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UNITED BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ERICKSON RETIREMENT) Case No. 09-37010-sgj11
COMMUNITES, LLC)
)
) Chapter 11
)
) Date: 10/21/2009
)
)
(DEBTOR)) TIME 1:30 P.M.

VOLUME 1 OF VOLUME 1
HEARING BEFORE THE HONORABLE STACEY G. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE

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Index Page

Movant's Witness:	DX	CR	RDX	RCX
PAUL RUNDELL:	19			

1 THE COURT: All right. The Court is
2 ready to begin an emergency hearing in the case
3 filing of Erickson Retirement Communities, LLC,
4 Case No. 09-37010.

5 Let's start out by getting appearances
6 from counsel on the record, please, first in the
7 courtroom.

8 MR. SLUSHER: Good afternoon, Your
9 Honor, Vincent Slusher, DLA Piper for the Debtor
10 Erickson.

11 THE COURT: Good afternoon.

12 MR. CHEVALLIER: Your Honor, Mark
13 Chevallier of McGuire, Craddock & Strother
14 appearing with respect to a number of not-for-
15 profit entities that are involved in this case,
16 and I'll just briefly recite them, but hereafter,
17 we'll refer to them as the NSCs and NFPs for the
18 National. The first Oak Creek Village, Inc.,
19 Greenspring Village, Inc., Riderwood Village,
20 Inc., Brooksby Village, Inc., Seabrook Village,
21 Inc., Cedar Crest Village, Inc., Anns Choice,
22 Inc., Maris Grove, Inc., Fox Run, Inc., Wind
23 Crest, Inc., Ashby Ponds, Inc., Highland Springs,
24 Inc., Eagles Trace, Inc., Linden Ponds, Inc.,
25 Sedgebrook, Inc., Monarch Landing, Inc., and

1 Tallgrass Creek, Inc.

2 THE COURT: There's 17 different
3 NFPs?

4 MR. CHEVALLIER: Yes.

5 THE COURT: Okay.

6 MR. CHEVALLIER: And, Your Honor, I
7 would also like at this time to introduce also
8 appearing on behalf of the NFCs and NFPs that
9 I've just identified, all with the Whiteford,
10 Taylor & Preston firm out of Baltimore, Maryland:
11 Mr. Martin Fletcher, Mr. Thomas Francella, and
12 Mr. Stephen Fruin.

13 THE COURT: Okay.

14 MR. CHEVALLIER: We are in the
15 process of filing motions to admit these
16 gentlemen pro hac before Your Honor, but I would
17 ask and move as a member of this Court for their
18 admission pro hac for purposes of today's
19 hearing.

20 THE COURT: Okay. Welcome to you
21 all. I may have already signed Orders on those.
22 I have.

23 MR. CHEVALLIER: I'm not sure you've
24 signed for us. There have been a number of
25 others that have been filed, but I don't believe

1 we filed ours yet.

2 THE COURT: Okay. If I have not,
3 we'll go out and look for the Orders, but I do
4 give you permission to talk if you choose today.
5 Thank you.

6 MR. CHEVALLIER: And for the Record,
7 Mr. Fletcher will be presenting our arguments to
8 the Court today.

9 THE COURT: Mr. Fletcher. Okay.
10 Very well.

11 MR. ELMORE: Good afternoon, Your
12 Honor. Mark Elmore, Haynes & Boone. I'm here on
13 behalf of Bank of America, and I appear today
14 with Brian Swett of Winston & Strawn, and he'll
15 be doing the arguments today, and we were lucky
16 enough to have the Pro Hac Order entered today.

17 THE COURT: Okay. Very good.
18 Welcome.

19 MR. SWETT: Good morning -- ah, good
20 afternoon, Your Honor. Thank you for having me
21 and signing for it.

22 THE COURT: Okay. You're welcome.

23 MR. MORENOFF: Thank you, Your
24 Honor. Daniel Morenoff from K & L Gates on
25 behalf of PNC Bank, NA. Your Honor, I have with

1 me Lisa B Tancredi of the firm Gebhardt & Smith
2 which is also in Baltimore, Maryland.
3 Similarly, while we are preparing a pro hac
4 application for her, it has not yet been filed,
5 and I would similarly ask that she be allowed to
6 participate in today's hearing.

7 THE COURT: Okay. Welcome,
8 Ms. Tancredi. I will allow you to talk.

9 MS. TANDREDI: Thank you, Your
10 Honor.

11 MR. MORENOFF: Thank you, Your Honor.

12 THE COURT: Thank you. Other
13 appearances in the courtroom.

14 MR. MCELREATH: Good afternoon,
15 Judge. George McElreath for the U.S. Trustee.

16 THE COURT: Welcome. All right.
17 Now, on the telephone, we have a few appearances.
18 You may go ahead.

19 MR. SUMMERS: Certainly. Good
20 afternoon, Your Honor. Matthew G. Summers of
21 Ballard Spahr in Baltimore, Maryland, and on the
22 phone with me I have Mark Pollock and Emily Alt.
23 We represent Morgan Stanley Windsor Health Care
24 and Kennedy Associates. We do not yet have local
25 counsel in Dallas, but I believe we'll probably

1 just be listening this afternoon.

2 THE COURT: Okay. Very well.

3 Welcome to you. Can you hear us okay?

4 MR. SUMMERS: We can hear you fine,
5 Your Honor.

6 THE COURT: Okay. I think that
7 should be all of the telephone appearances for
8 the 1:30 hearing. Is there anyone I missed on
9 the telephone?

10 MR. ROSE: Your Honor, it's Jorian
11 Rose from Venable on behalf of Redwood.

12 THE COURT: Okay. Welcome.

13 MR. ROSE: Thank you.

14 THE COURT: All right. Mr. Slusher,
15 are you ready to proceed?

16 MR. SLUSHER: Yes, Your Honor, we
17 are ready to proceed. I don't know -- to begin
18 with, I would like to thank the Court for
19 expediting the expedited hearing on this Motion,
20 and I think that counsel for the NFPs who asked
21 for the expedited expedited hearing wanted to
22 make an opening statement in terms of the
23 necessity for that hearing, and we are ready to
24 proceed on the Cash Management Motion.

25 THE COURT: Okay. And let me just

1 clarify before I hear from Mr. Fletcher, I think
2 it is, we are planning bifurcating these first-
3 day hearings, so we are only intending to go
4 forward with the Cash Management Motion right
5 now, and then we have our 3:30 setting on the
6 various other first-day matters.

7 MR. SLUSHER: That correct, Your
8 Honor. In addition to that, just for
9 informational purposes, we're filing Motions
10 today that will deal with a potential Debtor-in-
11 Possession finance and other matters that we will
12 seek expedited consideration for, but we'll file
13 the appropriate motions for expedited
14 consideration for those motions once they've all
15 been filed.

16 THE COURT: Okay. Understood.
17 Thank you.

18 All right, Mr. Fletcher.

19 MR. FLETCHER: Good afternoon, Your
20 Honor, and Martin Fletcher of Whiteford, Taylor
21 and Preston on behalf of the 17 Nonprofits that
22 we refer to as the NSC which stands for National
23 Senior Campuses which is their collective
24 sponsor, NFPs which stands for Nonprofits.

25 Your Honor, the reason ask that this

1 expedited hearing be expedited is, as you may be
2 aware, the actual filing of this case was
3 somewhat accelerated over what anyone expected,
4 so we're kind of coming in for a fast and
5 somewhat bumpy landing. We hope it will be
6 smoothed out as the days go by here.

7 One of the things that came to light
8 this morning is that the Cash Management System
9 of these entities is so complicated and so
10 interrelated that we actually have a situation
11 where the NSC and NFPs, and frankly, the two
12 non-NSC Nonprofits as well.

13 Some of their cash, millions of dollars
14 of their cash is currently frozen because the way
15 it is administered, if these Nonprofits contract
16 with Erickson to manage their operations, and at
17 different stages of this web of accounts in some
18 of those accounts it's actually nonprofit money,
19 Erickson may be on the title. I would
20 characterize that as on the title for
21 convenience. They need to be able to move the
22 money around pursuant to various agreements we
23 have, and that money is tied up.

24 The amount of funds that we're talking
25 about, again, is well into the seven figures, and

1 it represents the monthly payments that our
2 20-some-thousand residents made for the services
3 that are provided by Erickson. And these 20,000
4 residents of the NSC NFPs have an average age of
5 79 years. For most of them, they have invested
6 their entire life's saving in this unit, in their
7 unit that they occupy and for the services that
8 they've contracted for for the remainder of their
9 life. They are extremely nervous about these
10 proceedings already. Collectively, these
11 residents have put 4 billion, and that's billion
12 with a "B" dollars of their collective life's
13 work into this enterprise.

14 Of these 20,000, ten percent receive
15 skilled nursing services, so we're not just
16 talking about someone to keep the lights on and
17 sweep the floor. Some of these residents receive
18 skilled nursing care that they need for their
19 physical well-being.

20 Additionally, the Nonprofits that look
21 out for their interests are probably the largest
22 single creditor if you collectively add their
23 claims in all of these proceedings owed hundreds
24 and hundreds of millions of dollars and will be
25 one of the most active players in these cases, in

1 addition to being the single largest customer of
2 all of Erickson, and what we're talking about in
3 this case is preserving the going concern value
4 of Erickson, not only for the benefit of its
5 creditors but so the lives of these 20,000 people
6 are not needlessly disrupted and not needlessly
7 disrupted merely in actuality but also in anxiety
8 and stress.

9 As Your Honor may have noted, the filing
10 of this case has already attracted media
11 attention from every major newspaper in this
12 country. There have been multiple articles,
13 including today, in the Wall Street Journal
14 talking about all the residents protected.

15 Erickson is the flagship of this
16 industry, and so not only are these 20,000 people
17 looking to make sure that this is a smooth
18 process, but their families which would extend
19 the number of people involved, probably well over
20 100,000 people in this country and everyone else
21 that's in a CRC in this country is looking to
22 make sure the process works to protect the
23 residents.

24 Additionally and not surprisingly, these
25 are heavily regulated industries. Every state

1 where there is a facility has a regulator that
2 monitor these facilities on a regular basis, and
3 obviously, they are monitoring them now in the
4 case of Erickson with heightened scrutiny.

5 We have 10,000 employees of Nonprofits
6 that take care of our investments. Their payroll
7 dollars are right now trapped in this web of
8 accounts, and we need to make sure that their
9 payroll goes through at 2 P.M. today so that we
10 don't have checks bouncing for the high school
11 students who are working and volunteering at the
12 communities, for the nurses, for the people that
13 provide the meals and work in the kitchens, for
14 everyone that makes this broad community work, we
15 cannot have those checks bounce, we cannot have
16 our vendor payments bounce without causing not
17 only a stir among our residents and unnecessary
18 anxiety on their part, but, frankly, a broad
19 cascade across this entire industry?

20 And, so, we would urge in the strongest
21 possible terms that Your Honor approve the Cash
22 Management Motion because we understand that if
23 it is approved -- and I think you'll hear from
24 the banks and the Debtor that they have some
25 small tweaks to the Order that they've worked

1 out, that they will unfreeze the freeze that's
2 currently on and let the funds flow so that the
3 Nonprofits, and we're talking about nonprofit
4 dollars that are tied up, can go to the nonprofit
5 employees and the nonprofit vendors to serve the
6 nonprofit residents. So, we would ask that Your
7 Honor approve this as expeditiously as possible.

8 THE COURT: Okay. Thank you. All
9 right. Mr. Slusher, sounds like we need to
10 pretty quickly get the evidence here.

11 MR. SLUSHER: We do, Your Honor. If
12 I may summarize, the Debtor maintains 69 bank
13 accounts at various banks, Bank of America, M&T
14 Bank, PenCal Trust, PNC Bank, Sandy Spring Bank,
15 Sovereign Bank, 53rd Bank and Key Bank.

16 Erickson Retirement Communities LLC,
17 Erickson Construction LLC, Erickson Group LLC,
18 Concord Campus, Dallas Campus, Warminster Campus,
19 Senior Campus Services LLC maintain a centralized
20 cash management system through which funds are
21 collected into an operating account and disbursed
22 to various other accounts to pay operating
23 expenses with excess funds being invested.

24 The ERC Cash Management System employs a
25 series of integrated financial accounts,

1 including a centralized operating account
2 maintained at PNC Bank.

3 Your Honor, on the landowner Cash
4 Management System, there are similar setups, and
5 due to the time constraints, we would like to put
6 Mr. Paul Rundell on the stand who's the vice-
7 president for restructuring for the Debtors, and
8 we can run through essentially the averments that
9 he's made in his Affidavit which go to the relief
10 we've requested in this Motion.

11 THE COURT: Very well. Mr. Rundell,
12 if you could approach our court reporter, and
13 please raise your right hand, she'll swear you
14 in, and then you'll take this witness stand.

15 (Duly sworn by the Court Reporter)

16 MR. SLUSHER: Your Honor, may I
17 approach the witness?

18 THE COURT: You may.

19 MR. SLUSHER: Your Honor, I have an
20 additional set. I don't know whether you have
21 all the pleadings handy.

22 THE COURT: I have in here your Cash
23 Management Motion and your Affidavit.

24 MR. SLUSHER: Do you have the
25 Amended Affidavit, Your Honor?

1 THE COURT: I do.

2 MR. SLUSHER: Okay. Thank you, Your
3 Honor. For the Court's purposes, we're on Page
4 47 of the Amended Affidavit, beginning with
5 Paragraph 184.

6 PAUL RUNDELL,
7 Having been duly sworn to tell the truth, the
8 whole truth and nothing but the truth, testified
9 under as follows:

10 DIRECT EXAMINATION

11 BY MR. SLUSHER:

12 Q. Mr. Rundell, could you please state your
13 name and address for the record.

14 A. Yes. Paul Rundell, R-U-N-D-E-L-L. My
15 residence is 945 Hemlock Street in Deerfield,
16 Illinis 60015.

17 Q. Mr. Rundell, how are you employed?

18 A. My employer is Alvarez and Marsal, and I
19 am a Managing Director in their health care
20 group.

21 Q. And what is Alvarez and Marsal's
22 connection to the Debtors, the Erickson
23 Communities?

24 A. We were retained in April of 2009 to be
25 intermanagement to Erickson and their related

1 entities.

2 Q. And do you hold an official office or a
3 position with the Debtor?

4 A. I do. I'm actually the Executive Vice-
5 President of Restructuring.

6 Q. Now, Mr. Rundell, you prepared an
7 Affidavit, two Affidavits, but the one I'm
8 speaking of is the Amended Affidavit in Support
9 of First-Day Motions; is that correct?

10 A. It is.

11 Q. Now, in that Affidavit, at the beginning
12 of -- at Number Paragraph 184, there are
13 averments concerning the Cash Management Systems
14 and operations of the Debtors, and acknowledging
15 that these systems are complex, could you briefly
16 summarize the Debtor's Cash Management Systems.

17 A. Yes, I will try to very much summarize
18 because it is a complex system. In general,
19 Erickson is a Management firm that manages
20 communities, and we have residents that pay an
21 entrance deposit, and you'll hear the difference
22 between an IED, Initial Entrance Deposit, and a
23 resale which is a Entrance Deposit. The
24 difference is basically an unoccupied unit is an
25 IED, and a resale, a unit that is turning over,

1 is a regular entrance deposit.

2 Besides the entrance deposit, the residents
3 pay a monthly fee to the Nonprofits, and Erickson
4 manages these properties, and in return for
5 managing them, they receive a 5 percent
6 management fee, and they also get reimbursed for
7 cost, so we call it a management fee-plus, a
8 plus-cost contract.

9 The cash management, most of Erickson's funds
10 come through their communities, both developing
11 communities and mature communities, and that's
12 typically on the beginning of the month, as well
13 as there are some pass-through costs that come
14 throughout the month when cash flows are
15 available.

16 Each of the non-for-profits which are
17 nondebtors have their own bank accounts. There
18 are some funding of cash that goes from a
19 not-for-profit account to a landowner, and the
20 landowners are debtors, and the funds then go
21 from the landowner to Erickson, so the funds
22 always go from the not-for-profit to landowner to
23 Erickson and then back down the same way, they
24 don't go from landowner to landowner, or they
25 also do not go from not-for-profit to not-for-

1 profit.

2 In general, that is the Cash System. There's
3 lots of accounts, and I'm happy to answer to
4 other questions with specificity.

5 Q. Are all the accounts maintained by the
6 Erickson entities identified in the Motion that
7 we're here today on, the Cash Management Motion?

8 A. I believe so.

9 Q. And is it your belief that authorizing
10 the Debtor to continue to maintain the existing
11 bank accounts will eliminate delay or disruption
12 in the business operations of the Debtor?

13 A. Yes. To replace the bank accounts would
14 be an enormous challenge.

15 Q. Earlier we heard some discussions about
16 funds being frozen and those funds belonging to
17 the Not-For-Profits. Are you aware of that
18 situation?

19 A. I am.

20 Q. Are the accounts -- there are several
21 accounts that are lock box accounts that are
22 technically in the name of Debtor; is that
23 correct?

24 A. That is my understanding.

25 Q. And the funds that go into those

1 accounts are funds from the residents out service
2 fees?

3 A. They are the not-for-profit nondebtor
4 funds.

5 MS. TANCREDI: Objection, Your
6 Honor. That calls for a legal conclusion as to
7 whose funds those are. They're titled how
8 they're titled, and that's really not the thing
9 we need to hear about today.

10 THE COURT: Well, sustained as to
11 the way you phrased it.

12 MR. SLUSHER: That's fine, Your
13 Honor.

14 Q. (By Mr. Slusher) Does the Debtor
15 maintain and keep detailed records of cash
16 transactions or transactions through its bank
17 accounts and financial systems?

18 A. It does.

19 Q. And does it regularly report to lenders
20 and to management concerning its transactions?

21 A. It does.

22 Q. And has the Debtor agreed to continue to
23 provide such information?

24 A. It has.

25 MR. SLUSHER: Judge, we'll pass the

1 witness.

2 THE COURT: All right. Cross-exam
3 of this witness?

4 MS. TANCREDI: No. Thank you, Your
5 Honor.

6 THE COURT: Anyone? All right. The
7 Court needs to just perhaps recap, and I will say
8 that I appreciate the Affidavit, we have been in
9 trial if you can't tell from the boxes, for days
10 and days, and it has been as much a rush for the
11 Court, I suppose, as a lot of lawyers in the room
12 to start getting up to speed here. Let me just
13 recap, if I understand.

14 There are 69 bank accounts in the whole
15 Cash Managment System that we're talking about,
16 correct, Mr. Rundell?

17 THE WITNESS: Correct.

18 THE COURT: Okay. And it looks like
19 they are at about 8 different institutions; is
20 that correct?

21 THE WITNESS: That sounds right.

22 THE COURT: VA, M&T, PenCal Trust,
23 PNC Bank, Sandy Spring Bank, Sovereign, 53Rd
24 Bank, and Key Bank?

25 THE WITNESS: That sounds correct.

1 THE COURT: Okay. You think I've
2 got them all? All right. And if I understand,
3 there is specific controls and accounting and
4 whatnot so that some of these accounts are set up
5 as NFP accounts, some are set up as landowner
6 accounts, and some are set up as ERC accounts,
7 correct?

8 THE WITNESS: That's correct.

9 THE COURT: Okay. And, so, what
10 would come into the NFP account are the
11 residents' monthly fees?

12 THE WITNESS: Correct.

13 THE COURT: And maybe other funds as
14 well, but that's the bulk of it?

15 THE WITNESS: The entrance deposits
16 also go into -- they start out at the not-for-
17 profit as well.

18 THE COURT: The initial deposits, is
19 that what you're saying?

20 THE WITNESS: I'm sorry. The
21 initial entrance deposits and the entrance
22 deposits, the resale as well, both of them go
23 through the not-for-profit accounts to start
24 with.

25 THE COURT: Okay. All right. And

1 then there's a Management fee and cost
2 reimbursement that flow uphill to ERC --

3 THE WITNESS: Correct.

4 THE COURT: -- flagship, if you
5 will, who actually has management responsibility
6 and has the Management Agreement with each of the
7 NFPs, correct?

8 THE WITNESS: Correct.

9 THE COURT: All right. And there's
10 an interim step between ERC getting it from the
11 NFPs where the funds flow into separately into
12 landowner accounts?

13 THE WITNESS: Some of those funds go
14 through the landowner, some of them do go
15 directly from the NFP to Erickson.

16 THE COURT: Okay. So, in essence,
17 Debtor is simply wanting to keep the status quo
18 of all of this system, not change anything
19 against prepetition practice?

20 THE WITNESS: Correct.

21 THE COURT: Okay. All right. Any
22 redirect?

23 MR. SLUSHER: I do, Your Honor.

24 THE COURT: Okay.
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DIRECT EXAMINATION (Cont'd)

BY MR. SLUSHER:

Q. Mr. Rundell, in the course of preparing for this hearing this morning, we have discovered several accounts that were not included in the original Cash Management Motion; is that correct?

A. That is correct.

Q. And these accounts are designated PNC Trust Account 8022 -- they're all PNC accounts, correct?

A. Correct.

Q. There's PNC Trust Account 8022, and, HANS Cash Account 4053, the Ashburn Disbursement Account 3606, and the Concord Disbursement Account 1513; is that correct?

A. That's what I recall, correct.

Q. And it's the Debtors' intention that those accounts be managed pursuant to this Cash Management Order in the same manner that they had been managed prior to the bankruptcy filing?

A. Correct.

THE COURT: All right. Thank you, Mr. Rundell. You're excused from the Stand.

THE WITNESS: Thank you.

1 THE COURT: All right. Well, we'll
2 talk about the form of Order and hear whatever
3 comments lawyers want to make.

4 First, Mr. Slusher, is there anything
5 that you would consider exotic about this Order,
6 or is it pretty much -- I know we have a complex
7 bank account structure.

8 MR. SLUSHER: I think the only thing
9 that might be considered exotic is that it is
10 framed in the term of "Interim Order" for a
11 two-week period that allows the parties to
12 examine certain bank account agreements because
13 it is subject to existing agreements with the
14 banks. I mean, the business dealings are subject
15 to existing agreements, and, so, the Interim
16 Order gives the parties two weeks to kind of dig
17 into that, and if anybody files an objection or a
18 Motion to Reconsider this Order in that two-week
19 period, it would be heard, but absent such, then
20 it would become a final order at that point in
21 time.

22 THE COURT: All right.

23 MR. SLUSHER: And other than that, I
24 don't believe there's anything else exotic about
25 the Order.

1 THE COURT: Okay. Who would like to
2 be heard with regard to the relief sought or the
3 form of Order?

4 MS. TANCREDI: Good afternoon, Your
5 Honor. Lisa Tancredi on behalf of PNC Bank
6 National Association.

7 PNC is the agent bank for five of the
8 projects. Those projects are Ashburn Campus,
9 Concord Campus, Houston Campus, Kansas Campus and
10 Novi Campus. And we have been in discussions
11 with Debtors' counsel about the form of this
12 Order.

13 A couple of things I would like to point out.
14 There are some Certificates of Deposits that have
15 been pledged as collateral to certain Letters of
16 Credit. Those are not part of the bank accounts
17 that are affected by this Order.

18 THE COURT: Okay.

19 MS. TANCREDI: And in addition,
20 there are -- I learned this, I apologize, on the
21 way over in the cab to the courthouse from my
22 client, but there are remote deposit accounts
23 that may be in existence. And the way that those
24 work, those are needful the Debtor or the Account
25 Holder to deposit amounts that have immediate

1 access to credit, and we consider those an
2 extension of credit. I don't think they will be
3 covered by a Cash Management Order. I think to
4 the extent that those were going to be used, they
5 would require court approval in order to get
6 extensions of credit. I don't know the scope of
7 those or how many they are or where they are, but
8 I'd just point that out to Your Honor.

9 And, in addition, in response to some of
10 the comments that Mr. Fletcher made in his
11 presentation, I think that the situation before
12 the Court highlights -- and Your Honor hasn't had
13 an opportunity to really get very far into it,
14 but highlights an issue that PNC has a great
15 concern about, and that is, there's a lot of
16 relatedness in this operationally between the
17 Not-For-Profits and the Debtors. And the
18 Not-For-Profits currently are under the
19 supervision of this Court, they're not Debtors,
20 and all of the money from the residents, their
21 monthly fees and then their entrance fees goes
22 through the Not-For-Profits, and that's of great
23 concern to PNC.

24 And that is all I have unless Your Honor
25 has any questions for me.

1 THE COURT: Well, the remote deposit
2 accounts, are they -- are the issues any way
3 addressed by this Order? I mean, it's just
4 keeping the status quo and --

5 MR. SLUSHER: I don't believe they
6 are, Your Honor. They're not included in the
7 Motion or the Affidavits. I don't believe they're
8 in the scope of the relief requested or that
9 would be granted by the Court.

10 THE COURT: Okay. So no rights are
11 being impaired, we'll save for another day any
12 issues people want to raise with regard to those?

13 MS. TANCREDI: Right, Your Honor.
14 Thank you.

15 THE COURT: Okay. All right. Anyone
16 else wish to be heard with regard to the relief
17 or the form of Order? Mr. McElreath, are you
18 okay with it?

19 MR. MCELREATH: U.S. Trustee approves
20 it, Your Honor.

21 THE COURT: Okay. All right. Is
22 there a proposed waiver of marking all the stock
23 and accounts and whatnot with the DIP label?

24 MR. SLUSHER: We've met with the
25 U.S. Trustee's Office this morning, Your Honor,

1 and we have made arrangements to mark the stock
2 as we generate the term itself, so we can
3 designate the stock, we've been through those
4 issues.

5 THE COURT: Okay. Very good. Very
6 good. All right.

7 Well, the Court will grant this Motion
8 pursuant to the Court's authority under Section
9 105, 345, 363, 1107 and 1008.

10 The Court does think that it is in the
11 best interest of the estate and an exercise of
12 reasonable business judgment to maintain the
13 status quo with regard to this intricate system
14 of accounts based on the evidence I've heard so
15 far; however, this Order will be interim in
16 nature to last approximately two weeks, and, so,
17 parties in interest will have an opportunity to
18 further object and further put on evidence if
19 they so choose at a final hearing at which we
20 will determine whether this Order will become
21 final in nature.

22 Here is what I am going to propose
23 rather than give you right now the hearing date
24 for the final hearing on this. At 3:30, I
25 imagine you might need subsequent hearings on a

1 lot of things, and, so, we'll likely have an
2 Omnibus hearing that we'll establish at 3:30 that
3 will be used for the final hearing on this as
4 well as other matters.

5 All right. Is there anything further
6 right now? Okay. Well, we will obviously come
7 back at 3:30. I think we've got a larger crowd
8 appearing at 3:30, and one thing I'll obviously
9 want as part of the presentation at 3:30 is sort
10 of a more big picture of capital structure, and I
11 know that there is a potential sale that is
12 mentioned in the pleadings, you know, kind of an
13 overview of what the Debtor envisions the game
14 plan to be for the case.

15 All right. Thank you. We'll see you at
16 3:30. Do I have a -- I guess I don't have an
17 Order in my Orders box.

18 (Court in recess until 3:30 P.M.)
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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Darla M. Chavez, Transcriber

Dated: _____

**Note: Any spellings not available to transcriber are indicated with (phonetically spelled)

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