

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

3 In re: ) **Case No. 09-37010-sgj-11**  
4 ERICKSON RETIREMENT ) Jointly Administered Ch. 11  
COMMUNITIES, LLC, et al., )  
5 Debtors. ) Dallas, Texas  
6 ) Thursday, April 15, 2010  
7 ) 9:30 a.m./2:30 p.m. Dockets  
8 ) - PRETRIAL CONFERENCE  
9 ) - CONFIRMATION HEARING  
10 )

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11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
13 UNITED STATES BANKRUPTCY JUDGE.

14 APPEARANCES:

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1                   DALLAS, TEXAS - APRIL 15, 2010 - 9:37 A.M.

2                   THE COURT: Good morning. Please be seated. All  
3 right. We're ready to commence matters in Erickson Retirement  
4 Communities, LLC, Case No. 09-37010. We have a large crowd  
5 here. Let's start by getting appearances on the record.  
6 First, in the courtroom, please.

7                   MR. SLUSHER: Good morning, Your Honor. Vincent  
8 Slusher, Tom Califano and John Cusack of DLA Piper for the  
9 Debtors.

10                  THE COURT: Good morning.

11                  MR. WALLANDER: Your Honor, Bill Wallander and Molly  
12 Sorg from Vinson & Elkins, along with Peter Gilhuly from  
13 Latham & Watkins, on behalf of HCP.

14                  THE COURT: Okay. Good morning.

15                  MS. SPINDLER: Good morning, Your Honor. Laurie  
16 Spindler Huffman and Beth Weller on behalf of Dallas County  
17 and Harris County.

18                  THE COURT: Good morning.

19                  MR. SMITH: Good morning, Your Honor. It's James  
20 Smith and Lisa Tancredi for PNC Bank, National Association.

21                  THE COURT: Good morning.

22                  MR. STRICKLIN: Your Honor, Sam Stricklin and, from  
23 the New York office, Dan Connolly and Andrew Schouder, on  
24 behalf of the Official Committee of Unsecured Creditors.

25                  THE COURT: Okay. Good morning.



1 MR. STRICKLIN: Never disbanded.

2 (Laughter.)

3 THE COURT: Still alive and kicking.

4 A VOICE: Off the --

5 MR. STRICKLIN: Looks like we'll make it through the  
6 home stretch.

7 A VOICE: We made it to the --

8 THE COURT: You made it this far. Good morning.

9 MR. SWETT: Good morning, Your Honor. Brian Swett,  
10 and with me in the courtroom, my colleague, Myja Kjaer, on  
11 behalf of Bank of America as agent for the Dallas construction  
12 lenders.

13 THE COURT: Okay. Good morning.

14 MR. BOONE: Good morning, Your Honor. Bill Boone for  
15 the corporate revolver lenders.

16 THE COURT: Okay.

17 MS. RUCKMAN: Good morning, Your Honor. Dee Ruckman  
18 and Stuart Glick on behalf of M&T Bank, as agent.

19 THE COURT: Okay.

20 MR. FLETCHER: Good morning, Your Honor. Martin  
21 Fletcher of Whiteford Taylor Preston on behalf of the NSC NFPs.

22 THE COURT: Good morning.

23 MS. FORREST: Good morning, Your Honor. Heather  
24 Forrest on behalf of Key Bank.

25 THE COURT: Okay. Good morning.

1 MR. GOODWIN: Good morning, Your Honor. Steve Goodwin  
2 with Carrington Coleman, representing Oracle USA.

3 THE COURT: Okay. Good morning.

4 MS. GOOLSBY: Good morning, Your Honor. Melanie  
5 Goolsby of Pronske & Patel on behalf of Regional Construction  
6 Services, Inc. and Sergio Luciani.

7 THE COURT: Okay.

8 MR. MCELREATH: Good morning, Your Honor. George  
9 McElreath for the Office of the U.S. Trustee.

10 THE COURT: Okay. Good morning.

11 MR. PARHAM: Good morning, Your Honor. David Parham;  
12 Baker & McKenzie; on behalf of the City of Overland Park,  
13 Kansas.

14 THE COURT: Okay.

15 MR. BLECK: Good morning, Your Honor. Daniel Bleck,  
16 and with me is Adrienne Walker, for Capmark Finance, Inc., as  
17 agent for the Littleton lenders.

18 THE COURT: Okay. Good morning.

19 MR. KANNEL: Good morning, Your Honor. William Kannel  
20 for Wells Fargo Bank, National Association, and U.S. Bank,  
21 National Association, as Indenture Trustees.

22 THE COURT: Okay. Good morning.

23 MR. MARKS: Good morning, Your Honor. Jeffrey Marks;  
24 Squire Sanders & Dempsey; on behalf of Sovereign Bank. Also  
25 with me in the courtroom is Eric Van Horn; Rochelle McCullough.

1 THE COURT: Okay. Thank you.

2 MR. SCHEINBERG: Good morning, Your Honor. Sid  
3 Scheinberg on behalf of the ACE Group of Insurance Companies.

4 THE COURT: Okay.

5 MR. ROBERTS: Good morning, Your Honor. Ian Roberts  
6 on behalf of the Michigan Retirement Entities.

7 THE COURT: Okay.

8 MR. FRANKE: Good morning, Your Honor. Bob Franke;  
9 Strasburger & Price; Fidelity and Deposit Company of Maryland.

10 THE COURT: Okay. Good morning.

11 MR. GLUCK: Good morning, Your Honor. Kristian Gluck  
12 of Fulbright & Jaworski on behalf of Garnet Valley School  
13 District and Concord Township, Pennsylvania.

14 THE COURT: Okay.

15 MR. GOLDSTEIN: Good morning, Your Honor. Scott  
16 Goldstein on behalf of Wells Fargo Bank, National Association,  
17 as bond trustee for the Tallgrass Creek project.

18 THE COURT: Okay.

19 MR. CARMEL: Good morning, Your Honor. Marc Carmel of  
20 Kirkland & Ellis on behalf of the Coastwood entities.

21 THE COURT: Okay.

22 MR. CARMEL: And with me, Your Honor, is Adam  
23 Goldstein of Kirkland & Ellis as well.

24 THE COURT: Okay.

25 MR. HOWELL: Good morning, Your Honor. Jonathan

1 Howell with Munsch Hardt. Your Honor, Munsch Hardt represents  
2 as local counsel both Coastwood and CNA Insurance. I believe  
3 CNA Insurance has an agreement with the Debtor. Mr. Lippman  
4 has been handling most of the work. He, due to the short  
5 rescheduling, is unable to be here at the moment. He is in  
6 Judge Hale's courtroom on the *Provident* case. Will be here in  
7 30 minutes. He requested that I respectfully ask the Court to  
8 reserve any announcement on the agreement between CNA and the  
9 Debtors until he's able to make an appearance.

10 THE COURT: Okay. Thank you.

11 MR. HOWELL: Thank you, Your Honor.

12 THE COURT: All right. That's all the appearances in  
13 the courtroom. Let's go ahead and quickly get appearances from  
14 people on the phone.

15 MR. MORRIS: Good morning, Your Honor. This is Hal  
16 Morris, and with me on the line is Stuart Phillips, from the  
17 Texas Attorney General's Office on behalf of the Texas  
18 Department of Insurance and also on behalf of Texas A&M  
19 University.

20 THE COURT: Okay. Good morning.

21 MS. MIRSKY: Good morning, Your Honor. This is Arlene  
22 Mirsky on behalf of M&T Bank.

23 THE COURT: All right. Next?

24 MS. ESCOBAR: Good morning, Your Honor. This is  
25 Belkys Escobar on behalf of the County of Loudoun, Virginia.

1 THE COURT: Okay. Next?

2 MR. CLARK: Good morning, Your Honor. This is Robert  
3 Clark, Assistant County Attorney on behalf of Douglas County,  
4 Colorado.

5 THE COURT: Okay. Next?

6 MR. SUMMERS: Good morning, Your Honor. Matthew  
7 Summers on behalf of the MSRESS III Denver, Dallas and Kansas  
8 entities, as well as Windsor OH Holdings.

9 THE COURT: Okay. Next?

10 MR. HERMAN: Good morning, Your Honor. This is Ira  
11 Herman and Jennifer Christian at Thompson & Knight representing  
12 the Bank of New York Mellon as Indenture Trustee on the STAMPS.

13 THE COURT: Okay. Next?

14 MR. BERKOWITZ: Good morning, Judge. This is Ted  
15 Berkowitz from Farrell Fritz on behalf of the Debtors.

16 THE COURT: Okay. Next?

17 MR. ROSE: Good morning, Your Honor. Jorian Rose on  
18 behalf of ERC Funding and Redwood.

19 THE COURT: Okay. Anyone else?

20 (No response.)

21 THE COURT: All right. Well, Mr. Califano, first off  
22 the bat, we're going to talk about the start time on the  
23 confirmation hearing.

24 MR. CALIFANO: Yes, Your Honor.

25 THE COURT: Just to be clear for the record, this

1 confirmation hearing was noticed out to begin at 2:30 today,  
2 April 15th. And the Court received a request, I guess roughly  
3 24 hours ago, maybe sooner, to bump up the start time to 9:30.  
4 We now have -- well, let me -- I agreed to that. I will say I  
5 pondered it somewhat, given the notice required, the important  
6 notice in a confirmation context. But it had been represented  
7 I guess to my staff that all objectors would be promptly  
8 notified, and I got the impression that it was absolutely for  
9 the convenience of all the parties, that it would be upon full  
10 agreement of all of the affected parties to start five hours  
11 earlier. I certainly never would have bumped it up to an  
12 earlier date, but the way I looked at it was we had still had  
13 more than 28 days' notice of the confirmation hearing, and we  
14 were just starting a few hours earlier.

15 Perhaps, though, we have some due process issues that have  
16 legitimately been raised. And so I have seen the overnight  
17 objection of the U.S. Trustee, and I'm going to hear from the  
18 U.S. Trustee. But Mr. Califano, I'd like to start with you  
19 and have you tell me what you can tell me as far as who is on  
20 board with this, who is not, and is there any issue of an  
21 objector not being here, having trouble getting here, having  
22 trouble getting a witness here, things of that nature?

23 MR. CALIFANO: No, Your Honor. And I thank Your  
24 Honor for indulging us. I did ask for it, and I probably  
25 should have asked the Court earlier. But having realized that

1 we had resolved all but one objection -- and I think at the  
2 break, if we take a break, we'll be able to resolve that last  
3 objection --

4 THE COURT: Okay.

5 MR. CALIFANO: -- I thought it was in the interests  
6 of everyone, since we have people traveling from all over the  
7 country -- we have people here from LA, Philadelphia,  
8 Baltimore -- if we could get it done in one day so people  
9 could get home tonight, I thought it would be helpful. Now,  
10 what I did is I called each objector's counsel and I spoke to  
11 each objector's counsel and let them know we were starting at  
12 9:30, and no one raised an issue with it. Everybody is here.  
13 And in fact, as I've said, I believe we've resolved every  
14 objection. And so I don't think we have a due process  
15 concern, because I did speak -- personally spoke to counsel  
16 for each objector. It's simply for the convenience of the  
17 parties, Your Honor, and simply --

18 THE COURT: Maybe to save your client a little money,  
19 too, right?

20 MR. CALIFANO: Yes. Save the client, save the state  
21 some money.

22 THE COURT: How much money do you think we would save  
23 if we start five hours earlier?

24 MR. CALIFANO: I can't even think.

25 THE COURT: It's a six-figure sum, I have a feeling,

1 right?

2 MR. CALIFANO: It has to be, Your Honor.

3 THE COURT: Okay.

4 MR. CALIFANO: It would have to be a six-figure sum.  
5 So I do appreciate it. I understand the issue raised by the  
6 Office of the United States Trustee. But I think the parties  
7 here are all in agreement, and we haven't received an  
8 objection or concern from any other participant.

9 MR. CLARK: Your Honor, this is Robert Clark, Douglas  
10 County.

11 THE COURT: Okay.

12 MR. CLARK: I beg to differ. My objection has not  
13 been reserved, and Mr. Califano never called me. I did get  
14 notice, but it's just not true that we're in agreement for  
15 changing the time. We've got a \$1.2 million claim.

16 THE COURT: All right. So your objection is not  
17 resolved?

18 MR. CLARK: No, ma'am.

19 THE COURT: Do you have local counsel here and do you  
20 have evidence that you were going to put on today?

21 MR. CLARK: No, I have not been prejudiced. I just  
22 wanted to correct the record when Debtors' counsel said that  
23 my \$1.2 million claim had been resolved and my objections have  
24 been dealt with. That's not true. And it's also not true  
25 that he consulted with me. But I am here and I'm ready to be



1 heard.

2 THE COURT: Okay. So you are not requesting that the  
3 Court adjourn until 2:30, but you're just --

4 MR. CLARK: No, ma'am, I'm not. I'm just trying to  
5 correct the record.

6 THE COURT: Okay.

7 MR. CLARK: And I would like to have Debtors' counsel  
8 make fully truthful statements, as opposed to ones that aren't  
9 entirely so.

10 THE COURT: Okay. I understand, and we'll hear  
11 eventually on what the proposed resolution of your objection  
12 is and we'll see if we have a resolution or not.

13 All right. Who else wishes to be heard on this issue?

14 MR. MCELREATH: Thank you, Your Honor. George  
15 McElreath for the U.S. Trustee. Clearly, the courtroom is  
16 full. A lot of people have notice of a 9:30 start time. But  
17 as the gentleman from Colorado just mentioned, he was not  
18 consulted. And although he apparently had notice of a 9:30  
19 start, we don't know how many other people like him are out  
20 there. And I think, if the Court reaches substantive issues  
21 between 9:30 and 2:30 this afternoon, some party like the  
22 gentleman from Colorado can pop up later and make it all for  
23 naught. There would not have been due process afforded to  
24 that person.

25 I realize it would be an inconvenience for everybody to

1 twiddle their thumbs between now and 2:30, and I think some  
2 use can be made of this time, but I would caution against  
3 going forward and taking testimony and the Court making  
4 rulings before those people who have made arrangements to be  
5 here at 2:30 can appear.

6 In addition, Your Honor, the change of start time was  
7 noticed to me by e-mail approximately 2:00 o'clock yesterday  
8 afternoon. I didn't read it until after 4:00. As you know, a  
9 lot of the counsel representing parties in this case come from  
10 out of town. I think over 50 percent of the creditors that  
11 appear at these hearings are from out of town. How they could  
12 have made arrangements with that short a notice of the change  
13 in start time is beyond me. It just seems like unreasonably  
14 short notice, even of the switch.

15 And the notice of the switch went by e-mail. There are  
16 possibly creditors out there who don't have computers to  
17 receive such notice. There is no -- so far as I know, BMC  
18 didn't even attempt to mail a notice of this changed time.

19 So, Your Honor, I'm not saying stop everything and don't  
20 do anything between now and then, but I think some effective  
21 use of this time can be made. But there is a danger to ruling  
22 on confirmation before the hearing is scheduled to start.

23 THE COURT: Okay. Anyone else wish to be heard?

24 (No response.)

25 THE COURT: Mr. Califano, let me ask you this. I

1 counted 11 written objections to the plan. Does that sound  
2 correct?

3 MR. CALIFANO: Yes. Your Honor, we have -- we just  
4 figured out what the issue was. And this is an embarrassment,  
5 but I think I'd rather be negligent than dishonest.

6 THE COURT: Okay.

7 MR. CALIFANO: I was given a binder by a paralegal  
8 yesterday, and I -- of all the objections. There's 10  
9 objections. Douglas County isn't in the binder. All -- the  
10 10 objections --

11 THE COURT: You said Douglas is not?

12 MR. CALIFANO: Is not in the binder.

13 THE COURT: Okay.

14 MR. CALIFANO: So that's why I didn't call them.

15 THE COURT: They're Number 1 on my list --

16 MR. CALIFANO: I know.

17 THE COURT: -- in the binder you sent.

18 MR. CALIFANO: There was a mistake. But that's why  
19 they're -- that's why I didn't call them. I operated off of a  
20 book that didn't have them. I called the other 10: HCP, ACE  
21 and the balance. So I think -- and if we go through it, I  
22 think they're all resolved.

23 What I would suggest we do, Your Honor, and maybe this  
24 will satisfy the U.S. Trustee, if we can go through this  
25 morning and go through some of the changes we've made and

1 agreements that we've entered into with parties, and then if  
2 we come back at 2:30 and if there's any objections at that  
3 point, we could deal with their objections. But I can start  
4 the case and start talking about the modifications we did to  
5 the plan prior to that time.

6 THE COURT: Okay. And let me just say that it's  
7 certainly not unusual, in my experience, for a debtor to ask  
8 for a pretrial conference, basically, before the confirmation  
9 hearing starts, to go through things such as, you know, here's  
10 a laundry list of our objections, here are the ones we had  
11 resolved, here are the ones that remain pending, perhaps  
12 outline plan modifications, perhaps give a ballot tally, and  
13 then we come back for a confirmation hearing. It had occurred  
14 to me that that is one way we could almost do that, do this,  
15 --

16 MR. CALIFANO: Yes, Your Honor.

17 THE COURT: -- make this more like a pretrial  
18 conference, and then actually have the evidence, you know,  
19 whatever witnesses we're going to have, --

20 MR. CALIFANO: Yes, Your Honor.

21 THE COURT: -- start at 2:30.

22 So, again, just for the benefit of the U.S. Trustee and  
23 everyone, I don't think this is at all a frivolous concern  
24 that has been raised. But again, if we aren't starting a day  
25 early, we're starting a few hours early, and if in fact every

1 single objector is amenable to the earlier start time, then  
2 I'm at a little bit of a loss whose due process we're  
3 trampling on.

4 MR. CALIFANO: Yes, Your Honor.

5 THE COURT: So, anyway, let's do start in that  
6 fashion. If you could go through the objections we have, how  
7 they have been resolved, and we will at least be able to  
8 identify what is out there such as Douglas County, maybe. So  
9 --

10 MR. CALIFANO: And one housekeeping matter, Your  
11 Honor. We have -- we'll be submitting an order for a short  
12 DIP extension to take us from the expiration of the DIP  
13 through the anticipated closing. And right now, we're  
14 anticipating the closing to be April 30th. So, Your Honor,  
15 maybe I can just give an overview of how we intend --

16 MR. STRICKLIN: Your Honor? Your Honor?

17 THE COURT: Mr. Stricklin?

18 MR. STRICKLIN: If I could just add, maybe it makes  
19 sense to go through each of the 11 objections and make sure  
20 somebody's here from each of the 11. I just don't want to  
21 start over anything at 2:30.

22 THE COURT: Okay.

23 MR. CALIFANO: Okay.

24 THE COURT: That make sense to me.

25 MR. CALIFANO: All right.

1 THE COURT: And I am at Tab 2 of the notebook that  
2 Debtors' counsel delivered yesterday, where you have a laundry  
3 list of pending written objections to the plan. Is that the  
4 right place to be?

5 MR. CALIFANO: I would say so, Your Honor.

6 THE COURT: Okay.

7 MR. CALIFANO: So, maybe you should call the roll?

8 THE COURT: Okay.

9 MR. CALIFANO: Well, we know Douglas County is here.

10 THE COURT: All right. Douglas County, we had on the  
11 phone -- let's see, it was Mr. Clark, correct? Are you there?

12 MR. CLARK: Yes, Your Honor.

13 THE COURT: Okay. You also show County Commissioners  
14 of Johnson County, Kansas have an objection on file. Are they  
15 present?

16 MR. CALIFANO: That objection, I believe, is  
17 resolved. Mr. Goldstein is here. He's been the facilitator.  
18 Mr. Goldstein represents the Kansas bond trustee. He was good  
19 enough to facilitate a settlement with the City of Overland  
20 Park, the County, and the bond trustee.

21 THE COURT: Okay.

22 MR. GOLDSTEIN: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. GOLDSTEIN: Yes. We've been working on resolving  
25 this. There is language in the proposed confirmation order.

1 With the exception of one minor, minor nit that I believe that  
2 we will be able to resolve between now and the actual hearing  
3 on confirmation, I can represent to the Court that Johnson  
4 County, Kansas' objection has been resolved, as well as, since  
5 I'm here, the bond trustee for the Tallgrass Creek bonds,  
6 which we had also filed an objection. And I know that counsel  
7 for the City of Overland Park is also here and can represent  
8 to the Court that that objection, as a part of the overall  
9 resolution, has been resolved. So that takes care of three of  
10 the objections.

11 THE COURT: All right. So --

12 MR. CALIFANO: And at the break, Your Honor, --

13 THE COURT: Well, I see tenth on my list Wells Fargo  
14 as successor indenture trustee for \$15 million bonds, Overland  
15 Park.

16 MR. GOLDSTEIN: Yes.

17 THE COURT: That's who you --

18 MR. GOLDSTEIN: Yes, Your Honor. That's me.

19 THE COURT: -- represent? Okay. Well, thank you for  
20 that.

21 MR. GOLDSTEIN: Thank you, Your Honor.

22 THE COURT: The City of Overland Park we had third on  
23 your list, and Mr. Goldstein has just addressed that. Did I  
24 understand there might be someone on the phone also?

25 MR. CALIFANO: No, there's someone present.

1 THE COURT: Oh, I'm sorry. That was you, Mr. Parham?

2 MR. PARHAM: Mr. Goldstein is correct with respect to  
3 the City of Overland Park. Our objection has also been  
4 resolved.

5 THE COURT: Okay. Thank you, Mr. Parham.

6 All right. Fourth on your list was HCP, Inc. Mr.  
7 Wallander and crew are obviously here. Mr. Gilhuly?

8 MR. GILHULY: Yes, Your Honor. I believe also that  
9 our objection will be resolved once we put some things on the  
10 record.

11 THE COURT: Okay. ACE Group of Companies. We have  
12 an appearance, I believe. Mr. Scheinberg?

13 MR. SCHEINBERG: Yes, I am here. And we have  
14 resolved the matter, and I will confirm that Mr. Califano did  
15 personally call me yesterday to confirm the new time. Thank  
16 you.

17 THE COURT: And you have no problem with the 9:30  
18 start time?

19 MR. SCHEINBERG: No, I have no problem as well.

20 THE COURT: Okay. Thank you.

21 All right. Number 6 on your list was Westchester Fire  
22 Insurance Company.

23 MR. CALIFANO: That's also an ACE company. Isn't  
24 that correct?

25 MR. SCHEINBERG: Yes.



1 MR. CALIFANO: That's an ACE company. That is also

2 --

3 THE COURT: Oh, okay. Mr. Scheinberg, you speak for  
4 Westchester?

5 MR. SCHEINBERG: Yes, I do.

6 THE COURT: Okay. Thank you.

7 MR. SCHEINBERG: That is resolved.

8 THE COURT: All right. Going to Number 7 on your  
9 list, Bank of New York Mellon in connection with the STAMPS.  
10 Anyone here on behalf of Bank of New York Mellon?

11 MR. STRICKLIN: They're on the phone.

12 MR. HERMAN: Yes, Your Honor. We're on the phone.

13 THE COURT: Okay.

14 MR. HERMAN: Ira Herman, Judge, for Bank of New York  
15 Mellon.

16 THE COURT: Okay. Mr. Herman, do you have any  
17 objection to the earlier start time, and can you tell us where  
18 things stand on your plan objection?

19 MR. HERMAN: Your Honor, they were mostly technical  
20 points that we have been able to resolve with the Debtor. We  
21 believe the Debtor has accepted the language we had offered to  
22 them. Therefore, at this point, we believe the hearing can  
23 proceed, the bank is not objecting, and we don't object to the  
24 early start.

25 THE COURT: All right. Thank you, Mr. Herman.

1 MR. HERMAN: You're welcome, Your Honor.

2 THE COURT: All right. Number 8 on the list is  
3 County of Loudoun. That's Ms. Escobar, correct?

4 MS. ESCOBAR: Yes, Your Honor.

5 THE COURT: All right. Can you confirm, first of  
6 all, that there were discussions with you about pushing back  
7 the start time, and do you have any issues with that?

8 MS. ESCOBAR: We have no issues with that, Your  
9 Honor.

10 THE COURT: Okay. And your objection, does it remain  
11 pending or --

12 MS. ESCOBAR: We -- I talked to Mr. Califano  
13 yesterday, and I think all our objection has been resolved.

14 THE COURT: Okay. Very good.

15 All right. Dallas County and Harris County are ninth on  
16 your list.

17 MS. ESCOBAR: Yes, Your Honor.

18 THE COURT: Ms. Huffman?

19 MS. HUFFMAN: Mr. Califano contacted me by phone  
20 yesterday. I have no issue with the early start time. We  
21 have a couple of points to discuss, and perhaps we'll be able  
22 to resolve it this morning.

23 THE COURT: Okay. Very good. All right. Regional  
24 Construction Services and Sergio Luciani. Was that Ms.  
25 Goolsby?

1 MS. GOOLSBY: Yes, Your Honor. Pronske & Patel  
2 represents these creditors. I'm not aware, perhaps another  
3 attorney in our office was called, but we have no objection to  
4 the early start time.

5 Our objection has been resolved by a stipulation. It's  
6 been agreed to between Debtor and Regional Construction and  
7 Mr. Luciani, and we'd like to have that read into the record  
8 today.

9 THE COURT: Okay. Very good.

10 All right. Well, again, I'd ask you to confirm, Mr.  
11 Califano, is there any written objection to the plan that you  
12 know of that we did not just go through?

13 MR. CALIFANO: Well, there was an objection that  
14 Oracle America filed which was more of an objection to  
15 assumption, but it's also denominated an objection to  
16 confirmation.

17 THE COURT: Okay.

18 MR. CALIFANO: And I know there's been discussions  
19 with Oracle America, and I believe that that issue is being  
20 dealt with as an assumption issue and it's being moved to the  
21 next available hearing date. Just an issue on cure --

22 MR. GOODWIN: Yes. We received -- on where those  
23 stand on the docket.

24 MR. CALIFANO: -- and which particular contracts are  
25 being assumed.

1 THE COURT: Okay. Mr. Goodwin, I think that was you,  
2 right?

3 MR. SLUSHER: Actually, Your Honor, between the last  
4 time I talked to Mr. Califano about the resolution, we have  
5 actually resolved the substantive issues involved and are  
6 prepared to read the situation into the record and to submit a  
7 stipulation.

8 THE COURT: Okay. Mr. Goodwin, do you confirm and do  
9 you have any issue with the earlier start time?

10 MR. GOODWIN: Your Honor, we're going to withdraw our  
11 objection from Oracle, and we are going to have a cure amount  
12 of \$717,081.31. And the Debtor has an obligation to assume  
13 the entire existence of Oracle relationship. And what we'll  
14 do, Your Honor, is we will go forward and do -- since we have  
15 removed the objection, we're going to move forward with the  
16 stipulation and order, and we'll present that probably  
17 sometime this week.

18 THE COURT: Okay.

19 MR. GOODWIN: All right. Thank you.

20 THE COURT: Thank you, Mr. Goodwin.

21 MR. SLUSHER: That's correct, Your Honor.

22 THE COURT: All right.

23 MR. GOODWIN: Your Honor, may I be excused?

24 THE COURT: You may.

25 MR. GOODWIN: Thank you.

1 THE COURT: Thank you. All right. Are there any  
2 other objections in the nature of executory contract cure  
3 objections that perhaps we need to think about?

4 MR. CALIFANO: Well, we did receive some other cure  
5 objections, Your Honor. I believe that all the cure  
6 objections have been resolved, and the issues -- we had an  
7 objection -- we had objections by Oracle. CNA is resolved by  
8 some language that we're adding to the order. And CNA's  
9 counsel, I don't know if they've seen the order yet or if it's  
10 been transmitted to them or not, but we've adopted language  
11 that they had. Canon, I believe, is resolved.

12 MR. SLUSHER: Your Honor, the Canon objection, we're  
13 going to -- we have removed that from our assumed list. It's  
14 now on the reject list. So that resolves their cure  
15 objection.

16 THE COURT: Okay.

17 MR. CALIFANO: And what's the status with Verizon?

18 MR. SLUSHER: Verizon, we have a stipulation which  
19 has been finalized and we're prepared to file the stipulation  
20 today, Your Honor, --

21 THE COURT: Okay.

22 MR. SLUSHER: -- which resolves the Verizon  
23 objection.

24 THE COURT: Okay.

25 MR. CALIFANO: And we had one more party who did not

1 file an objection but who we've been dealing with. And --

2 MR. SLUSHER: There's Fidelity and Deposit.

3 MR. CALIFANO: Oh. And, well, --

4 MR. SLUSHER: We've reached a stipulation with them  
5 and --

6 MR. FRANKE: Bob Franke; Fidelity and Deposit. We've  
7 reached a stipulation and agreement where certain bonds will  
8 be assumed, and in connection with the assumption the general  
9 indemnity agreement will also be assumed. Those bonds that  
10 aren't going to be assumed will be rejected and canceled on  
11 the effective date of the plan. And we'll memorialize that in  
12 a written stipulation and submit it.

13 THE COURT: Okay.

14 MR. SLUSHER: That's correct, Your Honor. There are  
15 certain bonds that are actually issued in the names of the  
16 NFPs that are non-debtor entities, and those bonds are  
17 unaffected by the bankruptcy or this stipulation. So they  
18 would remain in effect pursuant to their terms.

19 THE COURT: Okay. Mr. Franke, did you have any  
20 problem with the earlier start time?

21 MR. FRANKE: No, Your Honor. I'm here.

22 THE COURT: Okay. Thank you.

23 MR. FRANKE: And may I be excused?

24 THE COURT: You may. Thank you.

25 MR. CONNOLLY: Your Honor?

1 THE COURT: Mr. Connolly?

2 MR. CONNOLLY: Daniel Connolly on behalf of the  
3 Committee.

4 We were served with two objections from Erickson former  
5 employees. I don't think we've ever seen them filed on the  
6 docket, but Charles Schlauch and Jan Matilde Walecka served us  
7 back on last Friday, before the deadline, objection deadline,  
8 with objections to the GPP Plan, the Growth Participation  
9 Plan. I don't know -- I don't know if you've seen them.

10 MR. CALIFANO: I've never -- I have not been served  
11 with those.

12 THE COURT: I've not seen them.

13 MR. CONNOLLY: Okay. I wanted the Court to be aware  
14 that we have --

15 THE COURT: Charles who?

16 MR. CONNOLLY: The names are Charles Schlauch, S-C-H-  
17 L-A-U-C-H, and a separate employee by the name of Jan Matilde  
18 Walecka, W-A-L-E-C-K-A. And we actually filed responses,  
19 which are on the docket, to those objections. But I'm not  
20 sure they ever properly filed them, but I do want you to be  
21 aware of that, Your Honor.

22 MR. CALIFANO: And we were not served with those  
23 objections.

24 THE COURT: Okay.

25 (The Court confers with staff.)

1 THE COURT: Okay. Yes, we've seen the Committee's  
2 response, but not the objections.

3 Okay. Mr. Gluck?

4 MR. GLUCK: Good morning, Your Honor. Kristian Gluck  
5 again on behalf of Garnet Valley School District and Concord  
6 Township.

7 We also had an objection, but we did not file it. We've  
8 worked out an agreement with the Debtor in the form of a  
9 stipulation and order that we'll be submitting to the Court  
10 that takes care of our objection.

11 We also don't oppose having the hearing this morning, Your  
12 Honor.

13 THE COURT: Okay. Thank you, Mr. Gluck.

14 MR. SLUSHER: Thank you, Your Honor. That's correct.

15 THE COURT: All right.

16 MR. SWETT: Judge, Brian Swett on behalf of Bank of  
17 America. The Debtors included on their initial list and then  
18 their revised list of contracts to be assumed certain  
19 contracts with the bank. We've reached an agreement with the  
20 estates as to the assumption and assignment of those  
21 agreements.

22 Most of the agreements deal with escrow accounts  
23 maintained at the bank with respect to IEDs, and the other  
24 agreement is a swap agreement. For the most part, the parties  
25 to those agreements are non-debtor NFP parties. Those parties



1 will continue to have the same economic and contractual  
2 obligations, given that their obligations under the contract  
3 are not, strictly speaking, subject to the Court's  
4 jurisdiction. Erickson Retirement Communities, in its  
5 capacity as the management company for those NFPs, is also a  
6 party to that contract, quote/unquote, "as agent," and its  
7 rights and obligations as agent are being assumed by the  
8 estate and then assigned to the Redwood management entity,  
9 which will serve the same purpose under the contracts as  
10 Erickson did.

11       Again, the obligations and liabilities of the NFPs will  
12 not be affected in any way by the assumption and assignment.  
13 And when we have a little bit of time, Mr. Slusher and I will  
14 work out an order to memorialize that.

15               THE COURT: Okay.

16               MR. SLUSHER: That's correct.

17               THE COURT: Okay. Thank you.

18               MR. SWETT: Thank you, Your Honor.

19               THE COURT: All right.

20               MR. CALIFANO: So those are the issues.

21               THE COURT: I'm a little bit concerned about the  
22 employee issue. We, of course, on one prior occasion had -- I  
23 can't remember his name. Was it --

24               MR. SLUSHER: Weaver.

25               MR. CALIFANO: Mr. Weaver, Robert Weaver.

1 THE COURT: Mr. Weaver show up and -- I think it was  
2 at the disclosure statement hearing, --

3 MR. CALIFANO: Yes, Your Honor.

4 THE COURT: -- and make some objections. And I don't  
5 see him on the phone last. And I honestly haven't seen the  
6 objections of these two -- are they former employees, I  
7 presume, or --

8 MR. CONNOLLY: That's correct, Your Honor.

9 THE COURT: But maybe they're ready, willing and able  
10 to show up and participate at 2:30.

11 MR. CALIFANO: Well, maybe, Your Honor, we can  
12 stipulate that nothing that happens will prejudice them if we  
13 come back -- we'll come back at 2:30, and if --

14 THE COURT: Come back at 2:30 with the evidence, but  
15 --

16 MR. CALIFANO: Right.

17 THE COURT: But right now, walk through the plan  
18 modifications --

19 MR. CALIFANO: Yes, Your Honor.

20 THE COURT: -- that address the objections, --

21 MR. CALIFANO: And it may --

22 THE COURT: -- and then get to the ballot tally?

23 MR. CALIFANO: And it may make sense, and Mr. Gilhuly  
24 just reminded me, that it may make sense to deal with the  
25 motion to compromise the controversy with the HCP entities,

1 because I think we can resolve their sort of reservation of  
2 rights objection.

3       The compromise has been changed. It no longer requires  
4 the lenders' support. The settlement with HCP will become  
5 effective on confirmation of the plan. The trustees with  
6 respect to the Warminster property have withdrawn their  
7 objection to the HCP settlement, and I believe that all HCP  
8 needs is an acknowledgement on the record that the Warminster  
9 trustees will not seek to enforce any subordination rights  
10 against HCP and allow HCP to receive the payments set forth  
11 under the plan and in the HCP compromise.

12               THE COURT: Okay.

13               MR. CALIFANO: And I believe the trustees are here  
14 and represented, and if they could just acknowledge that.

15               MR. KANNEL: Your Honor, William Kannel for Wells  
16 Fargo Bank as trustee on the Warminster project. We do  
17 represent, having resolved issues under the plan, subject, as  
18 with everybody else, to a few nits, that we would withdraw our  
19 objection to the HCP settlement, and in so doing we are  
20 withdrawing any claim we have to the money they're receiving  
21 under the settlement.

22               THE COURT: Okay. Thank you.

23               MR. KANNEL: And I think the papers we've filed said  
24 that.

25               THE COURT: All right. Mr. Gilhuly?

1           MR. GILHULY: Your Honor, with that, I think we're  
2 pretty much resolved. I think the only issues for the record  
3 are that, in the HCP settlement agreement, we called for a  
4 lender support agreement. It turns out, we got a bunch of  
5 objections from other banks that wanted to (a) do away with  
6 that, and (b) make sure that our hearing, which was originally  
7 scheduled for before confirmation, was indeed at confirmation.  
8 We -- HCP agrees to waive the requirement for that lender  
9 support agreement, and therefore -- and I think that everyone  
10 is now resolved with the representation from the Warminster  
11 bond trustee -- HCP will withdraw its conditional objection to  
12 the plan, and I think the settlement agreement can be  
13 approved, subject only to we have not yet seen the  
14 confirmation order. We'd like to see that and have the  
15 ability to comment. But other than that, we're fine.

16           THE COURT: Okay. Good.

17           MR. CALIFANO: Then, if I can make a recommendation,  
18 Your Honor, it seems like we will take a break before 2:30.  
19 We have copies of the proposed order that we've worked out  
20 with various parties. We could take copies of -- we can give  
21 copies of the order to people and they can confirm that their  
22 changes are made or look at the changes, and then we'll come  
23 back this afternoon and make sure that the order is complete.

24           THE COURT: Okay.

25           MR. CALIFANO: One other sort of housekeeping --

1 MR. HERMAN: Mr. Califano, if I may interrupt for a  
2 moment, this is Ira Herman for Bank of New York. Can you make  
3 arrangements for electronic delivery of the confirmation order  
4 or the draft to us, --

5 MR. CALIFANO: Yes.

6 MR. HERMAN: -- in anticipation of the hearing,  
7 please?

8 MR. CALIFANO: Yes.

9 MR. HERMAN: Thank you.

10 THE COURT: Okay.

11 MR. CALIFANO: One other housekeeping matter, Your  
12 Honor. We filed -- you know, when we were last here, I said  
13 there would be a TRO coming to stop the New Jersey action. I  
14 am happy to say that, within days of filing the TRO, we  
15 settled that case, the underlying case and the TRO matter. We  
16 had a motion on shortened notice to compromise the  
17 controversy, Your Honor, and all parties have agreed to it.  
18 There was a problem. Unfortunately, one of the attorneys  
19 involved had an illness in the family, so I agreed to adjourn  
20 that because he could not be here for that hearing. So we're  
21 agreeing to adjourn that to the next date, --

22 THE COURT: Okay.

23 MR. CALIFANO: -- because of an unexpected illness.

24 THE COURT: All right.

25 MR. CALIFANO: Then, Your Honor, if we could just --

1 if I can just tell you what we've suggested here this  
2 afternoon on evidence. We've submitted the declaration of Mr.  
3 --

4 (Background noise.)

5 A VOICE: It's not me.

6 (Laughter.)

7 THE COURT: Someone's listening to baseball or  
8 something instead of this fascinating confirmation hearing.

9 MR. CONNOLLY: Your Honor, I just, before we go into  
10 that, just on housekeeping issues, this is Dan Connolly again  
11 on behalf of the Committee. We received a copy of a draft  
12 order last night or yesterday morning, or this morning around  
13 1:00 a.m. It's 68 pages long. This is obviously a  
14 complicated case. There have been a lot of moving parts,  
15 really, right here at the end. And so I'm not sure, just by  
16 way of housekeeping, that it's going to be reasonable for  
17 everyone to have an opportunity to fully review this document  
18 for all the changes and get done today. So I think, just by  
19 way of caution, maybe putting that off --

20 MR. CALIFANO: Why don't we do this: Why don't you  
21 take a look at it, and if you have an issue, then we'll deal  
22 with it this afternoon?

23 MR. CONNOLLY: My concern is -- on behalf of the  
24 Committee, but perhaps for others -- that there may be not  
25 enough time for me to do that. That's my concern.

1 MR. CALIFANO: Then we'll -- if there's not enough  
2 time, then we'll talk about it this afternoon.

3 THE COURT: Okay. Well, --

4 MR. CALIFANO: I mean, we've -- Your Honor, a lot of  
5 the --

6 THE COURT: -- he's put you on notice that he may not  
7 be in a position --

8 MR. CALIFANO: No, but I'll just tell you.

9 THE COURT: -- to be happy with it this afternoon.

10 MR. CALIFANO: It is important, because we've spent  
11 --

12 THE COURT: Okay.

13 MR. CALIFANO: As you can tell, we've resolved every  
14 objection.

15 THE COURT: Okay.

16 MR. CALIFANO: And to resolve every objection, we've  
17 had to include and represent that we have, you know, language  
18 in the order resolving it.

19 THE COURT: Okay.

20 MR. CALIFANO: So that's why we're able to get  
21 through a hearing unopposed. I would hope that Mr. Connolly  
22 can read through it quickly, see the parts that don't relate  
23 to his clients, see the parts that might, and if there is an  
24 issue on anything that relates to his clients, then we'll try  
25 and deal with it. If they can't, then we'll talk about it

1 this afternoon. That would be my suggestion.

2 THE COURT: Okay.

3 MR. CLARK: Your Honor?

4 MR. CALIFANO: Your Honor, we --

5 MR. CLARK: Your Honor, this is Robert Clark on  
6 behalf of Douglas County. Once again, Debtor is representing  
7 that he's resolved Douglas County's objection. He hasn't  
8 talked to me and he hasn't sent me a copy of the draft  
9 confirmation order.

10 THE COURT: Okay.

11 MR. CLARK: So I'd like, at the very least, to have  
12 him e-mail a copy of the draft confirmation order, and then I  
13 can see whether my objection has been resolved or not.

14 MR. CALIFANO: Your Honor, I stand --

15 THE COURT: Okay. Mr. Califano, you'll --

16 MR. CALIFANO: Your Honor, I stand corrected.

17 Douglas County is not resolved. Everybody --

18 THE COURT: Okay.

19 MR. CALIFANO: Ten of the eleven objections are  
20 resolved.

21 THE COURT: Okay.

22 MR. CALIFANO: I stand corrected.

23 THE COURT: Did you hear that? He acknowledges he  
24 misspoke on that.

25 You will get him the confirmation order --



1 MR. CALIFANO: Yes, I will, Your Honor.

2 THE COURT: -- when we adjourn? Okay.

3 MR. CALIFANO: Yes.

4 MR. CLARK: That will be great.

5 THE COURT: Okay.

6 MR. CLARK: Thank you.

7 MR. CALIFANO: So, Your Honor, as I was saying, we  
8 have submitted the declarations of Paul Rundell, who Your  
9 Honor is familiar with; the declaration of Gerald Doherty,  
10 who's the General Counsel of the Debtors; and an affidavit  
11 Alan Butler, who's a representative of Redwood and the  
12 acquisition companies. We would like to, in the interests of  
13 time, use those as our direct case on confirmation. In that  
14 way, we can get through the -- when we get to confirmation  
15 this afternoon and walk through the elements, I can tie Your  
16 Honor to the affidavits and where that is. And then all three  
17 of Mr. Rundell, Mr. Doherty and Mr. Butler are available for  
18 cross-examination or clarification or any questions from third  
19 parties. But I just think, since we have the affidavits and  
20 declarations, they've been on file, and --

21 THE COURT: They have been on file?

22 MR. CALIFANO: They have been on file.

23 THE COURT: Okay.

24 MR. CALIFANO: That we could use those as direct.  
25 I'll have additional copies here that we can -- if anybody

1 wants to read them before the break, they can read them. But  
2 I just think it will smooth things if we treat that as the  
3 direct, because all the 1129 issues are resolved.

4 THE COURT: All right. The Court will accept the  
5 declarations of Mr. Rundell, Mr. Doherty and Mr. Butler as the  
6 direct testimony of the Debtor in support of confirmation, but  
7 they will all three be available for cross-examination this  
8 afternoon for any party who wants to. Okay?

9 MR. CALIFANO: Your Honor, we -- thank you, Your  
10 Honor.

11 We have made modifications to the plan, and a cumulative  
12 blackline was filed late last night and I believe again this  
13 morning. Mostly, it dealt with -- it cleared up some clerical  
14 -- I mean, it cleared up some errors and just some things that  
15 needed to be fixed. It also resolved some of the objections  
16 and we had to bring things into the body. And when we walk  
17 through the objections, we can go into that.

18 And there were also two issues that were not responses to  
19 objections, but one deals with the Littleton campus and one  
20 deals with the Kansas campus and changes that we made, and  
21 those lenders are represented. Their agents are here in  
22 court, and they have agreed to the modifications.

23 With respect to Littleton, Your Honor, there will be a  
24 stipulation that hopefully we'll get on file this afternoon.  
25 With respect to Littleton, because of the Colorado statutory

1 requirements, there is a time frame in which a -- Your Honor  
2 is familiar with the way the Debtor's business works: Initial  
3 Entry Deposit. After a tenant -- after a resident dies or  
4 moves out, the next deposit goes to reimburse them. In  
5 Colorado, there is a statute that, after 90 days, you have to  
6 pay back that resident, whether or not the unit is sold.  
7 There's approximately \$1.2 million in deposits that needed to  
8 be returned that otherwise would have been paid to the  
9 Littleton construction lender, Your Honor. And the  
10 stipulation in the plan provides that there is going to be a  
11 credit to the purchase price by the acquisition company of  
12 \$1,078,000, which will go towards those lenders. And then the  
13 NSC, when it receives the payments on those deposits, they'll  
14 be treated as Initial Entrance Deposits and then paid over to  
15 the acquisition company. So, that's one modification --

16 THE COURT: Okay.

17 MR. CALIFANO: -- that was made.

18 Another modification was in connection with the Kansas  
19 property, Your Honor, and with respect to the Kansas lenders.  
20 And basically, because of the way some -- some movement in the  
21 numbers, there is an agreement that \$814,000 from the IEDs  
22 will be paid over to the Kansas lenders.

23 And that's -- I believe that's a fair summary of the  
24 amendments which don't deal with objections, and I'd just ask  
25 that those lenders who are here acknowledge that they're

1 correct, those amendments.

2 THE COURT: All right. Can we get acknowledgement,  
3 Capmark?

4 MR. BLECK: Good morning, Your Honor. Daniel Bleck  
5 representing Capmark as the agent for the Littleton lenders.

6 As Mr. Califano has said, we have worked through some  
7 language in the proposed confirmation order dealing with this.  
8 There is an amendment to the master purchase agreement which  
9 will provide for an additional sum of \$1,078,000 added to the  
10 purchase price, and that money will be designated and paid  
11 over to the Littleton lenders. And that will resolve this  
12 issue.

13 THE COURT: Okay.

14 MR. BLECK: Thank you.

15 THE COURT: Thank you. Mr. Smith?

16 MR. SMITH: Your Honor, James Smith for PNC Bank.

17 We have been -- Mr. Califano has been -- has very  
18 graciously worked with us over the last several days on the  
19 plan supplement. And we have three minor changes to the most  
20 recently filed plan supplement which Mr. Califano has agreed  
21 to make. And with those changes, we're fine with the plan  
22 supplement as amended.

23 THE COURT: All right.

24 MR. CALIFANO: And the plan supplement includes  
25 modifications to the plan, Your Honor.

1 THE COURT: Okay.

2 MR. CALIFANO: So the modifications to the plan, and  
3 maybe we could just walk through those.

4 THE COURT: Okay.

5 MR. CALIFANO: Other than -- yes, those are the only  
6 arguably material modifications, Your Honor, and I just wanted  
7 to put on the record that those parties who were affected  
8 consented to those modifications.

9 THE COURT: Okay.

10 MR. CALIFANO: Your Honor, there are some other, and  
11 I'll just deal with them generally and highlight those  
12 changes.

13 In Section 4.1.4 of the plan, in reference to Erickson  
14 Group guaranty claims, there was a clarification, really, of  
15 how the Erickson Group guaranty claims would be assigned to  
16 the liquidating trust and how the potential proceeds, if any,  
17 from those claims would be distributed.

18 THE COURT: Okay.

19 MR. CALIFANO: So there's changes that are  
20 corresponding also in 6.4.7 and 6.4.8 of the plan.

21 THE COURT: Okay.

22 MR. CALIFANO: Your Honor, Section 4.5.6 -- and I  
23 promise, Your Honor, I will never use this numbering system  
24 again in any plan.

25 (Laughter.)

1 THE COURT: 4.5.6?

2 MR. CALIFANO: Six.

3 THE COURT: Okay.

4 MR. CALIFANO: 4.5.6 of the plan, Your Honor, which  
5 deals with the Ashburn junior loan claims, that has been  
6 updated to incorporate the settlement between the senior  
7 lenders, the Debtor and the junior Ashburn lenders.

8 THE COURT: Okay.

9 MR. CALIFANO: 4.7.6, Concord junior loan claims,  
10 Your Honor, that has also been modified to provide for the  
11 settlement that was made with those creditors, and the  
12 affected parties have consented.

13 THE COURT: Okay.

14 MR. CALIFANO: 4.11.7, there's a clarification that  
15 the NFP claims against the Houston debtor and the working  
16 capital loan claims are released and discharged. For some  
17 reason, it wasn't clear, while it was clear with every other  
18 debtor. It was just a drafting issue with respect to Houston,  
19 Your Honor.

20 THE COURT: Okay.

21 MR. CALIFANO: Sections 4.15.4, 4.15.5 and 4.15.8  
22 dealing with Warminster were changed to incorporate the  
23 settlement with respect to the Warminster debtor entity, --

24 THE COURT: Okay.

25 MR. CALIFANO: -- the Redwood, Ann's Choice, and the

1 Ann's Choice trustee. There is a term sheet which deals with  
2 the post-reorganization/post-closing documents, community  
3 documents, which has been attached as Exhibit D to the plan  
4 through the plan supplement, and 6.3.9 and other related  
5 provisions needed to be changed to incorporate that  
6 settlement.

7 THE COURT: Okay.

8 MR. CALIFANO: 6.2.3 and 6.2.3.1, which deals with  
9 the management company and describes the management company,  
10 that has been clarified to show the non-debtor bond land  
11 owners are not bound by the plan, and any new management  
12 agreement will be subject to the bond trustee and the  
13 acquisition companies.

14 THE COURT: Okay.

15 MR. CALIFANO: 6.4.1, Establishment of the  
16 Liquidating Creditor Trust, that was changed with the consent  
17 of the Committee to incorporate some issues respecting the  
18 types of claims being sought and assigned to the liquidating  
19 trust.

20 6.4.2, Your Honor, which deals with the participants of  
21 the liquidating trust, was modified to provide that the  
22 Sedgebrook bond trustee would have a Tier B claim in the  
23 allowed amount for \$3.5 million.

24 THE COURT: Okay.

25 MR. CALIFANO: And 10.4, which is an assignment provision,

1 assignment of contracts, there's a clarification that the plan  
2 does not implicate the rights of counterparties to the ACE  
3 Group and related insurance company claims.

4 THE COURT: Okay.

5 MR. CALIFANO: Then there were changes made to  
6 12.2.1, 12.2.2, 12.2.3 and 12.2.4, which are the release  
7 provisions, Your Honor. And those were changed, those were  
8 put forth in the plan supplement. That was something that we  
9 indicated to creditors was the subject of further  
10 documentation, and that has been the results of negotiation  
11 between almost every participant in this case. So that  
12 release language was changed, but that release language, we  
13 informed people through the disclosure statement and through  
14 the solicitation that it was subject to change, changes which  
15 would be set forth in the plan supplement, Your Honor.

16 So those, other than, you know, typographical errors and  
17 the like, those are the modifications to the plan, Your Honor.

18 THE COURT: Okay. Why don't you elaborate on the  
19 change to the release provisions?

20 MR. CALIFANO: Okay. And the changes to the release  
21 provisions, Your Honor, really make clear, because it was the  
22 subject of extensive negotiation between the parties. And I  
23 will -- I think probably the best thing to do, as opposed to  
24 going through the language, is to talk about what it's  
25 intended to do and what it's not intended to do.



1 THE COURT: Okay.

2 MR. CALIFANO: And basically it's to provide broad  
3 releases to the participants to the transactions under the  
4 plan. And as we described in the disclosure statement, this  
5 plan is really the result of a negotiation, and it's a  
6 negotiation on the one part with the Unsecured Creditors'  
7 Committee, and it resolved their litigation; the project  
8 lenders, it resolved their litigation vis-à-vis the Committee  
9 and vis-à-vis the subordinated lenders. It's a compromise  
10 vis-à-vis the corporate lenders, the Committee and the project  
11 lenders on the allocation of the purchase price, and it  
12 incorporates the resolution between the subordinated lenders  
13 and the project lenders on subordination issues, and it  
14 resolves issues with respect to the Warminster trustee, bond  
15 trustee, and the Kansas bond trustee, on issues that they had.  
16 And they, by agreeing to release certain monies, or agreeing  
17 that they would no longer be in -- the bonds would no longer  
18 be in default post-confirmation, they resolved issues that  
19 allowed the plan to go forward.

20 So that's the overall issue. And the NSC, I'm sorry. The  
21 NSC gave value through the new management agreements and  
22 through resolution of their claims.

23 So the release provisions reflect that global settlement  
24 and everybody making peace. There needed to be exclusions  
25 because there's going to be ongoing relationships between

1 various of the parties. So, for example, with respect to the  
2 Warminster trustee, we had to carve out certain claims that  
3 they might have against the NSC under their continuing  
4 documents. With respect to the project lenders, there are  
5 issues with respect to the NSC and carve-outs that needed to  
6 be made. So if you look at Paragraph 12.2 and 12.2.3 and  
7 12.2.4, they exempt these claims that may be at issue.

8 In other words, there's been -- a significant amount of  
9 effort, time and effort was spent on this, and I think the  
10 lead was done by the Committee on one side and the project  
11 agents' counsel on the other, and with the NSC, to really work  
12 out and give people the benefit of their bargain but not  
13 inadvertently release any claims that weren't intended to be  
14 released.

15 Each of the parties who is affected by these provisions,  
16 both the carve-out provisions and the release provisions, has  
17 reviewed the language and has agreed to the language.

18 With respect to other creditors, Your Honor, and you can  
19 see if you look at the blackline, you can see that the release  
20 was in there. 12.2.1. (Pause.) If you read 12.2.1, 12.5,  
21 12.6 and 12.7, Your Honor, you will see that the broad -- this  
22 broad release language in there. So it's submitted that any  
23 creditor who wasn't part of the negotiations would be aware  
24 and should have been aware that there would have been releases  
25 and release language.

1 In fact, the rest of the language that's added in the new  
2 provisions of 12.2.2, 12.2.3 and 12.2.4, those, Your Honor, I  
3 would submit are basically clarifications and limitations of  
4 the existing releases. So I believe that everybody has been  
5 put on notice.

6 We also had in the balloting an opt-out provision for  
7 creditors who chose not to grant the release.

8 So, while these changes may be significant, I would submit  
9 to the Court that any creditor who was voting on this plan was  
10 aware that there would have been releases and broad releases  
11 granted, was aware that the release, the actual release  
12 language, could change and would change between the disclosure  
13 statement and the confirmation hearing, and was given notice  
14 through the plan supplement of those changes. And we have not  
15 received any objections to the release provisions, either of  
16 the original plan or of the plan supplement, and we've  
17 received no objection on legal grounds that we shouldn't be  
18 granting third party releases or on the grounds that the  
19 releases were too broad --

20 THE COURT: Okay.

21 MR. CALIFANO: -- and weren't justified.

22 MR. STRICKLIN: Your Honor?

23 THE COURT: Okay. Let me just make clear. All of  
24 the changes, you said, have been in the nature of  
25 clarification or limitation. You know, making certain

1 exclusions or exemptions clear. As I understand that, in no  
2 way, in no area, have they been broadened, --

3 MR. CALIFANO: The only --

4 THE COURT: -- to be broader releases?

5 MR. CALIFANO: The only extent that they may have  
6 been broadened, Your Honor, was that, post-disclosure  
7 statement, we made resolutions, we entered into resolutions  
8 with the Warminster trustee, so they're included as a released  
9 party. The Kansas trustee, who's a released party. Is there  
10 anyone else? Are those it?

11 MR. STRICKLIN: And NSC.

12 MR. CALIFANO: That's, I believe, --

13 MR. STRICKLIN: And NSC parties, right?

14 MR. CALIFANO: Well, the NSC was in from the  
15 beginning. So those are the only increases, Your Honor.  
16 There was the Warminster trustee. But the Warminster trustee  
17 was in the plan supplement.

18 THE COURT: Okay.

19 MR. STRICKLIN: Your Honor, I believe --

20 THE COURT: And the plan supplement was filed five  
21 days ago or something like that?

22 MR. CALIFANO: Yes. Five days ago, and then we  
23 amended it.

24 THE COURT: Okay.

25 MR. STRICKLIN: I believe the disclosure statement

1 also made mention -- and I can't point to the exact language,  
2 but I believe the disclosure statement also made mention. We  
3 had a discussion before the disclosure statement hearing about  
4 these releases, and it was clear that we weren't going to get  
5 there before the disclosure statement was sent out, and I  
6 believe the disclosure statement had some language in it to  
7 the effect to put parties on notice that the release language  
8 was subject to change before the confirmation hearing. So  
9 there was a measure of notice in that respect.

10 I know you're -- suspect you're sitting there thinking  
11 about *Pacific Lumber* and the Fifth Circuit's recent  
12 declaration on that. *Pacific Lumber* specifically says non-  
13 consensual releases are not approved. In a circumstance where  
14 the releases are consensual, and as Mr. Califano pointed out,  
15 creditors had the ability to opt out. They have the ability  
16 to object. Nobody has objected. If anybody opted out, then  
17 they're not affected by the release. But I would suggest to  
18 the Court these are now consensual releases, and they're  
19 releases by parties that are given consideration.

20 The Fifth Circuit did not say you cannot approve  
21 consensual releases. In fact, you could hearken back to the  
22 older Fifth Circuit law. The *Shoaf* case would suggest this is  
23 teed up, nobody's here objecting, it's about to become the law  
24 of the case, and binding upon parties for that reason.

25 I don't think this bothers the *Pacific Lumber* holding,

1    though, as it's teed up today.

2           THE COURT:   Okay.   Thank you.

3           MR. CALIFANO:   Thank you.   And Mr. Kannel just  
4 corrected me.   What I meant when I said the Warminster  
5 trustee, I should have said all the bond trustees.   But it was  
6 in respect of all the bond trustees that we made that change.  
7 It was in the plan supplement, Your Honor, and we did give  
8 creditors notice.

9           So I believe that none of the modifications that we've  
10 made to the plan would require resolicitation.

11          THE COURT:   Okay.   Thank you.

12          MR. CALIFANO:   Okay.   Now, Your Honor, --

13          MR. SMITH:   Your Honor, could I jump in just for a  
14 minute?

15          THE COURT:   You may, Mr. Smith.

16          MR. SMITH:   Without offending Mr. Califano, which  
17 I've done plenty of in this case, I think.

18          Your Honor, the minor discrepancies -- the discrepancies  
19 in what's been filed, two of the three changes that I  
20 mentioned in the -- all of us tried, in addition to the  
21 boilerplate generic language carving out third -- who was not  
22 a third-party releasee, we all listed our non-debtor --  
23 various non-debtor affiliate transactions.   I had two  
24 additional that didn't get into the litany and are probably  
25 covered anyhow, but -- that are covered anyhow, but Mr.

1 Califano agreed to put me into the -- for the avoidance of  
2 doubt provisions on those two entities.

3 And there was inadvertently -- and I've not discussed this  
4 with Mr. Califano because I just noticed it. Mr. Swett just  
5 called it to my attention. It appears that, last night, the  
6 last two sentences, which are pretty much boilerplate, to  
7 12.2.4, were inadvertently deleted. And I'm hopeful Mr.  
8 Califano would agree to also put those back --

9 MR. CALIFANO: Yes. And I'll just read this language  
10 in. We must have just dropped it for some reason. It says,  
11 "Any reference to an agreement in the immediately-preceding  
12 sentence shall include such agreement as it may have been  
13 amended, supplemented or otherwise modified. All parties  
14 retain all defenses for exempt claims." To me, that's just  
15 boilerplate, Your Honor.

16 MR. SMITH: And the other minor change that we had  
17 was there's a Footnote 2 on the schedule of the TIP which  
18 refers to the Kansas TIP --

19 MR. CALIFANO: Administrative expenses.

20 MR. SMITH: -- administrative expenses, which,  
21 because of the changes in the IEDs, didn't work anymore, so we  
22 just deleted that footnote, but we didn't change the number.  
23 So I --

24 MR. CALIFANO: It just -- the footnote changes, but  
25 not the number, is really the --

1 MR. SMITH: Thank you, Your Honor.

2 THE COURT: Okay. Thank you.

3 MR. CALIFANO: All right. Jim?

4 So, that, I would submit, Your Honor, that none of the  
5 modifications that were made require resolicitation. They're  
6 either immaterial or the parties who are impacted have  
7 consented to the modifications.

8 THE COURT: Okay.

9 MR. CALIFANO: So, I don't know where we should go  
10 from there, whether we should come back at 2:30, or I can  
11 either address some of the objections or come back at 2:30.  
12 Whatever Your Honor would prefer.

13 THE COURT: All right. Well, I guess I'll just ask  
14 for the record: Now that Mr. Califano has gone through a  
15 summary, basically, of the various plan modifications that  
16 have been made and taken the position that there's no need for  
17 further solicitation or notice, is there anyone who either  
18 wants to make a clarification of any modification or wants to  
19 argue the point that further solicitation is not needed?

20 (No response.)

21 THE COURT: Okay.

22 MR. SMITH: Your Honor, I would have one  
23 clarification. Because of the nature of changes that were  
24 made yesterday, Mr. Califano graciously agreed to give the  
25 project -- all of the project lenders until 11:00 o'clock



1 today to file an objection. And we did in our notices to all  
2 of our bank project borrowers give them that time period. The  
3 11:00 o'clock hour has not struck yet, but I can -- will  
4 represent to the Court that I have received no objections from  
5 any --

6 THE COURT: Okay.

7 MR. SMITH: So, with that 15 minutes, I think I could  
8 agree that --

9 THE COURT: Yes. Twenty minutes.

10 MR. SMITH: Twenty minutes.

11 MR. CALIFANO: If I tell jokes for 20 minutes, then  
12 we're --

13 (Laughter.)

14 THE COURT: Well, --

15 MR. CALIFANO: Your Honor, I might --

16 THE COURT: Just a minute.

17 MR. CALIFANO: Maybe I can just --

18 (Pause.)

19 THE COURT: Okay. Yes.

20 MR. CALIFANO: Maybe I can just at this point, I  
21 mean, I'll ask the Douglas County objecting -- that what we've  
22 agreed to with Loudoun County, and we will reflect this in the  
23 order, is that to the extent Your Honor has not determined the  
24 tax liability on April 27th, and that will impact something  
25 we'll talk about this afternoon, we have agreed that we will

1 pay from the closing proceeds, and that's to the extent that  
2 Your Honor hasn't ruled on the 27th and we close before a  
3 final ruling comes in, we will pay from the closing proceeds  
4 the agreed-upon tax liability. Any disputed tax liability,  
5 together with postpetition interest thereon, will be escrowed  
6 with the title company pending Your Honor's resolution of the  
7 objections. And then the taxing authorities' liens will  
8 attach to that escrow account at the title company, and so  
9 will the project lenders' junior liens behind the taxing  
10 authorities.

11 So that has resolved the objection of Loudoun County, and  
12 I would hope that would resolve the objection of Douglas  
13 County.

14 THE COURT: All right. Mr. Clark?

15 MR. CLARK: Your Honor, that's exactly what we asked  
16 for in our objection, and it works perfectly for us.

17 THE COURT: Okay. So, conceptually, you're at least  
18 in agreement. Do you need to see the language, or have you --

19 MR. CLARK: I'd need to see the language, but the  
20 concept works fine.

21 THE COURT: Okay. Good. All right. So that, I  
22 understand, was the concept for all of the taxing authorities.

23 MR. CALIFANO: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. CLARK: And, with that, will it be necessary for

1 me to continue to take part in this hearing, or can I just  
2 work that out with Mr. Califano at the conclusion of the  
3 hearing, since I have his representation that that's what's  
4 going to happen?

5 THE COURT: Well, I will excuse you if you want to be  
6 excused, but, you know, any pending objection you might have  
7 to the language, you will need to be here this afternoon if  
8 you want the Court to consider that. So --

9 MR. CLARK: Well, if he can send me some language,  
10 then I will be back on the phone this afternoon.

11 THE COURT: Okay. The language, is it on file or  
12 have you --

13 MR. CALIFANO: It will --

14 THE COURT: It's in the confirmation order, or what?

15 MR. CALIFANO: It will be in the confirmation order  
16 --

17 THE COURT: Okay.

18 MR. CALIFANO: -- that we will send out.

19 THE COURT: Okay. He --

20 MR. CLARK: Okay. In the confirmation order he's  
21 sending me, I'll take a look for it there, and then I'll be  
22 able to tell the Court definitively.

23 THE COURT: Okay. Very good, Mr. Clark.

24 MR. CLARK: Thanks.

25 THE COURT: Okay.

1 MS. TANCREDI: Your Honor, just a point of --

2 MR. CLARK: Thank you, Your Honor, and thank you, Mr.  
3 Califano.

4 THE COURT: Okay.

5 MS. TANCREDI: Just a point of clarification before  
6 we leave this topic. At least with respect to Kansas, some of  
7 the tax escrow money is coming from sources other than the  
8 sale proceeds. There is \$814,000 that's coming from IEDs.  
9 And I think with respect to some other taxes, there may be  
10 another source other than the sales proceeds. So we're going  
11 to work that out before we come back.

12 THE COURT: Okay.

13 MR. CALIFANO: It's from the --

14 THE COURT: The point is, it's going to be escrowed?

15 MR. CALIFANO: It's going to be escrowed, Your Honor.

16 THE COURT: Okay.

17 MR. CALIFANO: And whatever is not in dispute will be  
18 paid at closing, if Your Honor hasn't ruled before closing.  
19 And if there's an amount that we're waiting for Your Honor to  
20 rule on, that will be escrowed with the title company.

21 THE COURT: Okay. Do you already have 505 motions on  
22 file for --

23 MR. CALIFANO: Yes, Your Honor.

24 THE COURT: -- anyone who --

25 MR. CALIFANO: They're on file, --

1 THE COURT: Okay.

2 MR. CALIFANO: -- and they've been scheduled to be  
3 heard on April 27th.

4 THE COURT: April 27th? Okay. All right. Well, it  
5 seems like the one thing it might make sense to do before  
6 adjourning is the ballot results.

7 MR. CALIFANO: Oh, yes, Your Honor.

8 THE COURT: Okay?

9 MR. CALIFANO: Your Honor, we had 58 voting classes,  
10 and we did file a ballot certification last night.

11 THE COURT: Okay.

12 MR. CALIFANO: BMC has -- was our balloting agent or  
13 our claims agent, and we have a representative of BMC here to  
14 testify in the event that there are any issues.

15 THE COURT: Okay.

16 MR. CALIFANO: But Your Honor, we had 58 voting  
17 classes. Fifty actually voted. We had eight classes where we  
18 received no votes.

19 THE COURT: Okay.

20 MR. CALIFANO: And I don't mean votes that were "No."  
21 We didn't receive any votes.

22 THE COURT: Uh-huh.

23 MR. CALIFANO: And of the 50 classes that voted,  
24 every class voted to accept the plan.

25 THE COURT: Okay.

1 MR. CALIFANO: So we have no impaired non --  
2 dissenting classes.

3 THE COURT: Okay.

4 MR. CALIFANO: We have eight abstaining classes.

5 THE COURT: Okay.

6 MR. CALIFANO: And we've had no issues with the  
7 ballot results. We had some objections to claims that were  
8 filed, and we dealt with those balloting issues before the  
9 balloting, so we have no -- we no longer have any issues  
10 there, Your Honor.

11 THE COURT: Okay.

12 MR. CALIFANO: I could tick through all the results,  
13 but it's 50. I don't think we need to tick through all 50 --

14 THE COURT: Fifty-eight. It may take a while.

15 I do have, I will say for the record, Docket #1324,  
16 showing it was filed last night, the declaration of the  
17 balloting agent, Tinamarie Feil, that I'm looking at. And --

18 MR. CALIFANO: And Ms. Feil is in the courtroom.

19 THE COURT: And Ms. Feil is in the courtroom. So I  
20 guess -- I will look through it as well as the other  
21 declarations during the lunch break, and if Ms. Feil could be  
22 back, if anyone desires to question her on the voting results,  
23 she would be available for cross-examination like the other  
24 witnesses.

25 MR. CALIFANO: Yes, Your Honor.

1 THE COURT: But I will look through this at lunch and  
2 see if I have any questions. Okay.

3 MR. SLUSHER: Your Honor, as a point of  
4 clarification, in the exhibit books we sent you yesterday,  
5 there was a ballot report. That ballot report has been  
6 superseded by the one that was actually filed of record.

7 THE COURT: Okay. The one I just referenced?

8 MR. SLUSHER: The one you just referenced is the  
9 actual correct report.

10 THE COURT: Okay.

11 MR. SLUSHER: So I just wanted to point that out.  
12 And I have an extra copy to give --

13 THE COURT: Okay. Well, I'm looking at what was  
14 filed at 6:29 last night.

15 MR. SLUSHER: That's the correct one.

16 THE COURT: Okay. Good. All right. All right.  
17 Anything else that we can accomplish? I think --

18 MR. MORRIS: Your Honor, this is Hal Morris with the  
19 Attorney General's Office of Texas.

20 THE COURT: Yes?

21 MR. MORRIS: At some point this afternoon, we'd like  
22 to be heard very briefly to express support for the plan on  
23 behalf of the Texas Department of Insurance, so -- only  
24 because I'm sure everyone will be anxious to catch planes.  
25 And while everyone is there now, if Your Honor would like to

1 hear that two-minute presentation, I'd be happy to go now, or  
2 at whatever time is convenient for the Court.

3 THE COURT: Okay. Why don't you go ahead now, Mr.  
4 Morris?

5 MR. MORRIS: Great. Thank you, Your Honor. Again,  
6 for the record, this is Hal Morris with the Texas Attorney  
7 General on behalf of the Texas Department of Insurance.

8 Very briefly, Your Honor, as the Court will recall, when  
9 the bankruptcy was first filed there were six or seven  
10 developing campuses in the states of not only Texas but also  
11 Virginia, Pennsylvania, Colorado, Kansas and Michigan, and  
12 that all of those were, for lack of a better description, in  
13 jeopardy of being foreclosed. That the regulators have very  
14 closely been following the case, actually before the  
15 bankruptcy was even filed. They've been meeting regularly  
16 among themselves. They've been meeting regularly with the  
17 Debtor. And my appreciation and compliments to Mr. Califano  
18 and his team, who have kept the regulators very, very well  
19 informed, and has always consistently been very responsive to  
20 our questions and inquiries, which have been myriad and  
21 numerous throughout the case.

22 Your Honor, we have carefully reviewed the plan and we've  
23 carefully looked at the finances, and it is the opinion of,  
24 certainly, the Texas Department of Insurance -- who is the  
25 only regulator that I represent, but again, have been in close



1 contact with the other regulators -- that the CCRCs will be  
2 well protected under this proposed plan of reorganization.  
3 And for that reason, I'm pleased to advise the Court that the  
4 regulators -- oh, excuse me, the Texas Department of Insurance  
5 and, to my knowledge, all the regulators -- fully support the  
6 plan and would urge that Your Honor confirm it.

7 Thank you, Your Honor.

8 THE COURT: All right. Thank you, Mr. Morris. We  
9 really appreciate hearing that. The Court knows you well, and  
10 you are always so diligent in bankruptcy cases. So to get  
11 that high praise and those compliments, Mr. Califano, I think  
12 speaks volumes.

13 MR. CALIFANO: Thank you, Your Honor.

14 THE COURT: All right. Well, if there's nothing  
15 further, then, I am prepared to adjourn.

16 Again, I understand that the 68-page confirmation order is  
17 going to be circulated electronically to those on the phone  
18 who have asked for it, and is going to be made available to  
19 the people in the courtroom. All of the declarants on the  
20 confirmation evidence will be available this afternoon for any  
21 cross-examination. And we will go forward with the remainder  
22 of the confirmation hearing at 2:30 today.

23 Mr. Califano, do you want to tell people in the courtroom  
24 where you and your team will be?

25 MR. CALIFANO: Well, I will be at our office at 1717

1 Main Street. And I can -- my cell phone number is 917-687-  
2 1714. The office number there is 214-743-4540. And  
3 obviously, I'll be sending it out by e-mail, so people will  
4 have my e-mail address.

5 THE COURT: Okay. All right. Well, Dawn --  
6 actually, we're going to lock up the courtroom, but only until  
7 about 1:00. We have 1:30 docket, and there will be a lot of  
8 people in here at 1:30, so I don't know if it's a good idea to  
9 leave stuff in the courtroom or not. Probably not, right,  
10 because we will have a pretty big 1:30 docket. So if you  
11 could take your stuff with you. I'm sorry.

12 All right. We stand adjourned until 2:30.

13 MR. CALIFANO: Thank you, Your Honor.

14 THE CLERK: All rise.

15 (Proceedings recessed from 10:50 a.m. until 2:54 p.m.)

16 THE COURT: Please be seated. All right. We are  
17 going back on the record in the Erickson Retirement  
18 Communities matters that are set today, Case No. 09-37010. In  
19 order to save a few minutes, I'm going to do a roll call in  
20 teacher-like fashion to see if we have everyone we need or  
21 everyone from this morning. So when I call your name, please  
22 say if you are present.

23 First, Tom Califano, Vince Slusher, and J. Cusack for the  
24 Debtor? Are you all here?

25 MR. CALIFANO: Yes, Your Honor.

1 THE COURT: All right. Sam Stricklin, D. Connolly  
2 and A. Schouder for the Unsecured Creditors' Committee. Are  
3 you here?

4 MR. STRICKLIN: Yes, Your Honor.

5 THE COURT: Okay. We have B. Boone for Wilmington.

6 MR. BOONE: Present.

7 THE COURT: All right. J. Smith and L. Tancredi for  
8 PNC?

9 MR. SMITH: Yes, Your Honor.

10 THE COURT: All right. B. Swett and M. Kjaer for  
11 Bank of America?

12 MR. SWETT: Present, Your Honor.

13 THE COURT: Okay. D. Bleck and A. Walker for  
14 Capmark?

15 MR. BLECK: Yes, Your Honor.

16 THE COURT: All right. D. Ruckman and S. Glick for  
17 M&T Bank?

18 MS. RUCKMAN: Present.

19 THE COURT: Okay. C. Callari for Redwood?

20 MS. CALLARI: Yes, Your Honor.

21 THE COURT: Okay. W. Kannel for Wells Fargo and U.S.  
22 Bank?

23 MR. KANNEL: Yes, Your Honor.

24 THE COURT: Okay. B. Wallander, M. Sorg and P.  
25 Gilhuly for HCP?

1 MR. WALLANDER: Here, Your Honor.

2 THE COURT: Okay. I. Roberts for Michigan Retirement  
3 Systems?

4 MR. ROBERTS: Here.

5 THE COURT: M. Fletcher for NSC NFPs?

6 MR. FLETCHER: Yes, Your Honor.

7 THE COURT: Okay. H. Forrest for Key Bank?

8 MS. FORREST: Here, Your Honor.

9 THE COURT: Okay. J. Marks for Sovereign Bank?

10 MR. MARKS: Present.

11 THE COURT: M. Carmel, A. Goldstein and J. Howell for  
12 Coastwood?

13 MR. CARMEL: We're here, Your Honor.

14 THE COURT: Okay. S. Scheinberg for ACE and  
15 Westchester? He may not have come back. Did he come back? I  
16 think he asked to be excused this morning. Is that correct?

17 MR. SLUSHER: He did, Your Honor, and advised that he  
18 would not be coming back this afternoon.

19 THE COURT: Okay. B. Franke for Fidelity? Is that  
20 the same category as --

21 MR. SLUSHER: That's correct, Your Honor.

22 THE COURT: Okay. He had his issues worked out?

23 L. Huffman and E. Weller for Dallas and Houston taxing  
24 authorities?

25 MS. HUFFMAN: Your Honor, I'm present in court. Ms.

1 Weller is not.

2 THE COURT: Okay. Thank you, Ms. Huffman.

3 Okay. K. Gluck for Garnet Valley School District and  
4 Concord Township. I think he's on the phone. Correct?

5 MR. GLUCK: Correct, Your Honor.

6 THE COURT: Okay. George McElreath, UST.

7 MR. MCELREATH: Here, Your Honor.

8 THE COURT: He's there? Dave Parham, City of  
9 Overland. Did he come back? His issues, I think, were worked  
10 out, correct?

11 MR. SLUSHER: Correct, Your Honor.

12 MR. CALIFANO: Yes, Your Honor.

13 THE COURT: Okay. M. Goolsby for Regional  
14 Construction and Sergio Luciani?

15 A VOICE: Your Honor, Pronske & Patel is --

16 THE COURT: Okay. Hello. Steve Goodwin for Oracle  
17 asked to be excused, correct?

18 MR. SLUSHER: Correct, Your Honor.

19 THE COURT: Okay. S. Goldstein for Wells Fargo Bank  
20 as Indenture Trustee for Tallcreek?

21 MR. GOLDSTEIN: Present.

22 THE COURT: Okay. All right. We have some phone  
23 appearances again this afternoon. Do we still have T.  
24 Berkowitz?

25 MR. BERKOWITZ: Present.

1 THE COURT: R. Clark from --

2 MR. CLARK: Here, Your Honor.

3 THE COURT: Okay. Belkys Escobar?

4 MS. ESCOBAR: Yes, Your Honor.

5 THE COURT: I. Herman?

6 MR. HERMAN: Yes, Your Honor.

7 THE COURT: A. Mirsky?

8 MS. MIRSKY: Here, Your Honor.

9 THE COURT: Okay. Hal Morris and S. Phillips?

10 MR. MORRIS: Good afternoon, Your Honor.

11 THE COURT: Okay. Do we have J. Rose from Redwood?

12 MR. ROSE: Present, Your Honor.

13 THE COURT: Okay. Matthew Summers for MSRESS?

14 MR. SUMMERS: Yes. Present, Your Honor.

15 THE COURT: Okay. Did I miss anyone either in the  
16 courtroom or on the phone who wished to appear this afternoon?

17 MR. LIPPMAN: I've got to work my way up.

18 THE COURT: Obstacle course getting up here, huh.

19 MR. LIPPMAN: Your Honor, Kevin Lippman with Munsch  
20 Hardt here on behalf of CNA Companies. I have, I guess, Round  
21 2 of today's hearing.

22 THE COURT: Okay. Thank you.

23 All right. Anyone else? Anyone on the phone?

24 (No response.)

25 THE COURT: All right. Well, so the record is clear,

1 we had set today the confirmation hearing in Erickson. It was  
2 noticed for 2:30 today, April 15th. At the Debtors' request,  
3 we commenced the hearing five hours early this morning at  
4 9:30. However, out of due process concerns for anyone out  
5 there who might not have gotten notice of the early start  
6 time, the court hearing this morning was more in the nature of  
7 a pretrial conference.

8 The Court did not actually take any of the confirmation  
9 evidence. The Court took announcements about objections that  
10 have been resolved and also about modifications the Debtor has  
11 agreed to make or proposed to make to resolve objections. And  
12 the Court heard a report about the balloting on the plan.

13 All right. So we are now ready to hear the confirmation  
14 evidence. Before I do that, Mr. Califano, was there anything  
15 in the nature of a housekeeping matter?

16 MR. CALIFANO: Well, Your Honor, other than the fact  
17 that we -- I don't think Your Honor actually ordered the HCP  
18 settlement this morning. We talked about that the objections  
19 have been withdrawn. And I would just ask that we close that  
20 loop by approving the settlement, subject to confirmation of  
21 the plan.

22 THE COURT: Okay. For the record, was there anyone  
23 who wanted to be heard with regard to the HCP settlement, as  
24 modified, as announced this morning?

25 (No response.)

1 THE COURT: All right.

2 MR. KANNEL: Your Honor, William Kannel. Just for  
3 the record, I had a brief conversation with Mr. Gilhuly about  
4 this. Our consent is, of course, conditioned on confirmation  
5 and the settlement actually closing. If things fall off the  
6 table, then we're not consenting to this deal for everything.

7 THE COURT: Okay.

8 MR. KANNEL: Thank you.

9 THE COURT: Mr. Gilhuly, you confirm that that is the  
10 arrangement, correct?

11 MR. GILHULY: Yes, Your Honor. That's correct.

12 THE COURT: Okay. All right. Based on the record  
13 before the Court as set forth in the pleadings on the HCP  
14 settlement, as well as the representations that have been made  
15 here in court, the Court does find the HCP settlement to be  
16 fair and equitable, given all the risks and rewards underlying  
17 the disputes there. So the Court will approve it, again, as  
18 fair and equitable and an exercise of reasonable business  
19 judgment of the Debtor. And this is, of course, all  
20 contingent on the plan being confirmed and going effective.  
21 All right.

22 MR. CALIFANO: Thank you, Your Honor.

23 THE COURT: And then the other matter we have is  
24 going to be reset, the --

25 MR. CALIFANO: Yes.



1 THE COURT: -- Point View/Sovereign?

2 MR. CALIFANO: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. CALIFANO: Your Honor, I want to thank you once  
5 again for having a flexible calendar today. It enabled us to,  
6 I think, accomplish a great deal, and hopefully it will smooth  
7 this hearing and everybody will be out of here today and home  
8 and on their way.

9 I just have to note, it's a long way from where we were at  
10 the interim DIP hearing, when we had 35 objections and we had  
11 two days of testimony. And I'm happy to say that, as I said  
12 this morning, Your Honor, of the 50 classes that voted, every  
13 one of them accepted the plan. We had 11 objections, and at  
14 the risk of being corrected by my friend from Douglas County,  
15 I think we've resolved them all, and we'll talk about that at  
16 the end. I'm happy --

17 MR. CLARK: Your Honor, that is correct this time.

18 THE COURT: All right.

19 (Laughter.)

20 THE COURT: We got the thumbs up. All right.

21 MR. CLARK: And I want to express my appreciation to  
22 the Debtor for having done so.

23 THE COURT: Okay. Very good.

24 MR. CALIFANO: See, if you keep trying, eventually,  
25 you get it right.

1 THE COURT: That's right.

2 MR. CALIFANO: Your Honor, we also haven't heard from  
3 the lenders that -- their 11:00 o'clock deadline came and  
4 went. So I'm happy to say that we look for a smooth sailing  
5 for confirmation. And I, for one, was not sure that this day  
6 would ever come, based on how this case started out, and it  
7 started out really almost like an involuntary case and came as  
8 an emergency.

9 Your Honor, we filed our Fourth Amended Plan on March 8,  
10 2010. It's the same date that the Court entered an order  
11 approving the Fourth Amended Disclosure Statement, which  
12 approved the solicitation procedures and scheduled this  
13 confirmation hearing. On March 12, Your Honor, as I said this  
14 morning, BMC Group, our balloting and claims agent, commenced  
15 the solicitation process by mailing the solicitation package.  
16 The disclosure statement and the order approving it provided  
17 that ballots were due April 8th, April 13th for STAMPS  
18 holders, and objections were due April 9th.

19 As I said this morning, 50 of the 58 classes that were  
20 entitled to vote under the plan approved the plan. The eight  
21 classes that did not vote in favor abstained. So we had no  
22 class that rejected the plan.

23 In connection with this hearing, Your Honor, in support of  
24 confirmation, we filed a memorandum of law in support of  
25 confirmation; the affidavit of Gerald Doherty, General Counsel

1 to the Debtor, in support of the plan; the affidavit of Paul  
2 Rundell, Executive Vice President-Restructuring and the  
3 representative of Alvarez & Marsal; and the affidavit of Alan  
4 Butler, the representative of Redwood.

5 The Doherty affidavit, Your Honor, goes to good faith,  
6 certain transactions that occurred under the plan, and also to  
7 the Coastwood payment. And Your Honor may recall, at the  
8 auction the Debtor agreed to make a payment to Coastwood as  
9 part of the bidding process. As is set forth in Mr. Doherty's  
10 affidavit, the evidentiary basis for that is that all parties  
11 recognized at the time that Coastwood, by agreeing to increase  
12 its bid in exchange for that 10 percent unsuccessful bidder  
13 fee, brought value to the estate, and I think that's evidenced  
14 by the fact that, in this case, where money is obviously short  
15 and creditors are getting only a portion of their claims paid,  
16 nobody has objected to the Coastwood payment. So the Doherty  
17 affidavit, in our opinion, establishes good faith and the  
18 basis for that Coastwood payment.

19 THE COURT: And to confirm, the dollar amount would  
20 be \$9 million, correct?

21 MR. CALIFANO: \$9 million, Your Honor.

22 THE COURT: Okay.

23 MR. CALIFANO: And as we've heard, Coastwood is in  
24 court today, and we've received no objection to that portion  
25 of the plan or to that payment.

1           The affidavit of Mr. Rundell, the declaration of Mr.  
2 Rundell, Your Honor, that goes to classification, feasibility,  
3 best interests of creditors, because there's a liquidation  
4 analysis attached, and the Debtors' operations. There is one  
5 clarification that we need to make about that declaration.  
6 That declaration was based on estimated DIP numbers as of the  
7 time that it was entered into. I don't think it's material,  
8 but if called upon to testify Mr. Rundell would be able to  
9 supplant those numbers in his declaration with the actual  
10 numbers to date.

11           And also there is the affidavit of Alan Butler. Alan  
12 Butler is a principal of -- he is the president of Redwood  
13 Capital Investments, a Maryland limited liability company,  
14 which is the -- sort of the umbrella entity for the  
15 acquisition companies under the plan. Mr. Butler, who is here  
16 in the courtroom if anyone seeks to cross-examine him, his  
17 affidavit sets forth, Your Honor, that, as of the effective  
18 date and immediately after the closing, the acquisition  
19 companies will have, on a consolidated basis, \$365 million in  
20 capital, including \$60 million in cash, with the only  
21 substantial debt being those assumed under the definitive  
22 agreement and the plan. The expected cash flow for the  
23 balance of 2010 is expected to be in the range of \$45 to \$60  
24 million in the positive from management contracts, the  
25 collection of IEDs, and the collection of IEDs going forward.

1 The acquisition companies will also have access to a  
2 substantial line of credit that could be used for any  
3 additional capital needs.

4 Your Honor, we believe that that establishes the basis for  
5 feasibility, for the ready, willingness and ability of the  
6 acquisition companies to close, and also any adequate  
7 assurance issues that would relate to the assumption and  
8 assignment of contracts. And we have, as I said before, Your  
9 Honor, no outstanding objections with respect to those issues.

10 We filed the balloting certificate, as we mentioned this  
11 morning, which was provided by BMC, which showed the  
12 overwhelming acceptance of the plan. And we have filed two  
13 plan supplements, Your Honor, one April 9th and one April  
14 14th, which incorporates the changes to the plan since the  
15 disclosure statement was approved and additional documents  
16 that are contemplated under the plan. And as we went through  
17 this morning, there have been no material modifications except  
18 where creditors have agreed.

19 We will be filing another corrected plan supplement this  
20 evening, Your Honor, to just correct some issues and also  
21 implement some of the settlements and resolutions that we've  
22 come up with. And that will be filed today.

23 Your Honor, the plan has been accepted by 52 of the 58  
24 impaired classes. The plan --

25 THE COURT: Fifty or 52?

1           MR. CALIFANO: I'm sorry. Fifty of the 58 impaired  
2 classes, --

3           THE COURT: Okay.

4           MR. CALIFANO: -- with eight abstaining.

5           The plan is implemented through various transactions.  
6 There is the closing of the sale which was commenced at the  
7 auction of December 22nd, which resulted in Redwood as the  
8 successful bidder for a cash bid of \$365 million.

9           There are new agreements entered into between National  
10 Senior Campuses and National Senior Campus Not-For-Profits  
11 with the acquisition companies that we've talked about in the  
12 past and is set forth under the plan.

13           The resolution of certain of the recharacterization  
14 adversary proceedings -- actually, all of the  
15 recharacterization adversary proceedings -- will provide not  
16 just for payment to those junior lenders, but also for the  
17 deeding back of properties which are then transferred to the  
18 acquisition companies.

19           There are certain agreed -- discounted payoffs that the  
20 project agents and their lenders have agreed to at the  
21 projects which facilitate the sale. And also with respect to  
22 the Unsecured Creditors' Committee, there is the creation of a  
23 liquidating trust, the transfer of assets which are not being  
24 transferred to the acquisition companies, including certain  
25 causes of action to this liquidating trust, and its initial

1 funding of seed money of approximately \$2.5 million, Your  
2 Honor.

3 Obviously, this is just an overview of the plan, and the  
4 plan provisions control.

5 Your Honor, we would submit with respect to the 1129(a)  
6 factors that the affidavits we have submitted create a *prima*  
7 *facie* case. And as I said, those witnesses are here to be  
8 cross-examined if anyone has an issue. And I'll just take the  
9 1129(a) criteria in order, Your Honor.

10 (a)(1) requires that the plan comply with the applicable  
11 provisions of Title 11, and those are deemed to be -- the most  
12 relevant provisions are deemed to be 1122 and 1123. 1122, of  
13 course, governs classification, and 23 contains certain  
14 requirements. 1122(a) requires that a claim or interest may  
15 be placed in a particular class only if such claim or interest  
16 is substantially similar to other claims or interests in that  
17 class. The plan has provided for classification based on the  
18 legal interests and rights of the particular creditors, we had  
19 no objections to classification, and we believe the plan  
20 complies with 1122(a).

21 With respect to 1123(a), Your Honor, there are mandatory  
22 plan requirements. There is a classification of claims.  
23 Except for claims for administrative expenses and unsecured  
24 tax claims, all claims under the plan are classified.

25 1123(a)(2) requires specification of those classes that

1 are not impaired. We have done that, Your Honor. Section 3  
2 specifies the deemed accepting classes that are unimpaired.  
3 (a)(3) also requires specification of any claims or interests  
4 that are impaired.

5 Section 4 of the plan sets forth the treatment of the  
6 classes of impaired claims. Section 1123(a)(4) requires that  
7 a plan provide the same treatment for each claim or interest  
8 of a particular class unless that claim or interest holder  
9 agrees to a less favorable treatment. Your Honor, we have  
10 provided for what we believe to be fair treatment among each  
11 class, and we've received no objections based on 1123(a)(4).

12 1123(a)(5) requires the plan to provide adequate means for  
13 the plan's implementation, and we believe Section 6 of the  
14 plan, the related definitive agreement and the plan supplement  
15 provide that, and that's the purchase of substantially all of  
16 the Debtors' assets by the acquisition companies, termination  
17 of the DIP facility, assumption of certain obligations by the  
18 acquisition companies, the various settlements of the  
19 adversary proceedings. And we believe therefore the plan  
20 satisfies 1123(a)(5).

21 1123(a)(6) prohibits the Reorganized Debtors' charter from  
22 allowing to issue non-voting securities. We have no such  
23 provision.

24 And 1123(a)(7) requires the plan only contain provisions  
25 consistent with the interests of creditors, equity security



1 holders and public policy. Since the plan provides for a sale  
2 of the Debtors' assets in accord with the statutory priority  
3 except where such holders have agreed, we believe it is in the  
4 best interest of creditors, interest holders and public  
5 policy. Your Honor, the Debtors' plan is supported by its  
6 regulators. It's a highly regulated industry, Your Honor. We  
7 believe public policy is supported, therefore, by the plan.  
8 And the fact, Your Honor, that the 20,000-some-odd residents  
9 of the Debtors' facilities will have their Initial Entrance  
10 Deposits, their investments, protected under the plan, we  
11 believe supports public policy.

12 1123(b), Your Honor, had certain optional plan provisions.  
13 The plan is consistent with 1123(b).

14 1129(a)(2), Your Honor, states that the Court shall  
15 confirm a plan only if the proponent complies with the  
16 applicable provisions of the Code. As opposed to the plan,  
17 this is the proponent. The proponent here is the Debtor. We  
18 have only solicited acceptances to the plan in accordance with  
19 the approved disclosure statement and in accordance with  
20 Section 1125. Your Honor, the Court has approved the  
21 disclosure statement, as I said previously, and the plan has  
22 complied with all other provisions of Title 11 and thus  
23 complies with 1129(a)(2).

24 1129(a)(3), Your Honor, would require that the plan be  
25 proposed in good faith and not by any means forbidden by law.

1 Your Honor, the plan here, as I said, for the same reasons it  
2 comports with public policy, I believe the plan is proposed in  
3 good faith. Mr. Doherty's affidavit goes through why the  
4 Debtor believes the plan is proposed in good faith. It  
5 incorporates the agreements of various constituencies,  
6 including its creditors and the NSC NFPs, and provides for the  
7 sale of the Debtors' assets and a payment in an agreed-upon  
8 fashion.

9 1129(a)(4) requires that the payment for services or costs  
10 in connection with the case must be subject to Court approval  
11 as reasonable. Your Honor, the Section 2 of the plan requires  
12 that professionals file fee applications subject to Your  
13 Honor.

14 1129(a)(5) requires the disclosure of the identity and  
15 affiliations of any individual who will act as a director or  
16 officer of the Reorganized Debtor. That is set forth in the  
17 plan supplement, Your Honor, and the plan thus satisfies  
18 1129(a)(5).

19 1129(a)(6), which requires government approval of rate  
20 changes, does not apply.

21 Your Honor, Section 1129(a)(7) is the best interests of  
22 creditors test that requires that, with respect to each  
23 impaired class of claims or interests, each holder of a claim  
24 or interest of such class has either accepted the plan or will  
25 receive property of a value as of the effective date not less

1 than the amount that such holder would receive if the Debtor  
2 were liquidated under a Chapter 7 case. Your Honor, annexed  
3 to Mr. Rundell's affidavit and incorporated therein is a  
4 liquidation analysis. Based on that liquidation analysis,  
5 Your Honor, every class of creditors would suffer in the event  
6 of a liquidation. We believe that, in addition to just the  
7 loss and breakage from a liquidation, the fact that the Debtor  
8 is in a highly regulated industry and that regulators would be  
9 forced to protect the interests of creditors -- of residents  
10 in such a liquidation would impair the recovery to any  
11 creditors. The plan also, by incorporating a number of  
12 settlements and compromises, has limited the amount of  
13 administrative expense that would occur in a liquidation and a  
14 full-blown litigation of these claims.

15 1129(a)(8), Your Honor, requires that each class of claim  
16 either accept the plan or is unimpaired under the plan, Your  
17 Honor. Each class of impaired claims has accepted the plan,  
18 except for those classes set forth in the plan as the deemed-  
19 rejecting classes. As set forth in the liquidation analysis,  
20 the deemed-rejecting classes would not recover in any recovery  
21 in any scenario.

22 1129(a)(9) governs the treatment of priority claims.  
23 (a)(9)(A) requires payment in full of administrative claims.  
24 The plan provides that each holder of an allowed  
25 administrative expense claim will receive payment in full in

1 cash on the effective date or on the date such claim is  
2 allowed. The Debtor will have the funds to pay administrative  
3 expenses, both through the reservation of a postpetition wind-  
4 down fund and through the proceeds of the sale.

5 1129(a)(9)(B) governs the treatment of holders of  
6 507(a)(1), (4), (5), (6) and (7) priority claims. Those  
7 claims will be paid in full under the plan.

8 Section 1129(a)(9)(C), related to Section 507(a)(8)  
9 claims, tax claims, those claims are being paid, as we've  
10 stated this morning, in full from the sales proceeds. So  
11 1129(a)(9)(C) is satisfied.

12 1129(a)(10), Your Honor, requires that at least one  
13 impaired class accept the plan. We have 50 impaired classes  
14 accepting the plan.

15 1129(a)(11), which is known as "Feasibility," requires the  
16 plan not likely be followed by a liquidation. Well, the plan  
17 does require -- does contemplate to a large extent a  
18 liquidation here, Your Honor, which is a sale of the Debtors  
19 as a going concern to Redwood. Mr. Rundell's affidavit sets  
20 forth the fact that Debtors are able to operate through the  
21 sale, and Mr. Butler's affidavit demonstrates that the  
22 acquisition companies have the wherewithal to close the sale  
23 and also the wherewithal to continue to meet their obligations  
24 under assumed contracts.

25 (a)(12) requires the payment of all fees to the -- under

1 Section 28 U.S.C. 1930, including U.S. Trustee fees. The plan  
2 does provide that U.S. Trustee fees would in fact be paid.

3 (a)(13) does not apply because Debtors have no retiree  
4 benefits, and (a)(14) does not apply because the Debtors have  
5 no domestic support obligations. Likewise, (a)(15) does not  
6 apply because the Debtors are not individuals. (a)(16)  
7 requires that -- it relates to not money, business or  
8 commercial corporations or trusts. Since the Debtors are not  
9 a not-for-profit, this section is not applicable.

10 1129(b), Your Honor, would need to be satisfied with  
11 respect to those deemed-rejecting classes. With respect to  
12 1129(b), Your Honor, we believe the plan does not unfairly  
13 discriminate against any dissenting class because that class  
14 is receiving what it would have received in other similarly-  
15 situated classes.

16 The fair and equitable rule is satisfied with respect to  
17 the classes of equity that are deemed rejecting under the plan  
18 because no junior class is receiving any distribution on  
19 account of the equity.

20 Your Honor, that's the 1129(a) and (b) changes. We can go  
21 through the objections now and how they're going to be  
22 resolved. Unfortunately, I believe the order has shown up  
23 with everybody's comments, but I do want to talk to Your Honor  
24 about one change that was made with respect -- incorporating  
25 the recovery analysis.

1 THE COURT: Okay.

2 MR. CALIFANO: Your Honor, this -- as I've said  
3 previously in this case, this plan requires expected payments  
4 to the various secured lenders, and that was the resolution.  
5 It's not a pot plan, and those expected payments are what  
6 allowed us to be able to make the payments to classes that  
7 would otherwise have arguably been out of the money. Since  
8 these numbers are set pre-closing but there are some expected  
9 deductions, we are incorporating with the plan the recovery  
10 analysis that's set forth in the plan supplement.

11 We have an agreement, and you will see in the plan there  
12 is a provision that, to the extent there is a material change  
13 somehow between -- I will leave it to Your Honor at some  
14 future date, which we hope we never have to deal with -- if  
15 there is a material change in the recoveries for these  
16 creditors, they can come back and argue that that is, in fact,  
17 a material modification to the plan which is prohibited under  
18 1127(b), a material post-confirmation modification.

19 We have to provide to these lenders five days prior to the  
20 closing an updated settlement sheet that will show what they  
21 will be getting under the closing. And they'll have the  
22 ability, if that closing settlement sheet departs in a  
23 material manner from the analysis, the recovery analysis  
24 that's being annexed as an exhibit to the order, then they'll  
25 be able to come back and make that argument of materiality at

1 that date, Your Honor.

2 THE COURT: Okay. So there is a recovery analysis  
3 that is in the plan supplement that's on file?

4 MR. CALIFANO: In the plan supplement.

5 THE COURT: You're contemplating it would be attached  
6 to the confirmation order as well?

7 MR. CALIFANO: Yes, Your Honor.

8 THE COURT: And then if -- you said five days prior  
9 to the closing there will be a settlement sheet, and if it  
10 materially differs from this recovery analysis attached to the  
11 confirmation order, creditors who are affected can come  
12 forward --

13 MR. CALIFANO: Could come back in --

14 THE COURT: -- and --

15 MR. CALIFANO: -- and argue that it's a material  
16 post-confirmation modification, in violation of 1127(b) of the  
17 Code.

18 THE COURT: Okay.

19 MR. CALIFANO: And this is a timing issue that we  
20 struggled with, Your Honor, because here, as opposed to most  
21 sale cases, the plan is a requirement post-confirmation. And  
22 these lenders needed to know that they were going to get a  
23 certain level of recovery. And that's what we've built into  
24 the order.

25 THE COURT: Okay. Can you show me the -- do you have

1 handy the recovery analysis that's in the plan supplement?

2 MR. CALIFANO: Yes, Your Honor.

3 (Pause.)

4 THE COURT: Well, so just help me conceptualize,  
5 since it's hard for me to digest this on the spot.

6 MR. CALIFANO: Well, --

7 THE COURT: Are there mechanisms for purchase price  
8 adjustments, or you're talking about other things?

9 MR. CALIFANO: Well, the biggest adjustment is really  
10 what might happen with taxes, Your Honor.

11 THE COURT: Okay.

12 MR. CALIFANO: There's probably going to be an  
13 adjustment. Probably. But, I mean, there's -- there are  
14 purchase price adjustments in the closing, you know, in  
15 connection with the closing, like any other sale. And really  
16 it is to make sure that this isn't, you know, a penny-off  
17 problem.

18 And it really goes to feasibility, Your Honor, because the  
19 plan sets forth numbers that these lenders are to receive.  
20 Okay? And we can't have the determination post-closing  
21 because then the horse is out of the barn. So, really, it was  
22 a mechanism that was worked out over the last 24 hours to save  
23 the deal when people realized that there could be a movement  
24 from the recoveries set forth in the plan to the actual  
25 recoveries. And it was the way -- this was the way it was



1 done to basically prevent the deal from blowing up or from  
2 there being a problem with lenders who didn't know until after  
3 the closing what they were receiving.

4 THE COURT: Okay. But we're just talking about a few  
5 days, we hope, correct?

6 MR. CALIFANO: Yes, Your Honor.

7 THE COURT: I mean, --

8 MR. CALIFANO: Closing is scheduled --

9 THE COURT: -- everybody is on board with regard to  
10 this April 14th version. Is that what --

11 MR. CALIFANO: Yes, Your Honor.

12 THE COURT: These numbers are as of April 14th? And  
13 you're planning on closing before April 30th, correct?

14 MR. CALIFANO: April 28th.

15 THE COURT: Okay.

16 MR. CALIFANO: It really is, Your Honor. We -- none  
17 of us -- nobody here anticipates any issue, either on the  
18 Debtors' side or on the lenders' side, but it really is just  
19 to protect everybody and to make sure that we're not in an  
20 issue where, if we're a penny off, we're out of compliance  
21 with the plan.

22 THE COURT: Okay. Does anyone wish to be heard with  
23 regard to this concept?

24 MR. GILHULY: Your Honor, I just want to make a  
25 clarification. I think I understand this, but, because it's

1 unwritten: I think I understand this only to apply to the  
2 construction lenders and the corporate lenders. This is not  
3 -- for example, HCP has an amount certain in our settlement  
4 agreement. We don't think of that as subject to any  
5 adjustments. Is that correct?

6 MR. CALIFANO: That is correct. That is correct.

7 THE COURT: Okay. Mr. Boone?

8 MR. BOONE: Your Honor, for the record, Bill Boone on  
9 behalf of the corporate revolver lenders.

10 This in no way is intended to be a monkey wrench in the  
11 process. There has have been an awful lot of work by  
12 everybody to get to the point where we are today. I think  
13 everybody uniformly is waiting to celebrate that, in fact,  
14 we've gotten here, and hopefully get over the goal line and  
15 get to the closing in a couple of weeks.

16 But the expectation is that we've been working off of a  
17 projected amount of money that would then come both to the  
18 corporate as well as to the project construction lenders in  
19 these various debtors. And all we're saying is that if  
20 there's some really material change -- we're not expecting --  
21 no one expects a material change, but it's just because we  
22 have been made representations as agents to the respective  
23 underlying lenders who are participating in each, and there  
24 were numbers put out in the disclosure statement that said,  
25 "Upon the closing, you shall receive x if you're in the

1 corporate. If you're in Ashburn, you'll receive y." Well,  
2 there have already been some adjustments that we've gotten  
3 just in the last week that have tweaked that and that have  
4 made, in some instances, actually, the numbers have gone down,  
5 and actually, I understand, a couple of the projects, they've  
6 actually gone up. And it's just a protective matter that no  
7 one hopes -- everyone hopes and prays that we never have to  
8 trigger it, but it's just a protective thing as a fiduciary,  
9 as agents of our underlying lenders, we felt obligated to push  
10 for.

11 So I don't want to blow it out of perspective or put too  
12 much emphasis or indicate in any way that anyone has changed  
13 their position and expectation to get to the goal line.  
14 Hopefully, that helps some, Your Honor.

15 THE COURT: Okay. But again, as Mr. Gilhuly said, we  
16 haven't seen this in writing. It would just be up to a Court  
17 determination --

18 MR. CALIFANO: Yes, Your Honor.

19 THE COURT: -- on materiality?

20 MR. BOONE: Yes.

21 MR. CALIFANO: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. BOONE: The draft that we saw last night -- and  
24 we've asked for a tweaking of that; we haven't seen the most  
25 recent tweaking -- but basically it indicates in essence that

1 if there is a material change from what's attached to the  
2 confirmation order, which we'll have specific amounts  
3 allocated for each of those secured lenders' groups, between  
4 now and the closing, and we will know that five days before  
5 the closing, then we have the burden to come back and say,  
6 "Judge, there's been a material change. We need to relook at  
7 this."

8 THE COURT: Okay.

9 MR. BOONE: So, for instance, if right now the  
10 corporate group is getting \$93 million and he comes back five  
11 days from closing, saying, "Oops, we had a slip. You're  
12 getting \$70 million," I want to be able to come back and talk  
13 to Your Honor about that.

14 THE COURT: Okay.

15 MR. BOONE: Okay?

16 MR. CALIFANO: And that is not an issue.

17 THE COURT: You don't think that's material, right?

18 MR. CALIFANO: If he gets anything, --

19 MR. BOONE: So we're not --

20 THE COURT: Okay. Understood.

21 MR. BOONE: That's basically the point, Your Honor.

22 THE COURT: Understood.

23 MR. STRICKLIN: Your Honor, as we understand this  
24 concept, this doesn't have any impact on us. We get a fixed  
25 \$2.5 plus \$1.1 million toward professional fees. They're

1 talking about adjustments to the project and corporate lender  
2 --

3 MR. CALIFANO: Of course.

4 MR. STRICKLIN: Okay.

5 THE COURT: Okay. Understood. Ms. Callari?

6 MS. CALLARI: Your Honor, Carolyn Callari on behalf  
7 of Redwood.

8 I know Mr. Califano will, but we would just like to see  
9 the actual language in the order that we're agreeing to before  
10 we actually agree to it. So we don't think it will be an  
11 issue, but we'll wait till we actually see the order, Your  
12 Honor.

13 THE COURT: Okay. Thank you.

14 MR. CALIFANO: And Your Honor, since at this point --

15 THE COURT: I think -- did Ms. Forrest have a comment  
16 on this point?

17 MS. FORREST: Sorry, Your Honor. Just one quick one.  
18 Heather Forrest on behalf of Key Bank.

19 The allocation I have is dated April 13th, and I think I  
20 heard counsel say that it was going -- that there was going to  
21 be an allocation circulated with the confirmation order. Is  
22 that right?

23 MR. CALIFANO: Yes.

24 THE COURT: He said it's going to be an attachment.

25 MR. CALIFANO: It's going to be an attachment. It's

1 going to be an attachment.

2 THE COURT: The recovery analysis is going to be an  
3 attachment.

4 MS. FORREST: Okay.

5 THE COURT: And it's going to be the same one that  
6 was in the plan supplement.

7 MR. CALIFANO: Yes, Your Honor.

8 MS. FORREST: Okay. Thank you.

9 THE COURT: Okay. Anything else?

10 MR. CALIFANO: Your Honor, what I would suggest is,  
11 since we have -- with, you know, my friend from Douglas County  
12 resolved, I believe, the language, we upload an order either  
13 tonight. I'm going to circulate it again to everybody who's  
14 filed an objection, who's here in court, the project lenders,  
15 the corporate lenders, Redwood, etcetera. And we upload the  
16 order tonight, if Your Honor does choose to confirm the plan,  
17 but everybody will have an opportunity to see the language  
18 that we've discussed.

19 THE COURT: Okay. Is there any more proposed  
20 language changes besides this material modification issue?

21 MR. CALIFANO: Well, there's some clean-up language,  
22 Your Honor. There's the language that we've agreed to put in  
23 for the secured tax authorities that -- this is what you'll  
24 see in the next version, --

25 THE COURT: Okay.

1           MR. CALIFANO: -- that preserves their claims and  
2 their rights. There is language that we got from the  
3 Committee before we convened, none of which is material. The  
4 Committee's language makes reference to the liquidating trust  
5 and brings the liquidating trust agreement into the plan and  
6 plan documents. We had language that we received from Mr.  
7 Kannel. It was clarification language. We also have some  
8 more language that we received from the Kansas bond trustee.  
9 Really, clarification language, Your Honor.

10           But, I mean, that's the extent of the changes that will be  
11 in the order. And we will, as I said, circulate them,  
12 circulate the order to everyone prior to downloading it. And  
13 what I would do is I'll submit a certification, Your Honor,  
14 with the order tonight saying -- letting Your Honor know who  
15 I've sent it to and if any objections remain and what those  
16 are.

17           THE COURT: Okay.

18           MR. STRICKLIN: Your Honor, we just want to make  
19 clear: We'd like to see a copy of it. He mentioned a few  
20 people, but we weren't on the list.

21           MR. CALIFANO: I thought I mentioned the Committee.  
22 I'm sorry.

23           THE COURT: Okay. The Committee is included in that.  
24 Okay?

25           MR. CALIFANO: Yes.

1 THE COURT: All right. Mr. Glick?

2 MR. GLICK: Yes, Your Honor, just very briefly. Two  
3 minor points. First, with respect to the order, I want to be  
4 certain that there will be an opportunity to object to the  
5 form of the new order that's being uploaded if it cannot be  
6 worked out beforehand.

7 MR. CALIFANO: Well, Your Honor, we went down that  
8 path once in this case.

9 THE COURT: I remember.

10 MR. CALIFANO: So what I would suggest is I'll send a  
11 certification today telling you who I sent it to. And if  
12 there are any -- if we've received any objections to it, I'll  
13 let you know. And then Your Honor can make the determination,  
14 if you want to notice it out or not.

15 THE COURT: Okay.

16 MR. GLICK: So the objections will not be heard now;  
17 it will be after we get the final version of the order?

18 MR. CALIFANO: Well, the --

19 MR. GLICK: We've had some versions that have been  
20 already circulated between the morning hearing and this  
21 afternoon's hearing, and I think, if you -- what I understand  
22 is that those objections, that if we have something that  
23 cannot be resolved, we'll have an opportunity to present them  
24 again to the Debtor, and possibly to the Court if we cannot  
25 resolve them with the Debtor, after the Debtor uploads that



1 order. Is that correct?

2 THE COURT: Well, I mean, we're just sort of thinking  
3 through this right now.

4 MR. CALIFANO: Right.

5 THE COURT: What I'm thinking we might do is -- I was  
6 going to talk about this at the end. I've not even sworn in  
7 the witnesses yet. We might have a placeholder status  
8 conference tomorrow. I have a 1:30 hearing that they have  
9 vowed will only take 15 or 30 minutes. Maybe at 2:00 o'clock  
10 Central Time tomorrow?

11 MR. CALIFANO: Well, hopefully, we won't need that,  
12 Your Honor. Hopefully, we'll have everything resolved. But I  
13 think that's a good enough motivation. If people want to go  
14 home, that's a good enough motivation for them to resolve it.

15 THE COURT: Okay. Well, let me hear from who else  
16 wants to be heard, and then we're going to talk about the  
17 process. Ms. Huffman, are your issues all resolved?

18 MS. HUFFMAN: Your Honor, we do have a stipulation  
19 and order resolving Dallas County and Harris County's  
20 objection to confirmation of the plan. I haven't completed  
21 reviewing the confirmation order, and when I arrived at court  
22 I had an e-mail show up on my BlackBerry that indicated to me  
23 that they had circulated a blackline version of the  
24 confirmation order, which I've had no opportunity to look at.

25 I did discuss one comment that I have to the version I had

1 the opportunity to look at with Mr. Califano. And Paragraph  
2 11, which refers to the vesting of assets, Line 6, that begins  
3 with "charges" -- "charges and other interest except as  
4 expressly provided herein," and then I asked him for "and any  
5 stipulation and order resolving an objection to confirmation."  
6 And it goes on to refer to vesting of assets free and clear of  
7 liens unless otherwise provided in an agreement or the plan.

8 There are some other provisions in the order that I've  
9 seen and I have some concerns as far as retention of liens and  
10 liens on proceeds with regard to protecting the client's  
11 liens, but those I can discuss with Mr. Califano in greater  
12 detail.

13 We do have a stipulation that we agreed to that provides  
14 that, upon closing, the ad valorem property taxes on the  
15 business personal property and the real property will be paid  
16 in the undisputed amount with 506(b) interest at the statutory  
17 rate of one percent per month, and that would be from the  
18 petition date through the closing.

19 They have also agreed to segregate funds representing the  
20 disputed amount plus 506(b) interest, --

21 THE COURT: Right.

22 MS. HUFFMAN: -- and our liens will attach to those  
23 funds.

24 THE COURT: Yes. We heard all that this morning, so  
25 --

1 MS. HUFFMAN: Yes. We have all that.

2 They have also agreed that the liens securing the 2010 ad  
3 valorem real and business personal property taxes will remain  
4 attached to the assets that are sold, and that Dallas County  
5 and Harris County's statutory liens will not be primed under  
6 the plan, the plan supplement, the confirmation order, or  
7 otherwise.

8 THE COURT: Okay. That's what I had understood this  
9 morning.

10 MS. HUFFMAN: Yes. That's --

11 THE COURT: Thank you.

12 MS. HUFFMAN: That's what we have.

13 THE COURT: Okay. Thank you. All right. Well, Mr.  
14 Califano, we kind of got down a road I wasn't ready to get  
15 down yet.

16 MR. CALIFANO: I know, and I appreciate. We should  
17 swear in the witnesses, --

18 THE COURT: We should.

19 MR. CALIFANO: -- admit the --

20 THE COURT: Let's, one by one, do that and see if  
21 there is any need for cross-examination. Let's start with Mr.  
22 Rundell. I'll go ahead and swear him in.

23 Mr. Rundell, do you swear that the affidavit you provided  
24 in connection with confirmation, as well as any further  
25 statements you may give the Court today, was and will be the

1 truth, the whole truth and nothing but the truth, so help you  
2 God?

3 THE WITNESS: I do.

4 THE COURT: Okay. Does anyone wish to cross-examine  
5 Paul Rundell? Ms. Callari, are you coming forward to do that?  
6 Okay.

7 (Laughter.)

8 THE COURT: All right. Did you want to clarify  
9 anything? There was a reference to certain numbers you used  
10 on the DIP might need upward adjustments or forward  
11 adjustments? Was there something --

12 MR. CALIFANO: Yes.

13 THE COURT: -- you wanted to clarify on the record?

14 PAUL RUNDELL, DEBTORS' WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. CALIFANO:

17 Q Mr. Rundell, are you familiar with the affidavit that was  
18 submitted in this case under your signature?

19 A I am.

20 Q Are there any -- would there need to be any clarifications  
21 or updates of the numbers that are contained therein?

22 A Yes, there are. In the back part of the affidavit, where  
23 the numbers are, the first two columns on the left, the first  
24 number and then the subtotals as well, we really updated the  
25 ending DIP balance for April 30th, which would be the

1 beginning balance on that sheet.

2       The reason why those were updated is, from time to time on  
3 a projection, most of those cases, the balances are lower than  
4 we thought, which is a positive variance. We wanted to show  
5 that to the secured lenders, the project lenders. And those  
6 numbers in the affidavit are -- I would say have been  
7 superseded by the most revised DIP numbers which are in the  
8 recovery analysis.

9 Q   So the Debtor has actually performed better than was  
10 expected with respect to the DIP?

11 A   Yes. We -- yes, we have.

12 Q   Okay.

13       MR. CALIFANO: No further questions, Your Honor.

14       THE COURT: Okay. Any cross-examination on that  
15 aspect of his testimony?

16       (No response.)

17       THE COURT: All right. Thank you, Mr. Rundell.

18 You're excused.

19       (The witness steps down.)

20       THE COURT: All right. Mr. Doherty, we'll swear you  
21 in next, if you could just stand in place. Do you swear the  
22 declaration you provided in connection with confirmation, as  
23 well as any further testimony you may give the Court today,  
24 was and will be the truth, the whole truth and nothing but the  
25 truth, so help you God?

1 THE WITNESS: Yes, I do.

2 GERALD DOHERTY, DEBTORS' WITNESS, SWORN

3 THE COURT: Okay. Does anyone wish to cross-examine  
4 Mr. Doherty?

5 (No response.)

6 THE COURT: All right. I think you're off the hook.  
7 All right. We had Mr. Butler also?

8 MR. CALIFANO: Yes, Your Honor. Mr. Butler.

9 THE COURT: Mr. Butler? Hi. If you could raise your  
10 right hand. Do you swear that the affidavit you provided in  
11 support of confirmation, as well as any further testimony you  
12 may give the Court today, was and will be the truth, the whole  
13 truth and nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 ALAN BUTLER, DEBTORS' WITNESS, SWORN

16 THE COURT: Okay. Does anyone wish to cross-examine  
17 Mr. Butler?

18 (No response.)

19 THE COURT: All right. We had Ms. Feil. Is that  
20 your balloting testimony?

21 MR. CALIFANO: Yes, Ms. Feil is here.

22 THE COURT: Ms. Feil, do you swear your balloting  
23 affidavit, as well as any further statements you may give the  
24 Court today, was and will be the truth, the whole truth and  
25 nothing but the truth, so help you God?

1 THE WITNESS: I do.

2 TINA MARIE FILE, DEBTORS' WITNESS, SWORN

3 THE COURT: Okay. Does anyone wish to cross-examine  
4 Ms. Feil?

5 (No response.)

6 THE COURT: All right. Thank you very much.

7 MR. CALIFANO: Thank you. Your Honor, with that  
8 evidentiary record, I'd move the Court to confirm the Debtors'  
9 Fourth Amended Plan of Reorganization.

10 THE COURT: Okay. Before the Court addresses the  
11 confirmation record and makes a ruling, is there anything  
12 anyone wanted to say in support or in opposition to  
13 confirmation? We'll talk about the order and that process  
14 after I rule, but anything anyone wants to state?

15 MR. KANNEL: Good afternoon, Your Honor. William  
16 Kannel. I'm actually addressing two stipulations which impact  
17 the plan and which were filed between this morning's hearing  
18 and this afternoon's hearing, --

19 THE COURT: Okay.

20 MR. KANNEL: -- which I think we have agreement on.

21 The first is a stipulation that was filed earlier this  
22 afternoon called a "Stipulation for Payment of Property Taxes  
23 and for Treatment of the Littleton Initial Entry Deposits,"  
24 which is a stipulation between Erickson, Redwood and the NFPs.  
25 That stipulation includes Ann's Choice, Inc., which is the NFP

1 associated with Warminster Campus, LP, which is one of the  
2 bonded communities. And it says that the working capital loan  
3 and master lease for that agreement -- for that community have  
4 terminated. That's a mistake. I think I have the agreement  
5 of Mr. Califano through Mr. Doherty, Mr. Butler and I think  
6 Ms. Callari that the inclusion of Ann's Choice in that  
7 stipulation is a mistake. And with that representation on the  
8 record, my issue with that stipulation is done.

9 MR. CALIFANO: I would note, Your Honor, that  
10 stipulation has not yet been submitted to the Court.

11 MR. KANNEL: Okay.

12 THE COURT: Okay.

13 MR. KANNEL: And then -- I thought it had been  
14 submitted. I had seen it on the --

15 MR. CALIFANO: No.

16 MR. KANNEL: -- on the PACER.

17 MR. CALIFANO: We'll get that -- make the change.

18 MR. KANNEL: Okay.

19 THE COURT: The Debtor will change it --

20 MR. KANNEL: If you'll make those changes, --

21 THE COURT: -- to eliminate Ann's Choice.

22 MR. KANNEL: -- that will be wonderful.

23 THE COURT: Okay.

24 MR. KANNEL: And then the second issue is there was a  
25 stipulation filed with the project lenders in which the



1 parties, both parties basically reserved the right to take a  
2 fresh look at the allocation and value evidence in the event  
3 that confirmation doesn't happen or substantial consummation  
4 doesn't happen. I think that essentially goes without saying,  
5 but we would like to reserve the same right for the bond  
6 trustees and on behalf of Mr. Goldstein, the Kansas bond  
7 trustee, as well. And I assume there's no issue with that.

8 MR. CALIFANO: Actually, Your Honor, that  
9 stipulation, Your Honor may recall, it relates to the March  
10 23rd hearing, that was just submitted today. And no offense  
11 to Mr. Goldstein, who's been fantastic, and Mr. Davis, they  
12 objected at that hearing. Remember, Spencer Fane represented  
13 the Kansas -- one of the trustees at that point, and objected  
14 at that hearing to the relief requested and objected to the  
15 stipulation.

16 So that stipulation, while it was submitted today, relates  
17 back to the March 23rd hearing, and we talked about it at the  
18 March 23rd hearing.

19 THE COURT: And I remember you had a co-counsel here  
20 who cross-examined Mr. Niemann but didn't have -- am I  
21 correct?

22 MR. CALIFANO: Yes.

23 THE COURT: And didn't have --

24 MR. KANNEL: No, but I think the point --

25 THE COURT: -- evidence to put on.

1           MR. KANNEL: I think the point is the reservation  
2 that this allocation is for this plan should apply for the  
3 bond trustees as well.

4           MR. CALIFANO: I'm not so sure, Your Honor. They  
5 objected to the stipulation.

6           THE COURT: Okay. I deny that request, overrule that  
7 request. Okay?

8           A VOICE: We didn't object.

9           A VOICE: We didn't object. We were just here. It  
10 was on behalf of U.S. Bank, and we didn't object. We were  
11 here --

12           MR. CALIFANO: Not for Kansas, but it was for the  
13 Sedgebrook trustee.

14           A VOICE: It was -- yeah. We were here on -- because  
15 we had an opportunity to examine the witness. But we didn't  
16 object. We were just --

17           MR. CALIFANO: They were here for another client. I  
18 stand corrected.

19           MR. KANNEL: So, then, Your Honor, on behalf of the  
20 bond trustees apart from U.S. Bank as bond trustee on  
21 Sedgebrook, we'd like to reserve that right, because the  
22 argument Mr. Califano made, at best, only applies to U.S. Bank  
23 --

24           MR. CALIFANO: I withdraw my objection.

25           THE COURT: Okay.

1 MR. KANNEL: Thank you, Your Honor.

2 THE COURT: Anything else?

3 MR. FLETCHER: Good afternoon, Your Honor. Martin  
4 Fletcher on behalf of the NSC NFPs.

5 Your Honor, we are wholeheartedly in favor of confirming  
6 this plan. Similar to what you heard from our regulators this  
7 morning, we think this is an outstanding result. As Mr.  
8 Califano mentioned, there were some very dark days at the  
9 start of this case, when it was unclear of its direction. And  
10 while we are approving a plan for one debtor today or one set  
11 of debtors today, this really is the spear point of an entire  
12 industry.

13 As Your Honor may have noted, this case has been  
14 attracting *The Wall Street Journal*, *The Washington Post*,  
15 numerous regional papers, countless community papers. And for  
16 the nonprofits, it was important not just to receive -- to  
17 achieve an appropriate and feasible economic adjustment, but  
18 as the regulators pointed out, something that also worked for  
19 the 20,000 residents who have invested collectively their life  
20 savings. And in our assessment, this plan does accomplish  
21 that goal.

22 We thank the Debtors and their professionals for an  
23 outstanding job in shepherding this case to this resolution.  
24 We also thank the lenders who, while of course they had to  
25 pursue their own economic interest, did it in a way that led

1 to a collective compromise so that we achieved this result  
2 without disrupting the lives of these residents.

3       And finally, we'd like to express our thanks and gratitude  
4 to the buyer. It took an outstanding buyer to achieve the  
5 exit that we have today, and the nonprofits and their boards  
6 are absolutely convinced that Redwood, its owner, Jim Davis,  
7 and his entire management team possess not only the high  
8 character that is required to undertake a sacred trust for  
9 helping to manage the day-to-day services to 20,000 seniors,  
10 but they also possess a commitment to the mission that the  
11 nonprofits have of serving those seniors in every way we  
12 possibly can. And we would wholeheartedly encourage the Court  
13 to confirm this plan.

14       Thank you.

15               THE COURT: Okay. Anyone else? Mr. Lippman, did you  
16 have an issue to come back to for CNA?

17               MR. LIPPMAN: Yes, Your Honor.

18               THE COURT: Okay.

19               MR. LIPPMAN: We had an agreement with the company  
20 and the purchaser. It's been reflected in the proposed form  
21 of order that's going to be uploaded to the Court. The  
22 parties last night entered into an agreement as to that  
23 language. However, at least in the form that I received,  
24 there were at least two points I need to note, and I believe  
25 we have an agreement on the change that needs to be made, and

1 I'd just like to get an acknowledgment on the record.

2 The language -- there's several forms of the order going  
3 around. The order I originally operated off of, it was  
4 Paragraph 23. I think in the current version that's going  
5 around, it may be Paragraph 24. It's the paragraph styled,  
6 "Assumption and Assignment of the CNA Insurance Agreements."  
7 The first change is just substance, to make sure it's  
8 consistent with the rest of the defined term in the paragraph,  
9 where they use the defined term "CNA Insurance Companies," but  
10 thereafter it's just "CNA." And so I would just say, to be  
11 consistent, make sure we use CNA, as we refer to it correctly.

12 And then the two more substantive changes. First is  
13 what's in Romanette i of that paragraph I referenced. It  
14 currently states, "The Debtors' assumption of all the Debtors'  
15 pre-closing and post-closing obligations and liabilities."  
16 The agreement is that should read that "The acquisition  
17 companies' assumptions of all the Debtors' pre-closing and  
18 post-closing obligations."

19 And then in Romanette iii of that same paragraph, it  
20 currently reads, "The full and satisfactory collateralization  
21 of all of the Debtors' assumed obligations." That word  
22 "Debtors'" likewise should be "assumption companies'." With  
23 an acknowledgment on the record, then we have an agreement  
24 that fully resolves the concerns that were raised by CNA as to  
25 the confirmation and the agreements.

1 THE COURT: All right. Mr. Califano, anything to say  
2 about that?

3 MR. CALIFANO: Yes. I can acknowledge that, Your  
4 Honor.

5 THE COURT: Okay. Very good.

6 MS. CALLARI: Your Honor, I too can acknowledge on  
7 behalf of Redwood as well. Thank you.

8 THE COURT: Okay. Very good.

9 MR. LIPPMAN: Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 MR. CARMEL: Good afternoon, Your Honor. Marc Carmel  
12 from Kirkland & Ellis on behalf of the Coastwood entities. I  
13 believe our issues may be totally resolved, but the way the  
14 language was drafted in the disclosure statement, it required  
15 that there be acceptance of the administrative claim, and I  
16 just didn't want to leave here today without knowing that the  
17 administrative claim for the auction fee has been approved.

18 THE COURT: Okay. I'm going to come to that in my  
19 ruling. Okay?

20 MR. CARMEL: Okay. Thank you, Your Honor.

21 And then in terms of the language -- and obviously it  
22 depends on your ruling -- but there's a provision in Paragraph  
23 GG on Page 23 of the confirmation order, and the Coastwood  
24 entities accept that language, and so long as it stays the  
25 same in the ultimate confirmation order that got entered, we'd

1 have no objection.

2 THE COURT: Okay. Thank you.

3 MR. CARMEL: Thank you, Your Honor.

4 MS. GOOLSBY: Good afternoon, Your Honor. Melanie  
5 Goolsby, counsel for Regional Construction Services and Sergio  
6 Luciani.

7 THE COURT: Okay.

8 MS. GOOLSBY: We did file a limited objection to  
9 confirmation of the plan, which as I represented this morning  
10 to the Court has been resolved by the terms of the stipulation  
11 which we believe has been approved and agreed to by the  
12 Debtors, the Committee, as well as Capmark, who's a secured  
13 lender in the Littleton campus case.

14 The terms of the stipulation does provide, however, that  
15 to the extent the stipulation cannot be entered and approved  
16 by the Court prior to entry of a confirmation order, that the  
17 substantive terms of the stipulation be included in the  
18 confirmation order, which I believe at this time does not  
19 include the terms.

20 Also, I would like at this time, with the Court's  
21 approval, to read into the record the material terms of the  
22 stipulation so that it's reflected what the parties have  
23 agreed to.

24 THE COURT: Okay. Is it short?

25 MS. GOOLSBY: It's short, yes.

1 THE COURT: Okay. Good.

2 MS. GOOLSBY: I'll make it brief.

3 "The Debtors will assume all obligations under the  
4 contracts entered into prepetition between Regional  
5 Construction Services and the Debtors by payment to the RCS  
6 creditors of a cure payment totaling \$450,000 at or no later  
7 than three business days following the closing, which payment  
8 will fully satisfy any outstanding obligation of the Debtors  
9 under the contracts and the RCS claims. The Debtors and their  
10 respective estates will fully and finally release the RCS  
11 creditors effective as of the date of this stipulation from  
12 any cause of action arising under Chapter 5 of the Bankruptcy  
13 Code in relation to either prepetition or postpetition  
14 payments made to the RCS creditors related to or pursuant to  
15 the contracts. This release shall be binding upon the Debtors  
16 and all parties in this case, including but not limited to the  
17 Official Committee of Unsecured Creditors, the liquidating  
18 creditor trust, and the trustees of the liquidating creditor  
19 trust. Upon Court approval of the stipulation, the RCS  
20 creditors will immediately withdraw their motions and  
21 objection, and, upon payment of the cure payment, the RCS  
22 claims. Upon further receipt of the cure payment, RCS will  
23 also execute any necessary lien waivers or releases with  
24 respect to their liens against the properties. This  
25 stipulation is without prejudice to the Debtors' right to



1 object to any other claims by RCS or Luciani or any other  
2 claims not specifically referenced herein."

3 And the rest of it is just boilerplate stipulation terms:  
4 "Each party represents that they have not relied upon any oral  
5 representation, promise or statement or any representation or  
6 statement not contained. Each party represents that they have  
7 authority to sign the stipulation." And finally, "The Court  
8 shall retain jurisdiction over the parties hereto with respect  
9 to any matter related to or arising from the stipulation."

10 THE COURT: All right. Mr. Califano, do you confirm  
11 that is what has been agreed to by the Debtor with regard to  
12 RCS creditors?

13 MR. SLUSHER: That's correct, Your Honor. The Debtor  
14 is prepared to execute the stipulation.

15 THE COURT: All right. And Mr. Stricklin, you were  
16 listening to that part about Chapter 5, right?

17 MR. STRICKLIN: Yes, Your Honor. There is an M&M  
18 lien in question, so we think it makes sense.

19 THE COURT: Okay. Thank you. All right.

20 MS. GOOLSBY: Thank you, Your Honor.

21 THE COURT: Anything else?

22 MR. GLICK: Good afternoon again, Your Honor. Stu  
23 Glick on behalf of M&T Bank as agent.

24 Just a matter of clarification with respect to the notice  
25 of filing of second amended contract assumption list that was

1 filed today by the Debtor, specifically with respect to the  
2 leases and contracts regarding the UMBC building. While they  
3 are listed on that list, my understanding is that the  
4 descriptions would be amplified in a supplemental filing by  
5 the Debtor. I just want to clarify that that's --

6 MR. CALIFANO: Can we deal with confirmation, because  
7 this is something separate. This is --

8 MR. GLICK: Well, I think this has to get done.

9 MR. CALIFANO: Well, we agree to that, Your Honor.

10 A VOICE: That's correct.

11 MR. GLICK: That's fine. Thank you, Your Honor.

12 THE COURT: Okay. He's just agreed. All right. Ms.  
13 Tancredi, did you have a confirmation issue?

14 MS. TANCREDI: Your Honor, PNC is still in the  
15 process of working through the confirmation order, like  
16 everybody else here. The issue that I stood up to talk about  
17 also has to do with the notice, the three notices -- one, the  
18 one that was filed on March 25th, then an amended one that was  
19 filed on April 10th, and then the one that was filed today --  
20 of assumption and assignment of contracts, which I understand  
21 is part of confirmation, so I can either speak about it now or  
22 at some other time, but --

23 THE COURT: Go ahead.

24 MS. TANCREDI: -- I will need to address the Court  
25 about it. So if Your Honor will indulge me.

1 THE COURT: Go ahead.

2 MS. TANCREDI: The notice that was filed on March  
3 25th contained three contracts that related to PNC. One of  
4 them, we couldn't identify. And upon further investigation,  
5 we believe -- we and the Debtors' advisers -- believe that  
6 it's a letter of credit in connection with the Concord project  
7 and that that letter of credit is going to be removed from the  
8 list of contracts to be assumed and assigned.

9 PNC provided a number of letters of credit to Erickson and  
10 the different projects. PNC is currently working with Redwood  
11 to transition those letters of credit and the collateral over  
12 to Redwood, but it gets more complicated, I guess, with  
13 respect to the Concord letter of credit because it's not  
14 secured by a certificate of deposit. So we'd like to take  
15 that off. But we are working with Redwood to make sure that  
16 they get what they need as far as letters of credit on terms  
17 that are acceptable to Redwood and PNC.

18 On the list that was filed on April 10th, there are a  
19 number of letters of credit that were identified on that list.  
20 Those letters of credit have to do with backstopping the  
21 insurance coverage for the Debtors and projects. Those  
22 letters of credit are going to be transitioned to Redwood.  
23 Those letters of credit are also collateralized by  
24 certificates of deposit which are also identified on the April  
25 10th schedule that was filed by the Debtors. Letters of

1 credit and certificates of deposit, I think, are financial  
2 accommodation contracts. I'm not sure that they technically  
3 belong on the list. But we don't care. I mean, --

4 THE COURT: Okay.

5 MS. TANCREDI: -- we understand that they are being  
6 transitioned to Redwood, and that's fine with us, so long as,  
7 with respect to the letters of credit, the outstanding letters  
8 of credit fees, prorated through the effective date or the  
9 closing date, are paid to date as a cure cost. And I have  
10 discussed that with Mr. Slusher and I think we're going to  
11 prepare some sort of stipulation to clarify that for the  
12 Court.

13 THE COURT: Okay.

14 MS. TANCREDI: The certificates of deposit that are  
15 being assumed and assigned are being assumed and assigned  
16 subject to the liens of PNC, and that's provided in the  
17 current draft of the confirmation order. So I understand that  
18 also to be acceptable to the Debtors.

19 THE COURT: Okay.

20 MS. TANCREDI: Thank you.

21 THE COURT: All right. Mr. Califano, do you confirm,  
22 I guess, working backwards, that the L/C fees that Ms.  
23 Tancredi mentioned are --

24 MR. CALIFANO: I can confirm that everything --

25 THE COURT: -- going to be paid?

1 MR. CALIFANO: -- everything Ms. Tancredi said is  
2 correct --

3 THE COURT: Okay.

4 MR. CALIFANO: -- and reflects our agreement.

5 THE COURT: Okay.

6 MR. CALIFANO: Thank you.

7 THE COURT: Anything else? Mr. Connolly?

8 MR. CONNOLLY: Good afternoon, Your Honor. Daniel  
9 Connolly on behalf of the Committee.

10 On behalf of the Committee, Your Honor, we endorse the  
11 confirmation of this plan. It is the result in no small  
12 measure of an extraordinary amount of work and creativity and  
13 reasonableness. I do want to single out Debtors' counsel for  
14 working with us. We had spirited negotiations, and of course  
15 by that I mean brutal negotiations, over a long period of  
16 time, but we've gotten here.

17 And also we think it's worthy to note that the agents for  
18 the lenders' counsel played a significant role in forming  
19 where we are today. Mr. Smith and Mr. Bleck, Mr. Boone and  
20 Mr. Swett all played -- and others, and many others -- played  
21 a significant role in that, and the Committee appreciates  
22 that, appreciates the respect we were given. And that brings  
23 us to where we are here today. And of course we, as I said,  
24 endorse the agreement.

25 There is just a couple of points I want to make that

1 relate to confirmation and that are specific to the Committee  
2 and involves the liquidating trust agreement. Under 6.4.11 of  
3 the plan, the Committee was granted the authority to prepare  
4 the liquidating trust agreement, determine trust governance,  
5 and select a post-confirmation trustee. After interviewing  
6 candidates, the Committee selected Mr. Dan B. Lain of Lain  
7 Faulkner, who's located here in Dallas. Mr. Lain, I believe,  
8 is known to the Court. He has over 30 years of experience in  
9 this arena. He is actually present in the court today. Mr.  
10 Lain, could you just stand up?

11 THE COURT: I saw him out there. I wondered if that  
12 was what that was about.

13 MR. CONNOLLY: And Your Honor, we're going to ask the  
14 Court to approve the appointment of Mr. Lain in confirming the  
15 plan, if the Court so does, so chooses.

16 THE COURT: Okay.

17 MR. CONNOLLY: Further, under the authority of  
18 Section 6.4.11 of the plan, the Committee filed its form of  
19 liquidating trust agreement on April 8th as a plan document.  
20 We believe the trust agreement, Your Honor, is consistent with  
21 the terms of the plan and applicable law and should be  
22 approved.

23 The Committee consulted with the lenders -- PNC, Capmark,  
24 Wilmington, B of A -- as required by the plan, and we have  
25 incorporated their comments. The trust agreement essentially

1 gives effect to the assignment by Redwood to the trust of  
2 certain causes of action that Redwood is acquiring and gifting  
3 to the trust, subject again to the terms of the plan. Redwood  
4 has reviewed the trust agreement, and we have incorporated all  
5 of their comments in the plan that has been provided to the  
6 Court.

7 The trust agreement also gives effect to the assignment by  
8 the Debtors of certain other assets, including the \$2.5  
9 million that Mr. Califano referred to previously from the  
10 lenders' TIP basket.

11 Additionally, the agents for the lenders from the Erickson  
12 Group guaranty claims have come to an agreement with the  
13 Committee regarding the assignment of the GST loan, as  
14 required by 6.4.7 of the plan. Broadly speaking, Your Honor,  
15 this agreement contemplates a 50-50 split of any recoveries on  
16 the GST loan receivable between the holders of Erickson Group  
17 guaranty claims and the trust. Any funds paid with respect to  
18 the trust's 50 percent share would be subject to the payment  
19 provisions that are included in the trust and the waterfall.  
20 To the extent the trust is unsuccessful in obtaining a  
21 recovery on the GST loan receivable, then the related fees and  
22 expenses associated with the prosecution of those claims will  
23 be borne entirely by the trust.

24 Now, while fees and expenses incurred by such a trust are  
25 not generally subject to Bankruptcy Court review or approval,

1 under the plan and the trust agreement, as part of the  
2 agreement with the agents, if the trust is successful in  
3 recovering money, we would ask that the Court -- we would ask  
4 that the fees and expenses incurred in prosecuting the claim  
5 be subject to this Court's review. To the extent the Court  
6 approves fees and expenses, they would be shared equally by  
7 the trust and the holders of the Erickson Group guaranty  
8 claims, and to the extent the fees were not approved by the  
9 Court, they would be borne entirely by the trust.

10 We believe the trust agreement, Your Honor, is consistent  
11 with the plan and was extensively negotiated, again, in a  
12 spirited fashion, in good faith and at arm's length. As such,  
13 as part of the confirmation of the plan, Your Honor, we're  
14 asking four things. One, that the Court approve the trust  
15 agreement as a plan document. Two, that the Court approve the  
16 appointment of Mr. Lain as the post-confirmation trustee.  
17 Three, that the Court order the assignment to the trust of all  
18 the trust assets, consistent with the plan. As part of this,  
19 we're asking the Court to specifically require the Debtors to  
20 assign all rights of Erickson Group to the GST loan to the  
21 trust, among other things. And all of this is incorporated in  
22 language, Your Honor, that we have provided to Mr. Califano  
23 and I believe will be incorporated in the final order that  
24 will be uploaded to you. And finally, part of that, an order  
25 pursuant to 105(a) and 1142(b) of the Code that all parties



1 required to sign the trust agreement do so and deliver those  
2 signatures to the trustee.

3 And with that, that clarifies those issues.

4 A claim was brought to our attention -- a concern, perhaps  
5 -- by the Sedgebrook representatives regarding the trust  
6 agreement as it relates to U.S. Bank in connection with their  
7 role as trustee for the bonds issued by the Sedgebrook  
8 community. To address this concern, I agreed to state in open  
9 record what we believe the -- what it is our understanding of  
10 what the documents actually say, is our collective  
11 understanding. But just so it's clear, the Committee agrees  
12 that pursuant to Section 6.4.2 of the plan and Section 6.4.9  
13 of the plan, assuming that U.S. Bank has complied with all  
14 other conditions necessary to participate in the trust, that  
15 U.S. Bank will in fact be entitled to participate as a Tier B  
16 beneficiary of the trust, with an allowed claim of \$3.5  
17 million. And this, of course, just clarifies that which is in  
18 the documents. It doesn't afford U.S. Bank any additional  
19 rights or greater rights. I just wanted it to be clear, and  
20 the Sedgebrook folks wanted it to be clear as well.

21 I believe the only other issue I would raise, I think it's  
22 clear that we all need just a little bit more time to review  
23 this order. And the Committee stands with the Debtor in the  
24 notion of wanting to get this resolved, and so this is not by  
25 any means a dilatory notion. But I don't know if it's an hour

1 or if it's a very discrete period of time, just to -- in  
2 fairness to everyone, including, quite frankly, the Debtor.  
3 Things have changed so quickly here at the end. If we can all  
4 quietly, even if it's in this courtroom, quietly review the  
5 final version, I would ask for an opportunity to do that and  
6 raise whatever -- if there are any issues that flow from that,  
7 perhaps the Court's idea of a backstop period tomorrow makes  
8 sense.

9 One last issue for us, that with respect to the way the  
10 professional fees were determined in connection with the  
11 Committee, a portion of it was to come from the DIP. To the  
12 extent that money is not drawn down at the end, we have a  
13 representation from Mr. Rundell that they will be drawn down  
14 and escrowed. It's capped at a specific figure, but escrowed  
15 and available to pay appropriate and approved fees when those  
16 invoices are presented and approved by the Court.

17 And with that, Your Honor, I also want to take two seconds  
18 to thank the Court for its enormous patience as we went  
19 through this process, and also guidance in getting us, a very  
20 good difficult group of folks, to get together. And I really  
21 don't think we would be in the posture that we're in today  
22 without the Court's active involvement, and we thank you for  
23 that.

24 THE COURT: Okay. Thank you. Mr. Kannel has a  
25 perplexed look on his face.

1           MR. KANNEL: I do, Your Honor, and I apologize for  
2 that.

3           Mr. Connolly, I'm not sure that was our agreement. The  
4 plan provides that the Sedgebrook trustee will have a \$3.5  
5 million unsecured claim in Tier B with no conditions  
6 precedent. So I'm not sure what these additional conditions  
7 you were referring to are. They're not in the plan. And in  
8 fact, that was part of the negotiated resolution, where the  
9 bond trustees gave up certain other significant unsecured  
10 claims.

11           MR. CONNOLLY: I just -- whatever -- I'm only  
12 suggesting the other general conditions to participate in the  
13 trust, like you didn't vote against the plan and things. I'm  
14 not -- wasn't suggesting any specific prerequisites.

15           MR. KANNEL: Okay. And I can represent that the  
16 Sedgebrook trustee did not vote against the plan.

17           THE COURT: Okay.

18           MR. KANNEL: Thank you.

19           THE COURT: Very good. Anything else?

20           (No response.)

21           THE COURT: All right. Well, I think it is time to  
22 make a ruling with regard to confirmation. The following is  
23 indeed the Court's confirmation ruling regarding the Debtors'  
24 Fourth Amended Joint Plan of Reorganization filed on or about  
25 March 8, 2010, as supplemented by plan supplements filed April

1 9th and April 14th, and as further modified per the various  
2 announcements that have been presented to the Court today,  
3 which the Court understands will be memorialized in yet  
4 another supplement to be filed hopefully later today.

5 Correct, Mr. Califano?

6 MR. CALIFANO: Yes, Your Honor.

7 THE COURT: Not to mention, I guess, some  
8 stipulations.

9 Collectively, this will all be referred to as "the Plan"  
10 in this ruling.

11 First, the Court, of course, has jurisdiction in this  
12 matter pursuant to 28 U.S.C. Section 1334, and this is a core  
13 proceeding pursuant to 28 U.S.C. Section 157(b)(2)(L).

14 First, with respect to notice and the solicitation  
15 process, the Court finds that notice of the plan has been in  
16 compliance with the Bankruptcy Code, Sections 1125 and 1126,  
17 as well as Bankruptcy Rules 3017 and 3018, as well as other  
18 applicable authority. It appears from the record that all  
19 creditors and other parties in interest have been given the  
20 requisite notice and copies of the plan solicitation materials  
21 and ballots, and it appears solicitation was in all ways in  
22 compliance with applicable law.

23 The Court finds, based on the credible evidence -- *i.e.*,  
24 the declaration of Tinamarie Feil of BMC -- that the plan has  
25 been accepted by a requisite number of holders of impaired

1 claims and interests. Again, the Court accepts as credible  
2 the ballot certification of Ms. Feil that was filed with the  
3 Court, which was judicially noticed on the record earlier  
4 today. It shows, among other things, tabulation results for  
5 50 classes that voted yes for the plan out of 58. Eight  
6 classes, of course, abstained. So, in any event, of all of  
7 these impaired classes that voted, we have at least two thirds  
8 in dollar amount and more than one half in number voting yes  
9 for the plan.

10 The Court would additionally note there appears to be an  
11 impaired accepting class for each of the 16 debtors.

12 The Court will later consider Section 1129(b) as to the  
13 deemed-rejecting classes, but the Court goes on to find that  
14 all objections to the plan that have not been withdrawn or  
15 otherwise resolved at this point should be overruled.

16 The Court finds, based on the totality of the confirmation  
17 evidence -- which includes the sworn testimony of Paul  
18 Rundell, of Gerald Doherty, of Alan Butler and Tinamarie Feil,  
19 and also including the testimony of Matt Niemann, who  
20 testified at a Rule 3012 valuation hearing back on March 23,  
21 2010, of which the Court takes judicial notice of today -- the  
22 Court finds under all of this evidence that the Plan meets the  
23 requirements of Sections 1122, 1123 and 1129 of the Code in  
24 order to be confirmed, and thus will be confirmed today.

25 Specifically, the classification of claims and interests

1 in the Plan is proper and consistent with Section 1122. The  
2 means for the Plan's implementation appears to be proper and  
3 within the guidelines of Section 1123. The Plan complies with  
4 the applicable provisions of Title 11, in accordance with  
5 1129(a)(1). The proponent -- *i.e.*, the Debtor -- has complied  
6 with the applicable provisions of Title 11 pursuant to  
7 1129(a)(2). Pursuant to 1129(a)(3), the Plan has been  
8 proposed in good faith and not by any means forbidden by law.  
9 Pursuant to 1129(a)(4), any payment made or to be made by the  
10 proponent or by the Debtor or by a person issuing securities  
11 or acquiring property under the Plan for services or costs or  
12 expenses in connection with the case or the Plan has been  
13 approved or is subject to approval of the Court as reasonable.  
14 The proponent of the Plan has disclosed the identity of the  
15 individuals that are required to be disclosed under 1129(a)(5)  
16 of the Code through its plan supplements. 1129(a)(6) does not  
17 apply in this case. 1129(a)(7), the Plan meets the so-called  
18 best interest test. Specifically, with respect to each  
19 impaired class of claims or interests, each holder of a claim  
20 or interest has accepted the Plan or such holder will retain  
21 or receive under the Plan on account of its claim or interest  
22 property of a value as of the effective date of the Plan that  
23 is not less than it would receive in a Chapter 7 liquidation.

24 Here, the Court again takes judicial notice of Mr.  
25 Niemann's testimony on March 23, 2010, and the Court also

1 accepts as credible on this point the Paul Rundell testimony.

2 With respect to 1129(a)(8), we do have certain deemed-  
3 rejecting classes that have been discussed here today, and so  
4 this requirement is technically not met, but the Court will  
5 address the deemed-rejecting classes and their treatment in  
6 accordance with 1129(b) momentarily.

7 With respect to 1129(a)(9) with respect to the treatment  
8 under the Plan of administrative expense claims and certain  
9 types of priority claims, unless the holders have otherwise  
10 agreed, the Plan provides for holders of these claims to  
11 receive on the effective date of the plan, at least with  
12 respect to the administrative expense claims, cash equal to  
13 the allowed amount of their claims. The Court will add that  
14 it specifically finds that the treatment provided for taxing  
15 authorities -- these are, I guess, for the most part secured  
16 claims -- but with regard to the taxing authorities'  
17 treatment, the provision for payment of their allowed or  
18 agreed-to claims as of 4/27/2010 and then the escrow procedure  
19 for the amounts that have not been allowed or agreed to as of  
20 4/27/10 does appear to be consistent with the Bankruptcy Code  
21 and fair. And it appears that the taxing authorities have  
22 otherwise agreed to this, in any event.

23 With respect to 1129(a)(10), the Plan complies. In other  
24 words, the Debtor has well exceeded the bare minimum of  
25 acceptances needed to confirm its Plan. We certainly have at

1 least one impaired class of claims with the required numbers  
2 of votes to deem a class an accepting class without including  
3 any acceptance of the Plan by any insider. So, again, there  
4 is at least one impaired accepting class -- in fact, there are  
5 several -- so the Court can proceed on to decide whether to  
6 confirm the Plan under 1129(b) by analyzing whether the Plan  
7 complies with 1129(b) as to any impaired non-accepting class.

8 1129(a)(11), the Court also finds that the Plan meets the  
9 so-called feasibility test. Specifically, the confirmation of  
10 the Plan is not likely to be followed by the liquidation or  
11 the need for further reorganization of the Debtor or any  
12 successor to the Debtor under the Plan, except to the extent a  
13 liquidation or sale is expressly contemplated in the Plan. In  
14 this regard, the Court specifically notes the projected  
15 financial statements for the years 2010 through 2014 that were  
16 included and described in the disclosure statement and were  
17 addressed in Paul Rundell's declaration. The Court finds  
18 based on these that the Debtors will have sufficient resources  
19 to meet obligations under the Plan, assuming Redwood provides  
20 the incremental funding needed to operate the business post-  
21 emergence. The Court also relies, in making this finding, on  
22 the testimony of Alan Butler of Redwood. He specifically  
23 testified in his affidavit about the amount of cash the  
24 Redwood acquisition entity will have on hand, the amount of  
25 debt it will have, the line of credit it will have available



1 to it, and the projected cash flow it anticipates. So it  
2 appears Redwood has made provisions and will be able to keep  
3 the Erickson enterprise adequately capitalized.

4 Next, the Plan provides that all U.S. Trustee fees have  
5 been or will be paid on the effective date.

6 1129(a)(13) does not apply because there are no retiree  
7 benefits as contemplated by that section. And 1129(a)(14),  
8 (a)(15) and (a)(16) also do not apply to this Debtor.

9 Next, the Court will address the plan modifications. With  
10 regard to those, the Court specifically finds that they meet  
11 the requirements of the 1122, 1123 and 1129, so the Plan as  
12 modified is the Plan, will be the Plan that the Court now  
13 confirms. And the acceptances of the Plan will be deemed to  
14 apply to the Plan as modified without further notice,  
15 solicitation or hearing being required since the proposed plan  
16 modifications do not adversely change the treatment of the  
17 claim of any creditor or interest of any equity security  
18 holder who has not accepted in writing the modification.

19 Now, with regard to the non-accepting impaired classes,  
20 the deemed-rejecting classes, the Court does specifically find  
21 that the Plan is fair and equitable and does not discriminate  
22 unfairly with respect to these holders. In that regard, the  
23 Court, among other things, has pondered the so-called "death  
24 trap" provisions, the so-called "gifting" provisions that have  
25 been discussed in some of the pleadings. The Court approves

1 specifically the provisions in the Plan that have sometimes  
2 been referred to as the "death trap" provisions, as well as  
3 the "gifting" provisions.

4 First, the Court does not believe, as drafted or  
5 implemented here, the so-called "death trap" provisions that  
6 impose a consequence for a claimant if they vote yes versus if  
7 they don't are unfair or discriminatory or infringe on voting  
8 rights or against public policy or any of the various  
9 arguments that were sometimes made. And the so-called  
10 "gifting" aspects of the Plan do not discriminate and are not  
11 otherwise violative of the Code. In this context, the gifting  
12 doctrine operates to provide consideration to creditors who  
13 would not otherwise be entitled to consideration under the  
14 Bankruptcy Code by virtue of the fact that the Debtors'  
15 secured lenders and Redwood have agreed to give these  
16 creditors consideration that the secured lenders would  
17 otherwise be entitled to. So the Court finds that these  
18 aspects of the Debtors' plan are permissible, and the Plan  
19 does not violate the absolute priority rule or unfairly  
20 discriminate.

21 Two or three remaining matters the Court believes it  
22 should specifically address. First, with regard to Redwood,  
23 the Court believes it earlier found on March 23, 2010 these  
24 things, but it will say again on the record here today that  
25 the consideration that Redwood will be paying pursuant to the

1 Plan is fair consideration for the assets. The auction was  
2 fair. It was a competitive, spirited process. And the Court  
3 believes Redwood is acting in good faith vis-à-vis this  
4 estate. The Court approves it as the winning bidder to  
5 acquire the Debtors' businesses as described in the Plan.

6 Next, the Coastwood fee, the \$9 million Coastwood fee.  
7 The Debtor, of course, seeks to have it allowed as an  
8 administrative expense claim and paid as part of the overall  
9 plan confirmation process. The Court has considered the  
10 confirmation testimony of Gerald Doherty on this issue at  
11 Paragraphs 10 through 19, and the Court finds this testimony  
12 persuasive. This testimony explains how the so-called  
13 Coastwood fee became a proposed part of the competitive  
14 auction last December between Redwood and Coastwood, and  
15 specifically how the original bids of Redwood and Coastwood  
16 got massaged, if you will, into bids that were, first, a  
17 combination of cash and debt assumption and maybe some buyer  
18 securities, and then eventually became all-cash bids, and then  
19 the cash bids increased.

20 It appears credible to this Court that the cash  
21 consideration ultimately achieved from the auction process  
22 went from \$275 million to \$365 million due at least in large  
23 part to, or maybe entirely because of, the Coastwood fee that  
24 was negotiated subject to Court approval. It appears to have  
25 been negotiated with Coastwood in the wee hours of December

1 23, 2009.

2 Now, I guess the \$90 million of augmentation that I just  
3 referenced, \$275 million to \$365 million, would be subject to  
4 some amount of debate. The evidence showed that the Redwood  
5 bid on the table at the time that the Coastwood fee was  
6 negotiated was net \$290 million, and then Coastwood agreed to  
7 make a \$305 million bid at that juncture if it could get a fee  
8 of 10 percent of the difference between the prevailing bid and  
9 \$260 million, and then that threshold of \$260 million was  
10 negotiated up to \$275 million as the threshold.

11 The Court can understand in hindsight the negotiation  
12 process that might have occurred and why \$275 million was  
13 chosen as the reasonable threshold, as opposed to, say, \$290  
14 million, when \$290 million was the current bid on the table.  
15 For one thing, it appeared that there had already been an  
16 informal agreement that the Debtor would support a \$2 million  
17 breakup fee for Coastwood, so I suppose that was a factor.  
18 But in any event, the end result after this Coastwood fee was  
19 negotiated, subject to Court approval, is that the bidding,  
20 the winning bid, ultimately went to \$365 million cash. Either  
21 \$90 million of increased value or \$75 million of increased  
22 value or somewhere in between, depending on the two or three  
23 ways you could look at it, was achieved here.

24 The Court finds, all in all, it is reasonable to give  
25 Coastwood the \$9 million fee, essentially a breakup fee, after

1 the fact, under these unique circumstances. The Court does  
2 find that Coastwood enhanced value for these assets and for  
3 the creditors. It did provide a benefit. This can reasonably  
4 be regarded as a cost in the nature of preserving and  
5 enhancing value. It caused stimulation in the bidding. It  
6 did not chill the bidding. Yes, it is rich. The Court might  
7 not approve it in different circumstances, but here the Court  
8 approves it.

9 So that specific ruling, Mr. Carmel, you now have. I do  
10 think it was the right thing to do under the circumstances.

11 Last, well, next to the last, the third-party releases.  
12 The Court finds and concludes that these third-party releases  
13 are reasonable and appropriate as proposed in this case, and  
14 the Court will approve them. The Court agrees with what has  
15 been argued, that the fact that these releases are consensual  
16 make them very different from what the Fifth Circuit found  
17 problematic in the *Pacific Lumber* or *Scotia* case. Here, as  
18 has been described, creditors were given the chance to check a  
19 box opting out if they did not want to give a third-party  
20 release. Thus, they were not forced on anyone, in the Court's  
21 view.

22 Moreover, it would appear that the beneficiaries of the  
23 releases have provided substantial contribution to the  
24 reorganization, either through providing cash, giving up money  
25 to which they were entitled, or by entering into long-term

1 agreements which benefited the Debtor and parties. These  
2 releases do appear to have been heavily negotiated, and the  
3 Court finds them to be necessary to the reorganization. So  
4 the Court will approve them.

5 I guess the last thing I should address is the executory  
6 contract assumption/rejection decisions contemplated by the  
7 Debtor in the Plan through the separate notices. The Court  
8 finds that the Debtor has complied with 365 as far as its  
9 decisions. The decisions do reflect reasonable business  
10 judgment, adequate assurance has been shown with respect to  
11 those contracts to be assumed, and so the Court will approve  
12 that aspect of confirmation as part of the overall  
13 confirmation order.

14 Again, any objections that were not specifically  
15 withdrawn, resolved or otherwise addressed in the Court's  
16 ruling will be overruled. The Court reserves the right to  
17 supplement and amend this ruling, but the Court will confirm  
18 the plan.

19 All right. The form of order. Mr. Califano, I have,  
20 again, a couple of ideas. One is that perhaps we set a  
21 hearing at 2:00 o'clock tomorrow as a placeholder to iron out  
22 any issues. Or, you're probably going to hate this, but maybe  
23 9:30 Monday morning. And if you have uploaded an order that  
24 you have certified everyone who needs to see it has seen it  
25 and has blessed it, you know, I'll sign it before then. But

1 would 9:30 Monday morning --

2 MR. CALIFANO: That would probably work better.

3 THE COURT: -- work better?

4 MR. CALIFANO: It would kill my weekend, but it would  
5 work. As long as I can appear telephonically if --

6 THE COURT: I'm anticipating everyone would appear --  
7 I mean, I hope everyone would.

8 MR. CALIFANO: Okay. So then, Your Honor, --

9 THE COURT: I'll be happy to see you in person if you  
10 want to come here, but --

11 MR. CALIFANO: Hopefully, we'll be able to certify --  
12 we'll be able to submit one as soon as tonight that I can  
13 certify is with everyone's consent. But I don't know.

14 THE COURT: Get real.

15 MR. CALIFANO: I'm not --

16 (Laughter.)

17 THE COURT: It's 4:30.

18 MR. CALIFANO: But I think that makes sense. 9:30  
19 makes more sense.

20 (The Court confers with staff.)

21 THE COURT: Oh. I didn't think we had anything at  
22 9:30 Monday morning. Okay. I thought these people were  
23 coming back. No, they were coming back at 11:00, if they  
24 needed it. Okay. So we can make it 9:30.

25 Is there someone who has a violently opposed reaction to

1 that? I saw some --

2 MR. SMITH: Your Honor, if there's any way we could  
3 do it at 12:00 here, I know most of us have traveled a long  
4 way.

5 THE COURT: Oh. People aren't jumping on planes  
6 tonight?

7 A VOICE: No.

8 A VOICE: No.

9 MR. SMITH: No, Your Honor. I think most of us have  
10 return flights tomorrow, in that we didn't count on Mr.  
11 Califano being so efficient.

12 (Laughter.)

13 MR. CALIFANO: I've been underestimated throughout  
14 this whole case, Your Honor.

15 THE COURT: Yes. Our former president used to always  
16 say that.

17 MR. SMITH: Speaking for my own self-interest, but  
18 I'd love to get this done and go to the weekend and have it  
19 all under our belts. And probably there's a lot of residents  
20 out there and a lot of folks who would love to see that in  
21 place. And I'm quite prepared to work all night or do  
22 whatever Mr. Califano wants me to do to get it done.

23 THE COURT: Well, I will give you anytime tomorrow  
24 except between 1:30 and 2:00.

25 MR. CALIFANO: Okay.



1 THE COURT: I have a hearing between 1:30 and 2:00.  
2 But let's just say right now what time it's going to be. Do  
3 you want 11:00 tomorrow?

4 MR. CALIFANO: 11:00 tomorrow.

5 THE COURT: Okay.

6 MR. CALIFANO: And hopefully we'll have it resolved  
7 by then and we don't -- if I can submit a certification at  
8 11:00 tomorrow that it's resolved, then we won't need to have  
9 a hearing. Is that correct?

10 THE COURT: Yes.

11 MR. CALIFANO: Okay.

12 THE COURT: But I'm --

13 MR. CALIFANO: Okay.

14 THE COURT: I'm guessing I'm going to see you at  
15 11:00 tomorrow. So --

16 MR. CALIFANO: Not that I don't like to be here, but  
17 I hopefully won't be here.

18 THE COURT: Okay. Anything further?

19 A VOICE: Your Honor, and we can appear  
20 telephonically?

21 THE COURT: Yes. Anyone who wants to participate  
22 telephonically, just follow the usual procedures with  
23 CourtCall to do that. But we will convene at 11:00 o'clock  
24 unless I get an e-mail saying you have 100 percent blessing on  
25 the order.

1 MR. CALIFANO: All right.

2 THE COURT: Okay?

3 MR. CALIFANO: Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 COUNSEL: Thank you, Your Honor.

6 THE CLERK: All rise.

7 (Momentarily off the record.)

8 THE COURT: Go back on the record. I'm pointing to  
9 you, Mr. Connolly. I'm surprised you didn't jump up.

10 I specifically approve the liquidating trust agreement,  
11 the liquidating trust agent.

12 (Background discussions continue.)

13 THE CLERK: Excuse me.

14 THE COURT: Excuse me. I forgot to specifically  
15 approve on the record the liquidating trust agreement, the  
16 liquidating trust agent, Mr. Lain, and the various provisions  
17 that deal with the liquidating trust.

18 And I will just say, while it's on my mind, Mr. Stricklin  
19 knows how I feel about good faith Chapter 5 avoidance practice  
20 in this Court. Something like the *Brook Mays* order, I would  
21 be delighted to see proposed in this case. Mr. Lain was the  
22 liquidating trust in *Brook Mays*, as I recall, right?

23 MR. STRICKLIN: I remember you speaking on this topic  
24 at an Inn of Court.

25 THE COURT: Yes. And my co-panelist, I think, was

1 you, right?

2 MR. STRICKLIN: I think it was.

3 THE COURT: So, anyway, again, I trust the  
4 professionals involved to know some of the Court's likes and  
5 dislikes on that.

6 MR. STRICKLIN: No, I understand completely.

7 THE COURT: Okay. Thank you.

8 MR. CONNOLLY: Thank you, Your Honor.

9 MR. CALIFANO: Thank you, Your Honor.

10 (Proceedings concluded at 4:33 p.m.)

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CERTIFICATE

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

23

24 \_\_\_\_\_  
Kathy Rehling  
Certified Electronic Court Transcriber  
25 CET\*\*D-444

\_\_\_\_\_  
Date

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