

Steven T. Holmes  
McGlinchey Stafford, PLLC  
2711 N. Haskell Avenue,  
Suite 2750, LB 25  
Dallas, Texas 75204  
Telephone: (214) 445-2445  
Facsimile: (214) 445-2450

James M. Smith, Esq.  
Lisa Bittle Tancredi, Esq.  
GEBHARDT & SMITH LLP  
One South Street, Suite 2200  
Baltimore, Maryland 21202  
(410) 752-5830  
Telecopy: (410) 385-5119

ATTORNEYS FOR PNC BANK,  
NATIONAL ASSOCIATION

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

<b>IN RE:</b>	§	<b>CASE NO. 09-37010</b>
	§	
<b>ERICKSON RETIREMENT COMMUNITIES, LLC, <i>et al.</i><sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	<b>Jointly Administered</b>
	§	
<b>Debtors.</b>	§	

**OBJECTION TO (1) MOTION FOR PROTECTIVE ORDER, (2) MOTION FOR  
LEAVE TO FILE MOTION FOR PROTECTIVE ORDER UNDER SEAL, AND  
(3) MOTION FOR SETTING AND REQUEST FOR EXPEDITED HEARING**

PNC Bank, National Association (“PNC”), by its undersigned counsel, as collateral and administrative agent for lenders that are parties to the construction loan for the Concord and Houston projects, and as lender with participants for the construction loan for the Novi project<sup>2</sup>, files this Objection to the (1) Motion for Protective Order, (2) Motion for Leave to File Motion for Protective Order Under Seal, and (3) Motion for Setting and Request for Expedited Hearing (collectively, the “Motions”), filed by the

---

<sup>1</sup> The Debtors in these chapter 11 cases are Erickson Retirement Communities, LLC, Ashburn Campus, LLC, Columbus Campus, LP, Concord Campus GP, LLC, Concord Campus, LP, Dallas Campus GP, LLC, Dallas Campus, LP, Erickson Construction, LLC, Erickson Group, LLC, Houston Campus, LP, Kansas Campus, LLC, Littleton Campus, LLC, Novi Campus, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC, and Warminster Campus, LP (collectively, “Debtors”).

2002 John C. Erickson GST Trust and the 2002 Nancy A. Erickson GST Trust (the “GST Trusts”), stating the following:

Facts

This dispute is about the value of a claim on a promissory note in the principal amount of \$49,648,620.00 (the “Note”). The balance owed on the Note is now more than \$70,000,000 on account of accrued interest. This Note is one that was undisclosed in the bankruptcy schedules in this case. This asset was only revealed shortly before plan confirmation.

No party-in-interest has taken formal discovery with respect to this asset other than the discovery requested by PNC. Instead, the Liquidating Trustee was provided with carefully selected bits of information as part of settlement discussions in separate litigation. These bits of information were created by, and provided at, the direction of persons with a vested interest in eliminating the entire indebtedness due on the Note to go away without paying anything – ostensibly in order to effectuate a global settlement.

Now, a settlement has been proposed and presented to this Court in the form of a motion to approve a compromise and settlement (the “9019 Motion”), which ascribes a value of \$0 to the Note. PNC was not a party to the discussions that led to this purported settlement. PNC was not even aware that settlement discussions were occurring until immediately before the 9019 Motion was on file.

After the Liquidating Trustee filed the 9019 Motion, counsel for PNC began to investigate RLTV.. RLTV’s website contained a press release announcing its entry into a “milestone” distribution agreement with Time Warner Cable and Brighthouse Network. According to press reports, the distribution agreement is expected to add some ten million

subscribers. PNC has since learned that important information about this material development was not provided to the Liquidating Trustee prior to his filing the 9019 Motion.

PNC promptly requested information about RLTV from counsel for the GST Trusts, as well as a copy of the settlement agreement for which approval was being sought. First, PNC was told that no information would be provided. After agreeing to the terms of a confidentiality order, PNC was provided with 262 pieces of paper. When PNC followed up with regard to information that was obviously missing, PNC was told that it would get nothing else. It was not until November 27, 2012 that PNC was supplied with a portion of the documentation that had been provided to the Liquidation Trustee.

PNC subsequently served discovery requests and requested a continuance of the hearing on the approval of the settlement, which this Court granted.

On December 3, 2012, PNC received approximately 2130 documents in hard copy on December 3, 2012. When PNC followed up later on the same day with regard to information that was obviously missing, PNC was told that no additional documents would be produced. It was not until the evening of December 3, 2012 that an unexecuted "working draft" of the settlement agreement was sent electronically to PNC. This is the only draft of the "settlement agreement" that has been provided to PNC.

In total, PNC eventually received approximately 2,259 pages of paper, over several days. However, more than a third of those pages were duplicate copies. Hundreds of pages of tax returns were produced in triplicate. Hundreds of pages of publicly-filed UCC filings were produced two times.

Thus far in its investigation of this \$70,000,000 asset, PNC has taken a single four-hour deposition. PNC deposed Scott Erickson, the Trustee of the GST Trusts. During the deposition, PNC asked relevant questions about the putative settlement that Mr. Erickson could not answer. Mr. Erickson identified individuals that he thought might know the answers. Categories of documents were described, but Mr. Erickson could not state whether or not such documents existed. Again, Mr. Erickson identified individuals that he thought might have knowledge about such documentation, if it exists.

As it had before, PNC attempted to follow up informally. Through emails and letters, PNC was advised that some information would be provided, but only on terms that are not acceptable to PNC. PNC being unable to obtain information informally, PNC asked if counsel would accept service of additional subpoenas. Counsel did not answer except to request copies of the subpoenas. PNC provided counsel with copies of those subpoenas at the end of the day on Friday, December 14, 2012.

When PNC did not receive a response over the weekend or by mid-morning on Monday, December 17, 2012, counsel for PNC served subpoenas on the individuals that Mr. Erickson named in the deposition as having knowledge on certain topics, and one subpoena was served in accordance with Federal Rule of Civil Procedure 30(b)(6). The subpoenas were served at approximately 11:45 a.m. Eastern Time. The subpoenas note the three depositions for January 4, 2013 (at 10:00 a.m., 2:00 p.m. and 4:00 p.m.). The subpoenas also contain narrow document requests.

Motion for an Expedited Hearing

PNC does not object to an expedited hearing if the Court feels that one is appropriate in these circumstances, but it requests that its lead counsel be permitted to attend if necessary by telephone.

As for asking the Court to require that the hearing on approval of the settlement agreement go forward on January 10, 2012, no reason is stated that would mandate a hearing on any particular time frame. Whether the hearing goes forward should depend on whether PNC has had an opportunity to complete its discovery and investigation. PNC has diligently pursued information -- to the point of eliciting complaints that it issued subpoenas too quickly. The GST Trusts and those with interests in those trusts should not be permitted to interrupt PNC's investigation.

Motion to Seal

PNC objects to the motion to seal the motion for a protective order. The purpose of a motion for a protective order should be to resolve a discovery dispute. Dozens of the exhibits attached to the motion have little to nothing to do with the discovery dispute and are, instead, an attempt to argue the merits of the case before discovery has been completed.

PNC does not object to the withdrawal of the Motion to Seal, so that a motion for a protective order (if necessary) may be re-filed, in the public record, and focused on the discovery dispute, if any.

PNC objects to entry of a protective order. The GST Trusts have yet to explain why they need protection. The GST Trusts made a promissory note that is now a \$70,000,000 obligation. One of the debtors in these jointly-administered cases, Erickson

Group, LLP, is the payee of the Note. PNC's limited discovery requests have hardly been "unfettered", "excessive", "oppressive", "unprecedented", "horribly expensive" or any of the other hyperbolic adjectives used in the Motions.

No justification has been stated for the requested limitation of deposition time to one hour per deponent. As a matter of practicality, all three depositions are scheduled for the same day. It is clear from the scheduling that counsel for PNC does not intend to conduct depositions longer than is necessary.

No justification has been stated for the requested blanket prohibition on PNC contacting anyone else, or serving any additional discovery. This is a \$70,000,000 claim. PNC is entitled to discovery about the financial information that RLTV has given to those third parties with whom it has conducted business or entered into transactions. Given the paucity of information that the GST Trusts provided to the Liquidating Trustee when trying to persuade him to give up the claim on the Note, there is reason to doubt that the GST Trusts can, or will, produce complete information.

No justification has been stated for shifting the costs of discovery to PNC. Indeed, if there is a concern about costs, one would think that counsel would have suggested limitations or parameters in order to keep costs down. No parameters have been suggested.

#### Conclusion

The GST Trusts are trying to cut short PNC's investigation of a \$70,000,000 claim against them. PNC's investigation is not completed. The Motions should be denied.

WHEREFORE, PNC respectfully requests that this Court (i) enter an Order denying the Motions, and (ii) grant such other and further relief as may be just and proper.

Respectfully submitted,

/s/ Steven T. Holmes

**STEVEN T. HOLMES**

State Bar No. 00794918

**MCGLINCHEY STAFFORD, PLLC**

2711 N. Haskell Avenue,

Suite 2750, LB 25

Dallas, Texas 75204

Telephone: (214) 445-2445

Facsimile: (214) 445-2450

E-mail: [sholmes@mcglinchey.com](mailto:sholmes@mcglinchey.com)

Richard A. Aguilar

Louisiana Bar No.. 17439

**MCGLINCHEY STAFFORD PLLC**

Telephone: (504) 586-1200

Facsimile: (504) 910-8371

Email: [raguilar@mcglinchey.com](mailto:raguilar@mcglinchey.com)

and

James M. Smith, Esquire

Lisa Bittle Tancredi, Esquire

**GEBHARDT & SMITH LLP**

One South Street, Suite 2200

Baltimore, Maryland 21202

(410) 752-5830

(443) 957-1920 (Telecopier)

ATTORNEYS FOR PNC BANK,  
NATIONAL ASSOCIATION

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of December, 2012, a copy of the foregoing Notice of Service of Discovery Materials was sent via electronic mail, and first class mail, postage prepaid, to the following:

James W. Walker, Esquire (jwalker@walkerwalkersewell.com)  
Walker Sewell LLP  
901 Main Street, Suite 5000  
Dallas, Texas 75202

William Blackford, Esquire (wblackford@blfawmd.com)  
BLACKFORD & FLOHR, L.L.C.  
513 Benfield Road, Suite 302  
Severna Park, Maryland 21146

/S/ Lisa Bittle Tancredi

Lisa Bittle Tancredi, Esquire