

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 08-27**

IN RE SCOTIA DEVELOPMENT, LLC *et. al.*, Debtors.

THE BANK OF NEW YORK, N.A., as
INDENTURE TRUSTEE FOR THE TIMBER NOTES,
Movant,

v.

MENDOCINO REDWOOD COMPANY, LLC, MARATHON STRUCTURED
FINANCE FUND L.P., AND THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, *et. al.*,
Respondents.

On Motion for Stay Pending Appeal from an Order of the United States
Bankruptcy Court for the Southern District of Texas, Corpus Christi Division
(District Court No. 2:08-mc-0066; Bankruptcy Court No. 07-20027-C-11)

**OPPOSITION RESPONSE OF INTERESTED PARTIES THE PALCO
DEBTORS TO THE EMERGENCY MOTION OF THE INDENTURE
TRUSTEE FOR A STAY PENDING APPEAL**

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CERTIFICATE OF INTERESTED PERSONS

Case No. 08-27 THE BANK OF NEW YORK, N.A., as INDENTURE TRUSTEE FOR THE TIMBER NOTES, *Movant*, v. MENDOCINO REDWOOD COMPANY, LLC, MARATHON STRUCTURED FINANCE FUND L.P., AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, *et. al.*, *Respondents* (IN RE SCOTIA DEVELOPMENT, LLC *et. al.*, *Debtors.*); IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Local Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

INTERESTED PARTY

COUNSEL

<p>1. The Pacific Lumber Company, Scotia Development LLC, Britt Lumber Co., Inc., Salmon Creek LLC and Scotia Inn Inc. (The “Palco Debtors”)</p>	<p>BAKER BOTTS L.L.P. C. Luckey McDowell Dallas, Texas</p> <p>JORDAN, HYDEN, WOMBLE CULBRETH & HOLZER, P.C. Nathaniel Peter Holzer Corpus Christi, Texas</p>
<p>2. Scotia Pacific Company LLC (“Scopac”)</p>	<p>GIBSON, DUNN & CRUTCHER LLP Kathryn A. Coleman New York New York</p> <p>Eric J. Fromme Irvine, California</p>
<p>3. The Bank Of New York, N.A., As Indenture Trustee For The Scopac Timber Notes</p>	<p>FULBRIGHT & JAWORSKI L.L.P. William Greendyke Zack A, Clement R. Andrew Black Jonathan Bolton Jason L. Boland Mark A. Worden Travis A. Torrance</p>

	<p>Houston, Texas</p> <p>Toby L. Gerber Louis R. Strubeck, Jr. O. Rey Rodriguez Dallas, Texas</p>
<p>4. Mendocino Redwood Company, LLC</p>	<p>GOODWIN PROCTER LLP Frederick C. Schafrick Washington, D.C.</p> <p>Allan Brilliant Brian D. Hail Craig P. Druehl New York, New York</p> <p>PERKINS COIE LLP Kenneth M. Crane Peter G. Lawrence Chicago Illinois</p>
<p>5. Marathon Structured Finance Fund L.P.</p>	<p>WINSTON & STRAWN LLP David Neier Steve Schwartz Carey D. Schreiber New York, New York</p> <p>HAYNES AND BOONE LLP John D. Penn Fort Worth, Texas</p> <p>Trey A. Monsour Dallas, Texas</p>
<p>6. The Official Committee Of Unsecured Creditors For The Palco Debtors And For Scopac</p>	<p>PACHULSKI STANG ZIEHL & JONES LLP John Fiero Maxim Litvak San Francisco, California</p>

7. Hundreds of employees of the Palco Debtors and of Scopac	
8. Hundreds of creditors of the bankruptcy estates of the Palco Debtors and of Scopac	
9. Multiple California State Agencies	<p>FELDERSTEIN FITZGERALD WILLOUGHBY & PASCUZZI LLP Paul J. Pascuzzi Sacramento, California</p>
10. Bank of America, N.A.	<p>O'MELVENY & MYERS LLP Evan M. Jones Los Angeles, California</p>
11. The United States Department of the Interior, Fish and Wildlife Agency	<p>U.S. DEPT OF JUSTICE - ENVIRONMENT DIV. Matthew Z Leopold Washington, DC</p>
12. MAXXAM Inc., MAXXAM Group Inc., MAXXAM Group Holdings, Inc.	
13. Angelo, Gordon & Co, L.P., Aurelius Capital Management, LP, and Davidson Kempner Capital Management LLC	<p>STUTMAN TREISTER ET AL Eric D Winston Jeffrey H Davidson Los Angeles, CA</p>
14. CSG Investments, Inc, and Scotia Redwood Foundation, Inc.	<p>ALEXANDER DUBOSE JONES & TOWNSEND LLP Roger D. Townsend Houston, Texas</p> <p>AKIN GUMP STRAUSS HAUER & FELD, LLP Murry Cohen</p>

	Houston, Texas Charles R. Gibbs David F. Staber J Carl Cecere Dallas, Texas
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/s/
Nathaniel Peter Holzer, Attorney of Record for The Palco Debtors

The Palco Debtors¹ submit this opposition to the Emergency Motion For Stay Pending Appeal (the “Motion”) filed by The Bank of New York Trust Company, N.A., as Indenture Trustee (the “Indenture Trustee”) for the Holders of Timber Notes (the “Noteholders”).

THE PALCO DEBTORS HAVE STANDING

Each of the Palco Debtors are Debtors and Debtors-in-Possession in the underlying bankruptcy case. All of the Palco Debtors are reorganized under the confirmed Plan, and so all have standing to object to the Motion and will have standing in the pending appeal of the confirmation order.

INCORPORATION OF MRC/MARATHON RESPONSE

The Palco Debtors adopt and incorporate all the arguments made in the opposition filed herein by Mendocino Redwood Company, LLC and Marathon Structured Finance Fund L.P.

THE INDENTURE TRUSTEE’S OFFER OF SECURITY TO THE PALCO DEBTORS IS INSUFFICIENT TO MAINTAIN THE STATUS QUO

The Palco Debtors respond separately to emphasize the insufficiency of the Log Discount Program that the Indenture Trustee has offered as an alternate means

¹ The “Palco Debtors” are The Pacific Lumber Company, Scotia Development LLC, Britt Lumber Co., Inc., Salmon Creek LLC, and Scotia Inn Inc. All the Palco Debtors are affiliated corporations and all are Debtors in the underling bankruptcy proceeding.

of security during the pendency of their requested stay.²

First, and most importantly, The Palco Debtors were approximately \$11.9 million behind on their post petition obligations as of June 11, 2008.³ Many of the parties to whom these debts are owed had agreed to forbearance only because confirmation of the MRC/Marathon Plan was imminent, since they will receive payment in full shortly after that plan goes effective. Because of this massive cash shortfall, the Indenture Trustee's security proposal falls woefully short of Palco's projected cash needs in the next six months—about \$8.8 million short, and that figure assumes that the Palco Debtors' professionals fees do not exceed the amount projected by Indenture Trustee. Recognizing this cash shortfall, the Bankruptcy Court found that security for any stay would have had to include a \$5 million loan to the Palco Debtors—just barely enough to keep them afloat for the next six months. Thus, the Indenture Trustee's assertion that "Palco's cash position is expected to increase to \$3,957,000"⁴ is misleading, since the true number is really

² To be clear, the Palco Debtors believe the Indenture Trustee has failed to carry his burden to justify any stay, as the Bankruptcy Court has held. Posting a bond or providing alternate means of security does not justify a stay in the absence of first proving that facts exist to warrant a stay in the first place.

³ See Multi Party Exhibit No. 7, "Pacific Lumber and Britt Lumber-13 Week Cash Budget for July 6-October 3, 2008," admitted in evidence in the Bankruptcy Court. A is copy attached as Exhibit A.

⁴ Motion at p. 18.

a multi-million dollar shortfall. And its no “windfall”⁵ if a stay bond includes funds for current payment of legitimate creditors who get paid in full under the plan, but who will otherwise receive nothing during the pendency of a stay, and who will get nothing if the plan craters due to a stay.

Second, the Indenture Trustee has offered the Discount Log Program for only six months, and the appeals process could take much longer.

And third, the Palco Debtors believe the Discount Log Program is too ambiguous to ever succeed anyway. It was admittedly thrown together by Scopac in a few days of virtually round the clock work, right before the stay hearing in the bankruptcy court. Its amoebic terms continuously morphed even after it was presented to the bankruptcy court. It is a completely untested proposal and likely fraught with ambiguities, omissions, and failings. It is not the type of proposal on which to stake the well being of hundreds of creditors, hundreds of employees, and, indeed, as found by the bankruptcy court “an entire way of life.”

In conclusion, Movant has never offered the Palco Debtors, in particular The Pacific Lumber Company, what they would require to survive as going concerns during the pendency of any proposed stay. Absent such security, which Judge Schmidt found to include, among other requirements, a \$5 million dollar

⁵ Id.

subordinated loan, The Pacific Lumber Company would likely not survive the appeal process.

WHEREFORE, the Pacific Lumber Company asks that the motion for stay be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this pleadings was served vial e mail on all the following on July 22. 2008:

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