

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF TEXAS

CORPUS CHRISTI DIVISION

IN RE: SCOTIA PACIFIC, . CASE NO. 07-20027
DEBTOR. . CORPUS CHRISTI, TEXAS
. MONDAY, APRIL 21, 2008
. 04:03 P.M. TO 04:24 P.M.
.....

MOTION HEARING

SOME PARTIES APPEARING TELEPHONICALLY

BEFORE THE HONORABLE RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

Trinity Transcription Services
87 Colonial Row Drive
The Woodlands, TX 77380
281-296-2290

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Appearances:

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1 Corpus Christi, Texas; Monday, April 21, 2008; 04:03 p.m.

2 (Some parties appearing telephonically)

3 THE COURT: Send in the call.

4 (Pause)

5 THE COURT: Hello. Let's see. Christopher Johnson?

6 (No audible response)

7 THE COURT: Christopher Johnson?

8 MR. JOHNSON: Present, your Honor.

9 THE COURT: Allison Byman?

10 MS. BYMAN: Present, your Honor.

11 THE COURT: Craig Druehl?

12 MR. DRUEHL: We're here, your Honor.

13 THE COURT: John Penn?

14 MR. PENN: Present.

15 THE COURT: Wendy Laubach?

16 MS. LAUBACH: Present, your Honor.

17 THE COURT: Kyung Lee?

18 MR. LEE: Present.

19 THE COURT: Toby Gerber?

20 MR. GERBER: Present, your Honor.

21 THE COURT: Kathryn Coleman?

22 MS. COLEMAN: Present, your Honor.

23 THE COURT: Jonathan Neerman?

24 MR. NEERMAN: Here, your Honor.

25 THE COURT: Jonathan Bolton?

1 **MR. BOLTON:** Present, your Honor.

2 **THE COURT:** Steven Schwartz?

3 **MR. SCHWARTZ:** Present, your Honor.

4 **THE COURT:** Evan Jones?

5 **MR. JONES:** Present, your Honor.

6 **THE COURT:** Paul Pascuzzi?

7 **MR. PASCUZZI:** Present, your Honor.

8 **THE COURT:** Maxim Litvak?

9 **MR. LITVAK:** Here, your Honor.

10 **THE COURT:** Jeffrey Spiers?

11 **MR. SPIERS:** Here, your Honor.

12 **THE COURT:** John Fiero?

13 **MR. SPEAKER:** Mr. Fiero is not going to be with us
14 today, your Honor.

15 **THE COURT:** Okay. Frank Bacik?

16 **(No audible response)**

17 **THE COURT:** Luckey McDowell. Luckey McDowell. How
18 about that?

19 **MR. MCDOWELL:** Present, your Honor.

20 **THE COURT:** James Delaune?

21 **MR. DELAUNE:** Present, your Honor.

22 **THE COURT:** Joli Pecht?

23 **MS. PECHT:** Present, your Honor.

24 **THE COURT:** Peter Laurianitis?

25 **MR. LAURIANITIS:** Present, your Honor.

1 **THE COURT:** Heather Zelevinsky?

2 **MS. ZELEVINSKY:** Present, your Honor.

3 **THE COURT:** Todd Hanson?

4 **MR. HANSON:** Present, your Honor.

5 **THE COURT:** Heather Mueller?

6 **MS. MUELLER:** Present, your Honor.

7 **THE COURT:** And Steven Church?

8 **MR. CHURCH:** Here, your Honor.

9 **THE COURT:** Anyone else on the call?

10 **MR. NEIER:** David Neier is here, your Honor, for
11 Marathon.

12 **THE COURT:** All right. David Neier.

13 And in the courtroom?

14 **MR. HELD:** Your Honor, also Michael Held here.

15 **THE COURT:** Okay.

16 **MR. HELD:** With Ira Herman on behalf of Scotia
17 Redwood Foundation, Beal Financial Corp., and Andy Beal.

18 **THE COURT:** Who?

19 **MR. HELD:** Andy Beal.

20 **THE COURT:** Oh, all right.

21 **MR. HALE:** Your Honor, this is Brian Hale from
22 Goodwin Proctor. I'm with Mr. Druehl and Mr. Brilliant.

23 **THE COURT:** All right. Thank you.

24 Anyone else?

25 **(No audible response)**

1 **THE COURT:** And Mr. Jordan's in the courtroom.

2 All right. Whose motion is this?

3 **MR. HALE:** Your Honor, this is our motion. This is
4 Brian Hale speaking on behalf of Mendocino Redwood and Marathon
5 Structured Finance.

6 Since the conclusion of the last confirmation
7 hearing, we've had a dialogue with the attorneys for Beal
8 Financial and Scotia Redwood Foundation, simply about making
9 Mr. Andrew Beal available for a deposition in connection with
10 the confirmation hearing.

11 Beal Financial and Mr. Beal, as represented by
12 counsel, have not agreed to make him available for a deposition
13 in this case. That's what prompted this motion and this call
14 with your Honor.

15 And so, your Honor, we'd ask for a brief deposition
16 of Mr. Beal, specifically to examine the financing and the --
17 the validity and feasibility of a proposed offer that's been
18 put on the table so far.

19 As, I think the testimony has made clear, Mr. Beal
20 personally, or the entities he controls, is being counted on
21 for over \$400 million in financing in connection with this
22 offer. No documents have been produced to support that
23 offer -- that commitment. And this is a position that's been
24 made and taken by Beal Financial. They've opened the door as
25 to the solidity to the offer.

1 We think we ought to have the opportunity to test
2 Mr. Beal, the entity -- the person who signed the offer letter,
3 the person who's engaged in dialogue with the Indenture Trustee
4 on the issue. And we ought to have the right to know what
5 he -- to understand what he thinks his commitments are under
6 the proposal.

7 We've offered to do it a point in time convenience
8 for Mr. Beal. And I think, your Honor, that we have, let's say
9 in connection with the mediation that's been scheduled, we
10 don't think it would interfere with that, to be actually done
11 somewhat in conjunction with that.

12 We don't see a reason -- rather than have
13 Mr. Cherner, who did not have the authority to bind Mr. Beal,
14 and to bind the corporation, and the entities, we think that
15 it's appropriate to have the testimony of the party who's going
16 to put in over \$400 million into the transaction to see if that
17 money's real.

18 **THE COURT:** Okay. Anything else?

19 **(No audible response)**

20 **THE COURT:** All right.

21 **MR. HALE:** No. That's it.

22 **THE COURT:** Who represents Mr. Beal?

23 **MR. NEERMAN:** Judge, this is Jonathon Neerman from
24 Hunton and Williams on behalf of Mr. Beal.

25 **THE COURT:** Yes. Go ahead.

1 **MR. NEERMAN:** Judge, this is the -- they are trying
2 to get a third bite of the apple. Mr. Cherner has already
3 testified twice; once in a deposition -- well, two depositions,
4 once on behalf of Beal Financial, once on behalf of Scotia
5 Redwood, and live, in person in your courtroom.

6 In his testimony, at no point, did he try and defer
7 an answer to Mr. Beal. He answered all the questions brought
8 forward by counsel. And, in fact, he testified that he had
9 full authority to close the deal.

10 This is nothing but -- they're trying to harass
11 Mr. Beal to try and get a deposition at this late state in the
12 game. Mr. Cherner provided all the answers to their questions.

13 **(Pause)**

14 **THE COURT:** Okay. So you think they're just hassling
15 Mr. Beal.

16 **MR. NEERMAN:** That's right, your Honor.

17 **THE COURT:** And you have no interest in calling
18 Mr. Beal yourself.

19 **MR. NEERMAN:** No, your Honor.

20 **THE COURT:** All right. Anyone else have anything
21 they wanted to say about this?

22 **MR. GERBER:** Your Honor, this is Toby Gerber on
23 behalf of the Indenture Trustee.

24 **THE COURT:** Yes, sir.

25 **MR. GERBER:** Your Honor, you may recall that during

1 the course of the confirmation hearing, the -- Marathon and MRC
2 asked for the deposition of Mr. Beal, and we told them that
3 Mr. Cherner was the most knowledgeable person and for the
4 second time within a matter of days, you asked we produced
5 Mr. Cherner for deposition. He flew down to Corpus Christi
6 at -- at the request of the parties and with the Court's
7 endorsement, and again answered all those questions.

8 But at that time, we pointed out to the parties that
9 Mr. Cherner was the most knowledgeable representative of the
10 corporate entities, including the financial institutions
11 involved for purposes of providing authority.

12 There is no question that Beal has the financial
13 resources, and Mr. Beal has committed to making those financial
14 resources available, as Mr. Cherner has testified. If they
15 wish to propound a written interrogatory to that effect, maybe
16 that's the way to do it. But to produce -- have to produce
17 Mr. Beal for deposition is clearly just an attempt to harass
18 him.

19 They already have the answers. If they need it in
20 writing further, or under oath in some fashion, one simple
21 interrogatory is, are you prepared to do the deal? And let him
22 sign that, and they'll have their answer.

23 **MR. HALE:** Your Honor, this is Brian Hale from
24 Goodwin Proctor. I'll be brief in responding to that. And
25 specifically, I'll pick up with what Mr. Gerber just said.

1 He said there's no question that Beal has the
2 financial resources and commitment to make the deal
3 Mr. Cherner told you so. Unfortunately, Mr. Cherner is not
4 being asked personally to commit over \$400 million in the case.

5 Because of the financing structure of the proposed
6 transaction, a lion's share of it is coming from the pocket of
7 Mr. Beal. That's the question we want to know. That's the
8 question where we're entitled to know if that's a real number,
9 or if this is some sort of gamesmanship to try and -- and put a
10 illusory bid on the table to deflect the Court's attention, the
11 parties' energy from the Marathon MRC offer.

12 We're entitled to ask the person whose -- whose name
13 is on the document, who's ultimately going to be writing a
14 check.

15 I think the testimony is clear that Mr. Cherner said
16 that it -- it's ultimately Mr. Beal's call. And that's the
17 person that we want to hear it from him. That's the person who
18 should explain to us where the money is going to come from --

19 **THE COURT:** Okay. Well --

20 **MR. HALE:** -- and not just doing the deal.

21 **THE COURT:** But I don't think it's any big question
22 that right now, because we haven't heard about the Debtor's
23 plans, we don't know anything about that, but based on what we
24 got going so far, see the real issue is whether your plan is
25 confirmable, not whether theirs is confirmable. 'Cause yours

1 is far more accepting of all of the creditors than anyone else.

2 Isn't that true?

3 **MR. HALE:** Yes, it is, your Honor.

4 **THE COURT:** So, I mean -- I mean, I agree that the
5 issue of whether \$400 million in financing is real or illusory
6 is a significant confirmation issue on the issue of whether
7 it's -- on feasibility.

8 And, of course, I don't get the billion dollar cases
9 that often. Normally, it's a -- you know, it's a hotel, or
10 it's a -- it's a -- some other building that they're trying to
11 refinance. And if they came in with some guy saying well, I'm
12 going to do the financing, it wouldn't be sufficient.

13 Now, I mean, I think that all the parties agree that
14 the Beal entities have -- probably have sufficient financial
15 stroke to do it if they want to. But if the issue comes down
16 to whether or not it's feasible, and the issue of whether he's
17 going to commit to it, I mean, if he doesn't testify, then they
18 don't have that issue.

19 I mean, they lose on that issue. And I don't, I
20 mean -- I mean, I'm not sure what this case is going to boil
21 down to. But, I mean, it did seem as though the most knowledge
22 person about the issue was the gentleman who testified.

23 On the other hand, it also seems as though if there's
24 a guy that's personally responsible for \$400 million worth of
25 financing, that that certainly would be a kind of information

1 that we would normally do a little discovery about.

2 So I don't see that it's a big problem. I mean,
3 if -- if Mr. Beal doesn't want to sit for his deposition for
4 some reason, I don't know. I mean, if the issue is just are
5 you willing to commit to this, and all that sort of other
6 stuff, I agree that there are simpler ways to deal with it.

7 I don't know. I mean, I don't know who's trying to
8 hassle whom. But the fact that he doesn't testify is certainly
9 an issue that I can consider also. Isn't that true?

10 **MR. HALE:** Yes, your Honor. It is.

11 **THE COURT:** So I don't see how this all sorts out. I
12 mean, if things -- anyone else, I guess, before I start talking
13 again.

14 Is there anyone else that has a position they want
15 to -- they want to give to the Court?

16 **MR. NEIER:** Your Honor, this is David Neier on behalf
17 of Marathon.

18 **THE COURT:** Yes, sir.

19 **MR. NEIER:** It wasn't just the financing. The two
20 other major issues that came up during -- during Mr. Cherner's
21 testimony were one, does Mr. Beal have an arrangement,
22 agreement, understanding that would essentially allow for a
23 credit bid to -- under the noteholders plan to really become
24 the only available option for this company.

25 And secondly, there was the entire issue of

1 feasibility, which is who's going to operate this facility,
2 who's going to manage these people, what's going to happen to
3 the mill, what's going to happen to the employees, how much
4 lumber are they going to harvest.

5 All those things Mr. Cherner really had no idea
6 about. And, you know, we'd like to talk to him about those --

7 **THE COURT:** And you think Mr. Beal will?

8 **MR. NEIER:** -- to see if there's -- if there's
9 somebody that does have an idea.

10 **THE COURT:** Do you think Mr. Beal knows the answers
11 to those questions?

12 **MR. NEIER:** I think it would be relevant to the Court
13 if he doesn't know the answers to those questions, your Honor.

14 **THE COURT:** Well, I think it would be relevant for
15 the Court, I mean, I think you all have pointed out, for
16 instance, that a credit bid of the bondholders could wipe out
17 the bid that -- of the Beal bids. And then leave them with
18 their -- with their breakout fee. And that he can even control
19 the credit bid, because he owns more than a third of the -- of
20 the bonds. Isn't that correct?

21 **MR. NEIER:** That's correct, your Honor.

22 **MR. GERBER:** No that it -- your Honor, Toby Gerber on
23 behalf of the Indenture Trustee.

24 That's not correct. He cannot control that. It's a
25 negative vote.

1 **THE COURT:** Right. But he can't -- they can't get
2 2/3 to out vote him and do whatever they want to do without him
3 voting; isn't that true?

4 **MR. GERBER:** But that's exactly the point, your
5 Honor, is that they cannot -- he cannot --

6 **THE COURT:** He can't get 2/3 without -- without a
7 significant number of other -- at least 30 percent of the other
8 bondholders. But --

9 **MR. GERBER:** That's right. Joining him.

10 **THE COURT:** But if all the rest of the bondholders --

11 **MR. GERBER:** High ability in denying the ability
12 to --

13 **THE COURT:** Yeah.

14 **MR. GERBER:** -- trying to get this Indenture Trustee,
15 absent an instruction by 2/3, must credit bid the entire amount
16 of the debt.

17 **THE COURT:** Right.

18 **MR. NEIER:** Yes, but the Indenture Trustee can't get
19 that instruction without Mr. Beal being part of it since they
20 get to 2/3 without Mr. Beal. He owns 37 percent.

21 **MR. GERBER:** Well he doesn't. But collectively the
22 various Scotia Redwood Foundation would. And Scotia Redwood
23 Foundation has already testified through Mr. Cherner that they
24 will not -- they will instruct him not to bid.

25 **MR. NEERMAN:** Judge, this is Jonathon Neerman.

1 **THE COURT:** Yes, sir.

2 **MR. NEERMAN:** Those are the precise -- the two
3 questions that Mr. Neier brought up are precisely the
4 categories of information that Mr. Cherner testified about.
5 And he is the one with the most knowledge about it.

6 **THE COURT:** Well, all right. Anyone else?

7 **MR. JORDAN:** Your Honor, on behalf of the Palco
8 Debtors, Shelby Jordan.

9 We simply would be interested in attending a
10 deposition if -- if at the time of confirmation there's going
11 to be any reference to Mr. Beal or his -- his decision-making,
12 his credit, or companies that he's -- his credit controls that
13 the witness on the stand can't talk about.

14 So to the extent that's going to happen, then --

15 **THE COURT:** There isn't going to -- he's not going to
16 be able to testify if he doesn't sit for a deposition.

17 **MR. JORDAN:** Right.

18 **THE COURT:** So that's not going to happen.

19 **MR. JORDAN:** Well --

20 **THE COURT:** I mean, you -- unless I order him to
21 deposition, you can't call him as a witness in the
22 confirmation. You understand that is meant -- I mean, the
23 Redwood Foundation and the bondholders understand that?

24 I mean, I'm not going to let you have him testify
25 unless he sits for a deposition.

1 **MR. GERBER:** Your Honor, I don't think that -- we've
2 offered Mr. Cherner. Okay?

3 **THE COURT:** I understand.

4 **MR. GERBER:** Scotia Redwood Foundation.

5 **THE COURT:** And I understand that.

6 I'm not suggesting that Mr. Cherner can't testify.
7 I'm just suggesting you can't, I mean, at some point decide,
8 oh, you know, we should have had Mr. Beal say something.

9 If you didn't offer him for deposition now, you can't
10 do that. I mean, I'm not -- that wouldn't be appropriate for
11 me to let him testify after you have refused to let him be
12 deposed. But --

13 **MR. JORDAN:** And actually, your Honor, I wasn't
14 really referring to your decision to allow him testify he
15 decided he didn't want to be deposed. I simply was referring
16 to the quantum of evidence that might come in in a confirmation
17 hearing, in which they make reference to entities or matters
18 controlled by Mr. Beal, and to which the witness would simply
19 have to say well, I'm familiar with, but I don't make the
20 decisions.

21 I think it goes to that extent. And we would
22 certainly --

23 **THE COURT:** I mean, those issues all go to the
24 feasibility of a plan. I mean, you know, if a witness comes in
25 and says I have a commitment from a bank to borrow money.

1 That's they way it typically comes up.

2 If you don't have a commitment letter, you don't have
3 the banker, how do I find that they have a commitment?

4 **MR. JORDAN:** Well, and that was my reference.

5 Assuming that in your example the Beal entity or
6 Mr. Beal himself would be the banker, we would want to be able
7 to talk to the banker if it was going to be made referenced in
8 that fashion.

9 **THE COURT:** Right. And normally if it's something
10 like that, I mean, I -- this is all extraordinary case. It's
11 all coming up on a very short order, with lots of things
12 happening. And I'm not suggesting that Mr. Beal's testimony is
13 going to be significant one way or the other.

14 But I'm not inclined to force him to testify at
15 this -- at this juncture. If they want to make him available
16 and some -- under some agreement of some sort. Or if they want
17 to, you know, give up a series of questions that they want him
18 to testify, maybe they could agree to a written deposition.

19 I don't know. But I'm not -- I mean, I think that
20 it -- it strikes both ways if he doesn't take his deposition.
21 And I don't know that it's going to have a significant impact
22 either way. But it can have an impact both ways.

23 So I think I'm going to just stay the course at this
24 point. And I'm not going to order the deposition at this
25 point --

1 **MR. JORDAN:** Your Honor, the --

2 **THE COURT:** -- prior to the reconstitution of the
3 hearing which will be in what, another week or so.

4 **MR. JORDAN:** And, your Honor, we -- on behalf of the
5 Palco Debtors, I just want to let the Court know that we are
6 continuing to make progress on our exit financing.

7 As a result, we plan to be one of the parties that
8 the Court has ordered the parties to prepare a position
9 statement and furnish that to Judge Isgur, the mediator.

10 So we wanted to let the Court --

11 **THE COURT:** And I have not talked to Judge Isgur
12 since he's back. It may well be that the parameters that I set
13 out in that order may change. So I'd ask the parties to be
14 very careful about keeping track of their emails.

15 Because if he decides he wants more parties than what
16 I suggested, that's going to be up to him. So --

17 **MR. LITVAK:** Your Honor?

18 **THE COURT:** Yes.

19 **MR. LITVAK:** This is Max Litvak for the Creditors
20 Committee. Forgive me, but I -- I thought I just heard
21 Debtor's counsel state that they're planning to submit a
22 position statement? I thought that the mediation order was
23 just directed to --

24 **THE COURT:** It was.

25 **MR. LITVAK:** -- the Indenture Trustee, Beal,

1 Marathon, and Mendocino.

2 **THE COURT:** It was. So --

3 **MR. LITVAK:** I guess I don't follow --

4 **THE COURT:** They have just announced that they're
5 going to interlope.

6 **MR. JORDAN:** Well, actually, your Honor, the Court
7 says it orders that the party, you don't define party, but you
8 have a capital P, Parties. And then you tell the parties to
9 talk about everybody's -- the opposing confirmation. Surely
10 we're not going to let other people talk about our plan and
11 confirmation of our plan --

12 **THE COURT:** Well --

13 **MR. JORDAN:** -- when we're not even participating. I
14 didn't think you meant for us not to have a role at all in the
15 process. I mean --

16 **THE COURT:** I think you can give them -- I don't have
17 a problem with you giving them a paper.

18 **MR. JORDAN:** We don't intend to invite ourselves. --

19 **THE COURT:** Into the --

20 **MR. JORDAN:** If he invites you, then I think that
21 there -- and I will talk to him again before then. And, in
22 fact, I thought I would have already talked to him today.

23 My hope is that some actual good can come from the
24 mediation. I mean, there was a part of me that was worried
25 that there were lots of parties in this case. And I wasn't

1 sure that Judge Houser would be successful. In fact, I
2 probably thought it wasn't. But I wanted to take every effort
3 to make sure it would.

4 At this point, it seems to me that this has come down
5 to a case that could be settled, because we're not involved in
6 environmental issues. We're involved in business issues right
7 now.

8 And I think the parties could settle this if they had
9 a mind to do that. So it's my hope that the parties will get
10 together and they will settle it. And I hope that that
11 happens.

12 And in that regard, I plan to facilitate that in any
13 way that Judge Isgur thinks it would be helpful to him to get
14 it accomplished.

15 So that's what we'll plan to do. I'll go try and get
16 a hold of him again. And if we have a change to that, I'll let
17 you know immediately.

18 **MS. COLEMAN:** Your Honor, this is Miss Coleman for
19 Scopac. To just be perfectly clear that Scopac also, as the
20 proponent of a confirmable plan, that you haven't heard about
21 yet, we do intend to submit a statement at the very least.
22 And --

23 **THE COURT:** All right.

24 **MS. COLEMAN:** -- anticipating --

25 **THE COURT:** All right. And I'll let him know that

1 that -- both of those are coming.

2 **MS. COLEMAN:** Thank you, your Honor.

3 **THE COURT:** And I would think that -- that -- I'm not
4 sure whether these -- how these statements go traditionally in
5 mediations. So somebody help me with that. I mean, does the
6 Creditors Committee want copies of those? Is there any problem
7 with that?

8 **MR. GERBER:** I think in -- Toby Gerber, your Honor,
9 in general, those are position statements between the
10 individual party and the mediator.

11 **THE COURT:** Oh, okay.

12 **MR. JORDAN:** Okay. We didn't -- in the last
13 mediation, your Honor, no parties shared the mediation.

14 **THE COURT:** Okay. So, if the -- I'll discuss that
15 with Judge Isgur, and he'll get them, and he may or may not
16 choose to use them or not. I don't know. But they won't be
17 shared with the rest of the parties.

18 All right. Thank you. Anything else?

19 **(No audible response)**

20 **THE COURT:** Thank you. You all are excused.

21 **MESSRS. SPEAKERS:** Thank you, your Honor.

22 **(This proceeding was adjourned at 4:24 p.m.)**

CERTIFICATION

1

2

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

6

7

8 /s/Cheryl L. HendershotApril 28, 2008

9

Transcriber

Date

10 07-20027

11 04/21/08 - 04/28/08