

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

-----X	:	
IN RE:	:	Civil Action No. 08-259
	:	
SCOTIA DEVELOPMENT LLC., <i>et. al.</i> ,	:	Bankruptcy Case No.
	:	07-20027-C11
Debtors.	:	
	:	
	:	
	:	
	:	
	:	
-----X	:	

**APPELLEES MENDOCINO REDWOOD COMPANY, LLC AND
MARATHON STRUCTURED FINANCE FUND L.P.'S OPPOSITION TO
APPELLANTS' MOTION FOR REHEARING AND TRANSFER**

HAYNES AND BOONE LLP

John D. Penn
Trey A. Monsour
201 Main Street, Suite 2200
Forth Worth, Texas 76102
Telephone: (817) 348-6610
Facsimile: (817) 348-2300

GOODWIN PROCTER LLP

Allan S. Brilliant
Brian D. Hail
620 Eighth Avenue
New York, New York 10018-1405
Telephone: (212) 813-8800
Facsimile: (212) 388-3333

WINSTON & STRAWN LLP

David Neier
Steven M. Schwartz
200 Park Avenue
New York, New York 10166-4193
Telephone: (212) 294-6700
Facsimile: (212) 294-4700

*Counsel to Appellee Mendocino
Redwood Company, LLC*

*Counsel to Appellee Marathon Structured
Finance Fund L.P.*

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
PRELIMINARY STATEMENT.....	1
FACTUAL BACKGROUND.....	2
ARGUMENT.....	3
I. THE FIFTH CIRCUIT COULD NOT HAVE EXERCISED JURISDICTION OVER THE INDENTURE TRUSTEE'S SEPARATE 507(b) APPEAL.....	4
II. IT IS NOT IN THE INTEREST OF JUSTICE TO TRANSFER THIS APPEAL.....	6
III. MRC AND MARATHON DID NOT ENGAGE IN GAMESMANSHIP.....	9
CONCLUSION.....	11

TABLE OF AUTHORITIES

	Page(s)
<u>CASES</u>	
<i>Bentley v. Gonzales</i> , 194 F. Appx. 200, 2006 WL 2355866 (5th Cir. 2006).....	6
<i>Billops v. Dep't of Air Force</i> , 725 F.2d 1160 (8th Cir. 1984).....	6
<i>Duran v. Reno</i> , 1998 WL 54611 (S.D.N.Y Feb. 1), <i>aff'd</i> , 165 F.3d 13 (Table), 1998 WL 781167 (2d Cir. 1998)	7-8
<i>FDIC v. McGlamery</i> , 74 F.3d 218 (10th Cir. 1996)	5
<i>Folden v. United States</i> , 379 F.3d 1344 (Fed. Cir. 2004)	6
<i>Gioda v. Saipan Stevedoring Co. Inc.</i> , 855 F.2d 625 (9th Cir. 1988)	6
<i>Hajjaoui v. Ashcroft</i> , 96 F. Appx. 243, 2004 WL 1013371 (5th Cir. 2004)	6
<i>Hill v. U.S. Air Force</i> , 795 F.2d 1067 (D.C. Cir. 1986).....	5
<i>In re Carter</i> , 759 F.2d 763 (9th Cir. 1985).....	7
<i>In re Dep't of Energy Stripper Well Litig.</i> , 206 F.3d 1345 (10th Cir. 2000)	8
<i>In re Exclusive Industries Corp.</i> , 751 F.2d 806 (5th Cir. 1985).....	4, 7, 9
<i>Kolek v. Engen</i> , 869 F.2d 1281 (9th Cir. 1989).....	9
<i>Liriano v. United States</i> , 95 F.3d 119 (2d Cir. 1996)	9
<i>McDonal v. Abbott Labs.</i> , 408 F.3d 177 (5th Cir. 2005).....	10

Appellees Mendocino Redwood Company, LLC (“MRC”) and Marathon Structured Finance Fund L.P. (“Marathon”) respectfully submit this opposition to the Appellants’ Motion Pursuant To Federal Rule Of Bankruptcy Procedure 8015 For Rehearing Of This Court’s February 6, 2009 Order Dismissing Appeal For Lack Of Jurisdiction (the “Motion”).¹

PRELIMINARY STATEMENT

The Indenture Trustee seeks to have its appeal from the Bankruptcy Court’s Order Denying The Indenture Trustee’s Motion For A Superpriority Administrative Expense Claim Pursuant To Section 507(b) of the Bankruptcy Code (the “507(b) Order”), which this Court dismissed for lack of subject matter jurisdiction, transferred to the Fifth Circuit pursuant to 28 U.S.C. § 1631. The Indenture Trustee, however, cannot satisfy the statutory requirements for a transfer. First, a transfer can only be made if the Fifth Circuit had jurisdiction to hear an appeal from the 507(b) Order separate and apart from the appeal from the Confirmation Order. This Court, however, has already ruled that the 507(b) Order was not separately appealable because it “is part of the Confirmation Order, which is currently on appeal to the Fifth Circuit Court of Appeals.” [Dist. Ct. Dkt. 28 at 2]. The Indenture Trustee’s Motion thus misses the essence of this Court’s ruling – that the 507(b) Order was incorporated into the Confirmation Order and hence any challenge to the 507(b) Order had to be raised, if at all, on an appeal from the Confirmation Order. Nothing in section 1631 provides a remedy for an unsuccessful attempt to split a single appeal into two separate appeals in different courts. Further, on the day that this separate 507(b) appeal was filed, the Fifth Circuit had not yet granted the Indenture Trustee permission to appeal and, thus, that Court did not have jurisdiction as required by section 1631.

¹ Appellants consist of the Indenture Trustee and certain Noteholders. For the Court’s convenience, we simply refer to the Indenture Trustee unless the context requires otherwise. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the papers previously filed by MRC and Marathon.

Second, a transfer can only be made if it is in the interest of justice to do so. But here, the Indenture Trustee already had its opportunity to address the merits of the 507(b) issue with the Fifth Circuit as part of its appeal from the Confirmation Order. Now the Indenture Trustee improperly seeks to use section 1631 as a backdoor into the Fifth Circuit to address the very issues that it failed to raise before that Court. It certainly is not in the interest of justice to give the Indenture Trustee a second opportunity to raise issues that it chose not to address on appeal from the Confirmation Order. Furthermore, the Indenture Trustee's accusation that MRC and Marathon somehow engaged in "gamesmanship" by raising a jurisdictional defense is irrelevant and flatly wrong. This Court would have had to consider its jurisdiction *sua sponte* even if it had not been challenged by MRC and Marathon. Moreover, the parties expressly agreed, eight days after this appeal was docketed, to preserve all issues regarding this Court's jurisdiction and brief them after the Fifth Circuit appeal was argued. For these reasons, transfer is not warranted and the Motion for rehearing should be denied.

FACTUAL BACKGROUND

This Court is familiar with the factual background as detailed in MRC and Marathon's motion to dismiss this appeal and memorandum of law in support thereof, to which this Court is respectfully referred. [Dist. Ct. Dkt. 19, 20]. Here, we summarize only those facts necessary for resolution of the Indenture Trustee's Motion.

On July 8, 2008, the Bankruptcy Court entered the Confirmation Order and the 507(b) Order. [R. 355, 356, Appellant 134, 135].² The next day, the Indenture Trustee filed Notices of Appeal from both the Confirmation Order [R. 357, Appellee 135] and the 507(b) Order [R. 358,

² Citations to the items listed in the Index to the Record prepared by the Clerk of the Bankruptcy Court are noted as "R" with the assigned record number in that Index, along with an Appellant or Appellee number based on which party designated the document.

Appellant 136]. At the same time, the Indenture Trustee petitioned the Bankruptcy Court to certify the Confirmation Order for a direct appeal to the Fifth Circuit. [R. 360, Appellee 136]. On July 15, 2008, the Bankruptcy Court authorized direct appeal to the Fifth Circuit. [Bk. Ct. Dkt. 3381]. On July 22, 2008, the Indenture Trustee petitioned the Fifth Circuit for permission to appeal the Confirmation Order directly to it. Two days later, the Fifth Circuit granted the Indenture Trustee's request and imposed an expedited briefing and argument schedule. [Fifth Circuit case no. 08-27]. The Indenture Trustee's appeal from the Confirmation Order was briefed without it raising any challenge to the 507(b) Order. The appeal was argued on October 6, 2008, and is *sub judice*. [Fifth Circuit case no. 08-40746].

On October 14, 2008, the Indenture Trustee filed its opening brief with this Court in connection with its attempt to separately appeal from the 507(b) Order. On November 14, 2008, MRC and Marathon filed a response brief addressing the merits of the Indenture Trustee's appeal and moved to dismiss the appeal for lack of subject matter jurisdiction or as equitably moot. [Dist. Ct. Dkt. 19, 20]. On February 6, 2009, this Court granted MRC and Marathon's motion to dismiss for lack of subject matter jurisdiction, stating, "The Court finds the 507(b) Order is part of the Confirmation Order, which is currently on appeal to the Fifth Circuit Court of Appeals. Because the Fifth Circuit Court of Appeals has accepted appellant jurisdiction to review the Confirmation Order, this Court does not have subject matter jurisdiction over this appeal." [Dist. Ct. Dkt. 28 at 2]. Now the Indenture Trustee seeks rehearing, requesting that its appeal from the 507(b) Order be transferred to the Fifth Circuit.

ARGUMENT

It is well established that a transfer of an appeal from one federal court to another pursuant to 28 U.S.C. § 1631 is warranted only if each of the following three elements is

satisfied: “(1) the transferor court lacks jurisdiction; (2) on the date the notice of appeal was filed, the transferee court could have heard the appeal; and (3) the interest of justice would be served by transfer.” *In re Exclusive Industries Corp.*, 751 F.2d 806, 808 (5th Cir. 1985).³ The first requirement is satisfied because, as this Court determined, it lacks subject matter jurisdiction over the Indenture Trustee’s appeal from the 507(b) Order. As we now show, the Indenture Trustee cannot satisfy either the second or third requirements. Therefore, this appeal should not be transferred and the Indenture Trustee’s Motion should be denied.

I. THE FIFTH CIRCUIT COULD NOT HAVE EXERCISED JURISDICTION OVER THE INDENTURE TRUSTEE’S SEPARATE 507(b) APPEAL

Notwithstanding the fact that the cases cited by the Indenture Trustee recognize the three statutory elements for a transfer under 28 U.S.C. § 1631, the Indenture Trustee conspicuously fails to address the requirement that the Fifth Circuit must have had jurisdiction on the date that this appeal was filed. The reason is obvious – on July 9, 2008, the day the Indenture Trustee filed this appeal, the Fifth Circuit did not have jurisdiction to hear an appeal from the 507(b) Order separate from the Confirmation Order appeal.

First, section 1631 only allows the transfer of actions or cases that could have been properly filed in the transferee court. As this Court already has ruled, the 507(b) Order could not be appealed separately from the Confirmation Order because the 507(b) Order is “an integral part of the Confirmation Order.” [Dist. Ct. Dkt. 28 at 2]. Because there is no basis for an appeal

³ 28 U.S.C. § 1631 provides:

“Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.”

from the 507(b) Order separate from an appeal from the Confirmation Order, there is no basis under section 1631 for transferring this appeal – which never should have existed separate from the Confirmation Order appeal – to the Fifth Circuit. Transferring this appeal would result in the 507(b) issue being before the Fifth Circuit unconnected to the Confirmation Order appeal, precisely what this Court held was not proper. [Dist. Ct. Dkt. 28]. *See also FDIC v. McGlamery*, 74 F.3d 218, 222 (10th Cir. 1996) (section 1631 does not permit transfer of a portion of an action); *Hill v. U.S. Air Force*, 795 F.2d 1067, 1070 (D.C. Cir. 1986) (“Section 1631 directs a court to transfer an ‘action’ over which it lacks jurisdiction, rather than an individual claim.”).

Second, the Fifth Circuit did not have jurisdiction to hear any appeal, whether from the 507(b) Order or the Confirmation Order, on July 9, 2008, the date that this appeal was filed. There is no direct appeal as of right from a bankruptcy court order to a court of appeals. Instead, a party seeking to appeal a bankruptcy court’s order directly to a circuit court must, among other things, obtain permission from the circuit court. *See* 28 U.S.C. § 158(d).⁴ The express language of section 158(d)(2)(A) could not be clearer that until and unless the court of appeals grants permission for a direct appeal, it has no jurisdiction over an appeal from a bankruptcy court order. The statute states, in relevant part, “[t]he appropriate court of appeals shall have jurisdiction of appeals [from a bankruptcy judge’s order]. . . *if* the court of appeals authorizes direct appeal of the judgment, order, or decree.” 28 U.S.C. § 158(d)(2)(A) (emphasis added).

On July 22, 2008 – thirteen days *after* filing this appeal – the Indenture Trustee petitioned the Fifth Circuit for permission to appeal from the Confirmation Order directly to it. Two days later, the Fifth Circuit granted the Indenture Trustee’s request. Accordingly, until July 24, 2008,

⁴ Section 158(d) also requires certification, typically by the bankruptcy court, that the order at issue involves a question of law as to which there is no controlling precedent, a matter of public importance, or a question of law requiring resolution of conflicting decision, or that an immediate appeal from the order may materially advance the progress of the case. *See* U.S.C. § 158(d)(2)(A).

the Fifth Circuit had no jurisdiction. Therefore, the Indenture Trustee cannot satisfy the second element under section 1631 and this appeal should not be transferred to the Fifth Circuit. See *Bentley v. Gonzales*, 194 F. Appx. 200, 201, 2006 WL 2355866 (5th Cir. 2006) (unpublished *per curiam*) (denying transfer because Fifth Circuit could not have exercised jurisdiction on the day petition was filed); *Hajjaoui v. Ashcroft*, 96 F. Appx. 243, 243, 2004 WL 1013371 (5th Cir. 2004) (unpublished *per curiam*) (denying transfer because “this court could not have exercised jurisdiction over the petition on the date that Hajjaoui filed the petition in district court”); see also *Folden v. United States*, 379 F.3d 1344, 1358 n.11 (Fed. Cir. 2004) (upholding denial of transfer “because at the time plaintiffs filed suit in the Court of Federal Claims, the D.C. Circuit would not have had jurisdiction over their suit”); *Gioda v. Saipan Stevedoring Co. Inc.*, 855 F.2d 625, 629 (9th Cir. 1988) (declining transfer because “this court could not have entertained this appeal” when it was filed); *Billops v. Dep’t of Air Force*, 725 F.2d 1160, 1163 (8th Cir. 1984) (“This court cannot transfer No. 83-922 to the Federal Circuit pursuant to section 1631 because it could not have been brought there at the time it was filed in this court.”).

II. IT IS NOT IN THE INTEREST OF JUSTICE TO TRANSFER THIS APPEAL

The Indenture Trustee likewise cannot satisfy the third requirement of section 1631 that transfer be in the interest of justice. The Indenture Trustee asserts that a transfer is in the interest of justice because it will otherwise be precluded from appealing the 507(b) Order to the Fifth Circuit. But that argument ignores the decisive fact that if the Indenture Trustee now finds itself without a way to present the 507(b) issue to the Fifth Circuit, that is a result of its own tactical decision not to raise that issue to the Fifth Circuit and instead attempt to pursue that issue as a separate appeal in this Court.

The Indenture Trustee adopted this strategy despite having asserted the 507(b) issue as a grounds for direct appeal from the Confirmation Order to the Fifth Circuit and designating it as

an issue to raise on that appeal.⁵ Specifically, in seeking certification for a direct appeal from the Confirmation Order to the Fifth Circuit, the Indenture Trustee argued that one of the reasons warranting a direct appeal was that “[t]he MRC/Marathon Plan makes no provision for payment of this superpriority administrative claim, and thus fails to comply with Section 1129(a)(9) which requires that such claims be paid in cash on the Effective Date.” [R. 360, Appellee 136 ¶ 81]. Certain Noteholders then included the following in their Statement Of Issues To Be Presented On Appeal From Confirmation Order: “Whether the Bankruptcy Court erred as a matter of law in concluding that the Marathon/MRC Plan [sic] satisfies 11 U.S.C. § 1129(a)(9) because it does not adequately provide for payment in full of the Indenture Trustee’s superpriority claim asserted under 11 U.S.C. § 507(b)...” [Bkt. Ct. Dkt. 3434 at 3]. Now, the Indenture Trustee seeks to circumvent the consequences of its decision by requesting transfer to the Fifth Circuit.⁶

This case is thus akin to *Duran v. Reno*, 1998 WL 54611 (S.D.N.Y Feb. 1), *aff’d*, 165 F.3d 13 (Table), 1998 WL 781167 (2d Cir. 1998). In *Duran*, plaintiff appealed from a deportation order to the District Court for the Southern District of New York. Counsel for the United States advised Duran’s counsel and the court that a challenge to the deportation order must be heard by the Second Circuit Court of Appeals, not the District Court, and requested that Duran consent to a transfer. Duran’s counsel asserted that the action was properly before the

⁵ Since the Indenture Trustee already timely appealed to the appropriate court – here, the 5th Circuit – the cases cited in paragraph 8 of the Indenture Trustee’s Motion are irrelevant, as they involve circumstances where the time to file an appeal has run, meaning that in the absence of a transfer, the party will be unable to file its appeal in the appropriate court. *See, e.g., Scherbatskoy v. Halliburton Co.*, 125 F.3d 288, 291-92 (5th Cir. 1997) (permitting transfer where a new appeal filed in the appropriate court would be barred as untimely); *In re Exclusive Industries Corp.*, 751 F.2d 806, 809 n.5 (5th Cir. 1985) (same); *Paul v. INS*, 348 F.3d 43, 47 (2d Cir. 2003) (same); *Phillips v. Seiter*, 173 F.3d 609, 610 (7th Cir. 1999) (same); *In re Carter*, 759 F.2d 763, 767 (9th Cir. 1985) (same). None of these cases involve an unsuccessful effort by the appellant to litigate interrelated appeals simultaneously in two different courts.

⁶ For other examples of the Indenture Trustee recognizing the inherent link between the 507(b) issue and confirmation, *see* MRC and Marathon’s Memorandum of Law in Support of its Motion to Dismiss This Appeal. [Dist. Ct. Dkt. 20 at 2-4, 11-13, 17-18].

District Court and refused to agree to a transfer. The District Court subsequently dismissed the case for lack of subject matter jurisdiction and declined to transfer it to the Second Circuit, explaining that transfer would not be in the interest of justice as required by section 1631 because Duran previously resisted transfer. *See id.* at *4; *see also In re Dep't of Energy Stripper Well Litig.*, 206 F.3d 1345, 1354 (10th Cir. 2000) (denying transfer to Federal Circuit when appellants had filed a duplicate appeal in that Court but had allowed it to be dismissed with prejudice while they pursued suit in the Tenth Circuit because appellants had “ample opportunity to pursue these cases in the proper forum”).

As in *Duran*, here, the Indenture Trustee asserted that jurisdiction was proper in the District Court and this Court rejected that argument. The interest of justice does not require relieving the Indenture Trustee from the consequences of its strategic decisions merely because they did not succeed. To the contrary, transferring this appeal to the Fifth Circuit would permit the Indenture Trustee to do an end-run around its decision not to brief the 507(b) issue on its direct appeal to the Fifth Circuit from the Confirmation Order and would give the Indenture Trustee the proverbial second bite at the apple with the opportunity to, once again, appeal portions of the Confirmation Order. Section 1631 should not be used to gain entrance to a court from which a litigant has already been foreclosed. *See, e.g., Puri v. Gonzalez*, 464 F.3d 1038, 1043 (9th Cir. 2006) (affirming denial of transfer where plaintiff had previously filed a petition in the appellate court that was dismissed, stating, “it appears that the real reason that Puri requests a § 1631 transfer of this action is so that he can circumvent our earlier order of dismissal”).

Accordingly, this case is unlike the “usual case[s]” cited by the Indenture Trustee in which courts have found a transfer to be in the interest of justice where the litigant, often acting

pro se, was “unaware of or confused” about the proper forum in which to file his action. *See, e.g., Liriano v. United States*, 95 F.3d 119, 122 (2d Cir. 1996) (finding that basis for transfer of petition is “ignorance concerning the new procedural requirements...rather than an effort to circumvent those requirements”); *Kolek v. Engen*, 869 F.2d 1281, 1284 (9th Cir. 1989) (finding that a transfer is in the interest of justice because “his errant filing was caused in part by his pro se status, lack of fluency in English, and inability to access legal research materials in prison”); *Exclusive Industries*, 751 F.2d at 809 (allowing transfer amid “cloud of confusion” governing bankruptcy appeals in the wake of new rules prohibiting direct appeals to appellate courts).⁷ Therefore, the Indenture Trustee’s appeal from the 507(b) Order should not be transferred to the Fifth Circuit and this Motion should be denied.

III. MRC AND MARATHON DID NOT ENGAGE IN GAMESMANSHIP

Even though the Indenture Trustee’s inability to appeal the 507(b) issue is the product of its own strategic decisions and even though MRC and Marathon’s conduct is irrelevant to this Motion, the Indenture Trustee accuses MRC and Marathon of “gamesmanship” and “strategic ploys” in filing “a belated motion to dismiss” the 507(b) appeal for lack of subject matter jurisdiction. These assertions are belied by the law and the facts. As an initial matter, the Indenture Trustee has no cause to complain because this Court would have been obligated to consider subject matter jurisdiction *sua sponte* even if it had not been raised by MRC and Marathon. *See McDonal v. Abbott Labs.*, 408 F.3d 177, 183 n.5 (5th Cir. 2005). Moreover, on August 26, 2008, only eight days after this appeal was docketed, MRC, Marathon, and the Indenture Trustee filed with this Court an Agreed Motion To Consolidate Appeals And Establish Briefing Schedule in connection with the 507(b) appeal (the “Agreed Motion”). [Dist. Ct. Dkt.

⁷ In fact, the Indenture Trustee does not assert that it was confused, but rather, that it appealed to this Court based on its “understanding” that it could, assertion that stands in stark contrast to its statements and applicable law, and a position that was rejected by this Court in dismissing the appeal for lack of subject matter jurisdiction.

5].⁸ The Agreed Motion stated that “briefing in the Fifth Circuit Appeal should precede the briefing in the District Court Appeals” and requested a briefing schedule accordingly. [*Id.* ¶ 3]. Critically, the Agreed Motion expressly provided that it “is without prejudice to any procedural or substantive arguments or issues that might be raised by any party in the District Court Appeals, including issues regarding *jurisdiction* and mootness.” [*Id.* ¶ 3(c) (emphasis added)]. On August 28, 2008, this Court granted the Agreed Motion. [Dist. Ct. Dkt. 6]. Thus, contrary to the Indenture Trustee’s assertions, it was on notice and, in fact, agreed that MRC and Marathon could seek dismissal of this separate 507(b) appeal for lack of jurisdiction.

⁸ The consolidation of appeals refers to the fact that the Indenture Trustee, as well as certain Noteholders, filed separate appeals of the 507(b) Order to this Court. *See* Dist. Ct. Dkt. 5 ¶¶ 1, 3. These appeals were collectively referred to as the “District Court Appeals”. *See id.* at ¶ 3.

CONCLUSION

For all of these reasons, MRC and Marathon respectfully request that this Court deny the Indenture Trustee's Motion for rehearing and grant such other and further relief as this Court deems just and proper. A proposed order denying the Motion is annexed hereto.

March 6, 2009

Respectfully submitted,

HAYNES AND BOONE LLP

/s/ John D. Penn
John D. Penn
Texas State Bar No. 15752300
Trey A. Monsour
Texas State Bar No. 14277200
201 Main Street, Suite 2200
Fort Worth, Texas 76102
Telephone: (817) 347-6610
Telecopy: (817) 348-2300

-and-

WINSTON & STRAWN LLP

/s/ David Neier
David Neier (attorney-in-charge)
(Admitted *pro hac vice*)
Steven M. Schwartz
(Admitted *pro hac vice*)
200 Park Avenue
New York, New York 10166-4193
Telephone: (212) 294-6700
Telecopy: (212) 294-4700

*Counsel to Appellee Marathon Structured
Finance Fund L.P.*

GOODWIN PROCTER LLP

/s/ Allan S. Brilliant
Allan S. Brilliant (attorney-in-charge)
(Admitted *pro hac vice*)
Brian D. Hail
620 Eighth Avenue
New York, New York 10018-1405
Telephone: (212) 813-8800
Facsimile: (212) 388-3333

*Counsel to Appellee Mendocino Redwood
Company, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2009, a true and correct copy of the foregoing document was served via e-mail (i) upon the parties listed below, and (ii) upon the parties that receive electronic notice in this case pursuant to the Court's ECF filing system.

/s/ John D. Penn

John D. Penn

Counsel for Appellant Indenture Trustee:

Toby L. Gerber
Louis R. Strubeck, Jr.
O. Rey Rodriguez
Fulbright & Jaworski L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, TX 75201
E-Mail: tgerber@fulbright.com
lstrubeck@fulbright.com
orodriguez@fulbright.com

Zack A. Clement
William Greendyke
R. Andrew Black
Jason L. Boland
Mark Worden
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, TX 77010
E-Mail: zclement@fulbright.com
wgreendyke@fulbright.com
ablack@fulbright.com
jboland@fulbright.com
mworden@fulbright.com

Counsel for Appellants Angelo, Gordon & Co., L.P., Aurelius Capital Management, LP, and Davidson Kempner Capital Management LLC:

Isaac M. Pachulski
Jeffrey H. Davidson
Eric D. Winston
Stutman Treister & Glatt P.C.
1901 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
E-Mail: jpachulski@stutman.com
jdavidson@stutman.com
ewinston@stutman.com

Counsel for Appellants CSG Investments, Inc. and Scotia Redwood Foundation, Inc.:

Murry Cohen
Akin Gump Strauss Hauer & Feld LLP
1111 Louisiana Street, 44th Floor
Houston, TX 77002
E-Mail:

Charles R. Gibbs
David F. Staber
Sarah Ann Link Schultz
Akin Gump Strauss Hauer & Feld LLP
1700 Pacific Avenue, Suite 4100
Dallas, TX 75201
E-Mail: cgibbs@akingump.com
dstaber@akingump.com
sschultz@akingump.com

Counsel for Debtor Scotia Pacific LLC:

Kathryn Coleman
Gibson Dunn & Crutcher LLP
200 Park Avenue, 47th Floor
New York, NY 10166
E-Mail: kcoleman@gibsondunn.com

Eric J. Fromme
Gibson Dunn & Crutcher LLP
3161 Michaelson Drive
Irvine, CA 92612
E-Mail: efromme@gibsondunn.com

Kyung S. Lee
Diamond McCarthy
909 Fannin, Suite 1500
Houston, TX 77010
E-Mail: klee@diamonddmccarthy.com

Counsel for Palco Debtors:

Shelby A. Jordan
Nathaniel Peter Holzer
Jordan, Hyden, Womble, Culbreth
& Holzer, P.C.
500 N. Shoreline Drive, Suite 900
Corpus Christi, TX 78471
E-Mail: sjordan@jhwclaw.com

Gary M. Kaplan
Howard Rice
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111
E-Mail: gmkaplan@howardrice.com

Jack L. Kinzie
James R. Prince
Baker Botts LLP
2001 Ross Avenue
Dallas, TX 75201
E-Mail: jack.kinzie@bakerbotts.com
jim.prince@bakerbotts.com

Counsel for Marathon Structured Finance Fund L.P.:

David Neier
Winston & Strawn, LLP
200 Park Avenue
New York, NY 10166
E-Mail: denier@winston.com

Counsel for Bank of America:

Evan M. Jones
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071
E-Mail: ejones@omm.com

Counsel for Mendocino Redwood Company, LLC:

Allan S. Brilliant
Goodwin Procter LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
E-Mail: abrilliant@goodwinprocter.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

-----X	:	
IN RE:	:	Civil Action No. 08-259
	:	
SCOTIA DEVELOPMENT LLC., <i>et. al.</i> ,	:	Bankruptcy Case No.
	:	07-20027-C11
Debtors.	:	
	:	
	:	
	:	
-----X	:	

ORDER DENYING MOTION FOR REHEARING AND TRANSFER

Upon consideration of Appellants’ Motion Pursuant To Federal Rule Of Bankruptcy Procedure 8015 For Rehearing Of This Court’s February 6, 2009 Order Dismissing Appeal For Lack Of Jurisdiction (the “Motion”) and Appellees’ response thereto, and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, that the Motion is DENIED because the Fifth Circuit could not have exercised jurisdiction over Appellants’ appeal on the day that the appeal was filed; and it is further

ORDERED, that even if the Fifth Circuit could have exercised jurisdiction over Appellants’ appeal on the day that the appeal was filed, this Court has balanced the equities and determined that a transfer is not in the interest of justice.

Dated: _____

Chief Judge Hayden Head
United States District Court