

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: ) CASE NO: 07-20027  
)  
)  
) SCOTIA DEVELOPMENT, LLC, )  
)  
) Thursday, April 17, 2008  
) (1:59 p.m. to 2:39 p.m.)  
)  
Debtor. )

STATUS HEARING

BEFORE THE HONORABLE RICHARD S. SCHMIDT,  
UNITED STATES BANKRUPTCY JUDGE

Appearances: See Page 2  
Courtroom Deputy: Letty Garza  
Court Recorder: Janet Silika  
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1 Corpus Christi, Texas; Thursday, April 17, 2008; 1:59 p.m.

2 (Courtroom and telephonic appearances)

3 (Call to Order)

4 **THE COURT:** Send it in.

5 All right. Let's see, we've got Kyung Lee?

6 **MR. LEE:** Present, your Honor.

7 **THE COURT:** Marc Pfeuffer?

8 **MR. PFEUFFER:** Present, your Honor.

9 **THE COURT:** Steven Schwartz?

10 **MR. SCHWARTZ:** Present, your Honor. I'm here with

11 David Neier and Matt Breckinridge.

12 **THE COURT:** All right. Kathryn Coleman?

13 **MS. COLEMAN:** Present, your Honor.

14 **THE COURT:** Alan Gover?

15 **MR. GOVER:** Present, your Honor.

16 **THE COURT:** Richard Doren?

17 **MS. COLEMAN:** I believe he'll be joining me, your

18 Honor.

19 **THE COURT:** Okay. Jacob Cherner?

20 **MR. ADAMS:** It's Lawrence Adams sitting in for

21 Mr. Cherner.

22 **THE COURT:** Larry Adams?

23 **MR. ADAMS:** Yes, sir.

24 **THE COURT:** Okay, Lawrence Adams. Oh, I got it.

25 Okay.

1 Christopher Johnson?

2 **MR. JOHNSON:** Present, your Honor.

3 **THE COURT:** Larry Engel?

4 **MR. ENGEL:** Yes, your Honor.

5 **THE COURT:** Peter Laurinaitis?

6 **MR. LAURINAITIS:** Present, your Honor.

7 **THE COURT:** Michael Neville?

8 **MR. NEVILLE:** Present, your Honor.

9 **THE COURT:** George Lamb?

10 (No audible response)

11 Baker Botts? Do we have somebody from Baker Botts?

12 (No audible response)

13 Ira Herman?

14 (No audible response)

15 Paul Pascuzzi?

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

17 **THE COURT:** Ruth Van Meter?

18 **MS. VAN METER:** Present, your Honor.

19 **THE COURT:** Jeffrey Spiers?

20 **MR. SPIERS:** Present, your Honor.

21 **THE COURT:** Evan Jones?

22 **MR. JONES:** Yes, your Honor.

23 **THE COURT:** Alan Tenenbaum?

24 **MR. TENENBAUM:** Present, your Honor.

25 **THE COURT:** Wendy Laubach?



1           **MS. LAUBACH:** Present, your Honor.

2           **THE COURT:** Toby Gerber?

3           **MR. GERBER:** In the courtroom, your Honor.

4           **THE COURT:** In the court.

5           Frank Bacik?

6           **MR. BACIK:** Present, your Honor.

7           **THE COURT:** Allison Byman?

8           **MS. BYMAN:** Present, your Honor.

9           **THE COURT:** John Penn?

10          **MR. PENN:** Present.

11          **THE COURT:** Craig Druehl?

12          **MR. WILLIAMS:** Your Honor, it's Alan Williams and

13 Brian Hale here for Goodwin Procter.

14          **THE COURT:** Okay, thanks.

15          Jonathan Neerman?

16          **MR. NEERMAN:** Here, your Honor.

17          **THE COURT:** Maxim Litvak?

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

19          **THE COURT:** John Fiero?

20          **MR. LITVAK:** Your Honor, I'm here with John Fiero as

21 well.

22          **THE COURT:** Thanks.

23          Eric Fromme?

24          **MR. FROMME:** Present, your Honor.

25          **THE COURT:** Francine Brodowicz?

1 MS. BRODOWICZ: Present, your Honor.

2 THE COURT: Heather Muller?

3 MS. MULLER: Present, your Honor.

4 THE COURT: Wei Wang?

5 MR. WANG: Present, your Honor.

6 THE COURT: David McLaughlin?

7 MR. McLAUGHLIN: Present, your Honor.

8 THE COURT: John Driscoll?

9 MR. DRISCOLL: Here, your Honor.

10 THE COURT: Stephen Burnazian?

11 MR. BURNAZIAN: Present, your Honor.

12 THE COURT: Dan Kamensky?

13 (No audible response)

14 Mark Worden?

15 MR. WORDEN: Good afternoon, your Honor.

16 THE COURT: Joli Pecht?

17 MS. PECHT: Present, your Honor.

18 THE COURT: Nathan Rushton?

19 MR. RUSHTON: Present, your Honor.

20 THE COURT: Todd Hanson?

21 MR. HANSON: Present, your Honor.

22 THE COURT: Erin Ross?

23 MS. ROSS: Present, your Honor.

24 THE COURT: Brett Young?

25 MR. YOUNG: Present, your Honor.

1           **THE COURT:** Heather Zelevinsky?

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

3           **THE COURT:** David Staber?

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

5           **THE COURT:** Gary Clark?

6           **MR. CLARK:** Present, your Honor.

7           **THE COURT:** Steven Felderstein?

8           **MR. MILLY:** Kirk Milly sitting in for

9 Mr. Felderstein, your Honor.

10           **THE COURT:** Ephraim Diamond?

11           **MR. DIAMOND:** Present, your Honor.

12           **THE COURT:** James Delaune?

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

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

15           **MR. LAMB:** George Lamb.

16           **THE COURT:** All right.

17           And in the courtroom, Mr. Jordan.

18           **MR. JORDAN:** Your Honor, Shelby Jordan, and Pete

19 Holzer, co-counsel, along with Baker Botts for the PALCO

20 debtors.

21           **THE COURT:** All right. Mr. Sterbach?

22           **MR. STERBACH:** Charles Sterbach for the United States

23 Trustee.

24           **THE COURT:** Mr. Gerber?

25           **MR. GERBER:** Toby Gerber on behalf of the Indenture

1 Trustee, and Mr. Jacob Cherner is here on behalf of -- as a  
2 business representative of Beal Bank and Scotia Redwood.

3 **THE COURT:** Okay.

4 Okay. I called this hearing cause I wanted to know  
5 if there's been any movement towards settlement. And I don't  
6 really know how to ask the question. I guess I could just ask  
7 it directly. And we can start with, since Mr. Gerber's in the  
8 courtroom, where are we with respect to the -- I mean, this  
9 case started out with -- as a case that had very little  
10 likelihood of settlement. There were -- and I'm not suggesting  
11 that parties had problems but there were more than just  
12 financial issues in this case. And it's boiled down, though,  
13 to basically two creditors now -- I mean, there are other  
14 plans, and I'm not ruling but right now we're got two creditor  
15 groups that are competing. And the -- one thing, you know, is  
16 we make the talk to individuals about bankruptcy. We talk  
17 about the two competing purposes of bankruptcy: a fresh start  
18 for the debtor but a way that creditors don't have to fight  
19 with each other. And if -- when you're down to a creditor's  
20 fight, it ought to be settled.

21 Okay. So that -- with that in mind, now Mr. Gerber.  
22 I'm sorry I made you sit down there for a second.

23 **MR. GERBER:** May it please the Court, your Honor. I  
24 don't have much to report other than, I think, the parties have  
25 communicated with each other, reached out to each other. We

1 don't have anything substantive to report. I don't know if the  
2 Court -- and I don't think the Court wants to hear about --

3 **THE COURT:** No, I --

4 **MR. GERBER:** -- what the parties' positions are. But  
5 I don't think that -- we believe, from the Indenture Trustee's  
6 standpoint, your Honor, that we've got sophisticated parties on  
7 both sides.

8 **THE COURT:** Right.

9 **MR. GERBER:** Parties who understand the issues and we  
10 certainly can continue to talk among ourselves and try to talk  
11 among ourselves. I think both sides are thinking very hard --  
12 at least I know from the Indenture Trustee's side and I think  
13 Marathon and MRC have represented to us that they're of  
14 solutions.

15 **THE COURT:** Okay. Is somebody from Marathon want to  
16 say anything?

17 **MR. NEIER:** Your Honor, this is David Neier. I would  
18 echo Mr. Gerber's comments.

19 **MR. GERBER:** Yep, the --

20 **THE COURT:** Okay. So then the next question, then,  
21 is: What can I do to facilitate movement? So I have thought  
22 about mediation. I called Judge Houser. She's not available.  
23 I don't know -- I mean, she says it's because of her schedule;  
24 and I tend to agree with her that, you know, it's a difficult  
25 situation. We've got a two-week break and take -- we have to

1 find somebody that's -- if we're going to find somebody else to  
2 assist in mediating, it's got to be somebody that doesn't need  
3 a lot of education; somebody that can grasp the issues quickly  
4 and has the stature to move the parties in a certain direction.  
5 Okay? I can think of three or four names of people that might  
6 be able to do that. I just throw them out because I don't ever  
7 select mediators. I would just give -- I have checked Houston:  
8 Marvin Isgur is available -- has two days he could make  
9 available to discuss this with the parties. I've talked to  
10 Larry Kelly in Waco. He is available. He probably, now since  
11 he's retired, would be charging some sort of a fee. I don't  
12 know what it is. He's available. Stephen Felsenthal is not in  
13 this case but has had experience doing this kind of thing. I  
14 have not talked to Steve Felsenthal cause he's involved in one  
15 of another case that I'm in -- not talked to him, have no idea  
16 if he's available. The other name, I don't know if he's  
17 available, I was thinking was McConnell. And I don't know  
18 whether Mike McConnell's involved in this case or not. Those  
19 are some names that I know of. If the parties thought that  
20 there would be some value during this period of doing some kind  
21 of mediation.

22 So now, let's hear about that.

23 **MR. GERBER:** Your Honor, from the Indenture Trustee's  
24 perspective, while we will follow whatever direction the Court  
25 sets for us, it's our view that again we believe we've got

1 sophisticated parties on both sides that it probably isn't  
2 necessary for a mediator to be brought in and formality of  
3 those types of proceedings and in the middle of the trial.  
4 We'll do whatever the Court suggests is best but we think as --  
5 and I hear Mr. Neier saying this -- that we're both working on  
6 ideas to try and reach out to each other. Don't know that  
7 it'll be successful, and I hate to think that not using a  
8 mediator would be the difference. But in our view of the  
9 world, we think we can talk directly with Marathon and MRC and  
10 get as far as we would get with the mediator.

11 **THE COURT:** Okay. Marathon?

12 **MR. NEIER:** Your Honor, it's even easier on our side  
13 because unlike Mr. Gerber who has an Indenture Trustee who has  
14 to take instructions from a super majority of bondholders, we  
15 have basically two individuals both of whom have testified on  
16 the stand in front of you who are -- you know, who we take  
17 direct, you know, instructions from. They don't need to check  
18 with anybody. And so on our side, you know, we're ready to --  
19 ready, willing and able to do whatever it takes to try and get  
20 a settlement done. Just structurally, I think it's a little  
21 bit different on the Indenture Trustee's side; but as  
22 Mr. Gerber says, his clients are sophisticated. And if they  
23 want to settle, they know how to do that.

24 **THE COURT:** Okay. What about -- what does the Debtor  
25 think? Debtor have something they want to add to this?

1           **MR. JORDAN:** Your Honor, on behalf of the PALCO  
2 debtors, I guess the thing that I would emphasize first is we  
3 encourage any effort to achieve case resolution. We selected  
4 to go last. We are -- we reported to the Court where we are  
5 and where we expect to be when we come back on the 29<sup>th</sup>. We  
6 truly understand the Court's procedures to date, the Court --  
7 the order that was entered several days ago but not intended to  
8 eliminate our ability to put on evidence and establish our case  
9 even though maybe a little reading might lead certain parties  
10 to think that. We do not see us as a leader in resolving the  
11 dispute between Marathon and the noteholders. We don't -- we  
12 are in a position that we will be talking separately with those  
13 entities as these matters develop. But we don't see a role for  
14 us in that -- in the resolution of that issue and, quite  
15 frankly, have been on the sidelines to their posturing ever  
16 since the two weeks that we spent in preparation with Judge  
17 Houser all through the mediation process. So that's -- I guess  
18 in this respect, we are at the Court's disposal for anything  
19 the Court wants us to do. We are busy accomplishing our exit  
20 financing matters, and we are busy getting ready for the 29<sup>th</sup>  
21 so the Court has the benefit of our evidence and input when it  
22 comes time to evaluate the whole package assuming that there's  
23 not going to be a resolution between the noteholders and  
24 Marathon between now and then. At that point, we would be  
25 making the same analysis of our position that I'm sure the



1 noteholders or Marathon would and the Court will be if any  
2 resolution by settlement is reached.

3 **THE COURT:** Okay. Ms. Coleman?

4 **MS. COLEMAN:** Your Honor, I generally agree with what  
5 Mr. Jordan said. I would simply add that we view all  
6 settlement talks as progress and hope that they are successful  
7 and would even anticipate those kinds of discussions. And any  
8 mediation that your Honor might encourage can go on after the  
9 May 2<sup>nd</sup> as well.

10 **THE COURT:** Okay. What about creditor's committee?

11 **MR. FIERO:** This is John Fiero, your Honor. I think  
12 our biggest concern would be that if I understand the way the  
13 Indenture works, the Indenture Trustee doesn't really have the  
14 ability to compromise without sort of getting his house in  
15 order, for lack of a better phrase. They need a super majority  
16 of bondholders to tell the Indenture Trustee that it is okay to  
17 compromise and that a compromise is a, you know, salutary  
18 thing. I don't know whether that's been accomplished by Mr.  
19 Gerber and the Indenture Trustee or not. But I fear that these  
20 two weeks could expire without that, you know, sort of basic  
21 understanding of whether or not you're, in fact, standing in  
22 the batter's box at the plate or not when Marathon and MRC are  
23 talking to the Indenture Trustee or whether it's purely  
24 theoretical because the Indenture Trustee remains bound and  
25 required to try to get the full amount of the note.

1           **THE COURT:** Okay. Well the -- I'm going to assume,  
2 you know, that the -- that Mr. Gerber and Zack -- I'll take for  
3 granted that what they said at the beginning, that they were  
4 brought into this to settle it, work something out -- I'm going  
5 to assume that that's the case. And, of course, it's easy for  
6 me to do that. I can be naïve without, you know, I don't get  
7 paid for being -- representing anybody. So I'm going to assume  
8 that that's the case. But I think that the other parties in  
9 this case if they truly believe that the noteholders are never  
10 going to settle, then they need to get their plan in a position  
11 that it can be confirmed one way or the other and upheld on  
12 appeal. Now I don't know -- I mean, there are legal arguments  
13 that maybe you think you can win, but why take the risk. I  
14 mean, there -- all of that sort of stuff. I don't know but --  
15 and you know what? I originally thought that perhaps Maxxam  
16 would come up with \$200 million and pay down the notes and then  
17 the rest could cash flow, and then we'd have an argument at  
18 least whether or not the Debtor can operate the property, you  
19 know, the normal way these things do. That didn't come up.  
20 That never happened. That was -- that plan never presented.  
21 And it was just -- that was just me thinking about this as I go  
22 on. I don't know -- there it is. As I said before, there is a  
23 great deal of pressure -- I mean, there are obviously a great  
24 deal of support for the Marathon plan. On the other hand,  
25 there are -- there is this little issue of, you know, the

1 Bankruptcy Code requires indubitable equivalent to cram down  
2 the noteholders. So that issue is one important issue that  
3 we'll have to deal with one way or the other but nobody's  
4 complaining about Mendocino. I haven't heard from the Debtor  
5 yet but it sounds as though everybody's happy that they --  
6 nobody has suggested that they can't operate this business. We  
7 don't know who the noteholders have in mind to operate it.  
8 They haven't chosen to tell us or maybe they don't have a deal  
9 yet, whatever. But I mean, the offer -- the noteholders, the  
10 Beal Bank offer obviously all of this stuff has been put  
11 together very quickly. And it has to in the bankruptcy  
12 setting. Things move very quickly and so the fact that the  
13 Beal offer changed while the witness was on the stand is not  
14 surprising. That's not a -- I mean, if anything, that was just  
15 an indication from them that they were working to try to get it  
16 done right. And when somebody points out a problem, that's --  
17 with it, they tried to correct it but, I mean, obviously this  
18 case -- the best solution for this case is a solution which  
19 deals with all of the case, not just the trees. I mean, that's  
20 the solution that -- I mean, I don't think that the Bankruptcy  
21 Code envisions, you know, piecemeal stuff. I mean, it can be  
22 done. Obviously, it can be done. But I think overall the best  
23 solution is the whole case, not just part of it. And so you've  
24 got a framework, at least one framework to work that out  
25 whether you can do it by adding to the noteholder plan, I don't

1 know. I mean, I don't pretend to even suggest that I have a  
2 way to settle all of this. But I do see that it's a dispute  
3 now just able dollars. It's not a dispute about operating the  
4 forest. It's not a dispute about how many trees can get cut in  
5 a certain time period although those issues could come up in  
6 reviewing the two plans if we -- but that's not what this is  
7 about right now. It's about dollars which is the traditional  
8 things that businessmen settle because they don't want the  
9 crazy bankruptcy judge settling it for them. He's the loose  
10 cannon. You don't want that happening. Somebody -- somebody's  
11 going to win and somebody's going to lose if I have to decide  
12 it.

13 Is there -- so is there anybody else that's got any  
14 other ideas? It sounds to me like you're not really that  
15 interested in mediation because you don't think that that  
16 really is going to get you moving in the right direction. Is  
17 there anyone else have an alternate opinion they want to say?

18 So, okay. All right. Well maybe we've had a waste  
19 of time, then, today. So there -- you're still talking to each  
20 other but you -- there's been no movement yet? And when are we  
21 scheduled to start again?

22 **MR. GERBER:** We're scheduled to start on April the  
23 29<sup>th</sup>, your Honor. Toby Gerber for the Indenture Trustee. And  
24 I think it's not that we haven't had any movement because I  
25 think the Indenture Trustee has some good ideas but the -- I

1 think we're also waiting for Mendocino and Marathon, as I  
2 understand it, they advised that they were putting together  
3 something as well too. So because we haven't had progress yet  
4 doesn't mean we won't have progress. On the other hand, you  
5 know, there's a lot of difficulties to get into settlement  
6 here.

7 **THE COURT:** Okay. Well, I would like, then, for Beal  
8 and the noteholders and Marathon and Mendocino to at least  
9 discuss who they would be interested in mediating if we do a  
10 mediation.

11 **MR. NEIER:** Your Honor, this is David Neier. We'll  
12 be happy to talk about that. But to Mr. Gerber's point, I'm  
13 not aware of any -- I don't know what he's waiting for because  
14 I'm unaware of anything that we have said we're delivering to  
15 him or even thinking of delivering to him that he's talking  
16 about now. We certainly had some, you know, initial  
17 conversations but it's a real stretch to say that he's waiting  
18 on us.

19 **MR. GERBER:** I'm sorry. I didn't mean to give that  
20 impression. It was reported to me, your Honor, just so the  
21 record is clear, it was reported to me that Marathon and MRC  
22 were thinking about some things. I didn't say that they had  
23 promised to deliver anything of the sort.

24 **THE COURT:** Okay.

25 **MR. GERBER:** Okay.

1           **MR. NEIER:** We're always thinking.

2           **THE COURT:** Okay. And, of course, --

3           **MR. WILLIAMS:** And, your Honor, this is Alan Williams  
4 on behalf of Mendocino. If I could just weigh in --

5           **THE COURT:** Sure.

6           **MR. WILLIAMS:** -- for a second, because, you know, we  
7 would be prepared to go to mediation. I think that, you know,  
8 my sense is that maybe a little differently than Mr. Neier's  
9 and Mr. Gerber's, that maybe mediation would be helpful.

10                   I think that this idea that Mr. Gerber has raised  
11 that, you know, they're waiting for us, I think we've been  
12 waiting for them. Obviously if they have somebody who's an  
13 intermediary, you know that, you know potentially, you know,  
14 eliminates any kind of, you know, miscommunications about, you  
15 know, who's waiting for who and who's obligation or opportunity  
16 it is to put something on the table.

17                   Because the way we had understood and, you know, that  
18 way you get back to us, you know obviously whether that's or  
19 wrong, it's not important. The fact is, you know the reality  
20 is people may be thinking about a lot of stuff, but nothing  
21 meaningful has happened since we all left, you know, Corpus,  
22 you know, last Friday.

23                   I think that the biggest concern that we would have  
24 and I'm sure everyone shares this, is that whether it be  
25 mediation or negotiations, whatever it is, that parties, you

1 know, meet, have conversations with a mediator, without a  
2 mediator and reach some kind of conclusion relatively soon as  
3 to whether or not we can reach an agreement. If we can, that'd  
4 be great, if we can't then, you know, your Honor has scheduled  
5 some dates and, you know, we should, if we can't reach an  
6 agreement we should finish the hearing and let your Honor  
7 decide.

8 **MR. NEIER:** Yeah, and this is David Neier from  
9 Marathon Structured, we're certainly not opposed to mediation.

10 **THE COURT:** Okay, well, -- well, good. So, in any  
11 event I don't know. I would -- I again, I'm reluctant -- I'm  
12 never reluctant to order mediation. I'm always reluctant to  
13 order a particular mediator.

14 So, I would like for you to discuss and let me know  
15 tomorrow if you can reach some agreement if I -- I'll discuss  
16 this mediation business. I'm not sure -- well, does that make  
17 sense? Okay.

18 Discuss it among yourself. Talk amongst yourselves  
19 and see where we can go. Anyone else have anything they want  
20 to say? I think we've almost --

21 **MR. PASCUZZI:** Your Honor, this is Paul Pascuzzi from  
22 the California State Agency.

23 **THE COURT:** Yes, sir?

24 **MR. PASCUZZI:** Your Honor, I would just ask if you do  
25 order the parties to mediation that you do it in the manner you

1 it did last time where, for example, the California State  
2 Agencies could be present at the mediation and be able to offer  
3 any assistance as needed.

4 **THE COURT:** Okay. Well, you know, first of all, I  
5 think that the -- now, let me -- again, let me not -- I'm not  
6 ruling on anything.

7 Right now the only operator of that is being  
8 considered in these plans that are before me right now are --  
9 is Mendicino. I mean, we still have the debtor's plan; we're  
10 going to look at that too. But looking at the ones that we  
11 have here that are on the table, the, you know, the -- I mean,  
12 it's almost a fair characterization to say that the  
13 noteholder's plan is a liquidation plan of the forest.  
14 Ultimately somebody's got to buy it and whether they're going  
15 to operate it or they're going to turn it, I don't know. But  
16 that'll be an issue that you all will have all -- whatever you  
17 need to do when they decide what they're going to do with that,  
18 but that's not a part of the plan.

19 The other, the only other plan is the  
20 Mendicino/Marathon plan and I don't think that the agencies  
21 have any problem with that. So, the only plan that can be by  
22 agreement among these parties is some sort of an alternative of  
23 the Marathon/Mendicino plan as far I can see.

24 Now, again, I'm just the judge. I don't write these  
25 plans. But, in order for anything else, for instance, for the



1 noteholders to try to graft onto their some sort of plan that  
2 takes care of Palco, and all those other companies, I suspect  
3 that'd have to be re-noticed and all revoted and all sorts of  
4 other stuff.

5           So the only plan that can get confirmed out of these  
6 hearings is one of the plans that's on the table or an  
7 alternative of that plan that does not impact you. Or the  
8 unsecured creditors. It only impacts the people presenting it.  
9 Or else if it -- I mean -- or I've got to go re-noticing the  
10 whole thing, go through the whole thing and that could kill all  
11 the companies just to do that. I -- am I wrong? Isn't that  
12 true? Am I -- isn't that correct?

13           Mr. Gerber, do you want to say something?

14           **MR. GERBER:** Yeah, your Honor, I don't think so. I  
15 think it's pretty clear to us that, you know, that modifying  
16 either plan to provide for -- our plan already provides for  
17 potential 363 sale of the mill as well.

18           **THE COURT:** Oh, okay.

19           **MR. GERBER:** -- and, but we need the permission of  
20 Palco to go along with that as MRC currently has it set up,  
21 there's a basically a transfer of ownership of the timberlands  
22 to this Newco, but, you know, at a price that they're both, the  
23 buyer and the seller, on --

24           **THE COURT:** Right.

25           **MR. GERBER:** -- and it's -- so if we could find a way

1 to make that a fair sale, give everybody an opportunity to bid  
2 on that, I think you could come up with a plan under either the  
3 noteholder plan or the framework of Mendicino/MRC plan as long  
4 as we expose it to the marketplace and, you know, we could do  
5 that within a short period of time and --

6 **THE COURT:** All --

7 **MR. GERBER:** -- make arrangements to make sure  
8 nothing fails in the meantime. That would solve everyone's  
9 legal problems as well as the monetary problems. It's not a  
10 question therefore just of dollars, you know, Marathon and MRC  
11 may have no interests in that type -- in that situation at all  
12 and it might be understandable why they -- why from their  
13 viewpoint they wouldn't want to do that. But from our  
14 viewpoint it would be a relatively simple matter to preserve  
15 the assets for a long enough period of time to make sure that  
16 they're marketed correctly and exposed to the marketplace.  
17 Everybody's solved then. You solved the legal problems that  
18 the Marathon/MRC plan and you solved the dollar problems, if  
19 you will, at the noteholders issues, just exposing it to the  
20 marketplace. It's a relatively simple fix; it doesn't  
21 guarantee that we will get a higher price. It doesn't require  
22 -- but it gives us --

23 **THE COURT:** Well, are the noteholders --

24 **MR. GERBER:** -- guarantee the higher -- it gives  
25 us --

1           **THE COURT:** -- are the note holders willing to  
2 substitute themselves for Marathon and the deal that Marathon  
3 has with Mendicino?

4           **MR. GERBER:** Yeah. I'm sorry are we willing --

5           **THE COURT:** In other words --

6           **MR. GERBER:** No, no.

7           **THE COURT:** Give Mendicino what its got and you take  
8 the noteholders position, I mean the noteholders take  
9 Marathon's position, work out the exchange to where, in other  
10 words, they're going -- everybody gets paid off, all those  
11 others, in other words, are you willing to substitute and buy  
12 all the assets like they are and the same terms that they --  
13 that they're proposing?

14           **MR. GERBER:** I don't think that's the right legal  
15 solution, but I -- I'd certainly want to give my indentured  
16 trustee the opportunity. I don't have a part in buying them,  
17 but step in there, might be very attractive, yes.

18                   But the point is, is that we don't think anyone  
19 should be able to set both the buyers side and the purchasers  
20 side of the value. We think the marketplace ought to do it.  
21 We don't think it would be fair necessarily to anyone else and  
22 that's the infirmity in the --

23           **THE COURT:** There's already a market for the notes,  
24 isn't there?

25           **MR. GERBER:** For our notes.

1           **THE COURT:** Yes.

2           **MR. GERBER:** Yes, yes, there is.

3           **THE COURT:** I mean isn't that some indication also of  
4 what the value is?

5           **MR. GERBER:** Yes.

6           **THE COURT:** And then there's a -- how many times do  
7 we confirm plans by writing down secured notes to the value of  
8 the debt?

9           **MR. GERBER:** Yes. But the issue is if it's the value  
10 of the collateral that can be easily tested here. That's all  
11 we're saying.

12           **THE COURT:** Okay, but, it's not a novel concept to  
13 write down secured debts to the value of the debt.

14           **MR. GERBER:** Well, --

15           **THE COURT:** And I understand that if the debtor were  
16 owning this and repaying it that there are a lot of issues.  
17 But when we open up exclusivity one of the things that happens  
18 is, is that people's notes and people's assets might get taken  
19 by it, somebody who confirms a plan. Isn't that true?

20           **MR. GERBER:** Yes, your Honor.

21           **THE COURT:** As long as you follow. I mean you got  
22 11, 11-B, which you didn't use, which means -- and you've got  
23 other protections under the code and you've got indubitable  
24 equivalent. But --

25           **MR. GERBER:** But it's rarely the case where the one

1 party gets to be both the buyer and the seller. And set the  
2 price. And that's what we have here. And it's easily fixable.  
3 I -- you know, the --

4 **THE COURT:** Okay. All right, well, in any event,  
5 everybody's still continue to try to settle this. Are we -- I  
6 don't know -- I don't know that it's been helpful or not, but I  
7 know I worry about it.

8 So I hope you all are working in the right direction.  
9 Anyone else, anything they need to say?

10 **MR. SPEAKER:** Yeah, your Honor, if Mr. Cherner could  
11 just briefly address the Court?

12 **THE COURT:** Sure.

13 **MR. CHERNER:** Good afternoon, your Honor.

14 We understand that the Court correctly wants to know  
15 the status of negotiations and whether it would be beneficial  
16 at this point to determine whether the parties should be  
17 ordered to mediation.

18 The Court's heard the lawyers' perspective and I'd  
19 appreciate a few minutes to provide a business prospective.

20 Your Honor, the views that the parties should not be  
21 ordered to mediation. Given our view I thought it appropriate  
22 for me to spend a few minutes to explain to you the thought  
23 process and the rationale that goes behind that. Based on our  
24 15 months in the case we've had many prior attempts to try to  
25 settle this matter, both through mediation and outside. And

1 there was never an offer made to us that didn't involve  
2 hundreds of millions of dollars being transferred of noteholder  
3 value to either Marathon or Maxxam.

4 Marathon and Mendicino as I'll describe in a minute  
5 have no incentive to settle, your Honor. Marathon and  
6 Mendicino are in a no lose position as they sit here today.

7 **THE COURT:** Okay, well that -- first of all that's  
8 not true because if I don't confirm their plan, you get the  
9 forest. They're stuck with the mill and if you don't sell them  
10 the stuff and you got enough money to hold out, eventually,  
11 unless they want to hold out too, the mill's going to get  
12 foreclosed on or whatever and you're going to be able to buy it  
13 cheaply. So, I'm not sure whether they don't have any  
14 incentive or you don't have any incentive.

15 **MR. CHERNER:** Yes, sir. But they have a position  
16 that's unique here that's not normally achievable in the  
17 marketplace. They have the proverbial two bites of the apple.

18 Marathon and Mendicino have a plan to take the forest  
19 from the noteholders under their plan, without exposing the  
20 assets to the market. And if their plan's not approved,  
21 Marathon and Mendicino can show up at the noteholder three sale  
22 and be a bidder and achieve the exact same business result as  
23 they would have achieved under their plans.

24 The status quo presents a free option to Marathon and  
25 Mendicino to see if this Court will approve their plan.

1 Marathon and Mendicino will never come and offer their best  
2 price for the forest now inside or outside of mediation. If  
3 they lose their plan confirmation their worst outcome is to bid  
4 at the sale for the noteholders allowing them to achieve the  
5 same result of owning the timberlands and combining it with the  
6 mill. The noteholders objective is to expose the forest to the  
7 marketplace to determine the fair value to be paid by a buyer  
8 that will have the economic incentive to properly manage the  
9 forest for the benefit of the employees and the local economy.

10 In the event of a sale the noteholders will be paid  
11 whatever the market determines the collateral is worth, less  
12 the approved expenses and payment to the trade creditors. The  
13 note holders are trying do right by the Scotia estate and the  
14 local economy.

15 We understand this Court's focus on jobs and we  
16 agree. The note holders plan works to allow the market to  
17 bring the required well capitalized purchaser to buy the forest  
18 and to operate the forest. No one needs to lose in this case.

19 If you approve the indentured trustee's plan, all of  
20 the parties will obtain what they are entitled to receive  
21 without Marathon and Mendicino potentially receiving a  
22 windfall.

23 Marathon and Mendicino still get the benefit of  
24 bidding on the forest with the objective of combining the  
25 middle of the forest and the note holders have their collateral

1 exposed to the market to make sure the note holders are  
2 receiving the fair market value of their collateral. We're not  
3 offering to purchase the forest and then sit idle. We expect  
4 to have Palco offer to purchase or process the timber.

5 Your Honor, we need to move forward for a  
6 confirmation hearing on the indentured trustees plan and would  
7 hope that Marathon and Mendicino will see that this case can  
8 still end with the noteholders, Marathon, and Mendicino having  
9 a victory as well as this Court's objectives being fulfilled.  
10 And we appreciate your time.

11 **MR. NEIER:** Your Honor, this is David Neier.

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

13 **MR. NEIER:** I guess if the largest noteholder with  
14 37/38 percent of the debt tells you he doesn't want a mediator  
15 and he doesn't want to settle there's not going to be a  
16 settlement. And that's disheartening to hear.

17 You know, I can say that we have a powerful incentive  
18 to settle, the Court has rightly figured that out that, you  
19 know, we want our plan confirmed and we recognize that there's  
20 risks on all sides, so we do have the incentive to settle. And  
21 I guess I would now think that, you know, there's not going to  
22 be a settlement based on Mr. Cherner's comments.

23 But, we certainly recognize the value of a settlement  
24 and as for this idea that we somehow have a free option, this  
25 is not free and certainly hasn't been a good case. The point



1 is that we have hooked up with the best operator, we have  
2 gotten the support of the state agencies, the federal agencies  
3 and the governor and the unsecured creditors and the  
4 environmental organizations because we put forward the best  
5 plan. And we don't see how that's going to risk -- how that's  
6 going to happen in a liquidation scenario where any old Joe can  
7 end up operating this thing or not operating this thing. And  
8 it'll be unmitigated disaster.

9           And I noticed that nobody indicated that they would  
10 support the estate while this marketing effort is going on.  
11 The marketing has gone on since 2005. This company's been in  
12 play rather -- rather very visibly in the marketplace, so, you  
13 know, if they want to have further marketing, it's not going to  
14 result in anything.

15           **MR. BRECKINRIDGE:** Your Honor, this is Matt  
16 Breckinridge from Marathon. Without a confirmation of our  
17 plan, I can virtually guarantee that Marathon will have to  
18 close the mill. Marathon cannot continue to allow its  
19 investors to support a money losing mill under the current  
20 configuration indefinitely. The mill is currently burning 2  
21 million dollars a month of my investors' money.

22           In addition, I would echo Mr. Neier's comments that  
23 this has been exposed to the market. This forest has been in  
24 play as Mr. Dean pointed out when he signs the -- his initial  
25 CA in 2004, the company's been in bankruptcy for 15 months,

1 anybody who has interest in the case, it's very well-  
2 publicized, should have shown up and either offered a plan or  
3 offered to join up with one on the parties of interest who to  
4 present a plan and so far we haven't seen anybody do that.

5 So, you know, this is -- this might as well been on  
6 the front page of the Wall Street Journal, that this company's  
7 for sale.

8 **THE COURT:** Okay.

9 **MR. CHERNER:** Your Honor, we did not say we wouldn't  
10 mediate if ordered by this Court. Of course, we'd mediate in  
11 good faith, show up. I thought that the ask was whether there  
12 should be mediation, it had been fruitless to this point and I  
13 believe that direct negotiations -- if that avenue fell, but  
14 I'll be glad to speak to Sandy Dean, members of Marathon or  
15 anyone else that'd like to speak.

16 **THE COURT:** All right. All right, well, then just  
17 let me know somehow through the U.S. Trustee or directly to my  
18 office if you reach an agreement on the name. I haven't  
19 decided we'll use it, but let me know what you have to say.

20 I -- the reason I struck -- the agencies wanted to  
21 participate. I don't have any problem with everyone in the  
22 case participating, it just seems to me that what the real  
23 issue here are these four parties and really it's Beal Bank and  
24 Marathon that need to reach an agreement. I mean the  
25 noteholders and Mendicino and all those -- I mean; those

1 parties are the ones that need to reach agreement for this to  
2 move forward on one of these plans.

3           They still have the debtor's plan they've got to --  
4 they've got to trump. And we haven't heard that part yet. I'm  
5 not ruling on anything. But I'm not so sure -- in other words,  
6 since we've only got two weeks before we start back up, I'm not  
7 so sure that there's time for a mediation that involves  
8 everybody in this case. It seems to me that there is time,  
9 perhaps, for a mediation that's meaningful for those four  
10 parties.

11           But, -- and then when they reach it, I mean,  
12 obviously all of you, if they've reached an agreement, all of  
13 you would have to be written into it, but any plan that they  
14 might reach agreement on would have to be one that didn't treat  
15 you worse than -- I mean it had -- they would have to pretty  
16 much keep everybody else the way they were.

17           **MR. FIERO:** Your Honor, this is John Fiero for the  
18 committee. That's our analysis as well; we don't need to  
19 participate in that mediation.

20           **THE COURT:** All right. Thank you, Mr. Fiero.

21           All right. Thank you all, appreciate you coming  
22 again.

23           **MR. FIERO:** Thank you, you Honor.

24           **(Proceeding adjourned at 2:39 p.m.)**

25

CERTIFICATION

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

A handwritten signature in cursive script that reads "Toni Hudson".

April 18, 2008

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TONI HUDSON, TRANSCRIBER