

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (RENO)

IN RE: . Case No. 14-50087-btb
. .
. Chapter 11
ASPEN SIERRA LEASING .
COMPANY, . 300 Booth Street
. Reno, NV 89509
Debtor. .
. Wednesday, September 24, 2014
. 2:30 p.m.

TRANSCRIPT OF HEARING ON AMENDED CHAPTER 11 PLAN NUMBER 2
JOINT FIRST AMENDED DEBTOR'S PLAN OF REORGANIZATION
FILED BY STEPHEN R. HARRIS ON BEHALF OF
ASPEN SIERRA LEASING COMPANY [82]
BEFORE THE HONORABLE BRUCE T. BEESLEY
UNITED STATES BANKRUPTCY COURT JUDGE

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I N D E X
9/24/14

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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FOR THE COMMITTEE:

Stephen Paul	55	62/66		
Thomas Gurnee	70	76/91		

EXAMINATION BY THE COURT:

Thomas Gurnee	93			
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EXHIBITS:

		<u>Marked</u>	<u>Received</u>
Exhibit 1	ACC and FOA Bids	5	29

1 (Proceedings commence at 2:30 p.m.)

2 THE COURT: So this is the case of Aspen Sierra
3 Leasing, Case Number 14-50087. Appearances, please.

4 MR. HARRIS: Your Honor, Steve Harris representing
5 the debtor, and also present is Drew Yardley, General Manager
6 for ArrowCreek and also Charles Leider, the debtor's
7 representative.

8 MR. HARTMAN: Good afternoon, Your Honor. Jeff
9 Hartman for the Committee, and two of the committee members are
10 here, Mr. Jacobson and Mr. Bailey.

11 MS. MACAULEY: Good afternoon, Your Honor. Laury
12 Macauley for Mr. Leider.

13 MS. SEGERBLOM: Good afternoon, Your Honor. Eva
14 Segerblom for ArrowCreek Homeowners' Association.

15 THE COURT: I'm sorry, could you state your name
16 again?

17 MS. SEGERBLOM: Eva Segerblom.

18 THE COURT: Segerblom, okay.

19 MS. SEGERBLOM: Yes.

20 MR. GOODENOW: Rew Goodenow for Friends of
21 ArrowCreek, LLC, and also present in court are two principals
22 for ArrowCreek -- excuse me, Friends of ArrowCreek, LLC, Tom
23 Gurnee and Gary Pestello.

24 THE COURT: Okay.

25 MR. COSSITT: Bill Cossitt for Tracy Hope Davis, U.S.

1 Trustee, Your Honor.

2 THE COURT: Mr. Harris, go ahead. We're going to
3 talk about the bidding procedures?

4 MR. HARRIS: Yes, sir.

5 THE COURT: I just was handed moments ago what I
6 think is the most recent suggested bidding procedures.

7 MR. HARRIS: From Mr. Goodenow.

8 THE COURT: Yes, from Mr. Goodenow.

9 MR. HARRIS: Right. I think there's a typo in it,
10 too, because mine doesn't make sense. But first, Your Honor,
11 I'd like --

12 THE COURT: Perhaps it's just Mr. Goodenow.

13 MR. HARRIS: What I'd like to do is this is a
14 comparison of the ArrowCreek bid offers, the ACC one and the
15 FOA one, and I'd like to introduce it as an exhibit.

16 THE COURT: Sure. Let me see it first.

17 THE CLERK: Do you have two?

18 MR. HARRIS: Yes.

19 THE CLERK: Thanks.

20 MR. HARRIS: And, Your Honor, it's a real basic
21 comparison, but I just thought it might be a helpful aid for
22 the Court as we're sort of talking and throwing numbers around
23 and talking about increases and decreases.

24 But as you can see, the -- I'll call Mr. Pahl's group
25 ACC.

1 THE COURT: All right.

2 MR. HARRIS: And I'll call, you know, the FOA group
3 is represented by Mr. Goodenow. But as you can see, they're
4 each at 160 for the -- that amount of money that goes to
5 allowed administrative claims and then pro rata to the Class 3
6 general unsecured creditors.

7 And just to give the Court an idea of the general
8 unsecured creditors, assuming that debtor was to prevail on the
9 Class 3 general unsecured creditors, and these are the members,
10 and then the resale list, if those numbers are accepted at some
11 point in time later, if and when we have to object to these,
12 that total would be about 1,353,000. The Class 3 would be
13 about -- well, there's a few additions. It would be
14 approximately 1,370,000.

15 THE COURT: That's the unsecured class basically.

16 MR. HARRIS: That's the Class 3 unsecured class, Your
17 Honor. And then the administratives, if you exclude the --
18 that 126,000 plus SAD payment, if you exclude that, they were
19 going to be approximately \$200,000. That includes the
20 creditor's committee lawyer, Mr. Hartman; the debtor's
21 accountant, Mr. Bosma's firm; and my firm. And then if you --
22 and it's the debtor's position that the Court should entertain
23 overbidding for that \$160,000 that both parties are at. And I
24 know Mr. Goodenow has a response to that, but I'll let him
25 bring that up to the Court later.

1 The next line is the ACC group is offering another
2 \$700,000 cash, and it's the debtor's contention that basically
3 everything below the \$160,000 line should not be included in
4 the overbid procedure. But just for the Court's information so
5 the Court has a general idea of, you know, what's going on,
6 Mr. Pahl's group, the ACC group, they're offering 700,000 in
7 cash --

8 THE COURT: And this is up from the 356,220 that was
9 offered previously?

10 MR. HARRIS: No. Of the 700, Your Honor, 350 --

11 THE COURT: Oh, that -- so it's being divided up.
12 Okay.

13 MR. HARRIS: See, 356 goes to repairs, CapEx, and 343
14 for 2015 shortfall and capital expenditures. But what Mr. Pahl
15 is saying is I will immediately put in \$860,000 cash and have
16 another 400,000 ready for my investors to fund any future
17 shortfalls, CapEx and expenses.

18 And then if I'm reading the FOA proposal correctly,
19 they have got 185,000 cash earmarked for shortfalls and capital
20 expenditures as opposed to the 700,000 from Mr. Pahl's group.

21 On the IRS, we have in there a \$52,000 -- IRS has a
22 claim for about 52,000.

23 THE COURT: But everyone pretty much agrees --
24 probably not the IRS -- that that's probably not a good claim.

25 MR. HARRIS: That's because Mr. Bosma just did the

1 2013 tax return, and there is a \$99,000 loss, and he believes,
2 Mr. Bosma believes, that once he applies that loss and shows a
3 different accounting treatment, that the IRS claim will be
4 zero. But whatever it is, either -- both groups are agreeing
5 to assume and pay whatever amount that is, 52 or less or zero.
6 We're hoping it's zero.

7 The Washoe County Treasurer, and this amount of money
8 has been agreed by Mr. Salter on behalf of the Washoe County
9 Treasurer, and that's approximately \$1,452,000 for round
10 numbers. And the Steve Paul Group, ACC, they're paying that
11 over five years. It's 10 percent statutory interest, so it's
12 just what the statute says, and a five-year amortization, so --
13 and that first payment starts January 1, '15, representing the
14 fourth quarter of 2014, and it goes on for five years.

15 And the FOA group, they're paying the same -- they're
16 assuming and paying the same Washoe County Treasurer claim, but
17 they're paying approximately 580,000 in cash, and then they're
18 going to pay the other 871, if I read it correctly, in three
19 installments of approximately 290. It's the same money, the
20 same assumption. I haven't heard anything from the Washoe
21 County Treasurer saying, you know, anything about the plan
22 other than it's 10 percent interest, you've got to pay us in
23 five years, and this is the amount, 1,452,000 approximately.

24 THE COURT: Okay.

25 MR. HARRIS: And, of course, they have lien rights.

1 These are past-due water bills, SAD fees, and real property
2 taxes. And then we have the Lighthouse Bank loan. The balance
3 with the October payment, the balance right now is
4 approximately 75,000 with the September payment having been
5 made. And so with the October payment, that balance would go
6 down to approximately 65.

7 And both parties are agreeing to assume and pay that,
8 but it's subject to the claim objection that the creditor's
9 committee and Mr. Hartman has filed. And so -- but both
10 parties are even in their treatment of that. On the special
11 assessment, right now I believe FOA has their check or one of
12 their member's check in with Mr. Salter, and I think the Court
13 remembers that interchange a couple weeks ago.

14 THE COURT: I do.

15 MR. HARRIS: And -- but if the ACC group prevails,
16 they will have a check delivered tomorrow for the equal amount
17 of 126,890 approximately and Mr. Pestello's check will be
18 returned. So that's basically where I see us right now. And
19 that -- if you go to -- there's two pieces of -- two pleadings
20 I think the Court needs. Number one, the pleading I filed
21 yesterday, Number 134, debtor's proposed bidding closing
22 procedures.

23 THE COURT: And 144, Mr. Goodenow's.

24 MR. HARRIS: One thirty-four, Your Honor.

25 THE COURT: Yeah, and 144, Mr. Goodenow's.

1 MR. HARRIS: Yes, what Mr. Goodenow just filed. And
2 I think in Paragraph 1, Mr. Goodenow is -- I think this is
3 where he's trying to say the Court should consider -- in any
4 overbids, include the cash that's going to Washoe County plus
5 the 160,000 to creditors. And then he's also suggesting -- oh,
6 that's later on. And I disagree with what Mr. Goodenow has. I
7 would refer to the Court my Paragraph Number 1 on Document
8 Number 134 that what is being overbid in this court, and
9 subject to the Court's noting any preference, okay, and I put
10 that, notwithstanding the weight the Court gives to indicated
11 preferences.

12 And by the way, I think in my ballot summary, just to
13 be completely open with the Court, there was an overwhelming
14 acceptance for the debtor's plan, but there was also an 80
15 percent plus preference for the FOA bid.

16 THE COURT: That's how I read it.

17 MR. HARRIS: Yes. But in my one, I'm saying the
18 Court should take overbidding on the 160 component, and Mr. --

19 THE COURT: Well, let me ask you first, is there
20 anyone here who is -- believes they will be overbidding either
21 one of these offers?

22 MR. HARRIS: I believe that Mr. Pahl's group --

23 THE COURT: Okay.

24 MR. HARRIS: -- is going to overbid, Your Honor. And
25 I don't know what Friends of ArrowCreek are going to do.

1 THE COURT: Okay.

2 MR. HARRIS: You can ask Mr. Goodenow that.

3 THE COURT: Mr. Goodenow?

4 MR. GOODENOW: Your Honor, Friends of ArrowCreek
5 intends to bid and will be overbidding if necessary.

6 THE COURT: So tell me -- I guess I'm not
7 understanding. It would seem to me sort of simplistically that
8 if we're going to overbid, it doesn't really matter how it gets
9 allocated. It's money into the estate. But explain to me why
10 that's not the case.

11 MR. GOODENOW: I'm not sure that I can explain to you
12 why it's not the case that the better bid should prevail, but I
13 want to answer your question directly by saying --

14 THE COURT: Well, let me --

15 MR. GOODENOW: -- I don't think the bids are equal at
16 this point in time, and I disagree with some of what Mr. Harris
17 has just told the Court with respect to the compares on the
18 bids. So, Your Honor, if I could be permitted to start there.

19 THE COURT: Well, let me -- I'll be frank with you.
20 My sense is even if the bids are not identical, the
21 overwhelming majority of the Friends of ArrowCreek who have the
22 right to vote on this and are the ones who are going to be
23 primarily impacted, I'm going to give probably more weight to
24 that than to some not huge discrepancy in the amount of money,
25 so -- but go ahead and explain why you don't think they're

1 equal.

2 MR. GOODENOW: Okay.

3 MR. HARRIS: Do you want me to sit down, Your Honor,
4 and --

5 THE COURT: I don't care.

6 MR. HARRIS: Okay.

7 THE COURT: Whatever.

8 MR. GOODENOW: And I'm fine with Mr. Harris standing
9 up here. Our goal is to get quickly to a comparison so that we
10 can get on with the bidding.

11 First, and I think these are the critical
12 differences, our cash up front within 30 days of the Court's
13 entry of an order is not -- and as Mr. Harris recited, it's
14 912,000. Mr. Harris as I understand has increased the debtor's
15 bid to 860,000. That's not equal. We're both proposing to pay
16 in full the secured claims, the administrative claims, and so I
17 think that they've got to come out to 912 in order to start
18 bidding against us.

19 The difference as to the Lighthouse Bank loan is
20 this: We understood that there was some effort to obtain for
21 the debtor its principals in Lighthouse Bank releases that the
22 debtor, Lighthouse Bank, and the principals should pay for if
23 they're obtaining releases. If they're -- if they do not
24 believe they are obtaining releases -- and that's my impression
25 from speaking with Mr. Harris today; as Your Honor instructed,

1 we went and talked about the competing bids -- then I think you
2 can say so now and put that to bed.

3 The exculpation clause I think needs to be modified
4 somewhat to include the language that it does not waive claims
5 for breaches of fiduciary duty that occurred during the
6 bankruptcy period.

7 THE COURT: Okay.

8 MR. HARRIS: My response to that, Your Honor, is that
9 there has been no objection to the exculpation clause. It is
10 subject to a carve-out for avoidance actions under the
11 Bankruptcy Code, whether 544, 548 or 547, in favor of the
12 creditor's committee, and that's written in the first amendment
13 to the plan.

14 MS. MACAULEY: Your Honor?

15 THE COURT: Ms. Macauley.

16 MS. MACAULEY: I'm sorry. Representing Charles
17 Leider. I just wanted to add that my feeling was that we just
18 -- you know, Mr. Leider had just been informed of this
19 objection to the exculpation clause just this morning.

20 THE COURT: Well, it's not -- has it been filed? Has
21 there been an objection filed?

22 MR. GOODENOW: No, Your Honor, but --

23 THE COURT: Overruled.

24 MR. GOODENOW: -- what they're --

25 THE COURT: Overruled.

1 MR. GOODENOW: All right. Thank you.

2 THE COURT: Go ahead.

3 MR. HARRIS: All right. Your Honor, probably the
4 other thing we should settle now is where is the overbidding.
5 And I understand you're going to give great weight to the
6 indicated preference of the creditors, but I'd like to see
7 where we end up on the bidding first because there may be a
8 significant jump or a difference between the two that that also
9 might be of a considerable weight to the Court in considering
10 overbidding.

11 THE COURT: Well, let me just clarify how this might
12 work, and if it sounds too cumbersome to break this up, I'm
13 probably not going to do that. So both of you agree that you
14 could overbid the admin and Class 3's.

15 MR. HARRIS: Right.

16 THE COURT: Okay. In overbidding the shortfalls,
17 there is a \$700,000 bid by ACC essentially and a 185 bid by
18 Friends of ArrowCreek, correct?

19 MR. GOODENOW: I don't think that's correct.

20 THE COURT: Okay.

21 MR. HARRIS: And I would ask why, Your Honor.

22 THE COURT: Yeah, why don't you think that's correct?

23 MR. GOODENOW: I don't -- I am not certain what he
24 means by shortfalls. We're both proposing to pay the same
25 amount.

1 THE COURT: Well, CapEx. I mean, CapEx, yours is
2 five -- yours is 700, and shortfall is an operation.

3 MR. GOODENOW: We don't agree with that. We're both
4 proposing to pay CapEx and operations going forward. There
5 isn't -- the difference is how they calculate CapEx and how we
6 calculate CapEx, but the bottom line is I don't think those can
7 be compared for the purposes of overbidding.

8 We're both going to pay for operations going forward,
9 and we're both going to pay for whatever is necessary to keep
10 the court in operations. That's in our proposed budget. The
11 Court has our proposed budget, so I don't think there is any
12 shortfall.

13 THE COURT: Well, let me just make sure I'm
14 understanding this correctly. ACC proposes to put in \$700,000
15 in cash for capital expenditures that need to be made and for
16 shortfalls that may occur, correct?

17 MR. GOODENOW: I don't think that's correct either,
18 Your Honor.

19 THE COURT: Okay.

20 MR. GOODENOW: ACC has said in their plan -- and I
21 only heard a \$60,000 difference today -- that they're going to
22 deposit \$800,000 --

23 THE COURT: Right.

24 MR. GOODENOW: -- within six -- within 30 days of the
25 entry of the order for -- confirming the plan. We're proposing

1 to put into this \$912,000. That's what my spreadsheet shows.

2 THE COURT: Right.

3 MR. GOODENOW: Therefore, we have proposed \$112,000
4 in excess of what ACC has proposed. Where they spend that I
5 think is a promise that the Court can't take into consideration
6 today, and likewise where we spend it. It may go to
7 feasibility, but it doesn't go to the comparison of the
8 opposing bids.

9 MR. HARRIS: Your Honor --

10 THE COURT: Well, I think feasibility is going to be
11 a problem, but go ahead.

12 MR. GOODENOW: So it is, and I'll tell you why our
13 plan is more feasible. Our --

14 THE COURT: Because you're going to take a golf
15 course that's been twice in bankruptcy and has never developed
16 enough members and you're going to make a go of it, just as
17 Mr. Harris' client is.

18 MR. GOODENOW: We have --

19 MR. HARRIS: Could I just finish my presentation
20 then?

21 THE COURT: Yeah, please.

22 MR. HARRIS: Your Honor, by the way, it wouldn't be
23 800,000. They'd increase that to 860 --

24 THE COURT: Okay.

25 MR. HARRIS: -- because the 800 included 100,000 for

1 the CapEx short -- or the unsecured administrative claims and
2 they've raised that to 160 so it's a total of 860. But if you
3 read the FOA proposal attached to the plan, this is where their
4 cash is going: 160 to the administrative unsecured creditors,
5 just like the ACC group, 581,000 to Washoe County Treasurer,
6 for a prepayment on that one million, four hundred and some
7 thousand, okay, and 185,000 cash to cover short-term 2014
8 operating losses and capital expenditures. And that's a direct
9 quote from their offer, so they are apples and apples. We are
10 comparing the same things.

11 The CapEx shortfall figure of 700 by ACC compared to
12 185 for the FOA group is significantly different. I don't know
13 how else you read -- and I'm just reading from the exhibit
14 that's attached to the plan, Your Honor, that was Exhibit E
15 that's part of the FOA purchase proposal.

16 THE COURT: So what I'm really concerned about is
17 this: ACC is putting \$860,000 cash in essentially, and FOA is
18 putting \$912,000 cash in, right?

19 MR. HARRIS: Including part payment to the Washoe
20 County Treasurer.

21 THE COURT: Including part payment to the Washoe
22 County Treasurer. I do understand that, although I think if
23 somebody wants to overbid those, I will let them go from those
24 two figures. So if ACC wants to -- if you want to bid up or if
25 they want to bid up, we'll just deal with those two figures.

1 I do understand that they're not identical, but they
2 are similar. They've got them allocated different which makes
3 it difficult to deal with that. So your client, frankly,
4 Mr. Goodenow, is probably short on CapEx and shortfalls, but,
5 you know, money is money into the estate and I think that will
6 work.

7 MR. GOODENOW: Okay. So to be sure that I understand
8 Your Honor, because here's what I heard. We're going to be
9 bidding on two cash bases.

10 THE COURT: Right.

11 MR. GOODENOW: One is the amount of cash deposited
12 within 30 days, and the other one is the amount of the overbid
13 to unsecureds.

14 THE COURT: Exactly.

15 MR. GOODENOW: Okay.

16 THE COURT: I think that's about as close as I can
17 come to making this equal.

18 MR. HARRIS: And then you're going to weigh whatever
19 you want to weigh?

20 THE COURT: I mean, I'm going to weigh, you know, the
21 amount of cash you're paying out immediately, the debt you're
22 assuming, the risk I think is associated with that, the
23 preference of the people who are the creditors who are the ones
24 who are really getting hurt by this, or hopefully getting taken
25 care of by this. That's what I'm going to consider, and I'm

1 going to consider feasibility, but I think both of your plans
2 have equal feasibility considerations.

3 MR. HARRIS: Okay. So if I understand this
4 correctly, so they're each at 160 and 160 for admins and
5 Class 3, okay?

6 THE COURT: Right.

7 MR. HARRIS: And then I think on CapEx shortfalls,
8 the ACC group is at 700.

9 THE COURT: Right.

10 MR. HARRIS: And I think Mr. -- FOA group is 912
11 minus 160 because we don't want to double count, so --

12 MR. GOODENOW: I don't see that, Your Honor. I
13 think --

14 THE COURT: So wait a minute. Here's -- I'll tell
15 you what it is. The way that money adds up, and I'm only
16 talking about cash, is 160/160.

17 MR. GOODENOW: Right.

18 THE COURT: Seven hundred, one eighty-five, zero --
19 or fifty -- no, that's not cash.

20 MR. GOODENOW: Nine twelve eight sixty.

21 THE COURT: On the OF -- on the Friends of
22 ArrowCreek, \$850,753.78 and that's it.

23 MR. HARRIS: Wait. Say that again, Your Honor,
24 please.

25 THE COURT: As I add them up, ACC is cash bidding

1 cash in at about -- at 860, \$860,000.

2 MR. HARRIS: That's correct.

3 THE COURT: Friends of ArrowCreek is in at \$912,000.

4 MR. HARRIS: Right.

5 THE COURT: Okay.

6 MR. HARRIS: Of which 160 includes the monies going
7 to the unsecured creditors.

8 THE COURT: Correct. Understood that.

9 MR. HARRIS: Yeah.

10 THE COURT: Yeah.

11 MR. HARRIS: So if you wanted to compare, you know,
12 apples to apples, it would be 160 and 160, and then it would be
13 700 --

14 MR. GOODENOW: I don't understand why we're
15 subtracting 160 from the --

16 THE COURT: I'm not understand -- I'm just listening
17 to Mr. Harris.

18 MR. GOODENOW: I don't think it's -- I don't think
19 that's accurate.

20 MR. HARRIS: Okay.

21 MR. GOODENOW: We're at 912 and 860.

22 MR. HARRIS: We are -- I am -- okay. It's either 860
23 for the ACC group or --

24 THE COURT: Which it is.

25 MR. HARRIS: -- and 912 for the FOA group.

1 THE COURT: Correct.

2 MR. HARRIS: Okay. So -- but if you want to go to
3 the other number, that's 160 and 160.

4 THE COURT: Yeah. If you want to go to the admin
5 claims, it's 160/160.

6 MR. GOODENOW: Okay.

7 MR. HARRIS: Right.

8 THE COURT: But what I'm going to do is this: As it
9 stands now, since the majority of the people voting vote for
10 the FOA plan, if the ACC people want to overbid, they would
11 have to up the amount significantly I think.

12 MR. HARRIS: The 160.

13 THE COURT: They would have to just up the dollar
14 amount.

15 MR. HARRIS: Okay.

16 THE COURT: Whoever wins this can apply the dollar
17 amount as they want to is the way I see this, the extra money
18 as they see fit. But I think they would have to upbid from
19 that, so they can -- the winner can apply the money as they see
20 fit that they're going to contribute to this.

21 MR. HARRIS: Okay. But --

22 THE COURT: They have to do it -- they have to apply
23 it the way it is in the schedule here, but once -- if they over
24 -- if they -- let's say there's an overbid by both parties of
25 \$250,000. As the winning party, they could then apply that

1 \$250,000 how they wanted to, but it has to be cash.

2 MR. HARRIS: Okay.

3 THE COURT: It has to be cash within 30 days.

4 MR. HARRIS: But, Your Honor, I think -- let's say --
5 let's just use the 250 figure. I think they need to earmark it
6 for the Court so you know if that 160 figure moves up, if the
7 CapEx shortfall figure moves up, and also if the Washoe County
8 Treasurer's cash payment moves up because it's the debtor's
9 position, you know, the 580 cash that's part of the 912 of that
10 FOA, that's -- two-thirds of the FOA money is going to the
11 Washoe County Treasurer.

12 THE COURT: I understand that.

13 MR. HARRIS: Okay. That's fine as long you
14 understand.

15 THE COURT: But here is why I think they get to
16 assign it where they want because the risk in this case is the
17 IRS debt is probably not there. I think that's probably a
18 fairly accurate thing. But the risk is if you're paying a
19 million four fifty-one, as ACC is doing over five years, given
20 the past history of this debtor in other -- this debtor and
21 predecessors on the same property, that could be a huge problem
22 because they have not met their income needs over the -- since
23 they started basically.

24 It's less of a problem for ACC because they're paying
25 down by over a third on day one, so they have a -- I think

1 that's a consideration. That's the real difference, and it's
2 the risk of that that is probably the most important to me in
3 the application of the additional funds.

4 MR. HARRIS: But the Court is going to take all this
5 into consideration?

6 THE COURT: I'm taking all of this into
7 consideration.

8 MR. HARRIS: But do you agree with me that if
9 somebody does hypothetically overbid 250, they should earmark
10 like how much more goes to the 160?

11 THE COURT: I would prefer that, but I -- you know,
12 I've been in lots of bankruptcy bids, both as a lawyer and as a
13 judge, and it's very difficult to corral people in specifically
14 because they all want to bid something differently.

15 MR. HARRIS: Well, but I think the Court needs to
16 know how much is going --

17 THE COURT: I'd like to know how much they -- if
18 they're overbidding, how they plan to allocate that.

19 MR. HARRIS: Okay. All right. That's fine.

20 THE COURT: Okay.

21 MR. HARRIS: Then we've still got some other
22 disagreements in the bidding procedures. I think that pretty
23 much takes care of --

24 MR. GOODENOW: Number 1.

25 MR. HARRIS: Right, my Number 1.

1 THE COURT: Well, Number 1 I'm not doing as part of
2 the bidding procedures because we've gotten all the way here
3 and nobody said you have to put up cash on the first day so I'm
4 not going to do that.

5 MR. GOODENOW: I think that takes care of Number 1,
6 too, Your Honor.

7 THE COURT: Okay.

8 MR. GOODENOW: I think we're -- and we're fine with
9 what -- I have -- and I'll just go to the document I filed
10 today.

11 MR. HARRIS: Now, Your Honor --

12 MR. GOODENOW: Number 3 --

13 MR. HARRIS: -- I think I have the floor so I --

14 THE COURT: Yeah, I think Mr. Harris has the floor.

15 MR. HARRIS: Okay. And my Paragraph 2 on Document
16 134, Your Honor, I have here -- and there's no disagreement on
17 two; 100 grand deposit non-refundable goes to Mr. Hartman in a
18 cashier's check.

19 MR. GOODENOW: Right.

20 THE COURT: Okay. Three.

21 MR. HARRIS: So we're done. And on my three, Rebecca
22 Rich at Ticor, there is no disagreement there.

23 MR. GOODENOW: Correct.

24 MR. HARRIS: Okay. Number 4, I think we have a
25 disagreement there.

1 MR. GOODENOW: Your Honor, this -- and this is where
2 I was headed. I have a disagreement with four, five, six,
3 seven --

4 THE COURT: You have a disagreement with Ticor?

5 MR. GOODENOW: And -- no.

6 MR. HARRIS: No, that's three on mine, Your Honor.

7 MR. GOODENOW: That's three.

8 THE COURT: Three on yours and four on
9 Mr. Goodenow's.

10 MR. GOODENOW: Yeah, 11, 12, 13 and 14, which is why
11 I wrote separately to try to go through those with Mr. Harris.

12 THE COURT: Hold on. Hold on. Hold on.

13 MR. HARRIS: Let's go to mine.

14 MR. GOODENOW: I have a very basic objection.

15 THE COURT: Let me -- Mr. Harris has the floor.

16 MR. HARRIS: Okay. If we go to mine, we're okay.
17 We've resolved one, Paragraph 1. We're okay -- we're all
18 accepting on two and three.

19 THE COURT: Four.

20 MR. HARRIS: On four, if the -- remember the ACC
21 group, they're not -- they're going to buy the equity in the
22 debtor and acquire the personal property of Golden Gate Golf.
23 The FOA group, they're going to buy the real property. I'm
24 just saying they pay for the documentary transfer tax, the
25 escrow closing fees, and any title policy premium.

1 MR. GOODENOW: Okay. So my problem with this, Your
2 Honor, is that it doesn't establish a level playing field.
3 We're either both buying the assets --

4 THE COURT: You're not both buying the same things.
5 That's the problem here. You're overruled. It's fine in
6 Mr. Harris'.

7 MR. GOODENOW: Okay. So, Your Honor, what I want to
8 understand so that we know what we're bidding on is that --
9 because I don't think it's clear in the bidding document.

10 THE COURT: What do you think you're bidding on?

11 MR. GOODENOW: All of the assets of the debtor.

12 MR. HARRIS: Correct, except the avoidance actions
13 which go to the Committee.

14 THE COURT: Right.

15 MR. GOODENOW: So property, plant, equipment, real
16 property, receivables accounts. And those assets of Golden --
17 and also the assets of Golden Gate Golf because that's the
18 problem here. The two estates were never consolidated, but
19 Golden Gate Golf effectively operated the debtor.

20 THE COURT: Well, Golden Gate can be done
21 effectively. It did.

22 MR. GOODENOW: Yeah.

23 THE COURT: I don't know if they have assets though.

24 MR. GOODENOW: And so that has been my concern. I
25 apologize for pushing this point so hard, Your Honor, but I

1 don't want -- you've been here before, and I just don't want to
2 get caught in a position where I'm uncertain what we've bid on.

3 THE COURT: Is it your understanding --

4 MR. HARRIS: Golden Gate Golf, that's an exhibit to
5 the plan.

6 THE COURT: That's all being -- that's everything
7 that's being purchased by your clients.

8 MR. HARRIS: Right.

9 THE COURT: And that's everything that's being
10 purchased by Mr. Goodenow's clients.

11 MR. HARRIS: Except the receivables which are
12 delineated in my five and six which we need to operate --

13 THE COURT: Hold on. Hold on.

14 MR. GOODENOW: That's the problem, Your Honor, and
15 that's what I was afraid of, we're going to start putting.

16 THE COURT: No, no. If you buy, you get the
17 receivables. If they buy, they get them.

18 MR. HARRIS: Well, it's just, Your Honor, that's the
19 other problem. See, we're -- the escrow won't close probably
20 until the end of October, and if we're going to operate during
21 the month of October and cure all the expenses, you know, we
22 need the income to go with it.

23 MR. GOODENOW: We're going to take possession as soon
24 as this is over, noon tomorrow.

25 MR. HARRIS: No, not for \$100,000 they're not, Your

1 Honor.

2 THE COURT: Not for \$100,000 you're not. What are
3 the receivables?

4 MR. HARRIS: Your Honor, okay. As I have in
5 Number 5, on September 30, next Tuesday, they'll bill for the
6 October membership dues, and so they will collect those
7 starting September 30 through October, possibly after October.
8 And then as members charge things during, you know, now and
9 during the month of October, they'll be collecting those to
10 offset the expenses of operation and all the payables that they
11 have.

12 MR. GOODENOW: This I don't -- this is the part I
13 don't understand, Your Honor. We're going to deposit --

14 THE COURT: Well, just wait for one second.

15 MR. GOODENOW: All right.

16 THE COURT: Are there any existing -- pardon me. Are
17 there any -- you are saying you're going -- if your client
18 prevails, you're going to continue collecting receivables.
19 You're going to continue generating receivables through the
20 operation of the golf course. I mean, that would make sense
21 but --

22 MR. HARRIS: Yes.

23 THE COURT: But you don't have any collectible
24 existing receivables that are of any consequence.

25 MR. HARRIS: Just the member dues and the charges

1 from the past, they are continuing to collect those. But right
2 now we have approximately \$83,000 in the bank account, I
3 believe. And, you know, we have payroll coming up.

4 THE COURT: Yeah. So hang on.

5 MR. HARRIS: Okay.

6 THE COURT: We're going to take a short break here.
7 Mr. Pahl is available. We have him in a judge's conference
8 room in the U.S. District Court, and we can hook him up by
9 video. You'll be happy to learn that San Jose Bankruptcy has
10 no videoconferencing, nor does the U.S. District Court in San
11 Jose other than the conference room.

12 MR. COSSITT: Do you need to know the way to San
13 Jose?

14 THE COURT: Apparently because you're not going to
15 appear by video. I got them on the phone so I know they have
16 phone service.

17 MR. HARRIS: Your Honor, I'd like to offer Proposed
18 Exhibit 1 as an exhibit. It's basically for the Court's
19 guidance.

20 THE COURT: It's admitted.

21 *(Debtor's Exhibit 1 in evidence)

22 THE COURT: I think it's highly unlikely that if your
23 clients -- well, I don't know. Never mind. I think it's
24 highly unlikely that if Mr. Goodenow's clients prevail, that
25 people are going to be paying membership dues to your client in

1 that two-month gap. I just -- just a guess.

2 This is not for entertainment, ladies and gentlemen.

3 I'm sorry. I'm not trying to make light of this, but --

4 Mr. Pahl?

5 MR. PAHL: Yes, sir.

6 THE COURT: Can you hear us?

7 MR. PAHL: I can hear you very well.

8 THE COURT: Okay. We are midway through a hearing on
9 the proposed bidding procedures and distribution procedures.
10 My understanding is Mr. Hartman will want to cross-examine you
11 at some time later during the hearing.

12 MR. PAHL: Okay.

13 THE COURT: We have about two hours to get this done.
14 We do not -- the Government does not provide us any overtime
15 security, so we will have to be out of here at about 5:00, so
16 everyone be cognizant of that, please.

17 So go ahead.

18 MR. HARRIS: Sure.

19 THE COURT: So you don't agree on those points?

20 MR. HARRIS: Your Honor, what I'm saying, and I will
21 glad to put Mr. Yardley on the phone, but the debtor is going
22 to continue operating --

23 THE COURT: Mr. Goodenow, I'm going to allow the
24 debtor to keep operating and use the receivables they generate
25 to operate. They would have to get approval from you, or

1 ultimately from the Court, to expend receivables. I wouldn't
2 let them go for officers' salaries, for bonuses, for anything
3 of that nature, but they could go for general ordinary
4 operations during that period of time. That just makes sense
5 because you're not going to take over if you've only put down a
6 \$100,000 deposit. And it's going to take some time to close.

7 MR. GOODENOW: All right. Your Honor, just so that I
8 -- I'm sure that I understand, your order is that we're bid --
9 the basis on which we're bidding with respect to receivables is
10 that the -- we are bidding on receivables, but the debtor may
11 use receivables in the period between today and the closing --

12 THE COURT: And transfer, yeah.

13 MR. GOODENOW: -- to pay ordinary costs of
14 operations only --

15 THE COURT: Exactly --

16 MR. GOODENOW: -- but not salaries of the -- of
17 principals.

18 THE COURT: Not salaries of the principals, no, and
19 not bonuses of the principals and not travel expenses of the
20 principals and not gifts that the principals are going to make
21 to people on their board. They can do ordinary general
22 operating expenses, power, light, fees for the people who
23 maintain the thing, people -- for the people who run the
24 restaurant, restaurant supplies, that sort of stuff.

25 MR. GOODENOW: We'll get regular reports.

1 THE COURT: Yes.

2 MR. GOODENOW: And if there is an issue, we can bring
3 it to the Court.

4 THE COURT: Yes.

5 MR. HARRIS: You know, Your Honor, I couldn't help
6 but hear that I hope whatever members do use the facilities in
7 October, pay for the -- their membership dues. That's the
8 right thing to do.

9 THE COURT: I would hope so, too, but I just think
10 you have a membership body just honestly who's not very happy
11 with your client, and I'm guessing that those are going to be
12 difficult collectibles is all.

13 MR. HARRIS: Okay.

14 THE COURT: I wasn't suggesting that anybody not pay.
15 I'm just guessing that it's going to be difficult.

16 MR. HARRIS: Okay. Well, Your Honor, if I could just
17 bring Mr. Pahl up to speed --

18 THE COURT: Sure.

19 MR. HARRIS: -- on Number 1, I believe the Court --
20 on the overbidding, the Court said the Court is cognizant that
21 both parties that are \$160,000 each for the administrative
22 claims and the Class 3 unsecured creditors, and then the Court
23 also is cognizant that the cash component is 860 for the ACC
24 group, Mr. Pahl's group, and it's 912 cash, but it includes
25 that \$580,000 down to the Washoe County Treasurer, 912,000 for

1 the FOA group. So if the Court hears overbidding, it wants to
2 hear how those -- how that is allocated, whether it's going to
3 the administrative Class 3 unsecured creditors or it's going to
4 the shortfall CapEx expenditures or it's going to the Washoe
5 County Treasurer, and then the Court will use that in a
6 weighing process to figure out which --

7 THE COURT: Because I think it makes a difference on
8 the risk that's undertaken here.

9 MR. HARRIS: Right. So -- and just so Mr. Pahl
10 knows, the Court believes that the \$580,000 cash going as a
11 paydown to the Washoe County Treasurer minimizes the risk of a
12 default under the plan. Is that --

13 THE COURT: That's correct.

14 MR. HARRIS: -- your statement, Your Honor?

15 THE COURT: Yeah, that's correct.

16 MR. HARRIS: All right. And then we have agreed that
17 it's \$100,000 paired up to -- might pair up to \$100,000
18 cashier's check, non-refundable deposit held by Mr. Hartman.
19 We've agreed that escrow is going to be at Ticor. We have
20 agreed or the Court is resolved that the purchaser, the FOA
21 group has to pay for documentary transfer taxes, escrow fees,
22 or title policy premiums if they want.

23 The Court has ordered that on five and six that the
24 debtor, pending close of escrow, can use the receivables,
25 membership money, charge monies, to offset its ordinary

1 expenses incurred in the operation of the group up through the
2 closing.

3 MR. GOODENOW: But --

4 MR. HARRIS: Is that a correct statement, Your Honor?

5 THE COURT: Yes.

6 MR. GOODENOW: But, Your Honor, we've also agreed
7 that we're buying receivables. They are to transfer all the
8 receivables that are not used in the interim period. They're
9 going to provide us with --

10 THE COURT: At the end, if there are remaining
11 receivables, they -- those will be transferred, correct.

12 MR. GOODENOW: They're going to provide us with
13 statements, and if we have an issue with the ordinary operating
14 expenses --

15 THE COURT: You can bring them to court.

16 MR. GOODENOW: -- we can bring it back to court.

17 THE COURT: Right.

18 MR. HARRIS: That's -- these are membership charge
19 account expenses.

20 THE COURT: Understood.

21 MR. HARRIS: So, I mean, that's --

22 THE COURT: So, members, if you are -- if you have
23 used your charge account, or if you use your charge account
24 during this interim period, you need to pay it. Otherwise you
25 will be sued. You don't want that to happen because you can't

1 charge, understanding that you're not going to be paid and that
2 you're not going to pay. I'm sure none of you will do that,
3 but it's not a good idea.

4 MR. HARRIS: Okay.

5 THE COURT: So go ahead.

6 MR. HARRIS: And then on my seven on how we're paying
7 the County, I have that it's five years, first payment January
8 2015, representing the fourth quarter 2014. This is my
9 Paragraph 7, Your Honor.

10 THE COURT: Right.

11 MR. HARRIS: It's 10 percent statutory interest or
12 the purchaser may elect to accelerate the payments as the FOA
13 has done.

14 THE COURT: Correct.

15 MR. HARRIS: So are we okay on seven, Your Honor?

16 MR. GOODENOW: So our view on that, Your Honor, is
17 they need to meet our bid, which is 40 percent now, 20 percent
18 over each year for three years, or the bid is -- or their bid
19 is illegal. that's our position, and I think Your Honor is --

20 THE COURT: And I'm not going to force that to
21 happen. I've told you what -- that I think that's a risk
22 factor. I think you're paying -- that the ACC paying over five
23 years imposes a significant risk. I don't think there's nearly
24 a significant a risk with your guys paying over \$500,000 on the
25 downstroke. I will consider that, but I have told you I'm not

1 going to make these equal. That's not how this all started, so
2 I'm not going to do it on the last day.

3 MR. HARRIS: All right. And then, Your Honor, on
4 Number 8, I don't think we have a disagreement on Number 8.
5 And that's the special assessment district payment, but it's
6 not --

7 THE COURT: I don't think there should be.

8 MR. HARRIS: It's not an administrative claim, Your
9 Honor, and I made that clear at the last hearing. And I notice
10 that Mr. Goodenow put that in one of his papers that he applied
11 -- filed yesterday, and I just want to make sure it's -- if
12 they have lien rights, it is not an administrative expense.

13 THE COURT: It's a secured claim but not a lien --
14 it's not an admin claim. It's a secured claim.

15 MR. HARRIS: That's correct. Each party is paying
16 that, Your Honor. If they're -- whether -- if they prevail.

17 MR. GOODENOW: That's the cost of the purchase.

18 THE COURT: Yes.

19 MR. HARRIS: So we're agreeing on eight.

20 THE COURT: Okay.

21 MR. HARRIS: And then on nine, I don't think we have
22 a disagreement on nine. That has to do with the Lighthouse
23 Bank --

24 MR. GOODENOW: Well --

25 MR. HARRIS: -- and it's subject to the claim

1 objection by Mr. Hartman.

2 MR. GOODENOW: Here's my --

3 THE COURT: Well, did you make an objection with
4 respect to this, Mr. Goodenow?

5 MR. GOODENOW: Here is my issue with that.

6 THE COURT: My question is did you make an objection
7 formally with respect to this?

8 MR. GOODENOW: I did.

9 THE COURT: Okay. Go ahead.

10 MR. GOODENOW: My issue with this is that the buyer
11 has to pay the Lighthouse Bank loan within 30 days after
12 confirmation. I think that is what it should order. I don't
13 know why there is anything in there about Golden Gate Golf. So
14 we're in agreement that our bid is to pay off the Lighthouse
15 Bank loan and that the debtor has to meet that. And it is
16 whatever it is. If it is presently 65,000, then it's 65,000.

17 MR. HARRIS: I believe the debtor -- that the -- Your
18 Honor, I represent the debtor. I don't represent --

19 THE COURT: I understand.

20 MR. HARRIS: -- ACC, and I believe ACC is willing to
21 pay off the Lighthouse Bank loan.

22 THE COURT: If ACC wants to do that, they can. I'm
23 not prohibiting them from doing that. If they want to pay it
24 off or reduce it by making payments, they can do that, so --

25 MR. HARRIS: They're intending to do that, Your

1 Honor.

2 THE COURT: -- I would change the "shall" to "may."

3 MR. HARRIS: Okay. And then Paragraph 10, Your
4 Honor, this -- these have to do with -- oh, the transfer. I
5 don't think we have a disagreement on 10.

6 MR. GOODENOW: Well, my issue there, Your Honor, was
7 what we covered earlier, and that is that we're bidding on all
8 of the assets.

9 MR. HARRIS: We've covered --

10 THE COURT: That's what you said. That's what it is,
11 all of the assets --

12 MR. GOODENOW: Yeah.

13 MR. HARRIS: Right.

14 THE COURT: -- any remaining AR that's been recovered
15 that hasn't been expended for necessary operating expenses
16 during the gap period.

17 MR. HARRIS: Right.

18 MR. GOODENOW: Right. And my concern is just that
19 the record that we've made constitutes the agreement as to what
20 we're bidding on and not this document Mr. Harris is referring
21 to.

22 THE COURT: That's my understanding.

23 MR. GOODENOW: All right.

24 MR. HARTMAN: Your Honor, if I may clarify.

25 THE COURT: Yes.

1 MR. HARTMAN: Technically, the equipment that's
2 leased is not owned and therefore title can't transfer.

3 THE COURT: That's correct.

4 MR. HARTMAN: So to the extent that there is a
5 proposal that --

6 THE COURT: What you're acquiring is a lease.

7 MR. HARRIS: And that's in 13, Your Honor.

8 MR. HARTMAN: Right.

9 MR. GOODENOW: We're getting to that.

10 MR. HARTMAN: Well, I just didn't want one issue to
11 step on top of the next issue.

12 THE COURT: No. I mean, if there's property that's
13 titled or property that's owned by possession and not necessary
14 titled, you get that. If it's an account, you get that. If
15 it's a leased property, you get the lease.

16 MR. GOODENOW: Right.

17 THE COURT: That's what you're acquiring.

18 MR. HARRIS: Your Honor, just since Mr. Goodenow said
19 something, we're following my bid procedures as modified by the
20 Court's orders and the parties' agreement.

21 THE COURT: That's correct.

22 MR. GOODENOW: So we're on 10 -- 11. I understood
23 this to be a provision that protected the debtor, that it could
24 close on the facility, if we haven't taken possession on
25 closing. And if that's what it -- the way it's intended, I'm

1 fine with that.

2 MR. HARRIS: Eleven, Your Honor, is closing October
3 30th or prior.

4 THE COURT: Okay. We'll put in a position there that
5 when the debtor closes the property, they shall make
6 arrangements with Friends of ArrowCreek, if they are the
7 winning bidder, to do an orderly transfer. You'll notify them
8 ahead of time when they're closing, at least ten days, and they
9 will let ArrowCreek -- or they will let Friends of ArrowCreek
10 have access to take over the property so that they can -- if
11 they want, they can have continuous operation. But it's going
12 to be in the middle of the winter. I don't want somebody
13 shutting the heat off and having the pipes freeze, so they have
14 to do a reasonable -- make a reasonable turnover.

15 MR. GOODENOW: That's really what I was looking for,
16 Your Honor.

17 THE COURT: Okay.

18 MR. HARRIS: That seems reasonable. I believe the
19 FOA is getting their own liquor license. We can't --

20 THE COURT: I think you're doing all those things.

21 MR. HARRIS: Right.

22 THE COURT: I'm not worried about the liquor license
23 necessarily.

24 MR. HARRIS: Right. But there's going to be --

25 THE COURT: But I am worried about having the

1 facility be empty essentially.

2 MR. HARRIS: Your Honor, they're going to turn it
3 over in a reasonable manner.

4 THE COURT: Okay.

5 MR. HARRIS: Number 12, I put in there that the new
6 memberships are going to start November 1. I previously had in
7 there October 1 just to coincide with the closing at the end of
8 October.

9 MR. GOODENOW: And, Your Honor, I had not included
10 that at all in our competing bid instructions simply because I
11 don't know why --

12 THE COURT: I don't -- I think we just put in new
13 memberships shall be offered at a time selected by the buyer,
14 by the successful buyer --

15 MR. GOODENOW: Thank you, Your Honor.

16 THE COURT: -- successful bidder.

17 MR. HARRIS: And then 13 has to do with the golf cart
18 lease and the landscape equipment, and I guess if somebody
19 doesn't want to assume the leases, I believe the landscape
20 equipment is almost paid off or --

21 MR. YARDLEY: It's completely paid off.

22 MR. HARRIS: It's completely paid off, the landscape.
23 That was Mr. Yardley speaking, Your Honor.

24 THE COURT: Is that an owned -- is that owned then or
25 was it lease-to-own?

1 MR. HARRIS: Is that thing --

2 MR. YARDLEY: There is a small buyout of about seven
3 to eight thousand dollars, Your Honor.

4 THE COURT: I think the purchaser shall assume or
5 purchase as they determine appropriate.

6 MR. HARRIS: Right.

7 MR. GOODENOW: Certainly.

8 MR. HARRIS: And if they don't want to purchase it,
9 they don't purchase it.

10 THE COURT: Right.

11 MR. GOODENOW: So we do not want to assume the cart
12 lease --

13 THE COURT: Then you don't have to.

14 MR. GOODENOW: -- at this point in time, but the
15 equipment lease sounds like a de minimis item.

16 THE COURT: I mean, you'd have to -- to assume it
17 you'd have to bring it current under bankruptcy law.

18 MR. GOODENOW: Well, that -- I don't think so here,
19 Your Honor, because these leases are Golden Gate Golf leases,
20 not the debtor's leases.

21 THE COURT: Okay. Well -- but you have to -- you can
22 assume -- what the general rule is you can assume or purchase
23 as the successful bidder deems fit.

24 MR. GOODENOW: There -- that's fine.

25 MR. HARRIS: Your Honor, what we were contemplating

1 is that the new buyer would just take over the payments to TCF
2 on the golf carts, or Wells Fargo on the landscape equipment,
3 and if they choose not to do that, then it will just -- those
4 -- that personal property won't go to the buyer. It will go
5 back to the lender and whoever can make an arrangement with the
6 lender to buy it.

7 THE COURT: Well, they're not buying the personal
8 property. They're buying the leases of the personal property
9 with whatever rights exist on the leases. They can continue
10 them if they want or they can buy out the lease if they want.
11 If they don't want to do that, they don't have to.

12 MR. HARRIS: All right. And then I don't -- then
13 lastly, 14, it's a free-and-clear sale.

14 THE COURT: Okay.

15 MR. HARRIS: Financial liens.

16 THE COURT: So let me recap here, make sure we're on
17 the same page.

18 MR. HARRIS: Your Honor, can I just -- well, can
19 Mr. Pahl hear you? I just want to make sure --

20 THE COURT: Mr. Pahl, can you hear me?

21 MR. PAHL: Yeah.

22 THE COURT: Okay.

23 MR. PAHL: I can, Your Honor.

24 THE COURT: So I've indicated that both parties' bid
25 will -- the starting point will be where they are, basically

1 \$860,000 for ACC, \$912,000 for FOA. I do understand that those
2 go to different things. I think that affects the feasibility
3 and the potential risk which is something that I have to take
4 into consideration if I'm going to confirm a plan.

5 If the parties are going to overbid those, I want
6 them to identify, obviously not with great specificity, but how
7 it is they intend to apply those overbids, be it to admin and
8 Class 3, be it to CapEx and shortfalls, be it to how you're
9 dealing with the Washoe County Treasurer's office. That's
10 about it. So I want some idea of what you intend to do with
11 that just because I think that makes a difference in terms of
12 how feasible I think the plan is.

13 MR. HARTMAN: Your Honor, if I may.

14 THE COURT: Yes.

15 MR. HARTMAN: I'm sorry to interrupt. Just to be
16 consistent with the way the plan was written, it was intended
17 that the -- any upbid would first cover administrative expenses
18 and then be available for the Class 3 unsecured creditors.

19 THE COURT: Okay.

20 MR. HARTMAN: So if -- I understand that the Court is
21 saying that there can be an allocation by the bidder as to
22 where that money is supposed to go.

23 THE COURT: Right.

24 MR. HARTMAN: So --

25 THE COURT: The overbid.

1 MR. HARTMAN: Yeah. So it -- in a very complicated
2 way, it affects whether or not that money ends up being
3 allocated to Class 3 for unsecured creditors or goes to put a
4 roof on the building. Are you following what I'm saying?

5 THE COURT: I do understand that, but ought that not
6 to be the -- ought that not to be a business choice from the
7 person who is -- from the entity that's buying it?

8 MR. HARRIS: Well, except, Your Honor, we need to
9 know if the 160 is 160 or some higher figure for purposes of
10 the admin claims.

11 THE COURT: Well, what are the estimated admin
12 claims?

13 MR. HARRIS: About 200,000, Your Honor.

14 THE COURT: So unless we get up to 200,000 on the
15 admin claims, we can't confirm this plan because not all the
16 admin claims are being paid in full.

17 MR. HARRIS: That's correct. But if it's more than
18 one -- if it's 160, then the admins are going to be prorated,
19 so we just need to know the number so we know what to work
20 with. That's it.

21 THE COURT: All right. Well, I'll do this --

22 MR. HARTMAN: And one last thing, Your Honor, and
23 then I'll sit down.

24 THE COURT: Sure.

25 MR. HARTMAN: Mr. Harris indicated earlier that the

1 estimated true unsecured number for this calculation was about
2 a million-four or a million-five, so at one level of the
3 analysis, if the bid is an extra \$20,000, it's not material.

4 THE COURT: Really doesn't matter.

5 MR. HARTMAN: So we may never get to that issue, but
6 I just wanted to let the Court know --

7 THE COURT: Let's do this.

8 MR. HARTMAN: -- the Committee's constituency has to
9 be its interest, and that's why I raised the issue.

10 THE COURT: Let's do it this way. I apologize for
11 equivocating a bit. Let's see what the overbids go to.
12 Initially the overbids will go to Class 3 and admin. If the
13 bids get -- if the overbids get above some figure, 200,000,
14 half a million -- I don't know if they're going to get there --
15 but if the overbids get above 250,000, we'll take another look
16 at it during the course of this.

17 MR. HARTMAN: Thank you.

18 THE COURT: Two hundred and fifty thousand, so --

19 MR. HARRIS: Thank you. So initially it will go to
20 the admin --

21 THE COURT: Right.

22 MR. HARRIS: -- the 160 figure.

23 THE COURT: Right.

24 MR. HARRIS: Okay. And then I interrupted Your
25 Honor.

1 THE COURT: That's okay. Looking at Mr. Harris',
2 Number 2 is okay, Number 3 is okay, Number 4 is okay as
3 modified, which is that each party is taking all of the assets.
4 However, if the Friends of Arrowhead (sic) take it, ordinary
5 and necessary operating expenses shall be paid out of the
6 receivables existing.

7 MR. HARRIS: That's on five, Your Honor, five and
8 six.

9 THE COURT: That's five, I'm sorry.

10 MR. HARRIS: Five and six.

11 THE COURT: Four is the transfer taxes.

12 MR. HARRIS: Right. That's okay.

13 THE COURT: That's okay. Five and six are -- if the
14 operation is purchased by Friends of ArrowCreek, the existing
15 receivables that have been collected and any receivables that
16 are generated and collected during sort of the gap period
17 before the transfer takes place can be used to pay ordinary,
18 necessary business -- ordinary, necessary operating expenses,
19 not including any compensation for any of the insiders.

20 And the information provided to Mr. Goodenow or other
21 counsel so they can take a look at it, or if there is an issue
22 about what's being paid, they can bring it to the Court's
23 attention and I'll decide it.

24 MR. GOODENOW: Your Honor, to put a bow on that --
25 I'm sorry, Your Honor, but I just want to be sure it was my

1 understanding that the excess would then be -- is an asset
2 we're purchasing.

3 THE COURT: If there is an excess, that would be what
4 you would be purchasing.

5 MR. HARRIS: Okay. Your Honor, okay, we've got --
6 there is an issue here. Let's say on the charges, okay, you --
7 let's say in the month of October there's \$200,000 worth of
8 charges at the bar, at the golf facilities, and there is costs
9 and expenses, food --

10 THE COURT: Sure.

11 MR. HARRIS: -- alcohol, that sort of thing, but
12 normally they're not going to probably get that until November.
13 So the debtor can't be subjected to all these charges and not
14 have the ability to try to collect this after the close. I
15 mean, we're going to leave payables with Golden Gate Golf and
16 we don't want to -- that's not our intention. We're just
17 talking about ordinary expenses.

18 THE COURT: I understand that, but -- Mr. Goodenow?

19 MR. GOODENOW: Oh, please, Your Honor, go ahead.

20 THE COURT: No, you're -- all right. I'm going to
21 let you bid without fully resolving that issue. I think they
22 should be able to -- well, I think that charges that would be
23 made have to be collected, so I think whoever the bidder is has
24 to commit to doing that.

25 MR. HARRIS: Do what, Your Honor?

1 THE COURT: Whoever is the successful bidder has to
2 commit to collecting the charges that are made during this gap
3 period, and I think --

4 MR. HARRIS: For Golden Gate Golf or --

5 THE COURT: Well, for Golden Gate Golf and -- or
6 Golden Gate Golf can collect them, and Golden Gate Golf can use
7 those less reasonable collection fees for purposes of paying
8 expenses that were incurred reasonably during the gap period
9 but didn't get billed until after the gap -- after the transfer
10 took place. I mean, that makes sense to me.

11 MR. HARRIS: Okay.

12 THE COURT: If there is -- but when and if there is a
13 net remaining in the account receivable column, that will go to
14 FOA if they are the successful purchaser.

15 MR. HARRIS: Okay.

16 THE COURT: And they're entitled to accounting and
17 that sort of thing.

18 MR. HARRIS: Okay. Can we have that for the
19 membership dues and the charges?

20 THE COURT: Anything that comes up.

21 MR. HARRIS: Okay.

22 MR. GOODENOW: And remaining receivables are
23 transferred to the buyer.

24 THE COURT: Yeah.

25 MR. HARRIS: But they'll collect it for Golden Gate

1 Golf for the month of --

2 THE COURT: No, no, Golden Gate Golf would collect it
3 for themselves.

4 MR. HARRIS: -- October and previous months.

5 THE COURT: Yeah, they'll collect it and they'll turn
6 over the difference less reasonable expenses.

7 MR. HARRIS: Okay.

8 THE COURT: Okay?

9 MR. GOODENOW: During that gap period.

10 THE COURT: Yeah, during the gap period.

11 MR. HARRIS: Well, let's say FOA is successful, post-
12 closing, if they receive monies from membership for October or
13 previous, or monies for charge --

14 THE COURT: That goes to Golden Gate.

15 MR. HARRIS: Right.

16 THE COURT: Golden Gate uses those monies for
17 reasonable expenses incurred existing prior to the gap period
18 or incurred before the gap period and --

19 MR. HARRIS: Less reasonable collection costs.

20 THE COURT: Less reasonable collection costs, but the
21 balance, if there is -- when and if there is one, will go to
22 FOA if they are the successful purchaser.

23 MR. HARRIS: All right.

24 MR. GOODENOW: And if after the closing takes place,
25 FOA collects receivables, those go to FOA.

1 THE COURT: Yeah.

2 MR. HARRIS: Well, if it's for post --

3 THE COURT: If they collect --

4 MR. GOODENOW: It's for --

5 THE COURT: For post-transfer receivables, those go
6 to FOA.

7 MR. GOODENOW: Yes.

8 THE COURT: If they're pre-transfer receivables, they
9 go to Golden Gate who distributes them for pre-transfer costs
10 occurring during the gap period and then the balance goes to
11 FOA.

12 MR. GOODENOW: And any excess goes to us.

13 THE COURT: Right.

14 MR. HARRIS: And then, Your Honor, I believe we're
15 okay on number -- so that takes care of five and six with what
16 you said. And I believe on seven, having to do with the
17 County, we're okay there.

18 THE COURT: I think that's correct.

19 MR. HARRIS: And then on eight I believe we're okay.

20 THE COURT: That deals with ArrowCreek being the
21 purchaser.

22 MR. GOODENOW: Let's go back to seven for just a
23 moment. I don't know that the interest rate is correct, so
24 that's --

25 At 3:24:04

1 THE COURT: Whatever the interest rate is.

2 MR. GOODENOW: Whatever the interest rate is.

3 MR. HARRIS: Yeah, just --

4 THE COURT: Estimated to be 10 percent, but whatever
5 it is.

6 MR. HARRIS: That's what Mr. Salter told me, the
7 statutory rate's 10.

8 THE COURT: Mr. Salter is in the front row on the
9 right side, my right, nodding yes, it's 10, so I'm assuming
10 he's telling us the truth.

11 MR. HARRIS: And then Number 8 I believe we're okay,
12 Your Honor.

13 THE COURT: Yes.

14 MR. HARRIS: Has to do with special assessment.

15 THE COURT: 9.

16 MR. HARRIS: And then 9, we've already discussed
17 that.

18 THE COURT: Correct.

19 MR. HARRIS: We've -- we're fine with that, subject
20 to the Court's comments.

21 And then on 10, I -- we're okay on that. Everything
22 gets transferred except, you know, the carve-outs you made on
23 the receivables and --

24 THE COURT: Right. And 11 is fine except Friends
25 gets reasonable notice and ability to come in and make for a

1 smooth transition.

2 MR. HARRIS: Right.

3 MR. GOODENOW: Right. And as I understand that, Your
4 Honor, we can -- we don't have to wait the 30 days, we can
5 close whenever we deem necessary.

6 THE COURT: Well, if it's possible to close, I mean,
7 if everything's in place for closing, it can be closed when
8 it's convenient, but Mr. Harris has estimated 30 days. I don't
9 think that's an unreasonable estimate, but if it can be done in
10 20, that's fine.

11 MR. GOODENOW: It is important to my client, in
12 bidding on this asset, that they be able to take possession as
13 soon as possible.

14 THE COURT: Well, when --

15 MR. HARRIS: October 30 or prior.

16 THE COURT: October 30 or prior. I think 30 days is
17 a reasonable time. I understand they want to take -- but it
18 takes time to close transactions. I mean, you know that as
19 well as the rest of us.

20 New memberships may be offered at the wishes of
21 whoever is the purchaser.

22 12, purchaser may --

23 MR. HARRIS: May.

24 THE COURT: -- may, but is not required to, assume
25 leases.

1 MR. HARRIS: And then 14's --

2 THE COURT: And it's free and clear of liens. So,
3 yes, Mr. Salter.

4 MR. SALTER: Your Honor, Greg Salter for Washoe
5 County. Under Number 14 the County has a statutory lien for
6 unpaid post-petition water bills. Is that --

7 THE COURT: Except the County's liens. They would
8 not be taken -- they would be -- would be subject to the
9 County's liens.

10 MR. SALTER: Okay. Thank you.

11 MR. HARRIS: Right.

12 THE COURT: All right. So, Mr. Harris, that's it?

13 MR. HARRIS: Yes, sir.

14 THE COURT: Mr. Hartman, I think you had some
15 questions for people?

16 MR. HARTMAN: Yes. Your Honor, thank you. It's
17 pretty brief, but I'd like to ask questions of Mr. Pahl.

18 THE COURT: Since we only have Mr. Pahl for about 30
19 more minutes because they had given us limited video time, Mr.
20 Pahl --

21 MR. HARTMAN: I may be -- 10 minutes is, at the most,
22 what I'll need.

23 THE COURT: Okay. Mr. Pahl, could you please stand
24 to be sworn.

25 MR. PAUL: (Via video conference) Sure.

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1 THE CLERK: Please raise your right hand.

2 STEPHEN PAHL, UNSECURED CREDITORS COMMITTEE'S WITNESS, SWORN

3 THE COURT: Go ahead, Mr. Hartman.

4 MR. HARTMAN: Thank you.

5 *(video conference) DIRECT EXAMINATION

6 BY MR. HARTMAN:

7 Q Mr. Pahl, we've met. My name's Jeff Hartman. I represent
8 the Committee.

9 A Yes, sir.

10 Q And what I -- I don't think you have any exhibits
11 available to you. Is that correct?

12 A That's correct.

13 Q All right. What I am looking at, for the Court's
14 reference, is Docket Number 82-1 and for your information, what
15 it is is a projection or a pro forma, if you will, for revenue
16 and expenses for ACC for 2015 and --

17 A There should be one for 2014 and one for 2015. Do you not
18 have both?

19 Q No, I have both. I'm only going to ask you questions
20 about 2015.

21 A Okay.

22 Q All right.

23 THE COURT: And what docket? That's 82-1?

24 MR. HARTMAN: 82-1, Page 60 of 69, Your Honor. I'll
25 give you a moment to bring it up.

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1 (Pause)

2 THE COURT: Thank you. Okay. Thank you. I have it.

3 BY MR. HARTMAN:

4 Q Okay. Thank you, Mr. Pahl. There are -- on the revenue
5 numbers for 2015, I'm not going to read them all to you, but
6 the two that I want to pay attention to is, number one, for
7 green fees and carts there's projected revenue of \$865,000 and
8 for membership dues there's projected \$841,550. Do you recall
9 those numbers?

10 A I do.

11 Q All right. What I would like to know is what assumptions
12 were utilized to reach those numbers?

13 A My -- our recollection -- my recollection is the pro forma
14 that you're looking at starts in 2014, I believe it starts the
15 last quarter of 2014, assumes about a 10-percent membership
16 decline in light of these proceedings and then after the
17 beginning of the year it presumes that we start picking up
18 memberships and that the memberships continue to move forward
19 throughout the year. And you're right, that's picking a --
20 that's clearly a guess, a guesstimate from both Drew Yardley,
21 who's our general manager on site, Dirk Zander (phonetic), who
22 is a certified club manager who is joining our team, he has
23 approved the numbers, as well as myself.

24 As far as the green fees, remember one of these courses is
25 daily fee and the other course is exclusive to the membership,

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1 but it would be open -- the upper course would be open to some
2 events. And then finally it presumes the memberships are
3 lowered from the current revenue run to \$435 per month. The
4 green fees I -- I believe that figure shows the green fees as
5 either 60 or \$65 per green fee.

6 Q Now, you indicated that there -- the -- one of the working
7 assumptions is a 10-percent decline in membership. Is that
8 correct?

9 A Initially.

10 Q And it's 10 percent from what number?

11 A I believe from the 180 number, which we were at 60, 90
12 days ago. And I believe since that time we've maintained a
13 constant. I don't think we've lost any in the last 60 or 90
14 days. We've lost a few, but we've gained a few.

15 Q So --

16 A And so the numbers are very close right now.

17 Q So if we start with 180 as a base number and take 90
18 percent of that, that's 162, if my math is correct.

19 A Correct.

20 Q And then what is the projected monthly increase in
21 membership over 2015, if you know?

22 A I don't have that number in my head. I know that we've --
23 because we've thrown a lot of numbers around and no one can be
24 certain. I believe we end the year somewhere in the low 200s.
25 I mean --

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1 Q And am I --

2 A 2015, we end 2015 somewhere in the 200 -- low 200s.

3 Q And am I correct that the working assumption is that the
4 members pay the \$435 per month for 12 months of the year?

5 A Yes, that is correct. As you may recall, we currently
6 have some members on a promotional fee of about \$350, but the
7 vast majority of the members -- I'm talking about the golf
8 members -- are between 495 and I believe 525 right now. So
9 each -- each existing member will receive a reduction of dues.

10 Q Thank you. Now, one additional line item in the revenue
11 section has to do with food and beverage with a projection of
12 \$625,000 for 2015. Do you recall the assumptions for reaching
13 that number?

14 A That was an assumption that was done between Dirk Zander,
15 who understands food and beverage far better than I'll ever
16 understand, and Drew Yardley. And that was again assuming --
17 based on our assumption of membership. And I believe that
18 projection was created before we made the decision to terminate
19 the social membership classification and open the food and
20 beverage to all the members of the ArrowCreek community, so if
21 that is still correct, and I believe that is, that number is
22 probably low.

23 Q All right. Thank you. Now so I'm taking this sort of in
24 reverse order.

25 A No problem.

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1 Q Would you please explain your relationship to the entity
2 that is the proposed purchaser under the plan?

3 A Sure. The entity that's proposed purchaser we've been
4 calling ArrowCreek Country Club Incorporated is a pre-
5 incorporated entity since we've not yet been the successful
6 bidder. The intent, I've circulated a proposal to a number of
7 potential investors and I have enough commitments that once we
8 are the successful bidder, we would incorporate the entity,
9 raise the money.

10 Obviously we will not have a problem putting \$100,000 into
11 escrow immediately, but we would raise the remainder of the
12 money and be able to close escrow, and I'm hoping within 30
13 days also. I'm hoping we can do it much sooner than 30 days,
14 but I thank Mr. Harris for giving me that time because
15 attorneys never are accurate in their predictions of how much
16 time something will take.

17 Q And what is the capital raised number that you anticipate?

18 A The commitment that I have is \$1.2 million from the
19 investment group. That would be \$800,000 immediately, a
20 commitment to another additional \$400,000 callable at the
21 direction of the manager of the LLC or the chairman of the
22 corporation, and the assumption of the indebtedness that's
23 currently part of the plan.

24 Q And what is your position with ACC?

25 A I'm -- currently I'm sort of the coordinator. I assume

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1 I'll end up having an -- the senior officer position, but that
2 has certainly not been decided yet.

3 Q Will you also be a shareholder?

4 A Yes. I'm putting my real money in there.

5 MR. HARRIS: Your Honor, I don't mean to interrupt,
6 but we filed an amendment where ACC is raising that eight
7 hundred to eight sixty.

8 THE COURT: Okay.

9 MR. HARRIS: So it would be a total of eight sixty
10 and then corresponding one million, two sixty.

11 THE COURT: And we discussed that going over the --
12 potentially the procedure sheet.

13 BY MR. HARTMAN:

14 Q In that regard, Mr. Paul, do you have the authority today
15 to bind ACC to the commitments if ACC is the successful
16 proponent?

17 A Well, it's -- it's not yet an incorporated orient. It's
18 basically in a pre-incorporation phase, so I am the
19 incorporator, I am the anticipated incorporator of it, so I'm
20 obviously personally making that commitment and personally
21 going to put the down payment down to insure compliance, so I'm
22 putting my own personal money at risk, but yes. I mean, to the
23 extent that we have an unincorporated association, which is all
24 we are at this moment, I can make that commitment.

25 Q One additional line of questioning. Has ACC developed a

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1 membership agreement structure for the new members going
2 forward?

3 A Yes. The intent is to have two -- one class of membership
4 only, and that would be a golf membership, at \$435 per month,
5 per member. As I indicated earlier, the social membership
6 classification will be terminated and all of the -- although we
7 may consider having a social membership classification for non-
8 ArrowCreek Homeowners' Association members, that has not really
9 been thoroughly discussed, but the intent is to open the food
10 and beverage facilities to all ArrowCreek Ownership Association
11 members.

12 Q All right. Would those then be referenced as social
13 memberships?

14 A Well, we would -- you could argue that. You could say
15 that we're giving the membership away or you could just say
16 we're opening it to all owners of ArrowCreek Country Club -- or
17 excuse me, ArrowCreek -- I'm sorry, the ArrowCreek Homeowners'
18 Association.

19 MR. HARTMAN: All right. I don't have any further
20 questions.

21 THE COURT: Any direct -- any redirect?

22 MR. HARRIS: I don't have any questions, Your Honor.

23 THE COURT: Mr. Goodenow --

24 MR. GOODENOW: Thank you, Your Honor.

25 THE COURT: -- further cross?

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1 *CROSS-EXAMINATION

2 BY MR. GOODENOW:

3 Q Mr. Pahl, my name is Rew Goodenow. I represent a
4 competing bidder. I just have a couple of questions for you.

5 A Sure.

6 Q And they pertain to things that Mr. Hartman's already
7 asked you. What is the source of your cash for performance of
8 the commitments that you've just described? Is it only those
9 individuals who you've just described who are prospective
10 members of the yet-to-be-created entity?

11 A Well, it's cash. It's either cash in my personal
12 resources or it's cash in my committed investors' personal
13 resources, but it's -- there's no liquidation of funds
14 necessary. There's the liquid -- liquid cash with each one of
15 my investors and they're ready to perform.

16 Q Okay. So I think I understood what you meant. The -- to
17 be clear, you have not obtained a commitment of any third-party
18 financing from anyone, a financial institution or non-
19 traditional financing then?

20 A No, there's no borrowing in this transaction.

21 Q All right. And the entity that you've described has not
22 yet been organized formally. Is that right?

23 A That is correct.

24 Q All right. And you described the commitments earlier that
25 would form the basis for the funding for the entity. Could you

1 tell the Court whether or not the commitments are in writing
2 signed by investors?

3 A No, they're personal commitments to me. I've explained
4 the proposition. These are all either clients and/or friends
5 and I've gotten commitments. And quite frankly, just as I
6 explained to Mr. Harris last night, one of my investors over
7 the weekend dropped out because we're taking so long, but on
8 the good -- on the other side, another one of my investors,
9 when I mentioned that to him, is doubling up, so I immediately
10 got that participation component re-traded, so to speak.

11 Q So is my understanding correct that what you have at this
12 moment is verbal commitments from persons, clients, and others
13 that are interested in the investment?

14 A Yes.

15 Q Okay. If I -- if my notes are correct on your testimony
16 today, the total of the commitments that you have obtained is
17 1.2 million. Is that correct?

18 A Well, Mr. Harris is right, we modified it to 1.26 million.

19 Q All right. 1.26 million. So you do not have commitments
20 beyond that today?

21 A I have not asked for commitments beyond 1.26 million
22 today.

23 Q All right. So the limit of your authority today is 1.26.
24 Is that right?

25 A I assume that would be a true statement.

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1 (Laughter)

2 THE COURT: Please.

3 BY MR. GOODENOW:

4 Q And just to be clear for the record, you're in agreement
5 with Mr. Harris's statement during your testimony that the
6 offer from your -- the party which you represent is being
7 increased by 160,000 cash to be paid within 30 days of the
8 entry of the order approving the plan. Is that right?

9 A I believe it's increasing by sixty. I believe --

10 THE COURT: I think that's what the testimony was.

11 THE WITNESS: -- our plan always had \$100,000 going
12 to the unsecureds and we increased it to 160,000.

13 BY MR. GOODENOW:

14 Q So it is my understanding that the debtor group has
15 committed to pay before -- within 30 days of the entry of the
16 order \$860,000. Is -- do you have authority to commit to that
17 today?

18 A Yes.

19 Q All right. I want to be sure that we're clear for the
20 purposes of our competitive bidding that I understand the
21 management plan going forward. Is my understanding correct
22 that it is your proposal that current management will stay in
23 place with the addition, I think, of another person that I
24 heard described?

25 A Well, yes and no. Like all good lawyers, the current

1 general manager on site, Mr. Yardley, would stay. He would be
2 supplemented by Dirk Zander, who is -- has an impeccable record
3 of operation of multiple country clubs. And that's who Mr.
4 Yardley would report to.

5 I have never been involved. Notwithstanding the Friends
6 of ArrowCreek's slanderous comments that I've been involved in
7 the management of ArrowCreek Country Club for the last seven
8 years, that's not a true statement, that I would be added to
9 the management team. And Mr. Leider, who, while was part of
10 the management team, is not any material part. Base --
11 primarily they were run by Mr. Balker (phonetic). He would be
12 added to the management team also, or he would take a far more
13 active role.

14 Q Okay. Thank you. I think that answers my question. Just
15 one followup. Does that management group manage any other golf
16 courses? And I'm interested in particular in what its track
17 record is, whether or not it has any history of any other
18 management -- golf course management activities.

19 A Both Mr. Zander and I have both been executive officers --
20 either general managers or executive officers of another
21 country club, which has been very, very successfully run. And
22 Mr. Zander has run several other country clubs prior to his
23 current assignment.

24 MR. GOODENOW: Your Honor, I have no further
25 questions at this time.

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1 MR. HARRIS: I just have a couple --

2 THE COURT: Go ahead.

3 CROSS-EXAMINATION

4 *BY MR. HARRIS:

5 Q Mr. Pahl, Steve Harris. Just to make it clear, Mr. Balker
6 is no longer involved in management of any form at ArrowCreek,
7 nor will he be in the future?

8 A That -- that -- I can make that absolute commitment.

9 Q Okay. There's --

10 A I rarely say "absolutely." Now I'll say absolutely.

11 Q Okay. And then Mr. Leider, Charlie Leider, he's a member
12 of your group, the new group coming in?

13 A That's correct also.

14 Q Okay. And you did say you have authority to make the
15 eight sixty all-cash offer. Do you also have authority -- do
16 you or Mr. Leider have authority to go higher?

17 A Well, of course. I mean, Mr. Leider has -- has -- and I
18 have spoken. I believe he's in the courtroom and we have
19 authority to go beyond that number.

20 Q Okay.

21 A And remember, it's not just eight sixty, it's eight sixty
22 immediate, and a -- the ability to call another four hundred.

23 Q Okay. So you have the ability to call another 400,000
24 from your investors?

25 A Correct.

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1 Q And that's in the plan, I believe.

2 A That's correct.

3 MR. HARRIS: Okay. I haven't any other -- oh, just,
4 Your Honor, I put it in the plan. Mr. Leider is a 50-percent
5 owner in the new group. He's not retaining any of his old
6 equity interest, it's strictly through the new group.

7 THE COURT: Okay.

8 MR. HARRIS: And that's going to disclose.

9 I have nothing further.

10 THE COURT: Any further examination?

11 MR. HARTMAN: I'd like to ask questions of Mr.
12 Gurnee, but no further questions of Mr. Pahl.

13 THE COURT: May this witness be excused?

14 MR. HARTMAN: Yes.

15 THE COURT: Mr. Pahl, thank you --

16 MR. HARRIS: We don't want him to go away.

17 THE COURT: Well, I've only got him -- I've only go
18 the video for 12 more minutes.

19 MR. HARRIS: We need him for the overbidding.

20 MR. HARTMAN: Can we switch to audio?

21 THE WITNESS: Mr. Harris, why don't you call me on my
22 cell phone?

23 MR. HARRIS: Well --

24 THE COURT: Wait, wait, wait. We're going to give
25 you a number for CourtCall and then you can call in by

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1 CourtCall.

2 THE WITNESS: Okay.

3 MR. HARRIS: Because we need Mr. Pahl for the
4 overbidding.

5 THE COURT: Understood. The US District Court only
6 gave me one hour. They're not used to video conferencing.

7 MR. HARRIS: Can I ask Mr. Pahl if you understand --

8 THE COURT: Sure. Please go ahead.

9 MR. HARRIS: Mr. Pahl, you understand we're going to
10 have you call into the court. You won't be on video anymore,
11 but we need you present for the overbidding portion.

12 THE WITNESS: Not a problem.

13 THE COURT: All right. Thank you very much.

14 THE WITNESS: Do you have the CourtCall? Do you have
15 the CourtCall number?

16 THE CLERK: Yes. It's 1-888-882-6878.

17 THE WITNESS: Okay.

18 THE COURT: And why don't you -- and one second.

19 THE CLERK: And use "Linda." My name is Linda.

20 THE WITNESS: Okay. Thank you.

21 THE COURT: One second, sir.

22 Why don't you give him your number at the bench in
23 case there's a problem?

24 THE WITNESS: I have her number direct, Your Honor.

25 THE COURT: Okay.

1 THE WITNESS: I have a 226-2158 number.

2 THE CLERK: Yes, but that isn't where I am.

3 THE WITNESS: Oh, okay.

4 THE CLERK: Use 2144.

5 THE WITNESS: 2144. Thank you, ma'am.

6 THE CLERK: You're welcome.

7 THE COURT: Thank you very much. You're excused,
8 sir.

9 THE WITNESS: Thank you.

10 (Witness excused)

11 MR. HARRIS: He's going to call right in.

12 THE COURT: I understand he's going to call right
13 back. So let's turn off the television. Tracy's coming.
14 Stacy.

15 Thank you very much. That seemed to work pretty
16 well.

17 (Counsel confer)

18 (Court and clerk confer)

19 MR. COSSITT: Your Honor, may I be excused?

20 THE COURT: You may be.

21 MR. COSSITT: Thank you.

22 THE COURT: Mr. Hartman?

23 MR. HARTMAN: Yes, Your Honor.

24 THE COURT: You had another witness?

25 MR. HARTMAN: Mr. Gurnee. I guess we don't really

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1 wait for Mr. Pahl to get on the phone, so --

2 THE COURT: I don't think so.

3 MR. HARTMAN: Okay. Mr. Gurnee?

4 MR. GURNEE: Yes, sir.

5 MR. HARTMAN: Step forward, please. Up here in the
6 well. Put you in the well.

7 THE COURT: Mr. Gurnee, would you please step forward
8 here and be sworn?

9 THE CLERK: Please raise your right hand?

10 THOMAS GURNEE, UNSECURED CREDITORS COMMITTEE'S WITNESS, SWORN

11 THE COURT: Please have a seat. There's some water
12 there. That's about the extent of our amenities.

13 MR. HARTMAN: Your Honor, Mr. Goodenow and I spoke
14 for a moment and he doesn't have any objection to me examining
15 Mr. Gurnee first and then he may --

16 THE COURT: Okay.

17 MR. HARTMAN: -- follow up with -- since it's his
18 client.

19 THE COURT: Okay. Go ahead.

20 *DIRECT EXAMINATION

21 BY MR. HARTMAN:

22 Q Mr. Gurnee, would you please explain your relationship to
23 FOA?

24 A Well, we formed FOA, I'm one of the founders of FOA, which
25 we really got going in December of -- December/January of this

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1 year because we could see the signs that -- that this was
2 heading towards bankruptcy, and so --

3 Q And what's -- what kind of entity is FOA?

4 A FOA originally was just a loose group of concerned
5 citizens. Now it's an LLC that we formed after getting
6 feedback from potential investors, et cetera, that this was
7 viable.

8 Q Are you the managing member of FOA?

9 A I'm a member of FOA and a managing member of FOA.

10 Q All right. Thank you. I don't know what you have with
11 you at the witness stand, but I have just a handful of
12 questions regarding the projections that were filed with the
13 Court yesterday.

14 MR. HARTMAN: For the Court, it's Docket Entry 132-1,
15 Your Honor.

16 BY MR. HARTMAN:

17 Q Specifically, Mr. Gurnee, I'm referring to Exhibit B,
18 which is titled "projected profit and loss." Do you need a
19 moment to get to that?

20 A I may not have it. I have Exhibit B, projected profit and
21 loss, yes.

22 Q Thank you.

23 A This is the one of about 10 columns, three colors?

24 Q Yes. I'm just waiting for --

25 THE COURT: And I'm sorry. What was the docket

Gurnee - Direct

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1 number again?

2 MR. HARTMAN: I'm sorry, Your Honor. It's Docket
3 Entry 132-1.

4 THE COURT: Okay. Thank you.

5 MR. HARTMAN: It's a series of exhibits. It's the
6 third page.

7 THE COURT: Thank you.

8 BY MR. HARTMAN:

9 Q All right. Mr. Gurnee, I'm focusing on what is identified
10 as "Year 1," which is the third column, and I'm presuming
11 that's the full year of 2015. Is that correct?

12 A Well, it's approximately correct. This has been taken a
13 year, so Year 1 has been changing a bit, but it's a year from
14 when we close, basically.

15 Q All right. So I want to ask questions similar to those I
16 asked Mr. Pahl. The first number I'm asking about is the
17 member dues of I presume that's a million, one eighty. Is that
18 correct?

19 A Yes, that's correct.

20 Q What are the assumptions that were used to calculate that?

21 A Sure. Well, go to the bottom of the page where it says
22 "number of members."

23 Q Yes.

24 A And under Year 1 it says 210. So there's our assumption
25 of growth, just 25 members. There's a lot of people who think

Gurnee - Direct

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1 we can do a lot better than that, but I --

2 Q So that -- excuse me. That's -- so that's a 25-member
3 increase from the current number of 185, which is what you
4 used.

5 A Correct.

6 Q All right.

7 A And then I weighted averaged that for the year so I'm
8 halfway between for times. I rationed the member dues by the
9 number of memberships, by the average number of memberships.

10 Q And again, just to be sure, that's based on paying dues 12
11 months of the year.

12 A Yes. At current rates, no increases to that.

13 Q All right. Now, the next item down is golf operations,
14 \$838,000. What are the assumptions utilized for that number?

15 A Oh, boy. Now you're going into lots of details. This was
16 mainly outside play, I believe, was the eight hundred and
17 thirty-eight, so there's tournaments. The -- there's two
18 courses, one's private, one is semi-private, or shall we call
19 it public. And there's a substantial amount of revenue earned
20 from -- from that, plus the driving range plus other related
21 golf operations, cart -- I think I have cart fees separate. So
22 other golf-related operation, lessons, things like that.

23 Q Is -- did you reach that number in part based upon
24 historical play?

25 A Yes. Oh, yeah. Well, we went through a lot of numbers.

Gurnee - Direct

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1 And in fact, I worked with some outside golf professionals,
2 mainly Mike Mazzaferri and some others. And we took some of
3 the -- some of the typical numbers for golf courses in this
4 area. We also tried to check it against what -- what Palmer
5 had been projecting for their different operations. So we --
6 we used both -- parameters that we had to put together because
7 we weren't getting anything from the club itself. We don't
8 have -- we didn't have data from the club itself.

9 Since then, I've gotten several P&Ls or expense-type
10 listings through the courts and I have verified that these are
11 reasonably accurate. And when I say that, I mean Year 1.
12 Reasonably accurate compared to current ongoing operations.

13 Q Now, final question on Exhibit B. It shows between Year 1
14 and 2 an increase from 210 members to 245 members.

15 A Right.

16 Q Is that -- is there any science to how you projected the
17 rate of increase?

18 A I -- I put what I thought and then I lowered them. It
19 wasn't very scientific, Jeff.

20 Q All right. Thank you. Couple more questions.

21 One, is FOA fully capitalized at this point to provide the
22 monies stated to be infused in this case?

23 A Okay. Let me describe where we stand. We have 32
24 investors. They have signed subscription agreements totaling
25 \$2,315,000. It's to be -- preliminarily is to be distributed

Gurnee - Direct

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1 in three tranches; one tranche has already been paid, a 10-
2 percent tranche has been paid to the FOA by the investors
3 totaling two hundred and -- what was the number, Gary, two
4 hundred and seventy?

5 UNIDENTIFIED: Two seventy-five I'm showing.

6 THE WITNESS: Two hundred seventy-five thousand.
7 There's -- some people paid extra. They paid up front.

8 So we have 275,000 we've collected just to cover
9 court costs and the SAD payment we made last week, et cetera.
10 So we have 10 percent now. If we're successful, the -- I show
11 in my current projections about another million coming in
12 within the month.

13 In total, we're committed to spending \$2.315 million.
14 So I heard earlier today in the court lower numbers quoted by
15 Mr. Harris. What we're really investing is \$2.315 million.

16 BY MR. HARTMAN:

17 Q All right. Five --

18 THE COURT: Over what period?

19 THE WITNESS: Pardon me?

20 THE COURT: Over what period of time?

21 THE WITNESS: Over -- it's in my projected balance
22 sheet, but the final amount is in three years, third year.

23 THE COURT: Okay. So that's consistent with payoff
24 of the county treasurer?

25 THE WITNESS: Yes.

Gurnee - Cross

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1 THE COURT: Okay.

2 THE WITNESS: In fact, I have submitted to the Court
3 a couple times the full balance sheet, P&L, cash flow, et
4 cetera, that ties into all this.

5 BY MR. HARTMAN:

6 Q Thank you. Final question, Mr. Gurnee. Do you have
7 authority on behalf of FOA today to increase the bid amount by
8 FOA?

9 A Yes. We've -- we've met amongst the five managing members
10 and we've -- I have that authority.

11 MR. HARTMAN: All right. I have no further
12 questions, Your Honor.

13 THE COURT: Mr. Goodenow?

14 MR. GOODENOW: No, Your Honor. I think it's best to
15 proceed with (indiscernible).

16 THE COURT: Okay. Well, that -- Mr. Harris can
17 cross.

18 MR. HARRIS: Your Honor, I just have a few
19 questions. I represent the debtor and I -- the last thing I
20 want to do is give Mr. Gurnee a Perry Mason cross-examination
21 and have him leave because we're here to generate bids and
22 higher money.

23 *CROSS-EXAMINATION

24 BY MR. HARRIS:

25 Q Do you have the Exhibit 1 or A that I presented to the

Gurnee - Cross

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1 Court?

2 A No, I don't. Yes, thank you.

3 Q On that exhibit, Mr. Gurnee, do you see the figures that
4 are --

5 A Yes.

6 Q -- at the bottom there?

7 A Yeah.

8 Q It says here total contribution by FOA -- and this is at
9 the \$160,000 figure for the unsecured administratives --

10 A Yes.

11 Q -- is 2,040,744 and change?

12 A Right.

13 Q Do you agree with that?

14 A No.

15 Q And why not?

16 A Because -- well, let's start with the box that says
17 "capital expenditure shortfalls ACC" where you write 700,000
18 cash. Let's start there.

19 You say there's 356,000 for capital expenditures and
20 343,000 for shortfall and capital expenditures. I have
21 reviewed carefully -- you submitted two or three versions of
22 capital expenditures to the Court and I have observed those and
23 it makes me chuckle a bit because only about 10 percent of
24 those are true capital expenditures. The rest are maintenance
25 items.

Gurnee - Cross

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1 In our P&L, which nobody has, but in our P&L under the
2 maintenance section under expenses you will find these items.
3 They are included in our ongoing maintenance costs. So it's
4 apples and oranges here.

5 Q Okay. But this -- we're talking about contributions.
6 Your ongoing maintenance costs are going to be funded by your
7 ongoing revenues, right?

8 A Okay. Well, what I've done, I submitted a balance sheet.
9 You've probably seen that. And in there it has paid-in
10 capital. That's our investment. I show 1.1 million on Day
11 Zero. That would be today. 1.7 million at the end of Year 1,
12 so I'm putting in another 600,000. Two million at the end of
13 Year 2, that's another 300,000. And two three one five, that's
14 another 315,000. That totals \$2.315 million. That's how much
15 we're investing.

16 MR. HARTMAN: May I interrupt, Your Honor?

17 THE COURT: Yes.

18 MR. HARTMAN: I'm sorry, Mr. Harris, but I think Mr.
19 Gurnee is referring to Docket Entry 132-2, Page 2 of 2, just so
20 the Court can follow along.

21 THE COURT: And that would be Exhibit B, creditor
22 proceeds comparison to buyer proceeds? Is that what we're
23 looking at?

24 MR. HARTMAN: No. No. It's Page 2 of 2, Docket
25 Entry 132-2. It's Exhibit C. It's called the projected

Gurnee - Cross

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1 balance sheet.

2 THE COURT: Okay.

3 THE WITNESS: Looks like this.

4 THE COURT: All right. Just a second.

5 BY MR. HARRIS:

6 Q Looking at the exhibit that I -- the ArrowCreek bid offers
7 that I've compared --

8 A Uh-huh.

9 Q -- as of the closing, whether it be October 30 or some
10 prior date, are there any additional monies as of closing that
11 your -- that the FOA group is going to contribute in cash or
12 assume, other than what's shown on this column?

13 A Well, we'll see what happens today, whether the events --

14 Q Subject to today, correct.

15 A Yeah. No, our original plan had --

16 Q No, but can you answer the question? Is there going to be
17 additional monies or assumptions, excepting possibly an overbid
18 today, other than the 2,040,774 at the end there?

19 A I don't understand. We're not investing 2 million today.

20 Q Counting assumptions and cash in, yes?

21 A Sorry, I don't understand the question.

22 Q Okay. Let's look at it --

23 THE COURT: Neither do I.

24 BY MR. HARRIS:

25 Q -- item by item. Okay. I've been looking at my sheet

Gurnee - Cross

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1 here where I compare the bids.

2 A Okay.

3 Q Okay. Isn't FOA right now at \$160,000 for unsecured
4 creditors and admins?

5 A Right.

6 Q Okay. And isn't FOA also at 185,000 to fund cash
7 shortfalls and capital expenditures?

8 A No. No.

9 Q I'm just reading from your purchase offer.

10 A What purchase offer? I didn't write 185,000 purchase
11 offer.

12 THE COURT: Mr. Goodenow?

13 MR. GOODENOW: I had an objection, but I think the
14 witness handled it.

15 (Laughter)

16 UNIDENTIFIED: He doesn't need you.

17 BY MR. HARRIS:

18 Q You said you're coming up with 912,000 -- oh, here. Here.
19 Here.

20 A Actually, Rew misspoke. It's nine hundred and twenty-one.

21 MR. HARRIS: May I approach the witness stand, Your
22 Honor?

23 THE COURT: You may.

24 MR. HARRIS: I'm trying to do this quickly, but this
25 is Exhibit E to the plan, Your Honor.

Gurnee - Cross

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1 BY MR. HARRIS:

2 Q And part of Exhibit E, I'll direct your attention about
3 five or six lines at the bottom. And you say \$185,000 for
4 shortfalls or cap eq.

5 A Just a second. I was talking here, will be funded by
6 (indiscernible). Oh, that was for 2014.

7 Q Right.

8 A This was for --

9 Q That's what I'm talking about. At the close of escrow on
10 October 30 or a prior date, I'm -- that snapshot in time you're
11 coming up with 160,000 and possibly an overbid, correct?

12 A No. I think I told you that we're investing 1.1 to 1.2
13 million by the -- within 30 days of this. I told you that and
14 it's in this balance sheet.

15 Q Okay. Can I break it down?

16 THE COURT: You're not helping your cause.

17 THE WITNESS: Pardon me?

18 THE COURT: Answer his questions.

19 BY MR. HARRIS:

20 Q Okay. Are you coming up with \$160,000 as your bid stands
21 now for unsecured creditors and admins?

22 A No, I think we're going to two hundred, but yes --

23 Q But as it --

24 A -- stands right now.

25 Q Subject to overbid, it's one sixty right now, correct?

Gurnee - Cross

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1 A Okay. Yes.

2 Q Okay. And then you're coming up with 185,000 for cap ex
3 and shortfalls by the close of escrow?

4 A Much more than that.

5 Q How much more than that?

6 A About 800,000 more than that, 900,000 more than that.

7 Q So nine hundred -- well, is that -- okay. How much are
8 you coming up for the county -- for -- towards the county --
9 Washoe County Treasurer cash at --

10 A By close of escrow about \$580,000.

11 Q Is that included in your nine twelve?

12 A Nine twenty-one, yes.

13 Q In your nine twenty-one?

14 A Yes.

15 Q Okay. So if you take -- I thought it was nine twelve. He
16 said --

17 A He was wrong. He transposed.

18 Q Okay. If you take nine hundred and twenty-one, that's
19 what you're coming up with cash at the close of escrow?

20 A Well, that's got -- our projection, yes, but in my -- yes.

21 Q Okay. And that one twenty-one [sic], a hundred and sixty
22 of the -- 160,000 is for admins and unsecureds, right?

23 A That's what your thing says, yes.

24 Q I'm only reading what your thing says. And then you've
25 got about 581,000 to the county.

Gurnee - Cross

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1 A I'm sorry. Do you want to know what I think?

2 Q No.

3 A I have an exhibit.

4 THE COURT: Let me see the exhibit.

5 THE WITNESS: This is filed, shows the amount paid by
6 each party.

7 BY MR. HARRIS:

8 Q How much are you paying in cash towards the county at the
9 close of escrow, approximately?

10 A Five hundred and eighty thousand.

11 Q Five hundred and eighty --

12 A Forty percent of one four five one.

13 Q Which is five hundred -- approximately 581,000?

14 A Right.

15 Q Okay. So if you take 160,000 plus 581,000, that adds up
16 to --

17 THE COURT: Nine hundred twenty-one.

18 BY MR. HARRIS:

19 Q -- 741,000, subtracted from nine twelve, you have
20 approximately a hundred and seventy, 175,000 going to cap ex
21 shortfalls. Is that correct?

22 A Yes. Yes.

23 Q Okay. Then also you have the remaining assumption of the
24 county debt, which is -- after you pay them 581,000 there's
25 about 871,000 left.

Gurnee - Cross

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1 A Yeah.

2 Q Okay. Then you have \$126,890 for the SAD payment.

3 A That's correct.

4 Q Okay. Then you potentially have the 52,000 for the IRS,
5 although we're all trying to get it to zero, correct? It's
6 part of the 2,040,744, correct?

7 A Right.

8 Q Okay. And then also you've got plugged in there the
9 Lighthouse Bank assumption, but you're hoping that gets
10 successfully objected to by Mr. Hartman but that's part of your
11 figures, correct?

12 A Right.

13 Q Okay. So all those figures add up to 2,040,774.44,
14 correct?

15 A No. I just -- didn't I just tell you that it's --

16 Q Okay. The answer to the question, you just stated --

17 A Your column on the right does add to two oh four, yes.

18 Q Okay. My column is 2,040,774.44.

19 A I agree your column adds.

20 Q Okay. Do you have additions that you're coming up with
21 before the close -- on or before the close of escrow?
22 Additional monies?

23 A I'm -- I'm -- I'm getting lost again because we're not
24 investing --

25 THE COURT: Other than the matters that are set forth

Gurnee - Cross

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1 in his column under "FOA," are there additional monies that
2 you're putting in in the next 45 days?

3 MR. HARRIS: By the close of escrow, Your Honor.

4 THE COURT: Close of escrow.

5 THE WITNESS: Well, into -- no. No.

6 BY MR. HARRIS:

7 Q No.

8 A Yes.

9 Q So this -- counting cash and assumptions, the max is
10 2,040.774.44.

11 A I'm going to have to ask for clarification, because each
12 time you ask me to agree to the \$2 million number and then you
13 ask me how much we're going to deposit by close of escrow,
14 we're not going to deposit 2 million by close of escrow.

15 Q No, that includes cash and assumptions.

16 A Okay. That's -- you have a definition there I'm not
17 familiar with. Cash and assumptions?

18 Q Like the remaining 890,000.

19 A Okay.

20 Q You're assuming that and paying that over time.

21 A So at the end of escrow, list the total assumptions, I
22 guess that's probably about right.

23 Q Okay. Thank you. And you see in the ACC column that
24 they're contributing \$2,555,774.44 in cash and assumptions,
25 like you?

Gurnee - Cross

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1 A No, that's not apples to apples. I think --

2 THE COURT: Why aren't they contributing that, given
3 the same assumptions that you made with your figures?

4 THE WITNESS: But they're not the same assumptions.
5 They've included maintenance expense spending in what the call
6 "capital expenditures" and we have that already embedded in our
7 normal operating expenses.

8 THE COURT: So how does that make a difference in the
9 dollars?

10 THE WITNESS: Well, we are -- well --

11 THE COURT: They're capitalizing their maintenance,
12 you're not. You're paying it monthly.

13 THE WITNESS: Right.

14 THE COURT: They're probably capitalizing their
15 maintenance because they're -- they've neglected their
16 maintenance and they need more cap ex to bring it up, which you
17 will too.

18 THE WITNESS: Oh, we used their -- we -- we, in fact,
19 think there's much more maintenance necessary than they're
20 putting in there.

21 THE COURT: So how does the fact that they've -- how
22 does the fact they've characterized it as cap ex, whether --
23 change the numbers.

24 THE WITNESS: Well, what I'm saying is, under the
25 FOA, the 185,000 cash for shortfalls, a lot of that is coming

Gurnee - Cross

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1 from operating income. Right.

2 THE COURT: My question is how does -- re-
3 characterize the columns. Do the numbers change? Is the
4 \$700,000 figure going away somehow because it's a maintenance
5 expense?

6 THE WITNESS: No, it's not going away, it's just that
7 we're understating what FOA is -- I'm not arguing with what --
8 ACC column. You can see what they're doing. What they're --
9 what they're -- what they're not doing is paying creditors
10 directly, which we are. But we have a payment in the FOA to
11 creditors that -- well, so our right-hand column is
12 understated, we believe. We're going to be --

13 THE COURT: And where should your right-hand column
14 be increased?

15 THE WITNESS: In the capital expenditures shortfalls.

16 THE COURT: How much should it be increased by?

17 THE WITNESS: Well, let me think about it. Let me
18 think.

19 MR. HARRIS: Well, because, Your Honor, I'm talking
20 about, at the close of escrow, how much cash is going to be
21 there. Now ACC has said they're going to have 700,000 cash at
22 close of escrow for cap ex, maintenance, shortfalls, whatever
23 you want to call it; and the FOA group has said they've got
24 185,000. And all I'm trying to do is establish the differences
25 for the Court, so the Court can weigh that and weigh the monies

Gurnee - Cross

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1 going to the county, what that all means.

2 THE WITNESS: Maybe the math breaks down when you
3 start talking about the total assumptions. You show the
4 assumptions the same. By close of escrow, the assumptions
5 aren't the same anymore. We will have paid 40 percent to
6 Washoe and you will have paid zero.

7 MR. HARRIS: Your Honor, the witness is non
8 responsive. I'm not trying to be argumentative, I'm just
9 trying to --

10 THE COURT: What is it you're trying to establish?
11 Because I'm not following this.

12 MR. HARRIS: Okay. Close of escrow, how much does
13 everybody pay at close of escrow? Okay?

14 THE COURT: Okay. At close of escrow, about 45 days
15 from now, how much money will you have, in dollars, not
16 assumptions, just dollars.

17 THE WITNESS: In escrow \$921,000 is what we're paying
18 into escrow.

19 MR. HARRIS: Okay. And then what I'm trying to
20 establish, so that nine twenty-one, they have earmarked one
21 sixty for the creditors, unsecured.

22 THE COURT: Okay. Right.

23 MR. HARRIS: And that could go up.

24 THE COURT: And admin.

25 MR. HARRIS: Right. And we have approximately five

Gurnee - Cross

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1 eighty-one going to the county. Okay?

2 THE COURT: Right.

3 MR. HARRIS: And that leaves approximately about --
4 let's say \$170,000 for -- it's not one eighty-five. Let me
5 just do -- nine twenty-one -- just give me one minute, Your
6 Honor.

7 THE COURT: It's somewhere between one seventy and
8 one eight-five for cap ex and --

9 THE WITNESS: Your Honor, could I make a point?

10 THE COURT: Just a second.

11 THE WITNESS: Thank you.

12 BY MR. HARRIS:

13 Q It's approximately \$180,000, \$181,000 going to cap ex and
14 shortfalls. That's the money at the close of escrow. That's
15 what I'm trying to establish for Friends of ArrowCreek.

16 A Now I understand. What you're not counting is the 580,000
17 payment we're making.

18 Q I am.

19 THE COURT: No, he is counting that.

20 BY MR. HARRIS:

21 Q Five eighty-one.

22 A Where is it?

23 THE COURT: Five eighty-one, one sixty, and one
24 eighty-one come up to nine twelve or nine --

25 THE WITNESS: Nine twenty-one, yeah. But it's not

Gurnee - Cross

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1 one eighty-five.

2 BY MR. HARRIS:

3 Q It's one eighty-one. Okay. So just so we're perfectly
4 clear, I'm not trying to trick you, Mr. Gurnee. When you go to
5 see Mr. Goodenow about -- if you're successful bidder and you
6 want to close escrow, how much cash does the Friends of
7 ArrowCreek, counting the deposit, not counting any overbid, but
8 how much cash do you need to make sure is in the title company,
9 excluding any expenses that they might have, to close this
10 transaction? And I think you're saying nine twenty-one.

11 A Yes. Yes.

12 Q Is that correct?

13 A That's the payment necessary to do what we say we're going
14 to do by close of escrow.

15 Q Which is -- which breaks down to about five eighty-one to
16 the county.

17 A Yes.

18 Q One sixty to the creditors.

19 A Yes.

20 Q And about one eighty, one eighty-one for a cap ex
21 shortfall.

22 A And that's exactly what I filed, yes.

23 Q Okay. And then just looking at the ACC column, they have
24 about eight sixty going in to close escrow. Is that correct?

25 A That's what it looks like, yes.

Gurnee - Cross

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1 Q Okay. They have zero going to the county. Is that
2 correct?

3 A Correct.

4 Q They have about one sixty going to the creditors, correct?

5 A Yes.

6 Q And they have about 700,000 going through escrow to be
7 there for cap ex, maintenance, shortfalls.

8 A To be there, yes.

9 Q Okay. You agree there?

10 A Yeah.

11 MR. HARRIS: Okay. I have no further questions.

12 THE COURT: Okay.

13 CROSS-EXAMINATION

14 *BY MR. GOODENOW:

15 Q Mr. Gurnee, I have just a couple of questions for you, and
16 they relate to Mr. Harris's questions. But first of all, I
17 just want to be sure that the judge has an understanding of
18 your background that you bring with you today. What is your --
19 what's your work history background?

20 A My work history, it's -- I'm -- I'm a finance guy. Went
21 to Stanford and Santa Clara MBA and worked for a company called
22 Varian Associates for eight years in various countries. Then I
23 worked for Schlumberger for 13 years. And then I lived in --
24 then I worked for Chartered Semiconductors, took them public on
25 the New York Stock Exchange and then -- then I moved to China

Gurnee - Cross

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1 and took a Chinese company -- internet company public and then
2 I've been in China off and on for 13 years. I was in Paris for
3 six years. I was in Brazil for three years.

4 So always kind of in the financial arena, various types of
5 businesses.

6 Q Okay. And Mr. Harris took you through a comparison of the
7 numbers and tried to focus on the difference in the timing of
8 the payment to the county just a moment ago. And can you
9 explain to the Court why you view the Friends of ArrowCreek
10 offer as superior, specifically with reference to that payment?

11 A Yes. We submitted this bid like that with accelerated
12 payments to the Washoe County because we felt it would -- it
13 would leave the -- both the creditor and the Court more
14 convinced of the soundness and prudence of our offer, and the
15 superior payback to Washoe County to an uncertain payback, we
16 felt, with the other guys.

17 Q And at the end of the day, is it correct that the Friends
18 of ArrowCreek offer provides for a \$921,000 payment within 30
19 days as opposed to the ACC offer that provides for a \$860,000
20 payment?

21 A I'm sorry. What was the question?

22 Q Is --

23 THE COURT: You don't need to ask that question.
24 It's very clear to me how much is being paid by each party at
25 closing.

1 MR. GOODENOW: Thank you, Your Honor. That's all I
2 have.

3 THE COURT: Thank you.

4 MR. GOODENOW: Thank you, Mr. Gurnee.

5 THE COURT: Anything further?

6 MR. HARRIS: May I inquire of Mr. Pahl's on the phone
7 yet?

8 THE CLERK: Not yet.

9 THE COURT: Okay. So let's do this. I do have one
10 question for you.

11 EXAMINATION BY THE COURT:

12 Q Have you ever run a golf course?

13 A No.

14 Q Ever been on a management team for a golf course?

15 A Well, we're hiring outside management.

16 Q Who is that?

17 A Arnold Palmer Golf. We already have a contract with them.

18 Q I saw his plane once.

19 A So I don't know anything.

20 Q Okay.

21 A So you're lucky I'm not going to be running a golf course.

22 THE COURT: All right. So we're going to take a
23 short break here while we find Mr. Pahl.

24 (Witness excused)

25 MR. HARRIS: I'll try and find him on his cell phone,

1 Your Honor.

2 THE COURT: Okay.

3 UNIDENTIFIED: Ten minutes, Your Honor?

4 THE COURT: Less. Whenever he comes back. Just buzz
5 me.

6 THE CLERK: All rise.

7 (Recess taken at 4:14 p.m.)

8 (Proceedings resume at 4:23 p.m.)

9 THE CLERK: All rise.

10 THE COURT: Good afternoon. Please be seated.

11 Do we have Mr. Pahl on the -- Mr. Pahl?

12 MR. PAHL: (Via telephone) Yes, sir.

13 THE COURT: We can certainly hear you. Can you hear
14 us?

15 MR. PAHL: (Indiscernible)

16 THE COURT: Okay. So I think now is the time to
17 start bidding, if we're going to have that. The -- I guess,
18 Mr. Harris, let's start with you, just because you're the
19 proponent. Your client -- is your client willing to up --

20 MR. HARRIS: Remember, Your Honor, I'm the debtor's
21 lawyer. I think Mr. Pahl, he's the one that needs to --

22 THE COURT: Okay. That's fine.

23 Mr. Pahl, are you willing to bid in excess of what
24 your current bid is?

25 MR. PAHL: Yes, Your Honor. We will go to 180,000.

1 THE COURT: You'd go up by 20,000?

2 MR. PAHL: That's right, Your Honor.

3 THE COURT: Okay.

4 MR. HARRIS: I believe, Your Honor, that would go
5 from one sixty to one eighty for the unsecured creditors.

6 THE COURT: Correct.

7 (Cell phone ringing)

8 THE COURT: Friends of ArrowCreek, are they willing
9 to upward their bid?

10 MR. GOODENOW: As I understand it, the last bid was
11 an additional 20,000 to --

12 THE COURT: Yes.

13 MR. GOODENOW: -- 180,000. Yes, Your Honor. We'll
14 go up that 20,000 plus another 20,000.

15 THE COURT: So you're plus forty.

16 ACC?

17 MR. PAHL: We'll go to two hundred and twenty, so
18 we'll go up another twenty.

19 THE COURT: So you're now matched at -- okay. So,
20 Mr. Goodenow?

21 MR. GOODENOW: I understood Mr. Pahl to say they're
22 at two twenty. Is that correct??

23 MR. PAHL: That's correct.

24 THE COURT: Oh, two twenty. From one sixty to two
25 twenty?

1 MR. PAHL: One sixty to two twenty now.

2 THE COURT: Okay. So --

3 MR. GOODENOW: Two forty.

4 THE COURT: Okay. Mr. Pahl?

5 MR. PAHL: They can have it.

6 THE COURT: Okay. Thank you very much.

7 (Counsel confer)

8 MR. HARRIS: Your Honor, so would that -- this is
9 Steve Harris. The one sixty is now two forty for the
10 administrative, general unsecured creditors?

11 THE COURT: Correct.

12 MR. HARRIS: Okay. I will prepare the order and a --
13 oh, and I would ask for confirmation, Your Honor.

14 THE COURT: Yes.

15 MR. HARRIS: I believe we haven't had to use 1129(b).

16 THE COURT: Right. And I did review the plans, I did
17 review the bidding. I'm convinced that the Friends of
18 ArrowCreek really are the ones who are primarily impacted by
19 this. They voted overwhelmingly for the FOA plan. I think the
20 overbid up to two forty will go to -- since it did not meet the
21 cap, it would go to admin and unsecured claims and I guess
22 admin of Article III claims. I think the plan complies with
23 the provisions of 1129(a) and 1129(b).

24 I do have concerns about the feasibility but the -- I
25 think that FOA plan has a better chance of succeeding than the

1 ACC plan. I don't think that's a given for anybody. This has
2 been a difficult property from -- pretty much from the onset,
3 but I certainly think they deserve a chance to make this work,
4 so that will be the order.

5 MR. HARRIS: So we have confirmation on -- of the
6 plan --

7 THE COURT: Yes.

8 MR. HARRIS: -- using the FOA --

9 THE COURT: Yes.

10 MR. HARRIS: -- I believe pursuant to 1129(a). I
11 don't think we have to get to cram-down under (b).

12 THE COURT: I don't think so either.

13 UNIDENTIFIED: That's correct, Your Honor.

14 THE COURT: Okay. Thank you.

15 MR. HARRIS: Thank you.

16 THE COURT: Anything further?

17 MR. GOODENOW: The only thing is -- and I want to
18 thank Mr. Harris for his participation and cooperation with me
19 in preparation for today and I'll ask Mr. Harris if he's
20 willing to commit to meet with us to do the transition as soon
21 as possible.

22 MR. HARRIS: Absolutely.

23 THE COURT: He already did that.

24 MR. HARTMAN: I'd like it in the order that he didn't
25 thank me.

1 THE COURT: What?

2 MR. HARTMAN: I'd like it in the order that he didn't
3 thank me.

4 THE COURT: Please reflect that in the order.

5 All right. We'll be in recess. Thank you guys very
6 much.

7 Mr. Pahl, thank you.

8 MR. PAHL: Thank you, Your Honor.

9 (Concluded at 4:27 p.m.)

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C E R T I F I C A T I O N

I, ILENE WATSON, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.



ILENE WATSON, AAERT NO. 447

DATE: September 26, 2014

ACCESS TRANSCRIPTS, LLC

C E R T I F I C A T I O N

I, Lisa Luciano, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.



LISA LUCIANO, AAERT NO. 327

DATE: September 26, 2014

ACCESS TRANSCRIPTS, LLC