

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (RENO)

IN RE:	:	Case No. 12-12349-MKN
	:	
AMERICAN WEST DEVELOPMENT, INC.,	:	Chapter 11
	:	
Debtors.	:	
.....	:	
	:	
TRACY HOPE DAVIS,	:	Adv. No. 13-01154-MKN
UNITED STATES TRUSTEE,	:	
	:	
Plaintiff,	:	
	:	300 Booth Street
v.	:	Reno, NV 89509
	:	
AMERICAN WEST DEVELOPMENT, INC.,	:	
	:	
Defendants.	:	Thursday, January 29, 2015
.....	:	2:32 p.m.

TRANSCRIPT OF SETTLEMENT CONFERENCE
BEFORE THE HONORABLE GREGG W. ZIVE
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For American West Development, Inc.:	Fox Rothschild LLP By: CHARLES D. AXELROD, ESQ. MARK J. CONNOT, ESQ. 3800 Howard Hughes Parkway, Suite 500 Las Vegas, NV 89169 (702) 262-6899
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------

For the U.S. Trustee:	Office of the United States Trustee By: NICHOLAS STROZZA, ESQ. By: ATHANASIOS AGELAKOPOULOS, ESQ. By: BRIAN E. GOLDBERG, ESQ. 300 Booth Street, Suite 3009 Reno, NV 85909
-----------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Audio Operator:	Stacie C. Burney, ECR
-----------------	-----------------------

Transcription Company:	Access Transcripts, LLC 10110 Youngwood Lane Fishers, IN 46038 (855) 873-2223 www.accesstranscripts.com
------------------------	---------------------------------------------------------------------------------------------------------------------

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 (Proceedings commence at 2:32 p.m.)

2 THE COURT: Please be seated. This is in the matter
3 of American West Development, Inc. in Adversary Number
4 13-01154, Tracy Hope Davis, United States Trustee, plaintiff,
5 versus American West Development, Inc., defendant. Throughout
6 this hearing I'll probably be referring to the defendant as
7 AWDI instead of using its full name.

8 May I have appearances of counsel for both parties,
9 please.

10 MS. AXELROD: Good morning, Your Honor. Charles
11 Axelrod and Mark Connot, Fox Rothschild, LLP, on behalf of
12 AWDI. Also present in the courtroom is Ed Lubbers, our general
13 outside counsel. Mr. Robert Evans is President, and the owner
14 --

15 MR. TANNER: Lawrence Tanner.

16 MR. AXELROD: Lawrence Tanner, the owner of the
17 company.

18 THE COURT: Thank you.

19 MR. STROZZA: Good afternoon, Your Honor. Nicholas
20 Strozza, Office of the US Trustee.

21 MR. AGELAKOPOULOS: Good afternoon, Your Honor. May
22 it please the Court, Athanasios Agelakopoulos for United States
23 Trustee Tracy Hope Davis.

24 MR. GOLDBERG: Good afternoon, Your Honor. May it
25 please the Court, Brian Goldberg, also of the Office of the

1 United States Trustee on behalf of the United States Trustee
2 for Region 17, Tracy Davis. Thank you.

3 THE COURT: Thank you. Pursuant to an order signed
4 by Judge Mike Nakagawa on November 3rd, 2014, the parties have
5 spent the day conducting a settlement conference over which I
6 have been presiding. And following hours of good-faith
7 negotiations, the parties have entered into a settlement
8 agreement of this adversary which sought to revoke a plan of
9 reorganization for the debtor, AWDI, the effective date of
10 which was March 15th, 2013.

11 In full settlement of all the matters between the
12 Office of the United States Trustee and the reorganized debtor,
13 AWDI, the parties have agreed as follows:

14 The debtor will waive the provisions of the plan that
15 required an 80 percent affirmative vote by members of Class 4,
16 which is a class composed of construction defect claimants,
17 known and unknown. The unknown claimants were represented by a
18 future claims representative that had been appointed in April
19 of 2013, shortly after the -- that's actually wrong. It would
20 be 2012 when the case was filed. As I noted, 2013, March 15th,
21 was the date of plan confirm -- effective date of the plan. I
22 apologize for that error.

23 The treatment of Class 4 called for either a 500,000
24 or a \$1.5 million deposit into a claims defect trust over which
25 a claims defect trustee would oversee. By not counting the

1 votes -- the vote of the future claims representative, the 80
2 percent threshold would not have been achieved. However, by
3 waiving that threshold, the amount of \$1.5 million deposited
4 into the trust will remain the option under the plan.

5 In addition to the 1.5 million, which is not wholly
6 earmarked for class members, because of the 1.5 million, there
7 was a carve-out of up to \$900,000 for trust administrative
8 expenses including the prosecuting of any actions against any
9 persons or entity that the trustee could bring claims against
10 pursuant to an assignment of claims from the debtor consistent
11 with the terms of the confirmed plan, and also administrative
12 expense to administer the trust.

13 The residual amount, \$600,000, was the only
14 guaranteed amount that would be available for class members.
15 That amount might -- it is agreed that that amount might need
16 augmentation, even though history to date since plan
17 confirmation indicated that it probably will not, but to ensure
18 that the class members receive additional protection, the
19 reorganized debtor has agreed to the following:

20 If at any time prior to or on the third anniversary
21 of the effective date of the plan -- this is March 15th, 2013
22 -- the fund for the benefit of the homeowners -- that was the
23 \$600,000 -- were to be depleted, the reorganized debtor, AWDI,
24 would provide an additional \$650,000. Then on the fifth
25 anniversary of the effective date of the confirmed plan, any

1 amounts remaining in the claim defect trust account shall be
2 paid to AWDI. The parties have also agreed, because of the
3 significant amount that was carved out for advancement
4 expenses, and candidly because of the administrative expenses
5 incurred to date, especially in light of the very small number
6 of claimants seeking compensation from that trust, both parties
7 have agreed that they will ask the Court to require the claim
8 defect trustee to obtain Court approval for any fees and
9 expenses in order to ensure that the maximum amount remains
10 available at least through the fifth anniversary of the plan
11 effective date.

12 In a separate manner, the plan of reorganization
13 contained consensual provisions addressing third-party
14 releases, exculpation, and release of claims. The debtor has
15 agreed that it will obtain waivers of any of those provisions
16 or estop certificates so that estopping any beneficiary of
17 those provisions from enforcing or utilizing in any manner
18 those provisions from Mr. Evans.

19 And Mr. Evans is present today and he has agreed to
20 that treatment. Correct, Mr. Evans?

21 MR. EVANS: Yes, Your Honor.

22 THE COURT: And from any other insider and/or equity
23 interest holder in the reorganized debtor, AWDI.

24 It has also been agreed that the statute of
25 limitations pertaining to any claim that might otherwise not

1 have been able to be brought because of the release exculpation
2 or release of claim language in the plan will have its statute
3 of limitations extended from one year from the time that Judge
4 Nakagawa enters an order approving the settlement agreement
5 pursuant to Federal Rule of Bankruptcy Procedure 9019, if, in
6 fact, he does approve this agreement.

7 The trustee -- United States Trustee has agreed that
8 if this agreement is approved by Judge Nakagawa, it shall
9 dismiss with prejudice the adversary proceeding.

10 The motion seeking approval pursuant to Rule 9019,
11 the parties have agreed could be brought on shortened time if
12 Judge Nakagawa so allows; that notice shall be provided to all
13 parties in interest, including members of Class 4 of the Rule
14 9019 motion. But I have explained to counsel and to the
15 parties that this agreement is binding upon them now; that
16 while I may not have any binding effect upon any of the other
17 parties to the bankruptcy case, as far as these parties are
18 concerned, they have reached an enforceable agreement.
19 Enforceable by me as the settlement judge, to utilize any of
20 the remedies available to me in the event that either party
21 attempts to breach this agreement. I do not anticipate that
22 that will be necessary because this settlement is clearly in
23 the best interest of the parties before me today and does
24 provide a benefit to Class 4 members that did not exist prior
25 to this agreement. And it does provide benefits to all parties

1 before me today.

2 But I want to emphasize, in a colloquial term, no
3 buyer remorse, no attempting to modify, alter, or change the
4 terms of the agreement in any manner or fashion whatsoever. If
5 there is any disagreement regarding the terms of the written
6 memorialization of this agreement, which I expect will be
7 either in the motion seeking approval or in an exhibit to that
8 motion, that I have agreed to retain jurisdiction to resolve
9 any of those matters and I will do so.

10 Counsel, you've heard the terms of the agreement that
11 I placed on the record. Do you have anything you wish to add
12 or to modify or you believe that I have missed? Mr. Axelrod?

13 Please identify yourself for the record.

14 MR. LUBBERS: My name is Ed Lubbers. I am the
15 general counsel for the reorganized debtor.

16 THE COURT: I'm going to ask you to spell your last
17 name, please.

18 MR. LUBBERS: L-U-B as in "boy," B as in "boy," E-R-
19 S.

20 I'm going to assume, Judge, that the notice
21 obligation for the Rule 9019 motion will be on the reorganized
22 debtor and I would like to reserve the right to use the same
23 company that we used for notice provisions during the process
24 of the plan. Does the trustee's office have any issue with
25 that?

1 MR. STROZZA: No issue.

2 MR. LUBBERS: I don't know the name of the company,
3 but I know we hired --

4 (Indiscernible - simultaneous speech)

5 MR. LUBBERS: We would also -- I'd also like to make
6 it clear that the notice to Class 4 would be to those people
7 who would have received notice for the confirmation of the
8 plan.

9 THE COURT: Oh, yes. I forgot to put that on the
10 record. It has a date of the confirmation of the plan, the
11 record date for that. That's correct.

12 MR. LUBBERS: And we would like to ad that Mr. Evans
13 will resign as president, secretary, treasurer, and board
14 member effective January 30th, two thousand -- what year are
15 we?

16 THE COURT: '15.

17 MR. LUBBERS: '15, 2015.

18 THE COURT: I forgot. That's correct. We had agreed
19 to that even before we went into private session.

20 MR. STROZZA: Thank you, Your Honor. Nick Strozza,
21 US Trustee.

22 Just two points of clarification and I don't know who
23 the released parties are, but I don't know -- does -- Mr.
24 Canarelli is here. Does he need to consent in the same fashion
25 as you --

1 THE COURT: I'm going to put this on the -- after we
2 get done with --

3 MR. STROZZA: Okay. And then the release would go to
4 the defined terms of released parties, not just the individuals
5 that Mr. --

6 THE COURT: Whatever -- the -- but they can only
7 obtain the waivers that I've identified.

8 MR. STROZZA: Wait, the release is only to the
9 specific people that can obtain waivers for or is it to the
10 group?

11 THE COURT: No, the -- they can agree that the plan
12 will not provide the waivers, but they can't waive now rights
13 that have been established by the plan from intended
14 beneficiaries in the absence of consent. So we can put that on
15 the record that that's what AWDI intends to do, but obviously
16 it can't -- for example, there may be a --

17 MR. STROZZA: Yeah, I got it.

18 THE COURT: -- released party, said I wasn't a party
19 to the settlement, you can't bind me, and I think they're
20 probably right.

21 MR. LUBBERS: If I --

22 MR. STROZZA: Sure.

23 MR. LUBBERS: I've asked the US Trustee's office to
24 do the first draft of that release because I know they're
25 concerned -- of that waivers, because I know they're concerned.

1 I will --

2 THE COURT: What's the statute of limitation
3 language?

4 MR. LUBBERS: I will provide my attorneys so that
5 they could provide to the US Trustee's office the list of
6 individuals that will qualify for the waiver as insiders in
7 equity interest holders.

8 THE COURT: All right. Does that help, Mr. Strozza?

9 MR. STROZZA: That's actually a question I had is
10 just so we know who the names are, who's going to be giving
11 this, and he said he's --

12 (Counsel confer)

13 THE COURT: Yeah. And notice will go out to
14 everyone. And under Espinoza, that may be sufficient to bind
15 them to the waivers.

16 (Counsel confer)

17 THE COURT: I'm not opining that that would be the
18 effect, only the potential effect.

19 (Counsel confer)

20 MR. AGELAKOPOULOS: For the record Athanasios
21 Agelakopoulos for the US Trustee. Just a brief bit of
22 clarification.

23 I believe Mr. Lubbers mentioned that they would
24 obtain the certificates of estoppel or waivers from
25 individuals. I also want to know if that includes other

1 entities that the -- that may qualify as insiders as well.

2 THE COURT: Oh, yeah. Are any of the related
3 entities the insiders have?

4 MR. LUBBERS: I don't want to beat any dead horses,
5 but I don't think there are any.

6 THE COURT: If there are, add them.

7 MR. LUBBERS: So they probably will not be on my
8 list, but I'd be more than willing to discuss it with you if
9 you think there is.

10 MR. AGELAKOPOULOS: We just want that as a point of
11 clarification, that that includes also entities as well as
12 individuals.

13 THE COURT: Yes. That was my understanding. That
14 your understanding? There you go. All right.

15 I don't -- Mr. Strozza, I need you to approach the
16 podium. Did you speak to the United States Trustee for this
17 region?

18 MR. STROZZA: Yes, Your Honor. I spoke to Tracy Hope
19 Davis, US Trustee for Region 17, and went through the terms as
20 we had discussed them and we have her agreement to the deal.

21 THE COURT: She has authorized you to enter into this
22 agreement on her behalf?

23 MR. STROZZA: She has, Your Honor.

24 THE COURT: And she understands that it's binding on
25 the US Trustee's office subject to --

1 MR. STROZZA: She does, Your Honor.

2 THE COURT: -- approval by Judge Nakagawa?

3 MR. STROZZA: She does.

4 THE COURT: Thank you. I need the principal who is
5 speaking on behalf of the reorganized debtor to step forward,
6 please. Please state your full name.

7 MR. CANARELLI: My name is Lawrence D. Canarelli, C-
8 A-N-A-R-E-L-L-I.

9 THE COURT: All right. Would you please swear --
10 LAWRENCE D. CANARELLI, PRINCIPAL FOR THE REORGANIZED DEBTOR,
11 SWORN

12 VOIR DIRE EXAMINATION BY THE COURT:

13 Q What is your position with AWDI, the reorganized debtor?

14 A I'm the CEO.

15 Q And are you authorized to act on behalf of American West
16 Development, Inc.?

17 A I am.

18 Q And did you participate in the settlement negotiations
19 that occurred today?

20 A I did.

21 Q And did you listen to the terms of the settlement
22 agreement as I placed them on the record and as clarified by
23 counsel?

24 A Yes.

25 Q Did you understand those terms?

1 A I did.

2 Q Do you agree to be bound by those terms?

3 A Yes.

4 Q Were you one of the released parties?

5 A I will be.

6 Q And do you agree to waive that release?

7 A I do, yes.

8 Q And did you agree that American West Development, Inc.
9 will be bound by the terms of this settlement agreement as you
10 understand it?

11 A Yes, I do.

12 Q And do you have any questions about what the agreement is
13 of me?

14 A No.

15 THE COURT: Thank you very much. I thank you all for
16 your participation in today's conference. I actually think
17 that it is a good resolution of the matter and I wish you all
18 the best of luck.

19 (Concluded at 2:52 p.m.)

20 * * * * *

21

22

23

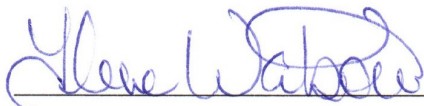
24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.



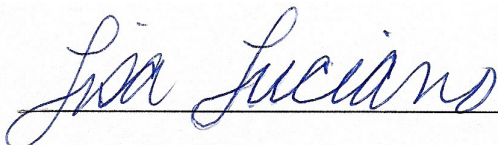
ILENE WATSON, AAERT NO. 447

DATE: February 4, 2015

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: February 4, 2015

ACCESS TRANSCRIPTS, LLC