

Lloyd King



Honorable Lloyd King
United States Bankruptcy Judge

Entered on Docket
April 12, 2012

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

AMERICAN WEST DEVELOPMENT,
INC., a Nevada corporation,

fdba Castlebay 1, Inc.
fdba Development Management, Inc.
fdba Fairmont 1, Inc.
fdba Glen Eagles 3, Inc.
fdba Heritage 1, Inc.
fdba Inverness 5, Inc.
fdba Kensington 1, Inc.
fdba Kingsbridge 1, Inc.
fdba Promontory Estates, LLC
fdba Promontory Point 4, Inc.
fdba Silverado Springs 1, Inc.
fdba Silverado Springs 2, Inc.
fdba Tradition, Inc.
fdba Windsor 1, Inc.

Debtor.

Case No. BK-S-12-12349-MKN

Chapter 11

**ORDER APPOINTING FUTURE CLAIMS
REPRESENTATIVE**

Hearing Date: April 10, 2012

Hearing Time: 9:30 a.m.

FOX ROTHSCHILD LLP
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1 The Court, having reviewed and considered the Motion for Order Appointing Future Claims
2 Representative (the "Motion"), filed by American West Development, Inc. ("Debtor") as debtor and
3 debtor in possession in its chapter 11 bankruptcy case captioned above (the "Chapter 11 Case"); the
4 accompanying points and authorities, and having considered the other matters submitted to the Court in
5 connection with the Motion; and the oral arguments of counsel set forth on the record at the hearing on
6 the Motion held at the date and time noted above; with the Court's findings as noted on the record
7 incorporated herein, pursuant to Federal Rules of Civil Procedure 52, made applicable to these
8 proceedings by Federal Rule of Bankruptcy Procedure 7052; and for good cause appearing,

9 **IT IS HEREBY ORDERED THAT:**

10 1. The Motion is hereby GRANTED.

11 2. The Court hereby appoints a Future Claims Representative¹ in this Chapter 11 Case to
12 represent the interests of all Future Construction Defect Claimants as related to all Future Construction
13 Defect Claims that may be asserted against Debtor, whether those claims are now known or as of yet
14 unknown by claimants, as the Court finds that such Future Construction Defect Claimants are parties in
15 interest in the Chapter 11 Case.

16 3. The Future Claims Representative is hereby authorized to act as the representative of
17 Future Construction Defect Claimants in this Chapter 11 Case. The Future Claims Representative shall
18 have the responsibility and duty to:

19 (a) investigate and evaluate the number and extent of potential claims that could be
20 asserted against Debtor by the class of individuals that comprises the Future Construction
21 Defect Claimants;

22 (b) employ such experts or other professional persons as may be required in order to
23 best determine such figures;

24 (c) file proofs of claim on behalf of such Future Construction Defect Claimants prior to
25 the claims bar date, to be determined by this Court;

26
27 ¹ Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed in
28 the Motion.

1 (d) negotiate on behalf of Future Construction Defect Claimants in the formulation,
2 finalization and confirmation of any pending or proposed plan of reorganization;

3 (e) advocate the legal position of the Future Construction Defect Claimants in any
4 proceeding before this Court or any appellate court;

5 (f) present, as necessary, evidence on any issue affecting the Future Construction Defect
6 Claimants; and

7 (g) file such pleadings in this Chapter 11 Case as are necessary and appropriate on
8 behalf of the Future Construction Defect Claimants.

9 **THEREFORE, IT IS FURTHER ORDERED** that, subject to satisfaction of the immediately
10 following provision of this Order, the following individual is appointed as Future Claims
11 Representative: JAMES L. MOORE.

12 **IT IS FURTHER ORDERED** that (i) on or before April 13, 2012, the Future Claims
13 Representative shall file a statement containing disclosures consistent with those required by Rule 2014
14 of the Federal Rules of Bankruptcy Procedure; (ii) any interested party shall file any objections based
15 on such disclosure on or before April 25, 2012; (iii) if any such objection is filed timely, then any reply
16 shall be filed on or before April 30, 2012, and a hearing will be held on May 7, 2012, at 10:00 a.m.; and
17 (iv) if no objection is filed timely, then the appointment of the Future Claims Representative pursuant
18 and *nunc pro tunc* to the date of entry of this Order shall be final without the need for further hearing or
19 order of the Court.

20 **IT IS FURTHER ORDERED** that the Future Claims Representative shall participate in this
21 Chapter 11 Case as a court-appointed professional and shall file all requests for compensation, any
22 applications for employment of professional persons to represent such Future Claims Representative,
23 including all disclosures of disinterestedness, pursuant to 11 U.S.C. §§ 327-331 and Federal Rules of
24 Bankruptcy Procedure 2014-2017.

25 **IT IS FURTHER ORDERED** that said persons shall be compensated as a cost of
26 administration of the Debtor's estate in the same manner and on the same terms as all other court-
27 appointed professionals.

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2 DATED: April 10, 2012.

3 Prepared and respectfully submitted by:

4 **FOX ROTHSCHILD LLP**

5 By /s/ Brett A. Axelrod

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10 *[Proposed] Counsel for Debtor*

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

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In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

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The Court has waived the requirement of approval in LR 9021(b)(1).

16

No party appeared at the hearing or filed an objection to the motion

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I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

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I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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