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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	:	Chapter 11
LandAmerica Financial Group, Inc., et al.,	:	Case No. 08-35994
Debtors.	:	Jointly Administered

INITIAL OBJECTION BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS' MOTION FOR AN ORDER (A) SCHEDULING EXPEDITED SALE HEARING TO CONSIDER APPROVAL OF SALE OF DEBTOR'S STOCK IN CERTAIN UNDERWRITING SUBSIDIARIES; (B) APPROVING RELATED STOCK PURCHASE AGREEMENT; (C) APPROVING FORM AND MANNER OF NOTICE OF SALE HEARING; AND (D) GRANTING RELATED RELIEF

The Official Committee of Unsecured Creditors of LandAmerica Financial Group, Inc., (the "Committee") by and through their undersigned counsel, hereby object to the Debtors'

Motion for Order: (A) Scheduling Expedited Sale Hearing to Consider Approval of Sale of Debtor's Stock in Certain Underwriting Subsidiaries; (B) Approving Related Stock Purchase Agreement; (C) Approving Form and Manner of Notice of Sale Hearing; and (D) Granting Related Relief (the "Sale Motion") and in support of its objection (the "Objection")[1] respectfully state:

PRELIMINARY STATEMENT

1. The sale process here is fundamentally flawed. And there are simply too many important, unanswered questions to allow the proposed sale to be approved without considerable scrutiny.

2. The Sale Motion seeks a sale of the companies that produce substantially all[2] of LandAmerica Financial Group, Inc.'s ("LFG's") revenue without an auction process, in a manner that is not likely to maximize value, and which may result in the improper taking of the seller's cash without the adjudication of competing claims thereto. LFG has failed to demonstrate to this Court that the sale of Commonwealth Land Title Insurance Company, United Capital Title Insurance Company and Lawyers Title Insurance Corporation (together, the "Underwriting Companies") for the proposed purchase price is in the best interests of LFG's estate or that the sale process itself was fair and adequate. This Court and all stakeholders also must understand all of the relevant facts related to, among other matters, the proposed treatment of: (i) the alleged $150 million inter-company claim; (ii) cash at LFG; and (iii) deferred compensation.[3]

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[1] The Committee reserves the right to file a supplemental objection to the Sale Motion as more information becomes available to it.

[2] From 2005 through 2007, title operations generated between 88 and 90% of total revenues on a consolidated basis for LFG, according to its 10K for year end 2007 filed with the United States Securities and Exchange Commission (the "SEC").

[3] Further, there is evidence of mismanagement at LFG and LandAmerica 1031 Exchange Services, Inc. ("LES") that must be investigated to determine its effect on the value of the Underwriting Companies. A copy of an article

3. No evidence has been presented that any effort has been made to seek out other potential purchasers of the stock of the Underwriting Companies. It appears from the Sale Motion and from press accounts that the instant sale proposal was prepared hurriedly in a matter of days as a hasty response to the failed Prior Merger Agreement.[4] Approving a deal under those circumstances, where the result of the sale is virtually tantamount to the approval of a bankruptcy plan, is inappropriate. Rather, at a minimum, a process should be put in place to ensure that the stock of the Underwriting Companies, and if possible other assets of LFG, are sold at a price that will maximize the value to the stakeholders.

4. It is also respectfully submitted that the following issues should be examined properly in connection with the Sale Motion:

i) Has LFG exercised sound business judgment in negotiating the sale of stock of the Underwriting Companies with only one suitor over the course of just a few days?

ii) To what extent has this transaction been structured so as to benefit management rather than to maximize the return to stakeholders?[5]

iii) To what extent was cash and/or assets of LFG and/or the Underwriting Companies used to fund payments to LES customers? Why do LFG and other

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from the December 3, 2008 issue of the Wall Street Journal relating to these concerns is attached hereto as Exhibit 1.

[4] Unless otherwise provided, capitalized terms not defined herein shall have the meanings ascribed to them in the Sale Motion.

[5] In an effort to make this determination, the Committee would like to be made aware of the existence and substance of any discussions between the Buyers and LFG regarding compensation or future employment and any agreements that may have been entered into regarding those subjects. Disclosure of that information is typically appropriate. In fact, the local rules of other jurisdictions require the disclosure of such information. *See* Local Rules for the Bankruptcy Court for the District of Delaware, R. 6004-1(b)(iv)(B). This may have the effect of disclosing why management at LFG is attempting to proceed with a private sale of the Underwriting Companies to the Buyers without an open auction process or even disclosing what other suitors, if any, were approached in the private sale process.

LFG subsidiaries owe approximately $150 million in inter-company debt to the Underwriting Companies?

iv) How much cash on hand did LFG have available to it on the Petition Date? How much cash on hand does LFG have available to it now? Is LFG continuing to move cash among affiliates as it had done pre-petition? How much cash on hand will LFG have following the closing date for the transaction proposed in the Sale Motion? How much cash, if any, has been transferred just prior to and after the Petition Date from LFG to the Underwriting Companies or to other affiliates? To whom does this transferred money belong as a legal matter, and how are these funds being treated as an accounting/bookkeeping matter?

v) Why did LFG facilitate the transactions with LES described in paragraph 10 of the Sale Motion and how did this impact the value of the Underwriting Companies? Namely, the $65 million advanced by LFG to LES beginning in September, 2008; the $40.1 million transfer of liquid and marketable securities from the Underwriting Companies to LES in October, 2008 in exchange for LES transferring $55.6 million in auction rate securities to the Underwriting Companies; and the $22.9 million transfer of liquid and marketable securities from the Underwriting Companies to LES in November, 2008 in exchange for LES transferring $33.3 million in auction rate securities to the Underwriting Companies.

vi) What effect do the title insurance reinsurance agreements among Fidelity National Financial, Inc. ("FNF") and the Underwriting Companies have on the Debtors' estates?[6]

5. Added to this, at least three matters give rise to significant concerns about whether the Debtors' estates are being administered in a fashion suggestive of possible self-dealing or conflicts of interest. Those issues are:

i) Debtors' counsel has advised counsel for the Committee that the Underwriting Companies, and perhaps others, may assert claims to cash held in LFG's bank accounts on the Petition Date. On top of this, the Committee believes that there is management overlap between the Debtor and its wholly-owned Underwriting Companies. Because it is these very Underwriting Companies that may assert claims to millions of dollars of estate funds, a full understanding as to who has been protecting LFG's interests, as opposed to those of the Underwriting Companies, and how, must be obtained before the sale can be approved. Even leaving this aside, the Committee submits that the mere fact that the stock purchase agreement between the Buyers and LFG (the "Stock Purchase Agreement") leaves completely unclear the effect this sale will have on LFG's cash post-closing by itself means that this transaction needs to be clarified, if not modified, before it could reasonably be found to be in the best interests of the Debtor's creditors.

ii) The Sale Motion treats similarly situated creditors differently. The Stock Purchase Agreement purports to have the Buyers assume LFG's alleged inter-

[6] A copy of the press release published by FNF announcing the signing of the Reinsurance Agreements is attached to the Objection as Exhibit 2 and is available at http://www.investor.fnf.com/releasedetail.cfm?R0eleaseID=350993&COMPID=FNT.

company debt in full, thus preferring insiders holding unsecured claims against LFG -- the Underwriting Companies -- over other parties with similarly situated (if not senior) unsecured claims against LFG.

iii) Further, the Stock Purchase Agreement purports to have the Buyers assume "approximately $45 million in deferred compensation liabilities and certain other employee-related liabilities." *The Sale Motion* ¶ 21(b). The apparent effect of this is that the claims of LFG's directors and officers against LFG are paid in full, thus receiving preferential treatment over the claims of other similarly situated (if not senior) creditors. Thus, yet again, LFG proposes to elevate the rights of some unsecured creditors over other similarly situated unsecured creditors.

6. Last, but not least, section 510 of the Stock Purchase Agreement leaves open the possibility that assets known as "Southland" as well as "certain other businesses owned" by the Seller or its Affiliates and Subsidiaries (as defined in the Stock Purchase Agreement) may be transferred to the Buyers. Thus, at present, neither the Committee nor the Court knows for certain what LFG intends to sell.

BACKGROUND

7. On November 26, 2008 (the "Petition Date") LFG and LES (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are continuing in possession of their property and have continued to operate and maintain their businesses as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

8. On the Petition Date, LFG filed the Sale Motion, pursuant to which it seeks to sell its stock in the Underwriting Companies to the Buyers for approximately $298 million.

OBJECTION

I. The Sale is A Sub Rosa Plan and Should Be Denied.

9. The Sale Motion should be denied because a sale of substantially all of a debtor's assets that runs afoul of the plan disclosure requirements should not be approved. *See In re Braniff Airways, Inc.,* 700 F.2d 935, 939-940 (5th Cir. 1983) (holding court is without authority under the Bankruptcy Code to approve a transaction which has the practical effect of dictating some of the terms of any future reorganization plan because this would allow the bankruptcy judge and the debtor to "short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets."); 3 *Collier on Bankruptcy* ¶ 363.02[4], at 363-19 (15th ed. rev. 1997) (stating that "[b]ecause there is some danger that a section 363 sale might deprive parties of substantial rights inherent in the plan confirmation process, sales of substantial portions of a debtor's assets under section 363 must be scrutinized closely by the court").

10. LFG has stated in its 2007 10K filed with the SEC that title operations, most of which are at the Underwriting Companies, comprised 88-90% of LFG's total revenue. *See also the Sale Motion* ¶ 4. The Sale Motion should be denied because it seeks to transfer substantially all of LFG's assets without satisfying any of the disclosure requirements for a plan, namely the requirements stated in section 1125 of the Bankruptcy Code.

II. The Sale is Not in the Best Interests of the Debtors' Estates and Should Be Denied.

11. This Court must determine whether the sale of the Underwriting Companies is in the best interests of the Debtors' estates. *See In re Planned System, Inc.*, 82 B.R. 919, 923

(Bankr. S.D. Ohio 1988); *In re Borne Chemical Co*., 54 B.R. 126, 131 (Bankr. D.N.J. 1984); *see also In re WBQ P'ship v. Va. Dep't of Medical Assistance Servs.* (*In re WBQ P'ship*), 189 B.R. 97, 102 (Bankr. E.D. Va. 1995) (holding for a sale motion to be approved the debtor must prove "(1) a sound business reason or emergency justifies a pre-confirmation sale; (2) the sale has been proposed in good faith; (3) adequate and reasonable notice of the sale has been provided to interested parties; and (4) the purchase price is fair and reasonable.").

The Sale Process Lacks Fairness and Adequacy and is Not in the Best Interests of the Estate

12. The $298 million sale price (plus the apparent assumption of some intercompany obligations) proposed in the Sale Motion appears to be inadequate. The Sale Motion states that LFG originally executed and announced a Prior Merger Agreement. The terms of the Prior Merger Agreement are not disclosed in the Sale Motion, so neither this Court, nor other parties in interest, can determine what transfers were contemplated by it. However, a news report indicates that the value of the deal contemplated by the Prior Merger Agreement would have cost FNF about $800 million.[7] On November 21, 2008, five days before the Petition Date, FNF exercised a "diligence out" and terminated the Prior Merger Agreement.

13. Now, LFG is to have this Court believe that it is in the best interests of all stakeholders in LFG to rush through a sale where the value of the acquired entities has somehow managed to decline by over $500 million in just five days, even though the Buyers are still acquiring the Underwriting Companies, which account for nearly 90% of LFG's annual revenue. *See the Sale Motion* ¶ 4. This Court should not put its stamp of approval on such an inadequate

[7] A copy of the news report is attached to the Objection as Exhibit 3. Further, in its 10Q filing with the SEC for the third quarter of 2008, LFG notes that the proposed Merger Agreement with FNF "is structured to repay the Note Purchase Agreement and Credit Agreement and [LFG] ha[s] taken and continue[s] to take actions to address the issues discussed above, [but] there can be no assurances that [LFG] can negotiate an acceptable solution with [its] lenders or obtain alternative financing, that [its] liquidity and capital resources will be sufficient to meet [its] short-term and long-term needs or that [it] will be able to consummate the merger with Fidelity."

sale price, nor should this Court conclude, given the previous offer for the Underwriting Companies, that accepting $298 million without determining what other potential purchasers may be out there is in the best interests of the Debtors' estates. It should be noted that it appears that no efforts were made by LFG pre-petition to sell the stock of the Underwriting Companies.

14. The Sale Motion provides that the proposed sale of the Underwriting Companies "will result in the highest and best recovery for LFG . . . ." *The Sale Motion* ¶ 29. However, LFG has not produced any evidence of the market value of the Underwriting Companies or alternative sale proposals by other prospective buyers. At this time, there is no way for this Court to determine if LFG is receiving the highest and best recovery or that the sale price even comports with the current market value for the Underwriting Companies. In fact, counsel for the Committee has thus far been contacted on several occasions by parties who have expressed an interest in purchasing the Underwriting Companies. Therefore, the private sale price should be considered inadequate and a process should be put in place to provide an adequate opportunity for other potential purchasers to bid. *See In re Planned System, Inc.*, 82 B.R. at 923 (holding that subject property be sold by way of public sale, as opposed to private sale, because there was no evidence as to the fair market value of the property being sold).

15. The Federal Rules of Bankruptcy Procedure permit a debtor-in-possession to sell property of the bankruptcy estate through either a public or private sale. Fed. R. Bankr. P. 6004(f)(1). However, Courts generally favor "the public sale of property of the estate as opposed to a private sale." *In re Planned System, Inc.*, 82 B.R. at 923. Private sales should only be permitted where the debtor has demonstrated, on the record, that an emergency exists to do so. *See In re Ancor Exploration Co.*, 30 B.R. 802, 808-09 (N.D. Okla. 1983) (considering bankruptcy court approval of a private sale of substantially all of the debtor's assets, the Court

remanded the matter because the record was inadequate "to yield the specific findings required as a necessary predicate for approval of the sale," namely, "No emergency was presented . . . .").

16. The Debtors are trying to push this sale through the Court too quickly and without proper disclosure against the interests of all stakeholders in these bankruptcy proceedings. Apparently, LFG's efforts to sell the Underwriting Companies have only involved private discussions with a hand-picked potential buyer. Such discussions did not even begin until just days before the Petition Date. *The Sale Motion* ¶ 15. Now the Debtors seek approval of the sale of the Underwriting Companies on shortened notice where there appears to be evidence of mismanagement at LFG and LES that had the effect of drawing money away from the very objects of the proposed sale, the Underwriting Companies.[8] *The Sale Motion* ¶ 10. This Court and the creditors are entitled to know what the Underwriting Companies would have been worth if millions of dollars were not siphoned off from them to stanch LES's liquidity problem.

17. LFG has provided inadequate detail as to why the Underwriting Companies will lose considerable value if the sale is not consummated immediately. It appears that this Court and the stakeholders are to take the assertion that there will be "significant value deterioration" largely on faith. *The Sale Motion* ¶ 18. This is simply inappropriate; rather, the issue should be examined carefully. This is especially so since, as shown, LFG seeks to transfer substantially all of its assets through this sale to the Buyers.

18. There is no emergency need at this time to sell the Underwriting Companies by way of a private sale. Under the Reinsurance Agreements,[9] as the Underwriting Companies conduct new business, FNF will assume 100% of the risk. Far from indicating an emergency,

[8] The Committee reserves the right to seek the appointment of a trustee or examiner in connection with this matter or any other matters that may arise in this bankruptcy proceeding.

[9] The Reinsurance Agreements are attached to the Objection as Exhibit 4.

the Reinsurance Agreements appear to provide stability to enable the Underwriting Companies to conduct business for the foreseeable future.

19. It should be noted that counsel for the Committee has been contacted by parties expressing interest in purchasing the Underwriting Companies, but who have had no ability prior to the Petition Date to participate in the due diligence necessary to consider making an offer for the stock of the Underwriting Companies. The Committee needs to depose persons with knowledge of this transaction at LFG (and elsewhere) about the sale process to determine what strategic alternatives were considered, the nature of the negotiations that took place, the fundamental value of the businesses, and whether other offers were sought or entertained. The Debtors have agreed to expedited discovery in this regard.

20. This Court cannot be sure that the sale price for the Underwriting Companies is fair (or that it is anywhere near market price) or that the process used to elicit the sale price from the Buyers was fair. LFG has produced no evidence that gives this Court any reason to believe that the Buyers are going to leave the scene if the sale is not consummated by December 16, 2008. Fundamentally, the Debtors are liquidating. No payment to creditors will be made from future operations. The interests and opinions of creditors therefore, should be paramount. Deference should be given to the wishes of the creditors.

Possible Mismanagement at LFG and LES

21. At this time, there is reason to believe that irregularities took place at LES and that LFG played a role in the losses the Debtors have suffered. The possible irregularities center on Exchange Agreements entered into between LES and LES' 1031 customers (collectively, the "Exchange Agreements").[10] Perhaps unbeknownst to its customers, LES placed customer investments in auction rate securities. However, auction rate securities began facing a severe

[10] A copy of a prototype Exchange Agreement is attached to the Objection as Exhibit 5.

liquidity crisis starting in February of 2008. This crisis strained LES' ability to return funds to its customers pursuant to the Exchange Agreements. To combat this problem, it appears that LFG and LES took money from LFG and the Underwriting Companies to plug the liquidity holes at LES. *The Sale Motion* ¶ 10.

22. This is what is known to date: The Exchange Agreements provide that "LES will deposit the Exchange Funds in an account maintained at SunTrust Bank in Richmond, Virginia . . . ." *The Exchange Agreements* ¶ 3(a). That same section of the Exchange Agreements also references "deposit insurance," an apparent reference to an FDIC-insured account. But instead of depositing Exchange Funds into an FDIC-insured account, LES invested those funds in auction rate securities. LFG acknowledges this fact in the Sale Motion, when it states that it "invested a portion of the Exchange Funds transferred to it in investment grade securities rated A or stronger at the time of the investment, including auction rate securities . . . ." *The Sale Motion* ¶ 9.

23. It appears that LFG facilitated millions of dollars of transfers from the Underwriting Companies and from LFG in an attempt to address the liquidity crisis at LES. *The Sale Motion* ¶ 10. In that regard, the Sale Motion references "approximately $150 million of intercompany obligations owed by LFG and its non-debtor subsidiaries . . . to the Underwriting Companies . . . ."[11] Further investigation may reveal that much of this alleged inter-company debt represents money taken from the Underwriting Companies, the very companies now to be sold. The foregoing strongly militates in favor of this Court halting LFG's sale of the Underwriting Companies until this matter is properly investigated.

[11] There was a substantial increase in inter-company debt in 2008. This suggests the increase was likely due to the liquidity crisis at LES, which began in February 2008.

CONCLUSION

WHEREFORE, for all of the reasons set forth above, the Committee respectfully requests that the Sale Motion be denied and that the Court grant such further relief as it deems just and proper.

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

/s/ Christopher L. Perkins
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December 2008, a true and correct copy of the foregoing Initial Objection By The Official Committee of Unsecured Creditors To The Debtors' Motion For An Order (A) Scheduling Expedited Sale Hearing To Consider Approval Of Sale Of Debtor's Stock In Certain Underwriting Subsidiaries; (B) Approving Related Stock Purchase Agreement; (C) Approving Form And Manner Of Notice Of Sale Hearing; And (D) Granting Related Relief was served on all persons receiving electronic notice in these cases, including the following:

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