

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION., <u>et al.</u> , ¹)	Case No. 09-12074 (KJC)
)	(Jointly Administered)
)	
Debtors.)	Related to Docket Nos. 817 & 917

The Debtors granted Weis an extension to file a
Reply until 1/25/10 at 10:00 a.m.

**REPLY TO DEBTORS' OBJECTION TO WEIS BUILDERS, INC.'S MOTION
FOR ENTRY OF AN ORDER ENLARGING THE CLAIMS BAR DATE**

Weis Builders, Inc. ("Weis"), by and through its undersigned counsel, respectfully submits this Reply (the "Reply") to the Debtors' Objection [D. I. 917] (the "Objection") to Weis Builders, Inc.'s Motion for Entry of an Order Enlarging the Claims Bar Date (the "Motion")² [D.I. 817]. In support of this Reply, Weis respectfully states as follows:

REPLY

1. The Objection observes that Weis had actual notice of the bankruptcy filing and implies that notice of the bankruptcy case in general satisfies notice of the deadline for filing proofs of claim (the "Claims Bar Date"). See Obj. ¶¶ 5 & 17. This Court made it clear in *Grand Union* that notice of the bankruptcy is not enough to satisfy the requirements of due process. *In re The Grand Union Co.*, 204 B.R. 864, 870 (Bankr. D. Del. 1997) (*stating* ("[a] claimant, who is not apprised with reasonable notice of the bar date, is not bound by the legal effects of the confirmation of the plan and should be allowed to file a late proof of claim.")). See also *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995).

¹ The Debtors consist of the following 12 entities: Building Materials Holding Corporation, BMC West Corporation, SelectBuild Construction, Inc., SelectBuild Northern California, Inc., Illinois Framing, Inc., C Construction, Inc., TWF Construction, Inc., H.N.R. Framing Systems, Inc., SelectBuild Southern California, Inc., SelectBuild Nevada, Inc., SelectBuild Arizona, LLC, and SelectBuild Illinois, LLC.

2. In accordance with due process, *Grand Union* requires that debtor's counsel provide a creditor's attorneys notice of the claims bar date if the creditor's counsel was specifically known by the debtors and had a preexisting involvement with debtor's counsel with respect to claims against the debtors. *Id.* at 870. It is clear from the facts set forth in the Motion that Weis's lead counsel in the State Court Action, Burch & Cracchiolo, P.A. ("B&C"), and Debtors' counsel in both the State Court Action and the bankruptcy case had a preexisting involvement which included numerous emails, telephone conversations, letters, voicemessages, and an in-person meeting. Thus, *Grand Union* dictates that notice of the Claims Bar Date should be provided to B&C and the Debtors' failure to do so renders notice of the Claims Bar Date to Weis insufficient.

3. Furthermore, at least one Court in this District has held that when counsel for a debtor is put on notice by certain counsel for a creditor that a creditor intends to file a proof of claim, the debtor has an affirmative duty to include that counsel on the claims bar date notice mailing list. *See Tr. AFY Holding Company*, 08-12175 (PJW) (March 5, 2009) at pages 25 to 26, attached hereto as **Exhibit A**. In this case, B&C clearly indicated to counsel for the Debtors that Weis intended to seek to lift the automatic stay. *See MacBeth Affidavit* at ¶ 27 & 28 attached to the Motion. Any reasonable bankruptcy attorney would conclude that a creditor that intends to seek to lift the automatic stay to proceed with its claim against the debtor would likewise file a proof of claim. Thus, similar to the debtor in *AFY Holdings*, the Debtors in this case were undoubtedly put on notice of B&C's intention to file a proof of claim. That notice should have prompted the Debtors to include B&C on the Claims Bar Date notice mailing list. Because the

² All capitalized terms used and not defined herein shall have the meaning ascribed to them in the Motion.

Debtors did not do this, this Court should hold in a similar fashion to the court in *AFY Holdings* and enlarge the Claims Bar Date with respect to Weis.

4. The cases that the Debtors cite to in support of the Objection are easily distinguished from the facts in this case. Specifically, the case law that the Debtors rely on are governed by federal and local rules of appellate procedure that have no applicability to the issues at bar. For example, the Debtors cite to *Marcangelo v. Boardwalk Regency* in support of their argument that relief requesting an extension of an expired deadline should not be granted when notice was sent to local counsel and not to a party's lead counsel. Obj. ¶ 11. *Marcangelo v. Boardwalk Regency*, 47 F.3d 88 (3d Cir. 1995). In *Marcangelo*, however, the Third Circuit Court of Appeals' ruling was premised primarily on "Local Rule 4(C) [that] provides that the clerk's office will send copies of court orders only to local counsel, even when out-of-state counsel has appeared pro hac vice." The court in *Marcangelo* also relied on the text of Federal Rule of Appellate Procedure 4(a)(6). *Id.*

5. As a result, *Marcangelo* and the other cases that the Debtors rely upon are wholly inapplicable to the facts in this case. The controversy in this case centers on notice of a claims bar date governed by due process principles set forth in *Grand Union*, not notice of entry of a court order governed by specific local rules of appellate procedure. Moreover, in the cases relied upon by the Debtors, the rules specifically prescribed to whom notice was to be provided by the clerk of the court and specifically excluded out of state counsel. It is no surprise that failure of out of state counsel to have received notice did not provide a basis to extend the deadline to appeal. The cases cited by the Debtors in support of the Objection are clearly irrelevant and inapplicable.

6. The Debtors also contend that “[i]f Weis is allowed to file late, every single other late filer will be able to make essentially the same argument that their late claims should be allowed.” Obj. ¶ 20. In *Inacom*, the Delaware District Court disagreed with the Delaware Bankruptcy Court regarding whether allowance of a claim would open the floodgates of litigation. See *In re Inacom Corp.*, 2004 WL 2283599 (Bankr. D. Del. 2004). In that case, the District Court concluded that the Debtors’ failure to identify any other *similarly situated* creditor weighed in favor of granting the requested relief.³

7. The Debtors’ argument incorrectly presupposes the fact that every other late filer is in a similar situation as Weis. It is difficult to believe that every single other late filer will claim that its failure to timely file a proof of claim was a result of the following facts: (i) notice of the Claims Bar Date sent to the creditor’s local counsel, but not to lead counsel; (ii) the notice sent to local counsel incorrectly listed the attorney and law firm as the creditor on the proof of claim forms; (iii) the creditor’s name did not appear anywhere in the documents; (iv) the underlying state court action was a construction litigation dispute wherein counsel regularly seek recovery of their fees and expenses from insurance if their claim is successful, and thus, it was reasonable for local counsel to believe that the proof of claim form related solely to him and his firm, and not to the creditor directly; and (v) the creditor’s lead counsel had a preexisting involvement which included numerous exchanges and interactions with debtor’s counsel in both the bankruptcy case and the underlying state court action. The Debtors have not identified any *similarly situated* creditor who filed or plans to file a motion to enlarge the Claims Bar Date.

8. Finally, the Debtors assert that extending the Claims Bar Date as it relates to Weis would “be a fruitless enterprise because ‘Weis seeks to recover on any judgment it obtains

³ In *Inacom*, the claimant filed a motion to reconsider its claim, rather than a motion to enlarge the bar date.

against the Debtors solely from available insurance coverage” and that no such coverage exists due to the existence of provisions regarding self insured retention (“SIR”) and deductibles. Obj.

¶ 22. As explained at length in the Motion, Weis is identified as an Additional Insured on three of the Debtors’ insurance policies (collectively, the “Policies”). One of these policies includes an SIR and the remaining two include deductible policies.

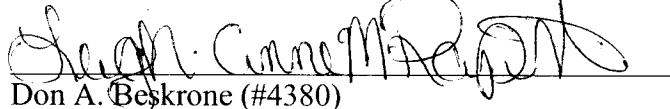
9. The Debtors ignore the differences between an SIR and a deductible. Deductibles differ from SIRs in several important respects, the key distinguishing characteristic of a deductible being that it is payable by the insured at the end of the claim rather than at the beginning. As a result, an insured who has obtained a policy with a deductible, as opposed to an SIR, has “first dollar coverage.” In other words, the insurer is obligated to pay defense costs of a potentially covered claim from the beginning and the amount of the deductible will be assessed only after the claim is resolved. In contrast, SIRs require the insured to pay the “first dollars” expended in a claim before the insurance carrier’s obligations arise.

10. In this case, Weis would receive “first dollar coverage” on the deductible policies. The insurers have a direct contractual obligation to Weis to cover its claims. As a named Additional Insured Party on the policies, Weis now seeks recovery from these policies. Thus, Weis seeks to enlarge the bar date for the sole purpose of proceeding against the Debtors’ insurance carriers.

For the reasons set forth herein and in the Motion, the Court should grant the proposed Order attached to the Motion: (i) granting Weis fourteen (14) days from the entry of the Order approving the Motion to file its Claim which will be deemed as timely filed; and (ii) granting Weis such other and further relief as the Court deems just and appropriate.

Dated: January 25, 2010

ASHBY & GEDDES, P.A.

A handwritten signature in black ink, appearing to read "Leigh-Anne M. Raport", is written over a horizontal line.

Don A. Beskrone (#4380)

Leigh-Anne M. Raport (#5055)

500 Delaware Avenue, 8th Floor

P.O. Box 1150

Wilmington, Delaware 19899

Tel: (302) 654-1888

Attorneys for Weis Builders, Inc.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: . Case No. 08-12175 (PJW)
AFY HOLDING COMPANY . (Jointly Administered)
a Delaware corporation, and . Chapter 11
AMERICAN FIBERS AND YARNS COMPANY . Courtroom 2
COMPANY, a Delaware corporation . 824 Market Street
Debtors. . Wilmington, DE 19801
March 5, 2009
2:00 P.M.

TRANSCRIPT OF PROCEEDINGS
BEFORE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor and Young Conaway Stargatt &
Debtors in Possession: Taylor, LLP
BY: ROBERT F. POPPITI, JR.,
BY: CURTIS CRUWILHER, ESQ.
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801
(302) 571-6600

For the Committee: Lowenstein Sandler, PC
BY: ERIC HORN, ESQUIRE
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500
Ashby & Geddes, PA
BY: AMANDA M. WINFREE, ESQ.
222 Delaware Avenue, 17th Fl.
P.O. Box 1150
Wilmington, Delaware 19899

ECRO: JENNIFER PASIERB

Transcription Service: DIAZ DATA SERVICES
331 Schuylkill Street
Harrisburg, PA 17110
(717) 233-6664

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

1 APPEARANCES:

2 (Continued)

3 For Absecon Mills, Inc.:

Cozen O'Connor

4 BY: JEFF WAXMAN, ESQ.

5 BY: ARTHUR ABRAMOWITZ, ESQ.

6 One Gateway Center

Suite 2600

7 Newark, New Jersey 07102

(973) 353-8400

8 For Amper Politziner &
9 Mattia, LLP:

EDWARD PHILLIPS, ESQ.

2015 Lincoln Highway

P.O. Box 988

10 Edison, New Jersey 08818

(732) 287-1000

(via teleconference)

11 For Johnston Textiles:

Benesch, Friedlander, Coplan &
12 Aronoff, LLP

13 BY: JENNIFER HOOVER, ESQ.

222 Delaware Avenue, Ste. 801

14 Wilmington, DE 19801-1611

(302) 442-7006

15

16

17

18

19

20

21

22

23

24

25

1 THE COURT: Please be seated.

2 MR. POPPITI: May it please the court, Your Honor,
3 Rob Poppiti on behalf of the debtors. Your Honor, I'll be
4 working from the Notice of Agenda of Matters scheduled for
5 today's hearing which the debtors filed this past Tuesday,
6 March 3.

7 THE COURT: Okay.

8 MR. POPPITI: The first item, Your Honor, relates
9 to the second rejection motion and we actually filed this
10 under certification of counsel, but your scheduling clerk
11 has advised me you've not yet entered this one. So I don't
12 know if the court had any questions --

13 THE COURT: No. I'll get around to it. I'll sign
14 it.

15 MR. POPPITI: Okay. Thank you, Your Honor. The
16 second item on today's agenda, Your Honor, is the interim
17 fee request. The interim fee request, Your Honor, with
18 respect to the debtors' professionals relate to Young
19 Conaway's first through the third, the applications for the
20 period September 23 through November 30, 2008 and also with
21 respect to the debtors' financial advisors, RES Management
22 Advisors, LLC, and that's also with respect to the first
23 through the third fee applications for the period September
24 23, 2008 through November 29, 2008. I don't know if Your
25 Honor has any specific questions that he has and I could

1 address them.

2 THE COURT: Okay. No. I have no --

3 MR. POPPITI: Okay.

4 THE COURT: -- questions. I'll approve them.

5 MR. POPPITI: Your Honor, the requests also relate
6 to the Committees and their professionals. I don't know if
7 Your Honor has any specific requests for them.

8 THE COURT: No.

9 MR. POPPITI: All right. May I approach with a
10 form of order, Your Honor?

11 THE COURT: Yes.

12 MR. POPPITI: Thank you.

13 THE COURT: Next?

14 MR. POPPITI: The third item on today's agenda,
15 Your Honor, is the Motion of Absecon Mills for Leave to File
16 Late Proof of Claim. With that, I'll turn the podium over
17 to Absecon Mills and my colleague, Curtis Cruwilher, will be
18 handling it for the debtors.

19 THE COURT: Okay.

20 MR. WAXMAN: Good afternoon, Your Honor. Jeff
21 Waxman of Cozen O'Connor on behalf of Absecon Mills. Your
22 Honor, behind me is my colleague, Arthur Abramowitz. He is
23 admitted to the District of New Jersey and Your Honor signed
24 the motion approving his pro hac motion earlier today.

25 THE COURT: Okay.

1 MR. WAXMAN: Mr. Abramowitz will be handling the
2 hearing.

3 MR. ABRAMOWITZ: Good afternoon, Your Honor.

4 THE COURT: Yes.

5 MR. ABRAMOWITZ: If I could just be brief. The
6 issues are such that most of the issues are uncontested, at
7 least to the acts. Proof of claim deadline was December 5
8 and I would note that at that time, we were retained solely
9 with regard to certain litigation. A proof of claim was
10 filed approximately 50 days after the bar date and I
11 understand what the state of the law is and I would like to
12 address those issues which may have some sway as to our
13 position.

14 THE COURT: Okay.

15 MR. ABRAMOWITZ: Number one, it's clear that one
16 issue that is obviously germane to this is prejudice and I
17 would note for the record that the AFY argues that it would
18 be prejudiced if the motion is granted because its claim --
19 our claim would be the largest claim in the case and would
20 throw a "wrench" in the plan negotiations. It's also an
21 assertion that it would encourage other creditors to ignore
22 bar dates and set a bad precedent. In response, I would
23 note that first the debtors ceased operations in October.
24 Number two, a plan has not yet been filed. Number three,
25 this is a liquidation case and it's unlikely that anything

1 will germinate from this case other than a pot plan.
2 Therefore, we do not believe that there would be prejudice.
3 I would also note that a number of courts have held that a
4 lower distribution to other creditors cannot be prejudicial
5 because in every case that would occur and that can't be a
6 benchmark with regard to these determinations. I think the
7 courts have looked at prejudice based upon whether a plan
8 has been confirmed or submitted versus one being still under
9 negotiation and I would refer to the O'Brien case that we
10 mentioned in our papers. Another factors is that although
11 the claim was filed late, there was notice of our claim in
12 correspondence dated October that was sent to Mr. Poppiti at
13 Young Conaway indicating that we asserted a counterclaim of
14 approximately or totaling \$6 million. The second aspect --

15 THE COURT: I'm sorry. This -- what was that
16 correspondence?

17 MR. ABRAMOWITZ: There was correspondence dated
18 October 15, Your Honor, 2008 that was sent to Mr. Poppiti in
19 response to a demand letter wherein Absecon --

20 THE COURT: I'm sorry. Let's back up and let me
21 make sure I have the dates correct.

22 MR. ABRAMOWITZ: Your Honor --

23 THE COURT: Well --

24 MR. ABRAMOWITZ: -- I will just note the --

25 THE COURT: When was the petition date?

1 MR. ABRAMOWITZ: Bear with me one second.

2 THE COURT: Okay. I see it.

3 MR. ABRAMOWITZ: September 23 --

4 THE COURT: 9/23 --

5 MR. ABRAMOWITZ: -- Your Honor.

6 THE COURT: -- '08.

7 MR. ABRAMOWITZ: Yes.

8 THE COURT: 9/23.

9 MR. ABRAMOWITZ: Yes.

10 THE COURT: Okay. '08. And your letter of
11 October 15, is that attached to your motion?

12 MR. ABRAMOWITZ: Your Honor, I went through the
13 correspondence this morning before I came to the -- to court
14 to see if there was anything that we would have that would
15 show anything that may not have been filed but may have been
16 notification. If the court would like, I'd be happy to
17 provide this letter or give the letter to my adversary and I
18 would supplement it with a further certification.

19 THE COURT: Okay. Let me see it.

20 MR. CRUWILHER: We actually have a copy, Your
21 Honor.

22 THE COURT: Okay. Okay. And this was not
23 referenced in your motion --

24 MR. ABRAMOWITZ: That is --

25 THE COURT: -- papers?

1 MR. ABRAMOWITZ: -- correct, Your Honor.

2 THE COURT: Okay.

3 MR. ABRAMOWITZ: I would be -- if the court would
4 allow, I would certainly provide a certification to the
5 effect that it was sent. But clearly on the record you have
6 a receipt by my adversary. But I would be happy to at least
7 supplement the record to at least provide some basis for
8 inclusion in the record.

9 MR. CRUWILHER: Your Honor, in the spirit of
10 candor with the court, I think it should be considered by
11 the court --

12 THE COURT: Okay.

13 MR. CRUWILHER: -- and it should be deemed to have
14 been --

15 THE COURT: Okay.

16 MR. CRUWILHER: -- attached.

17 THE COURT: So your firm received it?

18 MR. CRUWILHER: Absolutely.

19 THE COURT: Okay.

20 MR. ABRAMOWITZ: And I apologize again, Your
21 Honor. I just noticed this this morning and had my
22 secretary make a copy on the way in. Second aspect, Your
23 Honor, that I would like to address has to do with length of
24 delay and I think again this relates to prejudice and as
25 cases have held, in particular Enron, it must be viewed

1 within the context of the case. In O'Brien, although there
2 was a delay of 10 weeks after the bar date and four weeks
3 after a creditor learned of the bar date, although it would
4 not have been significant in the absolute case, in that
5 particular case it was significant because the debtors' plan
6 became effective during that span. So I think that we have
7 to talk about not a rigid determination but the
8 circumstances of the case to see where in fact there will be
9 prejudice. With regards to the reasons for delay, Your
10 Honor, I can only indicate that there was a delay. There
11 was a delay for approximately 50 days. I understand that
12 the delay is as a result of trying to assemble information
13 and verify that it would be accurate. I can't indicate
14 anything else other than there was an understanding that
15 there was a bar date, but the clients were insistent that
16 they wanted to make sure that whatever was submitted had
17 some basis. As far as the last tenant of good faith, Your
18 Honor, there's no reason that we are required to contact our
19 adversaries before filing the motion. We certainly believe
20 that we have acted in good faith. We would also note, Your
21 Honor, that in terms of litigating the claim, the claim is
22 ultimately going to have to be litigated because it's going
23 to be part of a counterclaim to a lawsuit that has been
24 filed which is the subject matter of item number five a
25 little later having to do with the adversary proceeding. So

1 that I think if you look at this telescopically as opposed
2 to microscopically --

3 THE COURT: Let me --

4 MR. ABRAMOWITZ: -- there's no --

5 THE COURT: -- ask you a question.

6 MR. ABRAMOWITZ: Yes.

7 THE COURT: As I understand it, you have
8 counterclaimed in the adversary proceeding brought by the
9 debtor --

10 MR. ABRAMOWITZ: Yes.

11 THE COURT: -- and that counterclaim is your claim
12 asserted -- or -- asserted in the proposed proof of claim.

13 MR. ABRAMOWITZ: Essentially it is, Your Honor.
14 Yes.

15 THE COURT: Does your failure to file within the
16 bar date preclude your asserting the counterclaims?

17 MR. ABRAMOWITZ: We don't believe that it does,
18 Your Honor.

19 THE COURT: Is there any case law on that?

20 MR. ABRAMOWITZ: Your Honor, I would be certainly
21 happy to check that determination. But I know that we would
22 have certain offset rights and affirmative rights. Again, I
23 understand that there are -- there is case law that if
24 you're going to assert a counterclaim that there may be a
25 requirement at some point to move to at least address stay

1 issues if the claim is going to be asserted, at least if
2 that were in a non-bankruptcy situation. Within a
3 bankruptcy situation, I have not been confronted where
4 there's a waiver by failing to file the claim. I would be
5 happy to have that addressed, Your Honor, if you would like
6 by supplemental brief.

7 THE COURT: Okay. I'm surprised there's no case
8 law on that.

9 MR. ABRAMOWITZ: I'm not saying there is no case
10 law --

11 THE COURT: Oh, okay. I'd be surprised if there
12 is no case law.

13 MR. ABRAMOWITZ: Right. I would be surprised,
14 too. I did not address it.

15 THE COURT: Well, if you're right and that
16 asserting the counterclaim notwithstanding that you did not
17 timely file a proof of claim that counterclaim can be
18 pursued, if that's the law, end of discussion. Isn't it?

19 MR. ABRAMOWITZ: Your Honor, I don't want to
20 assert for today's hearing that it is the law. I'm not that
21 cavalier. I would certainly be more than happy to submit
22 what the state of the law is before a determination is made
23 by the court. I don't know if it's germane to the thinking
24 or not. It should be in this sense in that it is still a
25 claim which we believe is a legitimate claim which the --

1 which our adversaries at least had notice of in terms of the
2 gross amount of the claim in the October letter.

3 THE COURT: Let me ask counsel for the debtor as
4 to whether he has a belief as to the law on that issue.

5 MR. CRUWILHER: I do, Your Honor, actually. I
6 believe that they can assert the counterclaim defensively as
7 a set off --

8 THE COURT: Okay.

9 MR. CRUWILHER: -- but not offensively for
10 affirmative recovery.

11 THE COURT: Okay.

12 MR. CRUWILHER: I do not have a case citation.
13 That's my understanding of the --

14 THE COURT: Okay.

15 MR. CRUWILHER: -- state of the law.

16 THE COURT: Okay. That's fine.

17 MR. ABRAMOWITZ: My understanding is as well that
18 it has to do with the extent of offset. I'm not sure that
19 there's an -- right to go above that --

20 THE COURT: And --

21 MR. ABRAMOWITZ: -- Your Honor.

22 THE COURT: -- what is the amount of the claim
23 asserted by the debtors in the adversary?

24 MR. CRUWILHER: Approximately \$1.2 million, Your
25 Honor.

1 THE COURT: Okay. So if Absecon is right, the
2 500,000 would -- I'm sorry. What'd you say --

3 MR. ABRAMOWITZ: Five --

4 THE COURT: -- your claim was?

5 MR. ABRAMOWITZ: -- million --

6 THE COURT: A million?

7 MR. ABRAMOWITZ: -- dollars. Five million --

8 THE COURT: Five --

9 MR. ABRAMOWITZ: -- would --

10 THE COURT: I'm sorry. Back up. The debtors'
11 claim in the adversary is how much?

12 MR. CRUWILHER: Approximately \$1.2 million --

13 THE COURT: 1.2 --

14 MR. CRUWILHER: -- Your Honor.

15 THE COURT: -- million.

16 MR. ABRAMOWITZ: Absecon is --

17 THE COURT: And your --

18 MR. ABRAMOWITZ: -- taking the position that --

19 THE COURT: -- claim is how much? Five hundred --

20 MR. ABRAMOWITZ: Approximately --

21 THE COURT: -- million?

22 MR. ABRAMOWITZ: -- \$5 million, Your Honor. Five-
23 million-dollar counterclaim.

24 THE COURT: Oh, okay. I was looking at the
25 \$500,000 number in your October 15 letter. Oh, okay. I see

1 the last sentence says the -- you could have more claims
2 asserted against you and they could total six million. Is
3 that --

4 MR. ABRAMOWITZ: Right. The claim that we --

5 THE COURT: Okay.

6 MR. ABRAMOWITZ: -- have is \$5,400,000, which
7 would be the proof of claim that we're seeking to file.

8 THE COURT: Okay.

9 MR. ABRAMOWITZ: If I could just conclude, Your
10 Honor.

11 THE COURT: Okay.

12 MR. ABRAMOWITZ: Again I think if we look at this
13 in its totality and in the circumstances of the case, there
14 is no plan. We do not see any prejudice to the estate in
15 having an amendment at this point, particularly where this
16 is going to be a liquidation and in all likelihood a pot
17 plan. The case will be litigated ultimately. It's not a
18 situation where because we filed late, suddenly there has to
19 be -- this issue has to be addressed. It was going to be
20 addressed as a part of the adversary proceeding. It's going
21 to be addressed at that point and we believe that under the
22 -- all of the circumstances of the case, we would be
23 entitled at this time to file an out-of-time proof of claim.

24 THE COURT: Okay.

25 MR. ABRAMOWITZ: Thank you.

1 MR. CRUWILHER: May it please the court, Curtis
2 Cruwilher from Young, Conaway, Stargatt & Taylor on behalf
3 of the debtors. Your Honor, the motion talks about a
4 starting date of December 18 that counsel became involved in
5 as the motion states. It was engaged in protecting the
6 claim of Absecon and to file a proof of claim for Absecon,
7 and that's where the motion starts from their dates. But as
8 Your Honor just saw, the same counsel was involved with this
9 matter since October 15 of 2008. And Your Honor read that
10 letter and I was going to point out to the court a couple of
11 things about it. One, the October 15 letter indicates that
12 they were going to file a proof of claim. That's what it
13 says on October 15. They did not. The letter states that
14 the claim is presently in excess of \$500,000, not 5.4
15 million. Although they project that it might be somewhere
16 at sometime, it's very much bundled up in speculation and
17 conjecture. But it says presently in excess of \$500,000.
18 That's a long way from 5.4 million, which is what they seek
19 to file after they asserted their counterclaim. The courts
20 in this circuit focus primarily as a starting point on the
21 reason for the delay in filing the claim. In this case, the
22 movant has set forth no reason it did not file the claim.
23 The basic tenant of the motion is simply we don't have any
24 notes of receiving it. Well, Your Honor, any creditor can
25 walk in here and say that. We have no record of receiving

1 it. Well, what are your procedures? What is your process?
2 What do you do? No evidence of that here. Simply we don't
3 have it. But what you do have here and what Your Honor has
4 before him now is a letter in October saying we have
5 counsel. We know you've asserted a \$1.2 claim against us.
6 We believe we have defenses and we have a claim that's in
7 excess of \$500,000 and we're going to file a proof of claim.
8 They want us to ask what would a diligent party do. They
9 would file a claim. They're on specific knowledge of the
10 bankruptcy case. They're on specific and actual knowledge
11 of a claim in excess of \$1.2 million asserted against them
12 and yet this Claimant does nothing. Only after they're sued
13 in December of '08 and only after they filed an answer and
14 counterclaim on January 22 of 2009, one week -- well, five
15 days later they then file the motion to file the late claim.
16 There is no explanation as to what was going on, why no one
17 filed a claim, why no one was remotely diligent about the
18 deadlines from October 15 through to January 27, 2009.
19 There is nothing here. The courts in this circuit also view
20 the bar dates as being strictly construed as an integral
21 part of the process of the bankruptcy case. And that's a
22 very good reason to place great emphasis on a reason for a
23 delay. There simply is no reason here. It's the reason
24 every single creditor would assert in trying to file a late
25 claim. I just didn't receive your notice. Well, the

1 affidavit of service shows it was mailed to the direct
2 address for Absecon Mills. That is not disputed either.
3 They just don't have a recollection of getting it. If on
4 December 18, 2008 as set forth in the motion, counsel was
5 charged with protecting its client's claim, Absecon's claim
6 and filing a proof of claim, why wasn't it filed? If on
7 October 15 of 2008, counsel was retained with respect to the
8 litigation that's threatened against Absecon Mills,
9 indicates they're going to file a claim and yet does
10 nothing, that is not acting with diligence. There is no
11 excuse for any neglect that may exist here. That is not a
12 reason for not filing a claim. Threat --

13 THE COURT: Where was the notice of the bar date
14 mailed to?

15 MR. CRUWILHER: I believe our response sets for
16 the website, the address on the website of Absecon Mills.
17 On their website. I don't have the exact address, Your
18 Honor. They do not deny that's their address.

19 THE COURT: Okay. So the documents can't tell me
20 the address?

21 MR. CRUWILHER: The affidavit of -- I do not have
22 the affidavit of service with me, Your Honor, because it was
23 not disputed that it was sent to the proper address.

24 THE COURT: The proper address meaning the address
25 of the Absecon Mills?

1 MR. CRUWILHER: That's correct.

2 THE COURT: Not to its counsel?

3 MR. CRUWILHER: That's correct.

4 THE COURT: Okay.

5 MR. CRUWILHER: Counsel had not entered an
6 appearance in the case, had no requested notices under Rule
7 2002 and was only responding to a demand letter for an
8 accounts receivable claim in defense. Before Your Honor can
9 get to any of the other factors in pioneer, Your Honor first
10 has to find that any neglect in filing the claim is in fact
11 excusable. In the view of the debtor, that is impossible in
12 this case because there has been no demonstration of
13 excusable neglect. The length of the day isn't just 50
14 days. It really goes back to October. Why didn't you file
15 it then? No reason. It's not even mentioned in their
16 motion that they had in fact been engaged in October. Why
17 didn't you file it when you were sued on December 18? The
18 explanation you heard today was that we had to gather
19 information. The former proof of claim, Your Honor, is
20 attached to the motion. It simply is a form which says \$5.4
21 million and has a one-page description. There's no
22 document. There's no evidence. There's nothing that had to
23 be gathered to assert it. They changed the number from
24 October 15 from the up to six million number, but the
25 reality is there's nothing of substance in the proof of

1 claim that would necessitate such a delay and there's simply
2 no explanation for that. Well, there is one explanation and
3 that's ours. The only reason we're here is because Absecon
4 Mills got sued. Absecon Mills want to defend and it's using
5 a counterclaim as leverage. Well, that's wonderful as a
6 litigation strategy, but it is not the way the law is on a
7 late-filed proof of claim. The reason must be annunciated
8 and demonstrated and it has not been here, Your Honor.

9 THE COURT: Any response?

10 MR. ABRAMOWITZ: Yes, Your Honor. Your Honor,
11 I've just presented my adversary with a copy of the
12 affidavit of mailing to respond to your question. Absecon
13 is listed on the mailing and it's listed as a Post Office
14 Box. I can indicate that the facts are the facts. My
15 client has no recollection of ever receiving the document.
16 I can also --

17 THE COURT: Can I see the --

18 MR. ABRAMOWITZ: Certainly.

19 THE COURT: -- address?

20 MR. ABRAMOWITZ: My thumb is right where Absecon
21 is, Your Honor.

22 THE COURT: Okay. I take it, it was not directed
23 to any particular --

24 MR. ABRAMOWITZ: That is correct.

25 THE COURT: -- individual?

1 MR. ABRAMOWITZ: That is correct, Your Honor.

2 THE COURT: Okay.

3 MR. ABRAMOWITZ: I can also advise the court that
4 in connection with the letter, I provided that. I know that
5 it could cut both ways, the October letter, but I would note
6 that we were retained exclusively just to respond to the
7 demand letter that had been sent by the debtor. That being
8 said, our client still took the position and takes the
9 position -- we have examined him and if the court wanted to
10 have an evidentiary hearing on that, I would have no problem
11 with that. But the letter was never directed to anyone, nor
12 do we have any knowledge of its receipt. It is a post
13 office letter. We have a very large firm. I can -- meaning
14 client in Absecon. I can indicate that normally when these
15 situations arise, we would receive or counsel would receive
16 a copy of that claim immediately so that it could be
17 pursued. It was not. Again what we did in terms of the
18 response was it -- respond to the letter or the demand
19 letter that had been made and again looking at the facts, we
20 have no ability to say that it was never sent. I can
21 indicate that there's no recollection of ever having
22 received it and there would be no reason for them not to
23 acknowledge it unless they were trying to somehow justify
24 that as a basis for not filing a timely claim. I would
25 submit, Your Honor, that again if we look at the totality of

1 the facts in this case, it's late. It's 50 days late. I
2 understand that. I can't get around that. It's 50 days
3 after the bar date. As far as the excusable neglect, for
4 whatever reason it was sent to a mailbox of a large company.
5 We've indicated that we did not act on it. The court will
6 have to make a determination of whether that or is not --

7 THE COURT: Tell me --

8 MR. ABRAMOWITZ: -- excusable.

9 THE COURT: -- how big the company is.

10 MR. ABRAMOWITZ: Your Honor, I know that I've been
11 to the property. It's multiple acres. I would assume that
12 it probably employs well over -- again I don't know what the
13 economic conditions are today as to what the impact would
14 be. But in the past, I know that it had debt alone of about
15 \$10 million. It had operations where it was about \$25
16 million or more in sales. So it's a fairly substantial
17 company that deals in this area.

18 THE COURT: Okay.

19 MR. ABRAMOWITZ: Your Honor, again I think that if
20 you look at the prejudice perspective to the case, we don't
21 see it in a case of this nature where it is a liquidation
22 and where a plan has not even been submitted at this date.
23 Thank you.

24 THE COURT: Yes, sir.

25 MR. HORN: Your Honor, may I address the court?

1 THE COURT: Yes.

2 MR. HORN: May it please the court. Your Honor,
3 my name is Eric Horn appearing on behalf of the Official
4 Committee of Unsecured Creditors of the case. I'm with the
5 firm of Lowenstein Sandler. I just want to make a very
6 brief statement for the record in -- with respect to the
7 prejudice aspect here. Absecon's counsel keeps on making
8 reference to the fact that a plan has not been submitted to
9 date. That is in fact correct. No plan has been submitted.
10 But in fact, a plan has been drafted. At least a first
11 draft has been put together by our shop. We have been
12 working on it. We have been in discussions previously in
13 the past with debtors' counsel about what the appropriate
14 exit strategy is here. Parties -- particularly parties on
15 our committee have been monitoring the amount of claims that
16 have been filed in the case with respect to what type of
17 distributions at the end of the day will be made. It's an
18 important element to them. They understand that the bar
19 date has in fact passed. They understand what the scope of
20 claims pool is here. If this claim were to be allowed,
21 you're essentially throwing \$5 million on top of that. To
22 the extent there is going to be any distribution in this
23 case, with the \$5 million claim on top of that which was
24 late filed, that has the potential to basically diminish any
25 claims that would be made in this case or making them at

1 least at a minimum de minimis.

2 THE COURT: Okay. I assume the proposed plan is a
3 liquidating plan?

4 MR. HORN: That's our current thinking, Your
5 Honor. Yes.

6 THE COURT: And what is your current belief as to
7 the amount of the distribution to the unsecured creditors
8 not counting this claim?

9 MR. HORN: It really depends, Your Honor. There
10 is -- as Your Honor may recall, there is the Afton property
11 which is still out there. To the extent that the Afton
12 property is able to be sold, there would be in our view --
13 and the debtors can speak to this themselves. But in our
14 view, there may be a distribution to unsecured creditors and
15 I don't have the exact total number in front of me for
16 creditors. Maybe the debtors could comment on that as to
17 what the current pool number is.

18 THE COURT: Can you give me a ballpark? Are we
19 talking in the typical range of five to ten cents or are we
20 talking about 80 cents?

21 MR. HORN: I don't -- I certainly -- 80 cents is
22 -- it's not going to be. But I don't know whether it's
23 going to be in the five or ten cents at this point.

24 THE COURT: Okay.

25 MR. HORN: It really depends --

1 THE COURT: Does --

2 MR. HORN: -- on --

3 THE COURT: -- counsel for the debtor have an
4 understanding?

5 MR. POPPITI: Your Honor, I don't have an
6 understanding as to percentages at this point. I believe
7 and Mr. Horn can correct me if I'm wrong the latest budget
8 attached to the DIP order -- I think it showed over -- we
9 were projecting a return in terms of real dollars somewhere
10 between 300,000 and half a million dollars. So obviously I
11 don't know the percentages breaking that across the claims
12 pool at this point.

13 THE COURT: So you don't know the aggregate claims
14 at this point?

15 MR. POPPITI: I don't have that number in front of
16 me, Your Honor.

17 THE COURT: Okay. Okay. Anything --

18 MR. HORN: Thank you --

19 THE COURT: -- else?

20 MR. HORN: -- Your Honor.

21 MR. CRUWILHER: Your Honor, may I respond to one
22 point that Your Honor raised?

23 THE COURT: Yes.

24 MR. CRUWILHER: Again Curtis Cruwilher from Young
25 Conaway. Your Honor raised the point of was the notice of

1 the bar date directed to a specific individual and I want to
2 make sure the record is clear that that requirement is in
3 rule 7004 not applicable to a notice in the bankruptcy case
4 unless a specific entry of appearance is filed. So it's
5 sent to a general address of the creditor, an address they
6 would normally receive their mail which is not disputed is
7 the correct address in this case. Thank you.

8 THE COURT: Is that the address and caption that
9 you would use in invoicing this company?

10 MR. CRUWILHER: I don't know if it's the payment
11 address. Payments are sometimes sent to different lockboxes
12 as opposed to -- because they're not actually managed by the
13 creditors. We hear lots of complaints about notices going
14 to lockboxes and the banks throw them away. That's not the
15 case here. I believe this --

16 THE COURT: Okay.

17 MR. CRUWILHER: -- address is the one that Absecon
18 advertises on its own website as its address for receipt of
19 mail.

20 THE COURT: Okay. I'm going to grant the motion.
21 When I originally looked at the pleadings here and I -- when
22 I came out here, I was prepared to deny it for the simple
23 reason that the excusable neglect, you have to have some
24 factual basis explaining why you should be excused such as
25 okay, was the -- was the case in the pioneer decision. But

1 I think the October 15 letter makes a big difference.
2 Specifically it puts the counsel for the debtor on notice
3 that they do intend to file a proof of claim which will
4 exceed the amount of the claim brought by the debtor in the
5 adversary proceeding. Arguably that letter should have
6 prompted the debtors to put the bar date notice mailing list
7 to include counsel for Absecon. The next point I find
8 persuasive in the letter is that when they say we're going
9 to file a proof of claim and it's going to be more than your
10 claim suggests to me the distinct possibility if not
11 probability that when the proof of claim was received by the
12 company, received by whomever we don't know, it never got to
13 counsel for the company because it certainly seems to me
14 that they put the debtor on notice that we're going to file
15 a proof of claim and I therefore have to believe that they
16 were waiting to get a notice as to the bar date so that they
17 didn't miss filing that proof claim. And that suggests to
18 me that somebody fouled up at the company level in either
19 not directing that bar date notice to the proper officer of
20 the company who therefore did not have an opportunity to
21 direct it to his counsel. So I think this letter makes all
22 the difference in the world. And furthermore as counsel for
23 Absecon points out, this is a liquidation case. If it's
24 like most liquidation cases in the last few years, we're
25 probably looking at five to ten cents distribution and

1 there's no plan on the table yet and I just don't think
2 there's any prejudice to the debtor or the other creditors
3 other than it can dilute the amount of distribution to the
4 other creditors and I don't think the case law suggests that
5 that would be a basis for denying a late claim. So for
6 those reasons, I'll grant the motion.

7 MR. ABRAMOWITZ: Thank you, Your Honor.

8 MR. CRUWILHER: May it please the court, Curtis
9 Cruwilher back again, Your Honor. Last two matters on the
10 agenda are the initial pretrial conferences for two
11 adversary proceedings, one with Johnston Mills and the other
12 -- I mean, I'm -- Johnston Textiles and one with Absecon
13 Mills. We have conferred with counsel for both of those
14 defenses and have reached an agreed-upon scheduling order.
15 I would certainly go through that with Your Honor.

16 THE COURT: Okay.

17 MR. CRUWILHER: They're pretty much -- there's
18 some slight variations between them based upon the
19 discussions with counsel. But essentially initial
20 disclosures and joinder in Absecon Mills will be by March
21 19. Discover cutoff will be May 5, 2009 except depositions
22 of witnesses will take place presumably after that up until
23 May 29 of 2009. There's expert discovery processes that
24 commence after that point in time after the fact discovery
25 is closed which will ultimately be closed out from a report

1 standpoint by July 24 of '09 and the deposition of expert
2 witnesses will be conducted from July 27 to August 14 of
3 2009. There's a case dispositive motion deadline of
4 September 4 and then a spot for Your Honor to schedule a
5 pretrial -- file a pretrial conference and a trial date.
6 The trial date in this case would require four days.

7 THE COURT: Four days?

8 MR. CRUWILHER: Four days, although that's
9 certainly possible to be compressed as discovery unfolds.
10 But the projection from the Defendant was they would need to
11 reserve four days of the court's time.

12 THE COURT: Okay. Is that four days for each one
13 or for --

14 MR. CRUWILHER: No --

15 THE COURT: -- both?

16 MR. CRUWILHER: -- Your Honor. Actually Johnston
17 Textiles we've only asked -- we're only asking for two days.

18 THE COURT: Okay.

19 MR. CRUWILHER: That's one of the differences in
20 the scheduling orders that are being proposed. I'll run
21 through Johnston Textiles now just so Your Honor knows
22 what's being projected.

23 THE COURT: Okay.

24 MR. CRUWILHER: Essentially it's the same type of
25 schedule; March 19 for disclosures, March 26 for any

1 amendments to the pleadings, fact discovery closing on July
2 2 of 2009. That includes depositions. Expert discovery and
3 reports due through July 31 of 2009 and then depositions of
4 experts from August 1 to August 21. Case dispositive motion
5 deadline the same, September 4, and then a pretrial
6 conference and a trial for Your Honor to enter and this
7 trial has been -- is for two days.

8 THE COURT: Okay. Let me see. My suggestion
9 is --

10 MR. CRUWILHER: May I approach, Your Honor?

11 THE COURT: Yes. That we have a status conference
12 but not establish a trial date yet because I think that just
13 may be premature. But my experience is if we have a status
14 conference let's say in the middle -- or the end of August,
15 I'm sure we can set a trial within a month. So I don't
16 think we really have to set a trial date at this point. So
17 why don't you revise them simply with respect to paragraph
18 five saying that we'll have as status conference on -- let
19 me pick a date at the end of the month, the end of August.
20 That's fully open. Let's pick Friday -- I'm sorry.
21 Thursday the 27th at 9:30. So could you -- and strike the
22 provision with respect to the trial date. So if you could
23 simply revise those two documents and send them over.

24 MR. CRUWILHER: Not a problem, Your Honor. Is
25 that a -- certification of counsel?

1 THE COURT: Yes. Yes. Okay. Anyone else wish to
2 be heard?

3 MR. WAXMAN: Excuse me, Your Honor. Jeff Waxman
4 of Cozen O'Connor on behalf Absecon. I'm not sure if the
5 debtor submitted a form of order for the motion for leave.
6 If not, Your Honor, I'm happy to hand that --

7 THE COURT: Okay.

8 MR. WAXMAN: -- up to the court. Thank you, Your
9 Honor.

10 THE COURT: Okay. Anything else?

11 MR. POPPITI: No, Your Honor. That concludes --

12 THE COURT: Okay.

13 MR. POPPITI: -- agenda.

14 THE COURT: We stand in recess.

15 (Whereupon at 2:38 P.M. the hearing was adjourned)

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

19 **Nancy O.**
20 **Bowders**

Digitally signed by Nancy O. Bowders
DN: cn=Nancy O. Bowders, o=Diaz
Data Services, ou,
email=info@diazdata.com, c=US
Date: 2009.03.18 16:16:58 -04'00'

21 Nancy O. Bowders
22 Transcriber

Date: March 17, 2009

23
24
25

AFY HOLDING CO.NOB.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line	Word	Page:Line
ability(1) 20:20		amper(1) 2:13		bowders(1) 30:22		conferred(1) 27:13	
able(1) 23:12		annunciated(1) 19:7		box(3) 1:40 2:15 19:14		confirmed(1) 6:8	
about(9) 9:7 15:3 15:11 16:17 21:14		another(1) 6:10		brandywine(1) 1:26		confronted(1) 11:3	
21:15 22:13 23:20 25:13		answer(1) 16:13		breaking(1) 24:11		conjecture(1) 15:17	
		any(17) 3:12 3:25 4:7 10:19 14:14 15:23		brief(3) 5:5 11:6 22:6		connection(1) 20:4	
above(1) 12:19		15:24 17:11 18:9 18:10 19:9 19:23 20:12		brought(2) 10:8 26:4		considered(1) 8:10	
aboveentitled (1) 30:18		22:22 22:24 27:2 28:25		budget(1) 24:7		construed(1) 16:20	
abramowitz(53) 2:7 4:22 5:1 5:3 5:5 5:15				building(1) 1:26		contact(1) 9:18	
6:17 6:22 6:24 7:1 7:3 7:5 7:7 7:9 7:12		anyone(2) 20:11 30:1		bundled(1) 15:16		context(1) 9:1	
7:24 8:1 8:3 8:20 10:4 10:6 10:10 10:13		anything(6) 5:25 7:14 7:15 9:14 24:17		came(2) 7:13 25:22		continued(1) 2:3	
10:17 10:20 11:9 11:13 11:19 12:17 12:2		30:10		candor(1) 8:10		coplan(1) 2:21	
13:3 13:5 13:7 13:9 13:16 13:18 13:20				cannot(1) 6:4		copy(4) 7:20 8:22 19:11 20:16	
13:22 14:4 14:6 14:9 14:12 14:25 19:10		apologize(1) 8:20		can't(4) 6:5 9:13 17:19 21:2		corporation(2) 1:7 1:11	
19:18 19:20 19:24 20:1 20:3 21:8 21:10		appearance(2) 18:6 25:4		caption(1) 25:8		correct(10) 6:21 8:1 18:1 18:3 19:24 20:1	
21:19 27:7		appearing(1) 22:3		case(40) 1:4 5:19 5:25 6:1 6:5 6:9 9:1 9:4		22:9 24:7 25:7 30:16	
		applicable(1) 25:3		9:5 9:8 10:19 10:23 11:7 11:9 11:12			
absecon(24) 2:5 4:15 4:17 4:21 6:19 13:1		applications(2) 3:19 3:23		12:12 14:13 14:17 14:22 15:21 16:10		correspondence(4) 6:12 6:16 6:17 7:13	
13:16 15:6 15:6 17:2 17:8 17:16 17:25		approach(2) 4:9 29:10		16:21 18:6 18:12 21:1 21:20 21:21 22:4		counsel(21) 3:10 12:3 15:4 15:8 16:5 17:4	
19:3 19:4 19:12 19:20 20:14 25:17 26:7		appropriate(1) 22:13		22:16 22:23 22:25 25:3 25:7 25:15 25:25		17:7 18:2 18:5 20:15 22:7 22:13 24:3	
26:23 27:12 27:20 30:4		approve(1) 4:4		26:23 27:4 28:3 28:6 29:4		26:2 26:7 26:13 26:21 26:22 27:13 27:19	
		approving(1) 4:24				29:25	
absecon's(2) 17:5 22:7		approximately(6) 5:10 6:14 9:11 12:24		cases(2) 8:25 26:24		counterclaim(11) 6:13 9:23 10:11 10:24	
absolute(1) 9:4		13:12 13:20		cavalier(1) 11:21		11:16 11:17 12:6 13:23 15:19 16:14 19:5	
absolutely(1) 8:18				ceased(1) 5:23			
accounts(1) 18:8		area(1) 21:17		center(1) 2:8		counterclaimed(1) 10:8	
accurate(1) 9:13		arguably(1) 26:5		cents(5) 23:19 23:20 23:21 23:23 26:25		counterclaims(1) 10:16	
acknowledge(1) 20:23		argues(1) 5:17		certain(2) 5:9 10:22		counting(1) 23:8	
acres(1) 21:11		arise(1) 20:15		certainly(9) 8:4 9:19 10:20 11:21 19:18		couple(1) 15:10	
across(1) 24:11		aronoff(1) 2:22		23:21 26:13 27:15 28:9		court(120) 1:1 3:1 3:2 3:7 3:12 3:13 4:2	
act(1) 21:5		around(2) 3:13 21:2				4:4 4:8 4:11 4:13 4:19 4:25 5:4 5:14 6:1	
acted(1) 9:20		arthur(2) 2:7 4:22		certification(4) 3:10 7:18 8:4 29:25		6:20 6:23 6:25 7:2 7:4 7:6 7:8 7:10 7:11	
acting(1) 17:10		ashby(1) 1:37		certify(1) 30:16		7:16 7:19 7:22 7:25 8:2 8:3 8:10 8:11	
acts(1) 5:7		ask(3) 10:5 12:3 16:8		changed(1) 18:23		8:12 8:15 8:17 8:19 10:3 10:5 10:7 10:1	
actual(1) 16:10		asked(1) 28:17		chapter(1) 1:6		10:15 10:19 11:7 11:11 11:15 11:23 12:3	
actually(5) 3:9 7:20 12:5 25:12 28:16		asking(1) 28:17		charged(1) 17:5		12:8 12:11 12:14 12:16 12:20 12:22 13:1	
address(22) 4:1 5:12 8:23 10:25 11:14		aspect(3) 6:14 8:22 22:7		check(1) 10:21		13:4 13:6 13:8 13:10 13:13 13:15 13:17	
17:2 17:16 17:17 17:18 17:20 17:23 17:24		assemble(1) 9:12		circuit(2) 15:20 16:19		13:19 13:21 13:24 14:5 14:8 14:11 14:24	
17:24 19:19 21:25 25:5 25:5 25:7 25:8		assert(5) 10:24 11:20 12:6 16:24 18:23		circumstances(3) 9:8 14:13 14:22		15:1 15:10 17:13 17:19 17:24 18:2 18:4	
25:11 25:17 25:18		asserted(9) 6:13 10:12 10:12 11:1 12:23		citation(1) 12:12		19:9 19:17 19:19 19:22 19:25 20:2 20:3	
		14:2 15:19 16:5 16:11		claim(62) 4:16 5:7 5:9 5:18 5:19 5:19		20:9 21:5 21:7 21:9 21:18 21:24 21:25	
addressed(4) 11:5 14:19 14:20 14:21				6:11 6:11 9:21 9:21 10:11 10:12 11:1		22:1 22:2 23:2 23:6 23:18 23:24 24:1	
adjourned(1) 30:15		asserting(2) 10:16 11:16		11:4 11:17 11:25 11:25 12:2 12:22 13:4		24:3 24:13 24:17 24:19 24:23 25:8 25:16	
administered(1) 1:5		assertion(1) 5:21		13:11 13:19 14:4 14:7 14:23 15:6 15:6		25:20 27:8 27:16 28:7 28:12 28:15 28:18	
admitted(1) 4:23		assume(2) 21:11 23:2		15:12 15:14 15:21 15:22 16:5 16:6 16:7		28:23 29:8 29:11 30:1 30:7 30:8 30:10	
adversaries(2) 9:19 12:1		attached(4) 7:11 8:16 18:20 24:8		16:9 16:11 16:15 16:17 16:25 17:5 17:5		30:12 30:14	
adversary(10) 7:17 8:6 9:25 10:8 12:23		august(5) 28:2 29:4 29:4 29:14 29:19		17:6 17:9 17:12 18:8 18:10 18:19 19:1			
13:11 14:20 19:11 26:5 27:11		avenue(3) 1:33 1:39 2:24		19:7 20:16 20:24 22:20 22:23 23:8 26:3		courtroom(1) 1:8	
		away(1) 25:14		26:4 26:9 26:10 26:11 26:15 26:17 27:5		courts(4) 6:3 6:7 15:19 16:19	
advertises(1) 25:18		back(4) 6:20 13:10 18:14 27:9				court's(1) 28:11	
advise(1) 20:3		bad(1) 5:22		claimant(1) 16:12		cozen(3) 2:5 4:21 30:4	
advised(1) 3:11		ballpark(1) 23:18		claims(6) 14:1 22:15 22:20 22:25 24:11		creditor(4) 9:3 15:24 16:24 25:5	
advisors(2) 3:21 3:22		bankruptcy(6) 1:1 1:18 11:3 16:10 16:21		24:13		creditors(9) 5:21 6:4 22:4 23:7 23:14	
affidavit(4) 17:1 17:21 17:22 19:12		25:3				23:16 25:13 27:2 27:4	
affirmative(2) 10:22 12:10				clear(2) 5:15 25:2			
after(10) 5:10 9:2 9:3 15:19 16:12 16:13		banks(1) 25:14		clearly(1) 8:5		cruwilher(36) 1:25 4:17 7:20 8:9 8:13	
21:3 27:22 27:24 27:24		bar(14) 5:10 5:22 9:2 9:3 9:15 10:16		clerk(1) 3:10		8:16 8:18 12:5 12:9 12:12 12:15 12:24	
		16:20 17:13 21:3 22:18 25:1 26:6 26:16		client(3) 19:15 20:8 20:14		13:12 13:14 15:1 15:2 17:15 17:21 18:1	
afternoon(2) 4:20 5:3		26:19		clients(1) 9:15		18:3 18:5 24:21 24:24 24:24 25:10 25:17	
afton(2) 23:10 23:11		based(2) 6:7 27:18		client's(1) 17:5		27:8 27:9 27:17 28:8 28:14 28:16 28:19	
afy(1) 5:17		basic(1) 15:23		closed(2) 27:25 27:25		28:24 29:10 29:24	
again(11) 8:20 8:24 10:22 14:12 20:17		basically(1) 22:24		closing(1) 29:1			
20:19 20:25 21:12 21:19 24:24 27:9		basis(5) 8:7 9:17 20:24 25:24 27:5		colleague(2) 4:17 4:22		current(3) 23:4 23:6 23:17	
		bear(1) 7:1		commence(1) 27:24		curtis(5) 1:25 4:17 15:1 24:24 27:8	
against(4) 14:2 16:5 16:11 17:8		became(2) 9:6 15:4		comment(1) 23:16		cut(1) 20:5	
agenda(5) 3:4 3:16 4:14 27:10 30:13		because(11) 5:18 6:5 9:5 9:22 14:18 17:22		committees(3) 1:31 22:4 22:15		cutoff(1) 27:21	
aggregate(1) 24:13		18:12 19:3 25:12 26:13 29:12		committees(1) 4:6		data(1) 1:45	
agreed-upon(1) 27:14				company(11) 1:6 1:10 1:11 21:4 21:9		date(23) 5:10 6:25 9:2 9:3 9:15 10:16	
all(4) 4:9 14:16 14:22 26:21		before(6) 1:17 7:13 9:19 11:22 16:4 18:8		21:17 25:9 26:12 26:13 26:18 26:20		15:4 17:13 21:3 21:22 22:9 22:19 25:1	
allow(1) 8:4		behalf(5) 3:3 4:21 15:2 22:3 30:4				26:6 26:16 26:19 28:5 28:6 29:12 29:16	
allowed(1) 22:20		behind(1) 4:22		complaints(1) 25:13		29:19 29:22 30:21	
alone(1) 21:14		belief(2) 12:4 23:6		compressed(1) 28:9			
also(9) 3:20 3:22 4:5 5:20 6:3 9:20 16:19		believe(11) 6:2 9:19 10:17 11:25 12:6		conaway(4) 1:22 6:13 15:2 24:25		dated(2) 6:12 6:17	
19:16 20:3		14:21 16:6 17:15 24:6 25:15 26:15		conaway's(1) 3:19		dates(4) 5:22 6:21 15:7 16:20	
				conclude(1) 14:9		day(2) 18:13 22:17	
although(5) 6:10 9:1 9:3 15:15 28:8		benchmark(1) 6:6		concludes(1) 30:11		days(13) 5:10 9:11 16:15 18:14 21:1 21:2	
amanda(1) 1:38		benesch(1) 2:21		conditions(1) 21:13		28:6 28:7 28:8 28:11 28:12 28:17 29:7	
amendment(1) 14:15		between(2) 24:10 27:18		conducted(1) 28:2			
amendments(1) 29:1		big(2) 21:9 26:1		conference(5) 28:5 29:6 29:11 29:14 29:18		deadline(3) 5:7 28:3 29:5	
amount(6) 12:2 12:22 22:15 23:7 26:4		both(3) 20:5 27:13 28:15		conferences(1) 27:10		deadlines(1) 16:18	
						deals(1) 21:17	

AFY HOLDING CO.NOB.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line	Word	Page:Line
debt(1) 21:14		element(1) 22:18		fouled(1) 26:18		integral(1) 16:20	
debtor(11) 1:22 10:9 12:3 18:11 20:7 24:3 26:2 26:4 26:14 27:2 30:5		else(4) 9:14 24:19 30:1 30:10		four(6) 9:2 28:6 28:7 28:8 28:11 28:12		intend(1) 26:3	
		emphasis(1) 16:22		friday(1) 29:20		interim(2) 3:16 3:17	
debtors(11) 1:12 1:23 3:3 3:5 4:18 5:23 12:23 15:3 23:13 23:16 26:6		employs(1) 21:12		friedlander(1) 2:21		invoicing(1) 25:9	
		encourage(1) 5:21		front(2) 23:15 24:15		involved(2) 15:4 15:8	
		end(5) 11:18 22:17 29:14 29:19 29:19		fully(1) 29:20		isn't(2) 11:18 18:13	
		engaged(2) 15:5 18:16		further(1) 7:18		issue(3) 5:16 12:4 14:19	
debtors'(5) 3:18 3:21 9:5 13:10 22:13		enron(1) 8:25		furthermore(1) 26:22		issues(4) 5:6 5:6 5:12 11:1	
december(5) 5:7 15:4 16:13 17:4 18:17		enter(1) 29:6		gateway(1) 2:8		item(4) 3:8 3:16 4:14 9:24	
decision(1) 25:25		entered(2) 3:11 18:5		gather(1) 18:18		it's(25) 5:15 5:20 5:25 9:22 11:23 14:17 14:20 15:16 16:23 18:15 19:4 19:13 21:1 21:1 21:2 21:11 21:16 22:17 23:22 23:22 25:4 25:10 26:9 26:23 28:24	
deemed(1) 8:13		entitled(1) 14:23		gathered(1) 18:23			
defend(1) 19:4		entry(1) 25:4		geddes(1) 1:37			
defendant(1) 28:10		eric(2) 1:32 22:3		general(1) 25:5			
defense(1) 18:8		esq(6) 1:25 1:38 2:6 2:7 2:13 2:23		germane(2) 5:16 11:23			
defenses(2) 16:6 27:14		esquire(1) 1:32		germinate(1) 6:1			
defensively(1) 12:6		essentially(4) 10:13 22:21 27:19 28:24		get(4) 3:13 18:9 21:2 26:16			
delaware(6) 1:2 1:7 1:11 1:39 1:41 2:24		establish(1) 29:12		getting(1) 17:3			
delay(9) 8:24 9:2 9:9 9:10 9:11 9:12 15:21 16:23 19:1		estate(1) 14:14		give(2) 7:17 23:18			
		even(2) 18:15 21:22		goes(1) 18:14			
demand(4) 6:19 18:7 20:7 20:18		ever(2) 19:15 20:21		going(20) 9:22 9:22 10:24 11:1 14:16 14:19 14:20 15:10 15:12 16:7 16:16 17:9 22:22 23:22 23:23 25:13 25:20 26:8 26:9 26:14			
demonstrated(1) 19:8		every(2) 6:5 16:24		good(5) 4:20 5:3 9:17 9:20 16:22			
demonstration(1) 18:12		evidence(2) 16:2 18:22		got(2) 19:4 26:12			
deny(2) 17:18 25:22		evidentiary(1) 20:10		grant(2) 25:20 27:6			
denying(1) 27:5		exact(2) 17:17 23:15		granted(1) 5:18			
depends(2) 23:9 23:25		examined(1) 20:9		great(1) 16:22			
deposition(1) 28:1		exceed(1) 26:4		gross(1) 12:2			
depositions(3) 27:21 29:2 29:3		except(1) 27:21		hac(1) 4:24			
description(1) 18:21		excess(4) 15:14 15:17 16:7 16:11		half(1) 24:10			
determination(4) 9:7 10:21 11:22 21:6		exclusively(1) 20:6		hand(1) 30:6			
determinations(1) 6:6		excusable(5) 18:11 18:13 21:3 21:8 25:23		handling(2) 4:18 5:1			
diaz(1) 1:45		excuse(2) 17:11 30:3		happy(6) 7:16 8:6 10:21 11:5 11:21 30:6			
didn't(4) 16:25 18:14 18:17 26:17		excused(1) 25:24		harrisburg(1) 1:47			
difference(2) 26:1 26:22		exist(1) 17:11		having(3) 9:25 14:15 20:21			
differences(1) 28:19		exit(1) 22:14		hear(1) 25:13			
different(1) 25:11		experience(1) 29:13		heard(2) 18:18 30:2			
diligence(1) 17:10		expert(3) 27:23 28:1 29:2		hearing(5) 3:5 5:2 11:20 20:10 30:15			
diligent(2) 16:8 16:17		experts(1) 29:4		held(2) 6:3 8:25			
dilute(1) 27:3		explaining(1) 25:24		highway(1) 2:14			
diminish(1) 22:24		explanation(4) 16:16 18:18 19:2 19:2		him(2) 16:4 20:9			
dip(1) 24:8		extent(3) 12:18 22:22 23:11		his(2) 4:24 26:21			
direct(2) 17:1 26:21		fact(9) 9:8 18:10 18:16 22:8 22:9 22:10 22:19 27:24 29:1		holding(1) 1:6			
directed(3) 19:22 20:11 25:1				honorable(1) 1:17			
directing(1) 26:19		factors(2) 6:10 18:9		hoover(1) 2:23			
disclosures(2) 27:20 28:25		facts(4) 19:14 19:14 20:19 21:1		horn(12) 1:32 21:25 22:2 22:3 23:4 23:9 23:21 23:25 24:2 24:7 24:18 24:20			
discover(1) 27:21		factual(1) 25:24					
discovery(5) 27:23 27:24 28:9 29:1 29:2		failing(1) 11:4					
discussion(1) 11:18		failure(1) 10:15					
discussions(2) 22:12 27:19		fairly(1) 21:16					
dispositive(2) 28:3 29:4		faith(2) 9:17 9:20					
disputed(3) 17:2 17:23 25:6		far(2) 9:17 21:3					
distinct(1) 26:10		fee(3) 3:17 3:17 3:23					
distribution(6) 6:4 22:22 23:7 23:14 26:25 27:3		few(1) 26:24					
		fibers(1) 1:10					
distributions(1) 22:17		file(22) 4:15 10:15 11:4 11:17 14:7 14:23 15:6 15:12 15:19 15:22 16:7 16:9 16:15 16:15 16:24 17:9 18:14 18:17 26:3 26:9 26:14 28:5					
district(2) 1:2 4:23							
document(2) 18:22 19:15		filed(14) 3:5 3:9 5:10 5:24 6:11 7:15 9:24 14:18 16:13 16:17 17:6 22:16 22:24 25:4					
documents(2) 17:19 29:23							
dollars(3) 13:7 24:9 24:10		financing(1) 3:21					
don't(25) 3:11 3:24 4:6 10:17 11:19 11:23 15:23 16:2 17:3 17:17 21:12 21:20 23:15 23:21 23:22 24:5 24:11 24:13 24:15 25:10 26:12 27:1 27:4 29:15 29:17		find(2) 18:10 26:7					
		fine(1) 12:16					
draft(1) 22:11		firm(3) 8:17 20:13 22:5					
drafted(1) 22:10		first(6) 3:8 3:19 3:22 5:23 18:9 22:10					
due(1) 29:3		five(11) 9:24 13:3 13:7 13:8 13:19 13:22 16:14 23:19 23:23 26:25 29:18					
during(1) 9:6							
each(1) 28:12		floor(1) 1:27					
earlier(1) 4:24		focus(1) 15:20					
economic(1) 21:13		foregoing(1) 30:16					
ecro(1) 1:43		form(3) 4:10 18:20 30:5					
edison(1) 2:16		former(1) 18:19					
edward(1) 2:13		forth(2) 15:22 17:4					
effect(1) 8:5							
effective(1) 9:6							
either(2) 17:2 26:18							
electronic(2) 1:50 30:17							
Page: 2							

AFY HOLDING CO.NOB.DOC

Word	Page:Line	Word	Page:Line	Word	Page:Line	Word	Page:Line
llp(3) 1:23 2:14 2:22		notices(2) 18:6 25:13		pjw(1) 1:4		reality(1) 18:25	
lockboxes(2) 25:11 25:14		notification(1) 7:16		place(2) 16:22 27:22		really(4) 18:14 23:9 23:25 29:16	
long(1) 15:18		notwithstanding(1) 11:16		plan(14) 5:20 5:24 6:1 6:7 9:5 14:14		reason(14) 9:18 15:21 15:22 16:22 16:22	
look(4) 10:1 14:12 20:25 21:20		november(2) 3:20 3:24		14:17 21:22 22:8 22:9 22:10 23:2 23:3		16:23 16:23 17:12 18:15 19:3 19:7 20:22	
looked(2) 6:7 25:21		now(2) 16:4 28:21		27:1		21:4 25:23	
looking(3) 13:24 20:19 26:25		number(11) 5:15 5:24 5:24 6:3 9:24 13:25		pleadings(2) 25:21 29:1		reasons(2) 9:9 27:6	
lots(1) 25:13		18:23 18:24 23:15 23:17 24:15		please(5) 3:1 3:2 15:1 22:2 27:8		recall(1) 23:10	
lowenstein(2) 1:31 22:5		obviously(2) 5:16 24:10		podium(1) 4:16		receipt(3) 8:6 20:12 25:18	
lower(1) 6:4		occur(1) 6:5		point(14) 10:25 14:15 14:21 15:10 15:20		receivable(1) 18:8	
made(4) 11:22 20:19 22:17 22:25		october(17) 5:23 6:12 6:18 7:11 12:2		23:23 24:6 24:12 24:14 24:22 24:25 26:7		receive(4) 16:25 20:15 20:15 25:6	
mail(2) 25:6 25:19		13:25 15:9 15:11 15:13 16:4 16:18 17:7		27:24 29:16		received(4) 8:17 20:22 26:11 26:12	
mailbox(1) 21:4		18:14 18:16 18:24 20:5 26:1				receiving(3) 15:24 15:25 19:15	
mailed(2) 17:1 17:14				points(1) 26:23		recess(1) 30:14	
mailing(3) 19:12 19:13 26:6		off(1) 12:7		politzer(1) 2:13		recollection(3) 17:3 19:15 20:21	
make(6) 6:21 8:22 9:16 21:6 22:5 25:2		offensively(1) 12:9		pool(3) 22:20 23:17 24:12		record(7) 5:17 8:5 8:7 8:8 15:25 22:6 25:	
makes(2) 26:1 26:21		office(2) 19:13 20:13		poppiti(16) 1:24 3:2 3:3 3:8 3:15 4:3 4:5		recorded(1) 1:50	
making(2) 22:7 22:25		officer(1) 26:19		4:9 4:12 4:14 6:12 6:18 24:5 24:15 30:11		recording(2) 1:50 30:17	
managed(1) 25:12		official(1) 22:3		30:13		recovery(1) 12:10	
management(1) 3:21		offset(2) 10:22 12:18		position(4) 5:13 13:18 20:8 20:9		refer(1) 6:9	
march(6) 1:12 3:6 27:20 28:25 28:25		okay(50) 3:7 3:15 4:2 4:3 4:19 4:25 5:14		possession(1) 1:23		reference(1) 22:8	
market(1) 1:9		7:2 7:10 7:19 7:22 7:22 8:2 8:12 8:15		possibility(1) 26:10		referenced(1) 7:23	
matter(3) 9:24 15:9 30:18		8:19 11:7 11:11 12:8 12:11 12:14 12:16		possible(1) 28:9		regard(2) 5:9 6:6	
matters(2) 3:4 27:9		13:1 13:24 13:25 14:5 14:8 14:11 14:24		post(2) 19:13 20:12		regards(1) 9:9	
mattia(1) 2:14		17:19 18:4 19:22 20:2 21:18 23:2 23:24		pot(2) 6:1 14:16		rejection(1) 3:9	
maybe(1) 23:16		24:17 24:17 25:16 25:20 25:25 27:16		potential(1) 22:24		relate(2) 3:18 4:5	
mean(1) 27:12		28:12 28:18 28:23 29:8 30:1 30:7 30:10		ppearances(2) 1:20 2:2		relates(2) 3:8 8:24	
meaning(2) 17:24 20:13		30:12		precedent(1) 5:22		remotely(1) 16:17	
mentioned(2) 6:10 18:15		one(17) 2:8 3:11 5:15 5:15 6:8 7:1 15:11		preclude(1) 10:16		report(1) 27:25	
merican(1) 1:10		16:14 16:16 16:17 19:2 24:21 25:17 27:1		prejudice(9) 5:16 6:2 6:7 8:24 9:9 14:14		reports(1) 29:3	
microscopically(1) 10:2		27:12 28:12 28:19		21:20 22:7 27:2		request(2) 3:17 3:17	
middle(1) 29:14				prejudiced(1) 5:18		requested(1) 18:6	
might(1) 15:15		one-page(1) 18:21		prejudicial(1) 6:4		requests(2) 4:5 4:7	
million(20) 6:14 12:24 13:5 13:6 13:7		only(7) 9:10 16:12 16:13 18:7 19:3 28:17		premature(1) 29:13		require(1) 28:6	
13:12 13:15 13:21 13:22 14:2 15:15 15:18		28:17		prepared(1) 25:22		required(1) 9:18	
16:11 18:21 18:24 21:15 21:16 22:21				presented(1) 19:11		requirement(2) 10:25 25:2	
22:23 24:10		open(1) 29:20		presently(2) 15:14 15:17		res(1) 3:21	
million-dollar(1) 13:23		operations(2) 5:23 21:15		presumably(1) 27:22		reserve(1) 28:11	
mills(13) 2:5 4:15 4:17 4:21 17:2 17:8		opportunity(1) 26:20		pretial(4) 27:10 28:5 28:5 29:5		respect(8) 3:18 3:21 3:22 17:7 22:6 22:16	
17:16 17:25 19:4 19:4 27:11 27:13 27:20		opposed(2) 10:1 25:12		pretty(1) 27:17		29:17 29:22	
		order(4) 4:10 24:8 27:14 30:5		previously(1) 22:12			
minimis(1) 23:1		orders(1) 28:20		primarily(1) 15:20		respond(4) 19:12 20:6 20:18 24:21	
minimum(1) 23:1		originally(1) 25:21		pro(1) 4:24		responding(1) 18:7	
miss(1) 26:17		other(9) 5:21 6:1 6:4 9:14 18:9 27:2 27:3		probability(1) 26:11		response(5) 5:22 6:19 17:15 19:9 20:18	
monitoring(1) 22:15		27:4 27:11		probably(2) 21:12 26:25		result(1) 9:12	
month(2) 29:15 29:19				problem(2) 20:10 29:24		retained(3) 5:8 17:7 20:6	
more(4) 11:21 14:1 21:16 26:9		our(13) 5:12 5:19 6:10 6:11 9:18 12:1		procedures(1) 16:1		return(1) 24:9	
morning(2) 7:13 8:21		17:15 20:8 22:11 22:15 23:4 23:12 23:13		proceeding(4) 9:25 10:8 14:20 26:5		revise(2) 29:17 29:23	
most(2) 5:6 26:24				proceedings(4) 1:16 1:50 27:11 30:18		right(7) 4:9 11:13 11:15 12:19 13:1 14:4	
motion(21) 3:9 4:15 4:24 4:24 5:18 7:11		ours(1) 19:3		process(2) 16:1 16:21		19:20	
7:23 9:19 15:3 15:5 15:7 15:23 16:15		out(5) 15:10 23:11 25:22 26:23 27:25		processes(1) 27:23			
17:4 18:16 18:20 25:20 27:6 28:3 29:4		out-of-time(1) 14:23		produced(1) 1:51		rights(2) 10:22 10:22	
30:5		over(4) 4:16 21:12 24:8 29:23		professional(2) 3:18 4:6		rigid(1) 9:7	
movant(1) 15:22		own(1) 25:18		project(1) 15:15		rob(1) 3:3	
move(1) 10:25		o'brien(2) 6:9 9:1		projected(1) 28:22		robert(1) 1:24	
much(4) 13:11 13:19 15:16 27:17		o'connor(3) 2:5 4:21 30:4		projecting(1) 24:9		roseland(1) 1:34	
multiple(1) 21:11		p.m(2) 1:13 30:15		projection(1) 28:10		rule(2) 18:6 25:3	
must(2) 8:25 19:7		p.o(2) 1:40 2:15		prompted(1) 26:6		run(1) 28:20	
name(1) 22:3		papers(2) 6:10 7:25		proof(19) 4:16 5:7 5:9 10:12 11:17 14:7		said(1) 20:8	
nancy(1) 30:22		paragraph(1) 29:17		14:23 15:6 15:12 16:7 17:6 18:19 18:25		sales(1) 21:16	
nature(1) 21:21		part(3) 9:23 14:20 16:21		19:7 26:3 26:9 26:11 26:15 26:17		same(3) 15:8 28:24 29:5	
necessitate(1) 19:1		particular(3) 8:25 9:5 19:23				sandler(2) 1:31 22:5	
need(1) 28:10		particularly(2) 14:15 22:14		proper(3) 17:23 17:24 26:19		say(5) 13:2 15:25 20:20 26:8 29:14	
neglect(5) 17:11 18:10 18:13 21:3 25:23		parties(2) 22:14 22:14		property(3) 21:11 23:10 23:12		saying(3) 11:9 16:4 29:18	
negotiation(1) 6:9		party(1) 16:8		proposed(3) 10:12 23:2 28:20		says(4) 14:1 15:13 15:17 18:20	
negotiations(1) 5:20		pasierb(1) 1:43		protecting(2) 15:5 17:5		schedule(2) 28:4 28:25	
never(3) 20:11 20:20 26:12		passed(1) 22:19		provide(3) 7:17 8:4 8:7		scheduled(1) 3:4	
new(4) 1:34 2:10 2:16 4:23		past(3) 3:5 21:14 22:13		provided(1) 20:4		scheduling(3) 3:10 27:14 28:20	
newark(1) 2:10		payment(1) 25:10		provision(1) 29:22		schuyllkill(1) 1:46	
next(2) 4:13 26:7		payments(1) 25:11		pursued(2) 11:18 20:17		scope(1) 22:19	
non-bankruptcy(1) 11:12		percentages(2) 24:6 24:11		put(3) 22:11 26:6 26:14		seated(1) 3:1	
nor(1) 20:11		period(2) 3:20 3:23		puts(1) 26:2		second(5) 3:9 3:16 6:14 7:1 8:22	
normally(2) 20:14 25:6		perspective(1) 21:20		question(2) 10:5 19:12		secretary(1) 8:22	
note(7) 5:8 5:17 5:23 6:3 6:24 9:20 20:5		persuasive(1) 26:8		questions(3) 3:12 3:25 4:4		seek(1) 15:18	
notes(1) 15:24		peter(1) 1:17		raised(2) 24:22 24:25		seeking(1) 14:7	
nothing(5) 16:12 16:19 17:10 18:22 18:25		petition(1) 6:25		range(1) 23:19		seems(1) 26:13	
notice(12) 3:4 6:11 12:1 16:25 17:13		phillips(1) 2:13		reached(1) 27:14		send(1) 29:23	
24:25 25:3 26:2 26:6 26:14 26:16 26:19		pick(2) 29:19 29:20		read(1) 15:9		sense(1) 11:24	
		pioneer(2) 18:9 25:25		real(1) 24:9			
noticed(1) 8:21							

UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

AFY Holding Company
55 VilCom Circle
Suite 300
Chapel Hill, NC 27514
EIN: 04-3483703

Chapter: 11

Case No.: 08-12175-PJW

***NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND
REDACTION***

A transcript of the proceeding held on 3/5/2009 was filed on 3/19/2009 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 4/9/2009 .

If a request for redaction is filed, the redacted transcript is due 4/20/2009 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 6/17/2009 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (name, address/contact information) or you may view the document at the clerk's office public terminal.



Clerk of Court

Date: 3/19/09

(ntc)

Notice Recipients

District/Off: 0311-1

User: Brandon

Date Created: 3/19/2009

Case: 08-12175-PJW

Form ID: ntcBK

Total: 6

Recipients of Notice of Electronic Filing:

ust United States Trustee USTPREGION03.WL.ECF@USDOJ.GOV

TOTAL: 1

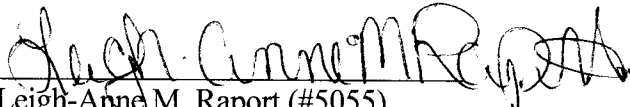
Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	AFY Holding Company	55 VilCom Circle	Suite 300	Chapel Hill, NC 27514	
aty	Edward J. Kosmowski	Young, Conaway, Stargatt & Taylor	1000 West Street, 17th Floor	PO Box	
	391	Wilmington, DE 19899			
aty	Michael R. Nestor	Young Conaway Stargatt & Taylor	The Brandywine Bldg.	1000 West Street, 17th	
	Floor	PO Box 391	Wilmington, DE 19899		
aty	Nathan D. Grow	Young Conaway Stargatt & Taylor, LLP	The Brandywine Bldg.	17th	
	Floor	Wilmington, DE 19801-0391			
aty	Robert F. Poppiti, Jr.	Young, Conaway, Stargatt & Taylor, LLP	The Brandywine Building	1000	
	West Street	17th Floor	Wilmington, DE 19801		

TOTAL: 5

CERTIFICATE OF SERVICE

I, Leigh-Anne M. Raport, hereby certify that on January 25, 2010, I caused one copy of the foregoing document to be served upon the parties on the attached service list in the manner indicated.



Leigh-Anne M. Raport (#5055)

BMHC 2002 Service List
Case No. 09-12074
Avery Labels 5162

Christopher M. Alston, Esq.
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
(Counsel to JELD-WEN, inc.)
First Class Mail

David G. Aelvoet, Esq.
Linebarger Goggan Blair & Sampson LLP
Travis Building, 711 Navarro, Suite 300
San Antonio, TX 78205
(Counsel to Bexar County)
First Class Mail

Robert McL. Boote, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(Counsel to Westchester Fire Insurance Company and ACE USA)
First Class Mail

Brian W. Bisignani, Esq.
Post & Schell, P.C.
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101-1601
(Counsel to Aon Consulting)
First Class Mail

Andrew Cardonick, Esq.
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
(Counsel to Grace Bay Holdings, II, LLC)
First Class Mail

David Boyle
Airgas, Inc.
259 Radnor-Chester Road, Suite 100
P.O. Box 6675
Radnor, PA 19087-8675
First Class Mail

Scott D. Cousins, Esq.
Dennis A. Melero, Esq.
Greenberg Traurig, LLP
1007 North Orange Street, Suite 1200
Wilmington, DE 19801
(Counsel to Grace Bay Holdings, II, LLC)
Hand Delivery

Scott T. Citek, Esq.
Lamm & Smith, P.C.
3730 Kirby Drive, Suite 650
Houston, TX 77098
(Counsel to Bay Oil Company)
First Class Mail

Tobey M. Daluz, Esq.
Joshua E. Zugerman, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801
(Counsel to Westchester Fire Insurance Company and ACE USA)
Hand Delivery

Raniero D. D'Aversa, Jr., Esq.
Laura D. Metzger, Esq.
Weston T. Eguchi, Esq.
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001
(Counsel to Rabobank International)
First Class Mail

John P. Dillman, Esq.
Linebarger Goggan Blair & Sampson LLP
P.O. Box 3064
Houston, TX 77253-3064
(Counsel to Cypress-Fairbanks ISD, Fort Bend County, and Harris County)
First Class Mail

Robert J. Dehney, Esq.
Erin R. Fay, Esq.
Morris Nichols Arsht & Tunnell LLP
1201 North Market Street, 18th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
(Counsel to D.R. Horton, Inc.)
Hand Delivery

Kevin B. Fisher, Esq.
Seth Mennillo, Esq.
Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, CA 94105
(Counsel to Wells Fargo Bank, N.A.)
First Class Mail

Mark W. Eckard, Esq.
Reed Smith LLP
1201 North Market Street, Suite 1500
Wilmington, DE 19801
(Counsel to CIT Technology Financing Services, Inc.)
Hand Delivery

Christopher J. Giaimo, Jr., Esq.
Katie A. Lane, Esq.
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
(Counsel to the Official Committee of Unsecured Creditors)
First Class Mail

John M. Flynn, Esq.
Carruthers & Roth, P.A.
235 North Edgeworth Street
P.O. Box 540
Greensboro, NC 27401
(Counsel to Arrowood Indemnity Company)
First Class Mail

Melody C. Hogston
Royal Mouldings Limited
P.O. Box 610
Marion, VA 24354
First Class Mail

Paul N. Heath, Esq.
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
(Counsel to Wells Fargo Bank, N.A.)
Hand Delivery

IKON Financial Services
Attn: Bankruptcy Administration
1738 Bass Road
P.O. Box 13708
Macon, GA 31208-3708
First Class Mail

Eric H. Holder, Jr., Esq.
U. S. Attorney General
Department of Justice - Commercial Litigation Branch
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
First Class Mail

Thomas W. Isaac, Esq.
Dietrich, Glasrud, Mallek & Aune
5250 North Palm Avenue, Suite 402
Fresno, CA 93704
(Counsel to Wilson Homes, Inc.)
First Class Mail

Internal Revenue Service
Attn: Insolvency Section
11601 Roosevelt Blvd., Mail Drop N781
P.O. Box 21126
Philadelphia, PA 19114
First Class Mail

Michael J. Joyce, Esq.
Cross & Simon, LLC
913 North Market Street, 11th Floor
Wilmington, DE 19801
(Counsel to Arrowood Indemnity Company)
Hand Delivery

Neal Jacobson, Esq.
Senior Trial Counsel
Securities and Exchange Commission
3 World Financial Center, Suite 400
New York, NY 10281
First Class Mail

Louisiana-Pacific Corporation
Attn: Bruce J. Iddings
P.O. Box 4000-98
Hayden Lake, ID 83835-4000
(Top 50)
First Class Mail

Thomas L. Kent, Esq.
Paul, Hastings, Janofsky & Walker LLP
75 East 55th Street, 1st Floor
New York, NY 10022
(Counsel to Wells Fargo Bank)
First Class Mail

Dan McAllister
San Diego County Treasurer-Tax Collector, Bankruptcy Desk
1600 Pacific Highway, Room 162
San Diego, CA 92101
First Class Mail

Cliff W. Marcek, Esq.
Cliff W. Marcek, P.C.
700 South Third Street
Las Vegas, NV 89101
(Counsel to Edward and Gladys Weisgerber)
First Class Mail

Joseph J. McMahon, Jr., Esq.
Office of the United States Trustee
844 King Street, Suite 2207
Lock Box 35
Wilmington, DE 19801
Hand Delivery

Frank F. McGinn, Esq.
Bartlett Hackett Feinberg, P.C.
155 Federal Street, 9th Floor
Boston, MA 02110
(Counsel to Iron Mountain Information Management, Inc.)
First Class Mail

Sheryl L. Moreau, Esq.
Missouri Department of Revenue - Bankruptcy Unit
P.O. Box 475
Jefferson City, MO 65105-0475
First Class Mail

Kathleen M. Miller, Esq.
Smith, Katzenstein & Furlow LLP
800 Delaware Avenue, 7th Floor
P.O. Box 410
Wilmington, DE 19801
(Counsel to Airgas, Inc.)
Hand Delivery

Michael Reed, Esq.
McCreary, Veselka, Bragg & Allen, P.C.
P.O. Box 1269
Round Rock, TX 78680
(Counsel to Local Texas Taxing Authorities)
First Class Mail

Charles J. Pignuolo, Esq.
Devlin & Pignuolo, P.C.
1800 Bering Drive, Suite 310
Houston, TX 77057
(Counsel to Partners in Building, L.P.)
First Class Mail

Debra A. Riley, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor
San Diego, CA 92101
(Counsel to D.R. Horton, Inc.)
First Class Mail

Jonathan Lee Riches
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512
First Class Mail

Martha E. Romero, Esq.
Romero Law Firm
6516 Bright Avenue
Whittier, CA 90601
(Counsel to Yuba County)
First Class Mail

Randall A. Rios, Esq.
Timothy A. Million, Esq.
Munsch Hardt Kopf & Harr, PC
700 Louisiana, 46th Floor
Houston, TX 77002
(Counsel to Cedar Creek Lumber, Inc.)
First Class Mail

Bradford J. Sandler, Esq.
Jennifer R. Hoover, Esq.
Jennifer E. Smith, Esq.
Benesch, Friedlander, Coplan & Aronoff LLP
222 Delaware Avenue, Suite 801
Wilmington, DE 19801
(Counsel to the Official Committee of Unsecured Creditors)
Hand Delivery

George Rosenberg, Esq.
Assistant Arapahoe County Attorney
5334 South Prince Street
Littleton, CO 80166
(Counsel to Arapahoe County Treasurer)
First Class Mail

Secretary of Treasury
Attn: Officer, Managing Agent or General Agent
P.O. Box 7040
Dover, DE 19903
First Class Mail

Secretary of State
Franchise Tax
Division of Corporations
P.O. Box 7040
Dover, DE 19903
First Class Mail

Securities & Exchange Commission
Bankruptcy Unit
Attn: Michael A. Berman, Esq.
450 Fifth Street NW
Washington, DC 20549
First Class Mail

Securities & Exchange Commission
Attn: Christopher Cox
100 F Street, NE
Washington, DC 20549
First Class Mail

Kimberly Walsh, Esq.
Assistant Attorney General
Texas Comptroller of Public Accounts, Bankruptcy & Collections Division
P.O. Box 12548
Austin, TX 78711-2548
First Class Mail

Ellen W. Slight, Esq.
Assistant United States Attorney
U.S. Attorney's Office
1007 Orange Street, Suite 700
P.O. Box 2046
Wilmington, DE 19899
Hand Delivery

Elizabeth Weller, Esq.
Linebarger Goggan Blair & Sampson LLP
2323 Bryan Street, Suite 1600
Dallas, TX 75201
(Counsel to Dallas County and Tarrant County)
First Class Mail

Christopher A. Ward, Esq.
Shanti M. Katona, Esq.
Polsinelli Shughart PC
222 Delaware Avenue, Suite 1101
Wilmington, DE 19801
(Counsel to SunTrust Bank)
Hand Delivery

Sean M. Beach, Esq.
Donald J. Bowman, Jr., Esq.
Robert F. Poppiti, Jr., Esq.
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

Joanne B. Wills, Esq.
Sally E. Veghte, Esq.
Klehr, Harrison, Harvey, Branzburg & Ellers LLP
919 Market Street, Suite 1000
Wilmington, DE 19801
(Counsel to Rabobank International)
Hand Delivery

Aaron G. York, Esq.
Jeremy L. Graves, Esq.
Gibson, Dunn & Crutcher LLP
2100 McKinney Avenue, Suite 1100
Dallas, TX 75201-6911
(Counsel to the Debtors)
First Class Mail

Michael A. Rosenthal, Esq.
Matthew K. Kelsey, Esq.
Saeed M. Muzumdar, Esq.
Gibson, Dunn & Crutcher LLP
200 Park Avenue, 47th Floor
New York, NY 10166-0193
(Counsel to the Debtors)
First Class Mail