

**EXHIBIT 9**

**To Be Replaced With A Settlement Agreement Consistent With The Attached  
When Completed**

## Agreement between CRO, Receiver, and HFG

- A. HFG, their spouses and children (“HFG”), will assign any and all Sunwest affiliated assets they own or co-own to the Receivership estate, which will contribute the assets to the REIT. This mechanics of this contribution are subject to HFG’s completion of a tax analysis to determine feasibility.
- B. On the effective date of the plan, HFG will receive initial securities entitling them to up to 25% of the MLP.
  - a. The initial securities will be in the form of an MLP membership interest, issued on the effective date of the plan, with a book value of \$100,000.
  - b. The initial securities will be restricted such that HFG shall have no voting or distribution rights. Distribution rights will begin as triggered according to the schedule on Exhibit A.
  - c. Subject to the provision in paragraph D, beginning on the third anniversary of the effective date of the plan, HFG may convert any membership interests whose economic value has been triggered into MLP units or REIT shares (subject to the same limitations as other MLP unit holders and all applicable REIT limitations).
  - d. Any conversions of membership interests or MLP units must occur on the anniversary of the effective date of the plan.
- C. Triggers:
  - a. When investors and creditors hold securities with aggregate share values as indicated on the schedule in Exhibit A (“Trigger Points”), or when plan distributions to investors and creditors, or other payments including without limitation rent to retaining TICs, distributions from third party recoveries, facility sales, or global disposition in the form of a sale, merger, public offering or other event relating to the MLP or the REIT), plus the aggregate share value, reaches the Trigger Points, HFG will be entitled to receive the corresponding percentage on the schedule of future MLP distributions, and, if the enterprise is sold, of sale proceeds.
  - b. Thereafter, HFG will be entitled to receive additional percentages of future MLP distributions and sale proceeds according to incremental increases of the Trigger Point values as specified on the schedule in Exhibit A.
- D. At the time of any global disposition event (e.g., sale, merger, or similar transaction), or at the seventh anniversary of the effective date of the plan, if there has been no such global disposition event, any HFG membership interest that has reached a Trigger Point but remains unconverted will be converted to MLP units based on the appraised value of MLP units using the applicable percentage as specified on Exhibit A, and the membership interest shall terminate. The value of MLP units will be based on the appraisal, the amount HFG would be entitled to at that appraised value will be determined based on the Trigger Point schedule in Exhibit A, and MLP units will be issued on that value.
  - a. Prior to the seventh anniversary of the effective date of the plan, valuation for purposes of determining whether a Trigger Point has been reached will be valuation of shares/units held in the hands of claimants, rather than a valuation of the company as a whole.

- b. At the seventh anniversary of the plan, a valuation performed for purposes of determining whether a Trigger Point has been reached will be a valuation of the company as a whole rather than of the shares/units in the hands of the claimants.
- E. No global disposition can occur within the first four years after the effective date without Court approval.
- F. HFG will have a right of first offer for the first three years in the event of any global disposition. There is no right of first offer on sales of individual properties.
- G. HFG will receive no indemnities.
- H. There is neither a prohibition, nor a guarantee, of employment by the enterprise.
- I. This agreement does not create any special fiduciary duties to HFG. Rather, it is the intention of the enterprise to owe the minimum fiduciary duties, if any, to HFG allowable by law. Nothing in this contractual agreement is intended to limit HFG's participation in any recovery against the enterprise for breach of fiduciary duties owed to all partners or shareholders.
- J. The plan shall include a claims bar as to HFG and spouses and their immediate family members as to claims arising out of or related to Sunwest activities, including but not limited to the claims of the Receiver for disgorgement. The Receiver's agreement to waive claims is subject to the Receiver's review of the financial disclosures from Jon and Kristin Harder, Darryl Fisher, and Wally Gutzler, which review will be conducted within 10 business days of receipt of the disclosure. The Receiver's agreement to release HFG will include a carve-out to address misrepresentations or material omissions.
- K. Nothing contained in this agreement or the reorganization and distribution plans shall be interpreted or construed to reflect a release, settlement, or otherwise as to the claims, causes of action, damages, and/or penalties of the SEC or any other governmental agency.
- L. The Court retains jurisdiction to alter or interpret the terms of this agreement.
- M. This agreement will include a mutual non-disparagement clause.

Value	HFG%	Investor recovery 80/20	HFG recovery A (80/20)	HFG Amount	Averaged Amount	HFG Percentage Allocation	Investor Allocation	Investor Percentage Allocation
\$ 500	0.00%	\$ 500.00	\$ -		\$ -		500.00	
\$ 505	0.85%	\$ 500.75	\$ 4.25		\$ 4.25		500.75	
\$ 510	1.69%	\$ 501.50	\$ 8.50		\$ 8.50		501.50	
\$ 515	2.54%	\$ 502.25	\$ 12.75		\$ 12.75		502.25	
\$ 520	3.38%	\$ 503.00	\$ 17.00		\$ 17.00		503.00	
\$ 525	4.22%	\$ 503.75	\$ 21.25		\$ 21.25		503.75	
\$ 530	5.00%	\$ 503.50	\$ 26.50		\$ 26.50		503.50	
\$ 535	5.00%	\$ 508.25	\$ 26.75					
\$ 540	5.00%	\$ 513.00	\$ 27.00					
\$ 545	5.00%	\$ 517.75	\$ 27.25					
\$ 550	5.00%	\$ 522.50	\$ 27.50	27.5	\$ 27.50	5.00%	522.50	95.00%
\$ 555	5.05%	\$ 526.97	\$ 28.03					
\$ 560	5.10%	\$ 531.44	\$ 28.56					
\$ 565	5.15%	\$ 535.90	\$ 29.10					
\$ 570	5.20%	\$ 540.36	\$ 29.64					
\$ 575	5.25%	\$ 544.81	\$ 30.19	30	\$ 30.09	5.23%	544.91	94.77%
\$ 580	5.30%	\$ 549.26	\$ 30.74					
\$ 585	5.35%	\$ 553.70	\$ 31.30					
\$ 590	5.40%	\$ 558.14	\$ 31.86					
\$ 595	5.45%	\$ 562.57	\$ 32.43					
\$ 600	5.50%	\$ 567.00	\$ 33.00	28.5	\$ 30.75	5.13%	569.25	94.88%
\$ 605	5.60%	\$ 571.12	\$ 33.88					
\$ 610	5.70%	\$ 575.23	\$ 34.77					
\$ 615	5.80%	\$ 579.33	\$ 35.67					
\$ 620	5.90%	\$ 583.42	\$ 36.58					
\$ 625	6.00%	\$ 587.50	\$ 37.50	31.25	\$ 34.38	5.50%	590.63	94.50%
\$ 630	6.10%	\$ 591.57	\$ 38.43					
\$ 635	6.20%	\$ 595.63	\$ 39.37					
\$ 640	6.30%	\$ 599.68	\$ 40.32					
\$ 645	6.40%	\$ 603.72	\$ 41.28					
\$ 650	6.50%	\$ 607.75	\$ 42.25	50	\$ 46.13	7.10%	603.88	92.90%
\$ 655	6.60%	\$ 611.77	\$ 43.23					
\$ 660	6.70%	\$ 615.78	\$ 44.22					
\$ 665	6.80%	\$ 619.78	\$ 45.22	67				
\$ 670	6.90%	\$ 623.77	\$ 46.23					
\$ 675	7.00%	\$ 627.75	\$ 47.25	67.5	\$ 57.38	8.50%	617.63	91.50%
\$ 680	7.20%	\$ 631.04	\$ 48.96					
\$ 685	7.40%	\$ 634.31	\$ 50.69					
\$ 690	7.60%	\$ 637.56	\$ 52.44					
\$ 695	7.80%	\$ 640.79	\$ 54.21					
\$ 700	8.00%	\$ 644.00	\$ 56.00	70	\$ 63.00	9.00%	637.00	91.00%
\$ 705	8.20%	\$ 647.19	\$ 57.81					
\$ 710	8.40%	\$ 650.36	\$ 59.64					
\$ 715	8.60%	\$ 653.51	\$ 61.49					
\$ 720	8.80%	\$ 656.64	\$ 63.36					
\$ 725	9.00%	\$ 659.75	\$ 65.25	72.5	\$ 68.88	9.50%	656.13	90.50%
\$ 730	9.20%	\$ 662.84	\$ 67.16					
\$ 735	9.40%	\$ 665.91	\$ 69.09					
\$ 740	9.60%	\$ 668.96	\$ 71.04					
\$ 745	9.80%	\$ 671.99	\$ 73.01					

\$ 750	10.00%	\$ 675.00	\$ 75.00	75	\$ 75.00	10.00%	675.00	90.00%
\$ 755	10.40%	\$ 676.48	\$ 78.52					
\$ 760	10.80%	\$ 677.92	\$ 82.08					
\$ 765	11.20%	\$ 679.32	\$ 85.68					
\$ 770	11.60%	\$ 680.68	\$ 89.32					
\$ 775	12.00%	\$ 682.00	\$ 93.00	77.5	\$ 85.25	11.00%	689.75	89.00%
\$ 780	12.40%	\$ 683.28	\$ 96.72					
\$ 785	12.80%	\$ 684.52	\$ 100.48					
\$ 790	13.20%	\$ 685.72	\$ 104.28					
\$ 795	13.60%	\$ 686.88	\$ 108.12					
\$ 800	14.00%	\$ 688.00	\$ 112.00	120	\$ 116.00	14.50%	684.00	85.50%
\$ 805	14.40%	\$ 689.08	\$ 115.92					
\$ 810	14.80%	\$ 690.12	\$ 119.88					
\$ 815	15.20%	\$ 691.12	\$ 123.88					
\$ 820	15.60%	\$ 692.08	\$ 127.92					
\$ 825	16.00%	\$ 693.00	\$ 132.00	123	\$ 127.50	15.45%	697.50	84.55%
\$ 830	16.40%	\$ 693.88	\$ 136.12					
\$ 835	16.80%	\$ 694.72	\$ 140.28					
\$ 840	17.20%	\$ 695.52	\$ 144.48					
\$ 845	17.60%	\$ 696.28	\$ 148.72					
\$ 850	18.00%	\$ 697.00	\$ 153.00	127	\$ 140.00	16.47%	710.00	83.53%
\$ 855	18.40%	\$ 697.68	\$ 157.32					
\$ 860	18.80%	\$ 698.32	\$ 161.68					
\$ 865	19.20%	\$ 698.92	\$ 166.08					
\$ 870	19.60%	\$ 699.48	\$ 170.52					
\$ 875	20.00%	\$ 700.00	\$ 175.00	131	\$ 153.00	17.49%	722.00	82.51%
\$ 880	20.20%	\$ 702.24	\$ 177.76		\$ -			
\$ 885	20.40%	\$ 704.46	\$ 180.54		\$ -			
\$ 890	20.60%	\$ 706.66	\$ 183.34		\$ -			
\$ 895	20.80%	\$ 708.84	\$ 186.16		\$ -			
\$ 900	21.00%	\$ 711.00	\$ 189.00		\$ -			
\$ 905	21.20%	\$ 713.14	\$ 191.86		\$ -			
\$ 910	21.40%	\$ 715.26	\$ 194.74		\$ -			
\$ 915	21.60%	\$ 717.36	\$ 197.64		\$ -			
\$ 920	21.80%	\$ 719.44	\$ 200.56		\$ -			
\$ 925	22.00%	\$ 721.50	\$ 203.50		\$ -			
\$ 930	22.20%	\$ 723.54	\$ 206.46		\$ -			
\$ 935	22.40%	\$ 725.56	\$ 209.44		\$ -			
\$ 940	22.60%	\$ 727.56	\$ 212.44	188	\$ 159,754.88			
\$ 945	22.80%	\$ 729.54	\$ 215.46		\$ -			
\$ 950	23.00%	\$ 731.50	\$ 218.50		\$ -			
\$ 955	23.20%	\$ 733.44	\$ 221.56		\$ -			
\$ 960	23.40%	\$ 735.36	\$ 224.64		\$ -			
\$ 965	23.60%	\$ 737.26	\$ 227.74		\$ -			
\$ 970	23.80%	\$ 739.14	\$ 230.86		\$ -			
\$ 975	24.00%	\$ 741.00	\$ 234.00		\$ -			
\$ 980	24.20%	\$ 742.84	\$ 237.16		\$ -			
\$ 985	24.40%	\$ 744.66	\$ 240.34		\$ -			
\$ 990	24.60%	\$ 746.46	\$ 243.54		\$ -			
\$ 995	24.80%	\$ 748.24	\$ 246.76		\$ -			
\$ 1,000	25.00%	\$ 750.00	\$ 250.00		\$ -			

### **Agreement on Payments and Attorney Fees to Harder, Fisher, and Gutzler**

In consideration of reaching agreement as to the future participation of Harder, Fisher, and Gutzler (“HFG”) in the unified entity to be formed pursuant to the distribution plan, the Receivership Entities will cease funding the legal and professional fees of HFG except to the following extent:

- Between August 7 and December 1, 2009, the Receivership Entities (or the newly-formed unified entity) will pay up to \$200,000 for Harder, \$100,000 for Fisher, and \$100,000 for Gutzler, net of any retainers already held by their professionals, to cover legal and professional costs and fees to be used exclusively for completing settlement negotiations with the SEC and Receiver, and for participation in the development and implementation of the distribution plan in the Receivership case.
- In addition, small amounts may be allowed from time to time upon application for specific purposes that benefit the estate, e.g., \$20,000 will be allowed to Harder for the purpose of filing required bankruptcy schedules.

As of December 2, 2009, the Receivership Entities or the newly-formed unified entity will pay no further legal or professional fees on account of HFG.

The Receivership Entities or unified successor entity will pay Harder, Fisher, and Gutzler each \$75,000 per year for three years.

The Court retains jurisdiction to alter or interpret the terms of this agreement.

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
THE HON. MICHAEL R. HOGAN, JUDGE PRESIDING

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09-6056-HO
	)	
SUNWEST MANAGEMENT, INC., et al.,	)	
	)	
Defendants.	)	
<hr/>		
JON M. HARDER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 09-6074-HO
	)	
US TRUSTEE, PORTLAND, et al.,	)	
	)	
Defendants.	)	
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

EUGENE, OREGON  
THURSDAY, AUGUST 6, 2009

PAGES 1 - 20

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12 FOR DARRYL FISHER:

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17 FOR JON HARDER:

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21 FOR JON HARDER:

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16:35:17

## PROCEEDINGS

THURSDAY, AUGUST 7, 2009

THE COURT: We'll go on the record.

This session of court is in Securities and Exchange Commission versus Sunwest Management and others, Case No. 09-06056-HO, and the -- also in the Jon Harder Chapter 11 bankruptcy proceeding.

The purpose of this session of court is to put on the record the agreement of a number of parties to -- in this case.

And who is going to recite the agreement for the record?

MR. ENGLISH: Your Honor, Stephen English on behalf of Jon Harder and Brent Bullock on behalf of Wally Gutzler and Stephen Blackhurst on behalf of Darryl Fisher.

I will do most of the recitation on this side and David Zaro on behalf of the receiver and the CRO.

Our clients are present, Your Honor, and we have entered into an agreement which resolves the claims and issues arising out of the receivership with respect to the three individuals I mentioned earlier, Harder, Gutzler, and Fisher.

In addition, we have -- we have reached an agreement as to certain aspects of those individuals and how those individuals will be reflected in the plan of

17:22:28

1 restructure, and we are prepared to recite that on the  
2 record.

3 THE COURT: Please do so.

4 MR. ENGLISH: Number one, Your Honor, as a part of  
5 this agreement, the plan includes a claims bar as to HFG,  
6 which is Harder, Fisher, and Gutzler, and their spouses and  
7 their immediate family as to claims arising out of or  
8 relating to Sunwest activities, including but not limited to  
9 the claims of the receiver.

10 The receiver's agreement to waive claims is  
11 subject to the receiver's review of the financial  
12 disclosures from Jon and Kristin Harder, Darryl Fisher, and  
13 Wally Gutzler, and that review will be conducted within ten  
14 business days of the receipt of the disclosure.

15 The receiver's agreement to release HFG will  
16 include a carve-out to address misrepresentations or  
17 material omissions, which we hope will not occur, in those  
18 financial statements, but if they do, if there are some,  
19 that would be a basis for a carve-out.

20 MR. ZARO: The only issue -- I think the only two  
21 comments on that is that the receipt of the information is  
22 to be satisfactory within reason to the receiver,  
23 satisfactory information from the -- these folks.

24 And then this release of claims by the receiver  
25 excludes applicable insured claims such as DNO claims that

17:24:08

1 they may be insured for. We don't want to waive those  
2 claims.

3 THE COURT: Insured third party claims.

4 MR. ENGLISH: Actually, Your Honor, they would be  
5 claims that might have available insurance under DNO  
6 policies --

7 THE COURT: All right.

8 MR. ENGLISH: -- which would otherwise insure  
9 Gutzler, Harder, or Fisher.

10 THE COURT: Thank you.

11 MR. ENGLISH: And we understand that and agree to  
12 that.

13 So there's no misunderstanding, it is our  
14 understanding that the intent of producing this information  
15 to the receiver is so that he may examine it to determine if  
16 there have been any inappropriate transfers of assets that  
17 might be subject to recapture or disclosure.

18 So it is the transfer of assets inappropriately or  
19 of value that he believes can be traced that would be the  
20 subject of that.

21 MR. ZARO: I think counsel meant disgorgement.

22 MR. ENGLISH: Yes.

23 THE COURT: Okay.

24 MR. ENGLISH: Your Honor, the agreement also  
25 contains a number of specifics which are incorporated in

17:25:12

1 written documents.

2 Briefly, HFG, their spouses, and children will  
3 assign any and all Sunwest-affiliated assets they own or  
4 co-own to the receivership estate which will contribute the  
5 assets to the REIT. The mechanics of this contribution are  
6 subject to HFG's completion of a tax analysis to determine  
7 feasibility.

8 In this regard, Your Honor, we understand that  
9 there will be no -- because of old carryovers and such,  
10 there will be no actual taxes, but if there are, we will  
11 seek additional guidance from Judge Velure and Hogan on that  
12 issue.

13 With respect to the --

14 MR. ZARO: I'm sorry. Just -- since we'll go  
15 point by point, on that point, the CRO made it clear that  
16 it's the -- and the receiver made it clear that we don't  
17 believe it's appropriate for the receivership estate to fund  
18 any taxes.

19 MR. ENGLISH: And the mechanics are such that the  
20 nature of the vehicle chosen may create tax liability, which  
21 is why we may at some point seek additional guidance from  
22 Judge Velure or the court.

23 There is neither a prohibition nor a guarantee of  
24 employment by the enterprise for any of the individuals  
25 named.

17:26:35

1 And I will just refer to them as HFG for brevity,  
2 Your Honor.

3 HFG will receive no indemnities.

4 HFG will have a right of first offer for the first  
5 three years in the event of a global disposition.

6 There is no right of first offer on sales of  
7 individual properties to HFG.

8 Nothing contained in this agreement or the  
9 reorganization and distribution plans shall be interpreted  
10 or construed to reflect a release, settlement, or otherwise  
11 as to the claims, causes of actions, damages, or penalties,  
12 if any, of the SEC or any other governmental agency.

13 The parties have agreed that this court retains  
14 jurisdiction to alter or interpret the terms of this  
15 agreement.

16 This agreement will also include a mutual  
17 nondisparagement clause applicable to all parties to the  
18 agreement with the understanding that the receiver, in the  
19 normal course of his duties, can answer questions as  
20 necessary where legitimate inquiries are made.

21 MR. ZARO: Thank you.

22 (Counsel conferred.)

23 MR. ENGLISH: He says he's probably comfortable.

24 MR. GRASSMUECK: I don't know about the word  
25 legitimate.

17:28:04

1 MR. ENGLISH: Legitimate or otherwise inquiries.

2 THE COURT: I will determine what's legitimate.

3 MR. ENGLISH: Yeah.

4 MR. ZARO: Someone has to.

5 MR. ENGLISH: Your Honor, with respect to the  
6 specifics of the initial transfers, I would like Mr. Bullock  
7 to deal with that.

8 Thank you.

9 MR. BULLOCK: Your Honor, the -- the interest will  
10 be transferred into the receivership estate or possible  
11 different structure depending on the tax implications as we  
12 have discussed before.

13 H, F, and G are going to be receiving initial  
14 securities that would entitle them to 25 percent of the  
15 Master Limited Partnership, which is one of the entities  
16 that will be created in the receivership structure.

17 They will have a book value at this point, we  
18 believe, to be of a \$100,000.

19 They will be restricted. They won't have voting  
20 or distribution rights up front subject to certain trigger  
21 points being met, and at that point in time portions will be  
22 released.

23 Beginning on the third anniversary of the  
24 effective date of the plan, HFG may convert any of the  
25 membership interests which have economic value which has

17:29:35

1       been triggered into either MLP units or REIT, spelled  
2       R-E-I-T, shares and then subject to the same limitations as  
3       other MLP unit holders and REIT holders would have.

4               Any conversions of MLP units must occur on or  
5       before the -- or on an anniversary date of the effective  
6       date of the plan.

7               The trigger points which are referenced earlier,  
8       Your Honor, when investors and creditors hold securities  
9       with aggregate share values that are reflected on the  
10      Exhibit A attached to the document which will be submitted  
11      with the court or when distributions to investors and  
12      creditors or other payments which include rent to TICs,  
13      distributions from third party recoveries, facilities sales,  
14      or the global disposition of the entity in the form of a  
15      sale or merger, public offering, or other event, plus the  
16      aggregate share values reaches the threshold points that are  
17      set forth in the schedule, then the corresponding percentage  
18      of the MLP interest would be released at that point in time.

19              The schedule, Your Honor, at the back, it's  
20      intended that a schedule will be developed which will have  
21      increments of a million dollars to make it very clear what  
22      the numbers will be. But in the interest of time, the  
23      schedule that's attached has increments set up at  
24      25 million-dollar increments. And the parties have agreed  
25      that we will simply run a separate line between those

17:31:01

1 numbers to determine what the amounts will be.

2 At the time of a disposition or at the seventh  
3 anniversary date of the plan, if there hasn't been a  
4 disposition, the HFG membership interests, if they have  
5 reached a trigger point but have not yet been exercised at  
6 that point, will automatically be effectively exercised at  
7 that point based on the value of the MLP units at that  
8 point. And to the extent that they reach one of the trigger  
9 points on the schedule, that number of units would be  
10 released at that point, and any units that have not been  
11 released from the original 25 percent would terminate.

12 For purposes of a global sale or disposition of  
13 the property, you would look to see what the other claimants  
14 or investors and creditors would have received at that point  
15 in time. If there's not a disposition and that occurs at  
16 the seventh anniversary date, then the value for the shares  
17 for purposes of determining how much of the trigger is met  
18 would be based on the aggregate value of the company as  
19 opposed to the interests of the individual claimants.

20 There will be no global disposition of the entity  
21 for the first four years without the approval of the court.

22 And --

23 MR. ENGLISH: This court.

24 MR. BULLOCK: This court.

25 And H, F, and G will have a right of first offer

17:32:27

1 for the first three years in the event of a global  
2 disposition of the entity.

3 As referenced earlier, they will not have a right  
4 of first refusal on the sales of any other properties.

5 And I believe that is a complete summary, Your  
6 Honor.

7 MR. ZARO: For clarification, I'd like to just  
8 read -- you paraphrased this, but I think the language was  
9 not in dispute, but what we wrote should be read in, and  
10 that is as follows:

11 At the time of any global disposition event, e.g.,  
12 sale, merger, or similar transaction, or at the seventh  
13 anniversary of the effective date of the plan, if there has  
14 been no such global disposition event, any HFG membership  
15 interest that has reached a trigger point but remains  
16 unconverted will be converted to MLP units based on the  
17 appraised value of MLP units using the applicable percentage  
18 as specified on Exhibit A and the membership interest shall  
19 terminate. The value of MLP units will be based on the  
20 appraisal. The amount HFG would be entitled to at the  
21 appraised value will be determined based on the trigger  
22 point schedule in Exhibit A, and the MLP units will be  
23 issued on that value.

24 Valuation purposes of determining whether a  
25 trigger point has been reached will be the valuation of

17:34:06

1 shares, slash, units held in the hands of claimants rather  
2 than the value of the company as a whole.

3 All right?

4 MR. BULLOCK: There was an error on the drafting  
5 and Maren had missed that with regard to the seventh  
6 anniversary at the effective date of the plan that the  
7 valuation would be based on the value of the company as a  
8 whole.

9 MR. ZARO: That's correct.

10 MR. BULLOCK: One additional clarification is that  
11 although the valuation of the units will be measured by the  
12 valuation numbers that are on the schedule to Exhibit A, the  
13 percentage that is listed on the schedule, it is the number  
14 of units that will be released at that point in time.

15 MR. ZARO: And then we had one additional  
16 paragraph that we agreed to. And may I read that?

17 THE COURT: Yes.

18 MR. ZARO: This is Paragraph H. This agreement  
19 does not create any special fiduciary duties to HFG.  
20 Rather, it is the intention of -- of the enterprise to owe  
21 the minimum fiduciary duties, comma, if any, comma, to HFG  
22 allowable by law. Nothing in this contractual agreement is  
23 intended to limit HFG's participation in any recovery  
24 against the enterprise for breach of fiduciary duties owed  
25 to all partners or shareholders.

17:35:38

1 MR. ENGLISH: There's one additional agreement  
2 that will not be part of the restructure plan, Your Honor,  
3 which the CRO and others wanted to make sure was a matter of  
4 the public record, and that is the limitation on future fees  
5 paid to the counsel for Mr. Harder, Mr. Gutzler, and  
6 Mr. Fisher.

7 Starting tomorrow and up to --

8 (Counsel conferred.)

9 MR. ZARO: Okay.

10 MR. ENGLISH: Up to December 1st, unless otherwise  
11 ordered by this court and allowed by this court, counsel for  
12 Harder, Fisher, and Gutzler will be paid a maximum of  
13 200,000, 100,000, and 100,000 respectively for purposes of  
14 resolving the remaining issues as a part of the global plan  
15 as well as remaining issues with the SEC and bankruptcy  
16 issues.

17 In addition, Your Honor, there is an agreement,  
18 again, we want to make it clear as a matter of public record  
19 that Mr. Harder, Mr. Fisher, and Mr. Gutzler will receive  
20 \$75,000 per year individually each for three years as a part  
21 of this overall settlement.

22 (Counsel conferred.)

23 MR. ENGLISH: Characterized as a loan repayment.

24 Finally, Your Honor, in order to assist in the  
25 restructure and certain information that's necessary for the

17:37:32

1 restructure, and to fulfill our obligations under the terms  
2 of providing information to Mr. Grassmueck, the parties have  
3 agreed that in addition to the \$200,000, an additional  
4 \$20,000 may be paid to bankruptcy counsel for Mr. Harder to  
5 fulfill certain schedules that are required to be filed  
6 accurately in bankruptcy court.

7 (Counsel conferred.)

8 MR. ENGLISH: Clarification on the 200,000,  
9 100,000, and 100,000.

10 That includes costs as well as fees. And in  
11 addition, Your Honor, there will be a budget submitted by  
12 Mr. Hart of Mr. Kalikman's firm, counsel -- bankruptcy  
13 counsel for Mr. Harder, as to the cost of certain  
14 additional --

15 (Counsel conferred.)

16 MR. ENGLISH: -- preference actions, which will be  
17 provided at the CRO's request to the CRO.

18 (Counsel conferred.)

19 MR. ENGLISH: Yes. To the extent that I mentioned  
20 that the 75,000 would be characterized as a loan repayment,  
21 I was premature. The CRO will work with us to decide how to  
22 best handle that, Your Honor.

23 THE COURT: Thank you.

24 Mr. English, are these the terms of the agreement  
25 on behalf of Mr. Harder?

17:40:11

1 MR. ENGLISH: Yes, I do, and I have my client here  
2 present as well, Your Honor, to confirm that he agrees with  
3 it.

4 THE COURT: Mr. Harder, do you agree with these  
5 terms?

6 MR. HARDER: Yes, I do.

7 THE COURT: And Mr. Blackhurst, do you agree to  
8 these terms on behalf of Mr. Fisher?

9 MR. BLACKHURST: Yes, Your Honor, and Mr. Fisher  
10 is here as well.

11 THE COURT: Mr. Fisher, do you agree with the  
12 terms?

13 MR. FISHER: Yes, Your Honor.

14 THE COURT: Mr. Bullock, with regard to  
15 Mr. Gutzler, do you agree to the terms?

16 MR. BULLOCK: Yes, Your Honor, and our client,  
17 Wally Gutzler, is here as well.

18 THE COURT: Mr. Gutzler, do you agree?

19 MR. GUTZLER: Yes, I do, Your Honor.

20 THE COURT: And Mr. Zaro, you are appearing for  
21 both the CRO and the receiver in this, or is Mr. Kennedy  
22 receiving -- Mr. Kennedy, you are appearing for the CRO?

23 MR. KENNEDY: Yes, Your Honor. I'm appearing on  
24 behalf of the CRO.

25 THE COURT: And do you agree with these terms?

17:40:57

1 MR. KENNEDY: There is one minor clarification  
2 that I would make with respect to the obligation of the  
3 receivership entities to pay fees and expenses on behalf of  
4 Harder, Fisher, and Gutzler. Those numbers, the 200,000,  
5 100,000, and 100,000, will be net of or will be reduced by  
6 any retainers that are currently held by any of the  
7 professionals so that if one of the professionals has a  
8 retainer of \$50,000, the remaining obligation of the  
9 receivership entity would be the difference between that and  
10 the amount here.

11 MR. ENGLISH: We can clarify that right now. We  
12 have no retainer.

13 MR. BLACKHURST: I don't know if I should speak.  
14 I think my cocounsel, Mr. Vanden Bos, may have a retainer,  
15 but that's fine. We understand the intent.

16 THE COURT: All right. What about Mr. Gutzler?

17 MR. BULLOCK: We do not, Your Honor.

18 THE COURT: Thank you.

19 And Mr. Hamstreet, do you agree with these terms?

20 MR. HAMSTREET: I do.

21 THE COURT: And Mr. Zaro, for the receiver, do you  
22 agree with these terms?

23 MR. ZARO: Yes, Your Honor.

24 THE COURT: Mr. Grassmueck, do you agree with  
25 these terms?

17:42:01

1 MR. GRASSMUECK: I do, Your Honor. Thank you.

2 THE COURT: All right. Well, what I -- I want you  
3 all to know how much I appreciate the hard work you and  
4 others have been doing in these matters, and, as you know,  
5 we have other agreements of other parties, TICs and  
6 unsecured creditors and so on, we put on the record earlier.

7 There are some matters left, of course, and I hope  
8 that we have an early schedule for working with the secured  
9 lenders to try to get acceptable term sheets there.

10 And I want to thank Judge Velure for his  
11 assistance in mediation in this, and also my staff and the  
12 court staff for their commitment to the process, even being  
13 here past the time that government workers allegedly work.

14 All right. Is there anything further?

15 MR. ENGLISH: Your Honor, we want to join in the  
16 thanks to the ever pleasant Judge Velure in his negotiations  
17 with us. And in addition, Your Honor, we will be planning,  
18 however done, formally or informally, to seek the court's  
19 assistance through Judge Velure, Judge Leavy, and  
20 ultimately, if necessary, Your Honor to determine the  
21 remaining issues with respect to the SEC by December 1 when  
22 the money runs out.

23 THE COURT: And we need to work on that.

24 And Ms. Walker.

25 MS. WALKER: I just have a quick question, Your

17:43:28

1 Honor. Obviously we just are here by coincidence on behalf  
2 of the secured lenders, and I wasn't sure if this settlement  
3 is going to go out on notice to other interested parties or  
4 be incorporated into the plan or what?

5 THE COURT: It will. It will be incorporated into  
6 the plan. That's my intention at this point.

7 MS. WALKER: Thank you.

8 THE COURT: All right.

9 Anything further?

10 Thank you very much. We are in recess.

11 THE CLERK: Court is adjourned.

12 (The proceedings were concluded this

13 6th day of August, 2009.)

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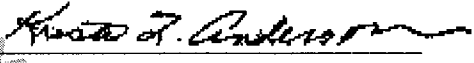
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I hereby certify that the foregoing is a true and correct transcript of the oral proceedings had in the above-entitled matter, to the best of my skill and ability, dated this 7th day of August, 2009.

  
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Kristi L. Anderson, Certified Real Estate Reporter

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