

EXHIBIT 10
RECEIVER'S, CRO'S AND DEBTOR'S
SECOND AMENDED PLAN OF REORGANIZATION (MAY 27, 2010)

TRANSCRIPT OF PROCEEDINGS OF APRIL 2, 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re: STAYTON SW ASSISTED)
LIVING, L.L.C., dba)
Lakeside Assisted)
Living Community,) No. 09-CV-6082-HO
et al.,)
)
Debtors.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHAEL R. HOGAN
UNITED STATES DISTRICT COURT JUDGE
FRIDAY, APRIL 2, 2010, 3:52 P.M.
EUGENE, OREGON

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APPEARANCES OF COUNSEL

1
2
3 Brentley M. Bullock
Perkins Coie, LLP
4 (503) 727-2020 representing J. Wallace Gutzler
(Defendant)
5
6 Ford Elsaesser
Elsaesser Jarzabek
7 Anderson Marks & Elliott, Chtd.
(208) 263-8517 representing Unsecured Creditors
8 Committee
(Interested Party)
9
10 Stephen F. English
David D. VanSpeybroeck
Bullivant Houser Bailey, PC
11 (503) 499-4411 representing Jon M. Harder
Kristin Harder
12 (Defendant)
13 A. Kenneth Hennesay
Allen Matkins Leck Gamble Mallory
14 (949) 553-1313 representing Michael Grassmueck
(Receiver)
15
16 Albert N. Kennedy
Tonkon Torp LLP
17 (503) 221-1440 representing Stayton SW Assisted
Living, LLC
18 (Plaintiff)
19 Merrilee A. MacLean
Karr Tuttle Campbell
20 (206) 224-8047 representing TIC Committee
(Interested Party)
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22 Robert J. Vanden Bos
Vanden Bos & Chapman
23 (503) 241-4869 representing Darryl E. Fisher
(Notice Party)
24
25

ALSO PRESENT

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Michael Grassmueck, Receiver
Clyde Hamstreet, CRO
Lyle Velure
Robert Dunn
Bill Bryan
Dick Carney

1 (Friday, April 2, 2010; 3:52 p.m.)

2 (The following proceedings were had in chambers.)

3 (Mr. Bullock is not present.)

4 P R O C E E D I N G S

5 THE COURT: All right. We'll go on the record
6 in this matter. Certain of the parties have been
7 working hard today to reach resolution of the interests
8 of Mr. Harder, Fisher and Gutzler in proceeds from the
9 various assets involved in this matter.

10 And, Mr. English, would you please place the
11 parties' agreement on the record.

12 MR. ENGLISH: Yes, Your Honor. Your Honor,
13 bear with me, but I think that Brent Bullock -- one
14 lawyer from HFG should be here.

15 JUDGE VELURE: I'll go get them.

16 THE COURT: All right. Thank you.

17 MR. ENGLISH: Al, you are welcome to read over
18 my shoulder here.

19 THE COURT: All right. I think we're
20 constituted now, Mr. English.

21 MR. ENGLISH: Your Honor, this supplements the
22 deal that was struck between Harder, Fisher, and
23 Gutzler, HFG, on the one hand and the receiver and the
24 CRO on the other hand on August 6, 2009. And we'll
25 refer to this as the August deal.

1 The August deal, except as described below and
2 otherwise modified by the plan of reorganization and the
3 plan of distribution, remains in full force and effect,
4 and that deal is now supported by the TIC committee and
5 the creditors' committee with the modifications agreed
6 to below.

7 Your Honor, the TIC committee raised
8 objections, and the unsecured creditors committee had
9 concerns, about how that deal would work in light of the
10 Blackstone deal or any eventual deal at the conclusion
11 of the current bidding process.

12 Today, HFG, the receiver, the TIC committee,
13 the creditors' committee, the CRO, and the receiver have
14 agreed as follows: HFG will receive a profits type
15 interest through a separate nonvoting class of
16 membership in the new entity, which interests will have
17 the right to receive distributions in connection with a
18 company sale or otherwise with the percentage of the
19 distributions -- let me rephrase that, Your Honor.

20 MS. MacLEAN: After "or otherwise."

21 MR. ENGLISH: Let me start that again, Your
22 Honor. In exchange for certain contributions, which
23 will be outlined in a moment, Your Honor, HFG will
24 receive a profits type interest through a separate
25 nonvoting class of distributions in connection with a

1 company sale or otherwise only after distributions to
2 investors have reached \$500 million.

3 The percentage of the distributions shall be in
4 accordance with the schedule agreed to by the parties on
5 August 6, 2009, except that if the distribution is
6 between 500 and 530 million, then the amounts in excess
7 of 500 million will be split on a 60 percent to HFG and
8 40 percent to the investors up to 530 million. And will
9 thereafter be distributed in accordance with the
10 August 6, 2009, schedule, in accordance with the prior
11 agreement with the State of Oregon.

12 To the extent that the prior agreement with the
13 State of Oregon gives Jon Harder a right to pay certain
14 amounts at certain times, it will be modified to agree
15 and reflect that Jon Harder will pay 50 percent of the
16 first 8.4 million he receives, which would otherwise be
17 distributable to him, to the State of Oregon. And our
18 understanding with the State and our understanding of
19 our agreement with the State, is that 4.2 million, which
20 he will pay to the State, will then be returned to the
21 investors as part of their investment recovery.

22 MS. MacLEAN: Don't forget the first part.

23 MR. ENGLISH: Consistent with the plan of
24 distribution, upon court approval of the HFG settlement
25 and confirmation of the reorganization plan, the claims

1 set forth in Section VIII(B)(4), that's Roman numeral
2 VIII (B)(4), of the distribution plan will become
3 effective.

4 Mr. Kennedy knows what that section refers to.
5 My understanding is that that references the claims bar.
6 But it is the understanding and agreement of all parties
7 here that there will be a claims bar of all claims
8 against HFG, its family members, and affiliates, which
9 relate to or arise out of their activities in the
10 Sunwest Enterprise.

11 Regarding claims brought by the Securities and
12 Exchange Commission, the creditors' committee will
13 recommend that no penalty be imposed upon HFG.

14 The TIC committee will take no position on
15 whether or not a penalty should be imposed.

16 Finally, Your Honor, HFG will contribute their
17 interests in the various entities on a tax free basis or
18 as close as possible to a tax free event as worked out
19 by the parties in good faith, and will, in return, waive
20 their defenses --

21 MS. MacLEAN: For everything.

22 MR. ENGLISH: -- that they might otherwise have
23 to any claims that will be barred by the claims bar,
24 which we expect to be a full bar of all claims.

25 That's the deal, Your Honor. It's the deal in

1 principle. And we agree to that on behalf of Jon and
2 Kristin Harder.

3 THE COURT: Thank you. And for Mr. Fisher?

4 MR. VANDEN BOS: Mr. Fisher agrees, Your Honor.

5 THE COURT: And for Mr. Gutzler?

6 MS. MacLEAN: Where is Brent?

7 MR. ENGLISH: Go get Brent.

8 THE COURT: And for the creditors' committee?

9 MR. ELSAESSER: Well, I don't want to put a
10 kenahora on this, Your Honor, so, yes, the unsecured
11 creditors' committee agree to it.

12 THE COURT: And for the TIC committee?

13 MS. MacLEAN: The TIC committee agrees, Your
14 Honor.

15 THE COURT: All right. We're going to wait for
16 Mister --

17 MR. ENGLISH: And the CRO is present with
18 counsel, and I'm assuming that they reaffirm their
19 earlier agreement.

20 MR. HAMSTREET: We agree.

21 MR. KENNEDY: Well, we want to clarify that the
22 claims bar that will be effective upon approval of this
23 settlement and the plan of reorganization is the claims
24 bar that has already been provided for in the plan of
25 distribution, and this is not an attempt to broaden that

1 or extend it.

2 MR. ENGLISH: Well, actually, my understanding
3 is that we're getting a full claims bar. If that is not
4 sufficient as it's described in the language there, to
5 give a full claims bar, then we're asking the court,
6 consistent with consistent understanding that the claims
7 bar bar any and all claims arising out of their
8 activities, including claims for guarantees or for any
9 other kind of lawsuit or claim that might be brought.

10 It's consistent with what was put into place in
11 the Capital Consultants case, and it's consistent with
12 what we expect to give to various third parties that are
13 also seeking the protections of the court in exchange
14 for giving up certain rights and monetary funds.

15 THE COURT: And for the trustee?

16 MR. HENNESAY: Your Honor, it's Ken Hennesay on
17 behalf of the receiver. And I had the same concern that
18 Mr. Kennedy did. Also wanted to make a point of
19 clarification with respect to the effectiveness of the
20 June agreement as we called it, which is that many of
21 the provisions in the June agreement were specific to a
22 REIT transaction or standard --

23 MS. MacLEAN: August.

24 MR. HENNESAY: I'm sorry?

25 MS. MacLEAN: August.

1 MR. HENNESAY: I'm sorry, August agreement,
2 were specific to a REIT transaction, what we called the
3 stand-alone plan. And, obviously, those provisions
4 should not remain in effect in connection with the
5 Blackstone transaction. In particular, paragraph B, D,
6 E, F are all irrelevant to a Blackstone deal, and those
7 are paragraphs out of the August agreement as attached
8 to the distribution plan. So those are not going to
9 remain in effect in connection with the Blackstone
10 transaction.

11 THE COURT: It's always problematic to have
12 someone respond who knows what the numbers mean in the
13 bankruptcy code.

14 MR. ENGLISH: Your Honor --

15 JUDGE VELURE: Hang on.

16 (Discussion held off the record. Brent Bullock
17 enters the conference room.)

18 MR. ENGLISH: Your Honor, the intent of the
19 August 6, 2009, agreement with the receiver was that all
20 claims that could otherwise be brought against Jon
21 Harder or his wife or his children or entities that they
22 own would be barred subject to the receivership --
23 subject to the receivership, through Michael Grassmueck,
24 having the opportunity to claim forfeiture of any assets
25 that Mr. Harder tried to hide -- and when I say

1 Mr. Harder, I include Mrs. Harder -- tried to hide or
2 lie about. Now --

3 JUDGE VELURE: Misrepresentations or material
4 omissions.

5 MR. ENGLISH: Those -- misrepresentations or
6 omissions as to those assets --

7 MS. MacLEAN: Material.

8 MR. ENGLISH: Material misrepresentations as to
9 those assets.

10 MS. MacLEAN: Material omissions.

11 MR. ENGLISH: Or material -- well, material
12 misrepresentations, including misrepresentations by
13 means of omission. I want to make it crystal clear,
14 though, that this claims bar does bar such claims that
15 arise out of representations made or claimed to have
16 been made in PPMs or to investors. Those claims are
17 barred by this.

18 If Mr. Harder misrepresented, either
19 affirmatively or by omission, when he gave information
20 or testimony to Mr. Grassmueck, those claims are not
21 barred. Does everybody understand it that way?

22 THE COURT: Let's put it a different way. Does
23 anyone object to those clarifications?

24 MR. KENNEDY: The claims bar goes to
25 Mr. Harder, Mr. Fisher, Mr. Gutzler, and their wives,

1 and children. It does not go to entities that are owned
2 by them or were owned by them or to affiliates.

3 MR. ENGLISH: What are we talking about?

4 MR. KENNEDY: The claims bar is a bar of claims
5 against Mr. Harder, Mr. Fisher, Mr. Gutzler, and their
6 respective wives and children.

7 MR. ENGLISH: I understand what you are saying.
8 Do you have some affiliate in mind that we're talking
9 about?

10 MR. KENNEDY: You added "affiliates" and you
11 added "entities owned by them." I didn't. And it
12 doesn't go that far. I have no idea what that means,
13 frankly.

14 MR. ENGLISH: Frankly, Your Honor, that means
15 then that with respect to the claims and defenses they
16 are waiving, they only waive them as to Harder, Fisher,
17 Gutzler, and their spouses, and not to those entities,
18 if any such entities exist, those entities remain able
19 to make claims as necessary.

20 THE COURT: All right. Does anyone wish to
21 be --

22 MR. ENGLISH: We have one other thing, Your
23 Honor, which Ms. MacLean pointed out.

24 THE COURT: Yes.

25 MR. ENGLISH: And this is part of the

1 agreement. The stipend referenced in the August 6th
2 deal will be revised so that the joint venture will
3 offer employment contracts to Fisher and Gutzler for a
4 two-year period. And Jon Harder will be granted
5 severance for a period of six months after confirmation
6 of the plan at a rate of \$25,000, after which he will
7 have no further claims against Stayton or any other
8 entity in the case.

9 THE COURT: Thank you. Are there any
10 objections to the clarification?

11 MR. HAMSTREET: I'd like to make one
12 clarification. The compensation should come from
13 Emeritus, not from the venture itself. They would be
14 working for Emeritus.

15 MS. MacLEAN: That's fine.

16 JUDGE VELURE: The severance for Mr. Harder of
17 \$25,000 a month for the six months following plan
18 confirmation has no effect on Mrs. Harder's compensation
19 that she is receiving, which will continue for the next
20 four months because she has just received her four
21 months' notice, or approximately in the next four
22 months, which will, if plan confirmation is in July,
23 will run 30 days after plan -- or a month after plan
24 confirmation. So she will -- but that will not diminish
25 Mr. Harder's \$25,000.

1 THE COURT: All right. Does anyone wish to
2 withdraw any of your agreement to these terms?

3 Congratulations, everyone.

4 As an old wrestler, this really did -- do you
5 have something?

6 MR. HENNESAY: Yeah, I'm sorry. I wasn't
7 completely finished. On behalf of the receiver, it's
8 Ken Hennesay again. The receiver doesn't have any
9 objection to the additional terms that have been agreed
10 to between the TIC committee, the general unsecured
11 committee, and the HFG parties. You know, we were
12 presented this term sheet, literally, you know, a minute
13 before we walked in here. I had very little time to
14 look at it. I noted before that there are discrepancies
15 between the prior deal in August and the contemplated
16 Blackstone transaction. To the extent that the HFG
17 settlement is consistent with their profits interest
18 being distributed to the terms we agreed to back in
19 August and based on distributions that investors
20 received, the receiver doesn't have any objection. But
21 the August agreement is not effective with respect to
22 very particular provisions that would have applied to
23 SWP and the MLP that were to have been put in place on
24 the stand-alone plan.

25 MR. ENGLISH: Don't start your representation

1 to the court by saying you got it a minute before,
2 because you had it for a while.

3 JUDGE VELURE: Guys, guys.

4 MR. KENNEDY: One copy for four people in a
5 room.

6 THE COURT: Are you requesting some sort of
7 recess here?

8 JUDGE VELURE: Do you want to go out in the
9 hall and talk to me or do you want to say everything is
10 okay?

11 THE COURT: What are you asking?

12 MR. HENNESAY: Your Honor, I --

13 JUDGE VELURE: Do you want to go out in the
14 hall and talk to me?

15 MR. ELSAESSER: I think we're talking about the
16 REIT related --

17 JUDGE VELURE: Come on, let's go, come on.

18 (Recess: 4:12 until 4:16 p.m. Mr. Elsaesser
19 is absent from the conference room.)

20 JUDGE VELURE: I met with the parties in the
21 hall, and the issue is this: Is that the tax issues
22 have not been fully determined, but that the parties
23 will agree that they will work together reasonably and
24 in good faith to assist each other in making this on a
25 favorable taxable event for each party on each side to

1 the extent that they can in a good faith basis.

2 MR. ENGLISH: So agreed, Your Honor, on behalf
3 of Harder, Fisher, and Gutzler.

4 JUDGE VELURE: Mr. Kennedy?

5 MR. KENNEDY: So agreed, Your Honor, on behalf
6 of the debtor and CRO.

7 JUDGE VELURE: Mr. Hennesay?

8 MR. HENNESAY: So agreed, Your Honor, on behalf
9 of the receiver.

10 JUDGE VELURE: Mr. Bullock?

11 MR. BULLOCK: So agreed on behalf of
12 Mr. Gutzler.

13 JUDGE VELURE: And you're in agreement with
14 this entire deal?

15 MR. GRASSMUECK: Yes.

16 JUDGE VELURE: All right. Sorry, Judge.

17 THE COURT: And Ms. MacLean?

18 MS. MacLEAN: Hi, Your Honor. I wasn't out in
19 the hall, but it sounded good.

20 THE COURT: You agree anyway, and you have
21 Ford's --

22 MS. MacLEAN: And I have Ford's proxy.

23 THE COURT: Yeah. All right. Well, it does
24 still remind me of a wrestling match, not freestyle like
25 I did, sumo with 15 participants, not sure who to grab

1 onto or who to turn loose of.

2 (Discussion held off the record.)

3 MS. MacLEAN: Let's read that sentence that you
4 skipped a line of.

5 MR. ENGLISH: I want to make sure this sentence
6 is correct in the record. In exchange for that
7 contribution, HFG will receive a profits type interest
8 through a separate nonvoting class of membership in the
9 new entity which interest will have the right to receive
10 distributions in connection with a company sale or
11 otherwise only after distributions to investors have
12 reached \$500 million.

13 MS. MacLEAN: Yes.

14 MR. ENGLISH: Thank you.

15 (The proceedings were concluded at 4:20 p.m.)

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CERTIFICATE

1
2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 4th day of April, 2010.
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12

13 /s/ Deborah Wilhelm

14 Deborah Wilhelm, RPR
15 Certified Shorthand Reporter
16 Certificate No. 00-0363
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