

Debtors' Motion for Entry of an Order Establishing Uniform Procedures for Settlement of Certain Actions or Potential Actions (the "Settlement Procedures Motion").

By the Settlement Procedures Motion, the Debtors seek entry of an order establishing uniform procedures for the settlement of actions in which any of the Debtors are plaintiffs (the "Settlement Procedures").

The Debtors assert that they are currently the plaintiff in various lawsuits that arose in connection with the operation of their business. The Debtors also allege that they are in the process of evaluating other potential actions that could be commenced to maximize the value of their estates for the benefit of creditors. The Debtors submit that these current and potential actions generally fall into two categories: (a) actions to recover customer deposits currently held in escrow accounts (the "Deposit Actions"); and (b) litigation arising in connection with the daily operation of the Debtors' business (the "Ordinary Course Actions" and, together with the Deposit Actions, the "Actions").

Deposit Actions. In connection with selling homes, the Debtors regularly enter into contracts with third-party purchasers that require such purchaser to make a deposit. These contracts include provisions that govern the return of a deposit in the event that a closing does not occur. In appropriate circumstances, the Debtors may initiate actions to obtain the recovery of customer deposits held in such escrow accounts.

Ordinary Course Actions. The Debtors allege that in the ordinary course of operating their business, certain vendors and suppliers provide them with the goods, materials, and services necessary at each stage of home construction and development. In some cases, the Debtors and these vendors and suppliers may become involved in disputes concerning their transactions, which, according to the Debtors, may result in the recovery of payments or damages by the Debtors. In these situations, the Debtors assert that they may initiate an action to recover damages or seek to resolve disputes without initiating formal litigation. The Debtors contend that the amount in controversy is *de minimis* for most of these Ordinary Course Actions.

The Debtors claim that most of the Actions are likely to settle without litigation because the Actions will not typically involve large dollar amounts. Absent the relief requested, however, the Debtors anticipate that they would be required to prepare, file, and present numerous repetitive motions related to relatively small assets because of the large number of potential Actions and the fact that the Debtors would otherwise be required to seek approval of each settlement (each, a "Settlement"). While the Debtors believe that consensual resolution of the Actions will help maximize the value of the estate for all parties in interest, they contend that the need to present each Settlement to the Court would be unnecessarily costly and inefficient and could be a disincentive to reach otherwise beneficial Settlements. According to the Debtors, the following Settlement Procedures address these concerns by providing a streamlined procedure that ensures the efficient and cost-effective disposition of the Actions:

- ***Authority to Settle.*** The Debtors will have the right to negotiate and settle Actions, regardless of the amount or nature of the Action; *provided, however*, that the Settlement Procedures will not apply to any settlements of any Actions (a) against any "insider" of

the Debtors (as such term is defined in section 101(31) of the Bankruptcy Code), and (b) against the Debtors' prepetition first lien lenders (the "First Lien Lenders") or prepetition second lien lenders (the "Second Lien Lenders") or (c) in any way relating to the adversary proceeding currently pending against, among others, the First Lien Lenders and the Second Lien Lenders (the "Committee Action").

- **Notice.** The Debtors shall give notice of any proposed Settlement (each, a "Notice") to counsel to the Committee, the United States Trustee (the "U.S. Trustee"), counsel to the agents for the First Lien Lenders and Second Lien Lenders (collectively, the "Notice Parties"). The Notice shall specify the amount and grounds of the Action and the proposed Settlement. No Settlement will be proposed unless it is reasonable in the judgment of the Debtors upon consideration of (a) the probability of success if the Action is litigated or arbitrated; (b) the complexity, expense and likely duration of any litigation or arbitration with respect to such Action; (c) other factors relevant to assessing the wisdom of the Settlement; and (d) the fairness of the Settlement vis-à-vis the Debtors' estates, creditors and shareholders.
- **Objection Period.** Each of the Notice Parties shall have ten business days after the Notice is sent to object or request additional time to evaluate the proposed Settlement. If no written objection or written request for additional time is received by the Debtors' counsel before the expiration of such ten-day period, the Debtors shall be authorized to enter into the proposed Settlement without the requirement for further order of the Court. If, however, a Notice Party provides a written request for additional time, such Notice Party shall have an additional five business days to evaluate and object to the proposed Settlement. If additional time has been granted, the Debtors may enter into a proposed Settlement promptly upon obtaining approval of the Notice Parties or upon expiration of the additional evaluation period, without the requirement for further order of the Court.
- **Resolution of Objections.** If any of the Notice Parties timely objects (an "Objection") to a proposed Settlement, the Debtors and the Notice Parties shall use good faith efforts to consensually resolve the objection. If the Objection is consensually resolved, the Debtors may enter into the proposed Settlement (as and to the extent modified by the resolution of the Notice Party's Objection). If the Debtors are unable to consensually resolve any Objection, the Debtors shall not proceed with the proposed Settlement pursuant to these Settlement Procedures without further Court approval.

A hearing on the Settlement Procedures Motion has been scheduled for March 20, 2009, with an objection deadline of March 16, 2009.