2012

William Edwin Lindsey

Lida Griest

Chris Inklebarger

Sydney Koch

William Edwin Lindsey Chapter 11

Reorganizations and Workouts

Spring 2012

Lida Griest, Chris Inklebarger, Sydney Koch

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PARTIES INVOLVED

DEBTOR, FAMILY, BUSINESS PARTNERS AND COUNSEL

William E. Lindsey – Debtor, local businessman who focuses mainly in commercial real estate development and management.

June Lindsey – Debtor's second and current wife and beneficiary of certain suspect transfers following FirstBank's motion for summary judgment.

Ronald Nease—Leasing property from Lindsey

Scott Davis—June Lindsey's son from previous marriage, owns the Cocke County Briarthicket Road property

Danika Lindsey – Debtor's biological daughter and beneficiary of certain suspect transfers following FirstBank's motion for summary judgment

Cissy Hurst – Debtor's adopted daughter and business partner is certain real estate transaction

Matt Caldwell – Debtor's long-standing business partner, and the party that FirstBank claims Lindsey is attempting to protect to the detriment of the estate

Mike Fitzpatrick – Debtor's attorney

Tommy Daugherty – Debtor's accountant

Steven Whitley – Debtor's business partner in Jefferson Plaza, LLC

ENTITIES

WIN, Inc. – Debtor owns 1,000 shares.

Jefferson Plaza, LLC – At the time of filing the Debtor owned 50%. Property located at X (google maps link)

Eastland Capital, LLC – At the time of filing the Debtor owned 100%. FirstBank suit led to bankruptcy

Knoxville HMA Holdings, LLC – Company that bought substantially all of Mercy Health Systems' assets

Issus, Inc—Lindsey is sole shareholder, owned the Cocke County Bapist Hospital porperty

Lindsey Leasing, LLC – Coal mining equipment leasing company

JS&A, LLC – Mr. Lindsey held a 50% interest valued at $1.00

Ultimate Toys Motorsports, Inc. – Motorcycle business

WL & MC Development, LLC – Had a construction loan and line of credit with SunTrust Bank

BTRG, LLC – Mr. Lindsey owned a 30% interest with an estimated value of $1.00

Ultimate Toys, LLC – Owns the motorcycle business building, leases back to UTM, Inc.

LEC Properties – Mr. Lindsey owned a 30% interest with an estimated value of $90,000

LHC Properties – Mr. Lindsey owned a 30% interest with an estimated value of $100,000

Old Capital Town, LLC – Entity Debtor transferred to wife prior to summary judgment

Flower's Baking Company of Morristown, Inc. – Rented the Clinton Highway Property

Minor entities include WL/MC, LLC, LECH, LLC, O.C. Energy, and additional entities transferred to wife and daughter.

CREDITORS

FirstBank, Walt Winchester

Greeneville Federal, Mary Miller, Ralph Boswell (SeniorV.P.)

Commercial Bank of Knoxville, Greg Logue

Lincoln National, Austin McMullin

Pinnacle Financial Partners, Tom Dickenson

Mountain National Bank, Tom Dickenson

Albert Haynesworth, Lynn Tarpey

Regions Bank

SunTrust

COURT AND ADMINISTRATORS

Becky Halsey – Bankruptcy Analyst with the U.S. Trustee's office.

Judge Richard Stair

U.S. Trustee – Patricia Foster

Chapter 11 Trustee – C. McRae Sharpe

CHAPTER 1: INTRODUCTION

Although Chapter 11 bankruptcy proceedings are overwhelmingly focused on the reorganization of a business entity, due to threshold amounts located within the bankruptcy code (the "Code"), certain individuals must file within Chapter 11 to reorganize.[1] The typical individual bankruptcy is administered under Chapter 13, and offers its own set of unique features. Courts across the country have struggled to determine whether an individual Chapter 11 reorganization should be administered in a fashion more similar to the Chapter 13 personal reorganization or if the individual should be thought of as business to mirror the more common business reorganization within Chapter 11.[2] *In re Lindsey*, the personal Chapter 11 of William E. Lindsey deals with these intricacies and the difficulties associated with personal Chapter 11 reorganizations.[3]

[1] 11 U.S.C. § 109(e)
[2] *See infra* Chapter 7 (discussing the issues facing individual chapter 11 debtors relevant to this case).
[3] Chapter 11 Voluntary Petition, *In re Lindsey*, No. 10-31694 (Bankr. E. D. D. Tenn. April 5, 2010).

CHAPTER 2: INTRODUCTION OF WILLIAM LINDSEY

William E. Lindsey (the "Debtor" or "Mr. Lindsey") is a Knoxville businessman whose primary focus is leasing commercial real estate throughout East Tennessee.[4] His personal experience in real estate development and management stretch all the way back to his high school days in Maryville, TN.[5] After attending the University of Tennessee for both his bachelor's degree and his MBA, Mr. Lindsey held numerous positions in corporate real estate working for local Wendy's franchises and the Winn-Dixie supermarket chain among others.[6] Mr. Lindsey is currently married to his wife June Dennis Lindsey, and has been since 1992.[7] This is Mr. Lindsey's third marriage.[8] He has one adopted daughter Cissy Hurst, and one biological daughter, Danika Lindsey, from his first marriage.[9] In the September of 2008, Mr. Lindsey was diagnosed with terminal cancer; he is currently actively fighting the disease with radiation and chemotherapy.[10] His prognosis has been a concern in his business practices, and has led to some pre-filing transactions that were heavily disputed.[11]

In 1989, Mr. Lindsey left the corporate world and began purchasing and leasing operations as an individual and under various business entities throughout East Tennessee.[12] He also owns sizeable stakes in multiple business entities that own and operate several commercial properties and some of the businesses occupying such properties.[13] In order to finance many of these projects, Mr. Lindsey utilized his relationships with local lenders to gain both loans as well

[4] Disclosure Statement, *In re Lindsey* at 4, No. 10-31694 (Bankr. E. D. D. Tenn. April 5, 2010).
[5] *Id*.
[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] Summary of Schedules, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. D. Tenn April 5, 2010); Disclosure Statement, *In re Lindsey* at 4, No. 10-31694 (Bankr. E. D. D. Tenn. April 5, 2010)., *See infra* Chapter 3 (discussing the the individual schedules).

as customers.[14] As is customary for corporate development lending, Mr. Lindsey was required to personally guaranty the loans made to his business entities, which were created for the sole purpose of developing and leasing the individual commercial properties.[15] In certain circumstances his relationships with local banks led to client relationships in which Mr. Lindsey would borrow the funds necessary to purchase and construct property for a business owner who did not qualify for the multi-million dollar loans necessary for land acquisition and the subsequent construction of the necessary buildings. This was Mr. Lindsey's primary operation as the sole shareholder of Eastland Capital, LLC and Lindsey Leasing, LLC.[16] These two business opportunities proved to be the catalyst for his pending bankruptcy.[17]

Judgment against Mr. Lindsey

According to Mr. Lindsey, he was approached by an acquaintance at FirstBank about partnering with Advanced Polymer Recycling, Inc. ("APR") on the construction of a polymer recycling facility in Knoxville, TN.[18] Mr. Lindsey was able to work out a satisfactory loan with FirstBank as well as a commercial lease with APR.[19] Unfortunately for Mr. Lindsey, APR was unable to meet its monthly rent obligations following the death of one of its founding partners and the waning global demand for polymer recycling.[20] Because APR could not meet its obligations, the recycling facility failed to produce the cash flow necessary to service its debt.[21] Eastland Capital's default upon the note entitled FirstBank to accelerate the payment schedule and make demands for full satisfaction of the note amount from Eastland Capital and Mr.

[14] Disclosure Statement, *In re Lindsey* at 5, No. 10-31694 (Bankr. E. D. D. Tenn April 5, 2010).
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

Lindsey personally based on his guaranty agreement.[22] Because Mr. Lindsey was unable to pay the remaining principal and accrued interest on the various notes due to FirstBank, it filed suit against Mr. Lindsey for breach of contract on his guaranties.[23]

Suing upon guaranties is typically a fairly easy matter to dispose of because the cause of action is relatively straightforward and all of the proof is contained within several documents. Likewise, FirstBank's motion for summary judgment was granted, which resulted in a judgment in excess of $4,000,000.00 against Mr. Lindsey personally.[24] Immediately following the summary judgment order being signed, FirstBank recorded its judgment lien against Mr. Lindsey in Knox County and eight surrounding counties, which ultimately led to Mr. Lindsey's petition for Chapter 11 protection from his creditors.[25]

[22] *Id*.
[23] *Id*. at 6.
[24] Response and Objection to Disclosure Statement by FirstBank, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. D. Tenn. April 5, 2010).
[25] Disclosure Statement, *In re Lindsey* at 9, No. 10-31694 (Bankr. E. D. D. Tenn April 5, 2010).

CHAPTER 3: BANKRUPTCY FILED

On April 5, 2010, Mr. Lindsey, with the help of his attorney Michael H. Fitzpatrick ("Mr. Fitzpatrick"), filed his Chapter 11 petition in the Eastern District of Tennessee.[26] Mr. Lindsey's petition showed total liabilities of between $10,000,001 and $50,000,000, while his total assets only amounted to $1,000,001 and $10,000,000.[27] Along with his petition, Mr. Lindsey filed both his statement of compliance with credit counseling and his certificate of credit counseling along with a list of his 20 Largest Unsecured Creditors. However, his schedules were not filed until May 3, 2010 following a motion to extend time to file.[28] On April 19, 2010, Mr. Lindsey filed his application to employ Mr. Fitzpatrick as his attorney; Mr. Fitzpatrick, the managing partner at Jenkins & Jenkins Attorneys, PLLC, is regarded as one of the top debtor's attorneys in Knoxville.[29]

Creditors

Shortly after Mr. Lindsey filed his petition, Notices of Appearance began to slowly trickle in, including: Thomas H. Dickenson ("Mr. Dickenson")[30] on behalf of Creditor Mountain National Bank, Mary D. Miller ("Mrs. Miller")[31] on behalf of Greeneville Federal Bank, and Austin L. McMullen ("Mr. McMullen")[32] on behalf of Lincoln National Life Insurance. Additionally, on April 23, 2010, Becky Halsey ("Ms. Halsey") on behalf of the U.S. Trustee

[26] Voluntary Petition, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. D. Tenn April 5, 2010).
[27] *Id*.
[28] *Id*.; Debtor's Motion for Additional Time to File Documents, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010); Summary of Schedules, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[29] Application to Employ Counsel, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010). $10,000 retainer statement of financial affairs.
[30] Notice of Appearance, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[31] Motion to be Admitted Pro Hoc, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[32] Notice of Appearance and Request for Notice, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

filed notice that no committee of unsecured creditors would be filed in Mr. Lindsey's case.[33] Interestingly enough, one of the most active participants in the litigation, Walter N. Winchester ("Mr. Winchester" or "Winchester"), counsel for FirstBank, does not officially enter the bankruptcy proceedings until he files his first Motion for 2004 examination following the filing of Mr. Lindsey's schedules.[34] However, Mr. Winchester played a major role in the suit filed by FirstBank, which precipitated Mr. Lindsey's bankruptcy. Shortly after Mr. Winchester's motion, Bruce C. Bailey ("Mr. Bailey") filed a Notice of Appearance on behalf of Regions Bank, Mr. Lindsey's largest unsecured creditor. On October 6, 2010 Gregory C. Logue ("Mr. Logue") filed a Notice of Appearance on behalf of Commercial Bank of Knoxville.[35]

Schedules

As previously mentioned, Mr. Lindsey filed his statement of financial affairs and schedules on May 3, 2010 following the agreed order to increase the time for filing.[36] Mr. Lindsey's Statement of Financial Affairs shows his yearly income from his rental properties in 2008 and 2009 was $240,220 and $342,995 respectively.[37] In addition, he had realized $108,074 in income for 2010 at the time of his filing.[38] The Statement of financial affairs also reflected the FirstBank judgment and the subsequent registration of said judgment in the surrounding counties.[39] Mr. Lindsey also listed 13 businesses in which he was involved at the time of his

[33] Notice of No Committee of Unsecured Creditors Will Be Appointed, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[34] Motion by FirstBank for Order Requiring Debtor to Appear for Examination Pursuant to Bankruptcy Rule 2004, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[35] Notice of Appearance, *In re Lindsey* at Page, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[36] Summary of Schedules, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010); Order, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[37] Statement of Financial Affairs, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[38] *Id*.
[39] *Id*.

petition, six of which were classified as "single asset real estate" as defined in 11 U.S.C. § 101.[40] Mr. Lindsey's Summary of Schedules indicated assets totaling $5,575,668.54 and liabilities of over $36,000,000.[41] His Summary of Schedules indicated real property assets of $3,500,500.00 and personal property assets of $2,075,168.54. Likewise, it broke down his liabilities into secured claims in the amount of $4,250,000.00 and unsecured nonpriority claims totaling $32,026,796.00. Additionally, it indicated a monthly income of just below $10,000.00.

Schedule A specifically lists six pieces of real property with various property interests associated therewith. The two largest assets are a fee simple interest in a building and land worth $1,600,000.00 (encumbered by a $1,200,000.00 secured claim by Pinnacle Financial Partners) and a leasehold interest in a commercial building worth $1,500,000.00 (encumbered by a $900,000.00 secured claim by Lincoln National).[42] Notably, Mr. Lindsey lists his entireties interest in his and his wife's personal residence as $500.00, although the home and land are worth over $1,000,000.00. Additionally, Schedule B shows Mr. Lindsey's joint checking accounts with his wife contain roughly $60,000.00. Mr. Lindsey's business interests in the 13 entities were also broken out as follows:

Business Entity	**Interest**	**Debtor's Estimated Value**
WIN, Inc.	1,000 shares	$1,000.00
Jefferson Plaza, LLC	50%	$1.00[43]
Eastland Capital, LLC	100%	$1.00
Lindsey Leasing, LLC	50%	$1.00
JS&A, LLC	50%	$1.00

[40] *Id*.
[41] Summary of Schedules, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[42] Mr. Lindsey also listed an unscheduled property interest in Schedule A; Schedule A – Real Property, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Schedule D – Creditors Holding Secured Claims, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); *see generally* First Amended Disclosure Statement, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[43] *See infra* Chapter 11 (discussing Mr. Lindsey's sale of his interest in Jefferson Plaza, LLC).

Ultimate Toys Motorsports, Inc.	39%	$1.00
BTRG, LLC	30%	$1.00
Ultimate Toys, LLC	42%	$1.00
LEC Properties	30%	$90,000.00
LHC Properties	30%	$100,000.00
Old Capitol Town, LLC[44]	50%	$650,000.00
WL/MC, LLC	50%	Unknown
LECH	33.33%	Unknown

Mr. Lindsey also listed notes receivable from his wife ($560,000.00) and his daughter, Danika, ($530,000.00).[45] Pursuant to Tenn. Code Ann. § 26-2-103, Mr. Lindsey claimed his interests in WIN, Inc.; Jefferson Plaza, LLC; Eastland Capital, LLC; Lindsey Leasing, LLC; JS&A, LLC; Ultimate Toys Motorsports, Inc.; BTRG, LLC; and Ultimate Toys, LLC as exempt because his schedules valued each interest below the $10,000.00 threshold.[46] Mr. Lindsey's valuation of these assets will come under a great deal of scrutiny and lead to some fairly contentious litigation over the coming years.

Mr. Lindsey's schedules list five secured creditors, Commercial Bank of Knoxville, Greeneville Federal Bank, Lincoln National, Matt Caldwell, and Pinnacle Financial Partners.[47] The secured claims are broken down as follows:

[44] This interest (roughly 31% of all scheduled assets) was included on Mr. Lindsey's schedule in error as this interest was transferred to June Lindsey as part of the disputed preferential transfers. Excluding this interest from the schedules effectively reduces Mr. Lindsey's scheduled assets to $1,425,168.54

[45] These notes were acquired upon the transfer of various business interests belonging to the Debtor. At the time of filing the disclosure statements none of the notes were secured. Schedule B – Personal Property, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Disclosure Statement, *In re Lindsey* at 5, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

[46] Schedule C – Property Claimed as Exempt, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Tenn. Code Ann. § 26-2-103 (2012).

[47] Schedule C – Property Claimed as Exempt, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010)

Creditor	Description	Value	Claim Amount
Commercial Bank of Knoxville	Undeveloped Lot	$140,000	$400,000*
Greeneville Federal Bank	Commercial Building	$250,000[48]	$250,000
Lincoln National	Commercial Building	$1,500,000	$900,000
Matt Caldwell	LEC and LHC Real Properties	$90,000	$1,500,000*
Pinnacle Financial Partners	Building and Land	$1,600,000	$1,200,000

*under secured

Mr. Lindsey listed no creditors holding unsecured priority claims.[49] However, the majority of his liabilities were listed on Schedule F as unsecured nonpriority claims. The more than $32,000,000 in claims were listed as follows:

Creditor	Description	Claim Amount
Regions Bank	Personal Guaranties	$12,000,000
FirstBank	Judgment	$3,950,000
Pinnacle Financial Partners	Personal Guaranties	$3,900,000
Commercial Bank of Knoxville	Personal Guaranties	$3,875,000
SunTrust Bank	Personal Guaranty	$2,500,000
G.E. Commercial Credit	Personal Guaranties	$1,657,249
Greeneville Federal Bank	Personal Guaranty	$1,540,000
Mountain National Bank	Personal Guaranties	$1,385,000
Blanchard Calhoun	Personal Guaranty	$800,000
Fifth Third Bank	Personal Guaranty	$300,000
Capital Mark	Personal Guaranty	$119,547

[48] The value of this collateral will later be disputed by Greeneville Federal Bank.
[49] Schedule E – Creditors Holding Unsecured Priority Claims, *In re Lindsey*, No. 10-31694 (Bankr. E. D.D. Tenn. April 5, 2010).

Mr. Lindsey's Schedule G listed only two unexpired leases, one lease to Mercy Health Partners in Cocke County[50] and another three year lease to Lanrick Group, LLC.[51]

[50] No term is listed in the schedules, but the 85 year lease was gifted to Mercy Health Partners in order to receive certain tax benefits for the Debtor. Schedule G – Executory Contracts and Unexpired Leases, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

[51] Schedule G – Executory Contracts and Unexpired Leases, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

CHAPTER 4: EARLY MOTIONS

Motions to use cash collateral

Certain properties Mr. Lindsey had financed, with Lincoln National and Pinnacle Financial Partners specifically, were secured by among other things the rents from the properties associated therewith.[52] As these were the only two properties that were positively cash-flowing at the time of Mr. Lindsey's filing, he filed motions to use the banks' cash collateral to continue operations during the pendency of his bankruptcy on May 6, 2010.[53] Both Lincoln National and Pinnacle Financial Partners were able to reach an agreement with Mr. Lindsey to allow him the use of their cash collateral in exchange for adequate protection payments and a continuing security interest in the post-petition receivables of their respective properties.[54]

2004 Examinations

During the pendency of the Debtor's motions to use the banks' cash collateral, Mr. Winchester filed a motion seeking a 2004 examination of Mr. Lindsey, pursuant to Federal Rules of Bankruptcy Procedure Rule 2004.[55] The main purpose of this examination was for FirstBank to clarify some ambiguity in Mr. Lindsey's Schedules and to determine which property interests were transferred prior to the bankruptcy filing.[56] Mr. Lindsey's 2004 examination led to further requests to examine June Lindsey, Danika Lindsey, and Matt Caldwell, in order to determine the

[52] Motion to Use Cash Collateral of Pinnacle National Bank, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010). Motion to Use Cash Collateral of Lincoln National Life Insurance, *In re Lindsey*, No 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[53] Motion to Use Cash Collateral of Pinnacle National Bank, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010). Motion to Use Cash Collateral of Lincoln National Life Insurance, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[54] Agreed Order Granting Motion to Use Cash Collateral (Related Doc. #47), *In re Lindsey*, No.10-31694 (Bankr. E. D. Tenn. April 5, 2010); Agreed Order Granting Motion to Use Cash Collateral (Related Doc. #47), *In re Lindsey*, No-10-31694 (Bankr. E. D. Tenn. April 5, 2010)
[55] F.R.B.P. R. 2004
[56] Disclosure Statement, Exhibit 2, *In re Lindsey*, No.10-31694 (Bankr. E. D. Tenn. April 5, 2010)

nature and purpose of certain property transfers. At this point, Mr. Winchester is setting the stage for FirstBank's major argument that immediately preceding the Chancery Court's granting of its motion for summary judgment, Mr. Lindsey transferred his most lucrative assets to his family members so that the FirstBank would be unable to seize them following the entry of its judgment against Mr. Lindsey.[57] These preferential transfers would be the subject of continued contention throughout the administration of the bankruptcy case. At this point, it's worth noting that FirstBank has taken a relatively aggressive approach regarding Mr. Lindsey's debt. Given its sizeable judgment against Mr. Lindsey, this is hardly unexpected, but the suit on Mr. Lindsey's personal guaranty may ultimately leave FirstBank with significantly less than had it chosen to negotiate an amicable settlement on the Eastland Capital loan, keeping Mr. Lindsey out of bankruptcy.

Motions for relief from stay

On June 23, 2010, Mr. Dickenson filed the first motion for relief from the automatic stay on behalf of Mountain National Bank.[58] Mountain National Bank claimed that its collateral was under-secured and continued to diminish in value due to the nature of the business conducted on the premises.[59] Mr. Lindsey did not oppose the motion, and Mountain National was ultimately granted relief from the say in order to foreclose upon its deed of trust.[60]

[57] Disclosure Statement, *In re Lindsey* at 5, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
objection to disclosure statement; First Amended Disclosure Statement, In re Lindsey, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); objection to amended disclosure statement
[58] Motion for Relief from Stay, *In re Lindsey*, No.10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[59] Included in the collateral property was the Weems Truss building, a truss manufacturing facility. Due to the economic slow down, new construction projects were nearly nonexistent and the potential for growth in both commercial and residential construction was suspect at best. Therefore, the truss business was becoming less and less viable.
[60] Order Granting Motion for Relief from Stay, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

Extensions

On August 31, 2010, Mr. Lindsey filed a motion to extend the exclusivity period for filing his plan and disclosure statement due to an expected round of chemotherapy in the coming month, which would leave him unable to finish his disclosure statement and Plan.[61] Mr. Lindsey also felt the additional 60 days would offer him further insight into the economic situation of several of his business investments.[62] On September 30, 2010, Mr. Lindsey was granted the additional exclusivity period.[63] During this same time period, FirstBank sought to again extend the deadline for filing a complaint as it continued to investigate Mr. Lindsey's financial affairs and his pre-petition transfers.[64] Although Mr. Lindsey objected to this extension, FirstBank was given more time to determine what claim if any it had.[65]

[61] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[62] *Id*.
[63] Order Granting Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement, I*n re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[64] Order Granting Second Motion to Extend Time to File 523 Complaint as to FirstBank, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[65] *Id*.

CHAPTER 5: ADVERSARY CASE

On November 3, 2010, Mr. Lindsey, as debtor-in-possession, filed an adversary case against FirstBank seeking to avoid FirstBank's recordation of its judgment lien as a preferential transfer pursuant to 11 U.S.C. § 547(b).[66] Likewise, Mr. Lindsey claimed that FirstBank had over/understated the value of the collateral securing its claim.[67] Mr. Lindsey also points out that multiple foreclosure sales had been scheduled; however, none were completed at the time of filing the adversary claim.[68] FirstBank filed its motion to dismiss for failure to state a claim upon which relief can be granted, which led Mr. Lindsey to file an amended complaint on December 23, 2010.[69] On February 9, 2011, FirstBank filed its answer to Mr. Lindsey's complaint;[70] however, shortly after submitting their discovery written report, FirstBank and Mr. Lindsey filed an Agreed Judgment for Plaintiff against Defendant.[71] FirstBank agreed that the recordation of the judgment created a lien against Mr. Lindsey's property in the nine counties and that such liens were preferential transfers pursuant to 11 U.S.C. 547(b).[72] Nevertheless, the other counts in Mr. Lindsey's amended complaint were agreed moot.[73] This adversary case is further indication of the contentious nature of the relationship between Mr. Lindsey and FirstBank. The opposition and litigation of this matter only served to prolong the entire bankruptcy and increase the legal fees for both parties.

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[66] 11 U.S.C. § 547 (b); Adversary case 3:10-ap-03112. Complaint by William Edwin Lindsey against FirstBank, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[67] *Id*.
[68] *Id*.
[69] Motion to Dismiss Complaint, *Lindsey v. FirstBank*, Adversary Case No. 10-ap-03112, (Bankr. E. D.D. Tenn. November 3, 2010).
[70] Answer to Amended Complaint, *Lindsey v. FirstBank*, Adversary Case No. 10-ap-03112, (Bankr. E. D.D. Tenn. November 3, 2010).
[71] Agreed Judgment, *Lindsey v. FirstBank*, Adversary Case No. 10-ap-03112, (Bankr. E. D.D. Tenn. November 3, 2010).
[72] *Id*.
[73] *Id*.

CHAPTER 6: FIRST DISCLOSURE STATEMENT AND PLAN

After a brief discussion of the case, the first Disclosure Statement sets out the current financial state of the estate, the specific business interests of Mr. Lindsey, and the business interests he transferred to his wife and daughter.[74] Specifically, at the time of its filing, the Disclosure Statement showed net income of the estate for the period since filing of $96,606.24.[75] However, the monthly income varied drastically (from over $56,000 in August to a loss of over $11,000 in April).[76] The description of available assets listed seven pieces of real property with varying amounts of equity scheduled.[77] The Disclosure Statement also set out the value of the scheduled business interests, and corrected the error of scheduling Old Capital Town, LLC, an interest transferred to Mr. Lindsey's wife.[78] Mr. Lindsey also claimed that at the time of confirmation his monthly net income would exceed $13,000.[79] Of that roughly $13,000, $4,525.00 was listed as monthly expenses, which would leave less than $9,000 a month to service Mr. Lindsey's debt.[80] However, certain assets including, all the various entities associated with Ultimate Toys Motor Sports, the Cocke County property, and Mr. Lindsey's interest in WL/MC would be liquidated for the benefit of the secured creditors under the Plan.[81] Additionally, the first Plan divided the creditors into 12 classes, and provided for the Mr. Lindsey to retain his interest in certain business entities.[82] The Plan provided for the sale of most of the under-secured real estate with the deficiency being transferred as an unsecured claim.

[74] See generally Disclosure Statement, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[75] Disclosure Statement, *In re Lindsey* at 11, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[76] *Id*.
[77] Only two of the seven properties were unencumbered, and one property was unscheduled. Disclosure statement, *In re Lindsey* at 11, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[78] *Id*. at 12.
[79] *Id*. at 15.
[80] *Id*.
[81] Chapter 11 Plan of Reorganization, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn April 5, 2010).
[82] *Id*.

Additionally, the $8,340.00 monthly surplus would be distributed to unsecured creditors or to a segregated account should the unsecured claims not be fully determined.[83] Although the first Disclosure Statement and Plan further clarified the business interests which Mr. Lindsey transferred to his wife and daughter and cleared up some of the questions about his specific business interests, in the eyes of multiple creditors, he did not go far enough.

Objection to Disclosure Statement

The first Disclosure Statement garnered objections from FirstBank, Mountain National Bank, Pinnacle Financial Partners, and the U.S. Trustee, citing near identical grounds.[84] The main thrust of the four objections was a general lack of adequate information regarding Mr. Lindsey's business holdings and certain transfers.[85] Specifically, Mr. Lindsey's failure to provide P&L statements on entities, valuation reports to support Mr. Lindsey's assertions regarding the value of his various interest, his relationship with affiliate companies, and detailed information about the allegedly fraudulent transfers to his wife and daughter.[86] In addition, Pinnacle Financial Partners and Mountain National Bank challenged the Debtor's claim that the absolute priority rule did not apply to his individual Chapter 11 case.[87] This is one of the more divided issues throughout the country, and an issue that Judge Stair will be forced to wrestle with

[84] Response *and Objection to Disclosure Statement* Filed by Walter N. Winchester on behalf of Creditor FirstBank, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Objection to (related document(s): 129 Disclosure Statement filed by Debtor William Edwin Lindsey), *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Objection to (related document(s): 129 Disclosure Statement filed by Debtor William Edwin Lindsey), *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Objection to (related document(s): 129 Disclosure Statement filed by Debtor William Edwin Lindsey), *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

before the plan confirmation process will be able to continue.[88] However, before the proceedings could get to that point, Mr. Lindsey would be required to file an Amended Plan and an Amended Disclosure Statement.

CHAPTER 7: FIRSTBANK, PINNACLE NATIONAL BANK, AND MOUNTAIN NATIONL BANK OBJECT TO THE PLAN AND MOVE FOR SUMMARY JUDGMENT

The Proposed Plan

On April 6, 2011, Michael Fitzpatrick ("Fitzpatrick"), attorney for the debtor in possession, Mr. Lindsey, filed the Plan.[89] The Plan identified twelve classes.[90] The first class, which was unimpaired, applied to administrative expenses.[91] The second through tenth classes identified the various secured claims, and were all impaired.[92] The eleventh class belonged to the general unsecured creditors, and twelfth class to the Debtor. Both the eleventh and twelfth classes were listed as impaired.[93]

The Plan called for the Debtor to pay his administrative expenses in full, and to continue payment on the secured claims in classes 2-10.[94] Class 2 is Commercial Bank's claim in Lot 88 Ladd Landing, Roane County.[95] This claim arose from a note from Ultimate Toys Motorsports, Inc.[96] The lot will be sold and the proceeds will be paid to Commercial Bank, with any deficiencies becoming a general unsecured claim.[97] Class 3 was the pre-petition secured claim of Greeneville Federal Bank for the disputed amount of $2,625,477.89 secured by the Debtor's

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[88] *See infra* Chapter 7.
[89] Debtor's First Amended Plan of Reorganization, *In re Lindsey*, No.10-31694 (Bankr. E. D. Tenn. April 5, 2010)
[90] *Id*.
[91] *Id*. Administrative expense claims specified by § 507(a)(1) include expenses allowed by the bankruptcy court and the compensation of professionals, like lawyers and accountants.
[92] Debtor's First Amended Plan of Reorganization, *In re Lindsey* at___, No.10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[93] *Id*.
[94] *Id*. at 8-15.
[95] *Id*.
[96] *Id*.
[97] *Id*.

interest in 7111 Clinton Hwy., Lot 71 Coker Addn. real property of Lindsey Leasing, LLC, the Kingston Pike condominiums of Jefferson Plaza, LLC, and the condominium home of the Clarks (which will later be released from the stay).[98] The notes are to be paid under the Plan, and any deficiencies were to become general unsecured claims.[99] Class 4 included the pre-petition, secured claim of Lincoln National Life Insurance for $900,000.00 secured by the Cocke County sub-lease.[100] This claim will "survive" the Plan and "remain in effect until…paid in full."[101] Although the Plan notes that Classes 2-10 are impaired, this claim does not appear to be truly impaired as it will be fully paid. Class 5 is Pinnacle National Bank's claim for $1,203,900.00 as secured by 10267 Kingston Pike, Knoxville, TN.[102] The property was subsequently foreclosed upon and sold for a $243,900.00 deficiency which has become a general unsecured claim. Class 6 is the second, pre-petition, secured claim of Pinnacle National Bank.[103] This claim is for $953,186.45 secured by an insurance claim for destroyed mining equipment owned by Lindsey Leasing, LLC.[104] Under the Plan, Pinnacle will retain its lien on the insurance claim.[105] Any deficiency after recovery will become a general, unsecured claim.[106] Class 7 is the pre-petition, secured claim of FirstBank for $4,301,941.72 secured by the real property owned by the Debtor and pursuant to its judgments in several counties.[107] This claim was disputed—Mr. Lindsey has filed suit to avoid the lien, and was successful.[108] This meant that the entire claim was relegated

[98] *Id.* See infra Chapter 9 (discussing Greeneville's motions for relief from the automatic stay).
[99] Debtor's First Amended Plan of Reorganization, *In re Lindsey*, No.10-31694 (Bankr. E. D. Tenn. April 5, 2010)
[100] *Id*.
[101] *Id*.
[102] *Id*.
[103] *Id*.
[104] *Id*.
[105] *Id*.
[106] *Id*.
[107] *Id*.
[108] *See supra* Chapter 5.

to Class 11, as an unsecured claim.[109] If, however, the lien had not been avoided and FirstBank did not make an 1111(b) election, the property would have been sold at auction and only deficiencies would be unsecured. Class 8 is the first the pre-petition, secured claim of Mountain National Bank for $413,762.44, secured by the Briarthicket Road, Cocke County property jointly owned by Mr. Lindsey and Mr. Davis.[110] Mr. Lindsey intends to quit-claim the property to Mr. Davis and allow Mountain National to deal directly with him.[111] If there is equity in the property, Mr. Lindsey will sell his interest to Mr. Davis rather than quit-claim it. Mountain National will be paid in full for this claim.[112] Class 9, however, is the pre-petition secured claim of Mountain National Bank for $809,802.86 secured by the real property of Samuel Spivey in Greene County, TN and will be treated differently.[113] This claim will be treated as an unsecured claim if there is a deficiency.[114] Finally, Class 10 is the pre-petition secured claim of Regions National Bank for $11,651,134.15 as a guarantor.[115] These notes have been re-worked and the claim will not be paid further.[116]

In instances where a deficiency was expected for a secured claim, the deficiencies were to become general unsecured claims.[117] Pinnacle National Bank held an unsecured deficiency claim for $243,900.00, and other unsecured claims for $1,501,125.00 and $953,186.45.[118] Similarly, Mountain National Bank held unsecured claims for $916,920.95 and $200,866.45.[119] The general unsecured claims, comprising class 11 and detailed in Schedule F, were not expected

[109] Debtor's First Amended Plan of Reorganization, *In re Lindsey*, No.10-31694 (Bankr. E. D. Tenn. April 5, 2010)
[110] *Id*.
[111] *Id*.
[112] *Id*.
[113] *Id*.
[114] *Id*.
[115] *Id*.
[116] *Id*.
[117] *Id*.
[118] *Id*.
[119] *Id*.

to be paid in full.[120] With regard to the unsecured class, the Plan specifically stated, "(t)his class will ***NOT*** be paid in full."[121] Furthermore, after re-stating that it was not anticipated that class 11 would be paid in full, the plan said "(i)t is not possible to calculate the dividend to be paid to Class 11 until the court determines the secured claims in Classes 2, 3, 5, 6, 7, and 9 together with the resolution of the debtor's other personal guaranty claims where no default by the maker has occurred." [122]

The Plan was to be implemented through the sale of property of the Debtor as designated within the Plan, the Debtor's income, and the payments required by the Plan.[123] Cash on hand was to be used to pay the unsecured creditors after administrative expenses were paid, along with amortized notes from June and Danika Lindsey, and potential rent money from the Cocke County property.[124] These sources could only account for up to $1, 275,000.00 in payments to the unsecured creditors.[125] After that, the unsecured creditors could be paid with the proceeds of the liquidation of property as described by the Plan.[126] The property named by the Plan to be sold included the Debtor's "interest in the Briarthicket Road property in Cocke County; his stock in Ultimate Toys Motorsports, Inc.; his membership in BTRG, LLC; his membership in Ultimate Toys, LLC; and his membership in WL & MC Development, LLC."[127]

The Plan allowed for the Debtor to retain his interest in the majority of his assets, and stated that upon confirmation all property of the estate would vest in the Debtor.[128] The Debtor's assets were specifically listed in the Debtor's First Amended Disclosure Statement, and the

[120] *See id*. at 10.
[121] *Id*. at 15.
[122] *Id*. at 19.
[123] *Id*. at 18-19
[124] *Id*.
[125] *Id*.
[126] *Id*.
[127] *Id*.
[128] *Id*.

Debtor intends to retain a majority of his assets.[129] Several of the Debtor's assets may have limited value, and others' values are uncertain.[130] However, the Plan would allow the Debtor to retain the majority of the assets at the expense of the unsecured creditors.

As one might expect, Greenville Federal Bank (1 vote), Pinnacle National Bank (2 votes), Mountain National Bank (2 votes), and four unsecured creditor votes rejected the Plan.[131]

Objections to the Plan

As one of the primary creditors, and the creditor that pushed Mr. Lindsey into chapter 11, it is fitting that FirstBank filed the first objection to the Plan.[132] Mr. Lindsey was able to avoid FirstBank's lien, leaving FirstBank with an unsecured claim. On behalf of FirstBank, FirstBank's counsel Walt Winchester ("Winchester") based his objection primarily on a lack of good faith (this argument will resurface later as well).[133] According to Winchester, the Plan proposed "inter-company loans that would preferentially benefit" insiders and included "self-dealing transfers" to insiders like June and Danika Lindsey.[134] Winchester further complained that because FirstBank is impaired, and has not accepted the Plan, and because FirstBank would receive more in a chapter 7 liquidation than it will under the Plan, that the Plan is not confirmable under section 1129 of the Code.[135] Winchester also argued that the value of Mr. Lindsey's income over the next five years exceeded the value of property to be distributed under

[129] First Amended Disclosure Statement at Page, *In re Lindsey* at 14, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[130] *Id*.
[131] Ballot Summary, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[132] Objection by FirstBank to Confirmation of Debtor's First Amended Plan of Reorganization, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[133] *Id*.
[134] *Id*. at 2.
[135] *Id*. *See also* 11 U.S.C. § 1129.

the Plan.[136] Finally, Winchester argued that the Plan violates the Absolute Priority Rule, making it non-confirmable.[137]

Following Winchester, Thomas Dickenson ("Dickenson") (counsel for Mountain National Bank) and Mary Miller ("Miller") (counsel for Greeneville Federal Bank) entered similar objections to the Plan.[138] Dickenson and Miller surmised that the Plan was non-confirmable because it was not proposed in good faith,[139] because Mountain National and Greenville did not accept the Plan,[140] because Mountain National and Greeneville would receive more in a chapter 7 liquidation than the Plan would allow, because the Plan is not feasible and the Debtor would need further reorganization following its confirmation,[141] because the Debtor's income over the next five years will exceed the distributions under the Plan,[142] because the Debtor has not made appropriate financial reports,[143] because the Plan is not fair and equitable,[144] and because the Plan violates the absolute priority rule. Miller also argued that Greeneville's collateral[145] was not adequately protected. Miller's concern over depreciated collateral will lead to future litigation.

The United States Trustee, Patricia Foster, responded to Plan objections very plainly. The trustee deferred submitting an opinion regarding good faith, stated that it did not see any feasibility issues with the Plan, and stated that it did not have any objections based on the best

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[136] *Id*.
[137] *Id*.
[138] Objection to Confirmation of the Plan, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010). Objection to Confirmation of the Plan, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[139] Good faith is required by 11 U.S.C. § 1129(a)(3).
[140] Acceptance requirements are laid out by 11 U.S.C. § 1129(a)(7).
[141] 11 U.S.C. 1129(a)(8).
[142] The value of the property may not be less than the debtor's projected income for the next five years under 11 U.S.C. § 1 12 9(a)(15); income is calculated by 11 U.S.C. 1325(b)(2).
[143] Required by 11 U.S.C. §1129(a)(2).
[144] 11 U.S.C. § 1129(b)(2)(B).
[145] Objection to Confirmation of the Plan, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

interests of the creditors.[146] A hearing was scheduled based on the objections, and motions for summary judgment were filed.[147]

Tom Dickenson files a motion for summary judgment objecting to the Plan on behalf of Pinnacle Bank and Mountain National Bank and Walt Winchester files a similar motion for summary judgment on behalf of FirstBank

After objecting to the Plan, Dickenson and Winchester expounded on their final point—that the Plan violated the "absolute priority rule," and should not pass for that reason. The absolute priority rule, codified in Section 1129(b)(2)(B) of the Bankruptcy Code, only allows a court to confirm a plan that provides for all of the dissenting creditors to be paid in full, or a plan that disallows creditors with claims junior to a dissenting creditor from retaining any property.[148] Essentially, in chapter 11 reorganizations the absolute priority rule must be satisfied to "cram down" a class of dissenting creditors in order to prevent junior classes from receiving more than their share of the estate's assets.[149] In this case, Dickenson and Winchester argued that the Debtor's retention of assets under the Plan would allow the Debtor, as a junior class (class 12), to retain property even though the unsecured creditors, as a senior class (class 11), will not be paid in full.[150] In his First Amended Disclosure Statement, filed February 21, 2011, the Debtor asserted that the absolute priority rule only applies to business's chapter 11 reorganizations—not

[146] *See* Response of United States Trustee to Debtor's Plan of Reorganization, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[147] *Id*.
[148] Absolute Priority Rule: **(B)**With respect to a class of unsecured claims--**(i)**the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or **(ii)**the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section. 11. U.S.C.A. § 1129(b)(2)(B).
[149] *Id*.
[150] Motions for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011); Motions for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011).

to individual cases.[151] Dickenson and Winchester, however, argued that the absolute priority rule applies to individual chapter 11 cases, and therefore applies in this case.[152]

Dickenson specifically argued that sections 1129(b)(2)(B) and 1115 of the Code should be interpreted using their plain language to enforce the absolute priority rule.[153] Section 1115 allows an individual chapter 11 debtor to retain property acquired post-petition and earnings from services performed post-petition.[154] Section 1129(b)(2)(B)(ii) allows the debtor to retain property as described in Section 1115, potentially creating an exception to the absolute priority rule. Dickenson's reading of the statutes would allow an individual chapter 11 debtor to retain post-petition property, but not pre-petition property as both sections are silent with regard to retention of pre-petition property.[155] Some courts, however, read the sections together to eliminate the absolute priority rule in individual chapter 11 cases.[156]

Dickenson maintained that the courts that would abrogate the absolute priority rule are incorrect.[157] Those courts looked to legislative history, but according to Dickenson the statutory

[151] First Amended Disclosure Statement at Page, *In re Lindsey* at 14, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[152] Motions for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011); Motions for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011).
[153] Motions for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011).
[154] Section 1115: **a)** In a case in which the debtor is an individual, property of the estate includes, in addition to the property specified in section 541—**(1)** all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and **(2)** earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first. **(b)** Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate. 11 U.S.C.A. § 1115.
[155] Motions for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011)
[156] *See generally* Reply to Motion for Summary Judgment, *In re Lindsey*, No. 10-31694, (Bankr. E. D. Tenn. April 5, 2010) (discussing cases favoring eliminating the absolute priority rule in its legal argument).
[157] Motions for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011).

language is clear.[158] Furthermore, the history does not state that Congress intended to abolish the absolute priority rule, and if Congress had meant to do so it could have done so with clear language.[159] Dickenson conceded that the legislative history of Bankruptcy Abuse Prevention Consumer Protection Act ("BAPCPA") shows that Congress intended to make individual chapter 11 cases more like chapter 13 cases, but still argued that in adopting the new laws Congress is presumed to be aware of the old law.[160] Following this logic, Dickenson argued that Congress was aware that the absolute priority law applied to individual chapter 11 cases, and would have made significant changes if it meant to eliminate the absolute priority rule.[161] Dickenson believes that majority view is in line with his approach—it employs a plain language reading of the statutes and continues to apply the absolute priority rule in individual chapter 11 cases.[162]

Pinnacle National Bank holds an unsecured, deficiency claim for $243,900.00 that arose after Pinnacle foreclosed on the 10267 Kingston Pike property.[163] At the foreclosure sale the highest bid was $960,000, which created the $243,900.00 deficiency, and unsecured claim for Pinnacle.[164]

In his Motion for Summary Judgment, Winchester joined Dickenson and incorporated the legal arguments Dickenson made in his motion.[165] Winchester further argued that section 1129(a)(8) of the Bankruptcy Code provided further guidance by stating that a court may not confirm a chapter 11 plan unless each impaired class accepts the plan or, according to section 1129(b)(1) the plan does not discriminate unfairly, and is fair and equitable to impaired

[158] *Id*.
[159] *Id*.
[160] *Id*.
[161] *Id*.
[162] *Id*.
[163] Statement of Undisputed Material Facts in Support of Motion for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[164] *Id*.
[165] Motions for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011).

classes.[166] Winchester argued that for a plan to be deemed fair and equitable, it must follow the absolute priority rule, and grant creditors priority over parties whose interests are in equity.[167] Winchester expanded Dickenson's arguments to include a recent Virginia case, *In re Maharaj*, which held in favor of applying the absolute priority rule to individual chapter 11 cases.[168] The court explained that if Congress intended to eliminate the absolute priority rule through the BAPCPA amendments, it could have, and would have done so with a clear change—not section 1115.[169] Furthermore, if Congress had intended to make chapter 11 cases akin to chapter 13 cases, it could have simply changed the debt ceilings for chapter 13.[170] Winchester further clarified that confirming the Plan would allow the Debtor to retain most of his assets, and under the Plan those assets would vest in the Debtor upon confirmation.[171]

Both Dickenson and Winchester noted that the Debtor has various pre-petition assets that include real property and business interests, but that the Debtor's Plan only requires the Debtor to sell a small portion of his assets. In their view, allowing the Debtor to retain assets without paying the unsecured claims in full violates the absolute priority rule, and is grounds to deny confirmation of the Plan.

Naturally, the Debtor opposed Dickenson and Winchester's motions for summary judgment.[172] Michael Fitzpatrick, counsel for the Debtor from Jenkins and Jenkins, LLC, began his Brief in Opposition to the Motion for Summary Judgment by acknowledging the statutory limits barring some individuals from filing for chapter 13 as set forth in section 109(e) of the

[166] *Id*. *See also* 11 U.S.C. § 1129
[167] Motions for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011).
[168] *Id*.
[169] *Id*.
[170] *Id*.
[171] *Id*.
[172] Brief in Opposition to the Motion for Summary Judgment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

Code.[173] Of course, individuals that want to reorganize may file chapter 11 instead of chapter 13, but are bound by the rules governing chapter 11 reorganization. Like Dickenson and Winchester, Fitzpatrick recognized section 1129(b)(1) of the Code's requirement that in order to confirm a plan over the objections of dissenting creditors, the dissenters need to be treated fairly and equitably as defined by the absolute priority rule.[174] According to Fitzpatrick, however, the BAPCPA amendments and the addition of section 1115 re-define property of the estate as it applies to individual, chapter 11 creditors.[175] Ultimately, Fitzpatrick contended that reading sections 1129(b)(2)(B)(ii) (with its reference to section 1115) and 1115 together excludes individual chapter 11 debtors from the absolute priority rule.[176] Despite Dickenson and Winchester's argument that there is a growing majority maintaining the absolute priority rule, Fitzpatrick stated that there is a split of authority and no controlling decision in the Sixth Circuit.[177]

Fitzpatrick further argued that section 1129's phrase "included in the estate under section 1115" may be read so broadly as to use section 1115 instead of section 541 in defining property of the estate for individual chapter 11 creditors.[178] According to Fitzpatrick, this is in line with the effect of the other BAPCPA amendments because they have the overall effect of making individual chapter 11 cases more like chapter 13 cases.[179] If Congress intended to make individual chapter 11 cases more like chapter 13 cases, then it is possible that Congress did in fact intend to abrogate the absolute priority rule as it applies to individual chapter 11 debtors. In one case, *In re Shat*, the court accepted the argument that prior to the BAPCPA amendments,

[173] *Id*.
[174] *Id*.
[175] *Id*.
[176] *Id*.
[177] *Id*.
[178] *Id*.
[179] *Id*.

individual chapter 11 debtors were not generally able to comply with the absolute priority rule and cram down dissenting creditors in the same way business debtors could.[180]

Fitzpatrick walked through several other cases, and argued that the under case law and the statutory language, the meaning of sections 1129 and 1115 is clear—the absolute priority rule no longer applies to individual chapter 11 debtors because section 1129 incorporates 1115, and 1115 supplants section 541.[181] Furthermore, Fitzpatrick emphasized that the word "included" in section 1129 does not mean "added," which would provide a narrow interpretation.[182] Instead, included should be read broadly, so that section 1115 may replace section 541. By replacing section 541, section 1115 re-defined property of the estate as it applies to individual chapter 11 debtors and took the teeth out of the absolute priority rule in their cases.[183] After highlighting the cases that favored eliminating the absolute priority rule, Fitzpatrick looked to opinions contrary to his position.[184] Interestingly, *In re Maharaj*, the case Winchester relied on, held that if Congress intended to make chapter 11 more like 13 for individual debtors it could have simply removed the debt ceilings, but Fitzpatrick pointed out that chapter 13 plans differ in other ways, so removing the debt ceiling would not have worked.[185] Specifically, chapter 13 plans have a maximum term for plans, while chapter 11 plans have a minimum plan length.

Judge Stair holds in Favor of the Creditors

Judge Stair reviewed the judicial record and then carefully listed the property Mr. Lindsey proposed to sell under the Plan and the property Mr. Lindsey would retain under the

[180] *Id*.
[181] *Id*.
[182] *Id*.
[183] *Id*.
[184] *Id*.
[185] *Id*.

Plan.[186] In light of the property Mr. Lindsey hoped to retain, and the applicability of the absolute priority rule, Judge Stair granted Winchester and Dickenson's motions for summary judgment.[187] Judge Stair specifically stated that the absolute priority rule was enacted to limit the danger in allowing a debtor to create a plan that benefits him or herself at the expense of the creditors.[188] Judge Stair looked to the plain language of section 1129(b)(2)(B) and section 1115 of the Code, and acknowledged that the language was ambiguous, and may allow section 1115 to supplant section 541 and redefine the property interests of the debtor.[189] However, a more narrow reading would mean that section 1115 merely amends section 541. Essentially, the phrase "included in the estate" in section 1129(b)(2)(B) could allow the absolute priority rule to survive, or to die in individual chapter 11 cases. Judge Stair examined the legislative history of the BAPCPA amendments and the various cases on point, and ultimately agreed with Mr. Lindsey's contention that BAPCPA aimed to make chapter 11 for individuals more like chapter 13, but that Congress did not intend to eliminate the absolute priority rule to do so.[190] According to Judge Stair, the BAPCPA amendments were designed to uphold the integrity of the bankruptcy system, and the effect of eliminating the absolute priority rule would give debtors an unfair advantage—they would be able to create an inequitable plan and leave the creditors without recourse.[191] Judge Stair held that a narrow interpretation of section 1115 was more logical, and thus held that the absolute priority rule applies to individual chapter 11 debtors, and applies in this case.[192]

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[186] Memorandum containing Findings of Fact and Conclusions of Law, *In re Lindsey* at 3-4, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[187] *Id*. at 30.
[188] *Id*. at 9.
[189] *Id*.
[190] *Id*.
[191] *Id*.
[192] *Id*. *See also* Order, *In re Lindsey* at 1, No. 10-3169 (Bankr. E. D. Tenn. April 5, 2010).

Mr. Lindsey Appeals

Following Judge Stair's grant of summary judgment and denial of the Debtor's plan of reorganization filed on August 5, 2011,[193] Mr. Lindsey filed a notice of appeal on August 10, 2011.[194] A week after Judge Stair entered the order granting Mr. Lindsey's motion to transfer his membership interest in Jefferson Plaza, LLC to Mr. Whitley, Mr. Lindsey filed a designation of record on appeal and statement of the issues.[195] The issue on appeal was set forth by Mr. Lindsey and his counsel as "[d]id the changes to 11 U.S.C. § 1129(b)(2)(B)(ii) and the addition of § 1115 caused by the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 abrogate the "absolute priority rule" altogether in individual Chapter 11 cases.[196] The motion designated the following 15 items for inclusion in the record on appeal[197]:

1. 6/27/11 Motion for Summary Judgment of Mountain National Bank and Pinnacle National Bank (docket #210)
2. 6/27/11 Statement of Undisputed Material Facts of Mountain National Bank and Pinnacle National Bank (docket #210)
3. 6/27/11 Brief of Mountain National Bank and Pinnacle National Bank (docket #211)
4. 7/12/11 Motion for Summary Judgment with supporting Memorandum of FirstBank (docket #214)
5. 7/12/11 Statement of Undisputed Material Facts of FirstBank (docket #215)
6. 7/18/2011 Reply to Statement of Undisputed Material Facts of William Lindsey (docket #221)

[193] Order, *In re Lindsey* at 1, No. 10-3169 (Bankr. E. D. Tenn. April 5, 2010).
[194] William E. Lindsey Notice of Appeal, *In re Lindsey* at 1, No. 10-3169 (Bankr. E. D. Tenn. April 5, 2010).
[195] William E. Lindsey Designation of Record on Appeal and Statement of the Issues, *In re Lindsey* at 1. 10-3169 (Bankr. E. D. Tenn. April 5, 2010).
[196] *Id*.
[197] *Id*.

7. 7/18/11 Response to Statement of Undisputed Material Facts of William Lindsey (Docket #222)
8. 7/18/11 Brief of William Lindsey (docket #224)
9. 7/26/11 Reply to Motion for Summary Judgment of William Lindsey (docket #228)
10. 7/26/11 Brief of William Lindsey (docket #229)
11. 7/26/11 Response to Statement of Undisputed Material Facts of William Lindsey (docket #230)
12. 8/5/11 Memorandum containing Findings of Fact and Conclusions of Law (docket #24)
13. 8/5/11 Order Granting Summary Judgment (docket #241)
14. 8/10/11 Notice of Appeal (docket #246)
15. 8/11/11 Certificate of Notice (docket #255)

Following Mr. Lindsey's designation of the record,[198] FirstBank filed a motion designating additional items to be included on the record of appeal.[199] These additional items included:

16. 1/5/11 Objection to Disclosure Statement by FirstBank (docket #146)
17. 2/21/11 First Amended Disclosure Statement and Exhibits thereto (docket #168)
18. 2/21/11 First Amended Chapter 11 Plan (docket #169)
19. 3/16/11 Agreed Judgment in Adversary Proceeding No. 10-03112
20. 4/7/11 FirstBank's Objection to Confirmation (docket #195)
21. 4/13/11 Summary of Ballots (docket #200)
22. 7/23/10 FirstBank's Proof of Claim

On September 9, 2011, the official record on appeal was set out by the Bankruptcy Court.[200] Just a few days later, FirstBank moved to dismiss.[201]

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[198] *Id*.

[199] FirstBank's Designation of Additional Items to Be Included in the Record on Appeal, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

CHAPTER 8: ALBERT HAYNESWORTH OBJECTS

More than a year after Mr. Lindsey filed his voluntary petition for bankruptcy a new creditor, Albert Haynesworth III, [202] a professional football player, friend, and business partner with Mr. Lindsey filed an objection to the Plan (through counsel, Lynn Tarpy).[203] According to the motion, Mr. Haynesworth believed himself to be a creditor, but was not informed of the bankruptcy filing until late June, 2011.[204] Mr. Haynesworth included an email Mr. Lindsey sent complaining about his financial predicament as his first (and very informal) notice of Mr. Lindsey's bankruptcy proceedings.[205] The email detailed Mr. Lindsey's transfer of business interests and further investments, leading Mr. Haynesworth to believe that Mr. Lindsey intentionally excluded Mr. Haynesworth from the proceedings.[206] Mr. Haynesworth and a third party, Terry Lewis, were guarantors on one of Mr. Lindsey's notes at Mountain National Bank.[207] The note was for $169,000.00.[208] Mr. Haynesworth is a guarantor on other debt and is a member to several of Mr. Lindsey's companies.[209] Haynesworth is (or would become) a member to Ultimate Toys Motorsports, Inc., Ultimate Toys, Inc., and BTRG, LLC, therefore giving Mr. Haynesworth a a right of first refusal to the transfer of Mr. Lindsey's debts.[210] Each of these business interests are to be sold to satisfy other debts under the Plan.[211] Mr. Haynesworth also

[200] Record on Appeal, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[201] Motion by FirstBank for Dismissal of Chapter 11 Case, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010). *See supra*, Chapter 10.
[202] http://en.wikipedia.org/wiki/Albert_Haynesworth
[203] Objection to Confirmation of the Plan, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[204] *Id*.
[205] *Id*., Exhibit 1
[206] *Id*.
[207] *Id*.
[208] *Id*.
[209] *Id*.
[210] *Id*.
[211] Debtor's First Amended Plan of Reorganization, *In re Lindsey*, No.10-31694 (Bankr. E. D. Tenn. April 5, 2010).

guaranteed a note for Mr. Lindsey on the Lot 88 Ladd Landing property.[212] Mr. Haynesworth further objected to the transfers made to June and Danika Lindsey as being made to "hinder, delay and defraud" creditors—including Mr. Haynesworth.[213] Mr. Tarpy closed his motion by incorporating the objections made by other creditors.

[212] Objection to Confirmation of the Plan, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).(Claim for Commercial Bank, Class 2).
[213] *Id.*

CHAPTER 9: GREENEVILLE REQUESTS RELIEF FROM THE STAY

Clinton Highway Motion

Miller, on behalf of Greeneville Federal Bank, moved for relief from the automatic stay and abandonment, or, alternatively, for adequate protection on January 20, 2011.[214] Greeneville Federal Bank is a secured creditor, and has a note executed by the Debtor for $276,290.00 secured by real property located on Clinton Highway in Knox County, Tennessee.[215] Greeneville Federal Bank has a second note executed by one of the Debtor's companies, Lindsey Leasing, LLC. The second note is for $115,000.00 and secured by the Clinton Highway property and another property located at 1616 Washington Pike, Knox County, Tennessee.[216] The Debtor personally guaranteed the second note. Another one of the Debtor's business interests, Jefferson Plaza, LLC, held a third note, also guaranteed by the Debtor.[217] This note was for $1,629,000.00 and was guaranteed up to $814,500.00.[218] Property located at 101Sherlake Lane, Knox County Tennessee (which was not part of the bankruptcy estate), along with the Clinton Highway property secured the third note.[219] The final note, executed by the Debtor and two partners (Michael Strickland and Anthony Woods), was originally for $502,500.00 and then renewed for $248,149.20 was also secured by the Clinton Highway property.[220]

The combined, outstanding balance on the four notes is $2,625,477.89.[221] The Clinton Highway property that secured the notes is valued at $539,900.00, and the Debtor has a half

[214] Motion for Relief from Stay and Abandonment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[215] *Id*.
[216] *Id*.
[217] *Id*.
[218] *Id*.
[219] *Id*.
[220] *Id*.
[221] *Id*.

interest in the property.[222] There is no equity in the property, and Miller argued that it is not necessary for a successful reorganization.[223] Furthermore, the property is depreciating, meaning Greeneville Federal Bank was not adequately protected.[224] Greeneville Federal hoped to foreclose on the property and recover from the Debtor, Lindsey Leasing, Michael Strickland, and Anthony Woods, so Miller requested relief from the stay and abandonment of the Clinton Highway Property.[225]

Approximately one month after Miller filed her motion for relief, the bankruptcy court entered an agreed order allowing the automatic stay to remain in effect until further ordered.[226] Just over a month after the agreed order was entered, the court granted Miller's motion for adequate protection (but did not lift the stay).[227] The court further ordered the Debtor to pay Greeneville Federal Bank $1,800.00 monthly as adequate protection for the Clinton Highway property.[228] The order further stated that if the Debtor is delinquent, Greeneville Federal may foreclose.[229] Furthermore, Greeneville Federal received a post-petition lien on the Clinton Highway property and on any profits derived from it. Later, when a Chapter 11 Trustee was appointed, the order was amended to allow the trustee, rather than Mr. Lindsey, to make monthly payments.[230] On March 9, 2012, Miller entered a second motion requesting relief from the

[222] *Id*.
[223] *Id*.
[224] *Id*.
[225] *Id*.
[226] Agreed Order Providing for Stay to Remain in Effect as to the claim of Greeneville Federal Bank Pending Further Order of the Court, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[227] Order Granting Motion For Relief From Stay and Abandonment or In The Alternative Adequate Protection, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2011).
[228] *Id*.
[229] *Id*.
[230] Amended Agreed Order Granting Amended Motion for Relief From Stay and Abandonment or In The Alternative Adequate Protection, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

automatic stay with regard to the Clinton Highway Property.[231] This motion is currently pending.

Clarks' Condominium Motion

Miller filed a second motion for relief from the stay and abandonment, or, in the alternative for adequate protection on behalf of Greeneville Federal Bank on June 23, 2011.[232] In this motion, Miller requested relief for two condominiums owned by Phillip and Joan Clark.[233] The condominiums secured a note executed by the Clarks and guaranteed by Mr. Lindsey up to $84,000.00.[234] The balance on the note is $419,979.00 and the value of the property is $386,200.00, so there is no equity in the property.[235] For this reason, Mr. Lindsey does not have an interest in the property, the property does not benefit the estate, and is not necessary for a successful reorganization.[236] Approximately one month after Miller's motion was filed, and after a hearing, the court granted Greeneville Federal Bank relief from the stay and recover its property.[237]

[231] Motion for Relief from Stay and Abandonment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[232] Motion for Relief from Stay and Abandonment, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[233] *Id*.
[234] *Id*.
[235] *Id*.
[236] *Id*.
[237] Order Granting Motion For Relief From Stay and Abandonment or in the Alternative Adequate Protection, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

CHAPTER 10: FIRSTBANK MOVES TO DISMISS

FirstBank, as the primary creditor and catalyst to bankruptcy, proved to be the most aggressive creditor throughout the proceedings. On September 12, 2011, Winchester filed a motion for dismissal on behalf of FirstBank.[238] Winchester cited several causes for dismissal beginning with the Debtor's actions FirstBank believed to be made in bad faith.[239] These bad faith actions began with Mr. Lindsey concealing that a loan he made was secured by real property.[240] Mr. Lindsey collected the collateral securing that note, and transferred it to his daughter rather than the estate.[241] Next, according to Winchester, Mr. Lindsey inappropriately conveyed business interests in exchange for assumption of debt (as revealed by his emails to Albert Haynesworth).[242] Winchester asserted that Mr. Lindsey was also diminishing the bankruptcy estate by continuing to transfer his interest in assets post-petition including his renewal of a lease without the Bankruptcy Court's authority, the discussion of which follows this section.[243] Mr. Lindsey entered into a lease with Flower's Baking Company without reflecting the lease in his Amended Disclosure Statement, even though it was necessary for valuing the collateral (the collateral would have significantly less value if the lease were not renewed).[244] Furthermore, Mr. Lindsey has made inter-company loans to benefit his business partner, Matt Caldwell and has made preferential transfers to benefit his wife and daughter.[245] These transfers (among other things) were the subject of prior objections to the Plan. Finally, Winchester argued

[238] Motion to Dismiss, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[239] *Id*.
[240] *Id*.
[241] *Id*.
[242] *Id*.
[243] *Id*.
[244] *See infra* Chapter 12.
[245] Motion to Dismiss, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

that Mr. Lindsey was abusing the fact that his spending habits were not being closely monitored.[246]

Winchester further argued that there is cause (i.e. bad faith), and when it is in the best interests of the creditors and the estate section 1112(b) of the Code calls for dismissal or conversion to chapter 7.[247] In this case, Winchester has requested dismissal.[248] Mr. Lindsey opposed Winchester's motion, and after brokering a deal that brought a trustee into the proceedings FirstBank withdrew its motion to dismiss.[249]

[246] Motion to Dismiss at 13, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[247] *Id*.
[248] *Id*.
[249] *See infra* Chapter 16.

CHAPTER 11: LINDSEY TRANSFERS MEMBERSHIP INTEREST IN JEFFERSON PLAZA, LLC

While the bankruptcy proceeding slowly continued, Mr. Lindsey maintained his partial membership interests in multiple entities and properties throughout East Tennessee. As previously mentioned, Mr. Lindsey held most of these real estate assets in separate limited liability companies. For years, real estate developers and their business partners have favored limited liability companies over other forms of business entities because it combines the benefits of a corporation with those of a limited partnership.[250] As explained by Sally Neely in the American Bankruptcy Law Journal, "the express purpose of the LLC business form is to achieve the limited liability of a corporation without the rigidity and formality of the corporate form, while simultaneously obtaining the pass-through tax treatment afforded partnerships."[251] A limited liability company shields owners from personal liability protecting the owners from both contract and tort obligations of the business entity.[252] Beyond creating limited liability companies to hold their real estate assets, developers often form multiple LLCs placing one real estate asset in each LLC.[253]

With Mr. Lindsey's health continuing to decline, his primary focus quickly began to shift from protecting himself to protecting his family and his business partners. By creating multiple limited liability companies to hold his real estate assets, Mr. Lindsey opened up multiple ways of protecting his family and business partners through transferring his membership interests in the LLCs. By removing the Debtor from the LLC, this opened up the possibility that banks would

[250] Bernie R. Kray, Comment, *Respecting the Concept and Limited Liability of a Series LLC in Texas*, 42 ST. MARY'S L.J. 501, 501-02 (2011).
[251] Sally S. Neely, *Partnerships and Partners and Limited Liability Companies and Members in Bankruptcy: Proposals for Reform*, 71 AM. BANKR. L.J. 271, 281 (1997).
[252] Bernie R. Kray, Comment, *Respecting the Concept and Limited Liability of a Series LLC in Texas*, 42 ST. MARY'S L.J. 501, 502 (2011).
[253] *Id*.

restructure and modify the loans. Mr. Lindsey first attempted this when he filed a motion on July 1, 2011 to transfer his membership interest in Jefferson Plaza, LLC to Steve Whitley.[254]

Mr. Lindsey had a 50% membership interest in Jefferson Plaza, LLC.[255] Jefferson Plaza, LLC's only asset was the office complex called Jefferson Plaza located at 101 Sherlake Lane, Knoxville, TN.[256] Mr. Whitley held the remaining 50% membership interest.[257] The motion stated that the property was encumbered by a $1,577,699.30 lien held by Greenville Federal Bank, and Mr. Lindsey signed a personal guaranty of the debt up to $814,500.00.[258] The appraised value of the property was currently $1,450,000.00, so the property appeared to have no equity.[259] The motion explained that the Mr. Lindsey's membership interest, therefore, had no value and was burdensome to the estate.[260] Mr. Lindsey's motion requested approval by the bankruptcy court of the sale of his membership interest in Jefferson Plaza, LLC pursuant to 11 U.S.C. § 363(b).[261] The motion further provided that Mr. Lindsey's personal guaranty would be discharged upon the transfer of his membership interest and that Mr. Whitley would personally guarantee the entire loan to Greenville Federal Bank.[262] A hearing on this motion was set for July 28, 2011 at 10:00am.

Section 363(b)(1) of the Bankruptcy Code permits the use, sale or lease of property of the estate, other than in the ordinary course of business, after notice and a hearing in the bankruptcy court.[263] Notice of the sale is required under this section in order to provide parties with an

[254] Debtor's Motion to Transfer Membership in Jefferson Plaza, LLC Subject to Liens.
[255] *Id*.
[256] *Id*.
[257] *Id*.
[258] *Id*.
[259] *Id*.
[260] *Id*.
[261] *Id*.; 11 U.S.C. § 363(b) (2012).
[262] *Id*.
[263] 11 U.S.C. § 363(b)(1) (2012).

opportunity to object and to be heard before the bankruptcy court.[264] As explained by Professor George Kuney, "[s]ection 363(b)(1) prevents the debtor from completing a transaction that would harm the estate by negating any transfer made outside the ordinary scope of business without prior notice and a hearing.[265] However, by transferring assets preconfirmation under section 363 of the Bankruptcy Code, the debtor merely has to provide notice and attend a hearing rather than the lengthy and burdensome process involved in a traditional confirmation process.[266]

Pursuant to 11 U.S.C. § 363, FirstBank, as a party-in-interest, filed a timely objection to Mr. Lindsey's request to transfer his membership interest in Jefferson Plaza, LLC to Mr. Whitley.[267] FirstBank objected to the proposed transfer on the basis that it was not provided with a copy of the appraisal of the property stating that the value of the property is $1,450,000.00, which was referenced in Mr. Lindsey's motion.[268] FirstBank's motion also explained that the Debtor's Rule 2004 Exam placed the value of the property at $1,900,000.00 and that the Debtor had also stated that the property was previously listed for $300,000 per unit for a total value of $2,100,000.00.[269] Because the value of the property was not clear and there was a possibility that there was equity in the property, FirstBank objected to the motion to transfer the Debtor's membership interest until proof of the current property value was provided.[270] FirstBank's second objection to the Debtor's motion is on the basis that the property produces an income stream sufficient to service the debt to Greenville Federal Bank.[271] Finally, FirstBank objected to the Debtor's motion on the ground that no records, books financial data or other information

[264] *In re Karpe*, 84 B.R. 926 (BC MD Pa 1988).
[265] George W. Kuney, *Hijacking Chapter 11*, 21 EMORY BANKR. DEV. J. 19, 77-78 (2004).
[266] *Id*. at 107.
[267] Objection by FirstBank to Debtor's Motion to Transfer Membership In Jefferson Plaza, LLC Subject to Liens, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[268] *Id*.
[269] *Id*.
[270] *Id*.
[271] *Id*.

had been provided for Jefferson Plaza, LLC and because Jefferson Plaza, LLC appeared to have been administratively dissolved as of August 8, 2010.[272] FirstBank explained that based on this lack of data and uncertainity in the property value, it was unable to make an educated determination of the potential value of the Debtor's membership interest in the entity.[273] The July 28, 2011 hearing on the Debtor's motion was continued and reset for August 4, 2011. The August 4, 2011 hearing on this matter was also continued and reset for August 11, 2011.

On August 11, 2011, affidavits of Mr. Lindsey[274], Mr. Whitley[275] and Ralph Boswell[276] were filed regarding the July 1, 2011 motion to transfer Mr. Lindsey's membership interest in Jefferson Plaza, LLC. Mr. Lindsey and Mr. Whitley's affidavits stated that Jefferson Plaza was a Tennessee Limited Liability Company which owned the office complex located at 101 Sherlake Lake, Knoxville, TN 37922.[277] The complex owned by Jefferson Plaza consists of 7 office condo units located off of Kingston Pike.[278] The affidavits also confirmed that the property was purchased on October 31, 2006 for $1,500,000.00 and that Greenville Federal Bank had an initial lien on the property for $1,600,000, which later increased to $1,629,000.00.[279] Jefferson Plaza's only asset was this office complex, and Mr. Lindsey and Mr. Whitley were the only parties with a membership interest in the company.[280]

Mr. Boswell is the senior vice-president for Greenville Federal Bank, and he is responsible for overseeing the loans and lending relationship with Mr. Lindsey at Greenville

[272] *Id*.
[273] *Id*.
[274] Affidavit of William E. Lindsey In Support of Greenville Federal Bank's Motion to Sell Debtor's Interest in Jefferson Plaza, LLC, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[275] Affidavit of Stephen G. Whiley In Support of Debtor's Motion to Transfer Membership In Jefferson Plaza, LLC Subject to Liens, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[276] Affidavit of Ralph Boswell In Support of Debtor's Motion to Transfer Membership In Jefferson Plaza, LLC Subject to Liens, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[277] *Id*.
[278] First Amended Disclosure Statement at Page, *In re Lindsey* at 14, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[279] *Id*.
[280] *Id*.

Federal Bank.[281] Boswell stated in his affidavit that he was responsible for the August 22, 2008 loan of $1,629,000.00 that Greenville Federal Bank made to Jefferson Plaza, LLC, which was personally guaranteed by both Mr. Lindsey and Mr. Whitley.[282] Mr. Boswell also explained in the affidavit that the $1,629,000 loan to Jefferson Plaza was currently past due.[283] When the loan first became past due, Greenville Federal Bank attempted to restructure and modify the loan.[284] However, Greenville Federal Bank would not modify the loan without approval from the Bankruptcy Court where Mr. Lindsey's bankruptcy case was filed.[285] Boswell explained in the affidavit that if Greenville Federal Bank modified the loan without approval from the Bankruptcy Court, it would be taking the risk that Mr. Lindsey's obligations under the guaranty would be released in the bankruptcy proceeding.[286] However, Greenville Federal Bank agreed to modify the loan and release Mr. Lindsey from his guarantee if Mr. Lindsey transferred his entire membership interest in Jefferson Plaza, LLC to Mr. Whitley and Mr. Whitley agreed to increase his guarantee to the full amount of the loan.[287]

The affidavits set out that Mr. Lindsey would transfer his 50% membership interest in Jefferson Plaza to Mr. Whitley without receiving any compensation.[288] In exchange for Mr. Lindsey's transfer of his membership interest in Jefferson Plaza, LLC, Greenville Federal Bank would release Mr. Lindsey from his personal guaranty permitting Greenville Federal Bank to restructure and modify the Jefferson Plaza loan.[289] Also on August 11, 2011, based on its review

[281] Affidavit of Ralph Boswell In Support of Debtor's Motion to Transfer Membership In Jefferson Plaza, LLC Subject to Liens, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[282] *Id* at 2.
[283] *Id*.
[284] *Id*.
[285] *Id*.
[286] *Id*.
[287] *Id*.
[288] *Id*.
[289] Affidavit of Ralph Boswell In Support of Debtor's Motion to Transfer Membership In Jefferson Plaza, LLC Subject to Liens, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

of Mr. Boswell's affidavit and other documentation provided by Greenville Federal Bank regarding the property and its current value, FirstBank withdrew its objection[290] to Mr. Lindsey's motion to transfer his membership interest in Jefferson Plaza, LLC.[291]

A hearing on Mr. Lindsey's motion to transfer his membership interest in Jefferson Plaza, LLC[292] was held on August 11, 2011. Judge Richard Stair granted Mr. Lindsey's motion and filed an order on August 11, 2011 granting Mr. Lindsey's request to transfer his 50% interest in Jefferson Plaza, LLC to Mr. Whitley subject to any existing liens.[293] In consideration for this transfer, Greenville Federal Bank extinguished Mr. Lindsey's guaranty agreement and Mr. Whitley guaranteed the entire loan.

[290] FirstBank's Objection to Lindsey's Motion to Transfer Jefferson Plaza Interest, *In re Lindsey* at 1, No. 10-3169 (Bankr. E. D. Tenn. April 5, 2010).
[291] Withdraw of Objection by FirstBank to Debtor's Motion to Transfer Membership in Jefferson Plaza, LLC Subject to Liens, *In re Lindsey* at 1, No. 10-3169 (Bankr. E. D. Tenn. April 5, 2010).
[292] Debtor's Motion to Transfer Membership In Jefferson Plaza, LLC Subject to Liens, *In re Lindsey* at 1, No. 10-3169 (Bankr. E. D. Tenn. April 5, 2010).
[293] Order for Sale of Membership in Jefferson Plaza, LLC Subject to Liens, *In re Lindsey* at 1, No. 10-3169 (Bankr. E. D. Tenn. April 5, 2010).

CHAPTER 12: MR. LINDSEY VIOLATES THE BANKRUPTCY CODE AND RENEWS FLOWERS BAKING COMPANY'S LEASE

Two and a half weeks after transferring his membership interest in Jefferson Plaza, LLC to Mr. Whitley, Mr. Lindsey filed a motion to enter into a real property lease.[294] Mr. Lindsey owned 50% of a property in Knox County, Tennessee located at 7111 Clinton Highway, Knoxville, Tennessee.[295] Mr. Lindsey owned the property jointly with his business partner, Matt Caldwell, in a partnership named L & C Properties Partnership.[296] The property is subject to Greenville Federal Bank's lien in the amount of $1,577,699.30.[297] While Mr. Lindsey and Mr. Caldwell owned the property as tenants in common, there was a lien on only Mr. Lindsey's 50% interest.[298] However, another entity, Woodstrick, LLC, was making the payments on the Greenville Federal note.[299] The note was interest only until December 28, 2010 when it became due in full.[300] At the time Mr. Lindsey filed for bankruptcy, the payments were current to the best of Mr. Lindsey's knowledge.[301]

When Mr. Lindsey filed for bankruptcy, the property was leased to Flowers Baking Company of Morristown, Inc. as a month-to-month tenant.[302] The First Amended Disclosure Statement explained that the value of the property was both directly and greatly affected by whether or not Flowers Baking Company renewed its lease.[303] The property appears to be a

[294] Debtor's Motion to Enter Into Real Property Lease, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[295] First Amended Disclosure Statement, In re Lindsey at 27, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[296] *Id*.
[297] Debtor's Motion to Enter into Real Property Lease, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[298] *Id*.
[299] First Amended Disclosure Statement, *In re Lindsey* at 27, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[300] *Id*.
[301] *Id*.
[302] *Id*.
[303] *Id*.

somewhat unimpressive factory building located on Clinton Highway. Because of the buildings size, location, and appearance, it was assumed that the property would be suitable for only a very particular type of tenant. Flowers Baking Company had leased the property since 1990 and was most likely the only potential tenant willing to sign another ten year lease at a reasonable monthly rent.

Excited that Flowers Baking Company was willing to renew the lease, Mr. Lindsey signed the Second Amendment and Renewal of Lease Agreement on February 10, 2011 without first seeking approval from the Bankruptcy Court.[304] As previously discussed, 11 U.S.C. § 363(b)(1) requires a debtor to obtain court approval before renewing an existing lease.[305] However, in Mr. Lindsey's haste to renew the lease he neglected to confer with either his counsel or the Bankruptcy Court. Instead, Mr. Lindsey renewed the lease without providing notice to the other interested parties and without a hearing in the bankruptcy court.

In an attempt to correct his mistake, Mr. Lindsey filed a motion requesting the Bankruptcy Court's approval of the lease renewal on August 29, 2011.[306] The Second Amendment and Renewal of Lease renews the lease agreement entered into between the property owners, Mr. Lindsey and Mr. Caldwell, and the tenant, Flowers Baking Company of Morristown, Inc. on December 20, 1990 and renewed on October 1, 2001.[307] The Second Amendment and Renewal of Lease is for a term of ten years and commenced on February 1,

[304] Debtor's Motion to Enter into Real Property Lease, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[305] 11 U.S.C. § 363(b)(1) (2012).
[306] Debtor's Motion to Enter into Real Property Lease, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[307] *Id*.

2011 and ends on January 31, 2012.[308] A hearing on the motion was set for September 22, 2011 at 10:00am.[309]

On September 22, 2011, Judge Stair approved Mr. Lindsey's request for approval of the lease renewal stating that no objections to the motion[310] had been filed or announced.[311]

[308] *Id*.
[309] *Id*.
[310] *Id*.
[311] Order Approving Real Estate Property Lease, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

CHAPTER 13: GRANT OF AUTHORITY TO MR. LINDSEY TO TRANSFER PROPERTY INTEREST TO RON NEASE

On September 26, four days after Judge Stair approved Mr. Lindsey's lease renewal with Flowers Baking Company of Morristown, Inc., Mr. Lindsey filed a motion requesting authority from the Court to perform all actions necessary to transfer his interest in a Cocke County, Tennessee property to Ron Nease.[312] Interestingly, the Debtor's First Amended Disclosure Statement filed on February 21, 2011 stated that Mr. Lindsey was unaware that his name was on the title to this property prior to filing Chapter 11.[313] The statement explained that the property was purchased in July 2006 for $410,000.[314] While Mr. Lindsey was unaware that he was on the property's title, he offered to obtain an appraisal of the property to see whether there was any equity in the property beyond $413,762.44 lien Mountain National Bank had on the property.[315]

Following Mr. Lindsey's brief and somewhat confusing statement regarding the property in February 2011, nothing was filed in the bankruptcy proceeding regarding this property until September 26, 2011 when this motion was filed by the Debtor.[316] The motion explained that Ron Nease had owned the property in Cocke County located on Briarthicket Road.[317] Mr. Nease needed funds to improve the property; however, he did not qualify for a loan.[318] Instead of borrowing the money for the improvements, Mr. Nease sold the property to Mr. Lindsey and his stepson, Scott Davis, in June 2006.[319] Mr. Lindsey is a 50% owner in the property with Mr.

[312] Debtor's Motion Regarding Nease Cocke County Real Property Lease, *In re Lindsey* at 1, No. 10-31694 (Bankr. E.D. Tenn. April 5, 2010)
[313] First Amended Disclosure Statement, *In re Lindsey* at 24, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[314] *Id*.
[315] *Id*.
[316] Debtor's Motion Regarding Nease Cocke County Real Property Lease, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[317] *Id*.
[318] *Id*.
[319] *Id*.

Davis.[320] Mr. Lindsey and Mr. Davis then leased the property back to Mr. Nease.[321] The lease contained a repurchase option permitting Mr. Nease to repurchase the property for $410,000.00.[322] As previously stated, Mountain National Bank had a lien on the property for $413,762.44.[323] In this motion, Mr. Lindsey requested authority from the Court to take all necessary actions to transfer the property to Mr. Nease in exchange for the claim of Mountain National Bank secured in the property.[324] Mr. Lindsey also requested that the time staying this relief pursuant to Fed. R. Bank. P. 6004(h) be waived.[325]

On September 27, 2011, Judge Stair granted Mr. Lindsey's request to reduce the time for notice and hearing on the motion to approve performance of all acts needed to transfer his interest in the real property in Cocke County.[326] Judge Stair shortened the time to allow for a hearing on the motion on October 6, 2011.

On October 6, 2011, a hearing was held on Mr. Lindsey's motion to approve performance of all acts needed to transfer his interest in real property in Cocke County to Mr. Nease. No objections to the motion were filed or announced, and Judge Stair granted Mr. Lindsey's motion on October 6, 2011.[327]

Despite Judge Stair's order stating that no objections to the motion were filed or announced, Lincoln National Insurance Company filed a motion on October 6, 2011 requesting

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[320] *Id*.
[321] *Id*.
[322] *Id*.
[323] *Id*.
[324] *Id*. at 2.
[325] *Id*.
[326] Order Reducing Time for Notice and Hearing on the Debtor's Motion Regarding Nease Cocke County Real Property Lease, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[327] Order Approving Debtor's Motion Regarding Cocke County Real Property Lease, *In re Lindsey* at 1, No. 10-31694 (Bankr. E.D. Tenn. April 5. (2010).

relief from the order.[328] In support of its motion, Lincoln National stated that it had a pre-petition secured claim in the amount of $900,000.00 secured by the Cocke County property.[329] Lincoln National argued that the hearing on this motion was scheduled for October 13, 2011, but was instead held on October 6, 2011 with no notice given as to the change in date.[330] Because Lincoln National was not given notice of the change in the hearing date and because it did not consent to the transfer of Mr. Lindsey's property interest, Lincoln National argued that the order granting Lindsey's motion must be voided.[331]

However, Lincoln National's motion for relief addressed Judge Stair's October 6, 2011 order[332] while also referring to Mr. Lindsey's motion filed on September 30, 2011.[333] Judge Stair's October 6, 2011 order granted Mr. Lindsey the authority to transfer his interest in the Cocke County property to Mr. Nease. This order did not address the motion filed by Mr. Lindsey on September 30, 2011 regarding the lease with Venture Health on which Lincoln National had a lien. It appears that Lincoln National and its counsel was confused when it saw Judge Stair's October 6, 2011 order and assumed that it related to the motion filed by Mr. Lindsey on September 30, 2011 rather than the actual motion that was filed on September 26, 2011. A hearing on Lincoln's motion was set for October 13, 2011.[334] Prior to the October 13, 2011 hearing, however, Lincoln National withdrew its motion to reconsider on October 7, 2011.[335] While the documents did not state the reason for this withdraw, it is probable that

[328] Motion for Relief from Order Approving Debtor's Motion Regarding Cocke County Real Property Lease and to Stay Order, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[329] *Id*.
[330] *Id*.
[331] *Id. at 2*.
[332] *Id*.
[333] Debtor's Motion Regarding Cocke County Real Property Lease Associated with Mercy Health System, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[334] Notice of Hearing, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[335] Notice of Withdraw, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

Lincoln National and its counsel realized that the October 6, 2011 order did not involve the property on which it had a lien and that it had incorrectly filed the motion to withdraw.

CHAPTER 14: KNOXVILLE HMA HOLDINGS, LLC ASSET PURCHASE AGREEMENT

Following Lindsey's success requesting authority to perform all actions necessary to transfer his interest in the Cocke County property, Lindsey again filed a motion on September 30, 2011 requesting authority from the bankruptcy court to perform all actions necessary requested by the successor Mercy Health Systems regarding Lindsey's interest in an additional Cocke County property.[336]

On April 5, 1989, Issus, Inc. and Cocke County Baptist Hospital entered into a subordinated ground lease under which Cocke County Baptist Hospital leased certain land to Issus, Inc. The ground lease was for 0.581 acres located in Newport, Cocke County, Tennessee. Issus, Inc. agreed to pay Cocke County Baptist Hospital $10.00 as consideration for the lease and another $1.00 per year as annual rent for this Ground Lease. Issus, Inc. then entered into an office lease agreement on April 5, 1989 where Issus, Inc. leased certain land and buildings located on the property back to Cocke County Baptist Hospital.

William Lindsey is the sole shareholder of Issus, Inc. On July 29, 1991, Issus, Inc. and Lindsey entered into an Assignment of Leases where Issus assigned its interest in the Ground Lease and the Office Lease to William Lindsey in consideration of $10.00. Lindsey took this assignment subject to all loans and security relating to the Ground Lease including Issus, Inc. October 31, 1989 note payable to the order of Jefferson-Pilot Life Insurance Company for $1,875,000 which was secured by the property and a promissory note of Issus dated September 19, 1989 payable to the order of Cocke County Baptist Hospital for $235,000.

[336] Debtor's Motion Regarding Cocke County Real Property Lease Associated with Mercy Health System, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

On February 5, 2009, Lindsey then entered into a Master Building Lease with Health Ventures, Inc. (Tenant). Lindsey and Health Ventures, Inc. had entered into a prior lease agreement on April 5, 1989. In the new Master Building Lease, Lindsey and Health Ventures terminated the prior lease agreement and entered this new Master Building Lease where Health Ventures, Inc. leased 36,540 square feet of space at 434 Fourth Street. In the new lease dated February 5, 2009, Lindsey warranted that he had constructed a medical office building on the land and wanted to lease the premises to Health Ventures, Inc. The annual base rent was $251,144.04 payable in monthly installments of $20,928,67. The term of the lease was for twenty-three months commencing on February 1, 2009 and ending on December 31, 2010. The lease also contained an automatic renewal clause where the lease could renew for up to two additional consecutive terms of three years each unless Health Ventures, Inc. gave Lindsey 60 days notice of its intent not to renew the lease.

Two and a half years after entering into this lease with Health Ventures, Inc., Lindsey received a letter dated August 31, 2011 from Elizabeth M. Stehler at Harter Secrest and Emery LLP. The letter stated that Harter Secrest & Emery's client, Knoxville HMA Holdings, LLC entered into an agreement to purchase substantially all of the assets of Mercy Health Systems and its affiliates located in East Tennessee. Health Ventures, Inc. is an affiliate of Mercy Health Systems which had entered into an Asset Purchase Agreement with Knoxville HMA Holdings, LLC, a subsidiary of Health Management Associates, Inc. The asset purchase agreement required that Health Ventures, Inc. assign all of its interest under the Building Lease to the buyer, Health Management Associates, Inc. Health Management Associates, Inc. will then assume all of the rights and obligations under the lease. The letter indicated that asset purchase agreement would be executed on October 1, 2011. The letter also requested Lindsey to confirm certain

factual information regarding the lease agreement between Lindsey and Health Ventures, Inc. as well as consent to the assignment of the lease agreement to Knoxville HMA Holdings, LLC.

However, because Lindsey had filed the bankruptcy petition, he did not have the authority to confirm the certain factual information regarding the lease or consent to the assignment of the lease without the consent of the bankruptcy court. Lindsey filed this motion[337] on October 30, 2011 requesting the authority to perform all actions requested by the tenant and the purchaser relating to the Ground Lease and Office Lease at 434 Fourth Street in Cocke County, Tennessee. Lincoln National Life Insurance holds a security interest in the Lindsey's rights related to these leases. However, Lincoln's security interest would not be adversely affected by the assignment of the lease. Lindsey and his counsel also asked the court to shorten the time staying this relief pursuant to Fed. R. Bankr. P. 6004(h).

On October 3, 2011, Judge Richard Stair granted Lindsey's request to reduce time for notice and hearing on the motion regarding the assignment of Health Venture, Inc.'s lease.[338] Judge Stair reduced the time and set the hearing date for October 13, 2011. The hearing on this motion was held on October 13, 2011, and Judge Stair entered an order granting Lindsey's motion on October 14, 2011.[339] Judge Stair ordered that Lindsey may execute the documents regarding his interest in real property in Cocke County associated with the Mercy Health System.

[337] Debtor's Motion Regarding Cocke County Real Property Lease Associated with Mercy Health System, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[338] Order Reducing Time for Notice and Hearing on the Debtor's Motion Regarding His Interest In Cocke County Real Property Associated with the Mercy Health System, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[339] Order Approving Debtor's Motion Regarding Cocke County Real Property Lease Regarding the Mercy Health System, *In re Lindsey at* 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

CHAPTER 15: WL & MC DEVELOPMENT, LLC REPLACEMENT LOAN DOCUMENTS

On December 15, 2011, Mr. Lindsey filed a motion requesting authority from the bankruptcy court to execute replacement loan documents for SunTrust Bank's benefit regarding SunTrust's loans to WL & MC Development, LLC and the guarantees of the loans by Mr. Lindsey and Mr. Caldwell.[340] The replacement loan documents would allow WL & MC Development, LLC to rework its debt without any increase in Mr. Lindsey's obligation to SunTrust bank.

On September 5, 2006, SunTrust Bank extended a $1,050,000.00 development loan to WL & MC Development, LLC and extended a $4,412,000.00 line of credit for construction costs.[341] Both the development and construction loans have become due and payable in full. However, WL & MC Development, LLC requested that SunTrust Bank modify and extend both loans.[342] The parties agreed to a discounted payoff of the loans in an amount of $1,550,000.00.[343] The total balance of the loans to date is $1,924,475.70, which includes the accrued interest and late fees on both loans. A hearing regarding this motion was set for January 26, 2011.[344]

On January 4, 2012, FirstBank filed an objection to Mr. Lindsey's motion to execute these replacement documents to SunTrust Bank regarding WL & MC Development, LLC's loans. FirstBank filed this motion as a creditor and party-in-interest in the bankruptcy proceeding. FirstBank objected to the replacement documents stating that execution of these

[340] Debtor's Motion to Execute Replacement Loan Documents of Suntrust Bank Regarding WL & MC Development, LLC, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[341] *Id*.
[342] *Id*.
[343] *Id*.
[344] *Id*.

documents would allow Mr. Lindsey to continue to funnel money away from profitable entities and into WL & MC Development, LLC bypassing the bankruptcy estate and discriminating against unsecured creditors.[345]

On January 26, 2011, the date the hearing on this motion was scheduled, Judge Richard Stair entered an order setting an evidentiary hearing on the motion and objection for March 7, 2012.[346]

[345] Objection by FirstBank to Debtor's Motion to Execute Replacement Loan Documents to SunTrust Bannk Regarding WL & MC Development, LLC, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[346] Order, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

CHAPTER 16: CHAPTER 11 TRUSTEE APPOINTED

On December 22, 2011, Mr. Lindsey, the United States Trustee and FirstBank filed a joint motion to appoint a trustee to this bankruptcy proceeding.[347] This motion was filed on the heels of FirstBank's motion to dismiss the case. While the motion is relatively simple and does not provide for much detail, the parties state that all three parties agree that there was sufficient cause to appoint a Chapter 11 Trustee pursuant to 11 U.S.C. 1104(a).[348] While the motion does not provide details of the "sufficient cause," it is likely that the Debtor's declining health, the Debtor's violation of the Bankruptcy Code when he renewed the Flowers Baking Company lease without the court's approval, and FirstBank's argument that the Debtor continues to funnel money away from the bankruptcy estate to protect his family and business partners all played a significant role in the parties' decisions to request a Chapter 11 trustee. The motion also stated that FirstBank would withdraw its motion to dismiss if a Chapter 11 trustee was appointed.[349]

Upon filing this joint motion to appoint a trustee, FirstBank filed a motion to withdraw its motion to dismiss on December 22, 2011.[350] FirstBank requested that the trial scheduled for January 12, 2012 on the motion to dismiss be removed from the docket and all pre-trial deadlines canceled.[351]

A hearing was held on January 12, 2012 regarding appointment of a Chapter 11 trustee, and on the same day Judge Stair entered an order granting the request for appointment of a trustee in the proceeding.[352] On January 17, 2010, the United States Trustee filed a motion

[347] Joint Motion by FirstBank, the United States Trustee and the Debtor for Appointment of Trustee, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[348] *Id*.
[349] *Id*. at 3.
[350] Withdrawal of Motion to Dismiss Case, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[351] *Id*.
[352] Order for Appointment of Chapter 11 Trustee, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

asking the court to approve the appointment of C. McRae Sharpe as the Chapter 11 trustee in this case.[353] Judge Stair approved the appointment of Mr. Sharpe on January 18, 2012.[354]

Following the appointment of Mr. Sharpe as the Chapter 11 Bankruptcy Trustee, Mr. Sharpe filed a motion on March 22, 2012 requesting authority from the court to pay Mr. Lindsey a monthly allowance.[355] Mr. Lindsey had requested $4,883.68 a month for his "core" monthly allowances. However, the motion requested payments of $3,500.00 per month for the Debtor's living expenses.[356] A list of these living expenses were set out in Exhibit "A" of the Debtor's January 2012 Operating Report[357] and include such expenses as:

- $1,318.79 for medical/prescriptions,
- $1,123.49 for Home/Maintenance
- $685.17 for Utilities/Garbage
- $485.87 for Gas
- $720.15 for Groceries
- $219.93 for Dining

On April 12, 2012, Judge Stair entered an order granting Mr. Sharpe's motion to pay the Debtor a monthly allowance of $3,500.[358] Mr. Lindsey was required to provide the Trustee an itemized reconciliation each month showing his use of the monthly allowance and all receipts and bills for the money used.

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[353] Application for Order Approving Appointment of Trustee, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[354] Order Approving Selection of Trustee, *In re Lindsey* at 1, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[355] Miscellaneous Motion of C. McRae Sharpe, Trustee, for Authority to Pay Monthly Allowance to William Edwin Lindsey at 1, *In re Lindsey*, No. 10-31694 (Bankr. E.D. Tenn. April 5, 2010).
[356] *Id*. at 2
[357] Monthly Operating Report for Filing Period January 1 - 31, 2012 at 3, *In re Lindsey*, No. 10-31694 (Bankr. E.D. Tenn. April 5, 2010).
[358] Order Granting Motion of C. McRae Sharpe, Trustee, for Authority to Pay Monthly Allowance to William Edwin Lindsey, *In re Lindsey*, No. 10-31694 (Bankr. E.D. Tenn. April 5, 2010).

CHAPTER 17: COMPENSATION OF PARTIES INVOLVED

Mr. Lindsey retained Michael Fitzpatrick, of Jenkins and Jenkins, to handle his bankruptcy proceedings.[359] Fitzpatrick was retained at $275 per hour, and had received $8,961 at the time of filing, along with the $1,039 filing fee.[360] Mr. Lindsey filed an application to employ Fitzpatrick, and the application was approved May 14, 2010.[361] Fitzpatrick has filed 4 applications for compensation since, as follows:

Date	Compensation	Reimbursement of Expenses
10/6/10[362]	$14,451.25	$1,659.39
2/9/11[363]	$17,878.75	$1,168.98
8/30/11[364]	$28,155.75	$4,579.91
12/29/11[365]	$12,410	$23,396.97

Based on these reports and the pre-petition fees, Mr. Lindsey has incurred $81,856.75 in attorney's fees and other expenses of $31,844.00 ($113,701.00 total).

Following the approval of Fitzpatrick as Debtor's counsel, Fitzpatrick requested the court approve Tommy Daugherty ("Daugherty") as a Certified Public Accountant.[366] Daugherty has requested compensation on four occasions, as follows:

[359] Disclosure of Compensation of Attorney for Debtor, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[360] *Id*.
[361] Application to Employ, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Order, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[362] First Application for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Order for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[363] Second Application for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010) ; Order for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[364] Third Application for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Order for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[365] Fourth Application for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Order for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).

Date	Compensation	Reimbursement of Expenses
10/6/11[367]	$1,875.00	$0
2/9/11[368]	$3,625.00	$0
7/21/11[369]	$7,812.50	$0
12/29/11[370]	$2,750.00	$0

Accountant expenses have totaled $16,062.50.

[366] Application to Employ Certified Public Accountant, *In re* Lindsey, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Order, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010).
[367] First Application for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Order, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010)
[368] Second Application for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Order, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010)
[369] Third Application for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010)
[370] Fourth Application for Compensation, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010); Order, *In re Lindsey*, No. 10-31694 (Bankr. E. D. Tenn. April 5, 2010)

CHAPTER 18: FINAL OUTCOME

While Mr. Lindsey's bankruptcy proceeding is still far from over, there are a few predictions that can be made for how the case will be resolved. First, with the appointment of a Chapter 11 trustee earlier this year, the bankruptcy proceeding should continue at a quicker pace with less objections and fewer violations of the Bankruptcy Code by the Debtor. Second, as has been happening throughout the proceeding, the Debtor's non cash-flowing properties will continue to be sold off, leaving the Debtor to manage only the two cash-flowing properties. Third, the court will agree to a sale of the Debtor's remaining interests similar to a Chapter 7 liquidation. Finally, we expect that FirstBank will probably receive less than $0.15 on the dollar before deducting litigation expenses (we'd wager this was a losing battle for FirstBank overall).