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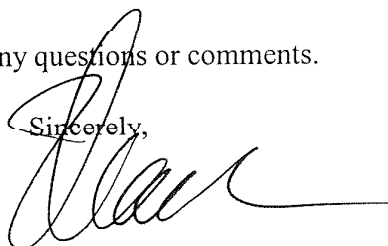
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Gentlemen:

Enclosed herewith is a copy of the Reply in Support of Motion to Convert to Chapter 7 filed by Henderson County Property Corporation, which particularly addresses the response that the Lorax Trustee filed, but ignores the points we made in our response. Thus, we should still continue to assume that these matters will go forward as contested at 9:30 a.m. next Tuesday, May 20, 2003.

Please do not hesitate to contact me with any questions or comments.

Sincerely,



Marc W. Taubenfeld

MWT/cdp
enclosure

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**ATTORNEYS FOR HENDERSON
COUNTY PROPERTY CORPORATION**

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:	§	CASE NO 02-48396-DML-11
	§	
LORAX CORPORATION,	§	
	§	
Debtor	§	Hearing Date: May 20, 2003
	§	Hearing Time: 9:30 a.m.
	§	

REPLY IN SUPPORT OF MOTION TO CONVERT TO CHAPTER 7

Henderson County Property Corporation ("HCPC" or "Movant"), a creditor and party-in-interest in this bankruptcy case, files this Reply (the "Reply") in Support of Motion to Convert to chapter 7 (the "Motion"), and states as follows:

PRELIMINARY STATEMENT

In response to the Motion to Convert, the Lorax Trustee filed "Monthly Operating Reports" which contain little more than information copied from Debtor's Bankruptcy Schedules. Other than that, nothing has changed in this case. Nothing in the Lorax Trustee's Response can change the fundamental truths of this case – Debtor has but one significant asset (a lawsuit), Debtor continues to accrue expenses, Debtor has no earnings or revenues, the value of Debtor's estate continues to diminish, and Debtor has no likelihood of rehabilitation. There is no hope for

a successful rehabilitation for the Debtor. Conversion is appropriate and respectfully the Motion should be granted.

REPLY TO LORAX TRUSTEE'S RESPONSE¹

A. Debtor's recently filed Monthly Operating Reports, filed only under the specter of possible conversion, do not change anything.

1. Debtor's operating reports reflect a copy-and-pasting of data from its schedules. For example, Debtor lists \$227.00 total cash available on its operating report, an amount carried from its schedules.² However, there is no Debtor-in-Possession bank account, and the amount may or may not be accurate. Similarly, all other figures and amounts listed in the MORs are static, and do not reflect any change in the five months since the petitioning creditors filed the involuntary petition against the Debtor, to wit:

- Putatively accrued Accounts Receivable, the product of alleged rents owed, have neither increased with the passage of each month nor decreased as they have aged;³
- The amount listed for Property Plant and Equipment has remained at \$10.4 million, even though the Trustee has offered his non-expert opinion that the amount should be approximately \$6.0 million;⁴
- Operating Expenses are reflected as not having changed since the entry of the Order for Relief⁵ when, in fact, the Debtor has accrued administrative expenses including without limitation utility costs, insurance, expenses, and taxes; and

¹ Capitalized terms herein shall have the meaning ascribed to them in the Motion.

² See Debtor's Bankruptcy Schedules; Debtor's Monthly Operating Report for November 2002 and December 2002 (the "4th Quarter 2002 MOR") at AB-3; Debtor's Monthly Operating Report for January 2003, February 2003, and March 2003 (the "1st Quarter 2003 MOR") at AB-3 (together, the 4th Quarter 2002 MOR and 1st Quarter 2003 MOR shall be referred to as the "MORs"). Copies of the 4th Quarter 2002 MOR and 1st Quarter 2003 MOR as attached hereto as Exhibits A and B, respectively.

³ See 4th Quarter 2002 MOR at AB-4; 1st Quarter 2003 MOR at AB-4.

⁴ See 4th Quarter 2002 MOR at AB-1; 1st Quarter 2003 MOR at AB-1. Movant disputes both of these amounts. For purposes of this Motion, both the Lorax Trustee's purported values, and the dispute about them, are not relevant.

⁵ See 4th Quarter 2002 MOR at AB-2; 1st Quarter 2003 MOR at AB-2.

- Reorganization Expenses are reflected as not having changed since the entry of the Order for Relief⁶ when, in fact, Debtor has accrued U.S. Trustee fees and the Lorax Trustee has incurred or accrued professional fees for, *inter alia*, his attorneys, accountants, and experts (including a real estate appraisal from Deloitte & Touche), and at least two quarterly US Trustee fees have been incurred.⁷

2. The MORs do, however, reflect the State of the Debtor's operations – in the words of the Trustee, there are "[n]o current operations."⁸ Debtor, accordingly, has zero operating revenues.⁹

B. Cause exists to convert to chapter 7.

3. The Lorax Trustee cites to *In re Western Pacific Airlines, Inc.*¹⁰ for the proposition that the continuing loss to or diminution of the estate does not warrant conversion. However, the justification for the decision in that case lay in the anticipated expense associated with appointment of a new chapter 7 Trustee.¹¹ Specifically, the Court wrote:

As stated by one commentator, "bringing in new parties and attorneys in the middle or at the end of the reorganization process to begin a liquidation in a chapter 7 proceeding is generally not the most practical, efficient, expeditious, or most effective manner of liquidating estates." This is particularly true in an airline liquidation.¹²

4. The *Western Pacific* Court went on to state that conversion was not warranted in that case because of the: (i) expenses associated with the appointment of a new and unfamiliar

⁶ See *id.*

⁷ If Debtor's Bankruptcy Schedules and the MORs are correct, Debtor lacks the ability to pay even a single quarter's worth of United States Trustee fees. See 28 U.S.C. § 1930(a)(6).

⁸ See 4th Quarter 2002 MOR, Footnotes Supplement; 1st Quarter 2003 MOR, Footnotes Supplement.

⁹ See 4th Quarter 2002 MOR at AB-2; 1st Quarter 2003 MOR at AB-2.

¹⁰ 218 B.R. 590, 594 (Bankr.D. Colo. 1998).

¹¹ See *id.*

¹² See *id.* at 595.

Trustee and his attorney(s); (ii) potential disruption of the appointment of new operational personnel; (iii) costs associated with the time and delay in training and replacing management and key employees; and (iv) issues associated with administrative compliance with the Federal Aviation Administration and Department of Transportation.¹³

5. None of this is true in the instant case. Debtor has no operations.¹⁴ In all likelihood, the office of the United States Trustee would seek to appoint – and Movant would not object to - the Lorax Trustee being appointed as the chapter 7 trustee. Similarly, the Lorax Trustee would not have to change counsel. There would be no change or disruption in employees or operations because Debtor has neither employee nor operations. Obviously, given the lack of operations, there are no governmental compliance issues. As a result, none of the "start-up-cost" considerations of the *Western Pacific* case apply to the instant case and the *Western Pacific* case is not relevant to the Motion.

6. What is relevant to the Motion is that Debtor continues to accrue expenses while failing to generate any revenues. It is unquestionable that Debtor's estate is diminishing.¹⁵ More importantly, Debtor's business prospects do not justify continuance of the reorganization effort. Debtor has no earnings and the only asset of consequence in the estate is a lawsuit over a

¹³ *See id.*

¹⁴ *See* 4th Quarter 2002 MOR, Footnotes Supplement; 1st Quarter 2003 MOR, Footnotes Supplement.

¹⁵ *See Berryhill v. U.S. (In re Berryhill)*, 189 B.R. 463, 466 (N.D. Ind. 1995) (debtor's failure to pay post-petition taxes – and its inability to pay such taxes without assistance from others – (1) evidenced a continuing loss or diminution of the estate, and (2) was a factor considered in its determination that there was no reasonable likelihood of rehabilitation); *In re Citi-Toledo Partners*, 170 B.R. 602, 606 (Bankr. N.D. Ohio 1994) (finding continued diminution where estate accumulated real estate taxes and where the real property assets of the estate remained idle.).

terminated lease, which, if the Trustee prevails, will have to be assumed (and perhaps assigned) before any value arising from the lease could be realized.¹⁶

7. Debtor has no operations, no employees, no earnings, and no ability to fund a plan of reorganization or to rehabilitate any property; in short, Debtor has no chance of rehabilitation. As a result, conversion of Debtor's case is appropriate.¹⁷

C. Debtor is still not an appropriate candidate for Chapter 11

8. In his Response, the Lorax Trustee misses the point to regarding the Debtor and the badges of bad faith. It is not that there was bad faith in this involuntary filing.¹⁸ It is that Debtors which wear so many of the bad faith badges are not appropriate candidates fo chapter 11.

9. To review, in this case: (1) Debtor has one significant asset – the lawsuit surrounding the leasehold interest;¹⁹ (2) Debtor has no employees;²⁰ (3) Debtor has no ongoing operations;²¹ (4) Debtor has reported no revenues for 2 years;²² (5) Debtor's petitioning creditors

¹⁶ Again that Debtor may consider proposing a liquidating chapter 11 plan is irrelevant to the inquiry under section 1112(b). Instead, the only inquiry here is the likelihood of a successful rehabilitation, something unlikely in this case. *See In re Citi-Toledo Partners*, 170 B.R. 602, 607 (Bankr. N.D. Ohio 1994) ("Lastly, although the Bankruptcy Code contemplates liquidating plans of reorganization in certain circumstances, the Court cannot equate the determination of whether [the Debtor] possesses a reasonable likelihood of rehabilitation with [the Debtor's] ability to effectuate a liquidating plan."), (emphasis added).

¹⁷ *See In re Citi-Toledo Partners*, 170 B.R. 602 (Bankr. N.D. Ohio 1994) at 607 (finding no reasonable likelihood of rehabilitation where Debtor had no employees, no operating income, and no ability to fund completion of the construction of the real property assets of the estate).

¹⁸ Whether or not the petitioning creditors filed the involuntary petition in bad faith is a question beyond the scope of this Motion.

¹⁹ Movant reiterates that the ground lease was terminated pre-petition and is not an asset of the estate.

²⁰ *See* 4th Quarter 2002 MOR at AB-2 (showing no wage or salary expense); 1st Quarter 2003 MOR at AB-2 (same)

²¹ *See* 4th Quarter 2002 MOR, Footnotes Supplement ("No current operations."); 1st Quarter 2003 MOR, Footnotes Supplement ("No current operations.").

²² *See* Debtor's Bankruptcy Schedules; 4th Quarter 2002 MOR at AB-2; 1st Quarter 2003 MOR at AB-2.

filed this case in order to stop a foreclosure sale; and (6) the reorganization is being effectively used to resolve a dispute as to the ownership of the lease by and between Debtor and one or two other parties.

10. Debtor has never been a legitimate candidate for reorganization, and reorganization of the Debtor is, effectively, an impossibility. There is ample cause to convert this case, and, respectfully, the Motion should be granted.

PRAYER FOR RELIEF

WHEREFORE, Movant requests that this Court grant the Motion, convert Debtor's case into one under chapter 7, and grant Movant what further and other relief as may be appropriate.

Respectfully submitted,

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By: _____

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**ATTORNEYS FOR HENDERSON
COUNTY PROPERTY CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that on this May 15, 2003 a true and correct copy of the above pleading was served via facsimile upon the chapter 11 Trustee, counsel for the chapter 11 trustee, and the office of the United States Trustee, and via regular mail on the parties listed below:

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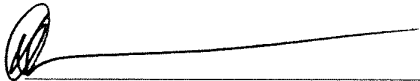
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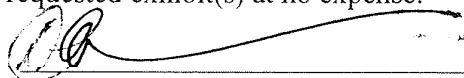
One of Counsel

SUMMARY OF EXHIBITS

The following exhibits were referenced in the forgoing pleading:

- A. Debtor's Monthly Operating Report for November 2002 and December 2002
- B. Debtor's Monthly Operating Report for January 2003, February 2003, and March 2003

Parties-in-interest who do not possess copies of the identified exhibits and wish to obtain copies of some or all of the identified exhibits may contact the undersigned in writing, who will provide such requesting party a copy of the requested exhibit(s) at no expense.



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