

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

IN RE: ) JOINTLY ADMINISTERED  
)  
SCOTIA DEVELOPMENT LLC., ET AL., ) Case No. 07-20027-C-11  
) Chapter 11  
Debtors )  
) Honorable Richard S. Schmidt

EXPEDITED MOTION OF THE PEOPLE OF THE STATE OF CALIFORNIA, BY AND THROUGH THE HUMBOLDT COUNTY DISTRICT ATTORNEY'S OFFICE, TO JOIN IN THE CALIFORNIA RESOURCES AGENCY, CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, CALIFORNIA DEPARTMENT OF FISH AND GAME, CALIFORNIA WILDLIFE CONSERVATION BOARD, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD, NORTH COAST REGION EXPEDITED MOTION TO TRANSFER VENUE TO THE UNITED STATES BANKRUPTCY FOR THE NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

A HEARING WILL BE CONDUCTED ON THIS MATTER ON FEBRUARY 15<sup>th</sup>, 2007, at 10:00 a.m., BEFORE THE HONORABLE RICHARD S. SCHMIDT, 515 RUSK AVENUE, COURTROOM 400 4<sup>th</sup> FLOOR, HOUSTON TX, 77002. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-THREE DAYS FROM THE DATE YOU WERE SERVED WITH THE NOTICE OF THIS PLEADING UNLESS YOU DID NOT RECEIVE THIS NOTICE IN TIME DO SO. IN THAT SITUATION, FILE YOUR RESPONSE AS SOON AS POSSIBLE. IN ADDITION TO FILING YOUR RESPONSE WITH THE CLERK, YOU MUST GIVE A COPY OF YOUR RESPONSE TO PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

The People of the State of California, by and through the Humboldt County District Attorney's Office, (referred to hereinafter as the "People") hereby move this Court under *Rule 19* and *Rule 20* of the *Federal Rules of Civil Procedure* for entry of an order permitting joinder of the People of the State of California with the Motion to Transfer Venue of the California Resources Agency, California Department of Forestry and Fire Protection, California Department of Fish and Game, California Wildlife Conservation Board, California State Water Resources Control Board, North Coast Regional Water Quality Control Board, North Coast Region (referred to herein collectively as "the California State Agencies"). In support of this Motion, the People of the State of California respectfully submit the following:

#### INTRODUCTION

1. The People and the Debtors are currently before the Court of Appeal of the State of California, First Appellate District, Division Three, (Appellate Court Case number A112028/Superior Court Case number DR030070). The appeal arises out of lawsuit filed against the Debtors under California *Business and Professions Code* § 17200 (referred to hereinafter as "UCL"), seeking civil penalties and restitution. The People's lawsuit alleges the Debtors intentionally misrepresented crucial facts in an adjudicative administrative procedure governed by the *California Environmental Quality Act* (referred to hereinafter as "CEQA"), resulting in the circumvention of a critical step in the CEQA process, to wit: recirculation of the Environmental Impact Report (referred to hereinafter as "EIR") of their requested harvesting permit in Humboldt County for public comment. As a result, PL was permitted to log timber at a greater rate than they would otherwise have been allowed. The increased timber harvest rate resulted, foreseeably, in increased landslides, water pollution, sedimentation, and impairment of northern California watersheds and fisheries that threaten the health and safety of residents and public

infrastructure. The Debtors did and do benefit from their deceit upon the people of the State of California.

2. The Debtors prevailed on Demurrer to the People's Complaint on the basis of the trial court ruling that: (1) California *Civil Code* § 47's litigation privilege bars the People's lawsuit; (2) the *Noerr-Pennington doctrine*, which protects the right to lobby or petition government, barred the lawsuit; (3) the Debtors' misrepresentations did not undermine the agency decision; and (4) the UCL is directed at ongoing wrongful conduct, not single transactions, and the complaint alleges a single transaction.

3. The People appealed the trial court's decision on the grounds that the ruling was incorrect. Specifically: (1) the law is clear in California that the litigation privilege does not apply to the People's UCL lawsuit because the People were not a party to the underlying CEQA process; (2) the *Noerr-Pennington doctrine* is not a defense to the People's lawsuit because (i) PL's deceit was fraud upon the people of the of the State of California – not lobbying; and (ii) the lawsuit is a law enforcement action designed to protect the public; (3) the court's failure to accept the allegations in the complaint in ruling on a demurrer was an abuse of the court's authority; and (4) it is well settled law in California that UCL applies to a single act of fraud.

4. The People expected to and expect to prevail on appeal.

5. On May 30, 2006, after much delay in making payment of the record on appeal, Respondents' were advised that, if the Court did not receive payment within 15 days from the mailing of the notice, the Court would not provide the record to Respondents. A true and correct copy of the Notification of Failure to Comply is attached hereto as Exhibit A.

6. The Respondents paid for the record and the appeal transcripts were made ready for the appellate court and the parties on June 15, 2006. A true and correct copy of the Appeal Transcripts Ready for Pick Up In Court Operations and Clerk's Certificate to Transcripts on Appeal is attached hereto as Exhibit B.

7. On July 11, 2006, the First Appellate Court advised the People and the Respondents that the record on appeal had been filed and gave notice of the briefing schedule. A true and correct copy of the Rule 14(e) Notice is attached hereto as Exhibit C.
8. Due to Counsel's schedule, the People requested and were given 3 extensions to file their Opening Brief. A true and correct copy of the Applications for Extension of Time to File Brief are attached hereto as Exhibits D, E and F.
9. The People's Opening Brief was filed on November 13, 2006. A true and correct copy of the People's Opening Brief is attached hereto as Exhibit G.
10. On November 15, 2006, Pacific Lumber Company, et al., filed an Application for Extension of Time to File Brief, asking for an extension to file Respondent's Brief to January 12, 2007. A true and correct copy of the Debtors' Application for Extension of Time to File Brief (Civil Case) is attached hereto as Exhibit H.
11. On January 16, 2007, Pacific Lumber Company, et al., was notified pursuant to *Rule 8.220(a)(2)* that they were late in filing their brief, their brief must be filed within 15 days after the notice was mailed and that failure to comply would result in the court will deciding the appeal on the record and the opening brief. A true and correct copy of the *Rule 8.220(a)(2)* Notice to Edgar Bancroft Washburn and John Alan Behnke is attached hereto as Exhibits I and J.
12. The case was placed on the ready list, i.e., the Court was preparing to decide the appeal on the record, the opening brief, and any oral argument of the People, due to the Debtors' failure to respond to the People's opening brief on January 31, 2007. A true and correct copy of the California Appellate Courts' Case Information, Briefs schedule is attached hereto as Exhibit K.
13. On or around January 30, 2007, Debtors filed a Notice Pending Bankruptcy Proceedings in the First District Court of Appeal. A true and correct copy of the Notice of Pending Bankruptcy is attached hereto as Exhibit L.

14. On February 1, 2007, the appellate case was ordered stayed pursuant to 11 U.S. C. § 362. A true and correct copy of the Order is attached hereto as Exhibit M.

15. On June 5, 2006, Scotia Development filed a Certificate of Formation of Limited Liability Company in Texas. A true and correct copy of the Certificate of Formation of Limited Liability is attached hereto as Exhibit N.

16. Scotia Development's website indicates their leadership is as follows: James D. Shanks as President and CEO, Gary L. Clark as Vice President and CFO, Dennis E. Wood as Vice President – Development, Bernard L. Birkel as Secretary, M. Emily Madison as Assistant Secretary, Valencia A. McNeil as Assistant Secretary and Norma Romo Robertson as Assistant Secretary. A true and correct copy of the information contained on the website is attached hereto as Exhibit O. Interestingly, James D. Shanks is a former president of MCO Properties, a subsidiary of MAXXAM, Gary Clark is PALCO's Chief Financial Officer, Dennis Woods is PALCO'S Vice President, and Bernard Bickel is Scotia Pacific's Secretary.

17. On January 18, 2007, Scotia Development LLC (Scotia Development) filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas. Five related entities simultaneously filed voluntary Chapter 11 petitions, also in this Court, including Pacific Lumber Company (PALCO), Britt Lumber Co., Inc. (Britt), Salmon Creek LLC (Salmon Creek), Scotia Inn, Inc (Scotia Inn), and Scotia Pacific Company LLC (SCOPAC) (referred to herein as "Debtors").

18. In their petitions, these five related entities asserted venue in this Court on the ground that they are affiliates of Scotia Development (See Voluntary Petitions for Debtors PALCO Case No. 07-20028 [Docket # 1], Britt Case No. 07-20029 [Docket # 1], Salmon Creek Case No. 07-20030 [Docket # 1], Scotia Inn Case No. 07-20031 [Docket # 1] and SCOPAC Case No.07-20032 [Docket #1].) Notably, all of these affiliates list California as their state of residence, not Texas.

18. On January 19, 2007, this Court ordered these cases to be jointly administered.

19. Based on the above, the People hereby move this Court to allow them to join in the California State Agencies' Motion to Transfer the Bankruptcy and move this Court to transfer the instant bankruptcy case to the California Bankruptcy Court. Specifically, the People believe the facts show the Debtors manufactured venue through the formation of Scotia Development as a limited liability company in Corpus Christi, Texas, to wit: Scotia Development was formed for the purpose of enabling the Debtors to file their bankruptcy petitions in this Court; Scotia Development has no significant business activity or purpose and was created provide its affiliates with a way to file bankruptcy in this Court rather than in the California Bankruptcy Court; and the Debtors' actions in a manufacturing venue constitute bad faith and blatant forum shopping. Allowing venue to remain in this Court under the facts before the Court will undermine the integrity of the bankruptcy laws and impose severe burdens on The People, the creditors and other parties in interest to assert and protect claims against these debtors.

20. Venue is not proper under 28 U.S.C. § 1408(2) when it has been manufactured.

21. If the Court finds venue is proper it should be transferred under 28 U.S.C. § 1412 in the interest of justice and the convenience of the parties. The facts supporting transfer are abundant and compelling:

- A number of creditors and potential creditors, including the People, are located in Northern California;
- Most witnesses are located in California;
- Five of the six Debtors reside in California, with four residing in Oakland, Alameda County, California, specifically where Oakland Division of the United States Bankruptcy Court for the Northern District of California is situated;
- The timberland that is the Debtors main asset and is located in Northern California, specifically, Humboldt County;

- The Debtors operations are regulated under the laws of the State of California;
- Of the Debtors 88 “critical vendors” 65 of them reside in California, while only one resides in Texas;
- The Debtors list only one creditor in their List of 20 Largest Creditors that reside in Texas (Scotia Development’s landlord), while 17 of them reside in California; and
- While Scotia Development is nominally listed as a moving party, none of the Debtors’ “first day” motions seek any significant relief for Scotia Development.

#### JURISDICTION AND VENUE

22. This court has jurisdiction to consider this motion under 28 U.S. C. §§ 1408 and 1412, 11 U.S.C. § 157(b)(2)(A).

#### STATEMENT OF FACTS

23. The People incorporate by reference as if fully stated herein paragraphs 6 through 16 of the California State Agencies Motion to Transfer Venue.

24. The District Attorney of Humboldt County is an elected official of Humboldt County, California and the underlying UCL lawsuit was filed in Humboldt County.

25. The People’s interest in this bankruptcy case is great. In the Debtors’ filings they assert that they are “negatively impacted” by the “continued regulatory constraint.” See, e.g., Application for Authority to Employ Howard Rice et al. [Docket # 68]. This statement strongly suggests that Debtors will attempt to use this bankruptcy forum as a vehicle to relieve themselves of their regulatory obligations and, perhaps, of their obligations to the People arising out of their alleged fraudulent conduct in the UCL lawsuit. The People, with jurisdiction to and the responsibility to protect the public welfare and enforce California’s unfair competition laws must be very active and vigilant over these Debtors and these bankruptcy proceedings to ensure that the interest of the

people of the State of California in the application of their laws to those who do business in the State of California is met. This is especially so in light of their efforts to deceive the government in the both the underlying action and in this action.

26. The Debtors choice of venue in Texas, rather than California where they have operated for over 130 years, where substantially all of their assets and employees are, and where the regulators and vast majority of creditors is located is clearly an attempt to blunt the participation of the People as well as the California State Agencies and California creditors.

27. The Debtors reside and conduct material operations in California. Specifically, this bankruptcy case concerns six jointly-administered cases involving Debtors PALCO, Britt, Salmon Creek, Scotia Inn, SCOPAC, and Scotia Development. PALCO, Britt, Salmon Creek, SCOPAC, and Scotia Inn all reside in and have mailing addresses in Northern California. Only Scotia Development, which was formed on June 5, 2006, lists a residence outside of California.

28. PALCO is located at 449 15<sup>th</sup> Street, Suite 401, Oakland, California, 94612 (mailing address P.O. Box 37, Scotia, California 95565). See PALCO Voluntary Petition [Docket # 1]. This location is blocks from the California Bankruptcy Court. PALCO lists its “County of Residence or the Principal Place of Business” as Alameda County, California. PALCO lists its “Location of Principal Assets of Business Debtor” as Humboldt County, California.

29. Britt is a California Corporation listing the same address, principal place of business, and location of assets as PALCO. See, Britt Lumber Voluntary Petition [Docket # 1]. Britt is located at 449 15<sup>th</sup> Street, Suite 401, Oakland, California, 94612 (mailing address P.O. Box 37, Scotia, California, 95565). This street address is blocks from the California Bankruptcy Court. Britt lists its “County of Residence of Principal Place of Business” as Alameda, County, California. Britt lists its “Location of Principal Business Debtor” as Humboldt County, California.

30. Salmon Creek is a California Corporation listing the same address, principal place of business, and location of assets as PALCO. See, Salmon Creek Voluntary Petition [Docket # 1]. Salmon Creek is located at 449 15<sup>th</sup> Street, Suite 401, Oakland, California, 94612 (mailing address P.O. Box 37, Scotia, California, 95565). This street address is blocks from the California Bankruptcy Court. Salmon Creek lists its “County of Residence of Principal Place of Business” as Alameda, County, California. Salmon Creek lists its “Location of Principal Business Debtor” as Humboldt County, California.

31. Scotia Inn is located at 100 Main Street, Scotia, California 95565. See, Scotia Inn Voluntary Petition [Docket # 1]. Scotia Inn lists its “County of Residence of Principal Place of Business” as Humboldt County, California. Britt lists its “Location of Principal Business Debtor” as Humboldt County, California.

32. SCOPAC Britt is located at 449 15<sup>th</sup> Street, Suite 401, Oakland, California, 94612. See, SCOPAC Voluntary Petition [Docket # 1]. (mailing address P.O. Box 37, Scotia, California, 95565). This street address is blocks from the California Bankruptcy Court. SCOPAC lists its “County of Residence of Principal Place of Business” and “Location of Principal Business Debtor” as Alameda County, California.

33. Each of the Debtors has filed lists of its 20 largest creditors. Of those creditors, 17 reside in California. Scotia Development’s landlord is the only listed creditor in Texas. Scotia Development lists only two creditors, one residing in California and the other, apparently their landlord, residing in Corpus Christi, Texas.

34. While Debtors are vague in their motion for authority to pay pre-petition claims of critical vendors, it appears from the amended list of such critical vendors that the Debtors are seeking such relief only with respect to PALCO and Britt – both located in

Northern California. Only one of the critical vendors is listed with an address in Texas while 65 of the 88 listed critical vendors are listed with addresses in California.<sup>1 2</sup>

35. The amended Exhibit to the Debtors' Motion to Prohibit Utilities from Altering Services [Docket # 45] lists 13 utilities that provide "critical" utility service to the Debtors, but only one of them, AT & T, is listed for Scotia Development and the sum of the debt is \$242. The remaining 12 critical utilities are for PALCO and Britt and not located in Texas. This strongly suggests that Scotia Development maintains a small office with a phone in Texas merely for the purpose of manufacturing venue. Interestingly, Scotia Development entered into the lease for the Texas office seven days after filing its corporate papers with the Secretary of State.

36. Further, Debtors' Emergency Motion to Pay Prepetition Compensation and Benefits [Docket # 12] mentions in detail only PALCO and Britt Lumber. Although Scotia Development is nominally listed as a moving party, there is no specific description of the number of its employees or the existence and description of any employee compensation or benefit plans. The Debtors statement is that Scotia Development has not salaried employees. SCOPAC filed a separate motion for similar relief [Docket # 97], but that too makes no mention of Scotia Development. The vast majority of the 500 plus employees reside in California.

37. The only significant mention of Scotia Development in the Debtors' first day motions so far is to say that it was "created in 2006 for the purpose of exploring and facilitating development opportunities with respect to commercial, industrial and residential properties, including raw land, in California and Texas. It is a party to development contracts with both SCOPAC and PALCO and owns option rights to real

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<sup>1</sup> The PALCO list of critical vendors also includes five California state agencies: the Board of Equalization, Department of Toxic Substance Control, State Water Resources Control Board, California Air Resources Board, the California Regional Water Control Board, North Coast Region.

<sup>2</sup> Worth noting is that no mention is made of the People's pending appeal arising out of a UCL lawsuit alleging PALCO committed fraud against the People of the State of California by deceiving state regulatory agencies.

property on the Texas Gulf Coast.” See, e.g. Affidavit of Gary L. Clark [Docket # 11, p. 4.]

38. According to the Debtors’ filings, PALCO owns 210,000 acres either of virtually contiguous commercial timberlands in Humboldt County, California, either directly or through SCOPAC or Salmon Creek. See, Application for Authority to Employ Howard Rice [Docket # 68], p. 5. PALCO owns most of this timberland through SCOPAC, its subsidiary as SCOPAC owns 200,000 acres. PALCO owns 8,500 acres, while Salmon Creek owns the remaining 1,300 acres. The People believe these California timberlands and lumber mill are the Debtors’ main assets.

39. The Debtors have claimed that the “regulatory limitations” placed on their timber harvests have caused them to become highly leveraged. According to the Debtors, much of their cash flow goes toward debt service.<sup>3</sup>

40. The facts underlying the bankruptcy case and the People’s case that is now before the appellate court arises out of the circumstances surrounding the Headwaters Forest Agreement of 1996, which rose out of the purchase of Pacific Lumber Company (hereinafter referred to as “PALCO”) by MAXXAM, Co., (hereinafter referred to as “MAXXAM”). In 1986 MAXXAM purchased PALCO with over \$750 million in borrowed money. MAXXAM’s own debt to Equity was 5:1 (or 5 times as much debt as equity in 1986). MAXXAM transferred the debt acquired to purchase the company into PALCO and in July 1986 refinanced the purchase debt for \$879 million in long-term debt. MAXXAM reorganized PALCO between 1986 and 1988, selling off PALCO’s old office building for \$31 million recapturing \$55 million from old PALCO’s pension plan, selling the Cutting and Welding Division of old PALCO for at least \$125 million gain. (The sale price of the Cutting and Welding Division was \$325 million but MAXXAM

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<sup>3</sup> The People’s allegations in their underlying case and in the appeal are that PALCO committed fraud to assure a harvest rate which would allow them to maintain payment of their debt. The debt was incurred as part of the hostile takeover of PALCO by MAXXAM, Co.

allocated \$200 million of PALCO debt to this Division for accounting purposes, yielding an estimated net profit of \$125 million. In 1993, MAXXAM had two separate refinancings: one into PALCO and Scotia Pacific (set up in 1993) for \$611 million and another for \$226.7 million into a MAXXAM holding company, MAXXAM Group Inc. (MGI) for a total of \$838 million. This refinancing paid off the old debt in PALCO, slightly lowered the interest rates on the long-term debt and appeared to allow MAXXAM to take \$226.7 million dollars out of PALCO (The MGI notes were secured by its stock ownership of PALCO as its major asset.) Again, total debt burden to PALCO (which had to provide dividends to MGI to pay that debt) was over \$838 million. So, after eight years of ownership, PALCO remained with over \$800 million in long-term debt.<sup>4</sup>

41. During this time, PALCO's harvesting of timber in the Headwaters Forest, located in Humboldt and one of the largest old-growth redwood forests remaining in private ownership, was leading to considerable litigation and protest. *Env'tl Prot. Info. Ctr. V. California Dept. of Forestry and Fire Prot.*, 37 Cal.Rptr.3d 31, 38-39, rev. granted, 132 P.3d 210 (No S140547, March 29, 2006). As result of this litigation, PALCO was enjoined from harvesting a particular strand of old-growth timber that was the habitat for the marbled murrelet. In response to this limitation, PALCO sued both the state and federal government alleging unlawful taking of property. *Id.* At 39.

42. This ultimately led to the Headwaters Forest Agreement of 1996 with various agencies of the State of California and the United States. *Ibid.* As part of this agreement, PALCO agreed to dismiss its takings lawsuit and sell a portion of its property called the Headwaters Forest and other property to the State of California and the United States (9,600 acres) to create a permanent wildlife preserve and "to conserve and study the land, fish, wildlife, and forests occurring on such land while providing public recreation

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<sup>4</sup> Comments on the *Pacific Lumber Company Economic White Paper*, by Michael W. Gjerde, State Water Resources Control Board. A true and correct copy is attached hereto as Exhibit P.

opportunities and other management needs.” Pub. L. 105-83, 11 Stat. 1543, 1613 (Nov. 14, 1997). PALCO further agreed to modify its Habitat Conservation Plan (hereinafter referred to as “HCP”) to provide additional protections for threatened and endangered species. In exchange, PALCO received a total of almost \$500 million dollars of public money - \$245.5 million from specific agencies of the State of California and \$250 million from the United States.

43. Under the Headwaters Forest Agreement, PALCO would be allowed to harvest its remaining timberlands in satisfaction of certain of its regulatory obligations, subject to the specified State agencies’ and the United States’ review and approval of certain plans and permits. These plans and permits, include but are not limited to, Timber Harvesting Plans (hereinafter referred to as “THP”) under the Forest Practice Act, the HCP and its Implementing Agreement, the Sustained Yield Plan (hereinafter referred to as “SYP”), an Environmental Impact Statement (hereinafter referred to as “EIS”) and Environmental Impact Report (hereinafter referred to as “EIR”), and an Incidental Take Permit.

44. During this process that PALCO, to obtain sufficient timber harvest rates to continue to finance their immense debt, committed the acts and/or failed to act as required by law which resulted in the underlying UCL lawsuit against PALCO by the People which is currently before the appellate courts as is more specifically related in paragraphs 1 through 14.

45. In 1998, MAXXAM and PALCO again refinanced the company debt related to the timberlands. This time, all the new debt was placed into Scotia Pacific. This was apparently done to insulate PALCO from the debt payment requirements. An interesting feature of this 1998 refinancing was that most of the money from the Headwaters deal was put into a collateral account in Scotia Pacific to secure the high mortgage on the Timber Notes. The average interest rate was lowered to around 7.43 % in the 1998 refinancing but the total long-term debt was again increased to \$867 million. Counting the initial 1993 bond money as payment to MAXXAM or the retirement of the debt as a

benefit to MAXXAM in 1998 indicates that MAXXAM drew \$225 million from PALCO. In 1998 an additional \$14.7 million was paid from MGI up to MAXXAM, though hidden through multiple company dividends. Again, the PALCO companies were left with over \$868 million in long-term debt, meaning no long-term debt was paid off in the previous 5 years, while MAXXAM received at least \$241.4 million out of the deals. (The 1993 MGI bond money of \$226.7 million that was paid off by assets from PALCO in 1998 and dividend payments of \$14.7 million from MGI to MGHI.<sup>5</sup>

46. Since 1998, PALCO has not done another refinance and has slowly paid some of its long-term debt back. As of December 31, 2004, the balance was \$703 million. The company choice has been to make all necessary interest payments and pay the minimum principle necessary. In six years \$165 million has been paid off while Scotia has delivered over \$182 million in dividends to PALCO. This is money that could have been used to pay down much more of the debt but has apparently been used to send money through to MAXXAM.<sup>6</sup>

#### ARGUMENT

##### The People's Motion to Join the California State Agencies' Motion to Transfer Venue Should be Granted.

47. Rule 19 of the *Federal Rules of Civil Procedure* states in pertinent part:

“A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if ... the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical

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<sup>5</sup> Comments on the *Pacific Lumber Company Economic White Paper*, by Michael W. Gjerde, State Water Resources Control Board. A true and correct copy is attached hereto as Exhibit P.

<sup>6</sup> Comments on the *Pacific Lumber Company Economic White Paper*, by Michael W. Gjerde, State Water Resources Control Board. A true and correct copy is attached hereto as Exhibit P.

matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party.”

48. As indicated above, the People claim an interest relating to the subject of the instant bankruptcy case. Further, the People are so situated that the disposition of the action in their absence will as a practical matter impair or impede the People's ability to protect that interest and/or leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

49. If the Court finds that joinder is not mandatory, the People should be permitted to join under Rule 20 of the *Federal Rules of Civil Procedure*. Rule 20 of the *Federal Rules of Civil Procedure* states in pertinent part:

“All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for

one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.”

50. The People clearly assert a right to the relief jointly, severally, or in the alternative of transferring venue of the instant bankruptcy case on the same grounds that the California State Agencies do in their moving papers. The underlying conduct, which is and will be at issue in this case for the People and the California State Agencies, arise out of the same transaction, occurrence, or series of transactions or occurrences. And there are questions of law or fact common to the People and the California State Agencies in the instant action.

#### CONCLUSION

51. For the reasons stated above, the People respectfully request that this Court grant the People’s Motion to Join the California State Agencies’ Motion to Transfer Venue Should be Granted. Additionally, the People request that any requirement of memorandum of law accompany any motion is waived.

Dated: February 11, 2007

Submitted and prepared by:

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