

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

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\*  
\*  
IN RE: \* NO. 1:08-bk-10249  
\*  
PROPEX, INC., et al., \* CHAPTER 11  
\*  
Debtors. \* JOINTLY ADMINISTERED  
\*  
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BE IT REMEMBERED, that the above-styled  
cause came on to be heard on the 26th day of March, 2008,  
before the Honorable John C. Cook, Judge of said Court, when  
all parties announced ready to proceed, and the following  
proceeding was had, to wit:)

\* \* \*

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## 1 APPEARANCES:

## 2 FOR THE DEBTORS:

3 SHELLEY D. RUCKER, ESQUIRE  
4 Miller & Martin, PLLC  
5 832 Georgia Avenue, Suite 1000  
6 Chattanooga, Tennessee 37402

## 7 FOR THE CREDITORS:

8 RICHARD B. GOSSETT, ESQUIRE  
9 Baker Donelson Bearman Caldwell  
10 & Berkowitz, PC  
11 1800 Republic Centre  
12 633 Chestnut Street  
13 Chattanooga, Tennessee 37450

14 EDWARD C. MEADE, ESQUIRE  
15 Bass, Berry & Sims, PLC  
16 1700 Riverview Tower  
17 900 S. Gay Street  
18 Knoxville, Tennessee 37902

## 19 FOR THE UNITED STATES TRUSTEE:

20 KIMBERLY C. SWAFFORD, ESQUIRE  
21 Historic U.S. Courthouse  
22 31 East 11th Street, 4th Floor  
23 Chattanooga, Tennessee 37402

24  
25 \* \* \*

1 THE COURT: Be seated, please.

2 Clerk, call the case.

3 THE CLERK: This is the Chapter 11 case of  
4 Propex, Inc., and other jointly administered cases. We have  
5 debtors' motion for entry of orders authorizing and  
6 scheduling an auction, authorizing the assumption and  
7 modification of auction listing contract, approving sale  
8 procedures, approving the sale of the real property to the  
9 party submitting the highest bid, and approving the payment  
10 of real estate commission to the auctioneer at closing.

11 Debtors' first supplemental motion for  
12 amendment of the notice procedures to establish objection  
13 deadlines for motions filed. Motion by an unsecured  
14 creditors' committee for entry of a stipulation and agreed  
15 order between the debtors and the creditors' committee  
16 regarding creditor access to information, and debtors'  
17 application for entry of an order authorizing retention and  
18 employment of Navigant Capital Advisors, nunc pro tunc.

19 THE COURT: Okay. Let's have announcement  
20 of appearances first.

21 MS. RUCKER: Your Honor, I'm  
22 Shelley Rucker, I'm with Miller & Martin, here for the  
23 debtors.

24 THE COURT: Okay.

25 MR. GOSSETT: Richard Gossett, for the

1 committee.

2 THE COURT: All right.

3 MS. SWAFFORD: Kimberly Swafford for the  
4 U.S. Trustee's office.

5 THE COURT: All right.

6 MR. MEADE: Your Honor, Edward Meade here  
7 for BNP Paribas and (Name) Finance Company.

8 THE COURT: All right. Ms. Rucker?

9 MS. RUCKER: Your Honor, the first motion  
10 on the docket today relates to a request to proceed with the  
11 sale, an auction sale on some property located in Dalton,  
12 Georgia. This sale was set to take place shortly after the  
13 debtor filed bankruptcy. The auctioneers had started the  
14 work, had been showing the property, and we were seeking  
15 basically to continue on with that process, to assume the  
16 contract with those auctioneers and to modify the agreement  
17 with them to provide for a closing instead of March 1st,  
18 June 1st. With that, if the Court approves that, we have  
19 tentatively scheduled the auction for May 16th, with a sale  
20 hearing to follow that on May 21st. And I've checked with  
21 Ms. Campacy this morning and that date is available for  
22 scheduling.

23 THE COURT: All right. Yes, I have  
24 reviewed that and all of that appears okay to me, except  
25 there is one matter. I don't think that I need to decide it

1 today. But, in the past, these transfer taxes, I have  
2 typically stricken that from any order approving the sale,  
3 because, as you know, there is a split authority on that,  
4 the 3rd and 4th Circuit go one way, the 11th Circuit goes  
5 another, and the 11th Circuit is now pending -- the 11th  
6 Circuit case is pending before the Supreme Court. I think  
7 it is going to be reversed, quite frankly, because I don't  
8 think it comports with the language of the statute. So I  
9 don't know how you propose to deal with that when we get to  
10 approval of the sale.

11 MS. RUCKER: Okay.

12 THE COURT: But, I will just tell you, I  
13 have had this come up in past cases and I have not been  
14 persuaded that the 11th Circuit position is the correct one.

15 MS. RUCKER: Your Honor, I did look at the  
16 order and I believe the order that we're asking to be  
17 entered today doesn't have anything related to that.

18 THE COURT: It doesn't address it today.

19 MS. RUCKER: Right.

20 THE COURT: But, I just wanted you all to  
21 know this.

22 MS. RUCKER: And I will communicate that to  
23 my co-counsel in Texas, that that may be an issue.

24 THE COURT: All right.

25 MS. RUCKER: And I'm not sure when

1 Piccadilly is scheduled to be heard, but I understand that  
2 that may be an issue for us at that time.

3 THE COURT: All right. Okay. I will grant  
4 the motion.

5 MS. RUCKER: The second motion, which we  
6 have filed on behalf of the debtors today, is a motion to  
7 amend the notice procedures. We've previously obtained an  
8 order for the Court setting up these hearings every two  
9 weeks in the process and for notice and that sort of thing.  
10 What we omitted was an objection deadline, given that we  
11 have so many counsel out of town that probably would not  
12 need to be here, if there are no objections, we have  
13 requested the Court add to that an objection, sort of a  
14 standard objection deadline, that we would put in with each  
15 one of the notices. What we have proposed in this motion is  
16 that the deadline would be the Friday before -- the end of  
17 the day Friday before the Wednesday hearings if 20 days or  
18 more notice has been given, and it would be 5:00 p.m. on  
19 Monday if less than 20 days have been given, and I don't  
20 believe there are any objections made by any party.

21 THE COURT: That looks fine to me. As you  
22 know, we have a local rule that has a box that sets out what  
23 a notice of hearing should contain or even a passive notice  
24 should contain. And let me let you take a look at the  
25 language here. I have kind of modified that somewhat to

1 accommodate your motion, and you can hand it to Mr. Gossett  
2 and the U.S. Trustee, as well, and see --

3 MS. RUCKER: Here, Mr. Meade.

4 THE COURT: -- if all of it will  
5 accommodate what you are seeking.

6 (Whereupon, a brief pause was held.)

7 MS. RUCKER: Your Honor, I think that will  
8 be very helpful. I think we are fine with that.

9 THE COURT: You will put the specific date  
10 in the notice when the objection is due, and I will just say  
11 Friday or Monday, see, that would require a specific date  
12 and it also says that if you don't want the Court to grant  
13 the relief requested, you have got to file a timely  
14 objection and appear at the hearing. If you fail to do  
15 either one of those, then I will consider that the objecting  
16 party is not opposing the relief. So if you can just put  
17 that in a box.

18 MS. RUCKER: Your Honor, just add that to  
19 the box?

20 THE COURT: Yeah.

21 MS. RUCKER: For example, the one --

22 THE COURT: Well, that would replace --

23 MS. RUCKER: What we've got here.

24 THE COURT: -- what you've got there.

25 MS. RUCKER: Okay.

1                   THE COURT: It kind of combines the local  
2 rule, the notice provision, with the procedure that you are  
3 seeking in the motion, and I think that would need to be  
4 done.

5                   MS. RUCKER: Okay. Your Honor, to that  
6 end, you want -- with respect to the order that we had  
7 proposed, would you want it to include this language, or  
8 just go with this?

9                   THE COURT: I don't --

10                  MS. RUCKER: We'll get that circulated  
11 then.

12                  THE COURT: I don't think so. I mean this  
13 is just a suggestion. I mean I am not saying that, you  
14 know, that there is a better way to do it, but -- or not a  
15 better way to do it. We've just got a local rule and I  
16 think this just kind of modifies the local rule by adding  
17 some language to the notice provision in our local rule, and  
18 I was just inquiring whether or not having the date --  
19 putting the specific date in that wouldn't cause any  
20 problem, I wouldn't think. You could just put it right in  
21 there.

22                  MS. RUCKER: I don't think so, Your Honor,  
23 and I think it also helps with those, with the other  
24 parties, rather than requiring people to --

25                  THE COURT: Well, do you see any problem

1 with the language that I am proposing?

2 MR. GOSSETT: I see none at all. And I  
3 think, also, you refer to this going in the box. In some  
4 situations, we also file a notice, a separate notice of  
5 hearing.

6 THE COURT: Yeah, that is fine too.

7 MR. GOSSETT: We just use this same  
8 language too for that, as well.

9 THE COURT: That is fine too.

10 MR. GOSSETT: Okay.

11 THE COURT: All right. The motion will be  
12 granted.

13 MS. RUCKER: Your Honor, the next motion  
14 was actually brought with the creditors' committee, and I  
15 will be happy to defer. You can go ahead.

16 MR. GOSSETT: Well, you can go ahead with  
17 your next motion and I will go after that.

18 MS. RUCKER: Okay. The last motion, which  
19 the debtor brought forward today, involves a motion to  
20 appoint Navigant Capital Advisors nunc pro tunc. Excuse me.  
21 Mr. Doug Brickley is here today with Navigant. He also is  
22 the party that prepared for the declaration and Navigant has  
23 been helpful to the debtor in getting the schedules  
24 completed and put together, which we anticipate will be  
25 filed as required next week in anticipation for the 341

1 Meeting on April 8th.

2 Your Honor, if you have any questions, I  
3 will be happy to answer them.

4 THE COURT: Okay. The committee has no  
5 problem --

6 MR. GOSSETT: No, Your Honor.

7 THE COURT: -- with this petition? I will  
8 grant the application.

9 MS. RUCKER: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. GOSSETT: Your Honor, the remaining  
12 motion that's on the calendar today is a motion that was  
13 filed by the committee to establish a procedural protocol to  
14 implement Section 11 -- 1102(b)(3), which is somewhat an  
15 ambiguous section for committees, and as the Court may know,  
16 in a number of cases. In fact, there's even for about a  
17 year now a website up that -- for over a year now -- that  
18 has various protocols established in cases throughout the  
19 country, and what the committee has proposed, the debtor has  
20 agreed to and stipulated to, is fairly standard in cases of  
21 this sort, and we ask since there's been no objection to it,  
22 we ask that that be entered.

23 THE COURT: Yes. I have reviewed that and  
24 it appears appropriate to enter the order, so I will grant  
25 the motion.

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MR. GOSSETT: Thank you.

THE COURT: Is there nothing further?

MS. RUCKER: Your Honor, I believe that concludes this morning's docket.

THE COURT: All right. If nothing further, then court is adjourned.

(Proceedings adjourned.)

## C E R T I F I C A T E

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2  
3 STATE OF TENNESSEE )  
4 : SS.  
5 COUNTY OF HAMILTON )

6 I, DONNA F. SEGARS, Court Reporter and  
7 Notary Public in and for the State of Tennessee, do hereby  
8 certify that I reported in machine shorthand the proceedings  
9 had in the above-styled cause on the 26th day of March,  
10 2008;

11 That the attached pages, numbered 1 through  
12 11, inclusive, were reduced to typewriting under my personal  
13 supervision; and that the foregoing is a true and accurate  
14 transcript of said proceedings.

15 This 5th day of April, 2008.  
16  
17  
18

19 \_\_\_\_\_  
20 Donna F. Segars, CCR  
21 Notary Public in and for  
22 the State of Tennessee.  
23 My commission expires:  
24 March 10, 2012.  
25