11 U.S.C. § 365
11 U.S.C. § 365(d)(1)
11 U.S.C. § 365(g)(1)
11 U.S.C. § 541
11 U.S.C. § 541(c)(1)
ORS 70.290
Idaho Code 53-240
Partnership Agreements
Executory Contracts

In re Jack Miller Case No. 387-06351
Marks v. Miller Adv. No. 89-3433
6/25/91 Judge Perris unpublished

The debtors were general partners in numerous limited partnerships which owned and rented real property. The issue was whether the trustee could transfer the debtors' rights to manage the partnerships and partnership properties.

The management rights became property of the estate to the extent they survived bankruptcy. However, the trustee's power to transfer the management rights was no greater than that of the debtors. The management rights arising under the partnership agreements were not assignable under Oregon and Idaho law. The trustee could, however, convey the debtors' rights to distributions as of the petition date.

The partnership agreements were executory contracts which the trustee failed to assume within 60 days. Therefore, under § 365(d)(1) the contracts were deemed rejected. Rejection constituted a breach of the contracts under § 365(g)(1), but did not automatically terminate the contracts. The contracts remained in existence and the breach gave rise to alternative remedies determined under state law. As a result of the breach status, the trustee and his assignee could not compel the Partnerships to recognize any enforceable management rights.

The deemed rejection did not constitute an abandonment of the executory contracts to the debtor or otherwise operate to remove the contracts from the estates.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:	)	Case No. 387-06351-P7
	)	
JACK M. MILLER,	)	
	)	
Debtor.	)	
_____	)	
	)	
THOMAS G. MARKS, as Trustee of the bankruptcy estates of Rockwood Development Corporation, Mark E. Miller, and Jack M. Miller,	)	Adversary No. 89-3433 (Consolidated)
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM OPINION
	)	
JACK M. MILLER, THOMAS PAULUS, BRENTWOOD LAND OREG. LTD., an Oregon limited partnership, BRENTWOOD OFFICE PARK OREG. LTD., an Oregon limited partnership, BRIARWOOD MANOR OREG. LTD., an Oregon limited partnership, COUNTRYWOOD MANOR OREG. LTD., an Oregon limited partnership, GARFIELD LAND OREG. LTD., an Oregon limited partnership, GARFIELD OFFICE BUILDING OREG. LTD., an Oregon limited partnership, GLENWOOD MANOR OREG. LTD., an Oregon	)	

limited partnership, HOPE)
PONDEROSA OREG. LTD., an)

Oregon limited partnership,)
IDYLWOOD MANOR OREG. LTD., an)
Oregon limited partnership,)
JAMES COURT ASSOCIATES, an)
Idaho limited partnership,)
MILLWOOD MANOR OREG. LTD., an)
Oregon limited partnership,)
NORTHWEST APARTMENTS OREG.)
LTD., an Oregon limited)
partnership, NYSSA MANOR OREG.)
LTD., an Oregon limited)
partnership, ONTARIO MANOR)
OREG. LTD., an Oregon limited)
partnership, ONTARIO MANOR)
OREG. LTD. II, an Oregon)
limited partnership, PARKSIDE)
VILLAGE OREG. LTD., an Oregon)
limited partnership, POST)
OFFICE BUILDINGS OREG. LTD.,)
an Oregon limited partnership,)
ROCKWOOD ALPINE OREG. LTD., an)
Oregon limited partnership,)
ROCKWOOD LAUREL PARK OREG.)
LTD., an Oregon limited)
partnership, ROCKWOOD)
HAWAII OREG. LTD., an Oregon)
limited partnership, ROCKWOOD)
PROPERTIES IDAHO OREG. LTD.,)
an Oregon limited partnership,)
ROCKWOOD PROPERTIES I OREG.)
LTD., an Oregon limited)
partnership, GREENWOOD MANOR)
OREG. LTD., an Oregon limited)
partnership, ROCKWOOD CALDWELL)
OREG. LTD., an Oregon limited)
partnership, OCHOCO MANOR)
OREG., LTD., an Oregon limited)
partnership, PINEWOOD MANOR)
OREG. LTD., an Oregon limited)
partnership, SURFWOOD MANOR)
OREG. LTD., an Oregon limited)
partnership, MILLCREEK OFFICE)
PARK OREG. LTD., a dissolved)
Oregon limited partnership,)
BAYWOOD MANOR CONDOMINIUMS)
OREG. LTD., a dissolved)
limited partnership,)

CHERRYWOOD MANOR OREG. LTD., a dissolved Oregon limited partnership, and RIVERGROVE OFFICE PARK OREG. LTD., a dissolved Oregon limited partnership, Defendants.	
In Re: ROCKWOOD DEVELOPMENT CORPORATION, Debtor.	Case No. 387-04330-P7
THOMAS G. MARKS, as Trustee of the bankruptcy estates of Rockwood Development Corporation, Mark E. Miller, and Jack M. Miller, Plaintiff, v. ROCKWOOD DEVELOPMENT CORPORATION, an Oregon corporation, MARK E. MILLER, JACK M. MILLER, and THOMAS PAULUS, Defendants.	(formerly Adv. Pro. No. 89-3432, now consolidated)
In Re: MARK E. MILLER, Debtor.	Case No. 387-04494-P7
THOMAS G. MARKS, as Trustee of the bankruptcy estates of Rockwood Development Corporation, Mark E. Miller, and Jack M. Miller,	(formerly Adv. Pro. No. 89-3431, now consolidated)

Plaintiffs,	
v.	
ROCKWOOD DEVELOPMENT CORPORATION, an Oregon corporation, MARK E. MILLER, JACK M. MILLER, and THOMAS PAULUS,	
Defendants.	
In Re:	Case No. 387-06351-P11
JACK MILLER,	
Debtor.	
WILSHIRE INVESTMENTS CORPORATION, a California corporation, as general partner of BURNWOOD HOUSING LIMITED PARTNERSHIP; CLEARWATER HOUSING LIMITED PARTNERSHIP; FIRWOOD PROPERTIES LTD.; GREENWOOD HOUSING LIMITED PARTNERSHIP; OCHOCO HOUSING LIMITED PARTNERSHIP; PINEWOOD INVESTMENT LTD.; SURFWOOD HOUSING LIMITED PARTNERSHIP, all Oregon limited partnerships, and INDIANA MANOR LIMITED PARTNERSHIP, an Idaho limited partnership,	(formerly Adv. Pro. No. 88-0230, now consolidated)
Plaintiffs,	
v.	
JACK MILLER and THOMAS G. MARKS as Trustee for ROCKWOOD DEVELOPMENT CORPORATION,	
Defendants.	

The central controversy in these consolidated adversary

proceedings is whether any of the debtors' rights to manage limited partnerships were transferred by the trustee. Resolution of that question involves a determination of whether such rights are assignable by a bankruptcy trustee and whether such rights are part of an executory contract.

FACTS

The debtors are Jack Miller, Rockwood Development Corp. and Mark Miller. At least one of the debtors was a general partner in numerous limited partnerships (the Partnerships). Each Partnership owns and operates rental property. Each Partnership Agreement grants the general partner the right to manage the Partnership and to appoint a manager for the property owned by the Partnership.

In June, 1987 Mark Miller filed with the Oregon Corporation Commission an amendment purporting to change the Partnership Agreement provisions regarding the effect of a general partner's bankruptcy (the "Bankruptcy Amendments"). Before the purported amendment, the Partnership Agreements provided that the bankruptcy of a general partner constituted an event of withdrawal of the general partner from the Partnership. The Partnership Agreements provided that upon such an event, the Partnership could continue upon performance of certain conditions. The Bankruptcy Amendments purported to change those provisions so that the bankruptcy of a general partner would not be deemed an event of withdrawal and would not cause Partnership

dissolution.

In August, 1987 Rockwood and Mark Miller filed voluntary petitions under Chapter 7 of the Bankruptcy Code (11 U.S.C.). In November, 1987 creditors filed an involuntary Chapter 7 petition against Jack Miller. Jack Miller filed an Answer consenting to relief under Chapter 11, and an order for relief under Chapter 11 was entered on December 23, 1987. In March, 1989 his case was converted back to Chapter 7.

In the spring of 1989, Jack Miller, purporting to act as general partner, attempted to amend some of the Partnership Agreements to add a new general partner, Thomas Paulus. In June, 1989 the court approved the sale of the estates' assets to Lee Pacific. The trustee did not seek nor obtain the limited partners' consent to the transfer to Lee Pacific prior to the sale. At trial the parties announced the settlement of the adversary proceeding filed by Wilshire Development Corp. against Jack Miller. Therefore, Wilshire Development Corp. did not participate in the trial. Similarly, there is a pending settlement between the Trustee and the following Partnerships represented by Mr. Padrick: Brentwood Land Oreg. Ltd., Ontario Manor Oreg. Ltd., Rockwood Properties I Oreg. Ltd., Rockwood Caldwell Oreg. Led., and Pinewood Manor Oreg. Ltd. Those Partnerships also did not participate in the trial.

I previously entered a judgment by default against Mark Miller and Rockwood Development Corp. The disposition of the

issues as to those defendants is based upon the judgment of default. However, as to the parties which appeared, issues concerning the transfers of Mark Miller's and Rockwood Development Corp.'s partnership interests and management rights are controlled by this ruling.

By letter ruling dated December 7, 1990 on motions for summary judgment filed by the trustee, Jack Miller and Wilshire, I held that, to the extent they survived bankruptcy, Jack Miller's general partner interests, including his rights to manage the Partnerships and to manage or appoint a manager for Partnerships' properties, were property of the estate. For the reasons set forth in that ruling, the same is true for the interests of Mark Miller and Rockwood Development Corp.

The ultimate question in this case is whether any management rights or rights to select management were effectively transferred by the trustee to Lee Pacific. As the sale to Lee Pacific was conditioned upon this court's retaining jurisdiction over that issue, this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (N) and (O). See Pretrial Order lodged March 18, 1991.

DISCUSSION

I. THE MANAGEMENT RIGHTS CONTAINED IN THE PARTNERSHIP AGREEMENTS WERE NOT ASSIGNABLE BY THE TRUSTEE

The commencement of the bankruptcy cases transferred the debtors' interests under the Partnership Agreements to the estate

under § 541[1]. However, the provision of §541(c)(1), which permit the transfer of property to the estate despite restrictions on transfer, do not invalidate such restrictions for all purposes. Rather, that particular provision is intended to eliminate barriers to the transfer of property to the estate and nothing more. In re Farmers Markets, Inc., 792 F.2d 1400, 1402 (9th Cir. 1986). The trustee takes the rights under the Partnership Agreements subject to the same restrictions on transfer applicable to the debtor. The nature and extent of the Trustee's rights in the agreements rise no higher than those of the Debtor, unless the restrictions are inconsistent with federal bankruptcy law. In re Baquet, 61 B.R. 495, 499 (Bankr. D. Mont. 1986).

The essence of a limited partnership is a voluntary association between an investor or group of investors (the limited partners) and the investment manager (the general partner). The partnership depends upon the honesty, integrity and management skills of the general partner. At least one court has characterized the relationship as akin to a marriage. In re Sovereign Group, 88 B.R. 325, 329 (Bankr. D. Colo. 1988). Because of the unique nature of the relationship, the court should not be able to force a third party into the relationship in a manner inconsistent with the partnership agreement.

The Partnership Agreements manifest the personal nature of

---

[1] Unless otherwise indicated, all statutory references are to title 11 of the United States Code.

the relationship through provisions which prevent the general partner from transferring his interest without the consent of the limited partners. State law also recognizes the personal nature of the relationship by defining the effect of an assignment of a partnership interest in a limited partnership as follows:

> An assignment of a partnership interest does not ... entitle the assignee to become or to exercise any rights of a partner.... Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all the partner's partnership interest. O.R.S. 70.290.

In the instant case, under both Oregon and Idaho law[2], unless the Partnership Agreements provide otherwise, the assignment of an interest in a limited partnership does not entitle the assignee to become or to exercise any rights of a partner. ORS 70.290; I.C. 53-240. The Partnership Agreements do not provide otherwise. Nor did the trustee seek or obtain the consent of the limited partners prior to the transfer to Lee Pacific. Accordingly, I find that the transfer by the trustee to Lee Pacific did not convey any management rights under applicable state law.[3] The only right effectively conveyed under state law was the right to receive, to the extent assigned, the

---

[2] Most of the partnerships were organized under the laws of the state of Oregon. However, at least one of the Partnerships, James Court Associates, was organized under the laws of the state of Idaho. Accordingly, reference to state law requires inquiry into both Oregon and Idaho law.

[3] I do not address the effect that any post-transfer acts of the partners or partnership may have had upon who may exercise management rights because the issues before the court can be resolved without determining the effects of such acts.

distribution to which the assignor would be entitled as of the petition date. ORS 70.290; I.C. 53.240. The management rights were personal and not assignable.

The trustee apparently contends that policy reasons require that the court override any applicable state law restrictions on transferability. In particular, the trustee suggests that upholding the restriction on assignability would result in the termination of the Partnerships, with adverse tax consequences to the partners and no benefit to the estate.

While it is not a foregone conclusion that the Partnerships would be terminated if the contracts were not assignable,[4] that issue is of no relevance to the question of whether termination of the Partnerships would be inconsistent with federal bankruptcy law[5]. In fact, in the instant case termination would have no impact upon the administration of these estates, as the estates' interests in the Partnerships have already been sold.

The trustee also argues that management rights under the Partnership Agreements constitute a species of "economic rights," and apparently concludes that all "economic rights" are freely

---

[4] See, e.g. O.R.S. 70.290 ("An assignment of a partnership interest does not dissolve a limited partnership ...."); In re Todd, 118 B.R. 432, 435 (9th Cir. BAP 1989).

[5] The discussion of policy issues by the court in In re Cardinal Industries, Inc., 116 B.R. at 981, is not helpful in resolving this case. Cardinal involved whether management rights survived in a chapter 11 where the debtor remained in possession. The instant case involves whether a Chapter 7 trustee can transfer those rights to a third party.

assignable in bankruptcy. I disagree. To illustrate the incongruity of that argument, one need only to apply it to another contract containing "economic rights" - Michelangelo's Sistine Chapel contract. I doubt that Michelangelo's bankruptcy trustee would have been able to assign the Sistine contract to the party of his choice simply because the contract conferred the economic right to payment upon completion of the job.

II. THE PARTNERSHIP AGREEMENTS WERE UNASSUMED EXECUTORY CONTRACTS

Even if all rights of the general partner were freely assignable by the trustee, his failure to assume the Partnership Agreements prevents the transfer of any management rights under those contracts.

A. The Partnership Agreements Were Executory Contracts.

The source of all management rights at issue in this case are the Partnership Agreements. The debtors' rights under the Partnership Agreements are contractual. In re Sovereign Group, 88 B.R. at 329; In re Harms, 10 B.R. 817 (Bankr. D. Colo. 1981); see In re Sigel, 923 F.2d 142 (9th Cir. 1991) (joint venture agreement is executory contract).

The Partnership Agreements are executory contracts for the purposes of § 365. While numerous courts have found partnership agreements are executory contracts, most have not gone into great depth in their analysis of the question, possibly assuming that such a conclusion is obvious. See, e.g., In re Cardinal

Industries, Inc., 116 B.R. 964 (Bankr. S.D. Ohio 1990) (listing cases in which courts have held partnership agreements are executory contracts). A contract is executory if the obligations of both the debtor and the non-debtor party remain so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other. In re Texscan Corp., 107 B.R. 227 (9th Cir. BAP 1989).

Where the debtor owes duties to more than one entity under a contract, the contract will be deemed executory if there are material unperformed obligations between the debtor and any other entity under the contract. In determining whether the Partnership Agreements are executory, the debtors' duties to the Partnership entities must be considered. The Partnership entities were bound to pay fees to the general partners under the Partnership Agreements, and it would therefore be anomalous to ignore the obligations running between the debtors and the Partnerships in determining the executory status of the contracts.

In In re Wegner, 839 F.2d 533 (9th Cir. 1988), the court held that the duty to pay money on one side is a material obligation sufficient to render the contract executory where corresponding material obligations exist on the other side. Corresponding material obligations burdened the general partners. The Partnership Agreements charged the general partners with the duty to perform management services for the various Partnerships.

The contracts' purpose was an exchange of management services for fees, and the failure to either pay the fees or perform the services would constitute a material breach. Those unperformed duties between the Partnerships and the managing partners rendered the Partnership Agreements executory.

In addition, the duties running between the limited partners and the general partners rendered the agreements executory. Each limited partner agreed to refrain from selling his or her interest except upon certain conditions. The limited partners also agreed to limit their participation in the management of the Partnerships' business. Such negative covenants, if material, will render a contract executory. See In re Select-A-Seat Corp., 625 F.2d 290 (9th Cir. 1980) (covenant to refrain from selling software to third parties rendered agreement executory). In the instant case, the limited partner's obligations to refrain from participating in management were material. The covenants prevented limited partners from meddling in management and protected the autonomy of the general partner. It also served to protect the general partner from liability for the acts of the limited partner. If a limited partner or group of limited partners were to intervene and take control of the management of a Partnership, the general partner would be justified in suspending his management activities. The limited partners' promise to refrain from management is not, as urged by the trustee, de minimis. I therefore conclude that, even if the

mutual duties owed between the Partnerships and the debtors were insufficient to render the contracts executory, the duties flowing between the debtors and the limited partners were sufficient to make the Partnership Agreements executory.

B. The Effect of the Failure to Assume The Partnership Agreements.

The trustee did not assume any of the Partnership Agreements. Section 365(d)(1) provides that in a case under Chapter 7, if the trustee does not assume an executory contract within 60 days after the order for relief, or such additional time as the court, within such 60 day period, fixes, then the contract is deemed rejected. Thus, all Partnership Agreements were deemed rejected.

Section 365(g)(1) provides the effect of rejection of an executory contract:

> Except as provided in subsections (h)(2) and (i)(2) [neither of which apply to the instant case], the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease-
>
> (1) if such contract or lease has not been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title, immediately before the date of the filing of the petition .... (Emphasis added.)

Therefore, under the plain language of the statute, the effect of rejection is defined by reference to the breach status. As explained in Westbrook, A Functional Analysis of Executory Contracts, 74 Minn. L. Rev. 227, 244 (1989),

> [T]he trustee inherits from the pre-bankruptcy debtor a contract created by nonbankruptcy law. The statutory option to "assume or reject" means exactly what the Code says it means: the option to perform or breach the contract, the same option every contract party has under nonbankruptcy law. It follows that the trustee is prima facie in the same position as any nonbankruptcy contract party, except when specific bankruptcy principles and rules require a different result.

Thus, a breach of contract does not automatically result in the contract's termination.[6] Instead, the contract remains

---

[6] The trustee contends that under Sea Harvest v. Riviera Land Co., 868 F.2d 1077, 1080 (9th Cir. 1989), the effect of rejection is always termination. In Sea Harvest, the Ninth Circuit Court of Appeals held that the rejection of a lease of nonresidential real property under § 365 was the same as termination of the lease. In support of its ruling, the Sea Harvest court noted that § 365(d)(4) required that upon rejection, the trustee immediately surrender the leased premises. The court stated that "surrender of property ... has the effect of terminating the enterprise that operates there." There is no analogous surrender provision in § 365 regarding contracts, and Sea Harvest is distinguishable on that basis. I believe Sea Harvest should be narrowly construed. A broad reading would be inconsistent with the express language of the Code defining the effect of rejection as a breach, as well as state law defining the consequences of a breach.

The trustee argues that the final clause of § 365(d) is not intended to treat leases differently from contracts, but merely makes explicit that termination of a lease requires surrender of the premises. He reasons that three subsections of § 365 [(h), (i) and (n)] give the non-debtor party certain options which are inconsistent with termination, and therefore concludes that in all other cases the effect of rejection is termination.

I disagree regarding the inference that should be drawn from the inclusion of those subsections. I believe that the subsections referred to by the trustee are intended as exceptions to the rule that state law defines the effect of a breach. The exceptions are intended to assure that the non-breaching party retains certain rights in the event of rejection regardless of state law rights upon breach. Thus, the provisions are intended to supplement state law rights upon breach under the specific scenarios covered by the subsections, rather than to suggest that in all cases the effect of breach is termination.

(continued...)

in existence and the breach gives rise to alternative remedies determined under state law with reference to the breach. See Sachs v. Precision Products Co., 257 Or. 273, 476 P.2d 199, 203 (1970). While the contract remains in existence, the trustee is under no obligation to perform the contract as one of his duties in administering the case. In most cases, since the trustee cannot be compelled to perform under a rejected contract, the non-debtor party chooses to treat the contract as terminated and assert the right to monetary damages as a general unsecured claim in the bankruptcy case.

In the instant case, because of the breach status, the debtor (and therefore the trustee or his assignee) could not compel the Partnerships to recognize the debtor as having enforceable rights to manage under the Partnership Agreements.[7]

(...continued)
That interpretation is consistent with the Code's general policy of deferring to state law in determining property and contract rights. See Westbrook, supra. at 237 ("[T]he 'material breach' language focuses the courts' attention on questions of state law. It is there, in state contract and remedies law, that the hard issues of bankruptcy contracts usually are found.") Under the trustee's reading, the subsections at issue suggest a Congressional intent to override state law in all cases and treat a breach as a per se termination of a contract or lease. Under the interpretation which I adopt, the subsections at issue are intended as limited exceptions to the general rule that state law determines the consequences of a breach. If Congress intended rejection of all executory contracts and leases to be the functional equivalent of termination, then it would have so specified.

[7] This ruling only concerns the transfer of management rights which may have been property of the estate. It does not concern any management rights which may have arisen by virtue of
(continued...)

Accordingly, the trustee could not convey any enforceable right to manage or select management of the Partnerships. Nor did Lee Pacific obtain any other authority to function as a general partner by virtue of the sale by the trustee.

To conclude the analysis, I must decide if the debtors are the beneficiaries of the failure to assume the Partnership Agreements. They are not. The debtors do not succeed to any management rights solely by virtue of the deemed rejection, as the deemed rejection of the contract did not constitute an abandonment of the contract or otherwise operate to remove the contract from the estate.[8]

CONCLUSION

The trustee did not transfer any management rights to Lee Pacific, as such rights were derived from executory contracts

---

(...continued)
an individual partnership's post-petition acts or omissions.

[8] But see In re Lovitt, 757 F.2d 1035, 1041 (9th Cir. 1985), an Act case in which the court states that "[t]he trustee's power to reject those executory contracts which he finds burdensome to the bankrupt's estate is an extension of his power to renounce title to and abandon burdensome property which is already a part of the estate." That statement is dicta. In addition, the continued vitality of Lovitt is in question given the later case of In re Computer Communications, Inc., 824 F.2d 725, 730 (9th Cir. 1987), which renounced Lovitt's suggestion that certain contractual rights do not become property of the estate.

While the Code provisions dealing with abandonment and with rejection of contracts may have been based on similar considerations, the two Code sections are different and therefore should not be treated as functional equivalents. Even if the trustee could effectively abandon an executory contract through rejection (a question which I need not decide), Bankruptcy Rule 6007(a) requires formal notice of intent to abandon, a procedure which was not followed here.

which the trustee is deemed to have rejected. Even if the contracts were not executory, the sale to Lee Pacific could not transfer any management rights because such rights were not assignable under state law. Having decided that the trustee did not and could not effectively convey management rights to Lee Pacific, I need not determine the effects of the Bankruptcy Amendments, the Paulus Amendments, or the effect of any post-petition action or inaction by the Partnerships which might have implications regarding the Partnerships' continued existence or management.

I have scheduled a status conference on Thursday, July 25, 1991, at 3:00 p.m. in Courtroom #1 to address the status of the proposed settlements between the trustee and Wilshire Development Corporation. At that conference we will also discuss the status of the proposed settlement between the trustee and the Partnerships represented by Mr. Padrick. Approval of that settlement was contingent upon the determination that Jack Miller and Tom Paulus had no management rights in the various Partnerships. That determination will not be made by this court because resolution of the questions require ruling upon the effect of post-petition acts of the Partnerships in choosing their management and other questions of state partnership law which exceed this court's jurisdiction. The settlement therefore cannot be approved at this time.

This Memorandum Opinion shall constitute Findings of Fact

and Conclusions of Law, and pursuant to Bankruptcy Rule 7052, they will not be separately stated. Counsel for the parties who actively participated in the litigation should confer with one another and submit an appropriate form of judgment disposing of the case as to all Partnerships except those involving Wilshire and those represented by Mr. Padrick.

_____
ELIZABETH L. PERRIS
Bankruptcy Judge

cc: Leon Simson
Craig R. McMillin
Daniel F. Vidas
Peter C. McKittrick
Pamela J. Griffith
Charles F. Hudson
Dana R. Taylor
Kevin D. Padrick
Don A. Dickey
Allan A. Fulsher
Asa L. Lewelling