UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

Fontainebleau Las Vegas LLC v. Bank of America, N.A., et al., S.D. Florida, C.A. No. 1:09-21879	)	MDL No. 2106
Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al., D. Nevada, C.A. No. 2:09-1047	)	

TRANSFER ORDER

Before the entire Panel[*]: Plaintiffs in an action pending in the District of Nevada have moved, pursuant to 28 U.S.C. § 1407, for centralization, in the Southern District of New York,[1] of their action and an action pending in the Southern District of Florida.[2]

Ten defendants[3] in the District of Nevada action submitted a brief supporting centralization, but arguing that the Panel should select the Southern District of Florida as transferee district. Plaintiffs in the potential tag-along action pending in the Southern District of New York submitted a brief supporting centralization in that district.

On the basis of the papers filed and hearing session held, we find that these two actions involve common questions of fact, and that centralization under Section 1407 in the Southern

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[*] Judges Heyburn, Vratil, and Trager took no part in the disposition of this matter.

[1] These plaintiffs initially sought centralization in the Southern District of Florida, but later changed their position to advocate selection of the Southern District of New York.

There was another Section 1407 motion in this docket, which was brought by defendants and third-party plaintiffs in Deutsche Bank Trust Co. Americas v. Jeffrey Soffer, et al., S.D. New York, C.A. No. 1:09-7089. That motion became moot, however, when the Southern District of New York court remanded the action to state court just prior to the Panel's hearing session.

[2] One additional related action is currently pending in the Southern District of New York. That action and any other related actions are potential tag-along actions. *See* Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

[3] Bank of America, N.A.; Merrill Lynch Capital Corp.; JPMorgan Chase Bank, N.A.; Barclays Bank PLC; Deutsche Bank Trust Co. Americas; the Royal Bank of Scotland PLC; Sumitomo Mitsui Banking Corp.; Bank of Scotland; HSH Nordbank AG; and MB Financial Bank, N.A.

District of Florida will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Both actions involve alleged breaches by various lenders of their commitments to provide financing for the Fontainebleau Las Vegas, a $3.1 billion resort casino project under construction on the Las Vegas Strip. Centralization under Section 1407 will eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.

We further find that the Southern District of Florida is an appropriate transferee district for pretrial proceedings in this litigation. The action pending in that district is the more advanced of the two actions, and a related bankruptcy proceeding involving the developer of the Fontainebleau Las Vegas project is also pending there.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the District of Nevada action is transferred to the Southern District of Florida, and, with the consent of that court, assigned to the Honorable Alan S. Gold for coordinated or consolidated pretrial proceedings with the action pending in that district.

PANEL ON MULTIDISTRICT LITIGATION

Robert L. Miller, Jr.
Acting Chairman

John G. Heyburn II, Chairman*
David R. Hansen
Frank C. Damrell, Jr.
Kathryn H. Vratil*
W. Royal Furgeson, Jr.
David G. Trager*

Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2106 - IN RE: Fontainebleau Las Vegas Contract Litigation

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more then one attorney. See Panel rule 5.2(c).

Party Representation Key

* Signifies that an appearance was made on behalf of the party by the representing attorney.
# Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2106 - Fontainebleau Las Vegas CONT

For Open Cases

Docket: 2106 - IN RE: Fontainebleau Las Vegas Contract Litigation
Status: Transferred on 12/02/2009
Transferee District: FLS Judge: Gold, Alan S. Printed on 12/02/2009

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ATTORNEY - FIRM	REPRESENTED PARTY(S)
	CLO III, Ltd.*; Symphony CLO IV, Ltd.*; Symphony CLO V, Ltd.*; Symphony Credit Opportunity Fund, Ltd.*; Veer Cash Flow CLO, Ltd.*; Venture II CDO 2002, Ltd.*; Venture III CDO Ltd.*; Venture IV CDO Ltd.*; Venture IX CDO Ltd.*; Venture V CDO Ltd.*; Venture VI CDO Ltd.*; Venture VII CDO Ltd.*; Venture VIII CDO Ltd.*; Vista Leveraged Income Fund*; Westchester CLO, Ltd.*; Wexford Spectrum Investors LLC*
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Effective November 2, 1998, With Amendments Effective June 1, 2000, & April 2, 2001

RULES OF PROCEDURE
OF THE
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

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RULES OF PROCEDURE
OF THE
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

I. GENERAL RULES/RULES FOR MULTIDISTRICT LITIGATION UNDER 28 U.S.C. §1407

RULE 1.1: DEFINITIONS

As used in these Rules "Panel" means the members of the Judicial Panel on Multidistrict Litigation appointed by the Chief Justice of the United States pursuant to Section 1407, Title 28, United States Code.

"Clerk of the Panel" means the official appointed by the Panel to act as Clerk of the Panel and shall include those deputized by the Clerk of the Panel to perform or assist in the performance of the duties of the Clerk of the Panel.

"Chairman" means the Chairman of the Judicial Panel on Multidistrict Litigation appointed by the Chief Justice of the United States pursuant to Section 1407, or the member of the Panel designated by the Panel to act as Chairman in the absence or inability of the appointed Chairman.

A "tag-along action" refers to a civil action pending in a district court and involving common questions of fact with actions previously transferred under Section 1407.

RULE 1.2: PRACTICE

Where not fixed by statute or rule, the practice shall be that heretofore customarily followed by the Panel.

RULE 1.3: FAILURE TO COMPLY WITH RULES

The Clerk of the Panel may, when a paper submitted for filing is not in compliance with the provisions of these Rules, advise counsel of the deficiencies and a date for full compliance. If full compliance is not accomplished within the established time, the non-complying paper shall nonetheless be filed by the Clerk of the Panel but it may be stricken by order of the Chairman of the Panel.

RULE 1.4: ADMISSION TO PRACTICE BEFORE THE PANEL AND REPRESENTATION IN TRANSFERRED ACTIONS

Every member in good standing of the Bar of any district court of the United States is entitled without condition to practice before the Judicial Panel on Multidistrict Litigation. Any attorney of record in any action

transferred under Section 1407 may continue to represent his or her client in any district court of the United States to which such action is transferred. Parties to any action transferred under Section 1407 are not required to obtain local counsel in the district to which such action is transferred.

RULE 1.5: EFFECT OF THE PENDENCY OF AN ACTION BEFORE THE PANEL

The pendency of a motion, order to show cause, conditional transfer order or conditional remand order before the Panel concerning transfer or remand of an action pursuant to 28 U.S.C. §1407 does not affect or suspend orders and pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of that court. A transfer or remand pursuant to 28 U.S.C. §1407 shall be effective when the transfer or remand order is filed in the office of the clerk of the district court of the transferee district.

RULE 1.6: TRANSFER OF FILES

(a) Upon receipt of a certified copy of a transfer order from the clerk of the transferee district court, the clerk of the transferor district court shall forward to the clerk of the transferee district court the complete original file and a certified copy of the docket sheet for each transferred action.

(b) If an appeal is pending, or a notice of appeal has been filed, or leave to appeal has been sought under 28 U.S.C. §1292(b) or a petition for an extraordinary writ is pending, in any action included in an order of transfer under 28 U.S.C. §1407, and the original file or parts thereof have been forwarded to the court of appeals, the clerk of the transferor district court shall notify the clerk of the court of appeals of the order of transfer and secure the original file long enough to prepare and transmit to the clerk of the transferee district court a certified copy of all papers contained in the original file and a certified copy of the docket sheet.

(c) If the transfer order provides for the separation and simultaneous remand of any claim, cross-claim, counterclaim, or third-party claim, the clerk of the transferor district court shall retain the original file and shall prepare and transmit to the clerk of the transferee district court a certified copy of the docket sheet and copies of all papers except those relating exclusively to separated and remanded claims.

(d) Upon receipt of an order to remand from the Clerk of the Panel, the transferee district court shall prepare and send to the clerk of the transferor district court the following:

(i) a certified copy of the individual docket sheet for each action being remanded;
(ii) a certified copy of the master docket sheet, if applicable;
(iii) the entire file for each action being remanded, as originally received from the transferor district court and augmented as set out in this rule;
(iv) a certified copy of the final pretrial order, if applicable; and
(v) a "record on remand" to be composed of those parts of the files and records produced during coordinated or consolidated pretrial proceedings which have been stipulated to or designated by counsel as being necessary for any or all proceedings to be conducted following remand. It shall be the responsibility of counsel originally preparing or filing any document to be included in the "record on remand" to furnish on request sufficient copies to the clerk of the transferee district court.

(e) The Clerk of the Panel shall be notified when any files have been transmitted pursuant to this Rule.

RULE 5.1: KEEPING RECORDS AND FILES

(a) The records and files of the Panel shall be kept by the Clerk of the Panel at the offices of the Panel. Records and files may be temporarily or permanently removed to such places at such times as the Panel or the Chairman of the Panel shall direct. The Clerk of the Panel may charge fees, as prescribed by the Judicial Conference of the United States, for duplicating records and files. Records and files may be transferred whenever appropriate to the Federal Records Center.

(b) In order to assist the Panel in carrying out its functions, the Clerk of the Panel shall obtain the complaints and docket sheets in all actions under consideration for transfer under 28 U.S.C. §1407 from the clerk of each district court wherein such actions are pending. The Clerk of the Panel shall similarly obtain any other pleadings and orders that could affect the Panel's decision under 28 U.S.C. §1407.

RULE 5.11: PLACE OF FILING OF PAPERS

All papers for consideration by the Panel shall be submitted for filing to the Clerk of the Panel by mailing or delivering to:

Clerk of the Panel
Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room G-255, North Lobby
Washington, D.C. 20002-8004

No papers shall be left with or mailed to a Judge of the Panel.

RULE 5.12: MANNER OF FILING OF PAPERS

(a) An original of the following papers shall be submitted for filing to the Clerk of the Panel: a proof of service pursuant to Rule 5.2(a) and (b) of these Rules, a notice of appearance pursuant to Rule 5.2(c) and (d) of these Rules, a corporate disclosure statement pursuant to Rule 5.3 of these Rules, a status notice pursuant to Rules 7.2(f), 7.3(e) and 7.4(b) of these Rules, a notice of opposition pursuant to Rules 7.4(c) and 7.6(f)(ii) of these Rules, a notice of related action pursuant to Rules 7.2(i), 7.3(a) and 7.5(e) of these Rules, an application for extension of time pursuant to Rule 6.2 of these Rules, or a notice of presentation or waiver of oral argument pursuant to Rule 16.1(d) of these Rules. An original and eleven copies of all other papers shall be submitted for filing to the Clerk of the Panel. The Clerk of the Panel may require that additional copies also be submitted for filing.

(b) When papers are submitted for filing, the Clerk of the Panel shall endorse thereon the date for filing.

(c) Copies of motions for transfer of an action or actions pursuant to 28 U.S.C. §1407 shall be filed in each district court in which an action is pending that will be affected by the motion. Copies of a motion for remand pursuant to 28 U.S.C. §1407 shall be filed in the Section 1407 transferee district court in which any action affected by the motion is pending.

(d) Papers requiring only an original may be faxed to the Panel office with prior approval of the Clerk of the Panel. No papers requiring multiple copies shall be accepted via fax.

RULE 5.13: FILING OF PAPERS: COMPUTER GENERATED DISK REQUIRED

(a) Whenever an original paper and eleven copies is required to be submitted for filing to the Clerk of the Panel pursuant to Rule 5.12(a) of these Rules, and where a party is represented by counsel, one copy of that paper must also be submitted on a computer readable disk and shall be filed at the time the party's paper is filed. The disk shall contain the entire paper exclusive of computer non-generated exhibits. The label of the disk shall include i) "MDL #___," ii) an abbreviated version of the MDL descriptive title, or other appropriate descriptive title, if not yet designated by the Panel, iii) the identity of the type of paper being filed (i.e. motion, response, reply, etc.), iv) the name of the counsel who signed the paper, and v) the first named represented party on the paper.

(b) The paper must be on a 3 ½ inch disk in WordPerfect for Windows format.

(c) One copy of the disk may be served on each party separately represented by counsel. If a party chooses to serve a copy of the disk, the proof of service, as required by Rule 5.2 of these Rules, must indicate service of the paper in both paper and electronic format.

(d) A party may be relieved from the requirements of this Rule by submitting a written application for a waiver, in a timely manner in advance of submission of the paper, certifying that compliance with the Rule would impose undue hardship, that the text of the paper is not available on disk, or that other unusual circumstances preclude compliance with this Rule. The requirements of this Rule shall not apply to parties appearing pro se. Papers embraced by this Rule and submitted by counsel after June 1, 2000 without a computer disk copy or Panel-approved waiver of the requirements of this Rule shall be governed by Rule 1.3 of these Rules.

RULE 5.2: SERVICE OF PAPERS FILED

(a) All papers filed with the Clerk of the Panel shall be accompanied by proof of previous or simultaneous service on all other parties in all actions involved in the litigation. Service and proof of service shall be made as provided in Rules 5 and 6 of the Federal Rules of Civil Procedure. The proof of service shall indicate the name and complete address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and the party's last known address. The proof of service shall indicate why any person named as a party in a constituent complaint was not served with the Section 1407 pleading. The original proof of service shall be filed with the Clerk of the Panel and copies thereof shall be sent to each person included within the proof of service. After the "Panel Service List" described in subsection (d) of this Rule has been received from the Clerk of the Panel, the "Panel Service List" shall be utilized for service of responses to motions and all other filings. In such

instances, the "Panel Service List" shall be attached to the proof of service and shall be supplemented in the proof of service in the event of the presence of additional parties or subsequent corrections relating to any party, counsel or address already on the "Panel Service List."

(b) The proof of service pertaining to motions for transfer of actions pursuant to 28 U.S.C. §1407 shall certify that copies of the motions have been mailed or otherwise delivered for filing to the clerk of each district court in which an action is pending that will be affected by the motion. The proof of service pertaining to a motion for remand pursuant to 28 U.S.C. §1407 shall certify that a copy of the motion has been mailed or otherwise delivered for filing to the clerk of the Section 1407 transferee district court in which any action affected by the motion is pending.

(c) Within eleven days of filing of a motion to transfer, an order to show cause or a conditional transfer order, each party or designated attorney shall notify the Clerk of the Panel, in writing, of the name and address of the attorney designated to receive service of all pleadings, notices, orders and other papers relating to practice before the Judicial Panel on Multidistrict Litigation. Only one attorney shall be designated for each party. Any party not represented by counsel shall be served by mailing such pleadings to the party's last known address. Requests for an extension of time to file the designation of attorney shall not be granted except in extraordinary circumstances.

(d) In order to facilitate compliance with subsection (a) of this Rule, the Clerk of the Panel shall prepare and serve on all counsel and parties not represented by counsel, a "Panel Service List" containing the names and addresses of the designated attorneys and the party or parties they represent in the actions under consideration by the Panel and the names and addresses of the parties not represented by counsel in the actions under consideration by the Panel. After the "Panel Service List" has been received from the Clerk of the Panel, notice of subsequent corrections relating to any party, counsel or address on the "Panel Service List" shall be served on all other parties in all actions involved in the litigation.

(e) If following transfer of any group of multidistrict litigation, the transferee district court appoints liaison counsel, this Rule shall be satisfied by serving each party in each affected action and all liaison counsel. Liaison counsel designated by the transferee district court shall receive copies of all Panel orders concerning their particular litigation and shall be responsible for distribution to the parties for whom he or she serves as liaison counsel.

RULE 5.3: CORPORATE DISCLOSURE STATEMENT

(a) Any nongovernmental corporate party to a matter before the Panel shall file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

(b) A party shall file the corporate disclosure statement within eleven days of the filing of a motion to transfer or remand, an order to show cause, or a motion to vacate a conditional transfer order or a conditional remand order.

(c) Once a corporate disclosure statement by a party has been filed in an MDL docket pursuant to subsection (b) of this Rule, such a party is required to update the statement to reflect any change in the information therein i) until the matter before the Panel is decided, and ii) within eleven days of the filing of any subsequent motion to transfer or remand, order to show cause, or motion to vacate a conditional transfer order or a conditional remand order in that docket.

RULE 6.2: APPLICATIONS FOR EXTENSIONS OF TIME

Any application for an extension of time to file a pleading or perform an act required by these Rules must be in writing, must request a specific number of additional days and may be acted upon by the Clerk of the Panel. Such an application will be evaluated in relation to the impact on the Panel's calendar as well as on the basis of the reasons set forth in support of the application. Any party aggrieved by the Clerk of the Panel's action on such application may submit its objections to the Panel for consideration. Absent exceptional circumstances, no extensions of time shall be granted to file a notice of opposition to either a conditional transfer order or a conditional remand order. All applications for extensions of time shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

RULE 7.1: FORM OF PAPERS FILED

(a) Averments in any motion seeking action by the Panel shall be made in numbered paragraphs, each of which shall be limited, as far as practicable, to a statement of a single factual averment.

(b) Responses to averments in motions shall be made in numbered paragraphs, each of which shall correspond to the number of the paragraph of the motion to which the responsive paragraph is directed. Each responsive paragraph shall admit or deny wholly or in part the averment of the motion, and shall contain the respondent's version of the subject matter when the averment or the motion is not wholly admitted.

(c) Each pleading filed shall be:

(i) flat and unfolded;

(ii) plainly written, typed in double space, printed or prepared by means of a duplicating process, without erasures or interlineations which materially deface it;

(iii) on opaque, unglazed, white paper (not onionskin);

(iv) approximately 8-1/2 x 11 inches in size; and

(v) fastened at the top-left corner without side binding or front or back covers.

(d) The heading on the first page of each pleading shall commence not less than three inches from the top of the page. Each pleading shall bear the heading "Before the Judicial Panel on Multidistrict Litigation," the identification "MDL Docket No.___" and the descriptive title designated by the Panel for the litigation involved. If the Panel has not yet designated a title, an appropriate descriptive title shall be used.

(e) The final page of each pleading shall contain the name, address and telephone number of the attorney or party in active charge of the case. Each attorney shall also include the name of each party represented.

(f) Except with the approval of the Panel, each brief submitted for filing with the Panel shall be limited to twenty pages, exclusive of exhibits. Absent exceptional circumstances, motions to exceed page limits shall not be granted.

(g) Exhibits exceeding a cumulative total of 50 pages shall be fastened separately from the accompanying pleading.

(h) Proposed Panel orders shall not be submitted with papers for filing.

RULE 7.2: MOTION PRACTICE

(a) All requests for action by the Panel under 28 U.S.C. §1407 shall be made by written motion. Every motion shall be accompanied by:

(i) a brief in support thereof in which the background of the litigation and factual and legal contentions of the movant shall be concisely stated in separate portions of the brief with citation of applicable authorities; and

(ii) a schedule giving

(A) the complete name of each action involved, listing the full name of each party included as such on the district court's docket sheet, not shortened by the use of references such as "et al." or "etc.";

(B) the district court and division in which each action is pending;

(C) the civil action number of each action; and

(D) the name of the judge assigned each action, if known.

(b) The Clerk of the Panel shall notify recipients of a motion of the filing date, caption, MDL docket number, briefing schedule and pertinent Panel policies.

(c) Within twenty days after filing of a motion, all other parties shall file a response thereto. Failure of a party to respond to a motion shall be treated as that party's acquiescence to the action requested in the motion.

(d) The movant may, within five days after the lapse of the time period for filing responsive briefs, file a single brief in reply to any opposition.

(e) Motions, their accompaniments, responses, and replies shall also be governed by Rules 5.12, 5.2 and 7.1 of these Rules.

(f) With respect to any action that is the subject of Panel consideration, counsel shall promptly notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

(g) A joinder in a motion shall not add any action to the previous motion.

(h) Once a motion is filed, any other pleading that purports to be a "motion" in the docket shall be filed by the Clerk of the Panel as a response unless the "motion" adds an action. The Clerk of the Panel, upon

designating such a pleading as a motion, shall acknowledge that designation by the distribution of a briefing schedule to all parties in the docket. Response time resulting from an additional motion shall ordinarily be extended only to those parties directly affected by the additional motion. An accelerated briefing schedule for the additional motion may be set by the Clerk of the Panel to conform with the hearing session schedule established by the Chairman.

(i) Any party or counsel in a new group of actions under consideration by the Panel for transfer under Section 1407 shall promptly notify the Clerk of the Panel of any potential tag-along action in which that party is also named or in which that counsel appears.

RULE 7.3: SHOW CAUSE ORDERS

(a) When transfer of multidistrict litigation is being considered on the initiative of the Panel pursuant to 28 U.S.C. §1407(c)(i), an order shall be filed by the Clerk of the Panel directing the parties to show cause why the action or actions should not be transferred for coordinated or consolidated pretrial proceedings. Any party or counsel in such actions shall promptly notify the Clerk of the Panel of any other federal district court actions related to the litigation encompassed by the show cause order. Such notification shall be made for additional actions pending at the time of the issuance of the show cause order and whenever new actions are filed.

(b) Any party may file a response to the show cause order within twenty days of the filing of said order unless otherwise provided for in the order. Failure of a party to respond to a show cause order shall be treated as that party's acquiescence to the Panel action contemplated in the order.

(c) Within five days after the lapse of the time period for filing a response, any party may file a reply limited to new matters.

(d) Responses and replies shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

(e) With respect to any action that is the subject of Panel consideration, counsel shall promptly notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

RULE 7.4: CONDITIONAL TRANSFER ORDERS FOR "TAG-ALONG ACTIONS"

(a) Upon learning of the pendency of a potential "tag-along action," as defined in Rule 1.1 of these Rules, an order may be entered by the Clerk of the Panel transferring that action to the previously designated transferee district court on the basis of the prior hearing session(s) and for the reasons expressed in previous opinions and orders of the Panel in the litigation. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose transfer, shall not send the order to the clerk of the transferee district court for fifteen days from the entry thereof.

(b) Parties to an action subject to a conditional transfer order shall notify the Clerk of the Panel within the fifteen-day period if that action is no longer pending in its transferor district court.

(c) Any party opposing the transfer shall file a notice of opposition with the Clerk of the Panel within the fifteen-day period. If a notice of opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(d) Within fifteen days of the filing of its notice of opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order and brief in support thereof. The Chairman of the Panel shall set the motion for the next appropriate hearing session of the Panel. Failure to file and serve a motion and brief shall be treated as withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(e) Conditional transfer orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(f) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

RULE 7.5: MISCELLANEOUS PROVISIONS CONCERNING "TAG-ALONG ACTIONS"

(a) Potential "tag-along actions" filed in the transferee district require no action on the part of the Panel and requests for assignment of such actions to the Section 1407 transferee judge should be made in accordance with local rules for the assignment of related actions.

(b) Upon learning of the pendency of a potential "tag-along action" and having reasonable anticipation of opposition to transfer of that action, the Panel may direct the Clerk of the Panel to file a show cause order, in accordance with Rule 7.3 of these Rules, instead of a conditional transfer order.

(c) Failure to serve one or more of the defendants in a potential "tag-along action" with the complaint and summons as required by Rule 4 of the Federal Rules of Civil Procedure does not preclude transfer of such action under Section 1407. Such failure, however, may be submitted by such a defendant as a basis for opposing the proposed transfer if prejudice can be shown. The inability of the Clerk of the Panel to serve a conditional transfer order on all plaintiffs or defendants or their counsel shall not render the transfer of the action void but can be submitted by such a party as a basis for moving to remand as to such party if prejudice can be shown.

(d) A civil action apparently involving common questions of fact with actions under consideration by the Panel for transfer under Section 1407, which was either not included in a motion under Rule 7.2 of these Rules, or was included in such a motion that was filed too late to be included in the initial hearing session, will ordinarily be treated by the Panel as a potential "tag-along action."

(e) Any party or counsel in actions previously transferred under Section 1407 or under consideration by the Panel for transfer under Section 1407 shall promptly notify the Clerk of the Panel of any potential "tag-along actions" in which that party is also named or in which that counsel appears.

RULE 7.6: TERMINATION AND REMAND

In the absence of unusual circumstances—

(a) Actions terminated in the transferee district court by valid judgment, including but not limited to summary judgment, judgment of dismissal and judgment upon stipulation, shall not be remanded by the Panel and shall be dismissed by the transferee district court. The clerk of the transferee district court shall send a copy of the order terminating the action to the Clerk of the Panel but shall retain the original files and records unless otherwise directed by the transferee judge or by the Panel.

(b) Each action transferred only for coordinated or consolidated pretrial proceedings that has not been terminated in the transferee district court shall be remanded by the Panel to the transferor district for trial. Actions that were originally filed in the transferee district require no action by the Panel to be reassigned to another judge in the transferee district at the conclusion of the coordinated or consolidated pretrial proceedings affecting those actions.

(c) The Panel shall consider remand of each transferred action or any separable claim, cross-claim, counterclaim or third-party claim at or before the conclusion of coordinated or consolidated pretrial proceedings on

(i) motion of any party,
(ii) suggestion of the transferee district court, or
(iii) the Panel's own initiative, by entry of an order to show cause, a conditional remand order or other appropriate order.

(d) The Panel is reluctant to order remand absent a suggestion of remand from the transferee district court. If remand is sought by motion of a party, the motion shall be accompanied by:

(i) an affidavit reciting
  (A) whether the movant has requested a suggestion of remand from the transferee district court, how the court responded to any request, and, if no such request was made, why;
  (B) whether all common discovery and other pretrial proceedings have been completed in the action sought to be remanded, and if not, what remains to be done; and
  (C) whether all orders of the transferee district court have been satisfactorily complied with, and if not, what remains to be done; and
(ii) a copy of the transferee district court's final pretrial order, where such order has been entered.

Motions to remand and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(e) When an order to show cause why an action or actions should not be remanded is entered pursuant to subsection (c), paragraph (iii) of this Rule, any party may file a response within twenty days of the

filing of said order unless otherwise provided for in the order. Within five days of filing of a party's response, any party may file a reply brief limited to new matters. Failure of a party to respond to a show cause order regarding remand shall be treated as that party's acquiescence to the remand. Responses and replies shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

(f) Conditional Remand Orders

(i) When the Panel has been advised by the transferee district judge, or otherwise has reason to believe, that pretrial proceedings in the litigation assigned to the transferee district judge are concluded or that remand of an action or actions is otherwise appropriate, an order may be entered by the Clerk of the Panel remanding the action or actions to the transferor district court. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose remand, shall not send the order to the clerk of the transferee district court for fifteen days from the entry thereof.

(ii) Any party opposing the remand shall file a notice of opposition with the Clerk of the Panel within the fifteen-day period. If a notice of opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(iii) Within fifteen days of the filing of its notice of opposition, the party opposing remand shall file a motion to vacate the conditional remand order and brief in support thereof. The Chairman of the Panel shall set the motion for the next appropriate hearing session of the Panel. Failure to file and serve a motion and brief shall be treated as a withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(iv) Conditional remand orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(v) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(g) Upon receipt of an order to remand from the Clerk of the Panel, the parties shall furnish forthwith to the transferee district clerk a stipulation or designation of the contents of the record or part thereof to be remanded and furnish the transferee district clerk all necessary copies of any pleading or other matter filed so as to enable the transferee district clerk to comply with the order of remand.

RULE 16.1: HEARING SESSIONS AND ORAL ARGUMENT

(a) Hearing sessions of the Panel for the presentation of oral argument and consideration of matters taken under submission without oral argument shall be held as ordered by the Panel. The Panel shall convene whenever and wherever desirable or necessary in the judgment of the Chairman. The Chairman shall determine which matters shall be considered at each hearing session and the Clerk of the Panel shall give notice to counsel for all parties involved in the litigation to be so considered of the time, place and subject matter of such hearing session.

(b) Each party filing a motion or a response to a motion or order of the Panel under Rules 7.2, 7.3, 7.4 or 7.6 of these Rules may file simultaneously therewith a separate statement limited to one page setting forth reasons why oral argument should, or need not, be heard. Such statements shall be captioned "Reasons Why Oral Argument Should [Need Not] Be Heard," and shall be filed and served in conformity with Rules 5.12 and 5.2 of these Rules.

(c) No transfer or remand determination regarding any action pending in the district court shall be made by the Panel when any party timely opposes such transfer or remand unless a hearing session has been held for the presentation of oral argument except that the Panel may dispense with oral argument if it determines that:

(i) the dispositive issue(s) have been authoritatively decided; or

(ii) the facts and legal arguments are adequately presented in the briefs and record,

and the decisional process would not be significantly aided by oral argument.

Unless otherwise ordered by the Panel, all other matters before the Panel, such as a motion for reconsideration, shall be considered and determined upon the basis of the papers filed.

(d) In those matters in which oral argument is not scheduled by the Panel, counsel shall be promptly advised. If oral argument is scheduled in a matter the Clerk of the Panel may require counsel for all parties who wish to make or to waive oral argument to file and serve notice to that effect within a stated time in conformity with Rules 5.12 and 5.2 of these Rules. Failure to do so shall be deemed a waiver of oral argument by that party. If oral argument is scheduled but not attended by a party, the matter shall not be rescheduled and that party's position shall be treated as submitted for decision by the Panel on the basis of the papers filed.

(e) Except for leave of the Panel on a showing of good cause, only those parties to actions scheduled for oral argument who have filed a motion or written response to a motion or order shall be permitted to appear before the Panel and present oral argument.

(f) Counsel for those supporting transfer or remand under Section 1407 and counsel for those opposing such transfer or remand are to confer separately prior to the oral argument for the purpose of organizing their arguments and selecting representatives to present all views without duplication.

(g) Unless otherwise ordered by the Panel, a maximum of twenty minutes shall be allotted for oral argument in each matter. The time shall be divided equally among those with varying viewpoints. Counsel for the moving party or parties shall generally be heard first.

(h) So far as practicable and consistent with the purposes of Section 1407, the offering of oral testimony before the Panel shall be avoided. Accordingly, oral testimony shall not be received except upon notice, motion and order of the Panel expressly providing for it.

(i) After an action or group of actions has been set for a hearing session, consideration of such action(s) may be continued only by order of the Panel on good cause shown.

II. RULES FOR MULTICIRCUIT PETITIONS FOR REVIEW UNDER 28 U.S.C. §2112(a)(3)

RULE 17.1: RANDOM SELECTION

(a) Upon filing a notice of multicircuit petitions for review, the Clerk of the Panel or designated deputy shall randomly select a circuit court of appeals from a drum containing an entry for each circuit wherein a constituent petition for review is pending. Multiple petitions for review pending in a single circuit shall be allotted only a single entry in the drum. This random selection shall be witnessed by the Clerk of the Panel or a designated deputy other than the random selector. Thereafter, an order on behalf of the Panel shall be issued, signed by the random selector and the witness,

(i) consolidating the petitions for review in the court of appeals for the circuit that was randomly selected; and

(ii) designating that circuit as the one in which the record is to be filed

pursuant to Rules 16 and 17 of the Federal Rules of Appellate Procedure.

(b) A consolidation of petitions for review shall be effective when the Panel's consolidation order is filed at the offices of the Panel by the Clerk of the Panel.

RULE 25.1: FILING OF NOTICES

(a) An original of a notice of multicircuit petitions for review pursuant to 28 U.S.C. §2112(a)(3) shall be submitted for filing to the Clerk of the Panel by the affected agency, board, commission or officer. The term "agency" as used in Section II of these Rules shall include agency, board, commission or officer.

(b) All notices of multicircuit petitions for review submitted by the affected agency for filing with the Clerk of the Panel shall embrace exclusively petitions for review filed in the courts of appeals within ten days after issuance of an agency order and received by the affected agency from the petitioners within that ten-day period.

(c) When a notice of multicircuit petitions for review is submitted for filing to the Clerk of the Panel, the Clerk of the Panel shall file the notice and endorse thereon the date of filing.

(d) Copies of notices of multicircuit petitions for review shall be filed by the affected agency with the clerk of each circuit court of appeals in which a petition for review is pending that is included in the notice.

RULE 25.2: ACCOMPANIMENTS TO NOTICES

(a) All notices of multicircuit petitions for review shall be accompanied by:

(i) a copy of each involved petition for review as the petition for review is defined in 28 U.S.C. §2112(a)(2); and

(ii) a schedule giving

(A) the date of the relevant agency order;

(B) the case name of each petition for review involved;

(C) the circuit court of appeals in which each petition for review is pending;
(D) the appellate docket number of each petition for review;
(E) the date of filing by the court of appeals of each petition for review; and
(F) the date of receipt by the agency of each petition for review.

(b) The schedule in Subsection (a)(ii) of this Rule shall also be governed by Rules 25.1, 25.3 and 25.4(a) of these Rules.

RULE 25.3: SERVICE OF NOTICES

(a) All notices of multicircuit petitions for review shall be accompanied by proof of service by the affected agency on all other parties in all petitions for review included in the notice. Service and proof of service shall be made as provided in Rule 25 of the Federal Rules of Appellate Procedure. The proof of service shall state the name and address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and his or her last known address. The original proof of service shall be submitted by the affected agency for filing with the Clerk of the Panel and copies thereof shall be sent by the affected agency to each person included within the proof of service.

(b) The proof of service pertaining to notices of multicircuit petitions for review shall certify that copies of the notices have been mailed or otherwise delivered by the affected agency for filing to the clerk of each circuit court of appeals in which a petition for review is pending that is included in the notice.

RULE 25.4: FORM OF NOTICES

(a) Each notice of multicircuit petitions for review shall be
(i) flat and unfolded;
(ii) plainly written, typed in double space, printed or prepared by means of a duplicating process, without erasures or interlineations which materially deface it;
(iii) on opaque, unglazed white paper (not onionskin);
(iv) approximately 8-1/2 x 11 inches in size; and
(v) fastened at the top-left corner without side binding or front or back covers.

(b) The heading on the first page of each notice of multicircuit petitions for review shall commence not less that three inches from the top of the page. Each notice shall bear the heading Notice to the Judicial Panel on Multidistrict Litigation of Multicircuit Petitions for Review," followed by a brief caption identifying the involved agency, the relevant agency order, and the date of the order.

(c) The final page of each notice of multicircuit petitions for review shall contain the name, address and telephone number of the individual or individuals who submitted the notice on behalf of the agency.

RULE 25.5: SERVICE OF PANEL CONSOLIDATION ORDER

(a) The Clerk of the Panel shall serve the Panel's consolidation order on the affected agency through the individual or individuals, as identified in Rule 25.4(c) of these Rules, who submitted the notice of multicircuit petitions for review on behalf of the agency.

(b) That individual or individuals, or anyone else designated by the agency, shall promptly serve the Panel's consolidation order on all other parties in all petitions for review included in the Panel's consolidation order, and shall promptly submit a proof of that service to the Clerk of the Panel. Service and proof of that service shall also be governed by Rule 25.3 of these Rules.

(c) The Clerk of the Panel shall serve the Panel's consolidation order on the clerks of all circuit courts of appeals that were among the candidates for the Panel's random selection.

* * * * *

CONVERSION TABLE

Renumbered Rule	Previous Rule	Renumbered Rule	Previous Rule
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RULES OF PROCEDURE
OF THE
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

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RULES OF PROCEDURE
OF THE
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

I. GENERAL RULES/RULES FOR MULTIDISTRICT LITIGATION UNDER 28 U.S.C. §1407

RULE 1.1: DEFINITIONS

As used in these Rules "Panel" means the members of the Judicial Panel on Multidistrict Litigation appointed by the Chief Justice of the United States pursuant to Section 1407, Title 28, United States Code.

"Clerk of the Panel" means the official appointed by the Panel to act as Clerk of the Panel and shall include those deputized by the Clerk of the Panel to perform or assist in the performance of the duties of the Clerk of the Panel.

"Chairman" means the Chairman of the Judicial Panel on Multidistrict Litigation appointed by the Chief Justice of the United States pursuant to Section 1407, or the member of the Panel designated by the Panel to act as Chairman in the absence or inability of the appointed Chairman.

A "tag-along action" refers to a civil action pending in a district court and involving common questions of fact with actions previously transferred under Section 1407.

RULE 1.2: PRACTICE

Where not fixed by statute or rule, the practice shall be that heretofore customarily followed by the Panel.

RULE 1.3: FAILURE TO COMPLY WITH RULES

The Clerk of the Panel may, when a paper submitted for filing is not in compliance with the provisions of these Rules, advise counsel of the deficiencies and a date for full compliance. If full compliance is not accomplished within the established time, the non-complying paper shall nonetheless be filed by the Clerk of the Panel but it may be stricken by order of the Chairman of the Panel.

RULE 1.4: ADMISSION TO PRACTICE BEFORE THE PANEL AND REPRESENTATION IN TRANSFERRED ACTIONS

Every member in good standing of the Bar of any district court of the United States is entitled without condition to practice before the Judicial Panel on Multidistrict Litigation. Any attorney of record in any action transferred under Section 1407 may continue to represent his or her client in any district court of the United States to which such action is transferred. Parties to any action transferred under Section 1407 are not required to obtain local counsel in the district to which such action is transferred.

RULE 1.5: EFFECT OF THE PENDENCY OF AN ACTION BEFORE THE PANEL

The pendency of a motion, order to show cause, conditional transfer order or conditional remand order before the Panel concerning transfer or remand of an action pursuant to 28 U.S.C. §1407 does not affect or suspend orders and pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of that court. A transfer or remand pursuant to 28 U.S.C. §1407 shall be effective when the transfer or remand order is filed in the office of the clerk of the district court of the transferee district.

RULE 1.6: TRANSFER OF FILES

(a) Upon receipt of a certified copy of a transfer order from the clerk of the transferee district court, the clerk of the transferor district court shall forward to the clerk of the transferee district court the complete original file and a certified copy of the docket sheet for each transferred action.

(b) If an appeal is pending, or a notice of appeal has been filed, or leave to appeal has been sought under 28 U.S.C. §1292(b) or a petition for an extraordinary writ is pending, in any action included in an order of transfer under 28 U.S.C. §1407, and the original file or parts thereof have been forwarded to the court of appeals, the clerk of the transferor district court shall notify the clerk of the court of appeals of the order of transfer and secure the original file long enough to prepare and transmit to the clerk of the transferee district court a certified copy of all papers contained in the original file and a certified copy of the docket sheet.

(c) If the transfer order provides for the separation and simultaneous remand of any claim, cross-claim, counterclaim, or third-party claim, the clerk of the transferor district court shall retain the original file and shall prepare and transmit to the clerk of the transferee district court a certified copy of the docket sheet and copies of all papers except those relating exclusively to separated and remanded claims.

(d) Upon receipt of an order to remand from the Clerk of the Panel, the transferee district court shall prepare and send to the clerk of the transferor district court the following:

(i) a certified copy of the individual docket sheet for each action being remanded;
(ii) a certified copy of the master docket sheet, if applicable;
(iii) the entire file for each action being remanded, as originally received from the transferor district court and augmented as set out in this rule;
(iv) a certified copy of the final pretrial order, if applicable; and
(v) a "record on remand" to be composed of those parts of the files and records produced during coordinated or consolidated pretrial proceedings which have been stipulated to or designated by counsel as being necessary for any or all proceedings to be conducted following remand. It shall be the responsibility of counsel originally preparing or filing any document to be included in the "record on remand" to furnish on request sufficient copies to the clerk of the transferee district court.

(e) The Clerk of the Panel shall be notified when any files have been transmitted pursuant to this Rule.

RULE 5.1: KEEPING RECORDS AND FILES

(a) The records and files of the Panel shall be kept by the Clerk of the Panel at the offices of the Panel. Records and files may be temporarily or permanently removed to such places at such times as the Panel or the Chairman of the Panel shall direct. The Clerk of the Panel may charge fees, as prescribed by the Judicial Conference of the United States, for duplicating records and files. Records and files may be transferred whenever appropriate to the Federal Records Center.

(b) In order to assist the Panel in carrying out its functions, the Clerk of the Panel shall obtain the complaints and docket sheets in all actions under consideration for transfer under 28 U.S.C. §1407 from the clerk of each district court wherein such actions are pending. The Clerk of the Panel shall similarly obtain any other pleadings and orders that could affect the Panel's decision under 28 U.S.C. §1407.

RULE 5.11: PLACE OF FILING OF PAPERS

All papers for consideration by the Panel shall be submitted for filing to the Clerk of the Panel by mailing or delivering to:

Clerk of the Panel
Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room G-255, North Lobby
Washington, D.C. 20002-8004

No papers shall be left with or mailed to a Judge of the Panel.

RULE 5.12: MANNER OF FILING OF PAPERS

(a) An original of the following papers shall be submitted for filing to the Clerk of the Panel: a proof of service pursuant to Rule 5.2(a) and (b) of these Rules, a notice of appearance pursuant to Rule 5.2(c) and (d) of these Rules, a corporate disclosure statement pursuant to Rule 5.3 of these Rules, a status notice pursuant to Rules 7.2(f), 7.3(e) and 7.4(b) of these Rules, a notice of opposition pursuant to Rules 7.4(c) and 7.6(f)(ii) of these Rules, a notice of related action pursuant to Rules 7.2(i), 7.3(a) and 7.5(e) of these Rules, an application for extension of time pursuant to Rule 6.2 of these Rules, or a notice of presentation or waiver of oral argument pursuant to Rule 16.1(d) of these Rules. An original and ~~eleven~~ four copies of all other papers shall be submitted for filing to the Clerk of the Panel. The Clerk of the Panel may require that additional copies also be submitted for filing.

(b) When papers are submitted for filing, the Clerk of the Panel shall endorse thereon the date for filing.

(c) Copies of motions for transfer of an action or actions pursuant to 28 U.S.C. §1407 shall be filed in each district court in which an action is pending that will be affected by the motion. Copies of a motion for remand pursuant to 28 U.S.C. §1407 shall be filed in the Section 1407 transferee district court in which any action affected by the motion is pending.

(d) Papers requiring only an original may be faxed to the Panel office with prior approval of the Clerk of the Panel. No papers requiring multiple copies shall be accepted via fax.

RULE 5.13: FILING OF PAPERS: COMPUTER GENERATED DISK REQUIRED

(a) Whenever an original paper and ~~eleven~~ four copies is required to be submitted for filing to the Clerk of the Panel pursuant to Rule 5.12(a) of these Rules, and where a party is represented by counsel, one copy of that paper must also be submitted on a computer readable disk and shall be filed at the time the party's paper is filed. The disk shall contain the entire paper exclusive of computer non-generated exhibits. The label of the disk shall include i) "MDL #___," ii) an abbreviated version of the MDL descriptive title, or other appropriate descriptive title, if not yet designated by the Panel, iii) the identity of the type of paper being filed (i.e. motion, response, reply, etc.), iv) the name of the counsel who signed the paper, and v) the first named represented party on the paper.

(b) The paper must be on a ~~3 ½ inch~~ disk in ~~WordPerfect for Windows~~ Adobe Acrobat (PDF) format.

(c) One copy of the disk may be served on each party separately represented by counsel. If a party chooses to serve a copy of the disk, the proof of service, as required by Rule 5.2 of these Rules, must indicate service of the paper in both paper and electronic format.

(d) A party may be relieved from the requirements of this Rule by submitting a written application for a waiver, in a timely manner in advance of submission of the paper, certifying that compliance with the Rule would impose undue hardship, that the text of the paper is not available on disk, or that other unusual circumstances preclude compliance with this Rule. The requirements of this Rule shall not apply to parties appearing pro se. Papers embraced by this Rule and submitted by counsel after June 1, 2000 without a computer disk copy or Panel-approved waiver of the requirements of this Rule shall be governed by Rule 1.3 of these Rules.

RULE 5.2: SERVICE OF PAPERS FILED

(a) All papers filed with the Clerk of the Panel shall be accompanied by proof of previous or simultaneous service on all other parties in all actions involved in the litigation. Service and proof of service shall be made as provided in Rules 5 and 6 of the Federal Rules of Civil Procedure. The proof of service shall indicate the name and complete address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and the party's last known address. The proof of service shall indicate why any person named as a party in a constituent complaint was not served with the Section 1407 pleading. The original proof of service shall be filed with the Clerk of the Panel and copies thereof shall be sent to each person included within the proof of service. After the "Panel Service List" described in subsection (d) of this Rule has been received from the Clerk of the

Panel, the "Panel Service List" shall be utilized for service of responses to motions and all other filings. In such instances, the "Panel Service List" shall be attached to the proof of service and shall be supplemented in the proof of service in the event of the presence of additional parties or subsequent corrections relating to any party, counsel or address already on the "Panel Service List."

(b) The proof of service pertaining to motions for transfer of actions pursuant to 28 U.S.C. §1407 shall certify that copies of the motions have been mailed or otherwise delivered for filing to the clerk of each district court in which an action is pending that will be affected by the motion. The proof of service pertaining to a motion for remand pursuant to 28 U.S.C. §1407 shall certify that a copy of the motion has been mailed or otherwise delivered for filing to the clerk of the Section 1407 transferee district court in which any action affected by the motion is pending.

(c) Within ~~eleven~~ fourteen days of filing of a motion to transfer, an order to show cause or a conditional transfer order, each party or designated attorney shall notify the Clerk of the Panel, in writing, of the name and address of the attorney designated to receive service of all pleadings, notices, orders and other papers relating to practice before the Judicial Panel on Multidistrict Litigation. Only one attorney shall be designated for each party. Any party not represented by counsel shall be served by mailing such pleadings to the party's last known address. Requests for an extension of time to file the designation of attorney shall not be granted except in extraordinary circumstances.

(d) In order to facilitate compliance with subsection (a) of this Rule, the Clerk of the Panel shall prepare and serve on all counsel and parties not represented by counsel, a "Panel Service List" containing the names and addresses of the designated attorneys and the party or parties they represent in the actions under consideration by the Panel and the names and addresses of the parties not represented by counsel in the actions under consideration by the Panel. After the "Panel Service List" has been received from the Clerk of the Panel, notice of subsequent corrections relating to any party, counsel or address on the "Panel Service List" shall be served on all other parties in all actions involved in the litigation.

(e) If following transfer of any group of multidistrict litigation, the transferee district court appoints liaison counsel, this Rule shall be satisfied by serving each party in each affected action and all liaison counsel. Liaison counsel designated by the transferee district court shall receive copies of all Panel orders concerning their particular litigation and shall be responsible for distribution to the parties for whom he or she serves as liaison counsel.

RULE 5.3: CORPORATE DISCLOSURE STATEMENT

(a) Any nongovernmental corporate party to a matter before the Panel shall file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

(b) A party shall file the corporate disclosure statement within ~~eleven~~ fourteen days of the filing of a motion to transfer or remand, an order to show cause, or a motion to vacate a conditional transfer order or a conditional remand order.

(c) Once a corporate disclosure statement by a party has been filed in an MDL docket pursuant to subsection (b) of this Rule, such a party is required to update the statement to reflect any

change in the information therein i) until the matter before the Panel is decided, and ii) within ~~eleven~~ fourteen days of the filing of any subsequent motion to transfer or remand, order to show cause, or motion to vacate a conditional transfer order or a conditional remand order in that docket.

RULE 6.2: APPLICATIONS FOR EXTENSIONS OF TIME

Any application for an extension of time to file a pleading or perform an act required by these Rules must be in writing, must request a specific number of additional days and may be acted upon by the Clerk of the Panel. Such an application will be evaluated in relation to the impact on the Panel's calendar as well as on the basis of the reasons set forth in support of the application. Any party aggrieved by the Clerk of the Panel's action on such application may submit its objections to the Panel for consideration. Absent exceptional circumstances, no extensions of time shall be granted to file a notice of opposition to either a conditional transfer order or a conditional remand order. All applications for extensions of time shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

RULE 7.1: FORM OF PAPERS FILED

(a) Averments in any motion seeking action by the Panel shall be made in numbered paragraphs, each of which shall be limited, as far as practicable, to a statement of a single factual averment.

(b) Responses to averments in motions shall be made in numbered paragraphs, each of which shall correspond to the number of the paragraph of the motion to which the responsive paragraph is directed. Each responsive paragraph shall admit or deny wholly or in part the averment of the motion, and shall contain the respondent's version of the subject matter when the averment or the motion is not wholly admitted.

(c) Each pleading filed shall be:
- (i) flat and unfolded;
- (ii) plainly written, typed in double space, printed or prepared by means of a duplicating process, without erasures or interlineations which materially deface it;
- (iii) on opaque, unglazed, white paper (not onionskin);
- (iv) approximately 8-1/2 x 11 inches in size; and
- (v) fastened at the top-left corner without side binding or front or back covers.

(d) The heading on the first page of each pleading shall commence not less than three inches from the top of the page. Each pleading shall bear the heading "Before the Judicial Panel on Multidistrict Litigation," the identification "MDL Docket No.___" and the descriptive title designated by the Panel for the litigation involved. If the Panel has not yet designated a title, an appropriate descriptive title shall be used.

(e) The final page of each pleading shall contain the name, address and telephone number of the attorney or party in active charge of the case. Each attorney shall also include the name of each party represented.

(f) Except with the approval of the Panel, each brief submitted for filing with the Panel shall be limited to twenty pages, exclusive of exhibits. Absent exceptional circumstances, motions to exceed page limits shall not be granted.

(g) Exhibits exceeding a cumulative total of 50 pages shall be fastened separately from the accompanying pleading.

(h) Proposed Panel orders shall not be submitted with papers for filing.

RULE 7.2: MOTION PRACTICE

(a) All requests for action by the Panel under 28 U.S.C. §1407 shall be made by written motion. Every motion shall be accompanied by:

(i) a brief in support thereof in which the background of the litigation and factual and legal contentions of the movant shall be concisely stated in separate portions of the brief with citation of applicable authorities; and

(ii) a schedule giving

(A) the complete name of each action involved, listing the full name of each party included as such on the district court's docket sheet, not shortened by the use of references such as "et al." or "etc.";

(B) the district court and division in which each action is pending;

(C) the civil action number of each action; and

(D) the name of the judge assigned each action, if known.

(b) The Clerk of the Panel shall notify recipients of a motion of the filing date, caption, MDL docket number, briefing schedule and pertinent Panel policies.

(c) Within ~~twenty~~ twenty-one days after filing of a motion, all other parties shall file a response thereto. Failure of a party to respond to a motion shall be treated as that party's acquiescence to the action requested in the motion.

(d) The movant may, within ~~five~~ seven days after the lapse of the time period for filing responsive briefs, file a single brief in reply to any opposition.

(e) Motions, their accompaniments, responses, and replies shall also be governed by Rules 5.12, 5.2 and 7.1 of these Rules.

(f) With respect to any action that is the subject of Panel consideration, counsel shall promptly notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

(g) A joinder in a motion shall not add any action to the previous motion.

(h) Once a motion is filed, any other pleading that purports to be a "motion" in the docket shall be filed by the Clerk of the Panel as a response unless the "motion" adds an action. The Clerk of the Panel, upon designating such a pleading as a motion, shall acknowledge that designation by the distribution of a briefing schedule to all parties in the docket. Response time resulting from an

additional motion shall ordinarily be extended only to those parties directly affected by the additional motion. An accelerated briefing schedule for the additional motion may be set by the Clerk of the Panel to conform with the hearing session schedule established by the Chairman.

(i) Any party or counsel in a new group of actions under consideration by the Panel for transfer under Section 1407 shall promptly notify the Clerk of the Panel of any potential tag-along action in which that party is also named or in which that counsel appears.

RULE 7.3: SHOW CAUSE ORDERS

(a) When transfer of multidistrict litigation is being considered on the initiative of the Panel pursuant to 28 U.S.C. §1407(c)(i), an order shall be filed by the Clerk of the Panel directing the parties to show cause why the action or actions should not be transferred for coordinated or consolidated pretrial proceedings. Any party or counsel in such actions shall promptly notify the Clerk of the Panel of any other federal district court actions related to the litigation encompassed by the show cause order. Such notification shall be made for additional actions pending at the time of the issuance of the show cause order and whenever new actions are filed.

(b) Any party may file a response to the show cause order within ~~twenty~~ twenty-one days of the filing of said order unless otherwise provided for in the order. Failure of a party to respond to a show cause order shall be treated as that party's acquiescence to the Panel action contemplated in the order.

(c) Within ~~five~~ seven days after the lapse of the time period for filing a response, any party may file a reply limited to new matters.

(d) Responses and replies shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

(e) With respect to any action that is the subject of Panel consideration, counsel shall promptly notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

RULE 7.4: CONDITIONAL TRANSFER ORDERS FOR "TAG-ALONG ACTIONS"

(a) Upon learning of the pendency of a potential "tag-along action," as defined in Rule 1.1 of these Rules, an order may be entered by the Clerk of the Panel transferring that action to the previously designated transferee district court on the basis of the prior hearing session(s) and for the reasons expressed in previous opinions and orders of the Panel in the litigation. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose transfer, shall not send the order to the clerk of the transferee district court for ~~fifteen~~ fourteen days from the entry thereof.

(b) Parties to an action subject to a conditional transfer order shall notify the Clerk of the Panel within the ~~fifteen~~ fourteen-day period if that action is no longer pending in its transferor district court.

(c) Any party opposing the transfer shall file a notice of opposition with the Clerk of the Panel within the ~~fifteen~~ fourteen-day period. If a notice of opposition is received by the Clerk of the Panel within this ~~fifteen~~ fourteen -day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(d) Within ~~fifteen~~ fourteen days of the filing of its notice of opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order and brief in support thereof. The Chairman of the Panel shall set the motion for the next appropriate hearing session of the Panel. Failure to file and serve a motion and brief shall be treated as withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(e) Conditional transfer orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(f) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

RULE 7.5: MISCELLANEOUS PROVISIONS CONCERNING "TAG-ALONG ACTIONS"

(a) Potential "tag-along actions" filed in the transferee district require no action on the part of the Panel and requests for assignment of such actions to the Section 1407 transferee judge should be made in accordance with local rules for the assignment of related actions.

(b) Upon learning of the pendency of a potential "tag-along action" and having reasonable anticipation of opposition to transfer of that action, the Panel may direct the Clerk of the Panel to file a show cause order, in accordance with Rule 7.3 of these Rules, instead of a conditional transfer order.

(c) Failure to serve one or more of the defendants in a potential "tag-along action" with the complaint and summons as required by Rule 4 of the Federal Rules of Civil Procedure does not preclude transfer of such action under Section 1407. Such failure, however, may be submitted by such a defendant as a basis for opposing the proposed transfer if prejudice can be shown. The inability of the Clerk of the Panel to serve a conditional transfer order on all plaintiffs or defendants or their counsel shall not render the transfer of the action void but can be submitted by such a party as a basis for moving to remand as to such party if prejudice can be shown.

(d) A civil action apparently involving common questions of fact with actions under consideration by the Panel for transfer under Section 1407, which was either not included in a motion under Rule 7.2 of these Rules, or was included in such a motion that was filed too late to be included in the initial hearing session, will ordinarily be treated by the Panel as a potential "tag-along action."

(e) Any party or counsel in actions previously transferred under Section 1407 or under consideration by the Panel for transfer under Section 1407 shall promptly notify the Clerk of the

Panel of any potential "tag-along actions" in which that party is also named or in which that counsel appears.

RULE 7.6: TERMINATION AND REMAND

In the absence of unusual circumstances—

(a) Actions terminated in the transferee district court by valid judgment, including but not limited to summary judgment, judgment of dismissal and judgment upon stipulation, shall not be remanded by the Panel and shall be dismissed by the transferee district court. The clerk of the transferee district court shall send a copy of the order terminating the action to the Clerk of the Panel but shall retain the original files and records unless otherwise directed by the transferee judge or by the Panel.

(b) Each action transferred only for coordinated or consolidated pretrial proceedings that has not been terminated in the transferee district court shall be remanded by the Panel to the transferor district for trial. Actions that were originally filed in the transferee district require no action by the Panel to be reassigned to another judge in the transferee district at the conclusion of the coordinated or consolidated pretrial proceedings affecting those actions.

(c) The Panel shall consider remand of each transferred action or any separable claim, cross-claim, counterclaim or third-party claim at or before the conclusion of coordinated or consolidated pretrial proceedings on

(i) motion of any party,
(ii) suggestion of the transferee district court, or
(iii) the Panel's own initiative, by entry of an order to show cause, a conditional remand order or other appropriate order.

(d) The Panel is reluctant to order remand absent a suggestion of remand from the transferee district court. If remand is sought by motion of a party, the motion shall be accompanied by:

(i) an affidavit reciting
  (A) whether the movant has requested a suggestion of remand from the transferee district court, how the court responded to any request, and, if no such request was made, why;
  (B) whether all common discovery and other pretrial proceedings have been completed in the action sought to be remanded, and if not, what remains to be done; and
  (C) whether all orders of the transferee district court have been satisfactorily complied with, and if not, what remains to be done; and
(ii) a copy of the transferee district court's final pretrial order, where such order has been entered.

Motions to remand and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(e) When an order to show cause why an action or actions should not be remanded is entered pursuant to subsection (c), paragraph (iii) of this Rule, any party may file a response within ~~twenty~~ twenty-one days of the filing of said order unless otherwise provided for in the order. Within ~~five~~ seven days of filing of a party's response, any party may file a reply brief limited to new matters. Failure of a party to respond to a show cause order regarding remand shall be treated as that party's acquiescence to the remand. Responses and replies shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

(f) Conditional Remand Orders

(i) When the Panel has been advised by the transferee district judge, or otherwise has reason to believe, that pretrial proceedings in the litigation assigned to the transferee district judge are concluded or that remand of an action or actions is otherwise appropriate, an order may be entered by the Clerk of the Panel remanding the action or actions to the transferor district court. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose remand, shall not send the order to the clerk of the transferee district court for ~~fifteen~~ fourteen days from the entry thereof.

(ii) Any party opposing the remand shall file a notice of opposition with the Clerk of the Panel within the ~~fifteen~~ fourteen-day period. If a notice of opposition is received by the Clerk of the Panel within this ~~fifteen~~ fourteen -day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(iii) Within ~~fifteen~~ fourteen days of the filing of its notice of opposition, the party opposing remand shall file a motion to vacate the conditional remand order and brief in support thereof. The Chairman of the Panel shall set the motion for the next appropriate hearing session of the Panel. Failure to file and serve a motion and brief shall be treated as a withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(iv) Conditional remand orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(v) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(g) Upon receipt of an order to remand from the Clerk of the Panel, the parties shall furnish forthwith to the transferee district clerk a stipulation or designation of the contents of the record or part thereof to be remanded and furnish the transferee district clerk all necessary copies of any pleading or other matter filed so as to enable the transferee district clerk to comply with the order of remand.

RULE 16.1: HEARING SESSIONS AND ORAL ARGUMENT

(a) Hearing sessions of the Panel for the presentation of oral argument and consideration of matters taken under submission without oral argument shall be held as ordered by the Panel. The

Panel shall convene whenever and wherever desirable or necessary in the judgment of the Chairman. The Chairman shall determine which matters shall be considered at each hearing session and the Clerk of the Panel shall give notice to counsel for all parties involved in the litigation to be so considered of the time, place and subject matter of such hearing session.

(b) Each party filing a motion or a response to a motion or order of the Panel under Rules 7.2, 7.3, 7.4 or 7.6 of these Rules may file simultaneously therewith a separate statement limited to one page setting forth reasons why oral argument should, or need not, be heard. Such statements shall be captioned "Reasons Why Oral Argument Should [Need Not] Be Heard," and shall be filed and served in conformity with Rules 5.12 and 5.2 of these Rules.

(c) No transfer or remand determination regarding any action pending in the district court shall be made by the Panel when any party timely opposes such transfer or remand unless a hearing session has been held for the presentation of oral argument except that the Panel may dispense with oral argument if it determines that:

(i) the dispositive issue(s) have been authoritatively decided; or
(ii) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

Unless otherwise ordered by the Panel, all other matters before the Panel, such as a motion for reconsideration, shall be considered and determined upon the basis of the papers filed.

(d) In those matters in which oral argument is not scheduled by the Panel, counsel shall be promptly advised. If oral argument is scheduled in a matter the Clerk of the Panel may require counsel for all parties who wish to make or to waive oral argument to file and serve notice to that effect within a stated time in conformity with Rules 5.12 and 5.2 of these Rules. Failure to do so shall be deemed a waiver of oral argument by that party. If oral argument is scheduled but not attended by a party, the matter shall not be rescheduled and that party's position shall be treated as submitted for decision by the Panel on the basis of the papers filed.

(e) Except for leave of the Panel on a showing of good cause, only those parties to actions scheduled for oral argument who have filed a motion or written response to a motion or order shall be permitted to appear before the Panel and present oral argument.

(f) Counsel for those supporting transfer or remand under Section 1407 and counsel for those opposing such transfer or remand are to confer separately prior to the oral argument for the purpose of organizing their arguments and selecting representatives to present all views without duplication.

(g) Unless otherwise ordered by the Panel, a maximum of twenty minutes shall be allotted for oral argument in each matter. The time shall be divided equally among those with varying viewpoints. Counsel for the moving party or parties shall generally be heard first.

(h) So far as practicable and consistent with the purposes of Section 1407, the offering of oral testimony before the Panel shall be avoided. Accordingly, oral testimony shall not be received except upon notice, motion and order of the Panel expressly providing for it.

(i) After an action or group of actions has been set for a hearing session, consideration of such action(s) may be continued only by order of the Panel on good cause shown.

II. RULES FOR MULTICIRCUIT PETITIONS FOR REVIEW UNDER 28 U.S.C. §2112(a)(3)

RULE 17.1: RANDOM SELECTION

(a) Upon filing a notice of multicircuit petitions for review, the Clerk of the Panel or designated deputy shall randomly select a circuit court of appeals from a drum containing an entry for each circuit wherein a constituent petition for review is pending. Multiple petitions for review pending in a single circuit shall be allotted only a single entry in the drum. This random selection shall be witnessed by the Clerk of the Panel or a designated deputy other than the random selector. Thereafter, an order on behalf of the Panel shall be issued, signed by the random selector and the witness,

(i) consolidating the petitions for review in the court of appeals for the circuit that was randomly selected; and

(ii) designating that circuit as the one in which the record is to be filed pursuant to Rules 16 and 17 of the Federal Rules of Appellate Procedure.

(b) A consolidation of petitions for review shall be effective when the Panel's consolidation order is filed at the offices of the Panel by the Clerk of the Panel.

RULE 25.1: FILING OF NOTICES

(a) An original of a notice of multicircuit petitions for review pursuant to 28 U.S.C. §2112(a)(3) shall be submitted for filing to the Clerk of the Panel by the affected agency, board, commission or officer. The term "agency" as used in Section II of these Rules shall include agency, board, commission or officer.

(b) All notices of multicircuit petitions for review submitted by the affected agency for filing with the Clerk of the Panel shall embrace exclusively petitions for review filed in the courts of appeals within ten days after issuance of an agency order and received by the affected agency from the petitioners within that ten-day period.

(c) When a notice of multicircuit petitions for review is submitted for filing to the Clerk of the Panel, the Clerk of the Panel shall file the notice and endorse thereon the date of filing.

(d) Copies of notices of multicircuit petitions for review shall be filed by the affected agency with the clerk of each circuit court of appeals in which a petition for review is pending that is included in the notice.

RULE 25.2: ACCOMPANIMENTS TO NOTICES

(a) All notices of multicircuit petitions for review shall be accompanied by:

(i) a copy of each involved petition for review as the petition for review is defined in 28 U.S.C. §2112(a)(2); and

(ii) a schedule giving
- (A) the date of the relevant agency order;
- (B) the case name of each petition for review involved;
- (C) the circuit court of appeals in which each petition for review is pending;
- (D) the appellate docket number of each petition for review;
- (E) the date of filing by the court of appeals of each petition for review; and
- (F) the date of receipt by the agency of each petition for review.

(b) The schedule in Subsection (a)(ii) of this Rule shall also be governed by Rules 25.1, 25.3 and 25.4(a) of these Rules.

RULE 25.3: SERVICE OF NOTICES

(a) All notices of multicircuit petitions for review shall be accompanied by proof of service by the affected agency on all other parties in all petitions for review included in the notice. Service and proof of service shall be made as provided in Rule 25 of the Federal Rules of Appellate Procedure. The proof of service shall state the name and address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and his or her last known address. The original proof of service shall be submitted by the affected agency for filing with the Clerk of the Panel and copies thereof shall be sent by the affected agency to each person included within the proof of service.

(b) The proof of service pertaining to notices of multicircuit petitions for review shall certify that copies of the notices have been mailed or otherwise delivered by the affected agency for filing to the clerk of each circuit court of appeals in which a petition for review is pending that is included in the notice.

RULE 25.4: FORM OF NOTICES

(a) Each notice of multicircuit petitions for review shall be
- (i) flat and unfolded;
- (ii) plainly written, typed in double space, printed or prepared by means of a duplicating process, without erasures or interlineations which materially deface it;
- (iii) on opaque, unglazed white paper (not onionskin);
- (iv) approximately 8-1/2 x 11 inches in size; and
- (v) fastened at the top-left corner without side binding or front or back covers.

(b) The heading on the first page of each notice of multicircuit petitions for review shall commence not less that three inches from the top of the page. Each notice shall bear the heading Notice to the Judicial Panel on Multidistrict Litigation of Multicircuit Petitions for Review," followed by a brief caption identifying the involved agency, the relevant agency order, and the date of the order.

(c) The final page of each notice of multicircuit petitions for review shall contain the name, address and telephone number of the individual or individuals who submitted the notice on behalf of the agency.

RULE 25.5: SERVICE OF PANEL CONSOLIDATION ORDER

(a) The Clerk of the Panel shall serve the Panel's consolidation order on the affected agency through the individual or individuals, as identified in Rule 25.4(c) of these Rules, who submitted the notice of multicircuit petitions for review on behalf of the agency.

(b) That individual or individuals, or anyone else designated by the agency, shall promptly serve the Panel's consolidation order on all other parties in all petitions for review included in the Panel's consolidation order, and shall promptly submit a proof of that service to the Clerk of the Panel. Service and proof of that service shall also be governed by Rule 25.3 of these Rules.

(c) The Clerk of the Panel shall serve the Panel's consolidation order on the clerks of all circuit courts of appeals that were among the candidates for the Panel's random selection.

* * * * *

III. CONVERSION TABLE

Renumbered Rule	Previous Rule	Renumbered Rule	Previous Rule
1.1	1	7.1	9
1.2	5	7.2	10
1.3	4	7.3	11
1.4	6	7.4	12
1.5	18	7.5	13
1.6	19	7.6	14
5.1	2	16.1	16, 16.2 & 17
5.11	3	17.1	24
5.12	7	25.1	20
5.13	–	25.2	21
5.2	8	25.3	22
5.3	–	25.4	23
6.2	15	25.5	25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

STEVEN M. LARIMORE
Court Administrator • Clerk of Court

December 4, 2009

United States District Court
District of Nevada

RE: MDL No. 2106 In Re: Fontainebleau Las Vegas Contract Litigation
Our Case # 09-md-2106-Gold
Your Case No. 2:09-1047 Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al.,

Dear Clerk:

Attached is a certified copy of the order from the Judicial Panel on Multidistrict Litigation (MDL Panel) transferring the above entitled action to the Southern District of Florida. This case will be directly assigned to the Honorable Alan S. Gold.

Please proceed to close the case(s) in your district and initiate the civil case transfer functionality in CM/ECF. We will initiate the procedure to retrieve the transferred cases(s) upon receipt of the e-mail. If your court does not utilize the CM/ECF transfer functionality, please forward the court file (including originating Complaint or Notice of Removal, any amendments, docket sheet, and MDL Conditional Transfer Order dated 12/2/09) as PDF documents to the Southern District of Florida via electronic mail at: mdl@flsd.uscourts.gov.

STEVEN M. LARIMORE
Clerk of Court

s/ Graciela Gomez
by: _____
MDL Clerk

Encl.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]
[This document relates to all actions]

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106
_____/

ORDER FOLLOWING TELEPHONIC STATUS CONFERENCE; REQUIRING SUBMISSION; SETTING TELEPHONE STATUS CONFERENCE

THIS CAUSE is before the Court following a telephonic status conference. For the reasons stated of record, it is hereby

ORDERED AND ADJUDGED that:

1. Per agreement of the parties, counsel for parties to all three cases shall meet and confer in good faith to discuss procedures and scheduling for the three cases to proceed on a coordinated basis. The parties are directed to review the transcript of the telephonic status conference held December 4, 2009 for guidance as to what issues need to be addressed.

2. Per agreement of the parties, the parties to all three cases shall file a Joint Notice in Case No.: 09-MD-02106 setting forth a proposed consolidated pre-trial schedule and procedures **no later than December 11, 2009**.

3. While I am aware that I have no jurisdiction over the New York "tag-along" case – or the parties to that case – until it is officially transferred to this Court, I request that counsel for all parties to the New York case actively participate in the resolution of these initial scheduling and procedural

issues as a matter of judicial economy given the anticipated transfer of the New York case to this Court.

4. A telephonic status conference regarding the pre-trial schedule and procedures is hereby set before the Honorable Alan S. Gold, at the United States District Court, Courtroom 11-1, Eleventh Floor, 400 North Miami Avenue, Miami, Florida, on **Friday December 18, 2009 at 2:30 p.m. All counsel shall call 1-866-208-0348 on the above date and time. Refer to Conference ID# 46051774. Please be prompt.**

DONE AND ORDERED in Chambers, at Miami, Florida, this 8 day of December, 2009.

HONORABLE ALAN S. GOLD
U.S. DISTRICT JUDGE

cc: U.S. Magistrate Judge Chris M. McAliley
All counsel of record in all three cases

NEVADA CASE # 09-1047

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CM/ECF PROCEDURES:

PROPOSED ORDERS: Counsel shall send a proposed order for all non-dispositive motions in WORDPERFECT FORMAT [or WORD] directly to gold@flsd.uscourts.gov. Please refer to the case number in the subject line of the email and the docket entry number on the proposed order. The Complete CM/ECF Administrative Procedures are available on the Court's Website at www.flsd.uscourts.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

In re:
Fontainebleau Las Vegas Contract Litigation
_____/

This Document Relates to: All Actions

Joint Notice

Plaintiff Fontainebleau Las Vegas LLC ("Fontainebleau") in the case captioned *Fontainebleau Las Vegas, LLC v. Bank of America, N.A., et al.*, Case No. 09-21879-CIV-GOLD/MCALILEY (S.D. Fla.) (the "Fontainebleau Action"), the plaintiffs in the case captioned *Avenue CLO Fund, Ltd., et al. v. Bank of America, et al.*, Case No. 09-1047-CIV-KJD (D. Nev.) (the "Avenue CLO Action"), the plaintiffs in the case captioned *ACP Master, LTD, et al. v. Bank of America, et al*, Case No. 09-cv-8064-LTS/THK (S.D.N.Y) (the "Aurelius Action") and defendants Bank of America, N.A., Merrill Lynch Capital Corporation, JPMorgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, The Royal Bank of Scotland plc, Sumitomo Mitsui Banking Corporation, Bank of Scotland PLC, HSH Nordbank, AG, New York Branch, MB Financial Bank, N.A., and Camulos Master Fund, L.P. (collectively, the "Revolver Banks"), having met and conferred, respectfully submit this Joint Notice in accordance with the Court's December 8, 2009 Order (D.E. # 6).

A. Issues not in Dispute: Proposed Consolidated Pre-Trial Schedule and Procedures

All plaintiffs and defendants in these consolidated proceedings have agreed to dates set forth in the proposed pre-trial schedule appearing in the table below. If approved by the Court, this schedule would apply to each of the above-captioned actions and supersede the schedule contained in the Court's November 10, 2009 Scheduling Order, entered in the Fontainebleau Action (D.E. # 103):

	DATE	**ACTION**
By	January 15, 2010	Service of Amended Complaints in the Avenue CLO and Aurelius Actions.
By	January 22, 2010	The parties shall exchange the information required by Fed. R. Civ. P. 26(a)(1).
By	January 29, 2010	Initial Requests for Production and Interrogatories to be exchanged.[1] The parties may serve subpoenas on non-parties at this time.
By	February 18, 2010	Service of Defendants' Answers to or Motions under Fed. R. Civ. P. 12(b) regarding the Amended Complaints in the Avenue CLO and Aurelius Actions.
By	March 1, 2010	Written responses to initial Requests for Production and Interrogatories to be served. Any related document productions to commence on a rolling basis.
By	March 22, 2010	Service of Avenue CLO Action and/or Aurelius Action Plaintiffs' Oppositions to any Motions under Fed. R. Civ. P. 12(b).
By	April 5, 2010	Service of Defendants' Replies to any Motions under Fed. R. Civ. P. 12(b).
By	May 13, 2010	Document productions in response to initial Requests for Production to be completed.
By	July 1, 2010	Commencement of fact depositions.
By	September 15, 2010	All non-dispositive, non-discovery related pretrial motions (including motions pursuant to Fed. R. Civ. P. 14, 15, 18 through 22, and 42 motions[2]) shall be filed. Any motion to amend or supplement the pleadings filed pursuant to Fed. R. Civ. P. 15(a) or 15(d) shall comport with S.D. Fla. L.R. 15.1 and shall be accompanied by the proposed amended or supplemental pleading and a proposed order as required. **When filing non-dispositive motions, the filing party must attach a proposed order to the motion as well as emailing the proposed order to gold@flsd.uscourts.gov. Failure to provide the proposed order may result in**

[1] The parties have agreed that Interrogatories shall be limited to those seeking names of witnesses with knowledge of information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, or information of a similar nature. Nothing herein shall preclude the parties from serving additional interrogatories.

[2] This order is without prejudice to the ability of any party to seek, or oppose, the transfer or consolidation for trial of any action in the event the action is returned to the court from which it was transferred to this MDL.

		denial of the motion without prejudice. Please refer to the docket entry number on the proposed order. The Complete CM/ECF Administrative Procedures are available on the Court's Website at www.flsd.uscourts.gov.
By	September 30, 2010	Plaintiffs shall furnish opposing counsel with a written list containing the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses so listed shall be permitted to testify.
By	November 1, 2010	Defendants shall furnish opposing counsel with a written list containing the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses so listed shall be permitted to testify.
By	January 31, 2011	Final date to exchange written discovery demands, including Requests for Production, Requests for Admission and Interrogatories.
By	April 15, 2011	Conclusion of fact discovery.
By	May 2, 2011	The parties shall comply with S.D. Fla. L.R. 16.1(K) concerning the exchange of expert witness summaries and reports. This date shall supersede any other date in Local Rule 16.1(K).
By	June 1, 2011	Rebuttal expert reports shall be filed.
By	July 15, 2011	All expert discovery, including depositions, shall be completed.
By	July 29, 2011	All dispositive pretrial motions, including motions to strike in whole or in part expert testimony, and memoranda of law must be filed.[3] **If any party moves to strike an expert affidavit filed in support of a motion for summary judgment** [for reasons stated in *Daubert v. Merrill Dow Pharmaceuticals, Inc,* 509 U.S. 579, 125 L.Ed. 2d 469, 113 S.Ct. 2786 (1993) and *Kumho Tire Company, Ltd. v. Carmichael,* 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999)], **the motion to strike shall be filed with that party's responsive memorandum.** Please carefully review the instructions for filing motions for summary judgment.
By	August 30, 2011	Opposition to any dispositive motions to be filed.
By	September 15, 2011	Replies, if any, to dispositive motions to be filed.

[3] The proposal of this date for the filing of summary judgment motions is without prejudice to any parties' rights to argue in the future that such motions should be heard by the transferor court in the Avenue Capital and/or Aurelius Actions.

B. Issues in Dispute

1. Fontainebleau's Motion To Certify Under 28 U.S.C. § 1292(b)

Fontainebleau's position is that its Motion to Certify under 28 U.S.C. § 1292(b) this Court's Orders Withdrawing the Reference and Denying Summary Judgment, and For a Stay Pending the Disposition of Any Appeal, filed in the Fontainebleau Action (the "Appeal Motion") (D.E. # 98), is meritorious, should be granted as soon as possible and that discovery should be stayed until after the resolution of any resulting appeal. The Revolver Banks' position is that the 1292(b) Motion is without merit and should be denied and that discovery should not be stayed. The position of the plaintiffs in the Avenue CLO Action and the Aurelius Action is that the Court should not consider the question of 1292(b) certification until after the resolution of potential motions to dismiss in their actions.

2. Fontainebleau's Potential Inability To Secure Sufficient Financing To Conduct Discovery

Fontainebleau has requested that the following provision be included in any discovery schedule entered in this case: "Fontainebleau's agreement to the foregoing schedule is subject to its ability to secure sufficient financing to defray the costs of collecting, scanning, processing, reviewing and producing documents and ESI from plaintiffs and defendants, as well as the costs of preparing for and conducting depositions. Fontainebleau explicitly reserves the right to seek modification of this schedule, or as to the scope of discovery, in the event it is unable to secure such financing. The Revolver Banks reserve all rights in that event as well."

Fontainebleau insists upon this provision because, as a debtor in a federal bankruptcy proceeding, it has yet to secure sufficient financing to conduct the extensive discovery which is likely to occur in this case, and thus this provision is necessary in the event it cannot comply with any deadlines. Fontainebleau's position is that although the Court did not include this

requested provision in its November 10, 2009 Scheduling Order, the Court made no rulings or findings with respect to this issue.

The Revolver Banks' position is that the Court already rejected this request, which Fontainebleau previously made in the parties' September 11, 2009 Rule 16.1 Joint Submission in the Fontainebleau Action (D.E. # 64), and which the Court denied by not including the requested provision in its November 10, 2009 Scheduling Order. The Revolver Banks maintain their objection to the inclusion of this provision because Fontainebleau brought this action and Fontainebleau is obligated to provide discovery relevant to its claims and the Revolver Banks' defenses. The Revolver Banks argue that Fontainebleau's potential inability to conduct sufficient discovery should not allowed to prejudice the Revolver Banks' ability to develop evidence in support of their defenses.

The plaintiffs in the Avenue CLO Action and the Aurelius Action do not support any delay of discovery.

Dated: Miami, Florida
December 11, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Notice was served via the Court's CM/ECF system on all parties registered to receive electronic notice in this case on December 11, 2009.

/s/ Mark D. Bloom
MARK D. BLOOM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions
_____/

MDL ORDER NUMBER TWO[1] FOLLOWING
TELEPHONIC STATUS CONFERENCE; SETTING
ORAL ARGUMENT; ALLOWING SUBMISSION AND RESPONSE

THIS CAUSE is before the Court following a telephonic status conference. For the reasons stated of record, it is hereby

ORDERED AND ADJUDGED that:

1. Oral argument on Fontainebleau's Motion for Leave to Appeal and for Stay Pending Appeal [**DE 98** - filed in 09-21879 CIV-GOLD] is hereby set before the Honorable Alan S. Gold, at the United States District Court, Courtroom 11-1, Eleventh Floor, 400 North Miami Avenue, Miami, Florida, on **January 21, 2010 at 5:00 p.m.** Counsel may appear personally or via telephone. Counsel wishing to appear telephonically **shall call 1.866.208.0348 on the above date and time. Refer to Conference ID # 48580946. Please be prompt.**

2. The Nevada and New York Plaintiffs may file a brief Joint Submission regarding Fontainebleau's Motion [DE 98] no later than **5:00 p.m. on**

[1] Although not expressly labeled as such, MDL Order No. 1 can be found at [DE 6].

January 13, 2010.

3. Fontainebelau shall have until **5:00 p.m. on January 20, 2010** to file a brief response to the Joint Submission, if necessary.

DONE AND ORDERED in Chambers, at Miami, Florida, this 21st day of December, 2009.

HONORABLE ALAN S. GOLD
U.S. DISTRICT JUDGE

cc: U.S. Magistrate Judge Chris M. McAliley
All counsel of record in all three cases

NEVADA CASE # 09-1047

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CM/ECF PROCEDURES:

~~**PROPOSED ORDERS: Counsel shall**~~ **send a proposed order for all non-dispositive motions in WORDPERFECT FORMAT [or WORD] directly to** gold@flsd.uscourts.gov. Please refer to the case number in the subject line of the email and the docket entry number on the proposed order. The Complete CM/ECF Administrative Procedures are available on the Court's Website at www.flsd.uscourts.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-2106-MD-GOLD/MCALILEY
CASE NO.: 09-21879-CIV-GOLD/McALILEY [Related Case]
CASE NO.: 09-23835-CIV-GOLD/McALILEY [Related Case]

IN RE:

FONTAINBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL NO. 2106

This document relates to all actions
_____/

MDL ORDER NUMBER THREE
AMENDED ORDER SETTING PRETRIAL AND TRIAL DATES, REFERRING DISCOVERY MOTIONS, DIRECTING PARTIES TO MEDIATION, AND ESTABLISHING PRETRIAL DATES AND PROCEDURES

Based upon the parties' discussions with the Court at the telephonic status conference on December 18, 2009, dates for the pretrial conference, oral arguments, calendar call, and trial of this case are set forth below. Counsel shall carefully review and comply with the following requirements concerning the pretrial conference.

Pretrial Conference and Trial Date

1. The pretrial conference is set pursuant to Fed.R.Civ.P. 16 for **January 13, 2012 at 2:00 p.m**. Unless instructed otherwise by subsequent order, the trial and all other proceedings shall be conducted at **400 North Miami Avenue, Courtroom 11-1, Miami, Florida 33128**. Pursuant to S.D.Fla.L.R. 16.1(C), each party shall be represented at the pretrial conference and at the meeting required by S.D.Fla.L.R. 16.1(D) by the attorney who will conduct the trial, except for good cause shown.

2. Trial is set for the two-week calendar commencing **Monday, February 13, 2012.** Counsel for all parties shall appear at a Calendar Call on **Wednesday, February 8, 2012 at 1:30 p.m.**

Referral

3. Pursuant to 28 U.S.C. § 636 and the Magistrate Judge Rules of the Local Rules of the Southern District of Florida, all discovery pretrial motions in the above-captioned cause, except all motions for extension of time which could affect the dates set forth below, are hereby referred to United States Magistrate Judge McAliley to take all necessary and proper action as required by law. This referral shall expire on the date of the pretrial conference. Upon expiration, all matters pending before the United States Magistrate Judge shall remain before the Magistrate Judge for resolution, and all new matters shall be filed for consideration by the undersigned.

Mediation

4. The parties shall participate in mediation in accordance with the schedule below. The appearance of counsel and each party or representative of each party with full settlement authority is mandatory. If insurance is involved, an adjuster with full authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

5. All discussions made at the mediation conference shall be confidential and privileged.

6. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Rule 16.2(B)(6), or as agreed to in writing by the parties and mediator. The parties shall share equally the cost of mediation unless otherwise ordered by the Court. All payments shall be remitted to the mediator within 30 days of the date of the bill. The parties shall notify the mediator of cancellation two full business days in advance. Failure to do so will result in imposition of a fee for one hour.

7. If a full or partial settlement is reached, counsel shall promptly notify the Court of settlement within ten days of the mediation conference in accordance with Local Rule 16.2(F).

8. **Within five days** following mediation, the mediator shall file a Mediation Report indicating whether the parties were present and recommending sanctions for non-attendance. The Report shall also state whether the case settled (in full or in part), was continued with the parties' consent, or whether the mediator declared an impasse.

9. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

Pretrial Schedule and Pretrial Stipulation

10. All counsel shall comply with S.D.Fla.L.R. 16.1(D) regarding the preparation of the joint Pretrial Statement. **The court will not accept unilateral pretrial stipulations, and will strike *sua sponte*, any such submissions.** Should any of the parties fail to cooperate in the preparation of the joint stipulation, all other parties shall file a certification with the court stating the circumstances. The non-cooperating party may be held in contempt, and sanctions may be imposed, for failure to comply with the court's order.

Filing Procedures

11. For the convenience of the parties and the Court, the Clerk will maintain a master docket with a single docket number and master record under the style: "In re Fontainebleau Las Vegas Contract Litigation" Master Case No. 09-2106-MD-GOLD/MCALILEY. When a document is filed and docketed in the master case, it shall be deemed filed and docketed in each individual case to the extent applicable and will not ordinarily be separately docketed or physically filed in any individual cases. However, the caption may also contain a notation indicating whether the document relates to all cases or only to specified cases, as described below.

All Orders, papers, motions and other documents served or filed in this Consolidated Action shall bear the same caption as this Order. If the document(s) is generally applicable to all consolidated actions, the caption shall include the notation: "This Document Relates to All Actions," and the Clerk will file and docket the document(s) only in the master record. However, if a document is intended to apply only to a particular case, the caption shall include the notation "This Document Relates to [case number of the case(s) to which it applies]". The original of this Order shall be filed by the Clerk in each of the Fontainebleau actions pending in this Court and a copy thereof shall be filed in each subsequently filed or transferred action, which is related to and consolidated with this action for pretrial purposes. The Clerk of Court will maintain docket and case files under this caption."

Time Schedule and Requirements

12. The following time schedule shall govern unless modified by court order after a showing of compelling circumstances (e.g., delay in transfer of tag-along-action). Absent a court order, a motion to dismiss shall not stay discovery.

	DATE	**ACTION**
By	1-15-2010	Service of Amended Complaints in the Avenue CLO and Aurelius Actions.
By	1-22-2010	The parties shall exchange the information required by Fed.R.Civ.P. 26(a)(1).
By	1-29-2010	Initial Requests for Production and Interrogatories to be exchanged. [The parties have agreed that Interrogatories shall be limited to those seeking names of witnesses with knowledge of information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location, location and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, or information of a similar nature. Nothing herein shall preclude the parties from serving additional Interrogatories.] The parties may serve

		subpoenas on non-parties at this time.
By	2-18-2010	Service of Defendants' Answers to or motions under Fed.R.Civ.P. 12(b) regarding the Amended Complaints in the Avenue CLO and Aurelius Actions.
By	3-1-2010	Written responses to initial Requests for Production and Interrogatories to be served. Any related document productions to commence on a rolling basis.
By	3-22-2010	Service of Avenue CLO Action and/or Aurelius Action Plaintiffs Oppositions to any motions under Fed.R.Civ.P. 12(b).
By	4-5-2010	Service of Defendants' Replies to any Motions under Fed.R.Civ.P. 12(b).
ON	**5-7-2010 @ 3:15 p.m.**	**Oral argument on any Motions to Dismiss.**
By	5-13-2010	Document productions in response to initial Requests for Production to be completed.
By	7-1-2010	Commencement of fact depositions.
By	9-15-2010	All non-dispositive, non-discovery related pretrial motions (including motions pursuant to Fed. R. Civ. P. 14, 15, 18 through 22, and 42 motions) shall be filed. Any motion to amend or supplement the pleadings filed pursuant to Fed. R. Civ. P. 15(a) or 15(d) shall comport with S.D. Fla. L.R. 15.1 and shall be accompanied by the proposed amended or supplemental pleading and a proposed order as required. **When filing non-dispositive motions, the filing party must attach a proposed order to the motion well as emailing the proposed order to gold@flsd.uscourts.gov. Failure to provide the proposed order may result in denial of the motion without prejudice**. Please refer to the docket entry number on the proposed order. The Complete CM/ECF Administrative Procedures are available on the Court's Website at www.flsd.uscourts.gov.

By	9-30-2010	Plaintiff shall furnish opposing counsel with a written list containing the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses so listed shall be permitted to testify.
By	11-1-2010	Defendant shall furnish opposing counsel with a written list containing the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses so listed shall be permitted to testify.
By	1-31-2011	Final date to exchange written discovery demands, including Requests for Production, Requests for Admission and Interrogatories.
By	4-14-2011	Conclusion of fact discovery.
By	5-2-2011	The parties shall comply with S.D. Fla. L.R. 16.1(K) concerning the exchange of expert witness summaries and reports. This date shall supersede any other date in Local Rule 16.1(K).
By	6-1-2011	Rebuttal expert reports shall be filed.
By	7-15-2011	All expert discovery, including depositions, shall be completed.
By	7-29-2011	All dispositive pretrial motions, including motions to strike in whole or in part expert testimony, and memoranda of law must be filed. **If any party moves to strike an expert affidavit filed in support of a motion for summary judgment** [for reasons stated in *Daubert v. Merrill Dow Pharmaceuticals, Inc,* 509 U.S. 579, 125 L.Ed. 2d 469, 113 S.Ct. 2786 (1993) and *Kumho Tire Company, Ltd. v. Carmichael,* 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999)], **the motion to strike shall be filed with that party's responsive memorandum.** Please carefully review the instructions for filing motions for summary judgment.
By	8-30-2011	Opposition to any dispositive motions to be filed.
By	9-15-2011	Replies, if any, to dispositive motions to be filed.

By	12-13-2011	**Pretrial Stipulation and *Motions in Limine.*** The joint pretrial stipulation shall be filed pursuant to S.D. Fla. L.R. 16.1(E). In conjunction with the Joint Pretrial Stipulation, the parties shall file their motions in limine.
ON	**11-18-2011 @ 9:00 a.m.**	**Oral argument will be heard on any motions for summary judgment that may be filed.**

DONE and ORDERED in Chambers in Miami, Florida this 8th day of January, 2010.

THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

In re:
Fontainebleau Las Vegas Contract Litigation
_____/

This Document Relates to: All Actions

TERM LENDERS' OPPOSITION TO PLAINTIFF FONTAINEBLEAU'S MOTION TO CERTIFY UNDER 28 U.S.C. 1292(b) DENYING SUMMARY JUDGMENT

The Term Lenders[1] request that this Court deny, without prejudice, Fontainebleau's motion to certify for interlocutory appeal this Court's order denying partial summary judgment.

If the motion is granted at this time, before this Court has an opportunity to hear from the Term Lenders on the rulings to be appealed, the ultimate termination of this multidistrict litigation will not be materially advanced. All of the parties in this multidistrict litigation, including Fontainebleau, agreed that centralization is appropriate because the cases raise related and overlapping legal and factual issues. One of the key issues in all three related cases will be the proper interpretation of the Credit Agreement. To date, this Court has only heard the arguments of Fontainebleau and defendants. The Term Lenders have not been heard on any issues raised in Fontainebleau's motion for partial summary judgment including the proper interpretation of the phrase "fully drawn." The Term Lenders will raise new arguments with respect to these issues, and will explain to the Court why the positions of the defendants are in error.

An interlocutory appeal by Fontainebleau at this time will not proceed together with any potential later appeal of the same issues by either the Term Lenders or defendants addressing arguments not raised by Fontainebleau. If "permitting piecemeal appeals is bad policy," permitting piecemeal appeals of the same issue addressing different arguments is even worse policy. *See*

[1] The Term Lenders include the plaintiffs in the cases captioned *Avenue CLO Fund, Ltd., et al. v. Bank of America, et al.*, Case No. 09-1047-CIV-KJD (D. Nev.) and *ACP Master, LTD, et al. v. Bank of America, et al*, Case No. 09-cv-8064-LTS/THK (S.D.N.Y).

McFarlin v. Conesco Servs., LLC, 381 F.3d 1251, 1259 (11th Cir. 2004). The purpose of centralizing related cases in an MDL proceeding is to address common issues of law and fact in all cases in an organized manner allowing all interested parties to be heard. The purpose of an interlocutory appeal is to achieve judicial efficiency and advance the termination of the litigation. Both of these purposes would be frustrated if Fontainebleau appealed issues common to all three cases without all parties and new arguments being heard.

Accordingly, the motion should be denied, without prejudice to the right of any party to refile the motion after this Court has heard and adjudicated the arguments of the Term Lenders.

Respectfully submitted,

HENNIGAN BENNET & DORMAN, LLP By: s/ Kirk D. Dillman Kirk D. Dillman, Esq. J. Michael Hennigan, Esq. 865 S Figueroa Street, Suite 2900 Los Angeles, CA 90017 Telephone: (213) 694-1200 Facsimile: (213) 694-1234 -and- DIMOND KAPLAN & ROTHSTEIN, P.A. By: s/ David A. Rothstein David A. Rothstein, Esq. 2665 South Bayshore Drive Penthouse Two-B Miami, FL 33133 Telephone: (305) 374-1920 Facsimile: (305) 374-1961 Email: DRothstein@dkrpa.com *Attorneys for Plaintiffs* *AVENUE CLO FUND, LTD., ET AL.*	BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP By: s/ James B. Heaton James B. Heaton, III, Esq. Steven J. Nachtwey, Esq. 54 West Hubbard Street, Suite 300 Chicago, IL 60654 Telephone: (312) 494-4400 Facsimile: (312) 494-4440 -and- KLEINBERG, KAPLAN, WOLFF & COHEN, P.C. 551 Fifth Avenue, 18th Floor New York, New York 10176 Telephone: (212) 986-6000 Facsimile: (212) 986-8866 *Attorneys for Plaintiffs* *ACP MASTER, LTD., ET AL.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 09-MD-02106-CIV-GOLD/MCALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions
_____/

MDL ORDER NUMBER FOUR: ADMINISTRATIVELY CLOSING MEMBER CASES

THIS CAUSE is before the Court *sua sponte*. Having reviewed the record and being otherwise duly advised, it is hereby

ORDERED AND ADJUDGED that:

1. The Clerk is directed to Administratively Close the Following Member Cases:

   a. 09-CV-21879-GOLD; and

   b. 09-CV-23835-GOLD

2. The dockets in the above-referenced cases, as well as the Master Docket, will continue to be maintained in accordance with MDL Order Number Three [DE 10].

DONE AND ORDERED in Chambers, at Miami, Florida, this 13th day of January 2010.

THE HONORABLE ALAN S. GOLD
U.S. DISTRICT JUDGE

cc: U.S. Magistrate Judge Chris M. McAliley
All counsel of record in all three cases

NEVADA CASE # 09-1047
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S.D.N.Y. CASE # 09-8064

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CM/ECF PROCEDURES:

~~**PROPOSED ORDERS: Counsel shall**~~ **send a proposed order for all non-dispositive motions in WORDPERFECT FORMAT [or WORD] directly to** gold@flsd.uscourts.gov. Please refer to the case number in the subject line of the email and the docket entry number on the proposed order. The Complete CM/ECF Administrative Procedures are available on the Court's Website at www.flsd.uscourts.gov

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-2106-CIV-GOLD/McALILEY

IN RE:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION
_____/

MOTION FOR ORDER APPROVING
STIPULATION FOR SUBSTITUTION OF COUNSEL

MB FINANCIAL BANK, N.A. requests this Court for the entry of an order substituting the law firm of Astigarraga Davis Mullins & Grossman, P.A. as local counsel of record for MB FINANCIAL BANK, N.A. in this action, and relieving the law firm of FURR AND COHEN, P.A. of any further responsibility herein.

Respectfully submitted,

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By s/Robert C. Furr
Robert C. Furr
Florida Bar No. 210854
Alvin S. Goldstein
Florida Bar No. 993621

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By: s/ Gregory S. Grossman
Gregory S. Grossman
Florida Bar No. 896667

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2010, I filed the foregoing document with the Clerk of the Court who will generate Notices of Electronic Filing to all counsel of record or other persons authorized to receive Notice of Electronic Filing generated by CM/ECF.

s/ Gregory S. Grossman
Gregory S. Grossman

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-2106-CIV-GOLD/McALILEY

IN RE:

FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION
_____/

ORDER APPROVING
STIPULATION FOR SUBSTITUTION OF COUNSEL

This cause came on before the Court on MB FINANCIAL BANK, N.A. Motion for Order Approving Stipulation for Substitution of Counsel. The Court having reviewed the Motion and being otherwise advised in the premises, it is hereby ORDERED AND ADJUDGED that:

(1) The law firm of Astigarraga, Davis, Mullins, & Grossman is hereby substituted for FURR AND COHEN, P.A. as counsel for MB FINANCIAL BANK, N.A..

(2) FURR AND COHEN, P.A. is relieved of all further responsibility for the defense of this matter.

(3) All further papers in this matter shall be served upon the law firm of Astigarraga, Davis, Mullins & Grossman at 701 Brickell Avenue, 16th Floor, Miami, Florida 33131.

DONE AND ORDERED in the Southern District of Florida this _____ day of January, 2010.

_____
United States District Court Judge

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION **MDL No. 2106** AVENUE CLO FUND, LTD., et al., Plaintiffs, vs. BANK OF AMERICA, N.A., et al., Defendants.	Case No. 09-CV-01047-KJD-PAL

SECOND AMENDED COMPLAINT FOR BREACH OF CONTRACT, BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING, AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

This action is brought by the Plaintiffs, each of which is a lender under a June 6, 2007 Credit Agreement (the "Credit Agreement"), by and among, *inter alia*, Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (together, the "Borrower"), the lenders referred to therein, and Bank of America N.A, in various capacities (in all capacities, "BofA"), against Defendants Bank of America, N.A., Merrill Lynch Capital Corporation, J.P. Morgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, The Royal Bank of Scotland PLC, Sumitomo Mitsui Banking Corporation, Bank of Scotland, HSH Nordbank AG, MB Financial Bank, N.A., and Camulos Master Fund, L.P. ("Defendants"), in their capacities as lenders under the Credit Agreement, as well as Bank of America, NA, in its capacities as

Administrative Agent under the Credit Agreement and as Disbursement Agent under the related Master Disbursement Agreement.[1] Plaintiffs allege for their complaint as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 12 U.S.C. § 632 because defendants BofA, JPMorgan Chase Bank, N.A. and MB Financial Bank, N.A. are national banking associations organized under the laws of the United States and the action arises out of transactions involving international or foreign banking or other international or foreign financial operations, within the meaning of 12 U.S.C. § 632.

2. Venue in the United States District Court for the District of Nevada is proper because the Project is located in Nevada and many of the acts and transactions at issue occurred in Nevada.

PARTIES

Plaintiffs

3. Plaintiff Avenue CLO Fund, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

4. Plaintiff Avenue CLO II, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

5. Plaintiff Avenue CLO III, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

6. Plaintiff Avenue CLO IV, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

7. Plaintiff Avenue CLO V, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

[1] Capitalized terms not otherwise defined herein have the meaning used in the Credit Agreement or, if applicable, the Disbursement Agreement.

8. Plaintiff Avenue CLO VI, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

9. Plaintiff Brigade Leveraged Capital Structures Fund, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

10. Plaintiff Battalion CLO 2007-I Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

11. Plaintiff Canpartners Investments IV, LLC is a limited liability company formed under the laws of California.

12. Plaintiff Canyon Special Opportunities Master Fund (Cayman), Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

13. Plaintiff Canyon Capital CLO 2004 1 Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

14. Plaintiff Canyon Capital CLO 2006 1 Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

15. Plaintiff Canyon Capital CLO 2007 1 Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

16. Plaintiff Caspian Corporate Loan Fund, LLC is a limited liability company formed under the laws of Delaware.

17. Plaintiff Caspian Capital Partners, L.P. is a limited partnership formed under the laws of Delaware.

18. Plaintiff Caspian Select Credit Master Fund, Ltd. is a company with limited liability formed under the laws of the Cayman Islands.

19. Plaintiff Mariner Opportunities Fund, LP is a limited partnership formed under the laws of Delaware.

20. Plaintiff Mariner LDC is company with limited duration formed under the laws of the Cayman Islands.

21. Plaintiff Sands Point Funding Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

22. Plaintiff Copper River CLO Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

23. Plaintiff Kennecott Funding Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

24. Plaintiff NZC Opportunities (Funding) II Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

25. Plaintiff Green Lane CLO Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

26. Plaintiff 1888 Fund, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

27. Plaintiff Orpheus Funding LLC is a limited liability company formed under the laws of Delaware.

28. Plaintiff Orpheus Holdings LLC is a limited liability company formed under the laws of Delaware.

29. Plaintiff LFCQ LLC is a limited liability company formed under the laws of Delaware.

30. Plaintiff Aberdeen Loan Funding, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

31. Plaintiff Armstrong Loan Funding, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

32. Plaintiff Brentwood CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

33. Plaintiff Eastland CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

34. Plaintiff Emerald Orchard Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

35. Plaintiff Gleneagles CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

36. Plaintiff Grayson CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

37. Plaintiff Greenbriar CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

38. Plaintiff Highland Credit Opportunities CDO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

39. Plaintiff Highland Loan Funding V, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

40. Plaintiff Highland Offshore Partners, L.P. is a limited partnership formed under the laws of Bermuda.

41. Plaintiff Jasper CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

42. Plaintiff Liberty CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

43. Plaintiff Loan Funding IV LLC is a limited liability company formed under the laws of Delaware.

44. Plaintiff Loan Funding VII LLC is a limited liability company formed under the laws of Delaware.

45. Plaintiff Loan Star State Trust is a trust formed under the laws of the Cayman Islands.

46. Plaintiff Longhorn Credit Funding, LLC is a limited liability company formed under the laws of Delaware.

47. Plaintiff Red River CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

48. Plaintiff Rockwall CDO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

49. Plaintiff Rockwall CDO II, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

50. Plaintiff Southfork CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

51. Plaintiff Stratford CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

52. Plaintiff Westchester CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

53. Plaintiff ING Prime Rate Trust is a business trust formed under the laws of Massachusetts.

54. Plaintiff ING Senior Income Fund is a statutory trust formed under the laws of Delaware.

55. Plaintiff ING International (II) - Senior Bank Loans Euro is a SICAV (Société d'Investissement à Capital Variable) formed under the laws of Luxembourg.

56. Plaintiff ING Investment Management CLO I, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

57. Plaintiff ING Investment Management CLO II, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

58. Plaintiff ING Investment Management CLO III, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

59. Plaintiff ING Investment Management CLO IV, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

60. Plaintiff ING Investment Management CLO V, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

61. Plaintiff Carlyle High Yield Partners 2008-1, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

62. Plaintiff Carlyle High Yield Partners VI, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

63. Plaintiff Carlyle High Yield Partners VII, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

64. Plaintiff Carlyle High Yield Partners VIII, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

65. Plaintiff Carlyle High Yield Partners IX, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

66. Plaintiff Carlyle High Yield Partners X, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

67. Plaintiff Carlyle Loan Investment, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

68. Plaintiff Centurion CDO VI, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

69. Plaintiff Centurion CDO VII, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

70. Plaintiff Centurion CDO 8, Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

71. Plaintiff Centurion CDO 9, Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

72. Plaintiff Cent CDO 10 Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

73. Plaintiff Cent CDO XI Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

74. Plaintiff Cent CDO 12 Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

75. Plaintiff Cent CDO 14 Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

76. Plaintiff Cent CDO 15 Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

77. Plaintiff Venture II CDO 2002, Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

78. Plaintiff Venture III CDO is a company with limited liability incorporated under the laws of the Cayman Islands.

79. Plaintiff Venture IV CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

80. Plaintiff Venture V CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

81. Plaintiff Venture VI CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

82. Plaintiff Venture VII CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

83. Plaintiff Venture VIII CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

84. Plaintiff Venture IX CDO Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

85. Plaintiff Vista Leveraged Income Fund is a company with limited liability incorporated under the laws of the Cayman Islands.

86. Plaintiff Veer Cash Flow, CLO, Limited is a company with limited liability incorporated under the laws of the Cayman Islands.

87. Plaintiff Genesis CLO 2007-1 Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

88. Plaintiff ARES Enhanced Loan Investment Strategy III, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

89. Plaintiff Primus CLO I, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

90. Plaintiff Primus CLO II, Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands.

91. Plaintiff Cantor Fitzgerald Securities is a general partnership formed under the laws of New York.

92. Plaintiff Olympic CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

93. Plaintiff Shasta CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

94. Plaintiff Whitney CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

95. Plaintiff San Gabriel CLO I Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

96. Plaintiff Sierra CLO II Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

97. Plaintiff Rosedale CLO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands, BWI.

98. Plaintiff Rosedale CLO II Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands, BWI.

99. Plaintiff SPCP Group, LLC is a limited liability company formed under the laws of Delaware.

100. Plaintiff Stone Lion Portfolio L.P. is a limited partnership formed under the laws of the Cayman Islands.

101. Plaintiff Venor Capital Master Fund, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands.

Defendants

102. Defendant BofA is a nationally chartered bank with its main office in Charlotte, North Carolina. Under the Credit Agreement and other Loan Documents, BofA acted in several capacities, including as a Revolving Facility lender, as Issuing Lender, and as Swing Line Lender. In addition, BofA served as Administrative Agent to all of the Lenders under the Credit Agreement and as Disbursement Agent to all of the Lenders under the Disbursement Agreement. BofA agreed to fund $100 million under the Revolving Facility.

103. Defendant Merrill Lynch Capital Corporation is a Delaware corporation with a principal place of business in New York. Merrill Lynch Capital Corporation, which is now indirectly owned by BofA, agreed to fund $100 million under the Revolving Facility.

104. Defendant J.P. Morgan Chase Bank, N.A. is a nationally chartered bank with its headquarters in New York, New York. J.P. Morgan Chase Bank, N.A. agreed to fund $90 million under the Revolving Facility.

105. Defendant Barclays Bank PLC is a public limited company in the United Kingdom with its principal place of business in London, England. Barclays Bank PLC agreed to fund $100 million under the Revolving Facility.

106. Defendant Deutsche Bank Trust Company Americas is a New York State-chartered bank with its principal office in New York, New York. Deutsche Bank Trust Company Americas agreed to fund $80 million under the Revolving Facility.

107. Defendant The Royal Bank of Scotland PLC is a banking association organized under the laws of the United Kingdom with a branch in New York, New York. The Royal Bank of Scotland PLC agreed to fund $90 million under the Revolving Facility.

108. Defendant Sumitomo Mitsui Banking Corporation is a Japanese corporation with offices in New York, New York. Sumitomo Mitsui Banking Corporation agreed to fund $90 million under the Revolving Facility.

109. Defendant Bank of Scotland is chartered under the laws of Scotland, with its principal place of business in Edinburgh, Scotland. Bank of Scotland agreed to fund $72.5 million under the Revolving Facility.

110. Defendant HSH Nordbank AG is a German banking corporation with a branch in New York, New York. HSH Nordbank AG agreed to fund $40 million under the Revolving Facility.

111. Defendant MB Financial Bank, N.A. is a nationally chartered bank with its main office in Chicago, Illinois. MB Financial Bank, N.A. agreed to fund $7.5 million under the Revolving Facility.

112. Defendant Camulos Master Fund, L.P. is a Delaware corporation with its principal place of business in Stamford, Connecticut. Camulos Master Fund LP agreed to fund $20 million under the Revolving Facility.

FACTUAL BACKGROUND

THE FONTAINEBLEAU PROJECT

113. Between March and June 2007, Plaintiffs or their predecessors were approached by a syndicate of investment bankers, led by Banc of America Securities and including other affiliates of the Defendants, to participate in a $1.85 billion bank financing (the "Credit Agreement Facility") for the development and construction of the Fontainebleau Resort and Casino in Las Vegas, Nevada (the "Project"). The Project is designed to be a destination casino-resort on the north end of the Las Vegas Strip, situated on approximately 24.4 acres. The Project consists of a 63-story glass skyscraper featuring over 3,800 guest rooms, suites and

condominium units; a 100-foot high three-level podium complex (the "Podium") housing casino/gaming areas, restaurants and bars, a spa and salon, a live entertainment theater and rooftop pools; a parking garage with space for more than 6,000 vehicles; and a 353,000 square-foot convention center. The Project is also designed to feature retail space (the "Retail Space") of approximately 286,500 square-feet, including retail shops, restaurants, and a nightclub. The Retail Space is being developed by indirect subsidiaries of the Borrower's parent company (the "Retail Borrowers").

114. The total Project costs were to be funded primarily from cash provided by the developers of the Project, the proceeds of the $1.85 billion bank financing, the proceeds of a $675 million 2nd Mortgage Note offering (the "Second Lien Facility"), and proceeds of a $315 million facility (the "Retail Facility") provided to the Retail Borrowers to finance construction of the retail portion of the Project (including $83 million in certain "Shared Costs" for construction improvements to the Podium which was to be owned by Borrower following completion of construction).

THE CREDIT AGREEMENT AND DISBURSEMENT AGREEMENT

115. On June 6, 2007, the Credit Agreement was entered into among numerous lenders, including Plaintiffs and Defendants, and the Borrower. BofA and its counsel served as the principal architects of the Credit Agreement and related Loan Documents, including the Disbursement Agreement. The Credit Agreement included commitments for three kinds of loans: (a) a $700 million initial term loan facility (the "Initial Term Loan Facility"); (b) a $350 million delay draw term facility (the "Delay Draw Facility," and together with the Initial Term Loan Facility, the "Term Loan Facility"); and $800 million revolving loan facility (the "Revolving Facility"). The Initial Term Loan Facility was funded upon the closing of the Credit Agreement in June 2007. The related Second Lien Facility and Retail Facility closed at the same time.

116. Obligations outstanding under the Term Loan Facility and the Revolving Facility are equally and ratably collateralized by mortgages on the real property comprising the Project

and by security interests on all personal property of the Borrower. The personal property security interests as well as statutory and/or common law rights of setoff also extend to deposit accounts, including the Bank Proceeds Account and the Bank Funding Account established pursuant to the terms of a Master Disbursement Agreement (the "Disbursement Agreement"). The Disbursement Agreement governs disbursement of all funds under the Credit Agreement, the Second Lien Facility and the Retail Facility.

117. Plaintiffs are each lenders under the Term Loan Facility. Lenders under the Term Loan Facility are referred to herein as "Term Lenders." Defendants, including BofA, are each lenders under the Revolving Facility. Lenders under the Revolving Facility are referred to herein as "Revolving Lenders." Although certain of the Revolving Lenders are also Term Lenders, BofA is not a Term Lender. In addition to its capacity as a Revolving Lender, BofA also served as Administrative Agent to all of the Lenders under the Credit Agreement, and as Disbursement Agent to all of the Lenders under the Disbursement Agreement.

118. Each of the lenders who agreed to providing financing under the Credit Agreement relied upon the obligation of the other lenders to comply with their funding obligations under the Credit Agreement. The loans available under the Credit Agreement were the principal source of construction financing for the Project and, along with a completion guaranty and the Retail Facility, were intended to be virtually the only source of construction financing remaining after junior sources (equity and second mortgage bonds) were utilized. Because all lenders would suffer if the amount of financing available for construction proved to be insufficient to complete the Project (and, as a result, their collateral value would be destroyed), the Credit Agreement requires that, in the absence of a Stop Funding Notice (described below) or the termination of a Facility by the Required Lenders following an Event of Default, each Lender is required to continue to make Loans into the Bank Proceeds Account.

119. Consistent with that agreement among the Lenders, the Credit Agreement and other Loan Documents create a two-step mechanism for the Borrower to obtain loan proceeds under the Term Loan Facility and the Revolving Facility prior to the Opening Date of the

Project. Under the first step, the Borrowers must submit to the Administrative Agent a notice of borrowing (the "Notice of Borrowing") specifying the requested loans and designated borrowing date. The Credit Agreement requires that the Administrative Agent promptly notify each lender of a Notice of Borrowing. Once notified, each lender is contractually required to make its pro-rata share of the requested loans available to the Administrative Agent prior to 10:00 AM on the designated borrowing date, subject only to identified conditions precedent. Although Revolving Loans made after construction is completed (referred to in the Credit Agreement as "Direct Loans") are expressly subject to conditions precedent in Section 5.3 of the Credit Agreement (including the requirement that each representation and warranty under the Loan Documents be true and correct and the absence of a Default or Event of Default), Revolving Loans made during construction (referred to as "Disbursement Agreement Loans") and Delay Draw Term Loans are expressly conditioned "**only**" upon the conditions precedent in Section 5.2 of the Credit Agreement (which, unlike Section 5.3, does not include the requirement that each representation and warranty under the Loan Documents be true and correct, nor the absence of a Default or Event of Default). The proceeds of Delay Draw Term Loans and Revolving Loans are, under the first step, deposited into the Bank Proceeds Account.[2]

120. Under the second step, in order to access those funds from the Bank Proceeds Account to pay for the cost of the Project, the Borrowers must submit an advance request (typically monthly) pursuant to the Disbursement Agreement (the "Advance Request"). The Disbursement Agreement establishes: (a) the conditions precedent, which are set forth in Section 3.3 of the Disbursement Agreement, to be satisfied prior to approval of the Advance Request by the Disbursement Agent; (b) the relative sequencing of disbursements from the proceeds of

[2] With respect to the $700 million Initial Term Facility, the funds were deposited into the Bank Proceeds Account on the Closing Date (June 6, 2007), and thus, were made subject to different conditions precedent that those applicable to the Delay Draw Term Loans and Revolving Term Loans.

various facilities and debt instruments; and (c) the obligations of the various agents to make disbursements to the Borrowers of loan proceeds from the Bank Proceeds Account.

121. The Term Lenders are intended third-party beneficiaries of the Disbursement Agreement, which, in pertinent part, governs the disbursement of the funds loaned by the Term Lenders. The Disbursement Agreement expressly provides that BofA is granted security interests in the Bank Proceeds Account, for the benefit of the lenders. (Disbursement Agreement, § 2.3). The Disbursement Agreement states that the provisions of Article 9 (which governs the duties and obligations of BofA as Disbursement Agent) are for the benefit of the Lenders (which includes the Plaintiffs), and that BofA is responsible and liable to the Term Lenders as a consequence of its performance under the Disbursement Agreement. (Disbursement Agreement, § 9.10).

122. As Disbursement Agent and Administrative Agent, BofA assumed responsibility for the proper administration of the construction loans and disbursement of funds to be used by the Borrower to construct the Project. BofA agreed to exercise commercially reasonable efforts and utilize commercially prudent practices in the performance of its duties. Disbursement Agreement, § 9.1. BofA's duties included ensuring that funds were disbursed to the Bank Funding Account only if all of the conditions precedent to disbursement of funds under Section 3 of the Disbursement Agreement were satisfied, including that, as of the Advance Date: (a) each representation and warranty of each Project Entity in Article 4 was true and correct as if made on such date; (b) there was no Default or Event of Default under any of the Financing Agreements; (c) the In Balance Test was satisfied; (d) there had been no development or event since the Closing Date that could reasonably be expected to have a Material Adverse Effect on the Project; and (e) the Retail Agent and Retail Lenders under the Retail Facility had made all Advances required of them under the Advance Request. (Disbursement Agreement, §§ 3.3.2, 3.3.3, 3.3.8, 3.3.11, 3.3.23).

123. If all of the applicable conditions precedent for the advance of funds were satisfied, the Disbursement Agreement provided for the Disbursement Agent and the Borrower

to execute an Advance Confirmation Notice and, with respect to the use of funds in the Bank Proceeds Account advanced by the Term Lenders, to deliver the notice to BofA as Administrative Agent. Upon receipt of such notice, BofA would make the advances contemplated under the Advance Confirmation Notice. (Disbursement Agreement, § 2.4.6).

124. If not all of the conditions precedent to an Advance were satisfied, or if the Administrative Agent notified the Disbursement Agent that a Default or Event of Default had occurred, then the Disbursement Agent was required to provide notice (a "Stop Funding Notice") to the Borrowers and each Funding Agent, including the Administrative Agent. (Disbursement Agreement, § 2.5.1). If a Stop Funding Notice were issued, no disbursements could be made, and the funds would remain safely in the Bank Proceeds Account until all of the conditions precedent were satisfied, including the absence of any Default or Event of Default. In addition, the lenders have no obligation to fund until the circumstances associated with the Stop Funding Notice have been resolved. (Credit Agreement § 2.4(e)).

125. Under Section 9.2.3 of the Disbursement Agreement, "if the Disbursement Agent is notified that an Event of Default or a Default has occurred and is continuing, the Disbursement Agent shall promptly and in any event within five Business Days provide notice to each of the Funding Agents of the same and otherwise shall exercise such of the rights and powers vested in it by this Agreement and the documents constituting or executed in connection with this Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the reasonable administration of its own affairs." As noted above, among the powers and duties vested in BofA under the Disbursement Agreement upon receiving notice of a Default or Event of Default was the power and duty to issue a Stop Funding Notice.

LEHMAN'S FAILURE TO FUND UNDER THE RETAIL FACILITY

126. As evidenced by the terms of the Disbursement Agreement, the three "Financing Agreements" covered by that agreement – the Credit Agreement, the Second Mortgage Indenture, and the Retail Facility Agreement – are closely interrelated, and the proceeds

available under each facility were integral to the construction, completion and ultimate success of the Project.

127. As a result of the syndication of the Retail Facility, Lehman Brothers Holdings, Inc. ("Lehman"), which served as Retail Agent, was the largest Retail Lender, responsible for $215 million, or 68.25%, of the Retail Facility. As of the Closing Date, $125.4 million of the Retail Facility was advanced, leaving $189.6 million to be advanced. Much of that sum was earmarked to pay Shared Costs to complete the Podium and to complete the Retail component of the Project. Thus, the successful completion of the overall Project depended heavily on the proceeds to be made available pursuant to Lehman's commitment under the Retail Facility.

128. In September 2008, Lehman filed for bankruptcy protection. According to a proof of claim filed by the Retail Borrower in Lehman's bankruptcy case, beginning in September 2008 and on four occasions thereafter, Lehman failed to honor "its obligation to fund a total of $14,259,409.74 under the Retail Facility," and thereby defaulted in its lending obligations under the Retail Facility Agreement (the "Lehman Defaults"). Those defaults prevented satisfaction of numerous conditions precedent to the approval of Advance Requests, including the following:

- Section 3.3.23 of the Disbursement Agreement requires that "[i]n the case of each Advance from the Bank Proceeds Account made concurrently with or after Exhaustion of the Second Mortgage Proceeds Account, the Retail Agent and the Retail Lenders shall, on the date specified in the relevant Advance Request, make any Advances required of them pursuant to that Advance Request."
    - Lehman, as Retail Agent and as a Retail Lender, did not make the Advances required of it pursuant to at least five Advance Requests between September 2008 and March 2009.
- Section 3.3.3 of the Disbursement Agreement provides that "[n]o Default or Event of Default shall have occurred and be continuing." A "Default" or "Event of Default" under the Credit Agreement constitutes a "Default" or "Event of

Default" under the Disbursement Agreement. (Disbursement Agreement, Ex. A). Under Section 8(j) of the Credit Agreement, the breach by "any Person" of a "Material Agreement" constitutes an Event of Default (and, prior to the expiration of any notice or other grace period, a Default) if such breach could reasonably be expected to result in a Material Adverse Effect. Schedule 4.24 of the Credit Agreement lists, as Material Agreements, "[t]he 'Financing Agreements' as defined in the Disbursement Agreement." Credit Agreement, Schedule 4.24. That definition of "Financing Agreements" includes the "Facility Agreements," which in turn includes the "Retail Facility Agreement." As stated above, the failure of the Project Entities to receive material amounts of funding and the resulting uncertainty over receiving the balance of Lehman's commitment threatened completion of the Project.

    - Accordingly, Lehman's breach of the Retail Facility was a Default, based upon Section 8(j) of the Credit Agreement.

- Section 3.3.2 requires that each representation and warranty by each Project Entity in Article 4 be true and correct as if made on such date. One such representation is that "[t]here is no default or event of default under any of the Financing Agreements." (Disbursement Agreement, at § 4.9.1).

    - That representation was not true and correct when made on or after September 2008, based upon the Lehman Defaults under the Retail Facility (one of the Financing Agreements).

- Section 3.3.11 requires that, prior to any disbursement, there has been no change in the economics or feasibility of constructing and/or operating the Project, or in the financing condition, business or property of the Borrowers, any of which could reasonably be expected to have a Material Adverse Effect.

    - Lehman's bankruptcy filing, and the uncertainty that Lehman would fulfill its loan commitment or that any other lender would assume Lehman's

commitment under the Retail Facility, threatened the successful completion of the Project and thus could reasonably be expected to have a Material Adverse Effect.

129. BofA, as Disbursement Agent, received notice of the Lehman Defaults from one or more of the Term Lenders. In September and October 2008, at least one of the Term Lenders wrote to BofA and expressed the position that Lehman's failure to comply with its funding obligations under the Retail Facility meant that certain of the conditions precedent to disbursement of funds under Section 3.3 of the Disbursement Agreement were not satisfied. In response, BofA refused to do anything, instead asserting that its function as Disbursement Agent was purely administrative in nature.

130. BofA refused to address the Lehman Defaults in large part because it wished to preserve its ongoing business relationship with the Borrower and its principal indirect owners, including Jeffrey Soffer. For example, BofA was the agent and a lender under a loan facility used to renovate the Fontainebleau Hotel in Miami, which was indirectly owned by the Borrower's indirect parent. BofA also made loans to Turnberry Associates (of which Soffer is a principal) or its affiliates. The close relationship between BofA on the one hand, and the Borrower and related parties on the other, was further evidenced by the fact that the Borrower's chief financial officer, prior to taking that position, worked for eight years at Banc of America Securities (which served as an co-lead arranger and joint underwriter of the Credit Agreement).

131. BofA's refusal to address the Lehman Defaults continued even after Moodys Investment Service announced on November 6, 2008 that it had downgraded the Credit Agreement Facility to B3 from B1. In that announcement, Moodys expressed its opinion that the outlook was "negative" in recognition of the challenges faced by the Borrowers' parent in resolving the potential funding shortfall related to the Lehman Default.

132. In wrongful and willful derogation of its duties and responsibilities as Disbursement Agent and Administrative Agent, BofA approved Advance Requests and issued Advance Confirmation Notices after, and despite notice of, the Lehman Defaults. Likewise,

BofA, as Administrative Agent, made Advances to the Borrowers pursuant to the Advance Requests. In total, those Advances (excluding debt service paid to the Lenders) exceeded $680 million, the last made on or about March 25, 2009 (the "March 25 Advance"). Each approval and/or Advance by BofA following the date it received notice of the Lehman Defaults was improper and constituted bad faith, gross negligence and/or willful misconduct on the part of BofA.

DEFAULT BY FIRST NATIONAL BANK

OF NEVADA UNDER CREDIT AGREEMENT

133. On July 25, 2008, First National Bank of Nevada, was closed by the Office of the Comptroller of the Currency. The Federal Deposit Insurance Company ("FDIC") subsequently was appointed as receiver. First National Bank of Nevada had made a commitment of $1,666,666 under the Term Loan Facility and a commitment of $10,000,000 under the Revolving Facility. According to the Borrower, FDIC has repudiated the commitments of First National Bank of Nevada under the Credit Agreement. As a result, beginning in January 2009, the Borrower's calculation of Available Funds under the In Balance Test was therefore reduced by the amount of the total commitment by First National Bank of Nevada ($11,666,666).

134. The FDIC's repudiation of First National Bank of Nevada's commitment constituted, as a matter of law, a breach of that bank's obligation under the Credit Agreement. Such a breach by a party to a Material Agreement (which the Credit Agreement was) was a Default, based upon Section 8(j) of the Credit Agreement. It also prevented the Borrower from satisfying Section 3.3.2 of the Disbursement Agreement, which conditioned any disbursement upon the truth of the Borrower's representations and warranties under Article 4, in particular the representation and warranty pursuant to Section 4.9.1 that there existed no defaults or events of default under any of the Financing Documents.

135. Notwithstanding the fact that the conditions precedent for disbursement under Section 3.3 of the Disbursement Agreement by virtue of the Default resulting from the FDIC's repudiation of the Credit Agreement were not satisfied, BofA wrongfully and willfully continued

to issue Advance Confirmation Notices, and failed to issue a Stop Funding Notice. Instead, the amounts requested by the Borrower continued to be disbursed by BofA.

BofA'S CHANGE OF APPROACH AS DISBURSEMENT AGENT

136. As a result of BofA's acquisition of Merrill Lynch that closed in December 2008, BofA effectively (through its indirect ownership of Merrill Lynch) doubled its level of commitment as a Revolving Lender, and became responsible for $200 million – or 25% – of the total original Revolving Loan commitment.

137. Prior to February 2009, the Borrowers did not request any advances under the Revolving Facility (other than for letters of credit), and instead used proceeds of the Initial Term Loan Facility, the Second Lien Facility and other proceeds to pay Project Costs. As explained above, during that period of time, BofA willfully and wrongfully disregarded its obligations as Disbursement Agent and Administrative Agent, taking the position that its role was purely administrative in nature. That passive approach changed dramatically after February 13, 2009, when the Borrower submitted an Advance Request that included the first request for an Advance under the Revolving Facility, in the amount of $68 million.

138. As a Revolving Lender, BofA was required to finance a portion of that Advance Request, and thus for the first time faced the prospect of sharing loan exposure with the Term Lenders if the Project failed. In response to the Advance Request in February 2009, BofA wrote a detailed letter to the Borrower on Friday, February 20, 2009. BofA began the letter by insisting upon "strict compliance" with the deadline of the 11th day of the month to submit Advance Requests established under Section 2.4.1 of the Disbursement Agreement, despite the fact that three of the previous four Advance Requests, each of which had been accepted, were submitted late, including as recently as October 16, 2008 and November 17, 2008. Commenting on the submission of the Advance Request "at a time of continued deterioration of both the national economy and the Las Vegas marketplace," BofA also raised numerous questions. Among those questions was a request to "comment on the status of the Retail Facility, and the commitments of the Retail Lenders to fund under the Retail Facility, in particular, whether you anticipate that

Lehman Brothers Holdings, Inc. will fund its share of requested loans, and whether the other Lenders under the Retail Facility intend to cover any shortfalls." With the Borrower insisting upon disbursement of funds no later than February 25, 2009, BofA demanded that the Borrower supply detailed written responses to the questions by no later than Monday, February 23, 2009 – the very next business day.

139. On February 23, 2009, the Borrower sent a response to BofA. In that letter, the Borrower sidestepped BofA's request for comment on whether it anticipated that Lehman would fund its share of the Retail Facility, or on whether the other Retail Lenders intended to cover any shortfalls. But the Borrower did not (nor could it) deny that Lehman was in default of its obligations.

140. Notwithstanding the unanswered questions, and the fact that numerous conditions to approval of the Advance Request were not satisfied, BofA did not issue a Stop Funding Notice. Instead, it approved the Advance Request and issued an Advance Confirmation Notice. The amounts requested by the Borrower accordingly were disbursed.

THE MARCH 2 AND MARCH 3 NOTICES OF BORROWING

141. On March 2, 2009, the Borrowers issued a notice of borrowing to borrow the entire amount of $350 million available under the Delay Draw Facility and to borrow $670 million available under the Revolving Facility (the "March 2 Notice"). The next day, the Borrowers issued another notice of borrowing to correct a "scrivener's error" made in calculating the amount sought under the Revolving Facility (the "March 3 Notice"), reducing the requested amount to approximately $656 million. Both notices caused the Delay Draw Facility to be fully drawn.

142. As described above, the lenders under the Credit Agreement expressly agreed among themselves and with the Borrower that the Revolving Loans (those that were Disbursement Agreement Loans) and Delay Draw Loans are not, at the time of the borrowing request, conditioned on the absence of any Defaults or Events of Default (as that term is defined in the Credit Agreement), nor conditioned on the truth and correctness of the representations and

warranties in the Loan Documents. Rather, the Delay Draw Facility lenders and the Revolving Facility lenders could refuse to fund their obligations only if their commitments were validly terminated by the Required Lenders of a loan facility in accordance with section 8 of the Credit Agreement following an Event of Default, or pursuant to Section 2.4 of the Credit Agreement, if BofA as Disbursement Agent issued a Stop Funding Notice to the Administrative Agent.

143. As of March 2 and March 3, the Revolving Lenders had not terminated their commitment, and BofA had not issued a Stop Funding Notice. Accordingly, because the Delay Draw Facility was fully drawn, the Revolving Lenders were obligated to fund their commitment. Although BofA submitted the March 2 Notice and the March 3 Notice to the Lenders, it stated that the notices did not comply with the terms of the Credit Agreement. BofA advised the lenders that an *ad hoc* steering committee formed by BofA supported BofA's position.

144. In its correspondence to the Borrowers, BofA took the position that the March 2 Notice and the March 3 Notice did not comply with the Credit Agreement because they contained simultaneous requests for borrowing under both the Delay Draw Facility and the Revolving Facility. A simultaneous request for loans under the two facilities, however, is not prohibited under and is consistent with the Credit Agreement.

145. The pretext for BofA's position was Section 2.1(c)(iii) of the Credit Agreement, which provides that no more than $150 million of Revolving Loans can be outstanding unless the Delay Draw Facility has been "fully drawn." BofA asserted that "fully drawn" meant "fully funded" rather than "fully requested." According to BofA, borrowing under the Revolving Facility is limited to $150 million unless and until each of the Term Lenders fully funded its commitment under the Delay Draw Facility.

146. Significantly, the interpretation of Section 2.1(c)(iii) put forward by BofA in early March 2009 was completely at odds with BofA's historical approval of each prior Advance Request. As noted above, a condition precedent to BofA's approval of any Advance Request is the satisfaction of the "In Balance Test," a critical calculation that demonstrates whether the remaining available financing is sufficient to cover the remaining anticipated costs required to

complete the Project. The In Balance Test is satisfied when "Available Funds" exceed "Required Costs." (Disbursement Agreement, Ex. A). One component of "Available Funds" is "Bank Revolving Availability," defined to mean "***as of each date of determination***, the aggregate principal amount ***available to be drawn on that date*** under the Bank Revolving Facility." (Disbursement Agreement, Ex. A) (emphasis added).

147. Each of the prior Advance Requests approved by BofA was supported by an In Balance Report that included "Bank Revolving Availability" equal to the full amount of the Revolving Facility – $800 million (reduced to $790 million in January 2009 after First National Bank of Nevada went into receivership) – despite the fact that, at such time, the Delay Draw Facility was not fully funded. Had the full amount of the Revolving Facility not been included in each of the prior In Balance Report calculations, the resulting calculations would have demonstrated that the Project was at all times enormously out of balance. As a result, BofA would have been prevented from making any of the prior Advance Requests, and the Project never could have been constructed.

148. In order to allow the full amount of the Revolving Facility to be included in the In Balance calculation, however, BofA had to conclude that the entire Revolving Facility was "available to be drawn on th[e] date" of the In Balance Test determination. BofA could not reach this conclusion unless it interpreted "drawn" to mean "requested." "Drawn" could not mean "funded" because, by virtue of the fact that the Borrower had never previously requested the full amount of the Revolving Facility (an obvious condition precedent to its funding), that amount was never available to be funded as of the date of any Advance Request. On the other hand, because the Revolving Facility at all times remained unfunded, the entire amount was always available to be requested. Thus, the term "drawn," as used in the definition of Bank Revolving Availability, and as applied by BofA when it approved all prior Advance Requests, can only mean "requested."

149. Similarly, only if BofA understood the term "drawn," as used under Section 2.1(c)(iii) in referring to the Delay Draw Facility, to mean "requested" rather than "funded,"

would it have been justified in concluding (as it repeatedly did) that the full amount of the Revolving Facility was "available to be drawn" as of the date of each Advance Request. If BofA understood "drawn" as used in Section 2.1(c)(iii) to mean "funded" rather than "requested," then the Bank Revolving Availability – the amount "available to be drawn on th[e] date" of each In Balance Test – could not have exceeded $150 million unless and until the Delay Draw Loans were fully funded. Until that occurred (which it never did), the In Balance Test would never be satisfied, and there would never be disbursements to fund construction of the Project. That was not the intent of the parties who drafted the Credit Agreement and other Loan Documents.

150. Notwithstanding the fact that satisfaction of the In Balance Test is a condition precedent to any Advance (past, present or future) under the Disbursement Agreement, BofA did not issue a Stop Funding Notice on March 3 or at any time thereafter. Under BofA's new, after-the-fact position that "drawn" means "funded," however, the Borrower had never satisfied the In Balance Test and all prior disbursements were improper. BofA was therefore obligated to (but did not) issue a Stop Funding Notice.

151. Faced with BofA's refusal to process the March 2 Notice and the March 3 Notice, the Borrower issued a revised Borrowing Notice on March 9, 2009, directed solely to the Delay Draw Facility lenders for the full amount of their $350 million commitment (a figure that included the $1,666,666 portion committed by First National Bank of Nevada). That Borrowing Notice was attached to a letter from the Borrower to BofA in which the Borrower asserted that the Lenders were, by their actions or inactions in response to the March 2 Notice and March 3 Notice, in default of the Loan Documents. The Borrower also reiterated its concern that BofA was acting in its own self-interest and against the interest of the Borrower and several of the other lenders.

152. Under section 2.1(b)(iii) of the Credit Agreement, any proceeds of the Delay Draw Facility must be used first to repay any "then outstanding" Revolving Loans. At the time of the March 9 Borrowing Notice, $68 million had been advanced by the Revolving Lenders in February 2009. Thus, as a Revolving Lender, BofA stood to benefit by failing to issue a Stop

Funding Notice prior to March 9, 2009, because such notice would have suspended any Delay Draw Loans otherwise to be used to repay BofA's 25% share of the $68 million of then "outstanding" Revolving Loans.

153. Acting at all times in bad faith and with gross negligence and willful misconduct, BofA processed the March 9 Notice and sent it to all Delay Draw Facility lenders. BofA advised the Lenders that the revised Borrowing Notice complied with the Credit Agreement and that the Delay Draw Lenders were required to fund. In the absence of any Stop Funding Notice that would have suspended their obligation to fund, the Delay Draw Term Lenders could not rely on the failure to fund by the Revolving Lenders, or by any individual Delay Draw Term Lenders or upon the Lehman default. That is because, under Section 2.23(g) of the Credit Agreement, "the obligations of the Lenders to make Term Loans and Revolving Loans . . . are several and not joint. The failure of any Lender to make any Loan . . . shall not relieve any other Lender of its corresponding obligation to do so . . . ." Thus, the Delay Draw Term Lenders were left with no choice but to fund, or else face a claim for breach of contract.

154. Accordingly, on or about March 10, 2009 or thereafter, Plaintiffs complied with their Delay Draw Facility commitments and honored their obligations to fund the Delay Draw Facility. BofA used a portion of those funds to immediately repay itself and the other Revolving Lenders the then-outstanding balance of the $68 million under the Revolving Facility, thereby unjustly enriching BofA and the other Defendants, to the detriment of the Plaintiffs.

155. On March 16, 2009, the Borrower sent another letter to BofA in which it stated its continued belief that the lenders who had not funded were in default of their funding obligations. Shortly thereafter, on March 19, 2009, certain Term Lenders wrote to BofA to demand that the Revolving Lenders, including BofA, honor the March 2 and 3 Notice of Borrowing. They explained why BofA's newly-minted interpretation of "fully drawn" was wrong. They also noted the conflict of interest that BofA had as a result of its Revolving Commitment exposure. The Term Lenders demanded that BofA either correct its conduct or resign. At that time, BofA refused to do either.

THE MARCH 25 ADVANCE

156. On March 11, 2009, the Borrowers sent BofA the March 25 Advance Request, requesting disbursement in the amount of $138 million (of which about $4 million was for debt service under the Credit Agreement). In response, BofA sent correspondence in which it once again reserved the right to demand "strict conformity" with the Disbursement Agreement, and expressed to the Borrower the need to conclude "our review of the substance of those documents." Because BofA used the proceeds of the Delay Draw Loans to repay to itself and the other Revolving Lenders the full amount of the then-outstanding $68 million in Revolving Loans, none of the funds to be disbursed under the March 25 Advance Request included funds to be loaned by the Revolving Lenders. Without its own money on the line, BofA reverted to the laissez-faire approach that it had employed before February 2009, prior to the Borrowers' first request for Revolving Loans.

157. As of no later than March 23, 2009, BofA was on notice, from the Borrower and otherwise, that certain of the Delay Draw Lenders had not funded their portion of the commitment under the Delay Draw Facility in response to the March 9 Notice. Section 1.1 of the Credit Agreement defines a "Lender Default" as "the failure or refusal (which has not been retracted in writing) of a Lender to make available (i) its portion of any Loan required to be made by such Lender hereunder . . . ." As of March 25, the amount of the unfunded commitment totaled about $23.3 million (of which $1.67 million was attributable to First National Bank of Nevada).[3] That unfunded commitment precluded BofA from disbursing any funds pursuant to the March 25 Advance Request for a number of independent reasons.

158. First, because the Credit Agreement, along with the Retail Facility, is one of the Material Agreements on Schedule 4.24, the failure of any Delay Draw Lender to fund its commitment was a Default by virtue of Section 8(j) of the Credit Agreement. (The same was, of

[3] A portion of that amount was subsequently funded, thereby curing any breach with respect to those Term Lenders.

course, true of the failure of the Revolving Lenders to fund on March 3). That meant that at least one of the conditions precedent for disbursement of funds, Section 3.3.3 of the Disbursement Agreement, clearly had not been satisfied.

159. Second, the Borrower could not, based on the failure as of March 25 to fund the $23,333,333 in Term Loans, represent and warrant to be true and correct that no default existed under the Financing Agreements (here, the Credit Agreement), as required under Section 4.9.1 of the Disbursement Agreement. (The same is true based on the failure of the Revolving Lenders to fund). Thus, the Borrower could not satisfy the conditions under Section 3.3.2 of the Disbursement Agreement.

160. Third, under the new interpretation of Section 2.1(c)(iii) of the Credit Agreement adopted by BofA and the other Revolving Lenders, the Revolving Lenders claimed to be relieved of any obligation to fund more than $150 million of their $800 million commitment until the Delay Draw Facility was fully "funded." The position of BofA and the other Revolving Lenders that no more than $150 million of the Revolving Facility was available to fund the Project if any Delay Draw Lender failed to fund its commitment, and the Revolving Lenders' ongoing refusal to fund, clearly constituted a change in the economics or feasibility of constructing the Project that could reasonably be expected to have a Material Adverse Effect, thereby precluding satisfaction of Section 3.3.11 of the Credit Agreement.

161. Fourth, the Borrower could not satisfy the In Balance Test. On March 23, 2009, the Borrowers advised BofA that it would be submitting a calculation of the In Balance Test reflecting a razor-thin cushion of only $13.8 million. That cushion included Available Funds with two components that are, as explained below, incompatible: (a) $750 million in "Bank Revolving Availability"; and (b) $21,666,666 under "Delay Draw Term Loan Availability," which represented the unfunded portion of the Delay Draw Loans (excluding First National Bank of Nevada's portion). Depending on whether "fully drawn" was interpreted to mean "fully funded" or "fully requested," either the $750 million or the $21,666,666 could be included as Available Funds – ***but not both***. If "fully drawn" meant "fully funded," then the "Bank

Revolving Availability" under the In Balance Test could not exceed $150 million unless and until the Delay Draw Facility was in fact fully funded, thereby causing the In Balance Test to fail by a spectacular margin. If, on the other hand, "fully drawn" meant "fully requested," then the $21,666,666 in Term Loans that were requested but not funded would be excluded. That is because "Delay Draw Term Loan Availability" is defined to mean, "as of each date of determination, the ***then undrawn*** portion of the Delay Draw Term Loans." (Disbursement Agreement, Ex. A)(emphasis added). If "drawn" meant "requested," then the "undrawn portion of the Delay Draw Term Loans" was zero as of March 25, 2009. Either way, the Borrower could not satisfy the In Balance Test, a condition to disbursement under Section 3.3.8 of the Disbursement Agreement.

162. In short, there was a myriad of facts – all known to BofA, and none requiring any investigation, additional facts, or exercise of discretion by BofA – that precluded satisfaction of the conditions precedent necessary for BofA to approve the March 25 Advance Request and disburse the proceeds that had been advanced by the Term Lenders. Yet BofA knowingly and intentionally chose to disregard those facts and to shirk its obligations as Disbursement Agent.

163. Instead, in a March 23 letter to Fontainebleau lenders posted on Intralinks, BofA flip-flopped yet again and took an entirely new position: "since the Borrower had requested all of the Delay Draw Term Loans and ***almost*** all of the loans had funded," the Borrowers could now request Revolving Loans in excess of $150 million. Under BofA's new position, "fully drawn" now meant "almost fully funded." Because "almost all" of the Delay Draw Term Loans had funded, BofA opined the entire amount of the Revolving Loan Facility could be used to calculate "Bank Revolving Availability." The letter read in pertinent part:

> Bank of America's position is that since the Borrower has requested all of the Delay Draw Term Loans**, and almost all of the loans have funded** (whether or not the outstanding $21,666,667 is ultimately received), Section 2.1 (c)(iii) ***now*** permits the Borrower to request Revolving Loans **which result in the aggregate amount outstanding under the Revolving Commitments being in excess of $150,000,000**. As a result, we would permit the relevant portion of the Revolving Commitment to be reflected in Available Funds. (Emphasis added)

164. Notably, in its third interpretive iteration, BofA proposed to redefine "fully drawn" to mean "almost fully funded" even though few, if any, of the other Revolving Lenders had indicated that they agreed with BofA's position, let alone unconditionally waived any argument that they were not required to fund the full amount of their commitment because of the failure of certain Delay Draw Term Lenders to fund. The March 23 letter itself recognizes the "divergence of opinions" as of that date among the Revolving Lenders. Indeed, within a week of the disbursement under the March 25 Advance Request, BofA negotiated an Interim Agreement with the Borrower, dated April 1, 2009 and circulated to Term Lenders on April 3, 2009, under which any consent of the Revolving Lenders to treat the Delay Draw Term Loans as "fully drawn" was conditioned upon the Borrowers' agreement to limit any requests under the Revolving Loans in April and May 2009 to the amount of the Advance Requests plus $5 million for each month. Under the Interim Agreement, "Bank Revolving Availability" on the dates of those Advance Requests would have been capped at an amount far less than the total amount of the Commitment.

165. By virtue of the inability of the Borrowers to satisfy numerous conditions under Section 3.3 of the Disbursement Agreement, BofA was not authorized to approve the March 25 Advance Request nor issue an Advance Confirmation Notice, and was instead obligated to issue a Stop Funding Notice. In breach of its duties as Disbursement Agent, BofA issued the Advance Confirmation Notice and, as Administrative Agent, disbursed $134 million in proceeds that had been advanced by the Term Lenders, including Plaintiffs.

EVENTS SUBSEQUENT TO THE MARCH 25 ADVANCE

166. On or about April 13, 2009, shortly after Plaintiffs' funding of the Delay Draw Facility and the release of approximately $134 million of those funds from the Bank Proceeds Account, the Borrowers advised BofA and the Lenders that it could not meet the In Balance Test, based upon a substantial increase in the figure they used to calculate Required Costs.

167. On April 20, 2009, BofA, in its capacity as Administrative Agent, sent a letter to the Borrower, the Lenders and other parties, in which BofA advised that "the Required Facility

Lenders under the Revolving Credit Facility have determined that one or more Events of Default have occurred and are continuing . . . ." BofA did not, in that letter or in response to a letter sent by certain Term Lenders the following day, identify those Events of Default that had been determined to have occurred. To the extent any Events of Default (or Defaults) had in fact occurred and were continuing on that date, any such Events of Default (or Defaults) were known or should have been known to BofA long before March 2009, and BofA breached its duties as Disbursement Agent and Administrative Agent by failing to communicate them to the Term Lenders, failing to issue a Stop Funding Notice, or failing to take any other required action.

168. Pursuant to Section 8 of the Credit Agreement, BofA provided notice that the Revolving Facility commitment was "terminated effectively immediately." Notably, BofA did not purport to make its termination retroactive to a date prior to the March 2 Notice and March 3 Notice, reflecting BofA's understanding that such retroactive termination was not a remedy available under the Credit Agreement or applicable law.

169. On April 21, 2009, the Borrower submitted a Notice of Borrowing (the "April 21 Notice") to BofA, drawing $710 million under the Revolving Facility. In a separate letter sent that same day by Borrower's counsel to BofA, the Borrower disputed the existence of any Events of Default under the Credit Agreement. If the Borrower were able to demonstrate that no Events of Default under the Credit Agreement had occurred or were continuing as of April 20, 2009, then Defendants were not authorized to terminate the commitment, and were obligated to fund $710 million in response to the April 21 Notice. Defendants did not provide such funding.

170. BofA's failure to issue a Stop Funding Notice and its approval of the prior Advance Requests was in bad faith and constituted gross negligence and willful misconduct. BofA promoted its own self-interest, to the detriment of the Term Lenders, by: 1) causing the Revolving Lenders to refuse to fund their Revolving Loans, thereby reducing the collateral available to the Term Lenders; 2) causing the Delay Draw Lenders to fund their Loans, thereby enabling the repayment of $68 million in Revolving Loans and increasing the collateral available to the Revolving Lenders on account of their existing claims arising from previously issued

letters of credit under the Revolving Facility; and 3) causing disbursements to be made from the Bank Proceeds Account to allow for construction to continue on the Project. All of those events dramatically improved the negotiating leverage of BofA and other Revolving Lenders and reduced the negotiating leverage of the Term Lenders, thereby positioning BofA to seek concessions from both the Borrower and the Term Lenders in exchange for providing the funds that already had been committed. Indeed, BofA applied that leverage to negotiate a term sheet with the Borrower, circulated to the Term Lenders in mid-May 2009, under which the Revolving Lenders would have obtained numerous concessions adverse to the interests of the Term Lenders. That proposal failed only because certain of the Revolving Lenders other than BofA were unwilling to advance funds even on those concessionary terms.

171. On or about May 6, 2009, after having succeeded in maximizing its leverage against the Term Lenders, BofA notified the lenders of its resignation as Disbursement Agent and Administrative Agent.

172. As a consequence of Defendants' wrongful and willful refusal to fund and their termination of the Revolving Facility commitments, the Project has been derailed and the value of the collateral securing Plaintiffs' loans has been substantially diminished. Moreover, BofA's failure to perform its obligations as Disbursement Agent and Administrative Agent not only reduced the amount and value of the collateral securing Plaintiffs' loans, but also required Plaintiffs to advance Delay Draw Loans that, but for BofA's failure to satisfy its duties, would have been suspended and ultimately terminated. Accordingly, Plaintiffs have suffered substantial damages in an amount based upon their *pro rata* share of the funds wrongfully disbursed from the Bank Proceeds Account and their *pro rata* share of the Delay Draw Loans for which they seek compensation.

COUNT I
Breach of the Disbursement Agreement Against BofA

173. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

174. The Disbursement Agreement is a valid and binding contract, pursuant to which BofA agreed to act as Bank Agent and Disbursement Agent. The Disbursement Agreement was intended to directly benefit Plaintiffs.

175. Pursuant to the terms of the Disbursement Agreement, BofA had a duty to exercise commercially reasonable efforts and use commercially prudent practices in performing its obligations under the Disbursement Agreement, including its duty to fund Advance Requests if, but only if, all conditions precedent to such funding were met and its corresponding duty to issue Stop Funding Notices if all such conditions were not met or if there existed any Defaults or Events of Default.

176. Beginning with Advance Requests made in September 2008, and continuing through the March 25 Advance Request, BofA materially breached its duties under the Disbursement Agreement by improperly approving Advance Requests that failed to meet one or more of the conditions precedent under Section 3.3 of the Disbursement Agreement, improperly issuing Advance Confirmation Notices, improperly failing to issue Stop Funding Notices as a result of the failure of conditions precedent to these Advance Requests and Defaults, and improperly disbursing funds from the Bank Proceeds Account pursuant to such deficient Advance Requests.

177. In breaching its duties under the Disbursement Agreement as set forth herein, BofA's actions constituted bad faith, gross negligence and willful misconduct, and favored its own interests over those of the Term Lenders.

178. Plaintiffs have suffered injury as a result of those breaches because, as a result of BofA's approval of the Advance Requests and failure to issue Stop Funding Notices, the amount and value of Plaintiffs' collateral has been and continues to be diminished, and Plaintiffs have been required to fund the Delay Draw Loans. BofA's liability to Plaintiffs is not limited under Section 9.10 of the Disbursement Agreement by virtue of the fact that: (a) the limitation of liability does not apply to claims asserted by Plaintiffs; (b) the limitation of liability does not

apply to the conduct of BofA for which BofA is liable; and (c) BofA's bad faith, gross negligence and willful misconduct are not subject to any limitation on liability.

COUNT II
Breach of the Credit Agreement Against All Defendants

179. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

180. The Credit Agreement is a valid and binding contract, pursuant to which the Defendants agreed to fund $790 million under the Revolving Facility.

181. The March 2 Notice and March 3 Notice complied with all applicable conditions under the Credit Agreement. Plaintiffs have performed all obligations required of them under the Credit Agreement.

182. The Revolving Loan Lenders had an obligation, not just to the Borrowers, but also to their co-lenders, to fund in response to the Notices of Borrowing.

183. Pursuant to the terms of the Credit Agreement, the Defendants were, and continue to be, obligated to honor the Notices of Borrowing.

184. In the alternative, in the event that it is judicially determined that, prior to April 21, 2009, no Events of Default under the Credit Agreement occurred that would authorize termination of the Revolving Facility commitment, then Defendants also were required to fund the sum of $710 million under the April 21 Notice.

185. The Defendants' failure to honor the Notices of Borrowing constitutes a material breach of their obligations under the Credit Agreement.

186. By repudiating their obligations to fund under the Revolving Facility, the Defendants have breached the Credit Agreement.

187. Plaintiffs, as parties to the Credit Agreement, are entitled to seek damages against Defendants for their breach of the Credit Agreement.

188. Plaintiffs have suffered injury as a result of the breach because, as a result of the Defendants' refusal to honor their obligation to fund the Revolving Facility, the amount and value of Plaintiffs' collateral has been and continues to be diminished.

COUNT III
For Breach of the Implied Covenant of Good Faith and Fair Dealing Against BofA

189. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

190. The Disbursement Agreement contained an implied covenant of good faith which prohibited BofA, in its capacities as Administrative Agent and Disbursement Agent, from preferring its own interests and the interests of the Revolving Lenders over the interests of the Term Lenders.

191. Defendants owed the implied covenant of good faith to Plaintiffs, who are intended third-party beneficiaries under the Disbursement Agreement.

192. BofA breached the implied covenant of good faith by: (a) preferring its own interests and the interests of the Revolving Lenders (including BofA) over the interests of Term Lenders when it improperly approved Advance Requests, issued Advance Confirmation Notices, failed to issue Stop Funding Notices, and caused the disbursement of funds from the Bank Proceeds Account; and (b) failing to communicate information to the Term Lenders regarding Events of Default that were known of should have been known to BofA.

193. Plaintiffs have suffered injury as a result of BofA's breach of the implied covenant of good faith. BofA's liability to Plaintiffs is not limited under Section 9.10 of the Disbursement Agreement by virtue of the fact that: (a) the limitation of liability does not apply to claims asserted by Plaintiffs; (b) the limitation of liability does not apply to the conduct of BofA for which BofA is liable; and (c) BofA's bad faith, gross negligence and willful misconduct are not subject to any limitation on liability.

COUNT IV
Breach of the Implied Covenant of
Good Faith and Fair Dealing Against All Defendants

194. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

195. The Credit Agreement is a valid and binding contract, pursuant to which the Defendants agreed to fund $790 million under the Revolving Facility.

196. The Credit Agreement contains an implied covenant of good faith and fair dealing. The covenant is intended to prevent parties to a contract from destroying or injuring the right of other parties to enjoy the fruits of the contract.

197. Defendants owed Plaintiffs a duty of good faith and fair dealing as parties to the same Credit Agreement.

198. BofA as Administrative Agent and the other Defendants breached the implied covenant by adopting a contrived construction of the Credit Agreement in order to justify their refusal to fund the March 2 Notice and the March 3 Notice.

199. Plaintiffs have performed all obligations required of them under the Credit Agreement.

200. Plaintiffs have suffered injury as a result of the breach of the covenant because, as a result of the Defendants' refusal to honor their obligation to fund under the Revolving Facility, the amount and value of Plaintiffs' collateral has been and continues to be diminished. Furthermore, Plaintiffs have been prevented from receiving the benefits of their bargain under the contract because their ability to obtain repayment on their loans has been endangered.

COUNT V
For Declaratory Relief Against BofA

201. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

202. A dispute has arisen between Plaintiffs and BofA regarding BofA's obligations to Plaintiffs as intended third-party beneficiaries under the Disbursement Agreement. Plaintiffs

contend that BofA has breached that agreement by approving the Advance Requests and by failing to issue a Stop Funding Notice. Plaintiffs are informed and believe and thereon allege that BofA contends that it has acted in good faith and in compliance with its obligations under the Disbursement Agreement.

203. A judicial determination is therefore necessary to resolve this dispute and ascertain the respective rights of the parties with regard to the actions and agreements referenced in this complaint.

COUNT VI
For Declaratory Relief Against All Defendants

204. Plaintiffs reallege and incorporate each and every allegation set forth in paragraphs 1 through 172 herein.

205. A dispute has arisen between Plaintiffs and Defendants regarding their respective rights and obligations under the Credit Agreement. Plaintiffs contend that Defendants have breached this agreement by failing to fund and by terminating their loan commitments under the Revolving Facility. Plaintiffs are informed and believe and thereon allege that Defendants contend that they have acted in good faith and in compliance of their obligations under the Credit Agreement.

206. A judicial determination is therefore necessary to resolve this dispute and ascertain the respective rights of the parties with regard to the actions and agreements referenced in this complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them,

(a) For compensatory damages in an amount subject to proof at trial.

(b) For a declaration that BofA has breached its contractual duties under the Disbursement Agreement as set forth above entitling Plaintiffs to damages in an amount subject to proof at trial.

(c) For a declaration that Defendants have breached their contractual duties under the Credit Agreement as set forth above entitling Plaintiffs to damages in an amount subject to proof at trial.

(d) For a declaration that Plaintiffs are excused from performance of any obligations owing to Defendants under the Credit Agreement.

(e) For a declaration that any claims asserted by Defendants against the Borrower should be disallowed pursuant to 11 U.S.C. § 502(b).

(e) For an award of the costs of suit including attorneys' fees to the extent available.

(f) For any further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury for all issues so triable.

DATED: January 15, 2010

Respectfully submitted,

/s/ David A. Rothstein

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771957

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-2106-CIV-GOLD/McALILEY

IN RE:
FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

This document applied to all actions.
_____/

MDL ORDER NUMBER FIVE; GRANTING
MOTION FOR SUBSTITUTION OF COUNSEL [DE 14]

THIS CAUSE came on before the Court on MB FINANCIAL BANK, N.A. Motion for Order Approving Stipulation for Substitution of Counsel [DE 14]. Having reviewed the Motion and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED that:

(1) The Motion [DE 14] is GRANTED.

(2) FURR AND COHEN, P.A. is relieved of all further responsibility for the defense of the members cases comprising this MDL.

(3) All further papers in this matter shall be served upon the law firm of Astigarraga, Davis, Mullins & Grossman at 701 Brickell Ave., 16th Floor, Miami, FL 33131.

DONE AND ORDERED at Chambers in Miami, Florida this 19th day of January, 2010.

HON. ALAN S. GOLD
U.S. DISTRICT JUDGE

cc:
Counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This Document Relates to: No. 09 Civ. 8064 (Southern District of New York)
No. 09 Civ. 1047 (District of Nevada)

NOTICE OF APPEARANCE
OF McDERMOTT WILL & EMERY LLP AS COUNSEL
FOR DEFENDANT CAMULOS MASTER FUND, L.P.

PLEASE TAKE NOTICE that the undersigned hereby appears in this proceeding as counsel for Camulos Master Fund, L.P., and requests that all papers be served upon the undersigned at the address provided below.

Dated: Miami, Florida
January 20, 2010

Respectfully submitted,

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To: Please see attached certificate of service.

CERTIFICATE OF SERVICE

I certify that on this 20th day of January, 2010, I caused a copy of the foregoing NOTICE OF APPEARANCE to be served on counsel for all parties as follows:

VIA ECF ELECTRONIC FILING SYSTEM OR FIRST CLASS MAIL (as designated)

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/s/ Bruce J. Berman
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MIA 356945-1.075895.0010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This Document Relates to: No. 09 Civ. 8064 (Southern District of New York)
No. 09 Civ. 1047 (District of Nevada)

DEFENDANT CAMULOS MASTER FUND, L.P.'S
RULE 7.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1 and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for Camulos Master Fund, L.P. ("Camulos") certifies that Camulos Capital, L.P., a privately held limited partnership, is the investment adviser of Camulos. No publicly held corporation owns more than 10% of Camulos' stock. Camulos has no subsidiaries that are publicly traded.

Dated: Miami, Florida
January 20, 2010

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

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To: Please see attached certificate of service.

CERTIFICATE OF SERVICE

I certify that on this 20th day of January, 2010, I caused a copy CAMULOS MASTER FUND L.L.P.'S RULE 7.1 DISCLOSURE STATEMENT to be served on counsel for all parties as follows:

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/s/ Bruce J. Berman
Bruce J. Berman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV– GOLD/MCALILEY

In re:
Fontainebleau Las Vegas Contract Litigation
_____/
This Document Relates to: All Actions

FONTAINEBLEAU'S RESPONSE IN FURTHER SUPPORT OF ITS MOTION TO CERTIFY THE COURT'S ORDERS UNDER 29 U.S.C. § 1292(b)

Fontainebleau[1] hereby responds to the Term Lenders' opposition to its Motion. For the reasons set forth below, the Term Lenders' arguments fail and the Motion should be granted:

First, a central premise of the Term Lenders' argument -- that they "have not yet been heard on any issues raised in Fontainebleau's motion for partial summary judgment" -- is demonstrably false. The Term Lenders fail to mention that they previously filed a brief as *amicus curiae* in support of Fontainebleau's motion for partial summary judgment motion. (*See Fontainebleau Las Vegas LLC v. Bank of America, N.A., et al.*, CASE NO.: 09-21879-CIV-GOLD/MCALILEY (S.D.Fla.) (the "*Fontainebleau* Action"), D.E. ## 26-1 (Term Lenders' *Amicus* Brief); 31 (Order Granting Leave to File *Amicus* Brief).) The *amicus* brief acknowledges that Fontainebleau's summary judgment briefs "*comprehensively* demonstrate that 'fully drawn' does not mean fully funded" (*Fontainebleau* Action, D.E. # 26-1 at 1 n.1 (emphasis added)), and then sets forth -- in detail -- the Term Lenders' arguments regarding "whether the Revolving Lenders' obligation to honor a Notice of Borrowing is conditioned on the absence of a material breach by the Borrower." (*See id.* at 1-6.) Thus, the Term Lenders have had every opportunity to address the *exact* summary judgment issues presented by Fontainebleau's appeal, and their

[1] All capitalized terms have the meaning set forth in Fontainebleau's memorandum of law in support of its motion to certify the Court's Orders pursuant to 28 U.S.C. § 1292(b) (the "Motion").

argument that this Court should indefinitely delay Fontainebleau's appeal so that the Term Lenders may advance undisclosed "new arguments" must fail.

Second, the Term Lenders offer only the prospect of unspecified "new arguments" -- not new evidence. Yet the issues at the center of Fontainebleau's appeal relate solely to the *unambiguous* interpretation of the Credit Agreement, without resort to any extrinsic evidence. (Indeed, any such evidence would be inadmissible in the construction of an unambiguous contract.) The Term Lenders had every opportunity to present their own arguments in the *amicus* brief, and Fontainebleau would have no objection to the Term Lenders' filing an *amicus* brief in the Eleventh Circuit, setting forth these "new arguments," should this Court and the Eleventh Circuit permit the appeal to go forward. But the mere suggestion of offering "new arguments" on the merits, after this Court has issued a written opinion on the subject, cannot suffice to delay resolution of Fontainebleau's motion for interlocutory appeal.

Third, the Term Lenders offer no suggestion of when or how they intend to present these "new arguments." No motion of any kind is now pending, and it appears the Term Lenders may intend to introduce these arguments only after discovery has been completed (currently scheduled for April of 2011). Thus, despite couching their argument as one for "judicial efficiency," the Term Lenders effectively seek to delay -- indefinitely -- any appeal of the Court's Orders, despite the fact that those purely legal issues are now ripe for consideration on appeal. Having chosen to refrain from making their own parallel motions for summary judgment, the Term Lenders should not be permitted to derail Fontainebleau's schedule.

Finally, the delay sought by the Term Lenders is especially unjustifiable here. As a debtor in bankruptcy, Fontainebleau has limited resources, and expending *millions* of dollars on discovery that would prove unnecessary if the Eleventh Circuit reverses the denial of summary

judgment is not in the best interests of Fontainebleau or its creditors. Similarly, the Term Lenders fail to recognize that Fontainebleau also seeks leave to appeal from the Court's August 5 Order withdrawing the reference from the Bankruptcy Court. Not only is the turnover issue underlying the August 5 Order not "common to all three cases," but delaying Fontainebleau's appeal of that Order will likely also serve to waste a significant amount of Fontainebleau's limited resources, since, as demonstrated more fully in Fontainebleau's briefs, reversal of the Order at a later point in the course of these proceedings may render it necessary to re-litigate all or most of this case in the Bankruptcy Court.

For these reasons, and as more fully set in Fontainebleau's prior briefs, the Motion should be granted.

Dated: January 20, 2010
Miami, Florida

Respectfully submitted,

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UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

ACP Master, Ltd., et al. v. Bank of America, N.A., et al.,)
S.D. New York, C.A. No. 1:09-8064) MDL No. 2106

CONDITIONAL TRANSFER ORDER (CTO-1)

On December 2, 2009, the Panel transferred one civil action to the United States District Court for the Southern District of Florida for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* ___F.Supp.2d___ (J.P.M.L. 2009). With the consent of that court, all such actions have been assigned to the Honorable Alan S. Gold.

It appears that the action on this conditional transfer order involves questions of fact that are common to the actions previously transferred to the Southern District of Florida and assigned to Judge Gold.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), this action is transferred under 28 U.S.C. § 1407 to the Southern District of Florida for the reasons stated in the order of December 2, 2009, and, with the consent of that court, assigned to the Honorable Alan S. Gold.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Southern District of Florida. The transmittal of this order to said Clerk shall be stayed 14 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 14-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

Jeffery N. Lüthi
Clerk of the Panel

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION MDL No. 2106

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

STEVEN M. LARIMORE
Court Administrator • Clerk of Court

January 25, 2010

United States District Court
Southern District of New York

RE: MDL No. 2106 In Re: Fontainebleau Las Vegas Contract Litigation
Our Case # 09-md-2106-Gold
Your Case No. 1:09-8064 ACP Master, Ltd., et al. v. Bank of America, N.A., et al.,

Dear Clerk:

Attached is a certified copy of the order from the Judicial Panel on Multidistrict Litigation (MDL Panel) transferring the above entitled action to the Southern District of Florida. This case will be directly assigned to the Honorable *Alan S. Gold*.

Please proceed to close the case(s) in your district and initiate the civil case transfer functionality in CM/ECF. We will initiate the procedure to retrieve the transferred cases(s) upon receipt of the e-mail. If your court does not utilize the CM/ECF transfer functionality, please forward the court file (including originating Complaint or Notice of Removal, any amendments, docket sheet, and MDL Conditional Transfer Order 1) as PDF documents to the Southern District of Florida via electronic mail at: mdl@flsd.uscourts.gov.

STEVEN M. LARIMORE
Clerk of Court

s/ Graciela Gomez
by: _____
MDL Clerk

Encl.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This Document Relates to: No. 09 Civ. 8064 (Southern District of New York)
No. 09 Civ. 1047 (District of Nevada)

MOTION OF ANDREW B. KRATENSTEIN FOR LIMITED APPEARANCE, CONSENT TO DESIGNATION AND REQUEST TO ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILINGS

In accordance with Local Rule 4.B of the Special Rules Governing the Admission and Practice of Attorneys of the United States District Court for the Southern District of Florida, the undersigned respectfully moves for the admission of ANDREW B. KRATENSTEIN, of the law firm of McDermott Will & Emery, Ltd., for purposes of limited appearance as counsel on behalf of CAMULOS MASTER FUND, L.P. herein, in the above-styled case only, and pursuant to Rule 2B, Southern District of Florida, CM/ECF Administrative Procedures, to permit Andrew B. Kratenstein to receive electronic filings in this case, and in support thereof states as follows:

1. Andrew B. Kratenstein is not admitted to practice in the Southern District of Florida and is a member in good standing of the New York Bar and the U.S. District Courts for the Southern and Eastern Districts of New York.

2. Movant, Bruce J. Berman, Esquire, of the law firm of McDermott Will & Emery, LLP, is a member in good standing of The Florida Bar and the United States District Court for the Southern District of Florida, maintains an office in this State for the practice of law, and is authorized to file through the Court's electronic filing system. Movant consents to be designated

as a member of the Bar of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon whom filings shall be served, who shall be required to electronically file all documents and things that may be filed electronically, and who shall be responsible for filing documents in compliance with the CM/ECF Administrative Procedures. See Section 2B of the CM/ECF Administrative Procedures.

3. In accordance with the local rules of this Court, Andrew B. Kratenstein has made payment of this Court's $75 admission fee. A certification in accordance with Rule 4B is attached hereto.

4. Andrew B. Kratenstein, by and through designated counsel and pursuant to Section 2B, Southern District of Florida, CM/ECF Administrative Procedures, hereby requests the Court to provide Notice of Electronic Filings to Andrew B. Kratenstein at email address: akratenstein@mwe.com.

WHEREFORE, Bruce J. Berman moves this Court to enter an Order permitting Andrew B. Kratenstein to appear before this Court on behalf of Camulos Master Fund, L.P. for all purposes relating to the proceedings in the above-styled matter and directing the Clerk to provide notice of electronic filings to Andrew B. Kratenstein at email address: akratenstein@mwe.com.

Dated: January 25, 2010

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This Document Relates to: No. 09 Civ. 8064 (Southern District of New York)
No. 09 Civ. 1047 (District of Nevada)

CERTIFICATE OF ANDREW B. KRATENSTEIN

Andrew B. Kratenstein, Esquire, pursuant to Rule 4B of the Special Rules Governing the Admission and Practice of Attorneys, hereby certifies that (1) I have studied the Local Rules of the United States District Court for the Southern District of Florida; and (2) I am a member in good standing of the New York Bar and the U.S. District Courts for the Southern and Eastern Districts of New York.

Dated: January 20, 2010

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings was served by mail on January 25, 2010, on all counsel or parties of record listed below.

Bruce J. Berman (FL Bar No. 159280)

SERVICE LIST

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This Document Relates to: No. 09 Civ. 8064 (Southern District of New York)
No. 09 Civ. 1047 (District of Nevada)

ORDER GRANTING MOTION FOR LIMITED APPEARANCE OF ANDREW B. KRATENSTEIN, CONSENT TO DESIGNATION AND REQUEST TO ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILINGS

THIS CAUSE having come before the Court on the Motion for Limited Appearance of ANDREW B. KRATENSTEIN, and Consent to Designation, requesting, pursuant to Rule 4B of the Special Rules Governing the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, permission for a limited appearance of Andrew B. Kratenstein in this matter and request to electronically receive notice of electronic filings. This Court having considered the motion and all other relevant factors, it is hereby

ORDERED and ADJUDGED that:

The Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings is GRANTED. Andrew B. Kratenstein is granted to appear and participate in this action on behalf of *Camulos Master Fund, L.P.* The

Clerk shall provide electronic notification of all electronic filings to Andrew B. Kratenstein at *akratenstein@mwe.com*.

DONE AND ORDERED in Chambers at Miami, Florida on _____, 2010.

_____
United States District Judge

Copies furnished to:
All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This Document Relates to: No. 09 Civ. 8064 (Southern District of New York)
No. 09 Civ. 1047 (District of Nevada)

MOTION OF MICHAEL R. HUTTENLOCHER FOR LIMITED APPEARANCE, CONSENT TO DESIGNATION AND REQUEST TO ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILINGS

In accordance with Local Rule 4.B of the Special Rules Governing the Admission and Practice of Attorneys of the United States District Court for the Southern District of Florida, the undersigned respectfully moves for the admission of MICHAEL R. HUTTENLOCHER, of the law firm of McDermott Will & Emery, LLP, for purposes of limited appearance as counsel on behalf of CAMULOS MASTER FUND, L.P. herein, in the above-styled case only, and pursuant to Rule 2B, Southern District of Florida, CM/ECF Administrative Procedures, to permit Michael R. Huttenlocher to receive electronic filings in this case, and in support thereof states as follows:

1. Michael R. Huttenlocher is not admitted to practice in the Southern District of Florida and is a member in good standing of the New York Bar and the U.S. District Courts for the Southern and Eastern Districts of New York.

2. Movant, Bruce J. Berman, Esquire, of the law firm of McDermott Will & Emery, LLP, is a member in good standing of The Florida Bar and the United States District Court for the Southern District of Florida, maintains an office in this State for the practice of law, and is authorized to file through the Court's electronic filing system. Movant consents to be designated

as a member of the Bar of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon whom filings shall be served, who shall be required to electronically file all documents and things that may be filed electronically, and who shall be responsible for filing documents in compliance with the CM/ECF Administrative Procedures. See Section 2B of the CM/ECF Administrative Procedures.

3. In accordance with the local rules of this Court, Michael R. Huttenlocher has made payment of this Court's $75 admission fee. A certification in accordance with Rule 4B is attached hereto.

4. Michael R. Huttenlocher, by and through designated counsel and pursuant to Section 2B, Southern District of Florida, CM/ECF Administrative Procedures, hereby requests the Court to provide Notice of Electronic Filings to Michael R. Huttenlocher at email address: mhuttenlocher@mwe.com.

WHEREFORE, Bruce J. Berman moves this Court to enter an Order permitting Michael R. Huttenlocher to appear before this Court on behalf of Camulos Master Fund, L.P. for all purposes relating to the proceedings in the above-styled matter and directing the Clerk to provide notice of electronic filings to Michael R. Huttenlocher at email address: mhuttenlocher@mwe.com.

Dated: January 25, 2010

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This Document Relates to: No. 09 Civ. 8064 (Southern District of New York)
No. 09 Civ. 1047 (District of Nevada)

CERTIFICATE OF MICHAEL R. HUTTENLOCHER

Michael R. Huttenlocher, Esquire, pursuant to Rule 4B of the Special Rules Governing the Admission and Practice of Attorneys, hereby certifies that (1) I have studied the Local Rules of the United States District Court for the Southern District of Florida; and (2) I am a member in good standing of the New York Bar and the U.S. District Courts for the Southern and Eastern Districts of New York.

Dated: January 20, 2010

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings was served by mail on January 25, 2010, on all counsel or parties of record listed below.

Bruce J. Berman (FL Bar No. 159280)

SERVICE LIST

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Alvin S. Goldstein **Furr & Cohen** 2255 Glades Road Ste. 337-W One Boca Place Boca Raton, FL 33431 (561) 395-0500 *Attorneys for MB Financial Bank, N.A.*	Mark D. Bloom John B. Hutton, III **Greenberg Traurig** 1221 Brickell Avenue Miami, FL 33131 (305) 579-0537 *Attorneys for Barclays Bank PLC, Deutsch Bank Trust Co. Americas, JP Morgan Chase Bank, N.A., Royal Bank of Scotland PLC*

Bruce Bennett Kirk Dillman J. Michael Hennigan Sidney P. Levinson Peter J. Most Lauren A. Smith Michael C. Schneidereit **Hennigan Bennett & Dorman LLP** 865 South Figueroa Street, Suite 2900 Los Angeles, CA 90017 (213) 694-1200 *Attorneys for Avenue CLO Fund, LTD., et al.*	Kevin M. Eckhardt Craig V. Rasile **Hunton & Williams** 1111 Brickell Ave., Ste. 3500 Miami, FL 33131 (305) 810-2500 *Attorneys for Bank of America, N.A.; Bank of Scotland PLC; Barclays Bank PLC; Deutsche Bank Trust Co. Americas; HSH Nordbank AG, New York Branch; JP Morgan Chase Bank, N.A.; Merrill Lynch Capital Corporation; The Royal Bank of Scotland PLC*
Jed I. Bergman David M. Friedman Marc E. Kasowitz Seth A. Moskowitz **Kasowitz Benson Torres & Friedman LLP** 1633 Broadway New York, NY 10019 (212) 506-1700 *Attorneys for Fontainebleau Las Vegas LLC*	Arthur Linker Kenneth E. Noble Anthony L. Paccione **Katten Muchin Rosenman LLP** 575 Madison Ave. New York, NY 10022 (212) 940-8800 *Attorneys for Bank of Scotland PLC*
Aaron Rubenstein Philip A. Geraci Andrew A. Kress W. Stewart Wallace **Kaye Scholer LLP** 425 Park Avenue 12th Floor New York, NY 10022 (212) 836-8000 *Attorneys for HSH Nordbank AG, New York Branch*	Laury M. Macauley **Lewis and Roca LLP** 50 West Liberty Street Reno, NV 89501 (775) 823-2900 *Attorneys for MB Financial Bank, N.A.*

Jean-Marie L. Atamian Jason I. Kirschner Frederick D. Hyman **Mayer Brown LLP** 1675 Broadway New York, NY 10019-5820 (212) 506-2500 *Attorneys for Sumitomo Mitsui Banking Corporation*	Daniel L. Cantor Bradley J. Butwin Jonathan Rosenberg William J. Sushon **O'Melveny & Myers LLP** Times Square Tower 7 Times Square New York, NY 10036 (212) 326-2000 *Attorneys for Bank of America, N.A.; Merrill Lynch Capital Corp.*
Arthur H. Rice **Rice Pugatch Robinson & Schiller** 101 NE 3 Avenue, Ste. 1800 Fort Lauderdale, FL 33301 (305) 379-3121 *Attorneys for HSH Nordbank AG, New York Branch*	Peter J. Roberts **Shaw Gussis Fishman Glantz Wolfson & Towbin LLC** 321 N. Clark Street Suite 800 Chicago, IL 60654 (312) 276-1322 *Attorneys for MB Financial Bank, N.A.*
Robert G. Fracasso, Jr. **Shutts & Bowen** 201 S. Biscayne Blvd. Ste. 1500 Miami Center Miami, FL 33131 (305) 358-6400 *Attorneys for Sumitomo Mitsui Banking Corporation*	Thomas C. Rice Lisa Rubin David Woll **Simpson Thacher & Bartlett LLP** 425 Lexington Avenue New York, NY 10017-3954 (212) 455-2000 *Attorneys for Bank of Scotland PLC; Barclays Bank PLC; Deutsche Bank Trust Co. Americas; JP Morgan Chase Bank, N.A.*
Harold D. Moorefield, Jr. **Stearns Weaver Miller Alhadeff & Sitterson** Museum Tower 150 W. Flagler Street, Ste. 2200 Miami, FL 33130 (305) 789-3467 *Attorneys for Bank of Scotland PLC*	Aaron R. Maurice **Woods Erickson Whitaker & Maurice, LLP** 1349 Galleria Drive, Ste. 200 Henderson, NV 89014 (702) 433-9696 *Attorneys for HSH Nordbank AG*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-02106-CIV–GOLD/MCALILEY

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This Document Relates to: No. 09 Civ. 8064 (Southern District of New York)
No. 09 Civ. 1047 (District of Nevada)

ORDER GRANTING MOTION FOR LIMITED APPEARANCE OF MICHAEL R. HUTTENLOCHER, CONSENT TO DESIGNATION AND REQUEST TO ELECTRONICALLY RECEIVE NOTICES OF ELECTRONIC FILINGS

THIS CAUSE having come before the Court on the Motion for Limited Appearance of MICHAEL R. HUTTENLOCHER, and Consent to Designation, requesting, pursuant to Rule 4B of the Special Rules Governing the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, permission for a limited appearance of Michael R. Huttenlocher in this matter and request to electronically receive notice of electronic filings. This Court having considered the motion and all other relevant factors, it is hereby

ORDERED and ADJUDGED that:

The Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings is GRANTED. Michael R. Huttenlocher is granted to appear and participate in this action on behalf of *Camulos Master Fund, L.P.* The

Clerk shall provide electronic notification of all electronic filings to Michael R. Huttenlocher at *mhuttenlocher@mwe.com*.

DONE AND ORDERED in Chambers at Miami-Dade, Florida on _____, 2010.

_____
United States District Judge

Copies furnished to:
All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-2106-CIV-GOLD/MCALILEY

In re:

FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION,

MDL No. 2106

This document relates to Case Numbers:

09-cv-23835-ASG
10-cv-20236-ASG

_____/

MDL ORDER NUMBER SIX: GRANTING MOTION FOR LIMITED APPEARANCE OF ANDREW B. KRATENSTEIN [DE 23]

THIS CAUSE having come before the Court upon the Motion for Limited Appearance of ANDREW B. KRATENSTEIN, Consent to Designation and Request to Electronically Receive Notices of Electronics Filings ("Motion") **[DE 23]**, requesting, pursuant to the Special Rules Governing the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, permission for a limited appearance of ANDREW B. KRATENSTEIN in this matter and to electronically receive notice of electronic filings. Having considered the Motion and being otherwise fully advised in the Premises, it is hereby

ORDERED and ADJUDGED that:

1. The Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings **[DE 23]** is GRANTED.

2. Andrew B. Kratenstein, Esq. is permitted to appear and participate in this action for purposes of limited appearances as co-counsel on behalf of CAMULOS

MASTER FUND, L.P. in the above-styled action.

3. The Clerk shall provide electronic notification of all electronic filings to Andrew B. Kratenstein at akratenstein@mwe.com

DONE AND ORDERED in Chambers at Miami, Florida, this 27th day of January, 2010.

ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
Magistrate Judge Chris McAliley
All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-MD-2106-CIV-GOLD/MCALILEY

In re:

FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION,

MDL No. 2106

This document relates to Case Numbers:

09-cv-23835-ASG
10-cv-20236-ASG

_____/

MDL ORDER NUMBER SEVEN: GRANTING MOTION FOR LIMITED APPEARANCE OF MICHAEL R. HUTTENLOCHER [DE 24]

THIS CAUSE having come before the Court upon the Motion for Limited Appearance of MICHAEL R. HUTTENLOCHER, Consent to Designation and Request to Electronically Receive Notices of Electronics Filings ("Motion") **[DE 24]**, requesting, pursuant to the Special Rules Governing the Admission and Practice of Attorneys in the United States District Court for the Southern District of Florida, permission for a limited appearance of MICHAEL R. HUTTENLOCHER in this matter and to electronically receive notice of electronic filings. Having considered the Motion and being otherwise fully advised in the Premises, it is hereby

ORDERED and ADJUDGED that:

1. The Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings **[DE 24]** is GRANTED.

2. Michael R. Huttenlocher, Esq. is permitted to appear and participate in this action as co-counsel on behalf of CAMULOS MASTER FUND, L.P. in the above-styled

action.

3. The Clerk shall provide electronic notification of all electronic filings to Michael R. Huttenlocher at mhuttenlocher@mwe.com

DONE AND ORDERED in Chambers at Miami, Florida, this 27th day of January, 2010.

ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

cc:
Magistrate Judge Chris McAliley
All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-MD-2106-CIV-GOLD/MCALILEY

IN RE:
FONTAINBLEAU LAS VEGAS
CONTRACT LITIGATION
_____/

ORDER OF RECUSAL

THE UNDERSIGNED MAGISTRATE JUDGE hereby recuses herself and refers the matter to the Clerk of Court for reassignment pursuant to 28 U.S.C. § 455(a) and S.D. Fla. Local Rule 3.6.

DONE AND ORDERED in chambers at Miami, Florida, this 19th day January, 2010.

CHRIS MCALILEY
UNITED STATES MAGISTRATE JUDGE

In accordance with the Local Rules for the Southern District of Florida and Administrative Order 2009-50, this cause will be randomly reassigned to another Magistrate Judge.

All documents for filing in this case shall carry the following case number and

designation: 09-MD-2106-CIV-GOLD/ Torres .

BY ORDER OF THE COURT this 25 day of January, 2010, Miami, Florida.

STEVEN M. LARIMORE
Clerk of Court

By: _____

cc: The Honorable Alan S. Gold
Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:09-md-02106-GOLD/TORRES

In Re: Fontainebleau Las Vegas
Contract Litigation

_____/

ORDER OF RECUSAL AND ORDER OF REASSIGNMENT

THE UNDERSIGNED MAGISTRATE JUDGE, to whom the above-styled case has now been assigned, hereby recuses himself based upon existing relationships with a party and counsel, and therefore refers the matter to the Clerk of Court for reassignment pursuant to 28 U.S.C. §455(a) and S.D. Fla. Local Rule 3.6.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of January, 2010.

EDWIN G. TORRES
United States Magistrate Judge

In accordance with the Local Rules for the Southern District of Florida, providing for the random and equal allotment of cases, this cause will be reassigned to the calendar of Ted E. Bandstra.

Copies of this order shall be served on all pending parties of record. All documents for filing in this case shall carry the following case number and designation: 09-MD-2106-CIV-GOLD/Bandstra.

BY ORDER OF COURT this 28 day of January, 2010, Miami, Florida.

STEVEN M. LARIMORE, CLERK

By: _____
Deputy Clerk

Copies to:
United States District Judge ___
Counsel of Record
Case Assignment Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

Case No. 09-CV-01047-KJD-PAL

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.

_____/

PLAINTIFFS' DISCLOSURE STATEMENTS
PURSUANT TO F.R.C.P. RULE 7.1

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs, by their counsel, attach the following Disclosure Statements:

1. Exhibit A: Disclosure Statement for Plaintiff ARES Enhanced Loan Investment Strategy III, Ltd.

2. Exhibit B: Disclosure Statement for Plaintiffs Avenue CLO Fund, Ltd.; Avenue CLO II, Ltd.; Avenue CLO III, Ltd.; Avenue CLO IV, Ltd.; Avenue CLO V, Ltd.; and Avenue CLO VI, Ltd.

3. Exhibit C: Disclosure Statement for Plaintiffs Brigade Leveraged Capital Structures Fund, Ltd. and Battalion CLO 2007-I Ltd.

4. Exhibit D: Disclosure Statement for Plaintiff Cantor Fitzgerald Securities.

5. Exhibit E: Disclosure Statement for Plaintiffs Canpartners Investments IV, LLC; Canyon Special Opportunities Master Fund (Cayman), Ltd.; Canyon Capital CLO 2004 1 Ltd.; Canyon Capital CLO 2006 1 Ltd.; and Canyon Capital CLO 2007 1 Ltd.

6. Exhibit F: Disclosure Statement for Plaintiffs Carlyle High Yield Partners 2008-1, Ltd.; Carlyle High Yield Partners VI, Ltd.; Carlyle High Yield Partners VII, Ltd.; Carlyle High Yield Partners VIII, Ltd.; Carlyle High Yield Partners IX, Ltd.; and Carlyle High Yield Partners X, Ltd.

7. Exhibit G: Disclosure Statement for Plaintiffs Caspian Corporate Loan Fund LLC; Caspian Capital Partners, L.P.; Caspian Select Credit Master Fund, Ltd.; Mariner Opportunities Fund, LP; and Mariner LDC

8. Exhibit H: Disclosure Statement for Plaintiffs Olympic CLO I Ltd.; Shasta CLO I Ltd.; Whitney CLO I Ltd.; San Gabriel CLO I Ltd.; and Sierra CLO II Ltd.

9. Exhibit I: Disclosure Statement for Plaintiffs Aberdeen Loan Funding, Ltd.; Armstrong Loan Funding, Ltd.; Brentwood CLO, Ltd.; Eastland CLO, Ltd.; Gleneagles CLO, Ltd.; Grayson CLO, Ltd.; Greenbriar CLO, Ltd.; Highland Credit Opportunities CDO, Ltd.; Highland Loan Funding V, Ltd.; Jasper CLO, Ltd.; Liberty CLO, Ltd.; Loan Funding IV LLC; Loan Funding VII LLC; Red River CLO, Ltd.; Rockwall CDO Ltd.; Rockwall CDO II, Ltd.; Southfork CLO, Ltd.; Stratford CLO, Ltd.; and Westchester CLO, Ltd.

10. Exhibit J: Disclosure Statement for Plaintiffs ING Prime Rate Trust; ING Senior Income Fund; ING International (II) - Senior Bank Loans Euro; ING Investment Management CLO I, Ltd.; ING Investment Management CLO II, Ltd.; ING Investment Management CLO III, Ltd.; ING Investment Management CLO IV, Ltd.; and ING Investment Management CLO V, Ltd.

11. Exhibit K: Disclosure Statement for Plaintiffs Venture II CDO 2002, Limited; Venture III CDO Limited; Venture IV CDO Limited; Venture V CDO Limited; Venture VI CDO Limited; Venture VII CDO Limited; Venture VIII CDO Limited; Venture IX CDO Limited; Vista Leveraged Income Fund; and Veer Cash Flow CLO, Limited.

12. Exhibit L: Disclosure Statement for Plaintiff Genesis CLO 2007-1 Ltd.

13. Exhibit M: Disclosure Statement for Plaintiffs Primus CLO I, Ltd. and Primus CLO II, Ltd.

14. Exhibit N: Disclosure Statement for Plaintiffs Rosedale CLO, Ltd. and Rosedale CLO II Ltd.

15. Exhibit O: Disclosure Statement for Plaintiff SPCP Group, LLC.

16. Exhibit P: Disclosure Statement for Plaintiff Stone Lion Portfolio L.P.

17. Exhibit Q: Disclosure Statement for Plaintiff Venor Capital Master Fund, Ltd.

Dated: January 29, 2010

Respectfully submitted,

/s David Rothstein .
David A. Rothstein
DIMOND KAPLAN & ROTHSTEIN, P.A.
2665 South Bayshore Drive
Penthouse Two
Miami, FL 331343
Telephone: (305) 374-1920
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Attorneys for Plaintiffs

Of counsel:
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Telephone: (213) 694-1200
Facsimile: (213) 694-1234
Email: Hennigan@hbdlawyers.com
DillmanD@hbdlawyers.com

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s David Rothstein .
David A. Rothstein

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFF ARES ENHANCED LOAN INVESTMENT STRATEGY III, LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiff ARES Enhanced Loan Investment Strategy III, Ltd. discloses the following:

1. Plaintiff is a company with limited liability incorporated under the laws of the Cayman Islands, whose Portfolio Manager is Ares Enhanced Loan Management III, L.P.

2. Plaintiff has no parent company and the Portfolio Manager is unaware of any publicly-held company that owns more than 10% of this Plaintiff's shares.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS AVENUE CLO FUND, LTD.; AVENUE CLO II, LTD.; AVENUE CLO III, LTD.; AVENUE CLO IV, LTD.; AVENUE CLO V, LTD.; AND AVENUE CLO VI, LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Avenue CLO Fund, Ltd.; Avenue CLO II, Ltd.; Avenue CLO III, Ltd.; Avenue CLO IV, Ltd.; Avenue CLO V, Ltd.; and Avenue CLO VI, Ltd. disclose the following:

1. Plaintiffs are each companies with limited liability incorporated under the laws of the Cayman Islands, whose Investment Advisor is Avenue Capital Management II, L.P.

2. Plaintiffs have no parent company. To the best of the Investment Advisor's knowledge, Deutsche Bank, a publicly-held company, may own greater than 10% of the equity of Avenue CLO II, Ltd. and Avenue CLO III, Ltd. The Investment Advisor has no actual knowledge of any publicly-held company that may own more than 10% of the shares of Avenue CLO Fund, Ltd.; Avenue CLO IV, Ltd.; Avenue CLO V, Ltd.; and Avenue CLO VI, Ltd.

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS BRIGADE LEVERAGED CAPITAL STRUCTURES FUND, LTD. AND BATTALION CLO 2007-I LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Brigade Leveraged Capital Structures Fund, Ltd. and Battalion CLO 2007-I Ltd. disclose the following:

1. Plaintiffs are each exempted companies with limited liability incorporated under the laws of the Cayman Islands, whose Investment Advisor is Brigade Capital Management, LLC.

2. Plaintiffs have no parent company and the Investment Advisor is unaware of any publicly-held company that owns more than 10% of these Plaintiffs' shares.

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFF CANTOR FITZGERALD SECURITIES

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiff Cantor Fitzgerald Securities discloses the following:

1. Plaintiff is a general partnership formed under the laws of New York whose parent is Cantor Fitzgerald L.P.

2. No publicly-held company owns more than 10% of the shares of this Plaintiff or Cantor Fitzgerald L.P.

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS CANPARTNERS INVESTMENTS IV, LLC; CANYON SPECIAL OPPORTUNITIES MASTER FUND (CAYMAN), LTD.; CANYON CAPITAL CLO 2004 I LTD.; CANYON CAPITAL CLO 2006 I LTD.; AND CANYON CAPITAL CLO 2007 I LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Canpartners Investments IV, LLC; Canyon Special Opportunities Master Fund (Cayman), Ltd.; Canyon Capital CLO 2004 1 Ltd.; Canyon Capital CLO 2006 1 Ltd.; and Canyon Capital CLO 2007 1 Ltd. disclose the following:

1. Plaintiff Canpartners Investments IV, LLC is a limited liability company formed under the laws of California, whose Manager is Canyon Capital Advisors LLC. This Plaintiff has no parent company.

2. Plaintiff Canyon Special Opportunities Master Fund (Cayman), Ltd. is an exempted company with limited liability incorporated under the laws of the Cayman Islands, whose Investment Manager is Canyon Capital Advisors LLC. CSOF II Trust owns 100% of the

ordinary voting shares of Canyon Special Opportunities Master Fund (Cayman), Ltd. The Trustee of CSOF II is Ogier Fiduciary Services (Cayman) Limited.

3. Plaintiffs Canyon Capital CLO 2004 1 Ltd.; Canyon Capital CLO 2006 1 Ltd.; and Canyon Capital CLO 2007 1 Ltd. are each exempted companies with limited liability incorporated under the laws of the Cayman Islands, whose Collateral Manager is Canyon Capital Advisors LLC. These Plaintiffs have no parent company.

4. No publicly-held company owns more than 10% of these Plaintiffs' shares or of the shares of CSOF II Trust.

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS CARLYLE HIGH YIELD PARTNERS 2008-1, LTD.; CARLYLE HIGH YIELD PARTNERS VI, LTD.; CARLYLE HIGH YIELD PARTNERS VII, LTD.; CARLYLE HIGH YIELD PARTNERS VIII, LTD.; CARLYLE HIGH YIELD PARTNERS IX, LTD.; AND CARLYLE HIGH YIELD PARTNERS X, LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Carlyle High Yield Partners 2008-1, Ltd.; Carlyle High Yield Partners VI, Ltd.; Carlyle High Yield Partners VII, Ltd.; Carlyle High Yield Partners VIII, Ltd.; Carlyle High Yield Partners IX, Ltd.; and Carlyle High Yield Partners X, Ltd. disclose the following:

1. Plaintiffs are each exempted companies with limited liability incorporated under the laws of the Cayman Islands, whose Collateral Manager is Carlyle Investment Management L.L.C.

2. Plaintiffs have no parent company and the Collateral Manager is unaware of any publicly-held company that owns more than 10% of these Plaintiffs' shares.

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS CASPIAN CORPORATE LOAN FUND LLC; CASPIAN CAPITAL PARTNERS, L.P.; CASPIAN SELECT CREDIT MASTER FUND, LTD.; MARINER OPPORTUNITIES FUND, LP; AND MARINER LDC

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Caspian Corporate Loan Fund LLC; Caspian Capital Partners, L.P.; Caspian Select Credit Master Fund, Ltd.; Mariner Opportunities Fund, LP; and Mariner LDC disclose the following:

1. Plaintiff Caspian Corporate Loan Fund, LLC is a limited liability company formed under the laws of Delaware and its sole managing member is Caspian Credit Advisors, LLC. No publicly-held company owns more than 10% of the shares of this Plaintiff or Caspian Credit Advisors, LLC.

2. Plaintiff Caspian Capital Partners L.P. is a limited partnership formed under the laws of Delaware and its sole general partner is Caspian Capital Advisors, LLC. No publicly-held company owns more than 10% of the shares of this Plaintiff or Caspian Capital Advisors, LLC.

3. Plaintiff Caspian Select Credit Master Fund, Ltd. is a company with limited liability formed under the laws of the Cayman Islands and is owned by Caspian Select Credit Fund LP and Caspian Select Credit International, Ltd. No publicly-held company owns more than 10% of the shares of this Plaintiff, Caspian Select Credit Fund LP or Caspian Select Credit International, Ltd.

4. Plaintiff Mariner Opportunities Fund, LP is a limited partnership formed under the laws of Delaware and its sole general partner is Caspian Credit Advisors, LLC. No publicly-held company owns more than 10% of the shares of this Plaintiff or Caspian Credit Advisors, LLC.

5. Plaintiff Mariner LDC is a company with limited duration formed under the laws of the Cayman Islands and is owned by Mariner Partners LP and Mariner Atlantic, Ltd. No publicly-held company owns more than 10% of the shares of this Plaintiff, Mariner Partners LP or Mariner Atlantic, Ltd.

6. The Investment Manager for these Plaintiffs is Mariner Investment Group, LLC.

EXHIBIT H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS OLYMPIC CLO I LTD.; SHASTA CLO I LTD.; WHITNEY CLO I LTD.; SAN GABRIEL CLO I LTD.; AND SIERRA CLO II LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Olympic CLO I Ltd.; Shasta CLO I Ltd.; Whitney CLO I Ltd.; San Gabriel CLO I Ltd.; and Sierra CLO II Ltd. disclose the following:

1. Plaintiffs are each companies with limited liability incorporated under the laws of the Cayman Islands, whose Collateral Manager is Churchill Pacific Asset Management LLC.

2. Plaintiffs have no parent company and the Collateral Manager is unaware of any publicly-held company that owns more than 10% of these Plaintiffs' shares.

EXHIBIT I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS ABERDEEN LOAN FUNDING, LTD.; ARMSTRONG LOAN FUNDING, LTD.; BRENTWOOD CLO, LTD.; EASTLAND CLO, LTD.; GLENEAGLES CLO, LTD.; GRAYSON CLO, LTD.; GREENBRIAR CLO, LTD.; HIGHLAND CREDIT OPPORTUNITIES CDO, LTD.; HIGHLAND LOAN FUNDING V, LTD.; JASPER CLO, LTD.; LIBERTY CLO, LTD.; LOAN FUNDING IV LLC; LOAN FUNDING VII LLC; RED RIVER CLO, LTD.; ROCKWALL CDO LTD.; ROCKWALL CDO II, LTD.; SOUTHFORK CLO, LTD.; STRATFORD CLO, LTD.; AND WESTCHESTER CLO, LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Aberdeen Loan Funding, Ltd.; Armstrong Loan Funding, Ltd.; Brentwood CLO, Ltd.; Eastland CLO, Ltd.; Gleneagles CLO, Ltd.; Grayson CLO, Ltd.; Greenbriar CLO, Ltd.; Highland Credit Opportunities CDO, Ltd.; Highland Loan Funding V, Ltd.; Jasper CLO, Ltd.; Liberty CLO, Ltd.; Loan Funding IV LLC; Loan Funding VII LLC; Red River CLO, Ltd.; Rockwall CDO Ltd.; Rockwall CDO II, Ltd.; Southfork CLO, Ltd.; Stratford CLO, Ltd.; and Westchester CLO, Ltd. disclose the following:

1. Plaintiffs Aberdeen Loan Funding, Ltd.; Greenbriar CLO, Ltd.; and Stratford CLO, Ltd. are each companies with limited liability incorporated under the laws of the Cayman

Islands. Highland Crusader Offshore Partners, L.P. has a greater than 50% interest in these Plaintiffs. Highland Crusader Fund II, Ltd. is the parent of Highland Crusader Offshore Partners, L.P. No publicly-held company owns more than 10% of the shares of these Plaintiffs, Highland Crusader Offshore Partners, LP, or Highland Crusader Fund II, Ltd. The Collateral Manager for these Plaintiffs is Highland Capital Management, L.P.

2. Plaintiffs Brentwood CLO, Ltd.; Red River CLO, Ltd.; Rockwall CDO Ltd.; Rockwall CDO II, Ltd.; and Westchester CLO, Ltd. are each companies with limited liability incorporated under the laws of the Cayman Islands. Highland CDO Holding Company has a greater than 50% interest in these Plaintiffs. Highland Financial Partners, L.P. is the parent of Highland CDO Holding Company. No publicly-held company owns more than 10% of the shares of these Plaintiffs, Highland CDO Holding Company, or Highland Financial Partners, L.P. The Collateral Manager for these Plaintiffs is Highland Capital Management, L.P.

3. Plaintiff Highland Credit Opportunities CDO, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands. Highland Credit Opportunities CDO, L.P. has a greater than 50% interest in this Plaintiff. No publicly-held company owns more than 10% of the shares of this Plaintiff or Highland Credit Opportunities CDO, L.P. The Collateral Manager for this Plaintiff is Highland Capital Management, L.P.

4. Plaintiffs Armstrong Loan Funding, Ltd.; Eastland CLO, Ltd.; Gleneagles CLO, Ltd.; Grayson CLO, Ltd.; Highland Loan Funding V, Ltd.; Jasper CLO, Ltd.; Liberty CLO, Ltd.; and Southfork CLO, Ltd. are each companies with limited liability incorporated under the laws of the Cayman Islands, whose Collateral Manager is Highland Capital Management, L.P. These Plaintiffs have no parent company that has greater than 50% interest in these Plaintiffs and the Collateral Manager is unaware of any publicly-held company that owns more than 10% of these Plaintiffs' shares.

5. Plaintiffs Loan Funding IV LLC and Loan Funding VII LLC are each companies with limited liability formed under the laws of the State of Delaware, whose Collateral Manager is Highland Capital Management, L.P. These Plaintiffs are wholly-owned subsidiaries of Citibank, N.A.

EXHIBIT J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS ING PRIME RATE TRUST; ING SENIOR INCOME FUND; ING INTERNATIONAL (II) – SENIOR BANK LOANS EURO; ING INVESTMENT MANAGEMENT CLO I, LTD.; ING INVESTMENT MANAGEMENT CLO II, LTD.; ING INVESTMENT MANAGEMENT CLO III, LTD.; ING INVESTMENT MANAGEMENT CLO IV, LTD.; AND ING INVESTMENT MANAGEMENT CLO V, LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs ING Prime Rate Trust; ING Senior Income Fund; ING International (II) - Senior Bank Loans Euro; ING Investment Management CLO I, Ltd.; ING Investment Management CLO II, Ltd.; ING Investment Management CLO III, Ltd.; ING Investment Management CLO IV, Ltd.; and ING Investment Management CLO V, Ltd. disclose the following:

1. Plaintiff ING Prime Rate Trust is a business trust formed under the laws of Massachusetts, whose Collateral Manager is ING Investments, LLC and whose Sub-Adviser is ING Investment Management Co.

2. Plaintiff ING Senior Income Fund is a statutory trust formed under the laws of Delaware, whose Collateral Manager is ING Investments, LLC and whose Sub-Adviser is ING Investment Management Co.

3. Plaintiff ING International (II) - Senior Bank Loans Euro is a SICAV (Societé d'Investissement a Capital Variable) formed under the laws of Luxembourg, whose Collateral Manager is ING Investment Management Luxembourg S.A. and whose Sub-Adviser is ING Investment Management Co.

4. Plaintiff ING Investment Management CLO I, Ltd. is a company with limited liability incorporated under the laws of the Cayman Islands, whose Collateral Manager is ING Investment Management Co.

5. Plaintiffs ING Investment Management CLO II, Ltd.; ING Investment Management CLO III, Ltd.; ING Investment Management CLO IV, Ltd. and ING Investment Management CLO V, Ltd. are each companies with limited liability incorporated under the laws of the Cayman Islands, whose Collateral Manager is ING Alternative Asset Management LLC.

6. Plaintiffs have no parent company and the Collateral Managers are unaware of any publicly-held company that owns more than 10% of these Plaintiffs' shares.

EXHIBIT K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS VENTURE II CDO 2002, LIMITED; VENTURE III CDO LIMITED; VENTURE IV CDO LIMITED; VENTURE V CDO LIMITED; VENTURE VI CDO LIMITED; VENTURE VII CDO LIMITED; VENTURE VIII CDO LIMITED; VENTURE IX CDO LIMITED; VISTA LEVERAGED INCOME FUND; AND VEER CASH FLOW CLO, LIMITED

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Venture II CDO 2002, Limited; Venture III CDO Limited; Venture IV CDO Limited; Venture V CDO Limited; Venture VI CDO Limited; Venture VII CDO Limited; Venture VIII CDO Limited; Venture IX CDO Limited; Vista Leveraged Income Fund; and Veer Cash Flow CLO, Limited disclose the following:

1. Plaintiffs are each companies with limited liability incorporated under the laws of the Cayman Islands, whose Collateral Manager is MJX Asset Management LLC.

2. Plaintiffs have no parent company and the Collateral Manager is unaware of any publicly-held company that owns more than 10% of these Plaintiffs' shares.

EXHIBIT L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFF GENESIS CLO 2007-1 LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiff Genesis CLO 2007-1 Ltd. discloses the following:

1. Plaintiff is a company with limited liability incorporated under the laws of the Cayman Islands, whose Collateral Manager is Ore Hill Partners LLC.

2. Plaintiff has no parent company and, to the best of the Collateral Manager's knowledge, a subsidiary of Deutsche Bank, a publicly-held company, owns 25% of the equity of this Plaintiff.

EXHIBIT M

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS PRIMUS CLO I, LTD. AND PRIMUS CLO II, LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Primus CLO I, Ltd. and Primus CLO II, Ltd. disclose the following:

1. Plaintiffs are each exempted companies with limited liability incorporated under the laws of the Cayman Islands, whose Collateral Manager is Primus Asset Management, Inc. and whose Collateral Administrator is Virtus Group L.P.

2. Plaintiffs have no parent company and the Collateral Manager is unaware of any publicly-held company that owns more than 10% of these Plaintiffs' shares.

EXHIBIT N

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFFS ROSEDALE CLO, LTD. AND ROSEDALE CLO II LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiffs Rosedale CLO, Ltd. and Rosedale CLO II Ltd. disclose the following:

1. Plaintiffs are each companies with limited liability incorporated under the laws of the Cayman Islands, BWI, whose Collateral Manager is Princeton Advisory Group.

2. Plaintiffs have no parent company and the Collateral Manager is unaware of any publicly-held company that owns more than 10% of these Plaintiffs' shares.

EXHIBIT O

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFF SPCP GROUP, LLC.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiff SPCP Group, LLC discloses the following:

1. Plaintiff is a company with limited liability formed under the laws of Delaware, whose Manager is Silver Point Capital, L.P. Silver Point Capital Fund, L.P. and Silver Point Capital Offshore Fund, Ltd. each own 50% of the membership interests in Plaintiff.

2. No publicly held company owns more than 10% of the shares of Plaintiff, Silver Point Capital Fund, L.P. or Silver Point Capital Offshore Fund, Ltd.

EXHIBIT P

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.
_____/

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFF STONE LION PORTFOLIO L.P.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiff Stone Lion Portfolio L.P. discloses the following:

1. Plaintiff is a limited partnership formed under the laws of the Cayman Islands, whose Investment Advisor is Stone Lion Capital Partners L.P. Plaintiff's sole general partner is Stone Lion GP LP.

2. No publicly held company owns more than 10% of the shares of Plaintiff or Stone Lion GP L.P.

EXHIBIT Q

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/MCALILEY
[original SDFL action 09-21879]

Case No. 09-CV-01047-KJD-PAL

IN RE: FONTAINEBLEAU LAS VEGAS CONTRACT LITIGATION

MDL No. 2106

AVENUE CLO FUND, LTD., et al.,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., et al.,

Defendants.

CORPORATE DISCLOSURE STATEMENT OF PLAINTIFF VENOR CAPITAL MASTER FUND, LTD.

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Plaintiff Venor Capital Master Fund, Ltd. discloses the following:

1. Plaintiff is a company with limited liability incorporated under the laws of the Cayman Islands, whose Investment Manager is Venor Capital Management LP.

2. Plaintiff has no parent company and the Investment Manager is unaware of any publicly-held company that owns more than 10% of this Plaintiff's shares.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 09-21879-CIV-GOLD/MCALILEY

FONTAINEBLEAU LAS VEGAS LLC,

Plaintiff,

v.

BANK OF AMERICA, N.A., *et al*,

Defendants.
_____/

NOTICE OF REQUEST FOR TERMINATION OF APPEARANCE OF ATTORNEY ON SERVICE LIST

The Term Lenders, by and through the undersigned counsel, hereby give notice of this request to the Clerk of Courts that the following person be terminated from the Service List:

- SUSAN WILLIAMS SCANN, ESQ.
  Deaner Deaner Scann Malan & Larsen
  720 S 4th Street, Suite 300
  Las Vegas, NV 89101.

Respectfully submitted,

By: /s Lorenz Michel Prüss

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Telephone: (305) 374-1920
Facsimile: (305) 374-1961
Local Counsel for Term Lenders

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this February 8, 2010, I filed the foregoing with the Clerk of the Court and the CM/ECF system will send a notice of electronic filing to the following counsel and parties of records, except as otherwise noted.

By: /s Lorenz Michel Prüss
Lorenz Michel Prüss