

**JUDGE SWAIN**

**'09 CIV 8064**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

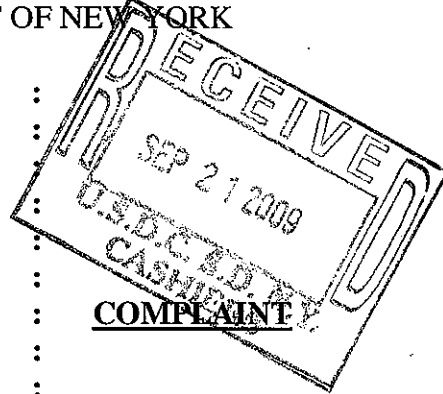
ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

-against-

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;  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;  
and CAMULOS MASTER FUND, L.P.,

Defendants.



Case No. \_\_\_\_\_

1. This action seeks to redress wrongs done by Defendants to predecessors-in-interest of ACP Master, Ltd. and Aurelius Capital Master, Ltd. ("Aurelius" or "Plaintiffs").

2. In March 2007, a group of investment bankers, including affiliates of Defendants (defined below), contacted Plaintiffs' predecessors-in-interest to participate in financing the development and construction of the Fontainebleau Resort and Casino in Las Vegas, Nevada ("the Project"). The Project was to consist of a 63-story glass skyscraper featuring over 3,800 guest rooms, suites and condominium units; a 100-foot-high, three-level podium complex housing casino/gaming areas, restaurants and bars, a spa and salon, a live entertainment theater and rooftop pools; a 353,000 square-foot convention center; a high-end retail space including shops and restaurants; and a nightclub.

3. In June 2007, Plaintiffs' predecessors-in-interest and Defendants entered into the Credit Agreement ("Credit Agreement") to provide funds for the Project.

4. The borrowers under the Credit Agreement were Fontainebleau Las Vegas LLC and Fontainebleau Las Vegas II, LLC (the "Borrowers").

5. The Credit Agreement covered three kinds of loans to build the Project:<sup>1</sup> (a) a \$700 million initial term loan facility (the "Initial Term Loan"); (b) a \$350 million delay draw term facility (the "Delay Draw Loan"); and (c) an \$800 million revolving loan facility (the "Revolving Loan"). The lenders are referred to below at times as "Initial Term Loan Lenders," "Delay Draw Loan Lenders," and "Revolving Loan Lenders," respectively.

6. Plaintiffs bring this action against Defendants because, to the detriment of Plaintiffs' predecessors-in-interest, Defendants refused to fund the Revolving Loan when the Credit Agreement required them to do so.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this civil action pursuant to 12 U.S.C. § 632 because Defendants Bank of America, N.A., 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.

8. Venue is proper in the United States District Court for the Southern District of New York because a substantial number of the Defendants reside in New York and transactions at issue occurred in this District.

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<sup>1</sup> Certain other loans were available only after the casino and hotel opened for business.

## THE PARTIES

### *The Plaintiffs*

9. Plaintiff ACP Master, Ltd. is a Cayman Islands exempt company with no place of business in the United States and with its principal place of business in the Cayman Islands.

Plaintiff Aurelius Capital Master, Ltd. is a Cayman Islands exempt company with no place of business in the United States and with its principal place of business in the Cayman Islands.

10. Plaintiffs ACP Master, Ltd. and/or Aurelius Capital Master, Ltd. is the successor-in-interest to the following Initial Term Loan Lenders and/or Delay Draw Loan Lenders:

Aberdeen Loan Funding, Ltd.; Airlie CLO 2006-II Ltd.; Artus Loan Fund 2007-I, Ltd.; Babson CLO Ltd. 2004-I; Babson CLO Ltd. 2004-II; Babson CLO Ltd. 2005-I; Babson CLO Ltd. 2005-II; Babson CLO Ltd. 2005-III; Babson CLO Ltd. 2006-I; Babson CLO Ltd. 2006-II; Babson CLO Ltd. 2007-I; Babson Loan Opportunity CLO, Ltd.; Bear Stearns Investment Products Inc.; Brentwood II CLO, Ltd.; Canadian Imperial Bank of Commerce; Carlyle High Yield Partners 2008-1, Ltd.; Carlyle Loan Investment 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.; Carlyle High Yield Partners X, Ltd.; Citibank, N.A.; C.M. Life Insurance Company; Emerald Orchard Limited; FCT First Trust/Four Corners Senior Floating Rate Income Fund II; Four Corners CLO 2005-1, Ltd.; Four Corners CLO II, Ltd.; Four Corners CLO III, Ltd.; Genesis CBNA Loan Funding LLC; Grand Central Asset Trust Cameron I Series; Grayson CLO, Ltd.; Halcyon Loan Investors CLO I, Ltd.; Halcyon Loan Investors CLO II, Ltd.; Halcyon Structured Asset Management CLO I Ltd.; Halcyon Structured Asset Management Long Secured/Short Unsecured CLO 2006-1 Ltd.; Halcyon Structured Asset Management Long Secured/Short Unsecured CLO 2007 Ltd.; Halcyon Structured Asset Management Long

Secured/Short Unsecured CLO II Ltd. (now 2007-1 Ltd.); Halcyon Structured Asset Management Long Secured/Short Unsecured CLO III Ltd. (now 2007-3 Ltd.); Halcyon Structured Asset Management CLO 2008-II B.V.; Highland Pharma CLO, Ltd.; Jefferies Finance CP Funding LLC; JFIN CLO 2007 Ltd.; LFSIGXG LLC; Longhorn Credit Funding, LLC; Massachusetts Mutual Life Insurance Company; Merrill Lynch Credit Products, LLC; Morgan Stanley Senior Funding, Inc.; Pequot Credit Opportunities Fund, L.P.; Sapphire Valley CDO I, Ltd.; and SF-3 Segregated Portfolio.

*The Defendants*

11. Defendant Bank of America, N.A. (“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 Loan Lender, Administrative Agent and Disbursement Agent. BofA committed to fund \$100 million under the Revolving Loan.

12. Defendant Merrill Lynch Capital Corporation is a Delaware corporation with its principal place of business in New York. Merrill Lynch Capital Corporation committed to fund \$100 million under the Revolving Loan.

13. Defendant JPMorgan Chase Bank, N.A. is a nationally chartered bank with its main office in Columbus, Ohio. JPMorgan Chase Bank, N.A. committed to fund \$90 million under the Revolving Loan.

14. 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 committed to fund \$100 million under the Revolving Loan.

15. 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 committed to fund \$80 million under the Revolving Loan.

16. 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 committed to fund \$90 million under the Revolving Loan.

17. Defendant Sumitomo Mitsui Banking Corporation is a Japanese corporation with offices in New York, New York. Sumitomo Mitsui Banking Corporation committed to fund \$90 million under the Revolving Loan.

18. Defendant Bank of Scotland is chartered under the laws of Scotland, with its principal place of business in Edinburgh, Scotland. Bank of Scotland committed to fund \$72.5 million under the Revolving Loan.

19. Defendant HSH Nordbank AG is a German banking corporation with a branch in New York, New York. HSH Nordbank AG committed to fund \$40 million under the Revolving Loan.

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

21. Defendant Camulos Master Fund, L.P. is a Delaware corporation with its principal place of business in Stamford, Connecticut. Camulos Master Fund L.P. committed to fund \$20 million under the Revolving Loan.

22. All of the above Defendants are referred to below collectively as the "Defendants."

## NATURE OF THE ACTION

### **The Structure of the Credit Agreement**

23. The Credit Agreement among the Borrowers, Defendants, Plaintiffs' predecessors-in-interest, and others was entered into on June 6, 2007.

24. The Credit Agreement provided for Initial Term Loans of \$700 million (all of which was funded in June 2007), Delay Draw Loans of \$350 million, and Revolving Loans of \$800 million.

25. Plaintiffs' predecessors-in-interest are each lenders under either the Initial Term Loan, the Delay Draw Loan, or both.

26. Defendants all are lenders under the Revolving Loan.

27. In addition to being a lender under the Revolving Loan, Defendant BofA acted as Administrative Agent to all of the lenders under the Credit Agreement and as Disbursement Agent to all of the lenders under the Master Disbursement Agreement ("Disbursement Agreement"), which was signed simultaneously and in connection with the Credit Agreement to control how loan proceeds were spent on the Project.

28. The purpose of the Credit Agreement was to make funds available for the construction of the Project.

29. The loans available under the Credit Agreement were the principal source of construction financing for the Project and were intended to be virtually the only source of construction financing remaining after junior sources of construction financing (equity and second mortgage bonds) were utilized, as was the case before March 2009.

30. The purpose of the Credit Agreement was to provide for the constant availability of funds so long as the terms and conditions of the Credit Agreement were met, because all Lenders would suffer if Project construction came to a halt and, as a result, their collateral value was destroyed.

31. Any amounts outstanding under the Initial Term Loan, the Delay Draw Loan and the Revolving Loan benefit from equal and ratable collateralization by mortgages on the real property comprising the Project and by security interests on all personal property of the Borrowers, including all loan proceeds not yet spent.

32. The Credit Agreement sets forth two kinds of Revolving Loan: (1) "Direct Loans"; and (2) "Disbursement Agreement Loans." Disbursement Agreement loans are loans made prior to the "Opening Date," which effectively is the date when the hotel and casino are open for business. The Revolving Loans at issue here are Disbursement Agreement loans, so references below to Revolving Loans are to those that are also Disbursement Agreement loans.

33. Disbursement Agreement borrowings under the Credit Agreement occur in two steps. First, the Borrowers must submit to the Administrative Agent (*i.e.*, BofA) a Notice of Borrowing specifying the amount of committed but unfunded loans it wishes to receive and the designated borrowing date. Such a Notice of Borrowing could be submitted only once per calendar month. The Credit Agreement contemplates a Notice of Borrowing drawing both the Delay Draw Loan and the Revolving Loan at the same date. For example, section 2.4(b) contemplates the Administrative Agent receiving a single Notice of Borrowing that obligates it to "promptly notify each Delay Draw Lender **and/or** Revolving Lender, as appropriate" (emphasis added).

34. Section 2.1(c) states: "The making of Revolving Loans which are Disbursement Agreement Loans to the Bank Proceeds Account shall be subject **only** to the fulfillment of the applicable conditions set forth in Section 5.2, and shall thereafter be disbursed from the Bank Proceeds Account subject only to the conditions set forth in Section 3.3 of the Disbursement Agreement" (emphasis in original).

35. Section 5.2 of the Credit Agreement states:

Conditions to Extensions of Credit controlled by Disbursement Agreement.

The agreement of each Lender to make Disbursement Agreement Loans and to issue Letters of Credit for the payment of Project Costs pursuant to Section 3.4 of the Disbursement Agreement, is subject only to the satisfaction of the following conditions precedent:

(a) Notice of Borrowing. Borrowers shall have submitted a Notice of Borrowing specifying the amount and Type of the Loans requested, and the making thereof shall be in compliance with the applicable provisions of Section 2 of this Agreement.

(b) Letters of Credit. In the case of Letters of Credit, the procedures set forth in Section 3.4 of the Disbursement Agreement shall have been complied with.

(c) Drawdown Frequency. Except for Loans made pursuant to Section 3 with respect to Reimbursement Obligations, Loans made pursuant to this Section shall be made no more frequently than once every calendar month unless the Administrative Agent otherwise consents in its sole discretion.

36. The Administrative Agent must promptly notify the lenders of the Notice of Borrowing. Once notified, each lender must make its pro-rata share of the requested loans available to the Administrative Agent prior to 10:00 a.m. on the designated borrowing date. The Administrative Agent, “[u]pon satisfaction or waiver of the applicable conditions precedent,” transfers the funds (except Delay Draw Loan proceeds used to pay off outstanding balances under the Revolving Loan pursuant to section 2.1(b)(iii) of the Credit Agreement) into a “Bank Proceeds Account,” which is essentially a holding account for the loaned funds. As Section 5.2 makes clear, the funding of this first step is not conditioned on representations and warranties or absence of Events of Default.

37. Second, the Borrowers must submit an advance request (the “Advance Request”) to secure disbursements from the Bank Proceeds Account under the Disbursement Agreement. It is at this second step that Section 3.3 of the Disbursement Agreement – referred to above by Section 2.1(c)’s requirements for Disbursement Agreement Loans – conditions the disbursement



on the protections afforded by the representations and warranties and absence of default. Article 3.3 of the Disbursement Agreement sets forth the conditions precedent to Advances by the Disbursement Agent, BofA, including no misrepresentations under the Credit Agreement, no continuing Events of Default or Defaults, and that the Bank Agent was not aware of any adverse information that may affect the Project. Pursuant to Article 2.5.1, BofA was required to stop funding Advance Requests (*i.e.*, requests by the Borrower to disburse amounts from the Bank Proceeds Account) if “conditions precedent to an Advance ha[d] not been satisfied....”

38. Each requested round of Delay Draw Loan was required to be in a minimum amount of \$150 million. This meant that either all \$350 million of Delay Draw Loans could be requested at once, or the Delay Draw Loans would be requested in two rounds, the first between \$150 million and \$200 million and the second for the balance. Once Delay Draw Loans were repaid, they could not be re-borrowed.

39. In contrast, each round of Revolving Loans could be requested in a minimum amount of \$5,000,000. This afforded the Borrowers the flexibility to make monthly borrowings of less than the \$150 million minimum denomination applicable to Delay Draw Loans. When Delay Draw Loans were made, the Borrowers were required to use the proceeds first to pay down any outstanding Revolving Loans before using them to meet other needs, such as the costs of the Project. Revolving Loans could be repaid and re-borrowed.

40. Consistent with this, Section 2.1(c)(iii) of the Credit Agreement states that “unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed \$150,000,000.”

41. The Credit Agreement allows the Borrowers simultaneously to request the remaining Delay Draw Loans and new Revolving Loans.

42. Absent this right, there could be months where the Borrowers would have no funds available to meet current expenditures on the Project, which could be disastrous for the Borrowers, the Lenders and the construction companies working on the Project.

43. To illustrate, suppose that the Borrowers received \$200 million in the first round of Delay Draw Loan borrowing, then received two rounds of Revolving Loans totaling \$150 million, and used that money in project construction. Suppose the Borrowers thereafter need an additional \$170 million to meet the current month's construction expenses. If the Borrowers only receive the remaining \$150 million of Delay Draw Loans, all of those funds would be used to repay the \$150 million of Revolving Loans. Thus, the Borrowers would be left without funds to pay their construction vendors unless the Borrowers could also request \$170 million of new Revolving Loans at the same time they request \$150 million of new Delay Draw Loans. If the Borrowers could not request both the Delay Draw Loans and the Revolving Loans at the same time, the Borrowers would be without funds to meet their expenses for another month, when they could request the next round of Revolving Loans.

#### **The Defendants' Wrongful Refusal to Fund**

44. On March 2, 2009, the Borrowers issued a Notice of Borrowing drawing the entire amount available under the Delay Draw Loan and the remaining amount available under the Revolving Loan (the "March 2 Notice").

**NOTICE OF BORROWING**

March 2, 2009

Bank of America, N.A.,  
as Administrative Agent  
Mail Code: TX1-492-14-11  
Bank of America Plaza  
901 Main St.  
Dallas, TX 75202-3714  
Attention: Donna F. Kimbrough

Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC

Ladies and Gentlemen:

Pursuant to Section 2.4 of that certain Credit Agreement, dated as of June 6, 2007 (as amended, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement or if not set forth therein the meanings given to them in the Disbursement Agreement, or, to the extent the Disbursement Agreement is then not in effect, the Disbursement Agreement as of the last day of its effectiveness), among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (collectively, the "Borrowers"), each lender from time to time party thereto and Bank of America, N.A., as administrative agent (the "Administrative Agent"), the Borrowers hereby give the Administrative Agent irrevocable notice that the Borrowers hereby request a Loan under the Credit Agreement, and in that connection set forth below the information relating to such Loan:

1. The Banking Day of the proposed Loan is March 3, 2009 (the "Borrowing Date").
2. The proposed Loan is a Disbursement Agreement Loan.
3. The proposed Loan is a Delay Draw Loan and a Revolving Loan. The Type of the proposed Loan is a Base Rate Loan.
4. The aggregate amount of the proposed Delay Draw Loan is \$350,000,000, and the aggregate amount of the proposed Revolving Loan is \$670,000,000.

The Borrowers agree that, if prior to the Borrowing Date any of the foregoing certifications shall cease to be true and correct, the Borrowers shall forthwith notify the Administrative Agent thereof in writing (any such notice, a "Non-Compliance Notice"). Except to the extent, if any, that prior to the Borrowing Date, the Borrowers shall deliver a Non-Compliance Notice to the Administrative Agent, each of the foregoing certifications shall be deemed to be made additionally on the Borrowing Date as if made on such date.

The undersigned is executing this Notice of Borrowing not in an individual capacity, but in the undersigned's capacity as a Responsible Officer of the Borrowers.

45. Approximately \$68 million of Revolving Loans had previously been funded pursuant to prior Notices of Borrowing and remained outstanding on March 2, 2009.

46. If the March 2 Notice (as corrected by the March 3 Notice described below) had been honored by the Lenders, (a) the \$68 million of previously outstanding Revolving Loans would have been fully repaid out of the proceeds of the Delay Draw Loan, (b) a new and much larger Revolving Loan would have been made concurrently with the Delay Draw Loan, and (c) the amounts funded by the Delay Draw Loan (less the portion used to repay previously outstanding Revolving Loans) and by the new Revolving Loan would have been placed in the Bank Proceeds Account, where they would have been subject to the liens of all Lenders under the Credit Agreement unless and until released to pay the costs of constructing the Project (which was also subject to the liens of all Lenders).

47. BofA submitted the March 2 Notice to Revolving Loan Lenders and the Delay Draw Lenders, and several of the Delay Draw Loan Lenders began to fund.

48. At 5:30 p.m. Eastern Time on March 2, 2009, BofA led a conference call among certain lenders to discuss the Notice of Borrowing.

49. BofA hosted a follow-up conference call at 8:00 a.m. Eastern Time the next morning, March 3, 2009.

50. On March 3, 2009, BofA, as the Administrative Agent, sent a letter (the "March 3 Agent Letter") to the Borrowers stating that it would not process the March 2 Notice.

51. The Administrative Agent claimed that the March 2 Notice did not comply with the provisions of Section 2.1(c)(iii) of the Credit Agreement, the provision discussed above which states that "unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed \$150,000,000."



March 3, 2009

Via Electronic Mail

Jim Freeman, Senior Vice President and Chief Financial Officer  
Fontainebleau Resorts LLC  
Fontainebleau Las Vegas, LLC  
2827 Paradise Road  
Las Vegas, NV 89109  
[jfreeman@fontainebleau.com](mailto:jfreeman@fontainebleau.com)

Re: Credit Agreement dated as of June 6, 2007 among Fontainebleau Las Vegas, LLC (the "Company"), Fontainebleau Las Vegas II, LLC, the Lenders, and Bank of America, N.A., as Administrative Agent

Dear Jim:

We are in receipt of the Loan Notice which the Company submitted yesterday under the Credit Agreement described above, which requests a Delay Draw Term Loan in the amount of \$350,000,000 and a Revolving Loan of \$670,000,000.

The Loan Notice which you submitted does not comply with the provisions of Section 2.1(c) of the Credit Agreement, which states that:

"(iii) unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed \$150,000,000."

Accordingly, we have notified the Lenders that we will not be processing this Loan Notice. Please contact Brian Corum or me if you have any questions regarding this letter.

Very truly yours,

BANK OF AMERICA, N.A. as Administrative Agent

By:   
Ronaldo Naval, Vice President

52. The Administrative Agent unilaterally returned funds to those Lenders that had funded the March 2 Notice.

53. Other Delay Draw Loan Lenders relied on BofA's incorrect advice in refusing to fund pursuant to the March 2 Notice and March 3 Notice.

54. On March 3, 2009, the Borrowers replied to the Administrative Agent by letter (the "March 3 Borrower Letter") advising that the March 3 Agent Letter was in error and urging the Administrative Agent to reconsider.

55. The March 3 Borrower Letter explained that the Credit Agreement does not prevent the Borrowers from requesting the full amount of the Delay Draw Loan and Revolving Loan pursuant to one Notice of Borrowing.



FONTAINEBLEAU RESORTS, LLC

702 495 8100  
2827 PARADISE ROAD  
LAS VEGAS NV 89109

FONTAINEBLEAU.COM

March 3, 2009

**VIA ELECTRONIC MAIL**

Bank of America, N.A.,  
as Administrative Agent  
Agency Management  
901 Main Street  
Mail Code TX1-492-14-11  
Dallas, TX 75202  
Attn: Ronaldo Naval, Vice President

**RE: CREDIT AGREEMENT DATED AS OF JUNE 6, 2007 AMONG FONTAINEBLEAU  
LAS VEGAS, LLC, FONTAINEBLEAU LAS VEGAS II, LLC, THE LENDERS  
PARTY THERETO AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT**

Dear Ron:

We are in receipt of your letter of March 3, 2009, in which Bank of America incorrectly declined to process the Notice of Borrowing we submitted yesterday<sup>1</sup>. We are legally entitled to have these monies deposited into the Bank Proceeds Account, in which we have a beneficial interest.

Your letter states that you will not process the Notice of Borrowing based upon an erroneous position that the Notice of Borrowing does not comply with Section 2.1(c)(ii) of the Credit Agreement. We believe that your reading of that section is contrary to the plain language of the Credit Agreement and related Loan Documents. For that reason, we urge you to reconsider your position.

The Notice of Borrowing, by its own terms, satisfies the requirements of Section 2.1(c)(iii). Specifically, at the time that Revolving Loans in excess of \$150 million will be outstanding, the Delay Draw Commitments will have been fully drawn in compliance with this provision.

To be clear, Section 2.1(c)(iii) does not require the Delay Draw Term Loan Commitment to have been *funded prior* to drawing down the Revolving Loans; instead, this provision restricts the *outstanding* amount of the Revolving Loans *unless* the Total Delay Draw Commitments have

been *fully drawn*. By fully drawing on the Delay Draw Commitments at the same time as we requested the borrowing under the Revolving Commitments, we met this requirement.

Accordingly, the Notice of Borrowing we submitted yesterday satisfied the requirements of the Credit Agreement and should have been processed and funded today. Your failure to have done so constitutes a breach of the Credit Agreement, resulting in substantial harm to the Loan Parties. We expect the Lenders to honor their obligations and fund their loans pursuant to the corrected Notice of Borrowing without further delay.

Nothing herein is intended to waive any of our rights and/or remedies, both at law or in equity, all of which we expressly reserve.

Very truly yours,

Fontainebleau Las Vegas, LLC



Name: Jim Freeman

Title: Sr. Vice President and Chief Financial Officer

cc: Brian Corum

56. The Borrowers also submitted an amended Notice of Borrowing (“March 3 Notice”) to correct a calculation error specifying that the amount sought was actually \$656.52 million.

<sup>1</sup> The Notice of Borrowing submitted on March 2, 2009, contained a scrivener's error such that the amount of Borrowing sought under the Revolving Commitments was represented to be \$670 million. The actual amount intended to be drawn upon is \$656,522,698, in respect of \$13,477,302 of Letters of Credit outstanding. We attach hereto a corrected Notice of Borrowing reflecting the appropriate amount.

57. On March 4, 2009, BofA posted on Intralinks (an on-line platform for the auditable exchange of information among syndicated loan participants) a message available to the lenders noting that BofA had not changed its position and that, in its view, the Notice of Borrowing did not comply with the terms of the Credit Agreement.



58. In fact, the March 2 Notice and the March 3 Notice were effective in fully drawing both the Delay Draw Loan and the Revolving Loan. Contrary to BofA's position and advice to the Delay Draw Loan Lenders, the March 2 Notice and the substituted March 3 Notice were valid and enforceable draws on both the Delay Draw Loan and the Revolving Loan. The Borrowers had satisfied Section 2.1(c)(iii) by submitting the March 2 Notice since, by virtue of the March 2 Notice the Borrowers had fully drawn the Delay Draw Loan, and, as a consequence of that full draw, Revolving Loans in excess of \$150 million could be outstanding. Within the meaning of the Credit Agreement and generally, a commitment is "drawn" when a request for payment is presented (here, a Notice of Borrowing).

**The Delay Draw Loan Lenders Cure Their Breach, But The Revolving Loan Lenders Do Not**

59. On March 6, 2009, the Borrowers sent a letter to the Administrative Agent again noting that the Administrative Agent had improperly failed and refused to process the Notice of Borrowing based on a contrived construction of Section 2.1 of the Credit Agreement. The letter also noted that other lender parties to the Credit Agreement had informed the Borrowers that they disagreed with the Administrative Agent's interpretation.

60. On March 9, 2009, the Borrowers, while reserving their position that the March 2 Notice and the March 3 Notice were valid, and stating their belief that BofA "may be acting in its own self-interest" by failing to process the notices, issued a revised Notice of Borrowing (the "March 9 Notice") directed solely to the Delay Draw Loan Lenders.



FONTAINEBLEAU RESORTS, LLC  
702 495 8100  
2827 PARADISE ROAD  
LAS VEGAS NV 89109  
FONTAINEBLEAU.COM

March 9, 2009

VIA ELECTRONIC MAIL

Henry Yu  
Senior Vice President  
Bank of America, N.A.  
901 Main Street  
Mail Code TX1-492-14-11  
Dallas, Texas 75202

RE: CREDIT AGREEMENT DATED AS OF JUNE 6, 2007 AMONG  
FONTAINEBLEAU LAS VEGAS, LLC, FONTAINEBLEAU LAS VEGAS II,  
LLC (CUMULATIVELY, THE "COMPANY"), THE LENDERS PARTY  
THERETO AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT

Dear Mr. Yu:

On March 2, 2009 and again on March 3, 2009 we issued a Notice of Borrowing to the Administrative Agent pursuant to Sections 2.1(b) and 2.4 of the Credit Agreement, in which we sought a Delay Draw Loan in the amount of \$350,000,000 and a Revolving Loan in the amount of \$656,522,698. The response to both Notices of Borrowing was that the Administrative Agent had declined to process our request on the basis that the Loan Notice did not "conform to the requirements of the credit agreement." It appears to be your belief – albeit an incorrect one – that the credit agreement does not permit a simultaneous draw on the Delay Draw Term Loan and Revolving Loan. We have explained in clear terms why your refusal to process our Loan Notice was in error. We reiterate our prior statements that the Lenders were, by their actions or inactions, in default of the Loan Documents and that, as a consequence of said conduct, we have incurred – and will continue to incur – substantial damages. We also reiterate our very real concern that Bank of America may be acting in its own self-interest in derogation of the Loan Agreement, and against the interests of the Company and several of the other Lenders.

However, given the substantial risks to the Company and the Project associated with any further delay in the processing of our Notice of Borrowing, you have left us no choice but to now submit a Notice of Borrowing for the \$350 million Delay Draw Term Loan, without simultaneously seeking to draw upon the Revolving Credit Facility. Accordingly, attached hereto please find our Notice of Borrowing with respect to a \$350,000,000 Delay Draw Term Loan to the Company.

61. BofA sent the March 9 Notice to the Delay Draw Loan Lenders, and Plaintiffs' predecessors-in-interest funded their commitments under the Delay Draw Loan. In all, the Delay Draw Loan Lenders funded approximately \$337 million of the \$350 million Delay Draw Loan. Plaintiffs' predecessors-in-interest entirely funded their own commitments under the Credit Agreement and have fully performed all of their obligations thereunder.

62. As required by Section 2(b)(iii) of the Credit Agreement, BofA applied approximately \$68 million of the amounts so lent by the Delay Draw Loan Lenders to repay the Revolving Loans that predated the March 2 notice

63. By funding the March 9 Notice, Plaintiffs' predecessors-in-interest cured their breach of the Credit Agreement in failing to fund the March 2 Notice and March 3 Notice.

64. The Defendants failed to cure their own breach of the March 2 Notice and March 3 Notice. The Defendants never funded the remaining commitment of the Revolving Loan that the Borrowers validly drew in the March 2 Notice and March 3 Notice.

#### **The Revolving Lenders Again Fail to Fund A Notice of Borrowing on April 21, 2009**

65. On April 21, 2009, the Borrowers sent a Notice of Borrowing (the "April 21 Notice") to the Revolving Loan Lenders to borrow \$710,000,000 under the Revolving Loan.

66. The Revolving Loan Lenders refused to honor the April 21 Notice.

67. On April 20, 2009, Defendants purported to terminate their Revolving Loan commitments based on one or more unspecified Events of Default, as defined in the Credit Agreement.



Global Product Solutions  
Credit Services

April 20, 2009

By Electronic Mail, Telecopier and Overnight Courier

Jim Freeman, Senior Vice President and Chief Financial Officer  
Fontainebleau Las Vegas, LLC  
c/o Fontainebleau Resorts LLC  
2827 Paradise Road  
Las Vegas, NV 89109

Dear Ladies and Gentlemen:

This letter is delivered with reference to the Credit Agreement dated as of June 6, 2007 (the "Credit Agreement"), among Fontainebleau Las Vegas, LLC, a Nevada limited liability company, and Fontainebleau Las Vegas II, LLC, a Florida limited liability company (collectively, the "Borrowers"), the Lenders, and Bank of America, N.A., as Administrative Agent. Capitalized terms used but not defined herein are used with the meanings set forth in the Credit Agreement.

You are hereby notified that the Required Facility Lenders under the Revolving Credit Facility have determined that one or more Events of Default have occurred and are continuing and that they have requested that the Administrative Agent notify you that the Total Revolving Commitments have been terminated. Pursuant to Section 8 of the Credit Agreement, you are hereby notified that the Total Revolving Commitments are terminated effective immediately.

68. In fact, however, no Events of Default existed on April 20, 2009.

69. Because Plaintiffs' predecessors-in-interest met their commitments under the Delay Draw Loan and Initial Term Loan while Defendants failed to meet their commitments

under the Revolving Loan in response to the March 2 Notice, the March 3 Notice, and the April 21 Notice, Plaintiffs' predecessors-in-interest were injured.

### **Plaintiffs' Interest in Enforcing the Credit Agreement Against the Defendants**

70. The Credit Agreement is a multi-party agreement. The parties to the Agreement are the Borrowers, the Initial Term Loan Lenders, the Delay Draw Loan Lenders, and the Revolving Loan Lenders, as well as all successors-in-interest of any of those parties.

71. Under the Agreement, the Initial Term Loan Lenders and the Delay Draw Loan Lenders had an interest in and relied upon their ability to enforce loan commitments made by the Revolving Lenders, since those commitments were critical to financing the construction of the Project, and any cash provided by the Revolving Lenders would be collateral security for the Initial Term Loans and the Delay Draw Term Loans.

72. Upon entering the Agreement, each lender understood that a wrongful refusal to fund loan commitments would jeopardize the completion of the Project, diminishing the amount and value of the other lenders' collateral. As such, all lenders agreed to share the risks of the lending transaction ratably in proportion to each of the lenders' commitments. The structure of the entire contract evidences the understanding and contractual intent that each lender would be bound to the Borrowers and to one another for its lending commitments.

73. Because any significant refusal to fund by any lender had the potential to destroy the economic viability of the Project and to impair the collateral of those that had funded, the lenders all agreed that any refusal to fund the Revolving Loan could be based only upon certain specified breaches, and then only after a default had been formally declared.

74. "Upon receipt of a Notice of Borrowing..." the Agreement provides that each lender "will make the amount of its pro rata share of each borrowing..." (Credit Agreement Section 2.4(b)). The Agreement further provides that "[t]he failure of any Lender to make any

Loan... shall not relieve any other Lender of its corresponding obligation to do so.” (Credit Agreement Section 2.23(g)).

75. 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. Indeed, as the Borrowers acknowledged in their March 9 Notice, BofA was “acting in its own self-interest in derogation of the [Credit Agreement], and against the interests of the [Borrowers] and several of the other Lenders.”

76. Plaintiffs’ predecessors-in-interest fulfilled their funding obligations as Initial Term Lenders and Delay Draw Lenders under the Credit Agreement. However, the Revolving Loan Lenders failed to cure their breach in which they refused to fund after the Notices of Borrowing on March 2 and 3, 2009.

77. The Revolving Loan Lenders’ failure to perform their contractual obligations reduced the amount and value of the collateral securing the loans of Plaintiffs’ predecessors-in-interest, contrary to their bargained-for rights and benefits under the Credit Agreement and Disbursement Agreement.

78. The Revolving Loan Lenders’ failure to follow the terms of the Credit Agreement, and to cure their breach, created the exact scenario the parties contracted to avoid, where the Initial Term Lenders and Delay Draw Loan Lenders were left bearing all of the losses while the Revolving Loan Lenders breached their obligations.

#### **BofA’s Improper Funding of the March 25, 2009 Advance Request**

79. In addition to being a large Revolving Loan Lender and the Administrative Agent under the Credit Agreement, BofA served as the Disbursement Agent under the related Disbursement Agreement. As Disbursement Agent, it was BofA’s responsibility to ensure that cash lent to the Borrower under the Credit Agreement was initially held in a Bank Proceeds

Account as collateral for the Loans and would only be released from that account and spent by the Borrower as needed for the project and subject to important conditions. On March 25, 2009, shortly after the events described above, BofA allowed approximately \$133 million of funds to be released from the Bank Proceeds Account.

80. BofA has taken the position in related litigation that “long before it issued the March [2] Notice of Borrowing ... [the Borrowers] had materially and repeatedly breached the Credit Agreement ...” (Defendants’ Opposition to Fontainebleau’s Motion for Partial Summary Judgment and an Order Pursuant to 11 U.S.C. § 542 Directing the Turnover of Funds; and Defendants’ Cross Motions (A) to Dismiss Fontainebleau’s Seventh Claim for Relief and (B) to Deny or Continue Fontainebleau’s Motion so that Discovery May Be Had,” *Fontainebleau Las Vegas LLC v. Bank of America, N.A., et al.*, Adv. Pro. No. 09-01621-ap-AJC (Bankr. S.D. Fla.), at 2.). BofA asserted that Fontainebleau “...had been in default of the Credit Agreement and the Disbursement Agreement prior to the March Notice of Borrowing. ... Moreover, Fontainebleau failed to report promptly these and other Events of Default under the Credit Agreement. Thus, while Lenders denied the March Borrowing Notice based on its failure to comply with the requirements of Section 2.1(c), there is mounting evidence that Fontainebleau had no right even to make the request for the additional reason that it was not in compliance with the Credit Agreement and the closely related Disbursement Agreement.” *Id.* at 50-51.

81. To the extent that BofA, as Disbursement Agent, knew that the Borrowers were in default on March 25, 2009, then BofA is liable to Plaintiffs for wrongfully disbursing the funds of Plaintiffs’ predecessors-in-interest. Plaintiffs thus allege, in the alternative, BofA’s breach of the Disbursement Agreement.

82. On March 10, 2009, BofA via Mr. Henry Yu wrote to the Borrowers and requested a meeting “in our capacities as both Administrative Agent and Distribution Agent.”

Mr. Yu further noted that Borrowers had not returned BofA's telephone calls and had refused to schedule a meeting with BofA.

83. On March 11, 2009, Borrowers sent Mr. Yu a "prenegotiations agreement" that included a standstill period during which BofA would temporarily forbear exercising its default rights and remedies.

84. On March 16, 2009, Borrowers sent Mr. Yu a letter stating that the "Company continues to believe strongly that the Lenders are currently in default of their funding obligations."

85. Also on March 16, 2009, Mr. Yu sent a letter to the Borrowers acknowledging that a meeting with the Borrowers was scheduled for March 20, 2009, and confirming receipt of an Advance Request. Mr. Yu noted that the requested Advance Date was March 25, 2009, and stated that the lenders had raised legitimate questions concerning the Project. Mr. Yu signed the letter on behalf of "Bank of America, N.A., as Administrative Agent and Disbursement Agent."

86. On March 20, 2009, BofA met with the Borrowers to discuss the Project's status. During the meeting Fontainebleau refused to answer questions about the future operating prospects of the Project. The information exchanged and discussions which occurred during this meeting preceded the drafting by the Borrowers of an Interim Agreement dated April 1, 2009, which provided in part that the lenders signing the agreement would not terminate the Revolving Commitments or declare a Default or an Event of Default.

87. From at least March 2, 2009, through March 25, 2009, Mr. Yu represented BofA in its various capacities as the Administrative Agent, the Bank Agent and the Disbursement Agent. As such, Mr. Yu's knowledge and actions are imputed to BofA in all of these capacities and BofA had identical knowledge in all its capacities.

88. On or before March 25, 2009, BofA was aware that the Advance Request should be denied because of existing defaults, misrepresentations and adverse information. At a



minimum, BofA was aware the Borrowers were alleging that the Revolving Loan lenders were in default of their obligations under the Credit Agreement and had reserved all of their rights in connection with that default. BofA was also aware that the Borrowers had requested a pre-negotiated standstill to the lenders' rights due to problems with project.

89. Under the Credit Agreement and Disbursement Agreement, BofA had a duty to act in good faith. BofA also had specific obligations and duties under the Disbursement Agreement to deny an Advance Request or issue a Stop Funding Notice if the conditions precedent to an Advance were not satisfied.

90. Instead of fulfilling its duties, BofA favored its own interests over those of the Initial Term and Delay Draw lenders and disregarded evidence in its possession that the March Advance Request should be denied because the conditions precedent in Article 3.3 of the Disbursement Agreement were not satisfied.

91. On March 25, 2009, BofA authorized the release of \$133 million from the Bank Proceeds Account, notwithstanding the information that it had in its possession regarding Defaults or Events of Default, misrepresentations and adverse information. BofA's release of the funds notwithstanding the information it had in its possession regarding Defaults or Events of Default, misrepresentations and adverse information was in reckless disregard for the Plaintiffs' predecessors-in-interests' rights.

92. Plaintiffs' and plaintiffs' predecessors-in-interests' collateral has been and continues to be diminished as a result of BofA's actions.

**FIRST CLAIM FOR RELIEF**  
**Breach of the Credit Agreement Against All Defendants**  
**For Failure to Fund the March 2 Notice/March 3 Notice**

93. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 92 hereof.

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

95. The March 2 Notice and the March 3 Notice complied with all applicable conditions under the Credit Agreement. Plaintiffs and their predecessors-in-interest have performed all obligations required of them under the Credit Agreement.

96. Defendants did not elect to cancel their obligations under the Credit Agreement in response to Plaintiffs' predecessors-in-interests' breach of the Credit Agreement but instead permitted the Credit Agreement to continue and took benefits from the cure of breach by Plaintiffs' predecessors-in-interest.

97. Pursuant to the terms of the Credit Agreement, the Defendants were, and continue to be, obligated to honor the March 2 Notice and the March 3 Notice.

98. The Defendants' failure to honor the March 2 Notice and March 3 Notice constitutes a material breach of their obligations under the Credit Agreement.

99. Plaintiffs and/or their predecessors-in-interest 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 Loan, the amount and value of Plaintiffs' collateral has been and continues to be diminished.

**SECOND CLAIM FOR RELIEF**  
**Breach of the Credit Agreement Against All Defendants**  
**For Failure to Fund the April 21 Notice**

100. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 99 hereof.

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

102. The April 21 Notice complied with all applicable conditions under the Credit Agreement. Plaintiffs and their predecessors-in-interest have performed all obligations required of them under the Credit Agreement.

103. Defendants did not elect to cancel their obligations under the Credit Agreement in response to Plaintiffs' predecessors-in-interests' breach of the Credit Agreement but instead permitted the Credit Agreement to continue and took benefits from the cure of breach by Plaintiffs' predecessors-in-interest.

104. Pursuant to the terms of the Credit Agreement, the Defendants were, and continue to be, obligated to honor the April 21 Notice.

105. The Defendants' failure to honor the April 21 Notice constitutes a material breach of their obligations under the Credit Agreement.

106. Plaintiffs and/or their predecessors-in-interest 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 Loan, the amount and value of Plaintiffs' collateral have been and continue to be diminished.

**THIRD CLAIM FOR RELIEF**  
**Breach of the Disbursement Agreement Against BofA**

107. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 106 hereof.

108. The Disbursement Agreement is a valid and binding contract, pursuant to which BofA agreed to act as Bank Agent (which is defined in the Disbursement Agreement as the Administrative Agent under the Credit Agreement), and/or Disbursement Agent. The Disbursement Agreement was intended to directly benefit Plaintiffs.

109. BofA had a duty to the lenders, including Plaintiffs' predecessors-in-interest, to carry out its capacities as the Bank Agent (Administrative Agent) and the Disbursement Agent in good faith and to follow the provisions of the Disbursement Agreement.

110. Pursuant to the Disbursement Agreement, BofA was obligated to deny, issue a stop-funding notice, or not fund the Advance Request prior to March 25, 2009 due to BofA's knowledge that one or more conditions precedent had not been met.

111. As opposed to fulfilling its duties, BofA acted in bad faith and with gross negligence and reckless disregard or willfulness in favoring its own interests over those of the Delay Draw lenders when BofA authorized the release of \$133 million from the Bank Proceeds Account despite knowing that the Borrowers were claiming that BofA and other Revolving Loan Lenders defaulted under the Credit Agreement. Moreover, BofA was in possession of information showing other misrepresentations and adverse information. Despite this knowledge, BofA acted with bad faith, gross negligence and reckless disregard or willfulness in approving the March 25, 2009, Advance Request.

112. BofA's failure to fulfill its obligations as Bank Agent (Administrative Agent) and/or Disbursement Agent by approving the March 25, 2009, Advance Request constitutes a material breach of its obligations under the Disbursement Agreement.

113. Plaintiffs have suffered injury as a result of the breach because, as a result of BofA's approval of the Advance Request, the amount and value of Plaintiffs' and/or their predecessors-in-interests' collateral have been and continue to be diminished.

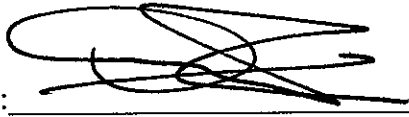
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

- A. for judgment in Plaintiffs' favor on the counts recited above;
- B. for compensatory damages in an amount to be proved at trial;
- C. for an award of costs including attorneys' fees and the costs and disbursements of this action;
- D. for pre-judgment and post-judgment interest and court costs; and
- E. for such other relief as the Court may deem proper and just.

DATED: September 21, 2009

Respectfully submitted,

By:   
\_\_\_\_\_

David Parker

KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.  
551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

and

James B. Heaton, III  
Steven J. Nachtwey  
BARTLIT BECK HERMAN PALENCHAR &  
SCOTT LLP  
54 West Hubbard Street, Suite 300  
Chicago, IL 60654  
Telephone: (312) 494-4400  
Facsimile: (312) 494-4440

Attorneys for Plaintiffs

JUDGE SWAIN

'09 CIV

8064

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

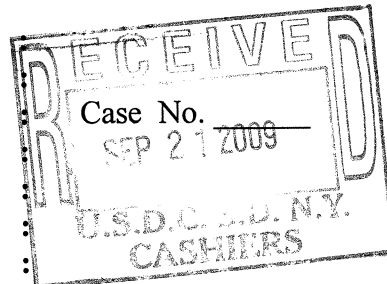
ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

-against-

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;  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;  
and CAMULOS MASTER FUND, L.P.,

Defendants.



**Rule 7.1 Statement**

Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned counsel for ACP Master, Ltd. ("ACP") and Aurelius Capital Master, Ltd. ("ACM") states as follows. ACP is an exempted company with limited liability incorporated in the Cayman Islands.

Aurelius Capital Partners, LP owns 100% of ACP's stock. Aurelius Capital GP, LLC is the sole general partner of Aurelius Capital Partners, LP, and is the parent of ACP.

ACM is an exempted company with limited liability incorporated in the Cayman Islands. Aurelius Capital International, Ltd. is the parent of ACM. No publicly held corporation owns 10% or more, directly or indirectly, of the stock of ACM.

DATED: September 21, 2009

Respectfully submitted,

James B. Heaton, III  
Steven J. Nachtwey  
**BARTLIT BECK HERMAN  
PALENCHAR & SCOTT LLP**  
54 West Hubbard Street, Suite 300  
Chicago, IL 60654  
Telephone: (312) 494-4400  
Facsimile: (312) 494-4440

**KLEINBERG, KAPLAN,  
WOLFF & COHEN, P.C.**

By: 

David Parker

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD. and  
AURELIUS CAPITAL MASTER, LTD.**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ACP Master, Ltd. and Aurelius Capital  
Master, Ltd.,

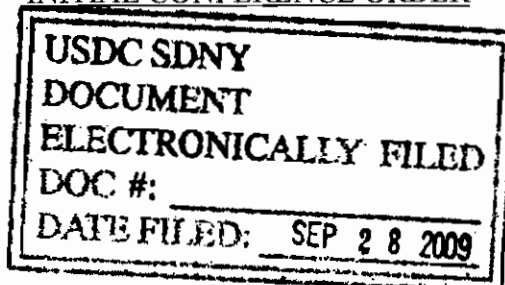
Plaintiff(s),

-against-

Bank of America, N.A., et al.,

Defendant(s).

No. 09 Civ. 8064 (LTS)(THK)  
INITIAL CONFERENCE ORDER



LAURA TAYLOR SWAIN, DISTRICT JUDGE:

1. It is hereby ORDERED that a pre-trial conference shall be held in the above-captioned matter on **December 17, 2009 at 11:00 a.m.** in Courtroom No. 11C<sup>1</sup>, Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, New York 10007. It is further
2. ORDERED that counsel<sup>2</sup> for plaintiff(s) shall serve a copy of this Initial Conference Order on each defendant within ten (10) calendar days following the date of this order, and that a copy of this Initial Conference Order shall also be served with any subsequent process that brings in additional parties, and that proof of such service shall be filed with the Court promptly. It is further
3. ORDERED that counsel for the parties confer preliminarily at least twenty-one (21) days prior to the date set forth in paragraph 1 above to discuss the following matters:
  - a. Facts that are not disputed and facts that are in dispute.
  - b. Contested and uncontested legal issues.
  - c. The disclosures required by Fed. R. Civ. P. 26(a)(1).
  - d. Anticipated amendments to the pleadings, and an appropriate deadline therefor.
  - e. Settlement.
  - f. Whether mediation might facilitate resolution of the case.
  - g. Whether the case is to be tried to a jury.
  - h. Whether each party consents to trial of the case by a magistrate judge.
  - i. Anticipated discovery, including discovery of electronically stored information and procedures relevant thereto, and an appropriate deadline for the conclusion of discovery.
  - j. Whether expert witness evidence will be required, and appropriate deadlines for expert witness discovery.

<sup>1</sup> On the day of the conference, check the electronic board in the lobby to be certain of the proper courtroom.

<sup>2</sup> As used in this Order, the term "counsel" shall, in the case of an individual party who is proceeding Pro-se, mean such party.

- k. Whether dispositive motions may be appropriate, and a deadline for such motions.
- l. Evidence to be presented at trial and the length of time expected to be required for the presentation of evidence at trial.

It is further

- 4. ORDERED that counsel for all parties shall confer and shall prepare, execute and file with the Court, with one courtesy copy provided to chambers of the undersigned, no later than seven (7) calendar days before the date set forth in paragraph 1 above a single document captioned PRELIMINARY PRE-TRIAL STATEMENT, which shall be signed by all counsel, which shall set forth the following information, and which shall constitute the written report required by Fed. R. Civ. P. 26(f):
  - a. A concise statement of the nature of this action.
  - b. A concise statement of each party's position as to the basis of this Court's jurisdiction of the action, with citations to all statutes relied upon and relevant facts as to citizenship and jurisdictional amount.
  - c. A concise statement of all material uncontested or admitted facts.
  - d. A concise statement of all uncontested legal issues.
  - e. A concise statement of all legal issues to be decided by the Court.
  - f. Each party's concise statement of material disputed facts.
  - g. A concise statement by each plaintiff and each counterclaimant of the legal basis of each cause of action asserted, including citations to all statutes, Federal Rules of Civil Procedure, other rules and case law intended to be relied upon by such plaintiff or counterclaimant.
  - h. Each party's concise statement of the legal basis of each defense asserted or expected to be asserted by such party, including citations to all statutes, Rules, and other applicable regulatory and judicial authority intended to be relied on by such party.
  - i. A concise statement of the measure of proof and on whom the burden of proof falls as to each cause of action or defense.
  - j. Whether and to what extent amendments to pleadings and/or the addition or substitution of parties will be required, and proposed deadlines therefor.
  - k. A statement as to whether all parties consent to transfer of the case to a magistrate judge for all purposes, including trial (without identifying which parties have or have not so consented).
  - l. What, if any, changes should be made in the timing, form or requirements for disclosures under Fed. R. Civ. P. 26(a), including a statement as to when any disclosures required under Fed. R. Civ. P. 26(a)(1) were made or will be made.
  - m. The subjects on which disclosure may be needed and a proposed discovery cut-off date.
  - n. Whether and to what extent expert evidence will be required, and proposed deadlines for expert discovery.
  - o. What, if any, changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or the Local Rules of court, and what other limitations should be imposed.
  - p. The status of settlement discussions and the prospects for settlement of the action in whole or in part, provided that the Preliminary Pre-Trial Statement shall not disclose to


- the Court specific settlement offers or demands.
- q. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days expected to be needed for presentation of that party's case.
  - r. Any other orders that should be entered by the Court under Fed. R. Civ. P. 26(c) or Fed. R. Civ. P. 16(b) and (c).

It is further

- 5. ORDERED that counsel shall be prepared to discuss the foregoing at the pre-trial conference, as well as whether a reference to the Magistrate Judge or to mediation may be helpful in resolving this case, and anticipated dispositive motions and a deadline therefor. It is further
- 6. ORDERED that counsel attending the pre-trial conference shall seek settlement authority from their respective clients prior to such conference. "Settlement authority," as used herein, includes the power to enter into stipulations and make admissions regarding all matters that the participants may reasonably anticipate discussing at the pre-trial conference including, but not limited to, the matters enumerated in the preceding paragraphs.
- 7. In the event that any party fails to comply with this Order, the Court may impose sanctions or take other action as appropriate. Such sanctions and action may include assessing costs and attorneys' fees, precluding evidence or defenses, dismissing the action, and/or the imposition of other appropriate penalties.
- 8. This case has been designated an electronic case. Counsel for all parties are required to register as filing users in accordance with the Procedures for Electronic Case Filing promptly upon appearing in the case.

IT IS SO ORDERED.

Dated: New York, New York  
September 28, 2009



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LAURA TAYLOR SWAIN  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ACP MASTER, LTD. and AURELIUS CAPITAL :  
MASTER, LTD., :

Plaintiffs, :

-against- :

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; :  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.; :  
and CAMULOS MASTER FUND, L.P., :

Defendants. :

**CERTIFICATE  
OF SERVICE**

Case No. 09 Civ. 8064 (LTS)

On October 2, 2009, on behalf of plaintiffs ACP Master, Ltd. and Aurelius Capital Master, Ltd., I caused the Initial Conference Order dated September 28, 2009, to be served by Federal Express delivery upon the following defendants at the below addresses:

Bank of America, N.A.  
Attn: General Counsel  
101 S Tryon Street  
Charlotte, NC 28280

Bank of Scotland  
Attn: General Counsel  
1095 Avenue of the Americas  
New York, NY 10036

Barclays Bank PLC  
Attn: General Counsel  
200 Park Avenue  
New York, NY 10166

Camulos Master Fund, L.P.  
Attn: General Counsel  
3 Landmark Square  
4th Floor  
Stamford, CT 06901

Deutsche Bank  
Trust Company Americas  
Attn: General Counsel  
60 Wall Street, 11th Floor  
New York, NY 10005

HSH Nordbank AG  
Attn: General Counsel  
230 Park Avenue  
Suite 3200  
New York, NY 10169

JPMorgan Chase Bank, N.A.  
Attn: General Counsel  
270 Park Avenue  
New York, NY 10017

MB Financial Bank, N.A.  
Attn: General Counsel  
800 West Madison Street  
Chicago, IL 60607

Merrill Lynch  
Capital Corporation  
Attn: General Counsel  
4 World Financial Center  
New York, NY 10080

Sumitomo Mitsui  
Banking Corporation  
Attn: General Counsel  
277 Park Avenue  
New York, NY 10172

The Royal Bank of Scotland PLC  
Attn: General Counsel  
101 Park Avenue  
New York, NY 10178

Dated: October 2, 2009

**KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.**

By:   
Marc R. Rosen

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD. and  
AURELIUS CAPITAL MASTER, LTD.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
ACP MASTER, LTD. and AURELIUS CAPITAL :  
MASTER, LTD., :

Plaintiffs, :

- against - :

Case No. 09 Civ. 8064 (LTS)

NOTICE OF APPEARANCE

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; :  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.; :  
and CAMULOS MASTER FUND, L.P., :

Defendants. :

----- X

PLEASE TAKE NOTICE that Marc R. Rosen, of Kleinberg, Kaplan, Wolff & Cohen, P.C., 551 Fifth Avenue, New York, New York 10176, hereby appears in this action as co-counsel for plaintiffs ACP Master, Ltd. and Aurelius Capital Master, Ltd., and demands that copies of all pleadings, notices and other papers in this action be served

upon the undersigned.

Dated: New York, New York  
October 5, 2009

**KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.**

By:   
Marc R. Rosen

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD. and  
AURELIUS CAPITAL MASTER, LTD**

TO:

Bank of America, N.A.  
101 S Tryon Street  
Charlotte, NC 28280

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Capital Corporation  
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New York, NY 10080

Sumitomo Mitsui  
Banking Corporation  
277 Park Avenue  
New York, NY 10172

The Royal Bank of Scotland PLC  
101 Park Avenue  
New York, NY 10178

**CERTIFICATE OF SERVICE**

On October 5, 2009, I caused the Notice of Appearance dated October 5, 2009, to be served by U.S. Postal Service first-class mail delivery upon the following defendants at the below addresses:

Bank of America, N.A.  
Attn: General Counsel  
101 S Tryon Street  
Charlotte, NC 28280

Bank of Scotland  
Attn: General Counsel  
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New York, NY 10005

HSH Nordbank AG  
Attn: General Counsel  
230 Park Avenue  
Suite 3200  
New York, NY 10169

JPMorgan Chase Bank, N.A.  
Attn: General Counsel  
270 Park Avenue  
New York, NY 10017

MB Financial Bank, N.A.  
Attn: General Counsel  
800 West Madison Street  
Chicago, IL 60607

Merrill Lynch  
Capital Corporation  
Attn: General Counsel  
4 World Financial Center  
New York, NY 10080

Sumitomo Mitsui  
Banking Corporation  
Attn: General Counsel  
277 Park Avenue  
New York, NY 10172

The Royal Bank of Scotland PLC  
Attn: General Counsel  
101 Park Avenue  
New York, NY 10178

Dated: October 5, 2009

**KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.**

By:   
\_\_\_\_\_  
Marc R. Rosen

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD. and  
AURELIUS CAPITAL MASTER, LTD.**





**Demovsky Lawyer Service**

Premier Nationwide Document Retrieval  
and Process Service Company

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

Case No. 09 CIV 8064

-against-

AFFIDAVIT OF SERVICE

BANK OF AMERICA, N.A.: MERRILL LYNCH  
CAPITAL CORPORATION; et al.,

Defendants.

-----X  
STATE OF NORTH CAROLINA     )  
                                  S.S.:  
COUNTY OF MECKLENBURG     )

WENDY L. HENRICH, being duly sworn, deposes and says that she is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 23<sup>rd</sup> day of SEPTEMBER 2009, at approximately the time of 2:30PM, deponent served a true copy of the SUMMONS IN A CIVIL CASE, COMPLAINT, RULE 7.1 STATEMENT, ELECTRONIC CASE FILING RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN and INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ upon BANK OF AMERICA, N.A. at 301 SO. KINGS DRIVE, CHARLOTTE, NORTH CAROLINA by personally delivering and leaving the same with ALEJANDRO CORDERO who informed deponent that he holds the position of BANKING MANAGER with that company and is authorized by appointment to receive service at that address.



**Demovsky Lawyer Service**  
Premier Nationwide Document Retrieval  
and Process Service Company

ALEJANDRO CORDERO is a tan (Hispanic) male, approximately 42 years of age, stands approximately 5 feet 8 inches tall, weighs approximately 160 pounds with black hair and mustache and wearing glasses.

WENDY L. HENRICH

Sworn to before me this  
24<sup>th</sup> day of SEPTEMBER 2009

NOTARY PUBLIC



My Commission Expires  
March 31, 2011



**Demovsky Lawyer Service**

Premier Nationwide Document Retrieval  
and Process Service Company

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

Case No. 09 CIV 8064

-against-

AFFIDAVIT OF SERVICE

BANK OF AMERICA, N.A.; MERRILL LYNCH  
CAPITAL CORPORATION; et al.,

Defendants.

-----X  
STATE OF TEXAS            )  
                                  S.S.:  
COUNTY OF DALLAS        )

BRANDON SACHSEL, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 23<sup>rd</sup> day of SEPTEMBER 2009, at approximately the time of 3:05PM, deponent served a true copy of the SUMMONS IN A CIVIL CASE, COMPLAINT, RULE 7.1 STATEMENT, ELECTRONIC CASE FILING RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN and INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ upon BARCLAYS BANK PLC c/o CIT CORPORATION SYSTEM at 350 N SAINT PAUL STREET, DALLAS, TEXAS by personally delivering and leaving the same with SANDY GALICIA who informed deponent that she holds the position of AUTHORIZED AGENT with that company and is authorized by appointment to receive service at that address.



# Demovsky Lawyer Service

Premier Nationwide Document Retrieval  
and Process Service Company

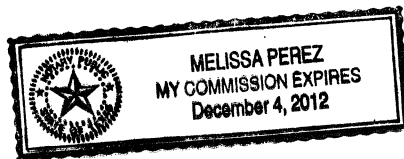
SANDY GALICIA is a tan (Hispanic) female, approximately 30 years of age,  
stands approximately 5 feet 6 inches tall, and weighs approximately 160 pounds with black hair.

BRANDON SACHSE

Brandon Sachse  
Supreme Court No. SC000001082

Sworn to before me this  
25<sup>th</sup> day of SEPTEMBER 2009

NOTARY PUBLIC





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD., ET AL.,

Plaintiff(s),

Civil Action No. 09 CV 8064

-against-

AFFIDAVIT OF SERVICE

BANK OF AMERICA, N.A.; ET AL.,

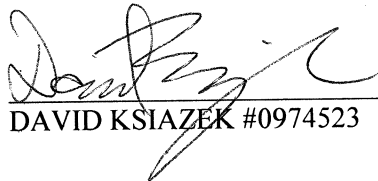
Defendant(s).

-----X  
STATE OF NEW YORK )  
S.S.:  
COUNTY OF ROCKLAND )

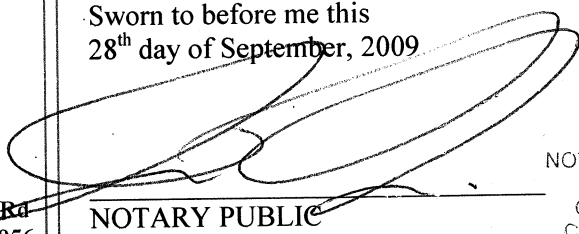
DAVID KSIAZEK, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, D.L.S., INC., and is not a party to this action.

That on the 24<sup>TH</sup> day of September, 2009, at approximately 2:25 PM, deponent served a true copy of the SUMMONS, COMPLAINT, RULE 7.1 STATEMENT, ECF RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN AND INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ upon CAMULOS MASTER FUND, L.P. at 3 Landmark Square, 4<sup>th</sup> Floor, Stamford, Connecticut 06901, by personally delivering and leaving the same with CARMEL MACNULTY, who informed deponent that she is authorized by CAMULOS MASTER FUND, L.P. to receive service at that address.

CARMEL MACNULTY is a white female, approximately 38 years of age, stands approximately 5 feet 8 inches tall, weighs approximately 155 pounds with red hair and blue eyes.

  
DAVID KSIAZEK #0974523

Sworn to before me this  
28<sup>th</sup> day of September, 2009

  
NOTARY PUBLIC

JONATHAN T. RIPPS  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01RI6109718  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MAY 17, 2012



**Demovsky Lawyer Service**

Premier Nationwide Document Retrieval  
and Process Service Company

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD. and AURELIJUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

Case No. 09 CIV 8064

-against-

AFFIDAVIT OF SERVICE

BANK OF AMERICA, N.A.; MERRILL LYNCH  
CAPITAL CORPORATION; et al.,

Defendants.

-----X  
STATE OF TEXAS            )  
                                  S.S.:  
COUNTY OF DALLAS        )

BRANDON SACHSE, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 23<sup>rd</sup> day of SEPTEMBER 2009, at approximately the time of 3:05PM, deponent served a true copy of the SUMMONS IN A CIVIL CASE, COMPLAINT, RULE 7.1 STATEMENT, ELECTRONIC CASE FILING RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN and INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ upon DEUTSCHE BANK TRUST COMPANY AMERICAS c/o CT CORPORATION SYSTEM at 350 N SAINT PAUL STREET, DALLAS, TEXAS by personally delivering and leaving the same with SANDY GALICIA who informed deponent that she holds the position of AUTHORIZED AGENT with that company and is authorized by appointment to receive service at that address.



# Demovsky Lawyer Service

Premier Nationwide Document Retrieval  
and Process Service Company

SANDY GALICIA is a tan (Hispanic) female, approximately 30 years of age,  
stands approximately 5 feet 6 inches tall, and weighs approximately 160 pounds with black hair.

BRANDON SACHSE

**Brandon Sachse**  
**Supreme Court No. SC000001082**

Sworn to before me this  
25<sup>th</sup> day of SEPTEMBER 2009

NOTARY PUBLIC





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

Index No. 09CIV8064

-against-

AFFIDAVIT OF SERVICE

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

Defendants.

-----X  
STATE OF NEW YORK )  
S.S.:  
COUNTY OF NEW YORK)

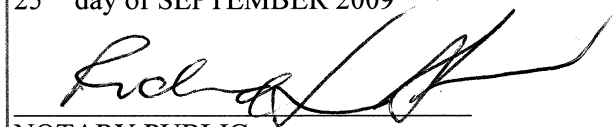
HECTOR FIGUEROA, being duly sworn, deposes and says that he is over the age of  
eighteen years, is employed by the attorney service, D.L.S., INC., and is not a party to this action.

That on the 23<sup>RD</sup> day of SEPTEMBER, 2009, at approximately 1:40 PM, deponent served a  
true copy of the SUMMONS IN A CIVIL CASE, ELECTRONIC CASE FILING RULES &  
INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN, INDIVIDUAL  
PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ, RULE 7.1 STATEMENT AND  
COMPLAINT upon HSH NORDBANK AG at 230 Park Avenue, Suite 3200, New York, New York, by  
personally delivering and leaving the same with DAVID C. WOLINSKY, who informed deponent that he  
is an Assistant General Counsel authorized by appointment to receive service at that address.

DAVID C. WOLINSKY is a white male, approximately 50 years of age, stands  
approximately 6 feet 0 inches tall, and weighs approximately 200 pounds with brown hair and light eyes  
and glasses.

  
HECTOR FIGUEROA #870141

Sworn to before me this  
25<sup>TH</sup> day of SEPTEMBER 2009

  
NOTARY PUBLIC

RICHARD LEE ALI  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01AL4961834  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES FEBRUARY 5, 2010





**Demovsky Lawyer Service**

Premier Nationwide Document Retrieval  
and Process Service Company

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD and AURELIUS CAPITAL  
MASTER, LTD.

Plaintiffs,

Case No. 09 CIV 8064  
JUDGE SWAIN

-against-

AFFIDAVIT OF SERVICE

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

Defendants.

-----X  
STATE OF INDIANA        )  
                                  S.S.:  
COUNTY OF MARION     )

*I, MARTIN Wiley*, being duly sworn, deposes and says that he/she is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 28<sup>th</sup> day of SEPTEMBER 2009, at approximately the time of 3:30PM, deponent served a true copy of the SUMMONS IN A CIVIL ACTION, COMPLAINT, RULE 7.1 STATEMENT, ELECTRONIC CASE FILING RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN and INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ upon MB FINANCIAL BANK, N.A. c/o CT CORPORATION SYSTEM, at 251 E. OHIO STREET, SUITE 1100, INDIANAPOLIS, INDIANA by personally delivering and leaving the same with *TRicia Cherry* who informed deponent that *she* holds the position of *Supervisor* with that company and is authorized by appointment or by law to receive service at that address.



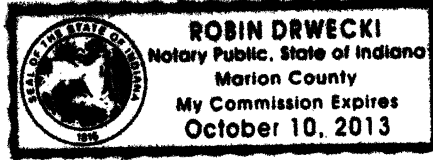
**Demovsky Lawyer Service**

Premier Nationwide Document Retrieval  
and Process Service Company

Teicia Cherry is a white woman, approximately 45 years of age,  
stands approximately 5 feet 2 inches tall, weighs approximately 125 pounds with Blonde hair.

*Matt W.P.*  
PROCESS SERVER

Sworn to before me this  
1 day of OCTOBER 2009



*Robin Drwecki*  
NOTARY PUBLIC



Demovsky Lawyer Service  
Premier Nationwide Document Retrieval  
and Process Service Company

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

Index No. 09CIV8064

-against-

AFFIDAVIT OF SERVICE

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

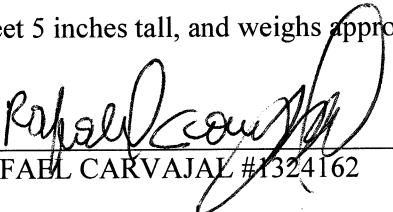
Defendants.  
-----X

STATE OF NEW YORK )  
S.S.:  
COUNTY OF NEW YORK)

RAFAEL CARVAJAL, being duly sworn, deposes and says that he is over the age of eighteen years, is employed by the attorney service, D.L.S., INC., and is not a party to this action.

That on the 23<sup>RD</sup> day of SEPTEMBER, 2009, at approximately 11:55 AM, deponent served a true copy of the SUMMONS IN A CIVIL CASE, ELECTRONIC CASE FILING RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN, INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ, RULE 7.1 STATEMENT AND COMPLAINT upon MERRILL LYNCH CAPITAL CORPORATION C/O CT CORPORATION SYSTEM at 111 8<sup>th</sup> Avenue, New York, New York, by personally delivering and leaving the same with AIXA FLORES, who informed deponent that she is a Process Specialist authorized by appointment to receive service at that address.

AIXA FLORES is a Hispanic female, approximately 36 years of age, stands approximately 5 feet 5 inches tall, and weighs approximately 140 pounds with brown hair and brown eyes and glasses.

  
RAFAEL CARVAJAL #1324162

Sworn to before me this  
25<sup>TH</sup> day of SEPTEMBER 2009

  
NOTARY PUBLIC

RICHARD LEE ALI  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01AL4961834  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES FEBRUARY 5, 2010



**Demovsky Lawyer Service**

Premier Nationwide Document Retrieval  
and Process Service Company

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

-against-

BANK OF AMERICA, N.A.; MERRILL LYNCH  
CAPITAL CORPORATION; et al.,

Defendants.  
-----X

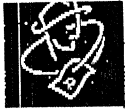
Case No. 09 CIV 8064

**AFFIDAVIT OF SERVICE**

STATE OF CONNECTICUT    )  
                                  S.S.:  
COUNTY OF HARTFORD    )

CHRISTINE FORAN, being duly sworn, deposes and says that she is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

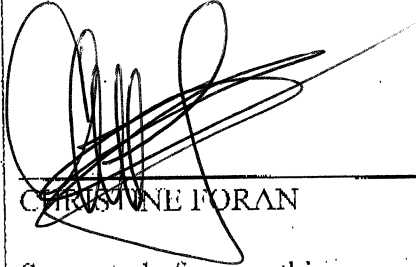
That on the 23<sup>rd</sup> day of SEPTEMBER 2009, at approximately the time of 10:15AM, deponent served a true copy of the SUMMONS IN A CIVIL CASE, COMPLAINT, RULE 7.1 STATEMENT, ELECTRONIC CASE FILING RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN and INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ upon ROYAL BANK OF SCOTLAND, PLC c/o CORPORATION SERVICE COMPANY at 50 WESTON STREET, HARTFORD, CONNECTICUT by personally delivering and leaving the same with LUCY WNUK who informed deponent that she holds the position of ACCOUNTING REPRESENTATIVE with that company and is authorized by appointment to receive service at that address.



**Demovsky Lawyer Service**

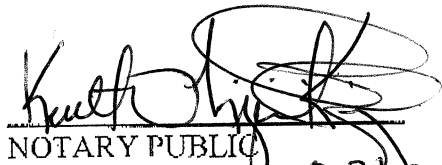
Premier Nationwide Document Retrieval  
and Process Service Company

LUCY WNUK is a white female, approximately 30 years of age, stands approximately 5 feet 4 inches tall, and weighs approximately 120 pounds with blonde hair.

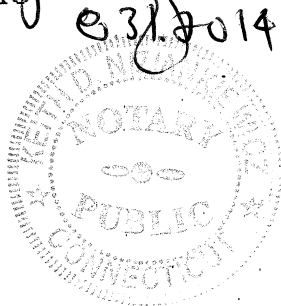


CHRISTINE FORAN

Sworn to before me this  
25<sup>th</sup> day of SEPTEMBER 2009



NOTARY PUBLIC





DLS NYC  
**Demovsky Lawyer Service**

Premier Nationwide Document Retrieval  
and Process Service Company

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

Case No. 09 CIV 8064

-against-

AFFIDAVIT OF SERVICE

BANK OF AMERICA, N.A.; MERRILL LYNCH  
CAPITAL CORPORATION; et al.,

Defendants.

-----X  
STATE OF TEXAS            )  
                                  S.S.:  
COUNTY OF DALLAS        )

BRANDON SACHSE, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of the attorney service, D.L.S., Inc., and is not a party to this action.

That on the 23<sup>rd</sup> day of SEPTEMBER 2009, at approximately the time of 3:05PM, deponent served a true copy of the SUMMONS IN A CIVIL CASE, COMPLAINT, RULE 7.1 STATEMENT, ELECTRONIC CASE FILING RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN and INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ upon SUMITOMO MITSUBI BANKING CORPORATION c/o CIT CORPORATION SYSTEM at 350 N SAINT PAUL STREET, DALLAS, TEXAS by personally delivering and leaving the same with SANDY GALICIA who informed deponent that she holds the position of AUTHORIZED AGENT with that company and is authorized by appointment to receive service at that address.



**Demovsky Lawyer Service**

Premier Nationwide Document Retrieval  
and Process Service Company

SANDY GALICIA is a tan (Hispanic) female, approximately 30 years of age,  
stands approximately 5 feet 6 inches tall, and weighs approximately 160 pounds with black hair.

BRANDON SACHSE

**Brandon Sachse**  
Supreme Court No. SC000001082

Sworn to before me this  
25<sup>th</sup> day of SEPTEMBER 2009

  
NOTARY PUBLIC



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER LTD and AURELIUS CAPTIAL MASTER, LTD.,

Plaintiff,

Index No. 09CIV8064

-against-

AFFIDAVIT OF SERVICE

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

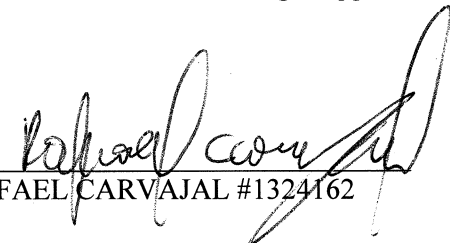
Defendants.  
-----X

STATE OF NEW YORK )  
S.S.:  
COUNTY OF NEW YORK)

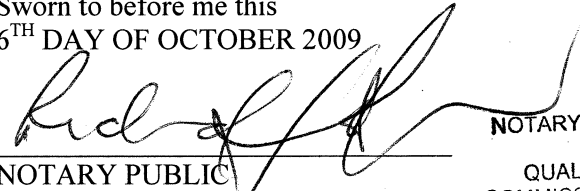
RAFAEL CARVAJAL, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of Assured Civil Process Agency, Inc., and is not a party to this action.

That on the 2<sup>ND</sup> day of OCTOBER, 2009, at approximately 11:45 AM, deponent served a true copy of the SUMMONS IN A CIVIL CASE, COMPLAINT, ELECTRONIC CASE FILING RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN, INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ AND RULE 7.1 STATEMENT upon BANK OF SCOTLAND C/O CT CORPORATION SYSTEM at 111 8<sup>th</sup> Avenue, New York, New York, by personally delivering and leaving the same with AIXA FLORES, who informed deponent that she is a Process Clerk authorized by appointment to receive service at that address. At the time of service, a witness fee in the amount of \$40 was tendered.

AIXA FLORES is a Hispanic female, approximately 36 years of age, stands approximately 5 feet 5 inches tall, and weighs approximately 140 pounds with brown hair and brown eyes with glasses.

  
RAFAEL CARVAJAL #1324162

Sworn to before me this  
6<sup>TH</sup> DAY OF OCTOBER 2009

  
NOTARY PUBLIC

RICHARD LEE ALI  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 01AL4961834  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES FEBRUARY 5, 2010





Premier Nationwide Document Retrieval and Process Service Company

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ACP MASTER, LTD and AURELIUS CAPITAL  
MASTER, LTD.

Plaintiffs,

Case No. 09 CIV 8064  
JUDGE SWAIN

-against-

AFFIDAVIT OF SERVICE

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

Defendants.  
-----X

STATE OF NEW YORK            )  
  S.S.:  
COUNTY OF ST. LAWRENCE    )

PAUL FANTONE, being duly sworn, deposes and says that he is over the age of eighteen years, is an agent of the attorney service, D.I.S., Inc., and is not a party to this action.

That on the 30<sup>th</sup> day of SEPTEMBER 2009, at approximately the time of 3:05PM, deponent served a true copy of the SUMMONS IN A CIVIL ACTION, COMPLAINT, RULE 7.1 STATEMENT, ELECTRONIC CASE FILING RULES & INSTRUCTIONS, INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN and INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE II. KATZ upon JP MORGAN CHASE BANK, N.A. c/o CT CORPORATION SYSTEM, at 400 CORNERSTONE DRIVE, SUITE 240, WILLISTON, VERMONT by personally delivering and leaving the same with JODY PECK who informed deponent that she holds the position of CT CORPORATION REPRESENTATIVE with that company and is authorized by appointment to receive service at that address.

D.L.S., Inc.  
401 Broadway  
Ste 510  
NY, NY 10013  
212-925-1220  
www.dlsny.com



**Demovsky Lawyer Service**  
Premier Nationwide Documents Retrieval  
and Process Service Company

JODY PECK is a white female, approximately 35-40 years of age, stands approximately 5 feet 8 inches tall, and weighs approximately 140 pounds with blonde hair and glasses.

**PAUL FANTONE**

Sworn to before me this  
1<sup>st</sup> day of OCTOBER 2009

**NOTARY PUBLIC** SUSAN BARTLETT  
Notary Public, State of New York  
No. 01BA4972479  
Qualified in St. Lawrence County  
Commission Expires October 1, 2010

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK


-----X	
ACP MASTER, LTD. and AURELIUS CAPITAL	:
MASTER, LTD.,	:
	:
Plaintiffs,	: Case No. 09 CIV 8064 (LTS)(THK)
	:
-against-	:
	:
BANK OF AMERICA, N.A., <i>et al.</i> ,	:
	:
Defendants.	:
	:
-----X	

**NOTICE OF APPEARANCE**

**PLEASE TAKE NOTICE** that Andrew B. Kratenstein hereby appears as counsel for the defendant Camulos Master Fund, L.P. in the above-captioned action and for the purpose of being added to the list of ECF notice recipients.

Dated: New York, New York  
October 14, 2009

**MCDERMOTT WILL & EMERY LLP**

By:   
Andrew B. Kratenstein

340 Madison Avenue  
New York, New York 10017  
(212) 547-5400

*Attorneys for Defendant  
Camulos Master Fund, L.P.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

----- X  
ACP MASTER, LTD and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

- against -

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;  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;  
and CAMULOS MASTER FUND, L.P.,

Defendants.  
----- X

BY *[Signature]* / DATE *10/16/09*

Case No. 09-8064 (LTS)(THK)

**MOTION TO ADMIT  
COUNSEL PRO HAC VICE**

Pursuant to rule 1.3(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, I, David Parker, a member in good standing of the bar of this Court, hereby move for an Order allowing the admissions pro hac vice of

Applicants' Names: James B. Heaton, III and Steven J. Nachtwey  
Firm Name: Bartlit Beck Herman Palenchar & Scott LLP  
Address: 54 West Hubbard, Suite 300  
City/State/Zip: Chicago, Illinois 60654  
Phone Number: (312) 494-4400  
Fax Number: (312) 494-4440

James B. Heaton, III and Steven J. Nachtwey are each members in good standing of the Bar of the State of Illinois. Mr. Nachtwey is also a member in good standing of the Bar of the State of Minnesota. Attached hereto as Exhibit A is a certificate of good standing for Mr. Heaton from the Supreme Court of Illinois. Attached hereto as Exhibit B are certificates of good standing for Mr. Nachtwey from the Supreme Court of Illinois and the Supreme Court of Minnesota.

OCT 15 2009

JHL 650-702853

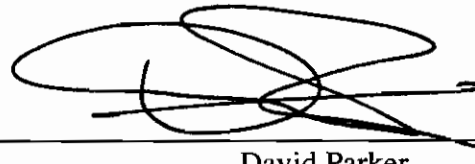
There are no pending disciplinary proceedings against James B. Heaton, III or Steven J. Nachtwey in any State or Federal court.

Dated: New York, New York  
October 12, 2009

Respectfully submitted,

**KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.**

By: \_\_\_\_\_



David Parker

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD and AURELIUS  
CAPITAL MASTER, LTD.**



ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS

One Prudential Plaza  
130 East Randolph Drive, Suite 1500  
Chicago, IL 60601-6219  
(312) 565-2600 (800) 826-8625  
Fax (312) 565-2320

One North Old Capitol Plaza, Suite 333  
Springfield, IL 62701  
(217) 522-6838 (800) 252-8048  
Fax (217) 522-2417

James B. Heaton, III  
Bartlit Beck Herman Palenchar & Scott LLP  
54 W. Hubbard, Suite 300  
Chicago, IL 60610

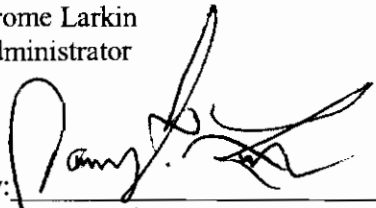
Chicago  
Monday, October 05, 2009

In re: James Breckinridge Heaton, III  
Admitted: 11/4/1999  
Attorney No. 6269923

To Whom It May Concern:

The records of the Clerk of the Supreme Court of Illinois and of this office indicate that the attorney named above was admitted to the practice of law in Illinois; is currently registered on the master roll of attorneys entitled to practice law in this state; and has never been disciplined; and is in good standing.

Very truly yours,  
Jerome Larkin  
Administrator

By:   
Darryl R. Evans  
Deputy Registrar

DRE



ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS

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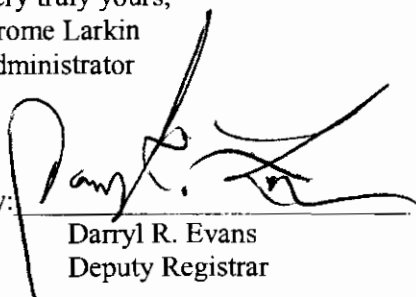
Chicago  
Monday, October 05, 2009

In re: Steven James Nachtwey  
Admitted: 5/8/2003  
Attorney No. 6279317

To Whom It May Concern:

The records of the Clerk of the Supreme Court of Illinois and of this office indicate that the attorney named above was admitted to the practice of law in Illinois; is currently registered on the master roll of attorneys entitled to practice law in this state; and has never been disciplined; and is in good standing.

Very truly yours,  
Jerome Larkin  
Administrator

By:   
Darryl R. Evans  
Deputy Registrar

DRE

**STATE OF MINNESOTA  
IN SUPREME COURT**

*Certificate of Good Standing*

This is to certify that the following lawyer is in good standing.

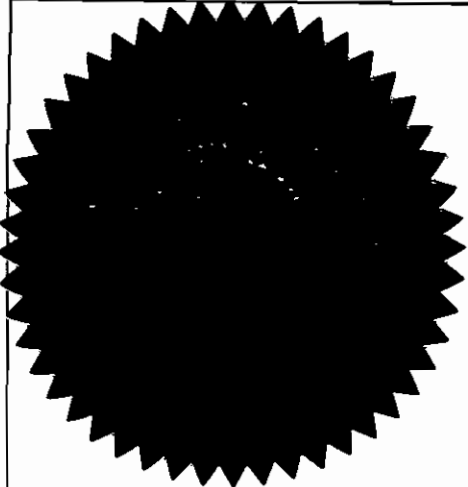
STEVEN JAMES NACHTWEY

was duly admitted to practice as a lawyer and counselor at law in all the courts of this state on

October 27, 2000

Given under my hand and seal of this court on

October 01, 2009

  
*Frederick K. Gritner*

Frederick K. Gritner  
Clerk of Appellate Courts



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**ORIGINAL**

----- X  
**ACP MASTER, LTD and AURELIUS CAPITAL  
MASTER, LTD.,**

Plaintiffs,

- against -

**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;  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;  
and CAMULOS MASTER FUND, L.P.,**

Defendants.  
----- X

Case No. 09-8064 (LTS)(THK)

**AFFIDAVIT OF DAVID PARKER  
IN SUPPORT OF MOTION TO  
ADMIT COUNSEL PRO HAC VICE**

**STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF NEW YORK)**

**DAVID PARKER**, being duly sworn, hereby deposes and says as follows:

1. I am a Shareholder and Director of the firm Kleinberg, Kaplan, Wolff & Cohen, P.C., co-counsel for Plaintiffs in the above-captioned action. I am familiar with the proceedings in this case. I make this statement based on my personal knowledge of the facts set forth herein and in support of Plaintiffs' motion to admit James B. Heaton, III and Steven J. Nachtwey of the firm Bartlit Beck Herman Palenchar & Scott LLP as counsel pro hac vice to represent Plaintiffs in this matter.

2. I am a member in good standing of the bar of the State of New York, and was admitted to practice law in March of 1974. I am also admitted to the bar of the United States District Court for the Southern District of New York, and am in good standing with this Court.

3. I have known James B. Heaton, III since 2003. I have known Steven J. Nachtwey since 2007.

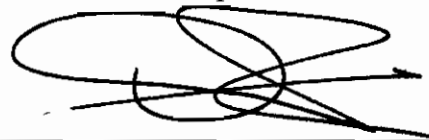
4. Mr. Heaton and Mr. Nachtwey are each partners at Bartlit Beck Herman Palenchar & Scott LLP in Chicago, Illinois.

5. I have found both Mr. Heaton and Mr. Nachtwey to be skilled attorneys, and persons of integrity. Each is experienced in Federal practice and is familiar with the Federal Rules of Procedure.

6. Accordingly, I am pleased to move the admissions of James B. Heaton, III and Steven J. Nachtwey, pro hac vice.

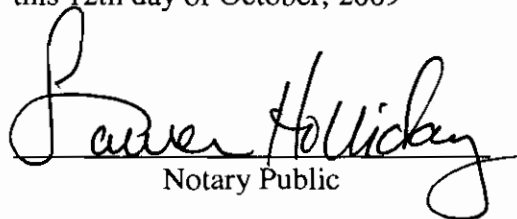
7. I respectfully submit a proposed order granting the admissions of James B. Heaton, III and Steven J. Nachtwey, pro hac vice, which is attached hereto as Exhibit A.

**WHEREFORE**, it is respectfully requested that the motion to admit James B. Heaton, III and Steven J. Nachtwey, pro hac vice, to represent Plaintiffs in the above-captioned matter, be granted.



David Parker

Subscribed and sworn to before me  
this 12th day of October, 2009



Notary Public

**Lauren Hoffday**  
**Notary Public, State of New York**  
**No. 01H0611873**  
**Qualified in New York County**  
**Commission Expires June 28, 2012**

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

-against-

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;  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;  
and CAMULOS MASTER FUND, L.P.,

Defendants.

**CERTIFICATE  
OF SERVICE**

Case No. 09 Civ. 8064 (LTS)

On October 13, 2009, on behalf of plaintiffs ACP Master, Ltd. and Aurelius Capital Master, Ltd., I caused the Motion To Admit Counsel Pro Hac Vice, Affidavit Of David Parker In Support Of Motion To Admit Counsel Pro Hac Vice, sworn to October 12, 2009, and [Proposed] Order For Admission Pro Hac Vice On Written Motion, to be served by mail upon the following defendants at the below addresses:

Bank of America, N.A.  
Attn: General Counsel  
101 S Tryon Street  
Charlotte, NC 28280

Bank of Scotland  
Attn: General Counsel  
1095 Avenue of the Americas  
New York, NY 10036

Barclays Bank PLC  
Attn: General Counsel  
200 Park Avenue  
New York, NY 10166

Camulos Master Fund, L.P.  
Attn: General Counsel  
3 Landmark Square  
4th Floor  
Stamford, CT 06901

Deutsche Bank  
Trust Company Americas  
Attn: General Counsel  
60 Wall Street, 11th Floor  
New York, NY 10005

HSH Nordbank AG  
Attn: General Counsel  
230 Park Avenue  
Suite 3200  
New York, NY 10169

JPMorgan Chase Bank, N.A.  
Attn: General Counsel  
270 Park Avenue  
New York, NY 10017

MB Financial Bank, N.A.  
Attn: General Counsel  
800 West Madison Street  
Chicago, IL 60607

Merrill Lynch  
Capital Corporation  
Attn: General Counsel  
4 World Financial Center  
New York, NY 10080

Sumitomo Mitsui  
Banking Corporation  
Attn: General Counsel  
277 Park Avenue  
New York, NY 10172

The Royal Bank of Scotland PLC  
Attn: General Counsel  
101 Park Avenue  
New York, NY 10178

Dated: October 13, 2009

**KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.**

By: \_\_\_\_\_

  
Jason A. Otto

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD. and  
AURELIUS CAPITAL MASTER, LTD.**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

----- X  
**ACP MASTER, LTD and AURELIUS CAPITAL  
MASTER, LTD.,**

Plaintiffs,

- against -

**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;  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;  
and CAMULOS MASTER FUND, L.P.,**

Defendants.  
----- X

Case No. 09-8064 (LTS) (THK)

**[PROPOSED]**

**ORDER FOR ADMISSION  
PRO HAC VICE  
ON WRITTEN MOTION**

Upon the motion of David Parker of Kleinberg, Kaplan, Wolff & Cohen, P.C., co-counsel for Plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., and said sponsor attorney's affidavit in support;

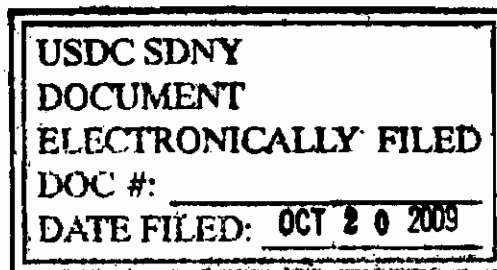
**IT IS HEREBY ORDERED** that:

Applicant's Name: James B. Heaton, III and Steven J. Nachtwey  
Firm Name: Bartlit Beck Herman Palenchar & Scott LLP  
Address: 54 West Hubbard, Suite 300  
City/State/Zip: Chicago, IL 60654  
Phone Number: (312) 494-4400  
Fax Number: (312) 494-4440  
Email Address: jb.heaton@bartlit-beck.com  
steven.nachtwey@bartlit-beck.com

are admitted to practice pro hac vice as counsel for Plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., in the above-captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court,

*Swain, J*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

Case No. 09 CIV 8064 (LTS)(THK)

-against-

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

Defendants.

-----X  
**STIPULATION AND ~~PROPOSED~~ ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel for the parties as follows:

1. 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, and Camulos Master Fund, L.P., (collectively, "Defendants"), shall have up to and including forty-five (45) days from the notice of entry of the order of the Judicial Panel on Multi-District Litigation (the "MDL Panel") on the pending Motion for Transfer to the Southern District of Florida and Consolidation of Related Actions Pursuant to 28 U.S.C. § 1407 (*In re Fontainebleau Las Vegas Contract Litigation*, MDL No. 2106) to serve and file their responses to the Complaint, unless the Plaintiffs herein seek to amend their Complaint.

2. Plaintiffs herein shall have thirty (30) days from the notice of entry of the MDL Panel's order to serve and file an Amended Complaint upon the consent of the Defendants.

3. Defendants shall have thirty (30) days from the service of an Amended Complaint by Plaintiffs herein to serve and file their responses to the Amended Complaint; provided, however, that in the event Plaintiffs herein move the Court for leave to file the proposed Amended Complaint, then the Defendants shall have thirty (30) days from the notice of entry of order on such motion to serve and file their responses to the operative complaint herein.

Dated: New York, New York  
October 13, 2009

KLEINBERG, KAPLAN, WOLFF &  
COHEN, P.C.

By:   
David Parker

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New York, New York 10176  
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and

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*Attorneys for Plaintiffs*

O'MELVENY & MYERS LLP

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*Attorneys for Bank of America, N.A. and  
Merrill Lynch Capital Corporation*

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*Attorneys for JPMorgan Chase Bank, N.A.,  
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Company Americas, and The Royal Bank  
Of Scotland plc*

MAYER BROWN LLP

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Jean-Marie L. Atamian  
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1675 Broadway  
New York, New York 10019  
Telephone: (212) 506-2500  
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E-mail: JAtamian@mayerbrown.com

*Attorneys for Sumitomo Mitsui Banking  
Corporation*



Dated: New York, New York  
October 13, 2009

KLEINBERG, KAPLAN, WOLFF &  
COHEN, P.C.

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David Parker

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*Attorneys for Plaintiffs*

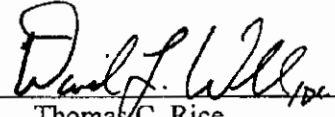
O'MELVENY & MYERS LLP

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E-mail: JAtamian@mayerbrown.com

*Attorneys for Sumitomo Mitsui Banking  
Corporation*

Dated: New York, New York  
October 13, 2009

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*Attorneys for Plaintiffs*

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*Attorneys for Sumitomo Mitsui Banking  
Corporation*

Dated: New York, New York  
October 13, 2009

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*Attorneys for Plaintiffs*

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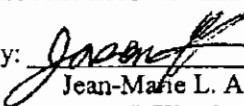
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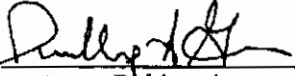
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*Attorneys for HSH Nordbank AG, New York Branch*

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*Attorneys for Bank of Scotland plc*

MCDERMOTT WILL & EMERY LLP

By: \_\_\_\_\_  
Andrew B. Kratenstein

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Fax: (212) 547-5444  
E-mail: akratenstein@mwe.com

*Attorneys for Camulos Master Fund, L.P.*

IT IS SO ORDERED.

Dated: New York, New York  
October \_\_, 2009

\_\_\_\_\_  
LAURA TAYLOR SWAIN  
United States District Judge

KAYE SCHOLER LLP

By: \_\_\_\_\_  
Aaron Rubinstein  
Phillip A. Geraci

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*Attorneys for HSH Nordbank AG, New  
York Branch*

MCDERMOTT WILL & EMERY LLP

By: \_\_\_\_\_  
Andrew B. Kratenstein

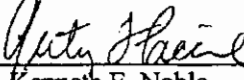
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New York, NY 10173-1922  
Phone: (212) 547-5695  
Fax: (212) 547-5444  
E-mail: akratenstein@mwe.com

*Attorneys for Camulos Master Fund,  
L.P.*

IT IS SO ORDERED.

Dated: New York, New York  
October \_\_, 2009

KATTEN MUCHIN ROSENMAN LLP

By:   
Kenneth E. Noble  
Anthony L. Paccione

575 Madison Avenue  
New York, New York 10022  
Telephone: (212) 940-8800  
Facsimile: (212) 940-8776  
E-mail: anthony.paccione@kattenlaw.com

*Attorneys for Bank of Scotland plc*

\_\_\_\_\_  
LAURA TAYLOR SWAIN  
United States District Judge

KAYE SCHOLER LLP

By: \_\_\_\_\_  
Aaron Rubinstein  
Phillip A. Geraci

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Facsimile: (212) 836-8689  
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*Attorneys for HSH Nordbank AG, New  
York Branch*

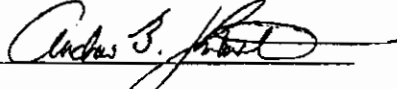
KATTEN MUCHIN ROSENMAN LLP

By: \_\_\_\_\_  
Kenneth E. Noble  
Anthony L. Paccione

575 Madison Avenue  
New York, New York 10022  
Telephone: (212) 940-8800  
Facsimile: (212) 940-8776  
E-mail: anthony.paccione@kattenlaw.com

*Attorneys for Bank of Scotland plc*

MCDERMOTT WILL & EMERY LLP

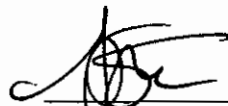
By:   
Andrew B. Kratenstein

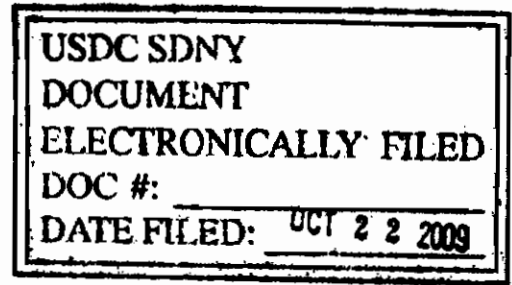
340 Madison Avenue  
New York, NY 10173-1922  
Phone: (212) 547-5695  
Fax: (212) 547-5444  
E-mail: akratenstein@mwe.com

*Attorneys for Camulos Master Fund,  
L.P.*

IT IS SO ORDERED.

Dated: New York, New York  
October 19, 2009

  
\_\_\_\_\_  
LAURA TAYLOR SWAIN  
United States District Judge



IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

ACP MASTER, LTD and AURELIUS CAPITAL MASTER, LTD.,

Plaintiffs,

- against -

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; HSH NORDBANK AG; MB FINANCIAL BANK, N.A.; and CAMULOS MASTER FUND, L.P.,

Defendants.

Case No. 09-8064 (LTS) (THK)

[PROPOSED]

ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION

Upon the motion of David Parker of Kleinberg, Kaplan, Wolff & Cohen, P.C., co-counsel for Plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., and said sponsor attorney's affidavit in support;

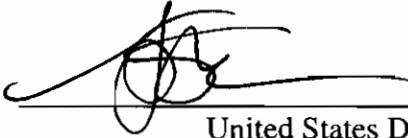
IT IS HEREBY ORDERED that:

Applicant's Name: James B. Heaton, III and Steven J. Nachtwey
Firm Name: Bartlit Beck Herman Palenchar & Scott LLP
Address: 54 West Hubbard, Suite 300
City/State/Zip: Chicago, IL 60654
Phone Number: (312) 494-4400
Fax Number: (312) 494-4440
Email Address: jb.heaton@bartlit-beck.com
steven.nachtwey@bartlit-beck.com

are admitted to practice pro hac vice as counsel for Plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., in the above-captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court,

including the Rules governing discipline of attorneys. If this action is assigned to the Electronic Case Filing (ECF) system, counsel shall immediately apply for an ECF password at [nysd.uscourts.gov](http://nysd.uscourts.gov). Counsel shall forward the pro hac vice fee to the Clerk of the Court.

Dated: Oct 21 2009

  
\_\_\_\_\_  
United States District Judge



SDNY (Rev. 10/2006) Pro Hac Vice Motion to Admit Counsel

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ACP Master, LTD., et al. Plaintiff,

9 cv 8064 (LTS)

- against -

**MOTION TO ADMIT COUNSEL  
PRO HAC VICE**

Bank of America, N.A., Defendant.  
et al.

NOV 16 2009

PURSUANT TO RULE 1.3(c) of the Local Rules of the United States District Courts for the

Southern and Eastern Districts of New York, I, **Paul A. Rubin** a member in good standing of the bar of this Court, hereby move for an Order allowing the admission pro hac vice of

Applicant's Name: **Peter J. Roberts**  
Firm Name: **Shaw Gussis Fishman Glantz Wolfson & Towbin LLC**  
Address: **321 North Clark Street, Suite 800**  
City/State/Zip: **Chicago, IL 60654**  
Phone Number: **(312) 276-1322**  
Fax Number: **(312) 275-0568**

**Peter J. Roberts** is a member in good standing of the Bar of the States of **Illinois and Massachusetts**

There are no pending disciplinary proceeding against **Peter J. Roberts** in any State or Federal court.

Dated: **11/12/2009**  
City, State: **New York, NY**

Respectfully submitted,

*Paul A. Rubin*

Sponsor's  
SDNY Bar  
Firm Name: **Herrick, Feinstein LLP**  
Address: **2 Park Avenue, New York, NY 10016**  
City/State/Zip: **New York, NY 10016**  
Phone Number: **212-592-1448**  
Fax Number: **212-545-3360**

FILED  
U.S. DISTRICT COURT  
2009 NOV 16 AM 11:26  
S.D. OF N.Y.

Handwritten signature/initials and number: *JLR-706253*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ACP MASTER, LTD., et al.,  
Plaintiff,  
v.  
BANK OF AMERICA, N.A., et al.,  
Defendants.

09 CV 8064 (LTS)

AFFIDAVIT OF PAUL A. RUBIN IN  
SUPPORT OF MOTION TO ADMIT  
COUNSEL PRO HAC VICE

STATE OF NEW YORK        )  
  )    ss:  
COUNTY OF NEW YORK    )


Paul A. Rubin, being duly sworn, hereby deposes and says as follows:

1. I am Paul A. Rubin, an attorney with Herrick, Feinstein LLP. I make this statement based on my personal knowledge of the facts set forth herein and in support of my motion to admit Peter J. Roberts as counsel pro hac vice to represent Defendant MB Financial Bank, N.A. in this matter.
2. I am a member in good standing of the bar of the State of New York, and was admitted to practice law on June 22, 1992. I was also admitted to the bar of the United States District Court for the Southern District of New York on August 25, 1992, and am in good standing with this Court.
3. I have known Peter J. Roberts since 2001.
4. Peter J. Roberts is a member of Shaw Gussis Fishman Glantz Wolfson & Towbin LLC in Chicago, Illinois.
5. I have found Mr. Roberts to be a skilled attorney and a person of integrity. He is experienced in Federal practice and is familiar with the Federal Rules of Procedure.
6. Accordingly, I am pleased to move the admission of Peter J. Roberts pro hac vice.
7. I respectfully submit a proposed order granting the admission of Peter J. Roberts, pro hac vice, which is attached hereto as Exhibit A.

WHEREFORE it is respectfully requested that the motion to admit Peter J. Roberts, pro hac vice, to represent Defendant MB Financial Bank, N.A. in the above captioned matter, be granted.

Dated: November 12, 2009  
City, State: New York, New York  
Notarized:

Respectfully submitted,

  
Name of Movant: Paul A. Rubin  
SDNY Bar Code:

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ACP Master, LTD., et al. Plaintiff,

9 cv 8064 (LTS)

- against -

Bank of America, N.A., et al. Defendant.

**ORDER FOR ADMISSION  
PRO HAC VICE  
ON WRITTEN MOTION**

Upon the motion of Peter J. Roberts attorney for defendant MB Financial Bank, N.A. and said sponsor attorney's affidavit in support;

**IT IS HEREBY ORDERED** that

Applicant's Name: Peter J. Roberts  
Firm Name: Shaw Gussis Fishman Glantz Wolfson & Towbin LLC  
Address: 321 North Clark Street, Suite 800  
City/State/Zip: Chicago, IL 60654  
Telephone/Fax: (312) 276-1322  
Email Address: proberts@shawgussis.com

is admitted to practice pro hac vice as counsel for defendant MB Financial Bank, N.A. in the above captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court, including the Rules governing discipline of attorneys. If this action is assigned to the Electronic Case Filing (ECF) system, counsel shall immediately apply for an ECF password at [nysd.uscourts.gov](http://nysd.uscourts.gov). Counsel shall forward the pro hac vice fee to the Clerk of Court.

Dated:  
City, State:

United States District/Magistrate Judge

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the **twentieth** day of **June** A.D. **1991**, said Court being the highest Court of Record in said Commonwealth:

**Peter J. Roberts**

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court\*.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this **fourth** day of **November** in the year of our Lord **two thousand and nine**.



*Maura S. Doyle*  
MAURA S. DOYLE, Clerk

\* Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.

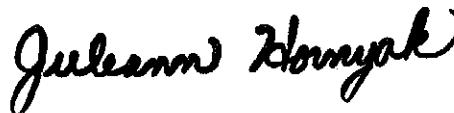
## **Certificate of Admission To the Bar of Illinois**

I, Juleann Hornyak, Clerk of the Supreme Court of Illinois, do hereby certify that

Peter John Roberts

has been duly licensed and admitted to practice as an Attorney and Counselor of Law within this State; has duly taken the required oath to support the CONSTITUTION OF THE UNITED STATES and of the STATE OF ILLINOIS, and also the oath of office prescribed by law, that said name was entered upon the Roll of Attorneys and Counselors in my office on May 8, 1997 and is in good standing, so far as the records of this office disclose.

In Witness Whereof, I have hereunto placed my hand and affixed the seal of said Supreme Court, at Springfield, in said State, this Monday, November 02, 2009.



Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ACP MASTER, LTD., et al.,

Plaintiff,

v.

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

Defendants.

9 CV 8064 (LTS)

PROOF OF SERVICE

Paul A. Rubin certifies that he caused to be served true and correct copies of **(i) Motion To Admit Counsel Pro Hac Vice; (ii) Affidavit Of Paul A. Rubin In Support Of Motion To Admit Counsel Pro Hac Vice; and (iii) Proof of Service** upon the attached Service List via first class mail on this 13<sup>th</sup> day of November, 2009.



Paul Rubin  
HERRICK, FEINSTEIN LLP  
2 Park Avenue  
New York, New York 10016  
(212) 592-1400

**SERVICE LIST**

David Parker  
Kleinberg, Kaplan, Wolff & Cohen, P.C.  
551 Fifth Avenue, Eighteenth Floor  
New York, NY 10176

James B. Heaton, III  
Steven J. Hachtwey  
Bartlit Beck Herman Palenchar & Scott LLP  
65 West Hubbard Street, Suite 300  
Chicago, IL 60654

Bradley J. Butwin  
Jonathan Rosenberg  
Daniel L. Cantor  
William J. Sushon  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036

Thomas C. Rice  
David Woll  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017-3954

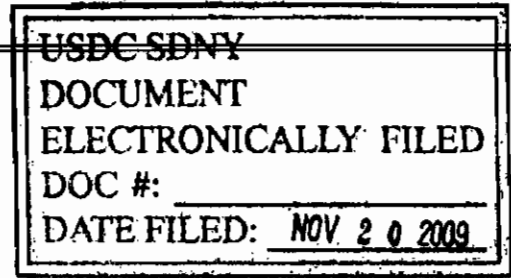
Jean-Marie L. Atamian  
Jason I. Kirshner  
Mayer Brown LLP  
1675 Broadway  
New York, NY 10019-5820

Aaron Rubinstein  
Phillip A. Geraci  
Kaye Scholer LLP  
425 Park Avenue  
12th Floor  
New York, NY 10022

Kenneth E. Noble  
Anthony L. Paccione  
Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, NY 10022-2585

Andrew B. Kratenstein  
McDermott Will & Emery LLP  
340 Madison Avenue  
New York, NY 10173-1922

SDNY (Rev. 10/2006) Order for Admission Pro Hac Vice on Written Motion



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ACP Master, LTD., et al. Plaintiff,

- against -

Bank of America, N.A., et al. Defendant.

09 cv 8064 (LTS)

ORDER FOR ADMISSION  
PRO HAC VICE  
ON WRITTEN MOTION

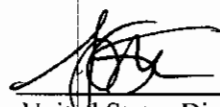
Upon the motion of Peter J. Roberts attorney for defendant MB Financial Bank, N.A.  
and said sponsor attorney's affidavit in support;

IT IS HEREBY ORDERED that

Applicant's Name: Peter J. Roberts  
Firm Name: Shaw Gussis Fishman Glantz Wolfson & Towbin LLC  
Address: 321 North Clark Street, Suite 800  
City/State/Zip: Chicago, IL 60654  
Telephone/Fax: (312) 276-1322  
Email Address: proberts@shawgussis.com

is admitted to practice pro hac vice as counsel for defendant MB Financial Bank, N.A. in the above captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court, including the Rules governing discipline of attorneys. If this action is assigned to the Electronic Case Filing (ECF) system, counsel shall immediately apply for an ECF password at [nysd.uscourts.gov](http://nysd.uscourts.gov). Counsel shall forward the pro hac vice fee to the Clerk of Court.

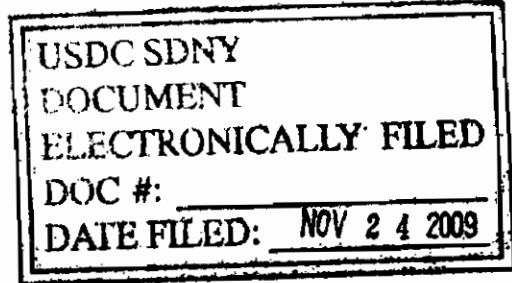
Dated: *NOV 20, 2009*  
City, State: *NY, NY*

  
United States District Court Magistrate Judge



*Swan, S.*

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



-----X  
ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

Case No. 09 CIV 8064 (LTS)(THK)

-against-

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

Defendants.  
-----X

**STIPULATION AND ~~PROPOSED~~ ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the  
undersigned counsel for Plaintiffs and Defendant MB Financial Bank, N.A.

("Defendant") as follows:

1. Defendant shall have up to and including forty-five (45) days from  
the notice of entry of the order of the Judicial Panel on Multi-District Litigation (the  
"MDL Panel") on the pending Motion for Transfer to the Southern District of Florida and  
Consolidation of Related Actions Pursuant to 28 U.S.C. § 1407 (*In re Fontainebleau Las  
Vegas Contract Litigation*, MDL No. 2106) to serve and file its response to the  
Complaint, unless the Plaintiffs herein seek to amend their Complaint.

2. Plaintiffs herein shall have thirty (30) days from the notice of entry  
of the MDL Panel's order to serve and file an Amended Complaint upon the consent of  
the Defendant.

3. Defendant shall have thirty (30) days from the service of an  
Amended Complaint by Plaintiffs herein to serve and file its response to the Amended

Complaint; provided, however, that in the event Plaintiffs herein move the Court for leave to file the proposed Amended Complaint, then Defendant shall have thirty (30) days from the notice of entry of order on such motion to serve and file its response to the operative complaint herein.

Dated: New York, New York  
November 17, 2009

KLEINBERG, KAPLAN, WOLFF &  
COHEN, P.C.

By:   
David Parker  
Maro Rosen

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866  
and


James B. Heaton, III  
Steven J. Nachtwey  
BARTLIT BECK HERMAN  
PALENCHAR & SCOTT LLP  
54 West Hubbard Street, Suite 300  
Chicago, IL 60654  
Telephone: (312) 494-4400  
Facsimile: (312) 494-4440

*Attorneys for Plaintiffs*

IT IS SO ORDERED.

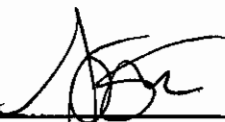
Dated: New York, New York  
November 23, 2009

SHAW GUSSIS FISHMAN GLANTZ  
WOLFSON & TOWBIN LLC

By:   
Peter J. Roberts (*pro hac vice*  
*admission pending*)

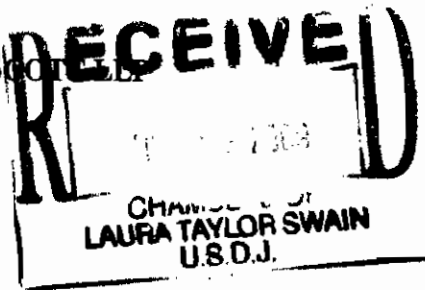
321 North Clark Street, Suite 800  
Chicago, Illinois 60654  
Telephone: (312) 276-1322  
Facsimile: (312) 275-0568  
E-mail: [proberts@shawgussis.com](mailto:proberts@shawgussis.com)

*Attorneys for Defendant MB Financial  
Bank, N.A.*

  
LAURA TAYLOR SWAIN  
United States District Judge

BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP  
www.bartlit-beck.com

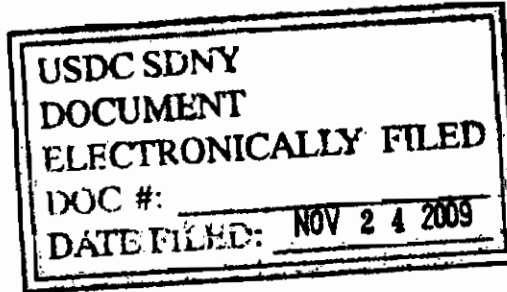
November 20, 2009



CHICAGO OFFICE  
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54 WEST HUBBARD STREET  
CHICAGO, IL 60654  
TELEPHONE: (312) 494-4400  
FACSIMILE: (312) 494-4440

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1899 WYNKOOP STREET  
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DENVER, CO 80202  
TELEPHONE: (303) 592-3100  
FACSIMILE: (303) 592-3140

WRITER'S DIRECT DIAL:  
(312) 494-4474  
steven.nachtwey@bartlit-beck.com



**VIA HAND DELIVERY**

Honorable Laura Taylor Swain  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Room 740  
New York, New York 10007-1312

**MEMO ENDORSED**

**Re: ACP Master, Ltd., et al., v. Bank of America, N.A., et al.  
Case No. 09-Civ-8064 (LTS) (THK)**

Dear Judge Swain:

I represent Plaintiffs ACP Master, Ltd. and Aurelius Capital Master Ltd. ("Aurelius") in the above-captioned case (hereinafter, the "ACP Master Case"). I write on behalf of all the parties in this matter. On September 28, 2009, the Court entered an Initial Conference Order in the ACP Master Case. The ACP Master Case is currently subject to a Motion for Transfer and Consolidation before the Judicial Panel of Multidistrict Litigation. The parties respectfully request that the Initial Conference Order be vacated until the Panel rules on the pending motion.

Very truly yours,

*Steven Nachtwey*  
Steven Nachtwey

*The initial conference date is adjourned to February 26, 2010, at 10:00 AM and the related deadlines are modified accordingly.*

SJN/jm

cc: All Defense Counsel of Record via e-mail

SO ORDERED.

NEW YORK, NY

NOV 23, 2009

*[Signature]*

LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

----- X  
**ACP MASTER, LTD and AURELIUS CAPITAL  
MASTER, LTD.,**

Plaintiffs,

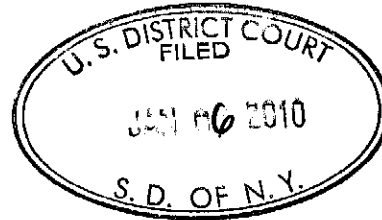
- against -

**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;  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;  
and CAMULOS MASTER FUND, L.P.,**

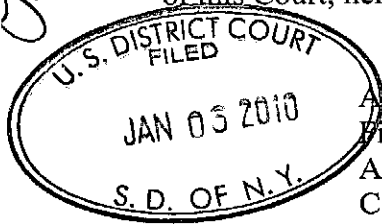
Defendants.  
----- X

Case No. 09-8064 (LTS) (THK)

**MOTION TO ADMIT  
COUNSEL PRO HAC VICE**



Pursuant to Rule 1.3(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, I, Marc R. Rosen, a member in good standing of the bar of this Court, hereby move for an Order allowing the admissions pro hac vice of



Applicants' Names: John D. Byars and Vincent S. J. Buccola  
Firm Name: Bartlit Beck Herman Palenchar & Scott LLP  
Address: 54 West Hubbard, Suite 300  
City/State/Zip: Chicago, Illinois 60654  
Phone Number: (312) 494-4400  
Fax Number: (312) 494-4440

John D. Byars and Vincent S. J. Buccola are each members in good standing of the Bar of the State of Illinois. Mr. Byars is also a member in good standing of the Bar of the United States District Court for the Northern District of Illinois. Attached hereto as Exhibit A are the above-referenced certificates of good standing for Mr. Byars. Attached hereto as Exhibit B is the certificate of good standing for Mr. Buccola.


01/08/10  
CINNO  
004  
210

There are no pending disciplinary proceedings against Mr. Byars or Mr. Buccola in any state or federal court.

Dated: January 5, 2009

Respectfully submitted,

**KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.**

By:   
Marc R. Rosen

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD and  
AURELIUS CAPITAL MASTER, LTD.**



ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS  
www.iardc.org

One Prudential Plaza  
130 East Randolph Drive, Suite 1500  
Chicago, IL 60601-6219  
(312) 565-2600 (800) 826-8625  
Fax (312) 565-2320

One North Old Capitol Plaza, Suite 333  
Springfield, IL 62701  
(217) 522-6838 (800) 252-8048  
Fax (217) 522-2417

John D. Byars  
Bartlit Beck Herman Palenchar & Scott LLP  
Courthouse Place  
54 West Hubbard Street  
Chicago, IL 60654

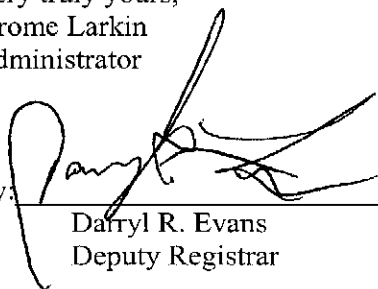
Chicago  
Tuesday, December 08, 2009

In re: John D. Byars  
Admitted: 11/10/2005  
Attorney No. 6285852

To Whom It May Concern:

The records of the Clerk of the Supreme Court of Illinois and of this office indicate that the attorney named above was admitted to the practice of law in Illinois; is currently registered on the master roll of attorneys entitled to practice law in this state; and has never been disciplined; and is in good standing.

Very truly yours,  
Jerome Larkin  
Administrator

By:   
Darryl R. Evans  
Deputy Registrar

DRE

## CERTIFICATE OF GOOD STANDING



*United States of America*

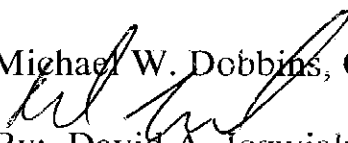
}ss. John David Byars

*Northern District of Illinois*

I, Michael W. Dobbins, Clerk of the United States District Court  
for the Northern District of Illinois,

DO HEREBY CERTIFY That John David Byars  
was duly admitted to practice in said Court on (11/08/2007)  
and is in good standing as a member of the bar of said court.

Dated at Chicago, Illinois  
on (12/10/2009 )

Michael W. Dobbins, Clerk,  
  
By: David A. Jozwiak  
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

----- X  
**ACP MASTER, LTD and AURELIUS CAPITAL** :  
**MASTER, LTD.,** :  
  
Plaintiffs, :  
  
- against - :  
  
**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;** :  
**HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;** :  
**and CAMULOS MASTER FUND, L.P.,** :  
  
Defendants. :  
----- X

Case No. 09-8064 (LTS) (THK)

**AFFIDAVIT OF MARC R. ROSEN  
IN SUPPORT OF MOTION TO  
ADMIT COUNSEL PRO HAC VICE**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK )

**MARC R. ROSEN**, being duly sworn, hereby deposes and says as follows:

1. I am associated with the firm Kleinberg, Kaplan, Wolff & Cohen, P.C., co-counsel for plaintiffs in the above-captioned action. I am familiar with the proceedings in this case. I make this statement based on my personal knowledge of the facts set forth herein and in support of plaintiffs' motion to admit John D. Byars and Vincent S. J. Buccola of the firm Bartlit Beck Herman Palenchar & Scott LLP as counsel pro hac vice to represent plaintiffs in this matter.
2. I am a member in good standing of the bar of the State of New York, and was admitted to practice law in January 1999. I am also admitted to the bar of the United States District Court for the Southern District of New York, and am in good standing with this Court.
3. I have known Mr. Byars since 2007, and have known Mr. Buccola since 2009.



4. Mr. Byars is a partner, and Mr. Buccola is an associate, at Bartlit Beck Herman Palenchar & Scott LLP in Chicago, Illinois.

5. I have found Mr. Byars and Mr. Buccola to be skilled attorneys and persons of integrity. Each is experienced in federal practice and is familiar with the Federal Rules of Procedure.

6. Accordingly, I am pleased to move for the admissions pro hac vice of John D. Byars and Vincent S. J. Buccola.

7. I respectfully submit a proposed order granting the admissions pro hac vice of John D. Byars and Vincent S. J. Buccola, which is attached hereto as Exhibit A.

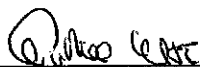
**WHEREFORE**, it is respectfully requested that the motion to admit pro hac vice John D. Byars and Vincent S. J. Buccola, to represent plaintiffs in the above-captioned matter, be granted.



---

Marc R. Rosen

Subscribed and sworn to before me  
this 5th day of January 2010



---

Notary Public

**CYNTHIA WISE**  
Notary Public, State of New York  
No. 01WI6098423  
Qualified in New York County  
Commission Expires September 08, 2011

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

----- X  
**ACP MASTER, LTD and AURELIUS CAPITAL** :  
**MASTER, LTD.,** :  
  
: Plaintiffs, :  
: :  
: - against - :  
: :  
**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;** :  
**HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;** :  
**and CAMULOS MASTER FUND, L.P.,** :  
  
: Defendants. :  
----- X

Case No. 09-8064 (LTS) (THK)

**[PROPOSED]**

**ORDER FOR ADMISSION  
PRO HAC VICE  
ON WRITTEN MOTION**

Upon the motion of Marc R. Rosen of Kleinberg, Kaplan, Wolff & Cohen, P.C., co-counsel for plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., and upon said sponsor-attorney's affidavit in support;

**IT IS HEREBY ORDERED** that:

Applicant's Name:	John D. Byars and Vincent S. J. Buccola
Firm Name:	Bartlit Beck Herman Palenchar & Scott LLP
Address:	54 West Hubbard, Suite 300
City/State/Zip:	Chicago, IL 60654
Phone Number:	(312) 494-4400
Fax Number:	(312) 494-4440
Email Address:	john.byars@bartlit-beck.com Vincent.buccola @bartlit-beck.com

are admitted to practice pro hac vice as counsel for plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., in the above-captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court,

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ACP MASTER, LTD. and AURELIUS CAPITAL :  
MASTER, LTD., :

Plaintiffs, :

-against- :

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; :  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.; :  
and CAMULOS MASTER FUND, L.P., :

Defendants. :

**CERTIFICATE  
OF SERVICE**

Case No. 09 Civ. 8064 (LTS)

On January 5, 2009, on behalf of plaintiffs ACP Master, Ltd. and Aurelius Capital Master, Ltd., I caused the Motion To Admit Counsel Pro Hac Vice, Affidavit of Marc R. Rosen in Support of Motion To Admit Counsel Pro Hac Vice, sworn to January 5, 2010, and [Proposed] Order for Admission Pro Hac Vice on Written Motion, to be served by first-class mail delivery upon the following defendants' counsel at the below addresses:

Simpson Thatcher & Bartlett LLP  
Attn: Thomas C. Rice and David Woll  
425 Lexington Avenue  
New York, New York 10017  
Attorneys for JPMorgan Chase Bank,  
N.A., Barclays Bank plc, Deutsche Bank  
Trust Company Americas, and The  
Royal Bank of Scotland plc

O'Melveny & Myers LLP  
Attn: Bradley J. Butwin  
7 Times Square  
New York, New York 10036  
Attorneys for Bank of America, N.A. and  
Merrill Lynch Capital Corporation

Mayer Brown LLP  
Attn: Jean-Marie L. Atamian  
1675 Broadway  
New York, New York 10019  
Attorneys for Sumitomo Mitsui Banking  
Corporation

Kaye Scholer LLP  
Attn: Aaron Rubinstein  
425 Park Avenue  
New York, New York 10022  
Attorneys for HSH Nordbank AG

Katten Muchin Rosenman LLP  
Attn: Kenneth E. Noble  
575 Madison Avenue  
New York, New York 10022  
Attorneys for Bank of Scotland plc

McDermott Will & Emery LLP  
Attn: Andrew B. Kratenstein  
340 Madison Avenue  
New York, New York 10173  
Attorneys for Camulos Master Fund, L.P.

Shaw Gussis Fishman  
Glantz Wolfson & Towbin LLC  
Attn: Peter J. Roberts  
321 North Clark Street, Suite 800  
Chicago, Illinois 60654  
Attorneys for MB Financial Bank, N.A.

Dated: January 5, 2010

**KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.**

By:   
\_\_\_\_\_  
Marc R. Rosen

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD. and  
AURELIUS CAPITAL MASTER, LTD.**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

----- X  
**ACP MASTER, LTD and AURELIUS CAPITAL  
MASTER, LTD.,**

Plaintiffs,

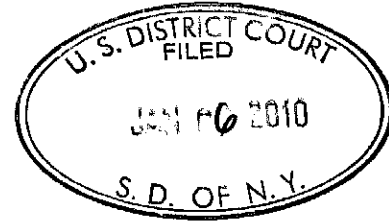
- against -

**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;  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;  
and CAMULOS MASTER FUND, L.P.,**

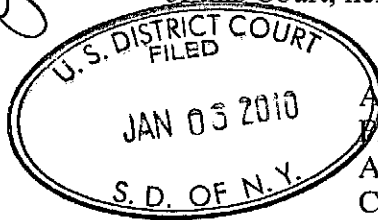
Defendants.  
----- X

Case No. 09-8064 (LTS) (THK)

**MOTION TO ADMIT  
COUNSEL PRO HAC VICE**



Pursuant to Rule 1.3(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, I, Marc R. Rosen, a member in good standing of the bar of this Court, hereby move for an Order allowing the admissions pro hac vice of



Applicants' Names: John D. Byars and Vincent S. J. Buccola  
Firm Name: Bartlit Beck Herman Palenchar & Scott LLP  
Address: 54 West Hubbard, Suite 300  
City/State/Zip: Chicago, Illinois 60654  
Phone Number: (312) 494-4400  
Fax Number: (312) 494-4440

John D. Byars and Vincent S. J. Buccola are each members in good standing of the Bar of the State of Illinois. Mr. Byars is also a member in good standing of the Bar of the United States District Court for the Northern District of Illinois. Attached hereto as Exhibit A are the above-referenced certificates of good standing for Mr. Byars. Attached hereto as Exhibit B is the certificate of good standing for Mr. Buccola.

890713  
1/6/10  
\$50  
OK

There are no pending disciplinary proceedings against Mr. Byars or Mr. Buccola in any state or federal court.

Dated: January 5, 2009

Respectfully submitted,

**KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.**

By:  \_\_\_\_\_  
Marc R. Rosen

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD and  
AURELIUS CAPITAL MASTER, LTD.**



ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS  
www.iardc.org

One Prudential Plaza  
130 East Randolph Drive, Suite 1500  
Chicago, IL 60601-6219  
(312) 565-2600 (800) 826-8625  
Fax (312) 565-2320

One North Old Capitol Plaza, Suite 333  
Springfield, IL 62701  
(217) 522-6838 (800) 252-8048  
Fax (217) 522-2417

John D. Byars  
Bartlit Beck Herman Palenchar & Scott LLP  
Courthouse Place  
54 West Hubbard Street  
Chicago, IL 60654

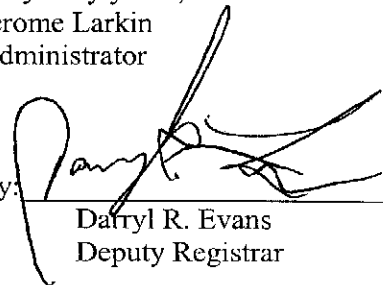
Chicago  
Tuesday, December 08, 2009

In re: John D. Byars  
Admitted: 11/10/2005  
Attorney No. 6285852

To Whom It May Concern:

The records of the Clerk of the Supreme Court of Illinois and of this office indicate that the attorney named above was admitted to the practice of law in Illinois; is currently registered on the master roll of attorneys entitled to practice law in this state; and has never been disciplined; and is in good standing.

Very truly yours,  
Jerome Larkin  
Administrator

By:   
Darryl R. Evans  
Deputy Registrar

DRE



ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS  
www.iardc.org

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Vincent Buccola  
Bartlit Beck Herman Palenchar & Scott LLP  
Courthouse Place  
54 West Hubbard Street  
Chicago, IL 60654

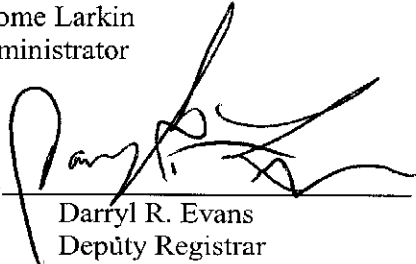
Chicago  
Tuesday, December 08, 2009

In re: Vincent Sidney Joseph Buccola  
Admitted: 11/5/2009  
Attorney No. 6299196

To Whom It May Concern:

The records of the Clerk of the Supreme Court of Illinois and of this office indicate that the attorney named above was admitted to the practice of law in Illinois; is currently registered on the master roll of attorneys entitled to practice law in this state; and has never been disciplined; and is in good standing.

Very truly yours,  
Jerome Larkin  
Administrator

By:   
Darryl R. Evans  
Deputy Registrar

DRE



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

----- X	:	
<b>ACP MASTER, LTD and AURELIUS CAPITAL</b>	:	
<b>MASTER, LTD.,</b>	:	
	:	
Plaintiffs,	:	
	:	Case No. 09-8064 (LTS) (THK)
- against -	:	
	:	
<b>BANK OF AMERICA, N.A.; MERRILL LYNCH</b>	:	<b>AFFIDAVIT OF MARC R. ROSEN</b>
<b>CAPITAL CORPORATION; JPMORGAN CHASE</b>	:	<b>IN SUPPORT OF MOTION TO</b>
<b>BANK, N.A.; BARCLAYS BANK PLC; DEUTSCHE</b>	:	<b><u>ADMIT COUNSEL PRO HAC VICE</u></b>
<b>BANK TRUST COMPANY AMERICAS; THE ROYAL</b>	:	
<b>BANK OF SCOTLAND PLC; SUMITOMO MITSUI</b>	:	
<b>BANKING CORPORATION; BANK OF SCOTLAND;</b>	:	
<b>HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;</b>	:	
<b>and CAMULOS MASTER FUND, L.P.,</b>	:	
	:	
Defendants.	:	
----- X		

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK )

**MARC R. ROSEN**, being duly sworn, hereby deposes and says as follows:

1. I am associated with the firm Kleinberg, Kaplan, Wolff & Cohen, P.C., co-counsel for plaintiffs in the above-captioned action. I am familiar with the proceedings in this case. I make this statement based on my personal knowledge of the facts set forth herein and in support of plaintiffs' motion to admit John D. Byars and Vincent S. J. Buccola of the firm Bartlit Beck Herman Palenchar & Scott LLP as counsel pro hac vice to represent plaintiffs in this matter.

2. I am a member in good standing of the bar of the State of New York, and was admitted to practice law in January 1999. I am also admitted to the bar of the United States District Court for the Southern District of New York, and am in good standing with this Court.

3. I have known Mr. Byars since 2007, and have known Mr. Buccola since 2009.


4. Mr. Byars is a partner, and Mr. Buccola is an associate, at Bartlit Beck Herman Palenchar & Scott LLP in Chicago, Illinois.

5. I have found Mr. Byars and Mr. Buccola to be skilled attorneys and persons of integrity. Each is experienced in federal practice and is familiar with the Federal Rules of Procedure.

6. Accordingly, I am pleased to move for the admissions pro hac vice of John D. Byars and Vincent S. J. Buccola.

7. I respectfully submit a proposed order granting the admissions pro hac vice of John D. Byars and Vincent S. J. Buccola, which is attached hereto as Exhibit A.

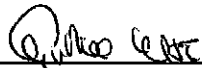
**WHEREFORE**, it is respectfully requested that the motion to admit pro hac vice John D. Byars and Vincent S. J. Buccola, to represent plaintiffs in the above-captioned matter, be granted.



---

Marc R. Rosen

Subscribed and sworn to before me  
this 5th day of January 2010



---

Notary Public

**CYNTHIA WISE**  
Notary Public, State of New York  
No. 01W16098423  
Qualified in New York County  
Commission Expires September 08, 2011

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

----- X  
**ACP MASTER, LTD and AURELIUS CAPITAL** :  
**MASTER, LTD.,** :  
: :  
Plaintiffs, :  
: :  
- against - :  
: :  
**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;** :  
**HSH NORDBANK AG; MB FINANCIAL BANK, N.A.;** :  
**and CAMULOS MASTER FUND, L.P.,** :  
: :  
Defendants. :  
----- X

Case No. 09-8064 (LTS) (THK)

**[PROPOSED]**

**ORDER FOR ADMISSION  
PRO HAC VICE  
ON WRITTEN MOTION**

Upon the motion of Marc R. Rosen of Kleinberg, Kaplan, Wolff & Cohen, P.C., co-counsel for plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., and upon said sponsor-attorney's affidavit in support;

**IT IS HEREBY ORDERED that:**

Applicant's Name:	John D. Byars and Vincent S. J. Buccola
Firm Name:	Bartlit Beck Herman Palenchar & Scott LLP
Address:	54 West Hubbard, Suite 300
City/State/Zip:	Chicago, IL 60654
Phone Number:	(312) 494-4400
Fax Number:	(312) 494-4440
Email Address:	john.byars@bartlit-beck.com Vincent.buccola @bartlit-beck.com

are admitted to practice pro hac vice as counsel for plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., in the above-captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court,

including the rules governing discipline of attorneys. If this action is assigned to the Electronic Case Filing (ECF) system, counsel shall immediately apply for an ECF password at [nysd.uscourts.gov](http://nysd.uscourts.gov). Counsel shall forward the pro hac vice fee to the Clerk of the Court.

Dated: January \_\_\_\_, 2010

---

United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ACP MASTER, LTD. and AURELIUS CAPITAL :  
MASTER, LTD., :

Plaintiffs, :

-against- :

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; :  
HSH NORDBANK AG; MB FINANCIAL BANK, N.A.; :  
and CAMULOS MASTER FUND, L.P., :

Defendants. :

**CERTIFICATE  
OF SERVICE**

Case No. 09 Civ. 8064 (LTS)

On January 5, 2009, on behalf of plaintiffs ACP Master, Ltd. and Aurelius Capital Master, Ltd., I caused the Motion To Admit Counsel Pro Hac Vice, Affidavit of Marc R. Rosen in Support of Motion To Admit Counsel Pro Hac Vice, sworn to January 5, 2010, and [Proposed] Order for Admission Pro Hac Vice on Written Motion, to be served by first-class mail delivery upon the following defendants' counsel at the below addresses:

Simpson Thatcher & Bartlett LLP  
Attn: Thomas C. Rice and David Woll  
425 Lexington Avenue  
New York, New York 10017  
Attorneys for JPMorgan Chase Bank,  
N.A., Barclays Bank plc, Deutsche Bank  
Trust Company Americas, and The  
Royal Bank of Scotland plc

O'Melveny & Myers LLP  
Attn: Bradley J. Butwin  
7 Times Square  
New York, New York 10036  
Attorneys for Bank of America, N.A. and  
Merrill Lynch Capital Corporation

Mayer Brown LLP  
Attn: Jean-Marie L. Atamian  
1675 Broadway  
New York, New York 10019  
Attorneys for Sumitomo Mitsui Banking  
Corporation

Kaye Scholer LLP  
Attn: Aaron Rubinstein  
425 Park Avenue  
New York, New York 10022  
Attorneys for HSH Nordbank AG

Katten Muchin Rosenman LLP  
Attn: Kenneth E. Noble  
575 Madison Avenue  
New York, New York 10022  
Attorneys for Bank of Scotland plc

McDermott Will & Emery LLP  
Attn: Andrew B. Kratenstein  
340 Madison Avenue  
New York, New York 10173  
Attorneys for Camulos Master Fund, L.P.

Shaw Gussis Fishman  
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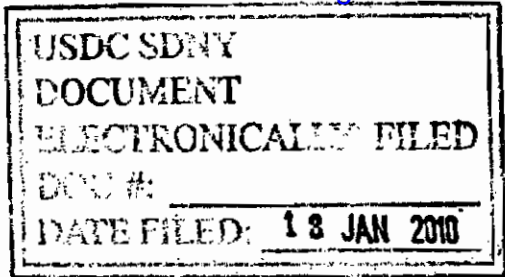
Dated: January 5, 2010

**KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.**

By:   
\_\_\_\_\_  
Marc R. Rosen

551 Fifth Avenue, 18th Floor  
New York, New York 10176  
Telephone: (212) 986-6000  
Facsimile: (212) 986-8866

Attorneys for Plaintiffs  
**ACP MASTER, LTD. and  
AURELIUS CAPITAL MASTER, LTD.**



IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

ACP MASTER, LTD and AURELIUS CAPITAL MASTER, LTD.,

Plaintiffs,

- against -

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; HSH NORDBANK AG; MB FINANCIAL BANK, N.A.; and CAMULOS MASTER FUND, L.P.,

Defendants.

Case No. 09-8064 (LTS) (THK)

~~PROPOSED~~

ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION

Upon the motion of Marc R. Rosen of Kleinberg, Kaplan, Wolff & Cohen, P.C., co-counsel for plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., and upon said sponsor-attorney's affidavit in support;

IT IS HEREBY ORDERED that:

Applicant's Name: John D. Byars and Vincent S. J. Buccola
Firm Name: Bartlit Beck Herman Palenchar & Scott LLP
Address: 54 West Hubbard, Suite 300
City/State/Zip: Chicago, IL 60654
Phone Number: (312) 494-4400
Fax Number: (312) 494-4440
Email Address: john.byars@bartlit-beck.com
Vincent.buccola @bartlit-beck.com

are admitted to practice pro hac vice as counsel for plaintiffs, ACP Master, Ltd. and Aurelius Capital Master, Ltd., in the above-captioned case in the United States District Court for the Southern District of New York. All attorneys appearing before this Court are subject to the Local Rules of this Court,

including the rules governing discipline of attorneys. If this action is assigned to the Electronic Case Filing (ECF) system, counsel shall immediately apply for an ECF password at [nysd.uscourts.gov](http://nysd.uscourts.gov). Counsel shall forward the pro hac vice fee to the Clerk of the Court.

Dated: January 13, 2010



---

United States District Judge



DOC # 27

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ACP MASTER, LTD. and AURELIUS CAPITAL  
MASTER, LTD.,

Plaintiffs,

-against-

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; HSH NORDBANK AG; MB  
FINANCIAL BANK, N.A.; and CAMULOS MASTER  
FUND, L.P.,

Defendants.

AMENDED COMPLAINT

Case No.  
09-CV-8064 (LTS)(THK)

1. This action seeks to redress wrongs done by Defendants to predecessors-in-interest of ACP Master, Ltd. and Aurelius Capital Master, Ltd. ("Aurelius" or "Plaintiffs").

2. In March 2007, a group of investment bankers, including affiliates of Defendants (defined below), contacted Plaintiffs' predecessors-in-interest to participate in financing the development and construction of the Fontainebleau Resort and Casino in Las Vegas, Nevada ("the Project"). The Project was to consist of a sixty-three story glass skyscraper featuring over 3,800 guest rooms, suites and condominium units; a 100-foot-high, three-level podium complex housing casino/gaming areas, restaurants and bars, a spa and salon, a live entertainment theater and rooftop pools; a 353,000 square-foot convention center; a high-end retail space including shops and restaurants; and a nightclub.

3. In June 2007, Plaintiffs' predecessors-in-interest and Defendants entered into the Credit Agreement ("Credit Agreement") to provide funds for the Project.

4. The borrowers under the Credit Agreement were Fontainebleau Las Vegas LLC and Fontainebleau Las Vegas II, LLC (the “Borrowers”).

5. The Credit Agreement covered three kinds of loans to build the Project:<sup>1</sup> (a) a \$700 million initial term loan facility (the “Initial Term Loan”); (b) a \$350 million delay draw term facility (the “Delay Draw Loan”); and (c) an \$800 million revolving loan facility (the “Revolving Loan”). The lenders are referred to below at times as “Initial Term Loan Lenders,” “Delay Draw Loan Lenders,” and “Revolving Loan Lenders,” respectively.

6. Plaintiffs bring this action against Defendants because, to the detriment of Plaintiffs’ predecessors-in-interest, Defendants refused to fund the Revolving Loan when the Credit Agreement required them to do so.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this civil action pursuant to 12 U.S.C. § 632 because Defendants Bank of America, N.A., 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.

8. Venue is proper in the United States District Court for the Southern District of New York because a substantial number of the Defendants reside in New York and transactions at issue occurred in this District.

---

<sup>1</sup> Certain other loans were available only after the casino and hotel opened for business.

**THE PARTIES**

***The Plaintiffs***

9. Plaintiff ACP Master, Ltd. is a Cayman Islands exempt company with no place of business in the United States and with its principal place of business in the Cayman Islands.

Plaintiff Aurelius Capital Master, Ltd. is a Cayman Islands exempt company with no place of business in the United States and with its principal place of business in the Cayman Islands.

10. Plaintiffs ACP Master, Ltd. and/or Aurelius Capital Master, Ltd. is the successor-in-interest to the following Initial Term Loan Lenders and/or Delay Draw Loan Lenders:

Aberdeen Loan Funding, Ltd.; Airlie CLO 2006-Ltd.; Airlie CLO 2006-II Ltd.; Armstrong Loan Funding, LTD.; Artus Loan Fund 2007-I, Ltd.; Babson CLO Ltd. 2004-I; Babson CLO Ltd.

2004-II; Babson CLO Ltd. 2005-I; Babson CLO Ltd. 2005-II; Babson CLO Ltd. 2005-III;

Babson CLO Ltd. 2006-I; Babson CLO Ltd. 2006-II; Babson CLO Ltd. 2007-I; Babson Loan Opportunity CLO, Ltd. (f/k/a Babson-Jefferies Loan Opportunity CLO, Ltd.); Carlyle High

Yield Partners 2008-1, Ltd.; Carlyle Loan Investment 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.; Carlyle High Yield Partners X, Ltd.; C.M. Life Insurance Company; Duane

Street CLO I, Ltd.; Duane Street CLO II, Ltd.; Duane Street CLO IV, Ltd.; Emerald Orchard

Limited; Encore Fund, L.P.; (FCT) First Trust/Four Corners Senior Floating Rate Income Fund

II; Fidelity Central Investment Portfolios LLC: Fidelity Floating Rate Central Investment

Portfolio; Flariton Funding; Fortissimo Fund; Four Corners CLO 2005-1, Ltd.; Four Corners

CLO II, Ltd.; Gleneagles CLO, Ltd.; Grand Central Asset Trust Cameron I Series; Grayson

CLO, Ltd.; Greenbriar CLO, Ltd.; Halcyon Loan Investors CLO I, Ltd.; Halcyon Loan Investors

CLO II, Ltd.; Halcyon Structured Asset Management CLO I Ltd.; Halcyon Structured Asset

Management Long Secured/Short Unsecured CLO 2006-1 Ltd.; Halcyon Structured Asset Management Long Secured Short Unsecured 2007-1 Ltd. (f/k/a Halcyon Structured Asset Management Long Secured/Short Unsecured CLO II Ltd.); Halcyon Structured Asset Management Long Secured/Short Unsecured 2007-2 Ltd.; Halcyon Structured Asset Management Long Secured/Short Unsecured 2007-3 Ltd. (f/k/a Halcyon Structured Asset Management Long Secured/Short Unsecured CLO III Ltd.); Halcyon Structured Asset Management CLO 2008-II B.V.; Jasper CLO, Ltd.; Jefferies Finance CP Funding LLC; JFIN CLO 2007 Ltd.; LFSIGXG LLC; LL Victory Funding LLC; Loan Star State Trust; Longhorn Credit Funding, LLC; Massachusetts Mutual Life Insurance Company; Pequot Credit Opportunities Fund, L.P.; Pyramis Floating Rate High Income Commingled Pool; Red River CLO, Ltd.; RiverSource High Yield Bond Fund, a series of RiverSource High Yield Income Series, Inc.; Rockwall CDO II, Ltd.; Sapphire Valley CDO I, Ltd.; SF-3 Segregated Portfolio, a segregated portfolio of Shiprock Finance, SPC, for which Shiprock Finance, SPC is acting on behalf of and for the account of SF-3 Segregated Portfolio; Stratford CLO, Ltd.; Symphony CLO II, LTD.; Symphony CLO III, LTD.; Symphony CLO IV, LTD.; and Symphony CLO V, LTD.

***The Defendants***

11. Defendant Bank of America, N.A. (“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 Loan Lender, Administrative Agent and Disbursement Agent. BofA committed to fund \$100 million under the Revolving Loan.

12. Defendant Merrill Lynch Capital Corporation is a Delaware corporation with its principal place of business in New York. Merrill Lynch Capital Corporation committed to fund \$100 million under the Revolving Loan.

13. Defendant JPMorgan Chase Bank, N.A. is a nationally chartered bank with its main office in Columbus, Ohio. JPMorgan Chase Bank, N.A. committed to fund \$90 million under the Revolving Loan.

14. 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 committed to fund \$100 million under the Revolving Loan.

15. 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 committed to fund \$80 million under the Revolving Loan.

16. 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 committed to fund \$90 million under the Revolving Loan.

17. Defendant Sumitomo Mitsui Banking Corporation is a Japanese corporation with offices in New York, New York. Sumitomo Mitsui Banking Corporation committed to fund \$90 million under the Revolving Loan.

18. Defendant Bank of Scotland is chartered under the laws of Scotland, with its principal place of business in Edinburgh, Scotland. Bank of Scotland committed to fund \$72.5 million under the Revolving Loan.

19. Defendant HSH Nordbank AG is a German banking corporation with a branch in New York, New York. HSH Nordbank AG committed to fund \$40 million under the Revolving Loan.

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

21. Defendant Camulos Master Fund, L.P. is a Delaware corporation with its principal place of business in Stamford, Connecticut. Camulos Master Fund L.P. committed to fund \$20 million under the Revolving Loan.

22. All of the above Defendants are referred to below collectively as the “Defendants.”

### **NATURE OF THE ACTION**

#### **The Structure of the Credit Agreement**

23. The Credit Agreement among the Borrowers, Defendants, Plaintiffs’ predecessors-in-interest, and others was entered into on June 6, 2007.

24. The Credit Agreement provided for Initial Term Loans of \$700 million (all of which was funded in June 2007), Delay Draw Loans of \$350 million, and Revolving Loans of \$800 million.

25. Plaintiffs’ predecessors-in-interest are each lenders under either the Initial Term Loan, the Delay Draw Loan, or both.

26. Defendants all are lenders under the Revolving Loan.

27. In addition to being a lender under the Revolving Loan, Defendant BofA acted as Administrative Agent to all of the lenders under the Credit Agreement and as Disbursement Agent to all of the lenders under the Master Disbursement Agreement (“Disbursement Agreement”), which was signed simultaneously and in connection with the Credit Agreement to control how loan proceeds were spent on the Project.

28. The purpose of the Credit Agreement was to make funds available for the construction of the Project.

29. The loans available under the Credit Agreement were the principal source of construction financing for the Project and were intended to be virtually the only source of construction financing remaining after junior sources of construction financing (equity and second mortgage bonds) were utilized, as was the case before March 2009.

30. The purpose of the Credit Agreement was to provide for the constant availability of funds so long as the terms and conditions of the Credit Agreement were met, because all Lenders would suffer if Project construction came to a halt and, as a result, their collateral value was destroyed.

31. Any amounts outstanding under the Initial Term Loan, the Delay Draw Loan and the Revolving Loan benefit from equal and ratable collateralization by mortgages on the real property comprising the Project and by security interests on all personal property of the Borrowers, including all loan proceeds not yet spent.

32. The Credit Agreement sets forth two kinds of Revolving Loan: (1) "Direct Loans" and (2) "Disbursement Agreement Loans." Disbursement Agreement loans are loans made prior to the "Opening Date," which effectively is the date when the hotel and casino are open for business. The Revolving Loans at issue here are Disbursement Agreement loans, so references below to Revolving Loans are to those that are also Disbursement Agreement loans.

33. Disbursement Agreement borrowings under the Credit Agreement occur in two steps. First, the Borrowers must submit to the Administrative Agent (*i.e.*, BofA) a Notice of Borrowing specifying the amount of committed but unfunded loans it wishes to receive and the designated borrowing date. Such a Notice of Borrowing could be submitted only once per calendar month. The Credit Agreement contemplates a Notice of Borrowing drawing both the Delay Draw Loan and the Revolving Loan at the same date. For example, section 2.4(b) contemplates the Administrative Agent receiving a single Notice of Borrowing that obligates it

to “promptly notify each Delay Draw Lender **and/or** Revolving Lender, as appropriate” (emphasis added).

34. Section 2.1(c) states: “The making of Revolving Loans which are Disbursement Agreement Loans to the Bank Proceeds Account shall be subject **only** to the fulfillment of the applicable conditions set forth in Section 5.2, and shall thereafter be disbursed from the Bank Proceeds Account subject only to the conditions set forth in Section 3.3 of the Disbursement Agreement” (emphasis in original).

35. Section 5.2 of the Credit Agreement states:

Conditions to Extensions of Credit controlled by Disbursement Agreement.

The agreement of each Lender to make Disbursement Agreement Loans and to issue Letters of Credit for the payment of Project Costs pursuant to Section 3.4 of the Disbursement Agreement, is subject only to the satisfaction of the following conditions precedent:

(a) Notice of Borrowing. Borrowers shall have submitted a Notice of Borrowing specifying the amount and Type of the Loans requested, and the making thereof shall be in compliance with the applicable provisions of Section 2 of this Agreement.

(b) Letters of Credit. In the case of Letters of Credit, the procedures set forth in Section 3.4 of the Disbursement Agreement shall have been complied with.

(c) Drawdown Frequency. Except for Loans made pursuant to Section 3 with respect to Reimbursement Obligations, Loans made pursuant to this Section shall be made no more frequently than once every calendar month unless the Administrative Agent otherwise consents in its sole discretion.

36. The Administrative Agent must promptly notify the lenders of the Notice of Borrowing. Once notified, each lender must make its pro-rata share of the requested loans available to the Administrative Agent prior to 10:00 a.m. on the designated borrowing date. The Administrative Agent, “[u]pon satisfaction or waiver of the applicable conditions precedent,” transfers the funds (except Delay Draw Loan proceeds used to pay off outstanding balances under the Revolving Loan pursuant to section 2.1(b)(iii) of the Credit Agreement) into a “Bank



Proceeds Account,” which is essentially a holding account for the loaned funds. As Section 5.2 makes clear, the funding of this first step is not conditioned on representations and warranties or absence of Events of Default.

37. Second, the Borrowers must submit an advance request (the “Advance Request”) to secure disbursements from the Bank Proceeds Account under the Disbursement Agreement. It is at this second step that Section 3.3 of the Disbursement Agreement – referred to above by Section 2.1(c)’s requirements for Disbursement Agreement Loans – conditions the disbursement on the protections afforded by the representations and warranties and absence of default. Article 3.3 of the Disbursement Agreement sets forth the conditions precedent to Advances by the Disbursement Agent, BofA, including no misrepresentations under the Credit Agreement, no continuing Events of Default or Defaults, and that the Bank Agent was not aware of any adverse information that may affect the Project. Pursuant to Article 2.5.1, BofA was required to stop funding Advance Requests and issue a Stop Funding Notice (*i.e.*, requests by the Borrower to disburse amounts from the Bank Proceeds Account) if “conditions precedent to an Advance ha[d] not been satisfied....” Once a Stop-Fund Notice was issued, no disbursements could be made from the accounts subject to the Disbursement Agreement

38. Each requested round of Delay Draw Loan was required to be in a minimum amount of \$150 million. This meant that either all \$350 million of Delay Draw Loans could be requested at once, or the Delay Draw Loans would be requested in two rounds, the first between \$150 million and \$200 million and the second for the balance. Once Delay Draw Loans were repaid, they could not be re-borrowed.

39. In contrast, each round of Revolving Loans could be requested in a minimum amount of \$5,000,000. This afforded the Borrowers the flexibility to make monthly borrowings of less than the \$150 million minimum denomination applicable to Delay Draw Loans. When Delay Draw Loans were made, the Borrowers were required to use the proceeds first to pay

down any outstanding Revolving Loans before using them to meet other needs, such as the costs of the Project. Revolving Loans could be repaid and re-borrowed.

40. Consistent with this, Section 2.1(c)(iii) of the Credit Agreement states that “unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed \$150,000,000.”

41. The Credit Agreement allows the Borrowers simultaneously to request the remaining Delay Draw Loans and new Revolving Loans.

42. Absent this right, there could be months where the Borrowers would have no funds available to meet current expenditures on the Project, which could be disastrous for the Borrowers, the Lenders and the construction companies working on the Project.

43. To illustrate, suppose that the Borrowers received \$200 million in the first round of Delay Draw Loan borrowing, then received two rounds of Revolving Loans totaling \$150 million, and used that money in project construction. Suppose the Borrowers thereafter need an additional \$170 million to meet the current month’s construction expenses. If the Borrowers only receive the remaining \$150 million of Delay Draw Loans, all of those funds would be used to repay the \$150 million of Revolving Loans. Thus, the Borrowers would be left without funds to pay their construction vendors unless the Borrowers could also request \$170 million of new Revolving Loans at the same time they request \$150 million of new Delay Draw Loans. If the Borrowers could not request both the Delay Draw Loans and the Revolving Loans at the same time, the Borrowers would be without funds to meet their expenses for another month, when they could request the next round of Revolving Loans.

#### **The Defendants’ Wrongful Refusal to Fund**

44. On March 2, 2009, the Borrowers issued a Notice of Borrowing drawing the entire amount available under the Delay Draw Loan and the remaining amount available under the Revolving Loan (the “March 2 Notice”).

**NOTICE OF BORROWING**

March 2, 2009

Bank of America, N.A.,  
as Administrative Agent  
Mail Code: TX1-492-14-11  
Bank of America Plaza  
901 Main St.  
Dallas, TX 75202-3714  
Attention: Donna F. Kimbrough

Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC

Ladies and Gentlemen:

Pursuant to Section 2.4 of that certain Credit Agreement, dated as of June 6, 2007 (as amended, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement or if not set forth therein the meanings given to them in the Disbursement Agreement, or, to the extent the Disbursement Agreement is then not in effect, the Disbursement Agreement as of the last day of its effectiveness), among Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (collectively, the "Borrowers"), each lender from time to time party thereto and Bank of America, N.A., as administrative agent (the "Administrative Agent"), the Borrowers hereby give the Administrative Agent irrevocable notice that the Borrowers hereby request a Loan under the Credit Agreement, and in that connection set forth below the information relating to such Loan:

1. The Banking Day of the proposed Loan is March 3, 2009 (the "Borrowing Date").
2. The proposed Loan is a Disbursement Agreement Loan.
3. The proposed Loan is a Delay Draw Loan and a Revolving Loan. The Type of the proposed Loan is a Base Rate Loan.
4. The aggregate amount of the proposed Delay Draw Loan is \$350,000,000, and the aggregate amount of the proposed Revolving Loan is \$670,000,000.

The Borrowers agree that, if prior to the Borrowing Date any of the foregoing certifications shall cease to be true and correct, the Borrowers shall forthwith notify the Administrative Agent thereof in writing (any such notice, a "Non-Compliance Notice"). Except to the extent, if any, that prior to the Borrowing Date, the Borrowers shall deliver a Non-Compliance Notice to the Administrative Agent, each of the foregoing certifications shall be deemed to be made additionally on the Borrowing Date as if made on such date.

The undersigned is executing this Notice of Borrowing not in an individual capacity, but in the undersigned's capacity as a Responsible Officer of the Borrowers.

45. Approximately \$68 million of Revolving Loans had previously been funded pursuant to prior Notices of Borrowing and remained outstanding on March 2, 2009.

46. If the March 2 Notice (as corrected by the March 3 Notice described below) had been honored by the Lenders, (a) the \$68 million of previously outstanding Revolving Loans would have been fully repaid out of the proceeds of the Delay Draw Loan, (b) a new and much larger Revolving Loan would have been made concurrently with the Delay Draw Loan, and (c) the amounts funded by the Delay Draw Loan (less the portion used to repay previously outstanding Revolving Loans) and by the new Revolving Loan would have been placed in the Bank Proceeds Account, where they would have been subject to the liens of all Lenders under the Credit Agreement unless and until released to pay the costs of constructing the Project (which was also subject to the liens of all Lenders).

47. BofA submitted the March 2 Notice to Revolving Loan Lenders and the Delay Draw Lenders, and several of the Delay Draw Loan Lenders began to fund.

48. At 5:30 p.m. Eastern Time on March 2, 2009, BofA led a conference call among certain lenders to discuss the Notice of Borrowing.

49. BofA hosted a follow-up conference call at 8:00 a.m. Eastern Time the next morning, March 3, 2009.

50. On March 3, 2009, BofA, as the Administrative Agent, sent a letter (the "March 3 Agent Letter") to the Borrowers stating that it would not process the March 2 Notice.

51. The Administrative Agent claimed that the March 2 Notice did not comply with the provisions of Section 2.1(c)(iii) of the Credit Agreement, the provision discussed above which states that "unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed \$150,000,000."



March 3, 2009

Via Electronic Mail

Jim Freeman, Senior Vice President and Chief Financial Officer  
Fontainebleau Resorts LLC  
Fontainebleau Las Vegas, LLC  
2827 Paradise Road  
Las Vegas, NV 89109  
[jfreeman@fontainebleau.com](mailto:jfreeman@fontainebleau.com)

Re: Credit Agreement dated as of June 6, 2007 among Fontainebleau Las Vegas, LLC (the "Company"), Fontainebleau Las Vegas II, LLC, the Lenders, and Bank of America, N.A., as Administrative Agent

Dear Jim:

We are in receipt of the Loan Notice which the Company submitted yesterday under the Credit Agreement described above, which requests a Delay Draw Term Loan in the amount of \$350,000,000 and a Revolving Loan of \$670,000,000.

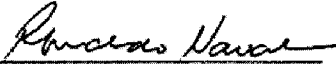
The Loan Notice which you submitted does not comply with the provisions of Section 2.1(c) of the Credit Agreement, which states that:

"(iii) unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed \$150,000,000."

Accordingly, we have notified the Lenders that we will not be processing this Loan Notice. Please contact Brian Corum or me if you have any questions regarding this letter.

Very truly yours,

BANK OF AMERICA, N.A, as Administrative Agent

By:   
Ronaldo Naval, Vice President

52. The Administrative Agent unilaterally returned funds to those Lenders that had funded the March 2 Notice.

53. Other Delay Draw Loan Lenders relied on BofA's incorrect advice in refusing to fund pursuant to the March 2 Notice and March 3 Notice.

54. On March 3, 2009, the Borrowers replied to the Administrative Agent by letter (the "March 3 Borrower Letter") advising that the March 3 Agent Letter was in error and urging the Administrative Agent to reconsider.

55. The March 3 Borrower Letter explained that the Credit Agreement does not prevent the Borrowers from requesting the full amount of the Delay Draw Loan and Revolving Loan pursuant to one Notice of Borrowing.



FONTAINEBLEAU RESORTS, LLC

702 495 8100  
2827 PARADISE ROAD  
LAS VEGAS NV 89109

FONTAINEBLEAU.COM

March 3, 2009

**VIA ELECTRONIC MAIL**

Bank of America, N.A.,  
as Administrative Agent  
Agency Management  
901 Main Street  
Mail Code TX1-492-14-11  
Dallas, TX 75202  
Attn: Ronaldo Naval, Vice President

**RE: CREDIT AGREEMENT DATED AS OF JUNE 6, 2007 AMONG FONTAINEBLEAU  
LAS VEGAS, LLC, FONTAINEBLEAU LAS VEGAS II, LLC, THE LENDERS  
PARTY THERETO AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT**

Dear Ron:

We are in receipt of your letter of March 3, 2009, in which Bank of America incorrectly declined to process the Notice of Borrowing we submitted yesterday<sup>1</sup>. We are legally entitled to have these monies deposited into the Bank Proceeds Account, in which we have a beneficial interest.

Your letter states that you will not process the Notice of Borrowing based upon an erroneous position that the Notice of Borrowing does not comply with Section 2.1(c)(iii) of the Credit Agreement. We believe that your reading of that section is contrary to the plain language of the Credit Agreement and related Loan Documents. For that reason, we urge you to reconsider your position.

The Notice of Borrowing, by its own terms, satisfies the requirements of Section 2.1(c)(iii). Specifically, at the time that Revolving Loans in excess of \$150 million will be outstanding, the Delay Draw Commitments will have been fully drawn in compliance with this provision.

To be clear, Section 2.1(c)(iii) does not require the Delay Draw Term Loan Commitment to have been **funded prior** to drawing down the Revolving Loans; instead, this provision restricts the **outstanding** amount of the Revolving Loans **unless** the Total Delay Draw Commitments have

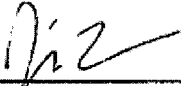
been **fully drawn**. By fully drawing on the Delay Draw Commitments at the same time as we requested the borrowing under the Revolving Commitments, we met this requirement.

Accordingly, the Notice of Borrowing we submitted yesterday satisfied the requirements of the Credit Agreement and should have been processed and funded today. Your failure to have done so constitutes a breach of the Credit Agreement, resulting in substantial harm to the Loan Parties. We expect the Lenders to honor their obligations and fund their loans pursuant to the corrected Notice of Borrowing without further delay.

Nothing herein is intended to waive any of our rights and/or remedies, both at law or in equity, all of which we expressly reserve.

Very truly yours,

Fontainebleau Las Vegas, LLC



Name: Jim Freeman

Title: Sr. Vice President and Chief Financial Officer

cc: Brian Corum

56. The Borrowers also submitted an amended Notice of Borrowing (“March 3 Notice”) to correct a calculation error specifying that the amount sought was actually \$656.52 million.

<sup>1</sup> The Notice of Borrowing submitted on March 2, 2009, contained a scrivener’s error such that the amount of Borrowing sought under the Revolving Commitments was represented to be \$670 million. The actual amount intended to be drawn upon is \$656,522,698, in respect of \$13,477,302 of Letters of Credit outstanding. We attach hereto a corrected Notice of Borrowing reflecting the appropriate amount.

57. On March 4, 2009, BofA posted on Intralinks (an on-line platform for the auditable exchange of information among syndicated loan participants) a message available to the lenders noting that BofA had not changed its position and that, in its view, the Notice of Borrowing did not comply with the terms of the Credit Agreement.



58. In fact, the March 2 Notice and the March 3 Notice were effective in fully drawing both the Delay Draw Loan and the Revolving Loan. Contrary to BofA's position and advice to the Delay Draw Loan Lenders, the March 2 Notice and the substituted March 3 Notice were valid and enforceable draws on both the Delay Draw Loan and the Revolving Loan. The Borrowers had satisfied Section 2.1(c)(iii) by submitting the March 2 Notice since, by virtue of the March 2 Notice the Borrowers had fully drawn the Delay Draw Loan, and, as a consequence of that full draw, Revolving Loans in excess of \$150 million could be outstanding. Within the meaning of the Credit Agreement and generally, a commitment is "drawn" when a request for payment is presented (here, a Notice of Borrowing).

59. In correspondence dated March 23, 2009, BofA, contradicted its own interpretation of Section 2.1(c)(iii), agreeing with the interpretation stated immediately above—namely, that the Delay Draw facility was "fully drawn" when the entire amount was requested, but before it was fully *funded*. Despite the fact that the Delay Draw Term Loans were never fully funded, BofA, acting as Disbursement Agent, wrote to the lenders that the Borrowers could request Revolving Loans in excess of \$150 million:

There's a divergence in opinions as to the reading of 2.1(c)(iii) of the Credit Agreement. 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 (emphasis added).

60. In its letter dated March 23, 2009, BofA also stated it was working to clarify the so-called "In Balance Test." The In Balance Test, satisfaction of which is a prerequisite to the Disbursement Agent's remitting funds from the Bank Proceeds Account, is defined in the Disbursement Agreement (and thereby in the Credit Agreement) to mean that, "at the time of calculation and after giving effect to any requested Advance, Available Funds equal or exceed the Remaining Costs." (Disbursement Agreement, Ex. A at 15). The In Balance Test is

“satisfied,” according to this definition, “when Available Funds equal or exceed Remaining Costs.” (*Id.*) “Available Funds” is defined, in turn, to include “as of each date of determination, the sum of: . . . (viii) the Bank Revolving Availability *minus* \$40,000,000 . . . .” (*See id.* at 3) The Disbursement Agreement defines “Bank Revolving Availability” to mean “as of each date of determination, the aggregate principal amount *available to be drawn on that date* under the Bank Revolving Facility.” (*See id.* at 4) (emphasis added).

61. In calculating the In Balance Test on March 23, 2009, BofA concluded that Revolver Availability could now exceed \$150 million and that that amount could be reflected in Available Funds because the Delay Draw Term Loans had been fully requested and almost all of the loans had funded. Following BofA’s logic, before March 23, 2009, the Revolver Availability for purposes of calculating the In Balance Test should not have exceeded \$150 million.

62. In fact, however, and contrary to BofA’s position on March 3, 2009, BofA consistently had determined in every month prior to March 2009 that the Revolver Availability for purposes of calculating the In Balance Test was between \$682 million and \$760 million, not \$150 million. In other words, BofA consistently had determined that the available amount of Revolver Loans to be “drawn on that date” was between \$682 and \$760 million. Had BofA not calculated the Bank Revolver Availability to be between \$682 million and \$760 million, Fontainebleau would not have satisfied the In Balance Test for most months for which a disbursement was requested. BofA’s position that on March 3, 2009 there was no “Revolver Availability” in excess of \$150 million was flatly inconsistent with its acceptance of the Borrower’s understanding of the In Balance Test in every month up to that date.

63. BofA’s refusals to process the March 2 Notice and March 3 Notice because, as BofA claimed, the notices were inconsistent with Section 2.1(c)(iii) of the Credit Agreement did not reflect BofA’s true interpretation of Section 2.1(c)(iii) of the Credit Agreement. BofA’s true interpretation of Section 2.1(c)(iii) of the Credit Agreement was evidenced by BofA’s

calculation of the In Balance Test and BofA's own admissions in its March 23, 2009 correspondence with Borrowers. BofA's refusals to process the March 2 Notice and March 3 Notice were willful misconduct, grossly negligent, and in bad faith.

**The Delay Draw Loan Lenders Cure Their Breach, But The Revolving Loan Lenders Do Not**

64. On March 6, 2009, the Borrowers sent a letter to the Administrative Agent again noting that the Administrative Agent had improperly failed and refused to process the Notice of Borrowing based on a contrived construction of Section 2.1 of the Credit Agreement. The letter also noted that other lender parties to the Credit Agreement had informed the Borrowers that they disagreed with the Administrative Agent's interpretation.

65. On March 9, 2009, the Borrowers, while reserving their position that the March 2 Notice and the March 3 Notice were valid, and stating their belief that BofA "may be acting in its own self-interest" by failing to process the notices, issued a revised Notice of Borrowing (the "March 9 Notice") directed solely to the Delay Draw Loan Lenders.



FONTAINEBLEAU RESORTS, LLC  
702 495 8100  
2827 PARADISE ROAD  
LAS VEGAS NV 89109  
FONTAINEBLEAU.COM

March 9, 2009

**VIA ELECTRONIC MAIL**

Henry Yu  
Senior Vice President  
Bank of America, N.A.  
901 Main Street  
Mail Code TX1-492-14-11  
Dallas, Texas 75202

**RE: CREDIT AGREEMENT DATED AS OF JUNE 6, 2007 AMONG  
FONTAINEBLEAU LAS VEGAS, LLC, FONTAINEBLEAU LAS VEGAS II,  
LLC (CUMULATIVELY, THE "COMPANY"), THE LENDERS PARTY  
THERETO AND BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT**

Dear Mr. Yu:

On March 2, 2009 and again on March 3, 2009 we issued a Notice of Borrowing to the Administrative Agent pursuant to Sections 2.1(b) and 2.4 of the Credit Agreement, in which we sought a Delay Draw Loan in the amount of \$350,000,000 and a Revolving Loan in the amount of \$656,522,698. The response to both Notices of Borrowing was that the Administrative Agent had declined to process our request on the basis that the Loan Notice did not "conform to the requirements of the credit agreement." It appears to be your belief – albeit an incorrect one – that the credit agreement does not permit a simultaneous draw on the Delay Draw Term Loan and Revolving Loan. We have explained in clear terms why your refusal to process our Loan Notice was in error. We reiterate our prior statements that the Lenders were, by their actions or inactions, in default of the Loan Documents and that, as a consequence of said conduct, we have incurred – and will continue to incur – substantial damages. We also reiterate our very real concern that Bank of America may be acting in its own self-interest in derogation of the Loan Agreement, and against the interests of the Company and several of the other Lenders.

However, given the substantial risks to the Company and the Project associated with any further delay in the processing of our Notice of Borrowing, you have left us no choice but to now submit a Notice of Borrowing for the \$350 million Delay Draw Term Loan, without simultaneously seeking to draw upon the Revolving Credit Facility. Accordingly, attached hereto please find our Notice of Borrowing with respect to a \$350,000,000 Delay Draw Term Loan to the Company.

66. BofA sent the March 9 Notice to the Delay Draw Loan Lenders, and Plaintiffs' predecessors-in-interest funded their commitments under the Delay Draw Loan. In all, the Delay Draw Loan Lenders funded approximately \$337 million of the \$350 million Delay Draw Loan. Plaintiffs' predecessors-in-interest entirely funded their own commitments under the Credit Agreement and have fully performed all of their obligations thereunder.

67. As required by Section 2(b)(iii) of the Credit Agreement, BofA applied approximately \$68 million of the amounts so lent by the Delay Draw Loan Lenders to repay the Revolving Loans that predated the March 2 notice. As a Revolving Lender, BofA stood to benefit by failing to issue a Stop Funding Notice as Disbursement Agent prior to March 9, 2009, that would have suspended any Delay Draw Term Loans otherwise to be used to repay BofA's 25% share of the then outstanding Revolving Loans.

68. By funding the March 9 Notice, Plaintiffs' predecessors-in-interest cured their breach of the Credit Agreement in failing to fund the March 2 Notice and March 3 Notice.

69. On March 19, 2009, over sixty Delay Draw Term Loan lenders wrote to BofA as Administrative Agent to demand that the Revolving Lenders, including BofA, honor the March 2, 2009 and corrected March 3, 2009 Notices of Borrowing. These Delay Draw Term Loan lenders explained why the interpretation of "fully drawn" BofA was now announcing was erroneous. These lenders stated that BofA's conduct as Administrative Agent indicated "a conflict of interest relating to its \$100,000,000 Revolving Commitment exposure," and that BofA should either correct its conduct or resign as agent. (After Merrill Lynch's merger with Bank of America Corp., BofA became exposed to the \$100 million funding commitment of defendant Merrill Lynch.)

70. The Defendants failed to cure their own breach of the March 2 Notice and March 3 Notice. The Defendants never funded the remaining commitment of the Revolving Loan that the Borrowers validly drew in the March 2 Notice and March 3 Notice.

**The Revolving Lenders Again Fail to Fund A Notice of Borrowing on April 21, 2009**

71. On April 21, 2009, the Borrowers sent a Notice of Borrowing (the “April 21 Notice”) to the Revolving Loan Lenders to borrow \$710,000,000 under the Revolving Loan.

72. The Revolving Loan Lenders refused to honor the April 21 Notice.

73. On April 20, 2009, Defendants told the Borrower they were terminating their Revolving Loan commitments. Defendants did not identify or set forth the Events of Default upon which they were relying to terminate their commitment. As such, Defendants’ purported termination of their Revolving Loan commitments was not a valid notice to the Borrower.



Global Product Solutions  
Credit Services

April 20, 2009

By Electronic Mail, Telecopier and Overnight Courier

Jim Freeman, Senior Vice President and Chief Financial Officer  
Fontainebleau Las Vegas, LLC  
c/o Fontainebleau Resorts LLC  
2827 Paradise Road  
Las Vegas, NV 89109

Dear Ladies and Gentlemen:

This letter is delivered with reference to the Credit Agreement dated as of June 6, 2007 (the "Credit Agreement"), among Fontainebleau Las Vegas, LLC, a Nevada limited liability company, and Fontainebleau Las Vegas II, LLC, a Florida limited liability company (collectively, the "Borrowers"), the Lenders, and Bank of America, N.A., as Administrative Agent. Capitalized terms used but not defined herein are used with the meanings set forth in the Credit Agreement.

You are hereby notified that the Required Facility Lenders under the Revolving Credit Facility have determined that one or more Events of Default have occurred and are continuing and that they have requested that the Administrative Agent notify you that the Total Revolving Commitments have been terminated. Pursuant to Section 8 of the Credit Agreement, you are hereby notified that the Total Revolving Commitments are terminated effective immediately.

74. Because Plaintiffs' predecessors-in-interest met their commitments under the Delay Draw Loan and Initial Term Loan while Defendants failed to meet their commitments under the Revolving Loan in response to the March 2 Notice, the March 3 Notice, and the April 21 Notice, Plaintiffs' predecessors-in-interest were injured.

### **Plaintiffs' Interest in Enforcing the Credit Agreement Against the Defendants**

75. The Credit Agreement is a multi-party agreement. The parties to the Agreement are the Borrowers, the Initial Term Loan Lenders, the Delay Draw Loan Lenders, and the Revolving Loan Lenders, as well as all successors-in-interest of any of those parties.

76. Under the Agreement, the Initial Term Loan Lenders and the Delay Draw Loan Lenders had an interest in and relied upon their ability to enforce loan commitments made by the Revolving Lenders, since those commitments were critical to financing the construction of the Project, and any cash provided by the Revolving Lenders would be collateral security for the Initial Term Loans and the Delay Draw Term Loans.

77. Upon entering the Agreement, each lender understood that a wrongful refusal to fund loan commitments would jeopardize the completion of the Project, diminishing the amount and value of the other lenders' collateral. As such, all lenders agreed to share the risks of the lending transaction ratably in proportion to each of the lenders' commitments. The structure of the entire contract evidences the understanding and contractual intent that each lender would be bound to the Borrowers and to one another for its lending commitments.

78. Because any significant refusal to fund by any lender had the potential to destroy the economic viability of the Project and to impair the collateral of those that had funded, the lenders all agreed that any refusal to fund the Revolving Loan could be based only upon certain specified breaches, and then only after a default had been formally declared.

79. "Upon receipt of each Notice of Borrowing..." the Agreement provides that each lender "will make the amount of its pro rata share of each borrowing..." (Credit Agreement Section 2.4(b)). The Agreement further provides that "[t]he failure of any Lender to make any Loan... shall not relieve any other Lender of its corresponding obligation to do so..." (Credit Agreement Section 2.23(g)).



80. 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. Indeed, as the Borrowers acknowledged in their March 9 Notice, BofA was “acting in its own self-interest in derogation of the [Credit] Agreement, and against the interests of the [Borrowers] and several of the other Lenders.”

81. Plaintiffs’ predecessors-in-interest fulfilled their funding obligations as Initial Term Lenders and Delay Draw Lenders under the Credit Agreement. However, the Revolving Loan Lenders failed to cure their breach in which they refused to fund after the Notices of Borrowing on March 2 and 3, 2009.

82. The Revolving Loan Lenders’ failure to perform their contractual obligations reduced the amount and value of the collateral securing the loans of Plaintiffs’ predecessors-in-interest, contrary to their bargained-for rights and benefits under the Credit Agreement and Disbursement Agreement.

83. The Revolving Loan Lenders’ failure to follow the terms of the Credit Agreement, and to cure their breach, created the exact scenario the parties contracted to avoid, where the Initial Term Lenders and Delay Draw Loan Lenders were left bearing all of the losses while the Revolving Loan Lenders breached their obligations.

#### **BofA’s Improper Funding of Advance Requests**

84. In addition to being a large Revolving Loan Lender and the Administrative Agent under the Credit Agreement, BofA served as the Disbursement Agent under the related Disbursement Agreement. As Disbursement Agent, it was BofA’s responsibility to ensure that cash lent to the Borrower under the Credit Agreement was initially held in a Bank Proceeds Account as collateral for the Loans and would only be released from that account and spent by the Borrower as needed for the project and subject to important conditions.

As Disbursement Agent, BofA agreed to “exercise commercially reasonable efforts and utilize commercially prudent practices in the performance of its duties [under the Disbursement Agreement] consistent with those of similar institutions holding collateral, administering construction loans and disbursing disbursement control funds.” (Disbursement Agreement 9.1). BofA agreed to exhibit the standard of care exercised by similarly situated disbursement agents.

85. This standard of care requires the Disbursement Agent, among other things, to determine if the conditions precedent to disbursing funds have been met including: that no Default or Event of Default has occurred and is continuing; that each “representation and warranty of (a) [e]ach Project Entity set forth in Article 4 [of the Disbursement Agreement] shall be true and correct in all material respects as if made on such date....”; that the In Balance Test is satisfied; 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.”; and that prior to any disbursement, there have 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. (*See id.* at 3.3.3, 3.3.2, 3.3.8, 3.3.11, 3.3.23)

86. Pursuant to the Disbursement Agreement, “if 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 Banking 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 learning of a Default or Event of Default was the power and duty to issue a Stop Funding Notice.

*Under BofA's current interpretation of Section 2.1(c)(iii) of the Credit Agreement, all disbursements by BofA were improper because the Borrowers did not satisfy the In Balance Test*

87. Among the prerequisites to disbursement was that the Borrowers satisfy the In Balance Test. This test, which was used to ensure that the project was on track, weighed the Borrowers' available financing against expected costs necessary to complete construction. Among the funding to be considered available was the so-called Revolving Availability—the amount the Borrowers could request from the Revolving facility *on the day determined*, minus \$40 million.

88. Beginning in August 2007, BofA consistently used a Revolving Availability figure between \$682 million and \$760 million when calculating the In Balance Test. In other words, BofA concluded that in excess of \$680 million was always available to be drawn from the Revolving facility *on the day of determination*. Using this range, BofA concluded that the Borrowers satisfied the In Balance Test and disbursed funds out of the Bank Proceeds Account.

89. On March 23, 2009, BofA concluded as a result of the Delay Draw Term Loans being fully requested and almost all funded that an amount in excess of \$150 million of Revolver Availability could be used to calculate the In Balance Test. BofA acknowledged that under its March 3 interpretation of the Credit Agreement, the Revolver Availability before March 23, 2009, was \$150 million and was not between \$682 million and \$760 million. According to BofA's March 3 interpretation—which is also the interpretation BofA has advanced in the related Fontainebleau litigation (currently pending before the Southern District of Florida and captioned as *Fontainebleau Las Vegas LLC v. Bank of America, N.A., et al*, No. 09-cv-21879-ASG),—the In Balance Test was not satisfied for any monthly Advance Request. BofA knew

the In Balance Test was not satisfied under its current interpretation of the Credit Agreement, yet it did not issue a Stop Funding Notice or prevent the disbursement of funds.

90. On March 23, 2009, the Borrowers advised BofA that they would be submitting a calculation of the In Balance Test reflecting a cushion of \$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).

91. The In Balance Test submitted with the March 25, 2009 Advance Request could include either \$750 million in “Bank Revolving Availability” or \$21,666,666 under “Delay Draw Term Loan Availability,” but not both.

92. If “fully drawn” meant “fully funded,” the interpretation advanced by BofA when rejecting the March 2 and March 3 Notices of Borrowing, then Bank Revolving Availability could not include \$750 million. Under BofA’s interpretation the “Bank Revolving Availability” could not exceed \$150 million unless and until the Delay Draw facility was in fact fully funded. The Delay Draw facility was not fully funded. As such, the Borrower did not meet the In Balance Test for the March 25, 2009 Advance Request.

93. If “fully drawn” meant “fully requested,” then the \$21,666,666 in Delay Draw Term Loan that was requested but not funded would be excluded from the In Balance Test because those funds were fully requested on March 3, 2009 and March 9, 2009. This 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” (emphasis added). (Disbursement Agreement, Ex. A). On March 25, 2009, there was no “undrawn portion of the Delay Draw Term Loans.”

94. Under either interpretation of “fully drawn,” the Borrower could not satisfy the In Balance Test submitted with the March 25, 2009 Advance Request, a condition to disbursement under Section 3.3.8 of the Disbursement Agreement.

95. BofA disbursement of funds out of the Bank Proceeds Account was willful misconduct, grossly negligent, and in bad faith because the Borrowers did not meet the In Balance Test according to BofA’s own interpretation and understanding of the Credit and Disbursement Agreements.

*Disbursements after September 15, 2008 by BofA were improper because there was a Default and/or Event of Default related to the bankruptcy of Lehman Brothers and Lehman Brothers breach of the Retail Facility Agreement*

96. Lehman Brothers Holdings Inc. (“Lehman Brothers”) served as the Retail Agent, arranger and largest lender under the Retail Facility Agreement dated June 6, 2007. Lehman Brothers was responsible for \$215 million of the Retail Facility. These funds were to be used to complete the Shared Costs of the Project including the Podium and Retail Component. To successfully complete the Project, the parties relied heavily on Lehman Brothers funding its commitment under the Retail Facility Agreement.

97. On September 15, 2008, Lehman Brothers filed for bankruptcy.

98. Upon information and belief, BofA was aware that Lehman Brothers, the arranger and a lender under the Fontainebleau retail loan facility, declared bankruptcy on September 15, 2008. On October 7, 2008, and October 22, 2008, BofA was made aware that Lehman Brothers was in bankruptcy proceedings. BofA also knew that Lehman Brothers failed to fund its required portion of the retail loan facility as required under Retail Facility Agreement dated June 6, 2007.

99. Since September 2008, Lehman Brothers has failed and refused to make any required advances under the Retail Facility Agreement for which it agreed to lend \$215 million.

Lehman Brothers breached the Retail Facility Agreement by declaring bankruptcy and failing to honor advance requests made by the Borrower in September 2008, December 2008, January 2009, February 2009 and March 2009. In total, Lehman Brothers failed to honor its obligations under the Retail Facility Agreement in the amount of \$14,259,409.47.

100. The Retail Facility Agreement is a Financing Agreement listed in Schedule 4.24 of the Credit Agreement and is, therefore, a Material Agreement for purposes of Section 8(j) of the Credit Agreement. The Retail Facility Agreement is also defined as a Facility Agreement under the Disbursement Agreement.

101. Under Section 8(j) of the Credit Agreement, a Default and/or Event of Default occurs when “any other Person shall breach or default under any term, condition, provision, covenant, representation or warranty contained in any Material Agreement....”

102. Under the Credit Agreement, a Default occurs when “any of the events specified in Section 8 [of the Credit Agreement], whether or not any requirements for the giving of notice, lapse of time, or both, has been satisfied.” A Default under the Credit Agreement is also a Default under Section 7.1 of the Disbursement Agreement.

103. Under the Disbursement Agreement, one representation and warranty made by the Project Entities is that “[t]here is no default or event of default under any of the Financing Agreement.” (*See id.* at 4.9) The Retail Facility Agreement is a Financing Agreement.

104. The bankruptcy and failure to fund by Lehman Brothers is one of the events leading up to Fontainebleau filing bankruptcy.

105. The failure of Lehman Brothers to fund pursuant to the Retail Facility Agreement was a breach of a Material Agreement, Financing Agreement and Facility Agreement, and therefore a Default and/or Event of Default under the Disbursement Agreement.

106. This Default and Event of Default is also a violation of the representation and warranty in Section 4.9 that there is no default or event of default, and therefore a Default or Event of Default pursuant to section 3.3.2 of the Disbursement Agreement.

107. Lehman's breach of the Retail Facility Agreement and failure to fund is the failure of a condition precedent pursuant to Section 3.3.23 under the Disbursement Agreement for at least the five Advance Requests prior to March 2009.

108. Lehman's breach of the Retail Facility Agreement and failure to fund is the failure of a condition precedent under Section 3.3.11 because Lehman's bankruptcy filing, and the uncertainty that any other lender would assume Lehman's commitment under the Retail Facility, posed a grave threat to the successful completion of the Project and thus could reasonably be expected to have a Material Adverse Effect.

109. Upon information and belief, BofA received notice of the Lehman's breach of the Retail Facility Agreement and 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 3.3.3 of the Disbursement Agreement were not satisfied. BofA willfully took no action in response to that notice, instead asserting that its function as Disbursement Agreement was purely administrative in nature.

110. In February 20, 2009, BofA wrote a detailed letter to the Borrower. In this letter BofA requested that the Borrower "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."

111. BofA knew of Lehman Brother's breach of the agreement and its failure to fund. BofA knew that Lehman's breach and failure were Defaults and Event of Defaults. BofA's disbursement of funds from the Bank Proceeds Account was willful misconduct, grossly negligent, and in bad faith.

*Disbursements by BofA were improper because BofA knew of other Defaults and failures of condition precedent to the disbursement of funds.*

112. On March 10, 2009, BofA via Mr. Henry Yu wrote to the Borrowers and requested a meeting "in our capacities as both Administrative Agent and Distribution Agent." Mr. Yu further noted that Borrowers had not returned BofA's telephone calls and had refused to schedule a meeting with BofA.

113. On March 11, 2009, Borrowers sent Mr. Yu a "prenegotiations agreement" that included a standstill period during which BofA would temporarily forbear exercising its default rights and remedies.

114. On March 16, 2009, Borrowers sent Mr. Yu a letter stating that the "Company continues to believe strongly that the Lenders are currently in default of their funding obligations."

115. Also on March 16, 2009, Mr. Yu sent a letter to the Borrowers acknowledging that a meeting with the Borrowers was scheduled for March 20, 2009, and confirming receipt of an Advance Request. Mr. Yu noted that the requested Advance Date was March 25, 2009, and stated that the lenders had raised legitimate questions concerning the Project. Mr. Yu signed the letter on behalf of "Bank of America, N.A., as Administrative Agent and Disbursement Agent."

116. On March 20, 2009, BofA met with the Borrowers to discuss the Project's status. During the meeting Fontainebleau refused to answer questions about the future operating prospects of the Project. The information exchanged and discussions which occurred during this meeting preceded the drafting by the Borrowers of an Interim Agreement dated April 1, 2009,



which provided in part that the lenders signing the agreement would not terminate the Revolving Commitments or declare a Default or an Event of Default.

117. On March 23, 2009, Mr Yu sent a letter to Fontainebleau's lenders stating that BofA knew that several Delay Draw Term Loan lenders, including First National Bank of Nevada, had not funded their Delay Draw Term Loan. Mr. Yu wrote that over \$20 million of Delay Draw Term Loan had not funded by March 23, 2009.

118. One of those lenders was First National Bank of Nevada, which had made a commitment of \$1,666,666 under the Term Loan Facility and a commitment of \$10,000,000 under the Revolving Facility. On July 25, 2008, First National Bank of Nevada, which had made a commitment of \$1,666,666 under the Term Loan Facility and a commitment of \$10,000,000 under the Revolving Facility, was closed by the Office of the Controller of the Currency, and the Federal Deposit Insurance Company ("FDIC") was subsequently appointed as receiver. According to the Borrower, FDIC subsequently repudiated its commitments under the Credit Agreement. Beginning in January 2009, the calculation of Available Funds under the In Balance Test was reduced by the amount of the total commitment by First National Bank of Nevada (\$11,666,666). Upon information and belief, BofA knew about this receivership and repudiation of commitment.

119. The Credit Agreement is a Financing Agreement listed in Schedule 4.24 and is, therefore, a Material Agreement for purposes of Section 8(j).

120. The failure of several lenders, including First National Bank, to fund their Delay Draw Term Loan was a breach of a Material Agreement and therefore a Default under the Disbursement Agreement.

121. This Default is also a violation of the representation and warranty in Section 4.9 that there is no default or event of default, and therefore a Default pursuant to section 3.3.2 of the Disbursement Agreement.

122. On March 23, 2009, BofA stated it knew of these Default by these lenders and therefore the breach of the representation and warranty in Sections 4.9 and 3.3.2 .

123. Despite BofA's knowledge of the Default by First National Bank, BofA willfully and in a grossly negligent manner disbursed funds from Bank Proceeds Account pursuant to Advance Requests made in January and February 2009.

124. Despite BofA's knowledge of these Defaults and the other information in BofA's possession, as both Administrative and Disbursement Agent, on March 25 BofA willfully and in a grossly negligent manner disbursed \$133 million from the Bank Proceeds Account.

125. From at least March 2, 2009, through March 25, 2009, Mr. Yu represented BofA in its various capacities as the Administrative Agent, the Bank Agent and the Disbursement Agent. As such, Mr. Yu's knowledge and actions are imputed to BofA in all of these capacities and BofA had identical knowledge in all its capacities.

126. BofA was aware the Borrowers were alleging that the Revolving Loan lenders were in default of their obligations under the Credit Agreement and had reserved all of their rights in connection with that default. BofA was also aware that the Borrowers had requested a pre-negotiated standstill to the lenders' rights due to problems with project. This information was materially adverse and impacted the economics and feasibility of constructing the Project. As such, on or before March 25, 2009, BofA was aware that the Advance Request should be denied because of existing Defaults, misrepresentations regarding the status of Defaults, and that these events could reasonably be expected have a Material Adverse Effect. As such, BofA was aware numerous conditions precedents to disbursement were not satisfied.

127. Instead of fulfilling its duties to act in good faith and to deny an Advance Request and issue a Stop Funding Notice if the conditions precedent to an Advance were satisfied, BofA favored its own interests over those of the Initial Term and Delay Draw lenders and disregarded

evidence in its possession that the March Advance Request should be denied because the conditions precedent in Article 3.3 of the Disbursement Agreement were not satisfied.

128. For each monthly Advance Request, including the request on March 25, 2009, BofA authorized the release funds from the Bank Proceeds Account, notwithstanding the information that it had in its possession regarding Defaults or Events of Default, misrepresentations and adverse information. BofA's release of the funds notwithstanding the information it had in its possession regarding Defaults or Events of Default, misrepresentations and adverse information was willful misconduct, grossly negligent, in bad faith and in reckless disregard for the Plaintiffs' predecessors-in-interests' rights.

129. BofA has conceded its wrongdoing in this respect. BofA has taken the position in related litigation that "long before [Fontainebleau] issued the March [2] Notice of Borrowing ... [the Borrowers] had materially and repeatedly breached the Credit Agreement..." (Defendants' Opposition to Fontainebleau's Motion for Partial Summary Judgment and an Order Pursuant to 11 U.S.C. § 542 Directing the Turnover of Funds; and Defendants' Cross Motions (A) to Dismiss Fontainebleau's Seventh Claim for Relief and (B) to Deny or Continue Fontainebleau's Motion so that Discovery May Be Had, *Fontainebleau Las Vegas LLC v. Bank of America, N.A., et al.*, Adv. Pro. No. 09-01621-ap-AJC (Bankr. S.D. Fla.), at 2.). BofA has asserted that Fontainebleau "...had been in default of the Credit Agreement and the Disbursement Agreement prior to the March Notice of Borrowing." (*Id.* at 50). Moreover, BofA has contended, "Fontainebleau failed to report promptly these and other Events of Default under the Credit Agreement. Thus, while Lenders denied the March Borrowing Notice based on its failure to comply with the requirements of Section 2.1(c), there is mounting evidence that Fontainebleau had no right even to make the request for the additional reason that it was not in compliance with the Credit Agreement and the closely related Disbursement Agreement." *Id.* at 50–51.

130. Because BofA, as Disbursement Agent, knew that the Borrowers were in default on March 25, 2009, BofA is liable for wrongfully disbursing funds from the Bank Proceeds Account.

131. Plaintiffs' and plaintiffs' predecessors-in-interests' collateral has been and continues to be diminished as a result of BofA's actions.

**FIRST CLAIM FOR RELIEF**  
**Breach of the Credit Agreement Against All Defendants**  
**For Failure to Fund the March 2 Notice/March 3 Notice**

132. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 131 hereof.

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

134. The March 2 Notice and the March 3 Notice complied with all applicable conditions under the Credit Agreement. Plaintiffs and their predecessors-in-interest have performed all obligations required of them under the Credit Agreement.

135. Defendants did not elect to cancel their obligations under the Credit Agreement in response to Plaintiffs' predecessors-in-interests' breach of the Credit Agreement but instead permitted the Credit Agreement to continue and took benefits from the cure of breach by Plaintiffs' predecessors-in-interest.

136. Pursuant to the terms of the Credit Agreement, the Defendants were, and continue to be, obligated to honor the March 2 Notice and the March 3 Notice.

137. The Defendants' failure to honor the March 2 Notice and March 3 Notice constitutes a material breach of their obligations under the Credit Agreement.

138. Plaintiffs and/or their predecessors-in-interest 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 Loan, the amount and value of Plaintiffs' collateral has been and continues to be diminished.

**SECOND CLAIM FOR RELIEF**  
**Breach of the Credit Agreement Against All Defendants**  
**For Failure to Fund the April 21 Notice**

139. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 138 hereof.

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

141. The April 21 Notice complied with all applicable conditions under the Credit Agreement. Plaintiffs and their predecessors-in-interest have performed all obligations required of them under the Credit Agreement.

142. Defendants did not elect to cancel their obligations under the Credit Agreement in response to Plaintiffs' predecessors-in-interests' breach of the Credit Agreement but instead permitted the Credit Agreement to continue and took benefits from the cure of breach by Plaintiffs' predecessors-in-interest.

143. Pursuant to the terms of the Credit Agreement, the Defendants were, and continue to be, obligated to honor the April 21 Notice.

144. The Defendants' failure to honor the April 21 Notice constitutes a material breach of their obligations under the Credit Agreement.

145. Plaintiffs and/or their predecessors-in-interest 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 Loan, the amount and value of Plaintiffs' collateral have been and continue to be diminished.

**THIRD CLAIM FOR RELIEF**  
**Breach of the Disbursement Agreement Against BofA**

146. Plaintiffs reallege and incorporate each and every allegation contained in paragraphs 1 through 145 hereof.

147. The Disbursement Agreement is a valid and binding contract, pursuant to which BofA agreed to act as Bank Agent (which is defined in the Disbursement Agreement as the Administrative Agent under the Credit Agreement), and/or Disbursement Agent.

148. The Disbursement Agreement was intended to directly benefit Plaintiffs. Pursuant to the Disbursement Agreement, BofA held the security interests for the benefit of Plaintiffs. The conditions and restrictions of disbursement set forth in the Disbursement Agreement were also for the benefit of Plaintiffs. The Disbursement Agreement also sets forth the duties of BofA and states those duties are for the benefit of Plaintiffs

149. BofA had a duty to the lenders, including Plaintiffs' predecessors-in-interest, to carry out its capacities as the Bank Agent (Administrative Agent) and the Disbursement Agent in good faith and to follow the provisions of the Disbursement Agreement.

150. Pursuant to the Disbursement Agreement, BofA was obligated to deny, issue a stop-funding notice, or not fund the Advance Requests due to BofA's knowledge that one or more conditions precedent had not been met.

151. As opposed to fulfilling its duties, BofA acted in bad faith and with gross negligence and reckless disregard or willfulness in favoring its own interests over those of the Delay Draw lenders when BofA authorized the release of funds from the Bank Proceeds Account despite knowing numerous conditions precedent were not satisfied including that under its own interpretation of the Credit Agreement the In Balance Test was not satisfied, that Defaults and/or Events of Default had occurred and were continuing and that the Borrowers were claiming that BofA and other Revolving Loan Lenders defaulted under the Credit Agreement. Moreover, BofA was in possession of information showing other misrepresentations and adverse

information. Despite this knowledge, BofA acted with bad faith, gross negligence and reckless disregard or willfulness in approving Advance Requests.

152. BofA's failure to fulfill its obligations as Bank Agent (Administrative Agent) and/or Disbursement Agent by approving Advance Requests constitutes a material breach of its obligations under the Disbursement Agreement.

153. Plaintiffs have suffered injury as a result of the breach because, as a result of BofA's approval of the Advance Requests, the amount and value of Plaintiffs' and/or their predecessors-in-interests' collateral have been and continue to be diminished.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

- A. for judgment in Plaintiffs' favor on the counts recited above;
- B. for compensatory damages in an amount to be proved at trial;
- C. for an award of costs including attorneys' fees and the costs and disbursements of this action;
- D. for pre-judgment and post-judgment interest and court costs; and
- E. for such other relief as the Court may deem proper and just.

DATED: January 15, 2010

Respectfully submitted,

By:  \_\_\_\_\_

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Marc Rosen  
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Attorneys for Plaintiffs



**CERTIFICATE OF SERVICE**

I, Steven J. Nachtwey, hereby certify that on January 15, 2010, I caused a copy of the Amended Complaint to be filed with a copy served upon all parties and counsel listed on the attached Service List via U.S. Mail.

DATED: January 15, 2010

By: 

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Marc R. Rosen  
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Attorneys for Plaintiffs Aurelius Capital  
Master, Ltd. and ACP Master, Ltd.

**Service List**

<p>Sarah A. Harom  <b>Bailey Kennedy</b>                  8984 Spanish Ridge Avenue                  Las Vegas, NV 89148                  (702) 562-8820  <i>Attorneys for Barclays Bank PLC, Deutsch Bank Trust Co. Americas, JPMorgan Chase Bank, N.A., Royal Bank of Scotland PLC</i></p>	<p>Scott Louis Baena                  Jeffrey I. Snyder  <b>Bilzine Bumberg Baena Price &amp; Axelrod</b>                  200 S. Biscayne Blvd., Ste. 2500                  Miami, FL 33131-2336                  (305) 350-2403  <i>Attorneys for Fontainebleau Las Vegas</i></p>
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<p>Arthur Linker                  Kenneth E. Noble                  Anthony L. Paccione  <b>Katten Muchin Rosenman LLP</b>                  575 Madison Ave.                  New York, NY 10022                  (212) 940-8800</p> <p><i>Attorneys for Bank of Scotland PLC</i></p>	<p>Aaron Rubenstein                  Phillip A. Geraci                  Andrew A. Kress                  W. Stewart Wallace  <b>Kaye Scholer LLP</b>                  425 Park Avenue                  New York, NY 10022                  (212) 836-8000</p> <p><i>Attorneys for HSH Nordbank AG, New York Branch</i></p>

<p>Laury M. Macauley  <b>Lewis and Roca LLP</b>                      50 West Liberty Street                      Reno, NV 89501                      (775) 823-2900  <i>Attorneys for MB Financial</i></p>	<p>Jean-Marie L. Atamian                      Jason I. Kirschner                      Frederick D. Hyman  <b>Mayer Brown LLP</b>                      1675 Broadway                      New York, NY 10019-5820                      (212) 506-2500    <i>Attorneys for Sumitomo Mitsui Banking Corporation</i></p>
<p>Andrew B. Kratenstein  <b>McDermott Will &amp; Emery LLP</b>                      340 Madison Ave.                      New York, NY 10173                      (212) 547-5695    <i>Attorneys for Camulos Master Fund, L.P.</i></p>	<p>Daniel L. Cantor                      Bradley J. Butwin                      Jonathan Rosenberg                      William J. Sushon  <b>O'Melveny &amp; Myers LLP</b>                      Times Square Tower                      7 Times Square                      New York, NY 10036                      (212) 326-2000    <i>Attorneys for Bank of America, N.A.;                      Merrill Lynch Capital Corp.</i></p>
<p>Arthur H. Rice  <b>Rice Pugatch Robinson &amp; Schiller</b>                      101 NE 3 Avenue, Ste. 1800                      Fort Lauderdale, FL 33301                      (305) 379-3121    <i>Attorneys for HSH Nordbank AG, New York Branch</i></p>	<p>Nicholas J. Santoro  <b>Santoro, Driggs, Walch, Kearney, Johnson &amp; Thompson</b>                      400 S. Fourth St.                      3<sup>rd</sup> Floor                      Las Vegas, NV 89101                      (702) 791-0308    <i>Attorneys for Camulos Master Fund, L.P</i></p>
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**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:09-cv-08064-LTS**

ACP Master, Ltd. et al v. Bank of America, N.A. et al  
Assigned to: Judge Laura Taylor Swain  
Cause: 12:632 International Banking

Date Filed: 09/21/2009  
Date Terminated: 01/25/2010  
Jury Demand: None  
Nature of Suit: 430 Banks and Banking  
Jurisdiction: Federal Question

**Plaintiff**

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**Marc R. Rosen**

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*ATTORNEY TO BE NOTICED*

**Steven James Nachtwey**

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*ATTORNEY TO BE NOTICED*

**Defendant**

**Bank of America, N.A.**

**Defendant**

**Merrill Lynch Capital Corporation**

**Defendant**

**JP Morgan Chase Bank, N.A.**

**Defendant**

**Barclays Bank PLC**

**Defendant**

**Deutsche Bank Trust Company Americas**

**Defendant**

**The Royal Bank of Scotland PLC**

**Defendant**

**Sumitomo Mitsui Banking Corporation**

**Defendant**

**Bank of Scotland**

**Defendant**

**HSH Nordbank AG**

**Defendant**

**MB Financial Bank, N.A.**

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Date Filed	#	Docket Text
09/21/2009	<u>1</u>	COMPLAINT against Merrill Lynch Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America, N.A. (Filing Fee \$ 350.00, Receipt Number 700407)Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.(ama) (Entered: 09/22/2009)
09/21/2009	<u>1</u>	SUMMONS ISSUED as to Merrill Lynch Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America, N.A. (ama) (Entered: 09/22/2009)
09/21/2009	<u>1</u>	Magistrate Judge Theodore H. Katz is so designated. (ama) (Entered: 09/22/2009)
09/21/2009	<u>1</u>	Case Designated ECF. (ama) (Entered: 09/22/2009)
09/21/2009	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Aurelius Capital Partners, LP, Aurelius Capital GP,LLC as Corporate Parent. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.(ama) (Entered: 09/22/2009)
09/28/2009	<u>3</u>	INITIAL CONFERENCE ORDER:... Initial Conference set for 12/17/2009 at 11:00 AM in Courtroom 11C, 500 Pearl Street, New York, NY 10007 before Judge Laura Taylor Swain. (Signed by Judge Laura Taylor Swain on 9/28/09) (cd) (Entered: 09/28/2009)
10/02/2009	<u>4</u>	CERTIFICATE OF SERVICE of Initial Conference Order dated September 28, 2009 served on Bank of America, N.A.; Bank of Scotland; Barclays Bank PLC; Camulos Master Fund, L.P.; Deutsche Bank Trust; HSH Nordbank AG; JPMorgan Chase Bank, N.A.; MB Financial Bank, N.A.; Merrill Lynch Capital Corporation; Sumitomo Mitsui Banking Corporation; and The Royal Bank of Scotland PLC on October 2, 2009. Service was made by Federal Express. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/02/2009)
10/05/2009	<u>5</u>	NOTICE OF APPEARANCE by Marc R. Rosen on behalf of ACP Master, Ltd., Aurelius Capital Master, Ltd. (Rosen, Marc) (Entered: 10/05/2009)
10/06/2009	<u>6</u>	AFFIDAVIT OF SERVICE. Bank of America, N.A. served on 9/23/2009, answer due 10/13/2009. Service was accepted by Alejandro Cordero. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>7</u>	AFFIDAVIT OF SERVICE. Barclays Bank PLC served on 9/23/2009, answer due 10/13/2009. Service was accepted by Sandy Galicia. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>8</u>	AFFIDAVIT OF SERVICE. Camulos Master Fund, L.P. served on 9/24/2009, answer due 10/14/2009. Service was accepted by Carmel MacNulty. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>9</u>	AFFIDAVIT OF SERVICE. Deutsche Bank Trust Company Americas served on 9/23/2009, answer due 10/13/2009. Service was accepted by Sandy Galicia. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>10</u>	AFFIDAVIT OF SERVICE. HSH Nordbank AG served on 9/23/2009, answer due 10/13/2009. Service was accepted by David C. Wolinsky. Document filed by ACP Master, Ltd.; Aurelius

		Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>11</u>	AFFIDAVIT OF SERVICE. MB Financial Bank, N.A. served on 9/28/2009, answer due 10/19/2009. Service was accepted by Tricia Cherry. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>12</u>	AFFIDAVIT OF SERVICE. Merrill Lynch Capital Corporation served on 9/23/2009, answer due 10/13/2009. Service was accepted by Aixa Flores. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>13</u>	AFFIDAVIT OF SERVICE. The Royal Bank of Scotland PLC served on 9/23/2009, answer due 10/13/2009. Service was accepted by Lucy Wnuk. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>14</u>	AFFIDAVIT OF SERVICE. Sumitomo Mitsui Banking Corporation served on 9/23/2009, answer due 10/13/2009. Service was accepted by Sandy Galicia. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>15</u>	AFFIDAVIT OF SERVICE. Bank of Scotland served on 10/2/2009, answer due 10/22/2009. Service was accepted by Aixa Flores. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/07/2009	<u>16</u>	AFFIDAVIT OF SERVICE. JP Morgan Chase Bank, N.A. served on 10/1/2009, answer due 10/21/2009. Service was accepted by Jody Peck. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/07/2009)
10/14/2009	<u>17</u>	NOTICE OF APPEARANCE by Andrew Bennett Kratenstein on behalf of Camulos Master Fund, L.P. (Kratenstein, Andrew) (Entered: 10/14/2009)
10/15/2009	<u>18</u>	MOTION for James B. Heaton, III and Steven J. Nachtwey to Appear Pro Hac Vice. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.(dle) (Entered: 10/16/2009)
10/20/2009	<u>I</u>	CASHIERS OFFICE REMARK on <u>18</u> Motion to Appear Pro Hac Vice in the amount of \$50.00, paid on 10/15/2009, Receipt Number 702853. (jd) (Entered: 10/20/2009)
10/20/2009	<u>19</u>	STIPULATION AND ORDER: It is hereby stipulated and agreed by and between the parties that Defendants shall have up to and including forty-five (45) days from the notice of entry of the order of the Judicial Panel on Multi-District Litigation (the "MDL Panel") on the pending Motion for Transfer to the Southern District of Florida and Consolidation of Related Actions Pursuant to 28 U.S.c. § 1407 (In re Fontainebleau Las Vegas Contract Litigation, MDL No. 2106) to serve and file their responses to the Complaint, unless the Plaintiffs herein seek to amend their Complaint. Plaintiffs herein shall have thirty (30) days from the notice of entry of the MDL Panel's order to serve and file an Amended Complaint upon the consent of the Defendants. Defendants shall have thirty (30) days from the service of an Amended Complaint by Plaintiffs herein to serve and file their responses to the Amended Complaint; provided, however, that in the event Plaintiffs herein move the Court for leave to file the proposed Amended Complaint, then the Defendants shall have thirty (30) days from the notice of entry of order on such motion to serve and file their responses to the operative complaint herein. (Signed by Judge Laura Taylor Swain on 10/19/2009) (jpo) (Entered: 10/21/2009)
10/22/2009	<u>20</u>	ORDER granting <u>18</u> Motion for James B. Heaton, III and Steven J. Nachtwey to Appear Pro Hac Vice for ACP Master, Ltd., Aurelius Capital Master, Ltd. (Signed by Judge Laura Taylor Swain on 10/21/2009) (jmi) (Entered: 10/22/2009)
10/22/2009	<u>I</u>	Transmission to Attorney Admissions Clerk. Transmitted re: <u>20</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (jmi) (Entered: 10/22/2009)

11/16/2009	<u>21</u>	MOTION for Peter J. Roberts to Appear Pro Hac Vice. Document filed by MB Financial Bank, N.A.(mro) (Entered: 11/17/2009)
11/18/2009	<u>I</u>	CASHIERS OFFICE REMARK on <u>21</u> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 11/16/2009, Receipt Number 706253. (jd) (Entered: 11/18/2009)
11/20/2009	<u>22</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION: granting <u>21</u> Motion for Peter J. Roberts to Appear Pro Hac Vice. (Signed by Judge Laura Taylor Swain on 11/20/2009) (jfe) (Entered: 11/20/2009)
11/20/2009	<u>I</u>	Transmission to Attorney Admissions Clerk. Transmitted re: <u>22</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (jfe) (Entered: 11/20/2009)
11/24/2009	<u>23</u>	STIPULATION AND ORDER. Defendant shall have up to and including forty-five days from the notice of entry of the order of the Judicial Panel on Multi-District Litigation (the MDL Panel) on the pending Motion for Transfer to the Southern District of Florida and Consolidation of Related Actions Pursuant to 28 U.S.C. section 1407 (in re Fontainebleau Las Vegas Contract Litigation, MDL NO. 2106) to serve and file its response to the Complaint, unless the Plaintiffs herein seek to amend their Complaint. Plaintiffs herein shall have thirty days from the notice of entry of the MDL Panel's order to serve and file an Amended Complaint upon the consent of the Defendant. Defendant shall have thirty days from the service of an Amended Complaint by Plaintiffs herein to serve and file its response to the Amended Complaint; provided, however, that in the event Plaintiffs herein move the Court for leave to file the proposed Amended Complaint, then Defendant shall have thirty days from the notice of entry of order on such motion to serve and file its response to the operative complaint herein. (Signed by Judge Laura Taylor Swain on 11/23/09) (djc) (Entered: 11/24/2009)
11/24/2009	<u>24</u>	ENDORSED LETTER addressed to Judge Laura Taylor Swain from Steven Nachtwey dated 11/20/09 re: Parties request that the Initial Conference order be vacated until the Panel rules on the pending motion. ENDORSEMENT: The initial conference date is adjourned to February 26, 2010 at 10:00 a.m. and the related deadlines are modified accordingly. (Signed by Judge Laura Taylor Swain on 11/23/09) (djc) (Entered: 11/24/2009)
01/06/2010	<u>25</u>	MOTION for John D. Byars and Vincent S. J. Buccola to Appear Pro Hac Vice. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Attachments: # <u>1</u> Pro Hac Vice of Buccola)(mbe) (Entered: 01/08/2010)
01/11/2010	<u>I</u>	CASHIERS OFFICE REMARK on <u>25</u> Motion to Appear Pro Hac Vice in the amount of \$50.00, paid on 01/07/2010, Receipt Number 890713. (jd) (Entered: 01/11/2010)
01/13/2010	<u>26</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION: John D. Byars and Vincent S.J. Buccola are admitted to practice pro hac vice as counsel for plaintiffs ACP Master, Ltd and Aurelius Capital Mater, Ltd. in this case in the USDC for the SDNY as further set forth herein. (Signed by Judge Laura Taylor Swain on 1/13/10) (dle) (Entered: 01/13/2010)
01/13/2010	<u>I</u>	Transmission to Attorney Admissions Clerk. Transmitted re: <u>26</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (dle) (Entered: 01/13/2010)
01/15/2010	<u>27</u>	AMENDED COMPLAINT amending <u>1</u> Complaint, against Merrill Lynch Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America, N.A..Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd. Related document: <u>1</u> Complaint, filed by ACP Master, Ltd., Aurelius Capital Master, Ltd. (ama) (Entered: 01/19/2010)

01/25/2010	<u>28</u>	CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER OUT ORDER FROM THE MDL PANEL...transferring this action from the U.S.D.C. – S.D.N.Y to the United States District Court – Southern District of Florida. (Signed by MDL Panel on 1/4/10) (ldi) (Entered: 01/25/2010)
01/25/2010	<u>İ</u>	MDL TRANSFER OUT ELECTRONICALLY: to the United States District Court – Southern District of Florida, except for document numbered 27 which was sent via Federal Express AIRBILL # 8693 1747 1859 on 1/25/10. (ldi) (Entered: 01/25/2010)

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:09-cv-08064-LTS**  
***Internal Use Only***

ACP Master, Ltd. et al v. Bank of America, N.A. et al  
Assigned to: Judge Laura Taylor Swain  
Cause: 12:632 International Banking

Date Filed: 09/21/2009  
Date Terminated: 01/25/2010  
Jury Demand: None  
Nature of Suit: 430 Banks and Banking  
Jurisdiction: Federal Question

**Plaintiff**

**ACP Master, Ltd.**

represented by **David Parker**  
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**Plaintiff**

**Aurelius Capital Master, Ltd.**

represented by **David Parker**

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**John D. Byars**

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**Vincent S.J Buccola**

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*ATTORNEY TO BE NOTICED*

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*ATTORNEY TO BE NOTICED*

**Marc R. Rosen**

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*ATTORNEY TO BE NOTICED*

**Steven James Nachtwey**

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*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Bank of America, N.A.**

**Defendant**

**Merrill Lynch Capital Corporation**

**Defendant**

**JP Morgan Chase Bank, N.A.**

**Defendant**

**Barclays Bank PLC**

**Defendant**

**Deutsche Bank Trust Company Americas**

**Defendant**

**The Royal Bank of Scotland PLC**

**Defendant**

**Sumitomo Mitsui Banking Corporation**

**Defendant**

**Bank of Scotland**

**Defendant**

**HSH Nordbank AG**

**Defendant**

**MB Financial Bank, N.A.**

represented by **Peter J Roberts**  
Shaw Gussis Fishman Glant Wolfson & Towbin,  
L.L.C.  
321 North Clark Street  
Suite 800  
Chicago , IL 60654  
(312) 276-1322  
Fax: (312) 275-0568  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Camulos Master Fund, L.P.**

represented by **Andrew Bennett Kratenstein**  
McDermott, Will & Emery, LLP (NY)  
340 Madison Avenue  
New York , NY 10017  
(212) 547-5695

Fax: (212) 547-5444

Email: akratenstein@mwe.com

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/21/2009	<u>1</u>	COMPLAINT against Merrill Lynch Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America, N.A. (Filing Fee \$ 350.00, Receipt Number 700407)Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.(ama) (Entered: 09/22/2009)
09/21/2009	<u>1</u>	SUMMONS ISSUED as to Merrill Lynch Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America, N.A. (ama) (Entered: 09/22/2009)
09/21/2009	<u>1</u>	Magistrate Judge Theodore H. Katz is so designated. (ama) (Entered: 09/22/2009)
09/21/2009	<u>1</u>	Case Designated ECF. (ama) (Entered: 09/22/2009)
09/21/2009	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Aurelius Capital Partners, LP, Aurelius Capital GP,LLC as Corporate Parent. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.(ama) (Entered: 09/22/2009)
09/28/2009	<u>3</u>	INITIAL CONFERENCE ORDER:... Initial Conference set for 12/17/2009 at 11:00 AM in Courtroom 11C, 500 Pearl Street, New York, NY 10007 before Judge Laura Taylor Swain. (Signed by Judge Laura Taylor Swain on 9/28/09) (cd) (Entered: 09/28/2009)
10/02/2009	<u>4</u>	CERTIFICATE OF SERVICE of Initial Conference Order dated September 28, 2009 served on Bank of America, N.A.; Bank of Scotland; Barclays Bank PLC; Camulos Master Fund, L.P.; Deutsche Bank Trust; HSH Nordbank AG; JPMorgan Chase Bank, N.A.; MB Financial Bank, N.A.; Merrill Lynch Capital Corporation; Sumitomo Mitsui Banking Corporation; and The Royal Bank of Scotland PLC on October 2, 2009. Service was made by Federal Express. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/02/2009)
10/05/2009	<u>5</u>	NOTICE OF APPEARANCE by Marc R. Rosen on behalf of ACP Master, Ltd., Aurelius Capital Master, Ltd. (Rosen, Marc) (Entered: 10/05/2009)
10/06/2009	<u>6</u>	AFFIDAVIT OF SERVICE. Bank of America, N.A. served on 9/23/2009, answer due 10/13/2009. Service was accepted by Alejandro Cordero. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>7</u>	AFFIDAVIT OF SERVICE. Barclays Bank PLC served on 9/23/2009, answer due 10/13/2009. Service was accepted by Sandy Galicia. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>8</u>	AFFIDAVIT OF SERVICE. Camulos Master Fund, L.P. served on 9/24/2009, answer due 10/14/2009. Service was accepted by Carmel MacNulty. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>9</u>	AFFIDAVIT OF SERVICE. Deutsche Bank Trust Company Americas served on 9/23/2009, answer due 10/13/2009. Service was accepted by Sandy Galicia. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)



10/06/2009	<u>10</u>	AFFIDAVIT OF SERVICE. HSH Nordbank AG served on 9/23/2009, answer due 10/13/2009. Service was accepted by David C. Wolinsky. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>11</u>	AFFIDAVIT OF SERVICE. MB Financial Bank, N.A. served on 9/28/2009, answer due 10/19/2009. Service was accepted by Tricia Cherry. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>12</u>	AFFIDAVIT OF SERVICE. Merrill Lynch Capital Corporation served on 9/23/2009, answer due 10/13/2009. Service was accepted by Aixa Flores. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>13</u>	AFFIDAVIT OF SERVICE. The Royal Bank of Scotland PLC served on 9/23/2009, answer due 10/13/2009. Service was accepted by Lucy Wnuk. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>14</u>	AFFIDAVIT OF SERVICE. Sumitomo Mitsui Banking Corporation served on 9/23/2009, answer due 10/13/2009. Service was accepted by Sandy Galicia. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>15</u>	AFFIDAVIT OF SERVICE. Bank of Scotland served on 10/2/2009, answer due 10/22/2009. Service was accepted by Aixa Flores. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/07/2009	<u>16</u>	AFFIDAVIT OF SERVICE. JP Morgan Chase Bank, N.A. served on 10/1/2009, answer due 10/21/2009. Service was accepted by Jody Peck. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/07/2009)
10/14/2009	<u>17</u>	NOTICE OF APPEARANCE by Andrew Bennett Kratenstein on behalf of Camulos Master Fund, L.P. (Kratenstein, Andrew) (Entered: 10/14/2009)
10/15/2009	<u>18</u>	MOTION for James B. Heaton, III and Steven J. Nachtwey to Appear Pro Hac Vice. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.(dle) (Entered: 10/16/2009)
10/20/2009	<u>1</u>	CASHIERS OFFICE REMARK on <u>18</u> Motion to Appear Pro Hac Vice in the amount of \$50.00, paid on 10/15/2009, Receipt Number 702853. (jd) (Entered: 10/20/2009)
10/20/2009	<u>19</u>	STIPULATION AND ORDER: It is hereby stipulated and agreed by and between the parties that Defendants shall have up to and including forty-five (45) days from the notice of entry of the order of the Judicial Panel on Multi-District Litigation (the "MDL Panel") on the pending Motion for Transfer to the Southern District of Florida and Consolidation of Related Actions Pursuant to 28 U.S.c. § 1407 (In re Fontainebleau Las Vegas Contract Litigation, MDL No. 2106) to serve and file their responses to the Complaint, unless the Plaintiffs herein seek to amend their Complaint. Plaintiffs herein shall have thirty (30) days from the notice of entry of the MDL Panel's order to serve and file an Amended Complaint upon the consent of the Defendants. Defendants shall have thirty (30) days from the service of an Amended Complaint by Plaintiffs herein to serve and file their responses to the Amended Complaint; provided, however, that in the event Plaintiffs herein move the Court for leave to file the proposed Amended Complaint, then the Defendants shall have thirty (30) days from the notice of entry of order on such motion to serve and file their responses to the operative complaint herein. (Signed by Judge Laura Taylor Swain on 10/19/2009) (jpo) (Entered: 10/21/2009)
10/22/2009	<u>20</u>	ORDER granting <u>18</u> Motion for James B. Heaton, III and Steven J. Nachtwey to Appear Pro Hac Vice for ACP Master, Ltd., Aurelius Capital Master, Ltd. (Signed by Judge Laura Taylor Swain on 10/21/2009) (jmi) (Entered: 10/22/2009)
10/22/2009	<u>1</u>	Transmission to Attorney Admissions Clerk. Transmitted re: <u>20</u> Order on Motion to Appear Pro

		Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (jmi) (Entered: 10/22/2009)
11/16/2009	<u>21</u>	MOTION for Peter J. Roberts to Appear Pro Hac Vice. Document filed by MB Financial Bank, N.A.(mro) (Entered: 11/17/2009)
11/18/2009	<u>I</u>	CASHIERS OFFICE REMARK on <u>21</u> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 11/16/2009, Receipt Number 706253. (jd) (Entered: 11/18/2009)
11/20/2009	<u>22</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION: granting <u>21</u> Motion for Peter J. Roberts to Appear Pro Hac Vice. (Signed by Judge Laura Taylor Swain on 11/20/2009) (jfe) (Entered: 11/20/2009)
11/20/2009	<u>I</u>	Transmission to Attorney Admissions Clerk. Transmitted re: <u>22</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (jfe) (Entered: 11/20/2009)
11/24/2009	<u>23</u>	STIPULATION AND ORDER. Defendant shall have up to and including forty-five days from the notice of entry of the order of the Judicial Panel on Multi-District Litigation (the MDL Panel) on the pending Motion for Transfer to the Southern District of Florida and Consolidation of Related Actions Pursuant to 28 U.S.C. section 1407 (in re Fontainebleau Las Vegas Contract Litigation, MDL NO. 2106) to serve and file its response to the Complaint, unless the Plaintiffs herein seek to amend their Complaint. Plaintiffs herein shall have thirty days from the notice of entry of the MDL Panel's order to serve and file an Amended Complaint upon the consent of the Defendant. Defendant shall have thirty days from the service of an Amended Complaint by Plaintiffs herein to serve and file its response to the Amended Complaint; provided, however, that in the event Plaintiffs herein move the Court for leave to file the proposed Amended Complaint, then Defendant shall have thirty days from the notice of entry of order on such motion to serve and file its response to the operative complaint herein. (Signed by Judge Laura Taylor Swain on 11/23/09) (djc) (Entered: 11/24/2009)
11/24/2009	<u>24</u>	ENDORSED LETTER addressed to Judge Laura Taylor Swain from Steven Nachtwey dated 11/20/09 re: Parties request that the Initial Conference order be vacated until the Panel rules on the pending motion. ENDORSEMENT: The initial conference date is adjourned to February 26, 2010 at 10:00 a.m. and the related deadlines are modified accordingly. (Signed by Judge Laura Taylor Swain on 11/23/09) (djc) (Entered: 11/24/2009)
01/06/2010	<u>25</u>	MOTION for John D. Byars and Vincent S. J. Buccola to Appear Pro Hac Vice. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Attachments: # <u>1</u> Pro Hac Vice of Buccola)(mbe) (Entered: 01/08/2010)
01/11/2010	<u>I</u>	CASHIERS OFFICE REMARK on <u>25</u> Motion to Appear Pro Hac Vice in the amount of \$50.00, paid on 01/07/2010, Receipt Number 890713. (jd) (Entered: 01/11/2010)
01/13/2010	<u>26</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION: John D. Byars and Vincent S.J. Buccola are admitted to practice pro hac vice as counsel for plaintiffs ACP Master, Ltd and Aurelius Capital Mater, Ltd. in this case in the USDC for the SDNY as further set forth herein. (Signed by Judge Laura Taylor Swain on 1/13/10) (dle) (Entered: 01/13/2010)
01/13/2010	<u>I</u>	Transmission to Attorney Admissions Clerk. Transmitted re: <u>26</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (dle) (Entered: 01/13/2010)
01/15/2010	<u>27</u>	AMENDED COMPLAINT amending <u>1</u> Complaint, against Merrill Lynch Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America,

		N.A..Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd. Related document: <u>1</u> Complaint, filed by ACP Master, Ltd., Aurelius Capital Master, Ltd. (ama) (Entered: 01/19/2010)
01/25/2010	I <u>28</u>	CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER OUT ORDER FROM THE MDL PANEL...transferring this action from the U.S.D.C. – S.D.N.Y to the United States District Court – Southern District of Florida. (Signed by MDL Panel on 1/4/10) (ldi) (Entered: 01/25/2010)
01/25/2010	I	MDL TRANSFER OUT ELECTRONICALLY: to the United States District Court – Southern District of Florida, except for document numbered 27 which was sent via Federal Express AIRBILL # 8693 1747 1859 on 1/25/10. (ldi) (Entered: 01/25/2010)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 10-20236-CIV-GOLD/MCALILEY

In re:

ACP Master, Ltd. and  
Aurelius Capital Master, Ltd.

Plaintiffs,

v.

Bank of America, N.A., *et al.*

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**NOTICE OF APPEARANCE OF BRETT M. AMRON AS COUNSEL FOR  
AURELIUS CAPITAL MASTER, LTD. AND ACP MASTER, LTD.**

PLEASE TAKE NOTICE that Brett M. Amron and the law firm of Bast Amron LLP, hereby gives notice of their appearance as counsel on behalf of Aurelius Capital Master, Ltd. and ACP Master Ltd. and the undersigned requests that all notices given or required to be served in the above-referenced cases be given to and served upon Brett M. Amron, Esq. at the following address:

BAST AMRON LLP  
SunTrust International Center  
One Southeast Third Avenue  
Suite 1440  
Miami, FL 33131  
Telephone: (305) 379-7904  
Facsimile: (305) 379-7905  
Email: [bamron@bastamron.com](mailto:bamron@bastamron.com)

*[Signature Page to Follow]*

Respectfully submitted,

BAST AMRON LLP  
SunTrust International Center  
One Southeast Third Avenue  
Suite 1440  
Miami, FL 33131  
Telephone: (305) 379-7904  
Facsimile: (305) 379-7905  
Email: [bamron@bastamron.com](mailto:bamron@bastamron.com)

By: /s/ Brett M. Amron

Brett M. Amron, Esq.  
Florida Bar No. 148342

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this Notice of Appearance has been served electronically via the Court's CM/ECF system where available and/or via U.S. Mail upon those parties not registered to receive notification via the Court's CM/ECF system on this the 28th day of January, 2010.

By: /s/ Brett M. Amron

Brett M. Amron

**United States District Court**  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

**Date:** 1/25/2010

**Our case #:** 09cv8064

Dear Sir/Madam,

Pursuant to an order issued by the MDL panel the above fore mentioned case is being electronically transferred from the Southern District of New York to the Southern District of Florida. Included with this letter you will find document number 27, which was not available to view electronically.

The included copy of this letter is for your convenience in acknowledging receipt of this document. If you have any further questions regarding this case, please contact Leyni Disla, MDL Docket Clerk at 212-805-0678.

Yours truly,

J. Michael McMahon  
Clerk of Court

By: Leyni Disla  
Deputy Clerk

Via: Fed Ex

**Airbill #:** 8693 1747 1859

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**RECEIPT IS ACKNOWLEDGED OF THE DOCUMENTS DESCRIBED HEREIN  
AND ASSIGNED CASE NUMBER:**

CASE # 10-20236-CV-ASG ON DATE: DE# 27 ON 1/27/10

CASE TRANSFERRED OUT FORM

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 10-20236-CIV-GOLD/BANDSTRA

ACP MASTER, et al.,

Plaintiffs,

vs.

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

Defendants.

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ENTRY OF FINAL JUDGMENT

In accordance with Federal Rule of Civil Procedure 58 and the Court's Order granting Defendants' Motion to Dismiss, final judgment is hereby entered in favor of Defendants. Plaintiffs collect nothing from Defendants and shall go hence without day.

DATED this 28<sup>th</sup> day of May, 2010.

STEVEN M. LARIMORE  
CLERK OF COURT

BY:

  
LYNN M. SUROWIEC  
DEPUTY CLERK

cc:  
Magistrate Judge Bandstra  
All counsel of record

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

In re:

FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION

*This document applies to:*

Case No.: 09-CV-23835-ASG

Case No.: 10-CV-20236-ASG

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**AMENDED<sup>1</sup> MDL ORDER NUMBER EIGHTEEN;<sup>2</sup> GRANTING IN PART AND DENYING IN PART MOTIONS TO DISMISS [DE 35]; [DE 36]; REQUIRING ANSWER TO COMPLAINTS; VACATING FINAL JUDGMENT<sup>3</sup>**

**I. Introduction**

THIS CAUSE is before the Court upon the Revolving Lender Defendants' Motion to Dismiss [DE 36] and Bank of America's Motion to Dismiss [DE 35] ("the Motions"). Responses and replies were timely filed with respect to both motions, see [DE 50]; [DE 52]; [DE 56]; [DE 57], and on May 7, 2010, oral argument was held. I have jurisdiction pursuant to 12 U.S.C. § 632, as it is undisputed that both actions at issue are "suits of a civil nature at common law . . . to which [a] corporation organized under the laws of the United States [is] a party [and which] aris[es] out of transactions involving international or foreign banking." Having considered the relevant submissions, the arguments of the

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<sup>1</sup>This Order corrects the inadvertent closure of the Aurelius Action. Count III of the Aurelius Complaint remains pending and the final judgment issued in that case must therefore be vacated.

<sup>2</sup> Although not labeled as such, MDL Order Number Seventeen appears at [DE 74].

<sup>3</sup> All docket entry citations refer to the MDL Master Docket – i.e., Case No.: 09-MD-2106 (S.D. Fla. 2009) – unless otherwise indicated.



parties, the applicable law, and being otherwise duly advised in the Premises, I grant the Motions in part and dismiss certain claims for the reasons that follow.

## II. Relevant Factual and Procedural Background<sup>4</sup>

Although the facts giving rise to the claims at issue are detailed in my August 26, 2009 Order Denying Fontainebleau's Motion for Partial Summary Judgment in the Southern District of Florida Action, *see generally Fontainebleau Las Vegas, LLC v. Bank of America, N.A.*, 417 B.R. 651 (S.D. Fla. 2009) ("August 26 Order"), I reiterate the relevant factual background here with citations to the operative complaints<sup>5</sup> to ensure that the record clearly demonstrates that the facts and inferences upon which this Order is predicated are drawn only from the operative complaints and the referenced undisputed central documents.

### A. The Credit Agreement and Disbursement Agreement

On June 6, 2007, Fontainebleau Las Vegas LLC and affiliated entities ("Fontainebleau") entered into a series of agreements with a number of lenders ("the Lenders") for loans to be used for the construction and development of the Fontainebleau Resort and Casino in Las Vegas, Nevada ("the Project"). (Avenue Compl.<sup>6</sup> at ¶¶ 113-115);

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<sup>4</sup> For purposes of a motion to dismiss, I take as true all factual allegations in the operative complaints and limit my consideration to the four corners of the complaints and any documents referenced in the complaints which are central to the claims. *Griffin Industries, Inc. v. Irvin*, 496 F.3d 1189, 1199 (11th Cir. 2007); *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009). To the extent the central documents contradict the general and conclusory allegations of the pleading, the documents govern. *See Griffin*, 496 F.3d at 1206.

<sup>5</sup> See note 5, *infra*.

<sup>6</sup> The operative complaint in the case of *Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al.*, Case No.: 09-CV-23835 [DE 84] (S.D. Fla. 2009), will be referred to throughout as the "Avenue Complaint." The operative complaint in the case of *ACP Master Ltd. and Aurelius Capital Master, Ltd. v. Bank of America, N.A., et al.*, Case No.: 10-CV-20236 [DE

(Aurelius Compl. at ¶¶ 2-4); see generally [DE 37-1] (“Cr. Agr.”); [DE 37-2] (“Disb. Agr.”). Among the agreements entered into by Fontainebleau and the Lenders were a Credit Agreement and a Disbursement Agreement. (Avenue Compl. at ¶ 115); (Aurelius Compl. at ¶¶ 3, 27). It is these two agreements that are the subject of the operative complaints.

In connection with the June 6, 2007 loan transaction, Fontainebleau and the Lenders entered into a Credit Agreement that provided, among other things, for a syndicate of lenders to provide three kinds of loans to Fontainebleau: (a) \$700 million initial term loan facility (“the Initial Term Loan”); (b) a \$350 million delay draw term loan facility (“the Delay Draw Term Loan”); and (c) an \$800 million revolving loan facility (“the Revolving Loan”). (Avenue Compl. at ¶ 115); (Aurelius Compl. at ¶¶ 23-24); (Cr. Agmt. at 22, 38). The Plaintiffs proceeding on the Avenue Complaint (“the Avenue Plaintiffs”) are comprised of certain term lenders that participated in either the Initial Term Loan and/or the Delay Draw Term Loan. (Avenue Compl. at ¶¶ 115, 117). The Plaintiffs proceeding on the Aurelius Complaint (“the Aurelius Plaintiffs”) are successors-in-interest to certain Term Lenders that participated in either the Initial Term Loan and/or the Delay Draw Term Loan (Aurelius Compl. at ¶¶ 10, 25). Both the Avenue and Aurelius Defendants (collectively “Defendants”) are lenders that agreed to fund certain amounts under the Revolving Loan. (Avenue Compl. at ¶¶ 102-112); (Aurelius Compl. at ¶¶ 11-22). In addition to being a Revolving Lender, Defendant Bank of America also was the Administrative Agent for purposes of the Credit Agreement. (Cr. Agr. at 8).

While the Initial Term Loan was to be made on the date of closing, (Cr. Agmt. at 22),

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**27]** (S.D. Fla. 2010), will be referred to throughout as the “Aurelius Complaint.”

the borrowing of funds under the Delay Draw and Revolving Loans prior to the Project's opening date was governed by a two-step borrowing process set forth in the Credit and Disbursement Agreements. (Aurelius Compl. at ¶¶ 32-33); (Avenue Compl. at ¶ 119). First, Fontainebleau was required to submit a Notice of Borrowing to the Administrative Agent (i.e., Bank of America) specifying the requested loans and the designated borrowing date. (Aurelius Compl. at ¶ 33); (Avenue Compl. at ¶ 119); (Cr. Agmt. § 2.4(a)). Upon receipt of each Notice of Borrowing, the Administrative Agent was required to notify each lender, as appropriate, so that each lender could, "subject [] to the fulfillment of the applicable conditions precedent set forth in Section 5.2 [of the Credit Agreement]" and in accordance with Section 2.1, make its *pro rata* share of the requested loans available to the Administrative Agent on the borrowing date requested by Fontainebleau. (Cr. Agr. §§ 2.1(c); 2.4(b)). Then, "[u]pon satisfaction or waiver of the applicable conditions precedent specified in Section 2.1," Section 2.4(c) of the Credit Agreement called for the proceeds of the loans to be "remitted to the Bank Proceeds Account and made available to [Fontainebleau] in accordance with and upon fulfillment of conditions set forth in the Disbursement Agreement."

The second step in the borrowing process concerns Fontainebleau's access to the funds remitted to the Bank Proceeds Account and is governed by the Disbursement Agreement. To access these funds, Fontainebleau was required to fulfill certain conditions set forth in the Disbursement Agreement – including, but not limited to, the submission of an Advance Request to Defendant Bank of America as Disbursement Agent – at which point the loan proceeds would be disbursed in accordance with the Disbursement Agreement. (Avenue Compl. at ¶ 120); (Aurelius Compl. at ¶ 37); *see also* (Disb. Agr. §

§ 2.4, 3.3).

However, pursuant to Section 2.5.1 of the Disbursement Agreement, Fontainebleau's right to disbursements was not absolute. That section provides that Defendant Bank of America (as Disbursement Agent) was required to issue a Stop Funding Notice "[i]n the event that (i) the conditions precedent to an Advance [set forth in Section 3.3 of the Disbursement Agreement] have not been satisfied, or (ii) [Wells Fargo, N.A. or Bank of America] notifies the Disbursement Agent [Bank of America] that a Default or an Event of Default has occurred and is continuing . . . ." (Disb. Agr. § 2.5.1); (Aurelius Compl. at ¶ 37); (Avenue Compl. at ¶ 124). Under the Disbursement Agreement, the issuance of a Stop Funding Notice has the effect of preventing disbursements from the accounts subject to certain waiver provisions and limited exceptions not at issue. (Disb. Agr. § 2.5.2).

As noted, Defendants' agreement to make Revolving Loans to Fontainebleau is governed by Section 2.1(c) of the Credit Agreement. The first sentence of Section 2.1(c) provides, in pertinent part, that "[s]ubject to the terms and conditions [of the Credit Agreement],<sup>7</sup> each Revolving Lender severally agrees to make Revolving Loans to [Fontainebleau] provided that . . . unless the Total Delay Draw Commitments have been fully drawn, the aggregate outstanding principal amount of all Revolving Loans and Swing Line Loans shall not exceed \$150,000,000." (emphasis in original). The second sentence of Section 2.1(c) provides that "[t]he making of Revolving Loans which are Disbursement Agreement Loans shall be subject **only** to the fulfillment of the applicable conditions set

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<sup>7</sup> The provision reads "[s]ubject to the terms and conditions hereof." (Cr. Agr. § 2.1(c)). Section 1.2 states that "hereof . . . shall refer to this Agreement as a whole."

forth in Section 5.2.” (emphasis in original). Section 5.2 provides, in pertinent part, that “[t]he agreement of each lender to *make* [the Revolving Loans at issue here] . . . is subject only to the satisfaction of following conditions precedent: (a) Borrowers shall have submitted a Notice of Borrowing specifying the amount and Type of the Loans requested, and the making thereof shall be in compliance with the applicable provisions of Section 2 of this Agreement.”<sup>8</sup>

B. The March 2009 Notices of Borrowing and Disbursements

On March 2, 2009, Fontainebleau submitted a Notice of Borrowing (“March 2 Notice”) to Defendant Bank of America, as Administrative Agent, that simultaneously “request[ed]” the entire amount available under the Delay Draw Term Loan (i.e., \$350,000,000) and the Revolving Loan (i.e., \$670,000,000).<sup>9</sup> (Aurelius Compl. at ¶ 44); (Avenue Compl. at ¶ 141). At the time of the March 2, 2009 request, approximately \$68 million in Revolving Loans had previously been funded and remained outstanding. (Aurelius Compl. at ¶ 45); (Avenue Compl. at ¶ 152). On March 3, 2009, Bank of America, as Administrative Agent, wrote to Fontainebleau rejecting the March 2 Notice, stating that the March 2 Notice did not comply with Section 2.1(c)(iii) of the Credit Agreement, which does not allow the aggregate outstanding principal amount of the Revolving Loans to

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<sup>8</sup> The second and third conditions precedent set forth in Section 5.2 are not relevant to the claims at bar.

<sup>9</sup> The Aurelius Complaint alleges that Fontainebleau issued a Notice of Borrowing “drawing” the above-referenced loans on March 2, 2009. (Aurelius Compl. ¶ 44). However, the Notice of Borrowing, which is reproduced in the body of the Complaint, states that Fontainebleau was “requesting a Loan under the Credit Agreement.” *Id.* at 11. Where there is a conflict between allegations in a pleading and the central documents, the contents of the documents control. See Section III, *infra*.

exceed \$150,000,000 unless the Delay Draw Term Loans have been “fully drawn.” (Aurelius Compl. ¶¶ 50-51); (Avenue Compl. at ¶¶ 143-45). On March 3, 2009, Fontainebleau wrote to Bank of America articulating its position that its March 2, 2009 Notice complied with the Credit Agreement because “fully drawn” meant “fully requested,” not “fully funded,” as Bank of America was contending. (Aurelius Compl. at ¶¶ 54-55); (Avenue Compl. at ¶ 141). Thus, according to Fontainebleau, the simultaneous request for the remainder of the Delay Draw Term Loan and the Revolving Loans complied with the Credit Agreement because the Delay Draw Term Loans had been “fully drawn” by virtue of having been “fully requested.” *Id.*

On March 3, 2009, Fontainebleau issued another Notice of Borrowing (“the March 3 Notice”), which was nearly identical to the March 2 Notice, but purported to correct a “scrivener’s error” in the March 2 Notice by reducing the amount of Revolving Loans requested from \$670,000,000 to approximately \$656 million in order to account for approximately \$14 million of Letters of Credit that were outstanding and had not been considered in connection with the March 2 Notice. (Avenue Compl. at ¶ 141); (Aurelius Compl. at ¶ 56). On March 4, 2009, Defendant Bank of America rejected the March 3 Notice for the same reason it rejected the March 2 Notice (i.e., the Notice, which simultaneously requested \$350,000,000 in Delay Draw Term Loans and Revolving Loans in excess of \$150,000,000 in Revolving Loans, did not comply with Section 2.1(c)(iii) because the Delay Draw Term loans had not yet been “fully drawn”). (Aurelius Compl. at ¶ 57); (Avenue Comp. at ¶ 144).

In an attempt to remedy the “fully drawn” issue, Fontainebleau issued yet another Notice of Borrowing on March 9, 2009 (“the March 9 Notice”). (Aurelius Compl. at ¶ 65)

(Avenue Compl. at ¶ 151). The March 9 Notice was directed solely to the Delay Draw Term Loan, requesting the full amount of the \$350,000,000 commitment. *Id.* Despite the fact that Bank of America “received notice . . . [i]n September and October 2008 that Lehman [Brothers] fail[ed] to comply with its funding obligations under the Retail Facility” in violation of Section 3.3.3 of the Disbursement Agreement, Defendant Bank of America did not issue a “Stop Funding Notice.” (Aurelius Compl. at ¶¶ 96-109); (Avenue Compl. at ¶¶ 129-133). Instead, it processed the March 9 Notice and sent it to all the Delay Draw Term Lenders, advising them that the March Notice complied with the Credit Agreement and that the Delay Draw Lenders were required to fund. (Aurelius Compl. at ¶ 66); (Avenue Compl. at ¶ 153). Plaintiffs allege that Bank of America “willfully took no action in response to the notice” regarding Lehman Brothers’ default, “favor[ed] its own interests over those of the Delay Draw lenders” by failing to issue a Stop Funding Notice, (Aurelius Compl. at ¶¶ 109, 151), and failed to act “because it wished to preserve its ongoing business relationship with the Borrower and its principal indirect owners, including Jeffrey Soffer.” (Avenue Compl. at ¶ 129-30).

On or about March 10, 2009, Plaintiffs funded their commitments under the Delay Draw Term Loans. In all, the Delay Draw Term Loan Lenders funded approximately \$337,000,000 of the \$350,00,000 Delay Draw Loan.<sup>10</sup> (Aurelius Compl. ¶¶ at 66-67); (Avenue Compl. at ¶ 154). Of these Delay Draw Term Loan proceeds, \$68,000,000 were used to repay “then outstanding” Revolving Loans in accordance with Section 2.1(b)(iii) of

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<sup>10</sup> The \$13 million financing gap resulted from the failure of certain Delay Draw Term Lenders to fund their respective portions of the Delay Draw Term Loans in response to the March 9 Notice. (Avenue Compl. at ¶ 157). This financing gap, however, is irrelevant for purposes in this Order.

the Credit Agreement, of which a twenty-five percent share was attributable to Bank of America as a Revolving Lender. (Avenue Compl. at ¶¶ 152-53). Then, on or about March 25, 2009, Bank of America disbursed more than \$100,000,000 of the Delay Draw Term Loan proceeds to Fontainebleau pursuant to an Advance Request submitted on March 25, 2009. (Avenue Compl. at ¶ 165); (Aurelius Compl. at ¶ 124). In addition, on or about March 23, 2009, Bank of America sent a letter to Fontainebleau regarding the Revolving Loans; the letter stated that because “almost all of the [Delay Draw Term Loans] have funded . . . 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.” (Aurelius Compl. at ¶ 89); (Avenue Compl. at ¶ 163).

C. Events Subsequent to the March 25 Advance

On April 20, 2009, Bank of America, “in its capacity as Administrative Agent, sent a letter to [Fontainebleau], the Lenders and other parties, in which [Bank of America] advised that . . . [it has been] determined that one or more Events of Default have occurred and are occurring” and stating that the Revolving Loan commitments were being “terminated effective immediately” pursuant to Section 8 of the Credit Agreement (“the Termination Notice”). (Aurelius Compl. at ¶ 73); (Avenue Compl. at ¶¶ 167-68). According to Plaintiffs, Bank of America was aware of these Events of Default prior to the March 25, 2009 Delay Draw Term Loan disbursement, but failed to take appropriate action (e.g., issuing a Stop Funding Notice). (Aurelius Compl. at ¶ 128); (Avenue Compl. at ¶ 167).

On April 21, 2009, Fontainebleau sent a Notice of Borrowing (“the April 21 Notice”) requesting \$710,000,000 under the Revolving Loan facility; this Notice of Borrowing was



not honored. (Aurelius Compl. at ¶¶ 71-72); (Avenue Compl. at ¶ 169). Subsequent to April 21, 2009, the Project was “derailed and the value of the collateral securing Plaintiffs’ loans [was] substantially diminished.” (Avenue Compl. at ¶ 172); (Aurelius Compl. at ¶ 153). Plaintiffs allege that they have been damaged by the derailment of the Project, the diminution in the value of their collateral, and the purportedly improper March 25 disbursement of Delay Draw Term Loan proceeds; it is further alleged that these damages were the result of Defendants’ improper failure to fund the March 3, 2009 Notice and Bank of America’s material breaches of the Credit and Disbursement Agreements. (Aurelius Compl. at ¶¶ 151-53); (Avenue Compl. at ¶ 172).

Based on these allegations, the Avenue and Aurelius Plaintiffs filed the instant lawsuits in June and September 2009, respectively. The Aurelius Complaint asserts three causes of action. The first is a contract claim against all Defendants for breach of the Credit Agreement as a result of their failure to fund the Notices of Borrowing submitted on or about March 2 and 3, 2009. The second is also a contract claim for breach of the Credit Agreement against all Defendants, but is predicated upon Defendants’ failure to fund the April 21, 2009 Notice of Borrowing. The third count also sounds in contract, but asserts a breach of the Disbursement Agreement against Bank of America.

The Avenue Complaint, on the other hand, asserts six causes of action: the first is for breach of the Disbursement Agreement against Bank of America; the second is for breach of the Credit Agreement against all Defendants; the third asserts that Bank of America breached the implied covenant of good faith and fair dealing by favoring its own interests and those of the Revolving Lenders (including itself) over those of the Term Lenders and failing to communicate with the Term Lenders regarding Events of Default;

the fourth alleges that all Defendants breached the implied covenant of good faith and fair dealing by adopting a contrived construction of the Credit Agreement in order to justify their refusal to fund the March 2 and 3 Notices; and finally, the fifth and sixth counts request declaratory relief regarding the parties' rights and obligations vis-a-vis the Credit and Disbursement Agreements. Pursuant to Rule 12(b)(6), Defendants now request dismissal of Plaintiffs' breach of contract and implied covenant claims. See **[DE 35]**; **[DE 36]**.

D. The Southern District of Florida Action and the Current MDL Proceedings

When Fontainebleau's project was derailed in Spring 2009, Fontainebleau filed a voluntary Chapter 11 petition in the United States Bankruptcy Court for the Southern District of Florida. On the same day that Fontainebleau filed for bankruptcy protection, it commenced an adversary proceeding against the Revolving Lenders (including Bank of America) seeking, among other things, a ruling requiring the Revolving Lenders to "turn over" the approximately \$657 million requested via the March 3 Notice to the bankruptcy estate in pursuant to 11 U.S.C. § 542(b) ("the Florida Action"). On June 9, 2009, Fontainebleau filed a Motion for Partial Summary Judgment in the Bankruptcy Court as to its turnover claim, and on June 16, 2009, Defendants filed a Motion to Withdraw the Reference pursuant to 28 U.S.C. § 157(d). On August 4, 2009, I granted Defendants' Motion to Withdraw the Reference in the Florida Action. After permitting the Term Lenders to file an amicus brief, I denied Fontainebleau's motion for partial summary judgment, concluding as a matter of law that, for purposes of the Credit Agreement, "fully drawn" unambiguously means "fully funded." *Fontainebleau Las Vegas, LLC v. Bank of America*,

N.A., 417 B.R. 651, 660 (S.D. Fla. 2009).<sup>11</sup>

In December 2009, the Joint Panel on Multi-District Litigation (“the Panel”) heard the Avenue Plaintiffs’ motion for centralization of their lawsuit and the Florida Action in the Southern District of New York. Defendants and the Aurelius Plaintiffs objected, requesting that the suits be transferred to the Southern District of Florida for pre-trial proceedings. After considering the parties’ positions, the Panel issued an Order finding “that centralization under Section 1407 in the Southern District of Florida will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.” *In re: Fontainebleau Las Vegas Contract Litigation*, 657 F. Supp. 2d 1374, 1375 (J.P.M.L. 2009). Following the issuance of the Panel’s Order, the Avenue Action was transferred to me for pre-trial proceedings. Approximately one month later, the Aurelius Action was also transferred to me as a “tag-along” action in accordance with the Panel’s directive. *Id.* at 1374 n.2. As the MDL judge, I now consider the instant motions to dismiss. See Rule 7.6, R.P.J.P.M.L. (providing that transferee district court may hear and enter judgment upon a motion to dismiss).

### III. Standard of Review

For purposes of deciding a motion to dismiss, my review is limited to the four corners of the operative complaint and any documents referred to therein that are central

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<sup>11</sup> Alternatively, I noted that “even if my conclusion that ‘fully drawn’ unambiguously means ‘fully funded’ is in error . . . [Fontainebleau’s] reasoning at best suggests that its interpretation is a reasonable one, but not the conclusive one, and requires the denial of partial summary judgment.” *Id.* at 661. I further noted that “[e]ven if [Fontainebleau] is correct that the term ‘fully drawn’ unambiguously means ‘fully requested,’ I am persuaded by Defendants’ arguments that they were entitled to reject the March 2 Notice on the basis of Plaintiffs’ default” and found there to be “genuine issue[s] of material fact as to whether Borrower was in default as of March 3, 2009.” *Id.* at 663-65.

to the claims at issue. *Griffin Industries, Inc. v. Irvin*, 496 F.3d 1189, 1199 (11th Cir. 2007); *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009); see also *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) (noting that district courts “may consider a document attached to a motion to dismiss without converting the motion into one for summary judgment if the attached document is (1) central to the plaintiff’s claim and (2) undisputed”). Where there is a conflict between allegations in a pleading and the central documents, it is “well settled” that the contents of the documents control. *Griffin*, 496 F.3d at 1206 (quoting *Simmons v. Peavy-Welsh Lumber Co.*, 113 F.2d 812, 813 (5th Cir. 1940)). Thus, only the contents of the operative complaints and the undisputed central documents will be considered for purposes of this Order.

In determining whether to grant Defendants’ motions to dismiss, I must accept all the *factual allegations*<sup>12</sup> in the complaints as true and evaluate all reasonable inferences derived from those facts in the light most favorable to the Plaintiffs. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003); *Hoffend v. Villa*, 261 F.3d 1148, 1150 (11th Cir. 2001). “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the claim showing that the pleader[s] are entitled to relief,’ in order to ‘give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests.’ ” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1959 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 103 (1957)). “Of course, ‘a formulaic recitation of the elements of a cause of action will not do.’ ” *Watts v. Fla. Int’l. Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555). “While Rule 12(b)(6) does not permit dismissal

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<sup>12</sup> Legal conclusions, on the other hand, need not be accepted as true. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009).

of a well-pleaded complaint simply because it strikes a savvy judge that actual proof of those facts is improbable, the factual allegations must be enough to raise a right to relief above the speculative level.” *Watts*, 495 F.3d at 1295 (citing *Twombly*, 550 U.S. at 555) (internal quotation marks omitted)). In other words, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff[s] plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* It follows that “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’ ” *Id.* at 1950 (quoting Fed.R.Civ.P. 8(a)(2)).

#### **IV. Analysis**

##### **A. Breach of Credit Agreement – Counts I and II of the Aurelius Complaint; Count II of the Avenue Complaint**

###### **1. *Plaintiffs Lack Standing to Assert Claims for Failure to Fund***

In support of their request for dismissal, Defendants contend that Plaintiffs lack standing to pursue claims based on Defendants’ alleged breaches of the Credit Agreement. I agree. “Standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party’s claims.” *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005) (quoting *Dillard v. Baldwin County Comm’rs*, 225 F.3d 1271, 1275 (11th Cir. 2000)). Absent an adequate showing of standing, “a court is not free to opine in an advisory capacity about the merits of a plaintiff’s

claims.” *Id.* The burden of establishing standing is on the Plaintiffs. *Id.* at 976; *see also AT&T Mobility, LLC v. National Ass’n for Stock Car Auto Racing, Inc.*, 494 F.3d 1357, 1360 (11th Cir. 2007)

Pursuant to Article III of the United States Constitution, Plaintiffs “must establish that [they] ha[ve] suffered an injury in fact” to have standing to challenge Defendants’ failure to fund under the Credit Agreement.<sup>13</sup> *AT&T Mobility*, 494 F.3d at 1360 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). “To establish injury in fact, [Plaintiffs] must first demonstrate that [Defendants] ha[ve] invaded a legally protected interest derived by [Plaintiffs] from the [Credit] Agreement between [Plaintiffs] and [Defendants].” *Id.* (citation and internal quotation marks omitted). The question of whether, for standing purposes, Plaintiffs have “a legally enforceable right” with respect to a contractual covenant is a matter of state law. *Id.* (citation omitted); *see also Mid-Hudson Catskill Rural Migrant Ministry, Inc. v. Fine Host Corp.*, 418 F.3d 168, 173 (2d Cir. 2005) (Sotomayor, J.) (citing various cases applying state law to determine whether parties had standing to sue for breach of contract). Accordingly, I must look to New York law<sup>14</sup> to determine whether

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<sup>13</sup> I recognize the parties’ position that having “standing” to sue for a breach of a contractual promise is distinct from the concept of Article III standing. **[MTD Hr’g Tr. 3:25 p.m., May 7, 2010]** (“I have always just thought of this as having been innocently mislabeled. I agree with [defense counsel] that when they said standing, what they really meant was the term lenders don’t have any contractual right”). While there is case law supporting this contention, the Eleventh Circuit treats the question of whether a party has a “legally enforceable right” with respect to a contractual promise as an Article III issue. *AT&T Mobility, LLC v. National Ass’n for Stock Car Auto Racing, Inc.*, 494 F.3d 1357, 1360 (11th Cir. 2007); *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975-980 (11th Cir. 2005). Accordingly, I treat it as such. I emphasize, however, that this distinction has no bearing on the motions at bar, for Plaintiffs’ contract claims must fail if they lack standing, regardless of how the standing issue is framed.

<sup>14</sup> At oral argument, the parties agreed that the question of whether Plaintiffs have a legal right to enforce the Revolving Lenders’ promise to fund the loans at issue must be determined pursuant to New York law. **[MTD Hr’g Tr. 3:25 p.m., May 7, 2010]**. In determining

Plaintiffs have standing to assert claims for breach of the Credit Agreement based on Defendants' failure to fund the Revolving Loans pursuant to the March and April Notices of Borrowing. (Cr. Agr. § 10.11) (stating that "rights and obligations of the parties under this agreement shall be governed by, and construed and interpreted in accordance with the law of the State of New York").

Under New York contract law, "[a] promise in a contract creates a duty in the promisor to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty"; thus, only intended beneficiaries of a promise "ha[ve] the right to proceed against the promisor" for breach of said promise.<sup>15</sup> Restatement (Second) of Contracts § 304 (1979); *Hamilton v. Hertz Corp.*, 498 N.Y.S. 2d 706, 709 (N.Y. Sup. Ct. 1986) (citing Restatement (Second) of Contracts § 304 (1979)). This well-established rule applies with equal force to both bipartite and multipartite agreements. See *Berry Harvester v. Walter A. Wood Mowing & Reaping Machine Co.*, 152 N.Y. 540, 547 (N.Y. 1897) (holding that a plaintiff may not enforce every promise contained in a multipartite agreement; rather, the specific promise a plaintiff seeks to enforce must have been intended for the plaintiff's benefit). Thus, in the context of a multipartite contract, "the mere fact that [Plaintiffs] signed the agreement is not controlling; they may have enforceable

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and applying the law of New York, I must follow the decisions of the state's highest court, and in the absence of such decisions on an issue, must adhere to the decisions of the state's intermediate appellate courts, unless there is some persuasive indication that the state's highest court would decide the issue otherwise. See *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 245 n. 9 (2d Cir. 2007).

<sup>15</sup> While the Plaintiffs and Defendants disagree as to whether Plaintiffs were intended beneficiaries of the Revolving Lenders' promise to fund, both sides appear to agree that one must be an intended beneficiary of a promise in order to have a legal right to enforce it. **[MTD Hr'g Tr. 3:35 p.m. - 3:38 p.m.]**

rights under some of its provisions and not have enforceable rights under other provisions.” *Alexander v. United States*, 640 F.2d 1250, 1253 (Ct. Cl. 1981) (finding that party to agreement was not an intended beneficiary of a certain promise and therefore had no legal right to enforce that promise and noting that *Berry Harvester* is a “leading case” on the subject). In such cases, the “critical inquiry is whether the parties to the agreement intended to give [Plaintiffs] the right to enforce” the promise at issue at issue.<sup>16</sup> Hence, in order to have standing to sue Defendants’ for failure to fund the Revolving Loans, Plaintiffs must adequately demonstrate that they are “intended beneficiaries” of Defendants’ promise to fund the Revolving Loans under the Credit Agreement.

The question of whether a party is an intended or incidental beneficiary of a particular contractual promise can be determined “as a matter of law” based on the parties’ intentions as expressed in the operative agreement. *See generally Fourth Ocean Putnam Corp. v. Interstate Wrecking Co., Inc.*, 66 N.Y. 2d 38 (N.Y. 1985) (affirming lower court’s

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<sup>16</sup> Although this argument was not raised in its opposition papers, counsel for the Aurelius Plaintiffs asserted at oral argument that Section 260 of New York Jurisprudence (Second) Contracts and Section 297 of the Restatement (Second) of Contracts support the conclusion that all parties to a multipartite agreement are presumed to have a right to enforce every promise contained therein unless a party’s right to enforce “is specifically severed.” [MTD Hr’g Tr. 3:38 p.m.]. Having reviewed these sections, I reject this contention and note that Plaintiffs appear to have conflated two distinct concepts in advancing this argument: the first is whether a party has a legal right to enforce a particular promise; the second is whether the right to enforce a particular promise is held jointly or severally by multiple parties. The issue here is *not* whether Plaintiffs and Fontainebleau have a “joint” or a “several” (i.e., separately enforceable) right to enforce the Revolving Lenders’ promise to fund; rather, the question is whether Plaintiffs have *any right whatsoever* to enforce that promise. With respect to this issue, it is clear that the *Berry Harvester* test controls – i.e., “[w]hether the right or privilege conferred by the promise of one party to a tripartite contract belongs to one or both of the other parties depends upon the intention of the parties; the mere fact that there are three parties to the contract does not enlarge the effect of any promise, except as it may extend the advantage to two persons instead of one where that is the intention.” 22 N.Y. Jur. 2d *Contracts* § 260 (2010) (citing *Berry Harvester v. Walter A. Wood Mowing & Reaping Machine Co.*, 152 N.Y. 540 (N.Y. 1897)).



determination that, as a matter of law, party was not an intended beneficiary); *see also Berry Harvester*, 152 N.Y. at 547 (“whether the right or privilege conferred by the promise of one party to a tripartite contract belongs to one or both of the other contracting parties depend upon the intention as gathered from the words used . . .”).<sup>17</sup> If the contractual language is ambiguous, however, courts may consider the contractual language “in light of the surrounding circumstances” in order to discern the intention of the parties. *Berry Harvester*, 152 N.Y. at 547.

Traditionally, New York law held that “the absence of any duty . . . to the beneficiary [vis-a-vis a particular promise]. . . negate[d] an intention to benefit” the beneficiary. *Fourth Ocean*, 66 N.Y. 2d at 44-45. However, as New York’s highest court has noted, that requirement “has been progressively relaxed.” *Id.* (citation omitted). Today, the rule is that a beneficiary can establish that he has standing to enforce a particular promise “*only if* no one other than the [beneficiary] can recover if the promisor breaches the [promise] or the contract language . . . clearly evidence[s] an intent to permit enforcement by the third-party.” *Abu Dhabi Commercial Bank v. Morgan Stanley & Co. Inc.*, 651 F. Supp. 2d 155, 172 (S.D.N.Y. 2009) (citations and internal quotation marks omitted) (emphasis added); *see also Fourth Ocean*, 66 N.Y. 2d at 45 (concluding that a third party to a promise can enforce the promise if “no one other than the third party can recover if the promisor

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<sup>17</sup> The fact that some of the cases cited involve third-party beneficiaries that were not actually “parties” to the written agreements at issue does not render the cases inapposite. As I have already explained, it is the intent of the parties with respect to the *individual promise at issue* that is critical. *See Berry Harvester*, 152 N.Y. at 547 (“any party . . . may insist upon the performance of every promise made to him, or for his benefit, by the party or parties who made it”). For example, in a tripartite contract setting where A makes an enforceable promise to B that is expressly intended for the benefit of C, C is a “third-party beneficiary” of that promise notwithstanding the fact that he, she, or it is technically a “party” to the written agreement.

breaches *or* that the language of the contract otherwise clearly evidences an intent to permit enforcement by the third party”) (emphasis added).

Here, there is no ambiguity with respect to the promise at issue, which states that “each Revolving Lender severally agrees to make Revolving Loans *to Borrowers* from time to time during the Revolving Commitment Period.” (Cr. Agr. § 2.1(c)) (emphasis added). This promise creates a duty on the part of Defendants to make loans *to Fontainebleau* in accordance with the Credit Agreement; it does not establish a duty to the Plaintiffs here or “clearly evidence an intent to permit enforcement by [Plaintiffs].” *Fourth Ocean*, 66 N.Y. 2d at 45. Additionally, it is not the case that “no one other than [Plaintiffs] can recover if [Defendants] breache[d],” *id.*, as Fontainebleau would unquestionably be able to recover if it were able to prove that it suffered damages as a result of Defendants’ material breach of the Credit Agreement. While I recognize that “the full performance of [Defendants’ purported obligation to fund the Revolving Loans] might ultimately benefit [Plaintiffs],” this, at best, establishes that Plaintiffs were “incidental beneficiaries” of Defendants’ promise to Fontainebleau to make Revolving Loans. *Fourth Ocean*, 66 N.Y. 2d at 45; *see also Salzman v. Holiday Inns, Inc.*, 48 N.Y.S. 2d 258, 261 (N.Y. App. Div. 4th Dept. 1975) (finding Holiday Inns, an interim lender, to be an incidental beneficiary of financing agreement between plaintiff and permanent lender because agreement called for the permanent lender to pay money to plaintiff, not Holiday Inns, and further noting that “the typical case of an incidental beneficiary is where A promises B to pay him money for his expenses [and] Creditors of B (though they may incidentally benefit by the performance of A’s promise) are not generally allowed to sue A”) (citation and internal quotation marks

omitted).<sup>18</sup>

Because New York law requires that one be an “intended beneficiary” of a particular promise in order to have a legal right to enforce that promise, and because Plaintiffs have failed to adequately demonstrate that they were “intended beneficiaries” of Defendants’ promise to fund the Revolving Loans at issue, Counts I and II of the Aurelius Complaint and Count II of the Avenue Complaint must be dismissed with prejudice.<sup>19</sup>

2. *Even if Plaintiffs Had Standing to Enforce Defendants’ Promises to Fund, Defendants Were Not Obligated to Fund the March Notices of Borrowing*

Even if Plaintiffs had standing to enforce Defendants’ promises to fund the Revolving Loans at issue, Plaintiffs have not demonstrated that Defendants breached the Credit Agreement by rejecting the March Notices of Borrowing because: (1) “fully drawn,” as used in Section 2.1(c)(iii) of the Credit Agreement, unambiguously means “fully funded”; and (2) the Delay Draw Term Loans had not been “fully drawn” at the time Fontainebleau submitted the March Notices of Borrowing.

Under New York law, a breach of contract claim “cannot withstand a motion to

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<sup>18</sup> Plaintiffs cite to *Deutsche Bank AG v. J.P. Morgan Chase Bank*, 2007 U.S. Dist. LEXIS 71933 (S.D.N.Y. Sept. 27, 2007), in support of the contention that they have a legally enforceable right in Defendants’ promise to fund the Revolving Loans. This case fails to buttress Plaintiffs’ position regarding standing, as it involved claims for declaratory relief, not breach of contract – claims that have different requirements with respect to standing than the contract claims at bar. *Deutsche Bank*, 2007 U.S. Dist. LEXIS 71933, \* 5 (noting that parties were only seeking “declaration[s]”); compare *Fieger v. Ferry*, 471 F.3d 637, 643 (6th Cir. 2006) (discussing standing requirements in declaratory relief actions) with *Alexander v. United States*, 640 F.2d 1250, 1253 (Ct. Cl. 1981) (discussing standing requirements in context of multi-party contracts). Thus, contrary to Plaintiffs’ contention, the *Deutsche Bank* court did not *sub silentio* conclude that lenders are intended beneficiaries of other lenders’ promises to fund a borrower’s loans.

<sup>19</sup> See Section V, *infra* (explaining why the dismissal is with prejudice).

dismiss if the express terms of the contract contradict plaintiff[s'] allegations of breach.” *Merit*, No. 08-CV-3496, 2009 WL 3053739, \*2 (S.D.N.Y. Sept. 24, 2009) (citing *805 Third Ave. Co. v. M.W. Realty Assocs.*, 58 N.Y. 2d 451, 447 (N.Y. 1983)). Thus, courts are not required to “accept the allegations of the complaint as to how to construe” the agreement at issue. *Merit*, 2009 WL 3053739, \*2. Instead, courts must enforce written agreements according to the “plain meaning” of their terms. *Greenfield v. Philles Records*, 98 N.Y. 2d 562, 569 (N.Y. 2002). When interpreting the meaning of contractual provisions, courts are generally required to “discern the intent of the parties to the extent their intent is evidenced by their written agreement.” *Int'l Klafter Co. v. Cont. Cas. Co.*, 869 F.2d 96, 100 (2d Cir. 1989) (citing *Slatt v. Slatt*, 64 N.Y. 2d 966, 967 (N.Y. 1985)). Thus, “[i]n the absence of ambiguity, the intent of the parties *must* be determined from their final writing and no parol evidence or extrinsic evidence is admissible.” *Id.* (emphasis added) (citation omitted). However, “[e]xtrinsic evidence of the parties' intent may be considered . . . if the agreement is ambiguous, which is an issue of law for the courts to decide.” *Greenfield*, 98 N.Y. 2d at 569.

Whether an agreement is “ambigu[ous] is determined by looking within the four corners of the document, not to outside sources.” *Kass v. Kass*, 91 N.Y. 2d 554, 556 (N.Y. 1998) (citation omitted).<sup>20</sup> “Consequently, any conceptions or understandings any of the

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<sup>20</sup> Plaintiffs urge me to consider the manner in which the word “drawn” is generally used in New York statutory and case law in order to discern the intended meaning of the phrase “fully drawn,” citing to *Hugo Boss Fashions, Inc. v. Fed Ins. Co.*, 252 F.2d 608, 617-18 (2d Cir. 2001) for the proposition that “an established definition provided by state law or industry usage will serve as a default rule . . . unless the parties explicitly indicate, on the face of their agreement, that the term is to have some other meaning.” However, as the Second Circuit noted in the sentence preceding the quote excerpted by Plaintiffs, “widespread custom or usage serves to determine the meaning of a *potentially vague term*,” not an unambiguous one. *Id.* (emphasis

parties may have had during the duration of the contracts is immaterial and inadmissible.” *Int’l Klaffer Co.*, 869 F.2d at 100. Under New York law, “[t]he test for ambiguity is whether an objective reading of a term could produce more than one reasonable meaning.” *McNamara v. Tourneau, Inc.*, 464 F. Supp. 2d 232, 238 (S.D.N.Y. 2006) (citing *Collins v. Harrison-Bode*, 303 F.3d 429, 433 (2d Cir. 2002)). Thus, “[a] party . . . may not create ambiguity in otherwise clear language simply by urging a different interpretation.” *Id.* (citing *Metro. Life Ins. Co. v. RJR Nabisco, Inc.*, 906 F.2d 884, 889 (2d Cir. 1990)).

As I noted in my August 26 Order, a review of the Credit Agreement in its entirety reveals no ambiguity as to the meaning of the term “fully drawn”; to the contrary, an objective and plain reading of the agreement establishes that “fully drawn” in Section 2.1(c)(iii) means “fully funded,” and not “fully requested” or “fully demanded,” as Plaintiffs suggest. *In re Fontainebleau Las Vegas Holdings, LLC*, 417 B.R. at 660.<sup>21</sup> This

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added). Because the Credit Agreement unambiguously establishes that “fully drawn” means “fully funded,” I decline to consider “extrinsic evidence” such as custom, industry usage, or the parties’ course of dealing. *Int’l Klaffer Co. v. Cont. Cas. Co.*, 869 F.2d at 100; see also [DE 50] (noting in their opposition to Defendants’ Joint Motion to Dismiss that “Term Lenders agree . . . that the parties’ course of dealing is not an appropriate consideration in determining, on a motion to dismiss, whether it is reasonable to interpret “drawn” to mean “demanded”). However, it does bear mentioning that even the cases cited by Plaintiffs indicate that, in the context of term loans, “draw” means “fund,” as compared to “request” or “demand.” See e.g., *Destiny USA Holdings, LLC v. Citigroup Global Markets Realty Corp.*, 2009 WL 2163483, \*1, \*14 (N.Y. Sup. Ct. July 17, 2009) (concluding that Destiny Holdings was entitled to preliminary injunction requiring Citigroup to fund “pending draw requests,” thus indicating that draw means “fund” or “funding” and not “request” or “demand”), *aff’d as modified on other grounds*, 889 N.Y.S. 2d 793 (N.Y. App. Div. 4th Dept. 2009).

<sup>21</sup> While it could be argued that the doctrine of “nonparty preclusion” should apply to preclude Plaintiffs from relitigating the meaning of “fully drawn” given that they filed an amicus brief in the Florida Action regarding the very same issue, this doctrine was not raised by the Plaintiffs and I decline to apply it *sua sponte*. See *Griswold v. County of Hillsborough*, 598 F.3d 1289, 1292 (11th Cir. 2010) (clarifying doctrine of nonparty preclusion in light of recent Supreme Court decisions on the subject).

conclusion comports not only with the plain language of the Credit Agreement, but also with the “structure of the lending facilities, as discerned from the Credit Agreement itself, [which] reflects the parties’ intent to employ a sequential borrowing and lending process that places access to Delay Draw Term Loans ahead of Revolving Loans when the amount sought under the Revolving Loan facility was in excess of \$150 million.” *Id.* at 660.

To support their argument that my prior ruling regarding the unambiguous meaning of “fully drawn” was erroneous, Plaintiffs proffer various hypotheticals purporting to demonstrate that interpreting “fully drawn” to mean “fully funded” would lead to patently unreasonable results that could not have been intended by the parties to the Credit Agreement. Such arguments are not relevant or proper, for “[a]n ambiguity does not exist by virtue of the fact that one of a contract's provisions could be ambiguous under some other circumstances.” *Bishop v. National Health Ins. Co.*, 344 F.3d 305, 308 (2d Cir. 2003). To the contrary, contract law is clear insofar as “a court must look to the situation before it, and not to other possible or hypothetical scenarios” when considering a contract in order to determine whether an ambiguity exists. *Id.*; *Donoghue v. IBC USA (Publications), Inc.*, 70 F.3d 206, 215-16 (1st Cir. 1995) (noting that “a party claiming to benefit from ambiguity . . . must show ambiguity in the meaning of the agreement with respect to the very issue in dispute . . . [because] courts consider contentions regarding ambiguity or lack of ambiguity not in the abstract and not in relation to hypothetical disputes that a vivid imagination may conceive but instead in relation to concrete disputes about the meaning of an agreement as applied to an existing controversy”).<sup>22</sup>

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<sup>22</sup> Even if I were to consider Plaintiffs’ hypotheticals, it would not alter my conclusion regarding the meaning of “fully funded,” as the proffered hypotheticals fail to account for critical

In sum, having considered the arguments of the parties regarding the meaning of “fully drawn,” I conclude, for the reasons set forth above, as well as those set forth in my August 26 Order – which I expressly incorporate by reference into this Order – that the plain language, purpose, and structure of the Credit Agreement leads to the inexorable conclusion that “fully drawn” unambiguously means “fully funded” *for purposes of Section 2.1(c)(iii)* of the Credit Agreement.<sup>23</sup> Accordingly, even if my conclusion that Plaintiffs lack standing is in error, Plaintiffs’ claims for failure to fund the March Notices of Borrowing fail as a matter of law because Defendants had no obligation to make Revolving and Swing

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provisions of the Credit Agreement. For example, the hypothetical set forth in Paragraph 43 of the Aurelius Complaint ignores the existence of Section 5.2(c), entitled “Drawdown Frequency,” which vests the Administrative Agent (i.e., Bank of America) with broad discretion to permit Disbursement Agreement loans to be made more frequently than once every calendar month. If Bank of America were to arbitrarily withhold its consent in such a scenario, it would be exposing itself to a potential claim for breach of the implied covenant of good faith and fair dealing. *Dalton v. Educational Testing Service*, 87 N.Y. 2d 384, 389 (N.Y. 1995) (noting that where a “contract contemplates the exercise of discretion, [the implied covenant of good faith] includes a promise not to act arbitrarily or irrationally in exercising that discretion”).

<sup>23</sup> While I recognize that “[i]t is reasonable to assume that the same words used in different parts of the instrument are used in the same sense,” it is beyond dispute that the very same terms can have different meanings for purposes of a single agreement where “a different meaning is indicated” by the agreement itself. *Johnson v. Colter*, 297 N.Y.S. 345 (N.Y. App. Div. 4th Dept. 1937) (citation omitted). This is especially true in the context of agreements spanning hundreds of pages that cover varying topics. For example, the word “draw” might have a different meaning when used to refer to “drawing” on a letter of credit than when used in reference to “drawing” on different sources of information, “drawing” on a chalkboard, or having “drawn” on a revolving credit facility. Thus, I emphasize that I am not concluding that “draw” must *always* mean “fund” for purposes of the Credit and Disbursement Agreements. Instead, my conclusion is limited to the meaning of “fully drawn” for purposes of Section 2.1(c)(iii). However, I note that a review of other relevant provisions appears to buttress my conclusion that, in the context of Term Loans and Revolving Loans, “fully drawn” unambiguously means “fully funded.” For example, Section 5.2(c), entitled “Drawdown Frequency,” provides that Disbursement Agreement loans “shall be *made* no more frequently than once every calendar month.” (emphasis added). Thus, this provision, which regulates the frequency of “drawdowns” vis-a-vis Revolving and Term Loans, indicates that a “drawdown” is the equivalent of “making” (i.e., funding) a Revolving or Delay Draw Term Loan, and not a “request” or “demand” for such a loan.

Line Loans in excess of \$150,000,000 until: (a) the Delay Draw Term Loans were fully funded; or (b) the provisions of Section 2.1(c)(iii) were validly waived.

B. Breach of the Disbursement Agreement Against Bank of America – Count I of the Avenue Complaint and Count III of the Aurelius Complaint

In addition to the Credit Agreement claim discussed above, Plaintiffs have each asserted a contract claim against Bank of America for breach of the Disbursement Agreement. In order to state a claim for breach of contract under New York law,<sup>24</sup> a Plaintiff must adequately allege: (1) the existence of a contract, (2) the plaintiff's performance under the contract, (3) the defendant's breach of that contract, and (4) resulting damages. *JP Morgan Chase v. J.H. Elec. of New York, Inc.*, 893 N.Y.S. 2d 237, 239 (N.Y. App. Div. 2d Dept. 2010). Here, Defendant Bank of America does not dispute the existence of a contract, Plaintiffs' performance, or resulting damages. Instead, Bank of America argues that Plaintiffs have failed to adequately allege a breach of the Disbursement Agreement.

In considering Bank of America's argument, I start with Section 2.5.1 of the Disbursement Agreement, which requires Bank of America to issue a Stop Funding Notice "[i]n the event that [] the conditions precedent to an Advance have not been satisfied." The conditions precedent to an Advance are set forth in Section 3.3 of the Disbursement Agreement. One of the conditions set forth in Section 3.3 is that "[n]o Default or Event of Default shall have occurred and be continuing." (Disb. Agr. § 3.3.3). The term "Default" is specifically defined in the Disbursement Agreement as "(i) any of the events specified

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<sup>24</sup> Like the Credit Agreement, the Disbursement Agreement also contains a New York choice-of-law clause. (Disb. Agr. § 11.6).



in Article 7 . . . and (ii) the occurrence of any ‘Default’ under any Facility Agreement.” (Disb. Agr., Ex. A at 10). “Facility Agreement” is also specifically defined in the Agreement as “the Bank Credit Agreement, the Second Mortgage Indenture and the Retail Facility Agreement.” *Id.* at 12.

In Paragraphs 129-132 of the Avenue Complaint and Paragraphs 103-111 of the Aurelius Complaint, Plaintiffs allege specific facts supporting the reasonable inference that Bank of America, as Disbursement Agent, received notice from a lender in Fall 2008 that Lehman Brothers defaulted under the Retail Facility Agreement and yet failed to issue a Stop Funding Notice. Defendant Bank of America does not dispute this. Instead, Bank of America argues that: (1) the claim is insufficient because the Plaintiffs’ “fail[ed] to attach th[e] purported ‘notice’ or even identify the lender who sent the alleged communications”; and (2) pursuant to Section 9.3.2 of the Disbursement Agreement, Bank of America was “entitled to rely on certifications from [Fontainebleau] as to satisfaction of any requirements and/or conditions imposed by th[e] [Disbursement Agreement].” **[DE 35, pp. 10, 13]**. I reject Bank of America’s first argument, for at the Rule 12(b)(6) stage, I must accept all of Plaintiffs’ factual allegations in the complaints as true – i.e., Plaintiffs need not support their factual allegations with documentary evidence at this stage of the proceedings. *See Hill*, 321 F.3d at 1335. Bank of America’s second argument also fails, as there are no allegations on the face of the operative complaints establishing that Fontainebleau “certif[ied]” that Lehman Brothers had not defaulted under the Retail Facility Agreement.<sup>25</sup>

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<sup>25</sup> At oral argument, I asked whether there is “anything that anyone could point to in the complaint one way or the other that refers to Fontainebleau affirmatively certifying that there was no default”; counsel for Bank of America was unable to reference any such allegation. **[MTD Hr’g Tr. 04:19 p.m.]**

While it can certainly be inferred that such representations were made given that Fontainebleau submitted various Advance Requests subsequent to the Fall of 2008, inferences of this nature are not appropriately drawn at this stage. To the contrary, it is well-settled that I must evaluate all reasonable inferences *in favor of the Plaintiffs*. *Wilson v. Strong*, 156 F.3d 1131, 1133 (11th Cir. 1998). Because Plaintiffs' complaints adequately allege facts indicating that Bank of America knew of Lehman Brothers' default under the Retail Financing Agreement and failed to issue a Stop Funding Notice in violation of the Disbursement Agreement, Count III of the Aurelius Complaint and Count I of the Avenue Complaint will not be dismissed.

C. Breach of the Implied Covenant of Good Faith and Fair Dealing Against Bank of America – Count III of the Avenue Complaint

Count III of the Avenue Complaint asserts that Bank of America breached the implied covenant of good faith and fair dealing when it “improperly approved Advance Requests, issued Advance Confirmation Notices, failed to issue Stop Funding Notices, [] caused the disbursement of funds from the Bank Proceeds Account; and [] fail[ed] to communicate information to the Term Lenders regarding Events of Default that were known o[r] should have been known to [Bank of America].” (Avenue Compl. at ¶ 192).

While it is well-settled that breach of the implied covenant of good faith gives rise to a stand-alone cause of action under New York law, see *Granite Partners, L.P. v. Bear, Stearns & Co.*, 17 F. Supp. 2d 275, 305 (S.D.N.Y. 1998) (noting that “[b]reach of the [good faith] covenant gives rise to a cognizable claim”), it is equally settled that “New York law . . . does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when a breach of contract claim, based upon the same facts,

is also pled.” *Harris v. Provident Life & Accident Ins. Co.*, 310 F.3d 73, 81 (2d Cir. 2002). In their opposition papers, the Avenue Plaintiffs acknowledge this rule, but contend that it does not apply because its implied covenant claim is predicated, in part, upon the factual allegation that Bank of America “failed to communicate information regarding defaults,” while its Disbursement Agreement claim is not. **[DE 52]**. This argument is not a novel one, and has been roundly rejected by New York courts. *Alter v. Bogoricin*, No. 97-CV-0662, 1997 WL 691332, \*1, \*7-\*8 (S.D.N.Y. Nov. 6, 1997) (rejecting similar argument, dismissing implied covenant claim, and noting that it has been observed that “every court faced with a complaint brought under New York law and alleging both breach of contract and breach of a covenant of good faith and fair dealing has dismissed the latter claim as duplicative”).

The critical inquiry in this respect is not whether the two claims are founded upon identical facts, but whether the relief sought by Plaintiffs “is intrinsically tied to the damages allegedly resulting from [the] breach of contract.” *Id.* (quoting *Canstar v. J.A. Jones Constr. Co.*, 622 N.Y.S. 2d 730, 731 (App. Div. 1st Dept. 1995)); *Deer Park Enterprises, LLC v. Ail Systems, Inc.*, 870 N.Y.S. 2d 89, 90 (N.Y. App. Div. 2d Dept. 2008). Because the relief sought by Avenue Plaintiffs in connection with their implied covenant claim against Bank of America is “intrinsically tied to the damages allegedly resulting from [the] breach of contract” alleged in Count I, this claim must be dismissed. *Deer Park Enterprises*, 870 N.Y.S. 2d at 90 (reversing lower court’s denial of motion to dismiss and concluding that “[a] cause of action to recover damages for breach of the implied covenant of good faith and fair dealing cannot be maintained where the alleged breach is ‘intrinsically tied to the damages allegedly resulting from a breach of the contract’ ”) (quoting *Canstar*, 622 N.Y.S.

2d at 731).

D. Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants – Count IV of the Avenue Complaint

The final claim I must address is the Avenue Plaintiffs' claim against all Defendants for breach of the implied covenant of good faith and fair dealing in connection with the Credit Agreement. In support of this claim, the Avenue Plaintiffs allege that Defendants "breached the implied covenant [of good faith] by adopting a contrived construction of the Credit Agreement in order to justify their refusal to fund the March 2 Notice [of Borrowing] and the March 3 Notice [of Borrowing]." (Avenue Compl. at ¶ 198). Under New York law, claims for breach of the implied covenant of good faith are unsustainable as a matter of law if a plaintiff "seek[s] to imply an obligation of the defendants which [is] inconsistent with the terms of the contract" at issue. *Fitzgerald v. Hudson Nat'l Golf Club*, 783 N.Y.S. 2d 615, 617-18 (N.Y. App. Div. 2d Dept. 2004) (affirming dismissal of implied covenant claim where plaintiff sought to imply an obligation inconsistent with the terms of the contract); see also *Dalton v. Educational Testing Service*, 87 N.Y. 2d 384, 389 (N.Y. 1995). Because I have concluded that the purportedly "contrived construction" of "fully drawn" is, in fact, the correct interpretation, this claim fails as a matter of law, as it seeks to impose an obligation – i.e., a particular construction of the Credit Agreement's terms – that is inconsistent with the terms of the agreement.

**V. Conclusion**

Based on the foregoing, I conclude that – with the exception of Count I of the Avenue Complaint and Count III of the Aurelius Complaint – all claims asserted by the Plaintiffs warrant dismissal. The dismissal of these claims is *with prejudice* for two

reasons. First, the facts, circumstances, and applicable law indicate that any attempt to amend the dismissed claims would be futile; and second, Plaintiffs have failed to state a claim despite having previously amended their complaints.<sup>26</sup> *Novoneuron Inc. v. Addiction Research Institute, Inc.*, 326 Fed. Appx. 505, 507 (11th Cir. 2009) (affirming dismissal with prejudice where Plaintiff amended as a matter of right and later decided to litigate the merits of Defendant's motion to dismiss rather than requesting leave to amend); *Butler v. Prison Health Services, Inc.*, 294 Fed. Appx. 497, 500 (11th Cir. 2008) ("The district court . . . need not allow an amendment . . . where amendment would be futile.") (cites and quotes omitted).

\_\_\_\_\_ I note that I would normally be inclined to afford Plaintiffs an opportunity to amend their complaints to assert claims founded upon contractual promises of which they were the intended beneficiaries (e.g., promises set forth in the Intercreditor Agreement to which the parties alluded during oral argument). However, because the parties have indicated that the promises contained in the Intercreditor Agreement are not germane to this action, **[MTD Hr'g Tr. 3:26 p.m. - 3:28 p.m.]**, I see no reason to invite further amendments.

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED that:

1. Defendants' Motions to Dismiss **[DE 35]**; **[DE 36]** are GRANTED IN PART AND DENIED IN PART.
2. Counts I and II of the Aurelius Complaint are DISMISSED WITH PREJUDICE.

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<sup>26</sup> The Avenue Complaint was amended twice. The Aurelius Complaint was amended once.

3. Counts II, III, and IV of the Avenue Complaint are DISMISSED WITH PREJUDICE.
4. Count VI of the Avenue Complaint is DISMISSED WITHOUT PREJUDICE AS MOOT.
5. Defendant Bank of America shall Answer Paragraphs 1-178 and 201-203 of the Avenue Complaint **no later than Friday June 18, 2010**.
6. Defendant Bank of America shall Answer Paragraphs 1-131 and 146-153 of the Aurelius Complaint **no later than Friday June 18, 2010**.
7. **No later than Friday June 18, 2010**, the Avenue Plaintiffs shall file a Notice with this Court stating whether Count V of the Avenue Complaint seeks declaratory relief pursuant to state or federal law.
8. The Clerk is directed to send a copy of this Amended Order to the Clerk of the Judicial Panel on Multidistrict Litigation.
9. The Final Judgment previously issued in the Aurelius Action, see Case No.: 10-CV-20236, **[DE 53]** (S.D. Fla. May 28, 2010), is hereby VACATED.

DONE AND ORDERED IN CHAMBERS at Miami, Florida this 28th day of May, 2010.



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THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Bandstra  
Counsel of record

ELEVENTH CIRCUIT TRANSCRIPT ORDER FORM

PART I. TRANSCRIPT ORDER INFORMATION

Appellant to complete and file with the District Court Clerk within 10 days of the filing of the notice of appeal in all cases, including those in which there was no hearing or for which no transcript is ordered.

14

Short Case Style: ACP Master, Ltd., et al. vs Bank of America, N.A., et al.

District Court No.: 10-CV-20236-Gold Date Notice of Appeal Filed: February 11, 2011 Court of Appeals No.: Not Available

(If Available)

CHOOSE ONE: [ ] No hearing [ ] No transcript is required for appeal purposes [ ] All necessary transcript(s) on file [x] I AM ORDERING A TRANSCRIPT OF THE FOLLOWING PROCEEDINGS:

Check appropriate box(es) and provide all information requested:

HEARING DATE(S) JUDGE/MAGISTRATE COURT REPORTER NAME(S)

[x] Pre-Trial Proceedings May 7, 2010 and January 7, 2011 - Judge Gold - Joseph A. Millikan

[ ] Trial

[ ] Sentence

[ ] Other

METHOD OF PAYMENT:

[x] I CERTIFY THAT I HAVE CONTACTED THE COURT REPORTER(S) AND HAVE MADE SATISFACTORY ARRANGEMENTS WITH THE COURT REPORTER(S) FOR PAYING THE COST OF THE TRANSCRIPT.

[ ] CRIMINAL JUSTICE ACT. Attached for submission to District Judge/Magistrate is my completed CJA Form 24 requesting authorization for government payment of transcript. [A transcript of the following proceedings will be provided ONLY IF SPECIFICALLY AUTHORIZED in Item 13 on CJA Form 24: Voir Dire; Opening and Closing Statements of Prosecution and Defense; Prosecution Rebuttal; Jury Instructions]

Ordering Counsel/Party: Brett Amron/Plaintiffs

Name of Firm: Bast Amron LLP

Street Address/P.O. Box: SunTrust International Center, One Southeast Third Avenue, Suite 1440

City/State/Zip Code: Miami, FL 33133 Phone No.: 305-379-7904

I certify that I have filed the original (Yellow page) with the District Court Clerk, sent the Pink and green pages to the appropriate Court Reporter(s) if ordering a transcript, and sent a photocopy to the Court of Appeals Clerk and to all parties.

DATE: February 22, 2011 SIGNED: s/Brett Amron Attorney For: Plaintiffs

PART II. COURT REPORTER ACKNOWLEDGMENT

Court Reporter to complete and file Pink page with the District Court Clerk within 10 days of receipt. The Court Reporter shall send a photocopy to the Court of Appeals Clerk and to all parties, and retain the Green page to provide notification when transcript filed.

Date Transcript Order received:

[ ] Satisfactory arrangements for paying the cost of the transcript were completed on:

[ ] Satisfactory arrangements for paying the cost of the transcript have not been made.

No. of hearing days: Estimated no. of transcript pages: Estimated filing date:

DATE: SIGNED: s/ Phone No.:

NOTE: The transcript is due to be filed within 30 days of the date satisfactory arrangements for paying the cost of the transcript were completed unless the Court Reporter obtains an extension of time to file the transcript.

PART III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN DISTRICT COURT

Court Reporter to complete and file Green page with the District Court Clerk on date of filing transcript in District Court. The Court Reporter shall send a photocopy of the completed Green page to the Court of Appeals Clerk on the same date.

This is to certify that the transcript has been completed and filed with the district court on (date):

Actual No. of Volumes and Hearing Dates:

Date: Signature of Court Reporter: s/

**ELEVENTH CIRCUIT TRANSCRIPT ORDER FORM**

**PART I. TRANSCRIPT ORDER INFORMATION**

*Appellant to complete and file with the District Court Clerk within 30 days of the filing of the notice of appeal in all cases, including those in which there was no hearing or for which no transcript is ordered.*

14

Short Case Style: ACP Master, Ltd., et al. vs. Bank of America, N.A., et al.,

District Court No.: 10-CV-20236-Gold Date Notice of Appeal Filed: February 11, 2011 Court of Appeals No.: Not Available  
(If Available)

CHOOSE ONE:  No hearing  No transcript is required for appeal purposes  All necessary transcript(s) on file  
 I AM ORDERING A TRANSCRIPT OF THE FOLLOWING PROCEEDINGS:

*Check appropriate box(es) and provide all information requested:*

HEARING DATE(S) JUDGE/MAGISTRATE COURT REPORTER NAME(S)

Pre-Trial Proceedings May 7, 2010 and January 7, 2011 - Judge Gold - Joseph A. Millikan

Trial

Sentence

Other

**METHOD OF PAYMENT:**

I CERTIFY THAT I HAVE CONTACTED THE COURT REPORTER(S) AND HAVE MADE SATISFACTORY ARRANGEMENTS WITH THE COURT REPORTER(S) FOR PAYING THE COST OF THE TRANSCRIPT.

CRIMINAL JUSTICE ACT. Attached for submission to District Judge/Magistrate is my completed CJA Form 24 requesting authorization government payment of transcript. [A transcript of the following proceedings will be provided ONLY IF SPECIFICALLY AUTHORIZED in Item 13 CJA Form 24: Voir Dire; Opening and Closing Statements of Prosecution and Defense; Prosecution Rebuttal; Jury Instructions]

Ordering Counsel/Party: Brett Amron/Plaintiffs

Name of Firm: Bast Amron LLP

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*I certify that I have filed the original (Yellow page) with the District Court Clerk, sent the Pink and green pages to the appropriate Court Reporter(s) if ordering a transcript, and sent a photocopy to the Court of Appeals Clerk and to all parties.*

DATE: February 22, 2011 SIGNED: s/Brett Amron Attorney For: Plaintiffs

**PART II. COURT REPORTER ACKNOWLEDGMENT**

*Court Reporter to complete and file Pink page with the District Court Clerk within 10 days of receipt. The Court Reporter shall send a photocopy to Court of Appeals Clerk and to all parties, and retain the Green page to provide notification when transcript filed.*

Date Transcript Order received: 02.22.11

Satisfactory arrangements for paying the cost of the transcript were completed on: 02.22.11

Satisfactory arrangements for paying the cost of the transcript have not been made.

No. of hearing days: 2 Estimated no. of transcript pages: 95 Estimated filing date: 02.22.11

DATE: 02.22.11 SIGNED: s/ Joseph A. Millikan Phone No.: 02.22.11

NOTE: The transcript is due to be filed within 30 days of the date satisfactory arrangements for paying the cost of the transcript were completed unless Court Reporter obtains an extension of time to file the transcript.

**PART III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN DISTRICT COURT**

*Court Reporter to complete and file Green page with the District Court Clerk on date of filing transcript in District Court. The Court Reporter shall send photocopy of the completed Green page to the Court of Appeals Clerk on the same date.*

This is to certify that the transcript has been completed and filed with the district court on (date): \_\_\_\_\_

Actual No. of Volumes and Hearing Dates: \_\_\_\_\_

Date: \_\_\_\_\_ Signature of Court Reporter: s/



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case 09-2106-MDL-GOLD

IN RE: COURTROOM 11-1  
FONTAINEBLEAU LAS VEGAS MIAMI, FLORIDA  
CONTRACT LITIGATION  
MAY 7, 2010  
(Pages 1 - 63)

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TRANSCRIPT OF ORAL ARGUMENT  
BEFORE THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE

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1 *Camulos Master Fund*

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15:05:52 1           **THE COURT:** Good afternoon. On Case 09-2106, may I  
15:05:56 2 have appearances, first on behalf of the plaintiffs?

15:06:02 3           **MR. HENNIGAN:** Good afternoon, Your Honor. Michael  
15:06:04 4 Hennigan from --

15:06:05 5           **THE COURT:** You need a microphone, sir. It's all  
15:06:07 6 right. Just whatever is comfortable, you can stay seated. Just  
15:06:10 7 speak in the microphone in front of you, please.

15:06:12 8           **MR. HENNIGAN:** Good afternoon, Your Honor. Michael  
15:06:14 9 Hennigan and Kirk Dillman on behalf of the Avenue plaintiffs.

15:06:18 10           **THE COURT:** Thank you.

15:06:18 11           **MR. HEATON:** Your Honor, James Heaton, Steve Nachtwey  
15:06:23 12 and Vince Buccola on behalf of the ACP Master and Aurelius  
15:06:29 13 Capital Master plaintiffs.

15:06:30 14           **THE COURT:** All right. Thank you. Other appearances?

15:06:34 15           **MR. RICE:** Yes. Good afternoon, Your Honor, Tom Rice  
15:06:36 16 and Steve Fitzgerald from Simpson Thacher & Bartlett. We're  
15:06:40 17 here for Barclays, Deutsche Bank, JP Morgan Chase and Royal Bank  
15:06:45 18 of Scotland. Your Honor, I apologize, but counsel for Bank of  
15:06:48 19 America and Merrill Lynch who have their own motion and were  
15:06:51 20 going to argue part of the joint motion are not here, and I  
15:06:55 21 don't know where they are, Your Honor.

15:06:56 22           **THE COURT:** You know, I may be early. My office is  
15:07:01 23 telling me this is set for 3:15. I thought it was three  
15:07:02 24 o'clock.

15:07:06 25           **MR. RICE:** Okay. Our understanding was, mine certainly

15:07:09 1 was, 3:15, Your Honor.

15:07:10 2 **THE COURT:** Then let me do this. Rather than impose  
15:07:14 3 upon you, I'll wait until 3:15 and come back. I think there are  
15:07:17 4 other appearances by phone, so we'll come back and pick this up  
15:07:21 5 in just a few minutes. Thank you. Stay seated, please.

15:07:24 6 [There was a short recess taken at 3:07 p.m.]

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**AFTER RECESS**

15:17:04 8 [Proceedings in this cause resume at 3:17 p.m.]

15:17:05 9 **THE COURT SECURITY OFFICER:** All rise.

15:17:07 10 **THE COURT:** Be seated, please. So let me start again  
15:17:10 11 with appearances. Everybody can stay seated. Just speak into  
15:17:12 12 the microphones, please.

15:17:13 13 **MR. HENNIGAN:** Thank you, Your Honor, and good  
15:17:14 14 afternoon. It's Michael Hennigan on behalf of the Avenue  
15:17:17 15 plaintiffs. I'm here with my partner, Kirk Dillman.

15:17:18 16 **THE COURT:** Thank you, sir.

15:17:20 17 **MR. HEATON:** Your Honor, I'm James Heaton. With me is  
15:17:23 18 Steven Nachtwey and Vincent Buccola on behalf of the ACP Master  
15:17:29 19 and Aurelius Capital plaintiffs.

15:17:30 20 **THE COURT:** Thank you. Now, let me start with  
15:17:33 21 appearances and work around the table.

15:17:35 22 **MR. RICE:** Thank you, Your Honor. Tom Rice and Steve  
15:17:37 23 Fitzgerald from Simpson Thacher & Bartlett for Deutsche Bank, JP  
15:17:43 24 Morgan, Royal Bank of Scotland and Barclays.

15:17:49 25 **MR. CANTOR:** Good afternoon, Your Honor. Dan Cantor,

15:17:50 1 O'Melveny & Myers, on behalf of Bank of America and Merrill  
15:17:53 2 Lynch Capital Corp. and I apologize for holding up the Court  
15:17:57 3 this afternoon.

15:18:02 4 **MR. RUBINSTEIN:** Good afternoon, Your Honor. Aaron  
15:18:03 5 Rubinstein from Kaye Scholer on behalf of defendant HSH  
15:18:04 6 Nordbank.

15:18:05 7 **MR. PACCIONE:** Anthony Paccione, Your Honor, from  
15:18:07 8 Katten Muchin Rosenman for Bank of Scotland.

15:18:09 9 **THE COURT:** Sorry. You'll need to speak in the  
15:18:12 10 microphone since I have others on the telephone who won't be  
15:18:12 11 able to hear you.

15:18:13 12 **MR. PACCIONE:** Anthony Paccione, Katten Muchin Rosenman  
15:18:18 13 for Bank of Scotland, Your Honor.

15:18:20 14 **MR. FRACASSO:** Robert Fracasso, Shutts & Bowen, for  
15:18:23 15 Sumitomo Mitsui Banking Corporation.

15:18:26 16 **MR. SHELDON:** Good afternoon. Samuel Sheldon from  
15:18:28 17 McDermott Will and Emory on behalf of the Camulos Master Fund.

15:18:33 18 **THE COURT:** All right. Thank you and welcome  
15:18:34 19 everybody. I'd like to start, please, with the defendants'  
15:18:38 20 joint motions to dismiss the term lenders' complaints which is at  
15:18:44 21 Docket Entry 36. And I'd like, if you don't mind, to go through  
15:18:51 22 the various points with a counterpoint. It would be helpful to  
15:18:55 23 me rather than hear everybody's argument and all the responses.

15:19:00 24 So let's start, please, with the standing issues, and  
15:19:10 25 I've looked at this in terms of the question of which circuit's

15:19:24 1 standing requirements apply and does it make a difference here  
15:19:27 2 in terms of ultimately getting to New York law. And my  
15:19:36 3 understanding from looking at both the Eleventh Circuit and the  
15:19:42 4 Second Circuit, given the nature of this proceeding, that the  
15:19:48 5 issue of standing ultimately is a question of state law and New  
15:19:54 6 York law would apply to it.

15:19:56 7 Does anybody disagree with the analysis of how we get  
15:20:01 8 there because I imagine it's a procedural versus substantive  
15:20:04 9 issue. I know you have choice of law in your credit agreements  
15:20:15 10 and the like, and it just seems to me that I have to go through  
15:20:19 11 the analysis to get to state law issues rather than federal  
15:20:27 12 common law issues on that question.

15:20:30 13 **MR. CANTOR:** Your Honor, Dan Cantor from O'Melveny &  
15:20:33 14 Myers. We do arrive at the same place. I'm not sure whether  
15:20:35 15 you need to go through the analysis of which circuit because  
15:20:38 16 standing may be a bit of a misnomer here. It's really more an  
15:20:42 17 issue of who has a right under the contract to assert a breach  
15:20:45 18 of contract clause. And since the contract has a choice of law  
15:20:50 19 provision that provides for New York law without choice of law  
15:20:53 20 rules --

15:20:54 21 **THE COURT:** But I wanted to ask you about when you use  
15:20:58 22 standing, there are different types of standing. I think your  
15:21:02 23 argument about Article 3 standing, about whether there's an  
15:21:07 24 injury in fact as a result of a legally protected interest under  
15:21:14 25 the contract at issue, is that the kind of standing you're

15:21:17 1 talking about?

15:21:18 2 **MR. CANTOR:** No, Your Honor. I think it really is  
15:21:21 3 standing in arguably a more colloquial sense of do you have a  
15:21:26 4 right of action here under the contract, not an Article 3 is  
15:21:31 5 there an injury, is there a case of controversy but, rather,  
15:21:38 6 does the contract give you rights to enforce an alleged breach  
15:21:43 7 by one of the other contracting parties, a contract to which you  
15:21:49 8 are admittedly a party. And so as I said, we end up in the same  
15:21:53 9 place but in my mind, Your Honor, it doesn't have a  
15:21:57 10 constitutional Article 3 dimension; it's a pure contract issue  
15:22:01 11 and it's standing in a legal sense as opposed to a  
15:22:05 12 constitutional sense, an Article 3 sense.

15:22:07 13 **THE COURT:** Well, it comes to the question of whether  
15:22:11 14 the term lenders have rights sufficiently under the contracts at  
15:22:19 15 issue to raise the claims that they're talking about. You  
15:22:24 16 broadly call it standing. I don't know if this is an Article 3  
15:22:29 17 kind of analysis or something else. That's why I'm asking how,  
15:22:35 18 from your side of the table, you're requesting I approach the  
15:22:41 19 analysis.

15:22:41 20 **MR. CANTOR:** I would approach it as an issue of state  
15:22:43 21 contract law, Your Honor, not as an issue of Article 3 standing.  
15:22:48 22 This is a multiparty contract with a great many multilateral,  
15:22:55 23 bilateral promises, and the issue is whether the promise that  
15:23:00 24 the term lenders have chosen to sue on in this case is one that  
15:23:04 25 they have a contractual right to enforce. So, you know, I don't



15:23:12 1 see this as an Article 3 issue; I see it as a pure state law  
15:23:16 2 contract issue.

15:23:16 3 **THE COURT:** Okay. There is citation to a case at 405  
15:23:20 4 F.3d 964 which suggests otherwise, but tell me: Does anybody  
15:23:29 5 else on that side of the table want to get into this issue and  
15:23:34 6 give me something other than opinion but based upon citation?

15:23:41 7 All right. What about from the plaintiffs' side here?  
15:23:45 8 How would you characterize the standing issue? I know it  
15:23:48 9 ultimately comes down to state law but it just seems to me that  
15:23:52 10 I ought not skip steps as to how I get there.

15:23:55 11 **MR. HEATON:** I understand, Your Honor. I have always  
15:23:58 12 actually just thought of this as having been essentially  
15:24:03 13 innocently mislabeled. I think I agree with Mr. Cantor that  
15:24:08 14 when they said "standing," what they really meant was the term  
15:24:11 15 lenders don't have any contractual right. They don't have the  
15:24:16 16 particular contractual right that they're asserting in this  
15:24:20 17 complaint and that that would make it purely a matter of really  
15:24:23 18 interpreting the contract.

15:24:25 19 That's also consistent with some of the, well, I think,  
15:24:30 20 you know, their cite to *Berry Harvester* and the way that we've  
15:24:34 21 briefed that. I think also, just from a typical standing  
15:24:39 22 analysis, because we're parties to the contract and because we  
15:24:42 23 actually have an injury, we would get over that hurdle almost  
15:24:46 24 too easily for that to have been what I think they meant. We're  
15:24:53 25 certainly comfortable, you know, proceeding either way, but I've

15:24:56 1 always understood it as really being about the existence of a  
15:24:59 2 right to enforce under the contract.

15:25:04 3 **THE COURT:** Okay. So no one disputes that that  
15:25:07 4 question is determined under New York law in any event; is that  
15:25:08 5 correct?

15:25:16 6 **MR. HEATON:** Yes, Your Honor.

15:25:17 7 **THE COURT:** Okay. So let me ask a question here: Was  
15:25:21 8 there, as part of the overall deal on this project, an  
15:25:31 9 interlender agreement or agreements independent of the credit  
15:25:37 10 and disbursement agreements? Does anybody know? Did anybody go  
15:25:41 11 back and look?

15:25:43 12 **MR. CANTOR:** I guess my question, not to answer your  
15:25:44 13 question with a question, Your Honor, there is a document that  
15:25:47 14 I'm aware of that is called an intercreditor agreement, I  
15:25:52 15 believe, is what it is called. I apologize. As I sit here  
15:25:55 16 today, I don't remember precisely what it covers.

15:25:58 17 **MR. RICE:** Your Honor, if I may. Again, I will confess  
15:26:00 18 I did not go back and look at it. I think though that may be an  
15:26:03 19 agreement that covers not just the rights vis-à-vis the lenders  
15:26:11 20 to this credit agreement but also as Your Honor knows, there are  
15:26:12 21 retail lenders under other credit agreements, but I don't  
15:26:14 22 believe that there is -- there also is obviously security  
15:26:15 23 agreements, you know, et cetera, but I don't think it's --

15:26:22 24 **THE COURT:** Okay. I'm talking about matters from  
15:26:26 25 another life that I participated in. In a deal of this

15:26:30 1 complexity, in addition to documents like the credit agreement  
15:26:33 2 and disbursement agreement, in the course of the relationships  
15:26:40 3 between and among the creditors, all the lenders here, was there  
15:26:46 4 an interlender or intercreditor agreement that spelled out  
15:26:54 5 obligations, promises, duties and the like?

15:26:57 6 **MR. CANTOR:** Not that I'm aware of, Your Honor.

15:27:01 7 **MR. HEATON:** Your Honor, I agree with Mr. Rice. I  
15:27:03 8 think there is an interlender agreement among all of the  
15:27:08 9 lenders, not just among the lenders here. It addresses things  
15:27:11 10 really not at issue here.

15:27:13 11 **THE COURT:** Well, I'm asking whether anybody has taken  
15:27:17 12 a serious look at whatever you're referring to, since I don't  
15:27:21 13 have it, to see if it in any way pertains to the kinds of  
15:27:30 14 responsibilities and obligations that are being argued in this  
15:27:34 15 case.

15:27:34 16 **MR. CANTOR:** I have not looked for it, Your Honor. I  
15:27:36 17 will say that the disbursement agreement is so specific and is  
15:27:42 18 so extensive in terms of the laying out of the obligations of  
15:27:47 19 the various parties to the credit agreement that it would  
15:27:51 20 surprise me if there was another agreement that spoke to that  
15:27:54 21 issue any further because I'm not sure what's left to say once  
15:27:59 22 you get beyond the provisions of the disbursement agreement.  
15:28:02 23 But I cannot represent to you, Your Honor, that I've gone back  
15:28:05 24 and looked for that.

15:28:06 25 **THE COURT:** Okay. But I thought if there was some

15:28:09 1 agreement like that, certainly the plaintiffs would have brought  
15:28:12 2 it to my attention as something important to look at in addition  
15:28:18 3 to the two agreements that are at issue here. Wouldn't that be  
15:28:22 4 a fair statement if it exists at all?

15:28:25 5 **MR. HEATON:** Your Honor, it's a fair statement that if  
15:28:27 6 there were any agreement that was more specific on this question  
15:28:32 7 than what we believe supportable from the case law and the  
15:28:37 8 contract, we would have brought it to your attention.

15:28:38 9 **THE COURT:** Okay. So for purposes of our discussion, I  
15:28:42 10 will continue to assume that there is no other agreement between  
15:28:47 11 and among the creditors/lenders that pertain to any of the  
15:28:54 12 issues. So essentially under New York law, the question comes  
15:29:00 13 down to whether the plaintiffs are intended or incidental  
15:29:08 14 beneficiaries of the various obligations and promises. So since  
15:29:13 15 this is your first point on that side of the room, why don't you  
15:29:17 16 go ahead and address your arguments on it.

15:29:20 17 **MR. CANTOR:** Sure, Your Honor. As you've alluded to,  
15:29:22 18 our argument here is that the term lenders cannot sue the  
15:29:27 19 revolvers for breach of contract damages in connection with the  
15:29:31 20 revolvers' refusal to fund in response to Fontainebleau's  
15:29:37 21 notices of borrowing in March 2009 because the revolvers'  
15:29:41 22 lending commitment was a promise to Fontainebleau only.

15:29:44 23 It was not a promise to the term lenders, and the term  
15:29:47 24 lenders provided no consideration for the revolvers' commitment  
15:29:50 25 to lend funds to Fontainebleau. The term lenders do not dispute

15:29:55 1 that they provided no consideration to the revolvers, and the  
15:29:59 2 term lenders don't identify any credit agreement provision  
15:30:02 3 giving them the right to enforce the revolvers' lending  
15:30:07 4 commitment and, in fact, there is no such provision that either  
15:30:09 5 expressly or impliedly would permit the term lenders to sue the  
15:30:13 6 revolvers.

15:30:15 7 In fact, to the contrary, if you take a look at  
15:30:19 8 Section 2 of the credit agreement which is titled "Amount and  
15:30:28 9 Terms of Commitments," § 2.1 expressly states that each lender  
15:30:30 10 has a several, i.e., separate, obligation to make loans to  
15:30:36 11 Fontainebleau. And in §§ 2.7.A and 2.8.A, Fontainebleau  
15:30:40 12 provides separate considerations in the form of promises to  
15:30:43 13 repay the loans and commitment fees to each of the lenders.

15:30:48 14 So the term lenders' assertion which they made in their  
15:30:52 15 opposition papers that there are no bilateral promises here is  
15:30:57 16 demonstrably false. In fact, there are dozens of bilateral  
15:31:01 17 promises here. There are as many bilateral promises as there  
15:31:05 18 are lenders. They may all have identical or near identical  
15:31:08 19 terms, but each one of them is a separate loan. It's a separate  
15:31:11 20 lending promise and a separate promise to repay.

15:31:15 21 So plaintiffs' argument that they can enforce mutual  
15:31:18 22 obligations is meaningless because they're unable to identify  
15:31:23 23 any mutual obligations, and it's been the law in New York for  
15:31:27 24 over 110 years now that merely because you are a party to a  
15:31:32 25 multiparty contract, that does not mean that you have the right

15:31:36 1 to enforce all of that contract's promises. And none of the  
15:31:40 2 cases that plaintiffs have cited in their opposition brief,  
15:31:43 3 which I'm happy to get into if Your Honor would like, requires  
15:31:46 4 any different result.

15:31:48 5 So at the end of the day because the term lenders do  
15:31:52 6 not dispute that there's no provision that entitles them to  
15:31:57 7 enforce the revolvers' commitment and that they provided any  
15:32:00 8 consideration for it, under the controlling law in *Berry*  
15:32:03 9 *Harvester* they do not have any basis to maintain a breach of  
15:32:08 10 contract claim against the revolvers for the revolvers' funding  
15:32:12 11 commitments.

15:32:14 12 **THE COURT:** Anyone else want to add to that argument?

15:32:16 13 **MR. RICE:** Your Honor, if I may just very briefly. Tom  
15:32:19 14 Rice. You know, the plaintiffs argue nonetheless that somehow  
15:32:25 15 they relied on, you know, the revolving commitment of the  
15:32:29 16 revolving lenders, and I just would ask Your Honor to take a  
15:32:33 17 look at, you know, both the provisions of § 2.1 which talk about  
15:32:37 18 what they did rely on in making term loans and delay draw term  
15:32:42 19 loans and contrast that with §§ 2.5 and 3.1 of the credit  
15:32:47 20 agreement which are provisions where in other contexts the  
15:32:53 21 parties to this contract show that they know exactly how to make  
15:32:57 22 clear when they're relying on the commitment of other lenders.

15:33:01 23 Those two provisions relate to the letter of credit  
15:33:03 24 commitment and the swing line loan commitment where one bank  
15:33:06 25 goes out-of-pocket and relies on other banks to basically

15:33:10 1 reimburse it when they go out-of-pocket. In each of those  
15:33:12 2 contexts, the parties make absolutely clear that one bank's  
15:33:16 3 commitment is in reliance on another. That is glaringly absent  
15:33:24 4 from any of the provisions relating to initial term loans or  
15:33:27 5 delay draw terms loans.

15:33:29 6 **MR. CANTOR:** And, Your Honor, if I may, I just to add  
15:33:30 7 one final point. There was a suggestion in the term lenders'  
15:33:33 8 papers that somehow the credit agreement reflects an agreement  
15:33:36 9 among the lenders to share the risks of the lending transaction  
15:33:41 10 in a ratable fashion. I think, Your Honor, that ignores what  
15:33:46 11 you recognized last summer in dealing with the Fontainebleau  
15:33:49 12 motion, which is the sequential structure of this credit  
15:33:52 13 facility, whereby you weren't going to be able to get to the  
15:33:56 14 entire revolver until after the term and delay draw loans had  
15:34:00 15 been exhausted. That shows that the term lenders were always  
15:34:03 16 going to bear the risk that for some reason or another the  
15:34:07 17 revolvers weren't going to end up funding their loans. They've  
15:34:11 18 got no basis for a breach of contract claim here, Your Honor.

15:34:14 19 **THE COURT:** Then let me shift over. I want to make  
15:34:17 20 sure that I've covered all of your arguments that you've raised  
15:34:21 21 on this issue and you didn't have anything else you wanted to  
15:34:30 22 bring to my attention that has not been briefed. Now's your  
15:34:30 23 opportunity.

15:34:31 24 **MR. HEATON:** Yeah. I do want to emphasize something,  
15:34:35 25 Your Honor. We could've briefed this better and it gets to this

15:34:38 1 point that merely because you are a party to a joint contract  
15:34:40 2 doesn't mean you can enforce every promise. That's an  
15:34:42 3 uncontroversial statement.

15:34:45 4 The necessary rest of that is if there are express  
15:34:49 5 words of severance, then you cannot enforce a right given you  
15:34:54 6 under that contract. And what I wish we would've done and what  
15:34:57 7 I'd appreciate the opportunity to do here now, Your Honor, is to  
15:35:00 8 point Your Honor to -- defendants cite 22 New York Jurisprudence  
15:35:06 9 2d Contracts, Section 260, which says: "Words of express  
15:35:11 10 joinder are not necessary to create a joint obligation or  
15:35:15 11 right."

15:35:16 12 **THE COURT:** Is this something you briefed or is this  
15:35:18 13 something you just came up with?

15:35:20 14 **MR. HEATON:** It's in the -- what we briefed was the  
15:35:25 15 point that we don't need -- the contract itself shows a joint  
15:35:31 16 obligation. What I think is not clear in there enough is that  
15:35:36 17 the premise that a joint contract must have express words  
15:35:43 18 including people in the set of people who can enforce rights is  
15:35:49 19 false; and the defendants' citation to this 22 New York  
15:35:56 20 Jurisprudence 2d Contracts, it's also in the Restatement  
15:35:59 21 (Second) of Contracts 297.

15:36:00 22 So what happens in *Berry Harvester*, for example, is  
15:36:03 23 that *Berry Harvester* is a contract that actually does exclude  
15:36:07 24 people from enforcing rights, and it's important because the  
15:36:11 25 defendants hammer on this idea that the obligation to lend is



15:36:18 1 severed, it's not joint among lenders; but there is no  
15:36:25 2 equivalent severing of the right to enforce that obligation, and  
15:36:28 3 that is what would have to be in this joint contract under New  
15:36:31 4 York law.

15:36:32 5 They focus on from whom the duty is owed. They don't  
15:36:36 6 point to anything severing to whom performance is owed, and  
15:36:42 7 that's why they haven't shown that this joint contract under New  
15:36:49 8 York law doesn't allow the term lenders to enforce.

15:36:54 9 The other point is that to look at these contracts as  
15:36:58 10 if they are separate contracts is commercially absurd. No term  
15:37:05 11 lender would enter into these agreements if theirs was the only  
15:37:11 12 enforceable agreement, that all the other term lenders could  
15:37:15 13 lend if they wanted to.

15:37:17 14 **THE COURT:** Are you, in effect, asking me to rewrite  
15:37:19 15 your agreement for you at this late stage? If these were  
15:37:25 16 crucial issues -- and I'm not saying that they weren't -- why  
15:37:30 17 weren't they in the document or in some other intercredit or  
15:37:37 18 interlender agreement spelling it out?

15:37:39 19 **MR. HEATON:** Your Honor, because New York law is  
15:37:41 20 crystal clear on this point, that words of express joinder  
15:37:46 21 aren't necessary in a joint contract.

15:37:48 22 What you have to do if you want a right not to be  
15:37:53 23 enforceable by someone in a joint contract, or if you want a  
15:37:57 24 right, a duty, to be severed is you have to expressly sever it.  
15:38:02 25 This contract is no doubt written in reliance on that background

15:38:09 1 law. It is a false premise that we don't have a right to  
15:38:14 2 enforce unless it is specifically there. It's the other way  
15:38:17 3 around. We have a right to enforce unless it is specifically  
15:38:23 4 severed.

15:38:23 5 **THE COURT:** Response?

15:38:24 6 **MR. CANTOR:** Yes, Your Honor. I think -- I'm not sure  
15:38:27 7 what words it is that they're looking for beyond a description  
15:38:31 8 of the lending obligation that's several and a description of  
15:38:35 9 the repayment obligation as being several.

15:38:40 10 They've mischaracterized the facts in *Berry Harvester*.  
15:38:44 11 In *Berry Harvester* what the Court looked at in deciding that  
15:38:48 12 there were separate promises was the fact that one portion of  
15:38:50 13 the contract was introduced by the words "It is mutually agreed  
15:38:55 14 by and between two of the parties."

15:38:58 15 Well, while we don't use the exact identical words -- and  
15:39:00 16 I assume that plaintiffs are not arguing that there is some  
15:39:03 17 magic talismanic set of words that need to be uttered here -- it  
15:39:08 18 is clear from the face of the contract that there are separate  
15:39:12 19 lending agreements that are all bound together in one contract  
15:39:16 20 that is designed to be administered jointly but that still  
15:39:23 21 reflect separate obligations both on the part of the lenders to  
15:39:25 22 lend and on the part of the borrower to repay.

15:39:33 23 I don't want to venture outside the four corners of the  
15:39:36 24 contract either with respect to their commercially reasonable  
15:39:39 25 argument, but presumably what they were expecting when they went

15:39:41 1 into this contract was that they were going to be repaid by the  
15:39:44 2 borrower. They probably had no expectations as to what was  
15:39:47 3 going to happen vis-à-vis other lenders. They wouldn't have  
15:39:51 4 been focusing on other lenders but they certainly knew, given  
15:39:52 5 the sequential structure of the contract, that there was a risk  
15:39:55 6 that for one reason or another that when they funded up front at  
15:40:00 7 the closing in the case of the initial term lenders or at some  
15:40:03 8 point earlier in the process in the case of the delay draw  
15:40:06 9 lenders that the revolving lenders would be relieved of their  
15:40:11 10 obligations to fund and would not fund. That's a risk that they  
15:40:14 11 clearly bore on the face of the contract.

15:40:17 12 **THE COURT:** Anything else anybody wants to argue?

15:40:19 13 **MR. HENNIGAN:** If I may, Your Honor. Michael Hennigan  
15:40:21 14 on behalf of the Avenue plaintiffs. There is a clause here that  
15:40:26 15 has not been discussed which is the in-balance test that is  
15:40:29 16 required before any funding is permitted or required under the  
15:40:34 17 agreement.

15:40:35 18 There is required to be a certification that there are  
15:40:38 19 sufficient funds left to complete the project at every phase of  
15:40:43 20 the project. That is there in order to insure that the project  
15:40:48 21 has sufficient credit accessible to it in order to complete the  
15:40:52 22 project and specifically there for the benefit of each lender  
15:40:57 23 whose turn it is to lend. And so that is a clause that, I  
15:41:02 24 think, does knit together all of these obligations, to say that  
15:41:06 25 we on our side, the term lenders, were looking to the continued

15:41:11 1 availability of those loans before we were obligated to fund at  
15:41:16 2 all.

15:41:17 3 **THE COURT:** Any response?

15:41:18 4 **MR. CANTOR:** Your Honor, that's really comparing apples  
15:41:21 5 and oranges. The law is clear that you're not going to have the  
15:41:25 6 right to enforce a promise that was not made to you unless there  
15:41:30 7 is something in the contract that makes it clear that you have  
15:41:34 8 the right to enforce that promise.

15:41:37 9 The promise here was by the revolving lenders to lend  
15:41:42 10 money to Fontainebleau. There is nothing on the face of the  
15:41:46 11 contract itself which in any way indicates that if the revolving  
15:41:51 12 lenders did not lend to Fontainebleau that the other lenders  
15:41:56 13 would have the right to sue Fontainebleau, excuse me, sue the  
15:42:01 14 revolvers for damages for their failure to lend money to  
15:42:04 15 Fontainebleau. That's been the law for over 110 years and to  
15:42:10 16 delve into the minutia of this complex contractual funding  
15:42:16 17 arrangement in an effort to shore up what should have been a  
15:42:19 18 very basic provision in the contract, I think, is exalting form  
15:42:27 19 way over substance.

15:42:28 20 **THE COURT:** All right. Moving on, the next area of  
15:42:34 21 concern has to do with the issues associated with whether the  
15:42:38 22 term lenders state a claim for breach of contract based on the  
15:42:44 23 March 2<sup>nd</sup> and 3<sup>rd</sup> notices of borrowing and as part of that, we  
15:42:49 24 get to the issue of the question of fully drawn and fully funded  
15:43:02 25 or the like which I've been through before but as pointed out,

15:43:09 1 there are matters that needed to be brought to my attention by  
15:43:13 2 the term lenders that they did not sufficiently have the  
15:43:17 3 opportunity as amicus to address.

15:43:20 4 So let me turn it back to whoever is going to argue  
15:43:23 5 those points of your brief if there's something in addition that  
15:43:26 6 you want to bring to my attention based upon all the  
15:43:30 7 submissions.

15:43:30 8 **MR. RICE:** Your Honor, this is Tom Rice. I would guess  
15:43:33 9 just to be brief -- and I won't reargue this. We've been over  
15:43:36 10 this ground with the term lenders, certainly Mr. Hennigan's  
15:43:40 11 clients in the room before. But, you know, it's absolutely  
15:43:43 12 crystal clear, Number 1, that Your Honor has already ruled on  
15:43:45 13 this in the Fontainebleau case and even though they try to  
15:43:49 14 characterize what they're doing as new, an awful lot of it is  
15:43:54 15 rehashing.

15:43:55 16 I think Your Honor has already found twice, both on  
15:43:58 17 denying Fontainebleau's motion for summary judgment and for its  
15:44:03 18 application for an interlocutory appeal, the Court has made  
15:44:06 19 clear that it's not looking at the general meaning of the term  
15:44:10 20 "drawn" or "fully drawn." The Court was looking at the meaning  
15:44:14 21 of that term within the four corners of this contract and, most  
15:44:18 22 importantly, you know, looking at § 2.B.3, the Court properly  
15:44:22 23 found that that could only mean "fully funded."

15:44:26 24 So all of the references to dictionary definitions or  
15:44:29 25 how it's used in cases, even though we don't think that supports

15:44:32 1 their claim, that's not new. I think Your Honor has already  
15:44:35 2 rejected that.

15:44:36 3 Similarly, the references to other places in the  
15:44:44 4 contract where words like "draw" are used, Your Honor has dealt  
15:44:47 5 with that already and has disposed of those arguments and I  
15:44:49 6 won't go through those.

15:44:51 7 I guess there are three new arguments, and I'm happy to  
15:44:56 8 address, you know, any questions Your Honor would have about  
15:44:58 9 them, but I think we have really, you know, addressed each of  
15:45:02 10 those. I think the main one or the only one that's really based  
15:45:06 11 on an interpretation of the contract is this idea that, you  
15:45:09 12 know, in § 2.B.3 rather than saying "delay draw term loans" it  
15:45:15 13 says "delay draw term loan," so therefore this clause doesn't  
15:45:18 14 mean what Your Honor found it to mean because it's only talking  
15:45:22 15 about the loan of each individual lender that they severally  
15:45:28 16 make, is frankly, Your Honor, specious.

15:45:32 17 Number 1, the agreement itself in § 1.2.B says, you  
15:45:37 18 know, it clearly says that plural means singular, singular means  
15:45:41 19 plural. And reading this in context, it's clear § 2.B.3 is  
15:45:46 20 talking about the proceeds to be received from the delay draw  
15:45:49 21 term loans that are made in response to any particular notice of  
15:45:53 22 borrowing. That's clearly what it means.

15:45:56 23 Even more importantly, their argument doesn't deal with  
15:46:00 24 the language of 2.B.3 that says those proceeds will be applied  
15:46:07 25 first to repay in full the then outstanding revolving term

15:46:11 1 loans, and that just can't happen if, as Your Honor has already  
15:46:15 2 found, if "fully drawn" meant "fully requested" as opposed to  
15:46:20 3 "fully funded."

15:46:21 4 Your Honor, I know you don't need to hear this. I'll  
15:46:25 5 stop. The other arguments, I think, you know, as we've laid out  
15:46:27 6 in our reply papers, are similarly, I think, just totally devoid  
15:46:30 7 of any merit and indeed the other ones go beyond the four  
15:46:33 8 corners of the contract as well, but I'm obviously happy to  
15:46:36 9 answer any questions.

15:46:38 10 **THE COURT:** All right. Anything that you want to cover  
15:46:40 11 that hasn't been already developed in the papers or you want to  
15:46:46 12 emphasize?

15:46:47 13 **MR. HEATON:** I won't emphasize anything. Your Honor, I  
15:46:49 14 would like to take on the charge that our use of "delay draw  
15:46:53 15 term loan" is specious. That argument, the line of reasoning  
15:47:01 16 that revolvers suggested and that the Court adopted in the  
15:47:03 17 August 2009 opinion just does not work because 2.1.B.3 uses the  
15:47:11 18 term "delay draw term loan."

15:47:15 19 You can go, for example, we didn't have the chance to  
15:47:17 20 do this because this was an argument that was fleshed out on the  
15:47:21 21 reply, just go to the definition of "delay draw commitment" in  
15:47:27 22 the credit agreement. "Delay draw commitment" means as to any  
15:47:31 23 delay draw lender the obligation of such lender, if any, to make  
15:47:37 24 delay draw term loan.

15:47:39 25 Go to "delay draw lender," same page, Page 12 of the

15:47:44 1 credit agreement, "A delay draw lender means each lender that  
15:47:45 2 has a delay draw commitment or is the holder of a delay draw  
15:47:50 3 term loan."

15:47:50 4 If the parties had meant that the amount of the entire  
15:47:57 5 borrowing had to be bigger than the outstanding revolving loan,  
15:48:01 6 they would have used the term they used in 2.1.B.1 which is each  
15:48:06 7 borrowing under the delay draw commitment.

15:48:09 8 So it may be that "drawn" should mean "funded," but  
15:48:18 9 that reasoning doesn't work. And in light of all the rest of  
15:48:23 10 what we point out in our briefs, a reasonable person can hold  
15:48:27 11 the view that "drawn" means "demanded" there and that's all we  
15:48:33 12 have to show.

15:48:34 13 **MR. RICE:** Your Honor, just very briefly. If "delay  
15:48:36 14 draw term loan" meant what was funded by a single delay draw  
15:48:44 15 term lender, then this 2.B.3 doesn't make any sense at all  
15:48:49 16 because there's no way that those monies could ever be applied  
15:48:52 17 to repay in full on these outstanding revolving loans. Clearly  
15:48:57 18 the agreement, including 1.2, I said "B" before; it's 1.2.D  
15:49:02 19 which says "The meanings given to terms defined herein shall be  
15:49:06 20 equally applicable to both the singular and plural forms of such  
15:49:09 21 terms," gives the Court the ability, indeed I think it is the  
15:49:12 22 inescapable ability, to interpret this in the manner that we've  
15:49:18 23 suggested and in the manner that Your Honor has previously  
15:49:21 24 found.

15:49:24 25 **THE COURT:** All right. Is there anything else that you



15:49:26 1 want to bring to my attention that came up in the reply that you  
15:49:31 2 haven't had a chance to address?

15:49:34 3 **MR. HEATON:** Just to respond to the reply in full  
15:49:38 4 point. Your Honor, it's very simply a flow of funds mechanism.  
15:49:42 5 It says each loan that comes in has to be set out over here  
15:49:47 6 until that thing is repaid in full, and then the extra monies  
15:49:52 7 go elsewhere into the bank proceeds account.

15:49:55 8 At worst for the term lenders "in full" creates an  
15:50:01 9 ambiguity, but it can never be such a strong ambiguity that it  
15:50:06 10 can overcome what is obviously the meaning of "delay draw term  
15:50:11 11 loan" which is the loan that each delay draw lender makes.

15:50:15 12 **MR. RICE:** I'm not going to respond further except to  
15:50:17 13 say that Mr. Heaton has not addressed § 1.2.D which gives Your  
15:50:21 14 Honor actually the ability and, I think, obligates us to  
15:50:22 15 interpret this in the way that makes sense within the context of  
15:50:26 16 the agreement.

15:50:28 17 **THE COURT:** All right. I think everybody has had the  
15:50:32 18 opportunity through the briefing to point out their various  
15:50:35 19 positions, particularly as it relates to what I have said in a  
15:50:40 20 prior order, so let's go to the remainder of the points if you  
15:50:45 21 feel that oral argument is necessary on any of those remaining  
15:50:52 22 issues on your motion.

15:50:53 23 **MR. RICE:** Your Honor, it's me, Tom Rice, again. Let  
15:50:57 24 me just make one other point if I can on the argument.

15:50:58 25 **THE COURT:** Go ahead.

15:50:59 1           **MR. RICE:** I mean, there really are -- you know, we  
15:50:59 2 made a number of arguments, but I think the only other one that  
15:51:03 3 I wanted to focus on was our argument that by the time the  
15:51:10 4 second notice of borrowing came in April, the April 21<sup>st</sup> notice  
15:51:13 5 of borrowing for which we were sued for allegedly breaching  
15:51:17 6 that, that that claim relating to that breach, you know, fails  
15:51:23 7 as a matter of law because it is conceded, indeed it's  
15:51:29 8 affirmatively alleged, that the day before that the revolving  
15:51:31 9 lenders had issued notice of termination of their commitments.

15:51:36 10           It's conceded as well, both in the papers and  
15:51:41 11 otherwise, that had there been an event of default by  
15:51:45 12 Fontainebleau on April 20<sup>th</sup>, that notice of termination could be  
15:51:53 13 issued and, indeed, there are affirmative allegations by the  
15:51:59 14 plaintiffs which show why -- withdrawn.

15:52:03 15           The plaintiffs have not alleged the absence of an event  
15:52:06 16 of default and indeed through their own pleadings we know why,  
15:52:11 17 because they affirmatively allege elsewhere the existence of the  
15:52:14 18 events of default. So their entire argument with regard to the  
15:52:19 19 April 21 notice of borrowing was that the termination of the  
15:52:20 20 commitments on April 20 was no good because the reasons for that  
15:52:24 21 termination were not given.

15:52:26 22           And, Your Honor, what we've laid out in our papers that  
15:52:30 23 certainly they've asserted -- they have pointed to the Court for  
15:52:33 24 no authority for that proposition, and I don't know that there  
15:52:38 25 is any in the case law or, more importantly, within the contract

15:52:41 1 itself.

15:52:44 2 I think looking at the relevant provisions of  
15:52:48 3 Section 8, it talks about providing a notice or by notice  
15:52:55 4 terminating. It's clear they're talking about what the notice  
15:52:59 5 should be, is a notice that the commitment is terminated.  
15:53:02 6 There's nothing in there to suggest that they're supposed to be  
15:53:05 7 given notice of the default which gives rise to the termination;  
15:53:09 8 and we pointed to, in a footnote, I'm sorry to say, in our  
15:53:13 9 papers, to § 8.D.2 which shows, you know, again, how the parties  
15:53:19 10 when they mean to require notice of a default, as opposed to  
15:53:24 11 notice of a termination, of how that's done.

15:53:27 12 And then, Your Honor, if I could just briefly refer to  
15:53:30 13 several other provisions in the contract that make clear when  
15:53:33 14 the parties are looking for specificity in terms of what the  
15:53:36 15 notice will give, they know exactly how to do that. Briefly, I  
15:53:41 16 refer the Court to § 6.7 in which when the borrower has an  
15:53:45 17 obligation to give a notice of its defaults when they occur. It  
15:53:50 18 makes clear that they shall "set forth details of the occurrence  
15:53:53 19 referred to therein and stating what action the company is  
15:53:56 20 proposed to take thereto."

15:53:58 21 So when the parties are looking for in the agreement  
15:54:01 22 detail in terms of the notice, they say so, and I'll just give  
15:54:05 23 you cites without burdening you with the argument about them,  
15:54:08 24 but similar specificity is required in § 5.1 relating to  
15:54:14 25 conditions for the closing date, § 2.17 relating to notice of

15:54:20 1 increased borrowing costs as a result of changes in law, § 6.8  
15:54:25 2 relating to environmental law issues and, maybe most obviously,  
15:54:31 3 in §§ 2.4 and 2.6 in notices of borrowing where there's  
15:54:36 4 specificity as to when details of the notice of borrowing need  
15:54:40 5 to be given.

15:54:41 6 **THE COURT:** Let me go back to one point because, again,  
15:54:45 7 I'm not trying to go outside the scope of the pleadings, but  
15:54:48 8 there is reference to the Aurelius complaint at Paragraph 68,  
15:54:53 9 and that is when the March 2<sup>nd</sup> third notice of borrowing came  
15:55:08 10 forward. My understanding is that most of the delay draw lenders  
15:55:19 11 refused to fund, essentially for the reasons that were  
15:55:27 12 incorporated in the responses; and it wasn't until it was  
15:55:32 13 severed out, that is, the draw term request was made  
15:55:36 14 independent, that there was funding by the draw term lenders.

15:55:39 15 Now, I wanted to go over the procedure on that and make  
15:55:44 16 sure that I understood that this is sufficiently from the  
15:55:49 17 pleadings itself. But there was a committee made up of the  
15:55:56 18 revolvers and the draw term lenders that met on this and made  
15:56:03 19 their decision, forwarded on to Bank of America and then Bank of  
15:56:10 20 America said, "Well, whoever disagrees with this can act  
15:56:15 21 independently." Is that a fair analysis of what --

15:56:21 22 **MR. RICE:** Yes, I believe it is, Your Honor. The  
15:56:23 23 complaints fairly allege that on March 2 there was a borrowing,  
15:56:29 24 a notice of borrowing for \$670 million. It was corrected to  
15:56:33 25 \$656 million on March 3.

15:56:39 1 On March 4<sup>th</sup>, there is reference in the complaint, and  
15:56:44 2 therefore we attached it to our motion papers, so I don't think  
15:56:49 3 it's outside the record -- it's Exhibit E to my affidavit with  
15:56:54 4 our motions -- there is a communication from Bank of America's  
15:56:59 5 agent to lenders and professionals who get these things which  
15:57:03 6 says, "We're posting this renewed loan notice and we're advising  
15:57:12 7 you that we formed an ad hoc committee of lenders."

15:57:17 8 **THE COURT:** This is the steering committee of lenders.

15:57:19 9 **MR. RICE:** It was called an ad hoc steering committee  
15:57:23 10 of lenders which included revolving lenders and some term loan  
15:57:28 11 lenders as well.

15:57:30 12 **THE COURT:** Were these plaintiffs members of that  
15:57:32 13 committee?

15:57:33 14 **MR. RICE:** I believe, Your Honor, that predecessors of  
15:57:35 15 some of the plaintiffs were. Highland, for example, is one.  
15:57:40 16 This is not in the record, I don't believe, Your Honor, you  
15:57:42 17 know, on the motion; but I do believe that at least one or a  
15:57:48 18 term loan only member was Highland, which I believe some of the  
15:57:54 19 plaintiffs who are on the other side of the table have acquired  
15:57:57 20 their interest.

15:57:58 21 But that ad hoc committee said it unanimously supported  
15:58:02 22 the interpretation of fully drawn that we've argued and Your  
15:58:05 23 Honor has found, and then it goes on to state importantly -- and  
15:58:09 24 I believe it is both alleged and it is also here in the  
15:58:13 25 exhibit -- that "lenders which disagree with the steering

15:58:16 1 committee's position are asked to immediately contact Bank of  
15:58:19 2 America as administrative agent to make operational arrangements  
15:58:22 3 for funding their portion of the requested borrowing."

15:58:28 4 **THE COURT:** Okay. So at that juncture what Bank of  
15:58:30 5 America was saying if there were any draw term lenders that  
15:58:35 6 disagreed with the ad hoc steering committee's position, they  
15:58:39 7 can act independently.

15:58:41 8 **MR. RICE:** They can go ahead and fund and none did,  
15:58:43 9 Your Honor. This is, I think, in the complaints. None did  
15:58:46 10 until there was yet a third borrowing notice which removed the  
15:58:51 11 request for the revolver.

15:58:53 12 **THE COURT:** So let me go back to that issue in terms of  
15:58:56 13 what's on the face of the complaint and what's fairly part of  
15:59:04 14 these proceedings. You're talking about course of dealings and  
15:59:07 15 what's commercially fair and all, but didn't your predecessors  
15:59:13 16 agree with Bank of America that that was the proper position  
15:59:17 17 because they didn't come back after the fact and say, "You know  
15:59:21 18 what, we don't believe that's right. We're going to fund  
15:59:25 19 separately to protect our position."

15:59:28 20 **MR. HEATON:** Your Honor, this is a great example of why  
15:59:29 21 we shouldn't go outside of the record at a time like this  
15:59:33 22 because Your Honor is not in a position to know yet, without  
15:59:38 23 benefit of expert testimony or fact testimony, what the course  
15:59:41 24 of conduct is for lenders in a syndicate when their  
15:59:46 25 administrative agent tells them --

15:59:46 1           **THE COURT:** I didn't ask about that. I'm asking what's  
15:59:49 2 fairly on the face of the complaint that there was a procedure  
15:59:56 3 in process where Bank of America said, "This is the position of  
16:00:01 4 the ad hoc committee. We're going to proceed to not fund and if  
16:00:08 5 any term lenders disagree, go ahead and you may act separately."  
16:00:13 6 I mean, that's not subject to expert testimony. I'm just asking  
16:00:17 7 if that's a fair statement of what appears on the face of what  
16:00:21 8 has been pled.

16:00:23 9           **MR. HEATON:** That's a fair statement. What would be  
16:00:25 10 unfair would be to infer from that that the reason that the term  
16:00:32 11 lenders did not fund was that they agreed with, acquiesced in,  
16:00:41 12 Bank of America's decision. That ad hoc committee was very ad  
16:00:44 13 hoc. It was not any official committee.

16:00:48 14           And to get back to the interrelatedness of a  
16:00:52 15 transaction like this, something that the Court in the Deutsche  
16:00:55 16 Bank case that we cite recognized, and which would be proven if  
16:01:00 17 we had the chance to take evidence on this, is that no one is  
16:01:09 18 going to fund into that sort of a situation.

16:01:15 19           The whole idea here is that either everybody's funding  
16:01:21 20 or this thing doesn't make any sense. And what the evidence  
16:01:24 21 would show when we got there is Bank of America knew full well,  
16:01:28 22 or should have known full well, that no one was going to fund  
16:01:32 23 once they had announced that their decision was it wasn't a  
16:01:38 24 valid notice.

16:01:39 25           And I think, you know, if we're going to go outside

16:01:42 1 like this or if we're gonna look at stuff which is, you know,  
16:01:46 2 outside the pleadings, but certainly outside the four corners of  
16:01:48 3 the agreement, all of this is going to show that these terms are  
16:01:54 4 susceptible to reasonable differences of opinion, and we need to  
16:01:58 5 take discovery to figure out what this means.

16:02:01 6 And when Your Honor went through this in August 2009,  
16:02:05 7 you had two people before you saying this is unambiguous and the  
16:02:09 8 other guy is being unreasonable. Their view is unreasonable. I  
16:02:12 9 think the term lenders are telling it like it is with respect to  
16:02:17 10 these items. This term "fully drawn" is ambiguous in this  
16:02:21 11 agreement.

16:02:22 12 You know, there is ambiguity in this agreement.  
16:02:28 13 Reasonable minds can differ and they did differ because some of  
16:02:30 14 the term lenders funded.

16:02:36 15 **MR. RICE:** Your Honor, if I may just very quickly.  
16:02:39 16 What is before Your Honor, you know, based on the pleadings and  
16:02:40 17 the agreements are as Your Honor stated: After the second  
16:02:44 18 borrowing request on March 3, Bank of America gave the notice  
16:02:49 19 that it gave. It was also in the record that the credit  
16:02:51 20 agreement says each lender is obligated to make its own  
16:02:55 21 decisions without reliance on anybody else, and what's also in  
16:02:58 22 the record from Mr. Heaton's pleading, as well as elsewhere, is  
16:03:04 23 that nobody funded in response to that second borrowing request  
16:03:08 24 and did not fund until the request for the revolving loan was  
16:03:15 25 removed from the agreement. I think that clearly is supportive



16:03:19 1 of the clear and unambiguous reading of "fully funded" that Your  
16:03:23 2 Honor has previously found.

16:03:25 3 **THE COURT:** All right. Is there anything else in the  
16:03:30 4 motion that anybody feels they need to bring up at this point in  
16:03:34 5 oral argument that's not already covered by the papers?

16:03:39 6 **MR. RICE:** Nothing from me, Your Honor.

16:03:42 7 **THE COURT:** Anyone else in terms of the motion because  
16:03:46 8 we've been at this about 45 minutes, and I want to have  
16:03:50 9 sufficient time for the other issues.

16:03:53 10 Anything else from your side on that?

16:03:56 11 **MR. HEATON:** No, Your Honor. Thank you.

16:03:57 12 **THE COURT:** All right. Thank you. So let me turn to  
16:04:02 13 Bank of America's motion to dismiss the term lenders'  
16:04:06 14 disbursement agreement claims which is Docket Entry 35 and  
16:04:13 15 invite again anything you wish to emphasize here at oral  
16:04:19 16 argument that you feel needs to be fleshed out more.

16:04:23 17 **MR. CANTOR:** Thank you, Your Honor. Again, Dan Cantor  
16:04:26 18 from O'Melveny & Myers. I will not go through the full blown  
16:04:30 19 argument because you have the papers and it's all there. I just  
16:04:34 20 want to emphasize that term lenders -- they assert that the  
16:04:39 21 disbursement agent here is the gatekeeper and that the  
16:04:43 22 disbursement agent is lenders' last line of defense.

16:04:47 23 And while these are nice rhetorical flourishes, they  
16:04:51 24 are entirely inconsistent with the clear and unambiguous terms  
16:04:55 25 of the disbursement agreement which at every turn seeks to limit

16:05:00 1 the disbursement agent's obligations and clearly establishes  
16:05:04 2 that the position of disbursement agent is essentially an  
16:05:09 3 administrative position. The disbursement agent was not a  
16:05:13 4 gatekeeper. It was not a watchdog. It certainly was not an  
16:05:16 5 auditor.

16:05:17 6 I would most particularly direct Your Honor's attention  
16:05:20 7 to §§ 2.4.4 and 9.3.2 of the disbursement agreement which, taken  
16:05:29 8 together, make it clear that with respect to advance requests,  
16:05:35 9 the disbursement agent's sole obligation was to make sure that  
16:05:39 10 the advance request that was submitted by Fontainebleau  
16:05:41 11 contained all of the necessary documents. Among those documents  
16:05:45 12 were certifications that the conditions for funding under § 3.3  
16:05:51 13 were met.

16:05:53 14 If, in fact, all of the required documentation was  
16:05:57 15 there, the disbursement agent had no choice. It was required.  
16:06:01 16 It shall send an advance confirmation notice to the funding  
16:06:04 17 agents who, in turn, shall release the funds to Fontainebleau.

16:06:10 18 § 9.3.2 -- I'll do this very quickly, Your Honor --  
16:06:16 19 amplifies the limited nature of the disbursement agent's  
16:06:20 20 obligations. It specifically provides the disbursement agent is  
16:06:22 21 not required to conduct any independent investigation with  
16:06:25 22 respect to the accuracy, completeness, veracity of documents  
16:06:29 23 submitted by Fontainebleau to certify its compliance.

16:06:33 24 It specifically provides that notwithstanding anything  
16:06:35 25 else in the agreement to the contrary, that in approving an

16:06:40 1 advance request, the disbursement agent is allowed to rely on  
16:06:44 2 certifications from Fontainebleau as to the satisfaction of  
16:06:49 3 conditions, and it specifically provides that the disbursement  
16:06:52 4 agent is protected in acting upon any certifications that it  
16:06:56 5 provides or that it receives, rather, from Fontainebleau.

16:07:01 6 So it is clear, Your Honor, from these provisions that  
16:07:04 7 any breach of contract claim with respect to the disbursement  
16:07:09 8 agent's -- with respect to BofA's conduct as the disbursement  
16:07:16 9 agent fails to state a claim, Your Honor.

16:07:18 10 **MR. HENNIGAN:** Your Honor, Michael Hennigan on behalf  
16:07:19 11 of the plaintiffs in this case. Listening to counsel's  
16:07:30 12 argument, one would assume that if you went back and read the  
16:07:33 13 complaint, we allege that Bank of America failed in its  
16:07:37 14 obligations as disbursement agent.

16:07:39 15 Bank of America played many roles here and,  
16:07:44 16 significantly, it was also the bank agent which is also called  
16:07:50 17 the administrative agent. There are provisions here that tend  
16:07:53 18 to describe the responsibilities of the disbursement agent in  
16:08:00 19 many different places, and I would suggest that some of those,  
16:08:07 20 even if we were talking about the responsibilities as  
16:08:09 21 disbursement agents, have been, shall we say, overly  
16:08:17 22 optimistically characterized by counsel.

16:08:20 23 He points, for example, to 9.3.2. 9.3.2 encaptioned  
16:08:31 24 reliance generally which if you would just listen to the  
16:08:34 25 argument, you would assume that this is like a letter of credit

16:08:38 1 where the disbursement agent is required to examine the document  
16:08:42 2 itself and if the document itself appears to be in order and  
16:08:47 3 properly signed, that he can and should rely on it. That's not  
16:08:53 4 what it says.

16:08:54 5 9.3.2 requires the disbursement agent -- and I'm going  
16:09:00 6 to skip into a complex paragraph -- "with a document believed by  
16:09:05 7 it on reasonable grounds to be genuine and to have been signed  
16:09:10 8 and presented by the proper party."

16:09:13 9 Well, "genuine and signed." We did a quick look of the  
16:09:21 10 American Heritage Dictionary this morning to look at "genuine."  
16:09:27 11 "Genuine" of course, means, "sincere." It means "real." It  
16:09:32 12 means "to be trusted."

16:09:36 13 So we contrast that phrase of requiring reasonable  
16:09:42 14 grounds to believe that it's genuine with the allegations of the  
16:09:47 15 complaint that very specifically set forth the fact that Bank of  
16:09:50 16 America, at the time it began processing these disbursement  
16:09:56 17 requests, was fully aware of the fact that there had been a  
16:10:01 18 material breach of one of the lending agreements by Lehman  
16:10:03 19 Brothers and specified that that notice had been received by  
16:10:11 20 them several months earlier.

16:10:13 21 So we begin there. We also point out the fact that if  
16:10:21 22 there's a gatekeeper here, it's the BofA, it's not the  
16:10:26 23 disbursement agent but the BofA. Perhaps most significantly in  
16:10:30 24 its responsibilities as the bank agent, Paragraph 3.3 of the  
16:10:34 25 agreement requires that the bank agent -- and I'm going to read

16:10:41 1 this paragraph slowly and carefully -- "Conditions precedent to  
16:10:46 2 advances by the trustee and the bank agent. The obligations of  
16:10:54 3 the trustee to make advances from the second mortgage proceeds  
16:11:01 4 account to the second mortgage funding account and of the bank  
16:11:04 5 agent to make advances from the bank proceeds account are each  
16:11:08 6 subject to the prior satisfaction of each of the conditions  
16:11:11 7 precedent set forth in this Section 3.3."

16:11:15 8 Well, there are, as far as I'm aware, no limitations or  
16:11:23 9 no paragraphs that would describe some kind of narrow  
16:11:28 10 functioning responsibility of the bank agent at that moment in  
16:11:32 11 time. He is required as bank agent, before he proceeds with the  
16:11:37 12 disbursement process, to ensure, make reasonable efforts to  
16:11:40 13 conclude that the conditions precedent in 3.3 have been  
16:11:44 14 satisfied.

16:11:44 15 We, of course, have alleged, I think very plainly, that  
16:11:50 16 not only were they not but that Bank of America -- and we're not  
16:11:56 17 specific with respect to which capacity it is -- was aware of  
16:12:02 18 the fact that there were material breaches and they were aware  
16:12:04 19 of them because term lenders had put them on specific notice of  
16:12:09 20 it.

16:12:12 21 One of the provisions of Section 3 --

16:12:18 22 **THE COURT:** Well, let me ask: Is there anything in the  
16:12:21 23 record that deals with whether the plaintiffs here or their  
16:12:28 24 predecessors were among those that put the bank on notice?

16:12:31 25 **MR. HENNIGAN:** Plaintiffs and their predecessors put

16:12:34 1 them on notice, yes.

16:12:35 2 **THE COURT:** So therefore plaintiffs and predecessors  
16:12:41 3 were aware of defaults, at least what could be characterized as  
16:12:45 4 defaults, prior to making the draw term loans.

16:12:55 5 **MR. HENNIGAN:** Indeed, Your Honor, and I think one of  
16:12:59 6 the emphasises here that relates to the prior argument as well  
16:13:03 7 is this was one tightly knit, cohesive lending agreement that we  
16:13:13 8 believed at the time anyone who failed to fund in the face of a  
16:13:16 9 demand from the Bank of America in whichever capacity was going  
16:13:20 10 to do so at its peril because it was likely going to crash this  
16:13:25 11 entire multibillion dollar project.

16:13:28 12 **THE COURT:** This is what I'd like you to help me  
16:13:30 13 understand in terms of your position. If plaintiff and  
16:13:33 14 predecessors knew and informed Bank of America and truly  
16:13:37 15 believed that there were defaults, then why fund since you had  
16:13:45 16 an independent and severable opportunity to make that decision.

16:13:53 17 **MR. HENNIGAN:** Because the way we read the obligations,  
16:13:53 18 Your Honor, it is our obligation to fund whether or not there  
16:13:55 19 have been defaults. It goes into a special block account. You  
16:14:00 20 know, we have an administrative agent, sometimes also called the  
16:14:05 21 bank agent, who is responsible for ensuring that those funds do  
16:14:10 22 not leave the sanctity of that account and get out into the  
16:14:19 23 project until there are no longer any material breaches. So the  
16:14:22 24 fact of the material breach does not prevent our obligation to  
16:14:24 25 fund; it prevents their obligation to disburse.

16:14:29 1           **THE COURT:** But wouldn't your communication be  
16:14:33 2 conditional on that by saying our position is that there is a  
16:14:41 3 default because of these two situations, and we are stating this  
16:14:47 4 to you to make sure these other components of the agreement are  
16:14:52 5 met so our monies are not further disbursed in a way that  
16:14:57 6 prejudices us until this issue is resolved.

16:15:03 7           In effect, this is something like the case you cited to  
16:15:06 8 me on the Deutsche Bank where there was a declaratory action as  
16:15:10 9 to what would happen or not happen under the circumstances. So  
16:15:13 10 this is where I'm having some difficulty because there's nothing  
16:15:17 11 I saw from your side of it, or your predecessor's side, that  
16:15:24 12 funded conditionally subject to maintaining rights. What about  
16:15:30 13 that? I mean, to what extent is that something -- I don't know  
16:15:35 14 if I consider at this point -- but to what extent does that  
16:15:40 15 address the issues of Bank of America's responsibility when  
16:15:47 16 it's, you know, something that is also subject to your control  
16:15:52 17 as well.

16:15:53 18           **MR. HENNIGAN:** Well, as I said, the way we read the  
16:15:55 19 agreements, we were required to fund. That's supposed to be a  
16:15:59 20 relatively safe function and keeps us from breaching. The next  
16:16:04 21 step is whether Bank of America is going to permit disbursement and  
16:16:08 22 in the two communications to the BofA dated September and  
16:16:16 23 October '08, they say: "We believe that there has been a  
16:16:23 24 default and here are some of the things you can do. One of them  
16:16:29 25 is the borrower's legal counsel should provide an opinion that

16:16:37 1 the Lehman funding agreement is in full force and effect. Our  
16:16:43 2 position is that Lehman is in breach of the agreement. It does  
16:16:46 3 not appear that the retail lenders made the September payment  
16:16:50 4 but, rather, equity investors. Please see attached report from  
16:16:55 5 Merrill Lynch. This would indicate that the reps the companies  
16:16:59 6 made for funding requests were false."

16:17:08 7 As we alleged in Paragraph 129, the BofA as  
16:17:13 8 disbursement agent received notice of Lehman default from one or  
16:17:17 9 more term lenders. I think the quick answer is a default isn't  
16:17:24 10 necessarily a default forever and steps can be taken in the  
16:17:29 11 interim to make sure that the defaults have been cured and that  
16:17:35 12 the project is still in force, and that's where we rely upon the  
16:17:40 13 discretion, good faith and contractual responsibilities of the  
16:17:45 14 BofA.

16:17:48 15 **MR. CANTOR:** Thank you, Your Honor. There's a lot here  
16:17:49 16 and let me try to get to all of it, and I'll try to do it in the  
16:17:53 17 order in which Mr. Hennigan laid it out. Certainly several of  
16:17:59 18 his first arguments are interesting arguments that I would have  
16:18:02 19 enjoyed responding to in my reply brief had they been found  
16:18:07 20 anywhere in his opposition brief, but this is the first time I'm  
16:18:10 21 hearing of an argument about the word "genuine."

16:18:14 22 I certainly believe that it would be an odd choice if  
16:18:18 23 what 9.3.2 was meant to mean was that the disbursement agent  
16:18:25 24 shall be protected in acting or referring on acting in any  
16:18:29 25 certificate or other paper document believed by it on reasonable



16:18:34 1 grounds to be genuine or to be signed and presented. If what  
16:18:38 2 that meant was that, in fact, we needed to believe that it was  
16:18:42 3 accurate, notwithstanding the fact that later in the paragraph  
16:18:44 4 it says that we are not required to conduct any independent  
16:18:47 5 investigation as to the accuracy, veracity or completeness of  
16:18:51 6 any such items or investigate any other facts or circumstances  
16:18:55 7 to verify compliance by the project entities, "genuine" is an  
16:18:59 8 odd word to have chosen to laden it with as much meaning as  
16:19:05 9 counsel now gives it here.

16:19:08 10 The second argument was about --

16:19:10 11 **THE COURT:** Can we go back? Is there anything -- maybe  
16:19:13 12 I missed this -- is there anything in the complaint where  
16:19:17 13 Fontainebleau affirmatively certifies that there was no default,  
16:19:22 14 such that Bank of America could rely upon that?

16:19:26 15 **MR. CANTOR:** I'm sorry. I couldn't hear Your Honor.

16:19:28 16 **THE COURT:** I say, Is there anything that anyone could  
16:19:31 17 point to in the complaint one way or the other that refers to  
16:19:38 18 Fontainebleau affirmatively certifying that there was no  
16:19:40 19 default, such that Bank of America could rely upon that?

16:19:46 20 **MR. CANTOR:** I don't know whether plaintiffs  
16:19:48 21 specifically allege that. The process, Your Honor, under the  
16:19:50 22 contract provides that Fontainebleau will submit this advance  
16:19:57 23 request. A copy of the advance request is in the record. It's  
16:20:01 24 Exhibit C1. A model advance request is Exhibit C1 to the  
16:20:05 25 disbursement agreement and thus is in the record in that form.

16:20:08 1 And what you'll see if you look at the document is that it  
16:20:12 2 requires numerous, different representations, warranties and  
16:20:17 3 certifications by Fontainebleau, among other things, as to the  
16:20:21 4 satisfaction of all conditions required for funding.

16:20:29 5 And that actually, Your Honor, is significant with  
16:20:32 6 respect to counsel's argument with § 3.3 and the bank agent's  
16:20:40 7 responsibility to fund because if you look at the way this is  
16:20:43 8 supposed to work -- and it's very important, Your Honor, to  
16:20:47 9 recognize that in this complex lending transaction, these  
16:20:51 10 lengthy documents, lengthy and detailed documents, set up some  
16:20:55 11 very specific procedures that had to be followed here and if  
16:20:59 12 they were followed, there were rights that flow from that, and  
16:21:02 13 we can't just sit here and argue about what should've happened  
16:21:04 14 or what sounds right.

16:21:07 15 We have to look and see whether the specific provisions  
16:21:10 16 of the contract were followed. In § 2.4.4 of the disbursement  
16:21:14 17 agreement, it provides, let me back up one. § 2.4 provides for  
16:21:19 18 Fontainebleau to submit an advance request in order to obtain  
16:21:24 19 funds that have been provided by the lenders. When they submit  
16:21:29 20 this advance request which I previously described to Your Honor,  
16:21:31 21 under 2.4.4 the disbursement agent reviews the advance request  
16:21:37 22 and the attachments thereto to determine whether all required  
16:21:41 23 documentation has been provided. That is the only obligation  
16:21:45 24 that the disbursement agent has under 2.4.4.

16:21:50 25 If you then flip forward to 2.4.6, it says that

16:21:54 1 when the applicable conditions precedent set forth in Article 3  
16:21:58 2 have been satisfied, and they get satisfied in this instance by  
16:22:01 3 virtue of a certification to the disbursement agent by the  
16:22:05 4 borrower that they've been satisfied, then it says the  
16:22:09 5 disbursement agent shall execute an advance confirmation notice  
16:22:13 6 setting forth the amount of advances to be made pursuant to each  
16:22:17 7 finance agreement on the advance date.

16:22:19 8           And then if you go further down in that paragraph, it  
16:22:24 9 says that on the scheduled advance date, each of the funding  
16:22:28 10 agents, which is the same as the bank agent, shall make the  
16:22:31 11 advances contemplated by that advance confirmation notice to the  
16:22:36 12 relevant accounts.

16:22:38 13           So to the extent that we're talking about obligations  
16:22:42 14 under the disbursement agreement here, it is clear that all of  
16:22:46 15 the proper -- that there has been no allegation that the proper  
16:22:49 16 steps were not followed here. The allegations in the complaint,  
16:22:54 17 as I read them and as described in plaintiffs' opposition brief  
16:23:00 18 after we said when we read the complaint, we see the claim  
16:23:04 19 against BofA as disbursement agent to be the following: That  
16:23:08 20 BofA was wrong in approving advance requests and in not issuing  
16:23:13 21 stop funding notices.

16:23:14 22           No one ever said to us that we'd missed something  
16:23:17 23 there, that there was some other claim that we needed to address  
16:23:20 24 because we would have addressed it in our reply brief. And what  
16:23:23 25 we have established, Your Honor, in our briefs is that with

16:23:25 1 respect to those two claims, that if you parse through § 2.4.4  
16:23:29 2 and 2.4.6 which deal with advance requests and if you look at §  
16:23:35 3 2.5.1 which deals with the conditions under which a stop funding  
16:23:41 4 notice is permitted to issue, there is no allegation that BofA  
16:23:47 5 in its capacity as disbursement agent has breached any  
16:23:50 6 obligation that it had under the disbursement agreement.

16:23:53 7           There isn't even any allegation that BofA as bank agent  
16:23:59 8 breached any obligation that it had under the disbursement  
16:24:01 9 agreement. These are disbursement agreement claims. They may  
16:24:06 10 have quarrel with whether BofA took actions that they consider  
16:24:10 11 to be improper under other agreements. If they ever plead that  
16:24:14 12 claim, we'll address it.

16:24:15 13           But the claim that we're dealing with here now is  
16:24:18 14 whether Bank of America breached the disbursement agreement, and  
16:24:22 15 there is no allegation sufficient when read next to the clear  
16:24:27 16 and unambiguous terms of the disbursement agreement establishing  
16:24:31 17 that sort of a breach.

16:24:34 18           **MR. HENNIGAN:** Your Honor, let's go back to 2.4.6  
16:24:37 19 which, I think, gets sometimes spoken about too swiftly when  
16:24:44 20 counsel for BofA is speaking. Let me read the first sentence:  
16:24:50 21 "When the applicable conditions precedent set forth in Article 3  
16:24:54 22 have been satisfied," that's when the rest of the paragraph  
16:24:59 23 follows.

16:25:00 24           Let's go back to Article 3. Article 3 is the one that  
16:25:04 25 says that the bank agent is required -- obligations are

16:25:09 1 conditioned upon the satisfaction of all the conditions  
16:25:12 2 precedent. Let me read to you condition precedent 3.3.21.

16:25:20 3 "In the case of each advance from a bank proceeds  
16:25:23 4 account made concurrently with or after exhaustion of the second  
16:25:27 5 mortgage proceeds account, the bank agent shall not have become  
16:25:32 6 aware, after the date hereof, of any information or other matter  
16:25:37 7 affecting any loan party, Turnberry residential, the project or  
16:25:43 8 the transactions contemplated hereby that, taken as a whole, is  
16:25:48 9 inconsistent in a material and adverse manner with the  
16:25:51 10 information or other matter disclosed to them concerning such  
16:25:56 11 projects and the project taken as a whole."

16:25:58 12 In other words, Bank of America, as a condition  
16:26:01 13 precedent to disbursing any funds, cannot have become aware of  
16:26:05 14 any adverse information.

16:26:10 15 **MR. CANTOR:** Your Honor, that ignores the rest of the  
16:26:12 16 agreement and the way that the funding mechanism was set up.  
16:26:18 17 Looking at 2.4.6: "When the applicable conditions precedent set  
16:26:23 18 forth in Article 3 have been satisfied, the disbursement agent  
16:26:29 19 shall." The rest of the contract, particularly 2.4.4 and 9.3.2,  
16:26:35 20 make it crystal clear that the disbursement agent's  
16:26:39 21 responsibility with respect to determining whether the  
16:26:41 22 conditions precedent set forth in Article 3 have been satisfied,  
16:26:45 23 that obligation is fulfilled if it receives a certification from  
16:26:51 24 the borrower that all of the conditions necessary to a borrowing  
16:26:55 25 have been satisfied.

16:26:56 1 When they get that certification and there's no  
16:26:58 2 allegation --

16:26:59 3 **THE COURT:** So was there a certification that's part of  
16:27:02 4 anything in this record so far from Fontainebleau?

16:27:07 5 **MR. CANTOR:** I would say, Your Honor, there is no --  
16:27:09 6 the process is the process. The -- the -- the --

16:27:15 7 **THE COURT:** Would you answer my question?

16:27:17 8 **MR. CANTOR:** I am trying to, Your Honor. I apologize.  
16:27:19 9 There is no allegation that Fontainebleau made that  
16:27:23 10 representation. There is also no allegation that they failed to  
16:27:25 11 make that representation.

16:27:26 12 **THE COURT:** Well, let me ask you about that. Wouldn't  
16:27:29 13 that be an important part of your statement of claim that  
16:27:35 14 Fontainebleau failed to make representation, and there was a  
16:27:43 15 loan anyway? I mean, isn't what Fontainebleau did or didn't do  
16:27:47 16 important to your claim as it relates to Bank of America?

16:27:51 17 **MR. HENNIGAN:** No.

16:27:51 18 **THE COURT:** Explain that to me.

16:27:53 19 **MR. HENNIGAN:** First of all, there's no allegation one  
16:27:54 20 way or the other in the complaint.

16:27:58 21 **THE COURT:** That's why I'm asking whether that's  
16:28:01 22 materially missing.

16:28:02 23 **MR. HENNIGAN:** It is not. It might be important if we  
16:28:06 24 had failed to allege that Bank of America was actually on notice  
16:28:10 25 of adverse information, in which case we would have to then

16:28:13 1 allege that they were not in possession of the kind of  
16:28:16 2 documentation that would have permitted them to fund. That's  
16:28:21 3 not our case.

16:28:22 4           You know, for purposes of this discussion only, you  
16:28:25 5 know, we can assume here that Fontainebleau, you know, was at  
16:28:30 6 least filing routine documents that were saying that the thing  
16:28:35 7 was in balance, for example.

16:28:36 8           What happens here is what happens when Bank of America  
16:28:40 9 is on notice and it's true that there is material adverse  
16:28:45 10 information out there that it can't and should not be permitted  
16:28:50 11 to ignore.

16:28:51 12           Let me read from the reply brief of Bank of America  
16:28:55 13 from Page 3. The second full paragraph about halfway down they  
16:29:00 14 say: "There's no allegation that BANA ever received a notice of  
16:29:06 15 default under the disbursement agreement concerning the  
16:29:08 16 allegedly Lehman defaults. In the absence of such notice, BANA  
16:29:14 17 was permitted to rely on, and indeed could not disregard,  
16:29:17 18 Fontainebleau's certification as to the satisfaction of the  
16:29:22 19 disbursement agent's conditions precedent to funding."

16:29:25 20           A little footnote there: We didn't make that  
16:29:27 21 allegation that there was such a certification, but they're flat  
16:29:32 22 wrong about the description of the complaint. The complaint  
16:29:36 23 specifically says that you were on notice of a default because  
16:29:40 24 we sent it to you.

16:29:43 25           **MR. CANTOR:** Well, there's several problems with that.

16:29:46 1 First of all, all they allege in the complaint is that letters  
16:29:49 2 were sent. They don't say whom they were sent to. They don't  
16:29:53 3 describe the letters in any detail. They certainly don't attach  
16:29:56 4 them. The issue here is not --

16:29:59 5 **THE COURT:** Well, how detailed do we have to get at  
16:30:02 6 this stage?

16:30:03 7 **MR. CANTOR:** Well, it's important, Your Honor, because  
16:30:05 8 they try to conflate all of the different roles that BofA had in  
16:30:11 9 this transaction and, admittedly, they had multiple roles.

16:30:15 10 But there is a specific provision in the contracts that  
16:30:19 11 states that knowledge that BofA has in one context is not  
16:30:26 12 imputed to it in another context. And so therefore if they sent  
16:30:30 13 a letter to Bank of American as lender or Bank of America as  
16:30:31 14 bank agent and said, "Hey, did you hear about the Lehman  
16:30:34 15 default," that's not notice to Bank of America as disbursement  
16:30:37 16 agent.

16:30:38 17 And in any event, as remarkable as plaintiffs seem to  
16:30:41 18 believe it to be, the parties specifically decided that the  
16:30:47 19 disbursement agent, whether it be BofA or somebody else, was not  
16:30:52 20 going to be burdened with that issue of whether there were  
16:30:56 21 defaults or not. 9.3.2 makes it clear that the disbursement  
16:31:02 22 agent shall be protected in acting upon information that it  
16:31:07 23 receives from Fontainebleau; that notwithstanding anything else  
16:31:11 24 in the agreement to the contrary that in performing its duties,  
16:31:16 25 including approving advance requests, disbursement agent shall



16:31:19 1 be entitled to rely on certifications from the project entities.

16:31:24 2 They want to read into that some notion --

16:31:27 3 **THE COURT:** So I'm going around in circles a little bit  
16:31:30 4 because I asked about the issue of whether there was  
16:31:35 5 certification of nondefault. Isn't that something that  
16:31:39 6 Fontainebleau had to submit along with its request?

16:31:42 7 **MR. CANTOR:** Yes, Your Honor. In order for them to  
16:31:44 8 establish that we breached our obligations, they have to  
16:31:48 9 plead -- and they have not -- that Fontainebleau failed to  
16:31:52 10 certify that there was compliance and we went ahead and issued a  
16:31:59 11 confirmation notice anyway.

16:32:01 12 They don't allege that, so they have not properly  
16:32:03 13 alleged a breach by Bank of America as disbursement agent.

16:32:09 14 **THE COURT:** I understand a lot of this comes down to  
16:32:13 15 technical arguments. I'm going to back off for a moment. It's  
16:32:27 16 difficult because the matters alleged, the two breaches, I mean,  
16:32:29 17 Lehman and, what was it, Nevada Bank --

16:32:32 18 **MR. HENNIGAN:** Yes.

16:32:34 19 **THE COURT:** -- were known to the plaintiffs and Bank of  
16:32:37 20 America and everybody else.

16:32:41 21 **MR. CANTOR:** Arguably, Your Honor, there were other --

16:32:43 22 **THE COURT:** So how could Fontainebleau certify there  
16:32:49 23 was no default when those two issues were clearly on the table?

16:32:56 24 **MR. CANTOR:** I don't know. I can't speak for  
16:32:58 25 Fontainebleau.

16:32:59 1           **THE COURT:** Well, that's what I'm struggling with here,  
16:33:03 2 is whether in order for your side, your complaint, is that an  
16:33:06 3 essential allegation, that in addition to knowledge there was  
16:33:13 4 no certification of nondefault.

16:33:16 5           **MR. HENNIGAN:** No, Your Honor.

16:33:18 6           **THE COURT:** That's where I'm struggling.

16:33:20 7           **MR. HENNIGAN:** The case that we've alleged and the one  
16:33:22 8 that we're going to stand on is: What is the obligation of Bank  
16:33:27 9 of America as bank agent -- let's draw a circle around it -- as  
16:33:32 10 bank agent when it knows that that certification is false?

16:33:37 11           **THE COURT:** Okay. I understand your position because  
16:33:39 12 you're at a pleading stage. This is something that may be more  
16:33:43 13 appropriate at a summary judgment argument on their side of the  
16:33:46 14 equation. You're arguing they knew. Whether they knew because  
16:33:52 15 of one means or another, I'm not sure they have to.

16:33:59 16           **MR. CANTOR:** That's an interesting claim and one that  
16:34:02 17 they might have wanted to plead, and we would have moved against  
16:34:05 18 it and dealt with it. But what they pled is that Bank of  
16:34:07 19 America as disbursement agent should not have approved advance  
16:34:11 20 requests or should have issued stop funding notices. That's  
16:34:15 21 different than what Bank of America as bank agent should have  
16:34:18 22 done.

16:34:18 23           These are divided. These positions are divided up, and  
16:34:22 24 you can't conflate them and place Bank of America as  
16:34:25 25 disbursement agent for which it was paid not by the lenders but

16:34:29 1 by the borrower a paltry sum and say that it's going to be  
16:34:34 2 responsible for a billion eight in financing if it wrongly  
16:34:38 3 approves an advance request when the language of the contract is  
16:34:42 4 so clear that all it was doing was checking boxes and making  
16:34:45 5 sure that documents were attached.

16:34:47 6 Do they have a claim against Bank of America as bank  
16:34:51 7 agent under the credit agreement for not taking action? I don't  
16:34:54 8 know, but that's not what they've pled here. It's clear from  
16:34:58 9 the complaints. Paragraph 176 of the Avenue complaint talks  
16:35:02 10 specifically about approving advance requests and failing to  
16:35:09 11 issue stop funding notices. The same is truth with respect to  
16:35:15 12 the Aurelius complaint. I don't have specific paragraph now but  
16:35:19 13 it's in the third claim.

16:35:20 14 They're now arguing a different claim than the one they  
16:35:24 15 pled, and it's sufficiently different that it doesn't even come  
16:35:27 16 within the normal rules about reading a pleading broadly and  
16:35:31 17 allowing them to state any claim. It's a different claim  
16:35:34 18 against a difficult entity.

16:35:35 19 It so happens in this case that BofA had multiple  
16:35:40 20 roles, but they've asserted a claim against the disbursing  
16:35:42 21 agent. They've failed to plead it as such. If they want to try  
16:35:44 22 to plead a claim against the bank agent, well, they had a chance  
16:35:47 23 to do that and they didn't.

16:35:48 24 **THE COURT:** Anything else. Any last points?

16:35:51 25 **MR. HENNIGAN:** Your Honor, I think he's confusing

16:35:54 1 complaints. In our complaint, the Avenue complaint, there is no  
16:35:58 2 allegation that Bank of America failed to perform its  
16:36:02 3 responsibilities as disbursement agent. We very clearly allege  
16:36:04 4 that they were both the bank agent and the disbursement agent.

16:36:08 5 We then allege that Bank of America failed in its  
16:36:12 6 responsibilities throughout. You know, that's what we pleaded.  
16:36:15 7 You know, I don't want, you know, the power of the argument here  
16:36:19 8 to change the words on the page. We pleaded Bank of America  
16:36:23 9 breached its responsibilities.

16:36:25 10 Now, I have to tell you something. I've spent a fair  
16:36:29 11 amount of time trying to figure out this metaphysical difference  
16:36:33 12 between the Bank of America as disbursement agent and the Bank  
16:36:35 13 of America as bank agent and the Bank of America as funding  
16:36:39 14 agent. You know, I don't know how that works.

16:36:40 15 You know, I'd kind of understand if they had told me  
16:36:43 16 that their Milan branch --

16:36:46 17 **THE COURT:** Were they a draw lender, too?

16:36:48 18 **MR. HENNIGAN:** Yes, they were.

19 **THE COURT:** Okay.

16:36:52 20 **MR. HENNIGAN:** No, no. They were a revolving lender.

16:36:54 21 **THE COURT:** They were a revolving lender. Okay.

16:36:56 22 **MR. HENNIGAN:** So I don't know understand exactly how  
16:36:58 23 you get knowledge in one capacity and not in another capacity if  
16:37:01 24 you're the same person.

16:37:03 25 **THE COURT:** Well, I mean, part of the problem, too, is

16:37:06 1 Bank of America as revolving lender says, "Well, we knew there  
16:37:12 2 were defaults which is one of the reasons why we didn't fund  
16:37:17 3 Fontainebleau, and that's why we shouldn't be subject to any  
16:37:20 4 liability to them."

16:37:21 5 **MR. CANTOR:** That is why, Your Honor, it is important  
16:37:23 6 to read --

16:37:25 7 **THE COURT:** So does one half communicate with the other  
16:37:27 8 half in Bank of America or --

16:37:29 9 **MR. CANTOR:** But, Your Honor, that's why it's important  
16:37:31 10 to read the documents and take their words as they are written,  
16:37:35 11 not as they are characterized by counsel. The issue here with  
16:37:38 12 respect to advance requests and stop funding notices is not  
16:37:43 13 knowledge, it's notice. All right. The question is whether  
16:37:50 14 BofA as disbursement agent received a notice.

16:37:54 15 **THE COURT:** From whom?

16:37:55 16 **MR. CANTOR:** From the bank agent. But the reason why  
16:37:55 17 it's important that they --

16:37:56 18 **THE COURT:** From whom?

16:37:57 19 **MR. CANTOR:** From Bank of America as bank agent.

16:38:02 20 **THE COURT:** So one division sends a notice to the other  
16:38:07 21 division? Is that what you're saying?

16:38:07 22 **MR. CANTOR:** The reason that would be important, Your  
16:38:08 23 Honor, is because if you look --

16:38:09 24 **THE COURT:** Is that what you're saying?

16:38:11 25 **MR. CANTOR:** They would need to paper it correctly.

16:38:13 1 It's not enough to assume that someone told someone else. They  
16:38:17 2 would need to paper it.

16:38:18 3 Your Honor, the reason that's important, as ridiculous  
16:38:21 4 as some people may think it sounds, is because if you look at  
16:38:25 5 2.5.1, Bank of America as disbursement agent is then supposed to  
16:38:29 6 provide a copy of that notice of default to Fontainebleau when  
16:38:33 7 it issues a stop funding notice to Fontainebleau saying we're  
16:38:36 8 not giving you the money that you want.

16:38:38 9 If they don't receive the notice, then they can't  
16:38:41 10 provide that notice to Fontainebleau. Again, Your Honor, let  
16:38:45 11 me, by the way, just before I move --

16:38:50 12 **THE COURT:** We're going to have to wrap up in a few  
16:38:52 13 minutes.

16:38:53 14 **MR. CANTOR:** Yeah. The complaint, Paragraph 154 -- let  
16:38:57 15 me make sure I'm looking at -- well, I'm sorry. That's the  
16:39:01 16 other firm's complaints.

16:39:07 17 Paragraph 176 of the Hennigan, Bennett & Dorman  
16:39:13 18 complaint says that, beginning in Paragraph 176:

16:39:16 19 "Beginning with Advance Requests made in September  
16:39:20 20 2008, and continuing through the March 25 Advance Request,  
16:39:24 21 BofA materially breached its duties under the Disbursement  
16:39:29 22 Agreement by improperly approving Advance Requests that  
16:39:32 23 failed to meet one or more of the conditions precedent under  
16:39:36 24 § 3.3 of the Disbursement Agreement, improperly issuing  
16:39:41 25 Advance Confirmation Notices, improperly failing to issue

16:39:42 1 Stop Funding Notices."

16:39:43 2 Your Honor, those --

16:39:46 3 **MR. HENNIGAN:** Can we finish the sentence?

16:39:47 4 **MR. CANTOR:** Let me finish it! Let's see. Where did I  
16:39:50 5 leave off?

16:39:53 6 "And improperly disbursing funds from the Bank Proceeds  
16:39:57 7 Account pursuant to such deficient Advance Requests."

16:40:00 8 Your Honor, the first three of those are  
16:40:05 9 responsibilities of the disbursement agent. They are not  
16:40:09 10 responsibilities of the bank agent.

16:40:11 11 The final one flows from the notice that they get from  
16:40:16 12 the disbursement agent which in 2.4.6, I said, provides that  
16:40:20 13 when they get this advance confirmation notice, they shall fund.  
16:40:24 14 So for them to say that their allegations are not about BofA in  
16:40:29 15 its role as the disbursement agent is totally contrary to  
16:40:33 16 Paragraph 176. It's only the disbursement agent that has the  
16:40:36 17 obligation to issue Advance Confirmation Notices, Stop Funding  
16:40:38 18 Notices, and approve Advance Requests.

16:40:40 19 **THE COURT:** I can't wait to hear this argument in front  
16:40:43 20 of a jury.

16:40:45 21 **MR. HEATON:** Your Honor, may I have ten seconds?

16:40:47 22 **THE COURT:** Just last words.

16:40:48 23 **MR. HEATON:** Very last, just to this point, the  
16:40:50 24 Aurelius complaint at Paragraph 152. BofA's failure to fulfill  
16:40:57 25 its obligation as bank agent, (administrative agent), and/or

16:41:00 1 disbursement agent by approving Advance Requests constitutes a  
16:41:03 2 material breach of its obligations under the disbursement  
16:41:07 3 agreement.

16:41:08 4 The idea that we don't allege breaches of duties as  
16:41:12 5 both bank agent and disbursement agent is belied by just going  
16:41:16 6 back and reading these allegations, Your Honor.

16:41:18 7 **MR. CANTOR:** And, Your Honor, the contract is crystal  
16:41:21 8 clear that the bank agent doesn't approve advance requests. So  
16:41:24 9 they could allege whatever they want about the bank agent but if  
16:41:27 10 it's not an obligation in the contract, it doesn't establish a  
16:41:31 11 breach.

16:41:31 12 **THE COURT:** All right. Thank you for your appearances  
16:41:33 13 today.

16:41:35 14 **MR. HENNIGAN:** Thank you, Your Honor.

16:41:35 15 **THE COURT:** It's going to take me a little time to work  
16:41:37 16 through some of these matters, but I appreciate all work that  
16:41:40 17 you've done on it. Have a nice weekend.

16:41:41 18 **MR. HEATON:** Thank you very much, Your Honor.

16:41:45 19 [The proceedings conclude at 4:41 p.m., 5/7/10.]

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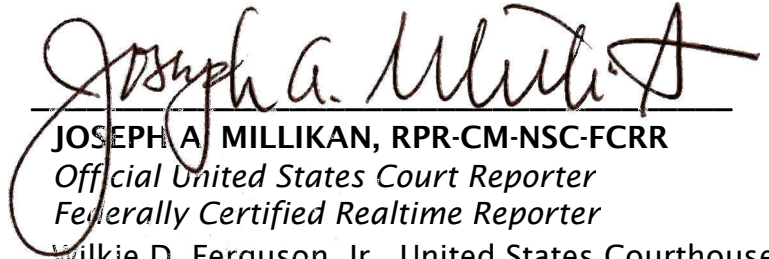
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CERTIFICATE

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

05.08.10

DATE



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case 09-2106-MDL-GOLD

IN RE:

FONTAINEBLEAU LAS VEGAS HOLDINGS, LLC,  
et al.,

Debtors.

FONTAINEBLEAU LAS VEGAS  
HOLDINGS, LLC, et al.,

Plaintiffs,

vs.

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

Defendants.

COURTROOM 11-1

MIAMI, FLORIDA

JANUARY 7, 2011

(Pages 1 - 32)

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TRANSCRIPT OF ORAL ARGUMENT  
BEFORE THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE

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09:59:12 1           **THE COURTROOM DEPUTY:** All rise. The Honorable  
09:59:15 2 Alan S. Gold presiding. This Court is in session.

09:59:18 3           **THE COURT:** Good morning, everyone. Please be seated.  
09:59:41 4           May I have appearances this morning on Case 09-2106.

09:59:46 5           **MR. DILLMAN:** Good morning, Your Honor. Kirk Dillman  
09:59:49 6 for the Nevada term lenders.

09:59:50 7           **MR. AMRON:** Good morning, Your Honor. Brett Amron on  
09:59:53 8 behalf of plaintiffs ACP Master, Ltd. and Aurelius Capital  
09:59:58 9 Master, Ltd.

09:59:58 10           **THE COURT:** All right. Thank you.

10:00:00 11           **MR. CANTOR:** Good morning, Your Honor. Dan Cantor,  
10:00:03 12 O'Melveny & Myers, on behalf of Bank of America, N.A. and  
10:00:07 13 Merrill Lynch Capital Corp.

10:00:10 14           **MR. RASILE:** Good morning, Your Honor. Craig Rasile of  
10:00:12 15 Hunton & Williams, also co-counsel with Mr. Cantor for Bank of  
10:00:14 16 America, N.A. and Merrill Lynch.

10:00:20 17           **MR. WOLL:** Good morning, Your Honor. David Woll from  
10:00:23 18 Simpson Thacher & Bartlett, for J. P. Morgan Chase Bank,  
10:00:23 19 Barclays, Royal Bank of Scotland and Deutsche Bank.

10:00:25 20           **THE COURT:** All right. Thank you.

10:00:25 21           **MR. RUBINSTEIN:** Good morning, Your Honor. Aaron  
10:00:27 22 Rubinstein from Kaye Scholer on behalf of HSH Nordbank.

10:00:35 23           **MR. MAHER:** Your Honor, Steven Maher from Shutts &  
10:00:36 24 Bowen here for Sumitomo Mitsui Banking Corporation.

10:00:40 25           **THE COURT:** Give me a moment. There are some who are

10:00:44 1 joining us by telephone but will not be participating through  
10:01:01 2 appearances.

10:01:06 3 All right. Thank you. Good morning to those who have  
10:01:09 4 joined us. I'm not going to take appearances over the phone. I  
10:01:14 5 have had appearances from counsel here in court.

10:01:19 6 We are here this morning on the plaintiff term lenders'  
10:01:23 7 joint motion for partial final judgment. So let me ask as we  
10:01:32 8 start our discussions: Why would you not have the same type of  
10:01:42 9 benefit of arguing on the issue which directly concerns you that  
10:01:50 10 the trustee has already filed by way of filing amicus briefs?

10:01:58 11 **MR. DILLMAN:** Your Honor, Kirk Dillman for the term  
10:02:00 12 lenders. I will be arguing on behalf of the term lenders today.

10:02:04 13 A couple of things: One, there is no guarantee that we  
10:02:07 14 will be permitted to file an amicus brief -- it is discretionary  
10:02:11 15 with the appellate court -- and there is even less guarantee  
10:02:14 16 that we would be permitted to argue. The reality, however, is  
10:02:18 17 even if those things were granted, an amicus simply doesn't have  
10:02:24 18 the same standing as a party to an appeal.

10:02:27 19 But if we were permitted to file an amicus brief and  
10:02:32 20 argue, then there really isn't any reason for delay in terms of  
10:02:37 21 a 54(b) certification. If we are going to be there anyway, if  
10:02:42 22 we are going to be arguing and presenting our opinions to the  
10:02:45 23 Court, that everyone who is there, all arguments will be aired  
10:02:50 24 and there will be no reason not to have that be final and  
10:02:53 25 binding upon us.

10:02:55 1 It is one of the benefits. It is the primary benefit  
10:02:59 2 of an MDL proceeding, to have a situation where all parties may  
10:03:03 3 air their views on the same issues before one Court at one time  
10:03:08 4 and hopefully get a final decision, so that is what we would  
10:03:12 5 hope for.

10:03:12 6 **THE COURT:** But let me ask you this: Because the  
10:03:15 7 primary ground had to do with standing, to make the argument, if  
10:03:23 8 you go 54(b), doesn't the Eleventh Circuit have to address that  
10:03:27 9 issue before letting you argue on the merits on the  
10:03:35 10 interpretation question?

10:03:36 11 **MR. DILLMAN:** Your Honor, a couple of things. The  
10:03:38 12 first answer, the short answer, is no, I don't believe so. The  
10:03:40 13 Court can reach the conclusion on the fully drawn -- which it  
10:03:44 14 will have to reach no matter what, and if the Court agrees with  
10:03:48 15 this Court, that the failure to fund claims in our case were  
10:03:51 16 properly dismissed, the summary judgment was properly denied in  
10:03:55 17 the trustee's case, then the standing issue will never have to  
10:04:03 18 be reached.

10:04:04 19 We suspect that the Eleventh Circuit would find those  
10:04:09 20 efficiencies compelling and would, in fact, sequence their  
10:04:12 21 deliberations in that manner.

10:04:15 22 **THE COURT:** What arguments would you envision making on  
10:04:19 23 the fully drawn question that would not already be covered by  
10:04:23 24 the trustee and also any amicus brief that you file, assuming  
10:04:28 25 that you are permitted to do so?

10:04:30 1           **MR. DILLMAN:** Well, Your Honor, if we are permitted to  
10:04:32 2 file an amicus brief, we would make the arguments that we would  
10:04:36 3 make if we were an appellant, so we wouldn't be making any new  
10:04:40 4 or different arguments as an appellant.

10:04:41 5           As I say as an appellant we have the virtue of having  
10:04:46 6 full standing to be there and also we have the finality of the  
10:04:51 7 decision.

10:04:51 8           One thing that I should point out, Your Honor, is --

10:04:55 9           **THE COURT:** Is the real difference and practical effect  
10:05:01 10 if you go 54(b) instead of amicus, you might have the  
10:05:05 11 opportunity to stand up and make some additional oral argument?

10:05:09 12           **MR. DILLMAN:** If we went 54(b) as opposed to amicus and  
10:05:16 13 were permitted to argue, we would have the same opportunity to  
10:05:20 14 present to the Court; however, what we would not have is the  
10:05:26 15 finality. We would not have the standing and we would impose  
10:05:32 16 upon the Ninth and the Second Circuits these same issues.

10:05:36 17           Let me pause there for a moment because I think this is  
10:05:38 18 an important point that at least wasn't expressly made in our  
10:05:43 19 papers.

10:05:43 20           If the trustee's motion is brought without us as an  
10:05:49 21 appellate and we do not have finality, what is going to happen?  
10:05:53 22 At the end of this case, those issues will then be determined by  
10:06:00 23 the Court, by the jurisdiction in which the matter then resides.

10:06:04 24           These matters will be remanded to their home districts  
10:06:09 25 upon the conclusion of pretrial proceedings. When they are, we

10:06:16 1 will go back to Nevada which is governed by the Ninth Circuit.

10:06:22 2 The ACP plaintiffs will go back to New York, governed  
10:06:25 3 by the Second Circuit. The trial will be held. There will be a  
10:06:29 4 judgment and at that point, the appeal of these issues by the  
10:06:33 5 term lenders will be had.

10:06:34 6 Who will hear that? The Ninth Circuit will in our  
10:06:38 7 case; the Second Circuit will in the Aurelius case. We have now  
10:06:42 8 burdened two additional circuits with the exact same issues,  
10:06:46 9 facts and parties that could now be, with a 54(b) certification,  
10:06:52 10 before the Eleventh Circuit.

10:06:53 11 I am told that the Eleventh Circuit briefing process  
10:06:57 12 has been delayed until sometime in February. It has been  
10:07:01 13 delayed because there is an ongoing mediation with the Eleventh  
10:07:05 14 Circuit mediator. We have actually asked to be a part of that.  
10:07:10 15 We have been told that, pending this motion, we are respectfully  
10:07:14 16 not invited.

10:07:15 17 We think that the granting of 54(b) relief would  
10:07:21 18 therefore have the other salutary effect not only of not  
10:07:24 19 imposing on additional districts these issues but on, perhaps,  
10:07:29 20 promoting a global settlement of these issues.

10:07:32 21 **THE COURT:** When is the mediation set?

10:07:34 22 **MR. DILLMAN:** Your Honor, I don't have that information  
10:07:36 23 except I have communications from the mediator to the effect  
10:07:39 24 that we have been disinvited. There is a mediation that is  
10:07:46 25 pending on other matters next week, and I believe the sort of

10:07:49 1 separate mediation or separate issues raised here, as far as I  
10:07:53 2 know -- and counsel across the aisle can comment -- but as far  
10:07:58 3 as I know, there hasn't been a date set for that continued  
10:08:03 4 mediation.

10:08:03 5 **THE COURT:** Let me interrupt your presentation for a  
10:08:04 6 moment and turn to the other side. What about these points that  
10:08:11 7 are raised with regard to any additional appeals to other  
10:08:20 8 circuits and would it make sense if they are fully part of  
10:08:28 9 global mediation with the 54(b) partial final judgment?

10:08:31 10 **MR. CANTOR:** Thank you, Your Honor. Dan Cantor from  
10:08:34 11 O'Melveny & Meyers.

10:08:36 12 **THE COURT:** Doesn't that make some sense?

10:08:40 13 **MR. CANTOR:** It actually does not, Your Honor,  
10:08:41 14 respectfully, and let me explain why not, certainly with respect  
10:08:45 15 to the argument about involving the other circuits.

10:08:47 16 As an initial matter, it is a speculative argument  
10:08:50 17 because if, in fact, this case ultimately gets resolved, the  
10:08:54 18 disbursement agent agreement claims that are still remaining in  
10:08:57 19 the case between Bank of America and the term lenders gets  
10:09:00 20 resolved on summary judgment by Your Honor, that appeal would go  
10:09:03 21 to the Eleventh Circuit.

10:09:03 22 So it is not even entirely clear that this case on an  
10:09:07 23 appellate level would end up in either the Ninth or the Second  
10:09:10 24 Circuit, but even if that were the case, Your Honor, quite  
10:09:13 25 frankly, that makes it even more clear why 54(b) relief is



10:09:18 1 inappropriate because there is going to be an appeal at the end  
10:09:21 2 of the litigation between the term lenders and Bank of America.

10:09:25 3 I know that in my bones and anyone who has been  
10:09:27 4 anywhere close to this litigation knows that one side or the  
10:09:30 5 other will be appealing the ultimate outcome of that case.

10:09:34 6 So if, in fact, that appeal is going to happen at all,  
10:09:39 7 it makes far more sense -- and this is what the second sentence  
10:09:44 8 of 54(b) is designed to accomplish -- and the basic policy of  
10:09:48 9 not having piecemeal appeals is designed to avoid where you  
10:09:53 10 would have a situation where the Ninth or the Second Circuit is  
10:09:56 11 going to have to learn all about this case anyways. You  
10:09:59 12 shouldn't have them have to do it only for half the case.

10:10:03 13 **THE COURT:** What if you have, continuing our discussion  
10:10:05 14 of theoretical possibilities, inconsistent ruling among the  
10:10:09 15 circuits?

10:10:10 16 **MR. CANTOR:** Obviously, Your Honor, that would be a  
10:10:13 17 situation that would be something that you would prefer to  
10:10:15 18 avoid.

10:10:16 19 **THE COURT:** Right, but that wouldn't benefit anybody,  
10:10:18 20 would it?

10:10:19 21 **MR. CANTOR:** It would not benefit anyone, although I  
10:10:22 22 would suspect that although they would not be bound by any  
10:10:25 23 determination by the Eleventh Circuit, they certainly would be  
10:10:27 24 well influenced by the fact that a panel has already considered  
10:10:31 25 these questions and ruled upon them.

10:10:34 1 But I think more fundamentally, Your Honor, what that  
10:10:37 2 argument reveals is a basic misunderstanding by the term lenders  
10:10:43 3 of what 54(b) is about. It is not about -- you can't look at  
10:10:48 4 this issue or this argument, rather, on an issue-by-issue basis.  
10:10:52 5 The question is not how many appeals are there going to be on  
10:10:56 6 the fully drawn issue. The question is how many appeals are  
10:11:00 7 there going to be in the case of term lenders versus revolving  
10:11:06 8 lenders.

10:11:07 9 The term lenders want there to be two different appeals  
10:11:09 10 in that case and Rule 54(b), and all the Eleventh Circuit  
10:11:13 11 authority on Rule 54(b) make it clear that if you are going to  
10:11:18 12 have two separate appeals in a single case, one on an  
10:11:22 13 interlocutory basis and one at the end of the case, that the  
10:11:25 14 movant under 54(b) has to satisfy an extremely high burden in  
10:11:30 15 order to justify that relief.

10:11:33 16 The Eleventh Circuit in the Eberhini case and in the  
10:11:36 17 Vann case has made it clear that the circumstances justifying  
10:11:40 18 54(b) relief are going to be encountered only rarely and that  
10:11:45 19 District Courts are supposed to be conservative in ruling on  
10:11:49 20 54(b) motions and that it is reserved for the unusual case where  
10:11:52 21 there is a pressing need on the part of the movant. The Vann  
10:11:58 22 Court called it the infrequent harsh case.

10:12:02 23 Well, pressing need, unusual case, infrequent harsh  
10:12:04 24 case, that couldn't be further from what the term lenders are  
10:12:10 25 facing here. They are merely complaining about the

10:12:11 1 inconvenience of the fact that there is another appeal that  
10:12:15 2 raises an issue, but not all of the issues that would be raised  
10:12:20 3 in their appeals, and that it is proceeding first.

10:12:24 4           You know, they were content to not appeal Your Honor's  
10:12:28 5 May 28th ruling when it first came out. They didn't seek  
10:12:31 6 reconsideration. They didn't move for 1292(b) relief. They  
10:12:34 7 were perfectly fine with this case proceeding along the normal  
10:12:38 8 path until the Fontainebleau trustee dismissed the rest of its  
10:12:44 9 claims and got the right to immediately appeal the fully drawn  
10:12:48 10 ruling. That was when they suddenly decided that they needed to  
10:12:52 11 appeal Your Honor's ruling.

10:12:53 12           But whatever it is that they feel that they will suffer  
10:12:58 13 as a result of the Fontainebleau trustee arguing this issue  
10:13:01 14 before they get a chance to do so, that is not the kind of  
10:13:05 15 hardship or prejudice or pressing need --

10:13:08 16           **THE COURT:** Let me talk more practical to you than  
10:13:12 17 technical if you don't mind.

10:13:13 18           **MR. CANTOR:** Okay. Sure.

10:13:15 19           **THE COURT:** What would be the harm for the Eleventh  
10:13:17 20 Circuit to have a choice, which really comes down to -- and I  
10:13:23 21 will get back to that in a second -- of looking at these issues  
10:13:29 22 with respect to both cases and also determine their standing?

10:13:34 23           **MR. CANTOR:** Well, that is the part, Your Honor, --

10:13:36 24           **THE COURT:** What would be the harm to your side to tee  
10:13:40 25 off all these issues and get one opinion on it?

10:13:45 1           **MR. CANTOR:** Well, among other things, Your Honor, the  
10:13:48 2 issue of the credit agreement breach is one that could be mooted  
10:13:54 3 by the proceedings that are going to happen on the disbursement  
10:13:58 4 agreement claims that are going forward in Your Honor's court  
10:14:01 5 simultaneously with the appeal that is going on at the Eleventh  
10:14:03 6 Circuit.

10:14:04 7           We spoke to counsel for the term lenders when they  
10:14:09 8 first raised this issue and they were adamant that they didn't  
10:14:11 9 want to do anything that was going to prejudice their 2012 trial  
10:14:15 10 date on the disbursement agent claims.

10:14:18 11           But in order to prevail on the disbursement agent  
10:14:21 12 claims, one of the things that they are going to have to show is  
10:14:24 13 that there were defaults, events of default, by Fontainebleau.

10:14:29 14           But as Your Honor recognized in the summary judgment  
10:14:32 15 ruling in the Fontainebleau case and as we discussed with Your  
10:14:36 16 Honor in the briefing on the motion to dismiss in this case, if  
10:14:41 17 it is established by the term lenders, as they must, that there  
10:14:46 18 were defaults by Fontainebleau, and the events of default that  
10:14:50 19 they are talking about in their complaint happened long, long,  
10:14:54 20 long before March 2009, then there would be no breach claim  
10:15:02 21 under the credit agreement for failure to fund the March  
10:15:05 22 borrowing request because Fontainebleau would have already been  
10:15:08 23 in material breach of the credit agreement.

10:15:10 24           So we would be going up to the Eleventh Circuit on an  
10:15:15 25 issue that, from a standing perspective, Your Honor has already

10:15:19 1 determined they don't have the right to be heard on. That is  
10:15:25 2 what your standing ruling is, is that they are not a beneficiary  
10:15:28 3 of the fully drawn provision and therefore they don't have a  
10:15:32 4 right to be heard on it.

10:15:33 5 So it is really getting it backwards that they want to  
10:15:36 6 go up to the Eleventh Circuit in an extraordinary procedural  
10:15:41 7 mechanism that is to be invoked rarely so that they can argue  
10:15:44 8 about the contract interpretation of a provision that Your Honor  
10:15:48 9 said they don't have the power to enforce. In any event, they  
10:15:51 10 are talking about a claim that could be mooted by the ongoing  
10:15:54 11 litigation.

10:15:55 12 So that's the prejudice to us, Your Honor, in addition  
10:15:58 13 to, respectfully, you know, what's the harm is not the proper  
10:16:04 14 standard. The Eleventh Circuit has made it clear that it is a  
10:16:07 15 lot more serious than okay, you know, it would be convenient.

10:16:11 16 **THE COURT:** Then they would tell us that I have  
10:16:15 17 overstepped my bounds and they are going to limit their  
10:16:19 18 discussion, in which case the other side then says, "Well, we  
10:16:23 19 want at least the opportunity to file amicus on this."

10:16:27 20 So then we're back to the amicus issue. One way or the  
10:16:30 21 other, they're going to try to get their position heard with  
10:16:33 22 respect to the fully drawn question.

10:16:38 23 **MR. CANTOR:** Your Honor, it is interesting --

10:16:39 24 **THE COURT:** The only issue is whether they have any  
10:16:41 25 opportunity to argue about the standing issue at that same time.

10:16:45 1           **MR. CANTOR:** Your Honor, it was interesting that when  
10:16:47 2 you asked them what new arguments, different arguments, they  
10:16:50 3 would raise that aren't going to be raised by the trustee,  
10:16:55 4 whether intentionally or by inadvertence, they actually didn't  
10:16:59 5 answer that question because, quite frankly, either answer  
10:17:01 6 doesn't help them on this motion.

10:17:04 7           Either their arguments are going to be exactly the same  
10:17:06 8 or their arguments are going to be different, in which case  
10:17:09 9 their point about not burdening the Eleventh Circuit makes no  
10:17:11 10 sense because now they are, in fact, burdening the Eleventh  
10:17:14 11 Circuit with additional issues that they wouldn't otherwise have  
10:17:17 12 to address.

10:17:18 13           **THE COURT:** Point well taken but let me turn back.  
10:17:22 14 What do you have to say with respect to their position?

10:17:24 15           **MR. DILLMAN:** Well, Your Honor, a lot was just said.  
10:17:27 16 Let me go back to, I think, where your question started with  
10:17:32 17 counsel.

10:17:33 18           As a practical matter, why do we care? Why is there  
10:17:37 19 any reason that we should not be in the Eleventh Circuit arguing  
10:17:43 20 these issues?

10:17:44 21           Counsel suggested that we had somehow not cared about  
10:17:46 22 this in the first instance and had delayed, had not sought  
10:17:51 23 reconsideration, had not sought a 54(b) certification because we  
10:17:56 24 had determined that we didn't want to be in the Court of Appeal.

10:17:58 25           Far from it, Your Honor. We would have loved, in May

10:18:01 1 of last year, to go up on appeal. We would have liked to have  
10:18:05 2 gotten finality on this. We would have liked to have gotten the  
10:18:08 3 revolving lenders back in this case. This is now a  
10:18:11 4 one-defendant case where it was eleven before.

10:18:14 5 It was our assessment, however, at that time that  
10:18:17 6 neither this Court nor the Eleventh Circuit would have looked  
10:18:20 7 favorably upon the multiple appeals that that would have  
10:18:26 8 created. How so?

10:18:27 9 You had already denied the 1292(b) motion for  
10:18:30 10 Fontainebleau. Therefore, they were going to only be able to  
10:18:35 11 have an appeal of that issue at the end of their case. And so  
10:18:41 12 by definition if we were to seek 54(b) relief at that time, we  
10:18:45 13 would have created the situation of multiple considerations by  
10:18:48 14 the Eleventh Circuit on these issues.

10:18:52 15 That situation has now come full circle. When Your  
10:18:56 16 Honor granted the trustee's motion to dismiss claims, to allow  
10:19:01 17 the trustee to appeal, that now gave an opportunity to have this  
10:19:07 18 issue decided once by the Eleventh Circuit now.

10:19:13 19 I go back to the practical question: What is the  
10:19:18 20 possible harm? Why is the Eleventh Circuit going to be burdened  
10:19:20 21 with a couple of additional arguments?

10:19:23 22 I think that they can handle that. I think the  
10:19:26 23 Eleventh Circuit will want to have before it when it considers  
10:19:29 24 these issues all points of view. They will be disappointed if  
10:19:35 25 at the end of the case it is determined that they weren't given

10:19:38 1 arguments.

10:19:39 2 Now, Your Honor has pointed to the issue of an amicus  
10:19:44 3 possibility. Yes, that exists, but then we get back to the  
10:19:48 4 multiplicity of appeals throughout the circuits that will result  
10:19:51 5 if we are not there.

10:19:52 6 **THE COURT:** Well, I mean, the truth of the matter is  
10:19:55 7 the Eleventh Circuit calls the shots on the issue because if I  
10:20:03 8 grant your motion, it can take a look at what I've done and say  
10:20:09 9 that the entry of partial final judgment under 54(b) was  
10:20:13 10 improper and dismiss it, and they have done so.

10:20:21 11 One case I found was Lloyd Noland Foundation, Inc.  
10:20:25 12 versus Tenet Health Care, 483 F.3d 773, decided in 2007, and  
10:20:40 13 there are others.

10:20:44 14 So the Eleventh Circuit can decide, in effect, what is  
10:20:48 15 in the interest of all the parties as they see it through the  
10:20:52 16 appellate lens.

10:20:58 17 The question is whether it makes sense to give them  
10:21:01 18 that opportunity and the opportunity for the other side to move  
10:21:04 19 to dismiss it as being improperly filed, I suppose, and the  
10:21:07 20 Eleventh Circuit can decide that question.

10:21:10 21 **MR. DILLMAN:** Well, Your Honor, I would point to the  
10:21:13 22 Yarn Processing case as another case where the Eleventh Circuit  
10:21:16 23 rejected a 54(b) certification, saying that there hadn't been  
10:21:19 24 sufficient grounds established.

10:21:20 25 The Eleventh Circuit has shown no reluctance to step in



10:21:22 1 when it does not want to be bothered by appeals that it does not  
10:21:25 2 consider to be appropriate under Rule 54(b).

10:21:29 3 I think, Your Honor, as a final matter we have to ask  
10:21:34 4 ourselves: Why are the defendants fighting so hard to keep us  
10:21:40 5 out of the Eleventh Circuit? They are going to be there. They  
10:21:43 6 will be there. It is not going to be a stitch more for them.  
10:21:47 7 They will fly out. They will make their appearance. They will  
10:21:50 8 have to address the standing argument, but they will have to  
10:21:53 9 address that sometime anyway.

10:21:54 10 **THE COURT:** They think you are too good an advocate up  
10:21:57 11 there.

10:21:57 12 **MR. DILLMAN:** Well, Your Honor, it is obviously  
10:22:00 13 strategic, not equitable, in terms of their desires here.

10:22:05 14 I want to emphasize this is an MDL proceeding. This is  
10:22:09 15 set up for just these efficiencies, and I would suggest that the  
10:22:15 16 MDL panel, if looking at this, would say we don't want these  
10:22:18 17 appeals to be heard in different circuits. That's why we sent  
10:22:22 18 it to Judge Gold. That's why we sent it to have the Eleventh  
10:22:26 19 Circuit oversee these matters.

10:22:28 20 I think it is fundamentally inconsistent with the whole  
10:22:31 21 reason that all of us are here before you, that you would not  
10:22:35 22 permit us 54(b) certification.

10:22:37 23 **THE COURT:** What is your response to the issue of the  
10:22:39 24 global mediation? With a 54(b) in their favor, they would have  
10:22:45 25 a place at the table.

10:22:46 1 Why wouldn't you want them to have a place at the  
10:22:49 2 table?

10:22:49 3 **MR. CANTOR:** Your Honor, I've got lots of answers to  
10:22:54 4 that. Some of them are probably not appropriate for a courtroom  
10:23:00 5 because they have to do with strategic settlement issues.

10:23:04 6 **THE COURT:** I'm not asking for those answers. I mean,  
10:23:06 7 is there some persuasive reason that would be disruptive of the  
10:23:14 8 mediation to have them as a participant if it is a global  
10:23:18 9 mediation?

10:23:18 10 **MR. CANTOR:** Well, Your Honor, they are in a different  
10:23:20 11 posture right now from a settlement perspective than the trustee  
10:23:26 12 is.

10:23:26 13 Every single one of the trustee's claims has now been  
10:23:29 14 dismissed. The term lenders still have their claims against  
10:23:33 15 Bank of America which while I, as you undoubtedly recognize,  
10:23:40 16 seriously dispute, I'm sure they believe them to be very strong,  
10:23:43 17 very valid and worth a lot of money.

10:23:47 18 Thus, it would impose an entirely different dynamic on  
10:23:52 19 the settlement conference just for that reason alone, among  
10:23:56 20 others.

10:23:56 21 **THE COURT:** Is it premature for settlement discussions  
10:24:00 22 among yourselves at this point because the discovery hasn't gone  
10:24:03 23 far enough?

10:24:05 24 Would it be helpful to have an early discussion which  
10:24:10 25 is triggered by this global mediation at the Eleventh Circuit

10:24:16 1 level?

10:24:16 2 **MR. CANTOR:** Let me put it this way, Your Honor, and  
10:24:19 3 not meaning to be -- hopefully not being nonresponsive. The  
10:24:22 4 parties have been mindful already of the potential benefits of  
10:24:27 5 early settlement. The mediation that is planned for February  
10:24:32 6 will not advance that goal in any way.

10:24:42 7 Your Honor, just further on the mediation point, the  
10:24:47 8 parties have already debated with Mr. Halbecker, the Eleventh  
10:24:52 9 Circuit mediator, whether, in fact, mediation would be fruitful  
10:24:57 10 even between the revolving lenders and the trustees.

10:25:00 11 Quite frankly, over the revolving lenders' views,  
10:25:03 12 Mr. Halbecker has told us he still wants to go forward with the  
10:25:07 13 mediation. So it's not as though everyone is going to mediation  
10:25:11 14 with high expectations for its success, so that's another  
10:25:16 15 atmospheric there as well.

10:25:18 16 If I may, Your Honor, I just would like to add one  
10:25:21 17 point on this issue of if the Eleventh Circuit doesn't want it,  
10:25:24 18 the Eleventh Circuit will kick it back.

10:25:27 19 Respectfully, I think when you read the Eleventh  
10:25:29 20 Circuit opinions on 54(b), and in particular the Eberhini case,  
10:25:37 21 the Eleventh Circuit has made it clear that it doesn't want to  
10:25:39 22 be burdened with having to kick it back in the first instance.

10:25:42 23 And that is why, respectfully, it has specifically  
10:25:46 24 instructed to Districts Courts that they need to make very  
10:25:50 25 specific findings before granting 54(b) relief and has, in the

10:25:55 1 Court's words, counseled Districts Courts to exercise the  
10:26:00 2 limited discretion afforded by Rule 54(b) conservatively.

10:26:05 3 So I think it is fair to say that the Eleventh Circuit  
10:26:08 4 does not envision a process whereby 54(b) relief will be granted  
10:26:13 5 because what's the harm? The Eleventh Circuit can always kick  
10:26:16 6 it back.

10:26:17 7 They want to make sure that the issue has been fully  
10:26:20 8 vetted here first.

10:26:21 9 **THE COURT:** I promise I won't put those words in my  
10:26:25 10 order but I'm asking you practically, as we discuss the  
10:26:33 11 implementations of the give and take, what is really going on  
10:26:36 12 here between the parties, this question, --

10:26:38 13 **MR. CANTOR:** Yeah.

10:26:39 14 **THE COURT:** -- particularly in a multidistrict  
10:26:41 15 litigation context.

10:26:44 16 I have concerns about where it all ends up. You know,  
10:26:51 17 we talk about summary judgment on the remaining issues that are  
10:26:57 18 still before us, but without even beginning to imagine all the  
10:27:05 19 arguments that both sides will present, there may be a  
10:27:12 20 likelihood that there are material issues of fact that require  
10:27:16 21 resolution through trial.

10:27:19 22 If that's the case, then there could be a potential for  
10:27:24 23 different points of view among circuits on this issue and that  
10:27:28 24 certainly is not consistent with the multidistrict goals.

10:27:37 25 **MR. CANTOR:** I understand that, Your Honor, but --

10:27:39 1           **THE COURT:** That's one point that the Eleventh Circuit  
10:27:42 2 might have some concern about, that they would be the one to  
10:27:47 3 decide this issue as to all the parties once and for all.

10:27:57 4           **MR. WOLL:** Your Honor, if Mr. Cantor doesn't mind,  
10:27:57 5 could I jump in for a second on that point? David Woll from  
6 Simpson Thacher.

10:28:00 7           **THE COURT:** Sure. Could you use the microphone a  
10:28:01 8 little bit better?

10:28:03 9           **MR. WOLL:** I apologize. I think it is important to  
10:28:06 10 recognize that the "fully drawn" appeal in the trustee case, in  
10:28:13 11 the Fontainebleau case, could very well result in unresolved  
10:28:19 12 disputed factual issues, either because the Eleventh Circuit  
10:28:22 13 found contrary to our belief that the term is ambiguous and that  
10:28:25 14 there needs to be a trial on the meaning of "fully drawn," or  
10:28:30 15 because of the events of default issues that Mr. Cantor  
10:28:33 16 mentioned.

10:28:35 17           Even if Fontainebleau prevailed on the "fully drawn"  
10:28:39 18 contract interpretation issue, there is still the issue of the  
10:28:42 19 events of default which Your Honor is suggesting may not be  
10:28:46 20 subject to resolution on summary judgment.

10:28:48 21           So this notion that the term lenders want to go up to  
10:28:52 22 the Eleventh Circuit now on this legal issue and then have  
10:28:55 23 another shot in another circuit after a trial on the factual  
10:28:59 24 issues which could very well result from the appeal, I don't  
10:29:03 25 think serves judicial economy or the MDL interest because then

10:29:08 1 you have two Appellate Courts dealing with appeals in the same  
10:29:11 2 case.

10:29:13 3 **MR. CANTOR:** And that goes back to the point that I was  
10:29:15 4 making earlier, Your Honor, which is to say that there is going  
10:29:17 5 to be an appeal from the term lender versus revolver case, and  
10:29:22 6 it will be better for whatever Court ultimately hears that  
10:29:25 7 appeal that it have all of the issues between us before it  
10:29:28 8 rather than having only part of those issues, particularly with  
10:29:33 9 respect to the credit agreement claims, because as Mr. Woll  
10:29:37 10 said, there are going to be arguments about the credit agreement  
10:29:41 11 claims in this case if the Eleventh Circuit decides that your  
10:29:44 12 interpretation of "fully drawn" was either incorrect or that the  
10:29:48 13 term is ambiguous.

10:29:51 14 So on the other hand if we were to wait to appeal the  
10:29:54 15 term lender case until it was all done, Mr. Dillman referred to  
10:29:58 16 this as strategic, but I think he sort of meant that in a  
10:30:02 17 somewhat pejorative sense, but I think it is really more a  
10:30:06 18 matter of fairness.

10:30:07 19 We should be able to go up to the Appeals Court in this  
10:30:09 20 case on the issue of the credit agreement with all of our  
10:30:16 21 arguments available to us.

10:30:18 22 One argument that we won't have available to us except  
10:30:20 23 in a pleading sense as opposed to a factual sense is that the  
10:30:21 24 term lenders can't prevail on the credit agreement claim because  
10:30:26 25 it has been established that Fontainebleau breached the

10:30:29 1 agreement before it made the March 3 borrowing request.

10:30:34 2 54(b) relief puts you in this odd posture, as Mr. Woll  
10:30:39 3 suggested, where there could be multiple courts dealing with  
10:30:42 4 that issue, where all of the issues relating to the credit  
10:30:45 5 agreement are not before the Appellate Court, whereas if you  
10:30:48 6 keep the term lender litigation together -- and again to go back  
10:30:51 7 to my initial point, 54(b) is not about the appeal of issues; it  
10:30:55 8 is about the appeal of cases.

10:30:57 9 And if you keep this case to one appeal, which is what  
10:31:01 10 the second part of 54(b) talks about, what the policy against  
10:31:06 11 piecemeal appeals is designed to prevent, then you avoid these  
10:31:11 12 potential problems.

10:31:12 13 **THE COURT:** What's your response to all that?

10:31:14 14 **MR. DILLMAN:** Your Honor, I think it is a narrow view  
10:31:17 15 to simply try and count up appeals and say how many are there,  
10:31:23 16 and depending on that equation, we're going to grant or not  
10:31:27 17 54(b) relief.

10:31:30 18 54(b) is designed to allow parties that should be in  
10:31:34 19 the Appellate Courts now to be there and, by the same token, to  
10:31:42 20 prevent parties from cutting in line. There is a process that  
10:31:45 21 you need to go through to appeal, and the Appellate Court has  
10:31:47 22 said we don't want people cutting in line unless there is a  
10:31:51 23 pretty darn good reason for it.

10:31:54 24 We are not even seeking to cut in line. It is already  
10:31:57 25 there. We are just seeking to join the parties that are already

10:32:00 1 in line, that are there as a matter of right; and the notion  
10:32:05 2 that somehow there may be events -- and I am not even sure I  
10:32:09 3 completely understood the fact patterns that they were  
10:32:12 4 speculating in terms of what may happen and when and in what  
10:32:15 5 circuits.

10:32:16 6 One thing we know to be clear: These issues, the fully  
10:32:21 7 drawn issues on the credit agreement, the only issues involving  
10:32:25 8 10 of the 11 defendants, the only issues involving those  
10:32:29 9 revolving defendants, other than BofA, who is -- the  
10:32:34 10 allegations, who is being -- claims are being asserted against  
10:32:39 11 on a wholly different agreement for wholly different conduct  
10:32:42 12 with different damages. So we have got all of the issues on a  
10:32:47 13 set of claims involving 10 defendants up before the Court of  
10:32:51 14 Appeal.

10:32:52 15 I don't know what is going to happen in these cases. I  
10:32:54 16 don't know how things are going to go. I don't know about  
10:32:56 17 summary judgment. Your Honor may grant our summary judgment for  
10:32:59 18 all I know. But I do know that we have an opportunity to put a  
10:33:04 19 stake through this particular issue and, that is, is there a  
10:33:08 20 claim for failure to fund against the revolving lenders?

10:33:11 21 If the answer to that is yes, it will come back down.  
10:33:16 22 It may or may not be able to be joined with this case given the  
10:33:20 23 timing. Who knows what is going to happen, but we will burn  
10:33:23 24 that bridge when we come to it.

10:33:25 25 If the answer is no, then we're done. Then we no



10:33:29 1 longer have the revolving lender failure to fund claims to deal  
10:33:35 2 with, and I think that really is the focus of our motion, is to  
10:33:42 3 generate the efficiencies, to eliminate the extraneous work that  
10:33:51 4 would otherwise be imposed upon the Eleventh Circuit,  
10:33:54 5 potentially the Ninth Circuit and potentially the Second Circuit  
10:33:58 6 here. There is no reason. There is no just cause for delay  
10:34:01 7 here. The parties are there. We simply seek to be there with  
10:34:07 8 them.

10:34:07 9 **MR. CANTOR:** Your Honor, the Eleventh Circuit has made  
10:34:10 10 it clear that there has to be a pressing need, that the purpose  
10:34:13 11 of 54(b) is to avoid prejudice to the party that seeks the  
10:34:19 12 relief. What is the pressing need? What is the prejudice?

10:34:22 13 Mr. Dillman has explained why they would like to be up  
10:34:28 14 at the Eleventh Circuit with the trustee, and I can understand  
10:34:30 15 why he would like to be a part of that proceeding, but he has  
10:34:32 16 not made even the remotest showing of a pressing need.

10:34:38 17 Again, it is important to remember what he's talking  
10:34:40 18 about is 54(b) relief for what was alternative grounds for Your  
10:34:47 19 Honor's decision to dismiss his claims. It is not even that he  
10:34:53 20 seeks 54(b) relief so that he can appeal the principal basis on  
10:34:58 21 which his claims were dismissed.

10:35:00 22 He wants to appeal an alternative basis.

10:35:10 23 **MR. RUBINSTEIN:** Your Honor, may I? Aaron Rubinstein  
24 from Kaye Scholer for HSH Nordbank.

10:35:12 25 I am in a slightly different position than Mr. Cantor

10:35:15 1 and his client because I am only a revolver, and I am not facing  
10:35:19 2 the disbursement agreement claims that he is facing.

10:35:21 3 To respond to plaintiff's last point, if the answer is  
10:35:25 4 yes from the Eleventh Circuit, that indeed Your Honor was wrong,  
10:35:30 5 then I am back in litigation now and I am litigating and going  
10:35:34 6 through discovery and everything without the Eleventh Circuit  
10:35:37 7 having had the opportunity to address everything to prevent me  
10:35:40 8 from being in that position, because without 54(b)  
10:35:44 9 certification, the litigation is going to proceed against Bank  
10:35:47 10 of America as administrative agent.

10:35:49 11 And if they lose, then I'm never going to be faced with  
10:35:54 12 the trial for the reasons Mr. Cantor said.

10:35:58 13 There will have been a default that will have been  
10:36:00 14 declared and that alone would preclude the revolvers from having  
10:36:05 15 to have funded on March 2 or March 3.

10:36:07 16 And so the answer to the last point that was made by  
10:36:11 17 plaintiff's counsel is that is exactly why I, as a revolver only  
10:36:17 18 -- and most of us are revolvers only except for Bank of  
10:36:19 19 America -- are facing very severe prejudice.

10:36:22 20 If they win without all of the issues before the  
10:36:26 21 Eleventh Circuit at the end of the case, including whether or  
10:36:28 22 not there was a default after a determination of the claims  
10:36:33 23 against the administrative agent, then they are only addressing  
10:36:37 24 the issues that relate to the revolvers with part of the legal  
10:36:45 25 basis to proceed on the claims for not funding on March 2 or

10:36:49 1 March 3.

10:36:50 2 I may never get there if the determination is made that  
10:36:55 3 there were serious defaults and events and defaults that existed  
10:36:59 4 because that is a separate basis that would preclude their  
10:37:03 5 claims against the revolvers.

10:37:06 6 One more point, Your Honor, if I may. You asked about  
10:37:09 7 settlement and why it would hurt if they were there. One of the  
10:37:12 8 things which I can say is I think it would hurt tremendously  
10:37:15 9 from my perspective. There are different types of plaintiffs  
10:37:20 10 here with respect to that same issue.

10:37:22 11 We are going to be negotiating with a trustee of a  
10:37:30 12 bankrupt entity that no longer owns this project and that has to  
10:37:34 13 evaluate, having lost, whether or not it is worth spending money  
10:37:39 14 to pursue the claims or not and evaluate what is reasonable for  
10:37:43 15 it to accept under these circumstances.

10:37:46 16 Many of the plaintiffs in this case are essentially  
10:37:53 17 vulture fund purchasers who bought up this debt for severe  
10:37:59 18 discounts but for many millions of dollars. They are in it to  
10:38:03 19 recover their investment, and they are hardly going to be of a  
10:38:06 20 frame of mind to settle at what we believe should be the minimal  
10:38:09 21 amount that a trustee should agree to settle because why should  
10:38:14 22 they?

10:38:15 23 They'd rather pay counsel and take a shot and recoup  
10:38:18 24 their hundreds of millions of dollars of whatever they have  
10:38:20 25 invested because otherwise they are potentially being asked to

10:38:22 1 walk away for a minimal amount.

10:38:27 2 I don't think there is a chance at this stage we could  
10:38:29 3 settle with the term lenders. I think there is a chance we  
10:38:31 4 could settle with the trustee but if there is a joint  
10:38:35 5 negotiation, I think that eliminates the chance of settling with  
10:38:38 6 the trustee because the trustee is not going to accept what I  
10:38:43 7 think is the most we are going to be willing to pay under the  
10:38:46 8 settlement circumstances if the term lenders are there  
10:38:48 9 potentially getting more or substantially more.

10:38:53 10 It really changes the dynamic in a way that I think is  
10:38:57 11 very detrimental to reaching a settlement with the trustee.

10:39:00 12 **THE COURT:** Anyone else have anything you wish to add?

10:39:04 13 **MR. DILLMAN:** Your Honor, I can't let this hearing go  
10:39:09 14 without indicating that this notion that proof of a default  
10:39:15 15 somehow eliminates the claims against the revolvers is just not  
10:39:22 16 correct.

10:39:24 17 Your Honor has ruled on this issue previously in a  
10:39:28 18 Fontainebleau case. We have in our motion, our opposition to  
10:39:31 19 the motion to dismiss, spent a great deal of time -- I believe  
10:39:36 20 six or seven pages -- explaining why, under the proper  
10:39:39 21 interpretation of the credit agreement, prior defaults did not  
10:39:45 22 excuse the revolving lenders from funding.

10:39:49 23 That was never rebutted by the revolving lenders in  
10:39:56 24 their reply brief on that. The Court never reached it, but it  
10:39:59 25 is very much, in our opinion, a live issue. Even if the Court

10:40:04 1 were to conclude that indeed prior existing defaults excused,  
10:40:12 2 recall that our disbursement agreement claims, our claims  
10:40:16 3 against Bank of America for improperly disbursing our funds  
10:40:22 4 March 25, 2009, concern acts that occurred on March 25, 2009.

10:40:26 5 The failure to fund occurred on March 3rd, and so there  
10:40:31 6 is certainly a possibility that even if you were to determine  
10:40:37 7 the defaults excused payments, the defaults that we prove up  
10:40:42 8 would not be relevant and applicable to that earlier period.

10:40:47 9 I didn't want it to go by that that was something that  
10:40:49 10 we agreed with and that that was the law of the case here.

10:40:52 11 I am happy to -- I don't get the sense from the Court's  
10:40:55 12 expression that you are interested in going through more detail  
10:40:58 13 on that.

10:40:59 14 **THE COURT:** I am really not.

10:41:00 15 **MR. DILLMAN:** There are many arguments that we have and  
10:41:03 16 I just wanted to make sure that that did not go unresponded to.

10:41:07 17 **MR. CANTOR:** Your Honor, the only thing I will say on  
10:41:09 18 that, because I also recognize that you don't want to get into  
10:41:12 19 the meat of this, but I would simply point out that in our  
10:41:15 20 motion to dismiss reply brief at Page 8, Footnote 12, we did, in  
10:41:19 21 fact, deal with their issue.

10:41:22 22 Because it was the fourth or fifth reason why their  
10:41:25 23 claims failed, it was not emphasized in our brief or in Your  
10:41:28 24 Honor's opinion, but we very much did dispute the issue, and are  
10:41:34 25 prepared to do so down the road as well.

10:41:38 1                   **THE COURT:** Does anybody wish to have any other  
10:41:41 2 position stated?

10:41:43 3                   I'd like to take another look at this before I decide  
10:41:49 4 on the question. Your arguments today were helpful in  
10:41:51 5 clarifying some matters that at least I wanted to ask you about,  
10:41:55 6 but I hope to get the answer out to you within the next week so  
10:42:01 7 that you have time to take positions that you may want to take  
10:42:09 8 if I rule adversely.

10:42:10 9                   Thank you for your appearances today.

10:42:14 10                  **MR. DILLMAN:** Thank you Your Honor.

10:42:15 11                  **MR. CANTOR:** Thank you, Your Honor.

10:42:17 12                  [The proceedings conclude at 10:42 a.m., 1/7/11.]

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CERTIFICATE

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

01.25.11  
DATE



**JOSEPH A. MILLIKAN, RPR-CM-NSC-FCRR**  
*Official United States Court Reporter*  
*Federally Certified Realtime Reporter*  
400 North Miami Avenue, Suite 11-1  
Miami, FL 33128 305.523.5588  
(Fax) 305.523.5589  
[josephamillikan@gmail.com](mailto:josephamillikan@gmail.com)

ELEVENTH CIRCUIT TRANSCRIPT ORDER FORM

PART I. TRANSCRIPT ORDER INFORMATION

Appellant to complete and file with the District Court Clerk within 30 days of the filing of the notice of appeal in all cases, including those in which there was no hearing or for which no transcript is ordered.

14

Short Case Style: ACP Master, Ltd., et al. vs. Bank of America, N.A., et al.,

District Court No.: 10-CV-20236-Gold Date Notice of Appeal Filed: February 11, 2011 Court of Appeals No.: Not Available (If Available)

CHOOSE ONE: [ ] No hearing [ ] No transcript is required for appeal purposes [ ] All necessary transcript(s) on file [x] I AM ORDERING A TRANSCRIPT OF THE FOLLOWING PROCEEDINGS:

Check appropriate box(es) and provide all information requested:

HEARING DATE(S) JUDGE/MAGISTRATE COURT REPORTER NAME(S)

[x] Pre-Trial Proceedings May 7, 2010 and January 7, 2011 - Judge Gold - Joseph A. Millikan

[ ] Trial

[ ] Sentence

[ ] Other

METHOD OF PAYMENT:

[x] I CERTIFY THAT I HAVE CONTACTED THE COURT REPORTER(S) AND HAVE MADE SATISFACTORY ARRANGEMENTS WITH THE COURT REPORTER(S) FOR PAYING THE COST OF THE TRANSCRIPT.

[ ] CRIMINAL JUSTICE ACT. Attached for submission to District Judge/Magistrate is my completed CJA Form 24 requesting authorization government payment of transcript. [A transcript of the following proceedings will be provided ONLY IF SPECIFICALLY AUTHORIZED in Item 13 CJA Form 24: Voir Dire; Opening and Closing Statements of Prosecution and Defense; Prosecution Rebuttal; Jury Instructions]

Ordering Counsel/Party: Brett Amron/Plaintiffs

Name of Firm: Bast Amron LLP

Street Address/P.O. Box: SunTrust International Center, One Southeast Third Avenue, Suite 1440

City/State/Zip Code: Miami, FL 33133 Phone No.: 305-379-7904

I certify that I have filed the original (Yellow page) with the District Court Clerk, sent the Pink and green pages to the appropriate Court Reporter(s) if ordering a transcript, and sent a photocopy to the Court of Appeals Clerk and to all parties.

DATE: February 22, 2011 SIGNED: s/Brett Amron Attorney For: Plaintiffs

PART II. COURT REPORTER ACKNOWLEDGMENT

Court Reporter to complete and file Pink page with the District Court Clerk within 10 days of receipt. The Court Reporter shall send a photocopy to Court of Appeals Clerk and to all parties, and retain the Green page to provide notification when transcript filed.

Date Transcript Order received: 02.22.11

[ ] Satisfactory arrangements for paying the cost of the transcript were completed on: 02.22.11

[ ] Satisfactory arrangements for paying the cost of the transcript have not been made.

No. of hearing days: 2 Estimated no. of transcript pages: 95 Estimated filing date: 02.22.11

DATE: 02.22.11 SIGNED: s/ Joseph A. Millikan Phone No.: 02.22.11

NOTE: The transcript is due to be filed within 30 days of the date satisfactory arrangements for paying the cost of the transcript were completed unless Court Reporter obtains an extension of time to file the transcript.

PART III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN DISTRICT COURT

Court Reporter to complete and file Green page with the District Court Clerk on date of filing transcript in District Court. The Court Reporter shall send photocopy of the completed Green page to the Court of Appeals Clerk on the same date.

This is to certify that the transcript has been completed and filed with the district court on (date): 02.22.11

Actual No. of Volumes and Hearing Dates: Two Volumes, 05.07.10 & 01.07.11

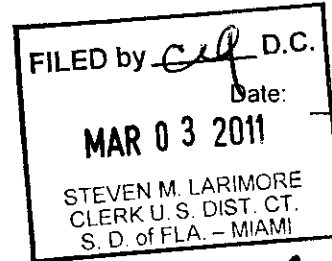
Date: 02.22.11 Signature of Court Reporter: s/ Joseph A. Millikan



Southern District of Florida

STEVEN M. LARIMORE  
Clerk of Court

Appeal Section  
305-523-5080



Date: February 14, 2011

Clerk, United States Court of Appeals  
Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

IN RE: District Court No.: 10cv20236 (member case  
09md2109A  
ATLANTA, GA  
69 ind Zick  
Style: APC Master Ltd, et al v. Bank of America et al

U.S.C.A. No.:

11-10740 AA

Enclosed are documents regarding an appeal in this matter. Please acknowledge receipt on the enclosed copy of this letter.

Certified copy of Notice of Appeal, docket entries, judgment, opinion/order appealed from, enclosed.  
If opinion/order was oral, please check \_\_\_\_\_.

First Notice of Appeal: yes

Date(s) of other notice(s): \_\_\_\_\_

\_\_\_\_\_ volume(s) of pleadings; \_\_\_\_\_ volume(s) of transcripts;

\_\_\_\_\_ volume(s) of exhibits/depositions; other: \_\_\_\_\_

There was no hearing from which a transcript could be made.

Copy of CJA form appointing counsel enclosed.

The following materials were SEALED in this court (order enclosed):

The appellate docket fee has been paid yes

Date paid 2/11/2011 Receipt No. FLS 100014010

Appellant has been granted leave to appeal In Forma Pauperis (copy of order granting IFP is enclosed)

The Judge or Magistrate appealed from is: Alan S. Gold

The Court Reporter(s): \_\_\_\_\_

This is an appeal of a bankruptcy order.

Bankruptcy Judge: \_\_\_\_\_

This is a DEATH PENALTY appeal.

Sincerely,

Steven M. Larimore, Clerk of Court

By: [Signature]  
C. Quinones Deputy Clerk

c: court file

- 400 N. Miami Avenue  
Miami, FL 33128  
305-523-5100
- 299 E. Broward Boulevard  
Room 108  
Ft. Lauderdale, FL 33301  
954-769-5400
- 701 Clematis Street  
Room 402  
W. Palm Beach, FL 33401  
561-803-3400
- 301 Simonton Street  
Room 130  
Key West, FL 33040  
305-295-8100
- 300 South Sixth Street  
Ft. Pierce, FL 34950  
561-595-9691

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO 09-MD-02106-CIV-GOLD/GOODMAN**

**IN RE: FONTAINEBLEAU LAS VEGAS  
CONTRACT LITIGATION**

**MDL No.2106**

This document relates to 10-cv-20236-  
GOLD/GOODMAN

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**AURELIUS PLAINTIFFS'  
DESIGNATION OF RECORD FOR APPEAL**

Pursuant to the Clerk of Court's request dated May 10, 2011, the Aurelius Plaintiffs<sup>1</sup> hereby designate documents to include in the record to be transmitted to the Eleventh Circuit Court of Appeals by circling the appropriate docket entry numbers of items to include on copies of the following dockets: (1) the MDL docket sheet, Case No. 09-md-2106, attached hereto as Exhibit A, to the extent the documents were filed in and appear on the MDL docket; (2) the docket sheet in the underlying case, Case No. 10-cv-20236, attached hereto as Exhibit B, to the extent the documents were filed in the underlying case only; and (3) the docket sheet in the coordinated case captioned *Fontainebleau Las Vegas LLC v. Bank of America, NA., et al.*, Case No. 09-cv-21879, attached hereto as Exhibit C, to the extent a document was only filed in the underlying docket of the coordinated case but expressly incorporated by the Court into MDL Order Number Eighteen, as amended. [ECF No. 80 in Case No. 09-md-2106.]

---

<sup>1</sup> Aurelius Plaintiffs consist of the plaintiffs in *ACP Master, Ltd., et al. v. Bank of America, NA., et al.*, in underlying case number Case No. 10-cv-20236-ASG.

Respectfully submitted,

DATED: May 12, 2011

By:           /s/ Brett M. Amron            
Brett M. Amron, Esq.  
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SunTrust International Center  
One Southeast Third Avenue, Suite 1440  
Miami, FL 33131  
Telephone: (305) 379-7904  
Facsimile: (305) 379-7905

*Local Counsel for Plaintiff Term Lenders*

*- and -*

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& SCOTT  
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Chicago, IL 60654  
Telephone: (312) 494-4400  
Facsimile: (312) 494-4440

*Counsel for Plaintiff Term Lenders*

**EXHIBIT A**

APPEAL, CASREF, JG, MDL, REF\_DISCOV

**U.S. District Court  
Southern District of Florida (Miami)  
CIVIL DOCKET FOR CASE #: 1:09-md-02106-ASG**

In Re: Fontainebleau Las Vegas Contract Litigation  
Assigned to: Judge Alan S. Gold  
Referred to: Magistrate Judge Jonathan Goodman  
Member case: [\(View Member Case\)](#)  
Cause: 28:1331 Fed. Question: Breach of Contract

Date Filed: 12/02/2009  
Jury Demand: Plaintiff  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
12/02/2009	<u>1</u>	TRANSFER ORDER (Dated 12/02/2009) from Judicial Panel on Multidistrict Litigation transferring case to the Southern District of Florida re: MDL Case # 09-MD-2106 for consolidated pretrial proceedings pursuant to 28 USC 1407 and assigned to the Honorable Alan S. Gold. (Signed by Robert L. Miller, Jr., Acting Chairman of the Panel). (Attachments: # <u>1</u> JPML Service List) (gp) (Entered: 12/03/2009)
12/02/2009	<u>2</u>	Rules of Procedure of the Judicial Panel on Multidistrict Litigation. (gp) (Entered: 12/03/2009)
12/04/2009	<u>3</u>	MDL Transfer In Case Receipt from Southern District of Florida; Case No. 1:09-cv-21879-ASG. Original file with documents 1-110. re: SDFL MDL Case Number 09-md-2106. This Document relates to: 1:09-md-02106-ASG, 1:09-cv-21879-ASG (gp) (Entered: 12/04/2009)
12/04/2009	<u>4</u>	Rules of Procedure of the Judicial Panel on Multidistrict Litigation [as modified] (gp) (Entered: 12/04/2009)
12/04/2009	<u>5</u>	MDL Transmittal Letter Requesting Case from the District of Nevada, Case Number 2:09-1047 Avenue CLO Fund, Ltd., et al., v. Bank of America, N.A., et al., with enclosed copy of the order of transfer from the Judicial Panel on Multidistrict Litigation. (gp) (Entered: 12/04/2009)
12/08/2009	<u>6</u>	ORDER FOLLOWING TELEPHONIC Status Conference; Requiring Submission; Setting Telephone Status Conference:( Status Conference set for 12/18/2009 02:30 PM in Miami Division before Judge Alan S. Gold.). **Please see Order for further details**. Signed by Judge Alan S. Gold on 12/8/2009. This Document relates to all actions: 1:09-md-02106-ASG, 1:09-cv-21879-ASG (gp) (Entered: 12/08/2009)
12/11/2009	<u>7</u>	NOTICE by Bank of America, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, Fontainebleau Las Vegas LLC, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC, Bank of Scotland PLC, Camulos Master Fund <i>[Joint Notice]</i> Associated Cases: 1:09-md-02106-ASG,

		1:09-cv-21879-ASG(Bloom, Mark) (Entered: 12/11/2009)
12/21/2009	<u>8</u>	MDL ORDER NUMBER TWO Following Telephonic Status Conference; Setting Oral Argument; Allowing Submission and Response - Oral Argument as to (98 in 1:09-cv-21879-ASG) MOTION for Leave to Appeal and for Stay Pending Appeal ( Oral Argument set for 1/21/2010 05:00 PM in Miami Division before Judge Alan S. Gold.). **Please see Order for further details**. Signed by Judge Alan S. Gold on 12/21/2009. This Document relates to All Actions: 1:09-md-02106-ASG, 1:09-cv-21879-ASG (gp) (Entered: 12/22/2009)
01/06/2010	<u>9</u>	MDL Transfer In Case Receipt from District of Nevada; Case Number 2:09-cv-01047-KJD-PAL. Electronic file consisting of documents numbered 1-76. Assigned Case #1:09-cv-23835-ASG on 12/28/09. re: SDFL MDL Transfer Order at DE # (1 in 1:09-md-02106-ASG). See Docket Sheet at DE # (77 in 1:09-cv-23835-ASG). This Document relates to: 1:09-md-02106-ASG, 1:09-cv-23835-ASG (gp) (Entered: 01/06/2010)
01/08/2010	<u>10</u>	MDL ORDER Number Three - Amended Order Setting Pretrial and Trial Dates, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures. Signed by Judge Alan S. Gold on 1/8/2010. This Document relates to all actions: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG (gp) (Entered: 01/08/2010)
01/08/2010	<u>11</u>	CASE REFERRED to Magistrate Judge Chris M. McAliley for Discovery Motions., Set/Reset Deadlines/Hearings: (Final date to exchange written Discovery demands, including Requests for Production, Requests for Admission and Interrogatories due by 1/31/2011., Conclusion of Fact Discovery due by 4/14/2011., Defendant shall furnish opposing counsel with a written list containing the names and addresses of all Expert Witnesses so Listed permitted to testify due by 11/1/2010., In Limine Motions due by 12/13/2011., All non-dispositive, non-discovery related pretrial Motions due by 9/15/2010., Joint Pretrial Stipulation due by 12/13/2011., Calendar Call set for 2/8/2012 01:30 PM in Miami Division before Judge Alan S. Gold., Trial set for 2/13/2012 before Judge Alan S. Gold., Pretrial Conference set for 1/13/2012 02:00 PM in Miami Division before Judge Alan S. Gold.) **Please see Order at DE # <u>10</u> for further deadlines/instructions** (gp) (Entered: 01/08/2010)
01/13/2010	<u>12</u>	RESPONSE in Opposition re (98 in 1:09-cv-21879-ASG, 98 in 1:09-cv-21879-ASG) MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and</i> MOTION to Stay re (23) Order., (62) Order., <i>Litigation Pending Disposition of Any Appeal</i> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and</i> MOTION to Stay re (23) Order., (62) Order., <i>Litigation Pending Disposition of Any Appeal</i> filed by Term Lenders. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG(Pruss, Lorenz) (Entered: 01/13/2010)
01/13/2010	<u>13</u>	MDL ORDER NUMBER FOUR: Administratively Closing Member Cases. **Please see Order for further details**. Signed by Judge Alan S. Gold on

		1/13/2010. This Document relates to All actions. Re: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG(gp) -Modified text on 1/14/2010 (gp). (Entered: 01/14/2010)
01/14/2010	<u>14</u>	UNSTIPULATED MOTION for Substitution of Counsel ( <i>Proposed Order Attached</i> ) by MB Financial Bank, N.A.. Responses due by 2/1/2010 Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG(Grossman, Gregory) (Entered: 01/14/2010)
01/15/2010	<u>15</u>	Second AMENDED COMPLAINT, filed by Term Lenders. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG(Pruss, Lorenz) (Entered: 01/15/2010)
01/19/2010	<u>16</u>	MDL ORDER Number Five granting (124) Unstipulated Motion for Substitution of Counsel. Attorney Alvin S. Goldstein terminated in case 1:09-cv-21879-ASG; granting (14) Unstipulated Motion for Substitution of Counsel. Attorney Alvin S. Goldstein terminated in case 1:09-md-02106-ASG. Signed by Judge Alan S. Gold on 1/19/2010. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG(lS) (Entered: 01/19/2010)
01/20/2010	<u>17</u>	NOTICE of Attorney Appearance by Bruce Judson Berman on behalf of Camulos Master Fund, L.P. (Berman, Bruce) (Entered: 01/20/2010)
01/20/2010	<u>18</u>	Corporate Disclosure Statement by Camulos Master Fund, L.P.. (Berman, Bruce) (Entered: 01/20/2010)
01/20/2010	<u>19</u>	REPLY to Response to Motion re (98 in 1:09-cv-21879-ASG, 98 in 1:09-cv-21879-ASG) MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay re (23) Order,, (62) Order,, Litigation Pending Disposition of Any Appeal</i> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay re (23) Order,, (62) Order,, Litigation Pending Disposition of Any Appeal</i> filed by Fontainebleau Las Vegas LLC. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG(Snyder, Jeffrey) (Entered: 01/20/2010)
01/21/2010	20	TEXT Minute Entry for proceedings held before Judge Alan S. Gold: Motion Hearing held on 1/21/2010 re Docket Number 98 in 1:09-cv-21879-ASG, MOTION for Leave to Appeal Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay re (23) Order, (62) Order, Litigation Pending Disposition of Any Appeal filed by Fontainebleau Las Vegas LLC. Court Reporter: Joseph Millikan, 305-523-5588 Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG (jh) (Entered: 01/22/2010)
01/25/2010	<u>21</u>	CONDITIONAL TRANSFER ORDER (CTO-1) from Judicial Panel on Multidistrict Litigation transferring case, to the Southern District of Florida re: MDL Case # 09-MD-2106 for consolidated pretrial proceedings pursuant to 28 USC 1407 and assigned to the Honorable Alan S. Gold. (Signed by Robert L. Miller, Jr., Acting Chairman of the Panel). (Attachments: # <u>1</u> Panel Service List) (gp) (Entered: 01/25/2010)

01/25/2010	<u>22</u>	MDL Transmittal Letter Requesting Case from the Southern District of New York (via e-mail), Case Number 1:09-8064 Master, Ltd., et al. v. Bank of America, N.A., et al., with enclosed copy of the order of transfer from the Judicial Panel on Multidistrict Litigation. (gp) (Entered: 01/25/2010)
01/25/2010	<u>23</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Andrew B. Kratenstein. Filing Fee \$75.00. Receipt # 1015807. (yc) (Entered: 01/26/2010)
01/25/2010	<u>24</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Michael R. Huttenlocher. Filing Fee \$75.00. Receipt # 1015808. (yc) (Entered: 01/26/2010)
01/27/2010	<u>25</u>	MDL ORDER Number Six: Granting (23) Motion for Limited Appearance of Andrew B. Kratenstein, in case 1:09-md-02106-ASG. Signed by Judge Alan S. Gold on 1/27/2010. This Document relates to : 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (gp) (Entered: 01/28/2010)
01/27/2010	<u>26</u>	MDL ORDER Number Seven: Granting (24) Motion for Limited Appearance of Michael R. Huttenlocher, in case 1:09-md-02106-ASG. Signed by Judge Alan S. Gold on 1/27/2010. This Document relates to: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (gp) (Entered: 01/28/2010)
01/28/2010	<u>27</u>	ORDER OF RECUSAL. Magistrate Judge Chris M. McAliley recused. Case reassigned to Magistrate Judge Edwin G. Torres for all further proceedings. Signed by Magistrate Judge Chris M. McAliley on 1/19/2010. (jc) (Entered: 01/28/2010)
01/28/2010	<u>28</u>	ORDER OF RECUSAL. Magistrate Judge Edwin G. Torres recused. Case reassigned to Magistrate Judge Ted E. Bandstra for all further proceedings. Signed by Magistrate Judge Edwin G. Torres on 1/28/2010. (jc) (Entered: 01/28/2010)
01/29/2010	<u>29</u>	Corporate Disclosure Statement by Term Lenders, Term Lenders. (Attachments: # <u>1</u> Exhibit A - Corporate Disclosure Statement, # <u>2</u> Exhibit B - Corporate Disclosure Statement, # <u>3</u> Exhibit C - Corporate Disclosure Statement, # <u>4</u> Exhibit D - Corporate Disclosure Statement, # <u>5</u> Exhibit E - Corporate Disclosure Statement, # <u>6</u> Exhibit F - Corporate Disclosure Statement, # <u>7</u> Exhibit G - Corporate Disclosure Statement, # <u>8</u> Exhibit H - Corporate Disclosure Statement, # <u>9</u> Exhibit I - Corporate Disclosure Statement, # <u>10</u> Exhibit J - Corporate Disclosure Statement, # <u>11</u> Exhibit K - Corporate Disclosure Statement, # <u>12</u> Exhibit L - Corporate Disclosure Statement, # <u>13</u> Exhibit M - Corporate Disclosure Statement, # <u>14</u> Exhibit N - Corporate Disclosure Statement, # <u>15</u> Exhibit O - Corporate Disclosure Statement, # <u>16</u> Exhibit P - Corporate Disclosure Statement, # <u>17</u> Exhibit Q - Corporate Disclosure Statement) Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (Pruss, Lorenz) (Entered: 01/29/2010)
02/08/2010	<u>30</u>	NOTICE by Term Lenders of <i>Request for Termination of Appearance on Service of List of Susan Scann</i> Associated Cases: 1:09-md-02106-ASG, 1:09-



		cv-23835-ASG(Pruss, Lorenz) (Entered: 02/08/2010)
02/09/2010	31	MDL Transfer In Case Receipt from New York Southern; Case Number 1:09-cv-08064. Electronic file consisting of documents numbered 1-28. Assigned Case # 1:10-cv-20236-ASG on 1/26/2010. re: SDFL MDL Conditional Transfer Order (CTO-1) at DE #(21 in 1:09-md-02106-ASG). See Docket Sheet at DE # (29 in 1:10-cv-20236-ASG). This Document relates to: 1:09-md-02106-ASG, 1:10-cv-20236-ASG (gp) (Entered: 02/09/2010)
02/17/2010	<u>32</u>	NOTICE of Voluntary Dismissal <i>Without Prejudice</i> by Carlyle High Yield Partners 2008-1, Ltd., Carlyle High Yield Partners IX, Ltd., Carlyle High Yield Partners VI, Ltd., Carlyle High Yield Partners VII, Ltd., Carlyle High Yield Partners VIII, Ltd., Carlyle High Yield Partners X, Ltd. (Pruss, Lorenz) (Entered: 02/17/2010)
02/17/2010	<u>33</u>	NOTICE of Voluntary Dismissal <i>Without Prejudice</i> by Primus CLO I, Ltd., Primus CLO II, Ltd. (Pruss, Lorenz) (Entered: 02/17/2010)
02/17/2010	<u>34</u>	NOTICE of Inadvertent Inclusion of Certain Plaintiffs by Carlyle Loan Investment, Ltd. re <u>15</u> Second Amended Complaint (Attachments: # <u>1</u> Exhibit Exhibits 1 - 3)(Pruss, Lorenz) Modified on 2/19/2010 (ls). (Entered: 02/17/2010)
02/18/2010	<u>35</u>	Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, by Bank of America, N.A.. Responses due by 3/8/2010 (Attachments: # <u>1</u> Exhibit 1)Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Rasile, Craig) (Entered: 02/18/2010)
02/18/2010	<u>36</u>	MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> by Bank of America, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., Merrill Lynch Capital Corporation, Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC. Responses due by 3/8/2010 Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Hutton, John) (Entered: 02/18/2010)
02/18/2010	<u>37</u>	AFFIDAVIT signed by : Thomas C Rice. re (42 in 1:10-cv-20236-ASG, 93 in 1:09-cv-23835-ASG, 36 in 1:09-md-02106-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> by Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG,

		JPMorgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, Bank of America, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., The Royal Bank of Scotland PLC (Attachments: # <u>1</u> Exhibit A-1, # <u>2</u> Exhibit A-2, # <u>3</u> Exhibit A-3, # <u>4</u> Exhibit A-4, # <u>5</u> Exhibit B-1, # <u>6</u> Exhibit B-2, # <u>7</u> Exhibit B-3, # <u>8</u> Exhibit B-4, # <u>9</u> Exhibit B-5, # <u>10</u> Exhibit C, # <u>11</u> Exhibit D, # <u>12</u> Exhibit E, # <u>13</u> Exhibit F, # <u>14</u> Exhibit G, # <u>15</u> Exhibit H) Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Hutton, John) (Entered: 02/18/2010)
02/19/2010	<u>38</u>	NOTICE of Voluntary Dismissal by Copper River CLO Ltd., Green Lane CLO Ltd., Kennecott Funding Ltd., LFC2 Loan Funding LLC, NZC Opportunities (Funding) II Limited, Orpheus Funding LLC, Orpheus Holdings, LLC, Sands Point Funding Ltd. (Pruss, Lorenz) (Entered: 02/19/2010)
02/22/2010	<u>39</u>	ORDER DISMISSING Certain Parties without Prejudice pursuant to (33 in 1:09-md-02106-ASG) Notice of Voluntary Dismissal, (38 in 1:09-md-02106-ASG) Notice of Voluntary Dismissal, (32 in 1:09-md-02106-ASG) Notice of Voluntary Dismissal, (34 in 1:09-md-02106-ASG) Notice (Other). DIRECTING Clerk to Take Action. Signed by Judge Alan S. Gold on 2/22/2010. This Document relates to: 1:09-md-02106-ASG, 1:09-cv-23835-ASG (gp) (Entered: 02/22/2010)
02/23/2010	<u>40</u>	ORDER Setting Hearing on Motion (35 in 1:09-md-02106-ASG, 92 in 1:09-cv-23835-ASG, 41 in 1:10-cv-20236-ASG) Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, (36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG, 42 in 1:10-cv-20236-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> : Motion Hearing set for 5/7/2010 03:15 PM in Miami Division before Judge Alan S. Gold. See [DE 10, p. 5].. Signed by Judge Alan S. Gold on 2/23/2010. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (mbs) (Entered: 02/23/2010)
02/24/2010	<u>41</u>	MDL ORDER Number Nine: Requiring Courtesy Copies. **Please see Order for further details**. Signed by Judge Alan S. Gold on 2/24/2010. This Document relates to All actions (gp) (Entered: 02/24/2010)
02/25/2010	<u>43</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Steven S. Fitzgerald. Filing Fee \$75.00. Receipt # 1018180. (gp) (Entered: 03/04/2010)

02/26/2010	<u>42</u>	NOTICE by Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., Bank of Scotland PLC, Royal Bank of Scotland PLC, The Royal Bank of Scotland PLC, Barclays Bank PLC of <i>Request for Termination of Appearance of Attorney (Justin S. Stern, Esq.)</i> Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Hutton, John) (Entered: 02/26/2010)
03/05/2010	<u>44</u>	NOTICE of Voluntary Dismissal <i>Without Prejudice</i> by Ares Enhanced Loan Investment Strategy III, Ltd., Avenue CLO Fund, Ltd., Avenue CLO II, Ltd., Avenue CLO III, Ltd. (Pruss, Lorenz) (Entered: 03/05/2010)
03/09/2010		Attorney Justin S. Stern terminated. Notice of Termination delivered by US Mail to Justin Stern. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(mbs) (Entered: 03/09/2010)
03/10/2010	<u>45</u>	MDL ORDER NUMBER TEN Granting <u>43</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Steven S. Fitzgerald. Signed by Judge Alan S. Gold on 3/10/2010. (gp) -Modified text on 3/10/2010 (gp). (Entered: 03/10/2010)
03/10/2010	<u>46</u>	ORDER DISMISSING Parties without prejudice pursuant to (44 in 1:09-md-02106-ASG) Notice of Voluntary Dismissal ; Directing Clerk to Take Action. Avenue CLO Fund, Ltd., Avenue CLO II, Ltd., Avenue CLO III, Ltd., Ares Enhanced Loan Investment Strategy III, Ltd. terminated.. Signed by Judge Alan S. Gold on 3/9/2010. This Document relates to: 1:09-md-02106-ASG, 1:09-cv-23835-ASG (gp) (Entered: 03/10/2010)
03/10/2010	<u>47</u>	ORDER granting <u>43</u> MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Steven S. Fitzgerald. Signed by Magistrate Judge Ted E. Bandstra on 3/9/2010. (gp) (Entered: 03/10/2010)
03/11/2010	<u>48</u>	CLERK'S NOTICE updating Aaron Rubinstein e-mail information. (yc) (Entered: 03/11/2010)
03/18/2010	<u>53</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Phillip A. Geraci. Filing Fee \$75.00. Receipt # 1019191 (ra) Modified Date on 3/24/2010 (ra). (Entered: 03/24/2010)
03/18/2010	<u>54</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Steven C. Chin. Filing Fee \$75.00. Receipt # 1019190 (ra) (Entered: 03/24/2010)
03/22/2010	<u>49</u>	RESPONSE in Opposition re (42 in 1:10-cv-20236-ASG, 36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> filed by

		<p>ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Attachments: # <u>1</u> Exhibit Declaration of James B. Heaton, III Opposing Defendants' Joint Motion to Dismiss the Term Lender Complaints, # <u>2</u> Exhibit Continuation of Declaration)Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Amron, Brett) (Entered: 03/22/2010)</p>
03/22/2010	<u>50</u>	<p>RESPONSE in Opposition re (42 in 1:10-cv-20236-ASG, 36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law Corrected Joint Opposition to Defendants' Motion to Dismiss the Term Lenders' Claims Against the Revolving Lenders</i> filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Amron, Brett) (Entered: 03/22/2010)</p>
03/22/2010	<u>51</u>	<p>AFFIDAVIT in Opposition re (42 in 1:10-cv-20236-ASG, 36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law Declaration of James B. Heaton, III Opposing Defendants' Joint Motion to Dismiss the Term Lender Complaints</i> filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Attachments: # <u>1</u> Affidavit Continuation)Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (Amron, Brett) (Entered: 03/22/2010)</p>
03/22/2010	<u>52</u>	<p>RESPONSE in Opposition re (92 in 1:09-cv-23835-ASG, 41 in 1:10-cv-20236-ASG) Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, filed by 1888 Fund, Ltd., Aberdeen Loan Funding, Ltd., Ares Enhanced Loan Investment Strategy III, Ltd., Armstrong Loan Funding, Ltd., Avenue CLO Fund, Ltd., Avenue CLO II, Ltd., Avenue CLO III, Ltd., Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brentwood CLO, Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Canyon Capital Advisors, LLC, Canyon Special Opportunities Master Fund (Canyon), Ltd., Carlyle High Yield Partners 2008-1, Ltd., Carlyle High Yield Partners IX, Ltd., Carlyle High Yield Partners VI, Ltd., Carlyle High Yield Partners VII, Ltd., Carlyle High Yield Partners VIII, Ltd., Carlyle High Yield Partners X, Ltd., Carlyle Loan Investment, Ltd., Caspian</p>

		<p>Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Copper River CLO Ltd., Duane Street CLO 1, Ltd., Duane Street CLO II, Ltd., Duane Street CLO III, Ltd., Duane Street CLO IV, Ltd., Duane Street CLO V, Ltd., Eastland CLO, Ltd., Encore Fund LP, Fortissimo Fund, Genesis CLO 2007-1 Ltd., Gleneagles CLO, Ltd., Grayson CLO, Ltd., Green Lane CLO Ltd., Greenbriar CLO, Ltd., Highland Credit Opportunities CDO, Ltd., Highland Loan Funding V, Ltd., Highland Offshore Partners, L.P., ING International (II) - Senior Bank Loans Euro, ING International (II) - Senior Bank Loans USD, ING Investment Management CLO I, Ltd., ING Investment Management CLO II, Ltd., ING Investment Management CLO III, Ltd., ING Investment Management CLO IV, Ltd., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Jasper CLO, Ltd., Jay Street Market Value CLO I, Ltd., Kennecott Funding Ltd., LFC2 Loan Funding LLC, Liberty CLO, Ltd., Loan Funding IV LLC, Loan Funding VII LLC, Loan Star State Trust, Mariner LDC, Mariner Opportunities Fund, LP, NZC Opportunities (Funding) II Limited, Nuveen Floating Rate Income Fund, Nuveen Floating Rate Income Opportunity Fund, Nuveen Senior Income Fund, Orpheus Funding LLC, Orpheus Holdings, LLC, Primus CLO I, Ltd., Primus CLO II, Ltd., Red River CLO, Ltd., Rockwall CDL II, Ltd., Rockwall CDO Ltd., Sands Point Funding Ltd., Southfork CLO, Ltd., Symphony CLO I, Ltd., Symphony CLO II, Ltd., Symphony CLO III, Ltd., Symphony CLO IV, Ltd., Symphony CLO V, Ltd., Symphony Credit Opportunity Fund, Ltd., Veer Cash Flow CLO, Limited, Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Westchester CLO, Ltd., Aurelius Capital Master, Ltd., Stratford CLO, Ltd., Cantor Fitzgerald Securities, Olympic CLO I Ltd. , Shasta CLO I Ltd., Whitney CLO I Ltd., San Gabriel CLO I Ltd., Sierra CLO II Ltd. , Rosedale CLO, Ltd., Rosedale CLO II Ltd., SPCP Group, LLC , Stone Lion Portfolio L.P., Venor Capital Master Fund, Ltd. . Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Pruss, Lorenz) -Modified to add missing filer on 3/23/2010 (gp). (Entered: 03/22/2010)</p>
03/30/2010	<u>55</u>	<p>MDL ORDER ELEVEN: Granting <u>53</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings ; Granting <u>54</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 3/30/2010. (gp) (Entered: 03/31/2010)</p>
04/05/2010	<u>56</u>	<p>MEMORANDUM in Support re (35 in 1:09-md-02106-ASG, 92 in 1:09-cv-23835-ASG, 41 in 1:10-cv-20236-ASG) Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,,Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>Defendant Bank of America, N.A.'s Reply Memorandum of Law in Further Support of Its Motion to Dismiss the Term Lenders' Disbursement Agreement Claims</i> by Bank of America, N.A.. Associated Cases: 1:09-md-02106-ASG,</p>

		1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Rasile, Craig) (Entered: 04/05/2010)
04/05/2010	<u>57</u>	RESPONSE in Support re <u>36</u> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law [Reply Memorandum in Further Support of Defendants' Joint Motions to Dismiss the Term Lender Complaints]</i> filed by Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC. (Hutton, John) (Entered: 04/05/2010)
04/09/2010	<u>58</u>	MDL ORDER NUMBER 12: SETTING HEARING Telephonic Status Conference set for 4/16/2010 01:30 PM in Miami Division before Judge Alan S. Gold. Miscellaneous Deadline: Joint Submission due 04/15/2010. Signed by Judge Alan S. Gold on 4/9/2010. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (jh) (Entered: 04/09/2010)
04/15/2010	<u>59</u>	Statement of: Joint Statement Requested by the Court in MDL Order Number 12 by ACP Master, Ltd., Avenue CLO Fund, Ltd., Bank of America, N.A., Bank of Scotland PLC, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC re <u>58</u> Order, Set/Reset Deadlines/Hearings,, (Hutton, John) (Entered: 04/15/2010)
04/16/2010	60	PAPERLESS Minute Entry for proceedings held before Judge Alan S. Gold: Telephone Status Conference held on 4/16/2010 re <u>59</u> Joint Statement Summarizing Current Discovery Dispute and the Parties' Respective Position. Court Reporter: Joseph Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov (jh) (Entered: 04/16/2010)
04/16/2010	<u>61</u>	MDL ORDER NUMBER THIRTEEN: REQUIRING SUBMISSION - All parties, including Fontainebleau, shall negotiate search terms no later than Wednesday April 21, 2010 at 10:00am; No later than Thursday April 22, 2010 at 12:00pm the parties shall file a Motion for Extension of Pre-Trial Deadlines. Signed by Judge Alan S. Gold on 4/16/2010. (gp) (Entered: 04/19/2010)
04/22/2010	<u>62</u>	Joint MOTION to Continue <i>Certain Pre-Trial Deadlines</i> by Term Lenders. Responses due by 5/10/2010 (Pruss, Lorenz) (Entered: 04/22/2010)
04/22/2010	<u>63</u>	NOTICE of Voluntary Dismissal <i>Without Prejudice</i> by Rosedale CLO II Ltd.,

		Rosedale CLO, Ltd. (Pruss, Lorenz) (Entered: 04/22/2010)
04/27/2010	<u>64</u>	ORDER DISMISSING PARTIES without prejudice Upon (63 in 1:09-md-02106-ASG) Notice of Voluntary Dismissal ; DIRECTING CLERK to Take Action. Rosedale CLO, Ltd., and Rosedale CLO II Ltd. terminated. Signed by Judge Alan S. Gold on 4/26/2010. (gp) (Entered: 04/27/2010)
04/28/2010	<u>65</u>	NOTICE of Voluntary Dismissal <i>Without Prejudice</i> by 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., Highland Offshore Partners, L.P., Jasper CLO, Ltd., Liberty CLO, Ltd., Loan Funding IV LLC, Loan Funding VII LLC, Loan Star State Trust, Red River CLO, Ltd., Rockwall CDO II, Ltd., Rockwall CDO Ltd., Southfork CLO, Ltd., Stratford CLO, Ltd., Westchester CLO, Ltd. (Pruss, Lorenz) (Entered: 04/28/2010)
04/29/2010	66	PAPERLESS ORDER providing Call-in information for Oral Argument scheduled for May 4, 2010 at 3:15 p.m. All parties and/or counsel that are not required to appear in person for oral argument may call 1-866-208-0348 on the above date and time. Refer to Conference ID#71566296. Please call 3-4 minutes in advance of the scheduled time. This conference has been designated as lecture mode only. No callers will be able to address the Court. Signed by Judge Alan S. Gold on 4/29/2010. (lms) (Entered: 04/29/2010)
04/29/2010	67	CORRECTED PAPERLESS ORDER. The oral argument which was the subject of the prior paperless order regarding the call-in information is scheduled for May 7, 2010 at 3:15 p.m. Signed by Judge Alan S. Gold on 4/29/2010. (lms) (Entered: 04/29/2010)
04/30/2010	<u>68</u>	ORDER DISMISSING PARTIES WITHOUT PREJUDICE Pursuant to (65 in 1:09-md-02106-ASG) Notice of Voluntary Dismissal. 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., Highland Offshore Partners, L.P., Jasper CLO, Ltd., Liberty CLO, Ltd., Loan Funding IV LLC, Loan Funding VII LLC, Loan Star State Trust, Red River CLO, Ltd., Rockwall CDO II, Ltd., Rockwall CDO Ltd., Stratford CLO, Ltd., Westchester CLO, Ltd., and Aberdeen Loan Funding, Ltd. terminated.. Signed by Judge Alan S. Gold on 4/30/2010. This Document relates to: 1:09-md-02106-ASG, 1:09-cv-23835-ASG (gp) (Entered: 05/03/2010)
05/07/2010	69	PAPERLESS Minute Entry for proceedings held before Judge Alan S. Gold: ORAL ARGUMENT presented on 5/7/2010 re <u>35</u> Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint, Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint filed by Bank of America, N.A.; <u>36</u> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint, and Supportion Memorandum of Law MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended

		Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint and Supportion Memorandum of Law MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint, and Supportion Memorandum of Law filed by HSH Nordbank AG, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC, Merrill Lynch Capital Corporation, JPMorgan Chase Bank, N.A., JP Morgan Chase Bank, N.A., Barclays Bank PLC, MB Financial Bank, N.A., Bank of Scotland, Bank of America, N.A., Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas. Court Reporter: Joseph Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov (jh) (Entered: 05/07/2010)
05/13/2010	<u>70</u>	Third Party MOTION for Extension of Time to File Response/Reply to <i>Plaintiff, Term Lenders' Document Requests</i> by Fontainebleau Resorts, LLC. (Trigoboff, Craig) (Entered: 05/13/2010)
05/14/2010	71	MDL ORDER NUMBER FIFTEEN (PAPERLESS) - REFERRING MOTION: <u>70</u> Third Party MOTION for Extension of Time to File Response/Reply to <i>Plaintiff, Term Lenders' Document Requests</i> filed by Fontainebleau Resorts, LLC. Motion referred to Ted E. Bandstra pursuant to 28 U.S.C. 636 to take all necessary and proper action as required by law.. Signed by Judge Alan S. Gold on 5/14/2010. (mbs) (Entered: 05/14/2010)
05/14/2010	<u>72</u>	Joint MOTION Leave to Add Plaintiffs to Action by 1888 Fund, Ltd., Aberdeen Loan Funding, Ltd., Ares Enhanced Loan Investment Strategy III, Ltd., Armstrong Loan Funding, Ltd., Avenue CLO Fund, Ltd., Avenue CLO II, Ltd., Avenue CLO III, Ltd., Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brentwood CLO, Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital Advisors, LLC, Canyon Special Opportunities Master Fund (Canyon), Ltd., Carlyle High Yield Partners 2008-1, Ltd., Carlyle High Yield Partners IX, Ltd., Carlyle High Yield Partners VI, Ltd., Carlyle High Yield Partners VII, Ltd., Carlyle High Yield Partners VIII, Ltd., Carlyle High Yield Partners X, Ltd., Carlyle Loan Investment, Ltd., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Copper River CLO Ltd., Duane Street CLO 1, Ltd., Duane Street CLO II, Ltd., Duane Street CLO III, Ltd., Duane Street CLO IV, Ltd., Duane Street CLO V, Ltd., Eastland CLO, Ltd., Encore Fund LP, Fortissimo Fund, Genesis CLO 2007-1 Ltd., Gleneagles CLO, Ltd., Grayson CLO, Ltd., Green Lane CLO Ltd., Greenbriar CLO, Ltd., Highland Credit Opportunities CDO, Ltd., Highland Loan Funding V, Ltd., Highland Offshore Partners, L.P., ING International (II) - Senior Bank Loans Euro, ING International (II) - Senior Bank Loans USD, ING Investment Management CLO I, Ltd., ING Investment Management CLO II, Ltd., ING Investment Management CLO IV, Ltd., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Jasper CLO, Ltd., Jay Street Market Value CLO I, Ltd., Kennecott Funding Ltd., LFC2 Loan Funding LLC, Liberty CLO, Ltd., Loan Funding IV LLC, Loan Funding VII LLC, Loan Star State Trust, Mariner LDC, Mariner Opportunities Fund, LP, NZC Opportunities (Funding) II Limited, Nuveen Floating Rate Income Fund, Nuveen Floating Rate Income



		Opportunity Fund, Nuveen Senior Income Fund, Olympic CLO I Ltd., Orpheus Funding LLC, Orpheus Holdings, LLC, Primus CLO I, Ltd., Primus CLO II, Ltd., Red River CLO, Ltd., Rockwall CDO II, Ltd., Rockwall CDO Ltd., Rosedale CLO II Ltd., Rosedale CLO, Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Sands Point Funding Ltd., Shasta CLO I Ltd., Sierra CLO II Ltd., Southfork CLO, Ltd., Stone Lion Portfolio L.P., Stratford CLO, Ltd., Symphony CLO I, Ltd., Symphony CLO II, Ltd., Symphony CLO III, Ltd., Symphony CLO IV, Ltd., Symphony CLO V, Ltd., Symphony Credit Opportunity Fund, Ltd., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Westchester CLO, Ltd., Whitney CLO I Ltd.. (Attachments: # <u>1</u> Exhibit Proposed Order Granting Motion)(Pruss, Lorenz) (Entered: 05/14/2010)
05/18/2010	<u>73</u>	ORDER Granting <u>72</u> Joint Motion to Add additional Plaintiffs ; DIRECTING Clerk to Take Action. Signed by Judge Alan S. Gold on 5/18/2010. (gp) (Entered: 05/18/2010)
05/18/2010	<u>74</u>	ORDER granting <u>70</u> Motion for Extension of Time to File Response/Reply re <u>70</u> Third Party MOTION for Extension of Time to File Response/Reply to Plaintiff, Term Lenders' Document Requests Responses due by 6/14/2010. Signed by Magistrate Judge Ted E. Bandstra on 5/18/2010. (rg) (Entered: 05/18/2010)
05/20/2010	<u>75</u>	MOTION to Withdraw as Attorney of Record for Plaintiff Fontainebleau Las Vegas, LLC by Bilzin Sumberg Baena Price & Axelrod LLP. by Fontainebleau Las Vegas LLC. Responses due by 6/7/2010 (Baena, Scott) (Entered: 05/20/2010)
05/21/2010	<u>76</u>	MDL ORDER NUMBER SIXTEEN; Second Amended Order Resetting Certain Pretrial deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial dates and Procedures: re <u>62</u> Joint MOTION to Continue <i>Certain Pre-Trial Deadlines</i> filed by Term Lenders (Pretrial Conference set for 1/13/2012 02:00 PM in Miami Division before Judge Alan S. Gold., Trial set for 2/13/2012 before Judge Alan S. Gold., Calendar Call set for 2/8/2012 01:30 PM in Miami Division before Judge Alan S. Gold., All Expert Discovery due by 7/15/2011., Conclusion of Fact Discovery due by 4/14/2011., In Limine Motions due by 12/13/2011., All Dispositive Pretrial Motions due by 7/29/2011., All non-dispositive, non-discovery related pretrial Motions due by 9/15/2010., Pretrial Stipulation due by 12/13/2011.). Signed by Judge Alan S. Gold on 5/21/2010. **Please see Order for further details** (gp) (Entered: 05/24/2010)
05/24/2010	<u>77</u>	ORDER Granting (75) in case 1:09-cv-21879-ASG Motion by Bilzin Sumberg Baena Price & Axelrod LLP to Withdraw as Counsel of Record. Attorney Scott Louis Baena and Jeffrey Ira Snyder terminated. **Please see Order for further details**. Signed by Judge Alan S. Gold on 5/24/2010. (gp) (Entered: 05/25/2010)
05/25/2010	<u>78</u>	CERTIFICATE OF SERVICE by Fontainebleau Las Vegas LLC (Snyder,

		Jeffrey) (Entered: 05/25/2010)
05/28/2010	<u>79</u>	MDL ORDER NUMBER EIGHTEEN granting in part and denying in part <u>35</u> Motion to Dismiss; granting in part and denying in part <u>36</u> Motion to Dismiss State Court Complaint; REQUIRING ANSWER TO AVENUE COMPLAINT; CLOSING AURELIUS CASE. Signed by Judge Alan S. Gold on 5/28/2010. (bb) (Entered: 05/28/2010)
05/28/2010	<u>80</u>	AMENDED ORDER re <u>79</u> Order on Motion to Dismiss, Order on Motion to Dismiss State Court Complaint. Signed by Judge Alan S. Gold on 5/28/2010. (jh) (Entered: 05/28/2010)
06/04/2010	<u>81</u>	Corporate Disclosure Statement by Caspian Alpha Long Credit Fund, L.P., Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P. (Attachments: # <u>1</u> Exhibit Corporate Disclosure Statements)(Pruss, Lorenz) (Entered: 06/04/2010)
06/04/2010	<u>82</u>	Third Party MOTION for Extension of Time to Complete Discovery <i>re: May 4, 2010 Subpoenas</i> by Fontainebleau Resorts, LLC. (Waldman, Glenn) (Entered: 06/04/2010)
06/07/2010	<u>83</u>	NOTICE of Striking <i>and Notice of Re-Filing Motion for Extension of Time to Respond to Subpoenas dated May 4, 2010</i> by Fontainebleau Resorts, LLC (Waldman, Glenn) (Entered: 06/07/2010)
06/07/2010	<u>84</u>	MOTION for Extension of Time to Complete Discovery <i>and to Respond to Subpoenas dated May 4, 2010</i> by Fontainebleau Resorts, LLC. (Waldman, Glenn) (Entered: 06/07/2010)
06/08/2010	<u>85</u>	PAPERLESS ORDER granting <u>84</u> Unopposed Motion for Extension of Time to Complete Discovery. Movants are hereby GRANTED a 30-day extension to respond to the subpoenas at issue.. Signed by Judge Alan S. Gold (mbs) (Entered: 06/08/2010)
06/18/2010	<u>86</u>	Third Party MOTION for Extension of Time to File Response/Reply <i>to Document Requests</i> by Fontainebleau Resorts, LLC. (Waldman, Glenn) (Entered: 06/18/2010)
06/18/2010	<u>87</u>	NOTICE by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Shasta CLO I Ltd., Sierra CLO II Ltd., Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III

		CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd. re <u>79</u> Order on Motion to Dismiss, Order on Motion to Dismiss State Court Complaint,, (Pruss, Lorenz) (Entered: 06/18/2010)
06/18/2010	<u>88</u>	ANSWER and Affirmative Defenses to Amended Complaint by Bank of America, N.A..(Rasile, Craig) (Entered: 06/18/2010)
06/18/2010	<u>89</u>	ANSWER and Affirmative Defenses to Amended Complaint (" <i>Aurelius Complaint</i> ") by Bank of America, N.A..(Rasile, Craig) (Entered: 06/18/2010)
06/23/2010	<u>90</u>	ORDER REFERRING MOTION: <u>86</u> Third Party MOTION for Extension of Time to File Response/Reply to <i>Document Requests</i> filed by Fontainebleau Resorts, LLC Motions referred to Ted E. Bandstra. Signed by Judge Alan S. Gold on 6/23/2010. (gp) (Entered: 06/23/2010)
06/30/2010	<u>91</u>	ORDER granting <u>86</u> Motion for Extension of Time to File Response/Reply re <u>86</u> Third Party MOTION for Extension of Time to File Response/Reply to <i>Document Requests</i> Responses due by 7/29/2010. Signed by Magistrate Judge Ted E. Bandstra on 6/30/2010. (rg) (Entered: 06/30/2010)
07/02/2010	<u>92</u>	MOTION to Substitute Party <i>Motion to Approve Substitution of Chapter 7 Trustee as Plaintiff Fontainebleau Las Vegas, LLC</i> by Soneet R. Kapila. Responses due by 7/19/2010 (Sharp, Susan) (Entered: 07/02/2010)
07/06/2010	<u>93</u>	MOTION to Quash <i>Subpoenas</i> by Fontainebleau Resorts, LLC. (Waldman, Glenn) (Entered: 07/06/2010)
07/08/2010	94	ORDER REFERRING MOTION: <u>93</u> MOTION to Quash <i>Subpoenas</i> filed by Fontainebleau Resorts, LLC Motions referred to Ted E. Bandstra. Signed by Judge Alan S. Gold (mbs) (Entered: 07/08/2010)
07/10/2010	<u>95</u>	Joint MOTION to Adopt/Join <u>15</u> Amended Complaint <i>Join Plaintiffs</i> by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Shasta CLO I Ltd., Sierra CLO II Ltd., Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd.. (Attachments: # <u>1</u> Text of Proposed Order Order Granting Joint Motion

		to Join Plaintiffs)(Pruss, Lorenz) (Entered: 07/10/2010)
07/12/2010	<u>96</u>	MOTION for Extension of Time to Complete Discovery <i>Chapter 7 Trustees Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures</i> by Soneet R. Kapila. (Sharp, Susan) -Modified text on 8/5/2010 (gp). (Entered: 07/12/2010)
07/12/2010	<u>97</u>	Joint MOTION for Extension of Time to Complete Discovery <i>/Joint Motion for Extension of Certain Pre-Trial Deadlines</i> by Bank of America, N.A., Merrill Lynch Capital Corporation. (Attachments: # <u>1</u> Text of Proposed Order)(Rasile, Craig) (Entered: 07/12/2010)
07/13/2010	<u>98</u>	CERTIFICATE OF SERVICE by Soneet R. Kapila re <u>96</u> MOTION for Extension of Time to Complete Discovery <i>Chapter 7 Trustees Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures Amended Certificate of Service</i> (Sharp, Susan) (Entered: 07/13/2010)
07/14/2010	<u>99</u>	Amended MOTION to Adopt/Join <u>95</u> Joint MOTION to Adopt/Join <u>15</u> Amended Complaint <i>Join Plaintiffs</i> Joint MOTION to Adopt/Join <u>15</u> Amended Complaint <i>Join Plaintiffs</i> Joint MOTION to Adopt/Join <u>15</u> Amended Complaint <i>Join Plaintiffs</i> Joint MOTION to Adopt/Join <u>15</u> Amended Complaint <i>Join Plaintiffs</i> Joint MOTION to Adopt/Join <u>15</u> Amended Complaint <i>Join Plaintiffs</i> Joint MOTION to Adopt/Join <u>15</u> Amended Complaint <i>Join Plaintiffs</i> , <u>15</u> Amended Complaint by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Shasta CLO I Ltd., Sierra CLO II Ltd., Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd.. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Leave to Join Additional Plaintiffs)(Pruss, Lorenz) (Entered: 07/14/2010)
07/15/2010	<u>100</u>	MDL ORDER Number 23 - Granting <u>97</u> Joint Motion for Extension of Time to Complete Discovery ; SETTING TELEPHONE STATUS CONFERENCE on Chapter 7 Trustee's Discovery Motions <u>96</u> , on Tuesday, July 20, 2010 at

		11:00 a.m. Any party opposing the Chapter 7 Trustee's Discovery Motion <u>96</u> shall have until Monday July 19, 2010 at 12:00 noon. Signed by Judge Alan S. Gold on 7/15/2010. (gp) (Entered: 07/15/2010)
07/15/2010		Set/Reset Deadlines as to <u>96</u> MOTION for Extension of Time to Complete Discovery <i>Chapter 7 Trustees Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing pretrial dates and procedures</i> . Responses due by 7/19/2010 Telephonic Status Conference set for 7/20/2010 11:00 AM in Miami Division before Judge Alan S. Gold. **Per <u>100</u> Order ** (gp) (Entered: 07/15/2010)
07/15/2010	<u>101</u>	Joint MOTION for Extension of Time to Complete Discovery / <i>Joint Motion for Extension of Certain Pre-Trial Deadlines</i> by Bank of America, N.A., Merrill Lynch Capital Corporation. (Attachments: # <u>1</u> Text of Proposed Order)(Rasile, Craig) (Entered: 07/15/2010)
07/15/2010	<u>102</u>	STIPULATION / <i>Confidentiality Stipulation and Proposed Protective Order</i> by Bank of America, N.A., Merrill Lynch Capital Corporation (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Rasile, Craig) (Entered: 07/15/2010)
07/15/2010	<u>103</u>	ORDER Granting <u>99</u> Unopposed Amended Joint Motion to add Plaintiffs. DIRECTING CLERK to Correct Dockets. Signed by Judge Alan S. Gold on 7/15/2010. **Please see Order for further details** (gp) (Entered: 07/16/2010)
07/15/2010	<u>104</u>	ORDER Granting <u>92</u> Chapter 7 Trustee's Motion to Approve Substitution; DIRECTING CLERK to Modify Docket.. Signed by Judge Alan S. Gold on 7/15/2010. **Please see Order for further details** (gp) (Entered: 07/16/2010)
07/16/2010	<u>105</u>	PAPERLESS ORDER granting <u>101</u> Joint Motion for Extension of Time to Complete Discovery. The date for completing document production in response to Initial Requests for Production is hereby EXTENDED from July 12, 2010 to and including the later of: (a) Monday, August 16, 2010; or (b) the date Plaintiff completes its document production. All other pretrial deadlines contained in MDL Order Number 16 [DE 76] shall remain in full force and effect. THIS DOCUMENT RELATES TO CASE NO.: 09-CV-21879-ASG.. Signed by Judge Alan S. Gold (mbs) (Entered: 07/16/2010)
07/16/2010	<u>108</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Vincent Buccola. Filing Fee \$ 75.00. Receipt # FLS 10000 3865. (gp) (Entered: 07/20/2010)
07/19/2010	<u>106</u>	RESPONSE in Opposition re <u>96</u> MOTION for Extension of Time to Complete Discovery <i>Chapter 7 Trustees Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures</i> filed by Bank of Scotland PLC, Barclays Bank PLC, Deutsche Bank Trust Company Americas, HSH Nordbank AG, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Royal Bank of Scotland PLC, Sumitomo Mitsui Banking Corporation. (Hutton, John) (Entered: 07/19/2010)

07/19/2010	<u>107</u>	RESPONSE to Motion re <u>96</u> MOTION for Extension of Time to Complete Discovery <i>Chapter 7 Trustees Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures</i> filed by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Genesis CLO 2007-1 Ltd., ING International (II) - Senior Bank Loans USD, ING Investment Management CLO I, Ltd., ING Investment Management CLO II, Ltd., ING Investment Management CLO III, Ltd., ING Investment Management CLO IV, Ltd., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Shasta CLO I Ltd., Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd.. Replies due by 7/29/2010. (Pruss, Lorenz) (Entered: 07/19/2010)
07/20/2010	109	PAPERLESS Minute Entry for proceedings held before Judge Alan S. Gold: Telephonic Motion Hearing held on 7/20/2010 re <u>96</u> MOTION for Extension of Time to Complete Discovery <i>Chapter 7 Trustees Motion for Brief Excusal of Compliance with Second Amended Order Resetting Certain Pretrial Deadlines, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures</i> filed by Soneet R. Kapila. Court Reporter: Joseph Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov (jh) (Entered: 07/20/2010)
07/20/2010	<u>110</u>	MDL ORDER Number 24 CONFIDENTIALITY STIPULATION AND PROTECTIVE ORDER. Signed by Judge Alan S. Gold on 7/20/2010. (gp) (Entered: 07/21/2010)
07/21/2010	<u>111</u>	MDL ORDER NUMBER 25; Granting in part <u>96</u> Motion for Extension of Time to Complete Discovery. REQUIRING SUBMISSION Setting Telephone Status Conference on August 31, 2010 at 8:45 a.m.. Signed by Judge Alan S. Gold on 7/21/2010. **Please see Order for further details** (gp) -Modified text on 7/22/2010 (gp). (Entered: 07/22/2010)
07/21/2010		Set/Reset Deadlines/Hearings - Telephonic Status Conference set for 8/31/2010 08:45 AM in Miami Division before Judge Alan S. Gold. **Per <u>111</u> MDL Order ** (gp) (Entered: 07/22/2010)
07/21/2010	<u>112</u>	MDL ORDER NUMBER TWENTY SIX: Granting <u>108</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Vincent Buccola. Signed by Judge Alan S. Gold on 7/21/2010. (gp) (Entered: 07/22/2010)

07/22/2010	<u>113</u>	TRANSCRIPT of Telephonic Conference held on 07.20.10 before Judge Alan S. Gold, 1-20 pages, Court Reporter: Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 8/16/2010. Redacted Transcript Deadline set for 8/25/2010. Release of Transcript Restriction set for 10/25/2010. (jm) (Entered: 07/22/2010)
07/23/2010	<u>114</u>	RESPONSE in Opposition re <u>93</u> MOTION to Quash <i>Subpoenas</i> filed by Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., The Royal Bank of Scotland PLC. (Hutton, John) (Entered: 07/23/2010)
07/23/2010	<u>115</u>	AFFIDAVIT signed by : Steven S. Fitzgerald. re <u>114</u> Response in Opposition to Motion by Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., The Royal Bank of Scotland PLC (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M)(Hutton, John) (Entered: 07/23/2010)
07/23/2010	<u>116</u>	AMENDED MDL ORDER NUMBER 24 re <u>110</u> Protective Order to include Exhibits A and B - Confidentiality Stipulation and Protective Order. Signed by Judge Alan S. Gold on 7/22/2010. (jh) (Entered: 07/23/2010)
07/23/2010	<u>117</u>	CERTIFICATE OF SERVICE by Bank of America, N.A., Merrill Lynch Capital Corporation re <u>116</u> Amended Order (Rasile, Craig) (Entered: 07/23/2010)
07/23/2010	<u>118</u>	NOTICE of Change of Attorney after Transfer by Camulos Master Fund, L.P. (gp) (Entered: 07/26/2010)
07/23/2010		Attorney Nicholas J. Santoro terminated. Notice of Termination delivered by US Mail to Nicholas Santoro, Per <u>118</u> Notice of Change of Attorney. (gp) (Entered: 07/26/2010)
07/30/2010	<u>119</u>	Corporate Disclosure Statement by Caspian Solitude Master Fund, L.P., Sola Ltd, Solus Core Opportunities Master Fund Ltd (Attachments: # <u>1</u> Exhibit Exhibit A - Corporate Disclosure - Caspian Solitude Master Fund, # <u>2</u> Exhibit Exhibit B - Corporate Disclosure Statement - Sola Ltd. and Sola Care)(Pruss, Lorenz) (Entered: 07/30/2010)
08/04/2010	<u>120</u>	MDL ORDER No. 27 Denying <u>93</u> Motion to Quash. Signed by Magistrate Judge Ted E. Bandstra on 8/3/2010. (gp)-Modified text on 8/5/2010 (gp). (Entered: 08/05/2010)
08/04/2010	<u>121</u>	CERTIFICATION OF REFERRAL to Magistrate Judge Jonathan Goodman for all discovery pretrial motions, Magistrate Judge Ted E. Bandstra no longer assigned to case. Pursuant to Administrative Order No. 2010-79. Signed by Magistrate Judge Ted E. Bandstra on 8/3/2010. (gp) -Modified text on 8/5/2010 (gp). (Entered: 08/05/2010)

08/05/2010	<u>122</u>	RESPONSE to Plaintiff Term Lenders' Document Request Dated April 22, 2010 by Fontainebleau Resorts, LLC. (gp) (Entered: 08/05/2010)
08/19/2010	<u>123</u>	MOTION to Compel <i>Production of Documents in Response to Subpoena</i> by Term Lenders. Responses due by 9/7/2010 (Attachments: # <u>1</u> Exhibit Mockler Declaration, # <u>2</u> Exhibit Exhibit A to Mockler Declaration.pdf, # <u>3</u> Exhibit Exhibit B to Mockler Declaration.pdf, # <u>4</u> Exhibit Exhibit C to Mockler Declaration.pdf, # <u>5</u> Exhibit Exhibit D to Mockler Declaration.pdf, # <u>6</u> Exhibit Exhibit E to Mockler Declaration.pdf, # <u>7</u> Exhibit Exhibit F to Mockler Declaration.PDF, # <u>8</u> Exhibit Exhibit G to Mockler Declaration.PDF)(Pruss, Lorenz) (Entered: 08/19/2010)
08/20/2010	<u>124</u>	NOTICE by Soneet R. Kapila re <u>111</u> Order on Motion for Extension of Time to Complete Discovery, <i>Chapter 7 Trustee's Notice of Intention with Regard to Case No. 1:09-cv-21879-ASG</i> (Sharp, Susan) (Entered: 08/20/2010)
08/20/2010	<u>125</u>	MDL ORDER NUMBER 28; REFERRING: <u>123</u> MOTION to Compel <i>Production of Documents in Response to Subpoena</i> filed by Term Lenders. Motions referred to Magistrate Judge Jonathan Goodman. Signed by Judge Alan S. Gold on 8/20/2010. (gp) (Entered: 08/23/2010)
08/23/2010	<u>126</u>	PAPERLESS ORDER Setting Hearing on Motion DE # <u>123</u> MOTION to Compel <i>Production of Documents in Response to Subpoena</i> : Motion Hearing set for 8/30/2010 at 02:30 PM in Miami Division before Magistrate Judge Jonathan Goodman. All parties associated with this motion may appear for the hearing telephonically. The filing party shall place the call through a commercial carrier (e.g., AT&T) to Chambers at 305-523-5720 shortly before the above-noted time so that the telephonic hearing may begin promptly. Court requests no additional briefing on this motion. Signed by Magistrate Judge Jonathan Goodman on 8/23/2010. (mso) (Entered: 08/23/2010)
08/25/2010	<u>127</u>	RESPONSE to Motion re <u>123</u> MOTION to Compel <i>Production of Documents in Response to Subpoena</i> filed by Fontainebleau Resorts, LLC. Replies due by 9/7/2010. (Waldman, Glenn) (Entered: 08/25/2010)
08/26/2010	<u>128</u>	NOTICE by Term Lenders re <u>126</u> Order Setting Hearing on Motion,, <u>127</u> Response to Motion, <u>123</u> MOTION to Compel <i>Production of Documents in Response to Subpoena</i> , <u>125</u> Order Referring Motion <i>Notice of Call-In Information</i> (Pruss, Lorenz) (Entered: 08/26/2010)
08/30/2010	<u>129</u>	ORDER granting <u>123</u> Motion to Compel. Signed by Magistrate Judge Jonathan Goodman on 8/30/2010. (eg) (Entered: 08/30/2010)
08/30/2010	<u>132</u>	Minute Entry for proceedings held before Magistrate Judge Jonathan Goodman: Motion Hearing held on 8/30/2010 re: DE # <u>123</u> MOTION to Compel <i>Production of Documents in Response to Subpoena</i> filed by Term Lenders. (Digital 14:33:53.) (Tapes #10-JG-3 and 4.) (mso) (Entered: 08/31/2010)
08/31/2010	<u>130</u>	PAPERLESS MDL ORDER NUMBER 31 re <u>124</u> Notice (Other) filed by Soneet R. Kapila. For the reasons stated of record, counsel shall meet and confer and submit proposals and proposed orders setting forth a course of action for all three cases no later than September 14, 2010 at 12:00 p.m. The



		proposals shall include a plan for the preservation of documents by the Trustee and any proposed final judgments the parties would like the Court to enter. The parties shall file a Motion for Status Conference if they are unable to agree regarding how these matters should proceed.. Signed by Judge Alan S. Gold on 8/31/2010. (mbs) (Entered: 08/31/2010)
08/31/2010	131	PAPERLESS Minute Entry for proceedings held before Judge Alan S. Gold: Telephonic Status Conference held on 8/31/2010 regarding prosecution of 09-21879-CV-GOLD. Court Reporter: Joseph Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov (jh) (Entered: 08/31/2010)
09/13/2010	<u>133</u>	Plaintiff's MOTION to Amend/Correct <i>Amended Complaint filed January 15, 2010 in Case No. 10-CV-20236-ASG</i> by ACP Master, Ltd., Aurelius Capital Master, Ltd.. Responses due by 9/30/2010 (Amron, Brett) (Entered: 09/13/2010)
09/14/2010	<u>134</u>	NOTICE by Bank of America, N.A., Term Lenders of <i>Positions Regarding Proposed Adjustment to Certain Pre-Trial Dates in Light of Trustee's Notice of Intention Relating to Case No. 1:09-CV-21879-ASG</i> (Amron, Brett) (Entered: 09/14/2010)
09/14/2010	<u>135</u>	Unopposed MOTION to Dismiss 130 Order,, <u>124</u> Notice (Other) <i>Claims With Prejudice to Expedite Appeal of Claim-Dispositive Ruling</i> by Soneet R. Kapila. Responses due by 10/1/2010 (Sharp, Susan) (Entered: 09/14/2010)
09/14/2010	<u>136</u>	REPORT REGARDING Trustee's Plan for Retention and Preservation of Documents by Soneet R. Kapila (Sharp, Susan) (Entered: 09/14/2010)
09/15/2010	<u>137</u>	Joint MOTION to Adopt/Join <u>15</u> Amended Complaint <i>Join Plaintiffs</i> by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital Advisors, LLC, Canyon Special Opportunities Master Fund (Canyon), Ltd., Carlyle High Yield Partners 2008-1, Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Duane Street CLO 1, Ltd., Duane Street CLO II, Ltd., Duane Street CLO III, Ltd., Duane Street CLO IV, Ltd., Duane Street CLO V, Ltd., Encore Fund LP, Fortissimo Fund, Genesis CLO 2007-1 Ltd., ING International (II) - Senior Bank Loans Euro, ING International (II) - Senior Bank Loans USD, ING Investment Management CLO I, Ltd., ING Investment Management CLO II, Ltd., ING Investment Management CLO IV, Ltd., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Jay Street Market Value CLO I, Ltd., LFC2 Loan Funding LLC, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Nuveen Floating Rate Income Fund, Nuveen Floating Rate Income Opportunity Fund, Nuveen Senior Income Fund, Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Southfork CLO, Ltd., Stone Lion Portfolio L.P., Symphony CLO I, Ltd., Symphony CLO II, Ltd., Symphony CLO III, Ltd., Symphony CLO IV, Ltd., Symphony CLO V, Ltd., Symphony Credit

		Opportunity Fund, Ltd., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd.. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Motion) (Pruss, Lorenz) (Entered: 09/15/2010)
09/17/2010	<u>138</u>	MDL ORDER NUMBER 32 Granting <u>133</u> Aurelius Plaintiffs' Motion for Leave to Amend their Complaint. Plaintiffs are directed to file their Second Amended Complaint no later than Friday, September 24, 2010. Signed by Judge Alan S. Gold on 9/16/2010. (gp) (Entered: 09/17/2010)
09/20/2010	<u>139</u>	MDL ORDER NUMBER 35; DISMISSING CLAIMS with Prejudice to Expedite Appeal of Claim-Dispositive Ruling <u>135</u> Motion to Dismiss. **Please see Order for further details**. Signed by Judge Alan S. Gold on 9/20/2010. (gp) (Entered: 09/21/2010)
09/20/2010	<u>140</u>	MDL ORDER NUMBER 33; Amending Pre-Trial Deadlines re <u>134</u> Notice filed by Term Lenders, Bank of America, N.A.. Signed by Judge Alan S. Gold on 9/20/2010. (gp) (Entered: 09/21/2010)
09/20/2010	<u>141</u>	FINAL JUDGMENT is hereby entered dismissing action 1:09-cv-21879-ASG, with prejudice, but without prejudice to the Trustee's right to appeal with respect to Counts I and VII of the Amended Complaint. In accordance with the Court's Order, the Plaintiffs shall take nothing from this cause. All parties shall bear their own costs. Signed by DEPUTY CLERK on 9/20/2010. (gp) (Entered: 09/21/2010)
09/22/2010	<u>142</u>	MDL ORDER NUMBER 34; Denying Motion to Stay re <u>134</u> Notice filed by Term Lenders, Bank of America, N.A.. Signed by Judge Alan S. Gold on 9/21/2010. (gp) (Entered: 09/22/2010)
09/22/2010	<u>143</u>	MDL ORDER NUMBER 36; Granting <u>137</u> Motion to Add Additional Plaintiffs to the Action. **Please see Order for further details**. Signed by Judge Alan S. Gold on 9/20/2010. (gp) (Entered: 09/22/2010)
09/22/2010	<u>144</u>	Third Party MOTION to Withdraw as Attorney by Glenn J. Waldman. by Fontainebleau Resorts, LLC. Responses due by 10/12/2010 (Waldman, Glenn) (Entered: 09/22/2010)
09/22/2010	<u>145</u>	NOTICE by Fontainebleau Resorts, LLC re <u>144</u> Third Party MOTION to Withdraw as Attorney by Glenn J. Waldman. (Attachments: # <u>1</u> Exhibit) (Waldman, Glenn) (Entered: 09/22/2010)
09/23/2010	<u>146</u>	Second AMENDED COMPLAINT <i>Relating to Case No. 20236-ASG</i> against Fontainebleau Las Vegas Contract Litigation filed in response to Order Granting Motion for Leave, filed by Aurelius Capital Master, Ltd., ACP Master, Ltd..(Amron, Brett) (Entered: 09/23/2010)
09/29/2010	<u>147</u>	RESPONSE to Motion re <u>144</u> Third Party MOTION to Withdraw as Attorney by Glenn J. Waldman. filed by Bank of America, N.A.. Replies due by 10/12/2010. (Rasile, Craig) (Entered: 09/29/2010)

09/29/2010	<u>148</u>	AFFIDAVIT signed by : Kirk D. Dillman in Support of Joint Response to Waldman Trigoboff Hildebrandt Marx & Calnan, P.A.'s Motion to Withdraw as Counsel. re <u>147</u> Response to Motion by Bank of America, N.A. (Rasile, Craig) (Entered: 09/29/2010)
09/30/2010	<u>149</u>	CERTIFICATE OF SERVICE by Bank of America, N.A. re <u>147</u> Response to Motion, <u>148</u> Affidavit (Rasile, Craig) (Entered: 09/30/2010)
10/04/2010	<u>150</u>	Corporate Disclosure Statement by Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd (Pruss, Lorenz) (Entered: 10/04/2010)
10/06/2010	<u>151</u>	Joint MOTION for Entry of Judgment under Rule 54(b) ( <i>Partial Final</i> ) and <i>Memorandum of Law in Support Thereof</i> by Term Lenders. (Amron, Brett) (Entered: 10/06/2010)
10/06/2010	<u>152</u>	REPLY to Response to Motion re <u>144</u> Third Party MOTION to Withdraw as Attorney by Glenn J. Waldman. filed by Fontainebleau Resorts, LLC. (Attachments: # <u>1</u> Exhibit)(Waldman, Glenn) (Entered: 10/06/2010)
10/08/2010	<u>153</u>	MOTION for Sanctions by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd., Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd.. (Attachments: # <u>1</u> Affidavit Declaration of Robert Mockler, Esq.)(Pruss, Lorenz) (Entered: 10/08/2010)
10/08/2010	<u>155</u>	MOTION to Appear Pro Hac Vice and Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Rebecca T. Pilch. Filing Fee \$ 75.00. Receipt # 7834. (ksa) (Entered: 10/12/2010)
10/08/2010	<u>156</u>	MOTION to Appear Pro Hac Vice and Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Robert W. Mockler. Filing Fee \$ 75.00. Receipt # 7835. (ksa) (Entered: 10/12/2010)
10/08/2010	<u>157</u>	MOTION to Appear Pro Hac Vice and Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Caroline M.

		Walters. Filing Fee \$ 75.00. Receipt # 7833. (ksa) (Entered: 10/12/2010)
10/09/2010	<u>154</u>	NOTICE by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Whitney CLO I Ltd. <i>OF REQUEST FOR TERMINATION OF APPEARANCE OF ATTORNEY ON SERVICE LIST</i> (Pruss, Lorenz) (Entered: 10/09/2010)
10/12/2010	<u>158</u>	ANSWER and Affirmative Defenses to Amended Complaint / <i>Answer and Affirmative Defenses to Aurelius Plaintiffs' Second Amended Complaint</i> by Bank of America, N.A..(Rasile, Craig) (Entered: 10/12/2010)
10/13/2010	<u>159</u>	PAPERLESS ORDER Setting Telephonic Hearing on <u>144</u> Third Party MOTION to Withdraw as Attorney by Glenn J. Waldman and <u>153</u> MOTION for Sanctions:Hearing set for 10/18/2010 at 10:00 AM in Miami Division before Magistrate Judge Jonathan Goodman. All parties are to appear telephonically. Fontainebleau's counsel shall place the call through a commercial carrier (e.g., AT&T) and shall contact Michael Santorufo at 305-523-5230 for call-in instructions. Neither party shall file any additional written materials in connection with either motion. Signed by Magistrate Judge Jonathan Goodman on 10/13/2010. (eg) (Entered: 10/13/2010)
10/13/2010	<u>160</u>	MDL ORDER NUMBER 37; REFERRING MOTIONS to Magistrate Judge Jonathan Goodman: <u>153</u> MOTION for Sanctions, <u>144</u> Third Party MOTION to Withdraw as Attorney by Glenn J. Waldman. Motions referred to Jonathan Goodman. Signed by Judge Alan S. Gold on 10/13/2010. (gp) (Entered: 10/14/2010)
10/14/2010	<u>161</u>	NOTICE by Fontainebleau Resorts, LLC <i>of Call-In Information for October 18, 2010 Telephonic Hearing</i> (Waldman, Glenn) (Entered: 10/14/2010)
10/15/2010	<u>162</u>	MOTION for Leave to File <i>Response to Motion for Sanctions</i> by Fontainebleau Resorts, LLC. (Attachments: # <u>1</u> Exhibit Response to Motion for Sanctions)(Springer, Sarah) (Entered: 10/15/2010)

10/15/2010	163	ORDER denying, without prejudice, Motion (DE 162) for Leave to File Response to Motion for Sanctions. The motion does not contain the required certificate attesting to a pre-filing conference with opposing counsel. In addition, the Court specifically instructed the parties to not submit any responses before the telephone hearing scheduled for October 18, 2010. Neither the Court nor its law clerks will review the proposed response which was filed along with the motion. Counsel can advise the Court, during the hearing, of the points outlined in the unread response. If, at the end of the hearing, counsel still believes that it is necessary for the Court to review the response, then the motion for leave can be renewed at that time. The Court is optimistic that the disputes will be resolved at the hearing, without further briefing, and that the proposed response will be moot. Signed by Magistrate Judge Jonathan Goodman on 10/15/2010. (JG) (Entered: 10/15/2010)
10/15/2010	164	MDL ORDER NUMBER 38; Granting <u>155</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing ; Granting <u>156</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing ; Granting <u>157</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Judge Alan S. Gold on 10/15/2010. (gp) (Entered: 10/18/2010)
10/18/2010	165	Minute Entry for proceedings held before Magistrate Judge Jonathan Goodman: Motion Hearing was held on 10/18/2010 regarding DE <u>153</u> MOTION for Sanctions and DE <u>144</u> Third Party MOTION to Withdraw. (Digital 10:06:54 and 10:21:12.) (Tape #10-JG-12 and 13.) (mso) (Entered: 10/18/2010)
10/18/2010	166	ORDER granting in part and denying in part <u>144</u> Motion to Withdraw as Attorney. THE CLERK OF THE COURT IS INSTRUCTED THAT THIS ORDER DOES NOT TERMINATE ANY ATTORNEYS FROM THIS CASE.. Signed by Magistrate Judge Jonathan Goodman on 10/18/2010. (eg) (Entered: 10/18/2010)
10/18/2010	167	ORDER granting in part, denying in part, and reserving in part <u>153</u> Motion for Sanctions. Signed by Magistrate Judge Jonathan Goodman on 10/18/2010. (eg) (Entered: 10/18/2010)
10/18/2010	168	NOTICE OF APPEAL (See case 09CV21879-ASG for appeal details) as to <u>141</u> Judgment, <u>139</u> Order on Motion to Dismiss by Soneet R. Kapila Filing fee \$ 455.00. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. Appeal Record due by 11/1/2010. (Sharp, Susan) -Modified appeal record due date per Attorney on 10/19/2010 (gp)-. Text modified on 10/20/2010 (mc). (Entered: 10/18/2010)
10/19/2010	169	CLERK'S NOTICE re <u>168</u> NOTICE OF APPEAL any documents related to this appeal will be docketed on case 09CV21879-ASG (mc) (Entered: 10/19/2010)

10/21/2010	<u>170</u>	NOTICE of Attorney Appearance by Raquel A. Rodriguez on behalf of Camulos Master Fund, L.P. (Rodriguez, Raquel) (Entered: 10/21/2010)
10/22/2010		Attorney Lauren A. Smith terminated per <u>154</u> Notice of Request for Termination. Notice of Termination delivered by US Mail to Lauren Smith. (gp) (Entered: 10/22/2010)
10/22/2010	<u>171</u>	MOTION for Entry of Confidentiality Order re <u>167</u> Order on Motion for Sanctions, <u>129</u> Order on Motion to Compel by Fontainebleau Resorts, LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Springer, Sarah) (Entered: 10/22/2010)
10/22/2010	<u>172</u>	MDL ORDER NUMBER 39; SETTING ORAL ARGUMENT on: <u>151</u> Joint MOTION for Entry of Judgment under Rule 54(b) ( <i>Partial Final</i> ) and <i>Memorandum of Law in Support Thereof</i> : Oral Argument set for 12/17/2010 11:00 AM in Miami Division before Judge Alan S. Gold. **Please see Order for further details** Signed by Judge Alan S. Gold on 10/22/2010. (gp) (Entered: 10/25/2010)
10/25/2010	<u>173</u>	ORDER denying <u>171</u> Motion for Entry of Confidentiality Order. Signed by Magistrate Judge Jonathan Goodman on 10/25/2010. (eg) (Entered: 10/25/2010)
10/25/2010	<u>174</u>	NOTICE of Compliance by Fontainebleau Resorts, LLC re <u>167</u> Order on Motion for Sanctions, <u>129</u> Order on Motion to Compel (Springer, Sarah) (Entered: 10/25/2010)
10/25/2010	<u>175</u>	MEMORANDUM in Opposition re <u>151</u> Joint MOTION for Entry of Judgment under Rule 54(b) ( <i>Partial Final</i> ) and <i>Memorandum of Law in Support Thereof</i> by Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Royal Bank of Scotland PLC, Sumitomo Mitsui Banking Corporation. (Rasile, Craig) (Entered: 10/25/2010)
10/27/2010	<u>176</u>	PAPERLESS ORDER Clarifying day of oral argument previously set forth in [DE 172]. Oral argument shall be heard on FRIDAY, December 17, 2010 at 11:00 a.m. Signed by Judge Alan S. Gold on 10/27/2010. (lms) (Entered: 10/27/2010)
11/01/2010	<u>177</u>	NOTICE by Camulos Master Fund, L.P. of <i>Request for Termination of Appearance of Attorney Bruce J. Berman on Service List</i> (Rodriguez, Raquel) (Entered: 11/01/2010)
11/02/2010	<u>178</u>	SUPPLEMENTAL ORDER re <u>167</u> Order on Motion for Sanctions, <u>153</u> MOTION for Sanctions. The Term Lenders' supplemental memorandum is due by 11/12/2010. Signed by Magistrate Judge Jonathan Goodman on 11/2/2010. (eg) (Entered: 11/02/2010)
11/04/2010	<u>179</u>	RESPONSE in Support re <u>151</u> Joint MOTION for Entry of Judgment under Rule 54(b) ( <i>Partial Final</i> ) and <i>Memorandum of Law in Support Thereof</i> [ <i>Term Lenders' Reply Memorandum in Furter Support</i> 0 filed by ACP Master,

		Ltd., Aurelius Capital Master, Ltd., Avenue CLO Fund, Ltd.. (Amron, Brett) (Entered: 11/04/2010)
11/05/2010	<u>180</u>	NOTICE by Term Lenders re <u>167</u> Order on Motion for Sanctions of <i>Non-Compliance with the October 18, 2010 Order</i> (Pruss, Lorenz) (Entered: 11/05/2010)
11/09/2010	<u>181</u>	NOTICE by Fontainebleau Resorts, LLC re <u>180</u> Notice (Other) of <i>Response to Notice of Non-Compliance</i> (Springer, Sarah) (Entered: 11/09/2010)
11/12/2010	<u>182</u>	SUPPLEMENT to <u>153</u> MOTION for Sanctions <i>Supplemental Memorandum</i> by Term Lenders (Pruss, Lorenz) (Entered: 11/12/2010)
11/15/2010	<u>183</u>	SECOND SUPPLEMENTAL ORDER re <u>167</u> Order on Motion for Sanctions, <u>153</u> MOTION for Sanctions. Signed by Magistrate Judge Jonathan Goodman on 11/15/2010. (eg) (Entered: 11/15/2010)
11/17/2010	<u>184</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Steven C. Chin, Esq.. Filing Fee \$ 75.00. Receipt # 9691. (gp) (Entered: 11/17/2010)
11/18/2010	<u>185</u>	NOTICE by Fontainebleau Resorts, LLC re <u>166</u> Order on Motion to Withdraw as Attorney (Springer, Sarah) (Entered: 11/18/2010)
11/19/2010	<u>186</u>	NOTICE by Fontainebleau Resorts, LLC re <u>183</u> Order <i>Response to Supplemental Order on Motion for Sanctions</i> (Springer, Sarah) (Entered: 11/19/2010)
11/19/2010	<u>187</u>	Statement of: Clarification by Term Lenders Regarding Response of Fountainebleau Resorts, Llc to Supplemental Order on Motion For Sanctions by Term Lenders re <u>186</u> Notice (Other) (Pruss, Lorenz) (Entered: 11/19/2010)
11/22/2010	<u>188</u>	ORDER Granting (184) in case 1:09-md-02106-ASG - Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing of Steven C. Chin. Signed by Judge Alan S. Gold on 11/22/2010. This document relates to: 1:09-md-02106-ASG, 1:09-cv-21879-ASG (gp) (Entered: 11/23/2010)
11/24/2010	<u>189</u>	RESPONSE/REPLY to <u>182</u> Supplement <i>Memorandum in Support of Motion for Sanctions</i> by Fontainebleau Resorts, LLC. (Springer, Sarah) (Entered: 11/24/2010)
11/29/2010	<u>190</u>	SUPPLEMENTAL ORDER re <u>153</u> MOTION for Sanctions. Signed by Magistrate Judge Jonathan Goodman on 11/29/2010. (eg) (Entered: 11/29/2010)
11/30/2010	<u>191</u>	MDL ORDER NUMBER 41; RE-Setting Oral Argument on <u>151</u> Joint MOTION for Entry of Judgment under Rule 54(b) ( <i>Partial Final</i> ) and <i>Memorandum of Law in Support Thereof</i> : Oral Argument set for 1/7/2011 10:00 AM in Miami Division before Judge Alan S. Gold. Signed by Judge Alan S. Gold on 11/30/2010. **Please see Order for further details** (gp) (Entered: 12/01/2010)
12/06/2010	<u>192</u>	MOTION Motion for Adjudication of FBs Waiver of Privilege by Term

		Lenders. (Attachments: # <u>1</u> Exhibit Declaration of Kirk Dillman)(Pruss, Lorenz) (Entered: 12/06/2010)
12/09/2010	<u>193</u>	Statement of: Joinder by Bank of America, N.A. re <u>192</u> MOTION Motion for Adjudication of FBs Waiver of Privilege (Rasile, Craig) (Entered: 12/09/2010)
12/13/2010	<u>194</u>	RESPONSE in Opposition re <u>192</u> MOTION Motion for Adjudication of FBs Waiver of Privilege filed by Fontainebleau Resorts, LLC. (Springer, Sarah) (Entered: 12/13/2010)
12/17/2010	<u>195</u>	TRANSCRIPT of Telephonic Hearing of Motion for Sanctions held on 10/18/2010 before Magistrate Judge Jonathan Goodman, 1-59 pages, Court Reporter: Jerald M. Meyers, 954-431-4757 / crjm@aol.com. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/10/2011. Redacted Transcript Deadline set for 1/20/2011. Release of Transcript Restriction set for 3/21/2011. (Attachments: # <u>1</u> Designation)(cqs) (Entered: 12/17/2010)
12/17/2010	<u>196</u>	TRANSCRIPT of Telephonic Hearing on Motion to Compel held on 8/30/2010 before Magistrate Judge Jonathan Goodman, 1-35 pages, Court Reporter: Jerald M. Meyers, 954-431-4757 / crjm@aol.com. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/10/2011. Redacted Transcript Deadline set for 1/20/2011. Release of Transcript Restriction set for 3/21/2011. (Attachments: # <u>1</u> Designation)(cqs) (Entered: 12/17/2010)
12/17/2010		Attorney Bruce Judson Berman terminated per <u>177</u> Notice of Request for Termination of Appearance. (gp) (Entered: 12/17/2010)
12/17/2010	<u>197</u>	MDL ORDER NUMBER 42; REFERRING MOTION: <u>192</u> MOTION Motion for Adjudication of FBs Waiver of Privilege filed by Term Lenders. Motions referred to Jonathan Goodman to take all necessary and proper aciton as required by law. Signed by Judge Alan S. Gold on 12/17/2010. (gp) (Entered: 12/20/2010)
12/30/2010	<u>198</u>	MDL ORDER 43 re <u>191</u> Order Setting Hearing on Motion <u>151</u> Joint MOTION for Entry of Judgment under Rule 54(b)(Partial Final) and Memorandum of Law in Support Thereof. Motion Hearing set for 1/7/2011 10:00 AM in Miami Division before Judge Alan S. Gold. Signed by Judge Alan S. Gold on 12/30/2010. (jh) (Entered: 12/30/2010)
01/07/2011	<u>199</u>	ORDER granting <u>192</u> Motion for Determination of FBR's Waiver of Privilege. Signed by Magistrate Judge Jonathan Goodman on 1/7/2011. (eg) (Entered: 01/07/2011)
01/07/2011	200	PAPERLESS Minute Entry for proceedings held before Judge Alan S. Gold: Motion Hearing held on 1/7/2011 re <u>151</u> Joint MOTION for Entry of Judgment under Rule 54(b)(Partial Final) and Memorandum of Law in



		Support Thereof filed by Term Lenders. Court Reporter: Joseph Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov (jh) (Entered: 01/11/2011)
01/13/2011	<u>201</u>	MDL ORDER NUMBER 44; Granting <u>151</u> Joint Motion for Entry of Partial Final Judgment under Rule 54(b). The Clerk is directed to enter final judgment in favor of Defendants on Claims II, III, and IV of the Second Amended Complaint in Avenue CLO Fund, Ltd., et al v. Bank of America, N.A., et al., Case No. 09-cv-23835-ASG and Claims I and II of the Amended Complaint in ACP Master, Ltd., et al v. Bank of America, N.A., et al., Case No. 10-cv-20236-ASG **Please see Order for further details**. Signed by Judge Alan S. Gold on 1/13/2010. (gp) (Entered: 01/18/2011)
01/13/2011	<u>202</u>	ENTRY OF PARTIAL FINAL JUDGMENT. Signed by DEPUTY CLERK on 1/13/2011. (gp) (Entered: 01/18/2011)
01/19/2011	<u>203</u>	NOTICE OF APPEAL (see member case 09-23835 for all appeal related documents) as to <u>201</u> Order on Motion for Entry of Judgment under Rule 54 (b), Order on Motion for Entry of Judgment under Rule 54(b), Order on Motion for Entry of Judgment under Rule 54(b), <u>202</u> Judgment by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd. Filing fee \$ 455.00. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Pruss, Lorenz)Text Modified on 1/20/2011 (cqs). (Entered: 01/19/2011)
01/24/2011	<u>204</u>	TRANSCRIPT INFORMATION FORM by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade

		<p>Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd. re <u>203</u> Notice of Appeal,,,,,,,,, Pre-Trial Proceeding transcript(s) ordered. Order placed by Lorenz Michel Prss. Email sent to Court Reporter Coordinator. (Pruss, Lorenz) (Entered: 01/24/2011)</p>
01/24/2011	<u>205</u>	<p>DESIGNATION of Record on Appeal by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd. re <u>203</u> Notice of Appeal,,,,,,,,, (Pruss, Lorenz) (Entered: 01/24/2011)</p>
02/08/2011	<u>206</u>	<p>NOTICE by Term Lenders <i>OF REQUEST FOR TERMINATION OF</i></p>

		APPEARANCE OF CERTAIN ATTORNEYS ON SERVICE LIST (Pruss, Lorenz) (Entered: 02/08/2011)
02/08/2011	<u>207</u>	NOTICE by Term Lenders OF NAME CHANGE OF AVENUE TERM LENDERS COUNSEL (Pruss, Lorenz) (Entered: 02/08/2011)
02/11/2011	<u>208</u>	NOTICE OF APPEAL as to <u>202</u> Judgment by ACP Master, Ltd., Aurelius Capital Master, Ltd. (for appeal document see member case 09cv23835 and 10cv20236) Filing fee \$ 455.00. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Amron, Brett)Text Modified on 2/11/2011 (cqs). (Entered: 02/11/2011)
02/11/2011	<u>209</u>	USCA Appeal Fees received \$ 455.00 receipt number FLS100014010 re <u>208</u> Notice of Appeal,, filed by ACP Master, Ltd., Aurelius Capital Master, Ltd. (for member case 09cv23835 and 10cv20236) (cqs) (Entered: 02/11/2011)
02/15/2011	<u>210</u>	MOTION to Appear Pro Hac Vice, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Kenneth Murata. Filing Fee \$ 75.00. Receipt # 14189. (ksa) (Entered: 02/16/2011)
02/15/2011	<u>211</u>	MOTION to Appear Pro Hac Vice, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Asher L. Rivner. Filing Fee \$ 75.00. Receipt # 14190. (ksa) (Entered: 02/16/2011)
02/17/2011	<u>212</u>	MOTION for Order Dismissing Aurelius Action without Prejudice by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd.. (Attachments: # <u>1</u> Exhibit A - Declaration of Kirk D. Dillman)(Pruss, Lorenz) (Entered: 02/17/2011)
02/18/2011	<u>213</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to

		Electronically Receive Notices of Electronic Filing for Peter J. Most, Esq.. Filing Fee \$ 75.00. Receipt # 14355. (gp) (Entered: 02/22/2011)
02/18/2011	<u>214</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for C. Dana Hobart, Esq.. Filing Fee \$ 75.00. Receipt # 14354. (gp) (Entered: 02/22/2011)
02/23/2011	<u>215</u>	MOTION for A Determination of Fontainebleau Resorts' Waiver of Privilege for its E-Mail Server Documents by Bank of America, N.A.. (Attachments: # <u>1</u> Exhibit Declaration in Support of Motion)(Rasile, Craig) (Entered: 02/23/2011)
02/24/2011	216	PAPERLESS ORDER requiring expedited response and reply to <u>215</u> MOTION for A Determination of Fontainebleau Resorts' Waiver of Privilege for its E-Mail Server Documents, filed by Bank of America, N.A. Fontainebleau shall file a response of no more than 5 pages by 3/1/2011. Bank of America shall file a reply of no more than 3 pages by 3/4/2011. Signed by Magistrate Judge Jonathan Goodman on 2/24/2011. (eg) (Entered: 02/24/2011)
02/28/2011		Attorney Bruce Bennett terminated. Notice of Termination delivered by US Mail to Bruce Bennett per DE # <u>206</u> . (gp) (Entered: 02/28/2011)
02/28/2011		Attorney Sidney P. Levinson terminated. Notice of Termination delivered by US Mail to Sidney Levinson per DE # <u>206</u> . (gp) (Entered: 02/28/2011)
02/28/2011		Attorney Michael C. Schneidereit terminated. Notice of Termination delivered by US Mail to Michael Schneidereit per DE # <u>206</u> . (gp) (Entered: 02/28/2011)
02/28/2011	<u>217</u>	Notice of Adoption by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income

		Fund, Whitney CLO I Ltd. Related document: <u>215</u> MOTION for A Determination of Fontainebleau Resorts' Waiver of Privilege for its E-Mail Server Documents filed by Bank of America, N.A. (Pruss, Lorenz) (Entered: 02/28/2011)
02/28/2011	<u>218</u>	MDL ORDER NUMBER 45 Granting <u>210</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Kenneth Murata ; Granting <u>211</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Asher L. Rivner ; Granting <u>213</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Peter J. Most, Esq. ; Granting <u>214</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for C. Dana Hobart, Esq.. Signed by Judge Alan S. Gold on 2/28/2011. (gp) (Entered: 03/01/2011)
03/01/2011	<u>219</u>	RESPONSE in Opposition re <u>215</u> MOTION for A Determination of Fontainebleau Resorts' Waiver of Privilege for its E-Mail Server Documents filed by Fontainebleau Resorts, LLC. (Attachments: # <u>1</u> Affidavit)(Springer, Sarah) (Entered: 03/01/2011)
03/02/2011	<u>220</u>	MDL ORDER NUMBER 46; SETTING ORAL ARGUMENT on Motion <u>212</u> MOTION for Order Dismissing Aurelius Action without Prejudice : Oral Argument set for <b>4/8/2011 03:00 PM</b> in Miami Division before Judge Alan S. Gold. To assist the Court, the parties are ORDERED to deliver to the undersigned's Chambers a <u>Joint Binder</u> by <b>Friday, March 25, 2011 at 5:00 p.m.</b> . Signed by Judge Alan S. Gold on 3/1/2011. <b>**Please see Order for further details**</b> (gp) (Entered: 03/03/2011)
03/03/2011	<u>221</u>	NOTICE OF UNAVAILABILITY by Fontainebleau Resorts, LLC for dates of March 10, 2011 through March 21, 2011 (Springer, Sarah) (Entered: 03/03/2011)
03/04/2011	<u>222</u>	REPLY to Response to Motion re <u>215</u> MOTION for A Determination of Fontainebleau Resorts' Waiver of Privilege for its E-Mail Server Documents // <i>Bank of America, N.A.'s Reply in Further Support of Its Motion</i> filed by Bank of America, N.A.. (Rasile, Craig) (Entered: 03/04/2011)
03/04/2011	<u>223</u>	ORDER on <u>215</u> Motion for Determination of Waiver of Privilege for Fontainebleau's E-Mail Server Documents. Signed by Magistrate Judge Jonathan Goodman on 3/4/2011. (dkc) (Entered: 03/04/2011)
03/07/2011	<u>224</u>	RESPONSE to Motion re <u>212</u> MOTION for Order Dismissing Aurelius Action without Prejudice filed by Bank of America, N.A., Merrill Lynch Capital Corporation. Replies due by 3/17/2011. (Rasile, Craig) (Entered: 03/07/2011)
03/07/2011	<u>225</u>	RESPONSE in Opposition re <u>212</u> MOTION for Order Dismissing Aurelius Action without Prejudice filed by Bank of Scotland PLC, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC. (Attachments: # <u>1</u> Affidavit Declaration of David J.

		Woll)(Hutton, John) (Entered: 03/07/2011)
03/09/2011	<u>226</u>	MOTION for Extension of Time to Comply with Order dated March 4, 2011, and to Serve Privilege Log re <u>223</u> Order on Motion for Miscellaneous Relief by Fontainebleau Resorts, LLC. Responses due by 3/28/2011 (Attachments: # <u>1</u> Text of Proposed Order)(Springer, Sarah) (Entered: 03/09/2011)
03/09/2011	227	ORDER granting in part and denying in part without prejudice <u>226</u> Motion for Extension of Time. The Court is now aware (from the motion for extension filed this afternoon) that the attorney primarily responsible for working with the IT vendors to produce a privilege log is scheduled to be married and then go on a honeymoon. However, there is an April 15, 2011 discovery cutoff and the parties are in the midst of taking depositions and they need the privilege log to know which documents may be used as exhibits in the depositions. Fontainebleau Resorts LLC advises that Bank of America, N.A. does not oppose the motion IF the discovery deadline and other deadlines linked to the discovery cutoff are extended for a month. FBR also advised that the Term Lenders oppose any extension of the discovery deadline. This Court, however, does not have the jurisdiction to unilaterally extend discovery deadlines or other, related deadlines imposed by U.S. District Judge Alan Gold. Moreover, it is FBR who is responsible for the apparent inadvertent production of privileged emails and the delay in providing a privilege log to identify the privileged emails and demand their return. Therefore, the Court is reluctant to provide a significant enlargement without a discovery cutoff enlargement, which the Court is unable to provide. I will therefore provide FBR with modest relief -- and extend the compliance deadline for the email server privilege log to 5:00 p.m. on March 17, 2011. To the extent that FBR's motion seeks an additional enlargement beyond March 17, 2011, it is denied, albeit without prejudice. If FBR or a party to the litigation files an appropriate motion and persuades Judge Gold to extend the discovery deadline and other deadlines by one month, then FBR can file a renewed motion and this Court will give it renewed consideration. But in the absence of a change in the discovery cutoff deadline and other scheduling deadlines, and given the procedural posture and upcoming discovery cutoff, the motion for an enlargement beyond March 17, 2011 is denied without prejudice. Signed by Magistrate Judge Jonathan Goodman on 3/9/2011. (JG) (Entered: 03/09/2011)
03/16/2011	<u>228</u>	NOTICE of Compliance <i>with Court Orders and Notice of Serving Additional Privilege Log</i> by Fontainebleau Resorts, LLC re 227 Order on Motion for Extension of Time,,,,,, <u>223</u> Order on Motion for Miscellaneous Relief (Springer, Sarah) (Entered: 03/16/2011)
03/17/2011	<u>229</u>	REPLY to Response to Motion re <u>212</u> MOTION for Order Dismissing Aurelius Action without Prejudice filed by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master

		Fund, L.P., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd.. (Pruss, Lorenz) (Entered: 03/17/2011)
04/06/2011	230	PAPERLESS ORDER providing information for counsel and/or parties to call into the hearing currently scheduled for Friday, April 8, 2011 at 3:00 p.m. Counsel that will be arguing the motion shall appear in person. Any other Counsel and/or parties that wish to listen to the proceedings shall call 1-888-684-8852. Access code is 8321924. Security code is 5050. Please begin calling five minutes in advance of the scheduled time. Signed by Judge Alan S. Gold on 4/6/2011. (lms) (Entered: 04/06/2011)
04/07/2011	231	PAPERLESS Order CANCELLING hearing previously scheduled for Friday, April 8, 2011. The Court has been advised by all counsel of record that the motion scheduled for hearing has been resolved, therefore, no appearance is required in person or via telephonically. Signed by Judge Alan S. Gold on 4/7/2011. (lms) (Entered: 04/07/2011)
04/11/2011	<u>232</u>	Notice of Court Practice re Discovery Procedures for Magistrate Judge Goodman. Entered by Magistrate Judge Jonathan Goodman on 4/11/2011. (eg) (Entered: 04/11/2011)
04/12/2011	<u>233</u>	NOTICE by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P.,

		Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd. <i>Notice of Filing [PROPOSED] ORDER GRANTING IN PART MOTION FOR ORDER DISMISSING AURELIUS ACTION WITHOUT PREJUDICE</i> (Attachments: # <u>1</u> Text of Proposed Order [PROPOSED] ORDER GRANTING IN PART MOTION FOR ORDER DISMISSING AURELIUS ACTION WITHOUT PREJUDICE)(Pruss, Lorenz) (Entered: 04/12/2011)
04/12/2011	<u>234</u>	NOTICE by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd. re <u>233</u> Notice (Other), Notice (Other), Notice (Other), Notice (Other), Notice (Other), Notice (Other), Notice (Other), Notice (Other) <i>SUPPLEMENTAL NOTICE REGARDING PROPOSED ORDER GRANTING IN PART MOTION FOR ORDER DISMISSING AURELIUS ACTION WITHOUT PREJUDICE</i> (Pruss, Lorenz) (Entered: 04/12/2011)
04/14/2011	<u>235</u>	NOTICE by Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., The Royal Bank of Scotland PLC of <i>Request for Termination of Appearance of Attorney - Steven S. Fitzgerald, Esq.</i> (Hutton, John) (Entered: 04/14/2011)
04/14/2011	<u>236</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Peri L. Zelig. Filing Fee \$ 75.00. Receipt # 17333. (gp) (Entered: 04/15/2011)
04/14/2011	<u>237</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Donald D. Conklin. Filing Fee \$ 75.00. Receipt # 17334. (gp) (Entered: 04/15/2011)



04/18/2011		Attorney Steven S. Fitzgerald terminated. Notice of Termination delivered by US Mail to Steven Fitzgerald. (See DE# <u>235</u> .) (wc) (Entered: 04/18/2011)
04/19/2011	<u>238</u>	MDL ORDER No. 47 Granting in part <u>212</u> Motion for Order Dismissing Aurelius Action without Prejudice in case 1:09-md-02106-ASG. The claims against Bank of America, N.A. currently pending before this Court in ACP Master, Ltd., et al. v. Bank of America, N.A., et al., Case No. 10-cv-20236 (Count III of the Aurelius Complaint) are DISMISSED WITHOUT PREJUDICE. **Please see Order for further details**. Signed by Judge Alan S. Gold on 4/19/2011. (gp) (Entered: 04/19/2011)
04/25/2011	<u>239</u>	NOTICE of Attorney Appearance by Michael Garrett Austin on behalf of Camulos Master Fund, L.P. (Austin, Michael) (Entered: 04/25/2011)
04/25/2011	<u>240</u>	NOTICE by Camulos Master Fund, L.P. <i>Of Request For Termination Of Appearance Of Attorney On Service List</i> (Austin, Michael) (Entered: 04/25/2011)
04/25/2011	<u>241</u>	Joint MOTION for Extension of Time for Certain Pre-Trial Deadlines by <i>Avenue CLO Fund, Ltd.</i> and by Bank of America, N.A.. Responses due by 5/12/2011 (Attachments: # <u>1</u> Text of Proposed Order)(Bane, David) (Entered: 04/25/2011)
04/28/2011	<u>242</u>	MDL ORDER NUMBER 48 Granting <u>236</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing ; Granting <u>237</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Judge Alan S. Gold on 4/28/2011. (gp) (Entered: 04/28/2011)
05/09/2011	<u>243</u>	MOTION to Dismiss <u>15</u> Amended Complaint, <u>46</u> Order, Terminate Parties,, <i>Motion to Dismiss Without Prejudice Certain Plaintiffs</i> by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007 1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V

		CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd.. Responses due by 5/26/2011 (Attachments: # <u>1</u> Affidavit Declaration of Kirk Dillman)(Pruss, Lorenz) (Entered: 05/09/2011)
05/10/2011	<u>244</u>	MDL ORDER NUMBER 49; Granting <u>241</u> Joint Motion for Extension of Time of Certain Pre-Trial Deadlines. ** Please see Order for further details ** . Signed by Judge Alan S. Gold on 5/10/2011. (gp) (Entered: 05/11/2011)
05/10/2011		Set/Reset Deadlines/Hearings per <u>244</u> MDL ORDER NUMBER 49 : Fact Discovery for all depositions noticed is extended to and including 5/6/2011. Expert Witness Summaries and reports due by 5/23/2011. (gp) (Entered: 05/11/2011)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
05/11/2011 14:55:05			
<b>PACER Login:</b>	hm0151	<b>Client Code:</b>	Font.Liti
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:09-md-02106-ASG
<b>Billable Pages:</b>	28	<b>Cost:</b>	2.24

**EXHIBIT B**

APPEAL, MDL, TEB

**U.S. District Court  
Southern District of Florida (Miami)  
CIVIL DOCKET FOR CASE #: 1:10-cv-20236-ASG**

ACP Master, Ltd. et al v. Bank of America, N.A. et al  
Assigned to: Judge Alan S. Gold  
Referred to: Magistrate Judge Ted E. Bandstra  
Lead case: 1:09-md-02106-ASG  
Member case: ([View Member Case](#))  
Case in other court: USCA, 11-10740-AA

Date Filed: 01/26/2010  
Date Terminated: 02/09/2010  
Jury Demand: None  
Nature of Suit: 430 Banks and Banking  
Jurisdiction: Federal Question

New York Southern, 1:09-cv-08064

Cause: 12:0632

Date Filed	#	Docket Text
09/21/2009	<u>1</u>	COMPLAINT against Merrill Lynch Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America, N.A. (Filing Fee \$ 350.00, Receipt Number 700407) Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.(ama) (Entered: 09/22/2009)
09/21/2009		SUMMONS ISSUED as to Merrill Lynch Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America, N.A. (ama) (Entered: 09/22/2009)
09/21/2009		Magistrate Judge Theodore H. Katz is so designated. (ama) (Entered: 09/22/2009)
09/21/2009		Case Designated ECF. (ama) (Entered: 09/22/2009)
09/21/2009	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Aurelius Capital Partners, LP, Aurelius Capital GP,LLC as Corporate Parent. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.(ama) (Entered: 09/22/2009)
09/28/2009	<u>3</u>	INITIAL CONFERENCE ORDER:... Initial Conference set for 12/17/2009 at 11:00 AM in Courtroom 11C, 500 Pearl Street, New York, NY 10007 before Judge Laura Taylor Swain. (Signed by Judge Laura Taylor Swain on 9/28/09) (cd) (Entered: 09/28/2009)
10/02/2009	<u>4</u>	CERTIFICATE OF SERVICE of Initial Conference Order dated September 28, 2009 served on Bank of America, N.A.; Bank of Scotland; Barclays Bank PLC; Camulos Master Fund, L.P.; Deutsche Bank Trust; HSH Nordbank AG;

		JPMorgan Chase Bank, N.A.; MB Financial Bank, N.A.; Merrill Lynch Capital Corporation; Sumitomo Mitsui Banking Corporation; and The Royal Bank of Scotland PLC on October 2, 2009. Service was made by Federal Express. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/02/2009)
10/05/2009	<u>5</u>	NOTICE OF APPEARANCE by Marc R. Rosen on behalf of ACP Master, Ltd., Aurelius Capital Master, Ltd. (Rosen, Marc) (Entered: 10/05/2009)
10/06/2009	<u>6</u>	AFFIDAVIT OF SERVICE. Bank of America, N.A. served on 9/23/2009, answer due 10/13/2009. Service was accepted by Alejandro Cordero. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>7</u>	AFFIDAVIT OF SERVICE. Barclays Bank PLC served on 9/23/2009, answer due 10/13/2009. Service was accepted by Sandy Galicia. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>8</u>	AFFIDAVIT OF SERVICE. Camulos Master Fund, L.P. served on 9/24/2009, answer due 10/14/2009. Service was accepted by Carmel MacNulty. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>9</u>	AFFIDAVIT OF SERVICE. Deutsche Bank Trust Company Americas served on 9/23/2009, answer due 10/13/2009. Service was accepted by Sandy Galicia. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>10</u>	AFFIDAVIT OF SERVICE. HSH Nordbank AG served on 9/23/2009, answer due 10/13/2009. Service was accepted by David C. Wolinsky. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>11</u>	AFFIDAVIT OF SERVICE. MB Financial Bank, N.A. served on 9/28/2009, answer due 10/19/2009. Service was accepted by Tricia Cherry. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>12</u>	AFFIDAVIT OF SERVICE. Merrill Lynch Capital Corporation served on 9/23/2009, answer due 10/13/2009. Service was accepted by Aixa Flores. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>13</u>	AFFIDAVIT OF SERVICE. The Royal Bank of Scotland PLC served on 9/23/2009, answer due 10/13/2009. Service was accepted by Lucy Wnuk. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/06/2009	<u>14</u>	AFFIDAVIT OF SERVICE. Sumitomo Mitsui Banking Corporation served on 9/23/2009, answer due 10/13/2009. Service was accepted by Sandy Galicia. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)

10/06/2009	<u>15</u>	AFFIDAVIT OF SERVICE. Bank of Scotland served on 10/2/2009, answer due 10/22/2009. Service was accepted by Aixa Flores. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/06/2009)
10/07/2009	<u>16</u>	AFFIDAVIT OF SERVICE. JP Morgan Chase Bank, N.A. served on 10/1/2009, answer due 10/21/2009. Service was accepted by Jody Peck. Document filed by ACP Master, Ltd.; Aurelius Capital Master, Ltd.. (Rosen, Marc) (Entered: 10/07/2009)
10/14/2009	<u>17</u>	NOTICE OF APPEARANCE by Andrew Bennett Kratenstein on behalf of Camulos Master Fund, L.P. (Kratenstein, Andrew) (Entered: 10/14/2009)
10/15/2009	<u>18</u>	MOTION for James B. Heaton, III and Steven J. Nachtwey to Appear Pro Hac Vice. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.(dle) (Entered: 10/16/2009)
10/20/2009		CASHIERS OFFICE REMARK on <u>18</u> Motion to Appear Pro Hac Vice in the amount of \$50.00, paid on 10/15/2009, Receipt Number 702853. (jd) (Entered: 10/20/2009)
10/20/2009	<u>19</u>	STIPULATION AND ORDER: It is hereby stipulated and agreed by and between the parties that Defendants shall have up to and including forty-five (45) days from the notice of entry of the order of the Judicial Panel on Multi-District Litigation (the "MDL Panel") on the pending Motion for Transfer to the Southern District of Florida and Consolidation of Related Actions Pursuant to 28 U.S.c. § 1407 (In re Fontainebleau Las Vegas Contract Litigation, MDL No. 2106) to serve and file their responses to the Complaint, unless the Plaintiffs herein seek to amend their Complaint. Plaintiffs herein shall have thirty (30) days from the notice of entry of the MDL Panel's order to serve and file an Amended Complaint upon the consent of the Defendants. Defendants shall have thirty (30) days from the service of an Amended Complaint by Plaintiffs herein to serve and file their responses to the Amended Complaint; provided, however, that in the event Plaintiffs herein move the Court for leave to file the proposed Amended Complaint, then the Defendants shall have thirty (30) days from the notice of entry of order on such motion to serve and file their responses to the operative complaint herein. (Signed by Judge Laura Taylor Swain on 10/19/2009) (jpo) (Entered: 10/21/2009)
10/22/2009	<u>20</u>	ORDER granting <u>18</u> Motion for James B. Heaton, III and Steven J. Nachtwey to Appear Pro Hac Vice for ACP Master, Ltd., Aurelius Capital Master, Ltd. (Signed by Judge Laura Taylor Swain on 10/21/2009) (jmi) (Entered: 10/22/2009)
10/22/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <u>20</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (jmi) (Entered: 10/22/2009)
11/16/2009	<u>21</u>	MOTION for Peter J. Roberts to Appear Pro Hac Vice. Document filed by MB Financial Bank, N.A.(mro) (Entered: 11/17/2009)
11/18/2009		CASHIERS OFFICE REMARK on <u>21</u> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 11/16/2009, Receipt Number 706253. (jd) (Entered: 11/18/2009)

		11/18/2009)
11/20/2009	<u>22</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION: granting <u>21</u> Motion for Peter J. Roberts to Appear Pro Hac Vice. (Signed by Judge Laura Taylor Swain on 11/20/2009) (jfe) (Entered: 11/20/2009)
11/20/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <u>22</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (jfe) (Entered: 11/20/2009)
11/24/2009	<u>23</u>	STIPULATION AND ORDER. Defendant shall have up to and including forty-five days from the notice of entry of the order of the Judicial Panel on Multi-District Litigation (the MDL Panel) on the pending Motion for Transfer to the Southern District of Florida and Consolidation of Related Actions Pursuant to 28 U.S.C. section 1407 (in re Fontainebleau Las Vegas Contract Litigation, MDL NO. 2106) to serve and file its response to the Complaint, unless the Plaintiffs herein seek to amend their Complaint. Plaintiffs herein shall have thirty days from the notice of entry of the MDL Panel's order to serve and file an Amended Complaint upon the consent of the Defendant. Defendant shall have thirty days from the service of an Amended Complaint by Plaintiffs herein to serve and file its response to the Amended Complaint; provided, however, that in the event Plaintiffs herein move the Court for leave to file the proposed Amended Complaint, then Defendant shall have thirty days from the notice of entry of order on such motion to serve and file its response to the operative complaint herein. (Signed by Judge Laura Taylor Swain on 11/23/09) (djc) (Entered: 11/24/2009)
11/24/2009	<u>24</u>	ENDORSED LETTER addressed to Judge Laura Taylor Swain from Steven Nachtwey dated 11/20/09 re: Parties request that the Initial Conference order be vacated until the Panel rules on the pending motion. ENDORSEMENT: The initial conference date is adjourned to February 26, 2010 at 10:00 a.m. and the related deadlines are modified accordingly. (Signed by Judge Laura Taylor Swain on 11/23/09) (djc) (Entered: 11/24/2009)
01/06/2010	<u>25</u>	MOTION for John D. Byars and Vincent S. J. Buccola to Appear Pro Hac Vice. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Attachments: # <u>1</u> Pro Hac Vice of Buccola)(mbe) (Entered: 01/08/2010)
01/11/2010		CASHIERS OFFICE REMARK on <u>25</u> Motion to Appear Pro Hac Vice in the amount of \$50.00, paid on 01/07/2010, Receipt Number 890713. (jd) (Entered: 01/11/2010)
01/13/2010	<u>26</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION: John D. Byars and Vincent S.J. Buccola are admitted to practice pro hac vice as counsel for plaintiffs ACP Master, Ltd and Aurelius Capital Mater, Ltd. in this case in the USDC for the SDNY as further set forth herein. (Signed by Judge Laura Taylor Swain on 1/13/10) (dle) (Entered: 01/13/2010)
01/13/2010		Transmission to Attorney Admissions Clerk. Transmitted re: <u>26</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (dle) (Entered: 01/13/2010)
01/15/2010	<u>27</u>	AMENDED COMPLAINT amending <u>1</u> Complaint, against Merrill Lynch

		Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America, N.A..Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd. Related document: <u>1</u> Complaint, filed by ACP Master, Ltd., Aurelius Capital Master, Ltd. (ama) (Entered: 01/19/2010)
01/25/2010	<u>28</u>	CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER OUT ORDER FROM THE MDL PANEL...transferring this action from the U.S.D.C. - S.D.N.Y to the United States District Court - Southern District of Florida. (Signed by MDL Panel on 1/4/10) (ldi) (Entered: 01/25/2010)
01/25/2010		MDL TRANSFER OUT ELECTRONICALLY: to the United States District Court - Southern District of Florida, except for document numbered 27 which was sent via Federal Express AIRBILL # 8693 1747 1859 on 1/25/10. (ldi) (Entered: 01/25/2010)
01/26/2010	<u>29</u>	Case transferred in from New York Southern; Case Number 1:09-cv-08064. Electronic file including transfer order and docket sheet received. (gp). (Entered: 01/26/2010)
01/26/2010	30	Clerks Notice of Judge Assignment on Electronic Case to Judge Alan S. Gold. (gp) (Entered: 01/26/2010)
01/27/2010	<u>32</u>	MDL ORDER Number Six: Granting (23) Motion for Limited Appearance of Andrew B. Kratenstein, in case 1:09-md-02106-ASG. Signed by Judge Alan S. Gold on 1/27/2010. This Document relates to : 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (gp) (Entered: 01/28/2010)
01/27/2010	<u>33</u>	MDL ORDER Number Seven: Granting (24) Motion for Limited Appearance of Michael R. Huttenlocher, in case 1:09-md-02106-ASG. Signed by Judge Alan S. Gold on 1/27/2010. This Document relates to: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (gp) (Entered: 01/28/2010)
01/27/2010	<u>45</u>	ACKNOWLEDGMENT OF RECEIPT from the Southern District of New York DE # <u>27</u> Amended Complaint. (gp) (Entered: 02/25/2010)
01/28/2010	<u>31</u>	NOTICE of Attorney Appearance by Brett Michael Amron on behalf of ACP Master, Ltd., Aurelius Capital Master, Ltd. (Amron, Brett) (Entered: 01/28/2010)
01/29/2010	<u>34</u>	Corporate Disclosure Statement by Term Lenders, Term Lenders. (Attachments: # <u>1</u> Exhibit A - Corporate Disclosure Statement, # <u>2</u> Exhibit B - Corporate Disclosure Statement, # <u>3</u> Exhibit C - Corporate Disclosure Statement, # <u>4</u> Exhibit D - Corporate Disclosure Statement, # <u>5</u> Exhibit E - Corporate Disclosure Statement, # <u>6</u> Exhibit F - Corporate Disclosure Statement, # <u>7</u> Exhibit G - Corporate Disclosure Statement, # <u>8</u> Exhibit H - Corporate Disclosure Statement, # <u>9</u> Exhibit I - Corporate Disclosure Statement, # <u>10</u> Exhibit J - Corporate Disclosure Statement, # <u>11</u> Exhibit K - Corporate Disclosure Statement, # <u>12</u> Exhibit L - Corporate Disclosure Statement, # <u>13</u> Exhibit M - Corporate Disclosure Statement, # <u>14</u> Exhibit N - Corporate Disclosure Statement, # <u>15</u> Exhibit O - Corporate Disclosure



		Statement, # <u>16</u> Exhibit P - Corporate Disclosure Statement, # <u>17</u> Exhibit Q - Corporate Disclosure Statement) Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Pruss, Lorenz) (Entered: 01/29/2010)
02/09/2010	<u>35</u>	MDL Transfer In Case Receipt from New York Southern; Case Number 1:09-cv-08064. Electronic file consisting of documents numbered 1-28. Assigned Case # 1:10-cv-20236-ASG on 1/26/2010. re: SDFL MDL Conditional Transfer Order (CTO-1) at DE #(21 in 1:09-md-02106-ASG). See Docket Sheet at DE # (29 in 1:10-cv-20236-ASG). This Document relates to: 1:09-md-02106-ASG, 1:10-cv-20236-ASG (gp) (Entered: 02/09/2010)
02/09/2010	<u>36</u>	MDL ORDER NUMBER ONE - ORDER FOLLOWING TELEPHONIC Status Conference; Requiring Submission; Setting Telephone Status Conference. **Please see Order for further details**. Signed by Judge Alan S. Gold on 12/8/2009. (gp) (Entered: 02/09/2010)
02/09/2010	<u>37</u>	MDL ORDER NUMBER TWO Following Telephonic Status Conference; Setting Oral Argument; Allowing Submission and Response. **Please see Order for further details**. Signed by Judge Alan S. Gold on 12/21/2009. (gp) (Entered: 02/09/2010)
02/09/2010	<u>38</u>	MDL ORDER NUMBER THREE - Amended Order Setting Pretrial and Trial Dates, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures. Signed by Judge Alan S. Gold on 1/8/2010. (gp) (Entered: 02/09/2010)
02/09/2010	<u>39</u>	MDL ORDER NUMBER FOUR: Administratively Closing Member Cases. **Please see Order for further details**. Signed by Judge Alan S. Gold on 1/13/2010. (gp) (Entered: 02/09/2010)
02/09/2010	<u>40</u>	Case reassigned to Magistrate Judge Ted E. Bandstra, pursuant to docket entry 28 on 09MD2106 (yc) (Entered: 02/09/2010)
02/18/2010	<u>41</u>	Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, by Bank of America, N.A.. Responses due by 3/8/2010 (Attachments: # <u>1</u> Exhibit 1) Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Rasile, Craig) (Entered: 02/18/2010)
02/18/2010	<u>42</u>	MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> by Bank of America, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., Merrill Lynch Capital Corporation, Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC. Responses due by 3/8/2010 Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Hutton, John) (Entered: 02/18/2010)
02/18/2010	<u>43</u>	AFFIDAVIT signed by : Thomas C Rice. re (42 in 1:10-cv-20236-ASG, 93 in

		1:09-cv-23835-ASG, 36 in 1:09-md-02106-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> by Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, JPMorgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, Bank of America, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., The Royal Bank of Scotland PLC (Attachments: # <u>1</u> Exhibit A-1, # <u>2</u> Exhibit A-2, # <u>3</u> Exhibit A-3, # <u>4</u> Exhibit A-4, # <u>5</u> Exhibit B-1, # <u>6</u> Exhibit B-2, # <u>7</u> Exhibit B-3, # <u>8</u> Exhibit B-4, # <u>9</u> Exhibit B-5, # <u>10</u> Exhibit C, # <u>11</u> Exhibit D, # <u>12</u> Exhibit E, # <u>13</u> Exhibit F, # <u>14</u> Exhibit G, # <u>15</u> Exhibit H) Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Hutton, John) (Entered: 02/18/2010)
02/23/2010	<u>44</u>	ORDER Setting Hearing on Motion (35 in 1:09-md-02106-ASG, 92 in 1:09-cv-23835-ASG, 41 in 1:10-cv-20236-ASG) Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, (36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG, 42 in 1:10-cv-20236-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> : Motion Hearing set for 5/7/2010 03:15 PM in Miami Division before Judge Alan S. Gold. See [DE 10, p. 5].. Signed by Judge Alan S. Gold on 2/23/2010. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (mbs) (Entered: 02/23/2010)
02/26/2010	<u>46</u>	NOTICE by Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., Bank of Scotland PLC, Royal Bank of Scotland PLC, The Royal Bank of Scotland PLC, Barclays Bank PLC of <i>Request for Termination of Appearance of Attorney (Justin S. Stern, Esq.)</i> Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Hutton, John) (Entered: 02/26/2010)
03/09/2010		Attorney Justin S. Stern terminated. Notice of Termination delivered by US Mail to Justin Stern. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(mbs) (Entered: 03/09/2010)
03/22/2010	<u>47</u>	RESPONSE in Opposition re (42 in 1:10-cv-20236-ASG, 36 in 1:09-md-

		02106-ASG, 93 in 1:09-cv-23835-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Attachments: # <u>1</u> Exhibit Declaration of James B. Heaton, III Opposing Defendants' Joint Motion to Dismiss the Term Lender Complaints, # <u>2</u> Exhibit Continuation of Declaration) Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Amron, Brett) (Entered: 03/22/2010)
03/22/2010	<u>48</u>	RESPONSE in Opposition re (42 in 1:10-cv-20236-ASG, 36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law Corrected Joint Opposition to Defendants' Motion to Dismiss the Term Lenders' Claims Against the Revolving Lenders</i> filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Amron, Brett) (Entered: 03/22/2010)
03/22/2010	<u>49</u>	AFFIDAVIT in Opposition re (42 in 1:10-cv-20236-ASG, 36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>and Supportion Memorandum of Law Declaration of James B. Heaton, III Opposing Defendants' Joint Motion to Dismiss the Term Lender Complaints</i> filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Attachments: # <u>1</u> Affidavit Continuation)Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Amron, Brett) (Entered: 03/22/2010)
03/22/2010	<u>50</u>	RESPONSE in Opposition re (92 in 1:09-cv-23835-ASG, 41 in 1:10-cv-20236-ASG) Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, filed by 1888 Fund, Ltd., Aberdeen Loan Funding, Ltd., Ares Enhanced Loan Investment Strategy III, Ltd., Armstrong Loan Funding, Ltd., Avenue CLO Fund, Ltd., Avenue CLO II, Ltd., Avenue

		<p>CLO III, Ltd., Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brentwood CLO, Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Canyon Capital Advisors, LLC, Canyon Special Opportunities Master Fund (Canyon), Ltd., Carlyle High Yield Partners 2008-1, Ltd., Carlyle High Yield Partners IX, Ltd., Carlyle High Yield Partners VI, Ltd., Carlyle High Yield Partners VII, Ltd., Carlyle High Yield Partners VIII, Ltd., Carlyle High Yield Partners X, Ltd., Carlyle Loan Investment, Ltd., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Copper River CLO Ltd., Duane Street CLO 1, Ltd., Duane Street CLO II, Ltd., Duane Street CLO III, Ltd., Duane Street CLO IV, Ltd., Duane Street CLO V, Ltd., Eastland CLO, Ltd., Encore Fund LP, Fortissimo Fund, Genesis CLO 2007-1 Ltd., Gleneagles CLO, Ltd., Grayson CLO, Ltd., Green Lane CLO Ltd., Greenbriar CLO, Ltd., Highland Credit Opportunities CDO, Ltd., Highland Loan Funding V, Ltd., Highland Offshore Partners, L.P., ING International (II) - Senior Bank Loans Euro, ING International (II) - Senior Bank Loans USD, ING Investment Management CLO I, Ltd., ING Investment Management CLO II, Ltd., ING Investment Management CLO III, Ltd., ING Investment Management CLO IV, Ltd., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Jasper CLO, Ltd., Jay Street Market Value CLO I, Ltd., Kennecott Funding Ltd., LFC2 Loan Funding LLC, Liberty CLO, Ltd., Loan Funding IV LLC, Loan Funding VII LLC, Loan Star State Trust, Mariner LDC, Mariner Opportunities Fund, LP, NZC Opportunities (Funding) II Limited, Nuveen Floating Rate Income Fund, Nuveen Floating Rate Income Opportunity Fund, Nuveen Senior Income Fund, Orpheus Funding LLC, Orpheus Holdings, LLC, Primus CLO I, Ltd., Primus CLO II, Ltd., Red River CLO, Ltd., Rockwall CDL II, Ltd., Rockwall CDO Ltd., Sands Point Funding Ltd., Southfork CLO, Ltd., Symphony CLO I, Ltd., Symphony CLO II, Ltd., Symphony CLO III, Ltd., Symphony CLO IV, Ltd., Symphony CLO V, Ltd., Symphony Credit Opportunity Fund, Ltd., Veer Cash Flow CLO, Limited, Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Westchester CLO, Ltd., Aurelius Capital Master, Ltd., Stratford CLO, Ltd., Cantor Fitzgerald Securities, Olympic CLO I Ltd. , Shasta CLO I Ltd., Whitney CLO I Ltd., San Gabriel CLO I Ltd., Sierra CLO II Ltd. , Rosedale CLO, Ltd., Rosedale CLO II Ltd., SPCP Group, LLC , Stone Lion Portfolio L.P., Venor Capital Master Fund, Ltd. . Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Pruss, Lorenz) -Modified to add missing filer on 3/23/2010 (gp). (Entered: 03/22/2010)</p>
<p>04/05/2010</p>	<p><u>51</u></p>	<p>MEMORANDUM in Support re (35 in 1:09-md-02106-ASG, 92 in 1:09-cv-23835-ASG, 41 in 1:10-cv-20236-ASG) Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,,Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, <i>Defendant Bank of America, N.A.'s Reply Memorandum of Law in Further Support of Its Motion to Dismiss the Term Lenders' Disbursement Agreement Claims</i> by Bank of America, N.A.. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG,</p>

		1:10-cv-20236-ASG(Rasile, Craig) (Entered: 04/05/2010)
04/09/2010	<u>52</u>	MDL ORDER NUMBER 12: SETTING HEARING Telephonic Status Conference set for 4/16/2010 01:30 PM in Miami Division before Judge Alan S. Gold. Miscellaneous Deadline: Joint Submission due 04/15/2010. Signed by Judge Alan S. Gold on 4/9/2010. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (jh) (Entered: 04/09/2010)
05/28/2010	<u>53</u>	VACATED Per Order at DE # <u>55</u> - ENTRY OF FINAL JUDGMENT. Signed by DEPUTY CLERK on 5/28/2010. (ail) **Modified text on 6/1/2010 (gp)** (Entered: 05/28/2010)
05/28/2010	<u>54</u>	MDL ORDER NUMBER EIGHTEEN Granting in part and Denying in part (35 in 1:09-md-2106-ASG, 92 in 1:09-cv-23835-ASG, 41 in 1:10-cv-20236-ASG) Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG), filed by Bank of America, N.A.; (36 in 1:09-md-2106-ASG, 42 in 1:10-cv-20236-ASG, 93 in 1:09-cv-23835-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG), <i>and Supportion Memorandum of Law</i> filed by HSH Nordbank AG, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC, Merrill Lynch Capital Corporation, JPMorgan Chase Bank, N.A., JP Morgan Chase Bank, N.A., Barclays Bank PLC, MB Financial Bank, N.A., Bank of Scotland, Bank of America, N.A., Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas ; REQUIRING ANSWER TO AVENUE COMPLAINT; CLOSING AURELIUS CASE.Signed by Judge Alan S. Gold on 5/28/2010. {Document originally filed as DE # 79 in 1:09-md-2106-ASG} (gp) (Entered: 06/01/2010)
05/28/2010	<u>55</u>	AMENDED MDL ORDER NUMBER EIGHTEEN; Granting in Part and Denying in Part Motions to Dismiss DE # 35 in 1:09-md-2106-ASG; DE # 36 in 1:09-md-2106-ASG; REQUIRING ANSWER TO COMPLAINTS; re: (54 in 1:10-cv-20236-ASG, 107 in 1:09-cv-23835-ASG) MDL Order Number Eighteen; VACATING (53 in 1:10-cv-20236-ASG) Judgment. Signed by Judge Alan S. Gold on 5/28/2010. {Originally filed as DE # 80 in 1:09-md-2106} (gp) (Entered: 06/01/2010)
07/12/2010	<u>56</u>	Joint MOTION for Extension of Time to Complete Discovery / <i>Joint Motion for Extension of Certain Pre-Trial Deadlines</i> by Bank of America, N.A., Merrill Lynch Capital Corporation. (Attachments: # <u>1</u> Text of Proposed Order) (Rasile, Craig) (Entered: 07/12/2010)
01/13/2011	<u>57</u>	ENTRY OF PARTIAL FINAL JUDGMENT. Signed by DEPUTY CLERK on 1/13/2011. (gp) (Entered: 01/18/2011)
02/11/2011	<u>58</u>	NOTICE OF APPEAL as to <u>57</u> Judgment by ACP Master, Ltd., Aurelius Capital Master, Ltd. Filing fee \$ 455.00. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Amron, Brett) (Entered: 02/11/2011)
02/11/2011		Transmission of Notice of Appeal, Orders and Docket Sheet to US Court of

		Appeals re <u>58</u> Notice of Appeal, (related to 09md2106-DE# 202) (cqs) (Entered: 02/11/2011)
02/11/2011	<u>59</u>	Appeal Remark re <u>58</u> Notice of Appeal, filing fee paid receipt # FLS100014010 in case 09md2106 : (cqs) (Entered: 02/11/2011)
02/22/2011	<u>60</u>	TRANSCRIPT INFORMATION FORM by ACP Master, Ltd., Aurelius Capital Master, Ltd. re <u>58</u> Notice of Appeal,. Hearing transcript(s) ordered. Order placed by Brett M. Amron. Email sent to Court Reporter Coordinator. (Amron, Brett) (Entered: 02/22/2011)
02/22/2011	<u>61</u>	COURT REPORTER ACKNOWLEDGMENT re <u>58</u> Notice of Appeal, <u>60</u> Transcript Information Form. Official Court Reporter: Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. Estimated filing date of transcript 02.22.11. (jm) (Entered: 02/22/2011)
02/22/2011	<u>62</u>	TRANSCRIPT of Oral Argument held on 05.07.10 before Judge Alan S. Gold, 1-63 pages, re: <u>58</u> Notice of Appeal, Court Reporter: Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 3/18/2011. Redacted Transcript Deadline set for 3/28/2011. Release of Transcript Restriction set for 5/26/2011. (jm) (Entered: 02/22/2011)
02/22/2011	<u>63</u>	TRANSCRIPT of Oral Argument held on 01.07.11 before Judge Alan S. Gold, 1-32 pages, re: <u>58</u> Notice of Appeal, Court Reporter: Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 3/18/2011. Redacted Transcript Deadline set for 3/28/2011. Release of Transcript Restriction set for 5/26/2011. (jm) (Entered: 02/22/2011)
02/22/2011	<u>64</u>	TRANSCRIPT NOTIFICATION - The transcripts ordered on 02.22.11 by Brett Amron, Esq., have been filed by the Official Court Reporter, Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov re <u>58</u> Notice of Appeal, <u>60</u> Transcript Information Form. (jm) (Entered: 02/22/2011)
03/03/2011	<u>65</u>	Acknowledgment of Receipt of NOA from USCA re <u>58</u> Notice of Appeal, filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. Date received by USCA: 2/13/2011. USCA Case Number: 11-10740-AA. (cqs) (Entered: 03/03/2011)
04/19/2011	<u>66</u>	MDL ORDER No. 47 Granting in part 212 Motion for Order Dismissing Aurelius Action without Prejudice in case 1:09-md-02106-ASG. The claims against Bank of America, N.A. currently pending before this Court in ACP Master, Ltd., et al. v. Bank of America, N.A., et al., Case No. 10-cv-20236 (Count III of the Aurelius Complaint) are DISMISSED WITHOUT PREJUDICE. **Please see Order for further details**. Signed by Judge Alan S. Gold on 4/19/2011. (gp) (Entered: 04/19/2011)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
05/11/2011 14:57:01			
<b>PACER Login:</b>	hm0151	<b>Client Code:</b>	Font.Liti
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:10-cv-20236-ASG
<b>Billable Pages:</b>	9	<b>Cost:</b>	0.72

**EXHIBIT C**



APPEAL, MDL, MEDREQ, REF\_DISCOV, TEB

**U.S. District Court  
Southern District of Florida (Miami)  
CIVIL DOCKET FOR CASE #: 1:09-cv-21879-ASG**

Fontainebleau Las Vegas LLC v. Bank of America, N.A. et al  
 Assigned to: Judge Alan S. Gold  
 Referred to: Magistrate Judge Ted E. Bandstra  
 Lead case: 1:09-md-02106-ASG  
 Member case: (View Member Case)  
 Case: 1:09-cv-23389-ASG  
 Case in other court: BKC-MIA, 09-01621-AJC-A  
 USCA, 10-14925-AA  
 Cause: 28:1331 Fed. Question: Breach of Contract

Date Filed: 07/07/2009  
 Date Terminated: 09/20/2010  
 Jury Demand: Plaintiff  
 Nature of Suit: 423 Bankruptcy  
 Withdrawal  
 Jurisdiction: Federal Question

Date Filed	#	Docket Text
07/07/2009	<u>1</u>	MOTION (COMPLAINT) to Withdraw Reference Bankruptcy Court case number 09-1621-AJC-A., filed by Bank of America, N.A., Merrill Lynch Capital Corporation, JP 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 PLC, HSH Nordbank AG, New York Branch. (Attachments: # <u>1</u> Part 2 of 3, # <u>2</u> Part 3 of 3)(dcn) (Entered: 07/07/2009)
07/07/2009	<u>2</u>	Bankruptcy Transmittal of Motion to Withdraw Reference Pursuant to 28 USC 157(d) to District Court re <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference filed by Bank of Scotland PLC, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC, Merrill Lynch Capital Corporation, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Bank of America, N.A., Deutsche Bank Trust Company Americas (Attachments: # <u>1</u> Plaintiff's Designation List, # <u>2</u> Plaintiff's Designated Documents Part 1, # <u>3</u> Plaintiff's Designated Documents Part 2, # <u>4</u> Plaintiff's Designated Documents Part 3, # <u>5</u> Response to Motion to Withdraw Reference Part 1, # <u>6</u> Response to Motion to Withdraw Reference Part 2, # <u>7</u> Defendant's Designation, # <u>8</u> Plaintiff's Memorandum of Law in Support of Motion, # <u>9</u> Transmittal from USBC) (dcn) (Entered: 07/07/2009)
07/07/2009	3 B	Bankruptcy Transmittal of Motion to Withdraw Reference Pursuant to 28 USC 157(d) to District Court re <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference filed by Bank of Scotland PLC, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC, Merrill Lynch Capital Corporation, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Bank of America, N.A., Deutsche Bank Trust

		Company Americas (vjk) (Entered: 07/07/2009)
07/07/2009	<u>4</u>	Defendant's MOTION to Expedite <i>Consideration of Motion to Withdraw Reference and Request for Oral Hearing, and Memorandum in Support Thereof</i> , MOTION for Hearing re <u>2</u> Bankruptcy Transmittal to District Court,,, <u>3</u> Bankruptcy Transmittal to District Court, <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference by Bank of America, N.A., Merrill Lynch Capital Corporation, JP 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 PLC, HSH Nordbank AG, New York Branch. (Hutton, John) (Entered: 07/07/2009)
07/08/2009	<u>5</u>	MOTION to Adopt/Join <u>4</u> Defendant's MOTION to Expedite <i>Consideration of Motion to Withdraw Reference and Request for Oral Hearing, and Memorandum in Support Thereof</i> MOTION for Hearing re <u>2</u> Bankruptcy Transmittal to District Court,,, <u>3</u> Bankruptcy Transmittal to District Court, <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference MOTION for Hearing re <u>2</u> Bankruptcy Transmittal to District Court,,, <u>3</u> Bankruptcy Transmittal to District Court, <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference MOTION for Hearing re <u>2</u> Bankruptcy Transmittal to District Court,,, <u>3</u> Bankruptcy Transmittal to District Court, <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference, <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference by MB Financial Bank, N.A.. (Goldstein, Alvin) (Entered: 07/08/2009)
07/09/2009	<u>6</u>	ORDER granting <u>4</u> Motion to Expedite; granting <u>4</u> Motion for Hearing; oral argument on <u>1</u> motion to withdraw reference is set for 7/31/09 at 9am. Signed by Judge Alan S. Gold on 7/9/2009. (dg) (Entered: 07/09/2009)
07/09/2009		Pursuant to DE# <u>6</u> , Set/Reset Hearings: Oral Argument re <u>1</u> Motion to Withdraw Reference set for 7/31/2009 09:00 AM in Miami Division before Judge Alan S. Gold. (dg) (Entered: 07/09/2009)
07/14/2009	<u>7</u>	ORDER granting <u>5</u> Motion to Join in Motion to Withdraw Reference. Signed by Judge Alan S. Gold on 7/14/2009. (cqs) (Entered: 07/14/2009)
07/15/2009	<u>8</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Kenneth E. Noble, Filing Fee \$75.00, Receipt #1004531. (cw) (Entered: 07/21/2009)
07/22/2009	<u>9</u>	ORDER granting <u>8</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings Re: Kenneth Noble. Signed by Judge Alan S. Gold on 7/22/2009. (cqs) (Entered: 07/22/2009)
07/27/2009	<u>10</u>	MOTION for Leave to Appear / <i>Motion for Limited Appearance of Daniel L. Cantor, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings</i> by Bank of America, N.A., Merrill Lynch Capital Corporation. Responses due by 8/13/2009 (Rasile, Craig) (Entered: 07/27/2009)

		07/27/2009)
07/28/2009	<u>11</u>	NOTICE of Striking <u>10</u> MOTION for Leave to Appear / <i>Motion for Limited Appearance of Daniel L. Cantor, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings</i> filed by Merrill Lynch Capital Corporation, Bank of America, N.A. by Bank of America, N.A., Merrill Lynch Capital Corporation (Rasile, Craig) (Entered: 07/28/2009)
07/28/2009	<u>12</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Daniel L. Cantor, Filing Fee \$75.00, Receipt #1005534. (cw) (Entered: 07/29/2009)
07/29/2009	<u>15</u>	MOTION for Admission Pro Hac Vice to Represent Defendant HSH Nordbank AG for Aaron Rubinstein, Filing Fee \$75.00, Receipt #1005584. (cw) (Entered: 07/31/2009)
07/29/2009	<u>18</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Jed I. Bergman, Filing Fee \$75.00, Receipt #1005601. (cw) (Entered: 08/02/2009)
07/30/2009	<u>13</u>	ORDER granting <u>12</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 7/30/2009. (wc) (Entered: 07/30/2009)
07/30/2009	<u>19</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Thomas C. Rice, Filing Fee \$75.00, Receipt #1005662. (cw) (Entered: 08/02/2009)
07/31/2009	14	TEXT Minute Entry for proceedings held before Judge Alan S. Gold: Oral Argument on Bankruptcy Appeal held on 7/31/2009 regarding motion to withdraw reference. Court Reporter: Joseph Millikan, Phone: 305-523-5588 (jh) (Entered: 07/31/2009)
08/01/2009	<u>16</u>	TRANSCRIPT of Oral Argument held on 07.31.09 before Judge Alan S. Gold. Court Reporter: Joseph A. Millikan, Phone: 305-523-5588. 1-45 pages. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 8/24/2009. Redacted Transcript Deadline set for 9/1/2009. Release of Transcript Restriction set for 10/30/2009. (jm) (Entered: 08/01/2009)
08/01/2009	<u>17</u>	Corrected Transcript and Notice of Correction of Oral Argument held on 07.31.09 before Judge Alan S. Gold. Re: <u>16</u> Transcript, Court Reporter: Joseph A. Millikan, Phone: 305-523-5588. 1-45 pages. (Corrects scrivener's error on cover.) (jm) (Entered: 08/01/2009)
08/04/2009	<u>21</u>	ORDER granting <u>18</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 8/4/2009. (cqs) (Entered: 08/05/2009)
08/04/2009	<u>22</u>	ORDER granting <u>19</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 8/4/2009. (cqs) (Entered: 08/05/2009)

08/04/2009	<u>23</u>	ORDER Granting Motion for Withdrawal of Reference re <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference filed by Bank of Scotland PLC, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC, Merrill Lynch Capital Corporation, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Bank of America, N.A., Deutsche Bank Trust Company Americas, (See Order for Details). Signed by Judge Alan S. Gold on 8/4/2009. (cqs) (Entered: 08/05/2009)
08/05/2009	<u>20</u>	ORDER granting <u>15</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 8/4/2009. (cqs) (Entered: 08/05/2009)
08/06/2009	<u>24</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Peter J. Roberts. Filing Fee \$75. Receipt #547107. (cw) (Entered: 08/07/2009)
08/10/2009	<u>25</u>	NOTICE of Attorney Appearance by David Alan Rothstein on behalf of Term Lenders (Rothstein, David) (Entered: 08/10/2009)
08/10/2009	<u>26</u>	MOTION for Leave to File <i>Amicus Brief</i> by Term Lenders. (Attachments: # <u>1</u> Exhibit Exhibit A - Amicus Brief, # <u>2</u> Exhibit Exhibit B - Motion to Transfer) (Pruss, Lorenz) (Entered: 08/10/2009)
08/10/2009	<u>35</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notice of Electronic Filings for Frederick D. Hyman. Filing Fee \$75. Receipt # 1006159. (cw) (Entered: 08/14/2009)
08/11/2009	<u>27</u>	ORDER setting Joint Report on the status of mediation and related settlement negotiations due by 6pm on 8/14/2009. See Order for full details. Signed by Judge Alan S. Gold on 8/11/2009. (wc) (Entered: 08/11/2009)
08/11/2009	<u>28</u>	ORDER granting <u>24</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings as to Peter J. Roberts. Signed by Judge Alan S. Gold on 8/11/2009. (cqs) (Entered: 08/11/2009)
08/11/2009	<u>29</u>	Notice of Supplemental Authority by Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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 (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P)(Bloom, Mark) (Entered: 08/11/2009)
08/11/2009	<u>34</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for J. Michael Hennigan. Filing Fee \$75. Receipt # 1006251. (cw) (Entered: 08/14/2009)
08/11/2009	<u>36</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notice of Electronic Filings for Jason I. Kirschner.

		Filing Fee \$75. Receipt # 1006281. (cw) (Entered: 08/14/2009)
08/11/2009	<u>37</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notice of Electronic Filings for Jean-Marie L. Atamian. Filing Fee \$75. Receipt # 1006282. (cw) (Entered: 08/14/2009)
08/12/2009	<u>38</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Lisa H. Rubin. Filing Fee \$75. Receipt # 1006389. (cw) (Entered: 08/14/2009)
08/13/2009	<u>30</u>	RESPONSE in Opposition re <u>26</u> MOTION for Leave to File <i>Amicus Brief (Curiae)</i> and Appear in Connection with the Court's Determination of Plaintiff's Motion for Partial Summary Judgment filed by Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Rasile, Craig) (Entered: 08/13/2009)
08/13/2009	<u>31</u>	ORDER granting <u>26</u> Motion for Leave to File Amicus Brief. Signed by Judge Alan S. Gold on 8/13/2009. (dg) (Entered: 08/13/2009)
08/13/2009	<u>32</u>	ORDER CONCERNING ORAL ARGUMENT, ( Oral Argument set for 8/18/2009 05:00 PM in Miami Division before Judge Alan S. Gold.) (see order for details). Signed by Judge Alan S. Gold on 8/13/2009. (dg) (Entered: 08/13/2009)
08/13/2009	<u>33</u>	CERTIFICATE OF SERVICE by Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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 re <u>30</u> Response in Opposition to Motion,, <i>for Leave to File Amicus Curiae Brief</i> (Rasile, Craig) (Entered: 08/13/2009)
08/14/2009	<u>39</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Bradley J. Butwin. Filing Fee \$75. Receipt # 1006530. (cw) (Entered: 08/14/2009)
08/14/2009	<u>40</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for William J. Sushon. Filing Fee \$75. Receipt # 1006531. (cw) (Entered: 08/14/2009)
08/14/2009	<u>41</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Jonathan Rosenberg. Filing Fee \$75. Receipt # 1006532. (cw) (Entered: 08/14/2009)
08/14/2009	<u>42</u>	REPORT REGARDING the Status of the Mediation by Fontainebleau Las Vegas LLC, Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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. (Hutton, John) (Entered: 08/14/2009)
08/14/2009	<u>46</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for David M. Friedman. Filing Fee \$75. Receipt # 1006576. (cw) (Entered: 08/17/2009)
08/17/2009	<u>43</u>	SUPPLEMENTAL ORDER concerning Order <u>32</u> setting Oral Argument. Counsel for Amicus Curiae shall not be permitted to present argument at the hearing set for 08/18/09. Signed by Judge Alan S. Gold on 8/17/2009. (jh) (Entered: 08/17/2009)
08/17/2009	<u>44</u>	Defendant's MOTION for Leave to File <i>Response to Amicus Curiae Brief</i> by Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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. (Hutton, John) (Entered: 08/17/2009)
08/17/2009	<u>45</u>	RESPONSE to Motion re <u>44</u> Defendant's MOTION for Leave to File <i>Response to Amicus Curiae Brief</i> filed by Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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. Replies due by 8/27/2009. (Hutton, John) (Entered: 08/17/2009)
08/17/2009	<u>47</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for David J. Woll. Filing Fee \$75. Receipt # 1006644. (cw) (Entered: 08/17/2009)
08/18/2009	<u>48</u>	ORDER granting <u>39</u> Motion for Limited Appearance ; granting <u>40</u> Motion for Limited Appearance ; granting <u>41</u> Motion for Limited Appearance. Signed by Judge Alan S. Gold on 8/18/2009. (tas) (Entered: 08/18/2009)
08/18/2009	<u>49</u>	ORDER granting <u>34</u> Motion for Limited Appearance. Signed by Judge Alan S. Gold on 8/18/2009. (tas) (Entered: 08/18/2009)
08/18/2009	<u>50</u>	ORDER granting <u>35</u> Motion for Limited Appearance ; granting <u>36</u> Motion for Limited Appearance ; granting <u>37</u> Motion for Limited Appearance ; granting <u>38</u> Motion for Limited Appearance. Signed by Judge Alan S. Gold on 8/18/2009. (tas) (Entered: 08/18/2009)
08/18/2009	<u>51</u>	ORDER granting <u>44</u> Leave to File Response. Signed by Judge Alan S. Gold on 8/18/2009. (tas) (Entered: 08/18/2009)
08/18/2009	<u>52</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Anthony L. Paccione. Filing Fee \$75. Receipt # 1006790. (cw) (Entered: 08/20/2009)
08/19/2009	<u>53</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Justin S. Stern. Filing Fee \$75. Receipt # 1006864. (cw) (Entered: 08/20/2009)
08/19/2009	<u>54</u>	ORDER granting <u>47</u> Motion for Limited Appearance. Signed by Judge Alan

		S. Gold on 8/19/2009. (tas) (Entered: 08/20/2009)
08/19/2009	<u>55</u>	ORDER granting <u>46</u> Motion for Limited Appearance. Signed by Judge Alan S. Gold on 8/19/2009. (tas) (Entered: 08/20/2009)
08/21/2009	<u>57</u>	ORDER granting <u>52</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 8/21/2009. (tb) (Entered: 08/24/2009)
08/24/2009	<u>56</u>	TRANSCRIPT of Oral Argument held on 08.18.09 before Judge Alan S. Gold. Court Reporter: Joseph A. Millikan, 305-523-5588. 1-60 pages. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 9/14/2009. Redacted Transcript Deadline set for 9/24/2009. Release of Transcript Restriction set for 11/23/2009. (jm) (Entered: 08/24/2009)
08/24/2009	<u>58</u>	ORDER granting <u>53</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 8/24/2009. (tb) (Entered: 08/25/2009)
08/26/2009	<u>59</u>	Courtesy Copy of Plaintiffs' Motion to Transfer of Related Actions to the Southern District of Florida and Consolidation Pursuant to 28 USC 1407 for Consolidated Pretrial Proceedings sent before the Judicial Panel on Multidistrict Litigation. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit A, # <u>3</u> Schedule of Pending Actions and Attachments) (gp) (Entered: 08/26/2009)
08/26/2009	<u>60</u>	Courtesy Copy of Defendants and Third-Party Plaintiffs' Motion to Transfer to the Southern District of Florida and Consolidation of Related Actions Pursuant to 28 USC 1407 sent before the Judicial Panel on Multidistrict Litigation. (Attachments: # <u>1</u> Memorandum of Law in Support, # <u>2</u> Exhibit A-D, # <u>3</u> Notice of Appearance, # <u>4</u> Schedule of Pending Actions and Exhibits 1-7) (gp) (Entered: 08/26/2009)
08/26/2009	<u>61</u>	Courtesy Copy of Revised Certificate of Service sent before the Judicial Panel on Multidistrict Litigation. (gp) (Entered: 08/26/2009)
08/26/2009	<u>62</u>	ORDER Denying Motion for Partial Summary Judgment; Denying Motion for an Order Directing the Turnover of Funds to the Debtors' Estate; Denying Motion for Expedited Filing and Consideration; Dismissing Motion to Dismiss the Turnover Claim and Granting Motion to Permit Discovery. In conjunction with the issuance of this Order, an Order Requiring Compliance with S.D.Fla. L.R. shall be issued. Further, a discovery conference in the matter shall take place before the Honorable Chris M. McAliley on September 25, 2009 at 2pm.. Signed by Judge Alan S. Gold on 08/06/09. (jc) (Entered: 08/26/2009)
08/26/2009		Discovery Conference set for 9/25/2009 02:00 PM before Magistrate Judge Chris M. McAliley. (jc) (Entered: 08/26/2009)
08/26/2009	<u>67</u>	Case assignment of Paired Magistrate Judge Chris M. McAliley. (vp)

		(Entered: 09/16/2009)
09/11/2009	<u>63</u>	STIPULATION <i>and Order Concerning Time to File Responses to Plaintiff's Amended Complaint</i> by Fontainebleau Las Vegas LLC, Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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. (Bloom, Mark) (Entered: 09/11/2009)
09/11/2009	<u>64</u>	SCHEDULING REPORT - <b>Rule 16.1</b> by Fontainebleau Las Vegas LLC, Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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. (Attachments: # <u>1</u> Appendix I - Joint Scheduling Report, # <u>2</u> Appendix II - Consent to Jurisdiction by a United States Magistrate Judge) (Snyder, Jeffrey) (Entered: 09/11/2009)
09/15/2009	<u>65</u>	STIPULATION of Dismissal of <i>Claims Five and Six of Plaintiff's Amended Complaint against Deutsche Bank Trust Company Americas Without Prejudice</i> by Fontainebleau Las Vegas LLC, Deutsche Bank Trust Company Americas. (Snyder, Jeffrey) (Entered: 09/15/2009)
09/16/2009	<u>66</u>	ORDER Regarding Discovery Conference and Requiring Joint Statement. Signed by Magistrate Judge Chris M. McAliley on 9/16/09. (jjz) (Entered: 09/16/2009)
09/16/2009	<u>68</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for Arthur S. Linker. Filing Fee \$75. Receipt # 1008449. (cw) (Entered: 09/20/2009)
09/22/2009	<u>69</u>	ORDER Setting TELEPHONIC Status Conference regarding Case # 09-22828-MC-Jordan. Telephonic Status Conference set for 9/23/2009 at 11:00 AM in Miami Division before Judge Alan S. Gold. Signed by Judge Alan S. Gold on 9/22/2009. (lms) (Entered: 09/22/2009)
09/22/2009	<u>70</u>	ORDER GRANTING <u>65</u> Stipulation of Dismissal of Claims Five and Six of Plaintiff's Amended Complaint filed by Fontainebleau Las Vegas LLC, Deutsche Bank Trust Company Americas. Signed by Judge Alan S. Gold on 9/22/2009. (mg) (Entered: 09/23/2009)
09/23/2009	<u>71</u>	Statement of: <i>Discovery Issues (Joint)</i> by Fontainebleau Las Vegas LLC, Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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 re <u>66</u> Order. (Fracasso, Robert) (Entered: 09/23/2009)
09/23/2009	<u>72</u>	Order Cancelling Discovery Conference. Signed by Magistrate Judge Chris M. McAliley on 9/23/09. (jjz) (Entered: 09/23/2009)
09/23/2009	<u>76</u>	MOTION for Limited Appearance, Consent to Designation and Request to



		Electronically Receive Notices of Electronic Filings for Seth A. Moskowitz. Filing Fee \$75. Receipt # 1008960. (cw) (Entered: 09/27/2009)
09/24/2009	<u>73</u>	STRICKEN BY DE <u>75</u> MOTION for Leave to Appear <i>Limited</i> by HSH Nordbank AG, New York Branch. Responses due by 10/13/2009 (Rice, Arthur) Modified on 9/28/2009 (tp). (Entered: 09/24/2009)
09/25/2009	<u>74</u>	Clerks Notice to Filer re <u>73</u> MOTION for Leave to Appear <i>Limited</i> . CORRECTIVE ACTION REQUIRED: The Filer must file a Notice of Striking, then file the original Motion to Make a Limited Appearance along with the applicable filing fee in the conventional paper format as required in the CM/ECF Administrative Procedures. Additional Notice: WRONG EVENT used (tp) (Entered: 09/25/2009)
09/25/2009	<u>75</u>	NOTICE of Striking <u>73</u> MOTION for Leave to Appear <i>Limited</i> filed by HSH Nordbank AG, New York Branch by HSH Nordbank AG, New York Branch (Rice, Arthur) (Entered: 09/25/2009)
09/28/2009	<u>77</u>	ORDER Granting Motion for Limited Appearance of Arthur S. Linker Consent to Designation and Request to Electronically Receive Notices of Electronic Filings; granting <u>68</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 9/28/2009. (asl) (Entered: 09/29/2009)
09/29/2009	<u>78</u>	ORDER Granting Motion for Limited Appearance of Seth A. Moskowitz <u>76</u> ; granting <u>76</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 9/29/2009. (asl) (Entered: 09/30/2009)
09/29/2009	<u>79</u>	MOTION for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings for W. Stewart Wallace. Filing Fee \$75. Receipt # 1009112. (cw) (Entered: 09/30/2009)
09/30/2009	<u>80</u>	ANSWER and Affirmative Defenses to Complaint ( <i>Amended</i> ) by MB Financial Bank, N.A..(Goldstein, Alvin) (Entered: 09/30/2009)
09/30/2009	<u>81</u>	ANSWER and Affirmative Defenses to Complaint ( <i>Amended</i> ) by Bank of Scotland PLC.(Moorefield, Harold) (Entered: 09/30/2009)
09/30/2009	<u>82</u>	ANSWER and Affirmative Defenses to Complaint ( <i>Amended</i> ) by Sumitomo Mitsui Banking Corporation.(Fracasso, Robert) (Entered: 09/30/2009)
09/30/2009	<u>83</u>	Corporate Disclosure Statement by Sumitomo Mitsui Banking Corporation. (Fracasso, Robert) (Entered: 09/30/2009)
09/30/2009	<u>84</u>	ANSWER and Affirmative Defenses to Complaint by HSH Nordbank AG, New York Branch.(Rice, Arthur) (Entered: 09/30/2009)
09/30/2009	<u>85</u>	ANSWER to Complaint ( <i>Amended</i> ) by JP Morgan Chase Bank, N.A..(Bloom, Mark) (Entered: 09/30/2009)
09/30/2009	<u>86</u>	ANSWER to Complaint ( <i>Amended</i> ) by The Royal Bank of Scotland PLC. (Bloom, Mark) (Entered: 09/30/2009)

09/30/2009	<u>87</u>	ANSWER to Complaint ( <i>Amended</i> ) by Deutsche Bank Trust Company Americas.(Bloom, Mark) (Entered: 09/30/2009)
09/30/2009	<u>88</u>	ANSWER to Complaint ( <i>Amended</i> ) by Barclays Bank PLC.(Bloom, Mark) (Entered: 09/30/2009)
09/30/2009	<u>89</u>	ANSWER and Affirmative Defenses to Complaint by Bank of America, N.A..(Rasile, Craig) (Entered: 09/30/2009)
09/30/2009	<u>90</u>	ANSWER and Affirmative Defenses to Complaint by Merrill Lynch Capital Corporation.(Rasile, Craig) (Entered: 09/30/2009)
09/30/2009	<u>91</u>	CERTIFICATE OF SERVICE by Bank of America, N.A., Merrill Lynch Capital Corporation re <u>90</u> Answer to Complaint, <u>89</u> Answer to Complaint (Rasile, Craig) (Entered: 09/30/2009)
10/02/2009	<u>92</u>	Corporate Disclosure Statement by HSH Nordbank AG, New York Branch. (Rice, Arthur) (Entered: 10/02/2009)
10/06/2009	<u>93</u>	ORDER Granting Motion for Limited Appearance of W. Stewart Wallace <u>79</u> ; granting <u>79</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings. Signed by Judge Alan S. Gold on 10/5/2009. (asl) (Entered: 10/06/2009)
10/06/2009	<u>94</u>	ORDER Regarding Oral Argument. Signed by Judge Alan S. Gold on 10/6/2009. (asl) (Entered: 10/06/2009)
10/06/2009	<u>95</u>	ORDER REGARDING ORAL ARGUMENT set for 10/7/09 at 5:30 PM (See Order for full details). Signed by Judge Alan S. Gold on 10/6/2009. (wc) (Entered: 10/06/2009)
10/17/2009	<u>96</u>	TRANSCRIPT of Oral Argument held on 10.07.09 before Judge Alan S. Gold. Court Reporter: Joseph A. Millikan, 305-523-5588. 1-63 pages. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 11/9/2009. Redacted Transcript Deadline set for 11/17/2009. Release of Transcript Restriction set for 1/15/2010. (jm) (Entered: 10/17/2009)
10/24/2009	<u>97</u>	FINAL REPORT of Mediation Disposition: Impasse(Snyder, Jeffrey) (Entered: 10/24/2009)
10/30/2009	<u>98</u>	MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and</i> , MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal</i> ( Responses due by 11/19/2009) by Fontainebleau Las Vegas LLC. (Snyder, Jeffrey) (Entered: 10/30/2009)
10/30/2009	<u>99</u>	SUPPLEMENT to <u>98</u> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and</i> MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal</i> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary</i>

		<i>Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal MEMORANDUM OF LAW IN SUPPORT</i> by Fontainebleau Las Vegas LLC. (Snyder, Jeffrey) (Entered: 10/30/2009)</i>
10/30/2009	<u>100</u>	AFFIDAVIT in Support re <u>98</u> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal</i> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal Declaration of Jed I. Bergman</i> filed by Fontainebleau Las Vegas LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Snyder, Jeffrey) (Entered: 10/30/2009)</i></i>
10/30/2009	<u>101</u>	MOTION for Hearing re <u>98</u> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal</i> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal (REQUEST FOR ORAL ARGUMENT)</i> by Fontainebleau Las Vegas LLC. (Snyder, Jeffrey) (Entered: 10/30/2009)</i></i>
10/30/2009	<u>102</u>	NOTICE by Fontainebleau Las Vegas LLC re <u>100</u> Affidavit in Support of Motion,, <i>OF FILING Exhibit F to Declaration of Jed I. Bergman In Support of Fontainebleau Las Vegas LLC's Motion to Certify Under 28 U.S.C. Section 1292(b) This Court's Orders Withdrawing the Reference and Denying Summary Judgment, and For a Stay Pending the Disposition of any Appeal</i> (Attachments: # <u>1</u> Exhibit F)(Snyder, Jeffrey) (Entered: 10/30/2009)
11/09/2009	<u>103</u>	ORDER Setting Pretrial and Trial Dates, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures. SCHEDULING ORDER: ( Pretrial Conference set for 7/29/2011 10:00 AM in Miami Division before Judge Alan S. Gold., Jury Trial set for 8/1/2011 before Judge Alan S. Gold., Calendar Call set for 7/27/2011 01:30 PM in Miami Division before Judge Alan S. Gold., Pretrial Stipulation due by 6/29/2011.), ORDER REFERRING CASE to Magistrate Judge Chris M. McAliley for Discovery Proceedings. ORDER REFERRING CASE to Mediation. ( Mediation Deadline 12/15/2010). Signed by Judge Alan S. Gold on 11/9/2009. (asl) (Entered: 11/10/2009)
11/12/2009	<u>104</u>	ORDER Granting Motion for Hearing <u>101</u> ; Setting Oral Argument on Motion to Certify Order for Interlocutory Appeal and For Stay Pending Appeal <u>98</u> ( Motion Hearing set for 12/4/2009 10:00 AM in Miami Division before Judge Alan S. Gold., Miscellaneous Deadline 12/2/2009.), Motions terminated: <u>101</u> MOTION for Hearing re <u>98</u> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay</i> . Signed by Judge Alan S. Gold on 11/12/2009. (asl) (Entered: 11/13/2009)

11/12/2009	<u>105</u>	ORDER Closing Civil Case; Noting Related Matter and Vacating Order <u>152</u> . The Clerk of the Courts is hereby directed to CLOSE Case No. 09-CV-23389, and list said case as a related matter on the Court docket under 09-21879. The Clerk is directed to file the Complaint docketed in Case No. 09-23389 in Case No. 09-21879, forthwith. All future filings shall bear Case No. 09-21879-CIV-GOLD. Signed by Judge Alan S. Gold on 11/12/2009. (asl) (Entered: 11/13/2009)
11/13/2009	<u>106</u>	COMPLAINT For Declaratory Judgment; Specific Performance and/or Damages by Fontainebleau Las Vegas LLC; per <u>105</u> Order, (asl) (Entered: 11/13/2009)
11/19/2009	<u>107</u>	RESPONSE in Opposition re <u>98</u> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b)</i> and MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal</i> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b)</i> and MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal</i> filed by Bank of America, N.A., Bank of Scotland PLC, Barclays Bank PLC, Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC. (Rasile, Craig) (Entered: 11/19/2009)
11/19/2009	<u>108</u>	AFFIDAVIT in Support re <u>107</u> Response in Opposition to Motion,,, / <i>Declaration of Daniel L. Cantor</i> by Bank of America, N.A., Bank of Scotland PLC, Barclays Bank PLC, Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC. (Attachments: # <u>1</u> Exhibit A - Part 1, # <u>2</u> Exhibit A- Part 2, # <u>3</u> Exhibit B) (Rasile, Craig) (Entered: 11/19/2009)
12/01/2009	<u>109</u>	ORDER converting oral argument into telephonic status conference; Oral argument scheduled for Friday, December 4, 2009 is CANCELLED; ( Telephonic Status Conference set for 12/4/2009 10:00 AM in Miami Division before Judge Alan S. Gold.). Signed by Judge Alan S. Gold on 12/1/2009. (dg) (Entered: 12/01/2009)
12/01/2009	<u>110</u>	REPLY to Response to Motion re <u>98</u> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b)</i> and MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal</i> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b)</i> and MOTION to Stay re <u>23</u> Order,, <u>62</u> Order,, <i>Litigation Pending Disposition of Any Appeal</i> filed by Fontainebleau Las Vegas LLC. (Snyder, Jeffrey) (Entered: 12/01/2009)
12/04/2009		Cases associated 09-md-2106. (gp) (Entered: 12/04/2009)

12/04/2009	<u>111</u>	MDL Transfer In Case Receipt from Southern District of Florida; Case No. 1:09-cv-21879-ASG. Original file with documents 1-110. re: SDFL MDL Case Number 09-md-2106. This Document relates to: 1:09-md-02106-ASG, 1:09-cv-21879-ASG (gp) (Entered: 12/04/2009)
12/04/2009	<u>112</u>	TEXT Minute Entry for proceedings held before Judge Alan S. Gold: Telephone Status Conference held on 12/4/2009 to discuss MDL procedures. Court Reporter: Joseph Millikan, Phone: 305-523-5588 (jh) (Entered: 12/07/2009)
12/08/2009	<u>113</u>	ORDER FOLLOWING TELEPHONIC Status Conference; Requiring Submission; Setting Telephone Status Conference:( Status Conference set for 12/18/2009 02:30 PM in Miami Division before Judge Alan S. Gold.). **Please see Order for further details**. Signed by Judge Alan S. Gold on 12/8/2009. This Document relates to all actions: 1:09-md-02106-ASG, 1:09-cv-21879-ASG (gp) (Entered: 12/08/2009)
12/08/2009	<u>115</u>	MOTION for Limited Appearance, Consent to Designation, and Request to Receive Electronically Notices of Electronic Filings for Kirk Dillman. Filing Fee \$75. Receipt # 1013202. (cw) (Entered: 12/13/2009)
12/08/2009	<u>116</u>	MOTION for Limited Appearance, Consent to Designation, and Request to Receive Electronically Notices of Electronic Filings for J. Michael Hennigan. Filing Fee \$75. Receipt # 1013203. (cw) (Entered: 12/13/2009)
12/11/2009	<u>114</u>	NOTICE by Bank of America, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, Fontainebleau Las Vegas LLC; HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC, Bank of Scotland PLC, Camulos Master Fund [Joint Notice] Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG(Bloom, Mark) (Entered: 12/11/2009)
12/18/2009	<u>117</u>	TEXT Minute Entry for proceedings held before Judge Alan S. Gold: Telephonic Status Conference held on 12/18/2009 to discuss pre-trial schedule and procedures. Court Reporter: Joseph Millikan, Phone: 305-523-5588 (jh) (Entered: 12/18/2009)
12/21/2009	<u>118</u>	MDL ORDER NUMBER TWO Following Telephonic Status Conference; Setting Oral Argument; Allowing Submission and Response - Oral Argument as to (98 in 1:09-cv-21879-ASG) MOTION for Leave to Appeal and for Stay Pending Appeal ( Oral Argument set for 1/21/2010 05:00 PM in Miami Division before Judge Alan S. Gold.). **Please see Order for further details**. Signed by Judge Alan S. Gold on 12/21/2009. This Document relates to All Actions: 1:09-md-02106-ASG, 1:09-cv-21879-ASG (gp) (Entered: 12/22/2009)
12/28/2009	<u>119</u>	ORDER granting <u>116</u> Motion for Limited Appearance, Consent to Designation and Request to Electronically Receive Notices of Electronic Filings Re: J. Michael Hennigan. Signed by Judge Alan S. Gold on 12/28/2009. (cqs) (Entered: 12/29/2009)
12/28/2009	<u>120</u>	ORDER granting <u>115</u> Motion for Limited Appearance, Consent to

		Designation and Request to Electronically Receive Notices of Electronic Filings Re: Kirk Dillman. Signed by Judge Alan S. Gold on 12/28/2009. (cqs) (Entered: 12/29/2009)
01/08/2010	<u>121</u>	MDL ORDER Number Three - Amended Order Setting Pretrial and Trial Dates, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures. Signed by Judge Alan S. Gold on 1/8/2010. This Document relates to all actions: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG (gp) (Entered: 01/08/2010)
01/13/2010	<u>122</u>	RESPONSE in Opposition re (98 in 1:09-cv-21879-ASG, 98 in 1:09-cv-21879-ASG) MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and</i> MOTION to Stay re (23) Order,, (62) Order,, <i>Litigation Pending Disposition of Any Appeal</i> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and</i> MOTION to Stay re (23) Order,, (62) Order,, <i>Litigation Pending Disposition of Any Appeal</i> filed by Term Lenders. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG(Pruss, Lorenz) (Entered: 01/13/2010)
01/13/2010	<u>123</u>	MDL ORDER NUMBER FOUR: Administratively Closing Member Cases. **Please see Order for further details**. Signed by Judge Alan S. Gold on 1/13/2010. This Document relates to All Actions. re: 1:09-md-02106-ASG (gp) (Entered: 01/14/2010)
01/14/2010	<u>124</u>	UNSTIPULATED MOTION for Substitution of Counsel ( <i>Proposed Order Attached</i> ) by MB Financial Bank, N.A.. Responses due by 2/1/2010 Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG(Grossman, Gregory) (Entered: 01/14/2010)
01/15/2010	<u>125</u>	Second AMENDED COMPLAINT, filed by Term Lenders. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG(Pruss, Lorenz) (Entered: 01/15/2010)
01/19/2010	<u>126</u>	MDL ORDER Number Five granting (124) Unstipulated Motion for Substitution of Counsel. Attorney Alvin S. Goldstein terminated in case 1:09-cv-21879-ASG; granting (14) Unstipulated Motion for Substitution of Counsel. Attorney Alvin S. Goldstein terminated in case 1:09-md-02106-ASG. Signed by Judge Alan S. Gold on 1/19/2010. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG(ls) (Entered: 01/19/2010)
01/20/2010	<u>127</u>	REPLY to Response to Motion re (98 in 1:09-cv-21879-ASG, 98 in 1:09-cv-21879-ASG) MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and</i> MOTION to Stay re (23) Order,, (62) Order,, <i>Litigation Pending Disposition of Any Appeal</i> MOTION for Leave to Appeal <i>Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and</i> MOTION to Stay re (23) Order,, (62) Order,, <i>Litigation Pending Disposition of Any Appeal</i> filed by Fontainebleau Las Vegas LLC. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG(Snyder, Jeffrey) (Entered: 01/20/2010)

		01/20/2010)
01/21/2010	128	TEXT Minute Entry for proceedings held before Judge Alan S. Gold: Motion Hearing held on 1/21/2010 re Docket Number 98 in 1:09-cv-21879-ASG, MOTION for Leave to Appeal Interlocutory Orders Withdrawing the Reference and Denying Summary Judgment Pursuant to 28 U.S.C. Section 1292(b) and MOTION to Stay re (23) Order, (62) Order, Litigation Pending Disposition of Any Appeal filed by Fontainebleau Las Vegas LLC. Court Reporter: Joseph Millikan, 305-523-5588 Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG (jh) (Entered: 01/22/2010)
01/29/2010	<u>129</u>	Corporate Disclosure Statement by Term Lenders, Term Lenders. (Attachments: # <u>1</u> Exhibit A - Corporate Disclosure Statement, # <u>2</u> Exhibit B - Corporate Disclosure Statement, # <u>3</u> Exhibit C - Corporate Disclosure Statement, # <u>4</u> Exhibit D - Corporate Disclosure Statement, # <u>5</u> Exhibit E - Corporate Disclosure Statement, # <u>6</u> Exhibit F - Corporate Disclosure Statement, # <u>7</u> Exhibit G - Corporate Disclosure Statement, # <u>8</u> Exhibit H - Corporate Disclosure Statement, # <u>9</u> Exhibit I - Corporate Disclosure Statement, # <u>10</u> Exhibit J - Corporate Disclosure Statement, # <u>11</u> Exhibit K - Corporate Disclosure Statement, # <u>12</u> Exhibit L - Corporate Disclosure Statement, # <u>13</u> Exhibit M - Corporate Disclosure Statement, # <u>14</u> Exhibit N - Corporate Disclosure Statement, # <u>15</u> Exhibit O - Corporate Disclosure Statement, # <u>16</u> Exhibit P - Corporate Disclosure Statement, # <u>17</u> Exhibit Q - Corporate Disclosure Statement) Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Pruss, Lorenz) (Entered: 01/29/2010)
02/04/2010	<u>130</u>	ORDER Denying Motion for Leave to Appeal Interlocutory Orders <u>98</u> . Signed by Judge Alan S. Gold on 2/3/2010. (asl) (Entered: 02/04/2010)
02/09/2010	131	Case reassigned to Magistrate Judge Ted E. Bandstra, pursuant to docket entry 28 on 09MD2106 (yc) (Entered: 02/09/2010)
02/23/2010	132	ORDER Setting Hearing on Motion (35 in 1:09-md-02106-ASG, 92 in 1:09-cv-23835-ASG, 41 in 1:10-cv-20236-ASG) Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,,, (36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG, 42 in 1:10-cv-20236-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> : Motion Hearing set for 5/7/2010 03:15 PM in Miami Division before Judge Alan S. Gold. See [DE 10, p. 5].. Signed by Judge Alan S. Gold on 2/23/2010. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (mbs) (Entered: 02/23/2010)

02/26/2010	<u>133</u>	NOTICE by Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., Bank of Scotland PLC, Royal Bank of Scotland PLC, The Royal Bank of Scotland PLC, Barclays Bank PLC of <i>Request for Termination of Appearance of Attorney (Justin S. Stern, Esq.)</i> Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Hutton, John) (Entered: 02/26/2010)
03/09/2010		Attorney Justin S. Stern terminated. Notice of Termination delivered by US Mail to Justin Stern. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(mbs) (Entered: 03/09/2010)
03/22/2010	<u>134</u>	RESPONSE in Opposition re (92 in 1:09-cv-23835-ASG, 41 in 1:10-cv-20236-ASG) Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,,Defendant's MOTION to Dismiss (84 in 1:09-cv-23835-ASG, 15 in 1:09-md-02106-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, filed by 1888 Fund, Ltd., Aberdeen Loan Funding, Ltd., Ares Enhanced Loan Investment Strategy III, Ltd., Armstrong Loan Funding, Ltd., Avenue CLO Fund, Ltd., Avenue CLO II, Ltd., Avenue CLO III, Ltd., Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brentwood CLO, Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Canyon Capital Advisors, LLC, Canyon Special Opportunities Master Fund (Canyon), Ltd., Carlyle High Yield Partners 2008-1, Ltd., Carlyle High Yield Partners IX, Ltd., Carlyle High Yield Partners VI, Ltd., Carlyle High Yield Partners VII, Ltd., Carlyle High Yield Partners VIII, Ltd., Carlyle High Yield Partners X, Ltd., Carlyle Loan Investment, Ltd., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Copper River CLO Ltd., Duane Street CLO 1, Ltd., Duane Street CLO II, Ltd., Duane Street CLO III, Ltd., Duane Street CLO IV, Ltd., Duane Street CLO V, Ltd., Eastland CLO, Ltd., Encore Fund LP, Fortissimo Fund, Genesis CLO 2007-1 Ltd., Gleneagles CLO, Ltd., Grayson CLO, Ltd., Green Lane CLO Ltd., Greenbriar CLO, Ltd., Highland Credit Opportunities CDO, Ltd., Highland Loan Funding V, Ltd., Highland Offshore Partners, L.P., ING International (II) - Senior Bank Loans Euro, ING International (II) - Senior Bank Loans USD, ING Investment Management CLO I, Ltd., ING Investment Management CLO II, Ltd., ING Investment Management CLO III, Ltd., ING Investment Management CLO IV, Ltd., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Jasper CLO, Ltd., Jay Street Market Value CLO I, Ltd., Kennecott Funding Ltd., LFC2 Loan Funding LLC, Liberty CLO, Ltd., Loan Funding IV LLC, Loan Funding VII LLC, Loan Star State Trust, Mariner LDC, Mariner Opportunities Fund, LP, NZC Opportunities (Funding) II Limited, Nuveen Floating Rate Income Fund, Nuveen Floating Rate Income Opportunity Fund, Nuveen Senior Income Fund, Orpheus Funding LLC, Orpheus Holdings, LLC, Primus CLO I, Ltd., Primus CLO II, Ltd., Red River CLO, Ltd., Rockwall CDL II, Ltd., Rockwall CDO Ltd., Sands Point Funding Ltd., Southfork CLO, Ltd., Symphony CLO I, Ltd., Symphony CLO II, Ltd., Symphony CLO III, Ltd., Symphony CLO IV, Ltd., Symphony CLO V, Ltd., Symphony Credit Opportunity Fund, Ltd., Veer Cash Flow CLO, Limited, Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO



		Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Westchester CLO, Ltd., Aurelius Capital Master, Ltd., Stratford CLO, Ltd., Cantor Fitzgerald Securities, Olympic CLO I Ltd. , Shasta CLO I Ltd., Whitney CLO I Ltd., San Gabriel CLO I Ltd., Sierra CLO II Ltd. , Rosedale CLO, Ltd., Rosedale CLO II Ltd., SPCP Group, LLC , Stone Lion Portfolio L.P., Venor Capital Master Fund, Ltd. . Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Pruss, Lorenz) -Modified to add missing filer on 3/23/2010 (gp). (Entered: 03/22/2010)
04/09/2010	<u>135</u>	MDL ORDER NUMBER 12: SETTING HEARING Telephonic Status Conference set for 4/16/2010 01:30 PM in Miami Division before Judge Alan S. Gold. Miscellaneous Deadline: Joint Submission due 04/15/2010. Signed by Judge Alan S. Gold on 4/9/2010. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG (jh) (Entered: 04/09/2010)
05/24/2010	<u>136</u>	ORDER Granting (75) in case 1:09-cv-21879-ASG Motion by Bilzin Sumberg Baena Price & Axelrod LLP to Withdraw as Counsel of Record. Attorney Scott Louis Baena and Jeffrey Ira Snyder terminated. **Please see Order for further details**. Signed by Judge Alan S. Gold on 5/24/2010. (gp) (Entered: 05/25/2010)
09/20/2010	<u>137</u>	MDL ORDER NUMBER 35; DISMISSING CLAIMS with Prejudice to Expedite Appeal of Claim-Dispositive Ruling 135 Motion to Dismiss. **Please see Order for further details**. Signed by Judge Alan S. Gold on 9/20/2010. (gp) (Entered: 09/21/2010)
09/20/2010		Case Reopened (gp) (Entered: 09/21/2010)
09/20/2010	<u>138</u>	FINAL JUDGMENT is hereby entered dismissing action 1:09-cv-21879-ASG, with prejudice, but without prejudice to the Trustee's right to appeal with respect to Counts I and VII of the Amended Complaint. In accordance with the Court's Order, the Plaintiffs shall take nothing from this cause. All parties shall bear their own costs. Signed by DEPUTY CLERK on 9/20/2010. (gp) (Entered: 09/21/2010)
10/18/2010	<u>139</u>	NOTICE OF APPEAL as to <u>62</u> Order,, <u>138</u> Judgment, <u>137</u> Order by Soneet Kapila, Trustee Filing fee \$ 455.00. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. Appeal Record due by 11/1/2010. (Sharp, Susan) (Entered: 10/18/2010)
10/19/2010		Transmission of Notice of Appeal, Order, Judgment and Docket Sheet to US Court of Appeals re <u>139</u> Notice of Appeal. Filing Fee \$(NOT PAID) (mc) (Entered: 10/19/2010)
10/21/2010	<u>140</u>	USCA Appeal Fees received on 10/20/2010 in the amount of \$455.00 receipt number FLS100008339 re <u>139</u> Notice of Appeal, filed by Soneet Kapila, Trustee (mc) (Entered: 10/21/2010)

10/29/2010	<u>141</u>	TRANSCRIPT INFORMATION FORM by Soneet Kapila, Trustee re <u>139</u> Notice of Appeal,. No Transcript Requested. (Sharp, Susan) (Entered: 10/29/2010)
10/29/2010	<u>142</u>	TRANSCRIPT INFORMATION FORM by Fontainebleau Las Vegas LLC re <u>139</u> Notice of Appeal,. No Transcript Requested. (cqs) (Entered: 11/01/2010)
11/02/2010	<u>143</u>	Acknowledgment of Receipt of NOA from USCA re <u>139</u> Notice of Appeal, filed by Soneet Kapila, Trustee. Date received by USCA: 10/25/2010. USCA Case Number: 10-14925-A. (cqs) (Entered: 11/03/2010)
11/10/2010	<u>146</u>	MOTION to Appear Pro Hac Vice, Consent to Designation and Request to Electronically Receive Notices of Electronic Filing for Phillip A. Geraci. Filing Fee \$ 75.00. Receipt # 9692. (ksa) (Entered: 11/18/2010)
11/10/2010	<u>147</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Steven C. Chin, Esq.. Filing Fee \$ 75.00. Receipt # 9691. (gp) (Entered: 11/19/2010)
11/12/2010	<u>144</u>	MOTION to Amend/Correct / <i>Motion to Correct or Modify the Record on Appeal</i> by Bank of America, N.A., Bank of Scotland PLC, Barclays Bank PLC, Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC. Responses due by 11/29/2010 (Attachments: # <u>1</u> Text of Proposed Order)(Hutton, John) (Entered: 11/12/2010)
11/16/2010	<u>145</u>	RESPONSE to Motion re <u>144</u> MOTION to Amend/Correct / <i>Motion to Correct or Modify the Record on Appeal</i> filed by Soneet Kapila, Trustee. Replies due by 11/26/2010. (Sharp, Susan) (Entered: 11/16/2010)
11/22/2010	<u>148</u>	ORDER granting <u>144</u> Motion to Amend/Correct. <i>Clerks Notice: Filer must separately re-file the amended pleading pursuant to Local Rule 15.1, unless otherwise ordered by the Judge.</i> Signed by Judge Alan S. Gold on 11/22/2010. (cqs) (Entered: 11/23/2010)
11/22/2010	<u>149</u>	ORDER granting <u>146</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Judge Alan S. Gold on 11/22/2010. (lbc) (Entered: 11/23/2010)
11/22/2010	<u>150</u>	ORDER granting <u>147</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Judge Alan S. Gold on 11/22/2010. (lbc) (Entered: 11/23/2010)
11/22/2010	<u>151</u>	ORDER Granting (184) in case 1:09-md-02106-ASG - Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing of Steven C. Chin. Signed by Judge Alan S. Gold on 11/22/2010. This document relates to: 1:09-md-02106-ASG, 1:09-cv-21879-ASG (gp) (Entered: 11/23/2010)
11/30/2010	<u>152</u>	NOTICE OF CONVENTIONAL FILING of Exhibits (2 Boxes) by Barclays

		Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., The Royal Bank of Scotland PLC (cqs) (Entered: 11/30/2010)
03/03/2011	<u>153</u>	ORDER of Dismissal by USCA as to <u>139</u> Notice of Appeal, filed by Soneet Kapila, Trustee, appellant has failed to file an appellant's brief and record excerpts with in the time fixed by the rules, USCA # 10-14925-AA (cqs) (Entered: 03/03/2011)
03/08/2011	<u>154</u>	Appeal Reinstated USCA Case Number:10-14925-AA for <u>139</u> Notice of Appeal, filed by Soneet Kapila, Trustee. (cqs) (Entered: 03/08/2011)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
05/11/2011 17:50:07			
<b>PACER Login:</b>	hm0151	<b>Client Code:</b>	Font.Liti
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:09-cv-21879-ASG
<b>Billable Pages:</b>	15	<b>Cost:</b>	1.20

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **AURELIUS PLAINTIFFS' DESIGNATION OF RECORD FOR APPEAL** was filed 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 counselor parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: May 12, 2011.

/s/ Brett M. Amron  
Brett M. Amron, Esq.

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<p>Harold Defore Moorefield Jr., Esq.  <b>STEARNS WEAVER MILLER WEISSLER  ALHADEFF &amp; SITTERSON</b>  Museum Tower  150 W Flagler Street, Suite 2200  Miami, FL 33130  Tele: (305) 789-3467  Fax: (305) 789-3395</p>	<p>Defendant  Bank of Scotland plc</p>
<p>J. Michael Hennigan  Kirk D. Dillman  Dana C. Hobart  Peter Most  Robert Mockler  Rebecca T. Pilch  Caroline M. Walters  <b>HENNIGAN DORMAN LLP</b>  865 South Figueroa Street, Suite 2900  Los Angeles, California 90017  Tele: (213) 694-1200  Fax: (213) 694-1234</p>	<p>Appellants  Avenue CLO IV, Ltd.  Avenue CLO V, Ltd.  Avenue CLO VI, Ltd.  Brigade Leveraged Capital Structures  Fund, Ltd.  Battalion CLO 2007-I Ltd.  Canpartners Investments IV, LLC  Canyon Special Opportunities Master  Fund (Cayman), Ltd.  Canyon Capital CLO 2004 1 Ltd.  Canyon Capital CLO 2006 1 Ltd.  Canyon Capital CLO 2007 1 Ltd.  Caspian Corporate Loan Fund, LLC  Caspian Capital Partners, L.P.  Caspian Select Credit Master Fund, Ltd.  Caspian Alpha Long Credit Fund, L.P.  Caspian Solitude Master Fund, L.P.  Mariner Opportunities Fund, L.P.  Mariner LDC  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,</p>



Attorneys:	Representing:
	<p>Ltd.                      ING Investment Management CLO V, Ltd.                      Venture II CDO 2002, Limited                      Venture III CDO                      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                      Veer Cash Flow, CLO, Limited                      Genesis CLO 2007-1 Ltd.                      Cantor Fitzgerald Securities                      Olympic CLO I Ltd.                      Shasta CLO I Ltd.                      Whitney CLO I Ltd.                      San Gabriel CLO I Ltd.                      Sierra CLO II Ltd.                      SPCP Group, LLC                      Stone Lion Portfolio L.P.                      Venor Capital Master Fund, Ltd.                      Monarch Master Funding Ltd.                      Normandy Hill Master Fund, L.P.                      Sola Ltd.                      Solus Core Opportunities Master Fund Ltd                      Scoggin Capital Management II LLC                      Scoggin International Fund Ltd                      Scoggin Worldwide Fund Ltd</p>
<p>David A. Rothstein                      Lorenz M. Prüss  <b>DIMOND KAPLAN &amp; ROTHSTEIN, P.A.</b>                      2665 South Bayshore Drive, PH-2B                      Miami, FL 33133                      Tele: (305) 374-1920                      Fax: (305) 374-1961</p>	<p>Appellants                      Avenue CLO IV, Ltd.                      Avenue CLO V, Ltd.                      Avenue CLO VI, Ltd.                      Brigade Leveraged Capital Structures Fund, Ltd.                      Battalion CLO 2007-I Ltd.                      Canpartners Investments IV, LLC                      Canyon Special Opportunities Master Fund (Cayman), Ltd.                      Canyon Capital CLO 2004 1 Ltd.                      Canyon Capital CLO 2006 1 Ltd.                      Canyon Capital CLO 2007 1 Ltd.                      Caspian Corporate Loan Fund, LLC                      Caspian Capital Partners, L.P.</p>

Attorneys:	Representing:
	<p> Caspian Select Credit Master Fund, Ltd.  Caspian Alpha Long Credit Fund, L.P.  Caspian Solitude Master Fund, L.P.  Mariner Opportunities Fund, L.P.  Mariner LDC  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.  ING Investment Management CLO V,  Ltd.  Venture II CDO 2002, Limited  Venture III CDO  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  Veer Cash Flow, CLO, Limited  Genesis CLO 2007-1 Ltd.  Cantor Fitzgerald Securities  Olympic CLO I Ltd.  Shasta CLO I Ltd.  Whitney CLO I Ltd.  San Gabriel CLO I Ltd.  Sierra CLO II Ltd.  SPCP Group, LLC  Stone Lion Portfolio L.P.  Venor Capital Master Fund, Ltd.  Monarch Master Funding Ltd.  Normandy Hill Master Fund, L.P.  Sola Ltd.  Solus Core Opportunities Master Fund Ltd  Scoggin Capital Management II LLC  Scoggin International Fund Ltd  Scoggin Worldwide Fund Ltd </p>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

STEVEN M. LARIMORE  
Clerk of Court

Appeals Section

Date: 9/9/2011

Clerk, United States Court of Appeals  
Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

COR/ROA

IN RE: Defendant: Cavneu CLO Fund and Brigade Leveraged Capital v. Bank of America  
Dist. Court No: 09-21879-CV - ASG 09-23835-CV ASG 10-20236-CV ASG  
U.S.C.A. No: 10-14925-AA 11-10468-AA 11-10740-AA  
Style: FONTAINEBLEAU LAS VEGAS LLC V. BANK OF AMERICA,

**CERTIFICATE OF READINESS AND TRANSMITTAL OF RECORD ON APPEAL**

Pursuant to Fed. R. App. P. 11(c), the Clerk of the District Court for the Southern District of Florida hereby certifies that, as shown on the enclosed index, the record is complete for purposes of this appeal. The record (including the transcript or parts thereof designated for inclusion and all necessary exhibits) consists of:

3 Volume(s) of pleadings  
3 Volume(s) of Transcripts  
Exhibits: 2 boxes; 2 folders;  
0 envelopes; 0 PSIs (sealed)  
 other: \_\_\_\_\_  
 other: (2) Boxes of Exhibits DE# 152, 09cv21879  
 Other: (1) Acc. Folders, 09cv21879 DE#2, (1) 09md2106

Other:  
Certified to be true and  
correct copy of the document on file  
Sincerely,  
Steven M. Larimore, Clerk,  
Southern District of Florida  
By: [Signature]  
Deputy Clerk Deputy Clerk  
Date: 9-9-11

Attachment  
c: court file

S/F A-15  
Rev. 10/94

400 N. Miami Avenue  
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561-803-3408

APPEAL, MDL, MEDREQ, REF\_DISCOV, TEB

**U.S. District Court  
Southern District of Florida (Miami)  
ABRIDGED CIVIL DOCKET FOR CASE #: 1:09-cv-21879-ASG Uol 1  
Internal Use Only**

10-14925-AA

Fontainebleau Las Vegas LLC v. Bank of America, N.A. et al  
Assigned to: Judge Alan S. Gold  
Referred to: Magistrate Judge Ted E. Bandstra  
Lead case: 1:09-md-02106-ASG  
Member cases:

Date Filed: 07/07/2009  
Date Terminated: 09/20/2010  
Jury Demand: Plaintiff  
Nature of Suit: 423 Bankruptcy  
Withdrawal  
Jurisdiction: Federal Question

Uol 2 1:09-cv-23835-ASG ... 11-10468-AA

Uol 3 1:10-cv-20236-ASG 11-10740-AA

Case: 1:09-cv-23389-ASG

Case in other court: BKC-MIA, 09-01621-AJC-A  
USCA, 10-14925-AA

Cause: 28:1331 Fed. Question: Breach of Contract

**Plaintiff**

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Southern District of Florida  
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Date 9-9-11

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**Defendant**

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Americas**

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**Defendant**

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**Lisa H. Rubin**  
(See above for address)  
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*ATTORNEY TO BE NOTICED*

**Defendant**

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*Term Lenders*

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**Trustee**

**Soneet Kapila, Trustee**  
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 P.A.  
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 (813) 229-0144  
 Chapter 7 Trustee for Fontainebleau  
 Las Vegas Holdings, LLC, et al.

Date Filed	#	Docket Text
07/07/2009  See According Felder # 1	2	<p style="text-align: right;"><i>Begin Vol 1</i></p> Bankruptcy Transmittal of Motion to Withdraw Reference Pursuant to 28 USC 157(d) to District Court re <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference filed by Bank of Scotland PLC, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC, Merrill Lynch Capital Corporation, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Bank of America, N.A., Deutsche Bank Trust Company Americas (Attachments: # <u>1</u> Plaintiff's Designation List, # <u>2</u> Plaintiff's Designated Documents Part 1, # <u>3</u> Plaintiff's Designated Documents Part 2, # <u>4</u> Plaintiff's Designated Documents Part 3, # <u>5</u> Response to Motion to Withdraw Reference Part 1, # <u>6</u> Response to Motion to Withdraw Reference Part 2, # <u>7</u> Defendant's Designation, # <u>8</u> Plaintiff's Memorandum of Law in Support of Motion, # <u>9</u> Transmittal from USBC)(dcn) (Entered: 07/07/2009)
08/04/2009	23	ORDER Granting Motion for Withdrawal of Reference re <u>1</u> Bankruptcy Motion (Complaint) to Withdraw Reference, Bankruptcy Motion (Complaint) to Withdraw Reference filed by Bank of Scotland PLC,

		Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC, Merrill Lynch Capital Corporation, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., Barclays Bank PLC, Bank of America, N.A., Deutsche Bank Trust Company Americas, (See Order for Details). Signed by Judge Alan S. Gold on 8/4/2009. (cqs) (Entered: 08/05/2009)
08/11/2009	29	Notice of Supplemental Authority by Bank of America, N.A., Merrill Lynch Capital Corporation, JP Morgan Chase Bank, N.A., MB Financial 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 (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P)(Bloom, Mark) (Entered: 08/11/2009) <i>Vol 1 Cont'd</i>
08/24/2009	56	TRANSCRIPT of Oral Argument held on 08.18.09 before Judge Alan S. Gold. Court Reporter: Joseph A. Millikan, 305-523-5588. 1-60 pages. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 9/14/2009. Redacted Transcript Deadline set for 9/24/2009. Release of Transcript Restriction set for 11/23/2009. (jm) (Entered: 08/24/2009) <i>Vol 4</i>
08/26/2009	62	ORDER Denying Motion for Partial Summary Judgment; Denying Motion for an Order Directing the Turnover of Funds to the Debtors' Estate; Denying Motion for Expedited Filing and Consideration; Dismissing Motion to Dismiss the Turnover Claim and Granting Motion to Permit Discovery. In conjunction with the issuance of this Order, an Order Requiring Compliance with S.D.Fla. L.R. shall be issued. Further, a discovery conference in the matter shall take place before the Honorable Chris M. McAliley on September 25, 2009 at 2pm.. Signed by Judge Alan S. Gold on 08/06/09. (jc) (Entered: 08/26/2009) <i>See Accordium Folder # 7</i>
09/20/2010	137	MDL ORDER NUMBER 35; DISMISSING CLAIMS with Prejudice to Expedite Appeal of Claim-Dispositive Ruling 135 Motion to Dismiss. **Please see Order for further details**. Signed by Judge Alan S. Gold on 9/20/2010. (gp) (Entered: 09/21/2010)
09/20/2010	138	FINAL JUDGMENT is hereby entered dismissing action 1:09-cv-21879-ASG, with prejudice, but without prejudice to the Trustee's right to appeal with respect to Counts I and VII of the Amended Complaint. In accordance with the Court's Order, the Plaintiffs shall take nothing from this cause. All parties shall bear their own costs. Signed by DEPUTY CLERK on 9/20/2010. (gp) (Entered: 09/21/2010)
10/18/2010	139	NOTICE OF APPEAL as to 62 Order,, 138 Judgment, 137 Order by Soneet Kapila, Trustee Filing fee \$ 455.00. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh



		Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. Appeal Record due by 11/1/2010. (Sharp, Susan) (Entered: 10/18/2010) <i>Vol 1 Cont'd</i>
11/12/2010	● 144	MOTION to Amend/Correct / <i>Motion to Correct or Modify the Record on Appeal</i> by Bank of America, N.A., Bank of Scotland PLC, Barclays Bank PLC, Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC. Responses due by 11/29/2010 (Attachments: # 1 Text of Proposed Order)(Hutton, John) (Entered: 11/12/2010)
11/22/2010	● 148	ORDER granting 144 Motion to Amend/Correct. <i>Clerks Notice: Filer must separately re-file the amended pleading pursuant to Local Rule 15.1, unless otherwise ordered by the Judge.</i> Signed by Judge Alan S. Gold on 11/22/2010. (cqs) (Entered: 11/23/2010)
11/30/2010	● 152	NOTICE OF CONVENTIONAL FILING of Exhibits (2 Boxes) by Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., The Royal Bank of Scotland PLC (cqs) (Entered: 11/30/2010) <i>see exhibit Box 1 + 2</i>

*End Vol 1*

APPEAL, MDL, TEB

**U.S. District Court  
Southern District of Florida (Miami)  
ABRIDGED CIVIL DOCKET FOR CASE #: 1:09-cv-23835-ASG  
Internal Use Only**

Avenue CLO Fund, Ltd. et al v. Sumitomo Mitsui Banking Corporation et al  
Assigned to: Judge Alan S. Gold  
Referred to: Magistrate Judge Ted E. Bandstra  
Lead case: 1:09-md-02106-ASG  
Member cases:

Date Filed: 12/28/2009  
Date Terminated: 01/13/2010  
Jury Demand: Both  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Diversity

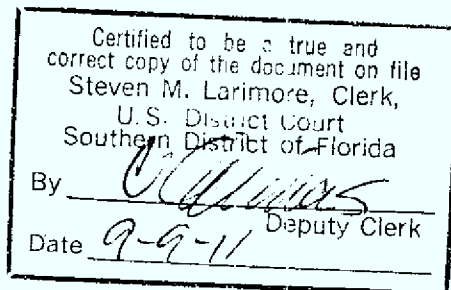
- 1:09-cv-23835-ASG
- 1:10-cv-20236-ASG

Case in other court: USCA, 11-10468-A  
Nevada, 2:09-cv-01047  
Cause: 28:1331 Fed. Question: Breach of Contract

**Plaintiff**

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**Defendant**

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Date Filed	#	Docket Text
01/27/2011  Vol 5	117	TRANSCRIPT of Oral Argument held on 05.07.10 before Judge Alan S. Gold, 1-63 pages, re: 111 Notice of Appeal, Court Reporter: Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 2/22/2011. Redacted Transcript Deadline set for 3/2/2011. Release of Transcript Restriction set for 5/2/2011. (jm) (Entered: 01/27/2011)
01/27/2011  Vol 6	118	TRANSCRIPT of Oral Argument held on 01.07.11 before Judge Alan S. Gold, 1-32 pages, re: 111 Notice of Appeal, Court Reporter: Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 2/22/2011. Redacted Transcript Deadline set for 3/2/2011. Release of Transcript Restriction set for 5/2/2011. (jm) (jm) (Entered: 01/27/2011)

APPEAL, MDL, TEB

**U.S. District Court  
Southern District of Florida (Miami)  
ABRIDGED CIVIL DOCKET FOR CASE #: 1:10-cv-20236-ASG  
Internal Use Only**

ACP Master, Ltd. et al v. Bank of America, N.A. et al  
Assigned to: Judge Alan S. Gold  
Referred to: Magistrate Judge Ted E. Bandstra  
Lead case: 1:09-md-02106-ASG  
Member cases:

1:09-cv-23835-ASG

1:10-cv-20236-ASG

Case in other court: USCA, 11-10740-AA  
New York Southern, 1:09-cv-08064

Cause: 12:0632

**Plaintiff**

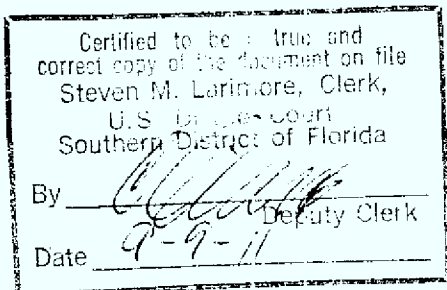
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**Defendant**

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Date Filed	#	Docket Text <span style="float: right;"><i>Begin Vol 3</i></span>
01/15/2010	27	AMENDED COMPLAINT amending 1 Complaint, against Merrill Lynch Capital Corporation, JP 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., Camulos Master Fund, L.P., Bank of America, N.A.. Document filed by ACP Master, Ltd., Aurelius Capital Master, Ltd. Related document: 1 Complaint, filed by ACP Master, Ltd., Aurelius Capital Master, Ltd. (ama) (Entered: 01/19/2010)
02/22/2011 <i>see vols Shared Document</i>	62	TRANSCRIPT of Oral Argument held on 05.07.10 before Judge Alan S. Gold, 1-63 pages, re: 58 Notice of Appeal, Court Reporter: Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that

		<p>date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 3/18/2011. Redacted Transcript Deadline set for 3/28/2011. Release of Transcript Restriction set for 5/26/2011. (jm) (Entered: 02/22/2011)</p>
<p>02/22/2011  See Vol 6  Shared Document</p>	<p>63</p>	<p>TRANSCRIPT of Oral Argument held on 01.07.11 before Judge Alan S. Gold. 1-32 pages, re: 58 Notice of Appeal, Court Reporter: Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. The transcript may be viewed at the court public terminal or purchased from Mr. Millikan before the deadline for Release of Transcript Restriction. After that date it may be obtained either from Mr. Millikan or through PACER. Redaction Request due 3/18/2011. Redacted Transcript Deadline set for 3/28/2011. Release of Transcript Restriction set for 5/26/2011. (jm) (Entered: 02/22/2011)</p>



APPEAL, CASREF, JG, MDL, REF\_DISCOV

**U.S. District Court  
Southern District of Florida (Miami)  
ABRIDGED CIVIL DOCKET FOR CASE #: 1:09-md-02106-ASG  
Internal Use Only**

In Re: Fontainebleau Las Vegas Contract Litigation  
Assigned to: Judge Alan S. Gold  
Referred to: Magistrate Judge Jonathan Goodman  
Member cases:

1:09-cv-23835-ASG

1:10-cv-20236-ASG

Cause: 28:1331 Fed. Question: Breach of Contract

Date Filed: 12/02/2009

Jury Demand: Plaintiff

Nature of Suit: 190 Contract: Other

Jurisdiction: Federal Question

**In Re**

**Fontainebleau Las Vegas Contract  
Litigation**

**Plaintiff**

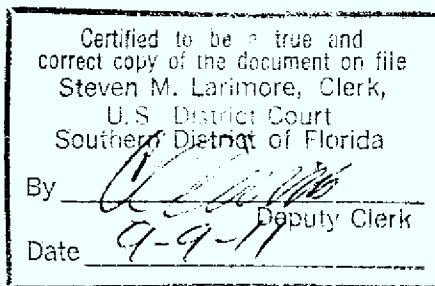
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**Consol Defendant**

**BofA**

*a nationally chartered bank with its main office in Charlotte, NC*

**Amicus**

**Term Lenders**

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*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
12/02/2009 <i>See Vol 1</i>	1	TRANSFER ORDER (Dated 12/02/2009) from Judicial Panel on Multidistrict Litigation transferring case to the Southern District of Florida re: MDL Case # 09-MD-2106 for consolidated pretrial proceedings pursuant to 28 USC 1407 and assigned to the Honorable Alan S. Gold. (Signed by Robert L. Miller, Jr., Acting Chairman of the Panel). (Attachments: # 1 JPML Service List) (gp) (Entered: 12/03/2009)
01/15/2010 <i>See Vol 2</i>	15	Second AMENDED COMPLAINT, filed by Term Lenders. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-21879-ASG, 1:09-cv-23835-ASG (Pruss, Lorenz) (Entered: 01/15/2010)
02/18/2010 <i>See Accordia Exhibit #2</i>	36	MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and Supportion Memorandum of Law by Bank of America, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, N.A., Merrill Lynch Capital Corporation, Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Sumitomo Mitsui Banking

02/18/2010	37	<p>Corporation, The Royal Bank of Scotland PLC. Responses due by 3/8/2010 Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Hutton, John) (Entered: 02/18/2010)</p> <p>AFFIDAVIT signed by : Thomas C Rice. re (42 in 1:10-cv-20236-ASG, 93 in 1:09-cv-23835-ASG, 36 in 1:09-md-02106-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> by Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, JPMorgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, Bank of America, N.A., Barclays Bank PLC, Deutsche Bank Trust Company Americas, JP Morgan Chase Bank, N.A., The Royal Bank of Scotland PLC (Attachments: # 1 Exhibit A-1, # 2 Exhibit A-2, # 3 Exhibit A-3, # 4 Exhibit A-4, # 5 Exhibit B-1, # 6 Exhibit B-2, # 7 Exhibit B-3, # 8 Exhibit B-4, # 9 Exhibit B-5, # 10 Exhibit C, # 11 Exhibit D, # 12 Exhibit E, # 13 Exhibit F, # 14 Exhibit G, # 15 Exhibit H)Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Hutton, John) (Entered: 02/18/2010)</p>
03/22/2010	50	<p>RESPONSE in Opposition re (42 in 1:10-cv-20236-ASG, 36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law Corrected Joint Opposition to Defendants' Motion to Dismiss the Term Lenders' Claims Against the Revolving Lenders</i> filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Amron, Brett) (Entered: 03/22/2010)</p>
03/22/2010	51	<p>AFFIDAVIT in Opposition re (42 in 1:10-cv-20236-ASG, 36 in 1:09-md-02106-ASG, 93 in 1:09-cv-23835-ASG) MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion</i></p>

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		<i>Memorandum of Law Declaration of James B. Heaton, III Opposing Defendants' Joint Motion to Dismiss the Term Lender Complaints</i> filed by ACP Master, Ltd., Aurelius Capital Master, Ltd.. (Attachments: # <u>1</u> Affidavit Continuation) Associated Cases: 1:09-md-02106-ASG, 1:09-cv-23835-ASG, 1:10-cv-20236-ASG(Amron, Brett) (Entered: 03/22/2010)
04/05/2010	57	RESPONSE in Support re <u>36</u> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law</i> MOTION to Dismiss State Court Complaint (84 in 1:09-cv-23835-ASG) Amended Complaint, (27 in 1:10-cv-20236-ASG) Amended Complaint,, and <i>Supportion Memorandum of Law [Reply Memorandum in Further Support of Defendants' Joint Motions to Dismiss the Term Lender Complaints]</i> filed by Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Sumitomo Mitsui Banking Corporation, The Royal Bank of Scotland PLC. (Hutton, John) (Entered: 04/05/2010)
05/28/2010	79	MDL ORDER NUMBER EIGHTEEN granting in part and denying in part <u>35</u> Motion to Dismiss; granting in part and denying in part <u>36</u> Motion to Dismiss State Court Complaint; REQUIRING ANSWER TO AVENUE COMPLAINT; CLOSING AURELIUS CASE. Signed by Judge Alan S. Gold on 5/28/2010. (bb) (Entered: 05/28/2010)
05/28/2010	80	AMENDED ORDER re <u>79</u> Order on Motion to Dismiss, Order on Motion to Dismiss State Court Complaint. Signed by Judge Alan S. Gold on 5/28/2010. (jh) (Entered: 05/28/2010)
08/31/2010	130	PAPERLESS MDL ORDER NUMBER 31 re <u>124</u> Notice (Other) filed by Soneet R. Kapila. For the reasons stated of record, counsel shall meet and confer and submit proposals and proposed orders setting forth a course of action for all three cases no later than September 14, 2010 at 12:00 p.m. The proposals shall include a plan for the preservation of documents by the Trustee and any proposed final judgments the parties would like the Court to enter. The parties shall file a Motion for Status Conference if they are unable to agree regarding how these matters should proceed.. Signed by Judge Alan S. Gold on 8/31/2010. (mbs) (Entered: 08/31/2010)
09/14/2010	135	Unopposed MOTION to Dismiss <u>130</u> Order,, <u>124</u> Notice (Other) <i>Claims With Prejudice to Expedite Appeal of Claim-Dispositive Ruling</i> by Soneet R. Kapila. Responses due by 10/1/2010 (Sharp, Susan) (Entered: 09/14/2010)
09/20/2010	139	MDL ORDER NUMBER 35; DISMISSING CLAIMS with Prejudice to Expedite Appeal of Claim-Dispositive Ruling <u>135</u> Motion to Dismiss. **Please see Order for further details**. Signed by Judge Alan S. Gold on 9/20/2010. (gp) (Entered: 09/21/2010)

See Acc. Folder # 2

See Acc. Folder # 2

See Acc. Folder # 2

See Vol 1

See Vol #1

See Vol #1

See Vol #1

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09/20/2010	141	FINAL JUDGMENT is hereby entered dismissing action 1:09-cv-21879-ASG, with prejudice, but without prejudice to the Trustee's right to appeal with respect to Counts I and VII of the Amended Complaint. In accordance with the Court's Order, the Plaintiffs shall take nothing from this cause. All parties shall bear their own costs. Signed by DEPUTY CLERK on 9/20/2010. (gp) (Entered: 09/21/2010) <i>See Vol #1</i>
09/23/2010 <i>see Vol 3</i>	146	Second AMENDED COMPLAINT <i>Relating to Case No. 20236-ASG</i> against Fontainebleau Las Vegas Contract Litigation filed in response to Order Granting Motion for Leave, filed by Aurelius Capital Master, Ltd., ACP Master, Ltd..(Amron, Brett) (Entered: 09/23/2010)
10/06/2010	151	Joint MOTION for Entry of Judgment under Rule 54(b) ( <i>Partial Final</i> ) and Memorandum of Law in Support <i>Thereof</i> by Term Lenders. (Amron, Brett) (Entered: 10/06/2010) <i>See Accordia Folder #2</i>
10/25/2010 <i>see Accordia Folder #2</i>	175	MEMORANDUM in Opposition re <u>151</u> Joint MOTION for Entry of Judgment under Rule 54(b) ( <i>Partial Final</i> ) and Memorandum of Law in Support <i>Thereof</i> by Bank of America, N.A., Bank of Scotland, Barclays Bank PLC, Camulos Master Fund, L.P., Deutsche Bank Trust Company Americas, HSH Nordbank AG, New York Branch, JP Morgan Chase Bank, N.A., MB Financial Bank, N.A., Merrill Lynch Capital Corporation, Royal Bank of Scotland PLC, Sumitomo Mitsui Banking Corporation. (Rasile, Craig) (Entered: 10/25/2010)
11/04/2010 <i>see Accordia Folder #2</i>	179	RESPONSE in Support re <u>151</u> Joint MOTION for Entry of Judgment under Rule 54(b) ( <i>Partial Final</i> ) and Memorandum of Law in Support <i>Thereof</i> [Term Lenders' Reply Memorandum in Furter Support] filed by ACP Master, Ltd., Aurelius Capital Master, Ltd., Avenue CLO Fund, Ltd.. (Amron, Brett) (Entered: 11/04/2010)
01/13/2011 <i>see Accordia Folder #2</i>	201	MDL ORDER NUMBER 44; Granting <u>151</u> Joint Motion for Entry of Partial Final Judgment under Rule 54(b). The Clerk is directed to enter final judgment in favor of Defendants on Claims II, III, and IV of the Second Amended Complaint in Avenue CLO Fund, Ltd., et al v. Bank of America, N.A., et al., Case No. 09-cv-23835-ASG and Claims I and II of the Amended Complaint in ACP Master, Ltd., et al v. Bank of America, N.A., et al., Case No. 10-cv-20236-ASG <b>**Please see Order for further details**</b> . Signed by Judge Alan S. Gold on 1/13/2010. (gp) (Entered: 01/18/2011) <i>See Accordia Folder #2</i>
01/13/2011 <i>see folder #2</i>	202	ENTRY OF PARTIAL FINAL JUDGMENT. Signed by DEPUTY CLERK on 1/13/2011. (gp) (Entered: 01/18/2011) <i>See Accordia Folder #2</i>
01/19/2011 <i>see Vol 2</i>	203	NOTICE OF APPEAL (see member case 09-23835 for all appeal related documents) as to <u>201</u> Order on Motion for Entry of Judgment under Rule 54(b), Order on Motion for Entry of Judgment under Rule 54(b), Order on Motion for Entry of Judgment under Rule 54(b), <u>202</u> Judgment by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Cantor Fitzgerald Securities, Canyon Capital CLO 2004 1 Ltd., Canyon Capital CLO 2006 1 Ltd., Canyon Capital CLO 2007

<p>See Accordion Folder #2</p>		<p>1 Ltd., Canyon Special Opportunities Master Fund (Canyon), Ltd., Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Corporate Loan Fund, LLC, Caspian Select Credit Master Fund, Ltd., Caspian Solitude Master Fund, L.P., Genesis CLO 2007-1 Ltd., 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., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Mariner Opportunities Fund, LP, Monarch Master Funding Ltd., Normandy Hill Master Fund, L.P., Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., Sierra CLO II Ltd., Sola Ltd, Solus Core Opportunities Master Fund Ltd, Stone Lion Portfolio L.P., Veer Cash Flow CLO, Limited, Venor Capital Master Fund, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Whitney CLO I Ltd. Filing fee \$ 455.00. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Pruss, Lorenz)Text Modified on 1/20/2011 (cqs). (Entered: 01/19/2011)</p>
<p>02/11/2011 See Vol 3</p>	<p>208</p>	<p>NOTICE OF APPEAL as to <u>202</u> Judgment by ACP Master, Ltd., Aurelius Capital Master, Ltd. (for appeal document see member case 09cv23835 and 10cv20236) Filing fee \$ 455.00. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Amron, Brett)Text Modified on 2/11/2011 (cqs). (Entered: 02/11/2011)</p>

SEP 1 2011

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

STEVEN M. LARIMORE  
Clerk of Court

FILED by H.H. D.C. Appeals Section  
SEP 23 2011  
STEVEN M. LARIMORE  
CLERK U. S. DIST CT  
S. D. of FLA. - MIAMI

Date: 9/9/2011

Clerk, United States Court of Appeals  
Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

COR/ROA

IN RE: Defendant: Cavneu CLO Fund and Brigade Leveraged Capital v. Bank of America

Dist. Court No: 09-21879-CV - ASG 09-23835-CV ASG 10-20236-CV ASG

U.S.C.A. No: 10-14925-AA 11-10468-AA 11-10740-AA

Style: FONTAINEBLEAU LAS VEGAS LLC V. BANK OF AMERICA,

**CERTIFICATE OF READINESS AND TRANSMITTAL OF RECORD ON APPEAL**

Pursuant to Fed. R. App. P. 11(c), the Clerk of the District Court for the Southern District of Florida hereby certifies that, as shown on the enclosed index, the record is complete for purposes of this appeal. The record (including the transcript or parts thereof designated for inclusion and all necessary exhibits) consists of:

- 3 Volume(s) of pleadings
- 3 Volume(s) of Transcripts
- Exhibits: 2 boxes; 2 folders;
- 0 envelopes; 0 PSIs (sealed)
- other: \_\_\_\_\_
- other: (2) Boxes of Exhibits DE# 152, 09cv21879
- Other: (1) Acc. Folders, 09cv21879 DE#2, (1) 09md2106

Other: \_\_\_\_\_  
 Certified to be a true and correct copy of the document on file  
 Sincerely,  
 Steven M. Larimore, Clerk,  
 Steven M. Larimore, Clerk of Court  
 Southern District of Florida  
 By: [Signature]  
 Deputy Clerk, Deputy Clerk  
 Date: 9-9-11

Attachment  
c: court file

S/F A-15  
Rev. 10/94

- 400 N. Miami Avenue  
Miami, FL 33128-7716  
305-523-5080
- 299 E. Broward Boulevard  
Ft. Lauderdale, FL 33301  
954-769-5413
- 701 Clematis Street  
West Palm Beach, FL 33401  
561-803-3408

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

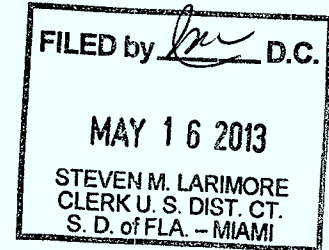
ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

May 08, 2013

Steven M. Larimore  
U.S. District Court  
400 N MIAMI AVE  
MIAMI, FL 33128-1810



Appeal Number: **10-14925-AA ; 11-10468 -AA ; 11-10740 -AA**  
Case Style: Soneet Kaplila, Trustee v. Bank of America, N.A., et al  
District Court Docket No: 1:09-cv-21879-ASG  
Secondary Case Number: 1:09-md-02106-ASG

The following record materials in the referenced case are returned herewith:

Six Volumes Record-on-Appeal.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Will Miller  
Phone #: (404) 335-6115

*(3) Vols. of Pleadings (copies)*  
*(3) Vols. of Transcripts (copies)*  
*(2) Decision Folders (copies)*  
*(2) Boxes containing DE# 152 (Exhibits)*

REC-3 Ltr Returning Record to DC