

Court Name: SOUTHERN DISTRICT OF FLORIDA
Division: 1
Receipt Number: FLS100012015
Cashier ID: vthomas
Transaction Date: 01/20/2011
Payer Name: DIMOND KAPLAN AND ROTHSTEIN
PA

NOTICE OF APPEAL/DOCKETING FEE
For: AVENUE CLO FUND, LTD., ET AL
Case/Party: D-FLS-1-09-MD-002106-001
Amount: \$455.00

CHECK
Check/Money Order Num: 4745
Amt Tendered: \$455.00

Total Due: \$455.00
Total Tendered: \$455.00
Change Amt: \$0.00

Returned check fee \$45

Checks and drafts are accepted
subject to collection and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.

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: Avenue CLO Fund, Ltd., et al. vs Bank of America, N.A., et al.,

District Court No.: 09-CV-23835-Gold Date Notice of Appeal Filed: January 19, 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: Lorenz Pruss/Plaintiffs

Name of Firm: Dimond Kaplan & Rothstein, P.A

Street Address/P.O. Box: 2655 S. Bayshore Drive, Penthouse 2B

City/State/Zip Code: Miami, FL 33133 Phone No.: 305-600-1393

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: January 19, 2011 SIGNED: s/ Lorenz Pruss 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: 01.25.11

[] Satisfactory arrangements for paying the cost of the transcript were completed on:

[x] Satisfactory arrangements for paying the cost of the transcript have not been made.

No. of hearing days: 2 Estimated no. of transcript pages: 97 Estimated filing date:

DATE: 01.25.11 SIGNED: s/ Joseph A. Millikan Phone No.: 305.523.5588

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 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

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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)

TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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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.]

7

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 2nd and 3rd 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 21st 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 20th, 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 2nd 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 4th, 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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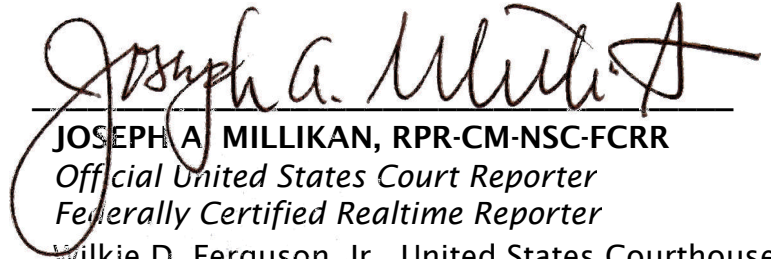
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CERTIFICATE

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

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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

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: Avenue CLO Fund, Ltd., et al. vs Bank of America, N.A., et al.,

District Court No.: 09-CV-23835-Gold Date Notice of Appeal Filed: January 19, 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: Lorenz Pruss/Plaintiffs

Name of Firm: Dimond Kaplan & Rothstein, P.A

Street Address/P.O. Box: 2655 S. Bayshore Drive, Penthouse 2B

City/State/Zip Code: Miami, FL 33133 Phone No.: 305-600-1393

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: January 19, 2011 SIGNED: s/ Lorenz Pruss 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: 01.25.11

[x] Satisfactory arrangements for paying the cost of the transcript were completed on: 01.27.11

[x] Satisfactory arrangements for paying the cost of the transcript have not been made: -----

No. of hearing days: 2 Estimated no. of transcript pages: 97 Estimated filing date: 01.27.11

DATE: 01.25.11 SIGNED: s/ Joseph A. Millikan Phone No.: 305.523.5588

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): 01.27.11

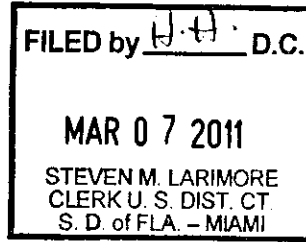
Actual No. of Volumes and Hearing Dates: Two Volumes, 05.07.10 & 01.07.11

Date: 01.27.11 Signature of Court Reporter: s/ Joseph A. Millikan

UNITED STATES DISTRICT COURT
Southern District of Florida

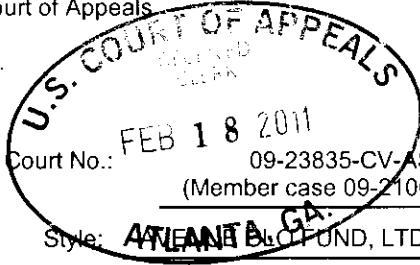
STEVEN M. LARIMORE
Clerk of Court

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.: 09-23835-CV-ASG
(Member case 09-2106-MD-ASG)
Style: ATLANTA, GA. BLOOMFOND, LTD ET AL V. SUMITOMO MITSUI BANKING

U.S.C.A. No.:

SECOND TRANSMITTAL

Duplicate
11-10468-A

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 1/20/2011 Receipt No. FLS100012815

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): JOSEPH MILLIKAN

This is an appeal of a bankruptcy order.

Bankruptcy Judge: _____

This is a DEATH PENALTY appeal.

Sincerely,

Steven M. Larimore, Clerk of Court

By: *Maria Cruz*
Maria Cruz Deputy Clerk

c: court file

- X 400 N. Miami Avenue 299 E. Broward Boulevard 701 Clematis Street 301 Simonton Street 300 South Sixth Street
- Miami, FL 33128 Room 108 Room 402 Room 130 Ft. Pierce, FL 34950
- 305-523-5100 Ft. Lauderdale, FL 33301 W. Palm Beach, FL 33401 Key West, FL 33040 561-595-9691
- 954-769-5400 561-803-3400 305-295-8100

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 09-CV-23835-
GOLD/GOODMAN

AVENUE TERM LENDER PLAINTIFFS'
AMENDED DESIGNATION OF RECORD FOR APPEAL

The Avenue Term Lender Plaintiffs¹ hereby amend their Designation of Record for Appeal filed pursuant to the Clerk of Court's request dated January 20, 2011 on January 24, 2011. [D.E. # 205 in Case No. 09-cv-2106; D.E. # 113 in Case No. 09-cv-23835.] The Avenue Term Lender Plaintiffs 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. 09-cv-23835, 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, N.A., 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

¹ Avenue Term Lender Plaintiffs consist of the plaintiffs in *Avenue CLO Fund, Ltd., et al. v. Bank of America, N.A., et al.* in underlying case number 09-cv-23835-ASG.

into MDL Order Number Eighteen, as amended. [D.E. 80 in Case No. 09-md-2106.] The Designation of Record is amended to include the document identified on Exhibit C.

Dated: May 12, 2011.

Respectfully submitted,

/s/ Lorenz M. Prüss

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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</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)
01/21/2010	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 Request for Termination of Appearance on Service of List of Susan Scann 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	48	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

		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>50</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 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>51</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,, 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 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>52</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

		<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 <i>Plaintiff, Term Lenders' Document Requests</i> 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 to <i>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	126	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 126 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	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)
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	159	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 of <i>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	<u>164</u>	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	<u>165</u>	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.) (ms0) (Entered: 10/18/2010)
10/18/2010	<u>166</u>	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	<u>167</u>	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	<u>168</u>	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	176	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>] 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 action 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>

		<i>APPEARANCE OF CERTAIN ATTORNEYS ON SERVICE LIST</i> (Pruss, Lorenz) (Entered: 02/08/2011)
02/08/2011	<u>207</u>	NOTICE by Term Lenders <i>OF NAME CHANGE OF AVENUE TERM LENDERS COUNSEL</i> (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. Schneiderei terminated. Notice of Termination delivered by US Mail to Michael Schneiderei 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 4/8/2011 03:00 PM 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 Friday, March 25, 2011 at 5:00 p.m. . Signed by Judge Alan S. Gold on 3/1/2011. **Please see Order for further details** (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 //Bank of America, N.A.'s Reply in Further Support of Its Motion 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) <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 <i>of 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 <i>by Avenue CLO Fund, Ltd. and by Bank of America, N.A.</i> . 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)

PACER Service Center			
Transaction Receipt			
05/11/2011 21:38:46			
PACER Login:	hm0151	Client Code:	Font.Liti
Description:	Docket Report	Search Criteria:	1:09-md-02106-ASG
Billable Pages:	28	Cost:	2.24

EXHIBIT B

APPEAL, MDL, TEB

**U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:09-cv-23835-ASG**

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 case: [\(View Member Case\)](#)
 Case in other court: USCA, 11-10468-A
 Nevada, 2:09-cv-01047
 Cause: 28:1331 Fed. Question: Breach of Contract

Date Filed: 12/28/2009
 Date Terminated: 01/13/2010
 Jury Demand: Both
 Nature of Suit: 190 Contract: Other
 Jurisdiction: Diversity

Date Filed	#	Docket Text
12/28/2009	77	Case transferred in from District of Nevada; Case Number 2:09-cv-01047-KJD-PAL. Electronic file consisting of documents numbered 1-76, including transfer order and docket sheet received. (Attachments: # 1 DE 1 - Complaint, # 2 DE 4 - Certificate of Interested Parties, # 3 DE 5 - Notice of Appearance of S.W. Scann, # 4 DE 6 - Amd. Complaint, # 5 DE 7 - Petition PHV by J.M. Hennigan, # 6 DE 8 - Petition PHV by L.A. Smith, # 7 DE 9 - Petition PHV by P.J. Most, # 8 DE 10 - Petition PHV by S.P. Levinson, # 9 DE 11 - Petition PHV by B. Bennett, # 10 DE 12 - Certificate of Interested Parties, # 11 DE 13 - Order granting PHV of J. M. Hennigan, # 12 DE 14 - Order granting PHV of L.A.Smith, # 13 DE 15 - Order granting PHV of P.J. Most, # 14 DE 16 - Order granting PHV S.P. Levinson, # 15 DE 17 - Order granting PHV of B. Bennett, # 16 DE 18 - Proposed Summons, # 17 DE 19 - Summons as to Bank of Scotland, # 18 DE 20 - Summons as to Barclays Bank PLC, # 19 DE 21 - Summons as to Bank of America, N.A., # 20 DE 22 - Summons as to Camulos Master Fund, L.P., # 21 DE 23 - Summons as to Deutsche Bank Trust Compnay Americas, # 22 DE 24 - Summons as to HSH Nordbank AG, # 23 DE 25- Summons as to JPMorgan Chase Bank, N.A., # 24 DE 26 - Summons as to MB Financial Bank, N.A., # 25 DE 27 - Summons as to Merril Lynch Capital Corporation, # 26 DE 28 - Summons as to Royal Bank of Scotland PLC, # 27 DE 29 - Summons as to Sumitomo Mitsui Banking Corp, # 28 DE 30-1 - Notice of Motion before the MDL Panel, # 29 DE 30-2 - Attachments to DE # 30, # 30 DE 31 - Stipulation re: Amd. Complaint, # 31 DE 32 - Amd Certificate of Svc., # 32 DE 33-1 - Amd Certificate of Svc., # 33 DE 33-2 - Attachments to DE # 33, # 34 DE 34 - Order on Stipulation granting (31) Stipulation, # 35 DE 35 - Stipulation and Order to Extend Time to File resp to amd complaint # 36 DE 36 - Summons Returned exec for Barclays Bank PLC, # 37 DE 37 - Summons returned executed for Deutsche Bank Trust Co, # 38 DE 38 - Summons Returned exec for MB Financial Bank N.A., # 39 DE 39 - Summons returned exec for JPMorgan Chase Bank, N.A., # 40 DE 40 - Summons returned exec for

		Sumitomo Mitsui Banking Corp, # <u>41</u> DE 41 - Summons returned exec for Bank of America, N.A., # <u>42</u> DE 42 - Summons Returned exec for Merrill Lynch Capital Corporation, # <u>43</u> DE 43 - Summons returned exec for HSH Nordbank AG, # <u>44</u> DE 44 - Summons returned exec for Camulos Master Fund, LP, # <u>45</u> DE 45 - Summons returned exec for Royal, # <u>46</u> DE 46 - Summons returned exec for Bank of Scotland, # <u>47</u> DE 47 - Notice of Appear by A.L. Paccione, # <u>48</u> DE 48 - Ntc of Appear for MDL Panel T.C. Rice, # <u>49</u> DE 49 - Ntc of Voluntary Dismissal, # <u>50</u> DE 50- Ntc of Voluntary Dismissal, # <u>51</u> DE 51 - Certificate of Interested Parties, # <u>52</u> DE 52 - Certificate of Interested Parties, # <u>53</u> DE 53 - Certificate of Interested Parties, # <u>54</u> DE 54 - Certificate of Interested Parties, # <u>55</u> DE 55 - Certificate of Interested Parties, # <u>56</u> DE 56 - Second Stipulation and Order to ext time to file Resp to Amd. Complaint, # <u>57</u> DE 57 - Order granting (56) Stipulation, # <u>58</u> DE 58 - Certificate of Interested Parties, # <u>59</u> DE 59- Third Stipulation to ext time, # <u>60</u> DE 60 - Rule 41(A)(1) Dismissal, # <u>61</u> DE 61 - Order granting (59) Stipulation, # <u>62</u> DE 62 - Certificate of Interested Parties, # <u>63</u> DE 63 - Mem in resp to Request to Trans to MDL, # <u>64</u> DE 64 - Ntc of Voluntary Dism, # <u>65</u> DE 65 - Ntc of Voluntary Dism, # <u>66</u> DE 66 - Ntc of Voluntary Dism, # <u>67</u> DE 67 - Stipulation and Order to ext time, # <u>68</u> DE 68 - Order granting (67) Stipulation, # <u>69</u> DE 69 - Ntc from MDL Panel re Oral Argument, # <u>70</u> DE 70 - Petition for PHV for K.D. Dillman, # <u>71</u> DE 71 - Order granting (70) Petition, # <u>72</u> DE 72 - Certificate of Service, # <u>73</u> DE 73 - Response to M for Trans and Consolidate, # <u>74</u> DE 74 - Ntc of Voluntary Dismissal, # <u>75</u> DE 75 - Transfer Order (Courtesy Copy) from MDL Panel, # <u>76</u> DE 76 - Certified Transfer Order from MDL Panel) (gp) -Modified attachment description on 1/12/2010 (gp). (Entered: 12/28/2009)
01/06/2010	<u>78</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)
01/06/2010	<u>79</u>	MDL ORDER NUMBER ONE - ORDER FOLLOWING TELEPHONIC Status Conference; Requiring Submission; Signed by Judge Alan S. Gold on 12/8/2009. (gp) (Entered: 01/06/2010)
01/06/2010	<u>80</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. (gp) (Entered: 01/06/2010)
01/08/2010	<u>81</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>82</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 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 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>83</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)
01/15/2010	<u>84</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)
01/20/2010	<u>85</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	<u>86</u>	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 <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. 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)
01/27/2010	<u>87</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>88</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)
01/29/2010	<u>89</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>90</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	91	Case reassigned to Magistrate Judge Ted E. Bandstra, pursuant to docket entry 28 on 09MD2106 (yc) (Entered: 02/09/2010)
02/18/2010	<u>92</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>93</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>94</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)
02/22/2010	<u>95</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	96	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>97</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)
03/10/2010	<u>98</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)
03/22/2010	<u>99</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>100</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>101</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>102</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-

		<p>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)</p>
04/05/2010	<u>103</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</p>

		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, 1:10-cv-20236-ASG(Rasile, Craig) (Entered: 04/05/2010)
04/09/2010	<u>104</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)
04/27/2010	<u>105</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)
04/30/2010	<u>106</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)
05/28/2010	<u>107</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), and <i>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>108</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>109</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)
10/22/2010		Attorney Lauren A. Smith terminated per (154 in 09-md-2106) Notice of Request for Termination. Notice of Termination delivered by US Mail to Lauren Smith. (gp) (Entered: 10/22/2010)
01/13/2011	<u>110</u>	ENTRY OF PARTIAL FINAL JUDGMENT. Signed by DEPUTY CLERK on 1/13/2011. (gp) (Entered: 01/18/2011)
01/19/2011	<u>111</u>	NOTICE OF APPEAL as to <u>110</u> Judgment, <u>107</u> Order by Avenue CLO II, Ltd., Avenue CLO III, Ltd., Avenue CLO IV, 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 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, 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., 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 (mc). (Entered: 01/19/2011)
01/20/2011	<u>112</u>	USCA Appeal Fees received \$ 455.00 receipt number FLS100012815 re <u>111</u> Notice of Appeal,,,,,, filed by Veer Cash Flow CLO, Limited, Mariner Opportunities Fund, LP, Caspian Capital Partners, L.P., ING Senior Income Fund, Stone Lion Portfolio L.P., Cantor Fitzgerald Securities, Venture VII CDO Limited, Sierra CLO II Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Caspian Corporate Loan Fund, LLC, Avenue CLO III, Ltd., Vista Leveraged Income Fund, Scoggin Capital Management II LLC, Canyon Special Opportunities Master Fund (Canyon), Ltd., ING Investment Management CLO I, Ltd., ING Investment Management CLO IV, Ltd., SPCP

		Group, LLC, ING Investment Management CLO V, Ltd., Mariner LDC, ING Prime Rate Trust, Venture IV CDO Limited, Scoggin International Fund Ltd, Venor Capital Master Fund, Ltd., Whitney CLO I Ltd., Olympic CLO I Ltd., San Gabriel CLO I Ltd., Venture V CDO Limited, Venture VIII CDO Limited, Venture III CDO Limited, Genesis CLO 2007-1 Ltd., Canpartners Investments IV, LLC, Battalion CLO 2007-I Ltd., Venture IX CDO Limited, ING Investment Management CLO III, Ltd., Venture VI CDO Limited, ING International (II) - Senior Bank Loans Euro, Venture II CDO 2002, Limited, Avenue CLO II, Ltd., Avenue CLO IV, Ltd., Caspian Select Credit Master Fund, Ltd., Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., ING Investment Management CLO II, Ltd. Member case in 09-MD2106 (cqs)Text Modified on 1/20/2011 (cqs). (Entered: 01/20/2011)
01/20/2011		Transmission of Notice of Appeal, Order, Judgment and Docket Sheet to US Court of Appeals re <u>111</u> Notice of Appeal(mc) (Entered: 01/20/2011)
01/24/2011	<u>113</u>	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 Special Opportunities Master Fund (Canyon), Ltd., 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, 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., 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>111</u> Notice of Appeal,,,,,, (Pruss, Lorenz) (Entered: 01/24/2011)
01/24/2011	<u>114</u>	TRANSCRIPT INFORMATION FORM by Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Cantor Fitzgerald Securities, Canyon Special Opportunities Master Fund (Canyon), Ltd., 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, 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., 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>111</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)
01/25/2011	<u>115</u>	COURT REPORTER ACKNOWLEDGMENT re <u>111</u> Notice of Appeal, <u>114</u> Transcript Information Form. Court Reporter: Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. Arrangements not made for payment. (jm) (Entered: 01/25/2011)
01/27/2011	<u>116</u>	COURT REPORTER ACKNOWLEDGMENT re <u>111</u> Notice of Appeal <u>114</u> Transcript Information Form. Court Reporter: Joseph Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov. (jm) (Entered: 01/27/2011)
01/27/2011	<u>117</u>	TRANSCRIPT of Oral Argument held on 05.07.10 before Judge Alan S. Gold, 1-63 pages, re: <u>111</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 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	<u>118</u>	TRANSCRIPT of Oral Argument held on 01.07.11 before Judge Alan S. Gold, 1-32 pages, re: <u>111</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 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)
01/27/2011	<u>119</u>	TRANSCRIPT NOTIFICATION - The transcripts ordered on 01.19.11 by Lorenz Pruss, Esq., have been filed by the Official Court Reporter, Joseph A. Millikan, 305-523-5588 / Joseph_Millikan@flsd.uscourts.gov re <u>111</u> Notice of Appeal, <u>114</u> Transcript Information Form. (jm) (Entered: 01/27/2011)
02/14/2011		Second Transmission of Notice of Appeal, Orders and Docket Sheet to US Court of Appeals re <u>111</u> Notice of Appeal(mc) (Entered: 02/14/2011)
03/07/2011	<u>120</u>	Acknowledgment of Receipt of NOA (SECOND TRANSMITTAL) from USCA re <u>111</u> Notice of Appeal, filed by Veer Cash Flow CLO, Limited, Mariner Opportunities Fund, LP, Caspian Capital Partners, L.P., ING Senior Income Fund, Stone Lion Portfolio L.P., Cantor Fitzgerald Securities, Venture VII CDO Limited, Sierra CLO II Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Caspian Corporate Loan Fund, LLC, Avenue CLO III, Ltd., Vista Leveraged Income Fund, Scoggin Capital Management II LLC, Canyon Special Opportunities Master Fund (Canyon), Ltd., ING Investment

Management CLO I, Ltd., ING Investment Management CLO IV, Ltd., SPCP Group, LLC, ING Investment Management CLO V, Ltd., Mariner LDC, ING Prime Rate Trust, Venture IV CDO Limited, Scoggin International Fund Ltd, Venor Capital Master Fund, Ltd., Whitney CLO I Ltd., Olympic CLO I Ltd., San Gabriel CLO I Ltd., Venture V CDO Limited, Venture VIII CDO Limited, Venture III CDO Limited, Genesis CLO 2007-1 Ltd., Canpartners Investments IV, LLC, Battalion CLO 2007-I Ltd., Venture IX CDO Limited, ING Investment Management CLO III, Ltd., Venture VI CDO Limited, ING International (II) - Senior Bank Loans Euro, Venture II CDO 2002, Limited, Avenue CLO II, Ltd., Avenue CLO IV, Ltd., Caspian Select Credit Master Fund, Ltd., Scoggin Worldwide Fund Ltd, Shasta CLO I Ltd., ING Investment Management CLO II, Ltd.. Date received by USCA: 2/18/2011. USCA Case Number: 11-10468-A. (mc) (Entered: 03/07/2011)

PACER Service Center			
Transaction Receipt			
05/11/2011 21:39:32			
PACER Login:	hm0151	Client Code:	Font.Liti
Description:	Docket Report	Search Criteria:	1:09-cv-23835-ASG
Billable Pages:	9	Cost:	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	<u>3</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 (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) and Appear in Connection with the Court's Determination of Plaintiff's Motion for Partial Summary Judgment</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. (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 - Rule 16.1 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	111	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	112	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	117	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)

PACER Service Center			
Transaction Receipt			
05/11/2011 17:50:07			
PACER Login:	hm0151	Client Code:	Font.Liti
Description:	Docket Report	Search Criteria:	1:09-cv-21879-ASG
Billable Pages:	15	Cost:	1.20

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **AVENUE TERM LENDER PLAINTIFFS' AMENDED 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 counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: May 12, 2011.

/s/ Lorenz M. Prüss

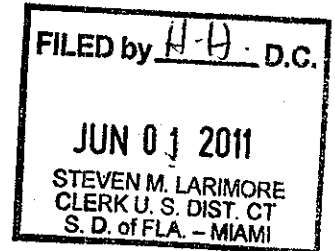
Service List

Attorneys:	Representing:
<p>Bradley J. Butwin, Esq. Daniel L. Cantor, Esq. Jonathan Rosenberg, Esq. William J. Sushon, Esq. Ken Murata, Esq. Asher Rivner, Esq. O'MELVENY & MYERS LLP Times Square Tower 7 Times Square New York, NY 10036 Tele: (212) 326-2000 Fax: (212) 326-2061</p>	<p>Defendants Bank of America, N.A. Merrill Lynch Capital Corporation</p>
<p>Craig V. Rasile, Esq. Kevin Michael Eckhardt, Esq. HUNTON & WILLIAMS 1111 Brickell Avenue Suite 2500 Miami, FL 33131 Tele: (305) 810-2579 Fax: (305) 810-2460</p>	<p>Defendants Bank of America, N.A. Merrill Lynch Capital Corporation</p>
<p>David J. Woll, Esq. Lisa H. Rubin, Esq. Thomas C. Rice, Esq. Peri L. Zelig, Esq. Donald D. Conklin, Esq. SIMPSON THACHER & BARTLETT LLP 425 Lexington Avenue New York, NY 10017-3954 Tele: (212) 455-3040 Fax: (212) 455-2502</p>	<p>Defendants JP Morgan Chase Bank, N.A. Barclays Bank PLC Deutsche Bank Trust Company Americas The Royal Bank of Scotland PLC</p>
<p>John Blair Hutton III, Esq, Mark D. Bloom, Esq. GREENBERG TAURIG 1221 Brickell Avenue Miami, FL 33131 Tele: (305) 579-0788 Fax: (305) 579-0717</p>	<p>Defendants JP Morgan Chase Bank, N.A. Barclays Bank PLC Deutsche Bank Trust Company Americas The Royal Bank of Scotland PLC</p>

Attorneys:	Representing:
<p>Sarah A. Harmon, Esq. BAILEY KENNEDY 8984 Spanish Ridge Avenue Las Vegas, NV 89148 Tele: (702) 562-8820 Fax: (702) 562-8821</p>	<p>Defendant JP Morgan Chase Bank, N.A. Barclays Bank PLC Deutsche Bank Trust Company Americas The Royal Bank of Scotland PLC</p>
<p>Frederick D. Hyman, Esq. Jason I. Kirschner, Esq. Jean-Marie L. Atamian, Esq. MAYER BROWN LLP 1675 Broadway New York, NY 10019-5820 Tele: (212) 506-2500 Fax: (212) 261-1910</p>	<p>Defendant Sumitomo Mitsui Banking Corporation</p>
<p>Robert Gerald Fracasso, Jr. SHUTTS & BOWEN 201 S Biscayne Boulevard Suite 1500 Miami Center Miami, FL 33131 Tele: (305) 358-6300 Fax: (305) 381-9982</p>	<p>Defendant Sumitomo Mitsui Banking Corporation</p>
<p>Phillip A. Geraci, Esq. Steven C. Chin, Esq. Aaron Rubinsten, Esq. W. Stewart Wallace, Esq. KAYE SCHOLER LLP 425 Park Avenue New York, NY 10022-3598 Tele: (212) 836-8000 Fax: (212) 836-8689</p>	<p>Defendant HSH Nordbank AG, New York Branch</p>
<p>Arthur Halsey Rice, Esq. RICE PUGATCH ROBINSON & SCHILLER 101 NE 3 Avenue Suite 1800 Fort Lauderdale, FL 33301 Tele: (305) 379-3121 Fax: (305) 379-4119</p>	<p>Defendant HSH Nordbank AG, New York Branch</p>
<p>Gregory S. Grossman, Esq. ASTIGARRAGA DAVIS MULLINS & GROSSMAN 701 Brickell Avenue, 16th Floor Miami, FL 33131-2847 Tele: (305) 372-8282 Fax: (305) 372-8202</p>	<p>Defendant MB Financial Bank, N.A.</p>

Attorneys:	Representing:
Laury M. Macauley, Esq. LEWIS & ROCA LLP 50 W Liberty Street Reno, NV 89501 Tele: (775) 823-2900 Fax: (775) 321-5572	Defendant MB Financial Bank, N.A.
Peter J. Roberts, Esq. SHAW GUSSIS FISHMAN FLANTZ WOLFSON & TOWBIN LLC 321 N Clark Street, Suite 800 Chicago, IL 60654 Tele: (312) 276-1322 Fax: (312) 275-0568	Defendant MB Financial Bank, N.A.
Anthony L. Paccione, Esq. Arthur S. Linker, Esq. Kenneth E. Noble KATTEN MUCHIN ROSENMAN LLP 575 Madison Avenue New York, NY 10022-2585 Tele: (212) 940-8800 Fax: (212) 940-8776	Defendant Bank of Scotland plc
Andrew B. Kratenstein, Esq. Michael R. Huttenlocher, Esq. MCDERMOTT WILL & EMERY LLP 340 Madison Avenue New York, NY 10173 Tele: (212) 547-5400	Defendant Camulos Master Fund, L.P.
Michael g. Austin, Esq. MCDERMOTT WILL & EMERY LLP 201 S. Biscayne Blvd. Suite 2200 Miami, FL 33131 Tele: (305) 358-3500 Fax: : (305) 347-6500	Defendant Camulos Master Fund, L.P.
David M. Friedman, Esq. Jed I. Bergman, Esq. Seth A. Moskowitz KASOWITZ BENSON TORRES & FRIEDMAN 1633 Broadway, 22nd Floor New York, NY 10019-6799 Tele: (212) 506-1700 Fax: (212) 506-1800	Plaintiff Fontainebleau Las Vegas LLC

Attorneys:	Representing:
<p>Jeffrey I. Snyder, Esq. Scott L. Baena, Esq. BILZIN SUMBERG BAENA PRICE & AXELROD 200 S Biscayne Blvd., Suite 2500 Miami, FL 33131-2336 Tele: (305) 375-6148 Fax: (305) 351-2241</p>	<p>Plaintiff Fontainebleau Las Vegas LLC</p>
<p>Harold Defore Moorefield Jr., Esq. STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON 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>James B. Heaton, Esq. John D. Byars, Esq. Steven James Nachtwey, Esq. Vincent S. J. Buccola, Esq. BARTLIT BECK HERMAN PALENCHAR & SCOTT 54 West Hubbard St. Suite 300 Chicago, IL 60654 Tele: (312) 494-4400</p>	<p>Plaintiffs ACP Master, Ltd. Aurelius Capital Master, Ltd.</p>
<p>Brett Michael Amron BAST AMRON LLP SunTrust International Center One Southeast Third Avenue Suite 1440 Miami, FL 33131 Tele: 305.379.7904 Fax: 305.379.7905</p>	<p>Plaintiffs ACP Master, Ltd. Aurelius Capital Master, Ltd.</p>



**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

May 24, 2011

Steven M. Larimore
United States District Court
400 N MIAMI AVE
MIAMI, FL 33128-1807

Appeal Number: 11-10468-AA
Case Style: Avenue CLO Fund, Ltd., et al v. Bank of America, NA, et al
District Court Docket No: 1:09-cv-23835-ASG
Secondary Case Number: 1:09-md-02106-ASG

The enclosed certified copy of the Clerk's Entry of Dismissal pursuant to appellant's motion to dismiss is issued as the mandate of this court. See 11th Cir. R. 42-1(a). This dismissal is for the Canyon Capital Advisors, LLC, Caspian Corporate Loan Fund, LLC.; and Mariner Opportunities Fund, L.P. only.

The district court clerk is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

Sincerely,

JOHN LEY, Clerk of Court

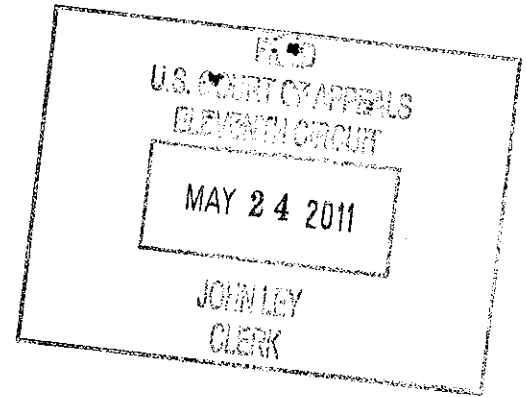
Reply to: Eleanor M. Dixon, AA
Phone #: (404) 335-6172

Enclosure(s)

DIS-3 Letter and Entry of Dismissal Vol

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 11-10468-AA



AVENUE CLO FUND LTD.,
AVENUE CLO II, LTD.,
AVENUE CLO III, LTD.,
AVENUE CLO IV, LTD.,
AVENUE CLO V, LTD.,
AVENUE CLO VI, LTD.,
BRIGADE LEVERAGED CAPITAL STRUCTURES FUND, LTD.,
BATTALION CLO 2007-I LTD.,
CANYON CAPITAL ADVISORS, LLC,
CASPIAN CORPORATE LOAN FUND, LLC,
CASPIAN CAPITAL PARTNERS, L.P.,
CASPIAN SELECT CREDIT MASTER FUND, LTD.,
MARINER OPPORTUNITIES FUND, L.P.,
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 LIMITED,
VENTURE IV CDO LIMITED,
VENTURE V CDO LIMITED,
VENTURE VI CDO LIMITED,
VENTURE VII CDO LIMITED,
VENTURE VIII CDO LIMITED,
VENTURE IX CDO LIMITED,
VISTA LEVERAGED INCOME FUND,
VEER CASH FLOW CLO, LIMITED,
MARINER LDC,
GENESIS CLO 2007-1 LTD.,
CANPARTNERS INVESTMENTS IV, LLC,

CANYON SPECIAL OPPORTUNITIES MASHTER FUND (CANYON), LTD.,
SCROGGIN CAPITAL MANAGEMENT II,
SCROGGIN INTERNATIONAL FUND LTD.,
SCROGGIN WORLDWIDE FUND 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.,
VENURE CAPITAL MASTER FUND, LTD.,

Plaintiffs - Appellants,

SANDS POINT FUNDING LTD., et al.,

Plaintiffs,

versus

BANK OF AMERICA,
NA, MERRILL LYNCH CAPITAL CORP.,
JPMORGAN CHASE BANK, N.A.,
BARCLAYS BANK, PLC,
DEUTSCHE BANK TRUST COMPANY AMERICAS,
ROYAL BANK OF SCOTLAND GROUP PLC, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

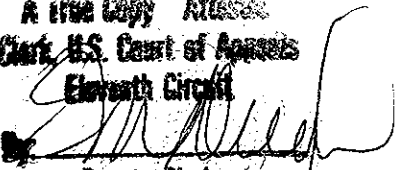
ENTRY OF DISMISSAL: Pursuant to the appellant's motion for voluntary dismissal (joint stipulation of the parties), FRAP Rule 42 and 11th Cir. R. 42-1(a), the above referenced appeal was duly entered dismissed as to Appellants Canyon Capital Advisors, LLC, Caspian

Corporate Loan Fund, LLC.; and Mariner Opportunities Fund, L.P. ONLY on this date, effective May 24, 2011.

JOHN LEY
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Eleanor M. Dixon, AA, Deputy Clerk

FOR THE COURT - BY DIRECTION

A true Copy Attested
Clerk, U.S. Court of Appeals
Eleventh Circuit
By 
Deputy Clerk
Atlanta, Georgia

filed
REC'D by _____ D.C.
JUN 29 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

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

June 24, 2011

Steven M. Larimore
United States District Court
400 N MIAMI AVE
MIAMI, FL 33128-1807

Appeal Number: 11-10468-AA
Case Style: Avenue CLO Fund, Ltd., et al v. Bank of America, NA, et al
District Court Docket No: 1:09-cv-23835-ASG
Secondary Case Number: 1:09-md-02106-ASG

The referenced appeal was dismissed on 05/24/2011.

This dismissal was issued in error and this appeal has been clerically reinstated.

Dismissal as to Canyon Capital Advisors, LLC, Caspian Corporate Loan Fund, LLC, and

Mariner Opportunities Fund, L.P.

The clerk of the court or agency shown above is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Eleanor M. Dixon, AA
Phone #: (404) 335-6172

REINST-1 Appeal Reinstated

A True Copy
Attested:
Clerk U.S. Court of Appeals, Eleventh Circuit
By: Andrea Ware
Deputy Clerk Atlanta, Ga

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

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Ft. Lauderdale, FL 33301
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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

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Date 9-9-11

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 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 Contd</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

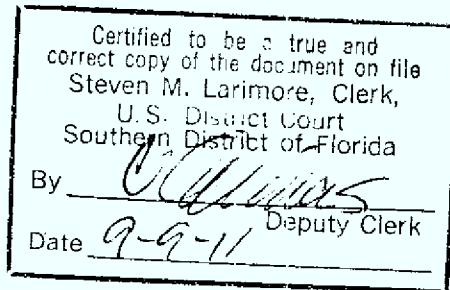
1:09-cv-23835-ASG
1:10-cv-20236-ASG

Case in other court: USCA, 11-10468-A
Nevada, 2:09-cv-01047
Cause: 28:1331 Fed. Question: Breach of Contract

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TERMINATED: 03/10/2010

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*a nationally chartered bank with its
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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

Date Filed: 01/26/2010
Date Terminated: 02/09/2010
Jury Demand: None
Nature of Suit: 430 Banks and Banking
Jurisdiction: Federal Question

Plaintiff

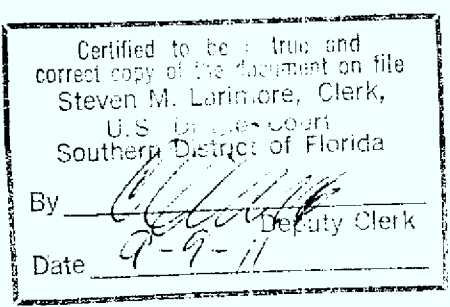
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Plaintiff

Aurelius Capital Master, Ltd.

represented by **Brett Michael Amron**
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LEAD ATTORNEY
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David Parker
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ATTORNEY TO BE NOTICED

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V.

Defendant

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Defendant

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represented by **Craig Vincent Rasile**
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John Blair Hutton , III
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ATTORNEY TO BE NOTICED

Defendant

JP Morgan Chase Bank, N.A.

represented by **John Blair Hutton , III**
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ATTORNEY TO BE NOTICED

Defendant

Barclays Bank PLC

represented by **John Blair Hutton , III**
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Defendant

**Deutsche Bank Trust Company
Americas**

represented by **John Blair Hutton , III**
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Defendant

The Royal Bank of Scotland PLC

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Defendant

**Sumitomo Mitsui Banking
Corporation**

represented by **John Blair Hutton , III**
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ATTORNEY TO BE NOTICED

Defendant

Bank of Scotland

represented by **John Blair Hutton , III**
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ATTORNEY TO BE NOTICED

Defendant

HSN Nordbank AG

represented by **John Blair Hutton , III**

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 ATTORNEY TO BE NOTICED

Defendant

MB Financial Bank, N.A.

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Defendant

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 PRO HAC VICE
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John Blair Hutton, III
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 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/15/2010	27	<p style="text-align: right;"><i>Begin Vol 3</i></p> 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</i> <i>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

		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 See Vol 6 Shared Document	63	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)

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:

Date Filed: 12/02/2009
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Federal Question

1:09-cv-23835-ASG

1:10-cv-20236-ASG

Cause: 28:1331 Fed. Question: Breach of Contract

In Re

**Fontainebleau Las Vegas Contract
Litigation**

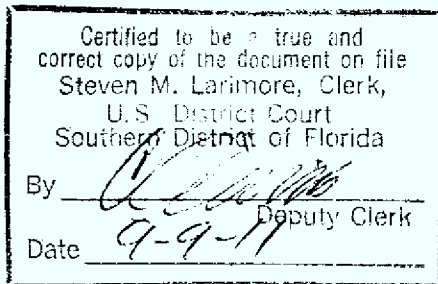
Plaintiff

**Caspian Alpha Long Credit Fund,
L.P.**

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Consol Defendant

BofA

a nationally chartered bank with its main office in Charlotte, NC

Amicus

Term Lenders

represented by **Brett Michael Amron**
 (See above for address)
 ATTORNEY TO BE NOTICED

David Alan Rothstein
 (See above for address)
 ATTORNEY TO BE NOTICED

J. Michael Hennigan
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 PRO HAC VICE
 ATTORNEY TO BE NOTICED

Lorenz Michel Pruss
 (See above for address)
 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

		<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>02/18/2010</p> <p>See Section Folder # 2</p>	<p>37</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>
<p>03/22/2010</p> <p>See Section Folder # 2</p>	<p>50</p>	<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>
<p>03/22/2010</p> <p>See Section Folder # 2</p>	<p>51</p>	<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>

		<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

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 **Please see Order for further details** . 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

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- 701 Clematis Street
West Palm Beach, FL 33401
561-803-3408