

1 Robert A. West, MBN 38604  
2 HAYNES BENEFITS PC  
3 1650 NE Grand, Suite 201  
4 Lee's Summit, Missouri 64086  
5 (816) 875-1919 – Telephone  
6 (816) 875-1920 – Facsimile Transmission  
7 [west@haynesbenefits.com](mailto:west@haynesbenefits.com)

8 Thomas S. Moring, ABN 021247  
9 PAK & MORING PLC  
10 8930 E. Raintree Drive, Suite 100  
11 Scottsdale, Arizona 85260  
12 (480) 444-9999 – Telephone  
13 (480) 308-0015 – Facsimile Transmission  
14 [tom@pakmoring.com](mailto:tom@pakmoring.com)

15 *Attorneys for Mortgages Ltd. 401(k) Plan*

16 **IN THE UNITED STATES BANKRUPTCY COURT**  
17 **FOR THE DISTRICT OF ARIZONA**

18 In re: ) In Proceedings Under Chapter 11  
19 MORTGAGES LTD., ) Case No. 2:08-bk-07465-RJH  
20 an Arizona corporation, )  
21 Debtor. ) **REPLY OF HAYNES BENEFITS TO OBJECTION**  
22 ) **OF LIQUIDATING TRUST TO HAYNES**  
23 ) **BENEFITS PC'S APPLICATION FOR**  
24 ) **ALLOWANCE OF ADMINISTRATIVE CLAIM**  
25 ) **FOR ATTORNEYS FEES AND COSTS**

26 Haynes Benefits PC, by and through undersigned counsel, hereby submits this Reply to the  
27 Objection filed by Liquidating Trust ("Objection") [DE 1989] to the Application for Allowance of  
28 Administrative Claim ("Fee Application") filed by Haynes Benefits.

29 **Factual Background**

30 As the Objection notes, the Debtor petitioned this Court, pursuant to 11 U.S.C. §§ 105 and  
31 327 to approve the appointment of the Haynes Benefits PC law firm to provide services to the  
32 Debtor. Specifically, Haynes Benefits was to provide service to Debtor's ERISA qualified 401(k) Plan

1 ("401(k) Plan"). By Order of this court on or about August 11, 2008, Haynes Benefits was approved  
2 as a professional to provide services to the Plan.

3  
4 In Haynes Benefits' Application, and in the Objection, each side points to the fact that it  
5 believes the fees due to Haynes Benefits are properly payable by the 401(k) Plan. See Objection at  
6 p. 2, Application at p. 2. In fact, even in the Objection the Liquidating Trust "concur[s] that -to the  
7 extent fees are properly payable- they should be paid out of the 401(k) Plan and not by the  
8 Liquidating Trust." See Objection at p. 2. It is important to note that the Liquidating Trust has not  
9 raised an objection to the amount of the fees claimed, or the services performed. In fact, the  
10 Liquidating Trust asserts that, aside from certain issues raised with regard to issues related to the  
11 services provided, "the Liquidating Trustee takes no position with regard to the reasonableness or  
12 necessity of the fees and expenses incurred by Haynes Benefits." See Objection at p. 3. No other  
13 party has come forward to object to the fee request.  
14  
15

16 In short the Liquidating Trust believes, as does Haynes Benefits, that the fees due Haynes  
17 Benefits should come from the 401(k) Plan. However, the Liquidating Trustee "has frozen the  
18 401(k) Plan account except for urgent payments required in the ordinary course." See Objection at  
19 p. 3.  
20

### 21 Legal Argument

22 Based on the refusal to compensate Haynes Benefits, the Liquidating Trustee apparently  
23 believes that the fees due Haynes Benefits are not "urgent payments required in the ordinary  
24 course." The quandary to Haynes Benefits is clear. The Liquidating Trustee asserts that the Plan  
25 should pay the fees due Haynes Benefits. Yet at the same time, the Liquidating Trustee has frozen  
26 the Plan assets that would otherwise be used to make that payment.  
27  
28

1 As a result of the Liquidating Trustee's decision, of which Haynes Benefits was made aware  
2 on or about June 24, 2009, Haynes Benefits submitted its Fee Application. To the extent the  
3 Liquidating Trustee has utilized the powers granted to him pursuant to his appointment to "freeze"  
4 the Plan accounts, Haynes Benefits seeks this Court's Order directing the Liquidating Trustee to pay  
5 the fees and costs due Haynes Benefits. Haynes Benefits does not assert that such payment should  
6 come from the Liquidating Trust, and continues to assert that these fees are properly a Plan  
7 expense.  
8

9  
10 Haynes Benefits seeks an Order from this Court directing the Liquidating Trust to  
11 immediately surrender any and all control of the Plan to the properly appointed Co-Trustees of the  
12 401(k) Plan. To the extent the Liquidating Trustee continues to hold the Plan funds in their current  
13 "frozen" state, the Liquidating Trustee should be directed to make payment to Haynes Benefits  
14 immediately. Haynes Benefits continues to believe such payment should be made by the 401(k)  
15 Plan, and requests the Court to so order. In the interest of judicial economy, Haynes Benefits  
16 suggests that the more prudent course is to order the Liquidating Trustee to return control to the  
17 401(k) Plan's Co-Trustees, and allow the Co-Trustees to make such decisions as they feel necessary  
18 in their fiduciary capacity to administer the Plan.  
19  
20

### 21 Conclusion

22 Haynes Benefits seeks an Order directing the Liquidating Trustee to "unfreeze" the 401(k)  
23 Plan accounts, and allow the Co-Trustees of the Plan to make such decisions as are reasonably  
24 necessary in the ordinary course. In the alternative, Haynes Benefits asks the Court to order the  
25 Liquidating Trustee to make payment to Haynes Benefits for services rendered, whether from the  
26 401(k) Plan accounts or the Liquidating Trust.  
27  
28

1 DATED: September 1, 2009

2  
3 /s/ Robert A. West  
4 Robert A. West,  
5 HAYNES BENEFITS PC

6  
7 /s/ Thomas S. Moring  
8 Thomas S. Moring,  
9 PAK & MORING PLC

10 *Attorneys for Haynes Benefits*

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2009, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the parties in interest via the Court's ECF System and to the following, whose registration status is unknown:

<p>Kevin J. Blakley Gammage &amp; Burnham, P.L.C. Two North Central Avenue, 18<sup>th</sup> F1 Phoenix, AZ 85004 Kblakley@gblaw.com Attorney for: Ronald L. Kohner</p>	<p>Charles A. Lamar Justin C. Lamar 818 North First Street Phoenix, AZ 85004 clamar@kmldevelopment.com jlamar@kmldevelopment.com Attorney for: University &amp; Ash; Roosevelt Gateway, Roosevelt Gateway II and KML</p>	<p>Ryan W. Anderson Guttilla Murphy Anderson, PC 4150 West Northern Avenue Phoenix, AZ 85051 randerson@gamlaw.com Attorney for: Department of Financial Institutions</p>
<p>Jerome K. Elwell Warner Angle 3550 N. Central, #1500 Phoenix, AZ 85012 jelwell@warnerangle.com Attorney for: Francine Haraway</p>	<p>Felecia A. Rotellini Robert Charlton AZ Dept. of Financial Institutions 2910 N. 44<sup>th</sup> St., Suite 310 Phoenix, AZ 85018 Rotellini@azdfi.gov rcharlton@azdfi.gov</p>	<p>C. Bradley Vynalek Quarles &amp; Brady LLP One Renaissance Square 2 North Central Avenue Phoenix, AZ 85004 bvynalek@quarles.com Attorney for: Ashley Coles</p>
<p>Scott A. Rose Kerry M. Griggs The Cavanaugh Law Finn 1850 N. Central Ave., #2400 Phoenix, AZ 85004 srose@cavanaghlaw.com kgriggs@cavanaghlaw.com Attorney for: Central PHX Partners</p>	<p>Robert J. Spurlock Bonnett, Fairbourn, Friedman &amp; Balint 2901 N. Central Avenue, #1000 Phoenix, AZ 85012-3311 bspurlock@bffb.com Attorney for: Foothills Plaza IV, LLC</p>	<p>Sheldon Sternberg 3212 Rainbow Ridge Drive Prescott, AZ 86303 sheldonsternberg@q.com Pro Per</p>
<p>Patrick R. Barrowclough Atkinson, Hamill &amp; Barrowclough PC 3550 N. Central Ave., #1150 Phoenix, AZ 85012 Patrick.Barrowclough@azbar.org Attorney for: Chuck Niday, Trustee for Ross Verne Family</p>	<p>Kelly Haddad 21586 N. Greenway Road Maricopa, AZ 85238 (520) 251-7303 Kellyhaddad01@mac.com Kelly Haddad and Navval Haddad, Creditors – Pro Per</p>	

By: /s/ Thomas S. Moring