

1 **Myers & Jenkins, P.C.**

2 One East Camelback Road
3 Suite 500
4 Phoenix, Arizona 85012

5 (602) 200-7900

6 William Scott Jenkins (#005896)
7 Jill M. Hulsizer (#023282)
8 Attorneys for Kevin T. O'Halloran,
9 Trustee of the ML Liquidating Trust

10 **IN THE UNITED STATES BANKRUPTCY COURT**

11 **FOR THE DISTRICT OF ARIZONA**

12 In re:

13 MORTGAGES, Ltd.,

14 Debtor.

In Proceedings Under Chapter 11

Case No.: 2:08-bk-07465-RJH

15 **APPLICATION FOR ORDER
16 REQUIRING SHELLEY
17 HARTSUIKER TO PRODUCE
18 DOCUMENTS PURSUANT TO
19 RULE 2004, FEDERAL RULES OF
20 BANKRUPTCY PROCEDURE**

21 Pursuant to Rule 2004 Federal Rules of Bankruptcy Procedure, Kevin T. O'Halloran,
22 ("Liquidating Trustee"), as Trustee of the ML Liquidating Trust, hereby applies to this Court for an
23 Order requiring Shelley Hartsuiker, ("Hartsuiker"):

24 To produce the documents requested in the attached Exhibit "A" for inspection and
25 copying by the Movant on a date and time agreeable to the parties or, if upon
26 notice, after not less than 10 days' notice.

27 This Application is further explained in the following Memorandum.

Memorandum

Pursuant to the terms of *The Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009*, (the "Plan") [Docket No. 1532], which was confirmed by an Order granted by the Court on May 20, 2009 (the "Confirmation Order") [Docket No. 1755], the Non Loan Assets, as defined in the Plan, have been transferred to the ML Liquidating Trust. The ML

1 Liquidating Trust seeks information concerning products and services provided by Hartsuiker to or in
2 connection with Mortgages Ltd., its affiliates, subsidiaries and otherwise related entities, and its past
3 President and CEO, Scott Coles. The ML Liquidating Trust seeks this information to assist in the
4 collection and investigation of Mortgages Ltd's assets and liabilities.

5 The requested discovery from Hartsuiker is well within the scope of examination permitted
6 under Rule 2004 Federal Rules of Bankruptcy Procedure, which includes:

7 [t]he acts, conduct, or property or . . . the liabilities and financial condition of the
8 debtor, or . . . any matter which may affect the administration of the debtor's estate,
9 or to the debtor's right to a discharge. In a . . . reorganization case under chapter 11
10 of the Code, . . . the examination may also relate to the operation of any business
11 and the desirability of its continuance, the source of any money or property
12 acquired or to be acquired by the debtor for purposes of consummating a plan and
13 the consideration given or offered therefore, and any other matter relevant to the
14 case or to the formulation of a plan.¹

12 Conclusion

13 Accordingly, the ML Liquidating Trust respectfully requests that this Court enter the form of
14 order submitted with this Motion.

15 RESPECTFULLY SUBMITTED this 10th day of November, 2009.

16 **MYERS & JENKINS, P.C.**

17
18 By /s/ William Scott Jenkins
19 William Scott Jenkins
20 Jill M. Hulsizer
21 Attorneys for Kevin T. O'Halloran,
22 Trustee of the ML Liquidating Trust

22 ORIGINAL of the foregoing electronically
23 filed this 10th day of November, 2009, with:

23 Clerk, United States Bankruptcy Court
24 District of Arizona
25 230 N. First Avenue, Suite 101
26 Phoenix, AZ 85003-1706
27 <https://edf.azb.uscourts.gov>

¹ FED.R.BANKR.P. 2004(b).

Myers & Jenkins, P.C.
One East Camelback Road
Suite 500
Phoenix, Arizona 85012

1 COPY of the foregoing mailed this 10th day
2 of November, 2009:

3 SHELLEY HARTSUIKER
4 Hebets & Maguire, LLC
2575 E. Camelback Road, Suite 700
Phoenix, AZ 85016

5 /s/ Alice Herdrich

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

EXHIBIT A

The ML Liquidating Trust requests that Shelley Hartsuiker produce the following described documents pursuant to Rule 2004, Federal Rules of Bankruptcy Procedure, (the “Discovery Requests”):

I. DEFINITIONS

The following definitions apply to each of the Discovery Requests set forth herein, unless otherwise indicated, and are deemed to be incorporated in each of the Discovery Requests.

1. The term “communication” means and includes every manner or means of disclosure, transfer or exchange of information (in the form of facts, ideas, inquiries or otherwise) whether made orally or in writing by document or whether by face-to-face, by telephone, telecopier, mail, facsimile, personal delivery, e-mail, computer mail, electronic mail, overnight delivery or otherwise.

2. The term “Debtor” shall mean Mortgages Ltd. and its predecessors and successors, past and present subsidiaries, affiliates, divisions, branches, agents, officers, directors, employees, attorneys, agents, brokers, representatives, servants, and any and all other persons or entities acting or purporting to act directly or indirectly on behalf of or under the control of the Debtor, including any attorneys, advisors, or consultants.

3. The term “document,” or any variant thereof, means all matter that is written, printed, typed, graphic, recorded, and visually or orally reproduced, referring or relating to, directly or indirectly, in whole or in part, the matter that is the subject of the particular discovery request, by whomever prepared, now or formerly in your actual or constructive possession, custody or control, whether or not privileged, including all originals, drafts and modifications of originals, as well as copies, duplicates, and counterparts of originals, and includes, but is not

limited to, correspondence, business records, telephone records and notations, diaries, calendars, minutes, contracts, agreements, orders, receipts, invoices, bills, pictures, drawings or sketches, blueprints, designs, notebooks, advertising and commercial literature, promotional literature of any kind, cables, telexes, telegrams, recordings, patents, lists, charts, pamphlets, appendices, exhibits, summaries, outlines, logs, journals, agreements, work papers, statements, records of inventory, financial and/or accounting records, catalogues, trade journals, and any other documented or recorded information. The term “document” also includes every other manner by which information is recorded or transmitted, including but not limited to, microfilms, punch cards, disks, tapes, computer programs, printouts, all recordings made through data processing techniques, and instructions and directions for use of the data processing equipment to obtain the information recorded by that method. The term “document” refers to copies, duplicates, and/or counterparts only where (i) the copy, duplicate, or counterpart is not exactly identical to the original or (ii) your records only contain a copy, duplicate, or counterpart of the original and not the original itself.

4. The term “evidencing” means constituting, mentioning, describing, concerning, referring to, relating to, supplementing, amending, superseding, replacing, modifying, or pertaining to, in whole or in part, the subject matter of the particular requests.

5. The term “identify” or “identity” with respect to a natural person requires that the following information be provided for each such person:

(a) the name of the person;

(b) the last known home address, business address and/or telephone number of each person.

6. The term “identify” or “identity” with respect to a person other than a natural

person (e.g., corporation, partnership, unincorporated joint venture, sole proprietorship, subchapter S corporation) requires that the following information be provided for each such person:

- (a) the name of the person;
- (b) the last known address and telephone number of that person's headquarters or principal place of business.

7. The term “identify” or “identity” with respect to a document means to state the date and author of the document, the type of document (e.g., letter, memorandum, telegram, chart), the addressee or intended recipient, a summary of its contents or other means of identifying the document, and the present location and custodian of the document. Alternatively, in lieu of the foregoing identification, the document may be produced along with an identification of the Discovery Request to which it is responsive. If any such document was, but is no longer, in your possession, custody, or control, state what disposition was made of it and the date of such disposition. With respect to document identification, documents prepared subsequent to or prior to the time period specified in this Discovery Request but which relate or refer to such time or period are to be included in your response.

8. The term “identify” or “identity” with respect to a communication, written or oral conversation, conference or meeting, means to identify all persons participating in or in attendance at the communication, conversation, conference or meeting, and to identify all documents recording, summarizing or otherwise arising from the communication, conversation, conference or meeting in accordance with the definitions stated above. In addition, “identify” or “identity” with respect to a communication, conversation, conference or meeting means to state in detail its purpose, all subjects discussed, and the method(s) of communication.

9. The term “person” means any natural person, business, proprietorship, public or private corporation, incorporated or unincorporated association, partnership, company, firm, government or governmental partnership, trusts, joint venture, entity (including any government agency, board, authority, commission, political subdivision or department thereof) or any other form of business or legal entity, organization or arrangement, group or association, whether or not such organization, entity or association has a separate juristic existence in its own right.

10. The term “relating or referring” and/or “relate or refer” means in whole or in part constituting, containing, concerning, embodying, evaluating, reflecting, describing, discussing, demonstrating, evidencing, supporting, analyzing, identifying, stating, referring to or dealing with, or in any way pertaining to including without limitation documents that relate to the preparation of another document, or documents that are attached to or enclosed with another document.

11. The term “you” and “your” refers to Shelley Hartsuiker.

12. Unless indicated, other terms used in these Discovery Requests correspond to terms defined or used in the United States Bankruptcy Code (11 U.S.C. 101, et. Seq.)

II. INSTRUCTIONS

1. The following Discovery Requests are to be responded to fully, by furnishing all information in your possession, custody or control. Your having possession, custody, or control of a document includes your having a right, superior to other parties, to compel the production of such document from a third party, such as your agent, employee, representative, or, unless privileged, attorney.

2. If any document requested herein has been lost, discarded, or destroyed, the

document so lost, discarded or destroyed should be identified as completely as possible, including without limitation, the date the document was lost, discarded, or destroyed, the manner in which the document was lost, discarded, or destroyed, the reason(s) the document was lost, discarded, or destroyed, the person who authorized that the document be destroyed or discarded, and the person who lost, discarded, or destroyed the document.

3. If you cannot produce a document because it no longer exists or is no longer in your possession, custody, or control, please identify that document by: (a) its title; (b) its nature (for example, a “letter” or “e-mail”); (c) the date it was created or sent; (d) its author(s) and signator(y/ies); (e) any of its recipient(s); (f) the last place it was known to have been located; (g) the circumstances under which it ceased to exist or passed from your possession, custody, or control; and (h) the identity and last known residence and business address of any person who had knowledge of its existence and location.

4. Produce the original, as well as all non-identical duplicates or copies and/or drafts, of all requested documents in your possession, in the possession of your agents, attorneys, accountants or employees, or which are otherwise within your custody, control, or access, wherever located. A document with handwritten notes, editing marks, etc., is not identical to one without such notes or marks and therefore must be produced if within the scope of documents requested. If a document has been prepared in several copies, or if additional copies are made that are not identical or are no longer identical by reason of subsequent notation or other modification of any kind whatsoever including, but not limited to, notations on the backs of pages thereto, each non-identical copy is a separate document and must be identified.

5. Produce each requested document in its entirety, including all attachments and enclosures, even if only a portion of the document is responsive to the request.

6. If you withhold from production any document (or portion of any document) that is otherwise responsive to a request on the basis of a claim of privilege, work product, or other ground, you must provide sufficient information regarding the withheld document to permit the Court and the parties to evaluate the propriety of your objection. Specifically, you must identify:

- (a) the name and title of the author(s) of the document; (b) the name and title of each person to whom the document was addressed; (c) the name and title of each person to whom the document was distributed; (d) the name and title of each person to whom the document was disclosed, in whole or in part; (e) the type of document (e.g., “memorandum” or “report”); (f) the subject matter of the document; (g) the purpose(s) of the document; (h) the date on the document and, if different, the date on which the document was created and/or sent; (i) the number of pages of the document; (j) the specific request herein to which the document is responsive; (k) the nature of the privilege(s) asserted as to the document; and (l) a detailed, specific explanation as to why the document is privileged or otherwise immune from discovery, including a presentation of all factual grounds and legal analyses.

7. If any requested document cannot be produced in full, produce it to the extent possible, indicating what is being withheld and the reason it is being withheld.

8. Please produce each specified document either (a) in the original file or organizational system in which it is regularly maintained or organized or (b) designate which documents are being produced in response to which of the numbered specifications below. Produce the requested documents either in their original file folders or appended to a copy of any writing on the file folders from which the documents are taken.

9. Identify each document produced by the paragraph number of this schedule to which it is responsive. If a document is produced in response to more than one request, it is

sufficient to identify only the first request to which the document is responsive.

10. All electronically stored information must be produced in the same form or forms in which it is ordinarily maintained. Specifically, all electronically stored information must be produced in its native format, so that the metadata can be accessed.

11. Unless otherwise specified, the relevant time period for this request is from January 1, 1998 through and including the present.

12. This request is a continuing one that calls for the supplemental or additional production of documents if any defendant or its counsel obtains supplemental or additional documents.

13. In responding to the requests below: (a) the disjunctive shall also be read to include the conjunctive and vice versa; (b) “including” shall be read to mean “including but not limited to;” (c) the singular shall also be read to include the plural and vice versa; (d) the present shall also be read as if the past tense and vice versa; (e) the masculine includes the feminine and the neutral genders; (f) “any” shall be read to include “all” and vice versa; and (g) “and” shall be read to include “or” and vice versa.

14. The phrases following “including” are intended to illustrate the kinds of matter that we believe are responsive to the Discovery Request. Such examples are not intended to be exhaustive of the material sought and shall not in any way be read to limit the scope of the Discovery Request.

III. DOCUMENTS

YOU ARE REQUESTED to produce the documents set forth below:

1. A copy of each life insurance policy issued by any life insurance company insuring the life of Scott Coles from January 1, 1998 through the date of his death, (collectively, the "Policies").
2. A copy of each insurance application relating to the acquisition of each of the Policies.
3. Copies of all documents or communications related to the acquisition of each of the Policies.
4. Copies of all documents or communication related to or reflecting any change in the ownership of any of the Policies.
5. Copies of all documents or communications related to or reflecting any designation of or change in the beneficiary(ies) of any of the Policies.
6. Copies of all documents evidencing the payment of any premiums owing under any of the Policies, including copies of any checks, money orders, wires, etc.
7. All documents or communications relating to the payment of any benefits under any of the Policies.