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

In re:	)	
	)	Chapter 11
MORTGAGES LTD.,	)	
an Arizona corporation,	)	Case No. 2:08-bk-07465-RJH
	)	
Debtor.	)	<b>JOINT PRETRIAL STATEMENT FOR</b>
	)	<b>EVIDENTIARY HEARING ON DLA</b>
	)	<b>PIPER LLP (US)’S FIRST AND FINAL</b>
	)	<b>FEE APPLICATION FOR</b>
	)	<b>ALLOWANCE AND PAYMENT OF</b>
	)	<b>FEES</b>
	)	
	)	Date: November 25, 2009
	)	Time: 10:00, a.m..
	)	Place: Courtroom 603
	)	230 N. First Avenue
	)	Phoenix, AZ 85003

Pursuant to this Court’s July 30, 2009 Minute Entry Order [Docket No. 2031] and Local Rule 7016-1, DLA Piper LLP (US) (“DLA”), ML Manager LLC (“ML Manager”), ML Liquidating Trust (“Liquidating Trust”), and G. Grant Lyon, in his capacity as duly appointed Chapter 11 Trustee (“RBLLC Trustee”) for Radical Bunny, L.L.C. (“RBLLC”)(collectively, the “Parties”), through their respective counsel, hereby file this Joint Pretrial Statement for the evidentiary hearing (the “Hearing”) on the First and Final Fee Application for Allowance and Payment of Fees for Services Rendered and Expenses

1 Incurred by DLA Piper LLP (US), as Special Real Estate and Litigation Counsel for  
2 Debtor (the “Fee Application”).<sup>1</sup>

3 **A. Nature of Case**

4 This Hearing concerns the allowance and approval of the Fee Application and the  
5 objections to the Fee Application filed by ML Manager, the Liquidating Trust and the  
6 RBLLC Trustee (collectively, the “Objectors”). From October 8, 2008 through July 20,  
7 2009<sup>2</sup> (“Application Period”), DLA rendered time and legal services to the Debtor as  
8 special real estate and litigation counsel. Through the Fee Application, DLA is seeking  
9 fees in the amount of \$1,406,056.80 and expenses in the amount of \$83,459.26 for a total  
10 of \$1,489,516.06 pursuant to sections 328, 330 and 503(b) of the Bankruptcy Code.  
11 After the initial hearing on this matter on July 28, 2009, this Court set the Hearing.

12 **B. Uncontested Material Facts**

13 The parties have agreed to the following uncontested material facts:

14 1. After the filing of the Bankruptcy, the Debtor sought to employ a law firm  
15 to pursue recovery of loan proceeds and other assets of the Debtor. This included the  
16 prosecution of claims against difficult borrowers and guarantors as well as the defense to  
17 counterclaims raised by Borrowers. DLA was selected for these purposes.

18 2. On October 23, 2008, the Debtor filed its Application for an Order  
19 Authorizing Employment and Retention of DLA Piper LLP (US) as Special Real Estate  
20 and Litigation Counsel (“DLA Retention Application”)(Docket No. 864) together with  
21 the Affidavit of Mark Nadeau in support thereof (“Nadeau Declaration”)(Docket No.  
22 865).

23 3. The Engagement Letter between the Debtor and DLA was attached to the  
24 Retention Application and stated that Mr. Nadeau’s hourly rate was \$690.00 per hour for  
25 2008 and that other lawyers who may render services on the Debtor’s behalf may have  
26 higher or lower hourly rates.

27 \_\_\_\_\_  
28 <sup>1</sup> Reference to the Fee Application shall include time from June 20, 2009 through July 20, 2009  
referenced by the Supplement to the Fee Application filed on July 27, 2009.

1           4.     The Nadeau Declaration identified 3 partners and 2 associates as the  
2 principal attorneys at DLA who were anticipated at the time to render services on behalf  
3 of the Debtor with hourly rates between \$385 to \$725 per hour. The principal attorneys  
4 identified in the Nadeau Declaration had biographical information published on DLA's  
5 website at [www.dlapiper.com](http://www.dlapiper.com) and DLA was otherwise readily described in both internet  
6 and publically available documents.

7           5.     The Nadeau Declaration specifically stated that the Debtor was retaining  
8 DLA to, among other things, (a) negotiate with, collect from and litigate with problem  
9 borrowers and guarantors of loans (but that routine foreclosure matters would continue to  
10 be handled by foreclosure counsel), (b) investigate the sources and causes of Debtor's  
11 losses and pursue avenues of recovery, including litigation, against appropriate parties,  
12 and (c) represent the Debtor in the NRDP and PDG litigation matters, and in such other  
13 litigation as the Debtor may request.

14           6.     This Court entered the Order approving the Debtor's retention of DLA on  
15 October 24, 2008. (Docket No. 873).

16           7.     On January 21, 2009 the Court held a hearing on the October Cover Sheet  
17 Application and the objections. The Court on January 27, 2009 entered its memorandum  
18 decision allowing \$100,000 to be paid on an interim basis. (Docket No. 1320). DLA was  
19 never paid the \$100,000 as provided in the memorandum decision.

20           8.     DLA filed its Cover Sheet Applications for October 2008 through April  
21 2009 on November 20, 2008, April 27, 2009, May 21, 2009 and June 4, 2009. (Docket  
22 Nos. 1039, 1603,1604,1605, 1606, 1756, and 1772).

23           9.     In the OIC's objection to the October Cover Sheet Application, the OIC  
24 had reserved its objections for the final fee application process. The OIC never made any  
25 other objections and did not file objections to any other fee statements.

26           10.    The OIC's First Amended Plan of Reorganization was confirmed by the  
27 Court on May 20, 2009("Plan") (Docket No. 1755) and became effective June 15, 2009  
28 ("Effective Date") (Docket No. ). Pursuant to the Plan, all professionals were to file their

1 final fee applications on or before July 6, 2009 (20 days after the Effective Date).

2 Section VII (b)(2) of the Disclosure Statement describing the Plan stated that Allowed  
3 Administrative Claims would be paid from the Exit Financing.

4 11. DLA filed its Fee Application on July 2, 2009 (Docket No. 1873) and filed  
5 its Supplement on July 27, 2009 (Docket No. 2023). DLA is seeking payment of fees in  
6 the amount of \$1,406,056 and expenses in the amount of \$83,459.26

7 **C. Contested Material Facts and Issues of Law**

8 **1. Contested Material Facts**

9 The following are contested material facts by DLA and the Objectors.

10 **a. DLA Contested Material Facts**

11 12. In or about August, 2008, the Debtor had a number of significant and  
12 complex litigation claims against borrowers and guarantors, was served with several  
13 lawsuits filed by borrowers against loan investors (including funds managed by Debtor)  
14 and was seeking counsel to represent the Debtor in such matters.

15 13. In August 2008, Mark Nadeau (“Mr. Nadeau”) was invited to a meeting at  
16 the Debtor’s offices among certain members of the Official Committee of Investors  
17 (“OIC”), other members of an unofficial investor group and the Debtor’s CEO and Board  
18 of Directors.

19 14. The Debtor was seeking counsel to prosecute claims concerning substantial  
20 loan and guaranty defaults and also to defend it against a number of actual and potential  
21 litigation matters related to the Debtor’s lending activities.

22 15. During the August meeting, Mr. Nadeau informed the Debtor and the  
23 investors about the range of DLA’s fees and the legal team he would construct to work on  
24 the Debtor’s litigation matters, which potentially included attorneys from outside of  
25 Phoenix.

26 16. DLA is the largest law firm in the world with a sophisticated finance and  
27 real estate practice.

28 17. DLA was ranked in the top 5 of national real estate firms and has a

1 sophisticated government affairs practice.

2 18. During many telephonic conferences in late August and during September  
3 2008, the Debtor and others representing the OIC urged Mr. Nadeau to become counsel  
4 to the Debtor. At a second meeting in early October 2008, the Debtor informed DLA that  
5 it wanted DLA to be the lead advisor on all key litigation matters and that it would be  
6 assigned the majority of the Debtor's troubled \$800 million loan portfolio.

7 19. No party had objected to the terms of the DLA retention application or the  
8 Nadeau Declaration, or otherwise sought reconsideration of the Court's Order [Docket  
9 No. 873] from the time the Order was entered.

10 20. DLA provided regular status reports to the Debtor on the matters assigned  
11 to it.

12 21. Counsel to the OIC was offered opportunities in December and January to  
13 meet with DLA to discuss litigation strategies and declined to meet.

14 22. Following receipt of objections to the first fee statement of DLA, the law  
15 firm and Debtor commenced discussions about a reduction in fees and/or scope of the  
16 engagement to ease concerns raised by the objecting parties.

17 23. After lengthy internal meetings with the Debtor and its counsel, DLA  
18 agreed to give a significant discount on total fees. The initial discount for November and  
19 December 2008 and January and February 2009 represented the complete write off of  
20 time for certain timekeepers no longer employed by DLA, a write off of all time for any  
21 lawyer working on a file that is "brought up to speed", a 15% discount off the entire fees,  
22 an additional 10% discount off the Case Administration category beyond earlier  
23 agreements, and an additional 20% discount off the Professional Retention and Fee  
24 Application category beyond earlier agreements ("Discount"). In addition to the  
25 Discount, DLA agreed to bill the Debtor at 2008 rates and provide a continuing 15%  
26 discount off all future fees through calendar year 2009. After the Debtor and DLA  
27 agreed on the Discount, DLA filed its monthly fee statements for November 2008  
28 through April 2009 and neither the OIC or Radical Bunny objected.

1           24.    The litigation between the Debtor and the borrowers/guarantors was  
2 complex with loan files that were sometimes incomplete and loans that had not been fully  
3 funded. The loan defaults included both developed and undeveloped land as security for  
4 borrowing in the tens of millions of dollars in value.

5           25.    DLA also provided consultation on existing claims against the Debtor and  
6 advised on settlement tactics intended to achieve loan modifications for a loan portfolio  
7 that was non-performing.

8           26.    The Debtor and DLA suffered constant interference from the OIC who  
9 independently met with borrowers and advised certain borrowers that the Debtor had no  
10 authority to modify loans, and any settlement would only work if it was originated and  
11 approved by the OIC.

12           27.    The Debtor's bankruptcy case ("Bankruptcy Case") was one of the largest  
13 bankruptcy cases in Arizona history, including 2,800 investors, 61 borrowers, 3 Court-  
14 Appointed Committees, one unofficial committee and 91 mechanics liens holders.

15           28.    The Debtor's case consistently received national media attention, and  
16 interested investors were nationally and internationally based.

17           29.    The Debtor and its counsel approved the involvement of DLA lawyers and  
18 partners outside of Arizona.

19           30.    Time related to general administrative categories was necessary and  
20 reasonable at the time they were rendered.

21           31.    Substantial administrative time for work associated with the Plan of  
22 Reorganization, substitution of counsel, and the fee statements and Fee Application has  
23 been incurred by Mr. Nadeau and his staff in Phoenix without charge to the Debtor. Mr.  
24 Nadeau has incurred substantial administrative time related to this reorganization from  
25 March to the date of the first hearing on the Fee Application and has billed none to the  
26 estate.

27           32.    Time billed to the TARP matter was considered necessary and critical to  
28 prospects for a Debtor sponsored Plan of Reorganization and work performed by DLA

1 was at the specific request of Debtor, its chief officers, the Board of Directors, and its  
2 counsel (JSS).

3 33. The Debtor was informed that DLA was a busy law firm and Mr. Nadeau  
4 and others assigned to the case would have to forego other work in order to focus on the  
5 difficult issues presented.

6 34. DLA's blended hourly rate in this case, including paraprofessionals is  
7 \$387.00 per hour.

8 35. Although the OIC plan was confirmed on May 20, 2009, DLA was required  
9 to perform additional services for the Debtor until July 20, 2009 because counsel for ML  
10 Manager delayed in advising DLA which of its litigation matters it would be substituting  
11 in for and deadlines for responsive pleadings were approaching.

12 36. The amount of fees and expenses sought by DLA includes the supplemental  
13 fees and expenses incurred because of the delay in substitution of counsel in the pending  
14 civil actions and for fees incurred in prosecuting its administrative claim for payment in  
15 light of the OIC, Liquidating Trust, ML Manager's failure to engage in settlement  
16 negotiations regarding the Fee Application.

17 **b. Objectors Contested Material Facts**

18 37. DLA was employed to handle only a few collection and litigation matters..  
19 At the time of the discussions about and employment of DLA, Debtor already had Rule  
20 9019 settlement motions on file for approximately \$400 million of the loans, including  
21 Tempe Land Company, Grace Entities, Rightpath, and University and Ash entities. The  
22 OIC had objected to each of the pending "settlements," which objections were pending  
23 at the time of the retention of DLA. Debtor subsequently filed settlement motions for  
24 another approximately \$70 million of settlements. The OIC also objected to these,  
25 including the Sorenson entities, SOJAC and Bisontown settlements. The Rightpath,  
26 Sorenson, SOJAC and Bisontown settlements were ultimately approved and implemented  
27 by January 2009. The other settlement motions were not withdrawn by Debtor but were  
28 taken off calendar after hostile reactions to the same by the OIC although the parties

1 continued to discuss settlement thereafter. All of the loans involved were secured by  
2 Arizona real estate, invoked Arizona law, and involved Arizona Borrowers and  
3 guarantors. Each of the loans involved multiple structures, some were single asset while  
4 some were not, some involved various LLC entities or corporate structures and were  
5 often guaranteed by sophisticated developers and others with multiple assets and tiered  
6 financial statements.

7 38. Contrary to its Fee Application, DLA was not hired to handle the following  
8 loans: (1) Arizona Commercial Land Acquisitions; (2) Tempe Land Company; (3)  
9 Central & Monroe; (4) All State Associates XVI; (5) All State Associates IX; (6)  
10 Roosevelt Gateway; (7) Roosevelt Gateway II; and (8) University & Ash. Any fees  
11 charged for these matters should be disallowed. Objectors estimate those fees to be about  
12 \$23,000. Further, the fees charged were unreasonable, unnecessary and duplicative of  
13 services rendered by Debtor's other professionals.

14 39. The rates charged by DLA are not reasonable and are not the customary  
15 compensation charged by comparably skilled practitioners in cases other than bankruptcy  
16 cases in this market.

17 40. DLA asserts it incurred \$156,000 of fees in Case Administration such as  
18 monitoring and reviewing pleadings and docket entries in the Bankruptcy Case. DLA was  
19 not employed as general bankruptcy counsel and these services were duplicative of  
20 Debtor's bankruptcy counsel, were not reasonably likely to benefit the estate and were  
21 not necessary to the administration of the case. Moreover, these fees were not necessary  
22 to allow DLA to complete the discrete tasks it was given. The fees in this category are  
23 not reasonable and should be disallowed.

24 41. DLA asserts it incurred about \$70,000 (between the Fee Application and  
25 Supplement) in its Retention and Fee Applications. This is not a reasonable amount of  
26 fees for this task.

27 42. DLA charged the Debtor with \$11,303 of "nonworking travel" time. It  
28 brought attorneys from its Chicago and Los Angeles offices for meetings and Court



1 appearances and charged the nonworking travel time to the Debtor. The fees in this  
2 category do not reasonably benefit the estate and were unnecessary. These amounts  
3 should be disallowed.

4 43. DLA charged \$63,026 in the category it calls "litigation strategy", \$50,483  
5 in the category it calls "loan analysis" and \$39,361 in the category it calls "legal  
6 research". None of the fees are identified to any of the files it set up for specific loans or  
7 borrowers or guarantor litigation. That totals \$152,870 for general services not tied to  
8 specific matters or files.

9 44. DLA charged \$39,489 for "meetings". The fees were not related to specific  
10 matters because those were charged to those matters. These are in addition to the  
11 meetings needed to perform the work on specific files. These fees for "meetings" are  
12 duplicative, unnecessary, unreasonable and do not benefit the estate. These fees of  
13 \$39,489 should be disallowed.

14 45. DLA incurred fees of \$67,026.03 in rendering services concerning the  
15 "TARP Program". The descriptions in this category are vague, e.g. "monitoring"  
16 proceedings. While some review and analysis of the TARP program may have been  
17 appropriate to determine whether Debtor was eligible for this program, at some point  
18 early in the review it was or should have been clear that further work in this area was not  
19 going to benefit the estate and was not warranted or necessary. The fees should be  
20 reduced to a much more reasonable number.

21 46. DLA was asked to handle the Cottonwood/Riverfront loan and bankruptcy  
22 matter which involved a \$7.5 million loan. DLA asserts it incurred fees of about  
23 \$294,000 in handling the matter. The matter has not been concluded. The fees incurred  
24 are excessive and not reasonable.

25 47. OIC counsel's did not interfere in the Riverfront bankruptcy proceeding so  
26 as to prevent successful results by DLA.

27 48. Debtor's counsel in the Riverfront bankruptcy seeks fees of \$75,000  
28 according to its first interim fee application. DLA's fees for the same matter are

1 excessive and not reasonable.

2 49. DLA was asked to handle the Foothills bankruptcy and guarantor litigation.  
3 The loan is approximately \$25.7 million. DLA seeks fees of about \$143,000 in that case.  
4 The matter has not been concluded. DLA's fees for this matter are excessive and  
5 unreasonable.

6 50. By contrast, fees sought by the Debtor's counsel in the Foothills bankruptcy  
7 (according to its interim fee application) are \$45,000. DLA's fees for the same matter are  
8 excessive and unreasonable.

9 51. DLA was asked to defend the litigation brought by National Retail against  
10 the MP Funds. DLA incurred fees of about \$170,000 on this \$5.2 million loan. While the  
11 motion to dismiss the adversary was successful, Dax Watson incurred only \$80,000 for  
12 the same services in this matter and the PDG Los Arcos matter combined.

13 52. DLA was asked to defend the litigation brought by PDG Los Arcos against  
14 the MP Funds. DLA incurred fees of about \$190,000 on a \$23.9 million loan. The issues  
15 were identical to the National Retail matter mentioned above. While the motion to  
16 dismiss was successful, Dax Watson incurred only \$80,000 for the same services in this  
17 matter and the National Retail matters combined. DLA incurred combined fees of  
18 \$360,000 on these two matters. The DLA fees are excessive and not reasonable. The  
19 DLA fees for these two loans should be significantly reduced.

20 53. The fees incurred on other individual files are not reasonable in light of the  
21 services rendered and results achieved.

22 54. The OIC did not agree to the employment of DLA or make a request of the  
23 Debtor that the Debtor hire DLA. Joseph Baldino (speaking only for himself) gave three  
24 names to Richard Feldheim and suggested that the Debtor might need additional counsel  
25 to pursue a few of the difficult borrowers or guarantors. Mr. Baldino provided the names  
26 of Pat McGroeder of Gallagher & Kennedy, Leo Beus of Beus Gilbert, PLLC and Mark  
27 Nadeau of DLA. Mr. Baldino did not attend a meeting with Mr. Feldheim and Mr.  
28 Nadeau.

1           55.     The OIC and its counsel did not interfere with the Debtor’s negotiations  
2 with borrowers and did not tell borrowers not to deal with the Debtor. On the contrary,  
3 the OIC met with Rightpath, University & Ash, Tempe Land Company, and Grace  
4 Entities with the express approval of and at the request of the Debtor. These Borrowers  
5 were told that only the Debtor had the authority to enter into a settlement and file a  
6 settlement motion. Clearly the OIC had the right and ability to object to settlements that it  
7 did not believe were reasonable – as a creditors committee routinely does in any Chapter  
8 11 case of consequence.

9           56.     As reflected by emails to and from Cathy Reece and Forrest Lammiman of  
10 DLA in December and in emails from Brad Stevens, Cathy Reece and Keith Hendricks  
11 did engage in discussions in December 2008 and January 2009 with DLA attorneys.

12                   **2.     Contested Issues of Law**

13           The following are the contested issues of law material to the Hearing:  
14

15           Whether DLA is entitled to fees for services rendered and expenses incurred in the  
16 total amount of \$1,489,516.06 pursuant to Sections 328, 330 and 503(b) of the  
17 Bankruptcy Code.

18                   **a.     DLA Position**

19           This Bankruptcy Case was undeniably one of the largest bankruptcy cases in  
20 Arizona’s history. This case involved over \$950 million in loan assets and consistently  
21 received national media attention from publications such as the Wall Street Journal, New  
22 York Times, USA Today, Bankruptcy Law 360 and the Daily Deal. The litigation and  
23 related issues arising out of this case were very complex with multiple deal structures and  
24 very sophisticated borrowers and guarantors. DLA is one of the most highly ranked  
25 firms (by the American Lawyer & Chambers) in terms of its Real Estate practice.  
26 Likewise, each of the partners engaged on the Debtor’s cases has significant experience  
27 in the overlapping legal arenas impacting the cases handled by the firm. In real estate  
28 lending, bankruptcy and financial litigation matters our litigation team was required to

1 defend and prosecute claims in state, federal, and bankruptcy court, while assuring  
2 substantive and procedural issues were handled consistently amongst a variety of cases  
3 and in front of a number of judges. In addition, DLA has a prominent government affairs  
4 practice group, lead at the time of its retention by the former Senator George Mitchell  
5 (also Global Chair of the firm), who is now the Middle East Envoy for our State  
6 Department. DLA was specifically considered and chosen by the Debtor based upon  
7 these qualifications and its ability to react immediately with a minimum of conflicts in  
8 this region. Other major firms in Arizona, where DLA maintains an office doing work  
9 for local, regional, national and international clientele, were already conflicted from  
10 representing Debtor owing to existing clients adverse to the Debtor, or relationships  
11 amongst various investor groups that prohibited oversight of multiple cases. Regardless,  
12 the rates charged by DLA are consistent with other work performed by the firm for  
13 private clients in Arizona. In fact, despite the accusations raised by ML Manager, the  
14 investors themselves, many of whom comprise the ML Trust Board and were members of  
15 the OIC interviewed DLA to handle the litigation issues facing the Debtor and  
16 encouraged the Debtor, with the assistance of Fennemore Craig and its financial  
17 consultants, to retain DLA. At all times prior to and after DLA's retention, the Debtor,  
18 its counsel, ML Manager and RBLLC were well aware of DLA's hourly rates and how  
19 they compared to those of other professionals employed in this case. Indeed, DLA was  
20 retained even after it declined to give an initial discount requested by those who  
21 interviewed DLA.

22 From the outset, DLA was required to vigorously defend the Debtor in two  
23 prominent cases receiving substantial press coverage and to immediately commence work  
24 in several additional loan matters wherein hundreds of millions of dollars were at stake.  
25 DLA was told it was to be the lead advisor on all litigation matters involving its loan  
26 portfolio. In addition, the work in PDG and NRDP alone consisted of more than  
27 collection work, but required responding to motions to remand, non-core determination  
28 and other similar pleadings that move beyond that of "simple collection matters." At the

1 behest of Debtor, DLA located counsel for the investors in cases where claims were made  
2 against the investors and worked closely with those attorneys to minimize the expense of  
3 said investors in defending claims made against them as individuals. DLA defeated all of  
4 PDG and NRDP's motions in addition to prevailing on its initial motion to dismiss with  
5 respect to the asserted tort claims. With respect to Foothills and Riverfront Commons,  
6 the attorneys at DLA had to have in-depth knowledge and skill in bankruptcy to respond  
7 to the Chapter 11 filings of those borrowers, again, more than just simple "collection  
8 work."

9         The Debtor specifically requested that DLA perform work (whether in the form of  
10 litigation or consultation) in all of the matters set forth in the Fee Application and  
11 contrary to the objectors, DLA provided status reports to the Debtor on a regular basis.  
12 DLA was well on its way to achieving significant results in a majority of the pending  
13 litigation when the OIC intervened and progress was stifled. Over objections of the  
14 Debtor, the OIC commenced its own independent meetings with borrowers. Such  
15 meetings allowed borrowers to constantly argue about "who was on first" and several  
16 attorneys for borrowers suggested that there was no point in meeting with Debtor or its  
17 counsel because the OIC said they "would control any settlement." As the OIC gained  
18 momentum toward confirming their plan of reorganization, borrowers became unwilling  
19 to settle with the Debtor. The borrowers all delighted in the extension of time on their  
20 credits and hoped for an economic rebound leading to increased value of real estate  
21 assets. Delay in payment or resolution benefitted most borrowers while it was clearly to  
22 the disadvantage of the Debtor. The OIC consistently approached borrowers about  
23 settlement, stating that the Debtor had no authority to settle. Borrowers became  
24 "confused"<sup>3</sup> and efforts at settlement or other recoveries were stymied.

25         Despite the interference by the OIC, DLA managed to have two \$100,000,000  
26 cases against the investors dismissed, would have achieved summary judgment against  
27 the guarantors in the Cottonwood matter (if it weren't for the last minute tactics of  
28

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<sup>3</sup> This "confusion" was largely tactical and convenient to borrowers.

1 Fennemore Craig to derail the Debtor’s progress), and would have successfully dismissed  
2 the Foothills bankruptcy (if only the Debtor would have had the funds to pay for a formal  
3 appraisal).

4 DLA submits that the appropriate market for considering the reasonableness of  
5 DLA’s fees is the national legal community. The complex facts of this “mega”  
6 bankruptcy and large collateral lawsuits required the special counsel as approved in the  
7 original DLA Retention Application. DLA should not have its fees dictated by a less  
8 than full view of the local market but rather on the national market articulated by the  
9 Arizona Bankruptcy Court in the *In re First Magnus Financial Corporation* (2008 WL  
10 2233503) (Bankr. D. Ariz. May 22, 2008) case. When faced with the need for counsel  
11 with skill in bankruptcy, real estate, litigation, loan work outs and government affairs, the  
12 Debtor chose DLA. The Debtor’s case was complex, and one with national significance.  
13 Indeed, the investor population was international and many prominent people outside of  
14 Arizona were stakeholders in the bankruptcy process. DLA brought in a team approved  
15 by Debtor and its counsel (and certain investors) together in an effort to best serve the  
16 Debtor and to serve in more than just a “collection” capacity. In doing so, DLA  
17 ultimately charged the Debtor a significantly discounted rate, a rate even lower than that  
18 earlier approved by this Court without objection. Moreover, the rates charged by DLA  
19 were commensurate with the rates charged by the other high profile Phoenix litigators  
20 that were considered by the Debtor for utilization as special counsel.

21 DLA is entitled to be paid its reasonable attorneys’ fees and expenses for its work  
22 as special real estate and litigation counsel to the Debtor in the amount of \$1,489,516.06.  
23 DLA preserves all rights to seek additional fees and costs incurred since July 20, 2009 in  
24 connection with DLA's fee application and objections thereto.

25 **b. Objectors’ Positions**

26 The Objectors assert that DLA hourly rates are not reasonable or customary for  
27 services they rendered in the matters upon which they were engaged. Even the reduced  
28 rates asserted by DLA significantly exceed the hourly rates for other attorneys providing

1 legal services in this market and case. DLA relies on In re First Magnus Financial  
2 Corporation, 2008 WL 2233503 (Bankr. D. Ariz. May 22, 2008) in claiming that  
3 excessive hourly rates are justified in this case. In First Magnus, Judge Marlar was  
4 addressing a truly national debtor with over 5,500 employees in virtually every state. In  
5 this case, the Debtor's assets were about \$200 million and it had only 25 employees all  
6 located in Phoenix. It managed a loan portfolio of assets located only in Arizona. As  
7 reflected in one of the exhibits, the top 10 borrower groups made up 85% of the loans.  
8 The loan documents were uniform, and invoked Arizona law. The loans were secured by  
9 Arizona real estate and were made to Arizona borrowers and guarantors. Judge Marlar  
10 recognized that the general rule for appropriate hourly rates is the prevailing market rates  
11 in the community where the court sits. The general rule must be applied in this case  
12 which is limited to Arizona. DLA cannot establish that local counsel was unavailable,  
13 unwilling or unable to handle the authorized services provided by DLA that could justify  
14 an exception to this general rule. The excessive requested rates cannot be awarded just  
15 because DLA is the world's largest law firm when there are no relevant national or  
16 international issues.

17 DLA exaggerates both the significance of this bankruptcy case and the  
18 significance of DLA's involvement in this case. True, this is a large case, but no amount  
19 of press clippings from around the country will convert it to a national case. It is Arizona  
20 based, both in its assets and law. DLA was not the Debtor's general bankruptcy counsel,  
21 but was authorized to be employed to provide discrete services to the Debtor in this case.  
22 DLA spent excessive amounts of time reviewing the Debtor's standard loan  
23 documentation for many loans, researching general issues and analyzing loans upon  
24 which it were not employed. Debtor has other special litigation counsel Greenberg  
25 Taurig employed to handle most of the largest loans, and had ordinary course counsel  
26 Gust Rosenfeld to handle collections, foreclosures and guarantor law suits.

27 There is no question that this case generated media attention. The circumstances of  
28 Scott Coles' death, particularly in light of the ongoing financial challenges to the entire

1 financial system of the United States, generated significant media interest. However  
2 media attention does not justify the award of unreasonable and excessive attorney's fees  
3 in a bankruptcy case.

4 The unreasonableness of the fees, whether they were necessary, the lack of benefit  
5 to the estate, the duplication of services when compared to the other professionals used  
6 by Debtor, and the extravagant rates, all dictate that DLA should not be allowed the fees  
7 in the amounts requested. The Objectors request that the Court look at the entire record of  
8 this case when evaluating the reasonableness of the requested fees.

9 The reasonableness of the expenses is also in question. DLA has not itemized its  
10 expenses and has not sustained its burden to show that the expenses were necessary and  
11 reasonable.

12 As for unauthorized work, DLA took on and charged for work it was never  
13 authorized to handle. All such fees should be denied.

14 Duplicative services cannot be approved. DLA has the burden to show either that  
15 its services were not duplicative or that they were reasonable. DLA has not met and  
16 cannot meet its burden.

17 DLA charged additional fees of \$43,242.47 or 140.1 hours after the  
18 Effective Date of June 15, 2009. After that date, DLA was supposed to stand down and  
19 all matters were to be continued. This is what happened by and large. The fees charged  
20 for this time were mostly on the pursuit of fees in the PDG Los Arcos (\$14,778.95 or  
21 44.3 hours) and National Retail (\$12,917.88 or 37.8 hours) matters. DLA also charged  
22 \$9,723.15 (34.1 hours) on preparing its fee application. Under applicable 9<sup>th</sup> Circuit law,  
23 some time for preparation of fee applications is allowable, but not a figure near \$10,000.  
24 The fees are excessive for the benefit obtained, generally unreasonable and subject to  
25 reduction.

26 57. In its Supplement (Docket No. 2023) DLA requests additional fees of  
27 \$43,242.47 and expenses of \$2,999.40 for time spent from June 20 through July 20, 2009.  
28 It complains that Fennemore Craig "waited almost two months after its plan was



1 confirmed to advise DLA Piper it would indeed be substituting in as counsel of record."  
2 Of course the Plan did not become effective until June 15, 2009 and until that Effective  
3 Date ML Manager had no authority to replace DLA and Fennemore Craig was not in a  
4 position to substitute in of record. DLA was directed to seek continuances and standstills  
5 in all matters until the new ML Manager was up and running. By July 20 almost all the  
6 substitution of counsel pleadings were prepared and signed by the new client. There was  
7 no unreasonable delay during this 30 day period. DLA however continued to charge fees.  
8 Most of the fees appear to be in pursuit of their own fee application or in pursuit of the  
9 fees in the PDG Los Arcos and National Retail matters. While some time for a transition  
10 was appropriate, \$43,242.47 is not reasonable and should be reduced.

11 **D. List of Witnesses**

12 1. **DLA's Witnesses**

13 DLA's expected witnesses that it will call are::

14 (a) Mark Nadeau, partner of DLA.

15 (b) Rob Odson, partner of DLA.

16 (c) Richard Feldheim, prior President and Chief Executive Officer of the  
17 Debtor.

18 (d) C. Taylor Ashworth, expert witness

19 DLA's witnesses that it may call are:

20 (e) Christine Zahedi, prior Chief Operating Officer of the Debtor.

21 (f) Joseph Baldino, member of the OIC and a current member of the  
22 Liquidating Trust Board.

23 (g) William Hawkins, member of the unofficial large investor committee and is  
24 a current member of the Board of Managers of ML Manager LLC.

25 (h) Ed McDonough, member of Alvarez & Marsal which acted as financial  
26 advisor to the OIC.

27 (i) Michael Tucker, member of FTI which was retained by the Debtor as  
28 financial advisor.

1 (j) Chris Olson, former member of the Board of Directors of Debtor and was  
2 the CFO for the Debtor.

3 (k) George Everett is a former member of the Board of Directors of Debtor.

4 (l) Carolyn J. Johnsen, counsel to Debtor.

5 (m) Dax Watson, Mack Drucker & Watson, counsel to the non MLTD investors  
6 in the PDG and NRDP litigation matters.

7 DLA's objections to Objectors' witnesses: DLA objects to witnesses not  
8 specifically identified within the time provided by the applicable rules, including Local  
9 Rule 7016-1, and Court Order. Without limiting the foregoing, DLA objects to the use of  
10 the witnesses that were first identified at 4:45 p.m. on Wednesday, November 18, 2009,  
11 Messrs. Olson, O'Brien, and Everette and Mesdames Petruschke and Martini. The  
12 parties identified their respective witnesses when the Joint Pretrial Statement was  
13 originally prepared in August. By substantially changing their witness list and adding  
14 new witnesses on the evening of November 18, 2009, the Objectors have deprived DLA  
15 of a reasonable opportunity to investigate, subpoena or depose these witnesses prior to  
16 hearing.

17 2. **Objectors' Witnesses**

18 (1) Joseph Baldino

19 (2) Nechelle Wimmer

20 (3) Chris Olson

21 (4) Sean O'Brien

22 (5) Sarah Lisa Petruschke

23 (6) Laura Martini

24 (7) George Everette

25 (8) All witnesses listed by DLA.

26 **E. Witness Declarations**

27 1. **DLA Declarations**--DLA offers the following witness declarations  
28 as evidence at the Hearing:

1 (a) Declaration of Christine Zahedi filed August 19, 2009 in this case no. 08-  
2 07465 (Docket No. 2108).

3 (b) Declaration of Richard Feldheim filed August 19, 2009 in this case no. 08-  
4 07465 (Docket No. 2109).

5 (c) Declaration of Michael Tucker filed in this case no. 08-07465 (Docket No.  
6 2138).

7 (d) Declaration of Mark A. Nadeau filed July 27, 2009 in case no. 08-07465  
8 (Docket No. 2016).

9 (e) Declaration of Mark A. Nadeau filed October 23, 2008 in case no. 08-  
10 07465 (Docket No. 865).

11 (e) Declaration of Andrew D. Eskin filed July 27, 2009 in case no. 08-07465  
12 (Docket No. 2017).

13 (f) Declaration of Allison Kierman filed July 27, 2009 in case no. 08-07465  
14 (Docket No. 2018).

15 (g) Declaration of Robert J. Odson filed July 17, 2009 in case no. 08-07465  
16 (Docket No. 1967).

17 (h) Declaration of Jennifer L. Nassiri filed July 17, 2009 in case no. 08-07465  
18 (Docket No. 1968).

19 (i) Declaration of Brendan P. Collins filed July 17, 2009 in case no. 08-07465  
20 (Docket No. 1969).

21 DLA incorporates the entire record before the Court, including any additional  
22 declarations filed on DLA's behalf.

23 DLA is prepared to stipulate to the admissibility of declarations provided that such  
24 a stipulation applies equally to both DLA and the Objectors. If the Objectors will not  
25 stipulate to the admissibility of declarations, DLA objects to the Objectors' use of the  
26 Declaration of Ed McDonough, or any other declarations used by the Objectors, if the  
27 declarant is not available in the Courtroom at the Hearing for cross-examination by DLA.  
28 DLA further objects to the Objectors use of declarations of Ed McDonough, Nechelle

1 Wimmer and Kevin O'Halloran as no copies of these declarations have been provided in  
2 accordance with Local Rule 7016-1(a). DLA also objects to the use of declarations of  
3 Ms. Wimmer and Mr. O'Halloran as they were not specifically identified within the time  
4 provided by Local Rule 7016-1, and were identified for the first time on Wednesday,  
5 November 18, 2009. At 4:45 p.m.

6 **2. Objectors' Declarations**—The Objectors do not anticipate using  
7 any Declarations at the Hearing other than the Declarations of Ed McDonough, Nechelle  
8 Wimmer and Kevin O'Halloran, but reserve the right to use any of the DLA Declarations  
9 listed above. However, the Objectors also object to DLA using any of the Declarations  
10 listed above if the Declarant is not available in the Courtroom at the Hearing for cross-  
11 examination by the Objectors. The Objectors also may use Declarations previously used  
12 in the Bankruptcy case for impeachment purposes without listing them in this Joint  
13 Pretrial Statement.

14 **F. List of Exhibits**

15 DLA has delivered copies of its exhibits 1-54 to The Objectors. All Parties  
16 reserve all objections to the various exhibits listed:

17 **1. DLA's List of Exhibits**

18 DLA intends to introduce the following exhibits at the Hearing.

- 19 1. DLA's Fee Application.
- 20 2. DLA's fee statements from October 2008 through April 30,  
21 2009.
- 22 3. Fee Application Summary in Support of Fee Application.
- 23 4. Supplement to Fee Application.
- 24 5. Order dated July 2, 2009 filed in *Liss, et al. v. Excel*  
25 *Transportation Services, Inc., et al.*, Case No. CV-04-2001-PHX-SMM, United States  
26 District Court for the District of Arizona.

27 **6.** Transcript of Record taken April 30, 2009, *In re Riverfront*  
28 *Commons, LLC*, 2:09-BK-00122-RTBP.

1                   7.       Documents and other papers on file in every case in which  
2 DLA represented the Debtor in its Bankruptcy Case, including the multiple adversary  
3 proceedings in NRDP, PDG, Foothills, Dragoo, Cottonwood, and Riverfront Commons  
4 summarized by way of court dockets in those cases.

5                   8.       Article dated June 26, 2008, from Bloomberg.com entitled  
6 *Mortgages Ltd. Files Chapter 11 After CEO Commits Suicide.*

7                   9.       Article dated June 26, 2008, from Daily Deal/The Deal  
8 entitled *Credit Crunch Hits Another Lender.*

9                   10.      Article dated July 16, 2008, from The Wall Street Journal  
10 entitled *Hard Money: Real-Estate Financier's Death Hints At Trouble for Lenders.*

11                  11.      Article dated July 17, 2008, from The Times (London)  
12 entitled *Suicide Suspected in Death of Property Loans Chief.*

13                  12.      Article dated July 17, 2008, from The Wall Street Journal  
14 (Europe) entitled *Real-Estate Financier's Death Hints at Trouble for Lenders --- Mr.*  
15 *Coles' Firm Draws Attention to Condition of Commercial Market.*

16                  13.      Article dated July 24, 2008, from The Wall Street Journal  
17 entitled *Coles' Death Ruled a Suicide.*

18                  14.      Article dated August 6, 2008, from Law 360 entitled  
19 *Conversion Fight Over Mortgages Ltd. Rages On.*

20                  15.      Article dated August 7, 2008, from Daily Deal/The Deal  
21 entitled *Mortgages Ltd. Gets New DIP.*

22                  16.      Article dated August 11, 2008, from Daily Deal/The Deal  
23 entitled *Mortgages Ltd. Wins DIP.*

24                  17.      Article dated August 26, 2008, from Source Media, Inc.  
25 entitled *Feldheim Joins Mtgs. Ltd.*

26                  18.      Article dated September 23, 2008, from Law 360 entitled  
27 *Mortgages Ltd. Investors Ask to Form Committee.*

28

- 1                   19.     Article dated December 6, 2008, from Wall Street Journal  
2 entitled *Tempe Land Files for Chapter 11*.
- 3                   20.     Article dated December 6, 2008, from Associated Press  
4 entitled *Condo Developer Files for Chapter 11*.
- 5                   21.     Article dated December 11, 2008, from Daily Deal/The Deal  
6 entitled *Tempe Land Creditor Files for Relief*.
- 7                   22.     Article dated December 12, 2008, from USA Today entitled  
8 *Timing Proves Bad For Phoenix; Big Investments Made Just Before Economic Decline*.
- 9                   23.     Article dated January 7, 2009, from Dow Jones Corporate  
10 Filings Alert entitled *Mortgages Ltd Investors Want Permission to File Rival Plan*.
- 11                  24.     Article dated January 26, 2009, from Business Wire, Inc.  
12 entitled *Reeder, Lu & Green, LLP Launch New Law Firm; New Firm, Same Winning*  
13 *Team Offers Broad Based, Complex Commercial Litigation Expertise*.
- 14                  25.     Article dated January 29, 2009, from Daily Deal/The Deal  
15 entitled *Mortgages Ltd. To Liquidate*.
- 16                  26.     Article dated March 3, 2009, from Law 360 entitled  
17 *Investors' Plan Draws Ire In Mortgages Ltd. Ch. 11*.
- 18                  27.     Article dated March 30, 2009, from Bloomberg.com entitled  
19 *Mortgages Ltd. Plan Faces Motion for Conversion to Chapter 7*.
- 20                  28.     Article dated April 7, 2009, from Daily Deal/The Deal  
21 entitled *Mortgages Moves to Confirmation*.
- 22                  29.     Article dated April 20, 2009, from Daily Deal/The Deal  
23 entitled *Tempe Land Files Plan*.
- 24                  30.     Article dated May 4, 2009, from Law 360 entitled *Creditors*  
25 *Balk At Mortgages Ltd. Ch. 11 Plan*.
- 26                  31.     Article dated May 6, 2009, from Law 360 entitled *Mortgages*  
27 *Ltd. Asks to Sell Land to Pay Off Creditor*.
- 28

1                   32. Article dated May 12, 2009, from Law 360 entitled *Creditors*  
2 *Object to Mortgages Ltd.'s Land Sale.*

3                   33. Article dated May 13, 2009, from Law 360 entitled  
4 *Mortgages Ltd., Investors Offer Up 3rd Ch. 11 Plan.*

5                   34. Article dated May 21, 2009, from Daily Deal/The Deal  
6 entitled *Mortgages Ltd. Wins Plan Confirmation.*

7                   35. Article dated July 5, 2009, from The New York Times  
8 entitled *Ruins of the Second Gilded Age.*

9                   36. Article dated July 28, 2009, from Market Watch from Dow  
10 Jones entitled *SEC Sues Over Alleged \$197 Million Mortgage Fraud.*

11                   37. Article dated July 29, 2009, from The Wall Street Journal  
12 entitled *SEC Sues Four Over Real-Estate Deal --- The Agency Accuses Phoenix Firm's*  
13 *Officers of Fraud in Fund Raising.*

14                   38. Article dated July 29, 2009, from M2 Presswire entitled *US*  
15 *SEC: SEC Charges Four Arizona-Based Promoters in \$197 Million Mortgage Lending*  
16 *Scheme.*

17                   39. Debtors Schedules and Statement of Financial Affairs.

18                   40. Various e-mails exchanged between DLA and OIC or others  
19 concerning requests for meetings and efforts to resolve fee disputes.

20                   41. Various phone records illustrating calls between DLA and  
21 Joseph Baldino regarding the hiring of DLA.

22                   42. All motions, oppositions and replies filed by DLA in the PDG  
23 (2:08-ap-00781-RJH and 2:08-ap-00831-RJH) and NRDP (2:08-ap-00780-RJH and 08-  
24 ap-00832-RJH) matters (including the draft motion to dismiss sent to Mack Drucker &  
25 Watson). (See, Exhibit 7)

26                   43. Joinders to DLA's multiple pleadings filed by Mack Drucker  
27 & Watson in the PDG and NRDP matters (See Exhibit 7)

28                   44. Employment Application filed by Fennemore Craig PC.

- 1                                   45.    Employment Application filed by Jennings Strouss & Salmon  
2 PLC.
- 3                                   46.    Employment Application filed by Greenberg Traurig LLP.
- 4                                   47.    Chart illustrating breakdown of fees between the Dragoo  
5 adversary proceeding,. 2:08-ap-00881 RJH and Foothills Chapter 11 case, 2-09-bk-  
6 02482-RJH.
- 7                                   48.    Chart illustrating breakdown of fees between Cottonwood  
8 adversary proceeding, 2:08-ap-00906-RTB and Riverfront Chapter 11 case, 2-09-bk-  
9 00122-RTB.
- 10                                  49.    Chart illustrating various deadlines in the PDG, NRDP, and  
11 Foothills matters requiring DLA to continue to perform work during the Supplemental  
12 Fee Period of June 20, 2009 through July 20, 2009.
- 13                                  50.    Summary chart of DLA write-offs.
- 14                                  51.    Debtors' Application for an Order Authorizing Employment  
15 and Retention of DLA Piper LLP (US) as Special Real Estate and Litigation Counsel for  
16 Debtor *Nunc Pro Tunc* to October 8, 2008
- 17                                  52.    Affidavit of Mark A. Nadeau in Support of Debtor's  
18 Application for an Order Authorizing Retention of DLA Piper LLP (US) as Special Real  
19 Estate and Litigation Counsel for Debtor *Nunc Pro Tunc* to October 8, 2008
- 20                                  53.    Order Authorizing Employment and Retention of DLA Piper  
21 LLP (US) as Special Real Estate and Litigation Counsel for Debtor *Nunc Pro Tunc* to  
22 October 8, 2008
- 23                                  54.    November 4, 2009 correspondence from Barry R. Sadners to  
24 Michael O'Mara et al.
- 25                                  55.    All exhibits identified by the Objectors.
- 26                                  56.    All impeachment exhibits.
- 27 DLA Objections to Objectors' List of Exhibits: In addition to the general reservation of  
28 objections set forth above, DLA specifically preserves objections based upon the



1 Objectors' failure to comply with Local Rule 7016-1(a)(9) by exchanging or making  
2 available its exhibits. DLA provided copies of its exhibits and declarations to Objectors  
3 in advance of the deadline for the filing of the joint pretrial statement. As of 8:30 a.m. on  
4 November 23, 2009, Objectors had not provided any copies of their exhibits to DLA.  
5 Moreover, a number of Objectors' exhibits are described generically and do not  
6 reasonably apprise DLA of the exhibits.

7           2.     **Objectors' List of Exhibits**

- 8           1.     All exhibits listed and used or identified by DLA.
- 9           2.     Debtor's Schedule of Assets and Liabilities and Statement of  
10          Affairs and Monthly Operating Reports.
- 11          3.     List of Borrower Loans listing amounts and grouped by related  
12          Borrower entities.
- 13          4.     Copies of various Borrower Promissory Notes or Loan  
14          Documents.
- 15          5.     Fee Application and Billing Statements of Debtor's Ordinary  
16          Course Counsel Gust Rosenfeld PLC ("Gust Rosenfeld"), including fee statements,  
17          summaries and supplemental fee applications.
- 18          6.     Summary comparisons of DLA and Gust Rosenfeld rates,  
19          attorney years in practice, legal services, fees and matters handled, and results achieved.
- 20          7.     Fee Application of the Debtor's bankruptcy counsel Jennings  
21          Strauss & Salmon PLC ("JSS"), including fee statements, summaries and supplemental  
22          fee applications.
- 23          8.     Fee Application of the Debtor's special counsel Greenberg  
24          Traurig LLP, including fee statements, summaries and supplemental fee applications.
- 25          9.     Fee Application of the Debtor's financial advisor FTI Consulting,  
26          including fee statements, summaries and supplemental fee applications.
- 27          10.    Fee Application of the OIC counsel, Fennemore Craig PC,  
28          including fee statements, summaries and supplemental fee applications.

1           11. Fee Application of the Unsecured Creditors Committee's  
2 counsel, Nussbaum & Gillis PC, including fee statements, summaries and supplemental  
3 fee applications.

4           12. Summary comparison of the various fee applications of the  
5 Debtor's professionals and the overlap and duplication of services.

6           13. Fee Application of the Mack Drucker & Watson in the  
7 Bankruptcy case and Requests for fees in the National Retail adversary proceeding 2:08-  
8 ap-00780-RJH and the PDG Los Arcos adversary proceeding 2:08-ap-00781-RJH and the  
9 Court's order awarding fees, including fee statements, summaries and supplemental fee  
10 applications.

11           14. Fee applications filed by debtor's counsel Polsinelli Shugart PC  
12 in the Riverfront bankruptcy case 2:09-bk-00122 RTBP and the Foothills bankruptcy  
13 proceeding 2:09-bk-002482-RJH.

14           15. Various Minute Entries and transcripts from the Riverfront  
15 bankruptcy proceeding, including minute entries, memorandum decisions and pleadings,  
16 including and without limitation, affidavits submitted by DLA.

17           16. Application to Employ DLA (Docket No. 864) and Nadeau  
18 Declaration and the Engagement Letter (Docket No. 865).

19           17. Various emails to and from DLA and counsel for OIC about  
20 discussions and proposals.

21           18. Various emails to and from DLA and counsel for ML Manager or  
22 Liquidating Trust for turnover or delivery of files and substitution of counsel and copies  
23 of various substitutions of counsel.

24           19. Various emails to and from DLA, the Debtor, its counsel and  
25 counsel for the OIC concerning communications relevant to the issues raised in this  
26 matter. (The applicable privilege is waived as to the emails described in paragraphs 17 –  
27 19 on a limited basis and only as to the DLA fee request).

28           20. All impeachment exhibits.

1 Respectfully submitted this 24<sup>th</sup> day of November, 2009.

2  
3 WN/4239

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