

1 FENNEMORE CRAIG, P.C.  
Cathy L. Reece (005932)  
2 Keith L. Hendricks (012750)  
3003 N. Central Ave., Suite 2600  
3 Phoenix, Arizona 85012  
Telephone: (602) 916-5343  
4 Facsimile: (602) 916-5543  
Email: creece@fclaw.com

5 Attorneys for ML Manager LLC

6 IN THE UNITED STATES BANKRUPTCY COURT  
7 FOR THE DISTRICT OF ARIZONA

8 In re

9 MORTGAGES LTD.,

10 Debtor.

Chapter 11

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

11 **ML MANAGER'S EMERGENCY MOTION**  
12 **FOR ORDER CONTINUING DEADLINES**  
13 **AND HEARING IN FTI FEE APPLICATION**

**Hearing Date:** December 16, 2009

**Hearing Time:** 9:00 a.m.

14 ML Manager LLC ("ML Manager") requests that the Court enter an order  
15 continuing the hearing date and deadlines for the consideration of FTI's Fee Application.  
16 Two events have occurred that necessitates this request. First, ML Manager just learned  
17 that Ed McDonough will be unable to testify as an expert as to the reasonableness of FTI's  
18 fees. Apparently, Mr. McDonough's firm will not allow Mr. McDonough to act as an  
19 expert in this regard. As such, ML Manager will need to retain a new expert who will  
20 need some time to come up to speed. Second, the deadline for filing the Joint Pretrial  
21 Statement is December 2, 2009. FTI has previously indicated that it is unwilling to  
22 stipulate to the continuance of that deadline. Moreover, FTI was to provide the initial  
23 draft of the Joint Pretrial. Attached as Exhibit A is the draft provided by FTI.  
24 Significantly, FTI failed to and has refused to provide its position as to most of the issues  
25 that it identifies and it has failed and refused to provide the exhibits it intends to produce.  
26 Moreover, FTI has not yet produced its working file and work product because the

1 deadline for production of the file pursuant to the discovery request has not yet come.  
2 Although the deadline for producing the file pursuant to the discovery request has not yet  
3 past, ML Manager will not be able to list exhibits from the file until at least December 8.

4 For these reasons, ML Manager respectfully requests that the deadlines be  
5 continued 30 days. This will allow ML Manager to retain a new expert, review the  
6 documents in FTI's file, and participate in preparing a meaningful Joint Pretrial  
7 Statement.

8 DATED: November 30, 2009

9 FENNEMORE CRAIG, P.C.

10 By /s/ Cathy L. Reece  
11 Cathy L. Reece  
12 Keith L. Hendricks  
13 Attorneys for ML Manager LLC

14 COPY of the foregoing emailed  
15 to the parties on the Service List.

16 /s/ Susan Stanczak-Ingram

17 2261383/25831.001

# Exhibit A

1 **SCHIAN WALKER, P.L.C.**

2 3550 NORTH CENTRAL AVENUE, #1700  
3 PHOENIX, ARIZONA 85012-2115  
4 TELEPHONE: (602) 277-1501  
5 FACSIMILE: (602) 297-9633  
6 E-MAIL: ecfdoCKET@swazlaw.com

7 **DALE C. SCHIAN, #010445**  
8 **MICHAEL R. WALKER, #003484**  
9 Attorneys for FTI Consulting, Inc.

10 **SACKS TIERNEY, P.A.**

11 4250 NORTH DRINKWATER BOULEVARD, 4TH FLOOR  
12 SCOTTSDALE, ARIZONA 85251-3693  
13 TELEPHONE: (480) 425-2600  
14 FACSIMILE: (480) 425-4925  
15 E-MAIL: Sharon.shively@sackstierney.com

16 **SHARON B. SHIVELY, #009292**  
17 Attorneys for Kevin T. O'Halloran, Trustee of  
18 the Liquidating Trust of Mortgages Ltd.

19 **FENNEMORE CRAIG, P.C.**

20 3003 NORTH CENTRAL AVENUE, #2600  
21 PHOENIX, ARIZONA 85012  
22 TELEPHONE: (602) 916-5343  
23 FACSIMILE: (602) 916-5543  
24 E-MAIL: creece@fclaw.com

25 **CATHY L. REECE, #005932**  
26 **KEITH L. HENDRICKS, #012750**  
Attorneys for ML Manager, LLC

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

ONE EAST CAMELBACK ROAD, #500  
PHOENIX, ARIZONA 85012  
TELEPHONE: (602) 200-7900  
FACSIMILE: (602) 200-7910  
E-MAIL: wsj@mjlegal.com

**WILLIAM SCOTT JENKINS, #005896**  
Attorneys for Kevin T. O'Halloran, Trustee of the  
Liquidating Trust of Mortgages Ltd.

**STRADLEY, RONON, STEVENS & YOUNG, LLP**

2600 ONE COMMERCE SQUARE  
PHILADELPHIA, PENNSYLVANIA 19103  
TELEPHONE: (215) 564-8000  
FACSIMILE: (215) 564-8120  
E-MAIL: mdorval@stradley.com

**MARK J. DORVAL**  
Attorneys for Kevin T. O'Halloran, Trustee of  
the Liquidating Trust of Mortgages Ltd.

**DECONCINI MCDONALD YETWIN & LACY, P.C.**

6909 EAST MAIN STREET  
SCOTTSDALE, ARIZONA 85251  
TELEPHONE: (480) 398-3100  
FACSIMILE: (480) 398-3101  
E-MAIL: tfreeman@lawdmyl.com

**SHELTON L. FREEMAN, #009687**  
Attorneys for G. Grant Lyon, Chapter 11 Trustee  
for Radical Bunny, L.L.C.

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF ARIZONA**

In re:

MORTGAGES LTD.,

Debtor.

No. 2-08-bk-07465-RJH

CHAPTER 11

**JOINT PRETRIAL STATEMENT**

DATE: December 16, 2009

TIME: 9:00 a.m.

LOCATION: 230 North First Avenue  
Phoenix, Arizona  
Courtroom 603, 6th Floor

This Joint Pretrial Statement is submitted to the Court by FTI Consulting, Inc. ("FTI"), as financial advisors to Mortgages Ltd., debtor and debtor-in-possession ("the Debtor"), on the one hand, and Kevin T. O'Halloran, trustee of the liquidating trust of Mortgages Ltd. ("Liquidating Trust"), ML

1 Manager, LLC ("ML Manager"), and G. Grant Lyon as the Chapter 11 Trustee of Radical Bunny, L.L.C.  
2 ("Lyon").

3 **A. NATURE OF THE CASE**

4 The issue to be tried is the request of FTI for approval of its Fee Application (defined  
5 below).

6 **B. UNCONTESTED FACTS DEEMED MATERIAL**

7 1. On June 20, 2008, Central and Monroe, LLC, Osborn III Partners, LLC and KGM  
8 Builders, Inc. filed an Involuntary Petition against the Debtor under chapter 7 of the United States  
9 Bankruptcy Code.

10 2. On June 23, 2008, the Debtor filed a motion to convert the Involuntary 7 case to a  
11 case under Chapter 11.

12 3. On June 24, 2008, the Court entered the Order converting the case to a case under  
13 Chapter 11.

14 4. On October 15, 2008, the Debtor filed its *Application Pursuant to Fed. R. Bankr.*  
15 *P. 2014(a) for Order Under Section 327(a) of the Bankruptcy Code Authorizing the Employment and*  
16 *Retention of FTI Consulting, Inc. as Financial Advisor to the Debtor and Debtor in Possession* (the  
17 "Application") [DE 750].

18 5. The Application was approved by the Court *nunc pro tunc* to October 7, 2008  
19 [DE 793].

20 6. FTI's rates, which were subject to periodic adjustment, were disclosed and  
21 approved by the Court.

22 7. On May 20, 2009, the Bankruptcy Court confirmed the OIC's First Amended Plan  
23 and Disclosure Statement.

24 8. On June 8, 2009, Jennings Strouss & Salmon, P.L.S. ("JSS") provided a  
25 Mortgages Ltd. Transition Memo, prepared by JSS and FTI, to Fennemore Craig, P.C..

26 9. On June 15, 2009, the OIC's First Amended Plan and Disclosure Statement

1 became effective.

2 10. On June 17, 2009, a news letter was sent to Mortgages Ltd. Investors stating that  
3 due to the competition of potential exit financiers, the interest rate change, among other items, will save  
4 the investors an estimated \$2.5 million.

5 11. FTI filed its *First and Final Fee Application of FTI Consulting, Inc. as Financial*  
6 *Advisors to the Debtor and Debtor in Possession for Allowance of Compensation and Reimbursement of*  
7 *Expenses* (the "Fee Application") [DE 1896] on July 7, 2009, which covered the period from October 7,  
8 2008 through July 6, 2009.

9 12. On July 21, 2009, ML Manager filed its objection to FTI's fee application [DE  
10 1993].

11 13. On July 21, 2009, the Liquidating Trust filed its objection to FTI's fee application  
12 [DE 1996].

13 14. On July 22, 2009, Lyon filed an untimely joinder in ML Manager's objection to  
14 FTI's fee application [DE 2002].

15 15. FTI received an interim payment of \$400,000 on September 28, 2009.

16 16. Pursuant to U.S. Trustee Guidelines, FTI established different project billing  
17 categories. FTI provided forty-one task codes to ensure there was a detailed breakdown of the services  
18 performed.

19 17. FTI documented the hours spent on the case and the hourly rate involved.

20 18. Approximately 3.6% of FTI's fees were incurred in preparing its Fee Application.

21 19. The Debtor maintained a cash flow budget and professional fee schedule. The  
22 professional fee schedule prepared on April 13, 2009 estimated FTI's professional fees through June  
23 2009 to be \$2,295,000.

24 20. Both the Debtor and OIC worked on plans and attempted to agree on a common  
25 plan. When that failed and exclusivity terminated, each worked on competing plans. Both plans faced  
26 substantial opposition. Negotiations and litigation over substantial legal and factual issues involving

1 multiple parties continued among the Debtor, the OIC and other parties-in-interest concerning both plans  
2 until near the end of the confirmation hearing on the OIC plan.

3 21. After confirmation of the OIC plan, FTI and the Debtor's counsel coordinated  
4 contact with lenders offering better terms than the exit financier proposed by the OIC. It was not until  
5 after competing financing terms were proposed that the OIC's exit lender improved its terms including  
6 reduction of the interest rate from 20% to 17.5% and lowered the origination fee and other charges.

7 22. Prior to confirmation of the OIC plan, FTI located a lender to provide short-term  
8 additional financing until the exit financing closed. This financing proposed was noticed for a hearing  
9 by Debtor's counsel in order to have back up financing in place.

10 23. With the assistance of Debtor, FTI investigated the transactions between the  
11 Debtor, S M Coles, L.L.C. and SMC Revocable Trust.

12 24. The results of FTI's analysis formed the basis of the Debtor's claim in the amount  
13 of \$31,958,767 in the S M Coles, L.L.C. estate. The debtor ultimately settled with S M Coles, L.L.C.  
14 pursuant to an agreement approved by this Court.

15  
16 **D. CONTESTED ISSUES OF FACT AND LAW TO BE TRIED IN THIS MATTER**

17  
18 **1. Has FTI presented a prima facie case for its requested fees?**

19 **FTI's position:**

20 ◇

21 **ML Manager's position:**

22 ◇

23 **Liquidating Trust's position:**

24 ◇

25 **Lyon's position:**

26 ◇

1           2.     Were the services of FTI performed within the scope of its employment and  
2 authorized by the client?

3           FTI's position:

4           ◇

5           ML Manager's position:

6           ◇

7           Liquidating Trust's position:

8           ◇

9           Lyon's position:

10          ◇

11           3.     Were the services FTI performed were necessary to the administration of, or  
12 beneficial at the time at which the service was rendered toward completion of the case?

13          FTI's position:

14          ◇

15          ML Manager's position:

16          ◇

17          Liquidating Trust's position:

18          ◇

19          Lyon's position:

20          ◇

21           4.     Did the services by FTI duplicate services performed by other professionals and, if  
22 so, should FTI' fee application be reduced as a result of the duplication?

23          FTI's position:

24          ◇

25          ML Manager's position:

26          ◇



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**Lyon's position:**

◇

5. Is FTI entitled to be compensated for the time spent in preparation of its final fee application?

**FTI's position:**

◇

**ML Manger's position:**

◇

**Liquidating Trust's position:**

◇

**Lyon's position:**

◇

6. Is FTI entitled to be compensated for the time spent and expenses incurred in responding to objections and obtaining approval of FTI's final fee application?

**FTI's position:**

◇

**ML Manger's position:**

◇

**Liquidating Trust's position:**

◇

**Lyon's position:**

◇

7. Is FTI entitled to adjust its 2008 hourly rates for work performed in 2009?

**FTI's position:**

◇

**ML Manager's position:**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

◇

**Lyon's position:**

◇

**8. Is FTI entitled to be compensated for the paraprofessional time?**

**FTI's position:**

◇

**ML Manager's position:**

◇

**Liquidating Trust's position:**

◇

**Lyon's position:**

◇

**9. Is FTI entitled to be compensated for transition work?**

**FTI's position:**

◇

**ML Manager's position:**

◇

**Liquidating Trust's position:**

◇

**Lyon's position:**

◇

**10. Is Radical Bunny, L.L.C. entitled to participate?**

◇

**FTI's position:**

◇

**ML Manager's position:**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

◇

**Liquidating Trust's position:**

◇

**Lyon's position:**

◇

**E. LIST OF WITNESSES**

**1. FTI's Witnesses:**

- a) Michael Tucker
- b) Chris Olson by declaration filed September 16, 2009 [DE 2181].
- c) Christine Zahedi by declaration filed September 16, 2009 [DE 2181].

**2. ML Manager's Witnesses:**

- a) Kevin O'Halloran
- b) Nechelle Wimmer
- c) Edward McDonough

**3. Liquidating Trust's Witnesses:**

None.

**4. Lyon's Witnesses:**

None.

**F. LIST OF EXHIBITS**

**1. FTI's Exhibits:**

- a) ◇

**2. ML Manager's Exhibits:**

- a) Fee application of Jennings Strouss.
- b) Fee application of DLA Piper.
- c) Fee application of FTI.

**3. Liquidating Trust's Exhibits:**

1 None.

2 **4. Lyon's Exhibits:**

- 3 a) Fee application of FTI.  
4 b) Fee application of Jennings Strouss.  
5 c) ML Manager's objection to the fee application of FTI.  
6 d) Liquidating Trust's objection to the fee application of FTI.

7 **G. ESTIMATED LENGTH OF TRIAL**

8 The parties estimate that the trial will require one judicial day.

9 DATED this \_\_\_\_\_ day of November, 2009.

10 SCHIAN WALKER, P.L.C.

11  
12 By \_\_\_\_\_  
13 Dale C. Schian  
14 Michael R. Walker  
15 Attorneys for FTI Consulting, Inc.

16 MYERS & JENKINS, P.C.

17 By \_\_\_\_\_  
18 William Scott Jenkins  
19 Attorneys for Kevin T. O'Halloran, Trustee  
20 of the Liquidating Trust of Mortgages Ltd.

21 SACKS TIERNEY, P.A..

22 By \_\_\_\_\_  
23 Sharon B. Shively  
24 Attorneys for Kevin T. O'Halloran, Trustee  
25 of the Liquidating Trust of Mortgages Ltd.

26 STRADLEY, RONON,  
STEVENS & YOUNG, LLP

By \_\_\_\_\_  
Mark J. Dorval

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Attorneys for Kevin T. O'Halloran, Trustee  
of the Liquidating Trust of Mortgages Ltd.

FENNEMORE CRAIG, P.C.

By \_\_\_\_\_  
Cathy L. Reece  
Keith L. Hendricks  
Attorneys for ML Manager, LLC

DECONCINI MCDONALD  
YETWIN & LACY, P.C.

By \_\_\_\_\_  
Shelton L. Freeman  
Attorneys for G. Grant Lyon, Chapter 11  
Trustee for Radical Bunny, LLC

132010v3