

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

3550 NORTH CENTRAL AVENUE, #1700

2 PHOENIX, ARIZONA 85012-2115

TELEPHONE: (602) 277-1501

3 FACSIMILE: (602) 297-9633

E-MAIL: ecfdocket@swazlaw.com

4 DALE C. SCHIAN, #010445

MICHAEL R. WALKER, #003484

Attorneys for FTI Consulting, Inc.

6 **UNITED STATES BANKRUPTCY COURT**

7 **DISTRICT OF ARIZONA**

8 In re:

9 MORTGAGES LTD.,

Debtor.

No. 2-08-bk-07465-RJH

CHAPTER 11

**CERTIFICATION OF COUNSEL
PURSUANT TO LOCAL RULE 9013-1(e)**

DATE: December 16, 2009

TIME: 9:00 a.m.

LOCATION: 230 North First Avenue

Phoenix, Arizona

Courtroom 603, 6th Floor

15 Pursuant to Local Rule Bankruptcy Rule 9013-1(e), the undersigned certifies that the
16 following good faith efforts have been made in an attempt to obtain timely disclosure of the witnesses,
17 exhibits, and expert opinions that the Objectors seek to offer at the trial scheduled in this matter on
18 December 16, 2009.

19 1. On September 17, 2009, the Court conducted an initial hearing with respect to the
20 FTI final fee application and set a final evidentiary hearing for December 16, 2009.

21 2. On September 22, 2009, FTI served three interrogatories on each of the Objectors.
22 The interrogatories, together with the Objectors' responses, are attached hereto as **Exhibits A, B, and C**,
23 but requested only basic information as to the identification of exhibits, identification of witnesses and
24 the substances of their expected testimony, and identification of any experts and their opinions.

25 3. Responses to the interrogatories were due on October 22, 2009. The Liquidating
26 Trust submitted an undated, unverified response indicating that it "has not yet determined which

1 documents [witnesses, expert witnesses, if any] it intends to call at a hearing or trial on the Application."

2 *See generally* **Exhibit A** hereto.

3 4. No response was received either from the Liquidating Trust or from Radical
4 Bunny. Therefore, on October 26, 2009, a letter was sent to counsel for both parties reminding them of
5 their failure to comply with their discovery obligations and demanding answers to the interrogatories by
6 October 30, 2009. Copies of that correspondence are attached hereto as **Exhibits D and E**.

7 5. Also on October 26, 2009, a letter was sent to counsel for the Liquidating Trust, a
8 true and correct copy of which is attached hereto as **Exhibit F** indicating that:

9 For all intents and purposes, you failed to respond. If you do not have
10 witnesses and do not intend to introduce any documentary evidence, then
11 simply say so. If you have evidence and witnesses, it must be disclosed
12 now, *not when we prepare the pre-trial statement*. If what you intend to
13 offer are only written objections, then please state so.

14 Therefore, if you intend to introduce evidence or call witnesses, then
15 answer the interrogatories no later than Friday, October 30, 2009. In the
16 event we do not receive them by that time, we will request the Court to
17 prevent you from calling any witnesses and introducing any exhibits at the
18 trial on this matter that were not identified in response to discovery.

15 (Emphasis added.)

16 6. No response was received from the Liquidating Trust either by October 30, 2009
17 or subsequently.

18 7. On October 30, 2009, ML Manager finally responded to the interrogatories and
19 identified as exhibits "[a]ll pleadings and documents filed in the Administrative Bankruptcy case as well
20 as all Adversaries" and the "Fee applications of Jennings Strouss, DLA Piper and FTI." It also identified
21 three witnesses: (1) Nechelle Wimmer, (2) Kevin O'Halloran, and (3) Edward McDonough. ML
22 Manager further indicated that they had "not yet determined whether expert witness testimony is
23 relevant to the issues involving FTI's Fee Application. ML Manager will supplement this response as
24 further determinations are made in accordance with Rule 26(e) Federal Rules of Civil Procedure.
25 Notwithstanding the foregoing, ML Manager discloses that it may call the following individual as an
26 expert witness." It then identified Edward McDonough. *See generally* Exhibit B.

1 8. Radical Bunny also responded on October 30, 2009. Radical Bunny's response
2 essentially stated that it did not know which witnesses, exhibits, or experts it may call; however, it
3 indicated that it may utilize the objections to the FTI fee application as an exhibit and might call the
4 same witnesses identified by the other objecting parties. *See generally* Exhibit C.

5 9. On November 5, 2009, notices of deposition were sent with respect to the three
6 witnesses identified by ML Manager, together with a letter, a true and correct copy of which is attached
7 hereto as **Exhibit G** indicating that the dates and times were flexible as long as the depositions could be
8 concluded prior to the Thanksgiving holiday. The November 5 correspondence also requested that any
9 expert and opinions to be rendered by Mr. Mc Donough be disclosed not later than November 13, 2009,
10 and informed ML Manager that identifying as an "exhibit" any pleadings filed in these proceedings or
11 any of the related adversaries was inadequate to permit FTI to identify what ML Manager intended to
12 offer as an exhibit.

13 10. Also on November 5, 2009, a similar letter, **Exhibit H** hereto, was sent to counsel
14 for Radical Bunny indicating that their identification of exhibits was inadequate and that Radical Bunny
15 also needed to identified the substance of the testimony for any witness it intended to call and provide
16 expert disclosures if it intended to solicit opinion testimony from Mr. Mc Donough. Once again, a
17 response was requested by Friday, November 13, 2009.

18 11. Both Exhibit G and H also requested that the interrogatory responses be verified.

19 12. *To date, no supplementation or verification of the discovery responses has been*
20 *received from any of the Objectors.*

21 13. The undersigned and counsel for ML Manager have had extensive and lengthy
22 discussions and correspondence concerning FTI's request for timely identification of witnesses and
23 exhibits.

24 14. On Friday, November 13, 2009, counsel for FTI and counsel for ML Manager
25 spoke from approximately 5:00 p.m. to 6:00 p.m. in an attempt to resolve these and other pretrial issues.
26 As a result, on Monday, November 16, 2009, counsel for ML Manager sent the correspondence which is

1 attached hereto as **Exhibit I**. On November 17, the undersigned responded via the correspondence that
2 is attached hereto as **Exhibit J**, which at page 3 indicated that the time for the objecting parties to
3 identify witnesses and exhibits had passed and that FTI was willing to accommodate the objecting
4 parties' scheduling difficulties provided "we are not going to be presented with additional late identified
5 witnesses or expert testimony."

6 15. Thereafter, counsel for ML Manager responded and summarized the dispute that
7 the parties have been unable to resolve as "I understand that you are going to object to additional
8 witnesses being listed in the joint pretrial. We will have to agree to disagree on that." See **Exhibit K**
9 which is attached hereto and incorporated herein by this reference.

10 16. At 11:11 a.m. on Wednesday, December 2, 2009, the day the joint pretrial was
11 due, the undersigned first received the comments of ML Manager with respect to their input on the
12 proposed joint pretrial statement. A true and correct copy of their input is attached hereto as **Exhibit L**
13 and incorporated herein by this reference.

14 17. In their proposed additions to the joint pretrial statement, ML Manager purports to
15 identify six additional witnesses, indicates that one of their previously identified fact witnesses (Kevin
16 O'Halloran) may seek to offer opinion testimony, and includes four generic designations (*e.g.*, a
17 representative of Rev Op Investors, any witness identified during discovery or depositions).

18 18. On December 2, 2009, ML Manager also purports to identify thirty-two exhibits,
19 only three of which had previously been identified, but even as to those exhibits, ML Manager seeks to
20 include "fee statements, summaries, and supplemental fee applications."

21 19. No copies of the documents first identified on December 2 were provided with the
22 draft of the joint pretrial statement, and many of the designations are generic and not susceptible of
23 identification in a way that permits their identification. These include, for example, "any and all
24 documents produced during discovery," "spreadsheets prepared by the Debtor," and "e-mails between
25 FTI, counsel for the Debtor, the Debtor and other parties to the bankruptcy."

26 ///

1 20. The undersigned certifies that after personal consultation and sincere efforts to do
2 so, the parties have been unable to resolve the issue of the Objectors' failure to timely identify their
3 witnesses and exhibits in response to the discovery requests propounded upon them by FTI.

4 DATED this 3rd day of December, 2009.

5 SCHIAN WALKER, P.L.C.

6
7 By /s/ DALE C. SCHIAN, #010445
8 Dale C. Schian
9 Michael R. Walker
 Attorneys for FTI Consulting, Inc.

10 COPY of the foregoing
11 e-mailed this 3rd day
 of December, 2009, to:

12 Cathy L. Reece, Esq.
13 Keith Hendricks, Esq.
14 Gerald L. Shelley, Esq.
15 Fennemore Craig, P.C.
16 3003 North Central Avenue, Suite 2600
 Phoenix, Arizona 85012
17 Attorneys for ML Manager, LLC
 creece@fclaw.com
 khendric@fclaw.com
 gshelley@fclaw.com

18 Shelton L. Freeman, Esq.
19 Nancy J. March, Esq.
20 DeConcini McDonald Yetwin & Lacy, P.C.
21 6909 East Main Street
 Scottsdale, Arizona 85251
22 Attorneys for G. Grant Lyon, Chapter 11
 Trustee of Radical Bunny, LLC
 tfreeman@lawdmyl.com
 nmarch@dmyl.com

23 Mark J. Dorval, Esq.
24 Stradley, Ronon, Stevens & Young, L.L.P.
25 2600 One Commerce Square
 Philadelphia, Pennsylvania 19103
26 Attorneys for Kevin O'Halloran, Trustee
 of ML Liquidating Trust
 mdorval@stradley.com

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1 Sharon B. Shively, Esq.
2 Sacks Tierney, P.A.
3 4250 North Drinkwater Boulevard
4 Scottsdale, Arizona 85251-3693
5 Attorneys for Kevin O'Halloran, Trustee
6 of ML Liquidating Trust
7 sharon.shively@sackstierney.com

8 William S. Jenkins, Esq.
9 Myers & Jenkins, P.C.
10 One East Camelback Road, #500
11 Phoenix, Arizona 85012
12 Attorneys for Kevin O'Halloran, Trustee
13 of ML Liquidating Trust
14 wsj@mjlegal.com

15 _____
16 /s/ DEBBI STEPHENS

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EXHIBIT "A"

1 Sharon B. Shively No. 009292
SACKS TIERNEY P.A.
2 4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693
3 Telephone: 480.425.2600

4 Local Counsel for Kevin T. O'Halloran,
Trustee of ML Liquidating Trust

5 Michael O'Mara
Stradley Ronon Stevens & Young, LLP
6 2600 One Commerce Square
Philadelphia, PA 19103
7 Telephone: 215.564.8000
momara@stradley.com

8 Lead Counsel for Kevin T. O'Halloran,
9 Trustee of ML Liquidating Trust

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

12 In re:
13 MORTGAGES LTD., an Arizona
corporation,
14 Debtor.

Proceedings Under Chapter 11
Case No. 2:08-bk-07465-RJH

**KEVIN T. O'HALLORAN'S RESPONSE
TO FIRST SET OF NON-UNIFORM
INTERROGATORIES**

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19 Kevin T. O'Halloran, Trustee of the Liquidating Trust of Mortgages Ltd, (the
20 **"Liquidating Trust"**) by and through his counsel, Stradley Ronon Stevens & Young, LLP,
21 hereby responds to the First Set of Non-Uniform Interrogatories by FTI Consulting, Inc.
22 (**"FTI"**), as follows:
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EXHIBIT "B"

1 FENNEMORE CRAIG, P.C.
2 Cathy L. Reece (005932)
3 Keith L. Hendricks (012750)
4 Joshua T. Greer (025508)
5 3003 North Central Avenue, Suite 2600
6 Phoenix, Arizona 85012-2913
7 Telephone: (602) 916-5000
8 Email: creece@fclaw.com

9 Attorneys for ML Manager LLC

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re
Mortgages Ltd.,

Debtor.

Chapter 11

Case No. 2-08-BK-07465-RJH

**RESPONSE TO FIRST SET OF NON-
UNIFORM INTERROGATORIES TO
ML MANAGER, LLC**

ML Manager LLC, pursuant to Rule 33 of the Federal Rules of Civil Procedure, made applicable by Rule 9014(c) of the Federal Rules of Bankruptcy Procedure hereby responds to FTI Consulting, Inc.'s First Set of Non-Uniform Interrogatories. Pursuant to Rule 26(e), Federal Rules of Civil Procedure, ML Manager will supplement its responses as information becomes available.

INTERROGATORIES

INTERROGATORY NO. 1: Identify any and all documents you intend to introduce as exhibits at a hearing or trial on the Application.

ANSWER:

ML Manager has not yet determined which documents it intends to introduce as exhibits at a hearing or trial on the Application. ML Manager will supplement this

1 response as further determinations are made in accordance with Rule 26 (e) Federal Rules
2 of Civil Procedure. Notwithstanding the foregoing, ML Manager discloses that it intends
3 to introduce the following:

4 1. All pleadings and documents filed in the Administrative Bankruptcy case as
5 well as all Adversaries.

6 2. Fee applications of Jennings Strouss, DLA Piper and FTI.
7

8 **INTERROGATORY NO. 2:** Identify the names, addresses, and telephone
9 numbers of any and all witnesses you intend to call at a hearing or trial on the Application
10 and a description of the substance of each as to their expected testimony.

11 **ANSWER:**

12 ML Manager has not yet determined which witnesses it intends to call at a hearing
13 or trial on FTI's Fee Application. ML Manager will supplement this response as further
14 determinations are made in accordance with Rule 26 (e) Federal Rules of Civil Procedure.
15 Notwithstanding the foregoing, ML Manager discloses that it may call the following
16 individuals:

17 1. Nechelle Wimmer
18 c/o Fennemore Craig
19 3003 N. Central Ave., suite 2600
20 Phoenix, AZ 85012

21 ML Manager anticipates that Ms. Wimmer will testify regarding the
22 reasonableness of FTI's fees and rates.

23 2. Kevin O'Halloran
24 Mark J. Dorval, Esq.
25 Stradley, Ronon, Stevens & Young, LLP
26 2600 One Commerce Square
Philadelphia, Pennsylvania 19103

ML Manager anticipates that Mr. O'Halloran will testify regarding the
reasonableness of FTI's fees and rates.

- 1 3. Edward McDonough
2 c/o Fennemore Craig
3 3003 N. Central Ave., suite 2600
4 Phoenix, AZ 85012

5 ML Manager anticipates that Mr. McDonough will testify regarding the
6 reasonableness of FTI's fees and rates.

7 **INTERROGATORY NO. 3:** Identify the names, addresses, and telephone
8 numbers of any and all expert witnesses you intend to call at a hearing or trial on the
9 Application, identify his or her field of expertise, set forth in detail the matters about
10 which he/she will testify, and state the opinion or opinions he/she is expected to give, set
11 forth his or her qualifications for giving expert opinion testimony, and state the facts upon
12 which his/her opinion will be based.

13 **ANSWER:**

14 ML Manager has not yet determined whether expert witness testimony is relevant
15 to the issues involving FTI's Fee Application. ML Manager will supplement this response
16 as further determinations are made in accordance with Rule 26 (e) Federal Rules of Civil
17 Procedure. Notwithstanding the foregoing, ML Manager discloses that it may call the
18 following individual as an expert witness.

- 19 1. Edward McDonough
20 c/o Fennemore Craig
21 3003 N. Central Ave., suite 2600
22 Phoenix, AZ 85012

23 ML Manager anticipates that in addition to his testimony as a fact witness, Mr.
24 McDonough may also provide his expert opinion regarding the reasonableness of FTI's
25 fees and rates.
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DATED this 30th day of October, 2009.

FENNEMORE CRAIG, P.C.

By /s/ Keith L. Hendricks
Keith L. Hendricks
Attorneys for ML Manager LLC

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

/s/ L. Carol Smith

EXHIBIT "C"

1 SHELTON L. FREEMAN (AZ #009687)
2 NANCY J. MARCH (AZ #012802)
3 **DeCONCINI McDONALD YETWIN & LACY, P.C.**

4 6909 East Main Street
5 Scottsdale, Arizona 85251

6 Ph: (480) 398-3100
7 Fax: (480) 398-3101
8 E-mail: tfreeman@lawdmyl.com
9 E-mail: nmarch@dmyl.com

10 Counsel to Radical Bunny, L.L.C. and
11 Special Counsel to G. Grant Lyon, Chapter 11
12 Trustee of Radical Bunny, L.L.C.

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

15 In re:
16
17 MORTGAGES LTD.,

18 Debtor.

19 Chapter 11

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

21 **G. GRANT LYON, CHAPTER 11**
22 **TRUSTEE FOR RADICAL BUNNY, LLC'S**
23 **RESPONSE TO FIRST SET OF NON-**
24 **UNIFORM INTERROGATORIES**

25 G. Grant Lyon, Chapter 11 Trustee for Radical Bunny, LLC ("RBLLC"), by
26 and through their his counsel, DeConcini McDonald Yetwin & Lacy, P.C. hereby
27 responds to the First Set of Non-Uniform Interrogatories by FTI Consulting, Inc.
28 ("FTI"), as follows:

1. ***Identify any and all documents you intend to introduce as exhibits at hearing or trial on the Application.***

RESPONSE: RBLLC is still in the process of reviewing the universe of documents and other evidence related to the Application and has not yet determined which documents it intends to introduce as exhibits at a hearing or

1 trial on the Application. It is likely that RBLLC will utilize the exhibits proffered by
2 the other objectors, but will include the following documents and/or categories of
3 documents:

- 4 • The FTI Fee Application;
- 5 • The JSS Fee Application;
- 6 • The Objections to FTI Fee Application;
- 7 • Financial Documents prepared by FTI and/or ML; and
- 8 • Pleadings filed in the ML Case.

9 Pursuant to the Federal Rules of Civil Procedure, as incorporated through the
10 Bankruptcy Rules, RBLLC reserves its right to supplement its response to these
11 discovery requests. The requested information also will be identified in the joint
12 pre-trial order required by the Court.

13
14 2. ***Identify the names, addresses, and telephone numbers of any***
15 ***and all witnesses you intend to call at a hearing or trial on the Application***
16 ***and a description of the substance of each as to their expected testimony.***

17 RESPONSE: RBLLC is still in the process of reviewing the universe of
18 evidence relating to the Application and has not yet determined which witnesses it
19 intends to call at a hearing or trial on the Application; however, it is likely that
20 RBLLC will not call any witnesses beyond those identified by the other objectors,
21 who will likely include, representatives of ML, and Edward M. McDonough and
22 any witnesses listed by FTI. Pursuant to the Federal Rules of Civil Procedure, as
23 incorporated through the Bankruptcy Rules, RBLLC reserves its right to
24 supplement its response to these discovery requests. The requested information
25 also will be identified in the joint pre-trial order required by the Court.

1 SHELTON L. FREEMAN (AZ #009687)
2 NANCY J. MARCH (AZ #012802)
3 **DECONCINI McDONALD YETWIN & LACY, P.C.**

4 6909 East Main Street
5 Scottsdale, Arizona 85251

6 Ph: (480) 398-3100
7 Fax: (480) 398-3101
8 E-mail: tfreeman@lawdmyl.com
9 E-mail: nmarch@dmyl.com

10 Counsel to Radical Bunny, L.L.C. and
11 Special Counsel to G. Grant Lyon, Chapter 11
12 Trustee of Radical Bunny, L.L.C.

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

15 In re:

16 MORTGAGES LTD.,

17 Debtor.

18 Chapter 11

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

20 **NOTICE OF SERVICE OF G. GRANT**
21 **LYON, CHAPTER 11 TRUSTEE FOR**
22 **RADICAL BUNNY, LLC'S RESPONSE TO**
23 **FIRST SET OF NON-UNIFORM**
24 **INTERROGATORIES**

25 Pursuant to Bankruptcy Rule 9014(c), on October 30, 2009, the
26 undersigned party served via e-mail and U.S. Mail an original and copy of G.
27 Grant Lyon, Chapter 11 Trustee for Radical Bunny, LLC's ("RBLLC") Response to
28 First Set of Non-Uniform Interrogatories to the following addresses:

Dale C. Schian
Michael R. Walker
Schian Walker, P.L.C.
3550 N. Central Avenue, #1700
Phoenix, Arizona 85012-2115
Attorneys for FTI Consulting, LLC
dschian@swazlaw.com
mwalker@swazlaw.com

EXHIBIT "D"



COMPLEX LITIGATION & BANKRUPTCY

3550 N. Central Ave. Suite 1700
Phoenix, AZ 85012-2115

Michael R. Walker
mwalker@swazlaw.com

October 26, 2009

Sent via e-mail only

Cathy L. Reece, Esq.
Keith L. Hendricks, Esq.
Fennemore Craig, P.C.
3003 North Central Avenue, #2600
Phoenix, Arizona 85012

Re: Mortgages Ltd. 2-08-07465
Response to First Set of Non-Uniform Interrogatories

Dear Cathy and Keith:

The purpose of this letter is to address the failure to provide discovery responses in the above-referenced matter. We would not be concerned if this were a normal litigation process. However, the short amount of time before trial makes appropriate and timely discovery responses mandatory. Your objections to FTI's fee application were filed over three months ago. We presume that the objections were filed and signed based on knowledge that the allegations contained therein were supported by evidence. Presumably that evidence would be testimony and/or documentary. If you have evidence, we are entitled to discover it.

In order to discover your evidence in sufficient time to prepare for trial, you were sent the simplest of interrogatories, asking only, who are your witnesses, what are your exhibits, to identify any experts and to provide the opinions. You failed to respond at all. If you do not have witnesses and do not intend to introduce any documentary evidence, then simply say so. If you have evidence and witnesses, it must be disclosed now, not when we prepare the pre-trial statement. If what you intend to offer are only written objections, then please state so.

Therefore, if you intend to introduce evidence or intend to call witnesses, then answer the interrogatories no later than Friday, October 30, 2009. In the event we do not receive them by that time, we will request the Court to prevent you from calling any witnesses and introducing any exhibits at the trial on this matter that were not identified in response to discovery.

Very truly yours,

Michael R. Walker

MRW:jsl
130838.1

EXHIBIT "E"



COMPLEX LITIGATION & BANKRUPTCY

3550 N. Central Ave. Suite 1700
Phoenix, AZ 85012-2115

Michael R. Walker
mwalker@swazlaw.com

October 26, 2009

Sent via e-mail only [tfreemain@lawdmyl.com]

Shelton L. Freeman, Esq.
DeConcini McDonald Yetwin & Lacy, P.C.
7310 North 16th Street, #330
Phoenix, Arizona 85020

Re: Mortgages Ltd. 2-08-07465
Response to First Set of Non-Uniform Interrogatories

Dear Mr. Freeman:

The purpose of this letter is to address the failure to provide discovery responses in the above-referenced matter. We would not be concerned if this were a normal litigation process. However, the short amount of time before trial makes appropriate and timely discovery responses mandatory. Your objections to FTI's fee application were filed over three months ago and we presume that the objections were filed and signed based on knowledge that the allegations contained therein were supported by evidence. Presumably that evidence would be testimony and/or documentary. If you have evidence, we are entitled to discover it.

In order to discover your evidence in sufficient time to prepare for trial, you were sent the simplest of interrogatories, asking only, who are your witnesses, what are your exhibits, to identify any experts and to provide the opinions. You failed to respond at all. If you do not have witnesses and do not intend to introduce any documentary evidence, then simply say so. If you have evidence and witnesses, it must be disclosed now, not when we prepare the pre-trial statement. If what you intend to offer are only written objections, then please state so.

Therefore, if you intend to introduce evidence or intend to call witnesses, then answer the interrogatories no later than Friday, October 30, 2009. In the event we do not receive them by that time, we will request the Court to prevent you from calling any witnesses and introducing any exhibits at the trial on this matter that were not identified in response to discovery.

Very truly yours,

Michael R. Walker

MRW:jsl
130837.1

EXHIBIT "F"



COMPLEX LITIGATION & BANKRUPTCY

3550 N. Central Ave. Suite 1700
Phoenix, AZ 85012-2115

Michael R. Walker
mwalker@swazlaw.com

October 26, 2009

Sent via e-mail only [jmmurphy@stradley.com]

Julie M. Murphy, Esq.
Stradley Ronon Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, Pennsylvania 19103

Re: Mortgages Ltd. 2-08-07465
Response to First Set of Non-Uniform Interrogatories

Dear Ms. Murphy:

The purpose of this letter is to address the inadequate responses to discovery you provided to us in the above-referenced matter. We would not be concerned if this were a normal litigation process. However, the short amount of time before trial makes appropriate and timely discovery responses mandatory. Your objections to FTT's fee application were filed over three months ago and we presume that the objections were filed and signed based on knowledge that the allegations contained therein were supported by evidence. Presumably that evidence would be testimony and/or documentary. If you have evidence, we are entitled to discover it.

In order to discover your evidence in sufficient time to prepare for trial, you were sent the simplest of interrogatories, asking only, who are your witnesses, what are your exhibits, to identify any experts and to provide the opinions. For all intents and purposes, you failed to respond. If you do not have witnesses and do not intend to introduce any documentary evidence, then simply say so. If you have evidence and witnesses, it must be disclosed now, not when we prepare the pre-trial statement. If what you intend to offer are only written objections, then please state so.

Therefore, if you intend to introduce evidence or intend to call witnesses, then answer the interrogatories no later than Friday, October 30, 2009. In the event we do not receive them by that time, we will request the Court to prevent you from calling any witnesses and introducing any exhibits at the trial on this matter that were not identified in response to discovery.

Very truly yours,

Michael R. Walker

MRW:jsl
cc: William Scott Jenkins, Esq. *[via e-mail]*
130836.1

EXHIBIT "G"



COMPLEX LITIGATION & BANKRUPTCY

3550 N. Central Ave. Suite 1700
Phoenix, AZ 85012-2115

Michael R. Walker
mwalker@swazlaw.com

November 5, 2009

Sent via e-mail only [reece@fclaw.com]

Cathy L. Reece, Esq.
Fennemore Craig, P.C.
3003 North Central Avenue, #2600
Phoenix, Arizona 85012

Re: Mortgages Ltd. 2-08-07465
Response to First Set of Non-Uniform Interrogatories

Dear Cathy:

Enclosed are Notices of Deposition for Nechelle Wimmer and Ed McDonough and a copy of a Notice of Deposition for Kevin O'Halloran. We are flexible with the days and times; however, we must complete the depositions prior to November 26, 2009. Therefore, if any of the days and times are unacceptable and need to be changed, please provide me with alternate days and times that are prior to November 26, 2009.

Please advise us immediately if it is necessary to subpoena Ms. Wimmer and Mr. McDonough or whether you will voluntarily produce them for deposition. If it is necessary to subpoena them, we will serve that subpoena upon your firm as that is the address identified in your interrogatory responses. If it is necessary to serve them at a different address, please supplement your responses accordingly.

With regard to Mr. McDonough, if you intend to ask him to offer opinions at trial, please complete the answers to interrogatories, provide the information required by Rule 26(e), Fed. R. Civ. P., and produce a complete copy of Mr. McDonough's file not later than Friday, November 13. Nevertheless, until you identify him as an expert and disclose his opinions, we will treat Mr. McDonough as a fact witness who we are at liberty to contact.

In response to Interrogatory No. 1, you list as one of your exhibits "all pleadings and documents filed in the administrative case as well as all adversaries." This answer is inadequate as a matter of law. As I am sure you are aware, we are not required to speculate which of the thousands of pleadings and documents filed in this case you might introduce at the trial of this matter. Therefore, properly designate each specific document and pleading you intend to use and do so on or before Wednesday, November 11, 2009. In the event you do not do that, I will presume that no

Cathy L. Reece, Esq.
November 5, 2009
Page 2

pleadings or documents will be offered in evidence at the trial.

In addition, it appears that no one has verified the answers to interrogatories. Please have the appropriate representative verify the answers. In the event you have any questions, please do not hesitate to call.

Very truly yours,



Michael R. Walker

MRW:jsl

Enclosures

131207.3



EXHIBIT "H"



COMPLEX LITIGATION & BANKRUPTCY

3550 N. Central Ave. Suite 1700
Phoenix, AZ 85012-2115

Michael R. Walker
mwalker@swazlaw.com

November 5, 2009

Sent via e-mail only [tfreeman@lawdmyl.com]

Shelton L. Freeman, Esq.
DeConcini McDonald Yetwin & Lacy, P.C.
6909 East Main Street
Scottsdale, Arizona 85251

Re: FTI Fee Application/Answers to Non-Uniform Interrogatories

Dear Tony:

We have received and reviewed your answers to non-uniform interrogatories. Interrogatory No. 1 requested the identification of documents you intend to introduce as exhibits at hearing or trial. You identify "financial documents prepared by FTI and/or ML; and pleadings filed in the ML case." This answer is inadequate as a matter of law. In order to prepare for trial, we are not required to speculate which of the thousands of documents and pleadings you may introduce. Therefore, if you have specific documents and pleadings you intend to use at trial, please immediately identify them.

In the event you do not do so by November 11, 2009, we will assume that none will be introduced as evidence at the trial.

You identify Mr. McDonough as a witness you may call. Please answer the interrogatories and provide the substance of the testimony for any witness that you intend to call or examine by Friday, November 11. In addition, you do not identify any expert witnesses. However, in the event you do intend to elicit any opinion testimony from Mr. McDonough, then please respond to Interrogatory No. 3 and provide the information required by Rule 26(e), Fed. R. Civ. P., by Friday, November 13.

In addition, it appears that no one has verified the answers to interrogatories. Please have the appropriate representative verify the answers.

Very truly yours,

Michael R. Walker

MRW:jsl
131191.3

EXHIBIT "I"

Dale Schian

From: HENDRICKS, KEITH [KHENDRIC@FCLAW.com]
Sent: Monday, November 16, 2009 1:20 PM
To: Dale Schian
Cc: GREER, JOSH; SHELLEY, GERALD
Subject: FTI Fee Application

Dale,

It was good to talk with you at some length last Friday. From our conversation, it seems that we have some common ground on some issues, but there are other issues that we will just need to agree to disagree.

Here is my proposal on the 30(b)(6) deposition, and the production of the file. You told me that the FTI file will be produced on or before December 7. This should resolve the dispute on the production of the file. I will agree that we will not assert in the joint pretrial, or at trial that there has been any stonewalling or refusal to produce the file. My understanding is that you have agreed or will agree to withdraw the Rule 30(b)(6) deponent.

With regard to the depositions scheduled for this week, we didn't reach a resolution. Neither my witnesses nor myself are available. We are generally available after Thanksgiving on the dates that we gave you. We believe that those dates should be sufficient. Indeed, we asked for dates to depose your client on the same date that you initially sent the letter to Cathy followed a couple of hours later by the unilaterally set deposition notices. In any event, our request for deposition dates for your client is the same date as your request for dates for our witnesses. I fail to see how December 7 is reasonable for your clients but unreasonable for us. Moreover, as I indicated, this is not some conspiracy or plan. We simply cannot do it this week. Primary among the reasons is that we are preparing for the DLA hearing. We are fighting the fire that is most immediate. I heard and understood all of your arguments. I guess this is simply one we will have to leave to Judge Haines. Let me know if any of the dates we have given you will be sufficient, or if we truly do need to take this to Judge Haines.

Keith L. Hendricks | Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600 | Phoenix, AZ 85012-2913
Tel: 602.916.5430 | Fax: 602.916.5630
Bio: <http://www.fclaw.com/attorneys/bio.cfm?aid=50477>

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Fennemore Craig, P.C.
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EXHIBIT "J"



COMPLEX LITIGATION & BANKRUPTCY

3550 N. Central Ave. Suite 1700
Phoenix, AZ 85012-2115

Dale C. Schian
dschian@swazlaw.com

November 17, 2009

Via E-Mail Only [khendric@fclaw.com]

Keith L. Hendricks, Esq.
Fennemore Craig, P.C.
3003 North Central Avenue, #2600
Phoenix, Arizona 85012-2913

Re: Mortgages, Ltd. - FTI Consulting, Inc. Fee Application

Dear Keith:

To respond to your e-mail yesterday, I also appreciated the opportunity to speak on the phone last Friday and your call at the end of what had to be a very long week. I believe that we have made substantial progress, and allow me to see if I can continue to advance the ball. The first two issues are easy.

Based upon your agreement not to assert that there has been any "stonewalling" or refusal to produce files in either the joint pretrial or at trial, there is no need to conduct the 30(b)(6) deposition and we will vacate that notice. I understand that this agreement relates to both the Liquidating Trust and ML Manager in connection with the FTI fee application and that neither of those parties will raise the issue. On that basis we will happily vacate the deposition. Allow me to also reiterate that I believe that FTI has endeavored to be responsive to whatever requests it has received for documentation. That should continue, and please communicate FTI's desire to be responsive to employees of the Liquidating Trust and ML Manager so that they may obtain whatever documentation they need to assist them in fulfilling their responsibilities.

With respect to the document production, in addition to the provision of business records previously discussed, FTI will fully comply with your request for the production of documents on or before December 7. Although many of the documents are already in your client's possession, and others may be produced as part of the discovery and pretrial process between now and December 7, it would be my suggestion that we schedule a time for someone from your office to review documents at FTI's offices on December 8. I suggest that date because you will have our written response to the request for production and you are scheduled to take Michael Tucker's deposition on December 7. Please let me know if that date is convenient for you.

I believe that we are getting closer on the issue of deposition scheduling; however, I know that you have been busy on other matters, please allow me to explain why I believe that it is

Joshua T. Greer, Esq.
November 17, 2009
Page 2

reasonable for us to propose December 7 for our client's deposition, but object to postponement of all of the depositions until after Thanksgiving.

At the September hearing, we asked that the court schedule an October trial date on the FTI fee application. Your client opposed that request, in part because of the trials in other matters, including the DLA fee application. The court acceded to your client's request and scheduled the trial for mid-December.

Having been denied our request for an early trial date, we returned to the office and immediately served three simple interrogatories asking for basic information concerning witnesses, exhibits and expert testimony. As a result of the later trial date, we did not seek expedited discovery. Nevertheless, the time to respond to discovery came and passed without any response from your client. Having failed to obtain any response from your client, we wrote and demanded identification of witnesses and exhibits within eight days from the original date they were due. As a result, we received a response identifying three witnesses.

Almost immediately after receiving the response, we noticed those three individuals for deposition, but included with the notice of deposition was a letter indicating a willingness to reschedule the depositions to accommodate schedules anytime within the next three weeks, provided that the depositions were concluded before Thanksgiving. We believed concluding the depositions before Thanksgiving to be important to permit us to conduct the necessary discovery in order to prepare a proper joint pretrial statement and to obtain transcripts of the deposition testimony for use at trial. Therefore, since mid-September, we had served and timed our discovery request to assure that our pretrial discovery and preparation would be done before Thanksgiving and before the court imposed a deadline to file a joint pretrial statement.

In response to our notices of deposition, you first requested dates when FTI could be deposed. However, as part of that request, you indicated that you would be unable to participate in such depositions before Thanksgiving. The joint pretrial statement is due the week after Thanksgiving (December 2). Therefore, I asked Mr. Tucker for dates that he could be available for deposition after December 2, as those appeared to be the first mutually convenient dates. Mr. Tucker is not available on December 3 or December 4; therefore, we offered to make him available on either December 7 or December 8. Based upon the foregoing, I believe that it was reasonable for us to request that your witnesses be produced in the three-week period prior to Thanksgiving, and also believe that it is reasonable that we offer to produce Mr. Tucker on the first available Monday or Tuesday, based upon the dates that you excluded from consideration and the date on which the joint pretrial statement is due.

I fully appreciate the difficulties that another trial can place on one's ability to participate in discovery. Nevertheless, I have a far more difficult time understanding why it is essential that you be the attorney to appear at the depositions. It is my understanding that none of the three witnesses are even employees of your client ML Manager. Although I appreciated your attempt to explain the organizational structure to me on the phone last Friday night, and openly admit that I fully do not understand it, it would appear that Nechelle Wimmer is the only witness who might conceivably be covered by an attorney-client relationship.

Joshua T. Greer, Esq.
November 17, 2009
Page 3

Generally, the rules of civil procedure as they have developed limit objections at depositions to matters of privilege. As such, any objections would appear to be inapplicable to the testimony of two of the three witnesses and possibly also for Ms. Wimmer. As these are your witnesses, and we do not intend to offer direct testimony from these witnesses as part of our case-in-chief, any attorney ought to be able to attend these depositions on behalf of ML Manager, and I simply do not understand why your participation in these depositions is essential. Nevertheless, I also appreciate your comments that your client wants you to be present at the depositions and to also conduct the DLA trial. I appreciate that you cannot be at the same place at both times and do not wish to cause you difficulty with your client. Therefore, we propose the following.

It is our view that the time for the objecting parties to identify witnesses and expert testimony has passed. We originally scheduled the three witnesses for this Thursday and Friday to conclude the depositions before Thanksgiving. We can reschedule those three depositions for Thursday, December 3, and Friday, December 4, which although after the joint pretrial statement is filed would still afford us sufficient time to conduct the discovery, obtain deposition transcripts, and utilize those transcripts in our trial preparation. Therefore, we would offer to move the three depositions to December 3 and December 4, conditioned upon two items. The first is that we are not going to be presented with additional late identified witnesses or expert testimony. The second is that the three witnesses are available to be deposed on December 3 and December 4. In that regard, please note that we previously rescheduled Ed McDonough's deposition to November 24 to accommodate his schedule.

Please let me know if December 3 and December 4 are acceptable to conduct the depositions of your three witnesses and whether December 8 is acceptable to review documents at the FTI offices.

Sincerely,



Dale C. Schian

DCS:dls

cc: Joshua T. Greer, Esq. [Via E-Mail Only]
Gerald L. Shelley, Esq. [Via E-Mail Only]
Michael R. Walker, Esq.

131693v1



EXHIBIT "K"

Dale Schian

From: HENDRICKS, KEITH [KHENDRIC@FCLAW.com]
Sent: Tuesday, November 17, 2009 9:03 PM
To: Debbi Stephens
Cc: GREER, JOSH; Dale Schian; Michael Walker; REECE, CATHY; SHELLEY, GERALD
Subject: RE: Mortgages Ltd. - FTI Consulting

Dale,

We have an agreement that there will be no statements made about the file. On the production of the file, you will produce what you are going to by December 7, and allow us to review documents on December 8.

I am confirming December 3 and 4 with my clients. The only one I am concerned about is Mr. O'Halloran because I'm not sure when he is in Phoenix. I should know by tomorrow.

I don't fully understand or agree with the distinction you are attempting to draw on the dates that you offered for us and the dates you were requesting to us, but frankly I don't think it matters if we have an agreement on the dates going forward.

I understand that you are going to object to additional witnesses being listed in the joint pretrial. We will have to agree to disagree on that.

Keith

FENNEMORE CRAIG

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From: Debbi Stephens [mailto:dstephens@swazlaw.com]
Sent: Tuesday, November 17, 2009 3:10 PM
To: HENDRICKS, KEITH
Cc: GREER, JOSH; gls@quarles.com; Dale Schian; Michael Walker
Subject: Mortgages Ltd. - FTI Consulting

Mr. Hendricks: please see the attached letter from Dale Schian. Thank you.

Debbi Stephens
Legal Assistant
Schian Walker, P.L.C.
3550 N. Central Ave., #1700
Phoenix, AZ 85012-2115
(602) 277-1501
FAX: (602) 297-9633
www.schianwalker.com

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EXHIBIT "L"

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

In re:
MORTGAGES LTD..

Debtor

Chapter 11 Proceedings
Case No. 2:08- bk-07465-RJH

**JOINT PRETRIAL STATEMENT
FOR EVIDENTIARY HEARING ON
FTI CONSULTING INC.'S FIRST AND
FINAL FEE APPLICATION FOR
ALLOWANCE AND PAYMENT OF
FEES**

Hearing Date: December 16, 2009
Hearing Time: 9:00 a.m.
Location: 230 N. First Avenue
Courtroom 603
Phoenix, AZ 85003

FTI Consulting Inc (“FTI”), 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 Incurred by FTI Consulting, Inc. (the “Fee Application”).

I. NATURE OF CASE

This Hearing concerns the allowance and approval of the Fee Application and the objections to the Fee Application filed by ML Manager, the Liquidating Trust and the

1 RBLLC Trustee (collectively, the “Objectors”). From October 7, 2008 through July 20,
2 2009 (“Application Period”), FTI rendered time and services to the Debtor as financial
3 advisors. Through the Fee Application, FTI is seeking fees in the amount \$2,425,862.50
4 and an expense payment of \$5,089.09.

5 **II. UNCONTESTED MATERIAL FACTS**

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

7 1. After the filing of the Bankruptcy, the Debtor sought to employ FTI as
8 financial advisors to the Debtor.

9 2. The Court approved FTI’s employment application *nunc pro tunc* to
10 October 7, 2008.

11 3. FTI seeks payment for 5,646.8 hours incurred on behalf of the Debtor from
12 October 7, 2008 to July 6, 2009. Based on FTI’s claimed rates, the total amount of
13 compensation claimed by FTI is \$2,425,682.50.

14 4. The Court confirmed the Investors Committee’s First Amended Plan of
15 Reorganization Dated March 12, 2009 (the “Plan”) on May 20, 2009. The Plan became
16 effective June 15, 2009. ML Manager became the new manager of all 9 MP Funds, the
17 new manager of the 48 newly formed Loan LLCs and the new agent for the pass-through
18 investors.

19 5. Pursuant to the Plan, the Debtor was renamed to ML Servicing Co. and
20 Kevin O’Halloran became the new president effective June 16, 2009

21 **III. CONTESTED MATERIAL FACTS AND ISSUES OF LAW**

22 The following are contested material facts and issues of law asserted by FTI and
23 the Objectors:

24 **A. FTI Contested Material Facts**

25 1.

26

1 **B. Objectors Contested Material Facts**

2 1. Until June 6, 2009 when FTI filed and sent out its first invoice, no person,
3 not even the business people at the Debtor, had approved or even seen an invoice setting
4 forth the scope and amount of work allegedly performed by FTI in this case.

5 2. In February 2009, FTI informed the Debtor that its estimated total fees were
6 \$1,200,000.

7 3. Later, around the time of the confirmation of the Plan and without the
8 knowledge of the Debtor, FTI increased its estimated fees on accounting schedules to \$2.4
9 million.

10 4. FTI's fees exceeded \$2.4 million for 9 months of services.

11 5. Alvarez and Marsal, the financial advisors for the Investors Committee,
12 incurred about \$770,000 total for 11 months of work.

13 6. Among other things, Alvarez and Marsal reviewed the settlement proposals,
14 testified at hearings on the settlements, reviewed loan proposals, helped negotiate and
15 obtain the exit financing, drafted exhibits for the disclosure statement and the
16 amendments, provided testimony at the confirmation hearing, attended depositions and
17 was deposed, processed the ballots and prepared the ballot report, attended all the investor
18 meetings during the solicitation period, and attended Committee meetings where
19 appropriate.

20 7. Alvarez and Marsal accomplished these services for 1/3 of the FTI fees.

21 8. Alvarez and Marsal sent out regular monthly bills which were reviewed by
22 the Investors Committee and the Debtor.

23 9. Sierra Consulting, the financial advisor to the Unsecured Creditor's
24 Committee, incurred about \$60,785.50 total in fees for 7 months of work.

25 10. During FTI's employment the Debtor employed a Chief Financial Officer, a
26 Controller, an accounting staff, kept accurate and complete books and records and

1 employed employees to handle the loan administration and investor relations.

2 11. These employees had significant knowledge of the Debtor's loan portfolio,
3 other assets and business.

4 12. FTI was not employed to be a chief restructuring officer, the chief financial
5 officer, or to manage the Debtor. FTI was only authorized by the Court to act as a
6 financial advisor.

7 13. FTI spent significant time on loan collections, \$448,714 and 1,295 hours,
8 duplicating what the staff did or what other professionals (such as DLA Piper, Gust
9 Rosenfeld, Jennings Strouss & Salmon, or Greenberg Traurig) were hired for.

10 14. FTI was hired to be an advisor on specific tasks, not to run the company or
11 redo employees work.

12 15. FTI overstaffed its assignments and undertook significant work that was not
13 necessary or reasonable given the circumstances. FTI spent substantial time on actions
14 that were not approved by the Debtor's board of directors, and the board of directors even
15 resigned, in significant part, because of the counsel and advice given by, among others,
16 FTI.

17 16. In terms of staffing, scope of work, advice given and overall performance,
18 FTI did not keep the best interests of the investors who were the Debtor's major
19 constituency group.

20 17. FTI spent substantial time on matters that did not provide value or
21 reasonable value to the Debtor or the estate.

22 18. Based on the Application, it appears that 4 employees of FTI spent 30 to 40
23 hours a week over the 9 month employment working on this case.

24 19. Mr. Tucker averaged 31.5 hours a week.

25 20. Mr. Harvick averaged 39.2 hours a week.

26 21. Mr. Stremcha averaged 35.8 hours a week

1 22. Mr. Brosious averaged 34.5 hours a week.

2 23. The Debtor's professionals incurred about \$9 million of professional fees.
3 Jennings Strouss incurred \$3,636,985.50 in fees, FTI incurred \$2,425,862.50, DLA Piper
4 incurred \$1,363,064.33 and Greenberg incurred \$563,249 (excluding the Gap period fees).
5 With the 8 attorneys hired to represent Debtor's employees and the 5 Debtor's ordinary
6 course professionals and all the costs, the amount applied for is about \$9 million for the
7 Debtor's professionals.

8 24. FTI spent unnecessary and wasteful time pursuing plans of reorganization
9 and exit financing. that had no realistic chance of confirmation, and continued to spend
10 unnecessary and wasteful time even after it became obvious that the Debtor's plan did not
11 have sufficient support to be confirmed.

12 25. There were no unencumbered assets from the start. The Debtor did not
13 manage its cash flow and started running out of cash starting in October, 2008.

14 26. By the end of the case, the Debtor was administratively and cash flow
15 insolvent. The Debtor turned over about \$60,000 of cash on the effective date and a lot of
16 unpaid post petition bills.

17 27. During the bankruptcy, FTI agreed or committed to attempt to coordinate
18 and reduce duplicative and unnecessary services from other professionals. Despite this
19 commitment, FTI failed to do so.

20 28. FTI never testified in any hearings.

21 29. The Debtor's professionals and the Debtor mismanaged the loan portfolio so
22 that by the end of the case there were only 5 performing loans out of 66 loans.

23 30. The Debtor did not file a Plan until March 4, 2009.

24 31. Debtor's Disclosure Statement was never approved by the Court.

25 32. The Board resigned on March 3, 2009 rather than approve the proposed Plan
26 by the professionals and a new Board of Directors had to be hired to obtain approval for

1 the Debtor's Plan.

2 33. The Debtor fought the three official Committees and Radical Bunny on
3 almost every issue in the case. As a result, fees of this amount for the Debtor's
4 professionals are not reasonable and not supported by the value delivered.

5 34. ML Manager LLC disputes about \$2 million of the fees of FTI.

6 35. FTI spent 320 hours and \$87,685.50 on fee application, time keeping,
7 monthly bills (which were never sent), editing and reviewing time, etc.

8 36. FTI provided no notice of its fee burn rate to the Debtor. FTI never filed a
9 monthly cover sheet application or sent a bill to its client the Debtor until July 6, 2009.

10 37. When FTI was employed in October 2008 it stated specific rates to be
11 charged.

12 38. Just three months after being retained, FTI significantly raised its rates
13 without Court approval.

14 39. The Senior Managing Director rate was increased from \$525 an hour to
15 \$595 an hour, a \$70 an hour increase, or 13.3% at time that the Debtor was
16 administratively insolvent.

17 40. The Managing Director rate was increased from \$475 an hour to \$525 an
18 hour, a \$50 an hour increase or 10.5%.

19 41. The Senior Consultant was raised from \$325 to \$395 an hour, a \$70 an hour
20 increase, or 21.5%.

21 42. The paraprofessional was raised from \$95 an hour to \$125 an hour, a \$30 an
22 hour increase, or 32%.

23 43. The Consultant was promoted to Senior Consultant and the rate increased
24 from \$265 an hour to \$350 an hour for an \$85 an hour increase, or 32.9%.

25 44. The total increase of FTI's fees as a result of its change in rates is \$172,467.

26 45. FTI billed a secretary's time for clerical tasks resulting in an increase in

1 \$33,171.

2 46. FTI spent over 274 hours on internal meetings and calls resulting in
3 \$110,031 of fees. No clients or parties were involved in these meetings or calls and FTI
4 has not accounted or justified the necessity of these meetings and calls.

5 47. At least 130 hours or \$57,524.50 were billed in various categories after the
6 May 20, 2009 confirmation of the Investors Committee's Plan, exclusive of the fee
7 application time.

8 48. In addition, FTI spent 80.8 hours or \$38,881 on what it calls transition time.
9 However, FTI did not prepare any separate reports, analysis, projects or otherwise provide
10 any information to ML Servicing Co. (the reorganized Debtor) or to the employees
11 reflecting this work.

12 49. The Debtor already had a number of salaried and hourly employees,
13 including Rich Feldheim, Laura Martini, Christine Zahedi, Nechelle Wimmer, Chris
14 Welsh, Sarah Lisa-Petrauschke and others performing the same or similar tasks.

15 50. FTI did not communicate or adequately communicate with the Debtor or its
16 employees the information or reports that it was seeking, and had it done so the Debtor
17 and its employees could have and would have much more efficiently produced the same
18 reports that FTI spent many unnecessary hours producing.

19 51. FTI spent many hours unnecessarily recreating information and reports
20 readily available from the Debtor's systems.

21 52. In addition, the Debtor employed DLA Piper, Gust Rosenfeld, Foster
22 Pepper, Greenberg Traurig and (it appears from the fee applications) Jennings Strouss, to
23 work on loan collections, workouts, and many other issues that FTI also claimed to be
24 working on. FTI unnecessarily spent many hours simply reviewing the work of other
25 professionals.

26 53. FTI spent about 1,295.6 hours or \$448,714.50 on Loan Collections and

1 workouts. This work was duplicative, excessive and unnecessary.

2 54. Many of FTI's time entries are too vague to determine if the Debtor
3 received any value from the service rendered.

4 55. FTI's work was internally duplicative. For example, it was a common
5 practice of FTI to have 2-4 people at many or most meetings or court appearances, even
6 though FTI never testified, and most FTI representatives did not participate in the
7 meetings.

8 56. This practice resulted in \$329,689 of fees and is excessive, unreasonable
9 and unnecessary.

10 57. FTI incurred \$693,970 and 1,519.3 hours on the Debtor's Plan and
11 Disclosure Statement and on fighting the Investors Committee's Plan and Disclosure
12 Statement.

13 58. The Court never confirmed the Debtor's Plan and never approved the
14 Debtor's Disclosure Statement.

15 59. This work was excessive, duplicative, unnecessary and unreasonable
16 especially in light of the work of other professionals such as Alvarez and Marsal.

17 60. FTI spent significant sums on administrative costs and document
18 organization.

19 61. FTI billed between \$15,000 - \$20,000.00 for downloading documents in
20 various bankruptcies, organizing documents and updating a workplan.

21 62. FTI charged \$4,631.70 for administrative expenses; including, hiring
22 temporary help to download/printout claims filed, PACER research, purchase of data
23 disks and postage.

24 **IV. CONTESTED ISSUES OF LAW**

25 The following are the contested issues of law material to the hearing: whether FTI
26 is entitled to fees for services rendered and expenses incurred in the total amount of

1 \$2,489,516.06 pursuant to Sections 328, 330 and 503(b) of the Bankruptcy Code.

2 **A. FTI Position**

3
4 **B. Objectors' Position**

5 1. FTI bears the burden of establishing that the work performed was authorized
6 and necessary, that the fees were reasonable and that the services were adequately
7 documented.

8 2. FTI's fees are unreasonable and should not be rewarded. These fees cannot
9 be justified in light of the results and the facts of this case and in light of the total amount
10 of fees requested by the Debtor's professionals.

11 3. FTI's decision to have 4 employees working full time at the Debtor's offices
12 was duplicative, unnecessary and not warranted in light of the Debtor's full-time salaried
13 staff working on the same projects.

14 4. FTI's work on fee applications is excessive and unreasonable considering it
15 prepared 1 bill and 1 fee application and failed to provide the Debtor with monthly totals
16 or reasonable estimates of the total fees.

17 5. FTI's increased rates after only three months of employment were improper
18 and unjustified as FTI failed to inform the Debtor, the Court and any other party of the
19 increase of rates. Moreover the rate increases of the magnitudes proposed by FTI are
20 unjustifiable in the current market.

21 6. The work performed by secretaries constitutes overhead and should be
22 absorbed by FTI.

23 7. FTI's fees for its internal meetings are unreasonable and FTI has failed to
24 justify the need or purpose for these meetings.

25 8. FTI's "transition time" work was unreasonable as FTI failed to provide any
26 work product or relevant information to the Debtor.

1 9. FTI's work was inherently duplicative on at least two levels.

2 10. FTI has not demonstrated why it was necessary or reasonable for the Senior
3 Managing Director and the Managing Director (and often times additional employees) to
4 attend the meetings and court appearances.

5 11. Second, FTI's services were duplicative of services performed by the
6 Debtor or other professionals retained by the Debtor.

7 12. FTI's work on the plan was excessive and unreasonable in comparison with
8 the work performed by Alvarez and Marsal, and Sierra Consulting .

9 13. FTI's administrative and clerical costs are unreasonable, not authorized by
10 the Bankruptcy Code and should be born by FTI.

11 14. Most or all time spent by FTI on the Debtor's plan after at least mid
12 February was unnecessary and unreasonable.

13 **V. LIST OF WITNESSES**

14 **A. FTI's Witnesses¹**

15 1.

16 **B. Objectors' Witnesses**

17 1. Nechelle Wimmer

18 2. Veronica Sas

19 3. Sara Lisa-Petrauschke

20 4. Ed McDonough

21 5. Dale Belt

22 6. George Everette

23 7. Kevin O'Halloran (including testimony as trustee/president of ML Servicing
24 and owner/trustee opinions as to value of services rendered and reasonableness of fees)

25 8. David Fieler

26 ¹ Objectors object to the use of any declarations unless the witnesses are available for cross examination.

- 1 9. Chas Harvick
- 2 10. Representative of Rev-Op Investors
- 3 11. Expert witness to be designated
- 4 12. Any witness identified by FTI
- 5 13. Any witness identified during discovery and depositions
- 6

7 **VI. WITNESS DECLARATIONS**

8 **A. FTI's Declaration**

9

10 **B. Objectors' Declarations**

11 1. The Objectors will not be offering any declarations at the hearing.
12 However, the objectors reserve the right to use any of the declarations in the public record
13 for purposes of impeachment.

14

15 **VII. LIST OF EXHIBITS**

16 The Parties have identified and exchanged copies of the following exhibits to be
17 introduced at the Hearing. All Parties reserve all objections to the various exhibits listed:

18 **A. FTI's List of Exhibits**

19 FTI intends to introduce the following exhibits at the Hearing.

20 1.

21 **B. Objectors' List of Exhibits**

22 1. All exhibits listed and used or identified by FTI.

23 2. Any or all documents produced during discovery.

24 3. Debtor's Schedule of Assets and Liabilities and Statement of Affairs and
25 Debtor's Monthly Operating Reports, and amendments thereto.

26 4. Fee Application and Billing Statements of Debtor's Ordinary Course

1 Counsel Gust Rosenfeld PLC (“Gust Rosenfeld”), including fee statements, summaries
2 and supplemental fee applications.

3 5. Fee Application of the Debtor’s bankruptcy counsel Jennings Strouss &
4 Salmon PLC (“JSS”), including fee statements, summaries and supplemental fee
5 applications.

6 6. Fee Application of the Debtor’s special counsel Greenberg Traurig LLP,
7 including fee statements, summaries and supplemental fee applications.

8 7. Fee Application of the Debtor’s financial advisor FTI Consulting, including
9 fee statements, summaries and supplemental fee applications.

10 8. Fee Application of the Debtor’s special counsel, DLA Piper, including fee
11 statements, summaries and supplemental fee applications.

12 9. Fee Application of the Alvarez & Marsal Dispute Analysis & Forensic
13 Services, LLC, Financial Advisors for the Official Committee of Investors, including fee
14 statements, summaries and supplemental fee applications.

15 10. Fee Application of Official Committee of Investors in the Value-to-Loan
16 Opportunity Fund I, LLC’s counsel, Schian Walker P.L.C., including fee statements,
17 summaries and supplemental fee applications.

18 11. Fee Application of Sierra Consulting Group, LLC, Financial Advisor to the
19 Official Unsecured Creditors Committee, including fee statements and supplemental fee
20 applications.

21 12. Debtor’s Plan of Reorganization of Mortgages Ltd, dated March 4, 2009 and
22 all amendments.

23 13. Mortgages Ltd.’s Disclosure Statement in Support of its Chapter 11, Plan of
24 Reorganization, dated March 4, 2009 and all amendments and exhibits thereto.

25 14. Emails between FTI, counsel for the Debtor, the Debtor, and other parties to
26 the bankruptcy.

- 1 15. Spreadsheets prepared by the Debtor.
- 2 16. Charts prepared by Objectors.
- 3 17. Transcript from the University & Ash Evidentiary Hearing dated November
- 4 18, 2008.
- 5 18. Transcript from the University & Ash Evidentiary Hearing dated November
- 6 19, 2008.
- 7 19. Transcript from the University & Ash Evidentiary Hearing dated November
- 8 24, 2008.
- 9 20. Transcript from the University & Ash Evidentiary Hearing dated November
- 10 25, 2008.
- 11 21. Transcript from the Riverfront/Cottonwood Motion for Summary Judgment
- 12 Hearing, dated April 14, 2009.
- 13 22. Transcript from the Riverfront/Cottonwood Motion to Compel Hearing,
- 14 dated April 30, 2009.
- 15 23. Transcript from the Confirmation Hearing dated May 13, 2009.
- 16 24. Transcript from the Confirmation Hearing dated May 14, 2009.
- 17 25. Transcript from the Confirmation Hearing dated May 15, 2009.
- 18 26. Transcript from the Confirmation Hearing dated May 18, 2009.
- 19 27. Transcript from the Confirmation Hearing dated May 19, 2009.
- 20 28. All deposition transcripts for Chris Olson.
- 21 29. All deposition transcripts for Christine Zahedi.
- 22 30. All declarations from any FTI representative filed with the Court.
- 23 31. All pleadings filed in connection with FTI's Fee Application.
- 24 32. All impeachment exhibits.

25 Respectfully submitted this 18th day of November, 2009

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DALE SCHIAN (Bar No. -----)
dschian@swazlaw.com
SCHIAN WALKER
3550 N. Central Ave., Suite 1700
Phoenix, AZ 85012
Telephone: 602.277.1501
Facsimile: 602.297.9633

Attorneys for FTI Consulting, Inc.

CATHY L. REECE (Bar No. 005932)
creece@fclaw.com
FENNEMORE CRAIG, P.C.
3303 N. Central Ave., Suite 2600
Phoenix, AZ 85012
Telephone: 602.916.5343
Facsimile: 602.916.5543

Attorneys for ML Manager LLC

SHARON B. SHIVELY (State Bar No. 009292)
Sharon.Shively@SacksTierney.com
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693
Telephone: 480.425-2600

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

SHELTON L. FREEMAN (State Bar No. 009687)
tfreeman@dmylphx.com
DeCONCINI McDONALD YETWIN & LACY, P.C.
7310 North 16th Street, Suite 330
Phoenix, AZ 85020
Telephone: 602.282.0500

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Facsimile: 602.282.0520

Special Counsel for G. Grant Lyon, Chapter 11
Trustee for Radical Bunny, L.L.C.

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