

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](mailto: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.,

10 Debtor.

No. 2-08-bk-07465-RJH

CHAPTER 11

**MOTION TO CONSOLIDATE HEARINGS  
RE: PENDING MOTIONS OF RADICAL  
BUNNY, L.L.C. AND FTI CONSULTING,  
INC. CONCERNING PAYMENT AND  
SEQUESTRATION OF ADMINISTRATIVE  
EXPENSES**

14 FTI Consulting, Inc. ("**FTI**") and Radical Bunny, L.L.C. ("**Radical Bunny**") have filed  
15 motions addressing the payment, sequestration and potential disgorgement of administrative fees paid or  
16 to be paid in these proceedings.<sup>1</sup> The FTI Motions and the Radical Bunny Motion all address the  
17 concern of whether the reorganized debtor has the funds necessary to pay allowed administrative claims  
18 in these proceedings and, if not, how any shortfall is to be apportioned among the various administrative  
19 claimants. The Court has set the Radical Bunny Motion for Tuesday, January 12, 2010, at 1:00 p.m.  
20 FTI respectfully requests that the Court set the FTI Motions for hearing at that same date and time. This  
21 motion is supported by the attached Memorandum of Points and Authorities.

22 \_\_\_\_\_  
23 <sup>1</sup> See *Motion to Alter or Amend Judgment Awarding Radical Bunny, L.L.C.'s Administrative Priority*  
24 *Claim for Substantial Contribution and Request for Indicative Ruling Pursuant to Federal Rule of Civil*  
25 *Procedure 62.1* (the "**Motion to Alter/Amend**") [DE 2557]; *Motion for Order Pursuant to Bankruptcy*  
26 *Rule 3020 Requiring Segregation of Funds and for Compliance with Confirmed Plan of Reorganization*  
(the "**3020 Motion**" and, with the Motion to Alter/Amend, the "**FTI Motions**") [DE 2556]; *Radical*  
*Bunny, L.L.C.'s: (1) Response and Objection to Liquidating Trust's Motion for Stay Pending Appeal;*  
*and (2) Motion to Compel Immediate Payment* (the "**Radical Bunny Motion** ") [DE 2548].

1 DATED this 5th day of January, 2010.

2 SCHIAN WALKER, P.L.C.

3 By /s/ MICHAEL R. WALKER, #003484  
4 Dale C. Schian  
5 Michael R. Walker  
6 Attorneys for FTI Consulting, Inc.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 On January 4, 2010, the Court entered its *Order Granting in Part and Denying in Part*  
9 *Motion for Stay Pending Appeal* [DE 2552], thereby mooted the Motion to Compel as it related to  
10 Kevin T. O'Halloran's, Trustee of the Liquidating Trust of Mortgages Ltd., *Motion for Stay Pending*  
11 *Appeal* ("**Stay Motion**") [DE 2535]. On the same day, January 4, 2010, the Court entered its *Order*  
12 *Setting Hearing on Payment of Administrative Claim of Radical Bunny* (the "**Hearing Order**")  
13 [DE 2554]. In the Hearing Order, the Court noted that the Radical Bunny Motion "seeks to require the  
14 Liquidating Trust to provide financial information on the status of the assets of the Liquidating Trust,  
15 the Exit Financing and reserves for administrative claims." Hearing Order at 1:15-19.

16 Whether funds exist to pay administrative claims is at the heart of the FTI Motions. The  
17 relief requested in the Radical Bunny Motion is inextricably linked to the relief requested in the FTI  
18 Motions, and *vice versa*. In fact, in *Radical Bunny, L.L.C.'s (1) Objection to the Form of Order re:*  
19 *Liquidating Trust's Motion for Expedited Hearing on its Motion for Stay Pending Appeal; and (2)*  
20 *Response and Objection to Motion for Expedited Hearing on Liquidating Trust's Motion for Stay*  
21 *Pending Appeal* ("**Objection**") [DE 2542], Radical Bunny attaches an e-mail dated December 23, 2009  
22 where its counsel specifically states that he "would like to hear [the reorganized debtor's] response to  
23 [FTI's counsel] whether there are sufficient funds to pay allowed administrative claims. It would be nice  
24 to confirm to him that the prior representations about having enough funds to pay allowed claims has not  
25 changed." Objection at 11. Given that the FTI Motions and the Radical Bunny Motion are directed to  
26 the issue of the reorganized debtor's ability to pay administrative fees as they are determined by this

1 Court, and also ask the Court to preserve the parties' right to *pro rata* treatment in the event that  
2 insufficient funds exist to fully satisfy all administrative claims, FTI respectfully requests that the FTI  
3 Motions and Radical Bunny Motion be considered together.

4 WHEREFORE, FTI respectfully requests that the Court hear the FTI Motions at the same  
5 date and time that is currently set for it to hear the Radical Bunny Motion. A proposed form of order is  
6 attached hereto as Exhibit "A" and contemporaneously uploaded herewith.

7 DATED this 5th day of January, 2010.

8 SCHIAN WALKER, P.L.C.

9  
10 By /s/ MICHAEL R. WALKER, #003484

11 Dale C. Schian  
12 Michael R. Walker  
13 Attorneys for FTI Consulting, Inc.

14 COPY of the foregoing  
15 e-mailed this 5th day  
of January, 2010, to:

16 Edward M. McDonough  
17 Alvarez & Marsal Dispute Analysis &  
Forensic Services, LLC  
2355 East Camelback Road, #805  
18 Phoenix, Arizona 85016  
[emcdonough@alvarezandmarsal.com](mailto:emcdonough@alvarezandmarsal.com)

19 Carolyn J. Johnsen, Esq.  
20 Bradley J. Stevens, Esq.  
Todd B. Tuggle, Esq.  
21 Jennings Strauss & Salmon, P.L.C.  
201 East Washington Street, 11th Floor  
22 Phoenix, Arizona 85004-2385  
Attorneys for Debtor  
23 [cjohnsen@jsslaw.com](mailto:cjohnsen@jsslaw.com)  
[bstevens@jsslaw.com](mailto:bstevens@jsslaw.com)  
24 [ttuggle@jsslaw.com](mailto:ttuggle@jsslaw.com)

25 ///

26 ///

1 Cathy L. Reece, Esq.  
Keith L. Hendricks, Esq.  
2 Gerald L. Shelley, Esq.  
Fennemore Craig, P.C.  
3 3003 North Central Avenue, #2600  
Phoenix, Arizona 85012  
4 Attorneys for ML Manager, LLC  
[creece@fclaw.com](mailto:creece@fclaw.com)  
5 [khendricks@fclaw.com](mailto:khendricks@fclaw.com)  
[gshelley@fclaw.com](mailto:gshelley@fclaw.com)

6 Sharon B. Shively, Esq.  
7 Sacks Tierney, P.A.  
4250 North Drinkwater Boulevard, 4th Floor  
8 Scottsdale, Arizona 85251-3693  
Attorneys for Kevin T. O'Halloran, Trustee  
9 of the Liquidating Trust of Mortgages Ltd.  
[sharon.shively@sackstierney.com](mailto:sharon.shively@sackstierney.com)

10 Michael D. O'Mara, Esq.  
11 Mark J. Dorval, Esq.  
Stradley, Ronon, Stevens & Young, LLP  
12 2600 One Commerce Square  
Philadelphia, Pennsylvania 19103  
13 Attorneys for Kevin T. O'Halloran, Trustee  
of the Liquidating Trust of Mortgages Ltd.  
14 [mo'mara@stradley.com](mailto:mo'mara@stradley.com)  
[mdorval@stradley.com](mailto:mdorval@stradley.com)

15 Shelton L. Freeman, Esq.  
16 Nancy J. March, Esq.  
DeConcini McDonald Yetwin & Lacy, P.C.  
17 6909 East Main Street  
Scottsdale, Arizona 85251  
18 Attorneys for G. Grant Lyon, Chapter 11  
Trustee for Radical Bunny, L.L.C.  
19 [tfreeman@lawdmyl.com](mailto:tfreeman@lawdmyl.com)  
[nmarch@dmyl.com](mailto:nmarch@dmyl.com)

20  
21           /s/   DEBBI STEPHENS          

22 133687.4  
23  
24  
25  
26

# **EXHIBIT "A"**

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](mailto: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**

9 In re:

10 MORTGAGES LTD.,

11 Debtor.

No. 2-08-bk-07465-RJH

CHAPTER 11

**ORDER SETTING HEARING ON FTI  
CONSULTING, INC.'S PENDING  
MOTIONS CONCERNING PAYMENT AND  
SEQUESTRATION OF ADMINISTRATIVE  
EXPENSES**

15 This matter having come before the Court on FTI Consulting Inc.'s *Motion to*  
16 *Consolidate Hearings re: Pending Motions of Radical Bunny, L.L.C. and FTI Consulting, Inc.*  
17 *Concerning Payment and Sequestration of Administrative Expenses* (the "**Motion**") [DE \_\_]; the Court  
18 having considered the Motion and the relevant record in these proceedings, and good cause appearing,

19 IT IS HEREBY ORDERED setting a hearing on the FTI Motions (as defined in the  
20 Motion) for 1:00 p.m., Tuesday, January 12, 2010, Courtroom 603, 230 North First Avenue, Phoenix,  
21 Arizona.

22 IT IS FURTHER ORDERED that any objection or other response to the FTI Motions  
23 shall be filed no later than Friday, January 8, 2010.

24 DATED AND SIGNED ABOVE.

25 133746.1

26