

**EXHIBIT "A"**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

\_\_\_\_\_)  
In re: )  
\_\_\_\_\_)  
MORTGAGES LTD. CH: 11 ) 2:08-bk-07465-RJH  
\_\_\_\_\_)  
RADICAL BUNNY'S REQUEST FOR STATUS )  
HEARING ON THE BANKRUPTCY APPELLATE )  
PANEL'S AUGUST 4, 2010 DECISION )  
\_\_\_\_\_)

U.S. Bankruptcy Court  
230 N. First Avenue, Suite 101  
Phoenix, AZ 85003-1706

September 21, 2010  
3:02 p.m.

BEFORE THE HONORABLE RANDOLPH J. HAINES, Judge

APPEARANCES:

For Radical Bunny LLC: Shelton L. Freeman  
DECONCINI MCDONALD YETWIN  
& LACY PC  
6909 E. Main Street  
Scottsdale, AZ 85251

For ML Liquidating Trust: Mark J. Dorval (Telephonic)  
STRADLEY RONON STEVENS  
& YOUNG LLP  
2600 One Commerce Square  
Philadelphia, PA 19103-7098

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1 THE CLERK: In the case of 08-7465, Mortgages, Ltd.

2 THE COURT: And just if there's anyone here waiting  
3 for it, the matter that came off for today was the victim's  
4 recovery adversary. We're not going to be hearing that. Has  
5 that been continued to a date specific?

6 THE CLERK: It hasn't, that I'm aware of. I was just  
7 told --

8 THE COURT: All right.

9 THE CLERK: -- it wasn't noticed.

10 THE COURT: So on the Radical Bunny matter,  
11 appearances.

12 MR. FREEMAN: Thank you, Your Honor. Shelton Freeman  
13 on behalf of Radical Bunny.

14 MR. DORVAL: Thank you, Your Honor. Mark Dorval on  
15 behalf of the liquidating trust.

16 THE COURT: Anyone else wish to appear on the Radical  
17 Bunny issue? Apparently not. Mr. Freeman, this was your  
18 request for a status conference.

19 MR. FREEMAN: It is, Your Honor. Based upon the  
20 decision of the BAP to remand the matter back to Your Honor to  
21 conduct the appropriate benefit analysis and make more detailed  
22 findings, I wasn't sure how the Court wanted to proceed in --

23 THE COURT: And my question for you is what do you  
24 propose?

25 MR. FREEMAN: Your Honor, what I would propose, in an

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1 effort to try and streamline this proceeding and avoid the need  
2 for more brain damage, based on, I guess, the fact that the  
3 Court and myself lived through this case and experienced it  
4 all, and we've got newcomers to the situation, in my zeal to  
5 try and get paid sooner rather than later, I failed to include  
6 enough findings in the proposed order that I submitted.

7 So what I would suggest, Your Honor, is that Your  
8 Honor has the record before you in this case, and that the  
9 parties submit proposed findings of fact and conclusions of law  
10 to you to consider in applying the concepts of the Cellular One  
11 case. And then, Your Honor, if you needed more oral argument,  
12 we could certainly set that out, but I think submitting  
13 proposed findings with citations to the record would be an  
14 appropriate vehicle to try and bring this to a conclusion.

15 THE COURT: Remind me if you would, did we have an  
16 evidentiary hearing before your fees were approved?

17 MR. FREEMAN: We did not, Your Honor. As you might  
18 recall, what we did do was we submitted stipulated facts.  
19 Most --

20 THE COURT: Most of the facts were stipulated?

21 MR. FREEMAN: Yes, Your Honor. And --

22 THE COURT: All right. So I think the critical  
23 question to ask after the remand is you believe that what the  
24 Ninth Circuit tells us is the proper standard can be applied on  
25 the basis of the facts already stipulated to and in the record?

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1 MR. FREEMAN: Yes, Your Honor.

2 THE COURT: We don't need to have any further  
3 evidentiary hearing nor any further stipulated facts for that  
4 matter?

5 MR. FREEMAN: That's our position, Your Honor, yes.

6 THE COURT: All right. And so your suggestion is  
7 each side submit perhaps proposed findings and conclusions,  
8 perhaps a memorandum to explain why you think those findings:  
9 A) can be made on the record; and B) why they satisfy or, in  
10 Mr. Dorval's case, don't satisfy the standard as defined by the  
11 Ninth Circuit, Ninth Circuit BAP.

12 MR. FREEMAN: Yes, Your Honor. I think where the BAP  
13 got wound up was that they interpreted your ruling to say that  
14 you found that there was a net benefit to the estate, without  
15 finding independent values for each of the services done. And  
16 I think the record is replete with references. So either  
17 through a brief briefing approach or proposed findings, I think  
18 we can provide Your Honor with what we believe are the facts in  
19 the record to support a ruling awarding the substantial  
20 contribution claim.

21 THE COURT: And maybe you can kind of clue me in here  
22 right now as to how you read the opinion, because I found it a  
23 little bit confusing and I thought maybe they misunderstood  
24 what I meant. On the one hand it seems that they agree with  
25 what I concluded, and that is that the Cellular 101 (sic), or

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1 whatever it is, is the applicable standard. And what I took  
2 away from that was the language in that case that said the  
3 benefit to the estate exceeded the cost, or exceeded the fees  
4 being awarded. And in my opinion, I used what I thought of as  
5 a shorthand terminology for that standard, and that is net  
6 benefit. You take the benefit minus the costs and they found a  
7 net benefit. And so at first when I read it I was confused,  
8 why are they saying that net benefit isn't the proper standard.  
9 The proper standard is whether there's a benefit in excess of  
10 cost, which in my mind that is net benefit.

11 On re-reading it, I concluded maybe they weren't  
12 disagreeing with net benefit somehow being different than the  
13 Clear Channel holding, but rather what they were saying is  
14 well, you've got to find that for each category of fees  
15 incurred. That's what you need to do. And I think they were  
16 saying and that really doesn't come from the Clear Channel case  
17 itself, because in that case there only was one category. When  
18 we look to some other case law and we see where there is more  
19 than one category, now we got to take the Clear Channel  
20 standard and apply it on a category by category basis.

21 'Course they don't give us any clue as to how you  
22 define category, but maybe in this case that doesn't matter  
23 because the parties in effect have agreed on what the  
24 categories are. Is that how you read it?

25 MR. FREEMAN: It's right, Your Honor. I've read this

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1 about six times and at first I came out with the same issue.  
2 And I do think that either I dropped the ball or I wasn't able  
3 to communicate to them, in essence there were kind of two  
4 levels of value being provided here. Radical Bunny provided a  
5 number of financial benefits to this estate and we were seeking  
6 to measure that by the fees that we were seeking in the claim  
7 amount.

8 In reversing, base -- they cited to your opinion and  
9 got hung up on the word -- use of your word of entirety. And I  
10 think what they got confused with is they saw three categories  
11 of fees and said well, you can't just say all the fees are good  
12 if you think the total benefit exceeded the value of those  
13 claims, not looking at financial benefits that Radical Bunny  
14 itself provided. So I do think there was a either  
15 misunderstanding or I failed to communicate clearly the bases  
16 for the ruling.

17 So I believe, Your Honor, that I -- they were not  
18 disagreeing with you. I think the -- if you specifically find  
19 that those categories benefited the estate, that is the  
20 Cellular One standard. I think they were concerned that there  
21 was just a determination that globally, well, I don't have to  
22 look at the fees because the value provided exceeded that  
23 number. And I think in this instance, the value provided by  
24 Radical Bunny in terms of financial benefit to the estate,  
25 separate and apart from calculating the fees, far exceeded that

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1 number. And I think that's what Your Honor determined, but I  
2 don't think in the short time we had for oral argument I was  
3 able to pin that down for them to where they could understand  
4 that basis.

5 So I do think providing those specific findings will  
6 address their concern that Cellular One's being complied with  
7 in looking at the benefit of each cast for each particular  
8 instance. For example, the subordination of the various loan  
9 positions, the use of cash collateral, those items juxtaposed  
10 against how much fees, how many -- how much fees were incurred  
11 in asset protection or asset preservation for the estate.

12 THE COURT: Mr. Dorval, I'll hear from you in just a  
13 second. Let me just make sure I'm done with Mr. Freeman. Are  
14 you --

15 MR. FREEMAN: So, Your Honor, I think there's --

16 THE COURT: -- done with that point?

17 MR. FREEMAN: There are two levels there. And I do  
18 believe that we can address their concerns. And I don't think  
19 they were disagreeing with you, I think they were just  
20 concerned it all got lumped together.

21 THE COURT: But in any event, your view is you can go  
22 back and analyze those then on a category by category basis  
23 based on the record already made?

24 MR. FREEMAN: That's correct, Your Honor.

25 THE COURT: All right, thank you.

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1 Mr. Dorval.

2 MR. DORVAL: Thank you, Your Honor. And thank you  
3 for allowing me to participate by phone.

4 I didn't sense any confusion from the Bankruptcy  
5 Appellate Panel on the issues, as Mr. Freeman may have  
6 suggested. They did state in their opinion that there's a need  
7 to analyze each activity independently to determine whether  
8 that activity was a greater to the estate than to the claimant.  
9 So that they made it very clear that the information wasn't  
10 there to do that, that there -- and that was the point that we  
11 did try and stress, that there is no information be -- there  
12 was no information before that court. And I don't believe  
13 there was information sufficient on the record to determine  
14 what the value was; and in particular, what additional costs  
15 may have been included.

16 They did mention the 70,000 that was in the  
17 stipulated facts that represented the amounts that Radical  
18 Bunny cost the estate in Radical Bunny's estimation for work  
19 once it switched its position on the plan, for example. That's  
20 something where they said that wasn't factored in. And, you  
21 know, we didn't -- there was no record established on those  
22 costs before Your Honor, as you mentioned. There was no  
23 evidentiary hearing.

24 We did stipulate to certain facts, but left most of  
25 this to legal analysis. And the BAP had determined that there

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1 just weren't sufficient facts in the record for it to say that  
2 an evaluation could be made with respect to the benefit to  
3 Radical Bunny versus the benefit to the estate. And without  
4 that, there can't be a substantial contribution award. And  
5 that's how they applied Cellular 101.

6 We have, being that there was the work -- with  
7 respect to whether additional discovery would be required,  
8 there's in -- potentially a need for information with respect  
9 to the work performed, the value of the work to the estate, the  
10 value of the benefit to Radical Bunny. All are things that are  
11 necessary to be determined in order to meet the standard that  
12 was applied in this case.

13 THE COURT: I understand that. But procedurally, it  
14 sounds to me like your position is going to be -- and you're  
15 probably happy to hear that Mr. Freeman is taking the position  
16 we don't need any more facts. And you're simply going to argue  
17 well, based on the facts that have been established, the  
18 benefit to the estate can't be demonstrated to exceed the  
19 benefit to Radical Bunny. And you're content to argue that, in  
20 effect, on the basis of the already stipulated facts.

21 MR. DORVAL: My only concern is that Mr. Freeman may  
22 consider the entire docket of this bankruptcy case to be part  
23 of the record; and therefore, anything in any of the pleadings  
24 to be facts that he might use that we haven't had as part of  
25 the record of this particular dispute. And then we would

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1 potentially be at a disadvantage at that point if that new  
2 information is there and we haven't had a chance to go through  
3 that information and potentially find additional information to  
4 help us respond to it. So that's my only fear in the process  
5 that is being proposed, is that new information comes in  
6 without a chance for us to properly respond to it.

7 THE COURT: Understood. I would think the way to do  
8 -- deal with that would be to simply say that Mr. Freeman's  
9 going to file a memorandum and maybe enclose with it proposed  
10 findings. And he'll give us in the memorandum where the  
11 necessary facts are found in the stipulation or in the record.  
12 And then you will respond and you'll have an opportunity to say  
13 he's relying on facts that aren't in the record. Is that fair  
14 enough, Mr. Dorval?

15 MR. DORVAL: Yes, Your Honor. That would be a proper  
16 way to handle it. Thank you.

17 THE COURT: All right. When do you think,  
18 Mr. Freeman, you can have that memorandum on file? Let's get a  
19 schedule.

20 MR. FREEMAN: Your Honor, I think we could file --  
21 get my calendar. I think we could have an opening brief filed,  
22 Your Honor, by October 18th.

23 THE COURT: So close to a month.

24 Mr. Dorval, when would you like for your response?

25 MR. DORVAL: November 22nd, Your Honor. Looking at

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1 the calendar, that's a Monday, similar to the 18th.

2 THE COURT: All right. Well, let's assume if there  
3 is any reply it'll be within one week of that, since the work  
4 hopefully will already have been done. So let's see if we can  
5 find time for oral argument starting the week of December 6.  
6 And let's set it for I would think 30 minutes.

7 THE CLERK: December 6th at 10 a.m.

8 THE COURT: December 6th at 10 a.m. So Mr. Freeman's  
9 opening memorandum will be due October 18 and Mr. Dorval's  
10 response November 22. If there is any reply it'll be by  
11 November 29.

12 Strikes me one issue you may need to address as a  
13 legal issue, and that is what the Ninth Circuit BAP's standard  
14 is and how it's going to apply on these facts. Are they saying  
15 -- and I'm just throwing this out for open thought, I guess.  
16 Are they saying that to get a substantial contribution award  
17 you must demonstrate that the benefit to the estate from the  
18 particular services rendered by the attorney is of a value that  
19 exceeds the value of those services to the party?

20 And the reason I'm asking that is as I recall, one of  
21 the arguments you made as to value conferred on the estate was  
22 that Radical Bunny agreed to subordinate its loans. Well, I  
23 don't know if subordinating a loan was one of the categories of  
24 work that you did. So if the comparison that has to be made is  
25 value to the estate for particular work compared to the value

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1 to the creditor from that same work, I don't know how you do  
2 that if you're saying and there's other value that we  
3 contributed that didn't really come necessarily from the  
4 lawyers' work. It was what the creditor did.

5 MR. FREEMAN: Your Honor, I think that is exactly  
6 where the -- I either didn't elucidate it for the BAP, but I  
7 think that's exactly the point they missed and I think that's  
8 exactly what -- I think those are two different standards. If  
9 you say Radical Bunny subordinated, they provide use of cash  
10 collateral and they consented to other financing. And that  
11 value was, you know, I think the evidence was \$12 million of  
12 subordination and use of cash collateral. That's value.

13 And if you say well, that value to the estate -- and  
14 what I thought your ruling was -- that value to the estate  
15 exceeded 595,000 in fees. So that net benefit exceeded the  
16 amount of fees sought. I don't think they understood that  
17 concept. I think they looked at the fees and said well, you  
18 didn't justify that this three hours spent on the plan actually  
19 conferred a benefit on Radical -- or the estate above what it  
20 conferred to Radical Bunny. And I think those are the detailed  
21 findings that I do think we can demonstrate that the value  
22 Radical Bunny provided to the estate far exceeded any number in  
23 terms of the fees sought. And so you can look at a net benefit  
24 under that analysis and say they provided all this other value.  
25 The fee number was how they used to measure it, but you don't

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1 have to independently find each fee entry directly conferred  
2 benefit. But I do think we can meet it under both levels.  
3 That would be our approach on the briefing, Your Honor.

4 THE COURT: All right. Because I expect Mr. Dorval  
5 will be saying no, they understood it perfectly well.

6 MR. FREEMAN: Absolutely.

7 THE COURT: And they said that doesn't work. You've  
8 got to demonstrate the value of the lawyer's services to the  
9 estate exceeded the value of the lawyer's services to the  
10 creditor.

11 MR. FREEMAN: And we'd apply it under both --

12 MR. DORVAL: Whether they raised --

13 THE COURT: For each category too.

14 MR. FREEMAN: And -- agreed, Your Honor. We applied  
15 under both standards, both on behalf of Radical Bunny on the  
16 benefit it provided, as well as the attorney fee portion. So I  
17 do think we can address both. And I do fully expect Mr. Dorval  
18 to take the position Your Honor suggested and we'll take it up  
19 come --

20 THE COURT: All right. Your --

21 MR. FREEMAN: -- December 2nd.

22 THE COURT: -- comment, Mr. Dorval?

23 MR. DORVAL: I was just going to agree with you, Your  
24 Honor, that we did answer questions about this at the appellate  
25 hearing. And I guess you've all -- you're already getting a

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1 taste of what I would put in a response, that they did address  
2 that issue and they did understand the issue, and they felt  
3 that there needed to be a way to determine that an attorney  
4 assisting in -- its client in subordinating an interest is  
5 somehow providing the value sought with this fee award. You  
6 know, clearly there's not \$14 million worth of work to be done  
7 to help somebody enter into subordination agreement. So they  
8 did bring a fee issue and recognized that there wasn't anything  
9 there to support that.

10 THE COURT: All right. Well, I think I'll hear more  
11 about that on your memoranda then.

12 MR. FREEMAN: Thank you, Your Honor.

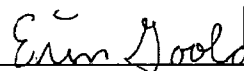
13 THE COURT: Thank you. That concludes this hearing.

14 MR. DORVAL: Thank you, Your Honor.

15 (Proceedings Concluded)

16  
17 I certify that the foregoing is a correct transcript from  
18 the record of proceedings in the above-entitled matter.

19  
20 Dated: October 13, 2010



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