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26 **IN THE UNITED STATES DISTRICT COURT**

27 **THE DISTRICT OF ARIZONA**

28 ML LIQUIDATING TRUST, as successor-in-
interest to Mortgages Ltd.

Plaintiff,

v.

MAYER HOFFMAN MCCANN P.C., a
Missouri professional corporation; CBIZ, Inc.,
a Delaware corporation; CBIZ MHM, LLC, an
Ohio limited liability company,

Defendants.

Case No. CV 10-2019-PHX-MHB
**MEMORANDUM IN SUPPORT OF
MOTION TO REFER THIS CASE
TO BANKRUPTCY COURT UNDER
THE COURT'S GENERAL
REFERRAL ORDER AND LOCAL
BANKRUPTCY RULE 5011-1 BY
DEFENDANTS MAYER HOFFMAN
MCCANN, P.C., CBIZ, INC., AND
CBIZ MHM, LLC**

1 On August 26, 2010, the ML Liquidating Trust (“Trust”), as successor-in-interest to
2 Mortgages Ltd. (“ML”), filed this lawsuit against Defendants Mayer Hoffman McCann
3 P.C., CBIZ, Inc., and CBIZ MHM, LLC (collectively “Defendants”) in the Superior Court
4 of Arizona, County of Maricopa. (*See* Doc. 1., Notice of Removal, at 2.) The Trust alleges
5 that Mayer Hoffman, ML’s former auditor, conducted negligent audits that resulted in ML
6 remaining in existence and taking on additional liabilities longer than it should have. (*See*
7 *id.* Ex. A, Compl. ¶¶ 117, 126.) Defendants removed the Trust’s suit to this Court on the
8 basis of diversity jurisdiction under 28 U.S.C. § 1332(a)(1) and bankruptcy jurisdiction
9 under 28 U.S.C. § 1334(b). (Doc. 1, Notice of Removal, at 3-7.)

10 Defendants asserted bankruptcy jurisdiction based upon ML’s pending bankruptcy
11 case. (*See In re Mortgages Ltd.*, No. 2:08-bk-07465-RJH.) On May 20, 2009, the
12 bankruptcy court issued an order that confirmed ML’s First Amended Plan of
13 Reorganization. (*See* Doc. 1755, Order Confirming Plan, *In re Mortgages Ltd.*, No. 2:08-
14 bk-07465-RJH.) The First Amended Plan created the Trust (the plaintiff in this case). (*See*
15 Doc. 1532, First Amended Plan, § 6.2, *In re Mortgages Ltd.*, No. 2:08-bk-07465-RJH.) The
16 Plan directed the Trust to liquidate ML’s remaining assets, including its potential “Causes
17 of Action” against third parties such as Defendants. (*Id.*) It specifically retained the
18 bankruptcy court’s jurisdiction over all “Causes of Action brought by the Liquidating
19 Trust.” (*Id.* § 9.1(i).) Under these circumstances, as detailed in Defendants’ notice of
20 removal (R.1, Notice of Removal, at 4-7), the bankruptcy court has, at the least, “related to”
21 bankruptcy jurisdiction over the Trust’s lawsuit. *See* 28 U.S.C. § 1334(b).

22 As a result, the Court should refer this case to the bankruptcy court. General Order
23 No. 01-15 sets forth a bright-line rule that “the court . . . refers to the bankruptcy judges for
24 this district *all* cases under title 11 and *all* proceedings under title 11 or arising in or related
25 to a case under title 11.” D. Ariz. Gen. Order No. 01-15(1) (emphasis added); *see also* D.
26 Ariz. Local Bankr. R. 5011-1 (same). Because Defendants have alleged such related-to
27 jurisdiction in this case, it should be referred to the bankruptcy court in accordance with the
28 Court’s automatic referral provisions.

1 Referral is all the more appropriate in this case because of the bankruptcy court's
2 extended knowledge of the underlying facts leading to ML's bankruptcy and because
3 various investors with ML have brought similar claims against Defendants that have been
4 removed to, and are presently pending in, the bankruptcy court. *See Victims Recovery, LLC*
5 *v. Greenberg Traurig LLP*, Adversary Case No. 2:10-ap-01214-RJH (Bankr. D. Ariz.);
6 *Ashkenazi v. Greenberg Traurig LLP*, Adversary Case No. 2:10-ap-01402-RJH (Bankr. D.
7 Ariz.). In addition, the Trust (or its Trustee) has filed numerous adversary proceedings
8 against ML's former officers or employees in bankruptcy court. *See, e.g., ML Liquidating*
9 *Trust v. Denning*, Adversary Case No. 2:10-ap-01098-RJH (Bankr. D. Ariz.); *ML*
10 *Liquidating Trust v. Furst*, Adversary Case No. 2:10-ap-01126-RJH (Bankr. D. Ariz.).
11 Given the pending ML bankruptcy case, "the possibility of greater efficiency in the
12 bankruptcy court" justifies that the Court follow its general referral rule here. *Gorilla Cos.,*
13 *LLC v. Van Tassel (In re Gorilla Cos., LLC)*, CV-09-1327-PHX-DGC, 2009 WL 3241759,
14 at *5 (D. Ariz. Oct. 2, 2009); *see Sigma Micro Corp. v. Healthcentral.com (In re*
15 *Healthcentral.com)*, 504 F.3d 775, 788 (9th Cir. 2007) ("Only by allowing the bankruptcy
16 court to retain jurisdiction over the action . . . do we ensure that our bankruptcy system is
17 carried out.").

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1 Dated: September 23, 2010

Respectfully submitted,

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3 /s/ Katherine V. Brown

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2010, I electronically filed the foregoing Memorandum with the Clerk of the Court using the CM/ECF system and served the following parties by U.S. mail:

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