

# ML Liquidating Trust

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## NEWSLETTER

December 16, 2011

Dear Trust Beneficiaries,

In our continuing effort to keep you apprised of the efforts of the ML Liquidating Trust and ML Servicing, Inc., we are sending you our ninth newsletter.

*Litigation.* We continue to focus on litigation against various parties to recover funds on behalf of our Trust beneficiaries. As mentioned in previous newsletters, nearly all of the attorneys retained by the Trust are being paid on a contingency basis to reduce our up front legal expenses. Under the contingency fee agreements, the Trust is responsible for the payment of costs incurred by the attorneys such as expert witness fees and other out-of-pocket costs, but no legal fees are due the attorneys unless they are successful recovering funds from the defendants.

### Greenberg Traurig and Robert Kant

Michael Manning from the law firm of Stinson Morrison Hecker LLP filed the Trust's lawsuit against Greenberg Traurig LLP and Robert Kant on March 25, 2011. Greenberg and Mr. Kant attempted to remove the case to Federal Court, but the Trust prevailed and the case is continuing in State Court which we believe is a better choice for the Trust. Currently a motion is pending to dismiss Mr. Kant from the lawsuit. We feel confident that the judge will keep Mr. Kant in the lawsuit, but even if we are not successful on this issue, it will not affect our suit against Greenberg Traurig.

### Scott Coles Life Insurance

Michael Manning is also handling the lawsuit to recover the proceeds of the life insurance policies of Scott Coles. This suit was filed on March 28, 2011. Because of a legal conflict, Scott Dosek of Hinshaw & Culbertson is handling the portion of the Trust's life insurance case against Ashley Coles. Mr. Dosek's complaint was filed on July 14, 2011. The two cases are being consolidated in front of a single judge. Rule 26.1 Disclosure Statements were recently exchanged in the main suit.

### Mayer Hoffman McCann and CBIZ

Nick DiCarlo of DiCarlo Caserta & Phelps filed the Trust's lawsuit against Mayer Hoffman McCann and CBIZ relating to the accounting malpractice claims on August 26, 2010. This case continues to be on hold pending our appeal relating to whether the case will be heard in Bankruptcy Court or State Court. We hope this issue will be settled in early 2012 so that the case can proceed. In the meantime, counsel continues to develop our case independently and with a CPA consultant to prepare for discovery.

### Appraisal Claims

The initial law firm that the Trust retained to investigate and pursue the claims against the appraisers was not able to proceed with the cases. We are in the process of interviewing additional firms and performing further investigations to determine whether the lawsuits should be brought.

### Preference Claims

The law firm of Carson Messinger is continuing its pursuit of the Trust's preference claims (that is, individuals and organizations that were cashed out of their investments within 90 days before the bankruptcy and ML insiders within one year). Of the 18 cases filed, 9 have settled, 4 were dismissed, and 5 are working through issues which we hope to resolve but if not the cases will go to trial.

Class Action Lawsuit. Occasionally we receive questions regarding the differences between the lawsuits brought against the former lawyers and accountants of Mortgages Ltd. (i.e. Greenberg Traurig and Mayer Hoffman McCann/CBIZ) by the attorneys for the proposed Class Action, and the attorneys for the ML Liquidating Trust. The main differences between the cases relate to the calculation of the damages owed. For example, the Trust is suing for the losses Mortgages Ltd. incurred. The Class Action attorneys are pursuing the losses the investors suffered. The Trust damages would be in addition to the investor losses, but will also benefit the investors since each investor is a beneficiary of the Trust. Some of the investors have opted out of the Class Action and have brought their own lawsuits against the attorneys and accountants. These lawsuits are commonly referred to as the Mass Action lawsuits.

An important fact to note about the Trust is that although each investor is a beneficiary of the Trust, the Trust has other beneficiaries consisting of the unsecured creditors. Furthermore, pursuant to the Bankruptcy Plan and the Interborrower Agreement, the Trust will be obligated to reimburse the majority of the Exit Financing costs before making distributions to the investors and unsecured creditors, and will also make a priority payment of \$2,000,000 to the unsecured creditors before making payments to the rest of the beneficiaries. Attached is a flow chart that helps explain how funds flow through the Trust to the beneficiaries.

One final item we would like to mention with regard to the Class Action lawsuit is that the attorneys for the Class Action are holding information meetings for the investors at 7:00 PM on each of December 19, 20 and 21. The meeting location is the Living Streams Church located at 7000 N. Central Avenue, Phoenix, Arizona 85020. The meeting is limited to investors only and you must RSVP in advance to be admitted. Additional information about the meetings may be obtained at 602-776-5999 or by email at [MLRB-InvestorMtg@bffb.com](mailto:MLRB-InvestorMtg@bffb.com).

Claim Payments. As stated in the last newsletter, the Trust resolved the last of the post-bankruptcy professional fee claims. The claims originally totaled \$13.7 million, but the Trust was able to reduce the amount by nearly \$3.9 million to approximately \$9.8 million. The Trust incurred approximately \$600,000 in attorneys' fees to achieve the approximately \$3.9 million in savings.

Exit Financing. As addressed in the last ML Manger newsletter, the Exit Financing has been paid in full from the proceeds of the real estate sales by ML Manager. There is an additional \$7.5 million disposition fee that does not accrue interest and will be paid to the Exit Lender over an extended period of time as additional properties are sold or the Trust recovers monies through its litigation claims. Approximately \$3.6 million of the \$7.5 million has been paid to date.

Owned Real Estate. The Trust continues to hold ownership of one property consisting of a golf course development in Eager, Arizona, which is approximately 40 miles east of Show Low. The asset includes 141 residential lots, a commercial parcel and golf course. The golf course is not currently operational. We recently entered into a Letter of Intent for a third party to operate, maintain and sell the property. We hope to have the final agreement completed in the next thirty days.

Trustee and Board Updates. We are pleased to inform you that we were able to fill the open position on the ML Liquidating Trust Board with Ralph Ponce de Leon. Mr. Ponce de Leon was chosen after an extensive search and multiple interviews. The Board's efforts to find a new Board member included a general notice to all trust beneficiaries regarding the open position. We were fortunate to have several qualified parties express interest in the position, but the Board ultimately chose Mr. Ponce de Leon. Attached is a brief bio containing additional information about Mr. Ponce de Leon. We also want to express our gratitude to the other parties that took time from their busy schedules to discuss the position and meet with the Board.

Mission. We occasionally receive inquiries regarding the ML Liquidating Trust's responsibilities, and how they differ from the ML Manager, LLC. In each of our Newsletters we like to provide a brief explanation of the differences.

The Official Committee of Investors First Amended Plan of Reorganization (the "Plan") became effective on June 15, 2009. Under the Plan, two Boards, ML Liquidating Trust Board and ML Manager Board, were formed. In general, ML Manager Board is responsible for the enforcement and collection of the loans owned by the Mortgages Ltd. Investors and Radical Bunny, LLC. The ML Liquidating Trust (the "LT") is not responsible for any of these loans. Instead, the Board of the LT directs the court-appointed Liquidating Trustee, Matthew Hartley, in pursuing certain causes of action described above and in selling the real estate owned directly by Mortgages Ltd. Pursuant to the Plan, Mortgages Ltd. was renamed to ML Servicing, Inc. The LT is also the sole shareholder of ML Servicing, Inc., which employs the remaining employees and administers the millions of documents being utilized in numerous lawsuits. The Board of Directors of both the LT and ML Servicing, Inc. are: Richard Shaw – Chair, David Goldman, James Merriman, Bob Casselman, and Ralph Ponce de Leon. All five board members were investors in Mortgages Ltd. Matthew Hartley is the Trustee of the LT and President/CEO of ML Servicing, Inc.

All previous newsletters may be found on our website <http://www.mtg ltd.com/webs/MLSNews>.

Richard C. Shaw  
Chair  
ML Liquidating Trust Board

Matthew R. Hartley  
Trustee  
ML Liquidating Trust

### BIO of Ralph Ponce de Leon

Ralph Ponce de Leon was raised in El Paso, Texas. He served in the US Air Force in Korea and at Eglin AFB Florida as a jet mechanic and crew chief. After discharge, he received a degree in Chemistry from the University of Texas-El Paso. Ralph completed graduate courses at ASU, U of A, and USC, and worked for Motorola for 34 years. His positions included: engineer, lab manager, and section manager with supervisory responsibility of numerous engineers. Ralph's first executive position at Motorola with profit and loss responsibility was Vice President of Operations which included Manufacturing, Quality Assurance, Engineering, and Procurement for a major Division. He was then transferred to the Corporate Offices in Chicago as Vice President and Corporate Director of Supply and Environmental Management. This entailed purchase and logistical coordination of a companywide \$13 billion procurement budget. Additionally, his Environmental Management duties required oversight of all global legal compliance to environmental law for the Motorola factories. Several company lawsuits were resolved during his watch. These lawsuits entailed devising legal strategy and court battles from which Motorola was successfully defended. Ralph was promoted to an elected officer by The Motorola Board of Directors and served as Corporate Vice President of Supply and Environmental Management for the last six years of his career with company.

Since retirement, Ralph has served on several boards including the University of Texas El Paso Science Advisory Board where he served as Chairman, and the M. D. Anderson Cancer Center Board.