

# ML Liquidating Trust

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## NEWSLETTER

December 18, 2012

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 tenth 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. Below are brief updates for each of the outstanding matters.

### 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. At this time, there were several class and mass action lawsuits pending, which for various reasons complicated the Trust's independent claim action. Following settlement of the other claims, and at the suggestion of Greenberg, in October we attended a mediation conference in New York. Unfortunately we were unable to reach an agreement. Our Judge for this case retired recently so we are awaiting appointment of a new Judge which we expect to occur in January. Shortly following appointment of our new Judge, the pending motion to dismiss Mr. Kant from the lawsuit will likely be heard and a scheduling order will be issued which will help move our case forward.

### 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. The Trust recently lost on motions to dismiss in both life insurance cases based on what our lawyers believe is a substantial misreading of applicable statutes. The trust is preparing to file an expedited appeal once the final order is issued.

### 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 was delayed for nearly two years while the Defendant litigated the question of which court should have jurisdiction to hear the case. The issue was finally resolved favorably for the trust earlier this year and Judge Anderson, an

Arizona State Court Judge, will preside over the matter. There are pending Motions to Dismiss which are scheduled to be heard January 11, 2013.

#### Appraisal Claims

The potential claims against the appraisers are currently under review by legal counsel. The cases are difficult because of the manner in which Mortgages Ltd. typically obtained appraisals. As mentioned in a previous newsletter the initial law firm retained by the Trust was not able to proceed with the cases. We hope to be able to determine soon whether cases may be brought against the appraisers.

#### 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, all but one have been settled or dismissed. We have been engaged in active settlement negotiations on the remaining case, and hope to reach a settlement soon after the next hearing on January 14, 2013.

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, as provided by the Bankruptcy Plan. Furthermore, pursuant to the Plan and the Interborrower Agreement, the Trust is obligated to reimburse the majority of the Exit Financing costs (now in the form of reimbursing existing investors from whom funds were withheld to liquidate the exit financing loan) before making distributions to the investors and unsecured creditors, as provided by the bankruptcy plan.

Exit Financing. As addressed in the last ML Manger newsletter, the Exit Financing has been paid in full, including the \$7.5 million disposition fee. As the Trust recovers funds from the lawsuits, the Trust will be able to reduce the Exit Financing costs paid by the Investors from the property sales.

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 Trust entered into an agreement with a third party to restart and operate the Golf Course, and to sell the residential lots and commercial property. The Golf Course has been repaired and in a condition to be reopened in the Spring of 2013. We are cautiously optimistic that the revamped golf course will encourage sales of the residential lots this coming year.

*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, the 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 ML Servicing Co., 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.

Operations: To keep operating expenses at a minimum, and in coordination with ML Manager, the office facility of ML Servicing has been closed, and we now have no full time employees. Our former Controller, Veronica Sas has been retained on a part time consulting basis to provide needed continuity.

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

Richard C. Shaw  
Chair  
ML Liquidating Trust Board

Matthew R. Hartley  
Trustee  
ML Liquidating Trust