IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*,[1]	Case No. 17-12560 (KJC)
	Jointly Administered
Debtors.	

EMERGENCY MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. § 1104

PACHULSKI STANG ZIEHL & JONES LLP
Richard M. Pachulski (CA Bar No. 90073)
James I. Stang (CA Bar No. 94435)
Jeffrey N. Pomerantz (CA Bar No. 143717)
Bradford J. Sandler (DE Bar No. 4142)
John A. Morris (NY Bar No. 2405397)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899 (Courier 19801)
Telephone: 302-652-4100
Facsimile: 302-652-4400
E-mail: rpachulski@pszjlaw.com
jstang@pszjlaw.com
jpomerantz@pszjlaw.com
bsandler@pszjlaw.com
jmorris@pszjlaw.com

Proposed Counsel for the Official Committee of Unsecured Creditors

[1] The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14225 Ventura Boulevard #100, Sherman Oaks, California 91423. The complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses may be obtained on the website of the noticing and claims agent at www.gardencitygroup.com/cases/WGC.

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The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned chapter 11 cases of Woodbridge Group of Companies, LLC, *et al.* (collectively, the "Debtors") hereby submits its *Emergency Motion of Official Committee of Unsecured Creditors for Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104* (the "Motion"), and in support thereof respectfully states as follows:

PRELIMINARY STATEMENT

1. The Committee, which represents the interests of thousands of noteholders and vendors, moves for the appointment of a chapter 11 trustee. The noteholders and vendors are not just creditors; they are victims of a complex fraud orchestrated by Robert Shapiro ("Shapiro"). The Debtors believe that the last-second appointment of a chief restructuring officer and "independent" manager to replace, but do the bidding of, Shapiro cures their ills. They are wrong. For the reasons set forth below, the Committee can establish that "cause" exists, and that the appointment of a trustee is necessary to protect the interests of creditors and other interests of the estates.

2. "Cause" plainly exists for the appointment of a chapter 11 trustee. The Securities and Exchange Commission (the "SEC") has been investigating Shapiro and his related entities for over a year. In fact, the SEC recently unsealed a complaint against Shapiro, the RS Protection Trust (the trust that owns the Debtors and non-Debtor affiliates for the benefit of Shapiro's family, the "RS Trust"), and the Debtors, in which it alleged that Shapiro, among other things, created hundreds of companies within the Woodbridge enterprise to facilitate a massive Ponzi scheme.[1] The SEC has already obtained an order freezing the assets of Shapiro and certain

[1] While Shapiro has apparently engaged in a massive fraud, what differentiates this case from a classic "Ponzi scheme" is that the Debtors own "hard assets" (comprised primarily of approximately 140 pieces of prime real estate valued at hundreds of millions of dollars, including a number of properties in various stages of construction completion) that will provide the basis for a substantial recovery rather than merely litigation claims.

non-Debtor affiliates, and has moved for the appointment of a receiver to take control of the entire Woodbridge enterprise, including the Debtors.

3. Knowing that Shapiro and his cohorts are unfit to act as estate fiduciaries, the Debtors attempt to avoid the appointment of a chapter 11 trustee by relying on the Debtors' chief restructuring officer ("CRO") and "independent manager" (the "Manager"), both of whom were installed on the last business day before the petition date. However, as set forth below, the CRO and the Manager were hand-picked by Shapiro, and have done his bidding both before and after the filing of these cases.

4. Shapiro enlisted Marc Beilinson ("Beilinson") as the Manager, and Lawrence R. Perkins ("Perkins") as the CRO, to maintain control over his scheme. The Debtors have repeatedly contended they are "independent," but any appearance of independence is illusory. With knowledge that a bankruptcy filing was imminent, Beilinson and Perkins immediately entered into the following agreements with Shapiro:

- Contribution Agreement, whereby Shapiro purportedly (a) ceded legal authority over certain Woodbridge entities while retaining absolute control over other entities holding assets allegedly worth tens of millions of dollars, (b) obtained the right to recover half of the net proceeds, up to $500,000, from each "sale" of certain assets "as an advance on distributions," and (c) reserved the right to reinstate himself as manager upon, among other things, the appointment of a chapter 11 trustee or receiver, or the conversion of the cases to ones under chapter 7 (*i.e.*, a truly independent estate fiduciary);

- Beilinson Engagement Letter, whereby Beilinson will receive a guaranteed minimum of $480,000, whether or not he provides services as "independent" manager; separately, Beilinson must obtain Shapiro's approval as a condition to obtaining any "success fee," the amount of which could greatly exceed the guaranteed minimum;

- Consulting Agreement, whereby Shapiro will receive $175,000 per month and be involved in every aspect of the Debtors' business including, for example, "identifying and negotiating with potential buyers" of the Debtors' assets, "meeting with investment bankers and lenders to assist" with the Debtors' capital fundraising, and "negotiating renovation contracts"; and

- Forbearance Agreement, whereby Shapiro is permitted to "continue to occupy" certain of the Debtors' properties worth millions of dollars "without fear of foreclosure during the pendency of the chapter 11 cases," which properties could otherwise be sold to generate desperately needed funds for the Debtors.

5. If Beilinson and Perkins were truly independent, they would have either: (a) insisted that their appointments be unconditional; or (b) sought immediate approval from the Court and the estates' interested parties before entering into the foregoing agreements. But Beilinson and Perkins did neither, choosing instead to validate Shapiro's plans one business day before the commencement of these cases.

6. Moreover, since the cases were commenced, these so-called "independent" parties have not shown that they are acting in the best interest of creditors. For example, and as set forth more fully in the Committee's preliminary objection to, and motion for continuance of, the *Debtors' First Omnibus Motion for an Order Pursuant to 11 U.S.C. § 365 (A) Authorizing the Debtors to Assume Certain Executory Contracts; (B) Fixing Cure Amounts with Respect Thereto; and (C) Granting Authorization to Request the Omnibus Assumption of the Assumed Contracts* [Docket No. 106] (the "Assumption Motion"), the Debtors filed a conclusory motion with almost no information or analysis seeking to assume contracts that could potentially bind the estates to millions of dollars of liabilities less than a week after the Committee was appointed.[2] Besides it being totally reckless for the Debtors to take on that kind of administrative liability right now, the Assumption Motion appears to be driven by Shapiro's desperate hope of increasing asset values so as to potentially mitigate personal liability and any charges that may be brought by the SEC.

[2] The Committee has urged the Debtors to proceed cautiously by filing a critical vendor motion in lieu of the Assumption Motion so as to avoid unnecessarily increasing administrative liabilities. The Debtors have been unresponsive, and insist on proceeding with the Assumption Motion.

7. Based on Shapiro's prepetition conduct, and the fact that Beilinson and Perkins acquiesced to Shapiro's demands as set forth in the applicable prepetition agreements and are otherwise tainted, "cause" clearly exists for the appointment of a chapter 11 trustee.

8. The appointment of a chapter 11 trustee is also in the best interest of the Debtors' creditors and other interests of the estates, notwithstanding the SEC's efforts to obtain a receiver. The Debtors have an operating business with over one hundred (100) employees and substantial real property assets in California (including approximately 140 pieces of pieces of prime real estate in Los Angeles in varying degrees of development) whose full value would be severely compromised if liquidated in their current state. In fact, the appointment of a receiver will trigger a default under the *Senior Secured Debtor In Possession Loan and Security Agreement*, dated as of December 7, 2017 (the "DIP"), enabling the DIP lender to foreclose on its collateral and depriving the estates of needed cash to enhance and preserve the Debtors' assets.[3]

9. Moreover, in contrast to a receivership, chapter 11 provides unique procedures and safeguards that will enable the Debtors to fully realize the value of the real estate thereby maximizing recoveries and "avoiding a fire sale" liquidation that will destroy value and compound the substantial losses the investors and creditors are already expected to incur. Indeed, the Committee believes that creditors could receive a meaningful recovery if the estates are carefully managed under the umbrella of chapter 11 where a trustee could, among other things, obtain priming debtor-in-possession financing or move to substantively consolidate the various Debtor and non-Debtor entities. The Committee also believes that it could confirm a

[3] The Committee believes a trustee could obtain a replacement DIP, if necessary, using the priming powers under the Bankruptcy Code that would be unavailable to a receiver.

plan providing for the optimal disposition of the Debtors' assets within six to eight months and begin making distributions shortly thereafter.

10. Accordingly, it is critically urgent, particularly in light of pending SEC motions, that a trustee with local and relevant real estate experience, and with the benefit of the Bankruptcy Code's powers and protections, be immediately appointed. In doing so, such trustee can have a seat at the table with the SEC and work cooperatively to fashion an appropriate combination of remedies in the Cases (as defined below) and SEC proceedings that will maximize the value of the assets (and avoid unreasonable risks) for the benefit of creditors.

11. For these reasons and those set forth below, the Committee urges the Court to immediately appoint a chapter 11 trustee.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Committee consents to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

13. Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The statutory bases for the relief requested herein are sections 105 and 1104 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 9013.

STATEMENT OF FACTS

A. The Bankruptcy Cases

15. On December 4, 2017 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"), thereby commencing these chapter 11 cases (the "Cases"). The Debtors continue in possession of their property and are operating and managing their businesses as debtors in possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.

16. On December 14, 2017, the United States Trustee (the "U.S. Trustee") appointed the Committee to represent the interests of all unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code. The Committee members are: (i) G3 Group LA, Inc.; (ii) Ronald E. Myrick, Sr.; and (iii) John J. O'Neill.

B. Debtors' Background

17. On December 4, 2017, the Debtors filed the *Declaration of Lawrence R. Perkins in Support of the Debtors' Chapter 11 Petitions and Request for First Day Relief* [Docket No. 12] (the "Perkins Declaration" or "Perkins Dec.") three (3) days after Mr. Perkins' appointment as the Chief Restructuring Officer of WGC Independent Manager LLC ("WGCIM"), the sole manager of Woodbridge Group of Companies, LLC.

18. The Debtors and each of their non-debtor affiliates (collectively, "Woodbridge") are all directly or indirectly owned by the RS Trust. *See* Perkins Dec. ¶ 14; Ex. A (organizational chart). Perkins asserts that the RS Trust is an irrevocable trust "of which Robert Shapiro is the trustee, or Shapiro or members of his family." Shapiro's family members are the sole beneficiaries of the RS Trust. *Id*.

19. At all relevant times prior to December 1, 2017, Shapiro solely controlled Woodbridge. *See* Perkins Dec. ¶ 24 ("Until December 1, 2017, [Shapiro] managed and controlled, directly or indirectly, each of the entities within the Woodbridge Group Enterprise, and was the sole Manager of most entities within the Woodbridge Group Enterprise.").[4]

20. According to Perkins, the Woodbridge Group Enterprise is a "comprehensive real estate finance and development company" that buys, improves, and sells high-end luxury homes that also "owns and operates full-service real estate brokerages, a private investment company, and real estate lending operations." *Id.* ¶ 12. Prior to the Petition Date, Shapiro financed Woodbridge's business by utilizing a "retail fund-raising operation" in which unregistered brokers solicited funds from individuals, many of whom invested their entire retirement and savings accounts.[5]

21. According to the Debtors, "[o]ver the last year and a half, this financing operation has drawn increased scrutiny from the SEC and 25 state regulatory agencies, as well as many, many others who have asked questions about whether appropriate representations were made." Transcript of Hearing, December 5, 2017 ("First Day Hearing Tr.") at 10:7-11.[6]

[4] While the Committee is not yet certain as to precisely which entities fall within which groups, there appear to be four relevant groups or sub-groups at issue: (a) "Woodbridge" includes every entity owned directly or indirectly by the RS Trust; (b) the "Woodbridge Group Enterprise" is a sub-group of Woodbridge, and includes all of the Woodbridge entities in which Shapiro appointed Beilinson and Perkins (*see* Perkins Dec. ¶ 3 (the "Woodbridge Group Enterprise" includes the "Debtors and *certain* of their non-debtor affiliates and subsidiaries") (emphasis added)); (c) the Debtors, which are a subgroup of the Woodbridge Group Enterprise since not all of the entities within the Woodbridge Group Enterprise filed for bankruptcy; and (d) those entities within Woodbridge that Shapiro excluded from the Woodbridge Group Enterprise and continues to control ("Shapiro's Woodbridge Entities").

[5] According to the SEC, Woodbridge used an "in-house" sales team as well as a "network of hundreds of external sales agents to solicit investments from the general public by way of television, radio, and newspaper advertisements, cold calling campaigns, social media, websites, seminars, and in-person presentations." SEC Complaint (as defined below) ¶ 45.

[6] The Debtors vastly understate the extent of the "scrutiny" Shapiro and Woodbridge faced. Indeed, as discussed below, Shapiro's assets, and the assets of non-Debtor affiliates, have since been frozen and the SEC has moved for the appointment of a receiver to take control of all of the Woodbridge entities, Debtors and non-Debtors alike.

C. Shapiro's Alleged Pre-Petition Fraud

22. The SEC has alleged that Woodbridge is a web of related entities that Shapiro controlled and used to conduct "a massive Ponzi scheme raising more than $1.22 billion from over 8,400 unsuspecting investors nationwide through fraudulent unregistered securities." *Complaint for Injunctive and Other Relief*, unsealed on December 21, 2017 (the "SEC Complaint"), and filed as Docket No. 1 in Case No. 17-24624, pending in the United States District Court for the Southern District of Florida (the "SEC Enforcement Proceeding").[7]

23. The SEC contends that, under Shapiro's direction, Woodbridge utilized unregistered brokers to sell certain promissory notes to individual investors that were marketed as short-term, "low risk" and "simple" investments. The SEC further contends that Shapiro promised the investors that they would be repaid from earnings on high interest loans that his companies allegedly made to third parties. *Id*. ¶¶ 1, 8.

24. However, the SEC alleges that most of the "loans" were made to "limited liability companies owned and controlled by Shapiro" (none of which had any revenue or paid interest under the so-called loans), rather than third-party borrowers. With insufficient revenue to meet the obligations under the notes, Shapiro allegedly "resorted to fraud, using new investor money to pay the returns owed to existing investors." Meanwhile, Shapiro and his family enjoyed a lavish and luxurious lifestyle. *Id*. ¶ 2.

25. Of the $1.2 billion raised over the course of the scheme, the SEC estimates that investors – thousands of who purportedly placed their retirement savings into Woodbridge –

[7] As previously stated (*see supra* fn. 1), unlike a "classic" Ponzi scheme where money is stolen and creditors are left primarily with litigation claims, Shapiro actually used some of the investor's money to purchase substantial real estate assets, and those assets -- if fully developed, managed, and properly marketed -- are likely to be the creditors' primary source of recovery in this case.

are still owed "at least $961 million in principal" (with apparently much if not all of the relatively modest repayment coming from subsequent investor borrowings). *Id.* ¶ 3.[8]

D. Regulatory Investigations and the SEC's Enforcement Proceeding

26. On September 27, 2016, the SEC issued a *Formal Order Directing Private Investigation and Designating Officers to Take Testimony* in the matter of Woodbridge Mortgage Investment Fund III, LLC (FL-04024). On January 17, 2017, the SEC issued a *Supplemental Order Designating Additional Officers* (collectively, the "Formal Order").

27. According to certain public records, the Formal Order authorized the SEC to investigate possible violations of certain provisions of the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") by Woodbridge Group of Companies, LLC ("WGC"), and other persons and entities. The SEC was specifically investigating the offer and sale of unregistered securities, securities sales by unregistered brokers, and fraudulent conduct in connection with the offer, purchase, and sale of securities.[9]

28. As part of its investigation, the SEC made at least two informal requests of Woodbridge for certain documents and e-mails. On January 31, 2017, after Woodbridge failed to respond, the SEC issued a subpoena requiring Woodbridge to produce documents by February 15, 2017. Notwithstanding that deadline, Woodbridge and the SEC spent months discussing

[8] The aggrieved investors comprise a majority of the Official Committee of Unsecured Creditors.

[9] Aside from the SEC, state regulators have also been focused on Woodbridge. Based on various public statements and filings, it appears that (a) Woodbridge has received information requests from approximately 25 state regulatory bodies; (b) regulators in eight states have filed civil or administrative actions; and (c) five states have entered temporary or permanent cease and desist orders against Woodbridge. SEC Complaint ¶ 36; *Debtors' Motion for Interim and Final Orders (I) Pursuant to 11 U.S.C.§§ 105, 361, 362, 363, 364, 507, and 552 Authorizing Debtors to (A) Obtain Postpetition Secured Financing, (B) Use Cash Collateral, (C) Grant Adequate Protection to Prepetition Secured Parties; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (IV) Related Relief*, filed on December 4, 2017, at Docket No. 22, ¶ 18; First Day Hearing Tr. at 10:7-11.

various aspects of the subpoena, and Woodbridge made partial productions of documents, but apparently failed to produce any company e-mails or a privilege log.

29. Frustrated in its efforts to obtain the requested information, on July 17, 2017, the SEC applied in the United States District Court for the Southern District of Florida to enforce its subpoena, Case No. 17-mc-22665 (the "SEC's First Subpoena Action"). The SEC sought, among other things, e-mails sent to or from the company and personal e-mail accounts of Shapiro, Woodbridge's Controller, Nina Pederson, and others. On September 20, 2017, the SEC's application was granted and Woodbridge, Shapiro, Pederson, and others were ordered to produce the e-mails and related documents by October 2, 2017.[10]

30. After the targets failed to comply with that order, the SEC moved for the entry of a contempt order on October 13, 2017.

31. Separately, on October 31, 2017, the SEC filed a second application seeking an order to show cause enforcing subpoenas the SEC previously served on 235 limited liability companies believed to be owned and controlled by Shapiro (the "SEC's Second Subpoena Action"). Case No. 17-mc-23986 (S.D. Fla. 2017). The SEC's Second Subpoena Action was apparently resolved through the entry of two Stipulated Orders requiring the production of documents and information by a date certain. SEC's Second Subpoena Action, Docket Nos. 16 and 24, respectively.

32. On December 20, 2017, the SEC's First Subpoena Action was consensually resolved with the district court issuing an order granting a joint motion for approval

[10] Even though Woodbridge's corporate headquarters and the vast majority of its assets, operational activities, and employees are located in a 15-mile diameter circle of Los Angeles, California, the SEC has pursued its claims and remedies in Florida where only certain accounting functions are based.

of a document production protocol. SEC's First Subpoena Action, Docket Nos. 50 and 51, respectively.

33. Shapiro's reprieve was short-lived. Hours later, the SEC revealed that it had commenced the SEC Enforcement Proceeding against Shapiro, the RS Trust and certain Debtors and non-Debtor entities, and had obtained an *Order Granting Emergency Ex Parte Motion for Asset Freeze and Other Relief* (the "Freeze Order"). SEC Enforcement Proceeding, Docket No. 13. Pursuant to the Freeze Order: (a) the assets of Shapiro, the RS Trust and certain non-Debtor entities were temporarily frozen; (b) Shapiro and the RS Trust were ordered to provide sworn accountings within ten days of the issuance of the Order; and (c) Shapiro, the RS Trust, and their agents were ordered to preserve records. *Id*.

34. The "other shoe" dropped the following day when the docket in the SEC Enforcement Proceeding was unsealed. In addition to the motion that resulted in the Freeze Order, on December 21, 2017, it was revealed that the SEC had previously filed, among other things, the SEC Complaint as well as an *Ex Parte Emergency Motion for Expedited Consideration of Motion for Appointment of Receiver* (the "SEC Receiver Motion"). SEC Enforcement Proceeding, Docket No. 9. The SEC Receiver Motion seeks the appointment of a receiver for "all of the corporate defendants named in this case," including most, if not all, of the Debtors. *Id*. ¶ 1.

35. The SEC alleges, among other things, that Shapiro "hired outside managers to purportedly serve as 'independent' management for approximately 273 of the 444 Woodbridge-related entities, and caused those 273 entities to file" for bankruptcy. The SEC also alleges that Shapiro entered into a consulting agreement with the Debtors for $175,000 per

month (discussed in more detail below), and that he maintains control of certain Woodbridge entities not in bankruptcy that hold real estate assets worth at least $34 million. *Id*. ¶ 2.

36. A scheduling conference with respect to the SEC Receiver Motion and a show cause hearing with respect to the Freeze Order were expected to be conducted on Friday, December 29, 2017. However, the parties subsequently agreed to a schedule that calls for the Debtors to respond by January 5, 2018, for the SEC to reply by January 9, 2018, and for a hearing to be held during the week of January 15, 2018, or as soon thereafter as counsel can be heard. SEC Enforcement Proceeding, Docket No. 34.

E. Shapiro Picks Beilinson and Perkins to Act as "Independent" Overseers

37. With the SEC's contempt motion in the SEC's First Subpoena Action pending, Shapiro devised a multi-pronged strategy designed to retain as much control over, and extract as much value from Woodbridge as possible. Towards that end, Shapiro enlisted Beilinson (through his limited liability company, Beilinson Advisory Group LLC, "BAG") and Perkins (through his firm, SierraConstellation Partners, LLC, "SCP")) to provide cover.

38. To effectuate his self-interested scheme, three days before the Petition Date, on December 1, 2017, Shapiro executed an *Action by Written Consent of the Sole Member of Woodbridge Group of Companies, LLC and Certain Affiliates* (the "Members' Consent"). Perkins Dec. Ex. F. The Members' Consent was executed by Shapiro on behalf of some, but not all, of the Woodbridge-related entities owned directly or indirectly by the RS Trust; upon information and belief, Shapiro decided in his sole discretion which entities would be subject to the Members' Consent. Pursuant to the Members' Consent, Shapiro purportedly removed himself and his affiliates as managers of each of the entities constituting the Woodbridge Group Enterprise and appointed WGCIM as the replacement manager. Perkins Dec. ¶ 34, Ex. F.

39. Notably, the Members' Consent is temporary. Upon the occurrence of specified events, the Members obtain the right to (a) terminate WGCIM as manager, and (b) amend any applicable operating agreement or other governing instrument without WGCIM's consent. Ominously, the Members obtain these rights upon, among other events, the "appointment of a chapter 11 trustee or a receiver for such Company." Perkins Dec. Ex. F (third resolution on page 3). In other words, Shapiro retained the ability to reinstate himself in place of Beilinson and Perkins if a truly independent fiduciary takes control.

40. In any event, WGCIM is a Delaware limited liability company that Shapiro created on behalf of the RS Trust. As the sole Member of WGCIM, the RS Trust purportedly appointed BAG to act as WGCIM's Manager.[11] WGCIM's Operating Agreement provided, among other things, that BAG would "serve as Manager until removed by [the RS Trust], with or without cause and at any time, and any such vacancy caused by such removal may be filled by" the RS Trust.

41. In response to the SEC's objections, Perkins filed a Supplemental Declaration in which he disclosed that WGCIM's Operating Agreement was amended to eliminate the RS Trust's right to terminate BAG without cause. Supplemental Declaration of Lawrence R. Perkins, executed on December 15, 2017, and filed at Docket No. 84. Perkins contends that this amendment "bolstered the independence of" BAG. *Id*. ¶ 6. To the contrary, the amendment only highlights how malleable and "accomodat[ing]" Beilinson and Perkins were

[11] The Limited Liability Company Agreement of WGC Independent Manager LLC ("WGCIM's Operating Agreement") may be unenforceable because although the RS Trust purports to be the Member of WGCIM (*see* WGCIM's Operating Agreement ¶ 8), Shapiro signed the document solely in his capacity as the Manager of a different entity, Woodbridge Group of Companies, LLC. The Committee reserves the right to challenge BAG's appointment as Manager of WGCIM on this ground alone. Other aspects of the Operating Agreement raise further questions as to the circumstances surrounding its execution. For example, the signature page is numbered "4" yet it is preceded by seven numbered pages, suggesting that the signature page submitted with the Perkins Declaration may have belonged to an agreement other than the WGCIM Operating Agreement. Perkins Dec. Ex. A (operating agreement) *to* Ex. F (Members' Consent).

in the first place because they accepted their "independent" appointments knowing that they could be terminated by Shapiro for no reason at all.

42. On December 1, 2017, Beilinson accepted the appointment of Manager of WGCIM on behalf of BAG at which time he knew or should have known, among other things, that (a) Shapiro and some or all of his related entities were under investigation by the SEC and various state regulators, and that a contempt motion was pending; (b) Shapiro, through the RS Trust, retained the right to fire BAG at any time without no reason; and (c) Shapiro continued to retain complete control over certain of the real property assets valued at tens of millions of dollars that would be unavailable to creditors in any bankruptcy.

43. The terms of BAG's appointment as Manager of WGCIM are set forth in an engagement letter that was entered into between BAG and WGC on December 1, 2017 (the "BAG Engagement Letter"). Perkins Dec. Ex. B *to* Ex. F.[12] The BAG Engagement Letter provides, among other things, that Woodbridge Group of Companies, LLC ("WGC") would pay BAG no less than $40,000 per month for an initial 12-month term "regardless of whether [WGC] uses the services of [BAG] during the entire period such that in no event shall the total compensation payable to [BAG] be less than $480,000 for the one year period ending December 1, 2018 (the "Guaranteed Fee")." *Id.* ¶ 3. In other words, Beilinson was promised a guaranteed minimum of $480,000 over a one-year period even if he never provided any services as the "independent manager." It appears that Beilinson and Shapiro intended that the Guaranteed Fee would be an administrative expense obligation of the Debtors' estates.

[12] The version of the BAG Engagement Letter affixed to the Perkins Declaration is unsigned. A fully executed copy of the BAG Engagement Letter was filed by the SEC as Exhibit C in support of the SEC Receiver Motion. SEC Enforcement Proceeding, Docket No. 35-4.

44. In addition to the Guaranteed Fee, the BAG Engagement Letter also incentivizes Beilinson to align his interests with Shapiro because Shapiro's approval is a condition to BAG's recovery of any "success fee" that may be awarded "upon the confirmation of a plan of reorganization or upon the occurrence of a significant milestone to be determined." *Id*. The plan envisioned by the Debtors places Shapiro back in control of a post-confirmation Woodbridge. *See, e.g.*, First Day Hearing Tr. at 19:18-20 (Shapiro "has no longer [sic] a management role with the business for the time being") (emphasis added). Thus, notwithstanding his acceptance of a role as "independent" manager, Beilinson appears to have been selected to shepherd these cases through bankruptcy, at a handsome fee, until Shapiro could regain control under a plan.

45. Also on December 1, 2017, Beilinson, as Manager of WGCIM, and SCP executed an engagement letter (the "SCP Engagement Letter") pursuant to which SCP agreed to (a) provide the services of Perkins as CRO of WGC, and (b) perform certain specified services. *See* Perkins Dec. ¶ 2; SEC Enforcement Proceeding, Docket No. 35-5. The SCP Engagement Letter provided that SCP was to receive a $500,000 "Advance Payment" (as defined in the SCP Engagement Letter) that SCP could immediately draw upon after presenting its weekly invoice; WGC is required to maintain the $500,000 Advance Payment throughout the engagement or SCP would have the right to cease providing services. SEC Enforcement Proceeding, Docket No. 35-5 at 3.[13]

[13] According to Perkins, SCP received the Advance Payment prior to the Petition date and drew down $26,040.18 on account of services rendered between December 1, 2017 (the date the SCP Engagement Letter was signed) and December 4, 2017 (the Petition Date). *See Declaration of Lawrence R. Perkins in Support of Debtors' Motion for Entry of an Order Pursuant to Section 363 of the Bankruptcy Code Authorizing (I) the Engagement Letter Between the Debtors and SierraConstellation Partners LLC and (II) Debtors' Employment of Lawrence R. Perkins as Chief Restructuring Officer Nunc Pro Tunc to the Petition Date*, executed on December 19, 2017, and filed as Docket No. 102 ("Perkins 363 Dec."), ¶ 17.

46. Tellingly, the Debtors have not provided any meaningful information with respect to the decision-making process or circumstances that led to the appointment of Beilinson and Perkins.[14] Indeed, although Perkins suggests that Beilinson independently selected him to serve as CRO on December 1, 2017 (*see* Perkins Dec. ¶ 35 (after being appointed the manager of WGCIM, BAG "appoint[ed] me to serve as" CRO of WGCIM), the facts show that Perkins and SCP began working with and for Shapiro and Woodbridge as early as October 23, 2017. Perkins Dec. ¶ 4. Moreover, there is no indication that Beilinson and Perkins had independent counsel in connection with the drafting and negotiation of each of the agreements executed on December 1, 2017 (assuming, for the sake of argument only, that each of the agreements was the subject of negotiations), and it is unclear as to whether either of them will seek to protect from disclosure any prepetition communications with Shapiro or Woodbridge on the grounds of joint representation, under the common interest doctrine, or otherwise.

F. Beilinson and Perkins Acquiesce to Shapiro's Plan to Direct the Bankruptcy Proceedings and Re-take Control Post-Confirmation

47. On the same day they were appointed, Beilinson and Perkins entered into certain agreements that Perkins described as "negotiated accommodations" and that Debtors' counsel called a "great concession to the investors." *See* Perkins Dec. ¶ 26; First Day Hearing Tr. at 18. A closer review of these agreements show that they were created and devised by

[14] For example, Perkins provides no information: (a) concerning whether he has any prior relationship with Shapiro, Beilinson, or Gibson Dunn; (b) what work he and his firm did between October 23 and December 1, 2017; (c) who proposed that he serve as CRO, and when; or (d) who decided which of the Woodbridge companies would be included (or excluded) from his purview. *See also Perkins 363 Dec.* ¶ 21(a) (stating only that "[o]n October 23, 2017, Sierra was retained by Gibson Dunn & Crutcher ("GDC"), counsel to the Debtors to provide services to GDC and to assist GDC to provide advice to the Debtors. The engagement with GDC terminated on November 30, 2017," the day before the SCP Engagement Letter was signed). Similarly, the Debtors have not provided any information concerning how or when Beilinson was introduced to Shapiro; what responsibilities Beilinson had prior to December 1, 2017, if any; and whether Beilinson had any prior relationship with Shapiro, Perkins, or Gibson Dunn. The opaque nature of the pre-petition work, relationships, compensation, and negotiations raise a host of questions, and the Committee reserves the right to seek discovery with respect to all of them.

Shapiro for the benefit of the RS Trust, and Beilinson's and Perkins' agreement and acquiescence to their extraordinary terms vitiate the repeated claims of "independence."

a. Contribution Agreement

48. The RS Trust, WGC, and Carbondale Doocy, LLC ("Carbondale"), entered into a *Membership Interest Contribution Agreement*, dated as of December 1, 2017 (the "Contribution Agreement"). Perkins Dec. Ex. H.[15] Shapiro signed the Contribution Agreement on behalf of the RS Trust and Perkins signed on behalf of WGC and Carbondale. Pursuant to the Contribution Agreement, the RS Trust indirectly "contributed" its membership interests in certain entities (defined as the "Contributed Companies") to WGC, and WGC became the sole member of each such entity.

49. Upon information and belief, Shapiro decided in his sole discretion which entities would be included within the Contributed Companies, and which would not. From Perkins' perspective, Shapiro executed the Contribution Agreement to "ensure that the Debtors could obtain additional liquidity sufficient to fund its operations [sic] during the pendency of the Chapter 11 Cases so that a comprehensive restructuring could be achieved." Perkins Dec. ¶ 37.

50. There is no evidence in the record that Perkins or Beilinson made any independent assessment as to whether Shapiro had actually ensured that there was "liquidity sufficient to fund" the Debtors' operations, or that Beilinson or Perkins even considered whether Shapiro was contributing assets sufficient to satisfy the claims of the Debtors' creditors. Tellingly, the DIP arranged by Beilinson and Perkins was only available because it would prime the investors' $215 million interest in the assets. If Beilinson and Perkins were truly "independent," they would have insisted that all of the Woodbridge entities be placed under their

[15] Apparently, the RS Trust owns 100% of the membership interests in Carbondale, which in turn owns 100% of the membership interests in WGC. Perkins Dec. Ex. H (Recital A).

control without condition, rather than acceding to Shapiro's plan of excluding Shapiro's Woodbridge Entities from their domain.

51. Indeed, far from being a "great concession," the Contribution Agreement is likely to damage investors and the general creditor body because substantial real property assets that should be available to satisfy the claims of general unsecured creditors were excluded and remain under Shapiro's direct control for the exclusive benefit of the RS Trust. Specifically, as explained in more detail below, the Contribution Agreement was used to place virtually all of the business' liabilities into the bankruptcy estates while dozens of other related entities (*i.e.*, Shapiro's Woodbridge Entities) -- holdings tens of millions of dollars of real estate -- were excluded in the apparent belief that they could be shielded from creditor claims.

52. According to the Debtors, Woodbridge's principal operations are "contained in three silos." The liabilities appear to be maintained in two of the silos: WGC (the "OpCo" entity that "managed contractual relationships" with the trade creditors engaged in real estate development), and WMF Management, LLC (which controlled the "retail fundraising operation" that owes over $900 million to the Unitholders and Noteholders (as those terms are defined in paragraphs 17 and 18 of the Perkins Declaration)). Perkins Dec. ¶¶ 15-18; First Day Hearing Tr. at 13:18-24, 14:7-13. These entities, and their affiliates (including the "seven funds" that have "raised money from thousands of retail investors by selling investments referred to as" units and notes), apparently owe most, if not all, of Woodbridge's collective third-party obligations, and are all Debtors.

53. The third "silo" is a network of over 200 special purpose vehicles ("SPVs"), "nearly all of which hold an individual real property asset." Perkins Dec. ¶ 19. According to the Debtors, these entities represent the "engine of this business" because they are

"really where the value is." First Day Hearing Tr. at 13:25-14:6. Yet, only 140 of the SPVs are Debtors, leaving dozens of SPVs (presumably including all of Shapiro's Woodbridge Entities) outside of the bankruptcy estates such that their value is (at least as intended by Shapiro) purportedly unavailable to satisfy creditors' claims. Perkins Dec. ¶ 19.[16]

54. Beilinson and Perkins knew or should have known that Shapiro used the Contribution Agreement in an attempt to "cleanse" the business' liabilities while shielding substantial assets and extracting further value for the exclusive benefit of himself and his family. Other aspects of the Contribution Agreement support that conclusion. For example, Beilinson and Perkins agreed to "distribute to the [RS] Trust an amount equal to fifty percent (50%) of the net proceeds of such sale, up to maximum amount of $500,000 of the net proceeds from each such sale . . . [as] an advance on distributions to which the [RS] Trust is entitled." Perkins Dec. Ex. H § 4.1. While it is unclear to which "sale[s]" this provision applies, no truly independent fiduciary would agree on the eve of bankruptcy to pay an equity holder anything of value before secured and unsecured creditors (most of whom are alleged victims of a fraudulent scheme) get paid in full, and not immediately seek bankruptcy court approval of such an agreement. Moreover, memorializing the concept that there are "distributions to which the [RS] Trust is entitled" contradicts the Debtors' representations to the Court that the estates are under water by hundreds of millions of dollars. Agreeing to pay millions of dollars of "advances" (and escrowing $500,000 of funds desperately needed by the estates) for what they tell this Court is a non-existent entitlement is a gross breach of duty to the estates' creditors.

[16] Notably, Debtors' counsel admitted during the First Day Hearing that even though Beilinson and Perkins accepted the terms of the Contribution Agreement, the Debtors commenced these bankruptcy cases without knowing whether all material assets had been identified, let alone whether they would be available to satisfy creditor claims. First Day Hearing Tr. at 14:14-22.

55. In short, Beilinson's and Perkins' willingness to validate Shapiro's scheme renders them tainted and unfit to serve as estate fiduciaries.

b. Shapiro's "Consulting" Agreement

56. The Transition Services Agreement, also signed just days before the Petition Date on December 1, 2017, removes any doubt that Beilinson and Perkins simply acceded to Shapiro's scheme and failed to exercise independent judgment when it mattered most. Perkins Dec. Ex. B.

57. The Debtors repeatedly have contended that Beilinson and Perkins are "independent." *See*, *e.g.*, First Day Hearing Tr. at 13:7-13 (Beilinson and Perkins are "in control of the valuable assets"), 18:18-22 (Shapiro "allow[ed] independent management to take over"); Perkins Dec. ¶ 25 (Shapiro "has agreed to empower an independent management team to take control"). Saying it, however, does not make it true.

58. Beilinson and Perkins agreed in the Transition Services Agreement that WFS Holding Co LLC (yet another entity directly or indirectly owned and controlled by Shapiro) would receive a "monthly consulting fee of $175,000" payable in advance, "with the first such monthly payment due concurrently with the execution hereof." Perkins Dec. Ex. B § 2.

59. Perkins asserts that the compensation scheme set forth in the Transition Services Agreement reflects "a fair-market consulting fee" based on an analysis that he "conducted after discussions with compensation consultants for senior executives in the real estate industry." Perkins Dec. ¶ 27. It is remarkable that Beilinson, Perkins, and the Debtors vigorously assert that Shapiro ceded control, yet they all agreed to a compensation arrangement whereby Shapiro will receive more than four times Beilinson's monthly compensation even

though Beilinson is supposed to be the one in charge and Shapiro purportedly has no material day-to-day involvement.[17]

60. In exchange for $2,100,000 in annual compensation, Shapiro was to provide "consulting services" that included meeting regularly with Beilinson and Perkins "with respect to the operation of the Company's business," and "advising" and "supporting" the Company on every aspect of the business. For example, Shapiro was expected to, among other things, negotiate renovation contracts, identify new real estate projects in which to invest, meet with investment bankers and lenders to assist with capital fundraising, and identify and negotiate with potential buyers of the Debtors' assets. Perkins Dec. Ex. B, Appendix A (setting forth a long list of specific "services" that Shapiro was expected to provide).

61. Thus, pursuant to the plain terms of the Transition Services Agreement, Beilinson and Perkins wanted and expected Shapiro to be "under the tent" throughout the bankruptcy process, where he would influence, if not technically control, every aspect of the business (and, of course, Shapiro retained absolute control over those entities, and their corresponding assets, that were excluded from the Contribution Agreement). Indeed, upon information and belief, Shapiro retained keys and had unfettered and unsupervised access to the Debtors' offices, and complete access to all information technology, resources, books, and records, at all times following the Petition Date.

62. As the Debtors admit, Shapiro's continued involvement was made with an eye towards regaining control post-confirmation. *See, e.g.*, Perkins Dec. Ex. F (Shapiro can terminate BAG upon the occurrence of certain events, including the confirmation of a chapter 11

[17] The Committee reserves the right to take discovery on Perkins' "analysis," the negotiation of the Transition Services Agreement, and the post-petition services actually rendered by Shapiro to date. The Committee also reserves the right to seek to set aside the Transition Services Agreement in its entirety and recoup the $175,000 paid to Shapiro the business day before the commencement of the Cases.

plan, the dismissal of the bankruptcy cases, or a "settlement or dismissal of all enforcement actions commenced" by the SEC); First Day Hearing Tr. at 19:18-20 (Shapiro "has no longer [sic] a management role with the business *for the time being*") (emphasis added).

c. Shapiro's Forbearance Agreement and Property Sales

63. To the extent the foregoing is insufficient to establish Shapiro's continued involvement in the Debtors' management and the deference paid to him by the Manager and the CRO, Beilinson and Perkins also agreed that Shapiro could continue to occupy two luxurious properties (one in California, apparently encumbered with obligations owing to certain of the Debtors in the aggregate amount of approximately $6.2 million, and one in Aspen, Colorado, apparently encumbered with obligations owing to certain of the Debtors in the aggregate amount of approximately $5.5 million) owned by two of the Debtors "without fear of foreclosure during the pendency of the Chapter 11 Cases as long as the existing leases for such properties remain in effect." Perkins Dec. Ex. C (note that the identity of the actual lessees of record is redacted from the Forbearance Agreement that Perkins signed).[18] The Debtors offer no rationale for tying these properties up and depriving themselves of the opportunity to generate liquidity in excess of $10 million from their sale, other than Perkins' assertion that this was one of the "negotiated accommodations with Mr. Shapiro to ensure his cooperation in connection with the Debtors' restructuring efforts." Perkins Dec. ¶ 26.

64. In yet another concession to Shapiro, Beilinson and Perkins inexplicably gave the unidentified tenants the right to terminate either or both of the leases if the Transition Services Agreement "is terminated for any reason." Perkins Dec. Ex. C. ¶ 3. Stated another way, if Shapiro does not remain intimately involved in the business and receive his $175,000

[18] In connection therewith, Perkins and certain unidentified tenants (the agreements affixed to the Perkins Declaration are also redacted) also signed two *Subordination, Non-Disturbance, and Attornment Agreements*. Perkins Dec. Exs. D and E, respectively.

monthly stipend pursuant to the Transition Services Agreement, he gets to walk away from the leases to the detriment of the estates.

65. Neither Perkins nor the Debtors have disclosed whether the rent, maintenance, insurance, real estate taxes, and other carrying costs on these properties are being paid by the Debtors, non-Debtor affiliates (whether with the Woodbridge Group Enterprise or Shapiro's Woodbridge Entities), or Shapiro, nor have they disclosed whether the rent due under the applicable leases is sufficient to cover debt service and other property-related expenses.[19]

66. Separately, Perkins disclosed that two properties owned by two of Shapiro's Woodbridge Entities were subjects of contracts for sale prior to the Petition Date. According to Perkins, Shapiro "intended to avoid disruption of those closings resulting from the bankruptcy cases," and proceed with the sales in accordance with the Contribution Agreement. Thus, after the satisfaction of liens, Perkins (and presumably Beilinson and the Debtors) stated that he intended to distribute 50% of the net proceeds from each sale, up to $500,000, to the RS Trust. Perkins Dec. ¶¶ 29-31.

67. Perkins' and Beilinson's willingness to permit Shapiro to use, occupy, retain, and control these properties is inconsistent with the actions of independent fiduciaries for the Debtors' estates. Moreover, the lack of transparency concerning how the carrying costs are being paid on Shapiro's multi-million dollar residences, eliminating the estates' ability to gain liquidity from these key assets so that Shapiro could remain comfortably ensconced in his luxurious residences undisturbed, and Perkins' and Beilinson's stated intention of adhering to the

[19] Perkins claims that "[b]ased on an analysis" he "confirmed that the lease on the Colorado property reflects market rent, while the California lease is below market." Perkins Dec. fn. 16. The lease for the California property was purportedly signed earlier this year (May 1, 2017), and the lease for the Aspen property was signed on "November __, 2017." Upon information and belief, Shapiro controlled or is both the lessor and the lessee under each of these leases, such that there should be no presumption that the leases are reasonable. The Committee reserves the right to seek discovery on all issues relating to the Forbearance Agreement and Shapiro's use and occupancy of the Debtors' properties.

so-called "Distribution Arrangement" (as defined in paragraph 37 of the Perkins Declaration) post-petition, are particularly troubling.

RELIEF REQUESTED

68. By the Motion, the Committee respectfully requests that the Court enter an order, in substantially the form filed contemporaneously herewith, (a) granting the Motion; (b) directing the United States Trustee, after consultation with the Committee, to appoint one disinterested person as chapter 11 trustee in these Cases under Bankruptcy Code section 1104(a); (c) ordering the United States Trustee to seek approval of such appointment from this Court in accordance with Bankruptcy Code section 1104(d) and Bankruptcy Rule 2007.1(c); and (d) ordering the Debtors, Shapiro, the RS Trust, Beilinson, BAG, Perkins, SCP, and any other individual or entity in possession of the Debtors' records and property to cooperate with the chapter 11 trustee and immediately turn over to the chapter 11 trustee all records and property of the estate in their possession or control as directed by the chapter 11 trustee.

LEGAL ANALYSIS

A. The Court Must Appoint a Trustee Upon a Finding of Cause or Where It Is in the Interests of Creditors and Other Interests of the Estates

69. Section 1104(a) of the Bankruptcy Code provides that the Bankruptcy Court *shall* order the appointment of a trustee, at any time after the commencement of the case but prior to confirmation of a plan, on request of a party in interest or the U.S. Trustee,[20] and after notice and a hearing:

[20] Section 1104(e) directs the U.S. Trustee to move for the appointment of a trustee under certain circumstances, providing as follows:

> The United States trustee *shall* move for the appointment of a trustee under subsection (a) if there are reasonable grounds to suspect that current members of the governing body of the debtor, the debtor's chief executive or chief financial officer, or members of the governing body who selected the debtor's chief executive or chief financial officer, participated in actual fraud, dishonesty, or

> (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
>
> (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C. §1104(a)(1)-(2).

70. Subsection (a)(1) addresses management's pre- and post-petition misdeeds or mismanagement, while subsection (a)(2) provides the court with "particularly wide discretion" to appoint a trustee even absent wrongdoing or mismanagement. *In re Bellevue Place Assocs.*, 171 B.R. 615, 623 (Bankr. N.D. Ill. 1994). Where the court finds either that cause exists or that appointment is in the interest of the parties, an order for the appointment of a trustee is mandatory. *Official Comm. of Asbestos Pers. Injury Claimants v. Sealed Air Corp. (In re W.R. Grace & Co.)*, 285 B.R. 148, 158 (Bankr. D. Del. 2002).

71. A debtor in possession and its officers and managing employees have a fiduciary duty to creditors and shareholders, and an "obligation to treat all parties, not merely the shareholders, fairly." *In re The AdBrite Corporation*, 290 B.R. 209, 217 (Bankr. S.D.N.Y. 2003) (citing *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355-56, 105 S.Ct. 1986, 85 L.Ed. 2d 372 (1985); *In re Hampton Hotel Investors, L.P.*, 270 B.R. 346, 358 (Bankr. S.D.N.Y. 2001); *see also Northwest Airlines Corp. v. Ass'n of Flight Attendants-CWA (In re Northwest Airlines Corporation*, 483 F.3d 160, 181 (2d Cir. 2007) (observing that a debtor in

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> criminal conduct in the management of the debtor or the debtor's public financial reporting.

11 U.S.C. § 1104(e) (emphasis added).

possession has a fiduciary duty to creditors and the estate). The presumption that a debtor should remain in possession of its estate and in control of its affairs holds only if management "can be depended upon to carry out the fiduciary responsibilities of a trustee." *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. at 355; *see also In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 169 (Bankr. S.D.N.Y. 1990) ("a debtor-in-possession must act as a 'fiduciary of his creditors' to 'protect and to conserve property in his possession for the benefit of creditors,' and to refrain [ ] from acting in a manner which could damage the estate . . ." (citing *In re Sharon Steel Corp*. 86 B.R. 455, 457 (Bankr. W.D. Pa. 1988), *aff'd*, 871 F.2d 1217 (3d Cir. 1989)).

72. Among the fiduciary duties of a debtor in possession is the primary goal of the bankruptcy process: "to get the creditors paid." *In re Ionosphere Clubs*, 113 B.R. at 169 (quoting *In re Pied Piper Casuals, Inc.*, 40 B.R. 723, 727 (Bankr. S.D.N.Y. 1984)). Importantly, "because the [debtor in possession's] fiduciary obligation is to the estate, and not to one group, the [debtor in possession] must act to benefit the estate as a whole." *In re Microwave Prods. of Am., Inc.*, 102 B.R. 666, 671 (Bankr. W.D. Tenn. 1989) (emphasis added); *Hirsch v. Pa. Textile Corp., Inc. (In re Centennial Textiles, Inc.)*, 227 B.R. 606, 612 (Bankr. S.D.N.Y. 1998) (a chapter 11 debtor and its managers owe fiduciary duties to the estate). Moreover, a debtor in possession's fiduciary duties also "include a duty of care to protect the assets, a duty of loyalty and a duty of impartiality." *In re Bowman*, 181 B.R. 836, 843 (Bankr. D. Md. 1995). To fulfill its duty of loyalty, a debtor in possession must "avoid self-dealing, conflicts of interest and the appearance of impropriety." *Id.*

73. When a debtor in possession is incapable of performing its fiduciary duties, or when creditors' confidence in management evaporates, a chapter 11 trustee must be

appointed.[21] *See In re McCorhill Publ'g, Inc.*, 73 B.R. 1013, 1017 (Bankr. S.D.N.Y. 1987); *In re Marvel Entm't Grp.*, 140 F.3d 463, 473 (3d Cir. 1998). "[I]n the appropriate case, the appointment of a trustee is a power which is critical for the Court to exercise in order to preserve the integrity of the bankruptcy process and to insure that the interests of creditors are served." *In re Suncruz Casinos, LLC*, 298 B.R 821, 828 (Bankr. S.D. Fla. 2003) (quoting *In re Intercat Inc.*, 247 B.R. 911, 920 (Bankr. S.D. Ga. 2000)); *see also In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 525 (Bankr. E.D.N.Y. 1989) ("Section 1104(a) represents a potentially important protection that courts should not lightly disregard or encumber with overly protective attitudes towards debtors-in-possession").

74. As explained more fully below, the appointment of a chapter 11 trustee is warranted under the circumstances, pursuant to either Bankruptcy Code section 1104(a)(1) or 1104(a)(2).

B. There Is Abundant "Cause" Within the Meaning of 11 U.S.C. § 1104(a)(l) to Warrant the Appointment of a Chapter 11 Trustee

75. While section 1104(a)(l) of the Bankruptcy Code expressly identifies four bases upon which "cause" may be found -- fraud, dishonesty, incompetence, and gross mismanagement (all of which exist in this case) -- those enumerated grounds are not exclusive.

[21] Although the Bankruptcy Code does not set forth the evidentiary standard for the appointment of a trustee under section 1104 of the Bankruptcy Code, the Third Circuit Court of Appeals has employed a "clear and convincing evidence" standard upon the party seeking appointment of a trustee. *See Official Comm. of Asbestos Claimants v. G-I Holdings, Inc. (In re G-I Holdings, Inc.)*, 385 F.3d 313, 319 (3d Cir. 2004) (citing *In re Marvel Entm't Group*, 140 F.3d 463, 471 (3d Cir. 1998)). Case law following the Supreme Court's 1991 decision in *Grogan v. Garner*, 498 U.S. 279, 286-91 (1991) ("preponderance of the evidence" standard as the general level of proof required in bankruptcy cases) calls that standard into question. *See Tradex Corp. v. Morse*, 339 B.R. 823, 829-32 (D. Mass. 2006) (rejecting clear and convincing evidentiary standard in context of a motion to appoint a trustee in favor of following the *Grogan* rationale that a heightened standard of review should not be applied when "Congress has not explicitly adopted a standard different from the traditional preponderance standard"); *see also In re Altman*, 230 B.R. 6, 16-17 (Bankr. D. Conn. 1999) (same), *aff'd in part, vacated in part on other grounds*, 254 B.R. 509 (D. Conn. 2000). The distinction here is immaterial given that the evidence to be presented by the Committee will be more than enough to meet either standard. *See, e.g., Crescive Landscape Mgmt. Inc. v. PHDC, LLC (In re PHDC, LLC)*, 2004 Bankr. LEX1S 1113, at *7 (Bankr. N.D. Ga. Apr. 28, 2004).

Additional grounds may be determined on a case-by-case basis. *See In re V. Savino Oil*, 99 B.R. at 525; *In re Sharon Steel Corp.*, 871 F.2d at 1226. Cause also may be established by the (1) materiality of the misconduct of the debtor's management, (2) evenhandedness or lack of same in dealings with insiders or affiliated entities vis-a-vis other creditors, (3) existence of pre-petition voidable preferences or fraudulent transfers, (4) unwillingness or inability of management to pursue estate causes of action, (5) conflicts of interest on the part of management interfering with its ability to fulfill fiduciary duties to the debtor, and (6) self-dealing by management or waste or squandering of corporate assets. *See In re Marvel Entm't Grp., Inc.*, 140 F.3d at 472-73; *In re Sharon Steel Corp.*, 871 F.2d at 1228; *In re Intercat, Inc.*, 247 B.R. at 920-21. Once a party has proven "cause" under section 1104(a)(1), a bankruptcy court must grant the requested relief. *See In re V. Savino Oil*, 99 B.R. at 525; *In re Deena Packaging Indus., Inc.*, 29 B.R. 705, 706 (Bankr. S.D.N.Y. 1983).

a. The Debtors' and Shapiro's Gross Fraud and Dishonesty Mandate Appointment of a Chapter 11 Trustee.

76. Pre-petition conduct of the type alleged to have occurred prior to the commencement of these Cases is sufficient to warrant the appointment of a trustee. *See* 11 U.S.C. § 1104(a)(1) (the relevant "cause" for appointment of a trustee may exist "either before or after the commencement of the case"); *In re Rivermeadows Assocs., Ltd.*, 185 B.R. 615, 619 (Bankr. D. Wyo. 1995) ("the Code is clear that the pre-petition conduct of the debtor's management may be the sole deciding factor" in the appointment of a chapter 11 trustee); *see also In re V. Savino Oil*, 99 B.R. at 526 ("[t]his pre-petition course of conduct, in and of itself, constitutes 'cause' for the appointment of a Chapter 11 trustee.").

77. As set forth above, the SEC has alleged that Shapiro controlled and used the Debtors and other Woodbridge entities to defraud investors and other creditors by raising

more than $1.22 billion from more than 8,400 individuals throughout the United States through fraudulent unregistered securities.[22] Due to the fraudulent acts of the Debtors' management, Woodbridge is subject to cease and desist orders and civil or administrative proceedings filed by regulators in more than a dozen states and has received information requests from many others. Indeed, the United States District Court for the Southern District of Florida has already found sufficient cause to enter the Freeze Order against Shapiro and the RS Trust, the ultimate owner of all of the Woodbridge entities (including the Debtors).

78. Separately, the agreements orchestrated by Shapiro on the eve of the Petition Date plainly demonstrate misconduct, conflicts of interest, self-dealing, and a "lack of evenhandness" in dealings with "affiliated entities vis-à-vis other creditors."

79. These facts establish that the Debtors and their management are unable to serve as estate fiduciaries and mandate the immediate appointment of a chapter 11 trustee. *In re Euro-American Lodging Corp.*, 365 B.R. 421, 426 (Bankr. S.D.N.Y. 2007) ("Dishonesty provides a reason to appoint a chapter 11 trustee under § 1104(a)(l)."); *Okla. Refining Co. v. Blaik (In re Okla. Refining Co.)*, 838 F.2d 1133, 1136 (10th Cir. 1988); *In re V. Savino Oil*, 99 B.R. at 525. Further, the Debtors' actions immediately preceding the commencement of the Cases in constructing a sham "independent" management structure demonstrates that they cannot be trusted to act as an honest broker. *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. at 355 ("[T]he willingness of courts to leave debtors in possession 'is premised upon an assurance that the officers and managing employees can be depended upon to carry out the

[22] The Debtors have implicitly acknowledged the fraudulent nature of Woodbridge's prepetition scheme by purportedly abandoning the "retail" fundraising practice that drew so much "scrutiny" in favor of seeking "institutional" capital. First Day Hearing Tr. at 9:12-11:17. Given the prepetition conduct and the lack of equity in the estates, the Debtors have been unable to attract institutional capital. The proposed DIP financing is being provided by a non-institutional hard money lender and only on the condition that the investors' interests be primed and only up to a 50% loan-to-value ratio.

fiduciary responsibilities of a trustee."'); *In re William H. Vaughan & Co.*, 40 B.R. 524, 526 (Bankr. E.D. Pa. 1984) (holding that appointment of a trustee was necessary because the debtor could not be trusted to scrutinize dealings between debtor and debtor's president).

b. The Debtors' Mismanagement of Corporate Assets for Shapiro's Benefit Further Warrants Appointment of a Chapter 11 Trustee.

80. The use of corporate assets for the personal benefit of insiders, resulting in the deterioration of the debtors' assets , further evidences "gross mismanagement" and mandates appointment of a chapter 11 trustee. *See, e.g, In re PRS Ins. Grp., Inc.*, 274 B.R. 381, 387 (Bankr. D. Del. 2001) (citation omitted).

81. The Debtors' implementation of Shapiro's scheme, ratified by Perkins and Beilinson, demonstrate gross mismanagement that itself warrants appointment of a chapter 11 trustee. For example, (a) all of the Woodbridge entities owing all or substantially all of Woodbridge's third-party liabilities are debtors, but other entities (including Shapiro's Woodbridge Entities) and their substantial assets were kept outside of the estates for the benefit of the RS Trust; (b) the Debtors are purportedly obligated to pay Shapiro over $2 million even though he supposedly ceded control of the Woodbridge Group Enterprise; (c) the so-called "Distribution Arrangement" was entered into for the exclusive benefit of the RS Trust; (d) the Debtors are purportedly obligated to pay BAG a Guaranteed Fee of $480,000, even if Beilinson renders no services as the Debtors' "independent manager;" (e) Shapiro was given the right to occupy two of the Debtors' readily-marketable multi-million dollar properties without fear of foreclosure; and (f) Shapiro was authorized to sell two properties outside of bankruptcy and, (supposedly) subject to the satisfaction of liens (if any), receive the proceeds in accordance with the Distribution Arrangement.

82. Shapiro's allegedly fraudulent conduct and the actions of the Debtors' management – through Shapiro, Perkins and Beilinson – to restructure Woodbridge's business on the eve of bankruptcy for Shapiro's benefit and that of his family at the expense of creditors constitutes ample cause to appoint a chapter 11 trustee.

C. The Debtors' Appointment of Beilinson and Perkins Does Not Negate the Need For a Chapter 11 Trustee

83. As already discussed above, Beilinson and Perkins have ratified and participated in Shapiro's efforts to maintain a direct role in the Debtors' affairs and continue to utilize Woodbridge for Shapiro's benefit and that of the RS Trust and his family. Therefore, by their actions, they already have demonstrated a lack of independence from Shapiro and an inability to serve as independent stewards of these bankruptcy estates for the benefit of creditors.[23] Even if Perkins and Beilinson were not aligned with Shapiro and had not participated in his scheme, their roles as CRO and Manager are not tantamount to that of a truly independent fiduciary for the benefit of creditors – a chapter 11 trustee.

a. On the Facts of these Cases, a Chief Restructuring Officer is Not a Substitute for a Chapter 11 Trustee

84. In its decision in *In re Marvel Entertainment Grp., Inc.*, the United States Court of Appeals for the Third Circuit quoted the following passage approvingly in affirming the appointment of a chapter 11 trustee:

> The willingness of Congress to leave a debtor-in-possession is premised on an expectation that current management can be depended upon to carry out the fiduciary responsibilities of a trustee. And if the debtor-in-possession defaults in this respect, Section 1104(a)(1) ***commands*** that the stewardship of the

[23] As stated above, Beilinson and Perkins could have bolstered their claims of independence by accepting their appointments without condition, or by insisting that the various agreements be subject to review and approval by all constituencies and the Court. They chose instead to enter into these agreements on the last business day before the Petition Date. Just as people only get one chance to make a first impression, Beilinson and Perkins had only one chance to establish their independence; and they failed.

> reorganization effort must be turned over to an ***independent trustee***.

See In re Marvel Entertainment Grp., Inc., 140 F.3d at 474 (quoting *In re V. Savino Oil*, 99 B.R. at 526) (emphasis added). The Third Circuit further stated that appointment of a trustee is mandatory if cause is found under 11 U.S.C. § 1104(a)(1), and the district court's refusal to appoint something less than a trustee was not an abuse of discretion under subsection (a)(2). *See id.* at 475. Congress provided but one way to replace a debtor's management's with an independent fiduciary: appointment of a trustee pursuant to 11 U.S.C. § 1104(a).

85. While bankruptcy courts may take into account changes in a debtor's management team in determining whether to appoint a chapter 11 trustee, last-minute management changes designed to fend off a trustee appointment have been found to be insufficient. *See In re Microwave Prods. of Am.*, 102 B.R. at 676; *In re Sharon Steel Corp.*, 871 F.2d at 1226. This should be particularly true where, as here, the newly-installed management team failed to immediately seek the Court's approval for the terms and conditions relating to their installation.

86. If the CRO and Manager had not been appointed, there would be no doubt that the appointment of a trustee would be mandatory for cause under section 1104. Beilinson and Perkins were appointed one (1) business day before the Petition Date in an effort to blunt that "cause." This effectively allowed Shapiro to choose his own "trustee" before a creditors' committee and other parties in interest could seek the appointment of a trustee pursuant to section 1104 of the Bankruptcy Code. *See In re Euro-American*, 365 B.R. at 432 ("If someone must be hired to report to the Court, the United States Trustee rather than the Debtor should select the new fiduciary. And unlike the Debtor's employees, the trustee will be bonded for the faithful performance of his or her duties.").

87. Even worse, Shapiro was not expected to cede total control of the Debtors to Beilinson or Perkins. Instead, Perkins and Beilinson retained Shapiro – notwithstanding his conduct – as a consultant at $175,000 per month and gave him an expansive portfolio of responsibilities, including "identifying and negotiating with potential buyers" of the Debtors' assets, "meeting with investment bankers and lenders to assist" with the Debtors' capital fundraising, and "negotiating renovation contracts."

88. Allowing the Debtors to rely on their last-second engagement of a CRO under these circumstances would nullify Bankruptcy Code section 1104(a)'s express provisions for appointment of an independent fiduciary, and enable any debtor in possession to avoid being dispossessed by selecting its own quasi-trustee under the guise of a chief restructuring officer. It would also encourage future debtors to respond in the same manner to any motion or anticipated motion for appointment of a trustee, effectively writing section 1104(a) out of the Bankruptcy Code. This is especially problematic where, as here, the person selecting the "new management" has been accused by the SEC of perpetrating a billion dollar fraud on the estates and the Debtors acknowledge that there is no equity in the estates.

89. Moreover, in a case burdened with allegations of fraud and dishonesty by the Debtors' prepetition management and continued sole equity holder, the CRO, whom the Debtors promote as an adequate substitute for a chapter 11 trustee, would have no statutory obligation to investigate Shapiro's allegedly fraudulent conduct.[24] Even assuming the CRO commenced an investigation, "[n]o matter how thoroughly or fairly [the CRO] conducted the investigation, the question will always linger whether [he] held back, or failed to bite the hand that feeds [him] quite as hard as the circumstances warranted." *In re Sunbum5 Enters., LLC,*

[24] *Compare* 11 U.S.C. § 1106 (mandating an investigation by a trustee) *with* 11 U.S.C. § 1107(a) (excluding the mandate of 11 U.S.C. § 1106).

2011 WL 4529648 at *25 (M.D. Fla. Sept. 30, 2011) (quoting *In re Granite Partners, L.P.*, 219 B.R. 22, 38 (Bankr. S.D.N.Y. 1998)). A chapter 11 trustee is statutorily required to conduct an investigation and would not be burdened by questions about allegiance to former management.

90. The supposed "changing of the guard" at the CRO and manager level has all the earmarks of Shapiro's not-so-invisible hand. The corporate documents and transactions approved by Beilinson and Perkins demonstrate that Shapiro still controls the Debtors in significant respects. For example, Perkins and Beilinson approved the Transition Services Agreement whereby Shapiro was given wide latitude to participate and influence, if not actually determine, virtually every issue confronting Woodbridge. In fact, notwithstanding the allegations against him, upon information and belief, Beilinson and Perkins knowingly permitted Shapiro to retain keys and have unfettered and unsupervised access to the Debtors' offices, and complete access to all information technology, resources, books, and records, after the Petition Date.

91. Without a chapter 11 trustee, the Debtors' current management will undoubtedly remain involved in these Cases, and there can be no real protection against further misconduct. Even if Shapiro truly stepped away from the management of the Debtors, he ultimately would remain in control of the Debtors through his control of RS Trust. Accordingly, the CRO could never be truly independent of Shapiro. The history of Shapiro's fraud runs too deep to cure by simply retaining a CRO and Manager. It is clear from a review of the consulting agreement for Shapiro that, even with the appointment of Perkins as CRO, Shapiro will continue to retain oversight and involvement in the Debtors' operations.

92. Moreover, since the Petition Date, the CRO and Manager have taken steps that demonstrate that the same mismanagement and overriding self-interest will continue during

their involvement in these Cases. By filing the Assumption Motion, for example, the Debtors seek to assume contracts that could bind the estate to millions of dollars of liability with almost no information or analysis and with the primary beneficiary appearing to be Shapiro, whose motivation is to risk investor assets in an effort to achieve an outsized profit enabling him to mitigate investor and SEC claims against him personally. The Court, the Committee and other interested parties should not be forced to evaluate every action taken by the Debtors to assess potential conflicts between an out-of-the money accused fraudster and unsuspecting defrauded investors. This proceeding can only be deemed fair if the hundreds of inevitable business decisions made on behalf of the estates can rely on the customary business-judgment presumption. Given the prepetition conduct and the events since the filing, such can never exist under the current circumstances.

D. Additionally, the Court Must Appoint a Trustee under 11 U.S.C. § 1104(a)(2) Because Such Appointment is in the Interests of the Estates and All Other Parties

93. Section 1104(a)(2) of the Bankruptcy Code allows the appointment of a trustee even when no "cause" exists. *See In re Sharon Steel Corp.*, 871 F.2d at 1226; *In re Ionosphere Clubs*, 113 B.R. at 168. Under section 1104(a)(2), the Court may appoint a trustee, in its discretion, to address "the interests of the creditors, equity security holders, and other interests of the estate." 11 U.S.C. § 1104(a)(2); *In re Sharon Steel Corp.*, 871 F.2d at 1226.

94. Under section 1104(a)(2), courts "look to the practical realities and necessities." *In re Euro-American Lodging Corp.*, 365 B.R. at 427. Among the factors courts consider are "(i) the trustworthiness of the debtor; (ii) the debtor in possession's past and present performance and prospects for the debtor's rehabilitation; (iii) the confidence - or lack thereof - of the business community and of creditors in present management; and (iv) the benefits derived

by the appointment of a trustee, balanced against the cost of the appointment." *Id*. (citations omitted).

95. In determining the best interests of creditors and the estate, courts "resort to [their] broad equity powers ... equitable remedies are a special blend of what is necessary, what is fair and what is workable." *In re Hotel Assocs., Inc.*, 3 B.R. 343, 345 (Bankr. E.D. Pa. 1980); *see In re Wings Digital Com.*, 2005 Bankr. LEXIS 3476, at *14 (Bankr. S.D.N.Y. May 16, 2005) (section 1104(a)(2) is a "lesser standard" than section 1104(a)(1)). In exercising these broad equitable powers to appoint a trustee under Bankruptcy Code section 1104(a)(2), courts "eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests." *In re Hotel Assocs., Inc.*, 3 B.R. at 345. Accordingly, the standard for appointment of a chapter 11 trustee under section 1104(a)(2) is flexible. *See* 124 Cong. Rec. H11, 102 (daily ed. Sept. 28, 1978); S17, 419 (daily ed. October 6, 1978). Each of the four considerations described above warrants appointment of a trustee here.

a. The Debtors Cannot Be Trusted to Carry Out Their Fiduciary Duties

96. An independent trustee should be appointed under section 1104(a)(2) of the Bankruptcy Code where, as here, a debtor and/or its management and insiders suffer(s) from material conflicts of interest and cannot be trusted to conduct independent investigations of questionable transactions in which they were involved. *See, e.g.*, *In re PRS Ins. Group, Inc.*, 274 B.R. at 389 (appointment of trustee appropriate under section 1104(a)(2) where causes of action against insiders are a significant asset of the estate); *In re Microwave Prods. of Am., Inc.*, 102 B.R. at 676 (chapter 11 trustee appointed where debtor was "not in a strong-posture to pursue possible claims" due to conflicts of interest and fraudulent transfers, and "a trustee would likely be able to investigate claims that could result in additional sums of money coming into the

estate"); *In re L.S. Good & Co.*, 8 B.R. 312 (Bankr. N.D.W. Va. 1980) (appointing trustee under section 1104(a)(2) where "[t]he magnitude of the number of inter-company transactions places current management of [the debtor] in a position of having grave potential conflicts of interest and the presumption arises that the current management of [the debtor] will be unable to make the impartial investigations and decisions demanded in evaluating and pursuing inter-company claims on behalf of [the debtor]").

97. The facts here are analogous to those found in the bankruptcy case of *Ondova Limited Company*, where a chapter 11 trustee was appointed. *In re Ondova Ltd. Co.*, Case No. 09-34784 (SGJ) (Bankr. N.D. Tex.). *See Order for Debtor to Appear and Show Cause Why: (A) a Chapter 11 Trustee Should Not Be Appointed, or Alternatively, (B) the Case Should Not Be Converted to a Case Under Chapter 7 and Chapter 7 Trustee Appointed* (the "Show Cause Order"), *In re Ondova Ltd. Co.*, Case No. 09-34784 (SGJ), Docket No. 56 (Bankr. N.D. Tex. Sept. 2, 2009).

98. In *Ondova*, the court was troubled by its perception "that the goal of Ondova in this Chapter 11 case (while under the direction of [the debtor's principal] Mr. Baron and the current management team) may not be centered around reorganizing a viable company (or providing a soft landing to a financially-stressed company), for the benefit of creditors and other parties-in-interest, but more geared toward protecting the personal interests of Mr. Baron and his affiliates, and/or attempting to relitigate issues already decided or settled in other fora." *Id.* at 4-5. The court also had concerns "about complex, prepetition transactions among various companies in which Mr. Baron has some interest or control, which transactions may affect the Debtor (and the value available/reachable for creditors), that need investigating by an independent fiduciary." *Id.*

99. The same concerns exist here. The Debtors (even following the appointment of the CRO and Manager) appear motivated to protect Shapiro and ensure his ultimate control of the Debtors. As described above, the Debtors have engaged in numerous suspect pre-petition transactions that cast considerable doubt on their trustworthiness. Therefore, a truly independent fiduciary is required to manage the Debtors, investigate their affairs, and put a halt to the ongoing harm to creditors.

100. In addition, the *Ondova* court noted that Mr. Baron, the debtor's principal was invoking his Fifth Amendment rights regarding basic questions about the debtor. *Ondova*, Transcript of Sept. 11, 2009 hearing at 34:20-35:9. This fact also required appointment of a chapter 11 trustee. *Id.* Here, Shapiro has invoked his Fifth Amendment rights in the SEC action, and, consequently is unable to fully and truthfully answer all inquiries regarding the assets, liabilities, and affairs of the Debtors and their affiliates.

101. The Debtors cannot be trusted to act in accordance with their fiduciary duties to creditors because management has breached those duties and instead chose to act in Shapiro's best interest, as detailed above. Nor can management be trusted to investigate the potential claims arising from the Debtors' own actions and/or inactions. For these reasons, appointment of a trustee is also appropriate under Bankruptcy Code section 1104(a)(2).

b. Creditors Lack Confidence in the Debtors

102. The Debtors do not have the confidence of their creditor body. The creditors' level of mistrust is very high due to the Debtors' pre-petition fraud and misconduct. Shapiro earned this mistrust over the past several years through self-dealing, dishonesty, and fraudulent activities, as alleged in the SEC Complaint, the SEC's motion that led to the Freeze Order, and the SEC's motion for the appointment of a receiver. The CRO and Manager have failed to take steps to suggest that they will act any differently. Instead, they have supported

transactions for Shapiro's personal benefit on the eve of the chapter 11 filings and have shown remarkably bad judgment after the commencement of these Cases by rushing into ill-advised transactions such as the Assumption Motion (which appears to support Shapiro's agenda to the creditors' detriment).

103. The Committee does not believe that the Debtors, under this management, can effectively reorganize or even liquidate optimally. Appointment of a chapter 11 trustee is the only remedy that will ensure that the Debtors are managed honestly and for the benefit of all of their stakeholders and relieve any suspicions of self-dealing and fraud. *See In re Marvel Entm't,* 140 F.3d at 474; *In re Cardinal Indus., Inc.*, 109 B.R. at 755, 766-767 (Bankr. S.D. Ohio 1990) (appointing trustee under section 1104(a)(2) where debtors' self-dealing and breach of fiduciary duties resulted in a serious erosion of trust and confidence by creditors and where benefits of potential claims against insiders of estate outweighed any cost of appointing a trustee); *In re Microwave Prods. of Am., Inc.*, 102 B.R. at 673-675 (same). The appointment of a trustee will provide creditors with the reassurance that a fair and independent fiduciary was finally managing the Debtors. This result, in turn, would enable an efficient and equitable resolution of these Cases for all parties in interest.

c. The Benefits of Appointing a Trustee Far Outweigh the Costs of Such Appointment

104. The benefits of a chapter 11 trustee greatly outweigh the burden to the Debtors from such appointment. At this stage of the Cases, the appointment of a trustee will not be an unduly burdensome expense for the Debtors' estates. Although the structure of the entire chain of debtor and non-debtor companies is somewhat complex, the Debtors' capital structure is not. What is complex, and what will require effort to untangle, is the web of transactions that the Debtors' management, including Shapiro, created to thwart creditors of the Debtors and their

non-Debtor affiliates. Unlike the Debtors' management, a chapter 11 trustee would be uniquely situated to untangle this web in a manner that is fair to all creditors, including those of the Debtors and their non-Debtor affiliates.

105. As set forth above, there are substantial benefits to appointing an independent trustee here. The Debtors own numerous properties that, if managed properly, will surely provide meaningful value to creditors. A fair and efficient sale process free from the stain of self-dealing can yield significant value. *See In re BLX Grp., Inc.*, 419 B.R. 457, 472 (Bankr. D. Mont. 2009) (concluding that appointment of chapter 11 trustee to manage a sale process was in the best interests of creditors because it would "eliminate the insider circumstances and conflicts of interest" and would allow for a "professionally managed sale process").

106. In addition, the Committee believes that the Debtors possess numerous and valuable causes of action that are not likely to be prosecuted if current management retains control of the Debtors. These causes of action may result in significant recoveries to the Debtors' estates. Such causes of action will need to be investigated and pursued, and the Debtors for obvious reasons, will be unable to conduct this investigation. By contrast, a chapter 11 trustee will be able to undertake the independent investigation needed and pursue any necessary litigation.

107. Moreover, the costs to appointing a trustee here are minimal. There is no reason to believe that a trustee with real estate experience would have a steep learning curve in getting up to speed, or would generate costs exceeding those of the CRO, the Manager and Shapiro. Moreover, since the CRO and Manager were appointed only one business day before the Petition Date and appear to still be working to gather all the information necessary to operate

these cases and formulate a plan of reorganization, there is no institutional knowledge lost if control of the Debtors is shifted to a truly independent fiduciary – a chapter 11 trustee.

108. The appointment of chapter 11 trustees in similar circumstances have been successful. For example, on November 10, 2009, an involuntary petition was filed against the law firm of Rothstein Rosenfeldt Adler P.A. ("RRA"). *See In re Rothstein Rosenfeldt Adler P.A.*, 09-34791-RBR [ECF No. 1] (Bankr S.D. Fla. 2009) (the "RRA Case"). Shortly after the filing of the case, the bankruptcy court ordered the appointment a chapter 11 trustee. RRA Case [ECF No. 47]. The impetus for the commencement of the RRA Case was Scott Rothstein's ("Rothstein") $1.2 billion Ponzi scheme that he ran through RRA.

109. By any measure the RRA Case has been very successful and efficient in recovering funds for the creditors and victims. The Second Amended Joint Chapter 11 Plan (the "RRA Plan") was confirmed on July 17, 2013. RRA Case [ECF No. 5063]. Since the liquidating trust was established under the RRA Plan, all general unsecured creditors have received dividends equal to 100% of their allowed claims, and all subordinated creditors, except for the most deeply subordinated creditor class, have likewise received 100% of their respective allowed claims. Additionally, the trustee and his professionals in the RRA Case were able to work cooperatively with United States Attorney's office to resolve the issues between the bankruptcy estate and the forfeiture proceedings. *See* RRA Case [ECF No. 5704]. In fact, the RRA liquidating trustee was appointed Restitution Receiver by the District Court proceeding over the criminal case of Scott Rothstein. This resolution ensured that every single victim in the forfeiture restitution proceedings in the Rothstein criminal case (*USA v. Rothstein*, 09-60331-CR (S.D. Fla. 2009)) received 100% of its allowed restitution claim. Further, because the liquidating trustee in the bankruptcy case was also appointed the restitution receiver in the Rothstein

criminal case, the liquidating trustee was able to verify all collateral source recoveries and ensure that no person, creditor, or victim was able to "double dip" from the various funds. Indeed, the RRA Case proved that bankruptcy, with its well defined procedures for claim reconciliation, judicial oversight, robust statutory scheme, and systemic flexibility, provides the most efficient way to unwind and clean up a large Ponzi scheme to maximize the return to the victims.

110. Based on the foregoing, the benefits of a chapter 11 trustee outweigh the costs -- and could help immeasurably in ensuring that the recovery to creditors is maximized.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter its order (a) granting the Motion; (b) ordering the U.S. Trustee, after consultation with the Committee, to appoint one disinterested person as chapter 11 trustee in these Cases under section 1104(a) of the Bankruptcy Code; (c) ordering the U.S. Trustee to seek approval of such appointment from this Court in accordance with section 1104(d) of the Bankruptcy Code and Bankruptcy Rule 2007; (d) ordering the Debtors, Shapiro, RS Trust, Perkins, BAG, Beilinson and any other individual or entity in possession of the Debtors' records and property to cooperate with the chapter 11 trustee and immediately turn over to the chapter 11 trustee all records and property of the estate in their possession or control as directed by the chapter 11 trustee; and (e) granting the Committee such other and further relief as the Court may deem appropriate.

Dated: December 28, 2017

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Bradford J. Sandler

Richard M. Pachulski (CA Bar No. 90073)
James I. Stang (CA Bar No. 94435)
Jeffrey N. Pomerantz (CA Bar No. 143717)
Bradford J. Sandler (DE Bar No. 4142)
John A. Morris (NY Bar No. 2405397)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899 (Courier 19801)
Telephone: 302-652-4100
Facsimile: 302-652-4400
E-mail: rpachulski@pszjlaw.com
jstang@pszjlaw.com
jpomerantz@pszjlaw.com
bsandler@pszjlaw.com
jmorris@pszjlaw.com

Proposed Counsel for the Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*, [1]	Case No. 17-12560 (KJC)
	Jointly Administered
Debtors.	

ORDER GRANTING EMERGENCY MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. § 1104

Upon the emergency motion (the "Motion") of the Official Committee of Unsecured Creditors (the "Committee") for entry of an order directing the appointment of a chapter 11 trustee pursuant to 11 U.S.C. § 1104(a) for each of the Debtors[2] in these Cases; and finding that notice of the Motion was appropriate and sufficient and that no other notice need be given, and having considered the various objections and other papers filed in response to the Motion, and after due deliberation and having determined that the Committee has demonstrated that "cause" exists to compel the appointment of a chapter 11 trustee pursuant to 11 U.S.C. § 1104(a)(1); and that appointment of a chapter 11 trustee is in the best interests of creditors pursuant to 11 U.S.C. § 1104(a)(2); and it appearing that the relief sought in the Motion is

[1] The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14225 Ventura Boulevard #100, Sherman Oaks, California 91423. The complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses may be obtained on the website of the noticing and claims agent at www.gardencitygroup.com/cases/WGC.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

appropriate under the circumstances; and after due deliberation and good and sufficient cause appearing;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

2. The United States Trustee, after consultation with the Committee, is hereby directed to appoint one disinterested person as chapter 11 trustee for each of the Debtors in these Cases and to apply to this Court for an order approving such appointment in accordance with 11 U.S.C. 1104(d) and Bankruptcy Rule 2007.1.

3. The Debtors, Shapiro, RS Trust, Perkins, SCP, BAG, Beilinson and any other individual or entity in possession of the Debtors' records and property shall cooperate with the chapter 11 trustee and immediately turn over to the chapter 11 trustee all records and property of the estate in their possession or control as directed by the chapter 11 trustee.

4. This Court retains jurisdiction to interpret, implement and enforce the terms of this Order.

Dated: _____, 2018

_____
The Honorable Kevin J. Carey
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	
	:	Chapter 11
WOODBRIDGE GROUP OF COMPANIES LLC, *et al.*,	:	
	:	Case No. 17- 12560 (KJC)
	:	
Debtors.	:	(Jointly Administered)

CERTIFICATE OF SERVICE

I, Bradford J. Sandler, hereby certify that on the 28th day of December, 2017, I caused a copy of the documents listed below to be served on the individuals on the attached service list in the manner indicated:

Emergency Motion of Official Committee of Unsecured Creditors for the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104

/s/ Bradford J. Sandler
Bradford J. Sandler (Bar No. 4142)

Woodbridge Group of Companies, Inc., et al.
2002 Email Service List
63 – Email Delivery

Email Delivery
(Independent Director)
Marc Beilinson
Beilinson Advisory Group
mbeilinson@beilinsonpartners.com

Email Delivery
(Counsel to DIP Lender)
William S. Brody, Esquire
Paul S Arrow, Esquire
Buchalter
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017
wbrody@buchalter.com
parrow@buchalter.com

Email Delivery
(California Labor & Workforce Development Agency)
California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
email@labor.ca.gov

Email Delivery
(Counsel for Robert Shapiro)
Stuart M. Brown, Esquire
DLA Piper LLP
1201 N Market Street, Suite 2100
Wilmington, DE 19801
stuart.brown@dlapiper.com

Email Delivery
(Counsel for Robert Shapiro)
Eric D. Goldberg, Esquire
DLA Piper LLP
2000 Avenue of the Stars, Suite 400 North Tower
Los Angeles, CA 90067
eric.goldberg@dlapiper.com

Email Delivery
(Counsel for Robert Shapiro)
Ryan D. O'Quinn, Esquire
DLA Piper LLP
200 South Biscayne Boulevard, South 2500
Miami, FL 33131
ryan.oquinn@dlapiper.com

Email Delivery
(Counsel for Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates.)
James H Millar, Esquire
Drinker Biddle & Reath LLP
1177 Avenue of the Americas, 41st Floor
New York, NY 10036
james.millar@dbr.com

Email Delivery
(Counsel for Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates.)
James G Lundy, Esquire
Drinker Biddle & Reath LLP
191 N Wacker Drive, Suite 3700
Chicago, IL 60606
james.lundy@dbr.com

Email Delivery
(Counsel for Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates.)
Steven K Kortanek, Esquire
Patrick A Jackson, Esquire
Joseph N Argentina, Jr, Esquire
Drinker Biddle & Reath LLP
222 Delaware Avenue Suite 1410
Wilmington, DE 19801
steven.kortanek@dbr.com
patrick.jackson@dbr.com
joseph.argentina@dbr.com

Email Delivery
(Claims and Noticing Agent for Debtors)
Katina Brountzas
GCG, LLC
1985 Marcus Avenue, Suite 200
Lake Success, NY 11042
susan.persichilli@choosegcg.com

Email Delivery
(Counsel for Debtors)
Matthew P. Porcelli, Esquire
J. Eric Wise, Esquire
Matthew K. Kelsey, Esquire
Gibson, Dunn, & Crutcher, LLP
200 Park Avenue
New York, NY 10166
mporcelli@gibsondunn.com
ewise@gibsondunn.com
mkelsey@gibsondunn.com

Email Delivery
(Counsel for Debtors)
Oscar Garza, Esquire
Daniel B. Denny, Esquire
Samuel A. Newman, Esquire
Gibson, Dunn, & Crutcher, LLP
333 S Grand Avenue
Los Angeles, CA 90071
ogarza@gibsondunn.com
ddenny@gibsondunn.com
snewman@gibsondunn.com

Email Delivery
(DIP Lender)
W. Scott Dobbins
Hankey Investment Company
4751 Wilshire Boulevard, Suite 110
Los Angeles, CA 90010
dobbins@hiclp.com

Email Delivery
(State Attorney General)
Indiana Attorney General's Office
Indiana Government Center South
302 W Washington Street, 5th Floor
Indianapolis, IN 46204
info@atg.in.gov

Email Delivery
(Counsel for The Law Offices of Ronald Richards & Associates, A.P.C.)
Ronald Richards
Law Offices of Ronald Richards & Associates, A.P.C
PO Box 11480
Beverly Hills, CA 90213
ron@ronaldrichards.com

Email Delivery
(State Attorney General)
Office of the Attorney General
1300 I Street, Suite 1142
Sacramento, CA 95814
piu@doj.ca.gov

Email Delivery
(State Attorney General)
Cynthia Coffman
Office of the Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203
attorney.general@state.co.us

Email Delivery
(Counsel for The State of Arizona Ex Rel. Arizona Corporation Commission ("Department"))
Matthew A Silverman
Arizona Assistant Attorney General
Office of the Attorney General
2005 N Central Avenue
Phoenix, AZ 85004
matthew.silverman@azag.gov

Email Delivery
(Office of the United States Trustee - Region 3)
Jane M. Leamy, Esquire
Timothy J. Fox, Jr., Esquire
Office of the United States Trustee, Region 3
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801
jane.m.leamy@usdoj.gov
timothy.fox@usdoj.gov

Email Delivery
(Counsel for Hankey Capital, LLC)
John H Knight
Christopher M Delillo
Richards Layton & Finger PA
One Rodney Square
920 North King Street
Wilmington, DE 19801
knight@rlf.com
delillo@rlf.com

Email Delivery
)
Secretary of State
Division of Corporations
Franchise Tax
401 Federal Street
PO Box 898
Dover, DE 19903
dosdoc_ftax@state.de.us

Email Delivery
(Sec Headquarters)
Secretary of the Treasury
Securities Exchange Commission
100 F Street, NE
Washington, DC 20549
chairmanoffice@sec.gov

Email Delivery
(Financial Advisor for Debtors)
Lawrence "Larry" Perkins
Lissa Weissman
Reece Fulgham
John Farrace
Miles Staglik
Robert Shenfeld
Sierra Constellation Partners, LLC
400 S Hope Street, Suite 1050
Los Angeles, CA 90071
lperkins@scpllc.com
lweissman@scpllc.com
rfulgham@scpllc.com
jfarrace@scpllc.com
mstaglik@scpllc.com
rshenfeld@scpllc.com

Email Delivery
(Delaware Office of the State Treasurer)
State of Delaware, Office of the State Treasurer
820 Silver Lake Boulevard, Suite 100
Dover, DE 19904
statetreasurer@state.de.us

Email Delivery
(State Attorney General)
Bankruptcy Dept
State of Hawaii Attorney General
425 Queen Street
Honolulu, HI 96813
hawaiiag@hawaii.gov

Email Delivery
(State Attorney General)
William Leibovici, Chief
State of Maryland Attorney General
Consumer Protection Division
200 Saint Paul Street, Suite 1700
Baltimore, MD 21202
consumer@oag.state.md.us

Email Delivery
(State Attorney General)
Director of the Consumer Protection Division
State of Michigan Attorney General
Cadillac Place, 10th Floor
3030 W Grand Boulevard, Suite 10-200
Detroit, MI 48202
miag@michigan.gov

Email Delivery
(SEC Atlanta Regional Office)
David W. Baddley
US Securities and Exchange Commission,
Atlanta Regional Office
950 E Paces Road, NE, Suite 900
Atlanta, GA 30321
baddleyd@sec.gov

Email Delivery
(Office of US Attorney)
David C. Weiss
United States Attorney's Office
Nemours Building
1007 Orange Street, Suite 700
Wilmington, DE 19801
askdoj@usdoj.gov

Email Delivery
(Counsel for the United States of America)
Andrew D Warner
United States Department of Justice
Civil Division
1100 L Street NW
Washington, DC 20530
andrew.warner@usdoj.gov

Email Delivery
(US Department of Justice)
Bankruptcy Claims Unit
US Department of Justice
PO Box 15012
Wilmington, DE 19850
askdoj@usdoj.gov

Email Delivery
(US Department of Justice)
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
askdoj@usdoj.gov

Email Delivery
)
Andrew Calamari, Regional Director
New York Regional Office
Securities & Exchange Commission
Brookfield Place, Suite 400
200 Vesey Street
New York, NY 10281-1022
nyrobankruptcy@sec.gov
newyork@sec.gov

Email Delivery
(State Attorney General)
Bankruptcy Dept
Washington Dc Attorney General
441 4th Street NW
Washington, DC 20001
dc.oag@dc.gov

Email Delivery
(DIP Lender)
Paul Kerwin
Westlake Financial Services
4751 Wilshire Boulevard, Suite 110
Los Angeles, CA 90010
pkerwin@westlakefinancial.com

Email Delivery
(Lead Debtor)
Eugene Rubinstein, Assoc. Counsel
Robert Reed, General Counsel
Woodbridge Group of Companies, LLC
14225 Ventura Boulevard, Suite 100
Sherman Oaks, CA 91423
eugene@woodbridgecompanies.com
rreed@woodbridgecompanies.com

Email Delivery
(Counsel for Debtors)
Ian J. Bambrick, Esquire
Sean M. Beach, Esquire
Allison S. Mielke, Esquire
Edmon L. Morton, Esquire
Young, Conaway, Stargatt, & Taylor, LLP
Rodney Square
1000 N King Street
Wilmington, DE 19801
ibambrick@ycst.com
sbeach@ycst.com
amielke@ycst.com
emorton@ycst.com

Email Delivery
(Counsel to Life Co. Insurance Services & Retirement Planning, Inc.)
Paul J. Pascuzzi, Esquire
Felderstein Fitzgerald Willoughby & Pascuzzi LLP
400 Capitol Mall, Suite 1750
Sacramento, CA 95814
ppascuzzi@ffwplaw.com

Email Delivery
(Counsel to the Michigan Dept of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau)
Bill Schuette, Esquire
Aaron W. Levin, Esquire
Office of the Attorney General
PO Box 30755
Lansing, MI 48909
levina@michigan.gov

Email Delivery
(Intersted Party)
Milton Bender
1690 Duck Creek Road
Ione, CA 95640
miltonbender@volcano.net

Email Delivery
(Counsel for the Unitholders Group)
Jeffrey S. Sabin, Esquire
Carol Weiner-Levy, Esquire
Venable LLP
Rockefeller Center
1270 Avenue of the Americas, 24th Floor
New York, NY 10020
jssabin@venable.com
cweinerlevy@venable.com

Email Delivery
(Counsel for the Unitholders Group)
Andrew J. Currie, Esquire
Venable LLP
750 E. Pratt Street, Suite 900
Baltimore, MD 21202
ajcurrie@venable.com

Email Delivery
(Counsel for the Unitholders Group)
Jamie L. Edmonson, Esquire
Venable LLP
1201 N. Market Street, Suite 1400
Wilmington, DE 19801
jledmonson@venable.com

Email Block:

mbeilinson@beilinsonpartners.com; wbrody@buchalter.com; parrow@buchalter.com; email@labor.ca.gov; stuart.brown@dlapiper.com; eric.goldberg@dlapiper.com; ryan.oquinn@dlapiper.com; james.millar@dbr.com; james.lundy@dbr.com; steven.kortanek@dbr.com; patrick.jackson@dbr.com; joseph.argentina@dbr.com; susan.persichilli@choosegcg.com; mporcelli@gibsondunn.com; ewise@gibsondunn.com; mkelsey@gibsondunn.com; ogarza@gibsondunn.com; ddenny@gibsondunn.com; snewman@gibsondunn.com; dobbins@hiclp.com; info@atg.in.gov; ron@ronaldrichards.com; piu@doj.ca.gov; attorney.general@state.co.us; matthew.silverman@azag.gov; jane.m.leamy@usdoj.gov; timothy.fox@usdoj.gov; knight@rlf.com; delillo@rlf.com; dosdoc_ftax@state.de.us; chairmanoffice@sec.gov; lperkins@scpllc.com; lweissman@scpllc.com; rfulgham@scpllc.com; jfarrace@scpllc.com; mstaglik@scpllc.com; rshenfeld@scpllc.com; statetreasurer@state.de.us; hawaiiag@hawaii.gov; consumer@oag.state.md.us; miag@michigan.gov; baddleyd@sec.gov; askdoj@usdoj.gov; andrew.warner@usdoj.gov; askdoj@usdoj.gov; askdoj@usdoj.gov; nyrobankruptcy@sec.gov; newyork@sec.gov; dc.oag@dc.gov; pkerwin@westlakefinancial.com; eugene@woodbridgecompanies.com; rreed@woodbridgecompanies.com; ibambrick@ycst.com; sbeach@ycst.com; amielke@ycst.com; emorton@ycst.com; ppascuzzi@ffwplaw.com; levina@michigan.gov; miltonbender@volcano.net; jssabin@venable.com; cweinerlevy@venable.com; ajcurrie@venable.com; jledmonson@venable.com;

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Overnight Service List
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(Proposed Counsel for the Official Committee of Unsecured Creditors)
Bradford J. Sandler, Esquire
Colin R. Robinson, Esquire
Pachulski Stang Ziehl & Jones, LLP
919 N. Market Street, 17th Floor
Wilmington, DE 19801

Interoffice
(Proposed Counsel for the Official Committee of Unsecured Creditors)
Richard M. Pachulski, Esquire
James I. Stang, Esquire
Jeffrey N. Pomerantz, Esquire
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067

Email Delivery
(Independent Director)
Marc Beilinson
Beilinson Advisory Group
mbeilinson@beilinsonpartners.com

Hand Delivery
(Delaware State Atty General's Office - Delaware Department of Justice)
Hon. Matt Denn, Atty General
Delaware State Atty General's Office
Delaware Department of Justice
Wilmington, DE 19801

Hand Delivery
(Counsel for Robert Shapiro)
Stuart M. Brown, Esquire
DLA Piper LLP
1201 N Market Street, Suite 2100
Wilmington, DE 19801

Hand Delivery
(Counsel for Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates.)
Steven K Kortanek, Esquire
Patrick A Jackson, Esquire
Joseph N Argentina, Jr, Esquire
Drinker Biddle & Reath LLP
222 Delaware Avenue Suite 1410
Wilmington, DE 19801

Hand Delivery
(Office of the United States Trustee - Region 3)
Jane M. Leamy, Esquire
Timothy J. Fox, Jr., Esquire
Office of the United States Trustee, Region 3
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801

Hand Delivery
(Counsel for Hankey Capital, LLC)
John H Knight
Christopher M Delillo
Richards Layton & Finger PA
920 North King Street
Wilmington, DE 19801

Hand Delivery
(Office of US Attorney)
David C. Weiss
United States Attorney's Office
1007 Orange Street, Suite 700
Wilmington, DE 19801

Hand Delivery
(Counsel for Debtors)
Ian J. Bambrick, Esquire
Sean M. Beach, Esquire
Allison S. Mielke, Esquire
Edmon L. Morton, Esquire
Young, Conaway, Stargatt, & Taylor, LLP
1000 N King Street
Wilmington, DE 19801

Hand Delivery
(Counsel for the Unitholders Group)
Jamie L. Edmonson, Esquire
Venable LLP
1201 N. Market Street, Suite 1400
Wilmington, DE 19801

Express Mail Delivery
(California Board of Equalization)
California Board of Equalization
PO Box 942879
Sacramento, CA 94279

Express Mail Delivery
(California Franchise Tax Board)
California Franchise Tax Board
PO Box 942840
Sacramento, CA 94240

Express Mail Delivery
(Irs Centralized Insolvency Operation)
Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101

Express Mail Delivery
(Counsel for The Law Offices of Ronald Richards & Associates, A.P.C.)
Ronald Richards
Law Offices of Ronald Richards & Associates, A.P.C
PO Box 11480
Beverly Hills, CA 90213

Express Mail Delivery
(State Attorney General)
Bankruptcy Dept
State of California Attorney General
PO Box 944255
Sacramento, CA 94244

Express Mail Delivery
(US Department of Justice)
Bankruptcy Claims Unit
US Department of Justice
PO Box 15012
Wilmington, DE 19850

Express Mail Delivery
(Counsel to the Michigan Dept of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau)
Bill Schuette, Esquire
Aaron W. Levin, Esquire
Office of the Attorney General
PO Box 30755
Lansing, MI 48909

Overnight Delivery
(Counsel to DIP Lender)
William S. Brody, Esquire
Paul S Arrow, Esquire
Buchalter
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017

Overnight Delivery
(California Governor's Office of Business & Economic Development)
California Governor's Office of Business & Economic Development
1325 J Street, Suite 1800
Sacramento, CA 95814

Overnight Delivery
(California Labor & Workforce Development Agency)
California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Overnight Delivery
(California Natural Resources Agency)
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Overnight Delivery
(State Attorney General)
Colorado Office of the Attorney General
Consumer Protection Division
1525 Sherman Street
Denver, CO 80203

Overnight Delivery
(Delaware Department of Labor - Divison of Unemployment Insurance)
Delaware Dept. of Labor
4425 N Market Street
Wilmington, DE 19802

Overnight Delivery
(Delaware Division of Revenue - Dept of Taxation and Finance)
Delaware Division of Revenue, Dept. of Taxation and Finance
540 S. Dupont Highway
Dover, DE 19901

Overnight Delivery
(Internal Revenue Service)
V. Hayes (Employee No. 1000315823)
Department of the Treasury
7850 SW 6th Court
Plantation, FL 33324

Overnight Delivery
(Department of the Treasury)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Overnight Delivery
(Counsel for Robert Shapiro)
Eric D. Goldberg, Esquire
DLA Piper LLP
2000 Avenue of the Stars, Suite 400 North Tower
Los Angeles, CA 90067

Overnight Delivery
(Counsel for Robert Shapiro)
Ryan D. O'Quinn, Esquire
DLA Piper LLP
200 South Biscayne Boulevard, South 2500
Miami, FL 33131

Overnight Delivery
(Counsel for Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates.)
James H Millar, Esquire
Drinker Biddle & Reath LLP
1177 Avenue of the Americas, 41st Floor
New York, NY 10036

Overnight Delivery
(Counsel for Ad Hoc Committee of Holders of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates.)
James G Lundy, Esquire
Drinker Biddle & Reath LLP
191 N Wacker Drive, Suite 3700
Chicago, IL 60606

Overnight Delivery
(Environmental Protection Agency - Office of General Counsel)
Office of General Counsel
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail 2310A
Washington, DC 20004

Overnight Delivery
(Claims and Noticing Agent for Debtors)
Katina Brountzas
GCG, LLC
1985 Marcus Avenue, Suite 200
Lake Success, NY 11042

Overnight Delivery
(Counsel for Debtors)
Matthew P. Porcelli, Esquire
J. Eric Wise, Esquire
Matthew K. Kelsey, Esquire
Gibson, Dunn, & Crutcher, LLP
200 Park Avenue
New York, NY 10166

Overnight Delivery
(Counsel for Debtors)
Oscar Garza, Esquire
Daniel B. Denny, Esquire
Samuel A. Newman, Esquire
Gibson, Dunn, & Crutcher, LLP
333 S Grand Avenue
Los Angeles, CA 90071

Overnight Delivery
(DIP Lender)
W. Scott Dobbins
Hankey Investment Company
4751 Wilshire Boulevard, Suite 110
Los Angeles, CA 90010

Overnight Delivery
(State Attorney General)
Indiana Attorney General's Office
302 W Washington Street, 5th Floor
Indianapolis, IN 46204

Overnight Delivery
(State Attorney General)
George Jepsen
Office of the Attorney General
55 Elm Street, Suite 1
Hartford, CT 06106

Overnight Delivery
(State Attorney General)
Office of the Attorney General
1300 I Street, Suite 1142
Sacramento, CA 95814

Overnight Delivery
(State Attorney General)
Mark Brnovich, Arizona Attorney General
Office of the Attorney General, Phoenix Office
1275 W. Washington Street
Phoenix, AZ 85007

Overnight Delivery
(State Attorney General)
Cynthia Coffman
Office of the Attorney General
1300 Broadway, 10th Floor
Denver, CO 80203

Overnight Delivery
(State Attorney General)
Christopher M Carr
Office of the Attorney General
40 Capitol Square, SW
Atlanta, GA 30334

Overnight Delivery
(State Attorney General)
The Honorable Alan Wilson
Office of the Attorney General
1000 Assembly Street, Suite 501 Rm 519
Columbia, SC 29201

Overnight Delivery
(Counsel for The State of Arizona Ex Rel. Arizona Corporation Commission ("Department"))
Matthew A Silverman
Arizona Assistant Attorney General
Office of the Attorney General
2005 N Central Avenue
Phoenix, AZ 85004

Overnight Delivery
)
Secretary of State
Division of Corporations
Franchise Tax
401 Federal Street
PO Box 898
Dover, DE 19903

Overnight Delivery
(California Secretary of State)
Secretary of State
1500 11th Street
Sacramento, CA 95814

Overnight Delivery
(Secretary of State)
Secretary of State
401 Federal Street
Dover, DE 19901

Overnight Delivery
(Secretary of Treasury)
Secretary of Treasury
820 Silver Lake Boulevard, Suite 100
Dover, DE 19904

Overnight Delivery
(Sec Headquarters)
Secretary of the Treasury
Securities Exchange Commission
100 F Street, NE
Washington, DC 20549

Overnight Delivery
(Financial Advisor for Debtors)
Lawrence "Larry" Perkins
Lissa Weissman
Reece Fulgham
John Farrace
Sierra Constellation Partners, LLC
400 S Hope Street, Suite 1050
Los Angeles, CA 90071

Overnight Delivery
(State Attorney General)
California Attorney General's Office
State of California Attorney General
455 Golden Gate Avenue, Suite 1100
San Francisco, CA 94102

Overnight Delivery
(Delaware Office of the State Treasurer)
State of Delaware, Office of the State Treasurer
820 Silver Lake Boulevard, Suite 100
Dover, DE 19904

Overnight Delivery
(State Attorney General)
Bankruptcy Dept
State of Florida Attorney General
The Capitol, Pl 01
Tallahassee, FL 32399

Overnight Delivery
(State Attorney General)
Bankruptcy Dept
State of Hawaii Attorney General
425 Queen Street
Honolulu, HI 96813

Overnight Delivery
(State Attorney General)
Director of the Consumer Protection Division
Chicago Main Office
State of Illinois Attorney General
100 W Randolph Street, Floor 12
Chicago, IL 60601

Overnight Delivery
(State Attorney General)
William Leibovici, Chief
State of Maryland Attorney General
200 Saint Paul Street, Suite 1700
Baltimore, MD 21202

Overnight Delivery
(State Attorney General)
Director of the Consumer Protection Division
State of Michigan Attorney General
3030 W Grand Boulevard, Suite 10-200
Detroit, MI 48202

Overnight Delivery
(State Attorney General)
Director of the Consumer Protection Division
State of New York Attorney General
The Capitol
Albany, NY 12224

Overnight Delivery
(State Attorney General)
Bankruptcy Dept
State of Ohio Attorney General
30 E Broad Street, Floor 14
Columbus, OH 43215

Overnight Delivery
(SEC Atlanta Regional Office)
David W. Baddley
US Securities and Exchange Commission,
Atlanta Regional Office
950 E Paces Road, NE, Suite 900
Atlanta, GA 30321

Overnight Delivery
(Counsel for the United States of America)
Andrew D Warner
United States Department of Justice
1100 L Street NW
Washington, DC 20530

Overnight Delivery
(US Department of Justice)
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Overnight Delivery
(US Environmental Protection Agency)
Office of Enforecement and Compliance Assurance
US Environmental Protection Agency
Mail 2201A
Washington, DC 20004

Overnight Delivery
)
Andrew Calamari, Regional Director
New York Regional Office
Securities & Exchange Commission
200 Vesey Street
New York, NY 10281-1022

Overnight Delivery
(US Treasury)
US Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Overnight Delivery
(State Attorney General)
Bankruptcy Dept
Washington Dc Attorney General
441 4th Street NW
Washington, DC 20001

Overnight Delivery
(DIP Lender)
Paul Kerwin
Westlake Financial Services
4751 Wilshire Boulevard, Suite 110
Los Angeles, CA 90010

Overnight Delivery
(Lead Debtor)
Eugene Rubinstein, Assoc. Counsel
Robert Reed, General Counsel
Woodbridge Group of Companies, LLC
14225 Ventura Boulevard, Suite 100
Sherman Oaks, CA 91423

Overnight Delivery
(Counsel to Life Co. Insurance Services & Retirement Planning, Inc.)
Paul J. Pascuzzi, Esquire
Felderstein Fitzgerald Willoughby & Pascuzzi LLP
400 Capitol Mall, Suite 1750
Sacramento, CA 95814

Overnight Delivery
(Intersted Party)
Milton Bender
1690 Duck Creek Road
Ione, CA 95640

Overnight Delivery
(Counsel for the Unitholders Group)
Jeffrey S. Sabin, Esquire
Carol Weiner-Levy, Esquire
Venable LLP
Rockefeller Center
1270 Avenue of the Americas, 24th Floor
New York, NY 10020

Overnight Delivery
(Counsel for the Unitholders Group)
Andrew J. Currie, Esquire
Venable LLP
750 E. Pratt Street, Suite 900
Baltimore, MD 21202