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.	:	**Ref. Docket Nos. 1833 & 2015**

STATEMENT OF THE AD HOC NOTEHOLDER GROUP REGARDING THE MOTION OF LISE LA ROCHELLE, *ET AL.* TO TERMINATE EXCLUSIVITY

The Ad Hoc Noteholder Group[2] (the "**Noteholder Group**"), by and through its undersigned counsel, hereby files this statement (this "**Statement**") in response to the *Motion of Lise La Rochelle,* et al. *to Terminate Exclusivity* [D.I. 1833] (the "**Motion**"). The Noteholder Group opposes the Motion and joins in substantially all of the arguments made by the above-captioned Debtors in their objection filed June 20, 2018 [D.I. 2015] (the "**Debtors' Objection**").[3] The Noteholder Group files this Statement for the benefit of its Noteholder constituents who are monitoring the docket, to provide further explanation and context for the Noteholder Group's opposition to the Motion.

[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. A 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 Debtors' noticing and claims agent at www.gardencitygroup.com/cases/WGC.

[2] The Noteholder Group was formed pursuant to the January 23, 2018 order of the Bankruptcy Court [D.I. 357]; "[D.I. #]" citations refer to "docket items" from the chapter 11 cases, which are available for free online at: http://cases.gardencitygroup.com/wgc/maincase.php (search by "Document No.").

[3] The Noteholder Group does not join in the arguments made in paragraph 14 and Exhibit A to the Debtors' Objection, but it agrees with the Debtors that the Court need not resolve such arguments in order to decide the Motion.

INTRODUCTION

1. The Motion is a canned pleading from another case,[4] which was repurposed for these chapter 11 cases with a primary purpose of advertising for The Sarachek Law Firm ("**SLF**")[5] rather than obtaining the relief sought. And the advertisement appears to have had some success. Since the Motion was filed, the group of investor clients represented by SLF (the "**SLF Group**") has grown to at least 244, based on the most recent Bankruptcy Rule 2019 statement filed by SLF [D.I. 1942].[6]

2. SLF's sales pitch is no doubt effective because it is straightforward, and it is exactly what Noteholder victims want to hear. According to SLF, the "$800 million question" in these chapter 11 cases is whether the Noteholders have valid liens in real estate—an issue that supposedly SLF alone has the intrepidity to litigate. (Mot. ¶ 1.) Once SLF prevails in its litigation, so the story goes, the rest of the chapter 11 process will simply fall into place. At that time, the SLF Group will supposedly prepare and propose a chapter 11 plan that "1) resolves the issues of priority and seniority of [valid] liens; 2) allow[s] for a lump-sum payout to creditors; and 3) encourages third[-]party investors to develop the Debtors['] existing properties and thereby increase the recovery to creditors." (Mot. ¶ 11.) Under this plan, holders of Woodbridge "unit" investments ("**Unitholders**") apparently would receive nothing. (*See* Mot. ¶ 20

[4] This is evident from the statement in paragraph 21 that "[t]he Debtors' Amended Plan is unconfirmable as a matter of law for a number of reasons"—at the time the Motion was filed, the Debtors had not yet filed *a* plan, much less an *amended* plan.

[5] This is evident from the Motion itself, which spends more time discussing SLF's litigation theory than the actual legal standard for termination of exclusivity. It is also evident from the lack of follow-up on the Motion, which was not noticed for hearing until June 27, 2018 [D.I. 2055] (more than a month after the Court entered its scheduling order directing the re-notice to be filed), and for which no reply to the Debtors' Objection was filed.

[6] Federal Rule of Bankruptcy Procedure 2019 requires professionals representing more than one creditor in a bankruptcy case to disclose the identities of their clients and the nature of their clients' economic interests in the bankruptcy.

(suggesting that if Noteholders have valid liens, there is "no reason" to "giv[e] away recoveries" to Unitholders).)

3. A very similar narrative is being pushed by at least one financial advisor, Knowles Systems, Inc., which hired counsel to monitor these chapter 11 cases and provide periodic memos that are then shared with Knowles's numerous Woodbridge-investor clients. In a May 25 memo, Knowles's counsel criticized what he anticipated would be the Noteholder Group's position on the Motion,[7] stating:

> They are arguing it is most efficient not to have competing plans. They want to preserve the right to propose a plan along the lines of the term sheet without competition.
>
> As far as I know, the Noteholder [Group] did not poll Noteholders before taking this position. *Most Noteholders would be better off by having their claims adjudicated and treated as secured.*
>
> Noteholders who disagree with the position the Noteholder[Group] has taken, without their input, can let the Noteholder[Group] know by email at steven.kortanek@dbr.com indicating support for the [SLF Group's] motion to limit exclusivity and have competing plans.

(Emphasis added). This memo has prompted several dozen inquiries from Knowles clients to the Noteholder Group, to which the Noteholder Group's professionals have endeavored to respond in a timely fashion. But there are no doubt other Noteholder constituents who have similar questions and concerns, who may not have reached out to (or yet connected with) the Noteholder Group's professionals.

[7] At the time of the memo, the Noteholder Group had not taken a formal position on the Motion, but had objected to the SLF Group's request to schedule the Motion for an expedited hearing [D.I. 1848], arguing the SLF Group had not met its burden of establishing "cause" for shortening the notice period otherwise applicable to the Noteholder Group's constituents. (The Court agreed, and entered an order scheduling the Motion for hearing on full notice [D.I. 1849].)

4. Given the misplaced confidence with which SLF and Knowles's counsel are advising Noteholders of the virtues of litigation and the folly of the yet-to-be-filed chapter 11 plan, one might think they have special access to information unavailable to the Noteholder Group, or have performed legal analysis that the Noteholder Group has overlooked. But neither proposition is correct.

5. In terms of information access, the Noteholder Group's counsel and financial advisors have access to a continuously-updated electronic dataroom containing more than 20,000 Woodbridge documents, are in regular contact with the Debtors' independent management and professionals (as well as professionals of the other creditor groups and the SEC), and have spoken or corresponded with several hundred Noteholders (and counting) about these bankruptcy cases. The members of the Noteholder Group, who come from a variety of personal and professional backgrounds and have approximately $9.8 million in total Note holdings among them, meet regularly concerning these bankruptcy cases, with the benefit of independent legal and financial analysis from their professional advisors.

6. SLF and Knowles's counsel certainly do not have any informational advantage over the Noteholder Group. And since neither has reached out to counsel for the Noteholder Group to discuss these bankruptcy cases, they are operating in very dangerous territory indeed, because *they don't know what they don't know.*[8]

[8] To illustrate, the May 25 memo from Knowles's counsel advises that "anyone who disagrees with having their claim designated as unsecured [on the Debtors' Schedules of Assets and Liabilities] must file a Proof of Claim." This advice was *exactly wrong*, however, as the Noteholder Group specifically negotiated to *excuse* Noteholders from filing proofs of claim to assert the secured status of their claims. [*See* D.I. 1599 (bar date notice) at 2-3 ("**FOR THE AVOIDANCE OF DOUBT, A NOTEHOLDER WHOSE CLAIM IS LISTED ON THE SCHEDULES (SCHEDULE F) IS NOT REQUIRED TO FILE A PROOF OF CLAIM TO DISPUTE THE NATURE OR SECURITY OF SUCH CLAIM.**" (emphasis in original)).]

7. Below is some additional information we believe Noteholders should be aware of in evaluating the merits of the Motion and the Noteholder Group's opposition to it. To sum up, the bankruptcy cases are vastly more complicated than either SLF or Knowles's counsel seems to appreciate, and prosecution of the Owlwood Complaint—*even if successful*—would leave open far more issues than it would actually resolve for Noteholders, including members of the SLF Group.

8. To be clear, the Noteholder Group stands ready to join the fray and advocate for the interests of Noteholders in any litigation that might result should the Debtors fail to obtain confirmation of their forthcoming chapter 11 plan. The main reason for the Noteholder Group's court-approved existence has been to thoroughly analyze the legal and factual issues relating to all Noteholders' lien claims. The Noteholder Group employed its extensive analysis to forcefully advocate for the interests of all Noteholders in the settlement negotiations that ultimately produced the March 22, 2018 Plan Term Sheet. The Noteholder Group strongly believes that its Noteholder constituents should be afforded an opportunity to evaluate the settlements embodied in the soon-to-be filed chapter 11 plan embodying the parties' global settlement, and to vote on the chapter 11 plan, rather than being forced down a years-long (and potentially pointless) litigation path by the SLF Group.

BACKGROUND CONCERNING THE NOTEHOLDER GROUP

9. The Noteholder Group is nine-member fiduciary body formed in accordance with a January 23, 2018, order of the bankruptcy court [D.I. 357] (the "**Settlement Order**"), as part of a global settlement of pending contested matters between the Debtors, the SEC, the Official

---

Unfortunately, this advice probably resulted in unnecessary legal expense to Knowles clients who heeded it and hired counsel to file a proof of claim.

Committee of Unsecured Creditors (the "**Creditors' Committee**"), and several *ad hoc* committees of Woodbridge investors.[9]

10. The Settlement Order tasked the Noteholder Group with "litigating and/or negotiating any aspects of Noteholder treatment in these [bankruptcy] cases," and granted the Noteholder Group the essential rights of an official statutory committee in a chapter 11 bankruptcy case,[10] including the rights (i) to retain counsel and financial advisors, (ii) to consult with the Debtors and their advisors, (iii) to investigate the Debtors' assets and financial affairs, (iv) to participate in the formulation of a chapter 11 plan, and (v) to appear before and be heard by the bankruptcy court on any issue in the bankruptcy cases. (Sett. Ord. ¶¶ 12-13.)

11. The Noteholder Group was formed from members of the four *ad hoc* committees of Noteholders that had appeared in the bankruptcy cases at the time the January 23 order was entered [*see* D.I. 1707 (listing Noteholder Group members and their prior involvement in the cases)]. The Noteholder Group's counsel had previously represented one of these *ad hoc* committees [*see* D.I. 279], which was formed for the limited purposes of (i) obtaining official representation for Noteholder interests in these bankruptcy cases, and (ii) preserving the status quo for Noteholders until they obtained official representation of their interests. To this end, the prior *ad hoc* committee had sought appointment of an official committee of Noteholders [D.I. 85], opposed the Debtors' post-petition financing [D.I. 113], opposed the motions of the Creditors' Committee and the SEC seeking appointment of a chapter 11 trustee [D.I. 245], and

[9] In bankruptcy parlance, an "*ad hoc*" committee is a group of creditors or equity interest holders acting together in a bankruptcy case, through counsel, for a common (and typically, limited) purpose.

[10] Section 1102 of the Bankruptcy Code provides for the creation of an official committee of unsecured creditors in every chapter 11 case, and for the formation of other official committees where necessary to ensure adequate representation of creditors or equity interest holders. Official committees have rights and powers conferred by statute, *see* 11 U.S.C. § 1103.

participated in the settlement discussions that led to the entry of the Settlement Order. Drawing on this prior experience, the undersigned counsel hit the ground running on behalf of the Noteholder Group.

12. As a fiduciary for all Noteholders, the Noteholder Group is sensitive to the potentially divergent interests among Noteholders based upon (i) the nature and relative priority of their Woodbridge notes, (ii) the properties and related intercompany obligations associated with their notes, (iii) the status of documentation of their notes, and (iv) the particular Woodbridge "fund" entities they lent to. (These diverging interests are discussed further below in connection with the Owlwood Complaint.) In light of the varied interests of its constituency, the Noteholder Group's approach to these cases has been (i) to preserve the status quo as much as possible on Noteholders' lien rights, so as not to prejudice Noteholders in any future litigation, should it become necessary,[11] (ii) to take actions that inure to the benefit all Noteholders,[12] and (iii) to promptly engage with the Debtors, the Creditors' Committee, and the Unitholder Group[13] on the terms of a liquidating chapter 11 plan that would be presented to and voted upon by Noteholders.

13. In view of the enormously successful plan settlement negotiations that resulted in the March 22 Plan Term Sheet, the main parties in these cases—the Debtors and the three

---

[11] Actions taken in furtherance of this goal include negotiation of protections for lienholders' lien rights in the final debtor-in-possession financing order [*see* D.I. 510 at ¶¶ 3-6; D.I. 724 at § 3.1.2] and in orders concerning sales of real property [*see* D.I. 811; D.I. 844 at ¶ 6].

[12] Actions taken in furtherance of this goal include the negotiation of a bar date order that made it unnecessary for most Noteholders to file proofs of claim [D.I. 911 at ¶ 6(b)], establishment of an informational website (www.omnimgt.com/sblite/woodbridge/) for Noteholders, and exploration of options for Noteholders to obtain liquidity on their investments prior to consummation of a chapter 11 plan (whether in the form of an agreed-upon protocol for the trading in Note claims, or a non-recourse borrowing facility for the benefit of Noteholders).

[13] The Settlement Order also provided for the formation of a fiduciary group of Unitholders (the "**Unitholder Group**").

committees—have had no reason to engage in a public airing on the docket of the myriad legal and factual issues that would need to be litigated absent the global settlement. This stands to reason, as of course the global settlement avoids the need to engage in any such litigation.

14. As a result, the docket itself provides only a keyhole view into the many complex issues at play in these bankruptcy cases. This should be obvious to experienced practitioners such as SLF and Knowles's counsel, who, as noted above, have yet to reach out to counsel for the Noteholder Group for any information about these bankruptcy cases or the Noteholder Group's reasons for taking the positions it has. In any event, the Debtors are on the eve of filing the comprehensive chapter 11 plan and disclosure statement (discussed below), which will lay out in considerable detail the key issues that investor victims in these cases will need to consider.

THE PLAN NEGOTIATIONS

15. On March 8, 2018, shortly after the Debtors' new independent management and professionals were in place and got up to speed on the bankruptcy cases, counsel for the Noteholder Group, the Unitholder Group, and the Creditors' Committee met in Los Angeles with the Debtors' lead bankruptcy counsel to discuss what all agreed were the threshold legal issues for any meaningful chapter 11 plan negotiation. These issues included (i) the existence, validity, and enforceability of Noteholders' lien rights, (ii) the characterization of "unit" investments as equity versus debt (i.e., whether the "unit" investments give rise to unsecured claims that are on par with other unsecured claims), and (iii) the possibility of substantive consolidation of the Debtors.[14]

[14] "Substantive consolidation" is an equitable remedy that collapses distinct legal entities into a single entity, so that assets and liabilities of each distinct entity are treated as assets and liabilities of the consolidated entity.

16. Prior to the March 8 meeting, the Noteholder Group, Unitholder Group, and Creditors' Committee prepared and exchanged "white papers" discussing the threshold legal issues. These white papers were discussed at length at the meeting, along with related issues such as the propriety and potential legal ramifications of a judicial determination that the Debtors' business constituted a "Ponzi" scheme. In the weeks that followed, the Noteholder Group's counsel refined their legal analysis in light of these discussions. The Debtors also disseminated a proposed business plan for the development and sale of their various real estate assets, which the Noteholder Group's financial advisors reviewed and analyzed.

17. On March 20, 21, and 22, professional advisors and representatives of the Noteholder Group, the Unitholder Group, and the Creditors' Committee met in Los Angeles with the Debtors' management and professional advisors to discuss the Debtors' proposed business plan and negotiate the key terms of a liquidating chapter 11 plan that would be presented to and voted upon by Noteholders. As a result of several days of often contentious negotiation between the Noteholder Group, the Unitholder Group, and the Creditors' Committee, brokered by the Debtors, the parties executed a summary term sheet on March 22, 2018 [*see* D.I. 828 Ex. I] (the "**Plan Term Sheet**"), which outlined the material terms of a chapter 11 plan of liquidation for the Debtors, subject to further negotiation and documentation.

18. As reported by the Debtors in their June 29, 2018, motion for a further extension of their exclusivity periods for filing and soliciting votes on a chapter 11 plan [D.I. 2065], the draft chapter 11 plan contemplated by the Plan Term Sheet is substantially final, save for some limited issues that are being discussed with the SEC. (And as is customary in chapter 11 plans in complex cases, there are some ancillary plan-related documents still to be negotiated and drafted, all against the backdrop of the Plan Term Sheet.)

19. When or shortly after the plan is filed, the Debtors will also file a "disclosure statement" concerning the plan, which will provide substantial information about (i) the Debtors' assets, operations, financial condition, and capital structure, (ii) these bankruptcy cases and the negotiation of the plan, (iii) the Debtors' business plan for development and sale of their real properties, (iv) the projected recoveries for Noteholders and other creditors under the plan, and (v) the estimated recoveries for Noteholders and other creditors in the event these chapter 11 cases were converted to proceedings under chapter 7 of the Bankruptcy Code (which would be one alternative outcome if a chapter 11 plan cannot be confirmed). This disclosure statement must then be approved by the Bankruptcy Court, which will evaluate it to determine whether it contains "adequate information" to allow Noteholders and other voting creditors to make an informed decision about whether to accept or reject the plan.[15]

20. Prior to the Bankruptcy Court's approval of a disclosure statement for the Debtors' forthcoming plan, the Noteholder Group is prohibited (as are others) from soliciting acceptances or rejections of the plan. *See* 11 U.S.C. § 1125(b). For this reason, and out of an abundance of caution, the Noteholder Group's professionals have attempted to limit statements about the plan to the information that is already set out in the Plan Term Sheet, without making any recommendations regarding acceptance or rejection of the plan.

21. Some Noteholders no doubt find the Noteholder Group's reticence on plan-related issues frustrating—and understandably so. But rest assured, the Noteholder Group will have much more to say about the Debtors' chapter 11 plan *after* it is filed and a disclosure statement is approved by the Bankruptcy Court as containing "adequate information." **Until then, the**

[15] The phrase "adequate information" is a bankruptcy term of art, but generally refers to an amount and quality of information one would expect to find in a prospectus for an investment. *See* 11 U.S.C. § 1125(a)(1).

Noteholder Group urges its Noteholder constituents to keep an open mind about the plan and not to make any decisions about it based upon descriptions, characterizations, or other information that has not been evaluated by the Bankruptcy Court.

THE OWLWOOD COMPLAINT

22. The Motion holds up the Owlwood Complaint as some sort of mythical key that will unlock the value of Woodbridge's real estate portfolio for the exclusive benefit of Noteholders. But the reality is quite different.

23. The Owlwood Complaint was filed on behalf of certain Noteholders who lent money to Debtor Woodbridge Mortgage Investment Fund 3A ("**FundCo**") and assert that they have first-priority liens in Owlwood Estate, an iconic mansion in the Holmby Hills neighborhood in Los Angeles owned by Debtor Sturmer Pippen Investments, LLC ("**PropCo**"). The loan documents between the plaintiffs and FundCo provide that the plaintiffs' notes are secured by a pledge of FundCo's interest in a secured promissory note from PropCo to FundCo (the "**Senior Intercompany Note**") and a related mortgage on Owlwood Estate. The loan documents also provide for the recording of an assignment of mortgage listing the plaintiffs on the deed for Owlwood Estate, which the plaintiffs assert was in fact done. The plaintiffs argue that the recorded assignment of mortgage gave them first-priority liens on Owlwood Estate by virtue of Section 10233.2 of the California Business and Professional Code, as interpreted by the Ninth Circuit Court of Appeals in *In re First T.D. Investment, Inc.*, 253 F.3d 520 (9th Cir. 2001), both of which are attached as exhibits to, and discussed in, the Motion.

24. To be clear, the Noteholder Group raised the California statute and *First T.D.* case in its white paper concerning Noteholder lien rights, along with several other potential arguments the SLF Group has not mentioned in any of its papers. The Debtors and the Creditors'

Committee disagree with all of these arguments, and the Debtors have moved to dismiss the Owlwood Complaint (the "**Motion to Dismiss**"). [*See* Adv. Proc. No. 18-50371(KJC), D.I. 7-9.][16] The Creditors' Committee has taken a different tack, and has filed a motion [D.I. 920] (the "**Committee Standing Motion**") seeking authority to bring an action on behalf of PropCo and other similar entities to avoid (i.e., invalidate) the Senior Intercompany Note and similar intercompany obligations, on the basis that such intercompany transactions were instrumentalities of the Debtors' fraudulent business enterprise.[17] While the Noteholder Group does not necessarily agree with the Debtors' and the Creditors' Committee's legal positions, it can attest that such positions are sincerely held and that litigation over them would be enormously expensive and take many years to resolve through multiple appeals.

25. But for purposes of this Statement, *let's assume* that the Owlwood Complaint survives the Motion to Dismiss, and that the Committee Standing Motion is denied (or at least, delayed until after litigation of the Owlwood Complaint). And *let's assume further* that the plaintiff Noteholders prevail in establishing they have first-priority liens on Owlwood Estate under the California statute by virtue of their recorded assignments of mortgage. Under those circumstances, let's look at which Noteholders are benefited, which are not, and what impediments remain for a chapter 11 plan.

Which Noteholders Are Benefited?

26. In our hypothetical, the Noteholder plaintiffs who brought the Owlwood Complaint are benefited by the determination that they have first-priority liens in Owlwood

[16] The Noteholder Group reserves all rights with respect to the Motion to Dismiss, which is available online at http://cases.gardencitygroup.com/wgc/adversary_2.php.

[17] The Noteholder Group reserves all rights with respect to the Committee Standing Motion as well.

Estate. (Of course, appeals would follow that could easily take a year or more to resolve, but let's put that aside for the moment.) Other Noteholders having recorded assignments of mortgage in transactions governed by the California statute are also likely benefited, to the extent the Bankruptcy Court's ruling on the application of the California statute becomes the "law of the case." But these Noteholders are benefited only to the extent of their Notes that fit the criteria of the California statute—many Noteholders hold a variety of different Notes, some of which fit these criteria and some of which do not.

Which Noteholders Are <u>Not</u> Benefited?

27. **<u>Where there was no Senior Intercompany Note.</u>** Application of the California statute relied upon in the Owlwood Complaint depends upon the existence, validity, and enforceability of the Senior Intercompany Note. But there are at least two instances that we're aware of where it appears the Woodbridge "FundCo" never got a Senior Intercompany Note from the applicable "PropCo" (despite executing loan documents purporting to pledge that Senior Intercompany Note as collateral to Noteholders). The first is with respect to the **800 Stradella Road (a.k.a. "Stradella Five")** property in Los Angeles, where Woodbridge (via its "Fund 3A" entity) raised approximately $24.7 million in "first-lien" investments from Noteholders (including at least $540,000 from members of the SLF Group) for the ostensible purpose of funding a mortgage loan secured by the property, but the Woodbridge "PropCo" that purchased the property (Grand Midway Investments LLC) did so with seller financing from Tintarella LLC, which was the only mortgage of record as of the commencement of these chapter 11 cases.[18] The second is with respect to the **53 Huron Street** property in Brooklyn, New York,

[18] Tintarella LLC previously moved to foreclose upon its mortgage [*see* D.I. 529], which motion was resolved by the Debtors' payment in full of the mortgage debt [*see* D.I. 1890].

where Woodbridge (via its "Fund 4" entity) raised approximately $33.2 million in "first-lien" investments from Noteholders (including at least $815,000 from members of the SLF Group) for the ostensible purpose of funding a mortgage loan secured by the property, but the Woodbridge "PropCo" that had contracted to purchase the property (Kirkstead Investments, LLC) never closed on the purchase.[19] No theory advanced in the Owlwood Complaint would even arguably provide first-priority liens to Noteholders on the 800 Stradella or 53 Huron Street properties (the latter of which is not even owned by a Debtor entity), or others who may be facing similar circumstances.

28. **Where there was no recorded assignment of mortgage.** Another key for application of the California statute is the recordation of an assignment of mortgage on the deed for the underlying real property. SLF candidly acknowledges in the Motion that it has no idea how many Noteholders have properly recorded collateral assignments. (*See* Mot. ¶ 7.) And anecdotally, the proper execution of loan documentation by Woodbridge (which was the party responsible for recordation of the assignments, under the loan documents) appears to have been spotty, at best. So whether a given Noteholder actually has a recorded assignment of mortgage may be determined by blind luck.

29. **Where the California statute would not govern.** Another key for application of the California statute, of course, is that California law would govern the transaction (or at least, the relevant part of the transaction) at issue. Based on their papers, SLF and the Debtors disagree in their choice-of-law analysis, and the Noteholder Group is not sure either of these

[19] The Debtors recently obtained Bankruptcy Court approval of a settlement with the seller whereby the Debtors recovered a portion of the deposit that had been put down on the property. [*See* D.I. 1902.] Woodbridge (via its "Fund 4" entity) also raised about $13.5 million in "mezzanine" investments (including at least $1 million from members of the SLF Group) for the ostensible purpose of funding a loan to the PropCo's holding company (a "**HoldCo**"), secured by a pledge of the HoldCo's equity in the PropCo.

analyses is entirely correct (it's a potentially complicated issue). But assuming SLF's analysis is correct, and the location of the underlying real property determines the governing law for all purposes, the California statute would be of no assistance to Noteholders in the more than $120.7 million of "first lien" and "second lien" note transactions (including at least $3.25 million involving members of the SLF Group) where the underlying real property collateral is located outside of California.

30. **Mezzanine Noteholders.** There are about $185 million in "mezzanine" notes held by Noteholders (including at least $9.2 million held by members of the SLF Group), which in no way benefit from application of the California statute. In a mezzanine transaction, the loan documents between the Noteholders and the applicable "FundCo" provide that the notes are secured by a pledge of FundCo's interest in a secured promissory note from a "HoldCo" to the FundCo (the "**Intercompany Mezzanine Note**"), which in turn is secured by a collateral pledge of the HoldCo's 100% equity interest in its "PropCo" subsidiary. The validity and enforceability of a lien in an Intercompany Mezzanine Note (which is also contested by the Debtors and the Creditors' Committee) would depend on law other than the California statute relied on in the Owlwood Complaint. And even assuming the liens are valid and enforceable, Noteholders' actual recovery on mezzanine notes will be highly dependent on the realizable value of the underlying real property and the amount of debt at the applicable PropCo, because any funds the HoldCo might use to pay the Intercompany Mezzanine Note would need to be "upstreamed" as equity distributions from the PropCo, and the PropCo would not be able to make any equity distributions unless it could first satisfy all of its debts.

What Impediments Would Remain for Confirmation of a Chapter 11 Plan?

31. Against this backdrop—again continuing our hypothetical—let's revisit the as-yet-nonexistent chapter 11 plan the Motion contemplates would be filed and confirmed following successful prosecution of the Owlwood Complaint. According to SLF, this supposed plan would (i) "resolve[] the issues of priority and seniority of [valid] liens," (ii) "allow for a lump-sum payout to creditors," and (iii) "encourage third[-]party investors to develop the Debtors' existing properties and thereby increase the recovery to creditors." (Mot. ¶ 11.) Recall also that this plan would apparently provide no recovery for Unitholders. (*See* Mot. ¶ 20.)

32. Proposing and confirming such a plan would be flatly impossible in these complex cases, for a variety of reasons. Perhaps chief among the obstacles is the notion that in this vast fraud on all Woodbridge investors, the entire swath of Unitholder investor victims could be simply left out of any distribution under a chapter 11 plan. The extent of the fraud arguably cuts away at the underpinnings of virtually of the Debtors' transactions—possibly even the transactions underlying the lien enforcement theories (which is the underlying thesis of the Committee Standing Motion). The many complex, litigable issues would not sustain treating the Noteholder lien issues as entirely free of the fraud, as if in a vacuum, while leaving Unitholder victims out as disproportionate victims of the Debtors' fraud.

33. As to the relative priority *among* valid Noteholder liens, which the SLF Group's proposed plan would address, that is not (and has never been) the real issue in these chapter 11 cases. If one simply assumes that the Noteholders' loan documents gave rise to valid, enforceable liens, then determining the relative priority of such liens is quite easy—it is resolved by the loan documents. But as discussed above, successful prosecution of the Owlwood Complaint would only establish the existence and validity of liens for a very limited subset of

Noteholders. (And even then, it would not definitively resolve the question of *enforceability* of the liens, because potential challenges including those set forth in the Committee Standing Motion would remain.) For all other Noteholders, additional litigation could be necessary to establish the existence and validity of their liens. And for some of these Noteholders—particularly those with "first-lien" investments that they thought were backed by the 800 Stradella Road property, or those with investments that they thought were backed (either directly or indirectly) by the 53 Huron Street property—the stark reality could be zero recovery for large swaths of Noteholder victims. Any attempt at technical lien enforcement, start to finish, involves harsh reality and the specter of terribly inequitable consequences to many Noteholder victims. It would certainly create "haves" and "have nots" where Noteholders whose liens relate to properties like 800 Stradella Road or 53 Huron Street may end up with zero recovery. Noteholder victim recoveries would depend on the luck of draw, as to whether the Debtors in the course of their massive fraud properly recorded an assignment of mortgage or followed through on their promises regarding the use of the amounts lent to them by the Noteholders.

34. As to the proposed lump-sum payout to creditors under the SLF Group's theoretical plan, the Noteholder Group assumes the Motion is referring to non-investor creditors. The Plan Term Sheet contemplates just such a payout (up to $5 million), but in the context of a broad settlement framework that provides alternate treatment to investor claims that is independent of any Noteholders' lien rights. If the plan contemplated by the Motion is premised upon the strict enforcement of Noteholders' lien rights, then the pool of claims that would be covered by the "lump-sum payout" could include tens of millions of dollars of claims of Noteholders who had thought they were secured by the 800 Stradella Road and 53 Huron Street properties (or other Noteholders finding themselves in similar circumstances). If such claims are

to be paid in full (or even close to in full) in a lump sum, where does SLF expect that money to come from?

35. As to the possibility of third-party investment in the development of the Debtors' real estate portfolio, that is *of course* something the Noteholder Group and the other constituencies have considered. But suffice it to say that the anticipated potential upside of building out the Debtors' real estate portfolio, when compared with the anticipated cost of such a buildout and the opportunity cost to Noteholders of further delay in distributions (particularly given that the original note investments were intended to be short-term, and many Noteholders are in dire need of liquidity), is likely not sufficient to justify the additional cost of obtaining third-party capital. (This being said, the Plan Term Sheet does contemplate at least some buildout of the Debtors' real estate portfolio, to be funded from cash on hand and proceeds from selling other properties, all of which will be covered in the forthcoming disclosure statement.)

36. Finally, as to the suggested treatment of the Unitholders, the Unitholder Group would clearly forcefully oppose any plan that delivers all of the value of the Debtors' real estate portfolio to the Noteholders. In addition, a plan that provides such disparate treatment of investors victimized by Woodbridge may well draw an objection from the SEC and prompt it to consider exercise of its regulatory enforcement remedies.[20] Whatever the outcome, litigation with the Unitholder Group or the SEC (or both) over the treatment of Unitholders would be costly and time-consuming.

[20] Prior to seeking appointment of a chapter 11 trustee in these bankruptcy cases, the SEC had commenced a regulatory enforcement proceeding in Florida and sought the appointment of a receiver for the Debtors. The request for appointment of a receiver was withdrawn without prejudice in accordance with the Settlement Order.

CONCLUSION

37. In sum, the Noteholder Group would like to assure its Noteholder constituents that if there were a "quick fix" solution for Noteholder issues in these bankruptcy cases, we would have pursued it months ago. For now we think continuation of the Debtors' exclusivity periods for filing and soliciting votes on a chapter 11 plan is clearly the right thing to do for the benefit of all Noteholder victims. The plan is the best chance for a prompt resolution of these bankruptcy cases. Much more information will be forthcoming once the plan and accompanying disclosure statement is filed—and even more once a disclosure statement has been approved. But for now, the Noteholder Group asks its constituents' patient indulgence while we continue to work toward these goals.

38. We hope that this Statement has helped to illuminate some of the facts and circumstances surrounding the Noteholder Group's opposition to the Motion, and we welcome continued input and feedback from our Noteholder constituents.

[Signature page follows]

Dated: July 6, 2018
Wilmington, Delaware

Respectfully submitted,
DRINKER BIDDLE & REATH LLP

/s/ Patrick A. Jackson

Steven K. Kortanek (Del. Bar No. 3106)
Patrick A. Jackson (Del. Bar No. 4976)
Joseph N. Argentina, Jr. (Del. Bar No. 5453)
222 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 467-4200
Facsimile: (302) 467-4201
steven.kortanek@dbr.com
patrick.jackson@dbr.com
joseph.argentina@dbr.com

-and-

James H. Millar
Michael P. Pompeo
1177 Avenue of the Americas, 41st Floor
New York, New York 10036-2714
Telephone: (212) 248-3140
Facsimile: (212) 248-3141
james.millar@dbr.com
michael.pompeo@dbr.com

-and-

Timothy R. Casey
191 N. Wacker Dr., Ste. 3700
Chicago, Illinois 60606-1698
Telephone: (312) 569-1000
Facsimile: (312) 569-3000
timothy.casey@dbr.com

Counsel to the Ad Hoc Noteholder Group Formed Pursuant to January 23, 2018, Order [D.I. 357]