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)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	**Hearing Date: 8/21/18 at 1:00 p.m.**
	)	**Objection Deadline: 8/10/18 at 4:00 p.m.**

CLASS PLAINTIFFS' OBJECTIONS TO DISCLOSURE STATEMENT FOR THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION OF WOODBRIDGE GROUP OF COMPANIES, LLC AND ITS AFFILIATED DEBTORS

Jay Beynon Family Trust DTD 10/23/1998, Richard J. Carli, Lois M. Carli, Albert M. Lynch, Freda B. Lynch, Robert J. Prince, Lilly Shirley, Joseph C. Hull, Lloyd Landman, Nancy Landman, Alan Gordon, Marlene Gordon, Mark Baker, Cornerstone Growth, LP, Leona Pomroy, Dennis Ryan, and Carole Ryan ("Class Plaintiffs") hereby object to the Disclosure Statement for the proposed First Amended Joint Chapter 11 Plan (D.I. 2286-1 ("Disclosure Statement"), D.I. 2285-1 ("Plan")).

1. Class Plaintiffs are Woodbridge creditors and plaintiffs in the consolidated putative class action against Comerica Bank for aiding and abetting the Woodbridge fraud. *In re Woodbridge Investor Litig.*, No. CV-18-103-DMG (KSx) (C.D. Cal.). The district court has granted the parties' joint motion to stay the class case pending confirmation of a plan of liquidation in this proceeding. *Id.*, ECF No. 52.

2. Class Plaintiffs' objections to the Disclosure Statement center on issues that are distinct from the primary question of law Class Plaintiffs and Comerica argued before this Court in May 2018. While Comerica's adversary proceeding and injunction motion involved the question of whether Class Plaintiffs' claims are direct and personally held or derivative of the

Estate, Class Plaintiffs object here on the grounds that (a) the Debtors should not be permitted to solicit creditors who are members of the proposed class to assign their claims against Comerica to the Liquidation Trust; (b) regardless of whether such assignments are legally permissible, the Plan's assignment scheme is contrary to the Bankruptcy Code and unconfirmable because it includes a coercive enhancement provision that would dilute Trust distributions to non-assigning creditors; and (c) the Disclosure Statement should provide notice of the rights and protections connected with the class action, which any assigning creditor would be giving up.

3. The Plan calls for the assignment and aggregation of personal causes of action against third parties held by noteholder (Class 3) and unitholder (Class 5) creditors into the Liquidation Trust, with an "enhancement multiplier" of 105% to be applied to payment of such assigned claims. D.I. 2285-1 §§ 1.28, 1.29, 1.30, 3.4, 3.6, 5.4.14, 5.4.15. The Disclosure Statement references these assignment provisions, stating in part that "[t]he relative share of Liquidation Trust recoveries for any such electing Class 3 Noteholder or Class 5 Unitholder . . . will be enhanced by having the amount that otherwise would be its Net Note Claim or Net Unit Claim increased by multiplying it by the Contributing Claimants Enhancement Multiplier (*i.e.*, 105%)." D.I. 2286-1 at p. 23 of 151.

4. Whether or not a liquidation plan may allow assignment of creditor claims to a trustee—and Class Plaintiffs contend that it may not—the scheme proposed here would unfairly coerce assignments and result in inequitable treatment of creditors within the same class. While framed as a "bonus" for investors who assign claims that would otherwise be pursued in the class action, the 5% premium would penalize *non*-assigning investors by diluting their distributions. The premium paid to investors who assign their claims would reduce the total amount in the Liquidation Trust available to the non-assignors (and to other Trust beneficiaries). Thus, because

the assignors would get more than their fair share, other creditors would get less. The Enhancement consequently would prejudice the rights of creditors by coercing them, on pain of taxation, to assign their claims against Comerica rather than participate in the consolidated class action in the Central District of California.

5. Assigned claims, moreover, would be resolved in a process that lacks any of the procedural safeguards of Rule 23 of the Federal Rules of Civil Procedure. Woodbridge noteholders and unitholders who assign their claims would relinquish the ability to opt out of or object to any aggregate resolution. Nor would these assignors be protected by court determinations as to the adequacy of any such resolution or of their legal representation. Yet the Disclosure Statement does not notify the creditors of their option to participate in the class action, let alone that assigning their claims would subject them to a less transparent process with fewer rights.

6. Therefore, as explained further below, the Disclosure Statement should not be approved, or should be corrected to ensure adequate disclosure to the Class 3 and Class 5 creditors. In Attachment A, Class Plaintiffs propose modifications to the Disclosure Statement.

BACKGROUND

A. Class Plaintiffs and Their Claims Against Third-Party Comerica

7. Class action claims arising out of the Woodbridge Ponzi scheme are pending against sole defendant Comerica Bank before U.S. District Judge Dolly M. Gee. *See In re Woodbridge Investor Litig.*, No. CV-18-103-DMG (KSx) (C.D. Cal.). On June 12, 2018, this Court entered a stipulated agreement between Class Plaintiffs and Comerica preliminarily enjoining and staying continued prosecution of the class action. *See* Adv. Proc. No. 18-50382-KJC, D.I. 21. On June 18, 2018, upon the parties' joint request, the district court in the class action stayed that litigation pending the conclusion of these confirmation proceedings, as

suggested by this Court at the hearing of May 15, 2018. *In re Woodbridge Investor Litig.*, No. CV-18-103-DMG (KSx) (C.D. Cal.), ECF Nos. 51, 52. The district court had previously appointed lead counsel and an executive committee to represent the proposed class of Woodbridge investors. *Id*., ECF No. 39.

8. Based on their counsel's investigation, Class Plaintiffs allege that Comerica accepted deposits of investor funds despite knowing that Woodbridge was paying money received from earlier investors to later investors and falsely characterizing those payments as interest on real-estate loans. *See id.*, ECF No. 17, Am. Compl. ¶¶ 1-3, 95-120. Comerica processed nearly 11,000 transfers among Woodbridge accounts totaling $1.66 billion, including returns to investors of $368 million in purported interest, dividends, and principal repayments, even though Woodbridge took in only $13.7 million in interest payments from unaffiliated borrowers. *Id*. ¶¶ 109, 113.

9. Class Plaintiffs allege that by accepting deposits of investor funds and then carrying out transfers it knew were inconsistent with the permitted uses of those funds, Comerica aided, abetted, and joined in Woodbridge's breaches of duty to its investors. Plaintiffs contend that Woodbridge's misuse of investor funds was known to Comerica and that by permitting its accounts to be used to facilitate the scheme, Comerica knew it was furthering breaches of duties to investors. Plaintiffs accordingly sue Comerica for aiding and abetting fraud, aiding and abetting breach of fiduciary duty, negligence, and unfair trade practices. *Id*. ¶¶ 141-70.

10. Class Plaintiffs' counsel are retained on a contingency fee basis. *See* Adv. Proc. No. 18-50382-KJC, D.I. 16-1, Girard Decl. ¶ 9. Attorneys' fees will be awarded to counsel for Class Plaintiffs from any recovery in the class action, subject to court approval. *Id*. The district court has directed lead counsel to collect and maintain time and expense records from all

plaintiffs' counsel monthly and to assign work to plaintiffs' counsel as necessary. *See* C.D. Cal. No. CV-18-103-DMG (KSx), ECF No. 39 ¶ 7. Lead counsel are required to "avoid duplication and inefficiency in the filing, serving, and/or implementation of pleadings, other court papers, discovery papers, and discovery practice, and, generally, in the litigation." *Id.*

B. The Disclosure Statement and Assignment Provisions

11. The Disclosure Statement for the First Amended Plan of Liquidation contains the following paragraph:

> The Ballots also permit each Holder of a Class 3 Claim, Class 5 Claim, or a Class 6 Claim to elect to assign its Contributed Claims to the Liquidation Trust. By electing such option on its Ballot, the applicable Noteholder or Unitholder agrees that, subject to the occurrence of the Effective Date and the formation of the Liquidation Trust, it will be deemed to have, among other things, assigned its Contributed Claims to the Liquidation Trust. Pursuant to the Plan, "Contributed Claims" are all Causes of Action of any Noteholder or Unitholder that is a Contributing Claimant (a) against any Person that is not a Released Party and (b) related in any way to the Debtors . . . . The relative share of Liquidation Trust recoveries for any such electing Class 3 Noteholder or Class 5 Unitholder (or Holder of a Class 6 Non-Debtor Note Claim that has its Claim reclassified into Class 3 under the Plan) will be enhanced by having the amount that otherwise would be its Net Note Claim or Net Unit Claim increased by multiplying it by the Contributing Claimants Enhancement Multiplier (*i.e.*, 105%). Noteholders and Unitholders also may choose to make such election because aggregating all Contributed Claims and similar Liquidation Trust Actions may enable the pursuit and settlement of such litigation claims in a more efficient and effective manner.

D.I. 2286-1 at p. 23 of 151.

12. The "Contributed Claims" that could be assigned to the Trust would include claims against a non-released party like Comerica that relate to the underlying fraud. D.I. 2285-1 § 1.28. The Disclosure Statement does not notify creditors that under the Plan, "the Liquidation Trust shall not be obligated to pursue all or any given Contributed Claims." *Id.* § 5.4.14.

LEGAL STANDARD

13. A disclosure statement protects creditor autonomy and must be accurate and adequate. 11 U.S.C. § 1125; *see In re Jeppson*, 66 B.R. 269, 291-92 (Bankr. D. Utah 1986) (noting that the disclosure "was intended by Congress to be the primary source of information upon which creditors and shareholders would make an informed judgment about a plan" and ordinarily must notify them of "[t]he existence, likelihood and possible success of non-bankruptcy litigation."). Thus, "[t]he Code imposes on debtors an affirmative duty of full disclosure." *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996). "Because creditors . . . rely heavily on the debtor's disclosure statement in determining whether to approve a proposed reorganization plan, the importance of full and honest disclosure cannot be overstated." *Id*.

14. A plan and its proponents must comply with all applicable provisions of Title 11 and be proposed in good faith. 11 U.S.C. §§ 1129(a)(1)-(3). The Court considers whether the plan "will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *In re Am. Capital Equip., LLC*, 688 F.3d 145, 156 (3d Cir. 2012) (citation omitted). The Code's purposes include "preservation of ongoing values in a manner which does equity and is fair to rights and interests of the parties affected." *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 119 (3d Cir. 2004) (citation omitted). "The 'good faith' requirement for Chapter 11 petitioners has strong roots in equity," *In re SGL Carbon Corp.*, 200 F.3d 154, 161 (3d Cir. 1999), and "requires fundamental fairness in dealing with one's creditors." *Tenn.-Fla. Partners v. First Union Nat'l Bank of Fla.*, 229 B.R. 720, 734 (W.D. Tenn. 1999); *see also In re Kaiser Aluminum Corp.*, 456 F.3d 328, 340 (3d Cir. 2006).

15. The plan proponents have the burden of establishing that the applicable standards have been satisfied by the preponderance of the evidence. *In re W.R. Grace & Co.*, 475 B.R. 34, 142 (D. Del. 2012); *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 120 (D. Del. 2006).

ARGUMENT

I. THE DISCLOSURES CONCERNING ASSIGNMENT OF INVESTOR CLAIMS ARE INAPPROPRIATE, BECAUSE THE ASSIGNMENT SCHEME DOES NOT COMPORT WITH THE BANKRUPTCY CODE.

A. The Assignment Scheme Would Exceed the Scope of a Bankruptcy Trustee's Authority.

16. As an initial matter, the Liquidation Trustee lacks standing under the Code to assert claims belonging to creditors. A bankruptcy trustee "has no right to bring claims that belong solely to the estate's creditors." *In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 584 (5th Cir. 2008) (citing *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416 (1972)); *accord Marion v. TDI Inc.*, 591 F.3d 137, 148 n.15 (3d Cir. 2010) ("A bankruptcy trustee lacks authority to bring a claim directly on behalf of the debtor's creditors."). By amending the Code without overruling *Caplin* by statute, Congress sent a "clear" message: "*no* trustee, whether a reorganization trustee as in *Caplin* or a liquidation trustee as in the present case, has power . . . to assert general causes of action . . . on behalf of the bankrupt estate's creditors." *In re Ozark Rest. Equip. Co., Inc.*, 816 F.2d 1222, 1227-28 (8th Cir. 1987) (emphasis in original).

17. Allowing a trustee to receive assigned claims would, among other things, produce a risk of duplicative litigation and inconsistent results. *See, e.g.*, *Mukamal v. Bakes*, 383 B.R. 798, 811-14 (S.D. Fla. 2007) (holding that a liquidation trustee lacked standing to bring creditor claims that had been assigned to the trust, and that "*Caplin* applies because of the failure of the Trustee to obtain assignments from all of the creditors."). In part for this reason, the court of appeals in *Williams v. California 1st Bank* held that a bankruptcy trustee could not rely on

assignments of investors' claims against a bank alleged to have participated in the debtor's Ponzi scheme. 859 F.2d 664, 666-67 (9th Cir. 1988). Similarly, the Liquidation Trustee in this proceeding has no authority to represent creditors on assigned claims against a third party like Comerica.

18. Class Plaintiffs recognize that the Seventh Circuit (and this Court) have disagreed with *Ozark* and *Williams*, reasoning that a liquidation trustee derives authority from the confirmed plan and not from the Code. *Grede v. Bank of New York Mellon*, 598 F.3d 899, 901-03 (7th Cir. 2010); *In re Tribune Co.*, 464 B.R. 126, 192-93 (Bankr. D. Del. 2011). The Third Circuit has not addressed this issue. Class Plaintiffs respectfully submit that *Ozark* and *Williams* are correctly decided, and that *Grede* erroneously "permits bankruptcy trustees to avoid the *Caplin* limitation through the simple means of deferring litigation until plan confirmation, switching titles from bankruptcy trustee to post-confirmation trustee, then pursuing the claims in that new role. . . . [I]t would be anomalous if the *Caplin* limitation on the role of trustees ceased to apply simply because litigation against a third party is delayed until a plan is confirmed." Andrew J. Morris, *Clarifying the Authority of Litigation Trusts: Why Post-Confirmation Trustees Cannot Assert Creditors' Claims Against Third Parties*, 20 Am. Bankr. Inst. L. Rev. 589, 593 (2012).

19. Moreover, even under *Grede* and *Tribune*, the sweeping authority this Plan would give the Trustee is unlawful. *Grede* is distinguishable because the defendant bank, not the creditors, challenged the trustee's authority, and did so only after the plan had been confirmed. Thus, the question of whether a plan could provide for assignment of individual investors' claims against third parties (such as the bank) was not properly before the court:

> The Bank is not among the Trust's beneficial owners—and, if it were, *the time to object would have been when the plan of*

> *reorganization was proposed*. The possibility that the Trust would use some of its assets to sue on behalf of the assignors was apparent to any reader of the plan or the trust documents. Any beneficial owner could have objected and demanded that the assignors contribute not only their claims but also liquid assets.

598 F.3d at 902 (emphasis added).

20. Unlike the Creditors' Trust in *Tribune*, the Liquidation Trust here would not be limited to acting on behalf of creditors. Rather, the Plan vests the Trustee with authority to represent both creditors *and* debtors. *See* D.I. 2285-1 §§ 1.76, 5.4.15. This dual representation would give rise to obvious conflicts of interest, *e.g.*, in determining how to allocate limited Trust resources, and would implicate the Supreme Court's stated concerns in *Caplin*. *Cf. Tribune*, 464 B.R. at 193 ("Moreover, the Creditors' Trustee is not acting as a representative of the Debtors or their estates, so the concerns for statutory trustees expressed in *Caplin* are not raised . . . .").

21. The Liquidation Trust, an outgrowth of the bankruptcy, lacks authority under *Caplin* to receive and pursue assigned creditor claims. The Trustee in any event could not fairly pursue assigned creditor claims where it would be representing Debtors concurrently. The Disclosure Statement should not, therefore, refer to creditor assignments. At a minimum, the Disclosure Statement should disclose that such assignments may be contrary to law, that the Plan's proposal for the Liquidation Trustee to be vested with authority to represent creditors (and the Trustee's ability to pursue their claims) may be forbidden by law, that as a result the Plan may not be confirmable, and that even if it is confirmed, the proposed assignments and the Liquidation Trustee's authority to pursue claims on behalf of creditors may be invalidated, in which case the assigning creditors may lose the value of the claims they assigned to the Liquidation Trust.

B. The Assignment Scheme Would Have an Improper Coercive Effect and Abridge the Fairness and Equity Standard by Arbitrarily Favoring Some Creditors Over Others.

22. The assignment provisions of the Plan also do not merit confirmation under section 1129(a) because they would unfairly burden creditors' property rights. "A cause of action, of course, is a form of 'property,'" *Malley-Duff & Assoc., Inc. v. Crown Life Ins. Co.*, 792 F.2d 341, 354 (3d Cir. 1986), and all Woodbridge investors have claims against Comerica for aiding and abetting the fraud. These claims are direct rather than derivative of the Estate because Comerica owed a duty to each Woodbridge investor not to participate in a scheme to defraud them, and recovery on these claims would inure to the personal benefit of each investor without benefiting any other creditor. *Bd. of Trs. of Teamsters Local 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 170 (3d Cir. 2002); *see, e.g., Hirschfield v. B'nai B'rith Int'l*, No. 2:09CV1535, 2010 WL 11565250, at *8 (W.D. Pa. Aug. 10, 2010) (finding state law causes of action non-core where they neither arose under the Bankruptcy Code nor invoked any right thereunder).

23. Bankruptcy jurisdiction should not be extended to create an incentive for the assignment of claims arising outside of the bankruptcy. Nonetheless, the Plan seeks to take control of investor claims from the class action litigation, in which the court has appointed counsel experienced in litigating similar claims to represent the putative class. As currently drafted, the Plan's assignment provisions would not meet the standard for approval, having been "filed merely to obtain a tactical litigation advantage." *In re Integrated Telecom Express, Inc.*, 384 F.3d at 120; *see also Furness v. Lilienfield*, 35 B.R. 1006, 1013 (D. Md. 1983) ("The Bankruptcy provisions . . . are not intended to be used as a mechanism to orchestrate pending litigation.").

24. The Contributing Claimants Enhancement Multiplier goes beyond what even *Grede* allows in regard to the assignment of creditor claims. Though framed as an incentive, the 5% premium would undermine creditor autonomy and lead to inequitable distributions to creditors within the same class. The Enhancement also threatens to undermine the orderly prosecution of the class action against Comerica by duplicating the efforts of Class Counsel, risking inconsistent rulings, and confusing class members.

25. Woodbridge noteholders and unitholders are among the creditors entitled to distributions out of the Liquidation Trust. *See* D.I. 2285-1 §§ 1.79, 1.83, 1.84, 3.4, 3.6. But, if they do not assign away their claims against Comerica, these investors would receive proportionally *less* in distributions than those who do assign. The 5% premium to assignors would be paid out of the same Trust that will make direct distributions to *non*-assignors in accordance with their Class A and Class B Liquidation Trust Interests. The recoveries for the non-assignors consequently would be diluted on the basis of assignment decisions that should be free and voluntary.

26. This scheme cannot be reconciled with the Code. First, because the 5% premium would benefit the assignors to the detriment of the non-assignors, the premium would improperly coerce assignments, curtailing creditors' choices and ability to control their own property rights. *See, e.g.*, *Coit Indep. Joint Venture v. Fed. Sav. & Loan Ins. Corp.*, 489 U.S. 561, 587 (1989) (disapproving of a claims procedure that would have enabled a receiver "to coerce claimants to enter into unfair settlements by virtue of the fact that the receiver's assets may be depleted by interim distributions to other claimants"). Second, for the same reason, the 5% premium would improperly result in inequitable treatment of creditors within Class 3 and Class 5. *See, e.g.*, *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 239-42 (3d Cir. 2004) (vacating confirmation order

where it appeared the plan treated creditors within the same class differently); *In re New Century TRS Holdings, Inc.*, 407 B.R. 576, 592 (D. Del. 2009) (rejecting a plan because it "treat[ed] the 100% claims in [a] class less favorably than the 130% claims"); *In re Prosperity Park, LLC*, No. 10-31399, 2011 WL 1878210, at *4 (Bankr. W.D.N.C. May 17, 2011) (rejecting a plan because a bank creditor would need to rely on property estimates when creditors of the same priority would rely on property liquidations). Further inequities would result in this case because *all* creditors would be required to pay for professionals hired by the Trust to compete with Class Counsel in litigating assigned noteholder and unitholder claims. None of this is fair to the creditors or consistent with the Code.

27. The proposed assignment scheme would confer no benefit on assigning investors, who are already represented in the class action. The disclosures relating to the assignment scheme and the 5% premium are ill-conceived and should be removed to ensure "that injustice or unfairness is not done." *In re Kaiser Aluminum Corp.*, 456 F.3d at 340 (citation omitted).

II. THERE ARE MATERIAL OMISSIONS IN THE DISCLOSURE STATEMENT.

28. A disclosure statement must be "full and honest" to satisfy section 1125, *Ryan Operations G.P.*, 81 F.3d at 362, but the Disclosure Statement before the Court is misleadingly incomplete. Noteholders and unitholders who assign third-party claims would be deprived of the rights and protections under Rule 23 of the Federal Rules of Civil Procedure and would assume the risk of recovering nothing on those claims. *E.g.*, D.I. 2285-1 § 5.4.14 (providing that "the Liquidation Trust shall not be obligated to pursue all or any given Contributed Claims."). The Disclosure Statement, however, is silent about the risks of assignment, the class action, the Rule 23 protections that assigning investors would give up, and the fact that a federal court has

appointed counsel outside of the bankruptcy to protect their interests. These are material omissions.

29. A disclosure statement ordinarily must describe "[t]he existence, likelihood and possible success of non-bankruptcy litigation." *In re Jeppson*, 66 B.R. at 292; *In re Cardinal Congregate I*, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990). Here, the investors cannot meaningfully decide whether to assign their claims without knowing the alternative. *See, e.g.*, *In re Lower Bucks Hosp.*, 471 B.R. 419, 439, 459-62 (Bankr. E.D. Pa. 2012), *aff'd*, 488 B.R. 303 (E.D. Pa. 2013), *aff'd*, 571 F. App'x 139 (3d Cir. 2014) (rejecting a disclosure statement because it did not provide bondholders with sufficient information to assess the merits or value of potential claims in a class action they would be releasing under the plan); *see also In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988) (stating that "[t]he burden of deciphering the meaning of the treatment of a claim should not be placed upon a creditor inexperienced with the technicalities of bankruptcy law" and, "[t]hus, it is important . . . that the Disclosure Statement contain simple and clear language delineating the consequences of the proposed plan on their claims and the possible Code alternatives").

30. As Congress has recognized, "the strict requirements of Rule 23" are "intended to protect the due process rights of both unnamed class members and defendants." S. Rep. No. 109-14 at p. 14 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 14. The due process protections for unnamed class members fall into three general categories. These protections are uniformly missing from the Plan's assignment provisions.

a. The unnamed class members—*i.e.*, the noteholder and unitholder creditors here—are entitled to adequate representation by the named plaintiffs and class counsel. *Hansberry v. Lee*, 311 U.S. 32, 41-43 (1940). Throughout the litigation the interests of the

representative plaintiffs must remain fully aligned with the interests of the class, and class counsel must remain non-conflicted. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (explaining that "[t]he protection of the absentees' due process rights depends in part on the extent the named plaintiffs are adequately interested to monitor the attorneys" and "have interests that are sufficiently aligned with the absentees to assure that the monitoring serves the interests of the class as a whole."); *In re Corn Derivatives Antitrust Litig.*, 748 F.2d 157, 165 (3d Cir. 1984) (Adams, J., concurring) ("The attorney's duty to the class requires him or her to make known to the court any conflicts in order that the court may take appropriate steps to protect the interests of all class members."), *adopted in Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581, 584, 589 (3d Cir. 1999). In contrast to these requirements, the Trustee would have authority under the Plan to pursue an amalgam of causes of action belonging not only to creditors but also to the Estate, *see* D.I. 2285-1 §§ 1.76, 5.4.15, without any provision for court oversight to ensure that the interests of the Trustee remain aligned with the interests of assigning creditors for their protection.

b. Members of a class certified under subdivision (b)(3) are entitled to notice of the action and the opportunity to opt out of the class. Fed. R. Civ. P. 23(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812-14 (1985). The court "obtains personal jurisdiction over the absentee class members by providing proper notice of the impending class action and providing the absentees with the opportunity to be heard or the opportunity to exclude themselves from the class." *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 306 (3d Cir. 1998). There are no analogous provisions with respect to assigning creditors in the Plan proposed here.

c. Under the Plan, a final settlement of assigned creditor claims would require only the Liquidation Trustee's approval, but a proposed class action settlement does not take effect unless *the court* finds it fair, adequate, and reasonable. Fed. R. Civ. P. 23(e). "Rule 23(e) imposes on the trial judge the duty of protecting absentees, which is executed by the court's assuring that the settlement represents adequate compensation for the release of the class claims." *In re NFL Players' Concussion Injury Litig.*, 961 F. Supp. 2d 708, 713 (E.D. Pa. 2014) (citation omitted). Likewise, payment of attorneys' fees to class counsel requires court approval. Fed. R. Civ. P. 23(h). There must also be a notice of the settlement "contain[ing] sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class." *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 180 (3d Cir. 2013). Any class member may object to settlement approval or to a fee request, Fed. R. Civ. P. 23(e)(5), and may appeal an order approving a class settlement or awarding fees. *Devlin v. Scardelletti*, 536 U.S. 1, 14 (2002).

31. Each of the above protections would apply to the Woodbridge investors in the class action. By contrast, under the Plan, investors who assign their claims to the Liquidation Trust would receive *none* of these protections—no notice, objection, or opt out rights; no guarantee of adequate, non-conflicted representation; no court finding that any fees the Trustee has agreed to pay are reasonable; and no finding of a fair and reasonable compromise of claims. Instead of court oversight, those who assign would be forced to accept whatever resolution and terms the Liquidation Trustee is able to obtain. The procedure for voting on the Plan is not a reasonable substitute for the Rule 23 protections, particularly where that process would occur before the resolution of assigned claims. *See* Douglas R. Keetorn, *Litigation Trusts in Chapter*

11 Bankruptcies: A Proposal to Ensure Adequate Representation to Creditors Represented by Bankruptcy Trustees, 79 Brook. L. Rev. 1657, 1702 (2014) ("[C]ourts should hesitate to allow bankruptcy trustees to create *ad hoc* class action suits solely through the protections offered by the voting procedures of the plan confirmation process. Instead, courts should look to Federal Rule of Civil Procedure 23 to ensure that creditors with claims against third parties are adequately represented.").

32. Thus, at a minimum, the Disclosure Statement should provide notice that the noteholders' and unitholders' claims against Comerica have been asserted in a representative class suit, and of the procedural protections connected with that litigation, including the appointment of Class Counsel and investors' right to opt out of any class settlement with Comerica, as well as the absence of such protections for any assigned claims and the fact that the Liquidation Trustee would have no obligation under the Plan to pursue such claims.

CONCLUSION

33. For the foregoing reasons, Class Plaintiffs respectfully object to the Disclosure Statement. Pursuant to the Notice of Hearing (D.I. 2168), Plaintiffs set forth their proposed modifications to the Disclosure Statement, together with suggested language, in Attachment A.

Dated: August 10, 2018

MANNING GROSS + MASSENBURG LLP

/s/ *Marc J. Phillips*

Marc J. Phillips (No. 4445)
1007 North Orange Street, 10th Floor
Wilmington, DE 19801
Telephone: (302) 657-2100
Facsimile: (302) 657-2104
Email: mphillips@mgmlaw.com

Daniel C. Girard
GIRARD GIBBS LLP
601 California Street, Suite 1400

San Francisco, CA 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846
Email: dcg@girardgibbs.com
Admitted Pro hac vice

Thomas R. Lehman
Jeffrey C. Schneider
LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard
22nd Floor, Citigroup Center
Miami, FL 33131
Telephone: (305) 403-8788
Facsimile: (305) 403-8789
Email: trl@lklsg.com
Email: jcs@lklsg.com
Admitted Pro hac vice

Attorneys for Class Plaintiffs

ATTACHMENT A

Objectors' Proposed Modifications to and Suggested Language for Disclosure Statement

1. Add the following language, *e.g.*, as a new section at the bottom of page 28 (D.I. 2286-1 at p. 36 of 151), after section II.F ("Prepetition Investigations and Litigation"):

Pending Class Action Against Comerica

A class action lawsuit on behalf of the Noteholders and Unitholders has been filed against Comerica Bank alleging that Comerica aided and abetted and committed other violations relating to the Woodbridge fraud. These investor claims against Comerica are pending in the United States District Court for the Central District of California, before the Honorable Dolly M. Gee, in a case known as *In re Woodbridge Investor Litigation*, No. CV-18-103-DMG (KSx) (C.D. Cal.).

No action is required of Noteholders and Unitholders at this time with respect to claims against Comerica relating to the Woodbridge fraud. The Noteholder and Unitholder claims against Comerica are protected by the filing of the class action. On April 4, 2018, the District Court appointed lead counsel and an executive committee of attorneys to represent the proposed investor class against Comerica in connection with the Woodbridge fraud. You will receive notice of any order that certifies a class in that case, as well as the opportunity to opt out of the class. If any proposed class action settlement of the Noteholder and Unitholder claims against Comerica is reached, the settlement will not take effect unless the court finds that it is fair, reasonable and adequate, and you will receive notice of the settlement and will have the opportunity to opt out of or object to the settlement.

2. Delete the following paragraph at page 15 of the Disclosure Statement (D.I. 2286-1 at p. 23 of 151):

The Ballots also permit each Holder of a Class 3 Claim, Class 5 Claim, or a Class 6 Claim to elect to assign its Contributed Claims to the Liquidation Trust. By electing such option on its Ballot, the applicable Noteholder or Unitholder agrees that, subject to the occurrence of the Effective Date and the formation of the Liquidation Trust, it will be deemed to have, among other things, assigned its Contributed Claims to the Liquidation Trust. Pursuant to the Plan, "Contributed Claims" are all Causes of Action of any Noteholder or Unitholder that is a Contributing Claimant (a) against any Person that is not a Released Party and (b) related in any way to the Debtors, their predecessors, their respective affiliates, or any Excluded Parties. For the avoidance of doubt, "Contributed Claims" do not include the Note Claims or Unit Claims being asserted against any Debtor that are held, respectively, by Noteholders and Unitholders. The relative share of Liquidation Trust recoveries for any such electing Class 3 Noteholder or Class 5 Unitholder (or Holder of a Class 6 Non-Debtor Note Claim that has its Claim reclassified into Class 3 under the Plan) will be enhanced by having the amount that otherwise would be its Net Note Claim or Net Unit Claim increased by multiplying it by the Contributing Claimants Enhancement Multiplier (i.e., 105%). Noteholders and Unitholders also may choose to make such election because aggregating all Contributed Claims and similar Liquidation Trust Actions may enable the pursuit and settlement of such litigation claims in a more efficient and effective manner.

3. If any portion of the above paragraph is not deleted, add the following language directly after:

The Liquidation Trust May Elect Not to Pursue Assigned Contributed Claims in Its Sole Discretion, and May Be Prohibited by Bankruptcy Law From Pursuing Such Claims

The Plan provides the Liquidation Trustee with exclusive discretion to decide whether to pursue—or not to pursue—Contributed Claims against third parties on behalf of assigning Creditors. The Plan does not entitle assigning Creditors to court oversight regarding the adequacy of legal representation for pursuing Contributed Claims and the fairness of any settlement of such claims. Nor does the Plan entitle assigning Creditors to notice of, or the opportunity to opt out of or object to, any such settlement.

Whether the Liquidation Trustee has authority to represent Creditors, including Noteholders and Unitholders, on assigned Creditor claims is not settled in the courts. For this reason, there can be no assurance that the Plan will be confirmed. Even if the Plan is confirmed, subsequent litigation could have materially adverse effects on the interests of Noteholders and Unitholders. If the Liquidation Trustee's authority to pursue assigned claims on behalf of Creditors against third parties is ultimately invalidated, Noteholders and Unitholders who have assigned Contributed Claims to the Liquidation Trust could lose the value of those claims.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 10th day of August, 2018, I served a true and correct copy of the foregoing **Class Plaintiffs' Objections to Disclosure Statement for the First Amended Joint Chapter 11 Plan of Liquidation of Woodbridge Group of Companies, LLC and its Affiliated Debtors** upon the parties listed below in the manner indicated:

VIA EMAIL and HAND DELIVERY

Steven K. Kortanek, Esq.
Patrick A. Jackson, Esq.
Drinker Biddle & Reath LLP
222 Delaware Avenue, Suite 1410
Wilmington, DE 19801

Bradford Sandler, Esq.
Colin R. Robinson, Esq.
Pachulski Stang Ziehl & Jones LLP
919 N. Market Street, 17th Floor
Wilmington, DE 19801

Sean M. Beach, Esq.
Edmon L. Morton, Esq.
Ian J. Bambrick, Esq.
Allison S. Mielke, Esq.
Young Conaway Stargatt & Taylor LLP
Rodney Square, 1000 North King Street
Wilmington, DE 19801

Timothy J. Fox, Jr., Esq.
Office of the United States Trustee
844 King Street
Room 2207
Wilmington, DE 19801

Jamie L. Edmonson, Esq.
Daniel A. O'Brien, Esq.
Venable LLP
1201 North Market Street, Suite 1400
Wilmington, DE 19801

VIA EMAIL and FIRST CLASS MAIL
Richard M. Pachulski, Esq.
James I. Stang, Esq.
Jeffrey N. Pomerantz, Esq.
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067

Michael L. Tuchin, Esq.
David A. Fidler, Esq.
Klee, Tuchin, Bogdanoff & Stern LLP
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067

Jeffrey S. Sabin, Esq.
Venable LLP
1270 Avenue of the Americas, 24th Floor
New York, NY 10020

/s/ Marc J. Phillips
Marc J. Phillips (No. 4445)