IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WOODBRIDGE GROUP OF COMPANIES, LLC, *et al*., Debtors.[1]	Chapter 11 Case No. 17-12560 (KJC) Jointly Administered Re: D.I. 2733, 2805, 2806

REPLY TO JOSEPH SARACHEK'S OPPOSITION TO MOTION TO REVOKE PRO HAC VICE ADMISSION

The Official Committee of Unsecured Creditors (the "Committee") appointed in the above-captioned chapter 11 cases (collectively, the "Cases") of Woodbridge Group of Companies, LLC, *et al*. (collectively, the "Debtors"), hereby submits its *Reply to Joseph Sarachek's Opposition to Motion to Revoke Pro Hac Vice Admission* (the "Reply"), and in support thereof respectfully states as follows:

PRELIMINARY STATEMENT

1. Mr. Sarachek opposes the Motion on three grounds.[2] Each of Mr. Sarachek's defenses is undermined by his own words; the Motion should be granted.

2. First, Mr. Sarachek contends that the Committee does not have standing to bring the Motion because "it is not Mr. Sarachek's current or former client." Opposition at 1.[3]

[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 are not provided herein. A complete list of such information may be obtained on the website of the noticing and claims agent at www.gardencitygroup.com/cases/WGC.

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the Committee's *Motion to Revoke Pro Hac Vice Admission of Joseph Sarachek*, filed on October 3, 2018, at Docket No. 2733.

[3] "Opposition" refers to *Joseph Sarachek's Opposition To Motion To Revoke Pro Hac Vice Application*, filed on October 17, 2018, at Docket No. 2805.

Mr. Sarachek's narrow construction of the facts and the law does not withstand scrutiny. Not only was Mr. Sarachek admitted *pro hac vice* through the stipulation with the Committee, the rationale for the Committee's involvement also provides an additional basis for its standing: Mr. Sarachek's conflicts adversely affect all creditors and otherwise prejudice the fairness of these proceedings. Both the *Pro Hac Vice* Stipulation and its rationale confer standing on the Committee.

3. Second, Mr. Sarachek contends that the Committee has "waived any objection through its strategic delay in raising disqualification." *Id.* This defense makes no sense and is wrong as a factual matter. If, as is suggested, the Committee always intended to "disqualify the messenger" (*id*. at 9), it would have made the Motion immediately after Mr. Sarachek filed his amended Rule 2019 Statement in mid-June. Indeed, Mr. Sarachek cannot identify any conceivable benefit the Committee supposedly gained by "strategic[ally]" or "tactic[ally]" waiting to file the Motion. Instead, the evidence shows that the Debtors and the Committee spent considerable time raising their concerns about his conflicts and their disclosure with Mr. Sarachek in a good-faith effort to persuade him to address his obvious conflicts but that it did not become clear until September 27, 2018, that Mr. Sarachek's conflicts were actually prejudicing creditors and the fairness of these proceedings; the Motion was filed less than a week later.

4. Finally, Mr. Sarachek contends that his conflicts can and have been cured by "informed consent." *Id*. at 1. While it is inarguable that *adequate* disclosure can result in a conflict waiver, Mr. Sarachek's conflict waiver here is woefully inadequate and his reliance another attorney's waiver language reeks of desperation – particularly since that attorney withdrew from these Cases without explanation just four days after appearing and long before

Mr. Sarachek signed up the vast majority of his clients. Most importantly, however, none of this matters. Where, as here, the conflicts adversely affect other parties and otherwise prejudice the fairness of the proceedings, Mr. Sarachek's belated attempt to obtain proper waivers is irrelevant.

5. For these reasons, and those previously stated, the Motion should be granted.

STATEMENT OF ADDITIONAL FACTS

6. Mr. Sarachek contends that the Committee "failed" to bring the Motion "until after eight months of work, on the eve of the plan confirmation hearing" and suggests that the Motion was brought now for "strategic" and "tactical" reasons. Opposition at 1, 3, 10. The facts show that the Committee timely brought the Motion and that it is otherwise meritorious.

7. There is no dispute that earlier this year the Committee (and the other two fiduciary committees) raised substantial concerns regarding the manner in which Mr. Sarachek solicited clients in these Cases, and that those concerns were addressed in the *Pro Hac Vice* Stipulation and the *Pro Hac Vice* Order entered on May 31, 2018. *Compare* Motion ¶¶ 13-15 *with* Opposition at 4-5; *see also* Sarachek Dec. ¶¶ 12-14.[4] Contrary to Mr. Sarachek's suggestion, however, nothing in the Committee's statements to the Court or in the relevant documents addressed Mr. Sarachek's conflicts of interests. *See* Motion at 4, n.3 (citing to the transcripts where the Committee informed the Court of its concerns), and Ex B. (the *Pro Hac Vice* Stipulation and the *Pro Hac Vice* Order).

8. The Committee "failed" to raise the conflict issues at that time for a simple reason: the conflicts among Mr. Sarachek's clients were not generally known. It was not until June 5, 2018, when Mr. Sarachek amended his Rule 2019 Statement, that certain of the

[4] "Sarachek Dec." refers to the *Declaration of Joseph Sarachek In Support Of Opposition To Motion to Revoke Pro Hac Vice Motion*, executed on October 17, 2018, and filed at Docket No. 2806.

conflicts among Mr. Sarachek's clients became publicly known. Even then, the full extent of the conflicts remained shielded.[5]

9. During the ensuing few months, the Debtors and the Committee raised substantial questions concerning Mr. Sarachek's irreconcilable conflicts in an effort to persuade him to address them. *See* Motion ¶ 4 ("The Debtors and the Committee have previously raised their concerns with Mr. Sarachek."); Opposition at 5-6.

10. On September 27, 2018, the Committee's substantial but generalized concerns regarding Mr. Sarachek's conflicts were transformed into a direct threat to unsecured creditors.[6] In an e-mail to the Debtors, Mr. Sarachek proposed settling his clients' claims by treating them all equally without regard to the type and nature of each claim:

> David, I've polled a good number of our 260+ clients. They see their upside as 100% not 70% as you suggested during our meeting. That said, I think I could sell to them a lump sum payout of 70%. That would require a payment within 60 days of 70% of their investment . . .

Morris Dec. Ex. A.[7]

11. The Debtors were understandably confused by the proposal and asked Mr. Sarachek how he intended to address his clients' irreconcilable and competing interests:

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[5] Mr. Sarachek's initial Rule 2019 covered approximately seven creditors described only as "Secured Noteholders." D.I. 563. As previously stated, the June 5, 2018 amendment to Mr. Sarachek's Rule 2019 Statement identified almost 250 clients as holders of Notes and/or Units, but made no distinction between MezzCo Clients, Non-Property Clients, and Purportedly Secured Clients nor was it possible to identify the particular properties in which the Purportedly Secured Clients have security interests. Consequently, the Rule 2019 Statement, as amended, shed little light on the nature and extent of the conflicts among Mr. Sarachek's clients. Motion at 5, n.4.

[6] Mr. Sarachek tendered his proposal pursuant to Federal Rule of Evidence 408. Morris Dec. Ex. A. As a result, the Committee could not properly identify or rely upon the proposal in the Motion. However, by specifically arguing that the Committee has "waived any objection through its strategic delay" (Opposition at 1), the Committee can now rely on the proposal and Mr. Sarachek's stated views with respect to his conflicts. Fed. R. Evid. 408(b) (the court may admit compromise offers into evidence for the purpose of "negating a contention of undue delay.").

[7] "Morris Dec." refers to the *Declaration of John A. Morris Submitted In Support of the Motion to Revoke* that was executed and filed on October 22, 2018.

> Do all of these clients see their upside at 100%? And to be very specific: Are all investments, whether Notes or Units, whether in property acquired or not acquired, whether in acquired property in California or in other states, to be paid exactly the same, i.e., 70 cents on the dollar, per your 'proposal'?

Id.

12. In response, Mr. Sarachek cavalierly confirmed that he wanted all of his clients to receive the exact same thing, regardless of the type and nature of claim they held:

> David, although we don't agree on the perfection issue (not even a little), you are truly the best. If I'm breaking out clients based on location of property, mezz., units, etc., the marginal difference justifies the Debtor settling with us to a much greater extent. *As you know, it also presents conflict issues and makes settlement more complex. Our proposal is 70% lump sum payment for all clients across the board.* Come back to me with a counter-proposal.

Id. (emphasis added).

13. The Debtors rejected Mr. Sarachek's proposal.

14. Mr. Sarachek's proposal completely ignored his clients' differing claims and legal rights and was directly at odds with the non-binding settlement reached among representatives for the estates' stakeholders earlier this year. As publicly disclosed, preliminary estimates of potential recoveries showed that Noteholders "may realize a recovery in the range of 62% to 76%" on their allowed claims while Unitholders "may realize a recovery in the range of 45% to 55%" on their allowed claims.[8]

15. Notably, excluding Mr. Sarachek's "dissident" clients, creditors have voted nearly unanimously to support the Debtors' Plan. *See Declaration Of Emily Young of Epiq*

[8] *See Statement Of The Official Committee of Unsecured Creditors In Support of Plan Term Sheet*, at 3, filed on March 27, 2018, at Docket No. 833. "Following execution of the Plan Term Sheet, the parties continued to extensively negotiate the open details of the potential plan. After many weeks of further discussion and negotiations with the Committees, the Debtors finalized and filed the Plan, which substantially incorporates and expands upon the Plan Term Sheet." D.I. 2398 at 60.

Certifying The Methodology For The Tabulation Of Votes On And Results of Voting With Respect To The First Amended Joint Chapter 11 Plan Of Liquidation Of Woodbridge Group Of Companies, LLC And Its Affiliated Debtors, ¶¶ 31-32, executed and filed on October 19, 2018, at Docket No. 2836.

REPLY

A. The Committee Has Standing To Seek to Revoke The Pro Hac Admission

16. Mr. Sarachek contends that the Committee does not have standing to bring the Motion because "it is not Mr. Sarachek's client or former client" and it has "made no attempt to argue that" that Mr. Sarachek's conflicts call into question the "fair administration of justice." Opposition at 8 and n.3. Mr. Sarachek ignores the import of the *Pro Hac Vice* Stipulation and is otherwise mistaken.

17. In a section of the Motion entitled "Mr. Sarachek's Relentless Pursuit of Claims For His Own Benefit Is Harming The Estates," the Committee argued, among other things, that Mr. Sarachek's dubious strategies for "creating leverage" have "caused the estates to incur substantial expenses (further diminishing his clients' and all creditors' recoveries), and have the potential to confuse investors and stakeholders." Motion ¶¶ 38-41.

18. Indeed, Mr. Sarachek has provided an example of the confusion caused by his haphazard approach to his clients' competing claims. Sarachek Dec. Ex. G.

19. So did Mr. Sarachek's earlier request to represent the Debtor Funds in connection with the Committee's derivative claims seeking to invalidate and otherwise avoid intercompany liens.[9] Mr. Sarachek apparently had no concerns that if the Court actually granted

[9] *See Objection of Lise La Rochelle, Et Al. Noteholders To The Motion Of The Official Committee Of Unsecured Creditors Pursuant To 11 U.S.C. § 105(a), 1103(c), and 1109(b) For Entry of An Order Granting Leave, Standing And Authority To Prosecute Certain Causes Of Action On Behalf Of Certain Debtors And Their Estates,* ¶¶ 8-21, filed on April 24, 2018, at Docket No. 1625.

his request, he would have been expressly adverse to his Unitholder Clients, MezzCo Clients, Non-Property Clients, and Non-California Clients.

20. Mr. Sarachek's September 27, 2018, settlement proposal further demonstrates how his conflicts adversely impact creditors and jeopardize the fairness of these proceedings. *See* Morris Dec. Ex. A. Under Mr. Sarachek's proposal, his Unitholder clients would receive the same distributions as his Noteholder clients – even though his Unitholder clients have *no* theoretical claim to be secured. Consequently, Mr. Sarachek's proposal (and his newly-disclosed approach to these Cases) improperly and unfairly discriminates against creditors by, among other things, treating his Unitholder clients the same as his Noteholder clients.

21. More broadly, Mr. Sarachek's settlement proposal reveals that he is attempting to maximize his own recovery without regard to the legal merits of his clients' claims.[10]

22. Mr. Sarachek's conduct in this regard is particularly egregious given that (a) each of his clients has already been the victim of a terrible fraud, and (b) the Court has appointed statutory committees as fiduciaries for the Unitholders and the Noteholders, and there has never been any suggestion that those committees and their professionals are doing anything less than zealously representing their constituencies at no direct cost to any of their clients.

[10] Given that Noteholders may recover between 60-70% on their claims, it is unclear how Mr. Sarachek would calculate his contingent fee if the Debtors ever agreed to pay Mr. Sarachek's Noteholder clients a fixed amount of 70% (or less) on their respective claims. Of course, the Court retained jurisdiction over the implementation and interpretation of the *Pro Hac Vice Stipulation*, including Mr. Sarachek's compliance with the Ethical Rules and the agreement concerning "Sarachek's proposed client fee arrangements." *Pro Hac Vice Order*, D.I. 1893 ¶ 3. *See also Supplemental Certification of Counsel Requesting Entry Of Order Approving Stipulation Resolving Pro Hac Vice Admission of Joseph E. Sarachek*, filed on May 31, 2018, at Docket No. 1891 (setting forth Mr. Sarachek's fee arrangement).

23. For the foregoing reasons, and those set forth in the Motion, the Court should find that Mr. Sarachek's conflicts are adversely affecting creditors and prejudicing the fairness of these proceedings such that the Committee has standing to pursue the Motion.[11]

B. The Committee Did Not Waive Any Argument For Disqualification

24. Next, Mr. Sarachek argues that the Committee was lying in wait for eight months and filed the Motion at the last second in a "tactical attempt to prejudice Mr. Sarachek's clients by disqualifying the messenger . . ." Opposition at 9. Mr. Sarachek's argument fails for several reasons.

25. First, the argument makes no sense. Mr. Sarachek has not, and cannot, identify any conceivable benefit that has inured to the Committee by "waiting" until now to make the Motion; stated another way, the Committee had no motivation to delay.[12] Indeed, if the Committee's goal was simply to get rid of Mr. Sarachek, it would not have entered into the *Pro Hac Vice* Stipulation nor would it have allowed Mr. Sarachek to continue to inject himself into these proceedings.

26. Second, until Mr. Sarachek amended his Rule 2019 Statement in June, there was no meaningful indication that Mr. Sarachek was representing clients with competing and irreconcilable conflicts. That is why, for example, the Committee did not raise the conflicts issues prior to June (*see* Motion at 4, n.3), and they were not specifically addressed in the *Pro Hac Vice* Stipulation. Motion Ex. B. Indeed, Mr. Sarachek admits that he reformulated his retainer agreement after the *Pro Hac Vice* Stipulation was approved by the Court, *but he made*

[11] Of course, the Court always has the independent authority to revoke a *pro hac vice* application, irrespective of whether the Committee has standing. *See* Motion ¶ 24 (*citing* Local Rule 9010-1(f) (qualified attorneys "may be admitted *pro hac vice* in the discretion of the Court, such admission to be at the pleasure of the Court.")).

[12] If an evidentiary hearing is held with respect to the Motion, the Committee reserves the right to introduce into evidence time records showing that work on the Motion did not begin until after Mr. Sarachek made his ill-advised settlement proposal on September 27, 2018.

no change to the conflicts and waiver provisions. Sarachek Dec. ¶ 14 (admitting that the revised retainer agreement "contained the same waiver language" used in his original retainer agreement).

27. Third, as Mr. Sarachek acknowledges, the Debtors and the Committee spent considerable time in August and September addressing Mr. Sarachek's conflict issues in an effort to get him to adequately address them. Sarachek Dec. ¶¶ 17-18. Mr. Sarachek has never denied having conflicts (indeed, to his modest credit, Mr. Sarachek has eschewed that argument in opposition to the Motion), and it is disingenuous for him to complain that the Committee did not rush to Court without seeking additional information or giving Mr. Sarachek an opportunity to correct his errors.

28. Finally, while the Debtors and the Committee expressed generalized concerns, the threat to unsecured creditors and the fairness of these proceedings only crystalized on September 27, 2018, when Mr. Sarachek threw all caution to the wind, ignored his clients' disparate claims and legal interests, and proposed resolving his disputes in a way that would unfairly treat some of his clients, and all other Noteholder and unsecured claimants as well.

29. For the foregoing reasons, Mr. Sarachek's argument that the Committee waived its right to bring the Motion is both disingenuous and unsupported by the facts.[13]

[13] Mr. Sarachek claims that the Motion is a threat to the timely confirmation of the Debtors' Plan. Opposition at 10. To address this issue, the Committee has offered to (a) have the Motion heard either at the next Omnibus hearing date or at the end of the agenda for the Wednesday, October 24, 2018, hearing so that confirmation can proceed unimpeded, and (b) permit Mr. Sarachek to argue in opposition to confirmation so as not to "strand his clients" (without prejudice to any arguments made in the Motion). As of the time of the filing of this Reply, Mr. Sarachek had rejected this proposal. Morris Dec. ¶¶ 5-6.

C. The Conflict Between Mr. Sarachek's Clients is Not Waivable

30. Mr. Sarachek claims that the conflicts among his clients were fully addressed through conflict waivers, all of which were "recently affirmed." Opposition at 1, 12. The facts show otherwise and are irrelevant under the circumstances in any event.

31. The inadequacy of Mr. Sarachek's conflict waiver provision is self-evident; it does not come close to meeting the standard set forth in Model Rule 1.7, comment 18. *See* Motion ¶ 32. Nor can Mr. Sarachek credibly rely on the conflict waiver provisions in Mr. Rose's engagement letter. *See* Sarachek Dec. ¶¶ 9-10; Opposition at 3.

32. First, while Mr. Sarachek vaguely states that "Baker Hostetler [Mr. Rose's firm] later withdrew from the case" [Opposition at 3, n.1], the facts show that Mr. Rose actually withdrew from these cases *just four days* after filing his motion to appear. *See* D.I. 850, D.I. 874. Second, regardless of what Mr. Rose's engagement letter provided with respect to conflict waivers, Mr. Sarachek has not identified any client of his who also signed Mr. Rose's engagement letter. Indeed, it appears that Mr. Sarachek had been retained by fewer than fifty clients at the time of Mr. Rose's withdrawal, but signed up hundreds more clients thereafter. *Compare* Motion at 4, n.2 (noting that Mr. Sarachek had filed approximately forty one (41) Notices of Appearance as of the end of March 2018, around the time Mr. Rose filed his Notice of Withdrawal) *with* Opposition at 1 (asserting that Mr. Sarachek now represents approximately 270 Woodbridge creditors).

33. Nor can Mr. Sarachek find succor in his belated attempt (made in response to the Motion) to rectify the problem. *See* Sarachek Dec. ¶¶ 21-22. Model Rule 1.7(3) provides that where a lawyer's representation involves a concurrent conflict of interest, the representation may proceed only if, among other things, the representation does not involve the assertion of a

claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

34. Mr. Sarachek cannot avoid this issue, notwithstanding what a single author may have written more than 15 years ago. Just as this Court would never permit one law firm to represent committees for general unsecured creditors and secured creditors – even if the committee members agreed and signed conflict waivers – the conflicts among Mr. Sarachek's clients are simply not waivable.

CONCLUSION

For the foregoing reasons, the Committee respectfully requests that the Court overrule the objection and enter an order granting the Motion and revoking the *pro hac vice* admission of Joseph Sarachek.

Dated: October 22, 2018

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Colin R. Robinson

Richard M. Pachulski (CA Bar No. 90073)
Jeffrey N. Pomerantz (CA Bar No. 143717)
Bradford J. Sandler (DE Bar No. 4142)
John A. Morris (NY Bar No. 2405397)
Colin R. Robinson (DE Bar No. 5524)
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
jpomerantz@pszjlaw.com
bsandler@pszjlaw.com
jmorris@pszjlaw.com
crobinson@pszjlaw.com

Counsel for the Official Committee of Unsecured Creditors