Update on Status of Transeastern Litigation and Appeal

On March, 8, 2017, U.S. District Judge K. Michael Moore issued a decision affirming the remedial scheme of the bankruptcy court's original 2009 Order. The Transeastern Lenders had objected to the remedies in the bankruptcy court's Order as a violation of the bankruptcy code's single satisfaction rule and beyond the court's authority. Judge Moore rejected these arguments, concluding that the bankruptcy court did not abuse its discretion in requiring the Transeastern Lenders to disgorge the moneys that they improperly received in the fraudulent transfer transaction. He ruled that the bankruptcy court was within its equitable discretion to have crafted an order where "the New Lenders and the Transeastern lenders each bear some of the burden." Judge Moore also adopted the bankruptcy court's 2016 Report and Recommendation that the settlements with the New Lenders, Monarch, and the D&O Coverage defendants did not reduce the liability of the Transeastern Lenders who did not participate in the Monarch settlement. A copy of the District Court's decision is attached.

On April 6 and 12, 2017, the various Transeastern Lenders appealed this ruling to the U.S. Court of Appeals for the Eleventh Circuit. The federal appeals court has yet to issue a scheduling order in the case. However, the written briefing typically takes 3 to 6 months, followed by oral argument roughly 4 to 6 months after briefing is completed. The Eleventh Circuit typically issues its rulings within 12 to 18 months of the appeal being filed.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 10-cv-62035-KMM

IN RE: TOUSA, INC., *et al.*, Debtors,
3V CAPITAL MASTER FUND LTD., *et al.*, Appellants, v. OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF TOUSA, INC., *et al.*, Appellees.

ORDER ADOPTING REPORT AND RECOMMENDATION

THIS CAUSE comes before the Court upon the Report and Recommendation of United States Bankruptcy Court Judge John K. Olson (ECF No. 101-2) and the United States Court of Appeals for the Eleventh Circuit's Remand to this Court (ECF No. 25) to consider the remedies imposed by the Bankruptcy Court.

I. BACKGROUND

A. The Bankruptcy Court's Findings and Order on Remedies

On January 29, 2008, national homebuilder TOUSA, Inc. ("TOUSA Parent") and its subsidiaries (together with TOUSA Parent, "TOUSA") filed for bankruptcy in the Southern District of Florida. This case was docketed before the Honorable John K. Olson, United States

Bankruptcy Judge in the Southern District of Florida, in *In re TOUSA, Inc.*, Bankr. No. 08-10928-JKO. On May 28, 2008, the Bankruptcy Court authorized the Official Committee of Unsecured Creditors of TOUSA (the "Committee") to prosecute an adversary proceeding on behalf of certain of the subsidiaries (the "Conveying Subsidiaries") against the First Lien Term Loan Lenders (the "First Lien Lenders"), the Second Lien Term Loan Lenders (the "Second Lien Lenders," and together with the First Lien Lenders, the "New Lenders"), and the Senior Transeastern Lenders (the "Transeastern Lenders"). The Bankruptcy Court also authorized the Committee to prosecute an adversary proceeding on behalf of TOUSA Parent against the New Lenders. Along with TOUSA Parent and the Conveying Subsidiaries, the New Lenders and the Transeastern Lenders were engaged in a set of interrelated transactions that were consummated on July 31, 2007 (the "July 31 Transaction").[1] On that date, TOUSA Parent paid a settlement of $421 million to the Transeastern Lenders, with loan proceeds from the New Lenders secured primarily by the assets of the Conveying Subsidiaries.

On July 14, 2008, the Committee filed a Complaint alleging that the Conveying Subsidiaries transferred liens and incurred obligations to the New Lenders in violation of federal and state fraudulent transfer laws, and that the Transeastern Lenders were entities for whose benefit the transfers were made within the meaning of 11 U.S.C. § 550(a). The Committee also alleged that TOUSA Parent's grant of liens to the New Lenders on its federal income tax refund for tax year 2007 was a preferential transfer under 11 U.S.C. § 547. The adversary proceeding

[1] The facts of the July 31 Transaction have been recounted many times. *See, e.g., Official Comm. of Unsecured Creditors of TOUSA, Inc. v. Citicorp N. Am., Inc. (In re TOUSA, Inc.)*, 422 B.R. 783, 787–790 (Bankr. S.D. Fla. 2009); *3V Capital Master Fund Ltd., v. Official Comm. of Unsecured Creditors of TOUSA, Inc. (In re TOUSA, Inc.)*, 444 B.R. 613, 628–637 (S.D. Fla. 2011); *Senior Transeastern Lenders v. Official Comm. of Unsecured Creditors (In re TOUSA, Inc.)*, 680 F.3d 1298, 1301–1303 (11th Cir. 2012).

was also docketed before Judge Olson. *See Official Comm. of Unsecured Creditors of TOUSA, Inc. v. Citicorp North Am., Inc.*, Bankr. No. 08-01435-JKO.

Judge Olson held a 13-day trial in 2009 after which he issued findings of facts and conclusions of law in favor of the Committee on its claims. *See Official Comm. of Unsecured Creditors of TOUSA, Inc. v. Citicorp N. Am., Inc. (In re TOUSA)*, 422 B.R. 783 (Bankr. S.D. Fla. 2009). The Bankruptcy Court found (1) that the Conveying Subsidiaries were unable to pay their debts when due, had unreasonably small capital, and were insolvent before and after the July 31 Transaction; (2) that the Conveying Subsidiaries did not receive reasonably equivalent value for the obligations they incurred; and (3) that the Transeastern Lenders were entities for whose benefit the Conveying Subsidiaries granted liens to the New Lenders. In its decision, the Bankruptcy Court adopted a remedial scheme designed to unwind the July 31 Transaction by avoiding the liens to the New Lenders and ordering disgorgements by the Transeastern Lenders. In particular, the remedies provided for:

1) cancellation of the New Lenders' claims against and liens on the assets of the Conveying Subsidiaries;
2) return by the New Lenders to the Conveying Subsidiaries of amounts that the New Lenders had been paid on account of the avoided obligations;
3) disgorgement by the Transeastern Lenders of the funds which they had been paid under the July 31 Transaction, together with interest;
4) restoration to the Transeastern Lenders of the claims against TOUSA Parent and TOUSA Homes LP,[2] which had been released in the July 31 Transaction; and

[2] TOUSA Homes LP is a TOUSA subsidiary which was not a Conveying Subsidiary, but which had been obligated on debt owed to the Transeastern Lenders prior to the July 31 Transaction.

5) disgorgement by the Transeastern Lenders of approximately $505 million, including prejudgment interest,[3] to be paid to the Conveying Subsidiaries, who were to pay the balance of the disgorgement to the New Lenders.

The Transeastern Lenders continue to challenge the remedies ordered by the bankruptcy court.

B. The Bankruptcy Appeal

On October 21, 2010, the defendants filed an appeal before this Court (ECF No. 1). The appeal was originally assigned to the undersigned, but it was subsequently transferred to the Honorable Alan Stephen Gold, United States District Judge (ECF No. 12). On February 11, 2011, Judge Gold entered an Order setting aside the bankruptcy court's Order (ECF No. 15). *See 3V Capital Master Fund Ltd. v. Official Comm. of Unsecured Creditors of TOUSA, Inc. (In re TOUSA, Inc.)*, 444 B.R. 613 (S.D. Fla. 2011).

Judge Gold's Order was subsequently appealed to the Eleventh Circuit (ECF No. 16). On May 15, 2012, following oral argument, the Eleventh Circuit entered an Order reversing the district court, affirming the liability findings of the bankruptcy court, and remanding the case to the district court for consideration of the remedies imposed by the bankruptcy court and the matters of assignment and consolidation.[4] *See Senior Transeastern Lenders v. Official Comm. of Unsecured Creditors (In re TOUSA, Inc.)*, 680 F.3d 1298 (11th Cir. 2012). Specifically, the Eleventh Circuit determined that the bankruptcy court did not clearly err when it (1) found that the Conveying Subsidiaries did not receive reasonably equivalent value in exchange for the liens conveyed to the New Lenders and (2) determined that the Transeastern Lenders were entities "for whose benefit" the liens were transferred. *Id.* at 1310–1315. The Eleventh Circuit then

[3] Post-judgment interest continues to accrue.
[4] The matters of assignment and consolidation have since been resolved.

ordered that "[t]he district court, on remand, should review, in the first instance, the remedies ordered by the bankruptcy court." *Id.* at 1315.

C. History Following Remand from the Eleventh Circuit

On remand, the case was reassigned from Judge Gold to the Honorable Kathleen A. Williams, United States District Judge, and subsequently transferred to the undersigned (ECF No. 28). On September 6, 2012, the undersigned entered an Order consolidating the nine appeals[5] as Case No. 10-cv-62035 and setting a uniform briefing schedule (ECF No. 29). Initial Briefs (ECF Nos. 32–35), Response Briefs (ECF Nos. 36, 38–40), and Reply Briefs (ECF Nos. 42–45) were filed.

On March 26, 2013, the New Lenders, the Committee, and TOUSA moved for a stay of the proceedings so that they may attempt to settle many of the disputed claims (ECF No. 51). On March 27, 2013, this Court granted the motion (ECF No. 53).

While the matter was stayed, three settlements were reached that resolved all disputes between the settling parties: (1) the New Lenders Settlement (resolving disputes between the First Lien Lenders, the Second Lien Lenders, the Debtors, and the Committee); (2) the Monarch Settlement (resolving disputes between certain Transeastern Lenders and the Committee); and (3) the D&O Settlement (resolving disputes between the Committee and Technical Olympic, S.A. and certain directors and officers of TOUSA parent and the Conveying Subsidiaries). The New Lenders Settlement and the D&O Settlement were also incorporated into a confirmed Chapter 11 plan of liquidation ("Debtors' Plan"). *See* Bankr. Dkt. 9442. Following these Settlement Agreements, the only Appellants that remain are the non-settling Transeastern Lenders.

[5] The nine appeals are: 10-cv-60017, 10-cv-60018, 10-cv-60019, 10-cv-61478, 10-cv-61681, 10-cv-61731, 10-cv-62032, 10-cv-62035, and 10-cv-62037.

On October 31, 2013, J Beck & Associates, Inc. filed a Motion for Substitution of the Liquidation Trustee as Plaintiff-Appellee (ECF No. 54). The Court granted the motion and substituted the Liquidation Trustee as Plaintiff-Appellee for the Committee (ECF No. 64). As Judge Olsen referred to the Liquidation Trustee as "the Committee" for purposes of clarity in his Report, this Court elects to do the same.[6]

Also on October 31, 2013, the Committee moved the Court to reopen the case and lift the stay (ECF No. 55). The non-settling Transeastern Lenders filed Responses opposing the Committee's Motion to lift the stay based on *Executive Benefits Ins. Agency v. Arkison (In re Bellingham)*, 134 S. Ct. 2165 (2014), which was on appeal to the United States Supreme Court (ECF Nos. 58, 59). The Committee filed a Reply stating that it did not oppose the Transeastern Lenders' request to continue to stay the case until *Bellingham* was decided (ECF No. 60). Accordingly, the Court entered an Order denying the Committee's Motion and ordering the parties to file a motion to reopen the case within twenty days of the Supreme Court's decision in *Bellingham* (ECF No. 65).

Bellingham was decided on June 9, 2014. On June 26, 2014, the parties moved to reopen the case and lift the stay (ECF Nos. 70, 71, 72). Subsequently, on July 3, 2014, the Transeastern Lenders submitted a Notice advising the Court that the Supreme Court had granted a petition for certiorari in *Wellness Int'l Network, Ltd. v. Sharif*, 727 F.3d 751 (7th Cir. 2013), *cert. granted*, 82 U.S.L.W. 3496 (U.S. July 1, 2014) (No. 13-935).[7] Based on *Wellness International*, the Transeastern Lenders suggested that the Court should continue to stay the case (ECF No. 73).

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[6] There is no dispute among the parties as to the Liquidation Trustee's standing. For purposes of clarity, the Liquidation Trustee will be referred to in this Report and Recommendation as the "Committee." *See* Report at 7, n.4 (ECF No. 101-2).

[7] *Wellness International Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015), was heard by the Supreme Court on January 14, 2015 and decided on May 26, 2015.

On September 5, 2014, the Court entered an Order reopening the case and directing the parties to file supplemental briefing on the impact of *Bellingham* and the interim settlements on the case (ECF No. 77). After briefing and oral argument, the Court on June 23, 2015, entered an Order (ECF No. 99) finding that *Bellingham* did not provide a basis for the Court to depart from the Eleventh Circuit's mandate. In addition, the Court referred to the Bankruptcy Court for a Report and Recommendation on the issue of what impact, if any, the three Settlement Agreements had on the Bankruptcy Court's remedies order.

On April 1, 2016, the Bankruptcy Court issued a Report and Recommendation (ECF No. 101-2) in which it upheld the remedial scheme and arrived at the following conclusions regarding the Settlement Agreements: (1) the New Lender Settlement does not affect in any way the Transeastern Lenders' obligation to pay the $505 million ordered to be disgorged in the Bankruptcy Court's order; (2) the Monarch Settlement reduced the liability of only those Transeastern Lenders who were parties to that settlement agreement, leaving the remaining Transeastern Lenders' liability at $273,296,992.77; and (3) the D&O Settlement does not impact the Transeastern Lenders' disgorgement obligation in any way.

On April 28, 2016, the Transeastern Lenders filed a brief detailing their objections to the Bankruptcy Court's Report (ECF No. 119). On May 12, 2016, the Committee filed a response (ECF No. 122), and on May 19, 2016, the Transeastern Lenders replied (ECF No. 127).

The Court now considers whether to adopt Judge Olson's Report and whether to affirm the Bankruptcy Court's remedies order. The Court reviews the Bankruptcy Court's

determinations as to remedies for abuse of discretion[8] and the Bankruptcy Court's Report on the impact of the Settlement Agreements *de novo*.

II. DISCUSSION

For the reasons below, the Court affirms the Bankruptcy Court's order establishing a remedial scheme that provides for the unwinding of the July 31 Transaction and requires the Transeastern Lenders to disgorge the funds from the transaction. Furthermore, the Court adopts the Report's recommendations regarding the Settlement Agreements.

A. The Bankruptcy Court's Remedial Scheme is Affirmed

Section 550(a) of the Bankruptcy Code expressly permits a trustee "to recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—(1) the initial transferee of such transfer *or the entity for whose benefit such transfer was made.*" 11 U.S.C. § 550(a) (emphasis added). "Bankruptcy courts have consistently held that § 550 'is designed to restore the estate to the financial condition that would have existed had the transfer never occurred.'" *Bakst v. Wetzel (In re Kingsley)*, 518 F.3d 874, 877 (11th Cir. 2008) (quoting *In re Sawran*, 359 B.R. 348, 354 (Bankr. S.D. Fla. 2007)); *Feltman v. Warmus (In re Am. Way Serv. Corp.)*, 229 B.R. 496, 530–31 (Bankr. S.D. Fla. 1999). In order to accomplish this purpose, bankruptcy courts are awarded broad equitable powers. *See*

[8] The Transeastern Lenders have asserted that the Court should review the Bankruptcy Court's order on remedies *de novo*. *See* Transeastern Lenders' Initial Brief at 6 (ECF No. 34). A district court reviews *de novo* a bankruptcy court's findings on issues of law. *Cohen v. United States*, 191 B.R. 482, 484 (S.D. Fla. 1995). However, "equitable determinations by the Bankruptcy Court are subject to review under an abuse of discretion standard." *In re Kingsley*, 518 F.3d 874, 877 (11th Cir. 2008) (quoting *In re General Dev. Corp.*, 84 F.3d 1364, 1367 (11th Cir. 1996)); *see also In re TOUSA*, 680 F.3d 1298, 1310 (11th Cir. 2012). The Committee provides substantial support for the position that abuse of discretion applies in reviewing the Bankruptcy Court's remedy order. *See* Committee's Response Brief at 103 (ECF No. 38); Response Brief at 9, n.5 (ECF No. 122). *See also In re Trout*, 609 F.3 1106, 1113 (10th Cir. 2010) (reviewing monetary recovery remedy under § 550(a) for abuse of discretion); *In re Taylor*, 599 F.3d 880, 890 (9th Cir. 2010).

In re Kingsley, 518 F.3d at 877 (citing 11 U.S.C. § 105). It is these equitable powers that serve as the foundation for the remedies ordered by the Bankruptcy Court.

The Transeastern Lenders take the position that the Bankruptcy Court's remedial scheme is in violation of § 550 because Judge Olson should have gone no further than avoiding the New Lenders' liens, which the Transeastern Lenders say would have sufficiently rendered the Committee whole. *See* Transeastern Lenders' Initial Brief at 15 (ECF No. 34). More specifically, the Transeastern Lenders argue that the Bankruptcy Court's decision to both avoid the Committee's liens and award the Committee the value of those liens in the form of the Transeastern Lenders' disgorgement of the New Loans is in violation of § 550(d), which establishes the single satisfaction rule. *See* 11 U.S.C. § 550(d) ("The trustee is entitled to only a single satisfaction under subsection (a) of this section.").

Under the single satisfaction rule, the Committee is indeed "limited to a single recovery for each transfer." *See* Appellant's Brief at 7 (ECF No. 119) (citing *Dzikowski v. N. Trust Bank of Fla., N.A. (In re Prudential of Fla. Leasing, Inc.)*, 478 F.3d 1291, 1297 (11th Cir. 2007)). However, the Transeastern Lenders are mistaken in asserting that both avoiding the liens and disgorging the $505 million violates the single satisfaction rule. As Judge Olson notes in his Report, the Conveying Subsidiaries will only retain $157 million of the $505 million (the "Reimbursement Amounts"), which represents "the costs incurred by them as a direct result of the July 31 Transaction." *See* Report at 8 (ECF No. 101-2). It is true that in a typical bankruptcy case the default remedy is a simple return of property, as opposed to the more unusual remedy of monetary recovery. *See Rodriguez v. Drive Fin. Servs., L.P. (In re Trout)*, 609 F.3d 1106, 1113 (10th Cir. 2010). However, as Judge Olson notes, "this is no ordinary case." Report at 9. The Bankruptcy Court was within its bounds to turn to an equitable solution. *See In re TOUSA*, 422

B.R. at 884 ("In the specific circumstances of this case involving inter-related multiparty transactions, unwinding the July 31 Transaction, to the extent possible, would provide a practicable and equitable remedy."). As the Report notes,

> Section 550 does not "[l]imit the bankruptcy court's choice of remedy to simply canceling the security interest;" such a view "would render the majority of § 550 meaningless surplusage in the context of a non-possessory lien." *See In re Taylor*, 599 F. 3d 880 (9th Cir. 2010). Under the express language of § 550(a), this Court could have imposed the entire remedial scheme on the Transeastern Lenders [alone] . . . . This Court's intent was . . . that the recovery of the fraudulent transfers by the Committee be balanced between the New Lenders . . . and the Transeastern lenders.

Report at 9.

The Transeastern Lenders seek to limit the Bankruptcy Court's options for remedying this matter to two choices: either ordering recovery of the entire amount of property, or its value, from the New Lender transferees only, or ordering recovery from the Transeastern Lender beneficiaries only. Either choice would result in one party bearing the entire burden with the other receiving a windfall. The Bankruptcy Court's solution was crafted in order to avoid this inequitable outcome. Under the current remedial scheme, the New Lenders and the Transeastern Lenders each bear some of the burden. This Court affirms the Bankruptcy Court's remedies order.[9]

B. The Court Adopts the Bankruptcy Court's Recommendations With Regard to the Impact of the Settlement Agreements

For the reasons addressed below, the Court adopts the Report's conclusions as to the News Lenders Settlement, the Monarch Settlement, and the D&O Settlement.

[9] The Court also finds that the Bankruptcy Court's decision to include prejudgment interest in the calculation of the disgorgement amount was appropriate. *See IBT International, Inc. v. Northern (In re International Administrative Services, Inc.)*, 408 F.3d 689, 710 (11th Cir. 2005).

The Court agrees with Judge Olson's finding that the New Lender Settlement does not affect the total amount of funds that the Transeastern Lenders must disgorge pursuant to the unwinding remedy. The settlement *does* impact the allocation of the disgorged funds, as "instead of paying the disgorged funds to the estates of the Conveying Subsidiaries, the disgorged funds will be paid to the Liquidation Trust and distributed pursuant to the terms of the Chapter 11 Plan." *See* Report at 11.

The Committee supports this finding, but also argues that the New Lenders Settlement renders the Transeastern Lenders' continued challenge to the Bankruptcy Court's award of the Reimbursement Amounts to the Conveying Subsidiaries as moot. *See* Report at 14–16. Judge Olson declined to directly address this issue in his Report. However, the Court interprets Judge Olson's conclusion that the New Lenders Settlement "does not affect in any way the challenge by the Transeastern Lenders to the Reimbursement Amounts" as a ruling rejecting the Committee's mootness argument. This Court agrees; the Transeastern Lenders may not have a winning challenge to the Reimbursement Amounts in light of the New Lenders Settlement, but that does render the challenge moot. Therefore, aside from organizing the allocation of the disgorged funds, the New Lenders Settlement does not affect the Bankruptcy Court's remedial scheme in any way.

The Court further agrees with Judge Olson's finding that the Monarch Settlement's sole effect is to reduce the liability of the non-settling Transeastern Lenders by the amount that the settling Transeastern Lenders had been responsible. This leaves the non-settling Transeastern Lenders with $273,296,992.77 million in disgorgement liability.

Finally, the D&O Settlement resolved three disputes brought against former officers and directors. First, it resolved Adversary Proceeding No. 09-1616 (the "Fiduciary Duty Action"), in

which the Committee had sued Technical Olympic, S.A. and certain directors and officers for alleged breaches of fiduciary duties stemming from the July 31 Transaction. Second, it resolved Adversary Proceeding No. 09-2281 (the "D&O Coverage Action"), in which certain Debtors sought a declaration that their insurers were liable in the Fiduciary Duty Action. Third, additional claims were brought against the Fiduciary Duty Action defendants by Monarch and Trilogy Capital LLC and by the First Lien Term Loan Agent and the First Lien Revolver Agent (the "Prepetition Secured Lender Demand Claims"). *See* Report at 13. The settlement provides for the Fiduciary Duty Action defendants' payment of $67 million to the plaintiffs.[10]

The Transeastern Lenders contend that their disgorgement obligations should be reduced by the $67 million on the basis that the D&O Settlement overlaps with the fraudulent transfer disgorgement ordered by the Bankruptcy Court. Judge Olson finds in his Report that there is no overlap. The Court concurs with Judge Olson.

The Transeastern Lenders claim that the D&O Settlement overlaps with the disgorgement remedy because the injuries alleged in the Fiduciary Duty Action are the same as the injuries that resulted from the fraudulent transaction. This is not the case. The Fiduciary Duty Action involved injury resulting from directors' and officers' failure to consider either the impact of the July 31 Transaction or a number of potential refinancing strategies to protect the Conveying Subsidiaries, which resulted in a breach of fiduciary duty. The damages for this injury are therefore separate and in addition to the fraudulent transfer damages.

Furthermore, the Transeastern Lenders waived their right to claim an offset of the disgorgement amount as a result of the D&O Settlement because they failed to raise the

[10] Under the D&O Settlement, the $67 million is to be distributed as follows: (1) $47,857,142.86 for the benefit of the unsecured creditors of the Conveying Subsidiaries; (2) $7,657,142.85 for the benefit of the First Lien Term Lenders and the First Lien Revolver Lenders; and (3) $11,485,714.28 for the benefit of the Second Lien Term Lenders. *See* Report at 14.

argument at the Plan confirmation proceedings. At those proceedings, the Transeastern Lenders were already aware of their liability and resulting disgorgement obligations, and yet did not argue for an offset or object to the Plan.

For these reasons, the D&O Settlement has no impact on the Transeastern Lenders' disgorgement obligations and they remain liable for the $273 million that remains after factoring in the Monarch Settlement's impact.

III. CONCLUSION

"[T]he cornerstone of the bankruptcy courts has always been the doing of equity." *See In re Waldron*, 785 F.2d 936, 941 (11th Cir. 1986). The Court finds that the remedies ordered by the Bankruptcy Court were well within the court's power to enact an equitable resolution in this case. Accordingly, UPON CONSIDERATION of Judge Olson's Report and Recommendation (ECF 101-2), the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Bankruptcy Court's 2009 Order setting out a remedial scheme requiring the Transeastern Lenders to disgorge the funds from the July 31 Transaction is AFFIRMED. It is further ORDERED AND ADJUDGED that Judge Olson's Report and Recommendation is ADOPTED. The Court finds the following with regard to the impact of the three Settlement Agreements:

1) The New Lenders Settlement has no impact on the remedial scheme;

2) The Monarch Settlement reduces the liability of only those Transeastern Lenders who participated in that settlement, with the net effect of reducing the remaining Transeastern Lenders' liability to $273,967,992.77; and

3) The D&O Settlement does not result in any offset in the Transeastern Lenders' disgorgement obligation.

The Clerk of the Court is instructed to CLOSE this case. All pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 8th day of March, 2017.

K. M. Moore

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K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: All counsel of record