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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
:
GENERAL GROWTH PROPERTIES INC., *et al.*, : Case No. 09-11977 (ALG)
:
Debtors. : (Jointly Administered)
:
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**RESPONSE OF METROPOLITAN LIFE INSURANCE COMPANY TO THE
DEBTORS' MOTION IN LIMINE TO LIMIT TESTIMONY OF
RULE 30(B)(6) REPRESENTATIVES AT THE JUNE 24, 2009 HEARING**

Metropolitan Life Insurance Company ("MetLife"), for its response (the "Response") to the motion in limine of South Street Seaport Limited Partnership, its ultimate parent, General Growth Properties, Inc. ("GGP"), and their debtor affiliates, as debtors and debtors in possession (collectively, the "GGP Debtors" or the "Debtors") to limit the testimony of MetLife's Rule 30(B)(6) representatives (the "Motion in Limine"). In support of this Response, MetLife respectfully represents as follows:



INTRODUCTION

The Motion in Limine filed by the GGP Debtors is nothing more than a desperate attempt by the GGP Debtors to exclude evidence that demonstrates that their entire premise for the filing of their chapter 11 cases is simply untrue. The GGP Debtors' primary justification for their chapter 11 filings was that refinancing was not available to them in the face of upcoming maturities. In the case of the White Marsh Mall Debtor, the Hughes-Summerlin Debtors and the Providence Debtors¹ (collectively, the "MetLife Borrowers"), this is false and the GGP Debtors know it. The testimony that the GGP Debtors seek to exclude shows that MetLife would have been, and remains, interested in discussing refinancings or extensions of the loans to the MetLife Borrowers. Moreover, MetLife has actually refinanced similar loans of similar properties within the relevant time period. However, the GGP Debtors did not bother to ask MetLife about refinancing the loans but rather chose to file the MetLife Borrowers even though such filings were unnecessary.

The GGP Debtors understand how devastating the testimonies of the MetLife representatives are to their cases. As a result, on the eve of the trial on this matter, the GGP Debtors filed the Motion in Limine. Although the Motion in Limine alleges that MetLife's Rule 30(b)(6) witnesses (the "Witnesses") were deficient in a number of topic areas, the only relief the GGP Debtors request is excluding the testimony related to refinancing. The purpose of the Motion in Limine is clear – the GGP Debtors are desperately seeking any pretext to prevent the Court from considering this important evidence.

The Motion in Limine is without merit. First, the GGP Debtors misstate the Rule 30(b)(6) standard. Second, the GGP Debtors cite examples of witness testimony that are

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed in the debtors' related motions to dismiss. See docket numbers 639, 638 and 637, respectively.

inaccurate and out of context. Finally, exclusion of testimony is reserved for the most flagrant discovery abuses, which is not even alleged by the GGP Debtors.

The Motion in Limine should be denied.

ARGUMENT

I. The 30(b)(6) Standard

In their Motion in Limine, the GGP Debtors misconstrue the standard under Rule 30(b)(6). *See* Fed. R. Civ. P. 30(b)(6). “Under Rule 30(b)(6), when a party seeking to depose a corporation announces the subject matter of the proposed deposition, the corporation must produce someone familiar with that subject.” *Reilly v. Natwest Markets Group Inc.*, 181 F.3d 253, 269 (2d Cir. 1999). Although the GGP Debtors erroneously suggest a much stricter standard that would require the 30(b)(6) witness to be prepared to answer any questions that could be presented, they seem to believe this heightened standard applies only to MetLife and not to themselves. Indeed, the witnesses produced by GGP Debtors could not address at least ten (10) of the topics contained in their deposition notices including: areas of inquiry numbers 3, 4, 15, 18, 19, 22 with respect to the White Marsh Debtors and Hughes-Summerlin Debtors and areas of inquiry numbers 3, 4, 17 and 18 with respect to the Providence Debtors. *See* Exhibit A (Letter regarding Rule 30(b)(6) notices).

The GGP Debtors suggest that MetLife’s representatives had an obligation to speak with every single individual within the vast MetLife organization who might have some knowledge in order to prepare for their depositions. This is not what is required by Rule 30(b)(6). In fact, the cases cited by the GGP Debtors themselves indicate that the personal knowledge of the designee is relevant. Pursuant to Rule 30(b)(6), the deponent “must make a conscientious good-faith endeavor to designate the persons having knowledge of the matters sought by [the party noticing

the deposition] and to prepare those persons in order that they can answer fully, completely, unequivocally, the questions posed ... as to the relevant subject matters.” *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 151 (S.D.N.Y. 1997) (quoting *Securities and Exchange Commission v. Morelli*, 143 F.R.D. 42, 45 (S.D.N.Y. 1992)).

Here, MetLife produced as representatives the individuals who are directly responsible for each of the loans in question and the key people making recommendations on modifications or extensions. These are exactly the type of witnesses contemplated by Rule 30(b)(6). See *Kyoei Fire & Marine Ins. Co., Ltd. v. M/V Maritime Antalya*, 248 F.R.D. 126, 152 (S.D.N.Y. 2007). See also *Bank of New York*, 171 F.R.D. at 150 (“While Rule 30(b)(6) is not designed to be a memory contest, the deponent must be both knowledgeable about a given area and prepared to give complete and binding answers on behalf of the organization.”). The GGP Debtors’ suggestion that the Witnesses should be held to a higher standard is both legally incorrect and hypocritical in light of their own approach to providing witnesses.

II. The Witness Testimony

Whereas MetLife produced qualified representatives as designees under Rule 30(b)(6), the GGP Debtors, in their Motion in Limine, misconstrue and mischaracterize the Witnesses as unprepared and lacking relevant knowledge. The GGP Debtors’ allegations are baseless for the following reasons:

A. Witnesses are Qualified

First, the GGP Debtors simply ignore the fact that each of the three Witnesses are regional directors for MetLife’s offices that are relevant to the loans in question and have personal knowledge of the topics expected to be addressed at the depositions. Mr. Menne is the regional director for the Los Angeles office, and has relevant personal knowledge of the matters

to which he was testifying. (Menne Dep. at 6:17)² Mr. Menne testified that his group is responsible for managing the Hughes-Summerlin loan including “addressing the borrower’s requests for refinances, modifications...” (*Id.* at 10:16-17)

Mr. Casey, as the regional director for the mid-Atlanta region, has relevant personal knowledge of the matters to which he was testifying. (Casey Dep. at 6:18-25, 9:6-9)³ Mr. Casey testified that his group is responsible for managing the White Marsh loan and making recommendations to the Investment Committee as to any material extensions or modifications. (*Id.* at 15:10-12)

Similarly, Mr. Politano is the regional director for the Northeast and, as such, is the person responsible for the Providence Place loan. (Politano Dep. at 6:16-20)⁴ Mr. Politano testified that his department was responsible for making recommendations to the Investment Committee within MetLife with respect to extensions or renegotiations on existing loans. (*Id.* at 7:22-8:2)

Each of the Witnesses is the person with relevant personal knowledge as to the likelihood of the refinancing of each respective loan and would have familiarity with refinancing standards within MetLife.

B. Witnesses were Prepared

In any deposition pursuant to Rule 30(b)(6), it is inevitable that witnesses would come across questions to which they do not know the answer. A Rule 30(b)(6) deposition is not a pop quiz, and witnesses are not required to anticipate every possible question that could be posed under the general topics specified in the 30(b)(6) notice. As described above, each of the Witnesses is responsible for monitoring their respective loans and making recommendations to

² The Menne deposition is attached hereto as Exhibit B.

³ The Casey deposition is attached hereto as Exhibit C.

⁴ The Politano deposition is attached hereto as Exhibit D.

the Investment Committee with respect to refinancing or modification decisions of each respective loan and has personal knowledge related thereto. The GGP Debtors' allegations that the Witnesses were not adequately prepared and lacked relevant knowledge are baseless.

Each of the Witnesses testified for approximately 5 to 6 hours with his testimony covering over 150 pages of transcript. Each Witness was knowledgeable about the topics he was designated to cover and each witness gave complete answers to countless questions posed by the GGP Debtors. It is impossible for any 30(b)(6) witness to have complete knowledge of every possible question that could be posed.

If the GGP Debtors were legitimately seeking responses to alleged unanswered questions that they required for trial, they could have requested additional information following the depositions. At the Menne and Politano depositions, which were taken on Thursday, June 18, 2009, co-counsel for the GGP Debtors stated on the record that they would review the transcripts and send a letter to MetLife's counsel if they thought the Rule 30(b)(6) witnesses were not appropriate. (Menne Dep. at 146:5-147:14; Politano Dep. at 197:4-198:23). Instead of reaching out to discuss these potential issues, the GGP Debtors filed their Motion without any notice. In fact, the GGP Debtors filed their Motion in Limine the night before the scheduled hearing (7:25 p.m. ET). That they chose instead to wait until the eve of today's hearing to file their baseless Motion demonstrates that the GGP Debtors are not seeking discovery – they are simply seeking a pretext to prevent the Court from hearing uncontroverted evidence that would be devastating to their cases.

Moreover, in their Motion, the GGP Debtors misconstrue and mischaracterize the testimonies by taking them out of context. As an example, the GGP Debtors attempt to make much of the fact that Mr. Menne did not speak to anyone from the Capital Markets group or the

Investment Committee in preparing for his deposition. However, Mr. Menne testified that the Capital Markets group had nothing to do with the Hughes-Summerlin loan, so there was simply no reason for Mr. Menne to speak with members of the Capital Markets group in preparation for his deposition.. (Menne Dep. at 93:13). With regard to the complaints of the GGP Debtors that Mr. Menne did not talk with members of the Investment Committee in preparation for his deposition, Mr. Menne testified that he had discussions with the Investment Committee regarding the Hughes-Summerlin loan and periodically does so. (*Id.* at 22:18-23:2) Accordingly, Mr. Menne did not need to have specific discussions with the Investment Committee to prepare for his deposition. Mr. Menne responded knowledgably and completely to the questions at his deposition. The GGP Debtors are not really concerned that Mr. Menne could not answer questions -- what really concerns the GGP Debtors is that they don't like the answers that Mr. Menne provided. Notably, Mr. Menne testified that he believed that the Hughes-Summerlin would be a candidate for refinancing. (*Id.* at 114:10-16, 115:22-116:2). The GGP Debtors desperately want to prevent the submission of this evidence at trial.

In addition, at the depositions, the GGP Debtors asked the Witnesses to respond to numerous hypotheticals; now, the GGP Debtors inexplicably contend that the "failure" of the Witnesses to speculate is a lack of knowledge. For example, the Debtors complain that Mr. Menne could not testify as to whether MetLife would have ultimately agreed to refinance the Hughes-Summerlin loan. (Menne Dep. at 116:5-117:10):

Q. So sitting here today, because you and the investment committee have not considered all of the other factors about the GGP parent organization, you can't say one way or the other whether right now MetLife would refinance the Hughes-Summerlin loan, correct?

...

A. I can tell you right now that in terms of the quality of the real estate and the existing loan amount, it would be something that we would be willing to talk with the borrower and also recommend. How it ultimately shakes out, *that's not my call. I can't comment on that.*

Q. And when you say how it ultimately shakes out, you mean whether or not at the end of the day MetLife would actually refinance the loan, correct?

A. Correct.

(*Id.* at 116:5-23)

Mr. Menne's response did not demonstrate a lack of familiarity or knowledge -- it simply reflected the reality that the GGP Debtors never approached MetLife with a request to refinance or even discuss the refinancing or extension of the Hughes-Summerlin loan. Because there was no refinancing proposal, MetLife could not know whether or not it would have approved a hypothetical refinancing on unknown terms. Accordingly, as MetLife's designated representative, Mr. Menne (or any other witness that MetLife could designate) could not speculate as to this issue.

II. The Exclusion of Testimony.

The eagerness of the GGP Debtors to exclude the testimony in question shows up most clearly in their request that the Court immediately jump to exclude the testimony. Given that this is a bench trial, it seems that the Court is certainly in a position to weigh the credibility of the evidence provided by MetLife's witnesses appropriately. *See* Fed. R. Bankr. P. 8013 (“[D]ue regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.”). The case law is clear that the exclusion of testimony is reserved for only the most egregious of situations, which the GGP Debtors have not alleged. *Kyoei Fire*, 248 F.R.D. at 152 (“In order for the Court to impose sanctions, the inadequacies in a deponent's testimony must be

egregious and not merely lacking in desired specificity in discrete areas.”); *Bank of New York*, 171 F.R.D. at 152) (stating “sanctions that prohibit a party from introducing evidence are typically reserved for only flagrant discovery abuses...”). Even the Debtors own Motion does not allege that this type of egregious conduct exists here.

CONCLUSION

The Motion in Limine is nothing more than a transparent attempt by the GGP Debtors to avoid the Court from hearing testimony that is damaging to the GGP Debtors’ arguments. This Motion is without merit and simply highlights the grave concerns that the GGP Debtors have with their case and the impact of the testimony of the MetLife Witnesses. The Motion in Limine should be denied.

WHEREFORE, MetLife respectfully requests that the GGP Debtors Motion in Limine be denied and grant MetLife such further relief as is proper.

Dated: New York, New York
June 24, 2009

Respectfully submitted,
GREENBERG TRAURIG, LLP

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June 12, 2009

VIA EMAIL

Jim Ponsetto
Greenberg Traurig
One International Place
Boston, MA 02110

Re: *In re General Growth Properties, Inc. et al.*, Case No. 09-11977

Dear Jim:

In response to your Amended Rule 30(b)(6) Notices dated June 4, 2009 to White Marsh Mall, LLC, White Marsh Mall Associates, White Marsh Phase II Associates, White Marsh General Partnership, Howard Hughes Properties, LP, 10000 West Charleston Boulevard, LLC, 1120/1140 Town Center Drive, LLC, 9901-9921 Covington Cross, LLC, Rouse Providence LLC, and Providence Place Holdings, LLC (collectively the "Debtors"), the Debtors will make available for deposition Messrs. Joel Bayer, Thomas Nolan and Jim Mesterharm, subject to the Debtors' Responses and Objections to Amended Notices of Depositions (hereinafter "Debtors' Discovery Responses").

Mr. Bayer will provide testimony with respect to Area of Inquiry No. 22 from the Notices to Rouse Providence LLC and Providence Place Holdings, LLC, subject to the objections and responses set forth in the Debtors' Discovery Responses.

Mr. Nolan will provide testimony with respect to Areas of Inquiry Nos. 11, 12, 16, and 17 from the Notices to White Marsh Mall, LLC, White Marsh Mall Associates, White Marsh Phase II Associates, White Marsh General Partnership, Howard Hughes Properties, LP, 10000 West Charleston Boulevard, LLC, 1120/1140 Town Center Drive, LLC, and 9901-9921 Covington Cross, LLC, subject to the objections and responses set forth in the Debtors' Discovery Responses. In addition, Mr. Nolan will provide testimony with respect to Areas of Inquiry Nos. 13, 14, 15, 19, and 20 from the Notices to Rouse Providence LLC, and Providence Place Holdings, LLC, subject to the objections and responses set forth in the Debtors' Discovery Responses.

KIRKLAND & ELLIS LLP

June 12, 2009

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Mr. Mesterharm will provide testimony with respect to Areas of Inquiry Nos. 2, 5, 6, 7, 8, 9, 10, 13, 14, 20, 21 from the Notices to White Marsh Mall, LLC, White Marsh Mall Associates, White Marsh Phase II Associates, White Marsh General Partnership, Howard Hughes Properties, LP, 10000 West Charleston Boulevard, LLC, 1120/1140 Town Center Drive, LLC, and 9901-9921 Covington Cross, LLC, subject to the objections and responses set forth in the Debtors' Discovery Responses. With respect to the Notices to Rouse Providence LLC and Providence Place Holdings, LLC, Mr. Mesterharm will provide testimony with respect to Areas of Inquiry Nos. 2, 5, 6, 7, 8, 9, 10, 11, 12, 16, 21, 23, and 24, subject to the objections and responses set forth in the Debtors' Discovery Responses.

Mr. Bayer's deposition is scheduled to commence at 10:30 A.M. (central) on Tuesday, June 16, and Messrs. Nolan's and Mesterharm's depositions are scheduled to commence at 10:00 A.M. (central) on Friday, June 19, at the offices of Kirkland & Ellis LLP at the address provided above.

Lastly, Debtors reserve the right to alter the topics that will be addressed by each of the deponents above and will promptly notify you of any such changes.

Sincerely,



Stacey G. Pagonis

SGP:cls

cc: Sallie Smylie, P.C.
Gabor Balassa

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter
: Case No.
GENERAL GROWTH PROPERTIES, INC., : 09-11977
et al, : (ALG)
:
Debtors. : (Jointly
----- Administered)

DEPOSITION OF JOHN MENNE
New York, New York
June 18, 2009

Reported by:
MARY F. BOWMAN, RPR, CRR
JOB NO. 23348-A

1 MENNE

2 thing that I ask, if there is a question pending
3 at the time you ask for a break, that you go
4 ahead and answer it before we take the break.
5 Is that OK with you?

6 A. OK, of course.

7 Q. Today if there is a time that I ask
8 you a question and you are not entirely clear on
9 what my question is, will you stop me and let me
10 know that you don't understand my question so I
11 can reframe it?

12 A. Sure.

13 Q. Where are you currently employed?

14 A. Metropolitan Life Insurance Company in
15 Los Angeles, California.

16 Q. What's your position at MetLife?

17 A. I am the regional director for our
18 Los Angeles office, which covers the
19 southwestern U.S., for debt and equity real
20 estate investments.

21 Q. And when you say that that office has
22 coverage for the southwest United States, does
23 that include the Las Vegas area?

24 A. Yes.

25 Q. What are generally your duties or

1 MENNE

2 before it has to go to the board of directors?

3 A. 125 million.

4 Q. As the regional director for the
5 Los Angeles office at MetLife, does -- do you
6 have any responsibilities for what are known as
7 the Hughes or Summerlin properties in Las Vegas?

8 A. Yes.

9 Q. What is your group's responsibility
10 with respect to the Summerlin properties in
11 Las Vegas?

12 A. Primarily to provide asset management
13 responsibilities. So interacting with the
14 borrower, advising the borrower when there are
15 property maintenance issues at the property,
16 addressing the borrower's requests for
17 refinances, modifications, items of those
18 natures.

19 Q. Do you have any contracts or
20 agreements with either a GGP parent level entity
21 or with Rouse Company that kind of appoints
22 MetLife as the asset manager for the Summerlin
23 properties?

24 A. When you say -- help me understand.
25 Asset management contracts?

1 MENNE

2 renegotiating or refinancing loans." Do you see
3 that?

4 A. Um-hm.

5 Q. Did you talk to anybody from the
6 capital markets group about topic number 5?

7 A. No.

8 Q. I believe you said earlier that for
9 the purposes of refinancing or modifying loan
10 terms, that that is done through an investment
11 committee; is that right?

12 A. Yes.

13 Q. Did you speak to anybody from the
14 investment committee in preparation to testify
15 on topic number 4, which is, "Any prerequisites,
16 limitations or restrictions on your ability to
17 refinance or modify loan terms"?

18 A. I did not speak to anyone on the
19 investment committee in the last week with
20 respect to Hughes-Summerlin. However, we
21 periodically speak to the investment committee
22 about loans in our portfolio that we are
23 interested in refinancing or making some other
24 form of modification, and in the past, we have
25 had preliminary discussions with respect to

1 MENNE

2 Hughes-Summerlin.

3 Q. And when you say that you have had
4 preliminary discussions with your investment
5 committee about Hughes-Summerlin, when did those
6 discussions take place?

7 A. During -- we have monthly calls to
8 review loans in our portfolio, and so I couldn't
9 tell you specifically what date, but it was
10 within the last six months.

11 Q. And who participates on the monthly
12 calls that you and the investment committee are
13 on?

14 A. Typically several members of the
15 committee, and it -- it could rotate, just
16 depending on availability. It sometimes
17 includes Mark Wilsmann. It usually includes
18 Gary Otten, and sometimes Jim Hills.

19 Can I make a correction also. I'm not
20 sure if I included -- when you asked earlier
21 about members of the committee, Gary Otten is a
22 member of the committee. I'm not sure if I
23 mentioned that or not. I just want to clarify
24 that.

25 Q. In addition to yourself and members of

1 MENNE

2 GGP00971.

3 Do you recognize Deposition Exhibit 5?

4 A. Yes.

5 Q. What is Deposition Exhibit 5?

6 A. It is a summary of our mortgage,
7 annual mortgage loan rating for 2009.

8 Q. What is the purpose of the annual
9 mortgage rating form?

10 A. Well, the purpose of the form is to
11 document our analysis of -- our annual analysis
12 of our mortgage loans.

13 Q. I take it MetLife conducts an annual
14 analysis of each loan in its portfolio; is that
15 correct?

16 A. Yes.

17 Q. When is that annual analysis usually
18 performed?

19 A. Usually performed beginning in April
20 and runs through typically the third quarter of
21 the year. It is very dependent on how soon we
22 receive financial statements and are able to
23 visit the property, et cetera. That's typically
24 the range.

25 Q. If you look on the first page of the

1 MENNE

2 A. None.

3 Q. Did you talk to the capital markets
4 group to find out about any such conversations?

5 A. I did not talk to the capital markets
6 group, as a result of preparing for this.

7 Q. When dealing with sponsor-type
8 entities, GGP or Simon, something of that
9 nature, is it -- in your experience, does the
10 capital markets group frequently get involved
11 with managing the overall debt portfolio that
12 MetLife has with that particular sponsor?

13 A. No. The management of the loans is
14 within each of the field offices. As I said
15 earlier, the capital markets group's objective
16 is to interact with investment banks and others
17 to -- for MetLife to purchase primarily
18 participations, but other types of loan
19 investments, or if MetLife decides it wants to
20 sell a loan, they are involved on the larger
21 deals as well.

22 In terms of managing the loan, that's
23 the responsibility of the field offices.

24 Q. Did your department receive any
25 inquiries that had been sent from GGP's capital

1 MENNE

2 out is, what is the basis for that belief? And
3 I'm not talking about property level data or
4 what have you. What I am talking about is, you
5 know, have you had a conversation with the
6 investment committee or somebody else in an
7 approval capacity where they have said to you,
8 yes, we are definitely going to refinance this
9 particular property when it comes up?

10 A. Yeah. You know, in our monthly calls
11 that we have with REPM, we, at least once in my
12 recollection, at least once, maybe more, talked
13 about Hughes-Summerlin and the fact that it
14 matures in a couple of years and the fact that
15 we believe it to be a lower risk loan and that
16 that would be a candidate for refinance.

17 I don't know what more to say on that.

18 Q. During those calls have you guys also
19 discussed -- did that discussion include any
20 discussion about the fact that in early 2009,
21 Rouse bonds matured and were not paid?

22 A. No.

23 Q. Did that discussion include any
24 discussion about the fact that in -- that a 2008
25 credit facility matured in early 2009 and the

1 MENNE

2 forbearance expired?

3 MR. TICOLL: Objection to form.

4 Q. Was that something that was discussed?

5 A. That was not something that was
6 discussed. The discussion was focused on our
7 area of expertise, which is really the real
8 estate, the quality of the real estate.

9 Q. I thought you told me earlier,
10 although not a dispositive factor, the
11 creditworthiness, the experience and capability
12 of the sponsor was one of the factors that you
13 considered when looking at an extension or a
14 refinance. Correct?

15 A. That's correct.

16 Q. OK.

17 A. But keep in mind that the discussions
18 that we have on the monthly calls are very high
19 level, very preliminary. Opinions and
20 perspectives that are formulated during those
21 calls may change over time.

22 So all I can tell you, when you asked
23 me the question earlier, was that yes, we did
24 discuss Hughes-Summerlin, and yes, it was a loan
25 that we talked about pursuing or looking into

1 MENNE

2 refinancing. Whether or not -- I mean how that
3 is all going to shake out, there is way too many
4 factors to --

5 Q. So sitting here today, because you and
6 the investment committee have not considered all
7 of the other factors about the GGP parent
8 organization, you can't say one way or the other
9 whether right now MetLife would refinance the
10 Hughes-Summerlin loan, correct?

11 MR. TICOLL: Objection to form.

12 A. I can tell you right now that in terms
13 of the quality of the real estate and the
14 existing loan amount, it would be something that
15 we would be willing to talk with the borrower
16 and also recommend.

17 How it ultimately shakes out, that's
18 not my call. I can't comment on that.

19 Q. And when you say how it ultimately
20 shakes out, you mean whether or not at the end
21 of the day MetLife would actually refinance the
22 loan, correct?

23 A. Correct.

24 Q. And as part of the decision-making
25 process that the investment committee would

1 MENNE

2 undertake, is it your understanding that they
3 would look at the creditworthiness and the
4 operations of the sponsor?

5 A. Yes.

6 Q. Those are factors that you are not
7 prepared -- sitting here today, you can't really
8 tell me how the investment committee would weigh
9 those, correct?

10 A. That's correct. Yes.

11 (Exhibit 9, document Bates stamped
12 MET-GGP 2264 marked for identification, as
13 of this date.)

14 Q. The court reporter has handed you what
15 we have marked as Exhibit 9, which is MET-GGP
16 02264. It appears to be an e-mail between --
17 from Matt Sharples to Kathy Sato, dated
18 February 19, 2009.

19 I believe you mentioned Ms. Sato
20 earlier. What is her role?

21 A. She is in our office in Los Angeles,
22 is the team leader for our debt portfolio and
23 debt investments.

24 Q. Does Ms. Sato report to you?

25 A. Yes.

1 MENNE

2 acquiescence of that. I understand you can
3 reserve your right and we will reserve our
4 rights.

5 MS. TAYLOR: We reserve our right to
6 reopen the deposition if necessary.

7 And we also object -- you know, at
8 various times today, I have asked the
9 witness about his preparation to testify as
10 to certain topics that were in our notice
11 here today. And we are going to take a look
12 obviously at his responses and to his
13 preparation, but for some of these topics in
14 particular, I'm pretty sure where we are
15 going to come out is that MetLife did not
16 fulfill its obligation to put up an
17 appropriate 30(b)(6) witness who was
18 prepared to testify on behalf of the
19 company.

20 MR. TICOLL: Well, you know, when you
21 are ready to make that argument, make that
22 argument. I will just tell you now that we
23 don't agree with that. We put forward the
24 witness that was best able to testify to the
25 topics that you put forward, as flawed as

1 MENNE

2 some of those topics might be and as
3 inappropriate in accordance with the
4 objections that we filed.

5 So we will -- you know, when you
6 advise us of your position, we will respond
7 accordingly.

8 MS. TAYLOR: We will follow up with a
9 letter, but I -- for the topic about
10 communications on potential loan extensions
11 and refinancings in particular, I think we
12 are going to have a big problem.

13 So with that said, I will pass the
14 witness.

15 EXAMINATION BY

16 MR. SORKIN:

17 Q. Mr. Menne, Hi.

18 MR. TICOLL: Excuse me. It is 2:10
19 now.

20 MR. SORKIN: I have ten minutes, if
21 that. Just a couple things.

22 MR. TICOLL: As long as it is ten
23 minutes. That is all I will agree to. Go
24 ahead.

25 BY MR. SORKIN:

1 Casey - CONFIDENTIAL

2 proceedings.

3 Second, if you don't understand one
4 of my questions, I ask that you ask me for
5 clarification and I will try to rephrase the
6 question. To the extent that you answer a
7 question, I will assume that you understood
8 the question.

9 Does that sound fair?

10 A. Yes.

11 Q. Sir, at any point that you would
12 like to take a break, just let me know and
13 I'll do my best to accommodate you. I just
14 ask that we don't break when there's a
15 question pending.

16 Does that sound fair?

17 A. Yes.

18 Q. I understand that you are the
19 regional director for MetLife Real Estate
20 Investments?

21 A. That's correct.

22 Q. In that role, are you familiar with
23 MetLife's loan on the White Marsh Mall
24 property?

25 A. Yes, I am.

1 Casey - CONFIDENTIAL

2 Q. So, is it fair to say you served as
3 a regional director in the Real Estate
4 Investments Department since about 2004?

5 A. Yes.

6 Q. Mr. Casey, what region are you in
7 charge of?

8 A. It is referred to as the
9 mid-Atlantic region at MetLife.

10 Q. As regional director, have you
11 always been in charge of this region?

12 A. Yes.

13 Q. Can you briefly explain to us what
14 your responsibilities are as regional
15 director?

16 A. I'm responsible for all real estate
17 investments in the mid-Atlantic region.

18 Q. Is that limited just to commercial
19 real estate investments?

20 A. Yes.

21 Q. Would that include commercial loans
22 to regional malls?

23 A. Yes.

24 Q. Is there a certain size of a loan?
25 Are you in charge of loans of various sizes?

1 Casey - CONFIDENTIAL

2 A. There would be maybe one person who
3 is senior management.

4 Q. Okay. You said that the authority
5 resides in your office for loans of
6 \$125 million so long as you have approval from
7 the committee.

8 Can you explain to me that process
9 of getting approval from the committee?

10 A. Sure. The regional office presents
11 a deal memo to the Investment Committee for
12 their review and approval.

13 Q. Is that something that you do in
14 your role as regional director?

15 MR. PONSETTO: Prepare the memo?

16 MS. PAGONIS: Prepare the memo.

17 A. No.

18 Q. Or prepared under your supervisor?

19 A. Yes.

20 Q. Yes, it's prepared under your
21 supervisor?

22 A. Yes.

23 Q. Is there a specific person or title
24 who's responsible for putting together the
25 proposal?

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In re: : Chapter
: Case No.
GENERAL GROWTH PROPERTIES, INC., : 09-11977
et al, : (ALG)
:
Debtors. : (Jointly
----- Administered)

DEPOSITION OF DAVID V. POLITANO
New York, New York
June 18, 2009

Reported by:
MARY F. BOWMAN, RPR, CRR
JOB NO. 23348-B

POLITANO

1
2 Q. And then if at any time I ask a
3 question and you didn't understand my question,
4 will you stop me and let me know so that I can
5 reframe it?

6 A. Yes.

7 Q. Have you ever given a deposition
8 before?

9 A. No.

10 Q. And have you -- are you currently
11 employed at MetLife?

12 A. Yes.

13 Q. How long have you been employed with
14 MetLife?

15 A. It will be 15 years in November.

16 Q. And what is your current position?

17 A. I am a regional director in the real
18 estate investments group.

19 Q. Which region are you responsible for?

20 A. Northeast.

21 Q. And which states does northeast region
22 encompass?

23 A. From Delaware to Maine.

24 Q. Approximately how many loans or how
25 many properties are in the northeast region

POLITANO

1
2 portfolio and under your responsibility?

3 A. Can you -- do you mean the dollar
4 amount or you mean the number of loans?

5 Q. Number and dollar amount, please.
6 Try.

7 A. It is 5.6 or 8 billion, and it is
8 between 180 and 200ish.

9 Q. 180 to 200 loans?

10 A. Yeah, yeah, right.

11 Q. And who do you report to within
12 MetLife?

13 A. Katherine Campbell.

14 Q. And as the regional manager -- is that
15 right? Or director?

16 A. Director.

17 Q. As the northeast regional director,
18 what are your responsibilities with respect to
19 Providence Place Mall?

20 A. It is a loan in our portfolio. We are
21 responsible for monitoring it.

22 Q. Is your department responsible for
23 making recommendations about potentially
24 extending or refinancing the loan on Providence
25 Place Mall?

1 POLITANO

2 A. Yes.

3 Q. Just so we have got some kind of
4 definitions in place, is it true that MetLife
5 has a -- what's known as a mezzanine loan on the
6 Providence -- with respect to the Providence
7 Place Mall property?

8 A. Yes.

9 Q. When we talk here today about the
10 loan, is it OK if we are referring to that
11 mezzanine loan on which MetLife is the lender?

12 A. I don't understand the question. I am
13 sorry.

14 Q. Just trying to make sure we are using
15 the same terminology. If I say, I am talking
16 about the MetLife loan, is it -- do you
17 understand that I am talking about the mezzanine
18 loan that MetLife actually has on the property?

19 A. Yes.

20 Q. Now, in addition to the mezzanine
21 loan, there is also what I have seen referred to
22 someplace as a senior loan on the Providence
23 Mall property. Is that something that you are
24 familiar with?

25 A. Yes.

1 POLITANO

2 new loan that was being originated?

3 A. I'm sure that it has come up.

4 MS. TAYLOR: It is almost 8 o'clock, I
5 am going to tender the witness.

6 Before I do that, I still want to make
7 the same -- I still want to make a record on
8 one thing that I made at the last time which
9 is, once again, I am a little -- I think
10 that it is likely that you will get a letter
11 from us about preparation for some of the
12 30(b)(6) topics here tonight and that we
13 may -- I'm sure we will have some discussion
14 about reopening the 30(b)(6) deposition, but
15 with appropriate deponents on some of these
16 topics.

17 MR. TICOLL: OK, and I will respond
18 the same as I responded before, that we have
19 tendered the -- or presented a perfectly
20 appropriate 30(b)(6) witness for the topics
21 that you suggested to the extent that those
22 topics were not objectionable and we will
23 respond accordingly when we receive your
24 letter.

25 MS. TAYLOR: I don't see how you can

1 POLITANO

2 take that position considering that, you
3 know, you didn't even, for -- I think it was
4 topic number 6, you didn't even get the guys
5 who actually sat down with GGP and had the
6 conversations. But --

7 MR. TICOLL: I am not going to argue
8 this before you now. If we have to argue
9 it, we will argue it before the judge. Our
10 view is contrary to yours. You have the
11 right witness.

12 MS. TAYLOR: Apparently not. Because
13 the right witnesses I think are in Chicago
14 actually. We can discuss that later.

15 MR. TICOLL: We will discuss that with
16 the judge.

17 MS. TAYLOR: For right now, suffice it
18 to say, we do not consider this 30(b)(6)
19 deposition closed. We have serious issues
20 about lack of knowledge and lack of
21 preparation of a corporate representative.

22 MR. TICOLL: OK, and I'll just note by
23 saying we do consider this 30(b)(6) closed.

24 - - - -

25 EXAMINATION BY