GREENBERG TRAURIG, LLP
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
Bruce R. Zirinsky
Nancy A. Mitchell
Howard J. Berman
Gary D. Ticoll

GREENBERG TRAURIG, LLP
One International Place
Boston, Massachusetts 02110
Telephone: (617) 310-6000
Facsimile: (617) 310-6001
Joseph P. Davis III (admitted *pro hac vice*)
James P. Ponsetto (admitted *pro hac vice*)

Attorneys for Metropolitan Life Insurance Company and KBC Bank N.V.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
GENERAL GROWTH PROPERTIES INC., *et al.*	:	Case No. 09-11977 (ALG)
Debtors.	:	(Jointly Administered)

CLOSING ARGUMENT OF METROPOLITAN LIFE INSURANCE COMPANY AND KBC BANK N.V. IN SUPPORT OF THEIR MOTIONS TO DISMISS CERTAIN OF THE DEBTORS' CHAPTER 11 CASES

Metropolitan Life Insurance Company ("MetLife") and KBC Bank N.V. ("KBC")[1] hereby submit their closing argument in connection with their Motions To Dismiss[2] and respectfully represent as follows:

1. The chapter 11 cases of the debtors for the Providence Place Mall, White Marsh Mall, and Hughes Summerlin office complex should be dismissed as bad faith filings under Section 1112 of the Bankruptcy Code and applicable case law. The Debtors failed to introduce any evidence of an independent, good faith basis for putting any of these debtors into bankruptcy. The testimony is clear and undisputed that the Providence Place Mall, the White Marsh Mall and the

0911977090702000000000007

Hughes-Summerlin Properties are each financially sound. Each of the properties before the Petition Date generated and continue to generate sufficient cash flow to pay its mortgage debt, and with respect to Providence Place Mall, its mortgage and mezzanine debt, as well as its trade payables and operational expenses.[3] It is also undisputed that prior to the Petition Date, none of the MetLife Debtors were in default of any loan agreement with MetLife.[4] Each of the Property Debtors was paying their debts as they became due in the ordinary course. None of the Property Debtors were in any financial difficulty or distress. Most importantly, none were in danger of an imminent maturity default as evidenced by the fact that the MetLife Debtors never even discussed the refinancing of their Loans with MetLife.

2. The MetLife Debtors are simple single asset real estate entities with few creditors other than MetLife and with respect to the Mezzanine Debtor, no creditors other than MetLife.[5] The filing of the chapter 11 petitions for the MetLife Debtors was unnecessary and premature and, therefore, not in good faith. The filings were part of a flawed process where there was no consideration by the boards, partners or managers of the MetLife Debtors as to whether the financial condition of these financially sound MetLife Debtors required a bankruptcy filing.[6] Indeed, the only reasons the MetLife entities were placed into bankruptcy were due to the financial problems that the GGP Debtors were facing and because of GGP's concerns about refinancing commercial mortgage backed securities ("<u>CMBS</u>") loans that mature within the next three years.[7]

3. The evidence demonstrates conclusively that the MetLife Debtors' chapter 11 cases were filed out of convenience and not out of necessity. The chapter 11 filings of the Property Debtors serve no reorganizational purpose. The Bankruptcy Code imposes a good faith filing requirement for the commencement of a chapter 11 case by each debtor. Some financial distress is required. Here, there was no financial distress to the Property Debtors, and it was not even likely that there would be any in the near future. The filing of the Property Debtors for the convenience

and rehabilitation of GGP, the parent entity, or other unrelated GGP entities is not a good faith basis for the filing of these Property Debtors.

4. The Debtors attempt to overcome the facial deficiencies of filing solvent and performing borrowers into bankruptcy by hiding under the business judgment rule. The Debtors argue that their concerns over refinancing all of GGP's debt – most of which is CMBS debt wholly unrelated to these MetLife Debtors – justified the decision to put the MetLife Debtors into bankruptcy and place these otherwise performing loans into default. Not only is this argument a misuse of the business judgment rule, it also is not an exercise of sound business judgment on the part of these debtors. The uncontroverted evidence at trial showed that the MetLife Debtors' respective directors, managers and partners never met to discuss placing these entities into bankruptcy, never reviewed the financials of these Debtors, never reviewed the terms of the MetLife loan agreements, never assessed the prospects of going into default, never analyzed refinancing options and never contacted or instructed any high-priced agent to contact MetLife to explore whether a bankruptcy filing could be avoided.[8] No minutes of any board meeting reflect any consideration given to an application of filing factors or considerations with regard to these Property Debtors. Hence, no business judgment was ever exercised by these Property Debtors. Instead, the Debtors try to paint the decision to precipitously place the MetLife Debtors into bankruptcy by equating this decision with the process the GGP Debtors put in place with regard to the filing of the special purpose entities with independent directors. This process – overseen by the Debtors' litigation team – ignored any consideration of these borrowers. In essence, the Debtors argue that their business judgment to put other GGP entities into bankruptcy justified putting the MetLife Debtors into bankruptcy. Throwing the baby out with the bath water is no more an exercise of sound parenting than it is of sound business judgment.

5. The lack of good faith in filing the MetLife Debtors' chapter 11 cases is most apparent by the undisputed evidence that neither the MetLife Debtors nor management of GGP ever reached out to MetLife to ascertain whether MetLife was amenable to refinancing, restructuring or extending the maturities of the Loans to avoid a bankruptcy filing. As the testimony of Mr. Nolan demonstrated, a bankruptcy filing, foreclosure or litigation related to a distressed single asset borrower – even if the borrower is in default under its secured loan agreement – can be avoided by simply reaching out to the lender and attempting to negotiate a reasonable accommodation.[9] Because each of the MetLife Debtors are single asset real estate entities with few or no creditors other than MetLife, commercially reasonable business judgment would dictate that MetLife be contacted about refinancing or restructuring the Loans prior to commencing bankruptcy proceedings. But this never happened.

6. The Debtors try to obscure their lack of diligence in putting the MetLife Debtors into bankruptcy by implying that MetLife was not interested in refinancing these loans. They do so by pointing to certain unrelated MetLife emails from executives who had no responsibility over the Loans and internal annual mortgage rating reports. The Debtors' arguments are without merit because the Debtors purposefully confuse a refinancing by a third party (*i.e.*, a new loan from that third party) with a refinancing and/or restructuring from the lender – here, MetLife – that originated the loan. As Mr. Politano testified, the process for underwriting new loans is different from refinancing existing credits: "With a new loan you have the opportunity to either make it or not[;] in other words, get exposure to that loan or not. With an existing loan we already have that on our books. So we have to be more flexible when a borrower has an issue."[10] The same distinction also applies to new loans. Thus, the mere fact that MetLife was not willing to underwrite new loans with GGP at a time GGP was facing financial problems is completely irrelevant as to whether MetLife would refinance or restructure the Loans. The Debtors also rely

on testimony from Mr. Nolan that he determined that it would not be fruitful to reach out to MetLife prior to the bankruptcy filings to discuss the Loans with MetLife based on a meeting GGP's capital markets group had with unidentified representatives of MetLife in December 2008 or January 2009, and an alleged phone call or calls with the same individuals in which MetLife declined to refinance certain unrelated GGP loans not issued by MetLife. This evidence lacks credibility and should be given no weight as none of it establishes that these MetLife Debtors provided MetLife with the opportunity to refinance their loans prior the Petition Date.[11]

7. The testimony of MetLife's three Regional Directors was that MetLife would have considered refinancing or restructuring its Loans to avoid bankruptcy filings by the Property Debtors.[12] The Debtors attempt to refute this fact by claiming that MetLife's witnesses had no authority to negotiate extensions or modifications of the Loans because an investment committee must ultimately approve a loan refinancing or modification is without merit. It is the Regional Directors who have ultimate responsibility for negotiating and recommending any loan restructuring or modification and they know from their years at MetLife what is acceptable to the investment committee; they know that extending or refinancing a loan with a good debt service coverage ratio on a good property is something they would be willing to recommend.[13]

8. The Debtors' lack of business judgment and good faith is further demonstrated by the fact that there would be no harm to GGP if these Property Debtors were not placed into bankruptcy. As Mr. Mesterharm testified, like the other non-debtor entities, these Property Debtors would still be managed by GGP, would still use the same or similar cash management system whereby all revenues over and above debt service and expenses would be upstreamed to GGP, and all expenses would still continue to be paid in the ordinary course if the Property Debtors were not in bankruptcy.[14]

9. The harm to MetLife as a result of the filing of the chapter 11 petitions of the Property Debtors is substantial. Not only is MetLife subject to the considerable costs and expenses of a chapter 11 proceeding, but it is not receiving all of the payments that are required to be made under the loan documents. This is especially true for the Mezzanine Loan where no payments are being made by the Debtors.

10. There was no sound justification to place the Property Debtors into bankruptcy as all of the Property Debtors were in no imminent danger of default or financial difficulty. Accordingly, the Motions to Dismiss should be granted.

Dated: New York, New York
July 2, 2009

Respectfully submitted,

GREENBERG TRAURIG, LLP

By:/s/ Howard J. Berman
Bruce R. Zirinsky
Nancy A. Mitchell
Howard J. Berman
Gary D. Ticoll
200 Park Avenue
New York, New York 10166
Telephone: (212) 801-9200
Facsimile: (212) 801-6400
Zirinskyb@gtlaw.com
Mitchelln@gtlaw.com
Bermanh@gtlaw.com
Ticollg@gtlaw.com

and

One International Place
Boston, Massachusetts 02110
Telephone: (617) 310-6000
Facsimile: (617) 310-6001
Joseph P. Davis III (admitted *pro hac vice*)
James P. Ponsetto (admitted *pro hac vice*)

Attorneys for Metropolitan Life Insurance Company and KBC Bank N.V.

NY 239,638,710v3

ENDNOTES

[1] KBC is a co-lender with MetLife only with respect to the White Marsh Loan. KBC joins herein only with respect to such loan, and all references to MetLife shall be deemed to include KBC as to the White Marsh loan only.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the *Omnibus Reply of Metropolitan Life Insurance Company to Debtors' Memorandum of Law in Opposition of the Official Committee of Unsecured Creditors to Motions to Dismiss Pursuant to Section 1112(b) of the Bankruptcy Code* dated June 19, 2009 [Docket No. 813] and the Motions to Dismiss [Docket Nos. 629, 630 and 631].

[3] Each of MetLife's Regional Directors testified that each of the Loans had more than adequate historical and projected Debt Service Coverage Ratio ("DSCR"). The DSCR with respect to the White Marsh Loan was 1.8x. *See* Transcript of Hearing, dated June 24, 2009 ("Tr. ___"), at 192:10-21 ("it is a healthy, strong figure and I wish my whole portfolio had 1.8 times coverage."); MetLife Exh. 81. Similarly, the DSCR for the Hughes-Summerlin Loan, according to John Menne, was "strong" at 1.78 times, and was projected to remain strong. Tr. at 163:7-64:10; MetLife Exh. 82. The DSCR with respect to the Providence Loan, according to Mr. Politano was "1.3 times the required" and was projected to remain stable. Tr. at 123:17-24:9; MetLife Exh. 80.

[4] Tr. at 64:8-65:10; 68:11-24; 70:3-71:17.

[5] *See* MetLife Exh. 61. Given the fact that the Mezzanine Debtor has only one creditor, the Debtors cannot confirm a plan over MetLife's objection. Similar confirmation hurdles exist for the Hughes-Summerlin Debtors and White Marsh Debtors because other than MetLife, they have few other creditors who are owed relatively small amounts. The Debtors failed to address this issue.

[6] Tr. at 52:21-53:1-2; 53:25-54:9, 20-25; 55:1-2, 5-15, 21-25; 56:1-2, 7-9, 12-15; 58:10-25-59:1-10; 61:20-25-62:1-4; 63:3-12, 16-24; 66:19-25-67:1-7; 68:11-20; 69:22-72:1.

[7] GGP's conclusion that the real estate credit markets would not recover to enable it to refinance its loans coming due in the next three years was based on advise of its investment banker, Miller Buckfire. Yet, Miller Buckfire has no real estate experience. *See* Tr. at 34-35. Notably, the Debtors did not call anyone from Miller Buckfire to testify.

[8] Mr. Nolan's self-serving testimony on direct in his Supplemental Declaration at paragraph 12 that the MetLife Debtors considered certain factors prior to filing for bankruptcy is not credible and should not be accorded any weight. On cross-examination, Mr. Nolan revealed the paucity of consideration given by the directors and acknowledged the complete lack of corroborating documentary evidence to support his contention.

[9] Tr. at 25:15-27:25.

[10] Tr. at 153:10-20. *See* also Casey Testimony, Tr. at 207:6-18 (Refinance risk refers to "outside refinance risk because "[w]hen we are looking at exit strategy we look at the ability for someone else to take us out, that is not an assessment of our ability to refinance our own loan."); Tr. at 215:6-13 ("It's a little bit different once the loan's on your books though. It's a different set of considerations. We already have the deal and the exposure.").

[11] First, Mr. Nolan describes the meeting as a "general relationship meeting . . . about the state of the capital markets." (Tr. at 47:10-12.) Second, the fact that GGP inquired as to whether MetLife would be interested in providing new financing for two properties, Perimeter and Minzer Park, where MetLife was not already a lender, has no bearing as to whether MetLife would be interested in refinancing or restructuring its Loans with the MetLife Debtors. Indeed, GGP never even inquired at this meeting whether MetLife would be interested in restructuring or extending the maturity dates of the Loans MetLife had with the MetLife Debtors. (Tr. at 78:6-9; 79:11-16.) Third, it defies credulity to believe that GGP would ask MetLife about underwriting two new loans in order to determine whether MetLife had an interest in refinancing its existing loans with GGP. Fourth, it was clear that MetLife did not express any concerns about its Loans with the MetLife Debtors at this meeting. Fifth, Mr. Nolan was unequivocal in testifying that he did not interpret the fact that MetLife did not show an interest in providing new financing for Perimeter and Minzer

Park to mean that MetLife was closing discussions with respect to its own Loans. (Tr. at 48:12-19; Nolan Deposition at 122:17-123:4) Sixth, Mr. Nolan had no first-hand, personal knowledge of the meeting as he was not even present. He did not know the names of the MetLife representatives who attended the meeting with GGP's capital markets group. Nor could he identify who said what to whom. Lastly, Mr. Nolan had no notes, emails, phone logs or any other documents relating to the meeting with GGP's capital markets group. Mr. Nolan's testimony about a meeting he did not attend shows he was just trying to provide some after the fact justification for the filing of the petitions for the Property Debtors when these cases should never have been filed. The record is replete that GPP's position is based on its own internal speculation, rather than external facts.

[12] Tr. at 125:14-126:1-4; 127:10-23; 167:5-169:2; 185:14-186:3; 194:24-196:7.

[13] Tr. at 130:5-11 (Politano: "I'm actually the start of the process and the end of that process."); Tr. at 167:6-168:10.

[14] Tr. at 97:24-25; 98:1-99:1.