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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
The Great Atlantic & Pacific Tea Company, Inc., et al.,	:	Case No. 10-24549 (RDD)
	:	
Debtors.	:	

SUR-REPLY TO DEBTORS' MEMORANDUM OF LAW AND OMNIBUS REPLY IN SUPPORT OF THE SETTLEMENT AND COMPROMISE OF CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THE SUBSTANTIVE CONSOLIDATION OF THEIR CHAPTER 11 ESTATES PURSUANT TO THEIR JOINT PLAN OF REORGANIZATION

Riverside Claims LLC and Riverside Contracting, LLC (collectively, "***Riverside***") hereby file this sur-reply in response to the *Debtor's Memorandum of Law and Omnibus Reply in Support of the Settlement and Compromise of Claims and Causes of Action Arising From or Related to the Substantive Consolidation of their Chapter 11 Estates Pursuant to their Joint Plan of Reorganization* (the "***Joint Plan***")[1] filed on January 31, 2012 [Docket # 3313] (the "***Omnibus Reply***"), and respectfully state as follows:

[1] All capitalized, undefined terms herein shall have the meanings assigned to them in Riverside's *Preliminary Objection to Confirmation of Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated January 10, 2012 (the "***Preliminary Objection***") [Docket # 3149], unless otherwise stated.

PRELIMINARY STATEMENT

1. The Debtors' Omnibus Reply boils down to one explanation as to why the Debtors are so adamant that substantive consolidation is necessary: their insider Investors want to close the deal, and fast.

2. Certainly, the Debtors' exit from bankruptcy is a desired outcome, but not on terms that would benefit their insiders while harming their creditors. The balloting information filed by the Debtors reflect that their creditors, Investors aside, are not convinced that they will fare at least as well under the substantively consolidated Joint Plan as they would in a liquidation.

3. The Debtors seek to convince their creditors that substantive consolidation is not a test they need to meet, but rather an assumption to be made. They insist that they do not need to meet the standards set forth for substantive consolidation, but instead are merely required to show that good reasons exist for and against substantive consolidation. A settlement on the issue, according to the Debtors, is a tidy solution that would tie up all loose ends and allow the Debtors to seal their deal. Yet, the Debtors' assertions that their estates are substantively consolidated does not make it so; they must first prove that their creditors are not harmed by this treatment. This they cannot do.

ARGUMENT

a. The Debtors Must Satisfy the *Augie/Restivo* Standards for Substantive Consolidation

4. The Debtors are incorrect when they insist that the applicable standard for determining whether the Joint Plan may substantively consolidate their estates is Federal Rule of Bankruptcy Procedure 9019. (Omnibus Reply at ¶¶ 7-8, 54-56.) The standard to be fulfilled is

indeed that set forth by the Court of Appeals for the Second Circuit in *Union Sav. Bank v. Augie/Restivo Baking Co. Ltd. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515 (2d Cir.1988).

5. None of the cases cited by the Debtors allowed full or deemed substantive consolidation of the estates solely on the basis of Bankruptcy Rule 9019. Substantive consolidation took place in the bankruptcy cases of Enron, WorldCom, and Lehman Brothers only after myriads of briefs and pleadings dedicated to the fulfillment of the *Augie/Restivo* factors were filed and argued. *See, e.g.*, *In re Enron Corp.*, Case No. 01-16034 (AJG), slip op., at 48-53 [Docket # 19758] (pages of Findings of Facts and Conclusions of Law dedicated to describing fulfillment of the *Augie/Restivo* factors); *In re WorldCom, Inc.*, Case No. 02-13533, 2003 Bankr. LEXIS 1401, *102-111 (Bankr. S.D.N.Y. Oct. 31, 2003) (discussing *Augie/Restivo* factors and concluding that "the substantive consolidation proposed in the Plan is necessary and appropriate and satisfies both prongs of the *Augie/Restivo* test."); *In re Lehman Brothers Holdings, Inc.*, Case No. 08-13555, *Debtor's Disclosure Statement for Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors Pursuant to Section 1125 of the Bankruptcy Code*, dated August 31, 2011 pp. 58-67 [Docket # 19629] (reciting fulfillment of *Augie/Restivo* factors).

6. The Debtors also cite the case of *In re Winn-Dixie Stores*, 356 B.R. 239 (Bankr. M.D. Fla. 2006) to bolster their argument that they merely need to satisfy the requirements of Bankruptcy Rule 9019; however, the court in that case made clear that it was not deciding the issue of substantive consolidation:

> First, Debtors have not sought 'deemed' consolidation or even substantive consolidation, unlike the case in Owens Corning. What is before the Court is a Plan wherein certain provisions regarding the unsecured creditors incorporate a settlement which touches on events consistent with consolidation. Normally unsecured creditors are not divided into separate classes, but the

> creditors divided themselves up due to their varying interests, not for the purpose of gerrymandering of votes. As aforementioned, the Ad Hoc Committee of Trade Creditors had filed a motion for substantive consolidation. But based upon the overwhelming agreement of the parties, they determined that substantive consolidation would not be prudent and reached a compromise.

Id. at 252.

7. The Debtors protest that they are not trying to accomplish a "full" substantive consolidation. The Debtors' proposed "deemed" substantive consolidation, however, is no different from actual consolidation in that it raises the specter of the same inequitable treatment of creditors. The Debtors' creditors face increased competition for a consolidated pool of assets and a revalued claim that is less precise than if the creditors were dealing with each Debtor individually.

8. The Debtors fail to satisfy the *Augie/Restivo* factors. Until its acquisition by the Debtors in late 2007, Pathmark was an entirely separate company, with its own books, records, and financial statements. Moreover, the Debtors acknowledge that they kept separate books, records, and financial statements since at least 2009, and even admit to relying on those separate accountings when classifying creditors. (*See* Omnibus Reply, at ¶ 89) ("The Debtors acknowledge that their books and records are heavily entangled, but their books and records cannot be completely disregarded in the context of settling disputed substantive consolidation-related causes of action.").

9. The Debtors' concurrent reliance on, and mistrust for, their separate financials, books, and records invokes the reasoning behind the distaste for deemed substantive consolidation articulated by the Court of Appeals for the Third Circuit in *In re Owens Corning*, 419 F.3d 195, 216 (3d Cir. Del. 2005):

> But perhaps the flaw most fatal to the Plan Proponents' proposal is that the consolidation sought was "deemed" (i.e., a pretend

> consolidation for all but the Banks). If Debtors' corporate and financial structure was such a sham before the filing of the motion to consolidate, then how is it that post the Plan's effective date this structure stays largely undisturbed, with the Debtors reaping all the liability-limiting, tax and regulatory benefits achieved by forming subsidiaries in the first place? In effect, the Plan Proponents seek to remake substantive consolidation not as a remedy, but rather a stratagem to "deem" separate resources reallocated to OCD to strip the Banks of rights under the Bankruptcy Code, favor other creditors, and yet trump possible Plan objections by the Banks. Such "deemed" schemes we deem not Hoyle.

10. The Debtors are adamant that substantive consolidation is necessary for them to exit bankruptcy by March 1, 2012, which, in turn, is necessary for them to consummate their equity financing transaction with Yucaipa, one of the Debtors' controlling shareholders, and the Debtors' Majority Noteholders. (Omnibus Reply, ¶ 13.) These conditions present yet more demands that the Debtors' insiders have made in order to expedite their receipt of the Debtors' equity, without regard to the harm suffered by the Debtors' creditors. The insiders' need for speed should not dictate the method by which creditors recover amounts owed to them; the Bankruptcy Code should. In this regard, substantive consolidation is improper.

b. The Debtors Are Required to Demonstrate that the Joint Plan Satisfies Bankruptcy Code Section 1129's Standards with Respect to Each Debtor

11. The Debtors may not use substantive consolidation to replace their requirement to demonstrate that the Joint Plan satisfies Bankruptcy Code section 1129's standards with respect to each individual Debtor.

12. The Debtors shirk their requirement to file separate liquidation analyses for each Debtor by citing the decision of in *In re Jennifer Convertibles, Inc.*, in which this Court stated that "[i]n a case where the propriety of substantive consolidation has been established, a separate liquidation analysis would not be required or even appropriate, as the cost of the effort to create it would defeat one of the purposes of consolidation." (*See* Omnibus Reply, ¶ 80 (citing 447

B.R. 713, 724-25.)) The Debtors neglected to recount, however, how this Court in fact found that the debtors in that case had failed to demonstrate that the creditors of one of the debtors would receive at least as much under the plan than in a liquidation. *See id*. This Court accordingly instructed the debtors in *Jennifer Convertibles* to either "provide for payment in full of the debt of these small creditors and immediately confirm the Plan … [or a]lternatively, they may supplement the record on the issue of substantive consolidation and submit a separate liquidation analysis for Hartsdale." *See id*. at 726.

13. As was made apparent by the *Jennifer Convertibles* decision, the mere fact that affiliated debtors make the case for substantive consolidation does not - poof - make their estates substantively consolidated. If creditors cannot be convinced that they would fare at least as well under a substantively consolidated plan than they would in a liquidation, such plan cannot be confirmed.

c. The Balloting Certification Reflects Creditors' Rejections of the Joint Plan

14. In this case, it appears that the Debtor's creditors are not convinced that they will fare well under the Joint Plan. The Debtors filed the *Certification of Alison M. Tearnen Schepper Pursuant to Local Bankruptcy Rule 3018-1(a) with Respect to the Tabulation of Votes on the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code* on January 30, 2012 [Docket #3308] (the "***Balloting Certification***"). This Balloting Certification reflects the resounding rejection of the Joint Plan by Classes E and L.

15. The Balloting Certification attempts to gloss over the votes rejecting the Joint Plan by suggesting that the Court consolidate the claims in Classes E, F, G, H, I, J, and L into a single class in order to demonstrate that the Joint Plan garnered the votes of creditors holding at least 70.32% of claims and 77.21% in value. The Balloting Certification also recommends that

the Court consolidate the claims in the Unsecured Classes excluding Class J into a single class in order to demonstrate, alternatively, that the Joint Plan garnered votes of 70.28% in number and 77.55% in value in favor of the Plan. (*See* Balloting Certification, ¶ 12.)

16. The Debtors cannot seriously suggest that the Court now recombine the classes that the Debtors so carefully gerrymandered.[2] As discussed in Riverside's Preliminary Objection, the Debtors carved up the classes, and then afforded many of those classes disparately favorable treatment in order to garner their votes on the Joint Plan. While Classes E, G, and L are provided with their respective shares of recovery from the Unsecured Creditor Cash Pool, estimated to be between 2.1%-2.7%, Classes E and G, but not Class L, also contain a number of Majority Noteholders who have the exclusive opportunity to invest in the equity of the Reorganized Debtors. Class H will share in the same Unsecured Creditor Cash Pool from which General Unsecured Creditors will be paid, but may also benefit from a distribution of an extra $10 million Trade Claims Pool. Class I is receiving 3.0%-3.9% out of the Unsecured Creditor Cash Pool, and Class J is receiving a 4.9%-6.3% distribution.

17. This separate treatment for each class necessarily prevents the Debtors from combining the classes to conjure up the image of satisfied creditors voting in favor of the Joint Plan. Bankruptcy Code section 1126 instructs a class-by-class analysis of plan acceptance, requiring acceptance by creditors "that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class." *See* 11 U.S.C. § 1126(c).

[2] The Debtors' suggestion does not even help them. In their *Motion for an Order Authorizing the Debtors to (A) Enter into Certain Securities Purchase Agreements for a $490 Million New Capital Investment and (B) Pay Certain Fees in Connection Therewith, Each to Support Debtors' Plan of Reorganization*, dated November 3, 2011 [Docket # 2797] (the "***SPA Motion***"), the Debtors describe the dollar amounts held by the Majority Noteholders. (*See* SPA Motion, ¶ 1, n. 5.) Deducting these dollar amounts from the dollar amounts of claims held by creditors who voted to accept the Joint Plan (with the assumption that the Class J creditors hold just one claim for each duplicative claim they filed) yields a 35.7% dollar amount of claims rejecting the Joint Plan. Clearly, had the Debtors not afforded certain, but not all, members within their classes the opportunity to invest in the Reorganized Debtors' equity, the Debtors, by their own calculations, would not have had a sufficient dollar amount of votes cast in favor of the Joint Plan.

18. Such a class-by-class analysis is particularly compelling here. The Balloting Certification reflects that creditors holding 60.08% of the amount of claims in Class E voted against the Joint Plan. (*See* Balloting Certification, ¶ 11.)[3] The Balloting Certification also reflects that creditors holding more than half of the dollar amount of claims in Class L voted against the Joint Plan. (*See id*.)

19. The two rejecting classes reflected in the Balloting Certification form only part of the reality that the Debtors' creditors are rejecting the Joint Plan. According to the Debtors' SPA Motion, the Majority Noteholders in Class G own $30.2 million of the $200 million aggregate principal amount outstanding of the Quarterly Interest Bonds. (*See* SPA Motion, ¶ 1, n. 5.) Subtracting this amount from the $62,006,325.00 in claims that was voted in favor of the Joint Plan leaves $31.8 million worth of claims voted in favor of the Joint Plan, compared to $29,490,525.00 worth of claims which voted against the Joint Plan. (*See* SPA Motion, ¶ 11.) Under Bankruptcy Code section 1126, Class G would also have voted against the Joint Plan, if not for the disparate treatment of Majority Noteholders in that class.

20. Still there is more evidence pointing to rejection of the Joint Plan, particularly as regards the Pathmark Debtor. Indeed, it is evident that if the estates were not substantively consolidated, the Pathmark Debtor would not be able to confirm this plan.

21. **Exhibit A** attached hereto was created by Riverside based on an analysis of the information in that Balloting Certification, and consists of a list of all creditors from Class L who

[3] The Balloting Certification does not tell the whole story. Not only were there insufficient votes by Class E based on the number of claims held by creditors voting for the Joint Plan, there were also insufficient votes based on the dollar amount of claims held by creditors voting for the Joint Plan. As stated above (see note 2, *supra*), the Debtors' SPA Motion describes the dollar amounts held by the Majority Noteholders in Class E. (*See* SPA Motion, ¶ 1, n. 5.) Subtracting those dollar amount from the dollar amounts of claims held by Class E creditors who voted for the Joint Plan results in a far lower number than that needed to satisfy Bankruptcy Code section 1126(c)'s requirement that "at least two-thirds in amount" of claims held by creditors in a class be voted in favor of a plan. It is apparent that the disparate treatment afforded to the Majority Noteholders in Class E obfuscates the overwhelming rejection of the Joint Plan by that class.

filed claims of at least $1 million against the Pathmark Debtor. Of those creditors, twelve creditors holding an aggregate of $37.4 million voted in favor of the Joint Plan. Eight creditors holding an aggregate of $126 million voted against the Joint Plan. Accordingly, the Pathmark Debtor has not garnered positive votes by creditors holding at least two-thirds in amount of claims under Bankruptcy Code section 11 U.S.C. § 1126(c).

22. Substantive consolidation may not be used to mask these negative votes by Pathmark creditors, particularly because doing so would allow the Debtors to violate Bankruptcy Code section 1129(b)(2)(B)'s absolute priority rule. Without the consensual votes of Pathmark's unsecured creditors, Pathmark's equity may not be retained by The Great Atlantic & Pacific Tea Company, Inc., as is called for under the Joint Plan. *See Dish Network Corp. v. DBSD North America, Inc. (In re DBSD North America, Inc.)*, 634 F.3d 79, 95 (2d Cir. 2011) ("a confirmable plan must ensure either (i) that the dissenting class receives the full value of its claim, or (ii) that no classes junior to that class receive any property under the plan on account of their junior claims or interests.").

23. Riverside previously discussed in its Preliminary Objection how the Joint Plan violates the absolute priority rule because it provides Yucaipa, one of the Debtors' controlling shareholders, at least a partial recovery on account of its equity interests, without paying unsecured classes in full. (*See* Preliminary Objection, at ¶¶ 33-34.) The Balloting Certification evidences this violation even more clearly by demonstrating that the Pathmark Debtor's unsecured class has rejected the Joint Plan. This rejection impedes The Great Atlantic & Pacific Tea Company, Inc.'s retention of Pathmark Debtor's equity.

d. The Debtors Cannot Use their Investors' Demands to Justify their Race to Exit Bankruptcy

24. As Riverside described in its Preliminary Objection, the Debtors refer to the sale of the Reorganized Debtors' equity to their insider Investors as the "backbone of the Plan." Troubling indeed, considering that the purchase price and terms of this sale were never market-tested. Even more troubling is that non-insiders were actually denied the opportunity to benefit from the equity investment.

i. The Debtors' Sale to Insiders Without Marketing Efforts Violates 11 U.S.C. § 1129(a)(3)'s Requirement That The Joint Plan be Proposed in Good Faith and Not by Any Means Forbidden by Law

25. As discussed in Riverside's Preliminary Objection, the Debtors never offered the opportunity to purchase the Reorganized Debtors' equity to the market. Instead, the Debtors approached the Majority Noteholders to inquire whether they would make capital investments. The Majority Noteholders readily agreed, which spurred Yucaipa to offer its own proposal. Instead of pitting the two proposals against each other, the Debtors encouraged the two to bid in collusion with each other. (*See* SPA Motion, ¶¶ 3-4.)

26. To make matters worse, the Debtors further eradicated any chance at a competitive bidding process by agreeing to a "no-shop" clause in the resulting Securities Purchase Agreements they signed with the Investors. This clause allowed the Debtors to consider only an unsolicited "Alternative Transaction" (as defined in the Securities Purchase Agreements) in certain limited circumstances, but mandated that they would "not, directly or indirectly, take any action to solicit, initiate, encourage or assist the submission of, or enter into any discussions, negotiations or agreements regarding, any proposal, negotiation or offer relating

to an Alternative Transaction…." (*See* Securities Purchase Agreement § 4.11.) This restriction alone is a fatal flaw in the Joint Plan.[4]

ii. The Denial of the Opportunity to Purchase the Reorganized Debtors' Equity to Members within A Class Violates 11 U.S.C. § 1123(a)(4)

27. Not only did the Debtors fail to market-test the sale of the Reorganized Debtors' equity, the Debtors also denied the same opportunity to other noteholders and shareholders.

28. Bankruptcy Code section 1123(a)(4) provides that "a plan shall . . . provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). Courts hold that "if claims within the same class are not receiving the same treatment, and the holders of those claims being treated less favorably have not consented to the discrimination, the plan is not confirmable [under Bankruptcy Code section 1123(a)(4)]." *Schroeder v. New Century Liquidating Trust (In re New Century TRS Holdings, Inc.)*, 407 B.R. 576, 592 (D. Del. 2009).

29. Here, only select members of the noteholder classes were offered the opportunity to purchase the Reorganized Debtors' equity. The Debtors accepted the offer without providing an opportunity to the other members of those classes to invest in the Reorganized Debtors. Those who requested the opportunity to invest were denied.

30. The Debtors have not explained why the Investors were afforded the opportunities to purchase valuable equity in the Reorganized Debtors to the exclusion of the other members of their classes and of similarly situated classes. When a plan provides for discriminatory treatment

[4] Adding insult to injury, the Debtors recently filed a *Management Services Agreement* as an exhibit to the Joint Plan. [Docket # 3190, p. 52.] Under this Management Services Agreement between Yucaipa and the Reorganized Debtors, the Reorganized Debtors commit to pay Yucapia $50,000.00 per month (Management Services Agreement, ¶ 2), and a termination payment of $10,000,000.00 (Management Services Agreements, ¶ 7.4). The Disclosure Statement made no mention of these payments.

amongst creditors within a particular class, the plan proponent bears the burden of establishing the reasonableness of the discrimination. *See In re Eddington Thread Mfg. Co.*, 181 B.R. 826, 833 (Bankr. E.D. Pa. 1995) ("the proponent of a Chapter 11 Plan bears the burden of proving a reasonable basis in the event a Plan discriminates in its treatment of creditors holding similar claims.").

31. Without any justifiable explanation as to why only select noteholders were offered the opportunity to invest, to the exclusion of others, the Debtors' Joint Plan is not confirmable.

CONCLUSION

WHEREFORE, Riverside respectfully requests that the Court deny confirmation of the Debtors' Joint Plan, and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: February 3, 2012
New York, New York

By: /s/ Dina Gielchinsky

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PATHMARK STORES - CASE # 10-24584

Ballot Analysis

Ballot Number	Creditor Name	Date Received	Voting Amount	Accept or Reject?	Pathmark POC	Other POC	Pathmark Scheduled Amount	Schedule Amount Notes
2	Aida Hernandez	1/5/2012	$2,000,000.00	Accept	4738		-	
788	Alane P Levine Executrix of the Estate of Aaron Uman Deceased	1/24/2012	$2,500,000.00	Accept	1391		-	
70	Andrea Ryan	1/13/2012	$1,000,000.00	Reject	3425		-	
381	ANISOWICZ DANA	1/20/2012	$5,000,000.00	Accept	3992/5630		-	
14	Carmen Delgado and Edgardo Rodriguez	1/12/12	$1,100,000.00	Accept	726		-	
251	Eileen R Scott	1/18/2012	$2,359,068.00	Accept	1921/1926	1918/1934	Unknown	Non-Qualified Pension Plan
355	Eleanor Vargas	1/20/2012	$1,000,000.00	Accept	903		-	
853	Grocery Haulers Inc	1/24/2012	$112,329,297.00	Reject	6337	6111	Unknown	Contingent, Unliquidated
822	Grocery Haulers, Inc.	1/24/2012	$591,666.75	Reject	6337	6111	Unknown	Contingent, Unliquidated
956	Harvey M Gutman	1/24/2012	$1,336,495.00	Reject	1970	1956/1972	Unknown	Non-Qualified Pension Plan
575	Jack Futterman	1/23/2012	$4,514,327.00	Accept	1928	1925	Unknown	Non-Qualified Pension Plan
645	Leonard Lieberman	1/23/2012	$3,034,421.00	Accept	1902	1903	Unknown	Non-Qualified Pension Plan
787	Mirjana Lambasa	1/24/2012	$2,500,000.00	Accept	3895	3892	-	
190	Nanda Richards	1/18/2012	$1,000,000.00	Reject	611		-	
618	OFFICE TWO LIMITED PARTNERSHIP	1/23/2012	$2,364,264.89	Accept	4315	1412	Unknown	Contingent, Unliquidated
384	RiverOak Cofinance Carteret LLC	1/20/2012	$2,842,215.88	Reject	1550		Unknown	Contingent, Unliquidated, Disputed
587	Rosalba Pisicchio	1/23/2012	$1,000,000.00	Accept	4848	4854	-	
86	Roy Dealmeida	1/13/2012	$10,000,000.00	Accept	2094		-	
815	Victoria Thomas formally known as Victoria Phillip	1/24/2012	$2,000,000.00	Reject	975		-	
309	William & Kathleen Althoff	1/20/2012	$5,100,000.00	Reject	2557	2532	-	
	Total		$163,571,755.52					

CRITERIA
All ballots that were over $1,000,000 and had a scheduled amount or filed a proof of claim in the Pathmark Stores case

Ballot Number	**BALLOT VOTING TO ACCEPT**	Date Received	Voting Amount	
2	Aida Hernandez	1/5/2012	$2,000,000.00	
788	Alane P Levine Executrix of the Estate of Aaron Uman Deceased	1/24/2012	$2,500,000.00	
381	ANISOWICZ DANA	1/20/2012	$5,000,000.00	
14	Carmen Delgado and Edgardo Rodriguez	1/12/12	$1,100,000.00	
251	Eileen R Scott	1/18/2012	$2,359,068.00	
355	Eleanor Vargas	1/20/2012	$1,000,000.00	
575	Jack Futterman	1/23/2012	$4,514,327.00	
645	Leonard Lieberman	1/23/2012	$3,034,421.00	
787	Mirjana Lambasa	1/24/2012	$2,500,000.00	
618	OFFICE TWO LIMITED PARTNERSHIP	1/23/2012	$2,364,264.89	
587	Rosalba Pisicchio	1/23/2012	$1,000,000.00	
86	Roy Dealmeida	1/13/2012	$10,000,000.00	
COUNT:	12		**$37,372,080.89**	**22.8%**
	BALLOT VOTING TO REJECT			
70	Andrea Ryan	1/13/2012	$1,000,000.00	
853	Grocery Haulers Inc	1/24/2012	$112,329,297.00	
822	Grocery Haulers, Inc.	1/24/2012	$591,666.75	
956	Harvey M Gutman	1/24/2012	$1,336,495.00	
190	Nanda Richards	1/18/2012	$1,000,000.00	
384	RiverOak Cofinance Carteret LLC	1/20/2012	$2,842,215.88	
815	Victoria Thomas formally known as Victoria Phillip	1/24/2012	$2,000,000.00	
309	William & Kathleen Althoff	1/20/2012	$5,100,000.00	
COUNT:	8		**$126,199,674.63**	**77.2%**

SUMMARY:

BALLOT VOTING TO ACCEPT	**$37,372,080.89**	**22.8%**
BALLOT VOTING TO REJECT	**$126,199,674.63**	**77.2%**

INCLUDING Pensions - Class J:

Pensions Voting to Accept	**$209,290,575.30**	
BALLOT VOTING TO ACCEPT	**$246,662,656.19**	**63.8%**
Pensions Voting to Reject	**$13,922,966.00**	
BALLOT VOTING TO REJECT	**$140,122,640.63**	**36.2%**