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Plan Administrator for Waypoint Leasing
Holdings Ltd. and its Affiliated Debtors*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

WAYPOINT LEASING HOLDINGS LTD., *et al.*,

Debtors.

WILLIAM TRANSIER, as Plan Administrator
for Waypoint Leasing Holdings Ltd. and its
Affiliated Debtors,

Plaintiff,

– against –

SUNTRUST BANK, MUFG UNION BANK,
N.A., DEUTSCHE BANK AG, NEW YORK
BRANCH, BARCLAYS BANK PLC, and
GOLDMAN SACHS BANK USA,

Defendants.

Chapter 11

Case No. 18-13648 (SMB)

(Jointly Administered)

Adv. Pro. No. _____

COMPLAINT

Plaintiff William Transier (“Plan Administrator”), as Plan Administrator for Waypoint Leasing Holdings Ltd. and its Affiliated Debtors¹ (collectively, “Waypoint” or the “Debtors”)

¹ A complete list of the Debtors in this Chapter 11 case is attached to the Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and its Affiliated Debtors [Case No. 18-13648 (SMB) (the “Bankr. Case”), Doc. 871] as Exhibit A.



under the Third Amended Chapter 11 Plan of Liquidation of Waypoint Leasing Holdings Ltd. and its Affiliated Debtors, dated July 22, 2019 (the “Plan”), for his Complaint against SunTrust Bank (“SunTrust Bank” or “WAC7 Agent”), as administrative agent for Waypoint Asset Co 7 Limited (“WAC7”) and as a WAC7 secured lender, MUFG Union Bank, N.A. (“MUFG”), as a WAC7 secured lender, Deutsche Bank AG, New York Branch (“Deutsche Bank”), as a WAC7 secured lender, Barclays Bank PLC (“Barclays”), as a WAC7 secured lender, and Goldman Sachs Bank USA (“Goldman Sachs”), as a WAC7 secured lender (collectively, the “WAC7 Lenders”), alleges as follows:

NATURE OF THE CASE

Through this adversary proceeding, Plan Administrator seeks to recover, on behalf of the Debtors’ estate (the “Estate”), \$4,138,244 that was inadvertently overpaid to, and unlawfully retained by, the WAC7 Lenders in connection with the partial distribution paid by Waypoint pursuant to the Court’s February 14, 2019 Order (I) Approving Purchase Agreement among Debtors and Macquarie, (II) Authorizing Sale of Certain of Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (IV) Granting Related Relief (the “Macquarie Sale Order”) [Bankr. Case, Doc. 444]. Despite due demand by Plan Administrator for repayment of the clearly erroneous and undisputed overpayment, the WAC7 Lenders have unlawfully retained those funds and refused to return them to the Estate.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, Section 12.1 of the Plan, Paragraph 59 of the Macquarie Sale Order, and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.).

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1409 as this adversary proceeding arises under and in connection with a case under the Bankruptcy Code that is pending in this District.

3. This is a “core proceeding” as defined by, *inter alia*, 28 U.S.C. § 157(b)(2)(A) and (E).

4. Plan Administrator consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

THE PARTIES

5. Plan Administrator has a business address of 12128 Madeleine Circle, Dallas, Texas 75230, and is the Plan Administrator for the Debtors. Pursuant to Sections 5.4(b)(vi) and 5.9 of the Plan, Plan Administrator has the authority and right on behalf of the Debtors to prosecute, among other things, all Causes of Action (as defined in the Plan) on behalf of the Debtors, including the Causes of Action set forth herein.

6. Upon information and belief, SunTrust Bank has a business address of 3333 Peachtree Street N.E., Atlanta, Georgia 30326, and is both the administrative agent for the WAC7 Lenders and a WAC7 secured lender that improperly received and is now unlawfully retaining a portion of the partial distribution overpayment, as described herein.

7. Upon information and belief, MUFG has a business address of 445 S. Figueroa Street, Los Angeles, California 90071, and is a WAC7 secured lender that improperly received and is now unlawfully retaining a portion of the partial distribution overpayment, as described herein.

8. Upon information and belief, Deutsche Bank has a business address of 60 Wall Street, New York, New York 10005, and is a WAC7 secured lender that improperly received and is now unlawfully retaining a portion of the partial distribution overpayment, as described herein.

9. Upon information and belief, Barclays has a business address of 1 Churchill Place, Canary Wharf, London E14 5HP, United Kingdom, and is a WAC7 secured lender that improperly received and is now unlawfully retaining a portion of the partial distribution overpayment, as described herein.

10. Upon information and belief, Goldman Sachs has a business address of 30 Hudson Street, Jersey City, New Jersey 07302, and is a WAC7 secured lender that improperly received and is now unlawfully retaining a portion of the partial distribution overpayment, as described herein.

FACTUAL BACKGROUND²

Waypoint's Business and Capital Structure

11. Waypoint was an independent helicopter leasing company focused on acquiring and leasing rotary wing aircraft to helicopter operators throughout the world.

12. Waypoint had a capital structure involving nine (9) separate debt facilities (each a "WAC Facility") with a total of approximately twenty-four (24) lenders (each a "WAC

² Given the Court's familiarity with the proceedings in the underlying Bankruptcy Case, for the sake of brevity, only a summary of relevant facts is provided herein.

Lender”). Each of the WAC Facilities was secured by different collateral housed in separate corporate entity silos and, thus, each group of WAC Lenders has different interests.

13. As of November 25, 2018, Waypoint had outstanding funded debt obligations in the aggregate principal amount of approximately \$1.1 billion, approximately \$100 million of which was attributable to unpaid principal, plus accrued and unpaid interest, fees, and other expenses associated with the WAC7 Facility.

Procedural History and the Macquarie Sale Order

14. On November 25, 2018, Waypoint filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”), which was docketed as Case No. 18-13648 (SMB).

15. On February 14, 2019, the Court entered the Macquarie Sale Order, authorizing and approving the sale of substantially all of Waypoint’s assets, including certain executory contracts and unexpired leases, to Macquarie Rotorcraft Leasing Holdings Limited (“Macquarie”) pursuant to the terms of a Stock and Asset Purchase Agreement, dated December 7, 2018 (as amended, supplemented or otherwise modified), and the additional terms set forth in the Macquarie Sale Order (the “Sale Transaction”).

16. As provided in the Macquarie Sale Order, the Debtors were required to make a partial distribution of the net proceeds of the Sale Transaction, less certain withholdings and holdback amounts (collectively, the “Partial Distributions”), to each of the WAC Lenders (or to their respective agents on the lenders’ behalf) pursuant to a formula set forth in the Macquarie Sale Order.

17. Paragraph 43 of the Macquarie Sale Order provides:

Partial Distribution to Affected Participating Lenders. Upon Closing and, with respect to the Supporting WAC Lenders, subject

to the terms and conditions of the Plan & Asset Sale Support Agreement, the Debtors shall make a partial distribution to the Affected Participating Lenders, in full and final satisfaction and release of that portion of such Affected Participating Lenders' claims in an amount equal to such Affected Participating Lenders' allocable share of net proceeds (as set forth in paragraphs 38 and 39 herein), less (i) such lenders' allocable share of the Winddown Account (as set forth in paragraph 32 herein), (ii) such lenders' allocable share of the Fee Reserve Account (as set forth in paragraph 35 herein), and (iii) such lenders' allocable share of a holdback in the aggregate amount of \$22,857,000, as set forth on Schedule 1 hereto (the "**Holdback Amounts**"), which Holdback Amounts shall be deposited in such lenders' respective Cash Collateral accounts (which shall constitute cash collateral of such lenders and shall be subject to such lenders' rights under the DIP Order and section 363(c) of the Bankruptcy Code) and held for the benefit of such lenders, subject to limited rights of the Debtors to draw upon if the funds in the Winddown Account are insufficient to fund the Affected Participating Lenders' allocable share of the winddown and administrative costs of the Debtors' estates, and the amount to be withdrawn is reasonable, as determined by agreement by the relevant Affected Participating Lenders or an order of the Court. The balance of any Holdback Amounts that remain in the respective Cash Collateral accounts shall be distributed on the effective date of the chapter 11 plan. The Debtors' rights to use the Affected Participating Lenders' Cash Collateral terminates upon Closing.

18. Leading up to the Closing of the Sale Transaction, detailed calculations of the Partial Distribution amounts for each WAC Facility were performed by the Debtors' advisors. Such calculations were distributed to (or made available via a dataroom accessible to) each of the WAC Lenders, including the WAC7 Lenders, without objection. Such calculations included estimations of certain amounts and, as such, were subject to express disclaimers.

19. As summarized in the below table prepared by the Debtors' advisors, the WAC7 Lenders' allocable share of net proceeds from the Sale Transaction less the WAC7 Lenders' allocable share of the Winddown and Account Fee Reserve Accounts equaled \$36,592,867:



Analysis of Overpayment in Actual Interim Distribution on 3/14/19

Confidential

Actual Interim Distribution Made to WAC 7 Agent on 3/14/19	
Initial Distribution A	\$34,160,085
Initial Distribution B	\$6,571,026
Total APA Proceeds & Estimated Excess Cash Distribution [1]	\$40,731,111
Excess Cash A	\$4,070,053
Excess Cash B	\$65,519
Total Excess Cash Collateral Distribution ⁽¹⁾ [2]	\$4,135,572

Total Interim Distribution Made to WAC7 Agent on 3/14/19 [1+2] \$44,866,683
Note: Letters "A" and "B" above relate to the two different wires that were distributed as noted in the detailed APA Excel schedule shared with lenders in advance of closing.

Actual vs Correct Distribution Amounts	
Total Received by WAC 7 Agent [1]	\$44,866,683
WAC 7 Net Sale Proceeds	\$36,592,867
Actual Excess Cash	\$4,135,572
Correct Amount Due to WAC 7 Agent [2]	\$40,728,439
Amount Overpaid and to be Returned [1 - 2]	\$4,138,244

- 1 Amount confirmed by WAC 7 Agent counsel on 3/14/19; This amount includes (i) WAC 7's allocated share of net APA proceeds and (ii) the \$4,138,244 estimated cash balance in WAC 7 cash collateral account (see below) in excess of the court ordered holdback
- 2 Actual cash balance of \$4,135,572 that was remaining in WAC 7 cash collateral account(s), in excess of the holdback amount, was also distributed resulting in duplicate distributions on account of excess cash

20. The cash balance in the WAC7 Lenders' cash collateral account at the Closing of the Sale Transaction was estimated to be \$6,382,587. As set forth in Schedule 1 of the Macquarie Sale Order, the WAC7 Lenders' allocable share of the \$22,857,000 aggregate holdback amount was \$2,244,343, resulting in an *estimated* excess cash balance to be distributed to the WAC7 Lenders of \$4,138,244 (*i.e.* \$6,382,587 - \$2,244,343 = \$4,138,244). The *estimated* excess cash balance in the WAC7's cash collateral account was subject to adjustment at the Closing based on the *actual* excess cash collateral balance.

21. Based on the foregoing formula, the WAC7 Lenders were estimated to receive a Partial Distribution in the total amount of \$40,731,111.

22. The \$40,731,111 estimated Partial Distribution and funds flow analysis was presented without objection to the WAC7 Lenders and/or the WAC7 Agent prior to distribution. The funds flow analysis included a "Statement of Limiting Conditions" expressly stating, *inter alia*, that "[t]he DRAFT numerical data and other information set forth herein ... are preliminary and subject to material change."

23. Upon the Closing of the Sale Transaction, the Partial Distribution amount due to the WAC7 Lenders was revised to account for the actual excess cash balance in the WAC7's Lenders cash collateral account. The revised amount was \$40,728,439.

Partial Distribution Overpayment to the WAC7 Lenders

24. Based on an accounting error by the Debtors' advisors, on March 14, 2019, the Debtors erroneously distributed \$44,866,683 (instead of the authorized \$40,728,439) to the WAC7 Lenders (through the WAC7 Agent), resulting in an overpayment of \$4,138,244 (the "Partial Distribution Overpayment"). The Partial Distribution Overpayment was the result of the Debtors' advisors erroneously including in their calculation *both*: (i) the estimated excess cash balance in the WAC7 Lenders' cash collateral account (*i.e.* \$4,138,244); *and* (ii) the actual excess cash balance in the WAC7 Lenders' cash collateral account (*i.e.* \$4,135,572), causing a "double counting" of those funds. As a result of this error, the WAC7 Lenders received funds that should have been distributed *pro rata* among all the WAC Lenders.

25. Shortly after discovering the Partial Distribution Overpayment, Plan Administrator asked the Debtors' advisors to conduct a thorough analysis of the Partial Distribution that was paid to the WAC7 Lenders. As a result of its analysis, these advisors prepared a detailed memorandum (the "Overpayment Memo") confirming the Partial Distribution Overpayment and explaining how such Overpayment was a result of "double counting" the excess cash balance in the WAC7 Lenders' cash collateral account.

26. The Debtors' advisors further calculated each of the WAC7 Lenders' estimated allocable share of the Partial Distribution Overpayment as follows:

Waypoint Leasing
WAC7 Lender Allocations
\$ in thousands

Lender	Holdings Based on Scheduled Claims		Implied Allocation of Overpayment	
	\$	%	\$	%
MUFG Union Bank	\$ 23,449	23%	\$ 941	23%
Deutsche Bank	18,759	18%	753	18%
Sun Trust	28,139	27%	1,129	27%
Barclays	18,759	18%	753	18%
Goldman Sachs	14,069	14%	565	14%
Total	\$ 103,175	100%	\$ 4,141	100%

Note:

Total overpayment of \$4,141k differs from the presentation amount of \$4,138k due to rounding.

27. Via letter dated November 6, 2019, Plan Administrator advised each of the WAC7 Lenders of the Partial Distribution Overpayment and demanded that each of the WAC7 Lenders immediately return their respective share of the Partial Distribution Overpayment. Plan Administrator further provided the WAC7 Lenders with a copy of the Overpayment Memo.

28. Receiving no response to his November 6, 2019 letter, on November 19, 2019, Plan Administrator sent a second correspondence to the WAC7 Lenders reiterating his request that the WAC7 Lenders immediately return their respective share of the Partial Distribution Overpayment.

29. Although never actually denying the Partial Distribution Overpayment, and despite having previously been provided with, and not objecting to, the actual Partial Distribution amount due to the WAC7 Lenders, on November 20, 2019, counsel for the WAC7 Agent responded on behalf of the WAC7 Lenders, flatly rejecting Plan Administrator's request and refusing to return the Partial Distribution Overpayment.

30. The WAC7 Lenders have engaged in willful misconduct because, *inter alia*, they: (i) knew of the Partial Distribution Overpayment at or about the time the Partial Distribution Overpayment was made and failed and/or refused to return the Partial Distribution

Overpayment to the Estate; and (ii) were timely advised of the Partial Distribution Overpayment by Plan Administrator and, despite such notice, failed and refused to return the Partial Distribution Overpayment to the Estate.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
(Conversion/Misappropriation)

31. Plan Administrator repeats, realleges and incorporates by reference the allegations contained in all preceding paragraphs of this complaint as though set forth at length herein.

32. As set forth above, the WAC7 Lenders are currently intentionally exercising unauthorized dominion and control over funds (*i.e.* the Partial Distribution Overpayment) belonging to the Estate to the exclusion and in derogation of the Estate's rights to those funds.

33. As a direct and proximate result of the WAC7 Lenders' wrongful conduct, as aforesaid, the Estate and its creditors have suffered, and continue to suffer, substantial damages.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

34. Plan Administrator repeats, realleges and incorporates by reference the allegations contained in all preceding paragraphs of this complaint as though set forth at length herein.

35. The Macquarie Sale Order required Waypoint to make a Partial Distribution of \$40,728,439 to the WAC7 Lenders. By mistake, Waypoint distributed \$44,866,683 to the WAC7 Lenders, resulting in a Partial Distribution Overpayment of \$4,138,244 to which the WAC7 Lenders are not entitled.

36. It would offend principals of equity and good conscience to permit the WAC7 Lenders to retain the amounts by which they have been unjustly enriched at the Estate's expense.

37. Plan Administrator is entitled to recover, on behalf of the Estate, the amount by which the WAC7 Lenders have been unjustly enriched as a result of the Partial Distribution Overpayment.

THIRD CAUSE OF ACTION
(Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542)

38. Plan Administrator repeats, realleges and incorporates by reference the allegations contained in all preceding paragraphs of this complaint as though set forth at length herein.

39. Section 541 of the Bankruptcy Code provides that, with certain exceptions, a debtor's "estate is comprised of ... all legal or equitable interests of the debtor in property as of the commencement of the case" and "[p]roceeds, product, ... or profits of or from property of the estate" 11 U.S.C. § 541(a)(1), (a)(6).

40. Section 542(a) of the Bankruptcy Code provides that "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

41. By virtue of the Partial Distribution Overpayment, the WAC7 Lenders are in custody, possession or control of valuable property of the Estate.

42. The Partial Distribution Overpayment constitutes property that can be used in accordance with Section 363 of the Bankruptcy Code.

43. The Partial Distribution Overpayment has more than inconsequential value or benefit to the Estate.

44. Accordingly, pursuant to Bankruptcy Code section 542(a), Plan Administrator is entitled to an order compelling and directing the WAC7 Lenders to turn over such property to Plan Administrator.

FOURTH CAUSE OF ACTION
(Avoidance of Transfers Pursuant to 11 U.S.C. § 549)

45. Plan Administrator repeats, realleges and incorporates by reference the allegations contained in all preceding paragraphs of this complaint as though set forth at length herein.

46. Section 549(a) of the Bankruptcy Code renders avoidable any “transfer of property of the estate – (1) that occurs after the commencement of the case; and (2) ... (B) that is not authorized under this title or by the court.” 11 U.S.C. § 549(a).

47. The Macquarie Sale Order authorized the Debtors to make a Partial Distribution of \$40,728,439 to the WAC7 Lenders. By mistake, Waypoint distributed \$44,866,683 to the WAC7 Lenders, resulting in a Partial Distribution Overpayment of \$4,138,244 to which the WAC7 Lenders are not entitled.

48. Except as otherwise provided by the Court under the Macquarie Sale Order, the proceeds of the Sale Transaction are property of the Estate.

49. The Partial Distribution Overpayment occurred after the commencement of the case and was not authorized by the Court or any provision of the Bankruptcy Code.

50. As a result, the Partial Distribution Overpayment is an unauthorized post-petition transfer that is avoidable by Plan Administrator pursuant to Bankruptcy Code section 549(a).

FIFTH CAUSE OF ACTION

(Recovery of Avoided Transfer Pursuant to 11 U.S.C. § 550)

51. Plan Administrator repeats, realleges, and incorporates by reference the allegations contained in all preceding paragraphs of this complaint as though set forth at length herein.

52. Pursuant to Section 549 of the Bankruptcy Code, Plan Administrator is entitled to avoid the Partial Distribution Overpayment as an unauthorized post-petition transfer.

53. The WAC7 Lenders were the initial transferee, or the immediate or mediate transferee of the initial transferee, for whose benefit the Partial Distribution Overpayment was made.

54. Pursuant to Section 550(a) of the Bankruptcy Code, Plan Administrator is entitled to recover the Partial Distribution Overpayment as an avoided transfer, plus interest thereon to the date of payment and the costs of this action.

SIXTH CAUSE OF ACTION

(Declaratory Judgment Pursuant to 11 U.S.C. § 105(a))

55. Plan Administrator repeats, realleges and incorporates by reference the allegations contained in all preceding paragraphs of this complaint as though set forth at length herein.

56. Section 105 of the Bankruptcy Code authorizes the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code]” where, as here, such relief is warranted and derived from another provision of the Bankruptcy Code. 11 U.S.C. § 105(a).

57. As set forth above, relief is warranted and derived from, *inter alia*, Sections 542, 549, and 550 of the Bankruptcy Code.

58. The Macquarie Sale Order authorized the Debtors to make a Partial Distribution of \$40,728,439 to the WAC7 Lenders. By mistake, the Debtors distributed \$44,866,683 to the WAC7 Lenders, resulting in a Partial Distribution Overpayment of \$4,138,244 to which the WAC7 Lenders are not entitled.

59. The Partial Distribution Overpayment was not authorized by the Court nor otherwise intended to be transferred to the WAC7 Lenders.

60. Pursuant to Sections 105(a), 542, 549, and 550 of the Bankruptcy Code, Plan Administrator is entitled to the entry of a judgment declaring that the Estate is the sole legal and equitable owner of the Partial Distribution Overpayment, and an order compelling and directing the WAC7 Lenders to turn over such property to Plan Administrator.

WHEREFORE, Plan Administrator prays that the Court enter a judgment against Defendants, the WAC7 Lenders, as follows:

a. Ordering each of the WAC7 Lenders to turn over to Plan Administrator their allocable share of the Partial Distribution Overpayment, plus prejudgment interest;

b. Awarding Plan Administrator his cost of suit and reasonable attorneys' fees; and

c. Granting such other and further relief as the Court may deem just and proper under the circumstances.

Dated: New York, New York
December 10, 2019

COLE SCHOTZ P.C.

/s/ Michael D. Sirota

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