

ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP

1801 K STREET, N.W., SUITE 411
WASHINGTON, D.C. 20006
PHONE (202) 775-4500
FAX (202) 775-4510
www.robbsrussell.com

Roy T. Englert, Jr.

(202) 775-4503
renglert@robbsrussell.com

December 8, 2008

VIA OVERNIGHT COURIER & E-MAIL

Charles R. Fulbruge III, Clerk
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: *The Bank of New York Mellon Trust Co., N.A., as Indenture Trustee for the Timber Notes, et al. v. Official Unsecured Creditors' Committee, et al.*, No. 08-40746 (argued October 6, 2008, before Chief Judge Jones, Judge Owen, and Judge Southwick, and awaiting decision)

Dear Mr. Fulbruge:

Pending before the Court, in addition to the merits, is a Motion to Dismiss on the basis of equitable mootness, filed by certain Appellees on August 20, 2008. Appellants, including my client The Bank of New York Mellon Trust Co., N.A., as Indenture Trustee for the Timber Notes (the "Indenture Trustee"), responded on September 4, 2008. Because certain factual representations made in Appellants' Response have recently been overtaken by events, I write to advise the Court of the updated factual circumstances.

In footnote 3 on page 2 of the Response, Appellants advised the Court that "the Indenture Trustee is holding undistributed to the Noteholders the entire \$513.6 million paid to it under the Plan (permitting its whole or partial return, if necessary, in connection with the re-imposition of the Indenture Trustee's lien or other Court imposed remedies)." In footnote 11 on page 7 of the Response, Appellants advised the Court that "this Court could direct that \$325 million of the \$513.6 million distributed to (and still held by) the Indenture Trustee, be used to pay off the American Ag Credit loan."

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Those representations have remained accurate for the more than three months since the Response was filed (and for the more than two months since oral argument took place on October 6). Recently, however, a non-Appellant Noteholder has written to the Indenture Trustee demanding immediate payment of its share of funds held by the Indenture Trustee on account of the Timber Notes. Other non-Appellant Noteholders have recently made similar demands.

In light of these demands, the Indenture Trustee has concluded that the appropriate course is to distribute the funds it is holding on account of the Timber Notes, and certain of those distributions have commenced today. Thus, it will no longer be possible for the Indenture Trustee to return any of the \$513.6 million it was paid under the Plan as part of any Court-ordered remedy such as a complete unwinding of the Plan or lien re-imposition.

Appellants continue to believe that other remedies discussed in the Response, in Appellants' opening and reply merits briefs, and in oral argument are available to the Court and that the case is therefore not equitably moot. Those available remedies include but are not limited to lien re-imposition without a repayment of the American Ag Credit loan, but junior to that loan.

We respectfully request that this letter be brought to the immediate attention of Chief Judge Jones and Judges Owen and Southwick, the panel that heard oral argument on October 6.

Thank you for your attention to this matter.

Sincerely yours,



Roy T. Englert, Jr.

cc: Counsel for Appellees