

1 Robert J. Miller, Esq. (#013334)  
Bryce A. Suzuki, Esq. (#022721)  
2 **BRYAN CAVE LLP**  
3 Two North Central Avenue, Suite 2200  
Phoenix, Arizona 85004-4406  
4 Telephone: (602) 364-7000  
Facsimile: (602) 364-7070  
5 Internet: [rjmiller@bryancave.com](mailto:rjmiller@bryancave.com)  
[bryce.suzuki@bryancave.com](mailto:bryce.suzuki@bryancave.com)

6  
7 Counsel for the Rev Op Group

8 **IN THE UNITED STATES BANKRUPTCY COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10 In re:

11 MORTGAGES LTD.,

12 Debtor.

In Proceedings Under Chapter 11

Case No. 2:08-bk-07465-RJH

13 **OBJECTION TO ML MANAGER'S**  
14 **FORM OF ORDER RE: MOTION TO**  
15 **APPROVE SETTLEMENTS WITH**  
**GRACE ENTITIES; NOTICE OF**  
**LODGING ALTERNATIVE FORM OF**  
**ORDER**

16 The Rev Op Group hereby files this Objection to the form of order filed by the ML  
17 Manager, LLC. [DE No. 2820] In support of this Objection, the Rev Op Group submits as  
18 follows:

19 1. ML Manager uploaded its proposed form of order without providing the Rev Op  
20 Group with any time to review it. It is almost like the ML Manager's counsel was absent at  
21 yesterday's hearing on this matter.

22 2. During the hearing, counsel for the Rev Op Group and the ML Manager engaged  
23 in a dialogue before the Court regarding the form of order. The Court made its position clear – a  
24 simple order was appropriate under the circumstances.

25 3. The ML Manager contends there is a “need for speed” and this matter needs to be  
26 resolved by court order before the end of July 2010. The Rev Op Group, while respectfully  
27 disagreeing with the Court's decision and the positions taken by the ML Manager, made it clear  
28

1 at yesterday’s hearing that the more the order was “loaded up” with language, the more likely it  
2 would be the Rev Op Group would have to file an objection.

3 4. There is one matter on appeal that is tangentially related to this matter. The  
4 Court, of course, has no present jurisdiction over those matters. There is another adversary  
5 proceeding before this Court that the Rev Op Group respectfully submits totally overlaps the  
6 “authority issues” addressed herein.

7 5. What is obvious from the ML Manager’s order is that, despite the fact the ML  
8 Manager’s chief operating officer testified under oath two days ago the ML Manager’s board  
9 owes a fiduciary duty to “opt out” investors, the ML Manager simply cannot resist the urge to try  
10 and “beat down” opt out investors who disagree with its position – even if it requires lodging an  
11 overreaching order.

12 6. The Rev Op Group has no desire to file a motion to reconsider the order that is  
13 ultimately entered by the Court. Out of the necessity, however, the Rev Op Group will do  
14 exactly that unless the Court takes control over this situation and enters an *appropriate* order in  
15 support of its decision.

16 7. Anyone who was in the courtroom yesterday would know that the order here  
17 needs to simple. The ML Manager requested a ruling that the ML Manager exercised valid  
18 business judgment in entering into the Settlement Agreements. The Court issued that finding on  
19 the record. Now, the Court needs to enter an order granting the motion and ruling that the  
20 Settlement Agreements are binding on the parties thereto. (Again, to be clear, the Rev Op Group  
21 respectfully disagrees with decision of the Court and reserves the right to appeal any order that is  
22 ultimately entered by the Court.)

23 8. Exhibit A attached hereto is a form of order that accomplishes exactly that. It is  
24 the ruling of the Court free from the extraneous findings and “ordered” language proposed by the  
25 ML Manager. There is a nearly unending list of improper items included in the order unilaterally  
26 submitted by the ML Manager.

27 9. In the first sentence, the ML Manager includes “as agent” language. That issue is  
28 before the Court in an adversary proceeding *brought by the ML Manager*.

1           10.     In Paragraph (c) and thereafter, the ML Manager tries to give itself the right to  
2 “implement” the settlements, but the record at yesterday’s hearing made it clear that ML  
3 Manager is not entitled to an advisory ruling about what it may do in the future. The Settlement  
4 Agreements will be ruled to be binding on the parties. What the parties do thereafter will be  
5 controlled by the contract and other law (e.g., the ML Manager’s fiduciary duty).

6           11.     Paragraph (d) is totally inappropriate, especially since it seeks to provide “cover”  
7 for the ML Manager’s desire to later charge the pass through investors for the note obligations.  
8 Paragraph (e) is an attempt to shield the ML Manager from any alleged breach of fiduciary duty  
9 problems if it fails to fulfill those duties in implementing the settlements.

10          12.     Paragraph (1) is nonsensical because it says the ML Manager is authorized to  
11 enter into the Settlement Agreements when it entered into them almost two months ago. The  
12 more substantive problem is the ML Manager will later try and argue the “implementation”  
13 language gives it cover when it tries to charge the ML Managers for the note obligations. That is  
14 an improper advisory ruling.

15          13.     The ML Manager also seeks to have the Court reverse its own ruling by allegedly  
16 mooted out the Court’s ruling on the motion to compel. The Court unambiguously granted in  
17 part the motion to compel. There was no ruling that the Court’s order partially granting the  
18 motion to compel was mooted by this ruling.

19          14.     Finally, the ML Manager does not have any language in the order making it clear  
20 the matters resolved pursuant to this ruling in no way constitute an adjudication of the matters in  
21 the pending declaratory judgment actions. The alternative form of order submitted herewith has  
22 appropriate language in this regard.

23                 WHEREFORE, the Rev Op Group respectfully request that the Court reject the ML  
24 Manager’s proposed order and enter an appropriate order that is not a skewed and improper  
25 version of what happened in Court over the past couple of days.  
26  
27  
28

1 DATED this 9<sup>th</sup> day of July, 2010.

2 BRYAN CAVE LLP

3 By /s/ RJM, #013334

4 Robert J. Miller  
5 Bryce A. Suzuki  
6 Two North Central Avenue, Suite 2200  
7 Phoenix, AZ 85004-4406  
8 Counsel for the Rev Op Group

9 COPY of the foregoing served via email  
10 this 9<sup>th</sup> day of July, 2010:

11 Cathy L. Reece, Esq.  
12 Keith L. Hendricks, Esq.  
13 Fennemore Craig, P.C.  
14 3003 North Central Avenue, Suite 2600  
15 Phoenix, Arizona 85012-2913  
16 [creece@fclaw.com](mailto:creece@fclaw.com)  
17 [khendricks@fclaw.com](mailto:khendricks@fclaw.com)  
18 Attorneys for ML Manager LLC

19 Donald F. Ennis, Esq.  
20 Snell & Wilmer LLP  
21 One Arizona Center  
22 Phoenix, AZ 85004  
23 [dfennis@swlaw.com](mailto:dfennis@swlaw.com)  
24 Attorneys for Grace Entities

25 /s/ Sally Erwin

BRYAN CAVE LLP  
TWO NORTH CENTRAL AVENUE, SUITE 2200  
PHOENIX, ARIZONA 85004-4406  
(602) 364-7000