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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

ARIZONA CORPORATION
COMMISSION,

Plaintiff,

vs.

NO. CV 2005-005484

THE OFFICIAL COMMITTEE OF
MATHON INVESTORS' MOTION
FOR AUTHORITY TO RESOLVE
CASE THROUGH BANKRUPTCY

(Assigned to the Honorable
Barry C. Schneider)

MATHON MANAGEMENT COMPANY,
L.L.C., fka an Arizona limited liability
company now dba a Delaware limited
liability company, SLADE WILLIAMS
AND ASSOCIATES, L.L.C., an Arizona
limited liability company, MATHON
FUND I, L.L.C., an Arizona limited
liability company, MATHON FUND,
L.L.C., fka an Arizona limited liability
company, INTEGRITY 101, L.L.C., an
Arizona limited liability company,
INTEGRITY 201, L.L.C., an Arizona
limited liability company,
INTEGRITY 301, L.L.C., an Arizona
limited liability company,
INTEGRITY 401, L.L.C., an Arizona
limited liability company,
INTEGRITY 501, L.L.C., an Arizona
limited liability company,

(Oral Argument Requested)

1 INTEGRITY 601, L.L.C., an Arizona
limited liability company,
2 INTEGRITY 701, L.L.C., an Arizona
limited liability company,
3 INTEGRITY 801, L.L.C., an Arizona
limited liability company,
4 INTEGRITY 901, L.L.C., an Arizona
limited liability company, ROUND
5 VALLEY CAPITAL, L.L.C., an Arizona
limited liability company, W.S.F. –
6 WORLD SPORTS FANS, L.L.C., an
Arizona limited liability company, MILL
7 CREEK, L.L.C., an Arizona limited
liability company, BELLEVUE
8 HOLDINGS, L.L.C., an Arizona limited
liability company, OAK HARBOR
9 FINANCIAL, L.L.C., an Arizona limited
liability company, SW STRATEGIC,
10 WEALTH ADVISORS, L.L.C., an Arizona
limited liability company, EVERETT
11 CAPITAL, L.L.C., an Arizona limited
liability company, CRE CAPITAL, L.L.C.,
12 an Arizona limited liability company,
MEZZANINE MANAGEMENT, L.L.C.,
13 an Arizona limited liability company,
MEZZANINE FUND I, L.L.C., an Arizona
14 limited liability company, JONAS FUND I,
L.L.C., an Arizona limited liability
15 company, TEMPLAR FUND L.L.C., fka an
Arizona limited liability company now dba
16 a Delaware limited liability company,
MERCER ISLAND, L.L.C., an Arizona
17 limited liability company, CONNECTICUT
PROPERTIES, L.L.C., an Arizona limited
18 liability company, FIRST ATLANTA
INVESTMENTS, L.L.C., a Georgia limited
19 liability company, MM COLONIAL
FUND, L.L.C., a Delaware limited liability
20 company, SLADE CONSTRUCTION,
L.L.C., an Arizona limited liability
21 company, DUANE SLADE and JENNIFER
SLADE, husband and wife, GUY
22 ANDREW WILLIAMS and LISA
WILLIAMS, husband and wife,
23

Defendants.
24
25
26

1 The Official Committee of Mathon Investors (“Committee”), through undersigned
2 counsel, hereby files its Motion for Authority to Resolve Case Through Bankruptcy
3 (“Motion”). The Committee seeks the entry of a court order authorizing the filing of a
4 consolidated bankruptcy case, relieving the current conservator, James C. Sell, of any
5 further duties, and placing Alvarez & Marsal in control of the Mathon companies prior to
6 and after the filing of the anticipated Chapter 11 case. There is wide investor support for
7 such a proposal, and the Committee believes it to be in the best interests of this case and
8 the investors.

9 In support of the Motion, the Committee provides the following Memorandum of
10 Points and Authorities.

11 DATED this 9th day of September, 2005.

12 QUARLES & BRADY STREICH LANG LLP
13 Renaissance One
14 Two North Central Avenue
15 Phoenix, AZ 85004-2391

16 By 
17 Gerald L. Shelley

18 Attorneys for The Official Committee of
19 Mathon Investors

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. Procedural Background.**

22 1. On or about April 1, 2005, the Arizona Corporation Commission caused to
23 be filed, in the Superior Court in and for the State of Arizona, a Verified Complaint in the
24 above-captioned matter against numerous individual defendants and entities (collectively,
25 “Mathon”), seeking the appointment of a receiver over the named Defendants.
26

1 2. On April 1, 2005, this Court issued its Order appointing James C. Sell as
2 Receiver for the approximately 30 entities named in the Receivership complaint.

3 3. In its Order Appointing Receiver, the Court enjoins the filing of a
4 bankruptcy by any party associated with this case. See Order Appointing Receiver, at ¶ 5.

5 4. On April 14, 2005, after notice and hearing, the Court issued an Order
6 Approving the Stipulation Regarding Order Appointing Conservator, in which the
7 Receiver's title was changed to "Conservator." The rights and obligations of the
8 Conservator were identical to those of the Receiver.

9 5. On May 25, 2005, this Court entered its "Order Granting Joint Motion to
10 Recognize the Proposed Official Investors'/Creditors' Committee and to Authorize the
11 Employment of Quarles & Brady Streich Lang LLP as Committee Counsel."

12 6. Pursuant to stipulation, the Conservator remains in place pending further
13 order of the Court.

14 **II. Bankruptcy Court is the Most Efficient Forum to Resolve This Case.**

15 7. Since the Committee's organization in May 2005, Committee
16 representatives and counsel have spent considerable time and effort to understand the
17 background of this case and to propose the best and most efficient method to resolve
18 various problems endemic to it.

19 8. The Committee and counsel have met on numerous occasions in session,
20 with the Conservator and his counsel, with investors and professionals, and have reviewed
21 all financial information and data provided by the Conservator and other parties. The
22 Committee has considered no fewer than five written proposals regarding resolutions of
23 this case, compared these to the status quo, and concluded that this case can be resolved
24 more efficiently in the context of a consolidated bankruptcy.

25 9. The Committee believes that this case can be more effectively and
26 efficiently resolved in bankruptcy court for reasons which include:

1 (i) **Potential Competing Claims Litigation Resolution.** A bankruptcy
2 case provides a more effective forum to resolve competing investor claims. In this case,
3 investors placed money in a pooled fund (the “Fund”), which was used to make loans and
4 acquire assets ostensibly on the investors’ behalf. Based on the information provided by
5 investors and the Conservator, many investors were promised that their funding would go
6 into a specific asset while other investors' funds were to be used at the discretion of the
7 principals and ostensibly in the best interest of the Fund. Regardless of the intentions
8 stated or understood by the investors or principals at the time of the investments, many
9 funds did not go into the intended asset. Further, in no case of which the Committee is
10 aware was any investor given a secured interest against a specific asset held by Mathon.
11 Thus, a situation exists whereby some investors have claims directly to specific assets that
12 could be viable so long as this case remains in the conservatorship under state law theories
13 such as equitable tracing, equitable liens, constructive trust or other similar theories.
14 Placing Mathon into a consolidated bankruptcy provides a well-developed scheme under
15 federal bankruptcy law to determine and segregate these claims and would effectively
16 eliminate the competing investor claims and the resource-draining attendant litigation.
17 Elimination of the claims litigation is itself sufficient reason to take this case from the
18 state court to bankruptcy court.

19 (ii) **Orderly Mechanism to Increase Fund by Restitution from Mathon**
20 **Principals.** Mathon principals have indicated a willingness to make substantial
21 contributions to the Fund in return for the full civil release of all investors. Without the
22 full release, the principals have indicated their unwillingness to make that contribution to
23 the Fund in the form of restitution, or as otherwise designated, without lengthy and costly
24 litigation (and the collection process and risk that follows such litigation). Thus, so long
25 as this case remains in the conservatorship, it would be necessary to obtain specific
26 releases from each and every investor (an unlikely event) to obtain a voluntary payment to

1 the Fund by Mathon principals. There are currently more than one hundred thirty
2 claimants. Obtaining such releases would be time-consuming, administratively
3 burdensome, and unnecessarily expensive. However, a confirmed plan of reorganization
4 in bankruptcy court, which the Committee believes will result in a self-executing
5 liquidation trust, can provide an across-the-board release in return for a settlement
6 payment that must be found to be fair and equitable in that court. This solution may bring
7 millions of dollars into the Fund voluntarily or through negotiations with Mathon
8 principals which otherwise may be unfruitful due to the lack of an across-the-board civil
9 release from all investors and piecemeal litigation by investors against the Principals
10 resulting in a disorderly race to judgment and asset collection activity. It is in the best
11 interests of all investors that the Principals' assets be available to the collective fund.

12 (iii) *More Efficient Forum for Allowed Claims.* There are numerous
13 investor claims in this case against the Fund. Mathon's current situation is most certainly
14 insolvent. The Bankruptcy Code is designed to deal specifically with insolvency and with
15 scenarios involving competing claims for limited funds. While this Court is certainly
16 capable and could employ the principles set forth under federal bankruptcy law, the
17 Committee believes that resolving such issues in a forum that regularly handles
18 insolvencies and which has well-developed statutory and case law is preferable in terms of
19 time and cost-efficiency.

20 (iv) *Prepackaged Plan of Liquidation Under A&M's Direction.* The
21 Committee believes that this case should be resolved through the confirmation of a
22 liquidation plan which will result in the implementation of a liquidation trust presided
23 over by experienced liquidation trustees. With that goal in mind, the Committee has
24 considered various proposals brought to it and concluded that the firm of Alvarez &
25 Marsal ("A&M") is best suited to administer the assets and claims in bankruptcy and to
26 act as liquidating trustee. By vote, the Committee has agreed to support A&M first in the

1 role of Mathon fiduciary, and subsequently as the liquidating trustee under the liquidating
2 trust implemented by a prepackaged plan of reorganization. The Committee proposes that
3 (i) A&M be substituted into the role of Conservator prior to the bankruptcy filing and (ii)
4 that it then remain as fiduciary trustee or debtor-in-possession in the consolidated
5 bankruptcy case. To confirm a plan of reorganization or liquidation in bankruptcy, a plan
6 proponent must obtain a vote of fifty percent (50%) in number of claimants and sixty-
7 seven percent (67%) in amount of claims. The Committee is convinced it cannot obtain
8 such a vote if the current Conservator remains in his fiduciary position. However, the
9 Committee has reason to believe that it can obtain the requisite votes to speedily confirm a
10 plan of liquidation if A&M is designated as the Mathon fiduciary and a reasonable plan is
11 promulgated. This will enable Mathon to emerge from bankruptcy quickly and will more
12 efficiently provide returns for the investors than if the case remains in the conservatorship.

13 (v) *Expeditious Distribution.* The Committee notes that a number of
14 investors in Mathon have been caused a hardship by the elimination of their cash flow and
15 that a speedy initial partial distribution is in the best interests of many Mathon investors.
16 The Committee contemplates that an initial distribution based on allowed claim amounts
17 and cash on hand can be made under the confirmed plan of liquidation prior to the end of
18 calendar 2005. Other distributions may take place as Mathon assets are liquidated based
19 on the requirements of the liquidation plan, the business judgment of A&M, and after
20 consultation with the Committee.

21 **III. Contemplated Schedule For the Mathon Bankruptcy.**

22 10. The Committee contemplates meeting with as many investors as possible on
23 or before September 29, 2005 to formally obtain the votes necessary to implement a plan
24 of liquidation in bankruptcy. The Committee anticipates that it will be a prepackaged plan
25 to be administered according to the following approximate schedule:
26

1 September 30, 2005 – Plan finalized and necessary votes obtained
2 October 5, 2005 – Bankruptcy case filed (subject to approval of this Motion)
3 October 30, 2005 – Hearing on Disclosure Statement
4 October 30, 2005 – Claims Bar Date
5 November 29, 2005 – Plan Confirmation Hearing.
6 December 15, 2005 – Effective date of Confirmed Plan of Liquidation -- Mathon
7 emerges from bankruptcy under guidance of liquidating trustee A&M.

8 **IV. A&M is Qualified to Act as Mathon Fiduciary and Liquidating Trustee.**

9 11. A&M is an international firm known for finding and implementing solutions
10 to reorganize insolvent, mismanaged, and/or ailing enterprises. A&M has wide
11 experience in real estate and other matters which specifically suit Mathon's case. For
12 instance, A&M served as fiduciary in the Baptist Foundation of Arizona Inc. ("BFA")
13 case, which unfolded in this state over the past few years and has resulted in a confirmed
14 plan and liquidation trust currently in its final stages. After considering a number of
15 proposals, the Committee has agreed to support A&M, through its local office and
16 principals Mark Roberts and Richard Williamson, to serve as the Mathon fiduciary.

17 12. The Committee has negotiated an agreement, which the Mathon principals
18 have agreed to in principle, which would cede the now dormant control of Mathon to
19 A&M. Upon this Court's granting of this Motion and relieving the Conservator of any
20 further duties, A&M would be substituted into the role of management pending the filing
21 of the bankruptcy. Once the bankruptcy is filed, A&M would be designated Mathon
22 fiduciary and would remain so until it becomes the trustee of the liquidation trust upon
23 confirmation of the plan of liquidation.

24 **V. Conclusion**

25 The Committee believes that this case can be more efficiently and expeditiously
26 resolved in a consolidated bankruptcy case. It has studied several proposals and has

1 agreed to prepare and support a prepackaged coalition plan of liquidation. The Committee
2 believes it can obtain the necessary votes to ensure a speedy confirmation of such a
3 liquidating plan in a bankruptcy case. The Committee has studied several proposals and
4 has concluded that it desires to have Alvarez & Marsal, through its local Phoenix office,
5 guide Mathon through the bankruptcy process. The Mathon principals have agreed to
6 cede control of Mathon to A&M in anticipation of the granting of this Motion, so that
7 A&M will step into the shoes of the current Conservator and become the fiduciary upon
8 the granting of this Motion preparatory to going into bankruptcy. Once in bankruptcy, the
9 path to a confirmed liquidation plan can be ensured and expeditious. This will result in a
10 liquidating trust that will be self-executing and in place by the end of calendar year 2005.

11 For these and other reasons, the Committee moves for the entry of an order:

- 12 (1) authorizing the filing of a consolidated bankruptcy case;
13 (2) relieving the Conservator of any further duties;
14 (3) placing Alvarez & Marsal in control of the Mathon companies prior to and
15 after the filing of the anticipated Chapter 11 case; and
16 (4) for such other relief as is just under the premises.

17 DATED this 9th day of September, 2005.

18 QUARLES & BRADY STREICH LANG LLP
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20 Two North Central Avenue
Phoenix, AZ 85004-2391

21 By 

22 _____
Gerald L. Shelley

23 Attorneys for The Official Committee of
24 Mathon Investors

25
26

1 **ORIGINAL** filed and **COPY**
2 of the foregoing hand-delivered the
12th day of September, 2005 to:

3 The Honorable Barry C. Schneider
4 MARICOPA COUNTY SUPERIOR COURT
101 West Jefferson, CCB 13A
5 Phoenix, Arizona 85003-2243

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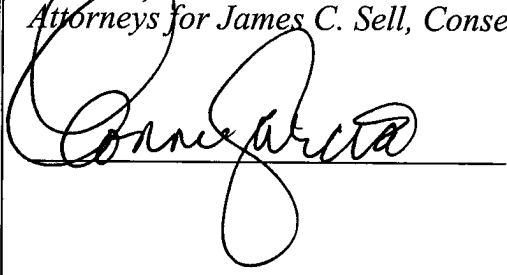
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