UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb@uscourts.gov

IN RE:	Case No.: 12-30081-BKC-EPK
CLSF III IV, Inc., *et al*.,	Chapter 7
Debtor.	(Substantively Consolidated)

_____/

TRUSTEE'S MOTION FOR SUBSTANTIVE CONSOLIDATION OF ADDITIONAL NON-DEBTOR TRUST ENTITIES WITH DEBTORS AND MEMORANDUM OF LAW IN SUPPORT

Deborah C. Menotte, the duly appointed and permanent Chapter 7 trustee ("Trustee") for the substantively consolidated bankruptcy estates of CLSF III IV, Inc., *et al.,* ("Debtors"), by and through her undersigned counsel, moves the Court ("Motion") for substantive consolidation of additional non-debtor trust entities, as listed in **Exhibit "A**" hereto ("SubCon Trusts"), with the previously substantively consolidated Debtors. In support of this Motion, the Trustee states:

Preliminary Statement

1. The purpose of this Motion is to complete the process of substantively consolidating all of the entities that collectively operated as one enterprise into the estates of the Debtors. The names and identities of the SubCon Trusts have been garnered over the past several months through information acquired by the Trustee and her professionals during their extensive investigation of the Debtors, including Deborah Catherine Peck ("Peck"), as well as through documentation obtained through discovery in various adversary proceedings in this case. Substantively consolidating the SubCon Trusts with the previously substantively consolidated Debtors is essential to the proper administration of the Debtors' bankruptcy cases.

2. From the very beginning of this case, it has been clear that all of the previously substantively consolidated Debtors, as well as the additional related SubCon Trusts, functioned through Peck, who failed to maintain entity distinctions, segregate monies by entity, or record transfers between and among entities. Beginning with Peck's initial testimony before this Court on August 24, 2012, together with the facts garnered by the Trustee and her financial advisors in their comprehensive review of financial records, along with the extensive investigation conducted by the Trustee and her counsel, it became clear that the only way to efficiently administer the Debtor estates was through substantive consolidation. Thus, the substantive consolidation of the SubCon Trusts with the previously substantively consolidated Debtors is the only means to complete this process in a way most beneficial and cost-effective to all of the Debtors' creditors.

3. As were the previously substantively consolidated Debtors, the SubCon Trusts were initially established and operated by Peck, who then utilized those entities in furtherance of the operations of other substantively consolidated Debtors and other third parties involved in the Debtors' activities. Among other actions, Peck: comingled SubCon Trust monies in the Debtors' Accounts (defined below); failed to maintain separate accounting by SubCon Trust or Debtor; utilized monies from one SubCon Trust or substantively consolidated Debtor to (without authorization) pay the premiums of life insurance policies ("Policies", each a Policy") owned by another SubCon Trust or substantively consolidated Debtor; withdrew millions of dollars from the Accounts without Participant (as defined below) knowledge or authorization; made payments to Participants without explanation; paid premiums on select Policies while allowing other Policies to lapse (with, in some instances, investors continuing to pay premiums after their Policies lapsed); and, at her whim, transferred assets from trust entities she controlled to

corporate entities she created and controlled.

I. Procedural Background

4. On August 22, 2012 ("Petition Date"), the above-captioned bankruptcy case was commenced by the filing of an involuntary petition for relief in this Court under Chapter 7 of the Bankruptcy Code.

5. Thereafter, thirty-two affiliates ("Affiliated Debtors", and, with the Debtor, "Debtors") of the Debtor filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code between October 24, 2012 and November 7, 2012.

6. On July 23, 2013, the Trustee filed *Trustee's Amended Motion for Substantive Consolidation of the Jointly Administered Bankruptcy Estates and Memorandum of Law in Support* [ECF No. 415] and, on September 17, 2013, the Trustee filed *Trustee's Second Amended Motion for Substantive Consolidation of the Jointly Administered Bankruptcy Estates and Memorandum of Law in Support* [ECF No. 520] ("SubCon Motion"), seeking the entry of an order substantively consolidating the bankruptcy estate of Debtor CLSF III IV, Inc. with that of those entities scheduled on **Exhibit "B"** hereof ("Non-debtor Entities").

7. On October 2, 2013, the Court entered its *Order Granting Trustee's Second Amended Motion for Substantive Consolidation of the Jointly Administered Bankruptcy Estates* [ECF No. 561] ("SubCon Order"). As set forth in the SubCon Order, except with respect to the Rabadi Life Insurance Trust, the bankruptcy estate of the Debtor was substantively consolidated with that of the Affiliated Debtors and each of the Non-debtor Entities *nunc pro tunc* to the petition date specified in the SubCon Order (September 25, 2012 for the Non-debtor Entities). The Rabadi Life Insurance Trust was found to be an alter ego, but substantive consolidation was deferred to the resolution of the so-called Parcside Adversary Proceeding.

8. On November 22, 2013, the Trustee filed a motion [ECF No. 623] seeking to clarify the SubCon Order so as to specify the "date of the filing of the petition" for the Non-debtor entities. On December 19, 2013, this Court entered an order [ECF No. 649] providing that, (i) with respect to the Non-debtor Entities, the petition date was September 25, 2012 for all purposes, and (ii) with respect to the Debtors, the effective petition date was the actual date of the filing of the respective voluntary or involuntary petition for each Debtor.

9. On June 27, 2014, the Trustee sought to substantively consolidate Deborah C. Peck, Esq., P.A. ("Peck PA"), a New Jersey professional association formed by Peck in January 2006, as well as Peck's individual chapter 7 bankruptcy estate, with the substantively consolidated Debtors, to ensure that all bank accounts into which QI investment funds were deposited were included in the assets of the substantively consolidated Debtors ("Peck SubCon Motion") [ECF No. 836].

10. Attached as Exhibit "A" to the Peck SubCon Motion was a list of the bank accounts ("Accounts") opened by Peck as attorney trust, escrow, and/or IOLTA accounts under her own name as an attorney and/or under Peck PA, utilizing various identification numbers, including her own social security number, as well as the tax identification number for Peck PA.

11. In its *Order Granting the Trustee's Amended Motion for Substantive Consolidation of the Bankruptcy Estate of Deborah Catherine Peck, Debtor [Case No. 14-1507-BKC-EPK] and Non-Debtor Deborah C. Peck, Esq., P.A., with the Substantively Consolidated Debtors and Memorandum of Law in Support* (the "Peck SubCon Order") [ECF No. 857] this Court found that the Accounts were property of Peck PA, and provided that Peck P.A. was substantively consolidated with the Debtors *nunc pro tunc* to September 25, 2012.

Factual Background

12. The SubCon Trusts began and were operated in much the same manner as the already substantively consolidated Debtors as part of a complex life settlement scheme the ("QI Scheme"). Dennis Edward Moens ("Moens"), the primary orchestrator of the QI Scheme, utilized Frank Laan ("Laan") and Laan's companies, including Quality Investments, B.V., ("Quality Investments"), as the public face of the scheme in Europe for sales and marketing purposes, and Peck as the Florida trustee purportedly ensuring the security of the underlying Policies. Each played a part in creating the illusion that the QI Scheme was a legitimate investment opportunity.

13. One component of the QI Scheme was the promotion of investments in Dutch life settlement funds ("Funds", each a "Fund") to investors in Europe. Each Fund had participation interests ("Participations") of varying amounts which could be purchased by investors ("Participants"). Each Fund was then to be the beneficiary of a Florida trust ("Trust" or "Trusts") that purchased a Policy on an elderly American, which the Trust would own. Peck was the trustee for each of the Trusts. The Trusts are comprised of the SubCon Trusts and those Trusts included in the Non-Debtor Entities already substantively consolidated with the Debtors.

14. In furtherance of the QI Scheme, Watershed was designated as the settlor or grantor of each Trust, even though Watershed sold the Policies to the Trusts, using monies from the Accounts for both Watershed's and the Trust's purchase of the Policies.

15. Each Trust received money from Participants who had been directed to wire money to the Accounts to: (i) purchase their respective Participations in a QI Fund, (ii) pay for

premiums on a Policy held by a Trust, and/or (iii) pay for the represented reinsurance on the Policy.[1]

16. Peck opened, operated and administered the Accounts for the benefit of the Trusts and substantively consolidated Debtors, and maintained the Policies owned by the Trusts and/or substantively consolidated Debtors.

17. In 2010, Peck, allegedly for tax purposes, formed corporations ("Corporations")(part of the substantively consolidated Debtors), to own the Policies. The Policies were transferred from many of the Trusts to the Corporations. Each Corporation was then owned by the related Trust, which became the sole shareholder, and the Corporation signed a note in favor of the Trust in the amount of the face value of the Policy. Thus, each Trust held one single Policy for the benefit of one single Fund and, later, one Corporation owned one Policy with one Trust as the single shareholder and one Fund as the beneficiary.[2] Peck controlled both the Trusts and the Corporations.

18. None of the Corporations or Trusts ever had their own separate bank account.

19. In 2012, Peck, purportedly concerned about the repercussions of a Dutch criminal investigation of Watershed and the arrest of Moens and Laan, removed approximately $20 million from the Accounts and wired the funds to Dubai. There was no reconciliation regarding which Policies and which Trusts and/or Corporations were affected by that transfer. Peck simply took a $20 million lump sum from the comingled money and sent it abroad.

20. After the arrest of Moens, Laan and their attorney, and the related freezing of the

[1] The represented reinsurance was itself a fraud. As admitted by the so-called reinsurer and found by the District Court for the Eastern District of Virginia, from as early as 2004, (i) the issuer of the reinsurance had no financial ability to ratify the bonds it issued, and (ii) the entire scheme was fraudulent. *See* ECF No. 62 in *United States of America v. Minor Vargas Calvo*, Case No. 11-cr-00014-JAG (Jan. 6,2012); and ECF No. 97 in *United States of America v. Provident Capital Indemnity, Ltd.*, Case No. 11-cr-00014-JAG (Apr. 18, 2012).

[2] There are certain exceptions in which either more than one Policy was owned by one Trust, or where one Policy was owned by more than one Trust. However, that distinction is immaterial to the Motion.

Watershed accounts, Peck faced what she termed a "crisis" - she was no longer receiving money from Watershed to pay the Policy premiums, and she had transferred the $20 million from the Accounts. Peck retained Admin QI ("QI") to administer the Policies. She then began writing to the individual investors in the Funds asking them for more money to pay the premiums on the Policies. As she received the funds, she pooled them together, then used the monies as she deemed appropriate to pay premiums on Policies on a case by case emergency basis. If a Policy was being lapsed, that's the Policy that would be paid (even though she allowed several Policies to lapse). There was no effort made to use the new monies received from investors to "protect" a Policy based on its association with a particular Fund or that investor.

Memorandum of Law

21. Substantive consolidation is appropriate when "the economic prejudice of continued debtor separateness" outweighs "the minimal prejudice that substantive consolidation might cause." *Eastgroup Properties v. Southern Motel Assoc., Ltd.*, 935 F.2d 245, 249 (11th Cir. 1991); *In re Murray Industries*, 119 B.R. 820, 829 (Bankr. M.D. Fla. 1990). Where, as here, there is a comingling of funds among entities, a disregard of corporate formalities, operations as if a single entity, significant financial and operational decisions being made by the same individual for all entities and arbitrary allocation of monies among the entities and to third parties, a case is clearly ripe for substantive consolidation. *See Murray Industries*, 119 B.R. at 829-830.

22. As explained both in the original SubCon Motion and the Peck SubCon Motion, Peck never established separate bank accounts for the Trusts or the Corporations, and comingled monies that were supposed to be maintained in segregated accounts. She transferred monies to pay premiums without regard to whether the source of the money used to pay the premiums on a

particular Policy originated from Participants in the Fund that was the beneficiary of the Trust holding that Policy.

23. As established by the Eleventh Circuit Court of Appeals in *Eastgroup Properties*, bankruptcy courts, by virtue of their general equitable powers, have the power to order substantive consolidation of multiple debtors. *Eastgroup Properties*, 935 F.2d at 248. "Consolidation involves the pooling of the assets and liabilities of two or more related entities; the liabilities of the entities involved are then satisfied from the common pool of assets created by consolidation." *Id.* "Substantively consolidating debtors' claims simplifies the administration of interrelated bankruptcies by eliminating inter-company claims between related debtors and amalgamating duplicative claims 'filed against related debtors by creditors uncertain as to where the liability should be allocated.'" *In re Pearlman*, 462 B.R. 849, 853 (Bankr. M.D. Fla. 2012).

24. The test for substantive consolidation requires a showing that "(1) there is substantial identity between the entities to be consolidated; and (2) consolidation is necessary to avoid some harm or to realize some benefit." *Eastgroup Properties*, 935 F.2d at 249. "Once the proponent has made this prima facie case for consolidation, the burden shifts to an objecting creditor to show that (1) it has relied on the separate credit of one of the entities to be consolidated; and (2) it will be prejudiced by substantive consolidation." *Id.*

25. The Eleventh Circuit suggested a number of factors that a proponent for consolidation could utilize to frame its argument, including the following factors outlined in *In re Vecco Construction Industries, Inc.*:

a. The presence or absence of consolidated financial statements,

b. The unity of interests and ownership between various corporate entities,

c. The existence of parent and intercorporate guarantees on loans,

d. The degree of difficulty in segregating and ascertaining individual assets and liabilities,

e. The existence of transfers of assets without formal observance of corporate formalities,

f. The commingling of assets and business functions, and

g. The profitability of consolidation at a single physical location.

4 B.R. 407, 410 (Bankr. E.D. Va. 1980).

26. In discussing the *Vecco Construction* factors and others that might be presented in support of substantive consolidation, the Eleventh Circuit stressed that they were only examples and that "[n]o single factor is likely to be determinative in the court's inquiry." *Eastgroup Properties*, 935 F.2d at 250.

27. Utilizing these factors, the Eleventh Circuit in *Eastgroup Properties* determined that the Chapter 7 trustee had presented sufficient evidence to establish a prima facie case for consolidation of the two debtor entities in that case, GPH and SMA. In evaluating whether consolidation was necessary to avoid some harm or to realize some benefit, the court noted certain factors that are also present here: that GPH had probably paid some of the unsecured obligations of SMA without being contractually obligated to do so, that consolidation would help see to it that GPH's creditors would not be harmed by that action, and that GPH's creditors would benefit "because a larger portion of each of their claims will be paid than if consolidation did not occur - both because their claims would be paid from the larger pool of assets resulting from consolidation and because substantive consolidation eliminates claims that either debtor has against the other." *Id.* at 251.

28. Here, there is substantial identity between the previously substantively

consolidated Debtors, and the SubCon Trusts, and consolidation is necessary both to avoid harm to individual entities and to realize a benefit to all. This conclusion is supported by many of the *Vecco Construction* factors:

a. The financial records of the substantively consolidated Debtors and the SubCon Trusts are in shambles (and, in fact, may never have been kept) and it is virtually impossible to unravel the finances at an individual level.

b. The unity of ownership and interest between and among the substantively consolidated Debtors and the SubCon Trusts is clear – Peck operated and administered all of the previously substantively consolidated Debtors and the SubCon Trusts, as well as their intermingled Accounts herself, out of one office, using the same staff.

c. The Trustee and her professionals have spent substantial time and effort trying to segregate and ascertain the individual assets and liabilities of each of the previously substantively consolidated Debtors, as well as the SubCon Trusts. While Peck's individual bank accounts are identifiable, the Accounts clearly contain intermingled funds of the SubCon Trusts and other substantively consolidated Debtors, while seemingly under the auspices (in name only) of Peck PA.

d. There were innumerable transfers of assets from various substantively consolidated entities for the benefit of other such entities without any observance of corporate or trust formalities. All of the aforementioned transfers originated from the Accounts.

e. There was a continuous commingling of assets without a separate accounting for

each of the substantively consolidated Debtors and the SubCon Trusts, rendering it impossible to identify which deposits belonged to which entity, which moneys were used to pay for which obligations, and how those moneys should be allocated to satisfy the claims of the individual Debtors and entities. Hence, substantive consolidation was imperative when the initial SubCon Motion and the Peck SubCon Motion were filed, just as it is now.

29. Moreover, each SubCon Trust is the alter ego of a substantively consolidated Debtor. Each SubCon Trust is the sole owner and shareholder of each affiliated substantively consolidated Debtor, each SubCon Trust was operated solely by Peck, and Peck simply converted the ownership as she wished without observance of any corporate or trust formality. The SubCon Trusts' assets were co-mingled with the assets of the other substantively consolidated Debtors, and were all intended to be used for the same purpose: advancing the QI Scheme.

Chapter 7 Trustees May Seek and Obtain Substantive Consolidation

30. As did the Eleventh Circuit in *Eastgroup Properties*, as well as this Court in entering the SubCon Order and the Peck SubCon Order, bankruptcy courts in Florida, Georgia and elsewhere have recognized the ability of a chapter 7 trustee to seek and obtain substantive consolidation. *See In re MMH Automotive Group, LLC*, 400 B.R. 885 (Bankr. S.D. Fla. 2008)(ordering substantive consolidation of separate chapter 7 estates); *In re Maxxis Group, Inc.,* 2009 WL 6527594 (Bankr. N.D.Ga. 2009)(authorizing substantive consolidation of chapter 7 debtor estates); *In re Creditors Service Corp.*, 195 B.R. 680 (Bankr. S.D. Ohio 1996) (approving substantive consolidation of chapter 7 debtor with non-debtor entities). Each of these cases had elements present here.

31. In *MMH Automotive*, the chapter 7 trustee sought, and the court approved, the substantive consolidation of three chapter 7 bankruptcy cases where, as here, there had been transfers of valuable assets from one entity to other debtor entities (both owned and controlled by the same person) for little or no consideration.

The Court Has the Authority to Substantively Consolidate Non-debtors with a Debtor's Estate

32. While the Trustee recognizes that there is a split of authority as to whether a bankruptcy court has the authority to substantively consolidate non-debtors' assets and liabilities into a bankruptcy debtor's estate, it has twice been approved by this Court, as well as by other bankruptcy courts in the Southern District of Florida and elsewhere, including the court in *In re S & G Financial Services of South Florida, Inc.*, 451 B.R. 573 (Bankr. S.D. Fla. 2011), whose analysis is particularly helpful.

33. In *S & G Financial*, the Chapter 7 trustee filed an adversary proceeding seeking to substantively consolidate the debtor with two non-debtor entities. The considerations in support of the trustee's arguments are similar to the factors present here, including the transfer of assets between the debtor and the non-debtors without observing corporate formalities, the comingling of assets and business functions between the debtor and the non-debtors, and the debtor and non-debtors having a sole common principal, owner and manager. As a result, the *S & G Financial* trustee argued that equity dictated their consolidation.

34. In rendering its decision, the *S & G Financial* court addressed the split among courts regarding substantive consolidation of debtor and non-debtor entities. It noted that, while the Ninth Circuit in *Bonham v. Compton (In re Bonham),* 229 F.3d 750 (9th Cir. 2000) was the only federal circuit to hold that a court could order substantive consolidation of such entities, there was full support for that holding to be found in the Supreme Court's decision in *Sampsell v.*

Imperial Paper and Color, Corp., 313 U.S. 215 (1941), "[t]he seminal case on substantive consolidation." *Id.* at 580. In *Sampsell*, the Supreme Court held that a bankruptcy referee properly ruled that the property of a non-debtor corporation was property of the bankruptcy estate of its debtor principal shareholder, noting that "mere legal paraphernalia will not suffice to transform into a substantial adverse claimant a corporation whose affairs are so closely assimilated to the affairs of the dominant stockholder that in substance it is little more than his corporate pocket." *Id.* (*quoting Sampsell*, 313 U.S. at 218).

35. The *S & G Financial* court, referencing cases cited by the non-debtor defendants who argued against substantive consolidation in the underlying adversary proceeding, explained that the courts in those cited cases viewed "the application of the substantive consolidation remedy over non-debtors as an impermissible use of the court's equitable power to take jurisdiction over a non-debtor without express statutory authority to do so." The *S & G Financial* court disagreed:

> Conflating jurisdiction with power obscures the issue. The Eleventh Circuit, as well as many other circuit courts, has recognized that a bankruptcy court's jurisdiction over non-debtors can be quite broad. In *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir. 1990), the court held that the bankruptcy court has jurisdiction over any proceeding relating to bankruptcy if "the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy." Moreover, "the proceeding need not necessarily be against the debtor or the debtor's property." *Id.* at 788.

Id. at 582-583.

36. The bankruptcy court correctly concluded:

> [C]onsistent with the directive of *Sampsell*, it is well within this Court's equitable powers to allow substantive consolidation of entities under appropriate circumstances, whether or not all of those entities are debtors in bankruptcy. Moreover, this Court holds that this Court has jurisdiction over non-debtor entities to determine the propriety of an action for substantive consolidation insofar as the outcome of such proceeding could have an impact on the bankruptcy case.

Id. at 582 (emphasis added).

37. In its opinion, the *S & G Financial* court emphasized the numerous other courts, including bankruptcy courts in Florida and Georgia, that had expressly recognized a bankruptcy court's ability to substantively consolidate a debtor with a non-debtor entity, including *In re Alico Mining, Inc*., 278 B.R. 586 (Bankr. M.D. Fla. 2002); *Munford, Inc. v. TOC Retail, Inc.,* (In re Munford, Inc.), 115 B.R. 390 (Bankr. N.D. Ga. 1990), *Simon v. New Center Hospital (In re New Center Hospital)*, 187 B.R. 560 (E.D. Mich. 1995), *White v. Creditors Service Corp. (In re Creditors Service Corp.)*, 195 B.R. 680 (Bankr. S.D. Ohio 1996), *and Bracaglia v. Manzo (In re United Stairs Corp.)*, 176 B.R. 359 (Bankr. D.N.J. 1995).

38. In *Munford*, the debtor sought to substantively consolidate the estate's assets with those of two other non-debtor corporations. The bankruptcy court looked to *Sampsell* for a foundation, through the Supreme Court's affirmance of the bankruptcy referee's decision to bring the property of a non-debtor 'alter ego' corporation into the debtor's bankruptcy estate. In denying the non-debtor entities' motion to dismiss the debtor's complaint for substantive consolidation, the *Munford* court recognized that,

> substantive consolidation may be based on a finding that it would be more equitable to all of the parties to allow consolidation under the circumstances of the case by showing that the affairs of the entities are inextricably intertwined or that creditors dealt with them as a single economic unit, and does not require a finding of fraud or intent to hinder, or delay creditors.

Id. at 394 (internal citations omitted). The *Munford* court further reasoned that substantive consolidation

> must be predicated upon the estate's right to property in the hands of someone else. That right is created by Bankruptcy Code § 541, however, which provides that property of the estate includes all legal and equitable interests of the estate and § 542, which requires that all estate property must be turned over to the trustee. Substantive consolidation is essentially a complex turnover proceeding because the debtor is asking the nondebtor affiliated entity to bring into the estate

> assets in which the debtor asserts an unseparable interest. As long as the debtor can satisfy the pleading requirements of substantive consolidation . . . then the debtor has correctly invoked its legal rights under these Code sections.

Id. at 398.

39. In *Alico Mining*, the bankruptcy court, agreeing with *Munford*, recognized substantive consolidation as an alternative means to bring a non-debtor's assets into a debtor's estate. 278 B.R. at 588-589. In support, it was argued by the creditor who filed the motion that both the debtor and non-debtor were controlled and dominated by the same individual and that individual determined what to do with the funds generated under an agreement for purchase of mining rights between the debtor and non-debtor. The bankruptcy court determined that it had the power to grant the requested relief under its general equitable powers.

40. A more recent decision by a California bankruptcy court similarly approved the substantive consolidation of non-debtor entities with the debtors' chapter 11 estates. In *In re SK Foods, LLP*, 499 B.R. 809 (Bankr. E.D. Cal. 2013), the same individual owned or controlled the various debtor and non-debtor entities, funds were regularly transferred between, among and diverted from those entities, the debtor and non-debtor entities did not deal with each other at arm's length, had inextricably intertwined finances and their business affairs were "hopelessly entangled".

41. Here, as with *S & G Financial* and the other cases cited above, equity demands substantive consolidation of the SubCon Trusts with the substantively consolidated Debtors. These entities are inextricably entwined in every aspect with the substantively consolidated Debtors and there is no other rationale or equitable means to untangle the financial quagmire that faces the Trustee and this Court without bringing the SubCon Trusts into the mix.

This Court Can Order Substantive Consolidation Subject to Specific Limitations and/or Preserving Particular Rights

42. The Trustee submits that substantive consolidation in this case would be ineffective unless, as in the SubCon Order, the Court's order approving substantive consolidation also maintained the Trustee's avoidance powers as well as causes of action against third parties on behalf of the additional Subcon Trusts. Maintaining the Trustee's ability to pursue these litigation claims on behalf of particular Debtor entities would provide substantial benefit to all substantively consolidated Debtors.

43. This Court has the authority to order substantive consolidation of the SubCon Trusts with the substantively consolidated Debtors subject to certain limitations, conditions and/or the preservation of particular rights. For example, in *In re Giller*, 962 F.2d 796 (8th Cir. 1992), the Eighth Circuit affirmed the bankruptcy court's ruling ordering the substantive consolidation of an individual debtor with six corporations in which he was the sole or majority shareholder, but specifically preserving the trustee's avoidance powers as to any transfers made by any of the debtors to third parties for the benefit of other debtors. In that case, the individual had abused corporate form and caused the corporations to make transfers that could be subject to fraudulent transfer litigation. Only one of the corporate entities had any assets, and those assets were needed to fund the litigation. As explained by the Eighth Circuit:

> We recognize that substantive consolidation normally would eliminate the justification for the exercise of the trustee's avoidance power. Nonetheless, the bankruptcy court retains the power to order less than complete consolidation. Here, eliminating the trustee's avoidance power after consolidation would also eliminate the very reason for ordering consolidation in the first place, that is, to obtain the funds required to recover transferred assets.

Geller at 799.

44. Similarly, the Ninth Circuit in *Bonham*, a Ponzi scheme case, affirmed the bankruptcy court's substantive consolidation of the debtor's estate with two non-debtor corporations, while specifically preserving the trustee's avoidance powers. "Absent express preservation of the trustee's avoidance power, an order of substantive consolidation would ordinarily eliminate that power." *Bonham*, 229 F.3d at 768. The Ninth Circuit recognized that "the bankruptcy court has the power, in appropriate circumstances, to order less than complete substantive consolidation, or to place conditions on the substantive consolidation, including the preservation of avoidance claims by the formerly separate estates." *Id*. at 769 (internal quotations and citations omitted). *See also In re Creditors Service Corp*. 195 B.R. 680 (Bankr. S.D. Ohio 1996) (approving chapter 7 trustee's request for substantive consolidation of chapter 7 debtor with an individual and non-debtor entities subject to numerous special limitations and requirements); and *In re Deltacorp, Inc.,* 179 B.R. 773, 777 (Bankr. S.D.N.Y. 1995)(noting that the court was "afforded a good deal of discretion in constructing its order of substantive consolidation" and retained "the power to order a less than complete consolidation, preserving avoidance claims by the formerly separate entities".)

45. In the case at bar, preserving the Trustee's right to bring claims and/or causes of action held by individual Debtors or Non-debtor Entities, or their subgroups , might well lead to recoveries that would benefit all entities and help equalize the glaring inequities created by Deborah Peck's indiscriminate usage of monies comingled in the Accounts.

46. Moreover, no creditors can prove prejudice should this Court grant the relief sought herein: while creditors may attest that they relied on the individual credit of the Subcon Trusts, what they actually relied on were the representations of Peck and others, which did not legitimately reflect the credit (if any) of individual entities. Through the investigation conducted

by the Trustee and her financial consultants, it was determined that all funds (other than Peck's individual monies) were combined in the Accounts, with monies being paid out without regard to the source of those funds. Hence, while creditors may have assumed a certain value was attributed to certain individual affiliated entities, that perceived value was illusory.

47. Further, no creditors can validly attest that they will be prejudiced by substantive consolidation. The only viable means to fairly, efficiently and, in a cost effective manner, address the creditors of the substantively consolidated Debtors' bankruptcy estates is to substantively consolidate the SubCon Trusts with those previously substantively consolidated Debtors, Affiliates and Non-Debtor Entities. The only prejudice to creditors here would be to deny that relief.

Nunc Pro Tunc Relief

48. The Trustee respectfully requests that, as in the SubCon Order and the Peck SubCon Order, the Court enter an order substantively consolidating the SubCon Trusts with the substantively consolidated Debtors *nunc pro tunc* to September 25, 2012. Permitting substantive consolidation on a *nunc pro tunc* basis has been approved by numerous Courts, including this one. *See* [ECF Nos. 561, 643, 673] (Granting motions for substantive consolidation *nunc pro tunc*.); *see also In re Baker & Getty Fin. Servs.*, 974 F. 2d 712 (6th Cir. 1992); *In re Auto-Train Corp.*, 810 F.2d 270 (D.C. Cir. 1987); *In re Bonham*, 229 F.3d 750 (9th Cir. 2000); *In re S&G Fin. Servs.*, 451 B.R. 573 (Bankr. S.D. Fla. 2011).

49. In determining whether to order consolidation *nunc pro tunc*, some courts use a balancing test where they analyze whether the harm to creditors outweighs the benefit to the Debtors. *See Auto-Train Corp.*, 810 F. 2d. at 276. To successfully oppose a Debtor's request for substantive consolidation *nunc pro tunc*, the objecting creditor must establish "that it relied on

the separate credit of one of the entities to be consolidated and that it will be harmed by the shift in filing dates." *Id.* at 277. However, other courts have found that applying such a balancing test, only adds "needless confusion" as the application of such a test results in relitigation of the propriety of substantive consolidation in "the guise of litigation over the filing date." *Baker*, 974 F.2d at 721; *In re Creditors Serv. Corp.*, 195 B.R. 680, 690 (Bankr. S.D. Ohio 1996) ("Once this Court determines substantive consolidation is warranted, it must be effective as of the filing date of the Debtor.") (internal citations omitted).

50. Here, where there can be no colorable argument by creditors of reliance on the separate credit of any of the SubCon Trusts, the benefit of substantive consolidation *nunc pro tunc* will outweigh any purported harm to the creditor body of the substantively consolidated Debtors. Among other things, failing to substantively consolidate the SubCon Trusts *nunc pro tunc* could jeopardize the Trustee's continuing efforts to pursue and recover fraudulent transfers, as well as create potentially unsurmountable hurdles in the resolution of the claims filed by Participants, who comprise the vast majority of creditors.

51. Substantively consolidating the SubCon Trusts with the previously substantively consolidated Debtors will ensure that the Trustee is able to recover wrongfully dissipated assets for the benefit of the victim-creditors of the QI Scheme and other creditors. *See In re Baker & Getty Fin. Servs., Inc.*, 974 F.2d 712, 720 (6th Cir. 1992) (permitting *nunc pro tunc* substantive consolidation to allow a Trustee to pursue otherwise time barred preference actions); *In re Owner Mgmt. Serv., LLC Tr. Corps.*, 1:12-BK-10231-MT, 2015 WL 2090924, at *23 (Bankr. C.D. Cal. 2015) ("The Trustee could arguably recover transfers going back seven years from the petition date.").

52. Moreover, there is no harm in ordering substantive consolidation *nunc pro tunc*, because the assets of the SubCon Trusts have effectively been frozen as of September 25, 2012, when Peck was enjoined from dissipating or transferring any of the assets of the Debtors, which were co-mingled with the SubCon Trusts.

53. Trustee's counsel spoke with Peck's attorney with regard to the relief sought in the Motion. Peck's counsel was out of the office at the time and needed more time to review the Motion before providing Peck's position on the relief requested.

54. Trustee's counsel spoke with counsel for Maatschap QI Collectief a/k/a MQIC. MQIC represents the largest body of creditors in the above captioned case, and counsel advised that MQIC consents to the relief sought in the Motion.

Conclusion

55. Based on the foregoing, the Trustee respectfully submits that this Court, under its equitable powers, has the authority to substantively consolidate the SubCon Trusts with the previously substantively consolidated Debtor, Affiliated Debtors and Non-debtor Entities. For the reasons stated herein, the Trustee respectfully requests that this Court enter an order:

(i) granting this Motion;

(ii) substantively consolidating the SubCon Trusts with the previously substantively consolidated Debtor, Affiliated Debtors, and Non-debtor Entities, *nunc pro tunc* to September 25, 2012; and

(iii) granting such other and further relief as the Court deems just and proper.

Dated: June 2, 2015

Respectfully submitted,

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Exhibit A

Trust Name
BGI FUND 3 UA DTD 9/29/2008
BGI FUND 4 UA DTD 11/25/2008
BGI TR 4 UA DTD 11/25/2008
BGI FUND 5 UA DTD 1/23/2009
BGI FUND II UA DTD 5/1/2008
BGIF 10 UA DTD 7/15/2009
BGIF 14 UA DTD 11/5/2009
BGIF 16 UA DTD 12/9/2009
BGIF 17 UA DTD 12/11/2009
BGIF 20 UA DTD 3/19/2010
BGIF 21 UA DTD 4/27/2010
BGI 22 UA DTD 5/5/2010
BGIF 23 UA DTD 6/30/2010

Trust Name
BGIF 24 UA DTD 10/06/2010
BGIF 6 UA DTD 1/28/2009
BGIF 7 UA DTD 3/2/2009
BGIF 8 UA DTD 9/1/2010
BGIF TRUST 12 UA DTD 10/15/2009
BGIF TRUST 15 UA DTD 11/18/2009
BGIF TRUST 25 UA DTD 10/20/2010
BGIF 12
The Behl Trust UA DTD 4/10/2009
THE CLSF TRUST I STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 3/13/2008
THE CLSF TRUST III/IV STICHTING CLOSED LIFE SETTLEMENT FUND III/IV UA DTD 7/9/2007

Trust Name
THE CLSF TRUST IX STICHTING CLOSED LIDE SETTLEMENT FUND UA DTD 05/01/2008 a/k/a THE CLSF TRUST IX STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 05/01/2008[1]
THE CLSF TRUST VII STICHING CLOSED LIFR SETTLEMENT FUND UA DTD 3/282008 a/k/a THE CLSF TRUST VII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 3/28/2008[2]
THE CLSF TRUST VIII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 9/19/2007
THE CLSF TRUST XII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 1/22/2008
THE CLSF TRUST XIV STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 9/19/2007
THE CLSF TRUST XL STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 2/1/2010
THE CLSF TRUST XLI STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 3/17/2010
THE CLSF TRUST XLII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 03/19/2010
THE CLSF TRUST XLIII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 5/7/2010
THE CLSF TRUST XV STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 2/15/2008

[1] There appears to be scriveners errors in the name of the trust instrument for this particular trust. For purposes of convenience, the Trustee has also listed what she believes to be the correct name of this trust without such errors.
[2] There appears to be scriveners errors in the name of the trust instrument for this particular trust. For purposes of convenience, the Trustee has also listed what she believes to be the correct name of this trust without such errors.

Trust Name
THE CLSF TRUST XVI STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 02/20/2008
THE CLSF TRUST XVII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 04/10/2008
THE CLSF TRUST XVIII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 04/22/2008
THE CLSF TRUST XX STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 4/15/2008
THE CLSF TRUST XXI STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 04/22/2008
THE CLSF TRUST XXII STICHTING CLOSED LIFE SETTLEMETN FUND UA DTD 6/16/2008 a/k/a THE CLSF TRUST XXII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 6/16/2008[3]
THE CLSF TRUST XXIII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 08/08/2008
THE CLSF TRUST XXIX STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 3/27/2009
THE CLSF TRUST XXV STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 10/29/2008
THE CLSF TRUST XXX STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 8/21/2009

[3] There appears to be scriveners errors in the name of the trust instrument for this particular trust. For purposes of convenience, the Trustee has also listed what she believes to be the correct name of the trust without such errors.

Trust Name
THE CLSF TRUST XXXI STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 9/1/2009
THE CLSF TRUST XXXII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 11/5/2009
THE CLSF TRUST XXXIV STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 12/9/2009
THE CLSF TRUST XXXV STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 12/11/2009
THE CLSF TRUST XXXVII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 1/21/2010
THE CLSF TRUST XXXVIII STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 2/1/2010
THE CLSF XXXIX STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 2/1/2010
THE CLSF XXXVI STICHTING CLOSED LIFE SETTLEMENT FUND UA DTD 12/11/2009
The Gluck Trust UA DTD 11/5/2009
The Lip Trust II UA DTD 10/25/2010
The Lip Trust UA DTD 10/05/2010

Trust Name
THE MP TRUST XXVI DTD 11/28/08
The RPM Trust UA DTD 3/2/2009
CLSF 6 Trust
The Teichman Trust UA DTD 4/27/2010
The Guberman Trust
The Ferga Darmanyan Ins. Trust UA DTD 10-07-10
CLSF MP XXXVI DTD 11/24/2008
The Friedman Trust UA DTD 8/26/2009

Exhibit B

DEBTOR ENTITIES

1.	CLSF III IV, Inc.
2.	LSF III, Inc.
3.	CLSF XIV, Inc.
4.	The Sinder TR Corporation
5.	LSF IV, Inc.
6.	LSF VI, Inc.
7.	BGI 3 Life, Inc.
8.	BGI 5 Life, Inc.
9.	BGI 6 Life, Inc.
10.	Behl Corporation
11.	BGI XVII, Corporation
12.	BGI XX, Corporation
13.	CLSF I, Inc.
14.	CLSF VII, Inc.
15.	CLSF VIII, Inc.
16.	CLSF XV, Inc.
17.	CLSF XVI, Inc.
18.	CLSF XVII, Inc.
19.	CLSF XX, Inc.
20.	CLSF XXI, Inc.
21.	CLSF XXII, Inc.
22.	CLSF XXIII, Inc.
23.	CLSF XXV, Inc.
24.	CLSF XXIX, Inc.
25.	CLSF XXXI, Inc.
26.	CLSF XXXV, Inc.
27.	CLSF XL, Inc.
28.	CLSF XLI, Inc.
29.	LSF I, Inc.
30.	RPM Life, Inc.
31.	Ryan Trust Corporation
32.	The Gluck TR Corporation
33.	Friedman TR Corp.
34.	Deborah Catherine Peck

NON-DEBTOR SUBSTANTIVELY CONSOLIDATED ENTITIES

1. BGI I Life, Inc.
2. BGI II Life, Inc.
3. BGI 2 Life, Inc.
4. BGI VII Corp.
5. BGI VIII Corporation
6. BGI IX Corp.
7. BGI X Corp.
8. BGI XI Corp.
9. BGI XII Corp.
10. BGI XIV Corp.
11. BGI XV Corp.
12. BGI XVI Corp.
13. BGI XVIII Corp.
14. BGI XIX Corporation
15. BGI XVIX Corp.
16. BGI XXI Corp.
17. BGI XXII Corp.
18. BGI XXIV Corporation
19. BGI XXV Corporation
20. BGI XXVI Corporation
21. BGIF 18 UA Dated 2-1-2010
22. BGIF 19 UA Dated 2-1-2010
23. CLSF IX, Inc.
24. CLSF XII, Inc.
25. CLSF XVIII, Inc.
26. CLSF XXX, Inc.
27. CLSF XXXII, Inc.
28. CLSF XXXIV, Inc.
29. CLSF XXXVI, Inc.
30. CLSF XXXVIII, Inc.
31. CLSF XXXIX, Inc.
32. CLSF XLII, Inc.
33. CLSF XXXXII, Inc.
34. CLSF XLIII, Inc.
35. CLSF XXXXIII Corporation
36. CLSF XXXXIV
37. CLSF XXXXV Corporation
38. CLSF XXXXVI Corporation
39. LSF II, Inc.
40. LSF V, Inc.
41. MP XXVI, Inc.
42. The LIP Corporation

43. The LIP II Trust Corporation
44. The LIP III Trust Corporation
45. CLSF 1A Corporation
46. CLSF 3-4 A Corporation
47. CLSF 3-4 Corporation
48. CLSF 7 A Corporation
49. The Friedman Trust Corp.
50. The Feyga Darmanyan Ins. Trust UA DATED 10-07
51. The Guberman Trust
52. The Guberman TR Corp.
53. Hassan Joher Family Insurance Trust
54. The Hassan Joher Family Insurance National Trust Corporation
55. The Hassan Joher Insurance Trust
56. Joher Family Trust Dated 9-10-2010
57. The Joher Family Aviva Insurance Trust Corporation
58. The Rabadi Life Insurance Trust Ryan TR Corp.
59. The Rabadi TR Corp.
60. The Klara Rosenberg Insurance Trust Dated 8-19-2012
61. The Spector Trust UA Dated 4-27-2010
62. The Spector TR Corp.
63. The Teichman Trust Corporation
64. The Teichman TR Corp.
65. The Lundvall TR Corp.
66. The Martha Elliott Insurance Trust Corporation
67. The Leifer Family Ins Trust UA dtd 6/30/2010 also known as Leifer Family Insurance Trust dated June 30, 2010
68. The Lundvall Trust UA DTD 04/29/2010 also known as The Lundvall Trust
69. The Ryan Corporation
70. The Ryan Trust UA DTD 04/10/2009
71. The BGI Fund 6 UA dtd 1/23/2009
72. Joher Family Insurance Trust UA DTD 9/10/2010
73. Joher Family Insurance Trust
74. Peck Associates Palm Beach, LLC d/b/a Deborah C. Peck, P.A.
75. Deborah C. Peck, Esq., P.A.

ALTER EGO ENTITIES THAT WERE NOT SUBSTANTIVELY CONSOLIDATED

1. The Ibrahim Rabadi Trust dated 2-3-2011