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 AMENDED MOTION FOR SUBSTANTIVE CONSOLIDATION OF THE BANKRUPTCY ESTATE OF DEBORAH CATHERINE PECK, DEBTOR, [CASE NO. 14-14507-BKC-EPK], AND NON-DEBTOR DEBORAH C. PECK, ESQ., P.A., WITH THE SUBSTANTIVELY CONSOLIDATED 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 undersigned counsel, moves the Court ("Motion") for substantive consolidation of non-debtor Deborah C. Peck, Esq., P.A., and the chapter 7 bankruptcy estate of Deborah Catherine Peck, debtor in Case No. 14-14507-BKC-EPK pending before this Court, with the substantively consolidated Debtors. In support of this Motion, the Trustee states:

Preliminary Statement

1. The inclusion of Deborah C. Peck, Esq., P.A. ("Peck PA"), and the bankruptcy estate of Deborah Catherine Peck, with the previously substantively consolidated Debtors is essential to the proper administration of the Debtors' bankruptcy cases. From the very beginning of these proceedings, it was clear that the roads of all the Debtors, as well as the related Non-debtor Entities (as defined below) ran through Deborah Catherine Peck. From her initial testimony before this Court on August 24, 2012, through the facts garnered by the Trustee's financial advisors in their comprehensive review of the financial records, through 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. The substantive consolidation of Peck's bankruptcy estate and Peck PA with the already substantively consolidated Debtors is the only way to facilitate this process in a way most beneficial and cost-effective to the Debtors' creditors.

2. As were the substantively consolidated Debtors, Peck PA was started and operated by the same individual, Deborah C. Peck, who then utilized that entity in furtherance of the operations of the other substantively consolidated Debtors. Peck also made numerous transfers from the various accounts utilized by the Debtors into her personal bank accounts, now part of her bankruptcy estate. Among other actions, Ms. Peck: comingled investor funds in Peck PA trust accounts; failed to maintain separate accounting by investor; utilized funds from one policy's investors to (without authorization) pay the premiums of other policies; withdrew millions of dollars from the comingled funds accounts without investor knowledge or authorization; made payments to investors without explanation, and paid premiums on select policies while other policies lapsed (with, in some instances, investors continuing to pay premiums after their policy lapsed).

I. Procedural Background

3. On August 22, 2012 (the "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.

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

5. 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] (the "SubCon Motion"), seeking the entry of an order substantively consolidating the bankruptcy estate of Debtor CLSF III IV, Inc. (the "Debtor") with that of: (a) the bankruptcy estates of the thirty-two jointly administered bankruptcy estates of the affiliated Debtors ("Affiliated Debtors"): Behl Corporation, a Florida corporation; BGI 3 Life, Inc., a Florida corporation; BGI 5 Life, Inc., a Florida corporation; BGI 6 Life, Inc., a Florida corporation; BGI XVII Corporation, a Florida corporation; BGI XX Corporation, a Florida corporation; CLSF I, Inc., a Florida corporation; CLSF VII, Inc., a Florida corporation; CLSF VIII, Inc., a Florida corporation; CLSF XIV, Inc., a Florida corporation, CLSF XL, Inc., a Florida corporation; CLSF XLI, Inc., a Florida corporation; CLSF XV, Inc., a Florida corporation; CLSF XVI, Inc., a Florida corporation; CLSF XVII, Inc., a Florida corporation; CLSF XX, Inc., a Florida corporation; CLSF XXI, Inc., a Florida corporation; CLSF XXII, Inc., a Florida corporation; CLSF XXIII, Inc., a Florida corporation; CLSF XXIX, Inc., a Florida corporation; CLSF XXV, Inc., a Florida corporation; CLSF XXXI, Inc., a Florida corporation; CLSF XXXV, Inc., a Florida corporation; Friedman TR Corp., a Florida corporation; LSF I, Inc., a Florida corporation; LSF III, Inc., a Florida corporation; LSF IV, Inc., a Florida corporation; LSF VI, Inc., a Florida corporation; RPM Life, Inc., a Florida corporation; Ryan Trust Corporation, a Florida corporation; The Gluck TR Corp., a Florida corporation; and The Sinder TR Corporation, a Florida corporation; and (b) the non-debtor trust entities, ("**Non-debtor Entities**"): BGI I Life, Inc., a Florida corporation; BGI II Life, Inc., a Florida

corporation; BGI VII Corp., a Florida corporation; BGI VIII Corporation, a Florida corporation; BGI IX Corp., a Florida corporation; BGI X Corp., a Florida corporation; BGI XI Corp., a Florida corporation; BGI XII Corp., a Florida corporation; BGI XIV Corp., a Florida corporation; BGI XV Corp., a Florida corporation; BGI XVI Corp., a Florida corporation; BGI XVIII Corp., a Florida corporation; BGI XIX Corporation, a Florida corporation; BGI XVIX Corp., a Florida corporation; BGI XXI Corp., a Florida corporation; BGI XXII Corp., a Florida corporation; BGI XXIV Corporation, a Florida corporation; BGI XXV Corporation, a Florida corporation; BGI XXVI Corporation, a Florida corporation; BGIF 18 UA Dated 2-1-2010; BGIF 19 UA Dated 2-1-2010; CLSF IX, Inc., a Florida corporation; CLSF XII, Inc., a Florida corporation; CLSF XVIII, Inc., a Florida corporation; CLSF XXX, Inc., a Florida corporation; CLSF XXXII, Inc., a Florida corporation; CLSF XXXIV, Inc., a Florida corporation; CLSF XXXVI, Inc., a Florida corporation; CLSF XXXVIII, Inc., a Florida corporation; CLSF XXXIX, Inc., a Florida corporation; CLSF XLII, Inc., a Florida corporation; CLSF XXXXII, Inc., a Florida corporation; CLSF XLIII, Inc., a Florida corporation; CLSF XXXXIII Corporation, a Florida corporation; CLSF XXXXIV, a Florida corporation; CLSF XXXXV Corporation, a Florida corporation; CLSF XXXXVI Corporation, a Florida corporation; LSF II, Inc., a Florida corporation; LSF V, Inc., a Florida corporation; MP XXVI, Inc., a Florida corporation; Peck Associates Palm Beach, LLC d/b/a Deborah C. Peck, P.A.; The LIP Corporation, a Florida corporation; The LIP II Trust Corporation, a Florida corporation; The LIP III Trust Corporation, a Florida corporation; CLSF 1A Corporation, a Florida corporation; CLSF 3-4 A Corporation, a Florida corporation; CLSF 3-4 Corporation, a Florida corporation; CLSF 7 A Corporation, a Florida corporation; The Friedman Trust Corp., a corporation; The Feyga Darmanyan Ins. Trust UA DATED 10-07; The Guberman Trust; The Guberman TR Corp., a Florida corporation; The

Hassan Joher Insurance Trust; Joher Family Trust Dated 9-10-2010; The Joher Family Aviva Insurance Trust Corporation, a Florida corporation; The Ibrahim Rabadi Trust Dated 2-3-2011; The Rabadi Life Insurance Trust, Ryan TR Corp., a Florida corporation; The Rabadi TR Corp., a Florida corporation; The Klara Rosenberg Insurance Trust Dated 8-19-2012; The Spector Trust UA Dated 4-27-2010; The Spector TR Corp., a Florida corporation; The Teichman Trust Corporation, a Florida corporation; The Teichman TR Corp., a Florida corporation; The Lundvall TR Corp., a Florida corporation; and The Martha Elliott Insurance Trust Corporation, a Florida corporation.

6. On October 2, the Court entered the *Order Granting Trustee's Second Amended Motion for Substantive Consolidation of the Jointly Administered Bankruptcy Estates* [ECF No. 561] (the "SubCon Order"). As set forth in the SubCon Order, the Court granted the substantive consolidation of the bankruptcy estate of the Debtor, 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), except The Rabadi Life Insurance Trust.

7. 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] clarifying 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.

Deborah C. Peck, Esq., PA.

8. To ensure that all bank accounts into which QI investment funds were deposited are included in the assets of the substantively consolidated Debtors, the Trustee now seeks to

substantively consolidate Peck PA, a non-debtor New Jersey professional association formed by Ms. Peck in January 2006, with the Debtors.

Deborah Catherine Peck, Debtor

9. On February 26, 2014, Deborah C. Peck filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code, Case No. 14-14507-BKC-EPK ("Peck Bankruptcy Case"). Margaret Smith was subsequently appointed as acting chapter 7 trustee in that case. The Peck Bankruptcy Case is currently pending before this Court. The bar date for filing proofs of claim in that proceeding was June 6, 2014. Of the 812 claims filed in that case, only 31 claims were filed by claimants who had not already filed claims in these substantively consolidated cases.

Factual Background

10. Each of the Debtors and the Non-debtor Entities began and was operated in a virtually identical way: Investors paid money into bank accounts established by Deborah C. Peck as attorney trust or IOLTA accounts operated through Peck PA. Watershed, LLC and/or its principal, Dennis Moens (collectively, "Watershed") would then use these funds to finance the purchase of life insurance policies by local providers in the United States that had licenses to buy and sell the policies. At times, policies were purchased directly from individual insureds. According to Ms. Peck, Watershed would then service and maintain the policies and open related escrow accounts. *See* Transcript of August 24, 2012 Hearing at 54-56.

11. Watershed packaged the policies for sale by the marketing entity, Quality Investments, located in Holland. The "package" was to include a reinsurance component. Quality Investments' job was to obtain the reinsurance, then market and sell the policies to European investors as investments in life settlements funds. Occasionally the "package" was set up even before the life insurance policy was actually purchased. Provident Capital Indemnity

("PCI") was to provide the reinsurance component for each of the life insurance policies. *See Id.* generally at 55-67.

12. The investments sold by Quality Investments were organized into closed life insurance settlement funds under Dutch rules and law (the "CLSF Funds"), or bank guaranteed interest funds under Belgium rules and law (the "BGI Funds"), each with an agreement that governed the members' involvement in that particular fund. *Id.* at 69-70.

13. Although Watershed never took actual title to the life insurance policies, it "sold" each of the policies to a separate Florida trust with Ms. Peck as the trustee of each trust. As a result, over 55 separate trusts were formed, each of which at some point owned a policy. According to Ms. Peck, the beneficiary of each individual trust was a CLSF Fund or BGI Fund in which foreign investors had purchased participation interests. *Id.* at 69

14. Watershed was the grantor and Ms. Peck was trustee for each of the Florida trusts. *Id.* at 58.

15. Ms. Peck was an attorney admitted in New Jersey, but lived in Florida and, from 2005 forward, worked as trustee for all of the trusts out of the same office in Florida. *Id.* at 49. During this period, Ms. Peck ran her law practice under the Peck PA entity.

16. Ms. Peck was in charge of opening, operating and administering the escrow accounts and subaccounts purportedly in the name of Watershed, as grantor for each of the trusts. However, upon information and belief, the bank accounts ("Bank Accounts") were opened by Ms. Peck as attorney trust, escrow and 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 taxpayer identification number for Peck PA. A list of the Bank Accounts is attached as **Exhibit "A"** hereto.

17. The QI investor funds were wired into and/or transferred into the Bank Accounts; hence the Bank Accounts were property of Peck PA and not property of Ms. Peck individually.

18. According to Ms. Peck, Watershed had control over the Bank Accounts and would give her instructions "as to everything, including the payment of premiums, payment to providers for purchase of policies, payment to accountants that needed to be paid to care for the servicing of the trust" as well as payments for personal items. These payments also included "fees that were required for the maintenance and servicing of the policies." *Id.* at 73:3-8, 75:7-14.

19. Ms. Peck would give notice to Watershed regarding when premium payments were due. As payments came into the Bank Accounts, usually by wire transfer, Peck would receive instructions from Watershed on how the funds were to be disbursed, including what premiums to pay and when to pay the insurance carriers. No escrow accounts were ever set up for the benefit of individual funds or individual investors. *Id.* at 73-76.

20. Corporations (the Debtor and the Affiliated Debtors) were later created, allegedly for tax purposes, to own the policies, which were transferred from the Florida trusts to the corporations. Peck was the sole principal of each of these corporations. Each corporation was 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. Each of the related trusts held all of the shares of the related corporation. *See generally* August 24 Transcript at 54-60.

21. In 2012, Peck, purportedly concerned about the repercussions of a Dutch criminal investigation of Watershed, removed $20 million from the escrow accounts and wired the funds to Dubai. There was no reconciliation regarding which policies and which trusts were affected by that transfer.

22. After the arrest of Moens, Laan and their attorney, and the related freezing of the Watershed accounts, Peck faced what she termed a "crisis" - she was no longer receiving money from Watershed to pay the policy premiums. The administration of the policies was taken over by Admin QI ("QI"). Peck began writing to the individual investors in the closed funds asking them directly for money to pay the premiums on the policies. As she received the funds, she pooled them together, then used them 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." *Id.* at 86-88, 96-97.

23. According to Ms. Peck, "ever since this crisis, I have pooled the policies, and have pooled the investors, so that I'm working on behalf of all of the investors, not a splintered group of investors." *Id.* at 86:6-9. Further, "[e]ver since the portfolio became a distressed portfolio, I was obligated to do what I needed to do to preserve the assets. In order to preserve the assets I needed to collectivize the money that was coming in, and use that money on an emergency basis to pay premiums." *Id.* at 87:25 -88:5.

24. Ms. Peck was solely in charge of opening, operating and administering the numerous Bank Accounts, which she utilized to receive, hold and disburse comingled investor funds.

25. Ms. Peck conducted her activities relating to the substantively consolidated Debtors while an attorney admitted in New Jersey, but living in Florida, operating as Peck PA out of the offices of Peck PA.

26. When the Peck Bankruptcy Case was filed, it became apparent that there would be significant difficulties in administering that case separately from the cases of the substantively consolidated Debtors. Peck's position as trustee and sole principal for the substantively

consolidated Debtors, her use of the Bank Accounts primarily for these entities, rather than for any law practice, her numerous transfers of funds from the Bank Accounts for her own use, and the substantial duplication in the creditor base between the Peck Bankruptcy Case and that of the Debtors, inextricably ties her individual case into the Debtors' cases.

Memorandum of Law

27. As the Court is aware, having entered the SubCon Order, this Court has the power to order substantive consolidation of non-debtor Deborah C. Peck, Esq., P.A., and the bankruptcy estate of Deborah Catherine Peck, with the substantively consolidated Debtors. The necessity for substantively consolidating the additional debtor and non-debtor entities, as well as the reasons behind seeking substantive consolidation, equal those present at the time of filing the initial SubCon Motion.

28. 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* at 829-830.

29. While Peck maintained separate bank accounts for her own personal expenses, which accounts are not included in the Bank Accounts utilized in furtherance of the QI life settlement operation, she transferred funds from the Bank Accounts into her personal accounts and used those funds for various purposes, including the purchase of properties that are now

assets of her individual bankruptcy estate and/or assets which the substantively consolidated estates may want to pursue. Given the identity of creditors between the Peck estate and the Debtors' substantively consolidated estates, substantive consolidation of these estates, and thereby their assets, would streamline the process of liquidating assets for the benefit of all the creditors.

30. 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* 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).

31. 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* 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.*

32. 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).

33. 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* at 250.

34. 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, 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.

35. Here, there is no denying the substantial identity between the previously substantively consolidated Debtors, Peck's bankruptcy estate and Peck PA, and that 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, Peck and Peck PA are in shambles 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, Peck and Peck PA is clear – Peck operated and administered all of the substantively consolidated Debtors and Peck PA, as well as their intermingled Bank Accounts, out of one office, in addition to managing her own assets and liabilities.

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 substantively consolidated Debtors, as well as Peck PA and Peck individually. While Peck's individual bank accounts are identifiable, the Bank Accounts clearly contain intermingled funds of the 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 and utilizing the Bank Accounts.

e. Indisputably, there was a continuous commingling of assets without a separate accounting for each of the substantively consolidated Debtors and the Non-debtor Entities, rendering it impossible to identify which funds belonged to which entity and how those funds should be allocated to satisfy the claims of the individual Debtors and entities. Hence, substantive consolidation was imperative when the initial SubCon Motion was filed, just as it is now.

36. Peck made in excess of $10 million in transfers to her own bank accounts and/or for her benefit, from the Bank Accounts. The Trustee has already filed a proof of claim against the estate in the Peck Bankruptcy Case to recover those funds. Substantive consolidation would avoid what would likely be substantial and costly litigation between the substantively consolidated Debtors and the Peck bankruptcy estate for recovery of those transfers and property purchased with those funds.

Chapter 7 Trustees May Seek and Obtain Substantive Consolidation

37. As did the Eleventh Circuit in *Eastgroup Properties*, as well as this Court in entering the 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.

38. 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.

39. In *Maxxis Group*, factors in support of the trustee's successful effort to obtain substantive consolidation of five chapter 7 debtor cases also ring true here: the debtors' financial records were "in disarray and incomplete" and the debtors all operated out of one office "without a conventional accounting system." 2009 WL 6527594, * 2.

40. In *Creditors Service Corp.,* the court, at the conclusion of an adversary filed by the chapter 7 trustee, approved the substantive consolidation of a corporate chapter 7 debtor with several non-debtor entities, as well as the individual who owned and controlled all of the entities. Among the numerous factors considered by the court, were several that apply to the case at bar: the financial affairs of the entities and the individual were interdependent, there were numerous financial transactions between and among the individual, the debtor and the non-debtor entities, there were fraudulent transfers between and among the debtor and the non-debtor entities, and all operated out of the same building and shared the same computer system and phones.

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

41. While the Trustee recognizes 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 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.

42. 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.

43. 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* at 218.

44. 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.

45. 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).

46. 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).

47. 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.

48. 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.

49. A 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".

50. Here, as with *S & G Financial* and the other cases cited above, equity demands substantive consolidation of Peck's bankruptcy estate and Peck PA 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, as well as the trustee in the Peck Bankruptcy Case, without bringing Peck PA and Peck's bankruptcy estate into the mix.

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

51. 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 preserved the Trustee's avoidance powers as well as causes of action against third parties on behalf of Peck's bankruptcy estate and Peck PA. Preserving the Trustee's ability to pursue these litigation claims on behalf of particular debtor entities would provide substantial benefit to the substantively consolidated Debtors.

52. This Court has the authority to order substantive consolidation of Peck's bankruptcy estate and Peck PA 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.

53. 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* 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." *Bonham* at 769 (internal quotations and citations omitted). *See also Creditors Service Corp.*(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)(recognizing 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.)

54. 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 subgroups of same, 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 Bank Accounts which were not assets of her individual estate.

55. 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 Peck individually or Peck PA, what they actually relied on were the representations of Peck and others, which did not legitimately reflect the credit (if any) of individual entities. Based on Peck's testimony, all funds (other than her individual monies) were combined in the Bank Accounts with monies being paid out without regard to the source of the funds. Hence, while creditors may have assumed a certain value was attributed to certain individual affiliated entities that perceived value was, in fact, illusory.

56. Furthermore, 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 Peck PA and Peck's bankruptcy estate is to substantively consolidate them with the already substantively consolidated Debtors. The only prejudice to creditors here would be to deny that relief.

57. The Trustee advises that she will not object to Ms. Smith and her counsel filing an application for an administrative claim in these proceedings for the fees and costs they incurred and expended, through entry of an order granting this Motion, in the administration of the Peck Bankruptcy Case.

58. Maatschap QI Collectief ("MQIC") advises that it has no objection to the relief

sought herein. MQIC filed individual claims on behalf of members of MQIC ("MQIC Investors") in these substantively consolidated cases and in the Peck Bankruptcy Case. The Trustee agrees that she will not object to the filing of any proof of claim by MQIC on behalf of any individual MQIC Investor, but only to the extent that the objection would be to MQIC's authority as agent for the filing of the individual claim or claim(s). In addition, the Trustee agrees that she will not object to any proof of claim(s) filed by MQIC on behalf of any MQIC Investor on the basis that any purported assignment between the MQIC and the MQIC Investor is invalid under applicable law. This would be without prejudice to the Trustee raising any other objections to the MQIC Investors' proofs of claim otherwise available to her under the Bankruptcy Code, including the right to object to any claim filed by MQIC on behalf of itself. Nothing in this agreement shall constitute a finding that the purported assignments between MQIC and any MQIC Investor are valid assignments. The Trustee's agreement not to file objections to MQIC Investor claims solely on the basis of the purported assignment shall not act as a bar to the right of any other interested party to raise such an objection and shall not act as a bar to the Trustee's right to negotiate directly with, and reach a settlement with, any MQIC Investor with regard to its claim(s). MQIC reserves the right to object to any settlements reached between the Trustee and any MQIC Investor. At the conclusion of this bankruptcy case, dividend checks shall be payable to the individual MQIC Investors and mailed to the address listed on the individual proofs of claim.

Conclusion

59. Based on the foregoing, the Trustee submits that the Court, under its equitable powers, has the authority to substantively consolidate Deborah Catherine Peck's bankruptcy estate and Deborah C. Peck, Esq. P.A. with the substantively consolidated Debtors. For the

reasons stated herein, the Trustee respectfully requests that this Court enter an order:

(i) granting this Motion;

(ii) substantively consolidating Deborah C. Peck, Esq., P.A., with the Debtors, *nunc pro tunc* to September 25, 2012;

(iii) substantively consolidating the bankruptcy estate of Deborah Catherine Peck with the Debtors,

(iv) finding that the Bank Accounts are property of Deborah C. Peck, Esq., PA., and not property of Deborah Catherine Peck, individually; and

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

Dated: June 30, 2014

Respectfully submitted,

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EXHIBIT "A"

Accounts Held at TD Bank

	Name of Account	Account Ending
1.	IOLTA / Deborah C Peck Attorney Trust Account, Escrow Master	2615
	Sub Accounts	4946 0003 0011 0029 0037 0045 0052 0060 0078 0086 0094 0102 0800 0818 7899 7901 7903 7906
2.	Deborah C Peck Esc Acct, Attorney Trust Account 3	9403
3.	IOLTA / Deborah C Peck, Attorney Trust Account 2	9740

Accounts Held at Wells Fargo Bank

4.	Deborah Peck, DBA Deborah C Peck PA, NJ IOLTA Attorney Client Trust Account	1843
5.	BGI I Life Inc.	2213
6.	Deborah Peck DBA Deborah C Peck, PA, NJ IOLTA Attorney Client Trust	5689
7.	Deborah Peck DBA Deborah C Peck, PA, NJ IOLTA Attorney Client Trust	5804