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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MOTORS LIQUIDATION COMPANY, *et al.*,

Debtors.

MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST, by and
through the Wilmington Trust Company, solely
in its capacity as Trust Administrator and
Trustee,

Plaintiff,

-against-

JPMORGAN CHASE BANK N.A., *et al.*,

Defendants.

Chapter 11 Case

Case No. 09-50026 (MG)

(Jointly Administered)

Adversary Proceeding

Case No. 09-00504 (MG)

**JOINDER TO OMNIBUS REPLY AND SUPPLEMENTAL REPLY
MEMORANDUM OF LAW IN SUPPORT OF CERTAIN
TLI DEFENDANTS' JOINT MOTION
TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

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The Term Loan Investor Defendants listed in Appendix A (the “TLI Defendants”), by and through their counsel, Hahn & Hessen LLP, hereby (i) join in the Omnibus Reply in Support of Certain Term Lenders’ Rule 12 Motions (the “Omnibus Reply”), and adopt the same as if set forth fully herein, and (ii) submit this supplemental reply memorandum in further support of their Joint Motion for an order dismissing with prejudice the AAT’s Amended Complaint as against the TLI Defendants (ECF No. 226) and the accompanying brief in support of the Joint Motion (ECF No. 226-1) (the “Moving Brief”).¹ In further support of the Joint Motion, the TLI Defendants respectfully state as follows:

REPLY ARGUMENT

I. *Intralinks* Was Not Designed To Inform Any Term Lender Of The Litigation And Did Not Provide “Actual” Notice To Many Defendants

The Court should vacate the *ex parte* Service Extension Orders and the Amended Complaint should be dismissed for the reasons set forth in Sections I-III of the Omnibus Reply.² The TLI Defendants agree that an individual Defendant Term Lender’s actual knowledge of the existence of this action prior to being served with the Amended Complaint is irrelevant for purposes of service of process. However, even if actual notice were relevant, the AAT has failed to demonstrate that any Term Lender received such “actual” notice. In its Omnibus Memorandum of Law in Opposition to Defendants’ Motions to Dismiss and for Judgment on the Pleadings (ECF 427) (the “Opposition Brief”), the AAT makes the sweeping statement that the Term Lender Defendants did not suffer any prejudice since “[t]he Term Lender Defendants were on notice of the litigation.” Opposition Brief, p. 33. To support their position that over 500 individual parties had actual notice of litigation

¹ Capitalized terms not herein defined shall have the meanings ascribed to them in the Moving Brief.

² Also as set forth in Section IV of the Omnibus Reply, the Amended Complaint’s Third Claim for Relief must be dismissed since the AAT lacks standing to bring claims pursuant to section 547 of the Bankruptcy Code and such claims have been expressly released pursuant to the DIP Order.

despite not being served with the Amended Complaint, the AAT cites JPMC's "continuous[] communica[tion] with the Term Lender Defendants—including in writing and by telephone-regarding the adversary proceeding and developments in the litigation...".

Id. In particular, the AAT points to the *Intralinks* site employed by JPMC to transmit written communications to the Term Lender Defendants regarding the litigation. *Id.* at 33-34.

The AAT does not, however, demonstrate that any of the 500 defendants actually accessed information on *Intralinks* or otherwise received actual notice of the litigation from the AAT. For example, TLI Defendant St. Luke's Health System Corporation as successor to St. Luke's Episcopal Health System Foundation ("Saint Luke's") is being sued for a \$18,489.93 preference claim and \$967,208.74 post-petition payment claim. There is no record of St. Luke's having received notice of or having registered for or accessed the *Intralinks* site, nor did St. Luke's participate in any conference calls set up by JPMC. Opposition Brief, Fisher Decl. Ex. J (JPMCB-3-0001290). Plaintiff has failed to provide any other evidence that St. Luke's received any "actual" notice, whether by email or otherwise, concerning this litigation, and a search by St. Luke's has failed to reveal that any such emails were ever received concerning this litigation.³

Moreover, there is a large category of defendants that could not have received notice via *Intralinks*: those who sold their interest in the Term Loan prior to repayment under the DIP Order. A comparison of the two schedules of Defendants annexed to the Amended

³ St. Luke's had terminated its relationship with its prior investment advisor in January 2009. Consequently, to the extent that the AAT is arguing that email notices sent to an advisor were somehow sufficient, they were ineffective to provide St. Luke's with any notice.

Complaint reveals that nearly 25% of the Defendant Term Lenders⁴, including many of the TLI Defendants, are only being sued for the Preference Claim.⁵ These Defendant Term Lenders settled on the sale of their interests in the Term Loan after the March 31, 2009 Record Date for the quarterly interest payment, but prior to the June 30, 2009 Record Date for the post-petition payoff of the Term Loan under the DIP Order (the “Preference Only Defendants”). Consequently, these Defendants were no longer Term Loan Lenders at the time the DIP Order was entered.

The Preference Only Defendants were denied access to *Intralinks* because, as an exhibit filed by Plaintiff’s counsel demonstrates, the *Intralinks* workspace terms and conditions expressly prohibited access to the site to any party who ceased being a Term Lender. *See* Opposition Brief, Fisher Decl. Ex. I (JPMCB-2-00006070) (“If at any time you are no longer a representative of an existing lender of the referenced loan, you must cease to access the workspace and take all necessary steps to cause yourself to be promptly removed as a user from the workspace.”). Thus, the Preference Only Defendants were not even permitted to access the *Intralinks* site that the AAT argues was employed to provide them

⁴ A comparison of the parties listed on Exhibit 4 to the Amended Complaint (May 27, 2009 Preference Payment) to those listed on Exhibit 3 to the Amended Complaint (June 30, 2009 Post-Petition Transfer) reveals that approximately 113 Defendants are only being sued by the AAT for the prepetition preference claim. *See* Comparison Chart annexed to the Power Decl. as Ex. 1.

⁵ The following TLI Defendants joining in this Reply are only being sued for the Preference Claim: Twin Lake Total Return Partners LP f/k/a Talon Total Return Partners LP, Twin Lake Total Return Partners QP LP f/k/a Talon Total Return QP Partners LP, DDJ High Yield Fund, J.C. Penney Corporation, Inc. Pension Plan Trust, Stichting Pensioenfond Hoogovens, Stichting Bewaarder Syntrus Achmea Global High Yield Pool f/k/a Stichting Bewaarder Interpolis Pensioenen Global High Yield Pool, Stichting Pensioenfond Metaal en Techniek (incorrectly identified in the pleadings as Stichting Pensiofond Me), Shinnecock CLO II, Ltd., Oak Hill Cr Opp Fin Ltd., Oak Hill Credit Opportunities Master Fund, Ltd., Oak Hill Credit Partners V Ltd., OHA Cap Sol Fin Offshore Ltd., OHA Cap Sol Fin Onshore Ltd., OHA Park Avenue CLO I Ltd., OHSF Financing Ltd., OHSF II Financing Ltd., and Stichting Pensioenfond van de Metalektro formerly known as Stichting Bedrijfstakpensioenfonds Voor De Metalektro. Nonparties Oak Hill Credit Partners II Ltd., Oak Hill Credit Partners III Ltd., Oak Hill Credit Partners IV Ltd. are similarly only being sued for the Preference Claim. Many other TLI Defendants are being sued primarily for the preference claim, and only a nominal amount under the Post-Petition Transfer claim, presumably representing the portion of that payment attributable to partial accrued interest.

with “actual” notice of the litigation, and, at least with respect to the TLI Defendants, did not otherwise have any knowledge of the filing of the adversary proceeding.

Critically, none of the information cited by the AAT in the Opposition Brief as proof that the Term Lender Defendants were on notice of the litigation applies to the Preference Only Defendants. These TLI Defendants are not included on the list of parties who accessed the *Intralinks* site nor did they participate in the two conference calls hosted by JPMC in July and August 2009.⁶ *See* Opposition Brief, Fisher Decl. Ex. J (JPMCB-3-0001290). This is to be expected since there was no reason for an investor to access a website to retrieve information concerning an investment that they had sold months earlier. The Preference Only Defendants were left in the dark by the AAT for six years, while it proposed multiple *ex parte* extension orders, effectively extending unilaterally the applicable statute of limitations. This was an egregious violation of these TLI Defendants’ due process rights.

These examples go to show that *Intralinks* was not designed to be a vehicle for keeping Term Lenders informed of litigation against them. *Intralinks* was a site designed for GM and JPMC to communicate information about the Term Loan to investment professionals while the Term Loan was outstanding. The documents cited in Plaintiff’s own declaration demonstrate this. For example, Ex. D to the Fisher Declaration explains how *Intralinks*, which was established long before this action arose, would improve the distribution of the quarterly collateral value certificates. It indicates that *Intralinks* is used in the syndicated loan “market at large.” *Id.* In the email reproduced as Ex. F, a JPMorgan

⁶ The AAT to date has failed to produce any evidence that the TLI Defendants who are Preference Only Defendants received any notices from JPMC or through *Intralinks*.

employee notes that Intralinks is a site for “investors.” Plaintiff also fails to appreciate that Intralinks was divided into two sections: “Private-side” and “Public-side.” *See* Fisher Decl. Ex. F. JPMC did not post all information to both sides. As Ex. F reveals, in order to “view and be alerted to information on the Private-side,” one had to fill out a “declaration.” This email flatly declares that “your institution will NOT receive alerts for any newly posted private-side documents until you, or someone at your institution, logs in and makes a Private-side declaration.”⁷ Plaintiff, who bears the burden of demonstrating notice, does not contend that every Term Lender, or even any of the TLI Defendants, filled out such a declaration, much less actually accessed the information on *Intralinks* after the loan had been repaid.

The AAT’s failure to provide any actual notice of the litigation to many of the TLI Defendants—much less demonstrate to the Court that it did so—until May 2015, severely deprived these parties of their due process rights and provides the Court with stark examples of why the AAT’s sweeping statement that all the Term Loan Defendants knew or had some form notice about the existence of the adversary proceeding is patently false and must be disregarded. The AAT has the burden of showing that it complied with service of process requirement under the Federal Rules of Civil Procedure and timely served all Term Loan Defendants in this action. *See Dickerson v. Napolitano*, 604 F.3d 732, 852 (2d Cir. 2010) (*citing Burda Media, Inc. v. Viertel*, 417 F.3d 292, 298 (2d Cir. 2005)) (where a defendant moves to dismiss under Rule 12(b)(5), “the plaintiff bears the burden of proving adequate service.”). The AAT’s admitted failure to meet its burden has serious ramifications, which must not be discarded by this Court. For the reasons the set form the in the Omnibus Reply

⁷ All of this makes Plaintiff’s insinuation that “ialerts” were sent to *all* Term Lenders about every post that much more unfounded. Plaintiff advances no evidence about who such ialerts were sent to, and the single example of an ialert Plaintiff cites was sent to an *employee at JPMC*.

and herein, the Extension Orders should be vacated and the Amended Complaint should be dismissed.

II. The Pre-Petition Payments Are Protected By The Section 546(e) Safe Harbor

The TLI Defendants demonstrated in the Moving Brief that the pre-petition Payments fell within either of two of the safe harbors provided by section 546(e):

- a “settlement payment” made by or to (or for the benefit of) a “financial institution”; or
- a transfer by or to (or for the benefit of) a “financial institution” made “in connection with a securities contract”.

See 11 U.S.C. § 546(e); Moving Brief, pp. 28-34. Either of these two safe harbors preclude the AAT’s avoidance of the Payments as a preference.

In opposing the motion, the AAT expresses no disagreement that the Payments in the first instance were made by the Debtor to JPMC in payment of interest due under the Term Loan Agreement and the Promissory Note or that JPMC in turn distributed that money among the TLI Defendants.⁸ The AAT does not take issue that JPMC qualifies as a “financial institution” for purposes of section 546(e). *See* Moving Brief, pp. 28-30; 11 U.S.C. § 101(22) (definition of “financial institution”). In short, no issue exists that the “made by or to . . . a financial institution” element of the above safe harbors has been met.

The AAT, however, does dispute that the interests in the Term Loan debt acquired by the TLI Defendants was a security, and that the pre-petition interest payments were either a “settlement payment” or one made “in connection with a securities contract”. It

⁸ The AAT asserts “there is an issue of fact as to whether the interest payment of \$28,241,781, made on May 27, 2009, was a routine or “mandatory” payment under the Term Loan Agreement, which dictates that interest be paid on the “third Business Day after the last day of each [of] March, June, September and December.” *See* Opposition Brief, p. 51. What that “issue of fact” may be, much less how that issue would affect the application of Section 546(e), is not expanded upon by the AAT.

also suggests that courts uniformly deny as premature a dismissal motion raising section 546(e). *See* Opposition Brief, pp. 50-57.

To be clear, the TLI Defendants are not arguing that the Term Loan itself was a security. Rather, the issue is whether the interests in the Term Loan debt sold to hundreds of institutional investors, including pension plans, mutual funds and charitable trusts, and traded extensively on the secondary market, are within the broad, expansive language adopted by Congress when it enacted section 546(e). There is simply no credible basis to treat investments in the Term Loan debt here differently for safe harbor protection purposes than investments in other types of tradeable debt instruments such as commercial paper, private and publically-held notes and commercial mortgage securitization trusts holding mortgage loans, all of which have been found by courts to be entitled to safe harbor protection. *See* Moving Brief, pp. 30-33.

As shown in the Moving Brief and below, the AAT's arguments cannot withstand scrutiny and are unsustainable. As a threshold matter, courts have granted pre-answer motions to dismiss avoidance claims where, as here, the defendant has shown that section 546(e) precludes the claim. *See, e.g., Picard v. Ida Fishman Rev. Trust (In re Bernard L. Madoff Inv. Sec. LLC)*, 773 F.3d 411 (2d Cir. 2014) (affirming dismissal under Rule 12(b)(6)); *AP Service LLP v. Silva*, 483 B.R. 63 (S.D.N.Y. 2012) (dismissal under Rule 12(b)(6)); *FTI Consulting, Inc. v. Merit Management Group, L.P.*, 541 B.R. 850 (N.D. Ill. E. Div. 2015) (*appeal pending*) (dismissal under Rule 12(c)). Dismissal of the preference count in the Amended Complaint at this stage is both warranted and appropriate.

A. The Interests In The Term Loan Debt Sold To Investors Were Securities Within Section 546(e)

As established in the Moving Brief and its accompanying submissions (and conspicuously ignored by the AAT in the Opposition Brief), the \$1.5 billion Term Loan and the note evidencing that debt was initially funded in full in 2006 through a syndicated loan by six Bank Lenders and agented by JPMC. Interests in that loan as evidenced by a “Note” were thereafter sold and purchased by hundreds of investors in the secondary market. Those investors, as shown by the Amended Complaint, encompassed a diverse and wide range of entities, including pension and retirement funds, universities, charitable organizations, hospitals, insurance companies, feeder funds and other funds that invested in these types of debt instruments. *See* Amended Complaint (¶ 15-528). To facilitate the trading of these interests in the secondary market, the term loan debt was registered and identified by CUSIP Number 370466AF9. *See* Moving Brief, pp. 3-4.

CUSIP is an acronym for the Committee on Uniform Securities Identification Procedures. *See In re Countrywide Financial Corporation Securities Litigation*, 273 F.R.D. 586, 620 n. 101 (C.D. Cal. 2009). That Committee “supplies a unique nine-character identification number, the CUSIP number, for each class of security traded in the United States.” *Id.*; *see also Fragrance Express DOT Com, Inc. v. Standard & Poors Corp.*, 314 F. Supp. 2d 189 (S.D.N.Y. 2003) (a “CUSIP number is a unique nine-digit number assigned to a publicly traded securities to identify securities for the clearing and settlement of trades”); *Smart Technologies, Inc., Shareholder Litigation*, 295 F.R.D. 50, 54 n. 6 (S.D.N.Y. 2013) (“CUSIP is an alphanumeric code which identifies a North American financial security for purposes of facilitating clearing and settlement of trades”). The interests in the term loan debt being traded and acquired by hundreds of investors were identified in the market and to

those investors as a type of security by its designated CUSIP number. The AAT simply ignores the CUSIP number.

The AAT, at pages 54-55 of its Opposition Brief, cites to the Second Circuit's majority opinion in *Banco Espanol de Credito v. Sec. Pac. Nat. Bank*, 973 F.2d 51 (2d Cir. 1992) to support a conclusion that the interests in the term loan traded in the secondary market were not a security covered by section 546(e). *Banco Espanol*, however, did not address whether widely-traded interests in term loan debt were subject to the section 546(e) safe harbor provisions, which were not yet then enacted in their present form. In *Banco Espanol*, the Court affirmed the district court's holding that a bank's sale of loan participations in short-term loans was not a security under the 1933 Securities Act. *See* 973 F.2d at 53, 55-56. Among the reasons for the Court's conclusion that a loan participant in that case could not sell its participation to a third-party without the selling bank's consent (a prohibition not present to the interests sold in the Term Loan)⁹. *Id.* at 53. Another important distinction between the facts of *Banco Espanol* and those present here was that while participants in *Banco Espanol* were found to have been given "ample notice" that the participations were not a security (*id.* at 55), the interests in the Term Loan being traded among hundreds of investors was identified in the market as a security by its CUSIP number.

Moreover, the Second Circuit in *Banco Espanol* "ruled only with respect to the loan participations as marketed in this case" and "expressly recognized that even if an underlying instrument is not a security, the manner in which participations in that interest are used, pooled or marketed might establish that such participations are securities." 973 F.2d at 56. It is thus immaterial for purposes of this motion that the Term Loan Agreement in the first

⁹ *See* Fisher Decl., Ex. B (Term Loan Agreement), at ¶ 10.06(c)(1) and (g); Fisher Decl., Ex. A, (PSA), at ¶ 10.

instance was not itself a security where interests in the debt evidenced by the Term Loan Agreement and Note were thereafter traded and recognized in the marketplace as a security. *See Krol v. Key Bank, N.A. (In re MCK Millennium Centre Parking, LLC)*, 532 B.R. 716, 729-30 (N.D. Ill. 2015) (interest and principal loan payments on promissory note for \$11,700,000 mortgage loan that was sold and included with other notes to form a pool of collateralized mortgage backed securities was found to be a payment in connection with a “securities contract” even though the underlying mortgage loan was not itself a security); *see also Enron Creditors Rec. Corp. v. ALFA (In re Enron Creditors Rec. Corp.)*, 651 F.3d 329, 337 (2d Cir. 2011) (“The cases on which Enron relies, however, involve non-tradeable bank loans, not widely issued debt securities”).¹⁰

The AAT, at page 56 of its Opposition Brief, points to the language in the LSTA Purchase and Sale Agreement For Distressed Trades, Standard Terms and Conditions (2009) (the “PSA”) at the outset of paragraphs 4.1(p) and 5.1(d) reciting “[w]ithout characterizing the Transferred Rights as a ‘security’ within the meaning of applicable securities law.” *See Fisher Decl., Ex. A.* That language appears to allow the use of this standard form for both the transfer of a security and one that is not. Here the interests acquired by the investors in the Term Loan were identified in the market as a security.

The AAT does not make any mention of the language in the PSA (including 4.1(p) and 5.1(d)) that does refer to securities law as applicable to the Transferred Rights (and would apply to those trades that involve a security):

¹⁰ The AAT also contends that “the predominant view is that syndicated loans are not securities.” *See* Opposition Brief, p. 55. It should be noted that each of the cases cited by AAT in support of that contention involved a loan participation (with the participants ranging from one to three in those cases) and not a syndicated loan. Moreover, it appears that in none of these cases were the participations being sold identified by a CUSIP number and none address the specific issue here which is whether interests in a syndicate term loan thereafter sold to and traded by hundreds of institutional investors in the secondary markets should be the afforded the safe harbor protections of section 546(e) similar to other debt instruments.

4.1(p) Seller is an “accredited investor” as defined in Rule 501 of the Securities Act . . . Seller has not made any offers to sell, or solicitations of any offers to buy, all or any portion of the Transferred Rights in violation of any applicable securities laws.

* * *

5.1(d) . . . Buyer is not purchasing the Transferred Rights with a view towards the sale or distribution thereof in violation of the Securities Act

* * *

5.1(e) Buyer is an “accredited investor” as defined in Rule 501 under the Securities Act.

See Fisher Decl., Ex. A, PSA §§ 4.1(p), 5.1(d) and (e).

B. The Payments Were “Settlement Payments”

The TLI Defendants showed in the Moving Brief that the Payments (paying interest due to the investors in the term loan debt) were within the scope of the Bankruptcy Code’s definition of a “settlement payment.” See 11 U.S.C. 741(8); Moving Brief, at pp. 30-31).¹¹ Consistent with the holdings in *Official Comm. of Unsecured Creditors of Quebecor World (USA) Inc. v. Am. Un. Life Ins. Co. (In re Quebecor World (USA) Inc.)*, 719 F.3d 94, 98 (2d Cir. 2013) (describing a settlement payment as a “transfer of cash made to complete a securities transaction”) and *In re Enron Creditors Rec. Corp.*, 601 F.3d at 331 (payment made to redeem and retire commercial paper including accrued interest was a “settlement payment”), the interest payments were necessary to complete the securities transactions whereby investors acquired an interest in the term loan debt (*i.e.*, that included the right to receive interest). Absent the interest paid by the Payments, the term loan debt could not have been retired and the transactions in which investors acquired their interests in that debt completed. See

¹¹ Settlement Payment is defined as “a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, or any other similar payment commonly used in the securities trade.” 11 U.S.C. § 741(8)

Enron Creditors Rec. Corp., 651 F.3d at 336 (rejecting argument that payment in that case could not be settlement payment because it retired debt). That the Payments only partially retired the term loan debt (*i.e.*, a partial settlement payment) does not alter the fact that they were necessary to complete a securities transaction or take them out of section 546(e).¹² See *In re Tribune Co. Fraudulent Conveyance Litigation*, 499 B.R. 310, 315 (S.D.N.Y. 2013), *aff'd*, --- F.3d --- (2d Cir. N.Y., Mar. 29, 2016) (“the term ‘settlement payment’ refers to any kind of payment that ‘completes a transaction in securities’”).

The AAT’s response is to tersely contend that the Payments were not a settlement payment and the motion should “not persuade the Court.” See Opposition Brief, at p. 53. The AAT, however, offers no specific support for its conclusion other than to cite *Global Crossing Estate Rep. v. Alta Partners Holdings LDC (In re Global Crossing Ltd.)*, 385 B.R. 52 (Bankr. S.D.N.Y. 2008) as instructive.¹³ *Id.*

In *Global Crossing Ltd.*, the court held that a dividend payment was not a settlement payment because “it was not a payment for the purchase, sale or loan of securities.” 385 B.R. at 56, n. 1. The Payments at issue here were not a dividend but interest. Moreover, the reasoning of *Global Crossing* has since been shown to be in error by the later holding in *Enron Creditors Rec. Corp.*, where the Second Circuit found that no basis exists to impose a “purchase or sale” requirement as limiting the scope of a settlement payment under

¹² The Payments that were applied in reduction of the term loan debt were a “partial settlement payment”. See 11 U.S.C. 741(8); *D.E.I. Systems, Inc. v. Bevan*, 996 F. Supp. 2d 1142 (D. Utah 2014) (payments made to A and B “were partial settlement payments in that they represented a portion of the \$7.5 million to be paid to defendants in exchange for their shares).

¹³ The other cases cited by the AAT at pages 52-53 of its brief do not support a finding that the payments were not a “settlement payment.” See *In re Lyondell Chemical Co.*, 503 B.R. 348 (Bankr. S.D.N.Y. 2014) (section 546(e) did not apply to state fraudulent transfer claims brought on behalf of individual creditors); *In re Tronox, Inc.*, 503 B.R. 239 (Bankr. S.D.N.Y. 2013) (section 546(e) did not apply to intercompany transfers of cash or corporate reorganization); *In re Norstan Apparel Shops, Inc.*, 367 B.R. 68 (Bankr. E.D.N.Y. 2007) (section 546(e) applies only to publicly traded securities).

section 741(8). 651 F.3d at 338. The AAT's response, therefore, "should not persuade this Court".

C. The Payments Were Made In Connection With A Securities Contract

The Moving Brief demonstrated that the Payments were made "in connection with a securities contract". See Moving Brief, pp. 31-34. As shown above, the interests in the Term Loan and Note acquired and traded by hundreds of investors was a security as that term is used in section 546(e). See above, at pp. 8-11; see also 11 U.S.C. § 101(49)(A)(xiv) ("term 'security' includes . . . note [and] . . . other claim or interest commonly known as 'security'"). The Payments were related to the investors' purchase of their interest in that security.

The term "securities contract" includes "a contract for the purchase, sale or loan of a security" or "any other agreement that is similar". 11 U.S.C. § 741(7)(A)(i) and (vii); see also *In re Bernard L. Madoff Inv. Securities LLC*, at 418 ("security contract" is defined by Bankruptcy Code with "extraordinary breadth" and "includes agreements that are similar or related to contracts for the purchase or sale of securities"). The reach of section 546(e) is "broadened even further" because it "also protects a transfer that is 'in connection' with a securities contract". *In re Madoff*, 773 F.3d at 418; see also *In re Lehman Bros. Holdings, Inc.*, 469 B.R. 415, 442 (Bankr. S.D.N.Y. 2012) ("the words 'in connection with' are to be interpreted liberally").

Consistent with the plain language of section 546(e) and its interpretation by the Courts, the payments made to investors on the Term Loan and Note were made "in connection with a securities contract". The investors' purchase of their interests in the Term Loan and Note entitled them to receive the interest payments that the AAT now seeks to

avoid as preferential transfers. Section 546(e), however, protects those payments from avoidance. See *In re Greektown Holdings, LLC*, 2015 WL 8229658 at 17, (Bankr. E.D. Mich. S. Div. 2015) (“Even if the Wire Payments and the Note Purchase Agreement are viewed as formally separate and distinct, as Plaintiff argues, such does not preclude the existence of a connection or relation between the two”); *In re MCK Millennium*, 532 B.R. at 731 (court held that payments on promissory note that was pooled with other notes and sold as securities, “while . . . not necessarily made for the purchase or sale of securities, were made in relation to a security agreement, the [Pooling and Services Agreement], and therefore fall within the safe harbor provision of § 546(e)”). Nothing raised by the AAT in its Opposition Brief supports a contrary conclusion.

D. A Finding That The Pre-Petition Payments Are Subject To The Safe Harbor Protections Is Consistent With The Intent And Purpose Of The Statute

Since Congress enacted section 546(e) in its present form, courts have taken a broad, expansive view of the type of payments on equity and debt instruments that are entitled to safe harbor protection, including interest and principal payments on commercial paper, publically-held notes, privately-held notes, and mortgage loans that are part of a securitization trust.¹⁴ There is simply no credible basis to treat the pre-petition Payments on the term loan debt here differently for safe harbor protection purposes. It is undisputed that those interests were widely held, identified by a CUSIP number and widely traded by institutional investors in the secondary market. The Second Circuit has noted that with respect to debt instruments a determinative distinction is whether it involves “non-tradeable bank loans” or “widely issued debt securities”. *Enron Creditors Rec. Corp.*, 651 F.3d at 337.

¹⁴ See Moving Brief, pp. 30-33.

Here, there is no issue that the interests in the Term Loan widely traded on the secondary market constituted “widely issued debt securities” as opposed to “no-tradeable bank loans”.

In a very recent decision, the Second Circuit explained why courts take an “expansive view of the section 546(e) safe harbor provisions ... because Congress drafted section 546(e) broadly ... in order to protect investors from the disruptive effect of after-the-fact unwinding of securities transactions.” Otherwise “[p]ension plans, mutual funds, and similar institutional investors would find securities markets far more risky if exposed to substantial liabilities derived from investments in securities sold long ago.” *In re Tribune Company Fraudulent Conveyance Litigation*, --- F.3d ---, 45 (2d Cir. N.Y., Mar. 29, 2016) (taking an expansive view of the section 546(e) safe harbor provisions to bar state law avoidance claims brought by individual creditors)¹⁵. Finding the safe harbor provisions protect the pre-petition Payments in issue here from avoidance is consistent with the Second Circuit’s interpretation of the scope, intent and purpose of section 546(e) and its language.

III. The AAT Has No Standing To Sue The Seller Conduit Defendants And Streamlined Procedures Should Be Established For Their Identification And Dismissal

As set forth in the Moving Brief, the TLI Defendants who sold their interest in the Term Loan but settled on the sale after the June 30, 2009 Record Holder Date (referred to in the Moving Brief as “Seller Conduit Defendants”) are being sued for the entire amount of the Postpetition Transfers despite not being the holder of the obligation under the Term Loan at the time of the payoff. To the extent they received the Postpetition Transfers, each

¹⁵ The Second Circuit in that case specifically rejected the argument, also made by the AAT at page 53 of its brief, that section 546(e) should not “trump” all other purposes of the Bankruptcy Code that seek to promote the maximization of assets available to creditors, and held that “[s]ection 546(e) cannot be trumped by the Code’s goal of maximizing the return to creditors without thwarting [section 546(e)’s] purposes”. *In re Tribune Co. Fraudulent Conveyance Litigation*, --- F.3d ---, 48-49 (2d Cir. N.Y., Mar. 29, 2016). A copy of the Second Circuit’s decision is annexed to the Power Decl. as Ex. 2.

Seller Conduit Defendant either (i) remitted it to its buyer in its entirety or (ii) netted out the Postpetition Transfers against the amount it was owed from the sale, thus satisfying the buyer's obligation, and remitted the balance to its buyer. In each case, the buyers, not the Seller Conduit Defendants, held the equitable interests in the Term Loan and were the beneficiaries of the Postpetition Transfers. Despite this, the Seller Conduit Defendants have been caught in the large, indiscriminate net cast by the AAT and forced to incur significant time and expense defending this massive litigation involving hundreds of parties even though they were not the holders of the obligations under the Term Loan at the time of the payoff.

The Opposition fails to respond at all the TLI Defendants' threshold argument that the Second Claim for Relief should be dismissed as to the Seller Conduit Defendants based on the express language of the DIP Order. The AAT's focus on the fact specific nature of the conduit defense—an issue plainly acknowledged by the TLI Defendants in the Opening Brief—misses the point, as the plain language of the DIP Order mandates that AAT's claims must be directed to the “holders of the obligations” under the Term Loan, not initial or mediate transferees.

The DIP Order only preserved the Committee's claims against “holders of obligations” under the Debtors' prepetition senior facilities, including the Term Loan (*see* DIP Order ¶¶ (v), 19(b)). Paragraph 19(d) of the DIP Order provides, in relevant part, that “Any Prepetition Senior Facilities Secured Party accepting Payment shall submit to the jurisdiction of the Court, it being understood that the respective administrative and collateral agents for the Prepetition Senior Facilities shall have no responsibility or liability for amounts paid to any Prepetition Senior Facilities Secured Parties and such agents shall

be exculpated for any and all such liabilities, excluding only such funds as are retained by each such agent solely in its respective role as a lender.” (DIP Order ¶ 19(d)). “Payment” is defined as payment “of all obligations under the Prepetition Senior Facilities” (DIP Order ¶ 19(b)).

Pursuant to Paragraph 19(d) of the DIP Order, the Committee was barred from suing JPMC as the “initial” transferee of the Postpetition Transfers. The DIP Order further limits the Committee’s ability to recover the Postpetition Transfers from only those parties that held obligations under the Term Loan and received the Payment—that is, the party for whose benefit the Postpetition Transfers were made under section 550(a) of the Bankruptcy Code. *See* 11 U.S.C. § 550(a)(1) (“the trustee may recover...the property transferred, or...the value of such property from (1) the initial transferee of such transfer *or the entity for whose benefit such transfer was made...*”) (emphasis added). Since the Seller Conduit Defendants had sold their interests in the Term Loan at the time of the Postpetition Transfers, they did not hold “obligations” under the Term Loan at that time. Thus, the AAT has no standing to sue the Seller Conduit Defendants under the terms of the DIP Order and the Amended Complaint should be dismissed as against these Defendants.

Accordingly, the Court should establish streamlined procedures for dismissal of the Second Claim for Relief against any Seller Conduit Defendant who can demonstrate to the AAT—or in the event the AAT and Seller Conduit Defendant cannot agree, the Court—that it sold its interest in the Term Loan prior to the Postpetition Transfers being made, and thus did not hold an the “obligation under the [Term Loan]” at the time the Postpetition Transfers were made.

CONCLUSION

For the foregoing reasons and the reasons set forth in the Moving Brief, the TLI Defendants respectfully request that the Court grant the Joint Motion and dismiss the Amended Complaint as against the TLI Defendants with prejudice, and that the Court grant such other and further relief as may be just and proper.

Dated: New York, New York
March 30, 2016

Respectfully submitted,

HAHN & HESSEN LLP

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*Attorneys for Attorneys for TLI Defendants listed in
Appendix A*

Appendix A

Arch Reinsurance Ltd.
Bechtel Trust & Thrift Plan & Master Trust for Certain Tax Qualified Bechtel Retirement Plans
Bill & Melinda Gates Foundation Trust
Board of Fire and Police Pension Commissioners of the City of Los Angeles
Board of Pensions of the Presbyterian Church (U.S.A.)
Building Trades United Pension Trust Fund
Carpenters Pension Fund of Illinois
Caterpillar Master Retirement Trust
City of Milwaukee Employees' Retirement System
Coca-Cola Company Retirement & Master Trust
Columbus Unconstrained Bond Fund (formerly Reams Unconstrained Bond Fund)
Connecticut General Life Insurance Company In Respect of Its Separate Account 4828CP
Cummins Inc. and Affiliates Collective Investment Trust
DDJ High Yield Fund
Debello Investors LLC
Eighth District Electrical Pension Fund
Emerson Electric Co. Retirement Master Trust
Employees' Retirement System of Baltimore County
GoldenTree Loan Opportunities III, Ltd.
GoldenTree Loan Opportunities IV, Ltd.
Halliburton Company Employee Benefit Master Trust
Health Care Foundation of Greater Kansas City
ILWU/PMA Pension Plan Trust
Indiana Public Retirement System
Indiana State Police Pension Trust
Indiana University
Inter-Local Pension Fund of the Graphic Communications Conference of the International Brotherhood of Teamsters
J.C. Penney Corporation, Inc. Pension Plan Trust
Kraft Heinz Foods Company & Kraft Foods Master Retirement Trust
Kynikos Opportunity Fund II, L.P.
Kynikos Opportunity Fund International Limited
Kynikos Opportunity Fund, L.P.
Master Trust Pursuant to the Retirement Plans of APL Limited & Subsidiaries
Mather Foundation
Montana Board of Investments
Municipal Employees' Retirement System of Michigan

New Orleans Carpenters Pension Plan <i>f/k/a Louisiana Carpenters Regional Council Pension Plan</i>
Purdue University
Reams – Prudential Retirement Insurance & Annuity Company, on behalf of Separate Account SA-18
Retirement Board of the Park Employees’ and Retirement Board Employees’ Annuity and Benefit Fund of Chicago
Santa Barbara County Employees’ Retirement System
Scout Core Plus Bond Fund (formerly Frontegra Columbus Core Plus Bond Fund)
Seattle City Employees’ Retirement System
Shinnecock CLO II, Ltd.
Sonoma County Employees’ Retirement Association
State of Indiana Major Moves Construction Fund
Stichting Bewaarder Syntrus Achmea Global High Yield Pool <i>f/k/a Stichting Bewaarder Interpolis Pensioen Global High Yield Pool</i>
Stichting Pensioenfond Hoogovens
Stichting Pensioenfond Metaal en Techniek
St. Luke’s Health System Corporation, as successor to St. Luke’s Episcopal Health System Foundation
Taxable Fixed Income Managers: Portfolio 1 [Series] <i>f/k/a Goldman Sachs GMS Core Plus Fixed Income Portfolio</i>
The Children’s Hospital of Philadelphia Foundation
The Duchossois Group Inc. Pension Trust
The Rotary Foundation
Twin Lake Total Return Partners LP <i>f/k/a Talon Total Return Partners LP</i>
Twin Lake Total Return Partners QP LP <i>f/k/a Talon Total Return QP Partners LP</i>
University of Kentucky
Ventura County Employees’ Retirement Association
Vulcan Ventures, Inc.
Wexford Catalyst Investors LLC
Wexford Spectrum Investors LLC
Oak Hill Credit Opportunities Financing Ltd.
Oak Hill Credit Opportunities Master Fund, Ltd.
Oak Hill Credit Partners V Ltd.
OHA Capital Solution Financing (Offshore), Ltd.
OHA Capital Solution Financing (Onshore), Ltd.
OHA Park Avenue CLO I Ltd.
OHSF Financing Ltd.
OHSF II Financing Ltd.

Stichting Pensioenfonds van de Metalektro *f/k/a Stichting Bedrijfstakpensioenfonds Voor De
Metalektro*

Stichting Pensionfonds Me

HAHN & HESSEN LLP

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New York, New York 10022
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*Attorneys for TLI Defendants listed in Appendix A
to Joinder to Omnibus Reply and Supplemental
Reply Memorandum of Law in Support of Certain
TLI Defendants' Joint Motion to Dismiss Plaintiff's
Amended Complaint*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MOTORS LIQUIDATION COMPANY, *et al.*,

Debtors.

MOTORS LIQUIDATION COMPANY
AVOIDANCE ACTION TRUST, by and
through the Wilmington Trust Company, solely
in its capacity as Trust Administrator and
Trustee,

Plaintiff,

-against-

JPMORGAN CHASE BANK N.A., *et al.*,

Defendants.

Chapter 11 Case

Case No. 09-50026 (MG)

(Jointly Administered)

Adversary Proceeding

Case No. 09-00504 (MG)

**DECLARATION OF MARK T. POWER IN SUPPORT
OF JOINDER TO OMNIBUS REPLY AND SUPPLEMENTAL
REPLY MEMORANDUM OF LAW IN SUPPORT OF CERTAIN
TLI DEFENDANTS' JOINT MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

Mark T. Power, hereby declares as follows¹:

1. I am an attorney at law duly admitted to practice before the United States Bankruptcy Court for the Southern, Eastern and Western Districts of New York, the Court of Appeals for the Second Circuit and the Courts of the State of New York, and a member of the firm of Hahn & Hessen LLP. My firm maintains offices for the practice of law at 488 Madison Avenue, New York, NY 10022.

2. My firm is counsel to the TLI Defendants listed in Appendix A to the accompanying Joinder to Omnibus Reply and Supplemental Reply Memorandum of Law in Support of Certain TLI Defendants' Joint Motion to Dismiss Plaintiff's Amended Complaint (the "Joinder and Supplemental Reply"). I respectfully submit this declaration (the "Power Declaration") in connection with the Joinder and Supplemental Reply, and to place before the Court true and correct copies of certain documents referenced in the Joinder and Supplemental Reply. Specifically, attached hereto for the Court's review and consideration are:

Exhibit 1: A comparison chart of the parties listed on Exhibit 4 to the Amended Complaint (May 27, 2009 Preference Payment) to those listed on Exhibit 3 to the Amended Complaint (June 30, 2009 Post-Petition Transfer).

Exhibit 2: The United States Court of Appeals for the Second Circuit's Opinion in *In re: Tribune Company Fraudulent Conveyance Litigation*, Docket Nos. 13-3992-cv; 13-3875-cv; 13-4178-cv; 13-4196-cv (March 29, 2016).

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the accompanying Joinder and Supplemental Reply or the Moving Brief.

Dated: New York, New York
March 30, 2016

/s/ Mark T. Power
MARK T. POWER

Exhibit 1

MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST VS. JP MORGAN CHASE BANK, N.A., ET AL., ADV. PRO. NO.: 09-00504 (MG)

**COMPARISON OF TERM LENDER DEFENDANTS NAMED IN EXHIBIT 4 – MAY 27, 2009 PREFERENCE PAYMENT
BUT NOT NAMED IN EXHIBIT 3 – JUNE 30, 2009 POST-PETITION TRANSFER**

Exhibit 4 - May 27, 2009 Preference Payment		Exhibit 3 – June 30, 2009 Post-Petition Transfer		Defendants Only Sued for Preference Claim ¹	
Defendant	Amount	Defendant	Amount	Defendant	Amount
Alticor Inc.	\$14,539.66	Advent Global Opportunity Master Fund	\$0.01	AR Mountain Range LLC	\$89.17
American International Group, Inc.	\$18,922.47	Alticor Inc.	\$967,705.71	Ares Enhanced Cr Opp Fd Ltd.	\$23,223.09
AR Mountain Range LLC	\$89.17	American International Group, Inc.	\$3,493.02	Ares Enhanced LN INV IR	\$2,211.57
Arch Reinsurance Ltd.	\$2,142.50	APG Fixed Income Credits Pool	\$6,011,716.65	Arnhold-Houston Police Officers' Pension System	\$13.75
Ares IIIR IVR CLO Ltd.	\$38,894.12	APG Investments US Inc. A/C Stichting Pensionfonds ABP	\$7,966.06	Bismarck CBNA Loan Funding LLC	\$5,436.10
Ares VR CLO Ltd.	\$56,483.56	Arch Reinsurance Ltd.	\$112,074.06	Black Diamond Offshore Ltd.	\$6,848.44
Ares VIR CLO Ltd.	\$56,224.04	Ares IIIR IVR CLO Ltd.	\$11,103.25	BlackRock Debt Strategies Fund, Inc.	\$15,252.94
Ares VIII CLO Ltd.	\$18,993.10	Ares VR CLO Ltd.	\$16,946.67	BlackRock Employees' Retirement Fund of the City of Dallas	\$8,579.78
Ares IX CLO Ltd.	\$52,558.56	Ares VIR CLO Ltd.	\$86,310.39	BlackRock Senior Income Series II	\$16,872.85
Ares XI CLO Ltd.	\$38,155.77	Ares VIII CLO Ltd.	\$322,417.78	Canadian Imperial Bank of Commerce	\$31,055.69
Ares Enhanced Cr Opp Fd Ltd.	\$23,223.09	Ares IX CLO Ltd.	\$977,328.89	Carbonado LLC	\$49,510.91
Ares Enhanced LN INV III Ltd.	\$94,612.33	Ares XI CLO Ltd.	\$644,835.56	Carlyle High Yield Par IX Ltd.	\$15,532.92
Ares Enhanced LN INV IR	\$2,211.57	Ares Enhanced LN INV III Ltd.	\$28,375.04	Carlyle High Yield Partners 2008-1, Ltd.	\$36,352.70
Arnhold-Houston Police Officers' Pension System	\$13.75	Arrowgrass Master Fund Ltd.	\$2,004,856.09	CCP Credit Acquisition Holding	\$3,546.51
Arrowgrass Master Fund Ltd.	\$25,651.12	Atrium IV	\$853,637.22	CMFG Life Insurance Company formerly known as Cuna Mutual Insurance Society	\$10,699.64
Atrium IV	\$75,311.42	Atrium V	\$2,430,542.22	Cypress Tree International Loan Holding Company	\$1,333.33
Atrium V	\$75,311.42	Avenue CLO V, Ltd.	\$3,897,052.11	DDJ - JC Penny Pension Plan Trust	\$21,301.80
Avenue CLO V, Ltd.	\$74,499.14	Avery Point CLO Ltd.	\$3,424,584.82	DDJ - Stichting Pensioenfonds Hoogovens	\$8,570.84
Avery Point CLO Ltd.	\$65,467.08	Ballyrock CLO II Ltd.	\$443,149.04	DDJ Cap - Caterpillar Master Retirement Trust	\$12,142.03
Ballyrock CLO 2006-1 Ltd.	\$8,471.59	Ballyrock CLO III Ltd.	\$664,723.52	DDJ Cap MGMT - Stichting Bewaarder Interpolis Pensioenen	\$17,617.84
Ballyrock CLO 2006-2 Ltd.	\$12,707.38	Ballyrock CLO 2006-1 Ltd.	\$443,149.04	DDJ Capital Mgt Group TR	\$4,523.50

¹ Column includes Defendant Term Lenders included in Exhibit 3 for a Post-Petition Transfer under \$500

Exhibit 4 - May 27, 2009 Preference Payment		Exhibit 3 - June 30, 2009 Post-Petition Transfer		Defendants Only Sued for Preference Claim ¹	
Defendant	Amount	Defendant	Amount	Defendant	Amount
Baltic Funding LLC	\$380,182.29	Ballyrock CLO 2006-2 Ltd.	\$664,723.52	DDJ High Yield Fund	\$4,285.42
Bank of America, N.A.	\$19,018.03	Baltic Funding LLC	\$12,279,928.27	DE-SEI Institutional Investment Trust - High Yield Bond Fund	\$21,561.10
Barclays Bank PLC	\$13,137.26	Bank of America, N.A.	\$994,833.91	DE-SEI Institutional Managed Trust - High Yield Bond Fund	\$18,558.91
BBT Fund LP	\$7,314.63	Barclays Bank PLC	\$4,963,695.95	Diamond Springs Trading LLC	\$22,430.27
Big Sky III Senior Loan Trust	\$34,032.41	BBT Fund LP	\$5,527,418.94	Double Black Diamond Offshore Ltd.	\$100,171.56
Bismarck CBNA Loan Funding LLC	\$5,436.10	Bechtel Trust & Thrift Plan Becon Trust & Thrift Plan	\$760,618.73	Eaton Vance Senior Income Trust	\$33,514.17
Black Diamond CLO 2005-1 Ltd.	\$199,186.37	Big Sky III Senior Loan Trust	\$1,780,236.47	Evergreen High Yield Bond Trust	\$5,207.96
Black Diamond CLO 2005-2 Ltd.	\$205,393.02	Black Diamond CLO 2005-1 Ltd.	\$10,419,444.18	Fairview Funding LLC	\$113,349.70
Black Diamond CLO 2005-2 Ltd.	\$18,970.13	Black Diamond CLO 2005-2 Ltd.	\$11,432,100.10	Fidelity Advisor Series I - Fidelity Advisor High Income Fund	\$13,810.52
Black Diamond CLO 2006-1 Cayman Ltd.	\$303,955.41	Black Diamond CLO 2005-2 Ltd.	\$992,328.03	Fidelity American High Yield Fund	\$822.24
Black Diamond International Funding Ltd.	\$330,808.25	Black Diamond CLO 2006-1 Cayman Ltd.	\$15,899,915.64	Fidelity - Arizona State Retirement System	\$228.54
Black Diamond Offshore Ltd.	\$6,848.44	Black Diamond International Funding Ltd.	\$31,177,664.60	Fidelity Ballyrock CLO II	\$8,471.59
BlackRock California State Teachers Retirement System	\$47,665.45	BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock Corporate High Yield Fund III Inc.	\$570,982.44	Fidelity Ballyrock CLO III	\$12,707.38
BlackRock Corporate High Yield Fund, Inc.	\$14,776.29	BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock Corporate High Yield Fund V, Inc.	\$944,989.63	Fidelity Canadian Assett All	\$9,036.84
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc.	\$24,786.04	BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock High Yield Trust	\$99,735.26	Fidelity Cen Inv-Hi Inc PFI	\$1,464.28
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock Corporate High Yield Fund III Inc.	\$15,729.60	BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc.	\$1,044,724.86	Fidelity Cen Inv-Hi Inc PFI	\$5,649.85
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock Corporate High Yield Fund V, Inc	\$22,879.42	BlackRock Corporate High Yield Fund, Inc.	\$521,114.81	Fidelity Illinois Muni Ret Fd	\$52,057.87

Exhibit 4 - May 27, 2009 Preference Payment		Exhibit 3 - June 30, 2009 Post-Petition Transfer		Defendants Only Sued for Preference Claim ¹	
Defendant	Amount	Defendant	Amount	Defendant	Amount
BlackRock Corporate High Yield Fund, Inc. formerly known as BlackRock Corporate High Yield Fund VI, Inc. as successor to BlackRock High Yield Trust	\$1,906.62	BlackRock Debt Strategies Fund, Inc. as successor to BlackRock Senior High Income Fund Inc.	\$374,007.16	Fidelity Income Fund - Fidelity Total Bond Fund	\$9,236.30
BlackRock Debt Strategies Fund, Inc.	\$15,252.94	BlackRock Debt Strategies Fund, Inc. as successor to BlackRock Strategic Bond Trust	\$224,404.30	Fidelity Income Fund - Fidelity Total Bond Fund	\$2,179.08
BlackRock Debt Strategies Fund, Inc. as successor to BlackRock Senior High Income Fund, Inc.	\$7,149.82	BlackRock Debt Strategies Fund, Inc.	\$797,881.95	Fidelity Puritan Trust - Puritan Fund	\$40,931.93
BlackRock Debt Strategies, Fund Inc. as successor to BlackRock Strategic Bond Trust	\$4,289.89	BlackRock Diversified Income Strategies Fund, Inc.	\$249,338.12	Fidelity TR-IG Invst Mgmt Ltd.	\$770.85
BlackRock Diversified Income Strategies Fund, Inc.	\$4,766.55	BlackRock Floating Rate Income Strategies Fund Inc.	\$423,874.79	Fidelity VIP FD Hi Inc PF	\$27,545.98
BlackRock Employees' Retirement Fund of the City of Dallas	\$8,579.78	BlackRock Funds II - High Yield Bond Portfolio as successor to BlackRock Funds High Yield Bond Portfolio	\$5,734,776.65	GPC 69 LLC	\$1,745.75
BlackRock Floating Rate Income Strategies Fund Inc.	\$8,103.13	BlackRock Funds II - High Yield Bond Portfolio as successor to BlackRock High Income Fund of Blackrockbond Fund Inc.	\$2,824,987.99	GPC 69 LLC	\$20,570.59
BlackRock Funds II - High Yield Bond Portfolio as successor to BlackRock Funds High Yield Bond Portfolio	\$109,630.54	BlackRock Funds II - High Yield Bond Portfolio as successor to BlackRock Managed Account Series High Income Portfolio	\$199,470.49	Grayson & Co.	\$11,639.05
BlackRock Funds II - High Yield Bond Portfolio as successor to BlackRock High Income Fund of Blackrockbond Fund Inc.	\$87,704.43	BlackRock Global Investment Series: Income Strategies Portfolio	\$1,286,835.44	Harch CLO II Ltd.	\$3,761.20
BlackRock Funds II - High Yield Bond Portfolio as successor to BlackRock Managed Account Series High Income Portfolio	\$3,813.24	BlackRock Global Investment Series: Income Strategies Portfolio	\$9,722.76	Harch CLO 111 Ltd.	\$3,737.69
BlackRock Global Investment Series: Income Strategies Portfolio	\$24,786.04	BlackRock GSAM Goldman Core Plus Fixed Income Fund	\$609,241.10	Hewett's Island CLO IV	\$5,423.42
BlackRock High Income Shares	\$7,149.82	BlackRock GSAM Goldman Core Plus Fixed Income Fund	\$4,603.15	Hewett's Island CLO VI Ltd.	\$5,423.42
BlackRock Met Investors Series Trust High Yield Portfolio	\$26,216.00	BlackRock High Income Shares	\$374,007.16	Hewlett-Packard Company	\$86,536.49
BlackRock Multi Strategy Sub-Trust C	\$11,463.90	BlackRock-Lockheed Martin Corp Master Retirement Trust	\$403,022.22	HFR RVA Opal Master Trust	\$6,150.09
BlackRock Senior Income Series II	\$16,872.85	BlackRock Met Investors Series Trust High Yield Portfolio	\$1,371,359.63	Highland - PAC SEL FD FLTG RT LN	\$43,560.76
BlackRock Senior Income Series IV	\$32,926.71	BlackRock Multi Strategy Sub-Trust C	\$96,010.49	Himco Fltg RT FD	\$10,088.16

Exhibit 4 - May 27, 2009 Preference Payment		Exhibit 3 - June 30, 2009 Post-Petition Transfer		Defendants Only Sued for Preference Claim ¹	
Defendant	Amount	Defendant	Amount	Defendant	Amount
BTG Factual Chile S.A. Administradora General De Fondos formerly known as Celfin Capital S.A. Administradora General de Fondos para Ultra Fondo de Inversion	\$6,196.51	BlackRock Senior Income Series IV	\$947,330.61	Janus Adviser Floating Rate Hi	\$322.62
Canadian Imperial Bank of Commerce	\$31,055.69	BTG Factual Chile S.A. Administradora General De Fondos formerly known as Celfin Capital S.A. Adm. General de Fondos para Ultra Fondo de Inversion	\$324,139.56	Jasper Funding	\$284,161.38
Canyon Capital CDO 2002-1 Ltd.	\$56,483.56	CAI Distressed Debt Opportunity Master Fund, Ltd.	\$3,013,333.33	Lehman GMAM Investment Funds Trust	\$236,369.88
Cap Fund LP	\$3,191.84	California State Teachers' Retirement System	\$2,241,547.83	Logan Circle - Public Service E	\$10,630.37
Capital Research-American High Income Trust	\$7,870.23	Canyon Capital CDO 2002-1 Ltd.	\$21,505.00	Longlane Master TRIV	\$516.22
Carbonado LLC	\$49,510.91	Cap Fund LP	\$2,411,964.63	Lord Abbett & Co - Teachers Re	\$2,216.55
Carlyle High Yield Par IX Ltd.	\$15,532.92	Capital Research-American High Income Trust	\$12,851.47	Lord Abbett Inv Trst - LA Hi Yld	\$49,686.51
Carlyle High Yield Partners 2008-1, Ltd.	\$36,352.70	Castle Garden Funding	\$1,948,656.67	MacKay New York Life Insurance Company (Guaranteed Products)	\$2,526.87
Castle Garden Funding	\$56,483.56	Caterpillar Inc. Master Pension Trust	\$215,858.19	McDonnell Illinois State Board of Investment	\$23,491.35
Caterpillar Inc. Master Pension Trust	\$4,126.52	Chatham Light II CLO Ltd.	\$2,852,278.78	Meritage Fund Ltd.	\$194,664.88
CCP Credit Acquisition Holding	\$3,546.51	Chrysler LLC Master Retirement Trust on behalf of Oaktree-DaimlerChrysler Corporation Master Retirement Trust	\$881,076.64	Oak Hill Cr Opp Fin Ltd.	\$3,183.49
Chatham Light II CLO Ltd.	\$54,526.43	Citibank, N.A.	\$21,056,528.61	Oak Hill Credit Opportunities Master Fund, Ltd.	\$797.91
Chrysler LLC Master Retirement Trust on behalf of Oaktree-DaimlerChrysler Corporation Master Retirement Trust	\$16,843.36	Citigroup Financial Products Inc.	\$10,024,280.46	Oak Hill Credit Partners II Ltd.	\$11,352.61
Citibank, N.A.	\$61,107.98	City of Milwaukee Employees Retirement System	\$22,958.23	Oak Hill Credit Partners III Ltd.	\$10,850.70
Citigroup Financial Products Inc.	\$166,593.55	City of Milwaukee Retirement System	\$5,336,922.42	Oak Hill Credit Partners IV Ltd.	\$12,308.62
City of Milwaukee Employees Retirement System	\$41,204.07	City of Oakland Police & Fire Retirement System	\$833,428.56	OHA Cap Sol Fin Offshore Ltd.	\$13,731.14
Classic Cayman B D Ltd.	\$188,278.54	Classic Cayman B D Ltd.	\$9,848,855.56	OHA Cap Sol Fin Onshore Ltd.	\$7,191.20
CMFG Life Insurance Company formerly known as Cuna Mutual Insurance Society	\$10,699.64	Continental Casualty Company	\$30,618,038.68	OHA Park Avenue CLO I Ltd.	\$11,065.81
Coca Cola Co Ret & MSTR Tr	\$8,336.00	Credit Suisse Loan Funding LLC	\$7,405.11	OHSF Financing Ltd.	\$729.45
Continental Casualty Company	\$585,318.73	Credit Suisse Syndicated Loan Fund	\$1,948,656.67	OHSF II Financing Ltd.	\$1,690.73

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Credit Suisse Loan Funding LLC	\$88.20	Crescent Senior Secured Floating Rate Loan Fund, LLC formerly known as TCW Senior Secured Floating Rate Loan Fund LP	\$1,752,580.49	ONEX Debt Opportunity FD Ltd.	\$5,138.97
Credit Suisse Syndicated Loan Fund	\$56,483.56	Debello Investors LLC	\$1,068,599.23	Pimco2496 - Fltg Rt Inc FD	\$8,321.25
Crescent Senior Secured Floating Rate Loan Fund, LLC formerly known as TCW Senior Secured Floating Rate Loan Fund LP	\$45,216.36	Delaware Delchester Fund	\$21,449.79	Pimco2497 - Fltg Rt Strt FD	\$43,109.11
Cypress Tree International Loan Holding Company	\$1,333.33	Delaware Diversified Income Fund	\$999,883.82	Pimco6819 Portola CLO Ltd.	\$19,018.03
DDJ - JC Penny Pension Plan Trust	\$21,301.80	Delaware Diversified Income Fund	\$1,187,892.57	Pimco700 - FD TOT RTN FD	\$605,581.51
DDJ - Stichting Pensioenfond Hoogovens	\$8,570.84	Delaware Diversified Income Fund	\$18,121,390.52	Pimco Fairway Loan Funding Company	\$38,132.36
DDJ Cap - Caterpillar Master Retirement Trust	\$12,142.03	Delaware Diversified Income Trust	\$502,109.05	Princeton Rosedale CLO II Ltd.	\$23,507.44
DDJ Cap MGMT - Stichting Bewaarder Interpolis Pensioen	\$17,617.84	Delaware Enhanced Global Dividend & Income Fund as successor to Delaware Investments Global Dividend & Income Fund	\$95,394.08	Reams Children's Hospital Fund	\$709.30
DDJ Capital Mgt Group TR	\$4,523.50	Delaware Enhanced Global Dividend & Income Fund	\$617,673.84	Reams City of Milwaukee Retirement System	\$24,746.49
DDJ High Yield Fund	\$4,285.42	Delaware Extended Duration Bond Fund	\$554,155.56	Reams - City of Oakland Police	\$15,794.28
DE-SEI Institutional Investment Trust - High Yield Bond Fund	\$21,561.10	Delaware Group Equity V Inc. Dividend Income Fund	\$1,836,537.77	Reams - Duchossois Ind Inc	\$8,872.17
DE-SEI Institutional Managed Trust - High Yield Bond Fund	\$18,558.91	Delaware Group Government Fund Core Plus Fund	\$326,236.62	Reams - Goldman Core Plus Fixed	\$11,639.06
Debello Investors LLC	\$51,338.33	Delaware Group Inc. Fund Inc. Corporate Bond Fund	\$1,460,955.56	Reams - Health Care Foundation of Greater Kansas City	\$10,024.48
Delaware Delchester Fund	\$43,312.45	Delaware Group Income Funds - Delaware High Yield Opportunities Fund	\$4,201,849.51	Reams - Health Care Foundation of Greater Kansas City	\$1,112.97
Delaware Diversified Income Fund	\$19,114.57	Delaware Investments Dividend & Income Fund Inc.	\$441,859.13	Reams - Indiana University	\$334.70
Delaware Diversified Income Fund	\$177,893.33	Delaware - LVIP Delaware Bond Fund	\$42,142.41	Reams Kraft Foods Global Inc.	\$6,432.44
Delaware Diversified Income Fund	\$18,613.15	Delaware Optimum Fixed Income Fund	\$1,268,252.98	Reams Louisiana Carpenters Regional Council Pension Trust Fund	\$2,061.45
Delaware Diversified Income Trust	\$5,578.79	Delaware Optimum Fixed Income Fund	\$602,481.00	Reams - San Diego Foundation	\$259.52
Delaware Enhanced Global Dividend & Income Fund	\$10,248.94	Delaware Pooled Trust - Core Plus Fixed Income Portfolio	\$250,607.02	Reams - Santa Barbara County	\$11,820.46

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Delaware Enhanced Global Dividend & Income Fund as successor to Delaware Investments Global Dividend & Income Fund	\$1,639.78	Delaware Pooled Trust - High Yield Bond Portfolio	\$323,249.94	Reams - Seattle City Employee's Retirement System	\$21,812.14
Delaware Extended Duration Bond Fund	\$122.22	Delaware PSEG Nuclear LLC Master Decommissioning Trust	\$3,321.02	Reams - St Indiana Major Moves	\$106,714.32
Delaware Group Equity V Inc. Dividend Income Fund	\$29,960.98	Delaware-SEI Institutional Investment Trust-High Yield Bond Fund	\$3,830,157.70	Russell Investment Company PLC The Global Strategic Yield Fund on behalf of DDJ - Multi-Style, Multi-Manager Funds PLC - Global Strategic Yield Fund	\$6,134.88
Delaware Group Government Fund Core Plus Fund	\$708.28	Delaware-SEI Institutional Managed Trust-High Yield Bond Fund	\$3,226,949.44	Sanford Bernstein II Interim DU	\$8,744.64
Delaware Group Inc. Fund Inc. Corporate Bond Fund	\$322.22	Delaware VIP Trust Diversified Income Series	\$6,106,308.49	Sanford C. Bernstein Fund, Inc. - Intermediate Duration Portfolio	\$14,574.40
Delaware Group Income Funds - Delaware High Yield Opportunities Fund	\$39,207.18	Delaware VIP Trust High Yield Series	\$6,119,707.61	Secondary Loan & Distressed	\$935,825.02
Delaware Investments Dividend & Income Fund	\$7,561.30	Deutsche Bank AG	\$7,620.34	SF-3 Segregated Portfolio	\$46,529.92
Delaware - LVIP Delaware Bond Fund	\$62,436.31	Deutsche Bank AG Cayman Island Branch	\$4,019,993.88	Spiret IV Loan Trust 2003 B	\$162,211.88
Delaware Optimum Fixed Income Fund	\$23,692.97	Eaton Vance CDO VIII Ltd.	\$3,944,491.42	Stichting Pensioenfonds ABP	\$76,127.67
Delaware Optimum Fixed Income Fund	\$2,798.08	Eaton Vance CDO IX Ltd.	\$2,272,660.57	Stichting Pensionfonds Me	\$12,541.54
Delaware Pooled Trust - Core Plus Fixed Income Portfolio	\$663.27	Eaton Vance CDO X PLC	\$1,969,771.11	Stichting Pensionfonds Me	\$17,855.92
Delaware Pooled Trust - High Yield Bond Portfolio	\$6,038.80	Eaton Vance Floating Rate Income Trust	\$4,063,530.63	TCW-Park Avenue Loan Trust	\$4,963.16
Delaware PSEG Nuclear LLC Master Decommissioning Trust	\$7,947.72	Eaton Vance Grayson & Co.	\$10,381,789.64	TCW Velocity CLO	\$18,140.97
Delaware-SEI Institutional Investment Trust-High Yield Bond Fund	\$36,769.64	Eaton Vance Institutional Senior Loan Fund	\$11,981,895.52	Teachers' Retirement System of the State of Illinois	\$34,614.60
Delaware-SEI Institutional Managed Trust-High Yield Bond Fund	\$31,613.15	Eaton Vance International (Cayman Islands) Funds Ltd. - Floating-Rate Income Fund formerly known as Eaton Vance Medallion Floating Rate Income Portfolio	\$1,472,011.53	The Hartford Mutual Funds, Inc. - The Hartford Floating Rate Fund	\$2,174.79
Delaware VIP Trust Diversified Income Series	\$68,209.26	Eaton Vance Limited Duration Income Fund	\$4,376,724.73	Twin Lake Total Return Partners LP formerly known as Talon Total Return Partners LP	\$25,649.01
Delaware VIP Trust High Yield Series	\$88,966.87	Eaton Vance Loan Opportunities Fund, Ltd.	\$1,984,656.05	Twin Lake Total Return Partners QP LP formerly known as Talon Total Return QP Partners LP	\$92,061.09
Deutsche Bank AG	\$145.68	Eaton Vance Senior Debt Portfolio	\$6,258,239.23	WAMCO Mt Wilson CLO Ltd.	\$37,655.71
Diamond Springs Trading LLC	\$22,430.27	Eaton Vance Senior Floating Rate Trust	\$3,405,272.73	WAMCO Mt Wilson CLO Ltd.	\$18,922.47

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Double Black Diamond Offshore Ltd.	\$100,171.56	Eaton Vance Short Duration Diversified Income Fund	\$905,892.60	Wells Fargo Advantage Income Fund: Income Plus Fund as successor to Evergreen Core Plus Bond Fund	\$1,886.05
Eaton Vance CDO VIII Ltd.	\$75,406.03	Eaton Vance Variable Trust Floating Rate Income Fund	\$5,654,957.18	TOTAL NO. DEFENDANTS ONLY NAMED IN PREFERENCE CLAIM: 113	
Eaton Vance CDO IX Ltd.	\$43,445.98	Employees Retirement Fund of the City of Dallas	\$448,808.61		
Eaton Vance CDO X PLC	\$37,655.71	Employers Insurance Company of WAUSAU	\$1,234.22		
Eaton Vance Floating Rate Income Trust	\$102,573.53	Evergreen High Income Fund	\$6,000.53		
Eaton Vance Grayson & Co.	\$285,842.31	Evergreen VA High Income Fund	\$321.57		
Eaton Vance Institutional Senior Loan Fund	\$436,064.16	Fairway Loan Funding Company	\$1,994,704.93		
Eaton Vance International (Cayman Islands) Funds Ltd. - Floating Rate Income Fund formerly known as Eaton Vance Medallion Floating Rate Income Portfolio	\$44,734.71	Fidelity Advisor Series I - Advisor Floating Rate High Income Fund	\$2,405,763.08		
Eaton Vance Limited Duration Income Fund	\$83,668.94	Fidelity Advisor Series I - Advisor High Income Advantage Fund	\$5,163,753.17		
Eaton Vance Loan Opportunities Fund, Ltd.	\$37,940.26	Fidelity Advisor Series II - Advisor Strategic Income Fund	\$23,873,447.27		
Eaton Vance Senior Debt Portfolio	\$152,826.60	Fidelity Central Investment Portfolios LLC Fidelity Floating Rate	\$31,829,331.35		
Eaton Vance Senior Floating Rate Trust	\$65,097.90	Fidelity Central Investment Portfolios LLC Fidelity High Income Central Fund 2	\$1,288,120.04		
Eaton Vance Senior Income Trust	\$33,514.17	Fidelity School Street Trust-Strategic Income Fund	\$19,879,483.86		
Eaton Vance Short Duration Diversified Income Fund	\$25,615.04	Fidelity Summer Street Trust-Capital & Income Fund	\$91,141,915.61		
Eaton Vance Variable Trust Floating Rate Income Fund	\$108,104.65	Fidelity Summer Street Trust-Capital & Income Fund	\$7,854,023.74		
Employers Insurance Company of WAUSAU	\$23.59	Fidelity Summer Street Trust-High Income Fund	\$12,926,309.67		
Evergreen High Income Fund	\$45,029.13	Fidelity Variable Insurance Products V Strategic Income Portfolio	\$1,182,585.24		
Evergreen High Yield Bond Trust	\$5,207.96	First Trust/Four Corners Senior Floating Rate Income Fund	\$1,484,770.80		
Evergreen VA High Income Fund	\$2,576.32	First Trust Four Corners Senior Floating Rate Income Fund II	\$7,906,158.05		
Fairview Funding LLC	\$113,349.70	Foothill CLO I, Ltd.	\$4,924,427.78		

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Fidelity Advisor Series I - Advisor Floating Rate High Income Fund	\$39,360.41	Foothill Group Inc.	\$13,897,679.71		
Fidelity Advisor Series I - Advisor High Income Advantage Fund	\$587,625.35	Foothill Group Inc.	\$3,994,472.56		
Fidelity Advisor Series I - Fidelity Advisor High Income Fund	\$13,810.52	Fortress Credit Investments I Ltd.	\$9,454,901.33		
Fidelity Advisor Series II - Advisor Strategic Income Fund	\$390,437.96	Fortress Credit Investments II Ltd.	\$2,363,725.33		
Fidelity American High Yield Fund	\$822.24	Four Corners CLO II Ltd.	\$1,984,656.05		
Fidelity - Arizona State Retirement System	\$228.54	Four Corners CLO III Ltd.	\$1,984,668.61		
Fidelity Ballyrock CLO II	\$8,471.59	General Electric Capital Corporation	\$27,375.93		
Fidelity Ballyrock CLO III	\$12,707.38	General Electric Pension Trust	\$4,874,560.15		
Fidelity Canadian Assett All	\$9,036.84	Genesis CLO 2007-1 Ltd.	\$3,098,182.71		
Fidelity Cen Inv-Hi Inc PFI	\$1,464.28	Genesis CLO 2007-2 Ltd.	\$5,953,968.09		
Fidelity Cen Inv-Hi Inc PFI	\$5,649.85	Global Investment Grade Credit Fund	\$1,477,328.33		
Fidelity Central Investment Portfolios LLC Fidelity Floating Rate	\$608,474.77	GMAM Investment Funds Trust	\$15,573,447.81		
Fidelity Central Investment Portfolios LLC Fidelity High Income Central Fund 2	\$24,624.73	Golden Knight II CLO, Ltd.	\$21,500.42		
Fidelity Illinois Muni Ret Fd	\$52,057.87	Goldentree Loan Opportunities III, Ltd.	\$1,613.96		
Fidelity Income Fund - Fidelity Total Bond Fund	\$9,236.30	Goldentree Loan Opportunities IV, Ltd.	\$1,611.79		
Fidelity Income Fund - Fidelity Total Bond Fund	\$2,179.08	Goldman Sachs - ABS Loans 2007 Ltd.	\$1,954,354.97		
Fidelity Puritan Trust - Puritan Fund	\$40,931.93	Goldman Sachs Lending Partners LLC	\$14,127,031.28		
Fidelity School Street Trust-Strategic Income Fund	\$325,077.15	Gracie Credit Opportunities Master Fund LP	\$2,004,856.09		
Fidelity Summer Street Trust-Capital & Income Fund	\$150,143.75	Grand Central Asset Trust Wam Series	\$1,483,371.45		
Fidelity Summer Street Trust-Capital & Income Fund	\$1,478,557.97	Guggenheim Portfolio Co X LLC	\$816,842.74		
Fidelity Summer Street Trust-High Income Fund	\$247,109.60	Gulf Stream Compass CLO 2003-1 Ltd.	\$972,336.09		
Fidelity TR-IG Invst Mgmt Ltd.	\$770.85	Gulf Stream - Compass CLO 2007 Ltd.	\$917,320.00		
Fidelity Variable Insurance Products V Strategic Income Portfolio	\$22,607.24	Gulf Stream - Sextant CLO 2007-1 Ltd.	\$1,947,323.33		
Fidelity VIP FD Hi Inc PF	\$27,545.98	Health Care Foundation of Greater Kansas City	\$725,936.71		
First Trust/Four Corners Senior Floating Rate Income Fund	\$28,384.06	Health Care Foundation of Greater Kansas City	\$3,927.95		

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First Trust Four Corners Senior Floating Rate Income Fund II	\$151,140.39	Hewett's Island CLO V Ltd.	\$436.58		
Foothill CLO I, Ltd.	\$94,139.27	High Yield Variable Account	\$265,442.42		
Foothill Group Inc.	\$265,679.08	Highland Credit Opportunities CDO, Ltd.	\$5,319.80		
Foothill Group Inc.	\$76,361.51	Highland Floating Rate Fund	\$0.02		
Fortress Credit Investments I Ltd.	\$180,747.40	Illinois Municipal Retirement Fund	\$3,262,152.73		
Fortress Credit Investments II Ltd.	\$45,186.85	Indiana University	\$160,618.09		
Four Corners CLO II Ltd.	\$37,940.26	Iowa Public Employees Retirement System	\$954,052.23		
Four Corners CLO III Ltd.	\$37,940.50	Ivy Funds-Ivy High Income Fund formerly known as Ivy Fund Inc.-High Income Fund	\$1,499,825.69		
General Electric Capital Corporation	\$113,108.69	Jersey Street CLO, Ltd.	\$1,055,403.98		
General Electric Pension Trust	\$93,185.96	J.P. Morgan Whitefriars Inc.	\$1,234,229.81		
Genesis CLO 2007-1 Ltd.	\$59,227.32	JPMCB - Secondary Loan & Distressed Credit Trading	\$119,460,770.20		
Genesis CLO 2007-2 Ltd.	\$113,820.78	Katonah 2007-1 CLO Ltd.	\$13,077.22		
Global Investment Grade Credit Fund	\$28,241.78	Katonah III, Ltd.	\$111,646.56		
Golden Knight II CLO, Ltd.	\$56,471.53	Katonah IV Ltd.	\$137,916.35		
Goldentree Loan Opportunities III, Ltd.	\$69,945.48	Kraft Foods Global Inc.	\$1,613,001.34		
Goldentree Loan Opportunities IV, Ltd.	\$69,851.34	Kynikos Opportunity Fund II LP	\$5,265.36		
Goldman Sachs - ABS Loans 2007 Ltd.	\$73,568.64	Kynikos Opportunity Fund International Ltd.	\$3,479.40		
Goldman Sachs Lending Partners LLC	\$83,628.65	Kynikos Opportunity Fund LP	\$630.87		
GPC 69 LLC	\$1,745.75	L3-Lincoln Variable Insurance Products Trust - Managed Fund	\$3,854.12		
GPC 69 LLC	\$20,570.59	Legg Mason ClearBridge Capital & Income Fund on behalf of WAMCO 2357 - Legg Mason Partners Capital & Income Fund	\$992,328.03		
Gracie Credit Opportunities Master Fund LP	\$38,326.42	Lehman Principal Investors Fund, Inc. - High Yield Fund	\$6,824,334.61		
Grand Central Asset TR SIL	\$5,527.28	Lincoln National Life Insurance Company Separate Account 12	\$566,824.04		
Grand Central Asset Trust Wam Series	\$36,321.26	Lincoln National Life WSA20	\$1,080,413.43		
Grayson & Co.	\$11,639.05	Loan Funding XI LLC	\$1,363,472.89		
Guggenheim Portfolio Co X LLC	\$882.20	Logan Circle - Alameda Contra Costa Transit Retirement System	\$38,275.76		
Gulf Stream Compass CLO 2003-1 Ltd.	\$37,844.93	Logan Circle - Allina Health Sys Defined Bnft Master Tr	\$24,359.61		

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Gulf Stream - Compass CLO 2007 Ltd.	\$75,089.19	Logan Circle - Allina Health System Trust	\$52,231.85		
Gulf Stream - Sextant CLO 2007-1 Ltd.	\$56,483.56	Logan Circle - Bechtel Corporation	\$2,355.90		
Harch CLO II Ltd.	\$3,761.20	Logan Circle Freddie Mac Foundation Inc.	\$77,093.92		
Harch CLO III Ltd.	\$3,737.69	Logan Circle - Liberty Mutual Employee Thrift Incentive Plan	\$263,580.95		
Hewett's Island CLO IV	\$5,423.42	Logan Circle Peoples Energy Corporation Pension Trust	\$23,615.37		
Hewett's Island CLO V Ltd.	\$24,385.20	Logan Circle - Russell Inst Funds LLC - Russell Core Bond Fund	\$127,793.57		
Hewett's Island CLO VI Ltd.	\$5,423.42	Logan Circle - Russell Investment Company PLC	\$221,208.07		
Hewlett-Packard Company	\$86,536.49	Logan Circle - Russell Multi-Managed Bond Fund	\$877,767.29		
HFR RVA Opal Master Trust	\$6,150.09	Logan Circle - Sunoco Inc. Master Retirement Trust	\$123,077.99		
Highland Credit Opportunities CDO, Ltd.	\$66,695.46	Logan Circle Wisconsin Public Service Corporation Pension Trust	\$47,245.09		
Highland - PAC SEL FD FLTG RT LN	\$43,560.76	Lord Abbett Investment Trust - Lord Abbett Floating Rate Fund	\$3,425.19		
Himco Fltg RT FD	\$10,088.16	Louisiana Carpenters Regional Council Pension Trust Fund	\$119,886.60		
Iowa Public Employees Retirement System	\$18,238.42	MacKay 1028 - Arkansas Public Employee Retirement System	\$1,773,672.14		
Ivy Funds-Ivy High Income Fund formerly known as Ivy Fund Inc.-High Income Fund	\$28,671.86	MacKay 8067 - Fire & Police Employee Retirement System of the City of Baltimore	\$1,506,463.15		
Janus Adviser Floating Rate Hi	\$322.62	MacKay-Houston Police Officers Pension System	\$571,330.15		
Jasper Funding	\$284,161.38	MacKay Shields Core Plus Alpha Fund Ltd.	\$749,415.18		
Jersey Street CLO, Ltd.	\$20,175.94	MacKay Shields Short Duration Alpha Fund	\$1,197,328.48		
J.P. Morgan Whitefriars Inc.	\$65,517.79	Madison Park Funding I Ltd.	\$17,377.78		
Katonah 2007-1 CLO Ltd.	\$56,673.74	Madison Park Funding II Ltd.	\$1,194,156.67		
Katonah III, Ltd.	\$2,134.32	Madison Park Funding III Ltd.	\$1,194,156.67		
Katonah IV Ltd.	\$2,636.52	Madison Park Funding IV Ltd.	\$1,948,656.67		
Kynikos Opportunity Fund II LP	\$19,168.80	Madison Park Funding V Ltd.	\$4,561.67		
Kynikos Opportunity Fund International Ltd.	\$12,668.63	Madison Park Funding VI Ltd.	\$1,948,656.67		
Kynikos Opportunity Fund LP	\$2,257.23	Marathon CLO I Ltd.	\$1,663,691.37		

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L3-Lincoln Variable Insurance Products Trust - Managed Fund	\$4,089.02	Marathon CLO II Ltd.	\$2,251,166.96		
Legg Mason ClearBridge Capital & Income Fund on behalf of WAMCO 2357 - Legg Mason Partners Capital & Income Fund	\$18,970.13	Marathon Financing I B V	\$22,630,040.42		
Lehman GMAM Investment Funds Trust	\$236,369.88	Mariner LDC	\$1,567.58		
Lehman Principal Investors Fund, Inc. - High Yield Fund	\$102,754.22	Marlborough Street CLO Ltd.	\$1,001,724.91		
Neuberger Berman Income Funds - Neuberger Berman High Income Bond Fund formerly known as Lehman-Neuberger Berman-High Income Bond Fund	\$87,159.55	Mason Capital LP	\$969,280.54		
Lincoln National Life Insurance Company Separate Account 12	\$3,429.40	Mason Capital LP	\$16,247,702.37		
Lincoln National Life WSA20	\$15,465.79	Mason Capital Ltd.	\$70,491,496.37		
Loan Funding XI LLC	\$26,065.23	Mayport CLO Ltd.	\$997,352.44		
Logan - Raytheon MPT - Floating Rate	\$44,710.20	Merrill Lynch Capital Services, Inc.	\$1,572,475.94		
Logan - Raytheon MPT - Mid Grade Portfolio	\$2,771.61	Metropolitan West High Yield Bond Fund	\$3,007,284.13		
Logan Circle - Alameda Contra Costa Transit Retirement System	\$1,496.55	MFS Charter Income Trust	\$1,162,016.49		
Logan Circle - Allina Health Sys Defined Bnft Master Tr	\$943.70	MFS Charter Income Trust	\$64,918.87		
Logan Circle - Allina Health System Trust	\$1,858.95	MFS Diversified Income Fund	\$241,524.91		
Logan Circle - Bechtel Corporation	\$14,585.63	MFS Diversified Income Fund	\$17,905.94		
Logan Circle Freddie Mac Foundation Inc.	\$2,812.26	MFS Diversified Income Fund-Series Trust XIII	\$100,905.61		
Logan Circle - Liberty Mutual Employee Thrift Incentive Plan	\$9,819.08	MFS Floating Rate Income Fund	\$1,543.71		
Logan Circle Peoples Energy Corporation Pension Trust	\$929.48	MFS Global High Yield Fund formerly known as MFS Series Trust III High Yield Opportunities Fund	\$2,909,694.84		
Logan Circle - Public Service E	\$10,630.37	MFS High Yield Portfolio as successor to MFS Variable Insurance Trust MFS High Income Series	\$1,721,064.33		
Logan Circle - Russell Inst Funds LLC - Russell Core Bond Fund	\$4,833.13	MFS Intermarket Income Trust I	\$203,022.60		
Logan Circle - Russell Investment Company PLC	\$8,244.21	MFS Intermediate High Income Fund	\$364,770.18		

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Logan Circle - Russell Multi-Managed Bond Fund	\$32,746.17	MFS Multimarket Income Trust	\$720,982.08		
Logan Circle - Russell Strategic Bond Fund	\$72,766.70	MFS Series III Trust High Income Fund as successor to MFS Series Trust X Floating Rate High Income Fund	\$686,223.23		
Logan Circle - Sunoco Inc. Master Retirement Trust	\$4,647.38	MFS Series Trust VIII Strategic Income Fund	\$439,510.35		
Logan Circle Wisconsin Public Service Corporation Pension Trust	\$1,763.62	MFS Series Trust VIII Strategic Income Fund	\$107,717.95		
Longlane Master TRIV	\$516.22	MFS Special Value Trust	\$254,117.15		
Lord Abbett & Co - Teachers Re	\$2,216.55	MFS Special Value Trust	\$13,951.21		
Lord Abbett Inv Trst - LA Hi Yld	\$49,686.51	MFS Strategic Income Portfolio as successor to MFS Variable Insurance Trust - MFS Strategic Income Series VWG	\$65,740.35		
Lord Abbett Investment Trust - Lord Abbett Floating Rate Fund	\$8,996.37	MFS Variable Insurance Trust II High Yield Portfolio	\$1,585,854.55		
MacKay 1028 - Arkansas Public Employee Retirement System	\$13,470.22	MFS Variable Insurance Trust II Strategic Income Portfolio	\$117,739.45		
MacKay 8067 - Fire & Police Employee Retirement System of the City of Baltimore	\$8,312.07	Microsoft Global Finance Ltd.	\$655,913.98		
MacKay - Houston Police Officers Pension System	\$15,948.30	Missouri State Employees Retirement System	\$481,218.89		
MacKay New York Life Insurance Company (Guaranteed Products)	\$2,526.87	Momentum Capital Fund Ltd.	\$3,132,988.63		
MacKay Shields Core Plus Alpha Fund Ltd.	\$11,527.99	Montana Board of Investments	\$14,923.66		
MacKay Shields Short Duration Alpha Fund	\$33,947.19	Morgan Stanley Senior Funding Inc.	\$18,080,171.96		
Madison Park Funding I Ltd.	\$75,311.42	Mt. Wilson CLO Ltd.	\$989,834.75		
Madison Park Funding II Ltd.	\$56,483.56	Mt. Wilson CLO Ltd.	\$1,969,771.11		
Madison Park Funding III Ltd.	\$56,483.56	Mt. Wilson CLO II Ltd.	\$3,944,491.42		
Madison Park Funding IV Ltd.	\$56,483.56	Muzinich & Company Ireland Ltd. for the Account of Extra Yield S Loan Fund	\$2,962,047.99		
Madison Park Funding V Ltd.	\$56,483.56	Nash Point CLO	\$6,017,698.85		
Madison Park Funding VI Ltd.	\$56,483.56	Neuberger Berman High Yield Strategies Fund formerly known as Lehman Brothers First Trust Income Opportunity Fund	\$3,056,838.20		
Marathon CLO I Ltd.	\$31,804.45	Neuberger Berman High Yield Strategies Fund as successor to Neuberger Berman Income Opportunity Fund, Inc.	\$1,695,336.18		

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Marathon CLO II Ltd.	\$43,035.09	Neuberger Berman Income Funds - Neuberger Berman High Income Bond Fund formerly known as Lehman-Neuberger Berman-High Income Bond Fund	\$5,953,347.76		
Marathon Financing I B V	\$432,613.82	New York Life Insurance Company (Guaranteed Products)	\$1,387.55		
Mariner LDC	\$25,672.10	New York Life Insurance Company GP - Portable Alpha	\$1,449,359.69		
Marlborough Street CLO Ltd.	\$19,149.77	New York Life Insurance Company Guaranteed Products	\$846,081.41		
Mason Capital LP	\$2,779.15	Oak Hill Credit Partners V Ltd.	\$0.01		
Mason Capital LP	\$16,100.99	Oaktree - Bill & Melinda Gates Foundation Trust	\$199,402.18		
Mason Capital Ltd.	\$76,600.06	Oaktree Capital Management - Central States SE and SW Area Pens Plan	\$455,175.51		
Mayport CLO Ltd.	\$19,066.18	Oaktree Capital Management High Yield Trust	\$1,592,693.57		
McDonnell Illinois State Board of Investment	\$23,491.35	Oaktree - Employees Retirement Fund of the City of Dallas	\$283,909.32		
Meritage Fund Ltd.	\$194,664.88	Oaktree - High Yield LP	\$718,916.99		
Metropolitan West High Yield Bond Fund	\$57,489.63	Oaktree - High Yield Fund II, LP	\$2,534,075.90		
MFS Charter Income Trust	\$22,214.03	Oaktree High Yield Plus Fund LP	\$19,727,707.63		
MFS Charter Income Trust	\$1,241.04	Oaktree - International Paper Co. Commingled Investment Group Trust	\$338,276.01		
MFS-DIF - Diversified Income Fund	\$4,617.18	Oaktree Loan Fund, LP	\$48,537,206.31		
MFS-DIF-Diversified Income Fund	\$342.30	Oaktree Loan Fund 2X (Cayman), LP	\$57,704,876.45		
MFS Diversified Income Fund - Series Trust XIII	\$1,928.99	Oaktree - Pacific Gas & Electric Post Ret Med Trust for Non-Mgt Emp & Retirees	\$29,373.35		
MFS Floating Rate High Income Fund	\$13,118.39	Oaktree - San Diego County Employees Retirement Association	\$185,915.72		
MFS Floating Rate Income Fund	\$4,778.64	Oaktree Senior Loan Fund, LP	\$1,999,767.63		
MFS Global High Yield Fund formerly known as MFS Series Trust III High Yield Opportunities Fund	\$55,624.04	Oaktree - TMCT LCC	\$126,649.37		
MFS High Yield Portfolio as successor to MFS Variable Insurance Trust MFS High Income Series	\$32,901.23	OCM - IBM Personal Pension Plan	\$134,444.29		
MFS - High Yield Variable Account	\$5,074.41	OCM-Pacific Gas & Electric Company Retirement Plan Master Trust	\$411,226.87		
MFS Intermarket Income Trust I	\$3,881.14	OCM-The State Teachers Retirement System of Ohio	\$540,177.55		

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MFS Intermediate High Income Fund	\$6,973.24	OCM-WM Pool High Yield Fixed Interest Trust	\$666,604.17		
MFS Multimarket Income Trust	\$13,782.87	Octagon Investment Partners XI Ltd.	\$421.21		
MFS Series Trust III High Income Fund	\$98,552.35	Oesterreichische Volksbanken AG	\$9,898,347.29		
MFS Series Trust VIII Strategic Income Fund	\$8,402.03	Ohio Police & Fire Pension Fund	\$3,163,990.24		
MFS Series Trust VIII Strategic Income Fund	\$2,059.22	OW Funding Ltd.	\$3,989,409.85		
MFS Special Value Trust	\$4,857.91	Pension Inv Committee of GM for GM Employees Domestic Group Pension Trust	\$3,894,774.72		
MFS Special Value Trust	\$266.70	Phoenix Edge Series Fund Phoenix Multi Sector Short Term Bond Series	\$100,366.54		
MFS Strategic Income Portfolio as successor to MFS Variable Insurance Trust - MFS Strategic Income Series VWG	\$1,256.74	Phoenix Edge SRS-Multi-Sector Fixed Income Series	\$311,839.96		
MFS Variable Insurance Trust II High Yield Portfolio	\$30,316.45	Pimco 1464 - Freescale Semiconductor Inc. Retirement Savings	\$1,477,328.33		
MFS Variable Insurance Trust II Strategic Income Portfolio	\$2,250.80	Pimco 1641 -Sierra Pacific Resources Defined Ben Mstr Tr	\$984,885.56		
Microsoft Global Finance Ltd.	\$12,538.97	Pimco2244 - Virginia Retirement System	\$3,984,334.25		
Missouri State Employees Retirement System	\$18,827.85	Pimco2603 - Red River HYPI LP	\$2,956,165.22		
Momentum Capital Fund Ltd.	\$80,830.72	Pimco3813 - Pimco Cayman Bank Loan Fund	\$1,987,237.72		
Montana Board of Investments	\$47,908.03	Pimco400 - Stocks Plus Sub Fund B LLC	\$0.01		
Morgan Stanley Senior Funding Inc.	\$190,735.62	Pimco706 - Private High Yield Portfolio	\$469,772.78		
Mt. Wilson CLO II Ltd.	\$75,406.03	Plumbers & Pipefitters National Pension Fund	\$1,534,357.44		
Muzinich & Company Ireland Ltd. for the Account of Extra Yield S Loan Fund	\$56,624.86	PNC Financial Service Group, Inc. as successor to National City Bank	\$5,071,432.78		
Nash Point CLO	\$115,039.11	Portola CLO Ltd.	\$987,373.75		
Neuberger Berman High Yield Strategies Fund formerly known as Lehman Brothers First Trust Income Opportunity Fund	\$46,318.67	Portola CLO Ltd.	\$7,460.16		
Neuberger Berman High Yield Strategies Fund as successor to Neuberger Berman Income Opportunity Fund, Inc.	\$25,811.65	Primus CLO I Ltd.	\$3,939,542.22		

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New York Life Insurance Company Guaranteed Products	\$17,180.89	Primus CLO II Ltd.	\$994,833.91		
New York Life Insurance Company GP - Portable Alpha	\$25,834.51	Putnam 29X-Funds Trust Floating Rate Income Fund	\$932,842.63		
Oak Hill Cr Opp Fin Ltd.	\$3,183.49	Putnam 29X-Funds Trust Floating Rate Income Fund	\$7,048.14		
Oak Hill Credit Opportunities Master Fund, Ltd.	\$797.91	Pyramis Floating Rate High Income Commingled Pool	\$561,359.70		
Oak Hill Credit Partners II Ltd.	\$11,352.61	Pyramis Floating Rate High Income Commingled Pool	\$1,043,590.97		
Oak Hill Credit Partners III Ltd.	\$10,850.70	Pyramis High Yield Fund LLC	\$230,558.44		
Oak Hill Credit Partners IV Ltd.	\$12,308.62	R3 Capital Partners Master LP	\$1,329.93		
Oak Hill Credit Partners V Ltd.	\$13,754.56	Race Point II CLO	\$766,653.30		
Oaktree - Bill & Melinda Gates Foundation Trust	\$3,811.93	Race Point II CLO	\$2,884,998.23		
Oaktree Capital Management - Central States SE and SW Area Pens Plan	\$8,701.50	Race Point III CLO	\$2,760,547.44		
Oaktree Capital Management High Yield Trust	\$30,447.19	Race Point IV CLO Ltd.	\$5,444,627.39		
Oaktree - Employees Retirement Fund of the City of Dallas	\$5,427.44	Raytheon MPT - Logan Floating Rate Portfolio	\$2,338,791.51		
Oaktree - High Yield LP	\$13,743.39	Raytheon MPT - Logan Mid Grade Portfolio	\$144,983.15		
Oaktree - High Yield Fund II, LP	\$48,443.41	RBC Dexia Investors Services Trust as Trustee for GM Canada Foreign Trust	\$3,303,518.28		
Oaktree - High Yield Plus Fund LP	\$92,969.15	Reams - Agility Global Fixed Income Master Fund LP	\$69,726.52		
Oaktree - International Paper Co. Commingled Investment Group Trust	\$6,466.75	Reams - American President Lines Ltd.	\$421,252.00		
Oaktree Loan Fund, LP	\$927,875.77	Reams - Baltimore County Retirement	\$1,627,109.01		
Oaktree Loan Fund 2X (Cayman), LP	\$1,103,132.23	Reams - Bill & Melinda Gates Foundation	\$3,955,089.59		
Oaktree - Pacific Gas & Electric Post Ret Med Trust for Non-Mgt Emp & Retirees	\$561.52	Reams - Bill & Melinda Gates Foundation Trust	\$1,473,525.83		
Oaktree - San Diego County Employees Retirement Association	\$3,554.11	Reams Board of Fire & Police Pension Commissioners of the City of Los Angeles	\$3,925,540.26		
Oaktree Senior Loan Fund, LP	\$38,229.15	Reams - Board of Pen Presbyterian Church	\$7,326,404.68		
Oaktree - TMCT LCC	\$2,421.13	Reams - Building Trades United Pension Trust	\$1,571,899.27		
OCM - IBM Personal Pension Plan	\$2,570.14	Reams - Carpenters Pension Fund of Illinois	\$1,550,905.50		

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OCM-Pacific Gas & Electric Company Retirement Plan Master Trust	\$7,861.34	Reams - Carpenters Pension Fund of Illinois Pension Plan	\$229,770.14		
OCM-The State Teachers Retirement System of Ohio	\$10,326.46	Reams Chicago Park District	\$307,176.14		
OCM-WM Pool High Yield Fixed Interest Trust	\$12,743.33	Reams - Children's Hospital Philadelphia	\$1,360,332.73		
Octagon Investment Partners XI Ltd.	\$18,254.42	Reams City of Montgomery Retirement System	\$212,615.57		
Oesterreichische Volksbanken AG	\$189,224.66	Reams City of Montgomery Alabama Employee's Retirement System	\$1,163,985.80		
OHA Cap Sol Fin Offshore Ltd.	\$13,731.14	Reams - Connecticut General Life Insurance Company	\$4,517,240.38		
OHA Cap Sol Fin Onshore Ltd.	\$7,191.20	Reams - Cummins Inc. & Affiliates Collective Investment Trust	\$3,739,056.62		
OHA Park Avenue CLO I Ltd.	\$11,065.81	Reams - Eight District Electrical Pension Fund	\$1,100,268.95		
Ohio Police & Fire Pension Fund	\$47,563.95	Reams - Emerson Electric	\$4,447,929.23		
OHSF Financing Ltd.	\$729.45	Reams - Emerson Electric Company Retirement Master Trust	\$1,120,558.56		
OHSF II Financing Ltd.	\$1,690.73	Reams - Employees' Retirement System of the City of Milwaukee	\$1,365,743.67		
ONEX Debt Opportunity FD Ltd.	\$5,138.97	Reams - Employees' Retirement System of Baltimore County	\$1,150,862.30		
OW Funding Ltd.	\$76,264.73	Reams - Frontegra Columbus Core Plus Fund	\$10,810,707.11		
Pension Inv Committee of GM for GM Employees Domestic Group Pension Trust	\$74,455.61	Reams - Halliburton Company	\$3,063,580.91		
Phoenix Edge Series Fund Phoenix Multi Sector Short Term Bond Series	\$1,918.69	Reams - Halliburton Company Employee Benefit Master Trust	\$776,379.94		
Phoenix Edge SRS-Multi-Sector Fixed Income Series	\$5,961.38	Reams - ILWU/PMA Pension Plan	\$8,886.36		
Pimco 1464 - Freescale Semiconductor Inc. Retirement Savings	\$28,241.78	Reams - ILWU/PMA	\$1,481,060.60		
Pimco 1641-Sierra Pacific Resources Defined Ben Mstr Tr	\$18,827.85	Reams - ILWU/PMA	\$2,303.87		
Pimco2244 - Virginia Retirement System	\$76,167.70	Reams Indiana State Police	\$405,966.18		
Pimco2496 - Fltg Rt Inc FD	\$8,321.25	Reams Indiana State Police Pension Fund	\$249,750.15		
Pimco2497 - Fltg Rt Strt FD	\$43,109.11	Reams Indiana State Police Pension Trust	\$7,093.62		
Pimco2603 - Red River HYPI LP	\$162,746.46	Reams Indiana State Police Pension Trust	\$598,561.97		

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Pimco3813 - Pimco Cayman Bank Loan Fund	\$37,989.61	Reams Indiana State Teachers Retirement Fund	\$14,130,923.76		
Pimco400 - Stocks Plus Sub Fund B LLC	\$60,539.97	Reams - Inter Local Pension Fund of the Graphic Comm. International Brotherhood of Teamsters	\$533.18		
Pimco6819 Portola CLO Ltd.	\$19,018.03	Reams - Inter Local Pension Fund of the Graphic Comm. International Brotherhood of Teamsters	\$1,516,832.03		
Pimco700 - FD TOT RTN FD	\$605,581.51	Reams - Kraft Foods Master Retirement Trust	\$6,462,107.87		
Pimco706 - Private High Yield Portfolio	\$26,686.23	Reams - LA Fire & Police	\$9,802,302.40		
Pimco Fairway Loan Funding Company	\$38,132.36	Reams - LabCorp Cash Balance Retirement Fund	\$1,777.27		
Pimco - St. Luke Episcopal Health System Foundation	\$18,489.93	Reams - Laboratory Corp. of America Holdings	\$1,945,490.57		
Plumbers & Pipefitters National Pension Fund	\$23,084.66	Reams - Master Trust Pursuant to the Retirement Plans of APL Ltd.& Subsidiaries	\$328,952.01		
PNC Financial Services Group, Inc. as successor to National City Bank	\$283,647.77	Reams - Montana Board of Investments	\$2,701,656.33		
Primus CLO I Ltd.	\$75,311.42	Reams Municipal Employee Retirement System of Michigan	\$4,319,334.60		
Primus CLO II Ltd.	\$19,018.03	Reams - Parkview Memorial Health	\$946,930.74		
Princeton Rosedale CLO II Ltd.	\$23,507.44	Reams - Prudential Retirement Insurance & Annuity Company	\$2,716,391.85		
Putnam 29X-Funds Trust Floating Rate Income Fund	\$17,967.70	Reams - Reichhold, Inc.	\$288,007.37		
Pyramis Floating Rate High Income Commingled Pool	\$10,731.40	Reams - Retirement Board of the Park Employees Annuity & Benefit Fund	\$1,840.19		
Pyramis Floating Rate High Income Commingled Pool	\$19,950.11	Reams - Retirement Board of the Park Employees Annuity & Benefit Fund	\$652,257.51		
Pyramis Hi Yld BD Comngl Pool	\$25,223.18	Reams - Rotary International Foundation	\$1,631,028.32		
Pyramis High Yield Fund LLC	\$4,407.54	Reams - Santa Barbara County Employees' Retirement System	\$1,619,395.40		
Race Point II CLO	\$14,655.95	Reams - Sonoma County Employees Retirement Association	\$1,601,012.42		
Race Point II CLO	\$55,151.92	Reams - St Luke Episcopal Health System Foundation	\$967,208.74		
Race Point III CLO	\$52,772.82	Reams - State of Indiana Major Moves Construction Fund	\$1,788,750.65		
Race Point IV CLO Ltd.	\$104,083.82	Reams - The Mather Foundation Core Plus	\$511,885.71		
RBC Dexia Investor Services Trust as Trustee for GM Canada Foreign Trust	\$49,162.24	Reams - The Rotary Foundation	\$216,071.83		

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Reams - Agility Global Fixed Income Master Fund LP	\$1,332.95	Reams - Trustees of Indiana University	\$1,371,450.68		
Reams - American President Lines Ltd.	\$13,251.38	Reams - Trustees of Purdue University	\$1,969,771.11		
Reams - Baltimore County Retirement	\$12,859.27	Reams Unconstrained Bond Fund LLC formerly known as Reams -Columbus Extended Market Fund LLC	\$51,514.74		
Reams - Bill & Melinda Gates Foundation	\$78,849.46	Reams Unconstrained Bond Fund LLC formerly known as Reams -Columbus Extended Market Fund LLC	\$9,280,796.31		
Reams Board of Fire & Police Pension Commissioners of the City of Los Angeles	\$9,642.01	Reams - University of Kentucky	\$1,267,949.62		
Reams - Board of Pen Presbyterian Church	\$108,478.87	Reams - Ventura County Employees' Retirement Association	\$5,796,481.03		
Reams - Building Trades United Pension Trust	\$25,293.52	Reichhold	\$1,103,630.60		
Reams - Carpenters Pension Fund of Illinois Pension Plan	\$28,628.90	RGA Reinsurance Company	\$563,933.80		
Reams Children's Hospital Fund	\$709.30	Russell Strategic Bond Fund	\$1,966,019.35		
Reams - Children's Hospital Philadelphia	\$24,226.22	Sankaty High Yield Partners III LP	\$0.01		
Reams City of Milwaukee Retirement System	\$24,746.49	Santa Barbara County	\$1,963,751.76		
Reams City of Montgomery Alabama Employee's Retirement System	\$22,152.72	Seattle City Employees' Retirement System	\$1,341,592.31		
Reams - City of Oakland Police	\$15,794.28	Security Investors-Security Income Fund-High Yield Series	\$988,606.76		
Reams - Connecticut General Life Insurance Company	\$66,461.41	SEI Institutional Managed Trust's Core Fixed Income	\$992,328.03		
Reams - Cummins Inc. & Affiliates Collective Investment Trust	\$71,478.77	Senior Income Trust	\$1,753,127.28		
Reams - Duchossois Ind Inc	\$8,872.17	SFR Ltd.	\$4,437,986.94		
Reams - Eight District Electrical Pension Fund	\$18,438.50	Shinnecock CLO II Ltd.	\$17,595.00		
Reams - Emerson Electric	\$79,944.50	Silverado CLO 2006-1 Ltd.	\$1,987,161.93		
Reams - Emerson Electric Company Retirement Master Trust	\$4,468.57	Solus Core Opportunities Master Fund Ltd.	\$2,009,777.78		
Reams - Employees' Retirement System of the City of Milwaukee	\$34,339.37	SRI Fund LP	\$2,110,469.05		
Reams - Employees' Retirement System of Baltimore County	\$28,938.19	SSS Funding II, LLC	\$3,055,475.15		
Reams - Frontegra Columbus Core Plus Fund	\$142,286.88	State of Connecticut	\$415,854.32		
Reams - Goldman Core Plus Fixed	\$11,639.06	State of Indiana Major Moves	\$7,283,279.55		

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Reams - Halliburton Company	\$54,923.43	Stichting Depository APG Fixed Income Credits Pool	\$2,997,001.70		
Reams - Halliburton Company Employee Benefit Master Trust	\$1,276.73	Stichting Pensioenfond van de Metalektro formerly known as Stichting Bedrijfstakpensioenfond voor De Metalektro	\$0.01		
Reams - Health Care Foundation of Greater Kansas City	\$10,024.48	Stoney Lane Funding I Ltd.	\$21,722.22		
Reams - Health Care Foundation of Greater Kansas City	\$1,112.97	Taconic Capital Partners 1 5 LP	\$483,893.33		
Reams - ILWU/PMA Pension Plan	\$28,527.05	Taconic Market Dislocation Fund II LP	\$327,116.16		
Reams Indiana State Police Pension Trust	\$1,341.42	Taconic Market Dislocation Master Fund II LP	\$76,083.84		
Reams Indiana State Police Pension Trust	\$17,293.45	Taconic Opportunity Fund LP	\$3,144,906.67		
Reams-Indiana State Teachers Retirement Fund	\$270,137.96	TCW High Income Partners Ltd.	\$999,883.82		
Reams - Indiana University	\$334.70	TCW Illinois State Board of Investment	\$1,052,945.75		
Reams - Inter Local Pension Fund of the Graphic Comm. International Brotherhood of Teamsters	\$1,711.62	TCW Senior Secured Loan Fund LP	\$1,395,736.13		
Reams - Inter Local Pension Fund of the Graphic Comm. International Brotherhood of Teamsters	\$27,040.39	Texas County & District Ret System	\$768,581.94		
Reams Kraft Foods Global Inc.	\$6,432.44	The Assets Management Committee of the Coca-Cola Company Master Retirement Trust	\$436,056.20		
Reams - Kraft Foods Master Retirement Trust	\$114,474.59	The Children's Hospital Foundation	\$190,947.20		
Reams - LA Fire & Police	\$175,409.99	The Duchossois Group Inc.	\$1,004,985.26		
Reams - LabCorp Cash Balance Retirement Fund	\$5,705.41	The Galaxite Master Unit Trust	\$967,854.30		
Reams - Laboratory Corp. of America Holdings	\$25,771.98	The Mather Foundation	\$514,396.32		
Reams Louisiana Carpenters Regional Council Pension Trust Fund	\$2,061.45	The Royal Bank of Scotland PLC New York Branch	\$21,095,155.08		
Reams Montana Board of Investments	\$4,003.01	Thrivent Financial for Lutherans	\$2,004,888.89		
Reams Municipal Employee Retirement System of Michigan	\$79,392.82	Thrivent High Yield Fund	\$2,526,118.68		
Reams - Parkview Memorial Health	\$18,102.28	Thrivent High Yield Portfolio	\$3,989,663.61		
Reams - Prudential Retirement Insurance & Annuity Company	\$40,815.43	Thrivent Income Fund	\$1,874,603.56		
Reams - Reichhold, Inc.	\$20,479.33	Thrivent Series Fund, Inc. - Income Portfolio	\$3,087,548.41		

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Reams - Retirement Board of the Park Employees Annuity & Benefit Fund	\$5,907.40	TMCT II LLC	\$127,366.51		
Reams - Retirement Board of the Park Employees Annuity & Benefit Fund	\$9,823.15	Transamerica Series Trust formerly known as Aegon/Transamerica Series Trust MFS Highyield	\$2,006,165.08		
Reams - Rotary International Foundation	\$29,016.05	Trilogy Portfolio Company LLC	\$1,211.88		
Reams - San Diego Foundation	\$259.52	TRS SVCO LLC	\$1.04		
Reams - Santa Barbara County	\$11,820.46	UMC Benefit Board, Inc. on behalf of Oaktree - General Board of Pension & Health Benefit of the UN Methodist Church Inc.	\$371,757.15		
Reams - Santa Barbara County Employees' Retirements System	\$41,192.35	Velocity CLO Ltd.	\$703,141.64		
Reams - Seattle City Employee's Retirement System	\$21,812.14	Virtus Multi Sector Fixed Income Fund	\$243,515.10		
Reams - Sonoma County Employees Retirement Association	\$30,531.81	Virtus Multisector Short Term Bond Fund	\$1,688,256.29		
Reams - St Indiana Major Moves	\$106,714.32	Virtus Senior Floating Rate Fund	\$108,436.91		
Reams - State of Indiana Major Moves Construction Fund	\$26,354.00	Vitesse CLO Ltd.	\$2,791,472.28		
Reams - The Mather Foundation Core Plus	\$16,724.91	Vulcan Ventures Inc.	\$249,338.12		
Reams - The Rotary Foundation	\$797.96	WAMCO 176 - Virginia Supplemental Retirement System	\$1,974,747.45		
Reams Trustees of Indiana University	\$23,461.97	WAMCO 176 - Virginia Supplemental Retirement System	\$14,920.31		
Reams Trustees of Indiana University	\$1,000.99	WAMCO 3023 - Virginia Retirement Systems Bank Loan Portfolio	\$6,725,218.84		
Reams - Trustees of Purdue University	\$37,655.71	WAMCO 3073 - John Hancock Trust Floating Rate Income Trust	\$4,224,753.58		
Reams Unconstrained Bond Fund LLC formerly known as Reams -Columbus Extended Market Fund LLC	\$13,030.98	WAMCO 3074 - John Hancock Fund II- Floating Rate Income Fund	\$3,222,325.54		
Reams Unconstrained Bond Fund LLC formerly known as Reams -Columbus Extended Market Fund LLC	\$165,372.88	WAMCO - 3131 - Raytheon Master Pension Master Trust	\$2,244,043.05		
Reams - University of Kentucky	\$24,047.78	WAMCO Western Asset Floating Rate High Income Fund LLC	\$11,435,085.85		
Reams - Ventura County Employees' Retirement Association	\$84,242.72	Wells - 13702900	\$1,494,965.74		
RGA Reinsurance Company	\$14,549.42	Wells - 14945000	\$423,874.79		

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Russell Investment Company PLC The Global Strategic Yield Fund on behalf of DDJ - Multi-Style, Multi-Manager Funds PLC - Global Strategic Yield Fund	\$6,134.88	Wells & Company Master Pension Trust: DBA Wells Capital Management - 12222133	\$1,719,872.50		
Sanford Bernstein II Interim DU	\$8,744.64	Wells Cap Mgmt - 13923601	\$1,095,201.98		
Sanford C. Bernstein Fund, Inc. - Intermediate Duration Portfolio	\$14,574.40	Wells Capital Management 16017000	\$422,869.90		
Secondary Loan & Distressed	\$935,825.02	Wells Capital Management 16959700	\$6,403,964.26		
Security Investors-Security Income Fund-High Yield Series	\$18,898.99	Wells Capital Management 16959701	\$6,052,939.18		
SEI Institutional Managed Trust's Core Fixed Income	\$18,970.13	Wells Capital Management 18866500	\$347,817.24		
SF-3 Segregated Portfolio	\$46,529.92	Wells Fargo Advantage Income Opportunities Fund formerly known as Evergreen Income Advantage Fund	\$7,372.50		
SFR Ltd.	\$84,840.08	Wells Fargo Advantage Multi-Sector Income Fund formerly known as Evergreen Multi Sector Income Fund formerly known as Evergreen Managed Income Fund	\$3,965.37		
Shinnecock CLO II Ltd.	\$56,483.56	Wells Fargo Advantage Utilities & High Income Fund formerly known as Evergreen Utilities & High Income Fund	\$570.20		
Silverado CLO 2006-1 Ltd.	\$37,988.17	Wells - Los Angeles Dept. of Water & Power Employees Retire Disability	\$820,805.98		
Spiret IV Loan Trust 2003 B	\$162,211.88	West Bend Mutual Insurance Company	\$697,868.06		
SRI Fund LP	\$2,792.86	Wexford Catalyst Investors	\$1,346,433.09		
SSS Funding II, LLC	\$58,410.89	Wexford Spectrum Investors LLC	\$3,761,466.23		
State of Connecticut	\$7,949.80				
Stichting Pensioenfonds ABP	\$76,127.67				
Stichting Pensioenfonds van de Metalektro formerly known as Stichting Bedrijfstakpensioenfonds Voor De Metalektro	\$15,322.25				
Stichting Pensionfonds Me	\$12,541.54				
Stichting Pensionfonds Me	\$17,855.92				
Stoney Lane Funding I Ltd.	\$94,139.27				
TCW High Income Partners Ltd.	\$19,114.57				
TCW Illinois State Board of Investment	\$3,674.52				

Exhibit 4 - May 27, 2009 Preference Payment		Exhibit 3 - June 30, 2009 Post-Petition Transfer		Defendants Only Sued for Preference Claim ¹	
Defendant	Amount	Defendant	Amount	Defendant	Amount
TCW-Park Avenue Loan Trust	\$4,963.16				
TCW Senior Secured Loan Fund LP	\$36,009.82				
TCW Velocity CLO	\$18,140.97				
Teachers' Retirement System of the State of Illinois	\$34,614.60				
Texas County & District Ret System	\$14,692.82				
The Galaxite Master Unit Trust	\$76,264.73				
The Hartford Mutual Funds, Inc. - The Hartford Floating Rate Fund	\$2,174.79				
The Royal Bank of Scotland PLC New York Branch	\$328,445.32				
Thrivent High Yield Fund	\$29,589.25				
Thrivent High Yield Portfolio	\$50,907.90				
Thrivent Income Fund	\$11,230.71				
Thrivent Series Fund, Inc. - Income Portfolio	\$18,434.34				
TMCT II LLC	\$2,434.84				
Transamerica Series Trust formerly known as Aegon/Transamerica Series Trust MFS Highyield	\$38,351.44				
Trilogy Portfolio Company LLC	\$57,694.12				
TRS SVCO LLC	\$0.02				
Twin Lake Total Return Partners LP formerly known as Talon Total Return Partners LP	\$25,649.01				
Twin Lake Total Return Partners QP LP formerly known as Talon Total Return QP Partners LP	\$92,061.09				
UMC Benefit Board, Inc. on behalf of Oaktree - General Board of Pension & Health Benefit of the UN Methodist Church Inc.	\$7,106.80				
Virtus Multi Sector Fixed Income Fund	\$4,655.23				
Virtus Multisector Short Term Bond Fund	\$32,274.05				
Virtus Senior Floating Rate Fund	\$2,072.97				
Vitesse CLO Ltd.	\$72,019.64				
Vulcan Ventures Inc.	\$4,766.55				
WAMCO 176 - Virginia Supplemental Retirement System	\$38,036.07				

Exhibit 4 - May 27, 2009 Preference Payment		Exhibit 3 - June 30, 2009 Post-Petition Transfer		Defendants Only Sued for Preference Claim ¹	
Defendant	Amount	Defendant	Amount	Defendant	Amount
WAMCO 3023 - Virginia Retirement Systems Bank Loan Portfolio	\$128,564.62				
WAMCO 3073 - John Hancock Trust Floating Rate Income Trust	\$117,692.14				
WAMCO 3074 - John Hancock Fund II- Floating Rate Income Fund	\$98,528.93				
WAMCO - 3131 - Raytheon Master Pension Master Trust	\$42,898.91				
WAMCO Mt Wilson CLO Ltd.	\$37,655.71				
WAMCO Mt Wilson CLO Ltd.	\$18,922.47				
WAMCO Western Asset Floating Rate High Income Fund LLC	\$341,743.65				
Wells - 13702900	\$24,728.40				
Wells - 14945000	\$8,103.13				
Wells & Company Master Pension Trust: DBA Wells Capital Management - 12222133	\$29,027.90				
Wells Cap Mgmt - 13923601	\$20,936.75				
Wells Capital Management 16017000	\$8,083.92				
Wells Capital Management 16959700	\$76,216.70				
Wells Capital Management 16959701	\$73,356.77				
Wells Capital Management 18866500	\$6,649.15				
Wells Fargo Advantage Income Opportunities Fund formerly known as Evergreen Income Advantage Fund	\$99,831.83				
Wells Fargo Advantage Income Fund: Income Plus Fund as successor to Evergreen Core Plus Bond Fund	\$1,886.05				
Wells Fargo Advantage Multi-Sector Income Fund formerly known as Evergreen Multi Sector Income Fund	\$47,970.55				
Wells Fargo Advantage Utilities & High Income Fund formerly known as Evergreen Utilities & High Income Fund	\$7,039.70				
Wells - Los Angeles Dept. of Water & Power Employees Retire Disability	\$15,691.18				
West Bend Mutual Insurance Company	\$18,004.91				
Wexford Catalyst Investors	\$64,350.23				
Wexford Spectrum Investors LLC	\$180,038.79				

Exhibit 2

13-3992-cv (L)
In re: Tribune Company Fraudulent Conveyance Litigation

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2014

4
5 (Argued: November 5, 2014

Decided: March 29, 2016)

6
7 Docket Nos. 13-3992-cv; 13-3875-cv; 13-4178-cv; 13-4196-cv

8
9
10 IN RE: TRIBUNE COMPANY FRAUDULENT CONVEYANCE LITIGATION

11
12 NOTE HOLDERS, Deutsche Bank Trust Company Americas, Law Debenture
13 Trust Company of New York, Wilmington Trust Company, INDIVIDUAL
14 RETIREES, William A. Niese, on behalf of a putative class of
15 Tribune Company retirees,

16
17 Plaintiffs-Appellants-Cross-Appellees,

18
19 MARK S. KIRSCHNER, as Litigation Trustee for the Tribune
20 Litigation Trust,

21
22 Plaintiff,

23
24 TENDERING PHONES HOLDERS, Citadel Equity Fund Ltd., Camden Asset
25 Management LLP and certain of their affiliates,

26
27 Plaintiffs-Intervenors,

28
29 v.

30
31 LARGE PRIVATE BENEFICIAL OWNERS, FINANCIAL INSTITUTION HOLDERS,
32 FINANCIAL INSTITUTION CONDUITS, Merrill Lynch, Pierce, Fenner &
33 Smith, Inc., on behalf of a putative class of former Tribune
34 Company shareholders, PENSION FUNDS, including public, private,
35 and Taft Hartley Funds, INDIVIDUAL BENEFICIAL OWNERS, Mario J.
36 Gabelli, on behalf of a putative class of former Tribune Company
37 shareholders, MUTUAL FUNDS, AT-LARGE, ESTATE OF KAREN BABCOCK,
38 PHILLIP S. BABCOCK, DOUGLAS BABCOCK, DEFENDANTS LISTED ON EXHIBIT
39 B,

40
41 Defendants-Appellees-Cross-Appellants,
42

1 CURRENT AND FORMER DIRECTORS AND OFFICERS, Betsy D. Holden,
2 Christopher Reyes, Dudley S. Taft, Enrique Hernandez, Jr., Miles
3 D. White, Robert S. Morrison, William A. Osborn, Harry Amsden,
4 Stephen D. Carver, Dennis J. FitzSimons, Robert Gremillion,
5 Donald C. Grenesko, David Dean Hiller, Timothy J. Landon, Thomas
6 D. Leach, Luis E. Le, Mark Hianik, Irving Quimby, Crane Kenney,
7 Chandler Bigelow, Daniel Kazan, Timothy Knight, Thomas Finke, SAM
8 ZELL AND AFFILIATED ENTITIES, EGI-TRB, LLC, Equity Group
9 Investments, LLC, Sam Investment Trust, Samuel Zell, Tower CH,
10 LLC, Tower DC, LLC, Tower DL, LLC, Tower EH, LLC, Tower Gr, LARGE
11 SHAREHOLDERS, Chandler Trusts and their representatives,
12 FINANCIAL ADVISORS, Valuation Research Corporation, Duff &
13 Phelps, LLC, Morgan Stanley & Co. Inc. and Morgan Stanley Capital
14 Services, Inc., GreatBanc Trust Company, Citigroup Global
15 Markets, Inc., CA PUBLIC EMPLOYEE RETIREMENT SYSTEM, CALPERS,
16 UNIVERSITY OF CA REGENTS, T. ROWE PRICE ASSOCIATES, INC., MORGAN
17 KEEGAN & COMPANY, INC., NTCA, DIOCESE OF TRENTON-PENSION FUND,
18 FIRST ENERGY SERVICE COMPANY, MARYLAND STATE RETIREMENT AND
19 PENSION SYSTEM, T BANK LCV QP, T BANK-LCV-PT, JAPAN POST
20 INSURANCE, CO., LTD., SERVANTS OF RELIEF FOR INCURABLE CANCER
21 (AKA DOMINICAN SISTERS OF HAWTHORNE), NEW LIFE INTERNATIONAL, NEW
22 LIFE INTERNATIONAL TRUST, SALVATION ARMY, SOUTHERN TERRITORIAL
23 HEADQUARTERS, CITY OF PHILADELPHIA EMPLOYEES, OHIO CARPENTERS'
24 MIDCAP (AKA OHIO CARPENTERS' PENSION FUND), TILDEN H. EDWARDS,
25 JR., MALLOY AND EVANS, INC., BEDFORD OAK PARTNERS, LP, DUFF AND
26 PHELPS LLC, DURHAM J. MONSMA, CERTAIN TAG-ALONG DEFENDANTS,
27 MICHAEL S. MEADOWS, WIRTZ CORPORATION,
28

29 Defendants.*

30 - - - - -
31
32 B e f o r e: WINTER, DRONEY, Circuit Judges, and HELLERSTEIN,
33 District Judge.**
34

35 Appeal from a dismissal by the United States District Court
36 for the Southern District of New York (Richard J. Sullivan,
37 Judge), of state law, constructive fraudulent conveyance claims
38 brought by creditors' representatives against the Chapter 11

* The Clerk of the Court is instructed to conform the caption in accordance with this opinion.

** The Honorable Alvin K. Hellerstein, of the Southern District of New York, sitting by designation.

1 debtor's former shareholders, who were cashed out in an LBO. The
2 district court held that plaintiffs lacked statutory standing
3 under the Bankruptcy Code. We hold that appellants have
4 statutory standing but affirm on the ground that appellants'
5 claims are preempted by Section 546(e) of that Code.

6
7 ROY T. ENGLERT, JR. (Lawrence S.
8 Robbins, Ariel N. Lavinbuk, Daniel
9 N. Lerman, Shai D. Bronshtein,
10 Robbins, Russell, Englert, Orseck,
11 Untereiner & Sauber LLP,
12 Washington, DC, Pratik A. Shah,
13 James E. Tysse, Z.W. Julius Chen,
14 Akin Gump Strauss Hauer & Feld LLP,
15 Washington, DC, David M. Zensky,
16 Mitchell Hurley, Deborah J. Newman,
17 Akin Gump Strauss Hauer & Feld LLP,
18 New York, NY, Robert J. Lack & Hal
19 Neier, Friedman Kaplan Seiler &
20 Adelman LLP, New York, NY, Daniel
21 M. Scott & Kevin M. Magnuson,
22 Kelley, Wolter & Scott, P.A.,
23 Minneapolis, MN, David S. Rosner &
24 Sheron Korpus, Kasowitz Benson
25 Torres & Friedman LLP, New York,
26 NY, Joseph Aronauer, Aronauer Re &
27 Yudell, LLP, New York, NY, on the
28 brief), Robbins, Russell, Englert,
29 Orseck, Untereiner & Sauber LLP,
30 Washington, DC, for Plaintiffs-
31 Appellants-Cross-Appellees Note
32 Holders.

33
34 Jay Teitelbaum, Teitelbaum & Baskin
35 LLP, White Plains, NY, for
36 Plaintiffs-Appellants-Cross-
37 Appellees Individual Retirees.

38
39 Joel A. Feuer & Oscar Garza,
40 Gibson, Dunn & Crutcher LLP, Los
41 Angeles, CA, David C. Bohan & John
42 P. Sieger, Katten Muchin Rosenman

1 LLP, Chicago, IL, for Defendants-
2 Appellees-Cross-Appellants Large
3 Private Beneficial Owners.

4
5 PHILIP D. ANKER (Alan E.
6 Schoenfeld, Adriel I. Cepeda
7 Derieux, Pablo G. Kapusta, Wilmer
8 Cutler Pickering Hale and Dorr LLP,
9 New York, NY, Sabin Willett &
10 Michael C. D'Agnostino, Bingham
11 McCutchen LLP, Boston, MA, Joel W.
12 Millar, Washington, DC, on the
13 brief), Wilmer Cutler Pickering
14 Hale and Dorr LLP, New York, NY,
15 for Defendants-Appellees-Cross-
16 Appellants Financial Institution
17 Holders.

18
19 Elliot Moskowitz, Davis Polk &
20 Wardwell LLP, New York, NY, Daniel
21 L. Cantor, O'Melveny & Myers LLP,
22 New York, NY, Gregg M. Mashberg &
23 Stephen L. Ratner, Proskauer Rose
24 LLP, New York, NY, for Defendants-
25 Appellees-Cross-Appellants
26 Financial Institution Conduits.

27
28 DOUGLAS HALLWARD-DRIEMEIER, Ropes &
29 Gray LLP, Washington, DC, D. Ross
30 Martin, Ropes & Gray LLP, New York,
31 NY, Matthew L. Fornshell, Ice
32 Miller LLP, Columbus, OH, for
33 Defendants-Appellees-Cross-
34 Appellants Pension Funds.

35
36 Andrew J. Entwistle, Entwistle &
37 Cappucci, LLP, New York, NY, David
38 N. Dunn, Potter Stewart, Jr. Law
39 Offices, Brattleboro, VT, Mark A.
40 Neubauer, Steptoe & Johnson LLP,
41 Los Angeles, CA, for Defendants-
42 Appellees-Cross-Appellants
43 Individual Beneficial Owners.

44
45 Michael S. Doluisio & Alexander
46 Bilus, Dechert LLP, Philadelphia,
47 PA, Steven R. Schoenfeld, Robinson

1 & Cole LLP, New York, NY, for
2 Defendants-Appellees-Cross-
3 Appellants Mutual Funds.

4
5 Alan J. Stone & Andrew M. LeBlanc,
6 Milbank, Tweed, Hadley & McCloy
7 LLP, New York, NY, for Defendant-
8 Appellee-Cross-Appellant At-Large.

9
10 Gary Stein, David K. Momborquette,
11 William H. Gussman, Jr., Schulte
12 Roth & Zabel LLP, New York, NY, for
13 Defendants-Appellees-Cross-
14 Appellants Defendants Listed on
15 Exhibit B.

16
17 Kevin Carroll, Securities Industry
18 and Financial Markets Association,
19 Washington, DC, Holly K. Kulka,
20 NYSE Euronext, New York, NY,
21 Marshall H. Fishman, Timothy P.
22 Harkness, David Y. Livshiz,
23 Freshfields Bruckhaus Deringer US
24 LLP, New York, NY, for Amici Curiae
25 Securities Industry and Financial
26 Markets Association, International
27 Swaps and Derivatives Association,
28 Inc., and the NYSE Euronext.

29
30 Michael A. Conley, John W. Avery,
31 Tracey A. Hardin, Benjamin M.
32 Vetter, Securities and Exchange
33 Commission, Washington, DC, for
34 Amicus Curiae Securities and
35 Exchange Commission.

36
37
38 WINTER, Circuit Judge:

39
40 Representatives of certain unsecured creditors of the
41 Chapter 11 debtor Tribune Company appeal from Judge Sullivan's
42 grant of a motion to dismiss their state law, constructive
43 fraudulent conveyance claims brought against Tribune's former
44 shareholders. Appellants seek to recover an amount sufficient to

1 satisfy Tribune's debts to them by avoiding (recovering) payments
2 by Tribune to shareholders that purchased all of its stock. The
3 payments occurred in a transaction commonly called a leveraged
4 buyout ("LBO"),¹ soon after which Tribune went into Chapter 11
5 bankruptcy. Appellants appeal the district court's dismissal for
6 lack of statutory standing, and appellees cross-appeal from the
7 district court's rejection of their argument that appellants'
8 claims are preempted.²

9 We address two issues: (i) whether appellants are barred by
10 the Bankruptcy Code's automatic stay provision from bringing
11 state law, constructive fraudulent conveyance claims while
12 avoidance proceedings against the same transfers brought by a
13 party exercising the powers of a bankruptcy trustee on an
14 intentional fraud theory are ongoing; and (ii) if not, whether
15 the creditors' state law, constructive fraudulent conveyance
16 claims are preempted by Bankruptcy Code Section 546(e).

17 On issue (i), we hold that appellants are not barred by the
18 Code's automatic stay because they have been freed from its
19 restrictions by orders of the bankruptcy court and by the
20 debtors' confirmed reorganization plan. On issue (ii), the

¹ In a typical LBO, a target company is acquired with a significant portion of the purchase price being paid through a loan secured by the target company's assets.

² Because the issue has no effect on our disposition of this matter, we do not pause to consider whether a cross-appeal was necessary for appellees to raise the preemption issues in this court, but, for convenience purposes, we sometimes refer to those issues by the term cross-appeal.

1 subject of appellees' cross-appeal, we hold that appellants'
2 claims are preempted by Section 546(e). That Section shields
3 from avoidance proceedings brought by a bankruptcy trustee
4 transfers by or to financial intermediaries effectuating
5 settlement payments in securities transactions or made in
6 connection with a securities contract, except through an
7 intentional fraudulent conveyance claim.

8 We therefore affirm.

9 BACKGROUND

10 a) The LBO

11 Tribune Media Company (formerly known as "Tribune Company")
12 is a multimedia corporation that, in 2007, faced deteriorating
13 financial prospects. Appellee Samuel Zell, a billionaire
14 investor, proposed to acquire Tribune through an LBO. In
15 consummating the LBO, Tribune borrowed over \$11 billion secured
16 by its assets. The \$11 billion plus, combined with Zell's \$315
17 million equity contribution, was used to refinance some of
18 Tribune's pre-existing bank debt and to cash out Tribune's
19 shareholders for over \$8 billion at a premium price -- above its
20 trading range -- per share. It is undisputed that Tribune
21 transferred the over \$8 billion to a "securities clearing agency"
22 or other "financial institution," as those terms are used in
23 Section 546(e), acting as intermediaries in the LBO transaction.
24 Those intermediaries in turn paid the funds to the shareholders

1 in exchange for their shares that were then returned to Tribune.
2 Appellants seek to satisfy Tribune's debts to them by avoiding
3 Tribune's payments to the shareholders. Appellants do not seek
4 money from the intermediaries. See Note 8, infra.

5 b) Bankruptcy Proceedings

6 On December 8, 2008, with debt and contingent liabilities
7 exceeding its assets by more than \$3 billion, Tribune and nearly
8 all of its subsidiaries filed for bankruptcy under Chapter 11 in
9 the District of Delaware. A trustee was not appointed, and
10 Tribune and its affiliates continued to operate the businesses as
11 debtors in possession. See 11 U.S.C. § 1107(a) ("Subject to any
12 limitations on a trustee . . . a debtor in possession shall have
13 all the rights . . . , and powers, and shall perform all the
14 functions and duties . . . of a trustee"). In discussing
15 the powers of a bankruptcy trustee that can be exercised by a
16 trustee or parties designated by a bankruptcy court, we shall
17 refer to the trustee or such parties as the "trustee et al."

18 The bankruptcy court appointed an Official Committee of
19 Unsecured Creditors (the "Committee") to represent the interests
20 of unsecured creditors. In November 2010, alleging that the LBO-
21 related payments constituted intentional fraudulent conveyances,
22 the Committee commenced an action under Code Section 548(a)(1)(A)
23 against the cashed out Tribune shareholders, various officers,
24 directors, financial advisors, Zell, and others alleged to have

1 benefitted from the LBO. An intentional fraudulent conveyance is
2 defined as one in which there was "actual intent to hinder,
3 delay, or defraud" a creditor. 11 U.S.C. § 548(a)(1)(A).

4 In June 2011, two subsets of unsecured creditors filed state
5 law, constructive fraudulent conveyance claims in various federal
6 and state courts. The plaintiffs, the appellants before us,
7 were: (i) the Retiree Appellants, former Tribune employees who
8 hold claims for unpaid retirement benefits and (ii) the
9 Noteholder Appellants, the successor indenture trustees for
10 Tribune's pre-LBO senior notes and subordinated debentures. A
11 constructive fraudulent conveyance is, generally speaking, a
12 transfer for less than reasonably equivalent value made when the
13 debtor was insolvent or was rendered so by the transfer. See
14 Picard v. Fairfield Greenwich Ltd., 762 F.3d 199, 208-09 (2d Cir.
15 2014).

16 Before bringing these actions, appellants moved the
17 bankruptcy court for an order stating that: (i) after the
18 expiration of the two-year statute of limitations period during
19 which the Committee was authorized to bring avoidance actions
20 under 11 U.S.C. § 546(a), eligible creditors had regained the
21 right to prosecute their creditor state law claims; and (ii) the
22 automatic stay imposed by Code Section 362(a) was lifted solely
23 to permit the immediate filing of their complaint. In support of
24 that motion, the Committee argued that, under Section 546(a), the

1 "state law constructive fraudulent conveyance transfer claims
2 ha[d] reverted to individual creditors" and that the "creditors
3 should consider taking appropriate actions to preserve those
4 claims." Statement of the Official Committee of Unsecured
5 Creditors in Supp. of Mot. 3, In re Tribune Co., No 08-13141
6 (KJC) (Bankr. D. Del. Mar. 17, 2011).

7 In April 2011, the bankruptcy court lifted the Code's
8 automatic stay with regard to appellants' actions. The court
9 reasoned that because the Committee had elected not to bring the
10 constructive fraudulent conveyance actions within the two-year
11 limitations period following the bankruptcy petition imposed by
12 Section 544, fully discussed infra, the unsecured creditors
13 "regained the right, if any, to prosecute [such claims]." J.
14 App'x at 373. Therefore, the court lifted the Section 362(a)
15 automatic stay "to permit the filing of any complaint by or on
16 behalf of creditors on account of such Creditor [state law
17 fraudulent conveyance] Claims." Id. The court clarified,
18 however, that it was not resolving the issues of whether the
19 individual creditors had statutory standing to bring such claims
20 or whether such claims were preempted by Section 546(e).

21 On March 15, 2012, the bankruptcy court set an expiration
22 date of June 1, 2012 for the remaining limited stay on the state
23 law, fraudulent conveyance claims. In July 2012, the bankruptcy
24 court ordered confirmation of the proposed Tribune reorganization

1 plan. The plan terminated the Committee and transferred
2 responsibility for prosecuting the intentional fraudulent
3 conveyance action to an entity called the Litigation Trust. The
4 confirmed plan also provided that the Retiree and Noteholder
5 Appellants could pursue "any and all LBO-Related Causes of Action
6 arising under state fraudulent conveyance law," except for the
7 federal intentional fraudulent conveyance and other LBO-related
8 claims pursued by the Litigation Trust. J. App'x at 643. Under
9 the plan, the Retiree and Noteholder Appellants recovered
10 approximately 33 cents on each dollar of debt. The plan was
11 scheduled to take effect on December 31, 2012, the date on which
12 Tribune emerged from bankruptcy.

13 c) District Court Proceedings

14 Appellants' various state law, fraudulent conveyance
15 complaints alleged that the LBO payments, made through financial
16 intermediaries as noted above, were for more than the reasonable
17 value of the shares and made when Tribune was in distressed
18 financial condition. Therefore, the complaints concluded, the
19 payments were avoidable by creditors under the laws of various
20 states. These actions were later consolidated with the
21 Litigation Trust's ongoing federal intentional fraud claims in a
22 multi-district litigation proceeding that was transferred to the
23 Southern District of New York. In re: Tribune Co. Fraudulent
24 Conveyance Litig., 831 F. Supp. 2d 1371 (J.P.M.L. 2011).

1 After consolidation, the Tribune shareholders moved to
2 dismiss appellants' claims. The district court granted the
3 motion on the ground that the Bankruptcy Code's automatic stay
4 provision deprived appellants of statutory standing to pursue
5 their claims so long as the Litigation Trustee was pursuing the
6 avoidance of the same transfers, albeit under a different legal
7 theory. In re Tribune Co. Fraudulent Conveyance Litig., 499 B.R.
8 310, 325 (S.D.N.Y. 2013). The court held that the bankruptcy
9 court had only "conditionally lifted the stay." Id. at 314.

10 The district court rejected appellees' preemption argument
11 based on Section 546(e). That Section bars a trustee et al. from
12 exercising its avoidance powers under Section 544 to avoid
13 transfers by the debtor to specified financial intermediaries,
14 e.g. a "securities clearing agency" or "financial institution,"
15 that is a "settlement payment" in a securities transaction or is
16 a transfer "in connection with a securities contract." The
17 district court held that Section 546(e) did not bar appellants'
18 actions because: (i) Section 546(e)'s prohibition on avoiding
19 the designated transfers applied only to a bankruptcy trustee et
20 al., id. at 315-16; and (ii) Congress had declined to extend
21 Section 546(e) to state law, fraudulent conveyance claims brought
22 by creditors, id. at 318.

DISCUSSION

We review de novo the district court's grant of appellees' motion to dismiss. See Mary Jo C. v. N.Y. State & Local Ret. Sys., 707 F.3d 144, 151 (2d Cir. 2013). The relevant facts being undisputed for purposes of this proceeding, only issues of law are before us.

a) Statutory Standing to Bring the Claims

We first address the district court's dismissal of appellants' claims on the ground that they lacked standing to bring them because of Section 362(a)(1).³ In re Tribune, 499 B.R. at 325. When a bankruptcy action is filed, any "action or proceeding against the debtor" is automatically stayed by Section 362(a). The purpose of the stay is "to protect creditors as well as the debtor," Ostano Commerzanstalt v. Telewide Sys., Inc., 790 F.2d 206, 207 (2d Cir. 1986) (per curiam), by avoiding wasteful, duplicative, individual actions by creditors seeking individual recoveries from the debtor's estate, and by ensuring an equitable distribution of the debtor's estate. See In re McMullen, 386 F.3d 320, 324 (1st Cir. 2004) (noting that Section 362(a)(1), among other things, "safeguard[s] the debtor estate

³The term "standing" has been used to describe issues arising in bankruptcy proceedings when individual creditors sue to recover funds from third parties to satisfy amounts owed to them by the debtor, and that action is defended on the ground that the recovery seeks funds that are recoverable under the Code only by a representative of all creditors. St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc., 884 F.2d 688, 696-97 (2d Cir. 1989), disapproved of on other grounds by In re Miller, 197 B.R. 810 (W.D.N.C. 1996). The use of the term "standing" is based on the suing creditors' need to demonstrate an injury other than one redressable under the Code only by the trustee et al. Id. at 704.

1 from piecemeal dissipation . . . ensur[ing] that the assets
2 remain within the exclusive jurisdiction of the bankruptcy court
3 pending their orderly and equitable distribution among the
4 creditors"). Although fraudulent conveyance actions are against
5 third parties rather than a debtor, there is caselaw, discussed
6 infra, stating that the automatic stay applies to such actions.⁴
7 See In re Colonial Realty Co., 980 F.2d 125, 131 (2d Cir. 1992).

8 The district court ruled that Section 362's automatic stay
9 provision deprived appellants of statutory standing to bring
10 their claims because the Litigation Trustee was still pursuing an
11 intentional fraudulent conveyance action challenging the same
12 transfers under Section 548(a)(1)(A). In re Tribune, 499 B.R. at
13 322-23. We disagree. The Bankruptcy Code empowers a bankruptcy
14 court to release parties from the automatic stay "for cause"
15 shown. In re Bogdanovich, 292 F.3d 104, 110 (2d Cir. 2002)
16 (quoting 11 U.S.C. § 362(d)(1)). Once a creditor obtains "a
17 grant of relief from the automatic stay" under Section 362(d), it
18 may "press its claims outside of the bankruptcy proceeding." St.
19 Paul Fire & Marine Ins. Co. v. PepsiCo, Inc., 884 F.2d 688, 702
20 (2d Cir. 1989), disapproved of on other grounds by In re Miller,
21 197 B.R. 810 (W.D.N.C. 1996).

⁴ The implications of applying the automatic stay to fraudulent conveyance actions are discussed infra.

1 In the present matter, the bankruptcy court granted
2 appellants relief from the automatic stay on three occasions. On
3 April 25, 2011, the bankruptcy court granted appellants relief
4 "to permit the filing of any complaint by or on behalf of
5 creditors on account of such Creditor [state law fraudulent
6 conveyance] Claims." J. App'x at 373. A second order, entered
7 on June 28, 2011, clarified that "neither the automatic stay of
8 [Section 362] nor the provisions of the [original lift-stay
9 order]" barred the parties in the state law actions from
10 consolidating and coordinating these actions. J. App'x at 376.
11 And the bankruptcy court's third order, entered on March 15,
12 2012, set an expiration date of June 1, 2012, for the "stay
13 imposed on the state law constructive fraudulent conveyance
14 actions." J. App'x at 521. None of the Tribune shareholders
15 filed objections to these orders.

16 Finally, the reorganization plan, confirmed by the
17 bankruptcy court and in all pertinent respects an order of that
18 court, expressly allowed appellants to pursue "any and all
19 LBO-Related Causes of Action arising under state fraudulent
20 conveyance law." J. App'x at 643. Section 5.8.2 of the plan
21 provided that "nothing in this Plan shall or is intended to
22 impair" the rights of creditors to attempt to pursue disclaimed
23 state law avoidance claims. J. App'x at 695.

1 Thus, under both the bankruptcy court's orders and the
2 confirmed reorganization plan, if appellants had actionable state
3 law, constructive fraudulent conveyance claims, assertion of
4 those claims was no longer subject to Section 362's automatic
5 stay. See, e.g., In re Heating Oil Partners, LP, 422 F. App'x
6 15, 18 (2d Cir. 2011) (holding that the automatic stay terminates
7 at discharge); United States v. White, 466 F.3d 1241, 1244 (11th
8 Cir. 2006) (similarly recognizing that the automatic stay
9 terminates when "a discharge is granted").

10 For the foregoing reasons, we hold that appellants' claims
11 are not barred by Section 362.

12 b) Section 546(e) and Preemption

13 We turn now to the issue raised by the cross-appeal:
14 whether appellants' claims are preempted because they conflict
15 with Code Section 546(e).

16 1. Conflict-Preemption Law

17 Under the Supremacy Clause, Article VI, Clause 2 of the
18 Constitution, federal law prevails when it conflicts with state
19 law. Arizona v. United States, 132 S. Ct. 2492, 2500 (2012).

20 As discussed throughout this opinion, Section 546(e)'s
21 reference to limiting avoidance by a trustee provides appellants
22 with a plain language argument that only a trustee et al., and
23 not creditors acting on their own behalf, are barred from
24 bringing state law, constructive fraudulent avoidance claims.

1 However, as discussed infra, we believe that the language of
2 Section 546(e) does not necessarily have the meaning appellants
3 ascribe to it. Even if that meaning is one of multiple
4 reasonable constructions of the statutory scheme, it would not
5 necessarily preclude preemption because a preemptive effect may
6 be inferred where it is not expressly provided.

7 Under the implied preemption doctrine,⁵ state laws are “pre-
8 empted to the extent of any conflict with a federal statute.
9 Such a conflict occurs . . . when [] state law stands as an
10 obstacle to the accomplishment and execution of the full purposes
11 and objectives of Congress.” Hillman v. Maretta, 133 S. Ct.
12 1943, 1949-50 (2013) (citations and internal quotation marks
13 omitted); accord In re Methyl Tertiary Butyl Ether (MTBE) Prods.
14 Liab. Litig., 725 F.3d 65, 97 (2d Cir. 2013) cert. denied sub
15 nom. Exxon Mobil Corp. v. City of New York, 134 S. Ct. 1877
16 (2014) (courts will find implied preemption when “state law
17 directly conflicts with the structure and purpose of a federal
18 statute”) (citation and internal quotation marks omitted).

⁵ We see no need for a full discussion of various modes of analysis used to determine federal preemption, i.e., “express” preemption, Chamber of Commerce v. Whiting, 131 S. Ct. 1968, 1977 (2011), “field” preemption, Arizona v. United States, 132 S. Ct. 2492, 2502 (2012), or even that branch of “implied” preemption that requires a showing of “impossibility” of complying with both state and federal law, id. at 2501. The only relevant analysis in the present matter is preemption inferred from a conflict between state law and the purposes of federal law, as discussed in the text.

1 Appellants argue that a recognized presumption against
2 preemption limits the implied preemption doctrine. They argue
3 that Section 546(e) preempts creditors' state law, fraudulent
4 conveyance claims only if the claims would do "'major damage' to
5 'clear and substantial' federal interests." Resp. & Reply Br. of
6 Pls.-Appellants-Cross-Appellees 45 (quoting Hillman, 133 S. Ct.
7 1943, 1950 (2013) (citation omitted)). The presumption against
8 inferring preemption is premised on federalism grounds and,
9 therefore, weighs most heavily where the particular regulatory
10 area is "traditionally the domain of state law." Hillman, 133 S.
11 Ct. at 1950; see also Madeira v. Affordable Hous. Found., Inc.,
12 469 F.3d 219, 241 (2d Cir. 2006) ("The mere fact of 'tension'
13 between federal and state law is generally not enough to
14 establish an obstacle supporting preemption, particularly when
15 the state law involves the exercise of traditional police
16 power."). According to appellants, the presumption against
17 preemption fully applies in the present context because
18 fraudulent conveyance claims are "among 'the oldest [purposes]
19 within the ambit of the police power.'" Resp. & Reply Br. of
20 Pls.-Appellants-Cross-Appellees 36 (quoting California v. Zook,
21 336 U.S. 725, 734 (1949)).

22 Preemption is always a matter of congressional intent, even
23 where that intent must be inferred. See Cipollone v. Liggett
24 Grp., Inc., 505 U.S. 504, 516 (1992) (congressional intent is the

1 "ultimate touchstone of pre-emption analysis") (quoting Malone v.
2 White Motor Corp., 435 U.S. 497, 504 (1978)) (internal quotation
3 marks omitted); N.Y. SMSA Ltd. P'ship v. Town of Clarkstown, 612
4 F.3d 97, 104 (2d Cir. 2010) ("The key to the preemption inquiry
5 is the intent of Congress."). As in the present matter, the
6 presumption against preemption usually goes to the weight to be
7 given to the lack of an express statement overriding state law.

8 The presumption is strongest when Congress is legislating in
9 an area recognized as traditionally one of state law alone. See
10 Hillman, 133 S. Ct. at 1950 (stating that because "[t]he
11 regulation of domestic relations is traditionally the domain of
12 state law . . . [t]here is [] a presumption against pre-emption")
13 (internal quotation marks and citation omitted). However, the
14 present context is not such an area. To understate the
15 proposition, the regulation of creditors' rights has "a history
16 of significant federal presence." United States v. Locke, 529
17 U.S. 89, 90 (2000).

18 Congress's power to enact bankruptcy laws was made explicit
19 in the Constitution as originally enacted, Art. 1, § 8, cl. 4,
20 and detailed, preemptive federal regulation of creditors' rights
21 has, therefore, existed for over two centuries. Charles Jordan
22 Tabb, The History of the Bankruptcy Laws in the United States, 3
23 Am. Bankr. Inst. L. Rev. 5, 7 (1995). Once a party enters
24 bankruptcy, the Bankruptcy Code constitutes a wholesale

1 preemption of state laws regarding creditors' rights. See
2 Eastern Equip. and Servs. Corp. v. Factory Point Nat. Bank,
3 Bennington, 236 F.3d 117, 120 (2d Cir. 2001) ("The United States
4 Bankruptcy Code provides a comprehensive federal system of
5 penalties and protections to govern the orderly conduct of
6 debtors' affairs and creditors' rights."); In re Miles, 430 F.3d
7 1083, 1091 (9th Cir. 2005) ("Congress intended the Bankruptcy
8 Code to create a whole scheme under federal control that would
9 adjust all of the rights and duties of creditors and debtors
10 alike").

11 Consider, for example, the present proceeding. While the
12 issue before us is often described as whether Section 546(e)
13 preempts state fraudulent conveyance laws, Resp. & Reply Br. of
14 Pls.-Appellants-Cross-Appellees 33, that is a
15 mischaracterization. Appellants' state law claims were preempted
16 when the Chapter 11 proceedings commenced and were not dismissed.
17 Appellants' own arguments posit that those claims were, at the
18 very least, stayed by Code Section 362. Whether, as appellants
19 argue, they were restored in full after two years, see 11 U.S.C.
20 § 546(a)(1)(A), or by order of the bankruptcy court, see 11
21 U.S.C. § 349(b)(3), is hotly disputed. But if they were
22 restored, it was by force of federal law.

23 Once Tribune entered bankruptcy, the creditors' avoidance
24 claims were vested in the federally appointed trustee et al. 11

1 U.S.C. § 544(b)(1). A constructive fraudulent conveyance action
2 brought by a trustee et al. under Section 544 is a claim arising
3 under federal law. See In re Intelligent Direct Mktg., 518 B.R.
4 579, 587 (E.D. Cal. 2014); In re Trinsum Grp., Inc., 460 B.R.
5 379, 387-88 (S.D.N.Y. 2011); In re Sunbridge Capital, Inc., 454
6 B.R. 166, 169 n.16 (Bankr. D. Kan. 2011); In re Charlys Holding
7 Co., Inc., 443 B.R. 628, 635-36 (Bankr. D. Del. 2010). Although
8 such a claim borrows applicable state law standards regarding
9 avoiding the transfer in question, see Universal Church v.
10 Geltzer, 463 F.3d 218, 222 n.1 (2d Cir. 2006), the claim has its
11 own statute of limitations, 11 U.S.C. § 546(a)(1)(A), measure of
12 damages, see 11 U.S.C. § 550, and standards for distribution, 11
13 U.S.C. § 726. A disposition of this federal law claim
14 extinguishes the right of creditors to bring state law,
15 fraudulent conveyance claims. See St. Paul Fire, 884 F.2d at 701
16 disapproved of on other grounds by In re Miller, 197 B.R. 810
17 (W.D.N.C. 1996) (noting that "creditors are bound by the outcome
18 of the trustee's action"); see also In re PWS Holding Corp., 303
19 F.3d 308, 314-15 (3d Cir. 2002) (barring creditor's state law,
20 fraudulent transfer claims after trustee released § 544 claims).
21 And, if creditors are allowed by a bankruptcy court, trustee, or,
22 as appellants argue, by the Bankruptcy Code, to bring state law
23 actions in their own name, that permission is a matter of grace
24 granted under federal authority. The standards for granting that

1 permission, moreover, have everything to do with the Bankruptcy
2 Code's balancing of debtors' and creditors' rights, In re Coltex
3 Loop Cent. Three Partners, L.P., 138 F.3d 39, 44 (2d Cir. 1998),
4 or rights among creditors, United States v. Ron Pair Enters,
5 Inc., 489 U.S. 235, 248 (1989), and nothing to do with the
6 vindication of state police powers.

7 We also note here, and discuss further infra, that the
8 policies reflected in Section 546(e) relate to securities
9 markets, which are subject to extensive federal regulation. The
10 regulation of these markets has existed and grown for over eighty
11 years and reflects very important federal concerns.

12 In the present matter, therefore, there is no measurable
13 concern about federal intrusion into traditional state domains.
14 Our bottom line is that the issue before us is one of inferring
15 congressional intent from the Code, without significant
16 countervailing pressures of state law concerns.

17 2. The Language of Section 546(e)

18 Section 544(b) empowers a trustee et al. to avoid a
19 "transfer . . . [by] the debtor . . . voidable under applicable
20 law by a[n] [unsecured] creditor." Section 548(a) also provides
21 the trustee et al. with independent federal intentional, 11
22 U.S.C. § 548(a)(1)(A), and constructive fraudulent conveyance
23 claims, 11 U.S.C. § 548(a)(1)(B).

1 Section 546(e) provides in pertinent part:

2 Notwithstanding sections 544, . . . 548(a)(1)(B) . . . of
3 this title, the trustee may not avoid a transfer that is a
4 . . . settlement payment . . . made by or to (or for the
5 benefit of) a . . . stockbroker, financial institution,
6 financial participant, or securities clearing agency, or
7 that is a transfer made by or to (or for the benefit of) a .
8 . . stockbroker, financial institution, financial
9 participant, or securities clearing agency, in connection
10 with a securities contract . . . except under section
11 548(a)(1)(A). . . .
12

13 Id. § 546(e). Section 546(e) thus expressly prohibits trustees
14 et al. from using their Section 544(b) avoidance powers and
15 (generally) Section 548 against the transfers specified in
16 Section 546(e). However, Section 546(e) creates an exception to
17 that prohibition for claims brought by trustee et al. under
18 Section 548(a)(1)(A) that, as noted, establishes a federal
19 avoidance claim to be brought by a trustee et al. based on an
20 intentional fraud theory. As discussed supra, the Litigation
21 Trust has brought a Section 548(a)(1)(A) claim against the same
22 transfers challenged by appellants' actions before us on this
23 appeal. That claim is still pending.

24 The language of Section 546(e) covers all transfers by or to
25 financial intermediaries that are "settlement payment[s]" or "in
26 connection with a securities contract." Transfers in which
27 either the transferor or transferee is not such an intermediary
28 are clearly included in the language. The Section does not
29 distinguish between kinds of transfers, e.g., settlements of
30 ordinary day-to-day trading, LBOs, or mergers in which

1 shareholders of one company are involuntarily cashed out. So
2 long as the transfer sought to be avoided is within the language
3 quoted above, the Section includes avoidance proceedings in which
4 the intermediary would escape a damages judgment. But see In re
5 Lyondell Chem. Co., 503 B.R. 348, 372-73 (Bankr. S.D.N.Y. 2014),
6 as corrected (Jan. 16, 2014), that Section 546(e) does not
7 include "LBO payments to stockholders at the very end of the
8 asset transfer chain, where the stockholders are the ultimate
9 beneficiaries of the constructively fraudulent transfers, and can
10 give the money back to injured creditors with no damage to anyone
11 but themselves."

12 3. Appellants' Legal Theory

13 Appellants' state law, constructive fraudulent conveyance
14 claims purport to be brought under mainstream bankruptcy
15 procedures directly mandated by the Code. However, an
16 examination of the Code as a whole, in contrast with an isolated
17 focus on the word "trustee" in Section 546(e), reveals that
18 appellants' theory relies upon adhering to statutory language
19 only when opportune and resolving various ambiguities in a way
20 convenient to that theory. Even then, their legal theory results
21 in anomalies and inconsistencies with parts of the Code. The
22 consequence of those ambiguities, anomalies, and conflicts is
23 that a reader of Section 546(e), at the time of enactment, would
24 not have necessarily concluded that the reference only to a

1 trustee et al. meant that creditors may at some point bring state
2 law claims seeking the very relief barred to the trustee et al.
3 by Section 546(e). Its meaning, therefore, is not plain.

4 (i) Appellants' Theory of Fraudulent Conveyance
5 Avoidance Proceedings

6 Appellants' theory goes as follows. When a debtor enters
7 bankruptcy, all "legal or equitable interests of the debtor in
8 property," 11 U.S.C. § 541(a)(1), vest in the debtor's bankruptcy
9 estate. This property includes legal claims that could have been
10 brought by the debtor. See U.S. ex rel. Spicer v. Westbrook, 751
11 F.3d 354, 361-62 (5th Cir. 2014) ("The phrase 'all legal or
12 equitable interests' includes legal claims-whether based on state
13 or federal law."). Therefore, "the Trustee is conferred with the
14 authority to represent all creditors and the Debtor's estate and
15 with the sole responsibility of bringing actions on behalf of the
16 Debtor's estate to marshal assets for the estate's creditors."
17 In re Stein, 314 B.R. 306, 311 (D.N.J. 2004). However,
18 fraudulent conveyance claims proceed on a theory that an
19 insolvent debtor may not make what are essentially gifts that
20 deprive creditors of assets available to pay debts. See Grupo
21 Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc., 527 U.S.
22 308, 322 (1999). Therefore, before a bankruptcy takes place,
23 fraudulent conveyance claims belong to creditors rather than to
24 the debtor. As a consequence, Section 544(b)(1) provides that a
25 bankruptcy trustee may avoid "any transfer of an interest of the

1 debtor . . . that is voidable under applicable law by a creditor
2 holding an unsecured claim." 11 U.S.C. § 544(b)(1). The
3 responsibility of the trustee et al. is to "step into the shoes
4 of a creditor under state law and avoid any transfers such a
5 creditor could have avoided." Univ. Church v. Geltzer, 463 F.3d
6 218, 222 n.1 (2d Cir. 2006).

7 The trustee et al., however, is subject to a statute of
8 limitations that requires such claims to be brought within two
9 years of the commencement of the bankruptcy proceeding. See 11
10 U.S.C. § 546(a)(1)(A). Appellants infer from this statute of
11 limitations that if the trustee et al. fails to act to enforce
12 such claims during that two-year period, the claims revert to
13 creditors who may then pursue their own state law, fraudulent
14 conveyance actions. Resp. & Reply Br. of Pls.-Appellants-Cross-
15 Appellees 1. This position assumes that, although the power to
16 bring such actions is clearly vested in the trustee et al. when
17 the bankruptcy proceeding begins, if the power is not exercised,
18 it returns in full flower to the creditors after the bankruptcy
19 ends or after two years.

20 Appellants' theory also is that their fraudulent conveyance
21 claims were only stayed under Section 362(a), rather than
22 extinguished when assumed by the trustee on behalf of the
23 bankrupt estate by the trustee et al. under Section 544, and
24 could be asserted by them as creditors when the Section 362(a)
25 stay was lifted. Accordingly, appellants argue, when the

1 Committee did not bring constructive fraudulent conveyance
2 actions against the LBO transfers by December 8, 2010, appellants
3 regained the right to bring their own state law actions. See
4 Resp. & Reply Br. of Pls.-Appellants-Cross Appellees 6.
5 Moreover, they correctly note that Section 362's automatic stay
6 was, as discussed supra, lifted. In either case -- automatically
7 after two years or by the bankruptcy court's lifting of the stay
8 -- appellants assert that the right to bring state law actions
9 has reverted to them.

10 (ii) Ambiguities, Anomalies, and Conflicts

11 When appellants' arguments and their relation to the Code
12 are viewed, as we must view them, in their entirety, In re
13 Boodrow, 126 F.3d 43, 49 (2d Cir. 1997) ("The Supreme Court has
14 thus explained . . . 'we must not be guided by a single sentence
15 or [part] of a sentence [of the Code], but look to the provisions
16 of the whole law, and to its object and policy.'") (quoting Kelly
17 v. Robinson, 479 U.S. 36, 43 (1986)), they reveal material
18 ambiguities, anomalies, and outright conflicts with the purposes
19 of Code Sections 544, 362, and 548, not to mention the outright
20 conflict with Section 546(e) discussed infra.

21 A critical step in the logic of appellants' theory finds no
22 support in the language of the Code. In particular, the
23 inference that fraudulent conveyance actions revert to creditors
24 if either the two-year statute of limitations passes without an
25 exercise of the trustees' et al. powers under Section 544 or the

1 Section 362(a) stay is lifted by the bankruptcy court has no
2 basis in the Code's language. To begin, the language of the
3 automatic stay provision applies only to actions against "the
4 debtor." 11 U.S.C. § 362. To be sure, there are cases barring
5 fraudulent conveyance actions brought by creditors before the
6 passing of the limitations period or lifting of the stay. See,
7 e.g., In re Crysen/Montenay Energy Co., 902 F.2d 1098, 1101 (2d
8 Cir. 1990). The rationales of these cases vary. Some rely on
9 Section 362(a) on the theory that the fraudulent conveyance
10 claims are the property of the debtors' estate. See In re
11 MortgageAmerica Corp., 714 F.2d 1266, 1275-76 (5th Cir. 1983);
12 Matter of Fletcher, 176 B.R. 445, 452 (Bankr. W.D. Mich. 1995),
13 rev'd and remanded on other grounds sub nom. In re Van Orden, No.
14 1:95-CV-79, 1995 WL 17903731 (W.D. Mich. Sept. 5, 1995). Some do
15 not mention Section 362(a) and rely on the need to protect
16 trustees' et al. powers to bring Section 544 avoidance actions.
17 See In re Van Diepen, P.A., 236 F. App'x. 498, 502-03 (11th Cir.
18 2007); In re Clark, 374 B.R. 874, 876 (Bankr. M.D. Ala. 2007); In
19 re Tessmer, 329 B.R. 776, 780 (Bankr. M.D. Ga. 2005). All the
20 caselaw agrees that the trustee et al.'s powers under Section 544
21 are exclusive, at least until the stay is lifted or the two-year
22 period expires.

23 Equally important is the fact that the inference of a
24 reversion of fraudulent conveyance claims to creditors drawn from
25 Section 544's statute of limitations is not based on the language

1 of the Code, which says nothing about the reversion of claims
2 vested in the trustee et al. by Section 544. Statutes of
3 limitation usually are intended to limit the assertion of stale
4 claims and to provide peace to possible defendants, Converse v.
5 Gen. Motors Corp., 893 F.2d 513, 516 (2d Cir. 1990), and not to
6 change the identity of the authorized plaintiffs without some
7 express language to that effect. A decisive part of appellants'
8 legal theory thus has no support in the language of the Code.

9 Even if this gap is assumed not to exist, or can be
10 otherwise traversed, appellants' theory encounters other serious
11 problems. Section 544, vesting avoidance powers in the trustee
12 et al., is intended to simplify proceedings, reduce the costs of
13 marshalling the debtor's assets, and assure an equitable
14 distribution among the creditors. See In re MortgageAmerica
15 Corp., 714 F.2d 1266, 1275-76 (5th Cir. 1983) (noting that "[t]he
16 'strong arm' provision of the [Bankruptcy] Code, 11 U.S.C. § 544,
17 allows the bankruptcy trustee to step into the shoes of a
18 creditor for the purpose of asserting causes of action under
19 state fraudulent conveyance acts for the benefit of all
20 creditors, not just those who win a race to judgment" and Section
21 362 helps prevent "[a]ctions for the recovery of the debtor's
22 property by individual creditors under state fraudulent
23 conveyance laws [that] would interfere with [the bankruptcy]
24 estate and with the equitable distribution scheme dependent upon

1 it"). However, these purposes are hardly consistent with the
2 process hypothesized by appellants.

3 Accepting for purposes of argument appellants' view of the
4 applicable process, Section 362, at the very least, prevented
5 appellants (for a time) from bringing their state law, fraudulent
6 conveyance claims, while Section 546(e) barred the Committee from
7 seeking to enforce or, necessarily, to settle them. Appellants'
8 argument thus seems to posit that their claims are on hold until
9 the trustees et al. decide whether to bring an action they are
10 powerless to bring or to pass on to creditors a power they do not
11 have. In short, it assumes that, when creditors' avoidance
12 claims are lodged in the trustee et al. and are diminished in
13 that hand by the Code, they reemerge in undiminished form in the
14 hands of creditors after the statute of limitations governing
15 actions by the trustee et al. has run or the bankruptcy court
16 lifts the automatic stay.

17 In the context of the Code, however, any such process is a
18 glaring anomaly. Section 548(a)(1)(A) vests trustees with a
19 federal claim to avoid the very transfers attacked by appellants'
20 state law claims -- but only on an intentional fraud theory.
21 There is little apparent reason to limit trustees et al. to
22 intentional fraud claims while not extinguishing constructive
23 fraud claims but rather leaving them to be brought later by
24 individual creditors. In particular, enforcement of the
25 intentional fraud claim is undermined if creditors can later

1 bring state law, constructive fraudulent conveyance claims
2 involving the same transfers. Any trustee would have grave
3 difficulty negotiating more than a nominal settlement in the
4 federal action if it cannot preclude state claims attacking the
5 same transfers but not requiring a showing of actual fraudulent
6 intent. Unable to settle, a trustee et al. will be reluctant to
7 expend the estate's resources on vigorously pursuing the federal
8 claim while awaiting the stayed state claims to revert and to be
9 litigated by creditors. As happened in the present matter, the
10 result is that the trustee et al.'s action awaits the pursuit of
11 piecemeal actions by creditors. This is precisely opposite of
12 the intent of the Code's procedures. While a bankruptcy court
13 can reduce the delay by an early lifting of the automatic stay
14 with regard to constructive fraudulent conveyance actions, that
15 action would underline the anomaly of applying the stay to the
16 bringing of claims that are barred to trustees et al.

17 Staying ordinary state law, constructive fraudulent
18 conveyance claims by individual creditors while the trustee
19 deliberates is a rational method of avoiding piecemeal litigation
20 and ensuring an equitable distribution of assets among creditors.
21 See MBNA Am. Bank, N.A. v. Hill, 436 F.3d 104, 108 (2d Cir. 2006)
22 ("The objectives of the Bankruptcy Code . . . include . . . 'the
23 need to protect creditors and reorganiz[e] debtors from piecemeal
24 litigation'") (quoting Ins. Co. of N. Am. v. NGC
25 Settlement Trust & Asbestos Claims Mgmt. Corp., 118 F.3d 1056,

1 1069 (5th Cir. 1997)). However, the scheme described by
2 appellants does not resemble this method either in simplicity or
3 in the equitable treatment of creditors.

4 To rationalize these anomalies, appellants speculate as to
5 -- more accurately, imagine -- a deliberate balancing of
6 interests by Congress. They argue that Congress wanted to
7 balance the need for certainty and finality in securities
8 markets, recognized in Section 546(e), against the need to
9 maximize creditors' recoveries, recognized in various other
10 provisions. Congress did so, they argue, by limiting only the
11 avoidance powers of trustees et al., not those of individual
12 creditors (save for the stay), in Section 546(e) because actions
13 by trustees et al. are a greater threat to securities markets
14 than are actions by individual creditors. Resp. & Reply Br. of
15 Pls.-Appellants-Cross-Appellees 71. That greater threat results
16 from the fact that a trustee's power of avoidance is funded by
17 the debtor's estate, see 11 U.S.C. §§ 327, 330, supported by
18 national long-arm jurisdiction, see Fed. R. Bankr. P.
19 7004(d),(f), and can be used to avoid the entirety of a transfer,
20 Tronox Inc. v. Anadarko Petroleum Corp. (In re Tronox Inc.), 464
21 B.R. 606, 615-17 (Bankr. S.D.N.Y. 2012) (citing Moore v. Bay, 284
22 U.S. 4 (1931)). Creditors, in turn, have no such funding, are
23 limited by state jurisdictional rules, and can sue only for their
24 individual losses. See In re Integrated Agri, Inc., 313 B.R.
25 419, 428 (Bankr. C.D. Ill. 2004). Therefore, appellants argue

1 that a deliberate "balance" was struck by protecting securities
2 markets from trustees' et al. actions while subjecting them to
3 the lesser disruption individual creditors' actions might cause
4 after a two-year stay. Resp. & Reply Br. of Pls.-Appellants-
5 Cross-Appellees 83-85. For a court to upset this delicate
6 balance would constitute judicial intrusion on policy decisions
7 rightfully left to the Congress.

8 However, the balance described above is an ex post
9 explanation of a legal scheme that appellants must first
10 construct, and then justify as rational, because it is essential
11 to their claims. Although they argue that the scheme was
12 deliberately constructed by Congress, that argument lacks any
13 support whatsoever in the legislative deliberations that led to
14 Section 546(e)'s enactment.

15 Moreover, appellants' arguments understate the number of
16 creditors who would sue, if allowed, and the corresponding extent
17 of the danger to securities markets. Creditors may assign their
18 claims and various methods of aggregation can lead to billions of
19 dollars of claims, as here.

20 (iii) No Plain Meaning

21 These issues reflect ambiguities as to exactly what is
22 transferred to trustees et al. by Section 544(b)(1). It is clear
23 that trustees et al. own the debtors' estates, which include the
24 debtors' property and legal claims. See 11 U.S.C. § 541(a)(1)
25 (Among other things, the "estate is comprised of . . . all legal

1 or equitable interests of the debtor in property as of the
2 commencement of the case"); U.S. ex rel. Spicer v. Westbrook, 751
3 F.3d 354, 361-62 (5th Cir. 2014) ("The phrase 'all legal or
4 equitable interests' includes legal claims -- whether based on
5 state or federal law."). Avoidance claims belong to creditors,
6 however, and whether they become the property of the debtors'
7 estates is a debated, and somewhat metaphysical, issue. See Note
8 7, infra. The issue does have a limited practical bearing on the
9 present matter, however. If the claims asserted by appellants
10 became the property of the debtor's estate upon Tribune's
11 bankruptcy and were thereby limited in the hands of the
12 Committee, their reversion in an unaltered form, whether
13 occurring automatically or by act of the Committee or bankruptcy
14 court, might seem counterintuitive.

15 Appellants' reliance on the applicability of the automatic
16 stay to their claims would arguably support the "property" view.
17 The stay is intended in part to protect the property rights of
18 the trustee et al. in the debtor's estate. Subjecting avoidance
19 actions by creditors to the stay has been supported by various
20 courts on the ground that such claims are either the property of
21 the debtor's estate or have an equivalent legal status. See In
22 re MortgageAmerica Corp., 714 F.2d 1266, 1275-76 (5th Cir. 1983);
23 In re Swallen's, Inc., 205 B.R. 879, 882 (Bankr. S.D. Ohio 1997);
24 Matter of Fletcher, 176 B.R. 445, 452 (Bankr. W.D. Mich. 1995).

1 Whether, and to what degree, fraudulent conveyance claims
2 become the property of a bankrupt estate was, at the time of
3 Section 546(e)'s enactment, and now, anything but clear. The
4 principal Supreme Court precedent held that such claims are the
5 property of the debtor's estate. Trimble v. Woodhead, 102 U.S.
6 647, 649 (1880). It is a very old decision but has not been
7 expressly overruled. Subsequent court of appeals decisions are
8 bountiful in contradictory statements regarding the property
9 issue. Compare In re Cybergenics Corp., 226 F.3d 237, 241, 246
10 (3d Cir. 2000) (stating that "fraudulent transfer claims have
11 long belonged to a transferor's creditors, whose efforts to
12 collect their debts have essentially been thwarted as a
13 consequence of the transferor's actions" but also noting that the
14 debtor's "'assets' and 'property of the estate' have different
15 meanings, evidenced in part by the numerous provisions in the
16 Bankruptcy Code that distinguish between property of the estate
17 and property of the debtor, or refer to one but not the other"),
18 and Picard v. Fairfield Greenwich Ltd., 762 F.3d 199, 212 (2d
19 Cir. 2014) ("Our case law is clear that assets targeted by a
20 fraudulent conveyance action do not become property of the
21 debtor's estate under the Bankruptcy Code until the Trustee
22 obtains a favorable judgment."), with Cumberland Oil Corp. v.
23 Thropp, 791 F.2d 1037, 1042 (2d Cir. 1986) (noting that causes of
24 action alleging violation of fraudulent conveyance laws would be
25 property of the estate), and Nat'l Tax Credit Partners v. Havlik,

1 20 F.3d 705, 708-09 (7th Cir. 1994) (“[T]he right to recoup a
2 fraudulent conveyance, which outside of bankruptcy may be invoked
3 by a creditor, is property of the estate that only a trustee or
4 debtor in possession may pursue once a bankruptcy is underway.”).

5 Use of the term “property” as a short-hand way of suggesting
6 exclusivity has merit, Henry E. Smith, Property and Property
7 Rules, 79 N.Y.U. L. Rev. 1719, 1770-74 (2004), but Section
8 544(b)(1) does not expressly state whether the bundle of rights
9 transferred can revert. However, we need not resolve either the
10 “property” or the reversion issues. Whether the statutory
11 language has a plain meaning turns on whether a consensus would
12 have existed among reasonable, contemporaneous readers as to
13 meaning of that language in the particular statutory context.
14 See Pettus v. Morgenthau, 554 F.3d 293, 297 (2d Cir. 2009) (“[W]e
15 attempt to ascertain how a reasonable reader would understand the
16 statutory text, considered as a whole.”); Engine Mfrs. Ass’n v.
17 S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 252-53 (2004)
18 (noting that “[s]tatutory construction must begin with the
19 language employed by Congress and the assumption that the
20 ordinary meaning of that language accurately expresses the
21 legislative purpose”) (quoting Park ‘N Fly, Inc. v. Dollar Park &
22 Fly, Inc., 469 U.S. 189, 194 (1985)). If differing views as to
23 meaning were reasonable at the time of Section 546(e)’s
24 enactment, its meaning is less than plain. See, e.g., Rodriguez
25 v. Cuomo, 953 F.2d 33, 39-40 (2d Cir. 1992).

1 Appellants' arguments on meaning rely not only on the
2 reference to a trustee's et al. powers but equally, or more so,
3 on a claim of settled law at the time of Section 546(e)'s
4 enactment that creditors' avoidance rights not only revert to
5 creditors but also revert in their original breadth. However,
6 whether fraudulent conveyance claims revert as a matter of law
7 upon a trustee's failure to act was, both at the time Section
8 546(e) was passed as well as now, unclear, as discussed supra. A
9 contemporaneous reader would not, therefore, necessarily have
10 believed it plain that Section 546(e)'s reference only to a
11 trustee's et al. avoidance claim meant that creditors could bring
12 their own claims.⁶

13 A contemporaneous reader would also notice that the language
14 of the automatic stay provision does not literally apply to
15 appellants' actions and that no provision for the reversion of
16 claims vested in the trustee et al. by Section 544 exists. As
17 explained supra, having to draw an inference of reversion of
18 rights from that provision's statute of limitations might well
19 have appeared as a leap several bridges too far to such a reader.
20 Indeed, the vesting of avoidance claims in the trustee et al.,
21 the lack of applicable language in the automatic stay provision,
22 and the lack of a statutory basis for reversion might well have
23 suggested to such a reader that Section 544's vesting of

⁶Our task of determining how a contemporaneous reader would have read Section 546(e) does not depend on the caselaw of one particular circuit.

1 avoidance proceedings in the trustee et al. cut off creditors
2 from any avoidance rights other than a share of the proceeds in
3 bankruptcy.

4 Even passing these obstacles, the structure of the Code and
5 the relationship of its pertinent sections might have suggested
6 to a contemporaneous reader that altered rights do not revert to
7 creditors unaltered, or to put it another way, a trustee et al.
8 cannot pass on, or "allow" to revert through passivity, a right
9 the trustee et al. does not have. To be sure, contemporaneous
10 readers might have taken other views, including those of
11 appellants, but that is the very definition of ambiguity.

12 (iv) Conclusion

13 We need not resolve these issues or even hold that the lack
14 of statutory support, ambiguities, anomalies, or conflicts with
15 purposes of the Code are sufficient to support a preemption
16 holding. They are sufficient, however, to dispel the suggestions
17 found in some discussions of these issues of a clear textual
18 basis for appellants' theory in the Code and an overall
19 consistency with congressional purpose. See In re Lyondell Chem.
20 Co., 503 B.R. 348, 358-59 (Bankr. S.D.N.Y. 2014) as corrected
21 (Jan. 16, 2014); In re: Tribune Co. Fraudulent Conveyance Litig.,
22 499 B.R. at 315. We also need not issue a decision that affects
23 fraudulent conveyance actions brought by creditors whose claims
24 are not subject to Section 546(e). Our ensuing discussion
25 concludes that the purposes and history of that Section

1 necessarily reflect an intent to preempt the claims before us.
2 We turn now to the conflict between those claims and Section
3 546(e).

4 4. Conflict with Section 546(e)

5 As discussed supra, the meaning of Section 546(e) with
6 regard to appellants' rights to bring the actions before us is
7 ambiguous. We must, therefore, look to its language, legislative
8 history, and purposes to determine its effect. Marvel
9 Characters, Inc. v. Simon, 310 F.3d 280, 290 (2d Cir. 2002).
10 Every congressional purpose reflected in Section 546(e), however
11 narrow or broad, is in conflict with appellants' legal theory.
12 Their claims are, therefore, preempted.

13 Section 546(e) was intended to protect from avoidance
14 proceedings payments by and to financial intermediaries in the
15 settlement of securities transactions or the execution of
16 securities contracts. The method of settlement through
17 intermediaries is essential to securities markets. Payments by
18 and to such intermediaries provide certainty as to each
19 transaction's consummation, speed to allow parties to adjust the
20 transaction to market conditions, finality with regard to
21 investors' stakes in firms, and thus stability to financial
22 markets. See H.R. Rep. No. 97-420 (1982); H.R. Rep. No. 95-595
23 (1977). Unwinding settled securities transactions by claims such
24 as appellants' would seriously undermine -- a substantial
25 understatement -- markets in which certainty, speed, finality,

1 and stability are necessary to attract capital. To allow
2 appellants' claims to proceed, we would have to construe Section
3 546(e) as achieving the opposite of what it was intended to
4 achieve.

5 Allowing creditors to bring claims barred by Section 546(e)
6 to the trustee et al. only after the trustee et al. fails to
7 exercise powers it does not have would increase the disruptive
8 effect of an unwinding by lengthening the period of uncertainty
9 for intermediaries and investors. Indeed, the idea of preventing
10 a trustee from unwinding specified transactions while allowing
11 creditors to do so, but only later, is a policy in a fruitless
12 search of a logical rationale.

13 The narrowest purpose of Section 546(e) was to protect other
14 intermediaries from avoidance claims seeking to unwind a bankrupt
15 intermediary's transactions that consummated transfers between
16 customers. See H.R. Rep. No. 97-420 (1982). It must be
17 emphasized that appellants' legal theory would clearly allow such
18 claims to be brought (later) by creditors of the bankrupt
19 intermediary. Even the narrowest purpose of Section 546(e) is
20 thus at risk.

21 Some judicial and other discussions of these issues avoid
22 addressing the full effects of adopting appellants' arguments.
23 See In re Lyondell Chem. Co., 503 B.R. 348, 359-78 (Bankr.
24 S.D.N.Y. 2014) as corrected (Jan. 16, 2014). Such analysis
25 always begins by reliance on the "trustee" language, id. at 358,

1 but then narrows the scope of the transfers covered by Section
2 546(e)'s language. For example, appellants argue that the
3 concerns of the amicus curiae Securities and Exchange Commission
4 regarding the effect of the district court's decision on the
5 securities markets are misplaced, because appellants are not
6 seeking money from the intermediaries.⁷ Resp. & Reply Br. of
7 Pls.-Appellants Cross-Appellees 78-82. In doing so, they rely
8 upon the Lyondell opinion, which, after relying on the "trustee"
9 language, held that Section 546(e) is not preemptive of state
10 law, fraudulent conveyance actions involving LBOs because such
11 actions do not implicate the purposes of Section 546(e). 503
12 B.R. at 372-73.

13 There is no little irony in putting lynchpin reliance on the
14 word "trustee" while ignoring the language that follows. In any
15 event, Section 546(e)'s language clearly covers payments, such as
16 those at issue here, by commercial firms to financial
17 intermediaries to purchase shares from the firm's shareholders.
18 11 U.S.C. § 546(e) (limitations on avoidance of transfers made to
19 a financial intermediary "in connection with a securities
20 contract"). A search for legislative purpose is heavily informed
21 by language, and analyzing all the language of a provision and

⁷ Under the "Collapsing Doctrine," "[c]ourts analyzing the effect of LBOs have routinely analyzed them by reference to their economic substance, 'collapsing' them, in many cases, to consider the overall effect of multi-step transactions." In re Lyondell Chem. Co., 503 B.R. 348, 354, 379 (Bankr. S.D.N.Y. 2014) as corrected (Jan. 16, 2014). Monies passed through intermediaries are deemed to be the property only of the ultimate recipients, here the cashed out shareholders.

1 its relationship to the Code as a whole is preferable to using
2 literalness here and perceived legislative purpose (without
3 regard to language) there as needed to reach particular results.
4 See King v. Burwell, 135 S. Ct. 2480, 2489 (2015) (“[O]ftentimes
5 the meaning -- or ambiguity -- of certain words or phrases may
6 only become evident when placed in context. So when deciding
7 whether the language is plain, we must read the words in their
8 context and with a view to their place in the overall statutory
9 scheme. Our duty, after all, is to construe statutes, not
10 isolated provisions.”) (internal quotation marks and citations
11 omitted).

12 We do not dwell on this because we perceive no conflict
13 between Section 546(e)’s language and its purpose. Section
14 546(e) is simply a case of Congress perceiving a need to address
15 a particular problem within an important process or market and
16 using statutory language broader than necessary to resolve the
17 immediate problem. Such broad language is intended to protect
18 the process or market from the entire genre of harms of which the
19 particular problem was only one symptom. The legislative history
20 of Section 546(e) clearly reveals such a purpose. That history
21 (confirmed by the broad language adopted) reflects a concern over
22 the use of avoidance powers not only after the bankruptcy of an
23 intermediary, but also after a “customer” or “other participant”
24 in the securities markets enters bankruptcy. See H.R. Rep. No.
25 97-420 (1982). To be sure, the examples used by the Section’s

1 proponents focused on the immediate concern of creditors of
2 bankrupt brokers seeking to unwind payments by the bankrupt firm
3 to other intermediaries. Id. Such actions were perceived as
4 creating a danger of "a ripple effect," id., a chain of
5 bankruptcies among intermediaries disrupting the securities
6 market generally. From these examples, appellants, and others,
7 have argued that when monetary damages are sought only from
8 shareholders, or an LBO is involved, the purposes of Section
9 546(e) are not implicated. See Resp. & Reply Br. of Pls.-
10 Appellants-Cross-Appellees 79; In re Lyondell, 503 B.R. at 358-
11 59. Even apart from using the oil and water mixture of applying
12 a narrow literalness to the word "trustee" and disregarding the
13 rest of the Section's language, we disagree.

14 As courts have recognized, Congress's intent to "minimiz[e]
15 the displacement caused in the commodities and securities markets
16 in the event of a major bankruptcy affecting those industries,"
17 In re Quebecor World (USA) Inc., 719 F.3d 94, 100 (2d Cir. 2013)
18 (quoting Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.,
19 651 F.3d 329, 333 (2d Cir. 2011)), reflected a larger purpose
20 memorialized in the legislative history's mention of bankrupt
21 "customers" or "other participant[s]" and in the broad statutory
22 language defining the transactions covered. That larger purpose
23 was to "promot[e] finality . . . and certainty" for investors, by
24 limiting the circumstances, e.g., to cases of intentional fraud,
25 under which securities transactions could be unwound. In re

1 Kaiser Steel Corp., 952 F.2d 1230, 1240 n.10 (10th Cir. 1991)
2 (quoting H. Rep. No. 484, 101st Cong. 2d Sess. 2 (1990),
3 reprinted in 1990 U.S.C.C.A.N. 223, 224).

4 The broad language used in Section 546(e) protects
5 transactions rather than firms, reflecting a purpose of enhancing
6 the efficiency of securities markets in order to reduce the cost
7 of capital to the American economy. See Bankruptcy of Commodity
8 and Securities Brokers: Hearings Before the Subcomm. on
9 Monopolies and Commercial Law of the Comm. on the Judiciary, 47th
10 Cong. 239 (1981) (statement of Bevis Longstreth, Commissioner,
11 SEC) (explaining that, without 546(e), the Bankruptcy Code's
12 "preference, fraudulent transfer and stay provisions can be
13 interpreted to apply in harmful and costly ways to customary
14 methods of operation essential to the securities industry"). As
15 noted, central to a highly efficient securities market are
16 methods of trading securities through intermediaries. Section
17 546(e)'s protection of the transactions consummated through these
18 intermediaries was not intended as protection of politically
19 favored special interests. Rather, it was sought by the SEC --
20 and corresponding provisions by the CFTC, see Bankruptcy Act
21 Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on
22 Civil & Constitutional Rights of the H. Comm. on the Judiciary,
23 94th Cong., Supp. App. Pt. 4, 2406 (1976) -- in order to protect
24 investors from the disruptive effect of after-the-fact unwinding
25 of securities transactions.

1 A lack of protection against the unwinding of securities
2 transactions would create substantial deterrents, limited only by
3 the copious imaginations of able lawyers, to investing in the
4 securities market. The effect of appellants' legal theory would
5 be akin to the effect of eliminating the limited liability of
6 investors for the debts of a corporation: a reduction of capital
7 available to American securities markets.

8 For example, all investors in public companies would face
9 new and substantial risks, if appellants' theory is adopted. At
10 the very least, each would have to confront a higher degree of
11 uncertainty even as to the consummation of securities transfers.
12 The risks are not confined to the consummation of securities
13 transactions. Pension plans, mutual funds, and similar
14 institutional investors would find securities markets far more
15 risky if exposed to substantial liabilities derived from
16 investments in securities sold long ago. If appellants were to
17 prevail, a pension plan whose position in a firm was cashed out
18 in a merger would have to set aside reserves in case the
19 surviving firm went bankrupt and triggered avoidance actions
20 based on a claim that the cash out price exceeded the value of
21 the shares. Every economic downturn would expose such
22 institutional investors not only to a decline in the value of
23 their current portfolios but also to claims for substantial
24 monies received from mergers during good times.

1 Given the occasional volatility of economic events, any
2 transaction buying out shareholders would risk being attacked as
3 a fraudulent conveyance avoidable by creditors if the firm
4 faltered. Appellants' legal theory would even reach investors
5 who, after voting against a merger approved by other
6 shareholders, were involuntarily cashed out. Tender offers,
7 which almost always involve a premium above trading price, Lynn
8 A. Stout, Are Takeover Premiums Really Premiums? Market Price,
9 Fair Value, and Corporate Law, 99 Yale L.J. 1235, 1235 (1990),
10 would imperil cashed out shareholders if the surviving entity
11 encountered financial difficulties.

12 If appellants' theory was adopted, individual investors
13 following a conservative buy-and-hold strategy with a diversified
14 portfolio designed to reduce risk might well decide that such a
15 strategy would actually increase the risk of crushing
16 liabilities. Such a strategy is adopted because it involves low
17 costs of monitoring the prospects of individual companies and
18 emphasizes the offsetting of unsystematic risks by investing in
19 multiple firms. See Leigh v. Engle, 858 F.2d 361, 368 (7th Cir.
20 1988). Appellants' legal theory might well require costly and
21 constant monitoring by investors to rid their portfolios of
22 investments in firms that might, under then-current
23 circumstances, be subject to mergers, stock buy-backs, or tender
24 offers (and would otherwise be good investments). Investing in

1 multiple companies, the essence of diversification, would
2 increase the danger of avoidance liability.

3 The threat to investors is not simply losing a lawsuit.
4 Given the costliness of defending such legal actions and the long
5 delay in learning their outcome, exposing investors to even very
6 weak lawsuits involving millions of dollars would be a
7 substantial deterrent to investing in securities. The need to
8 set aside reserves to meet the costs of litigation -- not to
9 mention costs of losing -- would suck money from capital markets.

10 As noted, concern has been expressed that LBOs are different
11 from other transactions in ways pertinent to the Bankruptcy Code.
12 In re Lyondell Chem. Co., 503 B.R. 348, 354, 358-59 (Bankr.
13 S.D.N.Y. 2014), as corrected (Jan. 16, 2014). However, the
14 language of Section 546(e) does not exempt from its protection
15 payments by firms to intermediaries to fund ensuing payments to
16 shareholders for stock.

17 Moreover, securities markets are heavily regulated by state
18 and federal governments. The statutory supplements used in law
19 school securities regulation courses are thick enough to rival
20 Kevlar in stopping bullets. Mergers and tender offers are among
21 the most regulated transactions. See, e.g., Williams Act, 15
22 U.S.C.A. §§ 78m(d)-(e), 78n(d). Much of the content of state and
23 federal regulation is designed to protect investors in such
24 transactions. Much of that content is also designed to maximize
25 the payout to shareholders cashed out in a merger, see, e.g.,

1 Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173,
2 182 (Del. 1986); Unocal Corp. v. Mesa Petroleum Co., 493 A.2d
3 946, 955-56 (Del. 1985), or accepting a tender offer, see
4 Williams Act, 15 U.S.C.A. §§ 78m(d)-(e), 78n(d). Appellants'
5 legal theory would allow creditors to seek to portray that
6 maximization as evidence supporting a crushing liability. A
7 legal rule substantially undermining those goals of state and
8 federal regulation -- again, one akin to eliminating limited
9 liability -- is a systemic risk.

10 It is also argued that the Bankruptcy Code has many
11 different purposes and that Section 546(e) does not clearly
12 "trump[] all [the] other[s]." In re Tribune Co. Fraudulent
13 Conveyance Litig., 499 B.R. 310, 317 (S.D.N.Y. 2013). The
14 pertinent -- and "trumping" -- "other" purpose of the Code is
15 said to be the maximization of assets available to creditors.
16 Id. Courts customarily accommodate statutory provisions in
17 tension with one another where the principal purpose of each is
18 attainable by limiting each in achieving secondary goals. See,
19 e.g., In re Colonial Realty Co., 980 F.2d 125, 132 (2d Cir.
20 1992). However, Section 546(e) is in full conflict with the goal
21 of maximizing the assets available to creditors. Its purpose is
22 to protect a national, heavily regulated market by limiting
23 creditors' rights. Conflicting goals are not accommodated by
24 giving value with the right hand and taking it away with the
25 left. Section 546(e) cannot be trumped by the Code's goal of

1 maximizing the return to creditors without thwarting the
2 Section's purposes.

3 5. Additional Considerations Regarding Congressional Intent

4 We therefore conclude that Congress intended to protect from
5 constructive fraudulent conveyance avoidance proceedings
6 transfers by a debtor in bankruptcy that fall within Section
7 546(e)'s terms. As discussed supra, appellants' theory hangs on
8 the ambiguous use of the word "trustee," has no basis in the
9 language of the Code, leads to substantial anomalies, ambiguities
10 and conflicts with the Code's procedures, and, most importantly,
11 is in irreconcilable conflict with the purposes of Section
12 546(e). In this regard, we do not ignore Section 544(b)(2),
13 which prohibits avoidance of a transfer to a charitable
14 contribution by a trustee but also expressly preempts state law
15 claims by creditors. It states: "Any claim by any person to
16 recover a transferred contribution described in the preceding
17 sentence under Federal or State law in a Federal or State March
18 14, 2016 court shall be preempted by the commencement of the
19 case." 11 U.S.C. § 544(b)(2). Appellants rely heavily upon this
20 provision to argue that, while Congress knew how to explicitly
21 preempt state law in the Bankruptcy Code, it chose not to do so
22 in the context of Section 546(e).

23 Appellants' argument suffers from a fatal flaw, however. In
24 Arizona v. United States, the Supreme Court made clear that "the
25 existence of an express pre-emption provisio[n] does not bar the

1 ordinary working of conflict pre-emption principles or impose a
2 special burden that would make it more difficult to establish the
3 preemption of laws falling outside the clause." 132 S. Ct. 2492,
4 2504-05 (2012) (quotation marks and citations omitted); see also
5 Hillman, 133 S. Ct. at 1954 ("[W]e have made clear that the
6 existence of a separate pre-emption provision does not bar the
7 ordinary working of conflict pre-emption principles.") (internal
8 quotation marks and citations omitted). Section 544(b)(2) does
9 not, therefore, undermine our conclusion as to Congress's intent.

10 Next, appellants argue that Congress's failure to amend
11 Section 546(e) over the years that it has existed in pertinent
12 form reflects a congressional intent to allow their actions to
13 proceed. In support, they point only to requests for an
14 amendment by the Chair of the CFTC and by Comex, see Bankruptcy
15 Act Revision: Hearings on H.R. 31 and H.R. 32 Before the
16 Subcomm. on Civil & Constitutional Rights of the H. Comm. on the
17 Judiciary, 94th Cong., Supp. App. Pt. 4, 2406 (1976); Bankruptcy
18 Reform Act: Hearings on S. 2266 and H.R. 8000 Before the
19 Subcomm. on Improvements in Judicial Machinery of the S. Comm. on
20 the Judiciary, 95th Cong. 1297 (1978), the enactment of Section
21 544(b)(2) with an express preemption provision, and a decision in
22 the District of Delaware, PHP Liquidating, LLC v. Robbins, 291
23 B.R. 603, 607 (D. Del. 2003), aff'd sub nom. In re PHP Healthcare
24 Corp., 128 F. App'x 839 (3d Cir. 2005).

1 To be sure, a history of relevant practice may support an
2 inference of congressional acquiescence. See, e.g., Fiero v.
3 Fin. Indus. Regulatory Auth., 660 F.3d 569, 577 (2d Cir. 2011)
4 (noting that FINRA's "longstanding reliance" on enforcement
5 mechanisms other than fines -- and Congress's failure to alter
6 FINRA's enforcement powers -- "indicates that FINRA is not
7 authorized to enforce the collection of its fines through the
8 courts"); Am. Tel. & Tel. Co. v. M/V Cape Fear, 967 F.2d 864, 872
9 (3d Cir. 1992) ("The Supreme Court in the past has implied
10 private causes of action where Congress, after a 'consensus of
11 opinion concerning the existence of a private cause of action'
12 had developed in the federal courts, has amended a statute
13 without mentioning a private remedy.") (quoting Merrill Lynch,
14 Pierce, Fenner & Smith, Inc. v. Curran, 456 U.S. 353, 380
15 (1982)). However, the effect or meaning of legislation is not to
16 be gleaned from isolated requests for more protective, but
17 possibly redundant, legislation. The impact of Section 544(b)(2)
18 is discussed immediately above and need not be repeated here.

19 Finally, the failure of Congress to respond to court
20 decisions is of interpretive significance only when the decisions
21 are large in number and universally, or almost so, followed. See
22 Merrill Lynch, 456 U.S. at 379 (holding that congressional
23 amendment of the Commodity Exchange Act that was silent on the
24 subject of private judicial remedies did not overturn federal
25 court decisions routinely and consistently [] recogniz[ing] an

1 implied private cause of action") (emphasis added); see also
2 Touche Ross & Co. v. Redington, 442 U.S. 560, 577 n.19 (1979)
3 (holding that the Supreme Court's implication of a private right
4 of action under § 10(b) of the Securities and Exchange Act of
5 1934 was simply acquiescence in "the 25-year-old acceptance by
6 the lower federal courts of an implied action"). The present
7 decision is far from a departure from a generally accepted
8 understanding. The district court decision in this very case and
9 the bankruptcy court decision in Lyondell are in fact the sole
10 extensive judicial discussions of the issue. Indeed, our present
11 decision does not even constitute a split among the circuits. As
12 or more telling with regard to the existence of a general
13 understanding or a need for action, we find no history of the use
14 of state law, constructive fraudulent conveyance actions to
15 unwind settled securities transactions, either after a bankruptcy
16 or in its absence.

17 The Constitution's establishment of two legislative branches
18 that must act jointly and with the executive's approval was
19 designed to render hasty action possible only in circumstances of
20 widely perceived need. Congress's failure to act must be viewed
21 in that context, and reliance upon an inference of satisfaction
22 with the status quo must at least be based on evidence of a long-
23 standing and recognized status quo. In the present matter, we
24 cannot draw the suggested inference on the basis of the skimpy

1 evidence submitted while the inference of a preemptive intent is
2 easily drawn.

3 CONCLUSION

4 For the reasons stated, we affirm the dismissal of the
5 complaint, on preemption rather than standing grounds. We
6 resolve no issues regarding the rights of creditors to bring
7 state law, fraudulent conveyance claims not limited in the hands
8 of a trustee et al. by Code Section 546(e) or by similar
9 provisions such as Section 546(g) which is at issue in an appeal
10 heard in tandem with the present matter, see Whyte v. Barclays
11 Bank.