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February 2, 2009

By ECF and Hand Delivery

Honorable Martin Glenn
United States Bankruptcy Judge
United States Bankruptcy Court
Alexander Hamilton Custom House
One Bowling Green, Room 504
New York, New York 10004

Re: *In re The 1031 Tax Group, LLC, et al.*, (Case No. 07-11448);
McHale v. Wachovia, N.A., et al. (Adv. Pro. No. 08-01604)

Dear Judge Glenn:

This firm is counsel to Gerard A. McHale, Jr., the chapter 11 trustee for the 1031 Debtors (the "Trustee") and plaintiff in the above-referenced adversary proceeding. I write regarding a discovery dispute which the parties have been unable to resolve and with respect to which we seek the intervention of the Court. We have conferred with counsel for Wachovia in a good faith effort to resolve this dispute, but have been unable to reach an agreement. If the Court is amenable, the parties will be prepared to address the discovery dispute at the hearing scheduled for this Wednesday, February 4, 2009 at 10 a.m.

The dispute concerns two requests in the Trustee's Request for Production of Documents (the "Document Requests"). The two requests seek information concerning Wachovia's own practices and policies in its capacity as a qualified intermediary ("QI"), as well as Wachovia's marketing of its QI services to customers, including other QIs such as the 1031 Debtors. Specifically, Requests No. 5 and No. 6 of the Document Requests are as follows:

5. All documents concerning protocols used by Wachovia or any of its customers when acting as a Qualified Intermediary, including without limitation policy and procedure manuals such as branch manager supervisory manuals, operation manuals, anti-money laundering policies and procedures, and Bank Secrecy Act policies and procedures.

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6. All documents concerning the marketing of your Qualified Intermediary services, including marketing to Qualified Intermediaries as customers.

In its responses and objections to the Document Requests, Wachovia objected to Requests 5 and 6, and refused to produce responsive documents on the grounds that the requests are overbroad, unduly burdensome, and vague; irrelevant; and confidential. In response, on July 31, 2008, I sent Wachovia a letter asking that Wachovia reconsider its position concerning the production of these documents. Wachovia responded by letter dated August 4, 2008, again refusing to produce documents responsive to these Requests, arguing that because Wachovia never acted as a QI with respect to any of the 1031 Debtors or the exchangers, the requests are overbroad and improper. On January 23, 2009, the parties had another meet and confer conference call, during which I again urged Wachovia to reconsider its position. Wachovia has refused to withdraw its objections.

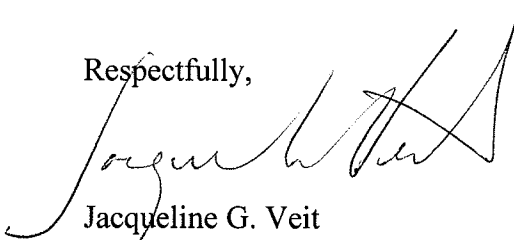
The requests are plainly relevant. Wachovia's knowledge of Okun's wrongful conduct is an element of several claims in the Complaint in this proceeding. It is undisputed that Wachovia acts as a QI in its own right. Further, Wachovia bank statements for the 1031 Debtors indicate that accounts were held in Wachovia's "QI Branch," and Wachovia was aware that the 1031 Debtors' accounts held QI funds. Also, as set out in the Complaint, in addition to maintaining accounts for the 1031 Debtors, Wachovia performed the role of agent for one of the 1031 Debtors. Wachovia's policies and procedures in its capacity as a QI are relevant to its knowledge of proper policies and procedures for QI's, and thus its knowledge that transfers being made from the 1031 Debtors' accounts maintained at Wachovia -- including transfers to the IPofA companies, to Okun's personal accounts and to other destinations unrelated to exchange transactions -- were improper. The Trustee, therefore, is entitled to documents responsive to Request 5.

Request 6, which seeks documents relating to the marketing of Wachovia's QI services, is likewise relevant. Like Wachovia's policies and practices, these materials are relevant to Wachovia's knowledge about the proper handling of QI funds and thus its knowledge that the transfers of funds from the 1031 Debtors' accounts indicated fraud. As alleged in the Complaint, statements on Wachovia's website demonstrate its awareness of the manner in which exchange deposits were to be handled to insure their security and availability to close exchange transactions and Wachovia's awareness that practices such as the pooling of QI funds into a single commingled account or sending QI funds to improper destinations could be red flags for fraud. Statements such as these in Wachovia's marketing materials are relevant to Wachovia's knowledge of what conduct is inappropriate, and thus that improper conduct was occurring. The Trustee is entitled to Wachovia's marketing materials to discover what other statements Wachovia's marketing materials contain that may support the Trustee's claims.

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The Trustee requests that Wachovia be compelled to produce all documents responsive to Requests 5 and 6 of the Document Requests.

Respectfully,

A handwritten signature in black ink, appearing to read "Jacqueline G. Veit", written in a cursive style. The signature is positioned above the printed name.

Jacqueline G. Veit

cc: Jordan Siev, Esq.