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April 3, 2009

***Via ECF and Federal Express***

The Honorable Martin Glenn  
United States Bankruptcy Judge  
United States Bankruptcy Court  
One Bowling Green – Room 504  
New York, New York 10004

Re: *In re The 1031 Tax Group, LLC, et al.*, (Case No. 07-11448 (MG));  
*McHale, as Trustee v. Wachovia Bank, National Association, et al.*  
(Adv. Pro. No. 08-01604 (MG))

Dear Judge Glenn:

We are counsel to Gerard A. McHale, Jr., chapter 11 trustee (the “Trustee”) for the above-referenced debtors, and plaintiff in the above-referenced adversary proceeding against Wachovia Bank, National Association and other Wachovia entities (“Wachovia”). We are writing on behalf of all parties to the adversary proceeding to advise the Court of its current status, and to request that the Scheduling Order, dated January 7, 2009, be amended to extend the time for discovery. There are several reasons underlying this request involving events since the Scheduling Order was entered and the efforts of the parties directed toward discovery and a possible resolution of the case.

First, the number of parties involved in discovery has changed. As the Court is aware, in 2008 two class action lawsuits were commenced against Wachovia Bank, National Association and/or its affiliates on behalf of proposed classes of exchangers, one in California, and one in Massachusetts. On January 20, 2009, the Class in California and the Trustee entered into an agreement providing for cooperation, joint discovery and other efforts, and sharing in certain recoveries, including a sharing of 60-40 between the Trustee and the Class with respect to any recoveries from the Wachovia litigation, which each has brought (“Class-Trustee Agreement”). On February 26, 2009, the parties and class representative in the Massachusetts action joined the Class-Trustee Agreement. On February 20, 2009, the Trustee filed a motion to approve the Class Trustee Agreement, which is now scheduled for a hearing on April 20, 2009 at 10:00 AM.

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In the Class Actions, motions have been filed in the District Courts to transfer those actions to the Southern District of New York, and a motion was filed with the multi-district litigation panel seeking the selection of a District Court to hear all class actions. On March 26, 2009, the MDL Panel heard argument on these motions, and all parties are awaiting a decision of the panel. After the motion was filed before the MDL Panel, the District Court hearing the California case *sua sponte* stayed that case pending the decision of the MDL Panel. Thus, the Class has not yet filed its motion to approve the Class-Trustee Agreement or a motion for preliminary approval of the various Plan Funding Settlements (see below).

Over the past few months, the Trustee has also negotiated and executed various settlements ("Plan Funding Settlements"), which the Trustee has negotiated with multiple parties, which will bring in approximately \$45 million to the Estates. On February 20, 2009 the Trustee filed a Plan and proposed disclosure statement based on these Plan Funding Settlements. The Class has now approved both the financial and non-financial terms of these settlement agreements.<sup>1</sup>

In view of the Class-Trustee Agreement and the obvious interests of all parties, including Wachovia, to avoid duplicative discovery in the Class cases and this case, all of us have been working together to coordinate discovery in this case with discovery in the class action lawsuits in order to have one document production and one set of depositions, in which all will participate. Because there are three law firms representing the Class, two in California and one in Massachusetts, this effort requires coordinating the schedules of five law firms and numerous witnesses.

Second, both the Trustee and Class claims against Wachovia are complex and significant, and require a substantial amount of discovery. Plaintiffs and Wachovia have already completed very substantial productions to each other involving massive numbers of documents, all of which require review. We anticipate that a million pages of documents will be exchanged in response to document requests. We have scheduled the first round of five video taped depositions of key Wachovia witnesses (each potentially for multiple days), and we anticipate more than a dozen additional depositions of the parties and third parties will be required after the document reviews and first round of depositions have been completed.

In view of these developments, we do not think discovery for a case of this size and complexity can be completed within the dates provided in the Scheduling Order, if both sides are going to be able to represent their clients and present their positions fairly and adequately.

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<sup>1</sup> As the Court is also aware, the Trustee is investigating, has filed and is prosecuting other adversary actions to recover substantial funds. Counsel for the Trustee in the Wachovia matter are also heavily involved in these other matters.

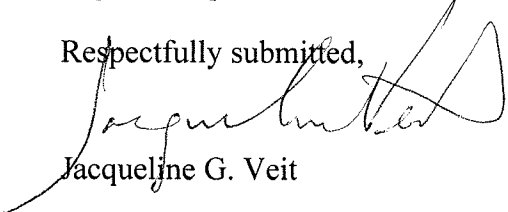
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Third, the Trustee, the Class, and Wachovia have been engaged in an extensive effort to determine whether this matter can be resolved. We have already held one all day meeting with all counsel and principals. A second meeting is scheduled for next week, on April 9, 2009. Both sides are committed to giving a full and good faith effort to attempt to resolve this case, and these efforts also require substantial resources.

In light of our joint desire to coordinate and pursue discovery, to have sufficient time to complete the complex discovery that is required in this case, and to explore settlement, all parties respectfully request that the Scheduling Order in this proceeding be amended. Our proposal would extend fact discovery until August 31, 2009, and shift the other dates in the Order accordingly.

We request a conference with the Court, by telephone if possible, to discuss this proposal.

Respectfully submitted,



Jacqueline G. Veit

cc: Jordan W. Siev, Esq. (Counsel for Defendants)  
Robert L. Brace, Esq. (Class Counsel)  
Thomas Foley, Esq. (Class Counsel)  
Anthony Zelle, Esq. (Class Counsel)