UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 7
	:	
AMERICAN BUSINESS FINANCIAL SERVICES, INC., *et al.*,	:	Case No. 05-10203 (MFW)
	:	
	:	Jointly Administered
Debtors. [1]	:	
	:	Related Doc. No. 4789

CHAPTER 7 TRUSTEE'S (I) OBJECTION TO MOTION OF LAW DEBENTURE TRUST COMPANY OF NEW YORK, AS INDENTURE TRUSTEE, AND WELLS FARGO BANK, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, FOR THE ENTRY OF AN ORDER AUTHORIZING THE CHAPTER 7 TRUSTEE TO DISTRIBUTE FUNDS IN ACCORDANCE WITH SETTLEMENT AGREEMENT, AND (II) REQUEST FOR ORDER DIRECTING COLLATERALIZED SUB-DEBT TRUSTEES TO RETURN ALL LITIGATION PROCEEDS AND OTHER FUNDS PREVIOUSLY PAID BY THE TRUSTEE AND DEBTORS PENDING FURTHER COURT ORDER

George L. Miller, the Chapter 7 trustee (the "Trustee") for the estates of American Business Financial Services, Inc. and its affiliated debtors in bankruptcy (the "Debtors" or "Estates"), in response to the Motion of Law Debenture Trust Company of New York, as Indenture Trustee, and Wells Fargo Bank, National Association, as Indenture Trustee, for the

funds previously paid by the Trustee and the Debtors pending further court order (the "Objection") and in support hereof, respectfully avers the following:

SUMMARY OF OBJECTIONS

1. This Court should deny the Motion and compel the return of previously disbursed Litigation Proceeds and other sums because, among other reasons:

(a) the Trustee, rather than the Collateralized Sub-debt Trustees, has the right and standing to determine when and the manner in which to litigate with Greenwich issues concerning the Greenwich Indemnity Claim (including the issue of adequate protection), and the Trustee has determined that it is not in the best interests of the Estates to incur substantial additional fees to litigate that dispute now (especially in light of the fact that dispositive motion briefing in the Adversary Action will conclude in mid-January and the case will be ready for trial shortly thereafter);

(b) the Collateralized Sub-debt Trustees have misappropriated more than $5.4 million of Litigation Proceeds and other funds previously disbursed to them by the Trustee[3] by using the funds to pay themselves for the fees and expenses of their professionals and agents in breach of the conditions and obligations imposed upon them by the Indentures[4] (which impose a "reasonableness" standard on the payment of fees and expenses, expressly deny reimbursement of fees and expenses incurred through

[3] To date, the Trustee has paid to the Collateralized Sub-debt Trustees a total of $5,411,047.44 on account of Litigation Proceeds and proceeds from ABFS 2003-2, Inc.

[4] Copies of the Indentures are attached hereto as Exhibits "A" and "B."

"negligence" or "bad faith," and require review and approval by this Court before payment);[5]

(c) the Collateralized Sub-debt Trustees have admitted that they have no intention of using any of the $27.76 million of requested Litigation Proceeds to make payments at this time to the Collateralized Noteholders (whose recovery, as creditors of the Debtors' Estates, must be the Trustee's chief concern) and again intend to pay themselves for the fees and expenses of their professionals and agents in breach of the conditions and obligations imposed upon them by the Indentures;

(d) the Trustee has been advised that the Collateralized Sub-debt Trustees are claiming $12.5 million on account of fees and expenses to date – an amount which appears patently unreasonable on its face – especially in light of the fact that the Collateralized Sub-debt Trustees have played no role in the realization of the Litigation Proceeds and other funds and have merely monitored the efforts of the Trustee's professionals who were responsible for recovering the Litigation Proceeds and other funds;

(e) the Collateralized Sub-debt Trustees have waived the right to receive some or all of the fees and expenses that they have charged or intend to charge in the Settlement Agreement;[6] and,

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[5] The Trustee proposes to hold the returned funds in a segregated account pending the determination of the Collateralized Sub-debt Trustees's entitlement to fees and expenses and the planned disbursement of the funds to the Collateralized Noteholders.

[6] A copy of the Settlement Agreement is attached hereto as Exhibit "C."

(f) by prosecuting the Motion over the objection of the Trustee, the Collateralized Sub-debt Trustees have breached and are continuing to breach their cooperation and other obligations under the Settlement Agreement.

I. Distribution of Litigation Proceeds to the Collateralized Sub-debt Trustees, At This Time, Will Not Benefit the Collateralized Noteholders.

2. The Collateralized Sub-debt Trustees state that entry of the requested Order will permit them to "take steps forthwith toward making initial distributions to the Collateralized Noteholders..." Motion, ¶ 1. The requested Order will *not*, however, permit distributions to the Collateralized Noteholders "forthwith", and any steps that the Collateralized Sub-debt Trustees *can* take "forthwith" do not require such an Order.

3. As the Collateralized Sub-debt Trustees concede, "even assuming the immediate availability of a portion of the FID Settlement proceeds for distribution to the Collateralized Noteholders, the complexities involved in effecting such a distribution are significant, and their resolution will require substantial time and resources." Motion, ¶ 39. The Collateralized Sub-debt Trustees also acknowledge that "[a]ny distribution received by the Collateralized Sub-debt Trustees pursuant to the Settlement Agreement *remains subject to the Collateralized Sub-debt Trustees' respective charging liens under the Indentures for outstanding fees and expenses, which will be paid prior to any distribution to the Collateralized Noteholders*." Motion, n. 5. (Emphasis added).

4. The Settlement Agreement in paragraph no. 5 provides that the Allowed ITs' Claims (as defined in the Settlement Agreement) shall not be subject to amendment to increase the amount of the claims and that the Allowed ITs' Claims are in full satisfaction of any and all obligations and/or claims, as defined in §105 (5) of the Bankruptcy Code, held by the Collateralized Sub-debt Trustees against the Estates. Therefore, even if the Collateralized Sub-debt Trustees have not waived their right to recover fees and expenses for the reasons outlined in paragraphs 17 to 25 of this Objection, the Collateralized Sub-debt Trustees are limited to looking

to the distributions made on account of the Allowed ITs' Claims for payment of compensation and expenses of their professionals.

5. In other words, if the Trustee was to distribute proceeds of the FID Settlement to the Collateralized Sub-debt Trustees now, such funds would not flow to Collateralized Noteholders anytime soon. Indeed, the individual claims of Collateralized Noteholders have not even been resolved, and the Collateralized Sub-debt Trustees do not presently know to whom they should make disbursements, or for how much. All that is presently known is that, before *any* distribution can be made to Collateralized Noteholders, the Collateralized Sub-debt Trustees intend to again take unauthorized and unapproved fees and expenses of their professionals off the top in violation of the Indentures, and without any Court or Trustee review to ensure such fees and expenses are reasonable and permitted under the Indentures and applicable law. Under these circumstances, the Trustee rejects the supposed urgency of turning more Litigation Proceeds over to the Collateralized Sub-debt Trustees.

II. The Reasonableness and Appropriateness of All Fees and Expenses Incurred by the Collateralized Sub-debt Trustees Must Be Determined Before Any Further Distributions to the Collateralized Sub-debt Trustees can be Made by the Trustee.

6. The Collateralized Sub-debt Trustees contend that the Settlement Agreement requires the Trustee to distribute their 40% share of the net Litigation Proceeds promptly upon his receipt of same. The Collateralized Sub-debt Trustees are in a poor position to assert contractual rights, however, given their disregard of their own obligations under the Indentures, to which the Trustee, as the Debtors' successor-in-interest, is a party.

7. As admitted by the Collateralized Sub-debt Trustees, they have previously received from the Trustee approximately $5.4 million in Litigation Proceeds and proceeds from ABFS 2003-2, Inc., and that the entire amount has been applied to the unauthorized and unapproved fees and expenses of the Collateralized Sub-debt Trustees and their professionals and agents. *See* Motion, n. 3 and 4, ¶ 29. The Trustee has been informed that the Collateralized Sub-debt Trustees have claimed fees and expenses of $12.5 million, which the Trustee asserts

under the circumstances of this case clearly should be subject to review as provided in the Indentures.

8. By applying $5.4 million to legal fees and expenses, and by intending to pay themselves millions of dollars more on account of legal fees and expenses, the Collateralized Sub-debt Trustees have violated and plan to again violate the express terms of the Indentures. Section 7.7 of the Indentures provides, in relevant part, as follows:

> The Company [the Debtor] shall pay to the Trustee [Collateralized Sub-debt Trustee] from time to time ***reasonable*** compensation for its acceptance of this Indenture and its performance of the duties and services required hereunder...The Company shall reimburse the Trustee promptly upon request for all ***reasonable*** disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the ***reasonable*** compensation, disbursements and expenses of the Trustee's agents and counsel. (E*mphasis added*).

Section 6.9 of the Indentures, in a similar vein, authorizes the Collateralized Sub-debt Trustees to file proofs of claim and other documents in order to have their claims, including "any claim for the ***reasonable*** compensation, expenses, disbursements and advances of the Trustee, its agents and counsel" allowed. (Emphasis added).

9. A comparison of the attorneys' fees and expenses to date of the Trustee's general counsel – approximately $2.7 million – to the claimed attorneys' fees and expenses of the Collateralized Sub-debt Trustees -- $12.5 million – demonstrates that the Collateralized Sub-debt Trustees' fees and expenses are unreasonable – requiring Trustee and judicial scrutiny. When one considers that the Trustee's general counsel substantially assisted the Trustee in the administration of the Estates and the recovery of over $50,000,000 in assets, and compares that to the Collateralized Sub-debt Trustees' primary services, to date -- which have been only to monitor the Trustee's and his professionals' successes in recovering substantial assets on behalf of the Estates -- the Collateralized Sub-debt Trustees' claim for $12.5 million in fees and expenses becomes patently unreasonable. The Collateralized Sub-debt Trustees did not render any assistance or cooperation as respects any of the Trustee's recoveries.

10. The Indentures provide that when the Collateralized Sub-debt Trustees incur expenses or render services after an event of default consisting of a bankruptcy, then "... the expenses and compensation for the services are intended to constitute expenses of administration under the Bankruptcy Law." See, Indentures Sec. 7.7. "Bankruptcy Law" is defined under the Indentures as including the United States Bankruptcy Code (Title 11 U.S. Code). See Indentures Sec. 1.1. Pursuant to the United States Bankruptcy Code, an entity may timely file a request for payment of administrative expense and such administrative expenses are only allowed ***after notice and hearing.*** 11 U.S.C. Section 503(a) and (b). The Bankruptcy Code further provides that "after notice and hearing" means "... after such notice as is appropriate in the particular circumstances, and such opportunity for hearing as is appropriate in the particular circumstances." 11 U.S.C. Section 102(1)(A). Accordingly, the Collateralized Sub-debt Trustees cannot simply take their fees and expenses from the disbursements being made by the Trustee, but rather payment can only be made ***after notice and hearing*** and only upon determination of entitlement to allowance in accordance with 11 U.S.C. Section 503(b) and the terms of the Indentures.

11. The Collateralized Sub-debt Trustees in footnote No. 5 of the Motion incorrectly state "any distribution received by the Collateralized Sub-debt Trustees pursuant to the Settlement Agreement remains subject to the Collateralized Sub-debt Trustees charging liens under the Indenture for outstanding fees and expenses, which will be paid prior to any distribution to the Collateralized Noteholders." This statement is incorrect because pursuant to Section 6.9 of the Indentures the right of the Collateralized Sub-debt Trustees to a charging lien, if any, exists only to the extent such fees and expenses have already been determined to be reasonable and hence "due under Section 7.7" of the Indentures. Specifically, Section 6.9 of the Indentures provides:

> To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee [Collateralized Sub-debt Trustee], its agents and counsel, and any

> other amounts ***due under Section 7.7*** [reasonable compensation] hereof out of the estate of such proceeding, shall be denied for any reason, payment of same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties which the holders of Senior Collateralized Notes may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. (Emphasis added).

12. In addition to a determination that the compensation and expenses sought to be taken by the Collateralized Sub-debt Trustees must be reasonable under Section 7.7 of the Indentures before obtaining a charging lien, the Indentures also provide in Section 7.7 that the "Company [Chapter 7 Trustee as successor] ***need not reimburse any expense*** or indemnify against any loss or liability ***incurred by the Trustee*** [Collateralized Sub-debt Trustees] ***through its own negligence or bad faith.***" (Emphasis added). Accordingly, a determination must be made as to whether any of the expenses or liabilities for which the Collateralized Sub-debt Trustees seek reimbursement ***were incurred through their own negligence or bad faith*** before the Collateralized Sub-debt Trustees are permitted to apply claimed compensation and expenses against the Litigation Proceeds recovered by the Trustee. Such a determination is particularly apropos given the action and/or inaction of the Collateralized Sub-debt Trustees with respect to the DIP financing during the Chapter 11 and the Collateralized Sub-debt Trustees' Motions during the Chapter 7, which under the circumstances may result in the fees and expenses of the Collateralized Sub-debt Trustees related thereto being deemed to have been incurred through negligence or bad faith and thus may not be reimbursable to the Collateralized Sub-debt Trustees under the Section 7.7 standards of the Indentures.

13. The importance of the aforesaid review of the Collateralized Sub-debt Trustees claim for reimbursement before any additional Litigation Proceeds are disbursed to them is enhanced by the fact the Settlement Agreement in paragraph 5(f) provides:

> The distribution by the Trustee pursuant to this Settlement Agreement are being made on account of and shall be applied against the Allowed ITs' Chapter 11 Super-Priority Claims. ***The distributions which are made by the Trustee in accordance with this Settlement Agreement on account of the Allowed ITs'***

Chapter 11 Super-Priority Claim shall not be subject to disgorgement by the IT's. (Emphasis added).

Accordingly, the Trustee asserts that the reviews for reasonableness and appropriateness of the Collateralized Sub-debt Trustees compensation and expenses must be performed before any additional Litigation Proceeds are applied by the Collateralized Sub-debt Trustees against claimed compensation and expenses to prevent the Collateralized Sub-debt Trustees from attempting to retain improperly paid fees and expenses under the guise of the aforesaid non-disgorgement provision.

14. The entitlement of the Collateralized Sub-debt Trustees to compensation and reimbursement for fees and expenses is not boundless, and any entitlement to be reimbursed is conditioned upon the reasonableness of the claimed fees and expenses and compliance with remaining conditions of the Indentures. This reasonableness requirement necessarily mandates that the Trustee and the Court be afforded the opportunity to review the claimed fees and expenses before they are paid. By applying the entirety of the $5.4 million which the Collateralized Sub-debt Trustees have previously received from the Trustee pursuant to the Settlement Agreement and approximately $600,000 arising by virtue of the DIP toward the fees and expenses of their professionals and agents, the Collateralized Sub-debt Trustees have improperly denied the Trustee, as successor to "the Company" under the Indentures, and the Court the ability to confirm the reasonableness of such fees and expenses, and to confirm that no such claimed fees or expenses of the Collateralized Sub-debt Trustees were "incurred through their own negligence or bad faith."

15. Consideration of the reasonableness of the Collateralized Sub-debt Trustees' fees and expenses is necessary on two levels. On a micro-level, it is important to understand the nature, value, and extent of the various services which have given rise to such extraordinary fees and expenses. On a macro-level, the reasonableness of the Collateralized Sub-debt Trustees' fees and expenses must be evaluated through the prism of their own questionable contributions during these bankruptcy cases, including, as a primary example, in connection with the

acquisition by Greenwich of the DIP Priority Lien. The payment of millions of dollars on account of the fees and expenses of the Collateralized Sub-debt Trustees and their professionals (as distinguished from their constituencies, the Collateralized Noteholders) appears improper and unwarranted especially when – under the circumstances of this case -- the Collateralized Noteholders have little or nothing to show thus far for the "efforts" of the Collateralized Sub-debt Trustees.

Given the track record of the Collateralized Sub-debt Trustees as relates to the $5.4 million already disbursed to them pursuant to the Settlement Agreement and the $600,000 received from the DIP, the Trustee is loathe to turn over an additional $27.76 million and cross his fingers that, ***this*** time, the funds will not be improperly spent. Rather, the Trustee submits that the Collateralized Sub-debt Trustees should be compelled to return the more than $6 million they previously received from the Trustee and the Debtors to be held in a segregated account pending the determination of the Collateralized Sub-debt Trustees's entitlement to fees and expenses and the planned disbursement of the funds to the Collateralized Noteholders.

16. It bears emphasizing that it is the Collateralized Noteholders whose interests are paramount. The fatal flaw of the Motion is that it does not further the interests of the Collateralized Noteholders in any material way and would enable the Collateralized Noteholders's share of the Litigation Proceeds to be misappropriated by the Collateralized Sub-debt Trustees for compensation of their professionals without the benefit of any examination for reasonableness or appropriateness under the terms of the Indentures.[7]

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[7] To the extent the Litigation Proceeds remain held by the Trustee the funds are subject to the Trustee's bonding requirements under 11 U.S.C. 327(a) and the deposit and investment restrictions of 11 U.S.C. 345, whereas the funds are not subject to these requirements once released to the Collateralized Sub-debt Trustees.

III. The Collateralized Sub-debt Trustees Have Waived Their Right To Fees and Expenses.

17. In the Settlement Agreement, the Collateralized Sub-debt Trustees waived and effectively released their right to claim fees and expenses against the Litigation Proceeds and other sums to be distributed by the Trustee.

18. Under the Settlement Agreement which was approved by the Court, the Collateralized Sub-debt Trustees were granted a Chapter 11 Super-Priority Claim in the aggregate amount of $40 million and a general unsecured claim in the aggregate amount of $58,149,685 (collectively, the "Allowed ITs Claims"), which superseded, amended, and replaced the Wells Fargo Proof of Claim and Law Debenture Proof of Claim (which in the aggregate equaled $98,149,685).[8]

19. Moreover, the Allowed ITs' Claims were not subject to amendment to increase the amount of the claims and were acknowledged to be in full satisfaction of any and all obligations and/or claims of the Collateralized Sub-debt Trustees against the Debtor's Estates as provided for in their Proofs of Claim.

20. In this regard, Paragraph 4.c. of the Settlement Agreement provides as follows:

> c. **Amendment of Wells Fargo Proof of Claim and Law Debenture Proof of Claim.** The Allowed ITs' Chapter 11 Super-Priority Claim and the Allowed Its' General Unsecured Claim (collectively, the "Allowed ITs' Claims") provided hereunder shall supersede, amend and replace the Wells Fargo Proof of Claim and the Law Debenture Proof of Claim. The Allowed ITs' Claims shall not be subject to amendment to increase the amount of the claims. The Allowed ITs' Claims shall be in full satisfaction of any and all obligations and/or claims, as defined in U.S.C. § 101(5), of the ITs against the Debtors' estates, including but not limited to any and all claims of the ITs for diminution of any collateral or failure of any adequate protection arising under the Interim Chapter 7 Order, the Final DIP Order, the Servicing Sale Order, or, otherwise.

[8] Copies of the Wells Fargo Proof of Claim and Law Debenture Proof of Claim are attached hereto as Exhibits "D" and "E" respectively.

21. In its Proof of Claim, Wells Fargo claimed that the Debtors' Estates were indebted to it in the principal amount of $41,130,505 as of the petition date; plus $2,688,024 of accrued unpaid interest through the petition date; plus post-petition interest; plus Trustee's expenses through June 30, 2005, of not less than $1,627,097.62.

22. In addition, the Wells Fargo Proof of Claim expressly stated that "the Company is obligated to the Indenture Trustees for all amounts due and to become due to the Indenture Trustees for their reasonable compensation and for all reasonable disbursements, expenses, and advances incurred and/or made by the Indenture Trustees (including the reasonable

disbursements, compensation, and expenses of each of the Indenture Trustees' agents and counsel) under §7.7 of the Indenture. . . ." See ¶ 2 of Wells Fargo's Proof of Claim.

23. Likewise, in its Proof of Claim, Law Debenture claimed entitlement to $57,019,180 for principal and interest, and that the Debtors were also obligated "in an amount presently unliquidated for Claimant's fees and expenses, including reasonable fees and disbursements of counsel and other agents in accordance with § 7.7 of the Indenture." See ¶ 9 of Law Debenture's Proof of Claim, which also provided as follows: "Claimant hereby reserves the right to amend this Proof of Claim, for among other purposes to include fees and expenses, including the reasonable fees of counsel and other agents, incurred by Claimant."

24. Pursuant to the Settlement Agreement and Order of this Court, the Collateralized Sub-debt Trustees agreed to waive, in consideration of the mutual promises and covenants

claimed on behalf of the Collateralized Noteholders in the Proofs of Claim filed by the Collateralized Sub-debt Trustees, and do not make provisions for fees and expenses in addition thereto.

IV. The Trustee, Rather Than the Collateralized Sub-debt Trustees, has the Right and Standing to Determine When and the Manner in Which to Litigate With Greenwich Issues Concerning the Greenwich Indemnity Claim (including the issue of adequate protection), and the Requested Relief is Against the Best Interests of the Estates, Because it Would Require the Costly and Premature Litigation of Adequate Protection Issues With Greenwich.

26. Greenwich, it can be very safely assumed, will contest the Collateralized Sub-debt Trustees' assertion that the Greenwich Indemnity Claim is adequately protected, thereby permitting the distribution of proceeds from the FID Settlement.

27. While the Trustee is confident that he will prevail against Greenwich in the Adversary Action, the Trustee has determined not to further litigate at this time the issue of adequate protection as relates to the Greenwich Indemnity Claim.

28. Under the terms of the First Greenwich Stipulation (and in particular paragraph no. 12) and the Second Greenwich Stipulation (and in particular paragraph no. 8),[9] only the Trustee and not the Collateralized Sub-debt Trustees, has the standing and right to determine the timing of further litigation of the issue of adequate protection as relates to the Greenwich Indemnity Claim.

29. Although the Trustee has determined not to litigate adequate protection issues with Greenwich at the present time, the Motion would effectively require the commencement of such costly proceedings now.

30. Although the Trustee denies Greenwich will be entitled to indemnification, compounding the detriment caused to the Estate is the fact that the Trustee, on account of the alleged Greenwich Indemnity Claim, could be exposed to incurring not only the Trustee's own

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[9] Copies of the First Greenwich Stipulation and the Second Greenwich Stipulation are attached hereto as Exhibits "F" and "G" respectively.

costs of litigating the adequate protection issue, could be exposed to claims by Greenwich and the Collateralized Sub-debt Trustees for indemnification of additional attorney's fees and costs being incurred by virtue of this Motion to determine adequate protection.

31. The Trustee as recently as September of 2009 in connection with the Second Greenwich Stipulation determined in the exercise of his business judgment that it was in the best interest of the Estates to defer additional litigation with Greenwich in connection with the Adversary Action over the issue of adequate protection of Greenwich's Indemnity Claim and the Collateralized Sub-debt Trustees having fully vetted the Second Greenwich Stipulation had no objection to same.

32. The primary benefits to the Estate of deferral of the adequate protection fight with Greenwich were to avoid incurring unnecessary costs and expenses which might be subject to claim of indemnification and also to enable the Estates to garner adequate resources and funds to evidence that the Estates possessed sufficient staying power to pursue the litigation against the FIDS through trial if necessary. The wisdom of the Trustee's decision to defer the adequate protection fight with Greenwich has been validated in part by the recent $100 million with the FIDs.

33. The Trustee in the First Greenwich Stipulation intentionally reserved to himself the right to hereafter seek the use of cash collateral (and then to litigate the related adequate protection issues) in the event the pending lawsuits settled. The Trustee makes no such request now, believing that the best interests of the Estates and creditors would not be served by

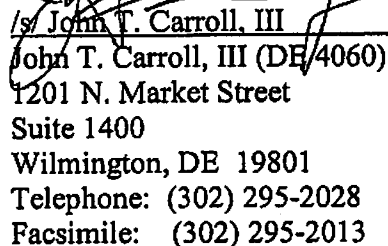
Collateralized Sub-debt Trustees' admission in paragraph 39 of the Motion that they are not currently in a position to make a distribution to the Collateralized Noteholders (even assuming that the distribution would not be consumed by the assertion of charging liens by the Collateralized Sub-debt Trustees for compensation and expenses).

35. The Settlement Agreement in paragraph 5(c)(ii) provides that Litigation Proceeds are determined after deduction of contingent fees and reimbursement of expenses incurred in connection with litigation claims held by the Debtors' Estates. The Debtors' Estates continue to pursue litigation claims consisting of the Adversary Action against Greenwich and others and an arbitration proceeding against BDO Seidman in which expenses are being incurred (possibly including indemnity claims). Accordingly, it would be necessary to determine an estimated reserve for the expenses attributable to these additional remaining litigation claims of the Estates in order to calculate the Litigation Proceeds. Therefore the assertion by the Collateralized Sub-debt Trustees that $69.4 million of the FID Settlement constitutes Litigation Proceeds under the Settlement Agreement to which they would be entitled to receive 40% (or $27.76 million) is incorrect.

36. In addition, the Trustee asserts that the Collateralized Sub-debt Trustees by virtue of filing the instant Motion and presently causing an adequate protection confrontation with Greenwich have breached the Settlement Agreement which provides in paragraph no. 6 that "The IT's [Collateralized Sub-debt Trustees] shall reasonably cooperate with the Trustee in connection with his prosecution or defense of the Adversary Action and any other litigation undertaken by the Trustee for the benefit of the Debtors' Estate." The Collateralized Sub-debt Trustees' failure to cooperate by bringing the instant Motion is particularly offensive given that it is just one more example in a long series of actions by the Collateralized Sub-debt Trustees which did not benefit the Collateralized Noteholders but merely increased the risk to and expenses of the Estates.

WHEREFORE, the Trustee for all of the reasons set forth above respectfully requests that the Court enter an Order (i) denying the Motion; and (ii) ordering the Collateralized Sub-debt Trustees to return all Litigation Proceeds and other funds which they have received from the Trustee and the Debtors to date including interest at the federal funds rate, which funds the Trustee will hold in a segregated account pending further Order of the Court.

Dated: November 25, 2009



COZEN O'CONNOR

/s/ John T. Carroll, III
John T. Carroll, III (DE 4060)
1201 N. Market Street
Suite 1400
Wilmington, DE 19801
Telephone: (302) 295-2028
Facsimile: (302) 295-2013

and

Eric L. Scherling
1900 Market Street
Philadelphia, PA 19103
Telephone: (215) 665-2042
Facsimile: (215) 701-2081

Counsel to Chapter 7 Trustee,
George L. Miller

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 7
	:	
AMERICAN BUSINESS FINANCIAL SERVICES, INC., *et al.*,	:	Case No. 05-10203 (MFW)
	:	
	:	Jointly Administered
Debtors. [1]	:	
	:	Related Doc. No. 4789

ORDER DENYING MOTION OF LAW DEBENTURE TRUST COMPANY OF NEW

ASSOCIATION, AS INDENTURE TRUSTEE, FOR THE ENTRY OF AN ORDER AUTHORIZING THE CHAPTER 7 TRUSTEE TO DISTRIBUTE FUNDS IN ACCORDANCE WITH SETTLEMENT AGREEMENT

FURTHER ORDERED that Law Debenture Trust Company of New York, and Wells Fargo Bank, National Association are hereby ordered to return to the Trustee all Litigation Proceeds and other funds which they have received from the Trustee and the Debtors to date together with accrued interest at the federal funds rate within ten (10) days of entry of this Order, which funds the Trustee will hold in a segregated account pending further Order of the Court.

BY THE COURT:

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The Honorable Mary F. Walrath
United States Bankruptcy Court Judge