

Exhibit 44
to
Affidavit of Daniel M. Reilly
in Support of Joint Memorandum of
Law in Opposition to Proposed Settlement

From: Kathy D. Patrick <kpatrick@gibbsbruns.com>
Sent: Thursday, December 2, 2010 1:01 PM
To: Kravitt, Jason H. P. <JKravitt@mayerbrown.com>; tmirvis@wlrk.com; mgkaplow@wlrk.com; epgolin@wlrk.com
Cc: Litsey, Jana J -Legal <jana.j.litsey@bankofamerica.com>; Ingber, Matthew D. <MIngber@mayerbrown.com>; Kathy D. Patrick <kpatrick@gibbsbruns.com>; Scott A. Humphries <shumphries@gibbsbruns.com>; Robert J. Madden <rmadden@gibbsbruns.com>
Subject: RE: A minor lawyer's point/Confidential/attorney work product

I think forbearance is the right word.

After the Section 7.01 Notice of Non-Performance has been sent, and sixty days have passed, Section 10.08 affords the noticing holders the right—but not the *requirement*--to send a second notice demanding that the Trustee take action to remedy the Event of Default. Our clients are agreeing to forbear, for 21 days, from sending the 10.08 notice they are otherwise entitled to send on December 18 (60 days after the Section 7.01 Notice).

Stated differently, we're not *lengthening* the 60 day cure period under Section 7.01. Instead, our clients are simply agreeing to send the 10.08 notice *when they want to send it*, rather than sending it on December 18, the earliest date on which they could otherwise send it.

From: Kravitt, Jason H. P. [mailto:JKravitt@mayerbrown.com]
Sent: Thursday, December 02, 2010 9:27 AM
To: Kathy D. Patrick; tmirvis@wlrk.com; mgkaplow@wlrk.com; epgolin@wlrk.com
Cc: Litsey, Jana J -Legal; Ingber, Matthew D.
Subject: A minor lawyer's point/Confidential/attorney work product

While I am not one to obsess about small, technical points, I have a concern with the present wording of one verb in the "Forbearance" Agreement. Putting aside whether the notice that has been given is effective to start a 60 day period running under the Sections 7.01(ii) of the various PSAs, the wording of such Sections (ii) is that "failure continues unremedied for a period of 60 days after the date on which written notice of such failure shall have been given to [various parties such as the MS or Trustee]" While I do not come out negatively on this myself, someone might raise the question whether even the party giving the notice can extend it unilaterally.

Would it be wiser to say that the giver of the notice is "suspending" it? Or "tolling" it? Or some other formulation that strengthens the argument that it is an action that the giver of the notice has the unilateral power to do? I welcome your thoughts.

Jason H.P. Kravitt

Mayer Brown LLP

1675 Broadway

New York, NY 10019-5820

Main Tel. 212-506-2500

Tel. 212-506-2622

Fax. 212-262-1910

Email: jkravitt@mayerbrown.com

IRS CIRCULAR 230 NOTICE. Any tax advice expressed above by Mayer Brown LLP was not intended or written to be used, and cannot be used, by any taxpayer to avoid U.S. federal tax penalties. If such advice was written or used to support the promotion or marketing of the matter addressed above, then each offeree should seek advice from an independent tax advisor.

This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.