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VIA OVERNIGHT COURIER AND E-MAIL

Charles R. Fulbruge III, Clerk
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408
(202) 775-4503

Re: *The Bank of New York Mellon Trust Co., N.A. as Indenture Trustee for the Timber Notes, et al. v. Official Unsecured Creditors' Committee, et al.*, No. 08-40746 (argued October 6,2008, before Chief Judge Jones, Judge Owen, and Judge Southwick, and awaiting decision)

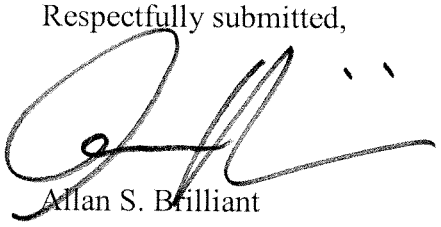
Dear Mr. Fulbruge:

This letter is submitted in response to the December 8, 2008 letter from counsel for the Indenture Trustee, relating to the pending motion by Appellees to dismiss this appeal as equitably moot. The Indenture Trustee and Noteholders opposed that motion in substantial part on their representation that, in order "[t]o give this Court maximum flexibility," the $513.6 million paid to the Noteholders under the Reorganization Plan had not been distributed and could be repaid as the Court might order. Appellants' Response to Motion To Dismiss Appeal at 2 n.3. The Noteholders have now – without any advance notice to the Court or other parties – unilaterally rendered that representation inoperative by distributing the $513.6 million they received under the Plan.

Appellees previously demonstrated that it would be infeasible and inequitable either to try to unwind the Plan or to unilaterally impose modifications to the Plan urged by the Noteholders, and the Noteholders' new action strongly reinforces that conclusion. Although the Noteholders assert that the Court can still order "lien re-imposition without a repayment of the American Ag Credit loan," that is refuted by their own prior statements to the Court. Specifically, the Noteholders previously argued that, if re-imposition of the Noteholders' lien would put the American Ag Credit loan issued to the reorganized company into default (which it would), the $513.6 million could be used to repay that loan. *Id.* at 7 n.11. Now, by their unilateral action, the Noteholders have rendered impossible even that inadequate and inappropriate response. The Noteholders' latest action has confirmed beyond any possible doubt that, having failed to secure a stay and having distributed the proceeds that they received, they have no equitable claim to pursue an appeal that would result in the "wholesale annihilation of the Plan." *In re Manges*, 29 F.3d 1034, 1043 (5th Cir. 1994).

We respectfully request that this letter be brought to the immediate attention of Chief Judge Jones and Judges Owen and Southwick, the panel that heard oral argument on October 6. Thank you for your attention to this matter.

Respectfully submitted,



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cc: Counsel for Appellants
Counsel for the United States
Counsel for the California State Agencies