

DEFENDANTS' CLOSING ARGUMENT

People of the State of New York v. Donald J. Trump, et al.

January 11, 2024



Not One Witness

- 3-year investigation – 1 year of litigation – 1MM+ pages in discovery – 44 trial days
- Not one trial witness = there was fraud
- Not one trial witness = identified material misstatement
- Not one trial witness = deceived by/relied on material misstatement
- Not one trial witness = loan terms/pricing would have been different
- Not one trial witness = post-closing certifications impacted loan terms/pricing
- Only AG FOF cite re: banks lost money/loan pricing impacted = Court
- Only AG FOF cite re: intent = Cohen
- Entire case = manufactured claim to pursue a political agenda
- Press releases and posturing but no proof – no evidence

Not One Complaint

- Conduct did not violate the rights of the banks
- No wrongdoing because no interference with banks' legally protected interests
- Core of unjust enrichment/disgorgement theory is trespass of rights of another
- Here no interference with a legally protected interest
- No violation of rights of parties to loan transactions
- No risk of harm to marketplace = marketplace functioned as it should
- No complaint from any party to any loan transaction
- No complaint from any market participant
- No testimony from anyone that D conduct impacted a protected interest
- No testimony from anyone as to how D conduct allegedly harmed the marketplace

Claims Not Timely

- First Department Already Decided – Defendants Already Won
- AG FN2 = “To the extent any proposed finding or conclusion relates to events occurring before the cutoff date established by the Appellate Division, the limitations period is a bar on claims, not evidence, as the Court has stated repeatedly. Tr.1812:24-25; 1924:2-11 (bank robbery example); *Kent v. Papert Companies, Inc.*, 309 A.D.2d 234, 241 (1st Dep’t 2003); NYSCEF No. 1535 (collecting cases). Such events may show a course of conduct, knowledge, intent, or a long-running conspiracy or scheme, or may be relevant to equitable relief to be awarded. *See* Guide to New York Evidence § 4.38, available at <https://www.nycourts.gov/JUDGES/evidence/>; *People v. Leisner*, 73 N.Y.2d 140, 146-47 (1989).” (NYSCEF No. 1667 at 5 n.2)
- Broad admission of evidence (error) cannot expand scope of available relief

Claims Not Timely

- AG FN 18 = “Insofar as defendants urge that relief is available only for loans or insurance policies issued after the First Department’s statute-of-limitations cutoff, OAG respectfully continues to advance those further doctrines toll or extend the limitations period. NYSCEF No. 245, at 36-41; 1AD NYSCEF No. 24. at 46 n.11.” (NYSCEF No. 1667 at 86 n.18)
- Makes no sense at all
- AG arguments cannot evade the First Department Decision
- Binding law of the case – “those further doctrines” were rejected
- Defendants won on those issues – period

Claims Not Timely

- Application of First Department mandate and appropriate accrual date under that decision based on the NYAG's stated basis for the claims bars recovery as to at least seven of the ten lending-based claims
- Simple non-discretionary process – any transactions closed before July 13, 2014
- Any potential recovery on loan claims only as to OPO Loan and/or the 40 Wall Street Loan
- Cannot seek disgorgement as to transactions closed/decisions made before July 13, 2014
- Cannot seek disgorgement as to contracts awarded (OPO/FP) before July 13, 2014
- Chart provides summary

Transaction	Date Transaction Closed (Accrual Date)	Defendants For Which NYAG'S Claims Are Timely
Seven Springs Loan	July 17, 2000	None
Trump Park Avenue Loan	July 23, 2010	None
Ferry Point Contract	2012	None
GSA OPO Bid Selection and Approval	February 2012	None
Doral Loan	June 11, 2012	None
Chicago Loan	November 9, 2012	None
OPO Contract & Lease	August 5, 2013	None
OPO Loan	August 12, 2014	Only Defendants Bound by The Tolling Agreement.
Buffalo Bills Bid	Transaction never consummated.	None
40 Wall Street Loan	November 2015	Only Defendants Bound by The Tolling Agreement.

Claims Not Timely

- AG theory = certifications are actionable
- But certifications are not a license to evade SOL decision
- Undisputed = loan terms/pricing established at closing
- AG has not established any specific impact of certifications alone
- Even the Court agrees:

Court: “Well, I agree with your logic that a certification, we will agree to that term, in 2017, doesn't affect the -- anything directly about the original loan, how it was negotiated, how it was finalized.” (Tr. at 3741:10-13)

- Cannot use certifications to revisit decisions made prior to SOL cutoff
- This is precisely what AG attempts to do with Doral/Chicago Loans + OPO/FP
- SOL precludes this evasive disgorgement rationale
- Issue decided in Appellate Court – Defendants won!

Issues for Determination at Trial

- Separate sets of issues to be determined at trial
- Separate from Count I
- Counts II–VII = AG's Burden

Intent & Materiality & Reliance

Civil claims based on criminal predicates

- Disgorgement entitlement and amount = AG's Burden

Trespass/Violation of legally protected interest

- Here, AG loses on all issues at trial

Burden of Proof

- Counts II–VII = Clear and Convincing Evidence (CCE)
- All based upon criminal predicates
- SCOTUS = CCE standard *must* be applied to “civil cases involving allegations of fraud or some other quasi-criminal wrongdoing” – *Addington*, 441 US at 424
- Common law fraud must also be established by CCE
- Where, as here, intent and materiality are at issue, CCE standard applies
- AG has not and cannot satisfy this rigorous standard
- AG cases inapposite – negligence/attorney discipline/civil forfeiture
- AG ignores fraud/quasi-criminal cases
- AG cannot even satisfy the lesser preponderance standard of proof

Evidence

- PJI 1:25 Consider Only Testimony and Exhibits

“In deciding this case, you may consider only the exhibits that were admitted in evidence and the testimony of the witnesses as you have heard it in this courtroom However, arguments, remarks, and summation(s) of the attorneys are not evidence, *nor is anything I now say or may have said with regard to the facts, evidence.*”

- Evidence is what the *witnesses* said in court (AG cites Court 18+ times)
- Evidence is what is contained in the exhibits
- Court must have actual evidence to support its findings
- Court simply cannot disregard unrebutted (URB) testimony
- Where unrebutted testimony in record Court cannot substitute its own judgment

Intent

- Unrebutted testimony and plausible rationale for valuations negate any intent
- Bartov/Flemmons testimony negates intent
- ASC 274 provides Estimated Current Value (“ECV”) is the standard
- ECV = great latitude in valuation methodology
- ECV not “Fair Value” or “Market Value”
- Bartov/Flemmons = SOFC valuations derived in compliance with GAAP/ASC 274
- Flemmons = ASC 274 = many ways to value – all are acceptable even though results differ
- Lewis improper rebuttal not credible

Professor of Practice with no practical experience

Accounting degree from engineering school

ECV opinions eviscerate the definitional structure – totally subjective

SOFCs

- SOFC overall NW lower than actual NW
- “User” defined as DB (Bartov/Flemmons)
- Notes part of SOFC – prepared by DJT
- IACR part of SOFC
- Bartov = no evidence of accounting fraud URB
- Flemmons = no indicia of fraud in the SOFCs/preparation process URB
- Kelly = Mazars’ review did not identify any specific misstatements URB
- Laposa = widely disparate valuations common and expected – not problematic URB
- Unrebutted testimony and only evidence in the record
- AG/Court cannot simply disregard

DJT Testimony

- Industry Expert
- Dealing with banks for 50 years
- Never intended for DB to rely just on SOFCs
- That is not what banks do in his experience – knows they perform own analysis
- Disclaimer language included – tells banks to perform own analysis
- Fully transparent
- Relied on multi-million-dollar accountants at Mazars
- Flemmons = reliance on Mazars reasonable URB
- Bender = any issues identified (only a few in all the years) corrected satisfactorily
- No CCE establishing intent

Qualifications for DB PWM

- Williams testified regarding PWM Eligibility Criteria
- Williams = Typical NW over \$50MM/proven track record in US CRE markets URB
- Williams = President Trump well in excess of this criteria URB
- Vrablic confirmed President Trump exceeded PWM eligibility criteria URB
- Williams testified PT would have qualified for PWM pricing at:
 - \$2BB NW
 - \$1BB NW
 - \$500MM NW
 - \$100MM NW
- Williams = PWM pricing = 2.0-2.5 percent range
- Williams = *once qualified for PWM then qualified for this pricing* URB (FOF91)

DJT Overqualified for DB PWM

- Once qualified for PWM = PWM pricing applies – no “motive” to inflate
 - = PT already there – already qualified
 - = already getting PWM benefits – no need to inflate numbers to qualify
 - = not a “red herring” (NYSCEF No. 1667 ¶ 410)
 - = no benefit “obtained through fraud”
 - = record does not “plainly demonstrate” any motive or loans procured by fraud

DJT Overqualified for DB PWM

- DJT NW = Higher than reflected on the SOFCs
- Bartov = Brand Value
- Bartov = following GAAP can lead to the undervaluing of assets; for example, Coca-Cola has a net worth of 10 times more in the stock market than in its annual report because intangible assets such as internally developed brand value cannot be reported on a balance sheet under GAAP, despite brand value being one of Coca-Cola's most valuable assets. 6242:2-6243:5. URB
- Professor Bartov testified that, like Coca-Cola, a major asset is missing from President Trump's SFCs—his brand; “there is no question that the brand value of [] President Trump [is] worth billions” and brand was not included in the SFCs as a standalone asset. 6243:6-18. URB
- This is why DB (and others) wanted the PWM relationship – “whale client”!!

DJT Overqualified for DB PWM

- Several major assets were undervalued in the SOFCs, including Ferry Point, OPO, Mar-a-Lago and Doral
- The 2021 SOFC Ferry Point value = \$22,548,589 – Bally's paid \$60 million
- Moens = MAL value higher than the value listed on the supporting data to the SFC every year from 2011-2021 and far exceeded the tax assessed value of the property during that time period - URB
- Moens/Larson = URB tax assessed value not appropriate measure
- Yet AG relies on this Court's determination that MAL worth on \$18MM-\$27.6MM
- Moens URB = every year from 2011 through 2021, he could have sold Mar-a-Lago for a price ranging from \$705,000,000 in 2011 to \$1,215,000,000 in 2021 and every year the price for which he could sell Mar-a-Lago was higher than the SOFC value—which ranged from \$347,761,431 to \$739,452,519

Intent – Shubin/MAL

- Shubin = expert in land-use planning, entitlement, and zoning
- Shubin identified multiple documents which *must be considered* in any analysis of permitted uses for Mar-a-Lago
- AG wants to focus on single line in single document (Development Deed) – ignore everything else
- Shubin walked through the documents that conclusively established there is no prohibition on MAL being used as a single-family residence. DX-478, DX-359, DX-360, PX-1013, DX-427, DX-429, DX-484
- Indeed, MAL currently being used as a social club *and as President Trump's residence*
- Town of Palm Beach allows use of MAL as a single-family residence
- Negates any intent regarding the valuation of MAL as a single-family residence

Disclaimers

- SOFCs contained clear and unambiguous disclaimers
- Flemmons/Bartov = Compilation Report/SOFC notes are integral part of the statements URB
- Flemmons/Bartov = Must be considered as one document URB
- Flemmons/Bartov = Intended for the *users* of the SOFCs URB
- Bender confirmed
- Unrebutted testimony – Court cannot disregard
- Court cannot contravene “as a matter of law” or otherwise
- AG/Court also confuse Compilation Report and SOFC Notes
- Compilation Report = prepared by Mazars
- SOFC notes = prepared by Trump (2011 example)

Disclaimers

- The very first SOFC note (prepared by PT/Trust *not* Mazars):
- *“Considerable judgment is necessary to interpret market data and develop the related estimates of current value.”*
- *“Accordingly, the estimates presented herein are not necessarily indicative of the amounts that could be realized upon the disposition of the assets or payment of the related liabilities.”*
- *“The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated current value amounts.”*
- Bartov = describes SOFC disclaimer language = “surgeon general’s warning”
- Unrebutted testimony – AG/Court cannot disregard
- Cannot substitute own judgment for the trial evidence “as a matter of law” or otherwise

Disclaimers

- Language drafted by the preparer of the statements – PT/Trust
- Language directed at/informs the user, here DB, Ladder Capital, etc.
- Language discloses:
 - statements contain estimated values
 - the limitations of those estimates
 - user could reach different valuations
 - disposition (sale) of assets might not be at same values
 - different assumptions/estimation methodologies = material effect on valuation
- Not possible for PT to do more here – places users on notice
- Fully consistent with Bartov – beginning not end of complex process
- Fully negates intent – transparent/informative

Michael Cohen – AG Only Witness is a Serial Liar

- AG's only witness on intent/conspiracy (Birney inadmissible/proves nothing)
- AG said MC "not the main witness" but he is her ONLY witness
- AG now forcing Court to find MC credible – AG seriously advocating for this?
- KW going to vouch for MC in federal court – Judge Furman
- MC admitted that he lied to Congress – pled guilty to lying to Congress
- MC admitted he lied at his plea hearing in response to dozens of questions from Judge Pauley
- MC admitted he lied to Judge Pauley at his sentencing

Michael Cohen – AG Only Witness is a Serial Liar

- MC first says Trump tasked him and AW to inflate the numbers on the SOFC
- MC said Trump would direct him and AW to go to AW's office and return after they achieved the desired goal
- MC then admits right here he lied in this courtroom
- *MC then says* PT did *NOT* direct him to inflate the numbers
- AG now evades all this by saying MC was “tasked by clear implication” – ridiculous
- *MC lies also inconsistent with the evidence*
- MC = process involved HW edits to the SOFC and took “several days”
- Does not at all align with Bender and JM about the SOFC preparation process
- Also inconsistent with AG FOF 28-34 that describe that process
- The record is replete with emails between JM and Bender over a period of months

Michael Cohen – AG Only Witness is a Serial Liar

- MC = lies, internally inconsistent and inconsistent with the record facts
- NO corroboration = no witnesses, emails, texts, calendar entries ... nothing
- MC hates PT – generates income trashing PT
- MC = lies in open court during this trial – makes up narrative
- MC = then flat out admits PT never told him to inflate the SOFC values
- Absurd/insulting for AG to even ask Court to find MC credible
- Not possible for AG to establish intent by CCE based on this liar

AG Alleged Defects – No CCE of Fraudulent Intent

- **Vornado** = cash components disclosed in SOFC note 2 (operating entities)
Trump granted access to independent verification (DB confirmed) = no concealment
- **Triplex** = error in square footage – corrected on next SOFC
Mazars = no issue with correction = did not assert this was misstatement/intentional
Bartov = inadvertent error URB
Sneddon email only “source” of 30K sq ft number
Unell = not material – DB would never even consider – minor asset – residence – no CF
- **TPA** = Bartov = ASC 274 allows for future plans URB
Flemmons = method used consistent with ASC 274 URB
Flemmons = prospective NOI appropriate – no temporal limits
Flemmons = anticipated selling prices OK
Bender = methods disclosed to Mazars – no concealment no intent
Mazars knew TPA had rent stabilized units

AG Alleged Defects – No CCE of Fraudulent Intent

- **40 Wall** = Flemmons = use of forecasted NOI consistent with GAAP URB

Laposa = valuations not scientific and wide disparities acceptable URB (Larson agrees)

Witkoff = developers use forward-looking perspective – different from appraisers URB

Not E of intent because others use different numbers/methods

Flemmons = ASC 274 does not require the use of appraisals URB

Flemmons = GAAP does not require use of appraisals URB

Flemmons = GAAP does not require disclosure of methods NOT relied upon URB

Bender alleged request illogical – not concerned with confirming values, just methods

Bender = had full access to all Trump accounting data URB

Larson = Trump entitled to own view on valuation – cap rates subjective

Larson = supplied cap rates to JM for use in SOFC valuations URB

Larson = own appraisals varied widely URB

AG Alleged Defects – No CCE of Fraudulent Intent

- **Seven Springs** =
 - Bartov = ASC 274 allows for future plans URB
 - Bender = methods disclosed to Mazars – no concealment (no intent)
 - Dillon = Bender involved in appraisal process – knowledge
 - Plan changed – value modified to conform with new course of action
 - Moved out of “properties under development” because plan changed

- **Brand Premium** =
 - Bartov = separate issue from overall brand value URB (6243:19-24)
 - Bartov = no GAAP violation URB (FOF 469)
 - Flemmons = disclosed in SOFC notes URB

SOFC notes = “does not reflect the value of [DJT] worldwide reputation, *except to the extent it has become associated with properties either operative or under development*”

Materiality is an Essential Element

Court = *AG must demonstrate “some component of intent and materiality”* to establish the second through seventh causes of action. *People v. Alamo Rent A Car, Inc.*, 174 Misc 2d 501, 505 (Sup. Ct. N.Y. Cty. 1997) (NYSCEF No. 1541, p. 20) (Summary Judgment Order).

Statutes also require establishment of materiality:

Issuance of a false financial statement = individual must know statement “is *materially* inaccurate” N.Y. Penal Law § 175.45

Insurance fraud = must present “written statement as part of, or in support of, an application for the issuance of” an “insurance policy,” which he “knows” to “contain *materially* false information” N.Y. Penal Law § 176.05.

May 10, 2016

LENDER: Deutsche Bank Trust Company Americas

GUARANTOR: Donald J. Trump

BORROWER: Trump Endeavor 12 LLC, a Delaware limited liability company
401 North Wabash Venture LLC, a Delaware limited liability company
Trump Old Post Office LLC, a Delaware limited liability company

1. **Financial Information.** As applicable (please check applicable box below and insert the applicable date below):

- [X] Attached hereto is Guarantor's Statement of Financial Condition as of June 30, 2014 (Section 11(A) of the Guaranty).
- [X] Attached hereto is Guarantor's Schedule of Contingent Liabilities as of June 13, 2014 (Section 11(B) of the Guaranty).
- [X] Attached hereto is Guarantor's Excess Revenue over Disbursement Schedule for the twelve (12)-month period ended June 30, 2014 (Section 11(C) of the Guaranty).

The foregoing presents fairly in all material respects the financial condition of Guarantor at the period presented.

4. **Net Worth of Guarantor.** In respect of Section 10(iii) of the Guaranty, the "Net Worth" of Guarantor for the period ending on June 30, is not less than (x) Two Billion Five Hundred Million (\$2,500,000,000) Dollars times (y) the applicable Step-Down Percentage on the date hereof.

IN WITNESS WHEREOF, Guarantor has executed this Compliance Certificate as of the date set forth above.

GUARANTOR:


DONALD J. TRUMP

Materiality Defined

- Materiality not determined based on AG or Court view
- AG cites Court in FOF to satisfy materiality element
- Not evidence – not the standard – not material because AG/Court says so
- NOT Defendants' burden to prove values
- AG did not intro any evidence of values or material misstatements of value
- *AG just relied on MSJ decision and ignores requirement to prove materiality!*
- AG wants to conflate Count I with Counts II-VII
- *But Court specifically held AG must establish materiality!*
- AG failed to do so

Materiality Defined

- Bartov = Materiality = what influences or makes a difference to the user URB
- Bartov = Misstatement of an item in a financial report is material if, in light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a user *relying upon the report* would have been changed or influenced by the inclusion or correction of the item URB
- If Bank does not say it was material, then it is simply not material
- NH/DW/CMs = DB values demonstrate what is material to the Bank
- AG/Court cannot “second guess” or substitute its own judgement
- AG cites Court = no world where \$2BB difference not material
- But it is not material here – URB evidence = DB satisfied with \$2BB differential

DB 2014 Credit Memo

II - Financial Analysis – Guarantor

It should be noted that the Guarantor, DJT, is required to provide financials within 120 days of 6/30 FYE. Thus the most recent financials available are as of 6/30/13. We are not aware of any material changes to the Guarantors financial profile.

Guarantors – Financial Summary: Although all three Facilities are secured by Collateral, given the unique nature of these credits, the credit exposure is being recommended based on the financial profile of the Guarantor. As part of this underwriting we have met with several members of the family office to update our due diligence on the client reported financial information, as prepared by WeiserMazars, an independent public accounting firm. Based on the results of this due diligence we have made certain assumptions that have resulted in adjustments to reported values. Details on such adjustments are included in the analysis that follows. Additional details are included in the Guarantor's financial statements which are attached as Exhibit V.

Financial Summary (\$ in millions)	DJT 6/30/2011 (Client Reported)	DJT 6/30/2012 (Client Reported)	DJT 6/30/2012 (DB Adjusted)	DJT 6/30/2013 (Client Reported)	DJT 6/30/2013 (DB Adjusted)
Source: Client provided financials					
Cash & Marketable Securities	\$258.9	\$169.7	\$146.3	\$339.1	\$154.5
Escrow & Reserve Deposits	\$9.1	\$10.8	—	\$15.2	—
Real Estate – Net Equity	\$2,996.9	\$3,184.2	\$1,707.5	\$3,268.7	\$1,834
Partnerships & Joint Ventures	\$720.0	\$823.3	\$411.7	\$869.3	\$434.7
Real Estate Licensing	\$89.3	\$65.2	\$32.6	\$174.7	\$87.3
Other Assets	\$199.2	\$318.5	\$159.3	\$352.0	\$176.0
Total Assets	\$4,273.4	\$4,563.9	\$2,448.8	\$5,019.0	\$2,686.2
Personal Mortgage other Debt	\$8.4	\$8.3	\$8.3	\$20.5	\$20.5
Other Liabilities	\$3.7	\$4.4	\$4.4	\$20.4	\$20.4
Net Worth	\$4,261.3	4,559.0	2,436.1	4,978.0	2,645.2
Contingent Obligations	\$114.0	\$195.7	277.7	\$197.2	\$420.5
Net Cash Flow *	\$82.4	(\$89.2)	\$13.4	\$169.7	(\$25.2)
Key Ratios – Unsecured Lending Guidelines (excludes Swap PFE)					
Leverage Ratio (<= .30)	.13	.14	.13	.01	0.16
Cash Flow Ratio (>= .35)	.57	-0.67	.05	0.45	-0.05
Liquidity Ratio (>= .25)	2.04	1.32	.47	0.90	0.41
Asset Coverage Ratio (>=6.0)	31.7	33.32	8.43	13.27	7.10

DB 2014 Credit Memo

Property Type	DJT Valuation	DB Valuation	Reported Debt	DJT Net Equity	DB Adjusted Net Equity
Trump Tower – 725 5 th Ave	\$526.8	\$480.0	\$100.0	\$426.8	\$380.0
Niketown – East 57 th St	\$287.6	\$175.0	\$39.2	\$248.4	\$135.8
40 Wall Street	\$530.7	\$500.0	\$160.0	\$370.7	\$340.0
Trump Park Ave	\$346.1	\$173.0	\$21.8	\$324.3	\$151.2
Subtotal – 4 Trophy Properties	\$1,691.2	\$1,328.0	\$321.0	\$1,370.2	\$1,007.0
Club Facilities	\$1,656.2	\$828.1	\$147.5	\$1,508.7	\$680.6
Other Property Interest	\$412.3	\$168.6	\$22.5	\$389.8	\$146.1
Total – Portfolio	\$3,759.7	\$2,324.7	\$491.0	\$3,268.7	\$1,833.7

- **4 Trophy Properties** – The valuations for each of these properties were discussed with DB Valuation Services Group (“DBVSG”) who advised on adjustments for each.
- **Trump Towers** – The 68 story building contains residential and condominiums that are owned by residents along with 178,000 square feet in commercial space and 114,000 square feet of retail space. As of 6/30/13 the property had associated debt of approx \$100MM. The loan is non-recourse and matures in 2022. A recent appraisal performed in conjunction with the refinance valued the property at \$480MM resulting in a roughly 21% LTV.
 - **Niketown** – The Guarantor is the lessee with respect to 2 long-term ground leasehold estates related to the land and the building located on 57th street between Madison and 5th Avenue. Since 1994 the building has been leased to Nike Retail Services. The current lease is scheduled to expire in May 2017. The space includes 65,000 square feet of retail space. Based on sq foot assumption DBVSG has indicated an adjusted value of \$175 million. Financing on the space is in the form of long-term bonds which are scheduled to fully amortize by June 1, 2017.
 - **40 Wall Street** – The 72 floor tower consist of 1.3 million in premier office space. Based on a SF assumption DBVSG has indicated an adjusted value of \$500 million. The existing debt in the amount of \$160 million, of which the Guarantor currently guarantees \$20 million, is scheduled to mature in November 2017.
 - **Trump Park Avenue** – The property located on 59th Street and Park Avenue consists of 134 condominium units coupled with 30,000 square feet of retail space has a reported value based on unsold units and retail rates of \$346.1 million. The unsold condominium units have been pledged as collateral for the mortgage which, as of 6/30/13, had an outstanding balance of 21.84MM and matures 8/1/15. Based on discussions with DBVSG we elected to take an approximate 50% haircut on the reported value.

Materiality

- Bartov URB:
 - The whole data in the [financial] statement is only a first step in a long and complex process that culminate[s] in the decision.
 - You have to use the numbers as the first step.
 - You have to read the notes.
 - You have to look for other sources of information.
 - And only after you can see there are everything together, only then you have to recast the financial statement using the new numbers that you come up with, the adjusted numbers not the wrong numbers that you are reporting on the statement *and based on the adjusted numbers, only based on that, you can make your investing or lending decisions.*
- This is *exactly* what DB did here
- Unell = SOFCs “truly an estimated opinion” – a “roadmap for a lender to do their own analysis” URB

Vrabic – What is Material to DB

- PWM had goal to develop relationships with top US CRE clients
- President Trump was a “whale” in this category – ultra-high NW client prospect
- *DB opened door –extended red carpet and pulled PT in!*
- President Trump a top five PWM relationship – loans/investments/capital markets
- Chmn. Jain Meeting = wanted to develop broader relationship
 - obtain more deposits/investment accounts
 - Trump low leverage – Bank could provide more loans
 - Grow Trump referral network = source of new customers
- *This is why PWM clients have access to better service/interest rates* – wholistic approach
- All these factors material to DB decision-making process - AG/Court cannot ignore

Credit Analysis Process

- AG = simply an automated process of applying formulaic standard discounts
- Contravenes both the evidence and logic
- Bartov = SOFC submission = beginning not the end of complex process (URB)
- Haigh = described a complex and detailed analytical process (URB)
- Haigh's job pointless if AG correct
- Haigh never identified any misstatements
- Haigh never said loan terms/pricing would have been impacted – *AG never asked*
- Williams = “standard UW/DD process” = what DB always does – not formulaic

Credit Analysis Process - Williams

- Reported NW is based on “use of estimates”
- Difference of NW values between client and bank not disqualifying/problematic
- Described NW value disparities as simply “a difference of opinion”
- Bank goes “into it with the understanding that there is a use of estimates”
- Bank “independently verif[ies] all material facts as they pertain to a credit transaction”
- PWM enters credit transactions as “part of broader relationship with the bank”
- No instance where DB failed to adhere to credit lending guidelines

DB 12/23/2011 Email (D-312)

- PT = “among the strongest personal balance sheets we have seen”
- “totally unlike any of our major RE developer clients”
- “absence of personal debt, with huge asset base and diversified C[ash] F[low]”
- Did not want to “miss a great franchise opportunity”
- “Through our due diligence we have concluded that DJT has an exceptionally strong financial profile consisting of a reported net worth of \$4.2B, which we have adjusted to \$2.4B, including \$230MM in unencumbered liquidity, an extensive real estate portfolio including \$1.0B in adjusted net equity held in four wholly-owned low leveraged Class A NYC properties, only \$2MM in personal debt and \$114MM in secured contingents. We have calculated DJT’s annual net recurring cash flow, after personal expenses and other disbursements, to be approximately \$48MM and it is well diversified”
- *This is what is material to DB! – This is the foundation for the lending decisions!*
- *Thorough analysis and specific details regarding PT financial profile and Doral Property*
- Not representative of “automatic” or “arbitrary” discounting/review process
- Credit Memos also establish what was material to DB

Real World Facts Negate Intent & Materiality

- Provided user (DB) with estimate (ECV)
- Told user (DB) – these are estimates (disclaimer)
- Told user (DB) it might reach different conclusions as to value
- User (DB) understood the SOFCs = estimates (DW testimony)
- User (DB) performs own analysis & calculates own values (credit memos)
- User (DB) values are vastly different from Trump values
- User (DB) not concerned about vast (\$2BB) differential (DW)
- User (DB) then relies on its own values when setting terms/pricing (NH/DW/CM)
- User (DB) – not AG/Court 10 yrs later – determines what is material/makes decision

Real World Facts Negate Intent & Materiality

- Not the starting point that matters – it is the ending point (Bartov)
- Loan terms/pricing never established based on borrower starting point
- AG = irrational premise – no lender would do this
- *Not one witness* testified there were any misstatements/terms/pricing different
- *Exxon* = no violation of § 63(12) where the NYAG had “produced no testimony . . . from any investor who claimed to have been misled by any disclosure”
- *Domino’s* = “if the evidence showed that the alleged false statements had no real-world impact (that is, no reliance or causation), that would speak to the question of whether the challenged conduct was unlawfully deceptive or fraudulent”
- *Tempur-Pedic* = no violation of § 63(12) where NYAG had “submitted no evidence to show that retailers were misled or deceived in any way”

Disgorgement

- AG disgorgement claim speculation
- AG substitutes her judgment for that of sophisticated bankers
- Core of unjust enrichment/disgorgement theory is trespass of rights of another
- Must be interference with a legally protected interest
- Cannot establish “ill-gotten gains” without evidence of this trespass
- Here = No violation of rights of parties to loan transactions
- Here = No risk of harm to marketplace = marketplace functioned as it should
- No bank testimony (any testimony) establishing loan terms/pricing impact
- Only AG FOF cite re: banks lost money/loan pricing impacted = Court
- McCarty does the same – cites to MSJ Order
- This is NOT evidence – cannot use “law of the case” as a substitute for actual evidence

Disgorgement

Proof actually establishes the banks were satisfied

AG disgorgement claim based on total speculation – substitutes her judgment

No record evidence of any “ill-gotten” gains – nothing “wrongfully obtained”

No bank testimony/evidence approvals/terms/rates would have differed

AG ignores multiple factor/detailed underwriting analysis

AG ignores fact all decisions based on DB’s own analysis

AG ignores PWM pricing grid which establishes rate boundaries

Benefits of DB PWM

- Relationship Banking – Bank wants DJT relationship
- Williams = pricing grid is what applies, period URB
- Williams = once qualified this is the pricing that applies URB
- Interest rate range 2.0-2.5%
- No question PT exceeded qualifications
- Thus any loan pricing limited strictly to PWM range
- CRE rates no longer even theoretically applicable
- Unell = differential would be 25 or 50 basis points
- Disgorgement cannot exceed actual harm
- Otherwise unauthorized punitive relief – Direct Revenue case

Benefits of DB PWM (D-205)

Pricing Exception – Pricing Grids

	Lombard	Concentrated Equity	Residential Real Estate	Commercial Real Estate	Hedge Funds	Aircraft, Art, Financial Sponsors	Unsecured Loans
Americas	0.75 - 1.25%	1.25 – 2.0%	Not part of Standard Pricing Grid	2.0 - 2.5%	2.0 - 2.75%	2.0 - 2.75%	2.5 - 3.0%
Asia Pacific	0.75 – 1.5%	1.5 – 3.5%	1.0 – 2.5%	1.5 – 3.5%	1.5 – 2.5%	2.75 - 3.5%	Case by case
Germany	0.75 – 1.5% (depending on client's AuM)	1.5 - 2.0%	1.0 - 2.0%	1.0 - 2.5%	2.0 - 2.75%	Not part of Standard Pricing Grid	1.5 - 3.0%
EMEA	1.5 - 2.0% (depending on Loan Amount)	2.0 - 3.0%	2.0 – 3.5%	2.5 - 5.0%	2.5 - 4.0%	3.0 - 5.0%	Case by case

D205

45

Disgorgement

AG's only remaining theory relates to the certifications

No proof post-closing certifications possibly impact closing approvals/rates/terms

No evidence of any kind at trial about impact of certifications alone

Even Court agrees:

Court: "Well, I agree with your logic that a certification, we will agree to that term, in 2017, doesn't affect the -- anything directly about the original loan, how it was negotiated, how it was finalized." (Tr. at 3741:10-13)

Cannot evade SOL by claiming certifications caused harm but measure of damage relates to decisions finalized at closing well prior to SOL cutoff

Certification breach also expressly contemplated in loan agreements

If DB does not enforce/complain AG cannot revisit 10 years later

McCarty Analysis Fatally Flawed

- McCarty analysis = speculation = just substitutes his judgment based on assumptions
- McCarty simply adopts Court's position on MSJ re: interest rate impacts
- But there is no actual evidence of this impact – *and no proof certifications caused it!*
- No proof any of the loan pricing/terms would have actually been different
- No bank testimony of any kind – *AG never asked any bank witness!!*
- Even McCarty stated he could *not* testify with any reasonable degree of certainty as to what banks actually would have done:

THE COURT: It is a yes-or-no question. Are you certain that they would or not have, whatever, offered a loan on those terms? Are you certain?

THE WITNESS: It is a hypothetical question. I can't be certain.

- AG cannot establish entitlement without evidentiary support
- No foundation for Court to conclude entitlement warranted

McCarty Analysis Fatally Flawed

McCarty also ignored PWM Pricing Grid Limitations (2.0-2.5%) URB (FOF752)

McCarty never considered this pricing limitation

McCarty also completely ignored Guaranty step-downs/elimination

Doral and Chicago = certifications moot once step-downs in place

Doral 10% and Chicago eliminated

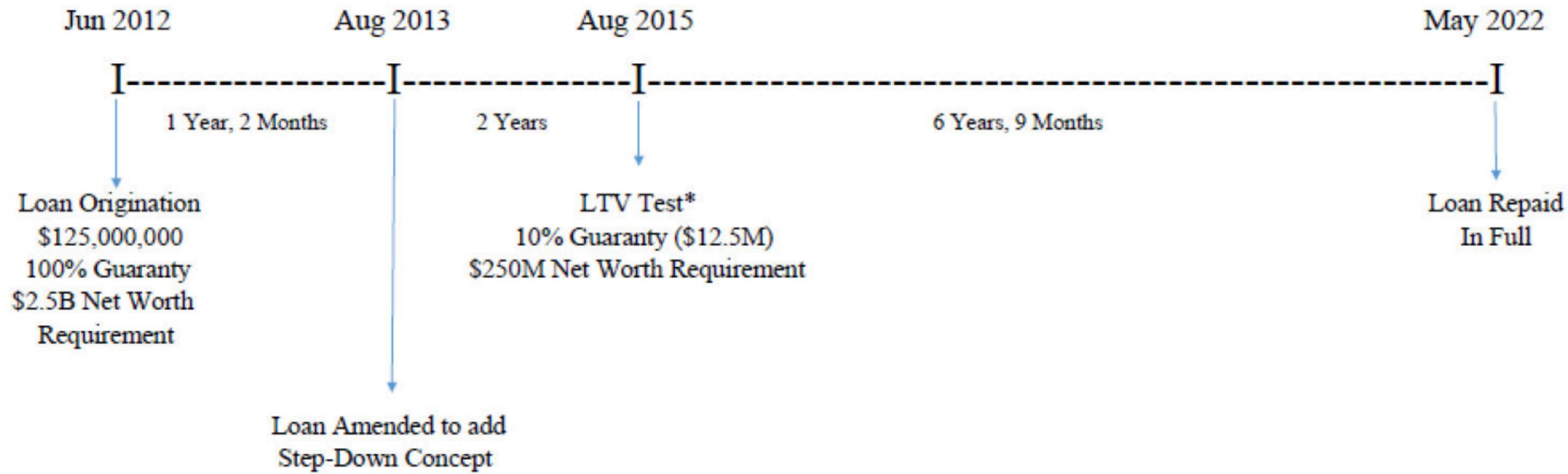
No possible basis for disgorgement on Doral/Chicago after step down/elimination

Supplemental Disclosure of Michiel C. McCarty

Exhibit 1 - Lost Interest Calculation (Updated)

<u>Doral</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Grand Total</u>
Actual Int %	1.9035%	1.9354%	2.1953%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
CRE Int %	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%		
Term	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23		
Loan Amt Adj	\$ 125,000,000	\$ 125,000,000	\$ 125,000,000	\$ 125,000,000	\$ 125,000,000	\$ 125,000,000	\$ 125,000,000	\$ 125,000,000	\$ 125,000,000		
Interest Delta	\$ (4,741,443)	\$ (10,080,750)	\$ (9,755,875)	\$ (8,916,113)	\$ (7,754,525)	\$ (7,297,963)	\$ (10,081,500)	\$ (10,210,313)	\$ (4,069,827)	\$ -	\$ (72,908,308)
<u>OPO</u>											
Actual Int %		2.1854%	2.4453%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
CRE Int %		8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%		
Term		08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24		
Loan Amt Adj		\$ 6,012,851	\$ 112,922,728	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000		
Interest Delta		\$ (176,248)	\$ (6,272,519)	\$ (8,725,913)	\$ (7,146,154)	\$ (6,525,229)	\$ (10,310,840)	\$ (10,486,025)	\$ (3,780,281)	\$ -	\$ (53,423,209)
<u>Chicago</u>											
Actual Int %	2.1535%	2.1854%	2.4453%	3.1171%	4.0464%	4.4116%	2.1848%	2.0818%	2.0542%	7.2177%	
CRE Int %	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	
Term	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	
Loan Amt Adj	\$ 19,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	
Interest Delta	\$ (475,912)	\$ (2,391,570)	\$ (2,274,615)	\$ (1,972,301)	\$ (1,554,129)	\$ (1,389,767)	\$ (2,391,840)	\$ (2,438,213)	\$ (2,450,606)	\$ (104,409)	\$ (17,443,359)
<u>40 Wall</u>											
Actual Int %		3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	
Cap 1%		5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	
Term		7/6/2025	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	
Loan Amt Adj		\$ 160,000,000	\$ 156,451,072	\$ 152,413,916	\$ 148,224,162	\$ 143,876,042	\$ 139,378,051	\$ 134,695,562	\$ 129,480,568	\$ 124,424,392	
Interest Delta		\$ (1,631,518)	\$ (3,199,424)	\$ (3,116,865)	\$ (3,031,184)	\$ (2,942,265)	\$ (2,850,281)	\$ (2,754,524)	\$ (2,647,878)	\$ (2,091,352)	\$ (24,265,291)
Grand Total of Lost Interest											\$ (168,040,168)

Trump National Doral Miami Deutsche Bank Loan



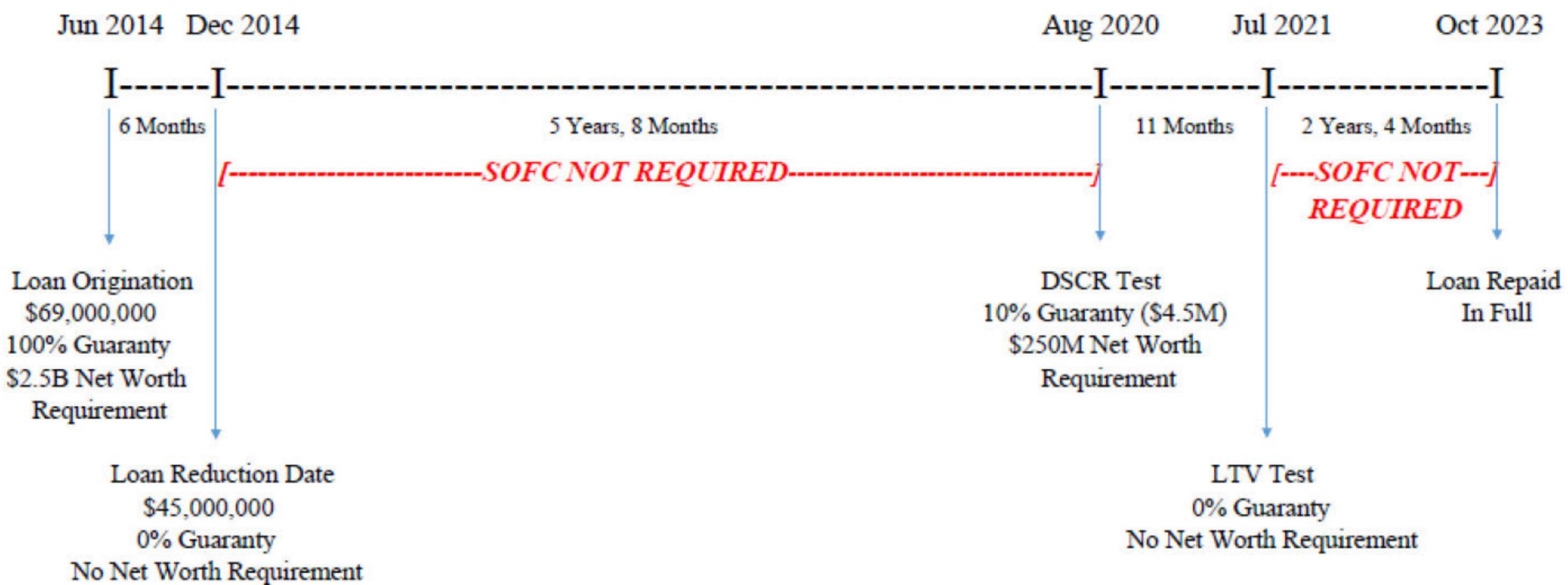
*Pursuant to the Fourth Amendment to Guaranty (August 7, 2015), the LTV Test allowed for the guaranty to be reduced to 0%.

Supplemental Disclosure of Michiel C. McCarty

Exhibit 1 - Lost Interest Calculation (Updated)

<u>Doral</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Grand Total</u>
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CRE Int %	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%		
Term	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23		
Loan Amt Adj	\$ 125,000,000	\$ 125,000,000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ (4,741,443)	\$ (10,080,750)	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]
<u>OPO</u>											
Actual Int %		2.1854%	2.4453%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
CRE Int %		8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%		
Term		08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24		
Loan Amt Adj		\$ 6,012,851	\$ 112,922,728	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000		
Interest Delta		\$ (176,248)	\$ (6,272,519)	\$ (8,725,913)	\$ (7,146,154)	\$ (6,525,229)	\$ (10,310,840)	\$ (10,486,025)	\$ (3,780,281)	\$ -	\$ (53,423,209)
<u>Chicago</u>											
Actual Int %	2.1535%	2.1854%	2.4453%	3.1171%	4.0464%	4.4116%	2.1848%	2.0818%	2.0542%	7.2177%	
CRE Int %	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	
Term	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	
Loan Amt Adj	\$ 19,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	\$ 45,000,000	
Interest Delta	\$ (475,912)	\$ (2,391,570)	\$ (2,274,615)	\$ (1,972,301)	\$ (1,554,129)	\$ (1,389,767)	\$ (2,391,840)	\$ (2,438,213)	\$ (2,450,606)	\$ (104,409)	\$ (17,443,359)
<u>40 Wall</u>											
Actual Int %		3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	
Cap 1%		5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	
Term		7/6/2025	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	
Loan Amt Adj		\$ 160,000,000	\$ 156,451,072	\$ 152,413,916	\$ 148,224,162	\$ 143,876,042	\$ 139,378,051	\$ 134,695,562	\$ 129,480,568	\$ 124,424,392	
Interest Delta		\$ (1,631,518)	\$ (3,199,424)	\$ (3,116,865)	\$ (3,031,184)	\$ (2,942,265)	\$ (2,850,281)	\$ (2,754,524)	\$ (2,647,878)	\$ (2,091,352)	\$ (24,265,291)
Grand Total of Lost Interest											\$ [REDACTED]

Trump International Hotel & Tower Chicago
Deutsche Bank Loan



Supplemental Disclosure of Michiel C. McCarty

Exhibit 1 - Lost Interest Calculation (Updated)

<u>Doral</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Grand Total</u>
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CRE Int %	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%		
Term	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23		
Loan Amt Adj	\$ 125,000,000	\$ 125,000,000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ (4,741,443)	\$ (10,080,750)	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]
<u>OPO</u>											
Actual Int %		2.1854%	2.4453%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
CRE Int %		8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%		
Term		08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24		
Loan Amt Adj		\$ 6,012,851	\$ 112,922,728	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000		
Interest Delta		\$ (176,248)	\$ (6,272,519)	\$ (8,725,913)	\$ (7,146,154)	\$ (6,525,229)	\$ (10,310,840)	\$ (10,486,025)	\$ (3,780,281)	\$ -	\$ (53,423,209)
<u>Chicago</u>											
Actual Int %	2.1535%	2.1854%	2.4453%	3.1171%	4.0464%	4.4116%	2.1848%	2.0818%	2.0542%	7.2177%	
CRE Int %	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	
Term	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	
Loan Amt Adj	\$ 19,000,000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ (475,912)	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
<u>40 Wall</u>											
Actual Int %		3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	
Cap 1%		5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	
Term		7/6/2025	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	
Loan Amt Adj	\$ 160,000,000	\$ 156,451,072	\$ 152,413,916	\$ 148,224,162	\$ 143,876,042	\$ 139,378,051	\$ 134,695,562	\$ 129,480,568	\$ 124,424,392		
Interest Delta	\$ (1,631,518)	\$ (3,199,424)	\$ (3,116,865)	\$ (3,031,184)	\$ (2,942,265)	\$ (2,850,281)	\$ (2,754,524)	\$ (2,647,878)	\$ (2,091,352)	\$ (24,265,291)	\$ (24,265,291)
Grand Total of Lost Interest											\$ [REDACTED]

40 Wall Loan

- NW Covenant \$160MM
- Never any question PT had sufficient NW at any time
- No plausible basis to argue loan terms/pricing could have possibly been impacted
- McCarty himself confirmed no violation of 40 Wall Loan Covenant:

Q: Do you have any reason to believe during the life of this loan Mr. Trump didn't maintain a net worth equal to at least \$160 million in liquidity of at least \$15 million?

A. No, I don't think there was any violation of this covenant.

- Yet he still includes in his calculations
- Arbitrary and unsustainable

Supplemental Disclosure of Michiel C. McCarty

Exhibit 1 - Lost Interest Calculation (Updated)

<u>Doral</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Grand Total</u>
Actual Int %	1.9035%	1.9354%	2.1953%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
CRE Int %	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%		
Term	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23		
Loan Amt Adj	\$ 125,000,000	\$ 125,000,000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ (4,741,443)	\$ (10,080,750)	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]
<u>OPO</u>											
Actual Int %		2.1854%	2.4453%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
CRE Int %		8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%		
Term		08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24		
Loan Amt Adj		\$ 6,012,851	\$ 112,922,728	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000	\$ 170,000,000		
Interest Delta		\$ (176,248)	\$ (6,272,519)	\$ (8,725,913)	\$ (7,146,154)	\$ (6,525,229)	\$ (10,310,840)	\$ (10,486,025)	\$ (3,780,281)	\$ -	\$ (53,423,209)
<u>Chicago</u>											
Actual Int %	2.1535%	2.1854%	2.4453%	3.1171%	4.0464%	4.4116%	2.1848%	2.0818%	2.0542%	7.2177%	
CRE Int %	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	
Term	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	
Loan Amt Adj	\$ 19,000,000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ (475,912)	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
<u>40 Wall</u>											
Actual Int %		3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	
Cap 1%		5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	
Term		7/6/2025	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	
Loan Amt Adj		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Grand Total of Lost Interest											\$ [REDACTED]

No Basis for OPO Disgorgement

- All decisions based on DB's own analysis URB
- No testimony/evidence terms/pricing would have differed
- No trespass on DB legal interest
- AG/Court cannot "presume" loss
- Entitlement must be based on actual record evidence
- Fails to incorporate applicable PWM pricing grid
- Ignores URB evidence that PWM pricing grid frames interest rate boundaries

OPO Originating Credit Memo

Recommendation:

Approval of i) the Annual Review for Facility A (Doral), (ii) the Modification/Increase to Facility B (Trump Chicago Hotel) and (ii) origination of Facility C (Trump Old Post Office) are being recommended based on:

All Facilities

- **Financial Strength of the Guarantor** - The financial profile of the Guarantor includes, on an adjusted basis, a net worth of \$2.6 billion with \$154.5 million in unencumbered liquidity.
- **Operating Experience** - DJT's extensive experience in operating private golf/country clubs. His current portfolio includes 13 such clubs with a reported value of \$1.66 billion and DB adjusted value of \$680.6 million.
- **DB Relationship** - DJT continues to develop his relationship with DB as Facility C will be the fourth credit facility we have originated with him or his family (3 with DJT, 1 with DJT Jr.). DJT has transferred \$40 million in liquidity to DB and has indicated he is interested in continued to grow his non-credit relationship with the firm. The AWM Banking team has been introduced to each of DJT's three adult children and two have established relationships with the firm. In addition, the CB&S Real Estate Team has had a successful history with the family.

Supplemental Disclosure of Michiel C. McCarty
Exhibit 1 - Lost Interest Calculation (Updated)

<u>Doral</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Grand Total</u>
Actual Int %	1.9035%	1.9354%	2.1953%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
CRE Int %	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%		
Term	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23		
Loan Amt Adj	\$ 125,000,000	\$ 125,000,000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ (4,741,443)	\$ (10,080,750)	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]
<u>OPO</u>											
Actual Int %		2.1854%	2.4453%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
CRE Int %		8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%	8.0000%		
Term		08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24		
Loan Amt Adj	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]
<u>Chicago</u>											
Actual Int %	2.1535%	2.1854%	2.4453%	3.1171%	4.0464%	4.4116%	2.1848%	2.0818%	2.0542%	7.2177%	
CRE Int %	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	
Term	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	
Loan Amt Adj	\$ 19,000,000	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ (475,912)	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
<u>40 Wall</u>											
Actual Int %		3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	
Cap 1%		5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	
Term		7/6/2025	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	
Loan Amt Adj	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Grand Total of Lost Interest											\$ [REDACTED]

No Basis for Doral/Chicago Disgorgement

- All decisions based on DB's own analysis URB
- No testimony/evidence terms/pricing would have differed
- No trespass on DB legal interest
- AG/Court cannot "presume" loss
- Entitlement must be based on actual record evidence
- AG did not even attempt to establish certifications had any impact
- Not possible for post-closing certifications to impact closing terms/pricing
- Fails to incorporate applicable PWM pricing grid
- Ignores URB evidence that PWM pricing grid frames interest rate boundaries

Doral Originating Credit Memo

Recommendation:

The Facility is being recommended for approval based on:

- **Financial Strength of the Guarantor** - The financial profile of the Guarantor includes, on an adjusted basis, \$135 million in unencumbered liquidity, \$2.4 billion in Net Worth and approximately \$48 million in adjusted recurring net cash flow.
- **Nature of the Guarantee** - The nature of the guarantee which includes both principal and interest along with operating expenses of the Resort.
- **Operating Experience** - DJT extensive experience in operating private clubs. His current portfolio includes 10 such clubs with a reported value of \$1.3 billion and DB adjusted value of \$675 million.
- **Expected Enhanced Value Due to Capex** - The Resort is a world class location that has been home to a PGA event every year since the Resort opened in 1962. As DJT expects to invest approximately \$50 million on capital improvements it is expected that the value of our Collateral will increase significantly over the term of the Facility.

Chicago Originating Credit Memo

Recommendation:

The Facility is being recommended for approval based on:

- **Quality of the Collateral and LTV** – the Property is in the form of a luxury hotel and condominium building located in Chicago. Based on recent “As Is” values provided in appraisals, as discussed herein and performed for purposes of underwriting these Facilities, the Residential Component is valued at \$113 million which provides a Maximum LTV of 55%, and the Commercial Component is valued at \$126.3 million which provides a Maximum LTV of 36%. The combined maximum LTV based on the maximum commitment amount of \$107 million is 44.7%. (See Section IV Financial Analysis – Property for additional details)
- **Financial Strength of the Guarantor** - The financial profile of the Guarantor includes, on an adjusted basis, \$146 million in unencumbered liquidity, \$2.4 billion in Net Worth and approximately \$13 million in adjusted excess recurring net cash flow. (See Section II – Financial Analysis – Guarantor for additional details.)
- **Nature of the Guarantee** - The nature of the guarantee which is fully unconditional and includes both principal and interest due under the Facilities along with Operating Shortfalls of the Property, as defined herein.
- **Operating Experience** - DJT is a well known and experienced in operator of properties of this type.
- **DB Relationship** – DJT continues to develop his relationship with DB, as this is the third credit facility we have originated with him or his family (2 with DJT 1 with DJT Jr). DJT has transferred \$20 million in liquidity to DB and has indicated he is interested in continuing to grow his non-credit relationship with the firm. The PWM Banking team has been introduced to each DJT's three adult children and two have also established relationships with the firm. In addition, the CB&S Real Estate Team, which currently agents the loan being refinanced by the proposed Facilities, also has an on-going dialogue with the family.

Supplemental Disclosure of Michiel C. McCarty
Exhibit 1 - Lost Interest Calculation (Updated)

<u>Doral</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Grand Total</u>
Actual Int %	1.9035%	1.9354%	2.1953%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
CRE Int %	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%	10.0000%		
Term	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23	08/11/23		
Loan Amt Adj	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]
<u>OPO</u>											
Actual Int %		2.1854%	2.4453%	2.8671%	3.7964%	4.1616%	1.9348%	1.8318%	1.8042%		
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Term		08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24	08/11/24		
Loan Amt Adj		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]
<u>Chicago</u>											
Actual Int %	2.1535%	2.1854%	2.4453%	3.1171%	4.0464%	4.4116%	2.1848%	2.0818%	2.0542%	7.2177%	
CRE Int %	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	7.5000%	
Term	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	06/01/24	
Loan Amt Adj	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
<u>40 Wall</u>											
Actual Int %		3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	3.6650%	
Cap 1%		5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	5.7100%	
Term		7/6/2025	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	07/06/25	
Loan Amt Adj		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Interest Delta		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Grand Total of Lost Interest											\$ [REDACTED]

OPO – No Legal or Factual Basis for Profit Disgorgement

- Contract/Lease awards 2012/2013 – AG financing theory seeks to evade SOL
- Any claim to disgorge sale profits fully outside SOL (July 13, 2014)
- Disgorgement of sale profits = prohibited “double-dip” remedy with conjured interest claim
- Amounts to unauthorized punitive relief – cannot recover both
- Collins = no single selection factor determinative URB
- Collins = financials only 15% of total scoring (85% other factors) URB
- Collins = GSA noted specifically financials not audited/no concerns expressed URB
- No GSA witness testified Contract/Lease would not have been awarded
- No record evidence at all Contract/Lease would not have been awarded
- No evidentiary basis to support disgorgement – *never mentioned at trial!*

Ferry Point – No Legal/Factual Basis for Profit Disgorgement

- Contract awarded 2012 – any disgorgement claim outside SOL – already won in First Dept
- No witness testified Contract would not have been awarded
- No record evidence at all Contract would not have been awarded
- Cerron = no idea what was relied on in award process – financial capability 10% URB
- Cerron = Trump spent more than required \$10MM on improvements URB
- Cerron = Trump spent \$5MM-\$7MM more than required on grow-in URB
- Cerron = Trump met all obligations under contract URB
- Cerron = never received SOFC – not aware of anyone at Parks ever asking for SOFC URB
- Cerron = NoMAC letters not reviewed to determine financial capability URB
- Cerron = financial capability determined at time of award (thus in 2012) URB
- Cerron = sole remedy for failure to submit NoMAC letter = increase in security deposit URB
- No evidentiary basis to support disgorgement – ***never mentioned at trial!***

Scope of Injunctive Relief

- 63(12) = enjoin the continuance of the unlawful activity
- 63(12) = enjoin fraudulent or illegal acts
- No power to enjoin otherwise lawful acts untethered from specific wrongdoing
- No power to enjoin conduct that is not fraudulent
- Isolated loan transactions – nothing to do with CRE industry participation
- No claim that all Trump CRE transactions are problematic
- AG claim = need to protect potential counterparties and the marketplace (397)
- No counterparties have claimed fraud/misstatement
- No marketplace participants have claimed fraud/misstatement

Constitutional Law Issues

- *Eighth Amendment – Excessive Fines Clause*

grossly disproportionate award unconstitutional

must bear some rational relationship to the offense at issue

here \$370MM is absurdly disproportionate given no
victim/complaints/harm

- *Due Process Clause*

excessive punitive award violates DP

Court must consider harm/potential harm actually suffered

Constitutional Law Issues

- *Takings Clause*

AG = PT cannot manage/dispose of own assets at all

AG = prohibition on PT engaging in any CRE transactions interferes with power of disposition of property

impacts hundreds of non-defendant companies and properties

confiscatory taking without compensation

- *Commerce Clause*

Florida resident cannot transact any lawful business with any NY financial institution

Denies NY financial institution right to transact commerce with PT

Unconstitutional restraint/burden on interstate commerce

Monitor

- Order = financial reporting misconduct, suspicious activity, suspected or actual fraudulent activity
- Monitor issued 5 reports = the word “fraud” does not appear in any report
- No mention of suspicious activity, suspected or actual fraud
- Court cannot “interpret” non-existent evidence
- Court must have evidentiary basis for any conclusion
- No basis to conclude any “ongoing” improper conduct – no evidence
- R = D continue to cooperate with [Monitor] and requirements of Court Orders
D committed to ensure all required information provided
- Hawthorn = Defendants consistently cooperating with Monitor URB
All accounting issues resolved URB
All discrepancies/issues explained URB
- No evidentiary basis for further oversight

No Real-World Impact

- All profitable loan transactions
- No evidence banks changed position - anything would have been different
- No party complaining or alleging fraud
- Banks never said SOFCs had any material misstatements
- No fraud victim = just banks satisfied with profitable loans
- AG converts standard commercial real estate loan transactions into “fraud”
- AG/Court cannot presume “banks lost money” without actual evidence
- Pure substitution of judgment for that of sophisticated independent risk analysis
- No evidence the parties or the markets were ever at risk
- AG has an *Exxon* problem – *not one witness* – *not one complaint*

Conclusion

- Decision impacts every corporation in New York – Not just about Trump
- AG seeks limitless power to intervene in successful private contractual relations in which sophisticated market participants never assert any harm or risk of harm
- Extremely dangerous precedent – weaponization of 63(12) – tried and failed in *Exxon*
- This case opens the floodgates for business exodus – consider Court's legacy
- Banks – CRE Industry exposed to AG substitution of judgment years after completion
- AG can single you out politically – personally – whimsically and attack successful transactions even where nobody – ***not one witness*** – claims harm/risk of injury
- Every contract is rendered meaningless and subject to AG review years later
- Cannot allow AG to pursue victimless fraud and impose corporate death penalty
- AG has weaponized consumer protection statute never before used in this context - never
- 63(12) not a license for AG to strip individuals of all property rights without a jury