

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
CBL & ASSOCIATES)	Case No. 20-35226 (DRJ)
PROPERTIES, INC., et al,)	
)	(Jointly Administered)
Debtors.)	
)	

**DEBTORS' SIXTH OMNIBUS OBJECTION TO CERTAIN
PROOFS OF CLAIMS (NO LIABILITY)**

This is an objection to your claim. The objecting party is asking the Court to disallow the claim that you filed in this bankruptcy case. If you do not file a response within 30 days after the objection was served on you your claim may be disallowed without a hearing.

Represented parties should act through their attorney.

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within thirty days from the date this motion was filed. Otherwise, the Court may treat the Objection as unopposed and sustain the relief requested.

This Objection seeks to modify certain proofs of claim. Claimants receiving this Objection should locate their names and claims on Exhibit A to the Proposed Order attached to this Objection.

The above-captioned debtors (collectively, the “Debtors”) represent as follows in support of this omnibus claims objection (this “Objection”), and submit the *Declaration of Mark Renzi in Support of the Debtors’ Sixth Omnibus Objection to Certain Proofs of Claim (No Liability Claims)* attached hereto as **Exhibit 1** (the “Renzi Declaration”):

Relief Requested

1. The Debtors seek entry of the proposed order (the “Order”), substantially in the form of the Order filed with this Objection, pursuant to § 502(b) of the Bankruptcy Code, and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), disallowing

and expunging the claims identified on **Exhibit A** and **Exhibit B** to the Order (collectively, the “**No Liability Claims**”) as such claims are not a claim against Debtors, but are rather are alleged shareholder derivative claims that belong to the Debtors, claims that have been waived by the confirmed Plan, and/or the claims that have no support in the Debtors’ books and records.¹

Jurisdiction, Venue, and Procedural Background

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Bankruptcy Rules, to the entry of a final order.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The relief requested herein is sought pursuant to §§ 105(a) and 502(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rule 3007, and Rules 9013-1 and 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”).

5. On November 1, 2020 and continuing on November 2, 2020 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description of the facts and circumstances of these chapter 11 cases is set forth in the *Declaration of Mark Renzi in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”) [Docket No. 3].

6. On November 3, 2020, the Court entered orders [Docket Nos. 96, 102–119] authorizing procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). On November 13, 2020, the United States Trustee for the Southern

¹ “**Plan**” means the *Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors (with Technical Modifications)* [Docket No. 1369], as supplemented from time to time and together with any exhibits, amendments, or supplements thereto.

District of Texas (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 204].

7. On May 26, 2021, the Court entered an *Amended Order (I) Approving Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of the Proposed Plan, (V) Approving Notice Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (VI) Granting Related Relief* [Docket No. 1168] approving the disclosure statement for solicitation.

8. On August 9, 2021, the Debtors filed their *Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors (with Technical Modifications)* [Docket No. 1369] (the “Plan”).

9. On August 11, 2021, this Court issued its *Proposed Findings of Fact, Conclusions of Law, and Order (I) Confirming Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors and (II) Granting Related Relief* [Docket No. 1397] (the “Confirmation Order”).

10. The Plan Effective Date occurred on November 1, 2021 and Debtors emerged from bankruptcy at such time.

The Claims Reconciliation Process

11. On February 23, 2021, the Court entered the *Order (I) Establishing Deadline to File Proofs of Claim and (II) Approving form and Manner of Notice Thereof* [Docket No. 902] (the “Bar Date Order”), establishing certain dates and deadlines for filing proofs of claims in these chapter 11 cases (collectively, the “Proofs of Claims”). The Court established: (a) March 21, 2021, at 5:00 p.m., prevailing Central Time, as the deadline for all non-governmental entities holding or wishing to assert a “claim” (as defined in § 101(5) of the

Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing (the “General Bar Date”); and (b) April 30, 2021 at 5:00 p.m., prevailing Central Time, as the deadline for all governmental units holding or wishing to assert a “claim” (as defined in § 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file a proof of such claim in writing (the “Governmental Bar Date”, and collectively with the General Bar Date, the “Bar Dates”).²

12. On December 31, 2020, the Debtors filed their respective Schedules D, E, and F of the schedules of assets and liabilities (the “Original Schedules D, E, and F”) pursuant to Bankruptcy Rule 1007(b). On December 31, 2020, the Debtors filed their respective Schedules A/B, G, and H, and statements of financial affairs (the “Original Schedules A/B, G, and H, and SOFA”).

13. To date, over 1,583 Proofs of Claims have been filed against, or scheduled by, the Debtors, totaling over \$61.2 billion in the aggregate for liquidated amounts. The Debtors and their advisors have been working diligently to review the No Liability Claims, including any supporting documentation filed therewith. The Debtors and their advisors believe that the No Liability Claims specified in **Exhibit A** and **Exhibit B** to the Order should disallowed.

Objection

14. The Debtors object to the No Liability Claims identified on **Exhibit A** to the Order. Debtors object to the No Liability Claims because each such claim is asserted pursuant to the shareholder derivative action pending in the United States District Court for the Eastern District of Tennessee (Chattanooga Division): *In re CBL & Associates Properties Inc. Securities Litigation*, Consolidated Case No. 1:190cv-00181-JRG-CHS (the “Litigation”). The No Liability Claims identified on **Exhibit A** are not claims as defined in section 101(5) of the

² For clarity, the Bar Date Order further established the deadline by which claims arising from the Debtors’ rejection of unexpired leases and executory contracts and claims related to the amendment of the Debtors’ Schedules must be filed. Each of such deadlines are incorporated into the defined term “Bar Dates” by this reference.

Bankruptcy Code because any cause of action related to the claims asserted in the Litigation do not belong to the claimants but rather, if such claims exist, belong to the estate and, post-Effective Date, the reorganized Debtors. Moreover, such claims were released and waived pursuant to the confirmed Plan

15. The Debtors object to the No Liability Claims identified on **Exhibit B** to the Order as each claim asserted is not reflected in the Debtors' books and records.

No Liability Claims

16. Section 502 of the Bankruptcy Code provides, in pertinent part, as follows: “[a] claim or interest, proof of which is filed under § 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502. Section 502(b)(1) provides that a court shall not allow a claim if “such claim is not timely filed . . .” *See* 11 U.S.C. § 502(b)(9). Moreover, Bankruptcy Rule 3007 provides certain grounds upon which “objections to more than one claim may be joined in an omnibus objection,” which includes when “the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because . . . they have been satisfied or released during the case in accordance with the [Bankruptcy] Code, applicable rules, or a court order.” Fed. R. Bankr. P. 3007(d).

17. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under § 502(a) of the Bankruptcy Code.³ A proof of claim loses the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim's legal sufficiency. Once such an allegation is refuted, the burden reverts

³ *See, e.g., In re Tran*, 351 B.R. 440, 444 (Bankr. S.D. Tex. 2006), *aff'd*, 369 B.R. 312 (S.D. Tex. 2007) (holding that a properly filed proof of claim is *prima facie* evidence of the validity and amount of the claim).

to the claimant to prove the validity of its claim by a preponderance of the evidence.⁴ Despite this shifting burden during the claim objection process, “the ultimate burden of proof always lies with the claimant.”⁵

18. As set forth in the Renzi Declaration, the Debtors have reviewed the No Liability Claims identified on **Exhibit A** to the Order and do not believe that the No Liability Claims because such are asserted liabilities of the Debtors and are not “claims” as defined in section 101(5) of the Bankruptcy Code because any cause of action related to the claims asserted in the Litigation belong are shareholder derivative claims against the Debtors’ officers and directors, not the Debtors, and such causes of action do not belong to the claimants but rather, if such claims exist, belong to the estate and, post-Effective Date, the reorganized Debtors. *See Mitchell Excavators, Inc. v. Mitchell*, 734 F.2d 129, 131 (2d Cir. 1984) (shareholder’s derivative suit for breach of officers’ and directors’ fiduciary duties passes to the bankruptcy estate); *Matter of Consolidated Bancshares, Inc.*, 785 F.2d 1249, 1253–1254 (5th Cir.1986) (if shareholders’ derivative action belongs to corporation under Texas law, then action becomes property of the estate once bankruptcy petition is filed). The Plan releases and waives all claims asserted in and related to the Litigation. *See* Plan, Art. 10.7(a) at 62. Accordingly, the plaintiffs in the Litigation have conceded that “CBL should be dismissed from [the Litigation] based upon the release obtained in the bankruptcy proceeding.” *See* Litigation, Docket No. 138 at 1.

19. As set forth in the Renzi Declaration, the Debtors have reviewed the No Liability Claims identified on **Exhibit B** and such asserted claims are not reflected in the Debtors’ books and records.

⁴ *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988) (“If, however, evidence rebutting the claim is brought forth, then the claimant must produce additional evidence to “prove the validity of the claim by a preponderance of the evidence” (quoting *In re WHET, Inc.*, 33 B.R. 424, 437 (D. Mass. 1983)).

⁵ *Id.*

20. Generally, the Debtors are not liable for the No Liability Claims because such asserted liabilities are not “claims” as defined in section 101(5) of the Bankruptcy Code because any cause of action related to the claims asserted in the Litigation are shareholder derivative claims against Debtors’ officers and directors, not the Debtors, and such causes of action do not belong to the claimants but rather, if such claims exist, belong to the estate and, post-Effective Date, the reorganized Debtors, such claims were released and waived pursuant to the confirmed Plan. Additionally, such claims are not reflected in the Debtors’ books and records.

21. Failure to disallow No Liability Claims could result in the relevant Claimants receiving an unwarranted recovery against the Debtors to the detriment of other similarly situated creditors. Elimination of these No Liability Claims will enable the Debtors to maintain a more accurate claims register and will not prejudice the Claimants.

Reservation of Rights

22. This Objection is limited to the grounds stated herein. It is without prejudice to the rights of the Debtors to object to any claim on any ground whatsoever. The Debtors expressly reserve all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors’ right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to § 365 of the Bankruptcy Code; or (f) a waiver of the Debtors’ rights under the Bankruptcy Code or any other applicable law.

Separate Contested Matter

23. To the extent that a response is filed regarding any No Liability Claim and the Debtors are unable to resolve any such response, each such No Liability Claim, and the Objection as it pertains to such No Liability Claim, will constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. The Debtors request that any order entered by the Court regarding an objection be deemed a separate order with respect to each proof of claim.

Notice

24. Notice of the hearing on the relief requested in this Motion will be provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. The Debtors will provide notice to parties-in-interest, including: (a) the U.S. Trustee for the Southern District of Texas; (b) holders of the No Liability Claims, and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors request that the Court enter an Order granting the relief requested herein, and such other and further relief as is just and equitable.

Respectfully Submitted,

HUSCH BLACKWELL LLP

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COUNSEL FOR DEBTORS

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' claims, noticing, and solicitation agent.

/s/ Buffey E. Klein
Buffey E. Klein

EXHIBIT 1

Renzi Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
CBL & ASSOCIATES)	Case No. 20-35226 (DRJ)
PROPERTIES, INC., et al,)	
)	(Jointly Administered)
Debtors.)	
)	

**DECLARATION OF MARK A. RENZI
IN SUPPORT OF THE DEBTORS' SIXTH OMNIBUS
OBJECTION TO CERTAIN PROOFS OF CLAIM (NO LIABILITY CLAIMS)**

I, Mark A. Renzi, hereby declare under penalty of perjury:

1. I am a Managing Director of Berkeley Research Group, LLC ("BRG"). BRG has been retained by the above-captioned debtors (collectively, the "Debtors") as financial advisor in connection with these chapter 11 cases. BRG is a global consulting firm that helps leading organizations advance in three key areas: disputes and investigations, corporate finance, and performance improvement and advisory. I have more than 25 years of business experience, with approximately 16 years of financial consulting experience, including liquidity and capital structure assessment, debt and equity restructuring, advice, and identification of reorganization alternatives. I have provided restructuring services on more than 35 engagements in both out-of-court workout situations and in-court reorganizations.

2. I am generally familiar with the Debtors' day-to-day operations, financing arrangements, business affairs, and books and records that reflect, among other things, the Debtors' liabilities and the amount thereof owed to their creditors as of the Petition Date, as well as Debtors' restructuring efforts and confirmed Chapter 11 Plan of Reorganization [Dkt. No. 1369] (the "Plan"). I am also familiar with the terms and provisions of the Debtors' Disclosure

[Dkt No. 1164] and Plan. I participated directly in due diligence, discussions, and analysis related to the Disclosure Statement and Plan. I, along with the employees of BRG who report to me, prepared the Liquidation Analysis (as defined below) based upon information provided to BRG by the Debtors and reviewed by other professionals retained by the Debtors. Members of my team and I have also assisted the Debtors in reviewing the terms, conditions, and potential impact of the transactions contemplated by the Plan. Further, I have read the *Debtors' Sixth Omnibus Objection to Certain Proofs of Claim (No Liability Claims)* (the "Objection"), filed contemporaneously herewith.¹

3. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge, the knowledge of other BRG professionals working under and alongside me on this matter, my discussions with the Debtors' personnel, the Debtors' various other advisors and counsel, and my review of relevant documents and information prepared by the Debtors. To the best of my knowledge, information, and belief, the assertions made in the Objection are accurate. In evaluating the No Liability Claims, the Debtors and their advisors have reviewed the relevant Proofs of Claim, as well as the supporting documentation provided by each claimant, and determined that each No Liability Claim should be disallowed. I believe that the disallowance of the No Liability Claims on the terms set forth in the Objection is appropriate.

No Liability Claims

4. To the best of my knowledge, information, and belief, the No Liability Claims identified on **Exhibit A** because each such claim is asserted pursuant to the shareholder derivative action pending in the United States District Court for the Eastern District of Tennessee

¹ Capitalized but undefined terms herein shall have the same meaning ascribed to them in the Objection.

(Chattanooga Division): *In re CBL & Associates Properties Inc. Securities Litigation*, Consolidated Case No. 1:190cv-00181-JRG-CHS (the “Litigation”). The No Liability Claims identified on **Exhibit A** are not “claims” as defined in section 101(5) of the Bankruptcy Code because any cause of action related to the claims asserted in the Litigation belong are shareholder derivative claims against the Debtors’ officers and directors, not the Debtors, and such causes of action do not belong to the claimants but rather, if such claims exist, belong to the estate and, post-Effective Date, the reorganized Debtors. Moreover, such claims were released and waived pursuant to the confirmed Plan. As such, I believe that each of the No Liability Claims should be disallowed as identified on **Exhibit A** to the Order.

5. To the best of my knowledge, information, and belief, the No Liability Claims identified on **Exhibit B** because claim is not reflected in the Debtors’ books and records. As such, I believe that each of the No Liability Claims should be disallowed as identified on **Exhibit B** to the Order.

6. If the No Liability Claims are not disallowed, the relevant claimants may be improperly paid on account of their interests.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information and belief.

Dated: November 23, 2021

/s/ Mark A. Renzi
Mark Renzi
Berkley Research Group, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
CBL & ASSOCIATES)	Case No. 20-35226 (DRJ)
PROPERTIES, INC., et al,)	
)	(Jointly Administered)
Debtors.)	
)	

**ORDER SUSTAINING DEBTORS' SIXTH OMNIBUS OBJECTION TO CERTAIN
PROOFS OF CLAIM (NO LIABILITY CLAIMS)**

Upon the objection (the "Objection")¹ of the above-captioned Debtors for entry of an order (this "Order") sustaining the Debtors' Sixth Omnibus Objection to certain No Liability Claims, all as more fully set forth in the Objection; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and this Objection in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Objection is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Objection and opportunity for a hearing on the Objection were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Objection and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Objection and at the Hearing establish

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Objection.

just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED THAT:

1. Each No Liability Claim identified on **Exhibit A** and **Exhibit B** attached to this Order is hereby disallowed and expunged,

2. The Debtors' claims, noticing, and solicitation agent, Epiq Corporate Restructuring, LLC, is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in the Order.

3. To the extent a response is filed regarding any No Liability Claim, each such No Liability Claim, and the Objection as it pertains to such No Liability Claim, will constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order will be deemed a separate order with respect to each No Liability Claim.

4. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to § 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Objection.

7. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2021
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

No Liability Claims

Exhibit B

No Liability Claims