

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

|                                     |   |                            |
|-------------------------------------|---|----------------------------|
| In Re:                              | ) | Case No. 02-16172          |
| Level Propane, Gases, Inc., et. al. | ) |                            |
| Debtors.                            | ) | Ch. 11                     |
|                                     | ) |                            |
| *****                               | ) | Hon. Randolph Baxter       |
| William H. Maloof,                  | ) |                            |
| Plaintiff                           | ) | Adv. Pro. Case No. 09-1127 |
|                                     | ) |                            |
| Vs.                                 | ) |                            |
|                                     | ) |                            |
| Mark Uhrich, Plan Administrator     | ) |                            |
| of the Consolidated Estate of       | ) |                            |
| Level Propane Gases, Inc.           | ) |                            |
| Defendant                           | ) |                            |

**PLAINTIFF’S MOTION TO RECUSE  
28 U.S.C. Sec. 455, Bank. R. 5004**

Now comes William H. Maloof, by and through counsel undersigned, and for his Motion to Recuse pursuant to 28 U.S.C. 455 and Bankr. R. 5004 states as follows:

**FACTUAL SUMMARY**

- 1.) On June 6, 2002, an involuntary bankruptcy petition was filed which initiated the bankruptcy proceedings known as In Re: Level Propane Gases, Inc., Case No. 02-16172, in this Bankruptcy Court.
  
- 2.) Judge Randolph Baxter of this Court was assigned to the case above-said.
  
- 3.) In the course of the proceedings that ensued, the going-concern assets of the two enterprises, a propane distribution business, known as Level Propane Gases, Inc. and its

affiliates, and an off-site parking airport parking business, known as Park Place, Inc., and its affiliates were sold out of the bankruptcy estate in 2003 and 2004 respectively.

4.) On October 9, 2008, the Debtors' Liquidation Plan was confirmed by this Court pursuant to 11 U.S.C. Sec. 1129.

5.) On April 6, 2009, Plaintiff filed this Complaint to Revoke Confirmation of Plan, pursuant to 11 U.S.C. Sec. 1144, as a separate but related proceeding, bearing its own case number as an adversary proceeding.

6.) On May 18, 2009, Plaintiff received a letter from an expert consultant, Ex. 1, which confirmed the authenticity of certain PST files, known as JV.PST and JV2.PST. These PST files contained email traffic reflecting a scheme to drive Level Propane Gases, Inc. and its affiliates into bankruptcy for the purpose of seizing its going concern assets. Included in this email traffic were emails dated 2000 and 2001 from John Rudd, addressed to a group of recipients, named only by their initials, in which was detailed plans to take over Level Propane Gases, Inc., Ex. 2, Affidavit of William Maloof and attached emails. Among those named in as a projected participant in the scheme was a person, "RB," whose task was to frustrate the rights of the owners or board members of the companies drawn into the bankruptcy court.

7.) These attached emails disclose that this scheme was actively pursued no later than October, 2000. These emails, see attached emails in Ex. 2, refer to the participants by their initials. Among those to which the emails refer is "RB." This "RB" is referred to in the context of the bankruptcy court where one Rudd intends to place Level Propane (LP) and is working John Verbos (JV) to assemble the data necessary to manipulate the affairs of Level to push it into bankruptcy. "RB" is mentioned several times as a key participant whose role must be concealed

with utmost care. Rudd assures “RB” directly by saying “we have been through this before and always come out on top.” A review of the roster of the Northern District shows that only one bankruptcy judge has the initials RB, a review of the email traffic in Ex. 9 excludes any other role for RB in the scheme. Further, the email traffic shows that RB was to receive a 20% share of the proceeds of the scheme. Further, when Rudd addressed other participants, he referred claimed to have involved “a judge (RB).”

8.) A review of the roster of judges in this district in 2000 and 2001 shows that the “RB” to which the emails refer was all but conclusively Randolph Baxter, then chief judge of the Northern District of Ohio, Eastern Division. The names of the bankruptcy judges in this District are a matter of public record of which this Court may take judicial notice. The participants in the scheme had planned to place the LTV Steel matter in Judge Baxter’s court, but this plan was thwarted when the voluntary petition was filed in Youngstown, placing it in front of Judge Bodoh. Judge Baxter, nevertheless, has presided over the LTV Steel case, since Judge Bodoh’s retirement in December, 2003.

### **LAW AND ARGUMENT**

9.) The Bankruptcy Rule governing recusal of judges in this court, Bankr. R. 5004, incorporates 28 U.S.C. Sec. 544 by reference. This statute provides that: “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned,” 28 U.S.C. Sec. 455 (a). The contents of the emails attached disclose the existence of a scheme to force Level Propane Gases, Inc. into bankruptcy proceedings and there to seize its going-concern assets. A person described as “judge RB” was assigned the specific task of frustrating any attempts by the owners or board members to oppose

this seizure of the going concern assets. Under these circumstances, the partiality of this judge might reasonably be questioned.

10.) Further 28 U.S.C. Sec. 455(b)(5) provides that

“He shall also disqualify himself in the following circumstances . . . (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person . . . . (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

Here, the emails disclose that “RB” was to receive 20% of the scheme’s proceeds. This assignment of a percentage of the proceeds of the scheme described in these emails can only be characterized as an interest in the matter that could be substantially affected by this proceeding, which alleges fraud in the bankruptcy proceedings. If indeed the fraud is demonstrated, and the judge here was assigned a 20% interest in the scheme challenged by this proceeding, his recusal is mandatory. Separately, the allegation of this scheme dating back to October, 2000, of which “judge RB” is named as a participant, which has been articulated in the Plaintiff’s Third Amended Complaint, for which leave has been requested before this Court, would likely require the judge to testify as a material witness.

11.) Pursuant to the plain language 28 U.S.C. Sec. 455(a), this judge’s impartiality might reasonably be questioned where he has been named in a participant in a fraudulent scheme to seize the going concern assets of the debtors in *In Re Level Propane Gases, Inc.*, Case No. 02-16172. Further, when he has been named as a participant in a fraudulent scheme to seize the going concern assets of the Debtors, recusal is mandatory under both subsections (iii) and (iv) of 28 U.S.C. 455(b)(5). He knows that he has an interest that would be affected by the outcome this proceeding to revoke the confirmation on the basis of fraud and he likely to be a material witness as to facts underlying the fraud the allegation of which is the very gravamen of this Complaint.

12.) The requirement that the source of the disqualifying prejudice described in 28 U.S.C. Sec. 455(a) be extrajudicial, see e.g. *In Re Walker* 331 B.R. 489 (U.S.B.C., M.D. Ga., 2005), is clearly satisfied by the attached email traffic. Separately, the allegations concerning the judge's interest in the outcome of this litigation and the allegations that would make it likely he would be a material witness in this case constitute independent bases for recusal.

### CONCLUSION

In conclusion, for the reasons set forth above, the Plaintiff moves this Court to recuse itself from this proceeding pursuant to three separate provisions of 28 U.S.C. Sec. 455: 1.) that there is an appearance of bias arising from an extrajudicial involvement, being the appearance of an involvement in the scheme to seize the going concern assets of the Debtors using the bankruptcy proceedings as a cover for the scheme, 28 U.S.C. Sec. 455(a); 2.) that this judge's interests in this matter will be affected by the outcome of this proceeding, in that he may be forced to return any proceeds derived from the scheme in which the email traffic indicates he was and is a part, 28 U.S.C. Sec. 455(b)(5)(iii) and 3.) that he is likely to be a material witness in these proceedings, 28 U.S.C. Sec. 455 (b)(5)(iv). For all of the foregoing reasons, the Plaintiff requests that this judge recuse himself from these proceedings.

Respectfully Submitted,

/s/ David C. Eisler

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## **SERVICE**

The foregoing has been filed electronically this 1<sup>st</sup> day of June, 2009. It has been electronically served on all parties to this action whose counsel have entered a notice of appearance herein. It is available to all other parties who access the Court website.

/s/David C. Eisler  
David C. Eisler, Counsel for the Plaintiff