

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

WILLIAM H. MALOOF,)
Individually and as Sole)
Shareholder or beneficial owner of)
Level Propane Gases, Inc.,)
and its subsidiary affiliates)
Park Place, Inc.,its subsidiary affiliates,)
and WHM Emprises, Inc.)
and its subsidiary affiliates)
P. O. Box 1721)
Medina, OH 44256)
Plaintiff.)

Case No. 06-01378

Judge Christopher A. Boyko

vs.)

**AMENDED
VERIFIED COMPLAINT
Racketeer Influenced Corrupt
Organization
(18 USC Sec. 1964)**

BT COMMERCIAL CORPORATION)
Individually and as Agent of DEUTSCHE)
BANK TRUST COMPANY AMERICAS)
LaSALLE NATIONAL BANK)
ASSOCIATION and Individually and)
as Agent of DEUTSCHE)
BANK TRUST COMPANY AMERICAS)
LaSALLE NATIONAL BANK)
ASSOCIATION and THE PROVIDENT)
BANK (by its Successor in Interest.)
National City Bank))
c/o Statutory Agent)
The Corporation Trust Co.)
Corporation Trust Center)
1209 Orange Street)
Wilmington, DE 19801 and)
c/o Statutory Agent)
The Corporation Trust Co.)
Corporation Trust Center)
1209 Orange Street)
Wilmington, DE 19801)

also serve at:)

DEUTSCHE BANK TRUST COMPANY)
AMERICAS)
60 Wall Street)
New York, NY 10005)

)
)
and)
)
LaSALLE BANK NATIONAL)
ASSOCIATION)
135 S. LaSalle Street)
Chicago, Ill. 60603)
)
Defendants)
)
and)
)
National City Bank, Successor in)
Interest to Provident Bank)
1575 East Ninth St,)
Cleveland, Ohio 44115)
)
New Party Defendant)
)
Please also Notify:)
)
ABN Ambro Bank, M.V.)
Gustav Mahleraan No. 10)
HQ9142)
P.O. Box 283)
1000 EA Amsterdam, The Netherlands)
)
and)
)
Deutsche Bank)
Taunusainiage No. 12)
60325 Frankfurt am Main, Germany)

COMPLAINT

Now comes William H. Maloof, individually and as sole shareholder of the WHM
 Emprises. Inc., Level Energy Group, Inc., The Park Place Companies, Inc., Park Place
 Management, Inc., Park Place, Inc., Over-Flo Lot, Incorporated, and Level Propane
 Gases, Inc., by and through counsel undersigned, and for his complaint against BT

Commercial Corporation, Individually and as agent for Deutsche Bank Trust Company Americas, LaSalle Bank National Association and the Provident Bank, and such banks individually, states as follows:

SUMMARY OF CLAIMS

1.) The Bank Group has engaged in a pattern of pre-petition and post-petition conduct, including, without limitation, corruption of and Plaintiff's and Debtors' pre-petition legal counsel, pre-petition conspiracy to commit wire and mail fraud, by the misrepresentation to Plaintiff that corrupted legal counsel represented Plaintiff and the Debtors, not the Defendants, by a continuing pattern of tortuous interferences with advantageous business relationships of the Debtors with interested purchasers of the various businesses, particularly Level Propane Gases, Inc., pre-petition, and, through the deliberate course of conduct of its agents installed to manage the affairs of the Debtors pre-petition, particularly with respect to Level Propane Gases, Inc., to damage fatally the going-concern value of the businesses subject of this Complaint, and post-petition, by a pattern of bankruptcy frauds, including, without limitation, deliberate and knowing misrepresentations to the Court to gain strategic advantage, deliberate frustration of the administration of the Estate in order to advance its own ends inimical to the interests of the Debtors, the other Creditors and the Estate, conspiracy to dissipate the assets of the Debtors to undermine their asset value and, particularly with respect to Level Propane Gases, Inc., to destroy its going concern value by frustration of the post-petition auction of the business, a campaign of document spoliation of essential business records accomplished by management installed by the Bank Group, renunciation of fully 30% of

its customer base by the same management and conduct calculated to alienate the remaining customer base including, most egregiously, failure to deliver winter gas to thousands of rural customers. The pre-petition conduct aforesaid constitute predicate acts to Plaintiff's civil Racketeer Influenced Corrupt Organization claims, made pursuant to 18 USC Sec.1964, and constitute with respect to the corruption of the pre-petition counsel, a separate pendent state claim under ORC Sec. 2923.32, which prohibits conduct of the affairs of an enterprise through a pattern of corrupt activity. The post-petition activity, particularly with respect to the deliberate knowing falsehoods told directly to this Court, the conspiracy to dissipate physical assets of the Estate in order to undermine, particularly with respect to Level Propane Gases, Inc., the Estate's asset value, and the deliberate campaign of document spoliation constitute a series of bankruptcy frauds under 18 USC Sec. 157, and as such constitute further predicate acts to Plaintiff's claims under 18 USC Sec. 1964.

2.) Plaintiff claims that he makes out the elements of a cause of action for damages under 18 USC Sec.1964, in that, as a result of Defendants' pattern of corrupt activity, he has been damaged in his property, that is to say, his shares in the business entities subjected to jurisdiction in this Court by means of a bad-faith involuntary petition for Chapter 7 relief, were destroyed in value as the going concerns held in the corporations in which he was the sole shareholder, were destroyed in value by the deliberate and calculated post-petition conduct of the Defendants herein.

JURISDICTION AND VENUE

3.) This court has jurisdiction over this matter pursuant to 28 USC. Sec.1331.

4.) Venue is proper pursuant to 28 USC Sec. 1409.

5.) The predicates for relief are 18 USC Sec. 1964.

The Parties and Their Agents

6.) Here follows a list of the parties and their agents, with a short description of their respective roles in the events outlined below:

William H. Maloof – the sole shareholder and director of Level Propane Gases, Inc. and its affiliated companies as well the sole shareholder and director of Park Place, Inc. and its affiliated companies.

Level Propane Gases, Inc. (Level Propane) – a retailer of residential, agricultural and commercial propane heating fuel with a business presence in 14 states, thrown into involuntary bankruptcy June, 2002.

Park Place, Inc. (Park Place) – a parking facility near Cleveland-Hopkins airport that served airline passengers, thrown into involuntary bankruptcy June, 2002.

Brian Salvagni – in-house counsel at Level Propane Gases, Inc.

Paul Dolansky – general manager of Level Propane Gases, Inc.

John Verbos – Chief Information Officer and later President of Level Propane Gases, Inc.

Walter Himmelman – pre-petition CFO of Level Propane and Park Place.

Jason Dimacchia – transportation manager at Level Propane Gases, Inc.

Timothy Conklin – transport fleet manager at Level Propane Gases, Inc.

Jared Maloof -- Secretary of Level Propane Gases, Inc. and Call Center/
Field Service Director, pre-petition.

Deutsche Bank – lead lender in the financing facility into which Level Propane and Park Place entered, pledging their assets as collateral.

Banker's Trust (BT) – Deutsche Bank's United States agent for financing facility. Banker's Trust was wholly-owned by Deutsche Bank.

The Bank Group – participants in the Deutsche Bank financing facility, which consisted of Deutsche Bank, LaSalle Bank and Provident Bank, with Banker's Trust as the agent for all three participants. LaSalle Bank has since become a division of ABN AMBRO, its successor in interest. Provident Bank has since been purchased by National City Bank.

The Equipment Lessors – various parties holding leases on vehicles, such as trucks and busses, and other equipment, such as customer propane tanks, with Level Propane Gases, Inc. and Park Place, Inc.

Amerigas, L.P. – a competitor of Level Propane Gases, Inc. This entity ultimately purchased all the assets of Level Propane Gases, Inc. from Eaglerock Propane LLC.

FerrellGas – a competitor of Level Propane Gases, Inc., who had communicated written good-faith offers to purchase Level in 2001 and 2002

Star Gas, Inc. – a competitor of Level Propane Gases, Inc., which had also communicated a written good-faith offer to purchase Level in 2002, which offer was actively negotiated through May, 2002.

John Rudd – a principal of Newmarket Partners, a business management concern whose focus is business restructuring, put in place at the insistence of the Bank Group as the Chief Restructuring Officer (CRO) of Level Propane Gases, Inc.

Blair & Co. – an investment firm, headquartered in Chicago, engaged to find a suitable buyer for Level Propane Gases, Inc. and to complete the sale in the event that a suitable buyer is found.

Squires, Saunders & Dempsey (SS&D) – prominent Cleveland law firm which had represented William Maloof's businesses since the establishment of Park Place.

Benesch, Friedlander, Coplan and Aronoff (BFCA) – a business law firm, engaged by William H. Maloof, acting for Level Propane Gases, Inc., to represent the businesses in a Ch. 11 reorganization.

Mark Schlachet – an attorney-at-law specializing in business reorganizations, of counsel with BFCA.

H. Jeffrey Schwartz – an attorney-at-law specializing in business reorganization, a partner at BFCA.

William Shonberg – an attorney-at-law, a partner at BFCA.

James Hill – an attorney-at-law, the managing partner at BFCA.

Michael Primrose – an attorney-at-law, a partner at BFCA.

Michael Mayo – an attorney-at-law, employee of BFCA, who represented Deutsche Bank.

Greg Gale – an attorney-at-law, employed by BFCA.

Mario Fazio – an attorney-at-law, employee of BFCA, who represented Plaintiff with respect to his personal federal tax dispute, directly related to his guarantor status to the financing facility.

Charles Sweet – installed as Director of Level Propane Gases, Inc. and Park Place, Inc. June 6, 2002, when the Bank Group seized the shareholder voting rights of both corporations from William H. Maloof.

Stephen Sues – hired by Charles Sweet as CEO of Level Propane Gases, Inc.

Paul Lowe – hired by Charles Sweet to manage the finances of Level Propane Gases, Inc.

Eaglerock Propane, LLC – an entity formed by Richard Jacobs that entered into a management agreement with Level Propane Gases, Inc. as Debtor-in-Possession and then purchased the assets of Level Propane Gases, Inc.

Robert Angart – an Eaglerock employee who acted as CFO of Level Propane Gases, Inc.

Richard Anter – at various times, President of Level Propane Gases, Inc., and at others its Director of Human Resources and Legal.

The Examiner – G. Ray Warner, who examined the affairs of Level Propane Gases, Inc. as Debtor-in-Possession and pre-petition pursuant to Bankruptcy Court orders of April 14, 2003 and April 30, 2003.

STATEMENT OF THE FACTS

Deutsche Bank's New Customer

7.) In 1999, Deutsche Bank entered a financing facility with Level Propane and Park Place, replacing National City Bank, who had expressed a desire to end its relationship with Level Propane and Park Place. The original participants of the financing facility were Deutsche Bank, the largest bank in the world, and its agent, Banker's Trust. Deutsche Bank later brought in LaSalle Bank, a division of ABN Ambro, a huge Dutch banking and financial concern, and Provident Bank, which later became a division of National City Bank, as participants, forming the Bank Group. Unbeknownst to William Maloof, the participation of Provident Bank in the facility created a conflict of interest for his long-time law firm, Squire, Saunders and Dempsey.

The Relationship Sours

8.) In January, 2001, the Ohio Attorney General filed suit against Level Propane, alleging unlawful pricing practices related to the fees associated with propane service, *State of Ohio, ex. Rel. Betty D. Montgomery, Attorney General of Ohio vs. Level Propane Gases, Inc.*, Case No. 01-CVH-01-018, Delaware County Court of Common Pleas. Suits by other State Attorneys General quickly followed. Level was soon defending pricing practices complaints in almost all the states in which it did business.

9.) Squire, Saunders and Dempsey had drafted the customer contracts that gave rise to these pricing practices suits. Kenneth Seminatore, representing Level Propane, later brought a malpractice claim against SS&D on this basis.

10.) As an apparent result of the state pricing practices suits, Level Propane's relationship with the Bank Group deteriorated to the point that threatened defaults were negotiated out. Representatives of the Bank Group would contact only Walter Himmelman, then CFO, refusing contact with William Maloof. Mr. Maloof sought advice from George Barry at Squire, Saunders & Dempsey, which had represented his businesses for 20 years, regarding avenues for resolution of these disputes with the Bank Group, among which included reorganization under bankruptcy protection. Only then did Mr. Barry disclose SS&D's conflict of interest, because the Bank Group refused to permit SS&D to represent Level Propane on the loan. He advised Mr. Maloof to obtain a waiver of the conflict from Provident. When Mr. Maloof approached Ted Randall of Provident for the waiver, Mr. Randall refused. After listing and rejecting several firms on the basis of conflict, Mr. Randall referred Mr. Maloof to McDonald, Hopkins, another Cleveland law firm, assuring Mr. Maloof that McDonald, Hopkins of all of the firms had no conflict.

11.) In order to separate Park Place from the Bank Group financing facility, Bank One committed \$15 MM in May, 2001. It renewed its offer five times between May, 2001, and February, 2002, but in each instance, the Bank Group refused to let Park Place out its financing facility.

12.) In June, 2001, Ferrell Gas offered to purchase Level Propane for its debt, leaving Mr. Maloof with Park Place, the propane bulk transport fleet and an existing operation in Florida free and clear of debt. Mr. Maloof held off the offer, believing that once the consumer pricing suits were resolved, Level Propane would command a higher price. Nevertheless, he communicated this offer to the Bank Group.

The Bank Group Positions Itself for Control

13.) In October, 2001, Level Propane retained McDonald, Hopkins to prepare Ch. 11 bankruptcy filings. After continuous prodding, Sean Riley of the firm advised Level Propane that his firm cannot even prepare the first day papers, since the firm represents the very banks which would be the largest creditors in any contemplated bankruptcy.

14.) Kenneth Seminatore, aware of Level Propane's need for counsel, introduced Mr. Maloof to Mark Schlachet, a well known bankruptcy attorney affiliated with Benesch, Friedlander, Coplan and Aronoff (BFCA), November 1, 2001. After Mr. Schlachet ran a conflicts check run which disclosed no conflicts (which included, at Plaintiff's insistence, a determination that BFCA had never represented any of the Defendant banks), Level Propane paid an initial retainer and BFCA began work on the proposed Ch. 11 filings at the end of November, 2001.

15.) Offers to purchase Level Propane remained open from various parties, among which was an offer from Star Gas for \$165MM (which provided for carve-outs of his lucrative national propane transport operation and the valuable right to operate in the Florida residential retail market while leaving Mr. Maloof with ownership of Park Place, free and clear). At William Blair & Co.'s suggestion, the deal was struck at the BFCA offices, with the Star Gas CEO, the Star Gas President and the Star Gas Chief Legal Counsel present, representatives of Blair and countless BFCA lawyers in attendance. This dramatic event provided a pretext for James Hill, the managing partner at BFCA, to involve himself in the file. Starting in December, 2001, Mr. Hill began a campaign that ultimately wrested control of the file from Mr. Schlachet by the end of January, 2002. *In February, 2002, Mr. Hill engaged BFCA in representation of Mr. Maloof with respect to*

his income tax matter that related directly to his liability as guarantor of the financing facility with the Bank Group. If the tax dispute over Mr. Maloof's tax basis in certain property of Level Propane's resolved in his favor, his obligations as Guarantor of the Bank Notes would be extinguished.

16.) By March 1, 2002, BFCA represented Level Propane *only as to a proposed sale*, to which a Ch. 11 filing was an adjunct, and later made it a subfile of the corporate sale engagement. Later that month, by letter dated March 19, 2002, Mario Fazio of BFCA advised Mr. Maloof of his efforts with the IRS relating to his tax matter.

17.) In contemplation of a possible Ch. 11 filing, Grant-Thornton, an investment advisor, prepared a valuation of the companies that set their value, exclusive of Park Place, and without valuation of the computer technology, at no less than \$125MM, in March, 2002. Shortly thereafter, Parthenon Capital made a written offer for Level Propane of \$129MM, in competition with the Star Gas offer.

The Bank Group Takes Control

18.) At the insistence of the Bank Group, memorialized in the Forbearance Agreement of March 7, 2002, John Rudd of Newmarket Partners, was engaged as the Chief Restructuring Officer (CRO) of Level Propane, the first week of March, 2002. The Forbearance Agreement all but severed Level Propane from its Principal, and further insisted that as a condition of its forbearance the Company be sold by a date certain to Parthenon Capital. Thus at the moment of its execution, Mr. Maloof was given the choice between surrendering Level Propane to the Bank Group in hopes of realizing some proceeds on its sale, or losing all hope of realizing any value from his equity in Level

Propane as the Bank Group seized it for liquidation. The Forbearance Agreement and the retention of Newmarket were both foisted on Level Propane and Mr. Maloof in order to wrest control utterly from him, as Level Propane's Principal, to the Bank Group. At the moment the Forbearance Agreement was signed, Level Propane lost its independence altogether and became alter ego of the Bank Group. Mr. Hill's ardent pursuit of the corporate representation of Level Propane to the exclusion of Ch. 11 representation transformed BFCA from an independent counsel to a pliable instrument of the Bank Group.

19.) Having wrested control of the Level Propane file from Mr. Schlachet, the ultimate evidence of which was the Forbearance Agreement, which made a sale a term of Level Propane's survival and precluded a Ch. 11 Bankruptcy by making it an exercise in futility, Mr. Hill proceeded to march to the Bank Group's drum with respect to managing the legal affairs of BFCA's nominal clients, Level Propane and Park Place.

20.) Among the first acts of Mr. Rudd was to cease payments to Level Propane's equipment lessors, which totaled nearly \$1,000,000.00 per month, thereby throwing the leases of trucks, customer tanks and other equipment into default. At the point that Mr. Rudd ceased the payments, little more than principal was due on the leases, the bulk of which principal would have been paid down within 24 months of the time the payments were stopped. Level Propane agreed to indemnify Newmarket and Rudd for any act short of fraud. Mr. Rudd and Newmarket Partners were to execute and deliver a confidentiality agreement in Level Propane's simultaneously with these other agreements, but did so only within days of his resignation as CRO some weeks later.

21.) Throughout this period, BFCA continued to prepare and present drafts of the proposed sale agreements with Star Gas. Meanwhile, Level Propane continued independently to negotiate with the various states until before Spring, 2002, the suits were resolved by agreements for Assured Voluntary Compliance (AVC), and substantially paid off. The agreement for Assured Voluntary Compliance with West Virginia was in the final stages of negotiation. Level Propane was prepared to enter these agreements because its centrally administered computer system gave it the unique ability in the industry to comply with the timely notice requirements of the AVCs on an automated basis, which otherwise would have been administratively impossible. Thus Level Propane had *negotiated in the AVCs an amplification of its competitive advantage* which should have increased its going-concern value.

22.) Mr. Maloof was introduced to Richard Baumgart by Mark Schlachet, shortly after the Forbearance Agreement was executed, with the purpose of Mr. Baumgart filing a Ch. 13 personal bankruptcy for Mr. Maloof simultaneously with that of the companies' Ch.11 petition. As Mr. Maloof was contemplating a personal bankruptcy, the Chief Restructuring Officer of Level Propane, John Rudd, killed the cash flow at Level Propane. Meanwhile, the deal with Star Gas was permitted to stall.

A March to the Gallows

23.) Mr. Rudd's position as Chief Restructuring Officer was further strengthened in Blair & Co.'s letter of May 10, 2002 to John Verbos, then President of Level Propane, in which Blair & Co. specifically agreed to "assist John Rudd in his capacity as Chief Restructuring Officer in . . . developing a strategy for pursuing a Possible Transaction

and a list of possible participant. . . and contacting and eliciting interest from those possible participants.” No action would be taken by Blair without Mr. Rudd’s participation, and any communication made directly to Blair by either a Board member or a Shareholder regarding sale of Level Propane, Blair would communicate to Mr. Rudd.

24.) Newmarket Partners continued their efforts to wreck the going concern value of Level Propane into the days just before the Bankruptcy, when Patty Geitgey, a Newmarket manager under Rudd, directed Timothy Conklin, Level’s Transportation Manager, to pull no more than 25 loads/week from the various propane supply points with which Level Propane had contractual relations. The effect of this order to Mr. Conklin was to cut off pipeline allocation for the 2002-2003 heating season. Mr. Conklin, cognizant of the devastating impact such a course would have on the company’s winter product supplies, protested that her decision would be disastrous. In his challenge to this direction, Conklin was terminated later that week. After Level Propane was put into bankruptcy, the management abandoned even this minimal contact with the pipelines, so that no allocation was earned whatsoever. Further, management gave up 20 million gallons in allocation previously negotiated, of which 10 million gallons were optioned to be hedged at low prices for pennies on the gallon. Instead, management opted to buy off-spec refinery gas, contrary to established Level Propane Gases, Inc. practice and policy.

25.) At the same time that Level Propane winter product supply was choked off by Ms. Geitgey, Mr. Maloof learned of the renewed Ferrell Gas offer for the company, which would give him \$165MM cash and carved out the transport fleet operation and the state of Florida for Mr. Maloof to retain as his own enterprise. The principal of Ferrell Gas, James Ferrell, contacted Mr. Maloof only after his attempts to communicate his

offer to Blair & Co. and to John Rudd as CRO fell on deaf ears. Neither Rudd nor Blair & Co. responded to his offer, when both of whom had the authority to act on it, and which, had they done so, would have discharged the entire debt of the Company to the Bank Group. When Rudd left Level, Mr. Maloof believed the Ferrell Gas deal had already been communicated to the Bank Group, and justifiably relied on its going forward, since, by the terms proposed, the purchase would fund almost double the Bank Group's loan exposure.

Involuntary Bankruptcy

26.) Mr. Maloof could not have monitored the responses of Newmarket or Blair & Co. to the Ferrell Gas offer because he was absorbed in a crisis with his own counsel, BFCA. In the days preceding the filing of the Involuntary Ch. 7 Petition, Mr. Maloof and BFCA had a sharp disagreement concerning whether Level Propane could properly sell pre-buys as it had customarily, and which was a common industry practice. Mr. Maloof stood on prior practice, BFCA contended that as a wounded business Level Propane could not sell pre-buys since it could offer no assurance that it would be in business to deliver on the contracts. On June 5, 2002, he repeatedly requested the First Day papers for the Ch. 11 BFCA had prepared. Yet BFCA held him off until June 6, 2002, going so far as to leave his son Jared, an officer of Level Propane, to beg in their lobby for the First Day papers on June 6, 2002, while the Bank Group filed the Involuntary Ch. 7 Petition, seized the voting rights, and installed Charles Sweet as sole director as Jared waited in the BFCA lobby. Only after all of this was done, did Mr. Primrose appear in the lobby to sorrowfully announce to Jared that all of this had transpired. BFCA terminated

its representation with Level Propane that same day, on the pretext of the pre-buy disagreement. With the Ch. 7 filed, the Ferrell Gas offer was derailed. The plain purpose of the Ch. 7 was to derail purchase offers that would have left Maloof with resources to participate in the propane market in any capacity.

27.) On June 11, 2002, negotiations began to convert the proceedings into a Ch. 11 Reorganization. At this point, the Debtor and its Counsel, BFCA, whom Charles Sweet, the newly elected Sole Director of Level Propane, had hired the day the Involuntary Petition was filed, were entirely creatures of the Bank Group. The only party with an interest adverse to the Bank Group that signed was Mr. Maloof, who signed it as a result of fraud and coercion. Mr. Maloof stipulated to the conversion to Chapter 11 on the specific conditions that 1) BFCA would not be counsel for the Debtors, 2) that neither John Rudd nor Newmarket Partners would have any part in the administration of the Debtors' affairs 3) that DSI would be appointed to manage the affairs of the Debtors pending the sale of the Debtors to one of several ready, willing and able suitors, and 4) that he be provided with weekly financial statements. These promises were not only specifically broken, *there was no present intention by the Bank Group, which controlled both BFCA and the Debtors, to abide by any of these conditions upon which Mr. Maloof specifically relied when he stipulated to the Conversion.* Charles Sweet, in his statement to the Examiner, claims that BFCA was only transitional counsel and only after failing to secure any other counsel capable on the one hand, and not barred by conflict on the other, did he seek to place BFCA permanently as Debtor's counsel. Moreover, were Mr. Maloof refuse to stipulate to the Conversion, a Trustee would be appointed, who would all but certainly liquidate the company, since he would be unwilling to operate it through the

heating season. Once again, faced with the choice between hope for survival of Level, even if it went into other hands, and utter ruin, Mr. Maloof had no choice but to stipulate the conversion.

The Bank Group's Iron Grip

28.) That the Bank Group had no present intention to abide by any of these conditions was born out by subsequent events. Among these events was BFCA's inducement of Mr. Maloof to drop his appeal of the bench appointment as counsel for the Debtor on the representation that Level Propane urgently needed his managerial participation to survive and that his appeal would be inconsistent with assuming such a role. The moment he dismissed his appeal, Mr. Maloof's position with Level Propane evaporated.

29.) That the Bank Group intended to control the administration of the Bankruptcy Estate was born out by its utter domination of the September 23, 2002 auction of Level Propane, particularly in its decision to forgo a stalking horse bidder in the auction process. It is further born out by the fact that no attempt was made to reactivate the bids of Star Gas or Ferrell Gas. Both of these pre-petition bids would likely have paid off the Bank Group altogether, or at the very least put the resources of very much larger, publicly traded, entities at work to pay off the debt. Its domination is further born out by its consent to Eagle Rock Propane's management of Level Propane, after Eagle Rock had made and withdrawn a bid at the September 23d auction. The Bank Group could well afford to phony up an auction because one of the primary objects of its bad-faith Involuntary Bankruptcy Petition was achieved by its very filing: the AVCs (see

Paragraph 21) were made into dead letters, and the status quo of the industry was thereby preserved. Neither Star Gas nor Ferrell Gas were pressed by any longer by the urgency to purchase such technology once the AVCs were taken off the competitive field, thereby muffling down Level Propane's competitive advantage arising from its satellite computer system.

30.) That the Bank Group dominated BFCA throughout the administration of the Ch. 11 proceeding is born out by the contest over the equipment leases, in the Debtor sought to recharacterize as disguised financing agreements, and which effort provoked a complaint for Equitable Subordination, based on the very domination of Level Propane here alleged.

31.) The Bank Group in like manner dominated those charged with administration of the Debtor in Possession. One of the very first acts of Steven Sues, the newly appointed Chief Executive Officer of the Debtor in Possession was to disable the audio tape system at the Westlake Headquarters and to seize the pre-petition tapes that, among other matters, contained the records of Mr. Maloof's negotiations respecting the Ferrell Gas offer for the company and his unsuccessful struggle to obtain the First Day Papers so that a pre-emptive Chapter 11 filing could be made. Had Mr. Maloof been left alone to complete the Ferrell Gas deal or had he won the struggle to file a voluntary petition, Level Propane would exist today as a going concern. In a parallel action, Mr. Sues disabled the video recording system at the Westlake headquarters, so that no record of any document spoliation and shredding would be made.

The Pillage of Level Propane

32.) Because of the massive shredding and spoliation of documents at Level Propane Headquarters since the inception of the Ch. 11, at which point the Bank Group had complete control over the affairs of the Debtor in Possession, there could be no documentary certainty whatever of the events that transpired leading up to the Bank Group's utter domination of the Debtor. The most celebrated incident of spoliation took place in March, 2003, when Robert Angart disposed of financial and insurance records, customer records and bank emails, which were ultimately recovered from waste containers and sequestered for an inventory that Brian Salvagni began but never completed because he was placed on administrative leave. The lengths taken to control the fallout from this disposal were nothing short of Herculean: Brian Salvagni, General Counsel for the Debtor-in-Possession was placed on administrative leave, ultimately to leave the employ of the Debtor-in-Possession, and Richard Anter, President of the Debtor-in-Possession, resigned; all over what management claimed were some mere duplicates of financial papers.)

33.) The campaign to destroy the documentation of the Debtor-in-Possession began well before the Angart incident and continued after it. In December, 2002, Pat Tighe observed this same Mr. Angart disposing of massive quantities of records; in February, 2003, Paul Lowe, an administrator associated with Eagle Rock management, was observed shredding documents; on yet another occasion, the contents of large binders of customer tank records were shredded; and throughout the tenure of Eagle Rock as manager, prior to its purchase of Level Propane's assets, those running the concern

were constant visitors to the shredding machine at the Westlake headquarters from the day they took control through 2003.

34.) Not to be outdone by the outrages at the headquarters of Level Propane, the men in field also participated in the wholesale spiriting away of physical assets with a view toward making asset value unascertainable by making a hash of the tank serial-number data base that correlated customers to their tanks: not only were customer tanks taken from the various plants by the truck-load for sale by a second-hand vendor on at least four (4) separate occasions between June and August, 2002, but men in the field were authorized to sell customer tanks throughout the winter heating season of 2002-2003 (December, 2002 – February, 2003) to whomever they could manage at whatever price they could get, so long as a cash payment of \$75 per tank made its way into the hands of management. These novel practices were capped by the bizarre events of April, 2003, in which a work order was issued to the field managers to purchase quantities of “Amerigas White” paint, to be mixed by Sherwin-Williams especially for the project, and to paint the 30,000 gallon storage tanks at each plant this Amerigas White over the pale gray identified with Level Propane. This work order was issued even before assets of the Debtor were in the hands of Eagle Rock as purchaser. The effect of all of these actions by the Bank Group was to make it impossible to identify the customer tanks with particular leases, and to further obliterate the identity of Level Propane as going concern on the ground.

35.) In the midst of all these machinations, the Equipment Lessors, recognizing the Bank Group’s domination of Level Propane and BFCAs for what it was, filed a Complaint for Equitable Subordination in January, 2003. In their complaint, they

described how Level Propane had been turned into the Bank Group's alter ego and how the conduct of Level Propane, as Debtor-in-Possession, was wholly controlled by the Bank Group for its, the Bank Group's, sole benefit.

36.) While the spoliation of documents and the spiriting away of tanks were moving inexorably forward, delivery of gas to customers ground to a chilly and miserable halt. Management's prevailing failure to fill customer-owned tanks only served to slash the Debtor-in-Possession's customer base, thereby slashing the Debtor-in-Possession's calculable value. Timothy Conklin's prediction that absent allocation Level would face a supply crisis was borne out when plants in throughout the company system ran out of gas and some customers went without heat for days during a record-breaking cold snap, as the result of management's decision to abandon the partial-fill policy that kept customers with critical supply until demand fell off and pipeline allocation ended for the season. The futile establishment of a "rail supply terminal," consisting of little more than a pumper truck at a rail siding, after the crisis had come and gone was yet another empty gesture by the Debtor-in-Possession's management to disguise the *clear pattern of enterprise destruction* in which it had engaged from its initial involvement.

The Bank Group's Pillage Revealed, then Covered Up

37.) Mr. Maloof's efforts to bring the document spoliation to the Court's attention in his Emergency Motion for Appointment of Examiner of March 11, 2003, were frustrated by the false assurance that the spoliation was investigated by disinterested counsel. Counsel brought forward in Court to offer this assurance was none other than Peter Kirsanow, who, proclaiming his disinterestedness, pledged to conduct a thorough

and objective investigation into the Angart incident. As matters unfolded, Mr. Kirsanow's disinterestedness was put to the lie when, in his investigation he bullied a witness to remain silent, and he appeared on behalf of the Debtor-in-Possession before the New Mexico Labor Board, to contest the claim of a terminated employee. Mr. Kirsanow was joined in this appearance by Richard Anter, who, having resigned as President of Level (or Horizon? We know not which.) in March to become Director of Legal and Human Resources, reappears as President in May.

The Bank Group's Panic Saves the Day

38.) Despite the misrepresentations made directly to the Court, an Examiner was appointed on April 14, 2003, on the motion of the United States Trustee. The Trustee's motion had been made in response to the pleading submitted by Mark Schlachet in which he recounted, among other matters, the domination of BFCA by the Bank Group. The scope of the Examiner's duties were not set out in the Order, but, rather, reserved. The very next day, April 15, 2003, the Debtor files its proposed Reorganization Plan. Three calendar days later, April 18, 2003, the Bank Group submits to Court its unequivocal support for the Reorganization as proposed. Ten (10) calendar days later, April 28, 2003, a Global Settlement was submitted for the Court's approval. The Equipment Lessors were dragged into this settlement, with an apparent promise of almost 50% of the sale proceeds, against the prospect, made painfully apparent throughout the winter, of their assets on the ground vanishing before their eyes as they sought to prove their claims against the Bank Group. The proposed Global Settlement was followed the next day, April 29, 2003, by a Motion for Sale of Level Assets to Eagle Rock. The same day, the

Bank Group files with the Court its comments regarding the scope of the Examiner's duties – stating that his budget should not exceed \$35,000 and that the scope of his investigation, both as to issues and as to time allotted to the investigation, should be severely limited in view of the proposed Global Settlement and the Motion for Sale. Since these events would resolve the disposition of any pending disputes and further the largest asset would be sold, there seemed no purpose in raking up old coals.

39.) On April 30, 2003, the order setting out the scope of the Examiner's duties was issued. The examiner would address only the issues bearing on the propriety of BFCA's conduct in relation to the bankruptcy, both pre- and post-petition, and address additionally the allegation that Robert Angart attempted to wrongfully dispose of corporate records. The report was to be filed June 6, 2003. In the report, the Examiner made it clear that his scope was extremely narrow and that his conclusions were necessarily curtailed by the severely limited time frame in which he was required to investigate and report on the issues. Shortly thereafter, the Global Settlement was approved by the Court.

40.) In July, 2003, the tank inventory was completed. and the Sale of Assets was closed. Eagle Rock later sold the assets to Amerigas, who stated to the trade press that it was unable to determine with any assurance how many customers came with the former Level Propane. Some three years later, in May, 2006 at Level's former headquarters in Westlake, Amerigas unveiled the computer dispatch system that it had obtained with the purchase of the Level assets to its hundreds of plant managers.

COUNT I

41.) Plaintiff herein reiterates and incorporates by reference all of the allegations set forth above as if fully rewritten herein.

42.) Defendants' took control of the law firm Benesch, Friedlander, Coplan & Aronoff (BFCA), so that BFCA represented the interests of the Defendants rather than the corporations of which Plaintiff was sole shareholder no later than March 7, 2002. As of March 7, 2002, BFCA was guaranteed weekly payment of its fees by John Rudd, the agent of the Defendants installed to manage the affairs of the corporations of which Plaintiff was sole shareholder.

43.) In order to maintain the pretense that BFCA represented the interests of Plaintiff as sole shareholder, BFCA was required to communicate repeatedly by telephone, by fax and by email with Plaintiff to maintain this pretense and to further reassure him that the firm, BFCA, in fact represented him and represented his interests with respect to the corporations of which he was sole shareholder, until on June 6, 2002, when the Bank Group caused to be filed a Petition for Involuntary Bankruptcy and it was no longer possible to maintain such pretense.

44.) On or about June 4, 2002, Plaintiff demanded that BFCA turn over the so-called first day papers for the contemplated Chapter 11 Voluntary Bankruptcy, so that he might cause them to be filed in the event that BFCA refused to do so. BFCA never turned these filings over to Plaintiff, despite his repeated demands up to the moment that June 6, 2002 Involuntary Bankruptcy Petition was filed.

45.) The maintenance of this pretense and the making of false assurances to Plaintiff that his interests as sole shareholder of the corporations were represented, and

not to the contrary, as was the true case, that BFCB represented the interests of the Bank Group's interests with respect to the corporations were accomplished by means of wire communications, each of which were wire frauds as defined by 18 USC Sec. 1341, and the pattern of which, constitutes a pattern of corrupt activity and as a direct and proximate consequence of which Plaintiff was injured in his property and for which Plaintiff claims damage pursuant to Ohio Revised Code Sec. 2923.34.

COUNT II

46.) Plaintiff herein reiterates and incorporates by reference all of the allegations set forth above as if fully rewritten herein.

47.) The Defendants, through their agent John Rudd and Newmarket Partners, LLC, further sought to and succeeded in the further destruction of the going concern value Level Propane Gases, Inc., by deliberately failing to pay lease payments as they fell due, thereby deliberately interfering with the existing business relationships with Level Propane Gases, Inc.'s equipment lessors. Further, by pursuit of a deliberate decision to so limit summer pipeline propane purchases as to make all but certain that Level Propane Gases, Inc. would have insufficient pipeline allocation to serve its customers during the peak demand period of the winter heating season, Defendants' agent, Newmarket Partners, LLC, acting on behalf of its principal, the Defendant Bank Group, interfered with Level Propane Gases, Inc.'s contractual relations with its existing customers, deliberately, maliciously, knowingly and with the intent to damage Level Propane Gases, Inc.'s existing relationships with its customer base. The filing of Involuntary Bankruptcy on June 6, 2002 made it impossible to reverse the disastrous course deliberately set by the

Defendants, at which point Plaintiff was damaged. The foregoing conduct constitutes intentional interference with existing business relationships, a pendent state claim.

COUNT III

48.) Plaintiff herein reiterates and incorporates by reference all of the allegations set forth above as if fully rewritten herein.

49.) Plaintiff's corporation Level Propane Gases, Inc. was the subject of two pre-petition good-faith, arm's-length offers of purchase by ready, willing and able buyers that would have resulted in the full payment of any debt owing the Defendants and a return on Plaintiff's equity, over and above any debt owed, in the amount of \$140 Million.

50.) Defendants at all times that these offers were pending, one from Star Gas, Inc., made conclusively no later than February 1, 2002 and the other from Ferrell Gas, LLP, made conclusively no later than May 1, 2002, were in complete control of the affairs of Level Propane Gases, Inc. and operating it as their alter ego in all material respects.

51.) Defendants frustrated and spurned both of these offers abovesaid, knowing full well that Plaintiff would receive substantial monies for his equity in Level Propane Gases, Inc. The Defendants' filing of the Involuntary Bankruptcy Petition on June 6, 2002, utterly destroyed any chance that either of these offers would result in a sale of Level Propane Gases, Inc. on terms that would leave Plaintiff with any money return on his equity. Their conduct was, therefore, a direct interference with Plaintiff's advantageous business relationship with both Star Gas and Ferrell Gas, by which Plaintiff was directly and proximately injured in his property, for which he claims damage.

COUNT IV

52.) Plaintiff herein reiterates and incorporates by reference all of the allegations set forth above as if fully rewritten herein.

53.) Defendants made direct representations to the Bankruptcy Court in pleading and in person that they knew at the time these representations were made were false, including, without limitation, that the initial filing of Involuntary Petition for Chapter 7 Relief, on or about June 6, 2002, their representations in the Agreed Order of June 11, 2002, and their representations to the Court that they would undertake an objective investigation of document spoliation. This conduct recited above herein constitutes bankruptcy fraud as defined in 18 USC Sec. 157.

54.) The Defendants' further misconduct, including without limitation, their deliberate frustration of the September 23, 2002 auction, as set forth above, the spoliation of corporate documents, the dissipation of corporate assets, the abandonment of fully **30%** of Level Propane Gases Inc.'s customer base, the deliberate alienation of the remaining customers by their sabotage of the continuous propane supply necessary to maintain their business relationships with said customers, all constitute bankruptcy fraud as defined in 18 USC Sec. 157.

56.) The conduct of the Defendants in frustrating any successful reorganization precluded Level Propane Gases, Inc. from the Chapter 11 Bankruptcy proceeding as a going concern. Had it done so, its provable going concern value would have been in excess of \$1.5 Billion.

55.) The foregoing conduct, to wit: a continuous pattern of bankruptcy frauds, constitutes a violation of 18 USC Secs. 1961 and 1962 and is therefore actionable

pursuant to 18 USC Sec. 1964. Plaintiff claims damage to his property as a direct and proximate result of Defendants' misconduct, for which he claims damage.

WHEREFORE, Plaintiff prays for judgment against Defendants as to all counts set out in this Complaint as follows:

- 1.) As to Count I, damages in the amount of \$1,000,080,000.00 plus punitive damages plus interest at the statutory rate plus punitive damages;
- 2.) As to Count II, damages in the amount of \$1,000,080,000.00 plus punitive damages plus interest at the statutory rate;
- 3.) As to Count III, damages in the amount of \$1,000,000,080.00 at steady 2002 dollars interest at the statutory rate plus punitive damages;
- 4.) As to Count IV, treble damages in the amount of \$3,000,240,000.00 plus interest at the statutory rate plus punitive damages;
- 5.) Such other relief as is just and proper in the premises.

Respectfully Submitted,

/s/
David C. Eisler, Ohio Bar No. 0020362,
Counsel for the Plaintiff
P.O. Box 1721
Medina, OH 44258
(216) 513-6369
inqs@aol.com

JURY DEMAND

Plaintiff hereby demands a trial by jury of all causes of action triable thereto.

/s/

David C. Eisler

SERVICE

Service has been made by ordinary mail on all the present defendants and by Summons on Deutsche Bank Americas, as a Second Attempt of Service, and the New Party Defendant, National City Bank this 21st day of June, 2006.

/s/

David C. Eisler