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CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

EXHIBIT 5

Maloof Affidavit

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

In re:)	Chapter 11
Level Propane Gases, Inc. et al.,)	
Debtors)	Case No. 02-16172
)	
)	Judge Randolph Baxter

**AFFIDAVIT OF PREJUDICE
28 U.S.C. Sec. 144**

STATE OF <u>Ohio</u>)	
COUNTY OF <u>Medina</u>)	SS.

Now comes William H. Maloof, being of legal age and duly sworn according to law and deposeth and sayeth as follows:

1.) Affiant was at all times relevant to this affidavit and is the sole shareholder of Level Propane Gases, Inc. and all of the other corporations over which the Bankruptcy Court has asserted jurisdiction in the above-captioned case;

2.) Affiant says further that Judge Randolph Baxter was assigned to the above-captioned case;

3.) Affiant says further that Judge Baxter was presented a certain newspaper article published in the *Cleveland Free Times* over a year previous to the date of the filing of the petition for involuntary bankruptcy initiating this case on June 6, 2002, which article contained scandalous, scurrilous, false and slanderous material concerning Affiant personally, and material injurious to the reputation of his businesses that were likewise false. Said article contained

scandalous, scurrilous and false material concerning Affiant's personal, allegedly criminal, conduct, so damning of his moral character that its damage to his reputation in the eyes of Judge Baxter was irreparable. The Petitioning parties, consisting of BT Commercial Corp., as agent, Deutsche Bank, LaSalle Bank and Provident Bank (the Bank Group), knew that the statements in the year-old *Cleveland Free Times* article were false, scandalous and scurrilous. Further, the Bank Group knew that said scandalous material concerning Affiant was entirely false and without foundation and further had no bearing whatsoever on the issues presented in the bankruptcy proceedings. Rather than retract its scandalous and scurrilous statements concerning the Affiant, the *Cleveland Free Times* ceased publication, and abandoned its corporate existence in October, 2002, resuming only some six months later under new ownership which had purchased its going-concern assets, in May, 2003. The *Cleveland Free Times* article archives pre-dating its ceasing publication in October, 2002, were never again made available to the public via the internet. This concealment of prior articles parallels the loss of the customer database at Level Propane in April, 2003.

4.) Affiant says further that the person advancing the scurrilous, scandalous and defamatory statements that were published in the *Cleveland Free Times* did so knowing they were false and did so in order to defame Affiant. This person was, many years prior to advancing the defamatory statements, a member of Carmen Zagaria's criminal drug smuggling and distribution ring, as a member of which she had witnessed scores of heinous crimes, including murder, and had participated in their concealment. The above-said Zagaria ring was active in the Cleveland west side in the 1970s and into the 1980s, when it was broken up through a series of prosecutions by the United States District Attorney for the Northern District of Ohio, during the time in which Judge Baxter was an Assistant United States Attorney in that office. That Judge

Baxter regarded these scurrilous, scandalous and defamatory statements as relevant to the matters in the Level Propane Bankruptcy proceedings and as worthy of credence was later born out when the Affiant was told by then Cuyahoga County Juvenile Magistrate Thal that Judge Baxter had been "asking around" concerning the Affiant, the person advancing these defamatory statements, and their daughter, who was three years of age at the time the defamatory statements were made;

5.) Affiant says further the aforesaid scandalous, scurrilous and false material damaging to the Affiant's personal moral reputation was of such force and nature that Judge Baxter could only view Affiant with revulsion and disgust. Affiant says further that as a result of the aforesaid *Cleveland Free Times* article, Judge Baxter could not exercise his judgment free of the taint of the personal prejudice against Affiant, especially in view of his habits of mind developed as a former Assistant United States Attorney in the Northern District of Ohio.

6.) Affiant says further that Judge Baxter has acted throughout these proceedings in a manner consistent with this taint of personal prejudice against Affiant, created by the abovesaid *Cleveland Free Times* article. On September 23, 2002, Judge Baxter appointed Benesch, Friedlander, Coplan & Aronoff, LLP (BFCA) as Debtors' Counsel, despite the agreement in the Agreed Conversion Order of June 6, 2002 that they would only act as transitional and never as permanent counsel;

7.) Affiant says further that said appointment of BFCA was over his objection and that neither he nor his counsel was ever served with a copy of the Order thereby fatally prejudicing his appeal rights;

8.) Affiant says further that it was only in February, 2007 that Judge Baxter, through his Deputy, Paul Rini, provided Affiant with a copy of the Order that showed that the Affiant was left off the service list as well as his counsel;

9.) Affiant says further that the above said Order appointing BFCA as Debtors' counsel was provided to him only after the Affiant made a specific request of the National Archive and Records Administration for a copy of said Order, to be informed that the Order was missing from the Archives and which fact Affiant caused to be noticed on the record of this case;

10.) Affiant says further that the United States Trustee moved for the appointment of an Examiner in accordance with 11 U.S.C. section 1104(c) on February 26, 2003 (Docket Item No. 1107), Judge Baxter appointed G. Ray Warner as Examiner on April 30, 2003, with instructions to complete his report on June 6, 2003, knowing that this period of four weeks was altogether insufficient to complete any investigation that would result in any meaningful conclusions. The time constraints on the investigation were so severe that the last of the interviews, that of Brian Salvagni, in-house counsel for Level Propane Gases, Inc. and its affiliated corporations, was conducted only on June 2, 2003, an interview which the Examiner had no opportunity to test for its truthfulness, despite the fact that said Brian Salvagni knew material facts concerning the unlawful disposal of documents by the management installed by the Bank Group and carefully failed to disclose those facts, an art in which he was practiced, see *United States v. Triana*, 468 F.3d 308 (6th Cir., 2006), in which he was named as an unindicted co-conspirator for similar conduct;

11.) Affiant says further that the Report of the Examiner and its Exhibits, presented to the Bankruptcy Court on June 6, 2003, contain to this day numerous redactions, despite the Order by

Judge Baxter denying BFCA's Motion to Redact (Docket Item No. 1807) which Order itself is missing from the PACER record of this case, so that it is effectively impossible to enforce;

12.) Affiant says further that Judge Baxter denied Affiant a 2004 Examination of the Debtors, to be conducted for the purpose of permitting backers of Affiant to conduct a due diligence investigation of the Debtors, Docket Item No. 1472;

13.) Affiant says further that Judge Baxter refused to permit affiant to present the testimony of Patrick Tighe, a witness to document despoliation that triggered Affiant's Motion to Re-open Examiner's Investigation Docket Item No. 2887, instead ordering that BFCA would interrogate Mr. Tighe in deposition;

14.) Affiant says further that Judge Baxter has failed to conduct a hearing with respect to Affiant's Motion to Vacate Agreed Conversion Order of June 11, 2002 and Sale Order of June 27, 2003, Docket Item No. 3140, as amended, despite having set a hearing for October 16, 2007, and further refused to conduct an evidentiary hearing despite the presence of fully 25 witnesses ready to testify in support of Affiant's Motion to Vacate, see *Notice of Witness Subpoenas Served*, Docket Item No. 3177;

15.) Affiant says further that on the date set for the hearing of the above-said Motion to Vacate, October 16, 2007, Judge Baxter refused to hold the requested evidentiary hearing, instead taking the issue of whether he would hold an evidentiary hearing under advisement, when evidence of the theft of tens of millions of dollars in customer payments was placed on the record in support of the Motion to Vacate;

16.) Affiant says further that on that same day, October 16, 2007, no argument was heard on the Motion to Vacate, instead, Judge Baxter granted John Verbos's Motion to Quash Subpoena, premised on an admitted misquotation of *H.K. Porter Co. v. Goodyear*, 536 F.2d

1111, 1118 (6th Cir., 1976), knowing full-well that the case did not apply to the facts presented by Affiant's Motion to Vacate;

17.) Affiant says further that Judge Baxter has granted a Motion for Summary Judgment in *WHM Emprises, Inc., et al. v. Maloof*, Adv. Pro. No. 07-1278, in favor of the Plaintiffs, in which they allege he took certain causes of action against Deutsche Bank, LaSalle Bank and National City Bank, (the Bank Group) for fraud and enjoining him from pursuing same;

18.) Affiant says further that Judge Baxter granted that Summary Judgment despite the affirmative defense made by Affiant that the bankruptcy proceedings were the product of frauds upon the court, while acknowledging that the Affiant had advanced and made a factual showing to support that affirmative defense but specifically refused to consider it, claiming instead that the fraud was a separate matter;

19.) Affiant says further that Judge Baxter granted the aforesaid Summary Judgment from the bench on January 29, 2008, knows that an Appeal has been taken from that ruling, and that in his Order from which Affiant has taken his appeal failed to address the issue of fraud upon the court, consistent with his refusal to address the issue in his bench ruling;

20.) Affiant says further that Judge Baxter is aware of the fact that he has not fully adjudicated the aforesaid Summary Judgment, and that his failure to do so is clear error;

21.) Affiant says further that BFCA and its confederates have sought and obtained the approval of a certain settlement in *Level Propane Gases, Inc. v. Maloof*, Adv. Pro. No. 04-1300, which they assert is necessary to fund the Chapter 11 Plan on February 29, 2008, upon which was issued a written Order on March 3, 2008, Docket Item No. 3266. Judge Baxter was and is aware that the aforesaid settlement was proposed over Affiant's unequivocal refusal to join in it,

because Affiant maintains that the purpose of the suit was to tarnish his business reputation, and so said in open court on February 26, 2008;

22.) Affiant says further that Judge Baxter denied from the bench Affiant's Motion to Disqualify BFCA as Debtor's Counsel on February 26, 2008, upon which was issued a written Order on March 3, 2008, Docket Item No. 3264. In so denying the Motion, Judge Baxter knowingly overruled a finding of the District Court in *Maloof v. Level Propane Gases, Inc.*, Case No. 07-0153, Docket Item No. 20 issued August 16, 2007, (U.S.D.C., N.D.O., Aldrich, J.) that BFCA were officers of the court representing the Bank Group.

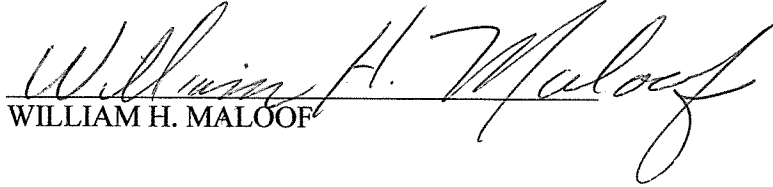
23.) Affiant says further when Judge Baxter cited the passage in which the District Court stated that BFCA represented the Bank Group in his Memorandum of Law denying Affiant's Motion to Vacate Agreed Conversion Order and Sale Order (Docket Item No. 3253), that statement was omitted from the passage and an elision put in its place;

24.) Affiant says further that Judge Baxter denied Affiant's Motion to Vacate Agreed Conversion Order of June 11, 2002 and Sale Order of June 27, 2003 (Docket Item No. 3140, as amended), to which were attached as Exhibits statements of those part of the customer database compromise and who worked in the cash room, who were employed after the management of Level Propane was taken over by designees and agents of the Bank Group. These witnesses had no pre-existing loyalties to Affiant, despite Judge Baxter's pointed inquiries as to their loyalty in open court on prior occasions;

25.) Affiant says further that by means of such conduct Judge Baxter has demonstrated a sharp prejudice against the Affiant and a corresponding prejudice in favor of the Bank Group, which prejudice was created by the Bank Group by the presentation of scandalous, scurrilous and

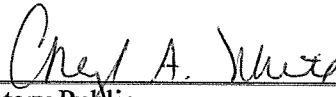
defamatory falsehoods printed in the *Cleveland Free Times*, having no bearing on the issues in the Bankruptcy Proceedings.

FURTHER AFFIANT SAYETH NAUGHT.


WILLIAM H. MALOOF

Sworn and subscribed before me, a Notary Public, in and for the State of
Ohio, by Cheryl A. White, this 27th day of March,
2008.

Cheryl A. White
Notary Public-State of Ohio
My Commission Expires 12/9/08


Notary Public

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Debtors)	Case No. 02-16172
)	
)	Judge Randolph Baxter

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CERTIFICATION OF COUNSEL

- 1.) I am counsel for William H. Maloof in the above-captioned matter.
- 2.) I certify that the statements made in the Affidavit are true and that the Affidavit is made in good faith.

Respectfully Submitted,

/s/ David C. Eisler
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SERVICE

I hereby certify that on this 24th day of March, 2008, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ David C. Eisler
David C. Eisler, Counsel for William H. Maloof