

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI -DADE COUNTY, FLORIDA

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and Managing
Member,

Defendants,

and,

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

THE ORIGINAL
FILED ON:
JAN 27 2009
IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL

**RECEIVER'S MOTION FOR A COURT ORDER AUTHORIZING
RECEIVER TO COMPROMISE WITH THE CLAIMS OF JOHNS MANVILLE**

Michael Goldberg, as Court Appointed Receiver over DB Biloxi, LLC ("Edgewater"), by and through undersigned counsel, moves this Court for an Order authorizing the Receiver to enter into a compromise of the claims of Johns Manville and enter the Stipulated Final Judgment, and as grounds therefore states:

1. Michael Goldberg acts as Court Appointed Receiver over Relief Defendant, DB Biloxi, LLC.
2. DB Biloxi, LLC is a single purpose entity formed by Dana Berman to take title to a condominium conversion project in Biloxi, Mississippi. As part of the condominium

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conversion certain construction work was undertaken by Johns Manville, Inc., including the provision of roofing materials and installation of the material.

3. As part of performing roofing work, Johns Manville entered into an agreement with DB Biloxi, LLC, whereby the latter was to be named as an additional insured under its windstorm policy. DB Biloxi, LLC management failed to make the arrangements for this entity to be named as an additional insured under the policy and it was not so named.

4. As a result of Johns Manville not being named as an additional insured, DB Biloxi, LLC, was not required by this Court to pay Johns Manville from the proceeds of windstorm insurance recovered pursuant to the insurance settlement. The use of these funds was previously authorized by this Court.

5. Before and after the property was destroyed by Hurricane Katrina during the fall of 2005, DB Biloxi, LLC was making payments under an unsecured Note entered into between
the Relief Defendant and Johns Manville.

6. At this time, Johns Manville is still owed by DB Biloxi, LLC the amounts stated in the attached proposed judgment and therefore, the Receiver does not oppose the entry of the judgment.

7. The Receiver contends that if the court approves the entry of the judgment, it should have a status junior to the secured claims of Transcapital Bank and the MAMC percentage lenders who respectively hold first and second mortgages.

WHEREFORE, the Receiver seeks a Court Order authorizing the Receiver to enter into the attached judgment, determine the judgment shall be inferior to the secured claims against DB Biloxi, LLC held by Transcapital Bank and the MAMC Lenders, and for such other relief as the Court deems just and appropriate under the circumstances.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this 27th day of January 2009, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd Avenue, Suite N-708, Miami, Florida 33128; to **Charles Pickett, Esquire, Counsel for Johns Manville**, CASEY CIKLIN LUBITZ MARTENS & O'CONNELL, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401; to **Richard H. Bergman, Esquire, Counsel for Transcapital Bank**, BERGMAN & JACOBS, P.A., 2001 Hollywood Boulevard, Suite 200, Hollywood, Florida 33020; to **Charles W. Throckmorton, Esquire, Attorneys for Dana Berman**, KOZYAK TROPIN THROCKMORTON, P.A., 2525 Ponce de Leon Boulevard, 9th Floor, Coral Gables, Florida 33134; and to **Gabrielle D'Alemberte, Esquire, LAW OFFICES OF ROBERT PARKS**, 2121 Ponce de Leon Boulevard, Suite 505, Coral Gables, Florida 33134.

Respectfully submitted,

BERGER SINGERMAN

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By: _____

~~JAMES D. GASSENHEIMER~~

~~Florida Bar No. 959987~~

cc: The Honorable Thomas Wilson, Jr. *(via Hand-Delivery)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*
Posted to the Berman Mortgage Website

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