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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In re:	§	CHAPTER 11
CRESCENT RESOURCES, LLC et al.	§	Case No. 09-11507 (CAG)
Debtors,	§	(Jointly Administered)

CRESCENT RESOURCES LITIGATION TRUST, by and through Dan Bensimon, Trustee,	§	
Plaintiff	§	
v.	§	Adversary No. 10-_____
DUKE ENERGY CORPORATION; DUKE VENTURES, LLC; SPECTRA ENERGY CAPITAL, LLC f/k/a DUKE CAPITAL, LLC; DUKE VENTURES, INC.; DUKE ENERGY CAROLINAS, LLC; DUKE ENERGY CAROLINAS; B. KEITH TRENT; JIM W. MOGG; JAMES M. SHORT, JR.; ARTHUR W. FIELDS; and R. WAYNE McGEE	§	
Defendants		

PLAINTIFF'S ORIGINAL COMPLAINT AND OBJECTION TO CLAIMS

Plaintiff Crescent Resources Litigation Trust (the "Litigation Trust"), by and through Dan Bensimon, Trustee, files this Original Complaint against Duke Energy Corporation ("Duke Energy"); Duke Ventures, LLC ("Duke Ventures"); Spectra Energy Capital, LLC f/k/a Duke Capital, LLC ("Duke Capital") (Duke Energy and its wholly-owned subsidiaries Duke Ventures and Duke Capital are sometimes referred to herein collectively as "Duke"); Duke Ventures, Inc.; Duke Energy Carolinas, LLC, Duke Energy Carolinas (collectively "Duke Energy Carolinas"); Jim W. Mogg, James M. Short, Jr., Arthur W. Fields, and R. Wayne McGee (collectively "Crescent Board of Managers"); and B. Keith Trent ("Trent").

I. INTRODUCTION

1. In September 2006, Duke required Crescent Resources, LLC ("Crescent Resources"), at the time Duke's wholly owned subsidiary, to borrow $1.225 billion from a consortium of banks and, immediately thereafter, to transfer $1.187 billion of these loan proceeds directly to Duke. However, only Crescent Resources (as the direct obligor), and the Crescent Debtor Subsidiaries (as guarantors of the loan) were liable on the $1.225 billion dollar loan. That was so even though the loan transaction (and other related transactions) (collectively, the "2006 Duke Transaction") benefited Duke - not Crescent Resources - and Crescent Resources had no viable business plan upon which it could repay its lenders; no viable means of servicing this debt; and was in fact rendered insolvent as a result of these transactions.

2. Crescent Resources predictably defaulted on the loan and, with the Crescent Debtor Subsidiaries, filed bankruptcy in this Court on June 10, 2009 (the "Crescent Bankruptcy"). Claims in the Crescent Bankruptcy totaling more than $2.25 billion were brought by the more than 1000 innocent creditors who were the victims of Duke's conduct.

3. On May 24, 2010, this Court confirmed a plan of reorganization in the Crescent Bankruptcy. Pursuant to that plan, the Litigation Trust was established to, among other things, collect (on behalf of the Debtors and their creditors) those damages resulting from the improper transfers of Crescent Resources' funds to Duke that are described herein. In this action, then, the Litigation Trust sues Duke, as well as the individuals who directed and/or substantially assisted the transactions at issue for, *inter*

alia, the $1.187 billion wrongfully transferred to Duke, as well as for the damages occasioned by the other misconduct set forth herein.

II. THE PARTIES

4. Plaintiff Crescent Resources Litigation Trust is established by this Court's Order Confirming Debtors' Revised Second Amended Joint Plan of Reorganization. Dan Bensimon is the duly appointed Trustee of the Litigation Trust.

5. Defendant Duke Energy Corporation is a Delaware Corporation with its principal place of business in North Carolina. Duke Energy Corporation may be served with process at the offices of its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

6. Spectra Energy Capital LLC, f/k/a Duke Capital, LLC is a Delaware Limited Liability Company with its principal place of business in Houston, Texas. Spectra Energy Capital, LLC may be served with process upon CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, TX 75201.

7. Duke Ventures, LLC, is a Nevada Limited Liability Company with its principal place of business, on information and belief, in North Carolina. Duke Ventures, LLC may be served with process by service upon CT Corporation System, 150 Fayetteville Street, Box 1011, Raleigh, NC 27601.

8. Duke Ventures, Inc., is a Delaware Corporation with its principal place of business, on information and belief, in North Carolina. Duke Ventures, Inc. may be served with process upon its attorney of record in the Bankruptcy, Berry D. Spears, Fulbright & Jaworski, L.L.P., 600 Congress Ave., Suite 2400, Austin, TX 78701.

9. Duke Energy Carolinas, LLC is a North Carolina Limited Liability Company with its principal place of business, on information and belief, in North Carolina. Duke Energy Carolinas, LLC may be served with process by service upon its registered agent CT Corporation System, 150 Fayetteville Street, Box 1011, Raleigh, NC 27601.

10. Duke Energy Carolinas is an unknown type of business with its principal place of business, on information and belief, in North Carolina. Duke Energy Carolinas may be served with process by service upon its counsel as Claimant, Duke Energy Corporation Office Of The General Counsel, PO Box 1006, Charlotte, NC 28201.

11. Defendant B. Keith Trent is, upon information and belief, an individual resident of North Carolina. Defendant Trent may be served with process at his home address of 5211 Gorham Dr., Charlotte, NC 28223.

12. Defendant Jim W. Mogg is, upon information and belief, an individual resident of Colorado. Defendant Mogg may be served with process at his home address of 25952 Fern Gulch Rd., Evergreen, CO 80439.

13. Defendant James M. Short, Jr. is, upon information and belief, an individual resident of North Carolina. Defendant Short may be served with process at his place of employment, CLT Development, LLC, 400 South Tryon St., Charlotte, NC 28285.

14. Defendant Arthur W. Fields is, upon information and belief, an individual resident of North Carolina. Defendant Fields may be served with process at his home address of 2112 Cassamia Glen Ct., Charlotte, NC 28211.

15. Defendant R. Wayne McGee is, upon information and belief, an individual resident of North Carolina. Defendant McGee may be served at his home address of 16629 Jetton Rd., Cornelius, NC 28031.

III. JURISDICTION AND VENUE

16. Bankruptcy Court Jurisdiction. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a) & (b) because this is a civil proceeding arising in or related to the Crescent Bankruptcy under Chapter 11 of Title 11 of the United States Code and because this is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to 28 U.S.C. § 157(b), this court also has jurisdiction over non-core claims that arise out of the subject bankruptcy. Pursuant to 28 U.S.C. §§ 1334(b) and 1367, the federal courts also have jurisdiction over pendant claims that arise out of the subject bankruptcy. Thus, this Court has jurisdiction over each of the claims asserted herein.

17. Jurisdiction over the Parties. This Court has jurisdiction over each of the Defendants because each is a citizen of the United States and each has conducted business within the Western District of Texas, including business that gives rise to the claims asserted herein. In addition, proofs of claims have been filed in the Crescent Bankruptcy by Defendants Duke Energy, Duke Ventures, Duke Ventures, Inc., Duke Energy Carolinas, Fields and Short, giving this Court jurisdiction over each of them. The filing of proofs of claims constitutes a voluntary submission to the equity jurisdiction of the bankruptcy court, especially where, as here, that jurisdiction is factually related to the claim.

18. Venue. Pursuant to 28 U.S.C. § 1409, venue is proper in the Western District of Texas, Austin Division, because that is the place of filing of the Crescent

Bankruptcy and because certain of the real estate that is the subject of the underlying bankruptcy estate is located within the Western District of Texas.

IV. FACTUAL BACKGROUND

A. The Litigation Trust

19. The Litigation Trust is the holder of the Debtors' claims arising from, among other things, the 2006 Duke Transaction. In its Order confirming Debtors' Chapter 11 plan of reorganization, this Court held that "the Litigation Trust Assets shall be transferred to the Litigation Trust in accordance with the provisions of the Plan." The Revised Second Amended Joint Plan provides that the 2006 Duke Transaction causes of action are specifically reserved by the Debtors and transferred, pursuant to the Plan, to the Litigation Trust. The Plan further provides that the causes of action transferred to the Litigation Trust include state law claims of fraudulent transfer and all other causes of action that could be brought under §§ 544, 547, 548, 549, 550 and 551 of the Bankruptcy Code. The Litigation Trustee is a properly appointed representative of the estate for the purposes of retaining and enforcing the claims and causes of action under § 1123(b)(3)(B) of the Bankruptcy Code.

B. The Debtors' Business

20. Prior to the 2006 Duke Transaction, Crescent Resources, LLC was a wholly owned indirect subsidiary of Duke Energy. On information and belief, Duke Energy wholly owned Duke Capital, which wholly owned Duke Ventures, which wholly owned Crescent Resources. Crescent Resources was, in effect, the Duke entity that held and developed Duke's real estate.

21. Duke Energy is a successor to energy companies that created numerous hydroelectric projects in the Catawba and Wateree River basins of North and South Carolina. In the course of those projects, Duke obtained the rights to huge tracts of land which, after the installation of the dams, included substantial lake-front and timber holdings.

22. In approximately 1969, Duke created Crescent Resources' predecessor, Crescent Land and Timber Company, as a separate entity to hold the various real estate interests. On information and belief, Crescent Land and Timber was created as a separate entity so that the real estate assets would not be subject to a Federal Power Commission Order requiring power companies to provide recreational opportunities on lands surrounding their reservoirs.[1]

23. In 2000, Crescent Resources, LLC was formed and received title to the land holdings of its immediate predecessor, Crescent Resources of Georgia, Inc. Historically, Crescent Resources primarily developed master planned residential communities. Many of these communities were large lake-front properties located on the series of Catawba and Wateree river basin lakes created by Duke's hydroelectric projects.

24. Over the years, Crescent Resources branched out into additional geographic areas and acquired additional properties, primarily through I.R.C. § 1031 like-kind exchanges of those "Legacy" properties it already held, for other properties. However, the core of its business model remained unchanged: Crescent Resources took large parcels of real estate, installed extensive infrastructure (such as roads and utilities), installed capital-intensive amenities (such as golf courses and community centers), and then sold lots to home-builders or individuals. This capital-intensive and long-term

[1] See, *Catawba Indian Tribe v. South Carolina*, 978 F.2d 1334 (4th Cir. 1992).

business plan was designed to maximize the return on these low or zero-basis properties. A key component of this business plan was to utilize a modest amount of project debt, usually less than 20% of the book value of the asset, and otherwise avoid long-term debt.

25. Using this business plan, Crescent Resources' property holdings expanded over the years, from the Catawba and Wateree lakes to other Carolina properties, eventually expanding to the greater Atlanta area; to the Hilton Head, South Carolina area; to Payson, Arizona; and to the Austin, Texas area. In addition, Crescent Resources branched out into the development of commercial and retail projects – again primarily in the South.

26. In approximately 1999, Crescent Resources also expanded its operations to Florida by acquiring an 80% interest in LandMar Group, LLC, and its subsidiary entities (collectively "LandMar"). LandMar was an established Florida-based real estate developer whose principal was Mr. Ed Burr. On information and belief, Mr. Burr retained a significant interest in, and control of, the LandMar developments after Crescent Resources acquired its 80% interest. Mr. Burr also became Crescent Resources' Executive Vice President – Florida.

27. Customarily, Crescent Resources created single-purpose entities for each of its developments, although, from time to time, several entities would be involved in a single project. As a result, in 2006, Crescent Resources operated, either as sole owner, via LandMar, or as majority owner, roughly 100 projects through roughly 120 entities.[2] As of December 31, 2005, the book value of Crescent Resources' majority and minority interests in these projects was $1.2 billion.

[2] Many of which are Debtors in these proceedings.

28. At the time of the 2006 Duke Transaction, Crescent considered itself to be "one of the pre-eminent diversified, multi-product real estate development companies in the United States." Its stated business plan going forward was to "continue portfolio diversification and to seek new acquisition and development opportunities."

C. Duke's Domination of the Debtors

29. From its inception, Crescent Resources was operated as the real estate division of Duke Energy. Duke Ventures was, from inception, the sole owner of Crescent Resources and the affairs of Crescent Resources were completely and totally controlled by Duke Energy and Duke Ventures. Moreover, the same individuals that made decisions for Duke also made decisions for Crescent Resources. Duke Energy employees typically sat on Crescent Resources' Board of Managers and the Duke Transaction Review Committee was empowered to review and approve any significant transactions by Crescent Resources.

30. Duke Ventures, LLC was created in December of 2000. In 2006, its Managers included Defendants Fields and Mogg. Defendant McGee had previously served as its Treasurer. In 2006, its president was Defendant Trent, who also served, at various times, as President of Duke Energy's Commercial Business Group, its Chief Strategy, Policy, and Regulatory Officer and as its General Counsel, Litigation.

31. Crescent Resources, too, was created in December of 2000. Three of Duke Ventures' Managers also comprised the majority of the Board of Managers of Crescent. In 2006, the Crescent Resources Managers included Defendants Fields, Short, McGee, and Mogg. Defendant Fields also served as Crescent Resources' President and CEO. Defendant McGee served as its CFO. Defendant Short served as its Vice-

President of Land Development. The remaining Manager of Crescent Resources was Defendant Mogg, who simultaneously served as Advisor to the Chairman of Duke Energy. Thus, at all times relevant to the 2006 Duke Transaction, the majority of its Managers were on both sides of the transaction - ostensibly serving Crescent Resources but simultaneously serving Duke.

32. On information and belief, the Duke Transaction Review Committee (comprised of Duke Energy officials) approved the 2006 Duke Transaction for both Duke and Crescent Resources.

33. The Formation and Sale Agreement between Duke Ventures, Crescent Resources, and Morgan Stanley was executed, on behalf of Duke Ventures, by Defendant Trent, and on behalf of Crescent Resources, by Defendant Fields (who was a Member of Duke Ventures). The Credit Agreement was executed on behalf of Crescent Resources by Defendant McGee (who had previously been Treasurer of Duke Ventures). The loan proceeds, of course, were paid to Duke Ventures and then passed on to Duke Energy.

34. Nor did Crescent Resources receive independent and conflict-free legal advice with respect to the transaction. Robinson, Bradshaw & Hinson, P.A. ("RBH"), a North Carolina law firm, represented Crescent Resources in connection with the 2006 Duke Transaction. But, on information and belief, it did not give independent advice to Crescent Resources' Board. In fact, on information and belief, RBH, which had long-standing ties to Duke Energy and its affiliates, also represented *Duke* in the same transaction.

35. The idea for the transaction at issue was apparently developed jointly between Duke and its financial advisor, Morgan Stanley, during 2005. By mid-2005,

senior Duke managers were aware of several facts: first, that Duke's balance sheet and cash position would be adversely affected by Duke's impending merger with Cinergy in a $9.1 billion transaction; second, that federal regulatory agencies would, or might, require divestiture of Duke's land holdings; third, that the Crescent Resources real estate holdings were becoming increasingly volatile and presented great business risk; fourth, that the national employment picture, and the overall real estate market, were beginning to soften rapidly; and fifth, that the softening of the market was especially pronounced in areas – both in terms of geography (such as Florida) and market segments (such as condominiums) - upon which Crescent Resources was heavily dependant. Because of these facts, it was determined that the time was right for Duke to try to monetize and extract its investment in Crescent Resources. By mid-2005, Duke had, in fact, announced plans to dispose of Crescent Resources.

36. As Duke Chairman and CEO James E. Rogers explained after the fact in his 2006 Statement to Shareholders: "We reduced our earnings volatility and business risk by selling…our real estate development company, Crescent Resources."

D. The 2006 Duke Transaction

37. Rather than simply selling Crescent Resources on the open market, aggressively courting joint venture partners, or revising the business plan of Crescent Resources to favor a more aggressive selling strategy (each of which was expressly considered by Duke, in consultation with its investment advisor), Duke devised a plan that was intended to and did maximize cash outflows from Crescent Resources to Duke. Unfortunately, that same plan was devised with little or no regard to the financial risk to Crescent Resources, its subsidiaries, and their many creditors. Indeed, as the form of the

transaction took shape, the structure guaranteed that Crescent Resources, and its subsidiaries, would be rendered insolvent by the transaction itself.

38. In its final form, the Duke plan was as follows: On September 7, 2006, Crescent Resources and its subsidiaries entered into a series of transactions (collectively the "2006 Duke Transaction") whereby Crescent Resources: (a) inflated the 'value' of its assets by $544 million; (b) on the same date borrowed nearly $1.5 billion against the newly-inflated value of the assets (including a Term Loan of $1.225 billion, a Revolver Loan of $200 million, and a Swingline Loan of $50 million), (c) caused its Debtor subsidiaries to guarantee the loans; (d) immediately transferred $1.187 billion of these loan proceeds to its parent, Duke Ventures (which went straight to Duke Energy's financial statement); (e) created Crescent Holdings, LLC, a new holding company for all of the Crescent Debtors; (f) sold a 49% interest in that holding company to certain Morgan Stanley real estate funds for $414 million; and (g) provided for the transfer of a 2% interest in the new holding company to Defendant Fields, Crescent Resources' Manager, President, and CEO. The net effects of the 2006 Duke Transaction were: (i) to put $1.6 billion in cash into the pockets of Duke, and (ii) to simultaneously render the Debtors insolvent.

39. With respect to the first component--creating a 'value' of Crescent Resources far in excess of the $1.2 billion value then carried on Crescent Resources' books – that exercise had two parts. First, the transaction proponents arranged to have a "valuation" done by Morgan Stanley regarding the supposed fair market value of Crescent Resources and its subsidiaries; second, they arranged to have an auditor

(PricewaterhouseCoopers) perform an accounting "step-up" to conform the accounting records to the new "valuation."

40. But there were several problems with this re-valuation. The "valuation" itself was largely a regurgitation of Crescent Resources' management's (i.e. Duke's) own value projections and attributed significant value to potential future projects not yet even approved, much less committed or underway. The valuation was also extremely aggressive and was, as admitted by the party who performed it, "at the upper end of the [value] range", and "comfortably exceeding the observed trading multiples of high quality land-rich public homebuilders". As Morgan Stanley also admitted, "the valuation on a per acre basis, the best statistic for meaningful comparison, is greater than that of comparable land companies." Thus the valuation knowingly overstated, and was known by Defendants to have overstated, the value of Crescent Resources and its subsidiaries at the time. On information and belief, there was no liquidation analysis performed.

41. As noted, it was only ***after the closing*** that an audit firm – PricewaterhouseCoopers – was engaged by Crescent Resources to substantiate the valuation in a so-called "step up analysis." But this exercise was more an allocation of the original purchase price than a rigorous test of the fair market value of the assets. It too was predicated on cash flow and revenue assumptions furnished by Crescent Resources (i.e Duke) management – projections that were demonstrably wrong even by the closing date itself, much less by the first quarter of 2007, when the "step-up analysis" was actually performed.

42. The second component of the 2006 Duke Transaction was to obtain a credit facility for Crescent Resources that would generate maximum funds for

distribution to Duke without regard for whether that loan could actually be repaid by Crescent Resources and/or its guarantor subsidiaries. The repayment terms for the loan bore no relation to what Crescent Resources historically had generated, and no relation to what it could be expected to actually re-pay under its existing business plan. This was evident from the fact that the Term Loan component of the $1.225 billion loan had no principal payment for nine quarters and only one-quarter of 1% quarterly principal repayment thereafter. Even more significantly, the loan matured in 2012, at which time Crescent Resources was to repay the outstanding principal balance of approximately $2.16 billion in full. Prior to that time, Crescent Resources was to have paid down only 4% of the principal, as well as the interest expense on the loan. The interest equaled approximately $87 million in the first full year of the loan alone.

43. The next step in the 2006 Duke Transaction was to create a holding company for Crescent Resources (*viz.*, a new Delaware Limited Liability Company named Crescent Holdings, LLC) and to find a buyer to purchase a portion of that company. To that end, Duke already had an insider ready, willing, and able to participate: Morgan Stanley, its investment advisor in connection with the 2006 transactions. In its own interest and capacity, Morgan Stanley brought certain Morgan Stanley Real Estate Funds to the table in approximately May of 2006, and arranged to sell a 49% interest in Crescent Holdings, LLC to those funds.

44. The 2006 Duke Transaction was orchestrated by and under the domination of Duke and entirely for the benefit of Duke, in complicity with numerous senior executives of Duke and Crescent Resources, including the individual Defendants. Although the RBH law firm formally represented Crescent Resources in connection with

the transaction, RBH took no apparent role in negotiating the operative documents, nor in giving any independent advice to the Crescent Resources Board.

45. Moreover, there was no legitimate business rationale for saddling Crescent Resources' ongoing operations with such enormous debt, save and except to enrich Duke at the expense of Crescent Resources, its subsidiaries, and their creditors. In 2005, Crescent Resources' President and CEO, Defendant Fields, had heralded, as a key part of Crescent Resources' business, that its project debt levels were modest. Fields nevertheless expressly approved the previously unheard of level of debt in this transaction.

46. On information and belief, Crescent Resources was also required by Duke to pay approximately $30 million in transaction costs in connection with the closing of the transaction. Included within these amounts were $5.5 million of loan proceeds wire transferred to Duke Ventures, and $3.5 million of loan proceeds wire transferred to Morgan Stanley entities, both being payments of "the good faith estimate of expenses incurred." Plaintiff has not yet been made aware of the bases for or the detail regarding these expenses.

47. In anticipation of the subject financing, Crescent Resources does not appear to have altered or modified its business plan in any material respect that would allow it to support the new and high level of debt that Duke had imposed on it.

48. Interestingly, the 2006 Duke Transaction follows a pattern of a number of similarly opportunistic transactions occurring in the same time frame, in which principals sought to liquidate their interests in ventures based on unsupportable and excessive

valuations. The courts have soundly rejected such transactions where they have injured creditors – as in, for example, the *Tousa*, *Yellowstone Club*, and *ASARCO* transactions.

E. Insolvency

49. The 2006 Duke Transaction rendered Crescent Resources and each of its Debtor Subsidiaries insolvent. Crescent Holdings and Crescent Resources were both liable on the debt created by the transaction, and the Crescent Debtor Subsidiaries were guarantors of the debt. The fact that those Crescent Resources subsidiaries who were not required to guarantee the debt did not join in the Bankruptcy filings only underscores the fact that it was the crushing debt that Duke imposed on the Debtors that led to their bankruptcies.

50. Crescent Resources and the Debtor Subsidiaries were rendered insolvent as a result of the 2006 Duke Transaction under a number of tests, each of which is independently sufficient to demonstrate insolvency. First, Crescent Resources and the Debtor Subsidiaries were rendered insolvent by virtue of having inadequate capitalization. Second, Crescent Resources and the Debtor Subsidiaries were rendered insolvent by virtue of being unable to pay their debts when they became due. Third, Crescent Resources and the Debtor Subsidiaries were rendered insolvent because their post-transaction liabilities exceeded their post-transaction assets at a fair valuation.

51. Numerous creditors existed at the time of the 2006 Duke Transaction whose claims arose on or before the date of that transaction and remained unpaid at the time of the bankruptcy filing at both Crescent Resources and its Debtor Subsidiaries. In total, well over a thousand innocent creditors of Crescent Resources and its Debtor Subsidiaries filed claims for debts that were incurred prior to or within a reasonable time

after the 2006 Duke Transactions. These creditors were the victims of Duke's greed and its improper, ill-conceived, and grossly over-leveraged distribution scheme.

52. Examples of why Crescent and the Debtor Subsidiaries could not meet one or more of these solvency tests include the following:

a. Prior to the 2006 Duke Transaction, Crescent Resources had a long-history of borrowing cash from Duke to meet its liquidity needs. With the 2006 Duke Transaction, Crescent Resources was cut off from this potential source of funds. Moreover, the Revolver and Swingline loans provided insufficient capitalization for Crescent to meet its cash needs, especially given the requirement that $50 million in cash be kept on-hand. In addition, the terms of the loan made it impossible to maintain capital requirements historically necessary to develop and market Crescent Resources' properties.

b. Crescent Resources' cash flow requirements also could not be met by the financing. Though the company attempted, unsuccessfully, to alleviate this condition by immediately cutting its capital expenditure budget by 40%--which had the effect of 'boosting' its immediate cash and balance sheet positions--it did so at the cost of its inability to continue to develop and sell real estate, thus forestalling, but further assuring, Crescent Resources' demise.

c. The substantial contingent liabilities represented by Letters of Credit and Surety Bonds do not appear to have been considered in the valuation and, in fact, represented substantial additional liabilities.

d. A material portion of the value ascribed to Crescent Resources was based on projects not yet in development.

53. The 2006 re-valuation of Crescent Resources' assets was far in excess of the actual value of those assets, given the actual market conditions existing at the time of closing. By the time of the closing of the 2006 Duke Transaction, the parties were aware that market conditions had soured. Thus, even if the Morgan Stanley valuation had been accurate as of the spring of 2006 – which it was not – adjustments to reflect market deterioration were required prior to closing. Duke, Crescent Resources, and Morgan Stanley were all aware of this deterioration, as evidenced by, among other things, the following:

a. In March 2006, six months before the 2006 transaction closed, a three-year budget was prepared by Crescent Resources. That budget projected a decline in real estate sales from $259 million in 2006, to $196 million in 2007, and to $169 million in 2008.

b. In August 2006, a month before the 2006 Duke Transaction closed, Crescent Resources' management publicly observed that the key Gulf Coast Market had slowed.

c. In the fall of 2006, Crescent Resources' management publicly observed a national slowdown in home sales, and continued softness in the residential sector, primarily in Florida.

d. The 2007-09 Crescent Resources budget projected a cash trap scenario for all three years of that budget under then-existing market conditions and loan covenants. In particular, that budget noted that the LandMar and condominium markets had softened dramatically from the original credit model.

e. The 2006 Duke 10-K, issued in March 2007, noted a $274 million decrease in Crescent Resources revenue due, in part, to "softening in the residential real estate market."

f. In the third quarter of 2005, a $16 million impairment charge was taken against the Oilfield project, one of Crescent Resources' properties.

54. In addition, the 2006 Duke Transaction required Crescent Resources to assume – over a three-year period – all of Duke's then-outstanding guaranties its of Letter of Credit and Surety Bonds. As of the time of closing, these totaled some $215 million. These obligations were also beyond Crescent Resources' ability to perform given its limited liquidity after the 2006 Duke Transaction.

55. The reality of Crescent Resources' insolvency is further demonstrated by its inability to perform under the loan covenants. Among other things, the loan documents required that Crescent maintain a ratio of EBIDA to certain fixed charges (such as interest, debt payments and lease obligations) of 1.75 (the "Fixed Charge Coverage"), and, further, that if the coverage fell to less than 2.00, it would trigger a cash trap requirement (a "Cash Trap Period").

56. By December 2006, less than 90 days after closing and before syndication of the loan was even completed, Crescent's (after the 2006 Duke Transaction, "Crescent" consisted of Crescent Holdings, LLC, Crescent Resources, and its subsidiaries) new owners had reduced their cash flow projections. By January of 2007, Crescent management was projecting a Cash Trap Period to occur that quarter. In April of 2007 Crescent sought an amendment to the covenant definitions in order to postpone being in a Cash Trap Period. By the second quarter of 2007, however, the inevitable could no

longer be postponed, and Crescent formally entered a Cash Trap Period. As a result, Crescent Debtor Subsidiaries pledged, at the bank's request, all Deposit Accounts, effective August 24, 2007.

57. By the end of the third quarter of 2007, Crescent was also in breach of the Fixed Charge Coverage covenant. As a result, in June of 2008, the Crescent Debtor Subsidiaries were required to grant liens on all of the real properties.

58. By the second quarter of 2008, Crescent's auditor had advised it that a further Event of Default would occur due to the failure to meet the Adjusted EBIDA requirements. As a result Crescent and its owners began actively exploring bankruptcy as a solution to the continuing default.

59. At that same time – during the second quarter of 2008 – Crescent's limited liquidity was bolstered by the sale of $50.5 million of property to Duke Energy. The express purpose of the transaction, known to both Duke and Crescent, was to avoid a monetary default on the loan in the second quarter of 2008. As one participant noted: if we "pull this off by the end of Q2"..."we have averted this crisis." This transaction was not only intended to forestall the inevitable default, but also to postpone bankruptcy, and the resulting scrutiny of the 2006 Duke Transaction.

60. In summary, Duke (in concert with Mr. Trent and the Crescent Board of Managers) compelled Crescent Resources and the Debtor Subsidiaries to enter into a transaction that had no benefit to Crescent Resources, and that immediately rendered it insolvent. Indeed, the sole purpose of the transaction was to benefit Duke at the expense of Crescent Resources and its many innocent creditors.

V. CAUSES OF ACTION, CLAIMS AND COUNTERCLAIMS

61. The Litigation Trust brings this action, and asserts causes of action in both its capacity as a direct owner of claims belonging to the Debtors, and in its capacity as the owner of derivative claims that may be brought on behalf of the Debtors and their creditors. The Litigation Trust brings these claims as the properly appointed representative of the estate for the purposes of retaining and enforcing the claims and causes of action pursuant to the Plan and under § 1123(b)(3)(B) of the Bankruptcy Code.

62. The claims asserted herein are asserted on behalf of Crescent Holdings, Crescent Resources, and each Debtor.

63. The claims herein are asserted both collectively and in the alternative.

Count 1 - State Law Fraudulent Transfer – Constructive Fraud (applicable through 11 U.S.C. § 544(b)(1)) As to Duke Energy, Duke Ventures and Duke Capital

64. Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

65. Duke Energy's, Duke Venture's, and Duke Capital's receipt of the $1.187 million in connection with the 2006 Duke Transaction constituted a fraudulent transfer. The Litigation Trust sues these Defendants under state law claims of constructive fraudulent transfer applicable through 11 U.S.C. § 544(b)(1).

66. Under applicable state law, a transfer, such as that at issue here, is fraudulent as to creditors whose claim arose before or after the transaction where, as here, the debtor does not receive reasonably equivalent value, or fair consideration for the transfer, where the debtor, as here, was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in

relation to the business or transaction or where the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

67. Transfers are also fraudulent as to creditors whose claims arose before the transfer was made or the obligation was incurred and the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

68. These elements are satisfied by the facts set forth herein. The Litigation Trust is thus entitled to recover the sum of $1.187 billion fraudulently transferred to Duke Energy, Duke Ventures, and/or Duke Capital, or alternatively, to impose a constructive trust on the $1.187 billion fraudulently transferred.

Count 2 – State Law Fraudulent Transfer – Actual
(applicable through 11 U.S.C. § 544(b)(1))
As to Duke Energy, Duke Ventures, and Duke Capital

69. Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

70. Duke Energy's, Duke Venture's, and Duke Capital's receipt of the $1.187 billion in connection with the 2006 Duke Transaction constituted a fraudulent transfer. The Litigation Trust sues these Defendants under state law claims of actual fraudulent transfer applicable in this proceeding through 11 U.S.C. § 544(b)(1).

71. Under applicable state law, a transfer is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation

was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay or defraud any creditor of the debtor.

72. Many of the factors considered as probative of fraudulent transaction under these statutes are present in this case. For example: (a) the transfer was to an insider; (b) the transfer was made for little or no consideration when the transferor and the transferee both knew of the claims of creditors, and knew, or should have known, that the transaction would leave Crescent unable to pay those creditors; (c) there was an unconscionable discrepancy between the value of the property transferred and the consideration received for the transfer; (d) there was a concealment of facts known to Duke, among other things regarding the softening real estate market; (e) Duke purchased from Crescent certain of the subject property; and (f) the transfer was approved by Crescent Resources' Managers and its President and CEO, who were affiliated with Duke Energy.

73. The elements of 'actual intent' are satisfied by the facts set forth herein. As such, the Litigation Trust is (a) able to demonstrate the voidability of the transfers under state law, and (b) avoid the transfers under 11 U.S.C. § 544(b), and (c) entitled to recover under 11 U.S.C. § 550 the sum of $1.187 billion fraudulently transferred to Duke Energy, Duke Ventures, and/or Duke Capital, or, alternatively, to impose a constructive trust on the $1.87 billion fraudulently transferred.

Count 3 - State Law Fraudulent Transfer – Constructive Fraud
(applicable through 11 U.S.C. § 544(b)(1))
Avoidance of Obligations Incurred for the Benefit of the Duke Entities

74. Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

75. Crescent's incurrence of obligations under the Term Loan and the Debtor Subsidiaries' guarantee of such debt constituted fraudulent transfers.

76. Under applicable state law, a transfer or incurrence of an obligation, such as the transfers and obligations at issue here, is fraudulent as to creditors whose claim arose before or after the transaction where, as here, the debtor does not receive reasonably equivalent value, or fair consideration for the transfer or obligation, where the debtor, as here, was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction or where the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

77. Transfers are also fraudulent as to creditors whose claims arose before the transfer was made or the obligation was incurred and the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

78. Thus, the obligations incurred are (i) voidable under applicable state law, (ii) subject to avoidance under § 544 of the Bankruptcy Code and (iii) recoverable to the extent of the obligations incurred from the entity for whose benefit such transfer was made under § 550(a)(1). As Duke Energy, Duke Ventures and/or Duke Capital were clearly the parties for whose benefit the notes and guarantees were made and obligations incurred, the plaintiff is entitled to recover against these Defendants the value of such obligations.

Count 4 – State Law Fraudulent Transfer – Actual
(applicable through 11 U.S.C. § 544(b)(1))
Avoidance of Obligations Incurred for the Benefit of the Duke Entities

79. Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

80. Crescent's incurrence of obligations under the Term Loan and the Debtor Subsidiaries' guarantee of such debt constituted fraudulent transfers.

81. Under applicable state law, a transfer or incurrence of an obligation is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay or defraud any creditor of the debtor.

82. Many of the factors considered as probative of fraudulent transaction under these statutes are present in this case. For example: (a) the obligation was incurred for the benefit of an insider; (b) the obligation was incurred for little or no consideration when the transferor and the transferee both knew of the claims of creditors, and knew, or should have known, that the transaction would leave Crescent and its subsidiaries unable to pay those creditors; (c) there was an unconscionable discrepancy between the amount of the obligations incurred and the consideration received for the incurrence of that obligation; (d) there was a concealment of facts known to Duke, among other things regarding the softening real estate market; (e) Duke reserved the right to purchase from Crescent certain of the subject property; and (f) the transfer was approved by Crescent Resources' Managers and its President and CEO, who were affiliated with Duke Energy.

83. The elements of 'actual intent' are satisfied by the facts set forth herein. As such, the Litigation Trust (a) is able to demonstrate the voidability of the obligations

under state law, (b) avoid the obligations under 11 U.S.C. § 544(b), and (c) is entitled to recover under 11 U.S.C. § 550(a)(1) against Duke Energy, Duke Ventures and/or Duke Capital as the entities for whom the obligations were incurred in the amount of such obligations.

Count 5 – Wrongful Distribution
As to Duke Energy, Duke Ventures, and Duke Capital, and the Crescent Board of Manager Defendants

84. Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

85. The transfer of $1.187 billion from Crescent to Duke Energy, Duke Ventures, and/or Duke Capital in connection with the 2006 Duke Transaction was characterized by Crescent as a "cash distribution to Duke Ventures" for accounting purposes. Under applicable state law, a distribution made which renders a limited liability company, such as Crescent Resources, unable to pay its debts when they come due in the usual course of business, or leaves it with total assets less than the sum of its total liabilities, is a wrongful distribution. As such, Duke Energy's, Duke Ventures', and/or Duke Capital's orchestration and receipt of the $1.187 billion constitutes receipt of a wrongful distribution. The Crescent Board of Managers' payment of the $1.187 billion constitutes the payment of a wrongful distribution.

86. The Litigation Trust accordingly sues Duke Energy, Duke Ventures, and Duke Capital, and the Crescent Board of Managers for state law claims for wrongful distribution.

87. The Litigation Trust is thus entitled to recover the sum of $1.187 billion improperly distributed to Duke Energy, Duke Ventures, and/or Duke Capital by Jim W.

Mogg, James M. Short, Jr., Arthur W. Fields, and R. Wayne McGee, or alternatively, to impose a constructive trust on the $1.187 billion wrongfully distributed.

Count 6 – Unjust Enrichment
As to Duke Energy, Duke Ventures, and Duke Capital

88. Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

89. Duke Energy, Duke Ventures, and/or Duke Capital, in connection with the 2006 Transaction, obtained a benefit (in the form of the receipt from Crescent Resources of $1.187 billion) by fraud, duress, or the taking of an undue advantage of Crescent Resources and its co-Debtors. Accordingly, those Defendants are equitably obliged to return such benefit to Crescent Resources to compensate it for the loss of that benefit.

90. The Litigation Trust sues Duke Energy, Duke Ventures, and Duke Capital for state law claims of unjust enrichment.

91. The Litigation Trust is thus equitably entitled to recover the sum of $1.187 billion from Duke Energy, Duke Ventures, and/or Duke Capital, or alternatively to impose a constructive trust on the $1.187 billion.

Count 7 – Breach of Fiduciary and Other Duties

92. Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

93. Each of the Crescent Board of Manager Defendants, Jim W. Mogg, James M. Short, Jr., Arthur W. Fields, and R. Wayne McGee owed Crescent Resources, LLC fiduciary duties, e.g., a duty of loyalty; a duty not to engage in intentional misconduct; and a duty not to engage in an act or omission performed fraudulently, or constituting

gross negligence. Such duties were owed to Crescent Resources both during the time the company was a wholly owned indirect subsidiary of Duke Energy, and as of such time the company was no longer a wholly owned subsidiary. Such duties existed both before and after the company became insolvent, and with respect to any transactions causing the company's insolvency. Those duties extend to the creditors of the company after insolvency and/or after the company entered the zone of insolvency.

94. The Litigation Trust sues the Defendants identified below for state law claims of breaches of their fiduciary and other duties they owed to Crescent Resources and its creditors under applicable state law.

1. As to the Crescent Board of Manager Defendants.

95. The Litigation Trust sues the Crescent Board of Manager Defendants, Jim W. Mogg, James M. Short, Jr., Arthur W. Fields, and R. Wayne McGee for breach of fiduciary and other duties with respect to the 2006 Duke Transaction.

2. Inducing and/or Aiding and Abetting Breach of Fiduciary Duty – As to Duke Energy, Duke Ventures, Duke Capital, and B. Keith Trent.

96. The Litigation Trust sues Duke Energy, Duke Ventures, Duke Capital, and B. Keith Trent for inducing and/or aiding and abetting the breaches of fiduciary and other duties committed by the Crescent Board of Manager Defendants with respect to the 2006 Duke Transaction.

Count 8 – Civil Conspiracy
As to Duke Energy, Duke Ventures, Duke Capital, B. Keith Trent and the Crescent Board of Manager Defendants

97. Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

98. The Litigation Trust sues Duke Energy, Duke Ventures, Duke Capital, B. Keith Trent, and the Crescent Board of Manager Defendants for state law claims for civil conspiracy with respect to the 2006 Duke Transaction.

99. Such defendants conspired to cause the wrongful payment of distributions previously described and to aid or cause the breaches of fiduciary and other duties by the Crescent Board of Manager Defendants with respect to the 2006 Duke Transaction, and thus engaged in a confederation or combination of two or more persons; performed at least one unlawful act in furtherance of the conspiracy; acted pursuant to a common scheme; and caused actual damage to Crescent.

Count 9 – Equitable Subordination of Claims

100. Plaintiff re-alleges each and every allegation contained in the preceding paragraphs.

101. As a result of the conduct of Duke Energy and its direct and indirect subsidiaries, Plaintiff requests that Claim Nos. 172, 1053, 1054, 1065, 1066, 1860, 1861, 1862, 1032 (as amended by 1829), and 1245 (as amended by 1843), as well as all claims as listed on Exhibit "A," be equitably subordinated to all other claims asserted against Crescent Resources and its Debtor Subsidiaries.

VI. OMNIBUS CLAIMS OBJECTION

102. Objection to Claim No. 172 – Plaintiff objects to the allowance and payment of Claim No. 172 filed by Duke Energy Carolinas LLC, pursuant to Rule 3001(f), because the claimant has failed to provide adequate information or transparent calculations of the claim's amounts. Plaintiff reserves the right to further amend this objection.

103. Objection to Claim No. 1053 – Plaintiff objects to the allowance and payment of Claim No. 1053 filed by Duke Energy Carolinas LLC (i) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, and (ii) pursuant to Rule 3001(f), because the claimant has failed to provide adequate information or transparent calculations of the claim's amount. Plaintiff reserves the right to further amend this objection.

104. Objection to Claim No. 1054 – Plaintiff objects to the allowance and payment of Claim No. 1054 filed by Duke Energy Carolinas LLC (i) because the claim is partially or fully duplicative of Claim No. 1053, (ii) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, and (iii) pursuant to Rule 3001(f), because the claimant has failed to provide adequate information or transparent calculations of the claim's amount. Plaintiff reserves the right to further amend this objection.

105. Objection to Claim No. 1065. Plaintiff objects to the allowance and payment of Claim No. 1065 filed by Duke Energy Carolinas LLC (i) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, and (ii) pursuant to Rule 3001(f), because the claimant has failed to provide adequate information or transparent calculations of the claim's amount. Plaintiff reserves the right to further amend this objection.

106. Objection to Claim No. 1066. Plaintiff objects to the allowance and payment of Claim No. 1066 filed by Duke Energy Carolinas LLC (i) because the claim is partially or fully duplicative of Claim No. 1065, (ii) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, and

(iii) pursuant to Rule 3001(f), because the claimant has failed to provide adequate information or transparent calculations of the claim's amount. Plaintiff reserves the right to further amend the objection.

107. Objection to Claim No. 1860. Plaintiff objects to the allowance and payment of Claim No. 1860 made by Duke Ventures, Inc. "for or on account of Duke Energy, LLC" (i) because the claim is duplicative and/or seeks the same claim, in whole or in part, as Claim Nos. 1861 and 1862, (ii) pursuant to § 502(d), because claimant is the recipient of property or a transfer which may be avoided, as more fully set forth *supra*, and is therefore not entitled to a claim until such time as claimant has paid over such amount, or turned over such property, (iii) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, (iv) pursuant to Rule 3001(f), because claimant has failed to provide adequate information or transparent calculations of the claim's amount, and (v) because Plaintiff possesses claims against the claimant in amounts substantially in excess of those claimed by claimant as more fully set forth *supra*, and because claimant is therefore not entitled to payment of a claim until such time as all such matters have been resolved and a determination made as to the amounts Plaintiff is entitled to recover from claimant. Plaintiff reserves the right to further amend this objection.

108. Objection to Claim No. 1861. Plaintiff objects to the allowance and payment of Claim No. 1861 made by Duke Ventures, Inc. "for or on account of Duke Energy, LLC" (i) because the claim is duplicative and/or seeks the same claim, in whole or in part, as Claim No 1860 and is completely duplicative of Claim No. 1862, (ii) pursuant to § 502(d), because claimant is the recipient of property or a transfer which

may be avoided, as more fully set forth *supra*, and is therefore not entitled to a claim until such time as claimant has paid over such amount, or turned over such property, (iii) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, (iv) pursuant to Rule 3001(f), because claimant has failed to provide adequate information or transparent calculations of the claim's amount, and (v) because Plaintiff possesses claims against the claimant in amounts substantially in excess of those claimed by claimant as more fully set forth *supra*, and because claimant is therefore not entitled to payment of a claim until such time as all such matters have been resolved and a determination made as to the amounts Plaintiff is entitled to recover from claimant. Plaintiff reserves the right to further amend this objection.

109. Objection to Claim No. 1862. Plaintiff objects to the allowance and payment of Claim No. 1862 made by Duke Ventures, Inc. "for or on account of Duke Energy, LLC" (i) because the claim is duplicative and/or seeks the same claim, in whole or in part, as Claim No 1860 and is completely duplicative of Claim No. 1861, (ii) pursuant to § 502(d), because claimant is the recipient of property or a transfer which may be avoided, as more fully set forth *supra*, and is therefore not entitled to a claim until such time as claimant has paid over such amount, or turned over such property, (iii) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, (iv) pursuant to Rule 3001(f), because claimant has failed to provide adequate information or transparent calculations of the claim's amount, and (v) because Plaintiff possesses claims against the claimant in amounts substantially in excess of those claimed by claimant as more fully set forth *supra*, and because claimant is therefore not entitled to payment of a claim until such time as all such matters have been

resolved and a determination made as to the amounts Plaintiff is entitled to recover from claimant. Plaintiff reserves the right to further amend this objection.

110. Objection to Claim No. 1032 as amended by 1829. Plaintiff objects to the allowance and payment of Claim No. 1032 as amended by Claim No. 1829 filed by James M. Short Jr. (i) pursuant to § 502(d), because claimant is the recipient of property or a transfer which may be avoided, as more fully set forth *supra*, and is therefore not entitled to a claim until such time as claimant has paid over such amount, or turned over such property, (ii) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, (iii) pursuant to Rule 3001(f), because claimant has failed to provide adequate information or transparent calculations of the claims amount, and (iv) because Plaintiff possesses claims against the claimant in amounts substantially in excess of those claimed by claimant as more fully set forth *supra*, and because claimant is therefore not entitled to payment of a claim until such time as all such matters have been resolved and a determination made as to the amounts Plaintiff is entitled to recover from claimant. Plaintiff reserves the right to further amend this objection.

111. Objection to Claim No. 1245 as amended by 1843. Plaintiff objects to the allowance and payment of Claim No. 1245 as amended by Claim No. 1843 filed by Arthur Fields (i) pursuant to § 502(d), because claimant is the recipient of property or a transfer which may be avoided, as more fully set forth *supra*, and because claimant is therefore not entitled to a claim until such time as claimant has paid over such amount, or turned over such property, (ii) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, (iii) pursuant to Rule 3001(f),

because claimant has failed to provide adequate information or transparent calculations of the claims amount, and (iv) because Plaintiff possesses claims against the claimant in amounts substantially in excess of those claimed by claimant as more fully set forth *supra*, and because claimant is therefore not entitled to payment of a claim until such time as all such matters have been resolved and a determination made as to the amounts the Trustee is entitled to recover from claimant. Plaintiff reserves the right to further amend this objection.

112. Omnibus Objection to Duke Entity Scheduled Claims. Plaintiff objects to the payment of the scheduled claims attached as Exhibit "A" to this Complaint based upon one or more of the objections (as specifically set forth in the exhibit) and (i) pursuant to § 502(d), because claimant is the recipient of property or a transfer which may be avoided, as more fully set forth *supra*, and because claimant is therefore not entitled to a claim until such time as claimant has paid over such amount, or turned over such property, (ii) pursuant to § 502(e), because claimant has asserted a claim for reimbursement or contribution that is contingent, (iii) pursuant to Rule 3001(f), because claimant has failed to provide adequate information or transparent calculations of the claims' amount, and (iv) because Plaintiff possesses claims against the claimant in amounts substantially in excess of those claimed by claimant as more fully set forth *supra*, and because claimant is therefore not entitled to payment of a claim until such time as all such matters have been resolved and a determination made as to the amounts Plaintiff is entitled to recover from claimant. Plaintiff reserves the right to further amend this objection.

VII. MISCELLANEOUS

113. Alter Ego. Duke Energy, Duke Ventures, and Duke Capital were, at all material times, the alter egos of one another.

114. Agency. Whenever it is alleged that a defendant entity engaged in an act or omission, such act or omission was engaged in by its officers, agents or other persons having authority to engage in such conduct and such defendant entity is thus liable for the acts of its agents.

115. Limitations. With respect to any defense based on a statute of limitations the Litigation Trust asserts that such defense is barred by 11 U.S.C. § 108 and § 546 and by such tolling or deferred accrual doctrines as the discovery rule; equitable tolling; adverse interest; fraudulent concealment; and adverse domination.

VIII. RELIEF REQUESTED

116. Plaintiff seeks an order sustaining its objections to Claim Nos. 172, 1053, 1054, 1065, 1066, 1860, 1861, 1862, 1032 (as amended by 1829), and 1245 (as amended by 1843), as well as to those claims listed on Exhibit "A", or, in the alternative, an order subordinating such claims to all other claims;

117. Plaintiff seeks an order that the guarantees of the Debtor Subsidiaries are unenforceable;

118. Plaintiff sues for actual damages, including but not limited to the $1.187 billion transferred to Duke Energy, Duke Ventures, and/or Duke Capital as well as the damages caused by the breaches of duty set forth herein;

119. Plaintiff seeks a constructive trust on the $1.187 billion transferred to Duke Energy, Duke Ventures, and/or Duke Capital;

120. Plaintiff seeks such statutory damages and penalties as provided by applicable state law;

121. Plaintiff seeks punitive damages as provided by applicable state law;

122. Plaintiff seeks reasonable and necessary attorneys' fees incurred in connection with the prosecution of this action and any appeal thereof;

123. Plaintiff seeks pre-and post-judgment interest on amounts recovered as provided by law; and

124. Plaintiff seeks its costs of court.

Date: September 3, 2010.

Respectfully submitted,

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