

Florida Department of Environmental Protection’s Motion to Vacate, Alter or Amend Order (the “SLL Amendment Motion”)

By the SLL Amendment Motion, the Florida Department of Environmental Protection (“FDEP”) seeks an amendment to the order (the “Order”) approving the Debtors’ second omnibus assumption motion (the “Motion”), with respect to four sovereignty submerged land leases (the “SLLs”) between the Debtors and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the “BOT”).¹

By the Motion, the Debtors sought to assume the SLLs, which were leases for submerged land used for the Debtors’ marinas.² FDEP filed its objection to the Motion (the “FDEP Objection”) on March 2, 2009, two days before the Court entered the Order. FDEP asserts that it was unaware and did not receive notice of the Motion until February 27, 2009, 10 days after the objection deadline and three days after the hearing date, due to mistake, inadvertence and excusable neglect.

The Motion asserted, and the Order adopted as findings of fact, (i) that there were no defaults or cure amounts due under any of the SLLs, and (ii) the SLLs were all unexpired. However, FDEP asserts that (a) the SLLs are not current, (b) one of them has expired by its terms, and (c) the Debtors are in material breach of each of the SLLs. Additionally, the FDEP maintains that (x) it will suffer a manifest injustice if the Order is not amended to reflect the actual status of the SLLs and the applicable cures necessary, and (y) the Debtors have not acted in reasonable reliance on the Order since its entry.

¹ FDEP represents the BOT in matters relating to the administration of sovereign lands.

² A summary of the Motion was posted to the Committee website in February 2009.