

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334(b), 1334(e)(1), and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012.
2. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Court may enter a final order consistent with Article III of the United States Constitution.
3. Venue of this adversary proceeding in this Court is proper under 28 U.S.C. § 1409.

PARTIES

4. Debtor is a Delaware corporation and the ultimate parent entity of two (2) direct or indirect wholly-owned subsidiaries (each a “Subsidiary” and collectively, the “Subsidiaries”).² On June 3, 2013 (the “Petition Date”), the Debtor filed in this Court a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtor is continuing to operate its business as debtor and debtor in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or official committee of unsecured creditors has been appointed in this chapter 11 case.
5. Defendant TGIC is a domestic stock insurance company organized under the laws of the State of Illinois wholly owned by the Debtor.
6. Defendant TGAC is a domestic stock insurance company organized under the laws of the State of Illinois indirectly wholly owned by the Debtor and wholly owned by TGIC.
7. Prior to the Petition Date, the Debtor provided residential mortgage insurance and reinsurance in the United States through its Subsidiaries. TGIC and TGAC, as Illinois-domiciled

² A chart depicting the organizational structure of the Debtor and its Subsidiaries is attached as Exhibit A to the *Declaration of William T. Ratliff, III in Support of the Debtor’s Chapter 11 Petition and First Day Motions* [Case No. 13-11452, Dkt. No. 3] (the “Ratliff Declaration”).

mortgage guaranty insurance and reinsurance companies, respectively, are subject to regulatory oversight by the Illinois Department of Insurance.

8. Defendant Andrew Boron is the Director of the Illinois Department of Insurance and the court appointed Rehabilitator of the Subsidiaries. On December 11, 2012, (i) the Rehabilitator issued an Administrative Order recommending that the Subsidiaries be placed into rehabilitation, and (ii) filed a Complaint for Rehabilitation against the Subsidiaries in the Circuit Court, Chancery Division of Cook County, Illinois (the “Rehabilitation Court”), Case No. 12 CH 43895. Later that same day, the Rehabilitation Court entered an Order of Rehabilitation (the “Rehabilitation Order”), with a finding of insolvency as to TGIC, pursuant to which the Rehabilitator took possession and control over all of the assets, liabilities and operations of the Subsidiaries and the Rehabilitation Court appointed the Rehabilitator as the statutory rehabilitator of the Subsidiaries. A true and correct copy of the Rehabilitation Order is attached hereto as Exhibit A.

FACTUAL BACKGROUND

I. THE TAX RIGHTS AND ATTRIBUTES

9. The Debtor and the Subsidiaries are a consolidated tax group for federal income tax purposes (the “Consolidated Tax Group”). Since 1993, the Debtor and the Subsidiaries have filed a consolidated federal income tax return. In past years, the Consolidated Tax Group has generated significant net operating losses. Under the Internal Revenue Code (the “IRC”) and the regulations implementing the IRC (the “Treasury Regulations”), as elucidated by federal common law, any of the Consolidated Tax Group’s net operating loss (the “CNOL”), capital loss and tax credits (collectively with the CNOL, the “Tax Attributes”) may be used by the Consolidated Tax Group to offset future income, thereby reducing tax liability in future tax periods. *See* 26 U.S.C. §§ 172 and 1502 (and the Treasury Regulations promulgated thereunder).

While the Tax Attributes are presently owned by the Consolidated Tax Group, as the “common parent” of the Consolidated Tax Group, the Debtor has a property interest in those Tax Attributes (the “Debtor’s CNOL Interest”) which is protected under Bankruptcy Code sections 362 and 541.

10. Additionally, as the common parent, the Debtor is the sole agent for the Consolidated Tax Group and the only entity “authorized to act in its own name with respect to all matters relating to the tax liability for [any given tax] year,” including application of the Tax Attributes. 26 C.F.R. § 1.1502-77(a)(1)(i). In other words, the Debtor’s sole authority as agent imposes certain obligations and rights upon the Debtor and no Subsidiary has authority to act for or to represent itself in any matter related to the tax liability for a consolidated return year. 26 C.F.R. § 1.1502-77(a)(3). Specifically, as the common parent, under the IRC and the Treasury Regulations, as elucidated by federal common law, the Debtor has the **exclusive** right to (i) file a federal income tax return for the Consolidated Tax Group and take into account the CNOL on such return (*see* 26 C.F.R. §§ 1.1502-75(h)(1) and 1.1502-11(a)(2)), (ii) act as the sole agent for the Consolidated Tax Group, as described above, (iii) file claims for and receive any federal income tax refund on behalf of the Consolidated Tax Group (*see* 26 C.F.R. § 1.1502-77(a)(2)(v)), (iv) reattribute to itself some or all of the CNOL otherwise allocable to TGIC in the event TGIC were to deconsolidate from the Consolidated Tax Group (*see* 26 C.F.R. § 1.1502-36(d)(6)(i)(B)), (v) elect to inherit the Tax Attributes upon the sale of the Debtor’s stock in TGIC to a third party (*see* 26 U.S.C. §§ 338(h)(10), 332, 381(a) and 381(c)),³ and (vi) take a worthless stock deduction with respect to TGIC’s stock (*see* 26 U.S.C. § 165(g) and 26 C.F.R. § 1.1502-

³ B. Bittker & J. Eustice, *Federal Income Taxation of Corporations & Shareholders* ¶10.42[6] (7th ed. 2006 & Supp. 2013-2) (“An election under § 338(h)(10) preserves the target’s [in this case, TGIC’s] tax attributes (e.g., loss carryovers) for the benefit of the selling parent corporation [in this case, the Debtor], which inherits those attributes in the deemed § 332 liquidation of the target-subsiary.” (footnote omitted)).

80(c)) (collectively, (i) through (vi), the “Tax Rights” and, together with the Tax Attributes, the “Tax Rights and Attributes”). In addition, the Debtor has the right to liquidate the assets of the estate under a plan and, in turn, pursuant to 26 U.S.C. § 382, limit the continuing availability of the CNOL.

II. THE TAX ALLOCATION AGREEMENT

11. The Debtor and its Subsidiaries are parties to a Tax Allocation Agreement, effective October 19, 1993, as amended effective December 7, 2004 (the “Tax Allocation Agreement”).⁴ While the Tax Allocation Agreement addresses the contractual duties of the Debtor and its Subsidiaries in preparing and filing the Consolidated Tax Group’s tax return, and the distribution of any tax refund, the Tax Allocation Agreement does not address the ownership or allocation of the Tax Attributes or alter the Debtor’s exclusive right to exercise the Tax Rights. In fact, aside from referencing the Debtor’s duty to file the Consolidated Tax Group’s tax return and distribute any refund (obligations the Debtor does not currently dispute), the Tax Allocation Agreement does not even reference the Tax Rights and Attributes. Nor does the Tax Allocation Agreement purport to alter in any way the provisions of the IRC or the Treasury Regulations, including provisions relating to the Debtor’s CNOL Interest. As a result, the Tax Allocation Agreement is irrelevant to the relief sought by this Adversary Proceeding.

III. THE TRADING ORDER MOTION AND INTERIM ORDER

12. On the Petition Date, the Debtor filed its *Motion for Interim and Final Orders Pursuant to Sections 105(a), 362, and 541 of the Bankruptcy Code (i) Establishing Procedures*

⁴ A true and correct copy of the Tax Allocation Agreement, including the amendment, is attached hereto as Exhibit B. As of the date of the filing of this Complaint, the Debtor has not assumed or rejected the Tax Allocation Agreement pursuant to section 365 of the Bankruptcy Code. However, nothing in this Complaint is intended, nor should it be construed, as an admission that the Tax Allocation Agreement is an executory contract subject to section 365 of the Bankruptcy Code. The Debtor reserves all rights with respect to this issue, as well as its corresponding right to assume or reject the Tax Allocation Agreement in the event it is an executory contract, neither of which issues are presently before this Court.

for (a) *Certain Transfers of Equity Interests, and (b) Taking or Implementing Certain Other Actions Affecting the Interests of the Debtor, and (ii) Scheduling a Final Hearing* [Docket No. 4] (the “Trading Order Motion”).

13. On June 5, 2013, the Court entered an order (the “First Interim Order”) granting the Trading Order Motion on an interim basis [Docket No. 17] and setting a final hearing on the Trading Order Motion. The First Interim Order provided certain notice procedures in the event that any entity desired to effectuate an “impairment action.”⁵ First Interim Order ¶ 5(i). Any impairment action implemented in violation of the procedures set forth in the First Interim Order “shall be null and void *ab initio* as an act in violation of the automatic stay under Bankruptcy Code sections 105(a) and 362.” First Interim Order ¶ 5(ii).

IV. THE DISPUTE WITH THE REHABILITATOR

14. In response to being informed of the Rehabilitator’s positions respecting the Debtor’s property interests in the Tax Rights and Attributes, the Debtor sought certain additional conclusions of law and findings in connection with the Trading Order Motion. To this end, on July 12, 2013, the Debtor filed a supplemental memorandum of law in support of the Trading Order Motion [Docket No. 72] (the “Supplemental Memorandum”), providing legal support for the additional findings and conclusions requested, and on July 17, 2013, the Debtor filed a notice [Docket No. 84] of rescheduled hearing on the Trading Order Motion and a revised form of final order granting the Trading Order Motion.

⁵ Impairment action was defined, for purposes of the First Interim Order, to include “certain actions outside of the ordinary course that could be taken or implemented by an Impairing Party that would affect the Debtor’s interest in and ability to use the Tax Attributes.” First Interim Order ¶ 6(v). In response to the Objection (as defined herein) and in order to accommodate the Rehabilitator, the Debtor clarified the definition of impairment action in a revised proposed order attached as Exhibit A to the Reply (as defined herein) (the “Revised Proposed Final Order”). Unless context dictates otherwise, as used herein, the term “Impairment Action” shall have the meaning ascribed to such term in the Revised Proposed Final Order – namely, “any action that could be taken or implemented by a non-Debtor party that results in the issuance of an equity instrument, as determined for federal income tax purposes, by any member of the consolidated group, as determined for federal income tax purposes, of which the Debtor is the common parent corporation.” Revised Proposed Final Order ¶ 7(iv).

15. On August 2, 2013, the Rehabilitator filed an objection to the Trading Order Motion (the “Objection”) and a cross-motion for relief from the automatic stay [Docket No. 98].⁶ In the Objection, the Rehabilitator expressly disputed the Debtor’s contention that the Tax Rights and the Debtor’s CNOL Interest are property interests protected by Bankruptcy Code sections 362 and 541 and that the Debtor has the exclusive right to exercise the Tax Rights.

A. The Rehabilitator Disputes the Debtor’s Exclusive Tax Rights

16. As detailed above, the Tax Rights are exclusive to the Debtor. The IRC and the Treasury Regulations make clear that only the Debtor – and not TGIC – can exercise these rights. The Rehabilitator expressly contests these rights. For example, with respect to the Debtor’s property interests in the Tax Rights and Attributes, amongst other similar contentions the Rehabilitator has asserted to the Court as follows:

- The Debtor’s proposed findings regarding the Tax Rights and the Debtor’s CNOL Interest are “contrary to law and the Tax Allocation Agreement”, (Sur-Reply [Docket No. 125-1] at 2).
- “The proposed Final Order would permit Debtor . . . to arrogate to itself rights that neither the Tax Allocation Agreement nor the tax law give to the Debtor”, (Objection at 16-17);
- “[U]nder the Treasury Regulations, were TGIC to deconsolidate from the tax group (a possibility the [Tax Allocation Agreement] contemplates, at Section 4.4, and does not prevent), it would be able to carry forward NOLs of the consolidated group equal to the proportion of the group’s NOLs that TGIC generated . . .” (Objection at 25);
- *There is nothing in the . . . relevant provisions of the Internal Revenue Code or the Treasury Regulations that would give the Debtor sole access to, or sole ownership of, the NOLs*”, (Objection at 6-7 (emphasis in original));

B. The Rehabilitator Disputes this Court’s Exclusive *In Rem* Jurisdiction Over the Debtor’s CNOL Interest and Tax Rights

17. Pursuant to Bankruptcy Code section 541, the Tax Rights and the Debtor’s CNOL Interest are property of the Debtor’s bankruptcy estate. As such, this Court has exclusive *in rem*

⁶ The response deadline for the Rehabilitator was extended to August 2, 2013 by agreement of the parties [Docket No. 93].

jurisdiction over these property interests and they are protected by the automatic stay of Bankruptcy Code section 362. In its motion to shorten the notice period with respect to its request for relief from the automatic stay [Docket No. 99] (the “Motion to Shorten”), the Rehabilitator also contested these important, fundamental propositions, asserting instead that the automatic stay would not be implicated by impairment actions taken by the Rehabilitator because no estate property would be implicated – *i.e.*, the Tax Rights and the Debtor’s CNOL Interest are not property of the estate. Motion to Shorten at 3. Moreover, at an August 21, 2013 hearing on the Trading Order Motion (the “August 21 Hearing”), the Rehabilitator, through his counsel, made clear his belief that “the injunctive provisions in th[e Rehabilitation Order] supersede the provisions of the automatic stay.” Transcript of Hearing at 24:16-21, *In re Triad Inc.*, Case No. 13-11452 (MFW) (Bankr. D. Del. Aug. 21, 2013) (the “August 21 Transcript”).

18. The Rehabilitator also contended that this Court lacked jurisdiction, by application of the McCarran Ferguson Act, to make findings with respect to the Tax Rights and Attributes because the CNOL is TGIC’s. *See* Objection at 27. Thus, the Rehabilitator argued that any determination regarding the Debtor’s right to exercise the Tax Rights or utilize and control the Tax Attributes must be decided in the Illinois Court. *See id.*

19. The McCarran Ferguson Act does not apply here. And this Court has exclusive *in rem* jurisdiction over property of the Debtor’s estate – including the Tax Rights and the Debtor’s CNOL Interest – as well as exclusive jurisdiction to determine what is property of the Debtor’s estate.

20. The Tax Rights and Attributes are instrumental to the Debtor’s ability to reorganize and maximize value for the estate and its stakeholders, and this Adversary Proceeding is an integral step in ensuring that third parties, including the Defendants, do not take actions that

could impair the value of the Tax Rights and Attributes. As explained above, there is a direct dispute between the Debtor and the Rehabilitator concerning the nature and extent of the Debtor's and the Subsidiaries' respective rights in connection with the Tax Rights and Attributes. For this reason, an actual, justiciable controversy exists as to whether (i) the Debtor has the exclusive right to exercise the Tax Rights, (ii) the Tax Rights and Debtor's CNOL Interest are property of the estate under Bankruptcy Code section 541, and (iii) as property of the Debtor's estate, this Court has exclusive *in rem* jurisdiction over the Tax Rights and Debtor's CNOL Interest.

V. THE NEED FOR IMMEDIATE ADJUDICATION OF THE DEBTOR'S RIGHTS

21. The Debtor commenced this chapter 11 case with limited resources: cash, its stock in TGIC and its property interests in the Tax Rights and Attributes. Despite the obstacles present in this case, the Debtor has been in contact with several unaffiliated potential investors that have expressed interest in recapitalizing the Debtor and thereby facilitating the Debtor's restructuring and emergence from bankruptcy as a going concern. For the Debtor to be able to recapitalize and thereby maximize value for its stakeholders, it is imperative that the Debtor preserve for its future use the Tax Rights and Attributes.

22. The Debtor is quickly running out of money. In the event that the Debtor runs out of money without a binding commitment from a third-party investor to allow it to recapitalize, the Debtor will need to convert this case to a chapter 7 case or liquidate the estate's assets under a plan. Accordingly, without an expedited, clear determination that the Tax Rights and the Debtor's CNOL Interest are property of the Debtor's estate over which this Court has exclusive *in rem* jurisdiction, the Debtor will be unable to confirm a non-liquidating plan, and the Defendants will essentially have a unilateral option to dictate the timing and outcome of this

chapter 11 proceeding. For this reason, it is necessary and appropriate to obtain a determination regarding the Debtor's rights with respect to the Tax Rights and Attributes at this juncture.

23. Moreover, without a determination regarding these issues, the Debtor faces the imminent prospect that the Rehabilitator will seek from the Rehabilitation Court a determination regarding the extent of the Debtor's rights with respect to the Tax Rights and Attributes. As described above, these determinations are solely within the province of this Court and any determination by the Rehabilitation Court could lead to inconsistent judicial determinations and potential irreparable harm to the Debtor's estate.

24. At the August 21 Hearing, counsel for the Rehabilitator argued that the Debtor's request to obtain the findings and conclusions contained in paragraphs B and C of the Revised Proposed Final Order "should have been brought as an adversary action . . ." August 21 Transcript at 27:10-11. Thereafter, the Court directed that the Debtor seek those findings by way of an adversary proceeding. *Id.* at 34:4-35:5. In accordance with the Court's direction, the Debtor has filed the instant adversary proceeding.

COUNT I

(Declaratory Judgment: the Debtor has the Exclusive Right to Act in its Own Name with Respect to all Matters Relating to the Consolidated Tax Group's Federal Income Tax Liability for That Tax Year)

25. Debtor repeats and restates the allegations set forth in paragraphs 1-24 in their entirety.

26. Pursuant to 28 U.S.C. § 2201, the Debtor is entitled to entry of a judgment declaring that it has the exclusive right, pursuant to 26 C.F.R. § 1.1502-77(a)(1)(i), to act in its own name with respect to all matters relating to the Consolidated Tax Group's federal income tax liability for that tax year, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code.

COUNT II

(Declaratory Judgment: the Debtor has, Independent of Which Member of the Consolidated Tax Group Owns the Federal Income Tax Refund, the Exclusive Right to File Claims for and Receive Any Federal Income Tax Refund on Behalf of the Consolidated Tax Group)

27. Debtor repeats and restates the allegations set forth in paragraphs 1-24 in their entirety.

28. Pursuant to 28 U.S.C. § 2201, the Debtor is entitled to entry of a judgment declaring that, independent of which member of the Consolidated Tax Group owns any federal income tax refund, the Debtor has the exclusive right, pursuant to 26 C.F.R. § 1.1502-77(a)(2)(v), to file claims for and receive any federal income tax refund on behalf of the Consolidated Tax Group, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code.

COUNT III

(Declaratory Judgment: the Debtor has the Exclusive Right to Take into Account the CNOL on the Consolidated Tax Group's Federal Income Tax Return)

29. Debtor repeats and restates the allegations set forth in paragraphs 1-24 in their entirety.

30. Pursuant to 28 U.S.C. § 2201, the Debtor is entitled to entry of a judgment declaring that it has the exclusive right, pursuant to 26 C.F.R. §§ 1.1502-75(h)(1) and 1.1502-11(a)(2), to take into account the CNOL on the Consolidated Tax Group's federal income tax return, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code.

COUNT IV

(Declaratory Judgment: the Debtor has the Exclusive Right to Reattribute to Itself Some or All of the CNOL Otherwise Allocable to TGIC in the Event That TGIC Were to Deconsolidate From the Consolidated Tax Group)

31. Debtor repeats and restates the allegations set forth in paragraphs 1-24 in their entirety.

32. Pursuant to 28 U.S.C. § 2201, the Debtor is entitled to entry of a judgment declaring that it has the exclusive right, pursuant to 26 C.F.R. § 1.1502-36(d)(6)(i)(B), to reattribute to itself some or all of the CNOL otherwise allocable to TGIC in the event that TGIC were to deconsolidate from the Consolidated Tax Group, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code.

COUNT V

(Declaratory Judgment: the Debtor has the Exclusive Right to Inherit the Tax Attributes by Selling TGIC's Stock to a Third Party and Making an Election under 26 U.S.C. § 338(h)(10))

33. Debtor repeats and restates the allegations set forth in paragraphs 1-24 in their entirety.

34. Pursuant to 28 U.S.C. § 2201, the Debtor is entitled to entry of a judgment declaring that it has the exclusive right, pursuant to 26 U.S.C. §§ 338(h)(10), 332, 381(a) and 381(c), to inherit the Tax Attributes by selling TGIC's stock to a third party and making an election under 26 U.S.C. § 338(h)(10), and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code.

COUNT VI

(Declaratory Judgment: the Debtor has the Exclusive Right to Take a Worthless Stock Deduction With Respect to TGIC's Stock)

35. Debtor repeats and restates the allegations set forth in paragraphs 1-24 in their entirety.

36. Pursuant to 28 U.S.C. § 2201, the Debtor is entitled to entry of a judgment declaring that it has the exclusive right, pursuant to 26 U.S.C. § 165(g) and 26 C.F.R. § 1.1502-80(c), to take a worthless stock deduction with respect to TGIC's stock, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code.

COUNT VII

(Declaratory Judgment: the Debtor's CNOL Interest is Property of the Debtor's Bankruptcy Estate)

37. Debtor repeats and restates the allegations set forth in paragraphs 1-24 in their entirety.

38. Courts uniformly recognize the broad scope of property of the estate under Bankruptcy Code section 541, with even speculative and derivative interests representing property of the estate. *See, e.g., In re Fruehauf Trailer Corp.* 444 F.3d 203, 211 (3d Cir. 2006) ("Property of the estate includes all interests, such as ... contingent interests and future interests, whether or not transferable by the debtor." (internal quotations omitted)); *In re Kemp*, 52 F.3d 546, 550 (5th Cir. 1995) ("The conditional, future, speculative, or equitable nature of an interest does not prevent it from being property of the bankruptcy estate"); *In re Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993) ("[E]very conceivable interest of the debtor, future, nonpossessory, contingent, speculative, and *derivative*, is within the reach of § 541[(a)]." (emphasis added)).

39. Pursuant to 28 U.S.C. § 2201, the Debtor is entitled to entry of a judgment declaring that the Debtor's CNOL Interest is property of the Debtor's estate pursuant to Bankruptcy Code section 541.

COUNT VIII

(Declaratory Judgment: This Court has Exclusive *in rem* Jurisdiction Over the Tax Rights)

40. Debtor repeats and restates the allegations set forth in paragraphs 1-39 in their entirety.

41. Pursuant to 28 U.S.C. § 2201, the Debtor is entitled to entry of a judgment declaring that this Court has exclusive *in rem* jurisdiction over each of the property rights and interests asserted in Counts I through VII that the Court declares are property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code.

COUNT IX

(Injunctive Relief: 11 U.S.C. § 105(a))

42. Debtor repeats and restates the allegations set forth in paragraphs 1-24 in their entirety.

43. Section 105 of the Bankruptcy Code empowers the Court, in the exercise of its equitable powers, to fashion relief that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.

44. In furtherance of the broad grant of power under section 105 of the Bankruptcy Code, a bankruptcy court may grant injunctive relief to prevent harm to the debtor, its estate and its creditors, and to preserve the integrity of the reorganization process.

45. Debtor seeks entry of an injunction prohibiting the Defendants from taking actions that would violate the automatic stay.

46. Defendants will suffer nominal, if any, harm as a result of this injunction.

47. In contrast, if the proposed injunctive relief is not granted, the Debtor will likely suffer irreparable harm, including misappropriation or destruction of the Tax Rights and Attributes.

48. The Debtor has no adequate remedy at law.

49. Based on the foregoing, pursuant to § 105(a) of the Bankruptcy Code, the Debtor respectfully requests an order prohibiting the Defendants from (i) commencing or continuing any action or proceeding against the Debtor on account of the Debtor's exercise of control over the Tax Rights and Attributes, or (ii)(A) taking any Impairment Action or (B) failing to take any action that is necessary to preserve the Tax Rights and Attributes, without prior leave of this Court.

COUNT X

(Injunctive Relief: Rule 7065 of the Federal Rules of Bankruptcy Procedure)

50. Debtor repeats and restates the allegations set forth in paragraphs 1-24 in their entirety.

51. Debtor seeks entry of an injunction prohibiting the Defendants from taking actions that would violate the automatic stay.

52. Defendants will suffer nominal, if any, harm as a result of this injunction.

53. In contrast, if the proposed injunctive relief is not granted, the Debtor will likely suffer irreparable harm, including misappropriation or destruction of the Tax Rights and Attributes.

54. The Debtor has no adequate remedy at law.

55. Based on the foregoing, pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure, the Debtor respectfully requests an order prohibiting the Defendants from (i) commencing or continuing any action or proceeding against the Debtor on account of the Debtor's exercise of control over the Tax Rights and Attributes, or (ii)(A) taking any Impairment Action or (B) failing to take any action that is necessary to preserve the Tax Rights and Attributes, without prior leave of this Court.

REQUEST FOR WAIVER OF SECURITY

56. Pursuant to Fed. R. Bankr. P. 7065, the Debtor requests that the Court waive the security requirements of Fed. R. Civ. P. 65(c), to the extent applicable, with respect to the preliminary injunction sought hereunder.

PRAYER FOR RELIEF

WHEREFORE, the Debtor respectfully requests as follows:

- (i) Entry of a declaratory judgment that:
 - a. the Debtor has the exclusive right, pursuant to 26 C.F.R. § 1.1502-77(a)(1)(i), to act in its own name with respect to all matters relating to the Consolidated Tax Group's federal income tax liability for that tax year, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code;
 - b. independent of which member of the Consolidated Tax Group owns any federal income tax refund, the Debtor has the exclusive right, pursuant to 26 C.F.R. § 1.1502-77(a)(2)(v), to file claims for and receive any federal income tax refund on behalf of the Consolidated Tax Group, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code;
 - c. the Debtor has the exclusive right, pursuant to 26 C.F.R. § 1.1502-75(h)(1) and -11(a)(2), to take into account the CNOL on the Consolidated Tax Group's federal income tax return, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code;
 - d. the Debtor has the exclusive right, pursuant to 26 C.F.R. § 1.1502-36(d)(6)(i)(B), to reattribute to itself some or all of the CNOL otherwise allocable to TGIC in the event that TGIC were to deconsolidate from the

Consolidated Tax Group, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code;

- e. the Debtor has the exclusive right, pursuant to 26 U.S.C. §§ 338(h)(10), 332, 381(a) and 381(c), to inherit the Tax Attributes by selling TGIC's stock to a third party and making an election under 26 U.S.C. § 338(h)(10), and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code;
 - f. the Debtor has the exclusive right, pursuant to 26 U.S.C. § 165(g) and 26 C.F.R. § 1.1502-80(c), to take a worthless stock deduction with respect to TGIC's stock, and that such right is property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code;
 - g. the Debtor's CNOL Interest is property of the Debtor's estate pursuant to Bankruptcy Code section 541; and
 - h. this Court has exclusive *in rem* jurisdiction over each of the property rights and interests asserted in Counts I through VII that the Court declares are property of the Debtor's estate pursuant to section 541 of the Bankruptcy Code; and
- (ii) Entry of an injunction prohibiting the Defendants from:
- a. commencing or continuing any action or proceeding against the Debtor on account of the Debtor's exercise of control over the Tax Rights and Attributes; or
 - b. taking any Impairment Action or failing to take any action that is necessary to preserve the Tax Rights and Attributes, without prior leave of this Court or written consent of the Debtor; and
- (iii) Entry of an order granting such other relief as this Court deems just and proper under the circumstances.

Dated: August 30, 2013

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