

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,  
by LETITIA JAMES,  
Attorney General of the State of New York,

Plaintiff,

-against-

DONALD J. TRUMP, *et al.*,

Defendants.

Index No. 452564/2022

**EXPERT REBUTTAL REPORT OF MICHEL C. McCARTY**

**June 30, 2023**

**PX-1786**

Index No. 452564/2022 (AFE)

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## **I. INTRODUCTION**

### **A. Assignment**

1. I have been asked by the OAG to review, evaluate and respond to certain of the expert reports submitted on behalf of Defendants in this matter: the Summary of Opinions of Robert E. Unell, dated May 26, 2023 (the “Unell Report”), the Expert Report of Professor Eli Bartov, dated May 26, 2023 (the “Bartov Report”), and the Summary of Opinions of Frederick Chin, dated May 26, 2023 (the “Chin Report”).<sup>1</sup>

2. This report (the “McCarty Rebuttal Report”) presents my analysis and conclusions regarding the Unell Report, the Bartov Report and the Chin Report. To the extent that I do not address certain opinions or conclusion in the Unell, Bartov or Chin Reports, it does not represent my endorsement or agreement with their findings.

3. I have additionally reviewed the remaining expert reports submitted on behalf of Defendants in this matter and my opinions as submitted in the McCarty Expert Report remain unchanged.<sup>2</sup>

### **B. Background of Michiel C. McCarty**

4. My credentials and compensation are presented in the McCarty Expert Report. I have not provided any additional expert testimony or published any materials since the date of the McCarty Expert Report.

5. My curriculum vitae is included as Appendix A of this report.<sup>3</sup>

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<sup>1</sup> Unless otherwise indicated, capitalized terms used herein have the meaning ascribed to them in the Expert Report of Michiel C. McCarty dated May 26, 2023 (“McCarty Expert Report”).

<sup>2</sup> The additional expert reports submitted by Defendants in this matter include: Expert Report of Steven A. Collins, dated May 26, 2023; Expert Report of Jason S. Flemmons, dated May 26, 2023; Expert Report of Gary Giulietti, dated May 26, 2023; Summary Opinions of Steven Laposa, dated May 26, 2023; Expert Report of Lawrence A. Moens, dated May 26, 2023.

<sup>3</sup> I have not authored any publications in the last 10 years.

### **C. Documents Relied Upon**

6. The documents I reviewed and relied on in preparing this report in addition to those already cited in the McCarty Expert Report are listed in Appendix B of this report. Additionally, I have relied upon my experience in global capital markets and related work with corporate, institutional and private wealth clients.

7. My work in this matter is ongoing. I reserve the right to supplement this report and any conclusions presented herein in light of any additional information that may become available after the submission of my report or if I am asked to perform further research or analysis.

## **II. SUMMARY OF OPINIONS**

8. The opinions of Messrs. Unell, Bartov and Chin that I address below are unpersuasive, inaccurate and misleading, and I affirm my opinions as set forth in the McCarty Expert Report in addition to my rebuttal opinions below.

9. Based on my review and analysis of the Unell Report, the Bartov Report and the Chin Report and my professional experience, I have formed the following additional rebuttal opinions in response to Messrs. Unell, Bartov and Chin's opinions:

- **The accuracy of the Statements of Financial Condition (SOFCs) was a crucial foundation to the Deutsche Bank Private Wealth Management approval process.**
- **Lenders consider both "Willingness" and "Ability" of a guarantor during the credit approval process.**
- **In contrast to claims that Mr. Trump appropriately presented the SOFCs as "As If," a lending institution would not underwrite a guaranty based on "As-If, pro-forma" projections.**
- **Deutsche Bank's Commercial Real Estate Group's proposal is evidence of the market rate at the time absent Mr. Trump's personal guaranty. Furthermore, this proposal was fully consistent with contemporaneous evidence of the market rates for comparable CRE loans at the time.**



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- **A default rate does not serve as an indication of market terms but rather is a penalty rate to enforce compliance.**
- **Deutsche Bank “haircuts” can’t be viewed as a performance of an independent valuation.**

10. I respond in further detail to certain opinions contained in the Unell Report, the Bartov Report and the Chin Report as follows.

### **III. BASIS FOR MY OPINIONS**

#### **A. The accuracy of the Statements of Financial Condition (SOFCs) was a crucial foundation to the Deutsche Bank Private Wealth Management approval process**

11. Mr. Unell opines that “[t]he statements of financial condition were one of many factors that the lenders used in approving various loan transactions for the Defendants”<sup>4</sup> and “[t]he SOFC were not solely responsible for the terms provided by the lenders.”<sup>5</sup> Similarly, Prof. Bartov opines that “[s]tandard credit analysis theory suggests that the decision-making process of lenders is highly complex and subjective”<sup>6</sup> and that “from the user perspective, financial statement information, like the information presented in the SOFCs, is the beginning, not the end, of a complex and highly subjective valuation process.”<sup>7</sup>

12. Mr. Unell and Prof. Bartov attempt to suggest that DB did not rely on the SOFCs that Mr. Trump submitted and that the SOFCs did not play a strong, if any, role in determining whether to extend a loan to Mr. Trump. The review process presented by Mr. Unell and Prof. Bartov is not an accurate description of the process DB’s PWM Group took when offering terms to Mr. Trump, and conflates DB’s PWM Group review process with the underwriting for a non-recourse standard commercial real estate loan.

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<sup>4</sup> Unell Report, para. 6.

<sup>5</sup> Unell Report, para. 6.

<sup>6</sup> Bartov Report, para. 27.

<sup>7</sup> Bartov Report, para. 30.

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13. DB's PWM Group placed a strong emphasis on Mr. Trump's guarantee, and on the SOFCs, to ensure that Mr. Trump was in a financial position to support the guarantees on the DB Loans and to support the overall credit decision on the loans at issue. This was especially the case for the Doral and OPO loans, which were not initially income producing properties and required substantial capital improvements.

14. Additionally, regarding the ratio analysis that DB conducted, Prof. Bartov fails to attribute accurately how much the SOFCs, and variables derived from the SOFCs, impacted DB's analysis. As discussed in the McCarty Expert Report, the Key Ratios that DB relied on were:

- i. Leverage Ratio = Total Liabilities / Adjusted Net Worth
- ii. Cash Flow Ratio = Recurring Net Cash Flow / Unsecured Liabilities
- iii. Liquidity Ratio = Unpledged Adjusted Liquid Assets / Unsecured Liabilities
- iv. Asset Coverage Ratio = Unpledged Adjusted Assets / Unsecured Liabilities

15. Prof. Bartov suggests that "none of the information required for the computations of these four ratios can be gleaned directly from the SOFCs"<sup>8</sup> and presents the SOFCs as being unimportant, stating that there were variables other than the SOFCs used to calculate the Key Ratios.

16. In fact, DB relied upon numbers from the SOFCs, as well as variables from other sources, when it calculated the Key Ratios. Even if one were to assume that the other inputs not derived from the SOFCs were correct and not misstated, the total amount of the assets directly impacts 2 of the 4 Key Ratios as detailed in the McCarty Expert Report. In fact, seven of the eight variables represented above in the Key Ratios are based on numbers directly reported in the SOFCs.

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<sup>8</sup> Bartov Report, para. 91.

17. Mr. Unell and Prof. Bartov are describing a hypothetical approval process, using a distinct and inapplicable credit analysis, that does not reflect the actual facts of this case. In reality, DB's PWM Group's approval process, favorable terms and interest rates materially relied on Mr. Trump's stated Net Worth based on the SOFCs, whereas the terms and interest rate proposed by DB's CRE Group did not.

**B. Lenders consider both “Willingness” and “Ability” of a guarantor during the credit approval process**

18. Mr. Unell opines that “the Defendants at all times complied with industry accepted standards, lender credit policies, the operative loan documents and guidance provided by the Office of the Comptroller of Currency [the ‘OCC’].”<sup>9</sup> In support of this opinion, Mr. Unell quotes the OCC's guidance on commercial real estate lending in the Comptroller's Handbook – Commercial Real Estate Lending Version 2.0 (the “OCC Handbook”).<sup>10</sup>

19. The OCC Handbook matches, in general terms, the credit analysis as described in the McCarty Expert Report from the Federal Reserve, as well as the guidelines set forth in the internal DB credit guidelines.

20. Further, the OCC Handbook discusses both a potential guarantor's “willingness” and “ability” to fund the project that is being requested. The OCC Handbook highlights that a part of the analysis should be whether the guarantor “has demonstrated willingness to fulfill previous obligations, has sufficient economic incentive, and has a significant investment in the project.”<sup>11</sup>

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<sup>9</sup> Unell Report, para. 3.

<sup>10</sup> Unell Report, para. 29 quoting Comptroller's Handbook – Commercial Real Estate Lending Version 2.0 Pages 29-30.

<sup>11</sup> Unell Report, para. 29 quoting Comptroller's Handbook – Commercial Real Estate Lending Version 2.0 Pages 29-30.

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21. In fact, the OCC's Comptroller's Handbook relating to Rating Credit Risk specifically states that "[g]uarantors who attempt to invalidate their obligations through litigation or protracted renegotiations retard, rather than improve, a loan's collectability."<sup>12</sup>

22. Consistent with the OCC guidance, I understand that DB reviewed litigation risk relating to Mr. Trump's willingness to pay as an additional risk factor. Mr. Trump had denounced a personal guarantee on a previous loan provided by DB's CRE Group and filed litigation accusing DB of "predatory lending."<sup>13</sup> I further understand that DB ultimately decided to issue the additional DB Loans to Mr. Trump. A Reputational Risk Memorandum dated March 9, 2016 states that "[s]enior members of the Americas... further reviewed aspects of this litigation when Mr. Trump was brought on as a [Wealth Management] client in 2011. Given that the litigation was dropped, approval to proceed was granted."<sup>14</sup>

23. In the context of Mr. Trump's previous litigation and the additional risks posed to DB, it remains my opinion that none of the DB Loans (Doral, Trump Chicago, OPO) would have been completed if during the credit approval process it was confirmed that the SOFCs had been misstated and materially misrepresented given the elevated risk of lending to Mr. Trump.

24. Moreover, as described in the McCarty Expert Report, the ongoing certification process is critical for assuring a lender that the personal guaranty supporting a recourse loan remains valid. For example, the Doral loan required Mr. Trump, as Guarantor, to annually certify the accuracy of his past and present SOFCs.<sup>15</sup>

25. In my experience, lenders take the accuracy of a Guarantor's financial information very seriously. DB's actions are consistent with my experience as reflected in their correspondence

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<sup>12</sup> Comptroller's Handbook – Ratings Credit Risk, April 2001, Updated June 26, 2017, page 27.

<sup>13</sup> TTO\_05711441.

<sup>14</sup> DB-NYAG-243069.

<sup>15</sup> DB-NYAG-211271.

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with the Trump Organization in response to the OAG's investigation and news reports concerning Donald J. Trump's financial statements.<sup>16</sup> DB demanded that the Trump Organization answer numerous questions concerning the SOFC valuations as "additional diligence to verify the accuracy of representations that have been provided to" the bank.<sup>17</sup> A member of DB's legal department later sent a detailed email to the Trump Organization's Chief Legal Officer describing the importance that a Guarantor provide accurate information on an ongoing basis as a condition of its loan agreements, and the failure to do so as a potential event of default:<sup>18</sup>

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Your email to Greg Khost of December 7 (below) has been forwarded to me as legal counsel for Deutsche Bank.

As you know, Donald J. Trump is required under the terms of his loan guaranties to provide annual financial statements to Deutsche Bank and to ensure that those statements "are true and correct in all material respects." *See, e.g.*, Old Post Office ("OPO") Guaranty Agreement, § 9(ix). This information is used by the Bank to assess the borrowers' and Mr. Trump's compliance with loan and guaranty covenants, as non-compliance with such covenants may result in an event of default. *See, e.g.*, OPO Loan Agreement, § 7.1(b). Failure to provide accurate valuations of financial assets may fundamentally impact the Bank's view of borrowers' and Mr. Trump's compliance with such covenants. Additionally, Mr. Trump must submit annually a signed certificate certifying, among other things, his compliance with covenants relating to his net worth, debt, and unencumbered liquid assets, and further certifying that his Statement of Financial Condition "presents fairly in all material aspects" his financial condition. *See, e.g.*, Old Post Office Guaranty Agreement, Section 11(i)(D). The loan agreements and guaranties provide that an event of default occurs when "[a]ny representation or warranty of Borrower or Guarantor herein or in any other Loan Document or any amendment to any thereof shall prove to have been false or misleading in any material respect at the time made or intended to be effective." *See, e.g.*, OPO Loan Agreement, § 7.1(d).

As described in Mr. Khost's letter of October 29, 2020, the Bank has identified relevant, publicly available information—including certain information filed in a court proceeding—raising concerns regarding the accuracy of certain representations made in Mr. Trump's prior submissions to the Bank under the terms of his guaranties. Consistent with the Bank's legal and contractual rights and its general practice, it is seeking further information from the Trump Organization to aid in its analysis of whether an event of default may have occurred with respect to such submissions and representations. We appreciate your prompt response to these matters.

DB ultimately decided to exit its relationship with Mr. Trump and the Trump Organization "in light of the failure and/or refusal of the covered client organization to respond to DB's event-driven KYC review questions."<sup>19</sup>

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<sup>16</sup> Complaint ¶¶ 738-742.

<sup>17</sup> DB-NYAG-408428.

<sup>18</sup> DB-NYAG-408432.

<sup>19</sup> DB-NYAG-455546.



26. The DB loan documents, and DB's response to reports concerning alleged misrepresentations in Mr. Trump's SOFCs, are consistent with my professional experience, and with my opinion that the ongoing accuracy of financial statements and certifications from a Guarantor are critical to a lender.

**C. In contrast to claims that Mr. Trump appropriately presented the SOFCs as "As If," a lending institution would not underwrite a guaranty based on "As-If, pro-forma" projections**

27. Mr. Chin's report claims that since the accounting literature "does not mandate that a standard value definition applies to the preparation of the SoFC/Compilations," then it was proper for Mr. Trump to present the compilations as being "As If, pro-forma, or anticipated or projected estimates based on the Guarantor's knowledge and perspective of the assets valued."<sup>20</sup>

28. This is plainly at odds with what Mr. Trump presented in the SOFCs. The SOFCs state "[a]ssets are stated at their estimated current values."<sup>21</sup> It is my experience that this disclosure is understood to mean that the financial statements are providing an estimate of assets and the borrower or guarantor's financial condition as true and correct as of the date presented.

29. It is also my experience that financial statements can be presented as "As-If, pro-forma" for certain purposes. For example, a lender may request an "As-If, pro-forma" budget to ascertain expected financial performance for a specific project to understand potential upside or stress scenarios, but it would not be used to support the value of the collateral, or, in this case, as a net worth estimate to support a guaranty. An "As-if, pro forma" budget would also include the detailed assumptions, methodologies, and alternative outcomes being evaluated, but none of those disclosures are included in the SOFCs.

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<sup>20</sup> Chin Report, pg. 7, paragraph 25.

<sup>21</sup> MAZARS-NYAG-00006308.

30. In my experience, a lending institution would not underwrite a guaranty based on “As-If, pro-forma” projections. Nor do the facts at issue for each of the Transactions support that Mr. Trump presented the SOFCs as being “As-If, pro-forma.” To use “As-If, pro-forma” values and not properly present the calculations as projected based on defined and disclosed assumptions is entirely misleading and against capital markets standard practice.

**D. Deutsche Bank’s Commercial Real Estate Group’s proposal is evidence of the market rate at the time absent Mr. Trump’s personal guaranty. Furthermore, this proposal was fully consistent with contemporaneous evidence of the market rates for comparable CRE loans at the time**

31. Mr. Unell additionally asserts that “the pricing provided by the Deutsche Bank Commercial Real Estate team was out of market and that the ultimate pricing of L+225 bps during the renovation period and L+200 bps thereafter for the Doral asset was consistent with market terms at the time of origination and the terms provided by the Deutsch Bank Commercial Real Estate division were not consistent with market terms at the time of origination.”<sup>22</sup>

32. As discussed in the McCarty Expert Report, DB’s CRE Group, as an informed previous lender to Trump, offered a comprehensive term sheet to the Trump Organization on the Doral Property for what I believe to have been the best comparable for what Mr. Trump would have been able to borrow at on the Doral loan at the time. The contemporary analysis and discussions between DB’s CRE Group and Mr. Trump support that DB’s CRE Group offered Mr. Trump what they believed to be competitive terms of the market at the time for the Doral loan without Mr. Trump providing a full personal guaranty.

33. At the time the CRE group offered a proposal to the Trump Organization on Doral, the property was a run-down resort that was being bought through a bankruptcy proceeding. Mr.

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<sup>22</sup> Unell Report, para. 70.

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Unell wrongly claims that the offer from DB's CRE group was "not consistent with market terms at the time of origination" by comparing it to market rates that were being offered to properties that belonged to different asset classes or were less risky than the Doral project.<sup>23</sup> Mr. Unell also misleadingly graphed spreads rather than interest rates (which included this spread on top of the 10-Year Treasury rate in the RealtyRates.com data).<sup>24</sup> If the actual interest rates were graphed accurately, the Doral CRE transaction would be above the average but well below the maximum rates for RealtyRates.com's major property category of Golf Courses & Country Clubs – All Types.<sup>25</sup> As Doral was being purchased through a bankruptcy auction and was even shopped to multiple lenders who declined to offer any terms on the project,<sup>26</sup> it was considered a highly risky endeavor and the interest rate that the CRE group offered accurately factored in the riskiness of the project.

34. It is further the case that RealtyRates.com's Investor Survey includes an unspecified mix of income-producing Class A and Class B properties.<sup>27</sup> In contrast, OPO and Doral were not income-producing or investment-grade properties at the time of the DB PWM loans. Therefore, the DB PWM loans would be comparable to loans at the higher end of the range rather than the average or lower end of the range. Additionally, as discussed in the McCarty Expert Report, Club Corp, a comparable borrower, required an interest rate of 10% plus fees and expenses. Mr. Unell conflates industry wide investment grade properties that are income producing with two

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<sup>23</sup> Unell Report, para. 70, n79. Mr. Unell inappropriately includes comparisons to RealtyRates.com's property categories "Office-All Types" and "Lodging Facilities - Full Service."

<sup>24</sup> Unell Report, para. 70, n79.

<sup>25</sup> RealtyRates.com, Investor Survey 1st Quarter 2011, page 16; RealtyRates.com, Investor Survey 2nd Quarter 2011, page 16; RealtyRates.com, Investor Survey 3rd Quarter 2011, page 16; RealtyRates.com, Investor Survey 4th Quarter 2011, page 16; RealtyRates.com, Investor Survey 1st Quarter 2012, page 16; RealtyRates.com, Investor Survey 2nd Quarter 2012, page 16; RealtyRates.com, Investor Survey 3rd Quarter 2012, page 16; RealtyRates.com, Investor Survey 4th Quarter 2012, page 16.

<sup>26</sup> TTO\_02952829.

<sup>27</sup> RealtyRates.com, Investor Survey 1st Quarter 2011, page 16.



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clearly non-investment grade development stage properties and ignores data from the same source, RealtyRates.com survey, that shows a wide range of interest rates.

35. As further support, at the time DB's CRE group offered their terms to Mr. Trump, I am aware of only one other offer--from Beal Bank ("Beal Bank"). The terms of the Beal Bank offer included an interest rate that was 2.5% lower than the offer the CRE group proposed. However, the offer from Beal was for a loan amount of only \$100 million, which was \$30 million less than the offer from DB's CRE Group, and included more restrictive terms relating to cash flow sweeps and prepayment penalties than the proposal from DB's CRE Group.<sup>28</sup> Ms. Ivanka Trump highlighted the inferior terms of the Beal offer in stating "[a]s the market has illustrated getting leverage on resorts right now is not easy (ie., 125 plus an equity kicker for 25 percent or Beal with full cash flow sweeps and steep prepayment penalties)."<sup>29</sup> It is also likely that had Beal offered the same amount as DB's CRE Group of \$130 million and on similar terms, the interest rate offered by Beal would have been even higher (and closer to the DB's CRE offer).

36. Mr. Unell's claim that DB's CRE Group's offer was not market rate at the time is inaccurate, and it is based on a misleading comparison with rates offered on projects that did not resemble the risk profile of the Doral and OPO projects. DB's CRE Group accurately priced the project based on the multiple risks and uncertainties involved in turning around each of the properties and is fully consistent with contemporaneous evidence of market rates at the time.

**E. A default rate does not serve as an indication of market terms but rather is a penalty rate to enforce compliance**

37. Additionally, Mr. Unell states that the default rate from the PWM group was still "below the proposed rate in the term sheet that Trump Endeavor 12 LLC received from the

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<sup>28</sup> BEAL001697.

<sup>29</sup> TTO\_02952829.

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commercial real estate division at Deutsche Bank.”<sup>30</sup> This is misleading as a default rate is not an indication of market terms, but rather, a penalty rate to encourage compliance and penalize noncompliance. Default rates serve as a penalty adjustment to the otherwise agreed upon market terms, which in this case were the low interest rate terms Mr. Trump inappropriately received from DB’s PWM Group.

38. A default rate is a common term in loan documents, with banks often insisting, and borrowers agreeing, on a default rate that is several percentage points higher than the operative rate. For example, the remedy for an Event of Default for the Doral loan was a Default Rate of interest, calculated at the loan rate plus 4%.<sup>31</sup> But that term is agreed to in the lending marketplace over and above the otherwise operative rate on the loan, and has nothing to do with how the marketplace sets the underlying lending rate.

**F. DB’s “haircuts” can’t be viewed as a performance of an independent valuation**

39. Prof. Bartov asserts that “Deutsche Bank performed and relied on its own analysis (due diligence) in determining Mr. Trump’s property values and worth.”<sup>32</sup> Prof. Bartov supports this claim primarily based upon DB’s application of its standardized “haircuts” for the stated values of Mr. Trump’s assets.<sup>33</sup>

40. Prof. Bartov is conflating the haircuts that DB took as part of their approval process with a performance of independent valuations. Prof. Bartov earlier explains that “the goal of lenders in estimating values of investment properties is to assess the asset’s worth in the event of

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<sup>30</sup> Unell Report, para. 81.

<sup>31</sup> DB-NYAG-005853, Doral Term Loan Agreement § 2.4 (defining Default Rate).

<sup>32</sup> Bartov Report, para. 98.

<sup>33</sup> As discussed in the McCarty Expert Report, DB’s underwriting process applied standardized “haircuts” to a Guarantor’s net worth statement, not as a covenant compliance test, but as a downside calculation used during the underwriting process to provide a conservative internal evaluation of what might be available to the bank to protect its investment. *See, e.g.*, Examination of Nicholas Haigh (Oct. 23, 2019) at 76-79.

the borrower's default... their primary focus is on determining the asset's liquidation value, which refers to the price it would achieve if sold quickly, typically below its fair market value."<sup>34</sup>

41. The statements quoted by Prof. Bartov should be understood in this context. The haircuts are not applied as an independent valuation of Mr. Trump's assets but as a downside risk if Mr. Trump were to default and assets liquidated to satisfy the guaranty. In other words, DB's haircuts were not a discount for materially misstated values, rather the haircuts were used to ensure the value of the guaranty in a liquidation scenario.

#### **IV. CONCLUSIONS**

42. In each of the above cases, Messrs. Unell, Bartov and Chin's arguments are unpersuasive, inaccurate and misleading and I affirm my opinions as set forth in the McCarty Expert Report.

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<sup>34</sup> Bartov Report, para. 82.

Expert Rebuttal Report of Michiel C. McCarty

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**V. RESERVATIONS OF RIGHTS**

43. The foregoing represents my professional opinions as of this date based on my 40 plus years of investment banking, capital markets and private equity experience, my specific knowledge of the disclosure in this case, the companies involved and the principals thereof and the analysis described in this report. I reserve the right to update my analysis based on any new relevant data that becomes available, specifically following the completion of the discovery phase of this case (including the completion of depositions and document productions) and the receipt of related other expert rebuttal reports, and to consider any facts or opinions raised by parties in this case.

June 30, 2023  
Greenwich CT



Michiel C. McCarty  
Chairman and CEO  
M.M. Dillon & Co., LLC

# APPENDIX A

## Michiel C McCarty Curriculum Vitae

### Employment

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<b>M.M. Dillon &amp; Co.</b>	<b>2009 – Present</b>
<ul style="list-style-type: none"><li>• Chairman &amp; CEO</li></ul>	
<b>CRT Capital Group LLC</b>	<b>2003 – 2008</b>
<ul style="list-style-type: none"><li>• Managing Director</li><li>• Head of Investment Banking</li></ul>	
<b>Gleacher &amp; Co., LLC</b>	<b>1996 – 2003</b>
<ul style="list-style-type: none"><li>• Managing Director</li><li>• NatWest Integration</li></ul>	
<b>SQ Warburg &amp; Co.</b>	<b>1991 – 1995</b>
<ul style="list-style-type: none"><li>• Managing Director</li><li>• Head of North and South America Investment Banking</li><li>• Management Committee</li></ul>	
<b>Dillon Read &amp; Co., Inc.</b>	<b>1979 – 1991</b>
<ul style="list-style-type: none"><li>• Managing Director</li><li>• Financing Head</li></ul>	
<b>Citicorp NA – Merchant Banking Group</b>	<b>1975 – 1979</b>
<ul style="list-style-type: none"><li>• Vice President</li></ul>	

### Relevant Transactions

#### **High Yield Debt (50+)**

- Consolidated Hydro
- Barnes & Noble Booksellers
- Level 3 Communications

#### **Mergers & Acquisitions (150+)**

- AT&T / SWB
- Lafarge / Blue Circle
- Fleet / Quick & Reilly

#### **Debt Exchange Offers (20+)**

- Primus Communications
- Barnes & Noble Booksellers
- Frontline

**Equity & Equity Linked (100+)**

- Xoma
- Regeneron
- Reva

**Spin Offs & Outs (24+)**

- ICI-Zeneca

**Other Experience**

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**University Lecturer**

- Dartmouth Tuck School
- University of Chicago Booth School of Business
- University of Pennsylvania Wharton School
- Vanderbilt University Owen School
- Vanderbilt University School of Law

**Major Expert Witness Cases (15+)**

- Oxbow Crestview (in re Oxbow Carbon Unitholders)
- EFIH TXU (in re Energy Future Holdings)
- Duke / Crescent (in re Duke Energy)
- Verizon / IDEARC (in re Version Communications)
- Burrup (in re Oswal v ANZ, Yara, and Apache)

**Mergers & Acquisitions (150+)**

- Sell Side Advisor
- Buy Side Advisor
- Hostile Tender Advisor

**Restructurings (30+)**

- Debtor Advisory
- Creditor Advisory
- Principal Investing

**Investment Banking Management**

**Private Equity Fund Advisor (10+)**

**Board of Directors Advisory (150+)**

**Education**

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**The Wharton School of Finance and Commerce, University of Pennsylvania**  
Master of Business Administration in Finance, 1975

**Vanderbilt University**

Bachelor of Arts in Physics with Honors, 1973

**Expert Testimony Within the Last Four Years**

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**Series A-2 Holders of Doubling Road Holdings, LLC, v. Curaleaf, Inc.**

JAMS Arbitration No. 142508497

Deposition and Arbitration Testimony

April 2022

**P3 Health Group Holdings, LLC, v. Hudson Vegas Investment SPV, LLC**

C.A. No. 2021-0518-JTL

Deposition Testimony

August 2021



# APPENDIX B

Expert Rebuttal Report of Michiel C. McCarty  
APPENDIX B – Documents Relied Upon

### **Listing of Documents Relied Upon by Michiel C. McCarty**

This appendix includes the new documents I relied upon in preparing my rebuttal report in addition to all documents listed in the McCarty Expert Report Appendix B.

<b>EXPERT REPORTS</b>
Expert Report of Robert E. Unell, dated May 26, 2023
Expert Report of Professor Eli Bartov, dated May 26, 2023
Summary of Opinions of Frederick Chin, dated May 26, 2023

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