IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: LOMBARD PUBLIC FACILITIES CORPORATION, Debtor.	Appeal from 17-bk-22517
LORD ABBETT HIGH YIELD MUNICIPAL BOND FUND Appellant, v. LOMBARD PUBLIC FACILITIES CORPORATION, *et al.* Appellees.	Case No. 17-cv-09211 (EEC)

JOINT OPPOSITION TO LORD ABBETT HIGH YIELD MUNICIPAL BOND FUND'S MOTION FOR LEAVE TO APPEAL FROM ORDER DENYING MOTION TO DISMISS

Brad A. Berish (ARDC #06200891)
Alexander Brougham (ARDC # 6301515)
ADELMAN & GETTLEMAN, LTD.
53 West Jackson Blvd., Suite 1050
Chicago, Illinois 60604
Tel (312) 435-1050
Fax (312) 435-1059

On behalf of Lombard Public Facilities Corporation

Aaron L. Hammer (IL No. 6243069)
SUGAR FELSENTHAL GRAIS & HAMMER LLP
30 N. LaSalle Street, Suite 3000
Chicago, IL 60602
Tel (312) 704-9400
Fax (312) 372-7951

On behalf of Oppenheimer Rochester High Yield Municipal Fund

Nancy A. Peterman (ARDC # 6208120)
Kevin D. Finger (ARDC # 6216060)
GREENBERG TRAURIG, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Tel (312) 456-8400
Fax (312) 456-8435

On behalf of ACA Financial Guaranty Corporation

Richard A. Bixter Jr. (ARDC #6200891)
HOLLAND & KNIGHT LLP
131 S. Dearborn, 30th Floor
Chicago, Illinois 60603
Tel (312) 263-3600
Fax (312) 578-6666

On behalf of Westin Hotel Management, L.P.

Lombard Public Facilities Corporation (the "Debtor"), ACA Financial Guaranty Corporation ("ACA"), Oppenheimer Rochester High Yield Municipal Fund ("Oppenheimer"), and Westin Hotel Management, L.P. ("Westin," and together with the Debtor, ACA, and Oppenheimer, the "Objecting Parties") respectfully request that this Court deny the Motion for Leave to Appeal from Order Denying Motion to Dismiss (the "Motion", ECF No. 2)[1] filed by Lord Abbett High Yield Municipal Bond Fund ("Lord Abbett").

PRELIMINARY STATEMENT

The Motion to permit an interlocutory appeal should be denied. Under 28 U.S.C. § 158(a), no appeal will lie from an interlocutory order absent "leave of the court" -- a standard generally determined by looking to 28 U.S.C. § 1292(b). This provision permits an interlocutory appeal only if: 1) the appeal presents a controlling question of law; 2) over which there is substantial basis for difference of opinion; and 3) an immediate appeal may materially advance the outcome of the case. None of those criteria is met here.

The appeal request fails at the outset because the appeal sought does not involve a controlling question of law. As an initial matter, Lord Abbett attempts to frame the issue before this Court as a pure legal one. The legal standard argued by Lord Abbett to support its appeal request is different than the standard it argued before the Bankruptcy Court. The parties generally agree on the legal standard, and in fact, the Bankruptcy Court adopted and applied Lord Abbett's proposed standard. Where the parties differ is on the application of that standard to the facts. Lord Abbett asks this Court to review and overturn the Bankruptcy Court's factual findings supporting the Debtor's eligibility for bankruptcy relief – specifically the Bankruptcy Court's findings that the Debtor neither carried out a governmental function nor was actively

[1] "ECF No. ___" refers to the corresponding docket entry in the District Court. "Bankr. ECF No. __" refers to the corresponding docket entry in Case No. 17-22517 (the "Bankruptcy Case").

controlled by the Village of Lombard (the "Village"). Accordingly, the appeal does not present a pure question of law that is appropriate for interlocutory review.

The appeal request also fails the other two criteria. There is no legal issue over which there is substantial basis for difference of opinion. Lord Abbett, the Debtor ***and the Bankruptcy Court*** all agreed on the standard the Bankruptcy Court applied to determine whether the Debtor is an instrumentality of the Village.

Finally, the requested appeal would not "materially advance the ultimate termination of the litigation." It is anticipated that partway through the briefing of the requested appeal, the Bankruptcy Court will rule on the Debtor's motion to confirm its plan of reorganization (the "Plan"), rendering the Bankruptcy Court's eligibility ruling "final" for appellate purposes. An appeal as-of-right will likely follow, requiring the parties to duplicate the efforts expended just months earlier in the first appeal.

The requested appeal also would hinder the Debtor's ability to confirm its Plan. The Debtor has endured two additional months in bankruptcy as a result of Lord Abbett's motion to dismiss; those two months consisted of extensive briefing, discovery disputes, depositions of multiple witnesses, and a two-day evidentiary hearing which resulted in hundreds of thousands of dollars in legal fees for the Debtor and the Restructuring Support Parties.[2] Granting the Motion would unnecessarily divert the Debtor's limited resources away from confirmation and to continued litigation over its eligibility for Chapter 11.

Ultimately, Lord Abbett disagrees with the Bankruptcy Court's factual findings. Displeasure over factual findings cannot support a request for an interlocutory appeal,

[2] "Restructuring Support Parties" means the Village, ACA, Nuveen Asset Management, LLC, Oppenheimer, Westin (the hotel manager), and HC Management Lombard, LLC (the restaurant manager).

particularly where the Debtor is on the verge of exiting Chapter 11. Accordingly, Lord Abbett cannot meet its high burden to establish that an interlocutory appeal is appropriate here.

BACKGROUND

The Debtor owns a 500-room hotel and convention center that operates under the Westin® flag (the "Hotel and Conference Center"). The Debtor financed the acquisition, development and construction of the Hotel and Conference Center with the proceeds of three series of bonds (Series A bonds, Series B bonds and Series C bonds) in the aggregate amount of $183,710,000. After completion of the Hotel and Conference Center, the Debtor's operations were adversely affected by the financial crisis and the Debtor defaulted on certain of the bonds beginning on January 1, 2014. Thereafter, the Debtor engaged in restructuring discussions with its bondholders, the Village,[3] and key contract counterparties. After four hard-fought years of negotiations, the Debtor was able to negotiate a consensual restructuring of the Debtor's debt and operations with substantially all of its stakeholders.

As of the date of commencement of the Debtor's Chapter 11 case, the aggregate accelerated amounts of the bonds totaled approximately $249,651,009. The consensual restructuring provides for, among other things, cancellation of approximately $109 million of bond debt, significant reductions in annual debt service on the restructured bond debt, significant extensions of the maturity dates of the bonds, at least $13.7 million for capital improvements at the hotel, and new hotel and restaurant management agreements with reduced fees. This consensual restructuring is supported by 91% of the Series A bonds, 56.58% of the Series B bonds, and 43.12% of the Series C bonds, the Village, and the managers of the hotel and restaurant. All major constituents signed restructuring support agreements which reflect

[3] The Village formed the Debtor in 2003 to assist in financing and constructing the Hotel and Conference Center. *See* Am. Mem. Op. at 2.

significant, material economic accommodations to facilitate the restructuring through a prearranged Chapter 11 case, which will maximize value for all constituents.

Lord Abbett, a holder of 3% of the bond debt, has been involved in these restructuring discussions since at least 2015 and has elected, for its own reasons, not to support this restructuring. On August 3, 2017, Lord Abbett filed its motion to dismiss the Debtor's bankruptcy case asserting that the Debtor was ineligible to reorganize under Chapter 11 of the Bankruptcy Code. In support of its motion, Lord Abbett alleged that the Debtor was an "instrumentality" of the Village. On that basis, Lord Abbett asked the Bankruptcy Court to dismiss the Chapter 11 case on the grounds that the Debtor is ineligible to file for Chapter 11.

After extensive briefing, two months of discovery and a two-day evidentiary hearing, the Bankruptcy Court denied Lord Abbett's motion to dismiss. Order, Bankr. ECF No. 259.[4] In reaching its decision, the Bankruptcy Court adopted the two-part analysis that Lord Abbett asked it to adopt and which required a significant factual inquiry: (i) whether the Debtor had an active relationship with the Village; and (ii) whether the Debtor carried out a governmental function. *See* Mot. To Dismiss ¶¶ 24-25; Am. Mem. Op. at 12 ("[T]his court agrees with Lord Abbett's position that when used in the context of section 101(27)'s definition of governmental unit, it should cover entities that have an active relationship with federal, state or municipal governments and that carry out governmental functions"). After a two-day fact intensive trial, the Bankruptcy Court denied Lord Abbett's motion and found that: (i) there was not an "active relationship" between the Debtor and the Village and (ii) the Debtor did not carry out a governmental function – the Debtor owns a Hotel and Convention Center and that does not constitute a "governmental function." Am. Mem. Op. at 1, 8, 11, 13.

[4] The Bankruptcy Court entered the *Amended Memorandum Opinion* (Bankr. ECF No. 268) which constitutes the Bankruptcy Court's findings of fact and conclusions of law.

LEGAL STANDARD

Interlocutory appeals are an exception to the general rule requiring a final order before seeking appellate review. Such appeals "are frowned on in the federal judicial system." *Sterk v. Redbox Automated Retail, LLC*, 672 F.3d 535, 536 (7th Cir. 2012). As an initial matter, Lord Abbett submits a legal issue to this Court that it did not argue to the Bankruptcy Court. On that basis alone, its request should be denied. *See In re Trentadue*, 837 F.3d 743, 747 (7th Cir. 2016).

In addition, Lord Abbett cannot satisfy the test applicable to interlocutory appeals. Although neither 28 U.S.C. § 158(a) nor the Bankruptcy Rules "provides any guidance for determining when an interlocutory appeal is appropriate," this Court has held that "the standard set forth in 28 U.S.C. § 1292(b), which governs interlocutory appeals from the district court to the court of appeals, is instructive in this matter." *In re Energy Insulation, Inc.,* 143 B.R. 490, 493 (N.D. Ill. 1992). Looking to Section 1292(b), the "courts have devised a three part test which suggests that review of interlocutory orders may be granted only where: 1) the appeal presents a controlling question of law; 2) over which there is a substantial basis for difference of opinion; and 3) an immediate appeal may materially advance the outcome of the case." *Id*. "These criteria are in the conjunctive, and thus the movant must demonstrate all three factors." *Fund Recovery Servs. LLC v. Argon Credit, LLC (In re Argon Credit, LLC)*, No. 17 C 5381, 2017 WL 3478812, at *2 (N.D. Ill. Aug. 14, 2017). Moreover, any "[d]oubts regarding appealability" should be "resolved in favor of finding that the interlocutory order is not appealable." *In re Westwood Shake & Shingle, Inc*., 971 F. 2d 387, 390 (9th Cir. 1992). As Lord Abbett's Motion fails to meet any of the relevant criteria, the Objecting Parties urge the Court to deny the Motion.

ARGUMENT

I. The Standard Lord Abbett Argues to this Court is Different Than the One It Argued to the Bankruptcy Court

The standard that Lord Abbett argued to the Bankruptcy Court – and which the Bankruptcy Court applied – is different than the one it contends is controlling for the purposes of this appeal. The standard presented below was whether the Debtor is an instrumentality of the Village because the Debtor had an active relationship with the Village and the Debtor carried out a governmental function. Mot. To Dismiss ¶¶ 19-20. It now argues that the "controlling" issue of law is: "whether an Illinois public-facilities corporation is a governmental unit as defined by § 101(27) of the United States Bankruptcy Code." Mot. ¶ 1. The Bankruptcy Court, therefore, was never able to address the issue Lord Abbett contends is central to this appeal. As the Seventh Circuit recently stated: "'it is axiomatic that issues and arguments which were not raised before the district court cannot be raised for the first time on appeal, except in rare cases.... To reverse the district court on grounds not presented to it would undermine the essential function of the district court.'" *In re Trentadue*, 837 F.3d at 747 (quoting *Boyers v. Texaco Ref. & Mktg., Inc*., 848 F.2d 809, 811–12 (7th Cir. 1988)). As the court then noted: "[w]e have applied this rule in the bankruptcy context . . . ." *Id*. (citing *In re Kroner*, 953 F.2d 317, 319 (7th Cir. 1992)). Because Lord Abbett raises the purported legal issue for the first time in its Motion, its request for leave to appeal must be dismissed.

II. Lord Abbett Cannot Meet the Test Applied Pursuant to Section 1292(b)

A. The Appeal Does Not Involve a Pure Question of Law that is Controlling

Lord Abbett's appeal does not present a pure question of law. "Interlocutory review is generally reserved for 'pure' questions of law . . . ." *880 S. Rohlwing Rd., LLC v. T&C Gymnastics, LLC*, No. 16-cv-07650, 2017 WL 264504, at *4 (N.D. Ill. Jan. 19, 2017). A question

is deemed a "pure question of law" when an appellate court could decide the issue "quickly and cleanly without having to study the record." *Ahrenholz v. Bd. of Trustees of Univ. of Illinois,* 219 F.3d 674, 677 (7th Cir. 2000); *880 S. Rohlwing Rd., LLC*, 2017 WL 264504, at *4 (holding that pure questions of law are "abstract issue[s] of law . . . suitable for determination by an appellate court without a trial record" (internal quotation marks omitted)).

A mixed question of law and fact, where a District Court is tasked to apply the law to a specific factual situation, is typically not suitable for an interlocutory appeal. *MCK Millennium Centre Retail, LLC v. Krol (In re MKC Millennium Centre Parking, LLC)*, Nos. 12 B 24676, 15 C 1163, 2015 WL 2004887, at *3 (N.D. Ill. Apr. 29, 2015). *See also United States v. Shanrie Co.*, No. 05-cv-306, 2007 WL 1749220, at *3 (S.D. Ill. June 15, 2007) ("The questions involved in reaching that determination were not 'pure' questions of law. Rather, the issues involved an application of the law to the facts of this case. The Seventh Circuit has made it clear that this type of fact-intensive determination is not appropriate for interlocutory appeal.") (citing *Ahrenholz*, 219 F.3d at 677).

As a preface before application of the three part test, it is apparent that Lord Abbett's purported question of law has no basis in law. It asks this Court to determine: "whether an Illinois public-facilities corporation is a governmental unit as defined by § 101(27) of the United States Bankruptcy Code." Mot. ¶ 1. Congress did not empower the Illinois legislature to define the scope of the term "person" as it is used in Section 109 and defined in Section 101(41). That determination is exclusively the province of federal law, determinable by federal courts tasked with interpreting that federal law. Simply put, and as explained in section II.B.2, *infra*, there is no basis for this Court to defer to the Illinois legislature on the scope of the term "person" under the Bankruptcy Code, and Lord Abbett offers no support for its position.

In its Motion to Dismiss, however, Lord Abbett did not frame the eligibility determination as a pure legal issue to the Bankruptcy Court, but instead relied on legislative history that indicated that the inquiry was a factual one and argued that the Debtor—which was formed four years before Illinois passed the public-facilities statute—was an instrumentality of the Village because the Debtor had an active relationship with the Village and the Debtor carried out a governmental function. *See* Mot. to Dismiss ¶¶ 19-20. Lord Abbett attached exhibits to its Motion to Dismiss to support a factual finding that Debtor had an active relationship with the Village and that the Debtor performed a governmental function. *See, e.g.*, *id*. Exs. A – E.

The two-day evidentiary hearing on the Motion to Dismiss focused on facts tending to prove, or disprove, the existence of these two elements. The hearing featured the direct testimony and cross-examination of four witnesses: the asset manager, the Debtor's president, the Village finance director, and a restructuring professional involved in over four years of restructuring negotiations. The hearing also featured the admission of 224 exhibits, of which at least 113 were offered into evidence by the movants. These exhibits included email communications, minutes of the meetings of the Debtor's board of directors, and other contemporaneous records of past events which occurred over a fourteen-year period. The evidence presented at the hearing addressed, *inter alia*, issues related to the nature and extent of the Debtor's operations, the Debtor's relationship and communications with the asset, restaurant, and hotel managers, the involvement of the Village in the Debtor's operations, and details of the financing transaction. Counsel for Lord Abbett argued that these facts supported its theory of the case.[5] *See, e.g.*, Hr'g Tr. at 24:4-16 (Nov. 14, 2017).

[5] Counsel for Lord Abbett: "So in order to determine whether the LPFC is an instrumentality of the village, this Court is being asked to determine, one, whether or not the LPFC had an active relationship with the village; and, two, if the LPFC carried out some governmental function. And, certainly, ***with the evidence that we have put in***, Your Honor, we have shown both, that there was an active and constant relationship from inception to

These highly fact-based proceedings resulted in a highly fact-dependent opinion. The Bankruptcy Court adopted the two-part standard advocated by Lord Abbett, Am. Mem. Op. at 12, and undertook an in-depth application of those standards to the evidence adduced at trial, *see, e.g., id*. at 3, 5-10, 12-13.[6] Ultimately, the Bankruptcy Court found that: (a) "The Debtor does not actively carry out a government function of the Village. It is a commercial enterprise, in competition with other hotels and convention centers," and (b) the Village's relationship with the Debtor does "not exhibit the kind of control necessary to show that the Debtor is an instrumentality of the Village sufficient to exclude it from bankruptcy protection." *Id*. at 13.

As a result, if this Court grants Lord Abbett's Motion, it will have to delve deeply into the factual record before the Bankruptcy Court to review the Bankruptcy Court's decision. Accordingly, the appeal does not present a pure question of law that is appropriate for interlocutory review. *See MCK Millennium*, 2015 WL 2004887, at *4 ("The appeal must present a 'pure' or 'abstract' question of law, 'something the [district court] could decide quickly and cleanly without having to study the record.'" (quoting *Ahrenholz*, 219 F.3d at 676-77)). For that reason, there is no pure question of law that is controlling.[7]

---

the filing date between the LPFC and the village; and, second, that the LPFC was established by the village in order to effectuate governmental functions and public purposes."

[6] "The Village, however, does not control the Debtor. It appoints its directors who, ***according to the record herein***, have acted to further the Debtor's purposes to operate a profitable hotel and convention center. That may be because the Debtor's interests and the Village's interests are aligned." Am. Mem. Op. at 8 (emphasis added).

[7] Lord Abbett cites to a Seventh Circuit decision for the principle that an order denying dismissal of a bankruptcy case is a "natural" for interlocutory appeal. *See* Mot. ¶ 7 (citing *Fruehauf Corp. v. Jartran, Inc.* 886 F.2d 859, 864 (7th Cir. 1989)). But that case is readily distinguishable because it presented a pure question of law. *Jartran*, 886 F.2d at 864; *In re Jartran*, 87 B.R. 525, 527-8 (N.D. Ill. 1988) (District Court found that the issue on appeal – whether serial Chapter 11 proceedings is allowed under the Bankruptcy Code – "is a legal determination which we review de novo"). Here, however, as explained, this appeal does not involve a pure question of law and the legal standards governing the appealable issues are not contested by the parties or in the case law.

B. The Purported Question of Law Is Not Contestable

Lord Abbett also fails to demonstrate that the issue posed by this putative appeal is contestable. To do so, a movant seeking an interlocutory appeal must: (a) identify case law demonstrating "substantial conflicting decisions regarding the claimed controlling issue of law," *Thomas D. Philipsborn Irrevocable Ins. Tr. v. Avon Capital, LLC*, Case No. 11 C 3274, 2014 WL 273649, at *1 (N.D. Ill. Jan. 24, 2014); and (b) "demonstrate that a 'substantial likelihood' exists that the interlocutory order will be reversed on appeal." *Tr. of Jartran, Inc. v. Winston & Strawn*, 208 B.R. 898, 901 (N.D. Ill. 1997); *MCK Millennium*, 2015 WL 2004887, at *4 (same). Lord Abbett cannot satisfy this burden.

1. There Are No Substantial Conflicting Opinions

It is clear that there is no difference of opinion, much less a "substantial" one, as to the narrowly-drawn question that Lord Abbett wishes to answer via interlocutory appeal. That question, raised now for the first time on appeal is, in Lord Abbett's own words, is: "Do Illinois public-facilities corporations constitute instrumentalities of their municipalities within the meaning of the Bankruptcy Code's definition of governmental unit?" Mot. ¶ 15. Lord Abbett, however, did not assert any caselaw demonstrating "substantial conflicting decisions regarding this [alleged] controlling issue of law."

Instead, Lord Abbett tries to create one by phrasing its "contested issue of law" in considerably broader terms. What begins as a narrowly drawn question about Illinois public-facilities corporations, *see* Mot. ¶¶ 1, 15, transforms into an inquiry into "the meaning and scope of the term "instrumentality," Mot. ¶ 23. It is this expansive topic, not the specific issue sought to be appealed, upon which Lord Abbett contends there is a difference of opinion. *See Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, No. 09-cv-58, 2011 WL 13118547, at

*1 (D.N.D. June 1, 2011) (noting that a significant difference of opinion must exist as to "the precise issue [the would-be appellant] seeks to certify"); *see also von Bulow ex rel. Auersperg v. von Bulow*, 634 F. Supp. 1284, 1312 (S.D.N.Y. 1986) (finding no significant difference of opinion where no conflicting authority existed as to the "narrow issue" sought to be appealed).

But even here Lord Abbett falls short because there is no genuine difference of opinion as to the standard for determining what constitutes an "instrumentality." The authorities agree that the primary determinants of "instrumentality" status are: (a) an active relationship with the municipality; and (b) performance of a governmental function. And this is the test applied by the Bankruptcy Court. Am. Mem. Op. at 12.

In an effort to demonstrate a conflict (where clearly none applies), Lord Abbett cites two opinions that it contends offer conflicting law: (i) *In re Northern Mariana Islands Retirement Fund*, No. 12 00003, 2012 WL 8654317 (D. N. Mar. I. June 13, 2012); and (ii) *In re Las Vegas Monorail Co.*, 429 B.R. 770 (Bankr. D. Nev. 2010). *See* Mot. ¶ 29. These opinions, however, do not conflict. *Las Vegas Monorail* provides for a three-part inquiry that, like the two-part approach discussed above, examines the debtor's governmental function and the government's control over and relationship with the debtor. *See* 429 B.R. at 789 ("If there is [government] control coupled with public function, then the nature and extent of that control determine whether the entity is an instrumentality"). The *Northern Mariana* case expressly found this analysis to be "helpful." *Northern Mariana*, 2012 WL 8654317, at *3. Likewise, in *In re Hospital Authority of Charlton County*, the court found that the "that the factors identified by the *Las Vegas Monorail* court are relevant in determining whether an entity is a governmental unit." *U.S. Tr. v. Hosp. Auth. of Charlton Cty. (In re Hosp. Auth. of Charlton Cty.)*, No. 12-50305,

2012 WL 2905796, at *6 (Bankr. S.D. Ga. July 3, 2012). Therefore, the notion that *Northern Mariana* and *Las Vegas Monorail* are contradictory is not supported by a review of the cases.

2. Lord Abbett Cannot Show a Likelihood of Reversal on Appeal

Lord Abbett also cannot "demonstrate that a 'substantial likelihood' exists that the interlocutory order will be reversed on appeal.'" *See Jartran*, 208 B.R. at 901; *MCK Millennium*, 2015 WL 2004887, at *4 (same). First, Lord Abbett proposes a purported legal question that has no basis in law and for which it offers no legal support. Second, Lord Abbett does not challenge the legal standard applied by the Bankruptcy Court, so its decision would be reviewed for clear error. Accordingly there is virtually no chance – let alone a substantial one – that this Court would reverse the very legal standard the appellant advocated.

Lord Abbett's purported question of law—whether being a "public facilities corporation" defined by Illinois law operates as a *per se* bar to chapter 11 eligibility—has an easy answer: absolutely not. Congress did not empower the Illinois legislature to define the scope of the word "person" as it is used in Section 109 and defined by Section 101(41). That determination is exclusively the province of federal law, as interpreted by federal courts. As the *Las Vegas Monorail* court observed, to give "controlling effect to the labels used by State government" in interpreting a federal statutory scheme would violate the Supremacy Clause. *Las Vegas Monorail*, 429 B.R. at 799 & n.30; *cf. United Food & Commercial Workers Local 100A v. John Hofmeister & Son, Inc.*, 950 F.2d 1340, 1346 (7th Cir. 1991) ("Federal courts must ensure that the importation of state law will not frustrate or interfere with the implementation of federal policy.").

Since all parties are in agreement as to the applicable legal standard, there are no pure legal issues to be resolved on appeal. Instead, this Court would be required to evaluate either the

manner in which the Bankruptcy Court weighed the evidence or the manner in which it applied the evidence to the facts – both of which would be reviewed for clear error. *Thomas v. Gen'l Motors Acceptance Corp.,* 288 F.3d 305, 307 (7th Cir. 2002). Under the "clear error" standard, the appellate court "will not overturn the [lower] court's factual findings unless, after reviewing all the evidence, [it is] left with [a] definite and firm conviction that a mistake has been [made]." *Hernandez v. Cardoso*, 844 F.3d 692, 695 (7th Cir. 2016) (internal citation omitted). Applying this appellate standard to this factual record, therefore, Lord Abbett cannot "demonstrate that a 'substantial likelihood exists that the interlocutory order will be reversed on appeal.'" *See MCK Millennium*, 2015 WL 2004887, at *4.

C. Granting the Motion Would Not Speed Up Litigation.

The requested interlocutory appeal would not "materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Instead it creates judicial inefficiency, duplicative litigation, and excessive costs in the bankruptcy case. The Bankruptcy Court determined that the Debtor is eligible for Chapter 11 relief and approved a process to consider whether to confirm a plan of reorganization on March 6, 2018. The more efficient and appropriate "termination" of the litigation is the Bankruptcy Court's decision on whether to confirm a plan of reorganization.

A plan confirmation process is the process by which all bankruptcy cases conclude or "terminate." If the Bankruptcy Court confirms the plan of reorganization, Lord Abbett and other parties will have the right to appeal the Bankruptcy Court's decision and as part of that appeal, can include the issue of the Debtor's eligibility for Chapter 11 relief. For example, if a decision on confirmation of the Plan (the "Confirmation Decision") is rendered by the Bankruptcy Court at the conclusion of the confirmation hearing on March 6, 2018, Lord Abbett (and other parties)

will have until March 20, 2018 to file a notice of appeal of the Confirmation Decision. *See* Fed. R. Bankr. P. 8002(a)(1). On this assumption, the appeal of the Confirmation Decision would commence in late March 2018. If this Court grants the pending Motion, the briefing of the requested interlocutory appeal likely would not be completed, at the earliest, until May 11, 2018, assuming an aggressive schedule for commencing the requested interlocutory appeal.[8] As a result, the two appeals will overlap, and the requested interlocutory appeal will not advance the ultimate termination of the litigation, much less advance it materially, and will result in a complex, overlapping set of appeals at a tremendous cost to all parties.

In addition, given the intense and contested factual disputes pertaining to eligibility, any reversal (which Debtor thinks is unwarranted) likely would be coupled with a remand to review the facts under a different standard. Allowing the appeal, therefore, would not terminate the litigation and would not "materially advance the ultimate determination of the litigation."

Finally, a "court considering interlocutory review must also evaluate the stage of litigation and weigh the disruptive effect of an immediate appeal on the Bankruptcy Court proceedings against the probability that resources will be wasted in allowing those proceedings to go forward." *Aurelius Capital Master, Ltd. v. Tousa Inc.*, No. 08-61317-CIV, 2009 WL 6453077, at *16 (S.D. Fla. Feb. 6, 2009). Granting the Motion would divert the Debtor's limited resources to defend the appeal and potentially jeopardize the consensual restructuring.

As stated previously, the Court has scheduled a confirmation hearing on March 6, 2018. This restructuring has taken over four years and was further delayed by Lord Abbett's Motion to

[8] The Court has scheduled a hearing on the Motion for Leave for January 24, 2018. Assuming a decision is made on that date, Lord Abbett's statement of issues and designation of the record will be filed on February 7, 2018, and the Appellees' designation would be due 14 days thereafter, on February 21, 2018. Fed. R. Bankr. P. 8009(a). Assuming the voluminous record is transmitted quickly (by February 26, 2018), briefing will take 74 days pursuant to Rule 8018. According to this schedule, briefing on the interlocutory appeal will conclude on May 11, 2018.

Dismiss. The Debtor's restructuring should not be delayed further by a baseless interlocutory appeal because the time and expense related to the requested interlocutory appeal will further jeopardize the restructuring. If the Plan is not confirmed on or before March 13, 2018,[9] the parties to the restructuring support agreements can terminate their support for the Plan. Further, money spent on professional fees incurred because of an appeal may upset the carefully negotiated financial concessions on which the Plan depends. If the Debtor's restructuring is unsuccessful, the very survival of the hotel which it operates is in jeopardy and the 300 jobs associated with the hotel could be lost. As a result, if the appeal is permitted and even if the Debtor is successful, it may well lose its opportunity to reorganize. It is clear, therefore, that an interlocutory appeal of the Order will waste resources and will not speed up the litigation.

The Bankruptcy Court Should Issue an
Opinion on Whether Leave Should Be Granted.

In response to this Court's Minute Entry on December 22, 2017, the Objecting Parties respectfully state that they have no objection to this Court asking the Bankruptcy Court for its viewpoint on whether the analogous requirements of 28 U.S.C. § 1292(b) are met in this appeal.

Conclusion

For the foregoing reasons, the Objecting Parties respectfully urge this honorable Court to deny the Motion and dismiss the appeal.

Dated: January 10, 2018

[9] The Restructuring Support Parties currently have the right to terminate their respective restructuring support agreements because the Debtor was not able to meet the original deadline of January 11, 2018 to confirm a plan of reorganization. The Debtor is currently requesting an extension of this deadline from the Restructuring Support Parties to March 13, 2018, and expects that such request will be granted.

Lombard Public Facilities Corporation

By: */s/ Brad A. Berish*

Brad A. Berish (ARDC #06200891)
Alexander Brougham (ARDC # 6301515)
ADELMAN & GETTLEMAN, LTD.
53 West Jackson Blvd., Suite 1050
Chicago, Illinois 60604
Tel (312) 435-1050
Fax (312) 435-1059

ACA Financial Guaranty Corporation

By: */s/ Kevin D. Finger*

Nancy A. Peterman (ARDC # 6208120)
Kevin D. Finger (ARDC # 6216060)
GREENBERG TRAURIG, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Tel (312) 456-8400
Fax (312) 456-8435

Oppenheimer Rochester High Yield Municipal Fund

By: */s/ Aaron L. Hammer*

Aaron L. Hammer (IL No. 6243069)
SUGAR FELSENTHAL GRAIS & HAMMER LLP
30 N. LaSalle Street, Suite 3000
Chicago, IL 60602
Tel (312) 704-9400
Fax (312) 372-7951

Westin Hotel Management, L.P.

By: */s/ Richard A. Bixter Jr.*

Richard A. Bixter Jr. (ARDC #6200891)
HOLLAND & KNIGHT LLP
131 S. Dearborn, 30th Floor
Chicago, Illinois 60603
Tel (312) 263-3600
Fax (312) 578-6666

CERTIFICATE OF SERVICE

Kevin D. Finger certifies that he caused to be served a true copy of the **JOINT OPPOSITION TO LORD ABBETT HIGH YIELD MUNICIPAL BOND FUND'S MOTION FOR LEAVE TO APPEAL FROM ORDER DENYING MOTION TO DISMISS** upon the attached Electronic Mail Notice List through the ECF System which sent notification of such filing via electronic means on January 10, 2018.

/s/ *Kevin D. Finger*

Mailing Information for a Case 1:17-cv-09211

Electronic Mail Notice List

- Brad Arnold Berish
  bberish@ag-ltd.com,dbaird@ag-ltd.com
- Alexander Franklin Brougham
  abrougham@ag-ltd.com
- Kevin D. Finger
  fingerk@gtlaw.com,caswickc@contract.gtlaw.com,ChiLitDock@gtlaw.com
- Nancy A. Peterman
  petermann@gtlaw.com,chilitdock@gtlaw.com,ChiBkyDocket@gtlaw.com
- Peter John Roberts
  proberts@shawfishman.com
- U.S. Bankruptcy Court, Clerk
  ilnb_appeals@ilnb.uscourts.gov
- United States Trustee
  pat.s.layng@usdoj.gov
- Richard A. Bixter Jr.
  Richard.Bixter@hklaw.com