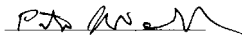


**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
DBSI, INC., et al.	)	Case No. 08-12687 (PJW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	
<hr/>	)	
JAMES R. ZAZZALI, as Trustee	)	
for the Debtors' Jointly-	)	
Administered Chapter 11 Estates	)	
and/or as Litigation Trustee	)	
for the DBSI Estate Litigation	)	
Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
AFA FINANCIAL GROUP, LLC,	)	Adv. Proc. No. 10-54524 (PJW)
et al.,	)	
	)	
1031 EXCHANGE GROUP, et al.,	)	Adv. Proc. No. 10-54648 (PJW)
	)	
THE BLIND GALLERY and JOHN DOE	)	Adv. Proc. No. 10-53991 (PJW)
1-10,	)	
	)	
AIR PERFORMANCE SERVICE, INC.	)	Adv. Proc. No. 10-53918 (PJW)
and JOHN DOE 1-10,	)	
	)	
ATLAS VAN LINES, INC., and	)	Adv. Proc. No. 10-54827 (PJW)
JOHN DOE 1-10,	)	
	)	
HOEFER WYSOCKI ARCHITECTS LLC	)	Adv. Proc. No. 10-54882 (PJW)
and JOHN DOE 1-10,	)	
	)	
IBF GROUP and JOHN DOE 1-10,	)	Adv. Proc. No. 10-54899 (PJW)
	)	
BROOKS & AMADEN, INC. and	)	Adv. Proc. No. 10-55219 (PJW)
JOHN DOE 1-10,	)	
	)	
NEW WEST PAVING and JOHN DOE	)	Adv. Proc. No. 10-54995 (PJW)
1-10,	)	
	)	
Defendants.	)	

Dated: March 30, 2012

**MEMORANDUM OPINION****WALSH, J** 

This opinion is with regard to nine motions (the "Motions") for a determination as to whether certain adversary proceedings<sup>1</sup> are core or non-core under 28 U.S.C. § 157. For the sake of administrative convenience, this opinion will resolve the common issues in the Motions. Several of the movants have also filed motions to dismiss "for lack of authority to adjudicate," citing the Supreme Court's decision in Stern v. Marshall, -- U.S. --, 131 S.Ct. 2594 (2011), in conjunction with these Motions. This opinion will address only whether the actions are core under § 157.

**Background**

In November 2008, DBSI Inc. ("DBSI") and several of its affiliates (collectively "Debtors") filed for bankruptcy protection under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

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<sup>1</sup>The relevant adversary actions are: Zazzali v. AFA Financial Group et al., Adv. Proc. No. 10-54524(PJW) [the "AFA Financial Action"]; Zazzali v. 1031 Exchange Group, et al., Adv. Proc. No. 10-54648(PJW) [the "1031 Exchange Action"]; Zazzali v. The Blind Gallery and John Doe 1-10, Adv. Proc. No. 10-53991(PJW) [the "Blind Gallery Action"]; Zazzali v. Air Performance Service, Inc. and John Doe 1-10, Adv. Proc. No. 10-53918(PJW) [the "Air Performance Action"]; Zazzali v. Atlas Van Lines, Inc. and John Doe 1-10, Adv. Proc. No. 10-54827(PJW) [the "Atlas Van Action"]; Zazzali v. Hoefler Wysocki Architects LLC and John Doe 1-10, Adv. Proc. No. 10-54882(PJW) [the "Hoefler Action"]; Zazzali v. IBF Group and John Doe 1-10, Adv. Proc. No. 10-54899(PJW) [the "IBF Group Action"]; Zazzali v. Brooks & Amaden, Inc. and John Doe 1-10, Adv. Proc. No. 10-55219(PJW) [the "Brooks & Amaden Action"]; Zazzali v. New West Paving and John Doe 1-10, Adv. Proc. No. 10-54995(PJW) [the "New West Action"].

Debtors' plan of liquidation was confirmed in October 2010, naming James Zazzali ("Trustee") as litigation trustee of the DBSI Estate Litigation Trust. (Case No. 08-12687(PJW), Doc. # 5924.)

Following his appointment, Trustee commenced these adversary actions in this Court. A number of the defendants have moved for a determination by this Court as to whether the claims asserted in the adversaries are core or non-core proceedings under 28 U.S.C. § 157(b). (Adv. Proc. No. 10-54524(PJW), Doc. # 99; Adv. Proc. No. 10-54648(PJW), Doc. # 157; Adv. Proc. No. 10-53991(PJW), Doc. # 21; Adv. Proc. No. 10-53918(PJW), Doc. # 23; Adv. Proc. No. 10-54827(PJW), Doc. # 21; Adv. Proc. No. 10-54882, Doc. # 22; Adv. Proc. No. 10-54899, Doc. # 23; Adv. Proc. No. 10-55219, Doc. # 22; Adv. Proc. No. 10-54995, Doc. # 20.) Trustee filed a consolidated response ("Response") to the Motions in each action. (Adv. Proc. No. 10-54524(PJW), Doc. # 160; Adv. Proc. No. 10-54648(PJW), Doc. # 237; Adv. Proc. No. 10-53991(PJW), Doc. # 26; Adv. Proc. No. 10-53918(PJW), Doc. # 31; Adv. Proc. No. 10-54827(PJW), Doc. # 26; Adv. Proc. No. 10-54882, Doc. # 27; Adv. Proc. No. 10-54899, Doc. # 28; Adv. Proc. No. 10-55219, Doc. # 27; Adv. Proc. No. 10-54995, Doc. # 30.)

There are commonalities among the claims asserted in the actions such that they can be grouped into categories based on the causes of action listed in the complaint. One category of action, herein the "Four-Count Actions," includes the Blind Gallery and Air

Performance Actions and asserts avoidance claims under 11 U.S.C. §§ 547<sup>2</sup>, 548<sup>3</sup>, 549<sup>4</sup>, and disallowance of

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<sup>2</sup>Section 547 permits a trustee to

avoid any transfer of an interest of the debtor in property --

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made--
  - (A) on or within 90 days before the date of the filing of the petition; or
  - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if--
  - (A) the case were a case under chapter 7 of this title;
  - (B) the transfer had not been made; and
  - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b) (2005).

<sup>3</sup>Section 548 provides in relevant part:

- (a)(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily--
  - (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
  - (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
  - (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
  - (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
  - (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

claims against the estate under § 502<sup>5</sup>. The second category of action, herein the “Ten-Count Actions,” includes the Atlas Van, Hoefer, IBF Group, Brooks & Amaden, and New West Actions. The complaints in the Ten-Count Actions all assert claims for the avoidance of fraudulent transfers under 11 U.S.C. §§ 544<sup>6</sup> and 548

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(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

11 U.S.C. § 548(a) (2005).

<sup>4</sup>a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate--

(1) that occurs after the commencement of the case; and

(2)(A) that is authorized only under section 303(f) or 542(c) of this title; or

(B) that is not authorized under this title or by the court.

11 U.S.C. § 549 (2005).

<sup>5</sup>Section 502 provides in relevant part that “the court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 544, 545, 547, 548, 549 . . . of this title, unless such entity or transferee has paid the amount or turned over any such property, for which such entity or transferee is liable . . . .” 11 U.S.C. § 502(d) (2005).

<sup>6</sup>(a) The trustee shall have . . . the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by--

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists;

. . .

(b)(1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

and applicable state law, preferential transfers under § 547, and post-petition transfers under § 549; for unjust enrichment; and for the disallowance of all claims under § 502. The remaining actions, the AFA Financial Action and the 1031 Exchange Action, each assert a unique combination of claims. The AFA Financial Action complaint asserts causes of action under §§ 544, 547, 548, 549, and 502, as well as for unjust enrichment. Lastly, the 1031 Exchange Action complaint seeks the avoidance of fraudulent transfers under §§ 544 and 548, the disallowance of claims under § 502, unjust enrichment, rescission of certain agreements between Debtors and the defendants, and a declaratory judgment for relief related to the federal Securities Act of 1933 and Securities Exchange Act of 1934.

### **Jurisdiction**

A bankruptcy court has the power to determine “whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11.” 28 U.S.C. § 157(b)(3).

### **Discussion**

In their briefing on whether these actions are core or non-core, the parties are in agreement that the cause of action for the disallowance of claims under § 502 and the avoidance claims

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11 U.S.C. § 544(a) & (b) (1998).

under §§ 544, 547, 548, and 549 are core. In dispute is whether the claims for unjust enrichment in the Ten-Count, AFA Financial, and 1031 Exchange Actions, and the declaratory judgment and rescission claims in the 1031 Exchange Action, are core. Thus, I will address each category of action in turn below.

Courts in this circuit apply a two-step analysis to determine whether a proceeding is core or non-core. The first step is to look at the non-exclusive list of core proceedings listed in § 157(b)(2)<sup>7</sup>. In re Exide Techs., 544 F.3d 196, 206 (3d Cir.

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<sup>7</sup>Section 157(b)(2) provides:

Core proceedings include, but are not limited to--

- (A) matters concerning the administration of the estate;
- (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
- (C) counterclaims by the estate against persons filing claims against the estate;
- (D) orders in respect to obtaining credit;
- (E) orders to turn over property of the estate;
- (F) proceedings to determine, avoid, or recover preferences;
- (G) motions to terminate, annul, or modify the automatic stay;
- (H) proceedings to determine, avoid, or recover fraudulent conveyances;
- (I) determinations as to the dischargeability of particular debts;
- (J) objections to discharges;
- (K) determinations of the validity, extent, or priority of liens;
- (L) confirmations of plans;
- (M) orders approving the use or lease of property, including the use of cash collateral;
- (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;
- (O) other proceedings affecting the liquidation of the assets of the estate

2008). The next step is to perform a two-pronged test, under which “a claim will be deemed core ‘if (1) it invokes a substantive right provided by title 11 or (2) if it is a proceeding, that by its nature, could arise only in the context of a bankruptcy case.’” Id. (quoting Halper v. Halper, 164 F.3d 830, 836 (3d Cir. 1999)). “A core proceeding must have as its foundation the creation, recognition, or adjudication of rights which would not exist independent of a bankruptcy environment although of necessity there may be peripheral state law involvement.” In re Stone & Webster, Inc., 367 B.R. 523, 526 (Bankr. D. Del. 2007) (citations and internal quotation marks omitted).

#### *Four-Count Actions*

The only claims asserted in these actions are avoidance claims under §§ 547, 548, 549 and disallowance of claims pursuant to § 502. The parties to the Four-Count Actions concede that these claims are core. Moreover, actions to avoid preferential and fraudulent transfers are specifically enumerated in the list of core proceedings, under § 157(b)(2)(F) and (H), respectively. Turning to the second prong of the Halper test, avoidance actions clearly invoke a substantive right provided by title 11 as they are

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or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and (P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

28 U.S.C. § 157(b)(2)(A)-(P) (2005).



brought pursuant to provisions of the Bankruptcy Code. The disallowance of claims is a core proceeding pursuant to § 157(b)(2)(B), and by definition could only arise in the context of a bankruptcy case. As to the avoidance of post-petition transfers under § 549, while it is not explicitly listed as a core claim in § 157(b)(2), it is an avoidance action that is both a substantive right created by the Bankruptcy Code and could only exist where a petition for bankruptcy has been filed. Therefore, I hold that the Four-Count Actions are core matters.

#### *Ten-Count Actions*

As noted above, the parties dispute only whether the claims for unjust enrichment in these actions are core. The remaining nine counts are avoidance actions pursuant to §§ 544, 547, 548, and 549, and the disallowance of claims under § 502. I have already determined above that the §§ 547, 548, and 549 actions are undoubtedly core. Likewise, I agree with the court in Kirschner v. Aqoglia (In re Refco Inc.), 461 B.R. 181 (Bankr. S.D.N.Y. 2011), that claims for fraudulent conveyance brought under § 544 are core because they arise under the Bankruptcy Code. 461 B.R. at 183-84. See also In re Universal Marketing, Inc., 459 B.R. 573, 576 (Bankr. E.D. Pa. 2011) (“Even though § 544 incorporates state law to provide the ‘rules of decision,’ a § 544 claim is a

federal bankruptcy cause of action.") Thus, the avoidance claims are all core.

With regard to the claim for unjust enrichment, Trustee argues that the claim is core "because it is expressly based on, and the unjust enrichment at issue flows from, the two and four-year fraudulent transfers [sought to be avoided under §§ 544 and 548]." (Response, at 3.) The Ten-Count Action defendants, on the other hand, conclude without explanation that the cause of action for unjust enrichment "is a state law claim that does not appear to be core." (Adv. Proc. No. 10-54827, Doc. # 21, at 3; Adv. Proc. No. 10-54882, Doc. # 22, at 3; Adv. Proc. No. 10-54899, Doc. # 23, at 3; Adv. Proc. No. 10-55219, Doc. # 22, at 3; Adv. Proc. No. 10-54995, Doc. # 20, at 3.)

In the Atlas Van Action complaint, Trustee frames the cause of action for unjust enrichment as follows:

98. Plaintiffs reassert all of the allegations in the foregoing paragraphs of this Complaint as if more fully set forth herein.

99. Defendants and/or defendants John Doe 1-10 were enriched as a result of receiving the Two Year Transfers and the Four Year Transfers described in this Complaint by receiving something of value that belonged to Plaintiff.

100. These enrichments violate equity and good conscience.

101. These enrichments did not result from enforceable agreements between Plaintiff and Defendants.

102. By reason of the forgoing [sic], Defendants and/or defendants John Doe 1-10 should be compelled by this

Court to make restitution to Plaintiff in the amount of the Two Year Transfers and the Four Year Transfers.

(Adv. Proc. No. 10-54827, Doc. # 1, at 21-22.) The other four complaints in the remaining Ten-Count Actions contain the same allegations in the same numbered paragraphs. The "Two Year Transfers" and "Four Year Transfers" are those transfers that Trustee seeks to avoid pursuant to §§ 544 and 548. Further, as the first paragraph of the complaints make clear, the purpose of the action is to "avoid and recover certain transfers" to the defendants. (Compls., at 1.) The "Nature of the Complaint," as stated in relevant part, is

to avoid and recover from Defendant, or from any other person or entity for whose benefit the transfers were made, all fraudulent transfers of property, and to or for the benefit of Defendant or defendants John Doe 1-10, from an account owned by one or more of the Debtors and/or any applicable additional Debtor(s) and/or the affiliated "Consolidated Non-Debtor(s)" (as that term is defined in the Plan) (collectively, the "Transferor") during the four year period prior to the filing of the Debtors' bankruptcy petitions pursuant to 11 U.S.C. §§ 544, 548 and 550 and/or applicable state law. Subject to further discovery, proof, and/or affirmative defenses that may be asserted by Defendant in response to the Complaint, Plaintiff also seeks: (i) to recover any unauthorized post-petition transfers, including any transfers on account of pre-petition debt that cleared post-petition, pursuant to 11 U.S.C. § 549, and (ii) any preferential transfers that the Debtors may have made to the Defendant pursuant to 11 U.S.C. § 547.

(Id. at 2.) No mention is made of any other grounds for relief in addition to the avoidance powers provided by the Bankruptcy Code. Thus, the cause of action for unjust enrichment in the Ten-Count

Complaint is best understood as an alternate method of pleading or a rewording of the fraudulent transfer actions provided by the Bankruptcy Code. Trustee is seeking the return of the same funds, and cannot get a double recovery for the fraudulent transfer actions and the unjust enrichment claims. In this context, then, it is this bankruptcy case that allows Trustee to seek the return of the transfers. The unjust enrichment claim here is in the nature of an action for fraudulent conveyance, and thus it is core.

*AFA Financial Action*

The moving defendants in this action do not dispute Trustee's determination that all of the claims asserted are core.

As in the Four-Count and Ten-Count Actions, the complaint in the AFA Financial Action seeks the avoidance and recovery of fraudulent (§§ 544 and 548), preferential, and post-petition transfers, the disallowance of claims under § 502, and restitution for unjust enrichment. Moreover, the unjust enrichment claim is identical to the unjust enrichment count in the Ten-Count Actions:

74. Plaintiffs reassert all of the allegations in the foregoing paragraphs of this Complaint as if more fully set forth herein.

75. Defendants and/or defendants John Doe 1-500 were enriched as a result of receiving the Two Year Transfers and the Four Year Transfers described in this Complaint by receiving something of value that belonged to Plaintiff.

76. These enrichments violate equity and good conscience.

77. These enrichments did not result from enforceable agreements between Plaintiff and Defendants.

78. By reason of the forgoing [sic], Defendants and/or defendants John Doe 1-500 should be compelled by this Court to make restitution to Plaintiff in the amount of the Two Year Transfers and the Four Year Transfers.

(Adv. Proc. No. 10-54524(PJW), Doc. # 1.) The first two pages of the complaint contain the same language regarding the purpose of the action as to avoid and recover certain fraudulent, preferential, and post-petition transfers. (Doc. # 1, at 1-2.) Thus, as in the Ten-Count Actions, the unjust enrichment claim is essentially an alternate grounds for recovery of the allegedly fraudulent transfers. In other words, the unjust enrichment cause of action is in the nature of a fraudulent transfer avoidance claim, and thus is core.

The defendants argue that another bankruptcy court in this district held in In re Insilco Techs., Inc., 330 B.R. 512 (Bankr. D. Del. 2008), that an unjust enrichment claim was non-core even where it was "paired with a fraudulent transfer claim." (Adv. Proc. No. 10-54524(PJW), Doc. # 187, at 7.) The Insilco decision, however, is distinguishable. The complaint in Insilco asserted mostly non-bankruptcy claims related to state corporate law (e.g. breach of fiduciary duty, abuse of control). 330 B.R. at 517. Further, there was no discussion of whether the unjust enrichment claim derived from either of the Bankruptcy Code claims. In

contrast, the unjust enrichment claim here is in the nature of a fraudulent conveyance action, which is undoubtedly core.<sup>8</sup>

### *1031 Exchange Action*

As in the Four-Count, Ten-Count, and AFA Financial Actions, Trustee asserts several avoidance claims in the 1031 Exchange Action. These causes of action are clearly core under § 157(b) (2) (F), (H), and the Halper test.

The remaining three causes of action, for declaratory judgment, unjust enrichment, and rescission, are of a different nature. The count for declaratory judgment reads as follows:

124. Plaintiffs reassert all of the allegations in the foregoing paragraphs of this Amended Complaint as if more fully set forth herein.

125. By virtue of the forgoing [sic], the Debtors seek a declaratory judgment from this Court: (1) that the TIC interests constituted securities under the Securities Act and the Exchange Act; (2) that Defendants were not licensed to sell securities; (3) that the sale of TIC interests as real estate rather than as a security violated the Securities Act and the Exchange Act due to the Debtors' failure to comply with the Securities Act and the Exchange Act with respect to the TIC interests and the Defendants' lack of appropriate licenses to sell the TIC interests as securities; (4) that as a result, any agreements obligating the Debtors to make referral fee, commission, or other payments to the Defendants based upon the sale of the TIC interests are void and unenforceable, and (5) requiring the Defendants to make

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<sup>8</sup>I also note that more recently, this Court determined that an action asserting unjust enrichment claims alongside other avoidance actions was core in its entirety, but did not analyze its determination in detail. Burtch v. Seaport Capital, LLC (In re Direct Response Media, Inc.), — B.R. —, Adv. No. 10–50855(KG), 2012 WL 112503, at \*1 (Bankr. D. Del. Jan. 12, 2012).

restitution to the Plaintiff in the amount of the Two Year Transfers and the Four Year Transfers.

126. As a result of the foregoing, the Court should enter declaratory judgment as aforesaid in the exercise of its sound discretion.

(Adv. Proc. No. 10-54648 (PJW), Doc. # 3, at 34-35.) The gravamen of this claim is a plea for relief under the federal securities laws, namely the Securities Act of 1933 and the Securities Exchange Act of 1934. Such a claim is not core, as it does not fall under any of the categories listed in § 157(b)(2), does not assert a substantive right provided under title 11, and is not an action that could arise only in a bankruptcy case.

Similarly, Trustee's claim for rescission derives from securities law:

133. To the extent that Defendants and/or defendants John Doe 1-500 received a brokerage commission, referral fee, or other payment based upon the unlicensed sale of securities, the agreement giving rise to the underlying obligation to make the payments was void, improper, and is subject to rescission.

134. To the extent Defendants and/or defendants John Doe 1-500 received a brokerage commission, referral fee, or other payment based upon the unlicensed sale of securities, the payments received by Defendants and/or defendants John Doe 1-500 must be disgorged.

135. By reason of the foregoing, Plaintiff is entitled to a judgment of rescission and disgorgement against Defendants and/or defendants John Doe 1-500.

(Id. at 36.) Trustee is asking for the recovery of funds received from the allegedly unlicensed sale of securities. This is not an

action in the nature of an avoidance action under the Bankruptcy Code, but rather a request for relief under federal securities law. Thus, the claim for rescission is not core for the same reason that the declaratory judgment claim is not core.

Lastly, the complaint asserts a cause of action for unjust enrichment:

127. Plaintiff reasserts all of the allegations in the foregoing paragraphs of this Amended Complaint as if more fully set forth herein.

128. Defendants and/or defendants John Doe 1-500 were enriched as a result of receiving the Two Year Transfers and the Four Year Transfers described in this Amended Complaint by receiving something of value that belonged to Plaintiff.

129. These enrichments violate equity and good conscience.

130. These enrichments did not result from enforceable agreements between Plaintiff and Defendants.

131. By reason of the forgoing [sic], Defendants and/or defendants John Doe 1-500 should be compelled by this Court to make restitution to Plaintiff in the amount of the Two Year Transfers and the Four Year Transfers.

(Id. at 35.) Although the language of this count is the same as that in the Ten-Count and AFA Financial Actions complaints, I conclude that, reading this complaint as a whole, the unjust enrichment claim in this action is of a different nature. In the Ten-Count and AFA Financial Actions, Trustee asserted only avoidance claims alongside the unjust enrichment claim, and thus it can be said that the unjust enrichment cause of action was a rewording of the Bankruptcy Code claims. In contrast, Trustee is alleging that the defendants in the 1031 Exchange Action entered



into "void and unenforceable agreements" to receive fees and commissions from the unlicensed sale of securities. (Adv. Proc. No. 10-54648, Doc. # 3, at 35, ¶ 125.) The "Nature of the Complaint" is described as

to avoid and recover from Defendants, or from any other person or entity for whose benefit a particular transfer was made, all fraudulent transfers of property, and to or for the benefit of Defendants or defendants John Doe 1-500, from an account owned by one or more of the Debtors or any applicable additional Debtor(s) or the affiliated "Consolidated Non-Debtor(s)" (collectively, the "Transferors") during the four year period prior to the filing of the Debtors' bankruptcy petitions pursuant to 11 U.S.C. §§ 544, 548 and 550 and/or applicable state law. This Amended Complaint also seeks declaratory relief pursuant to 28 U.S.C. § 2201, et seq., and 11 U.S.C. §§ 105(a), 323, and 541(a), and in accordance with Fed. R. Bankr. P. 7001(9) and 7003 declaring the underlying agreements pursuant to which the transfers at issue in this Amended Complaint were made to be null and void.

(Id. at 7-8.) Thus, in the 1031 Exchange Action, the unjust enrichment claim derives from a quasi-contract principle, rather than the right to recover avoidable transfers under the Bankruptcy Code. As a result, the claim does not assert a substantive right provided by title 11 and is not a claim that can arise solely in the context of a bankruptcy case.

### **Conclusion**

For the foregoing reasons, I hold that the Air Performance, Blind Gallery, AFA Financial, Atlas Van, Hoefer, IBF Group, Brooks & Amaden, and New West Actions are core in their

entirety. I further hold that in the 1031 Exchange Action, the causes of action for avoidance and disallowance of claims are core, but that the claims for declaratory judgment, unjust enrichment, and rescission are non-core.

SERVICE LIST

Francis A. Monaco, Jr.  
WOMBLE CARLYLE SANDRIDGE RICE  
222 Delaware Avenue, Suite 1501  
Wilmington, DE 19801

Ford Elsaesser  
Elsaesser Jarzabek Anderson  
ELLIOTT & MACDONALD, CHTD.  
P.O. Box 1049  
102 South Euclid Avenue, Suite 307  
Sandpoint, ID 83864

Theodore J. Tacconelli  
FERRY, JOSEPH & PEARCE, P.A.  
824 Market Street, Suite 1000  
P.O. Box 1351  
Wilmington, DE 19899

Derek C. Anderson  
Cliff G. Anderson  
MICHAELS, WARD & RABINOVITZ, LLP  
1113 Spruce Street, Suite 302B  
Boulder, CO 80302

Christopher A. Ward  
Shanti M. Katona  
POL SINELLI SHUGHART PC  
222 Delaware Avenue, Suite 1101  
Wilmington, DE 19801

Armand J. Della Porta, Jr.  
MARSHALL, DENNEHEY, WARNER, COLEMAN & COGGIN  
1220 N. Market Street, 5<sup>th</sup> Floor  
Wilmington, DE 19801

Denis C. Dice  
Joel Wertman  
MARSHALL, DENNEHEY, WARNER, COLEMAN & COGGIN  
1845 Walnut Street  
Philadelphia, PA 19103

Lucian B. Murley  
SAUL EWING LLP  
222 Delaware Avenue, Suite 1200  
P.O. Box 1266  
Wilmington, DE 19899

Martin Jaszczuk  
Alan M. Wolper  
Helen Din  
LOCKE LORD BISSELL & LIDDELL LLP  
111 South Wacker Drive  
Chicago, IL 60606

Matthew T. Boos  
Sarah McLaren  
Patrick D. Mahlberg  
FREDRIKSON & BYRON, PA  
200 South Sixth Street  
Suite 4000  
Minneapolis, MN 55402-1425

George J. Marcus  
Jennie L. Clegg  
David C. Johnson  
MARCUS, CLEGG & MISTRETTA, P.A.  
One Canal Plaza, Suite 600  
Portland, ME 04101

Carla B. Minckley  
Thomas D. Birge  
BIRGE & MINCKLEY, PC  
9055 East Mineral Circle, Suite 110  
Centennial, Colorado 80112-3457

Mona Parikh  
BUCHANAN INGERSOLL & ROONEY  
1105 N. Market Street, Suite 1900  
Wilmington, DE 19801

James A. McGovern  
MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN  
600 Grant Street  
Pittsburgh, PA 15219

Jason A. Cincilla  
Amaryah K. Bocchino  
Peter J. Faben  
Janine L. Hochberg  
COOLEY MANION JONES LLP  
1105 North Market Street, Suite 200  
Wilmington, DE 19801

Jessica Longobardi  
Fred Knopf  
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP  
3 Gannett Drive  
White Plains, NY 10604-3407

William P. Bowden  
Leigh-Anne M. Raport  
ASHBY & GEDDES, P.A.  
500 Delaware Avenue, 8<sup>th</sup> Floor  
Wilmington, DE 19801

Dennis M. Ryan  
Christopher J. Harayda  
FAEGRE BAKER DANIELS LLP  
2200 Wells Fargo Center  
90 South Seventh  
Minneapolis, MN 55402-3901

Mark L. Desgrosseilliers  
WOMBLE CARLYLE SANDRIDGE & RICE, LLP  
222 Delaware Avenue  
Suite 1501  
Wilmington, DE 19801

Janine M. Lucas  
Gary M. Saretsky  
SARETSKY HART MICHAELS & GOULD PC  
995 S. Eton  
Birmingham, MI 48009

Garvan F. McDaniel  
Mary E. Augustine  
BIFFERATO GENTILOTTI LLC  
800 N. King Street, Plaza Level  
Wilmington, DE 19801

Gregg Breitbart  
KAUFMAN DOLOWICH VOLUCK & GONZO LLP  
2101 NW Corporate Boulevard, Suite 218  
Boca Raton, FL 33431

Jeffrey Waxman  
MORRIS JAMES, LLP  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19801

Mark F. Raymond, P.A.  
BROAD AND CASSEL  
2 South Biscayne Boulevard, Suite 2100  
Miami, FL 33131

David A. Baugh  
Erin M. Korrison  
BAUGH, DALTON, CARLSON & RYAN, L.L.C.  
55 West Monroe Street, Suite 600  
Chicago, IL 60603

Michael J. Farnan  
SAUL EWING LLP  
222 Delaware Avenue, Suite 1200  
P.O. Box 1266  
Wilmington, DE 19899

S. Lawrence Polk  
Avital Stadler  
Gabriel A. Mendel  
SUTHERLAND ASBILL & BRENNAN LLP  
999 Peachtree St., NE  
Atlanta, GA 30309

Thomas M. Horan  
WOMBLE CARLYLE SANDRIDGE & RICE, LLP  
222 Delaware Avenue, Suite 1501  
Wilmington, DE 19801

Stephen W. Spence  
Stephen A. Spence  
PHILLIPS, GOLDMAN & SPENCE, P.A.  
1200 North Broom Street  
Wilmington, DE 19806

Steven J. Mitnick  
MITNICK & MALZBERG, P.C.  
P.O. Box 429  
29 Race Street  
Frenchtown, NJ 08825

Natasha M. Songonuga  
Christopher Viceconte  
GIBBONS P.C.  
1000 N. West Street, Suite 1200  
Wilmington, DE 19801-1058

Dale E. Barney  
Mark Conlan  
GIBBONS P.C.  
One Gateway Plaza  
Newark, NJ 07102-5310

Jami B. Nimeroff  
BROWN STONE NIMEROFF LLC  
Attorneys at Law  
901 N. Market Street  
Suite 1300  
Wilmington, DE 19801

Monte Neil Stewart  
Craig G. Taylor  
BELNAP STEWART TAYLOR & MORRIS, PLLC  
12550 W. Explorer Drive, #100  
Boise, Idaho 83713

Maria Aprile Sawczuk  
John D. Demmy  
STEVENS & LEE, P.C.  
1105 North Market Street, 7<sup>th</sup> Floor  
Wilmington, DE 19801

Anne R. Myers  
KAUFMAN DOLOWICH VOLUCK & GONZO LLP  
1777 Sentry Park West  
Gwynedd Hall, Suite 301  
Blue Bell, PA 19422

James S. Yoder  
WHITE AND WILLIAMS LLP  
824 N. Market Street, Suite 902  
P.O. Box 709  
Wilmington, DE 19899-0709

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
DBSI, INC., et al.	)	Case No. 08-12687 (PJW)
	)	
Debtors.	)	Jointly Administered
	)	
	)	
<hr/>	)	
JAMES R. ZAZZALI, as Trustee	)	
for the Debtors' Jointly-	)	
Administered Chapter 11 Estates	)	
and/or as Litigation Trustee	)	
for the DBSI Estate Litigation	)	
Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
AFA FINANCIAL GROUP, LLC,	)	Adv. Proc. No. 10-54524 (PJW)
et al.,	)	
	)	
1031 EXCHANGE GROUP, et al.,	)	Adv. Proc. No. 10-54648 (PJW)
	)	
THE BLIND GALLERY and JOHN DOE	)	Adv. Proc. No. 10-53991 (PJW)
1-10,	)	
	)	
AIR PERFORMANCE SERVICE, INC.	)	Adv. Proc. No. 10-53918 (PJW)
and JOHN DOE 1-10,	)	
	)	
ATLAS VAN LINES, INC., and	)	Adv. Proc. No. 10-54827 (PJW)
JOHN DOE 1-10,	)	
	)	
HOEFER WYSOCKI ARCHITECTS LLC	)	Adv. Proc. No. 10-54882 (PJW)
and JOHN DOE 1-10,	)	
	)	
IBF GROUP and JOHN DOE 1-10,	)	Adv. Proc. No. 10-54899 (PJW)
	)	
BROOKS & AMADEN, INC. and	)	Adv. Proc. No. 10-55219 (PJW)
JOHN DOE 1-10,	)	
	)	
NEW WEST PAVING and JOHN DOE	)	Adv. Proc. No. 10-54995 (PJW)
1-10,	)	
	)	
Defendants.	)	

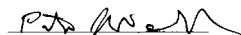


## ORDER

For the reasons set forth in the Court's memorandum opinion of this date, the Court rules as follows:

As to AFA Financial Group, LLC, et al., Adv. Proc. No. 10-54524(PJW), Doc. # 99; The Blind Gallery and John Doe 1-10, Adv. Proc. No. 10-53991(PJW), Doc. # 21; Air Performance Service, Inc. and John Doe 1-10, Adv. Proc. No. 10-53918(PJW), Doc. # 23; Atlas Van Lines, Inc. and John Doe 1-10, Adv. Proc. No. 10-54827(PJW), Doc. # 21; Hoefer Wysocki Architects LLC and John Doe 1-10, Adv. Proc. No. 10-54882(PJW), Doc. # 22; IBF Group and John Doe 1-10, Adv. Proc. No. 10-54899(PJW), Doc. # 23; Brooks & Amaden, Inc. and John Doe 1-10, Adv. Proc. No. 10-55219(PJW), Doc. # 22; and New West Paving and John Doe 1-10, Adv. Proc. No. 10-54995(PJW), Doc. # 20, those actions are core in their entirety.

As to 1031 Exchange Group, et al., Adv. Proc. No. 10-54648(PJW) (Doc. # 157), the causes of action for avoidance and disallowance of claims are core, but the claims for declaratory judgment, unjust enrichment, and rescission are non-core.



Peter J. Walsh  
United States Bankruptcy Judge

Dated: March 30, 2012