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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
: In re : Chapter 11  
: :  
: DREIER LLP, : Case No. 08-15051 (SMB)  
: :  
: Debtor. :  
-----X

**FIRSTSECOND AMENDED DISCLOSURE STATEMENT FOR FIRSTSECOND AMENDED PLAN OF LIQUIDATION OF DREIER LLP JOINTLY PROPOSED BY THE CHAPTER 11 TRUSTEE AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

**IMPORTANT DATES**

Date by which Objections to Confirmation of the Plan Must be Filed and Served:                     ; April 7, 2014 at 4:00 p.m.  
Date by which Ballots Must be Received:                     ; April 7, 2014 at 4:00 p.m.  
Hearing on Confirmation of the Plan:                     ; April 24, 2014 at 10:00 a.m.

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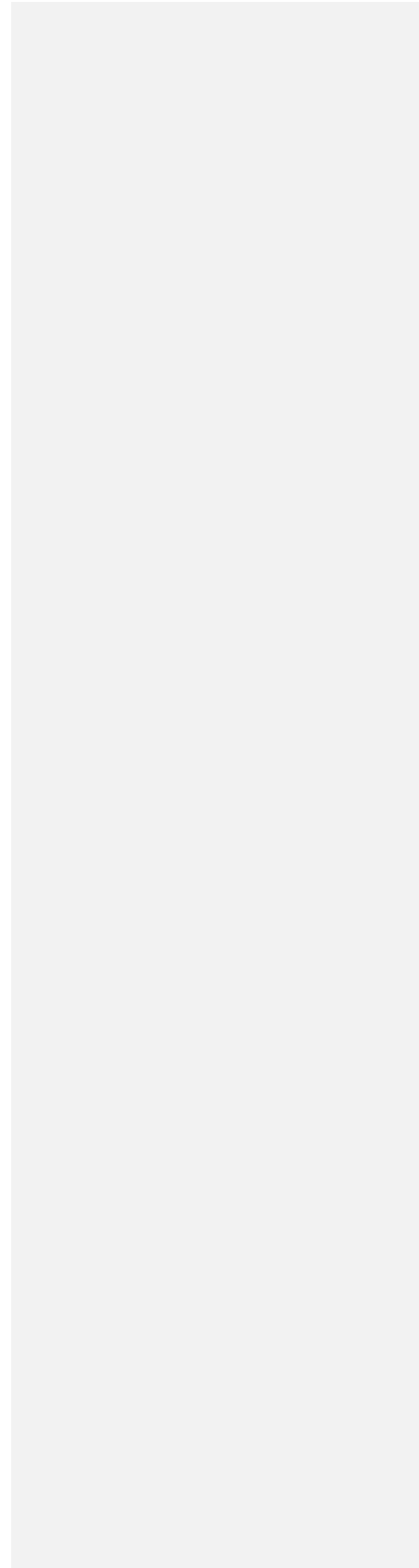
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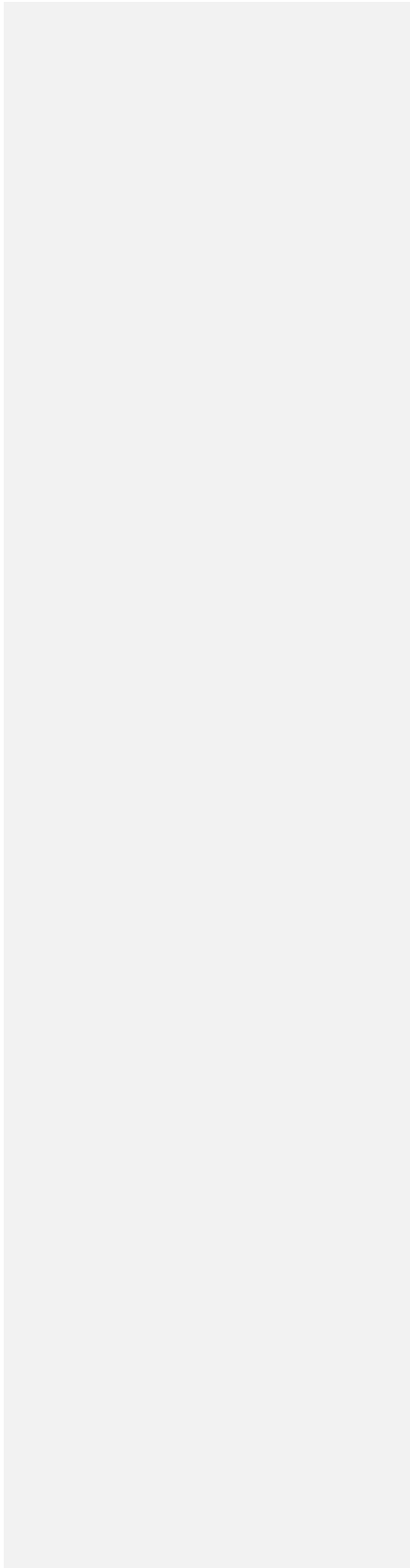
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**PLEASE READ THIS DISCLOSURE STATEMENT CAREFULLY. THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN WHICH IS ENCLOSED WITH THIS DISCLOSURE STATEMENT. THE TRUSTEE AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS BELIEVE THAT THE PLAN IS IN THE BEST INTERESTS OF THE DEBTOR AND ITS CREDITORS AND PROVIDES THE HIGHEST AND MOST EXPEDITIOUS RECOVERIES TO HOLDERS OF ALLOWED CLAIMS AGAINST THE DEBTOR.**

Sheila M. Gowan, the chapter 11 trustee (the “Trustee” or “Chapter 11 Trustee”) for Dreier LLP (the “Debtor” or “DLLP”) and the Official Committee of Unsecured Creditors (the “Creditors’ Committee” and, collectively referred to herein with the Trustee, the “Plan Proponents”) submit this ~~first~~second amended disclosure statement (the “Disclosure Statement”) pursuant to § 1125 of the Bankruptcy Code to accompany their ~~First~~Second Amended Plan of Liquidation of Dreier LLP Jointly Proposed by the Chapter 11 Trustee and Official Committee of Unsecured Creditors Pursuant to Chapter 11 of the United States Bankruptcy Code dated February ~~5~~11, 2014 (the “Plan”), which has been filed with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). A copy of the Plan is annexed as Exhibit A hereto.

## **I. PURPOSES AND LIMITATIONS OF DISCLOSURE STATEMENT**

### **A. Purpose of Disclosure Statement**

The purpose of the Disclosure Statement is to set forth information that (i) summarizes the Plan and alternatives to the Plan, (ii) advises holders of Claims<sup>1</sup> and Interests of their rights under the Plan, (iii) assists creditors entitled to vote in making informed decisions as to whether they should vote to accept or reject the Plan, and (iv) assists the Bankruptcy Court in determining whether the Plan complies with the provisions of chapter 11 of the Bankruptcy Code and should be confirmed.

You are urged to read the Disclosure Statement in order to determine what rights you may have to vote on or object to the Plan and before making any decision on any such course of action. Particular attention should be directed to the provisions of the Plan affecting or impairing your rights as they existed before the institution of this Bankruptcy Case. Please note, however, that this Disclosure Statement cannot tell you everything about your rights. For instance, this Disclosure Statement cannot and does not provide a complete description of the financial status of the Debtor, all of the applicable provisions of the Bankruptcy Code, or other matters that may be deemed significant by creditors and other parties in interest. You are also encouraged to consult with your lawyers and/or advisors as you review and consider the Disclosure Statement and the Plan to enable you to obtain more specific advice on how the Plan will affect you.

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

**B. Definitions and Exhibits**

Definitions Unless otherwise defined herein, capitalized terms used in this Disclosure Statement will have the meanings ascribed to such terms in the Plan.

Exhibits The following exhibits are annexed hereto and expressly incorporated herein:

- Exhibit A: A copy of the Plan.
- Exhibit B: List of pending Avoidance Actions
- Exhibit C: List of uncollected Receivables and Committee Receivables
- Exhibit D: List of Attorneys and Firms Subject to potential Unfinished Business claims
- Exhibit E: Disputed Funds
- Exhibit F: Liquidation Analysis

**C. Enclosures**

The following materials are included with this Disclosure Statement:

1. A copy of the Plan;
2. A copy of an order approving the Disclosure Statement (the “Disclosure Statement Order”), which states: (a) the date by which objections to confirmation of the Plan must be served and filed, (b) the date by which all votes with respect to the Plan must be cast, (c) the date of the hearing in the Bankruptcy Court to consider confirmation of the Plan, and (d) other relevant information;
3. Notice of Confirmation Hearing. A copy of the notice of the deadline for submitting ballots to accept or reject the Plan and, among other things, the date, time and place of the Confirmation Hearing and the deadline for filing objections to confirmation of the Plan (the “Confirmation Hearing Notice”); and
4. A ballot (and return envelope) for voting to accept or reject the Plan, unless you are not entitled to vote because you are (i) to receive no Distribution under the Plan and are deemed to reject the Plan or (ii) not impaired under the Plan and are deemed to accept the Plan.
5. A notice of non-voting status if you are not impaired under the Plan and are deemed to accept the Plan, or a notice of non-voting status if you are not receiving a Distribution under the Plan, and are deemed to reject the Plan, as applicable.
6. A letter from the Creditors’ Committee recommending that holders of Class 4 unsecured claims vote in favor of the Plan.
7. Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification.

**D. Representations and Limitations**

**NO PERSON IS AUTHORIZED IN CONNECTION WITH THE PLAN OR THE SOLICITATION OF VOTES THEREON TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ANNEXED HERETO OR INCORPORATED HEREIN BY REFERENCE OR REFERRED TO HEREIN, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE PLAN PROPONENTS.**

**NO REPRESENTATIONS CONCERNING THE DEBTOR OR THE PLAN ARE AUTHORIZED OTHER THAN AS SET FORTH HEREIN. ANY REPRESENTATIONS OR INDUCEMENTS TO SECURE YOUR ACCEPTANCE OF THE PLAN OTHER THAN AS CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY YOU.**

**THE INFORMATION CONTAINED HEREIN HAS BEEN PREPARED BY THE PLAN PROPONENTS IN GOOD FAITH, BASED UPON UNAUDITED INFORMATION AVAILABLE TO THE PLAN PROPONENTS AS OF THE DATE HEREOF. ALTHOUGH THE PLAN PROPONENTS HAVE USED THEIR BEST EFFORTS TO ENSURE THAT SUCH INFORMATION IS ACCURATE, THE INFORMATION CONTAINED HEREIN IS UNAUDITED. THE PLAN PROPONENTS BELIEVE THAT THIS DISCLOSURE STATEMENT COMPLIES WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE OF THIS DISCLOSURE STATEMENT AND/OR THE DATE THAT THE MATERIALS RELIED UPON IN PREPARATION OF THIS DISCLOSURE STATEMENT WERE COMPILED.**

**THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN, AND NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON HOLDERS OF CLAIMS AGAINST OR INTERESTS IN THE DEBTOR.**

**THE DESCRIPTION OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT IS INTENDED AS A SUMMARY ONLY AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN ITSELF. EACH CREDITOR AND INTEREST HOLDER IS ENCOURAGED TO READ, CONSIDER AND CAREFULLY ANALYZE THE TERMS AND PROVISIONS OF THE PLAN.**

**THIS DISCLOSURE STATEMENT AND THE PLAN PROVIDE FOR INJUNCTIVE RELIEF AS TO THE DEBTOR. THE PERMANENT INJUNCTIONS SET FORTH IN THE PLAN WILL APPLY TO HOLDERS OF ANY CLAIM, INTEREST, LIEN, ENCUMBERANCE OR DEBT, WHETHER SECURED OR UNSECURED, GRANTED PRIORITY STATUS, INCLUDING PRIORITY TAX (FEDERAL OR STATE), NON-PRIORITY UNSECURED CLAIM OR ANY INTEREST IN THE DEBTOR. CREDITORS AND INTEREST HOLDERS WILL BE BOUND BY THIS INJUNCTIVE RELIEF UNLESS CREDITORS TIMELY FILE OBJECTIONS IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THE DISCLOSURE STATEMENT ORDER OR HEREIN AND APPEAR AT THE CONFIRMATION HEARING, TO PROSECUTE ANY OBJECTION.**

**E. Important Dates**

The Bankruptcy Court approved this Disclosure Statement by and through the Disclosure Statement Order entered on ~~February 13, 2014~~, February 13, 2014 after notice and hearing and in accordance with section 1125 of the Bankruptcy Code. The Bankruptcy Court found that the information contained herein is of the kind, and is sufficiently detailed, to enable a hypothetical, reasonable investor typical of the class being solicited to make an informed judgment concerning the Plan. **HOWEVER, THE BANKRUPTCY COURT HAS NOT CONFIRMED THE PLAN, NOR IS THIS DISCLOSURE STATEMENT OR THE DISCLOSURE STATEMENT ORDER TO BE CONSTRUED AS APPROVAL OR ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.**

As stated in the Disclosure Statement Order, the Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan for ~~February 13, 2014 at 10:00 a.m.~~, April 24, 2014 at 10:00 a.m. Holders of Claims and Interests and other parties in interest may attend this hearing. Objections to confirmation of the Plan must be filed on or before ~~February 13, 2014~~, April 7, 2014 as set forth in the Disclosure Statement Order.

All Ballots with respect to the Plan must be completed in full and signed to be counted in the tabulation of the votes and must be received by GCG ("Voting Agent") no later than 5:00 p.m. on ~~February 13, 2014~~, April 7, 2014.

Completed and signed Ballots should be returned by first class mail to the Voting Agent at the below address in the enclosed self-addressed return envelope:

*By First Class Mail:*  
Dreier LLP Case Administration  
c/o GCG  
PO Box 10021  
Dublin, OH 43017-6621

Completed and signed Ballots may also be returned by overnight mail or hand delivery to the below address:

*By Overnight/Hand Delivery:*  
Dreier LLP Case Administration  
c/o GCG  
5151 Blazer Parkway, Suite A  
Dublin, OH 43017

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#### **F. Solicitation Procedures**

Creditors holding Claims that are impaired have the right to vote to accept or reject the Plan. Generally speaking, a Claim or Interest is impaired if the Plan alters the legal, contractual or equitable rights of the holder of the Claim or Interest. A Class of creditors accepts the Plan when creditors holding two-thirds in amount of such class and more than one-half in number of the Claims in such class who actually cast their ballots vote to accept the Plan.

In this Bankruptcy Case, the Plan contains four (4) Classes of Claims and one (1) Class of Interests. Class 1, 2 and 3 Claims are not impaired under the Plan and are conclusively presumed to have accepted the Plan under §1126(f) of the Bankruptcy Code. The Plan provides that holders of Class 4 Claims and Class 5 Interests are impaired in that the Plan alters the legal, contractual and equitable rights of the holders of such Claims and Interests. Class 5 Interests receive no Distribution under the Plan and are, therefore, deemed to reject the Plan. **Accordingly, votes on the Plan will be solicited from Class 4 Claims only.**

#### **G. Recommendation**

In the opinion of the Trustee and the Creditors' Committee, the treatment of creditors and interest holders under the Plan contemplates a greater recovery than that which is likely to be achieved under any other alternative for the liquidation of the Debtor's assets under chapter 11 or chapter 7 of the Bankruptcy Code. Accordingly, the Trustee and the Creditors' Committee believe that confirmation of the Plan is in the best interests of the Debtor's creditors and interest holders and recommend that all holders of Claims entitled to vote on the Plan vote to accept the Plan.

#### **H. Inquiries**

If you have any questions about the packet of materials that you have received, please contact Dreier LLP Case Administration, c/o GCG, Inc., 5151 Blazer Parkway, Suite A, Dublin, OH 43017 or by telephone at (800) 205-8508 during normal business hours.

## II. BACKGROUND

### A. History of the Debtor

Prior to the Petition Date, DLLP was a national law firm headquartered in New York and founded by Marc Stuart Dreier (“MSD”). At its peak, DLLP maintained 5 offices and employed approximately 300 people, about half of whom were lawyers.<sup>2</sup> MSD was the founding partner of DLLP.

### B. Events Preceding the Chapter 11 Filing

On December 2, 2008, Canadian police arrested MSD in Canada in connection with what turned out to be a massive Ponzi scheme (the “MSD Ponzi Scheme”). As part of the MSD Ponzi Scheme, MSD induced third parties (the “Note Investors”) to purchase certain promissory notes (the “Fraudulent Notes”) that MSD alleged had been issued by clients of DLLP but which were actually fabricated by MSD. The third parties typically paid for the Fraudulent Notes by wiring funds to one of the DLLP’s attorney escrow accounts (the “5966 Account”). The 5966 Account was putatively an attorney escrow account, but MSD commingled legitimate client funds in that account with funds from a multitude of other sources. He also used the money in the 5966 Account in order to make payments to Ponzi victims, for the operating expenses of DLLP, and for his personal benefit.

On December 8, 2008, the United States Securities and Exchange Commission (“SEC”) filed a civil complaint in the United States District Court for the Southern District of New York (the “District Court”) charging MSD with violations of the securities laws by selling, and offering to sell, fictitious notes purportedly issued by New York City-based real estate development company Solow Realty.<sup>3</sup> The SEC case was assigned to United States District Court Judge Miriam Goldman Cedarbaum, who appointed Mark Pomerantz as Receiver (the “Receiver”), for MSD and his assets, which include his interests in DLLP.

Following MSD’s arrest in the United States on December 7, 2008, substantially all of the business operations of DLLP immediately ceased. Upon his appointment, the Receiver took control of the business and assets of DLLP.

On December 16, 2008, the Receiver commenced this Bankruptcy Case on behalf of DLLP. At the same time, the government filed a federal criminal complaint against MSD in the District Court (the “Criminal Case”) charging him with securities and wire fraud violations (and, in a superseding indictment, money laundering). That case was assigned to United States

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<sup>2</sup> MSD was also the owner of several firms, including Pitta & Dreier LLP; Pitta, Bishop, Del Giorno and Dreier LLP; Schlesinger, Gannon and Lazetera LLP; Berry, Block & Bernstein LLP; Dreier Stein Kahan Browne Woods George LLP; Mason Miller LLP; Entertainment Strategies Group; and Dreier Sports Opportunities Group. Together these firms employed an additional 100 lawyers and other professionals. Combined, all of the MSD entities -- none of which ultimately survived in its original form -- employed more than 500 people, including lawyers and staff. This Bankruptcy Case involves only the assets and liabilities of DLLP.

<sup>3</sup> *SEC v. Dreier*, Case No. 08-civ-10617 (MGC) (S.D.N.Y.).

District Court Judge Jed S. Rakoff. MSD pleaded guilty to the criminal charges and is now serving a 20-year prison term.

On January 26, 2009, with the consent of Judge Cedarbaum and other interested parties, the Trustee, together with other petitioning creditors, commenced an involuntary chapter 7 case against MSD in the Bankruptcy Court under case number 09-10371 (the "Chapter 7 Case"). Salvatore LaMonica was appointed as chapter 7 Trustee (the "Chapter 7 Trustee") of the MSD estate.

### **III. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE**

#### **A. The Appointment of the Trustee**

On December 30, 2008, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed Sheila Gowan as the chapter 11 trustee for DLLP, which appointment was approved by the Bankruptcy Court on January 9, 2009 (the "Trustee Appointment Date").

#### **B. The Appointment of the Creditors' Committee**

On January 8, 2009, the U.S. Trustee appointed the Creditors' Committee to represent the interests of the unsecured creditors in the Bankruptcy Case. The Creditors' Committee originally included the following members: Estate of 360networks (USA); Hines 499 Park LLC; Mark Bruce International; Exponent, Inc.; Mestel & Company; Kraemer Inc.; and Van Prooyen Greenfield<sup>4</sup>.

#### **C. Retention of Professionals**

On January 29, 2009, the Bankruptcy Court entered an order authorizing the Creditors' Committee to retain Klestadt & Winters, LLP as lead bankruptcy counsel *nunc pro tunc* to January 8, 2009.

On February 3, 2009, the Bankruptcy Court approved the Trustee's employment of Diamond McCarthy LLP, *nunc pro tunc* to December 30, 2008, as the Trustee's lead bankruptcy counsel.

On February 25, 2009, the Bankruptcy Court approved the Trustee's employment of Development Specialists, Inc., *nunc pro tunc* to December 30, 2008, as the Trustee's financial advisor.

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<sup>4</sup> Since the appointment of the Creditors' Committee, Mark Bruce International, Exponent, Inc. and Van Prooyen Greenfield have withdrawn as members of the Committee. On March 19, 2009, the Office of the U.S. Trustee appointed AMA Consulting Engineers, P.C., Lion Button Holdings, and Computerist Inc. as members of the Creditors' Committee.



On January 19, 2011, Halperin Battaglia Raicht, LLP was retained by order of the Bankruptcy Court to serve as conflicts counsel to the Creditors' Committee to address certain issues involving the Debtor's prepetition lender.

Other professionals have been engaged by the Trustee and the Creditors' Committee on an as-needed basis.

The fees and expenses of these professionals are paid as an expense of the Estate upon entry of an order by the Bankruptcy Court approving corresponding fee applications.

**D. Schedules of Assets and Liabilities, Statement of Financial Affairs**

On February 16, 2009, the Trustee filed schedules of the Debtor's assets and liabilities and a statement of the Debtor's financial affairs (collectively the "Schedules"), and filed amended Schedules on March 11, 2009.

**E. Use of Cash Collateral**

As of the Petition Date, Wachovia Bank, N.A. ("Wachovia"), in connection with its asserted \$29,000,000 claim, held a first lien security interest in, and related setoff rights (if any) with respect to, much of DLLP's property, including, but not limited to, accounts receivable and unbilled time and the proceeds thereof. In order to use the assets of the estate, the Trustee determined that she had to enter into negotiations with Wachovia to use the cash collateral.

Following extensive negotiations between the Trustee, the Creditors' Committee, and Wachovia, on February 19, 2009, the Court entered the Stipulation and Order Pursuant to Section 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001 (1) Authorizing Trustee's Use of Cash Collateral, (2) Providing Adequate Protection, and (3) Granting Related Relief (the "First Cash Collateral Order") setting forth terms by which the Debtor would be permitted to use Wachovia's cash collateral through March 31, 2009. On May 13, 2009, after extensive negotiations and two evidentiary hearings, the Bankruptcy Court entered the Stipulation and Order Pursuant to Section 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001 (1) Authorizing Trustee's Continued Use of Cash Collateral, (2) Providing Adequate Protection, and (3) Granting Related Relief (the "Second Cash Collateral Order," and together with the First Cash Collateral Order the "Cash Collateral Orders").

The salient terms of the Second Cash Collateral Order, which governed the Trustee's use of cash collateral during the pendency of the Bankruptcy Case until the Wells Fargo Settlement (defined below), were:

(i) except as provided in the Cash Collateral Orders, Wachovia's secured claim is secured by a Post-Petition Lien (as the term is defined in the Cash Collateral Orders) on all of the Debtor's accounts receivable and work in process;

(ii) Wachovia was provided with a replacement lien that extends to the remainder of the Debtor's assets, but only up to the amount of Cash Collateral used by the Trustee and/or the Receiver post-petition; and

(iii) to the extent that the replacement liens granted as adequate protection to Wachovia are not sufficient to adequately protect it from diminution in its interests in the Pre-Petition Collateral, Wachovia is entitled to a superpriority claim, provided, however, that the replacement lien and superpriority claim granted to Wachovia do not extend to Avoidance Actions or any proceeds of the same, except to the extent of the use of Cash Collateral by the Trustee to pay the April 15, 2009 payroll of DLLP and the April 30, 2009 payroll of DLLP.

On or about January 1, 2009, Wachovia and Wells Fargo Bank, N.A. ("Wells Fargo") merged.

On December 15, 2010, the Trustee commenced an Avoidance Action against Wachovia and Wells Fargo, as successor-by-merger to Wachovia, seeking the avoidance of Wachovia's security interest (the "Wells Fargo Litigation").

On February 13, 2011, Wells Fargo moved to dismiss the Wells Fargo Litigation. On September 6, 2011, the Bankruptcy Court issued its Order Granting Defendants' Motion to Dismiss with Leave to Replead.

On September 15, 2011, the Trustee filed her First Amended Complaint.

On March 14, 2012, the Trustee and Wells Fargo reached a settlement of the Wells Fargo Litigation (the "Wells Fargo Settlement"). In addition to settling the Wells Fargo Litigation, the Wells Fargo Settlement also modified the terms of the Second Cash Collateral Order. The Wells Fargo Settlement provides, *inter alia*, that (i) Wells Fargo's remaining claims against the Debtor's estate would be fixed at \$7,173,155.92; and (ii) Wells Fargo's liens and security interests are deemed valid and duly perfected. The Wells Fargo Settlement also provides that the Second Cash Collateral Order is amended to provide that with respect to accounts receivable collections after October 1, 2011, the Debtor's estate will receive the first \$250,000 of net proceeds, and from amounts in excess of \$250,000, Wells Fargo receives forty percent (40%) in reduction of its claims, and sixty percent (60%) is retained by the Debtor's estate free and clear of Wells Fargo's liens.

On August 13, 2012, Wells Fargo filed a motion for an order directing the Trustee to immediately pay Wells Fargo's allowed superpriority claim. The Trustee filed her opposition on August 20, 2012. On October 9, 2012, the Court entered a stipulation and order resolving the motion of Wells Fargo and fixed the allowed amount of the Wells Fargo Superpriority Claim at \$940,527.33.

**F. Bar Date for Filing of Claims Arising Prior to the Petition Date**

On February 18, 2009, the Bankruptcy Court entered an order (the "Bar Date Order") (i) setting a deadline (the "Bar Date") for filing proofs of claim against the Debtor and its Estate

pursuant to Federal Rule of Bankruptcy Procedure 3003(c)(3); (ii) approving the form of notice of the Bar Date (the "Bar Date Notice") to be sent to Creditors and parties in interest; and (iii) approving as adequate and sufficient, the service of the Bar Date Notice by first class mail and publication of the Bar Date Notice in the global edition of the Wall Street Journal. The Bar Date Order fixed March 31, 2009, at 5:00 P.M. as the Bar Date by which all Claims against the Debtor which arose prior to December 16, 2008, other than those types of Claims specifically excepted, had to be filed. The Bar Date Order also set a Bar Date of June 14, 2009, with respect to governmental entities.

The Bar Date Notice was served by first class regular mail upon (a) the U.S. Trustee and all persons or entities who have requested notice of the proceedings in the Bankruptcy Case at that time; (b) all persons or entities listed in the Schedules as holding Claims; (c) all other nonscheduled holders of Claims known to the Trustee as of the date of the Bar Date Notice. Except for the holders of certain specifically excluded Claims, every Creditor was required to file a proof of claim on or before the Bar Date so that the Trustee could ascertain with certainty the total amount of pre-petition Claims outstanding.

In accordance with Federal Rule of Bankruptcy Procedure 3003(c)(2), holders of Claims who failed to comply with the terms of the Bar Date Order are forever barred from (i) filing a proof of claim with respect to such Claim, (ii) asserting such Claims against the Debtor or its Estate and/or property, (iii) voting on any plan filed in this Bankruptcy Case and (iv) participating in any Distribution in the Bankruptcy Case on account of such Claims.

#### **G. Significant Pre-Litigation Settlements**

The Trustee, with the assistance of her professionals and those of the Creditors' Committee, has resolved certain Causes of Action, Claims and litigations affecting the Estate during the Bankruptcy Case. Following is a brief summary of the more significant resolved matters.

##### **1. Settlement with the United States**

Before the commencement of the Bankruptcy Case, the United States Government (the "Government") had seized substantial assets from DLLP's offices, including bank accounts, money transferred from a DLLP account to an outside account belonging to third parties, and artwork (the "Seized Art"). As a result of the seizures, the Trustee's efforts to create an estate from which creditors' claims could be paid were hampered from the start. Making matters worse, the Government filed a superseding indictment against MSD seeking *inter alia*, the forfeiture of all the assets of DLLP, including the remaining assets that the Trustee was administering as part of the Bankruptcy Case.

Further complicating the situation was the fact that the Government had seized funds that had been paid from a DLLP attorney trust account to GSO (defined below), and was threatening to seize all other such transfers, thus casting doubt on the Trustee's ability to pursue Avoidance Action claims for the benefit of the creditors. The looming forfeiture threatened to strip DLLP

of all its assets, which would have meant that the estate would be unable to pay Creditors' Claims.

The Trustee and the Government reached a "Coordination Agreement," pursuant to which the Government waived its claim to substantial Avoidance Actions held by the Trustee and returned seized artwork, in exchange for the Trustee's waiver of her rights to challenge the forfeiture proceedings. The Coordination Agreement was approved by the Bankruptcy Court by order entered on June 8, 2010.

2. Settlement with the Chapter 7 Trustee

After extensive negotiations between the Trustee and the Chapter 7 Trustee (together, the "Trustees") and their counsel, the Trustees agreed (the "Trustees' Agreement") to resolve all disputes between their respective Estates, providing certainty for both estates and paving the way for the Trustee to complete her responsibilities without the uncertainty of having to address the Chapter 7 Trustee's claims to estate assets on an ad hoc basis. The Bankruptcy Court approved the Trustees' Agreement on July 22, 2010.

In summary, under the Trustees' Agreement, the Chapter 7 Trustee assigned his rights in any Avoidance Action claims to the Trustee in exchange for a payment of \$200,000 over time; the Trustee retained all proceeds from the sale of the Seized Art; and the two Trustees agreed to cooperate to effectuate the purposes of the Bankruptcy Code and the best interests of the creditors of their respective estates; and the Trustees entered into mutual releases.

3. Settlement with GSO

Following extensive negotiations, the Trustee, GSO Capital Partners LP ("GSO"), the Government, and the Chapter 7 Trustee received the approval of the District Court for agreements (the "GSO Agreements") that, among other things, resolved (a) potential Avoidance Actions the Trustee could have brought against GSO related to the payments received by GSO; and (b) potential challenges by the Trustee to the forfeiture of various assets seized by the Government, including the Frozen Funds (as defined in the GSO Agreements) on deposit in the GSO Sub-Accounts (as defined in the GSO Agreements). Pursuant to the GSO Agreements, GSO (i) agreed to forfeit to the Government \$30,895,027.78 (the "Forfeited Funds"), and (ii) agreed to pay \$9,250,000 to the Trustee, and \$250,000 to the Chapter 7 Trustee. The Trustee agreed (i) to forego any challenge to the Government's attempt to obtain by forfeiture the Forfeited Funds and any other assets identified in the Preliminary Order of Forfeiture, and (ii) released any claims against GSO. The Government released to the Trustee the Seized Art, which the Government seized in connection with MSD's criminal case, and also agreed to forego any attempt to seize or obtain through forfeiture the proceeds of any Avoidance Actions brought by the Trustee against other Note Investors (as defined in the GSO Agreements) identified to the Government by the Trustee in connection with payments made in respect of the Fraudulent Notes (as defined in the GSO Agreements). GSO obtained an injunction barring suit against GSO brought by other creditors of the two estates, and the Trustee moved the Bankruptcy Court to enter a Bar Order to ensure that the settlement results were a full and complete resolution of

GSO's potential exposure as a purchaser of, and recipient of payments in respect of, the Fraudulent Notes.

The GSO Settlement and the Bar Order were approved by the Bankruptcy Court by order dated June 9, 2010. Paul Gardi and Alex Interactive Media, LLC (together, the "Gardi Parties") appealed the order approving these agreements to the United States District Court for the Southern District of New York. On September 10, 2010, the approval order was affirmed by United States District Court Judge Deborah A. Batts. On October 8, 2010, the Gardi Parties appealed to the United States Court of Appeals for the Second Circuit.

As described in greater detail below, the Trustee and the Gardi Parties entered into a settlement that, *inter alia*, resulted in the withdrawal of the appeal to the United States Court of Appeals for the Second Circuit, which settlement was approved by the Bankruptcy Court on May 15, 2012. Upon the withdrawal of the appeal, the GSO Settlement became effective by its terms.

4. Settlement with Verition

On July 22, 2010, following extensive arms-length negotiations, the Trustee, Verition Fund Management LLC and Verition Multi-Strategy Master Fund, Ltd. (collectively, "Verition"), and the Chapter 7 Trustee, received the approval of the Bankruptcy Court to enter into an agreement resolving the Estate's claims under section 547 of the Bankruptcy Code against Verition, and resulting in a payment of \$9 million by Verition to the Estate.

**H. Avoidance Actions**

The Trustee, with the assistance of her professionals and those of the Creditors' Committee, evaluated and pursued over \$275 million in claims against Note Investors involved in what the Trustee has asserted was a Ponzi Scheme, many of who were fully repaid and reaped substantial profits from their investments in the fraud. In addition, the Trustee has commenced litigation against certain trade vendors who received preferential transfers and other Causes of Action. The following is a discussion of significant Avoidance Actions commenced by the Trustee and their current status. A list of Avoidance Actions that remain pending as of the date of this Disclosure Statement is annexed hereto as Exhibit B.

1. *Gowan v. Amaranth LLC, et al.*, Adv. Proc. No. 10-03493

On August 9, 2010, the Trustee filed a complaint against Amaranth LLC, Amaranth Advisors LLC and Amaranth Partners (collectively, "Amaranth"), seeking to avoid and recover over \$28 million in transfers from the hedge fund in connection with its participation in the MSD Ponzi Scheme. The litigation against Amaranth is pending as of the date of this Disclosure Statement. Discovery has been completed.

On December 21, 2012, the Trustee filed the Trustee's Motion for Partial Summary Judgment Against Amaranth Partners LLC, requesting judgment in favor of the Trustee and Against Amaranth in the amount of \$3,150,479, representing the profits Amaranth realized in the

MSD Ponzi Scheme. On January 3, 2014, the Bankruptcy Court entered its Memorandum Decision Denying Motions for Partial Summary Judgment.

2. *Gowan v. The Patriot Group, LLC, et al.*, Adv. Proc. No. 10-03524

On August 24, 2010, the Trustee filed a complaint against The Patriot Group, LLC, The Washington Special Opportunity Fund, LLC and The Washington Special Opportunity Fund, Inc. (collectively, "Patriot") seeking to avoid and recover almost \$17 million in transfers in connection with its participation in the MSD Ponzi Scheme. On or about March 29, 2013, the Trustee and Patriot entered into a settlement agreement (the "Patriot Settlement Agreement"), pursuant to which Patriot agreed to pay \$3,500,000. The Patriot Settlement Agreement also provided that the Trustee and Patriot mutually released one another, and Patriot agreed to waive the right to file a replacement claim pursuant to section 502(h) of the Bankruptcy Code. The Patriot Settlement Agreement was approved by the Bankruptcy Court on May 1, 2013.

3. *Gowan v. 360Networks (USA) Inc.*, Adv. Proc. No. 10-03904

On October 18, 2010, the Trustee filed a complaint against 360networks (USA) Inc. ("360"), seeking to avoid and recover an \$11.9 million pre-petition transfer of the Debtor's assets. DLLP had served as the 360 Committee's special litigation counsel in pursuing preference actions on behalf of the 360 chapter 11 estate, and on November 17, 2008, within 90 days of the commencement of the Bankruptcy Case, DLLP wired \$11.9 million in preference recoveries to a 360 bank account.

On August 4, 2011, the Trustee, 360 and Steven J. Reisman, solely in his capacity as the Postconfirmation Representative of the chapter 11 estates of 360Networks (USA) Inc. (the "Representative") entered into a Tripartite Settlement Agreement Among the Chapter 11 Trustee, Reorganized 360 and the Representative (the "360Networks Settlement Agreement"). Pursuant to the 360Networks Settlement Agreement, 360 paid the Debtor's estate \$2,875,000. In addition, the 360 Estates Claims (as defined in the 360Networks Settlement Agreement) were reduced and allowed in the amount of \$45,100,000 as a non-priority, general unsecured claim. The Trustee, 360, and the Representative exchanged releases, and 360 waived its right to a replacement claim under section 502(h) of the Bankruptcy Code. The 360Networks Settlement Agreement was approved by order of the Bankruptcy Court dated September 26, 2011.

4. *Gowan v. Xerion Partners II Master Fund Limited, et al.*, Adv. Proc. No. 10-4277

On December 15, 2010, the Trustee filed a complaint against Xerion Partners II Master Fund, Ltd. and Perella Weinberg Partners Xerion Master Fund, Ltd. (together, "Xerion"), seeking to avoid and recover \$24,115,376 in transfers. On or about May 17, 2011, the Trustee and Xerion entered into a settlement agreement (the "Xerion Settlement Agreement"), pursuant to which Xerion agreed to pay \$11,500,000. The Xerion Settlement Agreement also provided that Xerion would have an allowed non-priority general unsecured claim of \$35,703,940.04. In addition, Xerion was granted a replacement claim pursuant to section 502(h) of the Bankruptcy

Code in the amount of \$5,750,000. The Xerion Settlement Agreement was approved by the Bankruptcy Court on June 16, 2011.

5. *Gowan v. Novator Credit Management Limited, et al.*, Adv. Proc. No. 10-04278

On December 15, 2010, the Trustee filed a complaint against Novator Credit Management Limited, Novator Credit Opportunities Fund, Novator Credit Luxembourg SARL, Novator Credit Advisors LLC, Novator Credit Funding B.V., Novator Credit Opportunities Fund, Novator Credit Opportunities Fund LLC and Novator Partners LLP (collectively, "Novator") seeking to avoid and recover \$16,801,025.00, of which \$550,000 was received within 90 days of the Petition Date.

On August 16, 2011, the Trustee and Novator entered into a Settlement Agreement (the "Novator Settlement Agreement") pursuant to which Novator agreed to pay the Debtor's estate \$5,250,000. Pursuant to the Novator Settlement Agreement, Novator agreed to withdraw a claim for \$20 million. In addition, the Trustee and Novator exchanged mutual general releases. The Novator Settlement Agreement was approved by the Bankruptcy Court by order dated September 26, 2011.

6. *Gowan v. Concordia Advisors, L.L.C., et al.*, Adv. Proc. No. 10-04279

On November 22, 2010, the Trustee filed a complaint against Concordia Advisors, LLC, Enterprise Fund Limited, Concordia MAC29 Ltd., Concordia Partners L.P. and Concordia Institutional Multi-Strategy Fund, Ltd. (collectively, "Concordia") seeking to avoid and recover \$582,778.

On July 18, 2011, the Trustee and Concordia entered into a Settlement Agreement (the "Concordia Settlement Agreement"). Pursuant to the Concordia Settlement Agreement, Concordia's filed claims against the estate were reduced from a total of \$22,297,222.33 to \$16,469,442.33 and allowed at such reduced amount as non-priority, general unsecured claims. The Trustee and Concordia exchanged mutual general releases pursuant to the Concordia Settlement Agreement. The Concordia Settlement Agreement was approved by order of the Bankruptcy Court dated September 23, 2011.

7. *Gowan v. Meyer Ventures LLC, et al.*, Adv. Proc. No. 10-04280

On November 22, 2010, the Trustee filed a complaint against Meyer Ventures LLC and Meyer Venture Partners, L.P. (together, "Meyer") seeking to avoid and recover \$349,667.

On July 18, 2011, the Trustee and Meyer entered into a Settlement Agreement (the "Meyer Settlement Agreement"). Pursuant to the Meyer Settlement Agreement, Meyer's filed claims against the estate were reduced from a total of \$13,378,333.34 to \$9,881,663.34 and allowed at such reduced amount as non-priority general unsecured claims. The Trustee and Meyer exchanged mutual general releases pursuant to the Meyer Settlement Agreement. The

Meyer Settlement Agreement was approved by order of the Bankruptcy Court dated September 23, 2011.

8. *Gowan v. JPMorgan Chase, N.A., et al.*, Adv. Proc. No. 10-5450

On December 15, 2010, the Trustee filed a complaint against Cenlar FSB and Cenlar Home Funding, Inc. (collectively, "Cenlar"), Mark Roter and Jaye Roter (collectively, the "Roters"), First American Title Insurance Company ("First American"), First American Title Agency, Inc., and Resort Properties International Corp. ("Resort Properties") in the Bankruptcy Court. The lawsuit concerned MSD's purchase of 111 Dune Road, East Quogue, New York (the "Quogue House"). Specifically, the Trustee alleged that MSD purchased the Quogue House with DLLP funds and that each of the defendants therefore received property of DLLP's estate in that purchase without conveying any benefit on DLLP. The Trustee brought claims against the defendants in the aggregate amount of \$9,304,472.92 for constructive fraudulent conveyance under 11 U.S.C. §§ 544 and 550 and New York Debtor and Creditor Law §§ 273, 274, 275, 277, 278, and 279.

Shortly after Cenlar was served with summons and a copy of the complaint, Cenlar filed a third party complaint against JPMorgan Chase, N.A. ("JPMorgan"), claiming that JPMorgan was the real party-in-interest and that Cenlar was merely a sub-servicing agent for JPMorgan and a mere conduit for the funds it received related to the purchase of the Quogue House. After discussing these claims with counsel for Cenlar and counsel for JPMorgan, the Trustee determined that Cenlar's position had merit, and the parties agreed to substitute JPMorgan into the lawsuit for Cenlar. The Court granted this substitution on August 8, 2011.



On June 15, 2012, the parties entered into a Settlement Agreement (the "Quogue Transfers Settlement Agreement"). Pursuant to the Quogue Transfers Settlement Agreement, Mark Roter and Jay Roter agreed to pay the Trustee \$140,000, First American agreed to pay the Trustee \$20,000, and JPMorgan agreed to pay the Trustee \$40,000. The Quogue Transfers Settlement Agreement provided for mutual general releases, including with respect to Resort Properties. The Quogue Transfers Settlement Agreement was approved by order of the Bankruptcy Court dated September 25, 2012.

9. *Gowan v. Ehrlich*, Adv. Proc. No. 10-05451

On December 15, 2010, the Trustee filed a complaint against Steven Ehrlich ("Ehrlich"), the stepson of MSD's sister Frances Ehrlich, seeking avoidance and recovery of a transfer of \$300,000 of the Debtor's funds to Ehrlich for which the Debtor received no benefit.

In October 2011, the Trustee and Ehrlich entered into a Settlement Agreement (the "Ehrlich Settlement Agreement"). Pursuant to the Ehrlich Settlement Agreement, Ehrlich agreed to pay the Trustee \$75,000 to settle the Trustee's claims against him. The Ehrlich Settlement Agreement was approved by order of the Bankruptcy Court dated November 30, 2011.

10. *Gowan v. Armada Partners, L.P., et al.*, Adv. Proc. No. 10-5452

On December 15, 2010, the Trustee filed a complaint against Armando Ruiz ("Ruiz"), Armada Partners, LP ("Partners"), and Armada Management, LLC ("Management") in the Bankruptcy Court. The lawsuit concerned fraudulent conveyances that Ruiz, Partners, and Management received from DLLP in connection with the management and operations of Partners, a purported stock trading business created by MSD and Ruiz. MSD used DLLP funds to pay his \$13,210,000 capital contribution to Partners and caused DLLP to transfer \$319,250 to Ruiz purportedly to compensate him for running Partners. DLLP, however, had no obligations to make these payments and was not an investor, member, or manager of Partners. The Trustee therefore brought claims in the aggregate amount of \$13,210,000 against Partners and \$319,250 against Ruiz under 11 U.S.C. §§ 544, 548(a)(1)(B), and 550 and New York's Debtor and Creditor Law §§ 273, 274, 275, 277, 278, 279.

Ruiz filed his answer to the complaint on February 22, 2011. The Trustee attempted to affect service via U.S. mail on Partners and Management on December 20, 2010, January 7, 2011, and February 24, 2011. Each of these attempts was returned undeliverable or was served on an entity who claimed to not be the correct party. On August 17, 2011, the Court extended the time for the Trustee to serve Partners and Management and authorized service by publication.

Thereafter, on November 21, 2011, the Clerk of the Bankruptcy Court entered a default against Partners, and on November 21, 2011, the Clerk of the Bankruptcy Court entered a default against Management. The Bankruptcy Court entered default judgments against Partners and Management on January 24, 2012.

In June 2012, the Trustee received from counsel for Ruiz an "Affidavit for Confession of Judgment," in the amount of \$319,250, which Ruiz' counsel confirmed was an Offer of

Judgment pursuant to Federal Rule of Bankruptcy Procedure 7068. On July 20, 2012, the Trustee accepted Ruiz' Offer of Judgment, and on August 9, 2012, filed a Notice of Acceptance of Offer of Judgment with the Bankruptcy Court, requesting that judgment be entered. As of the date of this Disclosure Statement, judgment against Ruiz had not been entered.

The Trustee retained Starr & Starr PLLC to pursue collections on the default judgments against Ruiz, Partners and Management. To date, the Estate has not obtained any recovery from these parties.

11. *Gowan v. ETECO, et al.*, Adv. Proc. No. 10-05453 and *Gowan v. First Reporting Corporation*, Adv. Proc. No. 10-04564

On December 15, 2010, the Trustee filed a complaint (the "EPD Action") against ETECO and Elisa Dreier ("EPD"), the ex-wife of MSD, for avoidance and recovery of transfers by the Debtor in the aggregate amount of \$580,040 to ETECO, EPD's landlord, on account of rent owed by EPD to ETECO, for which the Debtor received no benefit. The rent payments were ostensibly paid by the Debtor in satisfaction of MSD's personal obligations under an agreement (the "Separation Agreement") between MSD and EPD. In connection with the Separation Agreement, MSD caused the Debtor to execute a Pledge and Security Agreement (the "Pledge"), allegedly to secure MSD's obligations under the Separation Agreement, which Pledge was not perfected. EPD filed a proof of claim in the Bankruptcy Case for an unliquidated amount (the "EPD Claim").

Separately, on December 1, 2010, the Trustee filed a complaint (the "FRC Action") against First Reporting Corporation ("FRC"), which is owned by EPD, seeking avoidance and recovery of \$23,256.78 transferred by the Debtor to FRC in the ninety (90) days prior to the Petition Date. FRC filed a proof of claim in the Bankruptcy Case in the amount of \$3,121.95 (the "FRC Claim").

In September 2011, the Trustee, EPD and FRC entered into a Stipulation of Settlement and Agreed Order (the "EPD/FRC Stipulation"). Pursuant to the EPD/FRC Stipulation, EPD agreed to pay the Trustee \$75,000 to settle the claims asserted by the Trustee in the EPD Action and the FRC Action, and EPD also agreed to withdraw the EPD Claim and the FRC Claim. The EPD/FRC Stipulation was approved by order of the Bankruptcy Court dated November 30, 2011.

12. *Gowan v. Weiss Financial Tax-Solutions, LLC*, Adv. Proc. No. 10-5454

On December 15, 2010, the Trustee filed a complaint against Weiss Financial Tax-Solutions, LLC ("Weiss Financial") in the Bankruptcy Court. The lawsuit concerns fraudulent conveyances that Weiss Financial received in connection with its preparing the personal tax returns of MSD. DLLP was not obligated to satisfy the personal obligations of MSD, and DLLP received no benefit from the satisfaction of MSD's personal debts to Weiss Financial. The Trustee brought claims in the aggregate amount of \$798,000 against Weiss Financial under 11 U.S.C. §§ 544, 548(a)(1)(B), and 550 and New York's Debtor and Creditor Law §§ 273, 274, 275, 277, 278, 279

The Trustee attempted service on Weiss Financial by U.S. mail on December 20, 2010, January 7, 2011, and February 24, 2011. Each time, the attempt was returned as undeliverable. On April 7, 2011, the Trustee received confirmation that the service attempts on January 7, 2011 and February 24, 2011 had been sent to the correct address. The Trustee then sought and obtained authorization to serve Weiss Financial by publication outside the 120 day-window set forth by Federal Rule of Bankruptcy Procedure 7004.

Weiss Financial neither answered, responded to the complaint, nor otherwise appeared in this proceeding. On November 9, 2011, the Clerk of the Bankruptcy Court entered a default against Weiss Financial, and on February 2, 2012, the Bankruptcy Court entered a default judgment against Weiss Financial.

The Trustee retained Starr & Starr PLLC to pursue collections on the default judgment against Weiss Financial. To date, the Estate has not obtained any recovery from Weiss Financial.

13. *Gowan v. East 57th Street, LLC*, Adv. Proc. No. 10-5455

On December 15, 2010, the Trustee filed a complaint against East 57th Street, LLC ("East 57th") in the Bankruptcy Court. The lawsuit concerned MSD's lease of a penthouse apartment at 150 East 57th Street, New York, New York 10022 (the "Apartment"). From June 2006 to December 2007, MSD leased the Apartment from East 57th and paid his personal rent obligations via checks or wires drawn from DLLP accounts. DLLP was not a party to the lease and derived no benefit whatsoever from it. Thus, the payment of MSD's personal lease obligations with DLLP funds constituted fraudulent conveyances that the Trustee sought to recover under 11 U.S.C. §§ 544, 548(a)(1)(B), and 550 and New York Debtor and Creditor Law §§ 273, 274, 275, 277, 278, and 279. The Trustee's complaint alleged that East 57th received avoidable fraudulent conveyances in the aggregate amount of \$883,557.

On June 15, 2012, the Bankruptcy Court ordered the adversary proceeding against East 57th be assigned to mediation. Robert Rosenberg was selected by the parties as mediator.

On November 19, 2012, the parties entered into a Settlement Agreement (the "East 57th Settlement Agreement"). Pursuant to the East 57th Settlement Agreement, East 57th agreed to pay the Trustee \$100,000, plus eight (8) monthly installments of \$25,000 each, to settle the East 57th Adversary Proceeding. The East 57th Settlement Agreement further provided for mutual general releases. The East 57th Settlement Agreement was approved by order of the Bankruptcy Court dated January 18, 2013.

14. *Gowan v. HSBC Mortgage Corporation (USA), et al.*, Adv. Proc. No. 10-5456

On December 15, 2010, the Trustee filed a complaint against HSBC Mortgage Corporation (USA) ("HSBC"), Mortgage Service Center, Prudential Douglas Elliman, The Corcoran Group Eastside, Inc. ("Corcoran"), First American Title Insurance Company ("First American"), Ka Wing Yuen, Jeannie Yuen, Michael Braverman Design ("Braverman Design"), and NY Landmark Construction Corp. ("NY Landmark") in the Bankruptcy Court. The lawsuit

concerned MSD's purchase of a luxury apartment located at One Beacon Court, 151 East 58th Street, Apt. 34C, New York, New York 10022 (the "Beacon Court Apartment"). Specifically, the Trustee alleged that MSD purchased the Beacon Court Apartment with DLLP funds and that each of the defendants received property of the Estate in that purchase without conveying any benefit on DLLP. The Trustee brought claims against each of the defendants for constructive fraudulent conveyance under 11 U.S.C. §§ 544, 548(a)(1)(B) and 550 and New York Debtor and Creditor Law §§ 277, 278, and 279. The Trustee also objected to the scheduled claim of HSBC in the Bankruptcy Case under 11 U.S.C. § 502(d).

After filing the original complaint, the Trustee became aware that three of the defendants—Mortgage Service Center, Prudential Douglas Elliman and NY Landmark Construction Corp.—had been sued under their trade names or assumed names, because that is how documents within her possession identified those defendants. To avoid any confusion, the Trustee moved to amend the complaint to add the registered names of those defendants. This motion was unopposed, and the Court granted this motion and accepted the Trustee's amended complaint on June 17, 2011. The amended complaint clarifies that PHH Mortgage Corporation ("PHH"), Douglas Elliman of Westchester, LLC ("Elliman"), and NY Landmark Construction Management Corp., are the registered names for Mortgage Service Center, Prudential Douglas Elliman, and NY Landmark Construction Corp., respectively.

The Trustee's amended complaint alleges that the defendants received avoidable transfers in the aggregate amount of \$4,748,781.65.

In March, 2012, the Trustee and Braverman Design entered into a Stipulation of Settlement and Agreed Order (the "Braverman Stipulation"), pursuant to which Braverman Design agreed to pay \$50,000 to settle the Trustee's claims against it. By order dated April 9, 2012, the Bankruptcy Court approved the Braverman Stipulation, which was deemed "So Ordered" by the Bankruptcy Court.

On March 16, 2012, the Trustee and Corcoran entered into a Settlement Agreement (the "Corcoran Settlement Agreement"), pursuant to which Corcoran agreed to pay the Trustee \$62,000 to settle the Trustee's claims against it. The Corcoran Settlement Agreement was approved by Order of the Bankruptcy Court dated June 4, 2012.

In April 2012, the Trustee, Ka Wing Yuen, Jeannie Yuen and Elliman entered into a Settlement Agreement (the "Yuen/Elliman Settlement Agreement"), pursuant to which Ka Wing Yuen, Jeannie Yuen and Elliman agreed to pay the Trustee the total amount of \$162,500 to settle the Trustee's claims against them. The Yuen/Elliman Settlement Agreement was approved by Order of the Bankruptcy Court dated June 4, 2012.

The Trustee's remaining claims, against HSBC, PHH and NY Landmark, were assigned to mediation. The parties selected Hon. Francis Conrad as their mediator. Before mediation commenced, the Trustee was able to reach agreement with PHH to settle the Trustee's claims against it. Through mediation, the Trustee was able to reach agreement with HSBC and NY Landmark to settle her claims against them. On November 28, 2012, the Trustee and NY Landmark entered into a Settlement Agreement (the "NY Landmark Settlement Agreement"),

pursuant to which NY Landmark Agreed to pay the Trustee \$30,000 to settle the Trustee's claims against it, with a \$15,000 down payment and twelve (12) equal monthly installments of \$1,250, with the installment payments secured by a confession of judgment. On December 20, 2012, the Trustee and PHH entered into a Settlement Agreement (the "PHH Settlement Agreement"), pursuant to which PHH agreed to pay the Trustee \$20,000 to settle the Trustee's claims against it. On December 20, 2012, the Trustee and HSBC entered into a Settlement Agreement (the "HSBC Settlement Agreement"), pursuant to which HSBC agreed to pay the Trustee \$82,500 to settle the Trustee's claims against it. The Bankruptcy Court approved the NY Landmark Settlement Agreement, the PHH Settlement Agreement and the HSBC Settlement Agreement by order dated February 1, 2013.

All settlements reached in this matter have been satisfied and paid, except for NY Landmark, which is paying its settlement in installments. The adversary proceeding has been dismissed, as to all defendants except for NY Landmark.

15. *Gowan v. Westford Asset Management LLC*, Adv. Proc. No. 10-5447

On December 15, 2010, the Trustee filed a complaint against Westford Asset Management LLC, SGS Asset Management, Stafford Towne, Ltd., Bennington International Holdings, Ltd. and others (collectively "Westford") on December 15, 2010, seeking to recover \$137,648,574, of which \$22.6 million was profits from the MSD Ponzi Scheme. Westford moved to dismiss the Westford Complaint, which motion was denied. The litigation against Westford is pending as of the date of this Disclosure Statement. Discovery has been completed.

On December 22, 2012, the Trustee filed the Trustee's Motion for Partial Summary Judgment Against Certain Westford Defendants. By her summary judgment motion, the Trustee seeks judgment for profits paid to defendant Westford Special Situations Master Fund, LP in the amount of \$22,308,431.31, defendant Epsilon Global Master Fund, LP in the amount of \$4,737,986.11, defendant Epsilon Global Master Fund II, LP in the amount of \$7,002,250.00 and defendant Epsilon Distressed Strategies Master Fund, LP in the amount of \$474,833.33. On February 8, 2014, certain Westford defendants moved for partial summary judgment to dismiss claims against certain of the Westford defendants.

On January 3, 2014, the Bankruptcy Court entered its Memorandum Decision Denying Motions for Partial Summary Judgment, denying both the Trustee's motion for partial summary judgment and Westford's motion for partial summary judgment.

16. *Gowan v. Durham, et al.*, Adv. Proc. No. 10-05448

On December 15, 2010, the Trustee filed a complaint against Richard P. Durham, individually, Christena Karen H. Durham, and Richard P. Durham as Trustee of the Christena Karen H. Durham Trust (the "Durham Parties") on December 15, 2010, seeking to recover \$6,800,000.

On or about August 26, 2011, the Trustee and the Durham Parties entered into a Settlement Agreement (the "Durham Settlement Agreement"). Pursuant to the Durham

Settlement Agreement, the Durham Parties paid to the Debtor's estate the sum of \$1,800,000. The Trustee and the Durham Parties executed mutual general releases, and the Durham Parties agreed to waive the right to a replacement claim under section 502(h) of the Bankruptcy Code. The Durham Settlement Agreement was approved by the Bankruptcy Court by order dated October 18, 2011.

17. *Gowan v. Mitchell Dreier*, Adv. Proc. No. 10-05449

On December 15, 2010, the Trustee filed a complaint against Mitchell R. Dreier, the brother of MSD, seeking avoidance and recovery of \$950,600 in transfers made by the Debtor to the defendant, ostensibly for personal services rendered by the defendant to MSD, and for which the Debtor received no benefit.

On November 23, 2011, Mitchell R. Dreier filed a petition for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Florida, which stayed the adversary proceeding against him. Mitchell R. Dreier received a discharge on June 6, 2012. The Estate has received distributions totaling \$65,735.95. No further distributions are expected.

18. *Gowan v. Elliott Associates, LP, et al.* Adv. Proc. No. 10-5459

On December 15, 2010, the Trustee filed a complaint against Elliott Associates, LP ("Elliott Associates"), Elliott International, LP ("Elliott International," and with Elliott Associates, "Elliott"), and Heathfield Capital Limited ("Heathfield") in the Bankruptcy Court. The Trustee alleged that in connection with Elliott investing \$99,850,000 into the Note Fraud in October 2008, Elliott requested and received a purported security interest in artwork owned by DLLP (the "Elliott Lien"). Elliott filed a UCC-1 financing statement naming MSD as the owner of all the artwork subject to the Elliott Lien, but never filed a UCC-1 financing statement correctly identifying DLLP as the debtor.

Elliott subsequently transferred its interest in the Elliott Lien to Heathfield. Elliott also filed proof of claim number 290-3 in the Bankruptcy Case asserting general unsecured claims totaling \$101,102,745.22 (the "Elliott Proof of Claim") and subsequently transferred the Elliott Proof of Claim and Elliott Lien to Heathfield.

The Trustee brought claims against Elliott and Heathfield seeking to avoid the Elliott Lien on the basis of (1) actual and constructive fraudulent transfer under 11 U.S.C. §§ 548(a)(1)(A), 548(a)(1)(B), 550, and 551; (2) preferential transfer under 11 U.S.C. §§ 547, 550, and 551; and (3) avoidance of unperfected lien under §§ 544(a), 550, and 551. The Trustee also objected to the Elliott Proof of Claim under 11 U.S.C. § 502(d).

Elliott and Heathfield moved to dismiss the Trustee's complaint on the basis that the Trustee had failed to state a claim for which relief could be granted. The Trustee filed a brief responding to that motion, and Elliott and Heathfield filed a subsequent reply in further support of their argument.

Prior to the hearing on the motions to dismiss, the Trustee, Elliott and Heathfield reached a settlement (the "Elliott Settlement"). The Elliott Settlement was approved by order of the Bankruptcy Court dated November 30, 2011. Pursuant to the Elliott Settlement, and subject to Heathfield prevailing on its petition (the "Heathfield Petition") under 21 U.S.C. § 853(n) in the criminal case against MSD, *United States of America v. Marc Dreier*, No. 09 Cr. 085 (S.D.N.Y.) (JSR), asserting that Elliott (and Heathfield by assignment) are bona fide purchasers of interests in the artwork subject to the Elliott Lien (the "Artwork"), the parties agreed that the Artwork would be liquidated at auction. From the proceeds of auction, Elliott and Heathfield agreed to pay the estate \$1,000,000. In exchange, the Trustee provided general releases to Elliott and Heathfield. On July 10, 2013, the District Court in the Criminal Case entered a Stipulation and Order for Release of Property to Heathfield. Thereafter, and on August 28, 2013, the Bankruptcy Court entered an Amended Joint Stipulation of Settlement providing, among other things, that Heathfield shall make arrangements for the artwork to be sold at an auction to occur no later than May 31, 2014.

19. *Gowan v. Brian O'Dowd*, Adv. Proc. No. 12-01572

On April 27, 2012, the Trustee filed a complaint against Brian O'Dowd ("O'Dowd") in the Bankruptcy Court, seeking avoidance and recovery of transfers in the aggregate amount of \$1,298,717 that O'Dowd received from the Debtor in connection with the MSD Ponzi Scheme, of which \$798,717 was "profits" purportedly earned in the scheme. The parties are engaged in settlement negotiations as of the date of this Disclosure Statement.

20. *Gowan v. Heidi Lee Art Advisory, et al.*, Adv. Proc. No. 12-01717

On June 13, 2012, the Trustee filed a complaint against Heidi Lee Art Advisory and Heidi Lee, individually (together, "Heidi Lee"), in the Bankruptcy Court. In her complaint, the Trustee alleged that between April 2007 and September 2008 Heidi Lee received transfers from the Debtor in the amount of \$1,940,915 for services rendered for MSD and for which the Debtor received no benefit.

On May 15, 2013, the parties entered into a Settlement Agreement (the "Heidi Lee Settlement Agreement"). Pursuant to the Heidi Lee Settlement Agreement, (1) Heidi Lee agreed to pay the Trustee \$50,000.00 (the "Settlement Cash Amount") in nine (9) equal monthly settlement payments of \$5,555.55; (2) Heidi Lee agreed to pay the Trustee the value of certain artwork (the "Settlement Art"); (3) on or before April 1, 2014, Heidi Lee will use best efforts to sell the Settlement Art for the highest possible value in one or more arms' length sales to one or more unrelated third parties.; (4) Heidi Lee executed a Security Agreement that grants the Trustee a first priority security interest in the Settlement Art, the proceeds of the Settlement Art and the proceeds of any insurance policies providing coverage for loss associated with the Settlement Art; (5), Heidi Lee delivered to the Trustee two executed agreed judgments, one in the amount of \$450,000 and the other in the amount of \$50,000 (collectively, the "Agreed Judgments") which shall be held, in escrow, to secure Heidi Lee's compliance with the terms of the Heidi Lee Settlement Agreement; (5) the Trustee and Heidi Lee will exchange mutual releases; and (6) the Trustee shall file papers dismissing the adversary proceeding. The Court approved the terms of the settlement on July 2, 2013.

The Trustee has received the Settlement Cash Amount and approximately \$7,000 in proceeds from the sale of the Settlement Art.

**I. Trade Creditor Preference Litigation**

ASK Financial LLP commenced 57 preference actions that collectively seek to recover \$2,946,450 in preferential transfers (the "Trade Preference Actions"). The estate has obtained gross recoveries of \$408,884.42 on the Trade Preference Actions.

**J. Receivables and Committee Receivable Litigation**

The Trustee and the Creditors' Committee worked diligently to recover accounts receivable through pre-litigation negotiations. The Trustee and the Creditors' Committee sent a number of letters demanding payment and made numerous attempts to contact both domestic and international parties and entities that owed money to the Debtor. It became necessary, however, to commence a number of adversary proceedings in the Bankruptcy Court, as well as collection actions in other applicable jurisdictions, in an effort to collect the Receivables and Committee Receivables. The Estate has recovered approximately \$8.5 million from the efforts of the Trustee and the Creditors' Committee.

A list of the Receivables and the Committee Receivables that remain uncollected as of the date of this Disclosure Statement is annexed to this Disclosure Statement as Exhibit C. uncollected Receivables and Committee Receivables will continue to be prosecuted by the Plan Administrator after the Confirmation Date.

**K. Unfinished Business Claims**

During the early part of 2011, the Trustee began seeking discovery under Bankruptcy Rule 2004 from each of the law firms to which departing Partners of the Debtor relocated (the "Successor Firms"). Specifically, the Trustee sought information concerning pre-petition DLLP client engagements and matters that were transferred to the Successor Firms. From the information gathered, the Trustee is analyzing the potential claims against departing Partners and/or the Successor Firms on account of the unfinished client matters brought with departing Partners to the Successor Firms (the "Unfinished Business").

On January 23, 2013, the Trustee filed a complaint against Albert Jacobs LLP, Albert L. Jacobs Jr., Gerald Diebner and Daniel Ladow (the "Jacobs Adversary Proceeding") in the Bankruptcy Court, seeking *inter alia*, an accounting and turnover of profits related to Unfinished Business.

On April 17, 2013, the parties agreed to stay the Jacobs Adversary Proceeding pending decisions by the United States Court of Appeals for the Second Circuit in *Geron v. Seyfarth Shaw LLP (In re Thelen LLP)*, case number 12-4138 and the consolidated appeals in *Development Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP*, case number 12-4916 (lead case), in which cases substantially similar causes of action were pursued.



The United States Court of Appeals for the Second Circuit certified the legal questions presented in *Thelen* and *Coudert* to the New York Court of Appeals, which accepted the certification. The New York Court of Appeals has been asked to determine whether, under New York law, a client matter that is billed on an hourly basis constitutes the property of a law firm, such that, upon dissolution and in related bankruptcy proceedings, the law firm is entitled to the profit earned on such matters as the “unfinished business” of the firm.

The Trustee reserves the right to bring additional claims for the return of Unfinished Business following the Effective Date and any rights in this regard will be vested along with the rest of the Debtor’s assets in the Plan Administrator. A list of former DLLP attorneys who may have transferred client engagements and matters is annexed to this Disclosure Statement as **Exhibit D**.

**L. Other Litigation**

1. Avoidance Actions Against Former DLLP Attorneys

After consultation with the Committee, the Trustee determined there was not a sufficient basis to bring suit against former DLLP attorneys for avoidance and recovery of potential preferential and/or fraudulent transfers. The limitation period to commence such actions expired on December 16, 2010.

2. Gardi Parties Litigation

Former DLLP client Paul Gardi and his company, Alex Interactive Media (together, the “Gardi Parties”) opposed the Trustee’s settlements with GSO and Verition and claimed that they should be able to trace certain funds that allegedly belonged to them. On January 15, 2010, the Gardi Parties moved for an order lifting the automatic stay seeking authority to bring an action against GSO or the Debtor to recover the “JANA Funds.” The Gardi Parties also opposed a settlement between the Chapter 11 Trustee and the Chapter 7 Trustee concerning the division of assets between the two estates. The Court denied the Gardi Parties’ lift stay motion, and approved the GSO Agreement, the Verition Agreement and the Trustees’ Agreement over the Gardi Parties’ opposition. The United States District Court for the Southern District of New York affirmed the Court’s order denying the Gardi Parties’ motion to lift stay and approving the GSO settlement on September 10, 2010. The Gardi Parties appealed that decision of the District Court to the United States Court of Appeals for the Second Circuit.

Also related to the Gardi Parties is an adversary proceeding encaptioned Paul Gardi and Alex Interactive Media, LLC v. JANA Partners LLC, and Sheila M. Gowan as Trustee of Dreier LLP, Adv. Proc. No. 10-03642 (the “JANA Adversary Proceeding”).

In the JANA Adversary Proceeding, the Gardi Parties sought a declaratory judgment that they were not bound to the settlement agreement negotiated by MSD with respect to the Gardi Parties’ claims against JANA Partners LLC (“JANA”).

JANA moved to dismiss the JANA Adversary Proceeding. The Bankruptcy Court converted the motion to dismiss to a motion for summary judgment. By Memorandum Decision and Order Granting Motion for Summary Judgment dated May 23, 2011, the Bankruptcy Court ruled that MSD had apparent authority as the Gardi Parties' counsel of record to agree to a settlement with JANA and receive settlement funds from JANA. As such, the Gardi Parties were bound by MSD's actions and bore the risk of loss of the JANA Funds.

On May 15, 2012, the Bankruptcy Court So Ordered a Stipulation by and between the Trustee, the Chapter 7 Trustee and the Gardi Parties that provided, *inter alia*, (i) that the Gardi Parties would have an allowed, general unsecured claim against the estate in the amount of \$6,349,093; (ii) the Gardi Parties' appeals would be withdrawn; and (iii) the claims and causes of action held by each of the parties would be released.

3. Kalikow Second Circuit Litigation

Developer Sheldon H. Solow ("Solow") made a \$7 million loan to developer Peter S. Kalikow ("Kalikow") in exchange for an option to buy an interest in Kalikow's business shortly after Kalikow emerged from his 1994 chapter 11 bankruptcy. Kalikow repaid the loan and repurchased the option, but Solow questioned whether Kalikow had been truthful about his assets. In 2004, on the eve of the expiration of the ten year window to make post-confirmation claims, Solow and Steven M. Cherniak ("Cherniak"), a senior officer of Solow's realty company, contacted MSD. MSD, using a third party (Kosta Kovachev) and his corporation, then caused certain legal notices to be published suggesting that Kalikow's creditors might have additional claims in his bankruptcy case. Thereafter, Kalikow moved to reopen his bankruptcy, claiming, *inter alia*, that the notices were issued in bad faith.

Ultimately, United States Bankruptcy Judge Burton R. Lifland ordered sanctions against several individuals and entities, including DLLP and MSD, in the amount of \$334,583.00, which order was affirmed by United States District Court Judge Deborah A. Batts in September 2008. DLLP and the other individuals and entities appealed to the United States Court of Appeals for the Second Circuit, which appeal was pending as of the Petition Date. The Trustee stipulated with Solow and Cherniak to permit the appeal (but not the enforcement of any judgment) to proceed. The appeal was argued before the Second Circuit on October 29, 2009.

On April 8, 2010, the Second Circuit issued an opinion affirming in part, reversing in part, vacating the award granting sanctions, and remanding the matter to the Bankruptcy Court for further proceedings.

On May 13, 2013, the Trustee filed an Objection to Proof of Claim Filed by Peter S. Kalikow seeking to expunge Claim No. 32 in the amount of \$366,997.58. On June 14, 2013, the Court entered an Order disallowing and expunging the claim in its entirety.

4. Regan Litigation

Prior to the Petition Date, DLLP commenced litigation (the "Regan Litigation") against Judith Regan for the collection of attorney's fees allegedly due DLLP by Judith Regan. After the

Petition Date, the Trustee's attorneys appeared before New York Supreme Court Justice Braun on two occasions. At the first hearing, Justice Braun dismissed Regan's affirmative claims against the Debtor, and, at the second hearing, Justice Braun held that the Debtor was entitled to recover in *quantum meruit* for the legal services performed for Regan. Thereafter, Regan filed a Notice of Appeal to the Appellate Division, First Department and a motion for a stay pending appeal, also to the Appellate Division, and moved to strike the Note of Issue filed by the Debtor. The parties adjourned the foregoing motions and continue to attempt to resolve the fee dispute.

The Trustee and Regan settled the Regan Litigation. The terms of the settlement are confidential pursuant to agreements between the parties.

5. DLLP Professional Liability Insurance Litigation

For many years, DLLP maintained a professional liability (malpractice) insurance policy (the "Policy") with Federal Insurance Company LLC ("Federal"). Federal moved for relief from the automatic stay and the Trustee and Federal stipulated to permit Federal to file a declaratory judgment complaint in an adversary proceeding seeking rescission of the Policy. In August 2009, Federal filed its Complaint for Declaratory Relief, Adversary case 09-01453, against the Debtor, certain former DLLP partners and John Does 1-50.

In the adversary proceeding, Federal sought a declaration that the Policy for the period February 2, 2008 to February 2, 2009, "is void *ab initio* and of no force and effect."

The Trustee, answered and asserted affirmative defenses and counterclaims for actual and constructively fraudulent conveyances under both the Bankruptcy Code and New York state law and for unjust enrichment.

On May 10, 2011, the Trustee and Federal entered into a Settlement Agreement and Release of Claims (the "Federal Settlement Agreement"). Pursuant to the Federal Settlement Agreement, Federal paid \$854,280.00 to the Debtor's estate, representing the premiums DLLP paid for the Policy, and \$645,720.00 in settlement of the Trustee's counterclaims. The Policy was ~~reinded~~ rescinded and Federal's claims against the Debtor's estate were withdrawn. The Federal Settlement Agreement was approved by the Bankruptcy Court by order dated June 22, 2011.

**M. Disposition of Client Files**

After considering potentially applicable rules of professional responsibility, the Trustee developed a strategy and procedure for the disposal of certain of the Debtor's client files stored at the Trustee's New York office and offsite at storage facilities in New York and elsewhere. The proposed procedures in relation to disposal of those files were approved by the Court by an amended order on January 31, 2011. The Trustee then effectuated a mailing of notification to over 3,550 former clients and others, primarily in the United States, explaining the proposed disposal of documents and the procedure for retrieval of documents in the Trustee's possession. Prior to the applicable deadlines imposed by the Court-approved procedures, the Trustee

received approximately 60 requests for files. The timely requests were fulfilled on September 16, 2011, and all non-necessary files and non-recovered files were destroyed in January 2012.

**N. Restructuring of Leases and Contracts**

As of the Petition Date and at certain points thereafter, the Trustee determined that it would be in the best interests of the Estate to reject certain of the Debtor's executory contracts and leases. Prior to the Petition Date, DLLP was party to leases for thousands of square feet of office space in New York, Stamford, and Pittsburgh, and was the guarantor and, in one instance, the direct lessee of, affiliated office leases in California. The Trustee moved in this Court to reject each of the office leases to which the DLLP was a counterparty and the Court entered Orders approving the rejections.

**O. Sale of Estate Assets**

Following approval of the Coordination Agreement, the Trustee and her counsel interviewed multiple auction galleries and entertained proposals for the auction of the Seized Art. The Trustee chose Phillips de Pury & Co. ("Phillips de Pury"). The Trustee filed an application to retain Phillips de Pury as auctioneer and, on September 17, 2010, the Bankruptcy Court entered an order approving the retention. The Trustee filed a motion to authorize the sale of the Seized Art and to approve the procedures with respect to the auction and on September 30, 2010, the Bankruptcy Court entered an Order granting the Trustee's motion. The auction took place on November 21, 2010. The auction resulted in a distribution to the estate of \$525,403.00.

The Trustee also conducted an auction of the furniture and other office supplies of DLLP. That auction resulted in sale proceeds in the amount of \$303,706.03.

**P. Claims Objections**

As of the date of this Disclosure statement, a total of \$351,748,088 in claims filed against the Estate have been disallowed and expunged through claims objections and settlements. As of the date of this Disclosure Statement, the Plan Proponents continue to evaluate claims that may be objectionable. The Plan Proponents estimate that the ultimate resolution of those objectionable claims may result in a variance of 0.2% to 0.5% on Distributions to Class 4 General Unsecured Creditors described in section IV(C)(7) below.

**Q. Tax Matters**

Historically, DLLP employed accountants to handle its tax matters. Following her appointment, the Trustee and her financial advisors prepared documentation to enable former DLLP partners and employees to file their personal tax returns. The Trustee has been advised that, since the estate's expenses have exceeded the estate's income in each of the years during which DLLP has been in chapter 11, no tax liability has been incurred. Following the Effective Date, the Plan Administrator is authorized to make any required tax filings as part of the final windup of the DLLP estate.

#### **IV. SUMMARY OF THE PLAN OF LIQUIDATION**

##### **A. General Plan Objectives.**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. Asset sales, stock sales, and other liquidation efforts, however, can also be conducted during a chapter 11 case or pursuant to a chapter 11 plan. Under chapter 11, a company endeavors to restructure its finances such that it maximizes recovery to its creditors.

Formulation of a chapter 11 plan is the primary purpose of a chapter 11 case. A chapter 11 plan sets forth and governs the treatment and rights to be afforded to creditors and shareholders with respect to their claims against and equity interests in the debtor. According to section 1125 of the Bankruptcy Code, acceptances of a chapter 11 plan may be solicited by the proponent of a plan only after a written disclosure statement has been provided to each creditor or shareholder who is entitled to vote on the plan.

The Plan is a plan of liquidation. In general, a chapter 11 plan of liquidation (i) divides claims and equity interests into separate classes, (ii) specifies the property that each class is to receive under the plan, and (iii) contains other provisions necessary to implement the Plan. Under the Bankruptcy Code, "claims" and "interests" are classified rather than "creditors" and "partners" because such entities may hold claims and interests in more than one class.

Generally, the Plan establishes a mechanism by which a Plan Administrator will marshal the assets of the Debtor, through the collection of monies owed to the Debtor, which monies shall be deposited with the Plan Administrator for the eventual Distribution to holders of Claims and Interests, in the order set forth in the Plan.

##### **B. Provisions Governing Order and Method for Distributions Under the Plan**

The Plan divides Claims against and Interests in the Debtor into five (5) categories or "Classes" according to the underlying basis and subsequent treatment for each. Claims within the same Class are treated identically and each Class is treated differently.

Administrative Expense Claims, Professional Fee Claims, Trustee Commission and Priority Tax Claims are not classified but are treated in the manner set forth in Article 2 of the Plan and summarized below.

##### **C. Classes of Claims**

The following classes of Claims and Interests are designated pursuant to and in accordance with section 1123(a)(1) of the Bankruptcy Code, which Classes shall be mutually exclusive:

<b>Class</b>	<b>Class Description</b>	<b>Estimated Amount of Allowed Claim in Class</b>	<b>Treatment Under Plan and Estimated Recovery Under Plan</b>
Unclassified	Professional Fee Claims subject to holdback	\$3,063,572 in professional fees and expenses held back through July 31, 2013.	Unimpaired. Estimated Recovery: 100%
Unclassified	Trustee Commission	To be awarded by Order of the Bankruptcy Court. By statute commission may not exceed 3% of monies disbursed.	Unimpaired. Estimated Recovery: 100%
Unclassified	Administrative Expense Claims (other than professional fees and expenses)	\$200,000	Unimpaired. Estimated Recovery: 100%
Unclassified	Priority Tax Claims	\$3,850,000	Unimpaired. Estimated Recovery: 100%
Class 1	Wells Fargo Superpriority Claim	\$940,527	Unimpaired. Holders of Class 1 Claims shall be paid the proceeds of collateral, if any, pledged to secure its claim. Deemed to Accept.
Class 2	Secured Claims	\$8,971,845	Unimpaired. Holders of Class 2 Claims shall be paid the proceeds of collateral, if any, pledged to secure their claim, except as described below. Deemed to Accept.
Class 3	Priority Non-Tax Claims	\$1,909,434	Unimpaired. Estimated Recovery:

			100%. Deemed to Accept.
Class 4	General Unsecured Claims	\$375,361,793	Impaired. Estimated Recovery: 4.9%-12.6%. Entitled to Vote.
Class 5	Interests	\$0.00	Impaired. Estimated Recovery: 0%. Deemed to Reject.

1. Professional Fee Claims and Trustee Commission

The Trustee or the Plan Administrator shall pay all Professional Fee Claims and any Trustee Commission as soon as practicable after a Final Order pursuant to Bankruptcy Rules 5003 and 9021 has awarded such compensation and reimbursement of expenses pursuant to proper application in accordance with Section 5.14 of the Plan. The Plan Administrator shall at all times hold and maintain Cash in an amount equal to the estimated Professional Fee Claims and Trustee Commission incurred or to be incurred prior to the Confirmation Date. In the event any Disputed Professional Fee Claims or any Disputed Trustee Commission exist on the Effective Date, the Plan Administrator shall at all times hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Professional Fee Claims and any Disputed Trustee Commission until such dispute is resolved consensually or by order of the Bankruptcy Court.

2. Administrative Expense Claims

All Allowed Administrative Expense Claims, other than Professional Fee Claims and Trustee Commission, shall be paid in full, in Cash, in such amounts as are incurred in the ordinary course of the liquidation of the Debtor, or in such amounts as may be Allowed by the Bankruptcy Court (a) as soon as practicable following the later of the Effective Date or the date upon which the Court enters a Final Order Allowing any such Administrative Expense Claim, or (b) upon such other terms as may exist in accordance with the ordinary course of the Debtor's liquidation or (c) as may be agreed upon between the holder of any such Administrative Expense Claim and the Trustee, or the Plan Administrator, as the case may be. In the event there exists any Disputed Administrative Expense Claims on the Effective Date, the Plan Administrator shall at all times hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Administrative Expense Claims.

3. Priority Tax Claims

Unless otherwise agreed to by the parties, each holder of an Allowed Priority Tax Claim will receive an amount in Cash equal to the Allowed amount of such Priority Tax Claim as soon

as practicable following the later of (a) the Effective Date, and (b) the date on which such Priority Tax Claim becomes an Allowed Claim. In the event there exists any Disputed Priority Tax Claims on the Effective Date, the Plan Administrator shall hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Priority Tax Claims until such dispute is resolved consensually or by order to the Bankruptcy Court.

4. Class 1 (Wells Fargo Superpriority Claim)

(a) On the Effective Date, or as soon thereafter as is reasonably practical, Wells Fargo shall receive (i) not more than the full amount of its Allowed Wells Fargo Superpriority Claim from the net proceeds of the disposition of any collateral which is pledged as security for such Allowed Wells Fargo Superpriority Claim and which collateral remains in possession and control of the Estate or (ii) such other, less favorable treatment as may be agreed to in writing by the holder of such Allowed Wells Fargo Superpriority Claim and the Plan Administrator. Any Deficiency Claim of Wells Fargo which may arise on account of the present lack of collateral or otherwise resulting from the aforesaid treatment shall be included in and treated as a Class 4 General Unsecured Claim.

(b) On October 9, 2012, the Court entered a Stipulation and Order fixing the outstanding amount of the Wells Fargo Superpriority Claim at \$940,527.33. Subject to and in accordance with the terms of the Cash Collateral Orders, the proceeds of the disposition of assets of the Estate, other than Avoidance Actions or the proceeds thereof, shall be paid to Wells Fargo in satisfaction of the Wells Fargo Superpriority Claim.

5. Class 2 (Secured Claims)

(a) On the Effective Date, or as soon thereafter as is reasonably practical, each holder of an Allowed Secured Claim shall receive (i) the net proceeds of the sale or other disposition of any collateral which is pledged as security for such Allowed Secured Claim and which remains in possession and control of the Estate; or (ii) such other, less favorable treatment as may be agreed to in writing by the holder of such Allowed Secured Claim and the Plan Administrator. Any Deficiency Claim which may arise on account of the present lack of collateral or otherwise resulting from the aforesaid treatment shall be included in and treated as a Class 4 General Unsecured Claim.

(b) Notwithstanding the foregoing, the Secured Claim of Wells Fargo shall be treated in accordance with the Second Cash Collateral Order, as amended by the Wells Fargo Settlement. On and after the Effective Date, or as soon thereafter as reasonably practical, Wells Fargo shall receive forty percent (40%) of the Net AR Proceeds (as defined in the Wells Fargo Settlement) as they are obtained. Any deficiency shall be treated as a Class 4 General Unsecured Claim. For the avoidance of doubt, at the time of any Distribution to holders of Class 4 General Unsecured Claims, the Plan Administrator shall reserve an amount equal to the Distribution that would be made on the maximum potential deficiency claim resulting from the aforesaid treatment, pending the liquidation of all collateral in which Wells Fargo claims an interest.

(c) Nothing in the Plan or this Disclosure Statement shall be construed to alter or waive the rights of the Trustee, the Plan Administrator, the Creditors' Committee or the Plan oversight



Committee to contest the validity of any Secured Claim, except for the Secured Claim of Wells Fargo, which has been fixed and allowed by stipulation.

6. Class 3 (Priority Non-Tax Claims)

On the Effective Date, or as soon thereafter as is reasonably practical, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Non-Tax Claim, each holder of an Allowed Priority Non-Tax Claim against the Debtor shall receive (a) an amount in Cash equal to the Allowed amount of such Priority Non-Tax Claim, or (b) such other treatment as to which the Plan Administrator and the holder of such Allowed Priority Non-Tax Claim shall have agreed upon in writing. In the event there exists any Disputed Priority Non-Tax Claims on the Effective Date, the Plan Administrator shall at all times hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Priority Claims.

7. Class 4 (General Unsecured Claims)

(a) On the Effective Date, or as soon thereafter as is reasonably practical, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed General Unsecured Claim, each holder of an Allowed General Unsecured Claim shall receive one or more Distributions equal to its *Pro Rata* share of the Unsecured Creditor Fund. In the event there exists any Disputed General Unsecured Claims on the Effective Date, the Plan Administrator shall at all times hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed General Unsecured Claims.

(b) Certain holders of General Unsecured Claims were determined in the Criminal Case to be victims of MSD's crimes and received payments from the proceeds of assets seized by the Government (in each case a "Restitution Payment"). Those holders of General Unsecured Claims determined to be victims (each a "Victim" and collectively, the "Victims") are identified in the Amended Restitution Order of the District Court dated August 18, 2009. The Plan Administrator shall take reasonable steps to ensure that no Victim receives more than one-hundred percent (100%) of their Allowed General Unsecured Claim as a result of such holder's receipt of one or more Restitution Payments and any Distributions contemplated by the Plan.

8. Class 5 (Interests)

Holders of Interests shall not receive a Distribution under the Plan.

V. MEANS OF IMPLEMENTING THE PLAN

1. Sources and Uses of Cash on Effective Date

The Plan Proponents estimate that on the Effective Date, the estate will have Cash on hand in the approximate amount of \$35,519,322 (the "Effective Date Funds"). On the Effective Date, after establishing and funding the Administrative Reserve, the Plan Administrator will make Distributions first, to holders of Allowed Administrative Expense Claims, second to

holders of Allowed Priority Tax Claims, third, to a reserve for Allowed Professional Fee Claims and Trustee Commission, and fourth, an initial Distribution to holders of Allowed Unsecured Claims. The Plan Proponents believe that the Effective Date Funds are sufficient to make these Distributions.

After the Effective Date, the Plan Administrator will make further Distributions to holders of Allowed Unsecured Claims, when possible, but not more often than quarterly, in accordance with the Plan. Such further Distributions will be funded from continued collection of Accounts Receivable and proceeds of the Causes of Action, and any other funds that may come to be held by the Plan Administrator.

2. Appointment of Plan Administrator

(a) Appointment. On the Effective Date, the Plan Administrator Agreement shall be executed by the Trustee, on behalf of the Debtor, the Creditors' Committee, and by the Plan Administrator. The Plan Administrator shall be deemed appointed upon execution of the Plan Administrator Agreement. A copy of the proposed form of Plan Administrator Agreement will be filed with the court not later than ten (10) days before the hearing on confirmation of the Plan. The Plan Administrator shall be Sheila M. Gowan.

(b) General Powers, Rights and Responsibilities of Plan Administrator On the Effective Date, subject to the direction of the Plan Oversight Committee, the Plan Administrator shall become the exclusive representative of the Estate. The powers, rights, and responsibilities of the Plan Administrator, all of which shall arise upon the occurrence of the Effective Date, shall be specified in the Plan Administrator Agreement. Subject to the direction of the Plan Oversight Committee, the powers, rights and responsibilities of the Plan Administrator, shall include, but are not be limited to:

(i) the dissolution and wind-down activities of the Debtor and its Estate;

(ii) the power and authority to negotiate, resolve and enter into settlements on all matters affecting the Estate, including, without limitation, Receivables, Disputed Claims, and/or other Causes of Action;

(iii) the authority to take such actions as she or he deems appropriate in the Plan Administrator's reasonable business judgment against any Person with respect to a Cause of Action;

(iv) the authority to employ all discovery devices permitted under applicable law, including Federal Rule of Bankruptcy Procedure 2004, in order to investigate any Causes of Action;

(v) the authority to take or cause to be taken all actions pursuant to the provisions of the Plan Administrator Agreement as necessary to secure the effective implementation of the Plan;

(vi) the authority to employ, without order of the Bankruptcy Court, Professionals to assist her or him in carrying out her or his duties hereunder, including former counsel to the Trustee and/or the Creditors' Committee, and may compensate and reimburse the expenses of those Professionals without further order of the Bankruptcy Court;

(vii) the authority to complete the disposition of client files and records of the Debtor and its Estate in accordance with the File Disposition Procedures and the Plan.

3. Appointment of Plan Oversight Committee

(a) Appointment. On the Effective Date, an oversight committee (the "Plan Oversight Committee") shall be appointed and shall consist of three members. The Creditors' Committee shall, by a simple majority, select the members of the Plan Oversight Committee. The Plan Oversight Committee may be composed of holders of Unsecured Claims or such other parties in interest as the Creditors' Committee designates prior to the Effective Date, or the Plan Oversight Committee designates after the Effective Date.

(b) Authority and Responsibilities. The Plan Oversight Committee shall have the authority specified in the Plan. The Plan Administrator shall consult with and provide information to the Plan Oversight Committee.

(c) Meetings of the Plan Oversight Committee. Meetings of the Plan Oversight Committee are to be held not less often than quarterly. Special meetings of the Plan Oversight Committee may be held whenever and wherever called for by any member of the Plan Oversight Committee. Any action required or permitted to be taken by the Plan Oversight Committee at a meeting may be taken without a meeting if the action is taken by one or more written consents describing the action taken, approved by a majority of the members of the Plan Oversight Committee and recorded in the minutes, if any, or other transcript, if any, of the proceedings of the Plan Oversight Committee. The Plan Administrator and the Plan Administrator's designated advisors may attend meetings of the Plan Oversight Committee if invited by the Plan Oversight Committee in its sole discretion.

(d) Manner of Acting. Two members of the Plan Oversight Committee shall constitute a quorum for the transaction of business at any meeting of the Plan Oversight Committee. Any or all of the members of the Plan Oversight Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the Plan Oversight Committee participating in a meeting by these means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications. For the avoidance of doubt, the Plan Administrator is not a member of the Plan Oversight Committee and has no vote thereon.

(e) Manner of Appearance of Plan Oversight Committee and Compensation. The Plan Oversight Committee may retain Professionals and such other advisors as the Plan Oversight Committee deems necessary. Reasonable fees and expenses of Professionals retained by the Plan Oversight Committee, if any, shall be paid by the Plan Administrator from the

Administrative Reserve. If a member of the Plan Oversight Committee participates by counsel, such member of the Plan Oversight Committee shall be entitled to reimbursement for the normal hourly rate of such counsel from the Administrative Reserve. If a member of the Plan Oversight Committee does not appear by counsel, such member shall be entitled to compensation from the Administrative Reserve for his or her time at a reasonable rate, plus reasonable expenses.

(f) Resignation and Removal of Plan Oversight Committee Members. If a member of the Plan Oversight Committee resigns, or, if in the opinion of a majority of the members of the Plan Oversight Committee, a member has abdicated his or her responsibilities, the remaining members of the Plan Oversight Committee may solicit replacement members, with any such replacement member to be agreed to by a simple majority of the remaining members of the Plan Oversight Committee. Removal and replacement of members of the Plan Oversight Committee shall be approved by order of the Court. The Plan Oversight Committee shall seek Bankruptcy Court approval of removal and replacement of members of the Plan Oversight Committee on Notice of Presentment to (i) the Office of the United States Trustee, (ii) the Plan Administrator, (iii) the members of the Plan Oversight Committee, and (iv) any parties in interest requesting post-Effective Date notice.

4. Plan Oversight Committee Direction of Plan Administrator

The Plan Administrator shall consult with Plan Oversight Committee with respect to the administration of the Bankruptcy Case as set forth in the Plan and such matters related thereto that the Plan Oversight Committee determines in its discretion. The Plan Oversight Committee may designate certain actions which require its prior consent before the Plan Administrator takes such actions, which designation may be modified by the Plan Oversight Committee at any time.

5. Removal of Plan Administrator

The Plan Oversight Committee may remove the Plan Administrator upon vote of two (2) of three (3) members of the Plan Oversight Committee, for cause as reasonably determined by the Plan Oversight Committee. Cause may include, without limitation, the Plan Administrator's failure or refusal to keep the Plan Oversight Committee reasonably informed about the Plan Administrator's activities and the status of open matters, or follow the direction of the Plan Oversight Committee. The Bankruptcy Court shall retain jurisdiction to interpret and enforce the foregoing provisions. The Plan Administrator will continue to serve after her removal until the earlier of (i) the time when appointment of a successor Plan Administrator becomes effective; or (ii) such date as the Bankruptcy Court otherwise orders.

6. Succession Matters

If the Plan Administrator is removed as set forth herein, or upon the death or incompetency of the Plan Administrator (in the case the Plan Administrator is a natural person) or upon dissolution (in the case the Plan Administrator is not a natural person), the Plan Oversight Committee shall designate a successor Plan Administrator. Such successor Plan Administrator shall be deemed to succeed the Plan Administrator in all respects, including, but not limited to, all litigation and other matters related to prosecution of the Causes of Action,

without need for further order of the Bankruptcy Court. In the event of resignation or removal of the Plan Administrator, the departing Plan Administrator shall promptly (a) execute and deliver such documents, instruments and other writings as reasonably requested by the successor Plan Administrator or as ordered by the Bankruptcy Court; (b) turn over to the successor Plan Administrator all property of the Estate in his, her or its possession, custody and control, including, but not limited to all funds held in bank accounts, and all files, books and records and other documents and information related to the Assets and to DLLP; and (c) otherwise assist and cooperate in affecting the assumption of his, her or its obligations and functions by the successor Plan Administrator. The successor Plan Administrator may, in his, her or its discretion, retain such Professionals as it deems necessary, including the Professionals of the departing Plan Administrator. If the Plan Administrator is replaced, the Professionals retained by the Plan Administrator shall be entitled to payment of their reasonable, undisputed fees and expenses from the Administrative Reserve through the date of the Plan Administrator's replacement as approved by the Plan Oversight Committee or otherwise allowed by order of the Bankruptcy Court.

7. Liability, Release and Indemnification

The Plan Administrator and the Plan Oversight Committee, and each of their respective designees, employees or Professionals or any duly designated agent or representative of the Plan Administrator, or their respective employees, and the Plan Oversight Committee, shall not be liable for any act or omission taken or omitted to be taken in their respective capacities other than for acts or omissions resulting from willful misconduct, gross negligence, or fraud as determined by Final Order of the Bankruptcy Court. The Plan Administrator and the Plan Oversight Committee may, in connection with the performance of their respective functions, and in their respective sole and absolute discretion, consult with attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such attorneys, or any Final Order of the Bankruptcy Court. Notwithstanding such authority, the Plan Administrator and the Plan Oversight Committee shall not be under any obligation to consult with attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability, unless such determination is based on willful misconduct, gross negligence or fraud as determined by Final Order of the Bankruptcy Court. The Estate shall indemnify and hold harmless the Plan Administrator and her or his designees and Professionals, and all duly designated agents and representatives thereof (in their capacity as such), and the Plan Oversight Committee and its members (in their capacity as such) and Professionals, from and against all liabilities, losses, damages, claims, costs and expenses, including, but not limited to attorneys' fees and costs arising out of or due to such actions or omissions, or consequences of their actions or omissions with respect or related to the performance of their duties or the implementation or administration of the Plan; provided however, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence or fraud.

8. Establishment of Reserves and Funds

(a) On the Effective Date or as soon thereafter as is practicable, the Administrative Reserve shall be established by the Plan Administrator in consultation with the Plan Oversight Committee. If the Plan Administrator determines that additional funding of the Administrative Reserve is required, from time to time, following the Effective Date, such funding shall be made from Available Cash, if any, and then, the Unsecured Creditor Fund. The Administrative Reserve shall be used to pay the Estate Expenses, including, without limitation, costs and expenses of counsel or other advisors retained by the Plan Administrator and Plan Oversight Committee. Any amounts remaining in the Administrative Reserve after all Estate Expenses are paid shall be deposited into the Unsecured Creditors Fund and shall become available for Distribution to holders of Allowed Claims in the priority of payment provided for in accordance with the provisions of the Plan.

(b) As soon as practicable following the Effective Date, the Unsecured Creditor Fund shall be established by the Plan Administrator, which account shall be subject to the terms of the Plan and the Plan Administrator Agreement.

(c) As soon as practicable following the Effective Date, the Disputed Claim Reserve shall be established by the Plan Administrator; provided, however, that the Plan Administrator shall have no obligation to fund the Disputed Claim Reserve unless and until a Distribution occurs to holders of Allowed Claims. The Plan Administrator shall fund the Disputed Claim Reserve from Available Cash in an amount which is equal to the amount holders of Disputed Claims would have otherwise been entitled but for the dispute. The assets in the Disputed Claim Reserve shall be held separately from other assets held by the Plan Administrator, subject to an allocable share of all expenses and obligations of the estate, on account of Disputed Claims. The Plan Administrator shall remove funds from the Disputed Claims Reserve as the Disputed Claims are resolved, which funds shall be distributed as provided in section 5.8 of the Plan. Notwithstanding any other provision of the Plan to the contrary, subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary, the Plan Administrator may treat any assets allocable to, or retained on account of, the Disputed Claims Reserve as held by one or more discrete entities for federal, and applicable state, local or other, income tax purposes, and may determine that such entity or entities shall constitute "disputed ownership funds" under, and may make the election permitted by, Treasury Regulation 1.468B-9, or any successor provision thereto. All recipients of distributions under the Plan shall be bound by, and shall report consistent with, such income tax treatment.

#### 9. Plan Distributions

Following the Effective Date, and subject to the establishment and funding of the Administrative Reserve as set forth above, and as set forth in greater detail in Article 10 of the Plan, Distributions shall be made by the Plan Administrator as follows:

(a) Initial Distributions of Cash: On the first Distribution Date following the Effective Date, the Plan Administrator shall, pursuant to the terms of the Plan, make Distributions from Available Cash to holders of the Wells Fargo Superpriority Claim (to the extent of available proceeds of collateral as set forth in Section 4.1 of the Plan), Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Professional Fee Claims, Allowed Trustee Commission, and Allowed Priority Non-Tax Claims, and shall make

Distributions to holders of Allowed Secured Claims (to the extent of available proceeds of collateral as set forth in Section 4.2 of the Plan) and to General Unsecured Claims in accordance Article IV of the Plan;

(b) Subsequent Distributions of Cash: On each Distribution Date, the Plan Administrator shall, pursuant to the terms of the Plan, make Distributions to holders of Allowed General Unsecured Claims in an amount equal to such Creditor's *Pro Rata* share, if any, of Cash held in the Unsecured Creditor Fund on such Distribution Date. Such subsequent Distributions shall occur as soon after the first Distribution Date as the Plan Administrator shall reasonably determine is appropriate in light of (i) the amount of funds on hand; (ii) the amount and nature of disputed claims; (iii) the activities to be accomplished, including their anticipated duration and costs; (iv) the length of time since any prior Distribution; (v) the costs of effecting and interim Distribution.

10. Preservation of Causes of Action

Except as otherwise provided in the Plan or in any contract, instrument, release or agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, all Claims or Causes of Action that the Debtor, Trustee, or Estate may have against any person or entity are preserved, including without limitation any and all Causes of Action the Debtor, Trustee, the Committee, Estate or other appropriate party in interest may assert under sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code.

11. Preservation of Records

The Trustee shall preserve for the benefit of the Estate, all documents and files, including electronic data hosted on remote servers, that are necessary to the prosecution of the Causes of Action and claims resolution process (the "Necessary Information"). After the Effective Date, the Plan Administrator shall preserve the Necessary Information until the date that is one (1) year following the closing of the Bankruptcy Case. As of the Effective Date, the Plan Administrator shall be permitted to abandon (with or without destruction), any information that is not Necessary Information.

12. General Disposition of Assets

Pursuant to section 1123(a)(5) of the Bankruptcy Code and subject to the terms of the Plan Administrator Agreement and the Plan, as soon as is reasonably practicable following the Effective Date, the Plan Administrator shall sell or otherwise dispose of, and liquidate to or otherwise convert to Cash, any non-Cash Assets in such manner as the Plan Administrator shall determine in his or her judgment is in the best interests of the Estate.

13. Disposition of Disputed Funds

The Chapter 11 Trustee currently holds the Disputed Funds identified on Exhibit E hereto. Certain Creditors and parties in interest have asserted, or may assert, rights and interests in the Disputed Funds. The Trustee believes that certain of the Disputed Funds are property of

the Estate since their derivation was from the comingled 5966 Account which MSD used to commit his fraudulent scheme.

Subject to the terms of the Plan, as soon as is reasonably practicable following the Effective Date, the Plan Administrator shall seek to negotiate a consensual resolution with the parties known to assert interests in the Disputed Funds. If consensual resolution is not attained within one hundred and twenty (120) days following the Effective Date, the Plan Administrator shall file a declaratory judgment action with the Court seeking determination as to whether the Estate, or any third party asserting rights or claims in the funds held in certain of the Disputed Funds, has a superior right, title and/or interest in the funds in question.

14. Debtor's Pre-Confirmation Period Operations

During the period prior to the Confirmation Date, the Trustee shall continue to administer the ~~Estate~~ Estate, including, but not limited to, preparing and filing tax returns and statements, collecting accounts receivable and filing U.S. Trustee reports, with the authority granted under section 1106 of the Bankruptcy Code and subject only to those restrictions imposed upon the Trustee pursuant to the Bankruptcy Code, the Bankruptcy Rules, orders of the Court and the Plan.

15. Administrative Claims Bar Date

With the exception of Professional Fee Claims and Trustee Commission, persons asserting an Administrative Expense Claim must file a request for payment of such Administrative Expense Claim on or before 5:00 p.m. prevailing Eastern Time on the date that is 30 days after the Effective Date (the "Administrative Expense Claims Bar Date"). No payment or Distributions will be made on account of any Administrative Expense Claim until such Claim becomes an Allowed Claim. Any person asserting an Administrative Expense Claim that fails to file and serve an Administrative Expense Claim on or before the Administrative Expense Claims Bar Date shall be forever barred from asserting any such right to payment as against the Debtor and/or the Estate.

16. Deadline for Filing Applications Seeking Payment of Professional Fee Claims or Trustee Commission

All parties seeking payment of Professional Fee Claims or Trustee Commission arising prior to the Effective Date must file with the Bankruptcy Court and serve upon the Plan Administrator, a final application and/or an application for payment of reasonable fees and expenses filed under section 503(b) of the Bankruptcy Code, as applicable, on or before the first Business Day after the thirtieth (30th) day after the Effective Date (the "Fee and Commission Application Deadline"). Any Professional failing to file and serve such final fee application or 503(b) motion on or before the Fee and Commission Application Deadline shall be forever barred from asserting any such right to payment.



17. Execution of Documents to Effectuate Plan

From and after the Confirmation Date, the Plan Administrator shall have the exclusive power and authority to execute any instrument or document to effectuate the provisions of the Plan.

18. Authorization of Plan Administrator's Action

Entry of the Confirmation Order shall authorize the Plan Administrator to take, or cause to be taken, all actions necessary or appropriate to consummate and implement the provisions of the Plan. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action.

19. Objections to Claims

Objections to Claims shall be brought by the Trustee or the Creditors' Committee during the period prior to the Effective Date and by the Plan Administrator or the Plan Oversight Committee on behalf of the Estate after the Effective Date, but prior to the expiration of the Claims Objection Bar Date. All Claims shall be subject to section 502(d) of the Bankruptcy Code.

(a) Reservation of Rights to Object to Claims. Unless a Claim is specifically Allowed prior to or after the Effective Date, the Trustee and the Plan Administrator prior to the Effective Date and the Plan Administrator and Plan Oversight Committee after the Effective Date reserve any and all objections to any and all Claims and motions or requests for the payment of Claims, whether administrative expense, secured or unsecured, including without limitation any and all objections to the validity or amount of any and all alleged Administrative Expense Claims, Priority Tax Claims, or Priority Non-Tax Claims, liens and security interests, whether under the Bankruptcy Code, other applicable law or contract. The failure to object to any Claim prior to the Effective Date shall be without prejudice to the Plan Administrator's and Plan Oversight Committee's right to contest or otherwise defend against such Claim in the Bankruptcy Court when and if such Claim is sought to be enforced by the holder of the Claim.

(b) Objections to Claims. Prior to the Effective Date, the Trustee and the Creditors' Committee shall be responsible for pursuing any objection to the allowance of any Claim. From and after the Effective Date, the Plan Administrator and the Plan Oversight Committee may dispute, object to, compromise or otherwise resolve all Claims. Unless otherwise provided in the Plan or ordered by the Bankruptcy Court, all objections to Claims shall be filed and served no later than two hundred seventy (270) days after the Effective Date, provided that the Plan Administrator or the Plan Oversight Committee may request (and the Bankruptcy Court may grant) an extension of time by filing a motion with the Bankruptcy Court.

(c) Filing Objections. An objection to a Claim shall be deemed properly served on the ~~Claimant~~claimant if the Trustee, Plan Administrator, the Committee or Plan Oversight Committee effect service ~~by any of the following methods~~of any such objection in accordance

with Rule 3007 of the Bankruptcy Rules by mailing or otherwise delivering the objection and a notice of hearing thereon to the claimant at the address set forth on such claimant's proof of claim at least thirty (30) days prior to the hearing thereon. The Trustee, Plan Administrator, the Committee or Plan Oversight Committee may also effectuate service of an objection to a claim:

(i) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (ii) to the extent counsel for a Claimant is unknown, by first class mail, postage prepaid, to the signatory on the proof of claim or interest or other representative identified on the proof of claim or interest or any attachment thereto; or; (iii) by first class mail, postage prepaid, on counsel that has appeared on the behalf of the Claimant in the Bankruptcy case.

(d) Determination of Claims. Except as otherwise agreed by the Trustee or Plan Administrator, any Claim as to which a proof of claim or motion or request for payment was timely filed in the Bankruptcy Case may be determined and liquidated after the Effective Date pursuant to (i) an order of the Bankruptcy Court (which order has not been stayed, reversed or amended and as to which determination or any revision, modification or amendment thereof, and the time to appeal or seek review or rehearing thereof has expired, and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending), or (ii) applicable non-bankruptcy law. Any Claim determined to be an Allowed Claim after the Effective Date pursuant to this section shall be treated as an Allowed Claim in accordance with the Plan.

20. Disallowance of Claims without Further Order of the Court.

As of the Confirmation Date, any Scheduled Claim designated as disputed, contingent or unliquidated in amount, and for which a proof of Claim has not been filed by the Claimant, shall be deemed expunged, without further act or deed. All Scheduled Claims that correspond to a proof of Claim filed by a particular Claimant shall be deemed to have been superseded by such later filed proof of Claim and the Scheduled Claims, regardless of priority, shall be expunged from the claims register; provided however, that such proofs of Claim shall be subject to objection in accordance with Section 5.16 of the Plan.

21. Continued Existence of Debtor Until Closing of the Case

Following the Confirmation Date, the Debtor, through the activities of the Plan Administrator, shall continue in existence for the purposes of, among other things, completing the liquidation of its assets, winding up its affairs and filing appropriate tax returns. Upon entry of an order closing the Bankruptcy Case, the Debtor shall be deemed dissolved for all purposes. No other actions or filings or payments shall be required of the Debtor or Plan Administrator in furtherance of such dissolution.

22. Post-Confirmation Reports and Fees

Following the Effective Date and until the Case is closed, not less than once every one-hundred and eighty (180) days, the Plan Administrator shall be responsible for the filing of all post-Confirmation reports required during such periods with the U.S. Trustee and payment from

the Estate of all post-Confirmation fees charged or assessed against the Estate under 28 U.S.C. §1930 during such periods together with applicable interest pursuant to 31 U.S.C. § 3717.

23. Cancellation of Interests

On the Effective Date, all existing Interests, shall, without any further action, be cancelled, annulled, and extinguished and any certificates representing such canceled, annulled, and extinguished Interests shall be null and void.

24. Creditors' Committee

On the Effective Date, the Creditors' Committee shall dissolve and the members of the Creditors' Committee shall be released and discharged from all duties and obligations arising from or related to the Bankruptcy Case, provided, however, that the Creditors' Committee shall remain in existence for the purposes of (a) reviewing and approving fee applications of its professionals; (b) reviewing, and if appropriate, raising any objection to the fee applications of other professionals; (c) completing the prosecution of any objections to claims filed prior to the Effective Date; and (d) completing the collection of the Committee Receivables. The reasonable fees and expenses of the Professionals retained by the Creditors' Committee for the foregoing shall be reimbursed by the Plan Administrator from the Administrative Reserve without further order of the Court.

25. Insurance Preservation

Nothing in the Plan shall diminish or impair the enforceability of any Insurance Policies that may cover Claims against the Debtor, its Employees, its Partners or any other Person.

26. ~~Substantial Consummation~~

~~Substantial consummation of the Plan under Bankruptcy Code section 1101(2) shall be deemed to have occurred on the date when the first Distribution is made to holders of Class 4 General Unsecured Claims.~~

~~27. Termination of 401(k) Plan~~

The Plan Administrator shall perform such acts as the Plan Administrator, with the advice of legal counsel, deems necessary or appropriate with respect to the Debtor's employee benefit plan known as the "Dreier LLP Savings Plan." All assets in the Dreier LLP Savings Plan have been disbursed.

**VI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

All executory contracts and unexpired leases of the Debtor will be deemed rejected as of the Confirmation Date, unless a particular executory contract or unexpired lease (i) has previously been assumed or rejected pursuant to order of the Bankruptcy Court or applicable provisions of the Bankruptcy Code, or (ii) has expired or otherwise terminated pursuant to its terms.

Any party to an executory contract or unexpired lease that is rejected in accordance with Section 6.1 of the Plan shall file a proof of Claim for damages from such rejection no later than thirty (30) days after the Confirmation Date. The failure to timely file a proof of Claim shall be deemed a waiver of any claim in connection with the rejection of such contract or lease.

## **VII. INJUNCTIONS; STAYS; RELEASE; EXCULPATIONS**

### **A. General Injunctions**

As set forth in Article 8 of the Plan, the following provisions shall apply and shall be fully set forth in the Confirmation Order.

#### **1. Injunctions Against Interference with Consummation or Implementation of Plan**

All holders of Claims or Interests shall be enjoined from commencing or continuing any judicial or administrative proceeding or employing any process against the Debtor, the Estate, or the Plan Administrator, with the intent or effect of interfering with the consummation and implementation of the Plan and the transfers, payments and Distributions to be made hereunder.

#### **2. Injunction Against Prosecution of Causes of Action**

Except as otherwise specifically provided for by the Plan, as and from the Effective Date, all Persons shall be enjoined from ~~(i) the commencement or continuation of any action, employment of process, or act to collect, offset, or recover any Claim or cause of action~~ ~~(ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order;~~ ~~(iii) the creation, perfection or enforcement of any encumbrance of any kind; and/or~~ ~~(iv) the assertion of any right of setoff, counterclaim, exculpation, or subrogation or recoupment~~ of any kind, in each case against the Debtor, its Estate, or the Plan Administrator, to the extent satisfied, or released, or enjoined under the Plan, to the fullest extent authorized or provided by the Bankruptcy Code; provided however, that this provision shall not limit the rights and powers vested in the Plan Administrator under any other provisions of the Plan.

#### **3. No Bar To Claims Against Third Parties**

Holders of Claims or Interests against the Debtor are not barred or otherwise enjoined by the Plan from pursuing any recovery against Persons that are not the Debtor.

### **B. All Distributions Received in Full and Final Satisfaction**

Except as set otherwise set forth in the Plan, all payments and all Distributions to be made in accordance with the Plan on account of Claims (including Administrative Expense Claims) shall be received in full and final satisfaction, settlement and release of such Claims as against the Debtor, its property and the Estate.

**C. No Modification of Res Judicata Effect**

No provision of the Plan is intended, and shall not be construed, to modify the *res judicata* effect of any order entered in the Bankruptcy Case, including without limitation the Confirmation Order and any order finally determining Professional Fee Claims to any Professional or Trustee Commission for the Chapter 11 Trustee.

**D. Exculpation**

**To the extent permitted by section 1125(e) of the Bankruptcy Code, the Trustee, the Creditors' Committee, and their respective members (acting in such capacity), employees and professionals (including professional firms and individuals within such firms), shall neither have nor incur any liability to any Person for any act taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, administration, confirmation or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan, or any act taken or omitted to be taken during the Bankruptcy Case, except for (i) acts or omissions as a result of willful misconduct or gross negligence and (ii) liability of any released person for any debt owed to the United States Government, any state, city or municipality arising under (a) the Internal Revenue Code or any state, city or municipal tax code, (b) the environmental laws of the United States or any state, city or municipality or (c) laws regarding the regulation of securities administered by the SEC and (d) any criminal laws of the United States, any state, city or municipality. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute, and may be submitted as, a complete defense to any claim or liability released pursuant to the Plan.**

**VIII. CONDITIONS PRECEDENT**

**A. Conditions to Confirmation**

The following conditions must be satisfied, or otherwise waived in accordance with Section 7.3 of the Plan, on or before the Confirmation Date:

(a) The Disclosure Statement Order shall have been entered and shall have become a Final Order;

(b) The entry of the Confirmation order shall be in form and substance reasonably satisfactory to the Trustee and the Creditors' Committee and shall contain provisions that, among other things: (i) authorize the implementation of the Plan in accordance with its terms; (ii) provide that any transfers effected or mortgages or other security documents entered into or to be effected or entered into under the Plan shall be and are exempt from any state, city, or other municipality transfer taxes, mortgage recording taxes, and any other stamp or similar taxes pursuant to section 1146(a) of the Bankruptcy Code; (iii) approve in all respects the other settlements, transactions, and agreements to be effected pursuant to the Plan; (iv) find that the Plan complies with all applicable provisions of the Bankruptcy Code, including that the Plan was proposed in good faith; (v) provide that all Interests shall be extinguished and canceled effective

upon the Effective Date; (vi) approve the Plan Administrator Agreement; and (vii) establish the Administrative Expense Claims Bar Date.

**B. Conditions to Effective Date**

The Effective Date shall not occur and no obligations and rights set forth in the Plan and set to occur as of the Effective Date or thereafter shall come into existence, unless each of the following conditions is met or, alternatively, is waived in accordance with Section 7.3 of the Plan, on or before the Effective Date:

(a) The Confirmation Order shall have been entered and no stay of the effectiveness of the same shall have been issued within fourteen (14) days following the entry of the Confirmation Order;

(b) The Confirmation Order shall have authorized and approved the appointment of the Plan Administrator and Plan Oversight Committee; and

(c) The Trustee shall have sufficient Cash on hand to pay all Administrative Expense Claims and fund the Administrative Reserve.

**IX. PROCEDURES FOR DISTRIBUTIONS UNDER PLAN**

Article 9 of the Plan establishes the procedures and guidelines for Distributions to be made to the terms of the Plan to the holders of Claims, including the timing, procedures and notice provisions related to same. Distributions shall be made by the Plan Administrator as follows.

**A. Payments in U.S. Dollars**

All Cash payments required under the Plan shall be made in U.S. dollars by checks drawn on a domestic bank selected by the Plan Administrator in accordance with the Plan or by wire transfer from a domestic bank, at the option of the Plan Administrator. The Plan Administrator may use the services of a third party to aid in the Distributions required to be made under the Plan, including the Voting Agent.

**B. Distributions Only on Business Days**

Notwithstanding the foregoing provisions, if any Distribution called for under the Plan is due on a day other than a Business Day, then such Distribution shall instead be due on the next Business Day.

**C. Unclaimed Distributions**

Unclaimed Distributions (including Distributions made by checks that fail to be cashed or otherwise negotiated within ninety (90) days after the Distribution Date or which Distributions are returned to the Plan Administrator as undeliverable to the addresses specified in the Claims Register, as it shall exist on the date such Distributions are made, shall be canceled (by a stop payment order or otherwise), the Claim(s) relating to such Distribution(s) shall be deemed forfeited and expunged without any further action or order of the Bankruptcy Court and the holder of such Claim(s) shall be removed from the Distribution schedules, expunged from the Claims register and shall receive no further Distributions under the Plan. Any such Unclaimed Distributions shall, as soon as is practicable, be redistributed pursuant to the provisions of the Plan.

**D. Timing of Distributions on Disputed Claims Subsequently Allowed**

In the event that a Disputed Claim is Allowed, in whole or in part, after the Effective Date, a Distribution shall be made on account of such Allowed Claim on the next Distribution Date that is at least fifteen (15) days after such Claim is Allowed. In no event shall the Plan Administrator be required to make Distributions more often than four times per year.

**E. Payment or Distribution of Disputed Claim**

Any contrary provision hereof notwithstanding, no payments or other Distributions shall be made on account of any Disputed Claim, or any portion thereof, unless and until such Claim or some portion thereof is Allowed by Final Order of the Bankruptcy Court. For the avoidance of doubt, no portion of any Disputed Claim is entitled to a Distribution. Holders of Disputed Claims shall be bound, obligated and governed in all respects by the Plan's provisions.

**F. Disputed Distribution**

If a dispute arises as to the identity of a holder of an Allowed Claim who is to receive a Distribution, the Plan Administrator may, in lieu of making such Distribution to such holder, hold such amount until the dispute is resolved by Final Order of the Bankruptcy Court or by written agreement among the parties to such dispute.

**G. Transmittal of Payments and Notices**

All Distributions shall be made to the holder of a Claim by regular first-class mail, postage prepaid, in an envelope addressed to such holder at the address listed on its proof of Claim filed with the Bankruptcy Court or, if no proof of Claim was filed, (i) at the address listed on the Debtor's Schedules, or (ii) at such address that a holder of a Claim provides to the Plan Administrator after the Effective Date in writing and files at least fifteen (15) business days prior to a Distribution Date. The Plan Administrator shall have no duty to ascertain the mailing address of any holder of a Claim other than as set forth herein. The date of payment or delivery shall be deemed to be the date of mailing. Payments made in accordance with the provisions of this Section shall be deemed made to the holder regardless of whether such holder actually receives the payment.

**H. Record Date for Distributions**

Except as otherwise provided in a Final Order of the Bankruptcy Court, transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 with appropriate filings ("Claim Transfer Document") made on or before the Effective Date (the "Record Date") shall be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer(s) may not have expired prior to the Record Date and except as specified in Section 9.7 of the Plan. The Plan Administrator shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making any Distribution with respect to any Claim, the Plan Administrator shall be entitled to recognize and deal for all purposes hereunder only with the Person who is listed on the Proof of Claim filed with respect thereto, on the Debtor's Schedules as the holder thereof, and upon such other evidence or record of transfer or assignment filed as of the Record Date.

**I. Time Bar to Cash Payments by Check**

Subject to the provisions of Section 9.3 of the Plan, checks issued by Plan Administrator on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void shall be made directly to the issuer thereof by the holder of the Allowed Claim to whom the check was originally issued. Any claim in respect of such a voided check shall be made in writing on or before the later of the first anniversary of the Effective Date or the first anniversary of the date on which the Claim at issue became an Allowed Claim. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall revert in and become the property of the Estate.



**J. Disputed Claims**

(a) Except to the extent the Court determines that a lesser amount is adequate, the Plan Administrator shall, on each Distribution Date, deposit in the Disputed Claims Reserve account(s) established by the Plan Administrator in consultation with the Plan Oversight Committee, Cash equal to the Distributions that would have been made to holders of Disputed Claims if such Claims were Allowed Claims in their full amounts or such lower amount as to which the relevant Claimant(s) has agreed in writing or, in the case where any such claim is unliquidated and/or contingent, the greater of (i) \$1, and (ii) such other amount as is reserved by order of the Bankruptcy Court made upon motion of the holder of such claim.

(b) For purposes of effectuating the provisions of Section 9.10 of the Plan and the Distributions to holders of Allowed Claims, the Court, on or prior to the Effective Date, or thereafter upon the request of any Claimant or the Plan Administrator may liquidate the amount of Disputed Claims pursuant to section 502(c) of the Bankruptcy Code, in which event the amounts so fixed or liquidated shall be deemed to be the amounts of the Disputed Claims pursuant to section 502(c) of the Bankruptcy Code for purposes of Distribution under the Plan and for purposes of the Disputed Claims Reserve.

(c) When a Disputed Claim becomes an Allowed Claim, there shall be distributed to the holder of such Allowed Claim, in accordance with the provisions of the Plan (but in no event later than the next succeeding Distribution Date), Cash in the amount of all Distributions to which such holder would have been entitled if such holder's Claim were Allowed on the Effective Date, to the extent of available Cash to make such Distribution.

(d) In no event shall any holder of any Disputed Claim be entitled to receive (under the Plan or otherwise) any Cash payment which is greater than the amount reserved, if any, for such Disputed Claim pursuant to Section 9.10 of the Plan. In no event shall the Plan Administrator have any responsibility or liability for any loss to or of any amount reserved under the Plan unless such loss is the result of that party's fraud, willful misconduct, breach of fiduciary duty or gross negligence. In no event may any Creditor whose disputed claim is subsequently allowed, pursue or recover or from any other Creditor in respect of any funds received as Distributions under the Plan.

(e) To the extent that a Disputed Claim ultimately becomes an Allowed Claim and is entitled to a Distribution in an amount less than the amount reserved for such Disputed Claim, then on the next succeeding Distribution Date, the Plan Administrator shall make, in accordance with the terms of the Plan, a Distribution of the excess amount reserved for such Disputed Claim.

(f) The Disputed Claims Reserve shall be treated as a disputed ownership fund, within the meaning of Treasury Regulation section 1.468B-9, for all purposes associated with taxation.

**K. Limitations on Funding of Disputed Claims Reserve**

Except as expressly set forth in the Plan, the Plan Administrator shall not have any duty to fund the Disputed Claims Reserve.

**L. Tax Requirements for Income Generated by Disputed Claims Reserve**

The Plan Administrator shall pay, or cause to be paid, out of the funds held in the Disputed Claims Reserve, any tax imposed by any federal, state, or local taxing authority on the income generated by the funds or property held in the Disputed Claims Reserve. The Plan Administrator shall file, or cause to be filed, any tax or information return related to the Disputed Claims Reserve that is required by any federal, state, or local taxing authority.

**M. No Payments of Fractional Cents or Distributions of Less Than One Hundred Dollars**

(a) Any contrary provision hereof notwithstanding, for purposes of administrative convenience, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with halfpennies or less being rounded down and fractions in excess of half of a penny being rounded up.

(b) Any contrary provision hereof notwithstanding, for purposes of administrative convenience, no Distribution of less than One Hundred Dollars (\$100) shall be made pursuant to the Plan. Whenever any Distribution of less than One-Hundred Dollars (\$100) under the Plan would otherwise be required, such funds will be retained by the Plan Administrator for the account of the recipient until such time that successive Distributions aggregate to One Hundred (\$100) Dollars, at which time such payment shall be made, and if successive Distributions do not ever reach One Hundred (\$100) in the aggregate, then such Distributions shall be returned to the Unsecured Creditor Fund.

**N. Setoff and Recoupment**

Except as otherwise provided in the Plan, the Trustee, the Creditors' Committee or the Plan Administrator may, but shall not be required to, set off against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any Claims, defenses or Causes of Action of any nature whatsoever that the Estate may have, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release of any right of setoff or recoupment against the holder of any Claim.

**O. Payment of Taxes on Distributions Received Pursuant to the Plan**

(a) Any contrary provision hereof notwithstanding, as a precondition to payment of any Distribution to a Creditor under the Plan, unless included on the official proof of claim form filed by such Creditor in this Bankruptcy Case, each Creditor shall provide a valid tax identification or social security number (collectively the "Tax Information") for purposes of tax reporting by the Plan Administrator. All Entities that receive Distributions under the Plan shall be responsible for reporting and paying, as applicable, any taxes on account of their Distributions.

(b) At such time as the Plan Administrator believes that Distributions to a particular Class of Claims is likely, the Plan Administrator shall request Tax Information in

writing from the Creditors (the "Tax Info Request"). Any Creditor who fails to respond to Tax Info Request within ninety (90) days from the date posted on the Tax Info Request, shall forfeit all Distributions such Creditor may otherwise be entitled to under the Plan and such forfeited funds will revert to the Estate to be disbursed in accordance with the terms and priorities established in the Plan.

**P. Compliance With Tax Withholding and Reporting Requirements**

With respect to all Distributions made under the Plan, Plan Administrator will comply with all withholding and reporting requirements of any federal, state, local or foreign taxing authority.

**X. RETENTION OF JURISDICTION BY BANKRUPTCY COURT**

From the Confirmation Date until entry of a final decree closing the Bankruptcy Case pursuant to 11 U.S.C. §350 and Bankruptcy Rule 3022, the Bankruptcy Court shall retain jurisdiction over the Bankruptcy Case for the following purposes:

(a) to hear and determine any and all objections to the allowance of any Claim or Administrative Expense Claim, or any controversy as to the classification of Claims or any matters which may directly, indirectly or contingently affect the obligations of the Debtor or the Plan Administrator to any creditors, holders of Claims, or other parties in interest;

(b) to hear and determine any and all applications for compensation and reimbursement of expenses by Professionals or the Chapter 11 Trustee;

(c) to hear and determine any and all pending motions for the assumption or rejection of executory contracts and unexpired leases, and to fix any Claims resulting therefrom;

(d) to adjudicate through final judgment such contested matters and adversary proceedings as may be pending or subsequently initiated in the Court including, but not limited to, the Causes of Action and claims related to Unfinished Business or the Disputed Funds. For the avoidance of doubt, the Bankruptcy Court shall retain jurisdiction to hear and determine compromises and settlements of any and all Causes of Action, including, but not limited to those Causes of Action set forth in the Exhibits hereto, and to enter orders granting releases, injunctions, and exculpations similar in scope to the releases, injunctions, and exculpations granted by orders of the Bankruptcy Court in settlements approved prior to the Confirmation Date.

(e) to enforce and interpret the provisions of the Plan, the Confirmation Order and the Plan Administrator Agreement;

(f) to hear and determine any matters relating to the appointment and replacement of the Plan Administrator and the Plan Oversight Committee;

(g) to issue any injunction or other relief appropriate to implement the intent of the Plan, and to enter such further orders enforcing any injunctions or other relief issued under the Plan or pursuant to the Confirmation Order;

(h) to modify the Plan pursuant to section 1127 of the Bankruptcy Code and the applicable Bankruptcy Rules;

(i) to correct any defect, cure any omission, or reconcile any inconsistency in the Plan, the Plan Administrator Agreement or in the Confirmation Order as may be necessary to carry out the purpose and the intent of the Plan;

(j) to interpret and determine such other matters as the Confirmation Order may provide for, or as may be authorized under the Bankruptcy Code; and

(k) to enter and implement such orders as may be appropriate in the event the Confirmation Order is, for any reason, stayed, reversed, revoked, modified or vacated.

## **XI. CERTAIN TAX CONSEQUENCES OF THE PLAN**

### **A. General**

**PURSUANT TO INTERNAL REVENUE SERVICE CIRCULAR 230, THE DESCRIPTION SET FORTH HEREIN WITH RESPECT TO FEDERAL INCOME TAX ISSUES IS NOT INTENDED OR WRITTEN TO BE USED, AND SUCH DESCRIPTION CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING ANY PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER UNDER FEDERAL INCOME TAX LAW. SUCH DESCRIPTION IS WRITTEN IN CONNECTION WITH THE CONFIRMATION OF THE PLAN AND MAY BE VIEWED AS A MARKETING DOCUMENT BY THE INTERNAL REVENUE SERVICE. THIS DESCRIPTION IS LIMITED TO THE SPECIFIC FEDERAL INCOME TAX MATTERS DESCRIBED HEREIN. IT IS POSSIBLE THAT ADDITIONAL ISSUES MAY EXIST THAT COULD AFFECT THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN OR OTHER FEDERAL INCOME TAX MATTERS DISCUSSED HEREIN AND THIS DISCUSSION DOES NOT CONSIDER OR PROVIDE ANY CONCLUSIONS WITH RESPECT TO ANY SUCH ADDITIONAL ISSUES. EACH TAXPAYER IS STRONGLY URGED TO SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM SUCH TAXPAYER'S INDEPENDENT TAX ADVISOR.**

**THE DESCRIPTION OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN PROVIDED BELOW IS SOLELY FOR THE PURPOSE OF COMPLIANCE WITH SECTION 1125(a) OF THE BANKRUPTCY CODE. THE DESCRIPTION IS BASED ON THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "INTERNAL REVENUE CODE") TREASURY REGULATIONS, JUDICIAL DECISIONS AND ADMINISTRATIVE DETERMINATIONS, ALL AS IN EFFECT ON THE DATE OF THIS DISCLOSURE STATEMENT. CHANGES IN ANY OF THESE AUTHORITIES OR IN THEIR INTERPRETATION MAY HAVE RETROACTIVE EFFECT, WHICH MAY CAUSE THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO DIFFER MATERIALLY FROM THE CONSEQUENCES DESCRIBED BELOW. EXCEPT AS PROVIDED BELOW, NO RULING HAS BEEN REQUESTED FROM THE IRS AND NO LEGAL OPINION HAS BEEN REQUESTED FROM COUNSEL CONCERNING ANY TAX CONSEQUENCE OF THE PLAN, AND NO TAX OPINION OR ADVICE IS GIVEN BY THIS DISCLOSURE STATEMENT.**

This description does not cover all aspects of federal income taxation that may be relevant to the Debtor or holders of Claims or Interests. For example, the description does not address issues of special concern to certain types of taxpayers, such as dealers in securities, life insurance companies, financial institutions, tax exempt organizations and foreign taxpayers, nor is it intended to address all of the possible federal income tax consequences to holders of Claims and Interests in the Debtor. This description also does not discuss the possible state tax or non-U.S. tax consequences that might apply to the Debtor or to holders of Claims or Interests.

**B. Tax Consequences of Payment of Allowed Claims Pursuant to Plan Generally**

The federal income tax consequences of the implementation of the Plan to the holders of Allowed Claims will depend, among other things, on the consideration to be received by the holder, whether the holder reports income on the accrual or cash method, whether the holder's Claim is Allowed or Disputed on the Effective Date, and whether the holder has taken a bad debt deduction or a worthless security deduction with respect to its Claim.

(i) Recognition of Gain or Loss

In general, a holder of an Allowed Claim or Interest should recognize gain or loss equal to the amount realized under the Plan in respect of its Claim less the holder's tax basis in the Claim. Any gain or loss recognized in the exchange may be long-term or short-term capital gain or loss or ordinary income or loss, depending upon the nature of the Allowed Claim and the holder, the length of time the holder held the Claim and whether the Claim was acquired at a market discount. If the holder realizes a capital loss, the holder's deduction of the loss may be subject to limitation. The holder's tax basis for any property received under the Plan generally will equal the amount realized.

(ii) Bad Debt or Worthless Security Deduction

A holder who receives in respect of an Allowed Claim an amount less than the holder's tax basis in the Claim may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under section 166(a) of the Internal Revenue Code. The rules governing the character, timing and amount of bad debt deductions place considerable emphasis on the facts and circumstances of the holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

**XII. CONFIRMATION OF PLAN – REQUIREMENTS**

In order for the Plan to be confirmed, the Bankruptcy Code requires, among other things, that the Plan be proposed in good faith, that the Plan Proponents disclose specified information concerning payments made or promised to insiders, and that the Plan comply with the applicable provisions of chapter 11 of the Bankruptcy Code. Section 1129(a) of the Bankruptcy Code also

requires that at least one Class of Claims has accepted the Plan (“Minimum Voting Threshold”), that Confirmation of the Plan is not likely to be followed by the need for further financial reorganization, and that the Plan be fair and equitable with respect to each Class of Claims or Interests which is impaired under the Plan. The Bankruptcy Court can confirm the Plan if it finds that all of the requirements of section 1129(a) have been met. The Plan Proponents believe that the Plan meets all of these required elements. With respect to the so-called “feasibility” test (i.e., that the Plan is not likely to be followed by the need for further financial reorganization), the Plan provides for an orderly liquidation of the Debtor’s assets and the Plan Proponents believe that they will be able to consummate the Plan fully.

In the event that a Class of Claims votes to reject the Plan, the Plan does not satisfy all of the requirements of Section 1129(a) of the Bankruptcy Code. Although the Minimum Voting Threshold is not met, the Bankruptcy Court nevertheless may confirm the Plan under the “cram down” provisions of Section 1129(b) of the Bankruptcy Code if all of the other provisions of Section 1129(a) of the Bankruptcy Code are met. Thus, the Plan Proponents presently intend, to the extent necessary, (i) to undertake to have the Bankruptcy Court confirm the Plan under the “cram down” provisions of Section 1129(b) of the Bankruptcy Code, and (ii) to amend the Plan to the extent necessary to obtain entry of the Confirmation Order.

In order to confirm a Plan over the dissenting vote of an impaired Class under Section 1129(b) of the Bankruptcy Code that satisfies the remaining provisions of Section 1129(a) of the Bankruptcy Code, the Bankruptcy Court, on request of the proponent of a plan, “shall” confirm the Plan if the Plan does not discriminate unfairly, and is fair and equitable with respect to each Class of Claims or interests that is impaired under, and has not accepted, the Plan. For purposes of Section 1129(b) of the Bankruptcy Code, a Plan is “fair and equitable” with respect to a class of unsecured Creditors if, at a minimum, it satisfies the “absolute “priority rule” and the “best interests of creditors test.”

**A. Absolute Priority Rule**

To satisfy the absolute priority rule, the Plan must provide that the holder of any Claim or Interest that is junior to the Claims of the dissenting Class will not receive or retain under the Plan on account of such junior Claim or interest any property unless the Claims of the dissenting Class are paid in full.

The Plan Proponents believe that the Plan satisfies the absolute priority rule. The Plan Proponents further believe that all non-accepting impaired Classes will receive or retain payment or Distribution, as the case may be, on account of their Claims or Interests, sufficient to permit full satisfaction of such Claims before junior Classes receive or retain any property on account of such junior Claims.

**B. Best Interest of Creditors Test; Liquidation Analysis**

Under the best interest of creditors test, the Plan is confirmable if, with respect to each impaired Class of Claims or Interests, each holder of an Allowed Claim or Allowed Interest in such Class has either (i) accepted the Plan, or (ii) receives or retains under the Plan, on account

of its Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor were to be liquidated under chapter 7 of the Bankruptcy Code.

To determine what the holders of each Class of Claims or Interests would receive if the Debtor were to be liquidated under chapter 7 of the Bankruptcy Code, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtor's assets in a chapter 7 liquidation case. The amount that would be available for satisfaction of the Allowed Claims and Interests of the Debtor would consist of the proceeds resulting from the disposition of the assets of the Debtor augmented by the cash held by the Debtor at the time of the commencement of the chapter 7 case. Such amounts would be reduced by the costs and expenses of the liquidation and by such additional Administrative Expense Claims and other priority Claims that might result from the chapter 7 case.

Here, the Debtor's major assets, Causes of Action and Receivables, have been liquidated or are in the process of being liquidated as of the date of this Disclosure Statement. The Plan contemplates the creation of a Plan Administrator to continue to pursue the Causes of Action and collection of Receivables. The proceeds obtained by the Plan Administrator will then be distributed to holders of Allowed Claims in accordance with the payment priority hierarchy established under the Bankruptcy Code. The Plan Proponents believe that a conversion of the Bankruptcy Case to chapter 7 would simply duplicate an orderly plan process, and that Creditors would be harmed by the delay and expense that would result.

To determine if the Plan, as proposed, is in the best interests of Creditors and Holders of Interests, the present value of the Distribution likely to be made to each class in a liquidating case are compared with the present value of the Distribution to each impaired Class provided for by the Plan.

In applying the best interest test, it is possible that Claims in a chapter 7 case may not be classified in the same manner as provided for by the Plan. Priorities and order of Distribution of estate assets are established by the applicable provisions of chapter 7. Under those provisions, each class of Claims is paid in a descending order of priority. No junior classes of Claims are paid until all senior classes have received payment in full. In the event that available assets are insufficient to pay all members of such class in full, then each member of the class shares on a pro rata basis.

The Plan Proponents believe that the primary advantages of the Plan over a chapter 7 liquidation is that Creditors will likely receive more under the Plan than they would in a chapter 7 case and receive their Distributions earlier. Costs would increase by the amount of the additional administrative expenses likely to be incurred in such a chapter 7 case, including the costs of time-consuming investigations and discovery. The process of other Claims resolution will proceed without the necessity for additional investigation by a chapter 7 trustee and its separate and new professionals, the Plan offers the opportunity to avoid additional administrative costs and the resulting delay which would result from a chapter 7 liquidation. The Plan Proponents therefore believe that the Plan will result in lower total administrative costs, and higher recoveries for Creditors than would the liquidation of the Debtor's assets under chapter 7

of the Bankruptcy Code. A liquidation analysis that demonstrates the lower recovery for creditors in a chapter 7 liquidation is annexed hereto as **Exhibit F**.

Thus, the Plan Proponents believe the Plan satisfies the “best interests of creditors test”, and, indeed, that the Plan is in the best interests of Creditors.

### **XIII. PROCEDURES FOR VOTING ON PLAN**

As noted above, pursuant to the Bankruptcy Code, a plan groups various Claims and Interests into classes, each consisting of parties having similar legal rights in relation to a debtor. Each class may then be treated as either “impaired” or “unimpaired” under a plan. There are three ways in which a plan may leave a claim or interest “unimpaired.” First, a plan may not propose to alter the legal, equitable or contractual rights of the holder of the claim or interest. Second, all defaults (excluding those covered by Section 365(b)(2) of the Bankruptcy Code) may be cured and the original terms of the obligation reinstated. Third, a plan may provide for the payment in full of the obligation to the holder of the claim or interest. If a class is unimpaired, then it is presumed to vote in favor of a plan.

An impaired class that would receive nothing under a plan is presumed to have rejected such a plan. An impaired class that is proposed to receive any Distribution (whether in Cash, securities or other property) has the right to vote, as a class, to accept or reject the plan. A class of Creditors accepts a plan if more than one-half (1/2) of the ballots that are timely received from members of such class, representing at least two thirds (2/3) of the dollar amount of Claims for which ballots are timely received, vote in favor of such plan. Section 1126(e) of the Bankruptcy Code provides that a Creditor’s vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that the Creditor’s vote either to accept or reject a plan was not solicited or cast in good faith, or in compliance with the Bankruptcy Code. A plan under which any class of Claims is impaired may be confirmed by the Bankruptcy Court only if it has been accepted by at least one such class.

Each holder of an Allowed Claim in an impaired Class which retains or receives property under the Plan shall be entitled to vote separately to accept or reject the Plan and shall indicate such vote on a duly executed and delivered Ballot as provided in such order as is entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court.

Holders of Claims and Interests in an impaired Class entitled to vote – Class 4 – will receive, together with this Disclosure Statement, a Ballot to be used in voting to accept or reject the Plan. Voting instructions will accompany the Ballot.

Each Creditor should first carefully review this Disclosure Statement and the Plan. The Creditor should then complete the portions of the Ballot indicating the Class or Classes in which the Creditor’s Claim falls and the total dollar amount of the Claim. If the Creditor’s Claim falls into more than one Class, then the Creditor should list each Class and state the dollar amount of the Claim which belongs in each Class. It is critical that the Class(es) and amount(s) of the Claim be correctly stated on the Ballot, so that the Creditor’s vote can be properly counted.



Next, the Creditor should mark in the space provided on the Ballot whether the Creditor wishes to accept or to reject the Plan. Please be sure to fill in the name of the Creditor for whom the Ballot is being filed. Finally, the Ballot must be signed by the Creditor, or by an officer, partner, or other authorized agent of the Creditor. Please note that the Trustee and Creditors' Committee reserve the right to object to the allowance, designation of Class and/or allowable amount of any Claim set forth in a Ballot for purposes of voting and/or Distribution under the Plan.

Completed and signed Ballots should be returned by first class mail to the Voting Agent at the below address in the enclosed self-addressed return envelope:

*By First Class Mail:*  
Dreier LLP Case Administration  
c/o GCG  
PO Box 10021  
Dublin, OH 43017-6621

Completed and signed Ballots may also be returned by overnight mail or hand delivery to the below address:

*By Overnight/Hand Delivery:*  
Dreier LLP Case Administration  
c/o GCG  
5151 Blazer Parkway, Suite A  
Dublin, OH 43017

Completed Ballots should be returned as soon as possible, and in any event so that they are RECEIVED NO LATER THAN ~~\_\_\_\_\_~~, APRIL 7, 2014 AT ~~54:00~~ P.M. ANY BALLOTS WHICH ARE RECEIVED BY THE VOTING AGENT AFTER ~~\_\_\_\_\_~~, APRIL 7, 2014 AT ~~54:00~~ P.M. SHALL NOT BE COUNTED IN DETERMINING ACCEPTANCE OR REJECTION OF THE PLAN.

#### **XIV. CONFIRMATION HEARING**

The Confirmation Hearing will be held by the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, on ~~{\*}~~, April 24, 2014 at 10:00 a.m., in the United States Bankruptcy Court, Southern District Of New York, Courtroom ~~{\*}~~, 723, One Bowling Green, New York, New York 10004. At that hearing, the Bankruptcy Court will decide whether the Plan should be confirmed, and will hear and decide any and all objections to the Plan. Any Creditor, or other party in interest who wishes to object to Confirmation of the Plan, or to the classification of Claims and Interests provided in the Plan, must, not later than 4:00 p.m. -on ~~\_\_\_\_\_~~, April 7, 2014, file an objection with the Clerk's Office, United States Bankruptcy Court, Southern District Of New York, One Bowling Green, New York, New York 10004, and serve a copy of the objection on the following persons:

(a) counsel to the Trustee:

DIAMOND McCARTHY LLP  
620 Eighth Avenue, 39<sup>th</sup> Floor  
New York, New York 10018  
Tel: (212) 430-5400  
Fax: (212) 430-5499  
Howard D. Ressler, Esq.  
Stephen T. Loden, Esq.

(b) counsel to the Creditors' Committee:

KLESTADT & WINTERS, LLP  
570 Seventh Avenue, 17th Floor  
New York, New York 10018  
Tel: (212) 972-3000  
Fax: (212) 972-2245  
Tracy L. Klestadt, Esq.  
Sean C. Southard, Esq.  
Joseph C. Corneau, Esq.

With copy to:

Steven J. Reisman  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, New York 10178

And a copy to:

Jerrold L. Bregman  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, New York 10178

Any objections to the Plan which are not filed and served by the above date may not be considered by the Bankruptcy Court. Any person or entity who files an objection to Confirmation of the Plan or to the classification of Claims and Interests provided in the Plan must also attend the Confirmation Hearing, either in person or through counsel.

If the Plan is confirmed, its provisions will bind the Estate and any and all entities, including all holders of Claims and Interests, whether or not the Claim or Interest of such claimant or interest holder is impaired under the Plan and whether or not the claimant or interest holder has, either individually or by a Class, voted to accept the Plan.

**XV. RECOMMENDATION**

The Plan Proponents believe that the Plan provides for the fair and equitable treatment of the Debtor's Creditors and therefore recommend that Creditors vote to accept the Plan.

| Dated: New York, New York  
| February 5~~1~~1, 2014

DIAMOND McCARTHY LLP

By: /s/ Howard D. Ressler  
Howard D. Ressler  
Stephen T. Loden

620 Eighth Avenue, 39th Floor  
New York, New York 10018  
Tel: (212) 430-5400  
Fax: (212) 430-5499

Attorneys for Sheila M. Gowan,  
Chapter 11 Trustee for Dreier LLP

KLESTADT & WINTERS, LLP

By: /s/ Tracy L. Klestadt  
Tracy L. Klestadt  
Sean C. Southard  
Joseph C. Corneau

570 Seventh Avenue, 17th Floor  
New York, New York 10017  
Tel: (212) 972-3000  
Fax: (212) 972-2245

Attorneys for the Official Committee of  
Unsecured Creditors

**Exhibit “A”**

**Exhibit “A”**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
:  
In re: : Chapter 11  
:  
DREIER LLP, : Case No. 08-15051 (SMB)  
:  
:  
Debtor. :  
-----x

**FIRSTSECOND AMENDED PLAN OF LIQUIDATION OF DREIER LLP  
JOINTLY PROPOSED BY THE CHAPTER 11 TRUSTEE AND THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS PURSUANT TO CHAPTER 11  
OF THE UNITED STATES BANKRUPTCY CODE**

DIAMOND McCARTHY LLP  
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Sean C. Southard, Esq.  
Joseph C. Corneau, Esq.

*Attorneys for Official Committee  
of Unsecured Creditors of Dreier LLP*

Dated: February ~~5~~11, 2014

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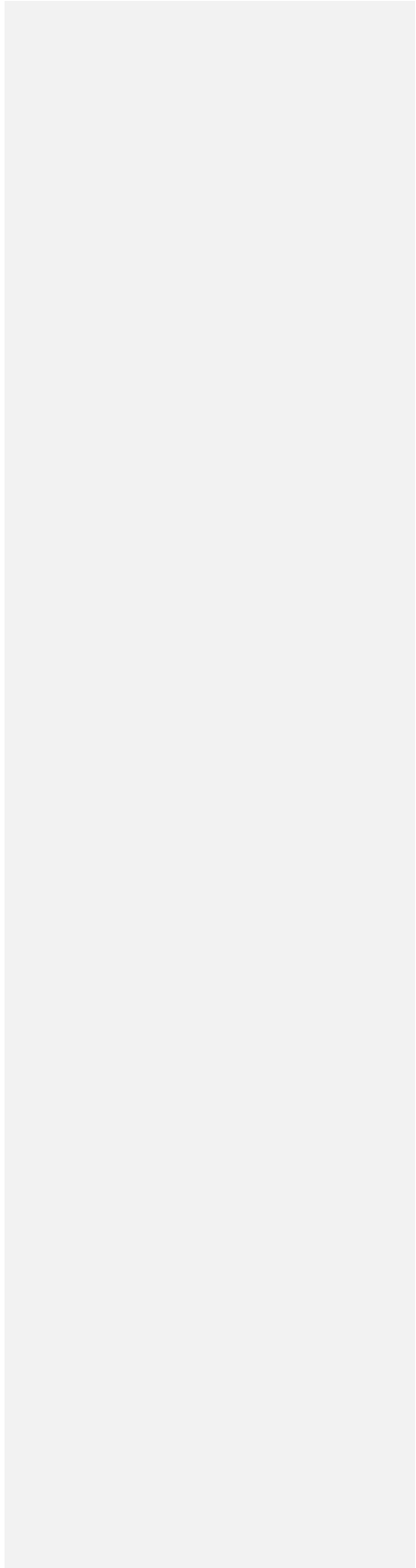
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## INTRODUCTION

Sheila M. Gowan, as chapter 11 trustee (the “Trustee” or “Chapter 11 Trustee”), and the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) for Dreier LLP jointly propose this ~~first~~second amended chapter 11 plan (the “Plan”) pursuant to section 1121 of the Bankruptcy Code.

### **ARTICLE 1 - DEFINITIONS AND RULES OF INTERPRETATION**

#### **A. Definitions**

The following terms, when used in this Plan, or any subsequent amendments or modifications thereof, shall have the respective meanings hereinafter set forth and shall be equally applicable to the singular and plural of terms defined.

**1.1** “Administrative Expense Claim” means a Claim for costs and expenses of administration allowed under sections 503(b) and 507(a)(1) including, without limitation, (a) any actual, necessary costs and expenses of preserving the Estate and winding down the Debtor’s business during the Bankruptcy Case, (b) any indebtedness or obligations incurred or assumed by the Debtor in the ordinary course of business in connection with the conduct of its business during the Bankruptcy Case, (c) any Professional Fee Claims, whether fixed before or after the Effective Date, (d) any Trustee Commission, (e) any costs and expenses for the management, maintenance, preservation, sale, or other disposition of any Assets, and (f) any fees or charges assessed against the Debtor’s Estate under section 1930, chapter 123, title 28, United States Code.

**1.2** “Administrative Expense Claims Bar Date” shall have the meaning set forth in Section 5.13 of the Plan.

**1.3** “Administrative Reserve” means a reserve in the initial amount of not less than \$4,500,000 established by the Plan Administrator as provided in Section 5.7 hereof, to fund post-confirmation costs and expenses of the Plan Administrator.

**1.4** “Allowed Administrative Expense Claim” means an Administrative Expense Claim, to the extent it is or has become an Allowed Claim.

**1.5** “Allowed Claim/Allowed Interest” means a Claim or Interest against the Debtor (i) proof of which was originally filed within the applicable period of limitation fixed by the Bankruptcy Court in accordance with Rule 3003(c)(3) of the Bankruptcy Rules, or (ii) if no proof of Claim or Interest has been timely filed, which has been or hereafter is listed by the Debtor in its Schedules as liquidated in an amount and not disputed or contingent, as to which no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, a Final Order, or the Claims Objection Bar Date, or as to which an objection has been interposed and such Claim or Interest has been allowed in whole or in part by a Final Order, or (iii) a claim or interest that is allowed by final order of the Bankruptcy Court. For purposes hereof, an “Allowed Claim” shall include any

Claim arising from the recovery of property under sections 550 or 553 of the Bankruptcy Code and allowed in accordance with section 502(h) of the Bankruptcy Code, any Claim allowed under or pursuant to the terms of this Plan, or any Claim that has been allowed by a Final Order, provided, however, that (i) Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed Claims” hereunder unless otherwise specified herein or by order of the Bankruptcy Court, (ii) “Allowed Claim” shall not include interest, penalties, or late charges arising from or relating to the period from and after the Petition Date; and (iii) “Allowed Claim” shall not include any Claim subject to disallowance in accordance with section 502(d) of the Bankruptcy Code.

**1.6** “Assets” means any and all property of the Estate, including without limitation all property and other interests identified in section 541(a) of the Bankruptcy Code. Without limiting the foregoing, Assets shall include all of the Debtor’s real, personal, tangible and intangible property, wherever located and whether acquired prior to or after the Petition Date, including Cash, Receivables, furniture, fixtures, equipment, artwork, intellectual property, Causes of Action (including Avoidance Actions), together with the proceeds and products, replacements and accessions thereof.

**1.7** “Available Cash” means all Cash held by the Plan Administrator as of any Distribution Date other than Restricted Cash.

**1.8** “Avoidance Action” means any Causes of Action to avoid or recover a transfer of property of the Estate or an interest of the Debtor in property, including, without limitation, actions arising under sections 506, 510, 541, 542, 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other applicable federal, state or common law.

**1.9** “Ballot” means the form distributed to the holder of an impaired Claim on which is to be indicated whether such holder accepts or rejects the Plan.

**1.10** “Ballot Date” means the date established by the Bankruptcy Court and set forth in the Disclosure Statement Order for the submission of Ballots and the election of treatments pursuant to the terms and provisions of the Plan.

**1.11** “Bankruptcy Case” means the case concerning the Debtor, commenced on December 16, 2008, under chapter 11 of the Bankruptcy Code, administered under case number 08-15051 (SMB) in the United States Bankruptcy Court for the Southern District of New York.

**1.12** “Bankruptcy Code” means title 11 of the United States Code, as amended, in effect and applicable to the Bankruptcy Case.

**1.13** “Bankruptcy Court” or “Court” means the United States Bankruptcy Court for the Southern District of New York wherein the Bankruptcy Case is pending.

**1.14** “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as promulgated by the Supreme Court of the United States, as amended, and any Local Rules of the Bankruptcy Court, as amended, in effect and applicable to the Debtor’s Bankruptcy Case.

**1.15** “Bar Date” means March 31, 2009 (June 14, 2009 for governmental entities), unless the Court has set a different date by which a specific Creditor must file a proof of claim, in which case it means, for such specific Creditor, such different date set by the Court.

**1.16** “Business Day” means any day other than a Saturday, Sunday or a “legal holiday,” as such term is defined in Bankruptcy Rule 9006(a).

**1.17** “Cash” means legal tender of the United States of America.

**1.18** “Causes of Action” means any and all Claims, rights, actions, chose in action, suits, causes of action, liens, judgments and damages belonging to the Debtor or its Estate and any and all liabilities, obligations, covenants, undertakings and debts owing to the Estate, whether arising prior to or after the Petition Date, and in each case whether known or unknown, in law, equity or otherwise, including without limitation, Avoidance Actions, Receivables and claims for Unfinished Business, including, but not limited to, the Causes of Action set forth in Exhibit B, Exhibit C and Exhibit D to the Disclosure Statement.

**1.19** “Causes of Action Proceeds” means any and all recoveries, including without limitation money or property which is received by the Estate, the Plan Administrator, or any other representative of the Estate, from any Causes of Action.

**1.20** “Claim” means, as defined in Bankruptcy Code section 101(5): (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

**1.21** “Claim Transfer Document” shall have the meaning set forth in Section 9.8 of this Plan.

**1.22** “Claims Objection Bar Date” means, unless otherwise extended by Order of the Court, the first Business Day that is at least 270 days after the Effective Date.

**1.23** “Class” means a category of Claims or Interests described in Article 3 of the Plan.

**1.24** “Committee Receivables” means, collectively and individually, as applicable, all unpaid hourly invoices for legal services rendered, or expenses incurred by DLLP on behalf of its clients, which the Creditors’ Committee has been assigned to

collect pursuant to the Second Cash Collateral Order and as further set forth on the schedule thereto.

**1.25** “Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

**1.26** “Confirmation Order” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code, as the Plan may be amended by its terms and consistent with applicable law, and any findings of fact and conclusions of law contained in the Confirmation Order or a separate document entered substantially contemporaneously therewith.

**1.27** “Creditor” means any Person holding a Claim against the Debtor or, pursuant to section 102(2) of the Bankruptcy Code, against property of the Debtor, that arose or is deemed to have arisen on or prior to the Petition Date, including, without limitation, a Claim against the Debtor of the kind specified in Bankruptcy Code sections 502(g), 502(h) or 502(i).

**1.28** “Creditors’ Committee” or “Committee” means the official committee of unsecured creditors appointed by the U.S. Trustee to represent the interests of unsecured creditors in the Bankruptcy Case.

**1.29** “Criminal Case” means case number S1 09 Cr. 85 (JSR) captioned *United States of America v. Marc Dreier*, commenced in the United States District Court for the Southern District of New York.

**1.30** “Debtor” or “DLLP” means Dreier LLP, the debtor in the Bankruptcy Case.

**1.31** “Deficiency Claim” means that portion of any Allowed Claim held by a Secured Creditor which exceeds the value of the assets securing such Allowed Claim.

**1.32** “Disallowed” means, when referring to a Claim or Interest, a Claim (including a Scheduled Claim) or Interest, or any portion of a Claim or Interest, which has been disallowed or expunged by a Final Order.

**1.33** “Disclosure Statement” means the disclosure statement for the Plan, and all exhibits, annexed thereto or otherwise filed in connection therewith, approved by the Bankruptcy Court in accordance with section 1125 of the Bankruptcy Code.

**1.34** “Disclosure Statement Order” means the Final Order of the Bankruptcy Court approving the Disclosure Statement in accordance with section 1125 of the Bankruptcy Code.

**1.35** “Disputed” means, with respect to a Claim against or Interest in, the Debtor, the extent the allowance of such Claim or Interest is the subject of a timely objection, complaint or request for estimation in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Confirmation Order, or is otherwise

disputed in accordance with applicable law, which objection, request for estimation, or dispute has not been withdrawn with prejudice, or determined by a Final Order.

**1.36** “Disputed Claims Reserve” means the segregated account established by the Plan Administrator consistent with Article 9.10 of the Plan.

**1.37** “Disputed Funds” means those certain funds held in the accounts identified on Exhibit E to the Disclosure Statement, which the Trustee and Committee assert may be property of the Estate.

**1.38** “Distribution” means any distribution made pursuant to the terms of this Plan.

**1.39** “Distribution Date” means any date on which a Distribution is made to holders of Allowed Claims under this Plan. The first Distribution shall occur as soon as practicable, on or after the Effective Date. To the extent subsequent Distributions are necessary, such subsequent Distributions shall occur as soon after the first Distribution Date as the Plan Administrator shall reasonably determine is appropriate in light of (i) the amount of funds on hand; (ii) the amount and nature of disputed claims; (iii) the activities to be accomplished, including their anticipated duration and costs; (iv) the length of time since any prior Distribution; (v) the costs of effecting and interim Distribution.

**1.40** “Effective Date” means the earlier of (a) the first Business Day after the entry of the Confirmation Order that (i) the conditions to effectiveness of the Plan set forth in Section 7.2 of the Plan have been satisfied or otherwise waived, and (ii) the effectiveness of the Confirmation Order has not been stayed, and (b) such other date following the Confirmation Date that the Trustee and the Creditors’ Committee, in their reasonable discretion, designate.

**1.41** “Employee” means an employee, associate or of counsel of the Debtor, but not a Partner.

**1.42** “Estate” means the Debtor’s estate created pursuant to section 541 of the Bankruptcy Code upon the Petition Date.

**1.43** “Fee and Commission Application Deadline” shall have the meaning set forth in Section 5.14 of the Plan.

**1.44** “First Cash Collateral Order” means the Stipulation and Order Pursuant to Section 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001 (1) Authorizing Trustee’s Use of Cash Collateral, (2) Providing Adequate Protection, and (3) Granting Related Relief, dated February 19, 2009.

**1.45** “File Disposition Procedures” means those certain procedures approved by order of the Bankruptcy Court on January 31, 2011, concerning the disposition of certain client files.

**1.46** “Final Order” means an order or judgment of the Bankruptcy Court as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending; provided, however, if an appeal, or writ of certiorari, reargument or rehearing thereof has been filed or sought, such order shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied or reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, further, that the possibility that a motion under section 502(j) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be but has not then been filed with respect to such order, shall not cause such order not to be a Final Order.

**1.47** “General Unsecured Claim” means any Unsecured Claim against the Debtor that is not an Administrative Expense Claim, Priority Tax Claim, or Priority Non-Tax Claim.

**1.48** “Insurance Policies” means any policy of insurance and any agreements relating thereto that may be available to provide coverage for Claims against the Debtor, its Employees, Partners or any other Person.

**1.49** “Interest” means the ownership and related rights and interests of any Partner, including Marc S. Dreier, pursuant to any applicable law, in and to the Debtor.

**1.50** “MSD” means the individual Marc Stuart Dreier.

**1.51** “Necessary Information” shall have the meaning set forth in Section 5.10 of this Plan.

**1.52** “Partner” means any individual who was identified by DLLP on its letterhead, websites, business cards or other promotional material as a partner of DLLP at any point in time, or who otherwise held himself or herself out to clients of the DLLP or the legal community as a partner of DLLP.

**1.53** “Person” means any individual, corporation, partnership, association, joint venture, Limited Liability Company, limited liability partnership, estate, trust, receiver, trustee, unincorporated organization or governmental unit or subdivision thereof or other entity.

**1.54** “Petition Date” means December 16, 2008, the date upon which the Receiver filed a voluntary petition on behalf of the Debtor for relief under chapter 11 of the Bankruptcy Code.

**1.55** “Plan” means this Plan and any exhibits annexed hereto or otherwise filed in connection with the Plan, and any documents delivered in connection herewith, as the same may be amended or modified from time to time by any duly authorized and permitted amendment or modification.



**1.56** “Plan Administrator Agreement” means the agreement between the Trustee, the Creditors’ Committee and the Plan Administrator.

**1.57** “Plan Administrator” means Sheila M. Gowan, or such other person or entity appointed by the Plan Oversight Committee in accordance with the Plan.

**1.58** “Plan Oversight Committee” shall have the meaning set forth in Section 5.1 of the Plan.

**1.59** “Post-Confirmation Expenses” means the administrative expenses accrued following the Effective Date, including without limitation, all fees and expenses of the Plan Administrator and Plan Oversight Committee, and any Professionals retained by the Plan Administrator and Plan Oversight Committee. If a member of the Plan Oversight Committee participates by counsel, Post-Confirmation Expenses shall include the reasonable hourly rate of such counsel. If a member of the Plan Oversight Committee does not participate by counsel, Post-Confirmation Expenses shall include reimbursement for his or her time at a rate to be agreed upon by the Plan Administrator and such member of the Plan Oversight Committee.

**1.60** “Priority Non-Tax Claim” means a Claim, other than an Administrative Expense Claim or a Priority Tax Claim, which is entitled to priority in payment under sections 507(a)(3), (4), (5), (6), (7), or (9) of the Bankruptcy Code.

**1.61** “Priority Tax Claim” means a Claim or a portion of a Claim of a governmental unit against the Debtor which is entitled to priority in payment under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**1.62** “Professional Fee Claims” means any Claim of a professional retained in the Bankruptcy Case pursuant to sections 327 or 1103 of the Bankruptcy Code or otherwise, for compensation or reimbursement of costs and expenses relating to services incurred prior to and including the Effective Date, when and to the extent any such Claim is allowed by the Bankruptcy Court pursuant to sections 329, 330, 331, 503(b), or 1103 of the Bankruptcy Code.

**1.63** “Professionals” means those professional persons, including lawyers, financial advisors, and accountants retained by the Trustee, the Creditors’ Committee, the Plan Administrator or the Plan Oversight Committee during the Bankruptcy Case. For the avoidance of doubt, the Plan Administrator and Plan Oversight Committee are not required to obtain Bankruptcy Court approval for the retention of their Professionals.

**1.64** “Pro Rata” means, in connection with a particular Allowed Claim or Allowed Interest and in connection with any Distribution, the ratio between the amount of such Allowed Claim or Allowed Interest and the aggregate amount of all Allowed Claims or Allowed Interests in such Class or Classes entitled to such Distribution.

**1.65** “Receivables” means, collectively and individually, as applicable, all unpaid invoices for legal services rendered or expenses incurred by DLLP, on behalf of its clients, other than the Committee Receivables.

**1.66** “Receiver” means Mark Pomerantz in his capacity as court-appointed receiver for MSD and his assets, which include his interests in DLLP.

**1.67** “Record Date” shall have the meaning set forth in Section 9.8 of this Plan.

**1.68** “Restricted Cash” means the Cash set aside or segregated, from time to time, by the Plan Administrator in (a) the Administrative Reserve, in accordance with the Plan Administrator Agreement, for the payment of the Post-Confirmation Expenses, including the fees and out-of-pocket expenses of the Professionals retained by the Plan Administrator and the Plan Oversight Committee, and such other expenses as may be necessary to implement the Plan, and/or (b) the Disputed Claims Reserve.

**1.69** “Scheduled Claim” means a Claim that is listed in the Debtor’s Schedules.

**1.70** “Schedules” means the schedules of assets and liabilities, schedules of executory contracts and unexpired leases, statements of financial affairs, and other schedules and statements filed by the Trustee on behalf of the Debtor pursuant to Federal Rule of Bankruptcy Procedure 1007, and any amendments thereto.

**1.71** “Second Cash Collateral Order” means the Second Stipulation and Order Pursuant to Section 363 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001 (1) Authorizing Trustee’s Use of Cash Collateral, (2) Providing Adequate Protection, and (3) Granting Related relief, dated May 21, 2009.

**1.72** “Secured Claim” means a Claim secured by a lien, as that term is defined in section 101(37) of the Bankruptcy Code, including, but not limited to, a judicial lien as that term is defined at section 101(36) of the Bankruptcy Code, against any property of the Estate, but only to the extent of the value, as determined by the Bankruptcy Court pursuant to section 506(a) of the Bankruptcy Code and Bankruptcy Rule 3012 or as otherwise agreed to, of such Creditor’s interest in the Debtor’s interest in such property.

**1.73** “Secured Creditor” means the holder of a Secured Claim.

**1.74** “Tax Information” shall have the meaning set forth in Section 9.15(a) of this Plan.

**1.75** “Tax Info Request” shall have the meaning set forth in Section 9.15(b) of this Plan.

**1.76** “Trustee” or “Chapter 11 Trustee” means Sheila M. Gowan, the trustee for DLLP, who was appointed by order of the Bankruptcy Court entered on January 9, 2009.

**1.77** “Trustee Commission” means the Claim for compensation payable to the Chapter 11 Trustee relating to her services provided as trustee in connection with the Bankruptcy Case, when and to the extent any such Claim is allowed by the Bankruptcy Court pursuant to sections 326, 330, 331, or 503(b) of the Bankruptcy Code.

**1.78** “U.S. Trustee” means any and all representatives and employees of the Office of the United States Trustee for the Southern District of New York.

**1.79** “Unclaimed Distribution” means any Distribution together with interest earned or payable thereon, if any, after the applicable Distribution Date, unclaimed after ninety (90) days following any Distribution Date. Unclaimed Distributions shall include, without limitation: (i) checks (and the funds represented thereby) which have been returned as undeliverable without a proper forwarding address; (ii) funds representing checks which have not been paid; and (iii) checks (and the funds represented thereby) which were not mailed or delivered because of the absence of a correct address.

**1.80** “Unfinished Business” means unfinished client matters that departing lawyers of DLLP transferred to successor firms in which the Debtor’s estate may claim an interest on the basis of, among other theories, quantum meruit.

**1.81** “Unsecured Claim” means any Claim which is not secured by an offset or “lien,” as that term is defined in section 101(37) of the Bankruptcy Code, including, but not limited to, a “judicial lien” as that term is defined at section 101(36) of the Bankruptcy Code, against any property of the Estate, but only to the extent of the “value,” as determined by the Bankruptcy Court pursuant to section 506(a) of the Bankruptcy Code and Bankruptcy Rule 3012, or as otherwise agreed to, of such Creditor’s interest in the Debtor’s interest in such property.

**1.82** “Unsecured Creditor Fund” means the current Cash held by the Trustee plus all Cash derived from liquidation of Assets, Causes of Action Proceeds, less any Distributions or reserves on account of Secured Claims, Administrative Claims, Priority Tax Claims, Priority Non-Tax Claim, and/or Post-Confirmation Expenses.

**1.83** “Voting Agent” means GCG, Inc., a Delaware corporation, which has been retained by the Trustee to perform certain solicitation and other administrative services.

**1.84** “Wells Fargo” means Wells Fargo Bank, N.A., successor-by-merger to Wachovia Bank, N.A., with said merger having occurred during the Bankruptcy Case.

**1.85** “Wells Fargo Collateral Settlement” means that certain settlement agreement dated as of March 13, 2012 by and between Wells Fargo and the Trustee and approved by order of the Court entered on May 8, 2012.

**1.86** “Wells Fargo Superpriority Claim” means the super priority claim of Wells Fargo as defined in the First Cash Collateral Order and the Second Cash Collateral Order and as fixed in the amount of \$940,527.33 as of October 9, 2012 by that certain Stipulation and Order Resolving Motion of Wells Fargo Bank, N.A. For the Immediate Payment of An Allowed Superpriority Claim entered on October 11, 2012.

**1.87** “401k Plan” means the DLLP employee 401k plan from which all assets have been fully distributed.

**B. Rules of Interpretation**

For purposes of this Plan: (a) where appropriate in the relevant context, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) unless otherwise provided in the Plan, any references in the Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) unless otherwise provided in the Plan, any reference in the Plan to an existing document or appendix filed or to be filed means such document or appendix, as it may have been or may be amended, modified or supplemented pursuant to the Plan; (d) unless otherwise specified herein, any reference to a Person as a holder of a Claim or Interest includes that Person's successors, assigns and affiliates; (e) unless otherwise specified, all references in the Plan to Sections and Articles are references to Sections and Articles of or to the Plan; (f) the words "herein", "hereto" and "hereof" refer to the Plan in its entirety rather than to a particular portion of the Plan; and (g) the rules of construction set forth in section 102 of the Bankruptcy Code will apply to the Plan. To the extent that the Plan is inconsistent with the Disclosure Statement or provisions of the documents comprising the Plan Supplement, unless such document specifically states otherwise, the provisions of the Plan shall be controlling.

**ARTICLE 2 - PAYMENT OF CLAIMS NOT REQUIRED TO BE CLASSIFIED**

**2.1 Claims Not Classified.**

No classes are designated for Administrative Expense Claims, including Professional Fee Claims, Trustee Commission, and Priority Tax Claims.

**2.2 Administrative Expense Claims.**

All Allowed Administrative Expense Claims, other than Professional Fee Claims or Trustee Commission, shall be paid by the Plan Administrator in full, in Cash, in such amounts as are incurred in the ordinary course of the liquidation of the Debtor, or in such amounts as may be Allowed by the Bankruptcy Court (a) as soon as practicable following the later of the Effective Date or the date upon which the Court enters a Final Order allowing any such Administrative Expense Claim, or (b) upon such other terms as may exist in accordance with the ordinary course of the Debtor's liquidation or (c) as may be agreed upon between the holder of any such Administrative Expense Claim and the Plan Administrator. In the event there exists any Disputed Administrative Expense Claims on the Effective Date, the Plan Administrator shall at all times hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Administrative Expense Claims.

**2.3 Professional Fee Claims and Trustee Commission.**

The Trustee or the Plan Administrator shall pay all Professional Fee Claims and any Trustee Commission as soon as practicable after a Final Order has awarded such compensation and reimbursement of expenses pursuant to proper application in accordance with Section 5.14 hereof. In the event any Disputed Professional Fee Claims or Disputed Trustee Commission exist on the Effective Date, the Plan Administrator shall hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Professional Fee Claims and any Disputed Trustee

Commission until such dispute is resolved consensually or by order of the Bankruptcy Court.

**2.4 Priority Tax Claims.**

Unless otherwise agreed to by the parties, each holder of an Allowed Priority Tax Claim will receive an amount in Cash equal to the Allowed amount of such Priority Tax Claim as soon as practicable following the later of (a) the Effective Date, and (b) the date on which such Priority Tax Claim becomes an Allowed Claim. In the event any Disputed Priority Tax Claims exist on the Effective Date, the Plan Administrator shall hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Priority Tax Claims until such dispute is resolved consensually or by order of the Bankruptcy Court.

**ARTICLE 3 - CLASSIFICATION OF CLAIMS AND INTERESTS**

**3.1 Criterion of Class.**

A Claim is in a particular Class only to the extent that the Claim qualifies within the description of that Class, and is in a different Class or Classes to the extent that the remainder of the Claim qualifies within the description of the different Class or Classes.

**3.2 Class Categories.**

The following classes of Claims and Interests are designated pursuant to and in accordance with section 1123(a)(1) of the Bankruptcy Code, which Classes shall be mutually exclusive:

<b>Class</b>	<b>Class Designation</b>	<b>Status/Voting Rights</b>
Class 1	Wells Fargo Superpriority Claim	Unimpaired/Deemed to Accept
Class 2	Secured Claims	Unimpaired/Deemed to Accept
Class 3	Priority Non-Tax Claims	Unimpaired/Deemed to Accept
Class 4	General Unsecured Claims	Impaired/Entitled to Vote
Class 5	Interests	Impaired/Deemed to Reject

**ARTICLE 4 - TREATMENT OF CLASSES OF CLAIMS AND INTERESTS**

The following treatment of and consideration to be received by holders of Allowed Claims and Allowed Interests pursuant to this Plan shall be in full settlement, release and discharge of such Allowed Claims and Allowed Interests.

**4.1 Class 1 (Wells Fargo Superpriority Claim).**

(a) On the Effective Date, or as soon thereafter as is reasonably practical, Wells Fargo shall receive (i) not more than the full amount of its Allowed Wells Fargo

Superpriority Claim from the net proceeds of the disposition of any collateral which is pledged as security for such Allowed Wells Fargo Superpriority Claim and which collateral remains in possession and control of the Estate or (ii) such other, less favorable treatment as may be agreed to in writing by the holder of such Allowed Wells Fargo Superpriority Claim and the Plan Administrator. Any Deficiency Claim of Wells Fargo which may arise on account of the present lack of collateral or otherwise resulting from the aforesaid treatment shall be included in and treated as a Class 4 General Unsecured Claim.

(b) On October 9, 2012, the Court entered a Stipulation and Order fixing the outstanding amount of the Wells Fargo Superpriority Claim at \$940,527.33. Subject to and in accordance with the terms of the Cash Collateral Orders, the proceeds of the disposition of assets of the Estate, other than Avoidance Actions or the proceeds thereof, shall be paid to Wells Fargo in satisfaction of the Wells Fargo Superpriority Claim.

#### **4.2 Class 2 (Secured Claims).**

(a) On the Effective Date, or as soon thereafter as is reasonably practical, each holder of an Allowed Secured Claim shall receive (i) the net proceeds of the sale or other disposition of any collateral which is pledged as security for such Allowed Secured Claim and which remains in possession and control of the Estate; or (ii) such other, less favorable treatment as may be agreed to in writing by the holder of such Allowed Secured Claim and the Plan Administrator. Any Deficiency Claim which may arise on account of the present lack of collateral or otherwise resulting from the aforesaid treatment shall be included in and treated as a Class 4 General Unsecured Claim.

(b) Notwithstanding the foregoing, the Secured Claim of Wells Fargo shall be treated in accordance with the Second Cash Collateral Order, as amended by the Wells Fargo Settlement. On and after the Effective Date, or as soon thereafter as reasonably practical, Wells Fargo shall receive forty percent (40%) of the Net AR Proceeds (as defined in the Wells Fargo Settlement) as they are obtained. Any deficiency shall be treated as a Class 4 General Unsecured Claim. For the avoidance of doubt, at the time of any Distribution to holders of Class 4 General Unsecured Claims, the Plan Administrator shall reserve an amount equal to the Distribution that would be made on the maximum potential deficiency claim resulting from the aforesaid treatment, pending the liquidation of all collateral in which Wells Fargo claims an interest.

(c) Nothing in the Plan shall be construed to alter or waive the rights of the Trustee, the Plan Administrator, the Creditors' Committee or the Plan oversight Committee to contest the validity of any Secured Claim, except for the Secured Claim of Wells Fargo, which has been fixed and allowed by stipulation.

#### **4.3 Class 3 (Priority Non-Tax Claims).**

On the Effective Date, or as soon thereafter as is reasonably practical, in full satisfaction of such Allowed Priority Non-Tax Claim, each holder of an Allowed Priority Non-Tax Claim shall receive (a) an amount in Cash equal to the Allowed amount of such

Priority Non-Tax Claim, or (b) such other treatment as to which the Plan Administrator and the holder of such Allowed Priority Non-Tax Claim shall have agreed upon in writing.

**4.4 Class 4 (General Unsecured Claims).**

(a) On the Effective Date, or as soon thereafter as is reasonably practical, in full satisfaction of such Allowed General Unsecured Claim, each holder of an Allowed General Unsecured Claim shall receive one or more Distributions equal to its *Pro Rata* share of the Unsecured Creditor Fund.

(b) Certain holders of General Unsecured Claims were determined in the Criminal Case to be victims of MSD's crimes and received payments from the proceeds of assets seized by the Government (in each case a "Restitution Payment"). Those holders of General Unsecured Claims determined to be victims (each a "Victim" and collectively, the "Victims") are identified in the Amended Restitution Order of the District Court dated August 18, 2009. The Plan Administrator shall take reasonable steps to ensure that no Victim receives more than one-hundred percent (100%) of their Allowed General Unsecured Claim as a result of such holder's receipt of one or more Restitution Payments and any Distributions contemplated by the Plan.

**4.5 Class 5 (Interests).**

No holder of an Interest shall be entitled to a Distribution under the Plan.

**ARTICLE 5 - MEANS OF IMPLEMENTATION OF THE PLAN**

**5.1 Appointment of Plan Administrator.**

(a) Appointment. On the Effective Date, the Plan Administrator Agreement shall be executed by the Trustee, on behalf of the Debtor, the Creditors' Committee, and by the Plan Administrator. The Plan Administrator shall be deemed appointed upon full execution of the Plan Administrator Agreement. The initial Plan Administrator shall be Sheila M. Gowan.

(b) General Powers, Rights and Responsibilities of Plan Administrator. On the Effective Date, subject to the direction of the Plan Oversight Committee, the Plan Administrator shall become the exclusive representative of the Estate. The powers, rights, and responsibilities of the Plan Administrator, all of which shall arise upon the occurrence of the Effective Date, shall be specified in the Plan Administrator Agreement. Subject to the direction of the Plan Oversight Committee, the powers, rights and responsibilities of the Plan Administrator, shall include, but are not be limited to:

- (i) the dissolution and wind-down activities of the Debtor and its Estate;

(ii) the power and authority to negotiate, resolve and enter into settlements on all matters affecting the Estate, including, without limitation, Receivables, Disputed Claims, and/or other Causes of Action;

(iii) the authority to take such actions as she or he deems appropriate in the Plan Administrator's reasonable business judgment against any Person with respect to a Cause of Action;

(iv) the authority to employ all discovery devices permitted under applicable law, including Federal Rule of Bankruptcy Procedure 2004, in order to investigate any Causes of Action;

(v) the authority to take or cause to be taken all actions pursuant to the provisions of the Plan Administrator Agreement as necessary to secure the effective implementation of this Plan;

(vi) the authority to employ, without order of the Bankruptcy Court, Professionals to assist her or him in carrying out her or his duties hereunder, including former counsel to the Trustee and/or the Creditors' Committee, and may compensate and reimburse the expenses of those Professionals without further order of the Bankruptcy Court; and

(vii) the authority to complete the disposition of client files and records of the Debtor and its Estate in accordance with the File Disposition Procedures and this Plan.

**5.2 Appointment of Plan Oversight Committee.**

(a) Appointment. On the Effective Date, an oversight committee (the "Plan Oversight Committee") shall be appointed and shall consist of three members willing to serve on the Plan Oversight Committee. The Creditors' Committee shall, by a simple majority of those voting, select the members of the Plan Oversight Committee. The Plan Oversight Committee may be composed of holders of Unsecured Claims or such other parties in interest as the Committee designates prior to the Effective Date, or the Plan Oversight Committee designates after the Effective Date.

(b) Authority and Responsibilities. The Plan Oversight Committee shall have the authority specified in the Plan. The Plan Administrator shall consult with and provide information to the Plan Oversight Committee.

(c) Meetings of the Plan Oversight Committee. Meetings of the Plan Oversight Committee are to be held not less often than quarterly. Special meetings of the Plan Oversight Committee may be held whenever and wherever called for by any member of the Plan Oversight Committee. Any action required or permitted to be taken by the Plan Oversight Committee at a meeting may be taken without a meeting if the action is taken by one or more written consents describing the action taken, approved by a majority of the members of the Plan Oversight Committee and recorded in the minutes, if any, or other transcript, if any, of the proceedings of the Plan Oversight Committee.



The Plan Administrator and the Plan Administrator's designated advisors may attend meetings of the Plan Oversight Committee if invited by the Plan Oversight Committee in its sole discretion.

(d) Manner of Acting. Two members of the Plan Oversight Committee shall constitute a quorum for the transaction of business at any meeting of the Plan Oversight Committee. Any or all of the members of the Plan Oversight Committee may participate in a regular or special meeting by, or conduct the meeting through the use of conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the Plan Oversight Committee participating in a meeting by these means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications. For the avoidance of doubt, the Plan Administrator is not a member of the Plan Oversight Committee and has no vote thereon.

(e) Manner of Appearance of Plan Oversight Committee and Compensation. The Plan Oversight Committee may retain Professionals and such other advisors as the Plan Oversight Committee deems necessary. Reasonable fees and expenses of Professionals retained by the Plan Oversight Committee, if any, shall be paid by the Plan Administrator from the Administrative Reserve. If a member of the Plan Oversight Committee participates by counsel, such member of the Plan Oversight Committee shall be entitled to reimbursement for the normal hourly rate of such counsel from the Administrative Reserve. If a member of the Plan Oversight Committee does not appear by counsel, such member shall be entitled to compensation from the Administrative Reserve for his or her time at a reasonable rate, plus reasonable expenses.

(f) Resignation and Removal of Plan Oversight Committee Members. If a member of the Plan Oversight Committee resigns, or, if in the opinion of a majority of the members of the Plan Oversight Committee, a member has abdicated his or her responsibilities, the remaining members of the Plan Oversight Committee may solicit replacement members, with any such replacement member to be agreed to by a simple majority of the remaining members of the Plan Oversight Committee. Removal and replacement of members of the Plan Oversight Committee shall be approved by order of the Bankruptcy Court. The Plan Oversight Committee shall seek Bankruptcy Court approval of removal and replacement of members of the Plan Oversight Committee on Notice of Presentment to (i) the Office of the United States Trustee, (ii) the Plan Administrator, (iii) the members of the Plan Oversight Committee, and (iv) any parties in interest requesting post-Effective Date notice.

### **5.3 Plan Oversight Committee Direction of Plan Administrator.**

The Plan Administrator shall consult with Plan Oversight Committee with respect to the administration of the Bankruptcy Case as set forth in this Plan and such matters related thereto that the Plan Oversight Committee determines in its discretion. The Plan

Oversight Committee may designate certain actions which require its prior consent before the Plan Administrator takes such actions, which designation may be modified by the Plan Oversight Committee at any time.

**5.4 Removal of Plan Administrator.**

The Plan Oversight Committee may remove the Plan Administrator upon vote of two (2) of three (3) members of the Plan Oversight Committee, for cause as reasonably determined by the Plan Oversight Committee. Cause may include, without limitation, the Plan Administrator's failure or refusal to keep the Plan Oversight Committee reasonably informed about the Plan Administrator's activities and the status of open matters, or follow the direction of the Plan Oversight Committee. The Bankruptcy Court shall retain jurisdiction to interpret and enforce the foregoing provisions. The Plan Administrator will continue to serve after her removal until the earlier of (i) the time when appointment of a successor Plan Administrator becomes effective; or (ii) such date as the Bankruptcy Court otherwise orders.

**5.5 Succession Matters.**

If the Plan Administrator is removed as set forth herein, or upon the death or incompetency of the Plan Administrator (in the case the Plan Administrator is a natural person) or upon dissolution (in the case the Plan Administrator is not a natural person), the Plan Oversight Committee shall designate a successor Plan Administrator. Such successor Plan Administrator shall be deemed to succeed the Plan Administrator in all respects, including, but not limited to all litigation and other matters related to prosecution of the Causes of Action, without need for further order of the Bankruptcy Court. In the event of resignation or removal of the Plan Administrator, the departing Plan Administrator shall promptly (a) execute and deliver such documents, instruments and other writings as reasonably requested by the successor Plan Administrator or as ordered by the Bankruptcy Court; (b) turn over to the successor Plan Administrator all property of the Estate in his or her possession, custody and control, including, but not limited to all funds held in bank accounts, and all files, books and records and other documents and information related to the Assets and to DLLP; and (c) otherwise assist and cooperate in affecting the assumption of his or her obligations and functions by the successor Plan Administrator. The successor Plan Administrator may, in its discretion, retain such Professionals as it deems necessary, including the Professionals of the departing Plan Administrator. If the Plan Administrator is replaced, the Professionals retained by the Plan Administrator shall be entitled to payment of their reasonable, undisputed fees and expenses from the Administrative Reserve through the date of the Plan Administrator's replacement as approved by the Plan Oversight Committee or otherwise allowed by order of the Bankruptcy Court.

**5.6 Liability, Release and Indemnification.**

The Plan Administrator and the Plan Oversight Committee, and each of their respective designees, employees or Professionals or any duly designated agent or representative of the Plan Administrator, or their respective employees, and the Plan

Oversight Committee, shall not be liable for any act or omission taken or omitted to be taken in their respective capacities other than for acts or omissions resulting from willful misconduct, gross negligence, or fraud as determined by Final Order of the Bankruptcy Court. The Plan Administrator and the Plan Oversight Committee may, in connection with the performance of their respective functions, and in their respective sole and absolute discretion, consult with attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such attorneys, or any Final Order of the Bankruptcy Court. Notwithstanding such authority, the Plan Administrator and the Plan Oversight Committee shall not be under any obligation to consult with attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability, unless such determination is based on willful misconduct, gross negligence or fraud as determined by Final Order of the Bankruptcy Court. The Estate shall indemnify and hold harmless the Plan Administrator and her or his designees and Professionals, and all duly designated agents and representatives thereof (in their capacity as such), and the Plan Oversight Committee and its members (in their capacity as such) and Professionals, from and against all liabilities, losses, damages, claims, costs and expenses, including, but not limited to attorneys' fees and costs arising out of or due to such actions or omissions, or consequences of their actions or omissions with respect or related to the performance of their duties or the implementation or administration of this Plan; provided however, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence or fraud.

**5.7 Establishment of Reserves and Funds.**

(a) Administrative Reserve. On the Effective Date or as soon thereafter as is practicable, the Administrative Reserve shall be established by the Plan Administrator in consultation with the Plan Oversight Committee. If the Plan Administrator determines that additional funding of the Administrative Reserve is required, from time to time, following the Effective Date, such funding shall be made from Available Cash, if any, with the prior consent of the Plan Oversight Committee, and then, to the Unsecured Creditor Fund. The Administrative Reserve shall be used to pay the Post-Confirmation Expenses, including, without limitation, costs and expenses of Professionals or other advisors retained by the Plan Administrator and/or the Plan Oversight Committee.

(b) Unsecured Creditor Fund. As soon as practicable following the Effective Date, the Unsecured Creditor Fund shall be established by the Plan Administrator which account shall be subject to the terms of this Plan and the Plan Administrator Agreement.

(c) Disputed Claim Reserve. As soon as practicable following the Effective Date, the Disputed Claim Reserve shall be established by the Plan Administrator; provided, however, that the Plan Administrator shall have no obligation to fund the Disputed Claim Reserve until, at the latest, immediately prior to the making of a Distribution to holders of Allowed Claims. The Plan Administrator shall fund the Disputed Claim Reserve from Available Cash in an amount equal to the amount holders

of Disputed Claims would have otherwise been entitled but for the dispute. The assets in the Disputed Claim Reserve shall be held separately from other assets held by the Plan Administrator, subject to an allocable share of all expenses and obligations of the estate, on account of Disputed Claims. The Plan Administrator shall remove funds from the Disputed Claims Reserve as the Disputed Claims are resolved, which funds shall be distributed as provided in section 5.8 of the Plan. Notwithstanding any other provision of the Plan to the contrary, subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary, the Plan Administrator may treat any assets allocable to, or retained on account of, the Disputed Claims Reserve as held by one or more discrete entities for federal, and applicable state, local or other, income tax purposes, and may determine that such entity or entities shall constitute "disputed ownership funds" under, and may make the election permitted by, Treasury Regulation 1.468B-9, or any successor provision thereto. All recipients of Distributions under the Plan shall be bound by, and shall report consistent with, such income tax treatment.

**5.8 Plan Distributions.**

Following the Effective Date, as set forth in greater detail in Article 10 herein, Distributions shall be made by the Plan Administrator, subject to the review and consent of the Plan Oversight Committee, as follows:

(a) Initial Distributions of Cash: On the first Distribution Date following the Effective Date, the Plan Administrator shall, pursuant to the terms of the Plan, make Distributions from Available Cash to holders of the Wells Fargo Super Priority Claim (to the extent of available proceeds of collateral as set forth in Section 4.1 of the Plan), Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Professional Fee Claims, Allowed Trustee Commission, and Allowed Priority Non-Tax Claims, and shall make Distributions to holders of Allowed Secured Claims (to the extent of available proceeds of collateral as set forth in Section 4.2 of the Plan) and to General Unsecured Claims in accordance Article IV of the Plan;

(b) Subsequent Distributions of Cash: On each Distribution Date, the Plan Administrator shall, pursuant to the terms of the Plan, make Distributions to holders of Allowed General Unsecured Claims in an amount equal to such Creditor's *Pro Rata* share, if any, of Cash held in the Unsecured Creditor Fund on such Distribution Date. In no event shall the Plan Administrator be required to make Distributions more often than four times per year.

**5.9 Preservation of Causes of Action.**

Except as otherwise provided in this Plan or in any contract, instrument, release or agreement entered into in connection with this Plan, in accordance with section 1123(b) of the Bankruptcy Code, all Claims or Causes of Action that the Debtor, Trustee, the Committee, or Estate may have against any person or entity are preserved, including without limitation any and all Causes of Action the Debtor, Trustee, Committee, Estate or other appropriate party in interest may assert under sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code.

**5.10 Preservation and Abandonment of Records.**

The Trustee shall preserve for the benefit of the Estate, all documents and files, including electronic data hosted on remote servers, that are necessary to the prosecution of the Causes of Action and claims resolution process (the “Necessary Information”). After the Effective Date, the Plan Administrator shall preserve the Necessary Information until the date that is one (1) year following the closing of the Bankruptcy Case. As of the Effective Date, the Plan Administrator shall be permitted to abandon (with or without destruction), any information that is not Necessary Information.

**5.11 General Disposition of Assets.**

Pursuant to section 1123(a)(5) of the Bankruptcy Code and subject to the terms of the Plan Administrator Agreement and the Plan, as soon as is reasonably practicable following the Effective Date, the Plan Administrator shall sell or otherwise dispose of, and liquidate to or otherwise convert to Cash, any non-Cash Assets in such manner as the Plan Administrator shall determine in his or her judgment is in the best interests of the Estate.

**5.12 Disposition of Disputed Funds.**

The Chapter 11 Trustee currently holds the Disputed Funds identified on Exhibit E to the Disclosure Statement. Certain Creditors and parties in interest have asserted, or may assert, rights and interests in the Disputed Funds. The Trustee believes that certain of the Disputed Funds are property of the Estate since their derivation was from the comingled 5966 Account which MSD used to commit his fraudulent scheme.

Subject to the terms of the Plan, as soon as is reasonably practicable following the Effective Date, the Plan Administrator shall seek to negotiate a consensual resolution with the parties known to assert, or who may assert, interests in the Disputed Funds. If consensual resolution is not attained within one hundred and twenty (120) days following the Effective Date, the Plan Administrator shall file a declaratory judgment action with the Court seeking determination as to whether the Estate, or any third party asserting rights or claims in the funds held in certain of the Disputed Funds, has a superior right, title and/or interest in the funds in question.

**5.13 Administrative Expense Claims Bar Date.**

With the exception of Professional Fee Claims and Trustee Commission, persons asserting and Administrative Expense Claim must file a request for payment of such Administrative Expense Claim on or before 5:00 p.m. prevailing Eastern Time on the date that is 30 days after the Effective Date (the “Administrative Expense Claims Bar Date”). No payment or Distributions will be made on account of any Administrative Expense Claim until such Claim becomes an Allowed Claim. Any person asserting an Administrative Expense Claim that fails to file and serve an Administrative Expense Claim on or before the Administrative Expense Claims Bar Date shall be forever barred from asserting any such right to payment as against the Debtor and/or the Estate.

**5.14 Deadline for Filing Applications Seeking Payment of Professional Fee Claims or Trustee Commission.**

All parties seeking payment of Professional Fee Claims or Trustee Commission arising prior to the Effective Date must file with the Bankruptcy Court and serve upon the Plan Administrator and the Plan Oversight Committee, a final application and/or an application for payment of reasonable fees and expenses under section 503(b) of the Bankruptcy Code, as applicable, on or before the first Business Day after the thirtieth (30th) day after the Effective Date (the "Fee and Commission Application Deadline"). Any Professional failing to file and serve such final application or 503(b) motion on or before the Fee and Commission Application Deadline shall be forever barred from asserting any such right to payment against the Debtor or the Estate.

**5.15 Execution of Documents to Effectuate Plan.**

From and after the Confirmation Date, the Plan Administrator shall have the exclusive power and authority to execute any instrument or document to effectuate the provisions of the Plan. Entry of the Confirmation Order shall authorize the Plan Administrator to take, or cause to be taken, all actions necessary or appropriate to consummate and implement the provisions of the Plan. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action.

**5.16 Objections to Claims.**

The Trustee, Creditors' Committee, the Plan Administrator and the Plan Oversight Committee may file objections to claims through the date that is 270 days from the Effective Date of the Plan, as may be extended. All Claims shall be subject to section 502(d) of the Bankruptcy Code.

**5.17 Disallowance of Claims without Further Order of the Court.**

As of the Confirmation Date, any Scheduled Claim designated as disputed, contingent or unliquidated in amount, and for which a proof of Claim has not been filed by the Creditor, shall be deemed disallowed and expunged. All Scheduled Claims that correspond to a proof of Claim filed by a particular Creditor shall be deemed to have been superseded by such later filed proof of Claim and the Scheduled Claims, regardless of priority, and shall be expunged from the claims register; provided however, that such proofs of Claim shall be subject to objection in accordance with Section 5.16 hereof.

**5.18 Continued Existence of Debtor Until Closing of the Case.**

Following the Effective Date, the Debtor, through the activities of the Plan Administrator, shall continue in existence for the purposes of, among other things, completing the liquidation of its Assets, winding up its affairs and filing appropriate tax returns. Upon the entry of an order closing this Bankruptcy Case, the Debtor shall be deemed dissolved for all purposes. No other actions or filings or payments shall be required in furtherance of such dissolution.

**5.19 Post-Confirmation Reports and Fees.**

Following the Effective Date and until the Case is closed, not less than once every one-hundred and eighty (180) days, the Plan Administrator shall be responsible for the filing of all post-Effective Date reports required during such periods with the U.S. Trustee and payment from the Debtor's Estate of all post-Effective Date fees charged or assessed against the Estate under 28 U.S.C. §1930 during such periods together with applicable interest pursuant to 31 U.S.C. § 3717.

**5.20 Cancellation of Interests.**

On the Effective Date, all existing Interests, shall, without any further action, be cancelled, annulled, and extinguished and any certificates representing such canceled, annulled, and extinguished Interests shall be null and void.

**5.21 Creditors' Committee.**

On the Effective Date, the Creditors' Committee shall be deemed to be dissolved and the members of the Creditors' Committee shall be released and discharged from all duties and obligations arising from or related to the Bankruptcy Case, provided, however, that the Creditors' Committee shall remain in existence for the purposes of reviewing and approving fee applications of Professionals retained by the Trustee and Committee prior to the Effective Date. The reasonable fees and expenses of the Professionals retained by the Creditors' Committee for the foregoing shall be reimbursed by the Plan Administrator from the Administrative Reserve. Objections to Claims filed by the Creditors' Committee prior to the Effective Date that remain pending on the Effective Date shall vest in the Plan Administrator on the Effective Date, and the Plan Administrator will be deemed to succeed to the Creditors' Committee without need of further order of the Court. Actions and demands brought by the Creditors' Committee with respect to Committee Receivables that remain pending or outstanding on the Effective Date shall vest in the Plan Administrator on the Effective Date, and the Plan Administrator will be deemed to succeed the Creditors' Committee with respect thereto without need of further order of the Court.

**5.22 Insurance Preservation.**

Nothing in this Plan shall diminish or impair the enforceability of any Insurance Policies that may cover Claims against the Debtor, its Employees, its Partners or any other Person.

~~**5.23 Substantial Consummation.**~~

~~Substantial consummation of the Plan under Bankruptcy Code section 1101(2) shall be deemed to have occurred on the date when the first Distribution is made to holders of Class 4 General Unsecured Claims.~~

5.245.23 **Termination of 401(k) Plan.**

The Plan Administrator shall perform such acts as the Plan Administrator, with the advice of legal counsel, deems necessary or appropriate to terminate the Debtor's employee benefit plan known as the "Dreier LLP Savings Plan."

**ARTICLE 6 - TREATMENT OF EXECUTORY CONTRACTS & UNEXPIRED LEASES**

**6.1 General Provisions.**

All executory contracts and unexpired leases of the Debtor shall be deemed rejected as of the Confirmation Date, unless a particular executory contract or unexpired lease (i) has previously been assumed or rejected pursuant to order of the Bankruptcy Court or applicable provisions of the Bankruptcy Code, or (ii) has expired or otherwise terminated pursuant to its terms.

**6.2 Notice of Deemed Rejection/Rejection Bar Date.**

Any party to an executory contract or unexpired lease that is rejected in accordance with Section 6.1 shall file a proof of Claim for damages from such rejection no later than thirty (30) days after the Effective Date. The failure to timely file a proof of Claim shall be deemed a waiver of any Claim in connection with the rejection of such contract or lease.

**ARTICLE 7 - CONDITIONS PRECEDENT; CONFIRMATION & EFFECTIVE DATE**

**7.1 Conditions Precedent to Confirmation of the Plan.**

The following conditions must be satisfied, or otherwise waived in accordance with Section 7.3, on or before the Confirmation Date:

(a) The Disclosure Statement Order shall have been entered and shall have become a Final Order;

(b) The entry of the Confirmation Order shall be in form and substance reasonably satisfactory to the Trustee and the Creditors' Committee and shall contain provisions that, among other things: (i) authorize the implementation of the Plan in accordance with its terms; (ii) provide that any transfers effected or mortgages or other security documents entered into or to be effected or entered into under the Plan shall be and are exempt from any state, city, or other municipality transfer taxes, mortgage recording taxes, and any other stamp or similar taxes pursuant to section 1146(a) of the Bankruptcy Code; (iii) approve in all respects the other settlements, transactions, and agreements to be effected pursuant to the Plan; (iv) find that the Plan complies with all applicable provisions of the Bankruptcy Code, including that the Plan was proposed in



good faith and that the Confirmation Order was not procured by fraud; (v) provide that all Interests shall be extinguished and canceled effective upon the Effective Date; (vi) approve the Plan Administrator Agreement; and (vii) establish the Administrative Expense Claims Bar Date.

**7.2 Conditions Precedent to the Effective Date.**

The Effective Date shall not occur and no obligations under the Plan shall come into existence, unless each of the following conditions is met or, alternatively, is waived in accordance with Section 7.3 hereof, on or before the Effective Date:

(a) The Confirmation Order shall have been entered and no stay of its effectiveness of the same shall have been issued within fourteen (14) days following the entry of the Confirmation Order;

(b) The Confirmation Order shall have authorized and approved the appointment of the Plan Administrator and the Plan Oversight Committee; and

(c) The Trustee shall have sufficient Cash on hand to pay all Administrative Expense Claims and fund the Administrative Reserve.

**7.3 Waiver of Conditions Precedent.**

Each of the conditions precedent in Sections 7.1 and 7.2 hereof may be waived or modified without further Court approval, in whole or in part, but only with the consent of each of the Trustee and the Creditors' Committee.

**ARTICLE 8 - INJUNCTION; RELEASE; EXCULPATION**

**8.1 General Injunctions.**

The following provisions shall apply and shall be fully set forth in the Confirmation Order.

(a) Injunctions Against Interference with Consummation or Implementation of Plan. All holders of Claims or Interests shall be enjoined from commencing or continuing any judicial or administrative proceeding or employing any process against the Debtor, the Estate, the Plan Administrator, or the Plan Oversight Committee with the intent or effect of interfering with the consummation and implementation of this Plan and the transfers, payments and Distributions to be made hereunder.

(b) Plan Injunction. Except as otherwise specifically provided for by this Plan, as and from the Effective Date, all Persons shall be enjoined from (i) the ~~commencement or continuation of any action, employment of process, or act to~~

~~collect, offset, or recover any Claim or cause of action (ii) the~~ enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order; ~~(iii)~~ the creation, perfection or enforcement of any encumbrance of any kind; and/or ~~(iv)~~ the assertion of any right of setoff, counterclaim, exculpation, or subrogation ~~or recoupment~~ of any kind, in each case against the Debtor, the Estate, the Plan Administrator, or the Plan Oversight Committee (and its members) to the fullest extent authorized or provided by the Bankruptcy Code.

(c) No Bar to Claims Against Third Parties. Holders of Claims or Interests against the Debtor are not barred or otherwise enjoined by the Plan from pursuing any recovery against Persons that are not the Debtor.

**8.2 All Distributions Received in Full and Final Satisfaction.**

Except as otherwise set forth herein, all payments and all Distributions to be made in accordance with the Plan on account of Claims (including Administrative Expense Claims) shall be received in full and final satisfaction, settlement and release of the Estate's obligations for such Claims as against the Debtor, its property and the Estate.

**8.3 No Modification of Res Judicata Effect.**

The provisions of this Article 8 are not intended, and shall not be construed, to modify the *res judicata* effect of any order entered in the Bankruptcy Case, including, without limitation, the Confirmation Order and any order finally determining Professional Fee Claims to any Professional or Trustee Commission due the Chapter 11 Trustee.

**8.4 Exculpation.**

~~The~~To the extent permitted by section 1125(e) of the Bankruptcy Code, the Trustee, the Creditors' Committee, and their respective members (acting in such capacity), employees and professionals (including professional firms and individuals within such firms), shall neither have nor incur any liability to any Person for any act taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, administration, confirmation or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan, or any act taken or omitted to be taken during the Bankruptcy Case, except for (i) acts or omissions as a result of willful misconduct or gross negligence and (ii) liability of any released person for any debt owed to the United States Government, any state, city or municipality arising under (a) the Internal Revenue Code or any state, city or municipal tax code, (b) the environmental laws of the United States or any state, city or municipality or (c) laws regarding the regulation of securities administered by the SEC and (d) any criminal laws of the United States, any state, city or municipality. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute, and may be submitted as, a complete defense to any claim or liability released pursuant to the Plan.

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**ARTICLE 9 - PROVISIONS GOVERNING DISTRIBUTIONS**

**9.1 Payment in U.S. Dollars.**

All Cash payments required under the Plan shall be made in U.S. dollars by checks drawn on a domestic bank selected by the Plan Administrator in accordance with the Plan or by wire transfer from a domestic bank, at the option of the Plan Administrator. The Plan Administrator may use the services of a third party to aid in the Distributions required to be made under this Plan, including the Voting Agent.

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**9.2 Distributions Only on Business Days.**

Notwithstanding the foregoing provisions, if any Distribution called for under this Plan is due on a day other than a Business Day, then such Distribution shall instead be due the next Business Day.

**9.3 Unclaimed Distributions.**

Unclaimed Distributions (including Distributions made by checks that fail to be cashed or otherwise negotiated within ninety (90) days after the Distribution Date or which Distributions are returned to the Plan Administrator as undeliverable to the addresses specified in the Claims Register, as it shall exist on the date such Distributions are made, shall be canceled (by a stop payment order or otherwise), the Claim(s) relating to such Distribution(s) shall be deemed forfeited and expunged without any further action or order of the Bankruptcy Court and the holder of such Claim(s) shall be removed from the Distribution schedules, expunged from the Claims register and shall receive no further Distributions under this Plan. Any such Unclaimed Distributions shall, as soon as is practicable, be redistributed pursuant to the provisions of the Plan.

**9.4 Timing of Distributions on Disputed Claims Subsequently Allowed.**

In the event that a Disputed Claim is Allowed, in whole or in part, after the Effective Date, a Distribution shall be made on account of such Allowed Claim on the next Distribution Date that is at least fifteen (15) business days after such Claim is Allowed.

**9.5 No Payment or Distribution on Disputed Claims.**

Any contrary provision hereof notwithstanding, no payments or other Distributions shall be made on account of any Disputed Claim, or any portion thereof, unless and until such Claim or some portion thereof is allowed by Final Order of the Bankruptcy Court. For the avoidance of doubt, no portion of any Disputed Claim is entitled to a Distribution. Holders of Disputed Claims shall be bound, obligated and governed in all respects by this Plan.

**9.6 Disputed Distribution.**

If a dispute arises as to the identity of a holder of an Allowed Claim who is to receive a Distribution, the Plan Administrator may, in lieu of making such Distribution to such holder, hold such amount until the dispute is resolved by Final Order of the Bankruptcy Court or by written agreement among the parties to such dispute.

**9.7 Transmittal of Payments and Notices.**

All Distributions shall be made to the holder of a Claim by regular first-class mail, postage prepaid, in an envelope addressed to such holder at the address listed on its proof of Claim filed with the Bankruptcy Court or, if no proof of Claim was filed, (i) at the address listed on the Debtor's Schedules, or (ii) at such address that a holder of a Claim provides to the Plan Administrator after the Effective Date in writing and files at least fifteen (15) business days prior to a Distribution Date. The Plan Administrator shall have no duty to ascertain the mailing address of any holder of a Claim other than as set forth herein. The date of payment or delivery shall be deemed to be the date of mailing. Payments made in accordance with the provisions of this Section shall be deemed made to the holder regardless of whether such holder actually receives the payment.

**9.8 Record Date for Distributions.**

Except as otherwise provided in a Final Order of the Bankruptcy Court, transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 with appropriate filings ("Claim Transfer Document") made on or before the Effective Date (the "Record Date") shall be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer(s) may not have expired prior to the Record Date and except as specified in Section 9.7 of this Plan. The Plan Administrator shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making a Distribution with respect to any Claim, the Plan Administrator shall be entitled to recognize and deal for all purposes hereunder only with the Person who is listed on the proof of claim filed with respect to such Claim, on the Debtor's Schedules as the holder thereof, and upon such other evidence or record of transfer or assignment filed as of the Record Date.

**9.9 Claims Administration Responsibility.**

(a) Unless a Claim is specifically Allowed prior to or after the Effective Date, the Trustee and the Plan Administrator prior to the Effective Date and the Plan Administrator and Plan Oversight Committee after the Effective Date reserve any and all objections to any and all Claims and motions or requests for the payment of Claims, whether administrative expense, secured or unsecured, including without limitation any and all objections to the validity or amount of any and all alleged Administrative Expense Claims, Priority Tax Claims, or Priority Non-Tax Claims, liens and security interests,

whether under the Bankruptcy Code, other applicable law or contract. The failure to object to any Claim prior to the Effective Date shall be without prejudice to the Plan Administrator's and Plan Oversight Committee's right to contest or otherwise defend against such Claim in the Bankruptcy Court when and if such Claim is sought to be enforced by the holder of the Claim.

(b) Objections to Claims. Prior to the Effective Date, the Trustee and the Creditors' Committee shall be responsible for pursuing any objection to the allowance of any Claim. From and after the Effective Date, the Plan Administrator and the Plan Oversight Committee may dispute, object to, compromise or otherwise resolve all Claims. Unless otherwise provided in the Plan or ordered by the Bankruptcy Court, all objections to Claims shall be filed and served no later than two hundred seventy (270) days after the Effective Date, provided that the Plan Administrator or the Plan Oversight Committee may request (and the Bankruptcy Court may grant) an extension of time by filing a motion with the Bankruptcy Court.

(c) Filing Objections. An objection to a Claim shall be deemed properly served on the ~~Claimant~~claimant if the Trustee, Plan Administrator, the Committee or Plan Oversight Committee effect service ~~by any of the following methods of any such objection in accordance with Rule 3007 of the Bankruptcy Rules by mailing or otherwise delivering the objection and a notice of hearing thereon to the claimant at the address set forth on such claimant's proof of claim at least thirty (30) days prior to the hearing thereon. The Trustee, Plan Administrator, the Committee or Plan Oversight Committee may also effectuate service of an objection to a claim:~~ (i) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (ii) to the extent counsel for a Claimant is unknown, by first class mail, postage prepaid, to the signatory on the proof of claim or interest or other representative identified on the proof of claim or interest or any attachment thereto or; (iii) by first class mail, postage prepaid, on counsel that has appeared on the behalf of the Claimant in the Bankruptcy case.

(d) Determination of Claims. Except as otherwise agreed by the Trustee or Plan Administrator, any Claim as to which a proof of claim or motion or request for payment was timely filed in the Bankruptcy Case may be determined and liquidated after the Effective Date pursuant to (i) an order of the Bankruptcy Court (which order has not been stayed, reversed or amended and as to which determination or any revision, modification or amendment thereof, and the time to appeal or seek review or rehearing thereof, has expired, and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending), or (ii) applicable non-bankruptcy law. Any Claim determined to be an Allowed Claim after the Effective Date pursuant to this section shall be treated as an Allowed Claim in accordance with the Plan.

#### **9.10 Disputed Claims**

(a) Except to the extent the Court determines that a lesser amount is adequate, the Plan Administrator shall, on each Distribution Date, deposit in the Disputed Claims Reserve account(s) established by the Plan Administrator in consultation with the Plan Oversight Committee, Cash equal to the Distributions that would have been made to

holders of Disputed Claims if such Claims were Allowed Claims in their full amounts or such lower amount as to which the holder of such Claim has agreed in writing or, in the case where any such Claim is unliquidated and/or contingent, the greater of (i) \$1, and (ii) such other amount as is reserved by order of the Bankruptcy Court made upon motion of the holder of such Claim.

(b) For purposes of effectuating the provisions of this Section 9.10 and the Distributions to holders of Allowed Claims, the Court, on or prior to the Effective Date, or thereafter upon the request of any holder of a Claim or the Plan Administrator may liquidate the amount of Disputed Claims pursuant to section 502(c) of the Bankruptcy Code, in which event the amounts so fixed or liquidated shall be deemed to be the aggregate amounts of the Disputed Claims pursuant to section 502(c) of the Bankruptcy Code for purposes of Distribution under this Plan and for purposes of the Disputed Claims Reserve.

(c) When a Disputed Claim becomes an Allowed Claim, there shall be distributed to the holder of such Allowed Claim, in accordance with the provisions of this Plan (but in no event later than the next succeeding Distribution Date), Cash in the amount of all Distributions to which such holder would have been entitled if such holder's Claim were Allowed on the Effective Date, to the extent of available Cash to make such Distribution.

(d) In no event shall any holder of any Disputed Claim be entitled to receive (under this Plan or otherwise) any Cash payment which is greater than the amount reserved, if any, for such Disputed Claim pursuant to this Section 9.10. In no event shall the Plan Administrator have any responsibility or liability for any loss to or of any amount reserved under this Plan unless such loss is the result of that party's fraud, willful misconduct, breach of fiduciary duty or gross negligence. In no event may any Creditor whose Disputed Claim is subsequently allowed, pursue or recover or from any other Creditor in respect of any funds received as Distributions under the Plan.

(e) To the extent that a Disputed Claim ultimately becomes an Allowed Claim and is entitled to a Distribution in an amount less than the amount reserved for such Disputed Claim, then on the next succeeding Distribution Date, the Plan Administrator shall make, in accordance with the terms of this Plan, a Distribution of the excess amount reserved for such Disputed Claim.

(f) The Disputed Claims Reserve shall be treated as a disputed ownership fund, within the meaning of Treasury Regulation section 1.468B-9, for all purposes associated with taxation.

**9.11 Limitations on Funding of Disputed Claims Reserve.** Except as expressly set forth in the Plan, or otherwise agreed to in writing or ordered by the Court, the Plan Administrator shall not have any duty to fund the Disputed Claims Reserve.

**9.12 Tax Requirements for Income Generated by Disputed Claims Reserve.**

The Plan Administrator shall pay, or cause to be paid, out of the funds held in the Disputed Claims Reserve, any tax imposed by any federal, state, or local taxing authority on the income generated by the funds or property held in the Disputed Claims Reserve. The Plan Administrator shall file, or cause to be filed, any tax or information return related to the Disputed Claims Reserve that is required by any federal, state, or local taxing authority.

**9.13 No Payments of Fractional Cents or Distributions of Less Than One Hundred Dollars.**

(a) Any contrary provision hereof notwithstanding, for purposes of administrative convenience, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with halfpennies or less being rounded down and fractions in excess of half of a penny being rounded up.

(b) Any contrary provision hereof notwithstanding, for purposes of administrative convenience, no Distribution of less than One Hundred Dollars (\$100) shall be made pursuant to the Plan. Whenever any Distribution of less than One Hundred Dollars (\$100) under the Plan would otherwise be required, such funds will be retained by the Plan Administrator for the account of the recipient until such time that successive Distributions aggregate to One Hundred (\$100) Dollars, at which time such payment shall be made, and if successive Distributions do not ever reach One Hundred (\$100) in the aggregate, then such Distributions shall be returned to the Unsecured Creditor Fund.

**9.14 Setoff and Recoupment.** Except as otherwise provided in the Plan, the Plan Administrator may, but shall not be required to, set off against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any Claims, defenses or Causes of Action of any nature whatsoever that the Debtor may have, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor or the Plan Administrator of any right of setoff or recoupment against the holder of any Claim.

**9.15 Payment of Taxes on Distributions Received Pursuant to the Plan.**

(a) Any contrary provision hereof notwithstanding, as a precondition to payment of any Distribution to a Creditor under this Plan, unless included on the official proof of claim form filed by such Creditor in this Bankruptcy Case, each Creditor shall provide a valid tax identification or social security number (collectively the "Tax Information") for purposes of tax reporting by the Plan Administrator. All Entities that receive Distributions under the Plan shall be responsible for reporting and paying, as applicable, any taxes on account of their Distributions.

(b) At such time as the Plan Administrator believes that Distributions to a particular Class of Claims is likely, the Plan Administrator shall request Tax Information in writing from the Creditors (the "Tax Info Request"). Any Creditor who

fails to respond to Tax Info Request within ninety (90) days from the date posted on the Tax Info Request, shall forfeit all Distributions such Creditor may otherwise be entitled to under this Plan and such forfeited funds will revert to the Estate to be disbursed in accordance with the terms and priorities established in this Plan.

**9.16 Compliance With Tax Withholding and Reporting Requirements.**

With respect to all Distributions made under the Plan, the Plan Administrator will comply with all withholding and reporting requirements of any federal, state, local or foreign taxing authority.

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**ARTICLE 10 - PLAN INTERPRETATION, CONFIRMATION AND VOTING**

**10.1 Procedures Regarding Objections to Designation of Classes as Impaired or Unimpaired.**

In the event the designation of the treatment of a Class as impaired or unimpaired is objected to, the Bankruptcy Court shall determine the objection and voting shall be permitted or disregarded in accordance with the determination of the Bankruptcy Court.

**10.2 Withdrawal and Modification of Plan.**

This Plan may be withdrawn or modified by the Trustee and the Creditors Committee at any time prior to the Confirmation Date. The Trustee and the Creditors' Committee, or the Plan Administrator, as the case may be, may modify the Plan in any manner consistent with section 1127 of the Bankruptcy Code prior to substantial consummation thereof. Upon request by the Plan Administrator, with the advice and consent of the Plan Oversight Committee, the Plan may be modified after substantial consummation with the approval of the Bankruptcy Court, provided that such modification does not affect the essential economic treatment of any Person that objects in writing to such modification.

**10.3 Governing Law.**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or the Plan, the laws of the State of New York applicable to contracts executed in such State by residents thereof and to be performed entirely within such State shall govern the construction and implementation of the Plan and any agreements, documents and instruments executed in connection with this Plan.

**10.4 Voting of Claims.**



Each holder of an Allowed Claim as of the Record Date in Class 4 shall be entitled to vote to accept or reject the Plan. The Disclosure Statement Order shall govern the manner and procedures for casting of Ballots with the Voting Agent.

**10.5 Acceptance by Impaired Class.**

Consistent with section 1126(c) of the Bankruptcy Code, and except as provided for in section 1126(e) of the Bankruptcy Code, a Class of creditors shall have accepted the Plan if it is accepted by at least two-thirds in dollar amount and more than one-half in number of the holders of Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

**10.6 Presumed Acceptances of Plan.**

Classes 1, 2 and 3 are unimpaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan.

**10.7 Presumed Rejections of Plan.**

Class 5 is conclusively presumed to have rejected the Plan.

**10.8 Cram Down.**

The Plan Proponents request that, in the event that any impaired Class entitled to vote on the Plan accepts the Plan, the Bankruptcy Court confirm the Plan in accordance with the provisions of section 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation of the Plan over the presumed rejection of Class 5 and/or the possible rejection of the Plan by any impaired Class entitled to vote on the Plan.

**ARTICLE 11 - RETENTION OF JURISDICTION BY BANKRUPTCY COURT**

**11.1** From the Confirmation Date until entry of a final decree closing the Debtor's Bankruptcy Case (pursuant to 11 U.S.C. §350 and Bankruptcy Rule 3022), the Bankruptcy Court shall retain such jurisdiction as is legally permissible over the Bankruptcy Case for the following purposes:

(a) to hear and determine any and all objections to the allowance of any Claim or Administrative Claim, or any controversy as to the classification of Claims or any matters which may directly, indirectly or contingently affect the obligations of the Debtor or the Plan Administrator to any Creditors, holders of Claims, or other parties in interest;

(b) to hear and determine any and all applications for compensation and reimbursement of expenses by Professionals or the Trustee;

(c) to hear and determine any and all pending motions for the assumption or rejection of executory contracts and unexpired leases, and to fix any Claims resulting therefrom;

(d) to adjudicate through final judgment such contested matters and adversary proceedings as may be pending or subsequently initiated in the Court including, but not limited to, the Causes of Action and claims related to Unfinished Business and the Disputed Funds. For the avoidance of doubt, the Bankruptcy Court shall retain jurisdiction to hear and determine compromises and settlements of any and all Causes of Action, including, but not limited to those Causes of Action set forth in the Exhibits to the Disclosure Statement, and to enter orders granting releases, injunctions, and exculpations similar in scope to the releases, injunctions, and exculpations granted by orders of the Bankruptcy Court in settlements approved prior to the Confirmation Date.

(e) to enforce and interpret the provisions of this Plan, the Confirmation Order and the Plan Administrator Agreement;

(f) to hear and determine any matters relating to the appointment and replacement of the Plan Administrator and the Plan Oversight Committee;

(g) to issue any injunction or other relief appropriate to implement the intent of the Plan, and to enter such further orders enforcing any injunctions or other relief issued under the Plan or pursuant to the Confirmation Order;

(h) to modify the Plan pursuant to section 1127 of the Bankruptcy Code and the applicable Bankruptcy Rules;

(i) to correct any defect, cure any omission, or reconcile any inconsistency in this Plan, the Plan Administrator Agreement or in the Confirmation Order as may be necessary to carry out the purposes and the intent of this Plan;

(j) to interpret and determine such other matters as the Confirmation Order may provide for, or as may be authorized under the Bankruptcy Code;

(k) to enter and implement such orders as may be appropriate in the event the Confirmation Order is, for any reason, stayed, reversed, revoked, modified or vacated.

## **ARTICLE 12 - MISCELLANEOUS PROVISIONS**

### **12.1 Headings.**

Headings are utilized in this Plan for the convenience of reference only, and shall not constitute a part of this Plan for any other purpose.

### **12.2 No Attorneys' Fees.**

No attorneys' fees with respect to any Claim or Interest shall be payable under the Plan, except as expressly specified herein or Allowed by a Final Order of the Bankruptcy Court.

**12.3 Reservation of Rights.**

If by March 31, 2014, or such later date as may be extended by the Committee in the exercise of its absolute discretion, the Confirmation Order is not entered, or if the Plan is confirmed but does not become effective, the Plan shall be deemed null and void and of no force or effect, and shall not be admissible in any proceeding, and the rights of all parties in interest in the Bankruptcy Case are and will be reserved in full.

**12.4 Notices.**

Except as otherwise specified in the Plan, all notices in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, five (5) days after the date of mailing. All communication shall be deemed sent if sent to the Trustee and the Creditors' Committee at the following addresses:

If to the Trustee:

DIAMOND McCARTHY LLP  
620 Eighth Avenue, 39<sup>th</sup> Floor  
New York, New York 10018  
Tel: (212) 430-5400  
Fax: (212) 430-5499  
Howard D. Ressler, Esq.  
Stephen T. Loden, Esq.

If to the Creditors' Committee:

KLESTADT & WINTERS, LLP  
570 Seventh Avenue, 17th Floor,  
New York, New York 10018  
Tel: (212) 972-3000  
Fax: (212) 972-2245  
Tracy L. Klestadt, Esq.  
Sean C. Southard, Esq.  
Joseph C. Corneau, Esq.

With copy to:

Steven J. Reisman  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, New York 10178

And a copy to:

Jerrold L. Bregman  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, New York 10178

**12.5 No Discharge.**

The Debtor will not receive a discharge under the Plan.

**12.6 Claims In Dollars.**

Any Claims asserted in foreign currencies shall be converted to United States Dollars in accordance with the prevailing exchange rates published by the Wall Street Journal on the Confirmation Date.

**12.7 Binding Effect.**

The rights, benefits, and obligations of any Person named or referred to in the Plan, or whose actions may be required to effectuate the terms of the Plan, shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person (including, but not limited to, any trustee appointed for the Debtor under chapter 7 or 11 of the Bankruptcy Code). The Confirmation Order shall provide that the terms and provisions of the Plan and the Confirmation Order shall survive and remain effective after entry of any order which may be entered converting the Debtor's Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code, and the terms and provisions of the Plan shall continue to be effective in this or any superseding case under the Bankruptcy Code.

Dated: New York, New York  
February 5<sup>th</sup>, 2014

DIAMOND McCARTHY LLP

By: /s/ Howard D. Ressler  
Howard D. Ressler  
Stephen T. Loden  
620 Eighth Avenue, 39<sup>th</sup> Floor  
New York, New York 10018  
Tel: (212) 430-5400  
Fax: (212) 430-5499

*Attorneys for Sheila M. Gowan,  
Chapter 11 Trustee for Dreier LLP*

KLESTADT & WINTERS, LLP

By: /s/ Tracy L. Klestadt  
Tracy L. Klestadt

Sean C. Southard  
Joseph C. Corneau  
570 Seventh Avenue, 17th Floor,  
New York, New York -10018,  
Tel: (212) 972-3000  
Fax: (212) 972-2245

*Attorneys for Official Committee of  
Unsecured Creditors*

**Exhibit “B”**

**Exhibit “B”**

Dreier LLP: Pending Avoidance Actions			
<b>Case Caption</b>	<b>Case Number</b>	<b>Court</b>	<b>Status</b>
Gowan v. Amaranth Advisors L.L.C., et al.	10-03493(SMB)	Bankr. S.D.N.Y.	Pending
Gowan v. Westford Asset Management LLC, et al.	10-05447(SMB)	Bankr. S.D.N.Y.	Pending
Gowan v. O'Dowd	12-01572(SMB)	Bankr. S.D.N.Y.	Pending

**Exhibit “C”**

**Exhibit “C”**



<b>Defendant/Account Debtor</b>	<b>Responsible Attorney</b>	<b>Comments</b>
David Engelke	Starr & Starr	
VCG Special Opportunites Master Fund Limited	Starr & Starr	
Legend Merchant Group, Inc.	Starr & Starr	
MTM Technologies, inc.	Starr & Starr	
Global NAPs New Hampshire, Inc.	Starr & Starr	
Solid State Logic, Inc.	Starr & Starr	
Steven S. Novick	L. Blake Morris	
Richard Selinfreund	L. Blake Morris	
Brookhaven Science Associates, LLC	L. Blake Morris	
Toothsavers Dental Laboratory, Inc. & Toothsavers Dental Services, P.C.	L. Blake Morris	
R. Scott Stevenson	L. Blake Morris	
John Benitez	L. Blake Morris	
Americas Securities, LLC	L. Blake Morris	
Mitolo Wines Pty. Ltd., The Mitolo Group USA, Inc.	L. Blake Morris	
Michael Satsky	L. Blake Morris	
NexTrade Holdings, Inc.	L. Blake Morris	
Curtis James Jackson (a/k/a 50 Cent)	L. Blake Morris	
Vibe Media Group, LLC (d/b/a Vibe Magazine)	L. Blake Morris	
Perry Ellis International, inc.	L. Blake Morris	
Waterfront Media, Inc. n/k/a Everyday Health, Inc.	L. Blake Morris	
Bravo Realty Group	L. Blake Morris	
Spiro, Ruby & Spiro, Summer (p/k/a "Ruby Summer")	L. Blake Morris	
Choices Women's Medical Center, Inc.	L. Blake Morris	
Mark Spiro	L. Blake Morris	

Vital Holdings Group, Inc. a/k/a Vital Marketing	L. Blake Morris	
Kolisch Hartwell, P.C.	L. Blake Morris	
Up Above Music, Inc. & Edwin Holmes	L. Blake Morris	
New England Energy Management, Inc.	L. Blake Morris	
Bebe Stores, Inc.	L. Blake Morris	
Allied Partners, Inc.	L. Blake Morris	
Lieberman, Jeremy I.	L. Blake Morris	
Enterprise Schermerhorn, LLC	L. Blake Morris	
Jimmy Rodriguez	L. Blake Morris	
Louis Dubin (LMD Worldwide)	L. Blake Morris	
Coogi Partners, LLC	L. Blake Morris	
Michael Sinensky d/b/a Village Pourhouse	L. Blake Morris	
Thomas Dockery	L. Blake Morris	
@quila, Inc.	L. Blake Morris	
Invt, LLC	L. Blake Morris	
Nathan Padgett	L. Blake Morris	
Kluger Peretz, Kaplan & Berlin, P.L.	L. Blake Morris	
Rock Scene Brands, LLC	L. Blake Morris	
Champion Associates LLC	L. Blake Morris	
Ian Parker	L. Blake Morris	
MJS Events, LLC	L. Blake Morris	
Hilco Merchant Resources, LLC	L. Blake Morris	
Interbrand Corporation	L. Blake Morris	
Apple Bottoms LLC	L. Blake Morris	
Contingency Fee Matter	Diamond McCarthy	Allan Applestein, as Trustee for benefit of DCA Grantor Trust (Argentine Bond case)

Contingency Fee Matter	Diamond McCarthy	Berger, Howard/Professional Traders Management
Contingency Fee Matter	Diamond McCarthy	Plaintiff David Alprin, Jack Fulton, Donald J. Roberts, Patrick Svoboda and James Byers (preferred stockholders of Equity Inns, Inc.)
Contingency Fee Matter	Diamond McCarthy	Merck & Co., Inc. Securities Litigation (Vioxx)
Contingency Fee Matter	Diamond McCarthy	Baker & Taylor, Inc. et al v. Alphacraze.com et.al.
Contingency Fee Matter	Diamond McCarthy	National City Corporation Shareholders Plaintiffs Kathleen Majer, as Trustee of A. Dowling Estate; David Anderson
Contingency Fee Matter	Diamond McCarthy	Nomura Asset Capital Corporation and Asset Securitization Corporation
Contingency Fee Matter	Diamond McCarthy	Ticketmaster Customers Plaintiffs (Stearns, Mancini)
Contingency Fee Matter	Diamond McCarthy	Vivendi SA
Contingency Fee Matter	Diamond McCarthy	Wendy's Litigation
Contingency Fee Matter	Diamond McCarthy	Linda Grant Williams v. Citigroup, Inc., Citigroup Global Markets, Inc., JP Morgan Chase & Co., Goldman Sachs & Co. and Does 1-20
Bankruptcy Fee Matter	Diamond McCarthy	Donald W. Spector
Ferrous Miner Holdings, Limited	Niehaus LLP	
NCT Group, Inc.	Niehaus LLP	
Soto, Flora	Niehaus LLP	
Friedman Equities	Niehaus LLP	
Jazz Photo Corp.	Niehaus LLP	
Greenberg, Samuel	Niehaus LLP	
KB Toys	Niehaus LLP	
112 Duane Associates LLC	Niehaus LLP	
Raab, Kevin/Lion Button Company	Niehaus LLP	
Vraston Trading, LLC	Niehaus LLP	

MarketXT Holdings Corp.	Niehaus LLP	
Reshke, Esq., Michael W.	Niehaus LLP	
Swig Equities, LLC	Niehaus LLP	
The Moinian Group	Niehaus LLP	
Pitcairn Properties, Inc.	Niehaus LLP	
Kelly, Elizabeth	Niehaus LLP	
Michael Stapleton Associates	Niehaus LLP	
Wasserman Media Grp	Niehaus LLP	
MLBPA	Niehaus LLP	
Merle Wolff	Niehaus LLP	
Das Films	Niehaus LLP	
Intermix	Niehaus LLP	
Wink NYC	Niehaus LLP	
I.C. Issacs	Niehaus LLP	
Michael Kors	Niehaus LLP	
Jack Lambert	Niehaus LLP	
Katherine Roddy (Tozer)	Niehaus LLP	

**Exhibit “D”**

**Exhibit “D”**

Potential Unfinished Business Defendants	
<u>Attorney</u>	<u>Successor Firms</u>
John Campo	Troutman Sanders
John Kinzey	Troutman Sanders
Gerard Diebner	Troutman Sanders
Daniel Ladow	Troutman Sanders
Al Jacobs	Troutman Sanders
Richard Block	Mintz Levin
Andrew Bernstein	Mintz Levin
David Lagasse	Mintz Levin
Steven Gursky	Olshan
Mitchell Stern	Olshan
Martin Feinberg	Olshan
Seth Ostrow	Ostrow Kaufman (NY)
Matthew Kaufman	Ostrow Kaufman (NY)
Mark Fawer	Dickstein Shapiro, Brown Rudnick (NY)
Steven Fox	Riemer & Braunstein
Jeffrey Mitchell	Gibbons
Ira Sacks	Akerman Senterfit
Arianna Frankl	Ostrow Kaufman, Cole Schotz
Michael Waters	Dickstein Shapiro
Wendy Marcari	Epstein Becker
Eugene Small	Gibbons
Eric Osterberg	Fox Rothschild, Osterberg LLC
Joseph Pastore	Pastore Osterberg, Smith Gambrell Russell
Maura Russell	Riemer & Braunstein
Paul Traub	Traub, Bonaquist & Fox, Gordon Brothers Group
Terrence Watson	

**Exhibit “E”**

**Exhibit “E”**

Dreier LLP: Disputed Funds		
Account Name	Amount	Bank
Hilco Consumer Capital LLC	\$72.91	JPMorgan Chase Bank
Rochelle Gores	\$528,547.73	JPMorgan Chase Bank
Gertrude F. Rothschild	\$18,536.27	JPMorgan Chase Bank
The Dinoto Group	\$17.88	JPMorgan Chase Bank
Tommy Hilfiger USA Inc	\$0.09	JPMorgan Chase Bank
Dreier LLP (360 networks)	\$249.54	JPMorgan Chase Bank
Dreier LLP for Empire Network LLC	\$10.23	JPMorgan Chase Bank
Sheila M. Gowan Chapter 11 Trustee (restored funds from Paul Traub)	\$441,015.06	Wells Fargo Bank



**Exhibit “F”**

**Exhibit “F”**

	Scenario 1		Scenario 2	
	Plan of Liquidation	Chapter 7	Plan of Liquidation	Chapter 7
Current cash balance	\$35,496,450	\$35,496,450	\$35,496,450	\$35,496,450
<b><u>CASH INFLOWS:</u></b>				
<b>Cash inflows from litigation matters:</b>				
Hedge funds <sup>1</sup>	\$0	\$0	\$27,004,000	\$27,004,000
Other	0	0	1,300,000	1,300,000
<b>Total cash inflows from litigation matters</b>	<b>\$0</b>	<b>\$0</b>	<b>\$28,304,000</b>	<b>\$28,304,000</b>
<b>Cash inflows from accounts receivable:</b>				
Hourly accounts receivable	\$189,000	\$189,000	\$189,000	\$189,000
Contingency/bankruptcy <sup>2</sup>	0	0	0	0
<b>Total cash inflows from accounts receivable</b>	<b>\$189,000</b>	<b>\$189,000</b>	<b>\$189,000</b>	<b>\$189,000</b>
<b>Other cash inflows:</b>				
Interest income	\$40,000	\$40,000	\$40,000	\$40,000
Disputed funds	0	0	988,320	988,320
<b>Total other cash inflows</b>	<b>\$40,000</b>	<b>\$40,000</b>	<b>\$1,028,320</b>	<b>\$1,028,320</b>
<b>Cash Available for Admin. Expenses and Claims</b>	<b>\$35,725,450</b>	<b>\$35,725,450</b>	<b>\$65,017,770</b>	<b>\$65,017,770</b>
<b><u>UNCLASSIFIED CLAIMS AND ADMINISTRATIVE EXPENSES</u></b>				
Professional fees <sup>12/19/2013</sup>				
General	\$2,750,000	\$3,500,000	\$2,750,000	\$3,500,000
Litigation	2,500,000	3,000,000	2,500,000	3,000,000
Trustee fees	2,176,977	2,183,847	2,176,977	3,062,616
Fee holdback due upon plan confirmation	3,063,433	3,063,433	3,063,433	3,063,433
<b>Total professional fees</b>	<b>\$10,490,410</b>	<b>\$11,747,280</b>	<b>\$10,490,410</b>	<b>\$12,626,049</b>
Other administrative expenses:				
Record storage and destruction	\$50,000	\$50,000	\$50,000	\$50,000
US Trustee fees	100,000	15,000	100,000	15,000
Other	164,200	164,200	164,200	164,200
<b>Total other administrative expenses</b>	<b>\$314,200</b>	<b>\$229,200</b>	<b>\$314,200</b>	<b>\$229,200</b>
<b>Priority Tax Claims</b>	<b>\$3,890,706</b>	<b>\$3,890,706</b>	<b>\$3,890,706</b>	<b>3,890,706</b>
<b><u>SECURED AND SUPERPRIORITY CLAIMS</u></b>				
Classes 1 and 2 claims				
Wells Fargo <sup>3</sup>	\$126,000	\$126,000	\$126,000	\$126,000
Other <sup>4</sup>	0	0	0	0
<b>Total Class 1 and 2 Claims</b>	<b>\$126,000</b>	<b>\$126,000</b>	<b>\$126,000</b>	<b>\$126,000</b>
<b><u>CLAIMS PAID AT 100%:</u></b>				
Class 3 claims	\$2,462,563	\$2,462,563	\$2,462,563	\$2,462,563
<b>Distributions to Unclassified claims and Classes 1 - 3</b>	<b>\$17,283,879</b>	<b>\$18,455,749</b>	<b>\$17,283,879</b>	<b>\$19,334,519</b>
<b>Net cash available for Class 4 claims</b>	<b>\$18,441,571</b>	<b>\$17,269,701</b>	<b>\$47,733,891</b>	<b>\$45,683,252</b>
<b>Class 4 Claims</b>	<b>\$379,756,528</b>	<b>\$379,756,528</b>	<b>\$379,756,528</b>	<b>\$379,756,528</b>
<b>Estimated distribution percentage - Class 4 claims</b>	<b>4.9%</b>	<b>4.5%</b>	<b>12.6%</b>	<b>12.0%</b>

**NOTES**

<sup>1</sup> Projection assumes recovery of profits but not principal. The Trustee is aggressively pursuing those claims. Any recoveries beyond profits would increase ultimate distributions to Class 4 claimants.

<sup>2</sup> As of the filing date, DLLP had hourly and contingency receivables. Although, the Plan Proponents reasonably project that there will be future collections on hourly receivables as reflected in this Liquidation Analysis, they cannot currently predict the ultimate recoveries on contingency and related receivables. To the extent there are any such future recoveries, they would further reduce Class 1 and Class 2 claims and, thus, increase distributions to Class 4 claimants, as set forth in the Plan.

<sup>3</sup> Wells Fargo holds a secured claim and a superpriority claim as discussed in the Disclosure Statement. The payment of these claims is limited by the future amounts collected from the collateral securing these claims.

<sup>4</sup> The Trustee has yet to finalize all claim objections. The Trustee disputes the characterization of all secured claims, other than the Wells Fargo claims. Therefore, no distribution is projected for Class 2 claimants.