

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

In re:)	Chapter 11
)	
TRAFFIC CONTROL AND SAFETY)	Case No. 12-11287 (KJC)
CORPORATION, <i>et al.</i> , ¹)	Jointly Administered
)	
Debtors.)	Hearing Date: Nov. 8, 2012 at 3:00 p.m.
)	Objection Deadline: Nov. 1, 2012 at 4:00 p.m.

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MOTION FOR AN
ORDER PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE APPROVING GLOBAL SETTLEMENT AGREEMENT BETWEEN AND
AMONG THE DEBTORS, THE COMMITTEE, THE DEBTORS' SECURED
LENDERS, MARWIT, AND CERTAIN OF THE DEBTORS'
CURRENT AND FORMER OFFICERS AND DIRECTORS**

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through its undersigned counsel, hereby submits this motion (the "Motion") for entry of an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") approving the Global Settlement Agreement, attached hereto as **Exhibit A**, between and among the Debtors, the Committee, the Debtors' Secured Lenders, Marwit, (each as defined below) and certain of the Debtors' current and former officers and directors (collectively, the "Parties"). In support thereof, the Committee respectfully states as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Traffic Control and Safety Corporation, a Delaware corporation (7891); Safety Systems Hawaii, Inc., a Delaware corporation (7907); Statewide Safety & Signs, Inc., a California corporation (4460); Traffic Solutions, Inc., a California corporation (7437); American Barricade, Inc., a California corporation (2617); Flash Safety Co., Inc., a California corporation (0225); and Toomey Industries, a California corporation (1551). The mailing address for each Debtor is 4000 Westerly Place, Suite 100, Newport Beach, CA 92660.

PRELIMINARY STATEMENT

1. After a contentious four months in chapter 11, the Debtors, the Committee and the Debtors' major stakeholders have reached a global settlement that will resolve the litany of disputes among them and facilitate a resolution of these bankruptcy cases. By this Motion, the Committee seeks the Court's approval of that global settlement, pursuant to Bankruptcy Rule 9019.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. Venue of these proceedings in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter concerns the administration of this bankruptcy case and accordingly is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. The predicate for the relief requested in the Motion is set forth in Bankruptcy Rule 9019.

BACKGROUND

A. General Case Background

3. On April 20, 2012 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").² The events leading up to the Petition Date are more fully set forth in the *Affidavit of Greg Grosch in Support of First Day Motion* [D.I. 2] (the "Grosch Affidavit"), which was also filed on April 20, 2012.

4. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee

² Unless otherwise noted, section references herein are to the Bankruptcy Code.

or examiner has been appointed in the Debtors' cases.

5. On May 1, 2012, the Office of the United States Trustee appointed the Committee.

6. One of the primary purposes of the bankruptcy filing was to effectuate a sale of substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code. To that end, on the Petition Date, the Debtors filed their *Motion for Orders (A) Establishing Bidding Procedures in Connection with Sale of Substantially All Assets of the Debtors, (B) Approving the Form and Manner of Notices, (C) Setting a Sale Hearing, (D) Authorizing the Sale of the Assets Free and Clear of Claims, Interests, Liens or Encumbrances, and Liabilities, (E) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (F) Granting Related Relief* [D.I. 11] (the "Sale Motion").

7. Ultimately, on July 26, 2012 the Bankruptcy Court entered its *Order (A) Authorizing and Approving the Sale of Assets Free and Clear of All Claims, Interests, Liens or Encumbrances, and Liabilities, (B) Authorizing and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [D.I. 302] (the "Sale Order"), which approved the sale of substantially all the Debtors' assets (the "Sale") to Statewide Holdings, Inc. (the "Purchaser"). The Sale closed on August 11, 2012 (the "Closing Date").

8. The Committee understands that, as a result of the Sale, all of the Debtors' secured claims and unsecured trade claims have been satisfied. Several unsecured claims against the Debtors' estates remain, however, the largest of which are held by the holders of unsecured, subordinated notes (the "Sub-Debt Holders") related to that certain Credit Agreement, dated as

of May 28, 2010, entered into by and among the Debtors, the Lenders (as defined therein) and Fifth Street (as defined below), as administrative agent (the “Unsecured Credit Agreement”). Conversely, the Debtors’ primary remaining assets are certain claims against the Sub-Debt Holders and their designees to the Debtors’ board of directors as set forth in greater detail below and in the Global Settlement Agreement.

B. The Marwit Litigation, Equitable Subordination Adversary Proceeding, and Related Claims

9. The Debtors’ largest equity holder, Marwit Capital Partners, L.P. (collectively with Marwit Capital Partners II, L.P., and their affiliates, “Marwit”) holds the second largest remaining unsecured claim against the Debtors’ estates by virtue of its status as a Sub-Debt Holder.

10. Specifically, Marwit has filed various proofs of claim against the Debtors, as follows (collectively, the “Filed Claims”):

- Claim No. 275 against debtor Traffic Control and Safety Corporation in the total amount of \$4,975,417.50 filed as an unsecured claim on July 6, 2012;
- Claim No. 276 against debtor Statewide Safety & Signs, Inc. in the total amount of \$4,975,417.50 filed as an unsecured claim on July 6, 2012;
- Claim No. 277 against debtor Safety Systems Hawaii, Inc. in the total amount of \$4,975,417.50 filed as an unsecured claim on July 6, 2012;
- Claim No. 278 against debtor Traffic Solutions, Inc. in the total amount of \$4,975,417.50 filed as an unsecured claim on July 6, 2012;
- Claim No. 279 against debtor American Barricade, Inc. in the total amount of \$4,975,417.50 filed as an unsecured claim on July 6, 2012;
- Claim No. 280 against debtor Flash Safety, Co., Inc. in the total amount of \$4,975,417.50 filed as an unsecured claim on July 6, 2012;
- Claim No. 281 against debtor Toomey Industries, Inc. in the total amount of \$4,975,417.50 filed as an unsecured claim on July 6, 2012

- Claim No. 336 against debtor Traffic Control and Safety Corporation filed as an unliquidated, contingent unsecured claim for indemnification on July 20, 2012; and
- Claim No. 337 against debtor Traffic Control and Safety Corporation filed as an unliquidated, contingent unsecured claim for indemnification on July 20, 2012.

11. Just before the Petition Date, on April 12, 2012, Marwit commenced a lawsuit in the Superior Court of California in Orange County, California (the “Orange County Litigation”) asserting various derivative and direct claims against the Debtors’ primary secured lender, Fifth Street Finance Corporation (“Fifth Street”); its current and former designees to the Debtors’ board of Directors, Len Tannenbaum, Robert Rakowski and Brian Finkelstein (collectively, the “Fifth Street Directors”); the Debtors’ CEO Gregory Grosch; and the Debtors’ independent director Michael Arthur (collectively with Grosch and the Fifth Street Directors, the “Director Defendants”).

12. In the Orange County Litigation, Marwit asserts that since early 2010, Fifth Street has engaged in a conspiracy with the Director Defendants to wrest ownership and control of the Debtors from Marwit. Among other claims, Marwit alleges that Fifth Street orchestrated the cover up of a fraudulent billing scheme involving Debtor Safety Systems Hawaii, Inc. and one of its largest customers. Marwit also alleges that Fifth Street and the Director Defendants caused the Debtors to make improper adjustments to the Debtors’ books and records in an effort to manufacture a financial hardship, forcing the Debtors into bankruptcy.

13. Shortly after the Petition Date, the dispute in the Orange County Litigation spilled over into the bankruptcy case when, on May 2, 2012, Marwit: (i) commenced an adversary proceeding styled *Marwit Capital Partners II, L.P. v. Fifth Street Finance Corp., SPP Mezzanine Funding L.P., SPP Mezzanine Funding II Holdings LLC, SPP Mezzanine Funding II-A, L.P.*,

CMFG Life Insurance Company f/k/a CUNA Mutual Life Insurance Company, and CUMIS Insurance Society, Inc. [Adv. Proc. 12-50626] (the “Equitable Subordination Action”) seeking to equitably subordinate the secured claims held by the Debtors’ pre-petition secured lenders and (ii) filed the *Motion of Marwit Capital Partners II, L.P. for an Order: (1) Conferring Standing to Continue Prepetition State Court Action; and (2) Granting Relief from the Automatic Stay to Continue Prepetition State Court Action* [D.I. 70] (the “Stay Relief Motion”), whereby Marwit sought permission to continue prosecuting the Orange County Litigation on behalf of the Debtors’ estates.

14. The Debtors, the Committee and Fifth Street all filed objections to the Stay Relief Motion, and the hearing with respect to the Stay Relief Motion has been continued several times. Although the derivative claims in the Orange County Litigation remain stayed, Marwit has continued to press forward with its direct claims against Fifth Street.

15. Fifth Street filed its Cross-Complaint against Marwit in the Orange County Litigation on June 11, 2012 (the “Cross-Complaint”). The Cross-Complaint asserted factual allegations concerning Marwit’s lack of diligence and mismanagement of the Debtors prior to 2010. The Orange County Litigation continues, and Marwit and Fifth Street have engaged in preliminary fact discovery.

16. Although the legal theories are quite different, the factual issues underlying the Equitable Subordination Action are largely identical to those at issue in the Orange County Litigation. Trial in the Equitable Subordination Action has been set for the first week of January, 2013, but no scheduling order has been entered. Fifth Street’s fellow lenders and co-defendants in the Equitable Subordination Action, CMFG Life Insurance Company f/k/a CUNA Mutual

Insurance Society and Cumis Insurance Society, Inc. (together, “CUNA Mutual”) and SPP Mezzanine Funding II Holdings, LLC, SPP Mezzanine Funding II-A, L.P., and SPP Mezzanine Funding, L.P. (collectively, “SPP,” and with Fifth Street and CUNA Mutual, the “Secured Lenders”) were dismissed from the Equitable Subordination Action without prejudice on August 14, 2012. Although much of the discovery in the Equitable Subordination Action likely will be duplicative of the discovery conducted in the Orange County Litigation, Marwit and Fifth Street have indicated that at least three experts are anticipated to be deposed in preparation for the hearing in the Equitable Subordination Action.

C. The Committee Investigation

17. While the Orange County Litigation and the Equitable Subordination Action were ongoing, the Committee commenced an examination of the debt, liens and security interests of the Secured Lenders. In connection with the *Final Order Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure Authorizing the Debtors to (I) Use Cash Collateral, (II) Obtain Postpetition Financing, and (III) Provide Adequate Protection to Secured Creditors* [D.I. 126], the Committee initially was granted until July 6, 2012 to bring any challenge to the Secured Lenders’ secured claims (the “Challenge Deadline”).

18. Given the serious allegations raised in the Equitable Subordination Action and the Orange County Litigation, the Committee requested and was granted several extensions of the Challenge Deadline to permit it to investigate those allegations (the “Investigation”). After reviewing nearly 8,000 documents spanning almost 120,000 pages and interviewing five witnesses, the Committee determined that viable causes of action exist against Fifth Street and

the Fifth Street Directors. The Investigation also uncovered viable potential claims against the Debtors' current CEO, Greg Grosch.

19. During the course of the Investigation, the Committee also inquired into the allegations against Marwit contained in the Cross-Complaint. Although these allegations were not the central focus of the Investigation, the Committee quickly realized that viable causes of action exist against Marwit and certain of their past and present director designees on the Debtors' board of directors, including Chris Britt.

20. As a result of its Investigation, the Committee has determined that the following categories of viable claims may exist (collectively, the "Committee Claims," and together with certain other claims against the Debtors' directors and officers, the "Estate Claims"):

- Equitable Subordination/Recharacterization of First and Second Liens – against Fifth Street as administrative agent and Secured Lender as well as the SPP and CUNA Mutual as Secured Lenders;
- Breach of Fiduciary Duties – against the Fifth Street Directors, all in their capacities as directors of the Debtors;
- Breach of Fiduciary Duties – against Grosch, in his capacity as an officer and director of the Debtors;
- Equitable Subordination/Recharacterization of Subordinated Unsecured Debt – against Fifth Street as administrative agent and all Sub-Debt Holders (the "Sub-Debt Subordination Claim"); and
- Breach of Fiduciary Duties – against Marwit's designees to the Debtors' board in their capacities as directors and/or officers of the Debtors.

21. The Committee believes the Estate Claims are a viable source of recovery for the Debtors' unsecured creditors, and, absent settlement, the Committee would intend to pursue those claims on their behalf.

D. Subsequent Negotiations

22. Upon concluding the Investigation, the Committee reached out to Fifth Street and the Director Defendants in an effort to resolve the Estate Claims without the additional expense involved in litigation. Recognizing that any exposure on the Estate Claims related to breaches of fiduciary duty could implicate the Debtors' officers and directors insurance policy, the Director Defendants reached out to the Debtors' insurance providers, Executive Risk Indemnity, Inc. ("ERII") – Powersource and Federal Insurance Company ("Federal") – Executive Elite (collectively "Chubb") regarding a potential settlement. After a series of good faith discussions, the Committee, the Debtors, the Secured Lenders, and the Director Defendants reached a resolution, which would ultimately become embodied in the Global Settlement Agreement.

23. Having reached a resolution with the Secured Lenders and the Director Defendants, the Committee and the Debtors next reached out to Marwit and Britt in an effort to bring the final party to the dispute on board with the settlement. After additional good faith negotiations, Marwit, the Debtors, the Committee, Britt and the Director Defendants (together with Britt, the "Directors") also reached a resolution of their remaining issues.

24. The Global Settlement Agreement is the culmination of the Parties' efforts to fully and finally resolve their differences.

E. The Stipulation

25. The terms of the compromise and settlement between the Parties are set forth in greater detail in the Global Settlement Agreement; however, the principal terms of the agreement may be summarized as follows:³

- (a) Settlement Effective Date. The Global Settlement Agreement shall become effective upon the first business day after the date that both the

³ Capitalized terms used but not otherwise defined in the summary of the terms of the Global Settlement Agreement herein shall have the meaning ascribed to them in the Global Settlement Agreement.

order approving this Motion and an order confirming the Plan become Final Orders.

- (b) Termination Event. Upon the failure of this Court to enter an order approving this Motion or to enter a Confirmation Order, the Global Settlement Agreement shall be null and void in all respects and have no further force and effect and the Parties shall be restored to the *status quo ante* as of the day immediately prior to the date of execution of the Global Settlement Agreement.
- (c) Committee Standing. The Committee shall have standing, and upon the occurrence of a Termination Event, sole authority to prosecute, compromise, settle, or otherwise adjudicate or resolve the Estate Claims, subject to the occurrence of the Marwit Settlement Effective Date and Marwit's receipt of the Marwit Payment.
- (d) Consideration for Settlement.
 - (i) Fifth Street waives any and all of its claims and rights to the excess payment made to the Debtors' estates pursuant to Section 2.3(h) of the Asset Purchase Agreement for the purpose of paying certain trade claims, which amounts to approximately \$400,000.
 - (ii) The Director Defendants shall pay, or cause to be paid, \$700,000 to the Debtors' estates.
 - (iii) Grosch waives any and all claims that he may have against the Debtors.
 - (iv) The Sub-Debt Holders agree to subordinate their claims arising from the Unsecured Credit Agreement (the "Sub-Debt Claims").
- (e) Releases.
 - (i) The Committee and the Debtors irrevocably and unconditionally waive, release and discharge with prejudice the Secured Lenders, Marwit, and the directors and officers of the Debtor and any officer or director insured under the Chubb Policies in their capacity as officers and/or directors (collectively, the "Released Directors") with respect to all matters arising out of or related to the Debtors or their bankruptcy cases.
 - (ii) The Committee, the Debtors, the Secured Lenders, Marwit and the Directors irrevocably and unconditionally waive, release and discharge with prejudice Released Directors with respect to all

matters arising out of or related to the Debtors or their bankruptcy cases.

- (iii) The Secured Lenders irrevocably and unconditionally waive, release and discharge with prejudice each other with respect to all matters arising out of or related to the Debtors or their bankruptcy cases.
 - (iv) The Secured Lenders, Marwit and the Released Directors irrevocably and unconditionally waive, release and discharge with prejudice the Debtors with respect to all matters arising out of or related to the Debtors or their bankruptcy cases.
 - (v) The Committee, the Debtors, the Secured Lenders, Marwit, and the Released Directors all agree to a waiver of section 1542 of the California Civil Code and any similar statute of another state.
- (f) Plan of Liquidation. The terms of the Global Settlement Agreement are to be implemented through a plan of liquidation consistent with the terms of the Global Settlement Agreement (the “Plan”). The Plan shall provide for an anticipated distribution to unsecured creditors of at least \$600,000 and will provide for the separate classification and subordination of the Sub-Debt Claims to the class of general unsecured claims.
- (g) Extension of Challenge Deadline.
- (i) The Challenge Deadline shall be extended indefinitely until its expiration on (i) the Settlement Effective Date or (ii) thirty (30) days following the occurrence of a Termination Event, subject to further extension by agreement of the Committee and Fifth Street or further order of the Bankruptcy Court.
 - (ii) The Committee acknowledges that notwithstanding the extension of the Challenge Deadline, the Secured Lenders’ secured claims arising under the Senior Lien Credit Agreement and the Junior Lien Credit Agreement (together, the “Secured Claims”) are valid, properly perfected, enforceable and unavoidable with respect to and in all the Debtors’ assets of any kind except: (a) the Estate Claims and (b) the Debtors’ rolling stock.
 - (iii) Fifth Street as administrative agent and the Secured Lenders, as lenders, acknowledge that the Secured Claims were satisfied on the Closing Date.
- (h) Marwit Settlement.

- (i) Marwit Settlement Effective Date. The settlement with Marwit shall take effect upon the Approval Order becoming an order (a) as to which (i) the time to or the right to appeal from or to seek reconsideration, review or rehearing or petition for certiorari has expired; (ii) the time to file such an appeal or petition is not stayed or extended and (iii) no appeal or petition for reconsideration, review, rehearing or certiorari has been filed or (b) as to which no stay of the Approval Order has been issued by any court of competent jurisdiction. (the “Marwit Settlement Effective Date”).
- (ii) Marwit Payment. The Debtors’ shall pay \$300,000 to Marwit (the “Marwit Payment”) in full and complete satisfaction of any and all claims against and/or interests in the Debtors that Marwit may have, including, but not limited to, the Filed Claims and any other claim or interest listed in the Debtors schedules (collectively, the “Marwit Claims and Interests”).
- (iii) Claim Waiver. The Marwit Claims and Interests shall be expunged from the claims register immediately upon Marwit’s receipt of the Marwit Payment.
- (iv) Dismissal of Litigation. Marwit shall (i) dismiss the Equitable Subordination Complaint, the Orange County Litigation (together with Fifth Street) and the Indemnification Claim, each with prejudice and (ii) withdraw the Stay Relief Motion with prejudice.
- (v) Director Releases. The Released Directors irrevocably and unconditionally waive, release and discharge with prejudice each other with respect to all matters arising out of or related to the Debtors or their bankruptcy cases.
- (vi) Marwit Releases. Marwit and Chris Britt irrevocably and unconditionally waive, release and discharge with prejudice Debtors, Fifth Street, the Secured Lenders, the Director Defendants and the Released Directors with respect to all matters arising out of or related to the Debtors or their bankruptcy cases. This release shall not affect Marwit’s or Britt’s claims against Twin City Fire Insurance Company or The Hartford Financial Services Group for coverage related to certain lawsuits set forth in the Global Settlement Agreement
- (vii) Release of Marwit. The Debtors, Fifth Street, the Secured Lenders, the Director Defendants and the Released Directors irrevocably and unconditionally waive, release and discharge with

prejudice Marwit and Britt with respect to all matters arising out of or related to the Debtors or their bankruptcy cases.

(viii) Section 1542 Waiver. The Debtors, the Secured Lenders, Marwit, the Directors and the Released Directors all agree to a waiver of section 1542 of the California Civil Code and any similar statute of another state.

(i) Support Agreement. Each of the Parties agrees to take, or refrain from taking, certain actions in connection with efforts to obtain approval of this Motion, and confirmation of the Plan.

26. The foregoing is intended only as a summary, and is qualified in all respects by reference to the actual terms of the Global Settlement Agreement. To the extent the foregoing is inconsistent with the terms of the Global Settlement Agreement, the Global Settlement Agreement controls.

RELIEF REQUESTED

27. Pursuant to Bankruptcy Rule 9019, the Committee respectfully requests that this Court enter an order approving the terms and conditions of the Global Settlement Agreement attached as **Exhibit A** hereto, and authorizing the Committee and/or the Debtors, as applicable to take any and all actions necessary to effectuate the Global Settlement Agreement.

28. The Debtors fully support the relief requested by this Motion.

BASIS FOR RELIEF REQUESTED

29. The Court has the discretionary authority to approve a settlement under Bankruptcy Rule 9019(a). *See Protective Comm. of Stockholder of TMT Trailer Ferry, Inc. v Anderson (In re TMT Trailer Ferry, Inc.)*, 390 U.S. 414, 424 (1968), *on remand, TMT Trailer Ferry, Inc. v Kirkland*, 471 F.2d 10 (5th Cir. 1972). “On motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Whether to approve a compromise or settlement is a matter within the sound

discretion of the Court. *See Am. Employers Inc. Co. v. King Res. Co.*, 556 F.2d 471 (10th Cir. 1977).

30. When determining whether to approve a proposed settlement, courts in the Third Circuit consider the following factors:

- (a) the probability of success in litigation;
- (b) the likely difficulties in collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (d) the paramount interest of the creditors.

See Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3rd Cir. 1996); *see also In re TMT Trailer Ferry, Inc.*, 390 U.S. at 424–25. This standard balances the risks and benefits associated with pursuing a potential claim against the costs associated with the proposed settlement. *Id.* The settlement need not be the best that a party could have achieved, but need only fall “within the reasonable range of litigation possibilities.” *In re Telephone Commc’ns, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994). As demonstrated herein, the proposed Global Settlement Agreement satisfies this standard.

31. The disputes, including the Orange County Litigation, the Equitable Subordination Action and the other contested matters in the Debtors’ bankruptcy cases, have already proven to be prohibitively expensive and time-consuming, and every indication is that continued litigation between the Parties will only result in additional millions being expended by the Parties to complete discovery and prepare for hotly-contested trials.

32. While each of the Parties believe they would prevail in their respective litigation, victory is far from certain. Moreover, any judgment rendered in favor of a Party at the

conclusion of any of the trials is almost certain to be appealed by the opposing Party, leading to further expenditures of time and money and continued uncertainty.

33. Moreover, the central disputes in the Orange County Litigation and the Equitable Subordination Action involve claims that are subsumed within the Estate Claims. The Committee believes that it is the proper party to pursue the Estate Claims, which will require the Court to determine what party is best suited to pursue those claims. As evidenced by the positions asserted with respect to the Stay Relief Motion, deciding which Party has standing to pursue the Estate claims will be highly contested.

34. Further, assuming the Committee or a litigation trustee is granted exclusive standing to pursue and resolve the Estate Claims, it would need to take the necessary procedural steps to intervene in the Orange County Litigation and the Equitable Subordination Action. These procedural steps, along with the costs of retaining California counsel and/or transferring the Orange County Litigation to Delaware will only serve to further increase the costs to the Debtors' estates and delay the resolution of the claims, at the expense of the Debtors' remaining creditors. By compromising and settling the Estate Claims now as part of the Global Settlement Agreement, the Parties can timely achieve certainty in respect of their obligations and avoid the time and expenses of litigation.

35. Finally, the compromise contained within the Global Settlement Agreement will facilitate the Debtors' exit from bankruptcy through a plan of liquidation. Without approval of this compromise, the Debtors likely would seek to pursue confirmation of a non-consensual plan of liquidation that transfers the Estate Claims to a Liquidating Trust or otherwise convert the case to chapter 7. The Committee is not certain that the Debtors' remaining assets would be

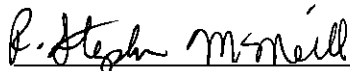
sufficient to fund the administrative expense of remaining in chapter 11 even for a short time. Nonetheless, any newly appointed trustee and his or her counsel would need to incur additional costs and spend additional time to get up to speed on the Estate Claims, resulting in wasted resources and a potentially dramatic, if not complete, reduction in recoveries to the Debtors' remaining creditors.

36. Accordingly, the settlement satisfies the standards enunciated by the Third Circuit Court of Appeals in *Martin* and the Global Settlement Agreement should be approved in all respects.

WHEREFORE, the Committee respectfully requests that this Court enter an order consistent with the Global Settlement Agreement approving the Global Settlement Agreement and granting such other and further relief as the Court may deem just and proper, either at law or in equity.

Dated: September 25, 2012
Wilmington, Delaware

POTTER ANDERSON CORROON LLP



Laurie Selber Silverstein (DE Bar No. 2396)

Jeremy W. Ryan, Esq. (DE Bar No. 4057)

R. Stephen McNeill (DE Bar No. 5210)

Hercules Plaza, 6th Floor

1313 North Market Street

Wilmington, DE 19899

Telephone: (302) 984-6000

Facsimile: (302) 658-1192

Email: lsilverstein@potteranderson.com

jryan@potteranderson.com

rmcneill@potteranderson.com

*Counsel for the Official Committee of Unsecured
Creditors*