

USA LLP (“Deloitte”), and "John Doe 1" through "John Doe 20" (collectively, the "Doe Defendants" and with Deloitte and the Individual Defendants, collectively, the “Defendants”), alleges the following based on its personal knowledge and public information including documents and announcements, public press releases, reports and information readily available on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

OVERVIEW OF ACTION

1. This is an action arising out of a \$130 million private placement of debt securities (the “Debt Offering”) in November 2004 pursuant to which Levitz Home Furnishings, Inc. (“LHFI”) issued certain bonds (the “Bonds”) seeking damages under the Securities Exchange Act of 1934, 15 U.S.C. §§78, *et seq.* (the “Exchange Act” or the “1934 Act”) as well as the common law for fraud, misrepresentation and negligence sustained as a result of the Defendants' conduct complained of herein.
2. Plaintiff is the beneficial holder of the rights, claims and choses in action in respect of \$19 million in par value Bonds¹ purchased at various times in reliance on Defendants' misrepresentations about the financial condition, asset value, goodwill and business strategy and execution of LHFI.

¹ The Plaintiff purchased \$7 million Bonds prior to the discovery of the events complained of herein, as well as an additional \$12 million Bonds together with all rights, claims and choses in action related thereto.

3. LHFII, the Defendants and others engaged in a scheme to artificially inflate and misreport the value of LHFII's assets and otherwise provided information pertaining to LHFII's financial condition which included material misrepresentations and omitted material information, and made other disclosures pertaining to LHFII's financial and business affairs to the Plaintiff and others which were false and misleading with the intent that the Plaintiff and others would rely on such information in deciding to participate in the Debt Offering (the "Scheme").
4. Despite the illusion created by the Defendants, LHFII was in significant financial distress at the time of the Debt Offering.
5. Less than one month after the closing of the Debt Offering, and even before it had paid the first coupon on the Bonds, LHFII announced that it was deeply insolvent and had a shortfall of approximately \$40 million.
6. Less than one year after the Debt Offering closed, on or about October 11, 2005, LHFII commenced a voluntary bankruptcy case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to Section 27 of the 1934 Act (15 U.S.C. §78aa) and 28 U.S.C. §1331. The claims asserted herein arise under Section 10(b) of the 1934 Act (15 U.S.C. §78j (b)) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5), and under the common law for fraud, misrepresentation and negligence.

8. Venue is proper in this District pursuant to Section 27 of the 1934 Act (15 U.S.C. §78aa) and 28 U.S.C. §1391.

9. In connection with the acts and conduct complained of herein, Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mails and the facilities of the national securities exchanges.

PARTIES

10. Plaintiff Bay Harbour is a Delaware limited liability company, which is headquartered in New York City and invests, *inter alia*, in debt and equity based on fundamental merit.

11. Defendant Carothers was the Chairman and Chief Executive Officer of LHFI at all relevant times and resigned shortly after the Debt Offering closed.

12. Defendant Scott was the Chief Operating Officer of LHFI at all relevant times.

13. Defendant Colreavy is the Chief Financial Officer of LHFI. Prior to becoming the CFO, Colreavy was LHFI's Senior Vice President-Finance and at all relevant times was CFO or Senior Vice President-Finance.

14. Defendant Webber was Senior Vice President-General Counsel of LHFI at all relevant times.

15. Defendant Carleton was LHFI's Vice President of Customer Service & Store Operations at the time of the Debt Offering, and was promoted to Chief Information and Services Officer in January, 2005 and was Vice President

Customer Service & Store Operations or Chief Information and Services Officer at all relevant times.

16. Defendant Matthews was LHFI's Non-Executive Chairman of the Board and chairman of the Real Estate and Compensation Committees and a member of the Audit Committee at all relevant times.

17. Defendant Deloitte is part of Deloitte Touche Tohmatsu, an organization of member firms worldwide that provide professional services and advice in four professional areas—audit, tax, consulting, and financial advisory services. Deloitte was LHFI's accounting firm at all relevant times.

FACTS

18. In 2004, LHFI's true financial condition was dire and LHFI was in urgent need of a cash infusion to refinance existing debt, and the Defendants decided to seek third party funding for LHFI from the capital markets through the Debt Offering.

19. In order to induce the Plaintiff and others to invest in the Debt Offering, LHFI and the Defendants touted purportedly positive and successful, but ultimately false and misleading information contrived and developed by the Defendants to further the Scheme and create the illusion of financial viability to conceal LHFI's dire financial condition.

20. By engineering and engaging in the Scheme and fraudulently concealing LHFI's true dire financial condition, the Individual Defendants, among other things, hoped to ensure the continuation of their highly-compensated

employment by LFHI and obtain substantial salary increases and large bonuses and to artificially prop up the value of LHFI's common stock.

21. Defendant Carothers's stated base compensation for 2003 was \$16,923, for 2004 it was increased to \$429,231, for 2005, it was increased to \$511,538 and he received a bonus of \$200,000. In addition, on information and belief, Defendant Carothers has or at the time of the Debt Offering had common stock and/or options to purchase common stock of LHFI
22. Defendant Scott's stated base compensation for 2004 was \$119,231. For 2005, it was increased to \$511,538 and he received a bonus of \$150,000. In addition, on information and belief, Defendant Scott has or at the time of the Debt Offering had common stock and/or options to purchase common stock of LHFI.
23. Defendant Colreavy's stated base compensation for 2005 was approximately \$50,000 greater than the previous year and she received a bonus for that year of \$75,000. In addition, on information and belief, Defendant Colreavy has or at the time of the Debt Offering had common stock and/or options to purchase common stock of LHFI.
24. Defendant Webber's stated base compensation was also increased in 2005 and he received a bonus of \$65,000. In addition, on information and belief, Defendant Webber has or at the time of the Debt Offering had common stock and/or options to purchase common stock of LHFI. .
25. In connection with the Scheme, Deloitte knowingly or recklessly issued false and misleading audit reports certifying LHFI's financial results, even

though Deloitte knew, or recklessly disregarded, that LHFI's financial statements were false and misleading and did not conform with Generally Accepted Accounting Procedures ("GAAP").

26. As detailed below, at the time Deloitte issued its unqualified audit opinions on LHFI's 2003 and 2004 financial statements, numerous red flags existed to put it on notice of the fraud and misrepresentations complained of herein and Deloitte knew or should have known of the fraud and misrepresentation complained of herein.
27. Moreover, Deloitte knew of or recklessly disregarded the existence of the activities of LHFI and the Individual Defendants in furtherance of the scheme to falsely state LHFI's financial condition, and perpetuate false and misleading statements of the value of LHFI's assets and financial condition.
28. Had Deloitte conducted its audits of LHFI's financial statements in accordance with Generally Accepted Auditing Standards ("GAAS"), it would have been unable to complete its audits due to the absence of effective internal controls system, the lack of substantiating and/or independently verifiable information pertaining to the LHFI's financial condition, and the valuation of its assets.
29. The serious flaws in LHFI's internal controls and accounting practices were a rampant and persistent feature of LHFI's business operations for many years, calling into question not only Deloitte's unqualified audit opinions for 2003 and 2004, but also, LHFI's unaudited financial statements for the preceding years of 2001, 2002 as well.

30. Deloitte's materially false and misleading audit reports certifying LHFI's financial statements for fiscal years 2003 and 2004 allowed the LHFI and the Individual Defendants to carry out the Scheme and perpetrate the fraud against the Plaintiff. Indeed, the materially false and misleading audit opinions contributed substantially to the perpetuation of the overstatement of the soundness of LHFI's financial condition and overvaluation of its assets in connection with the Debt Offering.
31. In order to stave off the undisclosed, impending demise of LHFI in late 2004, and hence to protect and bolster their own compensation and the value of LHFI stock, the Individual Defendants, Deloitte, and others participated in the Scheme and fraudulently misrepresented LHFI as a healthy, viable, concern in order to induce Plaintiff and others to participate in the Debt Offering.

The Materially False and Misleading Offering Circular

32. The November 9, 2004 private placement for the Debt Offering included the following: (a) \$100 million of 12% Senior Secured Class A Notes due 2011 and (b) \$30 million of 15% Senior Secured Class B Notes due 2011, together with 30,000 warrants to purchase common stock.
33. Investments in the Debt Offering were solicited through an Offering Circular dated October 15, 2004 (the "OC"). The Debt Offering was not registered, and the OC was intended for and provided only to accredited investors.

34. The OC was prepared under the direction and with the approval of the Individual Defendants and with the assistance of Deloitte in furtherance of the Scheme.
35. The OC outlined the proposed Debt Offering, purporting to describe LHFI and its existing and projected business, and purporting to represent how proceeds of the Debt Offering were to be used.
36. The OC also included, among other things, financial statements (including a balance sheet, cash flows, and other similar financial information) (collectively, the "Financial Statements") which were audited by Defendant Deloitte. In the OC (at page F-2), Deloitte certified the Financial Statements:
- A. We have audited the accompanying consolidated balance sheets of Levitz Home Furnishings, Inc. and Subsidiaries (collectively, the "Company") as of March 31, 2004 and 2003, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended March 31, 2004. . . . ***Our responsibility is to express an opinion on these consolidated financial statements based on our audits.***
 - B. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. *Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement.* An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. ***An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.***
 - C. ***In our opinion, such consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company at March 31, 2004***

and 2003, and the consolidated results of their operations and their cash flows for each of the three years in the period ended March 31, 2004, in conformity with accounting principles generally accepted in the United States of America. (emphasis added).

37. Never the less and unknown to the Plaintiff at the time of the Debt Offering, the OC, the Financial Statements and the information contained therein was false and misleading about the financial condition of and business prospects for LHFI.
38. In particular, in the OC the Defendants fraudulently and materially overstated the value of the Leasehold Interests (defined below) and of LHFI's goodwill and fraudulently and materially misrepresented LHFI's proposed business plan. In the OC, the Defendants also made material misrepresentations and omissions with respect to the relationship between LHFI and its vendors, LHFI's sales history, and the financial viability of LHFI's stores.
39. LHFI's obligations in respect of the Bonds were secured by substantially all of the assets of LHFI and its subsidiaries, except certain leasehold interests for Levitz and Seaman's furniture stores (collectively, the "Leasehold Interests"), which were subject to a negative pledge, pursuant to which, among other things, LHFI agreed not to encumber the Leasehold Interests. Pursuant to an Inter-Creditor Agreement, the security interests granted in respect of the Bonds was subordinate to a bank facility.

40. LHFI's purported equity in the Leasehold Interests, if as great as represented by the Defendants, would have provided cash flow to, among other things, service payments on the Bonds and other debt.
41. In the offering materials for the Debt Offering and again at a subsequent meeting, the Defendants represented that the Leasehold Interests had a value of over \$73 million. In truth, the Leasehold Interests had a value of less than \$45 million.
42. In the OC (at F-3) (and at other times) the Defendants represented that the value of the net Leasehold Interests was approximately \$73 million as of June 2004.
43. In order to protect that purported equity in the Leasehold Interests, the OC and an indenture that accompanied it contained a negative covenant that assured that those Leasehold Interests would not be encumbered to the detriment of the holders of the Bonds. The represented value of the Leasehold Interests as well as the negative covenant was a material part of the Debt Offering.
44. Deloitte audited the value of the Leasehold Interests as represented in connection with the Debt Offering, and Plaintiff relied on the presumed accuracy of that representation.
45. The value of LHFI's Leasehold Interests was in fact materially misrepresented and overstated in the OC (as well as in other publicly available information). The overstatement came to light following the November 9, 2004 closing, when LHFI, with no explanation whatsoever, reduced the stated value

of its Leasehold Interests from approximately \$73 million to approximately \$48 million as of March 31, 2005.

46. LHF I's restatement of the value of its leasehold interests came amid an extraordinary rise in real estate and leasehold values generally and was wholly inconsistent with what an investor would ordinarily expect during that time period.

47. Deloitte, as LHF I's auditor, and each of the other Defendants, knew or should have known of the foregoing misrepresentations.

48. Furthermore, in the audited financial statements attached to the OC, Defendants misrepresented that LHF I had goodwill with a value of \$90,466,000 as of the March 31, 2003, and June 30, 2004.

49. According to the OC (F-9),

Effective April 1, 2002, [LHF I] adopted Statement of Financial Accounting Standards ("SFAS") No. 142, Goodwill and Other Intangible Assets, which established new accounting and reporting requirements for goodwill and other intangible assets. SFAS No. 142 requires that goodwill amortization be discontinued and replaced with periodic tests of impairment.

Based upon management's evaluation of its fair value completed when SFAS 142 was adopted in fiscal 2003, [LHF I] concluded that there was no impairment of its goodwill. [LHF I] also performed its annual evaluation of its goodwill in the fourth quarters of fiscal 2004 and 2003, and, based on an independent evaluation of its fair value, concluded that there was no impairment of its good will. (emphasis added).

50. In fact, and despite these representations, LHF I's goodwill was reported as not have any value as of March 31, 2005.

51. Deloitte, as LHF I's auditor, and each of the other Defendants, knew or should have known of the foregoing misrepresentations.

52. By overstating the value of the Leasehold Interests and goodwill, the Defendants created the illusion that LHFI was financially viable.

53. In fact, as latter discovered by, among other things, overstating the value of the Leasehold Interests and goodwill, the Defendants fraudulently concealed from the Plaintiff and other investors in the Debt Offering, LHFI's dire financial condition.

54. The OC also represented that LHFI had the following inherent strengths, on all of which Plaintiff materially relied:

- a. Store density;
- b. Strong brand name
recognition;
- c. Strong and diversified vendor
relationships;
- d. Superior customer service;
and
- e. A highly experienced
management team.

55. These representations were materially false, and Defendants knew or should have known them to be false when they were made.

56. Contrary to the Defendants' much-touted representations as to the strength and vitality of LHFI, and unbeknownst to the Plaintiff at the time of the Debt Offering, not only were LHFI's vendor relationships not strong as had

been represented by the Defendants, but in fact, as Defendants knew or should have known at the time, LHFI was actually on the verge of losing three of its top vendors due to LHFI's failure to make timely payment. This made it impossible for LHFI to fill orders and resulted in substantial backorders and cancellations. None of this was disclosed to investors.

57. In the OC, the Defendants further represented that, after the refinancing of debt, LHFI would employ a strategy going forward to further increase store density, reduce costs, increase comparable store sales, increase margins through directly imported furniture and increase sales through its website, Furniture.com. Plaintiff materially relied on these representations as well.

58. These representations were materially false and Defendants knew or should have known them to be false when they were made.

59. With no warning to the Plaintiff or other holders of Bonds, on March 11, 2005, just a few months after the closing of the Debt Offering, Carothers resigned as the Chairman of the Board and Chief Executive Officer of LHFI and shortly after, LHFI announced a business strategy that was radically different from what had been represented in the OC. On or about April 8, 2005, LHFI abruptly announced that it had decided to shut the entire Seaman's furniture store chain (which was owned by LHFI) and close the Seaman's stores and reopen half of them as Levitz stores.

60. Based on the foregoing, Deloitte improperly failed to issue a "going concern" warning.

61. All of the Defendants knew or should have known the contents of the OC, as well as the actual truth of the matters misrepresented therein.
62. The Defendants knew that the purpose of the OC was to induce Plaintiff and other accredited investors to participate in the Debt Offering and that in order to do so Defendants would need to misrepresent the financial condition of LHFI and its prospects.
63. The Defendants' wrongful acts described herein were willful and/or grossly negligent and intended to fraudulently induce Plaintiff and others to invest in the Debt Offering.
64. The material information that Defendants failed to disclose to Plaintiff was readily available to each of the Defendants and gives rise to a strong inference that the Defendants knew or recklessly disregarded that their representations were false and misleading.
65. Deloitte, in particular, misrepresented that it had conducted and completed an audit of the financial records of LHFI and that, in conducting that audit, it had properly and in accordance with ordinary and customary accounting practice and generally accepted auditing standards tested and audited the financial information reported in the OC and the Financial Statements attached thereto.
66. Deloitte, and the Individual Defendants knew or should have known in particular that the value of LHFI's Leasehold Interests and goodwill were materially overstated.

67. But for Defendants' misrepresentations and omissions contained in the OC, Plaintiff would not have participated in the Debt Offering.

The False "Road Show" and Falsely Stated Earnings

68. On October 22, 2004, in furtherance of the Scheme, LHFI, at the direction of and with the assistance of the Defendants, held a "road show" in New York (the "NY Road Show") to tout the purported financial strength of LHFI. The Plaintiff attended the "road show" telephonically.

69. The "road show" was attended by, among others, Defendant Colreavy, Defendant Scott, and Defendant Carothers who highlighted and amplified the misrepresentations in the OC and made other materially false statements.

70. At the NY Road Show Defendants Colreavy, Scott, and Carothers represented that LHFI had strong relationships with its vendors. However, as the Defendants knew or should have known at the time it was made, that representation was also materially false.

71. In truth, and as was known or should have been known by the Defendants, at the time of the Debt Offering, LHFI was dependent on a limited number of vendors and had poor relationships with all of them. LHFI's furniture orders were inconsistent, and, as a result, it was unable to obtain preferential pricing and actually paid more for furniture than its competitors.

72. Moreover, because of its spotty inventory, LHFI would make sales and then be unable to deliver, driving away customers and further decreasing its sales. Defendants knowingly failed to disclose that LHFI lacked any effective

inventory management program and was forced to shut down 20 stores within a nine month period as a result of lost sales.

73. Indeed, with the intent of deceiving Plaintiff and other prospective investors, Defendants knowingly failed to disclose that many other of LHFI's stores were on the verge of closing before the Debt Offering closed, and that, in fact, at least 20 of its stores had negative cash flows during the preceding year.

74. Defendants also knowingly failed to disclose that they lacked the expertise and experience to operate LHFI's stores. Specifically, they failed to disclose that LHFI lacked a modern accounting system and, as a result, lacked the ability to prepare accurate monthly profit and loss statements.

75. But for Defendants' misrepresentations and omissions at the NY Road Show, Plaintiff would not have participated in the Debt Offering.

76. The Defendants' wrongful acts described herein were willful and/or grossly negligent and intended to fraudulently induce Plaintiff and others to invest in the Debt Offering.

77. The material information that Defendants failed to disclose to Plaintiff was readily available to each of the Defendants and gives rise to a strong inference that the Defendants knew or recklessly disregarded that their representations were false and misleading.

78. As a direct result of the Defendants' fraudulent and deceitful conduct, the Plaintiff has been damaged as set forth herein.

LHFI's Rapid Decline and Bankruptcy

79. In April 2005, only five months after the Debt Offering and just days before the first coupon on the Bonds was scheduled to be paid by LHFI, Plaintiff was advised that LHFI was experiencing a liquidity crisis and needed an additional \$40 million to stay solvent.
80. Pursuant to covenants in the Debt Offering, among other things, LHFI could not incur any debt senior to the Series A Notes without approval of a majority of the holders of the Bonds. Plaintiff and the other holders of the Bonds were asked to agree to waive certain covenants. Plaintiff and other bond holders requested a diligence period during which they would be provided with an explanation of how the business had deteriorated so rapidly in a matter of months. Plaintiff was advised that a diligence meeting would be arranged but that, due to the impending need for additional liquidity, would have to be delayed until after the consent was granted. Subsequently, Plaintiff was repeatedly refused such a meeting.
81. On October 11, 2005, LHFI commenced a voluntary bankruptcy case under chapter 11 of title 11 of the United States Code, 11 U.S.C §§ 101, *et seq.*
82. At or about that time, the magnitude of Defendants' fraud, misrepresentations, and omissions started to become apparent.

Plaintiff's Fraudulently Induced Investment

83. Despite Defendants painting a grossly misleading and inflated picture of LHFI's finances and future prospects in the OC and during the Road Show, the actual condition of its balance sheet and future prospects were less than bleak-- LHFI was on the verge of implosion.
84. As a result of, and in reliance on Defendants' misrepresentations, Bay Harbour participated in the Debt Offering.
85. Had Defendants not misrepresented the financial condition of LHFI, Plaintiff would not have participated in the Debt Offering.

Plaintiff's Mitigation of Damages

86. Effective as of January 30, 2006, a Delaware Limited Liability Corporation, PLVTZ, LLC ("PLVTZ"), proffered a tender offer to the Plaintiff and the other holders of the Class A Bonds, pursuant to which, among other things, PLVTZ offered to purchase for cash all of the outstanding Class A Bonds based on the following conditions: holders agreeing to simply tender their Class A Bonds would receive \$50.00 per \$1,000 principal face amount; holders agreeing to tender and waive any claims against the underwriter of the Debt Offering, Jefferies, would receive an additional payment of approximately \$40.00 per \$1,000 principal face amount.
87. PLVTZ also paid into a trust \$1,000,000 as collateral for perfected security interests that the holders had as a result of their ownership of the

Bonds, which equates to an additional \$10.00 per \$1,000 principal face amount of the Bonds.

88. Accordingly, the total possible consideration available to the Bond holders was \$100.00 per \$1,000 principal face amount of the Bonds, less fees and expenses of the tender offer.

89. Plaintiff accepted the full tender offer, thereby mitigating some of their damages.

90. As a direct result of Defendants' misrepresentations, deceit and negligence, Plaintiff, because of its mitigation received only a fraction of what it would have received in respect of the Bonds but for the conduct complained of herein

FIRST CLAIM FOR RELIEF

For Violation of §10(b) of the 1934 Act and Rule 10b-5

Against All Defendants

91. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "90" above as if set forth at length herein.

92. Defendants disseminated or approved the false statements specified above, which they knew were misleading, or deliberately disregarded their misleading and false nature in that the statements contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

93. Plaintiff did not know, nor with the exercise of reasonable diligence could have known, the falsity of the representations set forth above
94. Plaintiff reasonably relied on Defendants' misrepresentations and would not have participated in the Debt Offering but for Defendants' fraud and misrepresentations.
95. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:
- i. Employed devices, schemes, and artifices to defraud;
 - ii. Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - iii. Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff.
96. As a direct result of Defendants' foregoing violations, Plaintiff has suffered damages in an amount not less than \$19 million to be determined at trial.

SECOND CLAIM FOR RELIEF

For Fraud Against All Defendants

97. Plaintiff repeats and realleges the allegations contained in paragraphs “1” through “96” above as if set forth at length herein.
98. Defendants circulated the OC in order to induce Plaintiff and others to participate in the Debt Offering.
99. The OC contained fraudulently inflated and false and misleading information regarding, *inter alia* the value of LHFI’s leasehold interests, LHFI’s financials and LHFI’s strengths and its business plan that Defendants knew was materially false and omitted material information and made further material misrepresentations the NY Road Show.
100. Plaintiff justifiably relied on the fraudulent information disseminated by Defendants in determining to participate in the Debt Offering.
101. As a direct result of Defendants’ fraud, Plaintiff has suffered damages in an amount not less than \$19 million to be determined at trial.

THIRD CLAIM FOR RELIEF

For Negligent Misrepresentation and Professional Negligence Against Deloitte

102. Plaintiff repeats and realleges the allegations contained in paragraphs “1” through “101” above as if set forth at length herein.

103. Deloitte certified that the financial statements that it prepared for LHFI were true and accurate and in compliance with GAAS and GAAP.
104. Plaintiff reasonably relied on Deloitte's certification in deciding to participate in the Debt Offering.
105. Deloitte knew and intended that its certification of LHFI's financial statements would be included in the OC and would be relied upon by prospective investors in the Debt Offering, including Plaintiff.
106. The financial statements in the OC contained material misrepresentations, and Deloitte's audit was not performed in compliance with GAAS and GAAP.
107. Deloitte was negligent in its certification of the financial statements in the OC.
108. As a direct result of Deloitte's negligence and negligent misrepresentations, Plaintiff has suffered damages in an amount not less than \$19 million to be determined at trial.

FOURTH CLAIM FOR RELIEF

For Negligence Against Individual Defendants

109. Plaintiff repeat and realleges the allegations contained in paragraphs "1" through "108" above as if set forth at length herein.
110. As Directors and Officers of LHFI, the Individual Defendants owed Plaintiff a duty to confirm that the financial condition of LHFI was not misrepresented in the OC or at the road show.

111. The Individual Defendants breached their foregoing duty to Plaintiff by allowing the value of LHFI's leasehold interests, financials, and business implementation and strategy to be misrepresented.

112. As a direct result of the Individual Defendants' negligence, Plaintiff have suffered damages in an amount not less than \$ 19 million to be determined at trial.

WHEREFORE, Bay Harbour hereby requests that the Court enter judgment in its favor and against the Defendants as follows:

A. On the first claim for relief, judgment for Bay Harbour in the amount of \$19 million, plus costs and attorneys' fees;

B. On the second claim in the for relief, , judgment for Bay Harbour in the amount of \$19 million, plus costs and attorneys' fees;

C. On the third claim for relief, judgment for Bay Harbour in the amount of \$19 million, plus costs and attorneys' fees;

D. On the fourth claim for relief, judgment for Bay Harbour in the amount of \$19 million, plus costs and attorneys' fees; and

E. On all claims for relief, for punitive damages and such other further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

Dated: New York, New York
March 30, 2006

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