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American College of Bankruptcy – Seventh Circuit Regional Educational Program

The Grand Inquisitor in Chapter 11 – The Examiner

Source Documents

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[1] Excerpt is from the Enron Examiner's Final Fee Application.

[2] The document is the motion only. No discharge order was found on the electronic docket.

Timeline of Key Examiner Events In Select Large Chapter 11 Cases

	Enron	Worldcom	Refco	New Century
Case Number	01-16034	02-13533	05-60006	07-10416
Court	Bankr. S.D.N.Y.	Bankr. S.D.N.Y.	Bankr. S.D.N.Y.	Bankr. D. Del.
Examiner	Neal Batson	Dick Thornburgh	Joshua R. Hochberg	Michael J. Missal
Party Initially Requesting Examiner	Various Trading Creditors	U.S. Trustee	U.S. Trustee	U.S. Trustee
Petition Date	12/2/2001	7/21/2002	10/17/2005	4/2/2007
Examiner Motion First Filed	1/22/2002	7/22/2002	1/27/2006	4/17/2007
Examiner Order Entered	4/8/2002 12/6/2002	7/22/2002	3/16/2006	6/1/2007
Examiner Appointment Approved by Court	5/24/2002	8/6/2002	3/22/2006	6/7/2007
Examiner Report(s) Filed	9/21/2002 (1st) 1/21/2003 (2nd) 4/7/2003 (NEP) 6/30/2003 (3rd) 11/42003 (Final)	11/4/2002 (1st) 6/9/2003 (2nd) 1/26/2004 (Final)	4/16/2007	11/21/2007 (Interim) 2/29/2008 (Final)
Examiner Discharge Order(s) Entered	12/17/2003 12/18/2003 2/19/2004 10/5/2004	[Order Not Found] [Motion filed 8/30/2004]	8/16/2007	5/1/2009
Chapter 11 Plan(s) Filed	7/11/2003 9/18/2003 11/13/2003 12/17/2003 1/4/2004 1/12/2004	4/14/2003 5/16/2003 9/16/2003 9/19/2003	9/14/2006 12/26/2006	2/2/2008 3/18/2008 4/23/2008 9/20/2009
Chapter 11 Plan Confirmed	7/15/2004	10/31/2003	12/26/2006	12/4/2009

Timeline of Key Examiner Events In Select Large Chapter 11 Cases

	Semcrude	Lehman Brothers	Washington Mutual	Tribune Company
Case Number	08-11525	08-13555	08-12229	08-13141
Court	Bankr. D. Del.	Bankr. S.D.N.Y.	Bankr. D. Del.	Bankr. D. Del.
Examiner	Louis J. Freeh	Anton R. Valukas	Joshua R. Hochberg	Kenneth N. Klee
Party Initially Requesting Examiner	U.S. Trustee	The Walt Disney Company	Equity Committee	Wilmington Trust Co.
Petition Date	7/22/2008	9/15/2008	9/26/2008	12/8/2008
Examiner Motion First Filed	8/12/2008	10/20/2008	6/8/2010	1/13/2010
Examiner Order Entered	9/10/2008	1/16/2009 1/21/2009 (Errata)	7/22/2010	4/20/2010
Examiner Appointment Approved by Court	10/14/2008	1/20/2009	7/28/2010	5/10/2010
Examiner Report(s) Filed	4/15/2009	2/8/2010 (Sealed) 3/11/2010 (Partially Sealed) 4/14/2010 (Unsealed)	9/7/2010 (Preliminary)	7/26/2010 (Sealed, Redacted) 8/3/2010 (Unsealed)
Examiner Discharge Order(s) Entered	7/27/2009 10/21/2009	7/13/2010	N/A	8/26/2010
Chapter 11 Plan(s) Filed	5/15/2009 7/13/2009 7/20/2009 8/25/2009 10/27/2009	3/15/2010 4/14/2010	3/26/2010 5/17/2010 5/22/2010 6/2/2010 6/14/2010 7/1/2010	4/12/2010 7/30/2010
Chapter 11 Plan Confirmed	10/28/2009	N/A	N/A	N/A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Case No. 01-16034 (AJG)
ENRON CORP., et al.,	:	Chapter 11
Debtors.	:	Jointly Administered

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ORDER PURSUANT TO 11 U.S.C. § § 1104(c) AND 1106(b)
DIRECTING APPOINTMENT OF ENRON CORP. EXAMINER

Several motions having been filed requesting the appointment of a trustee or an examiner in the above-captioned cases, and the Court having convened a conference among parties in interest, and movants and other parties in interests having subsequently met and conferred about the appointment of an examiner with certain powers in the Enron Corp. case, and the United States Trustee and the United States Securities and Exchange Commission having appeared as parties in interest, and after due deliberations and sufficient cause appearing therefor, it is

ORDERED that an Examiner be appointed for Enron Corp.; provided, however, that subject to the terms of this Order, the Enron Examiner shall have the authority to investigate and report on transactions involving not only Enron Corp., but also any entity controlled by Enron Corp. and any other debtor in these jointly administered cases; and it is further

ORDERED that the United States Trustee for the Southern District of New York (the "United States Trustee") shall appoint the Enron Examiner, subject to approval of this Court; and it is further

ORDERED that the Enron Examiner shall have the authority and power to investigate all transactions (as well as all entities as defined in the Bankruptcy Code and pre-petition professionals involved therein): (i) involving special purpose vehicles or entities created or structured by the Debtors or at the behest of the Debtors (the "SPEs"), that are (ii) not reflected on the Enron Corp. balance sheets, or that (iii) involve hedging using the Enron Corp. stock, or (iv) as to which the Enron Examiner has the reasonable belief are reflected, reported or omitted in the relevant entity's financial statements not in accordance with generally accepted accounting principles, or that (v) involve potential avoidance actions against any pre-petition insider or professional of the Debtors; and it is further

ORDERED that all of the Debtors and their professionals, including the captioned Debtor's direct and indirect affiliates and subsidiaries, any official committee and its professionals, and the Enron Examiner shall mutually coordinate and cooperate, and the Debtors shall provide the Enron Examiner all documents and information that the Enron Examiner deems relevant to discharge duties under this Order or as such duties may be expanded or limited by this Court; and it is further

ORDERED nothing contained in this Order shall diminish the powers and authority of any official Committee under the Bankruptcy Code; including the powers to investigate transactions and entities, commence contested matters and adversary proceedings, and object to claims; and it is further

ORDERED that the Enron Examiner, to the extent possible, shall avoid duplication of effort of Debtors and any official Committee in connection with investigations to be pursued; and it is further

ORDERED that nothing in this Order is intended to restrict this Court's ability to expand or limit the duties of the Enron Examiner appointed herein sua sponte, or prejudice or limit the ability of any party in interest to move this Court to expand or limit the duties of the Enron Examiner, upon motion and a hearing, or limit the investigation being undertaken by the Enron Examiner; and it is further

ORDERED that the Examiner shall have the power to waive, on an issue-by-issue basis, the attorney-client privilege of the Debtors' estates with respect to pre-petition communications relating to matters to be investigated by the Examiner hereunder. In making any such determination, the Examiner shall act in the best interests of the Debtors' estates after consultation with the Debtors and the Committee of Unsecured Creditors preserving the right in the Debtors and the Committee to make prompt objection to the Court on two business days' notice. Such waiver shall be a limited and not a general waiver; and it is further

ORDERED that the Enron Examiner shall not make any public disclosure concerning his/her deliberations, conclusions, recommendations or the nature and content of the report(s) he/she is preparing until such report(s) shall have been filed with the Court; provided, however, that the Enron Examiner may communicate non-privileged information to government entities, including among others, the SEC and the Department of Justice; and it is further

ORDERED that the Enron Examiner, if appropriate, include in a report (taking into account the absolute priority rule, the financial condition of the Debtors' estates and the need not to waste value available to creditors) whether or not there is a legal mechanism for holders (except entities affiliated with Debtors) of any equity interest in the Debtors to share in the Debtors' estates; and it is further

ORDERED that the Enron Examiner may retain counsel and other professionals pursuant to section 327 of the Bankruptcy Code, if he or she determines that such retention is necessary to discharge his or her duties; and it is further

ORDERED that the Enron Examiner and any professionals retained by he Enron Examiner pursuant to an order of this Court shall be compensated from the Debtors' estates pursuant to section 330 of the Bankruptcy Code and further orders of this Court; and it is further

ORDERED that the Enron Examiner shall have the duties, powers and responsibilities of an examiner under section 1106(b) of the Bankruptcy Code provided, however that the scope of the Examiner's duties, unless expanded or limited by further order of this Court, shall be limited to the investigations delineated herein and to the preparation of reports regarding such investigations as set forth in this Order; and it is further

ORDERED that the Enron Examiner shall be a "party in interest" under section 1109 with respect to matters that are within the scope of the duties delineated in this Order or as such duties may be expanded or limited by this Court, and shall be entitled to appear at hearings held in these cases and to be heard, at such hearings, with respect to matters that are within the Enron Examiner's duties; and it is further

ORDERED that the Enron Examiner's initial report shall be filed with this Court within 120 days of the entry of the Order approving the appointment of the Enron Examiner and shall file interim reports every 120 days thereafter or as otherwise ordered by the Court.

Dated: New York, New York
April 8, 2002

s/Arthur J. Gonzalez
HONORABLE ARTHUR J. GONZALEZ
U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	§	**Chapter 11**
	§	
ENRON CORP., et al.,	§	**Case No. 01-16034 (AJG)**
	§	
Debtors.	§	**Jointly Administered**
	§	
	§	

ORDER APPROVING THE SUPPLEMENTAL RECOMMENDATION OF NEAL BATSON, THE COURT-APPOINTED EXAMINER, WITH RESPECT TO SCOPE AND TIME FRAME OF THE EXAMINATION PURSUANT TO THE COURT'S ORDER DATED OCTOBER 7, 2002

Upon the: (i) Motion of Goldendale Energy, Inc. for an Order Directing Appointment of an Examiner for the Estate of National Energy Production Corporation ("NEPCO") Pursuant to 11 U.S. C. §§ 105 and 1104(c) dated August 2, 2002 (the "Goldendale Motion") (Docket No. 5559); (ii) Joinder by Banca Nazionale Del Lavoro, S.P.A. in Motion of Goldendale Energy, Inc. for an Order Directing Appointment of an Examiner for the Estate of NEPCO Pursuant to 11 U.S.C. §§ 105 and 1104(c) dated August 22, 2002 (Docket No. 6005); (iii) NEPCO's Objections to Motion of Goldendale Energy, Inc. for an order Directing Appointment of Examiner for the Estate of NEPCO dated August 23, 2002 (Docket No. 6019); (iv) Objection of Official Committee of Unsecured Creditors to Motion of Goldendale Energy, Inc. for an Order Directing Appointment of an Examiner for the Estate of NEPCO Pursuant to 11 U.S.C. §§ 105 and 1104(c) dated August 23, 2002 (Docket No. 6017); (v) Reply of Goldendale Energy, Inc. to the Objections of NEPCO and the Official Committee of Unsecured Creditors to Motion of Goldendale Energy, Inc. for an Order Directing Appointment of an Examiner for the Estate of NEPCO Pursuant to 11 U.S.C. §§ 105 and 1104(c) dated September 17,

2002 (Docket No. 6486); and (vi) the recommendation of Neal Batson, Court-Appointed Examiner in the bankruptcy case of Enron Corp. and its affiliates (the "Examiner") with respect to the scope and time frame for the examination of the issues raised in the Goldendale Motion as set forth in the statements (i) filed by the Examiner on November 11, 2002 and December 4, 2002 and (ii) on the record at the hearing on December 5, 2002, including statements concerning potential claims arising out of the disposition of assets by NEPCO (the "Recommendation"); and the Court, having reviewed the Recommendation, it is hereby

ORDERED that the Examiner's Recommendation is hereby approved; and it is

ORDERED that 120 days after the entry of this Order, the Enron Corp. Examiner shall file with the Court an Initial Interim Report (as defined in the Recommendation) with respect to the issues identified in Paragraphs 10 and 11 of the Recommendation; and it is

ORDERED that (i) NEPCO; (ii) Enron Corp.; (iii) the Official Committee of Unsecured Creditors; (iv) the United States Trustee; (v) the Examiner; (vi) Goldendale Energy, Inc.; (vii) Banca Nazionale Del Lavoro, S.p.A.; and (viii) TECO Power Services, Inc., its affiliates and its affiliated joint venture entities, if they choose to be heard, shall have twenty (20) days from the filing of the Initial Interim Report by the Examiner to recommend to the Court the scope and timing of the second phase of the examination, if any, with respect to NEPCO. Following the submission of such recommendations, this Court will determine whether a hearing on the recommendation(s) is necessary prior to

ruling on the scope and time frame of the second phase of the investigation, to the extent the Court determines that such second phase is necessary.

Dated: New York, New York
December 6, 2002

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY COURT

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11**
WORLDCOM, INC., et al.	:	**Cases No. 02-13533(AJG)**
	:	**(Jointly Administered)**
Debtors.	:	
	:	

ORDER GRANTING THE MOTION OF THE UNITED STATES TRUSTEE FOR THE APPOINTMENT OF AN EXAMINER

Upon the oral motion of the United States Trustee ("U.S. Trustee") this date to limit and shorten notice and upon the submissions of the U.S. Trustee filed on July 22, 2002, to consider the Motion of the United States Trustee for the Appointment of an Examiner (the "Examiner") in the above-captioned chapter 11 cases (the "Motion"); and after hearing the arguments of counsel this date on the record; the Court finds that the notice given, under all the circumstances herein, is appropriate; the Court further finds that the above-captioned debtors ("Debtors") have not objected to the relief sought, and in the Court's considered judgment based on the record this date, the Court is satisfied that it is appropriate to grant the Motion. Accordingly it is hereby

ORDERED, that the oral motion of the U.S. Trustee to limit and shorten notice is GRANTED; it is further

ORDERED, that the Motion Of The United States Trustee For The Appointment Of An Examiner is GRANTED, and the United States Trustee is directed to appoint an Examiner pursuant to 11 U.S.C. § 1104(c)(2); it is further

ORDERED, that the Examiner shall investigate any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the arrangement of the affairs of any of the Debtors by current or former management, including but not limited to issues of accounting irregularities. In conducting such investigation, the Examiner shall use best efforts to coordinate with, and avoid any unnecessary duplication of, any investigations conducted by the U.S. Department of Justice, the Securities and Exchange Commission ("SEC"), other governmental agencies, or the corporate monitor appointed by order of the United States District Court for the Southern District of New York ("Corporate Monitor"); it is further

ORDERED, that in addition to the responsibilities set forth above, and to the extent necessary in light of the ongoing efforts of the Debtors and the Corporate Monitor, the Examiner shall oversee the affairs of the Debtor to the extent necessary to preserve all records of the Debtor, regardless of their format, that may be necessary to assist the Examiner in the performance of his or her duties or for any lawful investigation by any agency of state or federal government; it is further

ORDERED, that the Debtors and all of the Debtors' affiliates, subsidiaries and other companies under their control are directed to fully cooperate with the Examiner in conjunction with the performance of any of the Examiner's duties; it is further

ORDERED, that neither the Examiner nor the Examiner's representatives or agents shall make any public disclosures concerning the performance of the Examiner's duties until the Examiner's report is filed with the court, except that the Examiner shall convey to the SEC,

Corporate Monitor, and the U.S. Department of Justice any information requested by them; it is further

ORDERED, that the Examiner shall prepare and file the report required by 11 U.S.C. § 1106(a)(4) within 90 days of the date of appointment unless such time shall be extended by order of the Court; and it is further

ORDERED, that nothing in this Order shall impede the right of the United States Trustee or any other party to request any other relief, including but not limited to the expansion of the Examiner's powers or appointment of a trustee.

Dated: July 22, 2002
New York, New York

s/Arthur J. Gonzalez
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
Refco Inc., et al.,	:	Chapter 11
	:	Case No. 05-60006 (RDD)
Debtors.	:	(Jointly Administered)

ORDER GRANTING THE MOTION OF THE UNITED STATES TRUSTEE
FOR THE APPOINTMENT OF AN EXAMINER

Upon the motion (the "Motion") of the United States Trustee pursuant to 11 U.S.C. 1104(c)(2) for the appointment of an examiner in the above-captioned cases; and adequate notice of the Motion having been given; and upon the responses, statements and objections to the Motion filed by the above-captioned debtors (the "Debtors"), the Official Committee of Unsecured Creditors (the "Creditors Committee"), and Bank of America, as agent; and the Court having held a hearing (the "Hearing") on the Motion on March 7, 2006; and upon due consideration, for the reasons stated by the Court in its bench ruling at the Hearing, sufficient cause appearing therefor, it is hereby

ORDERED:

1. The Motion is granted as provided herein, and the United States Trustee is directed to appoint an examiner (the "Examiner") pursuant to 11 U.S.C. § 1104(c)(2), subject to approval of this Court. No appointment made pursuant hereto shall be effective before March 14, 2006.

2. Subject to paragraph 3 hereof and further order of the Court, the Examiner is authorized to investigate and to report on any topic that might reasonably result in the assertion of a claim or right by

any of the Debtors' estates with the exception of any claim or right of Refco Capital Markets, Ltd. ("RCM").

3. The Examiner shall, before commencing any investigations hereunder, develop a work plan and budget for such investigations. The Examiner shall consult with the Debtors and the Creditors Committee in developing the work plan. The Debtors and the Creditors Committee shall cooperate with the Examiner in the development of the work plan and budget, and shall provide the Examiner with such information as the Examiner reasonably requests to determine: (a) the events that have transpired to date in these cases; (b) the issues that are appropriate for investigation; and (c) the status and progress of any other investigations into those issues that might already have been commenced. In preparing the work plan and budget, the Examiner shall be mindful of the general goal of avoiding duplication of existing investigations. The Examiner shall also take into account the status of pending governmental investigations in developing the work plan. If issues arise in connection with the development of the work plan and budget that the Examiner, the Debtors, and the Creditors Committee are unable to resolve, the parties may seek the resolution of those issues by the Court. If any of the Examiner, the Debtors, or the Creditors Committee believes that public disclosure of such dispute and/or the work plan and budget might be prejudicial to the Debtors' estates or to the course of future investigations, such party may request to proceed *in camera* or by motion filed under seal. The Examiner shall submit for Court approval the final work plan and budget prior to commencing any investigation.

4. In conducting these investigations, the Examiner shall use best efforts to coordinate with and

to avoid interference with any investigations being conducted by the Securities and Exchange Commission, the United States Department of Justice, the Commodities Futures Trading Commission, or other governmental agencies, and will follow a protocol to be established with the investigatory agencies for the sharing of information to the extent that such sharing benefits the Debtors' estates, and such sharing of information shall be subject to appropriate conditions to protect the Debtors' estates.

5. The Debtors and all of the Debtors' affiliates, subsidiaries and other companies under their control and the Examiner shall mutually coordinate and cooperate in connection with the performance of any of the Examiner's duties. The Debtors shall provide to the Examiner all non-privileged documents and information that the Examiner deems relevant to discharge the Examiner's duties under this Order. If the Examiner seeks the disclosure of documents or information as to which any of the Debtors assert a claim of privilege and the Examiner and the Debtors are unable to reach a resolution on whether or on what terms such documents or information should be disclosed to the Examiner, the matter may be brought before the Court for resolution.

6. Subject to (a) any applicable confidentiality agreement signed by the Creditors Committee and/or its advisors, and (b) the restrictions contained in the "Order Under 11 U.S.C. §1103(c) and Bankruptcy Rule 2004, Directing Production of Documents by Certain (i) Current Directors and Former Officers and Employees and (ii) Investors, Attorneys, and Accountants of Refco Inc." signed on December 5, 2005, the Creditors Committee shall provide the Examiner with access to all materials it has received in response to discovery heretofore authorized by the Court, and the Examiner and the Creditors Committee shall cooperate and coordinate their efforts to assure, to the extent possible, that

their investigations are not unduly duplicative.

7. Subject to the requirements for mutual cooperation and coordination set forth herein, nothing contained in this Order shall diminish the powers and authority of the Debtors or the Creditors Committee under the Bankruptcy Code or any trustee for RCM, including the powers to investigate transactions and entities, to commence contested matters and adversary proceedings, and to object to claims.

8. Until the Examiner has filed the Examiner's report or reports pursuant to 11 U.S.C. § 1106(4)(A), neither the Examiner nor the Examiner's representatives or agents shall make any public disclosures concerning the performance of the Examiner's duties, except in hearings before the Court. The Examiner may disclose information and reports to investigative agencies pursuant to the protocol to be developed under paragraph 4 hereof.

9. The Examiner may retain counsel and other professionals if he or she determines that such retention is necessary to discharge his or her duties, with such retention to be subject to Court approval under standards equivalent to those set forth in 11 U.S.C. § 327.

10. The Examiner and any professionals retained by the Examiner pursuant to any order of this Court shall be compensated and reimbursed for their expenses pursuant to the procedures established in the Final Order Under 11 U.S.C. §§ 105 and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (entered Dec. 13, 2005). Compensation and reimbursement of the Examiner shall be determined pursuant to 11 U.S.C. § 330, and compensation and reimbursement of the Examiner's professionals shall be determined pursuant to standards equivalent

to those set forth in 11 U.S.C. § 330.

11. The Examiner shall be a "party in interest" under 11 U.S.C. § 1109(b) with respect to matters that are within the scope of the duties delineated in this Order or as such duties may hereafter be modified by this Court, and shall be entitled to appear at hearings and be heard with respect to matters that are within the Examiner's duties.

12. Nothing in this Order shall impede the right of the United States Trustee or of any other party in interest to request any other lawful relief, including but not limited to the expansion or limitation of the scope of the Examiner's investigation.

Dated: New York, New York
March 16, 2006

/s/Robert D. Drain
UNITED STATES BANKRUPTCY COURT

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
	:	
NEW CENTURY TRS HOLDINGS, INC., a Delaware Corporation, et al.,	:	**Case No. 07-10416 (KJC)**
	:	
Debtors.	:	**Jointly Administered**

ORDER DENYING IN PART AND GRANTING IN PART MOTION OF THE UNITED STATES TRUSTEE FOR AN ORDER DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE, OR IN THE ALTERNATIVE, AN EXAMINER

This matter came before this Court for hearing on May 15, 2007, on the Motion of the United States Trustee for an Order Directing the Appointment of a Chapter 11 Trustee or, in the Alternative, an Examiner (the "Motion"). Due and sufficient notice of the Motion was given to interested parties in accordance with the Bankruptcy Code and Rules. This Court, having considered the evidence in the record and arguments of counsel, concluded that the United States Trustee had not proven by clear and convincing evidence that cause exists for the appointment of a chapter 11 trustee. The Court therefore denied the Motion insofar as it sought such an appointment under 11 U.S.C. § 1104(a)(1). Based upon the record, however, the Court found that grounds exist for the appointment of an examiner under 11 U.S.C. § 1104(c)(1), which provides that "if the court does not order the appointment of a trustee under this section, . . . on request of a party in interest or the United States Trustee, and after notice and a hearing, the court shall order the appointment of an examiner. . .if. . .such appointment is in the interests of creditors, any equity security holders, and other interests of the estate. . . ." The Court finds that the appointment of an examiner is in the interests of creditors, any equity security holders, and other interests of the estate.

Based on the foregoing and on the record in this case, it is hereby

ORDERED that:

1. The Motion is denied insofar as it seeks the appointment of a chapter 11 trustee for cause pursuant to 11 U.S.C. § 1104(a)(1), and granted, pursuant to 11 U.S.C. § 1104(c)(1), insofar as it seeks the appointment of an examiner;

2. The United States Trustee is directed to appoint an examiner (the "Examiner") pursuant to 11 U.S.C. § 1104(c)(1);

3. The Examiner shall: (a) investigate any and all accounting and financial statement irregularities, errors or misstatements, including but not limited to such irregularities, errors or misstatements that (i) gave rise to the announced need to restate the Debtors' financial statements for the first three quarters of 2006 and/or (ii) led the Debtors' management and Audit Committee to conclude that it was more likely than not that pre-tax earnings in the 2005 financial statements were materially overstated, and identify and evaluate any claims or rights of action that the estates might have arising from or relating to such irregularities, errors or misstatements, (b) investigate any possible post-petition unauthorized use of cash collateral by the Debtor,[1] and (c) otherwise

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[1]The hearing on the Motion was held on May 15, 2007. After submission of competing orders, the Court had further discussion on May 21, 2007 on the record with the parties; however, before any order memorializing the Court's ruling on the Motion, was entered, the U.S. Trustee, by letter dated May 25, 2007, requested the insertion of additional language in any order directing the appointment of an Examiner, which request was occasioned by statements contained in the Debtor's form 8-K, filed with the Securities and Exchange Commission on May 24, 2007. The Debtors, by letter of the same date, agreed to the insertion of additional language, but differed as to the specifics of such language. The Court, therefore, directed that this matter be added to the agenda for the May 30, 2007 hearing, already scheduled to consider other matters. After yet further discussion with the parties, the Court will adopt the language suggested by the U.S. Trustee with respect to the additional language (paragraph 3(a)(ii)).

At the May 30, 2007 hearing, upon consideration of the Debtors' Motion to Provide Adequate Protection (Docket No. 736) and the various responses and objections thereto, it appeared that the Debtors may have used certain cash collateral without the required consent or court order. See 11 U.S.C.

perform the duties of an examiner set forth in section 1106(a)(3) (as limited by this Order) and 1106(a)(4) of the Bankruptcy Code (collectively the "Investigation");

4. The Examiner shall, before commencing the Investigation, meet and confer with the Debtors, the Committee, and the U.S. Trustee, if the U.S. Trustee requests participation. The Debtors and the Committee shall use their respective best efforts to coordinate with the Examiner to avoid unnecessary interference with, or duplication of, the Investigation. Such "meet and confer" shall occur prior to June 15, 2007, and the Court shall hold a status conference on June 15, 2007 at 10:00 o'clock a.m. to discuss with the parties the results of such "meet and confer" and to order, if appropriate, further relief as will aid the Examiner in the performance of the Examiner's duties and/or to accommodate the needs of the estate;

5. The Examiner shall prepare and file a report, as is required by 11 U.S.C. § 1106(a)(4), within 90 days of the date of appointment, unless such time shall be extended by order of the Court, advising as to (x) the status of the investigation, (y) whether the Examiner believes that the Examiner requires additional time to complete the Investigation, and (z) whether the Examiner has identified additional areas or topics which should be investigated and therefore whether the scope of the Investigation as defined herein should be broadened or otherwise amended; all parties in interest shall have the right to appear and be heard on whether the scope of the Investigation should be amended as requested by the Examiner;

6. Until the Examiner has filed his or her report, neither the Examiner nor the Examiner's representatives or agents shall make any public disclosures concerning the

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§363(c)(2). The Court, therefore, sua sponte, has added to the Examiner's charge, investigation of the possible unauthorized use of cash collateral by the Debtors.

performance of the Examiner's duties, except in hearings before the Court; provided further, that no portion of any report containing any evaluation of the strengths or weakness of any potential claim or right of action the estates may have or suggested litigation strategy in connection therewith shall be disclosed publicly without further order of this Court;

7. The Examiner may retain counsel and other professionals if he or she determines that such retention is necessary to discharge his or her duties, with such retention to be subject to Court approval under standards equivalent to those set forth in 11 U.S.C. § 327;

8. The Examiner and any professionals retained by the Examiner pursuant to any order of this Court shall be compensated and reimbursed for their expenses pursuant any procedures for interim compensation and reimbursement of expenses of professionals which are established in these cases. Compensation and reimbursement of the Examiner shall be determined pursuant to 11 U.S.C. § 330, and compensation and reimbursement of the Examiner's professionals shall be determined pursuant to standards equivalent to those set forth in 11 U.S.C. § 330;

9. The Examiner shall have the standing of a "party-in- interest" with respect to the matters that are within the scope of the Investigation, and shall be entitled to appear and be heard at any and all hearings in these cases; provided however, this Order is not intended to confer upon the Examiner any "party in interest" status for the purpose of intervening or joining in any adversary proceeding or contested matter in connection with disputes involving the non-debtor counter parties to repurchase agreements or any lenders of the Debtor[2];

10. The Examiner shall cooperate fully with any governmental agencies (such

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[2]This proviso is included to address the concern expressed by certain parties at the May 30, 2007 hearing that the Court's expansion of the Investigation (see paragraph 3(b) hereof) not delay disposition of their rights.

cooperation shall not be deemed a public disclosure as referenced in paragraph 6 hereof, including, but not limited to, any federal, state or local government agency that may be investigating the Debtors, its management or its financial condition), and the Examiner shall use best efforts to coordinate with such agencies in order to avoid unnecessary interference with, or duplication of, any investigations conducted by such agencies;

11. The Debtors and all of the Debtors' affiliates, subsidiaries and other companies under their control and the Examiner shall mutually coordinate and cooperate in connection with the performance of any of the Examiner's duties. The Debtors shall provide to the Examiner all non-privileged documents and information relevant to the Investigation that the Examiner requests. Nothing herein shall prohibit the Debtors from objecting to requests, including, without limitation, on the ground that the documents or information requested are beyond the scope of the Investigation. If the Examiner seeks the disclosure of documents or information as to which any of the Debtors assert a claim of privilege or have objected and the Examiner and the Debtors are unable to reach a resolution on whether or on what terms such documents or information should be disclosed to the Examiner, the matter may be brought before the Court for resolution. The Debtors' privileges, including, but not limited to, the attorney-client privilege and attorney work product privilege, remain and are not deemed waived or in any way impaired by the parties' stipulation referenced above or by this Order;

12. Subject to any applicable confidentiality agreement between the Committee and the Debtors, the Committee shall provide the Examiner with access to all materials it has received in response to discovery authorized by the Court or voluntarily provided by the Debtors, and the Examiner and the Committee shall cooperate and coordinate their efforts to assure, to the extent

possible, that their investigations are not unduly duplicative;

13. Subject to the requirements for mutual cooperation and coordination set forth herein, nothing contained in this Order shall diminish the powers and authority of the Debtors or the Committee under the Bankruptcy Code, including the powers to investigate transactions and entities, to commence contested matters and adversary proceedings, and to object to claims; and

14. Nothing in this Order shall impede the right of the United States Trustee or any other party to request any other lawful relief, including but not limited to a request to further expand the scope of the Investigation, if during such Investigation other relevant matters are revealed which the Examiner, the Debtor, the Committee or the United States Trustee believe should be brought to the attention of the Court, or to have the Examiner's report, or parts thereof, filed under seal.

The Honorable Kevin J. Carey
United States Bankruptcy Judge

Dated: June 1, 2007

Bench Filed
9/10/08

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
SEMCRUDE, L.P., *et al.*,	:	
Debtors.	:	Case Number 08-11525 (BLS) (Jointly Administered)
	:	**Related Docket No.** 667

ORDER DIRECTING UNITED STATES TRUSTEE TO APPOINT AN EXAMINER

This matter came before the Court for hearing on September 10, 2008, on the Motion of the United States Trustee for an Order Directing the Appointment of an Examiner dated August 12, 2008 (the "Motion"). Due and sufficient notice of the Motion was given to interested parties in accordance with the Bankruptcy Code and Rules. This Court, having considered the evidence in the record and arguments of counsel, concluded that the appointment of an examiner under 11 U.S.C. § 1104(c)(2) of the Bankruptcy Code to investigate the affairs of the Debtors[1] is mandatory as the Debtors' fixed, liquidated, unsecured debts, other than debts for goods and services or taxes, or owing to an insider, exceed $5 million. The Court further finds that grounds exist for the appointment of an examiner under 11 U.S.C. § 1104(c)(1) as the appointment of an examiner to investigate the affairs of the Debtors and the Debtors' affiliates and subsidiaries is in the best interests of creditors, any equity security holders, and other interests of the estate. Accordingly it is, hereby, ORDERED AND DECREED that:

1. The United States Trustee is directed to appoint one examiner ("Examiner") pursuant to 11 U.S.C. § 1104(c); and

[1] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

2. The Examiner is directed to: (a) investigate the circumstances surrounding (i) the Debtors' Trading Strategy and the transfer of their NYMEX account, (ii) the Insider Transactions and the formation of Energy Partners, and (iii) the potential improper use of borrowed funds and funds generated from the Debtors' operations and the liquidation of their assets to satisfy margin calls related to the Trading Strategy for the Debtors and certain entities owned or controlled by the Debtors' officers and directors; and (b) otherwise perform the duties of an examiner set forth in 11 U.S.C. § 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code (collectively, the "Investigation"); and

3. Within 10 business days after entry of the order approving the appointment of the Examiner is entered on the docket in these cases, the Examiner shall propose a work plan and shall provide his or her estimated costs for the Investigation, which shall be subject to the approval of the Court on 10 days notice to all parties that have requested notice pursuant to Federal Rule of Bankruptcy Procedure 2002; and

4. The Examiner, the Debtors, the Committee, the Pre-petition Secured Parties (as defined in the Interim DIP Financing Order) or the United States Trustee shall have the right to petition the Court to further expand the scope of the Investigation, if during such Investigation other relevant matters are revealed which the Examiner, the Debtors, the Committee or the United States Trustee believe should be brought to the attention of the Court; and

5. The Debtors, the Debtors' affiliates and subsidiaries, the Committee and the Pre-petition Secured Parties are directed to fully cooperate with the Examiner in conjunction with the performance of any of the Examiner's duties and the Investigation, and that the Debtors and the Committee shall use their respective best efforts to coordinate with the Examiner to avoid unnecessary interference with, or duplication of, the Investigation; and

6. In addition to reporting on the facts ascertained by the Investigation conducted pursuant to paragraph 2 hereof, the Examiner shall report on whether (a) any directors, officers, or employees of the Debtors participated in fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the Debtors and (b) the Debtors' estates have claims or causes of action against current or former officers, directors, or employees of the Debtors arising from any such participation. Nothing herein shall preclude the Committee from conducting its own investigation into the affairs of third parties that are not current or former officers, directors, or employees of the Debtors to determine whether the estate has claims or causes of action against such or other third parties. To the extent that the Committee's investigation is duplicative of the foregoing scope, the Committee will refrain from seeking such discovery until the Examiner issues his or her report; and

7. Until the Examiner has filed his or her report, neither the Examiner nor the Examiner's representatives or agents shall make any public disclosures concerning the performance of the Investigation or the Examiner's duties; and

8. The Examiner shall prepare and file a report, as is required by 11 U.S.C. § 1106(a)(4), within 120 days following the approval of the work plan by the Court, unless such time shall be extended by order of the Court on Notice to all parties that have requested notice pursuant to Federal Rule of Bankruptcy Procedure 2002; and

9. The Examiner may retain counsel and other professionals, if he or she determines that such retention is necessary to discharge his or her duties, with such retention to be subject to Court approval under standards equivalent to those set forth in 11 U.S.C. § 327; and

10. The Examiner and any professionals retained by the Examiner pursuant to any order of this Court shall be compensated and reimbursed for their expenses pursuant to any

procedures for interim compensation and reimbursement of expenses of professionals that are established in these cases. Compensation and reimbursement of the Examiner shall be determined pursuant to 11 U.S.C. § 330, and compensation and reimbursement of the Examiner's professionals shall be determined pursuant to standards equivalent to those set forth in 11 U.S.C. § 330; and

11. The Examiner shall cooperate fully with any governmental agencies (such cooperation shall not be deemed a public disclosure as referenced in paragraph 7 above) including, but not limited to, any federal, state or local government agency that may be investigating the Debtors, its management or its financial condition, and the Examiner shall use best efforts to coordinate with such agencies in order to avoid unnecessary interference with, or duplication of, any investigations conducted by such agencies; and

12. The Examiner shall have the standing of a "party-in-interest" with respect to the matters that are within the scope of the Investigation, and shall be entitled to appear and be heard at any and all hearings in these cases; and

13. Nothing in this Order shall impede the right of the United States Trustee or any other party to request any other lawful relief, including but not limited to the appointment of a trustee.

The Honorable Brendan L. Shannon
United States Bankruptcy Judge

Dated: 9/10/08

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	:	**Case No. 08-13555 (JMP)**
Debtors.	:	**(Jointly Administered)**

ORDER DIRECTING APPOINTMENT OF AN EXAMINER
PURSUANT TO SECTION 1104(c)(2) OF THE BANKRUPTCY CODE

By motion, dated October 20, 2008, The Walt Disney Company ("TWDC") as a claimant against Lehman Brothers Commercial Corporation ("LBCC") and Lehman Brothers Holdings Inc. ("LBHI") applied for the appointment of an examiner in these jointly administered chapter 11 cases pursuant to section 1104(c)(2) of title 11 of the United States Code ("Bankruptcy Code") ("TWDC Motion"), on the basis that the fixed, liquidated, unsecured debts other than debts for goods, services, taxes, or owing to an insider exceeded $5 million; and no party in interest having contested that pursuant to section 1104(c)(2) of the Bankruptcy Code that the appointment of an examiner is mandatory; and upon the joinders to the TWDC Motion by Harbinger Capital Partners Special Situations Fund, LP, and Harbinger Capital Partners Master Fund I., Ltd., f/k/a Harbert Distressed Investment Master fund, Ltd., (collectively, the "Harbinger Funds") dated October 31, 2008 and Bank of America, NA ("BoA") dated October 31, 2008; and the motion of Thomas P. DiNapoli, New York State Comptroller as Administrative Head of the New York State and Local Retirement Systems and Sole Trustee of the New York State Common Retirement Fund ("NYS Comptroller") for the appointment of a trustee or in the alternative an examiner with expanded powers dated November 4, 2008 ("NYS Comptroller

Motion"), and the joinder of the Lead Plaintiffs in Class Action No. 08-CV5523(LAK) ECF CASE pending in the United States District Court for the Southern District of New York to the NYS Comptroller Motion for the appointment of an examiner with expanded powers dated November 24, 2008; and the Response of the United States Trustee (the "U.S. Trustee") dated November 12, 2008 to the TWDC Motion dated January 9, 2009; and the Response of the Official Committee of Unsecured Creditors ("UCC") to the TWDC Motion dated January 9, 2009, the Objection of Barclays Capital Inc. ("Barclays") to a portion of the TWDC Motion dated January 9, 2009 and the Objection of James W. Giddens, as SIPA Trustee for the liquidation of the business of Lehman Brothers Inc. ("SIPA Trustee") to the TWDC Motion and the Response of LBHI, et al., as Debtors and Debtors In Possession, in opposition to the NYS Comptroller Motion for the appointment of a trustee, dated January 5, 2009; and the Response of TWDC to the Objections of the UCC, the SIPA Trustee, and Barclays dated January 13, 2009 and the Reply of the NYS Comptroller dated January 13, 2009; and a hearing having been held before the Court, on due notice, on January 14, 2009 and the Court having heard and considered all of the arguments and comments made by the parties in interest to the motions for the appointment of an examiner; and upon the record made before the Court and the record having been So Ordered to direct the appointment of an examiner in these jointly administered chapter 11 cases and, after due deliberation and sufficient cause appearing therefor, it is

ORDERED:

1. The United States Trustee is directed to appoint an examiner ("Examiner") as soon as practicable.

2. The Examiner's duties shall include an investigation ("Investigation") as to:

- Whether LBCC or any other entity that currently is an LBHI chapter 11 debtor subsidiary or affiliate ("LBHI Affiliate(s)") has any administrative claims against LBHI resulting from LBHI's cash sweeps of cash balances, if any, from September 15, 2008, the commencement date of LBHI's chapter 11 case, through the date that such applicable LBHI affiliate commenced its chapter 11 case.
- All voluntary and involuntary transfers to, and transactions with, affiliates, insiders and creditors of LBCC or its affiliates, in respect of foreign exchange transactions and other assets that were in the possession or control of LBHI Affiliates at any time commencing on September 15, 2008 through the day that each LBHI Affiliate commenced its chapter 11 case.
- Whether any LBHI Affiliate has colorable claims against LBHI for potentially insider preferences arising under the Bankruptcy Code or state law.
- Whether any LBHI Affiliate has colorable claims against LBHI or any other entities for potentially voidable transfers or incurrences of debt, under the Bankruptcy Code or otherwise applicable law.
- Whether there are more colorable claims for breach of fiduciary duties and/or aiding or abetting any such breaches against the officers and directors of LBCC and/or other Debtors arising in connection with the financial condition of the Lehman enterprise prior to the commencement of the LBHI chapter 11 case on September 15, 2008.

- Whether assets of any LBHI Affiliates (other than Lehman Brothers, Inc.) were transferred to Barclays Capital Inc. as a result of the sale to Barclays Capital Inc. that was approved by order of the Bankruptcy Court entered September 20, 2008, and whether consequences to any LBHI Affiliate as a result of the consummation of the transaction created colorable causes of action that inure to the benefit of the creditors of such LBHI subsidiary or affiliate.
- The inter-company accounts and transfers among LBHI and its direct and indirect subsidiaries, including but not limited to: LBI, LBIE, Lehman Brothers Special Finance ("LBSF") and LBCC, during the 30-day period preceding the commencement of the chapter 11 cases by each debtor on September 15, 2008 or thereafter or such longer period as the Examiner deems relevant to the Investigation.
- The transactions and transfers, including but not limited to the pledging or granting of collateral security interest among the debtors and the pre-chapter 11 lenders and/or financial participants including but not limited to, JPMorgan Chase, Citigroup, Inc., Bank of America, the Federal Reserve Bank of New York and others.
- The transfer of the capital stock of certain subsidiaries of LBI on or about September 19, 2008 to Lehman ALI Inc.
- The events that occurred from September 4, 2008 through September 15, 2008 or prior thereto that may have resulted in commencement of the LBHI chapter 11 case.

3. The Examiner shall perform the duties specified in sections 1106(a)(3) and (4) of the Bankruptcy Code, except to the extent the Court orders otherwise.

4. The Debtors, the Debtors' affiliates and subsidiaries, and the UCC and their respective representatives are directed to cooperate with the Examiner in conjunction with the performance of any of the Examiner's duties and the Investigation, and the Debtors and the UCC and other parties in interest shall use their respective best efforts to coordinate with the Examiner to avoid unnecessary interference with, or duplication of, the Investigation. The SIPA Trustee and his representatives and the Examiner and his or her representatives shall also cooperate with one another and coordinate their respective Investigations.

5. Until the Examiner has filed his or her report, neither the Examiner nor the Examiner's representatives or agents shall make any public disclosures concerning the performance of the Investigation or the Examiner's duties except that the Examiner, in the exercise of his or her discretion and in compliance with this order may file public reports as to completed phases of the Investigation or the progress of the Investigation.

6. The Examiner may retain attorneys and any professional persons, if he or she determines that such retention is necessary to discharge his or her duties, with such retention to be subject to Court approval under standards equivalent to those set forth in 11 U.S.C. § 327.

7. The Examiner and his or her Court-approved professional persons shall be compensated and reimbursed for their expenses pursuant to the procedures for interim compensation and reimbursement of professionals ordered in these cases. Compensation and reimbursement of the Examiner shall be determined pursuant to 11 U.S.C. § 330, and compensation and reimbursement of the Examiner's professional persons shall be determined pursuant to standards equivalent to those set forth in 11 U.S.C. § 330.

8. The Examiner shall cooperate fully with any governmental agencies (such cooperation shall not be deemed a public disclosure as referenced above) including, but not limited to, any Federal, state or local government agency that currently or in the future may be investigating the Debtors, their management or their financial condition, and the Examiner shall use best efforts to coordinate with such agencies in order to avoid unnecessary interference with, or duplication of, any investigations conducted by such agencies. The Examiner will follow a protocol to be established with the governmental agencies for the sharing of information to the extent that such sharing benefits the Debtors' estates, and such sharing of information shall be subject to appropriate conditions to protect the Debtors' estates.

9. This Order is without prejudice to the Examiner's seeking other relief from the Court as the Examiner may deem appropriate in furtherance of the discharge of his or her duties and the Investigation.

10. All parties in interest may use any documents or other materials disclosed in the Examiner's report in any proceeding in these chapter 11 cases consistent with the Federal Rules of Bankruptcy Procedure and the Federal Rules of Evidence.

11. The Examiner, when appointed, is directed to promptly meet and confer with the representatives of the Debtors, the UCC, TWDC, Barclays, NYS Comptroller, the Harbinger Funds, BoA, the Lead Plaintiffs, the U.S. Trustee, and the United States Attorney for the Southern District of New York to develop a work plan and plan to coordinate the Investigation so as to avoid replication of efforts and duplication of services and other matters pertinent to the Examiner's Investigation and, thereafter, submit an appropriate order to the Court setting forth the material items of the work plan and any process agreed upon to avoid replication and duplication and, to the extent that there is no agreement or consensus as to such work plan, plan

of coordination, and a proposed budget, all to be incorporated into an appropriate Order of the Court, the Examiner shall promptly report to the Court the failure to reach agreement and consensus and submit to the Court the Examiner's recommendations for resolution of the issues and, thereafter, the Court, upon such notice and a hearing or chambers conference as it may deem necessary, shall resolve the issues and enter an appropriate order.

12. The work plan described in the immediately preceding paragraph shall be completed within twenty (20) days from the date that the court approves the appointment of the individual selected by the United States Trustee to serve as Examiner. If the work plan is not completed within this twenty day period, a hearing shall be held on the next scheduled omnibus hearing date to determine the cause of such delay.

13. The court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

Dated: January 16, 2009
New York, New York

/s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	:	**Case No. 08-13555 (JMP)**
Debtors.	:	**(Jointly Administered)**

ERRATA ORDER

A typographical error in the Order Directing Appointment of an Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code, dated January 16, 2009 [ECF # 2569], is hereby corrected as follows: on page 3 at line 19, the word "more" is deleted.

SO ORDERED.

Dated: January 21, 2009
New York, New York

/s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Re: Docket No. 4644, 5119**

AGREED ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER

Upon the motion, dated June 8, 2010 (the "Second Motion"), of the Official Committee of Equity Security Holders (the "Equity Committee") for entry of an order appointing an examiner pursuant to section 1104 of title 11 of the United States Code (the "Bankruptcy Code"); and Washington Mutual, Inc. ("WMI") and WMI Investment Corp. (collectively, the "Debtors") having filed that certain Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated July 1, 2010, as may be further amended from time to time (the "Plan"), which embodies the compromise and settlement set forth in that certain Settlement Agreement, dated as of May 21, 2010 (the "Settlement Agreement"),[2] by and among the Debtors, the Creditors' Committee, JPMC, the FDIC Receiver, FDIC Corporate and the other parties thereto and a disclosure statement in connection therewith (the "Disclosure Statement"); and by motion, dated April 26, 2010 (the "First Motion"), the Equity Committee having previously requested the appointment of an examiner pursuant to

[1] The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

[2] Unless other wise defined herein, capitalized terms used herein shall have the meanings ascribed thereto in the Settlement Agreement.

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section 1104 of the Bankruptcy Code; and by order, dated May 5, 2010 (the "Denial Order"), the Court having denied the relief requested in the First Motion; and by separate notices of appeal, the Equity Committee and the Office of the United States Trustee (the "U.S. Trustee") having appealed from the Denial Order (collectively, the "Appeals"); and by petition, dated July 7, 2010, the Equity Committee having requested that the United States Court of Appeals for the Third Circuit consider its Appeal of the Denial Order under direct certification; and the Court contemporaneously herewith having (a) adjourned the hearing to consider the adequacy of the information contained in the Disclosure Statement in connection with the Plan in accordance with section 1125 of the Bankruptcy Code to September 7, 2010, and (b) subject to the provisions set forth herein, established November 1, 2010, at 9:30 a.m., as the date and time for the hearing to consider confirmation of the Plan in accordance with section 1129 of the Bankruptcy Code (the "Confirmation Hearing"); and based upon the Court's ruling with respect to the scheduling of the Confirmation Hearing, the Debtors having consented to the entry of this Order and the granting of the relief provided herein; and the Court having overruled the objections of the WMI Senior Noteholders Group, the FDIC Receiver and others to the appointment of an examiner; upon due consideration and sufficient cause appearing therefor, it is hereby ORDERED as follows:

1. The U.S. Trustee is directed to (a) solicit from the Parties and the Equity Committee the names of persons such entities believe are qualified to serve as examiner (the "Examiner") to perform the Investigation, as defined below, and (b) appoint the Examiner pursuant to section 1104 of the Bankruptcy Code on or prior to 5:00 p.m. (prevailing Eastern time) on July 26, 2010.

2. The Examiner is directed to investigate (the "Investigation") (a) the claims and assets that may be property of the Debtors' estates that are proposed to be conveyed, released or otherwise compromised and settled under the Plan and Settlement Agreement, including all Released Claims, as defined in the Settlement Agreement, and the claims and defenses of third parties thereto (the "Settlement Component") and (b) such other claims, assets and causes of actions which shall be retained by the Debtors and/or the proceeds thereof, if any, distributed to creditors and/or equity interest holders pursuant to the Plan, and the claims and defenses of third parties thereto (the "Retained Asset Component"); provided, however, that the foregoing is without prejudice to the Court modifying the foregoing scope of the Investigation in the event that the Court otherwise deems appropriate.

3. The Examiner shall promptly meet and confer, separately if requested, with the Debtors, each of the other Parties, the Equity Committee, and, if the U.S. Trustee requests participation, the U.S. Trustee. The Parties and the Equity Committee shall use their respective best efforts to coordinate with the Examiner and to avoid unnecessary interference with, or duplication of, the Investigation, and the Examiner, in his or her conduct of the Investigation, shall use best efforts to utilize relevant materials obtained by the Parties and the Equity Committee in the course of any informal and/or formal discovery to avoid unnecessary duplication of work performed to date.

4. On or prior to 5:00 p.m. (prevailing Eastern time) on August 6, 2010, the Examiner shall file with the Court a work and expenses plan (the "Work and Expenses Plan/Report"), which shall include a good faith estimate of the fees and expenses to be incurred by or on behalf of the Examiner in connection with the Investigation, and a status report detailing the Examiner's efforts to date. The Court will hold a status conference on August 10, 2010, at

1:30 p.m., to (a) consider the Work and Expenses Plan/Report (along with any responses thereto) and (b) order, if appropriate, further relief as will aid the Examiner in the performance of the Examiner's duties and/or to accommodate the needs of the Debtors' estates. Notwithstanding the foregoing, the Examiner is authorized to commence the Investigation immediately upon the Examiner's appointment.

5. The Examiner shall prepare and file (a) a preliminary report (the "Preliminary Report"), as required by 11 U.S.C. § 1106(a)(4), with respect to the Settlement Component and the Retained Asset Component on or before September 7, 2010 and (b) unless the Court finds that additional time for discovery is required, a final report (the "Final Report")[3] on or before October 8, 2010; provided, however, that such time may be extended by order of the Court, issued *sua sponte* or upon application by the Examiner on notice to all parties entitled to the same under Federal Rule of Bankruptcy Procedure 2002, for cause shown; and, provided, further, that, in the event that such time is extended with respect to the Final Report, the Court may, if necessary, adjourn commencement of the Confirmation Hearing.

6. Until the Examiner has filed the Reports, neither the Examiner nor the Examiner's representatives or agents shall make any public disclosures concerning the Investigation or performance of the Examiner's duties, except in hearings before the Court; provided, however, that, unless otherwise ordered by the Court, no information asserted to be confidential pursuant to applicable agreement, law or regulation, privileged or treated as such pursuant to court order, nor any evaluation of the strengths or weaknesses of any potential claim or right of action any of the Parties or the Equity Committee or any other party in interest may have or suggested litigation strategy in connection therewith (the "Evaluation Information"),

[3] The Preliminary Report and the Final Report are sometimes hereinafter collectively referred to as the "Reports".

shall be disclosed by the Examiner publicly or to any other party other than the party or parties providing such information, or, in the case of Evaluation Information, to any person other than publicly in connection with the filing of the Reports.

7. The Debtors, the other Parties and the Equity Committee are directed to fully cooperate with the Examiner in conjunction with the performance of any of the Examiner's duties and the Investigation. The Debtors shall provide to the Examiner all documents and information relevant to the investigation that the Examiner requests. The Debtors, the other Parties, the Equity Committee and any other party in interest may submit briefing memoranda to the Examiner with respect to matters pertaining to the Investigation, including, without limitation, the basis for the position that certain claims are available or unavailable to the Debtors. The Examiner shall consider all timely submitted memoranda in connection with the Investigation and the preparation of the Preliminary Report and Final Report. Nothing contained in this paragraph 7 shall prohibit the Debtors or any other of the Parties subject to requests from (a) objecting to requests on any ground or (b) seeking a protective order for any reason whatsoever.

8. The Examiner may retain counsel and other professionals if the Examiner determines that such retention is necessary to discharge the Examiner's duties, with such retention to be subject to Court approval after notice under standards equivalent to those set forth in 11 U.S.C. § 327.

9. The Examiner and any professionals retained by the Examiner pursuant to order of this Court shall be compensated and reimbursed for their fees and expenses pursuant to any procedures for interim compensation and reimbursement of professionals which are

established in these cases. Compensation and reimbursement of the Examiner shall be determined pursuant to 11 U.S.C. § 330.

10. In addition to full access to the documents in the Depository, as set forth below, the Debtors shall provide to the Examiner all other non-privileged documents and information relevant to the Investigation that the Examiner requests. Nothing herein shall prohibit the Debtors or any other party in interest, including the FDIC Receiver or FDIC Corporate, from (a) objecting to requests on any ground or (b) seeking a protective order for any reason whatsoever. If the Examiner seeks the disclosure of documents or information as to which the Debtors assert a claim of privilege and the Examiner and the Debtors are unable to reach a resolution, the matter may be brought before the Court for resolution. The Debtors' and the other Parties' privileges, including, but not limited to, the attorney-client privilege and attorney work-product privilege, in accordance with Federal Rule of Evidence 502(d), remain and are not deemed waived or in any way impaired by any production to the Examiner of materials protected by such privileges, or by any other aspect of this Order. The production of assertedly privileged documents to the Examiner shall not constitute a determination by the Court that such documents are, in fact, privileged, nor shall such production prejudice the rights of the producing party or parties in interest to challenge the assertion of any privilege.

11. The Parties will as promptly as practicable take all necessary and appropriate steps to give the Examiner and professionals retained by the Examiner full and complete access to all documents in the Depository referenced in that certain Confidentiality Agreement Governing Confirmation Discovery, as "So Ordered" in accordance with that certain Order Governing the Production and use of Discovery Materials in Connection with Plan Confirmation, dated July 2, 2010 (the "Depository Order"). Notwithstanding any other provision

of this Order, documents in the Depository and other information subject to orders of this Court relating to confidentiality shall not be disclosed by the Examiner, except in accordance with such orders or further order of this Court.

12. Unless the Court orders otherwise, the Examiner shall have the standing of a party in interest with respect to matters that are within the scope of the Investigation until completion of the Investigation.

13. The Equity Committee is directed to take all such actions as are necessary to withdraw, with prejudice, the appeal pending before the United States Court of Appeals for the Third Circuit (the "Third Circuit Court"), including, without limitation, filing such pleadings as are appropriate with the Clerk of the Third Circuit Court.

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

15. Nothing contained in this Order shall impede the right of any party in interest to seek such legal or equitable relief as is appropriate and any party in interest to contest any requested relief.

Dated: July 22, 2010
Wilmington, Delaware

Mary F. Walrath

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
TRIBUNE COMPANY, et al.,[1]	Case No. 08-13141 (KJC)
Debtors.	Jointly Administered
	Related to Docket No. 3062, 4112

AGREED ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER

Upon the Motion[2] of Wilmington Trust Company ("WTC") in the above-captioned chapter 11 cases for appointment of an examiner pursuant to § 1104(c) of the Bankruptcy Code; the Court having reviewed the objections, responses and/or statements related to the Motion filed

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tribune Company (0355); 435 Production Company (8865); 5800 Sunset Productions Inc. (5510); Baltimore Newspaper Networks, Inc. (8258); California Community News Corporation (5306); Candle Holdings Corporation (5626); Channel 20, Inc. (7399); Channel 39, Inc. (5256); Channel 40, Inc. (3844); Chicago Avenue Construction Company (8634); Chicago River Production Company (5434); Chicago Tribune Company (3437); Chicago Tribune Newspapers, Inc. (0439); Chicago Tribune Press Service, Inc. (3167); ChicagoLand Microwave Licensee, Inc. (1579); Chicagoland Publishing Company (3237); Chicagoland Television News, Inc. (1352); Courant Specialty Products, Inc. (9221); Direct Mail Associates, Inc. (6121); Distribution Systems of America, Inc. (3811); Eagle New Media Investments, LLC (6661); Eagle Publishing Investments, LLC (6327); forsalebyowner.com corp. (0219); ForSaleByOwner.com Referral Services, LLC (9205); Fortify Holdings Corporation (5628); Forum Publishing Group, Inc. (2940); Gold Coast Publications, Inc. (5505); GreenCo, Inc. (7416); Heart & Crown Advertising, Inc. (9808); Homeowners Realty, Inc. (1507); Homestead Publishing Co. (4903); Hoy, LLC (8033); Hoy Publications, LLC (2352); InsertCo, Inc. (2663); Internet Foreclosure Service, Inc. (6550); JuliusAir Company, LLC (9479); JuliusAir Company II, LLC; KIAH Inc. (4014); KPLR, Inc. (7943); KSWB Inc. (7035); KTLA Inc. (3404); KWGN Inc. (5347); Los Angeles Times Communications LLC (1324); Los Angeles Times International, Ltd. (6079); Los Angeles Times Newspapers, Inc. (0416); Magic T Music Publishing Company (6522); NBBF, LLC (0893); Neocomm, Inc. (7208); New Mass. Media, Inc. (9553); Newscom Services, Inc. (4817); Newspaper Readers Agency, Inc. (7335); North Michigan Production Company (5466); North Orange Avenue Properties, Inc. (4056); Oak Brook Productions, Inc. (2598); Orlando Sentinel Communications Company (3775); Patuxent Publishing Company (4223); Publishers Forest Products Co. of Washington (4750); Sentinel Communications News Ventures, Inc. (2027); Shepard's Inc. (7931); Signs of Distinction, Inc. (3603); Southern Connecticut Newspapers, Inc. (1455); Star Community Publishing Group, LLC (5612); Stemweb, Inc. (4276); Sun-Sentinel Company (2684); The Baltimore Sun Company (6880); The Daily Press, Inc. (9368); The Hartford Courant Company (3490); The Morning Call, Inc. (7560); The Other Company LLC (5337); Times Mirror Land and Timber Company (7088); Times Mirror Payroll Processing Company, Inc. (4227); Times Mirror Services Company, Inc. (1326); TMLH 2, Inc. (0720); TMLS I, Inc. (0719); TMS Entertainment Guides, Inc. (6325); Tower Distribution Company (9066); Towering T Music Publishing Company (2470); Tribune Broadcast Holdings, Inc. (4438); Tribune Broadcasting Company (2569); Tribune Broadcasting Holdco, LLC (2534); Tribune Broadcasting News Network, Inc., n/k/a Tribune Washington Bureau Inc. (1088); Tribune California Properties, Inc. (1629); Tribune CNLBC, LLC, f/k/a/ Chicago National League Ball Club, LLC (0347); Tribune Direct Marketing, Inc. (1479); Tribune Entertainment Company (6232); Tribune Entertainment Production Company (5393); Tribune Finance, LLC (2537); Tribune Finance Service Center, Inc. (7844); Tribune License, Inc. (1035); Tribune Los Angeles, Inc. (4522); Tribune Manhattan Newspaper Holdings, Inc. (7279); Tribune Media Net, Inc. (7847); Tribune Media Services, Inc. (1080); Tribune Network Holdings Company (9936); Tribune New York Newspaper Holdings, LLC (7278); Tribune NM, Inc. (9939); Tribune Publishing Company (9720); Tribune Television Company (1634); Tribune Television Holdings, Inc. (1630); Tribune Television New Orleans, Inc. (4055); Tribune Television Northwest, Inc. (2975); ValuMail, Inc. (9512); Virginia Community Shoppers, LLC (4025); Virginia Gazette Companies, LLC (9587); WATL, LLC (7384); WCWN LLC (5982); WDCW Broadcasting, Inc. (8300); WGN Continental Broadcasting Company (9530); WLVI Inc. (8074); WPIX, Inc. (0191); and WTXX Inc. (1268). The Debtors' corporate headquarters and the mailing address for each Debtor is 435 North Michigan Avenue, Chicago, Illinois 60611.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

or made by the above-captioned debtors and debtors in possession (the "Debtors"), the Official Committee of Unsecured Creditors appointed in the Debtors' cases (the "Committee"), JPMorgan Chase Bank, N.A. ("JPMC"), Merrill Lynch Capital Corporation ("MLCC"), the Credit Agreement Lenders (the "Credit Agreement Lenders"), certain retirees (the "TM Retirees"), Citicorp North America, Inc./Citigroup Global Markets Inc. (together, "Citigroup"), Bank of America, N.A. and Banc of America Securities LLC (together, "BofA"), Law Debenture Trust Company of New York, as Indenture Trustee ("Law Debenture"), Centerbridge Credit Advisors LLC ("Centerbridge") (collectively the "Parties"), and the Office of the United States Trustee (the "U.S. Trustee"), and considered the arguments and representations of counsel made thereon; and due and proper notice having been given under the circumstances; and it appearing that this is a core proceeding under 28 U.S.C. § 157(b)(2); and the Parties having consented to appointment of an examiner, it is hereby ORDERED as follows:

1. The U.S. Trustee is directed to appoint an examiner (the "Examiner") pursuant to 11 U.S.C. § 1104(c)(1).

2. The Examiner shall (i) evaluate whether there are potential claims and causes of action held by the Debtors' estates in connection with the leveraged buy-out of Tribune that occurred in 2007 (the "LBO") which may be asserted against any entity which may bear liability, including, without limitation, the Debtors, the Debtors' former and/or present management, including former/present members of Tribune's Board, the Debtors' lenders and the Debtors' advisors, said potential claims and causes of action including, but not being limited to, claims for fraudulent conveyance (including both avoidance of liability and disgorgement of payments), breach of fiduciary duty, aiding and abetting the same, and equitable subordination and whether

there are any potential defenses which may be asserted to such potential claims and causes of action, (ii) evaluate whether Wilmington Trust Company violated the automatic stay under 11 U.S.C. § 362 by its filing, on March 3, 2010, of its Complaint for Equitable Subordination and Disallowance of Claims, Damages, and Constructive Trust (docketed at Adv. No. 10-50732, D.I. 1), (iii) evaluate the assertions and defenses made by certain of the Parties in connection with the Motion of JPMorgan Chase Bank, N.A., for Sanctions Against Wilmington Trust Company for Improper Disclosure of Confidential Information in Violation of Court Order (D.I. 3714), and (iv) otherwise perform the duties of an examiner set forth in 11 U.S.C. §§ 1106(a)(3) and (4) (as limited by this Order) (collectively, the "Investigation").

3. The Examiner shall, before commencing the Investigation, meet and confer with the Parties, and the U.S. Trustee, if the U.S. Trustee requests participation. The Parties shall use their respective best efforts to coordinate with the Examiner and to avoid unnecessary interference with, or duplication of, the Investigation, and the Examiner, in his or her conduct of the Investigation, shall use best efforts to utilize relevant materials obtained by the Parties via informal and/or formal discovery to avoid unnecessary duplication of work performed to date. Nothing in this Order shall be deemed to require any Party to waive any applicable privilege.

4. Within seven (7) days after the later of entry of this Order or the date on which the U.S. Trustee files a notice of the Examiner's appointment, the Examiner shall propose a work and expenses plan (the "Work and Expenses Plan"), which shall include a good faith estimate of the fees and expenses of the Examiner and the Examiner's proposed professionals for conducting the Investigation (the "Budget"). The Court will hold a status conference on May 10, 2010 at 11:00 a.m. to (i) consider the Work and Expenses Plan (along with any responses thereto.

including an opportunity for any of the Parties to be heard on the appropriateness of the Budget) and (ii) order, if appropriate, further relief as will aid the Examiner in the performance of the Examiner's duties and/or to accommodate the needs of the estates. Notwithstanding the foregoing, the Examiner is authorized to commence the Investigation after the "meet and confer" referenced in the prior paragraph of this Order.

5. The Examiner shall prepare and file a report (the "Report"), as required by 11 U.S.C. § 1106(a)(4), on or before July 12, 2010, unless such time shall be extended by order of the Court upon application by the Examiner on notice to the Parties.

6. Until the Examiner has filed the Report, neither the Examiner nor the Examiner's representatives or agents shall make any public disclosures concerning the performance of the Examiner's duties, except in hearings before the Court; provided, however, that neither any information asserted to be confidential pursuant to applicable agreement or treated as confidential pursuant to court order, nor any evaluation of the strengths or weaknesses of any potential claim or right of action the estates may have or suggested litigation strategy in connection therewith, shall be disclosed publicly without further order of this Court.

7. The Examiner may retain counsel and other professionals if the Examiner determines that such retention is necessary to discharge the Examiner's duties, with such retention to be subject to Court approval after notice under standards equivalent to those set forth in 11 U.S.C. § 327.

8. The Examiner and any professionals retained by the Examiner pursuant to order of this Court shall be compensated and reimbursed for their expenses pursuant to any procedures for interim compensation and reimbursement of expenses of professionals which are established

in these cases. Compensation and reimbursement of the Examiner shall be determined pursuant to 11 U.S.C. § 330, and compensation of the Examiner's professionals shall be determined pursuant to standards equivalent to those set forth in 11 U.S.C. § 330.

9. The Examiner shall have the standing of a party in interest with respect to matters that are within the scope of the Investigation, and shall be entitled to appear and be heard at any and all hearings in these cases.

10. The Debtors and all of the Debtors' affiliates, subsidiaries and other companies and the Examiner shall mutually coordinate and cooperate in connection with the performance of the Examiner's duties. In addition to full access to the documents in the depository as set forth below, the Debtors shall provide to the Examiner all other non-privileged documents and information relevant to the Investigation that the Examiner requests. Nothing herein shall prohibit the Debtors from objecting to requests, including, without limitation, on the ground that the documents or information requested are beyond the scope of the Investigation. If the Examiner seeks the disclosure of documents or information as to which the Debtors assert a claim of privilege or have objected and the Examiner and the Debtors are unable to reach a resolution on whether or on what terms such documents or information should be disclosed to the Examiner, the matter may be brought before the Court for resolution. The Debtors' and the Committee's privileges, including, but not limited to, the attorney-client privilege and attorney work-product privilege, remain and are not deemed waived or in any way impaired by this Order.

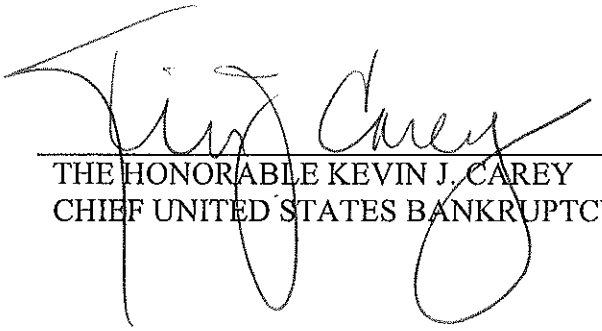
11. Subject to any applicable confidentiality agreement and orders entered by this Court, the Parties will as promptly as practicable take all necessary and appropriate steps to give

the Examiner and professionals retained by the Examiner access to the document depository referenced in the Order (i) Authorizing the Debtors to Establish a Document Depository and Directing the Committee to Deliver Certain Documents to the Depository and (ii) Establishing Settlement Negotiation Protections (D.I. 2858) (the "Depository Order"). The Examiner and professionals retained by the Examiner shall have full and complete access to all documents in the depository, notwithstanding the rights of Producing Parties (as that term is defined in the Depository Order) to object to the review of documents produced by such Producing Party. Notwithstanding any other provision of this Order, documents in the Depository and other information subject to orders of this Court relating to confidentiality shall not be disclosed by the Examiner, except in accordance with such orders or further order of this Court. The Parties shall reasonably cooperate with the Examiner.

12. Subject to the requirements for mutual cooperation and coordination set forth herein, nothing contained in this Order shall diminish the powers and authority of the Debtors or the Committee under the Bankruptcy Code, including the powers to investigate transactions and entities, to commence adversary proceedings and contested matters, and to object to claims.

13. Nothing in this Order shall impede the rights of the U.S. Trustee, the Parties (including WTC), or any other party in interest to request any other lawful relief, including but not limited to a request to further expand the scope of the Investigation, if during such Investigation other relevant matters are revealed which the Examiner or other party believes should be brought to the attention of the Court, or to have the Report (or parts thereof) filed under seal.

Dated: Wilmington, Delaware
April 20, 2010



THE HONORABLE KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE

46429/0001-6470778v2

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re,	:	Chapter 11
SEMCRUDE, L.P., *et al.*,	:	Case Number 08-11525 (BLS)
Debtors.	:	(Jointly Administered)

PRELIMINARY WORK PLAN OF LOUIS J. FREEH, ESQ., EXAMINER

Louis J. Freeh, Esq., the court-appointed examiner, by his proposed undersigned counsel, hereby submits his preliminary work plan in accordance with the requirements set forth in the Examiner Order (defined below) that the Examiner propose a work plan and provide his estimated costs for the Investigation by November 24, 2008. *See* Examiner Order at ¶ 3, as amended by the Order Extending the Examiner's Time to Propose a Work Plan entered on October 29, 2008, as further amended by the Order Further Extending the Examiner's Time to Propose a Work Plan entered on November 16, 2008.

INTRODUCTION

1. Pursuant to the Order Directing United States Trustee to Appoint an Examiner (the "Examiner Order"), entered September 10, 2008, this Bankruptcy Court granted the motion of the United States Trustee (the "UST") to appoint an examiner in the bankruptcy cases of SemCrude, L.P., its parent, SemGroup, L.P ("SemGroup") and certain direct or indirect subsidiaries of SemGroup, as debtors and debtors in possession in the above-referenced cases (collectively, the "Debtors"). The Examiner Order directed the UST to appoint an examiner in the Debtors' cases.

2. On October 14, 2008, the UST filed its Application for Order Approving the Appointment of Louis J. Freeh, Esq. as the Examiner in the Debtors' cases (the "Freeh Examiner Application"). The Freeh Examiner Application was approved pursuant to the Order Approving the Appointment of Examiner entered on October 14, 2008, under which Louis J. Freeh, Esq. was appointed as the examiner in the Debtors' cases (the "Examiner").

3. The Examiner Order directed the Examiner to: (a) investigate the circumstances surrounding (i) the Debtors' Trading Strategy[1] and the transfer of their NYMEX account; (ii) the Insider Transactions and the formation of Energy Partners; and (iii) the potential improper use of borrowed funds and funds generated from the Debtors' operations and the liquidation of their assets to satisfy margin calls related to the Trading Strategy for the Debtors and certain entities owned or controlled by the Debtors' officers and directors; and (b) otherwise perform the duties of an examiner set forth in sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code (collectively, the "Examiner Investigation"). *See* Examiner Order at ¶ 2. The Examiner Order also directed the Examiner to report on whether: (a) any directors, officers, or employees of the Debtors participated in fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the Debtors; and (b) the Debtors' estates have claims or causes of action against current or former officers, directors, or employees of the Debtors arising from any such participation (collectively, the "Insider Investigation" and, together with the Examiner Investigation, the "Investigation"). *Id.* at ¶ 6.

4. Pursuant to the terms of the Examiner Order, the Examiner is required to complete the Investigation within 120 days following the approval of the Examiner's work plan

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion of the UST for an Order Directing the Appointment of an Examiner dated August 12, 2008 (the "Motion"). [Docket No. 667].

by the Bankruptcy Court (*i.e.* on or about March 24, 2009), unless extended by the Bankruptcy Court on notice to parties who have filed notice of appearance in the Debtors' cases (the "Investigation Deadline".) *Id*. at ¶8.

THE INVESTIGATION IS UNDERWAY

5. Since his appointment, the Examiner and his professionals[2] have worked diligently to understand the Debtors' Trading Strategy, the Debtors' businesses and organizational structure and the significant issues related and parties relevant to the Investigation based upon the evaluation of publicly available information, including the Motion, the various responses filed to the Motion, the Examiner Order, the motions filed by the Debtors and the Official Committee of Unsecured Creditors (the "Creditors Committee") for Bankruptcy Rule 2004 examinations of various parties (collectively, the "Pending 2004 Motions"), and other pleadings filed in the Debtors' bankruptcy cases. The Examiner and his professionals have also been in preliminary discussions with the Debtors and their professionals, the UST and counsel for the Creditors Committee, and Bank of America, N.A., in its capacity as administrative agent for itself ("Agent") and certain other banking and financial institutions as secured lenders (the "Pre-Petition Secured Parties"), and certain other parties-in-interest regarding the Investigation.

6. Shortly after the appointment of the Examiner, representatives of Examiner's firm, the Freeh Group International (the "Freeh Group"), traveled to the Debtors' offices in Tulsa, Oklahoma and met in person with counsel for the Debtors and telephonically with certain of the Debtors' professionals and toured the Debtors' offices. Thereafter, a meeting was held between the Examiner's professionals and the Debtors' professionals on November 3 and 4,

[2] As described in more detail below, the Examiner has retained, subject to Bankruptcy Court approval, the following professionals to assist him in fulfilling his duties in connection with the Investigation: The Freeh Group International and KPMG LLP, as his consultants, and Morrison & Foerster LLP, as his counsel, and Polsinelli Shalton Flanigan Suelthaus PC, as his local counsel.

2008, at the office of Weil Gotshal & Manges ("WGM") in Dallas, Texas (the "November 3rd Meeting"). During the November 3rd Meeting, the Debtors' attorneys who are primarily responsible for the Debtors' internal investigation (the "Internal Investigation"), provided the Examiner's professionals with certain background information regarding the Debtors and the Internal Investigation including, without limitation, an overview of the various interviews conducted, documents collected and certain ongoing investigations by governmental agencies. Additional meetings were held between the Examiner's professionals and the Debtors' professionals on November 10 and 11, 2008 at WGM's offices in Dallas at which time the Debtors' professionals provided greater details regarding the Internal Investigation including the various interviews which were conducted in connection with the investigation.

7. The Examiner's professionals have conducted interviews with several of the Debtors' professionals and employees in connection with the Investigation. The Examiner's professionals have also met with the Debtors' counsel and received extensive downloads of information regarding the sum and substance of their interviews conducted in connection with the Internal Investigation. To date, the Examiner's professionals have conducted over ten interviews with various parties in interest and others regarding the Investigation.

8. The Examiner's professionals have also met with certain governmental agencies that may be investigating the Debtors, including, but not limited to, the Securities and Exchange Commission, the Department of Justice and the Commodity Futures Trading Commission (collectively, the "Governmental Agencies"), in an effort to understand and coordinate the investigations.

9. The Examiner's counsel engaged in negotiations and discussions with the Debtors' counsel in order to reach an agreement regarding the Debtors' sharing of information

and documents the Debtors have gathered regarding the Investigation. These discussions culminated in the parties' execution on November 12, 2008 of a stipulation, subject to Bankruptcy Court approval, setting forth the terms and conditions of the Debtors' sharing of information and documents with the Examiner (the "Information Sharing Stipulation").

10. This information gathering process and the full cooperation of the various entities have been and will continue to be vital to the Investigation in order to, among other things, coordinate the efforts of all interested parties and avoid unnecessary duplication of work undertaken or to be undertaken by the Debtors, the Creditors Committee, the Governmental Agencies and the Examiner. The information obtained to date and continued cooperation are also crucial to the Examiner's formulation and implementation of a streamlined work plan to timely complete the Investigation, which under the terms of the Examiner Order, is due within 120 days following the approval of the work plan by the Bankruptcy Court (*i.e.*, on or about March 24, 2009) unless extended by the Bankruptcy Court. *See* Examiner Order at ¶ 8.

EXAMINER'S PROPOSED WORK PLAN GOING FORWARD

11. As a result of these preliminary discussions, interviews and meetings and based upon the information currently available to the Examiner, the Examiner's preliminary work plan for the Investigation includes, but is not limited to, the following:

A. Information Gathering and Verification

12. Requesting, gathering, reviewing and analyzing data and information relevant to the subject matter of the Investigation from various parties, including, but not limited to, the Debtors, certain of the Debtors' current and/or former officers, directors, employees and other persons and entities including, without limitation, the Debtors' auditors, corporate counsel, professionals, lenders, investors, Westback Purchasing Co., L.L.C., Westback Holdings, LLC,

and counterparties to certain financial transactions with the Debtors (collectively, the "Witnesses").

13. Specifically, now that the Examiner and the Debtors have executed the Information Sharing Stipulation, the Examiner anticipates that his professionals will have access to the hundreds of thousands of pages of documents collected by the Debtors regarding the Investigation. The Examiner's professionals will analyze and review these documents, and, to the extent information is missing or additional information is necessary to verify the underlying information, the Examiner will request such information from additional sources.

B. Interviews and Depositions of Witnesses

14. The Examiner will also seek to conduct voluntary interviews of Witnesses with respect to the issues subject to the Investigation. At this juncture, the Examiner anticipates that interviews with at least 60 Witnesses will be conducted. In order to facilitate the Examiner's ability to timely and efficiently complete a comprehensive Investigation and fulfill his fiduciary and statutory duties, the Examiner has filed a motion with the Bankruptcy Court granting the Examiner the authority to issue subpoenas, including document requests, upon Witnesses who either refuse to voluntarily cooperate with the Examiner's requests or who condition their cooperation on the issuance of a subpoena (the "Subpoena Motion").

15. If this Bankruptcy Court grants the Subpoena Motion, the Examiner will coordinate with the Debtors, the Creditors Committee, and the Agent regarding the examination of any Witnesses who are also subject to the Pending 2004 Motions. Coordination of these examinations is necessary in order to avoid duplication, to minimize the cost to the Debtors' estates and comply with the provisions of the Examiner Order, which requires the Creditors

Committee to refrain from seeking discovery regarding its investigation to the extent it is duplicative of the scope of the Examiner's Investigation. *See* Examiner Order at ¶ 6.

C. Maintaining Open Lines of Communication

16. During the course of the Investigation, the Examiner intends to continue to maintain open lines of communication with the UST and counsel for the Debtors, the Creditors Committee and the Pre-Petition Secured Parties regarding the status of the Investigation.

17. The Examiner and his professionals will also continue to meet, confer and coordinate with the Governmental Agencies that may be investigating the Debtors.

18. The Examiner, through his counsel, intends to provide periodic reports regarding the Investigation to the Bankruptcy Court at omnibus hearings scheduled in the Debtors' cases and at such other hearings that the Bankruptcy Court may request.

D. Monitoring of Bankruptcy Cases and Any Government Investigations

19. The Examiner's counsel will continue to monitor and review pertinent filings with the Bankruptcy Court regarding or involving any issues related to the Investigation.

20. The Examiner's professionals will also continue to monitor any investigation of the Debtors undertaken by any Governmental Agencies.

E. Preparation of Examiner's Report

21. At this juncture, the Examiner anticipates that during the last 30 to 60 days of the Investigation, a substantial amount of time will be expended by his professionals to prepare for the filing with the Bankruptcy Court of the Examiner's report containing the Examiner's factual findings regarding the Investigation.

RETENTION OF PROFESSIONALS

22. In accordance with the provisions of the Examiner Order, the Examiner has determined that it necessary and appropriate to employ and retain, subject to approval of this Bankruptcy Court, certain professionals in order to fully discharge his fiduciary and statutory duties. *See* Examiner Order at ¶ 9. Specifically, the Examiner seeks authorization to retain the following professionals in connection with the Investigation: A) the Freeh Group; B) Morrison & Foerster LLP; C) KPMG LLP ("KPMG"); and D) Polsinelli Shalton Flanigan Suelthaus PC ("Polsinelli"), each of which is discussed below. The Examiner's applications to retain these entities will be filed shortly. The Examiner reserves the right to retain additional professionals, as needed based upon modifications to the work plan, subject to Bankruptcy Court approval.

23. The Freeh Group is an international consulting firm consisting in part of former United States Judges, United States Attorneys and agents for the Secret Service and Federal Bureau of Investigation, based in Wilmington, Delaware. The Examiner is the founder and senior managing partner of the Freeh Group. The Freeh Group, led by the Examiner, will be primarily responsible for handling the day-to-day activities regarding the Investigation. These activities include, without limitation, the following: A) scheduling, preparing for, and conducting Witnesses interviews; B) analysis and review of documents regarding the Investigation, including documents produced by Witnesses in response to the Examiner's document requests and those produced by the Debtors regarding the Internal Investigation; C) meeting and conferring with the Debtors' counsel regarding the details of the Internal Investigation; D) meeting, conferring and coordinating with representatives of the Governmental Agencies; E) preparing the Examiner's report; and F) assisting the Examiner in undertaking additional tasks that the Bankruptcy Court may direct.

24. Morrison & Foerster is an internationally recognized law firm with extensive experience and expertise in the fields of, among other things, debtors' and creditors' rights, business reorganizations under Chapter 11 of the Bankruptcy Code, litigation and energy law. In connection with the Examiner's carrying out of his fiduciary duties and responsibilities under the Bankruptcy Code and the Examiner Order, Morrison & Foerster will be the Examiner's lead counsel in connection with the Investigation and the Chapter 11 Cases. Specifically, Morrison & Foerster will render the following services on behalf of the Examiner: A) prepare motions, applications, notices, answers, orders and documents necessary in the discharge of the Examiner's duties; B) appear before this Bankruptcy Court to represent the interests of the Examiner; C) analyze and advise the Examiner regarding any legal issues that arise in connection with the Investigation; D) liaise with the UST and counsel for the Debtors, the Creditors Committee, the Pre-Petition Secured Parties and counsel for Witnesses regarding the Investigation; E) assist with Witness interviews and examinations; F) assist in preparing the Examiner's report; G) perform all other necessary legal services on behalf of the Examiner in connection with the Chapter 11 Cases; and H) assist the Examiner in undertaking additional tasks that the Bankruptcy Court may direct.

25. KPMG is an experienced financial consulting and forensic accounting firm with significant experience evaluating potential corporate malfeasance and investigating alleged corporate fraudulent activity and financial misconduct. The Examiner has retained KPMG as his consultant, in connection with the discharge of his fiduciary and statutory duties. Specifically, the services KPMG will provide to the Examine include assistance with respect to the Investigation of the Debtors' alleged fraud, impropriety of the trading strategy and trading activities, alleged misuse of loan funds, insider transactions. In particular, KPMG's services will

focus on A) the review and analysis of the Debtors' policies and procedure, trading strategies, and trading transactions; and B) the investigation and analysis of i) the Debtors' use of the funds obtained from the financial institutions; and ii) insider transactions. KPMG will also assist in preparing the Examiner's report and assist the Examiner in undertaking additional tasks that the Bankruptcy Court may direct.

26. Polsinelli is a nationally recognized law firm with extensive experience and expertise in the fields of, among other things, debtors' and creditors' rights, and business reorganizations under Chapter 11 of the Bankruptcy Code. In connection with the Examiner's carrying out of his fiduciary duties and responsibilities under the Bankruptcy Code and the Examiner Order, the Examiner has retained Polsinelli as his local counsel in connection with the Investigation and the Chapter 11 Cases. Specifically, Polsinelli will coordinate with Morrison & Foerster to render the following services on behalf of the Examiner: A) prepare motions, applications, notices, answers, orders and documents necessary in the discharge of the Examiner's duties; and B) appear before this Bankruptcy Court to represent the interests of the Examiner.

ESTIMATED FEES AND EXPENSES

27. The Examiner estimates that the total fees and expenses for the Examiner and his professionals, the Freeh Group, Morrison & Foerster, KPMG, and Polsinelli through the Investigation Deadline will be $5.9 million. To the extent that Investigation Deadline is extended beyond March 24, 2009, the estimated fees and expenses shall be revisited and, if requested by the Debtors, the Creditors Committee and the Agent, an updated estimate will be filed with the Bankruptcy Court.

28. In accordance with the terms of the Examiner Order, the fees and expenses of the professionals retained by the Examiner are subject to the filing of applications with and approval of the Bankruptcy Court.

RESERVATION OF RIGHTS

29. The Investigation is still in the nascent stage. The Examiner's preliminary work plan is based upon currently available information and presumes the full and complete cooperation of the Debtors, the Creditors Committee and the Pre-petition Secured Parties in accordance with the Examiner Order. *See* Examiner Order at ¶ 5. Given the early stage of the investigation, the Examiner has not yet completed a comprehensive review of the Debtors' internal documents. Given the volume of the documents, it will take significant time to review and analyze the documents. It is inevitable, therefore, that as the process unfolds, the Examiner's work plan will be amended, as necessary, to fulfill the Bankruptcy Court-ordered task. The Examiner reserves his right to modify the work plan accordingly and will keep the Bankruptcy Court informed of his progress on a periodic basis.

Dated: November 24, 2008

Respectfully submitted,

/s/ Christopher A. Ward

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Proposed Counsel for Louis J. Freeh, Esq.
Examiner

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
LEHMAN BROTHERS HOLDINGS INC., et al.,	:	Case No. 08-13555 (JMP)
Debtors.	:	(Jointly Administered)

ORDER APPROVING THE PRELIMINARY
WORK PLAN OF ANTON R. VALUKAS, EXAMINER

Upon the submission of a proposed Preliminary Work Plan (the "Work Plan") by Anton R. Valukas, the examiner (the "Examiner") appointed for Lehman Brothers Holdings Inc. and its affiliated debtors in the above-referenced chapter 11 cases, pursuant to paragraphs 11 and 12 of the Order Directing Appointment of an Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code [Docket #2569] (the "Examiner Order"); the Court having reviewed the Work Plan, the accompanying correspondence from the Examiner's counsel, and all other statements and documents submitted and presented in connection therewith; the Court having heard and considered the parties' statements with respect to any disagreements regarding the Work Plan; the Court being satisfied based on the statements made by the Examiner and other parties on the record on February 11, 2009 that (i) the Work Plan sets forth a reasonable basis for the Examiner to start his investigation, (ii) the Examiner will exercise appropriate discretion regarding what information may be shared with interested parties but that the Examiner is not required to share information with parties who are the subject of the investigation, (iii) the parties should proceed in the spirit of cooperation, (iv) the Work Plan is a work in process that may be modified in the future as appropriate on proper application but it is necessary now to commence the examination process, and (v) that adequate notice of the Work Plan has been provided to parties in interest

pursuant to the Examiner Order; the Court finding that no other or further notice of the Work Plan need be provided; and all objections to the Work Plan being overruled, and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the Work Plan is approved in the form attached hereto as Exhibit A.

Dated: February 17, 2009
New York, New York

/s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

PRELIMINARY WORK PLAN OF ANTON R. VALUKAS, EXAMINER

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
LEHMAN BROTHERS HOLDINGS INC., et al.,	:	Case No. 08-13555 (JMP)
Debtors.	:	(Jointly Administered)

PRELIMINARY WORK PLAN OF
ANTON R. VALUKAS, EXAMINER

Anton R. Valukas, the court-appointed Examiner, by his proposed undersigned counsel, hereby submits his preliminary work plan in accordance with the requirements set forth in the Court's Order Directing Appointment of an Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code, entered January 16, 2009 (the "Examiner Order").

Introduction

1. On January 16, 2009, the Court entered the Examiner Order directing the U.S. Trustee (the "U.S. Trustee") to appoint an examiner (the "Examiner") in the above-captioned Chapter 11 cases as soon as practicable. Examiner Order at ¶ 1 [Docket # 2569].

2. The Examiner Order directs the Examiner to investigate:

   a. Whether Lehman Brothers Commercial Corporation ("LBCC") or any other entity that currently is a Lehman Brothers Holdings, Inc. ("LBHI") chapter 11 debtor subsidiary or affiliate ("LBHI Affiliate(s)") has any administrative claims against LBHI resulting from LBHI's cash sweeps of cash balances, if any, from September 15, 2008, the commencement date of LBHI's chapter 11 case, through the date that such applicable LBHI affiliate commenced its chapter 11 case.

   b. All voluntary and involuntary transfers to, and transactions with, affiliates, insiders and creditors of LBCC or its affiliates, in respect of foreign exchange transactions and other assets that were in the possession or control of LBHI Affiliates at any time commencing on September 15, 2008 through the day that each LBHI Affiliate commenced its chapter 11 case.

   c. Whether any LBHI Affiliate has colorable claims against LBHI for potentially insider preferences arising under the Bankruptcy Code or state law.

   d. Whether any LBHI Affiliate has colorable claims against LBHI or any other entities for potentially voidable transfers or incurrences of debt, under the Bankruptcy Code or otherwise applicable law.

   e. Whether there are colorable claims for breach of fiduciary duties and/or aiding or abetting any such breaches against the officers and directors of LBCC and/or other Debtors arising in connection with the financial condition of the

Lehman enterprise prior to the commencement of the LBHI chapter 11 case on September 15, 2008.

f. Whether assets of any LBHI Affiliates (other than Lehman Brothers, Inc.) were transferred to Barclays Capital Inc. as a result of the sale to Barclays Capital Inc. that was approved by order of the Bankruptcy Court entered September 20, 2008, and whether consequences to any LBHI Affiliate as a result of the consummation of the transaction created colorable causes of action that inure to the benefit of the creditors of such LBHI subsidiary or affiliate.

g. The inter-company accounts and transfers among LBHI and its direct and indirect subsidiaries, including but not limited to: LBI, LBIE, Lehman Brothers Special Finance ("LBSF") and LBCC, during the 30-day period preceding the commencement of the chapter 11 cases by each debtor on September 15, 2008 or thereafter or such longer period as the Examiner deems relevant to the Investigation.

h. The transactions and transfers, including but not limited to the pledging or granting of collateral security interest among the debtors and the prechapter 11 lenders and/or financial participants including but not limited to, JPMorgan Chase, Citigroup, Inc., Bank of America, the Federal Reserve Bank of New York and others.

i. The transfer of the capital stock of certain subsidiaries of LBI on or about September 19, 2008 to Lehman ALI Inc.

j. The events that occurred from September 4, 2008 through September 15, 2008 or prior thereto that may have resulted in commencement of the LBHI chapter 11 case.

Examiner Order at ¶ 2. The Examiner Order also directs the Examiner to "perform the duties specified in sections 1106(a)(3) and (4) of the Bankruptcy Code, except to the extent the Court orders otherwise" (collectively, the "Investigation"). Id. at ¶ 3.

3. On January 19, 2009, the U.S. Trustee appointed Anton R. Valukas as Examiner in the Chapter 11 Cases, subject to Court approval, and filed her Notice of such appointment. [Docket # 2570].

4. On January 20, 2009, the U.S. Trustee filed her application for an Order of this Court approving the appointment of Anton R. Valukas as Examiner in the Chapter 11 cases. [Docket # 2571].

5. On January 20, 2009, this Court entered an order approving the appointment by the U.S. Trustee of Anton R. Valukas as Examiner in the Chapter 11 Cases. [Docket # 2583].

6. This preliminary work plan generally follows the format and level of detail of the plan submitted by the Examiner in *In re SemCrude, L.P., et al.,* Case Number 08-11525 (BLS) in the United States Bankruptcy Court for the District of Delaware. The Examiner notes that other Examiner's work plans, such as the one filed by the Examiner in *In re Refco, Inc. et al.,* Case Number 05-60006 (RDD) in the United States Bankruptcy Court for the Southern District of New York, were filed under seal. Given that this work plan is to be public and shared with all parties in interest, the Examiner believes that this plan contains a sufficient level of detail to inform the Court and the parties without interfering with the overriding goal of an independent investigation.

The Examiner's Activities To Date

7. Since his appointment, the Examiner and his proposed counsel have worked diligently to assemble and review publicly available materials that might be relevant to the scope of investigation. Pursuant to ¶ 11 of the Examiner Order, the Examiner and his proposed counsel have met and conferred with each of the parties as directed by the Court to attempt to reach consensus on a work plan and to coordinate to avoid duplication of effort.

8. On January 26, 2009, the Examiner met in a group meeting with representatives of Lehman Brothers Holdings Inc., and the other debtors in possession in these chapter 11 cases (collectively, the "Debtors"), the Unsecured Creditors Committee (the "UCC"), Barclays, the Lead Plaintiffs, the New York State Comptroller, Bank of America, The Walt Disney Company, and Harbinger Funds. Also in attendance were representatives of the U.S. Trustee, the SIPA Trustee, and the U.S. Attorney for the Southern District of New York. At that meeting, the Examiner solicited views and comments from the interested parties that would be of assistance in the formulation of a work plan that would avoid duplication of effort. The Examiner further explained that it was his intention to meet one-on-one with each of the interested parties to further explore those issues and to begin dialogue to aid in the successful performance of the Examiner's work. The Examiner explained that the one-on-one meetings were not designed for secrecy but for efficiency, and that the Examiner would consider anything

said in individual meetings regarding the formulation of a work plan to be subject to disclosure to all interested parties.

9. Following the group meeting, the Examiner conducted one-on-one meetings with representatives of the Debtors, the UCC, Barclays, the Lead Plaintiffs, the New York State Comptroller, Bank of America, The Walt Disney Company, and the Harbinger Funds. The Examiner also held a telephonic meeting with counsel for the Joint Administrators. The purpose of this series of meetings was to solicit each party's views on the Examiner's work plan, to explore how to achieve the maximum degree of cooperation among the parties to streamline the Examiner's work, to provide for sharing with the Examiner of materials assembled by each party so as to avoid duplication and to make the Examiner's work more efficient, and to gather whatever viewpoints and concerns any party wanted to express.

10. The Examiner also had one-on-one meetings with representatives of the U.S. Trustee, the SIPA Trustee and SIPC, and the U.S. Attorney for the Southern District of New York. The Examiner had telephone conferences with representatives of the U.S. Attorneys for the Eastern District of New York and the District of New Jersey. The Examiner had a telephone conference with representatives of the Securities & Exchange Commission. The purpose of these meetings was to coordinate the Examiner's work so as not to duplicate or impede the work of any of these agencies or the SIPA Trustee.

11. In order to develop an efficient work plan, the Examiner reached out and has spoken to the Examiners in other complex matters, Josh Hochberg (Refco) and Richard Thornburgh (WorldCom).

12. The Examiner has worked out the parameters of a protocol with the SIPA Trustee so that the integrity of each investigation can be maintained with as little duplication of effort as possible. The Examiner and the SIPA Trustee are exploring mechanisms for sharing documents and data. The Examiner and the SIPA Trustee will have regular conference calls to discuss their respective progress and plans and to coordinate their activities. To the greatest extent possible, each of the Examiner and the SIPA Trustee will give the other advance notice before any witness interview or deposition so that issues such as joint attendance and lead questioners may be addressed. When forensic or other projects involving the use of outside consultants are planned or conducted, the Examiner and SIPA Trustee will consider whether that work could be done by one rather than both of their outside professionals to avoid duplication.

13. The Examiner has worked out the parameters of a protocol with the U.S. Attorney for the Southern District of New York and expects and intends to reach similar understandings with other U.S. Attorneys and the SEC.

14. The Examiner has entered into proposed Stipulations with the Debtors and the UCC so that he will have access to documents and other materials germane to

the Investigation. A series of meetings have been scheduled and are on-going for the Examiner to access the information he will need to complete his report. The Examiner contemplates entering into similar stipulations with other parties to obtain access to their accumulated documents and materials.

15. On January 30, 2009, in order to facilitate the Examiner's ability to timely and efficiently complete a comprehensive investigation and fulfill his fiduciary and statutory duties, the Examiner filed a motion (the "2004 Motion") with the Bankruptcy Court. The 2004 Motion is similar to the one filed and granted with respect to the SIPA Trustee, and requests that this Court grant the Examiner the omnibus authority to issue subpoenas, including document requests, upon witnesses. The Examiner has advised the parties in interest that, if the Court approves that motion, the Examiner intends as a matter of course to give notice, by a filing on the docket of these cases, of any Rule 2004 subpoenas he issues; however, the Examiner reserves the right to file his declarations of subpoenas under seal in the event that he determines that disclosure of a particular subpoena might compromise the Investigation.

16. The Examiner contemplates maintaining a depository to collect documents, transcripts, and other materials, access to which will be limited to the Examiner and the SIPA Trustee during the ongoing investigation. The Examiner presumes that there will come a time when that depository can and should be made

available to all interested parties, subject to redactions for applicable privileges and confidences.

The Examiner's Proposed Work Plan Going Forward

17. One of the Examiner's first priorities will be to get an understanding of the volume and extent of documents he will need to review to complete the Investigation. The Examiner understands that the Debtors have not yet been able to file various schedules because of issues arising with respect to document access and the ability to effect a mid month closing of the Debtor's financial records. The Examiner's initial understanding is that a large portion of the data and documents that existed at the time of filing of this action on September 15, 2008 were transferred to Barclays as part of the sale of certain assets approved by the Court on September 19, 2008. The Examiner understands that a Transition Services Agreement dated as of September 22, 2008 ("TSA") between LBHI and Barclays establishes a framework for providing Debtors with access to Debtors' information that was transferred in the sale. The Examiner will work with the Debtors and Barclays to obtain access to Debtors' information. The Examiner understands that, as of September 15, 2008, the quantity of data includes billions of emails, which may or may not be in searchable format, as much as two petabytes of other electronic data (if a usual rule of thumb is that a gigabyte of data represents approximately 100,000 printed pages, two petabytes is approximately 200 billion pages), and hundreds of thousands of boxes of hard copy documents. The

Examiner intends to assist in whatever way he can to resolve document collection, retrieval, indexing and organization efforts since, obviously, the Examiner cannot render a comprehensive report without meaningful access to material documents.

18. Based upon the preliminary discussions, interviews and meetings conducted to date and the information currently available to the Examiner, the Examiner's preliminary work plan for the Investigation includes, but is not limited to, the following:

A. Information Gathering and Verification

19. Requesting, gathering, reviewing and analyzing data and information relevant to the subject matter of the Investigation from various parties, including, but not limited to, (1) current and/or former personnel of the Debtors, their affiliates, auditors, professionals, lenders, investors, and counterparties to certain financial transactions with the Debtors; (2) other interested parties, including but not limited to current and former personnel of Barclays, Bank of America, The Walt Disney Corporation, the Harbinger Funds, and others; (3) third parties, including but not limited to the Debtors' clearing banks and entities, the Federal Reserve Bank of New York and the U.S. Department of Treasury.

B. Interviews and Depositions of Witnesses

20. At this juncture, the Examiner anticipates that interviews with 100 or more witnesses will be conducted. The Examiner will generally seek to conduct voluntary

interviews of witnesses with respect to the issues subject to the Investigation. But in order to facilitate the Examiner's ability to timely and efficiently complete a comprehensive Investigation and fulfill his fiduciary and statutory duties, the Examiner has filed the 2004 Motion to obtain authority to quickly issue subpoenas in those instances where witnesses decline to voluntarily cooperate with the Examiner's requests or condition their cooperation on the issuance of a subpoena.

21. As noted above, the Examiner intends to coordinate with the SIPA Trustee, SIPC, and the Government in all cases, and with the Debtors, the UCC and other interested parties in those cases where it makes sense to do so and will not compromise the independence and integrity of the Examiner's investigation, such as where the Examiner determines to interview a witness who is subject to a Rule 2004 subpoena obtained by another party. The Examiner recognizes the need for and will seek coordination of efforts to avoid duplication, to minimize the cost to the Debtors' estates, and to comply with the provisions of the Examiner Order.

C. Maintaining Open Lines of Communication

22. During the course of the Investigation, the Examiner will continue to maintain open lines of communication with the U.S. Trustee, the SIPA Trustee, the Government, the Debtors, and other interested parties.

23. The Examiner, through his counsel, shall provide such periodic reports as the Court directs.

24. Some of the interested parties raised the possibility of interim reports. The Examiner does not yet know whether some of the issues assigned by the Court for investigation may lend themselves to early resolution, but the Examiner will consider making interim reports to the extent that it appears possible and efficient to do so.

D. Monitoring of Bankruptcy Cases and Any Government Investigations

25. The Examiner's counsel will continue to monitor and review pertinent filings with the Bankruptcy Court regarding or involving any issues related to the Investigation.

26. The Examiner's professionals will also continue to monitor any investigation of the Debtors undertaken by any Governmental Agencies.

E. Retention of Professionals

27. In accordance with the provisions of the Examiner Order, the Examiner has determined that it is necessary and appropriate to employ and retain, subject to approval of this Court, certain professionals in order to fully discharge his fiduciary and statutory duties. *See* Examiner Order at ¶ 6.

28. The Examiner has already moved for authorization to retain as counsel the firm of Jenner & Block for the reasons set out in that motion [Docket # 2627].

29. The Examiner has determined that he cannot adequately conduct his Investigation without an independent financial advisor. After interviewing a number of candidates, the Examiner has decided upon the retention of Duff & Phelps as his

independent financial advisor. Duff & Phelps is an international firm with substantial experience and expertise in the areas with which the Examiner will need independent assistance, such as forensic accounting, valuation, and cash management. The Examiner intends to expeditiously submit an application for authority to retain Duff & Phelps to the Court for approval.

F. Preparation of Examiner's Report

30. The scope of the Examiner's investigation is quite broad, the issues are both subtle and complex, and the potential witnesses include persons of such significant public stature that interviewing them may present unusual challenges. Despite that, if there were no issues with respect to immediate access to documents and financial data, the Examiner believes that a realistic time frame for the preparation of a Final Report is 9 months. But because, as explained in paragraph 17 above, there are significant document issues, the Examiner may need to advise the Court of the need for an expanded schedule.

G. Estimated Fees and Expenses

31. The Examiner has not yet had sufficient time to assess the full scope of the efforts he will need to undertake and any attempt to budget at this time is at best an educated guess. For example, while the Examiner is in the process of entering into stipulations in order to receive or access documents, data and work product from the Debtors, the UCC and other parties, he does not yet know how complete or how

organized those materials will be and what additional efforts will have to be undertaken. The Examiner does not yet know whether and to what extent he will obtain cooperation on document production and access to persons he presently contemplates to be material witnesses. All of these issues, and others, could significantly reduce or increase the Examiner's current estimates, which are based upon the Examiner's assumptions about the materials he is likely to receive from the parties and his expectations of cooperation and future events. The Examiner will promptly advise the Court and the parties as the Investigation unfolds if reality significantly varies from these preliminary estimates, but the Examiner currently estimates that the total fees for the Examiner and his counsel, Jenner & Block, will aggregate approximately $ 23 million, assuming that a final Report can be completed in approximately 9 months from today's date. As described in paragraph 29 above, the Examiner has decided upon the retention of Duff & Phelps as his financial advisor. But that selection was made only days ago, and the proposed advisor has similar difficulties estimating its budget at this nascent stage.

32. In accordance with the terms of the Examiner Order, the fees and expenses of the professional persons retained by the Examiner are subject to the filing of applications therefor and allowance by the Bankruptcy Court after notice and a hearing.

H. Reservation of Rights

33. The Examiner's preliminary work plan is based upon currently available information and presumes the full and complete cooperation of the Debtors, the UCC and other parties in interest in accordance with the Examiner Order. See Examiner Order at ¶ 4. Given the early stage of the investigation and the volume of the data in this matter, it will take significant time to assemble, review and analyze the documents. As the process unfolds, the Examiner's work plan may need to be amended to fulfill the Court's direction to deliver a comprehensive report. The Examiner reserves his right to modify the work plan accordingly and will promptly notify the Court if modifications are necessary.

Dated: February 6, 2009
New York, New York

Respectfully submitted,
Anton R. Valukas, Examiner

By:_____

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Proposed Attorneys for the Examiner

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WASHINGTON MUTUAL, INC., et al.,[1] Debtors.	Chapter 11 Case No. 08-12229 (MFW) Jointly Administered **Hearing Date: August 10, 2010 at 1:30 p.m.**

EXAMINER'S WORK AND EXPENSES PLAN/REPORT AND MOTION FOR ADDITIONAL RELIEF

Joshua R. Hochberg, the Examiner appointed on July 26, 2010 in the above-captioned bankruptcy cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors-in-possession (the "Debtors") by the United States Trustee for Region 3 (the "U.S. Trustee"), pursuant to the Court's Agreed Order Directing the Appointment of an Examiner, entered July 22, 2010 [Docket No. 5120] ("the "Examiner Order"), and whose appointment was approved by the Court in an Order entered on July 28, 2010 [Docket No. 5162] (the "Examiner"), hereby makes and files his Work and Expenses Plan/Report and his Motion for Additional Relief and respectfully represents as follows:

BACKGROUND

1. On September 26, 2008 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their affairs as debtors and debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

2. On January 11, 2010, the U.S. Trustee for the District of Delaware appointed an official committee of equity security holders (the "Equity Committee").

3. On June 8, 2010, the Equity Committee filed its Motion in Support of Order Directing Appointment of an Examiner Under 11 U.S.C. § 1104(c) [Docket No. 4644].

4. On July 22, 2010, this Court entered the Examiner Order [Docket No. 5120].

5. On July 26, 2010, the U.S. Trustee appointed Joshua R. Hochberg as Examiner in the Chapter 11 Cases, subject to further Court approval, and filed her Notice of Appointment of Examiner [Docket No. 5141]. Also on July 26, 2010, the U.S. Trustee filed her Application for Order Approving Appointment of Examiner [Docket No. 5142].

6. On July 28, 2010, this Court entered an order approving the appointment by the U.S. Trustee of Joshua R. Hochberg as Examiner in the Chapter 11 Cases. [Docket No. 5162].

7. In the Examiner Order, the Court directed the Examiner to investigate "(a) the claims and assets that may be property of the Debtors' estates that are proposed to be conveyed, released or otherwise compromised and settled under the Plan[2] and Settlement Agreement, including all Released Claims, as defined in the Settlement Agreement, and the claims and defenses of third parties thereto (the 'Settlement Component') and (b) such other claims, assets and causes of actions which shall be retained by the Debtors and/or the proceeds thereof, if any, distributed to creditors and/or equity interest holders pursuant to the Plan, and the claims and defenses of third parties thereto (the 'Retained Asset Component')" (collectively, the "Investigation"). *See* Examiner Order at ¶ 2.

8. The Examiner Order also directed that the Examiner file a "Work and Expenses Plan/Report" (the "Work Plan") no later than 5:00 p.m. on Friday, August 6, 2010. The Court

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[2] Capitalized terms used but not defined herein shall have the meaning set forth in the Examiner Order.

directed that the Work Plan, "include a good faith estimate of the fees and expenses to be incurred by or on behalf of the Examiner in connection with the Investigation and a status report detailing the Examiner's efforts to date." This Work Plan is filed in connection with this directive and will be divided into the following sections: a summary of work completed to date by the Examiner; a summary of Investigative Areas; a proposed Work Plan which includes the issues to be investigated by the Examiner and a good faith estimate of the fees and expenses which may be incurred in connection with the Proposed Work Plan; and a request for additional relief.

WORK COMPLETED TO DATE

9. The United States Trustee notified the Examiner of his appointment herein on July 26, 2010 and the Examiner immediately began work on the Investigation. In particular, the Examiner organized a team of professionals from his law firm, McKenna Long & Aldridge LLP ("MLA"), and began to review publicly available documents regarding the proposed Investigation, including the Examiner Order, the proposed Plan of Liquidation and other pleadings. In addition, the Examiner arranged conference calls and/or meetings with the Equity Committee, the Debtors, the Unsecured Committee, Trust Preferred Securities Investors ("TPS Consortium"), JP Morgan Chase ("JPMC"), the WMI Noteholders Group and a group of noteholders represented by Fried Frank.

10. The Examiner and attorneys from MLA participated in a conference call with counsel for the Equity Committee on July 27. During this conference call, counsel for the Equity Committee provided the Examiner with a summary of the issues they believed required investigation, the status of pending litigation related to the Investigation and possible sources of documents and investigative materials. The Equity Committee pledged full cooperation with the Examiner and also agreed to produce their own internal analyses, work product and other

documents related to the Examination. Since that call, the Equity Committee has provided additional information to the Examiner.

11. On July 28, the Examiner and attorneys from MLA met with counsel for the Debtors at the offices of Weil Gotshal in New York. Prior to the meeting, counsel for the Debtors provided the Examiner with two large binders of documents. Attorneys from both Weil Gotshal and Quinn Emmanuel were present on behalf of the Debtors at this meeting. This meeting included a detailed review of issues related to the Investigation and a detailed discussion of the location of and access to documents and information which would be required to conduct the Investigation. The Debtors agreed to fully cooperate with the Examiner and, in particular, agreed to the provide the Examiner with complete access to a document database maintained by Weil Gotshal (the "Weil Gotshal Database") and to make employees and agents of the Debtors available for interviews by the Examiner. The Examiner was advised that the Weil Gotshal Database contains all documents and records collected by or produced to the Debtors during the course of this Bankruptcy Case. It includes the Debtors' existing work product analyses with respect to the Settlement Component and the Retained Assets Component and also includes documents produced by JPMC. Counsel for the Debtors have now provided the Examiner and his team with passcodes which they advise provide the Examiner with access to all of the documents contained in the database. The Examiner has assigned specific attorneys and paralegals to coordinate with the Debtors to identify significant documents related to the Investigation. At the conclusion of the meeting, the Debtors and the Examiner agreed to conduct a follow up conference call on August 3, 2010. This conference call was conducted and the Examiner and the Debtors have begun discussions to schedule interviews of Debtor employees and agents during the week of August 16.

12. On July 28, 2010, the Examiner and an attorney from MLA met with counsel for the Unsecured Committee. In addition to counsel, representatives of the Committee's Financial Advisor were present at this meeting. The Unsecured Committee also pledged to fully cooperate with the Examiner and to provide the Examiner with documents and materials including their work product analysis of the issues to be investigated. At the meeting, the Committee reviewed and provided the Examiner with three binders of materials.

13. On August 2, 2010, the Examiner and attorneys from MLA met with counsel for and representatives of the FDIC. During the course of this meeting, the FDIC explained their legal position regarding several of the critical issues related to the Investigation and further agreed to provide the Examiner with a detailed memorandum setting forth their legal positions. Counsel for the FDIC advised the Examiner that many of the claims asserted against the FDIC were barred under applicable law, thereby rendering fact discovery unnecessary and, in some cases, prohibited under applicable law and regulation. In further discussing the issue, the FDIC did agree to consider discovery requests from the Examiner on a case by case basis, but made clear that any discovery would be voluntary and would be limited. The Examiner has reserved all rights with respect to this issue and is currently reviewing the memorandum which the FDIC subsequently provided on August 4.

14. On August 2, 2010, the Examiner and an attorney from MLA met with representatives of the TPS Consortium in response to a request from them for a meeting with the Examiner. The TPS Consortium provided the Examiner with a summary of their position and documents related to the Examination.

15. On August 4, 2010, the Examiner and attorneys from MLA held a meeting with counsel for JPMC. During this meeting, counsel for JPMC provided the Examiner with detailed information concerning their position with respect to the Settlement. JPMC advised the

Examiner that all of the documents it had collected related to its consideration of Settlement Component Issues had been or were being produced and were available in the Weil Gotshal Database. The Examiner and the JPMC representative engaged in a detailed discussion of the scope of document searches conducted by JPMC. JPMC pledged cooperation and agreed to consider further requests for documents, and information by the Examiner. JPMC also agreed to make employees and agents of JPMC available for interviews by the Examiner. The Examiner has begun the process of identifying additional information and documents to be requested from JPMC and to identify possible witnesses.

16. The Examiner and attorneys from MLA conducted a conference call with counsel for the WMI Noteholders Group on August 5, 2010. On that same date, the Examiner and attorneys from MLA conducted a conference call with attorneys from the law firm of Fried Frank who represent a separate group of noteholders. In each call, counsel for these noteholders provided their thoughts regarding the Investigation to the Examiner and agreed to cooperate in the Investigation.

AREAS OF INVESTIGATION

17. The Examiner will evaluate the overall reasonableness of the proposed settlement by evaluating, investigating and understanding the merits of the issues that have been compromised. In addition to the evaluation of the Settlement Component, the Examiner will consider the Retained Asset Component. The Examination will build off analyses conducted by various parties. As part of the Investigation, interviews of witnesses will be conducted and discovery materials obtained that have not been available to the settling parties. An analysis will be conducted to determine the effect of potential recoveries, specifically whether they would likely impact Equity or other out of the money claimants' potential recovery. This analysis will consider whether there are significant potential assets of the estate, that have not been fully

pursued or evaluated, who would benefit from their recovery, and whether recovery of those assets is reasonably likely. The following is a description of each of the issues to be investigated:

(a) Issues Related to JPMC. The Examiner will evaluate work completed to date by the Debtors and other parties in investigating claims which might exist against JPMC and will conduct his own investigation of these issues to the extent necessary. The issues related to the Settlement Component as they pertain to JPMC are as follows:

(1) Business Tort Claims: The Examiner will identify and investigate possible business tort and other claims which may exist against JPMC. The Examiner will review and consider claims identified by the Debtors and other parties to date and will also attempt to identify other possible claims and theories of recovery;

(2) Rights to Tax Refunds: The Examiner will identify and evaluate the competing claims to Tax Refunds totaling $6 Billion, the division of which is a critical part of the Settlement Component;

(3) Disputed Assets: During the course of his initial meetings, the parties have identified several categories of disputed assets which are to be allocated between the Debtors and JPMC. These include, but are not limited to, rights to approximately $4 Billion in deposit accounts which the Examiner is advised is a central part of the Settlement Component. The Examiner will investigate the competing claims to material portions of these assets.

(b) Issues Related to the FDIC: The parties have advised the Examiner that a review and investigation of the rights, duties and obligations by and between the Debtors, JPMC and the FDIC relating to the takeover of Washington Mutual Bank and concerning the duties and obligations of the FDIC are a critical part of the Settlement Component. The Examiner intends to conduct both a legal and factual investigation of these issues.

(c) Avoidance Actions: The parties have advised the Examiner that significant transfers of funds were made between WMI, a Debtor herein, and Washington Mutual Bank ("WMB"), which is WMI's non-debtor bank subsidiary, within one year of WMI seeking bankruptcy protection. The Examiner intends to investigate these conveyances to determine whether they are avoidable and, if so, from whom they are recoverable and the consequences of avoiding such transfers to the Debtors Bankruptcy Estates.

(d) TPS Securities: Under the terms of the Proposed Settlement, JPMC is entitled to retain approximately $4 Billion of securities identified as the TPS Securities. The Examiner will consider the competing claims to these securities.

(e) Third Party Claims: This is the Retained Asset Component. The Examiner will conduct a preliminary investigation of potential Third Party Claims for the purpose of identifying possible claims and causes of action which may exist against third parties, which may require further investigation, and which may provide for further recoveries in this case. The Examiner will focus his investigation on claims against parties involved in the sale and marketing of the Debtor prior to seeking bankruptcy protection, the failure and seizure of Washington Mutual Bank and conduct which has taken place since the Petition Date.

WORK PLAN AND GOOD FAITH ESTIMATE OF FEES

18. The Examiner is a partner in MLA, and has selected MLA to serve as his principal counsel. An Application to retain MLA was filed with the Court on July 30, 2010. In addition, the Examiner has retained the firm of Cole Schotz to serve as Delaware Counsel in this matter. At present, the Examiner has not determined whether he will require the services of a financial advisory or consulting firm, or will have to consult with select experts on specific issues.

19. The Examiner's consultations with parties in interest have confirmed that the scope of the proposed Investigation is large and that it will require significant factual and legal analysis of many complex issues. In addition, several parties in interest have made clear that they encourage the Examiner to conduct an expeditious examination. The Examiner will outline in his preliminary report the status of the Investigation as of that date and whether he anticipates completing the final report as scheduled by the Court or whether he will seek further relief. At present, the Examiner's focus is to assemble a large enough team to complete the Investigation as soon as possible within the schedule established by the Appointment Order.

20. The Examiner has determined that the most efficient manner in which to conduct the Investigation is to establish teams to investigate discrete areas of the Investigation. Each of these teams will report to the Examiner who will direct the Investigation. Due to the very short time deadlines established in the Examiner Order, the Examiner, in choosing MLA professionals

to assist on this matter, has attempted to identify professionals with high levels of experience and expertise who have immediate availability to assist in the Investigation. MLA is staffing the examination with a large number of professionals because of the significant amount of analysis that is necessary to review prior litigation, evaluate the legal and factual issues and to further investigate these issues.

21. A team leader will be appointed for each team and regular meetings between team leaders and the Examiner will be held to coordinate the activities of the teams. The Examiner will direct and coordinate the activities of the teams. The number of teams may be expanded as the Investigation continues to address specific issues. The following is a description of the teams established by the Examiner and their current staffing:

(a) FDIC Team. This team will consider and evaluate the merits of the Settlement Component as they pertain to FDIC and legal and factual issues relating to potential claims and causes of actions against the FDIC. The MLA Partner directing this portion of this investigation has an hourly rate of $450 per hour. He will be assisted by at least two associates having hourly rates averaging $325 per hour.

(b) J.P. Morgan Chase Team. An MLA partner will coordinate and conduct the Examination of the settlement claims as they pertain to JP Morgan Chase and also fully consider and evaluate potential claims and causes of action in which the bankruptcy estate may have against JPMC. Among the issues that will be analyzed and investigated by this team are the so-called "business tort" issues. The MLA Partner leading this portion of the investigation has an hourly rate of $700 per hour and will be assisted by at least four associates with rates of between $375 and $450 per hour.

(c) Avoidance and Asset Claims. An MLA Partner will investigate avoidance actions and matters relating to disputes over assets existing between the Debtor

and JPMC. The partner assigned to lead this portion of the investigation has an hourly rate of $575 per hour and will be assisted by at least three associates with rates of between $320 and $480 per hour. In addition, the Examiner has tasked a consultant employed by MLA to assist in evaluating financial issues concerning this portion of the investigation at an hourly of $450 per hour.

(d) Tax Issues. An MLA tax partner will investigate and report on the tax aspects of the settlement reached between the Debtor and the FDIC and JPMC. The hourly rate for the MLA Tax Partner tasked with conducting this portion of the investigation is $620. He will be assisted by an MLA litigation partner with an hourly rate of $495 to conduct this portion of the investigation. It is likely that this group will require associate assistance in conducting any legal research which might be required in developing and formulating that portion of the report pertaining to the tax issues. The anticipated hourly rate for the associate who will assist on this portion of the investigation is $350.

(e) Third Party Claims. An MLA partner will investigate potential claims against third parties. The hourly rate for the MLA partner tasked with investigating these claims is $495 per hour. In addition, this partner will be assisted by at least one associate with an anticipated rate of approximately $350.

(f) TPS Securities. An MLA Securities/Banking lawyer will evaluate the status of TPS issues and their impact on the settlement. The hourly rate of that partner is $615 per hour. It is anticipated that one associate will assist in this portion of the investigation with an hourly rate of approximately $350 per hour.

(g) Bankruptcy Issues and Overall Coordination. Several MLA attorneys will assist the examiner in coordinating the examination, addressing any issues which remain

to be resolved in the bankruptcy court and addressing any administrative issues in the bankruptcy case. The MLA partners who will be assisting on this portion of the investigation have hourly rates of $495 and $480 per hour. It is anticipated that one of these partners will work full time on the matter and the second partner will work at least half time on the matter. In addition, an MLA associate with the rate of $325 will also likely work full time.

22. The contemplated Investigation will require the collection and organization of voluminous documents. The Examiner will utilize a team of MLA professionals and paralegals with expertise in collecting and organizing documents and information. The hourly rates of the members of this group vary between $235 and $265 per hour. Their activities will be directed and coordinated by one of the MLA Partners already assigned to a team above and by one or more associates.

23. Based upon the work conducted by the Examiner to date, the Examiner anticipates that he will spend at least 180 hours per month on this matter during the months of August and September. In addition, the Examiner anticipates that the equivalent of eighteen MLA professionals will work on this matter on a full time basis (180 hours per month), certainly in August and most likely throughout the month of September. The Examiner anticipates that the blended hourly rate for MLA professionals working on this matter will be below $500 per hour, but for purposes of providing an estimate of fees will assume a blended rate of $500 per hour. In addition, the Examiner's Delaware counsel will incur fees in representing the Examiner. As of July 31, the Examiner and MLA had incurred fees of approximately $220,000.

24. Based upon the estimates set forth in the paragraph above, the Examiner anticipates Examiner and professional fees of $2,000,000 for each of August and September will be incurred if this Work Plan is followed. These estimates do not include estimates for any

financial consultants or advisors. If the Examiner determines that it is necessary to retain a financial advisor, the Examiner will, of course, file a motion for authority to retain such financial advisors and will provide a good faith estimate of the fees and expenses to be incurred in connection therewith. The Examiner's estimate of potential fees assumes that the parties in interest continue to cooperate and that disputes do not have to be litigated. The Examiner's best good faith estimate is that Examiner and professional fees in this matter could total $4 Million or more through September 30, 2010.

25. In addition to estimated fees, the Examiner will incur out of pocket expenses for the Examiner and his professionals. The Examiner anticipates that substantial out of pocket expenses will be incurred in conducting the Examination, including witness interviews. Travel will be require to meet with witnesses and to collaborate in the preparation of the reports required by the Examiner Order. In addition, the cost of collecting and using documents produced to the Examiner will also be significant. The Examiner anticipates monthly expenses of $200,000 per month.

ADDITIONAL RELIEF

26. At Paragraph 5 of the Examiner Order, the Court stated it would hold a status conference on August 10, 2010 at 1:30 p.m. to consider the Work and Expenses Plan/Report and also, "order, if appropriate, further relief as will aid the Examiner in the performance of the Examiner's duties and/or to accommodate the needs of the Debtors' Estates." The Examiner respectfully requests that the Court provide additional relief to the Examiner. First, the Examiner requests that this Court clarify that the voluntarily production of privileged or work product materials to the Examiner by parties in interest shall not constitute a waiver of such protection by the party producing such materials, and to further clarify that no discovery of any kind may be propounded upon the Examiner during the course of the Investigation. Second, the Examiner

requests that he be authorized, without further order of the Court, to demand and compel by way of subpoena, the production of documents that may be relevant to the Investigation or sworn testimony of witnesses with knowledge of facts relevant to the Examination.

A. Protections for Work Product Information and Documents and Prohibition on Discovery from Examiner

27. The Examiner has learned that the Debtor, the Equity Committee, the Unsecured Committee and other parties in interest have significant attorney work product and privileged documents and information (the "Work Product") relating to the Investigation which they are prepared to voluntarily turn over to the Examiner. This information will be extremely helpful to the Examiner in conducting the Investigation. In order to encourage parties to turn over Work Product to the Examiner, the Examiner requests a finding and order by this Court that the delivery of any documents or information to the Examiner or to his counsel is not intended to constitute a waiver of attorney-client privilege, attorney work product protection, confidentiality or any other applicable privilege, protection, immunity, or confidentiality, and the delivery of such documents or information shall not be the basis for any third party or any other party to assert that any of the parties or their counsel or other professionals have waived, in whole or in part, any privilege, protection, immunity, or confidentiality with respect to such documents or information or with respect to any other documents or information that may concern the same subject matter. The Examiner believes that establishing such a condition with respect to Work Product voluntarily produced to the Examiner will encourage parties to quickly turn over Work Product to the Examiner. The Examiner currently anticipates that he will use Work Product in his report, without attribution to the source of the Work Product and will, at the conclusion of the Investigation, destroy or return Work Product to the party which produced it.

28. In order to further protect the Work Product and other information collected by the Examiner during the course of the Investigation from disclosure, encourage parties to turn over Work Product to the Examiner, and ensure that no disruption to the Investigation process occurs, the Examiner also requests that the Court prohibit any party from propounding any discovery of any kind upon the Examiner during the pendency of the Investigation.

B. Authority to Issue Subpoenas

29. Because the Examiner Order contemplates that the Examiner will file his Preliminary Report by September 7, 2010 and his Final Report by October 8, 2010, it would not be efficient for the Examiner to wait until any potential non-cooperation occurs before seeking authority from the Court to propound formal discovery should it become necessary to do so, and such delay could potentially imperil the Investigation. In addition, based upon information provided to the Examiner, it may be necessary to obtain documents and information from persons and entities which are not parties to the Settlement Agreement, but who may have facts related to the Investigation. These could include documents requests and requests for oral testimony from professionals such as investment bankers and accountants and also from banks identified as potential competing bidders for the assets of WMB. Accordingly, the Examiner respectfully submits that granting the relief requested herein will give him the necessary tools to deal with non-cooperation, increase the likelihood that parties will voluntarily cooperate with the Examiner in the first instance, and preserve the rights of parties from whom the Examiner may request discovery ("Discovery Party") to seek relief if they have legitimate grounds to object to any subpoena.

30. Accordingly, the Examiner seeks authority, without further order of the Court, to demand and compel by way of subpoena: (1) the production of documents that may be relevant to the Investigation or lead the Examiner to information that is relevant to the Investigation and

(2) the oral examination, under oath, of persons who have may have knowledge of facts related to the Investigation. The Examiner proposes the following procedures in connection with the Examiner's issuance of any subpoena:

(a) Except as otherwise agreed by the Examiner, or subsequently ordered by the Court, a Discovery Party to which a subpoena that seeks documents (whether or not it also seeks testimony) is directed shall, within five (5) days of service of such subpoena: (i) produce all non-privileged documents responsive to such subpoena (unless otherwise agreed by the Examiner); or (ii) file and serve a motion seeking a protective order or making other objections to the subpoena , which the Court shall hear on shortened notice, no later than five (5) days from the filing of such motion.

(b) If a Discovery Party withholds any documents based upon a claim of privilege, he, she, or it must provide the Examiner with a privilege log containing the information required by Bankruptcy Rule 7026 no later than five (5) days after service of a subpoena upon such party (unless otherwise agreed by the Examiner).

(c) If the subpoena so directs, a Discovery Party may be required to appear for an oral examination within five (5) days of service of a deposition subpoena on the Discovery Party, which notice is deemed to be reasonable; provided the party may voluntarily agree to appear for an oral examination sooner and provided that the Discovery Party shall have five (5) days to bring a motion to contest the requirement that he appear for an examination..

(d) As necessary to implement the foregoing, the Examiner and his counsel are authorized to sign and issue a subpoena from any United States Bankruptcy Court for the applicable district in which a Discovery Party resides, does business, maintains documents, or is found, both to obtain documents from a Discovery Party and to

command the attendance of a party at a deposition. The Examiner and his counsel are also authorized to take such actions as may be necessary in any other court in order to enforce subpoenas and otherwise effectuate the terms of the Court's order with respect to this Motion.

31. The relief requested herein is not intended to limit the substantive rights of any Discovery Party or any other party under applicable law to object to or oppose any subpoena the Examiner may serve. In addition, and consistent with the relief requested above with respect to voluntary productions to the Examiner, the delivery of any documents or information to the Examiner or to his counsel is not intended to constitute a waiver of attorney-client privilege, attorney work product protection, confidentiality or any other applicable privilege, protection, immunity, or confidentiality, and the delivery of such documents or information shall not be the basis for any third party or any other party to assert that any of the parties or their counsel or other professionals have waived, in whole or in part, any privilege, protection, immunity, or confidentiality with respect to such documents or information or with respect to any other documents or information that may concern the same subject matter.

32. This Court granted similar relief to the examiner in *In re Tribune Company, et al.* (Case No. 08-13141) (Bankr. D. Del.). This Court and other courts have granted similar relief to examiners in similar situations. *See In Re DBSI* (Case No. 08-12687) (Bankr.D. Del.) (granting pre-approval to issue subpoenas); *New Century TRS Holdings, Inc.* (Case No. 07-10416) (Bankr. D. Del.) (same); *SemCrude, L.P., et al.* (Case No. 08-11525) (Bankr. D. Del.) (same); *Lehman Brothers Holdings Inc.* (Case No. 08-13555) (Bankr. S.D.N.Y.) (same). The *Tribune, DBSI, New Century, SemCrude* and *Lehman* orders are collectively attached hereto as Exhibit "A". The same considerations for expedience, thoroughness, and fulfillment of statutory and court-ordered mandates apply here. The Examiner does note that the proposed time deadlines for Discovery

Parties to object to subpoenas which may be served by the Examiner are shorter in this case than in the examples cited herein; however, the time deadlines for this Investigation are much more compressed than in those cases and thus shorter objection periods would be appropriate. The Examiner will attempt to conduct all discovery on a voluntarily and negotiated basis, but must have some ability to quickly seek discovery if a Discovery Party is unwilling to cooperate.

33. The requested relief will not unduly prejudice any party that may become the subject of a subpoena issued by the Examiner. The proposed order contemplates that the substantive rights of any party that becomes the subject of a subpoena to seek protective relief are fully preserved.

34. Attached hereto as Exhibits "B", "C" and "D", respectively, are proposed orders Approving the Examiner's Work Plan and Budget; Preserving Work Product Protection in Connection with Voluntarily Productions of Documents and Authorizing the Examiner to Issue Subpoenas. The Examiner respectfully requests that this Court enter the attached Orders.

WHEREFORE, the Examiner respectfully requests that the Court enter the orders, substantially in the form annexed hereto as Exhibits "B", "C" and "D", authorize the Examiner to proceed with the Work Plan set forth herein, granting the additional relief granted herein and such other and further relief as is just and proper.

Dated: August 6, 2010

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Proposed Counsel to the Examiner

Exhibit "A"

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
TRIBUNE COMPANY, *et al.*,[1]	:	Case Number 08-13141 (KJC) (Jointly Administered)
	:	
Debtors.		Re: Dkt Nos. 4354, 4474, 4497
	:	

AMENDED ORDER GRANTING EXAMINER'S MOTION FOR AN ORDER AUTHORIZING THE EXAMINER TO DEMAND AND ISSUE SUBPOENAS COMPELLING THE PRODUCTION OF DOCUMENTS AND ORAL EXAMINATION OF PERSONS AND ENTITIES

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tribune Company (0355); 435 Production Company (8655); 5800 Sunset Productions Inc. (5510); Baltimore Newspaper Networks, Inc. (8258); California Community News Corporation (5306); Candle Holdings Corporation (5626); Channel 20, Inc. (7399); Channel 20, Inc. (7399); Channel 39, Inc. (5256); Channel 40, Inc. (3844); Chicago Avenue Construction Company (8634); Chicago National League Ball Club n/k/a Tribune CNLBC, LLC (0347); Chicago River Production Company (5434); Chicago Tribune Company (3437); Chicago Tribune Newspapers, Inc. (0439); Chicago Tribune Press Service, Inc. (3167); ChicagoLand Microwave Licensee, Inc. (1579); Chicagoland Publishing Company (3237); Chicagoland Television News, Inc. (1352); Courant Specialty Products, Inc. (9221); Direct Mail Associates, Inc. (6121); Distribution Systems of America, Inc. (3811); Eagle New Media Investments, LLC (6661); Eagle Publishing Investments, LLC (6327); forsalebyowner.com corp. (0219); ForSaleByOwner.com Referral Services, LLC (9205); Fortify Holdings Corporation (5628); Forum Publishing Group, Inc. (2940); Gold Coast Publications, Inc. (5505); GreenCo., Inc. (7416); Heart & Crown Advertising, Inc. (9808); Homeowners Realty, Inc. (1507); Homestead Publishing Co. (4903); Hoy, LLC (8033); Hoy Publications, LLC (2352); InsertCo, Inc. (2663); Internet Foreclosure Service, Inc. (6550); JuliusAir Company, LLC (9479); JuliusAir Company II, LLC; KIAH, Inc. (4014); KPLR, Inc. (7943); KSWB Inc. (7035); KTLA Inc. (3404); KWGN Inc. (5347); Los Angeles Times Communications LLC (1324); Los Angeles Times International, Ltd. (6079); Los Angeles Times Newspapers, Inc. (0416); Magic T Music Publishing Company (6522); NBBF, LLC (0893); Neocomm, Inc. (7208); New Mass. Media, Inc. (9553); new River Center Maintenance Association, Inc. (5621); Newscom Services, Inc. (4817); Newspaper Readers Agency, Inc. (7335); North Michigan Production Company (5466); North Orange Avenue Properties, Inc. (4056); Oak Brook Productions, Inc. (2598); Orlando Sentinel Communications Company (3775); Patuxnet Publishing Company (4223); Publishers Forest Brook Productions, Inc. (2598); Sentinel Communications News Ventures, Inc. (2027); Shepard's Inc. (7931); Signs of Distinction, Inc. (3603); Southern Connecticut Newspapers, Inc. (1455); Star Community Publishing Group, Inc. (5612); Stemweb, Inc. (4276); Sun-Sentinel Company (2684); The Baltimore Sun Company (6880); The Daily Press, Inc. (9368); The Hartford Courant Company (3490); The Morning Call, Inc. (7560); The Other Company LLC (5337); Times Mirror Land and Timber Company (7088); Times Mirror Payroll Processing Company, Inc. (4227); Times Mirror Services Company, Inc. (1326); TMLH 2, Inc. (0720); TMLS I, Inc. (0719); TMS Entertainment Guides, Inc. (6325); Tower Distribution Company (9066); Towering T Music Publishing Company (2470); Tribune Broadcast Holdings, Inc. (4438); Tribune Broadcasting Company (2569); Tribune Broadcasting Holdco, LLC (2534); Tribune Broadcasting News Network, Inc. (1088); Tribune California Properties, Inc. (1629); Tribune Direct Marketing, Inc. (1479); Tribune Entertainment Company (6232); Tribune Entertainment Production Company (5393); Tribune Finance, LLC (2537); Tribune Finance Service Center, Inc. (7844); Tribune License, Inc. (1035); Tribune Los Angeles, Inc. (4522); Tribune Manhattan Newspaper Holdings, Inc. (7279); Tribune Media Net, Inc. (7847); Tribune Media Services, Inc. (1080); Tribune Network Holdings Company (9936); Tribune New York Newspaper Holdings, LLC (7278); Tribune NM, Inc. (9939); Tribune Publishing Company (9720); Tribune Television Company (1634); Tribune Television Holdings, Inc. (1630); Tribune Television New Orleans, Inc. (4055); Tribune Television Northwest, Inc. (2975); ValuMail, Inc. (9512); Virginia Community Shoppers, LLC (4025); Virginia Gazette Companies, LLC (9587); WATL, LLC (7384); WCWN LLC (5982); WDCW Broadcasting, Inc. (8300); WGN Continental Broadcasting Company (9530); WLVI Inc. (8074); WPIX, Inc. (0191); and WTXX Inc. (1268). The Debtors' corporate headquarters and the mailing address for each Debtor is 435 North Michigan Avenue, Chicago, Illinois 60611.

Upon the *Examiner's Motion For An Order Authorizing The Examiner To Demand And Issue Subpoenas Compelling The Production Of Documents And Oral Examination Of Persons And Entities* [Docket No. 4354] ("Motion")[2] filed by Kenneth N. Klee as examiner in these cases (the "Examiner"); and the Motion notice thereof having been served upon counsel for the Debtors, counsel for the Unsecured Creditors Committee, the Office of the United States Trustee and all other parties requesting notice pursuant to Fed. R. Bankr. P. 2002; the Court finding that such notice is good and sufficient under the circumstances; the Court having reviewed the Motion and other papers filed in respect thereof; and finding good cause to grant the Motion, it is

ORDERED, ADJUDGED and DECREED:

1. The Motion is granted.

2. The Examiner is hereby authorized, pursuant to Bankruptcy Rule 2004, to demand and compel by way of subpoena: (i) the oral examination, under oath, of Discovery Parties and (ii) the production of documents that may be relevant to the Investigation or lead the Examiner to information that is relevant to the Investigation.

3. The Examiner is hereby authorized to use the following procedures in connection with the Examiner's issuance of any subpoena:

(a) Except as otherwise agreed by the Examiner, or subsequently ordered by the Court, a Discovery Party to which a subpoena which seeks documents (whether or not it also seeks testimony) is directed shall, within ten (10) days of service of such subpoena: (i) produce all non-privileged documents responsive to such subpoena, or (ii) file and serve a motion seeking a protective order, which the Court shall hear on shortened notice, no later than 5 days from the filing of such motion;

(b) If a Discovery Party withholds any documents based upon a claim of privilege, he, she or it must provide the Examiner with a privilege log containing the

2 Capitalized terms that are not otherwise defined herein are intended to have the same meaning attributed to them in the Motion.

information required under Bankruptcy Rule 7026, no later than ten (10) days after service of a subpoena upon such Discovery Party (unless otherwise agreed by the Examiner);

(c) If the subpoena so directs, the Discovery Party may be required to appear for an oral examination within ten (10) days of service of a deposition subpoena on the Discovery Party, which notice is deemed to be reasonable; provided the Discovery Party may voluntarily agree to appear for an oral examination sooner.

(d) As necessary to implement the foregoing, the Examiner and his counsel are authorized to sign and issue a subpoena from any United States Bankruptcy Court for the applicable district in which a Discovery Party resides, does business, maintains documents or is found, both to obtain documents from a Discovery Party and to command the attendance of a Discovery Party at a deposition. The Examiner and his counsel also are authorized to take such actions as may be necessary in any other court in order to enforce subpoenas and otherwise effectuate the terms of the Court's order with respect to this Motion.

(e) Unless the Examiner determines that doing so would unduly interfere with the Investigation, the Examiner will file in these cases a notice advising that the subpoena has been issued and attaching a copy of the subpoena. Nothing in this Order shall be deemed or construed to modify the provisions of the "Order Approving Work and Expense Plan and Modifying Examiner Order" [Docket No. 4321] specifying that the Examiner shall be under "no obligation to furnish to any Party or other person or entity any communications, documents or information received from any Party or other person or entity to the Examiner in the course of his Investigation and shall be under no obligation to invite any Party or other person or entity to participate in any meetings or conversations between the Examiner and such Party or other person or entity," nor prejudice any right of any party to seek relief from such provisions and any party to oppose the same.

(f) Nothing herein limits the substantive rights of any Discovery Party or other party under applicable law to object to or oppose any subpoena the Examiner may serve.

5. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order.

6. This Order is without prejudice to the Trustee's right to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rule 2004(a) or any other applicable law.

7. This Amended Order supersedes the prior order entered at Docket No. 4497.

So ORDERED THIS 20th DAY of May, 2010.

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
DBSI, INC., et al.,	Case No. 08-12687 (PJW)
	Jointly Administered
Debtors.	**Related to Docket No.** 3516, 3515

ORDER GRANTING EXAMINER'S MOTION PURSUANT TO DEL. BANKR. L.R. 9006-1(e) FOR AN ORDER SCHEDULING A HEARING AND SHORTENING THE TIME FOR NOTICE OF THE HEARING TO CONSIDER THE EXAMINER'S MOTION FOR AUTHORITY TO CONDUCT BANKRUPTCY RULE 2004 EXAMINATIONS AND TO ESTABLISH PROCEDURES IN CONNECTION THEREWITH

Upon consideration of the motion (the "Motion to Shorten") for entry of an order scheduling a hearing and shortening the time for notice of the Examiner's Motion for Authority to Conduct Bankruptcy Rule 2004 Examinations and to Establish Procedures in Connection Therewith (the "Motion") for entry of an order providing that the applicable notice period for the Motion be shortened pursuant to Rule 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware; and the Court having determined that granting the relief requested in the Motion to Shorten is in the best interest of the Debtors, their estates and creditors and other parties in interest; and it appearing that due and adequate notice of the Motion to Shorten has been given under the circumstances, and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, that the Motion to Shorten is granted; and it is further

ORDERED, that the Motion shall be heard on May 22, 2009 at 10:30 (ET); and it is further

ORDERED, that objections to the relief requested in the Motion shall be filed and served upon counsel for the Examiner no later than May 21, 2009 at 12:00 noon (ET); and it is further

ORDERED, that this Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
May 15, 2009

The Honorable Peter J. Walsh
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	
NEW CENTURY TRS HOLDINGS, INC., a Delaware Corporation, et al.,	Chapter 11
	Case No. 07-10416 (KJC)
Debtors.	Jointly Administered
	Related to Docket No. ____

ORDER PURSUANT TO FED. R. BANKR. P. 2004(a) AUTHORIZING THE EXAMINER TO EXAMINE THE DEBTORS' CURRENT AND FORMER OFFICERS, DIRECTORS AND EMPLOYEES, AND OTHER PERSONS

UPON the Examiner's Motion for an Order Authorizing the Examination of the Debtors' Current and Former Officers, Directors and Employees, and Other Persons (the "Motion"), and the Motion having been served upon counsel for the Debtors, counsel for the Unsecured Creditors Committee, any witness the Examiner already has requested to appear for an interview and who has refused to cooperate on a timely basis or their known counsel, the Office of the United States Trustee and all other parties requesting notice pursuant to Fed. R. Bankr. P. 2002; and the Court finding that such notice is good and sufficient under the circumstances; and the Court further finding sufficient cause to grant the Motion, it is

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Examiner is authorized, pursuant to Fed. R. Bankr. P. 2004(a), to conduct examinations of the Debtors' current and former officers, directors and employees, and other persons (the "Witnesses") with respect to issues to be inquired into by the Examiner as set forth in this Court's Order Denying in Part and Granting in Part Motion of the United States Trustee for an Order Directing the Appointment of a Chapter 11 Trustee, or in the Alternative, an Examiner entered herein on June 1, 2007; and it is further

ORDERED that the Examiner is authorized to issue such subpoenas as may be necessary to compel the production of documents and the testimony of Witnesses in connection with his examination of the Witnesses; and it is further

ORDERED that nothing herein shall limit any Witness' rights under applicable law to object to any subpoena the Examiner may issue; and it is further

ORDERED that this Order is without prejudice to the Examiner's right to file further motions seeking additional documents and testimony pursuant to Fed. R. Bankr. P. 2004(a).

SO ORDERED THIS 16th DAY OF Oct 2007

The Honorable Kevin J. Carey
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
SEMCRUDE, L.P., *et al.*,	:	
Debtors.	:	Case No. 08-11525 (BLS)
	:	Jointly Administered
	:	Related to Docket No. 2273

ORDER GRANTING EXAMINER'S MOTION DIRECTING THE PRODUCTION OF DOCUMENTS AND AUTHORIZING THE EXAMINATIONS OF THE DEBTORS' CURRENT AND FORMER OFFICERS, DIRECTORS AND EMPLOYEES, AND OTHER PERSONS

Upon the Examiner's Motion for an Order Directing the Production of Documents and Authorizing the Examination of the Debtors' Current and Former Officers, Directors and Employees, and Other Persons (the "Motion"), and the Motion having been served upon counsel for the Debtors, counsel for the Official Committee of Unsecured Creditors, counsel for Bank of America, N.A., the agent for itself and certain other banking and financial institutions as pre-petition secured lenders and administrative agent for the Debtors'[1] post-petition secured lenders, any witness the Examiner already has requested to appear for an interview and who has refused to cooperate on a timely basis or conditioned their cooperation upon the issuance of a subpoena or their known counsel, the Office of the United States Trustee, and all other parties requesting notice pursuant to Bankruptcy Rule 2002; and the Court finding that such notice is good and sufficient under the circumstances; and the Court further finding sufficient cause to grant the Motion, it is

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that the Examiner is authorized, pursuant to Bankruptcy Rule 2004(a), to conduct examinations of the Debtors' current and former officers, directors and employees, and other persons or entities with relevant information regarding the matters included in the Investigation including, without limitation, the Debtors' auditors, corporate counsel, lenders, investors and other financial transaction counterparties to certain transactions with the Debtors (collectively, the "Witnesses") with respect to the Investigation and the issues to be inquired into by the Examiner as set forth in this Court's Order Directing the United States Trustee to Appoint an Examiner, entered on September 10, 2008; and it is further

ORDERED, that the Examiner is authorized to issue such subpoenas as may be necessary to compel the production of documents and the testimony of Witnesses in connection with his examination of the Witnesses; and it is further

ORDERED, that unless otherwise agreed to by the Examiner, Witnesses shall have ten (10) days from the service of a subpoena to either (1) produce to the Examiner all responsive documents requested in the Examiner's subpoena; or (2) file with the Bankruptcy Court an objection or response to the subpoena, with a hearing promptly scheduled on the objection/response; and it is further

ORDERED, that if a Witness produces some but not all documents, withholding the production of any documents based upon a claim of privilege, such Witness is directed to provide counsel for the Examiner with a privilege log, containing the information required under Bankruptcy Rule 7026, within ten (10) days of the service of a subpoena upon the Witnesses (unless otherwise agreed to by the Examiner); and it is further

ORDERED, that the Witness is directed to submit to oral examination upon reasonable

notice and, absent other agreement with the Examiner, in no event more than fifteen (15) days from the date of the service of a deposition subpoena upon such Witness; and it is further

ORDERED, that nothing herein shall limit the rights of any Witness or any other party under applicable law to object to any subpoena the Examiner may issue under Bankruptcy Rule 9016, other applicable Bankruptcy Rules, the Local Bankruptcy Rules or applicable non-bankruptcy law; and it is further

ORDERED, that this Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order; and it is further

ORDERED, that in accordance with Bankruptcy Rules 2004 and 9016, the Clerk of this Court shall issue subpoenas, signed but otherwise in blank, as requested by the Examiner; and it is further

ORDERED, that this Order is without prejudice to the Examiner's right to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rules 2004(a) or any other applicable Bankruptcy Rules.

SO ORDERED THIS 25th DAY OF NOVEMBER 2008

The Honorable Brendan L. Shannon
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	Chapter 11 Case No.
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	08-13555 (JMP)
Debtors.	(Jointly Administered)

----------x

ORDER GRANTING EXAMINER'S MOTION DIRECTING THE PRODUCTION OF DOCUMENTS AND AUTHORIZING THE EXAMINATIONS OF THE DEBTORS' CURRENT AND FORMER OFFICERS, DIRECTORS AND EMPLOYEES, AND OTHER PERSONS AND ENTITIES

Upon the Motion of Anton R. Valukas (the "Examiner") for an Order Directing the Production of Documents and Authorizing the Examination of the Debtors' Current and Former Officers, Directors and Employees, and Other Persons and Entities (the "Motion"); and the Court having reviewed the Motion and the exhibits submitted in support; and the Court being satisfied that adequate notice of the Motion has been provided in accordance with the procedures set forth in the order entered September 22, 2008 governing case management and administrative procedures [Docket # 285] (i) to the Court; (ii) counsel for the Debtors;[1] (iii) the U.S. Trustee; (iv) counsel for the Official Committee of Unsecured Creditors; (v) counsel for the Debtors' postpetition lenders; (vi) the Securities and Exchange Committee; (vii) the Internal Revenue Service; (viii) the United States Attorney for the Southern District of New York; (ix) any person with a particularized interest in the subject matter of the Motion; and (x) all parties who have requested notice in these Chapter 11 Cases; and (xi) it appearing that no other or further notice of the Motion need be provided; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED

[1] Capitalized terms not otherwise defined shall have the meaning ascribed to them in the Motion.

1. The Motion is granted.

2. The Examiner is authorized, pursuant to Bankruptcy Rule 2004, to issue such subpoenas as may be necessary to compel the production of documents and the testimony of Witnesses in connection with the Examiner's Investigation.

3. The Examiner shall serve each subpoena and a copy of this Order on the target of the subpoena, with copy to (i) the Debtor; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iii) the SIPA Trustee; and (iv) the United States Attorney for the Southern District of New York.

4. As directed in ¶ 8 of the Examiner Order, the Examiner shall cooperate fully with any government agencies including, but not limited to, any Federal, state or local government agency that currently or in the future may be investigating the Debtors, their management or their financial condition, and the Examiner shall use best efforts to coordinate with such agencies in order to avoid unnecessary interference with, or duplication of, any investigations conducted by such agencies. The Examiner will follow a protocol to be established with the governmental agencies for the sharing of information to the extent that such sharing benefits the Debtors' estates, and such sharing of information shall be subject to appropriate conditions to protect the Debtors' estates.

5. The Examiner shall file with the Court an affidavit or declaration of service for each subpoena he serves.

6. Unless otherwise agreed to by the Examiner, Witnesses shall have ten (10) days from the service of a subpoena to either (1) produce to the Examiner all responsive documents requested in the Examiner's subpoena, except as provided in ¶ 7 *infra;* or (2) file with the Bankruptcy Court an objection or response to the subpoena, with a hearing promptly scheduled.

7. Unless otherwise agreed by the Examiner, if a Witness withholds any documents from the production based upon a claim of privilege, such Witness is directed to provide counsel for the Examiner with a privilege log, containing the information required under Bankruptcy Rule 7026, within ten (10) days of the service of a subpoena upon the Witnesses.

8. The Witness is directed to submit to oral examination upon reasonable notice and, absent other agreement with the Examiner, in no event more than fifteen (15) days from the date of service of a deposition subpoena upon such Witness

9. Nothing herein limits the substantive rights of Witnesses or other parties under applicable law to object to or oppose any subpoena the Examiner may serve.

10. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order.

11. In accordance with Bankruptcy Rules 2004 and 9016, the Clerk of this Court shall issue subpoenas, signed but otherwise in blank, as requested by the Examiner.

12. This Order is without prejudice to the Trustee's right to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rule 2004(a) or any other applicable law.

Dated: February 11, 2009
New York, New York

/s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

Exhibit "B"

(Proposed Order Approving Work Plan)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WASHINGTON MUTUAL, INC., et al.,[1]	Case No. 08-12229 (MFW)
Debtors.	Jointly Administered
	Related to Docket No. _____

ORDER APPROVING EXAMINER'S WORK PLAN

Upon the *Examiner's Work and Expenses Plan/Report and his Motion for Additional Relief* (the "Work Plan")[2] filed by Joshua R. Hochberg as examiner in these cases (the "Examiner"); and notice thereof having been served upon the United States Trustee, counsel to the Debtors, counsel to the Equity Committee, and all parties who have filed a notice of appearance in the Chapter 11 Cases pursuant to Fed. R. Bankr. P. 2002; the Court finding that such notice is appropriate and sufficient under the circumstances; the Court having reviewed the Motion and other papers filed in respect thereof; and finding good cause to grant the Motion, it is

ORDERED, ADJUDGED, and DECREED:

1. The Work Plan is approved.

2. The scope of the Investigation proposed by the Examiner in the Work Plan is approved. The Examiner is authorized to conduct the Investigation under the terms and conditions set forth in the Work Plan.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

[2] Capitalized terms used but not defined herein shall have the meaning set for in the Work Plan.

3. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order and to interpret, implement, and enforce the provisions of this Order.

4. This Order is without prejudice to the Examiner's right to alter, amend, or modify the Work Plan.

SO ORDERED THIS ___ DAY of August, 2010

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MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit "C"

(Proposed Order Regarding Documents)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WASHINGTON MUTUAL, INC., et al.,[1]	Case No. 08-12229 (MFW)
Debtors.	Jointly Administered
	Related to Docket No. _____

ORDER REGARDING THE VOLUNTARY PRODUCTION OF DOCUMENTS TO THE EXAMINER

Upon the *Examiner's Work and Expenses Plan/Report and his Motion for Additional Relief* (the "Work Plan")[2] filed by Joshua R. Hochberg as examiner in these cases (the "Examiner"); and notice thereof having been served upon the United States Trustee, counsel to the Debtors, counsel to the Equity Committee, and all parties who have filed a notice of appearance in the Chapter 11 Cases pursuant to Fed. R. Bankr. P. 2002; the Court finding that such notice is appropriate and sufficient under the circumstances; the Court having reviewed the Motion and other papers filed in respect thereof; and finding good cause to grant the Motion, it is

ORDERED, ADJUDGED, and DECREED:

1. The delivery of any documents or information by any of the parties, or by counsel or other professionals engaged by any of the parties, to the Examiner or to any of the parties in connection with the Investigation does not constitute a waiver of attorney-client privilege, attorney work product protection, confidentiality, or any other applicable privilege, protection,

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

[2] Capitalized terms used but not defined herein shall have the meaning set for in the Work Plan.

immunity, or confidentiality; and the delivery of such documents or information to the Examiner or to any of the parties shall not be the basis for any third party or any other party to assert that any of the parties or their counsel or other professionals have waived, in whole or in part, any privilege, protection, immunity, or confidentiality with respect to such documents or information or with respect to any other documents or information that may concern the same subject matter. The Examiner may use Work Product in his report, without attribution to the source of the Work Product and will, at the conclusion of the Investigation, destroy or return Work Product to the party which produced it..

2. During the pendency of the Investigation, no discovery of any kind (whether by way of depositions, document production, or otherwise) may be propounded upon the Examiner. Nothing herein shall be deemed or construed to subject the Examiner to any such discovery after completion of the Investigation, which matter shall be considered by the Court prior to the discharge of the Examiner of his engagement, or to waive or modify any immunity available to the Examiner under applicable law.

3. As used in this Order, reference to the Examiner includes the Examiner's professionals.

4. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement, and enforce the provisions of this Order.

5. This Order is without prejudice to the Examiner's right to alter, amend, or modify the Work Plan.

SO ORDERED THIS ___ DAY of August, 2010

_____
MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit "D"

(Proposed Order Regarding Subpoenas)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WASHINGTON MUTUAL, INC., et al.,[1]	Case No. 08-12229 (MFW)
Debtors.	Jointly Administered
	Related to Docket No. _____

ORDER AUTHORIZING THE EXAMINER TO DEMAND AND ISSUE SUBPOENAS COMPELLING THE PRODUCTION OF DOCUMENTS AND THE ORAL EXAMINATION OF PERSONS AND ENTITIES

Upon the *Examiner's Work and Expenses Plan/Report and his Motion for Additional Relief* (the "Work Plan")[2] filed by Joshua R. Hochberg as examiner in these cases (the "Examiner"); and notice thereof having been served upon the United States Trustee, counsel to the Debtors, counsel to the Equity Committee, and all parties who have filed a notice of appearance in the Chapter 11 Cases pursuant to Fed. R. Bankr. P. 2002; the Court finding that such notice is appropriate and sufficient under the circumstances; the Court having reviewed the Motion and other papers filed in respect thereof; and finding good cause to grant the Motion, it is

ORDERED, ADJUDGED, and DECREED:

1. The Examiner is hereby authorized, pursuant to Bankruptcy Rule 2004, to demand and compel by way of subpoena: (1) the oral examination, under oath, of Discovery Parties and (2) the production of documents that may be relevant to the Investigation or lead the Examiner to information that is relevant to the Investigation.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

[2] Capitalized terms used but not defined herein shall have the meaning set for in the Work Plan.

2. The Examiner is hereby authorized to use the following procedures in connection with the Examiner's issuance of any subpoena:

(a) Except as otherwise agreed by the Examiner, or subsequently ordered by the Court, a Discovery Party to which a subpoena that seeks documents (whether or not it also seeks testimony) is directed shall, within five (5) days of service of such subpoena: (i) produce all non-privileged documents responsive to such subpoena (unless otherwise agreed by the Examiner); or (ii) file and serve a motion seeking a protective order or making other objections to the subpoena , which the Court shall hear on shortened notice, no later than five (5) days from the filing of such motion.

(b) If a Discovery Party withholds any documents based upon a claim of privilege, he, she, or it must provide the Examiner with a privilege log containing the information required by Bankruptcy Rule 7026 no later than five (5) days after service of a subpoena upon such party (unless otherwise agreed by the Examiner).

(c) If the subpoena so directs, a Discovery Party may be required to appear for an oral examination within five (5) days of service of a deposition subpoena on the Discovery Party, which notice is deemed to be reasonable; provided the party may voluntarily agree to appear for an oral examination sooner and provided that the Discovery Party shall have five (5) days to bring a motion to contest the requirement that he appear for an examination..

(d) As necessary to implement the foregoing, the Examiner and his counsel are authorized to sign and issue a subpoena from any United States Bankruptcy Court for the applicable district in which a Discovery Party resides, does business, maintains documents, or is found, both to obtain documents from a Discovery Party and to

command the attendance of a party at a deposition. The Examiner and his counsel are also authorized to take such actions as may be necessary in any other court in order to enforce subpoenas and otherwise effectuate the terms of the Court's order with respect to this Motion.

(e) Unless the Examiner determines that doing so would unduly interfere with the Investigation, the Examiner will file in these cases a notice advising that the subpoena has been issued and attaching a copy of the subpoena. The Examiner shall be under no obligation to furnish to any party or other person or entity any communications, documents, or information received from any party or other person or entity to participate in any meetings or conversations between the Examiner and such party.

3. Nothing herein limits the substantive rights of any Discovery Party or any other party under applicable law to object to or oppose any subpoena the Examiner may serve.

4. This Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement, and enforce the provisions of this Order.

5. This Order is without prejudice to the Examiner's right to alter, amend, or modify the Work Plan.

SO ORDERED THIS ___ DAY of August, 2010

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MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
TRIBUNE COMPANY, et al.,[1]	Case No. 08-13141 (KJC)
	Jointly Administered
Debtors.	**Status Conference: May 10, 2010, 11:00 a.m.**
	Re: Docket Nos. 4212, 4213

WORK AND EXPENSE PLAN OF EXAMINER-DESIGNATE KENNETH N. KLEE, ESQ.

Kenneth N. Klee, the Examiner-designate ("Examiner") appointed in the above-captioned chapter 11 cases of Tribune Company and its affiliates (collectively, the "Debtors") by and through his undersigned, proposed counsel, respectfully submits his proposed work and expense

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tribune Company (0355); 435 Production Company (8865); 5800 Sunset Productions Inc. (5510); Baltimore Newspaper Networks, Inc. (8258); California Community News Corporation (5306); Candle Holdings Corporation (5626); Channel 20, Inc. (7399); Channel 39, Inc. (5256); Channel 40, Inc. (3844); Chicago Avenue Construction Company (8634); Chicago River Production Company (5434); Chicago Tribune Company (3437); Chicago Tribune Newspapers, Inc. (0439); Chicago Tribune Press Service, Inc. (3167); ChicagoLand Microwave Licensee, Inc. (1579); Chicagoland Publishing Company (3237); Chicagoland Television News, Inc. (1352); Courant Specialty Products, Inc. (9221); Direct Mail Associates, Inc. (6121); Distribution Systems of America, Inc. (3811); Eagle New Media Investments, LLC (6661); Eagle Publishing Investments, LLC (6327); forsalebyowner.com corp. (0219); ForSaleByOwner.com Referral Services, LLC (9205); Fortify Holdings Corporation (5628); FOP/M Publishing Group, Inc. (2940); Gold Coast Publications, Inc. (5505); GreenCo, Inc. (7416); Heart & Crown Advertising, Inc. (9808); Homeowners Realty, Inc. (1507); Homestead Publishing Co. (4903); Hoy, LLC (8033); Hoy Publications, LLC (2352); InsertCo, Inc. (2663); Internet Foreclosure Service, Inc. (6550); JuliusAir Company, LLC (9479); JuliusAir Company II, LLC; KIAH Inc. (4014); KPLR, Inc. (7943); KSWB Inc. (7035); KTLA Inc. (3404); KWGN Inc. (5347); Los Angeles Times Communications LLC (1324); Los Angeles Times International, Ltd. (6079); Los Angeles Times Newspapers, Inc. (0416); Magic T Music Publishing Company (6522); NBBF, LLC (0893); Neocomm, Inc. (7208); New Mass. Media, Inc. (9553); Newscom Services, Inc. (4817); Newspaper Readers Agency, Inc. (7335); North Michigan Production Company (5466); North Orange Avenue Properties, Inc. (4056); Oak Brook Productions, Inc. (2598); Orlando Sentinel Communications Company (3775); Patuxent Publishing Company (4223); Publishers Forest Products Co. of Washington (4750); Sentinel Communications News Ventures, Inc. (2027); Shepard's Inc. (7931); Signs of Distinction, Inc. (3603); Southern Connecticut Newspapers, Inc. (1455); Star Community Publishing Group, LLC (5612); Stemweb, Inc. (4276); Sun-Sentinel Company (2684); The Baltimore Sun Company (6880); The Daily Press, Inc. (9368); The Hartford Courant Company (3490); The Morning Call, Inc. (7560); The Other Company LLC (5337); Times Mirror Land and Timber Company (7088); Times Mirror Payroll Processing Company, Inc. (4227); Times Mirror Services Company, Inc. (1326); TMLH 2, Inc. (0720); TMLS I, Inc. (0719); TMS Entertainment Guides, Inc. (6325); Tower Distribution Company (9066); Towering T Music Publishing Company (2470); Tribune Broadcast Holdings, Inc. (4438); Tribune Broadcasting Company (2569); Tribune Broadcasting Holdco, LLC (2534); Tribune Broadcasting News Network, inc., n/k/a Tribune Washington Bureau Inc. (1088); Tribune California Properties, Inc. (1629); Tribune CNLBC, LLC, f/k/a Chicago National League Ball Club, LLC (0347); Tribune Direct Marketing, Inc. (1479); Tribune Entertainment Company (6232); Tribune Entertainment Production Company (5393); Tribune Finance, LLC (2537); Tribune Finance Service Center, Inc. (7844); Tribune License, Inc. (1035); Tribune Los Angeles, Inc. (4522); Tribune Manhattan Newspaper Holdings, Inc. (7279); Tribune Media Net, Inc. (7847); Tribune Media Services, Inc. (1080); Tribune Network Holdings Company (9936); Tribune New York Newspaper Holdings, LLC (7278); Tribune NM, Inc. (9939); Tribune Publishing Company (9720); Tribune Television Company (1634); Tribune Television Holdings, Inc. (1630); Tribune Television New Orleans, Inc. (4055); Tribune Television Northwest, Inc. (2975); ValuMail, (9512); Virginia Community Shoppers, LLC (4025); Virginia Gazette Companies, LLC (9587); WATL, LLC (7384); WCWN LLC (5982); WDCW Broadcasting, Inc. (8300); WGN Continental Broadcasting Company (9530); WLVI Inc. (8074); WPIX, Inc. (0191); and WTXX Inc. (1268). The Debtors' corporate headquarters and the mailing address for each Debtor is 435 North Michigan Avenue, Chicago, Illinois 60611.

plan ("Work and Expense Plan"), pursuant to the "Agreed Order Directing the Appointment of an Examiner" entered by the Court on April 20, 2010 [Docket No. 4120] ("Examiner Order").

I.

INTRODUCTION

1. On January 13, 2010, Wilmington Trust Company ("WTC") filed its "Motion for Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code" (the "Examiner Motion"). On April 20, 2010, the Court entered the Examiner Order, directing the United States Trustee to appoint an examiner in these cases pursuant to Bankruptcy Code section 1104(c)(1).

2. On April 30, 2010, Roberta A. DeAngelis, the Acting United States Trustee for Region 3 ("United States Trustee"), filed her "Notice of Appointment of Examiner" [Docket No. 4212] appointing Kenneth N. Klee, Esq. as the Examiner, subject to Court approval. Contemporaneously therewith, the United States Trustee filed her Application of the United States Trustee for "Order Approving Appointment of Examiner" [Docket No. 4213], which is pending before the Court.

3. The Examiner Order directs the examiner appointed by the United States Trustee to:

> (i) evaluate whether there are potential claims and causes of action held by the Debtors' estates in connection with the leveraged buy-out of Tribune that occurred in 2007 (the "LBO") which may be asserted against any entity which may bear liability, including, without limitation, the Debtors, the Debtors' former and/or present management, including former/present members of Tribune's Board, the Debtors' lenders and the Debtors; advisors, said potential claims and causes of action including, but not being limited to, claims for fraudulent conveyance (including both avoidance of liability and disgorgement of payments), breach of fiduciary duty, aiding and abetting the same, and equitable subordination and whether there are any potential defenses which may be asserted to such potential claims and causes of action,

(ii) evaluate whether Wilmington Trust Company violated the automatic stay under 11 U.S.C. § 362 by its filing, on March 3, 2010, of its Complaint for Equitable Subordination and Disallowance of Claims, Damages, and Constructive Trust (docketed at Adv. No. 10-50732, D.I. 1),

(iii) evaluate the assertions and defenses made by certain of the Parties in connection with the Motion of JPMorgan Chase Bank, N.A., for Sanctions Against Wilmington Trust Company for Improper Disclosure of Confidential Information in Violation of Court Order (D.I. 3714),

(iv) otherwise perform the duties of an examiner set forth in 11 U.S.C. §§ 1106(a)(3) and (4) (as limited by the Examiner Order) (collectively, the "Investigation").

Examiner Order at Paragraph 2. The preceding is referred to as the "Investigation."

4. The Examiner Order directs the Examiner to prepare and file a report in respect of the Investigation in accordance with Bankruptcy Code section 1106(a)(4) on or before July 12, 2010, unless such time shall be extended by order of the Court upon application by the Examiner, on notice to the "Parties," as defined therein.

5. Prior to commencing the Investigation, the Examiner Order contemplates that the Examiner will meet and confer with the Parties and, no later than seven days after the filing of the notice of appointment of the Examiner, file a work and expenses plan, including a "good faith estimate of the fees and expense of the Examiner and the Examiner's proposed professionals for conducting the Investigation (the 'Budget')."

6. The Examiner Order further provides that the "Court will hold a status conference on May 10, 2010 at 11:00 a.m. to (i) consider the Work and Expense Plan (along with any responses thereto, including an opportunity for any of the Parties to be heard on the appropriateness of the Budget) and (ii) order, if appropriate, further relief as will aid the Examiner in the performance of the Examiner's duties and/or to accommodate the needs of the estates."

7. This Work and Expense Plan is filed in accordance with these directives.

II.

INITIAL MEETINGS AND CONFERENCES

8. Beginning immediately after the Examiner's appointment by the United States Trustee, late in the day on Friday, April 30, 2010, the Examiner and his proposed counsel held telephonic conferences with counsel to the United States Trustee and other Parties, in order to begin discussing the Investigation and arrange for an in-person meet and confer of the Parties. These telephonic conferences continued throughout the weekend. During this period, the Examiner and his proposed counsel began reviewing various pleadings in these cases relating to the subject matter of the Investigation, as well as pleadings relating to the examinations ordered in other large cases in recent years. In light of the July 12, 2010 deadline specified in the Agreed Order, the Examiner determined to proceed immediately to convene all of the Parties to a meet and confer as rapidly as possible. The Debtors and the other Parties agreed that a prompt meeting was appropriate under the circumstances.

9. For two full days, beginning on Tuesday, May 4, 2010, the Examiner conducted in-person meetings with the Parties in New York City, in order to discuss with them his preliminary views – and in turn solicit the Parties' views – regarding the work plan for conducting the Investigation, the manner in which the Parties would be expected to cooperate and assist with the Investigation, the Examiner's preliminary cost estimates for the Investigation, the manner in which issues of confidentiality and privilege should be addressed, and the need for certain clarifications or modifications to the Examiner Order. The Examiner also invited the Parties to share their views on the preceding, as well as the merits of the factual and legal issues raised by the Investigation. These meetings began with a plenary session of all Parties, during

which the Examiner believes he formally discharged his meet and confer obligations under the Agreed Order, followed by a series of "one-on-one" meetings between the Examiner and particular Parties (or in some cases groups of Parties).

10. The Examiner has developed this Work and Expense Plan after considering the Examiner Order, various pleadings filed in these cases in respect of the subject matter of the Investigation, various non-public documents provided by the Parties in respect of that subject matter, and his extensive consultations with the Parties.

III.

WORK PLAN

11. In just a few days, it has become readily apparent to the Examiner that the tasks he has been assigned are daunting, and the remaining 63-day timeframe in which he has been asked to perform those tasks is exceedingly limited. The Investigation relates to a series of transactions involving billions of dollars, potential claims against numerous parties, intricate financial analyses and other factual matters as to which the Parties have substantial disagreements, and a lengthy list of wide-ranging legal claims, defenses and issues arising under state and federal law. The record adduced to date includes over 3,000,000 pages of documents that have been collected in a document "depository" but have not been topically indexed.[2] Examinations of this magnitude have taken examiners appointed in other cases many, many months to conduct.

12. Faced with the preceding, the Examiner attempted to craft an approach to this Investigation that makes sense under the circumstances presented, and maximizes the possibility that the Examiner will timely generate a product that is helpful to the Court. The Examiner

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[2] The "Document Repository" created by the parties is not a single, electronic database containing the documents produced to date, but rather a collection of over 150 compact discs containing documents produced by various parties in connection with these cases.

effectively has been directed to investigate and opine, in just over two months, on matters that the parties have been investigating, researching and evaluating for many months. From the Examiner's perspective, the most sensible way to approach this project in the time given is to capitalize upon the work performed by the Parties to date and, at least in the first instance, to look to the Parties and the adversarial process to flesh out the issues and facts in dispute and the relative strength and weakness of the positions of the Parties.

13. To this end, the Examiner has indicated to the Parties that he expects their participation and cooperation in at least two principal areas. First, the Examiner has invited all Parties, on an informal basis, to provide as soon as possible whatever documentary evidence, legal analyses and financial analyses that have been prepared to date that demonstrate their respective views on the subject matter of the Investigation that they wish to share with the Examiner.

14. Second, the Examiner has indicated that he will look to the Parties to prepare and submit electronically annotated legal briefs and documentary appendices that set forth their respective positions and links to copies of the documentary support for those positions. Following submission of those briefs, which will be shared among all of the Parties, the Examiner will ask the Parties to file written responses, again identifying the specific documents that support the Parties' contentions.

15. Additionally, the Examiner has asked that the Debtors to prepare a written narrative describing the 2007 leveraged buyout transactions ("Basic Factual Statement"), solicit input from the Parties in respect of that Basic Factual Statement, and deliver it to the Examiner by a date certain, so that, in their submissions. the Parties need not draft multiple versions of the basic factual background as to which there is little or no dispute among the parties. Toward that

end, the Examiner respectfully submits that it is appropriate for the Court to order that the Parties' discussions and communications amongst one another in respect of the draft Basic Factual Statement be treated as "Settlement Material" within the meaning of the "Order (I) Authorizing the Debtors To Establish A Document Depository And directing The Committee To Deliver Certain Documents To The Depository Pursuant To Federal Rule of Bankruptcy Procedure 2004 and (II) Establishing Settlement Negotiation Protections Pursuant to 11 U.S.C. § 105(a)" [Docket No. 2858] ("Depository Order").

16. The Examiner's investigation ultimately will be independent, and will in no way be limited to the materials presented formally or informally by the Parties. The Examiner intends to supplement those materials with his own review of documents and interviews (or depositions) of witnesses that the Examiner deems necessary and feasible. Nevertheless, the Examiner believes that the submission of materials by the Parties (which already is underway), and the more formal use of a quasi-adversarial process under which the positions of the Parties are advocated against the backdrop and based upon the factual record, should enable the Examiner to quickly marshal and utilize the Parties' collective knowledge and expertise on the subject matter of the Investigation, and also help him to identify those factual or legal issues that may have received inadequate investigation to date. The Examiner readily acknowledges that he is not aware of any other examination that has proceeded in this fashion.

17. Based upon the Examiner's initial consultations with the Parties and their feedback, the Examiner believes that the Parties are amenable to the Examiner's proposed work plan for the Investigation. Further, the Examiner respectfully submits that his proposed approach to the Investigation is consistent with the following directive, which is set forth in the Examiner Order:

> The Parties shall use their respective best efforts to coordinate with the Examiner and to avoid unnecessary interference with, or duplication of, the Investigation, and the Examiner, in his or her conduct of the Investigation, shall use best efforts to utilize relevant materials obtained by the Parties via informal and/or formal discovery to avoid unnecessary duplication of work performed to date.

Examiner Order at Paragraph 3.

18. In accordance with the foregoing, the Examiner notes his expectation that the report he will prepare will not be a treatise, as has become the practice in connection with certain examinations. Without in any way being critical of those other products, given the short deadline to prepare the report required here and the massive amount of information that the Examiner must review and evaluate, it simply will not be possible for the examiner to generate anything approaching the multi-hundred page products that have been produced in other similarly complicated examinations prepared with the luxury of time. The Examiner anticipates preparing a report that speaks specifically to the questions presented by the Examiner Order. The Examiner does not believe he has been directed to prepare, nor would it be feasible to do so, a dissertation on all of the transactions and events preceding the filing of these cases, or all of the conceivable causes of action that may exist as a result of those transactions and events.

19. Further, the Examiner notes that given the short time frame he has been afforded to complete the Investigation, it is at least conceivable that the report filed on July 12, 2010 may identify certain matters as to which a complete investigation and analysis was not feasible and as to which further investigation may be necessary, if the Court so directs.

IV.

CLARIFICATIONS TO EXAMINER ORDER

20. Based upon his consultations with the Parties, the Examiner has concluded that the Examiner Order should be modified in certain respects to clarify the scope of the

Investigation. Specifically, the Examiner proposes that Paragraph 2(i) of the Examiner Order be modified as indicated below:

> (i) evaluate ~~whether there are~~ the potential claims and causes of action held by the Debtors' estates that are asserted by Parties, in connection with the leveraged buy-out of Tribune that occurred in 2007 (the "LBO") which may be asserted against any entity which may bear liability, including, without limitation, the Debtors, the Debtors' former and/or present management, including former/present members of Tribune's Board, the Debtors' lenders and the Debtors; advisors, said potential claims and causes of action including, but not being limited to, claims for fraudulent conveyance (including both avoidance of liability and disgorgement of payments), breach of fiduciary duty, aiding and abetting the same, and equitable subordination and whether there are any potential defenses which may be asserted to such potential claims and causes of action,

21. There are several good reasons for these proposed modifications. First, with the inclusion of the language "whether there are" in the foregoing, the passage reasonably may be read to charge the Examiner simply with determining whether there are or are not potential claims, causes of action and defenses that *might* be asserted (and, in this day and age, virtually any legal claim or defense *might* be asserted by some party), rather than investigating and evaluating the basis of those claims, causes of action and defenses, and engaging in a meaningful process of weighing the relative positions. The Examiner believes that it was the intention of the Parties and the Court that the Examiner undertake the latter inquiry, rather than the former. Along these lines, in connection with the Examiner's evaluation of potential fraudulent transfer or conveyance claims and defenses, the Examiner believes that it may be helpful to the Court for the Examiner to evaluate the potential remedies that may be available to the estate(s) if one or more transfers are avoided and the effect of such remedies on distributions on account of prepetition claims.

22. Second, absent inclusion of the additional qualifying phrase indicated above, the foregoing passage may reasonably be read to charge the Examiner with considering all manner

of theoretical claims, causes of action and defenses that have not been raised by the Parties over the course of the last two years. The proposed qualifying language reasonably limits the Investigation to those potential theories of liability and defenses that the Parties have identified to the Examiner, rather than charging the Examiner to consider, research and comment upon every *conceivable* legal theory that may exist. The Examiner respectfully submits that this clarification will ensure that his Investigation and resulting report are useful to the Court, rather than being burdened by purely academic consideration of potential theories that the Parties have not themselves raised or considered.

23. In respect of Paragraph 2(ii) of the Examiner Order, regarding investigation of the alleged violation of the automatic stay by WTC, the Examiner does not believe that the Examiner Order requires modification *per se*, but the Examiner wishes to share with the Court certain observations concerning that Paragraph. First, after meeting with the Parties and conducting his preliminary review of the matter, the Examiner believes that the essence of the question presented is whether any of the claims or causes of action asserted by WTC belong to the Debtors' estates and, if so, which ones. The Examiner certainly intends to evaluate whether a violation of the automatic stay occurred, but in addressing that question the Examiner believes it is appropriate to evaluate whether an estate action has been asserted. Second, the Examiner believes that in connection with the Investigation it is appropriate for the Examiner to review and consider the amended complaint that was filed under seal as an attachment to one of WTC's pleadings, subsequent to the filing of WTC's complaint. See Docket No. 3942 (Exhibit A). The Examiner has made no determination whether the subsequent filing is legally significant to the question presented by Paragraph 2(ii), but believes it is reasonable and appropriate for him to review the subsequent complaint in connection with the Investigation. Finally, the Examiner

believes that unlike Paragraph 2(i) of the Examiner Order, the Examiner is not being requested to and should not evaluate any remedies that may be available if it is determined that WTC violated the automatic stay.

24. Finally, the Examiner notes the subject matter of the Investigation does not include the proposed "Global Settlement" that is embodied in the Debtors' pending chapter 11 plan. As would be expected, during the course of the Examiner's initial consultations, nearly every one of the Parties referenced or discussed that proposed settlement, in connection with its effort to educate the Examiner on the events that preceded and/or resulted in entry of the Examiner Order. As he indicated to the Parties during those sessions, the Examiner is sensitive to the fact that the Investigation ultimately may have an impact on the Court's consideration of that proposed settlement, but the Examiner believes that it is not within his charge under the Examiner Order to investigate or comment upon the merits of the proposed settlement.

V.

CONFIDENTIALITY AND PRIVILEGES

25. During their initial conferences, the Examiner and the Parties addressed at length the issues of confidentiality and privilege with respect to materials that are provided to the Examiner for review. The Examiner observes that there is an internal tension within the Examiner Order when it comes to confidentiality. The Court has made clear on the Record that it expects the Examiner to file a public report. On the other hand, the Examiner Order appears to extend to the Examiner the prohibitions on disclosure of confidential information that are contained in the Depository Order. Based upon the Parties' representations, nearly *every* document that has been produced in these cases already has been marked "Confidential" and its

contents may not be publicly disclosed. This makes it extremely difficult for the Examiner to discharge his obligation to file a thorough public report, and needs to be changed.

26. In an effort to reconcile this conflict, the Examiner has proposed to the Parties that following the formal exchange of briefs and documents described above, each of them shall identify to the Examiner those particular documents that the Party believes in good faith are entitled to protection from public disclosure under applicable law and as to which the Examiner should not publicly disclose in his report. Absent relief prior to July 12, 2010, the report publicly filed on such date will be redacted so as not to disclose the contents of the documents designated by the Parties for protection in response to a deadline that will be established by the Examiner.

27. The Examiner has advised Parties that the standard they should utilize in whether to designate documents for non-disclosure is not whether disclosure would be embarrassing to a Party, or harmful to its position in existing or future litigation, but whether there is a bona fide legal basis to prevent its public disclosure. The Examiner hopes and expects that the universe of non-disclosable documents identified by the Parties will be few. In order to address those documents that ultimately may be designated for non-disclosure by a Party, the Examiner will propose that the Court adopt an expedited process for determining whether to lift the protection of any document or information and permit the public filing of the report without redaction – similar to the process utilized in the Lehman case following the filing of the examiner's report.

28. As for matters of privilege, and to facilitate the free flow of information to the Examiner, the Examiner believes it is appropriate for the Court to enter an order providing that the production to the Examiner or to any of the Parties of any document or communication that may be privileged shall not be the basis for any third party or any other Party to assert that any of the Parties or their counsel or other professionals have waived, in whole or in part, any privilege,

protection, immunity, or confidentiality with respect to such documents or information or with respect to any other documents or information that may concern the same subject matter. The Examiner does not believe any Parties oppose such relief. Certain of the Parties have requested that the Court's order *further* provide that the delivery of any documents or information by any of the Parties, or by counsel or other professionals engaged by any of the Parties, to the Examiner or to any of the Parties in connection with the Investigation, does not constitute a waiver of attorney-client privilege, attorney work product protection, confidentiality or any other applicable privilege, protection, immunity, or confidentiality, provided that, notwithstanding the foregoing, should the Examiner choose to incorporate any of the documents or information in the Examiner's report, the Parties will not assert attorney-client privilege, attorney work product protection, or any other applicable privilege, protection or immunity with respect to the specific documents or information so incorporated. The Examiner understands that not all of the Parties have agreed that the Court should order that privileges are preserved notwithstanding a Party's decision voluntarily to furnish otherwise privileged document or information to the Examiner (unless such matter is disclosed by the Examiner in his report); and the Examiner has heard the view expressed that Parties should understand that if previously privileged materials are voluntarily given to the Examiner, the applicable privilege should be lost as to such materials (and such materials only). The Examiner believes that it is appropriate for the Parties to address this matter with the Court at the upcoming status conference. In the interests of candor, while the Examiner remains interested in the Parties' views on this matter, the Examiner did not propose that the Court grant this boarder protection in his meetings with the Parties.

VI.

DISCOVERY

29. Based upon his consultations with the Parties, the Examiner expects and anticipates that the Parties will be cooperative with the Investigation. Moreover, to the extent the Examiner seeks information from an individual, the Examiner expects to obtain such information through an informal interview, rather than a formal deposition. Nevertheless, the Examiner may determine that it is necessary and appropriate to conduct depositions or other formal discovery with respect to one or more of the Parties or third-parties. To that end, the Examiner anticipates filing shortly a motion seeking blanket authority under Bankruptcy Rule 2004 to issue subpoenas and conduct formal discovery in connection with the Investigation, as was requested and granted by the examiners in recent cases such as New Century, Lehman Brothers and Enron.

VII.

BUDGET

30. Subject to Court approval, the Examiner has determined that he needs to engage the following professionals: (i) Klee, Tuchin, Bogdanoff & Stern LLP to serve as his counsel, (ii) Saul Ewing LLP to serve as his Delaware counsel, and (iii) LECG to serve as his financing advisors. The Examiner expects that applications to employ these professionals will be filed shortly. The Investigation and the drafting of the Examiner's report is a massive endeavor, given the scope of the issues and the breadth of the factual record that must be considered and analyzed. This effort will require a team of professionals in many instances working at or near full time between now and July 12, 2010, when the Examiner's report is due.

31. As discussed above, the Examiner has designed a preliminary work plan that seeks to avoid "reinventing the wheel," using the adversarial process and the cooperation of the

parties to fine tune the issues and the investigation. Nevertheless, there is a great deal of independent work that likely must be performed by the Examiner and his legal and financial professionals so that the Examiner may discharge his obligation to conduct an independent investigation, and a compressed period in which that work may be performed.

32. Among other things, the Examiner's financial advisors will need to assess the projections and solvency analysis prepared in connection with the various transactions, as well as the Debtor's financial performance before (and after) the LBO. The Examiner also is mindful of the fact that there are separate estates and separate avoidance actions that may be asserted by different Debtors against different parties. An independent assessment of these issues will require factual and legal investigation in respect of the various subsidiaries, intercompany claims, and the flow of funds between and among them.

33. The Examiner's proposed financial advisors will be meeting next week with the financial advisors to various Parties to obtain more information regarding the nature of the financial analyses performed to date, and make a better assessment of the original and/or comparative analysis that the Examiner's financial advisors must independently perform. As the Examiner's financial advisors learn more in this regard, they may determine that the work they must perform in order to supplement the work performed to date is less than currently contemplated. The Examiner expects to have a better sense of these matters after this week's meeting among the financial advisors.

34. It is exceedingly difficult at this time to estimate what this project will cost. Based upon the information that is *currently* available to the Examiner at this stage, the Examiner's preliminary estimate is that the Investigation and preparation of the report required by the Examiner Order will cost approximately $4 to $5 million in fees and costs. As discussed

above, however, the Examiner intends to build upon the work that has been done to date by the Parties' professionals, and hopes that this estimate may be reduced, among other things, if his financial advisors determine that there is less independent financial analysis to be performed than is currently contemplated. Nevertheless, there is a substantial amount of work to be performed in a short amount of time and the cost will be substantial. The Examiner has no desire to devote more of his time, and the time of his professionals, to this project than is reasonable and appropriate; and formulating ways to discharge his responsibilities in a cost efficient manner has been, and will continue to be, an exceedingly important consideration for the Examiner throughout this expedited process.

VIII.

CONCLUSION

35. The Examiner respectfully submits that the foregoing Work and Expense Plan is reasonable and appropriate and should be approved by the Court, subject to such additional input and guidance the Court may provide the Examiner with respect thereto.

Dated: May 7, 2010

Respectfully Submitted,

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
ENRON CORP., et al.,	:	Case Nos. 01-16034 (AJG)
	:	Jointly Administered
Debtors.	:	

STIPULATION AND CONSENT ORDER AMONG THE DEBTORS, THE COMMITTEE AND THE EXAMINER REGARDING THE SHARING OF CONFIDENTIAL INFORMATION

This Stipulation and Consent Order (the "Stipulation") is entered into by and among (i) Enron Corp. and its affiliated debtors and debtors in possession (collectively "Enron" or the "Debtors"), (ii) the Official Committee of Unsecured Creditors of Enron (the "Committee"), and (iii) Neal Batson, Esq., in his capacity as examiner for Enron Corp. (the "Examiner") (collectively, the "Parties", and individually, each a "Party"), by their undersigned counsel.

WHEREAS, Enron and certain of its affiliates and subsidiaries filed petitions for relief under title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court in the Southern District of New York (the "Court") commencing on or about December 2, 2001 (the "Chapter 11 Cases"); and

WHEREAS, the United States Trustee, in accordance with section 1102 of the Bankruptcy Code, formed the Committee in the Chapter 11 Cases on December 12, 2001, which appointment was amended on December 24, 2001; and

WHEREAS, the Court entered an Order, dated April 8, 2002, directing the appointment of an examiner for Enron Corp. (the "Examiner Order"); and

WHEREAS, pursuant to the Examiner Order, the United States Trustee duly appointed the Examiner, which appointment was approved by an Order, dated May 24, 2002; and

WHEREAS, the Debtors and the Committee have expended considerable resources in reviewing and analyzing transactions involving special purpose entities;

WHEREAS, the Examiner Order provides that the Examiner shall, among other things, investigate transactions involving special purpose entities (the "Examiner's Investigation");

WHEREAS, the Debtors and the Committee each and together wish to coordinate and cooperate with the Examiner as he discharges his duties under the Examiner Order in an effort to minimize the time and cost to the Debtors' estates in the Examiner's fulfillment of his duties.

NOW, THEREFORE, it is hereby agreed, stipulated and ordered as follows:

1. Each of the Debtors and the Committee and their respective outside professionals may share with the Examiner documents (as defined in Rule 7034 of the Federal Rules of Bankruptcy Procedure) and legal opinions that may be subject to a privilege or other protection from discovery, including the attorney-client privilege or the work product doctrine ("Shared Material"), and the provision of Shared Material to the Examiner is not and shall not be deemed to be a waiver of any such privilege or protection. Any Shared Material that consists of documents shall be clearly designated as such by stamping them "Documents shared pursuant to Stipulation of July 3, 2002. Do not disclose to anyone except pursuant to the terms of the foregoing Stipulation." The designation of a document as Shared Material shall not bind the Examiner that such document is in fact protected by any applicable privilege, and is subject to the procedures set forth in paragraphs 7

and 8 below. Legal opinions shared with the Examiner by counsel for the Debtors and/or the Committee shall be Shared Material.

2. Each of the Debtors and the Committee and their outside professionals reserves the right to determine for itself or themselves the Shared Material it will provide to the Examiner.

3. No obligation or duty to provide any Shared Material is created by this Stipulation and participation in this Stipulation by each Party and the provision of Shared Material is voluntary. The provision of Shared Material to the Examiner or his professionals shall not constitute grounds for any objection to the Examiner's Investigation or his selection of professionals to assist him. The Committee and the Debtors hereby agree that any Shared Material that either provides to the Examiner and his professionals may be used by the Examiner in the Examiner's Investigation.

4. By entering into this Stipulation or by any action or conduct pursuant to this Stipulation, neither the Debtors nor the Committee, nor their respective outside professionals, intends to waive, in whole or part, the attorney-client privilege, work-product doctrine or any

other privilege, right or immunity it may be entitled to claim or invoke.

5. Shared Material provided to the Examiner shall be held in strict confidence by the Examiner and the Examiner agrees he will not provide Shared Material to any person except as required by applicable law, regulation or legal process, and only after compliance with paragraph 7 or 8 hereof, provided, however, that Shared Material may be provided to (a) accountants, attorneys, experts, consultants, support staff, and representatives and agents of the Examiner (it being understood that such accountants, attorneys, experts, consultants, support staff, representatives and agents shall be informed by the Examiner to treat Shared Material confidentially in accordance with the terms of this Stipulation), and (b) any person or entity authorized in writing to receive Shared Material by the Party producing same. Nothing in this Stipulation shall prohibit the Examiner or his professionals from using or disclosing in any manner any factual information contained within the Shared Material, and in particular, the Examiner and his professionals need not comply with the procedures in the last sentence of paragraph 7 hereof concerning such factual information. The treatment of the legal opinions of counsel for the

Debtors or the Committee as Shared Material pursuant to the Stipulation shall not preclude the Examiner from reaching any conclusion or opinion, consistent or inconsistent therewith, in connection with the Examiner's Investigation, nor shall it preclude the Examiner from disclosing any opinion or conclusion the Examiner may reach.

6. Nothing herein shall prohibit, restrict or limit the Debtors or the Committee from providing or disclosing to any other person or entity, without notice and at the sole discretion of each, the Shared Material or information contained in Shared Material that they have provided to the Examiner.

7. Except as provided in paragraph 5 hereof, in the event that the Examiner is requested or required by any person (by law, oral questions, government action, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to provide or produce any Shared Material supplied to the Examiner by the Debtors or the Committee, the Examiner shall, unless prohibited from doing so by applicable law, give counsel to the Party who provided the Shared Material prompt notice of such request so that the producing Party may take appropriate action and/or waive the Examiner's compliance with the provisions of this Stipulation. Other

than the giving of notice, the Examiner has no obligation to resist the request for Shared Material. In the event that the Examiner wishes to provide any Shared Material to persons and entities not otherwise entitled to receive them under this Stipulation, such as in witness interviews or Rule 2004 examinations, or to include any Shared Material in the Examiner's interim or final reports, the Examiner must first obtain the advance, written consent of the Party or counsel for the Party that produced the Shared Material or, upon five (5) business days' notice to the Party that produced the Shared Material, obtain permission from the Court.

8. The Examiner may challenge the propriety of the designation of any materials marked as Shared Material. If the Examiner desires to challenge a Shared Material designation, he will file an application with the Court, *in camera*, challenging the Shared Material designation of documents provided hereunder. The Party who produced the documents and made the designation shall have ten (10) business days to either remove the designation or oppose the Examiner's application.

9. As it respects documents, this Stipulation applies only to documents created on or after December 2, 2001.

10. This Stipulation shall be deemed effective as to each Party, its attorneys, agents and representatives, upon the execution by all parties and entry of this Stipulation by the court. When effective, this Stipulation applies to any Shared Material provided prior to its execution.

11. Notwithstanding any other provision hereof, the confidentiality obligations of the Parties pursuant to this Stipulation shall remain in full force and effect with regard to any previously exchanged Shared Material, including upon termination or a Party's withdrawal from this Stipulation.

12.The provisions of this Stipulation governing the exchange of Shared Material by the Debtors and/or the Committee with the Examiner shall also apply to the exchange of Shared Material between counsel for the Debtors and counsel for the Committee.

13. Nothing herein is intended to limit or restrict in any way the rights, responsibilities and powers of the Debtors, the Committee or the Examiner provided in the Examiner Order, as it may hereafter be amended. In particular, and without limitation, nothing herein is intended to limit or restrict in any way the rights of the Examiner to obtain information and documents from the

Debtors (including pre-petition attorney-client privileged communications of the Debtors' estates) provided in the Examiner Order, as it may hereafter be amended.

14. This Stipulation may be amended, modified, supplemented or terminated only by the written consent of the Parties hereto or their counsel, or further order of the Court.

Agreed to by:

July 3, 2002

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Attorneys for the Committee

SO ORDERED, this 8th day of July, 2002:

/s/Arthur J. Gonzalez
ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY COURT

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ENRON CORP., *et al.*,	:	Case No. 01-16034 (AJG)
Debtors.	:	Jointly Administered

ORDER GOVERNING THE PRODUCTION AND USE OF CONFIDENTIAL MATERIAL AMONG THE EXAMINER, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, THE DEBTORS AND NON-PARTIES

IT IS HEREBY ORDERED THAT the following order shall apply to third parties to whom Rule 2004 subpoenas are directed (the "Non-Party Producer"), Neal Batson, Esq., in his official capacity as Examiner (the "Examiner"), Enron Corp. and its affiliated debtors and debtors in possession (collectively "Enron" or "Debtors"), and the Official Committee of Unsecured Creditors of Enron Corp. (the "Committee" and collectively with the Debtors and the Examiner, the "Requesting Parties") and all persons and entities who may be provided information covered by this Order, in the above-captioned Chapter 11 cases and any related proceedings (collectively, the "Matter"):

WHEREAS, Enron and certain of its affiliates and subsidiaries filed petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court of the Southern District of New York, commencing these Chapter 11 Cases on or about December 2, 2001; and

WHEREAS, on December 12, 2001, the United States Trustee appointed the Committee; and

WHEREAS, the Court entered an Order dated April 8, 2002 directing the appointment of an Examiner for the Debtors (the "Examiner Order"); and

WHEREAS, pursuant to the Examiner Order, the United States Trustee duly appointed the Examiner, Neal Batson, Esq., which appointment was approved by an Order by the Court dated May 24, 2002; and

WHEREAS, the Examiner Order provides that the Examiner shall, among other things, investigate transactions involving special purpose entities (the "Examiner's Investigation"); and

WHEREAS, the Committee is charged with investigating the Debtors' assets and liabilities and the operation of their businesses, and participating in the formulation of the Debtors' plan(s) of reorganization pursuant to 11 U.S.C. § 1103(c) (the "Committee's Investigation"); and

WHEREAS, the Debtors may investigate as necessary to carry out their duties and powers under Bankruptcy Code section 1107(a) (the "Debtors' Investigation") (collectively with the Examiner's Investigation and the Committee's Investigation the "Requesting Parties' Investigation"); and

WHEREAS, the Requesting Parties have served or will serve a subpoena upon the Non-Party Producer requesting the production of documents related to the Requesting Parties' Investigations; and

WHEREAS, the Requesting Parties may seek to investigate and examine documents from the same Non-Party Producers and, therefore, may issue subpoenas to the same Non-Party Producer; and

WHEREAS, the parties wish to avoid the unnecessary duplication of expense for both the Non-Party Producers and the Requesting Parties;

THEREFORE, IT IS HEREBY ORDERED:

1. This Order shall govern the designation and use by the Requesting Parties of any documents, testimony or other information designated as Confidential Information hereunder which were produced or provided or will in the future be produced or provided to the Requesting Parties by a Non-Party Producer (collectively, the "Materials").

2. As used herein, "Confidential Information" shall include any Materials that are (i) deemed a trade secret or other confidential research, development, or commercial information as those terms are used in Federal Rule of Bankruptcy Procedure 7026(c)(7) or under any law, rule or regulation of any jurisdiction having or claiming to have jurisdiction over the Non-Party Producer or confidential under the laws of a jurisdiction whose laws apply to the Non-Party Producer or personal information; or (ii) as to producing law firms only, deemed an attorney-client privileged communication; or (iii) as to producing law firms only, deemed work product as defined under Federal Rule of Bankruptcy Procedure 7026(b)(3) or under applicable law or (iv) unrelated to the Requesting Parties' Investigation. The Non-Party Producer may designate as "Highly Confidential" any Confidential Information containing particularly confidential technology or other trade secrets whose disclosure to persons in the same industry would put it at a severe competitive disadvantage or that is otherwise particularly sensitive personal information. To the extent that the Requesting Parties should challenge in writing, delivered by fax or overnight delivery, the "confidential" or "highly confidential" designation of any Materials, the Non-Party Producer designating the Materials as "confidential" or "highly confidential" shall bear the burden of showing that the

Materials are Confidential Information. Nothing in this Order is intended to modify the Examiner's power to waive the attorney-client privilege as set forth in the Examiner Order.

3. Confidential Information and Highly Confidential Information provided to the Requesting Parties shall be held in strict confidence by the Requesting Parties in accordance with the terms of this Order. Any Materials obtained by the Requesting Parties from a Non-Party Producer shall not be used or disclosed for any purpose, including any business or competitive purpose, other than the Requesting Parties' Investigation, as may hereafter be amended by the Court ("Permitted Use").

4. The Requesting Parties may disclose Confidential Information, but not Highly Confidential Information, only to each other and the following categories of persons or parties, provided that each person or party must be shown a copy of this Order and, where expressly required below, indicate its agreement to be bound by its terms by reviewing and executing the Agreement attached hereto as Addendum A:

(a) Counsel for the Requesting Parties and/or the employees of such counsel assigned to and necessary to assist such counsel in connection with the Requesting Parties' Investigation;

(b) Nonparty experts or consultants retained in good faith to assist the Requesting Parties in connection with the Requesting Parties' Investigation; *provided* that each such expert or consultant is provided with a copy of this Order and signs Addendum A attached hereto;

(c) Officers or employees of the Requesting Parties who may be necessary to assist in the preparation and conduct of the Requesting Parties' Investigation and

who have been furnished with a copy of this Order prior to disclosure to such person of any Confidential Information;

(d) Court reporters, stenographers or video operators at depositions, court or arbitral proceedings at which Confidential Information is disclosed;

(e) Clerical and data processing personnel involved in the production, reproduction, organizing, filing, coding, cataloging, converting, storing, retrieving and review of Confidential Information, to the extent reasonably necessary to assist the Requesting Parties or its counsel with respect to the Requesting Parties' Investigation; provided that the primary contractor is provided with a copy of this Order and signs Addendum A attached hereto;

(f) The Honorable Arthur J. Gonzalez, Judge of the United States Bankruptcy Court for the Southern District of New York, and employees of the Court working in his chambers;

(g) By the Examiner to the public at large, solely to the extent discussed in or attached as exhibits to the Examiner's interim or final reports so long as prior to such use in any interim or final reports the Examiner provides advance written notice, by facsimile or overnight delivery, to the Non-Party Producer five (5) business days prior to the filing of any interim or final report identifying the Confidential Information the Examiner may use in a report to allow the Non-Party Producer to serve an objection within such five (5) day period, which objection shall be transmitted by facsimile to the Examiner's counsel. During the five (5) day review period, the Non-Party Producer shall hold the identity and content of the Confidential Information about which the Examiner has given notice in strict confidence and shall make no disclosure to any person, except counsel for or employees of

the Non-Party Producer whose Materials the Examiner intends to disclose, of the identity or content of the Materials the Examiner has notified the Non-Party Producer he may use in a report. If the Non-Party Producer makes an objection, it must file with the Court a motion for a protective order seeking to prohibit the public disclosure of the Confidential Information proposed to be included in the Examiner's report within ten (10) business days of the making of the objection if it wishes to adhere to its objection. The Examiner shall maintain the confidentiality of such Confidential Information during the pendency of an objection and, if a motion for protective order is filed, until the Court resolves the motion for protective order. If the Examiner files a report during the pendency of an objection or motion for protective order, he shall file those portions of the report, or the entire report if more convenient, under seal to preserve such Confidential Information.

(h) Persons who are granted access pursuant to the terms of the March 15, 2002 Order Regarding Access by Third Parties to Bankruptcy Rule 2004 Material Obtained by the Official Committee of Unsecured Creditors (the "Rule 2004 Sharing Order") and sign Addendum A attached hereto.

5. The Requesting Parties may disclose Confidential Information and Highly Confidential Information only to witnesses being questioned by the Requesting Parties in interviews given in connection with the Requesting Parties' Investigation and who sign Addendum A attached hereto and (i) have been provided with notice that the information being disclosed is Confidential Information or Highly Confidential Information, (ii) have been provided with a copy of this Order, and (iii) have been informed that Confidential Information or Highly Confidential Information is being disclosed to them pursuant to this Order. The Requesting Parties may show the Confidential Information or Highly Confidential

Information to the witness, but Confidential Information and Highly Confidential Information may not be given to the witness.

6. The Requesting Parties may disclose Confidential Information and Highly Confidential Information only to witnesses being questioned by the Requesting Parties in depositions or in a court proceeding in connection with the Requesting Parties' Investigation (but not in adversary proceedings or other litigation outside the Matter) ("Court Proceeding") and who sign Addendum A attached hereto and (i) have been provided with notice that the information being disclosed is Confidential Information or Highly Confidential Information, (ii) have been provided with a copy of this Order, and (iii) have been informed upon the record of such testimony that Confidential Information or Highly Confidential Information is being disclosed to them pursuant to this Order. The Requesting Parties may show the Confidential Information to the witness, but Confidential Information or Highly Confidential Information may not be given to the witness. Within ten (10) business days of the receipt of a transcript of a deposition or a portion thereof, the Requesting Party who discloses Confidential Information or Highly Confidential Information must notify in writing by facsimile or overnight delivery the Non-Party Producer whose Confidential Information or Highly Confidential Information was disclosed. If a Requesting Party intends to use Confidential Information or Highly Confidential Information at a deposition or a Court Proceeding, the Requesting Party who intends to use such information must provide two (2) days advance written notice delivered by facsimile of the deposition or Court Proceeding and the intent to use Confidential Information or Highly Confidential Information.

7. If Highly Confidential Information is used during a deposition, everyone but the following persons shall be excused from the deposition while the Highly

Confidential Information is being used: (1) the Requesting Parties and their professionals; (2) the witness and his/her counsel; and (3) the Non-Party Producer whose Highly Confidential Information is being used and its counsel.

8. If Confidential Information is used during a deposition, the following persons shall be excused from the deposition while the Confidential Information is being used: (a) persons, other than Requesting Parties, in litigation with the Non-Party Producer; and (b) persons who have not signed Addendum A attached hereto.

9. The Non-Party Producer may designate Confidential Information as "Confidential" or "Highly Confidential" by marking or stamping Materials (or the first page of a multi-page document provided that the document is securely bound) "Confidential or "Highly Confidential," as the case may be. The Requesting Parties shall treat print-outs of any computer data so designated as Confidential Information or Highly Confidential Information in accordance with the terms of this Order. Failure to designate materials as Confidential Information or Highly Confidential Information at the time of their production may be remedied by supplemental written notice and, upon receiving such supplemental notice, the Requesting Parties shall thereafter treat the designated materials in accordance with the terms of this Order.

10. If the Requesting Parties use Confidential Information or Highly Confidential Information to question a witness in a deposition or during a Court Proceeding, the Requesting Parties shall within ten (10) business days after the receipt of the transcript of a deposition or a portion thereof, designate as Confidential Information or Highly Confidential Information each page of such transcript, including exhibits, that contains Confidential Information or Highly Confidential Information.

11. A Non-Party Producer may, on the record of a deposition or within ten (10) business days after receipt of each volume of transcript of a deposition, designate as Confidential Information or Highly Confidential Information each page of such transcript, including exhibits, that are Confidential Information or Highly Confidential Information under the terms of this Order. Until such time period expires, the entire volume of deposition transcripts shall be treated as Confidential Information or Highly Confidential Information unless otherwise specified in writing or on the record of the deposition by the Non-Party Producer so long as the Non-Party Producer requests the deposition transcript within ten (10) business days of the ten (10) day notice period provided in Paragraph 6.

12. If the Requesting Parties object to the designation of any Materials as Confidential Information or Highly Confidential Information, including but not limited to, documents, entire depositions, portions thereof and/or exhibits thereto, the Requesting Parties shall so state by letter to counsel for the Non-Party Producer. The Requesting Parties and counsel for the Non-Party Producer shall promptly confer, in good faith, to resolve any dispute concerning the designation and treatment of information as Confidential Information or Highly Confidential Information pursuant to the terms of this Order. In the event that the parties are unable to resolve any dispute concerning treatment of information as Confidential Information or Highly Confidential Information, the Requesting Party may file with the Court a motion challenging the designation. If such a motion is filed, the Non-Party Producer bears the burden of proving the material should be treated as Confidential Information or Highly Confidential Information. Pending determination of such motion, any information previously designated as Confidential Information or Highly Confidential Information shall continue to be treated in accordance with its original designation.

13. The Requesting Parties may disclose Confidential Information designated Highly Confidential only to the attorneys and their staff and experts and their staff of the Requesting Parties and witnesses and his or her counsel. Unless ordered by the Court or agreed by the Non-Party Producer, Highly Confidential Information shall not be made available to any other person or entity. If Highly Confidential Information is to be shown in an interview pursuant to Paragraph 5 of this Order to someone other than the author or recipient of the Highly Confidential Information or to someone other than a person employed by the author or recipient's employer, then the person who intends to make disclosure shall give notice of the proposed disclosure to outside counsel of record for the Non-Party Producer that produced the Highly Confidential Information one business day before the interview, who shall hold the information on an attorney's eyes only basis.

14. This Order is intended to limit production of Confidential Information or Highly Confidential Information to the Requesting Parties and to limit disclosure by them only to the extent and in the manner provided herein. In the event that the Requesting Parties are requested or required by any person or entity (by law, oral questions, government action, interrogatories, requests for information or Materials, subpoena, civil investigative demand or similar process) to provide or produce Confidential Information or Highly Confidential Information supplied to the Requesting Parties by the Non-Party Producer, the Requesting Parties shall, unless prohibited from doing so by applicable law, give counsel to the relevant Non-Party Producer who provided the Confidential Information or Highly Confidential Information prompt written notice as soon as practicable, but no less than, five (5) days in advance of the deadline for filing objections so that the Non-Party Producer has an opportunity to object to production. The Requesting Parties shall not disclose the

Confidential Information or Highly Confidential Information unless the Non-Party Producer's objections are overruled and a court orders production. Other than the giving of notice to the Non-Party Producer, the Requesting Parties have no obligation to resist the request for Confidential Information.

15. This Order has no effect upon, and its scope shall not extend to, the Non-Party Producer's use of its own Confidential Information or Highly Confidential Information for any purpose; nor does this Order affect the terms of the Non-Party Producer's respective stipulations and/or orders regarding confidentiality with persons other than the Requesting Parties.

16. Nothing herein shall prevent or prejudice any party from seeking additional, lessser or greater protection with respect to the use or disclosure of Confidential Information or Highly Confidential Information.

17. If, after having produced material to the Requesting Parties pursuant to this Order, the Non-Party Producer states in writing that material was privileged and/or produced in error, the Requesting Parties will not assert that the fact of production of the material constitutes a waiver of any right, privilege, or other protection that the Non-Party Producer had or may have had as to the material and shall return the material and all copies thereof and destroy that portion of any notes or memoranda that reflect the substance of the document. In the event of such inadvertent production, upon challenge by the Requesting Parties, the Non-Party Producer asserting the privilege, protection and/or error, shall have the burden to establish that the material is non-responsive and/or otherwise protected by motion to the Court. If the Requesting Parties challenge the Non-Party Producer's claim of inadvertent production, the Non-Party Producer shall file a motion with the Court within ten

(10) business days of the Requesting Parties' challenge seeking a ruling that the Materials at issue were produced inadvertently and the Requesting Parties are not entitled to use them in connection with their Investigations. The Requesting Parties shall maintain the confidentiality of the Confidential Information or Highly Confidential Information until the court resolves the motion and, during its pendency, the Requesting Parties shall not use the Confidential Information or Highly Confidential Information.

18. Upon the entry of a final decree closing the last of these jointly administered cases (a "Final Decree"), the provisions of this Order shall remain in effect.

19. All Materials and copies thereof shall be returned or destroyed at the Requesting Parties' election within forty-five (45) days of the entry of a Final Decree.

20. Nothing herein shall be construed to require the production by any party of any Materials including any Materials covered by otherwise valid and applicable privilege, including privileges from disclosure arising under the laws, rules and regulations of foreign jurisdictions.

21. All notices which may or are required to be given to the Requesting Parties shall be given to the following:

If to the Examiner, to:

James C. Grant
Alston & Bird, LLP
1201 West Peachtree Street
Atlanta, GA 30309
Fax: 404.881.7777

If to the Committee, to:

Philomena M. Dane
Squire, Sanders & Dempsey, L.L.P.
1300 Huntington Center
41 South High Street
Columbus, OH 43215-6197
Fax: 614.365.2499

If to the Debtors, to:

Brian S. Rosen
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Fax: 212.310.8007

22. Within ten (10) days after the entry of this Order, all Non-Party Producers shall provide notice to the Requesting Parties of the name, address and fax number of not more than three (3) people on whom all notices which may or are required to be given to such Non-Party Producer under this Order shall be given. Notice given by a Requesting Party to such persons identified by a Non-Party Producer shall satisfy such Requesting Party's notice obligations hereunder.

23. The Requesting Parties shall file a motion seeking to amend the Rule 2004 Sharing Order to the extent necessary to effectuate the provisions of this Order.

IT IS SO ORDERED:

Dated: October 10, 2002

s/Arthur J. Gonzalez
Arthur J. Gonzalez
United States Bankruptcy Judge

ADDENDUM A

AGREEMENT

I, _____ have reviewed and understand the preceding Order Governing the Production and Use of Confidential Material Among the Examiner, the Official Committee of Unsecured Creditors, the Debtors and Non-Parties ("the "Order.") I understand that a Requesting Party intends to disclose confidential information to me pursuant to the Order. I agree to be bound by the terms of the Order.

_____
(Signature)

_____
(Print Name)

_____
(Date)

Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, New York 10005
(212) 530-5000

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Alston & Bird LLP

One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
(404) 881-7000

Squire, Sanders & Dempsey, LLP
312 Walnut Street
Suite 3500
Cincinnati, Ohio 45202-4036
(513) 361-1200

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
ENRON CORP., et al.,	:	Case Nos. 01-16034 (AJG)
	:	Jointly Administered
Debtors.	:	

AMENDED STIPULATION AND CONSENT ORDER AMONG THE DEBTORS, THE CREDITORS' COMMITTEE AND THE EXAMINER REGARDING THE SHARING OF CONFIDENTIAL INFORMATION

This Amended Stipulation and Consent Order (the "Amended Stipulation") is entered into by and among (i) Enron Corp. and its affiliated debtors and debtors in possession (collectively "Enron" or the "Debtors"), (ii) the Official Committee of Unsecured Creditors of Enron (the "Committee"), and (iii) Neal Batson, Esq., in his capacity as examiner for Enron Corp. (the "Examiner") (collectively, the "Parties", and individually, each a "Party"), by their undersigned counsel.

WHEREAS, Enron and certain of its affiliates and subsidiaries filed petitions for relief under title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court in the Southern District of New York (the "Court") commencing on or about December 2, 2001 (the "Chapter 11 Cases"); and

WHEREAS, the United States Trustee, in accordance with Section 1102 of the Bankruptcy Code, formed the Committee in the Chapter 11 Cases on December 12, 2001, which appointment was amended on December 24, 2001 and September 10, 2002; and

WHEREAS, the Court entered an Order, dated April 8, 2002, directing the appointment of an examiner for Enron Corp. (the "Examiner Order"); and

WHEREAS, pursuant to the Examiner Order, the United States Trustee duly appointed the Examiner, which appointment was approved by an Order, dated May 24, 2002; and

WHEREAS, the Debtors and the Committee have expended considerable resources in reviewing and analyzing transactions involving special purpose entities; and

WHEREAS, the Examiner Order provides that the Examiner shall, among other things, investigate

transactions involving special purpose entities (the "Examiner's Investigation"); and

WHEREAS, the Examiner has expended considerable resources in reviewing and analyzing transactions involving special purpose entities; and

WHEREAS, the Parties together wish to coordinate and cooperate with each other as set forth in the Examiner Order in an effort to minimize the time and cost to the Debtors' estates in the Parties' fulfillment of their duties.

NOW, THEREFORE, it is hereby agreed, stipulated and ordered as follows:

1. Each of the Debtors and the Committee and their respective outside professionals may share with the Examiner documents (as defined in Rule 7034 of the Federal Rules of Bankruptcy Procedure) and legal opinions that may be subject to a privilege or other protection from discovery, including the attorney-client privilege or the work product doctrine ("Shared Material"), and the provision of Shared Material to the Examiner is not and shall not be deemed to be a waiver of any such privilege or protection. The Examiner and his outside professionals may share with the Debtors and/or Committee Shared Material, and the provision of Shared Material to the Debtors and/or

Committee is not and shall not be deemed to be a waiver of such privilege or protection. Any Shared Material that consists of documents shall be clearly designated as such by stamping them "Documents shared pursuant to Amended Stipulation of October 24, 2002. Do not disclose to anyone except pursuant to the terms of the foregoing Amended Stipulation." The designation of a document as Shared Material shall not bind the Party receiving the document that such document is in fact protected by any applicable privilege, and the designation of a document as Shared Material is subject to the procedures set forth in paragraphs 7 and 8 below. Legal opinions (i) shared with the Examiner by counsel for the Debtors and/or the Committee, or (ii) shared with the Debtors and/or Committee by counsel for the Examiner, shall be Shared Material.

2. Each of the Parties and their outside professionals reserves the right to determine for itself or themselves the Shared Material it will provide to another Party.

3. No obligation or duty to provide any Shared Material is created by this Amended Stipulation and participation in this Amended Stipulation by each Party and the provision of Shared Material is voluntary. The provision of Shared Material to the Examiner or his

professionals shall not constitute grounds for any objection to the Examiner's Investigation or his selection of professionals to assist him. The Committee and the Debtors hereby agree that any Shared Material that either provide to the Examiner and his professionals may be used by the Examiner in the Examiner's Investigation.

4. By entering into this Amended Stipulation or by any action or conduct pursuant to this Amended Stipulation, neither the Parties, nor their respective outside professionals, intend to waive, in whole or part, the attorney-client privilege, work-product doctrine or any other privilege, right or immunity they may be entitled to claim or invoke.

5. Shared Material provided to another Party shall be held in strict confidence by the receiving Party and the receiving Party agrees it will not provide Shared Material to any person except as required by applicable law, regulation or legal process, and only after compliance with paragraph 7 or 8 hereof, provided, however, that Shared Material may be provided to (a) accountants, attorneys, experts, consultants, support staff, and representatives and agents of the receiving Party (it being understood that such accountants, attorneys, experts, consultants, support staff, representatives and agents

shall be informed by the receiving Party to treat Shared Material confidentially in accordance with the terms of this Amended Stipulation), and (b) any person or entity authorized in writing to receive Shared Material by the Party producing same. Nothing in this Amended Stipulation shall prohibit the receiving Party or its professionals from using or disclosing in any manner any factual information contained within the Shared Material, and in particular, the receiving Party and its professionals need not comply with the procedures in the last sentence of paragraph 7 hereof concerning such factual information. The treatment of the legal opinions of counsel for the Debtors or the Committee as Shared Material pursuant to the Amended Stipulation shall not preclude the Examiner from reaching any conclusion or opinion, consistent or inconsistent therewith, in connection with the Examiner's Investigation, nor shall it preclude the Examiner from disclosing any opinion or conclusion the Examiner may reach. The treatment of the legal opinions of the Examiner and his counsel as Shared Material pursuant to the Amended Stipulation shall not preclude the Debtors or the Committee from reaching any conclusion or opinion, consistent or inconsistent therewith, in connection with any pleading, adversary proceeding or any other matter, nor shall it

preclude the Debtors or the Committee from disclosing any opinion or conclusion they may reach.

6. Nothing herein shall prohibit, restrict or limit any Party from providing or disclosing to any other person or entity, without notice and at the sole discretion of each, the Shared Material or information contained in Shared Material that they have provided to another Party.

7. Except as provided in paragraph 5 hereof, in the event that a Party receiving Shared Material is requested or required by any person (by law, oral questions, government action, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to provide or produce any Shared Material supplied by another Party, the receiving Party shall, unless prohibited from doing so by applicable law, give counsel to the Party who provided the Shared Material prompt notice of such request so that the producing Party may take appropriate action and/or waive the receiving Party's compliance with the provisions of this Amended Stipulation. Other than the giving of notice, the receiving Party has no obligation to resist the request for Shared Material. In the event that the receiving Party wishes to provide any Shared Material to persons and entities not otherwise entitled to receive them under this

Amended Stipulation, such as in witness interviews or Rule 2004 examinations, or to include any Shared Material in the Examiner's interim or final reports (in the case of Shared Material produced to the Examiner), the receiving Party must first obtain the advance, written consent of the Party or counsel for the Party that produced the Shared Material or, upon five (5) business days' notice to the Party that produced the Shared Material, obtain permission from the Court.

8. The receiving Party may challenge the propriety of the designation of any materials marked as Shared Material. If the receiving Party desires to challenge a Shared Material designation, it will file an application with the Court, *in camera*, challenging the Shared Material designation of documents provided hereunder. The Party who produced the documents and made the designation shall have ten (10) business days to either remove the designation or oppose such an application.

9. As it respects documents, this Amended Stipulation applies only to documents created on or after December 2, 2001.

10. This Amended Stipulation shall be deemed effective as to each Party, its attorneys, agents and representatives, upon the execution by all Parties and

entry of this Amended Stipulation by the court. When effective, this Amended Stipulation applies to any Shared Material provided prior to its execution.

11. Notwithstanding any other provision hereof, the confidentiality obligations of the Parties pursuant to this Amended Stipulation shall remain in full force and effect with regard to any previously exchanged Shared Material, including upon termination or a Party's withdrawal from this Amended Stipulation.

12. The provisions of this Amended Stipulation governing the exchange of Shared Material by the Debtors and/or the Committee with the Examiner shall also apply to the exchange of Shared Material between counsel for the Debtors and counsel for the Committee (except as otherwise provided in any separate agreement or Order governing the exchange of such materials between them) and the exchange of Shared Material between the Examiner and the Debtors and/or Committee.

13. Nothing herein is intended to limit or restrict in any way the rights, responsibilities and powers of the Debtors, the Committee or the Examiner provided in the Examiner Order, as it may hereafter be amended. In particular, and without limitation, nothing herein is intended to limit or restrict in any way the rights of the

Examiner to obtain information and documents from the Debtors (including pre-petition attorney-client privileged communications of the Debtors' estates) provided in the Examiner Order, as it may hereafter be amended.

14. This Amended Stipulation may be amended, modified, supplemented or terminated only by the written consent of the Parties hereto or their counsel, or further order of the Court.

Agreed to by:

October 25, 2002

MILBANK, TWEED, HADLEY & McCLOY LLP

By:/s/ Luc A. Despins
Luc A. Despins, Esq.
David R. Gelfand, Esq.
One Chase Manhattan Plaza
New York, New York 10005
(212) 530-5000

Attorneys for the Committee

October 25, 2002

WEIL, GOTSHALL & MANGES LLP

By:/s/ Brian S. Rosen
Martin J. Bienenstock, Esq.
Brian S. Rosen, Esq.
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Attorneys for the Debtors

October 25, 2002

ALSTON & BIRD LLP

By:/s/ Dennis J. Connolly
Dennis J. Connolly, Esq.
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
(404) 881-7000

Attorneys for the Examiner

October 25, 2002

SQUIRE, SANDERS & DEMPSEY LLP

By:/s/ Stephen D. Lerner
Stephen D. Lerner, Esq.
Mark J. Ruehlmann, Esq.
312 Walnut Street
Suite 3500
Cincinnati, Ohio 45202-4036
(513) 361-1200

Attorneys for the Committee

SO ORDERED, this 25th day of October, 2002:

s/ Arthur J. Gonzalez
ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY COURT

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	:	**08-13555 (JMP)**
Debtors.	:	**(Jointly Administered)**

ORDER AND STIPULATION BETWEEN THE DEBTORS AND THE EXAMINER

This stipulation (the "Stipulation") is entered into between (i) Lehman Brothers Holdings Inc. ("LBHI") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors (together, the "Debtors"), on behalf of themselves and certain of their non-debtor affiliates (collectively with the Debtors, "Lehman"), and (ii) Anton R. Valukas, Esq., in his capacity as Examiner (as defined below) by and through their undersigned counsel.

RECITALS

A. Commencing on September 15, 2008 and periodically thereafter, LBHI and certain of its subsidiaries commenced with this Court voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. On January 16, 2009, the Bankruptcy Court entered an Order Directing Appointment of an Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code (the "Examiner Order"). The Examiner Order, inter alia, ordered (i) the Unites States Trustee for the

Southern District of New York (the "U.S. Trustee") to appoint an examiner (the "Examiner") and (ii) the Examiner to conduct an investigation into certain specified matters and to perform the duties specified in sections 1106(a)(3) and (4) of the Bankruptcy Code (collectively, and as may be amended and/or supplemented by a Bankruptcy Court order, the "Examiner Investigation").

C. On January 19, 2009, pursuant to the Examiner Order, the U.S. Trustee appointed Anton R. Valukas as Examiner. The Bankruptcy Court approved the appointment by order, dated January 20, 2009.

D. The Debtors, on behalf of themselves and certain of their non-debtor affiliates, and the Examiner (collectively, the "Parties") wish to coordinate and cooperate with each other in an effort to assist with the Examiner Investigation and minimize the time and cost to the Debtors' estates. Therefore, the Parties have entered into this Stipulation and agree to be bound by its terms.

NOW THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND UPON COURT APPROVAL HEREOF, IT IS ORDERED THAT:

1. Documents and/or information that the Examiner may request from Lehman may be subject to a privilege or other protection from discovery, including the attorney-client privilege, the work-product doctrine or any other privilege, right, or immunity Lehman may be entitled to claim or invoke (collectively, the "Shared Information"). This Stipulation does not create any obligation or duty on behalf of Lehman to provide any Shared Information to the Examiner and the provision of any Shared Information is voluntary. Except as expressly provided herein, the Examiner may use the Shared Information in connection with the Examiner Investigation.

2. By entering into this Stipulation or by any action or conduct pursuant to this

Stipulation, including, but not limited to, Lehman's provision of Shared Information to the Examiner, neither the Parties, nor their respective professionals, intend to, or shall, waive, in whole or part, the attorney-client privilege, the work-product doctrine or any other privilege, right, or immunity they may be entitled to claim or invoke with respect to any Shared Information or otherwise.

3. The Examiner shall hold all Shared Information in strict confidence. The Examiner agrees that he will not provide or discuss any Shared Information with any other person or entity (including governmental units) except as required by applicable law, regulation, or legal process, and only after compliance with the terms of this Stipulation, provided, however, that Shared Information may be provided to (a) accountants, attorneys, experts, consultants, staff, and agents of the Examiner (it being understood that such parties shall be required to treat Shared Information as provided in this Stipulation), and (b) any person or entity authorized by Lehman in writing to receive Shared Information. Nothing in this Stipulation shall prohibit the Examiner or his professionals from using or disclosing in any manner any non-privileged, non-documentary factual information contained within the Shared Information provided that is does not reflect legal analysis or attorney work product, and the Examiner and his professionals need not comply with the procedures in paragraphs 5 or 6 hereof concerning such non-privileged, non-documentary factual information.

4. Except as otherwise provided herein, in the event that the Examiner receives a request or is required (whether by law, oral questions, government action, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to provide or produce any Shared Information, the Examiner shall provide notice to counsel to Lehman within three (3) business days of receipt of any such request and Lehman shall, in turn,

indicate in writing to the Examiner whether they have an objection to such production or provision of any Shared Information within five (5) business days. The Examiner shall not produce or provide any Shared Information until Lehman's objection to the production or provision of any Shared Information, if any, is finally resolved by the Bankruptcy Court pursuant to paragraph 5 of this Stipulation. If no timely objection is asserted by Lehman, the Examiner may, in his sole discretion, produce or provide the Shared Information in accordance with the request. This Stipulation shall not affect the rights of any third party to object, on grounds unrelated to the dissemination of such information to the Examiner, to the Debtors' assertion that any Shared Information may be subject to a privilege or otherwise protected from discovery. No determination made by the Court pursuant to this Stipulation that any Shared Information is subject to a privilege or otherwise protected from discovery shall be binding on any third party unless such party had an opportunity to be heard in connection with such determination. Nothing contained in this Stipulation shall modify the limitations on discovery contained in the applicable Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure or other applicable procedural rules, including, but not limited to, relevancy requirements.

5. If the Examiner desires to share Shared Information with any persons or entities (including governmental units) not authorized to receive Shared Information pursuant to this Stipulation (whether through any oral or written report by the Examiner, witness interview, deposition, or examination under Federal Rule of Bankruptcy Procedure 2004), the Examiner must either (i) obtain the advanced, written consent of Lehman or its counsel, or (ii) file an application with the Bankruptcy Court, in camera, to request authorization to produce, share or otherwise provide any of the Shared Information with a party not covered by this Stipulation. Lehman shall have ten (10) business days to either consent to the disclosure of Shared

Information or oppose the Examiner's application.

6. If the Examiner wishes to disclose Shared Information that he contends is available publicly, available through discovery (except for privileged information or Shared Information otherwise immune from discovery), including Federal Rule of Bankruptcy Procedure 2004, or that has been disclosed publicly, but not in violation of this Stipulation (collectively, "Public Information"), the Examiner will provide written notice to Lehman that (i) identifies the Shared Information the Examiner contends is Public Information, and (ii) describes how the Shared Information is Public Information. If Lehman objects to the Examiner's contention that such Shared Information is Public Information, Lehman shall have ten (10) business days to seek relief from the Bankruptcy Court. The Examiner shall not disclose the Shared Information that he contends is Public Information with any persons or entities (including governmental units) until the Bankruptcy Court resolves Lehman's objection.

7. The disclosure by the Examiner of any Shared Information, whether by consent of Lehman, by Bankruptcy Court order, or by the Examiner in violation of this Stipulation shall not affect the privileged protection of such disclosed Shared Information with respect to any person or entity and shall not affect the privileged protection of any other Shared Information.

8. Any violation of the terms of this Stipulation by the Examiner shall constitute sufficient cause for Lehman to immediately cease providing the Examiner any Shared Information and demand the return of all Shared Information within five (5) business days. Furthermore, any third-party who has received Shared Information from the Examiner other than in compliance with this Stipulation, whether inadvertent or not, shall, upon learning that any documents or materials are Shared Information, immediately return all Shared Information to

Lehman no later than two (2) calendar days from receipt of a request for the return of the Shared Information by Lehman or the Examiner.

9. This Stipulation shall not impact the public availability of any report filed by the Examiner with respect to the Examiner Investigation; provided, however, that the Debtors reserve their rights to object to, or otherwise seek to prevent, the inclusion of any privileged, confidential or work product information that may be included, referred to or discussed in the report.

10. Nothing in this Stipulation is intended to expand or limit the rights, responsibilities, and powers of Lehman and/or the Examiner.

11. This Stipulation shall be effective and binding on the Parties as of January 26, 2009.

12. The Parties represent and warrant to each other that the signatories to this Stipulation have full power and authority to enter into this Stipulation.

13. This Stipulation may not be changed, modified, or amended except in a writing signed by the Parties and/or their counsel.

14. The Parties agree that any dispute regarding this Stipulation shall be subject to the exclusive jurisdiction and venue of the Bankruptcy Court.

15. This Stipulation shall be governed by the laws of New York without regards to conflicts of law principles. If any provision of this Stipulation is determined by a court of competent jurisdiction to be invalid or enforceable, the remainder of this Stipulation shall nonetheless remain in full force and effect.

16. This Stipulation may be executed in any number of counterparts and shall constitute one agreement, binding upon the Parties hereto as if the Parties signed the same document; all facsimile signatures shall be treated as originals for all purposes.

Dated: February 6, 2009
New York, New York

By: /s/ Harvey R. Miller
Harvey R. Miller

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Proposed Attorneys for the Examiner

SO ORDERED this 9th day of January, 2009

/s/ James M. Peck
HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE

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Counsel for Neal Batson, the Enron Corp. Examiner

Objection Deadline: _____ __, 200_ at 5:00 p.m. (NYC Time)
Hearing Date: _____ __, 200_ at 10:00 a.m. (NYC Time)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
ENRON CORP., *et al*.,	:	**Case No. 01-16034 (AJG)**
Debtors.	:	**Jointly Administered**

EIGHTH AND FINAL APPLICATION OF ALSTON & BIRD LLP, AS COUNSEL FOR NEAL BATSON, THE ENRON CORP. EXAMINER, FOR ALLOWANCE OF COMPENSATION FOR PROFESSIONAL SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED FROM MAY 28, 2002 THROUGH AND INCLUDING JULY 15, 2004

TO THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE:

Alston & Bird LLP ("Alston & Bird" or "Applicant"), counsel for Neal Batson (the "Enron Corp. Examiner"), the Enron Corp. Examiner appointed in these cases by notice of appointment dated May 22, 2002, as approved by Order dated May 24, 2002, files its eighth and final application (the "Final Application") seeking final approval of its fees and expenses incurred during the period of May 28, 2002 through and including July 15, 2004, pursuant to Sections 330(a) and 331 of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the

B. The Enron Corp. Examiner's Significant Efforts with Respect to Discovery and Document Production and Management

i. The Rule 2004 Process

13. As set forth above, the Enron Corp. Examiner was appointed on May 22, 2002 [Docket No. 3924], and such appointment was approved by the Court by Order dated May 24, 2002 [Docket No. 4003]. The initial activities of the Enron Corp. Examiner included, among many other things, coordination with the Debtors, the Creditors' Committee and various other parties in interest in obtaining some understanding of the transactions and the documents available. As set forth below, during the entire course of the examination, the Enron Corp. Examiner sought to coordinate, to the extent practicable and appropriate, with the Debtors, the Creditors' Committee and various other parties in interest. During this initial period of investigation, however, the Enron Corp. Examiner determined that a separate discovery track was appropriate in order to comply with the deadlines set forth in the Examiner Order. Accordingly, by Motion dated August 1, 2002 [Docket No. 5522], the Enron Corp. Examiner sought the authority to obtain the production of documents from approximately three hundred (300) financial institutions and counterparties. On that same date, counsel for the Creditors' Committee also filed a motion for a Rule 2004 examination seeking the authority to obtain documents and testimony from a more limited group of counterparties [Docket No. 5520].

14. The two separate requests by the Enron Corp. Examiner and Creditors' Committee drew myriad objections from those parties who would be subject to the discovery requests. Those discovery objections focused on everything from the standing or appropriateness of the Enron Corp. Examiner taking discovery to the alleged "duplication" of the requests by the Enron Corp. Examiner and the Creditors' Committee.

Those objections also included various and sundry other issues relating to confidentiality, process and timing issues.[11] Following a hearing in September 2002, the Court granted the request of the Enron Corp. Examiner and the Creditors' Committee to obtain Rule 2004 Material (documents and testimony)[12] and directed the Enron Corp. Examiner and the Creditors' Committee to coordinate those discovery efforts so as to minimize cost and the burden on responding parties. Approximately one week later, the Court also addressed the expressed desire by various potential respondents for the entry of a confidentiality order to address the process issues involving the use of the documents and data obtained through the Rule 2004 process. That Order was entered after a day-long hearing, during which counsel for the Enron Corp. Examiner and for the Creditors' Committee negotiated with literally scores of lawyers for various potential respondents to best streamline the discovery process while at the same time recognizing the asserted

[11] Those objections included the objections of: (i) Shearman & Sterling [Docket No. 6003]; (ii) certain law firms including Greenebaum Doll & McDonald PLLC, Jones, Day, Reavis & Pogue, King & Spalding, Locke Liddell & Sapp LLP, Prickett, Jones & Elliott, P.A. and Richards, Layton & Finger, P.A. [Docket No. 6016]; (iii) Fleet National Bank [Docket No. 6020]; (iv) ABN AMRO Bank, N.V. [Docket No. 6026]; (v) Bailey & Glasser LLP and Lewis, Glasser, Casey & Rollins [Docket No. 6031]; (vi) Bayerische Landesbank [Docket No. 6040]; (vii) The Surety Group [Docket No. 6047]; (viii) KBC Bank N.V. [Docket No. 6049]; (ix) The Bank of New York [Docket No. 6050]; (x) JPMorgan Chase Bank [Docket No. 6053]; (xi) Royal Bank of Canada [Docket No. 6054]; (xii) State Bank of India [Docket No. 6056]; (xiii) PricewaterhouseCoopers LLP [Docket No. 6057]; (xiv) Seward & Kissel LLP [Docket No. 6058]; (xv) Clifford Chance Rogers & Wells LLP [Docket No. 6059]; (xvi) certain bank respondents, including Credit Suisse First Boston Corp., Bank of America, N.A., Barclays Bank PLC, Canadian Imperial Bank of Commerce, Citigroup, Inc., Deutsche Bank, JPMorgan Chase & Co., Lehman Brothers and Merrill Lynch [Docket No. 6060]; (xvii) the Debtors [Docket No. 6061]; (xviii) John Hancock Life Insurance Company [Docket No. 6063]; (xix) Intesabci S.P.A. [Docket No. 6064]; (xx) Linklaters [Docket No. 6065]; (xxi) Vinson & Elkins LLP [Docket No. 6067]; (xxii) The Royal Bank of Scotland Group plc [Docket No. 6070]; (xxiii) LeBoeuf, Lamb, Greene & MacRae, L.L.P. [Docket No. 6077]; (xxiv) Mayer, Brown, Rowe & Maw [Docket No. 6080]; (xxv) National City Bank [Docket No. 6085]; (xxvi) Outside Directors [Docket No. 6087]; and (xxvii) the United States of America on behalf of the Overseas Private Investment Corporation and the Export-Import Bank of the United States [Docket No. 6088].

[12] Rule 2004 Material is defined in the Order dated September 12, 2002 [Docket No. 6449] as being "all discovery material produced to the Debtors, [Creditors'] Committee or the Enron Corp. Examiner under Rule 2004, including without limitation documents, deposition transcripts, deposition exhibits and deposition videotapes."

need for confidential treatment of information produced to the Enron Corp. Examiner and/or the Creditors' Committee [Docket No. 7122].

15. Thereafter, counsel for the Enron Corp. Examiner and for the Creditors' Committee coordinated the discovery process over the next year. This coordination included, among other things, the agreement as to which counterparties or financial institutions would be served with a Rule 2004 request by which party (the Enron Corp. Examiner or the Creditors' Committee) and a protocol for addressing confidentiality concerns, process concerns and related issues that typically arise in the document production/discovery process. In addition, counsel for the Enron Corp. Examiner and for the Creditors' Committee initiated weekly calls (typically on Monday mornings) to discuss a number of items including, but not limited to, the status of ongoing negotiations with producing parties, the efforts at obtaining discovery from recalcitrant parties, the status of document review and the coordination of examination schedules. The Enron Corp. Examiner respectfully submits that this coordination effort was undertaken by counsel for the Enron Corp. Examiner and for the Creditors' Committee in good faith and in a professional manner in order to minimize costs to the estates and minimize the burden to third parties. For example, as a general matter, during the process of examining witnesses, only the Enron Corp. Examiner's counsel would ask questions. Rarely was a witness examined twice (first by the Enron Corp. Examiner and then by the Creditors' Committee). As stated below, the Rule 2004 Material gathered by the Enron Corp. Examiner and the Creditors' Committee has been deposited, for the most part, in the Newby Class Action depository and is available for the litigants in the MegaClaim Litigation.

16. At the outset of the investigation, one of the tasks of the Enron Corp. Examiner was to identify the very SPE transactions at issue. The Enron Corp. Examiner's professionals spent significant time in identifying the transactions and then identifying the transaction documents, including closing binders, closing statements, legal opinions and related materials in order to analyze those transactions. Those efforts allowed the Enron Corp. Examiner to address the legal accounting and financial implications of those transactions, and also provided significant benefits to the bankruptcy estates. Prior to the Enron Corp. Examiner's efforts, it is not clear that Enron had a comprehensive file for each of the SPE transactions. These files have now been completed by the Enron Corp. Examiner and provided to the Debtors (and other parties) and these documents should provide the foundation for understanding and addressing the consequences of these transactions.[13]

17. The documents including the transaction binders, are all now available to the Debtors, the Creditors' Committee and other parties at interest. Moreover, the Rule 2004 Material is now available to litigants and parties at interest in the Newby Class Action database as well as in the MegaClaim Litigation database.

[13] As noted in the recent request by Houlihan Lokey Howard & Zukin Financial Advisors, Inc. to amend the terms of its employment, the SPE transactions were complex and involved myriad conflicts of interest arising in each transaction. *See* Application of Official Committee of Unsecured Creditors Under 11 U.S.C. §§ 328(a) and 1103 for Order Authorizing Amendment to Terms of Employment and Retention of Houlihan Lokey Howard & Zukin Financial Advisors, Inc. at p. 12 [Docket No. 20055].

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	§	**Chapter 11**
In re:	§	
	§	**Case No. 02-13533 (AJG)**
WORLDCOM, INC., et al.,	§	
	§	**Jointly Administered**
Debtors.	§	
	§	

THIRD AND FINAL REPORT OF DICK THORNBURGH,

BANKRUPTCY COURT EXAMINER

January 26, 2004

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Counsel to Dick Thornburgh,
Bankruptcy Court Examiner

that governmental and other investigations and prosecutions were extremely active and that the subject of the Examiner's investigation was receiving extensive media coverage.

The role of an Examiner is somewhat unique and is different than that of a prosecutor or civil litigator. While there are certainly similarities in objectives, including obtaining relevant documents and testimony, the Examiner did not see his role as advocating a particular position or seeking a specific result. Rather, the Examiner sought to ascertain and report on facts that he believed were important to aid the Bankruptcy Court in these proceedings in an objective, unbiased and fair manner. The Examiner recognized the significance of his work and spent considerable time taking steps to ensure the accuracy and impartiality of his work.

The Examiner believes that it would be helpful to future examiners and other similarly situated persons to provide some observations from his work during the past 18 months. These observations are as follows:

- It is critically important to hire professionals who are experienced in conducting investigations. Skills that are required to conduct an investigation are honed through experience and are typically not obtained through civil litigation. Thus, lawyers who are experienced primarily in civil litigation may not be well qualified to conduct investigations. It is equally important that these professionals recognize that their job in an investigation is to identify and report on the facts that they uncover and not to advocate a particular theory or assumption. This is particularly important in a high profile matter like the WorldCom bankruptcy, where third parties, including competitors and civil litigants, push for particular results, often on the basis of self-interest.

- In the highly visible WorldCom bankruptcy proceeding, the Examiner received numerous tips and leads from various sources. Investors and former employees who felt that they had been mistreated or defrauded provided the Examiner with information to support their claims. Lawyers for claimants bringing actions against various parties who they believed were legally responsible for the problems at WorldCom sought the Examiner's assistance in pursuing their claims. Competitors of WorldCom brought information to the Examiner's attention that they believed should be pursued.

- Given the confidential nature of his work, the Examiner was careful not to share non-public information or the scope of his investigation with these persons. However, all leads and information received by the Examiner were assessed, taking into account the potential motivations of the sources of the information. While not all of these tips and leads were fruitful, some served as valuable sources of information. It was not always immediately obvious when a small piece of information might lead to something significant and future examiners should similarly assess all indications of wrongdoing that appear within their mandate.

- Examiners have the power to seek to compel production of documents, information and witnesses under Bankruptcy Rule 2004. The Examiner initially sought the voluntary cooperation of all persons from whom information was sought, and it was only necessary to seek the issuance of subpoenas for a relatively small number of persons or entities who either refused to provide information voluntarily or who requested that a subpoena be issued. The Examiner believed that encouraging voluntary cooperation would lead to a more productive and expeditious means of obtaining information and for the most part this occurred. Unfortunately, a number of persons and entities who agreed to produce information voluntarily took longer to produce such information than desired by the Examiner and some, in the end, may have failed to produce requested data to the Examiner. This, in turn, delayed the release of this Third and Final Report. In retrospect, it likely would have been beneficial to seek the issuance of more subpoenas at the first sign that production of information was being delayed to ensure that the production schedule and scope was subject to Court oversight and review if necessary.

- Both the SEC and the Department of Justice had ongoing investigations and prosecutions at the time that the Examiner was appointed and these have continued throughout his investigation. The Examiner coordinated his efforts with those governmental agencies and recognizes the valuable assistance that they provided to the Examiner. Since the Examiner wanted to be sensitive not to take steps that could prejudice the governmental actions, the Examiner's investigation was limited in certain situations. Some of these instances have been noted in the Examiner's Reports. Future examiners should be similarly sensitive to governmental investigations and seek to coordinate efforts as appropriate.

- While documents, including electronic records, provided a tremendous source of information, interviews were the most valuable part of the investigative process. In conducting interviews, the Examiner did not require witnesses to take an oath for truthfulness, nor did the Examiner have a court reporter present to transcribe the interviews. However, the Examiner's representatives took careful notes during interviews.

- Moreover, the Examiner did not follow the Rules of Evidence or Civil Procedure in conducting the interviews and allowed counsel for the witnesses to provide information at the interviews on occasion. The Examiner structured the

interviews in this manner to promote maximum cooperation and to make the interviews less adversarial. The Examiner believes that conducting the interviews in this way was beneficial and led to more productive interviews. To the credit of interviewees and their counsel, the Examiner's interviews were marked by very few instances where serious procedural disputes arose and counsel for the interviewees almost never used tactics that might be viewed as obstructionist in a civil litigation setting.

- The Examiner chose to identify in only limited situations the persons interviewed and specific documents relied upon. Where persons and documents were identified in the Reports, the Examiner did so because he believed such information was consistent with the Court's mandate and necessary to a full report on his investigation. The Examiner generally sought not to identify witnesses, since the mere mention of an individual in some instances could cause a negative and unfair taint to that person. Moreover, the Examiner did not believe that it was within his mandate to have a role in any of the collateral proceedings related to WorldCom, such as private litigation, and thus the Examiner did not want to include more specific information than necessary. Although some detailed information may not be identified in the Reports, the Examiner has created a thorough and comprehensive record to support his findings.

- The main sources of information for the Examiner during the investigation were documents and interviews. However, the Examiner took additional steps to ensure the completeness and accuracy of his findings. Some of the more significant steps taken were to invite certain persons or entities to provide additional information, other than documents and interviews, on a particular topic or issue. For example, the Examiner shared with the Company and KPMG his initial conclusions on the WorldCom state tax minimization program discussed in this Third and Final Report. Because of the significant concerns expressed about that program, the Examiner invited both the Company and KPMG to provide any additional information that they believed appropriate. To this end, the Examiner received "white papers" from the Company and KPMG that provided additional valuable information on this subject. Similarly, the Company submitted a white paper on the Tracker stocks. In addition, the Examiner's professionals met with counsel for SSB (and separately with counsel for Mr. Grubman) at their request and received SSB's (and Mr. Grubman's) views on certain issues. This again was useful. The Examiner invited counsel for Arthur Andersen to submit views on certain subjects, but counsel declined. Finally, when each of his Reports was close to final form, the Examiner supplied drafts to the Company and received comments from the Company that were given full consideration by the Examiner. Future examiners should also seek similar information where appropriate to promote the accuracy of the examiner's conclusions.

- The Examiner issued a First Interim Report on November 4, 2002, as required by the Bankruptcy Court's Order. As previously noted, it was not possible to complete the Examiner's investigation in the initial time period allotted. The Examiner subsequently issued a Second Interim Report on June 9, 2003. The

Examiner issued the Second Interim Report to provide the Bankruptcy Court with his findings to date and a status report on his investigation. While the Examiner recognizes the benefits of providing information to the Bankruptcy Court prior to the completion of the investigation, there could be some negative consequences from such a practice. After the Second Interim Report was issued, the extent and quality of cooperation from the Company and third parties decreased in a noticeable manner. While it is difficult to state with certainty the reasons for this, several witnesses informed the Examiner that the fact that several people resigned from WorldCom as a result of findings in the Second Interim Report had an impact on their cooperation. In addition, there were several areas of inquiry left open in the Second Interim Report and a roadmap was provided to counsel and witnesses concerning the Examiner's likely future investigation. Thus, future examiners should balance the benefits of issuing interim reports with the possible difficulties in completing the investigation that may occur as a result of such interim reporting.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	§	Chapter 11
	§	
REFCO INC., *et al.*,	§	Case No. 05-60006 (RDD)
	§	
Debtors.	§	Jointly Administered
	§	

Final Report of Examiner

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Counsel to the Examiner

of documents. Exhibit 2 to the Report lists the parties who produced documents referred to in this Report.

5. Witness Interviews

The Examiner and his investigative teams interviewed thirty-three fact witnesses. The interviews were taken on a consensual basis or pursuant to Bankruptcy Rule 2004 subpoenas. The interviews were not conducted under oath. Some of the interviews were transcribed. The Examiner did not conduct interviews of every possible witness. He selected the most appropriate available persons based on factors including time, resources and the desire to avoid interviewing witnesses with substantially overlapping knowledge. Counsel for the Litigation Trustee attended the interviews. Exhibit 3 lists all witnesses interviewed by the Examiner and his counsel.

III. HISTORY OF REFCO AND ITS AFFILIATES

A. BRIEF HISTORY OF THE REFCO DEBTORS

Refco Inc. and its subsidiaries were a commodities and futures trading brokerage conglomerate that provided execution and clearing services for exchange-traded derivatives, and also provided prime brokerage services in the fixed income and foreign exchange markets. Refco employed over 2,000 employees for its operations in fourteen countries, supervising and managing over 200,000 customer accounts.

The Refco Debtors' primary line of business was their futures trading business, consisting of the execution and clearance of trades of exchange-traded derivatives. Hedge funds, investment companies and similar customers used Refco to trade commodities and financial products, among other things. Some of Refco's business activities were subject to the regulations of the CFTC as well as the regulations of the Chicago Mercantile Exchange ("CME") and other applicable commodities exchanges on which the Debtors traded.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT DELAWARE

In re:	§	Chapter 11
	§	
NEW CENTURY TRS HOLDINGS, INC., a Delaware corporation, et al.,	§	Case No. 07-10416 (KJC)
	§	
	§	Jointly Administered
Debtors.	§	
	§	
	§	

FINAL REPORT OF MICHAEL J. MISSAL BANKRUPTCY COURT EXAMINER

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Counsel to Michael J. Missal, Bankruptcy Court Examiner

February 29, 2008

2007 to review potential sources of information. After that review, the Examiner requested copies of a limited number of documents, most of which had already been organized in boxes by New Century and that could be easily duplicated. In addition, the Examiner made a small number of specific information and document requests to the Debtors as particular needs were identified. New Century substantially completed the production of the specific paper documents reviewed and requested by the Examiner and his counsel by October 2007.

The Examiner also requested easily accessible data from, or access to, several of the Company's automated accounting systems, including New Century's general ledger. Further, the Examiner asked for copies of documents from the individual computer hard drives for several key former employees.

ii. Documents Requested from KPMG

KPMG initially refused to produce voluntarily any documents or information to the Examiner. Consequently, the Examiner was compelled to seek, pursuant to Rule 2004, authority to serve one or more subpoenas on KPMG. On August 1, 2007, the Court granted the Rule 2004 Motion filed by the Examiner, and the Examiner promptly served a subpoena for workpapers and other documents upon KPMG that same day. KPMG objected to the subpoena, and the Court entered a protective order with respect to KPMG's concerns on August 21, 2007.

Counsel for the Examiner and KPMG reached resolution with respect to most of the issues relating to KPMG's production of documents to the Examiner. KPMG's production began on August 23, 2007, and, to date, the Examiner has received almost 150,000 documents (or over 1.9 million pages) from KPMG pursuant to the subpoena. More than 25% of these documents were produced after January 1, 2008, long after most of the KPMG interviews had been completed.

b. Witness Interviews

Interviews are typically an important source of information in an investigation. The Examiner and his counsel conducted approximately 110 interviews of 85 different fact witnesses. These interviews included a large number of present or former employees of New Century, as well as members of the Company's Board of Directors. Additionally, the Examiner interviewed several accountants from KPMG. The Examiner did not conduct interviews of every possible witness, but instead selected the persons believed to have the most relevant information.

There were a substantial number of delays in scheduling interviews due to both the failure to produce documents to the Examiner on a more timely basis and because a number of former senior Officers of New Century initially refused to speak with the Examiner despite being subpoenaed. Ultimately, the Examiner interviewed all persons he requested. The delays in producing documents and scheduling interviews did not allow for follow-up interviews with a number of witnesses. The investigation would have greatly benefited from such follow-up interviews.

The vast majority of witnesses appeared voluntarily for interviews by the Examiner. Most of the interviews were done in person, although some were conducted by telephone. Some potential witnesses, however, including a few former senior executives, refused to appear voluntarily, and it became necessary for the Examiner to seek subpoena authorization from the Court to conduct examinations of New Century's current and former Officers, Directors and employees pursuant to Rule 2004. The Court granted the Examiner's motion for subpoena authorization on October 16, 2007. Pursuant to that authorization, the Examiner issued Rule 2004 subpoenas to 17 individuals beginning on October 24, 2007. With one exception, these witnesses requested that the interviews not be transcribed. Notes were taken by the Examiner and his counsel at the interviews and privileged memoranda of the interviews were prepared containing mental impressions of counsel.

Many of the witnesses interviewed by the Examiner were represented by personal counsel at the interviews. To the extent a witness was still an employee of the Company, he or she was also represented by counsel to New Century. Additionally, counsel for New Century asked to attend some of the interviews of former employees of New Century whom they did not represent in order to protect the Company's privilege. The Examiner permitted counsel for the Company to attend each of those interviews.

Most of the witnesses appeared to be forthcoming in the interviews. However, several of them did not seem entirely credible, both in terms of the truthfulness of their answers and their recollections of important events. This Final Report identifies some situations where witnesses did not appear forthright.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
SEMCRUDE, L.P., *et al.*,	)	
Debtors.	)	Case No. 08-11525 (BLS)
	)	

NOTICE OF FILING OF EXAMINER'S REPORT

PLEASE TAKE NOTICE that on April 15, 2009, the Examiner, Louis J. Freeh, Esq., in the above-captioned cases, filed the **Final Report of Louis J. Freeh, Bankruptcy Court Examiner** with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801.

Dated: April 15, 2009
Wilmington, Delaware

POLSINELLI SHUGHART PC

By: /S/ Christopher A. Ward

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Counsel for Examiner, Louis J. Freeh, Esq.

I. BACKGROUND

On July 22, 2008, SemCrude, L.P. ("SemCrude"), its parent company, SemGroup, L.P. ("SemGroup"), and certain entities directly or indirectly related to them (individually referred to herein by the name of the respective entity, or, collectively, as the "Debtors"), each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").[1] The Honorable Brendan L. Shannon was assigned to the Debtors' cases.

On August 12, 2008, Roberta A. DeAngelis, Acting United States Trustee for Region 3, filed a Motion for an Order Directing the Appointment of an Examiner in the Bankruptcy Court. *See* Exhibit 1.[2] The Bankruptcy Court granted the Motion pursuant to the Order Directing United States Trustee to Appoint an Examiner on September 10, 2008 (the "Examiner Order"). *See* Exhibit 2. Thereafter, the United States Trustee selected Louis J. Freeh, Esq., to serve as the examiner (the "Examiner"). The Bankruptcy Court approved Mr. Freeh's appointment as the Examiner pursuant to an Order entered on October 14, 2008. *See* Exhibit 3. On November 24, 2008, after presenting his work plan to the Bankruptcy Court in accordance with the Examiner Order, the Examiner formally commenced his examination.

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[1] (1) SemCrude, L.P.; (2) Chemical Petroleum Exchange, Incorporated; (3) Eaglwing, L.P.; (4) Grayson Pipeline, L.L.C.; (5) Greyhawk Gas Storage Company, L.L.C.; (6) K.C. Asphalt, L.L.C.; (7) SemCanada II, L.P.; (8) SemCanada, L.P.; (9) SemCrude Pipeline, L.L.C.; (10) SemFuel Transport, L.L.C.; (11) SemFuel, L.P.; (12) SemGas Gathering, L.L.C.; (13) SemGas Storage, L.L.C.; (14) SemGas, L.P.; (15) SemGroup Asia, L.L.C.; (16) SemGroup Finance Corp.; (17) SemGroup, L.P.; (18) SemKan, L.L.C.; (19) SemManagement, L.L.C.; (20) SemMaterials Vietnam, L.L.C.; (21) SemMaterials, L.P.; (22) SemOperating G.P., L.L.C.; (23) SemStream, L.P.; (24) SemTrucking, L.P.; and, (25) Steuben Development Company, L.L.C. On October 22, 2008, the following additional entities filed voluntary petitions for relief under Chapter 11: (26) SemGroup Holdings, L.P.; and (27) SemCap, L.L.C.

[2] The Exhibits referenced herein are filed separately in an appendix labeled as "Exhibits to Final Report of Louis J. Freeh."

The Examiner was directed by the Bankruptcy Court to: (1) investigate the circumstances surrounding the Debtors' trading strategy and the transfer of the New York Mercantile Exchange ("NYMEX") account; (2) investigate the circumstances surrounding the Insider Transactions (as defined in the Examiner Order) and the formation of SemGroup Energy Partners L.P. ("SGLP"); (3) investigate the circumstances surrounding the potential improper use of borrowed funds and funds generated from the Debtors' operations and the liquidation of their assets to satisfy margin calls related to the trading strategy for the Debtors and certain entities owned or controlled by the Debtors' officers and directors; (4) determine whether any directors, officers or employees of the Debtors participated in fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the Debtors; and (5) determine whether the Debtors' estates have causes of action against current or former officers, directors, or employees of the Debtors arising from any such participation.

The Examiner has reviewed more than 100,000 hard copy documents and more than 200,000 electronic documents. The Examiner has interviewed more than 100 people, some on several occasions, including current and former employees of the Debtors, and other individuals with knowledge of the Debtors' operations, its financial matters, and its trading activities. The Examiner has also interviewed representatives of, and obtained documents from, various entities that are or were associated with the Debtors. *See* Exhibit 4.

The Examiner interviewed representatives of PricewaterhouseCoopers ("PwC"), who conducted audits at SemGroup, and reviewed its work papers. The Examiner did not obtain any information from PwC that was inconsistent with his investigative conclusions.

Three of the Debtors' former principals (former Chief Executive Officer Thomas L. Kivisto ("Kivisto"), former Chief Financial Officer Gregory C. Wallace ("Wallace"), and former Treasurer Brent Cooper ("Cooper") refused the Examiner's requests for interviews. They also each invoked their Fifth Amendment privilege against self-incrimination during the Examiner's subsequent depositions of them.

The Examiner has been in contact with the following Governmental entities during his examination: (1) the United States Trustee's Office (Region 3); (2) the United States Attorney's Office for the Northern District of Oklahoma; (3) the Federal Bureau of Investigation (Oklahoma); (4) the United States Securities and Exchange Commission; (5) the United States Commodities Futures Trading Commission; (6) the United States Department of Justice (Fraud Section); (7) the United States Department of the Treasury (Office of the Comptroller of the Currency); (8) the United States Attorney's Office for the Southern District of New York; and (9) the Federal Bureau of Investigation (New York). The Examiner wishes to express his appreciation for the assistance that has been provided to him by the Government during his examination.

The Examiner's Report is divided into an Executive Summary, which contains a summary overview of the results of his examination, and the Examiner's Findings, which includes a detailed analysis of the specific areas of inquiry identified in the Examiner Order.

II. THE EXAMINER'S EXECUTIVE SUMMARY

SemGroup was founded in February 2000 (as Seminole Transportation and Trading) by three principals, each with a different area of expertise. Kevin L. Foxx ("Foxx"), SemGroup's

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11 Case No.
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	:	08-13555 (JMP)
	:	(Jointly Administered)
Debtors.	:	

REPORT OF ANTON R. VALUKAS, EXAMINER

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March 11, 2010

VOLUME 1 OF 9

Sections I & II: Introduction, Executive Summary & Procedural Background

Section III.A.1: Risk

Finally, the accessibility of data was complicated by the fact that the filing of a bankruptcy petition by Lehman came with virtually no advance preparation. The filing did not occur at the close of a month or a quarter when Lehman would prepare reconciliations and summaries of its financial data. Record-keeping quickly fell into disarray upon Lehman's hurried filing. Reconstructing data during this period has proven a challenge not only for the Examiner but for all who must rely upon this data in Lehman's Chapter 11 proceedings.

In the end, the Examiner's financial advisors were generally able to get sufficient data to inform and support the Examiner's Report, but there may be areas, specifically noted where appropriate in the text below, where data limitations need to be considered.

D. Witness Interview Process

Shortly after his appointment, the Examiner spoke with examiners from other large bankruptcy proceedings, including WorldCom, SemCrude and Refco, and obtained their advice on best practices. One of the suggestions made was that wherever possible interviews be conducted informally, without requiring that the witness be sworn and without transcripts. There are obvious pros and cons to the use of sworn, transcribed interviews. On the plus side, oath and transcription make citations to testimony more certain; on the minus side, the formality of oath and transcription inevitably takes more time, creates additional expense and makes some witnesses less

willing to give full cooperation; moreover, the creation of transcribed statements might have impacted pending Government investigations. Balancing these factors, the Examiner decided to use informal interviews wherever possible – and that turned out to be possible in all cases. To assure accuracy, all interviews were conducted by at least two attorneys, one of whom was assigned to keep careful notes. Flash summaries were prepared as soon as possible, usually the day of the interview, and reviewed by all lawyers present while recollections remained sharp; and full summaries were made and reviewed as soon as practical after that.

In the vast majority of cases, the interviewees were represented by counsel. Nevertheless, the Examiner advised each interviewee that he is a neutral fact-finder and that he and his professionals should not be deemed to represent the witness nor any point of view. Consistent with that neutrality, prior to each interview the Examiner provided advance notice of the topics he intended to cover and advance copies of the documents he anticipated showing the witness. The Examiner did so in order to make the interview as efficient as possible and to permit the witness to refresh recollection before the interview rather than on the fly. Each witness was encouraged to advise the Examiner if he or she believed it was appropriate to correct or supplement the information given during the interview.

In all, the Examiner has interviewed more than 250 individuals. There was only one individual the Examiner sought to interview but could not. The Examiner

requested an interview with Hector Sants, chief executive of the UK's Financial Services Authority ("FSA"), to discuss the FSA's involvement in the events of Lehman Weekend and the Barclays transaction. The FSA considered the request, but did not make Mr. Sants available for an interview. However, the FSA did provide detailed, written answers to specific questions that would have been posed to Mr. Sants.

A full list of the persons interviewed by the Examiner is set out in Appendix 4.

E. Cooperation and Coordination With the Government and Parties

The Examiner received extraordinary cooperation, both from parties and non-parties, without which the completion of this Report would have taken far more time. Although the Debtors' professionals and personnel were and are extremely busy with the day-to-day requirements of Lehman's liquidation, they remained responsive to almost daily requests for information from the Examiner and his professionals. Many parties, such as the Debtors, provided documents to the Examiner on an expedited basis without taking the time for privilege review, subject to clawback agreements.

Shortly after his appointment, the Examiner met with and established a regular line of contact with the SIPA Trustee to share documents, interview summaries and other information to avoid duplication of effort. The Examiner met with the SEC and three United States Attorney Offices (New Jersey, Eastern District of New York, Southern District of New York) to establish protocols for clearing proposed interviews

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WASHINGTON MUTUAL, INC., et al.,[1]	Case No. 08-12229 (MFW)
Debtors.	Jointly Administered
	Hearing Date: September 7, 2010 at 3:00 p.m.

EXAMINER'S PRELIMINARY REPORT AND MOTION FOR ADDITIONAL RELIEF

Joshua R. Hochberg, the Examiner herein, pursuant to the Court's Agreed Order Directing the Appointment of an Examiner, entered July 22, 2010 [Docket No. 5120] ("the "Examiner Order"), hereby makes and files his Preliminary Report and Motion for Additional Relief (the "Preliminary Report") and respectfully represents as follows:

INTRODUCTION AND BACKGROUND

1. On September 26, 2008 (the "Petition Date"), each Debtor (the "Debtors") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their affairs as debtors and debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. On October 15, 2008, the United States Trustee for Region 3 (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors in this case (the "Unsecured Committee").

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

cooperation has included the prompt scheduling of interviews, help in locating information in the document data room, and access to work product and legal research.

20. The Examiner has also received cooperation from the Unsecured Committee and the Equity Committee. The Examiner has either met in person or conducted phone calls with attorneys and other professionals employed by these Committees who have provided the Examiner with documents and information helpful to the Examination.

21. JPMC has been cooperative with the Examiner. JPMC has agreed to produce additional documents and information to the Examiner. To date, JPMC has produced several thousand documents in addition to those earlier produced to the Debtors. JPMC has also made several of its employees, including its senior management involved in the purchase of WMB, available to the Examiner for interviews. Not all of these interviews have been completed. Several are set for later in September.

22. The FDIC has indicated it will cooperate with the Examiner. The Examiner has had discussions with the FDIC regarding the production of documents and information and regarding the availability of employees of the FDIC for interviews by the Examiner. The Examiner has negotiated an agreement with the FDIC wherein the FDIC will produce certain documents and information to the Examiner. This agreement is in the process of being finalized. The Examiner has requested that the FDIC make some employees, yet to be designated, available for interviews and the FDIC has agreed in principle.

23. The Examiner is in the process of discussions with attorneys for certain third parties to obtain documents and witness interviews.

C. Method of Conducting the Investigation

24. In conducting the Investigation to date, the Examiner has obtained documents and information on a voluntary basis. As of the filing of this Preliminary Report, the Examiner has

not had to compel any party, including parties who are not Settling Parties, to produce documents or information.

25. In addition, the Examiner has conducted interviews, in lieu of depositions, in order to facilitate obtaining information from fact witnesses. In the experience of the Examiner, interviews can be scheduled expeditiously and are often more conducive to obtaining information from witnesses than more formal depositions. For each interview, the Examiner has charged a lawyer from MLA with the task of taking detailed notes of the interview and preparing a detailed summary of the interview. The Examiner will conduct formal discovery only to the extent necessary.

D. Document Review and Production to Date

26. The Examiner received prompt access to all documents stored in the Bowne Smart Room ("data room"), an online repository of documents. The data room contains not only voluminous documents produced by the Debtors during this Bankruptcy Case, but also the Rule 2004 productions of Blackstone Group, Citigroup, Texas Pacific Group, and JPMC; JPMC's productions to the Senate Permanent Subcommittee on Investigations; documents produced by the Office of Thrift Supervision ("OTS"); Alvarez & Marsal Settlement Communications; and Plan Confirmation documents produced by the Settling Parties.

27. Included within the data room are approximately 20,000 WMI, JPMC, and Blackstone Group documents recently uploaded in connection with the Plan confirmation process. The Examiner has reviewed these documents. In addition, the Examiner has run searches within the Rule 2004 discovery in the data room for key words and names of people significant to the investigation. These searches for key words and names have yielded a total of

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
TRIBUNE COMPANY, *et al.*,[1]	:	Case Number 08-13141 (KJC) (Jointly Administered)
Debtors.	:	
	:	

REPORT OF KENNETH N. KLEE, AS EXAMINER

(VOLUME ONE)

(SUMMARY OF PRINCIPAL CONCLUSIONS, OVERVIEW AND CONDUCT OF THE EXAMINATION, AND FACTUAL BACKGROUND)

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tribune Company (0355); 435 Production Company (8655); 5800 Sunset Productions Inc. (5510); Baltimore Newspaper Networks, Inc. (8258); California Community News Corporation (5306); Candle Holdings Corporation (5626); Channel 20, Inc. (7399); Channel 39, Inc. (5256); Channel 40, Inc. (3844); Chicago Avenue Construction Company (8634); Chicago National League Ball Club n/k/a Tribune CNLBC, LLC (0347); Chicago River Production Company (5434); Chicago Tribune Company (3437); Chicago Tribune Newspapers, Inc. (0439); Chicago Tribune Press Service, Inc. (3167); ChicagoLand Microwave Licensee, Inc. (1579); Chicagoland Publishing Company (3237); Chicagoland Television News, Inc. (1352); Courant Specialty Products, Inc. (9221); Direct Mail Associates, Inc. (6121); Distribution Systems of America, Inc. (3811); Eagle New Media Investments, LLC (6661); Eagle Publishing Investments, LLC (6327); forsalebyowner.com corp. (0219); ForSaleByOwner.com Referral Services, LLC (9205); Fortify Holdings Corporation (5628); Forum Publishing Group, Inc. (2940); Gold Coast Publications, Inc. (5505); GreenCo., Inc. (7416); Heart & Crown Advertising, Inc. (9808); Homeowners Realty, Inc. (1507); Homestead Publishing Co. (4903); Hoy, LLC (8033); Hoy Publications, LLC (2352); InsertCo, Inc. (2663); Internet Foreclosure Service, Inc. (6550); JuliusAir Company, LLC (9479); JuliusAir Company II, LLC; KIAH, Inc. (4014); KPLR, Inc. (7943); KSWB Inc. (7035); KTLA Inc. (3404); KWGN Inc. (5347); Los Angeles Times Communications LLC (1324); Los Angeles Times International, Ltd. (6079); Los Angeles Times Newspapers, Inc. (0416); Magic T Music Publishing Company (6522); NBBF, LLC (0893); Neocomm, Inc. (7208); New Mass. Media, Inc. (9553); New River Center Maintenance Association, Inc. (5621); Newscom Services, Inc. (4817); Newspaper Readers Agency, Inc. (7335); North Michigan Production Company (5466); North Orange Avenue Properties, Inc. (4056); Oak Brook Productions, Inc. (2598); Orlando Sentinel Communications Company (3775); Patuxnet Publishing Company (4223); Publishers Forest Brook Productions, Inc. (2598); Sentinel Communications News Ventures, Inc. (2027); Shepard's Inc. (7931); Signs of Distinction, Inc. (3603); Southern Connecticut Newspapers, Inc. (1455); Star Community Publishing Group, Inc. (5612); Stemweb, Inc. (4276); Sun-Sentinel Company (2684); The Baltimore Sun Company (6880); The Daily Press, Inc. (9368); The Hartford Courant Company (3490); The Morning Call, Inc. (7560); The Other Company LLC (5337); Times Mirror Land and Timber Company (7088); Times Mirror Payroll Processing Company, Inc. (4227); Times Mirror Services Company, Inc. (1326); TMLH 2, Inc. (0720); TMLS I, Inc. (0719); TMS Entertainment Guides, Inc. (6325); Tower Distribution Company (9066); Towering T Music Publishing Company (2470); Tribune Broadcast Holdings, Inc. (4438); Tribune Broadcasting Company (2569); Tribune Broadcasting Holdco, LLC (2534); Tribune Broadcasting News Network, Inc. (1088); Tribune California Properties, Inc. (1629); Tribune Direct Marketing, Inc. (1479); Tribune Entertainment Company (6232); Tribune Entertainment Production Company (5393); Tribune Finance, LLC (2537); Tribune Finance Service Center, Inc. (7844); Tribune License, Inc. (1035); Tribune Los Angeles, Inc. (4522); Tribune Manhattan Newspaper Holdings, Inc. (7279); Tribune Media Net, Inc. (7847); Tribune Media Services, Inc. (1080); Tribune Network Holdings Company (9936); Tribune New York Newspaper Holdings, LLC (7278); Tribune NM, Inc. (9939); Tribune Publishing Company (9720); Tribune Television Company (1634); Tribune Television Holdings, Inc. (1630); Tribune Television New Orleans, Inc. (4055); Tribune Television Northwest, Inc. (2975); ValuMail, Inc. (9512); Virginia Community Shoppers, LLC (4025); Virginia Gazette Companies, LLC (9587); WATL, LLC (7384); WCWN LLC (5982); WDCW Broadcasting, Inc. (8300); WGN Continental Broadcasting Company (9530); WLVI Inc. (8074); WPIX, Inc. (0191); and WTXX Inc. (1268). The Debtors' corporate headquarters and the mailing address for each Debtor is 435 North Michigan Avenue, Chicago, Illinois 60611.

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Faced with the preceding circumstances, the Examiner crafted an approach to the Investigation that was tailored to the circumstances presented and aimed at maximizing the possibility that the Examiner would timely generate a work product that would aid the Bankruptcy Court. It became clear to the Examiner that the Parties had devoted substantial time, analysis, and research to the financial and legal issues presented by the Investigation. The Examiner determined that the most sensible way to approach the Investigation in the limited time given was to capitalize on the work performed by the Parties, and, at least in the first instance, to look to the Parties in the adversarial process to flesh out the issues and facts in dispute and the relative strengths and weaknesses of the positions of the Parties. These contributions were intended to supplement, rather than replace, the Examiner's independent Investigation. The Examiner prepared and filed the Examiner Work Plan, which set forth this approach. In the Examiner Work Plan, the Examiner readily conceded that he was unaware of any other examination that had proceeded in this fashion, but submitted that his approach was appropriate under the circumstances. The Bankruptcy Court approved the Examiner Work Plan on May 10, 2010 in the Supplemental Order.

B. The Investigation.

Immediately following the Bankruptcy Court's approval of the Examiner Work Plan, the Examiner dispatched a letter dated May 10, 2010 to the Parties, in which the Examiner established a comprehensive procedure for the Parties to present an agreed-upon (or substantially agreed-upon) statement of basic facts and to furnish comprehensive legal, financial, and factual analyses of the matters that were the subject of the Investigation.[15] The Examiner also set

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parties in connection with the Chapter 11 Cases, in a variety of electronic formats. Unfortunately, it took the Examiner considerable time and expense to create a useable electronic database compiling these documents.

[15] *See* Ex. 3 (Letter to Parties, dated May 10, 2010).

deadlines concerning the submission of analyses in the form of opening and reply briefs served on all Parties, and the Examiner identified a host of legal and factual issues to which he requested the Parties devote attention.[16] In addition, the Examiner encouraged the Parties to furnish any documents or analyses that might bear meaningfully on the factual or legal subject matter of the Investigation, and to identify the names and contact information of any individuals that the Parties believed the Examiner should interview, and any discovery that they believed the Examiner should conduct in conjunction with the Investigation. The Examiner's advisors often posed follow-up questions and requested and obtained further analyses and documents from the Parties' legal and financial advisors.

The Examiner received, reviewed, and considered hundreds of pages of briefing and tens of thousands of pages of documentation in connection with these submissions (principally, but by no means exclusively, documents identified by the Parties to the Examiner as relevant to the Investigation). In retrospect, the provisions of the Examiner Order limiting the Investigation to contentions "raised by the Parties" encouraged the Parties to raise just about every conceivable claim or defense that could be imagined, lest the Examiner not consider it. The Parties raised dozens of claims and defenses, each with sub-issues and special complexities that required the Examiner's careful evaluation. Moreover, although the Parties took advantage of the opportunity to annotate their submissions with documents allegedly supporting their positions, on close inspection the Examiner determined that many of the documents did not support the contentions for which they were provided; in many instances the Examiner and his advisors had to search for and evaluate other documents to help develop a more complete picture. The interviews

[16] After sending the May 10, 2010 letter, the Examiner clarified that all Parties were invited to present briefs.

conducted by the Examiner and his advisors, discussed below, also raised issues that had not been adequately fleshed out by the Parties.

Early on, the Examiner established his own electronic databases of documents and information collected by his advisors. These databases provided the Examiner with the ability to review documents in a more organized fashion. In conjunction with the submissions requested under the above-noted May 10, 2010 letter, the Parties directly submitted evidence that they contend supported their respective positions, which the Parties uploaded to a secure document website established by the Examiner for that purpose. During the Investigation, certain Parties conducted documentary discovery, which was furnished to the Examiner.

The Examiner was surprised to learn at the outset of the investigation that—notwithstanding the extensive legal and factual analyses prepared by the Parties and the wide-ranging and factually-intensive allegations concerning, among other things, intentional fraudulent transfer, bad faith, breach of fiduciary duty, and aiding and abetting fiduciary duty breaches—only seven Rule 2004 examinations relating to the Leveraged ESOP Transactions had been conducted. The Examiner determined that it was necessary to identify and quickly arrange and conduct interviews of key witnesses, not all of whom were physically located in the same city. Because of the short amount of time available to conduct the Investigation, by necessity the Examiner attempted to narrow the list of interviewees to those persons that the Examiner believed could meaningfully clarify or augment the factual record. Had the Examiner had more time to conduct the Investigation, he would have conducted more than the 38 interviews that he held; and it is possible that someone who the Examiner did not interview would have provided pertinent information. Nevertheless, as the process unfolded, and new information was adduced in the interviews and during the Investigation, it became apparent that the Examiner would need

at least another two weeks to complete the interviews necessary to prepare the Report. Thus, the Examiner requested and obtained an extension of time to file the Report. The last interview was conducted telephonically on July 16, 2010.

All told, the Examiner and his advisors conducted 38 interviews over 46 days in four cities. Of these, the Examiner attended 33 in person (of which three were attended by video conference). Of the five interviews not attended by the Examiner (principally because he was conducting another interview at the same time or traveling to attend a scheduled interview), the Examiner believes that he adequately apprised himself of what transpired. Participating in most of the interviews enabled the Examiner to personally evaluate witness demeanor and credibility and actively participate in questioning. All interviewees were represented by counsel. In some instances, the Examiner did not record the interviews and did not request that witnesses take an oath (although witnesses were admonished at the outset, and were asked to and did confirm at the conclusion of the interview, that all answers were furnished with the same care as if the interviewee had been under oath). In other instances, the Examiner determined that it was appropriate to conduct transcribed interviews of certain interviewees under oath. In three instances, the Examiner re-interviewed a witness under oath. In connection with each transcribed interview, each witness was advised that the interview was not a deposition and that all objections to questions were preserved. Unlike a deposition (in which one party typically asks questions at any given time), the Examiner, as well as his counsel, posed questions; sometimes the witness' counsel posed clarifying questions and offered perspectives to the Examiner on the answers given by the witness.

The following are the persons interviewed, the dates of the interviews and the locations:

Interviewee	Title & Company	Date of Interview	Location of Interview
Bromberg, Kate S.	Current Senior Associate with Brown Rudnick LLP, representing Wilmington Trust	6/1/2010	Brown Rudnick LLP Seven Times Square New York, NY 10036
Dolan, William M.	Current Partner with Brown Rudnick LLP, representing Wilmington Trust	6/2/2010	Brown Rudnick LLP Seven Times Square New York, NY 10036
Hoover, Jennifer	Current Associate with Benesch Friedlander Coplan & Aronoff LLP, local Delaware counsel to Wilmington Trust	6/2/2010	Brown Rudnick LLP Seven Times Square New York, NY 10036
Siegel, Martin	Current Partner with Brown Rudnick LLP, lead litigator representing Wilmington Trust	6/2/2010	Brown Rudnick LLP Seven Times Square New York, NY 10036
Stark, Robert J.	Current Partner with Brown Rudnick LLP, representing Wilmington Trust	6/2/2010	Brown Rudnick LLP Seven Times Square New York, NY 10036
Sell, Jeffrey A.	Former Head of Special Credits Group in the Credit Risk Department of JPMCB	6/3/2010	Davis Polk 450 Lexington Avenue New York, NY 10017
Costa, Michael R.	Former Managing Director of Mergers and Acquisitions - part of the investment banking division of MLPFS	6/4/2010	Kaye Scholer 425 Park Avenue New York, NY 10022
Whayne, Thomas	Current Managing Director at Morgan Stanley	6/11/2010	Weil Gotshal & Manges 767 Fifth Avenue New York, NY 10153
Zell, Samuel	Current Controlling Shareholder of EGI, LLC/ Director, Chairman of the Tribune Board	6/14/2010	Equity Group Investments 2 N. Riverside Plaza Chicago, IL 60606
Hianik, Mark	Former Tribune Vice President, Assistant General Counsel and Assistant Secretary	6/15/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Larsen, Nils	Current Executive Vice President and CIO of Tribune	6/15/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603

Interviewee	Title & Company	Date of Interview	Location of Interview
Bartter, Brit	Current Vice Chairman of JPMCB's Investment Banking Group	6/16/2010	JPMorgan Chase Chase Tower 10 South Dearborn Street Chicago, IL, 60603
Bigelow, Chandler	Current Tribune CFO/ Former Tribune Treasurer/ VP, Treasurer of one or more Guarantor Subsidiaries	6/17/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Kazan, Daniel G.	VP of Development prior to the Leveraged ESOP Transactions/Current Sr. VP Corporate Development at Tribune	6/17/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Williams, David D.	President and CEO of Tribune Media Services, Inc.	6/18/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Landon, Timothy J.	Former President of Tribune Interactive, Inc.	6/22/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Mulaney Jr., Charles W.	Current Partners with Skadden Arps, Counsel to the Tribune Special Committee	6/24/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Osborn, William A.	Chair of the Special Committee of the Tribune	6/24/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Dimon, Jamie	Current CEO of JPM	6/25/2010	JPMorgan Chase 270 Park Avenue New York, NY 10017
FitzSimons, Dennis J.	Former Tribune CEO/ Chairman of the Tribune	6/25/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Grenesko, Donald C.	Former Sr. VP of Finance & Administration at Tribune	6/25/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Kapadia, Rajesh	Currently at JPMCB	6/25/2010	Davis Polk 450 Lexington Avenue New York, NY 10017
Stinehart, Jr., William	Former Director of Tribune/ Trustee of the Chandler Trusts	6/28/2010	Klee, Tuchin, Bogdanoff & Stern LLP 1999 Avenue of the Stars 39th Floor Los Angeles, CA 90067

Interviewee	Title & Company	Date of Interview	Location of Interview
Mohr, Christina	Currently at Citigroup in the M&A Group	6/29/2010	Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019
Browning, Bryan	Current Senior Vice President and Professional Services Manager with VRC	6/30/2010	Winston & Strawn 200 Park Avenue New York, NY 10166
Rucker III, Mose (Chad)	Current Managing Director with VRC	6/30/2010	Winston & Strawn 200 Park Avenue New York, NY 10166
Taubman, Paul	Currently with Morgan Stanley	7/1/2010	Morgan Stanley 1585 Broadway New York, NY 10036
Amsden, Harry	Former Vice President of Finance of Tribune Publishing	7/2/2010	LECG 33 West Monroe Street Chicago, IL 60603
Whayne, Thomas (Follow-Up Interview)	Current Managing Director at Morgan Stanley	7/2/2010	Weil Gotshal & Manges 767 Fifth Avenue New York, NY 10153
Kurmaniak, Rosanne	Current Director of Citigroup/ Former Vice President of Citigroup	7/7/2010	Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019
Larsen, Nils (Follow-Up Interview)	Current Executive Vice President and CIO of Tribune	7/7/2010	Jenner & Block 353 North Clark Street Chicago, IL 60654
Grenesko, Donald C. (Follow-Up Interview)	Former Senior VP of Finance & Administration at Tribune	7/8/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Kaplan, Todd	Current Senior Banker with Merrill	7/8/2010	Kaye Scholer 70 West Madison Street Suite 4100 Chicago, IL 60602
Kenney, Crane	Former General Counsel of Tribune	7/8/2010	Sidley Austin LLP One South Dearborn Chicago, Illinois 60603
Persily, Julie H.	Formerly with the Citigroup Leveraged Finance Department	7/8/2010	Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019

Interviewee	Title & Company	Date of Interview	Location of Interview
Petrik, Daniel	Currently with Bank of America	7/8/2010	LECG 33 West Monroe Street Chicago, IL 60603
Kenny, Thomas J.	Current Senior Vice President of Murray Devine	7/9/2010	Saul Ewing 1500 Market Street, 38th Fl. Philadelphia, PA 19102
Amsden, Harry (Follow-Up Interview)	Former Vice President of Finance of Tribune Publishing	7/16/2010	Telephone Conference

The Examiner believes that, on balance, the interviews were extraordinarily helpful in assisting the Examiner to understand key facts necessary to render his findings. The Examiner recognizes, however, that formal depositions (and the cross-examination that accompanies an adversarial process) might well produce information different from that which the Examiner was able to adduce in these interviews. Also, the adversarial process allows rebuttal witnesses and documents that may impeach or contradict other testimony or documents. Although the Examiner strongly believes that the information adduced in the Investigation materially advances an understanding of what transpired in the Leveraged ESOP Transactions, neither the Investigation nor the resulting Report are intended to serve as proxies for what an adjudicative process would produce.

The Examiner and his counsel evaluated numerous legal and factual questions in connection with the Investigation. In addition, the Examiner's counsel worked closely with the Examiner's financial advisor, LECG, which developed a reasonably comprehensive financial analysis of the issues presented under the circumstances. Among other things, LECG analyzed issues concerning solvency, unreasonable capital, the flow of funds, and matters pertaining to intercompany claims. To a great extent, LECG utilized and built on analyses prepared by the various financial advisors for the Parties, although, as the Report amply illustrates, LECG

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
ENRON CORP., *et al.*,	:	Case No. 01-16034 (AJG)
Debtors.	:	Jointly Administered

FINAL REPORT OF NEAL BATSON, COURT-APPOINTED EXAMINER

November 4, 2003

conduct. As a result, a fact-finder could conclude that these Financial Institutions aided and abetted Fastow in breaching his fiduciary duties.

- There is sufficient evidence of inequitable conduct by the Financial Institutions in connection with the SPE transactions for a court to determine that the claims of such Financial Institutions, totaling in excess of $1 billion,[24] may be equitably subordinated to the claims of other creditors.[25]

Finally, in Section IX of this Report, the Examiner addresses the question that many people have asked: how could this have happened?

D. Standard Adopted by the Examiner

The Examiner is not the ultimate decision maker on these matters. The Examiner has analyzed the evidence he has gathered to date against the legal standards applicable to the issues identified in this Report. The Examiner has considered direct evidence and the reasonable inferences that can be drawn therefrom. If there are sufficient facts to support a claim, even though there is evidence to the contrary, then a court would submit that claim to a fact-finder. Where the Examiner reaches the conclusion that there is *sufficient evidence for a fact-finder to conclude* that a claim exists, the Examiner has determined that in a legal proceeding regarding such matter, the proposition would be submitted to

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[24] This amount could be significantly greater. *See supra* n.6.

[25] In addition, if Section 548(a)(1)(A) of the Bankruptcy Code, which allows the avoidance of obligations incurred and transfers made with the intent to hinder, delay or defraud creditors, can be applied to the SPE transactions to which these Financial Institutions were parties, and a fact-finder determined that Enron entered into these SPE transactions with actual intent to hinder, delay or defraud its creditors, obligations incurred in these SPE transactions would be unenforceable. Either as a result of such a finding or if the fact-finder determined that the transfers made in connection with such SPE transactions were made with intent to hinder, delay or defraud, such transfers made to the Financial Institutions could be recovered by the Debtors' estates. The Financial Institutions that entered into the transaction giving rise to such an obligation or received such payments in good faith, however, would have a defense to this claim to the extent value was given to the Debtors. *See* Third Interim Report, Appendix B (Legal Standards), at 114-33.

the fact-finder for decision.[26] In most cases, the fact-finder would be a jury, although in equitable subordination actions the bankruptcy court serves as the fact-finder. The decision of the fact-finder would be made after evaluating the documentary evidence, the testimony and credibility of witnesses and the reasonable inferences that may be drawn from this evidence.

E. How to Read This Report

The remaining Sections of this Report provide an overview of the Examiner's conclusions with respect to the matters identified above. More detailed analyses and supporting evidence are set forth in the Appendices to this Report. Therefore, the reader should review the applicable Appendices (and any Annex attached thereto) for a more complete understanding of the issues addressed in the summaries below.

The first appendix to this Report – Appendix A (Certain Defined Terms) – is designed to provide the reader with certain definitions used throughout this Report.

[26] In connection with any claims against a professional that are based on malpractice, the plaintiff would generally be required to produce a qualified expert to give his or her competent opinion as to, among other things, whether the defendant satisfied the applicable standard of care. Where the Examiner reaches the conclusion *that there is sufficient evidence for a fact-finder to conclude* that these types of negligence claims exist, the Examiner has determined that the plaintiff would be able to produce a qualified expert to express such an opinion. The Examiner's conclusion does not mean that the defendant would be unable to produce a qualified expert who would give a competent opinion contrary to that expressed by the plaintiff's expert. As noted in Appendix C (Role of Enron's Attorneys), Vinson & Elkins has offered certain opinions of law school professors and practitioners on several matters as to which the Examiner took testimony.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	§	**Chapter 11**
In re:	§	
	§	**Case No. 02-13533 (AJG)**
WORLDCOM, INC., et al.,	§	
	§	**Jointly Administered**
Debtors.	§	
	§	

THIRD AND FINAL REPORT OF DICK THORNBURGH,

BANKRUPTCY COURT EXAMINER

January 26, 2004

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- Claims for accounting malpractice or negligence and breach of contract against Arthur Andersen and certain of its former personnel based upon their failure to satisfy professional standards in their audits of WorldCom's financial statements for audit years 1999 through 2001.

- Claims for breaches of the fiduciary duties of loyalty and good faith against Messrs. Ebbers and Sullivan for causing WorldCom to proceed with the Intermedia merger amendment in February 2001 without proper authorization by the Company's Board of Directors. The Examiner also believes that WorldCom has claims against all other former Directors[5] who later voted in favor of the Intermedia transaction for breaches of their fiduciary duty of care, based upon their failure to investigate whether to proceed with the Intermedia merger amendment and their failure to confront Messrs. Ebbers and Sullivan for authorizing the Intermedia merger amendment without Board approval.

The Examiner recognizes that the WorldCom plan of reorganization assigns any such claims to WorldCom and that the Company may have valid reasons, in exercising its business judgment, not to pursue particular potential claims, such as the inability to pay by certain defendants, the costs of litigation weighed against potential recovery, the presence of shareholder suits, or the strength of a particular claim.[6] The Examiner expresses no opinion whether any of the claims actually should be pursued. Rather, the Examiner views it as his responsibility to identify potential claims and to leave it to the Company to decide which, if any, of the claims to pursue.[7] To assist this evaluation process, the Examiner also is providing additional analysis regarding the legal standards applicable to certain of such potential claims, possible defenses and related considerations. See Appendix A ("Legal

[5] The former Directors are the same as listed in footnote 3, less Mr. Sullivan.

[6] Conversely, the Company may decide that it wishes to pursue claims not recommended by the Examiner.

[7] The Examiner does not believe that every instance of wrongdoing identified in his Reports gives rise to a potential cause of action on behalf of WorldCom. Instead, the Examiner has identified the potential causes of action that the Examiner, after reviewing the applicable facts and law, believes would most likely survive motions to dismiss or for summary judgment and reach a fact-finder if presented in a lawsuit. The Examiner has sought to avoid discussing potential causes of action that the Examiner believes bear a significant risk of being dismissed as a matter of law.

Standards Relating to Corporate Governance") and Appendix B ("Imputation Defenses -- Standing and in Pari Delicto").

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	§	Chapter 11
	§	
REFCO INC., *et al.*,	§	Case No. 05-60006 (RDD)
	§	
Debtors.	§	Jointly Administered
	§	

Final Report of Examiner

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D. SUMMARY OF CONCLUSIONS

This Report is the work product of the Examiner and his counsel. The information and statements contained herein, representing the Examiner's conclusions and opinions, should not be taken as admissions or findings for or against any person or entity.[3]

The Examiner concludes that the Debtors' estates could state claims for relief, sufficient to withstand a motion to dismiss, against certain of Refco's prepetition professionals who contributed to, or failed to prevent, the harm suffered by Refco, including:

- Claims for professional negligence against GT, E&Y, and Mayer Brown.
- Claims for aiding and abetting fraud and breaches of fiduciary duty against Mayer Brown and, although it is a close question, E&Y.
- Claims for avoidance and recovery of preferential transfers against Refco's professionals who received payments on or within the 90-days prior to the Petition Date.

As to Weil, although it is a close question, the Examiner concludes that there are facts that could support an allegation that Weil failed to adhere to the standard of care applicable to its representation of Refco.

Additional claims might be asserted against certain of the directors responsible for the declaration of the $82.2 million dividend and those who received the dividend, including:

- Claims for breaches of fiduciary duties and violation of Delaware General Corporate Law against Bennett.
- Claims for avoidance and recovery of fraudulent conveyances and/or preferential transfers, and damages, against Bennett/RGHI and Thomas H. Lee entities as the recipients of the $82.2 million dividend.

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[3] The Report includes discussions of facts that may be helpful to understanding the conclusions reached herein, but relate to non-professionals and topics that were not subjects of the Examination. The Examiner does not reach any conclusions concerning persons or entities other than those specifically identified in the Report; and, nothing in the Report should be interpreted as meaning the Examiner reached any conclusions as to the liability of, among others, the Round Trip Loan Participants, Thomas H. Lee entities, and the underwriters, because these persons and entities were beyond the scope of the Examination.

The Examiner believes further investigation is warranted to determine whether evidence exists to support other claims, including:

- Claims for aiding and abetting fraud and breaches of fiduciary duty against AA and GT.
- Claims for damages arising out of the declaration of the $82.2 million dividend against certain other members of Refco's Board of Directors.

Several significant factual and legal defenses are potentially available to all parties against whom claims may be asserted. Among the most significant potential defenses are the "*Wagoner*" rule and, in some cases, the statute of limitations.

II. PROCESS OF THE EXAMINATION

A. ESTABLISHING THE SCOPE OF THE EXAMINATION

Following Court approval of his appointment by the Office of the United States Trustee ("U.S. Trustee"), the Examiner's initial efforts were directed toward familiarizing himself with the background of the cases and the investigations in progress by other parties, including governmental agencies. Prior to commencing his investigation, as directed by the Court in an Order entered on March 16, 2005 ("Examiner Appointment Order") (Docket # 1487), the Examiner developed a work plan and budget in consultation with the Debtors and the Official Committee of Unsecured Creditors appointed in the Bankruptcy Cases ("Creditors Committee"). This process of developing a work plan culminated in a hearing on June 21, 2006, at which the Court indicated that it was appropriate for the Examiner to focus on investigating possible claims against professionals, as outlined by the Examiner in an alternative work plan and budget filed under seal with the Court. The Court also requested that the Examiner investigate possible claims arising out of the dividend paid to the pre-IPO shareholders of Refco in connection with the IPO. Thus, the scope of the Examination was determined to include the investigation and reporting on causes of action which might be brought by the Refco estates against Refco's

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT DELAWARE

In re:	§	Chapter 11
	§	
NEW CENTURY TRS HOLDINGS, INC., a Delaware corporation, et al.,	§	Case No. 07-10416 (KJC)
	§	
	§	Jointly Administered
Debtors.	§	
	§	

FINAL REPORT OF MICHAEL J. MISSAL BANKRUPTCY COURT EXAMINER

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February 29, 2008

XII. POTENTIAL CAUSES OF ACTION

In the June 1 Order, the Court directed the Examiner to "identify and evaluate any claims or rights of action that the estates might have" related to New Century's accounting and financial statement "irregularities, errors or misstatements."[715] The June 1 Order also prohibited the public disclosure of any evaluation by the Examiner with respect to "the strengths or weakness of any potential claim or right of action the estates may have or suggested litigation strategy in connection therewith," absent further order from the Court.[716]

The following summarizes the Examiner's analysis of potential causes of action in a manner that recognizes the sensitivity ascribed to public disclosure of these matters by the Court.

A. Executive Summary

The Examiner has determined that a number of potential causes of action may be available to the estates. First, the estates may be able to assert causes of action against KPMG for professional negligence and negligent misrepresentation. The Examiner has determined that the estates may assert that KPMG breached its professional standard of care in its audit and quarterly reviews of the Company's financial statements and its related systems of internal controls. Among other things, the Examiner found that KPMG failed to exercise due care in planning and carrying out its audits and reviews, failed to demonstrate appropriate professional skepticism with respect to Management's judgments and representations, and failed to obtain sufficient competent evidence to support its opinions and representations to the Company's Officers, Directors and shareholders. These failings by KPMG led to material misstatements in the financial statements of New Century. The Examiner believes the estates may seek to recover a broad range of damages proximately caused by KPMG's negligence, including, but not limited to: (a) the fees paid to KPMG in connection with its 2005 audit and its quarterly reviews of the Company's financial statements during 2006; (b) the legal, accounting and other costs incurred by the estates in connection with investigations of matters related to KPMG's negligence, including, but not limited to, costs associated with the Examiner's investigation; (c) losses suffered or expenses incurred in connection with payments that New Century might never have made (*e.g.*, incentive bonus payments to Senior Management) or transactions in which New

[715] June 1, 2007 Order Denying in Part and Granting in Part Motion of the United States Trustee for an Order Directing the Appointment of a Chapter 11 Trustee, or in the Alternative, an Examiner ("June 1 Order") ¶ 3.

[716] *Id.* ¶ 6.

Century might never have engaged (*e.g.*, stock share repurchases) had New Century's financial statements not been materially misstated; and (d) damages New Century suffered when, in early 2007, it was suddenly forced to announce that it needed to restate its 2006 financial statements on account of errors that had occurred, at least in part, because of KPMG's negligence. In addition, because KPMG's negligence may have been a proximate cause of New Century falling deeper into insolvency, the Examiner believes the estates may be able to recover additional damages from KPMG under the "deepening insolvency" theory of damages.

Second, the estates may be able to assert causes of action to recover bonuses and other forms of compensation paid to certain officers by New Century that were tied, directly or indirectly, to the Company's net income. The Examiner has determined that the Company's reported net income was materially overstated for 2005 and 2006. When adjustments are made to correct for these material inaccuracies, it becomes clear that the bonuses paid to certain New Century officers were inflated or undeserved. For example, the bonuses paid to Cole, Gotschall, Morrice, Cloyd and Flanagan with respect to 2005 were approximately $2.9 million greater than they should have been. Performance and mid-year bonuses paid to Cole, Gotschall and Morrice with respect to 2006 (totaling approximately $2 million) were undeserved altogether when accurate financial statements are taken into account. The Examiner believes these bonus amounts, and all or portions of certain quarterly bonuses paid to other senior executives in 2005 and 2006, may be recovered by the estates under unjust enrichment and bankruptcy law theories.

Third, the Examiner has reviewed various issues related to the conduct of former Officers and current and former Directors of New Century with respect to whether actions or inaction on the part of individual Officers or Directors may give rise to potential causes of action on behalf of the estates. The issues surrounding these possible claims are fact-specific and the Examiner observes that the legal standards applicable to potential causes of action against New Century's Officers or Directors present significant obstacles to recovery of money damages from the subject individuals. In particular, the business judgment rule and statutory or other limitations on liability applicable to New Century Officers and Directors require a substantial showing of misconduct, self-dealing and/or gross negligence to support a claim for liability. Accordingly, the Examiner has not undertaken to include in this Final Report a detailed discussion of such potential claims and related factual or legal considerations. Nonetheless, because questions and allegations may be raised with respect to the conduct and level of care observed by certain of the

Company's Officers and Directors, the Examiner is outlining some potential areas of concern below.

The potential causes of action the Examiner has considered may give rise to possible defenses, some of which may operate to defeat or reduce significantly the liability of the defendants. For example, KPMG and New Century Officers may assert defenses based upon the *in pari delicto* doctrine, or otherwise contest liability because of alleged unclean hands on the part of the Company, reasonable reliance on representations made by others, and/or deceptions or failures to disclose by persons at New Century. Further, as noted, current or former Directors or Officers of New Century may seek to reduce or avoid liability based upon the protections of the business judgment rule or indemnification provisions contained in the Company's organizational documents or language contained in individual employment agreements. The strengths or weaknesses of such defenses in individual cases may vary considerably, and in deference to the prohibition in the June 1 Order, the Examiner is not providing any evaluation of those strengths and weaknesses in this Final Report.

B. Legal Considerations Related to Potential Causes Of Action

1. Choice of Law

Claims on behalf of the estates may be brought in this Court under 28 U.S.C. § 1334(b) (2007).[717] In the Third Circuit, a bankruptcy court must apply the choice of law rules of the state in which the bankruptcy court sits. *See, e.g., PHP Liquidating, LLC v. Robbins (In re PHP Healthcare Corp.)*, 128 F. App'x 839, 843 (3d Cir. 2005); *Burtch v. Dent (In re Circle Y of Yoakum)*, 354 B.R. 349, 359 (Bankr. D. Del. 2006); *In re Garden Ridge Corp.*, 338 B.R. 627, 632 (Bankr. D. Del. 2006). Accordingly, the Court is to apply Delaware choice of law rules to determine which state's law applies to such claims.

a. Potential Claims Against KPMG

Both Delaware and federal common law choice-of-law rules provide that a bankruptcy court must follow the "most significant relationship" test of the Restatement (Second) of Conflict of Laws with respect to tort claims. *T. Frederick Jackson, Inc. v. Pepper, Hamilton & Scheetz, LLP (In re Olson Industries)*, No. 98-140, 2000 U.S. Dist. LEXIS 4897, at *35 (D. Del. 2000) (*citing Pig Improvement Co. v. Middle States Holding Co.*, 943 F. Supp. 392, 396 (D. Del.

[717] "Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
SEMCRUDE, L.P., *et al.*,	)	
Debtors.	)	Case No. 08-11525 (BLS)
	)	

NOTICE OF FILING OF EXAMINER'S REPORT

PLEASE TAKE NOTICE that on April 15, 2009, the Examiner, Louis J. Freeh, Esq., in the above-captioned cases, filed the **Final Report of Louis J. Freeh, Bankruptcy Court Examiner** with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801.

Dated: April 15, 2009
Wilmington, Delaware

POLSINELLI SHUGHART PC

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18. Kivisto, Wallace and Foxx had a conflict of interest by permitting Ms. Anna Hollinger ("Hollinger"), their outside business partner and a person with whom Kivisto had a close personal relationship, to engage in, and to reap the benefits of, a business relationship with SemGroup. They did so without notifying SemGroup's MC of their ownership interest in the vendor company, or of Kivisto's personal relationship with their co-owner, Hollinger.

G. Potential Causes of Action

The Debtors' estates have potential claims or causes of action including, without limitation, the following:

1. Negligence/Mismanagement:

a. Against Kivisto, for engaging in and controlling a complex options trading strategy that was speculative in certain aspects during the time of an unprecedented rise in and volatility of the price of oil, thereby subjecting SemGroup to increased risk.

b. Against Kivisto, Wallace, and Cooper, for their failure to integrate properly the commodities trading function into SemGroup's financial controls, thereby subjecting SemGroup to increased risk.

c. Against Foxx, Wallace and Kivisto, for their failure to develop a suitable risk management policy or integrate a suitable risk management policy into SemGroup's business controls, and for their failure to comply with the Risk Management Policy that did exist, thereby subjecting SemGroup to increased risk.

d. Against Kivisto, Wallace, Cooper and Stallings, for their failure to stop Kivisto from engaging in trading activity on his own behalf through Westback, thereby subjecting SemGroup to increased risk and losses.

e. Against Kivisto, Wallace and Cooper, for providing inaccurate and misleading information to members of SemGroup's MC that SemGroup's trading activity was supported by its physical inventory.

f. Against Kivisto, for placing, or causing others to place, the results of his options trading strategy on the books of other SemGroup business units, including SemGas, SemFuel, SemMaterials, SemEuro and SemStream, thereby subjecting these entities to increased risk.

2. Fraud/False Statements:

a. Against Cooper, and any other individuals who were involved in the submission of false and misleading reports (MtM and Position Reports and Borrowing Base Reports) and information to SemGroup's lenders.

b. Against Kivisto, for his failure to comply with the covenants of SemGroup's Pre-Petition Credit Agreement.

c. Against Kivisto, Wallace and Cooper, for providing false and misleading information to BOK representatives during their meetings and conversations with them.

d. Against Wallace, for providing false and misleading information to representatives of J. Aron, by claiming that SemGroup's liquidity issues were exaggerated, and that SemGroup did not have similar trading exposure with other brokers.

3. Conversion/Corporate Waste:

a. Against Kivisto, for improperly converting SemGroup's funds and resources to his own use, in connection with his: (i) personal options trading activities through Westback; (ii) other personal business ventures; and (iii) physical commodities trading activity for SemGroup through Westback, his alter ego.

4. Unjust Enrichment:

a. Against Kivisto, for improperly converting SemGroup's funds and resources to his own use, in connection with his: (i) personal options trading activities through Westback; (ii) other personal business ventures; and (iii) physical commodities trading activity for SemGroup through Westback, his alter ego.

b. Against Kivisto and Wallace, for approving the semi-annual bonuses paid to themselves without MC approval, and by personally benefiting from their own decisions in this regard, in violation of their employment agreements.

5. Breach of Fiduciary Duties:

a. Against Kivisto, for depriving SemGroup of his honest and faithful services as an officer and employee, by using SemGroup's resources and its personnel: (i) to engage in personal trading activities through Westback; and (ii) for his other personal business interests, and by making, and causing to be made, false, misleading and fraudulent statements and representations in connection with them.

b. Against Kivisto, for depriving SemGroup of his honest and faithful services as an officer and employee, by engaging in physical commodity transactions through Westback, his alter ego, and receiving additional money from SemGroup for activity that fell within his normal scope of duties, and by making, and causing to be made, false, misleading and fraudulent statements and representations in connection with it.

c. Against Kivisto and Wallace, for approving the semi-annual bonuses paid to themselves and other executives without MC approval, and by personally benefiting from their own decisions in this regard, in violation of their employment agreements.

d. Against Wallace and Cooper, for permitting Kivisto to engage in physical commodity trades for SemGroup, which were within the scope of Kivisto's duties at SemGroup, through Westback, thereby enabling Kivisto to receive additional compensation from SemGroup.

e. Against Kivisto, for authorizing substantial bonus payments to Oven (approximately $1.5 million in 2007), a trader he hired with no previous trading experience to assist him in implementing his trading strategy, and someone with whom he had a close personal relationship.

6. Breach of Contract

a. Against Kivisto and Wallace, for accepting semi-annual bonuses for themselves that had not been approved by the MC, in violation of their employment agreements.

assist him in implementing his trading strategy, and someone with whom he had a close personal relationship.

Kivisto, Wallace and Foxx had conflicts of interest by permitting Hollinger, their outside business partner and a person with whom Kivisto had a close personal relationship, to engage in, and to reap the benefits of, a business relationship with SemGroup. They did so without notifying SemGroup's MC of their ownership interest in the vendor company, or of Kivisto's personal relationship with their co-owner, Hollinger.

Kivisto and Wallace breached the terms of their employment agreements by accepting semi-annual bonuses for themselves that had not been approved by the MC.

VII. THE EXAMINER'S FINDINGS REGARDING WHETHER THE DEBTORS' ESTATES HAVE CLAIMS OR CAUSES OF ACTION AGAINST CURRENT OR FORMER OFFICERS, DIRECTORS, OR EMPLOYEES OF THE DEBTORS ARISING FROM ANY SUCH PARTICIPATION

A. Theories of Potential Liability

The Examiner has summarized the basic elements which support the Examiner's conclusions with respect to certain potential causes of action that the Debtors' estates may have under Delaware and Oklahoma law against Kivisto, Wallace, Foxx, Cooper, and others, and leaves the task of preparing detailed legal analyses and arguments to the fiduciaries of the Debtors' estates to the extent such claims are pursued.

1. Negligence/Mismanagement

The elements of common law negligence as summarized by Oklahoma courts, are "(1) the existence of a duty on the part of the defendant to protect plaintiff from injury; (2) a violation

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11 Case No.
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	:	08-13555 (JMP)
	:	(Jointly Administered)
Debtors.	:	

REPORT OF ANTON R. VALUKAS, EXAMINER

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March 11, 2010

VOLUME 1 OF 9

Sections I & II: Introduction, Executive Summary & Procedural Background

Section III.A.1: Risk

senior officers who oversaw and certified misleading financial statements – Lehman's CEO Richard S. Fuld, Jr., and its CFOs Christopher O'Meara, Erin M. Callan and Ian T. Lowitt. There are colorable claims against Lehman's external auditor Ernst & Young for, among other things, its failure to question and challenge improper or inadequate disclosures in those financial statements.

The Examiner Order does not contain a definition of what constitutes a "colorable" claim. The Second Circuit has described colorable claims as ones "that on appropriate proof would support a recovery,"[60] "much the same as that undertaken when a defendant moves to dismiss a complaint for failure to state a claim."[61] But under such a standard, the Examiner would find colorable claims wherever bare allegations might survive a motion to dismiss. Because he has conducted an extensive factual investigation, the Examiner believes it is more appropriate to use a higher threshold standard, and in this Report a colorable claim is one for which the Examiner has found that there is sufficient credible evidence to support a finding by a trier of fact. The Examiner is not the ultimate decision-maker; whether claims are in fact valid will be for the triers of fact to whom claims are presented. The identification of a claim by the Examiner as colorable does not preclude the existence of defenses and is not a

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[60] *In re STN Enters.*, 779 F.2d 901, 905 (2d Cir. 1985).

[61] *In re KDI Holdings, Inc.*, 277 B.R. 493, 508 (Bankr. S.D.N.Y. 1999) (quoting *In re America's Hobby Center*, 223 B.R. 275, 281 (Bankr. S.D.N.Y. 1998)), *accord In re Adelphia Commc'ns Corp.*, 330 B.R. 364, 376 (Bankr. S.D.N.Y. 2005).

prediction as to how a court or a jury may resolve any contested legal, factual, or credibility issues.[62]

Although Repo 105 transactions may not have been inherently improper, there is a colorable claim that their sole function as employed by Lehman was balance sheet manipulation. Lehman's own accounting personnel described Repo 105 transactions as an "accounting gimmick"[63] and a "lazy way of managing the balance sheet as opposed to legitimately meeting balance sheet targets at quarter end."[64] Lehman used Repo 105 "to reduce balance sheet at the quarter-end."[65]

In 2007-08, Lehman knew that net leverage numbers were critical to the rating agencies and to counterparty confidence.[66] Its ability to deleverage by selling assets was severely limited by the illiquidity and depressed prices of the assets it had accumulated.[67] Against this backdrop, Lehman turned to Repo 105 transactions to

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[62] For a more complete analysis of the law relating to the colorable claim standard, see Appendix 1. The Examiner is not the ultimate decision-maker on any colorable claim; he simply is directed to identify the existence of such claims. While the Examiner has evaluated the at-times conflicting evidence to make his determinations as to potential colorable claims, it is neither necessary nor appropriate for the Examiner to make credibility assessments or resolve conflicting evidence; that will be the responsibility of a trier of fact when and if those claims are litigated.

[63] Examiner's Interview of Murtaza Bhallo, Sept. 14, 2009, at p. 3.

[64] Examiner's Interview of Marie Stewart, Sept. 2, 2009, at p. 7.

[65] E-mail from Raymond Chan, Lehman, to Paul Mitrokostas, Lehman, *et al.* (July 15, 2008) [LBEX-DOCID 3384937].

[66] Examiner's Interview of Richard S. Fuld, Jr., Sept. 25, 2009, at p. 8 (rating agencies looked at net leverage); Examiner's Interview of Michael McGarvey, Sept. 11, 2009, at p. 2; Examiner's Interview of Anuraj Bismal, Sept. 16, 2009, at pp. 5-6 (Bismal told the Examiner that meeting leverage ratio targets was the most critical issue ("a very hot topic") for senior management by the end of 2007).

[67] Examiner's Interview of Timothy F. Geithner, Nov. 24, 2009, at pp. 7-8 (Starting in mid 2007, many of Lehman's inventory positions had grown increasingly "sticky" – *i.e.*, difficult to sell without incurring

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
TRIBUNE COMPANY, *et al.*,[1]	:	Case Number 08-13141 (KJC) (Jointly Administered)
Debtors.	:	
	:	

REPORT OF KENNETH N. KLEE, AS EXAMINER

(VOLUME ONE)

(SUMMARY OF PRINCIPAL CONCLUSIONS, OVERVIEW AND CONDUCT OF THE EXAMINATION, AND FACTUAL BACKGROUND)

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tribune Company (0355); 435 Production Company (8655); 5800 Sunset Productions Inc. (5510); Baltimore Newspaper Networks, Inc. (8258); California Community News Corporation (5306); Candle Holdings Corporation (5626); Channel 20, Inc. (7399); Channel 39, Inc. (5256); Channel 40, Inc. (3844); Chicago Avenue Construction Company (8634); Chicago National League Ball Club n/k/a Tribune CNLBC, LLC (0347); Chicago River Production Company (5434); Chicago Tribune Company (3437); Chicago Tribune Newspapers, Inc. (0439); Chicago Tribune Press Service, Inc. (3167); ChicagoLand Microwave Licensee, Inc. (1579); Chicagoland Publishing Company (3237); Chicagoland Television News, Inc. (1352); Courant Specialty Products, Inc. (9221); Direct Mail Associates, Inc. (6121); Distribution Systems of America, Inc. (3811); Eagle New Media Investments, LLC (6661); Eagle Publishing Investments, LLC (6327); forsalebyowner.com corp. (0219); ForSaleByOwner.com Referral Services, LLC (9205); Fortify Holdings Corporation (5628); Forum Publishing Group, Inc. (2940); Gold Coast Publications, Inc. (5505); GreenCo., Inc. (7416); Heart & Crown Advertising, Inc. (9808); Homeowners Realty, Inc. (1507); Homestead Publishing Co. (4903); Hoy, LLC (8033); Hoy Publications, LLC (2352); InsertCo, Inc. (2663); Internet Foreclosure Service, Inc. (6550); JuliusAir Company, LLC (9479); JuliusAir Company II, LLC; KIAH, Inc. (4014); KPLR, Inc. (7943); KSWB Inc. (7035); KTLA Inc. (3404); KWGN Inc. (5347); Los Angeles Times Communications LLC (1324); Los Angeles Times International, Ltd. (6079); Los Angeles Times Newspapers, Inc. (0416); Magic T Music Publishing Company (6522); NBBF, LLC (0893); Neocomm, Inc. (7208); New Mass. Media, Inc. (9553); New River Center Maintenance Association, Inc. (5621); Newscom Services, Inc. (4817); Newspaper Readers Agency, Inc. (7335); North Michigan Production Company (5466); North Orange Avenue Properties, Inc. (4056); Oak Brook Productions, Inc. (2598); Orlando Sentinel Communications Company (3775); Patuxnet Publishing Company (4223); Publishers Forest Brook Productions, Inc. (2598); Sentinel Communications News Ventures, Inc. (2027); Shepard's Inc. (7931); Signs of Distinction, Inc. (3603); Southern Connecticut Newspapers, Inc. (1455); Star Community Publishing Group, Inc. (5612); Stemweb, Inc. (4276); Sun-Sentinel Company (2684); The Baltimore Sun Company (6880); The Daily Press, Inc. (9368); The Hartford Courant Company (3490); The Morning Call, Inc. (7560); The Other Company LLC (5337); Times Mirror Land and Timber Company (7088); Times Mirror Payroll Processing Company, Inc. (4227); Times Mirror Services Company, Inc. (1326); TMLH 2, Inc. (0720); TMLS I, Inc. (0719); TMS Entertainment Guides, Inc. (6325); Tower Distribution Company (9066); Towering T Music Publishing Company (2470); Tribune Broadcast Holdings, Inc. (4438); Tribune Broadcasting Company (2569); Tribune Broadcasting Holdco, LLC (2534); Tribune Broadcasting News Network, Inc. (1088); Tribune California Properties, Inc. (1629); Tribune Direct Marketing, Inc. (1479); Tribune Entertainment Company (6232); Tribune Entertainment Production Company (5393); Tribune Finance, LLC (2537); Tribune Finance Service Center, Inc. (7844); Tribune License, Inc. (1035); Tribune Los Angeles, Inc. (4522); Tribune Manhattan Newspaper Holdings, Inc. (7279); Tribune Media Net, Inc. (7847); Tribune Media Services, Inc. (1080); Tribune Network Holdings Company (9936); Tribune New York Newspaper Holdings, LLC (7278); Tribune NM, Inc. (9939); Tribune Publishing Company (9720); Tribune Television Company (1634); Tribune Television Holdings, Inc. (1630); Tribune Television New Orleans, Inc. (4055); Tribune Television Northwest, Inc. (2975); ValuMail, Inc. (9512); Virginia Community Shoppers, LLC (4025); Virginia Gazette Companies, LLC (9587); WATL, LLC (7384); WCWN LLC (5982); WDCW Broadcasting, Inc. (8300); WGN Continental Broadcasting Company (9530); WLVI Inc. (8074); WPIX, Inc. (0191); and WTXX Inc. (1268). The Debtors' corporate headquarters and the mailing address for each Debtor is 435 North Michigan Avenue, Chicago, Illinois 60611.

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C. The Standard Adopted in the Report.

In connection with the Examiner Work Plan, the Examiner proposed, and the Bankruptcy Court in its Supplemental Order agreed, that with respect to Question One, the Examiner should engage in a meaningful process of weighing the relative positions of the Parties, including an analysis of the potential remedies that may be available to the estate(s) if one or more transfers or obligations are avoided, and the effect of such remedies on distributions on account of prepetition claims.[19] In addition, the Examiner understood that, when possible, he should attempt to draw conclusions with respect to the issues in dispute based on the factual record adduced and applicable law, rather than just determining whether a particular claim, cause of action, or defense could be sustained if the Parties' allegations were ultimately proven with sufficient evidence—akin to the standard governing a motion to dismiss a complaint.[20] To the best of the Examiner's knowledge, it is unusual for an Examiner to be requested to go beyond opining whether a claim or defense could survive a motion to dismiss. This required the Examiner to delve deeply into the factual record and conduct as thorough an investigation as time and resources permitted. As noted in the previous section, the Examiner determined to frame his conclusions in a uniform fashion utilizing the following continuum: (1) highly likely, (2) reasonably likely, (3) somewhat likely, (4) equipoise, (5) somewhat unlikely, (6) reasonably unlikely, and (7) highly unlikely.

As mentioned at the outset of the Report, although the Examiner has endeavored to present meaningful analyses and conclusions using the preceding framework, as previewed in the

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[19] By their terms, Questions Two and Three require that the Examiner "evaluate" the matters posed. In contrast, as originally formulated, Question One reasonably could be read to charge the Examiner simply with determining whether there are or are not potential claims, causes of action, and defenses that *might* be asserted. *See* Examiner Work Plan at ¶ 21. The Supplemental Order clarified this ambiguity as discussed above.

[20] To withstand a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Max v. Republican Comm.*, 587 F.3d 198, 200 (3d Cir. 2009) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)).

Examiner Work Plan, given the short period of time that the Examiner was afforded to complete the Investigation, the Report identifies certain matters on which a complete investigation and analysis was not feasible and as to which further investigation may be necessary, if the Bankruptcy Court so directs. In all instances, the conclusions contained in the Report are based on the information reviewed and analyses conducted through July 25, 2010. Further analyses and investigation might change the conclusions reached. When appropriate, the Report identifies areas that might require additional investigation and analyses.

D. Issues Pertaining to Confidentiality.

From the very first hours of the meet and confer process, the Examiner learned that nearly every document produced in the Chapter 11 Cases was marked "confidential" or "highly confidential" and its contents could not be publicly disclosed. The "confidential" or "highly confidential" designations of some documents verged on the absurd, and included, among other things, underlying credit agreements and even documents filed with the SEC. Unfortunately, to the best of the Examiner's knowledge, no Party had challenged the designation of as much as a single document as "confidential" or "highly confidential." Moreover, the Examiner Order expressly provided that the Examiner was subject to any applicable orders of the Bankruptcy Court governing confidentiality.[21] On the other hand, it also was clear from the Examiner Order,[22] and from the record of the Chapter 11 Cases, that the Bankruptcy Court expected the Report to be publicly filed.

In an effort to reconcile this apparent conflict, as discussed in the Examiner Work Plan,[23] the Examiner required that following the formal exchange of briefs and documents described

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[21] *See* Ex. 1 at ¶¶ 6 & 11 (Examiner Order).

[22] *See* Ex. 1 at ¶ 13 (Examiner Order).

[23] *See* Ex. 2 at ¶¶ 25-26 (Examiner Work Plan).

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
ENRON CORP., *et al.*,	:	Case No. 01-16034 (AJG)
	:	
Debtors.	:	Jointly Administered
	:	

ORDER GRANTING MOTION OF NEAL BATSON,
THE ENRON CORP. EXAMINER, WITH RESPECT TO
CERTAIN PROCEDURAL ISSUES IN CONNECTION WITH
THE TERMINATION OF THE ENRON CORP. EXAMINATION

Upon the Motion of Neal Batson, the Enron Corp. Examiner, With Respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination (the "Motion"), and adequate and sufficient notice of the Motion having been provided to all parties in interest; and the Court having conducted a hearing during which interested parties were given the opportunity to be heard with respect to the Motion; and sufficient cause appearing therefore; and based on the representations of counsel for the Enron Corp. Examiner[1] as well as counsel for the Debtors, the Creditors' Committee and certain other parties at the hearing on the Motion, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is granted, in part, to the extent set forth in this Order;

2. Effective as of December 31, 2003, the Enron Corp. Examiner, Neal Batson, shall be discharged from his duties as the Enron Corp. Examiner, under the terms of the Initial Examiner Order (as subsequently amended and supplemented), and any commitments or representations of Mr. Batson to the U. S. Trustee with respect to his

[1] The defined terms herein shall have the same meanings ascribed to them in the Motion.

duties as the Enron Corp. Examiner shall be considered terminated except as provided herein or by applicable law;

3. Upon the Effective Date of any plan of reorganization for Enron Corp., neither the Enron Corp. Examiner nor the Enron Corp. Examiner's Professionals shall have any liability with respect to any act or omission, statement or representation arising out of, relating to, or involving in any way, the Enron Corp. Examination or any report, pleading or other writing filed by the Enron Corp. Examiner in connection with the bankruptcy cases; provided, however, that nothing contained in this decretal paragraph shall be construed to limit the liability of the Enron Corp. Examiner or the Enron Corp. Examiner's Professionals for violation of any applicable disciplinary rule or code of professional responsibility or for any acts of willful misconduct or gross negligence or release the Enron Corp. Examiner or the Enron Corp. Examiner Professionals from compliance with any obligations arising under any confidentiality order, including the Confidentiality Order, under this Order or under any other Order entered by this Court relating to the Motion; and provided further that, in the event that estate fiduciaries and professionals receive lesser levels of exculpation in connection with a confirmed chapter 11 plan, any party in interest may, during the period up to ten (10) days following the entry of such confirmation order, seek to modify this provision, upon notice and hearing, and the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals may object thereto; and, provided, further, that nothing contained herein shall preclude the Fee Committee from filing advisory reports with respect to the fees incurred by the Enron Corp. Examiner or the Enron Corp. Examiner's Professionals;

4. In the event of a conflict between this Order and any provisions of a plan of reorganization confirmed in these cases, this Order shall control as it pertains to the rights, duties and obligations of the Enron Corp. Examiner and the Enron Corp. Examiner Professionals; and

5. Except as specifically set forth therein, the balance of the relief requested in the Motion shall be reserved pending further order of this Court.

DATED: New York, New York
December 17, 2003

s/Arthur J. Gonzalez
HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
ENRON CORP., *et al.*,	:	Case No. 01-16034 (AJG)
	:	
Debtors.	:	Jointly Administered
	:	

SUPPLEMENTAL ORDER GRANTING MOTION OF NEAL BATSON, THE ENRON CORP. EXAMINER, WITH RESPECT TO CERTAIN PROCEDURAL ISSUES IN CONNECTION WITH THE TERMINATION OF THE ENRON CORP. EXAMINATION

Upon the Motion of Neal Batson, the Enron Corp. Examiner, With Respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination (the "Motion"), and adequate and sufficient notice of the Motion having been provided to all parties in interest; and the Court having conducted a hearing during which interested parties were given the opportunity to be heard with respect to the Motion; and sufficient cause appearing therefore; and based on the representations of counsel for the Enron Corp. Examiner[1] as well as counsel for the Debtors, the Creditors' Committee and certain other parties at the hearing on the Motion, and the Court having granted, in part, the requested relief by Order dated December 17, 2003 [Docket No. 14908]; and the Court having considered: (i) the "Report of Neal Batson, Court-Appointed Examiner, In Connection With the Examination of National Energy Production Corporation Pursuant to Court Order dated December 6, 2002" (the "NEPCO Report") [Docket No. 10105], filed by the Enron Corp. Examiner pursuant to the Court's "Order Approving the Supplemental Recommendation of Neal Batson, the Court-

[1] The defined terms herein shall have the same meanings ascribed to them in the Motion.

Appointed Examiner, With Respect to Scope and Time Frame of the Examination Pursuant to the Court's Order Dated October 7, 2002" dated December 6, 2002 [Docket No. 8235] and (ii) certain recommendations filed with respect to the NEPCO Report, including: (a) the "Recommendation of Banca Nazionale del Lavoro S.p.A., Pursuant to Court Order, Dated December 6, 2002, with Respect to Scope and Timing of Second Phase of Examination with Respect to NEPCO," dated April 28, 2003 [Docket No. 10468]; (b) the "Submission of TECO Power Services, Inc. With Respect to Further Examination of National Energy Production Corporation Pursuant to Court Order, Dated December 6, 2002," dated October 15, 2003 [Docket No. 13481]; (c) the "Response of Banca Nazionale del Lavoro S.p.A. to Direction from the Court Regarding Submission of Recommendations With Respect to the Examination of National Energy Production Corporation, Pursuant to Court Order Dated December 6, 2002," dated October 15, 2003 [Docket No. 13482]; (d) the "Recommendation of Official Committee of Unsecured Creditors With Respect to Any Further Examination of National Energy Production Corporation Pursuant to Court Order Dated December 6, 2002," dated October 15, 2003 [Docket No. 13485]; and (e) the "Recommendation of Enron Corp. and EPC Estate Services, Inc. f/k/a National Energy Production Corporation With Respect to Any Further Examination of National Energy Production Corporation," dated October 15, 2003 [Docket No. 13487]; it is hereby

ORDERED, that the Enron Corp. Examiner shall not conduct any further investigations into NEPCO, and it is further

ORDERED, that the Enron Corp. Examiner shall be discharged from his duties with respect to NEPCO consistent with all the terms of this Court's Order Granting

Motion Of Neal Batson, The Enron Corp. Examiner, With Respect To Certain Procedural Issues In Connection With The Termination Of The Enron Corp. Examination [Docket No. 14908], dated December 17, 2003.

DATED: New York, New York
December 18, 2003

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
ENRON CORP., *et al.*,	:	Case No. 01-16034 (AJG)
	:	
Debtors.	:	Jointly Administered
	:	

ORDER GRANTING MOTION OF NEAL BATSON,
THE ENRON CORP. EXAMINER, WITH RESPECT TO
CERTAIN PROCEDURAL ISSUES IN CONNECTION WITH
THE TERMINATION OF THE ENRON CORP. EXAMINATION

Upon the Motion of Neal Batson, the Enron Corp. Examiner, With Respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination (the "Motion"), and adequate and sufficient notice of the Motion having been provided to all parties in interest; and the Court having conducted hearings during which interested parties were given the opportunity to be heard with respect to the Motion; and having considered the Proposed Order submitted on behalf of the Enron Corp. Examiner; and having considered the Proposed Counter-Order submitted on behalf of the Merrill Lynch Defendants; and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is granted to the extent set forth in this Order;

2. Any creditor or party in interest to these cases is hereby precluded from issuing or serving upon the Enron Corp. Examiner[1] or the Enron Corp. Examiner's Professionals any formal or informal discovery requests, including but not limited to, any

[1] The defined terms herein shall have the same meanings ascribed to them in the Motion.

subpoenas, requests for production of documents, requests for admissions, interrogatories, subpoenas *duces tecum*, requests for testimony, letters rogatory or any other discovery of any kind whatsoever in any way related to the Debtors, the nondebtor affiliates of the Debtors, the bankruptcy cases, or the Enron Corp. Examination with respect to any knowledge or documents (as defined by Bankruptcy Rule 7034(c)) or any other material in the possession, custody or control of the Enron Corp. Examiner or the Enron Corp. Examiner's Professionals; provided, however:

(i) that in the event a party in interest affirms that it has been unable to obtain discovery of certain information from any other source, then such party in interest may request that the Court permit discovery of that information from the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals in a manner that is consistent with this Court's orders concerning the confidentiality of Rule 2004 materials. The Enron Corp. Examiner and the Enron Corp. Examiner's Professionals have the right to and may oppose any such request for discovery; and

(ii) that in the event a federal district court presiding over a criminal proceeding in which a party in interest is a defendant issues an order finding that the Enron Corp. Examiner or the Enron Corp. Examiner's Professionals are obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), as embodied in subsequent case law and the Federal Rules of Criminal Procedure,

this Order shall not preclude such production as the federal district court may require. The Enron Corp. Examiner and the Enron Corp. Examiner's Professionals have the right to and may oppose any efforts by a party in interest to to secure such an order from a federal district court;

3. Except as prohibited by any existing confidentiality order, including the Confidentiality Order, or other confidentiality agreement executed by the Enron Corp. Examiner, the Enron Corp. Examiner shall deliver to counsel for the Debtors (or their successors), one copy of each report filed by the Enron Corp. Examiner in the bankruptcy cases, all material cited in the footnotes of each report and all closing documents for the transactions analyzed by the Enron Corp. Examiner by March 1, 2004. Counsel for the Debtors shall maintain the confidentiality of the material in accordance with the Confidentiality Order. Without limiting the generality of the foregoing, any Highly Confidential Material comprised by the material shall be maintained as such notwithstanding the citation to such material or the publication of any non-highly confidential portion thereof by the Enron Corp. Examiner. Consistent with any provisions of any confidentiality order entered in the bankruptcy cases, the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals shall be authorized and are directed to retain copies of the reports filed in the bankruptcy cases, together with copies of all materials cited in the footnotes of the reports, along with the transcripts of all examinations taken with the voluntary cooperation of a witness or pursuant to Bankruptcy Rule 2004. Notwithstanding anything to the contrary contained herein, and notwithstanding any provision of any plan of reorganization that is or may be confirmed

in these cases, the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals shall not be required to produce to the Debtors (or any successor to the Debtors or any other party) any material comprising the work product of the Enron Corp. Examiner and/or the Enron Corp. Examiner's Professionals and/or any material protected by the attorney-client privilege or other applicable privileges. The Enron Corp. Examiner and the Enron Corp. Examiner's Professionals shall be entitled to reimbursement for the costs of disposition of the material under the terms of this provision, and matters related to the completion of the Enron Corp. Examination (including the prosecution of all fee applications), and all requests for payment of fees and expenses (including professional fees and any expenses) shall be submitted to the Debtors for payment consistent with the terms of the orders entered in these cases addressing the compensation of professionals and reimbursement of expenses;

4. In the event of a conflict between this Order and any provisions of a plan of reorganization confirmed in these cases, this Order shall control as it pertains to the rights, duties and obligations of the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals; and

5. Except as specifically set forth herein, the balance of the relief requested in the Motion, including the relief sought in paragraphs 24 through 27 of the Motion, shall be reserved pending further order of this Court.

DATED: New York, New York
February 19, 2004

s/ Arthur J. Gonzalez
THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
ENRON CORP., *et al*.,	:	Case No. 01-16034 (AJG)
	:	
Debtors.	:	Jointly Administered
	:	

ORDER GRANTING MOTION OF NEAL BATSON,
THE ENRON CORP. EXAMINER, WITH RESPECT TO
CERTAIN PROCEDURAL ISSUES IN CONNECTION WITH
THE TERMINATION OF THE ENRON CORP. EXAMINATION

Upon the Motion of Neal Batson, the Enron Corp. Examiner, With Respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination (the "Motion"), and adequate and sufficient notice of the Motion having been provided to all parties in interest; and the Court having conducted a hearing during which interested parties were given the opportunity to be heard with respect to the Motion; and the Court having granted the Motion to the extent set forth in that certain "Order Granting Motion of Neal Batson, the Enron Corp. Examiner, with Respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination" dated December 17, 2003 [Docket No. 14908], that certain "Supplemental Order Granting the Motion of Neal Batson, the Enron Corp. Examiner, with Respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination" dated December 18, 2003 [Docket No. 14927], and that certain "Order Granting Motion of Neal Batson, the Enron Corp. Examiner with Respect to Certain Procedural Issues in Connection with the Termination of the Enron Corp. Examination"

dated February 19, 2004 [Docket No. 16382]; and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is granted to the extent set forth in this Order;

2. With respect to disposition of documents and witness statements gathered by the Enron Corp. Examiner or the Enron Corp. Examiner's Professionals during the course of the examination, the Enron Corp. Examiner shall proceed as follows:

(a) With respect to documents produced to the Enron Corp. Examiner by the Debtors, the Enron Corp. Examiner shall return those documents to the Debtors and the Debtors shall preserve the documents in accordance with the terms and provisions of Section 42.12 of that certain Supplemental Modified Fifth Amended Joint Plan of the Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Court, dated July 2, 2004 (the "Plan") confirmed by Order dated and entered July 15, 2004;

(b) With respect to the documents produced to the Enron Corp. Examiner pursuant to Bankruptcy Rule 2004, the Enron Corp. Examiner is directed to return to each party that produced Bankruptcy Rule 2004 material to the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals all copies of all such materials produced by such party to the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals. Each party is hereby directed to preserve all documents returned to it until such time as this Court directs otherwise. The Enron Corp. Examiner is

further directed to enclose a copy of this Order with the documents that it returns to the producing party and to notify the producing party of its obligation to preserve those documents;

(c) With respect to the documents produced voluntarily to the Enron Corp. Examiner by the Securities and Exchange Commission ("SEC") and the United States Senate, Permanent Subcommittee on Investigations ("PSI") that are subject to a private confidentiality agreement limiting access to the Enron Corp. Examiner, the Enron Corp. Examiner shall confer with the producing party and either return or destroy his copy set of those documents at the election of the producing party. If either party directs the Enron Corp. Examiner to destroy the documents produced to him, the Enron Corp. Examiner shall be authorized to do so; provided however, the Enron Corp. Examiner shall retain one electronic version of the documents produced to him by the SEC and PSI pending further order of this Court. With respect to all other documents provided voluntarily to the Enron Corp. Examiner that are subject to a private confidentiality agreement limiting access to the Enron Corp. Examiner, the Enron Corp. Examiner is directed to return to the producing party all copies of all such materials produced by such party to the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals. Each party is hereby directed to preserve all documents returned to it until such time as this Court directs otherwise. The Enron Corp. Examiner is further directed to enclose a copy of this Order with the documents that it returns to the producing

party and to notify the producing party of its obligation to preserve those documents;

(d) With respect to the documents produced to the Enron Corp. Examiner where an order has been entered restricting those documents to the Examiner because of litigation pending against the producing party or an order has been entered limiting access to the Enron Corp. Examiner because the producing parties are "affected by" pending litigation, the Enron Corp. Examiner is directed to return to the producing party all copies of all such materials produced by such party to the Enron Corp. Examiner and the Enron Corp. Examiner's Professionals. Each party is hereby directed to preserve all documents returned to it until such time as this Court directs otherwise. The Enron Corp. Examiner is further directed to enclose a copy of this Order with the documents that it returns to the producing party and to notify the producing party of its obligation to preserve those documents;

(e) The Enron Corp. Examiner shall not have any obligation to produce, compile or otherwise create any privilege log, or other index or indices of documents that the Enron Corp. Examiner is precluded from delivering to the Debtors and the Creditors' Committee either under the attorney-client privilege, the work-product immunity from discovery and/or any confidentiality agreement and/or any confidentiality order entered in the bankruptcy cases or in any other court relative to the

production of documents and information to the Enron Corp. Examiner by third parties; and

(f) The Enron Corp. Examiner shall file a Notice of Intended Disposition with this Court with respect to any documents or witness statements that the Enron Corp. Examiner intends to return, disperse, or destroy. The Notice of Intended Disposition shall identify the party to whom the documents are proposed to be delivered, if any, and reasonably identify the documents. The Enron Corp. Examiner may not return, disperse or destroy any documents or witness statements until twenty (20) days after the filing of a Notice of Intended Disposition. The Enron Corp. Examiner may petition this Court for relief on notice to all parties in interest regarding the disposition of documents.

3. In the event of a conflict between this Order and any provisions of the plan of reorganization confirmed in these cases, including, but not limited to, Section 33.3 of the Plan, the terms and provisions of this Order shall control as it pertains to the rights, duties and obligations of the Enron Corp. Examiner and the Enron Corp. Examiner's professionals.

DATED: New York, New York
October 5, 2004

s/Arthur J. Gonzalez

THE HONORABLE ARTHUR J. GONZALEZ,
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	§	**Chapter 11**
	§	
WORLDCOM, INC., et al.,	§	**Case No. 02-13533 (AJG)**
	§	
Debtors.	§	**Jointly Administered**
	§	
	§	

MOTION OF DICK THORNBURGH, BANKRUPTCY COURT EXAMINER, WITH RESPECT TO THE TERMINATION OF HIS APPOINTMENT AND THE TREATMENT OF DOCUMENTS

On July 22, 2002, the Court entered an Order granting the Motion of the United States Trustee for the appointment of an Examiner. By Order dated August 6, 2002, this Court approved the appointment of Dick Thornburgh as the Examiner in this proceeding. The Examiner and professionals retained by him have completed the investigation mandated by this Court's Orders, dated July 22, 2002 and August 6, 2002. The Examiner also has reported to the Court regarding his observations and findings with respect to the pre-petition conduct of the Debtors' management. See First Interim Report of Dick Thornburgh, Bankruptcy Court Examiner, dated November 4, 2002 (Docket # 1839); Second Interim Report of Dick Thornburgh, Bankruptcy Court Examiner, dated June 9, 2003 (Docket #6388); and Third and Final Report of Dick Thornburgh, Bankruptcy Court Examiner, dated January 26, 2004 (Docket #10624).

Accordingly, the Examiner, through his undersigned counsel, Kirkpatrick & Lockhart LLP, seeks the Court's approval to terminate his appointment as Examiner. In addition, the Examiner seeks an order of this Court authorizing him and his professionals, subject to the conditions described in this Motion, to dispose of documents provided to the Examiner or his

professionals during the course of the investigation. The Examiner also requests an order prohibiting discovery requests to him or his counsel with respect to information obtained by the Examiner during the course of his investigation. Counsel for the Examiner has reviewed this Motion with counsel for the Debtors and are authorized to state that the Debtors support this Motion.

I. Termination of the Examiner's Appointment

The Examiner seeks an order of the Court formally terminating his appointment as Examiner and discharging him from any commitments or representations with respect to his duties as Examiner. As discussed above, the Examiner has completed his examination and submitted his Third and Final Report. Therefore, the Examiner has completed the duties mandated by this Court's Orders, dated July 22, 2002 and August 6, 2002, and the Examiner requests that his appointment be formally terminated as of the date of any such order granting such termination, provided, however, that the Examiner will continue in his role as Examiner solely in connection with the requested disposition of documents, as discussed below.

II. Disposition of Documents

In the course of his investigation, the Examiner received millions of pages of actual hard copy documents, as well as a large volume of electronic data. While the quantity of documents produced to the Examiner is enormous, the sources of those documents are limited, including the Debtors, certain federal government agencies, and certain persons or entities that dealt with the Debtors. Predictably, the largest quantity of documents came from the Debtors.

In connection with the termination of his appointment, the Examiner proposes that he return to each of the sources of such documents all of the documents produced by such source, provided that each such source agrees that it will maintain a set of the documents for a

reasonable period of time, given the possibility that some of the documents may be relevant to ongoing or future litigation. The Examiner respectfully suggests that the reasonable period of time be set at not less than three (3) years. In the event that a source does not provide any such assurances to the Examiner and refuses to accept return of such documents, the Examiner will deliver the documents to counsel for the Debtors to maintain for three (3) years. By service of copies of this Motion, each source of documents provided to the Examiner or his professionals is being notified of this proposed disposition of the documents.[1] To make abundantly clear, the Examiner's request to return the documents to their source or, in cases where the source of the documents assures the Examiner that it has a complete set of the documents, destroy his set, will in no way interfere with the rights of third parties to seek discovery of such documents from the original source(s) of the documents.

The Examiner will work to dispose of documents promptly upon this Court's entry of an Order approving such disposition. Within a reasonable time after the Examiner and his professionals have completed the disposition of the documents, the Examiner will so advise the Court and will submit a Supplemental Final Fee Application, which will include charges associated with the disposition of such documents and other incidental services or charges.

III. Discovery Relief. The Examiner also respectfully requests that the Court issue an order precluding any third party from issuing or serving upon the Examiner or his professionals any formal or informal discovery request, including, but not limited to, any subpoena, request for

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[1] In lieu of actually returning documents to the sources, the Examiner also proposes that it be acceptable for the Examiner to destroy his set of documents in instances where the source requests such destruction within 20 days of the granting of this motion, provides assurance that it has another complete set of the documents produced to the Examiner and agrees that it will maintain that set for the required period. In the event that a party does not provide any such assurances to the Examiner and refuses to accept return of such documents, the Examiner will deliver the documents to counsel for the Debtors to maintain for three (3) years.

production of documents, requests for admissions, interrogatories, subpoenas duces tecum, requests for testimony, or any other discovery of any kind related to this proceeding. This relief is warranted because the Examiner will not be in possession of any documents after the return of the documents to the originating party. Moreover, the Examiner is a fiduciary to Debtors' estates in a nonadversarial role – thus, he should be relieved of any duty to respond to discovery requests with respect to his investigation of the Debtors. *See in re Baldwin United Corp.*, 46 B.R. 314 (Bankr. S.D. Ohio 1985) (the bankruptcy examiner should not be used as a discovery shortcut); *Vietnam Veterans Found. v. Erdham*, No. 84-0940, 1987 WL 9033, at *2 (D.D.C. Mar. 19, 1987) (bankruptcy examiner, as officer of the court, not permitted to testify regarding information gleaned from testimony, documents, and other information through his court-appointed powers).

WHEREFORE the Examiner respectfully request entry of an order granting the relief requested herein and such other or further relief as is just. A proposed form of order is attached for the Court's consideration.

Respectfully submitted,

August 30, 2004

KIRKPATRICK & LOCKHART LLP

By: /s/ Stephen G. Topetzes

Michael J. Missal
Stephen G. Topetzes
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, N.W.
Second Floor
Washington, D.C. 20036
(202) 778-9000
(202) 778-9100 (fax)

Counsel to the Examiner, Dick Thornburgh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion of Dick Thornburgh, Bankruptcy Court Examiner, with respect to the Termination of his Appointment and the Treatment of Documents, was served by facsimile and first class mail, postage prepaid, this 30th day of August, 2004, upon the following:

Weil, Gotshal & Manges LLP
700 Louisiana, Suite 1600
Houston, TX 77002
Attn: Alfredo R. Perez, Esq.

WorldCom, Inc.
22001 Loudon County Parkway
Ashburn, VA 20147
Attn: Paul M. Eskildsen, Esq.

Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
Attn: Mary Tom, Esq.

Akin, Gump, Strauss, Hauer & Feld LLP
Attorneys for Informal Committee of Bondholders of WorldCom, Inc.
590 Madison Avenue
New York, NY 10022
Attn: Daniel Golden, Esq.

/s/ Stephen G. Topetzes

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	**Chapter 11**
WORLDCOM, INC., et al.	:	
	:	**Case No. 02 B 13533 (AJG)**
Debtors.	:	
	:	**(Jointly Administered)**

ORDER TERMINATING APPOINTMENT OF
DICK THORNBURGH, BANKRUPTCY COURT EXAMINER, AND ADDRESSING
THE TREATMENT OF DOCUMENTS PRODUCED TO THE EXAMINER

Upon consideration of the Motion of Dick Thornburgh, Bankruptcy Court Examiner, by and through his attorneys, Kirkpatrick & Lockhart LLP, for an Order terminating his appointment as Examiner, prescribing certain procedures with respect to the treatment of documents produced to the Examiner during the course of his investigation, and providing the Examiner and his professionals relief with respect to discovery requests; and, after due deliberation and sufficient cause appearing therefore; it is

ORDERED, that the Motion is granted and that the appointment of Dick Thornburgh as Bankruptcy Court Examiner is hereby terminated, except that Mr. Thornburgh will continue in his role as Examiner solely in connection with the disposition of documents, as provided in this Order; and it is further

ORDERED, that the Examiner and his professionals shall dispose of documents provided to them in the course of their investigation conducted pursuant to Mr. Thornburgh's appointment as Examiner, as follows:

(i) Within 30 days of the date of this Order, the Examiner and his professionals shall return all such documents to the sources that produced such materials to the Examiner, provided that each such source agrees that it will maintain a set of the documents for a period of three years from the date of this Order;

(ii) In lieu of actually returning such documents to the sources that produced the documents to the Examiner, it shall be acceptable for the Examiner and his professionals to destroy such documents in instances where the source requests such destruction within 20 days of the date of this Order, provides assurance that it has another complete set of the documents it produced to the Examiner and agrees that it will maintain that set of the documents for a period of three years from the date of this Order;

(iii) In the event that a source does not provide such assurances to the Examiner or refuses to accept return of the documents it provided to the Examiner within 30 days of the date of this Order, the Examiner will deliver such documents to counsel for the Debtors, which will maintain the documents for a period of three years from the date of this Order; and

(iv) Within a reasonable time after the Examiner and his professionals have completed the disposition of the documents, the Examiner will so advise the Court and he and/or his professionals will submit a Supplemental Final Fee Application, which will include charges associated with the disposition of such documents and other incidental services or charges, as contemplated by this Order; and it is further

ORDERED that the Examiner and his professionals, including his legal counsel, Kirkpatrick & Lockhart LLP, and his forensic accountants and financial advisors, J.H. Cohn LLP, and their respective personnel that performed services in connection with the investigation conducted by the Examiner, are relieved from any duty to respond to formal or informal discovery requests, including, but not limited to, any subpoena, request for production of documents, request for admissions, interrogatories, requests for testimony or any other discovery of any kind related to this proceeding.

Dated: New York, New York
August ___, 2004

_____
Arthur J. Gonzalez
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	§	Chapter 11
	§	
REFCO INC., *et al*.	§	Case No. 05-60006 (RDD)
Debtors.	§	Jointly Administered
	§	
	§	

Order Discharging Examiner and Establishing Related Procedures

This matter came before the Court for hearing on August 14, 2007 (the "Hearing") on the Motion of Examiner for Order Discharging Examiner and Establishing Related Procedures (Docket No. 5632) ("Motion"); the Court having considered the Motion and the limited objection thereto and the arguments of counsel and the representations set forth on the record of the Hearing by counsel for the Litigation Trustee[1]; the Court having jurisdiction over this matter in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court By Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); consideration of the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; the Court having determined that the relief sought in the Motion is in the best interests of the Debtors' estates; the Court having determined that the legal and factual bases set forth in the Motion and articulated by counsel at the Hearing establish cause for the relief granted herein; and after due deliberation, and sufficient cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted except to the extent otherwise provided in this Order.

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. Effective as of the date of this Order, the Examiner and the Examiner's Counsel are discharged from any further obligations, duties, or responsibilities under the Examiner Appointment Order (Docket No. 1487), pursuant to other directions of the Court given at the hearing held in this case on June 21, 2006, or otherwise in these cases, except as specifically provided for in this Order.

3. The Examiner is authorized to, and shall, provide to the Litigation Trustee (as defined in the Modified Joint Chapter 11 Plan of Refco, Inc. and Certain of its Direct and Indirect Subsidiaries (Docket No. 3948) (the "Plan")) copies of, or access to, all the Investigative Documents requested by the Litigation Trustee in the possession, custody, or control of the Examiner. "Investigative Documents" shall mean: (a) all documents[2] produced to the Examiner by third-parties; (b) all documents produced to the Creditors Committee and the SEC in these cases and shared with the Examiner; and (c) all documents shared with the Examiner by the Debtors and their professionals. The Litigation Trustee shall request copies of, or access to, all Investigative Documents in the possession, custody, or control of the Examiner (except that the Litigation Trustee need not request copies of any Investigative Documents that the Trustee reasonably believes are already in the Litigation Trustee's possession, custody, or control), it being the intention of this Order that the Litigation Trustee ultimately have all of the Investigative Documents, from one source or another, in his possession, custody, or control.

4. The Examiner is authorized to provide to the Litigation Trustee, in the sole discretion of the Examiner, copies of, or access to, the Other Documents in the possession, custody, or control of the Examiner. "Other Documents" shall mean all documents in the possession, custody, or control of the Examiner that are not Investigative Documents.

[2] The term "documents" as used in this Order shall have the meaning ascribed to it in Bankruptcy Rule 7034.

5. Any such provision of Investigative or Other Documents by the Examiner to the Litigation Trustee is not, and shall not be deemed to be, a waiver of any currently existing work-product or other privilege.

6. Upon delivery to the Litigation Trustee of all Investigative Documents requested by the Litigation Trustee pursuant to paragraph 3 of this Order, the Examiner and the Examiner's Counsel are authorized to retain or dispose of all documents received by or generated by the Examiner and the Examiner's Counsel, including the Investigative Documents and Other Documents, in the sole discretion of the Examiner, through whatever process the Examiner determines is appropriate.

7. Without limiting the Examiner's rights under the Protective Orders, Stipulations and Agreements to which the Examiner is subject (the "Stipulations"), with respect to the parties to the Stipulations who were served with notice of the Motion and Hearing, the Examiner's compliance with this Order constitutes compliance by the Examiner with the disposition provisions of all such Stipulations.

8. Notwithstanding any other provision in this Order, the Examiner shall preserve any and all memoranda, notes, and transcripts (and any exhibits annexed thereto) of any and all interviews conducted by the Examiner in the course of the Examiner's investigation (the "Interview Materials"). The Examiner shall preserve the Interview Materials until: 1) either the end of the criminal trial in *United States v. Bennett, et al.*, S3 05 Cr. 1192 (NRB) or the entry of an order from the federal district court judge presiding over that trial denying the defendants therein (the "Defendants") access to the Interview Materials; and, thereafter, 2) the Examiner has provided the Defendants with thirty days advance written notice of the Examiner's intent to destroy the Interview Materials; and 3) that thirty day period has expired. The Defendants reserve all their rights to seek judicial relief preserving the Interview Materials during that thirty

day period. Nothing in this paragraph shall prevent the Examiner from opposing the production of any of the Interview Materials on any ground including, without limitation, work product or attorney client privilege, or prevent the Defendants from contesting the Examiner's position.

9. Every creditor and party in interest is hereby precluded from issuing or serving upon the Examiner or the Examiner's Counsel any formal or informal discovery requests, including, but not limited to, any subpoenas, subpoenas *duces tecum*, request for production of documents, requests for admissions, interrogatories, requests for testimony (through subpoena, notice of deposition, request for a Bankruptcy Rule 2004 Examination, or otherwise), letters rogatory, or any other discovery of any kind whatsoever in any way related to the Debtors, the non-debtor affiliates of the Debtors, the bankruptcy cases, or the Examiner's investigation and Report with respect to any knowledge or documents or any other material in the possession, custody, or control of the Examiner or the Examiner's Counsel (including, but not limited to, any Investigative Documents or Other Documents); provided, however: (a) that in the event a creditor or party in interest shows that it has been unable to obtain discovery of certain information from any other source, then such creditor or party in interest may request that the Court permit discovery of that information from the Examiner and the Examiner's Counsel in a manner that is consistent with the Protective Orders, Stipulations and Agreements. The Examiner and the Examiner's Counsel have the right to and may oppose any such request for discovery; (b) that in the event a federal district court presiding over a criminal proceeding in which a person or entity is a defendant issues an order finding that the Examiner or the Examiner's Counsel is obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), as embodied in subsequent case law and the Federal Rules of Criminal Procedure, this Order shall not preclude such production as the federal district court may require. The Examiner and the Examiner's Counsel have the right to and may

oppose any efforts by a person or entity to secure such an order from a federal district court; and (c) the Examiner and the Examiner's Counsel shall be entitled to reimbursement of any fees and expenses incurred (including professional fees and expenses) in objecting to, opposing, or otherwise responding to any such discovery request, with such fees and expenses to be submitted and paid in accordance with the provisions of this Order.

10. Neither the Examiner nor the Examiner's Counsel shall have any liability with respect to any act or omission, statement or representation arising out of, relating to, or involving in any way, the Examiner's investigation or any report, pleading, or other writing filed by the Examiner in connection with the bankruptcy cases, except in the case of gross negligence or willful misconduct, and the Examiner and the Examiner's Counsel, without limitation, are hereby provided the same releases, exculpations, and limitations of liability provided to the Debtors and their professionals, among others, pursuant to the Plan, including Sections 10.2 and 10.3 of the Plan.

11. The Examiner and the Examiner's Counsel shall be entitled to reimbursement from the Reorganized Debtors (as defined in the Plan) for all fees and costs relating to compliance with the procedures set forth in this Order, including the transfer of materials to the Litigation Trustee; the disposition of materials, including the Investigative Documents and Other Documents; and any other actions taken by the Examiner or the Examiner's Counsel in furtherance of concluding the Examiner's duties in connection with his role as Examiner in these cases, pursuant to this Order or otherwise. Any fees or expenses for which reimbursement is sought, which are incurred by the Examiner or the Examiner's Counsel after June 30, 2007, shall be submitted to and paid by the Reorganized Debtors in the ordinary course of business pursuant to Section 12.3(b) of the Plan and paragraph 18 of the Order confirming the Plan (Docket No.

3971). The Examiner and the Examiner's Counsel shall file a final fee application for allowance and payment of all fees and expenses incurred during this case through June 30, 2007.

12. All objections to the Motion are hereby RESOLVED in accordance with the terms of this Order or OVERRULED, for the reasons set forth on the record at the Hearing.

13. Notice of the Motion and Hearing was sufficient and appropriate as evidenced by the Certificate of Service filed by the Examiner (Docket No. 5649).

14. The requirement of Local Bankruptcy Rule 9013-1(b) is waived.

15. The Court retains jurisdiction to determine all matters relating to interpretation or enforcement of this Order.

16. The Examiner shall serve a copy of this Order, upon the parties on whom the Motion was served, by first-class mail within five (5) business days after entry of this Order.

Dated: August 16, 2007, at New York, New York

/s/Robert D. Drain
ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	CHAPTER 11
	:	(Jointly Administered)
NEW CENTURY TRS HOLDINGS, INC., *et al.*[1]	:	Case No. 07-10416 (KJC)
Debtors	:	

MEMORANDUM[2]

BY: KEVIN J. CAREY, UNITED STATES BANKRUPTCY JUDGE

The following two motions are currently before the Court for consideration:

(1) Motion of Michael J. Missal, Examiner, for Order Discharging the Examiner, Granting Relief From Third-Party Discovery, and Establishing Procedures for the Disposition and Sharing of Certain Documents and Information (docket no. 8665)(the Examiner's Motion"); and

(2) Motion by the New Century Liquidating Trustee and Reorganized New Century Warehouse Corporation for an Order Permitting the Transfer to the Liquidating

[1]The Debtors are the following entities: New Century Financial Corporation (f/k/a New Century REIT, Inc.), a Maryland corporation; New Century TRS Holdings, Inc. (f/k/a New Century Financial Corporation), a Delaware corporation; New Century Mortgage Corporation (f/k/a JBE Mortgage) (d/b/a NCMC Mortgage Corporate, New Century Corporation, New Century Mortgage Ventures, LLC), a California corporation; NC Capital Corporation, a California corporation; Home123 Corporation (f/k/a The Anyloan Corporation, 1800anyloan.com, Anyloan.com), a California corporation; New Century Credit Corporation (f/k/a Worth Funding Incorporated), a California corporation; NC Asset Holding, L.P. (f/k/a NC Residual II Corporation), a Delaware limited partnership; NC Residual III Corporation, a Delaware corporation; NC Residual IV Corporation, a Delaware corporation; New Century R.E.O. Corp., a California corporation; New Century R.E.O. II Corp., a California corporation; New Century R.E.O. III Corp., a California corporation; New Century Mortgage Ventures, LLC (d/b/a Summit Resort Lending, Total Mortgage Resource, Select Mortgage Group, Monticello Mortgage Services, Ad Astra Mortgage, Midwest Home Mortgage, TRATS Financial Services, Elite Financial Services, Buyers Advantage Mortgage), a Delaware limited liability company; NC Deltex, LLC, a Delaware limited liability company; and NCoral, L.P., a Delaware limited liability partnership. These entities are referred to herein as the "Debtors" or "New Century," collectively.

[2]This Memorandum constitutes the findings of fact and conclusions of law required by Fed.R.Bankr.P. 7052. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and §157(a). Venue is proper pursuant to 28 U.S.C. § 1409. This contested matter involves a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A) and (O).

Trustee of Certain Documents by the Former Official Committee of Unsecured Creditors (docket no. 9044)(the "Liquidating Trustee's Motion").

For the reasons set forth herein, the Examiner's Motion and the Liquidating Trustee's Motion, to the extent it is not moot, will be granted, in part.[3] To the extent the Examiner's Motion seeks an order providing that the sharing of documents does not cause a waiver of any applicable protection or privilege, that relief will be denied, without prejudice.

BACKGROUND

New Century TRS Holdings, Inc. and its affiliates filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code on April 2, 2007. On June 1, 2007, the Court directed the United States Trustee to appoint an examiner pursuant to 11 U.S.C. §1104(c)(1) to perform the following duties:

> (a) investigate any and all accounting and financial statement irregularities, errors or misstatements, including but not limited to such irregularities, errors or misstatements that (i) gave rise to the announced need to restate the Debtors' financial statements for the first three quarters of 2006 and/or (ii) led the Debtors' management and Audit Committee to conclude that it was more likely than not that pre-tax earnings in the 2005 financial statements were materially overstated, and identify and evaluate any claims or rights of action that the estates might have arising from or relating to such irregularities, errors or misstatements, (b) investigate any possible post-petition unauthorized use of cash collateral by the Debtor, and (c) otherwise perform the duties of an examiner set forth in section 1106(a)(3) (as limited by this order) and 1106(a)(4) of the Bankruptcy Code (collectively, the "Investigation").

Order dated June 1, 2007, ¶3 (docket no. 1023)(the "June 1, 2007 Order"). This Order also directed the examiner to prepare and file a report as required by Bankruptcy Code §1106(a)(4). *Id.* at ¶5. The June 1, 2007 Order further provides that:

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[3]*See* Liquidating Trustee Motion, p. 2 (stating that the Liquidating Trustee Motion would be rendered moot if the court grants the Examiner's Motion regarding transfer of the KPMG Materials).

10. The Examiner shall cooperate fully with any governmental agencies (. . . including, but not limited to, any federal, state or local government agency, that may be investigating the Debtors, its management or its financial condition), and the Examiner shall use best efforts to coordinate with such agencies in order to avoid unnecessary interference with, or duplication of, any investigations conducted by such agencies.

. . . .

12. Subject to any applicable confidentiality agreement between the Committee and the Debtors, the Committee shall provide the Examiner with access to all materials it has received in response to discovery authorized by the Court or voluntarily provided by the Debtors, and the Examiner and the Committee shall cooperate and coordinate their efforts to assure, to the extent possible, that their investigations are not unduly duplicative.

Id., at ¶10, ¶12. On June 5, 2007, the United States Trustee appointed Michael J. Missal as the examiner (the "Examiner"). The Court approved that appointment on June 7, 2007 (docket no. 1162).

On October 10, 2007, the Court amended its June 1, 2007 Order to extend the deadline for filing the Examiner's report and to provide that any report filed by the Examiner be filed initially under seal (the "October 10, 2007 Order")(docket no. 3261).

On November 21, 2007, the Examiner filed his First Interim Report related to the possible unauthorized post-petition use of cash collateral by the Debtors (docket no. 3934). On February 29, 2008, the Examiner filed his Final Report (docket no. 5132).

On July 15, 2008, this Court entered an Order (docket no. 8596) confirming the Debtors' Second Amended Joint Chapter 11 Plan of Liquidation (the "Plan") and appointing Alan M. Jacobs as the Liquidating Trustee of the Debtors (the "Liquidating Trustee").

(1) <u>The Examiner's Motion.</u>

On July 29, 2008, the Examiner filed the Examiner's Motion, which seeks the following

relief:

(a) an order noting that the Examiner has completed his duties under the June 1, 2007 Order and discharging him from further commitments or representations, except that the Examiner shall continue to cooperate with entities including governmental agencies, the office of the United States Trustee, and the Liquidating Trustee;

(b) permission to transfer portions of the Investigative Record and Other Investigative Materials[4] to the Liquidating Trustee, including privileged material received from the Debtors and KPMG[5], and permission to destroy documents as the Examiner deems appropriate;

(c) an order providing that the Examiner's sharing of documents or information with governmental agencies, the office of the United States Trustee and the Liquidating Trustee does not cause or constitute a waiver of any applicable protection belonging to the Examiner, including, but not limited to, the attorney-client privilege or the work product doctrine;

(d) an order precluding any third party from issuing or serving upon the Examiner or

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[4]The Examiner's Motion defines these terms as follows:

(a) "Investigative Record" means the millions of pages of documents produced to the examiner during the investigation by a number of parties, including the Debtors, the Debtors' independent auditors, KPMG, LLP ("KPMG"), and the Debtors' independent directors. The Investigative Record includes the Debtors' Privileged Materials and KPMG's Materials, as defined in n.4 [of the Motion].

(b) "Other Investigative Materials" means the documents created or compiled by the Examiner and/or his professionals (including his legal counsel, Kirkpatrick & Lockhart Preston Gates Ellis LLP ("K&L Gates"), and Saul Ewing, LLP ("Saul") and his forensic accountants, BDO Seidman LLP ("BDO")) that are protected from discovery by the attorney/client privilege or the work product doctrine. This term does not include documents relating to requests for information received by the Examiner or his professionals from governmental agencies.

[5]The Debtors produced certain privileged and potentially privileged documents to the Examiner pursuant to an Order dated October 10, 2007 (docket no. 3261), in which the Court ordered that production of such documents did not constitute a waiver of any applicable privileges belonging to the Debtors (the "Debtors' Privileged Materials"). After extensive negotiations and two hearings before this Court regarding the Examiner's request for a subpoena, KPMG produced documents to the Examiner pursuant to a Protective Order dated August 21, 2007 (docket no. 2368), which, among other things, limited the Examiner's ability to disseminate those materials and preserved KPMG's jurisdictional arguments, including arguments based upon the Discovery Limitation Provision in the Arbitration Agreement in the Engagement Letters between KPMG and the Debtors (the "KPMG Materials").

his professionals any formal or informal discovery request relating to the Investigative Record or Other Investigative Materials, unless the third party demonstrates that it cannot obtain the documents from any other source; and

(e) approval to be reimbursed for time and expenses incurred with respect to handling the Investigative Record and Other Investigative Materials, cooperating with governmental entities, the Liquidating Trustee and others specified in the Motion, and responding to discovery requests.

Although four objections to the Examiner's Motion were filed, none objected to the Examiner's request to be discharged from his duties. The objections were as follows:

(I) An objection filed by former officers and underwriters of the Debtors (docket no. 8867), who are defendants in a consolidated shareholder securities fraud class action pending in the Central District of California as Case No. 2:07-cv-00931 (DDP) (the "Class Action), concerning the Examiner's requests to be relieved of third-party discovery and to share documents and information (the "Former Officers' Objection").

(ii) An objection filed by the New York State Teachers' Retirement System (docket no. 8870), lead plaintiff in the Class Action, also objecting to the Examiner's requests regarding third-party discovery and the guidelines for destruction of documents (the "NYSTS Objection").[6]

(iii) An objection filed by the Liquidating Trustee (docket no. 8869) concerning the potential fees and expenses that the Examiner and his professionals may seek to have paid if they perform additional services (the "Liquidating Trustee Objection").

(iv) An objection filed by KPMG (docket no. 8873) concerning the Examiner's request for sharing KPMG Materials with the Liquidating Trustee (the "KPMG Objection").

On September 18, 2008, the court held a hearing to consider the Examiner's Motion and the objections. Just prior to that hearing, the Examiner and the Liquidating Trustee each filed a

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[6]The parties have resolved their differences over the Examiner's request to destroy documents by agreeing to procedures for destruction as now embodied in paragraph 8 of the Order accompanying this Memorandum. Although KPMG did not agree specifically to the proposed language in the NYSTS order, KPMG asked for at least 20 notice prior to any destruction of records. The compromise language requires 30 days' notice of any motion for authority to destroy records.

"response" to the objections (dockets nos. 8954 and 8960, respectively). At the September 18, 2008 hearing, the parties agreed to meet and discuss a form of order to resolve the objections to the Examiner's Motion. After conferring and exchanging proposed forms of orders, the parties resolved some issues, but important differences remained. On November 7, 2008, the NYSTS filed a Supplemental Response to the Examiner's Motion (docket no. 9117), attaching its proposed form of order. Also on November 7, 2008, KPMG filed a Supplemental Brief and its proposed form of order regarding the Examiner's Motion (docket no. 9119).

A second hearing regarding the Examiner's Motion was heard on November 19, 2008, at which time the Liquidating Trustee, NYSTS and KPMG each provided the Court with their own versions of proposed forms of order regarding the Examiner's Motion for the Court's consideration.

(2) The Liquidating Trustee's Motion.

On October 7, 2008, the Liquidating Trustee filed a motion for entry of an order permitting the former Official Committee of Unsecured Creditors (the "Creditors' Committee") to transfer to the Liquidating Trustee certain documents that had been provided to the former Creditors' Committee or its counsel by KPMG pursuant to Bankruptcy Rules 2004 and 9016. KPMG filed an objection to the Liquidating Trustee's Motion. (Docket no. 9118) and the matter was heard by the Court along with the Examiner's Motion on November 19, 2008. The Liquidating Trustee states that his motion will be rendered moot if the Court grants that portion of the Examiner's Motion which provides for the transfer of the KPMG Materials from the Examiner to the Liquidating Trustee.

DISCUSSION

No party disputes that the Examiner has completed his duties as described in the June 1, 2007 Order and, accordingly, he will discharged from further performance of those duties, except the Examiner shall continue to cooperate with entities including governmental agencies, the office of the United States Trustee, and the Liquidating Trustee. Objections remain outstanding, however, with respect to other relief sought in the Examiner's Motion, which must be addressed separately.

(a) Continuing Costs.

The Liquidating Trustee filed a limited objection to the Examiner's Motion, noting his concern about the Examiner's request for continued reimbursement for time and expenses incurred by the Examiner and his professionals for services not requested or approved by the Liquidating Trust. The Liquidating Trustee noted that the Examiner and his professionals had incurred nearly $20 million of fees and expenses from the beginning of his appointment through the filing of the Final Report. Moreover, the Liquidating Trustee noted that the Examiner and his professionals had incurred another $450,000 of fees and expenses since the filing of the Final Report.

The parties agreed to language and included a provision in the proposed orders submitted to the Court that limits the Liquidating Trust's responsibility for continued fees and costs as follows:

> 3. Notwithstanding [the Examiner's discharge] in paragraph 2, above, the Examiner (i) shall continue to cooperate as contemplated in the June 1 Order, with governmental agencies, the United States Trustee, her counsel and staff and the Liquidating Trustee and his professionals provided, however, that the payment of the first $100,000 of fees and expenses incurred by the Examiner and his

professionals under this paragraph will be the responsibility of the Liquidating Trustee (the "Paragraph 3 Cap") and the payment of fees and expenses thereafter incurred by the Examiner in excess of the Paragraph 3 Cap shall be the sole responsibility of the party requesting the Examiner's cooperation under this paragraph, and (ii) this Court shall retain jurisdiction to resolve professional compensation issues for the Examiner and his professionals in connection with the cases.

I agree that a cap on fees and expenses is in the best interests of the creditors and that the Liquidating Trust should not be subject to additional exposure for additional services provided by the Examiner, such as continued cooperation with governmental agencies or other parties, transferring or disposing of the Investigative Record and Other Investigative Materials, and responding to discovery requests. I understand that this may require the Examiner to seek reimbursement of certain fees and costs incurred in excess of the cap elsewhere. An appropriate provision will be included in the Order accompanying this Memorandum.

(b) Transfer of Government Materials.

During his investigation, the Examiner obtained numerous documents and materials from a number of parties, including the Debtors, the Debtors' independent directors, and the Debtors' independent auditors (KPMG). The Examiner seeks an order authorizing him to transfer copies of the Investigative Record and the Other Investigative Materials to the Liquidating Trustee.[7] In the Examiner's proposed form of Order granting the Examiner's Motion, however, the term "Other Investigative Materials" specifically excludes the following materials from turnover:

(I) "Government Materials," defined as including any requests for information received by the Examiner or his Professionals from governmental agencies and the responses to those requests; and

[7]The definition of the terms "Investigative Record" and "Other Investigative Materials," as set forth in the Examiner's Motion, are found in n. 4, *supra.*

(ii) "Internal Materials," defined as including documents reflecting internal privileged and otherwise confidential or protected communications and interaction between the Examiner and his Professionals of the type as described generally by the Examiner's counsel at the September 18, 2008 hearing before this Court.[8]

The NYSTS and the Former Officers jointly submitted an alternative proposed form of order which does not exclude the Government Materials from the documents to be turned over to the Liquidating Trustee. The Examiner has not asserted any privilege or other basis for excluding the Government Materials from turnover. Instead, the Examiner proposed to exclude those documents to allow governmental agencies investigating the Debtors, such as the U.S. Securities and Exchange Commission and the U.S. Department of Justice, an opportunity to take a position regarding turnover of such documents. Despite notice of the Examiner's Motion, no governmental agency has taken a position with respect to turnover of the Government Materials to the Liquidating Trustee. (Tr. 11/19/08 at 59:25 - 60:25). Because there is no basis for treating the Government Materials separately, they will be included in the Other Investigative Materials to be turned over to the Liquidating Trustee.[9]

(c) No waiver of privilege.

The Examiner asks this Court to rule that his sharing of documents with the governmental agencies, the office of the United States Trustee, and the Liquidating Trustee should not cause or constitute a waiver of any applicable protection belonging to the Examiner and his professionals, including, but not limited to, the attorney-client privilege or the work product doctrine. The

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[8]*See* Tr. 9/18/2008 at 33.

[9]For ease of reference, the Order entered in connection with this Memorandum employs the terms proposed by NYSTS to describe the documents and materials to be turned over to the Liquidating Trustee, so that the Investigative Record and Other Investigative Materials, including the Governmental Materials, will be defined, collectively, in the accompanying Order, as the "Examiner's Materials").

Examiner also seeks a similar ruling that the Liquidating Trustee's consultation with or retention of the Examiner's forensic accountants (BDO) will not cause a waiver of any of the Examiner's applicable privileges or protections. The Examiner and the Liquidating Trustee argue that the Court may order this relief based upon other cases holding that sharing documents and information with third persons who have a common interest should not constitute a waiver. *See, e.g., Westinghouse Electric Corp. v. The Republic of the Philippines*, 951 F.2d 1414, 1428 (3d Cir. 1991) (Disclosure to a third party does not necessarily waive the protection of the work product doctrine unless it enables an adversary to gain access to the information); *United States v. American Telephone and Telegraph Co.*, 642 F.2d 1285, 1299-1300 (C.A.D.C. 1980) (Disclosure made in pursuit of trial preparations to a third party with "common interests" may not suffice as a basis for waiver of the work product doctrine). *See also Teleglobe USA Inc. v. BCE Inc. (In re TeleGlobe Commc'ns Corp.)*, 493 F.3d 345, 363-66 (3d Cir. 2007) (discussing the "community-of-interest privilege," which allows attorneys representing different clients with similar legal interests to share information without waiving the attorney-client privilege as to third parties).

The Officers and Underwriters object to this request, arguing that the Examiner provided no factual basis for such relief, having failed to specify which privilege or protection is being asserted as to any particular document. KPMG filed a similar objection to this relief. The objecting parties argue that the Court should not make a decision about waiver in a vacuum. I agree. The *Westinghouse* and *American Telephone and Telegraph* cases cited above instruct that a court's analysis of an assertion of the attorney-client privilege differs from an analysis of an assertion of the work product doctrine. A blanket decision about waiver, without any context,

may also be in the nature of an improper advisory opinion. *See In re Grand Jury Matter,* 673 F.2d 688, 694 n. 12 (3d Cir. 1982) ("To avoid being merely advisory, a court's judgment must resolve 'a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be on a hypothetical state of facts.'") *quoting Preiser v. Newkirk,* 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975). When and if the issue does arise, the court or other forum directly involved in the discovery request will have the facts available to make an appropriate determination about waiver.[10]

(d) Protection from third party discovery.

The Examiner performs his duties at the request of the Court, for the benefit of the debtor, its creditors and shareholders, and not to "fuel the litigation fires of third party litigants." *In re Baldwin United Corp.*, 46 B.R. 314, 316 (Bankr.S.D.Ohio 1985). To protect the Examiner from a possible deluge of discovery requests, the Examiner asks that this Court enter an order precluding third parties from serving formal or informal discovery requests upon the Examiner. However, the Examiner has proposed that, if a third party demonstrates that it cannot obtain documents or materials from the Investigative Record or Other Investigative Record from any other source, then discovery requests related to those documents or materials would be allowed.

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[10]The Liquidating Trustee, who does not oppose this request, cites to orders entered in the *Refco* case (*In re Refco, Inc.*, case no. 05-60006, Bankr.S.D.N.Y. Aug. 16, 2007, docket no. 5748) and the *Enron* case (*In re Enron Corp.*, case no. 01-16034, Bankr.S.D.N.Y. Feb. 19, 2004, docket no. 16382) in support of the argument that there is precedent for ordering that an Examiner's sharing of documents does not waive any applicable privileges. However, without knowing background information with respect to entry of these orders, I cannot determine whether the orders were entered over the objections of other parties or if more particular facts were available to the judge entering each order. In the particular circumstances before me, the orders, without more, are not persuasive.

The Officers and Underwriters, the NYSTS, and KPMG each filed an objection to the requested relief on a limited basis. The objectors argue that the permitted discovery should not be limited only to those documents in the Investigative Record or Other Investigative Record (as defined by the Examiner). As discussed above, this does not include Government Materials and Internal Materials. The objectors argue that all of the Examiner's documents and materials should be subject to discovery if a third party demonstrates that it cannot obtain the documents from any other source. Further, the objectors argue that this Court should not be the sole forum for deciding issues related to the limited discovery.

I find no valid basis, for this purpose, to distinguish among different categories of information held by the Examiner and agree with the objectors on this issue.[11] All of the Examiner's documents and materials may be open to discovery if a third party demonstrates that it cannot obtain the requested documents and materials from another source. This Court will likely not be the sole forum for deciding third party discovery issues. Discovery issues should be brought before the court or forum that is hearing any third party litigation. *Baldwin*, 46 B.R. at 317. The Examiner will retain any right to assert that the attorney-client privilege or other protection applies in response to any discovery requests and, except as may be limited by the Order accompanying this decision, will have the right to seek recovery of any fees and costs related to such requests.

(e) Transfer of the KPMG Materials.

The Examiner's Motion seeks authority to transfer the KPMG Materials to the

[11]I note the distinction between granting third parties access to the Examiner's investigative documents and allowing access to the same documents by a party who succeeded to the claims of the estate, such as the Liquidating Trustee. *See* the discussion in section (e) of this Memorandum, *infra*.

Liquidating Trustee. The Liquidating Trustee's Motion also asks this Court to enter an order permitting the Creditors' Committee to transfer its documents related to KPMG to the Liquidating Trustee. The parties agree that the materials held by the Committee are the same, or substantially the same, as the KPMG Materials held by the Examiner.[12] KPMG filed similar objections to both requests, so the two motions will be considered together.

KPMG objected to any transfer to the Liquidating Trustee of the KPMG Materials, arguing that allowing a transfer (1) violates the terms and the spirit of the Protective Order dated August 21, 2007 (the "Protective Order"); (2) is inconsistent with the Examiner's role of being an independent and neutral officer of the Court; and (3) eliminates KPMG's bargained-for arbitration rights.

During the bankruptcy case, the Creditors' Committee undertook an investigation of claims pursuant to its duties as set forth in Bankruptcy Code §1103(c)(2).[13] The June 1, 2007 Order appointing the Examiner specifically provided that the Examiner and the Creditors' Committee should cooperate and coordinate their discovery efforts in investigating possible claims that the estates might have for accounting and financial statement irregularities, errors, and misstatements. This was to assure that their investigations were not duplicative. (June 1, 2007 Order, ¶12). In furtherance of that goal, the Protective Order provided that the Examiner

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[12]*See* n. 3, *supra.*, and KPMG Objection to the Liquidating Trustee Motion (docket no. 9118), ¶4 (stating that the KPMG documents held by the Creditors' Committee are substantially the same documents, subject to a substantively identical protective order).

[13]Indeed, the Committee initially resisted appointment of an Examiner, asserting, among other things, that its investigation of the Debtors' affairs would suffice. *See* Response of Official Committee of Unsecured Creditors in Opposition to Motion of the United States Trustee to Appoint Chapter 11 Trustee or, in the Alternative, an Examiner, dated May 9, 2007 (docket no. 615).

could share information with the Creditors' Committee. (Protective Order, ¶5(b)).

KPMG argues that the Liquidating Trustee is not the successor to the Creditors' Committee and, therefore, the Protective Order prevents sharing the materials with the Liquidating Trustee. From the inception of this chapter 11 proceeding, the inexorable effort of all constituencies was to liquidate all of the Debtors' assets. So, while the Debtors had a fiduciary duty to the estate, they never had any economic stake in the outcome of this liquidation. After confirmation of the Debtors' Plan, the Creditors' Committee was deemed disbanded as of the Plan's effective date, and the Liquidating Trustee became responsible for prosecuting any claims or causes of action.[14] If the Liquidating Trustee is not the "legal" successor to the Creditors' Committee itself, the Liquidating Trustee is certainly the functional successor to the constituency whose economic interests were and are directly at stake.

The Protective Order provided that "[u]pon the Examiner's completion of the Examiner's duties under the June 1, [2007] Order, the Examiner shall hold and preserve KPMG's Materials subject to further order of the Court after notice and hearing." (Protective Order, ¶7). In effect, this provision of the Protective Order merely postponed determination of what was to become of any materials collected from KPMG. Allowing transfer of the KPMG Materials to the Liquidating Trustee is not inconsistent with the Protective Order and, in fact, furthers, at a minimum, one important purpose of the Protective Order, i.e., to prevent the bankruptcy estate from having to pay twice for the same investigation in pursuit of potential claims.

KPMG also argues that transfer of the materials is inconsistent with the Examiner's role

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[14]*See* Order Confirming the Second Amended Joint Chapter 11 Liquidating Plan (docket no. 8596), ¶19; and Second Amended Joint Chapter 11 Liquidating Plan (ex. 1 to docket no. 8596) at Section 8D (dissolution of the Creditors' Committee), and Section 8F (Liquidating Trust).

as a "disinterested and nonadversarial" court-appointed officer. *See Baldwin*, 46 B.R. at 316. KPMG argues that allowing the Examiner to transfer the KPMG Materials provides an unfair advantage to the Liquidating Trustee and transforms the Examiner from an independent party to an advocate aligned with one side in anticipated litigation. In support of this argument, KPMG relies primarily on *Baldwin* and *Vietnam Veterans Foundation v. Erdman,* 1987 WL 9033 (March 19, 1987 D.D.C. 1987).

In *Baldwin*, the plaintiffs in a pending securities fraud action asked the Bankruptcy Court to require the court-appointed examiner to preserve documents and other investigative materials obtained during his investigation. The Court noted that the examiner was given free access to documents in his investigation based upon assurances "that the order appointing him and his status as an investigatory arm of this Court would serve to shield [those documents] from disclosure to others and from the threat of waiving any applicable privilege." *Baldwin*, 46 B.R. at 316. The *Baldwin* Court further wrote that

> If Examiners in other cases are to perform these "civil grand jury" functions effectively, and if their nonadversarial role is to be maintained, they and the subjects of their investigation must be unhampered by the threat that any information which comes into the Examiner's hands will be fair game for a plethora of anxious litigations, regardless of the limitations on disclosure that the Bankruptcy Court has imposed.

Id. at 317. The *Baldwin* Court recognized, however, that it was not deciding the issue regarding disclosure of the examiner's investigative materials at that time, but ordered the examiner to (i) maintain documents and other materials, (ii) list every document which is subject to a claim of privilege, and (iii) not disclose, identify or produce any document or item obtained in the investigation without approval of the Bankruptcy Court or the District Court hearing the

securities fraud litigation. *Id.*

Similarly, the *Veterans Foundation* Court decided that a former bankruptcy examiner could not provide testimony based upon the documents and information he obtained during his investigation as a court-appointed examiner. *Veterans Foundation,* 1987 WL 9033 at *2. The Court wrote that the "fruits of his investigation" for the bankruptcy court should serve no other purpose or interested party. *Id.* The written report provided by the examiner to the Bankruptcy Court, however, might be admissible, if relevant. *Id.* at *3.

The present situation, however, can be distinguished from *Baldwin* and *Veterans Foundation.* Those courts were concerned with attempts by third parties to circumvent the usual discovery procedures by taking possession of materials provided to an examiner for a different purpose. The reluctance to allow third parties access to the Examiner's investigative documents is appropriate, but is distinct from allowing access to the same documents by a party who succeeded to the claims of the debtor's estate, such as the Liquidating Trustee, and is pursuing the claims for the benefit of creditors in accordance with the terms of a confirmed plan. The Examiner's duties specifically included the investigation, identification and evaluation of any claims or causes of action that the estates might have arising from or relating to irregularities, errors or misstatements with respect to the Debtors' financial statements. As recognized in *In re Carnegie Int'l Corp.,* 51 B.R. 252, 256 (Bankr.S.D.Ind. 1984),

> The Examiner has invested numerous hours of research and investigation, an expense for which the estate is already liable. Common sense and the interests of creditors and equity holders suggest that such administrative expenses be kept to a minimum and that the estate derive the maximum benefit from costs already incurred.

Id. at 256. The *Carnegie* Court allowed the Examiner to bring the lawsuits identified in the

investigation to minimize expenses and maximize benefits to the estate. *Id.* Here, it is in the best interest of the estate and its creditors to pass the fruits of the Examiner's investigation on to the Liquidating Trustee. Unlike in *Baldwin* or *Veterans Foundation*, here there can be neither surprise to, nor frustrated expectation by, parties who provided information to the Examiner, because the order appointing the Examiner required him to investigate potential claims and causes of action, as well as to share that information with the Creditors' Committee, which was simultaneously evaluating potential claims that could be brought for the benefit of the estate and its creditors. As discussed above, this responsibility passed to the Liquidating Trustee upon confirmation of the Debtors' Plan.

Moreover, allowing the Examiner to transfer documents to the Liquidating Trustee cannot adversely impact the Examiner's independence, since his investigation is complete and his report already has been filed with this Court. *See Carnegie*, 51 B.R. at 255 (deciding that there was no risk of prejudice since the decision to expand the examiner's powers was made after the filing of his report). While it is true that the Examiner identified potential claims against KPMG (*see* the Examiner's Final Report at pp. 519-20) the Examiner's duties are completed and do not involve the assertion by him of any potential claims against KPMG. Indeed, the Examiner was never granted authority to pursue potential claims against any party and he asked for none.

Finally, KPMG also argues that transfer of the KPMG Materials to the Liquidating Trustee would violate its arbitration rights contained in the pre-petition engagement letter agreement between KPMG and the Debtors dated September 7, 2004 (the "Engagement Letter"). The Engagement Letter sets forth certain dispute resolution procedures, as detailed in an attached appendix, for any dispute or claim arising out of the services provided by KPMG to the Debtors

under the Engagement Letter. (*See* Ex. A to KPMG's Objection, docket no. 8873, at A9). The dispute resolution procedures specifically provide that "[d]iscovery shall be permitted in connection with the arbitration only to the extent, if any, expressly authorized by the arbitration panel upon a showing of substantial need by the party seeking discovery." (*Id.* at A18). KPMG argues that the transfer of the KPMG Materials would allow the Liquidating Trustee to obtain discovery in any potential claim against KPMG well beyond the bounds permissible in an arbitration proceeding under the terms as set forth in the Engagement Letter.

The Third Circuit has held that a bankruptcy court lacks authority to deny enforcement of an applicable arbitration clause unless the party opposing arbitration can establish, under the *McMahon* standard, that Congress, in enacting a particular statute, intended to override arbitration rights. *Mintze v. American Gen. Fin. Serv., Inc. (In re Mintze)*, 434 F.3d 222, 231 (3d Cir. 2006). The *McMahon* standard provides that:

> To overcome enforcement of arbitration, a party must establish congressional intent to create an exception to the FAA's mandate with respect to the party's statutory claims. Congressional intent can be discerned in one of three ways: (1) the statute's text, (2) the statute's legislative history, or (3) "an inherent conflict between arbitration and the statute's underlying purposes."

Mintze, 434 F.3d at 229 *citing Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 227, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987). However, before I can consider whether an arbitration clause is enforceable, I must determine whether the particular clause is applicable to the motions before me.

In support of its argument for applying the arbitration clause to this matter, KPMG relies on the case *Ernst & Young, LLP v. Pritchard (In re Daisytek, Inc.)*, 323 B.R. 180 (N.D.Tex. 2005). In *Daisytek*, the Court vacated a bankruptcy court order allowing a post-confirmation

creditors' trust to take a Rule 2004 examination of the debtor's pre-bankruptcy accountants. As in this case, the accountants argued that a mandatory arbitration clause in the engagement letter prevented the discovery. The District Court decided that a court must look to the underlying proceeding to determine whether a matter in a bankruptcy must be submitted to arbitration. *Daisytek*, 323 B.R. at 186. "If the proceeding derives solely from the provisions of the Bankruptcy Code, and arbitration of the proceeding would conflict with the purposes of the Code, the bankruptcy court has discretion to refuse enforcement of a provision requiring arbitration." *Id.* at 187 *citing In re Gandy*, 299 F.3d 489, 495 (5th Cir. 2002). The *Daisytek* Court then rejected the premise that the Rule 2004 examination was the proceeding at issue, deciding that the "proper focus is on the underlying nature of the proceedings that could flow from the information obtained through the Rule 2004 examination." *Id.* at 187.

When a similar issue arose in *In re Friedman's, Inc.*, 356 B.R. 779 (Bankr.S.D.Ga. 2005), the Bankruptcy Court was not persuaded to apply the rationale of *Daisytek*. In *Friedman's*, the Court was faced with a debtor's motion to compel discovery, followed by the accountants' motion for a protective order from the discovery. The accountants argued that the arbitration clause in its engagement letter required all disputes to be handled through mediation and mandatory arbitration. *Friedman's*, 356 B.R. at 782. While the *Friedman's* Court recognized that "arbitration agreements are generally favored and have been enforced in bankruptcy courts," it determined that the arbitration clause and dispute resolution procedures in the engagement letter were not triggered by the discovery requests because "there is no identifiable, discrete dispute between the parties that could be argued to control the scope of discovery." *Id.* at 783. The *Friedman's* Court declined to adopt the reasoning of *Daisytek*, noting that the cases upon

which the *Daisytek* Court relied (i.e., *In re Nat'l Gypsum Co.,* 118 F.3d 1056 (5th Cir. 1997) and *Gandy*), involved situations "in which the parties were contesting identified and specific causes of action," rather than cases in which potential claims were being investigated. *Id.* at 784. The *Friedman's* Court wrote, in articulating a paramount interest involved in the bankruptcy process:

> To prospectively shut down any meaningful investigation would be fundamentally at odds with bankruptcy policy and severely damage the interest of unsecured creditors. *See In re Nat'l Gypsum*, 118 F.3d at 1069 (stating that the purpose of the Bankruptcy Code includes the "goal of centralized resolution of purely bankruptcy issues, the need to protect creditors and reorganizing debtors from piecemeal litigation, and the undisputed power of a bankruptcy court to enforce its own orders.")

Friedman's, 356 B.R. at 784.

The arbitration clause in the KPMG Engagement Letter is not implicated by the motions before me because, as of the time this relief was sought, no evidence was presented that any claim had been asserted or that any particular proceeding had been commenced against KPMG. The Examiner's Motion does not seek relief to take additional discovery. The Examiner asks only that the fruits of his investigation be transferred to the Liquidating Trustee. The plain language of the Engagement Letter's dispute resolution procedures, as cited by KPMG, provides that it applies to discovery "in connection with the arbitration." The relief sought here is not in connection with any arbitration proceeding.

To the contrary, the relief requested in the motions do not prevent KPMG from asserting any right to arbitration (and attendant rights) if a proceeding is commenced. Moreover, it does not prevent KPMG from arguing that the Liquidating Trustee should not share the KPMG Materials with anyone else, or from arguing that all or part of the KPMG Materials are inadmissible in any later proceeding, whether before a court or an arbitrator. The motions seek

entry of an order providing that the materials held by the Examiner and the Creditors' Committee be transferred to Liquidating Trustee. Under these circumstances, the terms of the confirmed Plan, and in furtherance of the policies underlying the Bankruptcy Code, the transfer of the KPMG Materials is warranted.

CONCLUSION

For the reasons set forth above, the Examiner's Motion will be granted, in part, and denied, in part, as follows:

(1) the Examiner's request for a discharge will be granted;

(2) the Examiner's request to be reimbursed by the Liquidating Trust for future time and expenses incurred will limited to a cap of $100,000, pursuant to the terms set forth in the attached order.

(3) the Examiner's request for permission to transfer portions of the Investigative Record and Other Investigative Materials to the Liquidating Trustee will be granted and the materials to be turned over to the Liquidating Trustee will include, without limitation, the Government Materials;

(4) the Examiner's request for an order providing that sharing documents with governmental agencies, the office of the United States Trustee, and the Liquidating Trustee does not cause a waiver of any applicable protection or privilege is denied, without prejudice; and

(5) the Examiner's request for an order precluding third party discovery with respect to the Investigative Records, Other Investigative Materials, Governmental Materials and Other Materials, unless the third party demonstrates that it cannot

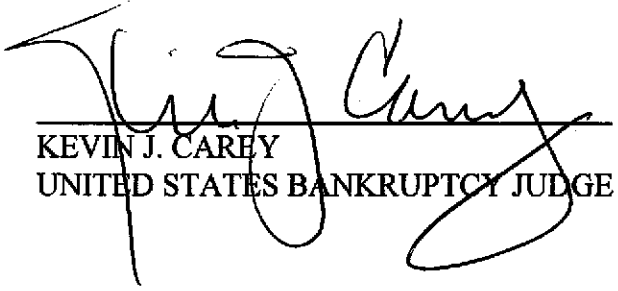
obtain the documents from any other source, is granted pursuant to the terms set forth in the attached order.

(6) the Examiner's request to transfer the KPMG Materials to the Liquidating Trustee is granted.

The Liquidating Trustee Motion, to the extent not rendered moot by the decision with respect to the Examiner's Motion, will be granted.

An appropriate Order follows.

BY THE COURT:



KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Dated: May 1, 2009

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	CHAPTER 11
	:	(Jointly Administered)
NEW CENTURY TRS HOLDINGS, INC., *et al.*[1]	:	Case No. 07-10416 (KJC)
Debtors	:	
	:	**Re: docket nos 8665 and 9044**

ORDER DISCHARGING MICHAEL J. MISSAL AS EXAMINER
AND
GRANTING, IN PART, THE EXAMINER'S MOTION REGARDING THIRD-PARTY DISCOVERY AND PROCEDURES FOR THE DISPOSITION AND SHARING OF CERTAIN DOCUMENTS AND INFORMATION
AND
GRANTING NEW CENTURY LIQUIDATING TRUSTEE'S MOTION REGARDING THE TRANSFER OF CERTAIN DOCUMENTS FROM THE FORMER OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE LIQUIDATING TRUSTEE

Upon consideration of the "Motion of Michael J. Missal, Examiner for Order Discharging the Examiner, Granting Relief From Third Party Discovery, and Establishing Procedures for the Disposition and Sharing of Certain Documents and Information (docket no. 8665) (the "Examiner's Motion"), and

[1]The Debtors are the following entities: New Century Financial Corporation (f/k/a New Century REIT, Inc.), a Maryland corporation; New Century TRS Holdings, Inc. (f/k/a New Century Financial Corporation), a Delaware corporation; New Century Mortgage Corporation (f/k/a JBE Mortgage) (d/b/a NCMC Mortgage Corporate, New Century Corporation, New Century Mortgage Ventures, LLC), a California corporation; NC Capital Corporation, a California corporation; Home123 Corporation (f/k/a The Anyloan Corporation, 1800anyloan.com, Anyloan.com), a California corporation; New Century Credit Corporation (f/k/a Worth Funding Incorporated), a California corporation; NC Asset Holding, L.P. (f/k/a NC Residual II Corporation), a Delaware limited partnership; NC Residual III Corporation, a Delaware corporation; NC Residual IV Corporation, a Delaware corporation; New Century R.E.O. Corp., a California corporation; New Century R.E.O. II Corp., a California corporation; New Century R.E.O. III Corp., a California corporation; New Century Mortgage Ventures, LLC (d/b/a Summit Resort Lending, Total Mortgage Resource, Select Mortgage Group, Monticello Mortgage Services, Ad Astra Mortgage, Midwest Home Mortgage, TRATS Financial Services, Elite Financial Services, Buyers Advantage Mortgage), a Delaware limited liability company; NC Deltex, LLC, a Delaware limited liability company; and NCoral, L.P., a Delaware limited liability partnership. These entities are referred to herein as the "Debtors" or "New Century," collectively.

upon consideration of the objections to the Examiner's Motion filed by KPMG LLC, certain former officers and underwriters of New Century, the New York State Teachers' Retirement System (the "NYSTS"), and the New Century Liquidating Trust and Reorganized New Century Warehouse Corporation (the "Liquidating Trustee"); and the responses of the Liquidating Trustee and the Examiner thereto; and

upon consideration of the "Motion by the New Century Liquidating Trustee and Reorganized New Century Warehouse Corporation for an Order Permitting the Transfer to the Liquidating Trustee of Certain Documents by the Former Official Committee of Unsecured Creditors" (docket no. 9044) (the "Liquidating Trustee's Motion"); and

upon consideration of KPMG LLC's Objection to the Liquidating Trustee's Motion; and

the Court having conducted hearings on September 18, 2008, and November 19, 2008, during which interested parties were given the opportunity to be heard with respect to the Examiner's Motion and the Liquidating Trustee's Motion; and

after due deliberation and sufficient cause appearing therefore; it is hereby ORDERED:

1. The Examiner's Motion is GRANTED, in part, to the extent provided herein.
2. The Examiner is discharged from his duties under the terms of the Order Denying in Part and Granting in Part Motion of the United States Trustee for an Order Directing the Appointment of a Chapter 11 Trustee, or in the Alternative, an Examiner dated June 1, 2008 (the "June 1 Order"), as subsequently amended, and his appointment as Examiner is hereby terminated.
3. Notwithstanding paragraph 2, above, the Examiner shall continue to cooperate as contemplated in the June 1 Order, with governmental agencies, the United States

Trustee, her counsel and staff and the Liquidating Trustee and his professionals provided, however, that the payment of fees and expenses incurred by the Examiner and his professionals under this paragraph will be subject to the cap as set forth in paragraph 9 herein.

4. The Examiner shall transfer to the Liquidating Trustee, as requested by the Liquidating Trustee, copies of all of (a) the documents that were produced to the Examiner by a number of parties, including the Debtors, the Debtors' independent auditors, KPMG LLP ("KPMG"), and the Debtors' independent directors (collectively, the "Investigative Record") and (b) the documents that were created and compiled by the Examiner and his professionals, Kirkpatrick & Lockhart Preston Gates Ellis LLP (now K&L Gates LLP) ("K&L Gates"), Saul Ewing LLP ("Saul"), and BDO Seidman LLP ("BDO") (collectively, the "Professionals"), in connection with the Examiner's investigation, including but limited to, requests for information received by the Examiner or his Professionals from government agencies and any materials or communications provided in response to those requests (the "Other Investigative Materials" and collectively with the Investigative Record, the "Examiner's Materials"). The Examiner is not required by this Order to transfer documents (or parts of documents, as the case may be) that contain privileged and otherwise confidential or protected communications and interaction between the Examiner and the Professionals of the type as described generally by the Examiner's counsel at the September 18, 2008 hearing

before this Court (the "Protected Materials").[2] To the extent that such transfer of the Examiner's Materials is not permitted under prior orders of this Court (the October 10, 2007 Order (docket no. 3261) or the August 21, 2007 Order (docket no. 2368) regarding the KPMG documents), the Court modifies its prior orders to permit this transfer.

5. The Examiner shall provide the Liquidating Trustee with a description by category of the Protected Materials as requested by the Liquidating Trustee. The Liquidating Trustee reserves all rights, on any grounds, to request that the Examiner provide him with copies of any of the Protected Materials and, if such request is refused, to move this Court, or other forum, to direct the production of such refused Protected Materials subject to the terms of this Order applicable to Examiner's Materials. The Examiner reserves all rights, on any grounds including that of privilege, to refuse to provide any of the Protected Materials to the Liquidating Trustee and to oppose any motion by the Liquidating Trustee to direct the production thereof.

6. Subject to his obligations under paragraphs 3 and 4 above, the Examiner and his Professionals are relieved from any duty to produce documents or information to third parties gathered by, produced to, or created by the Examiner or his Professionals, [e.g., the Examiner's Materials], in response to any formal or informal discovery requests, including, but not limited to, any subpoena, request for production of documents, request for admissions, interrogatories, request for

[2]*See* Tr. 9/18/2008 at 33.

testimony or any other discovery of any kind related to this proceeding and/or the Examiner's investigation, except that this prohibition:

a) shall not apply to requests for information and materials that the third party demonstrates that it cannot obtain through discovery from any other source so long as such production would not violate any protective or other order of this Court and the requests do not seek the production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege or protection; it being understood that nothing herein is intended to create a privilege or protection in favor of the Examiner and/or his Professionals that did not already exist; and, further, with all rights to dispute the attorney-client privilege, the work product doctrine or any other applicable privilege or protection as asserted by the Examiner being preserved; and

b) shall not apply to requests related to the compensation and reimbursement applications submitted by the Examiner and his Professionals to this court.

7. Upon receipt of a formal or informal discovery request related to the above-captioned cases, the Examiner shall provide the proponent of the request with a copy of this Order within a reasonable period of time after receiving the request and, at the same time and to the extent permitted by law, provide the Liquidating Trustee with a copy of the formal or informal discovery request.

8. The Examiner shall retain the Examiner's Materials and Protected Materials (collectively the "Records") for a period of two (2) years from the date of this

Order (the "Initial Retention Period"). After the Initial Retention Period, and upon written consent of the Liquidating Trustee and the United States Trustee, the Examiner may move this Court for an order permitting his destruction of the Records (the "Destruction Motion"). Notice of the Destruction Motion shall be provided by the Examiner no less than thirty (30) days prior to the scheduled hearing date of the Destruction Motion to counsel of record for those parties who have filed objections to the Examiner's Motion, the Liquidating Trustee, the United States Trustee, and any other party as the Court may direct. Any and all objections to the Destruction Motion shall be served upon the Examiner, the Liquidating Trustee and the United States Trustee and filed at least ten (10) days prior to the scheduled hearing date of the Destruction Motion or as otherwise directed by this Court.

9. The Examiner and his Professionals shall be reimbursed for reasonable time and expenses incurred from and after the date of entry of this order in (a) handling of the Records as provided herein, (b) cooperating with the entities and persons specified in paragraph 3, and (c) responding to any formal or informal discovery requests to the extent such requests are served, notwithstanding the prohibitions set forth in this Order, upon the submission of invoices to the Liquidating Trust without the necessity of filing further fee applications, provided, however, that payment of the first $100,000 of fees and expenses incurred by the Examiner and his Professionals will be the responsibility of the Liquidating Trust (the "Paragraph 9 Cap") and the payment of fees and expenses thereafter incurred by

the Examiner and his Professionals in excess of the Paragraph 9 Cap shall be the sole responsibility of the party requesting the Examiner's cooperation or services. This Court shall retain jurisdiction to resolve professional compensation issues for the Examiner and his Professionals in connection with these bankruptcy cases.

10. To the extent there is any dispute concerning the payment of all or any part of any such invoices, the undisputed portion of the invoices will be paid and the Court will retain jurisdiction to hear and determine any such dispute on motion of the former Examiner or his counsel, and after notice and a hearing.

11. To the extent the Examiner's Motion seeks an order providing that its sharing of documents with governmental agencies, the office of the United States Trustee, and the Liquidating Trustee does not constitute a waiver of any applicable protections belonging to the Examiner and his Professionals, such request is hereby denied, without prejudice.

12. If KPMG and the Liquidating Trustee become parties to an arbitration and as to that portion of the Investigative Record to be provided by the Examiner and/or the former Official Committee of Unsecured Creditors to the Liquidating Trustee hereunder that consists of documents that were produced by KPMG to the Examiner and/or the former Official Committee of Unsecured Creditors (the "KPMG Investigative Record"), nothing in this Order is intended to address or decide any positions taken or arguments advanced in such arbitration by either KPMG or the Liquidating Trustee as to the KPMG Investigative Record with respect to the provision in the engagement letter between KPMG and New

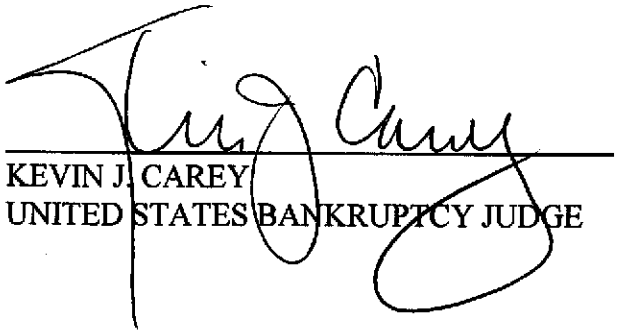
Century which reads: "[d]iscovery shall be permitted in connection with the arbitration only to the extent, if any, expressly authorized by the arbitration panel upon a showing of substantial need by the party seeking discovery".

13. In addition to the Document Retention policy described in paragraph 33 of the Order Confirming the Second Amended Joint Chapter 11 Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Dated as of April 23, 2008, the Liquidating Trustee shall preserve and maintain any and all documents and electronic data, including the Records, provided to the Liquidating Trustee by the Examiner and/or the former Official Committee of Unsecured Creditors pursuant to this Order and the Liquidating Trustee shall not destroy or otherwise abandon any or all of the Records absent further order of the Bankruptcy Court after a hearing upon notice to parties in interest and an opportunity to be heard, in the same manner as prescribed in paragraph 8 hereof.

14. The Liquidating Trustee's Motion, to the extent it is not rendered moot by the decision with respect to Examiner's Motion, is GRANTED.

15. The Court reserves jurisdiction as to all matters related to and arising from the implementation, interpretation and enforcement of this Order including, without limitation, any requested revision or modification thereof.

BY THE COURT:



KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Dated: May 1, 2009

cc: David W. Carickhoff, Jr., Esquire[1]

[1]Counsel shall serve a copy of this Order and the accompanying Memorandum upon all interested parties and file a Certificate of Service with the Court.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SEMCRUDE, L.P., et al.	Case No. 08 - 11525 (BLS)
Debtors	Jointly Administered
	RE: Docket No. 4149

ORDER GRANTING IN PART THE EXAMINER'S MOTION FOR ENTRY OF AN ORDER REGARDING CERTAIN PROCEDURAL ISSUES IN CONNECTION WITH THE TERMINATION OF THE EXAMINATION OF SEMCRUDE, L.P., ET AL.

Upon the Motion of Louis J. Freeh, the Examiner, with Respect to Certain Procedural Issues in Connection with the Termination of the Examination of SemCrude, L.P., et al. (the "Motion"); and adequate and sufficient notice of the Motion having been provided to all parties in interest; and the Court having conducted a hearing during which interested parties were given the opportunity to be heard with respect to the Motion; and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is granted in part.[1]

2. The Examiner[2] is discharged from his duties under the terms of the Examiner Order, and his appointment as Examiner in the Debtors' cases is hereby terminated.

3. Notwithstanding paragraph 2 above, the Examiner (a) shall continue to cooperate as contemplated in the Examiner Order with the governmental agencies, the UST, and the estate representatives including the Debtors, the Creditors Committee, the Oil Producers Committee,

[1] The remainder of the relief requested in the Motion will be addressed in a separate order.

the Agent, and any litigation trustee that is created on the effective date of the Debtors' plan of reorganization subject to any limitations contained in the Confidentiality Agreements and Informal Confidentiality Agreements and other confidential, protected or privileged information of the Examiner; and (b) shall remain subject to this Court's jurisdiction for the purpose of resolving professional compensation issues in connection with the Debtors' cases. Nothing in this Order shall constitute a determination that any information or material provided to or of the Examiner is confidential, protected or privileged and the rights of any creditor, party in interest or third party to challenge any such designation in this Court or another court of competent jurisdiction is reserved.

4. The Examiner and the Examiner's Professionals shall retain all materials produced to or by the Examiner or the Examiner's Professionals in connection with the Examination conducted pursuant to the Examiner's Order, including, but not limited to, documents, e-mails, electronic communications and other information produced or maintained electronically, memoranda of witness interviews, deposition transcripts and requests for information by any third parties (collectively, the "Records") for a period of two years from the date of this Order (the "Initial Retention Period"). After the Initial Retention Period, the Examiner may file a motion with the Court for an order permitting the destruction of the Records or, in accordance with any applicable Confidentiality Agreement or Informal Confidentiality Agreement, permitting the return the of the Records to the party that produced them (the "Disposal Motion"). Notice of the Disposal Motion shall be provided by the Examiner no less than sixty (60) days prior to the scheduled hearing date of the Disposal Motion to counsel of record for those parties who have filed objections to the Motion, the United States Trustee, the SEC, the United States Attorney's Office for the Northern District of Oklahoma, the United

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

States Attorney's Office for the Southern District of New York, the Federal Bureau of Investigation (Oklahoma), the Federal Bureau of Investigation (New York), the United States Commodities Futures Trading Commission, the United States Department of Justice (Fraud Section), the United States Department of the Treasury (Office of the Comptroller of the Currency), the New York County District Attorney's Office, the Debtors, the Creditors Committee, the Oil Producers Committee, the Agent, parties to the Confidentiality Agreements and Informal Confidentiality Agreements, and any other party as the Court may direct. Any and all objections to the Disposal Motion shall be served upon the Examiner, the Examiner's counsel, and the United States Trustee and filed at least ten (10) days prior to the scheduled hearing date of the Disposal Motion or as otherwise directed by this Court. The Examiner may only dispose of the Records in accordance with the further order of this Court in connection with the Disposal Motion. The Examiner and the Examiner's Professionals have the right to and may oppose any efforts by a party to require the retention of the Records after the Initial Retention Period.

5. The Examiner's Professionals shall be entitled to reimbursement for their reasonable fees and actual costs after the date of the entry of this Order for (a) handling of the Records as provided herein including, without limitation, the prosecution of the Disposal Motion; (b) cooperating with the entities and persons specified in paragraph 3; (c) the prosecution of the Motion in connection with the remainder of the relief sought therein; (d) responding to any formal or informal discovery requests served upon the Examiner or the Examiner's Professionals; (e) the preparation and prosecution of interim and final fee applications; and (f) such other actions undertaken by the Examiner or the Examiner's Professionals at the request or direction of the Court.

6. Neither the Examiner nor the Examiner's Professionals shall have or incur any liability with respect to any act taken or omitted to be taken, statement or representation arising out of, relating to, or involving in any way, the Examination or any report, pleading or other writing filed by the Examiner or the Examiner's Professionals in connection with, related to, or arising out of the Debtors' bankruptcy cases including, without limitation, the Report; provided, however, that nothing contained in this paragraph shall be construed to limit the liability of the Examiner or the Examiner's Professionals for violation of any applicable disciplinary rule or code of professional responsibility or for any acts of willful misconduct or gross negligence as determined in a final and non-appealable order of a court of competent jurisdiction or release the Examiner or any of the Examiner's Professionals from compliance with any obligations arising under any confidentially order, including the Order Approving the Debtors' Confidentiality Agreement or the Confidentiality Agreements; and, provided further, that nothing contained herein shall preclude the Fee Auditor from filing advisory reports with respect to the fees incurred by the Examiner or the Examiner's Professionals.

7. The final fee applications of the Examiner and the Examiner's Professionals shall be filed by August 31, 2009. Objections, if any, to the final fee applications of the Examiner and the Examiner's Professionals must be filed by September 28, 2009. A hearing to consider the final fee applications of the Examiner and the Examiner's Professionals will be held on October 8, 2009, unless otherwise noticed.

8. In the event of a conflict between this Order and any provision of a plan of reorganization confirmed in the Debtors' cases, this Order shall control as it pertains to the rights, duties and obligations of the Examiner and the Examiner's Professionals.

9. This Court shall retain jurisdiction to resolve professional compensation issues for the Examiner's Professionals in connection with the Debtors' cases.

10. The Court reserves jurisdiction as to all matters related to and arising from the implementation, interpretation and enforcement of this Order including, without limitation, any requested revision or modification thereof.

DATED: Wilmington, Delaware
July 27, 2009

HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SEMCRUDE, L.P., et al.	Case No. 08 - 11525 (BLS)
Debtors	Jointly Administered
	Re: Docket No. 4149

SUPPLEMENTAL ORDER GRANTING IN PART THE EXAMINER'S MOTION FOR ENTRY OF AN ORDER REGARDING CERTAIN PROCEDURAL ISSUES IN CONNECTION WITH THE TERMINATION OF THE EXAMINATION OF SEMCRUDE, L.P., ET AL.

Upon consideration of the Motion of Louis J. Freeh, the Examiner, with Respect to Certain Procedural Issues in Connection with the Termination of the Examination of SemCrude, L.P., et al. (the "Motion"); and adequate and sufficient notice of the Motion having been provided to all parties in interest; and upon consideration of Westback Purchasing Co., LLC's Response and Partial Objection to Motion, the Limited Objection of Lead Plaintiff to the Motion, Gregory C. Wallace's (1) Partial Objection to the Motion; and (2) Request to Clarify Committee's Obligations Regarding Examiner and Third-Party Documents (the "Wallace Partial Objection"), Thomas L. Kivisto's Joinder in the Wallace Partial Objection, and Gregory C. Wallace's Sur-Reply in Partial Objection to Examiner's Motion for an Order Regarding Certain Procedural Issues; and the Court having conducted hearings on July 14, 2009 and September 9, 2009, during which interested parties were given the opportunity to be heard with respect to the Motion; and after due deliberation and sufficient cause appearing therefore, it is hereby

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ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is granted in part as set forth herein[1].

2. Subject to the provisions of paragraph 4, the Examiner[2] shall transfer to the litigation trustee appointed pursuant to the confirmation order approving the Debtors' plan of reorganization (the "Litigation Trustee") copies of: (A) all documents produced by third parties to the Examiner in connection with the Examination that are not subject to written or informal confidentiality agreements and/or stipulations (collectively, "Confidentiality Agreements"), unless the producing party has consented in writing to the Examiner's transfer of the documents to the Litigation Trustee; (B) all transcripts of Bankruptcy Rule 2004 Examinations conducted in connection with the Examination; (C) any written presentations regarding the Examination prepared by the Examiner or the Examiner's Professionals that were produced to any governmental agency; (D) any documents produced by third parties to the Examiner in connection with the Examination that the Examiner produced to any governmental agencies; (E) any documents that were created and/or compiled by the Examiner or the Examiner's Professionals that were shared with or produced to third parties; and (F) a list of the parties with whom the Examiner entered into Confidentiality Agreements.

3. Any creditor, party in interest to these cases, or third party is hereby precluded from issuing or serving upon the Examiner or the Examiner's Professionals any formal or informal discovery request, including but not limited to, any subpoena, request for production of documents, requests for admissions, interrogatories, subpoenas *duces tecum*, requests for testimony, letters rogatory or any other discovery of any kind whatsoever in any way related to the Debtors, the nondebtor affiliates of the Debtors, the bankruptcy cases, the Report, or the

[1] The reminder of the relief requested in the Motion is addressed in a separate Order of this Court dated July 27, 2009. [Docket No. 4766]

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Examination with respect to any knowledge or documents (as defined by Bankruptcy Rule 7034(c)) or any other material in the possession, custody or control of the Examiner or the Examiner's Professionals regarding, concerning or in any way related to the Debtors, the nondebtor affiliates of the Debtor, the Debtors' bankruptcy cases, the Examiner Order, the Report or the Examination; except that this prohibition:

a. shall not apply in the event a federal district court presiding over a criminal proceeding in which a party in interest is a defendant issues an order finding that the Examiner or the Examiner's Professionals are obliged to produce documents in their possession under the principals of *Brady v. Maryland*, 373 U.S. 83 (1963), as embodied in subsequent case law and the Federal Rules of Criminal Procedure, this Order shall not preclude such production as the federal district court may require. This Order in no way establishes or provides that obligations under *Brady* are applicable to the Examiner or the Examiner's Professionals. The Examiner and the Examiner's Professionals have the right to and may oppose any efforts by a party to secure such an order from a federal district court on any basis, including the applicability of *Brady* to the Examiner or the Examiner's Professionals, and seek reimbursement for any fees and costs associated with such opposition from the Debtors' estates;

b. shall not apply in the event a party in interest, after the filing of a motion upon at least thirty (30) days notice to the Examiner and the Examiner's counsel, demonstrates to this Court or another court of competent jurisdiction that it cannot obtain the requested documents from any other source, that the production would not violate any order of this Court including, without limitation, the Order Approving the Debtors' Confidentiality Agreement with the Examiner, and the request does not seek the production of documents that are determined to be protected by the attorney-client privilege, the work product doctrine or another applicable

privilege or protection. The Examiner and the Examiner's Professionals have the right to and may oppose any efforts by a party to secure such information and seek reimbursement for any fees and costs associated with such opposition from the Debtors' estates; and

c. shall not apply to requests related to the compensation and reimbursement applications submitted by the Examiner and the Examiner's Professionals submitted to this Court.

4. Notwithstanding anything to the contrary contained herein, and notwithstanding any provision of any plan of reorganization that is or may be confirmed in these cases, the Examiner and the Examiner's Professionals shall not be required to produce to any party, including the Debtors, the Creditors Committee, the Oil Producers Committee or the Litigation Trustee (or any successor to the Debtors or any other party) any material comprising the work product of the Examiner and/or the Examiner's Professionals and/or any material protected by the attorney-client privilege or other applicable privileges or protections. Nothing in this Order shall constitute a determination that any information or material provided to or of the Examiner or the Examiner's Professionals is confidential, protected or privileged and, subject to the limitations contained in paragraph 3 of this Order regarding the right to obtain discovery from the Examiner and the Examiner's Professionals, the rights of any creditor, party in interest or third party to challenge such designation in this Court or another court of competent jurisdiction is reserved.

5. To the extent that the Examiner or the Examiner's Professionals are directed to produce documents pursuant to paragraph 3 of this Order and the Examiner or the Examiner's Professionals withhold the production of documents based upon a claim of attorney-client privilege, the work product doctrine or any other applicable privilege or protection, the Examiner

shall provide a privilege log, containing the information required under Bankruptcy Rule 7026(b)(5)(A) within thirty (30) days of the entry of an order directing the Examiner to produce the discovery.

6. In the event of a conflict between this Order and any provision of a plan of reorganization confirmed in the Debtors' cases, this Order shall control as it pertains to the rights, duties and obligations of the Examiner and the Examiner's Professionals.

7. Except as otherwise set forth in this Order, the Court reserves jurisdiction as to all matters related to and arising from the implementation, interpretation and enforcement of this Order including, without limitation, any requested revision or modification thereof.

DATED: Wilmington, Delaware
October 21, 2009

HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
LEHMAN BROTHERS HOLDINGS INC., et al.,	:	Case No. 08-13555 (JMP)
Debtors.	:	(Jointly Administered)

ORDER DISCHARGING EXAMINER
AND GRANTING RELATED RELIEF

Upon consideration of the Motion of Anton R. Valukas, Bankruptcy Court Examiner, by and through his attorneys, Jenner & Block LLP, for an Order discharging him as Examiner, and after due deliberation and sufficient cause appearing,

IT IS ORDERED as follows:

1. The Motion is granted, the appointment of Anton R. Valukas is terminated; and the Examiner and his professionals are discharged from any further obligations, duties, or responsibilities except as otherwise set forth in this Order. Subject to paragraph 4 below:

   a. If requested, the Examiner and his professionals may continue to provide such cooperation and assistance as he in his discretion deems appropriate to government agencies and the United States Trustee.

   b. If requested, the Examiner and his professionals may continue to provide such cooperation and assistance as he in his discretion deems appropriate to the

Debtors, the official committee of unsecured creditors appointed in these cases (the "Creditors' Committee") and James W. Giddens, SIPA Trustee for the Liquidation of the Business of Lehman Brothers Inc. (the "SIPA Trustee").

c. If other parties request cooperation or assistance from the Examiner and his professionals and such requesting parties are not parties to a pending civil litigation, the Examiner shall give written notice to the attorneys for the Debtors, Weil, Gotshal & Manges LLP, and the Creditors' Committee, Milbank, Tweed, Hadley & McCloy LLP, and any other party in interest that makes a written request of the Examiner for notice of all such requests for cooperation or assistance from the Examiner. The Debtors, the Creditors' Committee and any party that has requested notice of requests for cooperation or assistance of the Examiner may, within five business days of receipt of such notice, informally object to such request. If an objection is asserted, the parties shall confer within five business days of the assertion of such objection in an effort to resolve the objection. If the objection cannot be resolved, the objecting party or parties may, within five additional business days, make a motion with the Court to be heard at the next omnibus hearing and in compliance with the case management order governing the Debtors' cases seeking an order prohibiting or limiting the scope of the requested cooperation or assistance from the Examiner and his professionals, or for such other relief as may be appropriate. If such a motion is filed, the Examiner

shall not provide the requested cooperation or assistance pending the disposition of the motion. If no objection is asserted within five business days of receipt of the notice, or if no motion is filed within ten business days after assertion of an objection, the Examiner and his professionals may provide such cooperation and assistance as he in his discretion deems appropriate.

d. Notwithstanding anything herein to the contrary, if a party to a pending civil litigation, including the Debtors, the Creditors' Committee and the SIPA Trustee, requests cooperation and assistance from the Examiner relating to, concerning or involving that litigation, the Examiner shall give written notice to all other parties to such litigation and the Debtors and the Creditors' Committee to the extent either the Debtors or the Creditors' Committee is not a named party to the litigation. Any such party may, within five business days of receipt of such notice, informally object to such request. If an objection is asserted, the parties shall confer within five business days of the assertion of such objection in an effort to resolve the objection. If the objection cannot be resolved, the objecting party or parties may, within five additional business days, make a motion with the Court to be heard at the next omnibus hearing and in compliance with the case management order governing the Debtors' cases or in the court where such litigation is pending in accordance with the rules governing notice and discovery in that litigation seeking an order prohibiting or limiting the scope of the requested cooperation or assistance from

the Examiner and his professionals, or for such other relief as may be appropriate. If such a motion is filed, the Examiner shall not provide the requested cooperation or assistance pending the disposition of the motion. If no objection is asserted within five business days of receipt of the notice, or if no motion is filed within ten business days after assertion of an objection, the Examiner and his professionals may provide such cooperation and assistance as he in his discretion deems appropriate.

e. The Examiner and his professionals shall perform any and all acts necessary to transition the maintenance of the CaseLogistix database of documents he has assembled to a neutral vendor as more fully described in paragraph 6 of this Order.

2. The Examiner and his professionals are released from any and all liability with respect to any act or omission, statement, or representation arising out of, relating to, or involving in any way, the Investigation or any report, pleading, or other writing filed by the Examiner in connection with the bankruptcy cases, except in the case of gross negligence or willful misconduct.

3. The Examiner and his professionals are relieved from any formal or informal discovery process and no party shall issue or serve any discovery request upon the Examiner or his professionals, except as authorized (a) by this Court or another court of competent jurisdiction where litigation is pending upon notice of

motion to, and an opportunity to object by, the Examiner, the Debtors, the Creditors' Committee and parties in interest and demonstration by the requesting party that such materials or information cannot be reasonably obtained from any other source or for other cause shown, or (b) by an order of a federal district court presiding over a criminal proceeding in which a party in interest is a defendant finding that the Examiner or his professionals are obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), as embodied in subsequent caselaw and the Federal Rules of Criminal Procedure. The prohibition against discovery from the Examiner shall not prevent the discovery of information related to compensation applications filed by the Examiner or his professionals. The Examiner and his professionals shall maintain all materials currently in their possession related to their work on behalf of the Examiner until further order of the Court, upon notice and an opportunity to be heard by parties in interest, or until the closing of these Chapter 11 cases.

4. The Examiner and his professionals shall be entitled to reimbursement by the Debtors of any reasonable fees and expenses incurred (including professional fees and expenses) in connection with (i) any cooperation, assistance, or transition services they provide to the Debtors, the Creditors' Committee, government agencies or the United States Trustee pursuant to this Order, (ii)

objecting to, opposing, or otherwise responding to any request for formal discovery pursuant to paragraph 3 of this Order, or (iii) an application or motion for allowance and payment of fees and expenses payable by the Debtors. All fees of and expenses incurred by the Examiner and his professionals in connection with any cooperation or assistance provided to a party other than the Debtors, the Creditors' Committee, government agencies or the United States Trustee pursuant to this Order or in objecting to, opposing, or otherwise responding to any request for discovery by such party that is outside the scope of paragraph 3 of this Order shall be paid by, and shall be the sole and exclusive obligation of, such party. To the extent that the Examiner and his professionals' fees and expenses are payable by the Debtors and do not exceed $150,000 per month, the Examiner and his professionals may submit invoices to the Debtors and the Creditors' Committee, with notice to the United States Trustee and an opportunity to object. Such invoices shall be reasonably detailed, shall indicate the nature of the services rendered and shall be calculated in accordance with the billing practices employed by the Examiner and his professionals in this case. Absent any objection or dispute, the Debtors shall be authorized to pay such invoices without further order of the Court. In the event that the Debtors dispute any such invoice, the Examiner and his professionals may request, by motion, that such disputed fees or expenses be

approved by this Court and shall not be required to file a fee application therefor. In the event that fees and expenses payable by the Debtors exceed $150,000 in any month, a fee application shall be filed and considered in accordance with the procedures established in these cases. Nothing herein shall abrogate the obligation of the Examiner and his professionals to file applications for final allowances of compensation and reimbursement of expenses incurred prior to the entry of this Order or limit the rights of any party in interest to contest or otherwise object to such applications.

5. The Debtors shall continue to maintain the Stratify database of documents, in its current format, in the interests of the administration of the chapter 11 cases until further order of the Court, upon notice and an opportunity to be heard by parties in interest.

6. The Examiner is authorized to join with the Debtors to negotiate a contract between the Debtors and Epiq Bankruptcy Solutions LLC ("Epiq") or another comparable, neutral vendor, under which the selected vendor will take custody and maintenance of the documents contained in the CaseLogistix database assembled by the Examiner. The vendor's reasonable charges shall be paid by Debtors as an administrative expense of the Debtors.

7. Parties in interest who are not stayed or otherwise prohibited from seeking discovery by order of the Court or any other court of competent jurisdiction or

applicable law may request access to documents contained in the CaseLogistix database as follows:

a. In the case of a request by a person or entity that is not a party to a pending civil litigation in a court of competent jurisdiction, a document request ("Document Request") must be served on the attorneys for the Debtors and the Creditors' Committee and forwarded to the vendor. A Document Request shall not be filed with the Court. In the case of a request by a person or entity that is a party to such a pending civil litigation, including the Debtors, the Creditors' Committee and the SIPA Trustee, a subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure or any other applicable rules ("Subpoena") shall be served in compliance with all rules governing notice and discovery in that litigation and shall also be served on attorneys for the Debtors and the Creditors' Committee to the extent either the Debtors or the Creditors' Committee is not a named party to the litigation and forwarded to the vendor.

b. The vendor shall promptly identify responsive documents by producing party. The vendor shall then provide notice ("Notice") to each identified producing party setting out the Document Request or Subpoena, the identity of the party making the request (the "Requesting Party") and the specific documents that have been identified as responsive to the Document Request or Subpoena; the vendor shall provide to the Debtors, the Creditors' Committee, the Requesting Party and any

other person or entity that has been served with notice of a Subpoena by the Requesting Party in accordance with paragraph 7(a) above, a copy of the Notice that includes a schedule of responsive documents, but shall not attach or provide copies of any specific documents.

c. The Debtors, the Creditors' Committee and the producing party (collectively, the "Interested Parties") shall have five business days from the date of Notice to informally object to the Document Request and shall serve such objection on the Requesting Party and the other Interested Parties with a copy to the vendor. An objection to a Document Request shall not be filed with the Court. If a timely objection to the Document Request is asserted, the objecting party or parties and the Requesting Party shall confer within five business days of the assertion of an objection in an effort to resolve the objection. If the objection cannot be resolved, the objecting party or parties may, within five additional business days, make a motion with the Court to be heard at the next omnibus hearing and in compliance with the case management order governing the Debtors' cases seeking an order restricting or prohibiting access to the requested documents, or for such other relief as may be appropriate. If such a motion is filed, the vendor shall not comply with the Document Request pending the disposition of the motion. If no timely objection is asserted to a Document Request, or if no motion is filed within ten business days after assertion of an objection, the vendor shall promptly make the

requested documents available to the Requesting Party on a separate, publicly available platform. Nothing herein shall confer standing on any party to object to a Document Request and all rights to contest, object to or support standing of an objecting party are preserved.

d. Objections to a Subpoena issued in a pending civil litigation shall be heard in that litigation and governed by the applicable rules of civil procedure and discovery in such litigation. Nothing herein shall confer standing on any party to object to a Subpoena and all rights to contest, object to or support standing of an objecting party are preserved.

e. Notwithstanding anything herein to the contrary, the Debtors, the Creditors' Committee and the SIPA Trustee may request access to documents contained in the CaseLogistix database that do not relate to, concern or involve a pending civil litigation to which the Debtors, the Creditors' Committee or the SIPA Trustee are a party by providing a Document Request directly to the vendor. Prior notice to, and an opportunity to object to such a Document Request by, the Debtors or the Creditors' Committee shall not be required; *provided, however,* that, in all cases, the producing party or parties must be notified of and given an opportunity to object to the Document Request in accordance with provisions of paragraph 7 of this Order. A Document Request made by the Debtors, the Creditors' Committee or the SIPA Trustee shall not be filed with the Court. All requests by the Debtors, the

Creditors' Committee or the SIPA Trustee for documents contained in the CaseLogistix database relating to, concerning or involving a pending civil litigation to which the Debtors, the Creditors' Committee or the SIPA Trustee is a party shall be made by Subpoena and shall comply with the provisions of this paragraph 7 governing Subpoenas.

f. For the avoidance of doubt, nothing in this paragraph 7 is intended to expand, contract, waive or otherwise modify the rights of any party in interest to seek discovery in these cases or in any pending litigation. All rights possessed by the Debtors, the Creditors' Committee, or other parties in interest to object to or otherwise contest the propriety of any party or parties in interest to request access to documents contained in the CaseLogistix database are expressly reserved.

Dated: New York, New York
July 13, 2010

s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
TRIBUNE COMPANY, et al.,[1]	Case No. 08-13141 (KJC)
	Jointly Administered
Debtors.	Related to Docket No. 5115

ORDER APPROVING MOTION OF COURT-APPOINTED EXAMINER, KENNETH N. KLEE, ESQ., FOR ORDER (I) DISCHARGING EXAMINER; (II) GRANTING RELIEF FROM THIRD-PARTY DISCOVERY; (III) APPROVING THE DISPOSITION OF CERTAIN DOCUMENTS AND INFORMATION; AND (IV) GRANTING CERTAIN ANCILLARY RELIEF

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tribune Company (0355); 435 Production Company (8865); 5800 Sunset Productions Inc. (5510); Baltimore Newspaper Networks, Inc. (8258); California Community News Corporation (5306); Candle Holdings Corporation (5626); Channel 20, Inc. (7399); Channel 39, Inc. (5256); Channel 40, Inc. (3844); Chicago Avenue Construction Company (8634); Chicago River Production Company (5434); Chicago Tribune Company (3437); Chicago Tribune Newspapers, Inc. (0439); Chicago Tribune Press Service, Inc. (3167); ChicagoLand Microwave Licensee, Inc. (1579); Chicagoland Publishing Company (3237); Chicagoland Television News, Inc. (1352); Courant Specialty Products, Inc. (9221); Direct Mail Associates, Inc. (6121); Distribution Systems of America, Inc. (3811); Eagle New Media Investments, LLC (6661); Eagle Publishing Investments, LLC (6327); forsalebyowner.com corp. (0219); ForSaleByOwner.com Referral Services, LLC (9205); Fortify Holdings Corporation (5628); ROH/M Publishing Group, Inc. (2940); Gold Coast Publications, Inc. (5505); GreenCo, Inc. (7416); Heart & Crown Advertising, Inc. (9808); Homeowners Realty, Inc. (1507); Homestead Publishing Co. (4903); Hoy, LLC (8033); Hoy Publications, LLC (2352); InsertCo, Inc. (2663); Internet Foreclosure Service, Inc. (6550); JuliusAir Company, LLC (9479); JuliusAir Company II, LLC; KIAH Inc. (4014); KPLR, Inc. (7943); KSWB Inc. (7035); KTLA Inc. (3404); KWGN Inc. (5347); Los Angeles Times Communications LLC (1324); Los Angeles Times International, Ltd. (6079); Los Angeles Times Newspapers, Inc. (0416); Magic T Music Publishing Company (6522); NBBF, LLC (0893); Neocomm, Inc. (7208); New Mass. Media, Inc. (9553); Newscom Services, Inc. (4817); Newspaper Readers Agency, Inc. (7335); North Michigan Production Company (5466); North Orange Avenue Properties, Inc. (4056); Oak Brook Productions, Inc. (2598); Orlando Sentinel Communications Company (3775); Patuxent Publishing Company (4223); Publishers Forest Products Co. of Washington (4750); Sentinel Communications News Ventures, Inc. (2027); Shepard's Inc. (7931); Signs of Distinction, Inc. (3603); Southern Connecticut Newspapers, Inc. (1455); Star Community Publishing Group, LLC (5612); Stemweb, Inc. (4276); Sun-Sentinel Company (2684); The Baltimore Sun Company (6880); The Daily Press, Inc. (9368); The Hartford Courant Company (3490); The Morning Call, Inc. (7560); The Other Company LLC (5337); Times Mirror Land and Timber Company (7088); Times Mirror Payroll Processing Company, Inc. (4227); Times Mirror Services Company, Inc. (1326); TMLH 2, Inc. (0720); TMLS I, Inc. (0719); TMS Entertainment Guides, Inc. (6325); Tower Distribution Company (9066); Towering T Music Publishing Company (2470); Tribune Broadcast Holdings, Inc. (4438); Tribune Broadcasting Company (2569); Tribune Broadcasting Holdco, LLC (2534); Tribune Broadcasting News Network, inc., n/k/a Tribune Washington Bureau Inc. (1088); Tribune California Properties, Inc. (1629); Tribune CNLBC, LLC, f/k/a Chicago National League Ball Club, LLC (0347); Tribune Direct Marketing, Inc. (1479); Tribune Entertainment Company (6232); Tribune Entertainment Production Company (5393); Tribune Finance, LLC (2537); Tribune Finance Service Center, Inc. (7844); Tribune License, Inc. (1035); Tribune Los Angeles, Inc. (4522); Tribune Manhattan Newspaper Holdings, Inc. (7279); Tribune Media Net, Inc. (7847); Tribune Media Services, Inc. (1080); Tribune Network Holdings Company (9936); Tribune New York Newspaper Holdings, LLC (7278); Tribune NM, Inc. (9939); Tribune Publishing Company (9720); Tribune Television Company (1634); Tribune Television Holdings, Inc. (1630); Tribune Television New Orleans, Inc. (4055); Tribune Television Northwest, Inc. (2975); ValuMail, (9512); Virginia Community Shoppers, LLC (4025); Virginia Gazette Companies, LLC (9587); WATL, LLC (7384); WCWN LLC (5982); WDCW Broadcasting, Inc. (8300); WGN Continental Broadcasting Company (9530); WLVI Inc. (8074); WPIX, Inc. (0191); and WTXX Inc. (1268). The Debtors' corporate headquarters and the mailing address for each Debtor is 435 North Michigan Avenue, Chicago, Illinois 60611.

Upon consideration of the Motion of Kenneth N. Klee, Esq. ("Examiner"), by and through his attorneys, for an Order granting the *Motion of Court-Appointed Examiner, Kenneth N. Klee, Esq., for Order (I) Discharging Examiner; (II) Granting Relief from Third-Party Discovery; (III) Approving the Disposition of Certain Documents and Information; and (IV) Granting Certain Ancillary Relief* (the "Motion"); and, after due deliberation and sufficient cause appearing therefore; it is hereby ORDERED[2]:

1. The Motion is GRANTED.

2. The Examiner is discharged from his duties under the Examiner Order effective on August 20, 2010, and his appointment as Examiner is hereby terminated. The discharge of the Examiner is without prejudice to the entry of an order, in the future, reengaging the Examiner and the Examiner's Professionals to provide such services as the Court deems necessary and appropriate.

3. Notwithstanding paragraph 2 above, the Examiner shall respond in writing to reasonable written inquiries from the Parties concerning the Investigation and the Report, and such inquiries and responses will be posted on the Examiner's secure website for access and review by all Parties. Further, the Examiner will respond to reasonable inquiries from the Parties concerning documents received, maintained or created during the Investigation, and will otherwise assist and cooperate with the estate representatives and the Parties in the manner provided in this Order.

4. The Examiner and his Professionals shall maintain all Depository Documents, Third-Party Documents, Transcripts and Privileged Materials (collectively the "Complete

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2 Capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion. The term "Parties" as used in this Order shall include Aurelius Capital Management, LP

Examiner Record") for a period of two years from the date of this Order (the "Initial Retention Period"), after which, the Examiner and his Professionals may destroy any such materials without further order of the Court. At least thirty (30) calendar days prior to the last day of the Initial Retention Period, the Debtors, or a successor estate representative as applicable, shall serve and file a notice upon all Parties, the Office of the United States Trustee, and all parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure, reminding them of the Examiner's ability to dispose of the Complete Examiner Record after the Initial Retention Period. Any party seeking to extend the Initial Retention Period, must file a motion requesting such relief prior to the expiration of the Initial Retention Period, with notice and an opportunity to object provided to all Parties, the Office of the United States Trustee, the estate representatives, the Examiner and his Professionals, and all parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Court will schedule a prompt hearing on any such motion, and the burden of extending the Initial Retention Period shall rest with the movant.

5. For purposes of clarity, the Complete Examiner Record includes the notes taken or created by the Examiner and his Professionals regarding non-transcribed witness interviews. It is the Examiner's position that such notes constitute attorney-work product and are privileged from disclosure to any of the Parties. It is the Debtors' position that notes taken by the Examiner and his Professionals that purport to record what the interviewee said do not constitute work product or otherwise privileged material. All issues related to whether or not such materials are protected from disclosure by the attorney work-product doctrine, or otherwise, and all other issues relating to claims of privilege (specifically including claims unrelated to interviews that

were not professionally transcribed), are expressly reserved, and the Court makes no ruling on this issue at this time.

6. Neither the Examiner nor his Professionals shall have or incur any liability with respect to (a) any act taken or omitted to be taken, (b) any statement or representation arising out of, relating to, or involving in any way, the Investigation, or (c) any report, pleading or other writing filed by the Examiner or the Examiner's Professionals in connection with, related to, or arising out of the Debtors' Chapter 11 Cases including, without limitation, the Report. Nothing contained in this paragraph, however, shall be construed to limit the liability of the Examiner or the Examiner's Professionals for violation of any applicable disciplinary rule or code of professional conduct or for any acts of willful misconduct or gross negligence.

7. Except as otherwise provided herein, the Examiner and his Professionals are relieved from any duty to respond, object or move for a protective order in response to any formal or informal discovery process, except that this prohibition shall not apply to (i) requests for documents, materials or information that the requesting party has demonstrated to this Court, upon notice to and an opportunity to object by the Examiner, cannot be reasonably obtained from any other source, (ii) production required in response to an order of a federal district court presiding over a criminal proceeding in which a party in interest is a defendant, which finds that the Examiner or his Professionals are obliged to produce documents or other materials to said defendant under the principles of *Brady v. Maryland*, 373 U.S. 83 (1963), as embodied in subsequent caselaw and the Federal Rules of Criminal Procedure, and (iii) discovery of information related to compensation applications filed by the Examiner or his Professionals.

8. The Examiner and his Professionals shall be entitled to reimbursement from the Debtors, their estates, and their successors in interest, for their reasonable fees and actual costs

after the date of the entry of this Order for (a) maintaining the Complete Examiner Record; (b) responding to reasonable inquiries as set forth in paragraph 3 above; (c) responding to any formal or informal discovery requests served on the Examiner or the Examiner's Professionals; (d) the preparation and prosecution of interim and final fee applications; and (e) such other actions undertaken by the Examiner or the Examiner's Professionals at the request or direction of the Court. To the extent that the Examiner and his Professionals are entitled to payment or reimbursement of their reasonable fees and costs incurred subsequent to the time period covered by their final fee applications, the Examiner and/or his Professionals shall present invoices to the Debtors, or a successor estate representative, as applicable, with copies to the Official Creditors' Committee and United States Trustee, with sufficient detail to determine the basis for the fees and expenses incurred (the "Notice Parties"). Absent receipt by the Examiner and his Professionals of a written objection to any such invoice within fourteen (14) calendar days, the Debtors are authorized to pay or reimburse the Examiner and his Professionals without the need to file fee applications and without the need for Court approval; provided, however, that (i) if a timely objection is raised to such invoice and the matter cannot be resolved consensually, the objection shall be presented to the Court for resolution and (ii) notwithstanding the foregoing, if any invoice exceeds $100,000, the Examiner and/or his Professionals shall be required to file an application and obtain approval from the Court, on reasonable notice to the Notice Parties, prior to payment.

9. The final fee applications of the Examiner and the Examiner's Professionals may be filed by August 31, 2010. Objections, if any, to any final fee applications filed by August 31, 2010, must be filed by September 21, 2010. A hearing to consider the final fee applications filed by August 31, 2010 will be held on October 22, 2010 at 2:00 p.m. EDT. To the extent that the

Examiner and/or any of his Professionals are unable to file their final fee applications by August 31, 2010, counsel shall contact the Court's Chambers to set an objection deadline and hearing for any such applications.

10. In the event of a conflict between this Order and any provision of a plan of reorganization confirmed in the Debtors' cases, this Order shall control as it pertains to the rights, duties and obligations of the Examiner and the Examiner's Professionals.

11. This Court shall retain jurisdiction to resolve professional compensation issues for the Examiner or his Professionals in connection with the Debtors' cases.

12. This Order shall survive confirmation of any plan or plans in the Debtors' bankruptcy cases, as well as the conversion of any of the Debtors' cases to cases under Chapter 7 of the Bankruptcy Code.

13. The Court reserves jurisdiction as to all matters related to and arising from the implementation, interpretation and enforcement of this Order including, without limitation, any requested revision or modification thereof.

Dated: Wilmington, Delaware
August 26, 2010

Kevin J. Carey
United States Bankruptcy Judge

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April 1, 2010

Via E-mail and US Mail

Diana Adams
United States Trustee
Office of the United States Trustee
33 Whitehall Street, 21st Fl.
New York, NY 10004

Re: Best Practices for Examiners

Dear Diana:

When I undertook my appointment as Examiner in the Lehman bankruptcy, you and Cliff White asked that I report, at the conclusion of my investigation, on suggested best practices that might assist future Examiners perform their work. The Lehman examination was, of course, unique to Lehman; and given its size and scope, practices that worked for Lehman may or may not translate to other examinations. But I offer the following observations.

Initial Steps

Recommendation 1: New Examiners should speak with and review the reports of former Examiners to learn what worked in prior assignments.

The recommendations that follow are not simply mine. As I embarked upon this process, I began by speaking with other Examiners who had served in major proceedings, precisely to get a sense of best practices before I formed my own work plan. I spoke with Richard Thornberg (Worldcom), Neal Batson (Enron), and Josh Hochberg (Refco), and I was greatly assisted by their input. I reviewed the reports filed by those Examiners, and by others, in great detail, to see how they organized, conducted and reported upon their own investigations. All of that was enormously useful and future Examiners should build on our collective experience.

Recommendation 2: If the Court has not imposed a timetable for the Report, the Examiner should give himself and his team the discipline of a deadline.

The Lehman matter was especially challenging, given the scope of my assignment and the size of the universe I was asked to explore. It was apparent that our factual investigation would require hundreds of witness interviews. The volume of Lehman documents alone was estimated to amount to close to half a trillion pages; and relevant documents resided not just at Lehman but with dozens of third parties. Added to the magnitude of the work was the limit of time. Although the Court did not impose any deadline for the completion of my Report, I was keenly aware of the exclusivity date for the Debtors to suggest a plan and the fact that the value of my Report would be greatly enhanced if I were able to deliver the Report prior to that date.

My team and I ultimately reviewed more than thirty million pages of documents and interviewed more than 250 witnesses; we produced a comprehensive Report and filed it within thirteen months of my appointment. We could have done more work. We had collected millions more pages we might have reviewed; we had billions more pages we might have requested. We had identified hundreds more people we might have talked to. We might have circled back and re-interviewed each of the 250+ persons we had already talked to. But the fact is that doing that additional work might in theory have added marginally to the final product, while the stark reality is that to do so would have come at an unreasonable cost, both in dollars and time. I set a deadline and adhered to it; and the process was better for that.

Recommendation 3: The Examiner should enlist, accept, and use the aid and cooperation of the community.

I have said this before, and I emphasize it again here. My Report could not have been filed as expeditiously as it was without the genuine assistance and cooperation my team and I received from nearly every constituent in the Lehman community.

My order of appointment required that I meet with the interested parties. I would like to think that I would have had the good sense to do exactly that even if the Court had

not had the wisdom to have ordered it, because those meetings were extremely helpful.

By the time of my appointment, the Debtors, the Creditors Committee, and other parties had assembled documents and performed analyses. We asked for – and were provided access to – all of that work product.[1]

The Debtors, the Creditors Committee and the interested parties were and are represented by the cream of the New York and National bars. These excellent lawyers had excellent suggestions, and our conversations with the parties provided real guidance to steer the investigation. Other Examiners could benefit as I did by seeking out and listening to the parties.

That said, while it is important to seek suggestions and guidance from the parties and their counsel, it is critical that the Examiner maintain independence and objectivity.

Recommendation 4: The Examiner should perform every task necessary to produce a complete report; but do each task once, and do it right. That said, there is utility in doing some early interviews even before document production is complete.

We were eager to begin witness interviews immediately. We needed, of course, to first collect and review documents. But there were exceptions. One of the suggestions made by other Examiners was that a few key interviews – even before document production – could be very useful to inform issues and suggest the direction of the investigation.

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[1] While I am sincere in my praise of the parties' cooperation, I don't want to overstate its contribution to the final Report. I have also said this before: we had hoped that the parties' document collection and analysis, by the time of my appointment four months after the bankruptcy filing, would have been more mature and complete than it turned out to be. Because it was not so, I had to extend the projections I had made for completion of my work. But the fact remains that it is a good practice to feed off the work of others wherever possible.

We identified a relatively small number of key witnesses to interview even though document production was in its infancy. In general, those early interviews were with persons who (1) would help inform us on overriding issues and (2) would be available and willing to submit to further interviews after document review. And the other Examiners were right – these initial, early interviews did greatly assist the direction of the investigation.

Organization of the Team

Recommendation 5: The Examiner, of course, needs to assemble the right team for the task and organize it efficiently.

Every examination will be different and the manpower and organization needs will vary accordingly. But let me set out what did work for me and this matter as a guide for others.

It was apparent that this matter would require the almost full-time participation of scores of lawyers and financial professionals. Organizing them, coordinating their efforts, and avoiding redundancies and waste would present challenges.

First, we analyzed the 10 issues that had been assigned to me in my order of appointment and sorted them into four substantive areas. Five teams were created – four substantive teams and one administrative team which exercised oversight and coordination.

Second, we assembled a group of senior lawyers as team leaders with backgrounds and experience as trial lawyers, former prosecutors, bankruptcy lawyers, securities specialists and corporate lawyers. Each team was then staffed with other lawyers as necessary. As you know, Bob Byman served as my lead attorney, basically as chief of staff. It was his job to coordinate the activities of the five teams.

Third, each team was required to develop a work plan for my approval, so that they and I had a shared understanding of what work they proposed to do and by what deadlines. The work plans were shared among all of the teams so that we could reach consensus that nothing was overlooked but that nothing was being done twice. The work plans from each team listed the documents they wanted to collect, the search

terms to be used for collection, and the parties from whom to request documents. The work plans listed the witnesses each team proposed to interview and the anticipated order and dates for interviews. Of course, there were many witnesses listed by multiple teams; Bob would coordinate which team would take the lead for individual witnesses.

Fourth, each team prepared and periodically updated an annotated proof outline of its anticipated sections of the Report. That way, we were able to see early on what areas were covered, what areas remained for planned fills, and whether there were any holes that needed to be plugged.

Fourth, we asked Duff & Phelps, my financial advisors, to organize themselves similarly so that each legal team would have counterparts – dedicated advisors focusing on specific issues. To minimize unnecessary expense to the estate, Duff was asked to periodically list for us each deliverable they had been asked to perform, including the team which had made the assignment and the expected delivery date. Duff was instructed that it was not to perform any tasks unless they were reported on the deliverables list.

When we identified areas which required education on topics that even great lawyers might not be intimately familiar with – topics such as credit default swaps or derivative trading or FAS 157 accounting – we had Duff prepare and give us tutorials. We offered the same tutorials to the government as part of our cooperation with them (see below).

Fifth, we had regular communication among and within teams to ensure that teams and sub-teams did not develop silo mentalities, at the same time avoiding redundancy as much as possible.

Fee examiners in run of the mill cases typically react negatively to billing entries that show inter-office meetings. This was not a run of the mill event. As the investigation unfolded, hundreds of thousands of documents were reviewed daily; multiple witnesses were interviewed each day. Individual witnesses and documents did not usually fit neatly within a single team's responsibility. It was critical that every team knew what every other team was finding in real time.

We held weekly team leader meetings; key documents were circulated to all team leaders as they were found; interview summaries were circulated to all team leaders as they were prepared. We decided that all team leaders needed to be kept as informed as possible about daily events; each team leader exercised discretion as to whether and to what extent to pass on information to team members.

Government Coordination

Recommendation 6: Government coordination is essential, and best accomplished by regular, agreed protocols.

My order of appointment, of course, required that I cooperate with government agencies that may have an investigative interest in Lehman; but even if I had not been so ordered, cooperation was essential lest the government decide to block or shut down an area of my inquiry.

I initially met with the SEC and representatives of the US Attorneys for the Southern and Eastern Districts of New York and the District of New Jersey. After the initial face to face meetings, we held weekly conference calls for most of the period. We had several other face to face meetings.

We established several protocols that made the process agreeable to the government, so that they did not feel a need to restrict my investigation.

First, we agreed to clear with them any witness before we took an interview. We sent our proposed list of witnesses to the government periodically; after a default period of time (generally 5 business days) without express reservation, we would then be free to schedule an interview. Once scheduled, we would give the government notice of that, so that they had another opportunity to ask us not to interview a particular individual. We asked the government to advise us if there were any questions or subjects they wished us to address in interviews. Over the course of the investigation, the government did ask us to defer speaking to a number of individuals; but eventually, they released us to speak with every person we requested.

Second, we kept the government informed in real time of the significant facts we were developing. Our communications were, as these things almost always are, one way.

In our weekly calls, we would debrief the government on key information or documents as we learned it.

Third, as mentioned above, we made Duff available – as well as our lawyers who became expert in areas such as Repo 105 – to give the agencies tutorials on subjects they might not be totally familiar with.

Cooperation with the government, of course, includes our interaction with your office. We need not describe to you what that interaction was, but I hope you agree that I achieved my goal to keep you appropriately informed without overly immersing you in unnecessary detail.

Document Collection and Review

Recommendation 7: The Examiner should get – but try not to have to use – Rule 2004 Subpoena power.

Within weeks of my appointment, I filed a motion asking that the Court grant me expansive Rule 2004 subpoena powers. It was important to have subpoena power; and it was equally as important not to have to use it. Having the power gave my lawyers the leverage to negotiate voluntary production on a much faster track than formal process would have provided.

It was also important that the parties knew I would use the power if pressed. There was a single party which did not voluntarily in timely fashion produce the documents we requested. We issued a subpoena to that party and teed up a motion to compel for the Court; and the party decided to produce rather than fight the subpoena. With the exception of a few other instances where a producing party *requested* a subpoena, we were not otherwise required to use formal process or the Court's assistance to get the documents and interviews we sought.

The document experience carried into the way we conducted interviews, which I describe in detail below. But in all areas, the point is that the Examiner's role is investigative but not adversarial. It is necessary to get the facts, to ask the hard questions, to press for complete production. But it is not necessary to do so with an adversarial tone; it was my experience that we achieved full and complete production

far more quickly by adopting a cooperative tone than we would have through a formal subpoena process.

Recommendation 8: The Examiner will likely be asked to agree to confidentiality stipulations to get documents; he should agree, but perhaps with a standard order.

Nearly every producing party requested confidentiality agreements during document production. As part of the cooperative process, I agreed to any reasonable request for such agreements rather than take the time to negotiate or argue. In retrospect, this is the one area in which I might have acted differently than I did. We ended up with 16 different formal agreements and 5 different informal undertakings. It turns out that only a single agreement has come to issue – our relatively minor dispute with the CME over the publication of three documents. But if there had been more disputes, the Court and I would have had to sort out all of these different agreements with slightly different terms. If I had it to do over, I might have asked the Court to approve a single form of protective order to govern production from all parties.

Recommendation 9: The Examiner should use contract attorneys where possible to conduct document review.

As you know, we used contract attorneys to the fullest extent practicable to do first level document review. We had as many as 70 contract attorneys working at the same time, and our experience with them was excellent. We estimate that the savings to the estate, over the rates that would have been charged by Jenner associates, was in the tens of millions of dollars; moreover, we could not have deployed 70 additional, full time Jenner lawyers without a substantial time lag – the whole process would have taken much longer without the use of contract attorneys.

Recommendation 10: But substantive review must be done by lawyers who are fully integrated and invested.

We do not want to suggest that contract attorneys should have been used to an even greater extent than they were. As a group, the contract attorneys performed very well for first level review – that is, the initial screening of a data dump to identify documents of possible substantive interest. All second level review was performed by Jenner

lawyers. Our experience was that most of the contract attorneys did not have the skills, background and commitment to do effective and efficient second level review.

Jenner lawyers supervised the contract attorneys and exercised quality control. Jenner lawyers who did document review were fully integrated into the substantive teams so that they actually knew what to look for and so that they were able to make more refined searches to locate key documents more quickly.

Recommendation 11: The documents should be collected and maintained so as to make them an asset of the estate.

Our document collection and archival was conducted by seasoned trial lawyers who know how to try cases. As a result, the data base we have assembled is, as it should be, a valuable asset of the estate to limit costs in any pending and future litigation.

Many lawyers are familiar with document management systems such as Concordance which have served them in the past. But we recognized early on that those usual systems would not be up to the task of handling the quantities of documents we would assemble. We involved IT personnel at the outset to ensure that we had the right systems, and opted to maintain our document repository on two extremely robust, easy to search systems, CaseLogistics and Stratify.

The numbers are staggering. We extracted roughly 35 million pages of documents from Lehman's systems – an enormous amount of material, yet only one tenth of one per cent of the universe of Lehman's electronically stored data. We used carefully refined searches so that we would not be overwhelmed with returns. We kept careful records of the search terms we used, the date ranges of the searches, and the custodians against whom the searches were run. Those searches need not be rerun; the parties can look at our searches and add focused additional searches if necessary to their specific needs, but they need not reinvent our wheel. We have assembled the collected documents into electronic, searchable format, so that parties may pull what is relevant to them.[2]

Witness Interviews

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[2] Protective order issues still remain before free public access can be granted, but the documents are assembled; that substantial work need not be done again.

Recommendation 12: The Examiner should consider using informal interviews in most cases.

As you know, one of the suggestions made to me by other Examiners – which I adopted – was that wherever possible interviews be conducted informally, without requiring that the witness be sworn and without transcripts. There are obvious pros and cons. Even had I used transcribed statements under oath, they would have no evidentiary value in pending or future litigation, so the real advantage of oath and transcription is that a quotation of a witness's testimony can be precise. But my team of seasoned litigators estimated that it could easily double the amount of time take interviews with transcription; it would add significant cost; and, significantly, we anticipated that witnesses would be far more likely to be open and candid in an informal setting than if a reporter was transcribing each word. Moreover, the creation of transcribed statements might have impacted pending Government investigations and the government's willingness to release persons for interview.

Balancing these factors, I decided to use informal interviews wherever possible – and that turned out to be possible in all cases. As I noted above in the document collection process, our tone was investigative rather than adversarial. The informality of the interviews was a definite aid. We asked the tough questions where we had to; but the informal setting and objectivity we brought to the process made the witnesses comfortable to fully answer our questions.

To assure accuracy, all interviews were conducted by at least two attorneys, one of whom was assigned to keep careful notes. Flash summaries were prepared as soon as possible, usually the day of the interview, and reviewed by all lawyers present while recollections remained sharp; and full summaries were made and reviewed as soon as practical after that.

Recommendation 13: The Examiner should make the interviews an open book, not an occasion for cross-examination.

Prior to each interview we provided advance notice of the topics we intended to cover and advance copies of the documents we anticipated showing the witness. That procedure would have been anathema to a litigator – but, again, my goal was to get the

facts, not to surprise a witness into some admission. By giving advance notice, witnesses were able – and expected – to refresh recollection before the interview rather than on the fly. That greatly reduced the need for follow-up interviews. It put the witnesses and their counsel at ease that we were not trying to trap.

A number of the parties – including nearly every party against whom I reported colorable claims – have expressly told me that while they might disagree with my conclusions, they were satisfied with the process. I commend that process to future Examiners.

Recommendation 14: Interview outlines should be shared among teams.

In general, detailed interview outlines were prepared at least a week in advance and circulated among team leaders so that all substantive teams could have input on each interview. Moreover, having the outlines prepared in advance allowed us to identify the topics to counsel for the interviewee as described above.

Recommendation 15: The Examiner can supplement or supplant interviews with written questions.

In all, my lawyers and I interviewed more than 250 individuals. There was only one individual I sought to interview but could not – Hector Sants, chief executive of the UK's Financial Services Authority ("FSA"). However, the FSA did provide detailed, written answers to specific questions that would have been posed to Mr. Sants, and while not perhaps as satisfying as an interview, they sufficed.

In other cases, letters to interested parties' counsel with fairly discrete questions to confirm key background facts proved very helpful. For example, we asked a clearing bank to confirm that we had set out in a written question a comprehensive list of all collateral calls made in a particular period. The written exchange was more efficient than Q&A in an interview.

The Report

Recommendation 16: Examiners should carefully define terms not defined in their orders of appointment.

My order of appointment asked me to opine on the existence of colorable claims but did not define that term. The Second Circuit has described colorable claims as ones "that on appropriate proof would support a recovery," "much the same as that undertaken when a defendant moves to dismiss a complaint for failure to state a claim."[3]

I was mindful of the fact that there is a high likelihood that an actual claim will be asserted wherever I have concluded that a colorable claim exists, so I was reluctant to adopt a motion to dismiss standard. Having conducted an extensive factual investigation, I felt it was appropriate to use a higher threshold standard, and therefore defined "colorable claim" as one for which I found sufficient credible evidence to support a finding by a trier of fact.

In addition to defining terms, I recommend that future Examiners do something early on that I did somewhat late. Appendix 2 to my Report is a 98 page glossary of defined terms, names, acronyms and phrases; without that glossary and the ability to use abbreviations for defined terms, the Report would have been cumbersome and unwieldy. I did not append another document that was created during the writing process – a set of protocols that collectively amounts to our own private Blue Book of Citations. Although there were many individuals who contributed first drafts of sections, the overall Report was carefully edited to conform to the Glossary and Blue Book, resulting in a uniform style and appearance. That is not merely cosmetic; I believe that it greatly enhanced the readability of this lengthy tome.

But I confess that we came a little late to the realization how useful the Glossary and Blue Book would be. The editing process would have been less a challenge had we begun assembling and circulating those documents to the substantive teams before first drafts were created.

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[3] *In re STN Enters.*, 779 F.2d 901, 905 (2d Cir. 1985); *In re KDI Holdings, Inc.*, 277 B.R. 493, 508 (Bankr. S.D.N.Y. 1999).

Recommendation 17: The Report should contain as much detail on the claims that are not found as it does for claims which are found.

We devoted as much time and energy to conclude that claims did not exist as we did to conclude that there were claims. And we devoted almost as much space in the Report to those non-claims as we did to the claims.

I felt it was important that the Report set out the detailed facts that led me to conclude the absence of claims so that the parties can use that analysis to make measured judgments whether to expend their own time pursuing claims I have concluded are not there.

Recommendation 18: Examiners should consider whether persons against whom the Examiner tentatively determines there are colorable claims should be given an opportunity to supplement the record.

After I made tentative determinations as to colorable claims, I decided to give each such person and entity an opportunity to present additional factual detail they thought might dissuade me. I stressed that I was not looking for a *Wells* submission, but simply additional facts that I might not have had in making the initial determination. Every identified party took me up on the offer and presented additional materials.

I should stress that I perceived no obligation to go through that procedure, and I do not recommend that any such procedure be used in all Examiners' investigations. I simply note that under the unique circumstances of my investigation, the process worked; it had a real impact upon reaching fair and reasoned judgments. Future Examiners should consider whether it might work for them.

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Diana, it has been my great honor and privilege to have served as Examiner in this matter; thank you again for the trust you showed in me and our firm. I hope that this is useful to you; and I stand ready to assist in any further way I can.

Sincerely,

Anton R. Valukas

cc: Robert L. Byman