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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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

FEDERAL STATUTES

STATE STATUTES

FEDERAL REGULATIONS

OTHER SECONDARY MATERIALS

I.

SUMMARY OF PRINCIPAL FINDINGS[2]

A. Appointment of the Examiner and the Questions Presented in the Investigation.

On December 8, 2008, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On December 10, 2008, the Bankruptcy Court entered an order providing for the joint administration of the Chapter 11 Cases.

On January 13, 2010, Wilmington Trust filed its *Motion for Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code* [Docket No. 3062]. On April 20, 2010, the Bankruptcy Court entered the Examiner Order, directing the United States Trustee to appoint an examiner in the Chapter 11 Cases pursuant to Bankruptcy Code § 1104(c)(1).

On April 30, 2010, the United States Trustee filed her *Notice of Appointment of Examiner* [Docket No. 4212] appointing Kenneth N. Klee, Esq. as the Examiner, subject to Bankruptcy Court approval. Contemporaneously therewith, the United States Trustee filed the *Application of the United States Trustee for Order Approving Appointment of Examiner* [Docket No. 4213].

On May 7, 2010, the Examiner filed the Examiner Work Plan in connection with this matter [Docket No. 4261].

On May 11, 2010, the Bankruptcy Court entered the Examiner Approval Order [Docket No. 4320], approving the appointment of Professor Klee as the Examiner. The Bankruptcy Court also entered the Supplemental Order [Docket No. 4312], approving the Examiner Work Plan and modifying the Examiner Order.

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2 Unless otherwise indicated, the capitalized terms used in the Report are intended to have the meanings set forth in Volume Four of the Report, which comprises the Glossary of Defined Terms.

On May 19, 2010, the Bankruptcy Court entered orders granting the Examiner's applications to employ Klee, Tuchin, Bogdanoff & Stern LLP and Saul Ewing LLP as his counsel and LECG, LLC as his financial advisor *nunc pro tunc* to April 30, 2010 [Docket Nos. 4498, 4499, 4500].[3] The Bankruptcy Court also entered an order, on May 20, 2010, authorizing the Examiner to issue subpoenas for oral examinations and production of documents [Docket No. 4523].

Pursuant to the Examiner Order, as modified by the Supplemental Order, the Examiner was directed to conduct the Investigation, responding to each of the following Questions:[4]

> Question One: evaluate the potential claims and causes of action held by the Debtors' estates that are asserted by the 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 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 the potential defenses asserted by the Parties to such potential claims and causes of action.
>
> Question Two: 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.
>
> Question Three: 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).

3 The Examiner is grateful to his professional advisors for their tireless efforts in conducting this massive Investigation and helping to craft the Report.

4 Ex. 1 at ¶ 2 (Examiner Order).

In addition, the Examiner Order specified that the Examiner would "otherwise perform the duties of an Examiner set forth in 11 U.S.C. § 1106(a)(3) and (4) (as limited by this Order)."[5] The Examiner Order directed the Examiner to prepare and file a report in respect of the Investigation on or before July 12, 2010, unless such time shall be extended by order of the Bankruptcy Court on application by the Examiner and notice to the Parties.

On June 16, 2010, the Examiner filed the *Supplement Re: Examiner's Work and Expense Plan of Court-Appointed Examiner, Kenneth N. Klee, Esq.* [Docket No. 4797], apprising the Bankruptcy Court of the progress of the Investigation and advising the Bankruptcy Court that the scope and breadth of the work required to complete the Investigation was substantially greater than anticipated when the Examiner's Work Plan was filed, prior to the commencement of the Investigation.

On June 23, 2010, the Examiner filed the *Motion of Court-Appointed Examiner, Kenneth N. Klee, Esq. for Extension of Report Deadline* [Docket No. 4858]. Pursuant to a duly-entered order shortening time, the Bankruptcy Court held a telephonic hearing on the motion on July 1, 2010. By order of the Bankruptcy Court entered on July 1, 2010, the Bankruptcy Court extended the deadline for the Examiner to file the Report through and including July 26, 2010 at 11:59 p.m. prevailing Eastern time [Docket No. 4928].

B. Organization of the Report.

The Report comprises four Volumes (including annexes and tables) and an Appendix. Volume One comprises Sections I, II and III. Section I of the Report summarizes the Examiner's principal findings. Section II discusses the manner in which the Investigation was conducted. Section III contains the Statement of Facts.

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5 *Id.*

Although the Statement of Facts generally is organized chronologically, the Leveraged ESOP Transactions involved activities by dozens of participants who often were engaged in activities simultaneously that touched different aspects of the transactions. The Statement of Facts contains specific sections focusing on the activities of the key players in the Leveraged ESOP Transactions at different times. By necessity, some of these discussions span a multi-month period, followed by a discussion covering the same time period but focusing on a different participant in the transactions. Thus, although the Statement of Facts generally progresses chronologically from the period preceding Step One to the Step Two Financing Closing Date in December 2007, certain sections of the Statement of Facts cover overlapping time periods. Although, as noted, the Statement of Facts contains a narrative discussion of the relevant participants, events, and documents, it also specifically addresses, and sets forth the Examiner's findings regarding, a host of e-mails and documents cited by the Parties in support of their respective contentions.

Volume Two comprises Section IV. Section IV contains the Examiner's analyses and conclusions concerning the issues raised in Question One. The Examiner has organized this portion of the Report (as well as Volume Three) to enable the reader to obtain, in a relatively quick fashion, the Examiner's "bottom line" regarding the issues presented. To accomplish this objective, the Report sets forth the Examiner's conclusions regarding the principal issues addressed in each subsection at the outset of that subsection, followed immediately by the Examiner's factual and legal analysis. Although Section IV contains citations to relevant documents and facts adduced in the Statement of Facts, these citations are not intended to represent all of the facts and documents supporting the Examiner's legal conclusions. Readers are encouraged to review the legal issues addressed in Section IV in tandem with the corresponding factual discussion set forth in Section III. Volume Two is accompanied by Annex A (DCF Valuation Analysis), Annex B (Recovery Scenarios), and Annex C (Tribune Payments to LBO Lenders).

Volume Three comprises Sections V and VI. Section V contains the Examiner's analysis and conclusions regarding Question Two. Section VI contains the Examiner's analysis and conclusions regarding Question Three.

Volume Four contains all of the defined terms that are used in the Report.

Finally, the Appendix to the Report (which will be filed subsequent to the Report itself following leave of the Bankruptcy Court) will contain the exhibits cited in the Report.

C. Summary of Principal Conclusions.

The four Volumes comprising the Report contain dozens of discrete factual and legal findings. Summarizing each and every one of them here would take many pages and would not read very much like a summary. Some of the issues discussed in the Report, moreover, are difficult, nuanced, and not conducive to summary treatment. Nevertheless, the Examiner recognizes that not everyone has the time or the inclination to read the entire Report. The summary below, therefore, is intended to serve as a brief overview of the Examiner's principal conclusions and give readers the big picture. Even with that limited purpose, regrettably, the summary below is lengthy. Readers are encouraged to review this Section I with the Glossary of Defined Terms, contained in Volume Four of the Report, which defines the capitalized terms used in the Report. The summary does not, in every instance, correspond to the chronological order of the main volumes.

The Examiner did not reach definitive conclusions regarding certain of the issues considered in the Report, because, as noted, certain issues presented are difficult and nuanced. As a result, by necessity, the Examiner established a full range of potential conclusions from highly likely to highly unlikely, with steps in between. Specifically, the Examiner determined to frame his conclusions in the Report 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. This summary uses these terms, as does the rest of the Report, in reference to the Examiner's conclusions.

The Examiner emphasizes that the conclusions summarized below (indeed, all of the conclusions reached in the Report) are based on the evidence adduced in the Investigation through July 25, 2010. As summarized in the next section of the Report, the Examiner and his team worked nearly around the clock from the time of his appointment to the issuance of the Report to understand and, ultimately, evaluate what happened in the Leveraged ESOP Transactions. Although the Examiner and his advisors considered and developed a massive amount of information, by Bankruptcy Court order the Examiner had an extremely limited period of time to conduct the Investigation. Had the Examiner had more time, he would have interviewed (and probably re-interviewed) several more witnesses and certainly would have conducted further discovery. When appropriate, the Report notes specific areas meriting further investigation.

Finally, as discussed in the next section of the Report, as a result of what the Examiner believes are largely unjustified assertions of confidentiality by certain Parties, the Examiner was left with no choice but to redact from the version of the Report filed with the Bankruptcy Court essentially everything but this summary, the portions of Volume Two containing discussions of legal principles, Volume Three (discussing Questions Two and Three), and the Glossary of Defined Terms contained in Volume Four. During the Investigation, the Examiner repeatedly encouraged the Parties and other entities that previously produced documents and furnished information on a confidential basis to refrain from needlessly continuing to assert confidentiality, which in turn could unjustifiably shield highly relevant information from the public. Despite repeated efforts, certain Parties persisted in asserting confidentiality. The Examiner has taken these assertions up with the Bankruptcy Court and is hopeful that the vast majority, if not the entirety, of the Report (and exhibits) will be made available to the public. The Examiner notes that certain Parties (including the Debtors, who facilitated the Investigation and were responsive to the Examiner's many requests for documents and information) acted responsibly in their assertions of confidentiality.

1. Question One.

Question One encompasses a host of bankruptcy and nonbankruptcy claims, causes of action, and defenses asserted by the Parties with respect to the Leveraged ESOP Transactions.

a. Alleged Wrongful Acts—Intentional Fraudulent Transfers, Equitable Subordination, and Assorted Common Law Claims and Defenses.

Turning first to the cluster of bankruptcy and nonbankruptcy claims, causes of action, and defenses raised by the Parties involving the broad category of alleged wrongful acts by various persons and entities in connection with the Leveraged ESOP Transactions, the Examiner finds that a court is reasonably likely to conclude that the Step One Transactions did not constitute an intentional fraudulent transfer. Application of the traditional "badges of fraud" to the record adduced and the circumstances giving rise to the Step One Transactions weigh against the conclusion that the Step One Transactions were entered into to hinder, delay, or defraud creditors. Although Step One was a highly-leveraged transaction, which, after giving effect to the Step Two Transactions consummated half a year later, turned out very badly for creditors, the Examiner did not find credible evidence that the Tribune Entities entered into the Step One Transactions to hinder, delay, or defraud creditors.

The Examiner reaches a different conclusion regarding the Step Two Transactions and finds that it is somewhat likely that a court would conclude that the Step Two Transactions constituted intentional fraudulent transfers and fraudulently incurred obligations. The Tribune Entities did not incur the approximately $3.6 billion in additional Step Two Debt until Step Two closed on December 20, 2007. It is the incurrence of this indebtedness, the approximately $4 billion in payments made to stockholders, and the substantial amounts in fees paid to the lenders and investment bankers at Step Two,[6] that are the object of the Step Two intentional fraudulent transfer inquiry. Although, as noted, this section of the Report is just a summary, the Examiner believes that it is appropriate to furnish, consistent with the above-noted restrictions imposed by confidentiality, some measure of detail here regarding his findings on this question, as the underlying factual predicates bear on other conclusions reached in the Report.

The story of how Tribune ended up effectuating a transaction that the Examiner believes a court would be somewhat likely to find was an intentional fraudulent transfer has its genesis in what transpired at Step One, and what the participants in the Step One Transactions expected at that time would happen at Step Two. In connection with the Step One Transactions consummated in June 2007, three highly-qualified outside advisors were actively engaged: MLPFS and CGMI on behalf of Tribune, and Morgan Stanley on behalf of the Special Committee (which was formed in the fall of 2006 to oversee Tribune's consideration of a possible strategic transaction). In the period leading up to the closing of Step One, these advisors evaluated management's projections as well as the solvency work performed by the entity retained to issue a solvency opinion required for Step One to close, Valuation Research Corporation (VRC). With the input of the outside advisors, the Tribune Board approved the

[6] As a result of certain Parties' assertions of confidentiality, the Examiner believes that he is not at liberty to disclose the amount of fees paid.

Leveraged ESOP Transactions on April 1, 2007 and the Tribune Entities proceeded with the closing of the Step One Financing on June 4, 2007, having succeeded in obtaining commitments from the Lead Banks to advance the funds necessary to complete the Leveraged ESOP Transactions.

The record shows that, at the time of Step One, the Tribune Board, the Special Committee, and the Financial Advisors all were aware that the Tribune Entities would be incurring substantial additional indebtedness if Step Two closed. The underlying transaction documents, therefore, conditioned Tribune's effectuation of the Merger that would complete the Leveraged ESOP Transactions at Step Two, and the incurrence of the Step Two Debt necessary to complete those transactions, on Tribune's solvency (as specially defined in certain of these documents) after giving effect to the Step Two Transactions, and, specifically, on Tribune obtaining a third-party solvency opinion and furnishing to the LBO Lenders solvency certificates and representations concerning solvency. In other words—and this is critical for purposes of analyzing the intentional fraudulent transfer issues at Step Two—by design, a direct causal nexus existed between, on the one hand, the obligations incurred and transfers made at Step Two and, on the other hand, the procurement and issuance of the solvency opinion and solvency certificates and the making of solvency representations. The former could not occur without the latter.

As summarized below, the Examiner concludes that it is highly likely that Tribune, and reasonably likely that the Guarantor Subsidiaries, were rendered insolvent and without adequate capital as a result of the closing of the Step Two Transactions. Thus, unfortunately, what was supposed to never happen ended up happening. Although insolvency and gross disparity in the value given and received are most commonly associated with constructive fraudulent transfer analysis, they also are "badges of fraud" for purposes of intentional fraudulent transfer analysis. But, standing alone, they are not sufficient to render a transaction intentionally fraudulent. In the course of the Investigation, the Examiner found that these two factors do not stand alone. In particular, the Examiner focused his Investigation on three instances involving dishonesty by Tribune in the period leading up to, and resulting in, the Step Two Closing. It should be noted that direct evidence that a transferor set about to hinder, delay, or defraud creditors rarely is found, and that is why "courts usually rely on circumstantial evidence, including the circumstances of the transaction, to infer fraudulent intent."[7]

First, the Examiner found evidence indicating that Tribune did not act forthrightly in procuring the solvency opinion issued by VRC at Step Two. Based on the record adduced, the procurement of the solvency opinion was marred by dishonesty and lack of candor about the role played by Morgan Stanley in connection with VRC's solvency opinion and on the question of Tribune's solvency generally. Second, the Examiner found evidence indicating that Tribune's senior financial management failed to apprise the Tribune Board and Special Committee of relevant information underlying management's October 2007 projections on which VRC relied in giving its Step Two solvency opinion. Although the Examiner found no direct evidence that this information was purposely withheld from the Tribune Board or Special Committee in December 2007, the Examiner finds it implausible that the failure to apprise the Tribune Board and Special Committee of this information relating to the Step Two solvency valuation, and to a representation given by Tribune to VRC, was unintentional. Third, the Examiner found evidence that one important component of those projections went beyond the optimism that sometimes characterizes management projections. Although the Examiner found no direct evidence that

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[7] *See Liquidation Trust of Hechinger Inv. Co. v. Fleet Retail Fin. Group (In re Hechinger Inv. Co.),* 327 B.R. 537, 550 (D. Del. 2005), *aff'd,* 278 F. App'x 125 (3d Cir. 2008) (citing authorities).

Tribune's management was deceitful in the preparation and issuance of this aspect of the October 2007 forecast, this component of the projections bears the earmarks of a conscious effort to counterbalance the decline in Tribune's 2007 financial performance and other negative trends in Tribune's business, in order to furnish a source of additional value to support a solvency conclusion. The Examiner found that other aspects of management's projections, while aggressive, do not support the conclusion that the senior financial management at Tribune prepared them in bad faith.

Although not fitting neatly into one of the recognized "badges of fraud," the record also shows that fiduciaries charged with the responsibility for overseeing management's actions and determining whether the Step Two Transactions would render Tribune insolvent did not adequately discharge their duties. After Step One closed, Tribune's financial performance deteriorated. This circumstance, combined with the decline in the price of Tribune Common Stock, the amount of indebtedness Tribune would incur if Step Two closed, and broader market indicia, raised red flags signaling Tribune's insolvency if Step Two went forward. Indeed, had anyone performed a relatively simple mathematical calculation before Step Two closed, it would have been readily apparent that VRC's proposed Step Two solvency opinion translated into an implied pre-Step Two mid-point per share value of about $39 per share, well above both the $34 Tender Offer price that had been locked-in during the spring of 2007 (under far superior market conditions) and the trading value of Tribune's stock in the late fall of 2007. VRC's opinion was highly suspect.

In contrast to the active involvement by MLPFS, CGMI, and Morgan Stanley in the period preceding Step One, by the late fall of 2007 MLPFS and CGMI had ceased advising Tribune because of conflicts arising from the lending activities of their respective affiliates, MLCC and Citicorp. Unlike at Step One, neither of those advisors evaluated for the Tribune Board the reasonableness of management's projections or VRC's work. Although the Special Committee's Financial Advisor, Morgan Stanley, reviewed VRC's presentation materials and made brief oral remarks to the Special Committee which convened on December 18, 2007 to consider VRC's Step Two solvency opinion, no minutes of that Special Committee meeting ever were duly approved and adopted. Testimony provided in the course of the Investigation contradicted what is stated in portions of the draft minutes of that meeting attributed to Morgan Stanley, including that VRC's ultimate solvency opinion was conservative and was something on which directors could reasonably rely. In the course of the Investigation, the Examiner found a pattern beginning in early December 2007 in which Tribune used Morgan Stanley's imprimatur to bolster VRC's solvency opinion and push Step Two over the goal line, without authorization from Morgan Stanley.

The record shows, moreover, that both the Special Committee and the Tribune Board approved VRC's solvency opinion, despite the fact that no third-party advisor ever evaluated the reasonableness of that opinion or the projections on which VRC relied. This is true even though VRC's engagement letter required that VRC use a definition of "fair market value" and "fair saleable value" that was contrary to well-established principles of sound valuation, as discussed extensively in the Report. In effect, VRC was required to add to the value derived from its analysis the value conferred on the Tribune Entities from the S-Corporation/ESOP structure as a result of the Merger, even though inclusion of this value in the determination of "fair market value" and "fair saleable value" was improper. Even leaving this flaw aside, the solvency opinion was implausible. Other facts and circumstances, discussed in the Report, strongly suggest that the Tribune Board and the Special Committee failed appropriately to discharge their responsibilities at Step Two.

Based on the record adduced and applying the "natural consequences" formulation adopted by the Third Circuit Court of Appeals[8] to test whether an intentional fraudulent transfer occurred, the Examiner finds that a court is somewhat likely to conclude that the Tribune Entities incurred the obligations and made the transfers in Step Two with actual intent to hinder, delay, or defraud creditors. When a debtor resorts to what appears to be dishonesty to close a transaction, when no third-party advisor critically evaluates management's projections or the solvency opinion necessary for that transaction to close, when the transaction under consideration renders the debtor insolvent based on facts and circumstances known or reasonably ascertainable at the time, and when that transaction results in the debtor receiving far less than reasonably equivalent value, the natural consequence is that creditors will be hindered, delayed, or defrauded.

As discussed in the Report, the Examiner considered three principal potential mitigating factors that weigh against a conclusion that the Tribune Entities perpetrated an intentional fraudulent transfer at Step Two. First, although Tribune charged senior financial management with the responsibility for preparing projections and procuring the VRC solvency opinion and, therefore, any acts by management are ascribed to Tribune as a matter of law, nothing in the record suggests that the Tribune Board or the members of the Special Committee knowingly or intentionally committed any fraud or acts of dishonesty. Second, by all appearances, through and including the closing of the Step Two Transactions, the Zell Group remained eager to close Step Two. That the Zell Group still wanted to proceed with the transaction furnished some indicia to the Tribune Board and Special Committee that this significant and highly sophisticated

8 *United States v. Tabor Court Realty Corp.,* 803 F.2d 1288, 1305 (3d Cir. 1986).

participant in the Leveraged ESOP Transactions had not concluded that Tribune was about to be rendered insolvent if the Merger were consummated. Third, despite posing questions to Tribune and making it known to Tribune that they had retained a third-party solvency expert, the LBO Lenders ultimately funded the Step Two Debt. That the LBO Lenders were prepared to advance another $3.6 billion to the Tribune Entities (albeit heavily influenced by their preexisting contractual obligations made at Step One) supplied additional indicia that yet another sophisticated party was unwilling to stand in the way of the Step Two Closing.

The honesty of Tribune's outside directors, however, does not erase what appears to be the dishonesty found in the course of the Investigation. Likewise, the Zell Group's eagerness to take control of Tribune and willingness to invest approximately $56 million on a net basis at Step Two (representing about 1.5% of the aggregate debt and equity funded to make Step Two happen), and the unwillingness of the LBO Lenders to force a showdown with Tribune over funding Step Two, do not excuse Tribune's directors from failing to perform their responsibilities and do not erase the other evidence supporting the conclusion that an intentional fraudulent transfer occurred at Step Two. In sum, the Examiner does not believe that a court will likely find that the mitigating factors outweigh the contrary evidence. Nevertheless, in light of the mitigating factors, the Examiner concludes that it is only somewhat likely that a court would find an intentional fraudulent transfer occurred at Step Two.

Continuing the broad category of alleged wrongful acts by various persons and entities, with respect to claims for breach of fiduciary duty, the Examiner concludes that although, for the reasons summarized above, Tribune's directors did not exercise reasonable care in evaluating whether the solvency condition to the Step Two Closing was satisfied, Delaware law governing breach of fiduciary duty probably would not support imposition of liability against them. The

Examiner reaches this conclusion in view of the exculpatory provisions contained in Tribune's corporate charter and the relatively low threshold required under Delaware law to satisfy the requirement of good faith. As a result, although the Examiner acknowledges that the question is relatively close, based on the record adduced, the Examiner concludes it is somewhat unlikely that a court would impose liability against them. The Examiner, however, finds it reasonably likely that a court would conclude that one or more of Tribune's officers breached their fiduciary duties in connection with the Step Two Transactions. The Examiner did not find any credible evidence to support the conclusion that various third parties (the Large Stockholders, the Lead Banks, the Financial Advisors, and the Zell Group) aided and abetted any breach of fiduciary duty in connection with the Leveraged ESOP Transactions (although the Examiner leaves in equipoise the question whether VRC aided and abetted a breach of fiduciary duty or committed professional malpractice).

Based on the Investigation conducted to date, the Examiner finds that it is somewhat unlikely that a court would equitably subordinate or equitably disallow all or any portion of the LBO Lender Debt. Although the Examiner did find evidence suggesting that the Lead Banks suspected, and some may have even believed, that the Step Two Transactions would render Tribune insolvent or close to insolvent, the record adduced does not support a finding that the Lead Banks engaged in the type of egregious behavior required to support imposition of these remedies. The Examiner finds that the actions of the Lead Banks in the fall of 2007 largely were driven by the contractual obligations they made in the spring of 2007 at Step One. These contractual predicates help explain the actions of the Lead Banks between the closing of Step One and the closing of Step Two, and, the Examiner believes, serve as mitigating factors against the conclusion that equitable subordination or equitable disallowance is warranted. As discussed in the Report, however, the information adduced in the Investigation regarding certain actions by the Lead Banks in the fall of 2007 suggests that further investigation is warranted, among other things, on the question whether deliberations by the Lead Banks in the months preceding the Step Two Closing are protected from disclosure based on assertions of attorney-client privilege. The Examiner concludes that it is reasonably unlikely a court would conclude that any unjust enrichment claims are meritorious. Finally, the Examiner concludes that a court is reasonably unlikely to find that a claim for illegal corporate distributions pursuant to the relevant provisions of the DGCL could be sustained against Tribune's directors, based on the Step One Transactions, and is somewhat unlikely to find that such a claim could be sustained against Tribune's directors based on the Step Two Transactions.

b. Constructive Fraudulent Transfer Claims and Defenses.

Turning to the questions presented by the Parties arising under the general topic of constructive fraudulent transfer claims, the Examiner considered two threshold questions under what is colloquially referred to as the "collapse principle." First, the Examiner concludes that it is highly likely that a court would collapse all of the transactions *within* each of Step One and Step Two for purposes of evaluating the equivalence of the consideration given and received by the estates. Second, although the question is relatively close, the Examiner concludes that a court is somewhat unlikely to collapse Step One and Step Two *together* and thereby include the Step Two Debt for purposes of assessing solvency at Step One. On the latter question, applying the standards governing when collapse is warranted, the Examiner cannot reasonably conclude that satisfaction of all of the conditions to the Step Two Closing were a mere formality or that the Step Two Closing was assured from beginning to end. Thus, the Examiner finds that it is somewhat unlikely that a court would collapse Step One and Step Two together for solvency purposes. The Examiner also concludes that the Step Two Debt did not constitute a liability of the Tribune Entities at Step One. However—and this is an important distinction—the Examiner concludes that in measuring capital adequacy at the time of Step One and in considering whether the Tribune Entities intended to incur debts beyond their ability to repay, a court is highly likely to consider all obligations that were reasonably foreseeable at the time of Step One, including those caused by Step Two, as and when they were scheduled to require payment of interest or principal. Stated succinctly, whereas the Step Two Debt is not added to the balance sheet for Step One solvency purposes, this prospective indebtedness must be taken into account for purposes of measuring the Tribune Entities' capital adequacy and intention to incur debts beyond their reasonable ability to pay. Arguments presented by certain Parties to the contrary are not supported by the law governing the measurement of capital adequacy and the plain language of the Bankruptcy Code governing a debtor's intention to incur debts beyond its reasonable ability to pay.

Turning to questions of solvency and capital adequacy, the Examiner reaches a series of conclusions concerning the effect of the joint and several liability of all of Tribune and the Guarantor Subsidiaries on the LBO Lender Debt and the intercompany claims among the various Tribune Entities, on those questions. In broad outline, the Examiner finds that although a court would consider the solvency of each Tribune Entity separately, a court is reasonably likely, in the first instance, to value those entities collectively for solvency purposes after giving effect to intercompany claims and offsets and in consideration of the Tribune Entities' joint and several liability on the LBO Lender Debt.[9]

Regarding solvency and capital adequacy at Step One, the Examiner concludes that it is highly unlikely that the Tribune Entities were rendered insolvent at Step One if only the Step

[9] This area of inquiry is dense and highly technical, and it is unlikely that anyone other than the Parties and their professionals will make their way through those sections of the Report. They were as difficult to write as they undoubtedly will be to read.

One Debt is considered. Among other things, market indicia and the Tribune auction process leading to the Tribune Board's approval of the Leveraged ESOP Transactions on April 1, 2007 support this conclusion. The Examiner further concludes that if, contrary to the conclusion the Examiner reached, a court were to collapse Step One and Step Two together or treat the Step Two Debt as a liability for solvency purposes at Step One, it is somewhat unlikely (although an exceedingly close call) that a court would conclude that the Tribune Entities were rendered insolvent in that scenario. The Examiner further concludes that a court is reasonably unlikely to find that the Step One Transactions left the Tribune Entities without adequate capital, even taking into account the effect of the Step Two Debt contemplated at the time of Step One. One important premise underlying this conclusion is that Tribune management's projections developed in February 2007 (as thereafter revised, and ultimately relied on by VRC in its Step One solvency opinion) should be used for purposes of testing capital adequacy at Step One. For the reasons discussed in the Report, based on what was known and reasonably ascertainable at the time of the Step One Financing Closing Date, the Examiner finds that the variances in Tribune's financial performance through the Step One Financing Closing Date were not sufficient to justify adjusting those projections for purposes of testing capital adequacy. Finally, the Examiner finds that it is reasonably unlikely that a court would conclude that the Tribune Entities entered into the Step One Transactions intending to incur debts beyond their reasonable ability to pay.

Regarding solvency and capital adequacy at Step Two, the Examiner finds that (i) it is highly likely that a court would conclude that Tribune was rendered insolvent and left without adequate capital after giving effect to the Step Two Transactions, and (ii) it is reasonably likely that a court would conclude that the Guarantor Subsidiaries were left without adequate capital after giving effect to the Step Two Transactions. These are not particularly close questions. The Examiner finds that, applying a subjective test, a court is somewhat likely to find that the Tribune Entities intended to incur or believed they would incur debts beyond their ability to pay as such debts matured. If a court were to apply an objective test on this question, the answer to this question and the question of capital adequacy at Step Two would be the same.

Regarding the question whether the Tribune Entities received reasonably equivalent value in exchange for the obligations incurred and transfers made in the Leveraged ESOP Transactions if the other prerequisites to avoidance are met, as an overall matter the Examiner concludes that the Tribune Entities did not receive reasonably equivalent value in exchange for the obligations incurred on the LBO Lender Debt. The Examiner reached a series of conclusions regarding whether certain of the LBO Lenders conferred direct or indirect value to one or more of the Tribune Entities in connection with the advances made in the Step One Transactions and the Step Two Transactions. With respect to the Parties' contentions concerning value allegedly conferred by the LBO Lenders from specific components of the advances made by those creditors at Step One and Step Two, the Examiner finds that it is highly likely a court would conclude that none of the LBO Lenders conferred reasonably equivalent value on any Tribune Entity (i) for the payments made at Step One and Step Two to Selling Stockholders, (ii) for the satisfaction of the LATI Notes at Step One, and (iii) for Tribune's alleged "private company status" following the Step Two Transactions. The Examiner finds that it is highly likely that a court would find that the lenders under the Credit Agreement conferred reasonably equivalent value on Tribune resulting from the repayment of the 2006 Bank Debt. Finally, the Examiner finds that it is reasonably likely that certain of the LBO Lenders conferred, in varying degrees, reasonably equivalent value on certain of the Tribune Entities resulting from (i) at Step One and Step Two, obligations incurred to pay portions of the LBO Fees, (ii) at Step One, the provision of the Revolving Credit Facility and the Delayed Draw Facility, and (iii) at Step Two, various tax and annual 401(k) savings. The Examiner concludes that a court is highly likely to find that the Financial Advisors conferred some value on the Tribune Entities on account of their services rendered, but the Examiner is unable to conclude how much value a court would ascribe to those services.

The Examiner concludes that, to the extent obligations incurred in the Leveraged ESOP Transactions lacked reasonably equivalent value, then interest and principal payments made after those transactions but before the Petition Date on account of those obligations likewise were for less than reasonably equivalent value. Based on the applicable case law (which is less than clear), however, the Examiner leaves in equipoise the question whether the Credit Agreement Agent and the Bridge Credit Agreement Agent are the initial transferees of the payments on account of the indebtedness incurred under their respective credit agreements.

Turning to the various defenses asserted by certain Parties, the Examiner finds that a court is highly likely to find that Bankruptcy Code section 546(e)[10] protects payments to the Selling Stockholders on account of their equity interests in Tribune in connection with the Leveraged ESOP Transactions, except to the extent the transfers constitute intentional fraudulent transfers. As a result of the Examiner's findings concerning lack of an intentional fraudulent transfer at Step One, section 546(e) should provide a defense to avoidance or recovery of payments made to the Selling Stockholders in the Step One Transactions. The converse is true with respect to the payments made to those parties (and obligations incurred to the LBO Lenders) in the Step Two Transactions. The Examiner further finds that a court is reasonably

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[10] 11 U.S.C. § 546(e) (2006).

likely to find that section 546(e) does not protect against avoidance of the obligations incurred on account of the LBO Lender Debt or the Stock Pledge, guarantees, or promissory notes given in connection therewith. For the reasons discussed extensively in the Report, the Examiner disagrees with the contention advanced by certain Parties that this conclusion would render certain amendments to section 546(e) adopted in 2006 superfluous. The Report explains why that contention is flawed.

With respect to the various "good faith" defenses asserted by certain Parties as partial defenses to avoidance, the Examiner finds that a court is highly likely to find that any lack of good faith by the Credit Agreement Agent or the Bridge Credit Agreement Agent at the time the respective obligations under these facilities were incurred will apply to all claims against the Tribune Entities issued under such facilities, whether those claims are in the hands of original holders or their successors. The Examiner finds that a court is highly likely to apply an "objective test" for determining good faith in evaluating defenses to avoidance. Applying this standard and considering the actions of the Parties that asserted this defense, the Examiner finds as follows on the question of good faith regarding specified entities:

(1) A court is reasonably likely to conclude that JPMCB acted in good faith in connection with the obligations incurred and advances made in the Step One Transactions, but not at Step Two.

(2) The Examiner finds no basis to vary the conclusions reached above concerning JPMCB's actions as Credit Agreement Agent from the actions of the JPM Entities as recipients of LBO Fees at both steps. As a result, the Examiner finds that it is reasonably likely that the JPM Entities acted in good faith in Step One, but not at Step Two.

(3) For reasons similar to the Examiner's rationale for his conclusion concerning JPMCB as Credit Agreement Agent, the Examiner finds that it is reasonably likely that a court would conclude that MLCC did not act in good faith as Bridge Credit Agreement Agent in connection with the obligations incurred and advances made in the Step Two Transactions.

(4) Regarding the LBO Fees paid to the Merrill Entities at Step One, for reasons similar to the Examiner's conclusions concerning the good faith of JPMCB and MLCC as agents at Step One, the Examiner finds that it is reasonably likely that a court would find that the Merrill Entities acted in good faith in their capacity as transferee of LBO Fees at Step One, but not at Step Two.

(5) Regarding the LBO Fees paid to the Citigroup Entities at Step One, for reasons similar to the Examiner's conclusions generally regarding lender good faith at Step One, the Examiner finds that it is reasonably likely that a court would conclude that the Citigroup Entities acted in good faith in their capacity as transferee of LBO Fees at Step One, but not at Step Two.

(6) Regarding the LBO Fees paid to the BofA Entities at Step One, for reasons similar to the Examiner's conclusions generally regarding other lender good faith at Step One, the Examiner finds that it is reasonably likely that a court would conclude that the BofA Entities acted in good faith in their capacity as transferee of LBO Fees at Step One, but not at Step Two.

(7) The Examiner finds that a court is somewhat likely to conclude that both MLPFS and CGMI acted in good faith in connection with the payments made to them for Advisor Fees for financial advisory services in connection with the Leveraged ESOP Transactions, although the question is closer respecting payments made to CGMI shortly after the Step Two Closing.

c. Potential Preference Claims and Defenses.

The Examiner finds that it is unclear whether satisfaction of the Exchangeable EGI-TRB Note in connection with the Step Two Transactions constitutes a preferential transfer. Even if, however, satisfaction of the Exchangeable EGI-TRB Note qualifies as a preferential transfer, the Examiner finds that it is reasonably likely that a court would find that the transaction is subject to an ordinary course of business defense. It is unclear, however, whether a court would find that the transaction is subject to a new value defense.

The Examiner further finds that to the extent that payments to the LBO Lenders on account of the Credit Agreement Debt and the Bridge Debt qualified as preferential transfers, it is reasonably likely that a court would find that the payments would be subject to an ordinary course of business defense, except to the extent that the underlying Credit Agreement Debt and Bridge Debt are avoided as fraudulent transfers.

The Examiner did not have a sufficient opportunity to evaluate potential preference claims and defenses relating to bonuses, deferred compensation, retention, severance, and change in control payments made to directors and officers of the Tribune Entities, and to payments on intercompany claims, during the one-year period prior to the Petition Date. These issues were only briefly mentioned and insufficiently developed by the Parties, and a thorough analysis would require, in the case of the first category, scrutiny of multiple payments to more than two hundred individuals and, in the case of the second category, many thousands of transactions occurring over a one-year period.

d. Issues Relating to Remedies Resulting From Avoidance Actions.

The Examiner next considered two issues under the general category of "standing." First, the Examiner concludes that it is highly likely that a court would find that each Guarantor Subsidiary that is a Debtor in the Chapter 11 Cases has standing to seek avoidance of the obligations incurred to the LBO Lenders. Second, the Examiner concludes that a court is reasonably likely to find that *if* the estate representatives for Tribune and the Guarantor

Subsidiaries were to successfully avoid the obligations incurred on account of the LBO Lender Debt, then the value available from avoidance at the Guarantor Subsidiary estates would not be limited solely to the satisfaction of the Non-LBO Debt at the Guarantor Subsidiary levels. Based on the Examiner's conclusions concerning both intentional and constructive fraudulent transfer claims at Step One, however, the Examiner believes that the above finding would not likely affect the outcome in these cases.

The Examiner also made a series of findings concerning the effect of avoidance on certain creditor recoveries.

First, the Examiner concludes that to the extent a transferee of an avoided transfer pays the amount or turns over such property, the transferee will be entitled to assert a claim against the estate to which the funds are paid or returned equal to the non-constructively fraudulent claim. The Examiner finds, however, that to the extent an obligee's claim is avoided, a court is reasonably likely only to permit any participation of such a claim in distributions from the estate to the extent the claim is supported by reasonably equivalent value or if Non-LBO Creditor claims are paid in full with interest. It is reasonably likely that if the Step Two Debt, but not the Step One Debt, is avoided, absent an otherwise applicable basis to subordinate or disallow the Step One Debt or assert rights of unjust enrichment, the Step One Debt would participate in distributions from the estates in accordance with applicable non-bankruptcy priorities, but the Examiner leaves in equipoise the question whether the Step One Debt would participate in avoidance recoveries if the Step Two Transactions are avoided.

Second, the Examiner concludes that to the extent the LBO Lender Debt is not avoided (or if avoided, to the extent enforced under Bankruptcy Code section 548(c)),[11] the LBO Lenders

[11] 11 U.S.C. § 548(c) (2006).

will be entitled to recover value at the Guarantor Subsidiary levels as well as enforce their rights under the PHONES Subordination at the Tribune level with respect to distributions from the Tribune estate. The Examiner, however, concludes that a court is reasonably likely to hold that the PHONES Subordination would not extend to LBO Lender Debt avoided at the Tribune level.

Third, the Examiner concludes that, to the extent the Credit Agreement Debt and Bridge Debt are not avoided (or if avoided, to the extent enforced under Bankruptcy Code section 548(c)) at the Guarantor Subsidiary levels, the subordination provisions of the Subordinated Bridge Subsidiary Guarantee will remain in effect and govern distributions from the Guarantor Subsidiary estates. It is reasonably likely that to the extent those obligations are avoided and are not enforced under section 548(c) at the Guarantor Subsidiary levels and the Stock Pledge is avoided and thereby rendered inoperative, however, such avoidance in turn would invalidate the subordination provisions of the Subordinated Bridge Subsidiary Guarantee, such that any value distributed by Tribune (including amounts available to Tribune as a result of the remittance of value from the Guarantor Subsidiaries to Tribune resulting from avoidance of the LBO Lender Debt) would be ratably distributed between the Credit Agreement Debt and the Bridge Debt. The Examiner finds, however, that in connection with fashioning remedies resulting from avoidance, once all Non-LBO Creditors are paid in full plus post-petition interest, a court is reasonably likely to adjust this result.

2. Question Two.

Question Two presents a relatively discrete inquiry regarding whether Wilmington Trust violated the automatic stay imposed under Bankruptcy Code section 362[12] when it filed the Complaint against the Lead Banks and certain other defendants. On this matter, the Examiner

[12] 11 U.S.C. § 362 (2006).

concludes that a court is reasonably likely to find that Wilmington Trust did not violate the automatic stay by filing the Complaint.

Although the Complaint includes certain factual allegations that could underlie a fraudulent transfer claim, the Complaint does not actually allege a fraudulent transfer claim as a substantive cause of action, nor does it seek to recover property that may have been fraudulently transferred by the Debtors before the Chapter 11 Cases were commenced. The claims for relief alleged in the Complaint are limited to equitable subordination and disallowance of the defendants' claims, breach of fiduciary duty by the predecessor indenture trustee to the holders of the PHONES Notes and the defendants' aiding and abetting that breach of fiduciary duty, and the imposition of a constructive trust on distributions that would be received by the defendants. The use of factual allegations that may form the basis of an avoidance action does not convert these claims into fraudulent transfer claims.

Even if the claims for relief requesting equitable subordination and disallowance of the defendants' claims could be characterized as fraudulent transfer claims in substance, it is reasonably unlikely that avoidance actions themselves are rightfully considered property of the bankruptcy estate, the assertion of which could potentially violate the automatic stay. Property of the estate includes causes of action that the debtor could have asserted under nonbankruptcy law before the petition date. Before filing for bankruptcy, a debtor has no right under applicable nonbankruptcy law to prosecute an action for the recovery of property it has fraudulently transferred, and all such rights are vested exclusively in creditors. Because a debtor could not pursue a fraudulent transfer claim under applicable nonbankruptcy law before the petition date, a fraudulent transfer claim does not constitute property of the estate, although after a bankruptcy petition is filed the trustee or debtor in possession holds the exclusive right to pursue such claims as representative of the estate, absent further order of the court. For similar reasons, equitable subordination claims and claim objections are not property of the estate, the assertion of which would violate the automatic stay.

Finally, a court is highly likely to find that the breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and constructive trust claims for relief alleged in the Complaint do not violate the automatic stay. These claims are not property of the estate and do not seek to obtain possession of property of the estate or exert control over any such property. The breach of fiduciary duty and aiding and abetting breach of fiduciary duty claims are premised on unique and specific fiduciary duties allegedly owed by the predecessor indenture trustee to the holders of the PHONES Notes and could not be asserted by the Tribune Entities. The constructive trust remedy also is limited to distributions from the estates that would otherwise be received by the defendants, and does not seek to impose a constructive trust over property that is retained or held by the Tribune Entities.

3. Question Three.

Question Three requires the evaluation of assertions and defenses made by certain of the Parties in connection with the motion filed by JPMCB for sanctions against Wilmington Trust for alleged violations of the Depository Order. The Examiner concludes that a court is reasonably likely to find that Wilmington Trust, through its counsel, failed to comply with the requirements of the Depository Order when it publicly filed the defectively redacted version of the Complaint, but that this violation was not intentional or reckless. The Examiner further concludes that a court is reasonably likely to require Wilmington Trust to pay the reasonable attorneys' fees and expenses incurred by JPMCB as a result of the violation of the Depository Order. Finally, the Examiner concludes it is reasonably unlikely that a court would find that Wilmington Trust breached its fiduciary duties as a member of the UCC or violated the UCC's bylaws. The Examiner notes in this summary and in Volume Three that Wilmington Trust's counsel exhibited candor and contrition in their discussions with the Examiner regarding this matter and cooperated completely, while responding firmly to contentions of the Parties to which they disagreed and advancing the interests of their client in this matter.

II.

CONDUCT OF THE EXAMINATION

A. Meet and Confer Process and Establishment of the Examiner Work Plan.

Pursuant to the Examiner Order, prior to commencing the Investigation, the Examiner was required to meet and confer with the Parties and, no later than seven days after the filing of the notice of appointment of Examiner, file a work and expenses plan, including a "good faith estimate of the fees and expenses of the Examiner and the Examiner's proposed professionals for conducting the Investigation (the 'Budget')."[13]

Beginning promptly after the Examiner's appointment by the United States Trustee, on April 30, 2010, the Examiner and his proposed counsel held telephonic conferences with counsel to the United States Trustee and the Parties 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 bankruptcy cases in recent years. The Examiner determined to proceed immediately to convene all of the Parties to meet and confer as rapidly as possible. The Debtors and the other Parties agreed that a prompt meeting was appropriate under the circumstances.

13 Ex. 1 at ¶ 4 (Examiner Order).

For two full days, beginning on Tuesday, May 4, 2010, the Examiner conducted in-person meetings with the Parties in New York City, 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 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 in writing on the preceding issues, 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 formally discharged his meet and confer obligations under the Examiner Order, followed by a series of meetings between the Examiner and particular Parties (or, in some cases, groups of Parties).

After these consultations and his review of publicly available pleadings, it became readily apparent to the Examiner that the tasks he was assigned were quite substantial, and the timeframe in which he had to perform those tasks was 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 had substantial disagreements, and a lengthy list of wide-ranging legal claims, defenses, and issues under state and federal law. The record adduced as of the time the Investigation commenced included over 3 million pages of documents that were collected in a document "depository," but were not topically indexed.[14] Examinations of this magnitude have taken examiners appointed in other cases many months, if not years, to conduct.

[14] The "Document Depository" 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

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

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 conducted its own independent investigation of the financial matters at issue on behalf of the Examiner.

The Examiner would be remiss if he did not at least take note that in the wake of the financial collapse in the fall of 2008 and the resulting "Great Recession," considerable commentary has suggested that the credit markets generally and underwriting practices in particular in the period preceding these events were widely imprudent and reckless.[17] The Examiner shares some of the sentiments expressed in this regard. Although standards of reasonableness and prudence may well transcend the temporary systemic lapses that sometimes characterize standards of care at any particular time,[18] as readers will observe, the Examiner hewed closely in the Report to the applicable legal standards governing the Questions. As the legal analyses that follow reveal, these standards do not give the Examiner license to evaluate the Leveraged ESOP Transactions with the benefit of hindsight or the wisdom born from the hard lessons of the past few years, nor could the Examiner simply assume that a financial catastrophe of the magnitude our country has experienced since 2008 was reasonably foreseeable even a year before that. Moreover, the Examiner was not charged with evaluating, and therefore mercifully keeps to himself his own views regarding, whether the Leveraged ESOP Transactions represented a prudent, sound, or socially-useful business transaction.

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17 Stephen Labaton, *The Reckoning: Agency's '04 Rule Let Banks Pile up New Debt*, N.Y. TIMES, October 8, 2008, http://www.nytimes.com/2008/10/03/business/03sec.htmlpagewanted=all; JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 2008 (2008); Ben S. Bernanke, Chairman, Fed. Reserve, Speech at the Fed. Reserve Bank of Chicago's 43rd Annual Conference on Bank Structure & Competition, (May 17, 2007).

18 *See generally The T.J. Hooper*, 60 F.2d 737, 740 (2d Cir. 1932) (L. Hand, J.) ("Indeed in most cases reasonable prudence is in fact common prudence; but strictly it is never its measure; a whole calling may have unduly lagged in the adoption of new and available devices. It may never set its own tests, however persuasive be its usages. Courts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission.").

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

[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).

above, each Party identify to the Examiner those particular documents accompanying the briefs that the Party believed in good faith were entitled to protection from public disclosure under applicable law and that the Examiner should not publicly disclose in the Report. The Examiner made clear to the Parties, repeatedly, that the standard the Parties should apply to determine whether to designate documents for continued nondisclosure should not be whether the disclosure would be embarrassing to a particular Party, or even harmful to its position in existing or potential litigation, but whether there was a *bona fide* legal basis to prevent its public disclosure. The Examiner set June 14, 2010 as the deadline for Parties to identify any specific document that they maintained should be preserved as confidential. After the June 14, 2010 deadline, in a series of communications, the Examiner identified to the Parties, and other entities that had produced documents denominated as confidential, certain documents that were not submitted with the briefs but which the Examiner might determine to quote from or refer to in the Report. The Examiner set deadlines for each Party and other entities to identify which of those accompanying documents the Party believed in good faith were entitled to protection from public disclosure under applicable law and that the Examiner should not publicly disclose in the Report. The process was laborious and taxing, and the wanton practice of designating essentially every piece of paper "confidential" or "highly confidential" is unnecessary, wasteful, and expensive for all clients.

In response to the notifications provided by the Examiner, certain Parties designated certain documents that such Parties maintained should remain confidential. References to those items were so numerous and, in many instances, wide-ranging that, regrettably, the Examiner had no choice but to redact the entire factual narrative in this Volume One and the substantive analysis contained in Volume Two from the version of the Report filed as matter of public record. The Examiner has filed a motion with the Bankruptcy Court to address this matter.

III.

STATEMENT OF BASIC FACTS, TRANSACTIONS, AND AGREEMENTS.

A. The Tribune Entities and Their Businesses.[24]

1. Corporate History and Organization.

The Tribune Entities are a leading media and entertainment conglomerate reaching more than eighty percent (80%) of households in the United States through their newspapers, other publications and websites, their television and radio stations, Superstation WGN America, and their other news and entertainment offerings,[25] with their principal place of business in Chicago, Illinois.[26]

Tribune was founded in 1847 and incorporated in Illinois in 1861.[27] In 1968, as a result of a corporate restructuring, Tribune became a holding company incorporated in Delaware.[28] In 1983, Tribune became a public company.[29] Throughout the 1980s and 1990s, the Tribune Entities grew rapidly through a series of acquisitions,[30] culminating in 2000 with Tribune's acquisition of Times Mirror.[31]

Tribune directly or indirectly owns all (or substantially all) of the equity in the 128 Tribune Entities, of which 110 are Debtors.[32]

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24 The description of the Tribune Entities' businesses set forth in the Report primarily focuses on the activities of the Tribune Entities in 2007 and does not address changes to the Tribune Entities' businesses or holdings since the Petition Date.

25 Ex. 4 at 1 (Tribune 2007 Form 10-K); http://www.tribune.com/about/history.html.

26 Ex. 4 at cover page (Tribune 2007 Form 10-K) (listing address of principal executive offices as Chicago, IL).

27 *Id.* at 1.

28 *Id.*

29 *Id.*; http://www.tribune.com/about/history.html.

30 http://www.tribune.com/about/history.html.

31 Ex. 5 at 99 (Tender Offer); http://www.tribune.com/about/history.html.

32 Ex. 6 (Organization Chart).

2. Tribune's Operations.

The Tribune Entities' operations are divided into two primary industry segments: the Publishing Segment and the Broadcasting Segment.[33] These segments operate primarily in the United States.[34]

a. Publishing Segment.

In 2007, the Publishing Segment, which accounted for seventy-two percent (72%) of the Tribune Entities' consolidated 2007 revenues, operated eight major-market daily newspapers, distributed preprinted insert advertisements, provided commercial printing and delivery services to third-parties, and distributed entertainment listings and syndicated content through its Tribune Media Services business unit.[35] The Tribune Entities' primary daily newspapers in 2007 were the *Los Angeles Times, Chicago Tribune, Newsday, South Florida Sun-Sentinel, Orlando Sentinel, The Sun, Hartford Courant, The Morning Call* and *Daily Press.*[36] In 2007, the Tribune Entities' newspapers collectively had paid circulation of approximately 2.7 million copies daily and 3.9 million copies on Sundays.[37] The Publishing Segment also managed the websites of the Tribune Entities' daily newspapers, television stations, and other branded products that target specific areas of interest.[38]

b. Broadcasting Segment.

In 2007, the Broadcasting Segment, which accounted for twenty-eight percent (28%) of the Tribune Entities' 2007 consolidated operating revenues, included 23 television stations in 19

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[33] Ex. 4 at 8 (Tribune 2007 Form 10-K).

[34] *Id.*

[35] *Id.* at 9.

[36] *Id.*

[37] *Id.*

[38] *Id.*

markets.[39] The Tribune Entities' television stations compete for audience and advertising with other television and radio stations, cable television, and other media serving the same markets.[40] Selected data for the Tribune Entities' television stations in 2007 are shown in the following table:[41]

	Market			Major Over-the Air Stations in Market	Expiration of FCC License	Year Acquired
	National Rank	**% of U.S. Households**	**Affiliation**			
WPIX—New York, NY	1	6.6	CW	7	2015	1948
KTLA—Los Angeles, CA	2	5.0	CW	8	2014	1985
WGN—Chicago, IL	3	3.1	CW	8	2013	1948
WPHL—Philadelphia, PA	4	2.6	MNTV	7	2015	1992
KDAF—Dallas, TX	5	2.2	CW	9	2014	1997
WDCW—Washington, D.C.	9	2.0	CW	7	2012	1999
KHCW—Houston, TX	10	1.8	CW	9	2014	1996
KCPQ—Seattle, WA	14	1.6	FOX	8	2015	1999
KMYQ—Seattle, WA	14	—	MNTV	8	2015	1998
WSFL—Miami, FL	16	1.4	CW	7	2013	1997
KWGN—Denver, CO	18	1.3	CW	7	2014	1966
KTXL—Sacramento, CA	20	1.2	FOX	7	2014	1997
KPLR—St. Louis, MO	21	1.1	CW	6	2014	2003
KRCW—Portland, OR	23	1.0	CW	7	2015	2003
WTTV—Indianapolis, IN	26	1.0	CW	7	2013	2002
WXIN—Indianapolis, IN	26	—	FOX	7	2013	1997
KSWB—San Diego, CA	27	0.9	CW	7	2014	1996
WTIC—Hartford, CT	29	0.9	FOX	7	2015	1997
WTXX—Hartford, CT	29	—	CW	7	2015	2001
WXMI—Grand Rapids, MI	39	0.7	FOX	7	2013	1998
WPMT—Harrisburg, PA	41	0.6	FOX	5	2015	1997
WGNO—New Orleans, LA	53	0.5	ABC	7	2013	1983
WNOL—New Orleans, LA	53	—	CW	7	2013	2000

c. Additional Investments.

Tribune has investments in various private corporations, limited liability companies, and partnerships.[42] Significant equity investments as of 2007 included CareerBuilder (40.8%),

[39] *Id.* at 8 and 15-16.

[40] *Id.* at 16.

[41] *Id.*

[42] *Id.* at 18.

Classified Ventures (28%), TV Food Network (31%), Comcast SportsNet Chicago (25%), ShopLocal, LLC (43%), Tropix.net (33.7%), and Metromix, LLC (50%).[43]

3. Tribune's Directors, Management, and Advisors.

a. Board of Directors of Tribune.

During the period that the Leveraged ESOP Transactions were discussed and approved, Tribune's Board was comprised of eleven directors:[44] Jeffrey Chandler, Dennis J. FitzSimons, Roger Goodan, Enrique Hernandez, Jr., Betsy D. Holden, Robert S. Morrison, William A. Osborn, J. Christopher Reyes,[45] William Stinehart, Jr., Dudley S. Taft, and Miles D. White.[46] Tribune retained and received financial advice from MLPFS and CGMI and legal advice from Wachtell and Sidley Austin LLP and, for ESOP matters, McDermott Will & Emery LLP.[47] As discussed below, on September 21, 2006, the Tribune Board created a Special Committee to explore strategic alternatives.[48]

Three members of the Tribune Board (Mr. Chandler, Mr. Goodan, and Mr. Stinehart) were trustees of the Chandler Trusts.[49] Mr. Chandler and Mr. Goodan also were beneficiaries of the Chandler Trusts.[50] The Chandler Trusts were the principal stockholders of Times Mirror before the merger of Times Mirror into Tribune in 2000.[51] In connection with the Tender Offer

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43 *Id.* at 18 and 109.

44 Ex. 7 at 9-11 (2007 Tribune Proxy).

45 Mr. Reyes resigned from the Tribune Board effective at the conclusion of the July 18, 2007 Tribune Board meeting. Ex. 8 (Tribune Press Release, dated June 29, 2007).

46 Mr. White resigned from the Tribune Board on August 6, 2007. Ex. 9 (Tribune Form 8-K, filed August 10, 2007).

47 Ex. 5 at 45 (Tender Offer).

48 *See* Report at § III.D.1.a.

49 Ex. 5 at 97 (Tender Offer).

50 *Id.*

51 *Id.*

discussed below,[52] the Chandler Trusts agreed to tender all shares held by them and to cause Mr. Chandler, Mr. Goodan, and Mr. Stinehart to resign as directors of Tribune at the expiration of the Tender Offer.[53] These three individuals thereafter resigned from the Tribune Board effective June 4, 2007.[54]

On May 9, 2007, before the consummation of the Step One Transactions discussed below,[55] Samuel Zell was appointed to the Tribune Board.[56] On December 20, 2007, following consummation of the Merger, the members of the Tribune Board were Betsy D. Holden, William A. Osborn, William C. Pate, Maggie Wilderotter, Samuel Zell, Jeff Berg, Brian Greenspan, and Frank Wood.[57] Mr. FitzSimons, Mr. Hernandez, Mr. Morrison, and Mr. Taft ceased to be members of the Tribune Board on consummation of the Merger.[58]

b. Management of Tribune.

Unless otherwise indicated, each individual listed below was an officer of Tribune during the period from February 17, 2006 through at least March 20, 2008:[59]

Chandler Bigelow, Vice President/Treasurer.[60]

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52 *See* Report at § III.D.16.

53 Ex. 5 at 98 (Tender Offer). The Tender Offer expired on May 24, 2007 and the shares tendered thereunder were repurchased by Tribune on June 4, 2007.

54 Ex. 10 at 2 (Tribune Form 8-K, filed June 5, 2007).

55 *See* Report at § III.D.

56 *See id.* at § III.D.5.f.

57 Ex. 11 (Tribune Board Meeting Minutes, dated December 18, 2007); Ex. 12 (Tribune Board Meeting Minutes, dated December 20, 2007).

58 Ex. 13 at 8 (Tribune Form 8-K, filed December 28, 2007).

59 Ex. 4 at 21 (Tribune 2007 Form 10-K); Ex. 14 at 19-20 (Tribune 2006 Form 10-K); Ex. 15 at 17-18 (Tribune 2005 Form 10-K).

60 Chandler Bigelow was appointed Chief Financial Officer of Tribune effective March 24, 2008. From 2003 through March 23, 2008, Mr. Bigelow served as Tribune's Vice President/Treasurer with responsibility for Tribune's financing activities, cash management, short-term and retirement fund investments and risk-management programs. Before that time, commencing in 1998, Mr. Bigelow served as Tribune's Assistant Treasurer, Director/Corporate Finance and Corporate Finance Manager. Ex. 16 at 2 (Tribune Form 8-K, filed March 26, 2008).

Dennis J. FitzSimons, Chairman, Chief Executive Officer, and President.[61]

Donald C. Grenesko, Senior Vice President/Finance and Administration.[62]

Crane H. Kenney, Senior Vice President, General Counsel, and Secretary.

Luis E. Lewin, Senior Vice President/Human Resources.[63]

R. Mark Mallory, Vice President and Controller.[64]

Randy Michaels, Executive Vice President and Chief Executive Officer of Tribune Interactive, Inc. and Tribune Broadcasting Company.[65]

John E. Reardon, President of Tribune Broadcasting Company.[66]

Scott C. Smith, President of Tribune Publishing Company.[67]

Gerald A. Spector, Executive Vice President and Chief Administrative Officer.[68]

Ed Wilson, President of Tribune Broadcasting Company.[69]

Samuel Zell, Chairman and Chief Executive Officer.[70]

Of the members of Tribune's management, before the Merger closed, only Mr. FitzSimons also sat on the Tribune Board.

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61 Mr. FitzSimons resigned effective on consummation of the Merger. *See* Ex. 13 at 8 (Tribune Form 8-K, filed December 28, 2007).

62 Mr. Grenesko retired effective March 21, 2008. *See* Ex. 16 at 2 (Tribune Form 8-K, filed March 26, 2008).

63 Mr. Lewin resigned effective February 22, 2008. *See* Ex. 17 at 2 (Tribune Form 8-K, filed February 27, 2008).

64 Mr. Mallory retired effective April 17, 2008. *See* Ex. 18 at 2 (Tribune Form 8-K, filed April 22, 2008).

65 Mr. Michaels was named to these positions effective on consummation of the Merger. *See* Ex. 13 at 7-8 (Tribune Form 8-K, filed December 28, 2007).

66 Mr. Reardon resigned effective February 4, 2008. *See* Ex. 19 at 2 (Tribune 8-K, filed February 8, 2008).

67 Mr. Smith retired effective June 12, 2008. *See* Ex. 20 at 2 (Tribune Form 8-K, filed June 18, 2008).

68 Mr. Spector was named to these positions effective on consummation of the Merger. *See* Ex. 13 at 7-8 (Tribune Form 8-K, filed December 28, 2007).

69 Mr. Wilson was named to this position effective February 11, 2008. *See* Ex. 19 at 2 (Tribune Form 8-K, filed February 8, 2008).

70 Mr. Zell was named Chief Executive Officer on December 20, 2007 and Chairman on December 20, 2007. *See* Ex. 13 at 7-8 (Tribune Form 8-K, filed December 28, 2007).

c. Boards of Directors of the Guarantor Subsidiaries.

The members of the Boards of Directors of the Guarantor Subsidiaries as of June 4, 2007 and December 20, 2007 are as set forth on Table 1 of Volume One of the Report.

d. Management of the Guarantor Subsidiaries.

The officers of each of the Guarantor Subsidiaries during the period from May 2, 2006 through at least December 20, 2007 are set forth on Table 2 of Volume One of the Report.

e. Financial Advisors.

(1) MLPFS.

On October 17, 2005, Tribune and MLPFS, an affiliate of ML&Co., entered into two letter agreements whereby Tribune engaged MLPFS to serve as financial advisor to Tribune.[71] No other Tribune Entity was a party to these letter agreements.

Under the first MLPFS letter agreement, the scope of MLPFS' engagement included providing Tribune with financial advisory and investment banking services in connection with a "Strategic Transaction," which the first MLPFS letter agreement defined as "a transaction or series of transactions in which one or more Purchasers acquire or propose to acquire directly or indirectly a majority of the stock, assets, revenues, income or business of the Company or otherwise gains control of the Company. . . ."[72] MLPFS agreed to assist Tribune, at Tribune's request, in identifying and contacting potential transaction partners, as well as in "analyzing, structuring, negotiating and effecting a proposed Strategic Transaction."[73] MLPFS also agreed to provide an opinion, if requested by Tribune, "whether the consideration to be . . . paid in [a]

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71 Ex. 23 (MLPFS Strategic Transaction Engagement Letter); Ex. 24 (MLPFS Recapitalization Engagement Letter). Although both letter agreements were executed by Michael Costa on behalf of MLPFS, the text of both letters references the engagement of ML&Co.

72 *Id.* at 2.

73 *Id.* at 1.

proposed Strategic Transaction was fair from a financial point of view to the Company or the shareholders of the Company, . . . as applicable."[74]

Tribune agreed that MLPFS or any of its affiliates could provide financing or related services to one or more potential purchasers in connection with a "Strategic Transaction," and to permit the MLPFS financing team to attend Tribune's management presentations and conduct formal due diligence investigations.[75] In the event that MLPFS participated in a purchaser's financing, MLPFS only would be required to deliver a fairness opinion if Tribune also obtained an additional fairness opinion from a third-party financial advisor that was not participating in the financing of the transaction.[76]

If a "Strategic Transaction" were consummated, or if Tribune entered into an agreement for a "Strategic Transaction" that was subsequently consummated during the engagement period or within 18 months thereafter, the first letter agreement provided that MLPFS would earn a success fee of $12.5 million, payable on the closing of any such transaction.[77] If MLPFS earned fees in a financing in which it acted as a book-running manager, lead arranger, or a similar role, the success fee would be reduced by 25% of the net financing fees paid, up to an aggregate maximum reduction of $3.75 million.[78]

Under the second MLPFS letter agreement, the scope of MLPFS' engagement included assisting Tribune in analyzing, structuring, negotiating, and effecting (a) a leveraged

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74 *Id.*

75 *Id.* at 4.

76 *Id.* at 2.

77 *Id.*

78 *Id.*

recapitalization of Tribune (on a non-exclusive basis) and (b) the restructuring of Tribune's ownership interests in the TMCT LLCs (on an exclusive basis).[79]

If Tribune determined to make a tender or exchange offer as part of a leveraged recapitalization of Tribune, Tribune agreed to offer to retain MLPFS as dealer-manager for such offer.[80] If, in connection with a leveraged recapitalization, any Tribune Entity (or any of their respective Subsidiaries or affiliates) entered into a loan financing, public sale, or private placement of equity or debt securities, the proceeds of which were used in connection with a leveraged recapitalization, Tribune agreed to offer, or to cause the appropriate Subsidiary or affiliate to offer, to retain MLPFS as a book running lead manager and/or lead arranger (or similar role) under terms no less favorable than any other financing source.[81]

Under the second MLPFS letter agreement, MLPFS agreed to render an opinion on the fairness, from a financial point of view, to Tribune of the distribution involved in the restructuring of Tribune's ownership interests in the TMCT LLCs.[82]

The second MLPFS letter agreement entitled MLPFS to a fee of $2 million payable on the consummation of a leveraged recapitalization and $0.75 million payable on the consummation of a restructuring of Tribune's ownership interests in each of the TMCT LLCs.[83]

In connection with both MLPFS letter agreements, Tribune agreed to indemnify MLPFS and the indemnified parties thereunder against any and all losses, claims, damages, and liabilities to which any such party may have become subject in connection any transaction contemplated by

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79 Ex. 24 at 1 (MLPFS Recapitalization Engagement Letter).

80 *Id.* at 2.

81 *Id.*

82 *Id.*

83 *Id.*

the letter agreements, other than resulting from MLPFS' bad faith or gross negligence.[84] Also, under both letter agreements, MLPFS and Tribune acknowledged that MLPFS was retained to act as an independent contractor with duties solely to Tribune and that nothing in the letter agreements should be deemed to create a fiduciary relationship between MLPFS and Tribune or between MLPFS and Tribune's stockholders, creditors, or employees.[85] MLPFS was entitled to rely on the completeness and accuracy of information supplied by Tribune without any duty of MLPFS to independently verify such information and to assume that projections furnished to MLPFS by Tribune were reasonably prepared and reflected "the best then currently available estimates and judgment" of Tribune's management.[86] The letter agreements stated that MLPFS and its affiliates could actively trade debt and equity securities of Tribune for its own and for its customers' accounts.[87]

(2) Morgan Stanley.

On October 17, 2006, Tribune and Morgan Stanley entered into a letter agreement whereby Tribune engaged Morgan Stanley to serve as financial advisor to the Special Committee in connection with (a) a possible sale involving a change of control of Tribune and (b) a recapitalization or restructuring plan for Tribune, including any potential spin-off or significant asset sale.[88] No other Tribune Entity was a party to this agreement. In connection therewith, Morgan Stanley's responsibilities included (w) reviewing the analyses and presentations of

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84 Ex. 23 at 3 and Annex A (MLPFS Strategic Transaction Engagement Letter); Ex. 24 at 4 and Annex A (MLPFS Recapitalization Engagement Letter).

85 Ex. 23 at 3 (MLPFS Strategic Transaction Engagement Letter); Ex. 24 at 3 (MLPFS Recapitalization Engagement Letter).

86 Ex. 23 at 3 (MLPFS Strategic Transaction Engagement Letter); Ex. 24 at 3 (MLPFS Recapitalization Engagement Letter).

87 Ex. 23 at 5 (MLPFS Strategic Transaction Engagement Letter); Ex. 24 at 4 (MLPFS Recapitalization Engagement Letter).

88 Ex. 25 at 1 (Morgan Stanley Engagement Letter).

Tribune's financial advisors, (x) representing the Special Committee throughout the process, (y) making recommendations to the Special Committee with respect to the process, and (z) providing the Special Committee with a fairness opinion as to the consideration to be received in any transaction described in clauses (a) or (b) above.[89]

The Morgan Stanley engagement letter entitled Morgan Stanley to an advisory fee of $2.5 million, payable at the time of execution of the letter agreement.[90] In addition, Morgan Stanley charged a transaction fee of $7.5 million, payable at the earlier of (a) the time that Morgan Stanley, at the request of the Special Committee, was prepared to deliver a financial opinion (regardless of the conclusion reached in such opinion), (b) the closing of a transaction described in clause (a) of the paragraph above for which a financial opinion was not requested by the Special Committee, and (c) the closing of a transaction described in clause (b) of the paragraph above for which a financial opinion was not requested, but in which Morgan Stanley, at the request of the Special Committee, played a substantive role.[91] Tribune also agreed to discuss with Morgan Stanley at a later date whether the payment to Morgan Stanley of an additional discretionary fee would be appropriate.[92] In connection with the letter agreement, due in part to the fact that Morgan Stanley was acting as an independent contractor with duties solely to Tribune, Tribune agreed to indemnify Morgan Stanley under certain circumstances.[93]

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89 *Id.*

90 *Id.* at 1 (Morgan Stanley Engagement Letter). This fee was paid on November 13, 2006.

91 *Id.* Morgan Stanley received the $7.5 million transaction fee on May 9, 2007. *See* Report at § III.E.4.e.(1).

92 Ex. 25 at 1-2 (Morgan Stanley Engagement Letter). In December 2007, Morgan Stanley requested, but did not receive, any discretionary fees. *See* Report at § III.E.4.e.(1).

93 *Id.* at Appendix 2. Because the section of the Morgan Stanley engagement letter provided to the Examiner relating to Morgan Stanley's rights to indemnification was illegible, and as Tribune has informed the Examiner that it is unable to locate a legible version, the Examiner is unable to assess Morgan Stanley's rights to indemnification under its engagement letter.

Morgan Stanley was entitled to rely on the accuracy and completeness of information received by Morgan Stanley from Tribune without any requirement to verify such information.[94] Morgan Stanley assumed that projections it received reflected "the best available estimates of future financial performance."[95]

Pursuant to the terms of the letter agreement, Morgan Stanley agreed that it would "not provide financing to any bidder and [would] not participate in the transaction other than as an advisor to the [Special] Committee on a basis determined by the [Special] Committee."[96]

(3) CGMI.

On October 27, 2006, Tribune and CGMI entered into a letter agreement whereby Tribune engaged CGMI to serve as financial advisor to Tribune in connection with a transaction or series of transactions in which one or more purchasers acquired, or proposed to acquire, a majority of the stock, assets, revenues, income, or business of Tribune, or otherwise gain control of Tribune.[97] No other Tribune Entity was a party to this agreement. Pursuant to the terms of the CGMI letter agreement, CGMI agreed to provide advice on the structure, negotiation strategy, valuation analyses, and financial terms of potential transactions, and assistance in preparing a memorandum for distribution to potential investors, as requested by Tribune.[98]

In connection with the CGMI letter agreement, Tribune consented to CGMI or any of its affiliates acting as "book-running manager, lead manager, co-manager, placement agent, bank agent, underwriter, arranger or principal counterparty or other similar role on behalf of one or more potential bidders in connection with a [potential transaction], or otherwise assisting one or

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[94] *Id.* at 2 (Morgan Stanley Engagement Letter).

[95] *Id.*

[96] *Id.* at Appendix I.

[97] Ex. 26 at 1 (CGMI Engagement Letter).

[98] *Id.*

more potential bidders in obtaining funds. . . ."[99] CGMI agreed that it would establish "teams" that would either represent Tribune or potential buyers.[100] Tribune acknowledged that CGMI and its affiliates could hold or trade in, for its own and its clients' accounts, debt and equity securities of Tribune.[101]

Tribune agreed to pay CGMI a fee of $12.5 million on the consummation of a transaction.[102] Any fees CGMI earned acting in a leadership capacity with respect to financing a potential buyer would reduce the transaction fee by the amount of $0.25 per dollar for each dollar earned, up to an aggregate maximum reduction of $3.75 million.[103] Tribune agreed that CGMI's fee would at least equal MLPFS' fees before any credit for financing fees.[104]

Tribune acknowledged that CGMI was relying, without verification, on the accuracy and completeness of information provided by Tribune,[105] and that CGMI was acting as an independent contractor of Tribune, not as a fiduciary.[106]

Pursuant to a separate indemnification letter agreement that was incorporated by reference into the CGMI letter agreement,[107] Tribune agreed to indemnify CGMI and the indemnified parties thereunder from and against any and all losses, claims, damages, and liabilities to which any such party may have become subject in connection with any transaction

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99 *Id.* at 2.

100 *Id.*

101 *Id.* at 4.

102 *Id.* at 3.

103 *Id.*

104 *Id.*

105 *Id.*

106 *Id.* at 4.

107 *Id.* at 5.

described in the letter agreement, other than any such loss, claim, damage, liability, or expense resulting from any such indemnified party's bad faith or gross negligence.[108]

4. Holdings of Directors, Executive Officers, and Major Stockholders.

As of April 1, 2007, before the Tender Offer, the aggregate number and percentage of shares of Tribune Common Stock that were beneficially owned by then current directors, executive officers, and each person who owned 5% or more of the outstanding Tribune Common Stock were:[109]

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership[110]	Percentage of Shares[111]
5% or Greater Stockholders:		
The Chandler Trusts	48,753,788	20.25%
McCormick Foundation	31,282,788	13.00%
T. Rowe Price Associates, Inc.	17,655,120	7.34%
Ariel Capital Management, LLC	15,337,568	6.38%
Directors and Executive Officers:		
Jeffrey Chandler	30,387	*
Dennis J. FitzSimons	2,059,855	*
Roger Goodan	62,446	*
Donald C. Grenesko	873,144	*
Enrique Hernandez, Jr.	26,530	*

108 Ex. 27 at 1 (CGMI Indemnification Letter).

109 Ex. 5 at 101-104 (Tender Offer).

110 This column includes (a) shares of Tribune Common Stock beneficially owned by executive officers under the Tribune Company 401(k) Savings and Profit Sharing Plan and (b) options exercisable within 60 days of April 1, 2007.

111 Asterisk (*) indicates that the percentage of shares was less than 1%.

Name of Beneficial Owner	Amount and Nature of Beneficial Ownership[110]	Percentage of Shares[111]
Betsy D. Holden	15,861	*
Crane H. Kenney	536,732	*
Timothy J. Landon	412,997	*
Thomas D. Leach	293,149	*
Luis E. Lewin	415,020	*
R. Mark Mallory	321,979	*
Robert S. Morrison	24,348	*
Ruthellyn Musil	414,770	*
William A. Osborn	23,159	*
John E. Reardon	387,269	*
J. Christopher Reyes	14,969	*
Scott C. Smith	802,667	*
William Stinehart, Jr.	44,350	*
Dudley S. Taft	125,860	*
Miles D. White	6,419	*

B. Tribune's Principal Funded Indebtedness Before the Leveraged ESOP Transactions: Senior Notes, PHONES Notes, and the 2006 Bank Debt.

Between March 1992 and August 2005, Tribune and certain of its predecessors entered into a series of indentures and supplements thereto pursuant to which the Senior Notes were issued. The Senior Notes are unsubordinated obligations of Tribune and are not guaranteed and, at the time of original issuance, were not secured. The indentures contain similar covenants, including the requirement that any lien granted to secure other indebtedness of Tribune or its Subsidiaries also equally and ratably secure the Senior Notes.

1. Senior Notes.

a. 1992 Indenture.

Tribune entered into the 1992 Indenture on March 1, 1992 with Continental Bank, National Association as trustee.[112] Tribune is the issuer of the 6.25% Series D Medium-Term Notes due 2026 under the 1992 Indenture.[113] The 6.25% Series D Medium-Term Notes due 2026 mature on November 10, 2026, but holders of the notes had a one-time right to request payment in full of such holder's notes on November 15, 2001.[114] The securities issued under the 1992 Indenture are general unsecured obligations of Tribune ranking pari passu with all other unsecured and unsubordinated debt of Tribune.[115]

The 1992 Indenture prohibits Tribune and its Subsidiaries (other than Subsidiaries expressly excluded from this restriction by a resolution of the Tribune Board adopted before or within 120 days after the creation or acquisition of such Subsidiary) from creating, assuming, or guaranteeing any indebtedness secured by a lien on any assets of Tribune or such Subsidiaries unless the securities issued pursuant to the 1992 Indenture are equally and ratably secured by such assets.[116] Although subject to the foregoing restriction on secured indebtedness, Tribune's Subsidiaries are not prohibited under the 1992 Indenture from issuing unsecured indebtedness.[117]

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[112] Ex. 28 (1992 Indenture).

[113] Ex. 29 (Prospectus Supplement, dated May 8, 1996).

[114] Ex. 30 (Pricing Supplement, dated November 12, 1996).

[115] Ex. 29 at S-2 (Prospectus Supplement, dated May 8, 1996).

[116] Ex. 28 at § 10.07 (1992 Indenture).

[117] Ex. 29 at 4 (Prospectus Supplement, dated May 8, 1996).

b. 1995 Indenture.

New TMC Inc., a Subsidiary of Times Mirror, entered into the 1995 Indenture on January 30, 1995 with First Interstate Bank of California, as trustee.[118] Tribune assumed the obligations under the 1995 Indenture following its merger with Times Mirror in 2000.[119] Tribune, as successor to New TMC Inc., is the issuer of the 7.25% Senior Debentures due 2013[120] and the 7.5% Senior Debentures due 2023[121] under the 1995 Indenture. The 7.25% Senior Debentures due 2013 mature on March 1, 2013 and are not redeemable before maturity.[122] The 7.5% Senior Debentures due 2023 mature on July 1, 2023 and are not redeemable before maturity.[123] The securities issued pursuant to the 1995 Indenture are not subordinated in right of payment to any other indebtedness of Tribune.[124]

The 1995 Indenture prohibits Tribune and its Subsidiaries that own material manufacturing plants or facilities in the United States from issuing, assuming, or guaranteeing any indebtedness secured by a lien on any material manufacturing plants or facilities in the United States owned by Tribune or its Subsidiaries or the stock of any Subsidiaries that own or lease material manufacturing plants or facilities in the United States unless the securities issued pursuant to the 1995 Indenture are equally and ratably secured by such assets.[125]

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[118] Ex. 31 (1995 Indenture).

[119] Ex. 32 at § 1 (First Supplemental Indenture, dated June 12, 2000).

[120] Ex. 33 (Form of 7.25% Senior Debentures due 2013).

[121] Ex. 34 (Form of 7.5% Senior Debentures due 2023).

[122] Ex. 33 (Form of 7.25% Senior Debentures due 2013).

[123] Ex. 34 (Form of 7.5% Senior Debentures due 2023).

[124] Ex. 31 at § 301 (1995 Indenture).

[125] *Id.* at § 1006.

c. 1996 Indenture.

Times Mirror entered into the 1996 Indenture on March 19, 1996 with Citibank, N.A., as trustee.[126] Tribune assumed the obligations under the 1996 Indenture following its merger with Times Mirror in 2000.[127] Tribune, as successor to Times Mirror, is the issuer of the 6.61% Senior Debentures due 2027[128] and the 7.25% Senior Debentures due 2096[129] under the 1996 Indenture. The 6.61% Senior Debentures due 2027 mature on September 15, 2027, but are redeemable at Tribune's option at any time after September 15, 2004, and the holders thereof had a one-time right to request payment of such holder's debentures on September 15, 2004.[130] The 7.25% Senior Debentures due 2096 mature on November 15, 2096 and are not redeemable by Tribune before maturity.[131] The securities issued under the 1996 Indenture are unsecured and unsubordinated obligations ranking equally and ratably with other unsecured and unsubordinated indebtedness of Tribune.[132]

Pursuant to the terms of the Prospectus Supplements filed with respect to the 6.61% Senior Debentures due 2027 and the 7.25% Senior Debentures due 2096, Tribune and its Subsidiaries are prohibited from granting a lien securing any securities issued under the 1995 Indenture unless the securities issued under the 1996 Indenture are equally and ratably secured.[133]

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[126] Ex. 35 (1996 Indenture).

[127] Ex. 36 at § 4 (Second Supplemental Indenture, dated June 12, 2000).

[128] Ex. 37 (Officers' Certificate, dated September 9, 1997).

[129] Ex. 38 (Officers' Certificate, dated November 13, 1996).

[130] Ex. 37 (Officers' Certificate, dated September 9, 1997).

[131] Ex. 38 (Officers' Certificate, dated November 13, 1996).

[132] Ex. 39 at 5 (Prospectus Supplement, dated July 8, 1997); Ex. 40 at 4 (Prospectus Supplement, dated November 7, 1996).

[133] Ex. 39 at S-7 (Prospectus Supplement, dated July 8, 1997); Ex. 40 at S-3 (Prospectus Supplement, dated November 7, 1996).

d. 1997 Indenture.

Tribune entered into the 1997 Indenture on January 1, 1997 with Bank of Montreal Trust Company, as trustee.[134] Tribune is the issuer of the 4.875% Senior Notes due 2010,[135] the 5.25% Senior Notes due 2015,[136] the 5.50% Series E Medium-Term Notes due 2008,[137] the 5.67% Series E Medium-Term Notes due 2008,[138] and the 6.35% Series E Medium-Term Notes due 2008.[139]

The 4.875% Senior Notes due 2010 mature on August 15, 2010 and are redeemable at any time at Tribune's option.[140] The 5.25% Senior Notes due 2015 mature on August 15, 2015 and are redeemable at any time at Tribune's option.[141] The 5.50% Series E Medium-Term Notes due 2008 matured on October 6, 2008 and were not redeemable before maturity.[142] The 5.67% Series E Medium-Term Notes due 2008 matured on December 8, 2008 and were not redeemable before maturity.[143] The 6.35% Series E Medium-Term Notes due 2008 matured on February 1, 2008 and were not redeemable before maturity.[144] The securities issued under the 1997

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[134] Ex. 41 (1997 Indenture).

[135] Ex. 42 (Prospectus Supplement, dated August 10, 2005).

[136] *Id.*

[137] Ex. 43 (Prospectus Supplement, dated January 14, 1997); Ex. 44 (Pricing Supplement, dated October 2, 1998). The indebtedness under the 5.50% Series E Medium-Term Notes due 2008 was paid in full with the proceeds of a draw under the Delayed Draw Facility.

[138] Ex. 43 (Prospectus Supplement, dated January 14, 1997); Ex. 45 (Pricing Supplement, dated December 4, 1998).

[139] Ex. 43 (Prospectus Supplement, dated January 14, 1997); Ex. 46 (Pricing Supplement, dated January 29, 1998). The indebtedness under the 6.35% Series E Medium-Term Notes due 2008 was paid in full with the proceeds of a draw under the Delayed Draw Facility.

[140] Ex. 47 (Form of 4.875% Senior Notes due 2010).

[141] Ex. 48 (Form of 5.25% Senior Notes due 2015).

[142] Ex. 44 (Pricing Supplement, dated October 2, 1998).

[143] Ex. 45 (Pricing Supplement, dated December 4, 1998).

[144] Ex. 46 (Pricing Supplement, dated January 29, 1998).

Indenture are general unsecured and unsubordinated obligations of Tribune ranking pari passu with all other unsecured and unsubordinated debt of Tribune.[145]

The 1997 Indenture prohibits Tribune and its Subsidiaries (other than Subsidiaries expressly excluded from this restriction by a resolution of the Tribune Board adopted before or within 120 days after the creation or acquisition of such Subsidiary) from creating, assuming, or guaranteeing any indebtedness secured by a lien on any assets of Tribune or such Subsidiaries unless the securities issued pursuant to the 1997 Indenture are equally and ratably secured by such assets.[146] Although subject to the foregoing restriction on secured indebtedness, Tribune's Subsidiaries are not prohibited under the 1997 Indenture from issuing unsecured indebtedness.[147]

e. Principal Amounts Owing on Senior Notes.

According to Tribune's books and records, the approximate principal amounts owing on the Senior Notes as of the Step One Financing Closing Date, the Step Two Financing Closing Date and the Petition Date were as follows:

Indenture	Interest Rate	Maturity Date	Amount Outstanding as of the Step One Financing Closing Date	Amount Outstanding as of the Step Two Financing Closing Date	Amount Outstanding as of the Petition Date
1992	6.25%	November 10, 2026	$0.120 million	$0.120 million	$0.120 million
1995	7.25%	March 1, 2013	$ 82.083 million	$ 82.083 million	$ 82.083 million
1995	7.5%	July 1, 2023	$ 98.750 million	$ 98.750 million	$ 98.750 million
1996	6.61%	September 15, 2027	$ 84.960 million	$ 84.960 million	$ 84.960 million
1996	7.25%	November 15, 2096	$148.000 million	$148.000 million	$148.000 million
1997	4.875%	August 15, 2010	$450.000 million	$450.000 million	$450.000 million
1997	5.25%	August 15, 2015	$330.000 million	$330.000 million	$330.000 million
1997	5.67%	December 8, 2008	$ 69.550 million	$ 69.550 million	$ 69.550 million

145 Ex. 42 at S-7 (Prospectus Supplement, dated August 10, 2005); Ex. 43 at S-4 (Prospectus Supplement, dated January 14, 1997).

146 Ex. 41 at § 10.07 (1997 Indenture).

147 Ex. 43 at 4 (Prospectus Supplement, dated January 14, 1997).

Indenture	Interest Rate	Maturity Date	Amount Outstanding as of the Step One Financing Closing Date	Amount Outstanding as of the Step Two Financing Closing Date	Amount Outstanding as of the Petition Date
1997	6.35%	February 1, 2008	$ 25.000 million	$ 25.000 million	$0
1997	5.50%	October 6, 2008	$ 167.915 million	$ 167.915 million	$0
Total:			**$ 1.456 billion**	**$ 1.456 billion**	**$1.263 billion**

2. PHONES Notes.

Tribune entered into the PHONES Indenture on April 1, 1999 with Bank of Montreal Trust Company, as trustee.[148] Tribune is the issuer of the PHONES Notes under the PHONES Indenture.[149] The PHONES Notes mature on May 15, 2029.[150]

The principal amount of one PHONES Note is related to the value of a Reference Share, originally one share of common stock of AOL outstanding as of the date of the issuance of the PHONES Note and subject to adjustment for any splits, combination, sub-division, exchange, conversion, liquidation, or other changes to the Reference Share.[151] The PHONES Notes were issued with an original principal amount of $157.00 per PHONES Note, which represented the closing price of one Reference Share on April 7, 1999, and which would be reduced on payment of any dividends or other cash or property distributed to the holder of the Reference Shares with respect to the Reference Shares.[152] On November 22, 1999, AOL's common stock split on a two-to-one basis,[153] changing the Reference Share to two shares of AOL's common stock for each PHONES Note. On January 11, 2001, AOL and Time Warner merged to form AOL Time

[148] Ex. 49 (PHONES Indenture).

[149] Ex. 50 (Form of PHONES Notes).

[150] *Id.*

[151] Ex. 51 at S-1 (Prospectus Supplement, dated April 7, 1999).

[152] *Id.*

[153] Ex. 52 at Note 6 (AOL Form 10-Q, filed November 2, 1999).

Warner Inc., with the merged entity continuing to trade under the ticker symbol "AOL."[154] On October 16, 2003, AOL Time Warner Inc. changed its name to Time Warner and began trading under the ticker symbol "TWX."[155]

As a result of the two-to-one stock split and subsequent merger of AOL and Time Warner, two shares of TWX common stock represent the Reference Shares for each PHONES Note.[156] Tribune has the right under the PHONES Indenture to redeem the PHONES Notes at any time for the higher of the principal value of the PHONES Notes or the then-current market value of two shares of Time Warner common stock, as reduced by the amount of dividends and other distributions made on account of the Reference Shares before such date or the then-current market value of the Reference Shares, subject to certain adjustments.[157] In addition, before the Petition Date, holders of PHONES Notes were contractually entitled to exchange a PHONES Note for an amount of cash equal to ninety-five percent (95%) (or one hundred percent (100%) under certain circumstances) of the then-current market value of the Reference Shares, plus any accrued and unpaid interest on the PHONES Notes and any dividends or other distributions that a holder of the References Shares would be entitled to receive.[158]

The PHONES Indenture provides that the PHONES Notes are subordinate in right of payment to all "Senior Indebtedness" of Tribune.[159] "Indebtedness" is defined to include all notes, bonds, indentures, indebtedness for borrowed money, capitalized leases, and guarantees of Tribune, as of the date on which such Indebtedness is to be determined, and "Senior

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154 Ex. 53 at 2 (Time Warner Form 8-K, filed January 12, 2001 (without exhibits)).

155 Ex. 54 at 2 (Time Warner Form 8-K, filed October 16, 2003).

156 Ex. 4 at 116 (Tribune 2007 Form 10-K).

157 Ex. 55 at 16 (Tribune 2007 Form 10-Q, dated May 9, 2007).

158 Ex. 4 at 116 (Tribune 2007 Form 10-K).

159 Ex. 49 at § 14.01 (PHONES Indenture).

Indebtedness" is defined as the principal, premium (if any), and interest (including interest accruing after a bankruptcy filing, but only if such interest is allowed) on, and other amounts due on or in connection with, any "Indebtedness" of Tribune, whether arising before or after the date of the PHONES Indenture, other than debt which by its terms is subordinated to or pari passu with the PHONES Notes, trade payables, debt of Tribune to its Subsidiaries, and the PHONES Notes themselves.[160]

3. The 2006 Bank Debt.

a. Background to the 2006 Leveraged Recapitalization.

In June 2000, Tribune acquired Times Mirror. The principal stockholders of Times Mirror were the Chandler Trusts.[161] As a result of that transaction, Tribune amended its By-Laws to grant the Chandler Trusts the right to nominate three directors to the Tribune Board, one for each class of Tribune Board members.[162] Before Tribune's acquisition of Times Mirror, the Chandler Trusts and Times Mirror had entered into two transactions which, through the formation of two limited liability companies, the TMCT LLCs, enabled Times Mirror to retire shares for accounting purposes and the Chandler Trusts to diversify their assets without incurring tax liability, if certain restrictions were met.[163] Following the acquisition of Times Mirror by Tribune, Tribune and the Chandler Trusts became co-owners of the TMCT LLCs.[164]

Beginning in February 2005, in connection with Tribune's periodic strategic review of its businesses, the Tribune Board began to consider strategic alternatives, with MLPFS acting as

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160 *Id.*

161 Ex. 56 at 1-2 and 18-21 (Tribune 2000 Form 10-K); Ex. 5 at 97 (Tender Offer).

162 Ex. 5 at 98 (Tender Offer).

163 Examiner's Interview of William Stinehart, June 28, 2010.

164 Ex. 56 at 1-2 and 18-21 (Tribune 2000 Form 10-K); Ex. 5 at 97-99 (Tender Offer); Examiner's Interview of William Stinehart, June 28, 2010.

Tribune's financial advisor.[165] These discussions continued in October 2005 and December 2005, and included the possible sale or other separation of the Broadcasting Segment, a possible strategic combination with another media company, the acquisition of Tribune by financial buyers through a leveraged buyout, and the need to restructure the TMCT LLCs in connection with any such transaction.[166]

In January 2006, Tribune met with representatives of the Chandler Trusts, who expressed their desire to combine any strategic alternatives pursued by Tribune with the restructuring of the TMCT LLCs.[167] The Chandler Trusts believed that a "fundamental transaction" was in the best interests of Tribune, due to management's "failure to address fundamental strategic issues" and that restructuring the TMCT LLCs was a necessary prerequisite to a private equity transaction or an auction of Tribune.[168]

In early February 2006, the Chandler Trusts sent a letter to the Tribune Board reiterating their desire to restructure the TMCT LLCs and proposing that such restructuring occur before a possible spin-off of the Broadcasting Segment.[169] The letter also stated that in the absence of satisfactory progress on these alternatives, the Chandler Trusts would begin exploring with third parties, including existing stockholders, the possibility of a "fundamental transaction" involving Tribune.[170]

In early May 2006, the Tribune Board reviewed with management and MLPFS the status of the negotiations with respect to the potential redemption of Tribune's interests in one of the

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165 Ex. 5 at 15 (Tender Offer).

166 *Id.*

167 *Id.*

168 Ex. 57 at 2 and 10-11 (Chandler Trusts Letter, dated June 13, 2006); Examiner's Interview of William Stinehart, June 28, 2010.

169 Ex. 5 at 15 (Tender Offer).

170 *Id.* at 15-16.

TMCT LLCs, and progress toward a spin-off of the Broadcasting Segment.[171] CGMI was invited to this Tribune Board meeting to make a presentation regarding a possible recapitalization and other alternatives, either alone or in combination with a spin-off or other separation of the Broadcasting Segment.[172] MLPFS and CGMI both separately advised the Tribune Board to pursue a recapitalization.[173] The directors nominated by the Chandler Trusts were not supportive of a leveraged recapitalization, but the other members of the Tribune Board determined that additional work should be done to evaluate the leveraged recapitalization alternatives.[174]

At a meeting on May 26, 2006, the Tribune Board reviewed and authorized a leveraged recapitalization transaction in the form of a repurchase of up to 75 million shares of Tribune Common Stock at prices not to exceed $32.50 per share.[175] Because the proposed transaction did not unwind the TMCT LLCs, the three directors nominated by the Chandler Trusts voted against the proposed transaction.[176] On May 30, 2006, Tribune announced the leveraged recapitalization transaction using a modified "Dutch Auction" tender offer.[177]

On June 13, 2006, the Chandler Trusts sent a second letter to the Tribune Board, and filed the letter publicly, stating that the Chandler Trusts did not intend to tender any shares into the

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171 Ex. 58 (Tribune Board Meeting Minutes, dated May 1, 2006). In his interview with the Examiner, William Stinehart noted that, for tax reasons, the TMCT LLCs could not be unwound at the same time; by May 2006, the seven-year holding period to avoid capital gains had expired for one of the TMCT LLCs but not the other. Examiner's Interview of William Stinehart, June 28, 2010.

172 Ex. 5 at 16 (Tender Offer).

173 Ex. 59 (Tribune Company Leveraged Recapitalization Summary, dated May 23, 2006).

174 Examiner's Interview of William Stinehart, June 28, 2010; Ex. 5 at 16 (Tender Offer).

175 Ex. 60 (Tribune Board Meeting Minutes, dated May 26, 2006).

176 *Id.*; Examiner's Interview of William Stinehart, June 28, 2010.

177 Ex. 5 at 16-17 (Tender Offer); Ex. 1022 (Tribune Press Release, dated May 30, 2006).

2006 Tender Offer.[178] The letter stated that the Chandler Trusts believed that the process that had led to the 2006 Tender Offer was "hasty and ill-informed," that the 2006 Tender Offer failed to address the business issues facing Tribune, and that Tribune should promptly explore other strategic alternatives, including a possible leveraged buyout.[179] The letter concluded that, if timely action were not taken, the Chandler Trusts intended to engage with other stockholders and third parties to pursue changes in Tribune's management and other transactions to enhance value.[180]

On June 30, 2006, Tribune announced that it had repurchased approximately 55 million shares of Tribune Common Stock at a price of $32.50 per share through the 2006 Tender Offer and a separate purchase agreement with the McCormick Foundation, one of Tribune's major stockholders.[181] As a result of these transactions and the Chandler Trusts' decision not to tender any shares, the Chandler Trusts became Tribune's largest stockholders, increasing their percentage ownership of Tribune to approximately 15% of Tribune's outstanding common stock.[182]

To finance these transactions and refinance certain existing debt, on June 19, 2006, Tribune incurred the 2006 Bank Debt.

b. 2006 Credit Agreement.

On June 19, 2006, Tribune entered into a credit agreement, which was amended and restated on June 27, 2006, by and among Tribune, as borrower, the lenders party thereto, Citicorp, as administrative agent, MLPFS, as syndication agent, JPMCB, Bank of America,

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178 Ex. 57 at 1-2 (Chandler Trusts Letter, dated June 13, 2006).

179 *Id.*

180 Ex. 57 at 11 (Chandler Trusts Letter, dated June 13, 2006).

181 Ex. 61 at 2 (Tribune Amendment No. 8 to Schedule TO); Ex. 62 (Tribune Press Release, dated June 30, 2006).

182 Ex. 5 at 17 (Tender Offer).

Morgan Stanley Bank, and The Bank of Tokyo-Mitsubishi UFJ, Ltd., Chicago Branch, as co-documentation agents, and CGMI, MLPFS, and JPMorgan as joint lead arrangers and joint bookrunners.[183] The 2006 Credit Agreement provided for a $1.5 billion unsecured term loan facility, of which $250 million was available for and used to refinance certain medium-term notes that matured on November 1, 2006, and a $750 million unsecured revolving facility.[184]

Tribune was the sole borrower under the 2006 Credit Agreement.[185] The 2006 Credit Agreement was not guaranteed or secured. Advances under the 2006 Credit Agreement bore interest at a rate based on either the "Base Rate" (the higher of Citibank's base rate and the overnight federal funds rate plus 0.5%) or the "Eurodollar Rate" (LIBOR) plus the relevant applicable margin.[186] The applicable margin varied based on Tribune's Moody's and Standard & Poor's public debt ratings and ranged from 0% to .250% for "Base Rate" advances and from .350% to 1.250% for "Eurodollar Rate" advances.[187] As of December 31, 2006, the interest rate under the 2006 Credit Agreement was 6.2%.[188]

The 2006 Credit Agreement had a maturity date of June 20, 2011.[189] Tribune had the right to prepay the 2006 Credit Agreement at any time without penalty and was not required to make mandatory prepayments other than with respect to revolving credit advances in excess of the revolving credit commitment.[190] There were no scheduled amortization payments under the

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183 Ex. 63 (2006 Credit Agreement). The 2006 Credit Agreement was governed by New York law (*see* § 8.09). The Indebtedness under the 2006 Credit Agreement was paid in full on the Step One Financing Closing Date. *See* Report at § III.D.16.

184 Ex. 14 at 2 (Tribune 2006 Form 10-K).

185 Ex. 63 at 1 (2006 Credit Agreement).

186 *Id.* at § 2.07.

187 *Id.* at § 1.01 (definition of "Applicable Margin").

188 Ex. 14 at 100 (Tribune 2006 Form 10-K).

189 Ex. 63 at § 2.06 (2006 Credit Agreement).

190 *Id.* at § 2.10.

2006 Credit Agreement. The proceeds of the term loans under the 2006 Credit Agreement were to be used to finance a portion of Tribune's repurchases of Tribune Common Stock pursuant to the 2006 Tender Offer and to refinance existing indebtedness, and the proceeds of the revolving facility were to be used for working capital and general corporate purposes.[191]

Under the 2006 Credit Agreement, Tribune was not prohibited from incurring additional debt, but Tribune's ability to grant liens was limited,[192] and any additional debt incurred by Tribune or its Subsidiaries would factor into the calculation of Tribune's compliance with the leverage ratio covenant.[193] Tribune's Subsidiaries were explicitly prohibited from incurring debt other than specified types or amounts of debt.[194] The basket for debt (other than intercompany debt, debt assumed as part of an acquisition, or other categories of permitted debt) was capped at $100 million.[195] "Debt" as defined in the 2006 Credit Agreement included guarantees.[196] As a result of the foregoing covenants, payment in full of the indebtedness under the 2006 Credit Agreement was (or the consent of the lenders under the 2006 Credit Agreement would have been) required for Tribune to enter into the Step One Financing and the Step Two Financing (in particular the Stock Pledge, the Credit Agreement Subsidiary Guarantees, and the Subordinated Bridge Subsidiary Guarantees).

A change in control, defined as (a) any person or group of persons becoming the beneficial owner of more than 40% of the voting power of Tribune on a fully diluted basis or obtaining the power to elect a majority of the Tribune Board or (b) a majority of the Tribune

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[191] *Id.* at § 2.17.

[192] *Id.* at § 5.02(a).

[193] *Id.* at § 5.03(a).

[194] *Id.* at § 5.02(c).

[195] *Id.* at § 5.02(c)(v).

[196] *Id.* at § 1.01 (definition of "Debt").

Board, during any period of 24 consecutive months, ceasing to be comprised of individuals who were members of the Tribune Board at the beginning of such period and/or individuals whose election or nomination to the Tribune Board was approved by a majority of the directors who were members of the Tribune Board at the beginning of such period (or likewise approved during such period),[197] was an event of default under the 2006 Credit Agreement.[198] As a result of the foregoing event of default, payment in full of the indebtedness under the 2006 Credit Agreement was (or the consent of the lenders under the 2006 Credit Agreement would have been) required to consummate the Merger.

c. 2006 Bridge Credit Agreement.

At the same time Tribune entered into the 2006 Credit Agreement, it also entered into a bridge credit agreement by and among Tribune, as borrower, the lenders party thereto, Citicorp, as administrative agent, MLPFS, as syndication agent, JPMCB, as documentation agent, and CGMI, MLPFS, and JPMorgan, as joint lead arrangers and joint bookrunners.[199] The 2006 Bridge Credit Agreement provided for a $2.15 billion unsecured bridge facility.[200]

As with the 2006 Credit Agreement, Tribune was the sole borrower under the 2006 Bridge Credit Agreement.[201] The 2006 Bridge Credit Agreement was not guaranteed or secured. Advances under the 2006 Bridge Credit Agreement bore interest at a rate based on either the "Base Rate" (the higher of Citibank's base rate and the overnight federal funds rate plus 0.5%) or

[197] *Id.* at § 1.01 (definition of "Change in Control").

[198] *Id.* at § 6.01(g).

[199] Ex. 64 (2006 Bridge Credit Agreement). The 2006 Bridge Credit Agreement was governed by New York law (*see* § 8.09). The indebtedness under the 2006 Bridge Credit Agreement was paid in full on the Step One Financing Closing Date. *See* Report at § III.D.16.

[200] Ex. 14 at 2 (Tribune 2006 Form 10-K).

[201] Ex. 64 at 1 (2006 Bridge Credit Agreement).

the "Eurodollar Rate" (LIBOR) plus the relevant applicable margin.[202] The applicable margin varied based on Tribune's Moody's and Standard & Poor's public debt ratings and ranged from 0% to .250% for "Base Rate" advances and from .350% to 1.250% for "Eurodollar Rate" advances.[203] As of December 31, 2006, the interest rate under the 2006 Bridge Credit Agreement was 6.2%.[204]

The 2006 Bridge Credit Agreement matured on June 18, 2007.[205] Tribune had the right to prepay the 2006 Bridge Credit Agreement at any time without penalty.[206] Tribune was required to prepay the 2006 Bridge Credit Agreement with the proceeds of any debt for borrowed money or capital stock issued following the closing under the 2006 Bridge Credit Agreement.[207] There were no scheduled amortization payments under the 2006 Credit Agreement. The proceeds of the term loans under the 2006 Credit Agreement were to be used to finance a portion of Tribune's repurchases of Tribune Common Stock pursuant to the 2006 Tender Offer and to refinance existing indebtedness.[208]

As under the 2006 Credit Agreement, under the 2006 Bridge Credit Agreement Tribune was not prohibited from incurring additional debt, but Tribune's ability to grant liens was limited[209] and any additional debt incurred by Tribune or its Subsidiaries would factor into the calculation of Tribune's compliance with the leverage ratio covenant.[210] Tribune's Subsidiaries

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[202] *Id.* at § 2.06.

[203] *Id.* at § 1.01 (definition of "Applicable Margin").

[204] Ex. 14 at 100 (Tribune 2006 Form 10-K).

[205] Ex. 64 at § 2.05 (2006 Bridge Credit Agreement).

[206] *Id.* at § 2.09(a).

[207] *Id.* at § 2.09(b).

[208] *Id.* at § 2.16.

[209] *Id.* at § 5.02(a).

[210] *Id.* at § 5.03(a).

were explicitly prohibited from incurring debt other than specified types or amounts of debt.[211] The basket for debt (other than intercompany debt, debt assumed as part of an acquisition or other categories of permitted debt) was capped at $100 million.[212] "Debt" as defined in the 2006 Bridge Credit Agreement included guarantees.[213] As a result of the foregoing covenants, payment in full of the indebtedness under the 2006 Bridge Credit Agreement was (or the consent of the lenders under the 2006 Bridge Credit Agreement would have been) required for Tribune to enter into the Step One Financing and Step Two Financing (in particular the Stock Pledge, the Credit Agreement Subsidiary Guarantees, and the Subordinated Bridge Subsidiary Guarantees).

A change in control (the definition of which under the 2006 Bridge Credit Agreement is identical to the definition under the 2006 Credit Agreement[214]) was an event of default under the 2006 Bridge Credit Agreement.[215] As a result of the foregoing event of default, payment in full of the indebtedness under the 2006 Bridge Credit Agreement was (or the consent of the lenders under the 2006 Bridge Credit Agreement would have been) required for Tribune to consummate the Merger.

C. Significant Events Leading Up to the Step One Transactions.

1. Tribune Entities' Financial Performance Leading Up to April 1, 2007 and the Step One Financing Closing Date.

a. Financial Performance from 2004 through 2006.

To place the events of 2007 in an appropriate context from a financial perspective, the Examiner reviewed key financial data for the Tribune Entities, as reported in Tribune's various

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211 *Id.* at § 5.02(c).

212 *Id.* at § 5.02(c)(v).

213 *Id.* at § 1.01 (definition of "Debt").

214 *Id.* at § 1.01 (definition of "Change in Control"); Ex. 63 at § 1.01 (definition of "Change in Control") (2006 Credit Agreement).

215 Ex. 64 at § 6.01(g) (2006 Bridge Credit Agreement).

filings with the SEC for the period 2004 through 2006. These filings include quarterly (Form 10-Q) and annual (Form 10-K) financial statements, as well as other periodic disclosures (*e.g.*, Form 8-K filings). The following chart summarizes the SEC filings considered:[216]

SUMMARY OF SELECT SEC FILINGS		
Tribune Form	**Filing Date**	**Subject**
8-K	4/15/2004	Q1 2004 Earnings Announcement.
10-Q	4/30/2004	Q1 2004 Financial Statements and related disclosures.
8-K	7/15/2004	Q2 2004 Earnings Announcement.
10-Q	7/30/2004	Q2 2004 Financial Statements and related disclosures.
8-K	10/28/2004	Q3 2004 Earnings Announcement.
10-Q	10/29/2004	Q3 2004 Financial Statements and related disclosures.
8-K	1/28/2005	Q4 2004 Earnings Announcement.
10-K	3/4/2005	2004 Annual Financial Statements and related disclosures.
8-K	4/15/2005	Q1 2005 Earnings Announcement.
10-Q	4/29/2005	Q1 2005 Financial Statements and related disclosures.
8-K	7/14/2005	Q2 2005 Earnings Announcement.
10-Q	7/29/2005	Q2 2005 Financial Statements and related disclosures.
8-K	10/13/2005	Q3 2005 Earnings Announcement.
10-Q	10/27/2005	Q3 2005 Financial Statements and related disclosures.
8-K	2/1/2006	Q4 2005 Earnings Announcement.
10-K	2/28/2006	2005 Annual Financial Statements and related disclosures.
8-K	4/13/2006	Q1 2006 Earnings Announcement.
10-Q	4/28/2006	Q1 2006 Financial Statements and related disclosures.
8-K	7/13/2006	Q2 2006 Earnings Announcement.
10-Q	7/28/2006	Q2 2006 Financial Statements and related disclosures.
8-K	10/19/2006	Q3 2006 Earnings Announcement.
10-Q	11/2/2006	Q3 2006 Financial Statements and related disclosures.
8-K	2/8/2007	Q4 2006 Earnings Announcement.
10-K	2/26/2007	2006 Annual Financial Statements and related disclosures.

For the years 2004 through 2006,[217] as shown in the following table, the Tribune Entities reported substantial revenues, operating profits as measured by earnings before interest and taxes

[216] These filings represent the principal, but not the only, public disclosures that Tribune made during this period. In addition to SEC filings, Tribune periodically issued press releases containing disclosures regarding certain period-specific financial performance information, among other things (although such disclosures typically did not contain comprehensive presentation of GAAP basis financial statements). *See, e.g.*, Ex. 65 (Tribune Press Release, dated February 23, 2007). In addition, other SEC filings contained presentation of financial data, albeit generally in connection with other announcements. *See, e.g.,* Ex. 5 (Tender Offer).

[217] The Examiner did not analyze Tribune's financial performance for periods before 2004.

(EBIT), and positive operating cash flow as measured by earnings before interest, taxes, depreciation, and amortization (EBITDA), all on a consolidated basis, as normalized for discontinued operations.[218]

CONSOLIDATED TRIBUNE ($000s)			
	2004	2005	2006 (2)
Revenue	$ 5,631,431	$ 5,511,283	$ 5,517,708
EBIT	$ 1,187,278	$ 1,127,191	$ 1,085,010
EBITDA	$ 1,417,395	$ 1,368,232	$ 1,312,023

The consolidated results for the Tribune Entities for 2005 and 2006 show declining year-over-year EBIT contribution and EBITDA contribution, as a percentage of revenue, notwithstanding relative consistency in revenue during the period on a normalized basis:

CONSOLIDATED TRIBUNE EBIT and EBITDA as % of NORMALIZED REVENUE			
	2004	2005	2006
EBIT	21.08%	20.45%	19.66%
EBITDA	25.17%	24.83%	23.78%

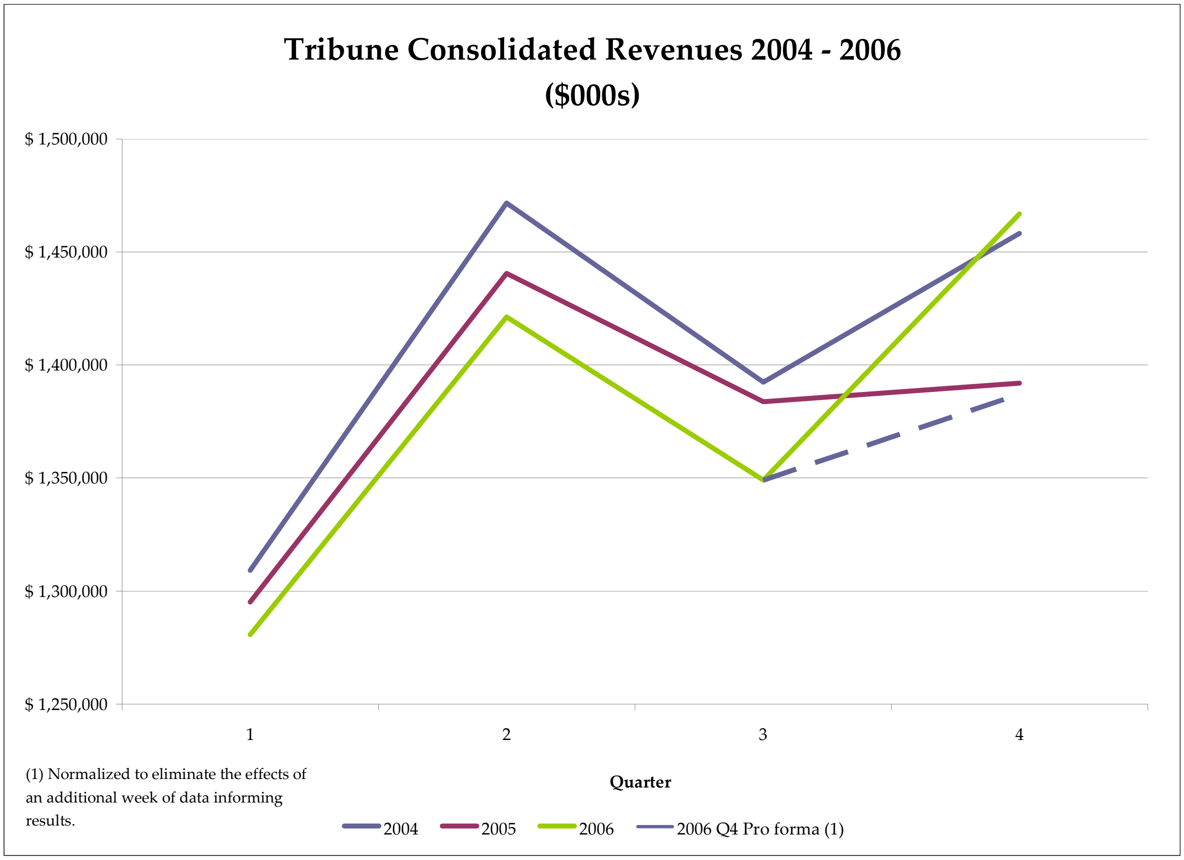
Although the Form 10-Q and Form 10-K filings for this period do not contain consolidating financial data on an entity-by-entity basis, the filings do contain a breakdown of revenue and operating profit results for Tribune's two operating business segments, the Publishing Segment and the Broadcasting Segment, which provides additional insight into the

218 These data reflect adjustments on account of discontinued operations. Making these adjustments (or "normalizing" the data) facilitates an "apples-to-apples" comparison of operating data that is not skewed by the effects of businesses sold during a subsequent year. The 2006 results reflect 53 weeks of financial data, although the 2004 and 2005 results reflect 52 weeks. *See* Ex. 14 at 8 (Tribune 2006 Form 10-K) (discussing effects of these differences).

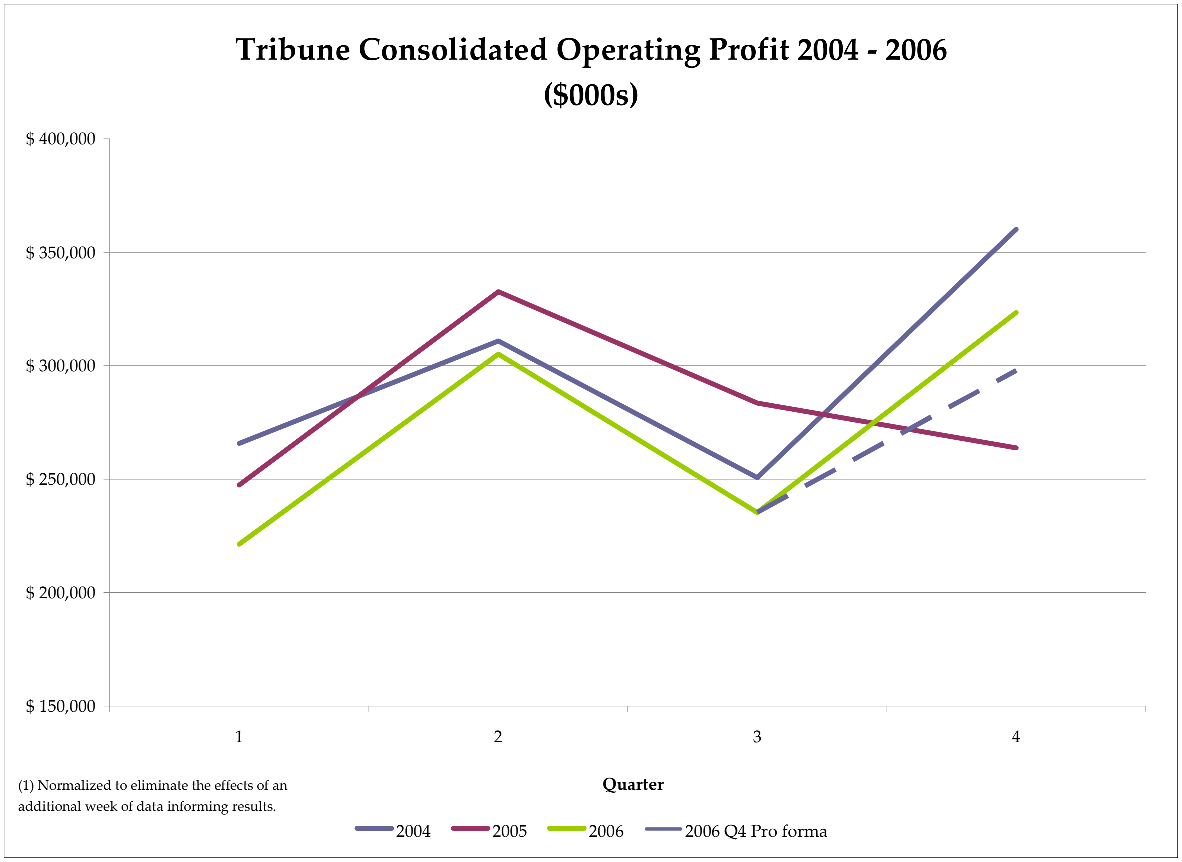
Tribune Entities' financial condition at the relevant time. Specifically, although comprising a smaller percentage of consolidated revenues for the entire enterprise, the Broadcasting Segment was significantly more profitable as a percentage of revenue than the Publishing Segment (although the rate of profitability of the Broadcasting Segment declined, year-over-year, from 2004 through 2006):

TRIBUNE SEGMENT LEVEL REPORTING ($000s)	2004	2005	2006
Publishing Segment			
Revenue	$ 4,129,850	$ 4,096,850	$ 4,092,562
Operating Profit	$ 726,207	$ 759,713	$ 749,189
Operating Profit Margin	***17.58%***	***18.54%***	***18.31%***
Broadcasting Segment			
Revenue	$ 1,501,581	$ 1,414,433	$ 1,425,146
Operating Profit	$ 513,289	$ 416,891	$ 391,533
Operating Profit Margin	***34.18%***	***29.47%***	***27.47%***
Consolidated Tribune			
Revenue	$ 5,631,431	$ 5,511,283	$ 5,517,708
Operating Profit	$ 1,239,496	$ 1,176,604	$ 1,140,722
Corporate Expenses	($ 52,218)	($ 49,413)	($ 55,712)
Net Consolidated Operating Profit (EBIT)	$ 1,187,278	$ 1,127,191	$ 1,085,010
Operating Profit Margin	***21.08%***	***20.45%***	***19.66%***

The Examiner also considered quarterly trends in financial performance, derived from information contained in Tribune's Form 10-Q filings. These data indicate that Tribune and its subsidiaries—except for the fourth quarter of 2006—reported declines in comparable quarter revenues each year during this period. Although the fourth quarter of 2006 showed improvement over revenues for the fourth quarter of 2004 and 2005, the results for 2006 included an additional week that was not included in the prior years. When normalized to adjust for that discrepancy, the fourth quarter of 2006 shows a slight decline over the prior year's fourth quarter revenue:



In terms of profitability, the 2006 consolidated quarterly results show consistent quarter-over-comparable-quarter declines over the results in both 2004 and 2005, except for the fourth quarter which exceeded the fourth quarter results for 2005 on both an as-reported and a normalized basis:



b. Financial Performance in Late 2006 and Tribune's Development of the 2007 Operational Plan.

According to testimony provided by Harry Amsden at his Rule 2004 examination,[219] consistent with its past practice in connection with the development of operating plans prepared in prior years, Tribune likely began the development of its 2007 financial and operating plan (including a budget and projections in respect thereof) during late summer of the prior year (*i.e.,* July or early August of 2006), by gathering input from discrete business units.[220] Among other things, the process culminated in the presentation of a formal plan approved by the Tribune

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[219] At the time of his deposition, Mr. Amsden was Senior Vice President of Financial Operations for Tribune. During 2006 and 2007, however, Mr. Amsden was Vice President of Finance for Tribune Publishing. *See* Ex. 66 at 8:7-12:11 (Rule 2004 Examination of Harry Amsden, December 16, 2009).

[220] *See id.* at 13:14-14:4.

Board at its February 13, 2007 meeting.[221] The 2007 operating plan development, however, differed from prior year undertakings in two respects. First, in connection with the development of the 2007 plan, Tribune developed financial expectations extending beyond the typical one-year projection horizon developed in prior years.[222] This longer projection horizon was

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221 *See* Ex. 67 at TRB0415614-15 (Tribune Board Meeting Minutes, dated February 13, 2007). The 2007 Tribune operating plan materials disseminated to the Tribune Board in advance of the meeting appear to have been comprised solely of 2007 consolidated and segment level income statement projections. *See, e.g.*, Ex. 68 (Tribune Board Meeting Materials, dated February 13, 2007). Minutes of the Special Committee meeting which occurred on February 12, 2007 (one day before the full Tribune Board meeting on February 13, 2007) reflect that "Mr. Grenesko then described the current environment for the Company's businesses and presented management's revised operating plan and projections. Referring to distributed materials, he outlined the revised 2007 operating plan and its publishing and broadcasting components." Ex. 69 at TRB-UR-G0007809 (Special Committee Meeting Minutes, dated February 12, 2007). It is not clear from the Special Committee meeting minutes whether this discussion pertained to solely 2007 projections, or included a discussion of projected results for subsequent years as well. Regardless, a subsequent section of the February 12, 2007 Special Committee meeting minutes reflect that Thomas Whayne (of Morgan Stanley) discussed with the Special Committee "three sets of projections for 2007-2011: management, research and management downside" projections. *Id.* at TRB-UR-G0007810. The meeting minutes note that "revenue and EBITDA for the Company on a consolidated basis and for each of publishing and broadcasting under each set of projections were described and analyzed." *Id.* A review of the February 12, 2007 Morgan Stanley "Project Tower – Presentation to the Committee of Independent Directors of the Board of Directors of Tribune" confirms that the Special Committee was presented with materials reflecting management projections of revenue and EBITDA, by segment and on a consolidated basis, for 2007-2011. *See* Ex. 70 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated January 12, 2007).

Although the February 13, 2007 Tribune Board meeting minutes reflect that, on motion, "the 2007 operating plan was approved" by the Tribune Board, it is unclear whether this approval related solely to the plan and projections submitted to the Tribune Board in advance of the meeting (which contained only 2007 projections), or to the 2007 plan containing the longer-term forecasts as presented in the Morgan Stanley materials discussed above. *See* Ex. 67 at TRB0414412 (Tribune Board Meeting Minutes, dated February 13, 2007).

The Examiner reviewed the detailed projection model setting forth specific projection assumptions underlying the 2007 single year budget approved by the Tribune Board. *See* Ex. 71 (ESOP Transaction Model—Revised Operating Plan Case, dated February 8, 2007). This projection model contained forecasts for 2007, as well as later years. The Examiner notes that this model presented the 2007 forecast quarterly, and for subsequent years, on a full year basis without monthly detail. The Examiner notes that monthly budgeted amounts for 2007 as reported in, for example, Brown Books, nonetheless sum to the quarterly and full year 2007 projected amounts, with minimum, and largely reconcilable, differences.

222 According to Mr. Amsden, Tribune had historically, as part of its ordinary course strategic planning process, developed certain multi-year "high level" projections during the spring of each year for discussion with the Tribune Board. He testified as follows:

> Q: Are there any longer term financial planning documents that are created? And now I am talking in the normal course of business. We will get to what happened in 2006, 2007.
>
> A: There is another part of our process that we normally undertake. It's also our strategic planning process. Normally that starts up in the spring of the year. And then that normally culminates with a presentation to the board of directors in October of the year. During that we are going through various strategic plans. You know, what people want to do obviously to

apparently developed in connection with the bidding and strategic review process then underway at Tribune. Second, the projections that were being developed starting in the summer of 2006 for the 2007 calendar year were, according to Mr. Amsden, subjected to an additional "re-do," or re-evaluation in early 2007, in order to "make sure that we reflected [the business units'] best thinking" at the time.[223]

This description of the chronology of events giving rise to the 2007 operating plan is largely consistent with the Examiner's review of Special Committee and Tribune Board meeting minutes (and materials disseminated in connection with those meetings).[224] As discussed elsewhere in the Report, financial expectations for 2007 and 2008 (developed by management *before* the January 2007 reevaluation) were apparently more bullish on both revenue and EBITDA than were the expectations of analysts following Tribune during late 2006 and 2007.[225] The 2007 revised operating plan projections developed in early 2007 (both as to the 2007 forecast component of that plan,[226] as well as the 2008 forecast component of the plan) more closely approximated analyst expectations at that time.[227]

> grow the business, what opportunities they see. Often as part of that process we may ask the business units for some high-level projections for both the current year and a couple years out, or we might have formulated it at the group level just to give the board an overall sense where things may be headed. Usually that's done at a pretty high level.

Ex. 66 at 15:19–16:14 (Rule 2004 Examination of Harry Amsden, December 16, 2009). The Examiner notes that the process described by Mr. Amsden as to the development of the 2007 operating plan is differentiable from that type of review. *See, e.g.*, i*d.* at 25:9-29:14.

223 *Id.* at 16:24–17:17.

224 *See also* Report at § III.D.1.

225 *See, e.g.*, Ex. 1076 at 7 (Merrill and Citigroup January 12, 2007 "Confidential Discussion Materials Prepared for: Committee of Independent Directors of Tribune") (observing that: "Current Tribune Management Projections generally more aggressive than Wall Street research," that management's projections were "[a]bove consensus for Revenues and EBITDA through 2008," and that "2008 considerably higher than even most aggressive Wall Street estimate").

226 The Examiner did note that the single year 2007 operating plan (included as a part of the Tribune Board book disseminated on February 6, 2007) was a multi-page document that contained a description of some of the significant assumptions underlying the 2007 projections, the basis for those assumptions, and a comparison of projected amounts to prior year (2005 and 2006) financial results. The Examiner also noted that, in connection

As shown in the table below, the Tribune Board-approved 2007 plan contemplated both reduced revenue and profitability compared to the actual 2006 results:[228]

CONSOLIDATED TRIBUNE ($000s)				
	2004 (1)	**2005 (2)**	**2006 (1)(2)**	**2007 Budget (3)**
Revenue	**$ 5,631,431**	**$ 5,511,283**	**$ 5,517,708**	**$ 5,386,000**
EBIT	**$ 1,187,278**	**$ 1,127,191**	**$ 1,085,010**	**$ 1,023,000**
EBITDA	**$ 1,417,395**	**$ 1,368,232**	**$ 1,312,023**	**$ 1,270,000**

(1) Ex. 14 (Tribune 2006 Form 10-K). Results are normalized for discontinued operations.
(2) Fiscal year 2006 encompassed 53 weeks, while fiscal years 2004 and 2005 each encompassed 52 weeks.
(3) Ex. 71 (ESOP Transaction Model-Revised Operating Plan Case, dated February 8, 2007).

These assumptions were directionally consistent with the trends observable in prior years. Tribune's segment-level projections for revenue and operating profit reflected the same trends:

with the Tender Offer, Tribune made reference to the longer term 2007 operating plan (inclusive of not only projected 2007 results but also a full five-year projection as well) as having been presented to the Tribune Board and Special Committee in February. *See, e.g.*, Ex. 5 at 94 (Tender Offer). As previously noted, however, the Examiner did not see evidence that the Tribune Board was provided the multi-year projections in advance of the meeting in which the 2007 single year budget was discussed and approved; those longer term projections were apparently presented to, and discussed with the Special Committee at the February meetings. *See, e.g.,* Ex. 69 at TRB-UR-G0007811 (Special Committee Meeting Minutes, dated February 12, 2007); Ex. 66 at 33:2-33:8 (Rule 2004 Examination of Harry Amsden, dated December 19, 2009).

227 Analyst expectations typically were presented on a forward looking basis for no more than two years. As such, this comparison is limited to a review of management's 2007 and 2008 revenue and EBITDA expectations, although the operating plan encompassed five years of projected results.

228 Approval of the 2007 operating plan, which occurred on February 13, 2007, pre-dated Tribune's 2006 Form 10-K, which was filed on February 26, 2007. Results for the fourth quarter of 2006 were, however, available to management and the Tribune Board, as Tribune's Form 8-K was publicly filed on February 8, 2007. *See* Ex. 72 (Tribune Form 8-K, filed February 8, 2007).

TRIBUNE SEGMENT LEVEL REPORTING ($000s)	2004 (1)	2005 (1)	2006 (1)	2007 Budget (2)
Publishing Segment				
Revenue	$ 4,129,850	$ 4,096,850	$ 4,092,562	$ 3,985,000
Operating Profit	$ 726,207	$ 759,713	$ 749,189	$ 721,000
Operating Profit Margin	***17.58%***	***18.54%***	***18.31%***	***18.09%***
Broadcasting Segment				
Revenue	$ 1,501,581	$ 1,414,433	$ 1,425,146	$ 1,401,000
Operating Profit	$ 513,289	$ 416,891	$ 391,533	$ 364,000
Operating Profit Margin	***34.18%***	***29.47%***	***27.47%***	***25.98%***
Consolidated Tribune Company				
Revenue	$ 5,631,431	$ 5,511,283	$ 5,517,708	$ 5,386,000
Operating Profit	$ 1,239,496	$ 1,176,604	$ 1,140,722	$ 1,085,000
Corporate Expenses	($ 52,218)	($ 49,213)	($ 55,712)	($ 62,000)
Net Consolidated Operating Profit (EBIT)	$ 1,187,278	$ 1,127,391	$ 1,085,010	$ 1,023,000
Operating Profit Margin	***21.08%***	***20.46%***	***19.66%***	***18.99%***
EBITDA	$ 1,417,395	$ 1,368,232	$ 1,312,023	$ 1,270,000
EBITDA Margin	***25.17%***	***24.83%***	***23.78%***	***23.58%***

(1) Ex. 14 (Tribune 2006 Form 10-K). Results are normalized for discontinued operations.
(2) Ex. 71 (ESOP Transaction Model - Revised Operating Plan Case, dated February 8, 2007).

Management's expectations regarding the future financial performance of the Tribune Entities, as reflected in the Tribune Board-approved operating plan for 2007,[229] had not been publicly disclosed at the time the Tribune Board considered them. Indeed, as a general matter, unlike some publicly traded companies, Tribune did not provide formal "guidance" to market analysts regarding Tribune's financial expectations, as some companies elect to do.[230]

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229 Ex. 1109 (Tribune 2007 Operating Plan, dated February 2007).

230 "Guidance," in the context used herein, refers to a formal announcement by a company of expectations, or estimates, of forward-looking financial performance measures such as revenue, earnings, or profitability. Although the Tribune, for example, communicated certain discrete, forward-looking plan and performance expectations, Tribune apparently did not express opinions regarding consolidated performance expectations in its communications with analysts. *See, e.g.,* Ex. 73 (Transcript of the Fourth Quarter 2006 Earnings Conference Call). Tribune did, however, subsequently disclose the February 2007 operating plan in connection with Tribune's Form SC TO-I on April 25, 2007, as an exhibit to the Tender Offer. *See* Ex. 5 at 94 (Tender Offer). In his interview with the Examiner, Donald Grenesko noted that, once the Leveraged ESOP Transactions were announced, Tribune stopped holding conference calls and meetings with Wall Street analysts. Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 29:9-14. Mr. Grenesko stated that this was done on the advice of counsel "to make sure that we didn't make any mistakes since [the Leveraged ESOP Transactions were] pending." Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 30:8-18.