such guarantee is a guarantee of payment when due and not of collection.[728] The Guarantor Subsidiaries waived various defenses, including:

- Presentment to, demand of payment from, and protest to Tribune;[729]
- Notice of acceptance of the guarantee;[730]
- Notice of protest for nonpayment;[731]
- The failure of the secured parties to enforce against Tribune or any other Guarantor Subsidiary;[732]
- Any amendment, modification, waiver or release of the Credit Agreement Subsidiary Guarantees or any other loan document;[733]
- The failure to perfect, or the release of, any security interest;[734]
- Any act or omission that may operate as a discharge of any Guarantor Subsidiary (other than the indefeasible payment of the obligations under the Credit Agreement in full in cash);[735]
- The right to require that the secured parties resort to any security interest;[736]

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obligations of Tribune under the Swap Documents do not constitute Credit Agreement Debt, but such obligations are guaranteed by the Guarantor Subsidiaries pursuant to the Credit Agreement Subsidiary Guarantee.

[728] *Id.* at § 4.

[729] *Id.* at § 2.

[730] *Id.*

[731] *Id.*

[732] *Id.*

[733] *Id.*

[734] *Id.*

[735] *Id.*

[736] *Id.* at § 4.

- The invalidity, illegality, or unenforceability of the obligations under the Credit Agreement;[737]
- Any defense based on or arising out of any defense of Tribune (other than payment in full of the obligations under the Credit Agreement);[738] and
- Any defense arising out of the election of remedies, even though such election impaired or extinguished any right of reimbursement or subrogation against Tribune or any other guarantor.[739]

The Guarantor Subsidiaries agreed that all rights of subrogation, contribution, indemnity, and the like against Tribune arising from payment by such Guarantor Subsidiary of the guaranteed obligations are in all respects subordinate and junior in right of payment to the prior payment in full in cash of the obligations under the Credit Agreement.[740] The Guarantor Subsidiaries further agreed that any indebtedness owed by Tribune to the Guarantor Subsidiaries is subordinated in right of payment to the prior payment in full in cash of the obligations under the Credit Agreement, except to the extent otherwise permitted under the Credit Agreement.[741]

Notably, although addressing (a) subordination of obligations and (b) subrogation, contribution, and indemnity rights as to Tribune, the Credit Agreement Subsidiary Guarantee does not address (a) subordination of obligations, and (b) subrogation, contribution, and indemnity rights among the Guarantor Subsidiaries. Moreover, the Credit Agreement Subsidiary

[737] *Id.* at § 5.

[738] *Id.* at § 6.

[739] *Id.*

[740] *Id.* at § 7.

[741] *Id.*

Guarantee does not include a traditional "fraudulent transfer savings clause." The only provision addressing unenforceability is as follows:[742]

> In the event any one or more of the provisions contained in [the Credit Agreement Subsidiary Guarantee] or in any other [Step One Financing] Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

The guarantee of the Credit Agreement Debt under the Credit Agreement Subsidiary Guarantee by its terms includes any indebtedness incurred under the Incremental Credit Agreement Facility on the Step Two Financing Closing Date.[743]

e. The Stock Pledge and Priority of the Credit Agreement Debt.

The indebtedness under the Credit Agreement is secured by a pledge of the equity interests of FinanceCo and Holdco, both of which are direct Subsidiaries of Tribune.[744] The Pledge Agreement was entered into on the Step One Financing Closing Date.[745] Pursuant to the Pledge Agreement, and consistent with the equal and ratable security provisions of the Senior Notes,[746] the Senior Notes are secured by the Stock Pledge on a pari passu basis with the indebtedness under the Credit Agreement.[747] The Credit Agreement contains a representation

742 *Id.* at § 15(b).

743 *Id.* at § 1. "Obligations" as defined in the Credit Agreement include advances under the Incremental Credit Agreement Facility.

744 Ex. 190 (Pledge Agreement). The Pledge Agreement is governed by New York law (*see* § 19).

745 *Id.* at 1.

746 *See* Report at § III.B.1.

747 Ex. 190 at 1 (Pledge Agreement).

and warranty that the Stock Pledge is superior to all other liens on the equity interests of FinanceCo and Holdco, subject to very limited exceptions.[748]

11. Terms of the Incremental Credit Agreement Facility.

The Credit Agreement executed on May 17, 2007 provided Tribune with the right to request advances under the Incremental Credit Agreement Facility on the Step Two Financing Closing Date.[749] The lenders under the Credit Agreement, other than the Step Two Lenders that were parties to the Step Two Commitment Letter, had the right to participate in the Incremental Credit Agreement Facility.[750] The Step Two Commitment Letter obligated the Step Two Lenders party thereto to participate in the Incremental Credit Agreement Facility.[751]

The funding of the Incremental Credit Agreement Facility was subject to the satisfaction of the following conditions:

- No default had occurred and was continuing at the time of, or would result from, the borrowing under the Incremental Credit Agreement Facility;[752]
- The accuracy of certain specified representations and warranties, including with respect to Tribune's corporate status, the execution, delivery, performance, and enforceability of the Credit Agreement and Step One Financing Documents, and solvency of Tribune as of the Step Two Financing Closing Date;[753]
- No material adverse effect having occurred (for purposes of this closing condition, "material adverse effect" was defined as, except as disclosed in Tribune's SEC filings

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[748] Ex. 179 at § 4.01(r) (Credit Agreement).

[749] *Id.* at § 2.17.

[750] *Id.* at § 2.17.

[751] Ex. 1010 at 3 (Step Two Commitment Letter).

[752] Ex. 179 at § 2.17(b)(i) (Credit Agreement).

[753] *Id.* at § 2.17(b)(ii)(A).

before April 1, 2007 or as disclosed in the schedules to the Merger Agreement, a Company Material Adverse Effect); and[754]

- The consummation of the Merger, the issuance of the Bridge Debt, the issuance of the Initial EGI-TRB Note, the repayment of the Exchangeable EGI-TRB Note, the purchase of the Warrant, and pro forma compliance with the financial covenants.[755]

Advances under the Incremental Credit Agreement Facility have terms that are identical to the Tranche B Facility, with the exception of the interest rate.[756] The applicable margins with respect to the Incremental Credit Agreement Facility were determined by Tribune and the lenders under the Credit Agreement, and if the applicable margins for advances under the Incremental Credit Agreement Facility were more than 25 basis points higher than the applicable margins for advances under the Tranche B Facility, the applicable margins for the Tranche B Facility would be increased to equal the applicable margins for the Incremental Credit Agreement Facility, minus 25 basis points.[757]

12. FinanceCo/Holdco Transactions.

On May 16, 2007, FinanceCo and Holdco were formed, with the sole member of each company being Tribune.[758]

FinanceCo was created as a direct, wholly-owned Subsidiary of Tribune.[759] On the Step One Financing Closing Date, Tribune made a $3 billion capital contribution to FinanceCo,[760]

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754 *Id.* at § 2.17(b)(ii)(B).

755 *Id.* at § 2.17(b)(iii).

756 *Id.* at § 2.17(c) (Credit Agreement).

757 Ex. 179 at § 2.17(c) (Credit Agreement).

758 Ex. 191 (Delaware Formation Information); Ex. 192 (FinanceCo Limited Liability Company Agreement); Ex. 193 (Holdco Limited Liability Company Agreement). *See also* Ex. 194 (Tribune Finance LLC Transaction Summary). Although evidence that FinanceCo and Holdco were formed was provided by Tribune to the Examiner, Tribune informed the Examiner that the Tribune Board did not explicitly authorize the formation of FinanceCo and Holdco.

759 Ex. 6 (Organization Chart).

which in turn loaned $3 billion to eight Publishing Segment Subsidiaries in return for the Intercompany Junior Subordinated Note.[761] The Subsidiaries that received the loans then made dividend payments of $3 billion back to Tribune.[762] The net effect of this transaction was the creation of a $3 billion asset held by FinanceCo in the form of the Intercompany Junior Subordinated Notes and $3 billion in corresponding liabilities owed by the eight Publishing Segment Subsidiaries that received the loans.

Holdco was also created as a direct, wholly-owned Subsidiary of Tribune.[763] On the Step One Financing Closing Date, Tribune capitalized Holdco by contributing to Holdco the stock of Tribune Broadcasting Company, an existing, wholly-owned Subsidiary of Tribune that directly or indirectly owned all of the operating Subsidiaries in the Broadcasting Segment.[764]

The consummation of the FinanceCo/Holdco Transactions were conditions to closing under the Credit Agreement.[765] The Credit Agreement also required that the Credit Agreement Debt be secured by the Stock Pledge and that FinanceCo and Holdco become guarantors of the Credit Agreement Debt.[766] Pursuant to the terms of Tribune's existing bond indentures, the Senior Notes (other than the PHONES Notes) received the same security in FinanceCo and Holdco (*i.e.,* the Stock Pledge) on a ratable and pari passu basis.[767] Under the Credit Agreement,

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760 Ex. 194 (Tribune Finance LLC Transaction Summary). Each of the steps in the transactions described in this paragraph of the Report were accomplished via accounting entries, and no cash actually was transferred among the companies. *Id.*

761 *Id.*; Ex. 195 (Intercompany Junior Subordinated Note).

762 Ex. 194 (Tribune Finance LLC Transaction Summary).

763 Ex. 6 (Organization Chart).

764 Ex. 196 (Equity Contribution Agreement). The Equity Contribution Agreement was effective immediately before the execution and delivery by Tribune of the Pledge Agreement.

765 Ex. 179 at § 3.01(m) (Credit Agreement).

766 *Id.* at § 3.01(a), (g).

767 *See* Report at § III.B.1.

FinanceCo (but not Holdco) was generally restricted from holding any material properties, becoming liable for any material obligations, or conducting any business activities.[768]

The Examiner has reviewed numerous documents addressing Tribune's creation of FinanceCo and Holdco and the transactions these entities effectuated in connection with Tribune's entry into the Credit Agreement. Based on this review, it appears that at least two considerations gave rise to the FinanceCo/Holdco Transactions.

First, JPMCB, MLPFS, CGMI, and possibly the other parties looking to syndicate the Step One Financing, desired to transform the Credit Agreement facility into a secured facility so that the loans could be marketed as partially secured obligations,[769] thereby expanding the universe of potential lenders, including collateralized debt obligation (CDO) managers and other lenders who may have been restricted from investing in unsecured obligations. This consideration, although helpful in understanding why the Credit Agreement included a form of collateral to secure the Credit Agreement Debt, does not by itself explain why the specific structures comprising the FinanceCo/Holdco Transactions were adopted.

Second, although Tribune could have created a secured facility by pledging the stock of existing entities (*i.e.,* by pledging the stock of Tribune Broadcasting Company and the Publishing Segment Subsidiaries that received the intercompany loans), Tribune expressed concern that such an approach could have resulted in significant and burdensome additional public reporting requirements.[770] This concern appears to have been justified. Under federal securities laws, if the stock of an issuer's Subsidiary serves as a substantial portion of the collateral for any class of registered securities, the issuer is required to file audited financial

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768 Ex. 179 at § 5.02(n) (Credit Agreement).

769 Ex. 197 (Sell E-Mail, dated March 28, 2007). *See also* Ex. 178 at 25 (Step One Confidential Information Memorandum).

770 Ex. 198 at 1 (Description of Tribune Credit Facilities Obligor Structure).

statements for that Subsidiary.[771] Therefore, if Tribune had pledged the stock of its many existing Subsidiaries, absent a waiver of reporting requirements, it would have been required to prepare audited financial statements for each of these entities.[772] Tribune was not in the practice of preparing financial statements by entity, but rather had historically reported by business segment.[773] In addition, Tribune appears to have been concerned that reporting on an entity-by-entity basis would have required sensitive disclosures.[774]

By contrast, the preparation of separate financial statements for only FinanceCo and Holdco did not pose as significant a burden, both because of the limited nature of the assets held by FinanceCo and Holdco and the fact that only two additional entities (as opposed to all eight of the Publishing Segment Subsidiaries that received the loans) would be required to deliver audited financial statements.[775] FinanceCo and Holdco appear to have been created, at least in part, to address these securities law issues.[776]

JPMCB and JPMorgan generally acknowledged that the establishment of FinanceCo and Holdco would not enhance the lenders' collateral position, which derived principally from the Subsidiary Guarantees and the corresponding structural seniority of the Credit Agreement Debt over the Tribune level indebtedness.[777] It also appears that JPMCB actually preferred a direct

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771 *See* SEC Regulation S-X, Rule 3-16, 17 C.F.R. § 210.3-16.

772 *See id.*

773 Ex. 197 (Sell E-Mail, dated March 28, 2007); Ex. 4 at 8-21 and 138-142 (Tribune 2007 Form 10-K).

774 Ex. 199 (Chen E-Mail, dated March 30, 2007).

775 Ex. 198 at 1-2 (Description of Tribune Credit Facilities Obligor Structure).

776 Ex. 200 (Kaplan E-Mail, dated March 21, 2007); Ex. 199 (Chen E-Mail, dated March 30, 2007). Tribune's 2007 Form 10-K includes audited financial statements for both FinanceCo and Holdco. Ex. 4 at 144-174 (Tribune 2007 Form 10-K).

777 At the syndication meeting held on April 26, 2007, Todd Kaplan of Merrill described the collateral package for the Credit Agreement as "the capital stock of [FinanceCo] and [Holdco]. That will be prorated with the existing senior note but that is essentially not the driver of prioritization. It is the guarantee package with the senior guarantees from the subsidiaries beneath and publishing and operating driving our prioritization." Ex. 180 at 50 (Transcript of Lenders Meeting, dated April 26, 2007). *See also* Ex. 201 at (Jacobson E-Mail, dated May 24,

pledge of stock of Tribune's existing Subsidiaries to the FinanceCo and Holdco structures and thought Tribune's reluctance to provide direct stock pledges was not justified.[778]

13. LATI Intercompany Debt Repayment Transactions.

At various times between 1997 and 2006, certain intercompany transactions occurred between LATI and twenty-one direct or indirect Subsidiaries of Tribune whereby liabilities were recorded from these entities to LATI.[779] These liabilities were documented in twenty-four separate promissory notes issued by these Subsidiaries in favor of LATI.[780] The original aggregate principal amount of the LATI Notes totaled approximately $6.12 billion.[781] As of the Step One Financing Closing Date, the aggregate amount totaled approximately $3.98 billion, comprised of approximately $3.86 billion in principal and approximately $116 million in accrued interest for the period January 1, 2007 to June 4, 2007.[782]

2007); Ex. 197 (Sell E-Mail dated March 28, 2007); Ex. 198 at 1-2 (Description of Tribune Credit Facilities Obligor Structure).

778 Jeffrey Sell, former Head of Special Credits Group, JPMCB, informed the Examiner that "I recall that I considered this baloney—that these guys gave this up for the weekend because some comptroller couldn't give the financial statements. . . . I wanted the pledge of stock in the subsidiaries. I probably asked for a lien on the assets and was told no so a pledge on the stock of the subsidiaries was second choice. Pledge on holding companies was next." Examiner's Interview of Jeffrey Sell, June 3, 2010. *See also* Ex. 197 (Sell E-Mail, dated March 28, 2007).

779 These Subsidiaries are: (i) Tribune Television Company, (ii) The Daily Press, Inc., (iii) Tribune Broadcasting Company, (iv) KHCW Inc. (f/k/a KHTV Inc. and KHWB Inc.), (v) Tribune Television Northwest, Inc., (vi) Tribune Television New Orleans, Inc., (vii) WBDC Broadcasting, Inc., (viii) Newsday, Inc., (ix) The Baltimore Sun Company, (x) The Hartford Courant Company, (xi) The Morning Call, Inc., (xii) Southern Connecticut Newspaper, Inc. (xiii) Los Angeles Times Communications LLC, (xiv) Virginia Gazette Companies, LLC, (xv) WTXX, Inc., (xvi) Tower Distribution Company, (xvii) KPLR, Inc., (xviii) Tribune Broadcast Holdings, Inc., (xix) Tribune National Marketing Company, (xx) Tribune Media Services, Inc., and (xxi) Tribune Media Net. Certain of the LATI Notes were originally issued to Tribune and Shortland Publications, Inc. (a former indirect Subsidiary of Tribune) and later assigned to LATI pursuant to a series of allonges. Ex. 202 (LATI Promissory Notes). WLVI, Inc. also issued two LATI Notes, which were repaid in 2006, before the Step One Financing Closing Date. Therefore, the WLVI notes are excluded from this summary.

780 Ex. 202 (LATI Promissory Notes).

781 Ex. 203 (Schedule of Notes 2007).

782 *Id.*

The LATI Notes were initially created in the years preceding the Leveraged ESOP Transactions pursuant to three-step intercompany transactions whereby (1) Tribune made a capital contribution to LATI, (2) LATI in turn advanced the contributed amounts to the Subsidiary and received a promissory note in return, and (3) the Subsidiary thereupon returned an amount equal to the loaned proceeds to Tribune.[783] Principal and interest payments on the LATI Notes were accomplished pursuant to a reverse three-step transaction, whereby (1) Tribune made a capital contribution to the Subsidiary, (2) the Subsidiary paid a like amount of principal or interest to LATI, and (3) LATI thereupon remitted the same amount of capital to Tribune.[784] Thus, the transactions had a circular quality, with funds flowing from Tribune to LATI to the particular Subsidiary to create a liability from the Subsidiary to LATI and then back from LATI to Tribune; and then funds flowing from Tribune to the Subsidiary and then LATI to repay principal and interest and then back from LATI to Tribune. It appears that between 1997 and 2005, Tribune actually funded the principal and interest payments in cash (and received cash from LATI at step 3), but starting in 2006 these transactions were accomplished via accounting entries.[785] Although a fair inference from these otherwise circular transactions is that they were accomplished for state tax purposes,[786] the Examiner discovered limited testimonial evidence supporting that inference.[787]

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783 Ex. 204 at 2 (Intercompany Notes from Various Business Units to LA Times International, Ltd.).

784 *Id.* at 3-4.

785 *Id.*

786 Although Tribune and its Subsidiaries filed a consolidated income tax return for federal income tax purposes, many states require or permit each member of a consolidated group of corporations to file a separate state income tax return. *See* 35 ILL. COMP. STAT. 5/203(e)(2)(E) (2010). Therefore, the LATI transactions may have been structured to minimize the state tax liability incurred by Tribune's operating Subsidiaries in states other than California.

787 The Examiner had the following exchange with Mr. Bigelow:

> Q: Are you familiar with intercompany transactions with LATI?
>
> A: Generally at a high level.

The Credit Agreement specified as a condition to closing satisfaction of the intercompany amounts shown on a schedule to the Credit Agreement as running in favor of LATI.[788] Tribune's twenty-one Subsidiaries that issued the LATI Notes were Guarantor Subsidiaries under the Credit Agreement.[789] LATI was not a guarantor.

The following transactions were effectuated on the Step One Financing Closing Date: (a) Tribune made capital contributions in the aggregate amount of $3.98 billion to the twenty-one Subsidiaries, (b) the Subsidiaries used the proceeds from their respective capital contributions to pay off the LATI Notes, and (c) LATI returned the proceeds from these loan repayments directly to Tribune.[790] In this fashion, the transactions replicated the above-described interest and principal repayments, except in this instance the entirety of the obligations was extinguished.

Q: What's your understanding at a high level of the transactions with LATI?

A: At a high level, my understanding is that because of some state tax planning that the company was doing for I think many, many years, I don't recall when it started, that the LATI entity, you know, issued notes to certain other subsidiaries in the organization, and because of those notes and because of the interest related to those notes, there were some advantages with respect to state tax payments, and for a time there were some economic advantages to that, but those advantages stopped. I don't recall exactly which states and why, but, you know, there was a period of time where there were some reasonable economic advantages. Because, those stopped, there was really no real economic reason to retain them, and as a result, I don't -- I can't recall exactly who, but the company elected to have those notes repaid.

Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 263:5-264:4

788 Ex. 179 at § 3.01 (Credit Agreement) ("Conditions Precedent to Initial Borrowing. The obligation of each Lender to make an advance on the Closing Date . . . shall be subject to the occurrence and satisfaction or waiver of the following conditions precedent (other than clause (m), which shall be a simultaneous condition). . . . (m) Related Transactions. The Tribune Finance LLC Transaction . . . shall be consummated substantially and simultaneously with the making of the Advances on the Closing Date.") "Tribune Finance LLC Transaction" is defined as "(a) the satisfaction of intercompany indebtedness owed by certain Subsidiaries and listed on Schedule 1.01(d) hereto . . .". *Id.* at § 1.01 (definition of "Tribune Finance LLC Transaction"). Although it appears that the Tribune Board did not specifically authorize repayment of the LATI Notes at the April 1, 2007 meeting where it approved the Leveraged ESOP Transactions and entry into the Credit Agreement, the Tribune Board did authorize Tribune's officers to "take from time to time any actions deemed necessary or desirable . . . to establish the Credit Facilities . . . in accordance with the requirements of the Commitments and the Credit Facilities Documents contemplated thereby and any other requirements established by the Credit Facilities Agents and/or any of the other lenders." Ex. 146 at 9 (Tribune Board Meeting Minutes, dated April 1, 2007).

789 Ex. 189 at Annex I (Credit Agreement Subsidiary Guarantee).

790 Ex. 204 at 5 (Intercompany Notes from Various Business Units to LA Times International, Ltd.); Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

Each of the above steps in these transactions was accomplished via accounting entry rather than the actual movement of cash.[791]

The net effect of the transactions was to shift the remaining outstanding balance of the LATI Notes from the twenty-one Subsidiaries to Tribune.[792] Although the elimination of the intercompany amounts may have enhanced the ability of these Subsidiaries to make required tax elections in a non-taxable manner and thereby be treated as qualified Subsidiaries under the S-Corporation/ESOP structure, the Examiner has not seen any evidence directly supporting the inference that the transactions were accomplished for this purpose.[793] The Examiner did not discover any documents that directly address the specific purpose behind the LATI-related transactions described in this section.

14. Tender Offer.

a. Terms.

Pursuant to the terms of the Merger Agreement,[794] on April 25, 2007, Tribune commenced the Tender Offer to repurchase up to 126 million shares of the Tribune Common Stock that were then outstanding at a price of $34.00 per share.[795] In the press release announcing the commencement of the Tender Offer, Mr. FitzSimons was quoted as saying,

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791 Ex. 205 (Step One Flow of Funds Memorandum).

792 Ex. 205 at 6 (Step One Flow of Funds Memorandum). LATI is a direct wholly-owned Subsidiary of Tribune, is not a Guarantor Subsidiary, and does not appear to have any significant creditors. *See* Ex. 6 (Organization Chart); Ex. 189 at Annex I (Credit Agreement Subsidiary Guarantee); Ex. 206 (LATI Schedules). As a consequence, any "claim" that LATI might hold against Tribune, in effect, is an asset of Tribune, and ultimately would be available for the benefit of Tribune's creditors.

793 *See* 26 C.F.R. §§ 1.1361-4(a)(2) and 1.332-2(b). The Examiner did not evaluate the merits of this contention as a tax matter.

794 Ex. 151 at § 5.14(a) (Merger Agreement).

795 Ex. 5 at cover page (Tender Offer).

"With Sam Zell's initial investment completed, and the tender offer launched, the first stage of our transaction that will result in [Tribune] going private is underway."[796]

b. Closing Conditions.

The Tender Offer was not conditioned on a minimum number of shares being tendered.[797] However, the Tender Offer was subject to the satisfaction of several other conditions:

- Receipt by Tribune of the necessary financing for the Tender Offer as contemplated by the Step One Commitment Letter;[798]
- Receipt by Tribune of an opinion from VRC or another nationally recognized valuation firm satisfactory to Tribune on the solvency of Tribune after giving effect to the Tender Offer;[799]
- The agreements relating to the Leveraged ESOP Transactions remaining in full force and effect;[800] and
- There being no restraining order, injunction, or other court order prohibiting the consummation of the Tender Offer or any of the other Leveraged ESOP Transactions.[801]

c. *Garamella* Litigation.

On November 17, 2006, a case captioned *Garamella v. FitzSimons, et al.*, was filed in the Superior Court of California, Los Angeles County, against Tribune's directors and Tribune as a nominal defendant, alleging direct and derivative claims on behalf of a purported class of

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796 Ex. 207 (Tribune Press Release, dated April 25, 2007).

797 Ex. 5 at 73 (Tender Offer).

798 *Id.* at 83.

799 *Id.*

800 *Id.*

801 *Id.* at 83-84.

Tribune stockholders for breach of fiduciary duty in connection with Tribune's 2006 Leveraged Recapitalization and the manner in which the Tribune Board was handling its exploration of strategic alternatives.[802] On April 4, 2007, before any responsive pleading was due, the plaintiff amended its complaint to include claims alleging that Tribune's directors had breached their fiduciary duties to stockholders in connection with the negotiation of the Leveraged ESOP Transactions. Among other claims, the plaintiff alleged that the Tribune Board breached its fiduciary duties by failing to obtain a higher value for Tribune's stockholders and that the Tender Offer was impermissibly "coercive" under Delaware law.[803] On May 18, 2007, the plaintiff filed a motion for preliminary injunction seeking to enjoin Tribune from completing the Tender Offer until Tribune (a) took steps to maximize stockholder value, (b) removed the allegedly coercive aspects of the Tender Offer, and (c) disclosed all material information about the Tender Offer to Tribune's stockholders. Following expedited discovery and a hearing held on May 22, 2007, the court denied this motion.[804]

15. Pre-Closing of the Step One Financing and Tender Offer.

a. Rating Agency Ratings.

On March 29, 2007, Standard & Poor's Rating Evaluation Service sent a letter to Chandler Bigelow, then a Vice President and the Treasurer (and currently the Chief Financial Officer) of Tribune, in response to Mr. Bigelow's request for feedback on the ratings impact of

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802 Ex. 208 (Verified Shareholder Class and Derivative Complaint, *Garamella v. FitzSimons, et al.*, No. BC362110).

803 Ex. 209 at ¶ 8 (First Amended Verified Shareholder Class and Derivative Complaint, *Garamella v. FitzSimons et al.*, No. BC362110).

804 Ex. 210 (Briefing and Declarations (and exhibits thereto) filed in *Garamella*); Ex. 211 (Court Minute Order, dated May 22, 2007).

Tribune's contemplated leveraged buyout transaction.[805] Standard & Poor's indicated that the existing ratings for Tribune and its debt were as follows:[806]

Corporate Credit Rating	BB+/Watch Neg[807]
Senior Unsecured Debt	BB+/Watch Neg[808]
Subordinated Debt	BB-/Watch Neg[809]
Commercial Paper	B/Watch Neg[810]

After reviewing the terms of the leveraged buyout scenario, Standard & Poor's reached the following hypothetical ratings conclusions, assuming the closing of *both* the Step One Transactions and the Step Two Transactions:[811]

805 Ex. 212 (Standard & Poor's Letter, dated March 29, 2007).

806 *Id.* at 1.

807 Under Standard & Poor's rating system, "an obligor rated 'BB' is less vulnerable in the near term than other lower-rated obligors. However, it faces major ongoing uncertainties and exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitments." *See* Ex. 213 at 10 (Standard & Poor's Ratings). The addition of a plus (+) sign shows "relative standing within the major rating categories." *See id.* "Watch Neg" means that a rating "may be lowered." *See id.* at 13.

808 Under Standard & Poor's rating system, "[a]n obligation rated 'BB' is less vulnerable to nonpayment than other speculative issues. However, it faces major ongoing uncertainties or exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitment on the obligation." *See id.* at 4. The addition of a plus (+) sign shows "relative standing within the major rating categories." *See id.* at 10. "Watch Neg" means that a rating "may be lowered." *See id.* at 13.

809 Under Standard & Poor's rating system, "[a]n obligation rated 'BB' is less vulnerable to nonpayment than other speculative issues. However, it faces major ongoing uncertainties or exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitment on the obligation." *See id.* at 4 (Standard & Poor's Ratings). The addition of a minus (-) sign shows "relative standing within the major rating categories." *See id.* at 10. "Watch Neg" means that a rating "may be lowered." *See id.* at 13.

810 Under Standard & Poor's rating system, "[a]n obligation rated 'B' is more vulnerable to nonpayment than obligations rated 'BB', but the obligor currently has the capacity to meet its financial commitment on the obligation. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meets its financial commitment on the obligation." *See id.* at 4. "Watch Neg" means that a rating "may be lowered." *See id.* at 13.

811 Ex. 212 at 2 (Standard & Poor's Letter, dated March 29, 2007).

Corporate Credit Rating	B/Stable[812]
Existing Senior Unsecured Debt	CCC+[813]
Existing Subordinated Debt	CCC+[814]
Commercial Paper	Not Rated[815]
New Senior Secured Debt[816]	B[817]
New Subordinated Debt[818]	CCC+[819]

Per Standard & Poor's, Tribune's corporate credit rating, as of the time of the letter, reflected Tribune's "significant debt levels and its announcement in September 2006 that the company would be considering various alternatives for 'creating additional value for

812 Under Standard & Poor's rating system, "[a]n obligor rated 'B' is more vulnerable than the obligors rated 'BB', but the obligor currently has the capacity to meet its financial commitments. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meets its financial commitments." *See* Ex. 213 at 10 (Standard & Poor's Ratings). "Stable" means that a rating "is not likely to change." *See id.* at 13.

813 Under Standard & Poor's rating system, "[a]n obligation rated 'CCC' is currently vulnerable to nonpayment, and is dependent upon favorable business, financial, and economic conditions for the obligor to meet its financial commitment on the obligation. In the event of adverse business, financial, or economic conditions, the obligor is not likely to have the capacity to meet its financial commitment on the obligation." *See id.* at 4. The addition of a plus (+) sign shows "relative standing within the major rating categories." *See id.* at 10.

814 Under Standard & Poor's rating system, "[a]n obligation rated 'CCC' is currently vulnerable to nonpayment, and is dependent upon favorable business, financial, and economic conditions for the obligor to meet its financial commitment on the obligation. In the event of adverse business, financial, or economic conditions, the obligor is not likely to have the capacity to meet its financial commitment on the obligation." *See id.* at 4. The addition of a plus (+) sign shows "relative standing within the major rating categories." *See id.* at 10.

815 As it was anticipated that all outstanding borrowings would be repaid, the rating for Tribune's commercial paper would be withdrawn. *See* Ex. 212 at 2 (Standard & Poor's Letter, dated March 29, 2007).

816 This referred to the Credit Agreement Debt that would be issued in part at Step One and in part at Step Two.

817 Under Standard & Poor's rating system, "[a]n obligation rated 'B' is more vulnerable to nonpayment than obligations rated 'BB', but the obligor has the capacity to meet its financial commitment on the obligation. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meet its financial condition on the obligation." *See* Ex. 213 at 4 (Standard & Poor's Ratings).

818 This referred to the Bridge Debt that would be issued at Step Two.

819 Under Standard & Poor's rating system, "[a]n obligation rated 'CCC' is currently vulnerable to nonpayment, and is dependent upon favorable business, financial, and economic conditions for the obligor to meet its financial commitment on the obligation. In the event of adverse business, financial, or economic conditions, the obligor is not likely to have the capacity to meet its financial commitment on the obligation." *See id.* at 4. The addition of a plus (+) sign shows "relative standing within the major rating categories." *See id.* at 10.

shareholders.'"[820] Tribune's new corporate credit rating, assuming the consummation of both the Step One Transactions and the Step Two Transactions, reflected the "substantially greater pro forma debt levels, resulting in sharply weaker credit measure and free operating cash flow generation. Both the company's newspaper and broadcasting operations [were] facing very challenging revenue climates and competitive market conditions."[821] Finally, Standard & Poor's concluded that its:

> default scenario contemplates that the sector downturn is more prolonged and pronounced than the company's expectations and other recent downturns. . . . Under our scenario, the company is expected to default in 2009 when its cash flow and revolving credit capacity are unable to cover its interest expense, capital expenditures, and working capital needs.[822]

On March 29, 2007, Moody's Investors Service also sent a letter to Mr. Bigelow, in response to Mr. Bigelow's request for feedback on the ratings impact of Tribune 's contemplated leveraged buyout transaction.[823] Moody's informed Mr. Bigelow that the consummation of both the Step One Transactions and the Step Two Transactions would result in a 'B2' Corporate Family Rating with a stable rating outlook, indicating that "[h]igh leverage . . . after conclusion of the transaction and the negligible amount of equity invested are key drivers of the B2 CFR

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[820] Ex. 212 at 2 (Standard & Poor's Letter, dated March 29, 2007). Standard & Poor's had previously anticipated that Tribune would "focus on debt reduction following the completion of the [2006 Leveraged Recapitalization]. This was no longer the case with the September announcement." *Id.* at 2.

[821] *Id.* at 3.

[822] *Id.* at 4-5. Standard & Poor's default scenario assumed: (a) publishing advertising revenues declining by 7% in 2007, 4% in 2008, and 4% in 2009, (b) circulation revenues decreasing by 5% in 2007, 5% in 2008, and 5% in 2009, (c) broadcast and entertainment revenues falling by 16% in 2007, increasing by 3% in 2008 (as a result of increased political advertising), and declining by 3% in 2009, (d) the Step Two Transactions closing by the end of 2007 and including borrowing the $2.13 billion in incremental term loans under the Tranche B Facility and $2.1 billion in Bridge Debt, (e) the divestitures of the Chicago Cubs and Comcast SportsNet closing by the end of 2007, with the net proceeds of $600 million being used to repay a portion of the Credit Agreement Debt, (f) drawing $260 million on the Delayed Draw Facility in 2008 and using the proceeds to repay the maturing $263 million of Senior Notes, (g) capital expenditures of $100 million in 2007, $90 million in 2008, and $90 million in 2009, (h) LIBOR rising by 150 basis points, (i) interest rates on the Credit Agreement Debt and the Bridge Debt increasing by 150 basis points to reflect the higher risk resulting from Tribune's simulated credit deterioration, and (j) a fully drawn Revolving Credit Facility at the time of default. *Id.* at 5.

[823] Ex. 214 (Moody's Letter, dated March 29, 2007).

and would weakly position the company at that rating level."[824] Finally, Moody's indicated its concern that the increased leverage was occurring at a time of "pressure on the company's advertising revenue . . . and cyclical fluctuations in the U.S. economy . . . [that] will make it difficult to materially reduce leverage over the intermediate term, even if the company devotes the majority of its cash flow . . . to debt reduction."[825] Moody's concluded by noting that it did "not view an upgrade as likely over the intermediate term."[826]

Following the announcement that Tribune had entered into the Leveraged ESOP Transactions, on April 2, 2007, Standard & Poor's Ratings Services, assuming solely the consummation of the Step One Transactions, lowered Tribune's corporate credit rating to 'BB-' from 'BB+'.[827]

On April 19, 2007 Standard & Poor's, assuming solely the consummation of the Step One Transactions, assigned the Credit Agreement Debt a rating of BB-, with a recovery rating of 2 (indicating the expectation for 80%-100% recovery of principal in the event of a payment

[824] *Id.* at 1. A "Corporate Family Rating" is Moody's "opinion of a corporate family's ability to honor all of its financial obligations and is assigned to a family as if it had a single class of debt [and] a single consolidated legal entity structure." Ex. 215 at 18 (Moody's Rating Symbols & Definitions). Under Moody's rating system, "[o]bligations rated 'B' are considered speculative and are subject to high credit risk" and the modifier "2" indicates a "mid-tier" ranking within that generic rating category. *Id.* at 8.

[825] Ex. 214 at 1 (Moody's Letter, dated March 29, 2007).

[826] *Id.* at 6.

[827] Ex. 80 at 1 (Standard & Poor's Research Report, dated April 2, 2007). Standard & Poor's determined that, on later stockholder approval of the Step Two Transactions, and "based on our analysis of the proposed capital structure, . . . we would lower [Tribune's post-Step Two] corporate credit rating to 'B' . . . [reflecting Tribune's post-Step Two] highly leveraged capital structure, weakened credit measures, and reduced cash flow-generating capability as a result of the LBO and associated heavy interest burden." *Id.* at 1-2. Under Standard & Poor's rating system, "an obligor rated 'BB' is less vulnerable in the near term than other lower-rated obligors. However, it faces major ongoing uncertainties and exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitments" and "[a]n obligor rated 'B' is more vulnerable than the obligors rated 'BB', but the obligor currently has the capacity to meet its financial commitments. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meets its financial commitments." *See* Ex. 213 at 10 (Standard & Poor's Ratings). The addition of a plus (+) or minus (-) sign shows "relative standing within the major rating categories." *See* Ex. 213 at 10 (Standard & Poor's Ratings).

default).[828] Tribune's corporate credit rating was BB-/Watch Neg.[829] Once again, Standard & Poor's concluded that, under its default scenario, assuming the consummation of the Step One Transactions and the Step Two Transactions, Tribune was expected to default in 2009.[830]

On April 23, 2007, Moody's Investor Service issued a Rating Action downgrading Tribune's Corporate Family Rating, assuming solely the consummation of the Step One Transactions, to 'Ba3' from 'Ba1', explaining that the downgrade reflected the "significant increase in leverage that will result from Tribune's repurchase of . . . stock . . . and that the

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828 Ex. 216 at 1 (Standard & Poor's Recovery Report, dated April 19, 2007). Standard & Poor's determined that, on later stockholder approval of the Step Two Transactions, and "based on our analysis of the proposed capital structure, . . . we would lower [Tribune's post-Step Two] corporate credit rating to 'B' with a stable outlook. Under these circumstances, the bank loan rating would also be lowered to 'B'." *Id.* at 1. "An obligor rated 'B' is more vulnerable than the obligors rated 'BB', but the obligor currently has the capacity to meet its financial commitments. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meets its financial commitments." *See* Ex. 213 at 10 (Standard & Poor's Ratings). "An obligation rated 'B' is more vulnerable to nonpayment than obligations rated 'BB', but the obligor currently has the capacity to meet its financial commitment on the obligation. Adverse business, financial, or economic conditions will likely impair the obligor's capacity or willingness to meets its financial commitment on the obligation." *See id.* at 4. "An obligation rated 'BB' is less vulnerable to nonpayment than other speculative issues. However, it faces major ongoing uncertainties or exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitment on the obligation." *See id.* at 4. The addition of a minus (-) sign shows "relative standing within the major rating categories." *See id.* at 10.

829 Ex. 216 at 1 (Standard & Poor's Recovery Report, dated April 19, 2007). Under Standard & Poor's rating system, "an obligor rated 'BB' is less vulnerable in the near term than other lower-rated obligors. However, it faces major ongoing uncertainties and exposure to adverse business, financial, or economic conditions which could lead to the obligor's inadequate capacity to meet its financial commitments." *See* Ex. 213 at 10 (Standard & Poor's Ratings). The addition of a minus (-) sign shows "relative standing within the major rating categories." *See* Ex. 213 at 10 (Standard & Poor's Ratings). "Watch Neg" means that a rating "may be lowered." *See id.* at 13.

830 Ex. 216 at 3 (Standard & Poor's Recovery Report, dated April 19, 2007). Standard & Poor's slightly modified default scenario assumed: (a) publishing advertising revenues declining by 7% in 2007, 4% in 2008, and 4% in 2009, (b) circulation revenues decreasing by 5% in 2007, 5% in 2008, and 5% in 2009, (c) broadcast and entertainment revenues falling by 16% in 2007, increasing by 3% in 2008 (as a result of increased political advertising), and declining by 3% in 2009, (d) the Step Two Transactions closing by the end of 2007 and including borrowing the $2.105 billion in incremental term loans under the Tranche B Facility and $2.1 billion in Bridge Debt (or the issuance of $2.1 billion of senior unsecured notes), (e) the divestitures of the Chicago Cubs and Comcast SportsNet closing by the end of 2007, with the net proceeds being used to repay a portion of the Credit Agreement Debt, (f) drawing $263 million on the Delayed Draw Facility in 2008 and using the proceeds to repay the maturing $263 million of Senior Notes, (g) capital expenditures of $100 million in 2007, $90 million in 2008, and $90 million in 2009, (h) LIBOR rising by 150 basis points, (i) interest rates on the Credit Agreement Debt and the Bridge Debt increasing by 150 basis points to reflect the higher risk resulting from Tribune's simulated credit deterioration, and (j) a fully drawn Revolving Credit Facility at the time of default. *Id.* at 3.

increase in leverage is occurring at a time of pressure on Tribune's advertising revenue and operating margins."[831] The rating remained on review for further downgrade.[832]

On May 3, 2007, Fitch Ratings announced that, assuming solely the consummation of the Step One Transactions, it had assigned a 'BB' rating to the Credit Agreement Debt and downgraded the Tribune's Issuer Default Rating to 'B+' from 'BB-', with the rating remaining on Fitch's Rating Watch Negative.[833] Fitch's announcement explained that its rating actions "reflect the significant debt burden the announced transaction places on the company's balance sheet while its revenue and cash flow have been declining. Fitch believes that newspapers and broadcast affiliates . . . face meaningful secular headwinds that could lead to more cash flow volatility in the future."[834] Fitch indicated that, following the closing of the Step Two Transactions, it expected to further downgrade Tribune's Issuer Default Rating from 'B+' to 'B-', albeit with a "Stable Outlook" rating, "predicated upon the view that Tribune's portfolio of assets

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[831] Ex. 217 (Moody's Rating Action, dated April 23, 2007). A "Corporate Family Rating" is Moody's "opinion of a corporate family's ability to honor all of its financial obligations and is assigned to a family as if it had a single class of debt [and] a single consolidated legal entity structure." Ex. 215 at 18 (Moody's Rating Symbols & Definitions). Under Moody's rating system, "[o]bligations rated 'Ba' are judged to have speculative elements and are subject to substantial credit risk." *Id.* at 8. The modifier "3" indicates a ranking in the "lower end" of that generic rating category and the modifier "1" indicates a ranking in the "higher end" of that generic rating category. *Id.*

[832] Ex. 217 (Moody's Rating Action, dated April 23, 2007).

[833] Ex. 218 (Fitch Press Release, dated May 3, 2007). An "Issuer Default Rating" is Fitch Rating's opinion "on an entity's relative vulnerability to default on financial obligations." Ex. 219 at 8 (Fitch Ratings Definitions of Ratings). Under Fitch's rating system, a 'BB' rating indicates an "elevated vulnerability to default risk, particularly in the event of adverse changes in business or economic conditions over time; however, business or financial flexibility exists which supports the servicing of financial commitments" and a 'B' rating indicates that "material default risk is present, but a limited margin of safety remains. Financial commitments are currently being met; however, capacity for continued payment is vulnerable to deterioration in the business and economic environment." *Id.* The plus (+) sign and minus (-) sign modifiers denote relative status within the major rating categories. *Id.* at 9.

[834] Ex. 218 (Fitch Press Release, dated May 3, 2007).

affords it the flexibility to postpone and potentially avoid financial distress even if its core businesses underperform to a degree."[835]

On May 18, 2007 (the day after the signing of the Credit Agreement), Moody's reaffirmed that Tribune's 'Ba3' Corporate Family Rating remained on review for downgrade and indicated that it would likely downgrade Tribune's Corporate Family Rating to 'B2' with a stable rating outlook if "(1) [the Step Two Transactions are] completed in accordance with the transactions outlined in Tribune's April 1, 2007 Form 8-K and; (2) industry conditions, the company's cash flow generation and anticipated asset sale proceeds are in line with Moody's expectations."[836] Such a downgrade would likely result in the "ratings for the proposed bank credit facilities . . . moving to B1 from Ba2."[837]

b. Analyst Reports.

Following Tribune's announcement of the Leveraged ESOP Transactions, a Bear Stearns analyst research report published on April 2, 2007, concluded that, "[a]fter an exhaustive six month review we believe this complicated and heavily levered transaction is another indication

[835] Ex. 218 (Fitch Press Release, dated May 3, 2007). An "Issuer Default Rating" is Fitch Rating's opinion "on an entity's relative vulnerability to default on financial obligations." Ex. 219 at 8 (Fitch Ratings Definitions of Ratings). Under Fitch's rating system, a 'B' rating indicates that "material default risk is present, but a limited margin of safety remains. Financial commitments are currently being met; however, capacity for continued payment is vulnerable to deterioration in the business and economic environment." *Id.* The plus (+) sign and minus (-) sign modifiers denote relative status within the major rating categories. *Id.* at 9.

[836] Ex. 220 (Moody's Press Release, dated May 18, 2007). A "Corporate Family Rating" is Moody's "opinion of a corporate family's ability to honor all of its financial obligations and is assigned to a family as if it had a single class of debt [and] a single consolidated legal entity structure." Ex. 215 at 18 (Moody's Rating Symbols & Definitions). Under Moody's rating system, "[o]bligations rated 'Ba' are judged to have speculative elements and are subject to substantial credit risk" (*Id.* at 8) and "[o]bligations rated 'B' are considered speculative and are subject to high credit risk." *Id.* The modifier "3" indicates a ranking in the "lower end" of that generic rating category and the modifier "2" indicates a "mid-tier" ranking within that generic rating category. *Id.*

[837] Ex. 220 (Moody's Press Release, dated May 18, 2007). Under Moody's rating system, "[o]bligations rated 'B' are considered speculative and are subject to high credit risk" and "[o]bligations rated 'Ba' are judged to have speculative elements and are subject to substantial credit risk." Ex. 215 at 8 (Moody's Rating Symbols & Definitions). The modifier "1" indicates a ranking in the "higher end" of that generic rating category and the modifier "2" indicates a "mid-tier" ranking within that generic rating category. *Id.*

of the waning interest in the newspaper business given the ongoing secular challenges that are weighing on the fundamental outlook."[838]

BMO Capital Markets issued an analyst report on April 2, 2007, rating the Tribune Common Stock as "Market Perform" and the industry as "Underperform" and increasing its target stock price to $34.[839] BMO noted that the $25 million break-up fee was "low" and "leaves the door ajar for the Burkle/Broad camp, but after raising their bid once by all accounts we see a second raise as improbable."[840] BMO concluded that Mr. Zell's offer was the "best available fair price . . . [at a] valuation [that] mirrors levels where comparable Newspaper and Broadcasting asset values now trade."[841]

Goldman Sachs issued a Company Update on April 3, 2007, rating the Tribune Common Stock as "Neutral" and the media industry as "Cautious."[842] Goldman Sachs noted that the Leveraged ESOP Transaction left "little room for error, particularly in this challenging newspaper operating environment."[843] Although acknowledging the need for stockholder and regulatory approval, Goldman Sachs indicated that it expected the Step One Transactions and the Step Two Transactions to close and issued a six month price target of $34, concluding that the "tax-advantaged nature of ESOP ownership has allowed a higher purchase price."[844]

Barrington Research issued a Progress Report on Tribune on April 3, 2007, rating Tribune as "Market Perform."[845] With respect to the Tender Offer, Barrington Research

[838] Ex. 221 at 3 (AFX News Limited, dated April 2, 2007).

[839] Ex. 222 at 1 (BMO Analyst Report, dated April 2, 2007).

[840] *Id.*

[841] *Id.*

[842] Ex. 223 at 1 (Goldman Sachs Company Update, dated April 3, 2007).

[843] *Id.*

[844] *Id.*

[845] Ex. 224 at 1 (Barrington Research Progress Report, dated April 3, 2007).

recommended that investors tender "all shares, getting cash for the likely allocation of about half the shares and then selling the balance in the open market due to time value of money considerations."[846] Although acknowledging that the transaction "does entail some risks related to the high degree of financial leverage in the context of stagnating core revenue and circulation trends,"[847] Barrington Research concluded that going private would "buy the company time to make the hard decisions required to transform the business model to one appropriate to the new realities of the information and Internet age."[848]

16. Closing of the Step One Financing and Expiration and Funding of the Tender Offer.

On May 9, 2007, in satisfaction of one of the conditions to the completion of the Tender Offer, VRC delivered its opinion to the Tribune Board that, giving effect to the Step One Transactions, Tribune was solvent.[849] VRC subsequently delivered a bring-down of its solvency opinion on May 24, 2007.[850] Tribune filed VRC's May 9, 2007 and May 24, 2007 solvency opinions with the SEC as amendments to the Tender Offer Filing.[851] The Tender Offer expired on May 24, 2007. On May 31, 2007, Tribune announced that 218,132,108 shares of Tribune Common Stock had been tendered in the Tender Offer.[852] Pursuant to the terms of the Tender Offer, Tribune repurchased the 126 million shares it had tendered for on a pro rata basis.[853] The shares tendered in the Tender Offer represented approximately 90% of the outstanding Tribune

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846 *Id.*

847 *Id.*

848 *Id.*

849 Ex. 268 (VRC Step One Solvency Opinion, dated May 9, 2007). *See* Report at § III.E.3.c. for a discussion of the solvency opinions delivered by VRC at Step One.

850 Ex. 269 (VRC Step One Solvency Opinion Bring-Down Letter, dated May 24, 2007).

851 Ex. 936 (Tribune Form TO-I/A, filed May 11, 2007); Ex. 937 (Tribune Form TO-I/A, filed May 24, 2007).

852 Ex. 225 (Tribune Press Release, dated May 31, 2007).

853 Ex. 226 at 8 (Proxy Statement, dated July 13, 2007).

Common Stock, and, after proration, the shares that Tribune repurchased represented approximately 52% of its shares outstanding.[854] Tribune subsequently retired the repurchased shares on June 4, 2007.[855] In the press release announcing the results of the Tender Offer, Mr. FitzSimons was quoted as saying, "The first stage of our transaction that will result in [Tribune] going private is now complete. We look forward to obtaining the necessary approvals for the next stage of the transaction and to completing the transition to a private company."[856]

As described below, Tribune utilized proceeds of the Credit Agreement to repurchase the shares tendered in the Tender Offer.[857] Tribune deposited the aggregate purchase price for the shares with Computershare Trust Company, N.A., the depositary for the Tender Offer, which acted as agent for Tribune for the purpose of receiving payment from Tribune and transmitting payment to the tendering stockholders.[858]

On the Step One Financing Closing Date, JPMCB and MLCC made the following wire transfers to Tribune:

- $5.515 billion, in respect of the Tranche B Facility;[859] and
- $1.5 billion, in respect of the Tranche X Facility.[860]

On the Step One Financing Closing Date, Tribune thereafter disbursed $4.284 billion to Computershare Trust Company, N.A. to consummate the Tender Offer,[861] approximately $2.5 billion to Citicorp to satisfy the 2006 Bank Debt, and $1,459,391 to Cahill Gordon & Reindel

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[854] Ex. 225 (Tribune Press Release, dated May 31, 2007).

[855] Ex. 4 at 46 (Tribune 2007 Form 10-K).

[856] Ex. 225 (Tribune Press Release, dated May 31, 2007).

[857] Ex. 4 at 46 (Tribune 2007 Form 10-K).

[858] Ex. 5 at 82 (Tender Offer).

[859] Ex. 205 at 1 (Step One Flow of Funds Memorandum).

[860] *Id.*

[861] *Id.* at 2.

LLP (as legal counsel to the Lead Banks).[862] Based on the Examiner's review of Tribune's books and records, Tribune also made the following disbursements on the Step One Financing Closing Date:[863]

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862 *Id.*

863 The record developed by the Examiner during the course of the Investigation does not resolve the question of whether these non-advisory fees were paid to or for the benefit of the investment banking entities (MLPFS, CGMI, JPMorgan, and BAS), which constituted the "Lead Arrangers" under the Credit Agreement and Bridge Credit Agreement, their lender-affiliates (MLCC, Citicorp, JPMCB, Bank of America, and Banc of America Bridge), which constituted "Initial Lenders" and held other titles under the Credit Agreement and Bridge Credit Agreement, or both. The governing documents contain a number of conflicting provisions in this regard. (This is not true of the fees separately paid for advisory services, as noted below). For instance, the Step One Commitment Letter, Ex. 944 at 4, states in relevant part:

> Fees. As consideration for the commitments of the Initial Lenders hereunder and the agreement of the Lead Arrangers to arrange, manage, structure and syndicate the Senior Secured Credit Facilities, you agree to pay to them when due the fees as set forth in the First Step Fee Letter.

The Step Two Commitment Letter contains similar language, referring to Step Two Fee Letter rather than the Step One Fee Letter as the source of information regarding calculation of the fees. *See* Ex. 1010 at 5. As a general matter, both Commitment Letters are signed by both the investment banking entities (*i.e.*, the Lead Arrangers), and lender affiliate entities (*i.e.*, the Initial Lenders). (For reasons that are not readily apparent, MLCC signed these agreements, but MLPFS did not. Further, CGMI signed on behalf of "Citigroup," comprising all of the Citigroup Entities). Thus, it appears that the investment banker entities and lenders are both to receive fees, or joint fees.

The Step One Fee Letter and Step Two Fee Letter, however, refer only to payment of certain "Underwriting Fees" in consideration for the Initial Lender's (*i.e.,* the lender-affiliates) commitments to fund and arrange the Step One Financing and the Step Two Financing pursuant to each commitment letter. *See* Ex. 542 at 1; Ex. 543 at 1. In other words, these agreements do *not* provide for the payment of any fees to the Lead Arrangers (*i.e.*, the investment banking entities).

Conversely, the Credit Agreement and Bridge Credit Agreement do provide for the payment on closing of fees to the Lead Arrangers (*i.e.*, the investment banking entities), but do not expressly provide for any payment of fees to the Initial Lenders in their capacity as such. The fees provision of the Credit Agreement reads in relevant part:

> (c) Agent's fees; Lead Arrangers' Fees. Borrower shall pay to (i) the Agent for its own account such fees as may from time to time be agreed between Borrower and Agent and (ii) the Lead Arrangers for their respective own accounts such fees as agreed to between Borrower and each such Lead Arranger.

Ex. 179 at § 2.04(c) (Credit Agreement). The Bridge Credit Agreement contains a nearly identical provision:

> (c) Agent's fees; Lead Arrangers' Fees. Borrower shall pay to (i) the Agent for its own account such fees as may from time to time be agreed between Borrower and Agent and (ii) the Lead Arrangers for their respective own accounts such fees as agreed to between Borrower and each such Lead Arranger (including pursuant to the Second Step Fee Letter).

Step One Financing Fees, Costs, and Expenses	
JPM	$35,042,750
Merrill Entities	$34,992,750
Citigroup Entities[864]	$32,529,375
BofA	$18,002,625
Barclays[865]	$3,375,000
LaSalle Bank National Association[866]	$2,187,500
Lehman Brothers[867]	$2,187,500
Sumitomo Mitsui Banking Corporation[868]	$2,187,500
Other Step One Financing Costs and Expenses[869]	$3,585,523
Total Step One Financing Fees, Costs, and Expenses	**$134,090,523**

Ex. 175 at § 2.04(c) (Bridge Credit Agreement). Neither agreement provides for the payment of an "Underwriting Fee" to the Initial Lenders as expressly contemplated by the Step One Fee Letter and the Step Two Fee Letter.

The flow of funds memoranda and wire instructions prepared in connection with each closing are generally consistent with the Credit Agreement and Bridge Credit Agreement on this—but not entirely so—providing yet another ambiguity. Consistent with the Credit Agreement and Bridge Credit Agreement, no "Underwriting Fee" fee is paid, but instead only fees payable to the Lead Arrangers pursuant to Section 2.04(c)(ii) of each of the Credit Agreement and Bridge Credit Agreement. The memoranda further indicate that these fees are paid to the investment banking entities as Lead Arrangers, rather than their lender affiliates, with one exception—MLCC, which is the lender-affiliate of MLPFS, an investment banking firm and Lead Arranger.

Although the Examiner was able to confirm that these sums left Tribune's accounts, he was unable to confirm during the Investigation which entities actually received the funds and the manner, if any, in which the funds were shared among the entities.

864 Of this amount, $3.25 million was the result of payments made via JPMorgan to all non-Lead Banks.

865 Payments made via JPMorgan to all non-Lead Banks.

866 Payments made via JPMorgan to all non-Lead Banks.

867 Payments made via JPMorgan to all non-Lead Banks.

868 Payments made via JPMorgan to all non-Lead Banks.

869 Includes the payment of out-of-pocket expenses, legal fees, and various other financing-related costs in connection with Step One.

The wire transfers from JPMCB and MLCC were sent to Tribune's concentration account at JPMorgan Chase Bank in Chicago, Illinois.[870]

Based on the Examiner's review of Tribune's books and records, on the Step One Financing Closing Date, Tribune also made the following payments in connection with the consummation of the Tender Offer:

Step One Tender Offer/Dealer Manager Fees[871]	
Merrill Entities	$460,000
Citigroup Entities	$450,000
BofA	$225,000
JPM	$374,976
All Other Tender Offer Fees	$3,444,274
Total Step One Tender Offer/Dealer Manager Fees	**$4,954,250**

Based on the Examiner's review of Tribune's books and records, Tribune made the following payments of Advisor Fees and other fees, costs, and expenses related to the Step One Transactions:

Step One Related Advisor Fees, Costs, and Expenses	
Morgan Stanley[872]	$7,667,704
Total Step One Advisor Fees, Costs, and Expenses	**$7,667,704**

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870 Ex. 205 at 1-2 (Step One Flow of Funds Memorandum).

871 Dealer Manager fees were paid in accordance with the terms of the Step One Engagement Letter. Ex. 306 (Step One Engagement Letter).

872 The payment of these Morgan Stanley Advisor Fees was made on May 9, 2007. In addition, the Morgan Stanley engagement agreement provided for an upfront fee of $2.5 million, which was paid on November 13, 2006.

All Other Step One Related Fees, Costs, and Expenses[873]	**$14,173,727**

E. Knowledge and Actions of Key Participants in the Step One Transactions.

The Report now addresses the knowledge and actions of the key participants with respect to the events culminating in the Step One Transactions. Although the Statement of Facts generally is organized chronologically, this section is organized by participant, such that the subsections span substantially the same multi-month period, but each focuses on a different participant.

1. Management's Knowledge of the Tribune Entities' Financial Performance Through the Step One Financing Closing Date.

As a general matter, Tribune's management, by definition, had virtually unlimited access to information pertaining to the Tribune Entities' operations and financial performance, in accordance with procedures and policies that management had instituted to gather and evaluate such data.[874] Tribune management, among other things: (a) planned and executed Tribune's financial strategy, (b) budgeted, monitored, and reported on Tribune's financial performance (both internally and publicly),[875] and, (c) as a part of Tribune's strategic review process culminating with the entry into the Leveraged ESOP Transactions and the closing of Step One,

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873 "All Other Step One Related Fees, Costs, and Expenses" generally consists of all other amounts (in addition to those otherwise specifically categorized above) which are assumed to be related to Step One based on the fact that they were expensed in either Q1 or Q2 2007. With the exception of the Wachtell portion of these fees ($600,000) which is known to have been part of a payment made to Wachtell on June 4, 2007, actual payment dates are generally unknown.

874 Management includes the executive officers of Tribune as well as functional area and operational leadership. Examples of key management personnel, include for example, participants in VRC and underwriter due diligence meetings. *See, e.g.*, Ex. 228 at VRC0002821-824 (Tribune Company Valuation Research Corp. Due Diligence Agenda) (identifying the participants in the two-day VRC due diligence meeting held September 19-20, 2007); Ex. 229 at MD00380 (Underwriters Due Diligence Agenda) (identifying the presenters in the meeting with Tribune's underwriters held on October 1, 2007).

875 Including the filing with the SEC of required public disclosures.

was the principal source of information for parties advising and/or participating in that transaction. As such, management was aware of both Tribune's actual and projected financial performance (and the assumptions on which that projected performance was based). Before the approval of the Leveraged ESOP Transactions on April 1, 2007, management also was aware of the financial performance of the Tribune Entities through at least February 2007. Similarly, before the Step One Financing Closing Date, management was aware of Tribune's actual financial performance through at least March and April 2007.

As discussed elsewhere in the Report, management began developing its 2007 budget as a part of its normal course annual budgeting process.[876] This process culminated in Tribune Board approval of the 2007 budget at the February 13, 2007 Tribune Board meeting. Management was aware that the 2007 budget and the operating plan contemplated reduced 2007 performance relative to actual 2006 results, and, in certain internal communications, expressed concerns about this reduced expected performance.[877]

Before the Tribune Board's approval of the Leveraged ESOP Transactions on April 1, 2007, management also was aware that adverse performance against the budget could affect the value of Tribune's assets and, correspondingly, Tribune's resulting equity value. For example, on March 24, 2007, James King, a Tribune employee, e-mailed Tribune Treasurer Chandler Bigelow as follows: "[I]f I am reading this right, we have a pretty narrow band for success under the ESOP—*i.e.,* if we are off plan by 2% we have no value in the ESOP for 5 years. Are there other dynamics at work I don't understand?" Mr. Bigelow responded: "Probably makes sense to

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[876] *See* Report at § III.C.1.b.

[877] *See, e.g.,* Ex. 1052 at TRB0047811 (Kazan E-Mail, dated February 21, 2007) ("If I'm reading this correctly, our plan has us being $47 million below 2006 for the first half. I don't know what the bankers will base their threshold number on, but it suggests we really need to get to the bottom of that. Otherwise, we are already half-way towards not being able to meet that covenant (which enables us to do the spin)").

meet on Monday to discuss. But yes, if we hit the down 2 case there is no equity value in the first 5yrs."[878]

As discussed elsewhere in the Report,[879] management also was aware of Tribune's monthly financial performance against monthly projections (based on monthly detail corresponding to 2007 operational plan) in periods leading up to board approval of the Leveraged ESOP Transactions and through the Step One Financing Closing Date. Tribune's actual performance, and variance from the 2007 operational plan, were formally reported in Brown Books, which, as previously noted, were typically issued within two to three weeks after the closing of each reporting period (approximating one month of results).[880] Hence, management was aware of results, as reported in the Brown Books, for the first two months of 2007 preceding the April 1, 2007 entry into the Leveraged ESOP Transactions and the first four months preceding the Step One Financing Closing Date.

As illustrated in the following table, the Tribune Entities' monthly operating profit for the first five months of 2007 deviated unfavorably at an increasing rate from the original February plan:

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[878] Ex. 230 at TRB0082812-13 (Bigelow E-Mail, dated March 24, 2007). Mr. Bigelow's comments regarding pro forma "equity value" appear to be based on a sensitivity analysis performed by management assuming a multiple of 8 times projected annual EBITDA (based on an assumed 2%, year-over-year, compounding downward adjustment of publishing revenue estimates contained in the 2007 operating plan, as well as associated EBITDA reductions). This analysis further assumes that estimated debt of approximately $12.5 billion is subtracted from the asset value calculated using this methodology. *See, e.g.*, Ex. 231 at TRB0109124-203 (February 8, 2007 ESOP Transaction Model) (reflecting 2% compounding publishing revenue declines and $12.5 billion in debt deduction in determining zero equity value between 2008 and 2013). *See also* Ex. 232 (ESOP- Equity Value Projections).

In addition to being a relatively simplistic analysis of downwardly adjusted cash flow expectations, the model on which this analysis is based clearly anticipates the inclusion of Step Two Debt in calculating equity values. The Examiner notes that the model implicitly fails to account for any tax savings attributes that may be associated with the Step Two S-Corporation/ESOP structure, among other things.

[879] *See* Report at § III.C.1.

[880] Slight differences in a reporting period in relation to a given calendar month may exist, but those differences are considered immaterial for purposes of the discussions in the Report.

TRIBUNE OPERATING PROFIT ($000s)					
	01/2007	02/2007	03/2007	04/2007	05/2007 (1)
Plan	$ 50,481	$ 51,785	$ 80,754	$ 73,591	$ 93,116
Actual	$ 52,467	$ 50,739	$ 78,843	$ 62,480	$ 73,515
Variance	$ 1,986	($ 1,046)	($ 1,911)	($ 11,111)	($ 19,601)
% Variance to Plan	3.93%	-2.02%	-2.37%	-15.10%	-21.05%

(1) May results are summarized, although such results would have been unavailable to management in Brown Book format prior to the Step One Financing Closing Date on June 4, 2007.

Again, management was aware of these developments and reported on them both internally and publicly.[881] Indeed, management considered and discussed at various times,

[881] Tribune issued its Form 10-K for year end 2006 on February 26, 2007. See Ex. 14 (Tribune 2006 Form 10-K). Tribune issued its Form 10-Q for the first quarter of 2007 on May 9, 2007. *See* Ex. 55 (Tribune 2007 Form 10-Q, filed May 9, 2007). In addition to its 10-K and 10-Q disclosures, Tribune issued press releases disclosing certain other information regarding monthly financial performance. During early 2007, Tribune issued press releases including the following:

EARLY 2007 TRIBUNE PRESS RELEASES	
Date of Press Release	Nature of Disclosure
February 23, 2007	January 2007 Revenue Disclosure and Commentary
March 11, 2007	February 2007 Revenue Disclosure and Commentary
April 19, 2007	Quarter 1 2007 Financial Results Disclosure
May 14, 2007	April 2007 Revenue Disclosure and Commentary

See Ex. 65 (Tribune Press Release, dated February 23, 2007); Ex. 233 (Tribune Press Release, dated March 11, 2007); Ex. 234 (Tribune Press Release, dated April 19, 2007); Ex. 79 (Tribune Press Release, dated May 14, 2007). Tribune management had access to additional information bearing on actual financial performance beyond data reported in the Brown Books or disclosed in press releases or filings with the SEC. For example, as described in the Rule 2004 Examination of Mr. Amsden, Tribune issued periodic "flash reports," which according to Mr. Amsden were "early indicators" of period financial results (*i.e.*, precursors to the more formal, and finalized, Brown Books). Typically, the flash reports were issued approximately one week after the end of each reporting period. As such, management would have had at least some indication of performance for the period financial performance, before the issuance of each period's Brown Book. *See* Ex. 66 at 19:5-20:8 (Rule 2004 Examination of Harry Amsden, December 16, 2009). Also, as evidenced by the Tribune Board materials and other documents, management was reporting on then-current financial trends and performance metrics that it was observing contemporaneously *i.e.*, before the close of the then-current reporting period. *See, e.g.,* Ex. 68 at TRB0413504 (Tribune Board Meeting Materials, dated February 13, 2007) (reporting that although January ad revenue finished down 3%, February was "pacing up 2%"); Ex. 65 (Tribune Press Release, dated February 23, 2007) (observing that "period 2 [February] ad revenue trends are better than period 1 in both publishing and broadcasting, particularly retail revenue in publishing").

internally and with others, whether the actual results required a modification to the Tribune Board-approved 2007 budget (a source of projected financial performance provided to numerous parties to the transaction and on which, among other things, VRC relied in developing its Step One solvency opinion). For example, one e-mail dated April 30, 2007 from Peter Knapp, the publishing group controller, to Brian Litman and Mr. Bigelow stated:[882]

> Brian and Chandler:
>
> You guys need to help get with Don and Crane to figure out whether or not we are doing an updated projection next week knowing that if we do, we may end up with some consistency issues to the recent document disclosures. Harry is insisting that we HAVE to and I told him I thought the 6th floor was thinking we weren't and he should get to Don and figure it out.
>
> Another stellar week in April. . . .
>
> Pete

Furthermore, an e-mail exchange (dated March 19, 2007 and March 20, 2007) reflects that an EGI representative, Nils Larsen, expected to meet with Mr. Bigelow on March 20, 2007 to inquire regarding both the status of availability of the second period 2007 results as well as an apparent earlier statement by Mr. Bigelow regarding the need to "refine their projections for 2007."[883] In connection with a review of actual January and February 2007 performance against

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[882] *See* Ex. 235 at TRB0137005 (Knapp E-Mail, dated April 30, 2007).

[883] One of the Parties cited an e-mail exchange between the Citigroup Entities and members of management as evidence that management inquired whether there ought to be adjustments to Tribune's 2007 and 2008 projections (which management ultimately concluded not to make). *See* Ex. 236 at TRB0057895-96 (Litman E-Mail, dated March 5, 2007). This discussion, however, appears to pertain only to adjustments relating to expected distributions from unconsolidated equity ownership interests held by Tribune and not the forecasted revenue and earnings from Tribune operations. One of the Parties also cited an e-mail exchange in which Mr. Bigelow states: "I am working on whether our full year projection will change and let you know in the morning, but I expect for full year we are about $25M lower than our original plan." *See* Ex. 342 at TRB0077179 (Bigelow E-Mail, dated March 21, 2007). It is not clear, however, that this statement refers to a reduction in earnings expectations for 2007 or contemplated levels of debt repayment assumed in the projection model. There is also another e-mail chain cited by one of the Parties as potential evidence of an alleged failure of Tribune to properly modify its projections in light of less-than-expected operating results in early 2007. *See* Ex. 238 at TRB057899-900 (Kurmaniak E-Mail, dated March 5, 2007). Rather than evidencing a failure of the projections to reflect reasonable expectations, however, these e-mails relate to the magnitude of growth in

plan, on March 21, 2007, Daniel Kazan (Tribune) e-mailed Mr. Bigelow, observing that, in connection with an upcoming ratings agency presentation, "we should discuss with Don before putting in the deck or showing to Nils. This is tricky because we've told Nils that we aren't changing our plan based on results from the first two periods. If he sees this, it may raise issues. We may need to weigh that against showing this in the rating agency deck."[884]

Notwithstanding the various management discussions about possible revisions to Tribune's projections, in accordance with past practices,[885] Tribune did not modify its 2007 operating plan projections through the closing of the Step One Transactions on June 4, 2007. In May 2007, however, management did incorporate the effects of management's revised expectation to sell additional assets during 2008, which simply was not contemplated in earlier models.[886] Ostensibly, management was also aware of mixed public reaction to its April 2, 2007 announcement of the Leveraged ESOP Transactions.[887]

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expected distribution amounts and an allocation of cash flow from equity investments between the Publishing Segment and the Broadcasting Segment.

884 *See* Ex. 602 at TRB0078233–35 (Kazan E-Mail, dated March 21, 2007). "Don", referred to in the e-mail appears to refer to Donald Grenesko, Tribune's Senior Vice President Finance and Administration. "Nils" refers to Nils Larsen, an EGI representative involved in the transaction.

As reflected in monthly Brown Books for period 1 and period 2, 2007, the differences between the January 2007 and February 2007 actual operating profit results and plan were favorable 3.93% and unfavorable 2.02% in January 2007 and February 2007, respectively. *See* Ex. 240 (Tribune Brown Book for Period 1, 2007) and Ex. 241 (Tribune Brown Book for Period 2, 2007). January 2007 and February 2007 actual results were contained in the ratings agency presentation, as were comparisons of those results to comparable periods in the prior year. Comparison of actual January 2007 and February 2007 results to plan were not disclosed in those presentation materials. *See* Ex. 242 (Rating Agency Presentation, dated March 2007).

885 *See* Ex. 66 at 25:18-26:32 (Rule 2004 Examination of Harry Amsden, December 16, 2009).

886 See Report at § III.C.1.e.

887 *See, e.g.,* Ex. 243 (Musil E-Mail, dated May 7, 2007) Analyst commentary ranged from favorable to negative. *See, e.g.*, Ex. 224 (Barrington Research Report, dated April 3, 2007) (observing "The ownership structure is one that should benefit employees, though it does entail some risks related to the high degree of financial leverage in the context of stagnating core revenue and circulation trends. Favorably, the going private transaction will provide an opportunity for the Company to restructure its operations while remaining outside the public limelight."); Ex. 244 (Lehman Brothers Report, dated April 2, 2007) (which observed "With only a $315 equity contribution from Sam Zell, this leaves Tribune with debt-to-2007E-EBITDA of 10x which we believe is far too high for secularly declining businesses.").

2. Knowledge of the Tribune Board and the Special Committee of the Tribune Entities' Financial Performance Through the Step One Financing Closing Date.

a. The Tribune Board.

From late 2005 (when the Tribune Board, Tribune's management, and Tribune's financial advisor at the time, MLPFS,[888] met to discuss strategic alternatives for Tribune) through the time of the Tribune Board's agreement to create the Special Committee in September 2006, the Tribune Board considered and evaluated several strategic alternatives for Tribune, including the potential sale or spin-off of the Broadcasting Segment, the outright sale of Tribune to financial buyers, strategic business combinations, share repurchase programs, and leveraged recapitalizations, among other alternatives.[889]

Following the September 21, 2006 Tribune Board meeting, however, at least until approval of the Leveraged ESOP Transactions, the Tribune Board largely delegated responsibility for the oversight of the process of reviewing strategic alternatives for the Tribune Entities to the Special Committee.[890] As such, the minutes of the Tribune Board meetings and Special Committee meetings during this period suggest that the full Tribune Board was not directly involved in much of the strategic review process after the Special Committee's creation, other than in connection with the ultimate approval of the Leveraged ESOP Transactions on April 1, 2007.[891]

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888 Tribune subsequently also engaged CGMI to assist it in the strategic review process.

889 The Tribune Board's evaluation of these, among other, alternatives was disclosed in general terms, in the Tender Offer filing. The Tender Offer contains a more comprehensive discussion of the Tribune Board's involvement in the strategic review process for periods preceding the establishment of the Special Committee. *See* Ex. 5 at 15-18 (Tender Offer).

890 Before approval of the Leveraged ESOP Transactions, the Special Committee was comprised of members of the Tribune Board, excluding Mr. Chandler, Mr. FitzSimons, Mr. Goodan, and Mr. Stinehart. As such, information available to the Special Committee was available to certain members of the Tribune Board.

891 In connection with that approval, Mr. Chandler, Mr. Goodan, and Mr. Stinehart abstained from voting. Ex. 146 at TRB0415621 (Tribune Board Meeting Minutes, dated April 1, 2007).

Including the September 21, 2006 Tribune Board meeting (at which the Tribune Board discussed the creation of the Special Committee), through the Step One Financing Closing Date, the Tribune Board met on seven occasions: September 21, 2006,[892] October 18, 2006, December 12, 2006, February 13, 2007, April 1, 2007, May 9, 2007, and May 21, 2007. All but two of the meetings preceded the Tribune Board's approval of the Leveraged ESOP Transactions on April 1, 2007.

As reflected in minutes of the Tribune Board meetings occurring on and after September 21, 2006 and through April 1, 2007 (and the "Tribune Board books" disseminated to Tribune Board members in advance of certain of those meetings), the Tribune Board was made aware of the consolidated and segment level financial performance of the Tribune Entities

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[892] The minutes of the September 21, 2006 Tribune Board meeting indicate that Mr. FitzSimons described the strategic review process undertaken after the Tribune Board's July 19, 2006 meeting and reviewed strategic analyses previously undertaken by Tribune and its financial advisors that began in 2005. Ex. 93 at TRB0434051 (Tribune Board Meeting Minutes, dated September 21, 2006). According to the minutes of that meeting, he also described actions taken by Tribune to address the decline in operating performance throughout 2005 and 2006. *Id.*

The minutes also indicate that Donald Grenesko reviewed a report, provided to the Tribune Board in advance of the meeting, regarding Tribune's analysis of strategic alternatives. Ex. 93 at TRB0434051 (Tribune Board Meeting Minutes, dated September 21, 2006). The Examiner did not review this report. The minutes also refer to a review of projected operating performance for 2006 through 2010. The materials provided to Tribune Board members in advance of the meeting, as reviewed by the Examiner, did not contain those projections, nor do the minutes shed additional light as to their content. *Id.* The minutes reflect that representatives of both MLPFS and CMGI discussed the content of materials provided to the Tribune Board in advance of the meeting. *Id.* The Examiner and his professionals located and reviewed only a MLPFS presentation package entitled "Confidential Discussion Materials Prepared For the Board of Directors of Tribune" dated September 21, 2006. Ex. 245 at TRB0042267-311 (Confidential Discussion Materials, dated September 21, 2006). The CGMI materials, referenced in both the meeting minutes and the letter transmitting materials to the Tribune Board members in advance of the meeting have not been located as part of the Examiner's review. The September 21, 2006 meeting minutes further reflect that MLPFS described each of five strategic alternatives and potential value creation associated with each. Ex. 93 at TRB0434051 (Tribune Board Meeting Minutes, dated September 21, 2006). MLPFS also reviewed a listing of potential strategic acquirers, as well as private equity investor interest in Tribune. *Id.* MLPFS concluded that pursuing a business combination with a strategic or private equity buyer was likely to produce the greatest value to Tribune stockholders. *Id.*

Although the Examiner and his professionals were unable to locate the CGMI materials, the Tribune Board minutes indicate that representatives of CGMI discussed those materials and concluded that a leveraged buyout would yield the greatest value to stockholders. *Id.* at TRB0434051-52. The minutes further reflect that CGMI representatives discussed, among other things, a comparison of Tribune's projections prepared both by the Boston Consulting Group and other analysts, as well as a "valuation summary of Tribune's assets on a consolidated and unconsolidated basis." *Id.* at TRB0434051.

through year end 2006 (as the audited financial statements had already been approved by the Tribune Board for issuance) and information bearing on financial results for the first period, *i.e.*, January 2007.[893] As previously indicated, in February the Tribune Board had also approved the 2007 budget.[894] The Examiner found no conclusive evidence that the Tribune Board was

[893] For example, the minutes of the October 18, 2006 Tribune Board meeting reflect that Mr. Grenesko reviewed third quarter 2006 results and commented on factors affecting those results. Ex. 94 at TRB0434068 (Tribune Board Meeting Minutes, dated October 18, 2006). According to the minutes, he also reviewed operating performance trends for Tribune as compared to its peers. *Id.* According to the minutes, Merrill's Michael Costa reviewed the state of the strategic review process. *Id.* at TRB0434065. The minutes also indicate that Mr. Landon discussed a written report, provided to board members before the meeting, regarding the status of online (interactive) initiatives. *Id.* at TRB0434068. The Examiner was unable to locate or review this report.

The minutes of the December 12, 2006 Tribune Board meeting reflect that Mr. Grenesko discussed the projected financial performance of the Tribune Entities for the fourth quarter 2006 and full fiscal year, both on a consolidated and line-of-business, or segment, basis. Ex. 246 at TRB0434078 (Tribune Board Meeting Minutes, dated December 12, 2006). Materials disseminated in advance of the meeting contained commentary regarding "business conditions and recent Company developments," observing, with respect to publishing and interactive, that "the ad environment remains challenging with continued softness in national advertising and lower spending….," and that "Interactives fourth quarter revenues are projected to increase 28% over 2005," among other things. Ex. 247 at TRB-UR-0433799-800 (Tribune Board Meeting Materials, dated December 12, 2006). Broadcasting Segment commentary recognized increased advertising revenues in October and November "due to strong political spending," although it was noted that "December is currently pricing down 8%." *Id.* at TRB-UR-0433800. The Tribune Board book materials also included a "Development Update." *Id.*

The December 12, 2006 meeting minutes also reflect that MLPFS reviewed a report that analyzed a range of alternatives. Ex. 246 at TRB0434084 (Tribune Board Meeting Minutes, dated December 12, 2006). In connection with the review of the MLPFS report, the Tribune Board authorized Mr. FitzSimons to further consider a spin-off of the broadcasting group, and "pursue a workplan that would enable such a transaction." *Id.* The minutes also reflect that Mr. Landon and Mr. Ferguson presented a report on CareerBuilder and other Interactive business initiatives. *Id.* at TRB0434080-83.

The minutes for the February 13, 2007 Tribune Board meeting reflect the Tribune Board's approval of Tribune's audited financial statements for the fiscal year ending December 31, 2006 for inclusion in the Tribune's Form 10-K filing with the SEC. Ex. 67 at TRB0415616 (Tribune Board Meeting Minutes, dated February 13, 2007). These minutes indicate that Mr. Grenesko "comment[ed] on results of the first period of 2007," that he presented the 2007 operating plan for approval by the Tribune Board, and after discussion, the Tribune Board approved the plan. *Id.* at TRB0415615. Previously disseminated Tribune Board books corresponding to the February 13 meeting contained qualitative commentary regarding "general business conditions and recent company developments" for each business segment, including observations regarding revenue performance in January, 2007. Ex. 68 at TRB0413503 (Tribune Board Meeting Materials, dated February 13, 2007). The Tribune Board book for this meeting also contained detailed analysis of 2006 quarter four and full year results, in relation to both 2006 plan and prior year results, among other things. *Id.* at TRB0413506-32. The materials contained several observations regarding financial performance, including a statement that "January advertising revenues were down 7% from last year as soft national trends and print advertising declines continued, especially in real estate and automotive." *Id.* at TRB0413503. Interactive fourth quarter revenues were reported as having increased 31% over the same period in the prior year and 29% for the full year. *Id.* at TRB0413504. The Broadcasting Segment performance was also reported, noting that, although January ad revenue finished down 3%, February was "pacing up 2%." *Id.* at TRB0413504.

[894] Ex. 67 at TRB0415615 (Tribune Board Meeting Minutes, dated February 13, 2007).

specifically made aware of actual February (Period 2) or March (Period 3) 2007 financial results before approving the Leveraged ESOP Transactions on April 1, 2007.

The meeting minutes of the April 1, 2007 Tribune Board meeting reflect that the Tribune Board received fairness opinions prepared by MLPFS (on behalf of the Tribune Board) and Morgan Stanley (on behalf of the Special Committee),[895] and that MLPFS and CMGI presented to the Tribune Board analyses comparing the Leveraged ESOP Transactions to the proposed leveraged recapitalization (previously considered by the Tribune Board).[896] There is no evidence, however, that actual historical financial results for the Tribune Entities were part of such presentations or any related discussions.

After the Tribune Board's approval of the Leveraged ESOP Transactions on April 1, 2007,[897] through the Step One Financing Closing Date on June 4, 2007, the Tribune Board meeting minutes show that the Tribune Board was made aware of first quarter 2007 financial results.[898]

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[895] Ex. 146 at TRB0415621 (Tribune Board Meeting Minutes, dated April 1, 2007). Certain presentation materials prepared by Morgan Stanley on behalf of the Special Committee before the Tribune Board's approval of the Leveraged ESOP Transactions on April 1, 2007 clearly reflect analysis of post-January 2007 financial results. Ex. 144 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated April 1, 2007). It is unclear whether the full Tribune Board received those same materials. Mr. Marchetti reported that the trustee for the ESOP also had received a fairness opinion from its financial advisor, Duff & Phelps. Ex. 146 at TRB0415621 (Tribune Board Meeting Minutes, dated April 1, 2007).

[896] Ex. 146 at TRB0415621 (Tribune Board Meeting Minutes, dated April 1, 2007).

[897] The minutes of the April 1, 2007 Tribune Board meeting reflect the Tribune Board's approval of the Leveraged ESOP Transactions and the adoption of numerous related resolutions. *Id.* at TRB0415626-37.

[898] Ex. 248 at TRB0415648 (Tribune Board Meeting Minutes, dated May 9, 2007). These minutes reflect that "Mr. Grenesko next reviewed the first quarter results of each of the Company's lines of business and commented on the factors impacting the results." *Id.* These meeting minutes also reflect that Mr. Osborn reported that the Audit Committee of the Tribune Board had "reviewed first quarter 2007 financial results with management and PWC before the public release as well as a draft of the Company's first quarter 10-Q." *Id.* at TRB0415649. Tribune Board books provided to the Tribune Board in connection with the May 9, 2007 meeting observed that, "The newspaper industry is going through a very difficult first half. Difficult comparisons to record real estate spending last year (especially in Florida) and continued weakness in automotive spending caused first quarter ad revenues to be down 6%. The second quarter will also be difficult." Ex. 249 at TRB0533511 (Tribune Board Meeting Materials, dated May 9, 2007). Interactive revenues were reported as up 17% for the first quarter 2007 in relation to the prior year. *Id.* at TRB0533512. The Tribune Board book also contained detailed comparisons of first quarter results, both at the consolidated and segment level, against prior year results and the 2007 plan. *Id.* at TRB0533514-40. Notably, the 2007 plan comparisons were based on, and largely agreed with, the Tribune Board-approved 2007 plan and the Brown Books discussed previously.

Minutes of the May 9, 2007 and May 21, 2007 Tribune Board meetings, however, do not indicate whether the Tribune Board was aware, at that time, of actual Tribune financial results for periods subsequent to the periods covered by the first quarter Form 10-Q.[899]

b. The Special Committee.

In executing its responsibility to oversee the process of reviewing strategic alternatives for Tribune, the Special Committee engaged Morgan Stanley as its financial advisor. From its inception in September 6, 2006, through June 4, 2007, the Special Committee met on 16 occasions, most of which included participation by its and/or Tribune's financial advisors.[900]

Meeting minutes (and corresponding materials provided to the Special Committee by Tribune management and/or the financial advisors) show that, before the approval of the Leveraged ESOP Transactions on April 1, 2007, the Special Committee was aware of and considered Tribune's projections and Tribune's financial performance through February 2007.[901] The Examiner found no evidence, however, that the Special Committee was aware of, or otherwise took into account, actual March 2007 Tribune financial results in performing its evaluations and making an ultimate recommendation to the Tribune Board to approve the

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[899] As noted, however, Tribune did issue a press release regarding certain aspects of April 2007 financial performance before June 4, 2007. Ex. 79 (Tribune Press Release, dated May 14, 2007); Ex. 248 at TRB0415648 (Tribune Board Meeting Minutes, dated May 9, 2007); Ex. 149 (Tribune Board Meeting Minutes, dated May 21, 2007). The May 9, 2007 Tribune Board meeting minutes indicate that Mr. Grenesko "provided projections for the second quarter and answered questions from the Board of Directors." Ex. 248 at TRB0415648 (Tribune Board Meeting Minutes, dated May 9, 2007). The Examiner was unable to locate those projections. The May 9, 2007 Tribune Board meeting minutes also reflect that the Tribune Board was presented with VRC's Step One solvency opinion dated May 9, 2007. *Id.* Although VRC apparently considered information regarding the Tribune Entities' actual performance through April 1, 2007 in rendering its solvency opinion as of May 9, 2007, there is no evidence that VRC considered, or presented to the Tribune Board, any specific financial performance information for the Tribune Entities after that date in connection with the rendering of its opinion. VRC did receive a representation from Tribune that it had not experienced a material adverse change in its assets or liabilities between April 1, 2007 and the date of the VRC Solvency Opinion, May 9, 2007. Ex. 250 (Representation Letters, dated May 9, 2007).

[900] From 2005 until September 2006, MLPFS was Tribune's sole financial advisor. Subsequently, Tribune also engaged CGMI as an additional advisor, such that MLPFS and CGMI were co-advisors to Tribune.

[901] *See, e.g.*, Ex. 251 (Special Committee Meeting Minutes, dated March 30, 2007); Ex. 136 at TRIB-G0008787 (Tribune Special Committee Meeting Minutes, dated March 21, 2007).

Leveraged ESOP Transactions.[902] Moreover, the Special Committee did not receive a solvency or capital adequacy opinion before the April 1, 2007 approval of the Leveraged ESOP Transactions.

The Examiner also notes that the Special Committee apparently met only once after the approval of the Leveraged ESOP Transactions and before the Step One Financing Closing Date, and it did so only to approve the minutes of prior meetings of the Special Committee and to receive "a brief update [from Special Committee Chair William Osborn] regarding the status of the series of transactions comprising the Zell/ESOP transaction."[903] The minutes of that meeting (which occurred on May 9, 2007) do not specifically reflect knowledge or consideration of the Tribune Entities' financial results beyond those previously considered by the Special Committee before April 1, 2007, although by the time of the May 9, 2007 meeting, Tribune had issued its Form 10-Q for the quarter ending April 1, 2007 (and as such the information contained therein would have been generally available to members of the Special Committee).[904]

3. Knowledge and Actions of Participants in the Step One Solvency Opinion and the Examiner's Evaluation of the Step One Solvency Opinion.

a. Parties Approached for the Step One Solvency Opinion.

Tribune contacted three firms to potentially render a solvency opinion to the Tribune Board in connection with the Special Committee's evaluation of potential strategic alternatives for Tribune: Houlihan Lokey, Duff & Phelps, and VRC.

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902 As previously indicated, the evaluation of actual financial results for period 3 (March 2007) in Brown Book presentation format was unavailable before the Tribune Board's approval of the Leveraged ESOP Transactions on April 1, 2007.

903 Ex. 252 (Minutes of Special Committee Meeting, dated May 9, 2007). In making these observations, the Examiner relied on a Draft of the Minutes because the Examiner was unable to locate an approved final copy.

904 Ex. 55 (Tribune Form 10-Q, filed May 9, 2007).

In early February 2007, Tribune contacted Andy Stull of Houlihan Lokey concerning a potential engagement regarding the preparation of a solvency opinion for the Tribune Board.[905] Mr. Stull referred the matter to Ben Buettell of Houlihan Lokey's Chicago office.[906] Mr. Stull and Mr. Buettell spoke by telephone with Chandler Bigelow (Treasurer of Tribune) on February 8, 2007[907] regarding the delivery of a solvency opinion in connection with a proposed "self-help" transaction.[908] During the call, it was Houlihan Lokey's impression that Mr. Bigelow conveyed a "sense of urgency," seeking to receive a response from Houlihan Lokey by the following day.[909] However, Mr. Stull and Mr. Buettell indicated that Houlihan Lokey would require more time to evaluate the matter.[910] By the middle of the following week Houlihan Lokey learned that Tribune was close to hiring Duff & Phelps "on the basis of fees and the assurance from [Duff & Phelps] that they could deliver an opinion by [February 15, 2007], if necessary."[911] Houlihan Lokey ceased pursing the engagement at that point.[912]

Roughly contemporaneously with Tribune's contact with Houlihan Lokey regarding a solvency opinion, Tribune, by letter agreement dated February 13, 2007, engaged Duff & Phelps to serve as independent financial advisor to the Tribune Board and to provide an opinion as to

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[905] Ex. 253 at 20:11-16 (Rule 2004 Examination of Ben Buettell, December 2, 2009). The firm's first contact with Tribune concerning a potential role in what ultimately became the Step One Transactions and Step Two Transactions was in late 2006, when Paul Much of Houlihan Lokey contacted the Special Committee to inquire about a potential engagement on behalf of the Special Committee. *Id.* at 17:3-13. At the time, Houlihan Lokey was aware only that Tribune had formed the Special Committee to explore transactional alternatives. *Id.* at 19:6-9. William Osborn, the Chair of the Special Committee, informed Houlihan Lokey that the Special Committee was not currently in need of Houlihan Lokey's services, and Houlihan Lokey learned that the Special Committee had engaged other financial advisors. *Id.* at 19:14-20:5.

[906] *Id.* at 21:8-12.

[907] *Id.* at 28:19-23.

[908] *Id.* at 29:17-19.

[909] *Id.* at 32:23-33:4.

[910] *Id.* at 33:3-4.

[911] Ex. 254 at HLHZ-Tribune 000251 (Buettell E-Mail, dated February 24, 2007).

[912] Ex. 253 at 46:4-7 (Rule 2004 Examination of Ben Buettell, December 2, 2009).

the solvency and capitalization (a) of Tribune after giving effect to a special distribution to stockholders of approximately $5 billion, and (b) of Tribune and the Broadcasting Segment after giving effect to a spinoff of the Broadcasting Segment.[913] Duff & Phelps also agreed to review and opine on Tribune's solvency based on a leveraged ESOP transaction, as a "potential alternative" to the special distribution.[914] Ultimately Duff & Phelps did not render the solvency opinion described in the February 13, 2007 engagement letter, however, because the Tribune Board's original engagement of Duff & Phelps was superseded by the separate engagement of Duff & Phelps on March 8, 2007 to advise GreatBanc, the ESOP trustee.[915]

On March 26, 2007, Tribune again contacted Houlihan Lokey concerning a potential solvency opinion engagement.[916] A confidentiality agreement was signed,[917] and Houlihan Lokey reviewed an overview of the structure and broad terms of the transaction.[918] By March 29, 2007, Houlihan Lokey decided to decline the potential solvency opinion engagement,[919] at least in part because Houlihan Lokey anticipated that it could be "tough" to opine that Tribune would be solvent following what Houlihan Lokey perceived to be a highly

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[913] Ex. 162 at D&P_TR108564 (Engagement Letter between the Tribune Board and Duff & Phelps, dated February 13, 2007). In early February, EGI had separately contacted Duff & Phelps regarding a potential ESOP transaction, but EGI did not engage Duff & Phelps. Ex. 255 at 26:20-32:5 (Rule 2004 Examination of Elyse Bluth, December 17, 2007).

[914] Ex. 162 at D&P_TR108564 (Engagement Letter between the Tribune Board and Duff & Phelps, dated February 13, 2007).

[915] Ex. 1106 (Tribune Letter to Duff & Phelps, dated March 28, 2007); Ex. 164 (Engagement Letter between GreatBanc and Duff & Phelps, dated March 8, 2007).

[916] Ex. 256 at HLHZ-Tribune 000243 (Buettell E-Mail, dated March 26, 2007).

[917] Ex. 947 (Confidentiality Agreement).

[918] Ex. 258 at HLHZ-Tribune 000147 (Buettell E-Mail, dated March 28, 2007); Ex. 253 at 72:2-3 (Rule 2004 Examination of Ben Buettell, December 2, 2009) ("[T]his was preliminary information that we put together . . .").

[919] Ex. 253 at 82:1-7 (Rule 2004 Examination of Ben Buettell, December 2, 2009).

leveraged transaction.[920] That same day, Samuel Zell telephoned Houlihan Lokey.[921] According to the Houlihan Lokey executive with whom Mr. Zell spoke, "Sam was upset that [Houlihan Lokey] was holding up his deal and asked [the Houlihan Lokey executive] for an explanation."[922] When questioned about this incident during his interview with the Examiner, Mr. Zell responded that although he did not remember that specific conversation, he was likely told by someone at EGI that Houlihan Lokey was "supposed to be doing something and they are not doing it," which would have prompted a telephone call from Mr. Zell.[923]

Faced with the engagement of Duff & Phelps by GreatBanc and the unwillingness of Houlihan Lokey to accept the engagement, Mr. Bigelow, on behalf of Tribune, approached VRC on March 29, 2007.[924] VRC's initial reaction was that the proposed transaction was "[h]ighly [u]nusual (because of S-Corp ESOP tax benefits) and highly leveraged,"[925] and that Tribune consisted of "good, stable but deteriorating businesses."[926] Perhaps foreshadowing the fact that VRC ultimately charged the highest fee it had ever charged for a solvency opinion,[927] $1.5 million,[928] VRC's discussions on the first day it was approached by Tribune included an

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920 Ex. 258 at HLHZ-Tribune 000147 (Buettell E-Mail, dated March 28, 2007); Ex. 253 at 72:18-21 (Rule 2004 Examination of Ben Buettell, December 2, 2009) ("[I]f we were asked [whether] we think we can deliver a solvency opinion, it may have been hard for us to say yes based on th[e] preliminary information we had."); *Id.* at 73:18-22 ("[Y]ou have face value of debt being greater than the enterprise value, at least as calculated by us in [our preliminary analysis], and that [seemed] a little challenging from my perspective at the time."). *See also id.* at 75:19-76:7 (noting Houlihan Lokey's internal discussions and potential differences of opinion about whether anticipated S-Corporation/ESOP tax benefits should factor into the solvency analysis).

921 Ex. 259 at HLHZ-Tribune 000071 (Stull E-Mail, dated March 29, 2007).

922 *Id.*

923 Examiner's Interview of Samuel Zell, June 14, 2010.

924 Ex. 260 at VRC0173988-89 (Browning E-Mail, dated March 30, 2007).

925 *Id.* at VRC0173988.

926 Ex. 261 at VRC0177894 (Gruskin E-Mail, dated March 30, 2007).

927 Ex. 262 at 28:23-29:3 (Rule 2004 Examination of Bryan Browning, December 4, 2009).

928 Ex. 263 at 7 (VRC Solvency Engagement Letter, dated April 11, 2007).

analysis of the fee necessary to compensate VRC for the risk involved in providing a solvency opinion for a transaction with the leverage anticipated in the Tribune transaction.[929]

b. VRC at Step One.

(1) The Engagement of VRC.

On April 11, 2007 (ten days after the Special Committee approved the Leveraged ESOP Transactions), Tribune formally engaged VRC to provide the Tribune Board the solvency opinion required as a condition to both the Tender Offer and the Merger.[930] Two portions of the engagement letter are particularly important in assessing VRC's subsequent analysis and performance: (a) the modification of the definition of "fair value," and (b) the extent to which VRC would make its own assessment of the reasonableness of management's projections and the accuracy of management-provided information.

(i) Modification of the Definition of Fair Value.

VRC's engagement letter specifically required the use of a definition of "fair value" that differed from definitions of that phrase in typical solvency opinions: VRC was required to measure fair value as the consideration that would change hands between a willing buyer and a willing seller "both having structures similar to the structure contemplated in the Transactions by the subject entity (an S-Corporation, owned entirely by an ESOP, which receives favorable federal income tax treatment), or another structure resulting in equivalent favorable federal income tax treatment."[931] As a consequence of this built-in limitation on VRC's analysis, VRC ultimately offered no opinion whether Tribune would be solvent if it were to be acquired by an

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[929] Ex. 261 at VRC0177894 (Gruskin E-Mail, dated March 30, 2007). One VRC executive wrote: "This may be just acceptable risk levels, but we will need to be compensated. My fee estimate would be $600-700k. . . ." *Id.* Another VRC executive responded: "I would say at least $750[K] and maybe significantly more depending on levels and if they need bringdowns, etc." *Id.*

[930] Ex. 263 (VRC Solvency Engagement Letter, dated April 11, 2007).

[931] *Id.* at 3-4.

entity that did not receive the described favorable federal income tax treatment.[932] Bryan Browning, a managing director at VRC who has worked on 400 to 500 solvency opinions (including the Tribune opinions),[933] testified that he did not believe he had ever worked on a solvency opinion that modified the definition of fair value in that fashion.[934] Although Mr. Browning testified that he could not recall whether VRC or Tribune suggested the modification to the definition of fair value,[935] the draft engagement letter VRC sent Tribune on April 2, 2007 includes this modified definition, which was not materially edited in Tribune's April 5, 2007 markup of the draft engagement letter.[936]

(ii) Assessment of Management's Projections and Information.

The draft engagement letter VRC sent Tribune on April 2, 2007 specified that Tribune would "furnish VRC with all reasonably available information and data" requested by VRC, warrant that such information (other than financial forecasts and projections) "will not contain any untrue statement of a material fact or omit to state a material fact," and, with respect to financial forecasts and projections, warrant that they "have been prepared in good faith" based on reasonable assumptions.[937] The draft engagement letter further provided that VRC would make no "independent verification or independent appraisal" of Tribune's assets, would assume the

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932 Ex. 262 at 48:5-49:3 (Rule 2004 Examination of Bryan Browning, December 4, 2009); Ex. 264 at 247:8-16 (Rule 2004 Examination of Mose Rucker, December 3, 2009) (agreeing that "VRC did not opine on the solvency of the company following step 2 transactions in the event that a buyer of the Tribune would be subject to federal income tax"). This limitation ultimately only affected VRC's Step Two solvency analysis because VRC's Step One solvency analysis ignored the effects of Step Two, at management's direction. *See* Report at § III.E.3.b.(2).

933 Ex. 262 at 14:4-13 (Rule 2004 Examination of Bryan Browning, December 4, 2009).

934 *Id.* at 35:17-22.

935 *Id.* at 35:23-36:3.

936 Ex. 265 at VRC0059204 (Hughes E-Mail, dated April 2, 2007); Ex. 266 at VRC0075241 (Bigelow E-Mail, dated April 5, 2007).

937 Ex. 265 at VRC0059205 (Hughes E-Mail, dated April 2, 2007).

reasonableness and prudence of Tribune's financial forecasts, and would "not assume any responsibility for independently verifying" any information provided by Tribune.[938]

Tribune responded to VRC's draft with a mark-up on April 5, 2007.[939] Among other changes, Tribune modified the portion of the letter specifying that VRC had no obligation to independently verify the accuracy of management's projection or other information by adding this sentence: "VRC will advise, however, whether anything has come to its attention in the course of its engagement which has led it to believe that that any such financial forecasts and projections are unreasonable or that any such information or data is inaccurate in any material respect, or that it was unreasonable for VRC to utilize and rely upon such financial forecasts, projections, information and data. . . ."[940] This language was further modified such that the final VRC engagement letter provides, in pertinent part:[941]

> In rendering the Opinions, VRC will conduct such reviews, analyses, and inquiries and will consider such information, data and other material deemed necessary and appropriate based on the facts and circumstances of the assignment. In conducting its reviews and analyses, and as a basis for arriving at its conclusions, VRC will utilize methodology, procedures and considerations deemed relevant and customary under the circumstances. VRC will also consider its assessment of general economic, industry, market, financial and other conditions, which may or may not prove to be accurate, as well as its experience as a financial advisor in general.
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> The Company hereby agrees to furnish VRC with all reasonably available information and data concerning the Company and the Transactions (the "Information") that VRC deems appropriate and will, if requested, provide VRC with reasonable access to the

938 *Id.*

939 Ex. 266 (Bigelow E-Mail, dated April 5, 2007). Mark Hianik, formerly an assistant general counsel at Tribune, whose name appears on certain of the e-mail correspondence concerning edits to VRC's engagement letter, stated to the Examiner that Tribune's April 5, 2007 edits to the VRC engagement letter were generally provided by outside counsel. Examiner's Interview of Mark Hianik, June 15, 2010.

940 Ex. 266 at VRC0075243 (Bigelow E-Mail, dated April 5, 2007).

941 Ex. 267 at TRB0412757 (VRC Engagement Letter, dated April 11, 2007) (emphasis added).

Company's officers, directors, employees, independent accountants, legal counsel and other advisors. The Company represents and warrants that all Information (other than financial forecasts and projections) made available to VRC by or on behalf of the Company, at all times during the period of VRC's engagement hereunder, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances under which such statements are made. The Company further represents and warrants that any financial forecasts and projections provided by it to VRC will have been prepared in good faith and will be based upon assumptions that, in light of the circumstances under which they are made, are reasonable.

In connection with the Opinions, the Company acknowledges and agrees that in rendering VRC's services hereunder, VRC will be using and relying on the Information and information available from public sources and other sources deemed reliable by VRC, in each cast, without independent verification or independent appraisal of any of the Company's assets. The Company agrees to notify VRC promptly (i) if any such Information becomes inaccurate, incomplete or misleading in any material respect, (ii) if the Information needs to be updated to be accurate in all material respects and (iii) of any material adverse change, or development that could reasonably be expected to lead to any material adverse change, in its business, properties, operations, financial condition or prospects; and if any such Information needs to be so updated, the Company will do so promptly. VRC will assume and rely upon, without independent verification or independent appraisal, the accuracy and completeness of all Information, and all other information data and other material (including, without limitation, financial forecasts and projections) furnished or otherwise made available to VRC, discussed with or reviewed by VRC, or publicly available, and VRC will not assume any responsibility for independently verifying such Information or other information, data or other material. In addition, VRC will assume and rely upon, without independent verification, that the Company's financial forecasts and projections have been reasonably and prudently prepared and therefore reflect the best currently available estimates and judgments of management as to the expected future financial performance of the Company. VRC will also assume, without independent verification, that the Company's determination of the favorable federal income tax treatment to be received as part of the Transactions is correct. *VRC will, however, advise, after discussion with management with respect thereto, and based on its inquiries and its experience in reviewing such* *liabilities, (i) whether anything has come to VRC's attention in the course of its engagement which has led it to believe that any such financial forecasts and projections are unreasonable or that any such information or data is inaccurate in any material respect, or (ii) whether VRC has reason to believe that it was unreasonable for VRC to utilize and rely upon such financial forecasts, projections, information and data, or that there has been any material adverse change with respect to the Company.*

The portion of VRC's engagement letter highlighted above is somewhat difficult to square with the language that precedes the emphasized text (which is perhaps to be expected, given the provenance and drafting history of this portion of the engagement letter). The most reasonable reading of the engagement letter as a whole, giving effect to all its terms, is that although VRC was obligated to consult with management if any particular projection or piece of information provided by management struck VRC as unreasonable, VRC was under no obligation to affirmatively investigate or skeptically evaluate anything management provided.

Consistent with this reading, although the record establishes that VRC personnel strived to *understand* Tribune's various projections and assumptions, there is no colorable evidence that VRC ever critically evaluated the *reasonableness* of those projections. For example, as discussed elsewhere in the Report, forecasts for growth in Tribune's interactive business were unjustifiably optimistic.[942] When asked about the reasonableness of management's growth expectations for the interactive business, the VRC representatives (Bryan Browning and Mose Rucker) testified that management was "pursuing a new strategy" that "hopefully . . . was going to be somewhat of a growth engine in the publishing sector":[943]

A: [I] do know we spent a lot of time talking to them about the growth strategy of that interactive sector. And they thought that given some of the secular trends that were going on in

942 *See* Report at § III.H.3.f.(1).

943 Examiner's Sworn Interview of Mose Rucker and Bryan Browning, June 30, 2010, at 95:19-97:2.

> the newspaper industry, that they would be able to leverage their interactive piece to get some growth there.
>
> Q: And what did you think? Did you agree with their optimism in that regard?
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> A: I can't recall whether we—whether we discounted—discounted that management could achieve what they were anticipating that they could achieve. We did know that they had had some pretty significant successes or things that they had invested in, like Auto Trader and a Career Builder, that they had—you know, they had some real successes there. So I don't recall whether we said this is not attainable or anything like that. I think ultimately we concluded that what management was telling us seemed to be reasonable, particularly given that they had a pretty successful track record in investing in some real winners in the online sector.

In this and other instances, VRC appears to have simply accepted Tribune's projections and assumptions at face value so long as they were even arguably colorable. In their sworn interviews with the Examiner, however, Donald Grenesko (formerly Tribune's Senior Vice President/Finance and Administration) and William Osborn (former Chair of the Special Committee) testified that they had a different understanding—that VRC was undertaking a rigorous, independent evaluation of management's work. Mr. Grenesko stated that "[VRC's] charge was to test all of those assumptions [provided by management] and use whatever outside resources that they wanted, whether it be other analyst reports or industry reports, to verify themselves . . . the reasonableness of the projections."[944] Mr. Osborn's understanding of VRC's role was similarly expansive:[945]

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[944] Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 50:8-15. *See also id.* at 36:23-37:1 ("[I]f there's something that looks unreasonable in our projections [VRC] would bring that to our attention."). Similarly, when asked whether "VRC conducted any review of the projection process to determine whether or not [Tribune's] projections were reasonable," Harry Amsden of Tribune testified that VRC "asked . . . how the projections were developed, and obviously we gave them all the documents we had in connection with those projections." Ex. 66 at 25:1-7 (Rule 2004 Examination of Harry Amsden, December 16, 2009).

[945] Examiner's Sworn Interview of William Osborn, June 24, 2010, at 88:17-89:11.

Q: As chair of the special committee, did you understand that VRC was engaging in significant testing of management's base case and downside cases?

A: Yes.

Q: And what did you understand that to mean? What exactly was VRC testing?

A: They were looking at the cash flow assumptions going forward and looking at whether the company could service its debt appropriately based on the assumptions that were in there and then the reasonableness of those assumptions.

Q: And so were they to—did you understand VRC was responsible for questioning or critiquing the projections themselves, the cash flow projections?

A: Yes.

The record, however, reflects virtually no instances in which VRC did not adopt a management assumption. The only significant exception (concerning the net present value of anticipated S-Corporation/ESOP tax savings) occurred very late in VRC's engagement and only in response to an inquiry from the Lead Banks questioning one of those assumptions.[946] Finally, neither Mr. Grenesko nor Mr. Browning could recall a single instance in which VRC brought to Tribune's attention any aspect of management's projections that VRC viewed as unreasonable.[947] The Examiner submits that the fair inference from this silence—in the face of the host of suspect assumptions underlying management's forecasts, particularly as Step Two approached—is that VRC did not critically evaluate the assumptions underlying management's forecasts. In light of

946 *See* Report at § III.H.3.d. *See also* Ex. 950 (Amsden E-Mail, dated September 27, 2007) ("We have done two conference calls with the bankers so far this week. The bankers have asked much more detailed financial questions than VRC did.").

947 Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 52:10-13; Ex. 262 at 50:12-17 (Rule 2004 Examination of Bryan Browning, December 4, 2009). VRC's May 9, 2007 opinion noted that, although VRC "assumed and relied upon, without independent verification, the accuracy and completeness of all information, data and other material . . . furnished or otherwise made available by the Company to VRC," "nothing has come to VRC's attention to lead VRC to believe that it was unreasonable for VRC to utilize and rely upon [Tribune's] financial forecasts, projections, information and data." Ex. 268 at TRB0149972 (VRC Step One Solvency Opinion, dated May 9, 2007).

the record adduced in the Investigation, the Examiner did not find Mr. Osborn's or Mr. Grenesko's testimony to the contrary credible.

(2) Management's Interactions with VRC.

Consistent with the terms of the VRC engagement letter, Tribune management supplied VRC with the projections and representations on which VRC based its Step One solvency opinion.[948] Chandler Bigelow, at the time a Vice President and the Treasurer of Tribune, primarily interacted with Mr. Browning and Mr. Rucker of VRC in this regard,[949] providing "a great deal of information" and responding to VRC's requests for additional information.[950] Tribune management also provided representation letters on which VRC relied in the preparation of the Step One solvency opinion.[951]

VRC shared drafts of its Step One solvency analysis with Tribune management,[952] and Tribune marked up VRC's draft May 9, 2007 Step One solvency opinion with Tribune's "requested changes."[953] The most significant change directed by management was that VRC

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[948] Ex. 264 at 248:4-7 (Rule 2004 Examination of Mose Rucker, December 3, 2009) ("We did test around management's base case, management's downside case. But ultimately we relied upon management's projections and representations to us."). Mr. Rucker explained to the Examiner that VRC "used [Tribune management's] 2007 projected period to 2013 projected period." Examiner's Sworn Interview of Mose Rucker and Bryan Browning, June 30, 2010, at 19:3-5. Mr. Rucker further explained that "[w]hen we do these opinions, because we rely so much upon management, we request several different [representation] letters. And unless we have assurance . . . that we are going to get those [representation] letters, we will not typically move forward with the opinion." *Id.* at 308:14-21.

[949] Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 49:7-8.

[950] *Id.* at 119:12-14. Mr. Bigelow also told the Examiner, "I was helping facilitate the flow of information to VRC in the context of the work that they were performing with respect to evaluating the economics and the financials. . . ." *Id.* at 120:22-121:3. *See also* Ex. 268 at TRB0149969-72 (VRC Step One Solvency Opinion, dated May 9, 2007) and Ex. 269 at TRB0163154-57 (VRC Letter to Tribune Board, dated May 24, 2007) (extensive lists of materials reviewed and considered by VRC for purposes of its May 9, 2007 solvency opinion and May 24, 2007 bringdown letter).

[951] Ex. 250 (Representation Letters, dated May 9, 2007). VRC's May 9, 2007 opinion letter noted that in the course of preparing its opinion, VRC "[o]btained a [sic] written representations from responsible officers of the Company" concerning contingent liabilities, the absence of material adverse changes, and financial projections. Ex. 268 at TRB0149970 (VRC Step One Solvency Opinion, dated May 9, 2007).

[952] Ex. 270 (Rucker E-Mail, dated April 24, 2007); Ex. 271 (Mednik E-Mail, dated May 4, 2007).

[953] Ex. 272 at TRB0129235 (Hianik E-Mail, dated April 22, 2007).

exclude the consequences of Step Two (including the additional debt and expected tax savings) from the Step One opinion.[954] Because the S-Corporation and ESOP-related qualifications would not be achieved unless Step Two occurred, management's instruction to VRC was correct. As discussed below,[955] the Examiner concludes that it is somewhat likely that a court would find that Tribune's instruction that VRC not include the Step Two Debt in determining balance-sheet solvency at Step One was correct, but that it is reasonably likely that the instruction not to consider the Step Two Debt for capital adequacy purposes was incorrect. The Examiner, however, did not find credible evidence to support a contention that Tribune's instruction in this regard was improperly motivated, and, in any event, as discussed below, the Examiner concludes that it is reasonably likely that Tribune did not have unreasonably small capital at the conclusion of the Step One Transactions—even taking the Step Two Debt into account.[956]

(3) VRC's Analysis Prior to Issuance of the Step One Opinion.

After giving effect to the above-noted instructions from management, VRC's Step One analysis was designed to determine whether, following consummation of the Step One Transactions, (a) the "Fair Value and Present Fair Saleable Value" of Tribune's assets would exceed Tribune's liabilities, (b) Tribune would "be able to pay its debts [as they] mature or

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[954] *Id.* at TRB0129237 and TRB0129240-42. The Examiner interviewed Mark Hianik, the Tribune attorney who instructed VRC to exclude the consequences of Step Two from the Step One opinion. Although Mr. Hianik stated that he did not specifically recall the basis of or any details surrounding his instruction to VRC, Mr. Hianik surmised that this particular edit was made by or at the direction of Tribune's outside counsel. Examiner's Interview of Mark Hianik, June 15, 2010. For purposes of its internal analysis, VRC nevertheless analyzed at Step One the solvency of Tribune on the assumption that Step Two closed on a pro forma basis. Ex. 262 at 58:13-60:17 and 62:7-12 (Rule 2004 Examination of Bryan Browning, December 4, 2009); Ex. 270 (VRC Preliminary Solvency Analysis, dated April 19, 2007). Mr. Browning testified that VRC undertook this analysis "to make sure that in rendering the [Step One solvency] opinion, that there weren't any red flags for the [Step Two solvency opinion]." Ex. 262 at 60:14-17 (Rule 2004 Examination of Bryan Browning, December 4, 2009).

[955] *See* Report at § IV.B.5.d.(6).

[956] *See id.* at § IV.B.5.d.(9).

otherwise become absolute or due," and (c) Tribune would be adequately capitalized.[957] For purposes of this inquiry, VRC valued Tribune's assets on the basis of what "would change hands between a willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, neither being under any compulsion to act."[958] VRC determined the adequacy of Tribune's capitalization by assessing Tribune's "ability . . . to continue as a going concern and not lack sufficient capital for the businesses in which it is engaged, and will be engaged, as management has indicated such businesses are now conducted and are proposed to be conducted."[959]

In preparing the Step One solvency opinion, VRC "assumed that the Company will be able to refinance debts when they mature and that it will not make acquisitions or dispositions other than those assumed during the forecast period based on the financial forecasts provided" by management.[960] VRC further assumed that the Step One Transactions would be consummated in accordance with their terms, and that management had "reasonably and prudently prepared" the financial forecasts on which VRC based its analysis.[961] VRC also cautioned that its Step One solvency opinion did not express any views on "the relative risks or merits of the Transactions or any other business strategies or transaction alternatives that may be available to the Company" or "the underlying business decisions of the Company to consummate the Transactions."[962]

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[957] Ex. 273 at VRC0060948 (Step One Solvency Opinion, dated May 9, 2007).

[958] *Id.* at VRC0060943.

[959] *Id.*

[960] *Id.* at VRC0060946. Unlike certain other assumptions VRC made, and unlike the handling of this same issue at Step Two, Tribune did not provide VRC with a written representation to this effect. *See* Ex. 250 (Representation Letters, dated May 9, 2007). The Step One representation letters do not address Tribune's ability to refinance.

[961] Ex. 273 at VRC0060946 (Step One Solvency Opinion, dated May 9, 2007). *See also* Ex. 250 (Representation Letters, dated May 9, 2007). Tribune made a written representation to VRC that Tribune's financial forecasts "reflect Management's best estimates" and "are reasonable and obtainable," in management's view. *Id.* at 3.

[962] Ex. 273 at VRC0060946 (Step One Solvency Opinion, dated May 9, 2007).

VRC's analysis at Step One relied on management's projections and representations,[963] though VRC also developed a sensitivity case to test management's numbers in various alternative scenarios.[964] VRC also determined to give equal weight in its final Step One solvency opinion to each of four valuation tests: comparable companies, comparable transactions, sum of individual assets, and discounted cash flow.[965] This equal weighing was a change from VRC's earlier draft analyses, in which VRC had assigned 40% to the discounted cash flow method, 25% to each of the comparable companies and sum of individual assets methods, and 10% to the comparable transactions method.[966] Mr. Rucker testified that VRC's decision to weigh the four tests equally was made by VRC's opinion committee, which "concluded that it was not appropriate to use weightings in a solvency opinion analysis."[967] According to Mr. Rucker, VRC's opinion committee viewed the assignment of different weights to different valuation methods as "more a traditional appraisal-type of valuation process . . . as opposed to the way that you should use indications of value in a solvency opinion."[968] VRC's decision to give equal weight to each of the four valuation methods increased VRC's overall assessment of the value of Tribune's operating assets.

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963 Ex. 264 at 248:4-7 (Rule 2004 Examination of Mose Rucker, December 3, 2009); Examiner's Sworn Interview of Mose Rucker and Bryan Browning, June 30, 2010, at 19:3-5 and 308:14-21.

964 Ex. 264 at 101:6-17 (Rule 2004 Examination of Mose Rucker, December 3, 2009); Examiner's Sworn Interview of Mose Rucker and Bryan Browning, June 30, 2010, at 81:6-13. Certain Parties have asserted that Tribune's adverse performance against plan during March, April, and May 2007 made it unreasonable for VRC to rely on management's projections when rendering its May 9, 2007 Step One solvency opinion. Although the Examiner has identified many potential problems with VRC's Step One analysis, this is not one of them. By May 9, 2007, Tribune had reported its first quarter 2007 results with little stock price reaction, and the variance to plan observed in March represented only a modest deviation on a consolidated basis. Tribune did not publicly report second quarter performance until after the Step One Financing Closing Date.

965 Ex. 273 at VRC0060928 (Step One Solvency Analysis, dated May 9, 2007); Ex. 264 at 148:20-49:20 (Rule 2004 Examination of Mose Rucker, December 3, 2009); Examiner's Sworn Interview of Mose Rucker and Bryan Browning, June 30, 2010, at 49:20-51:4.

966 Ex. 271 at VRC0051407 (Mednik E-Mail, dated May 4, 2007).

967 Ex. 264 at 149:16-20 (Rule 2004 Examination of Mose Rucker, December 3, 2009); *see also* Examiner's Sworn Interview of Mose Rucker and Bryan Browning, June 30, 2010, at 53:25-54:6.

968 Ex. 264 at 151:2-10 (Rule 2004 Examination of Mose Rucker, December 3, 2009).

c. VRC's Step One Opinion.

On May 9, 2007, VRC issued its first Step One solvency opinion, opining that:[969]

- Immediately before giving effect to the consummation of the Step One Transactions,[970] each of the Fair Value and Present Fair Saleable Value of the aggregate assets (including goodwill) of Tribune exceeds its liabilities (including Stated Liabilities and the Identified Contingent Liabilities);

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969 Ex. 268 at TRB0149973-74 (VRC Step One Solvency Opinion, dated May 9, 2007).

970 The term "Transactions" was defined in the VRC Step One solvency opinion as follows:

> Tribune will be taken private through a two-step process involving a newly formed Tribune employee stock ownership plan (the "ESOP") and investments by [EGI-TRB].
>
> The first step will involve (i) the purchase by EGI-TRB of newly issued common stock (the "Common Stock") from the Company for $34.00 per share, for an aggregate purchase price of $50 million in cash, and an exchangeable note for a purchase price of $200 million in cash (collectively, the "Step One EGI-TRB Purchase"); (ii) the purchase by the ESOP of newly issued Common Stock from the Company for $28.00 per share, for an aggregate purchase price of $250 million, which will be paid for by a note to the Company (the "ESOP Purchase"); (iii) the borrowing by the Company of debt of approximately $7.0 billion (the "Step One Debt Financing"); (iv) the purchase by the Company from its stockholders of up to 126 million shares of Common Stock at $34.00 per share, equaling approximately $4.3 billion (the "Step One Common Stock Purchase"); (v) the refinancing of existing debt of approximately $2.8 billion ("the Step One Debt Refinancing"); (vi) the roll-over of certain existing debt of approximately $2.4 billion (the "Step One Debt Roll-Over") and (vii) the payment of financing and other transaction fees of approximately $152 million (the "Step One Fees"). The Step One EGI-TRB Purchase, the ESOP Purchase, the Step One Debt Financing, the Step One Common Stock Purchase, the Step One Debt Refinancing, the Step One Debt Roll-Over, and the Step One Fees are collectively referred to as the "Step One Transactions."
>
> The second step will involve (i) the borrowing by the Company of additional debt of approximately $4.2 billion (the "Step Two Debt Financing"); (ii) the repayment by the Company of the exchangeable note acquired by EGI-TRB in the Step One EGI-TRB Purchase (the "Step Two Repayment"); (iii) the closing of the merger (the "Merger") in which all of the remaining Common Stock, other than shares held by the ESOP (but including shares held by EGI-TRB), will be converted into the right to receive $34 per share (plus 8% annualized accretion starting January 1, 2008, if the Merger has not closed by then), for an aggregate of approximately $4.3 billion; (iv) the purchase by EGI-TRB from the Company of a subordinated note for $225 million, and the purchase by EGI-TRB from the Company of a 15-year warrant, for a purchase price of $90 million, which gives EGI-TRB the right to acquire shares of Common Stock representing 40% of the economic interest in the equity of the Company at an initial aggregate exercise price of $500 million, increasing by $10 million per year for the first 10 years to a maximum aggregate exercise price of $600 million (collectively, the "Step Two EGI-TRB Purchase"); (v) the roll-over of certain existing debt of approximately $9.1 billion (the "Step Two Debt Roll-Over"); (vi) the payment of cash distributions triggered by a change of control of approximately $104 million (the "Step Two COC Payments"); (vii) the payment of financing and other transaction fees of approximately $120 million (the "Step Two Fees"); (viii) the election of an S-Corporation status following the Merger (the "S-Corp Election") and (ix) the sale of the Chicago Cubs and interest in Comcast SportsNet Chicago, which may occur before or after the closing of the Merger (the "Cubs/Comcast Sale"). The Step Two Debt Financing, the Step Two Repayment, the Merger, the Step Two EGI-TRB Purchase, the Step Two Debt Roll-Over, the Step Two COC Payments, the Step Two Fees, the S-Corp Election and the Cubs/Comcast Sale are collectively referred to as the "Step Two Transactions." The Step One Transactions and Step Two Transactions are collectively referred to as the "Transactions."

Id. at TRB0149968-69.

- Immediately after and giving effect to the consummation of the Step One Common Stock Purchase, each of the Fair Value and Present Fair Saleable Value of the aggregate assets (including goodwill) of Tribune will exceed its liabilities (including the Stated Liabilities, the Identified Contingent Liabilities and the New Financing), and such excess is in an amount that is not less than the capital of the Company (as determined pursuant to Section 154 of the DGCL);

- As of the date hereof, immediately after and giving effect to the consummation of the Step One Transactions, Tribune will be able to pay its debts (including the Stated Liabilities, the Identified Contingent Liabilities and the New Financing), as such debts mature or otherwise become absolute or due; and

- As of the date hereof, immediately after and giving effect to the consummation of the Step One Transactions, Tribune Does Not Have Unreasonably Small Capital.

In essence, VRC opined that Tribune was solvent both before and after giving effect to Step One, and that Tribune was adequately capitalized (and able to pay its debts) taking into account the Step One Debt. With the assistance of his professionals and the benefit of access to VRC's workpapers, the Examiner has been able to develop an understanding of VRC's Step One solvency opinion, dated May 9, 2007,[971] the discussion materials that VRC apparently presented to the Tribune Board on May 9, 2007,[972] and, as discussed below, VRC's updated Step One solvency opinion, dated May 24, 2007.[973]

VRC assessed Tribune's solvency after giving effect to the expected effects of the Step One Transactions. VRC did so by calculating a value of Tribune's assets, from which VRC subtracted a pro forma estimate of the interest-bearing debt that was anticipated to be incurred at

971 Ex. 268 (VRC Step One Solvency Opinion, dated May 9, 2007).

972 Ex. 274 (VRC Solvency Opinion Analysis, dated May 9, 2007).

973 Ex. 269 (VRC Step One Solvency Opinion Bring-Down Letter, dated May 24, 2007).

Step One.[974] A page from the materials VRC presented at the May 9, 2007 Tribune Board meeting is replicated,[975] in part, below reflecting the results of its analysis as described above:

VRC SUMMARY MAY 9, 2007 (as Presented)			
	Valuation Summary		
Valuation Method	**Low**	**Mid**	**High**
Comparable Companies	$ 11,335.8	$ 12,414.8	$ 13,493.8
Comparable Transactions	$ 11,753.4	$ 12,623.6	$ 13,493.8
Discounted Cash Flow	$ 9,830.7	$ 10,546.7	$ 11,262.6
Sum of Business Segments	$ 11,487.3	$ 12,729.7	$ 13,972.1
Average Operating Enterprise Value	**$ 11,101.8**	**$ 12,078.7**	**$ 13,055.6**
+ Equity Investments	$ 2,412.0	$ 2,686.0	$ 2,961.0
+ NPV of PHONES Tax Savings	$ 382.7	$ 382.7	$ 382.7
Adjusted Enterprise Value	**$ 13,896.5**	**$ 15,147.4**	**$ 16,399.2**
+ Cash	$ 182.1	$ 182.1	$ 182.1
- Debt	($ 9,463.8)	($ 9,463.8)	($ 9,463.8)
- Identified Contingent Liabilities	($ 97.1)	($ 97.1)	($ 97.1)
Equity Value	**$ 4,517.7**	**$ 5,768.5**	**$ 7,020.4**
% of Enterprise Value	32.5%	38.1%	42.8%
Less: Par value of Capital Stock	$ 3.9	$ 3.9	$ 3.9
Excess Capital	**$ 4,513.8**	**$ 5,764.6**	**$ 7,016.5**

Source: TRB0149946 - 0149967 at TRB0149955.

[974] Ex. 274 at TRB0149955 (VRC Solvency Opinion Analysis, dated May 9, 2007). VRC also considered "excess cash" as an increase to the value of VRC's assets and the amount of identified "contingent liabilities" as a deduction. *Id.*

[975] Ex. 274 at TRB0149955 (VRC Solvency Opinion Analysis, dated May 9, 2007). The order, or sequencing, of the presentation of results in the VRC table presented to the Tribune Board is slightly different from the presentation in the table presented here, in order to facilitate a logical discussion of VRC's analysis. The data presented, however, is numerically identical.

As shown in the table above, VRC determined the value of Tribune's assets by first determining the value of Tribune's operating assets to which VRC added its determination of the value of Tribune's ownership interests in other assets (whose revenue and profitability results were generally not consolidated with Tribune's other operations for financial statement presentation purposes)[976] and VRC's determination of the net present value of the PHONES Notes tax savings attributes.[977]

(1) Approaches to Valuing Tribune's Operating Assets.

In making its determination of the value of Tribune's operating assets, VRC employed four valuation methods—a comparable company approach, a transaction multiples approach, a sum-of-the parts (SOP) methodology, and a discounted cash flow (DCF) analysis. A discussion of each follows. For purposes of its presentation to the Tribune Board, VRC gave equal weight to each of four methods for valuing Tribune's operating assets: comparable companies, comparable transactions, discounted cash flow, and sum-of-the-parts, each of which is discussed below.

(i) Comparable Companies.

In determining a range of values for Tribune's operating assets using the comparable company valuation approach, VRC workpapers reflect that VRC identified a group of publicly traded companies that VRC ostensibly determined were comparable to Tribune.[978] VRC then

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976 These ownership interests included Tribune's 100% ownership interest in the Chicago Cubs (which was consolidated for financial statement presentation purposes), as well as partial ownership of the equity in, among others, TV Food Network, CareerBuilder, and Comcast SportsNet (whose results were not consolidated). Ex. 4 at 18 and 109 (Tribune 2007 Form 10-K); Ex. 271 at VRC0051428 (Mednik E-Mail, dated May 4, 2007). *See also* Ex. 268 at TRB0149971 (VRC Step One Solvency Opinion, dated May 9, 2007) (reciting VRC's review of materials related to these equity investments).

977 The PHONES Notes had certain attributes allowing for deferral of certain cash tax liabilities, which VRC projected to the year 2029. Ex. 271 at VRC0051432 (Mednik E-Mail, dated May 4, 2007).

978 VRC's work papers reflect consideration of The E.W. Scripps Co., McClatchy Company, New York Times Company, Belo Corp., and Media General, Inc. as comparable companies for purposes of VRC's analysis. *Id.* at VRC0051422.

computed values for those firms on the basis of observed equity trading values and debt, expressing such values as multiples of reported latest twelve month (LTM) revenues, EBITDA, and free cash flow (FCF), as well as multiples of current year expectations (CFY) and subsequent year expectations (NFY) of revenues, EBITDA, and FCF.[979] On the basis of the resultant multiples, VRC selected a range of (only) EBITDA multiples (LTM, CFY, and NFY multiples), applying the range of selected multiples to Tribune LTM EBITDA, CFY EBITDA, and NFY EBITDA statistics.[980] Applying VRC's selected range of EBITDA multiples to Tribune's EBITDA statistics, VRC computed values of Tribune's assets ranging between $11.33 billion and $13.06 billion.[981] It appears that in the days leading up to the May 9, 2007 Tribune Board meeting, VRC then further revised its computations by, among other things, including an additional $60 million of annual EBITDA based on Tribune's expected 401(k) cost savings under the ESOP structure.[982] These revisions resulted in an increased "comparable companies" asset valuation range for Tribune of $11.33 billion to $13.49 billion, which was the range of values that VRC presented to the Tribune Board during its May 9, 2007 meeting.[983]

(ii) Comparable Transactions.

VRC work papers reflect that, in computing a value for Tribune's operating assets using the transactions multiples approach, VRC identified 15 transactions involving the acquisition of companies that VRC deemed relevant for purposes of conducting its analysis.[984] On the basis of

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979 *Id.*

980 The CFY EBITDA and NFY EBITDA estimates were derived from the 2007 operating plan expectations. Although VRC computed revenue and FCF multiples in addition to EBITDA multiples, VRC's work papers indicate that VRC did not compute values for Tribune on the basis of those statistics. *Id.* at VRC0051407. The Examiner is unaware why VRC made, but ultimately ignored, its revenue and FCF multiple calculations.

981 *Id.*

982 Ex. 274 at TRB0149955 (VRC Solvency Opinion Analysis, dated May 9, 2007).

983 *Id.*

984 Ex. 271 at VRC0051425 (Mednik E-Mail, dated May 4, 2007).

its determination of the value conveyed in connection with each of these acquisitions, VRC expressed those values as multiples of each acquired company's LTM revenue and EBITDA.[985] Based on the observed ranges of LTM EBITDA and revenue multiples so computed, VRC selected a range of (only) EBITDA multiples that it then applied to not only Tribune LTM, but also CFY and NFY, EBITDA statistics in determining a range of Tribune operating asset values implied by that calculation.[986] VRC's resulting values under this analysis ranged from $11.56 billion to $13.34 billion.[987] As noted above, it appears that VRC thereafter revised its EBITDA computations to, among other things, reflect an additional $60 million in Tribune's expected 401(k) cost savings.[988] These revisions resulted in an increased "comparable transactions" asset valuation range for Tribune of $11.75 billion to $13.49 billion, which was the range of values that VRC presented to the Tribune Board during its May 9, 2007 meeting.[989]

(iii) Discounted Cash Flow.

The May 9, 2007 Tribune Board presentation materials prepared by VRC reflect that VRC concluded a range of Tribune operating asset values of between approximately $9.83 billion and $11.26 billion from its application of the DCF methodology.[990] Although VRC did not present the underlying DCF model parameters (*e.g.,* cash flow projections, discount rates, or terminal period multiples utilized) to the Tribune Board on May 9, 2007,[991] VRC's work papers reflect reliance on management's February 2007 operating plan[992] as the basis for the

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985 *Id.*

986 *Id.* at VRC0051424-25.

987 *Id.* at VRC0051407.

988 Ex. 274 at TRB0149955 (VRC Solvency Opinion Analysis, dated May 9, 2007).

989 *Id.*

990 *Id.*

991 Ex. 274 (VRC Solvency Opinion Analysis, dated May 9, 2007).

992 Ex. 71 (ESOP Transaction Model, dated February 8, 2007).

forecasted cash flows incorporated into VRC's DCF model (though VRC appears to have made certain adjustments to management's projections).[993] VRC converted annual forecasted EBITDA over the five-year projection horizon set forth in the 2007 operating plan to cash flow by deducting an estimate of working capital investment, taxes and capital expenditures.[994] VRC then calculated a terminal value range (on the basis of a range of exit multiples) and discounted to present value both the determined five-year interim period cash flows and the determined range of terminal values, at discount rates ranging between 7.5% and 8.5%.[995] The resulting "matrix of values" in VRC's work papers reflected a range of operating asset enterprise values of between \$9.38 billion and \$10.75 billion,[996] which range was then upwardly revised to \$9.83 billion and \$11.26 billion in the May 9, 2007 board presentation, to account for VRC's adjustments to its EBITDA calculations.[997]

(iv) Sum-of-the-Parts.

In conducting its SOP analysis, VRC valued Tribune's two operating segments separately, utilizing market and transaction multiples, and DCF methodologies to estimate values for the Broadcasting Segment and the Publishing Segment.[998] As such, VRC utilized the same basic methodologies used to value Tribune's assets on a consolidated basis, but did so separately for the business segments.[999]

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993 Ex. 275 (VRC Model Supporting May 9, 2007 Solvency Opinion).

994 Ex. 271 at VRC0051430 (Mednik E-Mail, dated May 4, 2007).

995 *Id.*

996 *Id.* at VRC0051407.

997 Ex. 274 at TRB0149955 (VRC Solvency Opinion Analysis, dated May 9, 2007).

998 Ex. 271 at VRC0051427 (Mednik E-Mail, dated May 4, 2007). VRC also valued certain of Tribune's certain radio assets separately, but the value VRC ascribed to these assets represented less than 1.5% of the value calculated as Tribune's total operating enterprise value. *Id.*

999 VRC's concluded SOP value ranges were slightly different between their May 4, 2007 work papers (\$11.4795 billion to \$13.9627 billion) and the May 9, 2007 Tribune Board presentation (\$11.4873 billion to \$13.9721 billion). The Examiner was unable to determine the basis for this discrepancy.

(2) Approach to Valuing Tribune's Equity Investments.

For purposes of valuing Tribune's equity investments, VRC estimated values for each discrete investment (with limited exceptions) using different valuation methodologies, including DCF and market based approaches, as well as, for certain publicly traded investments owned by Tribune (including AdStar and Time Warner shares), observed stock market prices as the basis for its valuation conclusions, as follows:[1000]

VRC'S EQUITY INVESMENT VALUATION ($mm)

		Valuation Range			Ownership Adjusted Range			Valuation Approach			
	Tribune Ownership	Low	Mid	High	Low	Mid	High	Unknown	DCF	Transaction Comps	Trading Comps
Cubs	100.0%	$ 600	$ 675	$ 750	$ 377	$ 422	$ 467	X			
TV Food Network	31.3%	$ 3,370	$ 3,743	$ 4,115	$ 1,055	$ 1,171	$ 1,288		X	X	
Career Builder	42.5%	$ 1,428	$ 1,615	$ 1,801	$ 607	$ 686	$ 766		X		X
Classified Ventures	27.8%	$ 243	$ 272	$ 302	$ 67	$ 76	$ 84		X		X
Comcast SportsNet Chicago	25.3%	$ 886	$ 961	$ 1,036	$ 142	$ 154	$ 165		X	X	
ShopLocal	42.5%	$ 82	$ 97	$ 113	$ 35	$ 41	$ 48			X	X
Topix.net	33.7%	$ 75	$ 80	$ 85	$ 25	$ 27	$ 29			X	X
Legacy.com	40.0%	$ 10	$ 13	$ 16	$ 4	$ 5	$ 7		X	X	X
Recycler		$ 72	$ 72	$ 72	$ 72	$ 72	$ 72	X			
AdStar (3.4mm shares @ $2.25/share)		$ 0	$ 0	$ 0	$ 8	$ 8	$ 8				
TWX (publicly traded Time Warner shares)		$ 0	$ 0	$ 0	$ 6	$ 6	$ 6				
Consumer Networks		$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	X			
Quetzel / Chase	3.0%	$ 42	$ 42	$ 42	$ 1	$ 1	$ 1	(1)			
Low Income Housing Credits	100.0%	$ 12	$ 17	$ 21	$ 12	$ 17	$ 21	X			
Total		**$ 6,820**	**$ 7,587**	**$ 8,353**	**$ 2,411**	**$ 2,686**	**$ 2,962**				

Notes:
(1) Value based on September 30, 2006 balance sheet (book value since investment carried at fair value)

VRC did not detail the basis for the value it ascribed to Tribune's ownership of the Chicago Cubs ($422 million mid-point valuation), although it appears that valuation information was provided to VRC by Tribune management and was likely based on management expectations derived from previous discussions with third parties regarding a potential sale of the Chicago Cubs. VRC determined values on a pre-tax basis, except for the values for the Chicago Cubs and Comcast SportsNet Chicago, which were presented net of estimated capital gains

1000 *Id.* at VRC0051428; Ex. 276 at VRC0024002 (Excel Version of Equity Investment Analysis forwarded by VRC to Tribune on May 4, 2007).

taxes.[1001] For certain smaller Tribune equity investments, the basis of VRC's valuation determination is not apparent.

After determining the aggregate value of the enterprises comprising Tribune's individual investments, VRC quantified an "ownership adjusted range" based on a calculation which multiplied Tribune's percentage ownership interest in each investment by VRC's determined aggregate equity value for each.[1002] Using this approach, VRC determined the value of Tribune's total equity investments ranged between $2.41 billion to $2.96 billion,[1003] which is consistent with the values presented to the Tribune Board on May 9, 2007.[1004]

(3) Approach to Valuing PHONES Notes Tax Savings.

VRC valued the tax savings associated with the PHONES Notes by estimating the economic benefit to Tribune of the deferral of cash tax payments afforded by the structure of the PHONES Notes, which permitted interest deductions in excess of the actual cash interest paid, thereby deferring the payment of substantial income tax until the maturity of the PHONES Notes.[1005] VRC netted the present value of the periodic cash tax savings against the present value of the future cash tax obligation at maturity, yielding a net present value for the tax savings of approximately $382.7 million,[1006] which is consistent with the values presented to the Tribune Board on May 9, 2007.[1007]

[1001] Such presentation implies that VRC assumed that Tribune had no intention to liquidate its ownership interests in its investments, other than the Chicago Cubs and Comcast SportsNet.

[1002] Ex. 271 at VRC0051428 (Mednik E-Mail, dated May 4, 2007); Ex. 276 (Excel Version of Equity Investment Analysis forwarded by VRC to Tribune on May 4, 2007).

[1003] Ex. 271 at VRC0051428 (Mednik E-Mail, dated May 4, 2007); Ex. 276 (Excel Version of Equity Investment Analysis forwarded by VRC to Tribune on May 4, 2007).

[1004] Ex. 274 at TRB0149955 (VRC Solvency Opinion Analysis, dated May 9, 2007).

[1005] Ex. 271 at VRC0051432 (Mednik E-Mail, dated May 4, 2007).

[1006] *Id.*

[1007] Ex. 274 at TRB0149955 (VRC Solvency Opinion Analysis, dated May 9, 2007).

(4) The Examiner's Assessment of the Reasonableness of VRC's Valuation Conclusions.

With the assistance of his financial advisors, the Examiner evaluated the reasonableness of VRC's Step One solvency analysis from two perspectives. First, the Examiner compared the range of equity values determined by VRC, expressed as a per share value, to market indicia. Second, the Examiner evaluated the components of VRC's valuation analysis and the assumptions underlying those determinations.

VRC's Step One solvency analysis presented to the Tribune Board on May 9, 2007 computed a range of implied equity value as follows:

IMPLIED POST-STEP ONE EQUITY VALUE ($mm)

	Low	Mid	High
Operating Asset Values	$ 11,101.8	$ 12,078.7	$ 13,055.6
Equity Investments	$ 2,412.0	$ 2,686.0	$ 2,961.0
PHONES Tax Savings	$ 382.7	$ 382.7	$ 382.7
Cash	$ 182.1	$ 182.1	$ 182.1
Asset Value	**$ 14,078.6**	**$ 15,329.5**	**$ 16,581.4**
Step One Debt (Est.)	($ 9,463.8)	($ 9,463.8)	($ 9,463.8)
Contingent Liabilities	($ 97.1)	($ 97.1)	($ 97.1)
Debt	**($ 9,560.9)**	**($ 9,560.9)**	**($ 9,560.9)**
Implied Post-Step One Equity Value	**$ 4,517.7**	**$ 5,768.6**	**$ 7,020.5**

Source: Ex. 274 at TRB0149955 (VRC Solvency Opinion Analysis, dated May 9, 2007).

Because VRC's computed range of equity values was established after taking into account the amount of anticipated Step One Debt (and therefore, by definition, after giving effect to the redemption of the shares contemplated to be tendered from the proceeds of advances giving rise to that debt), an implied equity value per share can be computed on the basis of post-Step One common stock outstanding as follows:

IMPLIED POST-STEP ONE VALUE PER SHARE			
	Low	**Mid**	**High**
VRC Computed Equity Value	$ 4,518	$ 5,769	$ 7,021
Post-Step One Shares Outstanding (millions)	117.1	117.1	117.1
Implied Value Per Share	**$ 38.58**	**$ 49.26**	**$ 59.96**

Source: Ex. 274 at TRB0149961 (VRC Solvency Opinion Analysis, dated May 9, 2007).

The Examiner concludes that the values implied by VRC's Step One solvency analysis included or relied on a series of aggressive or unsupported underlying assumptions that were unreasonable in light of both valuations of alternatives considered by the Special Committee leading up to the approval of the LBO on April 1, 2007,[1008] as well as the observed trading values of Tribune Common Stock in periods leading up to and including Step One Financing Closing Date.[1009] The following are the primary problems with VRC's Step One solvency opinion:[1010]

- VRC's DCF model contained a methodological error whereby VRC overstated the calculated tax liability (due to an error in its treatment of depreciation and

1008 The per share values implied by VRC's analysis are belied by analyses of value conducted by the Special Committee's and Tribune's financial advisors, which simply do not reflect values remotely close to those determined by VRC's mid-point valuation. Ex. 141 at TRB0098650 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated March 30, 2007); Ex. 144 at MS64879-83 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated April 1, 2007).

1009 At the mid-point of VRC's valuation range, a $49.26 implied per share value would represent a premium of almost 65% to the observed trading value (approximately $30 per share) of the Tribune Common Stock in periods leading up to the announcement of the Leveraged ESOP Transactions on April 2, 2007. This overstatement is further magnified when the methodological errors embedded in VRC's DCF and multiples-based analyses are corrected (as discussed in detail below).

1010 The Examiner notes that VRC performed its Step One solvency analysis on an extremely compressed timetable, which may account for the certain of the errors described above and elsewhere in the Report. By contrast, VRC had a substantial period of time to develop and issue its Step Two solvency opinion.

amortization), thereby understating expected future cash flow and under-quantifying Tribune's asset value under the DCF methodology.[1011]

- VRC's DCF model failed to deduct the costs of the planned Tribune interactive business acquisition and the costs of internal development investments in determining cash flow, resulting, among other things, in a substantial overstatement in Tribune operating asset value (a $443.6 million overstatement of midpoint value).[1012]

- VRC's DCF model improperly increased forecasted cash flow resulting from anticipated Step Two compensation cost savings as a result of ESOP ownership (a $455.3 million overstatement of midpoint value).[1013]

- VRC improperly converted its calculated terminal value to present value by erroneously specifying the applicable discount period in its DCF model (a $301.0 million understatement of midpoint value).[1014]

- VRC improperly calculated the trading the multiples of cohort companies by failing to adjust total asset value to remove, when appropriate, the fair market value of each company's equity investments from total enterprise value before computing the multiple.[1015]

[1011] Specifically, in estimating taxable income in its DCF computation, VRC added depreciation and amortization expense to EBITDA instead of deducting those amounts to determine taxable income (EBIT). VRC thus overstated taxes by twice the amount of depreciation and amortization in its model, resulting in an understatement of value that lowered VRC's mid-point DCF value to $10.5467 billion (instead of $11.4423 billion without the error). Ex. 277 (LECG Model Adjusting for VRC's Depreciation and Amortization Error).

[1012] Ex. 278 (LECG Model Adjusting for VRC's Costs of Interactive Business Acquisition Error).

[1013] Specifically, VRC assumed the recognition of $60 million in annual cash flow savings in its DCF analysis (as well as its forward looking multiples analysis), some if not all of which relates to expected 401(k) cost savings contemplated to be obtained only in connection with Step Two. Ex. 279 (LECG Model Adjusting for VRC's Compensation Cost Savings Error).

[1014] Ex. 280 (LECG Model Adjusting for VRC's Additional Discount Period Error).

[1015] Specifically, VRC erroneously adjusted the enterprise values for identified cohort companies by removing those investments on the basis of book values recorded on the cohort companies' balance sheets. As a result (assuming that the fair value of such ownership interests exceeded book value, which, on the basis of the asserted market values of Tribune's equity investments, is likely true), VRC inflated the cohort companies' operating asset values, and hence, earnings multiples. When those multiples were applied to Tribune's

- VRC used discount rates in its DCF analysis that were arguably too low (resulting in an overstatement of value) given the uncertainty associated with Tribune's ability to achieve long term expected growth rates in the Publishing Segment, particularly given the significant growth contemplated in the interactive business component of management's projections. Specifically, VRC used discount rates ranging from 7.5% to 8.5%,[1016] which does not properly reflect the risk attendant to the projected financial results in VRC's DCF model—particularly given rapid, high-margin growth projected in Tribune's interactive business, which Tribune predicted[1017] would make up for revenue losses anticipated in its more traditional publishing businesses:

INTERACTIVE AS A PERCENT OF PUBLISHING SEGMENT REVENUE

	2007	2008	2009	2010	2011
Interactive Revenues (1)	$ 273	$ 322	$ 376	$ 435	$ 500
Total Publishing Revenue (2)	$ 3,946	$ 3,969	$ 3,998	$ 4,025	$ 4,054
Interactive Percentage	**6.9%**	**8.1%**	**9.4%**	**10.8%**	**12.3%**

(1) Interactive revenues drawn from Ex. 242 (Ratings Agency Presentation, dated March 2007).
(2) Publishing Segment revenues drawn from Ex. 71 (ESOP Transaction Model - Revised Operating Plan Case, dated February 8, 2007).

historical and forward looking EBITDA (the only performance metrics used by VRC), the result erroneously attributed significant value related to Tribune's equity investments. This resulted in a significant potential "double count" of value because VRC added the separately determined value of Tribune's equity investments to the value determined for its operating cash flows, determined on the basis of inflated multiples.

1016 Ex. 271 at VRC0051430 (Mednik E-Mail, dated May 4, 2007).

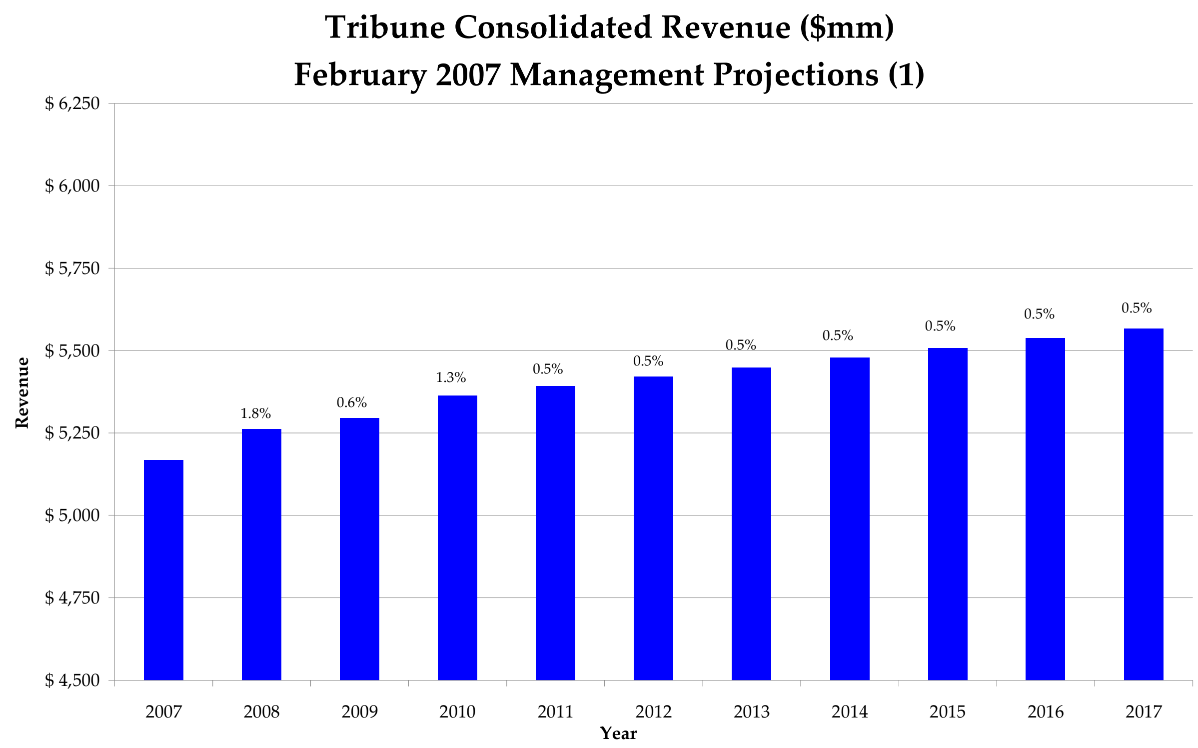
1017 Ex. 242 at TRB0094578-79 (Rating Agency Presentation, dated March 2007). The risks attendant to revenue expectations from future business opportunities not yet even identified at the time the February projections were developed should have led VRC to use much higher discount rates. Indeed, Timothy Landon of Tribune told the Examiner that the discount rate would need to be double-digits. Examiner's Interview of Timothy Landon, June 28, 2010. Moreover, Samuel Zell told the Examiner that EGI placed very little value on Tribune's interactive business during EGI's due diligence because "they were working on a whole bunch of projects that were going to create revenue in 2016. They didn't know what they were doing. . . . [N]ow we're working on projects that produce revenue next week." Examiner's Interview of Samuel Zell, June 14, 2010.

- For purposes of computing a terminal value in its DCF analysis, VRC used exit multiples that imply long term growth rates exceeding reasonable expectations:[1018]

IMPLIED GROWTH RATES per VRC			
	Multiples		
WACC	7.50	8.00	8.50
7.50%	1.56%	1.91%	2.22%
8.00%	2.03%	2.38%	2.70%
8.50%	2.50%	2.86%	3.17%

- These implied long-term growth rates were unreasonable in light of the general secular decline in the publishing business and decline in Tribune's profitability. Specifically, these implied growth rates were unjustified based on the year-over-year 2004 through 2006 declines in Tribune's profitability (discussed earlier in the Report), the expectation that this trend would continue for 2007 (as reflected in the February 2007 projections relied on by VRC), and the fact that those projections, although contemplating growth in 2008 and beyond, contemplated annual growth rates significantly lower than what VRC assumed (despite VRC's professed reliance on the projections as reasonable for purposes of its analysis). Stated differently, VRC explicitly used the February 2007 forecast, yet adopted an exit multiple approach to determining a terminal value that effectively assumed growth rates well beyond those even contemplated by management at the time. The table below shows the year-over-year revenue growth rates assumed by management in the February 2007 plan:

[1018] VRC's implied long-term growth rates are reflected in VRC's ranges of concluded terminal values (calculated by VRC using exit multiples ranges) and the ranges of discount rates used by VRC to convert forecasted future cash flows, including terminal values, to present value. By expressing the range of VRC's calculated terminal values as a function of VRC's assumed terminal period, or perpetuity cash flow, and the range of discount rates used by VRC in its DCF model, implied growth rates can be calculated as $TV = FCF \div (r-g)$, where "TV" means the range of terminal values calculated by VRC, "FCF" means VRC's assumed perpetuity cash flow as reflected in its model, "r" means VRC's selected range of discount rates, and "g" means the long-term growth rates inherently incorporated into VRC's analysis. This model, referred to as a "Gordon Growth Model," is well recognized and generally accepted in the valuation community.



(1) The revenue figures above include forecasted revenues excluding the Chicago Cubs and other discontinued operations (e.g., SCNI and Hoy, New York). Prior presentations of revenue forecasts inclusive of pro forma estimates of revenue for those businesses were necessary to facilitate a comparison of projected results to actual results, which include the Chicago Cubs and subsequently discontinued operations (SCNI and Hoy-New York) in reported amounts.

- VRC failed to use multiples other than EBITDA multiples (e.g., revenue multiples or FCF multiples) in its market comparables approach, which, had they been used, would have resulted in lower values.[1019]

[1019] When revenue and FCF multiples are included in the determination of VRC's range of indicated values from application of trading multiples to Tribune earnings and revenues, the calculated averages of indicated Tribune values reflect substantial downward adjustment. The following tables illustrate this point. For purposes of its comparable company trading multiples valuation analysis, VRC considered only EBITDA multiples, calculating such multiples for identified cohort companies and then applying a range of multiples to Tribune EBITDA statistics. The valuation conclusions are shown below. (The Examiner notes that the multiples ranges selected by VRC are in excess of the medium values calculated for the cohorts for two of the three multiples it selected and used. The Examiner also notes that VRC applied the EBITDA multiples to EBITDA contributions expected from Tribune's ownership in the Chicago Cubs, both its multiples based valuation conclusion, even while simultaneously including a value for the Chicago Cubs in connection with VRC's separately quantified value of equity investments):

- VRC selected multiples ranges for both the trading and transaction multiples analysis which failed to incorporate lower-end multiples observed from the data on which VRC ultimately selected its multiples ranges.[1020]

COMPARABLE COMPANY TEV CALCULATION USED BY VRC						
	May 9, 2007		Multiple		Enterprise Value	
	Model		Low	High	Low	High
VRC LTM EBITDA	$ 1,334	(1)	8.50	9.50	$ 11,336	$ 12,669
VRC CFY EBITDA	$ 1,306		9.00	10.00	$ 11,753	$ 13,059
VRC NFY EBITDA	$ 1,420	(2)	8.50	9.50	$ 12,073	$ 13,494
Minimum					**$ 11,336**	
Maximum					**$ 13,494**	
Average					**$ 12,397**	
Median					**$ 12,371**	

(1) Although VRC used $1,333.60 for this EBITDA figure it appears the actual amount per the Tribune February 2007 projections should be $1,339.
(2) This amount includes $60 mm in 401(k) savings.

As evidenced by VRC's work papers, however, VRC also calculated revenue and FCF multiples for the identified cohort companies—but then ignored these multiples in conducting its analysis. Ex. 271 at VRC0051422 (Mednik E-Mail, dated May 4, 2007). Had VRC determined values based on these other multiples, the following valuation conclusions would have resulted:

COMPARABLE COMPANY TEV CALCULATION IGNORED BY VRC				
	May 9, 2007			
	Model		Multiple	Enterprise Value
VRC LTM Revenue	$ 5,433	(1)	1.9	$ 10,323
VRC CFY Revenue	$ 5,358	(1)	1.9	$ 10,180
VRC NFY Revenue	$ 5,262	(1)	1.9	$ 9,998
VRC LTM FCF	$ 680	(2)	10.8	$ 7,349
VRC CFY FCF	$ 699	(2)	12.3	$ 8,593
VRC NFY FCF	$ 763	(2)	9.8	$ 7,473
Minimum				**$ 7,349**
Maximum				**$ 10,323**
Average				**$ 8,986**
Median				**$ 9,295**

(1) Revenue figures were derived from the Tribune February 2007 projections that correspond with the EBITDA figures utilized by VRC. They do not represent an "apples-to-apples" comparison.
(2) FCF is calculated as EBITDA (VRC's figures) less cash taxes (with an assumed tax rate of 39%) less capital expenditures plus change in working capital. As with revenues, the FCF values do not represent an "apples-to-apples" comparison as the values for NFY are adjusted for certain asset sales.

[1020] For example, VRC's work papers reflect that cohort company LTM EBITDA multiples ranged from 7.1x to 9.3x, whereas VRC applied a range of multiples of 8.5x to 9.5x for Tribune. VRC applied multiples well in excess of the highest observed multiple derived from its analysis of the cohort companies in its "high" range valuation, while simultaneously establishing the "low" range on the basis of a multiple exceeding the lowest

• VRC inappropriately used LTM multiples calculated in connection with VRC's transaction multiples approach by applying historical (LTM) multiples to forward-looking (CFY and NFY) Tribune EBITDA statistics.[1021]

• VRC used transaction multiples for transactions occurring during a period spanning May 2003 through March 2007, when values, particularly in publishing, had experienced secular declines.[1022]

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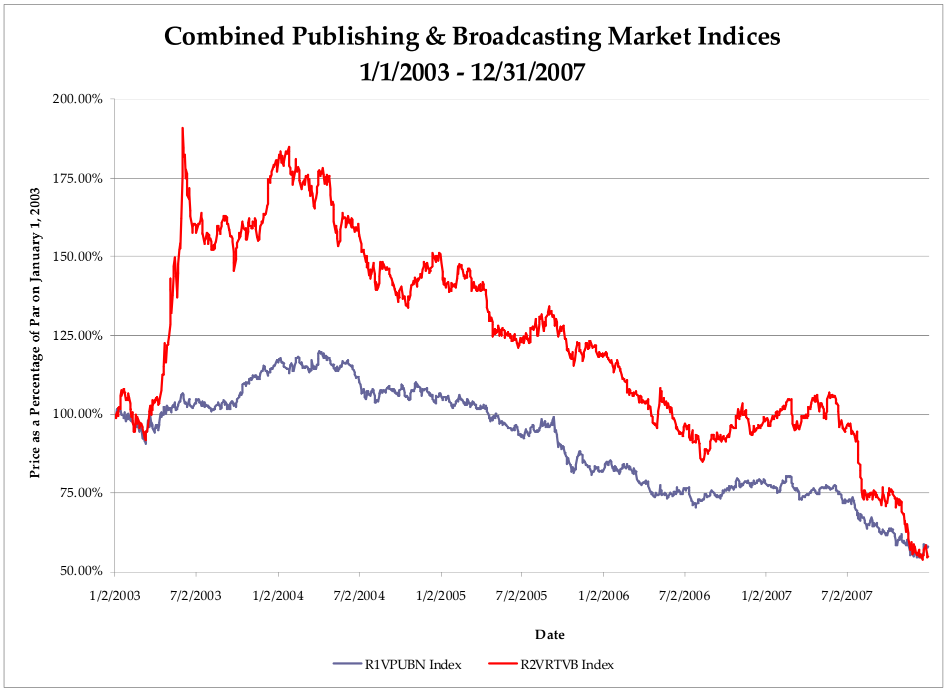
multiple observed from the cohorts. *See, e.g.*, Ex. 275 at VRC0001015 (VRC Model Supporting May 9, 2007 Solvency Opinion); Ex. 271 at VRC0051422 (Mednik E-Mail, dated May 4, 2007).

1021 It is important to ensure that multiples derived from a comparable company's economic performance over a given interval (e.g., latest twelve months) are applied to the target company's economic performance measured over the same relative measurement period. If an industry is in decline or, on the contrary experiencing substantial growth, mismatching a "backward looking" multiple with forward looking projections of the target company's EBITDA can produce unreliable values.

1022 By incorporating into its valuation analysis multiples derived from transactions dating back to 2003, VRC "benchmarked" a Tribune valuation conclusion to "cohort" acquisitions occurring at a time when industry expectations were likely very different.



Although the implications of "sector-wide" valuation changes likely would have been incorporated into transaction multiples to some degree (due to declining actual or EBITDA expectations, for example), in the Examiner's opinion use of significantly antecedent multiples in a rapidly changing industry sector is nonetheless improper.

- VRC failed to apply any minority or marketability discounts in connection with its determination of the value of Tribune's equity investments, despite the fact that (with limited exceptions) Tribune held less than a 50% ownership interest in those investments and most of Tribune's investments were in non-public, closely-held businesses.[1023]

- VRC used discount rates (in conducting DCF analyses to determine the value of certain equity investments) that failed to incorporate any size premium into its cost of capital determinations (despite a justifiable need to have done so given the smaller size of the firms in which Tribune was invested).

- VRC relied on market-based valuation approaches informed by companies materially different than Tribune or its investments, relying for example on Monster Worldwide as comparable to CareerBuilder, despite the former reporting significantly higher EBITDA margins than the latter.

[1023] In a memo titled, "Response to Questions From Lenders" from Bryan Browning (and other VRC employees) to Chandler Bigelow dated December 7, 2007 (as pertaining to VRC's Step Two solvency opinion, VRC responded to the following question: "10) Discuss the following issues concerning equity investments: a. Considering the Company has minority ownership in many of its equity investments, how has the marketability of these equity investments been considered?".

Response: "VRC reviewed and valued each of the Company's equity investments. A relatively small number of the Company's principal equity investments comprise a substantial percentage of the aggregate value of Tribune's equity investments. . . . VRC did not apply minority or marketability discounts to these equity investments because i) the principal equity investments are in attractive market segments that are growing, and VRC believes that there would be significant demand for the Company's minority interests in these investments; and ii) Tribune is generally able to elect board of director members for its principal equity investments. Microsoft's recent minority interest investment in Career[B]uilder supports VRC's valuation conclusion for Tribune's interest." Ex. 281 at TRB0398559 (Memorandum from Mr. Browning and Mr. Rucker to Mr. Bigelow, dated December 7, 2007).

Despite VRC's response, it is nonetheless appropriate to recognize some level of discount in determining the value of Tribune's minority ownership interests in illiquid (*i.e.,* non-publicly traded) assets. VRC's claim that Tribune's equity investments were in growing market segments would not modify the *nature* of Tribune's ownership interests, but rather would be reflected in (an enhancement to) the aggregate values ascribed to each enterprise already reflected in the value of the enterprise. Even though Tribune had (in certain instances) the ability to elect board members, this would not negate the justifiable inclusion of discounts. Rather, these considerations might be relevant in assessing the magnitude of discount to be applied but would not serve as a basis for eliminating them altogether.

- VRC ascribed equal weight to valuation results when results derived from Tribune specific cash flow estimates (DCF methodology) were materially lower than results obtained from "benchmarking" type methodologies (market and transaction multiple).[1024]

(5) The Examiner's Assessment of the Reasonableness of VRC's Cash Flow Tests.

VRC undertook cash flow tests to evaluate Tribune's post-Step One ability to fund its operations while meeting interest payment and principal amortization requirements associated with the Step One Financing debt covenants.[1025] VRC forecasted Tribune cash availability

1024 The following tables highlight the point:

VRC SUMMARY MAY 9, 2007 (at original weighting)			
	Valuation Summary		
Valuation Method	Low	Mid	High
Comparable Companies (25%)	$ 11,335.8	$ 12,414.8	$ 13,493.8
Comparable Transactions (10%)	$ 11,753.4	$ 12,623.6	$ 13,493.8
Discounted Cash Flow (40%)	$ 9,830.7	$ 10,546.7	$ 11,262.6
Sum of Business Segments (25%)	$ 11,487.3	$ 12,729.7	$ 13,972.1
Average Operating Enterprise Value	$ 10,813.4	$ 11,767.2	$ 12,720.9

Source:
Values from Ex. 274 at TRB0149966 (VRC Solvency Opinion Analysis, dated May 9, 2007).
Weighting from Ex. 1117 at VRC0038534 (Draft VRC Solvency Opinion Analysis, dated May 9, 2007).

VRC SUMMARY MAY 9, 2007 (at revised weightings)			
	Valuation Summary		
Valuation Method	**Low**	**Mid**	**High**
Comparable Companies (25%)	$ 11,335.8	$ 12,414.8	$ 13,493.8
Comparable Transactions (25%)	$ 11,753.4	$ 12,623.6	$ 13,493.8
Discounted Cash Flow (25%)	$ 9,830.7	$ 10,546.7	$ 11,262.6
Sum of Business Segments (25%)	$ 11,487.3	$ 12,729.7	$ 13,972.1
Average Operating Enterprise Value	**$ 11,101.8**	**$ 12,078.7**	**$ 13,055.6**

Source:
Values from Ex. 274 at TRB0149966 (VRC Solvency Analysis, dated May 9, 2007).

1025 Ex. 274 at TRB0149950 (VRC Solvency Opinion Analysis, dated May 9, 2007). VRC included in its analysis amounts available under Tribune's contemplated revolving credit facility, (*id.* at TRB0149957) and explicitly through year-end 2013 on the basis of a base case (modeled on the 2007 plan) and a sensitivity case (with downward adjustments to Tribune's ability to generate cash from operations and its equity investments).[1026] On the basis of modeling cash availability and EBITDA, VRC evaluated Tribune's ability to maintain both positive cash balances over the projection horizon and, simultaneously, compliance with debt covenants under both the base case and sensitivity case scenarios.

With the assistance of his financial professionals, the Examiner has concluded that VRC failed to model (a) the pro-forma effects of the inclusion of the anticipated Step Two Debt in evaluating downside scenarios, and (b) the foreseeable effects of revenue reductions on EBITDA, particularly regarding the Publishing Segment, as to which the Examiner's review of antecedent margin performance in a declining revenue environment demonstrates that publishing expenses are less variable in nature than VRC's downside model assumes. As such, the VRC model did not fully account for the reduction in EBITDA (cash flow) when modeling revenue declines.[1027]

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assumed Tribune's ability to refinance maturing obligations on comparable terms, Ex. 268 at TRB0149972 (VRC Step One Solvency Opinion, dated May 9, 2007). In his sworn interview with the Examiner, Mose Rucker of VRC acknowledged that there was an error in their DCF analysis before Step One: the cash taxes that were included in the analysis were too high, meaning that the DCF was lower than it should have been. Examiner's Sworn Interview of Mose Rucker and Bryan Browning, June 30, 2010, at 144:20-146:5.

[1026] Ex. 274 at TRB0149957 and TRB0149963 (VRC Solvency Opinion Analysis, dated May 9, 2007). The sensitivity case assumed (i) corporate discretionary acquisition expenditures would decline below base case expectations by $50 million annually from 2009-2013; (ii) publishing revenues would decline 3% in 2008, 3% in 2009, and 2% annually thereafter through 2013; (iii) EBITDA margins would be 22% in 2008, 21% in 2009, 22% in 2010, 24% in 2011, and 24.4% in both 2012 and 2013; Broadcasting Segment revenues would decline 5% in both 2008 and 2009, 3% in 2010, and 2% per year thereafter; (iv) annual EBITDA margins were modeled as 32% for 2008, 33% for 2009, 34% for 2010, 35% for 2011 and 35.8% each year thereafter. *Id.* at TRB0149962. VRC work papers reflect forecasts through 2017. Ex. 273 at VRC0060935 (Browning E-Mail, dated May 8, 2007).

[1027] Indeed, comparing VRC's downside scenario projection of operating cash flows with downside cases prepared by other advisors consulting on or participating in the Leveraged ESOP Transaction reveals VRC's inappropriate inflation of cash operating margins.

(6) VRC's May 24, 2007 Solvency Update.

On May 24, 2007, VRC issued a second Step One solvency opinion, concluding (consistent with its May 9, 2007 Step One solvency opinion) that:[1028]

- Immediately before giving effect to the consummation of the Step One Transactions, each of the Fair Value and Present Fair Saleable Value of the aggregate assets (including goodwill) of Tribune exceeds its liabilities (including Stated Liabilities and the Identified Contingent Liabilities);

- Immediately after and giving effect to the consummation of the Step One Common Stock Purchase, each of the Fair Value and Present Fair Saleable Value of the aggregate assets (including goodwill) of Tribune will exceed its liabilities (including the Stated Liabilities, the Identified Contingent Liabilities, and the New Financing), and such excess is in an amount that is not less than the capital of the Company (as determined pursuant to Section 154 of the DGCL);

TRIBUNE CONSOLIDATED STEP 1 STRESS CASES

	2007	2008	2009	2010	2011
VRC Stress Case (1)					
Revenue	$ 5,357.6	$ 4,992.6	$ 4,822.6	$ 4,717.3	$ 4,624.9
Operating Margin	**24.1%**	**23.9%**	**24.2%**	**25.9%**	**26.5%**
S&P (2)					
Revenue	$ 4,952.3	$ 4,634.2	$ 4,450.9	n/a	n/a
Operating Margin	**25.9%**	**25.2%**	**23.9%**	n/a	n/a
Duff & Phelps (3)					
Revenue	$ 5,299.0	$ 5,023.5	$ 4,938.1	$ 4,864.0	$ 4,791.0
Operating Margin	**25.4%**	**24.4%**	**24.4%**	**24.2%**	**23.3%**
Blackstone (4)					
Revenue	$ 5,338.0	$ 5,338.0	$ 5,268.6	$ 5,237.0	$ 5,168.9
Operating Margin	**23.7%**	**24.2%**	**24.4%**	**24.5%**	**24.2%**
Morgan Stanley Downside A (5)					
Revenue	$ 5,107.0	$ 5,045.7	$ 4,954.9	$ 4,905.3	$ 4,846.5
Operating Margin	**24.3%**	**23.8%**	**23.3%**	**22.6%**	**21.6%**
Morgan Stanley Downside B (5)					
Revenue	$ 5,066.0	$ 4,949.5	$ 4,840.6	$ 4,738.9	$ 4,639.4
Operating Margin	**23.9%**	**23.0%**	**21.9%**	**21.0%**	**19.6%**
Maximum	25.9%	25.2%	24.4%	24.5%	24.2%
Minimum	23.7%	23.0%	21.9%	21.0%	19.6%
Average	24.6%	24.1%	23.6%	23.1%	22.2%
Median	**24.3%**	**24.2%**	**23.9%**	**23.4%**	**22.5%**

(1) Ex. 283 (VRC Solvency Analysis, dated May 17, 2007).
(2) Ex. 212 (Standard & Poor's Letter, dated March 29, 2007).
(3) Ex. 1063 (Duff & Phelps ESOP Analysis Preliminary Draft, dated April 1, 2007).
(4) Ex. 1062 (Blackstone Presentation, dated May 23, 2007).
(5) Ex. 144 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated April 1, 2007).

[1028] Ex. 269 at TRB0163159 (VRC Step One Solvency Opinion Bring-Down Letter, dated May 24, 2007).

- As of [May 24, 2007], immediately after and giving effect to the consummation of the Step One Transactions, Tribune will be able to pay its debts (including the Stated Liabilities, the Identified Contingent Liabilities, and the New Financing), as such debts mature or otherwise become absolute or due; and

- As of [May 24, 2007], immediately after and giving effect to the consummation of the Step One Transactions, Tribune Does Not Have Unreasonably Small Capital.

VRC apparently issued this updated solvency opinion, just 15 days after its initial May 9, 2007 opinion, to take into account, among other things, revised financing terms associated with the Leveraged ESOP Transaction and a May 2007 update to the original February 2007 projection model.[1029] Although VRC did not prepare a formal board presentation package similar to what it presented on May 9, 2007, VRC did prepare a comparable document for its internal use.[1030] Mose Rucker testified that although the revised projection model provided by Tribune showed reduced revenue and EBITDA expectations, such reductions were not anticipated to have a material affect on VRC's Step One opinion given the magnitude of the equity value "cushion" determined in connection with the May 9, 2007 solvency opinion.[1031] In any event, because VRC used the same methodology in its May 24, 2007 bring-down letter that

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[1029] Ex. 282 (Browning E-Mail, dated May 14, 2007). Other information VRC considered includes (i) the Tribune Amendment to the Tender Offer filed with the SEC on May 10, 2007, (ii) Tribune's first quarter 2007 Form 10-K (which was not available to VRC on May 9, 2007, although VRC had reviewed comparable period unaudited financial statements through the first quarter previously), (iii) a Tribune Financing Update Memorandum that included a draft copy of the Tribune press release discussing April performance, and (iv) an updated copy of the February 2007 model. Ex. 269 at TRB0163154-55 (VRC Step One Solvency Opinion Bring-Down Letter, dated May 24, 2007).

[1030] Ex. 283 (VRC Solvency Analysis, dated May 17, 2007). The newly incorporated information only modestly reduced VRC's calculated equity values and cash flow forecasts. The range of equity values presented to the Tribune Board on May 9, 2007 ($4.518 billion, $5.769 billion, and $7.020 billion for VRC's low, mid, and high values, respectively) were reduced to $4.350 billion, $5.648 billion, and $6.946 billion for the low, mid, and high equity values in the May 17, 2007 analysis. As such, VRC's incorporation of the May 2007 model revisions did little to alter VRC's opinion regarding Step One solvency and capital adequacy.

[1031] Ex. 264 at 174:15-175:12 (Rule 2004 Examination of Mose Rucker, December 3, 2009); Ex. 1103 (Browning E-Mail, dated May 15, 2007). VRC did, however, recognize that these modifications would potentially have an impact on the Step Two solvency analysis, and in May 2007 VRC conducted some preliminary analyses relating to Step Two solvency. Ex. 283 (VRC Solvency Analysis, dated May 17, 2007); Ex. 1103 (Browning E-Mail, dated May 15, 2007).

it used in its May 9, 2007 Step One solvency opinion, both analyses contained the same errors and omissions discussed above.

4. Knowledge and Actions of the Lead Banks and Financial Advisors in Connection with the Step One Transactions.

a. JPM Entities.

The JPM Entities and their designated roles in the Step One Transactions are as follows: (a) JPMCB as a lender, administrative agent, documentation agent, and syndication agent and (b) JPMorgan as a lender, joint lead arranger and joint bookrunner.[1032]

The key personnel working on behalf of JPM typically are identified in correspondence by virtue of their department or working group, not by a particular corporate entity for which they purport to be acting. Some of the key personnel include:[1033]

<u>Client Credit Management</u>
Jeffrey Sell, Senior Vice President
John Kowalczuk, Vice President
Jieun (Jayna) Choi, Analyst
<u>Investment Banking Client Coverage</u>
Brit Bartter, Vice Chairman
<u>Technology, Media and Telecom Group</u>
Peter Cohen, Managing Director
<u>Syndicated and Leveraged Financing</u>
Patricia Deans, Managing Director
Rajesh Kapadia, Managing Director
Yang Chen, Associate

[1032] Ex. 178 at 8-9 (Step One Confidential Information Memorandum); Ex. 944 (Step One Commitment Letter); Ex. 1010 (Step Two Commitment Letter); Ex. 175 (Bridge Credit Agreement); Ex. 179 (Credit Agreement). Unlike financial institutions that served simultaneously as lenders and as advisors to Tribune, the JPM Entities served only as lenders to Tribune and therefore neither of the JPM Entities were potentially conflicted, rendering the distinction between JPMCB and JPMorgan less important than the distinctions among, for example, the Merrill Entities.

[1033] Ex. 178 at 8-9 (Step One Confidential Information Memorandum).

(1) Activities.

On February 15, 2007, William Pate of EGI telephoned Brit Bartter of JPMCB to express Samuel Zell's potential interest in pursuing a transaction involving Tribune and to gauge JPMCB's interest in helping to finance such a transaction.[1034] Mr. Bartter, who was the Zell client executive at JPMCB for non-real-estate transactions, recalls being surprised that Mr. Zell was interested in Tribune.[1035] Mr. Bartter asked JPMCB's conflicts desk to determine whether JPM could finance EGI's proposal; the next morning, Mr. Bartter learned that the conflicts desk had cleared the engagement.[1036] JPMCB assembled a team initially consisting of Peter Cohen, an investment banker who was the primary relationship contact for Tribune, and Rajesh Kapadia, who worked in JPMorgan's Syndicated and Leveraged Finance group, to evaluate EGI's proposal.[1037] In addition to Mr. Cohen and Mr. Kapadia, the team ultimately included Natasha Klykova, Darryl Jacobson, Yang Chen, Mark Guterman, and Tesja Sommer from Syndicated and Leveraged Finance, Joachim Sonne, Tony Grimminck, and Gretchen Tonneson from Investment Banking Coverage, John Kowalczuk and Jieun (Jayna) Choi from Client Credit Management, and Jeffrey Sell, as Credit Executive.[1038] Mr. Bartter's role consisted of arranging for Mr. Cohen and Mr. Kapadia to meet with Mr. Pate, and then acting as a liaison between JPM and EGI through the closing of the Step Two Transactions.[1039]

[1034] Examiner's Interview of Brit Bartter, June 16, 2010.

[1035] *Id.*

[1036] Although JPM had initially worked with other potential bidders on a possible Tribune transaction, "those trees had died. So this would be a new tree." Examiner's Interview of Brit Bartter, June 16, 2010; Ex. 285 at 38:25-39:6 (Rule 2004 Examination of Rajesh Kapadia, January 22, 2010).

[1037] Examiner's Interview of Brit Bartter, June 16, 2010; Ex. 285 at 23:3-12 (Rule 2004 Examination of Rajesh Kapadia, January 22, 2010).

[1038] Ex. 21 at 1 (JPMorgan Transaction Proposal, dated May 29, 2007).

[1039] Examiner's Interview of Brit Bartter, June 16, 2010.

EGI was a sophisticated client that already knew how it wanted to structure a Tribune deal when EGI first contacted JPMCB.[1040] Indeed, EGI had already submitted a written proposal to Tribune almost two weeks before approaching JPMCB,[1041] and the Special Committee had directed its advisors to continue to develop the EGI proposal several days before EGI's initial contact with JPMCB.[1042] Typically, JPMCB would next have simultaneously undertaken an internal review process to evaluate whether it was interested in financing the proposed transaction and also worked with its client to formulate or substantially refine a proposal in advance of presentation to the seller. Given that EGI already had presented a term sheet to the Special Committee, however, in this instance JPMCB focused its efforts primarily on vetting the structure proposed by EGI in order to determine whether JPMCB was willing to finance the proposal.[1043] In particular, JPMCB analyzed Tribune's enterprise value using, among other methods, public market comparables, private transaction comparables, sum-of-the-parts analysis, discounted cash flow methodologies, and the public market valuations of Tribune's non-consolidated investments.[1044] On February 20, 2007 (five days after Mr. Pate's initial call), Mr. Bartter was able to inform EGI that "JPM is there for them on their big project."[1045]

In his interview with the Examiner, Mr. Bartter characterized JPM's five-day turnaround time responding to EGI as "heroic," and indicated that both EGI and JPMCB's James Lee were

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[1040] *Id.*

[1041] Ex. 5 at 21 (Tender Offer). *See also* Ex. 116 (EGI Proposal, dated February 6, 2007). At this stage, EGI's proposal was for a one-step transaction. Ex. 285 at 42:3-7 (Rule 2004 Examination of Rajesh Kapadia, January 22, 2010).

[1042] Ex. 119 at 2 (Special Committee Meeting Minutes, dated February 13, 2007).

[1043] Examiner's Interview of Brit Bartter, June 16, 2010.

[1044] Ex. 286 (JPMorgan Project Tower Deal Package, dated February 2007).

[1045] Ex. 287 (Lee E-Mail, dated February 20, 2007).

pleased with the process and the response.[1046] Mr. Bartter stated to the Examiner that JPMCB's swift turnaround was not due to a desire to curry favor with Mr. Zell, but was instead a function of the sophistication of the JPMCB team and the advanced stage of the EGI proposal when JPMCB was first contacted.[1047] Similarly, regarding the substance (as opposed to timing) of JPMCB's response, Mr. Bartter maintained that JPM's long-standing relationship with Mr. Zell played no part in JPMCB's decision to approve the EGI proposal.[1048] According to Mr. Bartter, although JPM cared about developing and maintaining client relationships (and Mr. Zell is, in his own words, "a giant capital consumer"[1049]), JPM would not have made a different credit decision "just because it's Sam."[1050] To emphasize this point, Mr. Bartter identified a recent occasion in which he had been approached by EGI about a potential transaction that JPM ultimately declined to finance.[1051]

Jeffrey Sell, the senior credit officer at JPMCB who approved JPMCB's financing of EGI's proposed transaction with Tribune,[1052] corroborated Mr. Bartter's assertion that JPMCB approved the EGI proposal on February 20, 2007 on the basis of the proposal's substantive merits. Mr. Sell is an experienced credit professional who had been affiliated with JPM for approximately four decades before he retired in 2008.[1053] Mr. Sell first became involved with EGI's proposal on February 20, 2007, when Timothy Storms (another senior credit officer at

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1046 Examiner's Interview of Brit Bartter, June 16, 2010. *See also* Ex. 287 (Lee E-Mail, dated February 20, 2007).

1047 Examiner's Interview of Brit Bartter, June 16, 2010.

1048 *Id.*

1049 Examiner's Interview of Samuel Zell, June 14, 2010.

1050 Examiner's Interview of Brit Bartter, June 16, 2010.

1051 *Id.*

1052 Ex. 21 at JPM-00169467 (JPMorgan Transaction Proposal, dated May 29, 2007)

1053 Examiner's Interview of Jeffrey Sell, June 3, 2010. Mr. Sell was one of approximately six credit officers with "C6" approval authority, the highest authority at JPMCB. *Id.*

JPMCB) instructed Mr. Kapadia "to go straight to Jeff Sell for credit [approval]" because of conflicts precluding one or more other credit officers from reviewing the proposal.[1054] Although Mr. Sell was concerned about the high leverage and the use of what was to him an unfamiliar ESOP structure, Mr. Sell credibly explained that he approved EGI's proposal on its merits, with no pressure from JPMCB's senior management.[1055] Mr. Sell told the Examiner that he would not "incur a loss to further a business relationship,"[1056] and a contemporaneous e-mail from Mr. Sell to his supervisor, Brian Sankey, explains that even though the deal was "marginal" from a credit perspective, Mr. Sell "ultimately got comfortable because of the sponsor and the asset base."[1057]

The EGI proposal that Mr. Sell preliminarily approved on February 20, 2007 underwent two significant revisions relevant to JPMCB before the proposal ultimately was approved by the Special Committee and the Tribune Board on April 1, 2007:

First, at the Special Committee's request (made in response to concerns raised by several of Tribune's largest stockholders that the original EGI proposal involved too much delay and completion risk), on March 4, 2007, EGI modified its proposal to encompass two steps: an immediate share repurchase followed by the ESOP acquisition.[1058] Notwithstanding that adoption of this two-step structure necessarily prolonged the gap between execution of the Step Two Commitment Letter and the Step Two Financing Closing Date, JPMCB nevertheless analyzed the Leveraged ESOP Transactions as a whole, and never sought internal approval to

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[1054] Ex. 288 (Kapadia E-Mail, dated February 20, 2007); Ex. 289 at 52:11-54:2 (Rule 2004 Examination of John Kowalczuk, January 22, 2010).

[1055] Examiner's Interview of Jeffrey Sell, June 3, 2010.

[1056] *Id.*

[1057] Ex. 286 at JPM-00233346 (JPMorgan Project Tower Deal Package, dated February 2007). Mr. Sell explained that EGI's sponsorship was a factor because Mr. Zell would "bring a financial discipline that'd be helpful in managing the company in a leveraged environment," and that Tribune's asset base was important because there was both a core business and other assets (such as the Chicago Cubs) that could be sold off if necessary. Examiner's Interview of Jeffrey Sell, June 3, 2010.

[1058] *See* Report at § III.D.1.f.

provide the Step One Financing independent of the Step Two Financing.[1059] The failure to seek internal approval of this modification to EGI's proposal is surprising given that JPMCB was aware before the Commitment Letters were signed that the Step Two Financing could present a challenge. In a March 8, 2007 e-mail summarizing a conversation with Henry Higby of JPMCB's ratings advisory group, Yang Chen of JPMCB's Syndicated and Leveraged Finance group informed Mr. Kapadia and Ms. Klykova that "[w]e walked through the 2 step transaction, obviously recognizing Step 2 being the difficult part."[1060] Similarly, Mr. Sell indicated in a March 28, 2007 e-mail that he was "not concerned in the short term [*i.e.*, the Step One Financing]," but rather, he had concerns with "the second stage a year down the road."[1061]

Second, rather than creating a secured facility by pledging the stock of Tribune's existing subsidiaries, Tribune instead agreed to pledge the stock of two newly created intermediate holding companies (FinanceCo and Holdco).[1062] Mr. Sell expressed displeasure from a credit perspective when he learned of this change on March 27, 2007, writing to his supervisor (Brian Sankey) the following day that:[1063]

> the deal team informed me that over the weekend, the company, Merrill and Citi discovered that the existing debt indentures [require] separate financial statements . . . for each legal entity if we take the security envisioned in the original approval (pledge of the stock of the operating subs). The company says they produce statements by line of business and can't produce legal entity statements. Merrill and Citi served up a structure which they have already approved which would give up the pledge of the stock of the operating subsidiaries and replace that security with a pledge of

[1059] Ex. 289 at 116:3-9 (Rule 2004 Examination of John Kowalczuk, January 22, 2010). Mr. Sell did, however, request and review an analysis "showing just step 1, assuming step 2 never got done." Ex. 290 at JPM_00260070 (Tonnesen E-Mail, dated March 29, 2007).

[1060] Ex. 291 (Chen E-Mail, dated March 8, 2007).

[1061] Ex. 292 at JPM_003536 (Sell E-Mail, dated March 28, 2007).

[1062] *See* Report at § III.D.12.

[1063] Ex. 292 at JPM_00353676-77 (Sell E-Mail, dated March 28, 2007).

> the stock of a new intermediate holding company for the publishing assets which would hold a single asset, an inter-company note in the amount . . . of $4.2B. We would continue to have guarantees of the operating subsidiaries which will provide us with a superior claim vis a vis the existing debt. The rub in the new structure is that the value of the collateral offered is less than the face value of the secured debt.
>
> The new bank debt would be partially secured. Under the bankruptcy laws we would not be [entitled] to post petition interest if we are only partially secured. The repayment of our principal would be assured via the guarantees of the operating subsidiaries but interest post petition could not be claimed by secured debt since by definition the face of note is less than face of debt. . . .
>
> I'm comfortable the guarantees would give us assurance of repayment of principal . . . it's the interest post petition. I feel this second bridge has a possibility of being hung if markets tighten. . . . I've told the team I'm not comfortable approving the new structure for the reasons cited but would understand if [senior management] wanted to do this to further the Zell [relationship]. It's a question of lost income and leverage in a bankruptcy negotiation.

Although certain Parties have pointed to Mr. Sell's March 28, 2007 e-mail as evidence that JPMCB thought that a Tribune bankruptcy was likely, the Examiner believes that Mr. Sell's comments are those of a credit officer concerned with receiving the best possible security for the funds JPMCB was considering lending. Mr. Sell credibly described his concerns about the security for the Credit Agreement Debt to the Examiner as principally related to the fact that this particular modification had been agreed to over a weekend, without input from JPMCB, based on a concern (the preparation of entity-level audited financial statements) that Mr. Sell thought was "baloney."[1064] Notwithstanding his concern about the collateral, Mr. Sell noted that the Credit Agreement Debt would be structurally superior to other Tribune debt due to the Subsidiary Guarantees.[1065]

[1064] Examiner's Interview of Jeffrey Sell, June 3, 2010.

[1065] Ex. 292 at JPM_00353676 (Sell E-Mail, dated March 28, 2007).

Finally, certain Parties referred the Examiner to several e-mails sent by Peter Cohen, the Tribune client executive at JPMCB, using terms such as "ka-ching!!" to express enthusiasm about fees due JPM in connection with the Leveraged ESOP Transactions.[1066] Mr. Cohen's e-mails are crass and undoubtedly would have been highly embarrassing to JPMCB had they come to light even before Tribune became a debtor in bankruptcy. They are particularly inappropriate in light of what subsequently transpired. Nevertheless, the profit motive evidenced by these isolated, informal communications was not unique to JPM,[1067] nor is there any credible evidence that JPMCB was improperly motivated in its Tribune credit decisions. Indeed, Mr. Sell (the JPMCB credit officer who gave final approval to JPM's participation in the Leveraged ESOP Transaction) noted at the outset of JPMCB's involvement that "we will probably have to spend [a] considerable amount of fees to de risk the high yield bridge,"[1068] and Mr. Cohen (the author of the fee-related e-mails) later wrote that the JPM Entities "have eaten away at the majority of our fees to get this deal over the finish line."[1069]

(2) Due Diligence and Evaluations Performed.

As part of its internal credit approval process and due diligence, JPM examined the value of Tribune's operating businesses using a public market sum-of-the-parts analysis,[1070] a private market sum-of-the-parts analysis,[1071] a discounted cash flow analysis,[1072] and a market

[1066] Ex. 883 at JPM_00284643-44 (Cohen E-Mail, dated March 29, 2007); Ex. 884 at JPM_00492571 (Cohen E-Mail, dated April 2, 2007); Ex. 882 (Cohen E-Mail, dated April 4, 2007).

[1067] Mr. Zell told the Examiner that EGI planned "to make a fortune with this deal" and that Tribune "was fat city." Examiner's Interview of Samuel Zell, June 14, 2010.

[1068] Ex. 286 at JPM00233346 (Sell E-Mail, dated February 21, 2007).

[1069] Ex. 296 at JPM00340188 (Cohen E-Mail, dated May 11, 2007).

[1070] Ex. 21 at JPM00169503 (JPMorgan Transaction Proposal, dated May 29, 2007).

[1071] *Id.*

[1072] Ex. 297 at JPM00169569-76 (JPMorgan Credit Analysis, dated May 29, 2007).

capitalization analysis.[1073] Each of these valuations—when combined with the value of Tribune's non-consolidated assets (including the estimated value of the Chicago Cubs) and the value of the benefits expected to be obtained from the Merger—exceeded the debt that Tribune was expected to have on its books at the time the Merger closed. JPMCB also analyzed Tribune's future cash needs under management's base case projections and a downside that assumed recession in the general economy in 2008 and continued weakness in 2009.[1074] Under these analyses, the combination of Tribune's cash flows, its access to the $750M Revolving Credit Facility, and its ability to raise cash through asset sales would allow Tribune to meet its obligations as they became due ten years into the future.[1075] JPM also considered what would happen if Step One closed but Step Two did not.[1076]

Certain Parties referred the Examiner to an e-mail written by Jieun (Jayna) Choi, an analyst on the JPMCB deal team, to dispute JPMCB's assertion that its commitment to finance the Leveraged ESOP Transactions was made in the good-faith belief that Tribune would repay its debts (including its Non-LBO Debt) as they matured. Ms. Choi wrote:[1077]

> There was a WSJ article today that talked about how TRB should be very very careful at executing any deals or doing any-a-thing from now on, as the company has no room for mistake no more. The article also talked about how there is a wide speculation that the company might have put so much debt that all of its assets aren't gonna cover the debt, in case of (knock knock) you-know-what. Well that is actually basically what we (JK and me and the rest of the group) are saying too, but we're doing this 'cause it's enough to cover our bank debt. So, lesson learned from this deal: our (here, I mean JPM's) business strategy for TRB, but probably not only limited to TRB, is "hit and run" - "we'll s_ck the sponsor's

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[1073] *Id.* at JPM00169569.

[1074] Ex. 297 at JPM00169566 (JPMorgan Credit Analysis, dated May 29, 2007).

[1075] *Id.*

[1076] Ex. 290 at JPM00260070 (Tonnesen E-Mail, dated March 29, 2007).

[1077] Ex. 298 at JPM00422681 (Choi E-Mail, dated April 5, 2007).

> a$$ as long as we can s_ck $$$ out of the (dying or dead?) client's pocket, and we really don't care as long as our a$$ is well-covered. Fxxk 2nd/private guys - they'll be swallowed by big a$$ banks like us, anyways". See graph below (total debt, btw, is $14.639MM).

This text is followed by a draft of the chart that ultimately appears in the final Transaction Proposal approved by Mr. Sell and John Kowalczuk on May 29, 2007 in a portion of the document discussing loss given default (LGD).[1078] LGD is a risk assessment tool under which creditors "imagine the circumstances that would cause default and the condition of the obligor after such default."[1079] Critically, the LGD analysis is not concerned with the ***probability*** of a default, but rather is tool used to assess the magnitude of a loss if a default (however probable or improbable) were to occur.[1080] As is clear from the analysis portion of the May 29, 2007 Transaction Proposal, JPMCB's LGD calculation was based on an assessment of the capital structure and collateral package of the transaction—not any prediction of the probability of a Tribune default.[1081] In addition, the "total debt" figure set out in the text of Ms. Choi's e-mail ($14.639 billion) is incorrect because of two errors: (i) Ms. Choi included both the Delayed Draw Facility ($263 million) and the Senior Notes that the Delayed Draw Facility was to be used to pay down ($263 million) and (ii) Ms. Choi included the $750 million Revolving Credit Facility without accounting for the cash that would result from a draw on the Revolving Credit Facility.[1082] On balance, the evidence reveals that Ms. Choi's e-mail reflects a misunderstanding

[1078] Ex. 21 at JPM00169497 (JPMorgan Transaction Proposal, dated May 29, 2007).

[1079] Ex. 299 at 4 (Moody's LGD Modeling Methodology).

[1080] Examiner's Interview of Jeffrey Sell, June 3, 2010.

[1081] Ex. 21 at JPM00169491-98 (JPMorgan Transaction Proposal, dated May 29, 2007).

[1082] Examiner's Interview of Jeffrey Sell, June 3, 2010.

by a junior analyst who failed to understand the nature and purpose of the analysis she was asked to perform and whose conclusion that "total debt . . . is $14.639MM"[1083] was inaccurate.[1084]

b. Merrill Entities.

The principal Merrill Entities and their designated roles in the Step One Transactions were as follows: (a) MLCC, as an initial lender[1085] and syndication agent,[1086] and (b) MLPFS, as an advisor,[1087] a dealer manager,[1088] and a joint lead arranger and joint bookrunner.[1089] Although unclear, it also appears that ML&Co. may have been engaged as an advisor to Tribune.[1090] Some

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[1083] Ex. 298 at JPM00422681 (Choi E-Mail, dated April 5, 2007).

[1084] On May 21, 2010, counsel for the Examiner requested that counsel for JPMCB contact Ms. Choi to determine if she was willing to be interviewed. Ex. 300 (Nastasi E-Mail, dated May 21, 2010). On May 28, 2010, counsel for JPMCB indicated that Ms. Choi currently lives in South Korea, and declined to be interviewed by the Examiner. Ex. 301 (Letter from Sharon Katz, dated May 28, 2010). Counsel for JPMCB also provided contact information for Ms. Choi and indicated that it would provide counsel for Ms. Choi in the event she decided to be interviewed. *Id.* On June 3, 2010 at 8:39 pm EST, counsel for the Examiner informed counsel for JPMCB that the Examiner intended to contact Ms. Choi seeking to conduct an interview telephonically. Ex. 302 (Nastasi E-Mail, dated June 3, 2010). On June 3, 2010, at 9:31 pm EST, counsel for the Examiner spoke with Ms. Choi telephonically. Ms. Choi indicated that she was represented by counsel for JPMCB, that she had just started a new job and had scheduling difficulties, and that she was not sure if she wanted to be interviewed. Ms. Choi indicated that she would consider being interviewed and would inform counsel for the Examiner of her decision soon. On June 3, 2010 at 9:52 pm EST, counsel for the Examiner contacted counsel for JPMCB and sought clarification as to whether it represented Ms. Choi. *Id.* Counsel for JPMCB subsequently responded that Ms. Choi must have decided that she wanted representation and would confirm this with Ms. Choi. *Id.* On June 8, 2010, counsel for JPMCB confirmed that Ms. Choi wanted representation and that counsel for JPMCB was in the process of obtaining separate counsel for Ms. Choi. Ex. 303 (Katz E-Mail, dated June 8, 2010). On June 9, 2010, counsel for JPMCB informed counsel for the Examiner that Ms. Choi is being represented by Susan Brune of Brune & Richard LLP. Ex. 304 (Katz E-Mail, dated June 9, 2010). On June 15, 2010, counsel for the Examiner spoke with Ms. Brune who confirmed that she represents Ms. Choi and that Ms. Choi declines to be interviewed by the Examiner.

[1085] Ex. 179 at 1 (Credit Agreement); Ex. 305 at 1-3 (Project Tower—Amended and Restated First Step Commitment Letter, dated April 5, 2007).

[1086] Ex. 179 at 1 (Credit Agreement).

[1087] Ex. 23 at 6 (MLPFS Strategic Transaction Engagement Letter).

[1088] Ex. 306 (Project Tower—Amended and Restated First Step Engagement Letter, dated April 5, 2007). This role was in connection with facilitating the stock repurchase.

[1089] Ex. 179 at 1 (Credit Agreement).

[1090] Two October 17, 2005 engagement letter agreements specify ML&Co. as the entity that will provide advisory services to Tribune, but the letters are executed by Michael Costa on behalf of *MLPFS*. *See* Ex. 23 at 6 (MLPFS Strategic Transaction Engagement Letter); Ex. 24 (MLPFS Recapitalization Engagement Letter).

of the key personnel working with Tribune on behalf of the Merrill Entities, and the department or working group with which each was affiliated, were as follows:

Leveraged Finance
Todd Kaplan, Chairman, Global Leverage Finance[1091]
David Tuvlin, Managing Director[1092]
Leveraged Finance Capital Markets
Carl Mayer, Managing Director[1093]
Stephen Paras, Managing Director[1094]
Investment Banking
Michael Costa, Managing Director[1095]
Michael O'Grady, Managing Director[1096]

Certain Parties contended that notwithstanding the existence of separate legal entities, all of the Merrill Entities should be viewed as a single entity, for among other purposes, determining whether the knowledge and acts of personnel employed by one entity may be attributed to the other entity, and whether, as a consequence thereof, the other entity acted in good faith regarding a particular transaction or transfer. Proponents of this viewpoint cite as support for this position that, as noted, the October 2005 Merrill retention letters contain inconsistent entity references,

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1091 Ex. 307 at 10 (Step One Confidential Information Memorandum). Todd Kaplan had a longstanding business relationship with the Zell Group. In his sworn interview with the Examiner, Mr. Kaplan testified that when he started work at Merrill in 1986, one of his first projects was for the Zell Group. Examiner's Sworn Interview of Todd Kaplan, July 8, 2010, at 64:22-65:4. Indeed, the Zell Group offered Mr. Kaplan a job at EGI after the close of the Step Two Transactions, but he "ultimately decided not to [accept the job] and stayed at Merrill Lynch." *Id.* at 65:16-18. *See also* Examiner's Interview of Samuel Zell, June 14, 2010 ("We made him an offer. I think it was late '08. . . . We wanted him to come work for us, he ultimately said he was going to do it, then he got hotboxed by the guys at Merrill and he decided not to.").

1092 Ex. 307 at 10 (Step One Confidential Information Memorandum). David Tuvlin also is identified as a Vice President of ML&Co. *See* Ex. 179 at TRB0520889 (Credit Agreement).

1093 Ex. 307 at 10 (Step One Confidential Information Memorandum).

1094 *Id.*

1095 Ex. 24 at 4 (MLPFS Recapitalization Engagement Letter); Ex. 23 at 6 (MLPFS Strategic Transaction Engagement Letter). Michael Costa also has been identified as a Managing Director for "Mergers and Acquisitions" group. *See* Ex. 308 at ML-TRIB0382494-0382495 (Costa E-Mail, dated February 14, 2007).

1096 Ex. 307 at 11 (Step One Confidential Information Memorandum).

that some personnel apparently held positions with more than one entity[1097] (or are described in various materials as being affiliated with more than one of the Merrill Entities),[1098] that personnel for the Merrill Entities sometimes used the generic "Merrill Lynch" trade name to describe their employer,[1099] and that Merrill personnel involved in different aspects of the Leveraged ESOP Transactions often shared information.

Todd Kaplan explained in his interview with the Examiner that ML&Co. was the parent holding company, and MLPFS was the primary broker dealer within ML&Co.[1100] Mr. Kaplan further stated that MLCC was the "unregulated entity that we conducted a lot of lending and other types of counter-party business out of."[1101]

Michael Costa stated to the Examiner that the Merrill Entities had established procedures—well before the Tribune transactions—to maintain the separateness of the various working groups and address potential conflicts of interest between and among those personnel who are advising a target company regarding its strategic options, those personnel offering pre-arranged financing to facilitate an investment or acquisition, and those personnel representing and/or financing potential bidders interested in an acquisition or investment.[1102] At one point in

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1097 *See, e.g.,* Ex. 309 at 1-3 (Project Tower—Amended and Restated Second Step Commitment Letter, dated April 5, 2007) (Stephen Para executing on behalf of MLCC); Ex. 310 (Project Tower—Amended and Restated Second Step Engagement Letter, dated April 5, 2007) (Stephen Para executing on behalf of MLPFS).

1098 *See, e.g.,* Ex. 307 at 10 (Step One Confidential Information Memorandum) (listing David Tuvlin, and all other personnel of the Merrill Entities under "Merrill Lynch & Co."); Ex. 179 at TRB0520902 (Credit Agreement) (David Tuvlin executing the Credit Agreement on behalf, and as a Vice President of, MLCC).

1099 *See, e.g.,* Ex. 311 (Lewicki E-Mail, dated June 20, 2007) (Lewicki signature block stating that he is an Investment Banking Analyst with "Merrill Lynch").

1100 Examiner's Sworn Interview of Todd Kaplan, July 8, 2010, at 165:6-13.

1101 *Id.* at 165:13-16.

1102 *See* Examiner's Interview of Michael R. Costa, June 4, 2010.

the interview Mr. Costa described these procedures as a "wall," essentially precluding contact between the advisory and lending groups.[1103]

At another point Mr. Costa described these procedures more as a set of restrictions, *e.g.,* requiring investment bankers advising a company to provide the same level of information to the bankers in their affiliated lending group as they provide to bankers representing competing bidders who are putting together independent financing in connection with a proposed transaction to ensure a level playing field. The "wall" described by Mr. Costa was permeable. The evidence indicates that personnel working both with the investment banking and the finance groups at the Merrill Entities frequently communicated with each other regarding (a) how to structure the financing of the Tribune transaction and (b) how MLCC could participate in such financing.[1104]

Throughout the process of exploring strategic alternatives for Tribune and advising on the Leveraged ESOP Transactions, Merrill was aware of the potential conflicts of interest or appearances of conflict that arose because certain Merrill Entities served as advisors both to Tribune and to lenders to the buyer.[1105]

Nevertheless, the evidence generally indicates that each group of Merrill professionals had a distinct role and function in connection with the Leveraged ESOP Transactions, whether to

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[1103] *Id.*

[1104] *See, e.g.,* Ex. 312 at ML-TRIB-0445779 (Tuvlin E-Mail, dated December 6, 2007) (discussing downturn in publishing sector and being "anxious to see the VRC report"); Ex. 313 at ML-TRIB-0613213 (Kaplan E-Mail, dated November 7, 2007) (discussing inability of Tribune organization "to come to a decision" regarding whether to close transaction); Ex. 251 (Special Committee Meeting Minutes, dated March 30, 2007) (indicating both Michael Costa and Todd Kaplan were in attendance); Ex. 345 at ML-TRIB-0386225 (Tuvlin E-Mail, dated March 28, 2007) (reporting on call among banks and latest financing negotiation issues); Ex. 315 at ML-TRIB-0368506 (O'Grady E-Mail, dated July 27, 2006) (arranging joint meeting with Tribune to review outlook on newspaper and Internet operations); Ex. 316 at ML-TRIB-0367311 (Costa E-Mail, dated June 9, 2006).

[1105] For example, Mr. Costa wrote to Mr. Kaplan, a colleague on the leveraged finance side of the business, and encouraged: "Why aren't one of you in zell [sic] discussion. Are they arguing conflict[?]" Ex. 317 at ML-TRIB-0571282 (Costa E-Mail, dated February 21, 2007).

advise Tribune on its strategic options as investment banker, to underwrite and negotiate the financing for the transaction, or to market the debt securities resulting from that financing to other lenders and investors. Indeed, as discussed below, when it appeared between Step One and Step Two that there was a conflict of interest between MLFPS's role as advisor and MLCC's role as lender, MLFPS essentially ceased advising the Tribune Board.[1106] As discussed below, the Merrill lending team worked with the other Lead Banks in the fall of 2007 to address the various issues raised in connection with the Step Two Financing. On balance, although the record is mixed,[1107] the Examiner cannot conclude that the Merrill Entities should be viewed as one entity in connection with the Leveraged ESOP Transactions.

(1) Activities.

The relationship between Tribune and Merrill Entities predates the Step One Transactions. As detailed elsewhere in the Report,[1108] Mr. Costa, on behalf of MLPFS and ML&Co., and Dennis FitzSimons, on behalf of Tribune, signed two engagement letters dated October 17, 2005,[1109] one retaining MLPFS/ML&Co. to provide financial advisory and

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[1106] *See* Report at § III.H.4.c. During his interview with the Examiner, Mr. Costa explained as follows:

> [B]ecause of the potential conflict or appearance of conflict [in the EGI transaction], I effectively stepped back from advising the company . . . once there were conditions to financing that remained to be satisfied—one of which was solvency—to avoid the appearance that I might be advising the Board one way or another as to what to do and Merrill side might have a different view, and in light of the Independent Committee having its own advisor, I effectively stepped back.

Examiner's Interview of Michael Costa, June 4, 2010.

[1107] One area in which the record conflicts is the manner in which various transaction documents describe the fees to be paid to the various entities, the labels given to those fees, and the specific entities to which the payments actually were made. Given the inconsistency between the governing documents, the record is unclear whether the fees paid to the Merrill Entities for their lending commitments and arranging services (but not for the advisory services provided to Tribune) were paid to or for the benefit of MLPFS, MLCC, or both. *See* Report at § III.E.4.

[1108] *See* Report at § III.A.3.e.(1).

[1109] Ex. 24 at 4 (MLPFS Recapitalization Engagement Letter); Ex. 23 at 6 (MLPFS Strategic Transaction Engagement Letter).

investment banking services to Tribune in connection with the contemplated recapitalization[1110] and the other retaining MLPFS/ML&Co. to provide financial advisory and investment banking services to Tribune in connection with a "Strategic Transaction."[1111]

Between October 2005 and June 2006, representatives of Merrill, led principally by Mr. Costa, Mr. Kaplan, and Michael O'Grady, together with representatives of Citigroup, led principally by Christina Mohr, Michael Schell, and Michael Canmann,[1112] met regularly with the Tribune Board as it considered strategic alternatives for restructuring Tribune to enhance stockholder value.[1113] On July 19, 2006, the Tribune Board met with Mr. Costa, Ms. Mohr, and Mr. Schell concerning the status of the 2006 Leveraged Recapitalization, Tribune's performance subsequent to the 2006 Tender Offer, the imputed value to Tribune's stockholders, and the results of the bank syndication.[1114] The Merrill Entities and the Citigroup Entities continued to analyze various strategies to maximize stockholder value for Tribune between July and September 2006.[1115]

On September 21, 2006, Mr. Costa and Ms. Mohr met with the Tribune Board and presented a review of their strategic analysis to date.[1116] The Tribune Board minutes state that "Mr. Costa concluded that in Merrill Lynch's opinion, on a risk-adjusted basis, pursuing a business combination with a strategic or private equity buyer is likely to produce the greatest

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[1110] Ex. 24 (MLPFS Recapitalization Engagement Letter).

[1111] Ex. 23 (MLPFS Strategic Transaction Engagement Letter).

[1112] The discussion in the following section addresses in further detail the role of Citigroup.

[1113] Ex. 319 (Tribune Board Meeting Minutes, dated May 1, 2006), Ex. 320 at TRB-UR-0434011-12 (Tribune Board Meeting Minutes, dated May 26, 2006); Ex. 321 at TRB-UR-0434051-52 (Tribune Board Meeting Minutes, dated September 21, 2006).

[1114] Ex. 322 at TRB0434034 (Tribune Board Meeting Minutes, dated July 19, 2006).

[1115] Ex. 323 at ML-TRIB0418279-81 (Kaplan E-Mail, dated September 15, 2006).

[1116] Ex. 321 at TRB-UR0434051-52 (Tribune Board Meeting Minutes, dated September 21, 2006).

value to Tribune shareholders."[1117] Ms. Mohr next presented an analysis of the five strategic proposals then under consideration.[1118] According to the Tribune Board minutes, "Ms. Mohr concluded that in Citigroup's opinion, a leveraged buy-out of [Tribune] would yield the highest value to the Company's shareholders."[1119]

Following Ms. Mohr's and Mr. Costa's presentations, the Tribune Board unanimously approved the engagement of MLPFS and CGMI to lead a formal review of Tribune's strategic alternatives and appointed an independent Special Committee to oversee the process.[1120] Thereafter, Tribune proposed that Merrill and Citigroup jointly "staple finance"[1121] the transaction in exchange for a $10 million advisory fee to each firm, with a 50% credit against their respective advisory fees for any financing fees they each received, up to a maximum credit of $5 million.[1122]

1117 *Id.* at TRB-UR-0434051.

1118 *Id.*

1119 *Id.* at TRB-UR-0434052. Thomas Whayne of Morgan Stanley stated to the Examiner that MLPFS and CGMI did not fully explore a series of assets sales that, according to Mr. Whayne, would have created more value for Tribune's stockholders than pursuing a leveraged recapitalization. Examiner's Interview of Thomas Whayne, June 11, 2010. Mr. Whayne stated that Mr. Costa and Mr. Kaplan of Merrill were always strong advocates of the ESOP because under the EGI proposal they would make a lot of money. *Id.* Stated differently, Mr. Whayne said to the Examiner that Mr. Costa was in favor of the EGI proposal because more debt would result in more fees.

1120 Ex. 321 at TRB-UR-0434053 (Tribune Board Meeting Minutes, dated September 21, 2006). It appears that the Special Committee was formally organized a month later. Ex. 324 at TRB0434065-67 (Tribune Board Meeting Minutes, dated October 18, 2006). *See* Report at § III.D.1.a.

1121 "Stapled Finance is a loan commitment that is 'stapled' onto an offering memorandum, by the investment bank advising the seller in an M&A transaction. It is available to whoever wins the bidding contest for the asset or firm that is being put up for sale; but the winner is under no obligation to accept the loan offer. Stapled finance is usually offered early in the bidding process, providing the potential buyers with an indication of how much they can borrow against the target's assets and cash flow if they win, and under what conditions (interest rate, maturity, covenants, etc.)." *See* Paul Povel and Rajdeep Singh, *Staple Finance* (August 1, 2007), at http://finance.wharton.upenn.edu/department/Seminar/2007FALL/micro/paul-povel-micro092007.pdf.

1122 Ex. 325 (Costa E-Mail, dated September 27, 2006). Mr. Costa reported Tribune's proposal to Mr. Kaplan, Mr. O'Grady, and other Merrill personnel: "CFO and GC came back to me this morning. . . . Apparently Bill became more convinced given size of advisory fees cleaner to have new bank come in for fairness opinion. So they have proposed the following: ML and Citi do staple jointly[,] $10MM advisory fee to each firm[,] 50 percent credit against advisory fee for any financing fees we receive up to max credit of $5MM. . . . Greg—this modifies what you say to [Osborn]. Think you can say appreciate how he is thinking about this and we will come back to company constructively." *Id.*

MLPFS and CGMI assisted Tribune in conducting the auction process that culminated in the Step One Transactions.[1123] At the same time the auction process was proceeding, at the direction of the Special Committee, MLPFS and CGMI pursued and developed various self-help strategies to restructure Tribune.[1124] In a November 4, 2006 e-mail, Mr. Kaplan suggested to Mr. O'Grady and Mr. Costa a "radical approach" involving an ESOP structure in which:[1125]

> [W]e create a buying group that is the McCormick Foundation plus employees through an ESOP. . . . That base probably requires either significant asset sales and/or another partner, but we'd be most of the way there.

According to Mr. Kaplan, the level of leverage required for such a transaction would be "north of 8x . . . a complex topic—was thinking though, that there may be a desire for something of an option that centers around existing/long standing Tribune constituents."[1126] Four days later, EGI signed a confidentiality agreement with Tribune.[1127] Thereafter, the factual record reflects no further discussion of the ESOP concept or EGI until late January 2007.[1128] In his interview with the Examiner, Mr. Kaplan testified that the idea of an ESOP "just popped up out of [his] memory."[1129]

MLPFS and CGMI continued the auction analysis and advisory process during December 2006, and circulated a draft Special Committee presentation internally on December 10,

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1123 *See* Report at § III.D.1.

1124 *See id.* at § III.D.1.

1125 Ex. 326 at ML-TRIB-0598182 (Kaplan E-Mail, dated November 5, 2006).

1126 *Id.*

1127 Ex. 327 at 22 (Preliminary Proxy Statement, dated June 1, 2007).

1128 *See* Report at § III.D.1.

1129 Examiner's Sworn Interview of Todd Kaplan, July 8, 2010, at 171:2-4. Mr. Kaplan further testified that the "intersection of an ESOP owning more than 50 percent of an S Corp. and the specific exemption in the tax code that essentially allows both the corporation and its ESOP shareholders to avoid current taxation was something I was unaware of and surprised to find out when the Zell Team made me aware of it." *Id.* at 172:19-173:3.

2006.[1130] After distributing the draft presentation, Mr. Costa and Mr. Kaplan discussed the appropriate amount of leverage for each of Tribune's lines of business as part of an e-mail exchange:[1131]

> Mr. Costa: Can you take a look at leverage levels here again. . . . Are we a touch aggressive in light of loan to value?
>
> Mr. Kaplan: Generally speaking, business that stays with the parent company (in this case Publishing), can go as high as 8x due to cushion provided by the PHONEs . . . spinco (Broadcasting) can go to 7.75x[.]
>
> [C]onferred with Citi on both of these in light of other discussions, and they concurred—we're still not thinking about leveragability as different between the two, broadly speaking.
>
> One comment that I've made a few times . . . is to be mindful of min equity of 20% -- thus, on page 8, not enough equity in Publishing —on page 9, none of the Publishing numbers work (all too thin)[.]
>
> [W]hy is our EBITDA range so wide on Publishing (almost 2 turns) when B&E is only ½ a turn — seems like a curious distinction.

During the auction process, on January 21, 2007, Mr. Kaplan provided Mr. Costa, Mr. O'Grady, and others an extensive analysis of potential scenarios for a stand-alone financing alternative.[1132] In his e-mail, Mr. Kaplan summarized the possible alternatives as follows:[1133]

> Seems as though we are trying to achieve the following broadly defined objectives
>
> - capitalize on today's debt market conditions
>
> - return cash to shareholders as quickly as possible

[1130] Ex. 328 at ML-TRIB-0378110 (Kaplan E-Mail, dated December 10, 2006).

[1131] *Id.*

[1132] Ex. 329 (Kaplan E-Mail, dated January 21, 2007).

[1133] *Id.* at CITI-TRIB-CC 00041113.

> - create the ability to execute a tax-free spinoff of Broadcasting in the near-term. . . .
>
> Alternative 1—Raise financing for the whole company as currently constituted—my proposal is to use our staple—$7 b funded term loan, $750 mm revolver, $2.5 b notes ($1.7 b senior, $800 mm sub)—roll $1.25 b of existing debt plus PHONEs—bank debt secured, as are rollover senior notes, new bank/bond financing receives upstream guarantees . . .
>
> Citi/ML can review rates/flex/etc. in light of this design . . .
>
> Seems to be about 8.15x '06 EBITDA with PHONEs on rating agency basis (net liability of $875 mm) and 7.95x with PHONEs stated as GAAP liability of around $550mm . . .
>
> Alternative 2—Raise financing for the whole company as currently constituted—would reduce financing level from above by about $400 mm (or a little more than 1/4x EBITDA) . . . this should work for resultant parent financing where the PHONEs take an important layer of risk underneath the new financing.

Mr. Costa asked in a January 26, 2007 e-mail to Mr. Kaplan: "Can we get more forceful/formal expression of interest from Zell two ways to do: he signals to board members his interest level or pate can call or email me to outline their interest on Sam's behalf."[1134] Mr. Kaplan responded: "Just talked to Sam 10 min ago. He reiterated interest of $500 mm investment with $24 dividend. . . . [L]et me know how you'd like to progress – I can have Bill Pate call too, but leaned toward Sam as he has been calling directly on this."[1135] Mr. Kaplan explained to the Examiner in his sworn interview that he did not think this e-mail exchange reflected a desire to get the Zell Group interested in proposing a transaction; rather, it was an effort to get the Zell Group to "clarify in a more . . . forceful fashion what [their] interest is."[1136]

[1134] Ex. 1059 at ML-TRIB-0381221 (Kaplan E-Mail, dated January 26, 2007).

[1135] *Id.*

[1136] Examiner's Sworn Interview of Todd Kaplan, July 8, 2010, at 176:22-177:7.

On February 3, 2007, the same day that the Special Committee met, Mr. Costa informed William Pate of EGI that:[1137]

> —there are self-help and minority proposals that are marginally attractive and [permit holders] to retain some ownership
>
> —our deal is marginal at this valuation since it is an offer for the whole company, and in light of that there is a value gap
>
> —would we consider a straight investment in the company as part of a recap without the ESOP structure (competitive structure to [Broad/Yucaipa])
>
> —disappointment that, in light of tax savings, we could not put together a materially higher bid.

On February 5, 2007, management sent Mr. Costa and Ms. Mohr its updated consolidated financial projections for 2007,[1138] and on the following day, EGI e-mailed a revised proposal incorporating management's updated projections to Mr. Costa and Ms. Mohr.[1139] On February 12, 2007, Mr. Costa and Ms. Mohr presented the competing proposals, including EGI's revised proposal, to the Special Committee.[1140] Mr. Costa observed that the proposals from the other third parties contained more leverage than the self-help proposal also being considered.[1141] Mr. Costa also outlined the possibility of a recapitalization through a special dividend to Tribune's stockholders.[1142] Ms. Mohr summarized Tribune management's and research estimates

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[1137] Ex. 330 (Havdala E-Mail, dated February 3, 2007).

[1138] Ex. 331 (Grenesko E-Mail, dated February 5, 2007).

[1139] Ex. 116 (Kenney E-Mail, dated February 6, 2007).

[1140] Ex. 117 (Special Committee Meeting Minutes, dated February 12, 2007). *See also* Ex. 332 at TRIB-G0002808-9 (Presentation Materials for the Meeting of Committee of Independent Directors of the Board of Directors of Tribune, dated February 12, 2007).

[1141] Ex. 117 at TRIB-G0007810 (Special Committee Meeting Minutes, dated February 12, 2007). *See also* Ex. 332 (Presentation Materials for the Meeting of Committee of Independent Directors of the Board of Directors of Tribune, dated February 12, 2007).

[1142] Ex. 117 at TRIB-G0007810 (Special Committee Meeting Minutes, dated February 12, 2007). *See also* Ex. 332 (Presentation Materials for the Meeting of Committee of Independent Directors of the Board of Directors of Tribune, dated February 12, 2007).

for revenue and EBITDA and discussed the various values for recapitalization.[1143] The Special Committee directed MLPFS and CGMI to continue to develop both the EGI and self-help proposals and to seek from Carlyle its highest and best offer.[1144]

Despite the apparent progress with the EGI proposal, Mr. Kaplan complained to Mr. Costa that the transaction was "like wrestling an octopus."[1145] Mr. Costa, acknowledging Mr. FitzSimons' concerns that Tribune might be taking on too much debt with the self-help proposal, replied in an e-mail:[1146] "Which one of those 8 arms represents our CEO now saying its too much debt. Not kidding. He called this morning. At least he is doing what board should have done." On February 19 and 22, 2007, EGI presented revised proposals to the Special Committee.[1147] In a February 23, 2007 e-mail, Mr. Costa questioned why the employees would support the EGI proposal and why the recapitalization should not be announced within a week.[1148]

During a February 24, 2007 Special Committee meeting, Mr. Costa and Ms. Mohr presented an update on, and comparison of, the various proposals.[1149] After a separate meeting between the Special Committee and Morgan Stanley, the Special Committee instructed Tribune management and the Financial Advisors to defer further action on the self-help alternative so that the Special Committee could explore the EGI proposal further and gauge the support of the

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1143 Ex. 117 at TRIB-G0007810 (Special Committee Meeting Minutes, dated February 12, 2007). *See also* Ex. 332 (Presentation Materials for the Meeting of Committee of Independent Directors of the Board of Directors of Tribune, dated February 12, 2007).

1144 Ex. 119 at TRIB-G0007814 (Special Committee Meeting Minutes, dated February 13, 2007).

1145 Ex. 308 at ML-TRIB-0382494 (Costa E-Mail, dated February 14, 2007).

1146 *Id.* Mr. Costa confirmed to the Examiner that this e-mail referred to the concerns of Tribune's Chief Executive Officer, Dennis FitzSimons. Examiner's Interview of Michael Costa, June 4, 2007.

1147 Ex. 121 (EGI Term Sheet, dated February 19, 2007); Ex. 122 (EGI Term Sheet, dated February 22, 2007).

1148 Ex. 333 (Costa E-Mail, dated February 23, 2007).

1149 Ex. 123 at TRIB-G0051832-33 (Special Committee Meeting Minutes, dated February 24, 2007).

Chandler Trusts and the McCormick Foundation.[1150] On the following day, Mr. Costa learned that Morgan Stanley had proposed to be part of the financing package for the self-help transaction.[1151] In an e-mail to Tribune General Counsel Crane Kenney, Mr. Costa reacted to this development:[1152]

> How does MS who is supposed to be independent get to come in at the last minute and underwrite financing without having spent 9 [m]onths developing alternatives. I assume if MS indicates to Board that it favors recap over Zell it will disclose fact that it has submitted a financing proposal with substantial economics to them that they would not receive under Zell proposal. Is [C]hip aware of this?

On February 28, 2007, Thomas Whayne, Managing Director at Morgan Stanley, reported to Paul Taubman, Head of Global Mergers & Acquisitions at Morgan Stanley, and Charles Stewart, Managing Director at Morgan Stanley, that:[1153]

> ML/Citi said that they had communicated to Zell that value needs to be improved, and that they believe that they may have a way of removing the back-end risk inherent in the bring down, although they are not ready to provide specifics. Requested time through the weekend to see if they can secure a better price and address conditionality concerns.

Merrill and Citigroup continued to express reservations about the economics of both the EGI and self-help proposals. On February 28, 2007, Julie Persily, Managing Director and Head of North American Leveraged Finance for Citigroup, addressed her concerns with both the EGI and the self-help proposals to her lending counterpart at Merrill, Mr. Kaplan:[1154]

> Perhaps I'm over reacting [sic] — and that reaction [r]eflects my discomfort with Zell deal to begin with. I think that if we do

[1150] *Id.* at TRIB-G0051833.

[1151] Ex. 334 (Costa E-Mail, dated February 24, 2007).

[1152] *Id.* at ML-TRIB-1075295.

[1153] Ex. 335 (Whayne E-Mail, dated February 28, 2007).

[1154] Ex. 336 at CITI-TRIB-CC 00067426 (Canmann E-Mail, dated March 1, 2007).

> 20/share up front it exposes company to excess pricing. And risk. MFN issues become more real and we are exposed to both market movements and operating performance issues at the company. I suppose we are exposed in the Zell deal anyway and perhaps should welcome a chance to place paper sooner. So I don't want to say its undoable. If we are going to have 2.1 bn of a 2nd lien at the end of the day — I believe that paper must have broader call protection than in the self help case. Perhaps even NC2 to look like the bond we intended and to broaden investor audience. We need big audience for [Z]ell deal.

In response, Mr. Kaplan observed:[1155]

> I think that we have a philosophical issue to work through. . . . The 3 of us are working on financing for TRB— we both have separate trees doing the Zell ESOP financing . . . I think that we can run through this with Don and Chandler—I should suggest that to get from $15 to $20, we need to collapse the financing teams in some fashion—that not only requires TRB and Zell signoff, but also . . . means we need to work back through management and internal counsel at Citi and ML—btw, Zell group is asking to see what we're showing company re the 2 step.

Merrill and Citigroup continued their negotiations with EGI and Tribune, and on March 6, 2007, after observing that the Morgan Stanley proposal was "now not so different" from that of the Citigroup Entities, Ms. Persily noted to Tribune Treasurer Chandler Bigelow:[1156]

> For the record . . . [o]ur proposal does not assume that we can get around the liens test in the existing bonds as indicated in the MS proposal discussion. . . . We believe that we effectively "subordinate" the existing bonds by denying them guarantees. The Company provides that all subs guarantee the new loan(s), so that the value of the stock collateral is only realized by the existing note holders after satisfaction of the guarantees. Is that clear? — The cap tables in our presentations to you should more accurately describe the loans as Secured/Guaranteed (not just secured as they currently show). We focus on the "new debt" ratios to capture this concept of guaranteed debt. NOTE: We believe that we can market this to the banks and funds and our counsel agrees with our analysis that guarantees provided to the lenders come ahead of unguaranteed existing debt.

[1155] *Id.* at CITI-TRIB-CC 00067425.

[1156] Ex. 337 at CITI-TRIB-CC 00067723 (Persily E-Mail, dated March 6, 2007).

By March 10, 2007, the EGI proposal appeared "dead," at least from the perspective of Mr. Costa, at Merrill.[1157] Mr. Costa wrote: "Short answer is in light of recent operating performance no comfort in putting the kind of leverage necessary for Zell proposal to work and have board get comfortable with employees owning the equity. Also numerous issues in the Zell proposal we could not solve."[1158] Mr. Costa believed that Tribune had concluded that it was not comfortable with the leverage in either the EGI proposal or the self-help proposal.[1159]

The EGI proposal was, however, not dead, and, in fact, staged a come-back. The Special Committee directed the Financial Advisors and Tribune management to present two fully-developed alternatives to the Special Committee on March 30, 2007.[1160] The Financial Advisors were further directed to pursue the EGI proposal, but to get "better economic terms and enhance the likelihood of closing."[1161] The same day, an investment banker at MLPFS circulated a debt covenants analysis among her colleagues on the Merrill team.[1162]

Rosanne Kurmaniak, Ms. Mohr, Mr. Kaplan, and Mr. Costa thereafter worked together on the requested presentation. On March 20, 2007, Mr. Costa wrote to Ms. Mohr in an e-mail:[1163]

> Think we should take 2 percent decline case out of valuation. I worry that if you take midpoint of those two cases you are in 30 range and only 10 percent away from Zell. Seems more powerful to stick with revised mgmt plan, remind board we were closer to low end—and stock has moved this way—so near 20 percent discount to zell. Plus zell gives you recap plus at incremental cost of spin delay.

[1157] Ex. 338 (Costa E-Mail, dated March 10, 2007).

[1158] *Id.*

[1159] Ex. 339 at FOUN0000002 (Wander E-Mail, dated March 10, 2007).

[1160] Ex. 327 at 27 (Preliminary Proxy Statement, dated June 1, 2007).

[1161] Ex. 136 at TRIB-G0008789 (Special Committee Meeting Minutes, dated March 21, 2007).

[1162] Ex. 340 at ML-TRIB-0619109 (Kim E-Mail, dated March 21, 2007).

[1163] Ex. 341 at CITI-TRIB-CC 150611 (Mohr E-Mail, dated March 20, 2007).