Tribune.[1726] Mr. Larsen likewise told the Examiner that MLPFS encouraged EGI to re-engage in the bidding process.[1727] After speaking with Mr. Kaplan, Mr. Zell asked William Pate to "take another look and see if there's another way of approaching this that makes sense."[1728] Thomas Whayne of Morgan Stanley explained to the Examiner that the Special Committee approached EGI at this time because the Special Committee did not consider the other proposals then on the table sufficiently attractive.[1729] By January 29, 2007, EGI reviewed the data in Tribune's electronic data room in order to submit an outline of a proposed transaction to Tribune "by the end of the week."[1730]

As EGI prepared its proposal, Mr. Larsen spoke to the Merrill Entities and the Citigroup Entities about potentially financing EGI's proposed transaction. On January 30, 2007, Tami Kidd (Merrill Investment Banking) e-mailed Carl Mayer (Merrill Global Capital Markets) and informed Mr. Mayer that she was working directly with Mr. Zell on his potential bid for

[1726] Mr. Zell stated to the Examiner that he received a call from Mr. Kaplan who said, "Sam, this deal is falling apart. There isn't going to be a deal and I think, as opposed to when you said you had no interest, this situation has changed and you really ought to take a look at it and see if you can have some other way of approaching it that makes sense." Examiner's Interview of Samuel Zell, June 15, 2010. There is some dispute regarding Morgan Stanley's role in persuading EGI to re-engage in the bidding process. Although the documents and testimony from Mr. Zell and Mr. Larsen indicate that Mr. Kaplan of Merrill contacted Mr. Zell to ask him to reconsider his decision to withdraw from the process, Thomas Whayne of Morgan Stanley takes a different view. In his May 17, 2007 deposition, Mr. Whayne testified that he called William Pate of EGI, a "close personal friend [of Mr. Whayne] from college" (Examiner's Interview of Thomas Whayne, June 11, 2010), in late January/early February 2007 to discuss whether EGI would be interested in participating as an equity investor in a recap transaction. Ex. 126 at 37:7-28:23 (Rule 2004 Examination of Thomas Whayne, May 17, 2007). Mr. Whayne told the Examiner that Morgan Stanley approached EGI because Mr. Zell had already expressed an interest in Tribune and that "[f]rankly there was a view that by virtue of Zell's participation on the Board he might be a catalyst to shake up management which might also help investors." Examiner's Interview of Thomas Whayne, June 11, 2010. The Examiner has not found any support for Mr. Whayne's statements in either the Special Committee meeting minutes leading up to February 6, 2007, or in the documents reviewed.

[1727] Mr. Larsen described to the Examiner that, "[i]n the middle of January, it started to become obvious that the process was not going as well as could be expected. One of the advisors came back to EGI and said, 'You should take a second look at this. It's probably not as a robust a process as might have been anticipated.' We reluctantly said, 'Sure, we're taking a look.'" Examiner's Interview of Nils Larsen, June 15, 2010.

[1728] Examiner's Interview of Samuel Zell, June 14, 2010.

[1729] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1730] Ex. 580 (Larsen E-Mail, dated January 29, 2007).

Tribune.[1731] Ms. Kidd further reported that Mr. Zell had proposed two different types of debt structures to finance the transaction, and, in both cases, the "new debt is lower [versus] the staple."[1732] Julie Persily of CGMI offered to set up a "unique team" at Citigroup to work with Mr. Kaplan's team at Merrill on the financing commitment for an EGI proposal.[1733] Mr. Larsen agreed with this suggestion.[1734]

On February 2, 2007, EGI submitted to Tribune a letter proposing a transaction in which a company ESOP would acquire Tribune at a price of $30 per share.[1735] The very next day, Michael Costa, of Merrill, called Mr. Pate, of EGI, and conveyed concern about the terms of EGI's initial proposal.[1736] Mr. Pate reported to Mr. Larsen and other EGI colleagues both Mr. Costa's "disappointment that, in light of tax savings, [EGI] could not put together a materially higher bid," and Mr. Costa's request that EGI consider a "straight investment in the company as part of a recap without the esop structure."[1737] Mr. Pate described his response to Mr. Costa as follows: "I told him that I would talk to [Sam] but I was opposed to a straight investment and that the tax structure is the only thing that made it financially attractive for us."[1738]

1731 Ex. 581 (Kidd E-Mail, dated January 30, 2007).

1732 *Id.*

1733 Ex. 582 at EGI-LAW-00000635 (Pate E-Mail, dated January 31, 2007).

1734 *Id.*

1735 Ex. 113 (Letter from Samuel Zell to Tribune Board, dated February 2, 2007).

1736 Ex. 573 at EGI-LAW-00021094 (Havdala E-Mail, dated February 3, 2007).

1737 *Id.*

1738 *Id.*

Instead of restructuring its proposal away from a leveraged ESOP transaction, EGI decided to increase its acquisition price to $33 per share, with EGI investing $225 million directly in Tribune.[1739]

On February 6, 2007, EGI revised its initial proposal and submitted a summary term sheet proposing a single step, leveraged acquisition of Tribune by a company ESOP at $33 per share, with EGI investing $225 million in Tribune,[1740] that would, in the estimate of Tribune's advisors, take nine to twelve months to close.[1741]

Unsurprisingly, Mr. Zell had a profit motive in pursuing the Tribune transaction. Mr. Zell stated to the Examiner that his analysis was shaped by his background in the real estate industry:[1742]

> We thought we were going to make a fortune with this deal. Can I tell you why? It is so simple. Think about it like a real estate guy. It starts with assets.

Mr. Zell explained his assessment of the valuation of Tribune's assets as follows:[1743]

- Los Angeles Times - $2 billion
- Chicago Tribune - $1 billion
- Newsday and the other newspapers - $1 billion
- Chicago Cubs - $1 billion+
- TV stations - $4 billion (conservative estimate)

[1739] Ex. 116 (EGI Proposal, dated February 6, 2007); Ex. 5 at 21 (Tender Offer).

[1740] Ex. 116 (EGI Proposal, dated February 6, 2007); Ex. 5 at 21 (Tender Offer).

[1741] Ex. 113 (EGI Letter, dated February 2, 2007); Ex. 116 (EGI Proposal, dated February 6, 2007); Examiner's Interview of Thomas Whayne, June 11, 2010 (under the initial EGI proposals, stockholders might not get cash for nine months).

[1742] Examiner's Interview of Samuel Zell, June 14, 2010. Zell explained that "[t]he true value that has come out of real estate have come from being long-term owners, and frankly benefiting from the fact that when you have some inflation, debt services [have] got a fixed payment. If you own something long enough you get a fixed payment. The key to that is financing." *Id.*

[1743] Examiner's Interview of Samuel Zell, June 14, 2010.

- Tribune's 40% interest in CareerBuilder—at least $2.4 billion (Mr. Zell stated that the only business comparable with CareerBuilder was Monster.com, which was trading at $6 billion, and CareerBuilder was bigger than Monster.com)
- Real estate assets - $1 billion
- Apartments.com, cars.com, "and a whole bunch of other stuff"

Mr. Zell said that "when it was all said and done there was approx[imately] $16 billion of assets, $12 billion of debt."[1744] Mr. Zell explained that the remaining $4 billion in assets consisted of the deferred tax from the proposed ESOP structure.[1745] Mr. Zell maintained that after a ten year holding period, a step-up in asset basis would allow him to sell assets without built-in gain.[1746] "Did we think we bought a great company? We thought we bought a great opportunity. What allowed us to do it was the asset base."[1747] Similarly, in his sworn interview with the Examiner, Mr. Larsen acknowledged that the tax structure was a "substantial contributor as to the attractiveness of making an investment in Tribune."[1748] Mr. Larsen added:[1749]

> I would not say that the tax benefits in year ten and beyond were the sole reason to pursue the transaction. . . . [W]e did substantial due diligence on the assets, the operations, the investments that the company had, and I think viewed holistically with the added benefit of the structure, we felt that this was a sound and attractive financial investment with the tax benefits as he indicated were an attractive and contributing factor.

1744 *Id.*

1745 *Id.*

1746 *Id.* Mr. Zell stated: "We've never been flip artists, we've held stuff forever . . . I still own a building I bought in 1966." *Id.* Mr. Larsen corroborated Mr. Zell's characterization of the Tribune transaction as a long-term investment: "We were long-term investors. . . . The expectation was that [EGI and Tribune] would be partners for at least ten years. There were financial benefits with regard to the net built-in gain items. It's not unusual for EGI to have that kind of relationship. . . . It's just the type of firm that Sam is." Examiner's Interview of Nils Larsen, June 15, 2010.

1747 Examiner's Interview of Samuel Zell, June 14, 2010.

1748 Examiner's Sworn Interview of Nils Larsen, July 7, 2010, at 14:17-19.

1749 *Id.* at 14:19-15:6.

Mr. Zell's stated optimism as he approached the Leveraged ESOP Transactions was corroborated by Brit Bartter, EGI's principal relationship contact at JPMCB.[1750] Mr. Bartter told the Examiner that Mr. Zell was "pumped" to do the deal and got "more excited" as the closing approached.[1751] Mr. Larsen of EGI stated that, going into the transaction, EGI had a "fair amount of cushion . . . mean[ing] the covenants in the bank coverages or our liquidity."[1752]

b. Internal EGI Communications throughout the Process.

From late January through March 2007, EGI conducted due diligence of Tribune, revised its proposal, and addressed the concerns raised by the Special Committee and Tribune management, while working with the Lead Banks to obtain financing.

(1) EGI's Due Diligence.

EGI retained a team of professionals including KPMG,[1753] several law firms,[1754] and Presidio Merchant Partners,[1755] who consulted regarding Tribune's publishing division. Tribune gave EGI access to additional financial reports such as Brown Books,[1756] ad category reports,[1757] and flash reports, among others.[1758] EGI analyzed this information and posed additional due diligence questions to Tribune.[1759] As early as February 20, 2007, internal EGI e-mails reflect knowledge of the large interactive division revenues as compared to the decline in traditional

1750 Examiner's Interview of Brit Bartter, June 16, 2010.

1751 *Id.*

1752 Examiner's Interview of Nils Larsen, June 15, 2010.

1753 Ex. 583 (Engagement letter from KPMG to EGI, dated February 14, 2007); Ex. 584 (Hauser E-Mail, dated February 13, 2007).

1754 Ex. 584 (Hauser E-Mail, dated February 13, 2007); Ex. 585 (Hauser E-Mail, dated February 21, 2007).

1755 Ex. 586 (Hauser E-Mail, dated February 27, 2007).

1756 Ex. 587 (Sotir E-Mail, dated February 22, 2007).

1757 *Id.*

1758 Ex. 588 (Hochschild E-Mail, dated March 9, 2007).

1759 Ex. 589 (Larsen E-Mail, dated February 20, 2007).

print revenues.[1760] EGI also worked to understand the impact of an ESOP structure on tax payment obligations, hiring and firing/retiring employees, the ability to accomplish non-taxable spin-offs, and the payment of cash dividends to Tribune's stockholders.[1761]

Throughout February and March 2007, EGI continued to revise and update its financial[1762] and publishing models.[1763] EGI also considered additional financial information provided by Tribune and revised its forecasts accordingly.[1764] Mr. Larsen stated to the Examiner that EGI "had a fairly detailed financial model that had quite a few iterations, we were updating operating and changing capital assumptions and that sort of thing. What changed over that time – it got weaker."[1765] During this process, EGI apparently expressed concern to Tribune management about Tribune's declining revenues and the possible need to revise Tribune's forecasts. According to a March 9, 2007 e-mail from Mr. Sotir, such comments had caused Tribune to "look at the trends some more and rethink their outlook. We told them that if they come back with a lower revenue number, we want to see some action plans on how they are going to maintain the cashflow # in '07."[1766]

On March 20, 2007, in preparation for a meeting with Chandler Bigelow to discuss the latest version of the Tribune model and the ratings agency presentation, Mr. Larsen informed his colleagues via e-mail about additional issues he planned to raise:[1767]

[1760] *Id.* at EGI-LAW-00010786-87.

[1761] Ex. 590 (Pate E-Mail, dated February 20, 2007).

[1762] Ex. 591 (Larsen E-Mail, dated March 19, 2007).

[1763] Ex. 592 (Hochschild E-Mail, dated March 2, 2007).

[1764] Ex. 591 (Larsen E-Mail, dated March 19, 2007).

[1765] Examiner's Interview of Nils Larsen, June 15, 2010.

[1766] Ex. 588 (Hochschild E-Mail, dated March 9, 2007).

[1767] Ex. 593 (Larsen E-Mail, dated March 20, 2007).

> Chandler indicated on the 9th that management needed to sit down and refine their projections for 2007. I will inquire as to the status of this refinement and whether we can have a copy. It will not be to the level of detail outlined by Mark below but will/should be the projections management is willing to vouch for to the board and the financing providers.

In this same e-mail, Mr. Larsen commented on an earlier e-mail sent by Mr. Sotir asking for "a list of items that we'd want to get from the Company" such as Period 2 final results, Period 3 Flash report, 2007 Reforecast and Interactive diligence.[1768] The record is not clear whether EGI attempted to obtain some or all of this information from Tribune. In a summary of the March 20, 2007 meeting with Nils Larsen, Daniel Kazan (of Tribune) reported that Mr. Larsen was told that Tribune had not changed its 2007 projections.[1769]

(2) Revisions to the EGI Proposal.

On February 19, 2007, EGI submitted a term sheet to Tribune with proposed terms for the ESOP transaction.[1770] After preliminary conversations with Tribune's management and Financial Advisors, EGI submitted a revised term sheet on February 22, 2007, that included a description of the terms of the proposed financing for the transaction.[1771] In response, the Special Committee asked EGI to restructure its proposal to provide for a recapitalization that would offer an upfront distribution to Tribune's stockholders.[1772]

A February 28, 2007 internal Morgan Stanley e-mail reflected that MLPFS communicated Tribune's concerns with the EGI proposal to Mr. Zell, and that EGI was going to work through the weekend to "secure a better price and address conditionality concerns."[1773] A

[1768] *Id.*

[1769] Ex. 594 (Crane E-Mail, dated March 20, 2007).

[1770] Ex. 121 (EGI Term Sheet, dated February 19, 2007). *See* Report at § III.D.1.f.

[1771] Ex. 122 (EGI Term Sheet, dated February 22, 2007). *See* Report at § III.D.1.f.

[1772] Ex. 126 at 22-24 (Deposition of Thomas Whayne, May 17, 2007). *See* Report at § III.D.1.f.

[1773] Ex. 335 (Whayne E-Mail, dated February 28, 2007).

March 2, 2007 internal e-mail from William Pate to Mr. Larsen indicated that EGI responded to the Special Committee's concerns by incorporating an upfront payment and a year-end closing into its model.[1774] Mr. Pate noted:[1775]

> The change does not appear to have a material impact on returns; however, it seems to push our revolver draw at the opening to the limit. We become very reliant on the Cubs transaction to ensure that we don't have liquidity problems at the outset. While I think it is fine for now, we may want to ask the lenders to upsize the Sr. Notes in this scenario.

Mr. Larsen explained EGI's decision to structure a two-step transaction with an upfront distribution as being driven by the Special Committee to replicate the economics of the self-help proposal for Tribune's stockholders.[1776] Mr. Larsen further stated that EGI was being "positioned" as "not the only game in town," and "not the preferred alternative."[1777]

On March 4-6, 2007, EGI provided Tribune with revised term sheets that included an initial payment to Tribune's stockholders, followed later by the Merger.[1778] On March 7, 2007, EGI's counsel provided Tribune with a revised draft of a merger agreement reflecting the revised structure of the proposed transaction.[1779] During the next few days, the parties exchanged drafts of various agreements and comments on those drafts.[1780]

On March 11, 2007, Mr. Larsen sent an e-mail to Brit Bartter, Rajesh Kapadia, and others at JPMCB informing them that "as of late Friday night Tribune signaled to us that they had decided not to pursue either deal. The reasons given are a bit skimpy and I am not sure if this

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[1774] Ex. 595 (Pate E-Mail, dated March 2, 2007).

[1775] *Id.*

[1776] Examiner's Interview of Nils Larsen, June 15, 2010.

[1777] *Id.*

[1778] Ex. 127 (EGI Term Sheet, dated March 4, 2007); Ex. 128 (EGI Term Sheet, dated March 6, 2007). *See* Report at § III.D.1.f.

[1779] Ex. 129 (Draft Merger Agreement, dated March 7, 2007).

[1780] Ex. 5 at 23 (Tender Offer).

will stick but for now we are in limbo."[1781] After receiving JPMCB's response, which reflected surprise at the turn of events, Mr. Larsen responded that "[s]upposedly Dennis spent three days with the publishers and got cold feet on the leverage. It sort of came out of the blue to the other senior managers from what I understand. I don't know if he can convince the board though."[1782] (At the same time, Tribune was reconsidering the possible recapitalization and spin-off plan at reduced levels of leverage.)[1783] On March 13, 2007, Mr. FitzSimons had breakfast with Mr. Zell.[1784] Mr. FitzSimons testified that he told Mr. Zell that the "complexity of the transaction was causing us some difficulty in wondering could the transaction be, you know, could it be completed."[1785]

E-mails from the Lead Banks, as well as the interviews of Mr. Whayne, Mr. Zell, and Mr. Larsen, reveal the various perspectives of Tribune, its Financial Advisors, and EGI with regard to the status of the EGI proposal at this time. On March 10, 2007, Michael 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 comfortable [sic] with employees owning the equity. Also numerous issues in the Zell proposal we could not solve."[1786] A March 15, 2007 internal JPMCB e-mail described the Zell deal as "dead," and indicated that Tribune was focusing on pursuing a self-help proposal.[1787] Mr. Whayne explained to the Examiner that,

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[1781] Ex. 132 at JPM-00246318 (Bartter E-Mail, dated March 11, 2007).

[1782] *Id.* at JPM-00246317. In his sworn interview with the Examiner, Mr. FitzSimons denied that (a) his initial negative reaction to EGI's proposal and (b) the message delivered to EGI on March 9, 2007 that Tribune had decided not to pursue further EGI's proposal, resulted from the degree of leverage associated with EGI's proposal. *See* Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 30:2-31:4 and 34:9-35:3.

[1783] Ex. 5 at 23 (Tender Offer). *See* Report at § III.D.1.f.

[1784] Ex. 133 at 2 (Cohen E-Mail, dated March 15, 2007).

[1785] Ex. 134 at 120 (Deposition of Dennis FitzSimons, May 14, 2007).

[1786] Ex. 338 (Costa E-Mail, dated March 10, 2007).

[1787] Ex. 133 at 1 (Cohen E-Mail, dated March 15, 2007).

during the mid-March 2007 time period, Tribune's management "went back and forth as to what they wanted to do. Was it recap, was it Zell."[1788] Mr. FitzSimons acknowledged that at that time the "process was very fluid and we're trying to come out with the best answer and we're trying to be open with everybody . . . and [I] wanted to be straight with [Zell] telling him exactly what my concerns were."[1789]

According to Mr. Zell, during March 2007 he "really thought the deal was dead."[1790] In fact, though, the tide quickly shifted back in favor of the EGI proposal. Mr. Zell was in New York City on another matter when he received a call from his assistant telling him that William Osborn, Chair of the Special Committee, needed to talk to him.[1791] Mr. Zell told the Examiner that Mr. Osborn said to him "we've gone over this thing and really think it might work, and I said fine. And we then proceeded to go forward."[1792] Mr. Larsen told the Examiner that Tribune may have been using this "cold feet" story as a negotiating tactic to give Tribune "time to catch up on the self-help deal."[1793] Mr. Whayne explained that he believed the shift back toward EGI's proposal occurred because Tribune wanted a "complete solution" and because many of the impediments to the initial EGI proposal had been removed.[1794]

At a March 21, 2007 Special Committee meeting, Tribune management and the Financial Advisors reviewed EGI's proposal as well as the self-help proposal.[1795] The Financial Advisors highlighted the benefits and risks of each, including the tax benefits of the ESOP, but also the

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1788 Examiner's Interview of Thomas Whayne, June 11, 2010.

1789 Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 60:4-10.

1790 Examiner's Interview of Samuel Zell, June 14, 2010.

1791 *Id.*

1792 Examiner's Interview of Samuel Zell, June 14, 2010.

1793 Examiner's Interview of Nils Larsen, June 15, 2010.

1794 Examiner's Interview of Thomas Whayne, June 11, 2010.

1795 Ex. 136 (Special Committee Meeting Minutes, dated March 21, 2007).

leverage associated with the EGI proposal. Following these reviews, the Special Committee directed Tribune's management and advisors to present two fully developed alternatives to the Special Committee at a meeting on March 30, 2007 for a final determination.[1796]

When asked during his interview what changed Tribune's view of the EGI proposal, Michael Costa of Merrill cited three factors: (a) a better understanding of the ESOP tax shield, (b) improvements in the consideration that Tribune's stockholders would receive under the proposal, and (c) anticipated improvements in Tribune's cash flow due to synergies (*i.e.,* costs that would not be incurred as a private company that would be incurred as a public company) and other cost cutting measures that Mr. Zell would implement.[1797]

Tribune continued to seek improvements to the economic terms of the EGI proposal, including an increase in the price to be paid to Tribune's stockholders and an increase in the investment made by EGI.[1798] On March 22, 2007, Mr. Osborn sent an e-mail to Morgan Stanley advising that he had spoken with Mr. Zell that morning and asking Mr. Whayne to call EGI to resolve some of the open economic terms of the deal before the following week's Tribune Board meeting.[1799] After the call with Mr. Whayne, William Pate e-mailed Mr. Larsen and Mr. Zell and told them that Mr. Osborn had made "a highly equivocated assent to our counter," and that the EGI proposal as it stood would be presented to the Tribune Board at the following week's meeting.[1800] Mr. Pate emphasized that, at this point, the share price remained at $33 and, among other things, there was no break-up fee.[1801] Mr. Pate directed Mr. Larsen to call Tribune and

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[1796] Ex. 5 at 24 (Tender Offer). *See* Report at § III.D.1.f.

[1797] Examiner's Interview of Michael Costa, June 4, 2010.

[1798] Ex. 5 at 24 (Tender Offer).

[1799] Ex. 598 (Crane E-Mail, dated March 22, 2007).

[1800] Ex. 599 (Pate E-Mail, dated March 23, 2007).

[1801] *Id.*

inquire into the status of EGI's request for fee reimbursement and then "move quickly to put a fully wrapped deal before trb board."[1802]

During this period, Tribune also discussed the EGI proposal with the rating agencies.[1803] The record is not clear regarding the extent of EGI's involvement in the meetings with the rating agencies. Internal EGI e-mails suggest that Mr. Larsen was concerned about Tribune's ability to handle the rating agency presentations and that he therefore wanted to attend the presentations, but at least one of the agencies was not comfortable with Mr. Larsen's presence.[1804] In preparing for the rating agency meetings, Tribune management internally debated whether revised financials for Period 1 and Period 2 should be put "in the deck" or shown to Mr. Larsen.[1805] "This is tricky b/c we've told Nils that we aren't changing our plan based on the results from the first two periods. If he sees this, it may raise issues. We need to weigh that against showing this in the rating agency deck."[1806]

As EGI prepared for the March 30, 2007 Tribune Board meeting, Chandler Bigelow forwarded to Mr. Larsen Tribune's attorneys' notes regarding the status of the EGI and self-help proposals in advance of a conference call to discuss the proposals.[1807] In so doing, Mr. Bigelow ignored counsel's stated advice not to distribute the e-mail any further.[1808]

Before the meeting of the Special Committee on March 30, 2007, EGI revised its proposal slightly to increase the stated per share consideration in the merger to $33.50, but with

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1802 *Id.*

1803 *See* Report at § III.D.15.a.

1804 Ex. 600 at EGI-LAW-00030300 (Bigelow E-Mail, dated March 21, 2007); Ex. 601 (Larsen E-Mail, dated March 21, 2007).

1805 Ex. 602 at TRIB0078232 (Kazan E-Mail, dated March 21, 2007).

1806 Ex. 602 (Kazan E-Mail, dated March 21, 2007).

1807 Ex. 603 (Bigelow E-Mail, dated March 29, 2007).

1808 *Id.* at EGI-LAW 00044410.

the "ticking fee" start date moved to January 1, 2008.[1809] An internal EGI e-mail reported that adding the increase in price to the fully-flexed scenario resulted in "pretty tight" covenant levels in the first few years as well as "knocked down" returns.[1810]

(3) EGI's Involvement In Negotiations Regarding the Step One Financing.

At the beginning of February 2007, EGI worked with MLPFS and the Citigroup Entities regarding financing. JPMCB joined the team later in the month, providing EGI with capital commitments and underwriting services, but not financial advisory/M&A services.[1811] On February 23, 2007, Mr. Larsen e-mailed EGI's latest financial model with regard to the proposed transaction to EGI's contacts at Citigroup, MLPFS, and JPMCB.[1812] Mr. Larsen stated that: "The company has indicated that our proposal is made even stronger by the fact that we have added another party [JPMorgan] to the mix and we need to capitalize on this."[1813] Mr. Larsen forwarded engagement, commitment, and fee letters to Tribune General Counsel Crane Kenney on February 23, 2007.[1814]

On March 4, 2007, Todd Kaplan of Merrill e-mailed Mr. Bartter and Mr. Kapadia of JPMCB stating that the Zell Group and Tribune had asked them to work together on a "2-step" plan for financing the buyout, and referencing a proposed meeting with the "combined Zell/Trib client group" to discuss the financing.[1815] Mr. Kapadia subsequently e-mailed Mr. Larsen to confirm that EGI did not have an issue with JPMCB merging its team working with Tribune on

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[1809] Ex. 5 at 25 (Tender Offer).

[1810] Ex. 604 (Hochschild E-Mail, dated March 29, 2007).

[1811] Examiner's Interview of Brit Bartter, June 16, 2010.

[1812] Ex. 605 at JPM __ 00205153 (Kapadia E-Mail, dated February 23, 2007).

[1813] *Id.*

[1814] Ex. 606 (Larsen E-Mail, dated February 23, 2007).

[1815] Ex. 607 at JPM __ 00450043-450044 (Bartter E-Mail, dated March 4, 2007).

the self-help proposal with the team that had been working with EGI on its proposal.[1816] Mr. Kapadia noted that "[i]t appears that ML and Citi have already done so."[1817] Mr. Larsen confirmed that he had no issue with the merger of the JPMCB teams.[1818]

On March 27, 2007, Sidley Austin LLP circulated to EGI and Tribune the Lead Banks comments to the Commitment Letters for the proposed EGI transaction.[1819] The same day, Mr. Bigelow forwarded to Mr. Larsen a list of open issues with respect to the Commitment Letters.[1820] Mr. Bigelow also reported to Mr. Larsen that there was "deafening silence" with respect to his request for EGI's $1.5 million fee reimbursement.[1821]

On the eve of the March 30, 2007 meeting of the Tribune Board, JPMCB believed that the EGI proposal was going to be approved and noted that there would be discussions with Mr. Zell to give JPMCB a "lead left role on some/all of the financings."[1822]

EGI believed that the Lead Banks made their decision to provide the LBO Lender Debt based on the merits of the financing, not on the fees to be earned or the prospect of future business from the Zell Group.[1823] Mr. Larsen told the Examiner that he believed JPMCB would have "done the same deal" for someone other than Mr. Zell.[1824] Mr. Larsen pointed to the fact that EGI had asked JPMCB to work exclusively with EGI and not finance any competitors, and

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[1816] Ex. 608 (Larsen E-Mail, dated March 6, 2007).

[1817] *Id.*

[1818] *Id.*

[1819] Ex. 609 (Varner E-Mail, dated March 27, 2007).

[1820] Ex. 610 at EGI-LAW-00036117 (Bigelow E-Mail, dated March 27, 2007).

[1821] *Id.*

[1822] Ex. 611 (Dimon E-Mail, dated March 29, 2007).

[1823] Examiner's Interview of Nils Larsen, June 15, 2010. Mr. Larsen told the Examiner that he believed the Lead Banks "looked at the opportunity and structure and thought it was a prudent risk to run. They thought they could syndicate the risk and be adequately paid for the risk, and that was something based on their own due diligence." According to Mr. Larsen, EGI "had no coercion or other deals to offer them. They all had to look at this as a reasonable financial risk and reward." *Id.*

[1824] *Id.*

JPMCB refused.[1825] Regarding the fees earned by the Lead Banks, Mr. Larsen stated that the Lead Banks "provided a capital commitment that was still $4.2 [billion] of exposure that was tied to the Second Step. JPMorgan was on the hook for 1/3; that's $1.2 billion exposure, I don't think we paid $1.2 billion of fees. Even if they syndicated the whole first step, if they were not comfortable with the risk its really hard to say how do you get there with the fees."[1826]

> No absolutely not. Credit didn't know Sam. People approving the projections didn't know Sam. Senior management isn't going to influence Credit. . . . On the margin you care about your client relationships. Of course. But will never do something crazy just because it's Sam.

c. Tribune's Selection of the EGI Proposal.

The sequence of events culminating in the Special Committee's and the Tribune Board's approvals of the Leveraged ESOP Transactions is discussed elsewhere in the Report.[1827] Mr. Larsen stated to the Examiner that EGI was not sure how serious the Broad/Yucaipa Proposal was, but that "it was a credible feeling that the Company was considering other alternatives. To engage with [Tribune] we had to increase the pricing and the timing."[1828] EGI went from $33 to $34 per share as a matter of "negotiation," which was ultimately Mr. Zell's decision.[1829]

d. The Extent, if any, to which Tribune Director and Officer Transaction-Based Compensation Played a role in the Selection of the EGI Proposal.

Certain Parties alleged that the Tribune Board supported the EGI proposal because it included monetary incentives for the directors and officers of Tribune. The most significant

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[1825] *Id.*

[1826] *Id.*

[1827] *See* Report at § III.D.1.

[1828] Examiner's Interview of Nils Larsen, June 15, 2010.

[1829] *Id.*

monetary incentives received by these individuals as a result of the Leveraged ESOP Transactions, however, were based on the Transitional Compensation Plan and accelerated restricted stock and options already in place before the EGI proposal was considered.[1830] Mr. Zell told the Examiner that he did not recall negotiating any management incentives and that he thought Tribune formulated the 2007 Management Equity Incentive Plan.[1831] Mr. Whayne also told the Examiner that he was "not aware of anything Zell did to offer incentives to management. What I saw of Zell was that he was non-committal about who was going to stay or go. Didn't offer any assurances, certainly no guarantees to people."[1832] Mr. Larsen was similarly unequivocal in response to the Examiner's question as to whether management incentives played a role in Tribune management's ultimate support of the EGI proposal:[1833]

> The conclusion is about as far off base as possible. The company had 95 or 100 different employee benefit plans, most of which were focused on senior folks. As we did our due diligence we found lots of plans. The Board had put in place a success bonus in 2006, all pre-existed our involvement. We focused on how much money would go out if people left and got those payments. We found between $100-$140 million in payments. . . . EGI never proposed to add more money to the cash bonus pool.

The record establishes, however, that EGI's February 19, 2007 term sheet contemplated the adoption of a management incentive plan providing management the economic equivalent of 5% of the outstanding Tribune Common Stock.[1834] Mr. Larsen acknowledged the equity incentive plan in his interview with the Examiner, stating that: "We suggested the success bonus

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1830 Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 59:17-60:13 and 63:18-64:3.

1831 Examiner's Interview of Samuel Zell, June 14, 2010.

1832 Examiner's Interview of Thomas Whayne, June 11, 2010.

1833 Examiner's Interview of Nils Larsen, June 15, 2010. In his sworn interview with the Examiner, Mr. FitzSimons concurred, stating "absolutely not" in response to the Examiner's question as to whether Mr. Zell or others had "sweetened the deal by giving management incentives, compensation incentives connected to the transaction." Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 127:1-12.

1834 Ex. 121 at 5 (EGI Term Sheet, dated February 19, 2007).

be exchanged for a payment of $37 million cost net benefit of $25 million to management. We looked at what the cost was going to be. We allocated 5% pool with longer vesting and 3% shortened vesting in exchange for management relinquishing cash bonuses at closing."[1835] Mr. Larsen also said that the 2007 Management Equity Incentive Plan was designed to incentivize management to make the new company a success, whereas all of the other bonuses called for management to be paid on completion of the Leveraged ESOP Transactions or a change of control.[1836] Similarly, Chandler Bigelow testified that the incentive plan developed as part of the EGI proposal "actually delivered less benefits" than the then-existing incentive plan.[1837]

e. The Zell Group's Activities Leading Up to the Closing of the Step One Transactions.

From April 1, 2007 until June 4, 2007, EGI actively participated in finalizing the Step One Financing.[1838] The day after the Tribune Board approved the Leveraged ESOP Transactions, EGI advised the Citigroup Entities of Mr. Zell's intention to bring in BofA as a Lead Bank.[1839]

[1835] Examiner's Interview of Nils Larsen, June 15, 2010.

[1836] *Id.*

[1837] Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 72:1-15.

> Q. The plan – the plan ultimately approved by the board had less benefits?
>
> A. Just so – can I be very clear . . . there was a 5 percent plan which was a broad-based, 300, 400, people, you know. Obviously it's a big company, right. And then on top of it there was a plan that was a 3 percent of equity plan. It's that 3 percent of equity plan that did not include a gross up, was equity, and essentially replaced what had been in my mind, again, and this is just my recollection, a cash-based plan with a gross up, and it's that 3 percent plan that I believe, again I don't have the numbers in front of me, it's my recollection that delivered less benefits than the original plan.

[1838] During this timeframe, Tribune regularly sent EGI internal financial reports, such as Brown Books, updated 2007 plan schedules by business unit, advertising revenue category reports, and full projections by business unit. *See* Ex. 612 (Hochschild E-Mail, dated April 12, 2007); Ex. 613 (Kazan E-Mail, dated April 16, 2007); Ex. 614 (Hochschild E-Mail, dated May 14, 2007); Ex. 615 (Hochschild E-Mail, dated May 21, 2007); Ex. 616 (Pate E-Mail, dated May 25, 2007).

[1839] Ex. 617 (Perisly E-Mail, dated April 3, 2007).

Mr. Zell's initial plan was to reduce the Citigroup Entities' share of the financing by 50% and to give that portion to BofA.[1840] The Citigroup Entities were displeased with EGI's plan, which reduced their share yet left the Merrill Entities' and JPM's respective shares untouched.[1841] Mr. Zell and Tribune responded to the Citigroup Entities' complaints and ultimately determined that participation would be as follows: 30% each for the Merrill Entities and JPM (reduced from 33.3%), 25% for the Citigroup Entities (increased from 16.6%), and 15% for BofA (reduced from 16.6%).[1842]

Mr. Larsen described the financing for this transaction as not "the easiest transaction," but claimed that he has worked on "more difficult ones."[1843] According to Mr. Larsen, in mid-April of 2007 JPMCB began its effort to syndicate the Step One Financing at a bank meeting in New York.[1844] Mr. Larsen recalled that he attended the meeting (likely along with William Pate) but did not speak.[1845] Mr. Larsen described the meeting as "well attended, several hundred people in the room and a fairly substantial number on the phone."[1846]

By the end of April, discussions with potential lenders were progressing, albeit slowly. On April 24, 2007, Mr. Bigelow forwarded to Tribune management an e-mail from Mr. Larsen regarding first quarter results, and Mr. Bigelow advised management that "the banks are getting a lot of questions from prospective lenders about Zell's reaction to our first quarter" financial results.[1847]

1840 *Id.*

1841 *Id.*

1842 Ex. 618 (Kowalczuk E-Mail, dated April 5, 2007).

1843 Examiner's Interview of Nils Larsen, June 15, 2010.

1844 *Id.*

1845 *Id.*

1846 *Id.*

1847 Ex. 619 at TRB0131956 (Musil E-Mail, dated April 24, 2007).

By early May 2007, it was apparent that the Lead Banks were having difficulties syndicating the loans. A series of internal JPMCB e-mails discussed these dynamics.[1848] JPMCB began working with Mr. Zell and Tribune on a proposal for an asset sale bridge that would "slow deleveraging and help with technicals."[1849] Mr. Larsen admitted that there was a difference in the market from February to May of 2007, and that "[i]n May, this was a large deal and a fair amount of senior debt relative to the capital structure. It's essentially a market deal. A lot of lenders, a lot of conversations."[1850] As discussed in the Report, Tribune, the Zell Group, and the LBO Lenders came to terms on the Step One Financing and the Step Two Financing, and the Step One Financing closed on June 4, 2007.[1851]

F. Significant Events Leading Up to the Step Two Transactions.

1. Pre-Step Two Transactions Market Background.

a. Analyst Reports.

On June 20, 2007, Deutsche Bank Securities Inc. reduced its projected target price for the Tribune Common Stock after Tribune announced disappointing May 2007 revenues, announcing that "[w]e lower our price target from $34 to $32 to reflect the offer price and the probability of the offer being lowered or the deal not closing."[1852] Deutsche Bank also raised concerns about the likelihood of Tribune obtaining the FCC Order, the primary lenders' ability to syndicate the Step Two Financing, rising interest rates, and widening high yield credit spreads.[1853]

[1848] *See* Ex. 620 (Kaplan E-Mail, dated May 11, 2007); Ex. 621 (Cohen E-Mail, dated May 11, 2007); Ex. 622 (Sell E-Mail, dated May 12, 2007).

[1849] Ex. 623 (Linneman E-Mail, dated May 11, 2007).

[1850] Examiner's Interview of Nils Larsen, June 15, 2010.

[1851] *See* Report at §§ III.D.10. and III.D.17.

[1852] Ex. 624 (Deutsche Bank Securities Inc. Company Alert, dated June 20, 2007).

[1853] *Id.*

On June 22, 2007, an analyst at Standard & Poor's Leveraged Commentary & Data reported that the bid price for the Tranche B Facility had fallen approximately one point below its initial offer price, "an indicator that the market's appetite for the deal is waning."[1854]

On July 1, 2007, Deutsche Bank issued a comprehensive ratings upgrade report on Tribune indicating that:[1855]

> [b]ased on our understanding of the merger and the credit agreements, and discussions with the company, investors and DB analysts . . . we believe that the Tribune going-private transaction will complete. There may be some unhappy lenders in the end, but equity investors are more likely than not to get their $34 in the second tender. We therefore raise our target to $34, and move our rating from Hold to Buy.

Deutsche Bank continued on to say that "Zell/ESOP have secured financing via commitment letter, which essentially locks in financing to complete the deal…."[1856] Deutsche Bank noted that, notwithstanding that the financing is "locked in place," the Tribune Common Stock had dropped below $30, explaining that the equity market was concerned about the following:[1857]

> 1) The merger agreement includes a clause that would allow Sam Zell to exit the deal if there is insufficient financing. Some investors believe that Zell is having second thoughts given very weak current advertising trends and the rising cost of debt that TRB will have to contend with as the credit market's view of the company and [its] business is increasingly lukewarm. These investors believe Zell will try to use the clause (or some other means) to get out of the deal.
>
> 2) The primary lenders for the deal (four of them, led by JP Morgan and Merrill Lynch), who have guaranteed financing via a bridge loan, may be unhappy with the bond

[1854] Ex. 625 at C3 (Chicago Tribune, dated June 22, 2007).

[1855] Ex. 626 at 1 (Deutsche Bank Rating Upgrade, dated July 1, 2007).

[1856] *Id.*

[1857] *Id.* at 2-3.

> market's diminished appetite for highly leveraged credit issues, particularly from a big market newspaper company. They may be looking for a way out of the deal themselves. The commitment letter for the bridge loan contains a leverage ratio test that could give them an out if operating trends get meaningfully worse for Tribune.
>
> 3) The Chandler family sold the balance of their shares remaining after the first tender (20.4M shares) for about \$31.19 per share to Goldman Sachs in early June. We are not sure why the family sold at a price so substantially below the upcoming second tender, and the mystery surrounding that move has contributed to the spooking of the equity markets. Goldman likely, in turn, sold some or all of that position, which could also have put downward pressure on the stock.

Having evaluated the response of the equity markets, Deutsche Bank continued on to evaluate the debt markets:[1858]

> While the equity market appears to believe there is a good chance the deal will die or the terms of the deal will be materially altered, the bond and credit default swap markets appear to think the deal is highly likely to be completed.
>
> Credit default swaps are "insurance" against default for current Tribune debt, and thus rise the more it becomes likely that current debt will be impacted by newer, more senior debt, due to the increased risk of default for a more highly leveraged company. If the deal died completely, the CDS price would fall sharply. Instead they have been rising fairly dramatically, suggesting that the CDS market thinks the deal will be completed. Prices for the 5 year senior TRB CDS have risen over 100 points over the last two weeks…. Some of this rise is due to a jittery debt market, but we believe that most of it reflects a view on the deal.

With respect to the likelihood of obtaining the requisite FCC Order, Deutsche Bank noted that:[1859]

> Under current FCC rules, a single company cannot own both a daily newspaper and a broadcast outlet in the same market.

[1858] *Id.* at 13.

[1859] *Id.* at 13-14.

> Several companies with cross-ownership markets were either grandfathered around the ban, or received a waiver that allowed them to own both a paper and a TV or radio station in the same market. FCC rules provide that a transfer of control terminates any grandfather exemption or waiver, and would theoretically force a purchaser to divest one of the media assets in a cross-owned market.
>
> Among Tribune's 11 daily newspapers, five operate in markets in which Tribune also owns a TV station (New York, Los Angeles, Chicago, Miami/Ft. Lauderdale and Hartford). The going-private transaction is conditioned upon the FCC providing a cross-ownership waiver for each of the five stations.
>
> Recent press reports indicated that Zell and Tribune have lobbied both the FCC and Congress for a quick ruling on Tribune's pending transfer of control application (filed May 1). The press has also reported that several prominent Senate Democrats, including Majority Leader Harry Reid, Richard Durbin from Illinois, and Charles Schumer from New York, have written a letter to FCC Chairman Kevin Martin asking for "prompt consideration." In "Washington-speak" this means "approve it."
>
> Historically the Democrats have been more concerned than the Republicans regarding local media concentration and diversity of voice. With top Democrats promoting completion of the Tribune deal, we expect the Republican majority in the FCC to comply with the "prompt consideration" request as there seems to be bi-partisan political will behind it.

Finally, although Deutsche Bank did conclude that it believed that the Leveraged ESOP Transactions would close, it noted the following concerns:[1860]

> While we believe that Tribune will exceed the minimum adjusted EBITDA threshold laid out in the merger and credit agreements, our primary concern is that none of the parties involved in this going-private transaction are highly motivated to see the deal through on its current terms.
>
> • Zell has no reason to want to keep the second tender at $34 per share. He may even now have reason to want to exit the deal all together [sic]. At the very least he'd like to renegotiate the price of the second tender to a lower number. The only reason we can

[1860] *Id.* at 14-15.

> see that he would not seek to renegotiate the second stage tender offer is to keep his good reputation.
>
> • The lenders for this deal don't want to get stuck not being able to syndicate the debt from the bridge loan. We believe they'd probably like to be able to get out of their commitment if they could do so without damaging their reputation (which seems very difficult).
>
> • Management may have some incentive to keep the deal intact "as is," as some of their compensation (via options and shares) has been tied to the sales price. But if management remains in place following the going-private transaction, they would also want less debt to ease the interest burden of the company they will be running.
>
> • The only party that has a fiduciary duty to the shareholders and does not have conflicting alliances is The Board of Directors. The Board may potentially have to weigh the threat of shareholder lawsuits versus accepting a lower price to get the deal completed, if Zell and the lenders put up legal delays (if any such are possible other than the MAC clause).

On August 14, 2007, Lehman Brothers issued a Change of Earnings Forecast, cutting its estimate of Tribune's earnings per share in 2007 from $1.48 to $1.42 and in 2008 from $1.20 to $1.00, on the assumption that the Step Two Transactions would not close, and rating Tribune as "Underweight" and the sector as "Negative," with a $34 price target[1861] for the Tribune Common Stock.[1862] Lehman indicated that, in its opinion, "the likelihood [of the Step Two Transactions] happening in the upcoming months is no better than 50%/50% at this stage due to the significant pressure on revenue and EBITDA…. Tribune is significantly overlevered currently and should not be adding more debt to its capital structure,"[1863] concluding that "[s]hould the [Step Two

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[1861] Lehman cautioned that $34 was based on the price per share that stockholders would receive following the consummation of the Step Two Transactions. However, if the Step Two Transactions were not consummated, Lehman's estimated that the "fair value on the stock would be $3-$4 per share based on our detailed sum-of-the-parts analysis" or $9-$10 per share if determined on the basis of estimated free cash flow. *See* Ex. 627 at 20 (Lehman Change of Earnings Forecast, dated August 14, 2007).

[1862] *Id.* at 1.

[1863] *Id.* at 2.

Transactions close], the company will not be able to cover the estimated annual interest expense from operations let alone have excess free cash flow to pay down debt each year."[1864]

Lehman outlined several factors that made it less likely that the Step Two Transactions would be consummated:[1865]

- "The secularly declining revenue/EBITDA at Tribune;"
- "Much tighter fixed income markets over the past two to three months with no end seemingly in sight make syndicating the [Step Two Debt] very difficult;"
- Lehman's "belief that the commercial banks who have committed to financing [the Step Two Transactions] may be looking to exit this deal [as] $4.2 billion in debt could be sitting on their balance sheets if they cannot syndicate the loans out;"
- Lehman's view that the "potential realization . . . by the parties involved in the [Step Two Debt] that the proposed leverage . . . will be much too high; . . . we are talking about Sam Zell personally, the board of directors at Tribune, the company's own outside advisors, etc.;"
- Lehman's skepticism that Tribune would be able to obtain the requisite solvency opinion;
- Lehman's estimated one-third possibility that the "FCC demands that Tribune sell . . . newspaper or TV station[s]" in certain markets "would most likely cause a 'material adverse change' to the portfolio of media assets;"
- The fact that, if the Leveraged ESOP Transactions did not close by May 31, 2008, the "banks involved in the deal can walk away from the financing;" and

[1864] *Id.* at 2.

[1865] *Id.* at 3.

- The possible failure of Tribune to meet the "secured leverage ratio test" in the Step Two Commitment Letter.

b. **SEC Filings.**

Tribune's SEC filings during the period leading up to the Step Two Transactions disclosed certain risks associated with the Leveraged ESOP Transactions. In Tribune's Form 10-Q for the period ended July 1, 2007 (filed August 9, 2007) Tribune disclosed three risk factors with respect to the Leveraged ESOP Transactions:[1866]

- "Our businesses may be adversely affected by the Leveraged ESOP Transactions and the failure to consummate the pending Leveraged ESOP Transactions."[1867] According to Tribune, the considerations underlying this risk factor included the diversion of management's attention away from day-to-day operations, transaction costs (which would be payable by Tribune whether or not the Merger closed), the termination of the Merger Agreement, the failure of the Merger to close, the failure to obtain necessary stockholder and FCC approvals to the Merger, and the failure to obtain the financing arrangements outlined in the Commitment Letters.[1868]

- "We currently have substantial debt and other financial obligations, and we expect to incur significant additional debt in connection with the Leveraged ESOP Transactions."[1869] According to Tribune, the considerations underlying this risk factor included the need to dedicate greater amounts of cash flow to the payment of the LBO Lender Debt, the

[1866] Ex. 628 at 46-49 (Tribune Form 10-Q, filed August 9, 2007).

[1867] *Id.* at 46.

[1868] *Id.* at 46-47.

[1869] *Id.* at 47.

failure of operations to generate sufficient cash flow to pay the LBO Lender Debt, and the ability of Tribune to refinance the LBO Lender Debt on or before maturity.[1870]

- "Consummation of the Leveraged ESOP Transactions will require regulatory approval from the FCC."[1871] According to Tribune, the considerations underlying this risk factor included the timing of the FCC's review of the application and the need to obtain new cross-ownership waivers as a result of the change of control that would result from the Merger.[1872]

Tribune's Form 10-Q for the period ended September 30, 2007 (filed November 2, 2007) identified the same risk factors as in the previous quarter's Form 10-Q.[1873] In addition, in the Form 10-Q for the period ended September 30, 2007, Tribune cited the failure to close the Merger due to "the inability to receive a satisfactory solvency opinion" as an additional consideration underlying the first risk factor.[1874]

2. The Tribune Entities' Financial Performance Following the Step One Financing Closing Date and Before the Step Two Financing Closing Date.

Between the Step One Financing Closing Date and the Step Two Financing Closing Date, the Tribune Entities' financial performance deteriorated significantly, both in relation to comparable periods in prior years and in comparison to the Tribune Board-approved February 2007 plan. Tribune Common Stock prices, despite being informed by at least some expectation of the closing of Step Two, traded as low as $25.41 during this period (a discount of more than 25% to the Tender Offer price), and Tribune's bond prices began declining in relation to par,

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[1870] *Id.* at 47-48.

[1871] *Id.* at 48.

[1872] *Id.* at 48-49.

[1873] Ex. 629 at 51-54 (Tribune Form 10-Q, filed November 2, 2007).

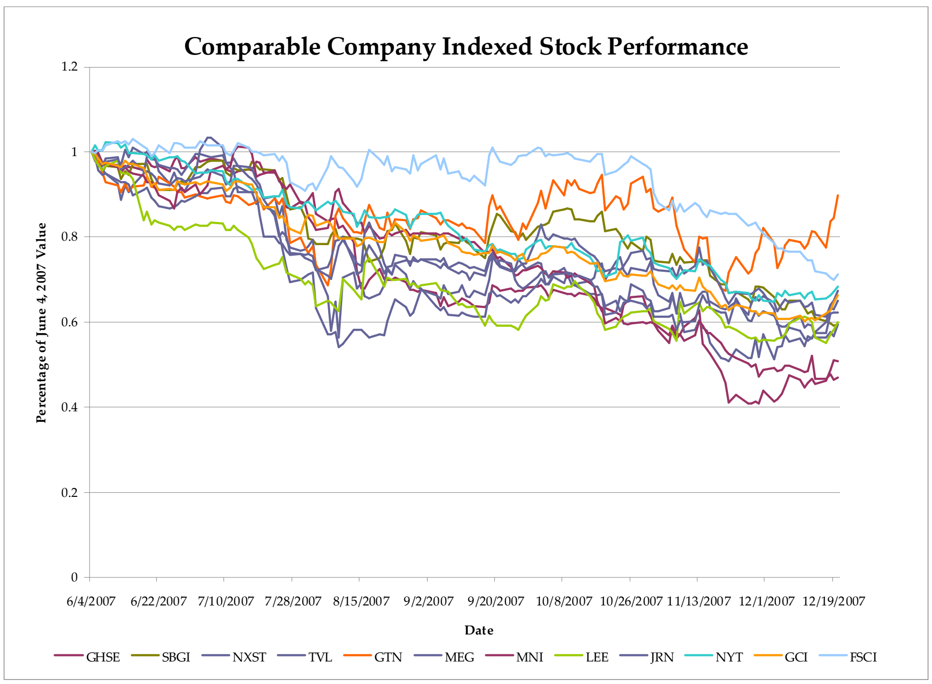
[1874] *Id.* at 52.

slumping to as low as almost 50 cents on the dollar for certain tranches of Tribune's longer-term maturity bond debt. Most of the adverse Tribune financial performance can be traced to declining absolute and relative performance of the Publishing Segment (consistent with observed declines in the equity values of other publicly traded newspaper companies identified by advisors as Tribune cohorts[1875] and evidencing a secular decline in the industry).

a. 2007 Quarterly Performance Versus Prior Years.

Tribune announced its second quarter 2007 results in a Form 8-K filed on July 25, 2007.[1876] Tribune reported second quarter 2007 consolidated revenues of $1.3 billion, down 7%

1875 Indexed stock price changes between June 4, 2007 and December 20, 2007 for companies identified as potential Tribune Publishing Segment cohorts is presented below. *See* Ex. 630 (Table of Tribune comparable company stock trading prices).



1876 *See* Ex. 631 (Tribune Form 8-K, filed July 25, 2007). Tribune filed its 2007 second quarter 10-Q on August 9, 2007, approximately two weeks later. *See* Ex. 628 at 33 (Tribune Form 10-Q, filed August 9, 2007). The management discussion of results set forth therein observed, among other things, as follows:

> Consolidated operating revenues for the 2007 second quarter fell 7% to $1.3 billion from $1.4 billion in 2006, and for the 2007 first half decreased 6% to $2.5 billion from $2.7 billion. These declines were primarily due to decreases in publishing revenues.

from the prior year, and a 36% comparable quarter operating profit decline of more than $100 million (declining from more than $300 million in 2006 to less than $200 million in 2007):

TRIBUNE CONSOLIDATED Q2 COMPARISON ($000s)			
	Q2 2007 (1)	Q2 2006 (1)	Difference
Revenue	$ 1,313,366	$ 1,408,789	($ 95,423)
EBIT	$ 195,804	$ 303,993	($ 108,189)
EBITDA	$ 254,060	$ 358,640	($ 104,580)

(1) Ex. 628 (Tribune Form 10-Q, filed August 9, 2007).

In connection with the earnings announcement, Mr. FitzSimons observed to the marketplace:[1877]

> Our second quarter results reflect the difficult advertising environment, although strong cost controls partially offset revenue declines. Publishing was impacted by soft print advertising and comparisons to record real estate spending, particularly in Florida, in 2006. However, second quarter interactive revenues increased 17 percent over the same period last year. In television, the telecom and entertainment categories showed growth. Demand was soft across other categories and there was little political spending versus last year. As we look to Tribune's second half, year-over-year comparisons will ease and new revenue initiatives are expected to contribute to publishing results. The launch of new CW and syndicated shows will positively impact our television group.

> Consolidated operating profit decreased 36%, or $108 million, in the 2007 second quarter and decreased 28%, or $144 million, in the 2007 first half. Publishing operating profit decreased 51%, or $106 million, in the 2007 second quarter and 36%, or $135 million, in the 2007 first half. Publishing operating profit in the second quarter and first half of 2007 included charges of $25 million and $26 million, respectively, for the elimination of approximately 440 positions and a charge of $24 million in both the second quarter and first half of 2007 for the write-off of Los Angeles Times plant equipment related to the previously closed San Fernando Valley facility. Publishing operating profit in the 2006 first half included a $20 million charge related to new Newsday union contracts. Broadcasting and entertainment operating profit was down 2%, or $2 million, in the 2007 second quarter and 5%, or $9 million, in the 2007 first half due to a decline in television group operating profit, partially offset by an increase in radio/entertainment profit.

[1877] Ex. 631 (Tribune Form 8-K, filed July 25, 2007).

Tribune's third quarter results were reported in a Form 8-K filed on October 24, 2007 and in a press release issued on the same day. A little more than a week later, Tribune filed its Form 10-Q for the quarter. Again, results were disappointing in comparison to the same period during the prior year, although third quarter results showed less disparity relative to the prior year in relation to the comparative decline in the second quarter.

TRIBUNE CONSOLIDATED Q3 COMPARISON ($000s)			
	Q3 2007 (1)	Q3 2006 (1)	Difference
Revenue	$ 1,276,899	$ 1,332,169	($ 55,270)
EBIT	$ 229,001	$ 237,856	($ 8,855)
EBITDA	$ 285,083	$ 294,617	($ 9,534)

(1) Ex. 628 (Tribune Form 10-Q, filed August 9, 2007).

A discussion of third quarter results contained in the Form 10-Q noted:[1878]

> Consolidated operating revenues for the 2007 third quarter fell 4% to $1.28 billion from $1.33 billion in 2006, and for the first three quarters of 2007 decreased 5% to $3.79 billion from $4.00 billion. These declines were due to decreases in publishing revenues, partially offset by an increase in broadcasting and entertainment revenues.

The Form 10-Q also noted:[1879]

> Consolidated operating profit decreased 4%, or $9 million, in the 2007 third quarter and decreased 20%, or $153 million, in the first three quarters of 2007. Publishing operating profit decreased 15%, or $21 million, in the 2007 third quarter and 30%, or $157 million, in the first three quarters of 2007. Publishing operating profit in the third quarter of 2007 included a severance charge of $3 million. Publishing operating profit in the first three quarters of 2007 included a severance charge of $29 million and a charge of $24 million for the write-off of Los Angeles Time plant equipment related to the previously closed San Fernando Valley facility.

[1878] *See* Ex. 629 at 36 (Tribune Form 10-Q, filed November 2, 2007).

[1879] *See id.* at 36-37.

> Publishing operating profit in the 2006 third quarter and the first three quarters of 2006 included $2 million of severance charges. Publishing operating profit in the first three quarters of 2006 included a $20 million charge related to new union contracts at Newsday and a $3 million gain on real property sales. Broadcasting and entertainment operating profit was up 9%, or $10 million, in the 2007 third quarter primarily due to higher cable copyright royalties, partially offset by a decrease in television advertising revenues. Broadcasting and entertainment operating profit was up $1 million in the first three quarters of 2007.

Although comprehensive financial results for the fourth quarter 2007 were not published publicly until early 2008,[1880] after the Step Two Financing Closing Date, Tribune continued to issue press releases during the fourth quarter, which shed light on the continuing decline in Tribune's performance, at least to some degree.[1881] For example, on November 27, 2007, Tribune issued a press release for period 10 (ending October 28, 2007), announcing that consolidated revenues had decline 9.3% in that period in relation to a comparable period for the prior year:[1882]

[1880] Tribune filed both its Form 8-K and Form 10-K on March 20, 2008. Although actual financial results were not disclosed publicly until after year end, approximately a full year of 2007 results likely were available to management before the Step Two Closing on December 20, 2007 (*e.g.*, based on the availability of the Brown Books for both October and November 2007). The following discussion addresses the fourth quarter results based on data obtained from Tribune's 10-K filing for the fiscal year ended December 30, 2007. *See* Ex. 4 (Tribune 2007 Form 10-K).

TRIBUNE CONSOLIDATED Q4 COMPARISON ($000s) (1)

	Q4 2007	Q4 2006	Difference
Revenue	$ 1,268,695	$ 1,448,214	($ 179,519)
EBIT (2)	$ 156,742	$ 324,717	($ 167,975)
EBITDA	$ 213,824	$ 383,525	($ 169,701)

(1) Ex. 4 (Tribune 2007 Form 10K) and Ex. 629 (Tribune Form 10-Q, filed November 2, 2007).

(2) Adjusted to exclude $130 million adjustment for writedown of intangible asset.

[1881] Tribune's monthly press releases typically did not contain profitability disclosures.

[1882] *See* Ex. 633 (Tribune Press Release, dated November 27, 2007). The press release stated:

On December 12, 2007, Tribune issued its final revenue-related press release of the year, observing that period 11 revenues were down 3.3% from the prior year, but noting that advertising revenues for period 11 in 2007 benefitted from a shift in the Thanksgiving week from period 12 in 2006 to period 11 in 2007 (thereby understating the actual extent of the decline).[1883]

> Tribune Company (NYSE: TRB) today reported its summary of revenues and newspaper advertising volume for period 10, ended October 28, 2007. Consolidated revenues for the period were $383 million, down 9.3 percent from last year's $422 million.
>
> Publishing revenues in October were $287 million compared with $311 million last year, down 7.9 percent. Advertising revenues decreased 10.6 percent to $222 million, compared with $249 million in October 2006.
>
> - Retail advertising revenues decreased 7.8 percent with the largest decreases in the department stores, amusements and electronic categories, partially offset by an increase in health care category. Preprint revenues, which are principally included in retail, were down 5.7 percent for the period.
> - National advertising revenues decreased 2.3 percent, with the largest decreases in the auto, transportation, and technology categories, partially offset by an increase in the movie category.
> - Classified advertising revenues decreased 19.2 percent. Real estate fell 26.9 percent with the most significant declines in Florida markets, Los Angeles, and Chicago. Help wanted declined 21.7 percent and automotive decreased 4.9 percent. Interactive revenues, which are primarily included in classified, were $22 million, up 11.4 percent, due to growth in most categories.
>
> Circulation revenues were down 6.3 percent due to single-copy declines and continued selective discounting in home delivery.
>
> Broadcasting and entertainment group revenues in October were $96 million, down 13.3 percent, due to decreases in television group revenue and Chicago Cubs revenue. Television revenues fell 7.1 percent, due to declines in political, movies and retail, partially offset by strength in the food/packaged goods, telecom and restaurant/fast food categories. Radio/entertainment revenues declined primarily due to five fewer Cubs home games.

[1883] *See* Ex. 634 (Tribune Press Release, dated December 12, 2007). The press release stated:

> Tribune Company (NYSE: TRB) today reported its summary of revenues and newspaper advertising volume for period 11, ended Nov. 25, 2007. Consolidated revenues for the period were $413 million, down 3.3 percent from last year's $428 million. Consolidated operating expenses were 5.0 percent lower than period 11 last year.
>
> Publishing revenues in November were $309 million compared with $321 million last year, down 3.5 percent. Advertising revenues decreased 4.9 percent to $244 million, compared with $257 million in November 2006. Advertising revenues benefited from the shift in the Thanksgiving holiday week from period 12 in 2006 to period 11 this year.
>
> - Retail advertising revenues increased 7.3 percent with the largest increase in the specialty merchandise, department stores, apparel/fashion and electronics categories. Preprint revenues, which are principally included in retail, were up 18.5 percent for the period.

b. 2007 Monthly Performance Versus The February 2007 Tribune Board-Approved Plan.

Although not reported publicly, Tribune did track monthly profitability performance in its Brown Books. In addition to providing management with insight into actual performance, the Brown Books compared actual performance to plan.[1884] Analysis of information contained in the Brown Books reveals not only that was Tribune performing poorly in relation to comparable quarterly results in prior years as reported, for example, in the quarterly SEC filings discussed above, but also in comparison to its February 2007 plan. Based on data contained in the Brown

---

- National advertising revenues increased 1.9 percent, with the largest increases in the movies, auto, financial and telecom/wireless categories, partially offset by a decrease in the transportation category.
- Classified advertising revenues decreased 26.2 percent. Real estate fell 39.8 percent with the most significant declines in Chicago, the Florida markets, and Los Angeles. Help wanted declined 28.4 percent and automotive decreased 7.6 percent. Interactive revenues, which are primarily included in classified, were $21 million, up 7.8 percent, due to growth in most categories.

Circulation revenues were down 4.6 percent due to single-copy declines and continued selective discounting in home delivery.

Publishing operating expenses in November were down 5.2 percent primarily due to lower newsprint and ink, compensation, promotion and other cash expenses.

Broadcasting and entertainment group revenues in November were $104 million, down 2.6 percent, due to decreases in television group revenue, partially offset by increases in radio/entertainment revenues. Television revenues fell 4.8 percent due to the absence of political advertising, partially offset by strength in several categories including retail, corporate, health, food/packaged goods, telecom and restaurant/fast food.

Broadcasting and entertainment group operating expenses in November declined by 2.7 percent primarily due to lower compensation and other cash expenses.

Consolidated equity income was $11 million in November, up from $8 million in the prior year period.

Tribune expects to complete its disposition of the Chicago Cubs, Wrigley Field and related real estate, and its interest in Comcast SportsNet Chicago in the first half of 2008. It plans to use the proceeds to repay existing debt.

As stated previously, the company also expects its going-private transaction to close before the end of Tribune's 2007 fiscal year following satisfaction of the remaining closing conditions, including the receipt of a solvency opinion and completion of the committed financing.

[1884] The Examiner concluded that the monthly budget amounts contained in the Brown Books, when aggregated, agree (with minor and reconcilable differences) with the February 2007 Tribune Board-approved plan.

Books, monthly variances to plan at the consolidated Tribune level of reporting for the periods from May through December 2007[1885] are summarized below:[1886]

TRIBUNE CONSOLIDATED REVENUE ($000s)								
	2007							
Period	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2007 Actual	$ 405,965	$ 507,931	$ 466,707	$ 391,163	$ 419,029	$ 382,810	$ 413,447	$ 472,438
2007 Plan	$ 441,391	$ 541,920	$ 497,934	$ 414,056	$ 420,587	$ 417,883	$ 437,745	$ 512,525
Variance	-8.03%	-6.27%	-6.27%	-5.53%	-0.37%	-8.39%	-5.55%	-7.82%

TRIBUNE CONSOLIDATED OPERATING PROFIT ($000s)								
	2007							
Period	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2007 Actual	$ 73,515	$ 59,809	$ 82,419	$ 63,218	$ 83,364	$ 73,148	$ 95,113	($ 141,519)
2007 Plan	$ 93,116	$ 123,144	$ 88,112	$ 73,846	$ 72,409	$ 90,221	$ 106,162	$ 113,767
Variance	-21.05%	-51.43%	-6.46%	-14.39%	15.13%	-18.92%	-10.41%	-224.39%

Most of the negative variance to plan resulted from the Publishing Segment as opposed to the Broadcasting Segment.[1887]

1885 *See* Ex. 635, Ex. 636, Ex. 637, Ex. 638, Ex. 639, Ex. 640, Ex. 641, Ex. 642 (Monthly Brown Books for the eight periods May - December 2007). May 2007 data are included in this section of the Report because these data were not available in Brown Book format before the Step One Financing Closing Date.

1886 The Examiner notes that certain significant non-recurring charges were taken by Tribune that explain some of the observed variances to plan, particularly in December 2007 when Tribune wrote off $130 million in goodwill associated with the Newsday Masthead, among other things. Therefore, variances to plan as reflected in the comparative tables need to be considered in light of these circumstances. Other non-recurring charges amounting to approximately $113.3 million were recorded during the fourth quarter 2007 as well. These charges included approximately $20 million in severance costs and almost $64 million in change of control payments. *See* Ex. 640, Ex. 641, Ex. 642 (Monthly Brown Books for fourth quarter 2007).

1887 Broadcasting Segment results are summarized below. Monthly operating profit for the consolidated Tribune Entities does not equal the sum of Publishing Segment and the Broadcasting Segment results due to the recognition of certain expenses only at the consolidated Tribune Entities level of reporting.

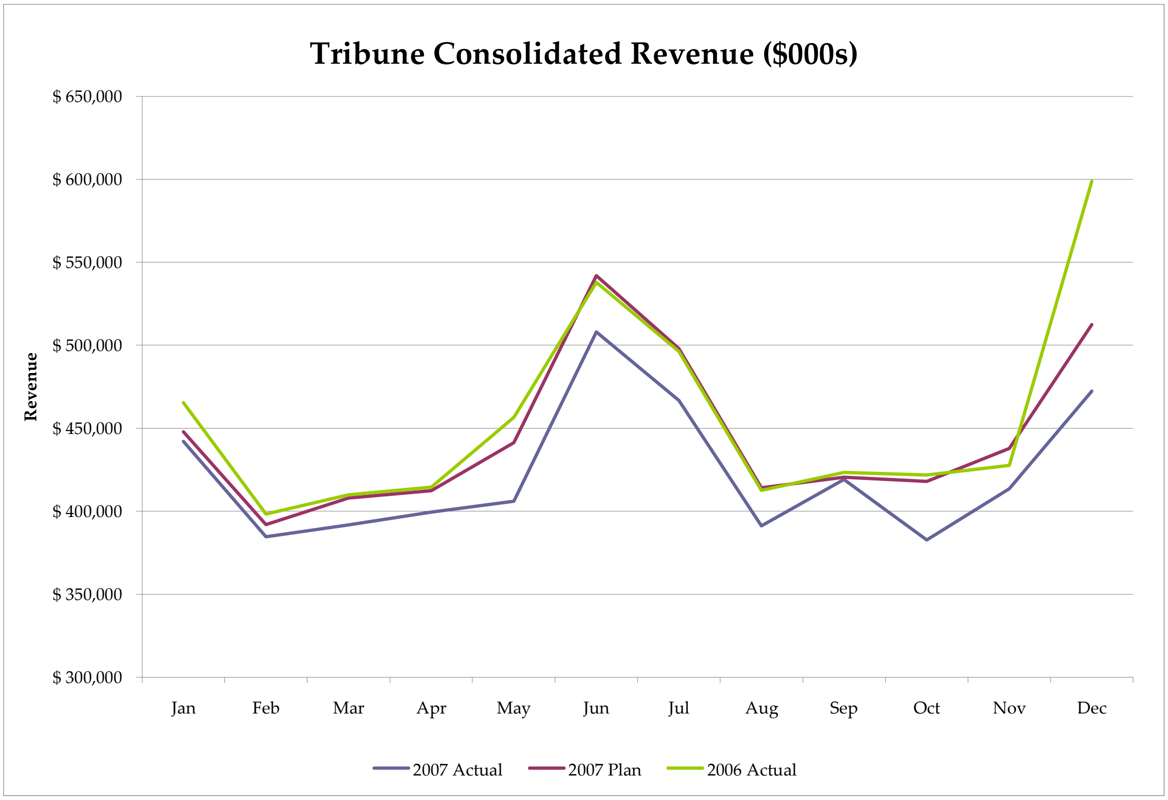
BROADCASTING SEGMENT REVENUE ($000s)								
	2007							
Period	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2007 Actual	$ 114,055	$ 158,251	$ 147,427	$ 120,536	$ 138,088	$ 96,123	$ 104,047	$ 116,206
2007 Plan	$ 121,903	$ 164,486	$ 148,504	$ 121,913	$ 115,550	$ 100,665	$ 106,549	$ 117,211
Variance	-6.44%	-3.79%	-0.73%	-1.13%	19.50%	-4.51%	-2.35%	-0.86%

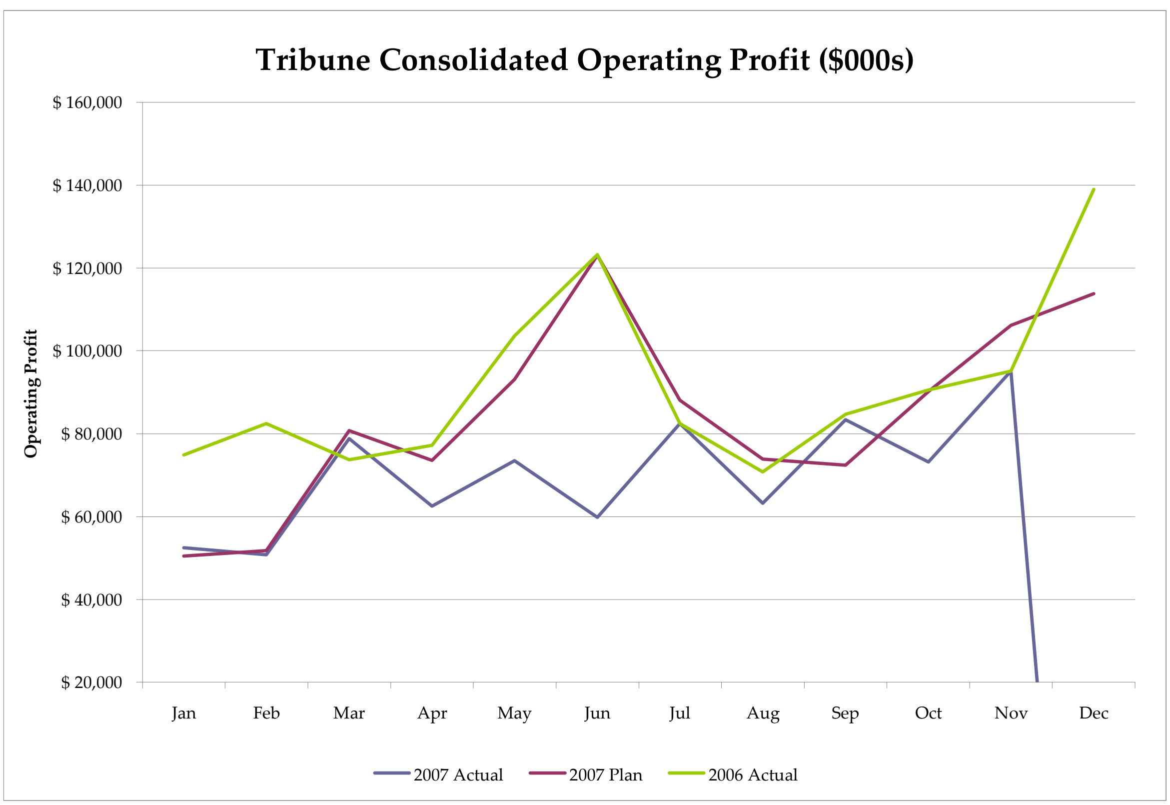
PUBLISHING SEGMENT REVENUE ($000s)								
	2007							
Period	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2007 Actual	$ 291,910	$ 349,680	$ 319,280	$ 270,627	$ 280,941	$ 286,687	$ 309,400	$ 356,232
2007 Plan	$ 319,488	$ 377,434	$ 349,430	$ 292,143	$ 305,037	$ 317,218	$ 331,196	$ 395,314
Variance	-8.63%	-7.35%	-8.63%	-7.36%	-7.90%	-9.62%	-6.58%	-9.89%

PUBLISHING SEGMENT OPERATING PROFIT ($000s)								
	2007							
Period	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2007 Actual	$ 52,241	$ 14,253	$ 43,097	$ 35,031	$ 44,415	$ 50,231	$ 67,065	($ 114,277)
2007 Plan	$ 65,895	$ 71,437	$ 50,327	$ 43,375	$ 54,308	$ 64,514	$ 77,545	$ 92,026
Variance	-20.72%	-80.05%	-14.37%	-19.24%	-18.22%	-22.14%	-13.51%	-224.18%

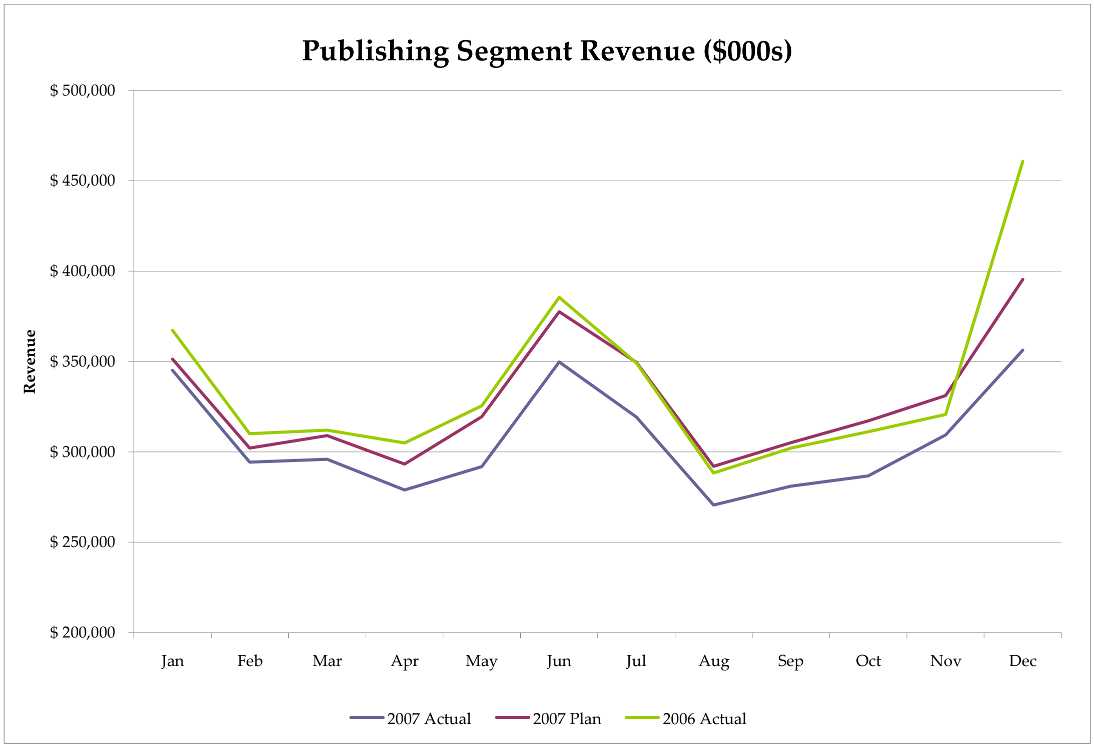
Viewed in the aggregate, Tribune was underperforming in relation to both plan and prior year 2006 results, with most of the underperformance attributable to the Publishing Segment throughout 2007:

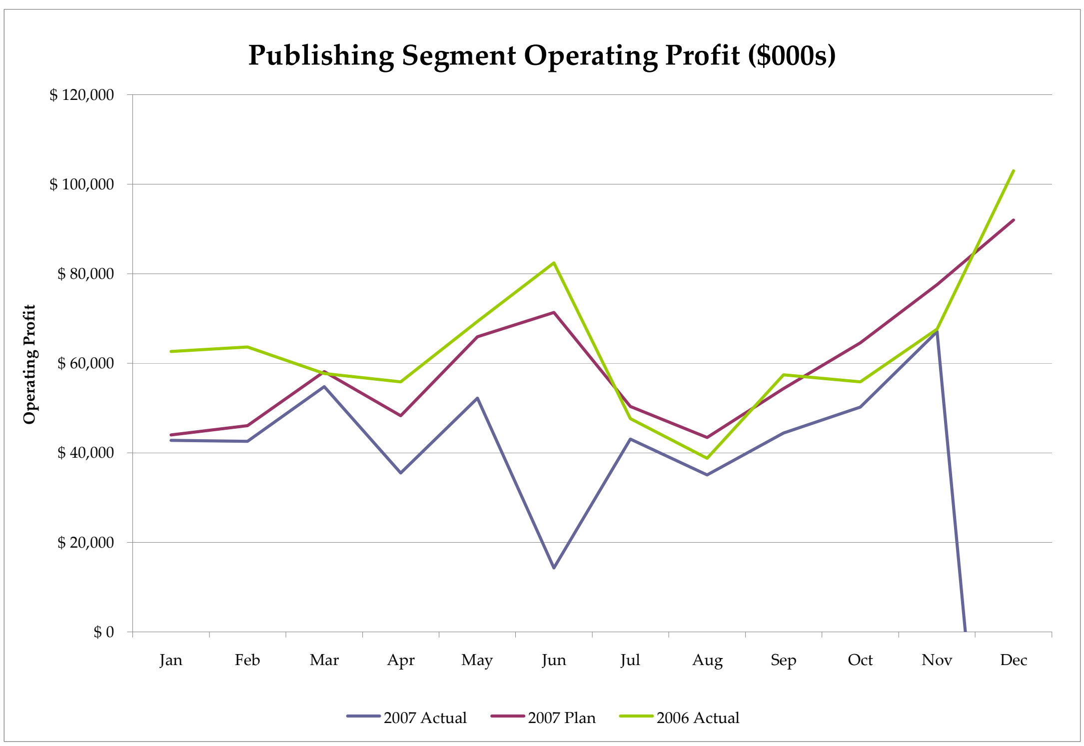
BROADCASTING SEGMENT OPERATING PROFIT ($000s)								
	2007							
Period	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2007 Actual	$ 25,249	$ 51,349	$ 43,748	$ 31,545	$ 42,494	$ 26,578	$ 31,150	$ 12,710
2007 Plan	$ 31,599	$ 57,178	$ 43,254	$ 34,831	$ 22,439	$ 29,994	$ 32,903	$ 27,106
Variance	-20.10%	-10.19%	1.14%	-9.43%	89.38%	-11.39%	-5.33%	-53.11%


Tribune Consolidated Revenue ($000s)
Revenue
$ 650,000
$ 600,000
$ 550,000
$ 500,000
$ 450,000
$ 400,000
$ 350,000
$ 300,000
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
2007 Actual
2007 Plan
2006 Actual


Tribune Consolidated Operating Profit ($000s)
Operating Profit
$ 160,000
$ 140,000
$ 120,000
$ 100,000
$ 80,000
$ 60,000
$ 40,000
$ 20,000
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
2007 Actual
2007 Plan
2006 Actual

Most of the adverse performance was attributable to the Publishing Segment:





c. **The October 2007 Revised Plan.**

In light of its deteriorating financial performance in relation to the February 2007 Tribune Board-approved plan, Tribune management revised its financial forecast, and, as memorialized in minutes of the October 17, 2007 Tribune Board meeting, presented a revised plan to the Tribune Board.[1888] This revised plan is discussed further in connection with the Examiner's discussion of management's knowledge between the Step One and Step Two closings.[1889]

d. **Observations Regarding Market Awareness and Reactions.**

Between the Step One Financing Closing Date and the Step Two Financing Closing Date, analysts following Tribune began downwardly revising expectations for Tribune's prospective financial performance, both in response to Tribune's specific public disclosures (*e.g.,* Form 8-K and 10-Q filings) and in recognition of performance announcements for companies identified as Tribune cohorts (among other information that would have been deemed relevant by such analysts, including broad based economic factors, etc.). As reflected in the table below, consensus estimates declined considerably during this time:[1890]

TRIBUNE IBES ESTIMATES								
	2007 Estimates				2008 Estimates			
Consensus	Revenue		EBITDA		Revenue		EBITDA	
Date	IBES Median	IBES Mean	IBES Median	IBES Mean	IBES Median	IBES Mean	IBES Median	IBES Mean
01/2007	$ 5,495.8	$ 5,465.6	$ 1,287.7	$ 1,277.3	$ 5,448.6	$ 5,432.1	$ 1,260.1	$ 1,279.4
02/2007	$ 5,399.6	$ 5,395.1	$ 1,269.7	$ 1,267.8	$ 5,473.4	$ 5,452.2	$ 1,260.9	$ 1,264.7
03/2007	$ 5,367.8	$ 5,369.0	$ 1,277.6	$ 1,255.1	$ 5,399.6	$ 5,412.5	$ 1,237.1	$ 1,244.5
04/2007	$ 5,323.0	$ 5,318.1	$ 1,211.8	$ 1,214.1	$ 5,288.1	$ 5,327.2	$ 1,239.6	$ 1,214.4
05/2007	$ 5,335.5	$ 5,323.9	$ 1,218.4	$ 1,217.4	$ 5,304.2	$ 5,335.4	$ 1,244.3	$ 1,219.7
06/2007	$ 5,248.5	$ 5,250.4	$ 1,179.5	$ 1,180.2	$ 5,257.6	$ 5,217.7	$ 1,164.2	$ 1,170.5
07/2007	$ 5,113.3	$ 5,130.5	$ 1,138.7	$ 1,123.9	$ 5,053.3	$ 5,062.2	$ 1,138.7	$ 1,109.0
08/2007	$ 5,084.3	$ 5,088.9	$ 1,124.8	$ 1,106.2	$ 5,015.1	$ 4,982.1	$ 1,110.9	$ 1,081.7
09/2007	$ 5,075.9	$ 5,086.8	$ 1,117.3	$ 1,104.3	$ 4,983.7	$ 4,971.9	$ 1,088.4	$ 1,074.5
10/2007	$ 5,102.3	$ 5,118.7	$ 1,171.2	$ 1,153.1	$ 5,014.2	$ 4,993.1	$ 1,140.3	$ 1,096.7
11/2007	$ 5,128.4	$ 5,128.9	$ 1,171.4	$ 1,161.7	$ 5,009.0	$ 4,987.7	$ 1,135.2	$ 1,092.6

1888 *See* Ex. 643 at TRB0415666 (Tribune Board Meeting Minutes, October 17, 2007).

1889 *See* Report at § III.H.1.b.

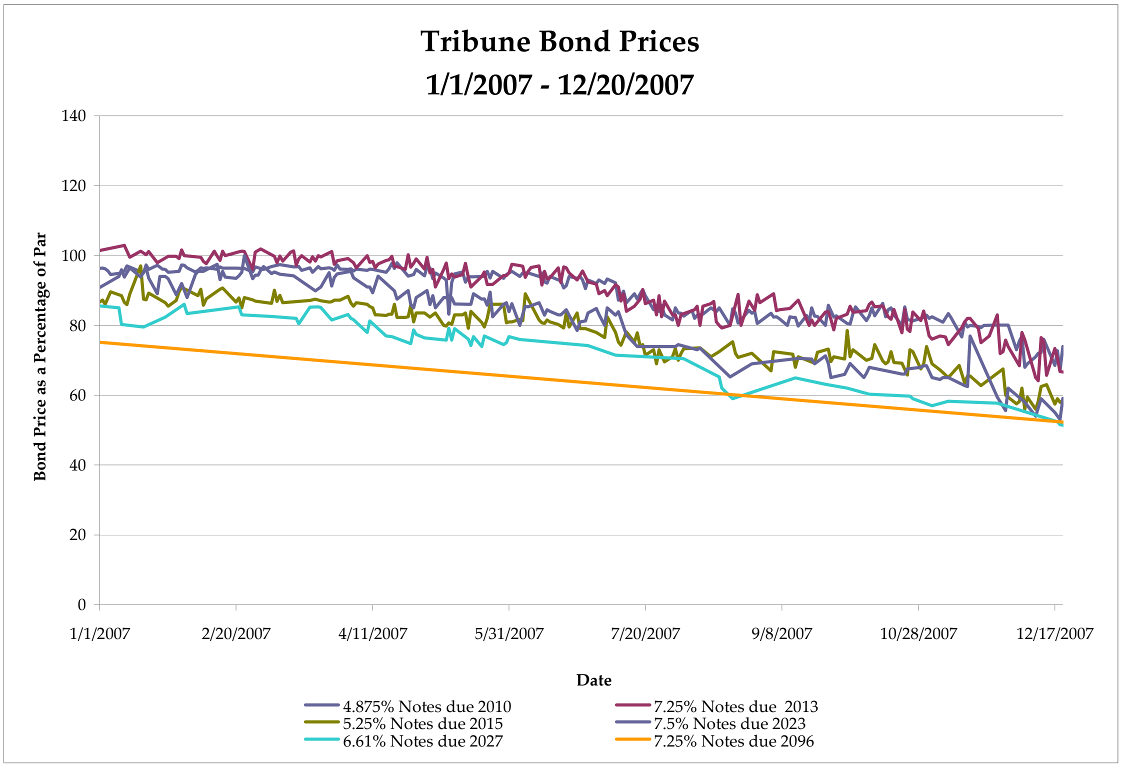
1890 This Institutional Brokers' Estimate System data reflecting analyst consensus estimates were obtained from Tribune's financial advisor, Lazard. *See* Ex. 74 (Tribune IBES Estimates).

Tribune Common Stock price eroded during the period, albeit increasing to near the Tender Offer price as the closing of Step Two approached.[1891]

Finally, prices of Tribune's publicly traded debt declined significantly between June 4, 2007 and December 20, 2007, despite showing little volatility in periods leading up to the closing of Step One.[1892]

[1891] *See* Ex. 75 (Daily Tribune Stock Trading Price).

[1892] *See* Ex. 77 (Tribune Bond Pricing). Credit default swap pricing also increased substantially during this period.



3. Disposition of Chandler Trusts Stock and Resignation of Tribune Board Members Affiliated with the Chandler Trusts.

The Chandler Trusts tendered into the Tender Offer all shares of Tribune Common Stock held by them as of the expiration of the Tender Offer.[1893] Because the number of shares tendered into the Tender Offer, proration of the tendered shares was required by the terms of the Tender Offer,[1894] and not all shares tendered by the Chandler Trusts into the Tender Offer were accepted for payment by Tribune. As a result, the Chandler Trusts sold 27,774,388 of Tribune Common Stock into the Tender Offer.[1895] On June 4, 2007, in accordance with the terms of the Chandler Trusts Registration Rights Agreement, the Chandler Trusts entered into an underwriting agreement with Goldman Sachs and Tribune, pursuant to which the Chandler Trusts agreed to sell through a block trade underwritten by Goldman Sachs an aggregate of 20,351,954 shares of

[1893] Ex. 171 at 9 (Chandler Trusts Schedule 13D).

[1894] Ex. 5 at 73 (Tender Offer); Ex. 225 (Tribune Press Release, dated May 31, 2007).

[1895] Ex. 171 at 9 (Chandler Trusts Schedule 13D).

Tribune Common Stock, which represented the remainder of the shares of Tribune Common Stock owned by the Chandler Trusts following the Tender Offer.[1896] At the time the underwriting agreement was signed, a Blackstone team member sent an e-mail to some members of the Foundation's Advisory Committee and other Foundation's Advisors concerning the Goldman Sachs trade, noting:[1897]

> From what I heard, Goldman was way oversubscribed on the Chandler block . . . more then [sic] 2x . . . the stock has pretty consistently traded over $32/share, so the arbs all thought getting a chance to buy the stock at $31.50 was a way to make sure money . . . interesting logic . . . will be interesting to see where the stock trades as they all try to capture the spread – it sounds like Goldman bought the shares from the Chandlers at a price around $31 or $31.25/share and reoffered to the street at $31.50 . . . the fun never stops!

Following the closing of this transaction on June 7, 2007, the Chandler Trusts no longer owned any shares of Tribune Common Stock.[1898] On June 4, 2007, the three Tribune Board

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[1896] Ex. 10 at Exhibit 1.1 (Tribune Form 8-K, filed June 5, 2007); Ex. 4 at 46 (Tribune 2007 Form 10-K). In response to the Examiner's question as to why the Chandler Trusts sold their Tribune Common Stock before the consummation of the Merger, William Stinehart explained that:

> Once the [Tender Offer] closed, we had an absolute fiduciary duty to get rid of [the Chandler Trusts'] stock -- a quarter of the [Chandler Trusts'] net worth was in this stock, and they had suspended paying dividends for six months. Most trusts have to diversify their assets, and we had a legal opinion that we didn't have to diversify like other trusts, but that opinion hinged on the 3 members of the board that were designated by the Chandler Trusts. Once they lost their board seats, our fiduciary duty says, "dump this."

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

When asked by the Examiner why the Chandler Trusts were willing to accept a price for their shares of Tribune Common Stock lower than the consideration that they would have received in the Merger, Mr. Stinehart explained that:

> We had to diversify from this comprising 25% of our total assets, and the stock was not paying dividends for 6 months. We have a duty to our income beneficiaries. Also, there was no guarantee that the transaction would go through. As a trustee, there was no doubt in my mind that we could not hold that stock.

Id.

[1897] Ex. 644 (Greenthal E-Mail, dated June 4, 2007).

[1898] Ex. 577 at 27 (Tribune Form 10-Q, filed May 8, 2008).

members nominated by the Chandler Trusts, Jeffrey Chandler, Roger Goodan, and William Stinehart, Jr., resigned from the Tribune Board.[1899]

4. Asset Dispositions and Application of Proceeds.

During 2007, before the Step Two Transactions, the Tribune Entities completed several asset dispositions: On February 12, 2007, Tribune announced an agreement to sell Hoy, New York, the Tribune Entities' Spanish-language daily newspaper, to ImpreMedia, LLC.[1900] The Tribune Entities completed the sale of Hoy, New York on May 15, 2007,[1901] recording a pretax gain on the sale of $2.5 million ($0.1 million after taxes).[1902] On March 6, 2007, Tribune announced an agreement to sell the Tribune Entities' southern Connecticut newspapers, The Advocate (Stamford) and Greenwich Time, to Gannett Co., Inc.[1903] However, an arbitrator ruled that the Tribune Entities could not sell the newspapers unless the buyer agreed to assume an existing collective bargaining agreement, and, when the potential buyer refused, Tribune announced the termination of the transaction on May 25, 2007.[1904] On October 25, 2007, Tribune announced an agreement to sell the newspapers to Hearst Corporation for $62.4 million.[1905] The sale closed on November 1, 2007,[1906] and Tribune recorded a pretax loss of $19 million ($33 million after taxes) to write down the net assets of the newspapers to estimated fair value, less costs of sale.[1907] The proceeds from this and other asset sales required

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1899 Ex. 554 (Tribune Press Release, dated June 4, 2007); Ex. 4 at 46 (Tribune 2007 Form 10-K).

1900 Ex. 645 (Tribune Press Release, dated February 12, 2007).

1901 Ex. 646 (Tribune Press Release, dated May 15, 2007).

1902 Ex. 4 at 6 (Tribune 2007 Form 10-K).

1903 Ex. 647 (Tribune Press Release, dated March 6, 2007); Ex. 4 at 6 (Tribune 2007 Form 10-K).

1904 Ex. 4 at 6 (Tribune 2007 Form 10-K); Ex. 648 (Tribune Press Release, dated May 25, 2007).

1905 Ex. 4 at 6 (Tribune 2007 Form 10-K); Ex. 649 (Tribune Press Release, dated October 25, 2007).

1906 Ex. 4 at 6 (Tribune 2007 Form 10-K); Ex. 650 (Tribune Press Release, dated November 1, 2007).

1907 Ex. 4 at 6 (Tribune 2007 Form 10-K).

mandatory prepayments under the Credit Agreement when cumulative net cash proceeds, not previously prepaid, exceed $50 million.[1908] No proceeds from this sale were applied to the LBO Lender Debt as a prepayment. In the third quarter of 2007, Tribune recorded a favorable $3 million after-tax adjustment to the loss on the sale.[1909] In addition, during the third quarter of 2007, Tribune began actively pursuing the sale of the stock of one of its Subsidiaries, EZ Buy & EZ Sell Recycler Corporation, to Target Media Partners. The stock sale closed on October 17, 2007.[1910] Tribune recorded a pretax loss of $1 million on the sale of the stock.[1911] No proceeds from this sale were applied to the LBO Lender Debt.

5. Stockholder Approval.

On July 2, 2007, Tribune announced that the Company Meeting to consider the Merger would be held on August 21, 2007.[1912] On July 13, 2007, Tribune sent proxy materials to its stockholders in connection with the Company Meeting.[1913] At the Company Meeting, 82,631,710 shares of Tribune Common Stock were voted in favor of the Merger, representing 64.9% of the total shares outstanding and 97.4% of the shares that were voted, and the Merger was thereby approved.[1914] In the press release announcing the results of the Company Meeting, Mr. FitzSimons was quoted as saying, "With financing fully committed, we anticipate closing the transaction in the fourth quarter, following FCC approval and satisfaction of the other closing conditions."[1915]

[1908] Ex. 179 at 49 (Credit Agreement).

[1909] Ex. 4 at 6-7 (Tribune 2007 Form 10-K).

[1910] *Id.* at 7 (Tribune 2007 Form 10-K).

[1911] *Id.*

[1912] Ex. 651 at 2 (Tribune Schedule 14A, filed July 3, 2007).

[1913] Ex. 226 (Proxy Statement).

[1914] Ex. 652 at 4 (Tribune Schedule 13E-3).

[1915] Ex. 653 (Tribune Press Release, dated August 21, 2007).

6. Step Two Due Diligence/Revisions to Long Term Financial Assumptions.

In August 2007, Tribune began to prepare an updated five-year model by business unit.[1916] To that end, Tribune elicited revised revenue, expense, and operating cash flow forecasts from its various business units.[1917]

On September 19 and 20, 2007, Tribune held a series of meetings with VRC.[1918] Participants included senior management and executives from the Tribune Entities' major businesses.[1919] Tribune provided VRC with current 2007 projections, a revised five-year forecast, and detailed presentations regarding the Publishing Segment and the Broadcasting Segment.[1920]

On September 26, 2007, Tribune held a session with certain of the lenders participating in the Step One Financing and the Step Two Financing.[1921] Tribune provided information regarding 2007 third and fourth quarter projections, 2007 projected cash flow summary, projected Tranche X Facility repayment schedule, revised long term financial projections, a summary of real estate assets, an update on the Chicago Cubs transaction process, equity investments, and a legal update that included an update on the status of the efforts to obtain the necessary waivers from the FCC.[1922] Tribune held another session on October 1, 2007, during

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[1916] Ex. 654 (E-Mail from Chandler Bigelow, dated August 2, 2007).

[1917] *Id.*

[1918] Ex. 655 (Tribune Company Valuation Research Corp. Due Diligence Agenda).

[1919] *Id.*

[1920] *Id.*; Ex. 656 (Tribune Company Corporate Finance Handouts, dated September 19, 2007).

[1921] Ex. 182 (Bank Due Diligence Teleconference Call Agenda and Schedules, dated September 26, 2007).

[1922] *Id.*

which it provided information regarding the updated model for the Publishing Segment and the Broadcasting Segment.[1923]

On October 17, 2007, the Tribune Board met to discuss, among other things, management's revised five-year forecast for the Tribune Entities.[1924] Management's revised forecast included several different scenarios, including a "base case," a "downside case," and an "upside case."[1925] In addition, management ran each of these three operating scenarios two ways: (a) assuming that the Step Two Financing was incurred as planned; and (b) assuming that Tribune was "flexed" (*i.e.,* the terms of the loans were modified as permitted under the Step One Financing documents into more expensive financing because of the Lead Banks' inability to syndicate the Step Two Financing).[1926] Management's "downside scenario" was based on the publishing revenue projections assumed by Craig Huber at Lehman Brothers, the most pessimistic sell-side analyst, which assumed that Tribune's publishing revenues would fall 3.3% per year for five consecutive years.[1927] Management's analysis also noted the possibility of asset dispositions depending on the severity of the downturn.[1928] According to management's analysis, even in a downside operating scenario in which financing was more expensive, Tribune would be in compliance with its financial covenants without the need for asset sales over the term of the Credit Agreement.[1929] At this meeting, Morgan Stanley made a presentation regarding the

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[1923] Ex. 183 (Tribune Company Underwriters Due Diligence Agenda for October 1, 2007); Ex. 184 (Tribune Publishing Presentation); Ex. 185 (Tribune Broadcasting Presentation).

[1924] Ex. 643 at 4 (Tribune Board Meeting Minutes, dated October 17, 2007).

[1925] *Id.*; Ex. 657 (Tribune Five-Year Financial Outlook).

[1926] Ex. 643 at 4 (Tribune Board Meeting Minutes, dated October 17, 2007); Ex. 657 (Tribune Five-Year Financial Outlook).

[1927] Ex. 657 at 4 (Tribune Five-Year Financial Outlook).

[1928] *Id.*

[1929] *Id.*

leveraged finance market environment, a publishing and broadcasting sector update, Tribune's updated longer term financial projections, and Tribune's leverage profile.[1930]

7. Third-Party Approvals.

a. FCC.

On November 30, 2007, Tribune issued a press release announcing that the FCC had approved the transfer of its broadcasting licenses and the extension of its cross-ownership waivers in markets where the Tribune Entities owned both a television station and a newspaper, thereby satisfying a closing condition to the Merger.[1931] In the press release announcing FCC approval, Mr. FitzSimons was quoted as saying, "We appreciate today's action by the FCC, which allows our transaction to move forward. . . . We look forward to implementing the new ownership structure that will enable us to focus all of our energy and resources on Tribune's future."[1932]

b. Major League Baseball.

On December 17, 2007, the Tribune Entities received the consent of the Office of the Commissioner of Major League Baseball to consummate the Merger, thereby satisfying a closing condition to the Merger.[1933]

8. Management Incentive and Severance Plans.[1934]

a. Transitional Compensation Plan.

On July 19, 2006, the Tribune Board adopted an amended and restated Transitional Compensation Plan.[1935] Each employee covered by the Transitional Compensation Plan was

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[1930] Ex. 643 at 5 (Tribune Board Meeting Minutes, dated October 17, 2007).

[1931] Ex. 658 (Tribune Form 8-K, filed December 3, 2007); Ex. 659 (FCC Order, dated November 30, 2007). Although the FCC Order was entered, two FCC Commissioners dissented.

[1932] Ex. 660 (Tribune Press Release, dated November 30, 2007).

[1933] Ex. 661 (Major League Baseball Letter, dated December 17, 2007).

[1934] This section of the Report describes only a few of the Tribune Entities' incentive compensation programs.

entitled to benefits in the event that such employee's employment was terminated (a) on, or within a specified period of time following, a change in control of Tribune (defined as (i) the acquisition of 20% or more of the outstanding Tribune Common Stock or voting power by a person or group of persons other than the McCormick Foundation and any employee benefit plan or trust of Tribune or its Subsidiaries, (ii) the failure of individuals who were directors as of January 1, 2005 or whose election or nomination to the Tribune Board was approved by such individuals (or individuals so approved) to constitute a majority of the Tribune Board, (iii) a reorganization or merger of Tribune in which the stockholders of Tribune immediately before the consummation of the reorganization or merger did not own 50% or more of the voting power of the combined entity immediately thereafter, or (iv) a sale of all or substantially all of the assets of the Tribune Entities), (b) before a change in control at the request of a third party participating in or causing the change in control, or (c) otherwise in connection with a change in control.[1936]

Eligibility for, and the amount of a portion of the benefits received by, a participant in the Transitional Compensation Plan depended on the tier to which such employee was ascribed:[1937]

Tier	**Period of Time Following Change in Control for Termination of Employment to Trigger Benefits**	**Lump Sum Cash Payment**	**Period of Continuation of Insurance Coverage (unless earlier covered by comparable insurance from a new employer)**
Tier I	36 months	3 multiplied by the sum of the highest annual base salary during the three year period before termination plus 200% of the target bonus payable for the year in which the change in control occurs	36 months
Tier II	24 months	2 multiplied by the sum of the highest annual base salary during the three year period before termination plus 200% of the target bonus payable for the year in which the change in control occurs	24 months

[1935] Ex. 662 at 1 (Transitional Compensation Plan).

[1936] *Id.* at §§ 2 and 4.

[1937] *Id.* at §§ 3 and 5.

Tier	Period of Time Following Change in Control for Termination of Employment to Trigger Benefits	Lump Sum Cash Payment	Period of Continuation of Insurance Coverage (unless earlier covered by comparable insurance from a new employer)
Tier III	18 months	1 multiplied by the sum of the highest annual base salary during the three year period before termination plus 100% of the target bonus payable for the year in which the change in control occurs	12 months

Participants would also receive outplacement services and a gross-up for excise taxes payable under the IRC.[1938] Termination of employment due to the participant's death, disability, or voluntary resignation or termination for conduct involving dishonesty or willful misconduct significantly detrimental to Tribune and its Subsidiaries would not trigger benefits under the Transitional Compensation Plan.[1939] Tribune was not required to set aside funds for the payments to be made under the Transitional Compensation Plan.[1940] Tribune was prohibited from making any modifications to the Transitional Compensation Plan that would reduce the benefits available thereunder during the 36 month period following a change in control if the modifications were made (a) on the day of or subsequent to the change in control, (b) before the change in control but at the request of a third party participating in or causing the change in control, or (c) otherwise in connection with an actual or anticipated change in control.[1941]

Pursuant to the terms of the Merger Agreement, the individual participants in the Transitional Compensation Plan had the right to enforce the requirement in the Merger Agreement that the surviving corporation in the Merger (*i.e.,* post-Merger Tribune) "honor, fulfill and discharge the Company's obligations under the Transitional Compensation Plan,

[1938] *Id.* at §§ 5 and 7.

[1939] *Id.* at § 3(b).

[1940] *Id.* at § 8.

[1941] *Id.* at § 11 (Transitional Compensation Plan).

without any amendment or change that is adverse to any beneficiary of such Transitional Compensation Plan."[1942]

Mr. FitzSimons received a payment of $15,966,121 (including tax gross-up) under the Transitional Compensation Plan as a result of the termination of his employment in December 2007 and John Reardon received a payment of $6,118,449 (including tax gross-up) under the Transitional Compensation Plan as a result of the termination of his employment in February 2008.[1943]

b. Proposal of the Management Equity Incentive Plan.

Before February 19, 2007, EGI apparently had not proposed a management incentive plan in connection with the Leveraged ESOP Transactions.[1944] On February 19, 2007, EGI submitted a term sheet to Tribune that, in addition to proposed terms for the Merger, contemplated the adoption of a management incentive plan providing management the economic equivalent of 5% of the outstanding Tribune Common Stock.[1945] After preliminary conversations with Tribune's management and financial advisors, EGI submitted a revised term sheet on February 22, 2007 that included a further description of a "Management Equity Incentive Plan" providing that:[1946]

> participants in the [Management Equity Incentive Plan] shall be entitled to receive benefits upon the occurrence of specified events or upon a specified date, with the value of their benefits to be determined by reference to the value of [Tribune's] stock, determined on an enterprise value basis, with no discount for the lack of control or lack of marketability.

[1942] Ex. 151 at § 5.5(b)(i) (Merger Agreement).

[1943] Ex. 4 at 198 (Tribune 2007 Form 10-K).

[1944] Ex. 116 (EGI Proposal, dated February 6, 2007).

[1945] Ex. 121 at 5 (EGI Term Sheet, dated February 19, 2007).

[1946] Ex. 122 at 7 (EGI Term Sheet, dated February 22, 2007).

c. Board of Directors/Compensation Committee Approvals of Bonus and Incentive Awards and Management Equity Incentive Plan.

In connection with the Tribune Board's approval of the Leveraged ESOP Transactions, on April 1, 2007, the Compensation Committee met to consider management's proposal for Tribune to adopt "a special cash bonus pool and phantom stock plan . . . in connection with, and conditioned upon consummation of, [the Leveraged ESOP Transactions]."[1947] Compensation Committee members Jeffrey Chandler, Enrique Hernandez, Jr., and Robert S. Morrison attended the meeting, with Tribune officers Dennis J. FitzSimons, Donald C. Grenesko, and Crane H. Kenney also participating.[1948]

At the meeting, the Compensation Committee approved a special cash bonus pool (totaling $6.5 million)[1949] to be awarded to the 32 managers and other key employees[1950] involved in the strategic review process leading up the Leveraged ESOP Transactions, the establishment of a 3% phantom stock pool in post-Merger Tribune to be awarded to the 17 members of senior management directly involved in the Leveraged ESOP Transactions, and the establishment of a 5% phantom stock pool in post-Merger Tribune to be awarded to approximately 200 members of management as a long term incentive.[1951] No director of Tribune held any stock or options as of December 30, 2007.[1952]

[1947] Ex. 663 (Compensation Committee Meeting Minutes, dated April 1, 2007).

[1948] *Id.* at 1 (Compensation Committee Meeting Minutes, dated April 1, 2007).

[1949] This amount was later reduced to $5.4 million. Ex. 5 at 60 (Tender Offer).

[1950] This number was later increased to 40 managers and other key employees. Ex. 5 (Tender Offer).

[1951] Ex. 663 at 1 (Compensation Committee Meeting Minutes, dated April 1, 2007). Payment of the cash bonuses was conditioned on consummation of the Leveraged ESOP Transactions. Ex. 4 at 184 (Tribune 2007 Form 10-K). Although the recipients and precise amounts of the phantom equity awards changed slightly between April 2007 and December 2007, the pool sizes, originally established at 3% and 5% in April 2007, did not change on their approval in December 2007. *Compare* Ex. 1110 (Exhibit A to Compensation Committee Meeting Minutes, dated April 1, 2007) *with* Ex. 1111 (Exhibits A and B to Tribune Board Meeting Minutes, dated December 20, 2007). *See also* Ex. 4 at 130-31 (Tribune 2007 Form 10-K); Ex. 12 (Tribune Board

At the April 1, 2007 Tribune Board meeting at which the Tribune Board voted to approve the Leveraged ESOP Transactions, the Tribune Board also addressed the impact of the potential change of control associated with the Leveraged ESOP Transactions on various of Tribune's employee compensation plans, resolving that:[1953]

> [I]n the event that the Company divests a business unit during the period beginning on the date on which the Company announces a transaction that would constitute a Change in Control (within the meaning of the Company's Incentive Compensation Plan) and the date on which such Change in Control is consummated, the Company shall cause any Company restricted stock units and stock options held by any employee of such divested business unit to be fully vested;
>
> [I]n the event that the Company eliminates an employee's position during the period beginning on the date on which the Company announces a transaction that would constitute a Change in Control (within the meaning of the Company's Incentive Compensation Plan) and the date on which such Change in Control is consummated, the Company shall cause any Company restricted stock units and the stock options held by such employee to be fully vested effective as of the consummation of such Change in Control; [and]
>
> [I]n the event of a Change in Control (within the meaning of the Company's Incentive Compensation Plan), each participant in the Tribune Company 401(k) Savings and Profit Sharing Plan whose employment with the Company is terminated by the Company other than for cause or is constructively terminated within one year following such Change in Control shall be fully vested in all employer contributions held on such participant's behalf under such plan. . . .

On July 18, 2007, the Compensation Committee held a brief meeting to review an executive compensation update presented by Tribune's management, including expected 2007

Meeting Minutes, dated December 20, 2007); Examiner's Sworn Interview of Donald Grenesko, July 8, 2010, at 228:19-229:14.

[1952] Ex. 4 at 199 (Tribune 2007 Form 10-K).

[1953] Ex. 146 at 17 (Tribune Board Meeting Minutes, dated April 1, 2007). "Change of control" is defined in Article XIII of Tribune's Incentive Compensation Plan. Ex. 664 at Article XIII (Tribune Incentive Compensation Plan).

management incentive payouts based on year-to-date results and incentive awards previously approved by the Compensation Committee.[1954]

At the December 20, 2007 Tribune Board meeting held following consummation of the Merger, the Tribune Board approved the 2007 Management Equity Incentive Plan.[1955] No member of the Tribune Board received any awards under the 2007 Management Equity Incentive Plan.[1956]

d. Terms of 2007 Management Equity Incentive Plan.

The 2007 Management Equity Incentive Plan was effective as of December 20, 2007.[1957] It provides for the grant of phantom stock awards to eligible employees.[1958] Initial awards under the 2007 Management Equity Incentive Plan were made on December 20, 2007.[1959] Awards under the 2007 Management Equity Incentive Plan are granted as either First Tranche Units or Second Tranche Units.[1960] The aggregate economic value of the First Tranche Units available for grant is equal to 5% of the fully diluted outstanding Tribune Common Stock (calculated after giving effect to the Warrant and subject to typical anti-dilution adjustments).[1961] First Tranche Units vest ratably over a three year period beginning on the date of grant and, subject to a re-deferral election by individual plan participants, are payable in cash ratably following the fourth, sixth, and eighth anniversaries of the grant date.[1962]

[1954] Ex. 665 (Compensation Committee Meeting Minutes, dated July 18, 2007).

[1955] Ex. 12 (Tribune Board of Directors Meeting Minutes, dated December 20, 2007). Ms. Wilderotter was the only director not in attendance at the meeting.

[1956] Ex. 4 at 199 (Tribune 2007 Form 10-K).

[1957] Ex. 666 at § 8 (2007 Management Equity Incentive Plan).

[1958] *Id.* at § 4.

[1959] Ex. 4 at 178 (Tribune 2007 Form 10-K).

[1960] Ex. 666 at § 4 (2007 Management Equity Incentive Plan).

[1961] Ex. 13 at 9 (Tribune Form 8-K, filed December 28, 2007).

[1962] Ex. 666 at § 5 (2007 Management Equity Incentive Plan).

The unvested portion of any First Tranche Units fully vest on a change in control of Tribune or termination of employment due to death, disability, or retirement from Tribune.[1963] On a change in control of Tribune or a 2007 Management Equity Incentive Plan participant's termination of employment due to death or disability, all of the First Tranche Units held by such participant become payable as soon as practicable following such event.[1964] On a 2007 Management Equity Incentive Plan participant's termination of employment for any reason other than death or disability, the participant is entitled to retain the then-vested portion of the First Tranche Units, but the unvested portion of the First Tranche Units is to be cancelled on such termination.[1965]

The aggregate economic value of the Second Tranche Units available for grant is equal to 3% of the fully diluted outstanding Tribune Common Stock (calculated after giving effect to the Warrant and subject to typical anti-dilution adjustments).[1966] Participants receiving Second Tranche Units are entitled to receive a gross-up for the payment of excise taxes, if any.[1967] Fifty percent of the Second Tranche Units granted to a participant fully vest on grant, and the remaining fifty percent of the Second Tranche Units vest on the one year anniversary of the grant date.[1968] On a change in control of Tribune or a 2007 Management Equity Incentive Plan participant's involuntary termination of employment or termination of employment due to death, or disability, all of the Second Tranche Units held by such participant are payable in cash as soon

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[1963] *Id.*

[1964] *Id.*

[1965] *Id.*

[1966] Ex. 13 at 9 (Tribune Form 8-K, filed December 28, 2007).

[1967] Ex. 666 at § 5 (2007 Management Equity Incentive Plan).

[1968] *Id.*

as practicable following such event.[1969] On a 2007 Management Equity Incentive Plan participant's termination of employment for any reason other than involuntary termination, death, or disability, the participant is entitled to retain the then-vested portion of the Second Tranche Units, but the unvested portion of any of the Second Tranche Units on such termination is to be cancelled.[1970]

e. Recipients.

The following table summarizes the value of (a) cash bonuses, (b) equity incentives, and (c) accelerated restricted stock and options, received by certain executive officers and key employees of the Tribune Entities in connection with the Leveraged ESOP Transactions:[1971]

Name	Cash Bonus	Phantom Stock	Accelerated Options and/or Restricted Stock Units
Dennis J. FitzSimons	$0[1972]	2,916,667	6,869,559
John E. Reardon	$200,000	1,500,000	2,005,265
Timothy J. Landon	$300,000	1,666,667	1,605,285
Chandler Bigelow	$400,000	0	880,645
Scott C. Smith	$0	2,083,333	2,665,784
Donald C. Grenesko	$400,000	2,083,333	2,699,026
Crane H. Kenney	$600,000	0	2,005,265
Harry A. Amsden	$150,000	0	717,324
Mark W. Hianik	$175,000	0	634,019

1969 *Id.*

1970 *Id.*

1971 In the interests of privacy, the Examiner has limited individualized disclosure of this information to persons whose compensation was publicly reported by Tribune and whose participation in the Leveraged ESOP Transactions is described in the Report. Ex. 667 (Chart of Compensation Payments).

1972 Mr. FitzSimons elected not to accept a cash bonus in connection with the Leveraged ESOP Transactions, informing the Examiner that "we were going to have to do some very difficult things, and I didn't want to be standing up in front of a group of employees after just accepting a $600,000 bonus and tell them there were going to have to be layoffs." Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 121:22-122:4.

Name	Cash Bonus	Phantom Stock	Accelerated Options and/or Restricted Stock Units
Other Key Employees	$2,375,000	7,416,667	22,927,938

The following table summarizes cash amounts received for shares of Tribune Common Stock tendered by the Tribune Entities' officers and directors in connection with the Tender Offer:

Name	Office	Shares	Price	Total
Dennis J. FitzSimons[1973]	Chairman, President, CEO	266,073	$34	$9,046,482
Donald C. Grenesko[1974]	Senior Vice President	131,391	$34	$4,467,294
Scott C. Smith[1975]	President, Tribune Publishing	129,542	$34	$4,404,428
R. Mark Mallory[1976]	Vice President, Controller	62,510	$34	$2,125,340
Dudley S. Taft[1977]	Director	56,938	$34	$1,935,892
John E. Reardon[1978]	President, Tribune Broadcasting	36,822	$34	$1,251,948
Ruthellyn Musil[1979]	Senior Vice President, Corporate Relations	33,754	$34	$1,147,636
Crane H. Kenney[1980]	Senior Vice President, General Counsel and Secretary	29,763	$34	$1,011,942
Thomas D. Leach[1981]	Senior Vice President, Development	29,281	$34	$995,554
Timothy J. Landon[1982]	President, Tribune Interactive	26,535	$34	$902,190

1973 Ex. 668 (FitzSimons Form 4, filed on June 1, 2007); Ex. 669 (FitzSimons Form 4/A, filed on June 4, 2007).

1974 Ex. 670 (Grenesko Form 4, filed on June 1, 2007).

1975 Ex. 671 (Smith Form 4, filed on June 1, 2007).

1976 Ex. 672 (Mallory Form 4, filed on June 1, 2007).

1977 Ex. 673 (Taft Form 4, filed on June 1, 2007).

1978 Ex. 674 (Reardon Form 4, filed on June 1, 2007).

1979 Ex. 675 (Musil Form 4, filed on June 1, 2007).

1980 Ex. 676 (Kenney Form 4, filed on June 1, 2007).

1981 Ex. 677 (Leach Form 4, filed on June 1, 2007).

1982 Ex. 678 (Landon Form 4, filed on June 1, 2007).

Name	Office	Shares	Price	Total
Luis E. Lewin[1983]	Senior Vice President	12,726	$34	$432,684
William A. Osborn[1984]	Director	8,216	$34	$279,344
Roger Goodan[1985]	Director	7,575	$34	$257,550
Christopher J. Reyes[1986]	Director	7,078	$34	$240,652
William Stinehart, Jr.[1987]	Director	4,041	$34	$137,394
Robert S. Morrison[1988]	Director	2,308	$34	$78,472
Enrique Hernandez, Jr.[1989]	Director	808	$34	$27,472
Betsy D. Holden[1990]	Director	635	$34	$21,590

The following table summarizes cash amounts received by the Tribune Entities' officers and directors for their respective shares of Tribune Common Stock in connection with the consummation of the Merger:[1991]

Name	Office	Shares	Price	Total
Dennis J. FitzSimons[1992]	Chairman, President, CEO	389,335.98	$34	$13,237,423.32
Donald C. Grenesko[1993]	Senior Vice President	182,385.46	$34	$6,201,105.64
Scott C. Smith[1994]	President, Tribune Publishing	165,730.50	$34	$5,634,837.00
R. Mark Mallory[1995]	Vice President, Controller	67,545.38	$34	$2,296,542.92

1983 Ex. 679 (Lewin Form 4, filed on June 1, 2007).

1984 Ex. 680 (Osborn Form 4, filed on June 1, 2007).

1985 Ex. 681 (Goodan Form 4, filed on June 1, 2007).

1986 Ex. 682 (Reyes Form 4, filed on June 1, 2007).

1987 Ex. 683 (Stinehart Form 4, filed on June 1, 2007).

1988 Ex. 684 (Morrison Form 4, filed on June 1, 2007).

1989 Ex. 685 (Hernandez Form 4, filed on June 1, 2007).

1990 Ex. 686 (Holden Form 4, filed on June 1, 2007).

1991 On consummation of the Merger, all Tribune Common Stock, other than shares owned by the ESOP, were converted into the right to receive cash; thus, no Tribune officer or director directly owned any shares of Tribune Common Stock following the Merger.

1992 Ex. 687 (FitzSimons Form 4, filed on December 21, 2007).

1993 Ex. 688 (Grenesko Form 4, filed on December 21, 2007).

1994 Ex. 689 (Smith Form 4, filed on December 21, 2007).

Name	Office	Shares	Price	Total
Dudley S. Taft[1996]	Director	44,000.00	$34	$1,496,000.00
John E. Reardon[1997]	President, Tribune Broadcasting	80,293.52	$34	$2,729,979.68
Crane H. Kenney[1998]	Senior Vice President, General Counsel and Secretary	75,239.55	$34	$2,558,144.70
Thomas D. Leach[1999]	Senior Vice President, Development	71,459.86	$34	$2,429,635.24
Timothy J. Landon[2000]	President, Tribune Interactive	63,446.75	$34	$2,157,189.50
Luis E. Lewin[2001]	Senior Vice President	44,318.33	$34	$1,506,823.22
William A. Osborn[2002]	Director	6,021.00	$34	$204,714.00
Robert S. Morrison[2003]	Director	13,119.28	$34	$446,055.22
Enrique Hernandez, Jr.[2004]	Director	12,800.85	$34	$435,228.90
Betsy D. Holden[2005]	Director	10,304.70	$34	$350,359.80
Samuel Zell[2006]	Director	2,278.00	$34	$77,452.00

G. The Step Two Transactions.

This section is a chronological summary of the actions taken, and agreements entered into, in connection with the Step Two Transactions. Section III.H. addresses the knowledge and

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[1995] Ex. 690 (Mallory Form 4, filed on December 21, 2007).

[1996] Ex. 691 (Taft Form 4, filed on December 21, 2007).

[1997] Ex. 692 (Reardon Form 4, filed on December 21, 2007).

[1998] Ex. 693 (Kenney Form 4, filed on December 21, 2007).

[1999] Ex. 694 (Leach Form 4, filed on December 21, 2007).

[2000] Ex. 695 (Landon Form 4, filed on December 21, 2007).

[2001] Ex. 696 (Lewin Form 4, filed on December 21, 2007).

[2002] Ex. 697 (Osborn Form 4, filed on December 21, 2007).

[2003] Ex. 698 (Morrison Form 4, filed on December 21, 2007).

[2004] Ex. 699 (Hernandez Form 4, filed on December 21, 2007).

[2005] Ex. 700 (Holden Form 4, filed on December 21, 2007).

[2006] Ex. 701 (Zell Form 4, filed December 21, 2007). The information in the table regarding Mr. Zell does not include the Warrant held by EGI-TRB.

actions of the key participants with respect to the events culminating in the Step Two Transactions.

1. Tribune Board Deliberations.

As noted above,[2007] the Tribune Board voted to approve the Step Two Transactions on the evening of April 1, 2007 in connection with the approval of the Leveraged ESOP Transactions.[2008] Representatives of the Chandler Trusts on the Tribune Board abstained from voting as directors; Dudley Taft was not present at the April 1, 2007 meeting and did not vote.[2009]

On November 21, 2007, the Tribune Board approved certain modifications to the terms of the Step Two Financing.[2010] The Tribune Board did not vote again to approve entry into the Step Two Transactions, but did discuss the Step Two Transactions on December 18, 2007.[2011] On December 18, 2007 the Tribune Board and the Special Committee held meetings to review, among other things, the status of the Step Two Transactions, discussions with lenders, and the status of VRC's analysis.[2012] VRC provided a presentation regarding its solvency analysis.[2013] Following VRC's presentation, and after being advised that management stood ready to deliver the closing certificates contemplated by the Credit Agreement and the Bridge Credit Agreement as to solvency and that such certificates would be based on management's own analysis, as

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[2007] *See* Report at § III.D.1.g.

[2008] Ex. 146 (Tribune Board Meeting Minutes, dated April 1, 2007).

[2009] *Id.* at 1.

[2010] Ex. 702 at TRB0415674 (Tribune Board Meeting Minutes, dated November 21, 2007).

[2011] The Certificate of the Assistant Secretary of Tribune delivered in connection with the closing of the Step Two Financing only attaches the minutes from the April 1, 2007 Tribune Board meeting when certifying as to Tribune Board approval of the Step Two Financing. Ex. 703 (Certificate of the Assistant Secretary of Tribune, dated December 20, 2007), which to which Ex. 146 was attached as Exhibit C thereto.

[2012] Ex. 11 (Tribune Board Meeting Minutes, dated December 18, 2007); Ex. 704 (Special Committee Meeting Minutes, dated December 18, 2007). *See* Report at § III.H.2. for a further discussion of these meetings.

[2013] Ex. 705 (Tribune Board Meeting Materials, dated December 18, 2007).

further supported by VRC's opinion and analysis, the Tribune Board recessed to permit the Special Committee to meet with its counsel and financial advisors.[2014]

According to the draft minutes of the Special Committee meeting, Mr. Osborn, the Chair of the Special Committee, asked Morgan Stanley to comment on the VRC solvency opinion and analysis:[2015]

> Mr. Whayne indicated that the analysis of VRC seemed thorough and appropriate. He noted that VRC used earnings and termination value multiples for the publishing and broadcasting industries consistent (but not identical) with those used by Morgan Stanley as

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[2014] Ex. 11 (Tribune Board Meeting Minutes, dated December 18, 2007). The minutes of the December 18, 2007 Tribune Board meeting state that the Tribune Board meeting was called to order at 1:00 p.m. Although the minutes do not indicate at what time the Tribune Board meeting recessed to permit the Special Committee to meet with its counsel and financial advisors, the draft minutes of the December 18, 2007 Special Committee meeting state (assuming the accuracy of such draft minutes; *see* below) that the Special Committee meeting was called to order at 2:45 p.m. As the minutes of the Tribune Board meeting state that the Tribune Board meeting reconvened following the Special Committee meeting, the Tribune Board then met in executive session, and the Tribune Board meeting then adjourned at 3:00 p.m., it appears that the Special Committee meeting at which the Special Committee determined to make its recommendation to the Tribune Board that "it rely in good faith upon the solvency opinion of VRC" lasted no longer than fifteen minutes and that the Tribune Board then, in the Examiner's opinion in somewhat cavalier fashion, with little opportunity to discuss the Special Committee's recommendation further, determined that "it could rely in good faith on the VRC opinion." *Id.*; Ex. 704 (Special Committee Meeting Minutes, dated December 18, 2007). The Examiner has not located any evidence that the December 18, 2007 Special Committee meeting minutes were signed or approved by the Special Committee, or that the Special Committee met subsequent to December 18, 2007.

[2015] Ex. 704 (Special Committee Meeting Minutes, dated December 18, 2007). In his interview with the Examiner, Mr. Taubman disputed the characterization of his remarks in the draft minutes of the Special Committee meeting:

> Q: As you sit here today based on your best recollection did you at that meeting or any other time reiterate the conservative nature of VRC's analysis?
>
> A: No. What I did recall doing was that there was one specific aspect of their analysis where they could have been more aggressive and they were not and I recall pointing that out to the members of the committee.

Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 84:16-85:3.

Mr. Whayne likewise disputed the characterization of his remarks:

> Q: Did you state to the special committee that you or Morgan Stanley had concluded that VRC's solvency analysis was conservative?
>
> A: No.
>
> Q: Did you state to the special committee that you or Morgan Stanley had concluded that VRC's opinion was something upon which a director could reasonably rely?
>
> A: No.

Examiner's Sworn Interview of Thomas Whayne, July 2, 2010, at 130:4-13.

> well as Merrill Lynch and Citibank in previous advice to the Board of Directors. Similarly, VRC's selection of precedent transactions and its discounted cash flow analysis used metrics very similar to that previously used by each of the investment banks. He commented on VRC's analysis of the net present value of S Corp. – ESOP tax savings using a 16% discount rate (as VRC did today) as compared with a 10% discount rate (as VRC did in its preliminary presentation to the Board on December 4, 2007). He suggested the higher discount rate, representing the cost of equity, and the lower discount rate, representing the cost of capital, set forth the book ends of an appropriate net present valuation. Using either of these analyses, VRC found solvency after given effect to the merger. He also commented on VRC's valuation of the PHONES debt and other assets and liabilities of the Company. He concluded that VRC's solvency analysis was conservative and that VRC's opinion was something upon which a director could reasonably rely.
>
> Mr. Taubman reiterated the conservative nature of VRC's analysis. He stated that the Company has additional value not represented in the VRC presentation because the Company has a number of different assets and businesses that readily could be sold for fair value and that this additional financial flexible is of incremental value to a company.

The Special Committee then adopted the following resolution:

> RESOLVED, that the Special Committee hereby recommends to the [Tribune Board] (1) that it rely in good faith upon the solvency opinion of VRC, (2) that it determines that said opinion is in form and substance satisfactory to the Company for purposes of the [Merger Agreement] and (3) that the [Tribune Board] direct management to take all necessary and appropriate actions to consummate promptly the merger provided for in such [Merger] Agreement.[2016]

The Tribune Board then reconvened, was advised of the Special Committee's recommendations, and determined (with Mr. Zell abstaining) that:[2017]

> Based upon the presentations and discussions at the Tribune meeting (as well as presentations and discussions at prior meetings of the board, including on May 9, 2007 and December 4, 2007) and the recommendation of the Special Committee, the Tribune

[2016] Ex. 704 (Special Committee Meeting Minutes, dated December 18, 2007).

[2017] Ex. 11 at TRB0415685-86 (Tribune Board Meeting Minutes, dated December 18, 2007).

> Board, with Mr. Zell abstaining, determined (i) that it could rely in good faith on the VRC opinion and (ii) that the opinion is in form and substance satisfactory to the Company for the purposes of Section 6.2(e) of the Merger Agreement.

This appears to have been the final Tribune Board meeting that occurred before the Step Two Financing Closing Date at which the Merger was discussed.

2. Subsidiary Boards Approval.

The Guarantor Subsidiaries authorized the Subordinated Bridge Subsidiary Guarantee by unanimous written consent of the respective Subsidiary Boards (or sole or managing member, as applicable).[2018] The recitals in the unanimous written consents of the Subsidiary Boards acknowledged Tribune's entry into the Bridge Credit Agreement, noted that the Guarantor Subsidiary's entry into the Subordinated Bridge Subsidiary Guarantee was a condition to making advances under the Bridge Credit Agreement, and referenced the form of Subordinated Bridge Subsidiary Guarantee attached as an exhibit to the Bridge Credit Agreement.[2019] The resolution in the unanimous written consents of the Subsidiary Boards authorized "each of the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Treasurer" of such Guarantor Subsidiary to execute and deliver to the Bridge Credit Agreement Agent, the Subordinated Bridge Subsidiary Guarantee and "all other documents, instruments and agreements deemed necessary or desirable by the [Bridge Credit Agreement Agent] in order to guarantee the obligations of [Tribune] under the [Bridge Credit Agreement]."[2020] The resolutions also authorized such officers to "take from time to time any actions deemed necessary or

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[2018] Ex. 706 (Unanimous Written Consents of the Subsidiary Boards, dated December 20, 2007). These unanimous written consents of the Subsidiary Boards are substantially similar in form and substance. As with the June 4, 2007 written consents of the Subsidiary Boards with respect to Credit Agreement Subsidiary Guarantee, it appears that the directors of the Guarantor Subsidiaries did little to no diligence when asked to sign the Subsidiary Board written consents authorizing the execution, delivery, and performance of the Subordinated Bridge Subsidiary Guarantee. *See* Report at § III.D.2.

[2019] Ex. 706 (Unanimous Written Consents of the Subsidiary Boards, dated December 20, 2007).

[2020] *Id.*

desirable by the Authorized Officers of the Company to establish the [Subordinated Bridge Subsidiary Guarantee] and to evidence the [Subordinated Bridge Subsidiary Guarantee] properly in accordance with the requirements of the [Bridge Credit Agreement]."[2021] The unanimous written consents were dated as of December 20, 2007.[2022]

3. The Step Two Financing.

a. Syndication of the Step Two Financing.

The Step Two Financing was syndicated by the Lead Banks pursuant to a confidential information memorandum dated April 2007.[2023] The confidential information memorandum described a transaction which would result in "the Company going private and Tribune shareholders receiving $34 per share" with the transaction to be "completed in two stages."[2024] The confidential information memorandum described the two stages as follows:[2025]

> The first stage . . . of the [Leveraged ESOP Transactions] is a cash tender offer for approximately 126 million shares at $34 per share. The tender offer will be funded by incremental borrowings and a $250 million investment from [EGI-TRB], which occurred on April 23, 2007. The tender will settle concurrently with the funding of the [Step One Financing], which is currently expected to take place in late May. The second stage . . . is a merger, which is currently expected to close in the fourth quarter of 2007, in which the remaining publicly-held shares will receive $34 per share. . . . Zell will make an additional investment of $65 million in connection with the merger, bringing Zell's total investment in Tribune to $315 million. The board of directors of Tribune, on the recommendation of the Special Committee, has approved the

[2021] *Id.*

[2022] *Id.* Certain Guarantor Subsidiaries were not signatories to the Credit Agreement Subsidiary Guarantee on June 4, 2007, but their execution and delivery of a joinder to the Credit Agreement Subsidiary Guarantee on the Step Two Financing Closing Date was authorized in the December 20, 2007 unanimous written consents of such Guarantor Subsidiaries.

[2023] Ex. 707 (Step Two Confidential Information Memorandum). Ultimately, under the Bridge Credit Agreement JPMCB was the Syndication Agent, and JPMorgan, ML&Co., MLPFS, CGMI and BAS were the Joint Lead Arrangers and Joint Bookrunners. *See* Ex. 175 at preamble (Bridge Credit Agreement).

[2024] Ex. 707 at 15 (Step Two Confidential Information Memorandum).

[2025] *Id.* at 42.

> agreements and will recommend Tribune shareholder approval of the merger. The Chandler Trusts, Tribune's largest shareholder, have agreed to vote in favor of the merger.

Additionally, the confidential information memorandum set forth "Shareholder and other necessary approvals" required to consummate the Merger:[2026]

> The Merger is subject to a number of conditions including shareholder, HSR, [FCC], and Major League Baseball . . . approvals, compliance with certain covenants, no material adverse change in Tribune's business, and the delivery of a solvency opinion. On April 20, 2007, early termination of the HSR waiting period was granted. Shareholder approval is currently expected to take place in [the] third quarter [of] 2007, while the FCC approval is currently expected in late 2007.

As set forth in the confidential information memorandum, the Step One Financing consisted of the Revolving Credit Facility, the Tranche B Facility (in the amount of $7.015 billion),[2027] and the Delayed Draw Facility,[2028] and the Step Two Financing consisted of the Bridge Facility (in the amount of $2.1 billion)[2029] and the Incremental Credit Agreement Facility.[2030] The Step One Financing and the Step Two Financing were to be "marketed concurrently."[2031] The confidential information memorandum set forth the estimated sources and uses of funds for, and the pro forma capitalization of Tribune following, Step One and Step Two.[2032] The Lead Banks estimated that $4.288 billion of the Step One Debt would be used to pay for the Tender Offer, $2.825 billion would be used to refinance existing debt, and

[2026] Ex. 707 at 44 (Step Two Confidential Information Memorandum).

[2027] This was amount was reduced to $5.515 billion in the Credit Agreement when the $1.5 billion Tranche X Facility was added. *See* Ex. 179 at § 1.01 (definition of "Tranche X Facility") (Credit Agreement).

[2028] Ex. 707 at 23 (Step Two Confidential Information Memorandum).

[2029] This was amount was reduced to $1.6 billion in the Bridge Facility. *See* Ex. 175 at § 1.01 (definition of "Commitment") (Bridge Credit Agreement).

[2030] Ex. 707 at 24 (Step Two Confidential Information Memorandum).

[2031] *Id.*

[2032] *Id.* at 19 and 21.

$152 million would be used to pay Step One transaction and financing fees.[2033] The Lead Banks estimated that $4.261 billion of the Step Two Debt would be used to consummate the Merger, $200 million would be used to redeem the EGI-TRB Exchangeable Note, $50 million would be used to repurchase shares of Tribune Common Stock owned by EGI-TRB, and $120 million would be used to pay Step Two financing and other fees.[2034]

On April 26, 2007, a syndication meeting was held at which Mr. Zell and Mr. FitzSimons, among others, addressed potential lenders and answered questions.[2035] As discussed above,[2036] additional syndication meetings were held on September 26, 2007 and October 1, 2007, during which time Tribune discussed updates to its projections and model.[2037]

b. Terms of the Bridge Facility.

On December 20, 2007, Tribune entered into a $1.6 billion senior unsecured interim credit agreement with MLCC, as administrative agent, JPMCB, as syndication agent, Citicorp and Bank of America as co-documentation agents, and the initial lenders named therein.[2038] The Bridge Credit Agreement consists of a $1.6 billion Bridge Facility.[2039]

Advances under the Bridge Credit Agreement bear interest at a rate based on either the "Base Rate" (the higher of Citibank's corporate base rate and the overnight federal funds rate

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[2033] *Id.* at 19.

[2034] *Id.* at 21.

[2035] Ex. 180 (Transcript of Lenders Meeting, dated April 26, 2007); Ex. 181 (Lenders' Presentation, dated April 26, 2007).

[2036] *See* Report at § III.F.6.

[2037] Ex. 182 (Bank Due Diligence Teleconference Call Agenda and Schedules, dated September 26, 2007); Ex. 183 (Tribune Company Underwriters Due Diligence Agenda for October 1, 2007); Ex. 184 (Tribune Publishing Presentation); Ex. 185 (Tribune Broadcasting Presentation).

[2038] Ex. 175 (Bridge Credit Agreement). The Bridge Credit Agreement is governed by New York law (*see* § 8.09). With respect to the Bridge Credit Agreement, (a) Tribune was represented by the law firm of Sidley Austin LLP (Chicago, IL office) and (b) the agent was represented by the law firm of Cahill Gordon & Reindel LLP (New York, NY office) (*see* § 8.02).

[2039] *Id.* at § 2.01.

plus 0.5%) or the "Eurodollar Rate" (LIBOR) plus the applicable margin for the tranche of loan.[2040] The applicable margin for "Base Rate" loans was 3.50%, which amount increased by 0.50% each quarter following the Step Two Financing Closing Date.[2041] The applicable margin for "Eurodollar Rate" loans was 4.50%, which amount increased by 0.50% each quarter following the Step Two Financing Closing Date.[2042] The interest rate is capped at 15.25% and Tribune can elect to pay the portion of interest in excess of 14.5% in kind rather than in cash.[2043] Interest under the 2006 Bridge Credit Agreement was similarly calculated as "Base Rate" or "Eurodollar Rate" plus an applicable margin, but the applicable margins under the Bridge Credit Agreement are significantly higher.[2044] As of December 30, 2007, the interest rate on the Bridge Facility was 9.43%.[2045]

The Bridge Facility Lenders have the right to exchange any loans outstanding on December 20, 2008 for senior exchange notes that would be issued under an indenture.[2046] The maturity date of any exchanged notes would be December 15, 2015[2047] and, if the Tribune Entities had not filed the Chapter 11 Cases on December 8, 2008, the maturity date of any loans remaining outstanding under the Bridge Facility on December 20, 2008 automatically would

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[2040] *Id.* at § 2.07.

[2041] *Id.* at § 1.01 ("Applicable Margin" definition).

[2042] *Id.*

[2043] *Id.* at § 1.01 ("Applicable Margin" definition) and Schedule I-A.

[2044] *See* Report at § III.B.3.c.

[2045] Ex. 4 at 51 (Tribune 2007 Form 10-K).

[2046] Ex. 175 at § 2.17 (Bridge Credit Agreement).

[2047] *Id.* at Exhibit I.

have been extended to December 15, 2015.[2048] The proceeds of the Bridge Facility were used to finance a portion of the Step Two Transactions and to pay fees and expenses related thereto.[2049]

There are no scheduled amortization payments on the Bridge Facility. In the event that Tribune or any of its Subsidiaries incurs certain indebtedness for borrowed money or sells assets or issues equity with an aggregate fair market value in excess of $10 million (subject to certain exceptions) or receives insurance proceeds or condemnation awards in excess of $10 million, Tribune is obligated to prepay the Bridge Facility in an amount equal to the net cash proceeds thereof.[2050] Any such mandatory prepayments are to be first applied to the payment of the Credit Agreement Debt and then to the payment of the Bridge Debt.[2051] In addition to the foregoing, on the occurrence of a Change in Control, each Bridge Facility Lender has the right to require Tribune to prepay its loans under the Bridge Facility.[2052]

Each Bridge Facility Lender has the right to request that Tribune execute a promissory note evidencing the advances made by such lender.[2053]

The Bridge Credit Agreement contains various affirmative and negative covenants (in the case of negative covenants, Tribune is required to not cause or permit any of its Subsidiaries to violate such covenants)[2054] and specifies various events of default, including:

- Tribune was obligated to qualify and elect to be treated as an S-Corporation under Subchapter S of the IRC effective as of January 1, 2008; provided, that the

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[2048] *Id.* at §§ 2.06 and 3.02.

[2049] *Id.* at § 5.01(j).

[2050] *Id.* at § 2.10(b).

[2051] *Id.* at § 2.10(b).

[2052] *Id.* at § 2.10(b)(iv).

[2053] *Id.* at § 2.16(a).

[2054] *Id.* at § 5.02.

failure to timely make such election could be cured by the investment of $100 million (subject to certain reductions) of junior capital by Mr. Zell or EGI-TRB;[2055]

- Tribune is prohibited from selling the equity interests associated with the PHONES Notes unless Tribune contemporaneously purchases call options or otherwise enters into a hedge agreement to ensure Tribune's ability to perform under the terms of the PHONES Notes;[2056]

- Tribune and its Subsidiaries are prohibited from incurring any indebtedness other than certain specified indebtedness, including the Step One Financing, the Exchangeable EGI-TRB Note, the EGI-TRB Notes, and up to $450 million under a receivables facility;[2057]

- FinanceCo is prohibited from engaging in any material business, holding any material assets or incurring any material obligations, other than incurring debt as the co-obligor or guarantor of the Credit Agreement Debt and the Bridge Debt, holding the Intercompany Junior Subordinated Notes, and activities incidental to the foregoing;[2058] and

- A Change in Control is an event of default under the Credit Agreement[2059] (but the consummation of the Step One Transactions and the Step Two Transactions was, by definition, not a Change in Control).[2060]

The closing under the Bridge Credit Agreement was subject to the satisfaction of various conditions, including the following:

[2055] *Id.* at § 5.01(n). However, by definition, the amount that Mr. Zell or EGI-TRB was required to invest as junior capital was equal to zero. *See id.* at § 1.01 ("Zell Investment Amount" definition).

[2056] *Id.* at § 5.02(e)(ii).

[2057] *Id.* at § 5.02(c).

[2058] *Id.* at § 5.02(n).

[2059] *Id.* at § 6.01(g).

[2060] *Id.* at § 1.01 ("Change in Control" definition).

- Delivery of executed copies of the Bridge Credit Agreement and associated loan documents;[2061]

- Delivery of a solvency certificate executed by the Chief Financial Officer of Tribune;[2062]

- Delivery of opinions from outside counsel to the Borrower and the general counsel of the Borrower;[2063]

- Delivery of financial statements, including a balance sheet as of September 30, 2007 on a pro forma basis giving effect to both the Step One Transactions and Step Two Transactions;[2064]

- Delivery of financial projections for the five year period following the Step Two Financing Closing Date on a pro forma basis giving effect to both the Step One Transactions and the Step Two Transactions;[2065]

- The consummation of the Merger;[2066]

- Tribune's receipt of proceeds from the borrowing under the Incremental Credit Agreement Facility;[2067]

- The accuracy of representations and warranties;[2068] and

[2061] *Id.* at § 3.01(a).

[2062] *Id.* at § 3.01(b)(i). *See* Report at § III.G.3.c. for a discussion of the definition of solvency and the form of solvency certificate.

[2063] Ex. 175 at § 3.01(b)(ii) (Bridge Credit Agreement).

[2064] *Id.* at § 3.01(b)(iii).

[2065] *Id.* at § 3.01(c).

[2066] *Id.* at § 3.01(h).

[2067] *Id.* at § 3.01(m).

[2068] *Id.* at § 3.01(b)(iv)(A). *See* Report at § III.G.3.c. for a discussion of the solvency representation and warranty in the Bridge Credit Agreement.

- No default had occurred and was continuing at the time of, or would result from, the making of an advance.[2069]

c. Solvency.

Section 4.01(l)(ii) of the Bridge Credit Agreement contains a representation regarding the solvency of Tribune: "As of the [Step Two] Financing Closing Date, immediately after giving effect to the [Step Two] Transactions, [Tribune] is Solvent."[2070]

The definition of "Solvent" in the Bridge Credit Agreement is substantially the same as the definition in the Credit Agreement:[2071]

> "Solvent" and "Solvency" mean, with respect to [Tribune] on the [Step Two Financing] Closing Date, that on such date (a) the fair value and present fair saleable value of the aggregate assets (including goodwill) of [Tribune] exceeds its liabilities (including stated liabilities, identified contingent liabilities and the new financing), and such excess is in an amount that is not less than the capital of [Tribune] (as determined pursuant to Section 154 of the Delaware General Corporate Law), (b) [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 (c) [Tribune] does not have unreasonably small capital. As used in this definition:
>
> "fair value" means the amount at which the aggregate or total assets of [Tribune] (including goodwill) 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 and, on the [Step Two Financing] Closing Date, in a transaction having a similar structure;
>
> "present fair saleable value" means the amount that may be realized by a willing seller from a willing buyer if [Tribune] aggregate or total assets (including goodwill) are sold with reasonable promptness and, on the [Step Two Financing] Closing Date, in a transaction having a similar structure;

2069 Ex. 175 at § 3.01(b)(iv)(B) (Bridge Credit Agreement).

2070 *Id.* at § 4.01(l)).

2071 *Id.* at § 1.01 (definition of "Solvency").

> "does not have unreasonably small capital" relates to the ability of [Tribune] to continue as a going concern and not lack sufficient capital for the business in which it is engaged, and will be engaged, as management has indicated such businesses are now conducted and are proposed to be conducted;
>
> "stated liabilities" means recorded liabilities of [Tribune] as presented on the most recent balance sheet of [Tribune] provided to [MLCC] prior to the [Step Two Financing] Closing Date;
>
> "identified contingent liabilities" means the reasonably estimated contingent liabilities that may result from, without limitation, threatened or pending litigation, asserted claims and assessments, environmental conditions, guaranties, indemnities, contract obligations, uninsured risks, purchase obligations, taxes, and other contingent liabilities as determined by [Tribune];
>
> "new financing" means, on the [Step Two Financing] Closing Date, the indebtedness incurred, assumed or guaranteed by [Tribune] in connection with the Transactions; and
>
> "similar structure" means a structure similar to the structure contemplated in the Transactions (an S corporation (under Subchapter 5 of the [IRC]), owned entirely by an Employee Stock Ownership Plan, which receives favorable federal income tax treatment), or another structure resulting in equivalent favorable federal income tax treatment.

One of the conditions to closing under the Bridge Credit Agreement was the accuracy of representations and warranties.[2072] It is also an event of default under the Bridge Credit Agreement if any representation or warranty was not true as of the date made or deemed made.[2073]

On December 20, 2007, as a condition to the occurrence of the Step Two Financing Closing Date, Donald Grenesko, Senior Vice President/Finance and Administration of Tribune, delivered a solvency certificate to MLCC stating "As of the date hereof, immediately after giving

[2072] *Id.* at § 3.01(b)(iv)(A).

[2073] *Id.* at § 6.01(b).

effect to the [Step Two] Transactions, [Tribune] is Solvent."[2074] The certificate noted that Mr. Grenesko reviewed and relied on the opinion of VRC, dated as of December 20, 2007, for purposes of the solvency certificate.[2075] The solvency certificate delivered in connection with the Bridge Credit Agreement on the Step Two Financing Closing Date was consistent with the form of solvency certificate attached as Exhibit E to the Bridge Credit Agreement.[2076]

In addition, on December 20, 2007, as a condition to the occurrence of the Step Two Financing Closing Date, Chandler Bigelow, a Vice President and the Treasurer of Tribune, delivered a Responsible Officer's Certificate under the Bridge Credit Agreement stating, "The undersigned certifies in his capacity as Vice President of the Company, that, as of the date hereof . . . the representations and warranties contained in Section 4.01 of the [Bridge] Credit Agreement . . . are correct in all material respects. . . ."[2077] Section 4.01(l) of the Bridge Credit Agreement states that, "As of the [Second Two Financing] Closing Date, immediately after giving effect to the Second Step Transactions, Borrower is Solvent."[2078]

d. The Subordinated Bridge Subsidiary Guarantee.

Tribune's obligations under the Bridge Credit Agreement are guaranteed by the Guarantor Subsidiaries pursuant to the Subordinated Bridge Subsidiary Guarantee.[2079] The Subordinated Bridge Subsidiary Guarantee, executed by the Guarantor Subsidiaries on the Step Two Financing Closing Date, provides that each of the Guarantor Subsidiaries, "jointly and severally, as a

2074 Ex. 708 (Step Two Solvency Certificate). Capitalized terms used but not defined in the solvency certificate had the meanings ascribed to such terms in the Bridge Credit Agreement.

2075 *Id.*

2076 Ex. 709 (Form of Bridge Credit Agreement Solvency Certificate).

2077 Ex. 710 at 1 (Bridge Credit Agreement Responsible Officer's Certificate, dated December 20, 2007).

2078 Ex. 175 at § 4.01(l) (Bridge Credit Agreement). Notwithstanding the above, Mr. Bigelow informed the Examiner that he never had been required to deliver a solvency certificate. *See* Examiner's Sworn Interview of Chandler Bigelow, June 3, 2010, at 109:22-110:2.

2079 Ex. 414 (Subordinated Bridge Subsidiary Guarantee). The Subordinated Bridge Subsidiary Guarantee is governed by New York law (*see* § 13).

primary obligor and not merely as a surety," unconditionally guarantees the monetary and other obligations of Tribune under the Bridge Credit Agreement[2080] and that such guarantee is a guarantee of payment when due and not of collection.[2081] The Guarantor Subsidiaries waived various defenses, including:

- Presentment to, demand of payment from and protest to Tribune;[2082]
- Notice of acceptance of the guarantee;[2083]
- Notice of protest for nonpayment;[2084]
- The failure of the secured parties to enforce against Tribune or any other Guarantor Subsidiary;[2085]
- Any amendment, modification, waiver, or release of the Subordinated Bridge Subsidiary Guarantee or any other loan document;[2086]
- The failure to perfect or release of any security interest;[2087]
- Any act or omission that may have operated as a discharge of any Guarantor Subsidiary (other than the indefeasible payment of the obligations under the Bridge Credit Agreement in full in cash);[2088]
- The right to require that the secured parties resort to any security interest;[2089]

[2080] *Id.* at § 1.

[2081] *Id.* at § 4.

[2082] *Id.* at § 2.

[2083] *Id.*

[2084] *Id.*

[2085] *Id.*

[2086] *Id.*

[2087] *Id.*

[2088] *Id.*

- The invalidity, illegality or unenforceability of the obligations under the Bridge Credit Agreement;[2090]

- Any defense based on or arising out of any defense of Tribune (other than payment in full of the obligations under the Bridge Credit Agreement);[2091] and

- Any defense arising out of the election of remedies, even though such election operates to impair or extinguish any right of reimbursement or subrogation against Tribune or any other guarantor.[2092]

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 Bridge Credit Agreement.[2093] 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 Bridge Credit Agreement, except to the extent otherwise permitted under the Bridge Credit Agreement.[2094]

The obligations of the Guarantor Subsidiaries under the Subordinated Bridge Subsidiary Guarantee are subordinated to the prior payment in full in cash of the obligations (including interest that accrues after the commencement of any bankruptcy proceeding, whether or not such interest is an allowed claim) of the Guarantor Subsidiaries under the Credit Agreement

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[2089] *Id.* at § 4.

[2090] *Id.* at § 5.

[2091] *Id.* at § 6.

[2092] *Id.*

[2093] *Id.* at § 7.

[2094] *Id.*

Subsidiary Guarantee.[2095] The Guarantor Subsidiaries are prohibited from making any payments under the Subordinated Bridge Subsidiary Guarantee on receipt of a notice of either a payment default or a default that permits the acceleration of the obligations under the Credit Agreement.[2096] In the event of a payment default, the Guarantor Subsidiaries are prohibited from making any payments under the Subordinated Bridge Subsidiary Guarantee until the payment blockage is cured or waived.[2097] In the event of a non-payment default, the blockage period is 180 days after the date of the notice.[2098]

Although addressing (a) subordination of obligations and (b) subrogation, contribution, and indemnity rights as to Tribune, the Subordinated Bridge Subsidiary Guarantee does not by its terms address (a) subordination of obligations and (b) subrogation, contribution, and indemnity rights among the Guarantor Subsidiaries. It did, however, require the Guarantor Subsidiaries to enter into the Bridge Subrogation Subordination Agreement.[2099]

The Subordinated Bridge Subsidiary Guarantee does not include a traditional "fraudulent transfer savings clause." The only provision addressing unenforceability is as follows:[2100]

> In the event any one or more of the provisions contained in [the Subordinated Bridge Subsidiary Guarantee] or any other Loan 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

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2095 *Id.* at § 3.

2096 *Id.*

2097 *Id.*

2098 *Id.*

2099 *Id.* at § 7.

2100 *Id.* at § 15(b).

valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

e. The Credit Agreement Subrogation Subordination Agreement.

On the Step Two Financing Closing Date, the Guarantor Subsidiaries executed the Credit Agreement Subrogation Subordination Agreement in favor of the Credit Agreement Agent.[2101] Pursuant to the Credit Agreement Subrogation Subordination Agreement, Tribune agreed to indemnify the Guarantor Subsidiaries for any payment made by the Guarantor Subsidiaries under the Credit Agreement Subsidiary Guarantees and for the value of any assets of the Guarantor Subsidiaries (at the greater of book or fair market value) that are sold to satisfy a claim under the Credit Agreement.[2102] Each Guarantor Subsidiary agreed to indemnify each other Guarantor Subsidiary for its pro rata share of any payment made by such other Guarantor Subsidiary under the Credit Agreement Subsidiary Guarantees and its pro rata share of the value of any assets sold to satisfy a claim under the Credit Agreement, in which case the Guarantor Subsidiary making such contribution would be subrogated to such other Guarantor Subsidiary's rights of indemnification against Tribune to the extent of such contribution.[2103] All rights of the Guarantor Subsidiaries under the Credit Agreement Subrogation Subordination Agreement are subordinated to the prior payment in full in cash of the obligations under the Credit Agreement.[2104]

[2101] Ex. 711 (Credit Agreement Subrogation Subordination Agreement). The Credit Agreement Subrogation Subordination Agreement is governed by New York law. *See id.* at § 5.

[2102] *Id.* at § 1.

[2103] *Id.* at § 2.

[2104] *Id.* at § 3.

f. The Bridge Subrogation Subordination Agreement.

On the Step Two Financing Closing Date, the Guarantor Subsidiaries executed the Bridge Subrogation Subordination Agreement in favor of the Bridge Credit Agreement Agent.[2105] Pursuant to the Credit Agreement Subrogation Subordination Agreement, Tribune agreed to indemnify the Guarantor Subsidiaries for any payment made by the Guarantor Subsidiaries under the Subordinated Bridge Subsidiary Guarantees and for the value of any assets of the Guarantor Subsidiaries (at the greater of book or fair market value) that are sold to satisfy a claim under the Bridge Credit Agreement.[2106] Each Guarantor Subsidiary agreed to indemnify each other Guarantor Subsidiary for its pro rata share of any payment made by such other Guarantor Subsidiary under the Subordinated Bridge Subsidiary Guarantees and its pro rata share of the value of any assets sold to satisfy a claim under the Bridge Credit Agreement, in which case the Guarantor Subsidiary making such contribution would be subrogated to such other Guarantor Subsidiary's rights of indemnification against Tribune to the extent of such contribution.[2107] All rights of the Guarantor Subsidiaries under the Bridge Subrogation Subordination Agreement are subordinated to the prior payment in full in cash of the obligations under the Bridge Credit Agreement.[2108]

g. Priority of Bridge Credit Agreement.

The Bridge Debt is not by its terms subordinated to any other indebtedness of Tribune, however, mandatory prepayments resulting from the incurrence of indebtedness or the sales of

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[2105] Ex. 712 (Bridge Subrogation Subordination Agreement). The Bridge Subrogation Subordination Agreement is governed by New York law. *See id.* at § 5.

[2106] *Id.* at § 1.

[2107] *Id.* at § 2.

[2108] *Id.* at § 3.

assets or equity are to be first applied to the Credit Agreement Debt.[2109] The Subordinated Bridge Subsidiary Guarantee is expressly subordinated to the Credit Agreement Subsidiary Guarantee.[2110] The Stock Pledge does not secure the Bridge Debt.[2111]

4. Closing of the Step Two Transactions.

a. Merger Agreement.

As required under the Merger Agreement, on December 20, 2007, VRC delivered its opinion to the Tribune Board that, giving effect to the Step Two Transactions, Tribune was solvent.[2112] At 12:02 p.m. on December 20, 2007, Tribune consummated the Merger utilizing proceeds of the Incremental Credit Agreement Facility and the Bridge Facility.[2113] Pursuant to the terms of the Merger Agreement, the certificate of incorporation and bylaws of Tribune were amended to read in their entirety as the certificate of incorporation and bylaws of the Merger Sub.[2114] As a result of the ownership of Tribune solely by the ESOP, Tribune filed a Form 15 with the SEC providing notice of the termination of Tribune's registration under Section 12(g) of the Exchange Act.[2115] Tribune also requested that the Tribune Common Stock be suspended from the New York Stock Exchange effective as of the close of market on December 20, 2007.[2116]

[2109] Ex. 175 at § 2.10(b) (Bridge Credit Agreement).

[2110] Ex. 414 at § 3 (Subordinated Bridge Subsidiary Guarantee).

[2111] Ex. 190 (Pledge Agreement).

[2112] Ex. 728 (VRC Step Two Solvency Opinion, dated December 20, 2007). *See* Report at § III.H.3. for a discussion of the solvency opinion delivered by VRC at Step Two. Unlike the solvency opinions delivered by VRC at Step One, the solvency opinion delivered by VRC at Step Two was not filed by Tribune with the SEC. According to a statement issued by Chandler Bigelow on January 16, 2009, Tribune did not publicly file VRC's Step Two solvency opinion with the SEC because Tribune was not required to do so under federal securities laws. Ex. 940 (Tribune Press Release, dated January 16, 2009).

[2113] Ex. 13 at 2 (Tribune Form 8-K, filed December 28, 2007).

[2114] Ex. 151 at § 1.5 (Agreement and Plan of Merger).

[2115] Ex. 227 (Tribune Form 15, filed December 20, 2007).

[2116] Ex. 13 at 6 (Tribune Form 8-K, filed December 28, 2007).

b. Second Closing under the EGI-TRB Purchase Agreement.

The EGI-TRB Purchase Agreement Second Closing occurred on December 20, 2007, immediately following consummation of the Merger.[2117] In connection therewith, EGI-TRB purchased (a) the $225 million Initial EGI-TRB Note and (b) the Warrant, for an aggregate purchase price of $315 million.[2118] In addition, pursuant to the terms thereof, Tribune repaid the Exchangeable EGI-TRB Note in the amount of $206,418,859.46.[2119]

c. Advance under the Incremental Credit Agreement Facility.

On December 12, 2007, Tribune notified the Credit Agreement Agent of a request for borrowing under the Incremental Credit Agreement Facility.[2120] Certain lenders executed Increase Joinders on December 20, 2007[2121] and the Incremental Credit Agreement Facility was funded on the Step Two Financing Closing Date.[2122] As discussed above, advances under the Incremental Credit Agreement Facility are guaranteed by the Guarantor Subsidiaries pursuant to the Credit Agreement Subsidiary Guarantee.[2123]

On December 20, 2007, as a condition to the occurrence of the Step Two Financing Closing Date, Donald Grenesko, Senior Vice President/Finance and Administration of Tribune, delivered a solvency certificate to JPMCB stating, "As of the date hereof, immediately after giving effect to the [Step Two] Transactions, [Tribune] is Solvent."[2124] The certificate noted that

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[2117] Ex. 4 at 47 (Tribune 2007 Form 10-K).

[2118] Ex. 4 at 47 (Tribune 2007 Form 10-K). Tribune and EGI-TRB netted the payments between them. *See* Report at § III.G.4.d.

[2119] Ex. 153 at § 1(b)(i) (Exchangeable EGI-TRB Note); Ex. 714 at 4 (Step Two Flow of Funds Memorandum).

[2120] Ex. 713 (Notice of Increase).

[2121] Ex. 351 (Increase Joinders).

[2122] Ex. 714 at 1 (Step Two Flow of Funds Memorandum).

[2123] *See* Report at § III.D.10.d.

[2124] Ex. 715 (Incremental Credit Agreement Facility Solvency Certificate). Capitalized terms used but not defined in the solvency certificate had the meanings ascribed to such terms in the Credit Agreement.

Mr. Grenesko reviewed and relied on the opinion of VRC dated as of December 20, 2007 for purposes of the solvency certificate.[2125] The solvency certificate delivered in connection with the draw under the Incremental Credit Agreement Facility on the Step Two Financing Closing Date was consistent with the form of solvency certificate attached as Exhibit E to the Credit Agreement.[2126]

In addition, on December 20, 2007, as a condition to the occurrence of the Step Two Financing Closing Date, Chandler Bigelow, a Vice President and the Treasurer of Tribune, delivered a Responsible Officer's Certificate under the Credit Agreement stating, "The undersigned certifies in his capacity as Vice President of the Company that the representations of the Company . . . contained in [Section 4.01(l)(ii) of the Credit Agreement] . . . are true and correct in all material respects as of the date hereof. . . ."[2127] Section 4.01(l)(ii) of the Credit Agreement states that, "Upon and after consummation of the Second Step Transactions and as of the Second Step Closing Date, immediately after giving effect to the Second Step Transactions, Borrower is Solvent."[2128]

d. Funds Flow.

On the Step Two Financing Closing Date, JPMCB wire transferred $2.105 billion to Tribune in respect of the Incremental Credit Agreement Facility[2129] and the Lead Banks wire transferred $1.6 billion to Tribune in respect of the Bridge Facility.[2130]

[2125] *Id.* *See* Ex. 714 (Step Two Flow of Funds Memorandum).

[2126] Ex. 187 (Form of Credit Agreement Solvency Certificate).

[2127] Ex. 716 at 1 (Credit Agreement Responsible Officer's Certificate, dated December 20, 2007).

[2128] Ex. 179 at § 4.01(l)(ii) (Credit Agreement). Notwithstanding the above, and as with respect to the Bridge Credit Agreement, Mr. Bigelow informed the Examiner that he never had been required to deliver a solvency certificate. *See* Examiner's Sworn Interview of Chandler Bigelow, June 3, 2010 at 109:22-110:2; Report at § III.G.3.c.

[2129] Ex. 714 at 1 (Step Two Flow of Funds Memorandum).

[2130] *Id.* at 2-4.

On the Step Two Financing Closing Date, Tribune thereafter disbursed approximately $4 billion to Computershare Trust Company, N.A., to consummate the Merger[2131] and $1.355 million to Cahill Gordon & Reindel LLP (as legal counsel to the Lead Banks).[2132] Based on the Examiner's review of Tribune's books and records, Tribune also made the following disbursements on the Step Two Financing Closing Date:[2133]

Step Two Financing Fees, Costs, and Expenses	
JPM	$13,767,054
Merrill Entities	$37,883,125
BofA	$6,883,527
Citigroup Entities	$11,472,545
Other Step Two Financing Fees, Costs, and Expenses[2134]	$3,436,240
Total Step Two Financing Fees, Costs, and Expenses	**$73,442,490**

Tribune and EGI-TRB netted the payments due between them, such that EGI-TRB wire transferred Tribune $56,081,148.54 in respect of: (a) (i) the issuance by Tribune of the Initial EGI-TRB Note ($225,000,000) and (ii) the purchase by EGI-TRB of the Warrant ($90,000,000), less (b)(i) the repayment by Tribune of the Exchangeable EGI-TRB Note ($206,418,859.46), (ii) the payment of the Merger Consideration to EGI-TRB on account of its ownership of

2131 *Id.* at 5.

2132 *Id.* at 10.

2133 As noted, the record developed by the Examiner during the course of the Investigation does not resolve the question of whether these 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. *See* footnote 863.

2134 Includes the payment of out-of-pocket expenses, legal fees, and various other financing-related costs paid in connection with Step Two.

Tribune Common Stock ($49,999,992), and (iii) reimbursement of expenses ($2,500,000) incurred by EGI-TRB pursuant to the EGI-TRB Purchase Agreement.[2135]

e. Payments to Tribune Advisors.

Based on the Examiner's review of Tribune's books and records, Tribune also made the following payments to advisors, consultants, counsel, and other service providers in connection with the Step Two Transactions:

Step Two Related Advisor Fees, Costs, and Expenses	
CGMI[2136]	$12,837,360
MLPFS[2137]	$12,768,422
Total Step Two Advisor Fees, Costs, and Expenses	**$25,605,782**
Other Step Two Related Fees, Costs, and Expenses[2138]	**$21,577,816**

f. Rating Agency Ratings Leading Up to the Closing of the Step Two Transactions.

On August 20, 2007, assuming the consummation solely of the Step One Transactions, and one day before the Company Meeting, Standard & Poor's Rating Services issued a research update, lowering Tribune's corporate credit rating to 'B+' from 'BB-' and the Credit Agreement rating from 'BB+' to 'BB'.[2139] In addition, all ratings remained on CreditWatch "with negative

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2135 Ex. 714 at 4 (Step Two Flow of Funds Memorandum).

2136 The payment of these CGMI Advisor Fees was made on January 15, 2008.

2137 The payment of these MLPFS Advisor Fees was made on January 15, 2008.

2138 "All Other Step Two 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 Two based on the fact that they were expensed in either Q3 or Q4 2007. With the exception of the Wachtell portion of these fees ($4,350,000) which is known to have been part of a payment made to Wachtell on December 20, 2007, actual payment dates are generally unknown.

2139 Ex. 717 at 2 (Standard & Poor's Research Update, dated August 20, 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 implications until the close of the [Step Two Transactions]. . . ."[2140] Standard & Poor's explained that "the negative outlook at the 'B' corporate credit rating represents a revision in the expected outlook from stable, and reflects deterioration in expected operating performance and cash flow generation compared to previous expectations."[2141]

On November 29, 2007, Moody's Investor Service issued a Rating Action downgrading Tribune's Corporate Family Rating to 'B1' from 'Ba3'.[2142] The downgrade reflected Moody's:[2143]

> estimate that projected advertising revenue, EBITDA and cash flow generation will be lower than previously anticipated in 2008 and 2009 as a result of the ongoing challenges associated with a difficult revenue environment facing the newspaper industry. . . . [However, this] rating action is unrelated to Tribune's plan to go private in a transaction led by Sam Zell … and all ratings remain on review for downgrade due to the transaction.

Moody's also indicated that completion of the Step Two Transactions would result in a further downgrade of Tribune's Corporate Family Rating to 'B3' with a stable outlook rating, one

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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 id.*

[2140] Ex. 717 at 2 (Standard & Poor's Research Update, dated August 20, 2007). "CreditWatch" reflects Standard & Poor's opinion regarding the potential direction of a rating; "negative" means that a rating "may be lowered." *See* Ex. 213 at 13 (Standard & Poor's Ratings).

[2141] Ex. 717 at 2 (Standard & Poor's Research Update, dated August 20, 2007).

[2142] Ex. 718 (Moody's Rating Action, dated November 29, 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 '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." *Id.* at 8. The modifier "1" indicates a ranking in the "higher end" of that generic rating category and the modifier "3" indicates a ranking in the "lower end" of that generic rating category. *Id.*

[2143] Ex. 718 (Moody's Rating Action, dated November 29, 2007).

level lower than Moody's earlier expectation, due to an anticipated "reduction in earnings through 2009. . . ."[2144]

In connection with Tribune's announcement of the closing of the Step Two Transactions, on December 20, 2007, Fitch Ratings announced that it had downgraded Tribune's Issuer Default Rating from 'B+' to 'B-'.[2145] According to Fitch, the downgrade reflected the "significant debt burden the transaction places on the company's balance sheet while its revenue and cash flow have been declining … [leaving] … very little room to endure a cyclical downturn."[2146] In addition, Fitch assigned Tribune a "negative outlook" as result of Fitch's "belief that there are significant secular pressures facing newspapers and broadcast affiliate industries. . . ."[2147] However, Fitch did indicate that the fact that "the company's assets are separable from the company [provided] some capacity to potentially postpone financial distress."[2148]

In addition, on December 20, 2007, immediately following closing of the Step Two Transactions, Standard & Poor's issued a Ratings Action Update e-mail update in which it lowered Tribune's issuer credit rating to 'B-' from 'B+'.[2149]

[2144] *Id.* 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 "3" indicates a ranking in the "lower end" of that generic rating category. *Id.* at 8.

[2145] Ex. 719 (Fitch Press Release, dated December 20, 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 major rating categories. *Id.* at 9.

[2146] Ex. 719 (Fitch Press Release, dated December 20, 2007).

[2147] *Id.*

[2148] *Id.*

[2149] Ex. 720 (Standard & Poor's Rating Action Update, dated December 20, 2007). 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 &

H. Knowledge and Actions of Key Participants in the Step Two Transactions.

The Report now addresses the knowledge and actions of the key participants with respect to the events culminating in the Step Two Transactions. As with Section III.E., 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 Two Financing Closing Date.

Between the Step One Financing Closing Date and the Step Two Financing Closing Date, Tribune management continued to monitor Tribune Entities' financial performance and was acutely aware that, during this period, the Tribune Entities generally were not achieving the financial results contemplated in the February 2007 Tribune Board-approved plan.

As a consequence, and in order to provide, among others, the Lead Banks and VRC current information regarding expected future financial performance, during the fall of 2007, management developed revised financial forecasts, and presented those revised expectations to the Tribune Board in October 2007.[2150] Further, during the period between June 4, 2007 and December 20, 2007, management was aware of Tribune's stock performance, analyst expectations for, and commentary regarding, Tribune, and the contraction of the credit markets.[2151]

Poor's Ratings). The addition of a plus (+) or minus (-) sign shows "relative standing within the major rating categories." *See id.*

[2150] *See* Ex. 643 at TRB0415666 (Tribune Board Meeting Minutes, October 17, 2007).

[2151] *See, e.g*. Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 68:8-69:15, 70:17-71:1, 73:7-73:13.

a. Tribune Entities' Actual Performance Against Plan.

As discussed elsewhere in the Report,[2152] management tracked the Tribune Entities' actual financial performance in monthly Brown Books. Thus, management closely tracked the Tribune Entities' performance.

b. Management's Revised October 2007 Projections.

According to testimony provided by former Tribune Treasurer and current Chief Financial Officer Chandler Bigelow,[2153] against the backdrop of Tribune's unfavorable 2007 performance against its February 2007 plan, management developed revised projections in the fall of 2007, culminating in the development of new financial projections which, in part,[2154] were presented to and discussed with the Tribune Board.[2155] At the October 17, 2007 meeting, management presented a revised five-year plan forecasting the Tribune Entities' financial results for 2008 through 2012.[2156] The updated October 2007 projections also were provided to the Lead Banks, VRC and rating agencies. The October 2007 forecast reflected less optimism

[2152] *See* Report at § III.C.1.

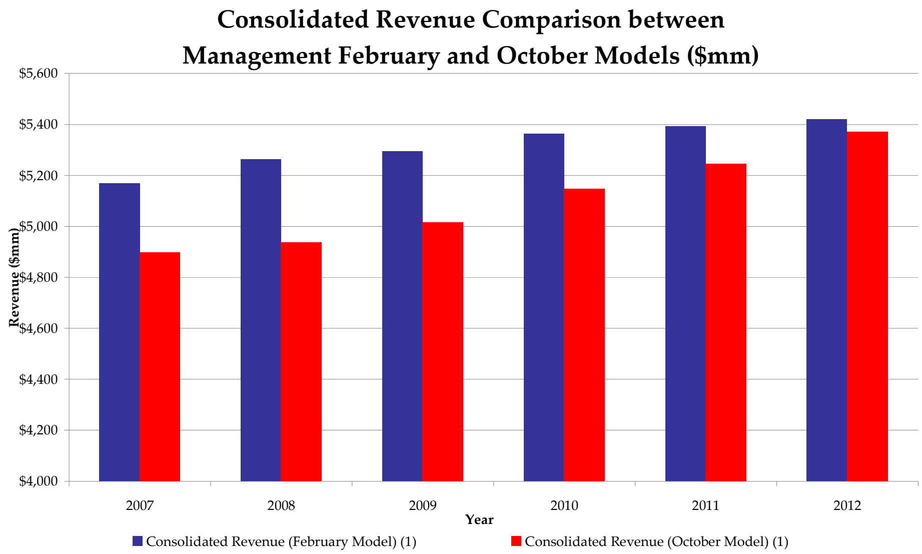
[2153] *See* Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 139:3-144:8.

[2154] The detailed projection model underlying the revised five-year projection discussed with the Tribune Board in October 2007 also contained projections through the year 2017. *See* Ex. 721 (Tribune Company Model, dated November 21, 2007). This model comports with the five-year projection information provided to the Tribune Board in October 2007. As discussed herein, management presented the Tribune Board with five-year projections, reflecting downwardly revised expectations relative to the February plan over that forecast horizon. The underlying financial model, however, contained projections for the next ten years that reflected certain increased expectations of financial performance in later years relative to the longer term expectations developed in connection with the February 2007 plan. These longer-term projections also are discussed in the Report in the Examiner's review of VRC's Step Two opinion. *See* Report at § III.H.3.

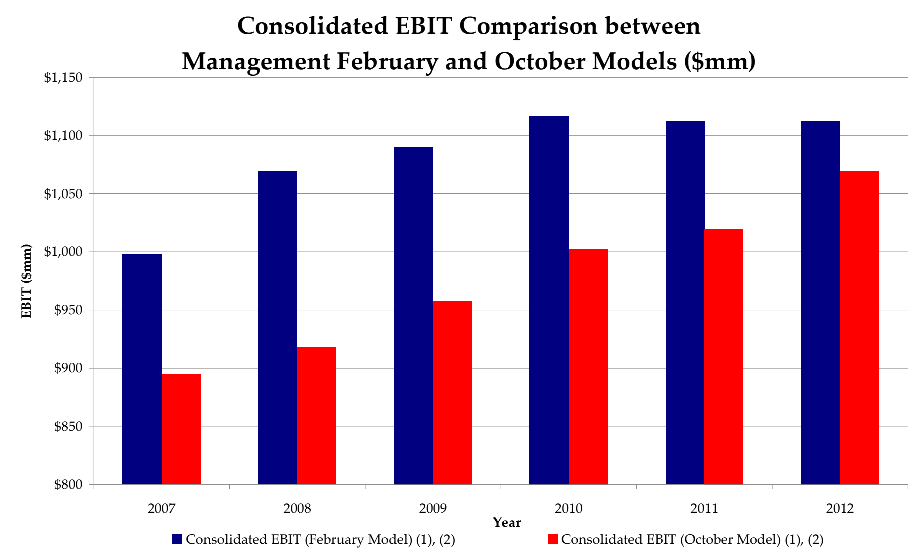
[2155] *See* Ex. 643 at TRB0415666 (Tribune Board Meeting Minutes, dated October 17, 2007) and Ex. 722 at TRB-UR-710-763 (Tribune Board Meeting Materials, dated October 17, 2007).

[2156] The basis for assumptions regarding projected levels of revenue and other key operating performance metrics, with respect to the five-year projection model, were described in the text of the document provided to the Tribune Board. The Examiner directs the reader to the October 2007 plan for a delineation of the assumptions informing the five-year October 2007 plan. *See* Ex. 722 at TRB-UR-0414710-44 (Tribune Board Meeting Materials, dated October 17, 2007).

regarding revenue growth and profitability relative to management's expectations held in February 2007, as reflected in the summaries below:[2157]



(1) Management's February, 2007 model, Ex. 71 (ESOP Transaction Model, dated February 8, 2007) and Management's November 21, 2007 model, Ex. 721 (Tribune Company Model, dated November 21, 2007).

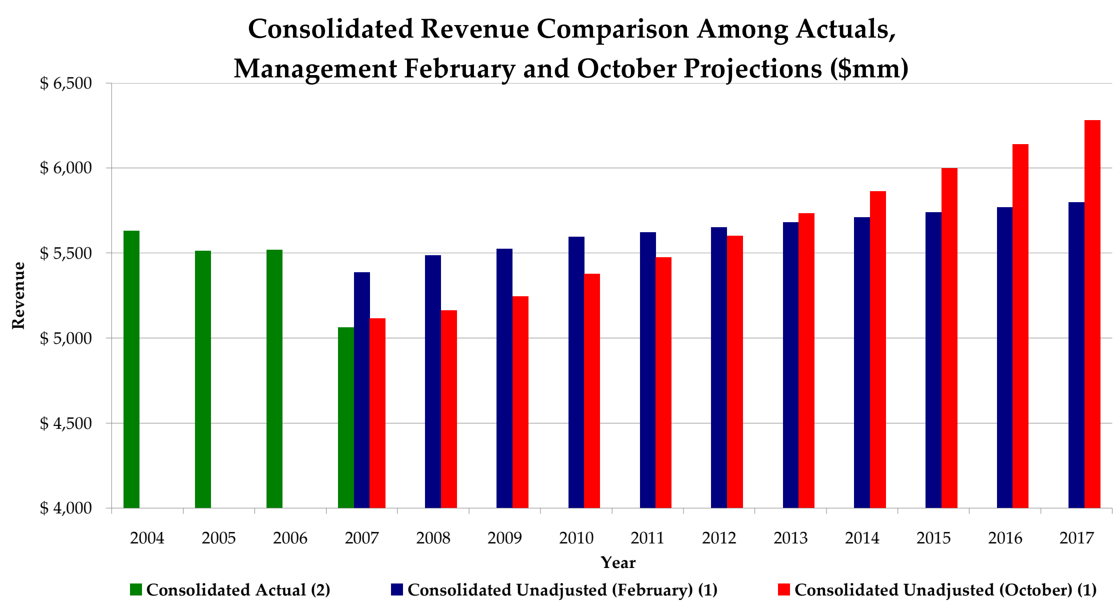


(1) Management's February, 2007 model, Ex. 71 (ESOP Transaction Model, dated February 8, 2007) and Management's November 21, 2007 model, Ex. 721 (Tribune Company Model, dated November 21, 2007)
(2) EBIT is calculated consistently with management models (EBIT = Revenue - Operating Expenses - Stock-Bassed Compensation - Depreciation & Amortization).

[2157] *See* Ex. 71 (February 2007 ESOP Model); Ex. 722 at TRB-UR-0414710–63 (Tribune Board Meeting Materials, dated October 17, 2007) (Revised October Model).

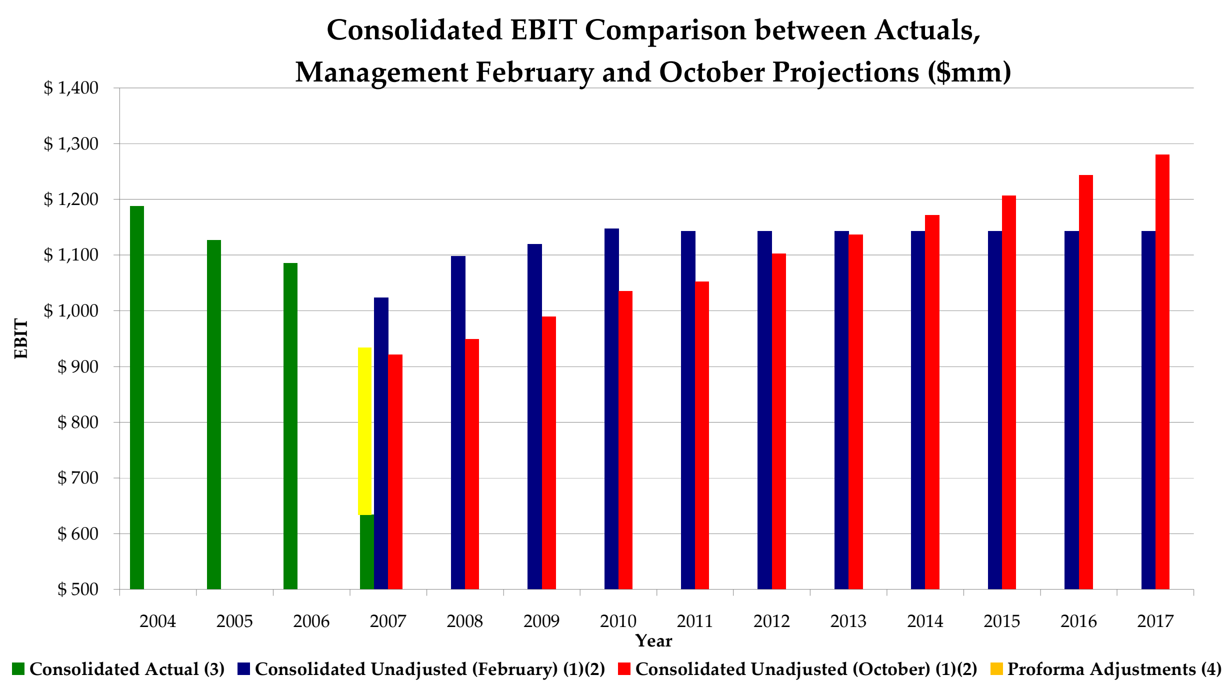
Although reflecting less optimism than the February 2007 projections for the initial years of the projection horizon, the October 2007 projection model (which contained projected results through 2017) contemplated that revenue and profitability would grow in the later years at a rate well beyond the expectations reflected in the February 2007 model.

The October 2007 projection model forecasted significant long-term improvements in performance relative to the expectations held in February 2007 despite contrary historical performance from 2004 to 2007, including actual unfavorable performance against the February 2007 plan for both revenue and EBIT:



(1) Management's February 2007 projections (Ex. 71 (ESOP Transaction Model - Revised Operating Plan Case, dated February 8, 2007)) and Management's November 21, 2007 projections (Ex. 721 (Tribune Company Model, dated November 21, 2007), which corresponds to the October 2007 Five-Year Plan) exclude forecasted results for the Cubs, SCNI and Hoy, New York (because such businesses had been, or were contemplated to be sold). Management's November 21, 2007 projections were adjusted to account for the pro forma revenue contributions of the Cubs, SCNI, and Hoy, New York based on amounts forecasted in February, 2007 projections to facilitate and "apples-to-apples" comparison to historical results which included the revenue from those businesses.

(2) 2004, 2005, and 2006 actuals from Ex. 14 (Tribune 2006 Form 10-K). 2007 actual is from the Ex. 4 (Tribune 2007 Form 10-K). The 2007 Form 10-K revenue does not include revenues from discontinued operations (SCNI and Hoy, New York) whereas 2004-2006 results are inclusive of SCNI and Hoy, New York revenues. Normalized to exclude the effects of discontinued operations, revenues for 2004-2006 (as reported in Ex. 4 (Tribune 2007 Form 10-K)) were $5,543, $5,427, and $5,444 million respectively. The declining revenue trend is nonetheless apparent, particularly given that 2006 results include 53 weeks.



(1) Management's February, 2007 projections (Ex. 71 (ESOP Transaction Model - Revised Operating Plan Case, dated February 8, 2007)) and Management's November 21, 2007 projections (Ex. 721 (Tr bune Company Model, dated November 21, 2007), which corresponds to the October 2007 Five-Year Plan) exclude forecasted results for the Cubs, SCNI and Hoy, New York (because such businesses had been, or were contemplated to be sold). Management's November 21, 2007 projections were adjusted to account for the pro forma EBIT contr butions of the Cubs, SCNI, and Hoy, New York based on amounts forecasted in the February 2007 projections to facilitate and "apples-to-apples" comparison to historical results which included the EBIT contributions of the businesses.
(2) EBIT is calculated consistently with management projections (EBIT = Revenue - Operating Expenses - Stock-Based Compensation - Depreciation & Amortization).
(3) 2004, 2005, and 2006 actuals from Ex. 14 (Tribune 2006 Form 10-K). 2007 actual is from Ex. 4 (Tribune 2007 Form 10-K). The 2007 Form 10-K EBIT does not include results from discontinued operations (SCNI and Hoy, New York) whereas 2004-2006 results are inclusive of SCNI and Hoy, New York EBIT. Normalized to exclude the EBIT effects of discontinued operations, EBIT for 2004-2006 (as reported in Ex. 4 (Tribune 2007 Form 10-K)) were $1,190, $1,121, and $1,085 m llion respectively. The declining EBIT trend is nonetheless apparent, particularly given that 2006 resu ts include 53 weeks.
(4) Non-operating adjustments added back to reported 2007 EBIT include severance, outplacement fees, phantom equity compensation, changes-in-control compensation and other items (including $130 mm goodwill write-off occuring in December), as detailed in Ex. 642 at 5 (Brown Book for Period 12, 2007).

There is no question that Tribune's management was aware of these negative trends. Indeed, this largely what prompted the reforecast in October 2007.[2158] Furthermore, the revised October 2007 projection, although downwardly revising near term expectations of revenue and operating profitability relative to the pre-existing February 2007 model, nonetheless contemplated that Tribune would significantly mitigate the effects of the secular declines then affecting the traditional Publishing Segment (*i.e.,* newspapers and corresponding print advertising), by substantially growing its interactive business. In fact, the October 2007

[2158] *See* Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 139:3-144:8.

projections contemplated that Tribune's interactive business would create significant value prospectively.[2159]

c. Management Awareness of Market Conditions.

As evidenced by, among other things, materials disseminated to the members of the Tribune Board in connection with 2007 Tribune Board meetings occurring after June 4, 2007, management monitored the price performance of the Tribune Common Stock in both an absolute and relative sense (*e.g.,* noting in Tribune Board book materials Tribune's stock returns in relation to "cohort company" returns). Management further recognized that the market was, for certain periods between Step One and Step Two, reflecting concerns regarding the ability of Tribune to consummate the Merger.[2160]

[2159] The following table, derived from a review of detailed projection parameters embedded in the financial forecasting model serving as the basis for the consolidated October 2007 plan, reveals the significant reliance Tribune management was apparently placing on an expectation of substantial growth in revenue and profitability in Tribune's interactive business. *See* Ex. 721 (Tribune Company Model, dated November 21, 2007).

INTERACTIVE BUSINESS OCTOBER 2007 PROJECTIONS ($mm)

	Actual (1)		October Projections (2)				
	2006	2007	2008	2009	2010	2011	2012
Revenue	$ 227.0	$ 254.2	$ 318.0	$ 406.3	$ 507.9	$ 603.8	$ 712.5
% Growth		*12.0%*	*25.1%*	*27.8%*	*25.0%*	*18.9%*	*18.0%*
Operating Cash Flow	$ 125.9	$ 116.9	$ 127.2	$ 158.5	$ 203.2	$ 241.5	$ 285.0
% Margin (3)	*55.5%*	*46.0%*	*40.0%*	*39.0%*	*40.0%*	*40.0%*	*40.0%*

(1) Actual figures derived from Ex. 642 (Brown Book for Period 12, 2007) unless otherwise noted.
(2) All Projections are derived from Ex. 1004 (Mednik e-mail, dated October 31, 2007) unless otherwise noted.
(3) Operating Margin derived from Ex. 956 (Interactive Segment Projections). Margin is utilized to calculate operating cash flow.

Both the reasonableness of these expectations, as well as the impact of these expectations on valuation, as implicitly incorporated into VRC's Step Two analysis, are discussed later in the Report in connection with the Examiner's conclusions regarding Step Two solvency and capital adequacy. *See* Report at §§ IV.B.5.d.(10). and IV.B.5.d.(12).

[2160] *See, e.g.*, Ex. 723 at TRB-UR-0414584.03-84.04 (Tribune Board Meeting Materials, dated July 18, 2007).

2. Knowledge of the Tribune Board and the Special Committee of the Tribune Entities' Financial Performance Between Step One and Step Two.

The Tribune Board met on nine occasions between the approval of the Leveraged ESOP Transactions and the Step Two Financing Closing Date. During that interval, the Special Committee met only twice (on May 9, 2007 and December 18, 2007).[2161] The minutes for the Tribune Board and Special Committee meetings and materials disseminated in connection with those meetings reveal that the Tribune Board was generally aware of the ongoing deterioration in the Tribune Entities' financial performance during 2007 (relative to the February 2007 Tribune Board-approved plan) and certain of management's actions taken in response to that decline.

The minutes also show that the Tribune Board received information regarding: (a) the financial performance of the Tribune Entities during the first through third quarters (as Tribune had issued its Form 10-Q filings for those periods), (b) management's October 2007 revision to the Tribune Entities' financial projections,[2162] and (c) certain additional information bearing on

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[2161] *See* Ex. 248 (Tribune Board Meeting Minutes, dated May 9, 2007); Ex. 149 (Tribune Board Meeting Minutes, dated May 21, 2007); Ex. 724 (Tribune Board Meeting Minutes, dated July 18, 2007); Ex. 725 (Tribune Board Meeting Minutes, dated September 28, 2007); Ex. 643 (Tribune Board Meeting Minutes, dated October 17, 2007); Ex. 726 (Tribune Board Meeting Minutes, dated November 5, 2007); Ex. 702 at TRB0415674 (Tribune Board Meeting Minutes, dated November 21, 2007); Ex. 727 (Tribune Board Meeting Minutes, dated December 4, 2007); Ex. 11 (Tribune Board Meeting Minutes, dated December 18, 2007); Ex. 252 (Special Committee Meeting Minutes, dated May 9, 2007); Ex. 704 (Special Committee Meeting Minutes, dated December 18, 2007). Mr. FitzSimons testified to the Examiner that as Step Two approached and after the Chandler Trusts no longer had a Tribune Board representative, the membership of the Tribune Board and the Special Committee substantially overlapped (with the exception of Mr. FitzSimons and Mr. Zell). Examiner's Sworn Interview of Dennis J. FitzSimons, June 25, 2010, at 86:1-87:3.

[2162] A revised five-year projection (*i.e.,* for years 2008 through 2012) presented to the Tribune Board at the October 17, 2007 Tribune Board meeting was apparently based on a detailed projection model, which also contained projections for an additional five years (through 2017). *See* Ex. 721 (Tribune Company Model, dated November 21, 2007). Although the detailed projection model reviewed by the Examiner is referenced as being "last updated" on November 21, 2007, the data contained therein comport with the October 2007 five-year projection model discussed with the Tribune Board on October 17, 2007 for years 2008 through 2012. It appears that VRC relied on these full ten-year projections in connection with the rendering of its Step Two solvency opinion, as reflected in VRC's December 18, 2007 presentation to the Tribune Board and the VRC Step Two solvency opinion, dated December 20, 2007.

The VRC December 20, 2007 opinion letter references reliance on a management projection model "model_negotiated_proposal_november21.xls." Ex. 728 at TRB0294009 (VRC Step Two Solvency Opinion, period specific results through November 2007. Moreover, the Tribune Board minutes show that before the Step Two Financing Closing Date, the Tribune Board received information regarding management's pro forma financial expectations for the entirety of 2007 based on actual performance data available at the time.[2163]

The first Tribune Board meeting after the Step One Financing Closing Date occurred on July 18, 2007. At that meeting, Donald Grenesko reviewed the Tribune Entities' second quarter results for each of the Publishing Segment and the Broadcasting Segment, Tribune's stock price performance, and Tribune's operating performance in relation to its identified peers.[2164] In addition, Chandler Bigelow discussed "alternatives for completing the second step financing in the face of tighter market conditions and the Company's current operating results" and "presented several alternative financing strategies" that would allow Tribune to more quickly repay the Tranche X Facility, "and facilitate a successfully syndicated second step financing. . . ."[2165]

The Tribune Board book (disseminated to the Tribune Board members in advance of the July 18, 2007 meeting) sheds additional light on the Tribune Entities' declining financial performance and the difficult environment facing the Tribune Entities' business segments

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dated December 20, 2007). It appears that the "Tribune Company Model dated November 21, 2007" is the same document. The Examiner, however, has not located evidence indicating whether the Tribune Board received a copy of that underlying model or a description of the assumptions in respect of growth rates for both the Publishing Segment and the Broadcasting Segment on which such outer-year projections were based. Accordingly, it is unclear what the Tribune Board knew about the projections for those "outer" periods. These outer-year financial projections are discussed further in connection with the Examiner's discussion of Management's Knowledge of Tribune's Financial Performance. *See* Report at § III.H.1.

[2163] In addition to Tribune Board meeting minutes (and any materials disseminated or presented to the Tribune Board in connection with such meetings), Tribune continued to issue monthly press releases disclosing certain information regarding the Tribune Entities' monthly performance. Between June 4, 2007 and the closing of Step Two, Tribune issued seven such press releases. *See* Ex. 81 (Tribune Press Release, dated June 20, 2007); Ex. 729 (Tribune Press Release, dated July 25, 2007); Ex. 730 (Tribune Press Release, dated August 24, 2007); Ex. 731 (Tribune Press Release, dated September 20, 2007); Ex. 732 (Tribune Press Release, dated October 24, 2007); Ex. 633 (Tribune Press Release, dated November 27, 2007); Ex. 634 (Tribune Press Release, dated December 12, 2007).

[2164] Ex. 724 at TRB0415655 (Tribune Board Meeting Minutes, dated July 18, 2007).

[2165] *Id.*

(particularly the Publishing Segment), as well as management's actions taken in response to the Tribune Entities' deteriorating financial performance.[2166] The Tribune Board book also commented on the implications of the Tribune Entities' financial results on the contemplated Step Two Financing.[2167]

[2166] For example, the July 11, 2007 letter to Tribune Board members transmitting the Tribune Board book observed that, with respect to the Publishing Segment and interactive business: "The newspaper industry continues to struggle through a very difficult revenue environment," that "[r]evenue declines accelerated during the second quarter. . ." and that during the quarter, the Tribune Entities reduced Publishing Segment staffing by approximately 3%, or approximately 450 full-time equivalents. *See* Ex. 723 at TRB0414550 (Tribune Board Meeting Materials, dated July 18, 2007). The July 11, 2007 letter also observed that in the Broadcasting Segment, "[s]econd quarter ad revenue for our television group was down 10%" and that advertising demand was "soft across all ad categories, with the exception of telecom and entertainment." *Id.* at TRB014552. Quarterly interactive revenues, however, were reported as up 17% in relation to a comparable period in the prior year. *Id.* at TRB0414551.

[2167] Tribune Board book materials corresponding to the July 18, 2007 Tribune Board meeting included a document entitled "Tribune Company Leveraged ESOP Transaction Update." That document, in addition to discussing the status of the Bender tax matter (and an anticipated $290 million associated settlement) and other matters, contained the following statement:

> There has been increasing speculation in the market regarding the possibility that the merger will not be consummated on its current terms. Following the release of our Period 5 results, several sell-side analysts expressed some concern as to whether the second step of the transaction will close due to uncertainties relating to the FCC approval process and our ability to finance the second step, as interest rates have begun to rise and credit spreads have widened. . . .
>
> The Company is preparing for the possibility that general market conditions may have an adverse effect on a successful syndication of our second step financing. There are a record number of transactions in the market due to the large volume and size of recently announced leveraged buyouts, many of which have aggressive pricing and 'covenant-like' [sic] structures.
>
> These new issues have pressured the secondary trading market, including the trading of our existing Term Loan B and Term Loan X. These tighter market conditions and our current operating results could limit our access to or increase the cost of the public bond financing. If this were the case, we would draw on the bridge to close the merger and wait for conditions to improve. . . .
>
> In addition, we are working with Valuation Research on the second step solvency opinion. The solvency analysis includes future downside scenarios which have become tougher tests given our weaker operating results. Nevertheless, we still expect to receive the solvency opinion.

Ex. 723 at TRB-UR-0414584.03-84.04 (Tribune Board Meeting Materials, dated July 18, 2007).

Interviewees noted to the Examiner the significant tightening of the credit markets following the Step One Financing Closing Date. *See, e.g.*, Examiner's Sworn Interview of Dennis J. FitzSimons, June 25, 2010, at 72:19-73:13; Examiner's Interview of Rajesh Kapadia, June 25, 2010 ("Just to take a step back, the credit markets and the capital markets did show cracks in the system in the July time frame. And it was most evidenced by some of the hedge funds issues at Bear Stearns, beginning of August."); Examiner's Sworn Interview of William A. Osborn, June 24, 2010, at 34:11-12 ("[Y]ou could tell from the way that the transaction was being viewed that the markets were getting tighter.").

The next Tribune Board meeting occurred on September 28, 2007.[2168] At the meeting, Mr. Grenesko "provided an update on the Company's recent presentations to VRC in connection with the solvency opinion to be rendered by VRC at the closing of the leveraged ESOP transaction."[2169] Mr. Grenesko also discussed planned meetings with Morgan Stanley to "provide updated Company performance information and projections."[2170] Regarding the Step Two Financing, Mr. Bigelow reported on the current debt market and reported on transactions that were being renegotiated as a result of market conditions.[2171]

On October 10, 2007, Mr. FitzSimons distributed the Tribune Board book in advance of the next Tribune Board meeting scheduled for October 17, 2007. In the letter transmitting those materials, he commented on preliminary third quarter results, observing that, "On an EBIT basis, [the Tribune Entities were] $30 million ahead of our last projection. . .", and that "[d]iluted EPS of $0.38 was $0.15 higher than our projection. . . ."[2172] The Tribune Board materials explain that the Tribune Entities' third quarter performance resulted from "better revenues, strong expense controls and several favorable one-time items."[2173]

[2168] Ex. 725 (Tribune Board Minutes, dated September 28, 2007). The Examiner has not located any Tribune Board books that may have been issued in connection with the September 28, 2007 meeting.

[2169] *Id.*

[2170] *Id.*

[2171] *Id.*

[2172] Ex. 734 at TRB0414678 (Tribune Board Meeting Materials, dated October 17, 2007).

[2173] *Id.* The Examiner notes that third quarter 2007 results derived from an aggregation of monthly Brown Book data evidence an unfavorable third quarter consolidated revenue variance to plan of $55.7 million and an unfavorable operating profit variance to plan of $5.4 million. *See* Ex. 637 (Brown Book for Period 7, 2007); Ex. 638 (Brown Book for Period 8, 2007); Ex. 639 (Brown Book for Period 9, 2007).

Significantly, the Tribune Board book disseminated by Mr. FitzSimons contained a revised financial projection for the Tribune Entities. The document, titled "Tribune Five-Year Financial Outlook," dated October 2007, included both a revised "base case" projection and

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Q3 2007 CONSOLIDATED ACTUAL V. PLAN

	Jul	Aug	Sep	Q3
Revenue				
2007 Actual	$ 466,707	$ 391,163	$ 419,029	$ 1,276,899
2007 Plan	$ 497,934	$ 414,056	$ 420,587	$ 1,332,577
Difference	($ 31,227)	($ 22,893)	($ 1,558)	($ 55,678)
% Variance	**-6.27%**	**-5.53%**	**-0.37%**	**-4.18%**
Operating Profit				
2007 Actual	$ 82,419	$ 63,218	$ 83,364	$ 229,001
2007 Plan	$ 88,112	$ 73,846	$ 72,409	$ 234,367
Difference	($ 5,693)	($ 10,628)	$ 10,955	($ 5,366)
% Variance	**-6.46%**	**-14.39%**	**15.13%**	**-2.29%**

Although September 2007 monthly profitability performance, in isolation, indicates a favorable variance to plan at the operating profit level, September was the only month during 2007 showing a favorable variance to the February 2007 board-approved plan.

2007 CONSOLIDATED ACTUAL V. PLAN

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Revenue												
2007 Actual	$ 441,948	$ 384,500	$ 391,785	$ 399,470	$ 405,965	$ 507,931	$ 466,707	$ 391,163	$ 419,029	$ 382,810	$ 413,447	$ 472,438
2007 Plan	$ 447,888	$ 391,911	$ 407,940	$ 412,408	$ 441,391	$ 541,920	$ 497,934	$ 414,056	$ 420,587	$ 417,883	$ 437,745	$ 512,525
Difference	($ 5,940)	($ 7,411)	($ 16,155)	($ 12,938)	($ 35,426)	($ 33,989)	($ 31,227)	($ 22,893)	($ 1,558)	($ 35,073)	($ 24,298)	($ 40,087)
% Variance	**-1.33%**	**-1.89%**	**-3.96%**	**-3.14%**	**-8.03%**	**-6.27%**	**-6.27%**	**-5.53%**	**-0.37%**	**-8.39%**	**-5.55%**	**-7.82%**
Operating Profit												
2007 Actual	$ 52,467	$ 50,739	$ 78,843	$ 62,480	$ 73,515	$ 59,809	$ 82,419	$ 63,218	$ 83,364	$ 73,148	$ 95,113	($ 141,519)
2007 Plan	$ 50,481	$ 51,785	$ 80,754	$ 73,591	$ 93,116	$ 123,144	$ 88,112	$ 73,846	$ 72,409	$ 90,221	$ 106,162	$ 113,767
Difference	$ 1,986	($ 1,046)	($ 1,911)	($ 11,111)	($ 19,601)	($ 63,335)	($ 5,693)	($ 10,628)	$ 10,955	($ 17,073)	($ 11,049)	($ 255,286)
% Variance	**3.93%**	**-2.02%**	**-2.37%**	**-15.10%**	**-21.05%**	**-51.43%**	**-6.46%**	**-14.39%**	**15.13%**	**-18.92%**	**-10.41%**	**-224.39%**

Mr. FitzSimons' October 10, 2007 letter to the Tribune Board noted that revenue trends improved slightly in the Publishing Segment during the third quarter, although still evidencing significant declines in relation to a comparable period in the prior year (down 7%, as contrasted with a 9% comparable quarter decline during the second quarter). Ex. 734 at TRB0414678 (Tribune Board Meeting Materials, dated October 17, 2007). Although meeting managements' projections, operating cash flow was identified as down 10% from the prior year. *Id.* Broadcasting Segment advertising revenue showed some improvement in trends during the quarter, but only in the sense that the rate of decline slowed, *i.e.*, July ad revenue was down 7%, and August and September were down 4%. *Id.* at TRB0414680. Interactive revenues, however, increased 9% over the prior year for the third quarter. *Id.* at TRB0414680.

The Tribune Board book materials also included a "Development Update," which discussed the Tribune Entities' launching of Metromix, a national entertainment channel, expected to be a source of incremental revenue and cash flow, after an initial $18 million investment in 2007 and 2008. *Id.* at TRB 0414697.

several alternative scenarios – *e.g.*, an "upside case" and a "downside case."[2174] In addition to presenting a forecast of financial results for a five-year projection horizon, the "Tribune Five-Year Financial Outlook" contained a comparison of the financial results contemplated in the original 2007 operating plan that was approved by the Tribune Board in February 2007[2175] against a projection of anticipated 2007 results that was based on year-to-date actual results.[2176] The comparison reveals substantially diminished expectations when compared to the Tribune Entities' original 2007 operational plan:

COMPARISON BETWEEN FEBRUARY AND OCTOBER PLAN (1)

	February	October	Difference
Publishing Segment Revenue	$ 3,923	$ 3,693	($ 230)
Broadcasting Segment Revenue	$ 1,198	$ 1,164	($ 34)
Consolidated Revenue	**$ 5,121**	**$ 4,857**	**($ 264)**
Operating Cash Flow - Publishing Segment	$ 931	$ 818	($ 113)
Operating Cash Flow - Broadcasting Segment	$ 401	$ 384	($ 17)
Corporate Cash Expenses	($ 49)	($ 42)	$ 7
Consolidated Operating Cash Flow	**$ 1,283**	**$ 1,160**	**($ 123)**

(1) Ex. 657 at TRB0252887 (Tribune Five-Year Financial Outlook).

The notes to the comparison explain the differences as being "due to the unexpected decline in operating results in the second quarter of 2007 which have run through our current 2007 and our longer term projections."[2177] Although the revised October 2007 plan forecasted lower 2007 operating cash flow, it nevertheless assumed, among other things: (a) that Tribune

[2174] *Id.* at TRB0414710-40.

[2175] *Id.* at TRB0414723. As noted previously, it is not clear whether the Tribune Board received in advance of its February 13, 2007 meeting a copy of the five-year projection that management had prepared or only a one-year projection for 2007. It does appear that the Special Committee may have received a set of five-year projections, in connection with its February 12, 2007 meeting, which correspond to the so-called "ESOP Transaction Model – 2/8/07 Revised Operating Plan Case," *i.e.,* Ex. 71 (ESOP Transaction Model—Revised Operating Plan Case, dated February 8, 2007). *See* Report at § III.C.1.b.

[2176] Ex. 734 at TRB0414716 (Tribune Board Meeting Materials, dated October 17, 2007).

[2177] *Id.*

would receive $338 million in connection with resolution of the so-called Bender tax matter (which proceeds were received on October 1, 2007), and (b) that Tribune would receive $250 million more from the contemplated 2007 sales of the Chicago Cubs and Comcast SportsNet than originally anticipated.[2178] Management advised the Tribune Board that when these proceeds and others came in,[2179] they could be used to reduce the borrowings under the Step Two Financing from $4.2 billion, as originally contemplated, to approximately $3.7 billion.[2180]

The following chart summarizes the key operating performance projection metrics in the five-year base case plan presented to the Tribune Board in October 2007:

TRIBUNE CONSOLIDATED FIVE-YEAR FINANCIAL OUTLOOK (BASE CASE/NO FLEX) ($mm) (1)	2007PF	2008	2009	2010	2011	2012	'07-'12 CAGR
Operating Revenues							
Publishing Segment	$ 3,693	$ 3,680	$ 3,752	$ 3,840	$ 3,928	$ 4,019	1.7%
Broadcasting Segment (excl. Cubs)	$ 1,164	$ 1,257	$ 1,264	$ 1,307	$ 1,317	$ 1,352	3.0%
Total Operating Revenues	**$ 4,857**	**$ 4,936**	**$ 5,016**	**$ 5,147**	**$ 5,245**	**$ 5,371**	**2.0%**
Operating Expenses							
Publishing Segment	$ 2,875	$ 2,894	$ 2,938	$ 2,996	$ 3,053	$ 3,113	1.6%
Broadcasting Segment (excl. Cubs)	$ 780	$ 808	$ 800	$ 827	$ 852	$ 868	2.2%
Corporate	$ 42	$ 41	$ 41	$ 41	$ 41	$ 41	-0.2%
Less: Elimination of Bonus Plan	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	
Less: Salary Freeze	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	
Total Operating Expenses	**$ 3,697**	**$ 3,743**	**$ 3,780**	**$ 3,865**	**$ 3,946**	**$ 4,023**	**1.7%**
Operating Cash Flow							
Publishing Segment	$ 818	$ 786	$ 814	$ 844	$ 875	$ 906	2.1%
Plus: Comm. Delivery and Infrastructure Savings	$0	$0	$0	$0	$0	$0	$0
Total Publishing Segment	$ 818	$ 786	$ 814	$ 844	$ 875	$ 906	2.1%
Broadcasting Segment (excl. Cubs)	$ 384	$ 448	$ 464	$ 479	$ 465	$ 484	4.7%
Corporate/Other	($ 42)	($ 41)	($ 41)	($ 41)	($ 41)	($ 41)	-0.2%
Total Operating Cash Flow	**$ 1,160**	**$ 1,193**	**$ 1,237**	**$ 1,282**	**$ 1,298**	**$ 1,349**	**3.1%**
Plus: Cash From Equity Investments	$ 68	$ 99	$ 115	$ 140	$ 163	$ 181	21.5%
Plus: Cash Savings From 401(k) Contributions	$ 40	$ 60	$ 60	$ 60	$ 60	$ 60	8.4%
Plus: Interest Income	$ 19	$ 4	$ 2	$ 2	$ 2	$ 2	-34.6%
Less: Severance Payments	$ 0	($ 10)	($ 10)	($ 10)	($ 10)	($ 10)	
Adjusted EBITDA	**$ 1,287**	**$ 1,346**	**$ 1,404**	**$ 1,474**	**$ 1,513**	**$ 1,582**	**4.2%**

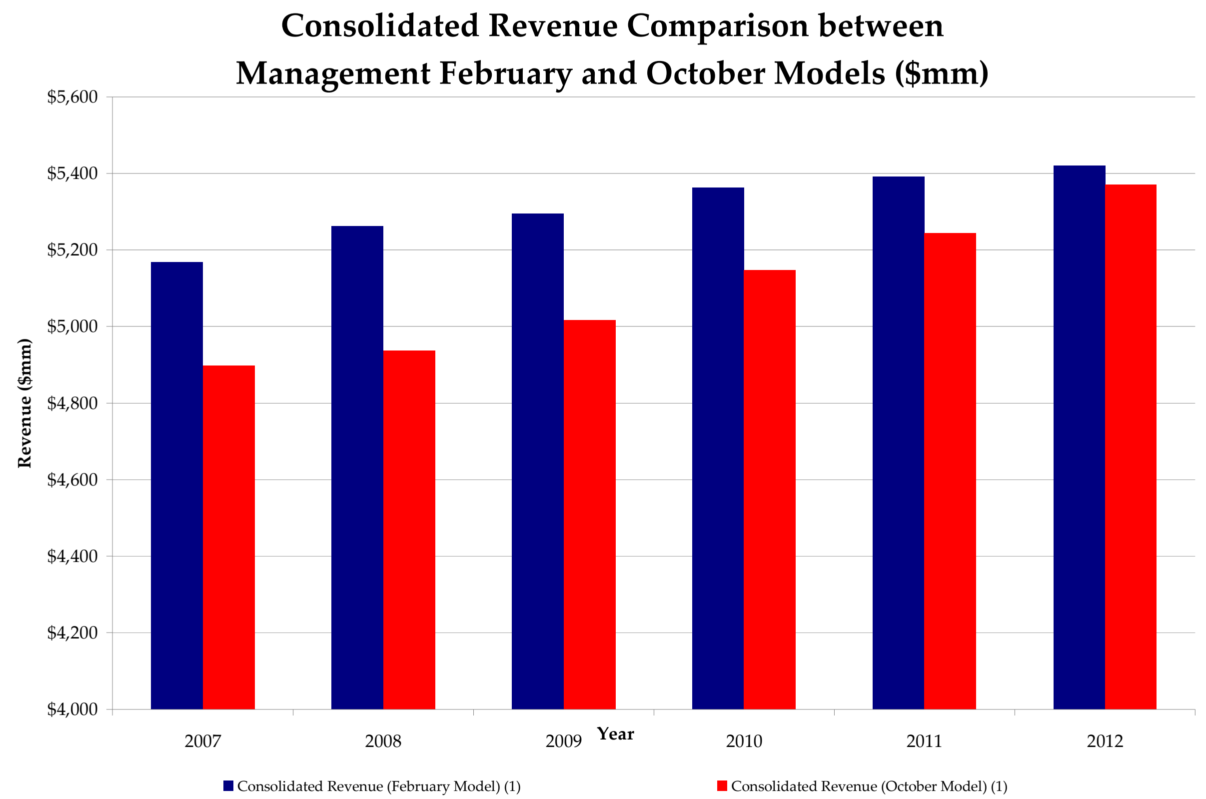
(1) Information presented as it appears in Ex. 657 at TRB0252894 (Tribune Five-Year Financial Outlook).

2178 *Id.*

2179 Other sources of incremental cash increases were included proceeds from the sale of the KTLA Studios ($125 million) not contemplated in the February operating plan and reduced levels of investments and capital expenditures ($193 million). *Id.* at TRB0414716.

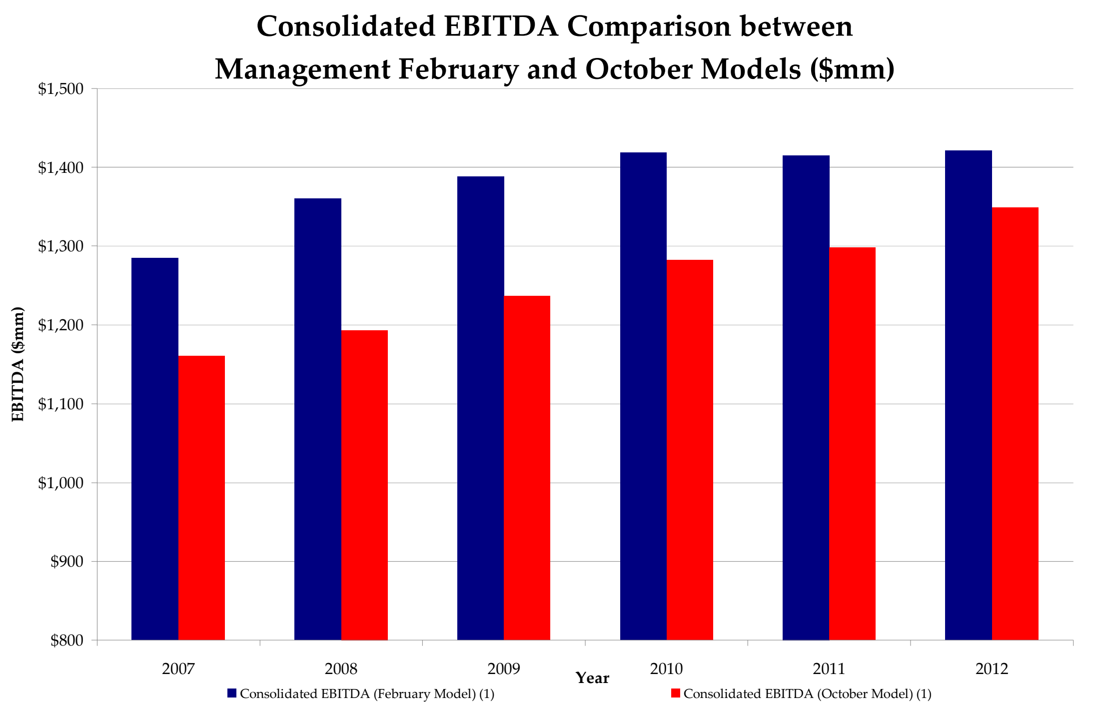
2180 *Id.*

When contrasted with the five-year revenue and profitability expectations developed by management in the February 2007 operating plan, which served as the basis for the 2007 plan approved by the Tribune Board,[2181] the revised October 2007 projections show diminished expectations throughout the five-year projection period for both revenue and profitability, on a consolidated basis. The following three graphs illustrate these differences:

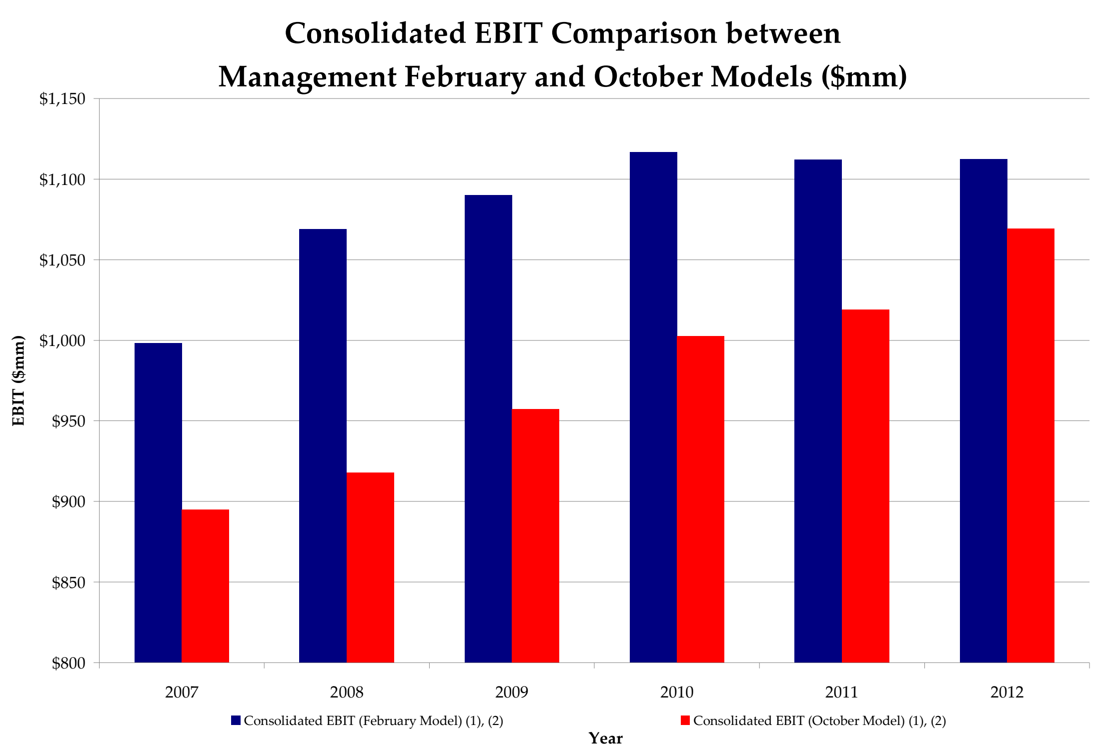


(1) Management's February, 2007 model, Ex. 71 (ESOP Transaction Model, dated February 8, 2007) and Management's November 21, 2007 model, Ex. 721 (Tribune Company Model, dated November 21, 2007).

[2181] For purposes of this comparison, the October 2007 plan forecasted results are compared to forecasts contained in the February 2007 ESOP Model. Although the May 2007 revision to the ESOP plan forecast eliminated from forecasted revenues and earnings the revenue and profit associated with business units that management expected to sell during 2008, the October 2007 version plan did not contemplate those same business unit sales. Thus, the February 2007 ESOP Model version of the projections used in order to ensure an "apples-to-apples" comparison. The 2007 operating plan approved by the Tribune Board was a one year plan. As noted, the projection model underlying the 2007 plan contained projections for additional years.



(1) Management's February 2007 model (Ex. 71 (ESOP Transaction Model - Revised Operating Plan Case, dated February 8, 2007)) and Management's November 21, 2007 model (Ex. 721 (Tribune Company Model, dated November 21, 2007), which is consistent with the October Five-Year Plan).



(1) Management's February, 2007 model, Ex 71 (ESOP Transaction Model, dated February 8, 2007) and Management's November 21, 2007 model, Ex 721 (Tribune Company Model, dated November 21, 2007)
(2) EBIT is calculated consistently with management models (EBIT = Revenue - Operating Expenses - Stock-Bassed Compensation - Depreciation & Amortization)

In addition to the five-year "base case" plan, the October 2007 Tribune Board book included the presentation of a downside case, based on "the most pessimistic sell-side analyst" expectations,[2182] as well as "flex" projection scenarios.[2183] According to the summary contained at the beginning of the "Tribune Five-Year Financial Outlook," management already had reviewed these projections with Tribune's bankers and financial advisors:[2184]

> We [management] have reviewed these financial projections with our four lead underwriting banks (JP Morgan, Merrill Lynch, Citigroup and Bank of America), our solvency firm (Valuation Research Corporation), Morgan Stanley and Equity Group. We plan to review these projections with Moody's and Standard & Poor's on October 25 and 26, respectively. In addition, these

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[2182] The disseminated materials noted:

> [O]ur downside Publishing revenue projections are based on the most pessimistic sell-side analyst on the Street (Craig Huber at Lehman Brothers). Huber assumes that Publishing revenues fall 3.3% per year for five consecutive years. While we don't agree with Huber's assessment of our business prospects, we have used his assumptions to illustrate that even in the most pessimistic operating environment, we maintain compliance with our financial covenants.
>
> In our downside case, we mitigate Huber's revenue declines through significant cost reductions, including a possible salary freeze and the elimination of management bonus payments. In addition, we have the option to defer cash interest payments on our PHONES for a five year period, which would save us about $25 million in cash annually during the deferral period. We would also reduce our capital expenditure and investment spending in this scenario. Depending on the severity of the downturn, we could also consider selling assets which are shown on Chart 20 in the Appendix of this report. It is important to note that we are already ahead of Huber's projections as our third quarter 2007 operating cash flow from continuing operations exceeded his estimate by about $35 million, or 15%.
>
> Section 5 shows our three operating scenarios assuming a "flexed" second step. In 2008, the "flex" has little impact on interest expense since we would fund the merger with a twelve-month bridge loan at a rate similar to the non-flex scenario. However, in 2009, the "flex" case adds about $100 million of additional interest expense because the bridge loan converts into 12.5% seven-year notes. These notes will be held by our lead banks if we are unable to refinance the bridge through a public high-yield bond offering. Importantly, as Charts 2 and 3 on the following pages show, even in a downside operating scenario that is "flexed," we will be in compliance with the financial covenants contained in our credit agreement without having to sell any assets other than those already identified.
>
> In addition, in order to consummate the merger, the Company must meet these financial covenants on a pro forma basis, assuming that all of the debt issued in connection with steps one and two of the Leveraged ESOP transaction had been outstanding for twelve months. Assuming the second step of the transaction closes in the fourth quarter, we will meet these tests and have approximately $250 million of operating cash flow cushion.

Id. at TRB0414713.

[2183] *Id.* at TRB0414738-40.

[2184] *Id.* at TRB0414713.

> financial projections will become the basis for the presentation materials we will use with prospective lenders in the second step financing.

The October 17, 2007 Tribune Board book also contained a section devoted to the ongoing VRC evaluation of solvency in contemplation of the Step Two Transactions, noting as follows:[2185]

> Valuation Research Corporation (VRC) has been conducting its due diligence as it prepares for the provision of a solvency opinion prior to closing the transaction. VRC spent two days on-site in September meeting with a group of Publishers, television station General Managers and members of the corporate staff. Their diligence focused on current operating performance, our five year projections under various operating scenarios, balance sheet implications, performance of equity investments, divestitures, litigation and contingencies and general risk assessment. Their team is experienced and their diligence has been rigorous.
>
> Since our on-site diligence meetings, we have held a series of follow-up sessions with business unit leaders and corporate staff. We expect this will continue for the next several weeks as VRC performs their solvency analysis. We expect their work to be completed by the end of October, and they have indicated a willingness to provide updates as to their conclusions as they approach completion.

The minutes of the October 17, 2007 meeting reflect that: (a) the Tribune Board discussed the foregoing materials,[2186] (b) CGMI gave a presentation regarding the debt market and disclosed that CGMI might cease providing advisory services to Tribune because of Citicorp's obligation to fund the Step Two Financing,[2187] and (c) Morgan Stanley gave a

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[2185] Ex. 722 at TRB-UR-0414764.02 (Tribune Board Meeting Materials, dated October 17, 2007).

[2186] Ex. 643 at TRB041566 (Tribune Board Meeting Materials, dated October 17, 2007).

[2187] *Id.* at TRB041567. It appears that CGMI never terminated its employment as an advisor to Tribune before the closing of Step Two, in part because Tribune would not pay CGMI's advisory fee until the closing of Step Two. Examiner's Interview of Christina Mohr, June 27, 2010.

presentation that addressed Tribune's expected level of leverage associated with the Step Two Financing and the status of the debt markets, among other things.[2188]

The Tribune Board next met on November 5, 2007. Minutes from that meeting show that management presented the Tribune Board a review of preliminary operating results for period 10 (October 2007) and that Chandler Bigelow described the status of VRC's ongoing work, noting that "[V]RC has indicated preliminarily that it is in a position to issue a favorable solvency opinion prior to closing of the second step merger."[2189] Minutes of the next Tribune Board meeting, held on November 21, 2007, contained a "Solvency Update" in which Mr. Bigelow noted, in connection with his discussion of the status of VRC's ongoing work, that "VRC was working through a list of supplemental due diligence questions submitted by the lenders," although it is not apparent whether the Tribune Board was provided any details regarding the substance of these inquiries at that time.[2190]

On November 28, 2007, the Tribune Board members received the Tribune Board book for the December 4, 2007 meeting. In the accompanying transmittal letter, Mr. FitzSimons observed, among other things, regarding the Tribune Entities' recent financial performance that:[2191]

> Publishing and Interactive
>
> Current business conditions – Period 11 advertising revenues were 1% ahead of our projection, down 5% for the period. . . .

[2188] Ex. 643 at TRB041567 (Tribune Board Meeting Materials, dated October 17, 2007). It is unclear whether any additional written materials were disseminated to the Tribune Board relating to these matters.

[2189] Ex. 726 at TRB0415669 (Tribune Board Meeting Minutes, dated November 5, 2007).

[2190] Ex. 702 at TRB0415674 (Tribune Board Meeting Minutes, dated November 21, 2007). Subsequent meeting minutes (December 18, 2007) indicate that "Diligence questions that had been posed by the banks to VRC and management were previously made available to the Board." Ex. 11 at TRB0415685 (Tribune Board Meeting Minutes, dated December 18, 2007).

[2191] Ex. 736 at TRB0414798-799 (Tribune Board Meeting Materials, dated December 4, 2007).