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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re: CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC; CAOP MANAGERS, LLC; CASTLE ARCH OPPORTUNITY PARTNERS I, LLC; CASTLE ARCH OPPORTUNITY II, LLC; CASTLE ARCH KINGMAN, LLC; CASTLE ARCH SECURED DEVELOPMENT FUND, LLC; and CASTLE ARCH SMYRNA, LLC, Debtors.	Bankruptcy No. 11-35082 Bankruptcy No. 11-35237 Bankruptcy No. 11-35240 Bankruptcy No. 11-35242 Bankruptcy No. 11-35243 Bankruptcy No. 11-35246 Bankruptcy No. 11-35241 (Jointly Administered) (Chapter 11) Honorable Joel T. Marker

ROBERT D. GERINGER'S OBJECTION AND RESPONSE TO CHAPTER 11 TRUSTEE'S MOTION FOR ENTRY OF AN ORDER (I) APPROVING DISCLOSURE STATEMENT FOR CHAPTER 11 TRUSTEE'S PLAN OF LIQUIDATION DATED SEPTEMBER 29, 2012, (II) APPROVING SOLICITATION PROCEDURES, INCLUDING FORM OF BALLOT AND MANNER OF NOTICE, AND (III) FIXING THE CONFIRMATION HEARING AND THE DEADLINE FOR FILING OBJECTIONS TO THE CONFIRMATION OF THE PLAN

Robert D. Geringer ("Geringer"), through his counsel, submits this objection and response to the Motion for Entry of an Order (I) Approving Disclosure Statement for

Chapter 11 Trustee's Plan of Liquidation Dated September 29, 2012, (II) Approving Solicitation Procedures, Including Form of Ballot and Manner of Notice, and (III) Fixing the Confirmation Hearing and the Deadline for Filing Objections to the Confirmation of the Plan (the "Motion") filed by D. Ray Strong, the Chapter 11 Trustee ("the Trustee") for Castle Arch Real Estate Investment Company, LLC ("CAREIC") and, in that capacity as manager, either directly or indirectly of related debtor entities. In opposition to the Motion, Geringer respectfully represents as follows:

INTRODUCTION

There are two independent grounds upon which the Court should deny the Motion and decline to approve the Disclosure Statement[1] as presented by the Trustee. First, since the Trustee has presented a Plan that is not capable of being confirmed, the Court should exercise its discretion to refuse to consider the adequacy of the Disclosure Statement. Second, the Disclosure Statement does not provide adequate information for holders of Claims and Equity Interests to make an informed judgment on the Plan.

ARGUMENT

I. THE DISCLOSURE STATEMENT SHOULD NOT BE APPROVED BECAUSE THE PLAN IS NOT CAPABLE OF BEING CONFIRMED

Where a disclosure statement "describes a plan that is so 'fatally flawed' that confirmation is 'impossible,' the court should exercise its discretion to refuse to consider the adequacy of disclosures." In re Phoenix Petroleum Co., 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) (collecting cases). In this case, the Court should decline to consider the

[1] Unless otherwise noted, capitalized terms shall have the same meaning as the Trustee's proposed Plan and Disclosure Statement.

adequacy of the Disclosure Statement because the Trustee's Plan contains several deficiencies that render the Plan unconfirmable on its face.

A. A Plan that Proposes to Subordinate Claims to Equity Interests is Not Confirmable on its Face

Under Bankruptcy Code § 510(c)(1), principles of equitable subordination may be used to subordinate for principles of distribution "all or part of an allowed claim to all or part of another allowed claim or part or all of an allowed interest to all or part of another allowed interest." (Emphasis added). Conversely, this plain language does not permit for equitable subordination of a claim to an equity interest. See id.; In re C.R. Amusements, LLC, 259 B.R. 523, 529 (Bankr. D.R.I. 2001) (analyzing plain language of Bankruptcy Code § 510(c)(1) and legislative history to reject argument that claims could be equitably subordinated to equity interests under Bankruptcy Code § 105).

In this case, the Trustee's Plan improperly proposes to subordinate Allowed Insider Claims to Allowed Equity Interests. See, e.g., Disclosure Statement at Part IV, Section (H)(7) (pp. 67-68). The Disclosure Statement, however, never cites Bankruptcy Code § 510(c) or any other statutory basis for subordination. Id. In any event, the only basis the Trustee provides for this subordination is the conclusory and undifferentiated assertion that Insiders "received excessive distributions, engaged in gross mismanagement, and breached their fiduciary duties." Id. These allegations, therefore, fall squarely within the scope of the type of subordination contemplated by Bankruptcy Code § 510(c)(1), which prohibits the subordination of claims to interests. As such, the Plan is not capable of being confirmed and the Court should not approve the Disclosure Statement.

B. As a Matter of Law, the Trustee May Not Use Subordination to Deny Holders of Insider Claims or Insider Equity Interests Distributions under the Plan

"[E]quitable considerations can justify only the subordination of claims, not their disallowance." Matter of Mobile Steel Co., 563 F.2d 692, 699 (5th Cir. 1977).

Nevertheless, throughout the Disclosure Statement, Plan and Motion the Trustee repeatedly takes the position that Insider Claims and Insider Equity Interests will receive no Distribution under the Plan. See, e.g., Disclosure Statement at Part V, Section (C)(3) (characterizing Insider Classes as not receiving or retaining property under the Plan); Plan § 1.1 (categorically including Insider Equity Interest as a "Disallowed … Interest"); Plan § 5.1.7(c) (providing that Insider Claims "are subordinated" and "shall not receive any beneficial interest in the Legacy Trust or any Distribution under the Plan or the Legacy Trust"); Plan § 5.1.8(c) (providing that Insider Equity Interests are "cancelled" and "will receive no Distribution under the Plan"); and Motion at 12, n. 10 (providing that Insider Classes "will receive no Distribution under the Plan").

However, the only legally cognizable basis the Trustee has articulated for separate and inferior treatment of Insider Claims and Insider Equity Interests is equitable subordination under Bankruptcy Code § 510(c)(1). As a matter of law, this type of subordination cannot be used to completely deny a Class Distributions under the Plan. As such, the Plan is not capable of being confirmed and the Disclosure Statement should not be approved.

C. Contrary to the Plan, Disclosure Statement and Motion, Holders of Allowed Insider Claims and Insider Equity Interests are Entitled to Vote on the Plan

Under Bankruptcy Code 1126(g), a class is deemed not to have accepted a plan "if such plan provides that the claims or interests in such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests." (Emphasis added). This "deemed rejection" is conclusive—members of such a class are not entitled to vote on the plan. In re Plant Insulation Co., 469 B.R. 843, 857 (Bankr. N.D. Cal. 2012) (reasoning that class members "were not entitled to vote and are deemed to reject the Plan, because they will not receive or retain any property under the Plan").

There is a distinction, however, between a class that is unlikely to receive a distribution under a plan, and a class that is not entitled to a distribution under that plan. See, e.g., In re Rickel & Associates, Inc., 260 B.R. 673, 675 (Bankr. S.D.N.Y. 2001) (distinguishing class that would receive a distribution only in the "unlikely event" that the classes above [that class] received payment in full, which was entitled to payment under plan, from class that would not receive or retain anything under plan, which was not entitled to payment under plan, even in the unforeseen event of surplus funds).

The Trustee's Plan ignores this distinction. For example, Plan § 5.1.7(c) provides that in the "unlikely event" that Classes A5 and A6 are paid in full, the Plan and Legacy Trust automatically "shall be deemed to be amended to provide Allowed Insider Claims a beneficial interest in the Legacy Trust and the remaining Legacy Trust Assets … to be Distributed Pro Rata to holders of Allowed Insider Claims until paid in full." If this "unlikely

event" were to occur, holders of Insider Claims would be entitled to Distributions under the Plan. For this reason, holders of Insider Claims are not conclusively deemed to reject the Plan under Bankruptcy Code § 1126(g) and are entitled to vote to accept or reject the Plan.

Despite this Plan provision, the Disclosure Statement, Plan, and Motion take the inconsistent position that holders of Insider Claims are not entitled to vote on the Plan because such holders "are not receiving a Distribution under the Plan." See, e.g., Disclosure Statement at Part IV, Section (H)(9) (providing that Class A7 is "deemed to reject Plan—no right to vote"); Disclosure Statement at Part V, Section (C)(3) (characterizing Class A7 as not entitled to vote because class "retains or receives no property under the Plan"); Plan § 5.1.7(d) (providing that "because holders of Insider Claims in this Class are not receiving a Distribution under the Plan, each holder of an Insider Claim is deemed to have rejected the Plan … and is thus not entitled to vote to accept or reject the Plan"); Motion at 12, n. 10 (concluding no solicitation required for holders of Insider Claims).

Similarly, and contrary to the Trustee's position, holders of Insider Equity Interests are entitled to vote to accept or reject the Plan. Distributions of one percent or greater are anticipated for so-called non-Insider Allowed Legacy Preferred Interests. Disclosure Statement at Part V, Section (H)(9). The Plan also provides for Distributions to holders of Allowed Legacy Common Interests in the "unlikely event" that senior claims and interests are paid in full. Id. As described above, while the Trustee has proposed to disallow and cancel the Insider Equity Interests on the basis of equitable subordination, as a matter of

law subordination can only affect priority—it cannot be used to disallow. As such, the Plan and Disclosure Statement as currently structured cannot result in holders of Insider Equity Interests not retaining or receiving property under the Plan.

Because the Plan erroneously provides that holders of Insider Claims and Insider Equity Interests are not entitled to vote on the Plan, the Plan is not confirmable on its face. Therefore, the Court should deny the Motion.

D. The Trustee's Plan May Not Categorically Subordinate Insider Claims and Insider Equity Interests

A plan proponent may not use Bankruptcy Code § 510(c) to categorically reorder the priority of claims and interests. See United States v. Reorganized CF & I Fabricators of Utah, Inc., 518 U.S. 213, 229 (1996). Interpreting CF&I, the Tenth Circuit has concluded "that equitable subordination is not justified absent a finding that the party sought to be subordinated engaged in inequitable conduct." In re Hedged-Investments Associates, Inc., 380 F.3d 1292, 1301 (10th Cir. 2004). Relatedly, insider status alone—without material evidence of inequitable conduct—is not sufficient grounds for equitable subordination. Id.; In re ARN LTD. Ltd. P'ship, 140 B.R. 5, 13 (Bankr. D.D.C. 1992) (reasoning "[s]eparate classification on the basis of the insider or equity holder status of the creditor does not alone warrant unequal treatment unless equitable subordination principles apply").

In this case, however, the Trustee seeks to categorically reorder the priority of claims and interests through generic, subordinated "Insider" classes. Without findings of particularized inequitable conduct by each holder of a claim or interest, such categorical subordination is improper and renders the Plan unconfirmable on its face.

II. THE DISCLOSURE STATEMENT SHOULD NOT BE APPROVED BECAUSE IT FAILS TO PROVIDE ADEQUATE INFORMATION

Bankruptcy Code § 1125 requires that before a disclosure statement may be distributed for consideration, the statement must provide "adequate information" under the circumstances of the particular case for holders of claims and interests to evaluate the plan. See, e.g., In re Phoenix Petroleum Co., 278 B.R. 385, 392-93 (Bankr. E.D. Pa. 2001). To fulfill this purpose, disclosure statements must disclose all material facts that will enable creditors to make an informed judgment on the plan. See In re Prudential Energy Co., 59 B.R. 765, 768 (Bankr. S.D.N.Y. 1986). Conclusory assertions and unsupported opinions made without further information or documentation are not sufficient. See In re Weiss-Wolf, Inc., 59 B.R. 653, 656 (Bankr. S.D.N.Y. 1986) (observing that "[i]t is not enough for a [plan proponent's disclosure statement] to say, in effect, trust me, this is a good deal for creditors"); In re Egan, 33 B.R. 672, 675-76 (Bankr. N.D. Ill. 1983)(concluding that "without factual support, statements of opinion or belief are entirely inappropriate in Disclosure Statements").

As set forth below, the Trustee's Disclosure Statement does not provide adequate information on a number of central aspects of the proposed Plan. As such, the Court should deny the Motion.

A. Insufficient Disclosure of Basis for and Effects of Substantive Consolidation

Substantive consolidation "combine[s] the assets and liabilities of separate and distinct—but related—legal entities into a single pool and treat[s] them as though they belong to a single entity. … The consolidated assets create a single fund from which all

claims against the consolidated debtors are satisfied; duplicative and inter-company claims are extinguished; and, creditors of the consolidated entities are combined for purposes of voting on reorganization plans." In re Bonham, 229 F.3d 750, 764 (9th Cir. 2000); In re George Love Farming, LC, 366 B.R. 170, 180 (Bankr. D. Utah 2007) (observing that substantive consolidation results in "one common pool consisting of assets, liabilities and a single body of creditors, while extinguishing the intercorporate liabilities of the consolidated entities")

Courts have articulated and applied numerous tests and factors for substantive consolidation, the precise contours of which remain unsettled. In re Horsley, 99-30458 JAB, 2001 WL 1682013 at *5 (Bankr. D. Utah Aug. 17, 2001) (applying factors identified in Tenth Circuit cases in addition to tests developed outside Tenth Circuit to deny substantive consolidation of debtor with non-debtor nunc pro tunc), a copy of which attached as Exhibit A. As such, the issue of substantive consolidation is fluid and not mechanical—"no single element or group of elements is determinative of the courts' inquiry." 6 Collier on Bankruptcy ¶ 105.09[2][a] at 105-95 (Alan N. Resnick & Henry J. Sommer eds., 16th Ed.) (summarizing "elements tests" articulated in Fish v. East, 114 F.2d 177 (10th Cir. 1940), In re Gulfco Inv. Corp, 593 F.2d 921 (10th Cir. 1979), and In re Vecco Constr. Indus., Inc., 4 B.R. 407 (Bankr. E.D. Va. 1980)).

A related trend is that "the bankruptcy courts are replacing piercing-the-veil theory with a decisional rationale that examines equitable grounds for disregarding separate corporate existence" that move beyond "mere commonality tests or alter ego law." In re Circle Land & Cattle Corp., 213 B.R. 870, 874-875 (Bankr. D. Kan. 1997).

"Under these equitable guidelines stressing the impact of consolidation on the creditors of both entities, the remedy of substantive consolidation is sparingly granted." Id. at 875.

As such, a disclosure statement for a plan that proposes substantive consolidation must provide more than a summary of the grounds for substantive consolidation—it also must provide sufficient information for creditors to evaluate the potential effect of consolidation on the debtors' assets and liabilities and on the creditors' claims or interests. See In re Lisanti Foods, Inc., 329 B.R. 491, 508 (D.N.J. 2005) aff'd sub nom. In re Lisanti Foods Inc., 241 F. App'x 1 (3d Cir. 2007) (affirming approval of "Disclosure Statement that adequately described the effect of substantive consolidation on creditors' recoveries as well as the assets and liabilities of the estates consolidated into a single entity") (emphasis added); In re Monroe Well Serv., Inc., 80 B.R. 324, 332 n. 7 (Bankr. E.D. Pa. 1987) (reasoning that "[b]ecause substantive consolidation is sought, the objectors are correct in seeking additional information about inter debtor accounts receivables").

In this case, however, nearly all of the Trustee's discussion of substantive consolidation in the Disclosure Statement is dedicated to a mechanical application of the factors used to assess whether a subsidiary is an instrumentality of a parent. See, e.g., Disclosure Statement Part IV, Section (C)(1). The Disclosure Statement provides little information regarding inter-Debtor assets and/or liabilities and the impact consolidation may have on holders of Claims and Interests. Specifically, the Disclosure Statement does not disclose any facts related to the nature and extent of intercompany

Claims. See, e.g., Disclosure Statement at Part II, Sections 2(B)(2)(a)-(f) (referring to "intercompany Claims" generally without further explanation).

Relatedly, the Disclosure Statement provides no factual basis for creditors to assess the effect of consolidation on each of the entities the Trustee proposes to consolidate or the potential harms to creditor recoveries that may result from substantive consolidation. Such information would include, among other things, an estimation for each entity proposed to be part of the substantive consolidation of the total dollar amount of (i) the assets and liabilities that would consolidated into a single pool, (ii) the intercompany Claims that would be extinguished under the Plan, and (iii) the Claims asserted against each entity. This information is central for creditors to meaningfully assess the potential harms and benefits of substantive consolidation.

Instead, the Trustee provides nothing more than vague assertions and unsupported opinions as to the practical and equitable considerations related to substantive consolidation:

> In fact, the Trustee has determined that given the Legacy Debtors' use of Cash and the volume and complexity of intercompany transfers and intercompany Claims involved, attempting to treat the Legacy Debtors as separate Entities would be extremely difficult and, if possible, prohibitively expensive. Id. at 38 (emphasis added).
>
> The Trustee thus has proposed consolidation of the Legacy Debtors because recognizing corporate formalities in this setting would be unfair and not promote equitable distributions of assets to holders of Allowed Claims and Allowed Equity Interests. Id. at 41 (emphasis added).

These statements provide no specific facts from which to assess the harms and benefits of substantive consolidation and are insufficient as a matter of law. When coupled with the Trustee's mechanical application of the "mere instrumentality" factors, the Trustee's

conclusory assertions and opinions do not constitute adequate information for creditors to evaluate the Trustee's proposed substantive consolidation.

B. Insufficient Disclosure of Basis for Separate Classification

Separate classification of similar claims or interests under Bankruptcy Code § 1122 is not permissible absent legitimate legal or factual grounds for the separate classification. In re Stratford Associates Ltd. P'ship, 145 B.R. 689, 695 (Bankr. D. Kan. 1992) (collecting cases). Relatedly, under Bankruptcy Code § 1129(b)(1) a plan may not discriminate unfairly against a class that does not accept the plan. Moreover, as described above, insider status alone is not a legitimate ground for separate classification, inferior treatment under a plan, or categorical subordination. In re ARN, 140 B.R. at 13; In re Hedged-Investments., 380 F.3d at 1301.

In this case, the only basis the Trustee's separate classification of Insiders is the bare assertion that Insiders "received excessive distributions, engaged in gross mismanagement, and breached their fiduciary duties." Disclosure Statement at Part IV, Section (H)(7) (pp. 67-68); see also Disclosure Statement at Part II, Section (E) (p. 26) (referring to "potential mismanagement and breaches of fiduciary duties of former management" without further explanation); Disclosure Statement at Part I, Section (B)(2)(a) (asserting that "Trustee maintains that the Directors and Officers, and some being directed by management, received excessive compensation and expense reimbursement, engaged in mismanagement and breached their fiduciary duties of loyalty and care").

Absent a Plan, the subordination of Claims or Interests requires an adversary proceeding. Bankruptcy Rule 7001(8). In such an adversary proceeding, Bankruptcy Rule 7012 incorporates Rule 12(b)-(i) of the Federal Rules of Civil Procedure—including Rule 12(b)(6) (failure to state a claim for which relief can be granted) and Rule 12(e) (motion for more definite statement).

In this case, if the Disclosure Statement was a complaint seeking equitable subordination, it would not survive a Rule 12(b)(6) motion to dismiss because it contains no factual allegations that would support plausible claims for subordination of any of the Insiders Claims or Interests. At a minimum, the vagueness of the Trustee's allegations related to subordination of Insider Claims and Interests would require a more definite statement. Analogizing these standards to the Disclosure Statement , "adequate information" should include, as to each Insider, (i) the statutory basis for subordination, (ii) the elements required to establish subordination and (iii) the facts that support subordination of each Insider's Claim(s) and/or Equity Interest(s). The current Disclosure Statement does not provide this information.

As described above, the Disclosure Statement leaves creditors to guess as to the statutory basis for subordination of Insider Claims and Interests in this case, which appears to be Bankruptcy Code § 510(c). Because the Disclosure Statement fails to provide any specific facts regarding the Trustee's allegations of unfair conduct, it fails to satisfy the "adequate information" standard.

C. Insufficient Disclosure of Information to Support Feasibility of Plan

Under Bankruptcy Code § 1129(a)(11), a plan must be feasible—it must have a "reasonable prospect of success and [be] workable." In re Pikes Peak Water Co., 779 F.2d 1456, 1460 (10th Cir. 1985).

At a minimum, adequate information to assess the feasibility of a plan includes, among other things, a reasonable projection of asset values, income and administrative expenses. See, e.g., In re Ferretti, 128 B.R. 16, 21 (Bankr. D.N.H. 1991); In re Forest Grove, LLC, 448 B.R. 729, 735 (Bankr. D.S.C. 2011) (rejecting disclosure statement that did not provide "any information regarding the amount or sources of Debtor's future income and expenses"); In re Oxford Homes, Inc., 204 B.R. 264, 269 (Bankr. D. Me. 1997) (observing that "[a]lthough what constitutes 'adequate information' will vary from case to case, a good faith estimate of administrative expenses, incurred and upcoming, is a virtual constant"). The Disclosure Statement in this case does not provide this material information. Other than the Trustee's unsupported opinion, the Disclosure Statement provides no information regarding the Plan's prospects for success or workability. See Disclosure Statement at Part V, Section A (providing that "[t]he Trustee believes that the structure set forth in the Plan, as discussed above, provides a feasible framework … and that confirmation of the Plan is not likely to be followed by further liquidation").

For example, the Plan provides for an estimated distribution percentage of 100 percent to holders of Allowed General Unsecured Claims, but fails to provide any

information regarding the assumptions underlying this estimate. As the court observed in In re Ferretti, this is not adequate:

> In regards to general unsecured claims, a disclosure statement should not say, as this one does, that if all claims are allowed each creditor will get ten percent. Rather, the statement should inform the reader what the undisputed claims are, what the disputed claims are, what effect, if any, there will be on the distribution if disputed claims are or are not allowed, and when will distribution be made. This requires a total dollar amount projected for the undisputed claims, and a total dollar amount projected for the disputed claims should they be allowed over objections.

128 B.R. at 19. Moreover, the Disclosure Statement does not provide reasonable projections or timelines related to income, administrative expenses, or anticipated distributions. It also fails to identify dollar amounts for undisputed or disputed claims. The Disclosure Statement similarly does not provide any valuation of assets, let alone an analysis of the financial impact of substantive consolidation. The Disclosure Statement similarly fails to identify any meaningful information regarding the Reserved Funds or the Legacy Trust. In other words, the Disclosure Statement does not provide the numerators or denominators necessary to evaluate the Plan's workability.

The Disclosure Statement also fails to address the likelihood and impact of potential contingencies, including the possibility that the Trustee does not succeed in subordinating Insider Claims[2] and Insider Equity Interests. This contingency, among others, could materially affect the feasibility of the Plan. Similarly, the Disclosure Statement does not provide information for creditors to assess the effect that the allowance of certain Claims may ultimately effect Distributions. For example, Geringer

[2] Relatedly, the Disclosure Statement does not disclose which Claims the Trustee considers Insider Claims and provides no information regarding the nature and extent of these Claims.

has asserted an Unsecured Claim against CAREIC in the amount of approximately $8.5 million. If Geringer's Claim is allowed over the Trustee's objections, this may materially impact the feasibility of the Plan. The Disclosure Statement, however, fails to address this contingency.

In short, the Disclosure Statement does not provide adequate information to determine the assumptions underlying the Plan, the financial workability of the Plan, or the various contingencies that may influence whether the Plan has a reasonable prospect for success.

D. Insufficient Disclosure of Information to Support "Best Interest of Creditors" Test

Bankruptcy Code § 1129(a)(7) requires that, with respect to each impaired class of claims or interests, each holder of a claim or interest of such class (a) has accepted the plan or (b) will receive or retain property of a value not less than what such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code. This provision is often referred to as a test of whether the plan is in the "best interests" of impaired creditors.

Here, the Disclosure Statement does not provide adequate information to assess whether the Plan is in the best interest of impaired creditors. See Disclosure Statement at Part V, Section B (summarizing reasons why Trustee anticipates Distributions would be "greatly diminished" in Chapter 7). As described above, the Disclosure Statement provides little to no information regarding the Trustee's proposed liquidation of the Debtors' assets that would permit creditors to contrast the Plan with the results of liquidation in Chapter 7. Indeed, holders of Insider Claims and Insider Equity Interests

appear to be better off in Chapter 7, since the Trustee's Plan proposes to categorically subordinate Insider Classes and extinguish all intercompany Claims through substantive consolidation. As such, Disclosure Statement provides no factual basis for holders of Insider Claims and Insider Equity Interests in the Legacy Debtors to believe they would receive less through a Chapter 7 liquidation.

CONCLUSION

For all these reasons, Geringer respectfully requests entry of an Order (i) denying the Motion and (ii) and granting Geringer such other and further relief as the Court deems just and proper.

DATED: November 26, 2012

PARSONS KINGHORN HARRIS, P.C.

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