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Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re:	
TECHNOLOGY PROPERTIES LIMITED LLC, fka TECHNOLOGY PROPERTIES LIMITED INC., A CALIFORNIA CORPORATION, fka TECHNOLOGY PROPERTIES LIMITED, A CALIFORNIA CORPORATION,	Case No. 13-51589-SLJ-11
	Chapter 11
	Date: *[Pending entry of order]*
	Time: *[Pending entry of order]*
Debtor.	Place: United States Bankruptcy Court 280 S. First Street, Room 3099 San Jose, CA 95113
	Judge: Honorable Stephen L. Johnson

MOTION FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO INVESTIGATE, COMMENCE, PROSECUTE AND SETTLE ACTIONS OF THE DEBTOR'S ESTATE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

The Official Committee of Unsecured Creditors (the "Committee") in the case of Technology Properties Limited, LLC ("TPL", or the "Debtor") hereby submits its MOTION FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO COMMENCE AND PROSECUTE CLAIMS OF THE DEBTOR'S ESTATE (the "Motion") seeking authority pursuant to pursuant to 11 U.S.C. §§ 105, 1103 and 1109 to investigate and prosecute actions against the Debtor's insiders and affiliates, as detailed below. The Motion is based on the points and authorities below, the Motion itself, the notice of hearing on the Motion filed concurrently herewith, the pleadings and papers filed herein, and upon such oral and documentary evidence as may be presented at the hearing on the Motion.

In support of the Motion, the Committee respectfully represents the following:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This Motion raises a core matter under 28 U.S. C. § 157(b)(2)(A). Venue of this case and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105, 1103 and 1109.[1]

II. FACTUAL BACKGROUND

A. General

2. On March 20, 2013 (the "Petition Date"), the Debtor commenced the above-entitled Chapter 11 bankruptcy case by filing a Voluntary Petition in this Court.

3. A trustee has not been appointed for the Debtor and it continues to function as the debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

4. The Committee was appointed by the Office of the United States Trustee pursuant to § 1102 of the Bankruptcy Code.

5. As described by the Debtor in its DISCLOSURE STATEMENT RE: TPL PLAN OF REORGANIZATION (DECEMBER 23, 2013) [Docket No. 340] (the "December 23 Disclosure Statement"), TPL's business is to maximize the value of patent portfolios. [December 23 Disclosure Statement, p. 13]. That business has essentially three components. In most cases, the owner of the

[1] All statutory references herein are to the title 11, United States Code (the "Bankruptcy Code") unless otherwise specified.

patent is an LLC owned directly or indirectly through a family trust (the "Leckrone Entity") by the Debtor's sole member and manager Daniel E. Leckrone ("Leckrone"). Typically, TPL is granted an exclusive license to commercialize a portfolio of patents in exchange for payment of a percentage of the revenue (65% of gross proceeds not to exceed 80% of net) to the Leckrone Entity. According to the Debtor, TPL then identifies companies whose products infringe the patents and works to license the technology to them. The December 23 Disclosure Statement explains that "TPL is in contract with Alliacense Limited LLC ("Alliacense"), a related entity, as its vendor or to provide TPL with much of the needed technical expertise in marketing services." The third component of TPL's business is to prosecute litigation against infringing companies that refuse to license patented technology.

B. Relevant Case Developments

6. Since the commencement of the case, the Committee has engaged the Debtor in negotiations in an attempt to reach agreement on a consensual plan. When it became clear that negotiating with the Debtor was futile and in light of the Debtor's dubious financial performance during the Bankruptcy Case, the Committee filed its MOTION TO TERMINATE EXCLUSIVE PERIOD TO SOLICIT ACCEPTANCES OF PLAN OF REORGANIZATION AND TO FILE A COMPETING PLAN [Docket No 269] (the "Exclusivity Termination Motion") in order to facilitate the progression of the bankruptcy case and to enable the Committee to file its competing plan and disclosure statement for consideration by creditors and other parties in interest. After a hearing on December 5, 2013, the Court entered its Order terminating exclusivity as to the Debtor. Subsequently, on December 17, 2013, the Committee filed the DISCLOSURE STATEMENT FOR OFFICIAL COMMITTEE OF UNSECURED CREDITORS' PLAN OF REORGANIZATION (DATED DECEMBER 17, 2013) [Docket No. 322] and the OFFICIAL COMMITTEE OF UNSECURED CREDITORS' PLAN OF REORGANIZATION (DATED DECEMBER 17, 2013) [Docket No. 321].

7. During the bankruptcy case, on April 3, 2013, the Debtor filed its MOTION REGARDING SETTLEMENT PROCEDURES (the "Settlement Motion") seeking unilateral authority to enter into settlements of litigation. Both the United States Trustee and the Committee filed objections to the Settlement Motion because it requested a blanket authorization of settlements by

the Debtor without any notice to or review by the Court, the Committee or the United States Trustee. After a contested hearing, the Debtor and the Committee agreed on a protocol for the Debtor to seek the consent of a subcommittee of the Committee to enter into any settlements during the Bankruptcy Case. This protocol is reflected in the Court's ORDER ON MOTION REGARDING SETTLEMENT PROCEDURES (the "Settlement Protocol Order") entered on May 7, 2013.

8. During November 2013, the Committee became aware that the Debtor had violated the Settlement Protocol Order. On December 17, 2013, the Committee filed the MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF THIS COURT'S ORDER [Docket No. 313] (the "Trustee Appointment Motion") due to the Debtor's violation and other reasons (including, *inter alia*, the Debtor's inherent conflicts of interest with respect to Alliacense and other affiliated parties, and the Debtor's bad faith and reprehensible behavior) as more fully set forth in the Trustee Appointment Motion.

9. During this bankruptcy case, the pleadings filed by the Debtor, the Committee and other parties in interest have raised various claims and established numerous grounds on which the Derivative Actions are based, including, without limitation, the following:

a. Within one year of the Petition Date, the Debtor made numerous transfers aggregating substantial amounts to insiders such as Leckrone, Alliacense, Susan Anhalt and Dwayne Hannah. AMENDED STATEMENT OF FINANCIAL AFFAIRS, Attachments to No. 3c and No. 23 [Docket No. 96].

b. The Debtor has scheduled debts to insiders based on compensation agreements between these insiders and Alliacense or "oral agreements" with these insiders.

c. Certain insider claims of persons characterized by the Debtor as the 13%ers are based on undocumented and invalid assignment agreements. [See OPPOSITION OF CREDITORS CHESTER A. BROWN JR. AND MARCIE BROWN TO THE MOTION OF TECHNOLOGY PROPERTIES LIMITED, LLC FOR APPROVAL OF DISCLOSURE STATEMENT (NOVEMBER 22, 2013), [Docket No. 292], § I-A-5].

d. Common ownership by Leckrone of the Debtor, Alliacense and limited liability companies which own the intellectual property have raised issues of conflicts and loyalty and have resulted in questions regarding transfers of funds between the Debtor and Leckrone owned entities, raising the possibility of alter ego liability or substantive consolidation.

e. While it was insolvent and refusing to pay its non-insider creditors, TPL made distributions of over $700,000 to Leckrone and funded his purchase of two separate entities. It also paid the operating expenses of such entities and of Alliacense.

III. RELIEF REQUESTED

10. While there is authority supporting a creditor's committee's right to prosecute actions on behalf of the estate, the Committee nevertheless seeks authority from the Court to investigate, commence and prosecute actions against the Debtor's sole member and manager and appointed Responsible Individual, Daniel E. Leckrone ("Leckrone"), all of the Debtor's affiliates including, without limitation, all entities wholly-owned or partially owned by Leckrone, and all insiders including, without limitation all directors, officers, and senior management, past and present (collectively, the "Derivative Action Defendants"). The Committee wishes to investigate and commence actions of any nature including, without limitation, any actions pursuant to Chapter 5 of the Bankruptcy Code, and any actions based on theories of breach of fiduciary duty, diminution of value, self-dealing, conflicts of interest, willful and malicious injury, intentional and negligent misrepresentations, intentional infliction of emotional distress, ultra vires acts, usurping corporate opportunities, fraud, defalcation while acting in a fiduciary capacity, theft, embezzlement, larceny and conversion[2] (collectively, the "Derivative Actions").

IV. LEGAL AUTHORITY

A. The Committee Has Standing To Prosecute Actions.

11. The Northern California bankruptcy court has stated that a creditors committee possesses standing to bring claims on behalf of the estate. *Variable-Parameter Future Dev. Corp. v.*

[2] The Committee also will be filing objections to Proofs of Claims filed by certain Derivative Action Defendants. Pursuant to sections 502(a) and 1109, the Committee believes that it possesses standing to file such objections. *See Official Comm. of Equity Sec. Holders v. Monsanto Co. (In re Solutia Inc.)*, 2006 Bankr. LEXIS 2295 (Bankr. S.D.N.Y. Sept. 14, 2006). However, to the extent Court approval and standing is required to file objections to claims, the Committee includes all such objections as "Derivative Actions."

Comerica Bank-California (In re Morpheus Lights), 228 B.R. 449, 453 (Bankr. N.D. Cal. 1998). However, the Committee is cognizant that some courts have required that a committee must obtain a grant of derivative standing from the court before proceeding. In the instance this Court is inclined to enforce such requirement, the Committee files this Motion.

B. Derivative Standing May Be Conferred On The Committee.

12. The Bankruptcy Code authorizes a trustee or the debtor-in-possession to pursue avoidance actions on behalf of the estate and obligates such estate representatives to maximize value for the benefit of creditors. *Commodity Futures Trading Comm 'n v. Weintraub*, 471 U.S. 343, 352 (1985). However, because authorization is discretionary, a debtor-in-possession will often be conflicted and motivated not to pursue avoidance actions against certain potential defendants, to the detriment of non-defendant creditors. *In re Catwil Corp.*, 175 B.R. 362, 365 (Bankr. E.D. Cal. 1994) ("The inherent conflict of interest between Catwil [debtor-in-possession] and the insider-defendants made it unlikely that Catwil would initiate an avoidance action against the defendants."); *Official Committee of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (en banc) (noting that "[fraudulent conveyances] present a particularly vexing problem in reorganizations conducted under Chapter 11."); *Canadian Pac. Forest Prods. v. J.D. Irving, Ltd. (In re Gibson Group)*, 66 F.3d 1436, 1441 (6th Cir. 1995) ("A debtor-in-possession often acts under the influence of conflicts of interest and may be tempted to use its discretion under Sections 547 and 548 as a sword to favor certain creditors over others, rather than as a tool to further its reorganization for the benefit of all creditors as Congress intended. Given this reality, we do not believe Congress intended to exclude creditors from seeking to avoid preferential or fraudulent transfers where the debtor-in-possession abuses its discretion.").

13. The conflicts of interests may be inherently present even outside of the "fox guarding the henhouse" scenario, where debtor's management is not directly acting in its own self-interests: "[A] debtor may be unwilling to pursue claims against individuals or businesses, such as critical suppliers, with whom it has an ongoing relationship that it fears damaging ... even if a bankrupt debtor is willing to bring an avoidance action, it might be too financially weakened to advocate vigorously for itself. In any of these situations, the real losers are the unsecured creditors whose

interests avoidance actions are designed to protect." *Cybergenics*, 330 F.3d at 573 (internal citation omitted).

14. To ameliorate these concerns, unsecured creditor committees are often tasked with derivative standing to provide "a critical safeguard against lax pursuit of avoidance actions." *Id.*; *see also Liberty Mut. Ins. Co. v. Official Unsecured Creditors' Comm. of Spaulding Composites Co. (In re Spaulding Composites Co.)*, 207 B.R. 899, 904 (B.A.P. 9th Cir. Cal. 1997) ("The DIP has an obligation to pursue all actions that are in the best interests of creditors and the estate … An unsecured creditors' committee has a close identity of interests with the DIP in this regard. Allowing the DIP to coordinate litigation responsibilities with an unsecured creditors' committee can be an effective method for the DIP to manage the estate and fulfill its duties.").

15. Accordingly, courts will often grant derivative standing to a committee to investigate and initiate adversary proceedings or contested matters in the name of the debtor-in-possession under Sections 1103(c)(5) and 1109(b) of the Bankruptcy Code and in fact, "every circuit … which has addressed the issue has recognized the possibility of derivative standing to pursue avoidance actions on behalf of a bankruptcy estate under certain circumstances." *PW Enters. v. North Dakota (In re Racing Servs.)*, 363 B.R. 911, 914-915 (B.A.P. 8th Cir. 2007)(citing cases). The standing confers rights which extend to all suits that the debtor may bring under Chapter 5 of the Bankruptcy Code and applicable non-bankruptcy law. *See Cybergenics*, 330 F.3d at 567-69.

C. Vesting Derivative Standing In The Committee Is Appropriate.

16. Generally, courts will review four requirements to determine whether derivative standing should be vested in third-party such as a creditors committee as follows:

a. The claim must be colorable;

b. The committee must either make a demand upon the debtor to bring the action or establish that such demand is excused;

c. The debtor must either unjustifiably refuse to bring the claim or be excused from taking such action; and

d. The committee must obtain leave from the court before suing.

In re First Capital Holdings Corp., 146 B.R. 7, 11 (Bankr. C.D. Cal. 1992); *see also Hansen v. Finn (In re Curry & Sorensen, Inc.)*, 57 B.R. 824, 828 (9th Cir. BAP 1986).

1. The Claim Must Be Colorable.

17. Courts have found that a colorable claim need only be "plausible." *See, e.g., In re LTV Steel Co.*, 333 B.R. 397, 406 (Bankr. N.D. Ohio 2005) ("A colorable claim is defined as one which is plausible or 'not without merit'"); *see also, e.g., Elstner-Bailey v. Fannie Mae (In re Elstner-Bailey)*, 2011 Bankr. LEXIS 4802, 9-10 (B.A.P. 9th Cir. Oct. 4, 2011) (in relief from stay context, quoting Cornell University Law School's Legal Information Institute's definition as: "A plausible legal claim. In other words, a claim strong enough to have a reasonable chance of being valid if the legal basis is generally correct and the facts can be proven in court. The claim need not actually result in a win."). Thus, the standard to establish whether an underlying claim is colorable is not onerous and merely requires, as with defeating a motion to dismiss, assertion of claims "that on appropriate proof would support a recovery." *In re G-I Holdings, Inc.*, 313 B.R. 612, 631 (Bankr. D.N.J. 2004); *see also In re STN Enterprises*, 779 F.2d 901, 905-06 (2d Cir. 1985) (court need not conduct mini-trial to determine whether "colorable" claim has been presented); *Official Comm. of Unsecured Creditors of America's Hobby Ctr., Inc. v. Hudson United. Bank* (*In re America's Hobby Ctr., Inc.*), 223 B.R. 275, 288 (Bankr. S.D.N.Y. 1998) (observing that standing should be denied only if the claim is "facially defective").

18. It is clear that there is a basis to the Derivative Action claims[3]. As noted above, the Debtor's Statement of Financial Affairs sets forth several transfers to insiders. A cursory examination of Proofs of Claims filed by certain insiders based on incentive compensation demonstrates the questionable nature of the Debtor's compensation paid to its insider employees. [See Proofs of Claims Nos. 17, 27, 30, 35, 39]. Generally, these insider claims are largely based on agreements, either written or "oral" which purport to be with Alliacense and/or some other TPL affiliate, not TPL, and in that regard, should not exist against the Debtor.

19. In addition, Leckrone has directed TPL to pay Alliacense at least $42,000,000 without a written contract and an additional $15 million for "operating expenses." [See DECLARATION OF SALLIE KIM IN SUPPORT OF MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) APPOINTING A CHAPTER 11 TRUSTEE; AND (2) DIRECTING DANIEL E. LECKRONE TO APPEAR AND

[3] Other colorable claims are set forth in the Exclusivity Termination Motion and the Trustee Appointment Motion.

SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THIS COURT'S ORDER [Docket 313-3] (the "Kim Declaration"), Exhibit "A", p. 1156: 14 – 21]. There was no signed written agreement between TPL and Alliacense authorizing any payments to Alliacense. [Kim Decl., Exhibit "A", pp. 234: 8 – 12 and 291: 10–14]. Furthermore, Dwayne Hannah, TPL's Chief Financial Officer, testified that TPL listed the payment of $15 million as a loan to Alliacense and thus an asset of TPL. [Kim Declaration, Exhibit "A", p. 1156:14 – 21]. The two entities even share employees, some of which are the insiders who now assert substantial claims in the bankruptcy case. [December 23 Disclosure Statement, Exhibit C-1].

20. It is imperative that the Derivative Actions are thoroughly investigated and, if appropriate, vigorously pursued. Time is of the essence in this matter. The Debtor's deficient performance during the case has led only to a substantial loss to the estate (with a proportional gain to many, if not all, of the Derivative Defendants), and, as demonstrated by its consummation of settlements in violation of the Settlement Procedures Order over the Committee's objection, the Debtor's management will continue to dissipate estate assets to benefit only themselves. The Committee understands that affirmative claims against the Derivative Defendants may be the largest, if not only, asset which may realize a return to non-insider creditors. In addition, unsecured claims approximate $50 million in in the case, but approximately $37 million are held by just eight insiders. Accordingly, the Debtor is able to manipulate and control the plan confirmation voting process through the votes of its insiders,[4] a process the Debtor previously was attempting to consummate without any alternatives for creditors until the Court approved the Exclusivity Termination over the Debtor's opposition.

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[4] The Debtor will no doubt argue that because under its proposed Plan, a third party trustee will be able to prosecute claims, there is no need for the Committee to do so. However, this argument simply ignores the fact that the Debtor's Plan, which continues to perpetuate the management structure, self-dealing, transfers to insiders and conflicts discussed herein [*see, e.g.*, discussion at sec. II-B-1 and II-B-2 of OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTOR'S DISCLOSURE STATEMENT RE: TPL PLAN OF REORGANIZATION (NOVEMBER 22, 2013) [Docket No. 298] will have already been confirmed.

2. The Committee Is Excused From Demanding That The Debtor Prosecute the Derivative Actions And Demonstrating That The Debtor Refuses to Bring Such Actions.

21. The second and third requirements are appropriately addressed together. In this instance, the conflicts of interest between the Debtor, Leckrone and all Derivative Action Defendants are so profound that any demand would be futile. In fact, even if the Debtor were to commence any of the Derivative Actions, it is unrealistic to expect that the Debtor would do so vigorously and to expect a maximum (or any) return for the estate.

22. Bankruptcy courts routinely excuse the demand and refusal requirements when an inherent conflict is present such as when the claims at issue would be asserted against management or directors who would be required to investigate and prosecute such claims. *See In re First Capital Holdings Corp.*, 146 B.R. 7, 12-13 (Bankr. C.D. Cal. 1992); *see also Official Comm. of Unsecured Creditors of Nat'l Forge Co. v. Clark (In re Nat'l Forge Co.)*, 326 B.R. 532, 544 (W.D. Pa. 2005); *Louisiana World Exposition v. Fed. Ins. Co. (In re Louisiana World Exposition)*, 832 F.2d 1391 1397-98 (5th Cir. 1987).

23. Policy considerations behind the formal demand requirement are not in play here. As stated by the *Nat'l Forge* Court, "[t]he policy concerns underlying the general requirement of a formal demand are to ensure that the debtor is (i) informed of the committee's intent to assert the subject claims and (ii) afforded an opportunity to explain its reasons, if any, for declining to pursue the claims itself." *In re Nat'l Forge Co.*, 326 B.R. at 544. Here, the Committee has already communicated its intent to investigate and prosecute the Derivative Claims. [See Para. 4d to DECLARATION OF THOMAS T. HWANG IN SUPPORT OF EX PARTE MOTION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO COMMENCE AND PROSECUTE CLAIMS OF THE DEBTOR'S ESTATE, filed on January 13, 2014]. Moreover, the reason for the Debtor's management not pursuing the Derivative Claims against its own self-interests is obvious. Consequently, due to the inherent conflicts presented by the Derivative Actions, the Committee respectfully submits that the Court excuse it from meeting these requirements.

3. The Committee Must Obtain Leave From The Court.

24. By this Motion, the Committee is attempting to satisfy this requirement.

D. The Debtor Should Be Directed To Provide Unfettered Access to Its Documents, Both Privileged and Non-Privileged.

25. In order to properly and thoroughly investigate the Derivative Claims, with derivative standing and in the capacity of an estate representative, the Committee requires access to the books and records and other documents in the Debtor's possession. Bankruptcy Code section 105 provides broad authority for the Court to issue any order that is necessary or appropriate to carry out the provisions of the Code. 11 U.S.C §105(a).

26. In addition, pursuant to Federal Rule of Evidence 502(d), the Court is authorized to provide the Committee with direct access to all of the Debtor's privileged and non-privileged documents on the basis that such disclosure will not waive any applicable attorney-client privilege or work product protection. *See* Fed. R. Evid. 502(d) ("A Federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court--in which event the disclosure is also not a waiver in any other Federal or State proceeding"); *see also, e.g., Whitaker Chalk Swindle & Sawyer, LLP v. Dart Oil & Gas Corp.*, 2009 U.S. Dist. LEXIS 15901, at *9-12 (N.D. Tx. Feb. 23, 2009) (issuing an order that discovery proceed conditioned on the protection of Fed. R. Evid. 502). Confidentiality concerns are further safeguarded by that certain CONFIDENTIALITY AGREEMENT effective as of April 17, 2013, executed by the Debtor and each of the Committee members during this bankruptcy case.

27. Together, Federal Rule of Evidence 502(d) and section 105 provide the basis for the Court to authorize access to the Debtor's books and records to the Committee for its investigation and prosecution of the estate's Derivative Claims. Therefore, the Committee requests that the Court order the Debtor to provide the Committee with unfettered access to all of the books, records, and other documents in the possession, custody, or control of the Debtor, or in which the Debtor has an interest as property of the estate, whether or not the documents are subject to a claim of privilege or confidentiality, and to decree that such access shall not constitute a waiver of any privilege that protects disclosure of such documents.

V. CONCLUSION

28. In sum, the Debtor's management and officers have unquestionably made transfers to insiders and affiliates, including to relatives and entities owned by Leckrone. They have continued to justify their misconduct with retroactive explanations, attenuated legal theories, undocumented transfers and "oral" agreements. While stockpiling their own riches, they have caused millions of dollars of damages to creditors and the estate. And while the Debtor's management have pointed to the discretion afforded under the business judgment rule in operating TPL, their self-interest prevents management from relying on the business judgment rule to justify their actions. *See Adams v. Calvarese Farms Maint. Corp.*, 2010 Del. Ch. LEXIS 199, at *71 (Del. Ch. Sept. 17, 2010) (noting that "business judgment rule would not apply to actions taken in bad faith or otherwise in the context of a breach of the duty of loyalty").

29. It is clear that numerous colorable claims exist against the Derivative Defendants and that the Debtor's management is not only disinterested in pursuing the Derivative Claims but will persist in defending against them. Therefore, the Committee submits that it is the appropriate party to investigate, commence and prosecute the Derivative Claims.

Wherefore, based on the foregoing, the Committee respectfully request that the Court enter its order;

1. Granting the Motion;

2. Granting leave, derivative standing and authority in the Committee to investigate, commence and prosecute any and all of the Derivative Actions against the Derivative Defendants;

3. Directing the Debtor to provide the Committee with unfettered access to all of the books, records, and other documents in the possession, custody, or control of the Debtor, or in which the Debtor has an interest as property of the estate, whether or not the documents are subject to a claim of privilege or confidentiality;

4. Decreeing that access to such documents by the Committee shall not constitute a waiver of any privilege that protects disclosure of such documents; and

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5. Granting such other and further relief as is just and appropriate.

Dated: January 13, 2014

DORSEY & WHITNEY, LLP

By: */s/ Robert A. Franklin*
Robert A. Franklin
Attorneys for the
Official Unsecured Creditors Committee