REDACTED

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: TRIBUNE COMPANY FRAUDULENT CONVEYANCE LITIGATION	Consolidated Multidistrict Action No. 11 MD 2296 (RJS) No. 12 MC 2296 (RJS)
MARC S. KIRSCHNER, as Litigation Trustee for the TRIBUNE LITIGATION TRUST, Plaintiff, v. CITIGROUP GLOBAL MARKETS INC. and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, Defendants.	No. 12 CV 6055 (RJS) **FIRST AMENDED COMPLAINT**

Plaintiff Marc S. Kirschner, as Litigation Trustee (the "Litigation Trustee") for the Tribune Litigation Trust (the "Litigation Trust"), on behalf of the Chapter 11 estates of the debtors and debtors-in-possession in the above-captioned Chapter 11 cases (collectively, the "Debtors"),[1] respectfully alleges as follows:

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, were: Tribune Company (0355); 435 Production Company (8865); 5800 Sunset Productions Inc. (5510); Baltimore Newspaper Networks, Inc. (8258); California Community News Corporation (5306); Candle Holdings Corporation (5626); Channel 20, Inc. (7399); Channel 39, Inc. (5256); Channel 40, Inc. (3844); Chicago Avenue Construction Company (8634); Chicago River Production Company (5434); Chicago Tribune Company (3437); Chicago Tribune Newspapers, Inc. (0439); Chicago Tribune Press Service, Inc. (3167); ChicagoLand Microwave Licensee, Inc. (1579); Chicagoland Publishing Company (3237); Chicagoland Television News, Inc. (1352); Courant Specialty Products, Inc. (9221); Direct Mail Associates, Inc. (6121); Distribution Systems of America, Inc. (3811); Eagle New Media Investments, LLC (6661); Eagle Publishing Investments, LLC (6327); forsalebyowner.com corp. (0219); ForSaleByOwner.com Referral Services, LLC (9205); Fortify Holdings Corporation (5628); Forum Publishing Group, Inc. (2940); Gold Coast Publications, Inc. (5505); GreenCo, Inc. (7416); Heart & Crown Advertising, Inc. (9808); Homeowners Realty, Inc. (1507); Homestead Publishing Co. (4903); Hoy, LLC (8033); Hoy Publications, LLC (2352); InsertCo, Inc. (2663); Internet Foreclosure Service, Inc. (6550); JuliusAir Company, LLC (9479); JuliusAir Company II, LLC; KIAH Inc.

(4014); KPLR, Inc. (7943); KSWB Inc. (7035); KTLA Inc. (3404); KWGN Inc. (5347); Los Angeles Times Communications LLC (1324); Los Angeles Times International, Ltd. (6079); Los Angeles Times Newspapers, Inc. (0416); Magic T Music Publishing Company (6522); NBBF, LLC (0893); Neocomm, Inc. (7208); New Mass. Media, Inc. (9553); Newscom Services, Inc. (4817); Newspaper Readers Agency, Inc. (7335); North Michigan Production Company (5466); North Orange Avenue Properties, Inc. (4056); Oak Brook Productions, Inc. (2598); Orlando Sentinel Communications Company (3775); Patuxent Publishing Company (4223); Publishers Forest Products Co. of Washington (4750); Sentinel Communications News Ventures, Inc. (2027); Shepard's Inc. (7931); Signs of Distinction, Inc. (3603); Southern Connecticut Newspapers, Inc. (1455); Star Community Publishing Group, LLC (5612); Stemweb, Inc. (4276); Sun-Sentinel Company (2684); The Baltimore Sun Company (6880); The Daily Press, Inc. (9368); The Hartford Courant Company (3490); The Morning Call, Inc. (7560); The Other Company LLC (5337); Times Mirror Land and Timber Company (7088); Times Mirror Payroll Processing Company, Inc. (4227); Times Mirror Services Company, Inc. (1326); TMLH 2, Inc. (0720); TMLS I, Inc. (0719); TMS Entertainment Guides, Inc. (6325); Tower Distribution Company (9066); Towering T Music Publishing Company (2470); Tribune Broadcast Holdings, Inc. (4438); Tribune Broadcasting Company (2569); Tribune Broadcasting Holdco, LLC (2534); Tribune Broadcasting News Network, Inc., n/k/a Tribune Washington Bureau Inc. (1088); Tribune California Properties, Inc. (1629); Tribune CNLBC, LLC, f/k/a Chicago National League Ball Club, LLC (0347); Tribune Direct Marketing, Inc. (1479); Tribune Entertainment Company (6232); Tribune Entertainment Production Company (5393); Tribune Finance, LLC (2537); Tribune Finance Service Center, Inc. (7844); Tribune License, Inc. (1035); Tribune Los Angeles, Inc. (4522); Tribune Manhattan Newspaper Holdings, Inc. (7279); Tribune Media Net, Inc. (7847); Tribune Media Services, Inc. (1080); Tribune Network Holdings Company (9936); Tribune New York Newspaper Holdings, LLC (7278); Tribune NM, Inc. (9939); Tribune Publishing Company (9720); Tribune Television Company (1634); Tribune Television Holdings, Inc. (1630); Tribune Television New Orleans, Inc. (4055); Tribune Television Northwest, Inc. (2975); ValuMail, Inc. (9512); Virginia Community Shoppers, LLC (4025); Virginia Gazette Companies, LLC (9587); WATL, LLC (7384); WCCT, Inc., f/k/a WTXX Inc. (1268); WCWN LLC (5982); WDCW Broadcasting, Inc. (8300); WGN Continental Broadcasting Company (9530); WLVI Inc. (8074); and WPIX, Inc. (0191). The Debtors' corporate headquarters and the mailing address for each Debtor is 435 North Michigan Avenue, Chicago, Illinois 60611.

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NATURE OF THE ACTION

> *"Having seen the book I am still extremely uncomfortable with Zell. . . . Declining ebitda is scary. Until yesterday I did not know that Q1 cash flow was down 20 from last year. . . . I'm very concerned."*
>
> – Julie Persily, Managing Director of Citigroup Global Markets, a week before Tribune approved Samuel Zell's proposed leveraged buyout that buried Tribune in ruinous debt.
>
> *"[W]here are we in thinking thru solvency issue if company's [solvency] advisor thinks solvent but we think otherwise?"*
>
> – Michael Costa, Merrill Lynch Managing Director, prior to the closing of the second step of the LBO.

1. This lawsuit arises out of the destruction of Tribune Company by greed, fraud, and financial chicanery. The facts of this case show how two Wall Street financial advisors, defendants Citigroup Global Markets Inc. ("Citigroup") and Merrill, Lynch, Pierce, Fenner & Smith Incorporated ("Merrill"), lured by the prospect of huge fees, were willing to set aside their serious reservations and assist a reckless leveraged buyout that funneled more than $8 billion to Tribune's shareholders while saddling the Company with massive debt—debt that quickly led to the bankruptcy of one of America's most venerable media companies.

2. By this action and a companion action pending in this Court, Tribune's Litigation Trustee seeks to hold responsible those who orchestrated and benefited from what Samuel Zell, the Chicago billionaire at the center of the debacle, called "the deal from hell." Substantial fault, ranging from gross negligence to intentional fraud, can be laid at the feet of virtually every participant in the transaction. Consumed by self-

interest, these participants cared not what happened to Tribune and its existing creditors so long as they got their own money out or their fees paid.

3. The LBO participants included the members of Tribune's Board of Directors, who collectively received more than $28 million in LBO proceeds. These directors breached their fiduciary duties of care, loyalty, and good faith in approving a transaction that loaded Tribune with unsustainable levels of debt in order to finance payments to shareholders, including themselves.

4. Tribune's officers were rewarded even more richly than Tribune's Board, receiving collectively more than $79 million in LBO proceeds and special compensation, all contingent on consummation of the LBO. In order to reap this massive windfall, Tribune's managers created and clung to patently unrealistic projections of future earnings to give the illusion that Tribune would be able to handle the avalanche of debt it would incur in the LBO, despite the Company's underperformance in a declining industry.

5. Tribune's financial advisors, including Citigroup and Merrill, turned a blind eye to management's transparent manipulations so the advisors could collect the large fees that would be due them only if the deal proceeded. The defendants were hopelessly conflicted throughout the relevant time period insofar as they acted simultaneously as financial advisors to the Company and as lead lenders and arrangers of the LBO debt. While occupying these conflicting roles, they advised the Company to proceed with an LBO that imposed unsustainable burdens on the Company and its existing creditors while providing significant and massive benefits to themselves. In addition, the defendants sought to further or nurture relationships with Zell—the

mastermind of the disastrous LBO—that would lead to other profitable business. The defendants knew, or were reckless or grossly negligent in not knowing, that the LBO would render Tribune insolvent, but decided to pretend otherwise or keep silent.

6. The directors and officers of Tribune's operating subsidiaries—the entities that owned virtually all of Tribune's assets—permitted the subsidiaries to guarantee the LBO debt incurred by Tribune without so much as a meeting or board vote, despite the fact that the subsidiaries received no value of any kind in exchange for their guarantees. The subsidiary directors and officers thereby advanced the LBO lenders' quest to unfairly prime Tribune's pre-existing creditors in the event of a bankruptcy.

7. The biggest beneficiaries of the LBO were Tribune's shareholders who, after seeing their shares drop in value by one-third from 2003 to 2006, were cashed out at a premium price of $34 per share, with roughly half the shares purchased in June 2007 and the rest in December 2007. Topping the list of the shareholders were the Chandler Trusts, which got $1.5 billion for their shares. They were followed by the McCormick and Cantigny Foundations—led by Tribune's Chief Executive Officer, Dennis J. FitzSimons—which received more than $1 billion. Billions of dollars more were distributed to investment funds, trusts, pension funds, wealthy individuals, and others, all of whom "jumped the line" in order improperly to bail out of Tribune ahead of its lawful creditors.

8. From the outset, Tribune was a terrible candidate for a highly leveraged buyout, a form of transaction in which a company's shares are purchased with money borrowed by the corporation itself. Because an LBO encumbers a company with substantial—or, in this case, massive—debt, it is risky even under the best of

circumstances. As was contemporaneously acknowledged by many observers, Tribune's LBO was doomed to fail from its inception, as it was effectuated during a time of dramatic, relentless, and irreversible declines in the newspaper industry, which was seeing both advertisers and subscribers abandon traditional print media and migrate to online alternatives. The resulting drop in revenues and profits was universally regarded by industry experts and analysts as a fundamental shift from which the industry could not expect to recover. Tribune, which relied on newspaper publishing for 75% of its revenue, was suffering not only from this industry-wide decline, but also from Company-specific obstacles that rendered it one of the worst-performing businesses in its sector.

9. Alarmed by the declining value of its investment, Tribune's largest shareholder, the Chandler Trusts, began agitating in 2006 for the Company to consummate a strategic transaction designed to provide value to shareholders. The Trusts were painfully aware of the headwinds facing Tribune. Indeed, one of the Trusts' representatives on Tribune's Board argued that the Company's performance would not improve in the foreseeable future, and that the projections prepared by Tribune management were overly optimistic and unsupportable. The Chandler Trusts warned that if the Tribune Board failed to take prompt action, the Trusts would "begin actively purs[uing] possible changes in Tribune's management."

10. The Company responded in September 2006 by appointing a special committee of directors to explore strategic alternatives. The Special Committee initially concentrated on transactions that would involve the Company incurring relatively modest amounts of additional debt to fund a stock dividend or other deal that would

leave Tribune's shareholders—including Tribune's directors and officers—still owning the Company. During this period, while Tribune's fiduciaries still believed they had "skin in the game," the Board and management focused intently on the quality of the Company's financial projections, and sought to ensure that Tribune would be able to service the debt associated with any proposed transaction. Yet these fiduciaries' approach quickly changed when the risk of insolvency was shifted entirely away from themselves and onto Tribune's creditors through the LBO proposed by Zell.

11. Zell submitted his LBO bid for Tribune in February 2007, proposing an unusual takeover structure that would ultimately enable him to obtain control of the multibillion-dollar corporation while investing only $306 million of his own money in the Company. Zell's deal called for the Company to increase its total debt from approximately $5.6 billion to a whopping $13.7 billion to purchase or redeem its outstanding shares, refinance its existing bank debt, and pay investment banking fees and other costs associated with the transaction. Immediately upon the Company's announcement that it was contemplating the LBO, Wall Street analysts and rating agencies uniformly derided the deal, characterizing it as "way too risky," with many explicitly predicting the LBO would "put the company into bankruptcy."

12. Although Zell's proposal was far riskier to the Company than any transaction the Board and Special Committee had seriously considered in the past, the LBO provided that Tribune's directors, officers, and other shareholders would no longer bear the risk of the Company's failure, since they would be cashed out of the Company entirely. Suddenly, the attitude of Tribune's Board and management toward increased leverage changed. They now became concerned only with ensuring that shareholders

would be paid a high price for their shares, regardless of whether the increased share price burdened the Company and its creditors with an unsustainable level of debt. Once presented with an escape route from the Company, Tribune's directors, officers, and controlling shareholders no longer cared about Tribune's survival.

13. In order to give the false impression that the Company's future earnings would be sufficient to service its enormous debt load following the LBO, certain of Tribune's officers prepared fraudulent "base case" financial projections in February 2007, predicting a miraculous, near-term financial recovery by Tribune notwithstanding the deteriorating state of the publishing industry and of Tribune's own business. Seeking to perpetuate the illusion of sound financial health, senior management concealed their projections from many of the executives responsible for Tribune's day-to-day operations, fearing that such executives would disavow senior management's wildly optimistic, "hockey stick" projections for the coming year.

14. Management's pie-in-the-sky projections were obviously wrong even when they first were circulated in February 2007. Their unreliability was confirmed by the time the first step of the LBO was about to close in June 2007. By then, Tribune's actual results for most of the first two quarters were in. Those results showed that Tribune's performance was already lagging management's 2007 base case by a significant margin, and that meeting management's February projections would have required the Company to first miraculously reverse its decline, and then suddenly and substantially outperform its 2006 performance. Nevertheless, management refused for months to revise the discredited February projections. When Tribune management finally prepared a modified set of projections in October 2007, they offset the expected

lower financial performance for the remainder of 2007 by fraudulently increasing the Company's projected growth rate for 2008 and beyond. Tribune's directors, officers, advisors, and Zell continued to cite the rosy projections as a justification for closing the LBO, even after the Company's progressive deterioration showed that it would be virtually impossible for the Company to achieve them.

15. Company advisors Citigroup and Merrill were incentivized to promote the LBO over other proposals being considered by the Company because their retention agreements expressly provided that they could participate as lenders in the transaction. Providing such financing would enable these banks to reap tens of millions of dollars in financing fees on top of the tens of millions of dollars they were already being paid for their advisory services. They were thus heavily biased in favor of the LBO, which they zealously advocated to the Tribune Board and Special Committee, notwithstanding that they had significant misgivings about the transaction. Not only did these banks acquiesce in what they knew were unreasonable and unreliable projections engineered by management at both steps of the LBO, Citigroup played an active role in preparing the financial modeling that underlay those inflated projections.

16. Both steps of the LBO were conditioned upon the issuance of solvency opinions stating that the Company would be balance-sheet solvent, adequately capitalized, and able to pay its debts as they came due following consummation. This was an opportunity for Tribune's fiduciaries to halt the LBO if it became apparent that the transaction posed unacceptable risks to the Company. Yet instead of treating the solvency opinion requirement as an opportunity to fully vet the wisdom of the LBO

given the Company's steadily worsening financial condition, Tribune's management and the Company's advisors treated it only as an obstacle to circumvent.

17. Tribune originally approached Duff & Phelps to provide a solvency opinion in the event of an LBO, but Duff & Phelps determined it could not do so without violating accepted practices for analyzing company solvency. After yet another firm refused the solvency opinion engagement based on its conclusion that it could not opine that Tribune would be solvent following the LBO, Tribune's management hastily agreed to pay a third firm, Valuation Research Corporation ("VRC"), the highest fee VRC had ever earned for issuing solvency opinions. Tribune's management directed VRC not only to rely on the Company's tainted projections, but also to depart from the accepted definition of fair value—something VRC had never done before—to enable VRC to inflate the Company's value for purposes of finding solvency. Management also instructed VRC to discount the amount of Tribune's subordinated debt obligations for purposes of the solvency analysis.

18. The LBO imposed nearly $14 billion of debt on a Company that, at the time the second step of the LBO closed in December 2007, was worth no more than $10.4 billion and that, by its own admission, was worth no more than $7 billion just months later. As many in the financial and newspaper publishing industries predicted, the Company filed for bankruptcy less than one year later, causing enormous loss to the Company and its pre-LBO creditors, who received only cents on the dollar. The goal (and natural consequence) of the LBO—to hinder, delay, and defraud the Company's existing creditors in order to provide value to the Company's shareholders ahead of those creditors—had been achieved.

19. The Litigation Trustee therefore brings this action in order to remedy the harm caused by this fraudulent scheme, by compensating Tribune and its unpaid creditors for the wrongs committed by Citigroup and Merrill in connection with the LBO.

JURISDICTION AND VENUE

20. The United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157 and 1334 and the Standing Order of the United States District Court for the District of Delaware (the "District of Delaware") referring to the Bankruptcy Judges of the District of Delaware all cases and proceedings arising under title 11 of the United States Code (the "Bankruptcy Code").

21. This adversary proceeding constitutes a "core" proceeding as defined in 28 U.S.C. § 157(b)(2)(A). In the event that this or any other appropriate Court finds any part of this adversary proceeding to be "non-core," Plaintiff consents to the entry of final orders and judgments by the Bankruptcy Court, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure. Plaintiff also consents to the entry of final orders or judgments by the Bankruptcy Court if it is determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

22. Venue in the District of Delaware, the transferor district, is and was proper under 28 U.S.C. §§ 1408 and 1409 because this adversary proceeding arises under and in connection with cases commenced under the Bankruptcy Code.

23. Venue in this Court presently is proper under 28 U.S.C. § 1407 and an order of the Judicial Panel on Multidistrict Litigation ("JPML") transferring this action to this Court for pre-trial administration.

PARTIES AND NON-PARTIES

24. Plaintiff is the Litigation Trustee of the Tribune Litigation Trust, which was created pursuant to the Fourth Amended Plan of Reorganization (the "Plan") for the Tribune Company ("Tribune" or the "Company") and its related Debtor subsidiaries. Following an evidentiary confirmation hearing respecting a prior version of the Plan that lasted more than two weeks, and a subsequent confirmation hearing respecting the Plan, the Bankruptcy Court confirmed the Plan on July 23, 2012. Pursuant to the Plan, certain causes of action commenced on behalf of the Debtors' estates, including those asserted herein, were transferred to the Litigation Trust. The Litigation Trustee has been granted authority and standing to pursue those causes of action on behalf of the beneficiaries of the Litigation Trust, the Debtors' creditors, which received only a fraction of their allowed claims against the Debtors in the Debtors' bankruptcy proceeding.

25. Defendant Citigroup acted as a financial advisor to Tribune in connection with Tribune's two-step leveraged buyout (the "LBO") and served as one of the lead arrangers for Tribune's pre-existing bank debt (the "2006 Bank Debt") as well as for the bank debt Tribune assumed in the LBO (the "Senior Credit Facility" and the "Bridge Facility"). (Each of the banks and other lenders participating currently, previously, or in the future in the Senior Credit Facility and the Bridge Facility are referred to herein collectively as the "LBO Lenders.")

26. Defendant Merrill acted as a financial advisor to the Company in connection with the LBO and served as one of the lead arrangers for the Senior Credit Facility and the Bridge Facility.

27. Non-party Morgan Stanley & Co. LLC f/k/a Morgan Stanley & Co. Incorporated ("Morgan Stanley") was engaged by the Company to act as a financial advisor to the special committee (the "Special Committee") of Tribune's Board of Directors (the "Tribune Board") in connection with the LBO. Morgan Stanley also acted as a financial advisor to the Company. Morgan Stanley is named as a defendant in a separate action by the Litigation Trustee entitled *Kirschner v. FitzSimons, et al.*, No. 12 CV 2652 (RJS) (the "FitzSimons Action"), which was originally filed by the Committee in the Bankruptcy Court and was transferred to this Court by the JPML for coordinated and consolidated pretrial proceedings with this and other related actions.

28. During all or part of the period relevant to this complaint, the following individuals (the "Directors") served as directors of Tribune: Dennis J. FitzSimons (Chairman of the Board of Directors), Enrique Hernandez Jr., Betsy D. Holden, Robert S. Morrison, William A. Osborn, J. Christopher Reyes, Dudley S. Taft, Miles D. White, Jeffrey Chandler, Roger Goodan, William Stinehart Jr., and Samuel Zell. The Directors are named as defendants in the FitzSimons Action.

29. During all or part of the period relevant to this complaint, the following individuals (the "Officers") served as officers of Tribune and/or one of its subsidiaries: Dennis J. FitzSimons (President and Chief Executive Officer), Chandler Bigelow (Treasurer), Donald C. Grenesko (Senior Vice President of Finance and Administration), Mark W. Hianik (Assistant General Counsel and Assistant Secretary), Daniel G. Kazan

(Vice President of Development), Crane H. Kenney (Senior Vice President, General Counsel and Secretary), and Harry Amsden (Vice President of Finance of Tribune Publishing Company). The Officers are named as defendants in the FitzSimons Action.

30. During all of part of the period prior to the completion of the LBO, the following entities (the "Controlling Shareholders") collectively were the largest shareholders of Tribune: the Robert R. McCormick Foundation (the "McCormick Foundation"), the Cantigny Foundation (together with the McCormick Foundation, the "Foundations"), and Chandler Trust No. 1, Chandler Trust No. 2, and the Chandler Sub-Trusts (collectively, the "Chandler Trusts"). The Controlling Shareholders are named as defendants in the FitzSimons Action.

31. Zell is a billionaire investor who is the controlling party of EGI-TRB, L.L.C. ("EGI-TRB")—the entity that entered into the Agreement and Plan of Merger (the "Merger Agreement") with Tribune on April 1, 2007, memorializing the material terms of the LBO. Zell was elected to the Tribune Board on May 9, 2007, before consummation of the first step of the LBO, and became the Chairman of the Tribune Board and Tribune's President and Chief Executive Officer in December 2007 when the second step of the LBO was consummated. Zell and EGI-TRB are named as defendants in the FitzSimons Action.

FACTS

I. Tribune's Business and Its Operations

32. Prior to filing for bankruptcy protection in December 2008, Tribune was America's largest media and entertainment company, reaching more than 80% of U.S. households through its newspapers and other publications, its television and radio broadcast stations and cable channels, and its other entertainment offerings.

Headquartered in Chicago, Illinois, Tribune's operations were conducted through two primary business segments: (i) publishing, and (ii) broadcasting and entertainment. Tribune's publishing segment owned major newspapers in many of the most significant markets in the United States, including the *Chicago Tribune*, the *Los Angeles Times*, the *Baltimore Sun*, the *South Florida Sun-Sentinel*, the *Orlando Sentinel*, and the *Hartford Courant*. Tribune's broadcasting and entertainment segment owned numerous radio and television stations in major markets.

33. As of the date that Tribune initiated its bankruptcy case, the publishing segment employed approximately 12,000 full-time equivalent employees, and the broadcasting and entertainment segment employed an additional 2,600 full-time equivalent employees.

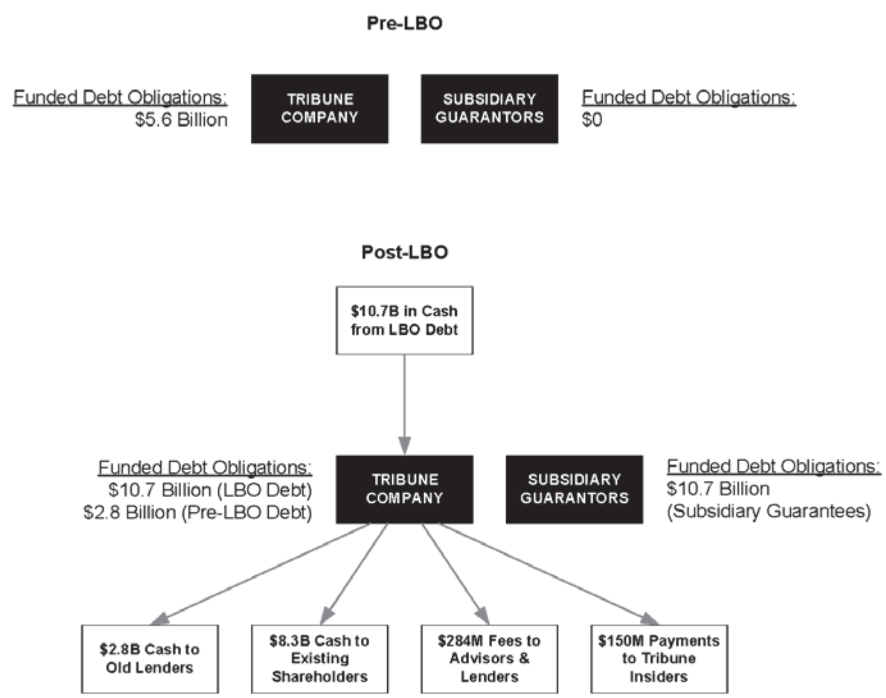
II. Overview of the Tribune LBO

34. A leveraged buyout is a transaction in which the shares of a corporation—the "target"—are purchased with debt that is borrowed by the target corporation itself. The effect of a leveraged buyout is to encumber the assets of the target corporation with debt that benefits not that corporation, but rather its new owner and former shareholders, and to substitute a significant amount of debt in the place of equity in the corporation's capital structure. In this case, Tribune incurred nearly $11 billion in debt (the "LBO Debt") to finance its two-step leveraged buyout (the "LBO"), bringing its total debt to more than $13 billion. At least 25% of the payouts to shareholders in the LBO went to the Directors and Officers, the Controlling Shareholders, and entities affiliated with Zell. The LBO Debt was used to line the pockets of Tribune's shareholders, directors, officers, and advisors, and left Tribune's creditors holding the proverbial bag.

35. The Tribune LBO was a unitary transaction implemented in two steps at the behest of the Company's Controlling Shareholders. As the diagram below illustrates, prior to the LBO, Tribune had approximately $5.6 billion in funded debt obligations (*i.e.* bank or bond debt, or debt arising from similar financial instruments), and Tribune's subsidiaries—where the majority of the Company's value resided—had none. At the first step of the transaction ("Step One"), which closed on June 4, 2007, Tribune borrowed approximately $7 billion. That new debt was guaranteed by most of Tribune's subsidiaries (the "Subsidiary Guarantors"), thereby ensuring that the LBO Lenders would be paid before the Company's existing creditors in the event of a bankruptcy. Of that new debt, approximately $4.3 billion was used to purchase shares from Tribune's existing shareholders at an above-market price of $34 per share. At the second step of the transaction ("Step Two"), which closed on December 20, 2007, Tribune borrowed an additional approximately $3.7 billion, which was also guaranteed by the Subsidiary Guarantors. Tribune then paid out that $3.7 billion, plus $300 million from other sources, to purchase the remainder of its outstanding shares from its shareholders at the $34 per share price.

36. Over the course of the two steps, an additional approximately $2.8 billion of the LBO Debt was used to retire Tribune's 2006 Bank Debt, which had to be paid in full upon consummation of a transaction like the LBO pursuant to the governing credit agreements. Approximately $284 million more was paid in fees to advisors and lenders financing the LBO, and approximately $150 million was paid as special monetary incentives to the Tribune insiders who helped facilitate and consummate the deal. Thus, the entirety of the LBO Debt—and then some—was used to pay Tribune's shareholders,

LBO advisors, LBO Lenders, and management, and left Tribune saddled with nearly $2.8 billion of pre-LBO debt, plus $10.7 billion of new LBO Debt. Tribune also received $306 million from Zell, which represents the full cost that Zell paid to purchase control of the Company, and which imposed on the Company additional purported debt obligations to EGI-TRB of $225 million. This left Tribune with approximately $13.7 billion in total debt—more than double the Company's total debt prior to the LBO.



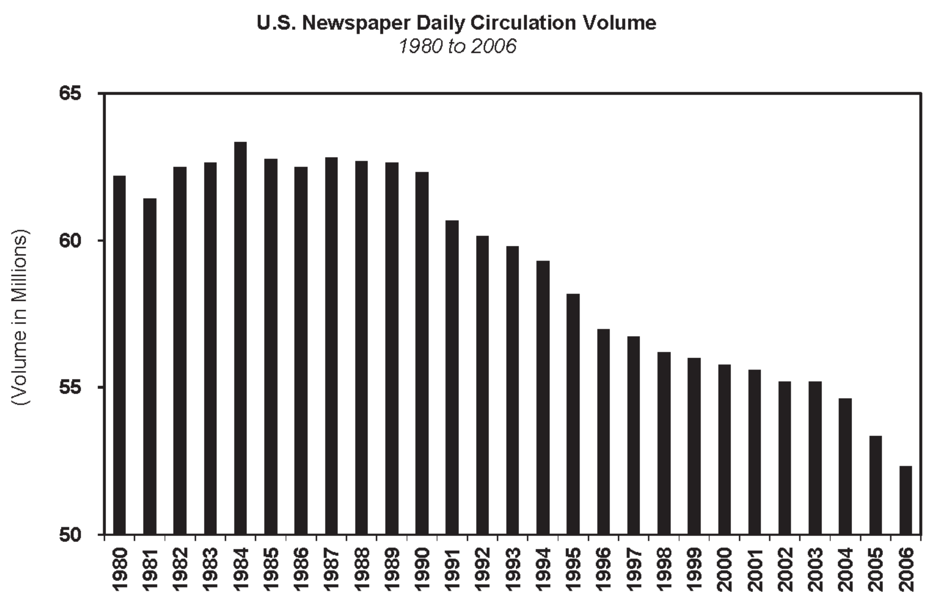
III. <u>Prior to the LBO, the Secular Decline in the Publishing Industry and Tribune's Deteriorating Performance Led the Controlling Shareholders to Begin Looking for an Exit Plan From the Company</u>

A. The Publishing Industry—and Tribune to a Greater Extent—Were in the Midst of a Deep Secular Decline During the Period Leading Up to the LBO

37. As the foregoing diagram illustrates, a leveraged buyout places a significant amount of debt on the target corporation, but the proceeds of that debt are used for purposes other than the corporation's operations or growth. If a company's

performance is not likely to enable it to service a substantial amount of new debt, then the company is a particularly poor candidate for a leveraged buyout, and will become a likely candidate for bankruptcy following the leveraged buyout.

38. This was certainly the case with Tribune. At the time that the LBO was planned and executed, the newspaper publishing business—which accounted for approximately 75% of Tribune's revenues—was in the midst of a severe secular decline. As shown in the graph below, by 2006, the newspaper publishing industry had experienced declines in circulation for almost two decades.

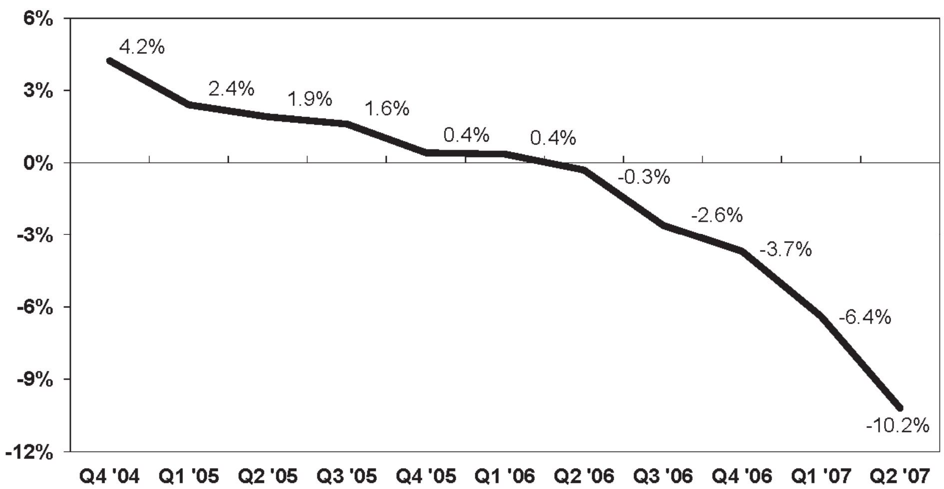


Source: Newspaper Association of America; JP Morgan Tribune Company Credit Analysis, May 29, 2007.

39. A secular shift was also occurring in the distribution of advertising dollars across alternative advertising media. The newspaper publishing industry was expected to have lost 9.8% of its share of the U.S. advertising market over the 10-year period from 1998 to 2008. Conversely, the Internet was expected to increase its market share by 9.7% over the same period. In addition, as shown in the graph below, the growth rate in

quarterly newspaper advertising expenditures began to decrease from the fourth quarter of 2004, and turned negative in the second quarter of 2006. By the second quarter of 2007, the quarterly rate of decline was over 10% on a year over year basis.

Growth Rates for Quarterly Newspaper Print Advertising Expenditure
Decline in Quarterly Newspaper Advertising Expenditures Began in 2004



Source: Research Dept., Newspaper Association of America.

40. These changes were structural, not cyclical, and represented a fundamental shift of advertising away from print media. The long-term secular decline plaguing the newspaper publishing industry was a great concern to the industry, and was widely reported on and discussed in various high-profile traditional media outlets during the period leading up to the LBO. Industry experts and analysts also agreed that the declines in circulation levels and advertising revenues were not likely to abate. For example, on March 15, 2007, the *Morton-Groves Newspaper Newsletter*—a leading industry newsletter that had been in operation for over 20 years—noted that the "business environment faced by publishers and media companies today has changed forever. Instead of an industry cycle with advertising recovering as the economy recovers, we have a secular shift." Similarly, on March 23, 2007, Morgan Stanley observed that

"February will likely go on record as one of the worst months for the newspaper industry in recent years," and stated that "it appears rather clear to us that new revenue streams are simply not enough to offset the secular shift of print to online."

41. To make matters worse, in the five years preceding the LBO, Tribune experienced significant declines in its circulation levels that were more severe than the overall industry. In an industry report dated March 2007, Deutsche Bank noted that the Company, as a national newspaper publisher, was experiencing greater circulation losses than local newspapers. The *Morgan Stanley Publishing Handbook* reported that daily circulation for the Company's seven largest newspapers in September 2006 decreased by 4.9% from September 2005, as compared to the industry average decrease of 4.0% for the same period. Similarly, March 2007 daily circulation of the Company's newspapers decreased by 4.1% from March 2006, as compared to the industry average decrease of 2.7% over the same period. Thus, Tribune's daily circulation fell at a rate that was 50% greater than the newspaper publishing industry as a whole in the 12 months prior to the Tribune Board's approval of the LBO. The Company's loss in classified advertising revenues—which represented over 28% of Tribune's publishing segment's total 2006 revenue—in the first quarter of 2007 was also greater than the industry average loss across all major categories. In short, the Company was performing so poorly that there could have been no reasonable expectation that it would be able to satisfy the additional $8 billion of debt that it incurred in the LBO. Consummation of the LBO in the face of the Company's sharply deteriorating performance and the publishing industry's secular decline resulted in what the *New York Times* referred to as "one of the most absurd deals ever."

B. The Company Retains Citigroup and Merrill

42. In response to the declining state of the newspaper industry, beginning in late 2005, the Tribune Board undertook a strategic review of the broadcasting and entertainment sector of the Company's business and considered possible changes to the structure and ownership of its properties. On October 17, 2005, the Company retained Merrill to assist in this evaluation and entered into an engagement letter pursuant to which Merrill agreed to "perform such financial advisory and investment banking services for the Company as are customary and appropriate" in connection with a potential strategic transaction. The engagement letter contemplated a "Success Fee" of $12.5 million payable to Merrill if the Company consummated such a transaction. As Merrill undoubtedly realized, however, this $12.5 million paled in comparison to the fees Merrill could earn if tapped to finance or manage a transaction. Accordingly, Merrill sought, and the Company agreed to, the following provision in the engagement letter:

> The Company hereby consents to Merrill Lynch or any of its affiliates to provide financing or act as book-running manager, lead manager, co-manager, placement agent, bank agent, underwriter, arranger or principal counterparty or other similar role on behalf of one or more potential Purchasers in connection with a Strategic Transaction, or otherwise assisting one or more potential Purchasers in obtaining funds, through debt or equity financing or the sale of debt or equity securities (the "Financing") in connection with a Strategic Transaction.

43. Shortly after engaging Merrill, the Company also engaged Citigroup to advise it in connection with a potential strategic transaction. The Company's engagement letter with Citigroup, dated October 26, 2005, contemplated a "Success Fee" of $12.5 million if the Company consummated a transaction. As it did with Merrill, Tribune also agreed in the Citigroup engagement letter to permit Citigroup to play a lucrative role with respect to any strategic transaction: "The Company hereby consents

to Citigroup or any of its affiliates to act as book-running manager, lead manager, co-manager, placement agent, bank agent, underwriter, arranger or principal counterparty . . . in connection with a Transaction."

44. Pursuant to their advisory engagements with Tribune, both Citigroup and Merrill stood to reap tens of millions of dollars in additional fees—on top of their combined $25 million in advisory fees (the "Advisory Fees")—if the Company entered into a transaction at the recommendation of its advisors. Citigroup and Merrill would ultimately play a central role in financing the disastrous LBO, earning approximately $33 million and $44 million in fees, respectively, in addition to the $12.5 million each of them received as a "Success Fee."

C. The Chandler Trusts Voice Serious Concerns About the Company's Future and Begin Agitating for Change

45. In May 2006, the Tribune Board, with the advice of Citigroup and Merrill, decided to engage in a leveraged recapitalization transaction (the "2006 Leveraged Recapitalization"), in which it ultimately repurchased 55 million shares of its then outstanding stock for a total of nearly $1.8 billion through a public tender offer and a private transaction with the Foundations. Following the 2006 Leveraged Recapitalization, the Chandler Trusts held approximately 20% of the Company's stock, and became the Company's largest shareholders. The Foundations held approximately 13% of the Company's outstanding stock, and became the second-largest shareholders.

46. Faced with the Company's rapidly declining performance, the Chandler Trusts began exerting their influence over Tribune . In June 2006, Michael Costa, a Managing Director at Merrill, commented that he was concerned that the Chandler Trusts

could not take such an active role in the Company without publicly disclosing their activities.

REDACTED

47. In a publicly filed letter to the Tribune Board dated June 13, 2006 and signed by Stinehart—himself a member of the Tribune Board—Stinehart, purportedly acting in his capacity as Trustee for the Chandler Trusts, complained that "[o]ver the past two years, Tribune has significantly underperformed industry averages and there is scant evidence to suggest the next two years will be any different." Stinehart reiterated his view that the Company's financial condition would continue to deteriorate over the foreseeable future:

> In addition to the failure of its primary strategy, the company is confronted with a fundamental erosion in both of its core businesses and the consequences of failing to invest aggressively in growing new businesses.
>
> Since 2003, Tribune's revenue and EBITDA have underperformed its peers, and, unfortunately, analyst estimates for the next two years indicate that they expect the same bleak picture.
>
> Not only has Tribune underperformed the industry averages, but the company has lagged business segment performance for *each* of the companies in the comparable list over the last two years. . . . This trend is only expected to continue for the next two years.
>
> Much as they have in the previous two years, management doggedly projects a turnaround, with steady revenue and operating cash flow growth over the next four years. This projected turnaround is hard to believe with no proposed change in strategy and little prospect for an upturn in the core businesses. Management has already revised estimates down since December 2005, suggesting the likely direction of future changes. With the current plan in place, we believe the risk of further deterioration in print and broadcast outweighs the projected growth in interactive, a segment that, while growing, still makes up less than 9% of revenues (including joint ventures).

48. In his letter, Stinehart pointedly reminded the Tribune Board that "the [Chandler] Trusts are the largest investor in the Company, and, more than any other shareholder, it is in their interest to see that either current value is maximized or a value enhancing strategic repositioning occurs." To that end, Stinehart demanded that the Tribune Board "promptly appoint a committee of independent directors to oversee a thorough review of the issues facing Tribune and to take prompt decisive action to enhance stockholder value."

49. Notably, one of the actions urged by Stinehart in his letter was the exploration of a leveraged buyout. After observing that realistic projections suggested that the Company's per share value could be as low as (or even lower than) $21 per share (compared to the inflated $34 per share payout that shareholders later received in the LBO), Stinehart stated that given the current market conditions of easy money, a leveraged buyout would enable shareholders to cash out of the Company at an elevated share price, and to escape the "huge downside risks" that the Company was facing. Thus, Stinehart stated to the rest of the Tribune Board:

> In addition, in light of inquiries received from very credible private equity firms, and the very liquid, low cost financing markets, it seems quite likely that a leveraged buyout could be accomplished at a price in excess of $35 per share. *This would provide shareholders cash value at or above the high end value implied in management's plans without any exposure to the huge downside risk of the as yet unaddressed fundamental strategic challenges of Tribune's business*. If a separation of broadcasting and newspapers cannot be accomplished by year end, the company should actively pursue inquiries from private equity firms. (Emphasis added.)

50. Stinehart concluded the letter by stating, "We are prepared to work directly and cooperatively with [a special] committee to further our common objective of maximizing value." Stinehart also threatened, however, "to begin actively purs[uing] possible changes in Tribune's management and other transactions to enhance value

realized by all Tribune stockholders" if timely action was not taken by the Tribune Board.

51. An agenda of "talking points" prepared by the Chandler Trusts on or about July 17, 2006 for the next Tribune Board meeting underscores the Chandler Trusts' extreme dissatisfaction with Tribune's declining performance, noting that the "Chandler Trusts have seen almost 40% of the value of their Tribune holdings evaporate into thin air. We believe action must be taken to recover as much as possible of this loss . . . ."

52. The Chandler Trusts also planned to stress that the Company needed to act "in a short timeframe. As Tribune is not a growth company, time is not on our side. Consequently, we have a real sense of urgency about action."

53. In subsequent sworn testimony, Stinehart explained his and the Chandler Trusts' view of Tribune's financial prospects in the early 2007 time period, and their efforts to effect a transaction that benefitted the Chandler Trusts' interests:

> We looked out and we saw a ski slope. Management looked at the ski slope as though it [were] a bunny hill and you can traverse across by cost-cutting and catch the Internet chair lift and go to the top, but what the [Chandler] Trusts saw was a four-star black-diamond run headed straight downhill. Costcutting gets you nowhere, and the chair lift's broken. Essentially there were two different versions of where the world was going, and we wanted off the ski slope. We originally wanted to get everybody off the ski slope, but we saw the world differently, and we had a special constituency that wanted off.

D. The Tribune Board Acquiesces in the Chandler Trusts' Demands, and the Controlling Shareholders Inject Themselves Into the Special Committee Process

54. In response to the demands made by the Chandler Trusts, in September 2006, the Tribune Board announced that it had established the Special Committee to oversee the Company's exploration of alternatives. Directors Hernandez, Holden, Morrison, Osborn, Reyes, Taft, and White, a majority of whom were deemed to be

"'audit committee financial experts' as defined in applicable securities laws," were named to the Special Committee. Officers FitzSimons, Grenesko, and/or Kenney attended all but one of the Special Committee meetings.

55. In or around October 2006, the Company retained Morgan Stanley to act as the financial advisor to the Special Committee. The Company agreed to, and did, pay Morgan Stanley more than $10 million in fees and expenses for serving in that role.

56. On October 2, 2006, Stinehart again wrote to the Tribune Board, on behalf of the Chandler Trusts, to ensure that the Chandler Trusts would play a significant role in the Special Committee's deliberations. Stinehart wrote:

> We appreciate Bill Osborn's [the Chairman of the Special Committee] call to [me] last week. . . . We believe such collaboration is important to assure that the Chandler Trusts will be in a position to support the conclusions of the special committee. This is especially important since several of the alternatives under consideration would likely require a vote of the stockholders and possibly other affirmative action by the [Chandler] Trusts.

Stinehart advised the Tribune Board that he, Chandler, and Goodan (collectively, the "Chandler Trust Representatives") would agree not to participate in the Special Committee, provided that

> they are assured full and bona fide cooperation and regular communication between the special committee and its advisors and the Chandler Trusts and their advisors. This must include, at a minimum, the opportunity to discuss with the special committee and its advisors important issues . . . in order that the views of the Chandler Trusts may be considered by the special committee as it proceeds.

57. At the beginning of 2007, Controlling Shareholder pressure on the Tribune Board intensified when the Foundations—which collectively held approximately 13% of Tribune's outstanding common stock and were Tribune's second largest shareholder group—also began advocating for change that would serve their own interests.

58. On or about January 4, 2007, the Foundations announced that they had retained Blackstone Group L.P. ("Blackstone") to advise them in connection with their investment in Tribune. At the time, Blackstone was working on a separate multibillion-dollar deal with Zell, who would soon set his sights on acquiring control of Tribune.

59. On or about January 10, 2007, the Foundations advised the Special Committee that it would be "difficult to do a transaction" without the support of the Controlling Shareholders, who collectively owned 33% of Tribune. That same day, the advisors to the Foundations acknowledged in an internal email that it was time for the Controlling Shareholders to begin exerting their control over the Special Committee, stating that the Special Committee needed to "know[] very specifically what the goals and objectives of 33 percent of the owners [are]. . . . The independence of the special committee of the Tribune Board has been important up till now. But it is time for everyone to declare their intentions."

60. Shortly thereafter, the Foundations' advisors reiterated that "it is important to make the Foundations' interest and objectives known at the very least to the special committee of the board and Dennis [FitzSimons]. . . . [We] also feel, to the degree possible, that management should be aware of [the Foundations'] perspective and that they are in support of the position(s) we take."

61. On January 22, 2007, counsel for the Chandler Trusts reached out to the Foundations to explore the possibility of pooling their combined holdings to exert even greater control over the Company and the "[d]irection . . . the Tribune should go." Conscious of the legal consequences of joining forces in this way, counsel for the Controlling Shareholders sought to paper the record by writing that they "should avoid

reaching any agreement or understanding between us." In fact, however, the Chandler Trusts and the Foundations intended to do exactly the opposite—to reach an agreement and understanding to use their voting power and influence to control Tribune—but to do so in a way they hoped would insulate them from the responsibilities that arise from taking such an active role in the Company's future. Upon information and belief, the Chandler Trusts and the Foundations did reach such an agreement and understanding, and the Chandler Trusts and the Foundations in fact acted in concert at all relevant times.

62. Minutes from Special Committee meetings in early 2007 reveal that the Controlling Shareholders injected themselves into the Special Committee process at every step of the decision-making process. The minutes show that the Special Committee repeatedly sought the Controlling Shareholders' views on potential strategic alternatives and spent significant time reporting on and discussing conversations with and letters sent by the Controlling Shareholders, and that the Controlling Shareholders' advisors were engaged in direct discussions with Tribune's management.

IV. Zell Proposes the Highly-Leveraged LBO, and Structures It to Respond to the Controlling Shareholders' Concerns

63. In late January 2007, Zell emerged as a potential bidder for Tribune. Upon information and belief, Zell reached out to the Controlling Shareholders prior to making a proposal to Tribune. On February 7, 2007, five days after Zell sent his initial proposal to the Tribune Board, the *Chicago Tribune* reported that he had spoken with the McCormick Foundation about his interest in structuring a proposal for Tribune. The article recognized that Zell would need the McCormick Foundation's support to make any deal work. The minutes of the February 12, 2007 Special Committee meeting reveal that Zell representatives also met with Chandler Trusts representatives concerning Zell's

proposal, and that the Chandler Trusts sent a letter to the Special Committee respecting those meetings.

64. On February 2, 2007, Equity Group Investments, LLC ("EGI"), a company owned principally by Zell, wrote to the Tribune Board to propose a transaction in which an EGI affiliate (ultimately, EGI-TRB) would acquire all of Tribune's outstanding common stock for $30 per share, pursuant to a merger in which Tribune would be the surviving corporation. Tribune would then elect to be treated as an S corporation for federal income tax purposes, with the result that Tribune would no longer be subject to federal income taxes, subject to certain limitations. A newly-formed employee stock ownership plan ("ESOP"), which would also be exempt from federal income taxes subject to certain exceptions, would thereafter acquire the majority of Tribune's outstanding common stock for approximately $800 million. EGI's proposal contemplated that EGI-TRB would provide approximately $1 billion of equity financing, and arrange for debt financing in the aggregate amount of $10.7 billion. The proposal also contemplated that approximately $2.2 billion of the Company's existing indebtedness would remain outstanding, which would bring the Company's total debt from less than $5 billion to approximately $12.9 billion—9.9 times the Company's 2006 earnings before interest, taxes, depreciation, and amortization ("EBITDA")—and would make the Company one of the most highly leveraged in the publishing industry.

65. On February 19, 2007, EGI submitted a revised LBO term sheet to Tribune (including FitzSimons and Grenesko). The revised terms increased the consideration to be paid to shareholders to $33 per share, and, remarkably, reduced EGI-TRB's equity investment to only $225 million (later increased such that Zell invested just

$306 million of the nearly $11 billion needed to consummate the LBO). EGI's new proposal contemplated that Tribune would incur a whopping $11.3 billion in additional debt—on top of the existing $2.2 billion of debt that would remain after the LBO—to finance the remaining cash payments to stockholders and the fees and expenses related to the transaction, and to refinance the Company's 2006 Bank Debt. The term sheet also provided that Tribune would enter into an Investor Rights Agreement that would grant EGI-TRB the right to designate two members to the Tribune Board, and provide Zell with other minority consent rights (including the right to serve as chairman of the Tribune Board).

66. On or about February 24, 2007, the Special Committee directed Tribune's management and financial advisors to solicit the views of the Chandler Trusts and the Foundations with respect to Zell's proposal. Tribune's financial advisors sent materials related to Zell's proposal to the Controlling Shareholders, and engaged in discussions with them respecting the proposal.

67. The Foundations and the Chandler Trusts responded with separate letters expressing concerns regarding the delays and completion risk associated with Zell's proposal. The McCormick Foundation's concerns centered on the price that Zell was offering shareholders, the time that it would take to close the deal (which the Foundations estimated to be between 9 and 12 months given the need to obtain approval from the Federal Communications Commission (the "FCC"), and the risk that, given that delay, the deal would not actually close. The Chandler Trusts echoed these concerns, writing to the Special Committee that Zell's one-step proposal could allow "the value of Tribune stock to decline during the interim period" before the transaction closed. The Controlling

Shareholders concluded their letters by stating that they were not willing to sign voting agreements supporting Zell's proposal.

68. In response to the Controlling Shareholders' concerns, the Special Committee requested that any further proposal submitted by EGI include a recapitalization that would provide an upfront distribution to Tribune's stockholders. EGI responded by submitting a revised proposal on March 4, 2007, which contemplated that prior to a merger, Tribune would effect a first step tender offer at $33 per share in cash as a means of providing a portion of the cash consideration to Tribune's stockholders more quickly and with greater certainty.

69. Over the course of the next few weeks, Tribune sought to increase the price to be paid to Tribune's stockholders in the LBO. During this time, the Special Committee and Tribune provided the Controlling Shareholders with regular updates respecting Zell's proposal, and Zell and EGI also negotiated directly with the Chandler Trusts and the Chandler Trust Representatives in order to reach agreement on terms for the LBO that would be acceptable to the Chandler Trusts. Throughout this process, none of the Controlling Shareholders, or any of their representatives on the Tribune Board, raised any concerns to Tribune or the Tribune Board about what would happen to the Company once it incurred the mountainous debt necessary to provide the Controlling Shareholders and their Tribune Board representatives with their lucrative payouts.

V. <u>Wall Street Derides Zell's Proposal as the Company's Performance Continues to Deteriorate</u>

A. Rating Agencies and Analysts Raise Concerns About the Zell Proposal

70. While the Company and the Controlling Shareholders analyzed Zell's proposal, various analysts expressed concern that the Company could not survive under

the burden of the debt it would place on the Company. For example, on March 16, 2007, Lehman Brothers ("Lehman") issued an equity research report stating: "In our opinion, this is way too high a portion of debt, especially given the secular pressures on the newspaper and TV station operations, with or without the ESOP tax benefits in our opinion (which are relatively small)." The report continued, "We think putting this much debt on Tribune's newspapers and TV stations is way too risky and makes it very possible to put the company into bankruptcy somewhere down the road, especially if the economy slows, with or without the added tax savings from the ESOP financing."

71. Credit rating agencies expressed similar concerns. In a letter to Bigelow dated March 29, 2007, Standard & Poor's ("S&P") stated that if the Zell leveraged buyout moved forward, "the company is expected to default in 2009 when its cash flow and revolving credit capacity are unable to cover its interest expense, capital expenditures, and working capital needs."

72. Similarly, notwithstanding Zell's efforts to "ma[k]e some contact at a senior level" at Moody's in order to obtain a favorable debt rating for the LBO, Moody's wrote to Grenesko on March 29, 2007 that it was "concerned that the significant amount of leverage is occurring at a time of pressure on the company's advertising revenue and operating margins from online and cross media competition and cyclical fluctuations in the U.S. economy."

B. The Company's Performance Raises Even More Concerns Among the Defendants and Other Financial Advisors

73. The Company continued its downward spiral during the early months of 2007. In early March 2007, the advisors for the Special Committee and Tribune, Morgan Stanley and Citigroup, discussed the Company's declining performance—"down 5% in

February, and 9% in January"—and whether Tribune was going "to modify their management plan for the second time in a month." Citigroup noted that while Tribune was not going to revise its business plan, it "had less confidence in the plan at present," and "certain members of publishing management were concerned" that "if the current business trajectory continue[d]" the Company would run afoul of the covenants in its loan documents.

74. The Company's declining financial performance also caused Tribune to temporarily second-guess its decision to continue pursuing the Zell proposal. For example, on March 10, 2007, Merrill's Costa stated that "in light of recent operating performance no comfort in putting the kind of leverage necessary for Zell proposal to work and have board get comfortable with employees owning the equity."

75. On March 11, 2007, an EGI employee sent an email to bankers at JPMorgan Chase Bank, N.A. ("JPMorgan") 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 will stick but for now we are in limbo." When asked why Tribune had decided not to pursue the LBO, the EGI employee responded that Tribune's Chief Executive Officer and Board Chairman, FitzSimons, "spent three days with the [Company's] publishers and got cold feet on the leverage." Notably, the amount of leverage associated with the LBO did not decrease in any material way subsequent to March 11, 2007. To the contrary, the only things that changed between March 11, 2007 and the date the LBO was approved and undertaken were that the Company's financial condition worsened, while management negotiated lucrative financial incentives that

would be paid to them in connection with the LBO, and the proposed consideration paid to shareholders *increased* from $33 per share to $34 per share.

76. The Company's advisors at Citigroup were also troubled by the amount of debt that the LBO would require and the Company's financial performance. On March 22, 2007, Julie Persily, a Managing Director at Citigroup, stated:

> Having seen the book I am still extremely uncomfortable with Zell. No matter the rating. Deal creep brings debt higher than the deal we approved for him which was 9.5bn new raise. (7.1x thru the new money.). Declining ebitda is scary. Until yesterday I did not know that Q1 cash flow was down 20 from last year. All I heard was that pub was 6mm off plan and broadcast was 5mm higher. I'm very concerned.

VI. The Parties Charged With Protecting the Company Are Lured by Financial Incentives to Support Zell's Proposal

77. Notwithstanding the concerns over the LBO raised by the Company and its advisors in mid-March 2007, Zell was ultimately able to induce the Officers to support the LBO by enticing them with lucrative financial benefits that would be awarded only if the LBO was consummated. In February 2007, EGI sent a proposed management equity incentive plan to, among others, Grenesko and Kenney at Tribune, with a copy to Zell. The plan was then forwarded to FitzSimons and Bigelow. The plan would provide key members of Tribune's management with "phantom" shares with an economic value equal to a percentage of Tribune's outstanding capital stock. An internal list of "deal points" that a top EGI executive wrote on February 27, 2007 suggested that a 5% stock option plan for management could be used to induce management to represent that the Company could achieve $100 million in cash savings.

78. On March 16, 2007, Bigelow instructed Tribune's financial advisors to make several changes to the "Zell model," including to increase the change of control payments by $20 million for possible transitional compensation. On March 26, 2007,

Kazan emailed Bigelow regarding the "management equity plan," and noted that Osborne "was supposed to talk to Zell today." The next day, Kazan advised Bigelow that management was pushing Zell to increase the value of the management equity plan from 5% of Tribune's stock to 10%. Ultimately, Zell and the Tribune Board agreed that upon consummation of the LBO, executives and employees of Tribune and/or its subsidiaries who played "a critical role in overseeing the completion of the transaction" would receive from the Company (a) $6.5 million (later reduced to approximately $5 million) in cash awards (the "Success Bonus Payments") and (b) phantom stock that allowed management to reap the economic benefits of stock ownership without actually owning stock (the "Phantom Equity Payments"), which was beneficial for tax purposes. The phantom stock was awarded in two tranches equal to 5% and 3% of Tribune's common stock. The 5% tranche vested over three years. Half of the 3% tranche vested upon consummation of Step Two, and the other half vested one year later. Officers Amsden, Bigelow, FitzSimons, Grenesko, Kazan, Kenney, Leach, and Mallory, among others, all received Success Bonus Payments and/or Phantom Equity Payments.

79. The Phantom Equity Payments and Success Bonus Payments were not the only financial incentives pushing the Officers toward facilitating and recommending the LBO. Consummation of the LBO would (and did) activate the premature vesting of millions of dollars in restricted stock units and stock options through an incentive compensation plan. The LBO also triggered enormous "change of control" severance payments (the "Executive Transition Payments," and together with the Phantom Equity Payments and Success Bonus Payments, collectively, the "Insider Payments") for officers let go after the LBO that were equal to three times the employee's highest annual salary

during the past three years and six times the employee's target bonus for the current year. The Merger Agreement expressly provided that the LBO would constitute a "Change of Control" under all of Tribune's various employee benefit plans, and that the surviving company—not just pre-LBO Tribune—was obligated to pay the Executive Transition Payments. These Executive Transition Payments resulted in more than $10 million for FitzSimons, who knew by late March that he would be terminated following the LBO.

80. All of the Officers—each of whom played a critical role in ensuring that the LBO was consummated—benefitted greatly from these special monetary incentives. The final terms of the LBO provided that the Officers would collectively receive more than $42 million in special monetary incentives for closing the deal, in addition to the aggregate payments of more than $36 million that they would receive for selling or redeeming their Tribune shares in connection with the LBO.

81. Upon information and belief, Zell and EGI also communicated to certain of the Directors and Officers that they would be rewarded with a future role at Tribune if they helped facilitate the LBO. For example, upon information and belief, Zell and/or his subordinates at EGI signaled to Bigelow—who kept Zell apprised of the Special Committee process notwithstanding an instruction to keep the information confidential—that if the LBO closed, Bigelow would be promoted to Chief Financial Officer of Tribune. Zell made good on this promise in or around March 2008, three months after the second step of the LBO closed.

82. By structuring and/or agreeing to these special incentives, Zell enticed the Officers to recommend the LBO to the Special Committee, and those Officers in turn committed intentional fraud in order to facilitate the LBO's consummation. At a

March 30, 2007 meeting with the Special Committee, FitzSimons, who received more than $37 million in connection with the LBO, reported to the Special Committee "that it was management's recommendation that the Company proceed with Zell's proposal."

VII. Citigroup and Merrill Advise Tribune Notwithstanding Debilitating Conflicts of Interest

83. Defendants Citigroup and Merrill were also heavily incentivized to favor the LBO over the other proposals being considered by the Company. As noted above, Citigroup and Merrill were engaged by Tribune in October 2005 to advise Tribune in connection with potential strategic transactions, but their engagement agreements expressly provided that they also could participate as lenders in any such transaction engaged in by the Company. From the time of their engagement, representatives of Citigroup and/or Merrill participated in no fewer than ten Tribune Board meetings—the vast majority of which they attended in person at Tribune's headquarters in Tribune Tower in Chicago, Illinois. These included meetings held on December 6, 2005, May 1, 2006, May 26, 2006, July 19, 2006, September 21, 2006, October 18, 2006, December 12, 2006, February 13, 2007, and October 17, 2007.

84. Moreover, although Morgan Stanley was the Special Committee's financial advisor, during the months leading up to approval of the LBO, representatives of both Citigroup and Merrill met with the Special Committee on a near-weekly basis. While a number of these meetings were telephonic, the defendants' representatives personally attended Special Committee meetings in Chicago on October 18, 2006, January 12, 2007, January 20, 2007, February 12, 2007, February 13, 2007, and March 30, 2007.

85. Michael Costa and Michael O'Grady, both Managing Directors in Merrill's Investment Banking Division, were intimately involved in advising Tribune on the LBO. They worked hand in hand with Merrill's Leveraged Finance team, headed by Chicago-based Todd Kaplan, the Chairman of Merrill's Global Leverage Finance Group, and David Tuvlin, a Managing Director in the same group.

86. The Tribune advisory team at Citigroup was headed by Christina Mohr, a Managing Director, and Rosanne Kurmaniak, a Vice President. The lending side was led by Julie Persily, a Managing Director and Head of North America Leveraged Finance.

87. Prior to the approval of the LBO, among Citigroup's and Merrill's principal responsibilities was to solicit third parties to express interest in a buyout of the Company. By October 2006, 17 potential outside purchasers had expressed interest in the Company. Citigroup and Merrill acted as advisors to the Company in evaluating these proposals. However, Citigroup and Merrill each had an inherent conflict of interest. As noted above, if any of the transactions went forward, Citigroup and Merrill, or their affiliates, were highly likely to participate in financing the transactions and stood to make tens of millions of dollars in additional fees from such financing. Citigroup and Merrill thus had a strong financial incentive to advise the Company to agree to a substantial sale or recapitalization even if doing so were not in the best interests of the Company.

88. The defendants' inherent conflict of interest as advisors and potential lenders crystallized as the Zell proposal moved forward. At the same time Citigroup and Merrill were advising the Company on Zell's proposal, they were already negotiating for themselves or their affiliates to provide financing for the LBO from which they would receive millions of dollars in fees, interest at premium rates that were far higher than

those they were earning from the 2006 Bank Debt, and security in the form of the Subsidiary Guarantees (defined below). For example, on March 31, 2007—the eve of the Special Committee's approval of the EGI proposal—Costa sent a memorandum to Merrill's internal Fairness Opinion Committee recommending that the committee find the EGI proposal fair to Tribune's stockholders. This memorandum disclosed that advisory fees payable to Merrill were expected to be approximately $15 million, on top of which Merrill and its affiliates anticipated earning an additional $50 million based on a debt financing commitment of $4.1 billion. Merrill ultimately issued its fairness opinion dated April 1, 2007, which Tribune attached to its Form SC TO-1, Tender Offer Schedule and Amendment.

89. There was little pretense of separation between Merrill's investment banking advisory team headed by Costa and the leveraged finance team headed by Kaplan, who ultimately spearheaded Merrill's efforts on the lending side. And both teams were motivated by a common objective: maximizing Merrill's fees through advocacy of the Zell proposal. During the months preceding the April 1, 2007 approval of the LBO, both Costa and Kaplan served as advisors to Tribune and met regularly with the Tribune Board and Special Committee. Even after Kaplan shifted his focus from advising Tribune to arranging financing for the eventual buyer, he and Costa remained in regular contact. For example, in a January 26, 2007 email, Costa asked Kaplan, "Can we get more forceful/formal expression of interest from Zell[?]" And in a March 11, 2007 email exchange in which Kaplan advised Costa that Merrill could expect approximately $33 million to $35 million in financing fees with respect to the LBO, Costa responded

that Merrill should get "more aggressive." When Kaplan asked, "What are you expecting, and why[?]," Costa's response cut to the chase: "More money."

90. Citigroup's advisory group, headed by Mohr, likewise communicated and worked closely with the lending group, headed by Persily, in promoting the Zell proposal. Even though Citigroup's engagement letter with Tribune precluded the advisory team from sharing non-public information with the financing team, Mohr described her advisory group's contact with Persily's group as an "active dialogue," which included providing the lending group with its analyses to integrate into the latter's work and continued even after Persily's team was charged with developing the financing for Zell to facilitate the LBO. Moreover, Citigroup's advisory group maintained the Company's financial model that was used by the lending group and Tribune. As Kurmaniak later testified, "[T]he model was run by Citi with guidance from Christina [Mohr] and other people on our transaction team as well as guidance primarily from the company about what the underlying assumptions of the model should be." And when Kurmaniak had reservations about the appropriateness of Citigroup maintaining the Company's model, she did not raise those concerns with Mohr, her boss, but rather with Persily.

91. The defendants had yet additional reasons to be biased in favor of the Zell transaction. Citigroup and Merrill either enjoyed or sought to develop relationships with Zell and his companies that the defendants hoped would lead to lucrative business opportunities in the future. For example, Kaplan had a longstanding business relationship with the Zell interests dating back to 1986. In fact, he was offered a job with one of Zell's companies in early 2008, shortly after the completion of the LBO. Citigroup and its affiliates similarly viewed the Zell proposal as an opportunity to cultivate a

relationship with Zell. Just weeks before the Special Committee approved the Zell offer, the head of Citigroup's North America Real Estate and Lodging Group wrote to Mohr that "[i]f we end u[p] helping sam, if appropriate, please let him know how important his relationship is to our ecm and real estate teams . . . . We are trying to win a book position on his IPO of Equity International." And in the weeks immediately following the closing of Step One of the LBO, Mohr and her team made several presentations to Zell and EGI in an effort to garner business from them.

92. Thus, both Citigroup and Merrill had strong and manifold incentives to steer Tribune into the maw of the Zell-sponsored LBO. When, in early March 2007, it appeared that the Company might move away from the Zell proposal, the defendants were unabashed in their disappointment. On March 10, 2007, Tribune informed Zell that it was reconsidering whether to proceed with the LBO because, among other things, of the high degree of leverage under that proposal. Thereafter, the Company discussed with the Chandler Trusts and the Foundations the possibility of pursuing a recapitalization and spin-off transaction with a lower per share dividend to reduce the leverage required for that transaction. Upon learning of the Company's decision to table the Zell proposal, Citigroup's Mohr wrote an email to Persily and others at Citigroup informing them that "[t]he company wants to go to the recap[italization] route and has told Zell that they are pencils down on his proposal." After considering the lower debt associated with the recapitalization proposal, Persily wrote to Mohr, "Bummer. Say g'bye to another 18mm of fees (gross)." Mohr responded in kind: "Tell me about it." As it turned out, the pause in the Company's interest in the Zell proposal was brief, and Citigroup and Merrill eagerly resumed their efforts to facilitate the disastrous LBO.

93. The Company purportedly recognized Citigroup's and Merrill's conflicts and sought to mitigate them through its retention of Morgan Stanley to advise the Special Committee. But Morgan Stanley also suffered from conflicts of interest, as Morgan Stanley's engagement letter made $7.5 million of Morgan Stanley's fee contingent on the preparation of an opinion concerning, or the closing of, a financial transaction, recapitalization, or restructuring plan for Tribune. The engagement letter also provided for a discretionary "additional" fee. Morgan Stanley later aggressively sought such a discretionary fee, although the Company declined to pay it. Furthermore, notwithstanding that Morgan Stanley was hired because it agreed in its engagement letter not to participate as a lender in the LBO—and thus be free of the conflicts attendant to potential lenders—it repeatedly and persistently pressed for a role as a lender. Like Citigroup and Merrill, Morgan Stanley stood to gain substantially more if the LBO proceeded than if another transaction was consummated.

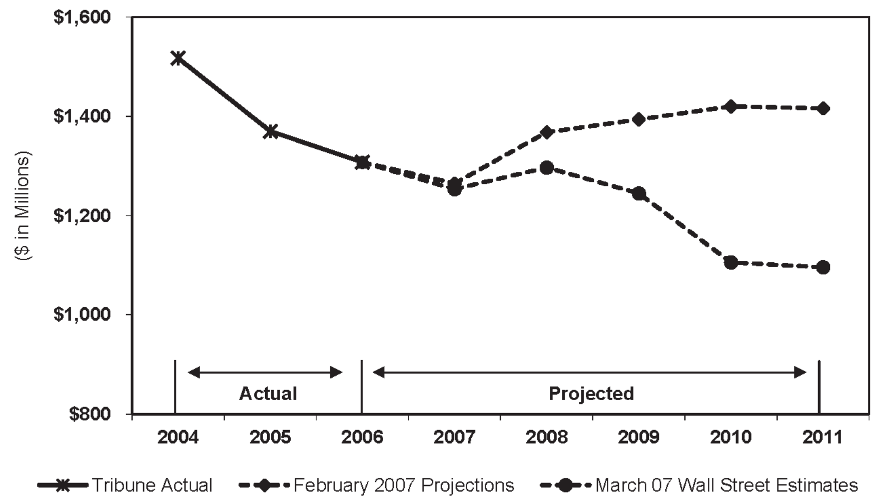
VIII. <u>Incentivized to Favor the LBO, the Officers Create Fraudulent, Unrealistic Projections</u>

94. While certain of the Officers—including Bigelow, Grenesko, and Kazan—were negotiating with Zell over the amount of the special monetary incentives they would receive if the LBO was consummated, those same Officers prepared a revised set of long-term projections (the "February 2007 Projections"). This was the fourth set of long-term projections issued by the Company in less than a year. The February 2007 Projections were prepared in the midst of an accelerating, long-term, secular decline in the publishing industry, which industry accounted for approximately three-quarters of Tribune's revenues. Moreover, as noted, the Company's publishing assets were performing poorly at the time of the LBO even by the standards of the troubled publishing industry. The

Officers were aware of these secular declines and of Wall Street consensus estimates predicting decreasing EBITDA over the projection period, but nevertheless prepared unrealistic and unfoundedly optimistic projections that they knew the Company would not be able to meet.

95. Incredibly, the February 2007 Projections predicted that the Company would materially outperform 2006 in the latter half of 2007, and that its performance would continue to improve in subsequent years. To give but one example, the projections assumed that the Company's small Interactive business, which accounted for just 4% of the Company's revenues in 2006, would somehow double its growth during the 2007-2011 projection period. Citigroup and Merrill commented that the "Tribune Management Projections [were] generally more aggressive than Wall Street research," were "[a]bove consensus for Revenues and EBITDA through 2008," and that "2008 [was] considerably higher than even [the] most aggressive Wall Street estimate."

Tribune – Consolidated Actual and Projected EBITDA
Case Projections Are Inconsistent With March 07 Wall Street Estimates



Note: Actual EBITDA adjusted to include stock based compensation; and Projected EBITDA adjusted to include stock-based compensation and cost savings for 2007 – 2011, and exclude Cubs and Southern Connecticut Newspapers, Inc. for 2008 – 2011.

Sources: Tribune Co. Proxy Statement, July 13, 2007; Reuters Mean Consensus Estimates (March 2007); Tribune ESOP Transaction Model; Tribune Rating Agency Presentation, March 2007.

96. Emails among the Officers show that they knew that the February 2007 Projections were premised on unrealistic assumptions—and that they had been prepared without input from the members of Tribune management who may have questioned those assumptions. For example, the projections assumed that the Company would receive cash income from its joint ventures, notwithstanding that, historically, this was not the case, and that the Company did not and could not control those joint ventures because it held only a non-controlling interest in them. Timothy J. Landon, a director of several of Tribune's subsidiaries, was the person in management familiar with the joint ventures, and knew that the joint ventures had not distributed all their profits as cash before, and that there was no reason to expect them to begin doing so. Nevertheless, Landon was not asked whether the February 2007 Projections' assumption about the joint ventures was justifiable, or even told about the assumption. Rather, in an August 2007 email with the subject line "Joint Venture Cash Distributions," Peter Knapp, the Company's publishing

group controller, wrote to Landon, "[W]e need to start having the cash generated at our joint ventures come back to us because that is what we are assuming in the model." Landon responded shortly thereafter, remarking that such an assumption was "unrealistic" and inconsistent with the Company's actual intention:

> Not sure our other partners will be supportive of this. Certainly management will not be. This is a really tricky conversation *and it would seem we have set very unrealistic expectations*. (Emphasis added).

97. Landon's response showed that, incredibly, the Officers did not vet the February 2007 Projections with the members of management who were actually knowledgeable about the assumptions on which the projections were based. Landon confirmed in his email that the Officers did not confer with him about their joint-venture cash-flow assumptions, stating that "the first time I was aware that we were expected to take cash distributions for [sic] the ventures [was] in the last month," and specifically remarking that the assumption was "pretty inconsistent with the conversations [the Company] was having" with one of its joint venture partners.

98. The Company also appears to have massaged its expense data. For example, in December 2006, Kazan questioned the capital expenditure forecast that was ultimately incorporated into the February 2007 Projections. Kazan stated, "On the capex, we don't really have an explanation for the $35 million reduction (which, by the way, was spread over Pub, Broadcasting and Corporate), so I wouldn't highlight this—just begs someone to ask why and we don't really have an answer."

IX. The Company Struggles to Find a Firm Willing to Opine That the Company Would Be Solvent Following the LBO

A. Duff & Phelps Declines to Provide Tribune With a Solvency Opinion for the LBO

99. A "solvency opinion" is a recognized and commonly used vehicle in leveraged transactions to provide assurances to lenders, the borrower (*i.e.*, the target company itself) and other participants that the company will not fail after and as a result of the transaction, and that the transaction will not effect a fraudulent conveyance. Typically rendered by a reputable, independent financial advisory firm, a proper solvency opinion is the result of a standardized, legally condoned methodology that is designed to test whether a company will be able to survive under the weight of the additional leverage it intends to incur. A proper solvency opinion is generally a prerequisite to any leveraged transaction on the scale of the Tribune LBO, and is the central safeguard against overloading the company with debt and putting existing creditors at risk.

100. On February 13, 2007, the Tribune Board engaged Duff & Phelps to provide, for a fee of $1.25 million, an opinion as to the solvency and capitalization of Tribune following either an internal recapitalization and spin-off of the Company's broadcasting unit or, in the alternative, the LBO. In order to conduct its solvency analysis for Tribune, Duff & Phelps was granted access to Tribune's datasite and, accordingly, had full access to all documents relevant to Tribune's financial condition.

101. In the period between March 19, 2007 and March 28, 2007, Duff & Phelps concluded that it could not render a solvency opinion to the Tribune Board in connection with the LBO because the transaction would render Tribune insolvent—unless Duff & Phelps took into account approximately $1 billion in future income tax savings that Tribune hoped to realize by converting to a Subchapter S corporation following the

merger. An S corporation passes income directly to its shareholders, thus avoiding income taxation at the corporate level. Moreover, the portion of an S corporation's ownership that is held by an ESOP is not subject to income tax at the federal level (and usually not at the state level). Tribune intended to avoid the payment of these taxes—and retain in the Company the cash that ordinarily would have been used to pay them—by converting itself into an S corporation that was 100% owned by the ESOP following the LBO.

102. Duff & Phelps ultimately concluded, however, that it could not consider future (and uncertain) tax savings under any of the applicable legal or valuation standards that it was required to use to assess Tribune's post-transaction solvency. Handwritten notes on a draft Duff & Phelps engagement letter read: "Solvency Opinion—very specific definition under [Delaware] law. Could not sell co[mpany] to anyone and repay debt. Need S corp benefits. Assets will not exceed liabilities w/o looking at S corp benefits." Upon information and belief, Tribune knew that Duff & Phelps would not provide a standard "solvency opinion" for the LBO because Duff & Phelps could not take the S corporation tax benefits into account in issuing such an opinion.

103. On or around March 28, 2007, Duff & Phelps prepared a preliminary solvency analysis of the LBO that plainly demonstrated that, using a low-end estimation of Tribune's post-transaction enterprise value, Tribune's liabilities would exceed its assets by over $300 million unless $900 million in anticipated tax savings from the S corporation/ESOP structure were taken into account. By this time, Duff & Phelps knew that Tribune faced a real risk of bankruptcy if it went forward with the transaction, and had discussed the bankruptcy risk internally.

104. On or around March 28, 2007, Duff & Phelps advised the Tribune Board that it could not provide a solvency opinion in connection with the LBO. Intending to move forward with the LBO and knowing that Duff & Phelps could not provide the solvency opinion that was a precondition to the consummation of the transaction, the Tribune Board terminated Duff & Phelps' engagement.

B. Tribune Retains VRC to Issue a Solvency Opinion After Houlihan Lokey Voices Concerns Over the LBO

105. As noted, Duff & Phelps advised the Tribune Board that it could not provide a solvency opinion in connection with the LBO on or about March 28, 2007. Finding a solvency opinion firm to provide the requisite opinion turned out to be no easy task. Tribune first approached Houlihan Lokey ("Houlihan"), a prominent solvency opinion firm, which informed Tribune on March 29, 2007 that it would not bid for the engagement. In soliciting Houlihan's involvement, Tribune's management did not tell Houlihan that Duff & Phelps had considered the transaction and concluded that it would render the Company insolvent. But even without knowing that Duff & Phelps had concluded that the Company would be insolvent following the LBO, Houlihan independently reached the same conclusion, stating that it would be "tough" to find Tribune solvent based on the preliminary information with which it was provided. In December 2007, Houlihan commented that the "Com[pa]ny was insolvent in [M]ay and [is] more so now."

106. Based on communications from Duff & Phelps and Houlihan, the Officers, including Bigelow and Grenesko, knew that they could not obtain an industry-standard solvency opinion in connection with the LBO. They therefore scrambled to find another firm that was willing to provide a *non*-standard opinion that the Company could use to

close the deal. On March 30, 2007, Bigelow emailed a lesser known solvency opinion firm—VRC. Bigelow told VRC that he "would very much like to speak with someone about solvency opinion work," and requested that VRC respond to him that very day. Later that same day, Bigelow provided preliminary information to VRC.

107. VRC's initial reaction was that the proposed transaction was "[h]ighly [u]nusual (because of S-Corp ESOP tax benefits) and highly leveraged," and that the Company consisted of "good, stable but deteriorating businesses." One VRC executive wrote: "This may be just acceptable risk levels, but we will need to be compensated. My fee estimate would be $600-700k. . . ." Another VRC executive responded: "I would say at least $750[K] and maybe significantly more depending on levels and if they need bringdowns, etc." The reply revealed VRC's misgivings notwithstanding the potential for a high fee: "I'd like to discuss HLHZ [Houlihan] not wanting to bid. Raises the risk by itself."

108. In order to compensate for its misgivings about this risky assignment, VRC charged Tribune $1.5 million, the highest fee it had ever charged for a solvency opinion.

109. On April 11, 2007, Tribune formally engaged VRC to provide the Tribune Board with solvency opinions at Step One and Step Two. VRC's engagement letter, which was negotiated and edited by certain of the Officers, including Bigelow and Hianik, and signed by Bigelow, required a modification of the legal and industry standard definition of "fair value," which is determined based on the assumption that the company at issue is being purchased by a "hypothetical buyer." Instead, as set forth below, the definition contained in the engagement letter permitted VRC to assume, for purposes of

its balance sheet solvency opinion, that the party purchasing Tribune was an S corporation wholly owned by an ESOP:

> **Fair Value** – The amount at which the aggregate or total assets of the subject entity (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, for purposes of the Step Two Opinion, both having structures similar to the structure contemplated in the Transactions by the subject entity (an S-Corporation, owned entirely by an ESOP, which receives favorable federal income tax treatment), or another similar structure resulting in equivalent favorable federal income tax treatment*. (Emphasis added.)

This manipulation of the standard definition of "fair value" enabled VRC to calculate fair market value in the very same manner Duff & Phelps had concluded was contrary to legal and industry standards. Bryan Browning, a VRC Senior Vice President who was involved in the LBO solvency analysis and who had worked on 400 to 500 solvency opinions, later testified that he had never before worked on a solvency opinion that modified the definition of fair value in that fashion. The decision to manipulate the definition of fair value in this manner completely eviscerated the protections that should have been afforded to the Company and its creditors by the solvency opinion requirements set forth in the LBO transaction documents.

X. Lured by the Financial Incentives Associated With the LBO, the Controlling Shareholders and Directors Facilitate and Approve the Transaction

A. Zell Induces the Controlling Shareholders and Chandler Trust Representatives to Support the LBO by Proposing a Higher Purchase Price for Shareholders

110. On March 30, 2007, the Special Committee directed Osborn, who worked through Company management, including FitzSimons and Kenney, to improve and finalize the Zell proposal. Over the course of the next 24 hours, Tribune, the ESOP, EGI, and the Chandler Trusts negotiated the agreements respecting Zell's proposal. In the

course of these negotiations, EGI-TRB agreed to increase the price to be paid to Tribune's stockholders to $34 per share. EGI-TRB further agreed that its initial $250 million investment in Tribune would be based on a $34 per share price, and that its total investment would increase to $315 million in connection with the merger—as opposed to the $1 billion equity investment Zell had originally proposed. That total consisted of the $225 million Subordinated Note and $90 million for a warrant, against which the Company credited $6 million in interest that EGI-TRB purportedly earned on the $200 million note it received in connection with Step One, and $2.5 million in fees incurred by Zell and/or EGI-TRB in connection with the transaction, such that the total amount of money that Zell ultimately invested in Tribune was just $306 million.

111. As part of these negotiations, the Chandler Trusts agreed to enter into a voting agreement with the Company whereby they agreed to vote their shares in favor of the LBO, and against any alternative transaction, in exchange for certain registration rights. The Chandler Trusts further committed that they would not transfer their shares without also obtaining from any recipient a similar commitment to vote the transferred shares in favor of the LBO, and against any alternative transaction.

112. As the parties involved in the LBO widely acknowledged, the voting agreement with the Chandler Trusts virtually guaranteed shareholder approval for the LBO. After the Chandler Trusts' and other Tribune shares were tendered during Step One, the Foundations and Zell controlled close to 50% of the remaining outstanding shares. Accordingly, only a tiny percentage of holders of the remaining shares needed to vote in favor of the merger in order for shareholder approval to be secured.

113. Once EGI-TRB increased the purchase price to $34 per share, the Foundations' support for the LBO was also a foregone conclusion. On Saturday, March 31, 2007, Joseph Hays, the spokesperson for the McCormick Foundation, sent an email to the McCormick Foundation's financial advisors at Blackstone that "[t]hose that I spoke with today say management was on the phone all day 'finishing the deal,' and that it looks to them like the Zell deal will be announced tomorrow, Sunday." Hays sent a separate email to a senior advisor at Blackstone the next day, writing, "God understands, but may not forgive us for what are bout to do to good Olde TRB." Like any reasonable person with knowledge of the publishing industry and the Company's financial condition, Hays knew that approval of the LBO meant an end to Tribune as a going concern.

B. The Special Committee and Tribune Board Breach Their Fiduciary Duties by Approving the LBO

114. On April 1, 2007, the Special Committee unanimously recommended that the Tribune Board approve the "Zell/ESOP transaction to acquire Tribune for $34 per share." The Directors (other than Taft who was absent and Stinehart, Goodan, and Chandler, who abstained from voting) then voted to agree to Zell's proposal, and caused Tribune to enter into the Merger Agreement contemplating that the LBO would proceed in a two-step transaction. In the first step, Tribune would incur approximately $7.015 billion in debt to retire its existing bank facility, and purchase approximately 50% of the Company's outstanding shares (126,000,000 shares) in a tender offer for $34 per share. In the second step, Tribune would incur approximately $3.7 billion in additional debt to purchase its remaining outstanding shares for $34 per share in a go-private merger following certain regulatory and shareholder approvals.

115. The LBO enabled the members of the Special Committee to reap aggregate payments of more than $6 million, and enabled the other members of the Tribune Board to collectively pocket tens of millions of dollars more from stock sales and special incentives, all at Tribune's expense. The members of the Special Committee and the Tribune Board, in respectively recommending and approving the LBO, breached the fiduciary duties of care, good faith, and loyalty that they owed to the Company and to its creditors.

116. Minutes from the Special Committee and Tribune Board meetings show that the Special Committee and Tribune Board completely disregarded the interests of the Company and its existing creditors, and focused exclusively on providing shareholders with the highest price for their shares that could be achieved. Neither the Special Committee nor the Board considered whether incurring an additional $8 billion of debt to fund such a high price constituted a breach of fiduciary duty to the Company and its creditors, given the Company's deteriorating financial condition and dismal future outlook.

117. To the contrary, the proxy statement accompanying the Company's tender offer at Step One stated that the Special Committee considered the trends contributing to the secular decline in newspaper publishing, such as the "weakened demand" for newspaper advertising and the "declines and potential declines in newspaper circulation," as factors that weighed *in favor* of recommending the LBO and of shareholders tendering their shares. In short, the Special Committee recommended to shareholders that they should get out while the getting was good. The Special Committee, and the Board in accepting its recommendation, wholeheartedly endorsed the Controlling Shareholders'

exit plan, without considering the effect these negative trends would have on the Company and its residual risk-takers—the pre-LBO creditors—following the LBO.

118. The Special Committee and Tribune Board should have abandoned the LBO when Duff & Phelps concluded that it could not provide a solvency opinion, or when Houlihan refused to even bid on the solvency opinion engagement. Instead, the Special Committee and Tribune Board went shopping for a customized solvency opinion and, for the right price, found a willing provider in VRC. The Special Committee and Tribune Board also should have considered the universally negative reaction to the LBO among news outlets, industry analysts, and rating agencies. Yet minutes of the Special Committee and Tribune Board meetings between the time that the LBO was proposed by Zell and the time that the Company approved the transaction reflect no discussion of these criticisms.

119. Moreover, the Directors failed to acknowledge that the negative trends facing the publishing industry and the Company rendered the February 2007 Projections—which projected that the Company's performance would begin improving steadily in the latter half of February—patently unreasonable. This was a particularly egregious failure. Because a leveraged buyout places such a high amount of leverage on the target, it is essential that the base case projections on which the leveraged buyout is premised be reasonable and reliable. Had the Directors paid even minimal attention to the challenges facing the newspaper publishing industry at the time of the LBO, they could not have continued to rely on the February 2007 Projections.

120. It is also crucially important that a leveraged buyout be tested using reasonable downside projections, so that the target can ensure that it will be able to

service its increased debt and continue operating as a viable company even in the face of a significant downturn. Nevertheless, neither the Special Committee nor the Tribune Board requested that management or the Company's advisors perform the quality of downside testing of the Company's projections that the Tribune Board had previously insisted on in connection with the 2006 Leveraged Recapitalization, which involved far less leverage than the LBO, and was consummated during a period of comparatively better financial performance for the Company and the industry as a whole.

121. In connection with its consideration of the 2006 Leveraged Recapitalization, the Tribune Board considered whether the Company could sustain an additional $2 billion in debt. The members of the Tribune Board at the time insisted on testing the 2006 transaction assuming the onset of a recession similar to that of 2001. Specifically, the Tribune Board examined a scenario in which revenues declined by 15%, and then recovered by 5% annually over the next three years.

122. REDACTED

REDACTED

123. Significantly, prior to the submission of Zell's proposal, the Special Committee spent substantial time reviewing the Company's projections and its ability to handle increased leverage (albeit, materially less leverage than the LBO Debt) in connection with its consideration of various strategic alternatives in which shareholders would continue to maintain an ownership interest in the Company.

REDACTED

Once the Special Committee shifted its attention to the Zell proposal contemplating that shareholders would cash out of the Company completely, however, discussion by the Special Committee, the Tribune Board, and Tribune's advisors respecting the reliability of the Company's projections or the Company's ability to handle additional leverage ceased completely. At that point, in derogation of their obligations to the Company and the parties that would continue to hold an interest in its performance following the LBO, the Special Committee, the Tribune Board, and defendants Citigroup and Merrill focused exclusively on the value that would be provided to shareholders by the LBO.

XI. The Company Begins Implementing the Disastrous LBO Amid a Growing Chorus of Criticism of the Transaction

A. Tribune Announces the LBO and Begins Taking the Steps Necessary to Consummate the Transaction

124. On April 1, 2007, Tribune entered into Step One and Step Two financing commitment letters that obligated Citigroup, Merrill, JPMorgan, and Bank of America, N.A. ("Bank of America") and affiliated entities of each of them (collectively, the "Lead Banks"), to provide up to $12.2 billion in financing in order to consummate the LBO.

125. On April 2, 2007, Tribune publicly announced that it had agreed to Zell's proposal. Tribune's press release stated in relevant part:

> With the completion of its strategic review process, Tribune Company today announced a transaction which will result in the company going private and Tribune shareholders receiving $34 per share. Sam Zell is supporting the transaction with a $315 million investment. Shareholders will receive their consideration in a two-stage transaction.
>
> Upon completion of the transaction, the company will be privately held, with an Employee Stock Ownership Plan (ESOP) holding all of Tribune's then-outstanding common stock and Zell holding a subordinated note and a warrant entitling him to acquire 40 percent of Tribune's common stock. Zell will join the Tribune board upon completion of his initial investment and will become chairman when the merger closes.
>
> The first stage of the transaction was 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 Sam Zell . . . .
>
> The second stage is a merger 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 his investment in Tribune to $315 million.

126. An Investor Rights Agreement executed in connection with the LBO granted Zell the power to veto major transactions, even though his investment in the Company was nominally structured as "debt" and a warrant rather than equity. Under the

terms of the Investor Rights Agreement, transactions with a value of more than $250 million, among others, would require the approval of the Tribune Board, which would include two directors of Zell's choice. Such transactions, along with any changes to the Company's by-laws, would require approval of a majority of the Tribune Board's independent directors as well as that of one of Zell's appointees. On May 9, 2007, Zell was appointed a member of the Tribune Board. Consistent with the reality of Zell's position as the new controlling equity holder, the parties involved in the LBO routinely referred to Zell's "loans" to the Company as equity investments.

127. On April 23, 2007 EGI-TRB made its initial $250 million investment in the Company in exchange for (a) 1,470,588 shares of Tribune's common stock at a price of $34 per share and (b) a $200 million unsecured subordinated exchangeable promissory note of Tribune (the "Exchangeable Note"), which required Tribune to make a payment to EGI-TRB at Step Two in the same amount that EGI-TRB would have received if it had held stock that was cashed out at $34 per share as a part of the completion of the LBO.

B. In Connection With the LBO, Tribune Enters Into Loan Agreements That Are Designed to Hinder, Delay, and Defraud Its Existing Creditors

128. On May 17, 2007, Tribune entered into a Senior Loan Agreement that obligated the Lead Banks to loan Tribune $8 billion in senior debt to be used at Step One, and $2 billion in incremental funds to be used at Step Two. On December 20, 2007, Tribune entered into a Bridge Credit Agreement that obligated the Lead Banks to loan Tribune an additional $1.6 billion in subordinated senior debt in connection with Step Two. In all, these obligations totaled $11.2 billion.

129. The Lead Banks knew that the LBO posed a high risk that the Company would have to file for bankruptcy. For example, on March 28, 2007, a senior JPMorgan

employee wrote in an internal email that he was concerned about the structure of the LBO because the Lead Banks would not be entitled to "post [bankruptcy] petition interest."

130. Thus, in order to protect themselves in the event of a bankruptcy, the Lead Banks were willing to arrange and finance the LBO only if they could effectively subordinate Tribune's existing debt (the "Non-LBO Debt") to the LBO Debt, so that, if the Company filed for bankruptcy, the LBO Lenders would be paid before any of the Company's other creditors. The Special Committee and Tribune Board agreed to this aspect of the LBO financing without any discussion or consideration whatsoever.

131. Under the Company's existing credit agreements and the indentures governing its bond debt (the "Bond Debt"), the Company's bondholders had a right to share equally in any payments made to the Company's bank lenders in the event of a bankruptcy. The Lead Banks sought to obtain priority of payment over the Bond Debt, by insisting that the Subsidiary Guarantors, which held the majority of the Company's value, guarantee all of the LBO Debt, including the amounts used to refinance the 2006 Bank Debt (the "Subsidiary Guarantees"). Because the Subsidiary Guarantors had not guaranteed the Bond Debt, these Subsidiary Guarantees ensured that the LBO Lenders would be paid in full before the bondholders could receive any payments derived from the value at the Subsidiary Guarantors. As a result, by causing the Subsidiary Guarantors to enter into the Subsidiary Guarantees, the Company effectively transferred the value of the Company's equity interest in the Subsidiary Guarantors to the LBO Lenders.

132. The Subsidiary Guarantors did not receive anything in exchange for the Subsidiary Guarantees, as all of the funds made available by virtue of the LBO Debt went

first to Tribune, and then to its shareholders or advisors, existing bank lenders, or the Lead Banks.

133. The Lead Banks also took other steps that were intended to make it more difficult for the Company's non-LBO lenders to share equally with the LBO Lenders in any bankruptcy recoveries. Those steps included the creation of two new Company subsidiaries, Tribune Broadcasting Holdco, LLC ("Holdco") and Tribune Finance, LLC ("Finance"). Holdco became the holding company for the Company's broadcasting subsidiaries through the Company's transfer to Holdco of the stock of the previous broadcasting holding company, Tribune Broadcasting Company. Finance became a creditor of the Company's principal publishing subsidiaries through a complex circle of transactions, accomplished through a series of book entries, that obligated the publishing subsidiaries to Finance through substantial intercompany obligations, even though Finance had not provided any value to the publishing subsidiaries.

134. Holdco and Finance effectively controlled all the value of the other Subsidiary Guarantors, through Holdco's ownership of the broadcasting subsidiaries, and Finance's "loans" to the publishing subsidiaries. Holdco and Finance were Subsidiary Guarantors, and the Company pledged its stock in Holdco and Finance to further secure the LBO Debt.

135. The Company and the Lead Banks agreed to the creation of Holdco and Finance and the complex related transactions to hinder, delay, and impede the ability of non-LBO lenders to challenge the Subsidiary Guarantees in the event of a bankruptcy. Specifically, the Company and Lead Banks believed that because Holdco and Finance

had no pre-existing creditors, a plaintiff would be unable to challenge their Subsidiary Guarantees as fraudulent.

136. In late May, 2007, a JPMorgan analyst who was working on the LBO explained in colorful terms how the Subsidiary Guarantees ensured that JPMorgan and the other LBO Lenders would be paid in full in a Tribune bankruptcy, notwithstanding that the Company's value was less than the total debt it would have following consummation of the LBO:

> There was a WSJ article today that talked about how TRB . . . has no room for mistake no more. The article also talked about how there is a wide speculation that the company might have put so much debt that all of its assets aren't gonna cover the debt, in case of (knock knock) you-know what. Well that is actually basically what we (JK and me and rest of the group) are saying too, but we're doing this 'cause [Tribune's assets are] enough to cover our bank debt. So, lesson learned from this deal: our (here, I mean JPM's) business strategy for TRB, but probably not only limited to TRB, is "hit and run"—"we'll s_ck the sponsor's a$$ as long as we can s_ck $$$ out of the (dying or dead?) client's pocket, and we don't really care as long as our a$$ is well-covered. Fxxk 2nd/private guys—they'll be swallowed by big a$$ banks like us, anyways".

C. The LBO Was a Single Unitary Transaction With Two Steps

137. The Tribune Board approved both Step One and Step Two on April 1, 2007. Consistent with this unitary approval, the market accurately viewed Step One and Step Two as part of a single, unitary transaction, designed to allow Tribune to become a privately held company that could reap the tax benefits afforded to an S corporation owned by an ESOP. Thus, the LBO made economic sense for its participants only if Step Two closed, which was necessary in order for the anticipated tax savings resulting from the ESOP structure to be realized. EGI-TRB acknowledged the central importance of the S corporation/ESOP structure to both it and the LBO at the outset of its bidding process,

stating that "the tax structure is the only thing that made [the LBO] financially attractive for us."

138. Consistent with EGI's views, an internal Bank of America "Deal Screen Memorandum" dated March 5, 2007 listed the tax benefits and potential reduction in capital gains taxes from future asset sales resulting from the Company's S corporation/ESOP structure, none of which would occur until the close of Step Two, as the first items in the "Transaction Rationale" for the LBO. Similarly, in a letter dated March 29, 2007, Moody's called the S corporation election "a critical component of the company's plan," noting that "[t]he tax-free status and the effective elimination of the significant amount of deferred tax liabilities . . . is a critical mitigating factor to the minimal amount of equity and is thus a key assumption factored into" Moody's rating.

139. As discussed above, the only reason that the transaction was consummated in two steps was because the Controlling Shareholders would not agree to vote in favor of or support the LBO unless it provided an upfront payment to shareholders that was not delayed by the time it would take to obtain the FCC approval necessary to complete the transaction. Had there been a way to structure the transaction so that only one step was necessary, it would have been so structured. Thus, neither of the two steps was intended to occur on its own, and each was designed to be dependent on the other. For example:

a. the Company's press release announcing the deal prior to the close of Step One referred to the LBO as a "two-stage transaction," and explained that, "[u]pon completion of the transaction, the company will be privately held, with an Employee Stock Ownership Plan (ESOP) holding all of Tribune's then-outstanding common stock";

b. the Tribune Board approved both Steps One and Two at the same time;

c. the commitment letters providing for the Step One and Step Two financing (the "Step One Commitment Letter" and "Step Two Commitment Letter," respectively) were executed at the same time, and obligated the lenders to provide the requisite financing to permit Step Two to occur;

d. the loan agreement entered into at Step One provided for the secured financing for both Step One and Step Two;

e. a single Merger Agreement executed at Step One required the Company to exercise reasonable best efforts to effect both Step One and Step Two of the LBO;

f. the Step One and Step Two Commitment Letters cross-referenced each other, and the Step One Commitment Letter made the execution and delivery of the Merger Agreement without waiver, amendment, or modification a condition precedent to the Company's initial borrowings at Step One;

g. the Step One Commitment Letter and Step Two Commitment Letter explicitly conditioned the borrowing under these facilities on the continued existence of the financing commitments (for both Step One and Step Two) set out in the Merger Agreement; and

h. the fairness opinions on shareholder consideration issued by Merrill and Morgan Stanley, on which the Tribune Board relied in approving the LBO in April 2007, evaluated and referred to the Merger Agreement as the governing document, and considered the share acquisitions at Step One and Step Two together.

140. The documents maintained by and communications among the Lead Banks also show that the LBO was a unitary transaction with two steps. For example, all of the Lead Banks analyzed the LBO, which they referred to as a "two-step transaction," as one transaction, and sought internal approval to participate in both steps in advance of Step One. Moreover, a senior member of the Merrill team commented that the rating agencies would "immediately rate Tribune for the entirety of the buyout transaction when the purchase agreement is signed," noting that JPMorgan, Citigroup, and Merrill "would commit to both steps in order to ensure financing for the whole transaction."

141. Additionally, at the time of Step One, Step Two was, at minimum, highly likely to occur. As noted, and as widely acknowledged by the parties involved,

shareholder approval for the LBO was effectively secured from its inception, as the voting agreement with the Chandler Trusts virtually guaranteed it. As Tribune management consistently acknowledged, obtaining shareholder approval was never a significant hurdle.

142. The parties also believed that FCC approval, another condition of consummation of the deal, would be obtained because the LBO entailed no new combination of assets, and therefore the merger merely involved the renewal of existing cross-ownership waivers. As recognized by rating agencies and news analysts, FCC approval in these circumstances was expected.

D. Rating Agencies, Wall Street Analysts, News Publications, and Investors React Negatively to the LBO

143. On April 2, 2007, two of the three major credit rating agencies, Fitch and S&P, downgraded Tribune's debt in response to the approval of the LBO. S&P stated:

> [B]ased on our analysis of the proposed capital structure, we have determined that if shareholders approve the transaction as outlined, we would lower the corporate credit rating to 'B', with a stable outlook.
>
> The expected 'B' rating would reflect the company's highly leveraged capital structure, weakened credit measures, and reduced cash flow-generating capability as a result of its LBO and associated heavy interest burden. The rating would also underscore Tribune's exposure to the very challenging revenue climates and competitive market conditions affecting its newspaper and broadcasting operations, and its aggressive financial policy.

144. On April 19, 2007, S&P downgraded Tribune's credit rating on its unsecured notes to CCC+, indicating a high default risk. S&P reported that "given the amount of priority debt ahead of these notes, we will assign them a recovery rating of '5' upon the close of the proposed bank transaction, indicating the expectation for negligible (0% -25%) recovery of principal in the event of a payment default." On April 23, 2007,

Moody's also downgraded Tribune, citing the significantly increased leverage that the Company would incur as a result of the LBO.

145. Similarly, citing the increased debt Tribune planned to take on by virtue of the LBO, Fitch expressed its belief that the deal would be "detrimental to bondholders," and maintained a negative outlook on the Company. On May 3, 2007, Fitch announced that Tribune's ratings would remain on "rating watch negative." Fitch stated that the downgrading reflected the "significant debt burden the announced transaction places on the company's balance sheet while its revenue and cash flow have been declining," especially in light of "meaningful secular headwinds that could lead to more cash flow volatility in the future." Fitch believed that "these factors could impair the company's ability to service its debt, particularly if coupled with a cyclical downturn."

146. Wall Street analysts' responses were consistent with the rating agency downgrades and concerns over the transaction. For example, on April 2, 2007 Barclays Capital stated:

> We think it is possible that TRB is leveraged higher than the total asset value of the company (after taxes), which makes recovery valuations difficult if the economy and/or advertising market slows.

147. On April 3, 2007, an analyst from Gabelli & Co. stated, "I certainly hope no one else is thinking of doing what Tribune has done. It's a mess." Similarly, a Goldman Sachs analyst reported that same day that "with estimated annual interest expense of over $1bn/yr and estimated EBITDA of $1.3bn, the transaction leaves little room for error, particularly in this challenging newspaper operating environment." The analyst pointed out that the high leverage from the deal left Tribune in a "precarious financial position."

148. Also on April 3, Bloomberg News quoted an industry analyst who stated that, for the LBO to succeed, Tribune either had to significantly cut costs or experience "significant growth." The analyst remarked that "[t]here just isn't a scenario that shows how this industry or this company is going to get significantly better." The article essentially predicted—correctly—that, absent a miracle, Tribune could not survive the LBO.

149. A Lehman analyst reported on April 26, 2007 that the "[p]roposed deal leaves TRB with debt-to-2007E-EBITDA of 11.5x . . . which we believe is far too high for secularly declining businesses . . . . Debt payments should overwhelm EBITDA, by our calculations."

150. Financial analysts and rating agencies were not alone in recognizing the devastating consequences of the proposed LBO. As soon as the LBO was announced, a growing chorus of news outlets also began reporting on the substantial risk of the proposed transaction, openly questioning the proposal's soundness, and highlighted the crushing debt load that the LBO would create. For example, on April 2, 2007, the *Baltimore Sun*—one of Tribune's own newspapers—questioned the wisdom of the proposed LBO: "The deal, which would return Tribune to private ownership, would make the company one of the most heavily indebted enterprises in the media industry at a time of falling readership and declining advertising revenues." The report commented further that Tribune's rivals were "dumbfounded" by the deal.

151. On April 3, 2007, the *New York Times* reported that the proposed sale came with some "big risks," observing that the LBO "would saddle the company with $13 billion in debt even as advertising sales and circulation decline." An article

appearing in the *Times* three days later characterized the proposed LBO as "one of the most absurd deals ever."

152. In an April 4, 2007 article entitled "How Will Tribune Pay Its Debts?" the *Wall Street Journal* stated:

> The big question hanging over Tribune's $8.2 billion buyout deal unveiled Monday is this: How do they plan to do that [repay its debt], given that the newspaper industry faces uncertain prospects? Financed almost entirely by debt, the buyout will leave the newspaper and TV concern staggering under more than $12 billion in debt when existing borrowings are included. That is about 10 times Tribune's annual cash flow, a ratio several times higher than typically carried by most media businesses.

153. On April 16, 2007, *Businessweek* also raised serious concerns as to the highly leveraged nature of the proposed LBO:

> How leveraged? The just-announced deal orchestrated by investor Sam Zell leaves the company with more than $13 billion in debt. To put that in its proper perspective, Tribune's cash flow in '06—earnings before interest, taxes, depreciation, and amortization, or EBITDA—was $1.3 billion. Thus its debt exceeds last year's EBITDA by about ten times. This is an angina-inducing multiple even for veteran media players accustomed to playing with debt, some of whom get nervous above six. And Tribune's cash flow comes in large part from big-city Old Media properties, which are not noted for their stability right now. (Tribune's revenues declined by more than 5% in February.)

154. By contrast, an extensive search of contemporaneous accounts reveals no articles or analyst reports suggesting that the LBO made sense or was a positive move for the Company. The Directors and Officers must have been—and certainly should have been—aware of the universally negative reaction to the LBO.

155. The market's negative perception of the LBO hindered the Lead Banks' ability to syndicate the LBO Debt. When asked if the problems were "[s]omething about this deal or the mkt," a Merrill banker responded: "[The issue is] [t]his deal—market is busy, but fine. Misjudged level that investors would require here. Working people

through the structure has been a challenge, but major pushback has been on newspaper business."

156. Similarly, on May 11, 2007, a JPMorgan banker reported internally:

> Since we launched two weeks ago, the deal has struggled in the market. Investor concerns include total leverage (8.9x EBITDA), low equity check from Sam [Zell], continuing deterioration of newspaper industry fundamentals, price and overhang from expected Second step of the transaction which will occur later this year.

XII. The Company Engages in Intentional Fraud in Order to Close Step One

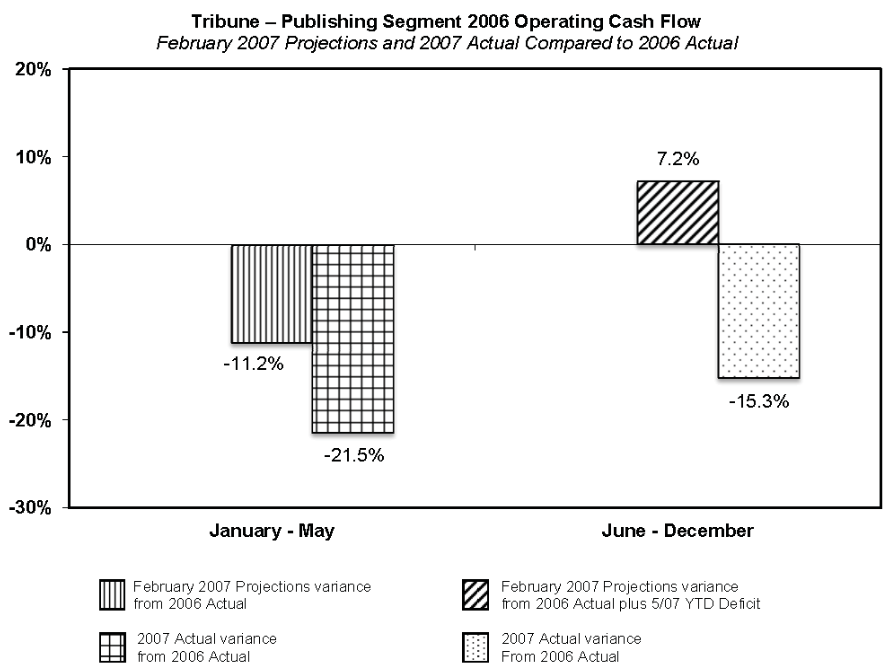
A. The Directors, Officers, Controlling Shareholders, Zell, Citigroup, and Merrill Purport to Rely on the Outdated, Unreasonably Optimistic February 2007 Projections in Order to Obtain a Step One Solvency Opinion

157. Incentivized to ensure that the LBO was consummated so that they could obtain the lucrative payments associated with selling their shares in the LBO, the special monetary incentives offered by Zell, and the substantial financing and advisory fees the deal provided, the Directors, Officers, Controlling Shareholders, Zell, and defendants Citigroup and Merrill purported to rely on the unrealistic February 2007 Projections even as each month's below-projection performance showed conclusively that they could not be achieved.

158. As should have been reasonably expected, the Company's actual operating cash flows through May 2007, right before Step One closed, materially failed to meet even the relatively modest projections for early 2007 set forth in the February 2007 Projections, and definitively showed that the projections were unreasonable. As of May 2007, operating cash flow for six newspapers accounting for more than 91% of the Company's publishing business was 24% off of 2006 results, and 14% off of the

February 2007 projections. Similarly, the Company's publishing segment as a whole was 21.5% off of its 2006 results, and 12% off of the February 2007 Projections.

159. To make up the ground the publishing segment lost through May and achieve the February 2007 Projections for the full calendar year, the publishing segment's weekly operating cash flow for June through December 2007 would have to have been 38% higher than it was from January through May. This meant that the Company would have had to exceed the 2006 actual results by 7.2% for the remainder of the year—an impossible proposition since the publishing segment's results were already trailing 2006 by 21.5%.



160. No reasonable person could have expected this to occur given the state of the publishing industry at that time and the Company's historical performance. Indeed, as noted in June 2006 by Stinehart, "over the past two years, Tribune . . . significantly

underperformed industry averages *and there [wa]s scant evidence to suggest the next two years w[ould] be any different*" (emphasis added).

161. The Officers were aware of the Company's dismal performance, as they received weekly "flash reports" showing that the February 2007 Projections were unrealistic almost immediately after they were disseminated. Up-to-date financial information was regularly provided to the Directors. For example, in preparation for the Tribune Board's May 9, 2007 meeting, FitzSimons sent to the Tribune Board the Company's first-quarter results, which showed total operating profits down 22% from 2007, with the observation that "the newspaper industry's going through a very difficult first half." Such up-to-date financial information was also likely known by, and was certainly available to, the Controlling Shareholders, Tribune advisors including Citigroup and Merrill, and Zell.

162. Nevertheless, contrary to what the Company subsequently acknowledged as proper corporate practice of updating its financial projections based upon "the most recent information available" as soon as such information became available, the Officers decided not to publicly update Tribune's February 2007 Projections until *after* Step One closed, and *after* VRC relied on those projections to render its Step One Solvency Opinion.

163. Similarly, the Directors, Controlling Shareholders, Zell, and defendants Citigroup and Merrill continued to cite the February 2007 Projections as a justification for the deal, even though they knew, or were reckless or grossly negligent in not knowing, that these projections could not be achieved. Emails among the Officers, EGI, and Tribune's advisors show, however, that notwithstanding the Officers' failure to

update the February 2007 Projections prior to the close of Step One, the Officers knew that they should have done so. On March 20, 2007, an EGI executive disclosed to the EGI team that "Chandler [Bigelow] indicated on [March] 9th that management needed to sit down and refine their projections for 2007." On March 21, 2007, Tribune circulated a document showing actual results for January and February compared to the February 2007 Projections. Kazan stated to Bigelow that they needed to discuss the results with Grenesko before including them in a rating agency presentation or showing them to EGI, as "[t]his is tricky b/c we've told Nils [Larsen of EGI] that we aren't changing our plan based on the results from the first two periods."

164. Emails among Amsden and EGI-TRB representative Mark Sotir also show that the Officers did downwardly revise the February 2007 Projections *internally* weeks prior to the Step One close, but decided not to distribute the revised numbers outside of the Company or to the Tribune Board. The emails reference "new 'projections' which are a new look at the full year numbers," but state that Amsden was reluctant to disclose the new projections to EGI because of "potential legal concerns."

165. Emails among the Officers also show that they engaged in subsequent discussions respecting whether the revised projections should be disclosed. For example, Knapp wrote the following email to Bigelow and others on April 30, 2007:

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

166. Consistent with the contemporaneous emails showing that the Company knew that the February 2007 Projections were unrealistic both at the time they were

created and at the close of Step One, the Company was unable to proffer a single witness during the pendency of its bankruptcy proceeding who could attest to the honesty or reasonableness of any aspect of the February 2007 Projections.

167. On June 8, 2007, only four days after Step One closed, Sotir asked other EGI-TRB representatives if they could meet with the "Trib finance team" on June 12, 2007. Sotir wrote, "[T]hey may show us their revised forecast, but are still discussing with lawyers what level of detail they can discuss." Presumably, that "revised forecast" was not prepared during the four days between the Step One close and June 8, 2007.

168. The decision to continue to purport to rely on the outdated, unreliable February 2007 Projections at the close of Step One was a crucial failing by the Company's fiduciaries and by Citigroup and Merrill. Because the February 2007 Projections were both unrealistically optimistic and significantly higher than the Company's actual performance, the downside cases used to test the LBO—(i) "Downside Case A," which reflected a 2% decline in publishing revenue per year and flat operating cash flow for the broadcasting segment, and (ii) "Downside Case B," which reflected a 3% decline in publishing revenue per year and a 1% per year decline in the operating cash flow for broadcasting—were, at best, base cases rather than downside cases. Indeed, the Company acknowledged in May 2007 that its performance for the first quarter of 2007 was "significantly below" the February 2007 Projections and "closest to its 'Downside Case B,'" and that its performance for April 2007 was substantially worse. Bigelow had acknowledged in writing in March 2007 that if the Company consummated the LBO and performed in accordance with even "Downside Case A," then the Company would have "no equity value," and thus be insolvent. Remarkably, the Company's even

worse "Downside Case B" performance did not cause Bigelow, any of the other Company fiduciaries, or Citigroup or Merrill, to suggest that the Company should abandon or restructure the LBO.

169. As noted, both the Special Committee and Tribune Board had access to up-to-date financial information showing Tribune's dismal performance. The members of the Special Committee and Tribune Board thus knew—or were reckless or grossly negligent in not knowing—that VRC's opinion was premised on flawed projections and a flawed and inadequate downside case. As such, even if VRC otherwise applied appropriate valuation methodology—which it did not—the Special Committee's and Tribune Board's purported reliance on VRC or management was wholly unwarranted and in bad faith.

170. Similarly, as the Company's advisors, both Citigroup and Merrill had considerable access to the books and records of Tribune, met regularly with the Tribune Board and Special Committee, and routinely reviewed the Company's financial information. They were thus fully aware that management's February 2007 Projections had been missed by a significant margin and were not reliable. In an email dated March 10, 2007, Merrill's Costa cited Tribune's "recent operating performance" in explaining why the Company seemed to have second thoughts about taking on "the kind of leverage necessary for Zell proposal to work." And as noted above, Citigroup's Persily wrote to Mohr just days before the Tribune Board approved the Zell proposal that she was "very concerned" about Tribune's latest numbers, and described the Company's declining EBITDA as "scary." Despite these professed concerns, and their knowledge that the Company's February 2007 Projections were increasingly unreasonable, Citigroup

and Merrill never tried to steer Tribune away from the LBO and the debilitating debt that it would heap upon the Company.

B. The Officers Instruct VRC to Deviate From Industry Practice in Issuing Its Solvency Opinions

171. Faced with the reality that the traditional methodology used to prepare a solvency opinion would show that the LBO would render the Company balance sheet insolvent, inadequately capitalized, and unable to pay its debts as they came due, and lured by the lucrative financial benefits that consummation of the LBO would bestow upon them, the Officers, including Bigelow and Hianik, prevailed upon VRC to use a series of improper methodologies to prepare its Step One Solvency Opinion.

172. First, the Officers instructed VRC to ignore the debt that the Company planned to incur at Step Two when issuing the Step One Solvency Opinion. As outlined above, the LBO was conceived of and promoted, first to Tribune and then to the public, as a single, unitary transaction with fully committed financing. Thus, the legal and economic reality of the LBO required that all of the debt incurred in the transaction be considered in the Step One solvency analysis. Indeed, the draft solvency opinions originally submitted to the Officers by VRC were prepared precisely in this manner. In an effort to hide the disastrous effect that the LBO would have on the Company and ensure that they received the payments associated with consummation of the transaction, however, the Officers and VRC agreed to consider only the Step One debt, thus artificially reducing the Company's liabilities for purposes of the solvency analysis.

173. Second, as noted above, the Officers and VRC agreed that in performing its solvency analyses, VRC would depart from the standard definition of "fair value" that it had used in every other solvency opinion it had ever prepared. Specifically, rather than

assuming that Tribune would be purchased by a hypothetical willing buyer, VRC agreed to opine on Tribune's solvency assuming that the buyer would be structured to receive the same favorable tax treatment as the ESOP utilized for the LBO—that is, that the buyer would be another ESOP. As Duff & Phelps had previously recognized REDACTED, there was no precedent and no justification for making this alteration in the definition of fair value, other than to artificially pump up value for solvency purposes.

174. Nevertheless, on June 4, 2007, Grenesko and Bigelow delivered certificates to the Lead Banks certifying that the Company was solvent as of that date.

XIII. VRC Improperly Renders the Step One Solvency Opinion

175. VRC uncritically and erroneously accepted the Officers' improper directions to depart from the standard definition of "fair value" and to ignore the Step Two debt when issuing its Step One Solvency Opinion. It also relied upon Tribune's unrealistic February 2007 Projections without a hint of skepticism, notwithstanding that VRC knew, from reviewing Tribune's interim financial statements through at least the period ended March 31, 2007, that the Company's performance was already off plan by the time the LBO was approved.

176. In addition to improperly disregarding Step Two debt and improperly manipulating the definition of fair value, VRC committed several other significant errors in connection with its Step One solvency analysis. For example, VRC changed how it weighted the discounted cash flow ("DCF") valuation methodology in its overall analysis. The DCF valuation approach yielded a value for Tribune that was significantly lower than that obtained through other valuation methods. Several drafts of VRC's Step One solvency analysis weighted the DCF method more heavily than the other valuation

methodologies. At the same time, VRC initially gave relatively little weight to the "comparable transactions" method, which yielded a much higher valuation figure. However, in its final solvency analysis, VRC reduced the weight given to the low DCF valuation and increased the weight given to the high comparable transactions value, thereby increasing Tribune's overall valuation figure. This shift in VRC's methodological weighting further tipped the balance in favor of finding Tribune solvent at Step One.

177. Other significant errors contained in VRC's Step One solvency analysis included the following:

a. VRC's DCF model failed to deduct the costs of the planned Tribune Interactive business acquisition and the costs of internal development investments in determining cash flow, resulting in a substantial overstatement in operating asset value.

b. VRC used discount rates in its DCF analysis that were too low (resulting in an overstatement of value) given the uncertainty associated with Tribune's ability to achieve expected long-term growth rates in the publishing segment, particularly given the significant growth contemplated in the Interactive business.

c. The exit multiples in VRC's DCF analysis assumed long-term growth rates that were unreasonable in light of the general secular decline in the publishing business and in Tribune's profitability, and that exceeded even the growth rates contemplated by Tribune management in the February 2007 Projections.

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

e. VRC relied on comparable company and transaction valuation approaches informed by companies materially different than Tribune or its investments.

178. On May 24, 2007, VRC delivered to Tribune its Step One solvency opinion (the "Step One Solvency Opinion"), which concluded that the Company would be solvent immediately after and giving effect to the consummation of the Step One transactions.

XIV. Citigroup and Merrill Fail to Advise Tribune About the Serious Flaws in the VRC Step One Solvency Opinion

179. As advisors to the Company, both Citigroup and Merrill were tasked with reviewing and commenting upon VRC's Step One solvency analysis prior to the issuance of the opinion. For example, on or about May 7, 2007, Bigelow forwarded VRC's draft preliminary solvency analysis to Kazan, who in turn forwarded the document to O'Grady, a member of Costa's investment banking team at Merrill, and to Kurmaniak, who reported directly to Mohr at Citigroup.

180. Citigroup and Merrill actively studied and questioned VRC's analysis. Kurmaniak, for example, requested backup information from Bigelow about VRC's numbers, and followed up on various points of VRC's analysis. Indeed, Citigroup's representatives have acknowledged that their job on behalf of the Company was to examine what VRC was doing and to look critically at its analysis. In failing to detect and/or remedy various glaring and material flaws in VRC's solvency analysis and assumptions—including VRC's unjustifiable reliance on the Company's February 2007 Projections—the defendants resoundingly failed to fulfill their responsibilities, and substantially assisted the Officers' efforts to ensure the closing of Step One.

181. Citigroup and Merrill knew or should have known, based on their own contemporaneous valuations of the Company, that the LBO would render Tribune insolvent. A joint presentation by Citigroup and Merrill dated March 30, 2007

demonstrates that a few simple calculations would have shown that the Company would be rendered insolvent as a result of the LBO. Specifically, the presentation shows that the average value of Company equity using DCF, sum of the parts, and market approach analyses was between $26.58 and $33.00 per share. Multiplying the midpoint of this range ($29.79) by the amount of Tribune's outstanding shares at the time (242.4 million) results in an implied equity value of $7.221 billion. Adding the Company's net debt at the time ($5.085 billion) yields an implied total enterprise value of $12.306 billion—$1.424 billion less than the $13.730 billion of total debt the Company was expected to have following consummation of the LBO.

182. Notwithstanding their knowledge that VRC's solvency opinion was fundamentally flawed, the Company's advisors remained silent and allowed the LBO to proceed at Tribune's peril.

XV. <u>The Company's Fiduciaries Ignore the Company's Performance and the Cacophony of Voices Warning Against the LBO and Permit the Transaction to Proceed</u>

A. The Special Committee and the Tribune Board Breach Their Fiduciary Duties in Connection With Step One

183. The Tribune Board met only twice between the time that the LBO was approved and the time that Step One closed, and the Special Committee met only once during that period. The Director Defendants were all financially sophisticated, and information demonstrating the folly of the February 2007 Projections was provided to them. The Tribune Board received regular reports of the Company's performance and thus had the information necessary to determine that the February 2007 Projections were not even remotely realistic. Additionally, on May 20, 2007, in connection with shareholder litigation relating to the LBO, Tribune proffered the declaration of an expert

who stated that absent the LBO, the Company's per share value could be "well below $32," particularly in light of the Company's weak financial performance since Zell's proposal was made. Nevertheless, neither the Tribune Board nor the Special Committee minutes reflect any meaningful analysis of the February 2007 Projections on which the VRC Step One Solvency Opinion was based, nor consideration of whether the Company's actual performance, which was significantly below that forecast in the February 2007 Projections, rendered the VRC Step One Solvency Opinion unreliable or the LBO inadvisable.

184. Additionally, although the Directors knew, or were reckless or grossly negligent in not knowing, of all of the flaws in the VRC analysis, including VRC's extraordinary change to the definition of fair value, none of the Directors questioned why VRC had made the modification or whether or how it would affect VRC's conclusions. Rather, enticed by the financial incentives and the ability to escape the Company's downward spiral at a premium price, both the Special Committee and the Tribune Board charged head-long into a transaction that reaped tens of millions of dollars for their members, but left the Company insolvent, inadequately capitalized, and unable to pay its debts as they came due. In so doing, the Special Committee and the Tribune Board breached the fiduciary duties of care, good faith, and loyalty that they owed to the Company.

185. Moreover, neither Stinehart, Goodan, nor Chandler, who knew that the optimistic outlook embodied in the February 2007 Projections was, in Stinehart's words, "hard to believe," voiced any concern respecting the LBO. Satisfied that the interests of

their "special constituency" were protected, the Chandler Trust Representatives remained silent.

B. Step One of the LBO Closes

186. On June 4, 2007, the Company consummated Step One of the LBO, and Tribune repurchased and retired 126 million shares of common stock at a purchase price of $34 per share using proceeds from the Senior Loan Agreement. Presented with an opportunity to cash out of a rapidly deteriorating company at a premium price, Tribune's shareholders tendered 92% of Tribune's stock, rendering the tender offer significantly oversubscribed. Tribune used the remainder of the Step One proceeds to refinance the 2006 Bank Debt and commercial paper and to pay transaction fees. The new debt carried significantly higher interest rates than the 2006 Bank Debt, causing material harm to Tribune.

187. Consummation of Step One rendered the Company balance sheet insolvent, unable to pay its debts as they came due, and inadequately capitalized.

XVI. The Publishing Industry and Tribune Continue to Decline Between the Close of Step One and Step Two

A. The Secular Decline in the Publishing Industry Worsens

188. The newspaper publishing industry continued its secular decline through the remainder of 2007. In a research report issued in July 2007, Fitch highlighted the negative impact of secular and structural changes on the newspaper industry:

> Fitch believes newspapers will continue to face intense secular issues on the revenue side. Fitch expects national advertising and automotive classifieds to continue to be significantly pressured. Fitch believes these changes are structural, not cyclical, and does not believe the advertising lost in these categories will return to newspapers in any meaningful way in future periods. Help wanted and real estate classifieds sustained growth and profits at many newspaper companies in 2005 and the first half of 2006, but both categories have slowed significantly in recent periods.

> Fitch expects this trend to continue for the rest of 2007, driven by both cyclical and secular issues.

189. Fitch also reiterated its negative outlook for the newspaper industry, stating:

> With no meaningful catalysts for the remainder of 2007 or 2008 to reverse the operational pressure and secular uncertainty facing the newspaper industry, Fitch expects the event risk environment to remain heightened for bondholders.

190. Similarly, on September 6, 2007, S&P noted the continuing secular shift in the distribution of advertising dollars from traditional media to new media, and affirmed its negative outlook for the newspaper publishing industry:

> Advertising and circulation revenues, the bread and butter of newspaper publishers, continue to grow leaner as the industry deals with a number of serious problems and challenges. Among publishers' hurdles are an ever-increasing array of new advertising media, which are cutting into newspapers' share of the ad pie. . . . Newspaper publishers' share of the advertising market is shrinking in the United States, and we expect that trend to continue for the foreseeable future. . . .
>
> The trend in declining newspaper ad share extends back more than five decades . . . . We do not expect the downtrend to end within the foreseeable future, if at all . . . . Standard & Poor's forecasts little improvement for newspaper advertising in 2008. For newspaper advertising as a whole, we anticipate a rise in ad spending of less than 1.0%.

B. Tribune Significantly Underperforms the February 2007 Projections and Is Further Downgraded

191. In its Form 8-K filed on July 25, 2007, Tribune reported second quarter 2007 consolidated revenues for the Company of $1.3 billion, down 7% from the prior year. Thus second quarter performance was 5.9% off the February 2007 Projections on which the Tribune Board's approval of the transaction was based. Given that the February 2007 Projections had been created only four months earlier, this was an enormous miss that should have been alarming. While the February 2007 Projections

forecast that Tribune was going to beat its 2006 performance, operating profit for publishing in the second quarter of 2007 was more than 50% below publishing's operating profit during the same period in 2006.

192. In July 2007, Fitch noted that the Company continued to face "meaningful secular headwinds," as well as challenges including declining circulation trends for newspapers, pressures on newspaper advertising revenue streams, significant substitution risk, and competition threat from online rivals:

> Fitch believes [Tribune's] newspapers and broadcast affiliates (particularly in large markets where there is more competition for advertising dollars) face meaningful secular headwinds that could lead to more cash flow volatility in the future. With fixed-charge coverage estimated to be below 1.3 times (x), there is very little room to endure a cyclical downturn. In addition, the rating continues to reflect declining circulation trends for newspapers, pressures on newspaper advertising revenue streams, significant substitution risk and competitive threat from online rivals (particularly in high-margin classified categories), volatile newsprint prices, the threat of emerging technologies on the economics of the pure-play broadcasting business and the volatility of cash flow due to cyclical and political fluctuations.
>
> Importantly, publishing sector operating profits of $102 million were well below our $145 million figure and less than half of the $209 million reported in Q2/06. This is a clear cause for concern.

193. On August 14, 2007, Lehman cut its earnings estimate for Tribune and stated that "Tribune is significantly overlevered currently and should not be adding more debt to its capital structure given the ongoing secular decline in the fundamentals across Tribune's newspapers and TV stations." Lehman concluded that final consummation of the LBO would leave the Company unable "to cover the estimated annual interest expense from operations let alone have excess free cash flow to pay down debt each year."

194. On August 20, 2007, S&P issued a research update, lowering Tribune's corporate credit rating to B+ from BB-, and citing "deterioration in expected operating performance and cash flow generation compared to previous expectations."

195. On November 27, 2007, the Company announced results for October 2007. Consolidated revenues had declined 9.3% in that period in relation to the comparable period in the prior year. As a result, Moody's downgraded Tribune's Corporate Family Rating to B1 from Ba3. The downgrade reflected Moody's

> 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.

XVII. Citigroup, Merrill, and the Other LBO Lenders Question the Company's Solvency as Step Two Approaches

196. The LBO Lenders, including Citigroup, Merrill, and their affiliates, also recognized that in light of Tribune's financial performance, the LBO rendered the Company insolvent, inadequately capitalized, and unable to pay its debts as they came due.

197. On July 26, 2007, various JPMorgan bankers centrally involved in the LBO reported to JPMorgan Vice Chairman James B. Lee, Jr. that JPMorgan was "totally underwater on this underwrite [and] the deal is now underequitized and underpriced."

198. Additionally, in a memo marked "Highly Confidential, Internal Distribution Only," JPMorgan wrote:

> JPMorgan deal team's DCF and sum of the parts analysis based on revised July projection indicate that the current valuation of Tribune is approximately $[10] to $[13] billion, potentially failing the solvency tests (*i.e.*, debt amount exceeds value of Borrower).

199. Similarly, a Merrill banker informed EGI-TRB on August 20, 2007, that it was "highly unlikely that [the Company's solvency firm] can get there." A Bank of America banker echoed this sentiment on September 10, 2007, stating, "I think the solvency opinion might be difficult, in my opinion."

200. Moreover, solvency analyses prepared by each of JPMorgan, Citigroup, and Merrill in the days leading up to the Step Two close concluded that the Company was insolvent under various scenarios. Specifically:

a. Citigroup "didn't believe the Company's projections were achievable" and "created [its] own set." Solvency analyses using these projections and Citigroup valuation parameters (rather than VRC's) showed that the Company was insolvent by more than $1.4 billion.

b. Merrill's solvency analyses showed that the Company was insolvent by more than $1.5 billion in the "low" cases, and by at least $287 million in the "mid" cases.

c. Solvency analyses prepared by JPMorgan on December 13 and December 18, 2007 show that Tribune was insolvent in certain "low" and "stress" cases.

201. In light of these analyses, the LBO Lenders did not want to go forward with Step Two, but believed they were contractually obligated to do so. In an email regarding a July 3, 2007 call with the Company, a Citigroup banker stated, "I expect a real problem. Let's hope that it is so bad that they trip the 9x covenant that they have to meet to close Step 2." The Citigroup banker reiterated this sentiment on July 20, 2007, stating:

> I'm told there are only 3 ways that the deal won't close:
>
> -they miss the 9x gteed debt covenant
> -they don't get a solvency opinion
> -whatever the FCC determines causes a MAC [material adverse change] in the broadcasting business.
>
> I'm hoping for one of the first two.

202. The Officers were aware that the LBO Lenders harbored these concerns. On November 8, 2007, the Lead Banks sent management a list of more than a dozen questions regarding VRC's solvency analysis, and then sent a second list of follow-up questions on December 12, 2007. Based on these questions, the Officers understood that the LBO Lenders—who now believed that the Company's value might be insufficient even to repay the LBO Lenders (which were first in line as a result of the Subsidiary Guarantees)—were seriously considering backing out of the deal. In an effort to coerce the LBO Lenders into consummating Step Two, the Officers hired the law firm of Quinn Emanuel as litigation counsel, and threatened the LBO Lenders with litigation if they failed to close Step Two.

203. In the days preceding the Step Two close, the LBO Lenders weighed their belief that the Company was insolvent against their concern that the Company would sue them if they did not fund Step Two. Notes from a December 14, 2007 meeting taken by a Bank of America banker reflect the deliberations among the LBO Lenders, and the predominant belief among them that the liability they would face if they refused to fund would be greater than any loss they would incur for funding Step Two when the Company inevitably failed:

> JPM - Not 100% final but leaning
> Going ahead and funding
> Risk greater if do not fund
>
> MRL - Not 100% but leaning to not fund
> - Reasonable that not a solvent company
> - Not planning on being lone wolf
>
> Citi - Numerous and not significant to not fund
> - More risk if end up in bk
> - Focus on understanding risk of not funding

- Not yet landed
. . . if in good faith—good defense

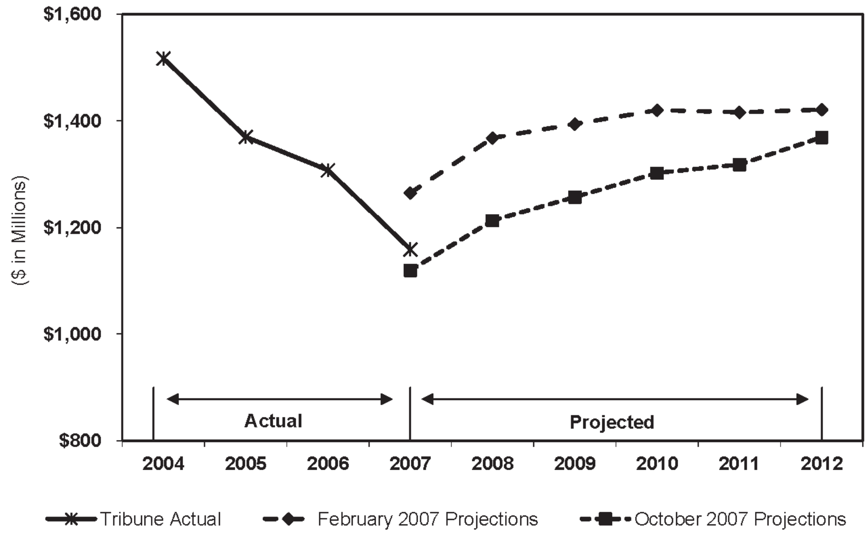
204. Not surprisingly, JPMorgan, Citigroup, and Bank of America each referred the LBO Debt to their distressed groups prior to the Step Two close. And JPMorgan downgraded its Tribune credit (following a series of prior downgrades) the day after Step Two closed.

XVIII. <u>The Company Engages in Intentional Fraud in Order to Close Step Two</u>

A. The Officers Create Unreliable, Overly Optimistic Projections in Order to Obtain a Solvency Opinion at Step Two

205. Tribune's financial projections were finally updated by the Officers and presented, in part, to the Tribune Board in October 2007 (the "October 2007 Projections"). As shown in the graph below, although the October 2007 Projections lowered the Company's expected financial performance for calendar year 2007 relative to the February 2007 Projections, the October 2007 Projections predicted that the Company's future growth rate would outperform that predicted in the February 2007 Projections, notwithstanding that the outlook for the publishing industry and Tribune had only declined since the February 2007 Projections were prepared.

Tribune – Consolidated Actual and Projected EBITDA
October 2007 Projections



Note: Actual EBITDA adjusted to include stock based compensation; Actual 2007 EBITDA adjusted to exclude one-time special items; and Projected EBITDA adjusted to include stock-based compensation and cost savings for 2007 – 2011, and exclude Cubs and Southern Connecticut Newspapers, Inc. for 2008 – 2011.

Sources: Tribune SEC Filings; Tribune ESOP Transaction Model; Tribune Brown Books, 2007; and Tribune Co. Proxy Statement, July 13, 2007.

206. For the years 2007–2010, the February 2007 Projections included an annual growth rate of 3.9%, whereas the October 2007 Projections included an annual growth of 5.1%, a 30% increase. Similarly, the annual growth rate for the years 2010–2012 reflected in the February 2007 Projections was zero, compared with a 2.5% annual growth rate for the same period in the October 2007 Projections. There was no basis whatsoever to support the increase in projected growth rates, which served to partially offset the revenue reductions in the earlier years of the projection period.

207. The October 2007 Projections also erroneously assumed that the consolidated growth rate of 2.4% from 2011 to 2012—a year in which advertising revenues were forecast to spike due to the 2012 presidential election—would be replicated each and every year from 2013 through 2017. In other words, the October 2007 Projections improperly assumed that each of the five years following the 2012

presidential election year would also enjoy the benefit of a growth bump occasioned by an election year. This fraudulent assumption resulted in a projected growth rate for the last five years of the ten-year projection period that was five times greater than the growth rate projected by management just eight months earlier. This growth rate assumption was a conscious effort by certain of the Officers to counterbalance the decline in Tribune's 2007 financial performance and other negative trends in Tribune's business. This intentionally fraudulent adjustment alone provided $613 million of additional "value" to support a conclusion of solvency by VRC.

208. The October 2007 Projections were also dependent upon speculative growth assumptions in the Company's Interactive business. At the time, the Company's Interactive business was a small Internet-based division that had grown over ten years to approximately 4% of the Company's total operating revenues in 2006, and had performed at more than 4% below expectations in 2007. Without any factual basis, the Officers increased the compound annual growth rate for the Interactive business from 16.3% in the February 2007 Projections to 22.0% in the October 2007 Projections. The October 2007 Projections forecasted that revenues from the Interactive business would more than triple by 2012, and account for more than 13% of the Company's total operating revenues and 31% of projected EBITDA in 2012.

209. As they had done with the February 2007 Projections, the Officers concealed the October 2007 Projections from the members of Tribune management who would have known that they were premised on fraudulent assumptions. For example, Landon, who was the head of the Company's Interactive division at the time of the LBO, did not see the projections for the Interactive division that were set forth in the October

2007 Projections until after the Company had filed for bankruptcy. When asked about those projections, Landon stated that he "would have expected the October forecast [for Interactive] to be flat or lower" than the February 2007 Projections, and expressed surprise when he was told that the October 2007 Projections predicted greater growth than the February 2007 Projections. When he finally saw the October 2007 Projections, Landon stated that he was "disappointed in the[] numbers," and didn't "believe in the logic behind th[em]."

210. In addition to the overly aggressive assumptions respecting Interactive revenue projections, the October 2007 Projections assumed significant increases in the cash distributions from the Company's equity investments, with a compound annual growth rate of 22.0% between 2007 and 2012. The premise of this increase was mainly focused on three investments: CareerBuilder, Classified Ventures, and Food Network.

211. The Officers assumed that the cash received from these investments would equal the Company's share of accounting profits (*i.e.*, equity income from investments). This assumption, however, was inconsistent with past practice. Moreover, because the Company held non-controlling interests in these joint ventures, it had no ability to control the timing or amount of profits actually distributed as cash to the Company. Including this assumed cash flow in the October 2007 Projections was yet another attempt by certain of the Officers to fraudulently bolster the Company's value so that VRC would be able to issue a solvency opinion for Step Two and the LBO would close. As with the February 2007 Projections, Tribune was unable to proffer a witness during its bankruptcy proceeding who could attest to the honesty or reasonableness of any aspect of the October 2007 Projections.

B. Citigroup and Merrill Continue to Act as Advisors to Tribune Through the Close of Step Two and Either Participate in or Fail to Advise the Company About the Serious Flaws in the October 2007 Projections and About Their Own Conclusions Regarding the Company's Insolvency

212. Citigroup's and Merrill's advisory engagements with Tribune dating back to October 2005 were never terminated, either by the defendants themselves or by the Company. Moreover, members of the advisory teams—including Costa and O'Grady for Merrill and Mohr and Kurmaniak for Citigroup—remained in regular communication with members of their respective lending teams and with Tribune management and/or the Tribune Board through the close of Step Two. Indeed, Kurmaniak played an active role in the business modeling reflected in the fraudulent October 2007 Projections.

213. Through at least the fall of 2007, Citigroup maintained on its computer system the projection models related to Tribune's strategic alternatives. Bigelow and other Officers communicated extensively with its Citigroup advisors, including Kurmaniak, and transmitted information related to various models to them. In an email dated September 27, 2007, for example, Bigelow suggested to Kurmaniak, "How about we make post 2012 revenue/OCF CAGRs [operating cash flow compounded annual growth rates] the same as the growth assumed in 2012 for both Publishing/Broadcasting?" Kurmaniak endorsed this approach. Citigroup thus had direct knowledge of and involvement in Tribune's decision to use the inflated 2012 election-year growth rate for purposes of projecting 2012–2017 revenues—one of the many flawed assumptions infecting the October 2007 Projections relied upon by VRC.

214. Moreover, Mohr attended the October 17, 2007 Tribune Board meeting at which management's projections were presented and discussed. According to the meeting minutes, both Mohr and another Citigroup representative gave presentations to

the Board regarding, *inter alia*, the debt market, current equity and credit market conditions, and an "overview of the publishing and broadcasting sectors in the context of the Company's [LBO] transaction." The minutes also reflect a discussion about Citigroup's "possible need to cease providing advisory services to Tribune given its obligation to finance the second step of the leveraged ESOP transaction." No decision was reached at this meeting regarding Citigroup's conflict or the future of its advisory engagement, and there is no evidence that Citigroup—or Merrill—ever, formally or informally, ceased acting as advisors to Tribune prior to the completion of the LBO.

215. Accordingly, when Citigroup and Merrill determined prior to the close of Step Two that Tribune was insolvent, they remained obligated as advisors to apprise the Company of their conclusion—notwithstanding any conflicting motivations they might have had in their role as lenders. Merrill's Costa gave voice to this conflict when, in an October 17, 2007 email to Kaplan and other colleagues at Merrill, he asked, "[W]here are we in thinking thru solvency issue if company's advisor [VRC] thinks solvent but we think otherwise?" Similarly, Citigroup's Persily has testified that prior to the closing of Step Two, Citigroup "didn't believe the Company's projections were achievable."

216. As noted above, just days before the closing of Step Two, Citigroup and Merrill each prepared several financial analyses that showed insolvency under various scenarios: Citigroup's analyses showed that the Company was insolvent by more than $1.4 billion, and Merrill's analyses showed that the Company was insolvent by more than $1.5 billion in the "low" cases and by at least $287 million in the "mid" cases. Yet, notwithstanding Citigroup's and Merrill's determinations that Tribune was insolvent at Step Two—and despite the fact that both defendants had ongoing duties as the

Company's financial advisors—neither Citigroup nor Merrill advised Tribune about their conclusions, or otherwise sought to forestall consummation of Step Two.

C. The Officers Reap the Benefits of Altering the Definition of Fair Value, and Instruct VRC to Artificially Lower the Amount of Company Debt When Assessing Balance Sheet Solvency

217. As noted above, in order to increase the likelihood that VRC would be able to opine that the Company would be solvent following the LBO, the Officers agreed with VRC that VRC's solvency analysis could alter the standard definition of fair value so that the projected tax savings arising from the S corporation/ESOP structure could be included in the balance sheet solvency test. When combined with VRC's other deviations from standard valuation methodology at Step Two, inclusion of the projected S corporation/ESOP tax benefits enabled VRC to erroneously opine that the Company would be balance sheet solvent at Step Two.

218. Additionally, in another attempt to artificially increase the Company's value for purposes of VRC's solvency analysis, the Officers prevailed upon VRC to understate the amount Tribune owed on its subordinated notes (the "PHONES Notes") by ascribing to them a liability of only $663 million, rather than the $1.256 billion face amount of the notes (less the $340 million value of Time Warner shares that could be netted against the liability upon redemption), and providing a representation letter signed by Grenesko and, upon information and belief, drafted by Grenesko, Hianik, and Bigelow, that this was a reasonable estimation of the liability arising from the PHONES Notes. The lower number was derived from the Company's financial statements, which calculated the PHONES Notes using a mix of book and fair values pursuant to Financial Accounting Standard No. 133. There can be no dispute, however, that the Company was required to pay the face amount of the PHONES Notes (less the value of the Time

Warner shares) in a liquidation or upon maturity of the PHONES Notes, or that applicable law and standard valuation practice requires debt to be calculated at face value for purposes of performing a balance sheet solvency test. Indeed, VRC valued the PHONES Notes at face value in its Step One Solvency Opinion, and in all of the drafts of the Step Two solvency opinion (the "Step Two Solvency Opinion") that it prepared prior to the Officers' directed change. Additionally, both JPMorgan and Merrill used the face value of the PHONES Notes (minus the value of the Time Warner shares) in the solvency analyses that they prepared prior to Step Two, as did Blackstone, the financial advisor to the McCormick Foundation. Furthermore, the Company itself considered the PHONES Notes at face value in the rating agency presentations it prepared in March and October 2007.

D. Certain Officers Misrepresent to VRC That an Outside Financial Advisor Agreed That Tribune Would Be Able to Refinance Its Debt

219. Notwithstanding that it relied on the patently unreasonable October 2007 Projections and employed multiple methodological flaws urged by the Officers or of its own making, VRC still concluded that the Company would face significant cash shortfalls in 2014 and 2015 unless it could refinance its debt that was set to mature in those years. VRC was deeply "concerned about [this] refinancing risk." VRC's opinion letter committee also concluded that VRC would not be able to issue a solvency opinion unless Tribune represented that Tribune could refinance that debt. Thus, on or about December 1, 2007, Mose "Chad" Rucker, a VRC Managing Director, placed a telephone call to Bigelow, and advised that any representation from Tribune as to the reasonableness of assuming that Tribune would have the ability to refinance its debt should indicate that an outside financial advisor to Tribune agreed with any such

assumption. When Morgan Stanley refused to provide the representation, certain of the Officers decided to mislead VRC into believing that Morgan Stanley had actually done so.

220. On or about December 2, 2007, certain of the Officers, including Bigelow, Grenesko, and Kenney, placed a telephone call to VRC's Browning. During that conversation, Bigelow and/or Grenesko stated that Morgan Stanley had agreed that Tribune could refinance its debt in 2014 even in a "downside" scenario. Upon information and belief, however, Morgan Stanley had never represented that it agreed with management's refinancing assumptions. To the contrary, Morgan Stanley's Managing Director Thomas Whayne told Bigelow explicitly on December 2, 2007 that Morgan Stanley was *unable* to make a representation as to Tribune's ability to refinance its debt.

221. Nonetheless, a Tribune representation letter to VRC dated December 20, 2007, that was signed by Grenesko and, upon information and belief, drafted by Grenesko, Bigelow, and Hianik, stated in part: "Based upon (i) management's best understanding of the debt and loan capital markets and (ii) management's recent discussions with Morgan Stanley, management believes that it is reasonable and appropriate for VRC to assume that Tribune . . . would be able to refinance." VRC's Step Two Solvency Opinion relied on that representation letter, expressly citing management's purported discussions with Morgan Stanley regarding the Company's ability to refinance its debt when it came due. VRC never sought or received confirmation of Morgan Stanley's view from, or otherwise discussed the Tribune representation letter with, Morgan Stanley itself.

222. On December 20, 2007, Grenesko and Bigelow delivered certificates to the Lead Banks certifying that the Company was solvent as of that date.

XIX. VRC Adopts Management's Inflated October 2007 Projections in Issuing Its Step Two Solvency Opinion

223. Faced with the daunting task of delivering a solvency opinion in connection with Step Two of the LBO, VRC continued to rely on Tribune management's increasingly unreasonable assumptions and projections—even when VRC's own internal work product demonstrated that those projections were unreliable—and resorted to even more dubious methods of analysis.

224. As alleged above, Tribune management's October 2007 Projections unreasonably assumed that the 2.4% revenue growth rate forecast for the 2012 presidential election year would be duplicated in each of the following five years. Tribune provided VRC with a specific, separate representation letter, signed by Grenesko and dated December 20, 2007, which purported to justify this methodology. VRC's solvency analysis incorporated management's "election year" assumption by extending the time period over which VRC calculated the discounted present value of projected cash flows from five years (as in VRC's Step One solvency analysis) to ten years, which added approximately $613 million to Tribune's DCF value at Step Two as computed by VRC.

225. In addition to its unreasonable adoption of the October 2007 Projections, VRC's Step Two solvency analysis carried over many of the same flaws and skewed assumptions that infected its Step One solvency analysis, including VRC's novel and unjustified definition of "fair value," the improper equal weighting that VRC assigned to its different valuation methodologies, VRC's failure to apply any minority or

marketability discounts in connection with its determination of the value of Tribune's equity investments, and VRC's reliance on comparable company and transaction valuation approaches that used companies materially different from Tribune or its investments.

226. VRC's Step Two analysis included the following additional significant flaws:

a. VRC accepted the Officers' direction to use a value nearly 50% lower than the face amount of the PHONES Notes for purposes of calculating the liability arising from those obligations.

b. VRC used discount rates in its DCF analysis that did not properly reflect the risk of achieving forecasted future cash flows, particularly regarding assumptions for growth in Tribune's Interactive business.

c. VRC ignored market-based information that was (or should have been) readily available to VRC that contradicted VRC's Step Two opinion that Tribune was solvent as of December 20, 2007.

XX. <u>The Tribune Board and Special Committee Breach Their Fiduciary Duties in Connection With VRC's Step Two Solvency Opinion</u>

227. As noted above, the Tribune Board (excluding Zell, and with Taft absent and the Chandler Trust Representatives abstaining), voted to approve the LBO, including Step Two, on April 1, 2007. On December 18, 2007, The Tribune Board (including Zell and Taft) met again in connection with Step Two. The Special Committee purportedly gathered separately for a meeting that lasted, at most, fifteen minutes, and resolved to recommend to the Tribune Board that it rely on the VRC Step Two solvency opinion and direct management to take all steps necessary to consummate Step Two. The Tribune Board did not hold an additional vote as to whether the Company should proceed with Step Two of the LBO, and accepted the Special Committee's recommendations.

228. As with the Step One Solvency Opinion, neither the Tribune Board nor the Special Committee board minutes reflect any meaningful analysis of the projections on which the VRC Step Two Solvency Opinion was based, or discussion of the faulty assumptions employed by VRC. Given the Company's worsening financial performance, the declining state of the publishing industry, and the worsening state of the economy, no reasonable person could have believed that incurring an additional $4 billion of debt would not plunge the Company further into insolvency. Enabling the Company to consummate Step Two of the LBO did, however, ensure that the Directors, Officers, and Foundations would be able to sell their remaining shares in Tribune at a price that was well above the shares' actual value, despite the inevitable consequences of placing the mountainous LBO Debt on the Company. This was the ESOP "escape" plan that Stinehart laid out in July 2006. By failing to act to prevent such consequences, the Directors breached the fiduciary duties of loyalty, good faith, and due care that they owed to the Company.

229. Indeed, in taking the actions described above with respect to the LBO, the Directors and Officers and Zell abandoned Tribune's interests altogether. The Directors and Officers and Zell knowingly and intentionally acted in the sole pursuit of their personal individual interests (including receiving tens of millions of dollars in cash proceeds, bonus payments, and other monetary special incentives from the LBO, or in Zell's case, acquiring control of one of America's most prominent companies for a minimal equity investment), or in the interests of the Controlling Shareholders and/or Zell. They did not act in order to achieve any benefit or accomplish any legitimate corporate purpose for Tribune or its subsidiaries, in either the short term or long term. To

the contrary, they engaged in actions that did not confer any benefit upon or serve any corporate purpose for Tribune and that could never have conferred any such benefit or served any such purpose. The actions they took were entirely adverse to Tribune's interests.

XXI. The LBO Closes and Tribune Collapses Under Its Massive Debt Burden

230. On August 21, 2007 Tribune's remaining shareholders voted on the merger. Although the substantial risks to the Company arising out of the LBO were obvious, 97% percent of voting shareholders voted in favor of the merger.

231. On December 20, 2007, the Company completed Step Two of the LBO and repurchased the remaining 119 million shares of common stock outstanding at a purchase price of $34 per share.

232. In order to fund the repurchase, Tribune took on another approximately $3.7 billion of debt, bringing its total funded debt to approximately $13.7 billion. As part of Step Two, Tribune repaid EGI-TRB's initial $200 million unsecured subordinated Exchangeable Note in the amount that EGI-TRB would have received if it had held stock that was cashed out at $34 per share, and paid EGI-TRB $50 million for the 1,470,588 shares of common stock it had purchased prior to the completion of Step One. EGI-TRB also purchased from the Company a $225 million subordinated note and a $90 million warrant to purchase approximately 40% of the fully diluted equity of the Company at a later date. The warrant was for a term of 15 years and specified a maximum purchase price of $13.80 per share. In these transactions, EGI-TRB received credit for interest deemed to have accrued on the Exchangeable Note, and EGI and EGI-TRB also received credit for expenses they and/or Zell incurred in connection with the LBO, rendering Zell's total equity investment in Tribune a mere $306 million.

233. As a result of the LBO, the Company became a private company, wholly owned by the ESOP.

234. Zell subsequently became Chairman of the Tribune Board and Tribune's President and Chief Executive Officer. For Zell, the transaction clearly was an option play. For a total investment of $306 million, Zell received control of a media conglomerate with $5 billion in revenue, and a warrant to purchase 40% of the Company at a maximum price per share of only $13.80. Fees and expenses paid to various lenders and advisors at the closing of both Step One and Step Two amounted to approximately $284 million.

235. The Company rapidly deteriorated under its massive debt burden after the LBO closed in December 2007. REDACTED

236. In early 2008, just weeks after the close of Step Two, the Company implemented a 5% workforce reduction in its publishing segment. In announcing this reduction in a memo dated February 13, 2008, Zell discussed "the reality of [the Company's] significant debt levels," and "significant declines in advertising volume at our newspapers . . . putting downward pressure on our cash flow." On July 14, 2008, the Associated Press reported that the *Los Angeles Times* planned to cut 250 positions, explaining "[l]ast December, Tribune bought out its public shareholders in an $8.2 billion

deal orchestrated by real estate mogul Sam Zell. Now, he and Tribune are struggling to service that debt."

237. On or about March 5, 2008, *less than three months after Step Two closed*, Tribune hired bankruptcy lawyers from the law firm of Sidley Austin LLP to advise the Company on ways to escape the detrimental ramifications of the LBO Debt, including a potential bankruptcy filing. On December 8, 2008 (the "Petition Date"), less than a year after Step Two closed, Tribune and nearly all of the Subsidiary Guarantors filed voluntary petitions for relief under the Bankruptcy Code. In an affidavit filed in connection with the bankruptcy filing, Bigelow stated that for the quarterly period ended September 28, 2008, Tribune had approximately $7.6 billion in assets—$6.9 billion less than the midpoint of the asset value set forth in VRC's Step Two Solvency Opinion—and $13.9 billion of total liabilities—a number that, unlike the VRC Step Two Solvency Opinion, properly included the PHONES debt at face value. Bigelow stated further that "the newspaper industry generally is in the midst of an unprecedented decline which has only been exacerbated by the current recession," and noted the constraints placed on the Company by virtue of the mountainous debt it had incurred in connection with the LBO. Bigelow specified that "[i]n December, 2008 alone, the Debtors face debt service and related payments of approximately $200 million, with another $1.3 billion due in 2009." Bigelow stated that these "substantial debt service requirements," among other things, required the Debtors to seek bankruptcy protection.

238. The Debtors remained in bankruptcy for more than four years. On August 10, 2012, Tribune's then President and Chief Executive Officer stated in a sworn affidavit that as of that date, the Company had incurred approximately $400 million in fees

and expenses in connection with the bankruptcy proceeding. During the pendency of the bankruptcy proceeding, neither Tribune nor the LBO Lenders presented any evidence that the Company was solvent at Step Two.

GROUNDS FOR RELIEF

COUNT ONE
Aiding and Abetting Breaches of Fiduciary Duties Against Citigroup and Merrill

239. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as though fully set forth herein.

240. As directors and officers of Tribune, the Directors and Officers owed Tribune fiduciary duties of good faith, care, and loyalty. As Tribune was rendered insolvent by the LBO, the Directors and Officers owed fiduciary duties to all of Tribune's stakeholders, including its creditors, who were harmed due to Tribune's inability to pay them in full.

241. The Directors and Officers, including Bigelow and Grenesko, acting both individually and collectively, failed to exercise the necessary care, and breached their respective duties of good faith, care, and loyalty as set forth fully herein.

242. Citigroup and Merrill knew that the Directors and Officers had the fiduciary duties alleged herein.

243. Citigroup and Merrill colluded in or aided and abetted the Directors' and Officers' breaches of fiduciary duties, and were active and knowing participants in those breaches of fiduciary duties by, among other things:

a. recommending and supporting the LBO in their role as financial advisors to the Company when they knew that the LBO would or was highly likely to render Tribune insolvent;

b. failing to identify and/or advise the Company, the Tribune Board, or the Special Committee of substantial flaws in Tribune management's February 2007 Projections and October 2007 Projections, and/or endorsing improper assumptions in those projections, that were relied upon by VRC in issuing its Step One Solvency Opinion and Step Two Solvency Opinion, respectively;

c. failing to identify and/or advise the Company, the Tribune Board, or the Special Committee of substantial flaws in the methodology, assumptions, and conclusions of VRC in connection with its Step One and Step Two solvency analyses; and

d. failing to inform the Company, the Tribune Board, or the Special Committee of the defendants' own internal financial analyses showing that the Company would be insolvent after Step Two under certain reasonable assumptions.

244. Citigroup and Merrill acted in bad faith and were grossly negligent. In recommending and supporting the LBO, Citigroup and Merrill failed to exercise even slight care, in such a way as to show complete disregard for the rights and safety of others.

245. Tribune has been substantially damaged as a direct and proximate result of Citigroup's and Merrill's aiding and abetting the breaches of fiduciary duties set forth herein.

246. Accordingly, Plaintiff is entitled to recover damages from Citigroup and Merrill in an amount to be determined at trial.

COUNT TWO
Professional Malpractice Against Citigroup and Merrill

247. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as though fully set forth herein.

248. Citigroup and Merrill agreed to provide professional financial advice to the Company, and in fact provided financial advice to the Company and the Special

Committee, in connection with the LBO, including whether to pursue a transaction, and what form of transaction to pursue, and advice concerning VRC's solvency opinions.

249. In providing professional financial advice to the Company and the Special Committee, and pursuant to their engagement agreements with the Company, Citigroup and Merrill had a duty to use the same degree of knowledge, skill, and ability as would an ordinarily prudent professional in similar circumstances.

250. Citigroup and Merrill deviated from the standard of care expected of a professional financial advisor under these circumstances, and in fact, failed to exercise even slight care in rendering financial advice to the Company. Citigroup and Merrill acted in bad faith and were grossly negligent by, among other things,

a. allowing their conduct as advisors to be influenced by the opportunity for the defendants and/or their affiliates to receive, in addition to the Advisory Fees, millions of dollars of fees from participating in the LBO financing as lenders and managers;

b. advising the Company on the Zell proposal at the same time they were negotiating to provide financing for the transaction from which they and/or their affiliates would receive tens of millions of dollars in fees, interest at premium rates far higher than the 2006 Bank Debt, and Subsidiary Guarantees;

c. recommending and supporting the LBO in their roles as professional financial advisors to the Company when they knew, or were reckless or grossly negligent in not knowing, the substantial risk that the LBO would or was highly likely to render Tribune insolvent;

d. failing to identify and/or advise the Company, the Tribune Board, or the Special Committee of substantial flaws in Tribune management's February 2007 Projections and October 2007 Projections, and/or endorsing improper assumptions in those projections, that were relied upon by VRC in issuing its Step One Solvency Opinion and Step Two Solvency Opinion, respectively;

e. failing to identify and/or advise the Company, the Tribune Board, or the Special Committee of substantial flaws in the methodology, assumptions, and conclusions of VRC in connection with its Step One and Step Two solvency analyses; and

f. failing to inform the Company, the Tribune Board, or the Special Committee of the defendants' own internal financial analyses showing that the Company would be insolvent after Step Two under certain reasonable assumptions.

251. Tribune has been substantially damaged as a direct and proximate result of Citigroup's and Merrill's professional malpractice set forth fully herein.

252. Accordingly, Plaintiff is entitled to recover damages from Citigroup and Merrill in an amount to be determined at trial.

COUNT THREE
Avoidance and Recovery of the Advisory Fees (of at Least $25 Million) as Constructive and/or Actual Fraudulent Transfers Under Sections 548(a)(1)(A) and (B) and 550(a) of the Bankruptcy Code Against Citigroup and Merrill

253. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as though fully set forth herein.

254. The Advisory Fees were paid within two years of the Petition Date.

255. Tribune, by and through certain of its officers, directors, shareholders, and agents, paid the Advisory Fees with the actual intent to hinder, delay, and defraud Tribune's creditors, which intent is demonstrated by, among other things, the facts that:

a. The Directors and Officers stood to receive millions of dollars through the sale of their Tribune shares and the receipt of special monetary incentives if the LBO was consummated;

b. The Officers recommended that the Tribune Board approve the LBO notwithstanding that they knew, or were reckless or grossly negligent in not knowing, that the LBO would render the Company insolvent, inadequately capitalized, and/or unable to pay its debts as they came due;

c. Certain of the Officers prepared, instructed, and/or induced VRC to rely on the patently unreasonable February 2007 Projections and October 2007 Projections, notwithstanding that these Officers knew, or were reckless or grossly negligent in not knowing, that the projections were not prepared by, and were actively concealed from, the members of Tribune management with direct knowledge of facts that rendered them unreasonable, and that these Officers knew, or were reckless or grossly negligent in not knowing, that Tribune would have to vastly outperform its own 2006 performance and its 2007 performance to date in order to meet the February 2007 Projections and October 2007 Projections, that the February 2007 Projections and October 2007 Projections conflicted with Tribune's internal projections, and that Tribune could not achieve the February 2007 Projections and October 2007 Projections;

d. The Directors and Officers relied upon, and allowed VRC to rely upon, an inadequate downside analysis of the Company's projections which assumed a materially more optimistic downside case than the Tribune Board had insisted on in connection with the Company's 2006 Leveraged Recapitalization, even though the publishing industry and the Company's own financial performance had deteriorated since 2006 and despite the fact that the leverage associated with the LBO was more than double what the Company incurred in its 2006 Leveraged Recapitalization;

e. Certain of the Officers colluded with VRC to ensure that in preparing its solvency opinions, which were crucial to the consummation of the LBO, VRC would deviate from legal and recognized industry standards for preparing a solvency analysis, because these Officers knew that a solvency analysis prepared in accordance with proper legal and industry standards would show that the LBO would render the Company insolvent, inadequately capitalized, and unable to pay its debts as they came due, and would have prevented the consummation of the LBO;

f. Certain of the Officers knowingly misrepresented to VRC that an outside financial advisor had agreed with management's unreasonable assumptions concerning the prospective ability of Tribune to refinance its debt;

g. The Directors and Officers effectively transferred virtually all of the Company's value to Tribune's shareholders and/or the LBO Lenders and away from its existing creditors, by causing the Subsidiary Guarantors to enter into the Subsidiary Guarantees;

h. The Directors and Officers sought to ensure that the LBO Lenders would be paid in advance of Tribune's and its subsidiaries' existing creditors, by creating Holdco and Finance and authorizing the complex transactions resulting in intercompany obligations from the Company's publishing subsidiaries to Finance;

i. The Directors and Officers, motivated by the fact that they would personally receive outsized, non-standard monetary rewards if the LBO was consummated, advocated and/or voted in favor of the LBO, notwithstanding that (a) they had previously refused to vote in favor of and/or endorse other proposed transactions on the ground that those transactions placed too much debt on the Company, (b) the LBO placed significantly more debt on the Company than those proposed transactions, and (c) at the time of the LBO, the Company was performing substantially worse than it had been when they refused to vote in favor of and/or endorse the other proposed transactions;

j. At every stage of the LBO, the Directors relied on the advice of outside advisors that the Directors knew, or were reckless or grossly negligent in not knowing, was proffered by parties with a financial interest in the consummation of the LBO, and was not credible;

k. At every stage of the LBO, the Directors failed to adequately analyze the impact that the LBO would have on the Company and those parties who would continue to be creditors and/or constituents of the Company, and voted in favor of and/or advocated for the LBO, notwithstanding that they knew, or were reckless or grossly negligent in not knowing, that the LBO would render the Company insolvent, unable to pay its debts as they came due, and/or inadequately capitalized.

256. In addition, the following traditional badges of fraud also indicate that Tribune paid the Advisory Fees with the actual intent to hinder, delay, and defraud Tribune's creditors:

a. Tribune received less than reasonably equivalent value in exchange for payment of the Advisory Fees;

b. The Advisory Fees were not paid in the regular course of Tribune's business;

c. The Advisory Fees were paid at the same time as, or were made with the proceeds of, the LBO Loans; and

d. Management engaged in deceptive conduct in connection with the LBO by, among other things, concealing the February 2007 Projections and October 2007 Projections from members of management who had knowledge of facts that rendered them unreasonable; concealing from VRC and from the Board that the February 2007 Projections and October 2007 Projections were inaccurate, unjustified, based on unreasonable assumptions, and inconsistent with the Company's performance; and misrepresenting to VRC that Morgan Stanley had agreed with management's unreasonable assumptions concerning the prospective ability of Tribune to refinance its debt.

257. Tribune received less than reasonably equivalent value for the Advisory Fees, and Tribune, at the time of payment of the Advisory Fees, (i) was insolvent or

became insolvent as a result of the payment of the Advisory Fees; (ii) was engaged in business or a transaction, or was about to engage in business or a transaction, for which Tribune was left with unreasonably small capital; and/or (iii) intended to incur, or believed that it would incur, debts that would be beyond its ability to pay as such debts matured.

258. Accordingly, payment of the Advisory Fees were transfers in fraud of the rights of the creditors of Tribune and its subsidiaries, and the Advisory Fees should be avoided and recovered pursuant to Bankruptcy Code Sections 548(a)(1)(A), 548(a)(1)(B), and 550(a) of the Bankruptcy Code.

RESERVATION OF RIGHTS

259. The Litigation Trustee reserves the right, to the extent permitted under the Bankruptcy Code, the Federal Rules of Civil or Bankruptcy Procedure, or by agreement, to assert any claims relating to the subject matter of this action or otherwise relating to the Debtors and their estates against any third party.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Plaintiff respectfully requests that this Court enter judgment against the defendants as follows:

(a) awarding Plaintiff damages in an amount to be determined at trial;

(b) declaring the payment of the Advisory Fees to be a transfer or incurrence of an obligation in actual and/or constructive fraud of the rights of the creditors of Tribune and its subsidiaries and/or a transfer that preferred certain creditors to the detriment of others;

(c) avoiding and/or granting recovery of all amounts paid in connection with the Advisory Fees pursuant to Bankruptcy Code Sections 547 and/or 548 and/or 550;

(d) awarding Plaintiff its attorneys' fees, costs, and other expenses incurred in this action;

(e) awarding Plaintiff pre- and post-judgment interest at the maximum rate permitted by law; and

(f) awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 1, 2013

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