

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISH NETWORK  
DERIVATIVE LITIGATION.

JACKSONVILLE POLICE AND FIRE  
PENSION FUND,

Appellant,

vs.

GEORGE R. BROKAW; CHARLES M.  
LILLIS; TOM A. ORTOLF; CHARLES  
W. ERGEN; CANTEY M. ERGEN;  
JAMES DEFRANCO; DAVID K.  
MOSKOWITZ; CARL E. VOGEL;  
THOMAS A. CULLEN; KYLE J. KISER;  
AND R. STANTON DODGE,

Respondent.

Electronically Filed  
SUPREME COURT No. 69012  
May 27 2016 09:22 a.m.  
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Clerk of Supreme Court

**JOINT APPENDIX  
VOLUME 20 of 44**

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Date	Document Description	Volume	Bates No.
2014-08-29	Affidavit of Service re Second Amended Complaint Kyle Jason Kiser	Vol. 18	JA004272 – JA004273 <sup>1</sup>
2014-08-29	Affidavit of Service re Second Amended Complaint Stanton Dodge	Vol. 18	JA004268 – JA004271
2014-08-29	Affidavit of Service re Second Amended Complaint Thomas A. Cullen	Vol. 18	JA004274 – JA004275
2013-08-22	Affidavit of Service re Verified Shareholder Complaint	Vol. 1	JA000040

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<sup>1</sup> JA = Joint Appendix

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2016-01-27	Amended Judgment	Vol. 43	JA010725 – JA010726
2014-10-26	Appendix, Volume 1 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation (No exhibits attached)	Vol. 20	JA004958 – JA004962
2014-10-27	Appendix, Volume 2 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation (No exhibits attached)	Vol. 20	JA004963 – JA004971

<b>Date</b>	<b>Document Description</b>	<b>Volume</b>	<b>Bates No.</b>
2014-10-27	Appendix, Volume 3 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation and Selected Exhibits to Special Litigation Committee's Report: Exhibit 162 (Omnibus Objection of the United States Trustee to Confirmation dated Nov. 22, 2013); Exhibit 172 (Hearing Transcript dated December 10, 2013); and Exhibit 194 (Transcript, Hearing: Bench Decision in Adv. Proc. 13-01390-scc., Hearing: Bench Decision on Confirmation of Plan of Debtors (12-12080-scc), In re LightSquared Inc., No. 12-120808-scc, Adv. Proc. No. 13-01390-scc (Bankr. S.D.N.Y. May 8, 2014)); Exhibit 195 (Post-Trial Findings of Fact and Conclusion of Law dated June 10, 2014 (In re LightSquared, No. 12-120808 (Bankr. S.D.N.Y.)); Exhibit 203 (Decision Denying Confirmation of Debtors' Third Amended Joint Plan Pursuant to Chapter 11 of Bankruptcy Code (In re LightSquared, No. 12-120808 (Bankr. S.D.N.Y.))	Vol. 20 Vol. 21 Vol. 22 Vol. 23	JA004972 – JA005001 JA005002 – JA005251 JA005252 – JA005501 JA005502 – JA005633
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2014-10-27	Appendix, Volume 5 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation and Selected Exhibits to Special Litigation Committee's Report: Exhibit 395 (Perella Fairness Opinion dated July 21, 2013); Exhibit 439 (Minutes of the Special Meeting of the Board of Directors of DISH Network Corporation (December 9, 2013). (In re LightSquared, No. 12-120808 (Bankr. S.D.N.Y.)) <b>(Filed Under Seal)</b>	Vol. 23	JA005643 – JA005674
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2016-02-09	Notice of Appeal	Vol. 43 Vol. 44	JA010747 – JA010751 JA010752 – JA010918
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2015-01-06	Special Litigation Committee's Appendix of Exhibits Referenced in their Reply In Support of their Motion to Defer to its Determination that the Claims Should Be Dismissed	Vol. 25	JA006046 – JA006227

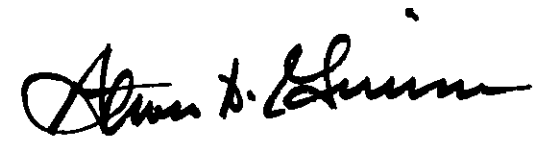
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2013-08-09	Verified Shareholder Derivative Complaint	Vol. 1	JA000001 – JA000034

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**CLARK COUNTY, NEVADA**

IN RE DISH NETWORK CORPORATION  
DERIVATIVE LITIGATION

Case No. A-13-686775-B  
Dept. No. XI

*Consolidated with A688882*

**VOLUME 1 OF APPENDIX TO THE  
REPORT OF THE SPECIAL  
LITIGATION COMMITTEE OF DISH  
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3.	Certificate of Amendment of Articles of Incorporation of EchoStar Communications Corporation, Annex I to Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934 (Dec. 31, 2007)	334 – 367
4.	EchoStar Communications Corporation, Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934, (Dec. 31, 2007)	368 – 401
5.	Certificate of Amendment of Articles of Incorporation of EchoStar Communications Corporation (Jan. 16, 2008, effective Jan. 20, 2008)	402 – 412
6.	EchoStar Corp., Annual Report (Form 10-K) (Mar. 1, 2010)	413 – 539
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21.	DISH Network Corp., Current Report (Form 8-K) (Sept. 10, 2014)	1388 - 1401
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DATED this 26th day of October, 2014

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of October, 2014, a true and correct copy of the foregoing **VOLUME 1 OF APPENDIX TO THE REPORT OF THE SPECIAL LITIGATION COMMITTEE OF DISH NETWORK CORPORATION** was served by the following method(s):

☒ **Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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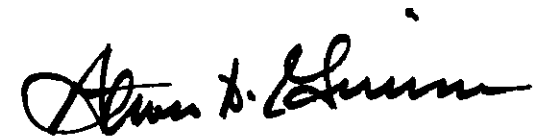
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**CLARK COUNTY, NEVADA**

29 **IN RE DISH NETWORK CORPORATION**  
30 **DERIVATIVE LITIGATION**

Case No. A-13-686775-B  
Dept. No. XI

*Consolidated with A688882*

**VOLUME 2 OF THE APPENDIX IN  
SUPPORT OF REPORT OF THE  
SPECIAL LITIGATION COMMITTEE  
OF DISH NETWORK CORPORATION**

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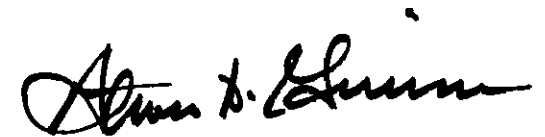
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29 **IN RE DISH NETWORK CORPORATION**  
30 **DERIVATIVE LITIGATION**

Case No. A-13-686775-B  
Dept. No. XI

*Consolidated with A688882*

**VOLUME 3 OF APPENDIX TO THE**  
**REPORT OF THE SPECIAL**  
**LITIGATION COMMITTEE OF DISH**  
**NETWORK CORPORATION**

EXHIBIT	DESCRIPTION	PAGE NO.
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110.	Order (A) Approving Asset Purchase Agreement and Authorizing the Sale of Assets of Debtor Outside the Ordinary Course of Business; (B) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Interests and Encumbrances; (C) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Unexpired Leases; and (D) Granting Related Relief, <i>In re TerreStar Networks Inc.</i> , No. 10-15446 (SHL) (Bankr. S.D.N.Y. July 7, 2011).	3541 – 3683
111.	Voluntary Petition, <i>In re LightSquared Inc.</i> , No. 12-12080 (Bankr. S.D.N.Y. May 14, 2012) (Bankruptcy Docket No. 1)	3684 – 3705
112.	Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) In support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York, <i>In re LightSquared Inc.</i> , No. Unassigned (Bankr. S.D.N.Y. May 14, 2012) (Bankruptcy Docket No. 3).	3706 – 3791
113.	Global Notes, Methodology and Specific Disclosures Regarding LightSquared's Statements of Financial Affairs, at Statement Question 21a Rider, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. June 27, 2012) (Bankruptcy Docket No. 175).	3792 – 3873
114.	Motion for Entry of Order Pursuant to 11 U.S.C. § 1121(d) Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Aug. 29, 2012) (Bankruptcy Docket No. 294).	3874 – 3903
115.	Agreed Order Pursuant to 11 U.S.C. § 1121(d) Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Oct. 1, 2012) (Bankruptcy Docket No. 343).	3904 – 3907
116.	Stipulation and Agreed Order Establishing Procedures for the Protection of Confidential Information, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Nov. 28, 2012) (Bankruptcy Docket No. 437).	3908 – 3924
117.	Motion for Entry of Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Jan. 17, 2013) (Bankruptcy Docket No. 485).	3925 – 3979
118.	Statement of U.S. Bank and Mast In Support of The Motion for Entry of Order Pursuant to 11 U.S.C. § 1121(D) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-120808 (SCC) (Bankr. S.D.N.Y. Jan. 24, 2013) (Bankruptcy Docket No. 500).	3980 – 3985

119.	Statement of the Ad Hoc Preferred LP Group in Support of the Debtors' Motion for Entry of Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusiv Periods to File a Plan of Reorganization and Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Jan. 24, 2013) (Bankruptcy Docket No. 501).	3986 – 3990
120.	Objection of the Ad Hoc Secured Group of LightSquared LP Lenders to the Debtors' Second Motion to Extend Exclusivity, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Jan. 24, 2013) (Bankruptcy Docket No. 503).	3991 – 4081
121.	LightSquared's Reply in Support of Its Motion for Entry of Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Jan. 31, 2013) (Bankruptcy Docket No. 509).	4082 – 4123
122.	Reply of Harbinger Capital Partners LLC to the Objection of the Ad Hoc Secured Group of LightSquared LP Lenders to the Debtors' Second Motion to Extend Exclusivity, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Jan. 30, 2013) (Bankruptcy Docket No. 510).	4124 – 4138
123.	Order Authorizing LightSquared to File Under Seal Certain Provisions of Stipulation Between parties in Interest Regarding Entry of Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Feb. 13, 2013) (Bankruptcy Docket No. 521).	4139 – 4142
124.	Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Feb. 13, 2013) (Bankruptcy Docket No. 522).	4143 – 4202
125.	Motion of the Ad Hoc Secured Group of LightSquared LP Lenders, Pursuant to 11 U.S.C. § 107(b), Fed. R. Bankr. P. 9018, For an Order Authorizing The Ad Hoc Secured Group to File Under Seal Its Emergency Motion to Enforce This Court's Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and to Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. June 18, 2013) (Bankruptcy Docket No. 684).	4203 – 4211
126.	Emergency Motion of the Ad Hoc Secured Group of LightSquared LP Lenders to Enforce this Court's Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and to Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080	4212 – 4236



	(SCC) (Bankr. S.D.N.Y. June 18, 2013) (Bankruptcy Docket No. 685).	
127.	LightSquared's (I) Objection to Emergency Motion of Ad Hoc Secured Group of LightSquared's LP Lenders to Enforce Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof [Docket No. 522], and (II) Cross-Motion for Entry of Order, Pursuant to 11 U.S.C. § 105(a), Relieving LightSquared of Certain Obligations Thereunder, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. July 1, 2013) (Bankruptcy Docket No. 705).	4237 – 4296
128.	Joinder of Harbinger Capital Partners LLC in Support of LightSquared's Objection to Emergency Motion of Ad Hoc Secured Group of LightSquared's LP Lenders to Enforce Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof [Docket No. 522], <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. July 1, 2013) (Bankruptcy Docket No. 706).	4297 – 4300
129.	Joinder of Harbinger Capital Partners LLC in Support of Cross-Motion for Entry of Order, Pursuant to 11 U.S.C. § 105(a), Relieving LightSquared of Certain Obligations Under Order Pursuant to 11 U.S.C. § 1121(d) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof [Docket No. 522], <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. July 3, 2013) (Bankruptcy Docket No. 716).	4301 – 4330
130.	Amended Stipulation by SP Special Opportunities, LLC in Aid of Discovery in Connection with Emergency Motion of the Ad Hoc Secured Group of LightSquared LP Lenders to Enforce this Court's Order Pursuant to 11 U.S.C. § 1121(D) Further Extending LightSquared's Exclusive Periods to File a Plan of Reorganization and to Solicit Acceptances Thereof, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. July 9, 2013) (Bankruptcy Docket No. 728).	4331 – 4341
131.	Joint Chapter 11 Plan for LightSquared LP, ATC Technologies, LLC, LightSquared Corp., LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, LightSquared Finance Co., LightSquared Network LLC, LightSquared Bermuda Ltd., Skyterra Holdings (Canada) Inc., and Skyterra (Canada) Inc., Proposed by the Ad Hoc Secured Group of LightSquared LP Lenders, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. July 23, 2013) (Bankruptcy Docket No. 764)	4342 – 4400
132.	Disclosure Statement for Joint Chapter 11 Plan for Lightsquared LP, ATC Technologies, LLC, Lightsquared Corp., Lightsquared Inc. of Virginia, Lightsquared Subsidiary LLC, Lightsquared Finance Co., Lightsquared Network LLC, Lightsquared Bermuda	4401 – 5169

	Ltd., Skyterra Holdings (Canada) Inc., and Skyterra (Canada) Inc., Proposed by the Ad Hoc Secured Group of Lightsquared LP Lenders, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. July 23, 2013) (Bankruptcy Docket No. 765 – 765-8).	
133.	Transcript, <i>In re LightSquared Inc.</i> , No. 12-12080-scc (Bankr. S.D.N.Y. July 23, 2013) (Bankruptcy Docket No. 776).	5170 – 5267
134.	Notice of Filing of Revised Seventh Supplemental Verified Statement of White & Case LLP Pursuant to Bankruptcy Rule 2019, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. July 26, 2013) (Bankruptcy Docket No. 777).	5268 – 5278
135.	Stipulation and Order of Dismissal Without Prejudice, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. July 30, 2013) (Bankruptcy Docket No. 779)	5279 – 5281
136.	Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Aug. 6, 2013) (Adversary Docket No. 1).	5282 – 5323
137.	Statement of Intervention of U.S. Bank National Association and Mast Capital Management, LLC, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Aug. 22, 2013) (Adversary Docket No. 12).	5324 – 5326
138.	Debtors' Joint Plan Pursuant to Chapter 11 of Bankruptcy Code, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Aug. 30, 2013) (Bankruptcy Docket No. 817).	5327 – 5396
139.	Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code Proposed by Harbinger Capital Partners, LLC, <i>In re LightSquared, Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Aug. 30, 2013) (Bankruptcy Docket No. 821).	5397 – 5456
140.	Defendant SP Special Opportunities Holdings, LLC's Corporate Disclosure Statement, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2013) (Adversary Docket No. 24)	5457 – 5459
141.	Notice of Motion to Dismiss Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2013) (Bankruptcy Adversary Docket No. 29).	5460 – 5462
142.	Memorandum of Law in Support of Defendants Charles Ergen, SP Special Opportunities, LLC and SP Special Opportunities Holdings, LLC's Motion to Dismiss the Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2013) (Adversary Docket No. 30)	5463 – 5497
143.	Notice of the Motion of Defendants DISH Network Corporation, EchoStar Corporation and L-Band Acquisition, LLC to Dismiss the Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2013) (Adversary Docket No. 32).	5498 – 5500
144.	Memorandum of Law in Support of Defendants DISH Network Corporation, EchoStar Corporation and L-Band Acquisition,	5501 – 5541

	LLC's Motion to Dismiss the Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2013) (Bankruptcy Adversary Docket No. 33).	
145.	Notice of Motion of Defendants Sound Point Capital Management, L.P. and Stephen Ketchum to Dismiss Plaintiffs' Adversary Complaint Pursuant to FRBP 7012(B), <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2013) (Adversary Docket No. 34).	5542 – 5550
146.	Memorandum of Law of Defendants Sound Point Capital Management, L.P. and Stephen Ketchum in Support of Their Motion to Dismiss the Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2013) (Adversary Docket No. 35).	5551 – 5579
147.	Amended Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Sept. 30, 2013) (Adversary Docket No. 43).	5580 – 5632
148.	Order (A) Establishing Bid Procedures, (B) Scheduling Date and Time for Auction, (C) Approving Form of Notice, and (E) Granting Related Relief, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Oct. 1, 2013) (Bankruptcy Docket No. 892).	5633 – 5739
149.	Defendants Charles W. Ergen, SP Special Opportunities, LLC and Special Opportunities Holdings, LLC's Memorandum of Law in Support of Their Motion to Dismiss the Amended Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Oct. 3, 2013) (Adversary Docket No. 44).	5740 – 6000
150.	Memorandum of Law of Defendants Sound Point Capital Management, L.P. and Stephen Ketchum in Support of Their Motion to Dismiss the Amended Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Oct. 3, 2013) (LightSquared Bankruptcy Adversary Docket No. 45).	6001 – 6007
151.	Supplemental Memorandum of Law in Support of Defendants DISH Network Corporation's, EchoStar Corporation's and L-Band Acquisition, LLC's Motion to Dismiss the Amended Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Oct. 5, 2013) (Bankruptcy Adversary Docket No. 46)	6008 – 6064
152.	Notice of Filing of First Amended Plan and Disclosure Statement, <i>In re LightSquared, Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Oct. 7, 2013) (Bankruptcy Docket No. 917).	006065 – 006747
153.	Notice of Filing by Ad Hoc LP Secured Group of Solicitation Versions of First Amended Plan and Disclosure Statement, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Oct. 28, 2013) (Bankruptcy Docket No. 970).	006748 – 007433

154.	Transcript, <i>In re LightSquared Inc.</i> , No. 12-12080-scc, Adv. Proc. No. 13-01390-scc (Bankr. S.D.N.Y. Oct. 29, 2013) (Adversary Docket No. 64).	007434 – 007592
155.	Order Granting Motions to Dismiss the Amended Complaint, at 2, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Nov. 14, 2013) (Adversary Docket No. 65).	007593 – 007596
156.	Supplemental Declaration of Paul M. Basta, P.C. In Support of Debtors' Application for Entry of An Order Pursuant to Section 327(e) of the Bankruptcy Code Authorizing and Approving Employment and Retention of Kirkland & Ellis LLP, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Oct. 31, 2013) (Bankruptcy Docket No. 977).	007597 – 007685
157.	Status Report, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Nov. 1, 2013) (Bankruptcy Docket No. 983).	007686 – 007756
158.	Order Granting Motions to Dismiss the Amended Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Nov. 14, 2013) (Adversary Docket No. 65)	007757 – 007760
159.	Complaint-In-Intervention, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-01390 (SCC) (Bankr. S.D.N.Y. Nov. 15, 2013) (Adversary Docket No. 66).	007761 – 007788
160.	LightSquared Special Committee Status Report, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Nov. 15, 2013) (Bankruptcy Docket No. 1023)	007789 – 007822
161.	Statement of L-Band Acquisition, LLC <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Nov. 22, 2013) (Bankruptcy Docket No. 1041).	007823 – 007829
162.	Omnibus Objection of the United States Trustee to Confirmation of (A) the First Amended Joint Plan Proposed by the Ad Hoc Secured Group of LightSquared LP Lenders, (C) the Chapter 11 Plan for One Dot Six Proposed by U.S. Bank National Association and Mast Capital Management, LLC and (D) the Amended Joint Plan of Reorganization Proposed by Harbinger Capital Partners, LLC, at p. 2, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Nov. 22, 2013) (Bankruptcy Docket No. 1036).	007830 – 007854
163.	Notice of Motion to Dismiss the Complaint-in-Intervention, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Nov. 25, 2013) (Adversary Docket No. 69).	7855 – 7857
164.	Memorandum of Law in Support of Defendants Charles Ergen and SP Special Opportunities, LLC's Motion to Dismiss the Complaint-in-Intervention, <i>In re LightSquared Inc.</i> , No. 12-	7858 – 7890

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165.	Transcript, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Nov. 25, 2013) (Bankruptcy Docket No. 1079).	7891 – 7934
166.	Notice of Motion of Defendants DISH Network Corporation and EchoStar Corporation to Dismiss the Complaint-in-Intervention, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Nov. 25, 2013) (Adversary Docket No. 72).	7935 – 7937
167.	Memorandum of Law in Support of Defendants DISH Network Corporation's and EchoStar Corporation's Motion to Dismiss the Complaint-in-Intervention, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Nov. 25, 2013) (Adversary Docket No. 73).	7938 – 7969
168.	Second Amended Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Dec. 2, 2013) (Adversary Docket No. 74)	7970 – 8019
169.	Notice of Appeal, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Dec. 2, 2013) (Adversary Docket No. 75).	8020 – 8025
170.	Order Modifying Previously Scheduled Hearing Dates and Deadlines In Connection with Chapter 11 Plan Process, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Dec. 3, 2013) (Bankruptcy Docket No. 1061).	8026 – 8030
171.	Memorandum of Law in Support of Defendant SP Special Opportunities, LLC's Motion to Dismiss Harbinger's Second Amended Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-01390 (SCC) (Bankr. S.D.N.Y. Dec. 5, 2013) (Adversary Docket No. 84).	8031 – 8058
172.	Transcript, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-01390 (SCC) (Bankr. S.D.N.Y. Dec. 10, 2013).	8059 – 8235
173.	LightSquared's Auction Related Notice, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Dec. 11, 2013) (Bankruptcy Docket No. 1086).	8236 – 8239
174.	Order Regarding Motions to Dismiss LightSquared's Complaint-in-Intervention and Harbinger's Second Amended Complaint, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Dec. 12, 2013) (Bankruptcy Adversary Docket No. 97).	8240 – 8243
175.	Transcript, Pre-Trial Conference, <i>In re LightSquared Inc.</i> , No. 12-12080-scc (Bankr. S.D.N.Y. Jan 7, 2014) (Bankruptcy Docket no. 1274).	8244 – 8355
176.	Transcript of Adversary Proceeding Day 1, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Jan. 9, 2014) (Bankruptcy Docket No. 1275).	8356 – 8596
177.	Transcript of Adversary Proceeding Day 2, <i>In re LightSquared Inc.</i> , No. 12-12080-scc, Adv. Proc. No. 13-01390-scc (Bankr.	8597 – 8763

	S.D.N.Y. Jan. 10, 2014) (Bankruptcy Docket No. 1276).	
178.	Transcript of Adversary Proceeding Day 3, <i>In re LightSquared Inc.</i> , No. 12-12080-scc, Adv. Proc. No. 13-01390-scc (Bankr. S.D.N.Y. Jan. 13, 2014) (Bankruptcy Docket No. 1277).	8764 – 9062
179.	Statement of the Ad Hoc Secured Group of LightSquared LP Lenders and Notice of Intent to Proceed with Confirmation of the First Amended Joint Chapter 11 Plan for LightSquared LP, ATC Technologies, LLC, LightSquared Corp., LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, LightSquared Finance Col, LightSquared Network LLC, LightSquared Bermuda Ltd., Skyterra Holdings (Canada) Inc., and Skyterra (Canada) Inc., Proposed by the Ad Hoc Secured Group of LightSquared LP Lenders, <i>In re LightSquared Inc.</i> , No. 12-12080-scc (Bankr. S.D.N.Y. Jan. 13, 2014) (Bankruptcy Docket No. 1220).	9063 – 9072
180.	Transcript of Adversary Proceeding Day 4 (Jan. 15, 2014) (Adversary Docket No. 129).	9073 – 9231
181.	Transcript of Adversary Proceeding Day 5 (Jan 16, 2014) (Adversary Docket No. 130)	9232 – 9497
182.	Transcript of Adversary Proceeding Day 6 (Jan 17, 2014) (Adversary Docket No. 131).	9498 – 9705
183.	The Ad Hoc Secured Group of LightSquared LP Lenders' Response to the Objection of L-Band Acquisition, LLC to the January 13, 2014 Statement of the Ad Hoc Secured Group of LightSquared LP Lenders and Notice of Intent to Proceed with Confirmation of the First Amended Joint Chapter 11 Plan and Motion for Declaratory Relief, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Jan. 20, 2014) (Bankruptcy Docket No. 1238).	9706 – 9732
184.	Transcript, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Jan. 22, 2014) (Bankruptcy Docket No. 1278).	9733 – 9863
185.	Confirmation Hearing, Transcript of Day 1, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 19, 2014)	9864 – 9996
186.	Confirmation Hearing, Transcript of Day 2, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 20, 2014)	9997 – 10045
187.	Confirmation Hearing, Transcript of Day 3, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 24, 2014).	10046 – 10201
188.	Confirmation Hearing, Transcript of Day 4, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 25, 2014)	10202 – 10226
189.	Confirmation Hearing, Transcript of Day 5, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 26, 2014).	10227 – 10525

190.	Confirmation Hearing, Transcript of Day 6, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 27, 2014).	10526 – 10818
191.	Confirmation Hearing, Transcript of Day 7, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 28, 2014).	10819 – 10933
192.	Confirmation Hearing, Transcript of Day 8, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Mar. 31, 2014).	10934 – 11084
193.	Closing Arguments, Transcript, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. May 5, 2014) (Bankruptcy Docket No. 1533).	11085 – 11430
194.	Transcript, Hearing: Bench Decision in Adv. Proc. 13-01390-scc., Hearing: Bench Decision on Confirmation of Plan of Debtors (12-12080-scc), <i>In re LightSquared Inc.</i> , No. 12-120808-scc, Adv. Proc. No. 13-01390-scc (Bankr. S.D.N.Y. May 8, 2014).	11431 – 11629
195.	Post-Trial Findings of Fact and Conclusions of Law, <i>LightSquared LP v. SP Special Opportunities LLC (In re LightSquared Inc.)</i> , No. 12-12080 (SCC), Adv. Pro. No. 13-01390 (Bankr. S.D.N.Y. June 10, 2014).	11630 – 11805
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199.	Notice of Appeal, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-01390 (SCC) (Bankr. S.D.N.Y. June 24, 2014) (Adversary Docket No. 172)	11823 – 11828
200.	Mediator's Memorandum Under ¶¶ 14 and 15 of Mediation Order, <i>In re Lightsquared Inc.</i> , No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. June 27, 2014) (Bankruptcy Docket No. 1612).	11829 – 11851
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203.	Decision Denying Confirmation of Debtors’ Third Amended Joint Plan Pursuant to Chapter 11 of Bankruptcy Code, at 65, <i>In re LightSquared Inc.</i> , No. 12-120808 (SCC) (Bankr. S.D.N.Y. July 11, 2014) (Bankruptcy Docket No. 1631).	11912 – 11985
204.	Final Order (A) Authorizing LP DIP Obligors to Obtain Second Replacement Superpriority Senior Secured Priming Postpetition Financing, (B) Granting Superpriority Liens and Providing Superpriority Administrative Expense Status, (C) Granting Adequate Protection, and (D) Modifying Automatic Stay (June 30, 2014) (No. 1614) (hereinafter the “Second Replacement LP DIP Order”); Final Order (A) Authorizing LP DIP Obligors to Obtain Third Replacement Superpriority Senior Secured Priming Postpetition Financing, (B) Granting Superpriority Liens and Providing Superpriority Administrative Expense Status, (C) Granting Adequate Protection, and (D) Modifying Automatic Stay, <i>In re Lightsquared Inc.</i> , No. 12-12080 (SCC), (Bankr. S.D.N.Y. July 14, 2014) (Bankruptcy Docket No. 1639)	11986 – 12038
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208.	Joint Plan Pursuant to Chapter 11 of Bankruptcy Code Proposed by Debtors and Ad Hoc Secured Group of Lightsquared LP Lenders, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Aug. 7, 2014) (Bankruptcy Docket No. 1686)	12204 – 12300
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210.	Letter from Philip C. Dublin on behalf of U.S. Bank National Association, MAST Capital Management, LLC to the Honorable Shelly C. Chapman, <i>In re Lightsquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Aug. 9, 2014) (Bankruptcy Docket No. 1691)	12376 – 12384
211.	Letter from David M. Friedman on behalf of Harbinger Capital Partners, LLC to the Honorable Shelly C. Chapman, <i>In re Lightsquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Aug. 10, 2014) (Bankruptcy Docket No. 1692).	12385 – 12387
212.	Harbinger Capital Partners LLC's Joint Plan of Reorganization for the Inc. Debtors Pursuant to Chapter 11 of the Bankruptcy Code, <i>In re Lightsquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Aug. 11, 2014) (Bankruptcy Docket No. 1696).	12388 – 12459
213.	Letter from Thomas E. Lauria on behalf of the Ad Hoc Secured Group to the Honorable Shelley C. Chapman, <i>In re Lightsquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Aug. 11, 2014) (Bankruptcy Docket No. 1697)	12460 – 12464
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217.	Final Order (A) Authorizing LP DIP Obligors to Obtain Sixth Replacement Superpriority Senior Secured Priming Postpetition Financing, (B) Granting Superpriority Liens and Providing Superpriority Administrative Expense Status, (C) Granting Adequate Protection, and (D) Modifying Automatic Stay, <i>In re Lightsquared Inc.</i> , No. 12-12080 (SCC), (Bankr. S.D.N.Y. Aug. 28, 2014) (Bankruptcy Docket No. 1736)	12992 – 13101
218.	Notice of Filing of (I) Harbinger Capital Partners LLC's First Amended Joint Plan of Reorganization for the Inc. Debtors Pursuant to Chapter 11 of the Bankruptcy Code and (II) Plan Support Agreement, Dated September 8, 2014, <i>In re</i>	13102 – 13483

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219.	Notice of Filing of Plan Supplement for Harbinger Capital Partners LLC'S First Amended Joint Plan of Reorganization for the Inc. Debtors Pursuant to Chapter 11 of the Bankruptcy Code, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Sept. 16, 2014) (LightSquared Bankruptcy Docket No. 1751).	13484 – 14091
220.	Notice of Harbinger's Motion to (A) Expunge the Guaranty Claim Asserted by the LP Lenders (Claim No. 56) or, in the Alternative, (B) Estimate the Guaranty Claim at Zero Pursuant to 11 U.S.C. §502, <i>In re LightSquared Inc.</i> , No. 12-120808-scc (Bankr. S.D.N.Y. Sept. 16, 2014) (Bankruptcy Docket No. 1752	14092 – 14144
221.	Notice of Filing of Plan Supplement Documents for First Amended Joint Plan Pursuant to Chapter 11 of Bankruptcy Code Proposed by Debtors and Ad Hoc Secured Group of LightSquared LP Lenders, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Sept. 16, 2014) (Bankruptcy Docket No. 1754).	14145 – 14792
222.	Notice of Filing of Harbinger Capital Partners LLC's Second Amended Joint Plan of Reorganization for the Inc. Debtors Pursuant to Chapter 11 of the Bankruptcy Code, <i>In re LightSquared Inc.</i> , No. 12-120808-scc (Bankr. S.D.N.Y. Sept. 29, 2014) (Bankruptcy Docket No. 1780)	14793 – 14952
223.	Notice of the Ad Hoc Secured Group of LightSquared LP Lenders' Intent to (I) Amend the First Amended Joint Plan Pursuant to Chapter 11 of Bankruptcy Code Proposed by Debtors and Ad Hoc Secured Group of LightSquared LP Lenders (the "Joint Plan"); (II) Withdraw the First Amended Joint Plan of LP Debtors Only Pursuant to Chapter 11 of Bankruptcy Code Proposed by LP Debtors and Ad Hoc Secured Group of LightSquared LP Lenders; and (III) Adjourn the Confirmation Hearing on the Joint Plan, as it will be Amended, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Oct. 1, 2014) (Bankruptcy Docket No. 1788).	14953 – 14958
224.	Declaration of Steven Zelin in Support of the Ad hoc Secured Group of LightSquared LP Lenders' Objection to Harbinger's Motion to (A) Expunge the Guaranty Claim Asserted by the LP Lenders (Claim No. 56) or, In the Alternative, (B) Estimate the Guaranty claim at Zero Pursuant to 11 U.S.C. § 502(c), <i>In re LightSquared Inc.</i> , No. 12-12080-scc (Bankr. S.D.N.Y. Oct. 7, 2014) (Bankruptcy Docket No. 1815).	14959 – 15016
225.	LightSquared's Motion to Stay Harbinger's Litigation Efforts, <i>In re LightSquared Inc.</i> , No. 12-12080 (SCC) (Bankr. S.D.N.Y. Oct. 8, 2014) (Bankruptcy Docket No. 1816)	15017 – 15067
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DATED this 26th day of October, 2014

/s/ Robert J. Cassity

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of October, 2014, a true and correct copy of the foregoing **VOLUME 3 OF APPENDIX TO THE REPORT OF THE SPECIAL LITIGATION COMMITTEE OF DISH NETWORK CORPORATION** was served by the following method(s):

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\_\_\_\_/s/ Valerie Larsen\_\_\_\_\_  
An Employee of Holland & Hart LLP

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Objection Deadline: Nov. 26, 2013 at 4:00 p.m.  
Hearing Date: December 10, 2013 at 10:00 a.m.

----- X  
In re:

LIGHTSQUARED INC., *et al.*,

Debtors.

:  
: Chapter 11  
:  
: Case No. 12-12080 (SCC)  
:  
: (Jointly Administered)  
:  
----- X

**OMNIBUS OBJECTION OF THE UNITED STATES TRUSTEE TO  
CONFIRMATION OF (A) THE FIRST AMENDED JOINT PLAN  
PROPOSED BY THE DEBTORS, (B) THE FIRST AMENDED JOINT  
PLAN PROPOSED BY THE AD HOC SECURED GROUP OF  
LIGHTSQUARED LP LENDERS, (C) THE CHAPTER 11 PLAN FOR  
ONE DOT SIX PROPOSED BY U.S. BANK NATIONAL ASSOCIATION  
AND MAST CAPITAL MANAGEMENT, LLC AND (D) THE AMENDED  
JOINT PLAN OF REORGANIZATION PROPOSED BY HARBINGER  
CAPITAL PARTNERS, LLC**

TO: THE HONORABLE SHELLEY C. CHAPMAN,  
UNITED STATES BANKRUPTCY JUDGE

Tracy Hope Davis, the United States Trustee for Region 2 (the “United States Trustee”), by and through her counsel, respectfully submits this objection (the “Objection”) to the Confirmation of (a) the First Amended Joint Plan proposed by the Debtors (the “Lightsquared Plan”), (b) the First Amended Joint Plan proposed by the Ad Hoc Secured Group of Lightsquared LP Lenders (the “Ad Hoc LP Secured Group Plan”), (c) the Chapter 11 Plan for One Dot Six proposed by U.S. Bank National Association and Mast Capital Management, LLC (the “U.S. Bank/MAST Plan”) and (d) the Amended Joint Plan of Reorganization proposed by Harbinger Capital Partners, LLC (the “Harbinger Plan”). In support hereof, the United States Trustee respectfully states:

## **I. INTRODUCTION**

There are four competing plans (collectively, the “Plans”) filed in these chapter 11 cases. Three of these Plans, the Lightsquared Plan, the Ad Hoc LP Secured Group Plan and the U.S. Bank/MAST Plan (collectively, the “Sale Plans”), call for the sale of some or all of the Debtors’ assets. The fourth plan, the Harbinger Plan, is a plan of reorganization.

As an initial matter, while the risks were clearly disclosed in each of the Disclosure Statements, ultimately none of the Plans may be feasible given the uncertainty of FCC and/or Industry Canada approval of the assignment or transfer of control of any rights and interests in any of the Debtors’ spectrum assets and the length of time the approval process may take. The successful Plan proponent must meet the statutory requirements of section 1129 of the Bankruptcy Code for its Plan to be confirmed.

In addition, the United States Trustee objects to the confirmation of each of the Plans, because they all contain overly broad non-debtor third-party releases, exculpations and injunction provisions that do not comport with Second Circuit law or the Bankruptcy Code.

## **II. FACTUAL BACKGROUND**

### **A. Filing of Chapter 11 Proceedings**

1. On May 14, 2012 (the “Petition Date”), Lightsquared, Inc. and its affiliates (collectively, the “Debtors”)<sup>1</sup> each commenced a voluntary case under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. By Order entered May 15, 2012, the Debtors’ cases are being jointly administered for procedural purposes. ECF Doc. No. 33.

2. The United States Trustee solicited but did not receive enough responses to form an Official Committee of Unsecured Creditors pursuant to section 1102(a) of the Bankruptcy Code.

3. No trustee or examiner has been appointed in these Chapter 11 Cases.

4. The Debtors’ exclusive periods to file and solicit acceptance of a plan or plans of reorganization expired on July 15, 2013. See ECF Doc. No. 522.

### **B. Competing Chapter 11 Plans and Disclosure Statements**

5. On July 23, 2013, the Ad Hoc Secured Group filed the Ad Hoc LP Secured Group Plan and related disclosure statement, as amended on October 7, 2013, for LightSquared LP and

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<sup>1</sup> The are: LightSquared LP, ATC Technologies, LLC, LightSquared Corp., LightSquared Finance Co., LightSquared Network LLC, LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, Lightsquared Bermuda Ltd., SkyTerra Holdings (Canada) Inc., and SkyTerra (Canada) Inc. The “Lightsquared Inc. Debtors” are: LightSquared Inc., LightSquared Investors Holdings Inc., One Dot Four Corp., One Dot Six Corp., SkyTerra Rollup LLC, SkyTerra Rollup Sub LLC, SkyTerra Investors LLC, TMI Communications Delaware, Limited Partnership, LightSquared GP Inc., and One Dot Six TVCC Corp.



its direct and indirect subsidiaries (the “LP Debtors”)<sup>2</sup> proposing to sell substantially all of the assets of the LP Debtors through an auction process where a \$2.22 billion cash (plus assumed liabilities) bid of L-Band Acquisition, LLC will serve as the stalking horse bid, subject to higher and better offers. ECF Doc. Nos. 764, 917. The Ad Hoc LP Secured Group Plan addresses only the sale of the LP Debtors’ assets.

6. On August 29, 2013, as amended on October 7, 2013, the Debtors filed a “General Disclosure Statement” which provided a general description of the history of the Debtors, their businesses, operations and capital structure, events leading up to the chapter 11 cases and other significant events. ECF Doc. Nos. 815, 918. The Debtors, U.S. Bank/MAST and Harbinger all utilized and relied upon the information contained in the General Disclosure Statement and subsequently, as described below, prepared supplemental “Specific Disclosure Statements” that described their respective Plans for the purposes of section 1125 of the Bankruptcy Code.

7. On August 30, 2013, the Debtors filed the Lightsquared Plan, and related Specific Disclosure Statement, as amended on October 7, 2013. The Lightsquared Plan contemplates the sale of all of the Debtors’ assets pursuant to an auction. ECF Doc. Nos. 817, 921.

8. On August 30, 2013, U.S. Bank and Mast Capital Management, LLC filed the U.S. Bank/MAST Plan for One Dot Six Corp. (“One Dot Six”), together with its related Specific Disclosure Statement, as amended on October 7, 2013. ECF Doc. Nos. 823, 914. The U.S. Bank/MAST Plan addresses only the sale of the assets of One Dot Six through an auction process where the credit bid of MAST Spectrum Acquisition Company LLC will serve as the stalking horse bid, subject to higher and better offers.

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<sup>2</sup> The “LP Debtors” are: LightSquared LP, ATC Technologies, LLC, LightSquared Corp., LightSquared Finance Co., LightSquared Network LLC, LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, LightSquared Bermuda Ltd., SkyTerra Holdings (Canada) Inc., and SkyTerra (Canada) Inc.

9. On August 30, 2013, Harbinger Capital Partners LLC (“Harbinger”) filed the Harbinger Plan, together with its Specific Disclosure Statement, as amended on October 7, 2013. ECF Doc. Nos. 821, 912. The Harbinger Plan does not contemplate a sale of any of the Debtors’ assets, but instead seeks to effectuate a reorganization of the Debtors.

10. On October 1, 2013, the Court entered an Order (the “Bid Procedures Order”) (I) establishing bid procedures for the sale or sales (the “Sale”) of all, or substantially all, of the Debtors' assets, or any grouping or subset thereof, (II) scheduling the date and time to hold an auction (the “Auction”), (III) approving assumption and assignment procedures, (IV) approving the form of notice with respect to the Sale and the Auction and (V) granting related relief. ECF Doc. No. 892. The Auction is currently scheduled for December 3, 2013. ECF Doc. No. 1026.

11. After a hearing on October 9, 2013, on October 10, 2013, the Court entered an Order (I) Approving the Disclosure Statements, (II) Approving Solicitation and Notice Procedures with Respect to Confirmation of Competing Plans, (III) Approving Forms of Various Ballots and Notices in Connection Therewith, (IV) Approving Scheduling of Certain Dates in Connection with Confirmation of Competing Plans, and (V) Granting Related Relief. ECF Doc. No. 936. This Order provides that each of the Plan proponents must file all supplemental documents to their respective Plans by November 27, 2013. Id. at ¶ 31.

12. Each of the Plans contains third party releases and/or exculpations. A copy of the relevant provisions of each Plan is attached hereto as Exhibit A. Below are the definitions in each plan of the released and/or exculpated parties:

a. The Lightsquared Plan

The Released Parties include:

(a) the Debtors; (b) the Wind Down Debtors; (c) the DIP Inc. Agent and DIP Inc. Lenders; (d) each Stalking Horse Bidder; (e) each Purchaser; and (f) each of the foregoing Entities' respective predecessors, successors and assigns, and current and former shareholders, affiliates, subsidiaries, members (including exofficio members), officers, directors, principals, managers, trustees, employees, partners, attorneys, financial advisors, accountants, investment bankers, investment advisors, actuaries, professionals, consultants, agents, and representatives (in each case in his, her, or its capacity as such).

Lightsquared Plan at I.155.

b. The Ad Hoc LP Secured Group Plan

The Released Parties include:

(a) the LP Debtors, (b) the Ad Hoc LP Secured Group and each member thereof, (c) the Plan Sponsors, (d) the Stalking Horse Bid Parties, (e) the Purchaser, (f) each LightSquared LP Lender, (g) the Prepetition LP Facility Agent, (h) the present and former directors, officers, managers, equity holders, agents, successors, assigns, attorneys, accountants, consultants, investment bankers, bankruptcy and restructuring advisors, financial advisors of the parties listed in (a) through (g), in each case in their capacity as such, (i) each of the respective affiliates of the parties listed in (a) through (h), in their capacity as such, and (j) any Person claimed to be liable derivatively through any of the foregoing; provided, however, that neither the Purchaser nor the LP Debtors shall be deemed to be a Released Party as against one another with respect to each such party's right to enforce the Asset Purchase Agreement against the other party.

Ad Hoc LP Secured Group Plan at Exhibit A, Glossary of Defined Terms

c. The U.S. Bank/MAST Plan

The Released Parties Include:

(a) One Dot Six, (b) the Plan Proponents, (c) the Stalking Horse Bidder, (d) the Purchaser, (e) each Inc. Facility Non-Affiliate Lender, (f) the Inc. Facility Agent, (g) each DIP Lender, (h) the DIP Agent, (i) the Plan Administrator and (j) the present and former directors, officers, managers, agents, successors, assigns, attorneys, accountants,

consultants, investment bankers, bankruptcy and restructuring advisors and financial advisors, in each case solely in their capacity as such; provided, however, that neither the Purchaser nor One Dot Six shall be deemed to be a Released Party as against one another with respect to each such party's right to enforce the Purchase Agreement against the other party.

U.S.Bank/MAST Plan at I.B.105.

d. The Harbinger Plan

The Exculpated Parties Include:

(a) the Debtors; (b) Harbinger, (c) the DIP Agent, the DIP Facility Lenders and the lead arranger under the DIP Facility, (d) the Exit Facility Lenders and the Exit Facility Lead Arranger, and (e) each of the foregoing Entities' respective predecessors, successors and assigns, and current and former shareholders, affiliates, subsidiaries, members (including ex-officio members), officers, directors, principals, managers, trustees, employees, partners, attorneys, financial advisors, accountants, investment bankers, investment advisors, actuaries, professionals, consultants, agents, and representatives (in each case in his, her, or its capacity as such).

Harbinger Plan at I.A.51.

13. The confirmation hearing (the "Confirmation Hearing") is currently scheduled for December 10, 2013.

### III. OBJECTIONS

A. Confirmation Standards.

Section 1129 of the Bankruptcy Code contains 16 standards that must be met for the Court to confirm a plan. 11 U.S.C. § 1129. The plan proponent bears the burden of establishing compliance with Section 1129 of the Bankruptcy Code. In re Charter Commc'ns, 419 B.R. 221 (Bankr. S.D.N.Y. 2009) (citing In re Briscoe Enters.), 994 F.2d 1160, 1165 (5th Cir. 1993) (stating that "[t]he combination of legislative silence, Supreme Court holdings, and the structure of the Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown"); In re Worldcom, Inc.,

No. 02-13533 (AJG), 2003 WL 23861928, at \*46 (Bankr. S.D.N.Y. Oct. 31, 2003) (citing Briscoe).

Section 1129(a)(1) of the Bankruptcy Code requires that the Court find that the plan “complies with the applicable provisions of [the Bankruptcy Code].” 11 U.S.C. § 1129(a)(1). Section 1129(a)(2) provides that in order to be confirmable, the proponent of the plan must comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). Section 1129(a)(3) provides that the plan be proposed in good faith. 11 U.S.C. § 1129(a)(3). Section 1129(a)(4) requires that the Court exercise substantive control over fees and costs related to the Chapter 11 case. 11 U.S.C. § 1129(a)(4).

For the reasons set forth below, the Debtors, the Ad Hoc Secured Group, U.S. Bank/MAST and Harbinger have each failed to meet their burden of proof to show that their respective Plan satisfies the confirmation standards of section 1129.

**B. Feasibility**

As a threshold matter, any plan must be feasible. 11 U.S.C. § 1129(a)(11). The feasibility requirements of Section 1129(a)(11) ensure that confirmation proceeds only if “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor . . . unless such liquidation or reorganization is proposed in the plan.” Id. In the Second Circuit, the standard for feasibility is “whether the plan offers a reasonable assurance of success. Success need not be guaranteed.” Kane v. Johns-Manville (In re Johns-Manville Corporation), 843 F.2d 636, 649 (2d Cir. 1988). Bankruptcy courts consider factors including “the earning power of the business, its capital structure, the economic conditions of the business, the continuation of present management, and the efficiency of management in control of the business after confirmation” when assessing whether a plan is

feasible. In re D&G Invs. of West Fla., Inc., 342 B.R. 882, 886 (Bankr. M.D. Fla. 2006). In determining if a plan is feasible, the “inquiry is peculiarly fact intensive and requires a case by case analysis, using as a backdrop the relatively low parameters articulated in the statute.” In re Eddington Thread Mfg. Co., 181 B.R. 826, 833 (Bankr. E.D. Pa. 1995). “In most situations, the time immediately following bankruptcy will call for fairly specific proof of the company’s ability to meet its obligations . . . .” Dish Network Corp. v. DBSD N. Am. Inc., 634 F.3d 79, 107 (2d Cir. 2011).

Although the risks were clearly disclosed in each of the respective Disclosure Statements, each of the Plans is ultimately premised upon the uncertain approval of the FCC, Industry Canada and/or other regulatory bodies. More specifically, each of the Sale Plans is dependent upon the sale of all, or part, of the Debtors’ spectrum assets. While the Auction is scheduled to take place on December 3, 2013, despite the desires of the Sale Plan proponents, the regulatory approval process itself may take years, with no certainty that the FCC will approve any sale or transfer of control to the winning bidder or bidders. Likewise, the Harbinger Plan suffers from the same regulatory problem, since its feasibility is also contingent upon receiving appropriate FCC approvals as a condition precedent to its effective date.

Each of the Plan proponents must meet their burden of proof under 11 U.S.C. § 1129(a)(11) to establish that their Plan is feasible, given the uncertainty of the regulatory process.

**C. The Third Party Releases and Exculpations<sup>3</sup> Contained in the Plans Do Not Satisfy Sections 1129(a)(1) and (a)(3)**

None of the Plans explain why the third party releases and/or exculpations are warranted or justified. In order to be valid, the releases and exculpations must meet the standards set forth

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<sup>3</sup> Copies of the full release, exculpation and injunction provisions for each Plan are attached hereto as Exhibit A.

by the Second Circuit in In re Johns-Manville Corp., 517 F.3d 52 (2d Cir. 2008) (“Manville II”), vacated & remanded on other grounds, \_\_\_ U.S. \_\_\_, 129 S.Ct. 2195 (2009), aff’g in part & rev’g in part, 600 F.3d 135 (2d Cir. 2010) (“Manville III”) and In re Metromedia Fiber Network, Inc., 416 F. 3d 136, 141 (2d Cir. 2005).

Specifically, “[i]n bankruptcy cases, a Court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the [Debtor’s] reorganization plan.” Metromedia, 416 F. 3d at 141 (quoting Drexel Burnham Lambert Group, Inc., 960 F.2d at 292 (2d Cir. 1992)). In Metromedia, the Second Circuit expressed its dissatisfaction with the frequency in which non-debtor releases are included in plans. These releases were identified by the Court as “a bankruptcy discharge arranged without a filing and without the safeguards of the Code. The potential for abuse is heightened when releases afford blanket immunity.” Id. at 142. Therefore, non-debtor releases are appropriate only in “rare cases,” and should not be approved absent the finding that truly unusual circumstances render the release terms important to the success of the plan. Id. at 141-143.

The Second Circuit has approved of non-debtor releases in unique circumstances, including circumstances where: (1) the estate received substantial consideration, see Drexel (multi-billion dollar settlement including a payment of over a billion dollars into fund by Michael Milken and other co-liable Drexel personnel); (2) enjoined claims were “channeled” to a settlement fund rather than extinguished, see MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89, 93-94 (2d Cir. 1988); (3) the enjoined claims would indirectly impact the debtor’s reorganization “by way of indemnity or contribution,” and the plan otherwise provided for the full payment of the enjoined claims, see In re A.H. Robins Co., 880 F.2d 694, 701 (4<sup>th</sup> Cir. 1989); and (4) the affected creditors consented, see In re Specialty Equip. Cos., 3 F.3d 1043, 1047 (7<sup>th</sup>

Cir. 1993); see also Metromedia 416 F.3d at 143. The appeals court cautioned, however, that a non-debtor third-party release is not considered to be adequately supported by consideration simply because the non-debtor contributed something to the reorganization and the enjoined creditor took something out. Metromedia at 143.

Recent cases further clarify the Metromedia requirements. For example, in In re DBSD, the Bankruptcy Court stated:

As the Second Circuit's decision in Metromedia and my earlier decision in Adelphia provide, exculpation provisions (and their first cousins, so-called "third party releases") are permissible under some circumstances, but not as a routine matter. They may be used in some cases, including those where the provisions are important to a debtor's plan; the claims are "channeled" to a settlement fund rather than extinguished; the enjoined claims would indirectly impact the debtor's reorganization by way of indemnity or contribution; the released party provides substantial consideration; and where the plan otherwise provides for the full payment of the enjoined claims.

In re DBSD N. Am., Inc., 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009) (emphasis in original)

(footnotes omitted); In re Motors Liquidation Co., 477 B.R. 198, 220 (Bankr. S.D.N.Y. 2011)

("Although (since the Code is silent on the matter) third-party releases aren't 'inconsistent with the applicable provisions of this title,' the Second Circuit has ruled that they're permissible only in rare cases, with appropriate consent or under circumstances that can be regarded as unique, some of which the Circuit listed. But where those circumstances haven't been shown, third-party releases can't be found to be appropriate." ).<sup>4</sup>

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<sup>4</sup> Other examples include: (i) In re Adelphia Commc'ns Corp., 368 B.R. 140, 268–69 (Bankr. S.D.N.Y. 2007) (court held that three categories of non-debtor third-party releases are acceptable under Metromedia: (1) persons indemnified by the estate under by-laws, employment contracts, or loan agreements, (2) persons involved in unique transactions, such as a party who makes a substantial financial contribution to the estate; and (3) persons who consent to the releases); (ii) In re Karta Corp., 342 B.R. 45 (S.D.N.Y. 2006) (district court framed inquiry as "whether a significant non-debtor financial contribution plus other unusual factors render a situation so "unique" that the non-debtor third-party releases are appropriate." Id. at 55; (iii) In re Oneida Ltd., 351 B.R. 79 (Bankr. S.D.N.Y. 2006) (the equity committee had raised, but then abandoned, an objection to the validity of the non-debtor third-party releases, and the court found that the releases in that case were acceptable because all of the affected creditors had consented by affirmatively checking a box on the ballot indicating their willingness to grant the releases); (iii) In re Spiegel, Inc., No. 03-11540 (BRL), 2006 WL 2577825, at \*7 (Bankr. S.D.N.Y. Aug. 16, 2006) (plan's non-debtor



Before a court considers whether the proponent of a plan has demonstrated the “truly unusual circumstances” mandated by Metromedia, it must first determine whether it has subject matter jurisdiction to approve the releases or injunctions provided for by and against non-debtor third-parties. See Manville II; accord In re Dreier LLP, 429 B.R. 112, 132 (Bankr. S.D.N.Y. 2010); In re Metcalfe & Mansfield Alternative Invs., 421 B.R. 685, 695 (Bankr. S.D.N.Y. 2010). In Manville II, the Second Circuit held that “a bankruptcy court only has jurisdiction to enjoin third-party non-debtor claims that directly affect the res of the bankruptcy estate.” Manville II, 517 F.3d at 66; see also Dreier, 429 BR. at 133 (stating that because the court lacks jurisdiction to enjoin claims that do not affect property of the estate or the administration of the estate, non-debtor third-party releases must be limited to claims that are derivative of the debtors).

Because all of the instant Plans contain various provisions whereby the Plan proponents seek to release non-debtor third parties from various claims and liabilities and enjoin claims by and against non-debtor third parties, the Second Circuit’s rulings in Manville II and Metromedia govern the Court’s determination as to whether they may be approved. It is now settled in the Second Circuit that the Court does not have subject matter jurisdiction to approve a provision that seeks to release “direct” (non-derivative) claims that non-debtor third-parties may have against other non-debtor third parties. See Manville III, 600 F.3d at 153 (clarifying on remand that the bankruptcy court does not have jurisdiction to enjoin claims against non-debtor insurers that are not derivative of the debtor).

Simply put, none of the Plan proponents have shown, or attempted to show, that they meet any of the requirements for “uniqueness” set forth in Metromedia or its progeny that would

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third-party releases and injunctions were critical components of the settlement that played a “vital part in the plan” and “were necessary to the proposed reorganization of the Debtors and the successful administration of their estates”); and (iv) In re XO Commc’ns, Inc., 330 B.R. 394, 440 (Bankr. S.D.N.Y. 2005) (non-debtor third-party releases were permissible where the non-debtors provided significant consideration, the non-debtors were integral to the plan, and the non-debtors’ interests aligned with those of the debtors with regard to the claims).

justify the approval of the third party releases and exculpations. Moreover, the various provisions in each of the Plans are also not restricted to business-related claims. Although the releases and exculpations carve out wilful misconduct, fraud and gross negligence, they would release all other claims in any manner, including criminal conduct and professional malpractice.<sup>5</sup>

None of the Plan proponents have met their burden of proof under Sections 1129(a)(1) and (3) of the Bankruptcy Code to show that their release and/or exculpation satisfies the Metromedia standards. Absent adequate explanation as to their justification, the proposed releases and exculpations should be disallowed.

#### **IV. RESERVATION OF RIGHTS**

Because each of the Plan proponents may file a Plan Supplement related to their respective Plan on November 27, 2013 (two weeks prior to the Confirmation Hearing), the United States Trustee reserves the right, on all grounds, to supplement the instant Objection.

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<sup>5</sup> All of the releases and exculpations must provide that they will not limit the liability of professionals pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009).

**V. CONCLUSION**

WHEREFORE, the United States Trustee respectfully requests that the Court: (i) require that each of the Plan proponents narrow the third party releases, exculpations and injunction provisions in compliance with the law of this Circuit and the Bankruptcy Code and (ii) grant such other relief as is just.

Dated: New York, New York  
November 22, 2013

Respectfully submitted,

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