IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISH NETWORK DERIVATIVE LITIGATION.	SUPREME COURT No. 69012
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.	SUPREME COURT No. 69729

JOINT APPENDIX
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[1] JA = Joint Appendix

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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

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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
2014-10-27	Appendix, Volume 4 of the Appendix to the Report of the Special Litigation Committee of DISH Network Corporation (No exhibits attached)	Vol. 23	JA005634 – JA005642

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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.)) **(Filed Under Seal)**	Vol. 23	JA005643 – JA005674
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2013-10-15	Order Granting, in Part, Plaintiffs Ex Parte Motion for Order to Show Cause and Motion to (1) Expedite Discovery and (2) Set a Hearing on Motion for Preliminary Injunction on Order Shortening Time and Plaintiff's Motion for Preliminary Injunction and for Discovery on an Order Shortening Time	Vol. 7	JA001557 – JA001561
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2015-07-02	Special Litigation Committee's Appendix of Exhibits to their Supplemental Reply in Support of their Motion to Defer (Exhibits Filed Publicly) (Includes Exhibits: A, B, F, G, H, I, L and M)	Vol. 37 Vol. 38	JA009921 – JA009251 JA009252 – JA009498
2015-07-02	Special Litigation Committee's Appendix of SLC Report Exhibits Referenced in Supplemental Reply in Support of the Motion to Defer **(Exhibits Filed Under Seal)** (Includes SLC Report Exhibits 298, 394, 443, 444, 446, 447 and 454)	Vol. 41	JA0010002 – JA010048
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2015-04-06	Special Litigation Committee's Status Report	Vol. 26	JA006452 – JA006459
2015-12-08	Special Litigation Committee's Supplement to Opposition to Plaintiff's Motion to Retax	Vol. 43	JA010690 – JA010699
2015-07-02	Special Litigation Committee's Supplemental Reply in Support of the Motion to Defer to the SLC's Determination that the Claims Should Be Dismissed **(Filed Under Seal)**	Vol. 38 Vol. 39	JA009499 – JA009501 JA009502 – JA009552
2013-09-12	Verified Amended Derivative Complaint	Vol. 1	JA000049 – JA000094

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

(Recess from 3:23 p.m. until 3:44 p.m.)

THE COURT: Please have a seat. All right. Same provisos and qualifications apply with respect to the form of this decision, which is a bench decision on confirmation of the debtor's plan.

Before the Court is the debtors' third amended joint plan of reorganization.

The plan enjoys the support of every significant party-in-interest in these cases save one: SPSO, a special purpose entity owned and controlled by Mr. Charles Ergen. SPSO opposes confirmation of the plan. SPSO holds approximately 844 million dollars face amount of the outstanding LightSquared LP pre-petition secured debt.

The facts and circumstances surrounding SPSO's acquisition of its claim and the conduct of Mr. Ergen and certain of its affiliated entities in these cases are the subject of a separate adversary proceeding pending in this court and are also at issue in connection with the consideration of confirmation of the plan.

Among other things, the debtors seek to disallow or subordinate the SPSO claim in its entirety and have also moved pursuant to Section 1126(e) of the Code to designate SPSO's vote.

Pointing to SPSO's connection to Mr. Ergen and DISH, the debtors, Harbinger, and the ad hoc group LightSquared LP

lenders have constructed a plan that purports to follow the blueprint laid out by the decisions in DBSD to address conduct by Mr. Ergen that they maintain is even more egregious than the conduct at issue in DBSD.

The plan proponents separately classify the SPSO claim, seek to designate its vote and disregard the class, 7-B, in which the SPSO claim is the sole classified claim and seek to confirm the plan without satisfying the requirements of Section 1129(b) of the Code, among others.

In the alternative, the plan proponents assert that the treatment of the SPSO claim, which is markedly different from the treatment the plan affords to the other holders of LightSquared LP pre-petition secured debt provides SPSO with the indubitable equivalent of its claim and satisfies all requirements for confirmation, including those embodied in Section 1129(b).

It is no understatement to say that the parties have waged a lengthy and increasingly nasty litigation war against each other over the past year and the confirmation hearing was a particularly vivid display of the parties' animosity towards each other. The parties continued to file motions and cross-motions for weeks after the evidentiary record on confirmation was to be closed and for weeks after the evidentiary record in the adversary proceeding was to be closed.

This decision will address confirmation of the plan

and all pending motions related to the confirmation hearing.

The evidentiary hearing on confirmation was conducted over the course of eight days. The Court heard live testimony from the following witnesses and rebuttal witnesses called by the debtors, the ad hoc secured group, and SPSO: 1, Mr. Christopher Rogers, a member of the special committee of the boards of directors of LightSquared Inc. and LightSquared GP Inc.; 2, Mr. Robert McDowell, offered by the debtors as an expert on FCC-related matters; 3, Mr. Douglas Smith, the debtor's CEO; 4, Mr. Mark Hootnick, a managing director of Moelis, the debtor's financial advisor; 5, Mr. John Jacob Rasweiler, V, a principal of Sublime Wireless offered by debtors as an expert with respect to certain technical issues; 6, Mr. Charles Ergen who is, among other things, the ultimate owner of SPSO, the controlling shareholder of DISH and the chairman of DISH's board of directors; 7, Mr. Philip Falcone, the controlling member of Harbinger Capital Partners, which is one of the plan sponsors and is also the principal shareholder of LightSquared; 8, Mr. Douglas Hyslop of Wireless Strategy, LLC and SmartSky Networks, LLC, offered by SPSO as an expert with respect to certain technical issues; 9, Mr. Omar Jaffrey, a principal of Melody Capital partners, a private investment firm which is one of the sponsors in the plan; 10, Mr. J. Soren Reynertson, a managing director of GLC Advisors & Co., offered by SPSO as an expert on valuation issues; and 11, Mr. Steven

Zelin a managing director of The Blackstone Group and financial advisor to the ad hoc secured group.

The testimony of Mr. Marc Montagner, the debtor's chief financial officer, was presented by a videotape and deposition transcript designations. Several volumes of documentary exhibits have also been admitted into evidence.

Detailed proposed findings of facts and lengthy post-trial memoranda were also submitted by the parties, which submissions were in addition to the pre-trial memoranda filed by the parties prior to the commencement of the confirmation hearing.

As indicated there are also numerous confirmation-related motions pending before the Court and the various objections and responses thereto. They are: one, LightSquared's motion for entry of an order designating the vote of SPSO; two, LightSquared's confirmation-related motion for an order approving post-petition financing and seeking related relief; three, LightSquared's motion to strike portions of the expert testimony of Douglas Hyslop and J. Soren Reynertson; four, SPSO's motion to strike certain of the testimony of Robert McDowell and Mark Hootnick; and five, SPSO's motion to admit SPSO Confirmation Exhibit 2.

And in addition to all of the foregoing, numerous joinders and statements in support of and in opposition to confirmation of the plan have been filed on the docket of these

cases and considered by the Court.

While the Courts findings of facts will be set forth in a more detailed final version of this decision which will be filed as soon as practicable, the Court offers the following summary of the evidence presented at the hearing in order to provide the necessary context for the legal analysis that follows.

THE WITNESSES.

The debtors' first witness was Mr. Christopher Rogers. Mr. Rogers serves as a member of the three-member special committee of the boards of directors of LightSquared Inc. and LightSquared GP Inc., which was constituted in the fall of 2013.

Against the backdrop of allegations by SPSO that the plan process was driven not by the special committee, but by Harbinger and those parties that Mr. Falcone wished to protect, including Harbinger, Fortress, Melody and JPMorgan, Mr. Rogers testified as to his personal involvement in the plan formulation and negotiation process and that of the special committee.

He estimated that he had spent around 500 hours working on the plan and related issues, although he did not provide much, if any, detail into how he or other members of the special committee had been involved in negotiating the economics of the plan.

For the most part his testimony was credible but superficial and consistent with the proposition that he and other members of the special committee were involved in some discussions regarding the plan process from the time of their appointment through the present.

However, in the face of a great deal of evidence that the economic terms of the plan have been largely dictated by Harbinger, and in particular by Mr. Falcone, Mr. Rogers shed little light on how the economic terms of the plan emerged and evolved or on the involvement of the special committee and those negotiations.

Because the session committee has asserted a broad common interest privilege with respect to communications among it, the plan sponsors, and the ad hoc secured group, there are no documents that were produced in discovery or are in evidence that reflect any communications on this point during the relevant time frame.

Mr. Robert McDowell, a former FCC commissioner, is the debtors' retained expert on Federal Communication Commission matters. He left the FCC in May 2013. During the confirmation hearing he offered his opinion that he agreed with LightSquared's forecast that it would receive FCC approval of its proposed twenty by ten license modification by December 31st, 2015 and that a portion of the downlink included in the license modification would be made available from the so-called

NOAA spectrum, a 5 megahertz band of spectrum between 1675 megahertz and 1680 megahertz.

In addition, Mr. McDowell testified that he believed it was very likely that the FCC would also approve LightSquared's use of its 10 megahertz of lower downlink, 1526 megahertz to 1536 megahertz, for terrestrial use within the seven years contemplate by the plan.

Mr. McDowell did not pick these dates. Rather he was simply giving the dates reflected in the plan.

Although he testified that he had participated in and had knowledge of matters related to LightSquared during his tenure at the FCC, he acknowledged that he is precluded by government rules and regulations from having any contact with the FCC during the two years subsequent to his departure from the agency. Accordingly, since that two-year period has yet to expire, Mr. McDowell has had no contact whatsoever with FCC personnel regarding matters pending before it relating to LightSquared.

Nevertheless, he offered his opinions based on his thirty years of experience that the FCC will grant LightSquared's license modification application before the end of 2015, will not require an auction of the NOAA spectrum, and will approve the use of the lower downlink spectrum by the end of seven years. Although he admitted that the FCC could commence a rulemaking proceeding with respect to the NOAA

spectrum, which could take years, and acknowledged that the FCC had filed a statement in these cases indicating that it could give no assurances about what its decision would be or the timing of the decision, Mr. McDowell nonetheless offered his opinions on the critical timing issues on which the plan is premised. The only other support he offered for his opinions was the fact that no so-called petitions to deny had been filed with respect to the proposed license modification application.

Mr. McDowell pointed to no evidence indicating that the FCC will proceed along the time line suggested, offered no evidence that he had any knowledge of how or when NTIA or any coordinate agency intends to act with respect to LightSquared's application, and could not credibly estimate or state when any required rulemaking proceeding may be commenced or how long it would take. His opinion is simply an educated guess and cannot be afforded significant weight.

Mr. Douglas Smith, the debtor's CEO, testified at length about a variety of topics relating to the conduct of these cases, including the plan process and the involvement of LightSquared's management and plan negotiations.

He also testified about a host of issues relating to the FCC process and certain technical issues relating to LightSquared's spectrum assets. He explained the basis of his belief that the December 31st, 2015 license modification date and seven-year downlink approval process time line were

achievable.

In support of his opinion, Mr. Smith pointed to four specific points: one, the completion of two common cycles with respect to use of the two upper 10 megahertz of uplink spectrum; two, the fact that great progress had been made with NOAA; three, the observation that the latest U.S. budget reflects NOAA-related costs that are not inconsistent with LightSquared's projections and objectives; and four, the fact that a petition for rulemaking with respect to the lower 10 megahertz of downlink has already been filed with the FCC and could be complete in three to five years.

In addition to testifying about the FCC approval process, Smith gave substantial testimony regarding the technical issue raised by LBAC with respect to LightSquared's spectrum and the basis of LightSquared's belief that the issue does not exist or can easily be managed at minimal cost.

Mr. Smith, though soft spoken, is powerfully earnest and credible as a witness and it is clear that he has been working tirelessly in pursuit of LightSquared's business and strategic goals.

The debtors next called Mr. Mark Hootnick of Moelis to testify in support of the valuation issues that undergrow the plan and that provide the basis and support for SPSO's treatments under the plan.

Mr. Hootnick relied on Mr. McDowell's opinions

regarding the timing and outcome of the license modification process. He also relied on the opinions of Mr. Smith with respect to certain regulatory matters.

For the purposes of preparing the Moelis valuation, Mr. Hootnick assumed that the FCC would grant LightSquared a license for 30 megahertz of spectrum, including the 5 megahertz of NOAA spectrum for terrestrial use on or before the end of 2015.

He further assumed that the lower 10 megahertz of downlink would be approved for terrestrial use within seven years. He did not take into account any of the alleged technical issues that have been raised by SPSO. He acknowledged that the FCC's filed a statement in these cases means that the FCC is making no promises on timing, and he has had no personal contact with any FCC personnel on any issues related to LightSquared.

Mr. Hootnick's valuation rises or falls with Mr. McDowell's opinions on the timing of FCC approval.

The details of Mr. Hootnick's valuation opinion will be discussed in detail below.

Mr. Marc Montagner, the debtor's chief financial officer, gave testimony regarding numerous issues which testimony was viewed by the Court on videotape. In addition, designated portions of his March 6, 2014 videotaped deposition transcript were placed on the record and reviewed by the Court.

Mr. Montagner testified, among other things about, one, his participation in the plan process which he described as "being mostly on the receiving end"; two, his preparation of financial forecasts for use in connection with the plan; three, his views with respect to FCC matters; and four, his knowledge of the technical issue.

Mr. Montagner was forthright in his testimony, as he has been in the past in connection with other contested hearings in these matters.

SPSO called Mr. Douglas Hyslop of Wireless Strategy, LLC and Smart Sky Networks, LLC, engineering consulting firms which provide engineering services for wireless operators. SPSO retained Mr. Hyslop to provide expert testimony on the technical issue. He was retained on February 28th, 2014 and formed his opinions by March 3rd, 2014.

His deposition was conducted on March 8th, 2014.

The debtors have moved to strike a portion of Mr. Hyslop's testimony on the basis that it reflects, in his own words, a new opinion regarding guard bands that first occurred to him after he gave his deposition testimony and thus was first revealed to the debtors at trial.

The parties dispute whether or not this opinion should be considered new and whether or not gamesmanship is implicated in the debtors' (sic) approach to eliciting the opinion.

For the reasons set forth in the debtors' motion to

strike portions of the Hyslop testimony, the motion shall be granted.

The remainder of Mr. Hyslop's testimony, as to which the Court will make detailed findings under seal, does not lend credible support to SPSO's position with respect to the existence and the magnitude of the technical issue.

SPSO also offered the expert testimony of Mr. J. Soren Reynertson of GLC Advisors. Mr. Reynertson was paid 1.25 million dollars by SPSO for his work and was given three weeks to form his opinions.

The debtors raised a Daubert challenge to Mr. Reynertson's qualifications under Federal Rule of Evidence 702, which was overruled by the Court in part because there had been no notice of such a challenge prior to the witness taking the stand and in part based on the Court's conclusion that a Daubert exclusion was inappropriate on the merits.

The debtors have renewed their objection to a portion of Mr. Reynertson's testimony and in their motion to strike.

Mr. Reynertson testified that he relied one hundred percent on the opinions of Mr. Hyslop with respect to the amount of spectrum that will be available to and usable by LightSquared, including with respect to uplink 1 and uplink 2.

Many aspects of Mr. Reynertson's testimony are noteworthy. One, he had never previously valued satellites for spectrum. Two, he applied certain faulty and arbitrary

assumption in his valuation methodology. And three, he was not provided with the valuation analyses that had been prepared by Mr. Ergen and by Perella Weinberg during the summer of 2013, and when presented with such analysis at the confirmation hearing, he admitted that seeing these would have helped him and may have changed what he did in connection with forming his opinions.

Mr. Reynertson's analysis was rife with inconsistencies and flaws. It was on the whole an unimpressive piece of work and will not be afforded significant weight.

In addition a portion of Mr. Reynertson's testimony relied on the expert opinion of Mr. Hyslop. As the Court finds that portions of Mr. Hyslop's expert opinion shall be stricken from the record, the portion of Mr. Reynertson's expert valuation that relies on the stricken Hyslop testimony shall be afforded little weight.

Mr. Charles Ergen was called as a witness by the ad hoc secured group and testified for a full day, taking the witness stand at 10 in the morning and stepping down at approximately 7:45 in the evening. He was questioned extensively on a number of topics having already given substantial testimony during the trial in the adversary proceeding relating to SPSO's acquisition of its holding in the LP debt.

His testimony focused on, among other things, one, the

valuation analysis he prepared and presented to the DISH board in July 2013 with respect to the LightSquared spectrum assets, which valued the LP assets between 5.17 billion and 8.99 billion dollars, including value that would be realized by DISH based on its enhanced ability to utilize its existing spectrum; two, his knowledge of the Perella Weinberg fairness opinion and valuation; three, his knowledge of the so-called technical issue and how he believes it affects the value of the LightSquared spectrum; four, his participation on behalf of DISH in the LightSquared auction process in December 2013, including the readiness of DISH to increase its bid and DISH's ultimate decision to terminate the LBAC bid; and five, whether or not he views SPSO and/or DISH as competitors of LightSquared.

Mr. Ergen's testimony leaves little doubt that he has a tremendous amount of knowledge and expertise with respect to the wireless telecommunications industry, displaying great command of detail with respect to spectrum issues and spectrum deployment strategy. And yet his testimony becomes remarkably less precise and straightforward when queried about his involvement in the events leading to the termination of the LBAC bid, and his answers with respect to potential competition between DISH and LightSquared were facile and disingenuous.

Moreover, his testimony with respect to actions taken by DISH with respect to the alleged technical issue supports

the conclusion that once it was allegedly identified by DISH, there was no meaningful effort made to identify a solution that would preserve the billions of dollars in value that DISH would realize by a consummation of the LBAC bid.

This defies common sense. Mr. Ergen's testimony on this point was not credible. His testimony with respect to his dealings with Inmarsat was also not credible.

The ad hoc secured group also called its financial advisor, Mr. Steve Zelin of Blackstone, to testify. Mr. Zelin detailed the various plan alternatives he had explored with the ad hoc secured group in 2013 and earlier and described his participation in the negotiations leading to the execution of a plan support agreement in connection with the LBAC bid.

He described in some detail his reaction to what he viewed as strange conduct and comments by DISH, SPSO and their counsel in connection with the technical issue and in connection with pursuit of the LBAC bid in the time period leading up to and subsequent to the scheduled December 11th LightSquared auction and he shared his theories about why LBAC terminated its bid.

Mr. Zelin's testimony was credible, but it added little of substance to the issues at the heart of this proceeding.

SPSO next called Mr. Omar Jaffrey to testify. Mr. Jaffrey testified that he contacted Mr. Falcone in the summer

of 2013 to find a way for his firm, Melody Capital Partners, to invest in LightSquared.

Melody was first retained by Harbinger to provide a 550 million dollar commitment for a debtor-in-possession financing for a plan of reorganization to be proposed by Harbinger.

Pursuant to that commitment, Melody was entitled to the payment of an eight percent per annum commitment fee so long as the commitment remained outstanding, as well as a four million upfront fee and a double-digit breakup fee in the event that LightSquared was sold, all payable by Harbinger. It was Mr. Jaffrey's believe that Melody's commitment to Harbinger was still outstanding as of the date of his testimony on March 28th, 2014.

Correspondence between Mr. Jaffrey and others was introduced into evidence reflecting Mr. Jaffrey's view that as of the time Melody entered into this commitment with Harbinger, there was a ninety percent chance that Mr. Ergen would purchase LightSquared out of the bankruptcy such that the Melody financing would never be needed.

Extensive testimony was elicited from Mr. Jaffrey regarding the evolution of the economic terms of what eventually became the plan.

E-mail correspondence from the January 2014 time frame indicates that even as the trial in the adversary proceeding

was unfolding, there was close coordination among Mr. Jaffrey, Mr. Falcone, and Drew McKnight of Fortress regarding the economics of the plan, how to structure it to satisfy the concerns of Fortress, how to include JPMorgan, and how to deal with the SPSO claim.

The entire premise of the Melody proposal was the subordination of Mr. Ergen, a notion that was obviously consistent with Mr. Falcone's mindset. As Mr. Jaffrey put it in an e-mail, the goal was a win-win, for everyone but SPSO.

While Mr. Jaffrey not surprisingly declined to share the details of his so-called LightSquared investment thesis, it is clear that he and Melody have opportunistically entered the picture not to help, but to earn a sizable return through fees, interest on Melody's highly secure proposed second lien exit investment, and equity upside tied to LightSquared's success.

John Jacob Rasweiler, V, testified as the debtors' rebuttal expert with respect to the technical issue. Mr. Rasweiler is employed by Sublime Wireless, a professional engineering and services firm that provides communication services for operators and equipment providers such as Sprint, Samsung and AT&T. He has substantial experience in radio frequency engineering and network design.

In response to SPSO's contentions with respect to certain technical issues, Mr. Rasweiler provided credible and compelling testimony that the technical issue is unlikely to

exist at all and that even if it did exist today, technology is available today that can eliminate the problem rendering it a nonissue.

In addition, Mr. Rasweiler identified newly patented technology that, while not currently in commercial production, reflects further advances in certain devices that could be deployed to address the technical issue.

Mr. Rasweiler testimony substantially undercut the credibility of many of Mr. Hyslop's conclusions with respect to many critical aspects of the technical issue.

Mr. Philip Falcone was the final witness called to testify at the confirmation hearing. The scope of Mr. Falcone's testimony did not include matters as to which he had previously testified during the adversary proceeding.

Called by SPSO, Mr. Falcone testified about his intimate involvement in the formulation of the plan, detailing his discussions with Mr. Jaffrey of Melody, Mr. McKnight of Fortress and others. E-mail correspondence was introduced reflecting Mr. Falcone's desire to subordinate Mr. Ergen's claim and to protect the interests of Harbinger, Fortress and JPMorgan.

He detailed his views about the FCC approval process and his continuing belief that approval is forthcoming. He indicated his view that the technical issue was fabricated by DISH and is merely fluff, that the FCC will see it for what it

is and will ultimately grant LightSquared the license.

Mr. Falcone also answered a number of questions about what consideration Harbinger would receive under the plan and what Harbinger's options were to increase its proposed stake in the reorganized company.

Mr. Falcone confirmed that Harbinger could exercise call option and put in an additional 150 million dollars to increase its post-confirmation stake to thirty-six percent and that at least part of that sum would be part of the second lien and therefore would be ahead of the SPSO note.

Mr. Falcone stated that he believed he did not get everything he had asked for and that Harbinger is entitled to in connection with the plan, citing the fact that he himself has no seat on the board of directors of the reorganized company and that he is giving up his causes of action against the GPS industry.

It is fair to say that there was much correspondence introduced into evidence that at best reflects mean-spirited banter by Mr. Falcone about various aspects of these cases and worst reflects genuinely malevolent views toward various individuals. His many attempts to spin his words otherwise were unconvincing.

It is clear that Mr. Falcone more or less dictated the principal economic terms and structure of the plan.

DISCUSSION.

A) Separate classification of the pre-petition LP facility SPSO claim complies with Section 1122.

Under the plan, the pre-petition LP facility SPSO claim is placed in a separate class, Class 7-B, from the pre-petition LP facility, non-SPSO claim.

The proper justification for such separate classification claims which, on their face, are identical is not equitable subordination, but rather that the holder of the SPSO claim is a competitor of the debtors' that has various noncreditor interests and that there is, thus, a valid business reason for separately classifying the SPSO claim.

SPSO vehemently opposes separate classification of its claim. For the reasons set forth herein, the Court finds that such separate classification is permitted by the Bankruptcy Code and applicable case law.

Section 1122(a) of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claim or interests of such class. Although Section 1122(a) specifies that a claim or an interest may only be included in a particular class if it is substantially similar to the other claims or interests in such class, it does not require that all similar claims be placed in a single class, nor does it address when similar claims may be placed in different classes.

Stated differently, the Bankruptcy Code does not prohibit placing similar claims in separate classes as long as there is a reasonable justification for doing so.

Courts that have considered the issue, including the Court of Appeals for the Second Circuit as well as numerous courts in this district, have concluded that the separate classification of otherwise substantially similar claims in interest is appropriate so long as the plan proponent can articulate a reasonable or rational justification for separate classification. See e.g., In re Chateaugay, In re Lafayette Hotel Partnership, In re Adelphia Communications.

Where there is any "good business reason" to support a plan proponent's separate classification is a question of fact. In re: Graystone III Joint Venture, 995 F.2d 1274, cert. denied, 506 U.S. 821 (1992).

However, the separate classification of substantially similar claims must not offend one's sensibility of due process and fair play. In re: One Times Square Associates Ltd. Partnership, 159 B.R. 695 (S.D.N.Y. 1993).

One such reasonable justification for separate classification is where a claimant is a competitor of the debtor. See e.g., In re: Premier Network Services, Inc., 333 B.R. 130 (N.D. Tex. 2005).

A noncreditor interest in the reorganized debtor meets the good business reason standard and justifies separate

classification of the creditor's claim. In re: Graphics Communications, Inc. 200 B.R. 143, (E.D. Mich. 1996), holding that a rational business reason existed for classifying competitors separately from general trade creditors; In re: Texas Star Refreshments, 494 B.R. 684, (N.D. Tex.), separately classifying trade creditors from competitor creditor.

Importantly, it is not merely the creditor's status as a competitor that is dispositive so much as the noncreditor interests that the creditor competitor may pursue. In Premier Networks, for example, the separately classified creditors, noncreditor interest, was a different stake in the future viability of their reorganized company.

The parties also cite to In re: 500 Fifth Avenue Associates, 148 B.R. 1010, (S.D.N.Y. 1993), but disagree on its applicability here.

In 500 Fifth Avenue Associates, the debtor isolated the unsecured deficiency claim of a secured creditor in a separate plan class from other recourse unsecured claims arguing that such treatment was justified due to the legal distinction between nonrecourse deficiency claims and other secured claims.

The court found that separate classification was not justified because the deficiency claim of the secured lender was an allowed unsecured claim that was no different in a bankruptcy case from the obligation owed to a recourse creditor

and also found that the separate classification of the deficiency claim was based on the debtor's clear desire to gerrymander an impaired accepting class to ensure confirmation of its plan.

The court, perhaps presaging Judge Gerber's views in Adelphia observed that the fact that a creditor's secured claim may drive the manner in which it votes its unsecured deficiency claim, which may be contrary to its best interests as an unsecured creditor, is not a valid reason for separately classifying a secured creditor's deficiency claim.

SPSO, relying on Fifth Avenue Associates, argues that a secured creditor's motives and agenda cannot justify separate classification of a creditor's claims and that the Court should focus, instead, on the legal nature of the underlying claim.

The debtors and the ad hoc secured group argue that 500 Fifth Avenue Associates merely addresses the separate classification of a secured creditor's garden-variety unsecured deficiency claim and it does not address the propriety of separately classifying the claim of a competitor/creditor whose sole interest was to acquire the company by one means or another.

The court agrees.

While SPSO urges that the Court should decline to delve into an analysis of ulterior motives and poses myriad hypotheticals to demonstrate instances in which a valuation of

a classification scheme based on claim holder considerations would be "a complicated and arbitrary line drawing exercise", there is no need to go down that path here. SPSO's different stake in the future of LightSquared is manifest and does not require a searching inquiry into ulterior motives.

Although as a general matter, 500 Fifth Avenue Associates does indeed hold that when considering classification issues, the focus should be on the legal nature of the underlying claim rather than on the motives and agenda of the claim holder, here it is necessary to recognize that a claim reflects more than a dollar amount on a proof of claim. It reflects a bundle of rights and remedies that are wielded by the holder of the claim. Accordingly, both the nature of the claim and the identity of the claimant may be relevant in the context of separate classification.

While SPSO is the holder of the SPSO claim, the Court finds that under the circumstances here, SPSO, which is wholly owned by Mr. Ergen, the chairman of the board and controlling shareholder of DISH, must be considered to have interests which are aligned with those of DISH, which is a competitor of the debtors.

Notwithstanding Mr. Ergen's reluctance to admit as much, the record makes it clear that, A, both DISH and the debtors own spectrum assets; B, DISH has been and remains active in the market to acquire more spectrum assets and/or

engage in transactions with third parties that own spectrum assets; C, Mr. Ergen himself purports to have an interest in owning spectrum personally, if his testimony in the adversary proceeding is to be credited; and D, both DISH and the debtors have announced their intention to develop and operate telephonic networks that utilize spectrum assets and that would compete with each other for customers and business. The debtors and the Ergen parties, one of which is SPSO, are competitors for spectrum assets under any reasonable meaning of the word.

Given Mr. Ergen's interests as the sole beneficial owner of SPSO and as the chairman of the board of directors and controlling shareholder of DISH, it is not hard to conjure a set of facts and circumstances in which he personally would benefit more from LightSquared's failure than its success.

Stated differently, his fiduciary duties as chairman of DISH may at some point require him to take action that is contrary to the best interests of LightSquared and contrary to his interest as a creditor through SPSO of LightSquared LP.

As Mr. Ergen himself made clear in pursuing his so-called personal bid for LightSquared spectrum through his LBAC bid, preserving optionality for DISH is a hallmark of his ongoing strategy for DISH in these cases and more generally.

Optionality for DISH should not come at the expense of the interests of LightSquared's creditors who do not share Mr.

Ergen's economic interest in and lifelong commitment to DISH.

While SPSO maintains that it is not a competitor of the debtor's because, although it is affiliated with DISH and EchoStar, those companies are in the paid television business while the debtors own spectrum "but have no ability or authority to use it for commercial purposes", this position is demonstrably unsupportable and is contrary to Mr. Ergen's sworn testimony.

Mr. Ergen clearly has big ambitions for DISH. Indeed, DISH is expanding or at least has the desire to expand into the terrestrial wireless business. Mr. Ergen has specifically testified that DISH would like to compete with telecommunications companies such as AT&T and Verizon.

Doing so requires spectrum, which Mr. Ergen describes as a limited commodity. DISH's takeover of DBSD and TerreStar and its failed attempts at transactions with, among others, ClearWire, Sprint and Inmarsat demonstrate that DISH is an active market participant in the race for spectrum and a player on the ever-changing chessboard of spectrum usage. Indeed, DISH's participation in the recently concluded H-block auction has been raised many times in these cases in a variety of contexts.

The fact that the Ergen parties are competitors of LightSquared is bolstered by the fact that DISH was listed as a disqualified company under the pre-petition LP credit agreement

and as a result was prohibited from purchasing LP debt.

Mr. Ergen's testimony, as well as the testimony of SPSO's valuation expert, Mr. Reynertson, supports the conclusion that DISH and LightSquared are currently competitors and would continue to be competitors upon LightSquared's emergence from Chapter 11.

Even if the status of DISH and EchoStar as competitors of LightSquared were not imputable to Mr. Ergen and SPSO, which it is, SPSO is clearly an affiliate of such entities, and by virtue of such affiliation and the common control exercise by Mr. Ergen with respect to these entities, SPSO is properly viewed as a competitor of the debtors. SPSO's attempts to distance itself from the overwhelming evidence of its competitor status and interest must be rejected.

That being said, SPSO is quite correct in its argument that separate classification cannot be used to mistreat a creditor out of personal animosity or otherwise. The unfair discrimination against SPSO reflected in the plan will be dealt with separately herein.

For all of these reasons separate classification of the pre-petition LP facility SPSO claimed in the plan is thus necessary and appropriate. SPSO must be viewed as a competitor of the debtors with significant noncreditor interest, or in the alternative, SPSO is an affiliate of a competitor controlled by SPSO's ultimate owner, Mr. Ergen.

Under the facts and circumstances of this case, the separate classification of SPSO's claim comports with Section 1122 of the Code.

It is worth noting that while the separate classification of the SPSO claim and the pre-petition LP facility non-SPSO claims is permissible under Section 1122, that does not mean it is required. Indeed, it is possible to envision a plan of reorganization which classifies all pre-petition LP facility claims in the same class subject to being able to navigate successfully the requirements of Section 1123(a)(4).

Of course, that portion of the SPSO claim, which is equitably subordinated, could not be included in such a class, absent the consent of all affected parties.

B) SPSO's vote to reject the plan should not be designated.

Section 1126(e) of the Bankruptcy Code provides that a Bankruptcy Court may designate the vote of any entity whose acceptance or rejection of a plan was not in good faith.

The seminal decision in this circuit addressing vote designation is the Second Circuit's 2011 decision In re: DBSD North America, 634 F.3d 79 in which the court made the following observations:

The Code provides no guidance about what constitutes a bad faith vote to accept or reject the plan. Rather, Section

1126(e)'s good faith test effectively delegates to the courts the task of deciding when a party steps over the boundary. Bankruptcy courts should employ Section 1126(e) designations sparingly as the exception, not the rule.

Merely purchasing claims in bankruptcy for the purpose of securing the approval or rejection of a plan does not of itself amount to bad faith, nor will selfishness alone defeat a creditor's good faith. The Code assumes that parties will act in their own self-interest and allows them to do so.

Section 1126 comes into play when voters venture beyond mere self-interested promotion of their claims. This section was intended to imply to those who are not attempting to protect their own proper interests, but who were, instead, attempting to obtain some benefit to which they were not entitled.

A Bankruptcy Court may, therefore, designate the vote of a party who votes in the hope that someone would pay them more than the ratable equivalent of their proportionate share of the bankrupt assets, or one who votes with an ulterior motive, that is with an interest other than an interest as a creditor. DBSD at 101 to 102.

Moreover, votes cast by parties who purchase claims in a competitor's bankruptcy are viewed by courts as being particularly worthy of scrutiny. Id. at 105, Note 12. See also Allegheny International, 118 B.R. 282 (W.D.Pa. 1990).

As described with greater detail in LightSquared's motion for entry of an order designating the vote of SP special opportunities, the vote designation motion, and the ad hoc secured group's joinder to the motion, the debtors maintain that, one, Mr. Ergen's attempt to secure control of the LP debtor's assets by purchasing a blocking position is precisely the behavior the Second Circuit attempted to deter and punish in DBSD and that, two, the behavior of SPSO in these cases is even worse than the behavior of DISH in DBSD.

The debtors allege the following in support of their conclusion: one, SPSO and the Ergen parties have followed the DBSD and TerreStar playbooks to gain control of a company in distress by buying claims and then manipulating the Chapter 11 process for their own noncreditor interest, but in this case they did so with stealth; two, SPSO's purchase of the LP debt at close to par to acquire a blocking position was part of Mr. Ergen's scheme and not simply to obtain higher returns, as he testified, or to ensure that he had bankruptcy protections against cram down; three, Mr. Ergen's overall interest in these cases as an owner of LP debt through SPSO and as the majority equity owner of DISH gives him incentives to help DISH achieve as low a purchase price for the debtors' assets as possible in direct contravention of his interest as a creditor; rather than acting in his interest as a creditor -- four, rather than acting in his interest as a creditor, SPSO opposed a near-full

recovery in cash under the ad hoc secured group plan by authorizing its counsel to object to the ad hoc secured group's motion to enforce the LBAC bid and seek a declaratory judgment that the LBAC bid was terminated.

And once again, the debtors in the ad hoc secured group urge that the bad acts of all of the Ergen parties other than SPSO should be imputed to SPSO for purposes of vote designation. See ad hoc secured group statement in support pointing out that "if this were not the case, it would be easy to eviscerate the protection intended by Section 1126(e) by simply forming multiple entities and having one buy claims while the other engage in disruptive inequitable conduct, exactly as the Ergen parties did here." While there is certainly truth to such an observation, those are not the facts before the Court with respect to vote designation.

Moreover, whether or not the alleged bad acts of all the Ergen parties, including LBAC, can be imputed or attributed to SPSO, the Court finds that SPSO's vote to reject the plan cannot be designated.

What the debtors and the ad hoc secured group ignore is the fact that, as will be discussed in detail below, the third amended plan is unconfirmable for a variety of reasons, not the least of which is the unpalatable treatment it affords the SPSO claim. Where a creditor votes not to accept the plan for an admixture of reasons, some of which can be characterized

as being consistent with the interests of a creditor acting to protect its legitimate creditor interest, its vote cannot be designated.

SPSO has voted against a plan that not only deprives it of its first lien security interest, but provides it with plan consideration that is virtually indistinguishable from equity interests. It is not at all surprising that SPSO declined to accept such treatment. The other members of the ad hoc secured group would most certainly have done likewise. Indeed, Mr. Falcone could not even interest Mr. McKnight in taking that treatment on account of the LP preferred equity interest held by Fortress.

While the debtors urge that DBSD compels designation of SPSO's vote to reject the plan, to do so would materially extend the reach of DBSD in ways that Section 1126(e) does not contemplate.

The centerpiece of the Second Circuit's decision in DBSD was its observation that a competitor of DBSD, DISH, brought claims with the intent of voting against any plan that did not give it a strategic interest in the reorganized company, and it bought those claims above par and after a plan had been proposed by DBSD. So too in Alleghany in which creditor Japonica purchased its claims after balloting on a plan had already been begun.

As Judge Gerber noted in DBSD, DISH intended to use

its creditor status to provide advantages over proposing a plan as an outsider. However, both Judge Gerber and the Second Circuit were particularly focused on the timing of the debt -- of the DISH debt purchases after the plan in DBSD had been filed.

Here, SPSO made no purchases above par and acquired a significant portion, 286 million dollars, of its claim before the Chapter 11 cases were commenced when the LP debt was trading at or below sixty cents on the dollar. Moreover, SPSO acquired all of its LP debt below par and prior to the filing of any plan.

SPSO is, thus, arguably at least in part a pre-existing creditor, albeit one who has allegedly voted with strategic intentions, the type of creditor that the Second Circuit did not expressly include in the ambit of its prohibition on voting in connection with strategic claims acquisitions.

The Court declines to extend the holding of DBSD to cover votes cast with respect to claims and which were acquired before a plan had been propose by any party and where, as discussed below, there are valid economically self-interested creditor reasons for the holder of such claims to reject a proposed plan.

While courts in this district and elsewhere have held that casting a vote on a plan to gain more than one deserves is

evidence of bad faith, it takes more than evidence of simply a selfish or aggressive attempt to maximize recovery to demonstrate bad faith. See e.g. Adelphia, 359 B.R. 54 (S.D.N.Y 2006). Declining to designate votes of creditor who held claims against two different Adelphia debtors and who cast votes with respect to one set of claims with ulterior purpose of increasing its recovery on the claims it held against another debtor.

Judge Gonzalez had occasion to analyze the issue of alleged mixed motive voting post-DBSD in the case of In re: GSC, 453 B.R. 132. In GSC, there were allegations that a creditor, Black Diamond, had voted against a plan in order to pursue a sale transaction that would have given it more than its ratable share of the debtor's assets.

In analyzing whether there was evidence to this effect Judge Gonzalez observed that, even if there were such evidence, the objectors would have needed to establish Black Diamond's intent to pursue this alternative at the time of voting and that, even if the objectors could have succeeded in making such a showing, the objectors "would have had to further prove that Black Diamond's sole or primary goal in rejecting the plan was to benefit at the expense of others."

Stated differently, vote designation should not be ordered where a creditor can articulate a valid business reason for rejecting a plan, even if such rejection may also be

consistent with such creditors' noncreditor interest. See also, In re: Figter Limited, 118 F.3d 635 (9th Cir. 1997), denying vote designation where creditor acts to preserve what he reasonably perceives as his fair share of the debtor's estate; In re: Landing Associates Limited, 157 B.R. 791 (W.D. Tex.), noting that creditors act with a variety of motives in evaluating an admixture of creditor-related and noncreditor-related motives; In re: Dune Deck Owners Corp., 175 B.R. 839 (S.D.N.Y. 1995), stating that a court must decide whether the creditor opposes the plan because of how it affects his claim, or because the creditor really seeks to obtain some collateral advantage in another capacity and has voted without regard to the treatment of its claim.

Here, there is ample basis to find that, notwithstanding SPSO's alleged ulterior motives, its noncreditor competitor interests and its demonstrable inequitable conduct in acquiring at least a substantial proportion of its claim, it casts its vote to block a plan that provided it with abysmal treatment that no similarly situated creditor would have accepted.

The debtors would have this Court conflate the provisions of Section 1126(e) and Section 510(c) and hold that a finding of inequitable conduct sufficient to support equitable subordination of a creditor's claim necessarily translates into the basis for designating the bad actor's vote.

Moreover, the debtors would seek to transform vote designation into a substantive treatment provision.

The Court declines to read Section 1126 so broadly.

In the plain words of the statute, designation may be ordered with respect to "any entity whose acceptance or rejection of such plan was not in good faith."

It is vote specific and plan specific, not entity specific. It focuses on the voting conduct of the creditor holding the claim.

Simply put, had SPSO voted to reject the plan that proposed to pay it in full in cash, or a plan proposing some other treatment that was accepted by the non-SPSO holders of LP debt, SPSO's good faith in rejecting such a plan would be open to serious question.

Indeed, as SPSO itself ironically points out in drawing a distinction between this case and DBSD, "it is one thing to designate a creditor that votes against a plan that manifestly compensates the designated stakeholder's economic expectations in full," but quite another thing to designate SPSO's vote on this plan.

Here, while it is not subject to credible dispute that SPSO has noncreditor interests, its vote to reject this demonstrably unconfirmable plan cannot be designated, especially when to do so would arguably render the protections of Section 1129(b) inapplicable.

C) Because SPSO's vote cannot be designated, the cram down standard of 1129(b) is applicable to class 7-B.

Pursuant to Section 1129(b)(1) of the Bankruptcy Code, the court may confirm a plan over a dissenting impaired class of claims so long as the plan is fair and equitable and does not discriminate unfairly with respect to the dissenting class. See In re: Johns Manville, 843 F.2d 636 (2d. Cir. 1988); In re: Cantora, 439 B.R. 561 (Bankr. S.D.N.Y. 2010).

Neither requirement is satisfied by the plan.

1. The plan is not fair and equitable with respect to the secured plan of SPSO.

A plan is fair and equitable with respect to a class of secured claims if it satisfies one of the three alternatives set forth in Section 1129(b)(2)(A).

The plan must provide: one, that the holders of such claims, A, retained their liens on the same collateral to the extent of the allowed amount of such claims, and B, receive deferred cash payments of a value equal as of the effective date of the plan to the value of the secured creditor's interest and the estate's interest in such collateral; two, for the sale of any property that is subject to the lien securing such claims free and clear of such liens with such liens to attach the proceeds of such sale and the treatment of such liens to comply with Clause 1 or 3 of Section 1129(b)(2)(A), a provision which the parties is agree is not applicable here; or

three, for the realization by such holders of the indubitable equivalent of such claims.

The plan is not fair and equitable with respect to SPSO. Although the parties here disagree as to whether the plan must comply with Section 1129(b)(2)(A)(1) or Section 1129(b)(2)(A)(3) with respect to SPSO. See RadLAX Gateway Hotel v. Amalgamated Bank, 132 S.Ct. 2065 (2012). The plan fails to satisfy either subsection. On its face the plan does not comply with subsection (A)(1) inasmuch as it replaces SPSO's first lien with the third lien. Since SPSO's claim will not be subordinated in its entirety, the analysis of this speech is a fair and equitable -- of the fair and equitable treatment ends there.

Nor does the plan fare better under Section 1129(b)(2)(A)(3), which requires the realization by the creditor of the indubitable equivalent of its claims.

In In re: DBSD, 419 B.R. 179, the Bankruptcy Court held that although indubitable equivalent is not defined in the Bankruptcy Code, courts generally will find that the requirements satisfied were a plan both protects the creditor's principal and provides for the present value of the creditor's claim. Citing In re: Sparks, 171 B.R. 860 (N.D. Ill. 1994).

The court continued stating that "Courts focus on the value of the collateral relative to the secured claim and the proposed interest rate of the facility providing the

indubitable equivalent." Courts have held that the indubitable equivalent standard requires that there can be no doubt that replacement recoveries are equal to existing secured interests. See In re: Philadelphia Newspapers, 599 F.3d 298 (3rd Cir. 2010).

Thus, the indubitable equivalent under subsection (3) is the unquestionable value of a lender's secured interest in the collateral. See also, In re: Salem Suede, 219 B.R. 922 (D. Mass.), requiring that there be no reasonable doubt that the subject creditor will receive the full value of what it bargained for.

Here, the plan proposes to give SPSO the SPSO note, which, one, accrues pick interest at the rate of thirteen percent based on current LIBOR and the one percent LIBOR floor under the SPSO note; two, has a seven-year maturity, and three, is secured by a third priority lien on all of the assets of the new LightSquared entities.

SPSO argues that the SPSO note does not represent the indubitable equivalent of its claim because, among other things, A, the value of such note will be highly speculative as of the effective date; B, such note does not provide for post-petition interest accrued through the effective date; C, such note contains economic terms that are inferior to those it enjoys pursuant to the pre-petition LP facility as it provides for the payment of interest in kind rather than in cash and its

seven-year maturity is longer than the four-year maturity under the pre-petition LP facility; and D, such note will be subject to more rigorous transfer restrictions and be less liquid than SPSO's pre-petition LP facility claim while at the same time containing reduced covenant protections for SPSO.

The debtors submit that the SPSO note will provide SPSO with the indubitable equivalent of its claim by providing it with payment in full.

To determine whether the SPSO note provides for the indubitable equivalent of SPSO's claim, the debtors suggest that the Court must, one, compare the value of the collateral securing the SPSO note to the value of SPSO's claim to ensure that the principal is protected; and two, analyze the interest rate and maturity of the SPSO note to ensure that SPSO is receiving the present value of its claim. If an equity cushion can be shown, the debtors argue indubitable equivalence is established.

Pointing to the Moelis valuation, a collateral valuation with the midpoint of 7.7 billion dollars, the debtors argue that the full principal value of the SPSO claim would be more than sufficiently protected by a third lien note on the existing collateral securing the pre-petition LP facility.

Nevertheless, to erase any shadow of a doubt to the extent any such doubt existed that SPSO was not receiving fair and equitable treatment, the debtors emphasize that the plan

enhances SPSO's collateral package by providing SPSO with a third lien on existing collateral, as well as a lien on certain new collateral, including substantially all of the assets of NewCo and its direct and indirect subsidiaries.

The SPSO note, according to debtors, is thus secured by a new collateral package that is more "expansive" than that provided under the pre-petition LP facility. And the ad hoc secured group argues that this so-called additional collateral, which includes the assets of LightSquared, Inc., increases SPSO's collateral package by at least hundreds of millions of dollars.

SPSO disagrees entirely. In addition to disputing the debtor's valuation and protections, SPSO argues that the third lien it will receive under the SPSO note cannot satisfy indubitable equivalence where SPSO currently enjoys to purport a first lien.

While some courts have held that a subordinated lien can constitute the indubitable equivalent of a secured creditor's claim under Section 1129(b)(2)(A)(3), such cases are few and far between. See e.g., Woods v. Pine Mountain Limited, 80 B.R. 171 (9th Cir. BAP 1987); Affiliated National Bank, Englewood v. TMA Associates, 160 B.R. 172 (D. Colo. 1993). No cases from courts in this district have been cited to the Court in support of this contention.

Moreover, in each case cited by the ad hoc secured

group in support of its indubitable equivalence argument the Court found that the secured creditor in question was demonstrably over secured and that the creditor's equity cushion protected it from any diminution in value -- any diminution of its security interest.

In In re: Pine Mountain, for example, the Ninth Circuit BAP based its determination that the secured credit received the indubitable equivalent of its claim on the fact that the creditor's claim would still be fully secured even after obtaining a senior construction loan.

Similarly, in Affiliated National Bank of Englewood, the court based its holding on the Bankruptcy Court's determination that the property securing the creditor's 1 million dollar claim was worth between 1.8 million and 2 million dollars.

The debtors readily concede that although the plan is not conditioned on FCC approval, the debtor's valuation of the SPSO note and SPSO's proposed recovery thereunder indeed relies on opinions offered at the confirmation hearing that the FCC will approve LightSquared's pending license modification application and the later use of its lower downlink spectrum.

Thus, the value of the collateral securing the SPSO note depends almost entirely on whether or not such approvals occur.

Accordingly, it appears that the parties are in

agreement that the valuation of LightSquared and its assets, including its spectrum assets, is ultimately dispositive on the question of indubitable equivalence.

There is enormous disagreement on valuation, however. Not surprisingly, the debtors and the plan sponsors on the one hand with the vocal support of the ad hoc secured group and SPSO on the other hand have drastically different views on valuation.

Mr. Ergen himself prepared a valuation of the debtor's spectrum assets, as did Perella Weinberg when it issued a fairness opinion for the DISH special committee in connection with the now terminated LBAC bid.

Of course, the assumptions underlying each of these valuations are radically different from one another with respect to variables, such as the appropriate price per megahertz POP metric, the impact of FCC approval on the license modification application, the proposed use of each block of spectrum, and the question of whether or not there is a so-called technical issue with respect to portions of the spectrum.

The Court will enter detailed findings of fact with respect to valuation issues as soon as is practicable, and the following summary is offered for the sake of expedience in order to provide context herein.

First, the Moelis valuation. As the debtors readily

concede, the value of LightSquared's assets is central to the determination of the feasibility of the plan and the appropriateness of the treatment of the SPSO claim.

Under the direction of Mr. Hootnick, Moelis prepared a valuation analysis of LightSquared's assets that reflects a range of value from 6.2 billion at the low end to 9.1 billion at the high end.

The methodology employed by Moelis is industry accepted and indeed does not differ in any material respect from the methodology used by SPSO's valuation expert, or from the methodology used in the valuations performed by Perella Weinberg for the DISH special committee, or by Mr. Ergen himself.

The methodology employs market comparables based on price per megahertz POP, which reflects, among other things, the market price as a function of the size of the band of spectrum and the number of people it covers.

Spectrum characteristics are also taken into account, including, for example, the propagation characteristics of the spectrum.

Moelis relied on the opinions of Mr. Smith, Mr. McDowell and Mr. Jeffrey Carlisle, LightSquared's EVP for regulatory affairs, that the FCC will grant LightSquared's license modification application by the end of 2015 and will approve the use of the lower downlink in seven years.

Mr. Hootnick's qualifications as an expert are stellar. Moelis' experience in valuing complex assets in the telecommunications space is broad and deep and the methodology employed in the Moelis valuation is clearly consistent with industry standards.

But because the Moelis valuation rests almost entirely on unsupportable assumptions about the timing of FCC approvals, the Court is unable to afford it weight sufficient to support the valuation premise of the plan.

Next, the Reynertson GLC valuation. The Reynertson GLC valuation suffered from many infirmities and inconsistencies. On the one hand, Mr. Reynertson purported to have relied on the opinions of Mr. Hyslop for his determination of how much of LightSquared's spectrum should be included in his valuation analysis and how much might be sidelined due to the alleged technical issue.

He appears to have relied in part on a Hyslop opinion that was first revealed at trial. This undermines the integrity of Mr. Reynertson's opinion and, more generally, raises questions about his credibility.

Moreover, notwithstanding his reliance on others for regulatory and technical assumptions, he appears to have used his own judgment to risk adjust his valuation analysis.

Simply put, his methodology is all over the place. Paid 1.25 million dollars for his work, Mr. Reynertson

delivered a superficial analysis that was not even performed by a review of the valuations prepared by Mr. Ergen and Perella Weinberg. The court affords it little weight.

Next, the July 2013 Ergen valuation. In connection with the consideration of the LBAC bid by the DISH board and the DISH special committee, Mr. Ergen prepared a six-page presentation dated July 3rd, 2013 entitled Strategic Investment Opportunity L-Band Acquisition.

The presentation reflects Mr. Ergen's analysis of the aggregate value of LightSquared's assets to DISH comprised of, A, the value of twenty megahertz of LightSquared spectrum and satellites themselves; and B, the incremental value that would be realized by DISH due to the substantial additional value that LightSquared spectrum would bring to DISH's existing AWS-4 spectrum.

The range of value for the former, per Mr. Ergen, is 3.3 billion to 5.2 billion. The range of value of the latter, i.e., inclusive of DISH supplemental asset value, is 5.1 billion to 8.9 billion. The Ergen valuation includes a higher range of price per dollars per megahertz POP than the Moelis valuation, sixty-five cents to ninety-five cents versus sixty cents to ninety cents.

SPSO has attempted to retreat from the numbers reflected in the Ergen valuation on the grounds that it does not reflect the negative effect of the alleged technical issue.

As the Court repeatedly observed during the confirmation hearing, however, no attempt was ever made by DISH to solve, let alone quantify, the technical issue, which allegedly stood in the way of the realization by DISH of billions of dollars of supplemental asset value. It is indeed a curious thing.

The Ergen valuation, while offering strong support for the proposition that LightSquared's assets have tremendous value in the hands of DISH, does not provide sufficient support for the valuation on which the plan and the treatment of the SPSO claim are premised.

Finally, the Perella Weinberg valuation. In addition to the Ergen valuation, a valuation was prepared by Perella Weinberg. A valuation prepared by Perella Weinberg was considered by the DISH special committee. Perella Weinberg was retained by the DISH special committee to issue a fairness opinion with respect to the 2.2 billion dollar LBAC bid in July of 2013. In connection with its assignment, Perella Weinberg performed an extensive valuation analysis of LightSquared assets and concluded that the cumulative value is estimated to be 4.4 billion to 13.3 billion. This valuation range includes the standalone value of LightSquared spectrum and an estimate of the magnitude of the ways in which the LightSquared spectrum would enhance the value of DISH's existing and planned business.

In order to demonstrate the existence of an equity cushion, the debtors point not only to the Moelis valuation, but also to the Ergen valuation, which yields an approximately twenty-three percent equity cushion, not including value attributable to the lower downlink; and 2, the valuation prepared by Perella Weinberg, which yields an approximately fifteen percent equity cushion, both of which are higher than the ten percent equity cushion, which has found to be sufficient by courts in this district.

SPSO, not surprisingly, argues that these various equity cushion calculations should be given little credence because of the technical issue that was allegedly discovered after preparation of the Ergen and Perella Weinberg valuations and as such, these valuations are no longer indicative of current value.

The debtors contend that the Ergen and Perella Weinberg valuations, which are consistent with the Moelis valuation, are illustrative and persuasive evidence of the value of LightSquared's assets and that the purported technical issue is a red herring manufactured by SPSO that likely does not materially alter such valuations.

The Court is inclined to agree, but this issue was not explored or fully developed during the evidentiary hearing.

Based on all of the valuation evidence in the record, it is clear that LightSquared is indeed the owner of valuable

spectrum assets, unbuilt beachfront property that has yet to be put to its highest and best use. But as long as the regulatory hurdles that exist remain unresolved, it is impossible to conclude by a preponderance of the evidence that debtors' valuation and projections are sufficiently reliable to support indubitably the valuation on which SPSO's treatment under the plan is premised.

As the Court found, the Moelis valuation is premised on unsupportable assumptions about the timing of FCC approvals and no party has the ability to predict when and if such approvals will be obtained. Moreover, the fact that certain of the planned support parties appear to be investing what the debtors characterize as hundreds of millions of dollars junior to the SPSO note does not persuade the Court otherwise.

Indeed as graphically demonstrated in SPSO's post-confirmation trial brief, the plan is in large part a sophisticated shell game that moves debt and cash up and down the capital structure in ways that are less than obvious, but nonetheless real. A substantial amount of the purportedly junior investment by Melody is being offset by substantial fees paid to Melody by Harbinger in connection with the defunct Harbinger plan. Moreover, certain of the plan support parties who are holders of existing LP preferred equity interest, including Fortress, would receive 223 million dollars in cash and additional pick preferred interest under the plan.

As the January 2014 correspondence among the plan support parties makes very clear, the plan was constructed to bootstrap these preferred interests into the second lien position ahead of Mr. Ergen. When Mr. McKnight balked at being third to Mr. Ergen's second, Mr. Falcone simply moved him up ahead of Charlie. Breathtakingly simple, but entirely unsupportable.

Because the debtor's asset valuation does not support the valuation on which the plan and the treatment of the SPSO claim are premised, the Court cannot conclude that under the plan SPSO will realize the indubitable equivalent of its existing pre-petition LP facility claim such that the plan is fair and equitable with respect to Class 7-B.

Even if the Court were to find the valuation that undergirds the plan is sufficient to protect SPSO's principal, however, the Court determines that the SPSO note would still not constitute the indubitable equivalent of the SPSO claim because of other features of the SPSO note, including the alteration of the type of interest received under the SPSO note, as opposed to the pre-petition LP facility, pick versus cash, the longer maturity of SPSO note as compared to the pre-petition LP facility, seven years versus four years, and the fact that the note, instead of providing SPSO with the first lien, provides for a far riskier third lien treatment subordinated behind at least 2.2 billion dollars of senior

debt.

2. The plan unfairly discriminates against Class 7-B.

Contrary to the requirement of Section 1129(b)(1) of the Code, the plan unfairly discriminates against Class 7-B. While the currency with which the pre-petition LP facility SPSO claim has paid the SPSO note, does not have to be exactly the same as that provided to the pre-petition LP facility non-SPSO claims, there must nonetheless be a determination that the treatment afforded SPSO does not discriminate unfairly against SPSO.

The purpose of the requirement is to ensure that a dissenting class will receive relative value equal to the value given to all other similarly situated classes. In re: Johns Manville, 68 B.R. 618 (Bankr. S.D.N.Y. 1987). See also, In re: Sea Trail (E.D.N.C., October 23rd, 2012); In re: Hawaiian Telcom Communications, 430 B.R. 564 (Bankr. D. Haw. 2009); In re: Great Bay Hotel and Casino, Inc., 251 B.R. 213 (Bankr. D.N.J. 2000).

To determine whether a plan discriminates unfairly, this Court has held that courts consider whether, one, there is a reasonable basis for discriminating; two, the debtor cannot consummate the plan without the discrimination; three, the discrimination is proposed in good faith; and four, the degree of discrimination is in direct proportion to its rationale. In re: Worldcom, 2003, Bankr. LEXIS 1401 (S.D.N.Y. 2003).

The debtors argue that each of these elements has been satisfied because, one, SPSO impermissibly acquired LP debt intending to facilitate the acquisition of LightSquared's assets by DISH, a competitor, thus providing a rational basis for the treatment; two, the treatment of the SPSO claim is necessary because the plan represents "the best and only path for LightSquared to emerge"; three, the plan has been proposed in good faith; and four, there is nothing unfair about the fact that the plan satisfies SPSO's claim in full.

SPSO vehemently disputes such assertions arguing that the disparate treatment is not supported by any reasonable basis and, far from providing payment in full, the SPSO note is at best a highly distressed debt instrument and is at worst entirely worthless.

At a minimum, the treatment afforded in the plan clearly does not pass muster on prongs one and four of the Worldcom test and likely falls short on the good faith prong as well.

Simply put, it is difficult to imagine discrimination that could be much more unfair than that contemplate by the plan. Close to full payment in cash on confirmation, not the effective date, for Class A, versus an equity-like deeply subordinate seven-year third lien pick interest note for Class 7-B, treatment that, even if possibly yielding payment of the value of the SPSO claim seven years down the road, for all

intents and purposes puts SPSO at the mercy of the rest of the proposed post-confirmation capital structure, including the equity holders below it.

While some discrimination in this case may be necessary to address the noncreditor competitor interests of SPSO, the plan's treatment of Class 7-B is not designed to achieve that goal. The legitimate business reasons for separately classifying the SPSO claim hardly entitle the debtors to discriminate in SPSO in ways that far exceed those that are necessary to address the legitimate concerns attending to SPSO's creditor status and connections to DISH; e.g., through appropriate covenants and other noneconomic protective measures.

Moreover, the fact that, as Mr. Smith testified, SPSO is getting a promissory note because "there's not enough cash for everybody to receive cash," does not provide a legitimate basis for the plan's discriminatory treatment of Class 7-B, nor is it a justification for such discrimination to point to the fact that, as some have observed, the ad hoc secured group "requires" early payment in full in cash." See Mr. Hootnick. "And the plan satisfies the requirement of certain constituents, particularly the non-SPSO lenders who have been promised an early payout by the LBAC approach and who have required throughout that they be paid off quickly."

There are many creative ways to attempt to address the

limited availability of cash. See, e.g. In re: Central European Distribution Corporation, et al., case number 13-10738, Bankruptcy District of Delaware, employing a reverse Dutch auction procedure in which note holders could elect to bid for cash treatment, but unfair discrimination is not one of them.

Thus, separate and apart from its failure to satisfy the fair and equitable requirement of Section 1129(b)(2), the plan fails to pass muster on unfair discrimination grounds as well and thus, cannot be confirmed.

We're almost there. Hang in there.

D) The claim of SPSO may be subordinated to the extent of harm caused to innocent creditors.

As set forth in detail in the Court's decision in the adversary proceeding, the Court has concluded that SPSO has engaged in inequitable conduct in connection with its acquisition of its now nearly one billion dollar LP debt claim.

Although confirmation hearing did not encompass a retrial of those issues that were presented and have now been adjudicated in connection with the adversary proceeding, there are additional allegations of inequitable conduct that were raised in connection with confirmation.

In essence, the ad hoc secured group maintains that they were the victims of an elaborate bait-and-switch strategy perpetrated by Mr. Ergen through SPSO, LBAC and DISH. The

strategy was allegedly hatched in a presentation prepared by Mr. Ergen's counsel in late April 2013 and presented by Mr. Ergen to the DISH board in May 2013, which stated, among other things, that Mr. Ergen wanted to "see the results of the marketing process and if the process is unsuccessful, revert with a different bid later."

There, says the ad hoc secured group, it is made crystal clear that the Ergen-led strategy is to make a bid, wait and see if anyone else is interested in the LightSquared assets at that price, and if not, pull the bid and come back with a lower bid. Had they only known, say the members of the ad hoc secured group, they would never have gone down that path.

But now, pointing again and again to the DBSD and TerreStar playbooks as evidence of Mr. Ergen's modus operandi for acquiring distressed assets, the ad hoc secured group complains that it was deceived into signing up for a deal that Mr. Ergen never intended to close. The fly now regrets having accepted the invitation of the spider to enter its parlor.

Not surprisingly, there is no documentary evidence reflecting the alleged bait-and-switch strategy. The May 2nd DISH board presentation on which the ad hoc secured group principally relies cannot be fairly read as the ad hoc secured group suggests it should be read. The DISH board minutes in the December 2013 time frame contain carefully constructed

high-level summaries of the status of the LBAC bid and, not surprisingly, contain no hint of any such strategy.

Consistent with the allegations of the ad hoc secured group that the so-called technical issue was fabricated as a pretext for LBAC's termination of its bid, there are, however, DISH internal documents that suggest that the so-called technical issue was not being approached as something to be resolved in order to keep the proposed transaction on track, but rather was being viewed as something DISH was hoping would turn out to be real. In addition to the unsettling content and tenor of some of these documents, Mr. Ergen's testimony on this issue is quite evasive.

Moreover, the words and behavior of Mr. Ergen in connection with the December 11th auction are not exactly what one would expect to hear and see from a stalking horse bidder who had snagged assets that were worth, in DISH's hands, billions of dollars of net incremental value. Why would Mr. Ergen fly to New York to personally attend the auction with a sizable team of DISH personnel and the DISH board on standby, but on that very day have his counsel tell Mr. Zelin that she hoped another bidder would appear or it would be bad for the ad hoc secured group? Why in December did the DISH board waive its forty-eight-hour meeting notice requirement until January 9th, 2014, the exact day on which the LBAC bid termination became effective? There are no good answers to these and many

other questions about the conduct of LBAC and SPSO.

Nonetheless, the fact remains that the LBAC transaction was tied to the achievement of certain milestones, and LBAC, as this Court has ruled, was free to terminate the PSA and then terminates its bid for any reason once any of those milestones was missed. The milestones were aggressive from the outset and were soon missed.

Moreover, the bid procedures order only required LBAC to remain in place as a backup bidder until mid-February 2013 only if another party had outbid it at the auction, and that did not occur.

Whether LBAC terminated its bid because it believed there was a technical issue, even though the record does not support a finding that there was or is such an issue, or because it wanted to make a lower conditional bid, or because Mr. Ergen decided to direct DISH and its capital elsewhere, or because of negative implications for DISH in connection with the Nevada shareholder litigation remains unclear.

What is indisputable, however, is that the actions of Mr. Ergen in this regard defy logical explanation. Mr. Ergen was particularly evasive when asked at the confirmation hearing about his reasons for coming to the December 11th auction fully prepared to proceed and then terminating his bid shortly thereafter.

Notwithstanding, the record of a confirmation does not

provide compelling additional support for the equitable subordination of the SPSO claim, even assuming that the conduct of LBAC and DISH in terminating the LBAC bid were attributable to SPSO.

E) Additional objections to the plan.

SPSO has raised numerous additional objections to confirmation of the plan, including the failure to satisfy the best interests test under Section 1129(a)(7) of the Code; the failure of the plan to contain projections that extend beyond the first quarter of 2016, the impermissibility of the plan's proposed nondebtor releases, the effect of the plan when SPSO's intercreditor rights under the pre-petition LP credit agreement, certain infirmities with respect to the new proposed DIP facility, including the lack of adequate protection, the alleged artificial impairment of certain accepting classes, the debtor's failure to demonstrate that the plan is feasible, and the debtor's alleged lack of good faith in soliciting acceptances of the plan under Section 1125(e). While there may be merit to several of these additional objections, the Court need to the address them now in light of the other bases on which the Court has denied confirmation of the plan.

One final observation is in order. This Court has previously ruled in this case that the Bankruptcy Code does not contemplate or permit equitable disallowance of a creditor's claim. Against the backdrop of allegations and findings that

SPSO and Mr. Ergen indeed orchestrated an end run around restrictions on the pre-petition LP credit agreement, it is remarkable that the debtors and those parties who support the plan have constructed a plan of reorganization that is a gerrymandered end run around their inability to disallow the SPSO claim.

The latest such attempt is the invocation of unjust enrichment by the ad hoc secured group. And the trial record leaves no doubt that subordinating the SPSO claim with or without a finding of equitable subordination was the sine qua non of the Harbinger-driven plan process. This was a plan that was orchestrated by Mr. Falcone and those he sought to protect. It provides the ad hoc secured group with the quick cash payout it had hoped to obtain from LBAC's purchase of the LP assets, and it assumes a result in the adversary proceeding that is not to be.

As these cases approach their two-year anniversary in this court, the time is long overdue for the parties to adjust their expectations, tone down their animosity and work constructively to maximize the value of LightSquared's valuable spectrum assets.

CONCLUSION.

For all of the foregoing reasons, one, confirmation of the third amended joint plan is denied.

Two, SPSO's motion to strike portions of the testimony

of Mr. McDowell and Mr. Hootnick is denied.

Three, the debtors' motion to strike portions of the testimony of Mr. Hyslop and Mr. Reynertson is granted as to Mr. Hyslop and denied as to Mr. Reynertson.

Debtor's motion to designate SPSO vote is denied.

Five, the motion to approve the DIP facility and for related relief, including the request to approve the plan support party breakup fee, is denied as moot.

Six, SPSO's motion to admit SPSO confirmation Exhibit 2 is denied.

And seven, the request for equitable subordination of the claim of SPSO is granted for the reasons set forth in the Court's separate decision in the adversary proceeding with the extent of such subordination to be determined in further proceedings to be held in this court.

The Court's finding and conclusions remain subject in all respects to a complete decision to be filed in these cases as soon as practicable.

Okay. That ends the rulings. That ends the two bench decisions, but I'd like to take a few minutes further to talk to you.

MR. DUGAN: Your Honor, just a clarification on the record, just to be clear, the adversary proceeding ruling is not final; is that correct?

THE COURT: Okay, I thought I had explained the ground

rules at the beginning. So I'm not going to re-explain them.

MR. DUGAN: Okay.

THE COURT: You can read the transcript of what I said in the beginning.

If what you're immediately asking me, Mr. Dugan, is how you all are going to start trying to appeal, I'm not interesting in having that discussion right now.

MR. DUGAN: We just don't want to --

THE COURT: So --

MR. DUGAN: Yeah. We just wanted to make sure we weren't missing anything. That's all. Thank you, Judge.

THE COURT: There is a transcript and it will say exactly what it says.

MR. DUGAN: Okay.

THE COURT: These decisions are bench decisions. They're not open for discussion. They're not tentative rulings. They will be superseded in their entirety by full decisions that will be filed when I recover enough strength to finish dotting all I's and crossing the T's.

The reason that this was done in this manner was for the sake of all of you. Rather than you spend the next thirty days waiting for me to do what I need to do and for Mr. Montagner to see 1.5 million dollars go out the door every day, I'm going to do what I'm going to do while you're going to do what you have to do. Okay?

And I would strongly suggest that figuring out how to appeal right now is not the best thing. Your appeal rights are what they are.

At the end of these decisions there are not the words "it is so ordered." Okay?

MR. DUGAN: Okay, thank you.

THE COURT: I am not so ordering these records.

MR. MUNDIYA: Thank you, Your Honor.

THE COURT: Okay. Now, I know that I took you all by surprised today, probably in more ways than one, by issues these decisions on the timing that I did, but I felt that this was the best thing to do, rather than send you away and come back in many weeks so that you could productively make use of this time.

It may be overreaching, but I feel that it's necessary for me to attempt to guide you in a constructive direction at this point because I care deeply about this case.

You have two weeks. You have two weeks to come up with a deal. You all know the facts. You know all the moving parts. You know what people are willing to do. You've now been given a lot of guidance about what's going to fly with me, what's not going to fly with me.

Two weeks. If you don't do it in two weeks, which takes us to Memorial Day weekend, which you can have off, on Tuesday, May 27th, Judge Drain will assume his role as a plan

mediator. You have two weeks to avoid that.

If you come up with a deal globally, both with respect to the amount of equitable subordination and on a plan, no Judge Drain. If you don't, Judge Drain. He has agreed, gracious as always, notwithstanding his enormous workload, to serve free of charge as a plan mediator in this case. There could be no one better. He is sophisticated, he is smart and he is really nice.

So that's what we're going to do. That's what you're going to do for the next two weeks. For the next two weeks we're going to keep working. I can't make you promises about when I will be ready to file these decisions on the docket, because as I've said, there is a lot of work that goes into the footnotes and the dotting of the I's and crossing of the T's, and because there may well eventually be appeals consistent with all of your rights, they have to be perfect by my standards. But I think what you've heard today is sufficiently detailed for you to know more than enough about the bottom line.

So that's going to be plan. I will wait until May 27th to enter an order appointing Judge Drain as plan mediator, but he is standing by and is ready. And that gives us a healthy three weeks or so before what I believe now is the current June 15th point with respect to liquidity and I fully admit I don't know details about the current liquidity

position.

So again, I apologize for taking you by surprise if you thought you were going to have the next couple of weeks off, but there you go.

Questions, comments, anything other than you really would like to get out of here on stopping listening to me talk?

MR. MUNDIYA: I just want to say thank you, Your Honor, for all the work you did.

THE COURT: Sure.

MR. BARR: Same. Just thank you, Your Honor. We understand. Thank you.

THE COURT: Thank you, folks.

(Whereupon these proceedings were concluded at 5:22 PM)

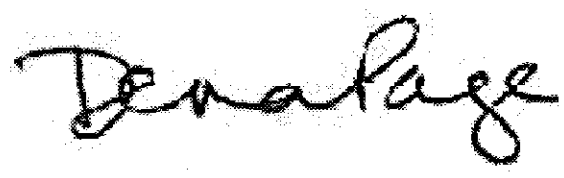
I N D E X

RULINGS

1	Request for equitable subordination of the claim of SPSO is granted	154	11

C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true and accurate record of the proceedings.



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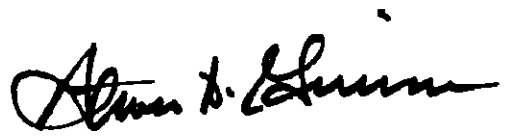

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN RE DISH NETWORK CORPORATION DERIVATIVE LITIGATION	CASE NO. A-686775
	DEPT. NO. XI
	Transcript of Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION FOR RECONSIDERATION

THURSDAY, DECEMBER 19, 2013

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF:	BRIAN W. BOSCHEE, ESQ. MARK LEBOVITCH, ESQ. WILLIAM MILLER, ESQ. ADAM HULLANDER, ESQ,
FOR THE DEFENDANTS:	BRIAN FRAWLEY, ESQ. J. STEPHEN PEEK, ESQ. ROBERT CASSITY, ESQ. ROBERT BRADY, ESQ. BARR FLIN, ESQ. JOSHUA M. REISMAN, ESQ. JEFFREY S. RUGG, ESQ. TARIQ MUNDIYA, ESQ. MAXIMILLIAN FETAZ, ESQ.

LAS VEGAS, NEVADA, THURSDAY, DECEMBER 19, 2013, 8:24 A.M.

(Court was called to order)

THE COURT: So this is page 8, Jacksonville Police versus Charles Ergen. Good morning, gentlemen.

MR. BOSCHEE: Good morning, Your Honor. Thank you for --

THE COURT: Happy holidays.

MR. BOSCHEE: Thank you for hearing us on shortened time. And aft talking to Mr. Peek after I guess he talked to you, said you'd call us a little early today, so we tried to get over here --

THE COURT: It was yesterday I talked to him. I was talking to him on an unrelated matter, and --

MR. BOSCHEE: -- as quickly as we possibly could --

THE COURT: -- he said, can I go first.

MR. BOSCHEE: -- get my little boy dropped off and get over here, we did. So I appreciate you taking us out of turn.

THE COURT: No problem. Let's talk about this motion for reconsideration.

MR. BOSCHEE: I will, Judge. And, truthfully -- I'm actually going to move to the podium for this, because I've got a lot of stuff -- it's a motion for reconsideration technically under Rule 2.24, but really we didn't have any intention of challenging, appealing, doing anything with the

order until the bankruptcy hearing played out, and I think, as we pointed out in paperwork and I think was pretty clear from what Judge Chapman said, we were all a little bit surprised when the release that we had talked about at length at the hearing at this proceeding on the 27th was clarified, I guess, by defense counsel, and I believe it was by Ms. Strickland, arguing on behalf of Mr. Ergen in that proceeding. And it was articulated and the judge articulated very specifically that the release was actually a condition, the bid, the DISH bid was contingent on payment in full of the preferred -- the preferred stock and the debt. That was something that we had not known before, that was something that was not represented to this Court at the proceeding that we had. Everybody kind of looked at that release, and we went through it, and I believe Mr. Peek even articulated it as a boilerplate release, which on its face it appears to be.

Well, Your Honor, I believe based on a good part of your ruling and the partial injunction that you granted and the most the injunction you denied on the fact that that release said what it said and the representations made by counsel. So when we learned that it was possible, and in fact likely, that this bid was contingent on Mr. Ergen's debt being paid in full and his preferred stock being paid in full, that's a little bit different than what we had talked about at the hearing. In fact, I would say it's a lot different. And

more to the point, we believe it's a changed fact and a changed circumstance that regardless of what Your Honor's going to do with your order we think that it would certainly lend itself to expanding the injunction to not let Mr. Ergen deal with any part of the bankruptcy proceeding at this point given the intricate and interrelated nature of the release and what the Bankruptcy Court's saying now about the bid being related to the release, I felt it was my duty -- if I didn't bring that to your attention on a 2.24 motion or some other way, I don't think I'm doing my client justice, because it a new fact, it is a changed circumstance that went forward. And it's notable, I think, in the oppositions -- I don't really -- I didn't anything about that from any of the three oppositions I read yesterday, it was all, the release has been here since July, everybody's had the release, everybody knows what the release says. Well, yeah, we do. We have had the release since July. We read it in court, we all looked at it, Your Honor was very concerned about it. It's a part of the injunctive order, and now the defendants, not us, but the defendants, Mr. Ergen's counsel is going to the New York Bankruptcy Court and saying, actually, that release means that if Mr. Ergen is not paid in full, if we don't know that in advance, if we don't have an assurance of that in advance, DISH is potentially going to pull its bid.

That's a lot different than saying, okay, we got the

bid, we want to take care of -- like in a lien case, we want to take care of all the claimants and get this free and clear. DISH and Ergen's counsel are actually going to the New York Bankruptcy Court and saying, well, actually, the release is a little bit -- means a little bit more than that, we need an assurance that these are not going to be discharged, we need an assurance that his debt is not going to be kicked out of this proceeding or we may pull the bid. That is a completely changed circumstance from what we talked about here on the 27th. In fact, Mr. Peek -- and I looked up in the transcript last night -- said on a couple of occasions to Your Honor, the bid is apples, the allegations in the Harbinger complaint are oranges, it's complete separate things and you need to keep them separate and it doesn't have anything to do with the other.

Mr. Peek also indicated to Your Honor, both in the status report filed on October 3rd and then again in the hearing that the easy out here would be if the Bankruptcy Court has a concern about the conflict, they'll just disallow Ergen's debt claims, and the thing will go forward. But now we know that that's not going to happen. If Mr. Ergen's debt claims are disallowed by the Bankruptcy Court, DISH is saying, again through Ergen's counsel -- and I think it's interesting, Your Honor enters an injunction saying that Mr. --

THE COURT: But I have a question.

MR. BOSCHEE: Go ahead.

THE COURT: How can Ergen's counsel bind DISH?

MR. BOSCHEE: I don't know. I don't know why Ergen's counsel is making all the representations in court, I don't know why she's doing -- Rachel Strickland's doing all the argument to the Bankruptcy judge. I read -- I mean, again, obviously your order is what it is and you know it better than I do --

THE COURT: Which she would seem to be someone acting on Mr. Ergen's behalf.

MR. BOSCHEE: But she's the only one arguing about the release. She's the only one talking about the release in the transcript of any substance.

THE COURT: And she's the one who's having the discussions with Judge Chapman, who's the Bankruptcy judge.

MR. BOSCHEE: Right. Which -- again, Your Honor may read your order differently than I do. Mr. Ergen and his people are really not supposed to be negotiating anything having to do with the release.

THE COURT: She would seem to be one of Mr. Ergen's people.

MR. BOSCHEE: She would seem to be one of Mr. Ergen's people. I believe that's correct, Your Honor. And that was one of the things that was troubling, because it appears from the dialogue going on in the Bankruptcy Court

that she is speaking on behalf of DISH, she is making representations that DISH is going to do X, Y, and Z if Mr. Ergen's debt is not -- if anything happens, if it's not paid in full. Well, that then goes to the larger argument that we've been here in front of Your Honor now several times of, well, wait a minute, who's really calling the shots here. If Mr. Ergen's counsel is going into Bankruptcy Court and making representations that DISH is going to pull its bid if Mr. Ergen's debt is for whatever reason disallowed, well, she shouldn't be making those representations on behalf DISH. DISH's counsel should be. Ms. Strickland shouldn't be doing that. In fact, per your order I don't think Ms. Strickland should be saying anything to the Bankruptcy Court about the release at all. But there she is, and she's talking about it, and the judge is clearly concerned about it. We quote it in our motion, but that judge clearly comes out and says, wait a minute, now the bid is conditioned on the debt release, now you're telling me that the debt has to be kept in full and he has to be paid 100 cents on the dollar or DISH may pull its bid; and then she said it better than I possibly could later on in the transcript, and we quoted it in the motion, why does DISH care. I mean, if DISH made an independent business judgment --

THE COURT: What she said was, "DISH has determined that it wants to pay $2.2 billion for the spectrum. It

shouldn't care what happens to that $2.2 billion aft it gets into the debtor's hand whether or not whoever's claims are allowed."

MR. BOSCHEE: Exactly. And yet their counsel is in the New York Bankruptcy saying, well, actually it does matter.

THE COURT: Their counsel being Ergen's counsel, not DISH's counsel.

MR. BOSCHEE: Correct. But Ergen is making -- Ergen's counsel is making representations of what DISH is and isn't going to do, which we think again is problematic both under your order and also under the fact that the DISH board and the special litigation committee, as far as we know, have made no inroads, have made no attempts to talk to the Bankruptcy Court or the trustee or LightSquared about this release. The only person talking about the release is Rachel Strickland, who's Ergen's counsel, and she's making representations of what DISH is and isn't going to do.

So against that backdrop I agree with Judge Chapman. If DISH really is independent from Ergen, if Ergen really has nothing to do with this process and the spectrum and his debt is a peripheral issue, then why does DISH Network care? If DISH Network believes the spectrum's worth $2.2 billion, and that's what they have -- everybody here has said that this asset is vital to DISH going forward, it's been in the papers, it's been argued, it's been -- the table has been pounded a

couple times. Then why do they care? DISH Network should not care if LightSquared does something different or pays Ergen 80 cents on the dollar or whatever it decides to do with the SBSO. It shouldn't matter. It really shouldn't. If the asset is worth this amount of money, then it shouldn't be a contingency of the bid that Ergen is paid in full. Again, as Mr. Peek said, it should be apples and oranges.

But what we're seeing from the Bankruptcy transcript and what Judge Chapman is clearly concerned about is that it's not apples and oranges. I mean, at best it's Gala apples and Fuji apples. I mean, it's apples. They're talking about the same thing, and they're now saying it's a contingency. Well, Judge, if it's a contingency and it matters to DISH whether Ergen's debt is paid off or not, then I would posit to the Judge how on earth can Ergen participate in any part of this bankruptcy now knowing that his debt is a contingency of DISH even going forward with its bid. And if that's the case, then, again, the reason that we brought a motion to reconsider, or I guess clarify would be probably a better word, the order is, we don't think Mr. Ergen in light of the fact that his counsel is making representations on behalf of DISH, his counsel has said that DISH is going to potentially pull its bid if Ergen's debt isn't paid off, we don't think he should be -- he or any of his people, which I would guess would be Ms. Strickland, should be done anything with respect

to this bankruptcy. The, quote, unquote, "independent board" should be going in there and basically agreeing with Judge Chapman, saying, well, wait a minute, you don't have -- you know, whatever happens to Mr. Ergen's debt we'd like it to be paid off because he's our guy, but it's not a contingency, we believe the asset is worth this, this is what we're going to do, we're not going to pull it if the debtor or the trustee decide to do something different with the debt downstream.

But that's not what's happening here. What they're saying is, no, no, no, no, Ergen's debt and his preferred stock is going to be paid 100 cents on the dollar or DISH isn't going to do this deal.

THE COURT: So who's Mr. Dugan?

MR. BOSCHEE: I wasn't actually at the bankruptcy hearing. I'm only --

THE COURT: He doesn't appear on the list of lawyers on page 4.

MR. BOSCHEE: I believe it's Rachel Strickland's partner.

MR. RUGG: He is. He's another lawyer from Wilke Farr, and he's representing SBSO and Mr. Ergen.

THE COURT: Okay. I see. He's on page 6.

MR. RUGG: Ms. Strickland and Mr. Dugan are both.

THE COURT: I see him there. Thank you.

MR. BOSCHEE: I was going to say -- that was the

only thing I was going to say, what it says on there, as well. And they also both appeared, and he appeared a couple of days ago, I believe on behalf of LBAC at a second hearing that, again, we don't have the transcript of in full to provide to the -- to provide to the Judge. I've got a partial transcript, if Your Honor wants to see it.

Nothing really happened at the hearing notably, other than Wilke Farr appeared again on behalf of LBAC instead of on behalf of Mr. Ergen personally. But Mr. Dugan and Ms. Strickland have been pretty consistently doing that in this bankruptcy proceeding. And that lends itself to again our concern and what we believe is a changed circumstance and a new fact that warranted bringing this to Your Honor's attention.

Now, whether that means that the injunction needs to be broadened, whether that means that the injunction needs to be enforced with respect to Mr. Ergen and what his counsel is or isn't doing, you know, again, I'll defer to Your Honor on that point. But we believe that this new fact and this new circumstance, which I think all the defendants ignored yesterday and just said, no, the release has been there since July, there's no new fact, no new circumstance here, none at all, there is a new fact, there is a new circumstance. This changes the landscape of what we're talking about, and I'm not doing my job if I don't bring it to Your Honor's attention on

a motion like this.

So unless Your Honor has any further questions for me --

THE COURT: No.

MR. BOSCHEE: Okay. Thank you, Judge.

THE COURT: Mr. Rugg.

MR. RUGG: Yes, Your Honor. Well, I think we have clarified that the only issue being discussed at the December 10th hearing in the bankruptcy was the release. It's not some separate language condition. So we have that set aside. But the issue of the release --

THE COURT: Well, but people are saying that the broad terms of the release mean a release of any claim that is disallowed.

MR. RUGG: And I understand, Your Honor. And I think --

THE COURT: Which didn't appear to me to be anything we were talking about when we were here last time.

MR. RUGG: But also what plaintiff is setting aside is the context of the hearing. What plaintiff is asking is that Mr. Ergen shouldn't do anything in the bankruptcy. But the context of the hearing was the adversary proceeding, where there's claims directly against Mr. Ergen and SBSO.

THE COURT: Oh, I understand. I understand that.

MR. RUGG: But he's got to be represented. He can't

just give up -- he shouldn't be enjoined such that he has to give up a claim against him. And the added context is what inference can be drawn from the release language to allow Harbinger and LightSquared to act contrary to what plaintiff claims they want in this case and say that SBSO is a subsidiary of DISH and therefore a disallowed purchaser. That's what the context of that hearing was, and that's what Judge Chapman was trying to deal with. Because Harbinger and LightSquared are latching onto the release and say, if you take this broad general release -- and everyone agrees it was a broad general release -- can you bring this inference and say, SBSO is a subsidiary? So you have Mr. Ergen and SBSO being defended by Wilke Farr, trying to say that should be dismissed, it's not a valid inference.

You also have Mr. Gufa [phonetic] who appears on behalf of DISH and EchoStar. Separate counsel.

THE COURT: And LBAC.

MR. RUGG: Excuse me?

THE COURT: And LBAC.

MR. RUGG: Well, LBAC actually -- I don't believe --

THE COURT: It says LBAC on the transcript.

MR. RUGG: Yeah. But I don't believe LBAC's actually a defendant any longer in the adversary proceeding.

THE COURT: Well, but they're listed by the court reporter, whoever that is.

MR. RUGG: I understand. Yeah. I understand. He was representing LBAC for that purpose. But I'm trying to keep the context of that hearing clear, because it was just that motion to dismiss of LightSquared and Harbinger's complaints.

So the discussion -- Judge Chapman takes the counsel down the road of this discussion about what the release means and whether an inference can be drawn, and counsel is trying to say that the inference can't be drawn. Both counsel for Mr. Ergen and counsel separately for DISH and EchoStar. But nothing changed. There's not a condition that changed.

THE COURT: I'm not concerned about whether a condition changed. What I'm concerned about is in contravention of my order I have someone on behalf of Mr. Ergen arguing the release.

MR. RUGG: I can understand where Your Honor's concern is on that, and I have actually several points on that. Number one, counsel tried not to have that -- they kept saying to Judge Chapman, if you want to discuss a change in the release that's something that we can't have, that's something that Mr. Dugan and Ms. Strickland both said, we can't have that conversation with Your Honor, that's a conversation for somebody else, because they are respecting the order here in Nevada.

There is a technical point, as well, that the order

here -- they haven't even posted their bond by December 10th. They posted their bond on December 12th. So technically they weren't even that concerned about having the order be effective. So whatever happened on December 10th was out of respect for Your Honor's opinion where they said, we're not going to negotiate over the release because we represent Mr. Ergen and we can't do that. But plaintiff hadn't even put in place the mere $1,000 that would have made that order effective at that time. They waited until two days later.

But beyond that what was happening was a discussion of the inference. And all counsel was trying to do was defend Mr. Ergen. If the order is expanded in the way that plaintiffs are asking, Mr. Ergen and SBSO are going to have their hands tied in the adversary proceeding and go down a road that actually doesn't help what plaintiff wants here, which is that -- which is the reverse, a decision that Mr. Ergen acted completely separately and contrary to his fiduciary duties with DISH, as opposed to what Harbinger and LightSquared are trying to prove, which is that he acted as essentially an agent for DISH in buying the debt.

So what I think we have is really just a confusion of context, because in the Bankruptcy Court you have this discussion of the adversary proceeding that has to happen and that the parties, DISH and EchoStar, Mr. Ergen and SBSO, were all trying to defend themselves and get rid of that adversary

proceeding.

What will happen -- and one other point that Counsel made is that there was this threat to withdraw. Nobody's ever made a threat to withdraw the bid. In fact, there's never even been an opportunity to, because LightSquared has just refused to deal with DISH in even trying to have a discussion about the release. If LightSquared wants to have that discussion, it will happen with counsel who do not represent Mr. Ergen. It'll happen with counsel who represent the company. That's in respect for Your Honor's order, and everybody understands that. But LightSquared has to be willing to have that discussion. Instead, LightSquared is trying to get a bigger bidder, which is fine. They managed for about a week to have a $3.3 billion bidder, but then those folks walked away. Now they're trying to find somebody else who will bid up that amount as a way to get around the DISH bid. Meanwhile, DISH is trying to protect its position as the stalking horse bidder. And if LightSquared wants to have that conversation about the release, all it has to do is approach DISH's counsel and the conversation could happen. What will result I can't speak to. It's not my -- it's not my responsibility. But that's a conversation that'll happen in respect of Your Honor's order.

THE COURT: Okay.

MR. RUGG: Lastly, because Your Honor's order

already covers the release, I don't think it's necessary to expand it. If Your Honor is -- I'm reading that Your Honor's concerned that there was a potential violation of that order, but we can give --

THE COURT: There is that concern.

MR. RUGG: Yes.

THE COURT: You're reading correctly, Mr. Rugg.

MR. RUGG: I'm not as dense as I sometimes seem. But --

THE COURT: I never said you were dense.

MR. RUGG: I'm sure we can address that. But if you read through the transcript, you'll see that Ms. Strickland, Mr. Dugan, and Mr. Gufa are all concerned about abiding with it Your Honor's order and not having a conversation that was a negotiation over the release, but merely trying to focus Judge Chapman on the issue of the inference and whether that inference is proper for the purposes of the adversary proceeding.

THE COURT: Good morning.

MR. REISMAN: Your Honor, I'm not going to reiterate what Mr. Rugg just said, I just want to make a couple of points.

I want to make it absolutely clear that based upon my communications with the Wilke Farr lawyers that are acting in the bankruptcy that it's always been their understanding

that they were subject to this Court's injunction, that they always intended to abide by this Court's injunction, that it was irrelevant whether that bond had been posted at that point or not, we were going to act in accordance with this Court's injunction.

I also want to just -- I just want to point out what Ms. Strickland says, which goes to exactly that issue. It's on page of director defendants' opposition. Ms. Strickland says, "Right. Your Honor, obviously you're not negotiating a credit agreement with me, and were you asking me to negotiate that provision I would refer you to someone else; because as a result of the injunction in Nevada, I would not be the lawyer having that --" and I assume she was going to say having that negotiation. So she is doing the best that she can in this hearing to abide by this Court's order and believes that she's subject to the Court's order.

It's my understanding the context of this hearing is that she is representing a client that's being sued in an adversary proceeding, that there's a motion to dismiss pending that she is defending on behalf of her client, and the court is specifically asking her to interpret -- to interpret and have a conversation with the court about the language in the injunction and the interpretation of the injunction. And there's a question on the table based upon this broad language and a boilerplate injunction that, you know, includes

affiliates, et cetera, would this include a release of claims for disallowance against SBSO. And that's just the discussion, you know, that they're having at that point, and based upon, you know, a broad interpretation which, you know, was in front of us at the time of our injunction hearing, that's always been in front of us one could interpret it that way. That doesn't necessarily mean that it has to be interpreted that way, enforced that way, that this was ever made a condition to the DISH bid, that DISH is going to withdraw its bid. She never says that in here. She never said, DISH is going to withdraw its bid of the claims are disallowed.

So this is really just someone defending their client in an adversary proceeding in a motion to dismiss context, you know, being questioned by the judge and doing their best to answer that questions, while at the same time saying, but I can't go here, you know, in terms -- I can't negotiate anything, because I'm subject to an injunction and if this gets to any kind of negotiation state we've got to hand this off because we can't do this. So they're doing the best that they can to abide by the Court's injunction here. It's always been our intention to abide by the Court's injunction.

I believe that the language in this Court's injunction already covers any fears or issues that the

plaintiffs raise here today. The Court's enjoined Mr. Ergen from participation, including any review, comment, or negotiations relating to the release. So he's not -- he's not trying to negotiate this release. He's stepped back. He's not -- you know, he's not active in whether -- you know, how they're going to deal with this release vis-a-vis the other party here. This is -- this is just a defense of an adversary proceeding.

So I think the current injunction already covers the situation. We intend to abide by it, we'll continue to abide by it, and I think one of the points of the Court's limited injunction in the first place was a recognition that Mr. Ergen at least needs to be involved like -- not in the release; I agree with -- well, I don't necessarily agree with you, I understand what you're saying. I don't agree with you, but I understand what you're saying, that Mr. Ergen --

THE COURT: You don't have to agree with me. That's okay. It doesn't bother me.

MR. REISMAN: I understand. I understand.

-- that Mr. Ergen -- I understand, of course, Mr. Ergen should not be involved in the negotiation of the release and conditions put upon with regard to the release. But always think it was the Court's goal in making a very, you know, limited, narrow injunction to allow Mr. Ergen who is, you know, the field general for DISH and has been for

30 years, to be part of this crucial process that's so crucial to DISH, and, you know, where so much is at stake and he has so much knowledge he needs some form of participation, active participation. And they're trying to exclude him from the entire process.

THE COURT: No. I understand, Counsel. I'm just concerned of the discussions that Mr. Ergen's counsel -- recognized Mr. Ergen's counsel are having about the release and what the release means and the scope of the release. I'm very concerned about that. Because it would seem to be inappropriate and not helpful to the company in the bankruptcy proceedings.

MR. REISMAN: I understand what your client's [sic] saying. I'm saying the spirit of this -- the spirit and the context of these discussions was motion to dismiss and Bankruptcy Court saying was Mr. Ergen acting as a subsidiary of DISH such that there would be disallowance. And it was in that context. And wasn't we're imposing a condition, we're going to withdraw the bid. You know, it had nothing to do with that. And to the extent that it felt it had to do with whether -- you know, whether or not they were going to negotiate that issue, she said, I'm subject to an injunction, I can't go there. There's always been an intent to abide by the injunction, they will continue to abide by the injunction, and, you know, Mr. Ergen just needs to be a part of the

process outside of that release, but be able to defend himself in the adversary proceeding.

THE COURT: Well, but he's not, because his counsel is there talking with the judge about what the scope of the release is and how they're going to deal potential disallowance of Mr. Ergen's debt.

MR. REISMAN: I believe -- and I do think that Mr. -- sorry to put you on the spot. I believe that Mr. Ergen has better sense of the nature of the hearing than I do and exactly what -- you know, what was discussed. But I believe the context of it was that the judge for purposes of this notion is Mr. Ergen acting as a subsidiary of DISH such that, you know, there should be disallowance here, the context is --

THE COURT: Well, and they're trying to draw inferences from the context of the release that negotiated.

MR. REISMAN: Exactly. Exactly. And she's --

THE COURT: Because clearly the negotiation benefits Mr. Ergen of the release.

MR. REISMAN: It does. But it's also my understanding that that release was done prior to any claims for disallowance being brought, that that release was done through Mr. Ergen's -- the original language was done -- it's standard language in these situations, and it was done by Mr. Ergen's original company -- it was LBAC at the time before it became DISH's -- you know, before DISH assumed it by -- it was

done by Mr. Ergen, by LBAC when Mr. Ergen solely owned it, it was done before any of these claims for disallowance were brought, and the concept was LBAC and its affiliates, which were, you know, at that point arguably SBSO. And the spirit of this is just that there -- she's being asked questions by the judge, she's trying to defend her client in an adversary proceeding, there's a motion to dismiss pending, there's no intent and I don't think a fact of violating this Court's order. And we have to -- not we. They have to be able to defend their client in an adversary proceeding in their position.

THE COURT: To her credit, she did say, if somebody has to negotiate the release it's not going to be me. She did tell the judge that. Whether the judge would buy it or not was an entirely different issue, because the judge kept pushing her because clearly the judge was not comfortable with the statements she had made.

MR. REISMAN: In a motion to dismiss, you know, context. And the context was specifically, you know, before the judge.

THE COURT: Okay. Mr. Peek.

MR. PEEK: I'm going to try to be brief. Please don't comment on that.

THE COURT: I'm trying to keep my tongue bit and my mouth shut this morning.

MR. PEEK: And I -- Stephen Peek on behalf of the special litigation committee, DISH, and Mr. Ortolf.

The thing that troubles me I think the most here is the Court's concern. I'm troubled that the Court has concerns and the presentation that was made by Mr. Boschee about the fact that DISH said that it would pull its bid if the release is changed. That never -- that didn't happen.

THE COURT: Well, I don't think it's DISH saying it.

MR. PEEK: Okay.

THE COURT: I think it's the judge saying it.

MR. PEEK: Well, the judge saying that that release has what, the release has the effect of doing that. But nobody -- nobody from DISH said that. So that's -- I want to make that clear.

THE COURT: No. The judge said it.

MR. PEEK: The judge did say it.

THE COURT: Which I think is more problematic than DISH saying it. But that's a different issue.

MR. PEEK: Well, it's certainly an interpretation. But I think really what -- what my takeaway from the whole context in which this hearing occurred on December 10th was a motion to dismiss based upon the allegations that are -- appear within the body of the two complaints. And remember there are two complaints. There's a LightSquared complaint called intervention, and there's now the Harbinger complaint,

all of which occurred on very short notice. And the standard by which one measures the issue of whether or not a motion to dismiss is proper -- because what happens in a motion to dismiss is the court is required -- you know this better than I do, because you do it all the time -- to draw all reasonable inferences that would arise from the complaint. And so, as Mr. -- and I think Mr. Rugg is one probably who addressed this already in his brief and I think will address it again, because I think he is, as Mr. Reisman said, more attuned to that, is the judge is, can I draw these inferences, Ms. Strickland, can I draw this inference, can I draw that inference, can I draw the other inference, all of which come from the --

THE COURT: But the judge is going farther than that. I understand -- and I do the same thing. I understand it's --

MR. PEEK: You push people, yes, just like Judge Chapman did, Your Honor.

THE COURT: It's a motion to dismiss claim, but the judge is looking at it from a broader perspective, because she's looking at the whole forest that she has to deal with ultimately in this case.

MR. PEEK: That's right. She does have to deal with it.

THE COURT: And so I certainly understand what

you're saying, that on a motion to dismiss where the judge is merely dealing with -- at least supposedly dealing with inferences that can be drawn in favor of the non-moving party, you know, maybe it's okay for Mr. Ergen's counsel to get up there and stay, judge, blah, blah, blah; but the judge keeps pushing, because the judge wants the whole case to be resolved, she wants a great deal, she wants to maximize the value of the bankruptcy estate so she could --

MR. PEEK: She's your model, Your Honor.

THE COURT: So, you know, and she's trying to multiple things at this hearing. But my concern is the way that Mr. Ergen's counsel interacted with her when she was pressed, rather than DISH's counsel being the one to say, you know, judge, because of the injunction we've got to deal with that issue, we understand you're going to draw inferences because the release looks like it clearly benefits Mr. Ergen and we're trying to do something and maybe you should interpret him as, you know, we are all part of the same deal here and if you disallow the debt, you know, that's okay.

MR. PEEK: No. And --

THE COURT: But nobody said that from DISH.

MR. PEEK: You are correct. Nobody said that from DISH, because it really -- at the time of the exchange between the judge and Ms. Strickland there wasn't an opportunity for the DISH counsel to get up and really --

THE COURT: It's at the beginning of the transcript. It was Mr. Dugan. That was when Mr. Dugan was talking. Ms. Strickland didn't say, I can't talk to you about that, till the very end, like four pages from the back.

MR. PEEK: Yeah.

THE COURT: I mean, there was plenty of time for DISH counsel to stand up in that 100 pages or so.

MR. PEEK: Your Honor, you're right. I guess there was an opportunity for somebody to stand up and say something. But I think in that context what would that have -- what would that have been and what is the need now today to expand, if you will, the injunctive relief as requested? Because what I also --

THE COURT: I'm not expanding the injunctive relief. I'm not.

MR. PEEK: Okay.

THE COURT: Okay? But --

MR. PEEK: And I understand what you're doing is you're sending a message to me and to Mr. -- well, the three of us on this other side of the V is that, gentlemen, you know, be careful and instruct these lawyers in New York to be careful about the way they're making their presentations.

THE COURT: And here's the real issue. I understand DISH may lose leverage on the agreement if it has to negotiate off of those provisions. But you know what, that's how life

is.

MR. PEEK: I understand. And, of course, what troubles me is certainly that the derivative plaintiffs seem to be playing really more into the hands of those who are opposing the opportunity of the company to buy valuable spectrum. And every step that they take along the way breaches their fiduciary duty, if you will, Your Honor, that they have to the other shareholders. The shareholder derivative plaintiff has a fiduciary duty, as well, Your Honor.

THE COURT: As the representative.

MR. PEEK: As the representative if it claims to be the representative.

THE COURT: If they weren't the representative, they wouldn't have any fiduciary duty. But once they're the representative, they are --

MR. PEEK: I'm not saying that they are the representative, Your Honor, but they've got to be mindful of their own -- as they come -- every time they come into court here and things that say then get repeated back into New York as, oh, my gosh, look at this bad company.

THE COURT: Yeah. And then apparently Nevada is an entirely bad place, too, so --

MR. PEEK: Well, we all knew that a long time ago, Your Honor. That's why, you know --

THE COURT: Like wow.

MR. PEEK: But I've lived with that curse I guess for 60-some-odd years in Nevada, and I love every minute of it. And so --

THE COURT: Okay. So let me grill Mr. Rugg for a minute before you sit down.

MR. PEEK: Okay. Please do.

THE COURT: Mr. Rugg --

MR. RUGG: Yes, Your Honor.

THE COURT: -- you've got to figure out a way for the lawyers for the company to be the people who are the ones taking the laboring oar and the majority responsibility. You cannot allow Ms. Strickland and Mr. Dugan to be the ones who are taking that laboring oar, because a large part of this adversary proceedings relates to the company's incestuous relationship with Mr. Ergen. And while in Nevada we recognize that there can be conflicted relationships, and with certain disclosures it's okay. People in New York don't understand that. So don't you think you'd be better served to have DISH's counsel be the primary mouthpiece with the judge?

MR. RUGG: I understand that, and I believe that's what is going to happen. I will make sure that that message is delivered, that that is what's going to happen going forward, and I believe it's actually already happening on the bankruptcy side of the case, as opposed to the adversary side

where -- where both parties were being attacked and both DISH and EchoStar separately from Mr. Ergen and SBSO are trying to go back again to LightSquared and Harbinger. But I will deliver Your Honor's message very clearly to my co-counsel that it is very important that they step up and take the lead role on behalf of the company.

THE COURT: And if there's a discussion to be had about what the release means and whether changes to release can or should be made, they should be the ones talking, not Ms. Strickland and Mr. Dugan.

MR. RUGG: Okay. And that's actually a good point of clarification, because I did see in the transcript that Mr. Triffer [phonetic] was a little concerned about the injunction, as well. He mentioned it in several places where he didn't want to step on Your Honor's injunction.

THE COURT: He is perfectly welcome as counsel for the company to negotiate that release any way he wants.

MR. RUGG: Okay. I appreciate that clarification.

THE COURT: I think my goal and the bankruptcy judge's goals may be in tune. My goal is to let DISH, if it has an ability to, to buy that spectrum asset because it is in the benefit of the company. Her goal is to maximize the return to the bankruptcy estate.

MR. RUGG: And I also believe --

THE COURT: I think we have similar goals.

MR. RUGG: I also believe Judge Chapman is wrestling with how to do it timingwise between the fact that the auction was cancelled by LightSquared, she has this adversary proceeding that's set for trial on January 9th, unless she's moved it and I haven't heard about it. So there's -- she's wrestling with the timing of how to deal with --

THE COURT: There's somebody who sets trials faster than me?

MR. RUGG: Bankruptcy Court is a strange land, Your Honor.

THE COURT: Well, that's a good thing. All right.

MR. RUGG: Thank you, Your Honor.

THE COURT: Mr. Boschee.

MR. BOSCHEE: I'll be very brief, Judge.

THE COURT: Do you understand what I have said?

MR. BOSCHEE: I do. I do understand what you said. I had a couple of comments. And again, Mr. Peek has said a lot of things much worse than that about me and my clients over the years, but the one thing I would posit to the Court is certainly I take great offense at the idea that are trying in some way to jeopardize DISH Network from acquiring the spectrum.

THE COURT: But you understand LightSquared and Harbinger is jumping on everything you do in this case --

MR. BOSCHEE: I do.

THE COURT: -- and using it against the company in the bankruptcy proceeding.

MR. BOSCHEE: I do.

THE COURT: Which is not to the company's best interest.

MR. BOSCHEE: We understand that. And we would prefer not to have to bring a lot of these attentions to the Court's attention. We think that the finger's being unfairly pointed by the defense table at us when it really should be pointed at Mr. Ergen and what has done, what he continues to do, and what he has done in contravention -- I think Your Honor -- I mean, even they all acknowledged it -- of your order. I mean, with all due respect to Mr. Rugg, I'm sure he's going to pick up the phone and call his colleagues. But if they didn't comply with your order, which was clear as a bell as to what they could and couldn't do, I fear that they may not comply with Counsel's request. But we are --

THE COURT: You know what happens in this department when people don't comply with orders.

MR. BOSCHEE: I do.

THE COURT: Bad things happen.

MR. BOSCHEE: I do.

THE COURT: Okay.

MR. BOSCHEE: And obviously to the extent that you

can reach out and grab the lawyers that are doing this, we certainly --

THE COURT: I don't grab the lawyers. I grab parties.

MR. BOSCHEE: I understand. I understand that. But that was the first point. I just wanted to say that we have -- we want DISH to get this -- to get this asset at a reasonable price that's fair to the shareholders irrespective of any interest that Mr. Ergen is going to have in terms of getting his personal debt paid off. We don't want to jeopardize that, we're not taking any efforts to jeopardize that, and any characterization that way I think is unfounded and unfair. It's certainly not my intention, it's not our intention on behalf of these shareholders.

And also and lastly, we have a concern going forward, because this is an easy fix, right, and Your Honor said it. All these lawyers had to do at any point in the 140 pages before Ms. Strickland, you know, maybe I shouldn't be talking about this, was just defer to DISH counsel. I mean, if I'm representing Charles Ergen in front of Your Honor and Mr. Peek and Mr. Rugg are sitting here, that would have been the first thing I said, is that, you know, I can't talk about that release at all, I can't do it, I'm going to defer to counsel, let them stand up at that point and say it. But she hasn't done that, and she hasn't done that apparently at two

different hearings, and this judge is really, really concerned about it. So we think something needs to be done.

THE COURT: I'm concerned about it, too.

MR. BOSCHEE: And we think that at this --

THE COURT: And just for the record, there may be a disgorgement issue that we talk about later, but we're not there.

MR. BOSCHEE: I understand that.

THE COURT: Okay.

MR. BOSCHEE: That was my -- but my last point was we think something needs to be done at this point to really hammer them, and I don't --

THE COURT: I think I've delivered the message --

MR. BOSCHEE: I think you have, too, Your Honor.

THE COURT: -- very firmly and thoroughly. But does not require any modification of my order.

MR. BOSCHEE: Okay. That's fair. Thank you, Your Honor.

MR. PEEK: Thank you, Your Honor.

THE COURT: Have a lovely day. 'Bye.

THE PROCEEDINGS CONCLUDED AT 9:03 A.M.

* * * * *

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

EXHIBIT 5

EXHIBIT 5

In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

May 6, 2014

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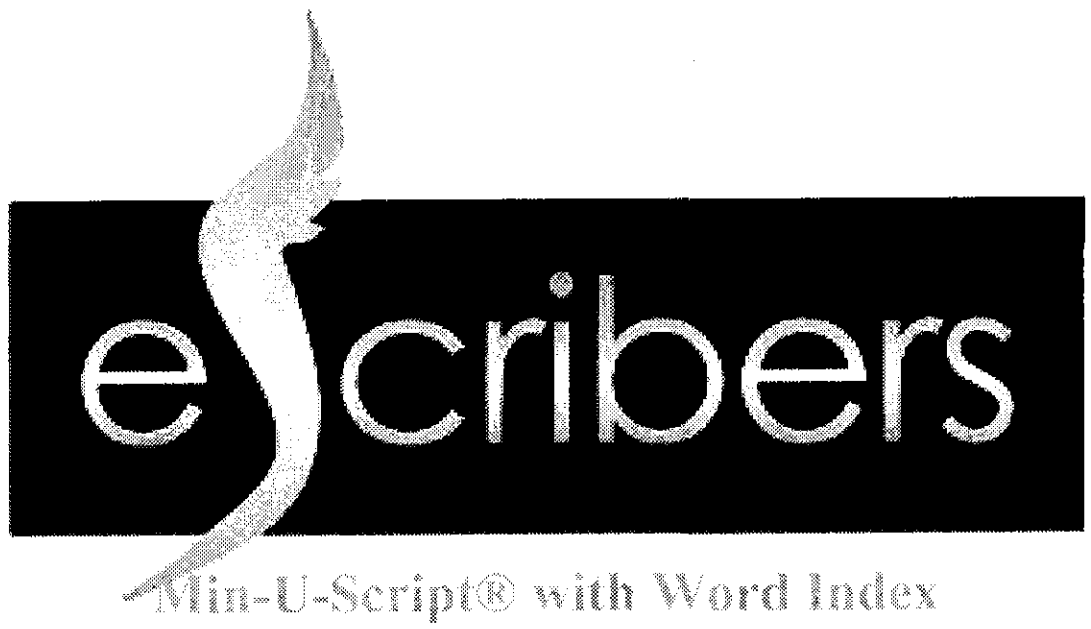

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 6, 2014

9:37 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

Closing Arguments

Transcribed by: Penina Wolicki

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P R O C E E D I N G S

THE COURT: Good morning. Please have a seat.

How is everyone today?

MR. LEBLANC: Good morning, Your Honor.

THE COURT: Good morning, Mr. Leblanc. How are you?

MR. LEBLANC: I am well, Your Honor.

THE COURT: So what's the --

MR. LEBLANC: I was just going to go through the --

THE COURT: Schedule of --

MR. LEBLANC: -- if Your Honor would like me to, I'd go through the schedule.

THE COURT: Yeah. That would be great.

MR. LEBLANC: So we have two hours and fifteen minutes collectively today on the side of the plan proponents.

THE COURT: Okay.

MR. LEBLANC: And I'll even give you a breakdown of how we intend to use that, but just to finish the thought, the SPSO side has one hour and forty-five minutes --

THE COURT: Okay.

MR. LEBLANC: -- for their presentations today.

THE COURT: Okay.

MR. LEBLANC: So let me tell you how we intend to use our time.

THE COURT: Okay.

MR. LEBLANC: We'd like to reserve some portion of it

to the study that LightSquared had done raising concerns about the uplink, but which were being expressed for the first time by the GPS in September of 2013.

THE COURT: Right, after they got sued.

MR. DUGAN: Well, Your Honor, that issue may not be coming away any time soon.

I mean, the fact is these are things that affect value.

THE COURT: You know, here's the problem, Mr. Dugan. The problem is that, as I keep being told, this was a presentation that went to the board of a public company. This public company was being told, spend our shareholders' money on this, we're good, look at all this value. And now all of a sudden after the fact, there is what I call "yeah, buts." There's this, yeah, but this, yeah, but that, yeah, but this.

And it's kind of a -- it's bold to go to a board of directors and say on a piece of paper -- it's not a back of an envelope -- on a piece of paper, look at all these iterations of value.

Yeah, he didn't do due diligence because he felt, I guess, in the exercise of his fiduciary duty that he didn't need to, that he knew enough about the spectrum that he could credibly put these values on a piece of paper and have his board rely on it to approve the transaction. And that's exactly what they did, exactly what they did.

MR. DUGAN: Right, Your Honor. And I --

THE COURT: And now it's like what, now I don't want to -- he doesn't want to own it. And it's hurting my head.

MR. DUGAN: I understand, Your Honor. Look, I don't know how to make your head feel better other than I can say that it's not uncommon, Your Honor -- you can attack me for this in one second.

It's not uncommon, Your Honor, in mergers and acquisition scenarios for a party that wants to acquire another to have a view of value that changes. It's not unheard of.

I mean, there is such a -- and that's why there is a due diligence process. We didn't have a due diligence out, I know. That's not what I'm saying was the case here, except for the fact --

THE COURT: Because this valuation shows that in DISH's hands this was a freebie, that there was so much value here that this was a freebie. He was going to get the spectrum and there was so much value that DISH was not even going to feel that 2.2 billion dollars walk out its door. That's the extraordinary part of it.

And now when we get back to the puzzle piece that I was giving Ms. Strickland a hard time about, now the piece of the puzzle that I just can't figure out is changed my mind.

MR. DUGAN: I don't know who testified to this, but maybe Mr. Hootnick. I'm not sure. I'm pretty sure someone

did, but at the risk of saying anything that is not part of the record --

THE COURT: He's already out of his chair.

MR. DUGAN: I don't think anyone is going to really challenge this any. Obviously if you're the one who's got to do the work to make the spectrum work, it's worth less than if they're the ones who do the work to make the spectrum work.

If they're the ones -- I mean, LightSquared are the ones who've done all the work, laid all the groundwork, remediated all the concerns, addressed all the interference issues, run interference with the FCC --

THE COURT: Right.

MR. DUGAN: -- all of that, if they do all of that -- and they say they will and they say they'll do it by 12/31/15 --

THE COURT: Yes.

MR. DUGAN: -- it's worth a lot more.

But if we're the ones who have to do all that or someone else -- Centerbridge, by the way, who were on the scene, did some due diligence and left, if they're the ones who have to do all that work -- if someone else has to do all the work, it affects the value, because that's not an insignificant amount of work.

I mean, you say mobilize all your highest qualified experts, get everyone on this. I mean, that's not something

EXHIBIT 6

EXHIBIT 6

In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

January 10, 2014

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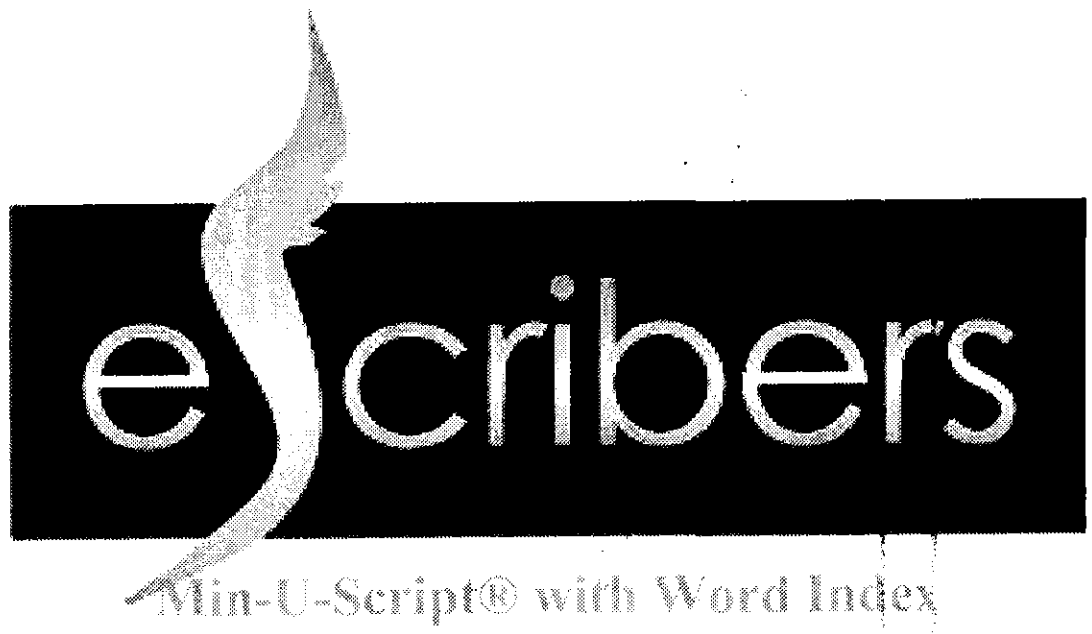

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Lead Case No. 12-12080-scc Adv. Proc. No. 13-01390-scc

- -x

In the Matters of:

LIGHTSQUARED, INC., et al.,

Debtors.

- -x

HARBINGER CAPITAL PARTNERS LLC, et al.,

Plaintiffs,

- against -

ERGEN, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 10, 2014

10:06 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

Confirmation Hearing

Adversary Proceeding: 13-01390-scc HARBINGER CAPITAL PARTNERS LLC, et al. v. ERGEN, et al.

TRIAL

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P R O C E E D I N G S

THE COURT: Good morning. Please have a seat.

How is everybody today?

UNIDENTIFIED SPEAKER: Very well, Your Honor.

THE COURT: Good. All right.

Mr. Stone --

MR. STONE: Yes.

THE COURT: -- before you start, I have a little matter I want to bring to everyone's attention.

As some of you may know, I have daughters. My older daughter is a second-year law student at the Harvard Law School. And she from time to time is invited to recruiting functions at the law school given by various organizations and given by law firms.

It has come to my attention that, in fact, she may want to attend a function given by law firms. This is news to me as a parent since she is working at a public defender office this coming summer. Nonetheless, before she divulged any details, I told her not to tell me any of the details.

So some of your firms, one or more of your firms may in fact be throwing a recruiting function, a cocktail party, and she may in fact go. And I'm not going to hear about it. I've imposed an ethical wall in the family. But there is no prospect at the moment that she will be interviewing per se for a summer job, since she is only a 2-L and has a job for the

trades in LightSquared debt?
A. It was spring 2012, April-ish time frame, I think. I'm sure we've got the list here somewhere.
Q. Here is what we're going to do, because we're going to be referring to this list throughout the course of the morning, I think.
A. Okay.
Q. So why don't we take a look at Exhibit 729. And I have an extra set in the back of your binder so you can refer to it as we go through your examination. Okay. And if you'd keep that to one side, we'll be referring to that back and forth.
A. Okay, yeah. All right, so yeah, April 13th would have been the first trade.
Q. So he makes --
THE COURT: I'm sorry, Mr. Mundiya.
MR. MUNDIYA: Yes.
THE COURT: This is --
MR. MUNDIYA: Plaintiffs' 729.
THE COURT: In this book?
MR. MUNDIYA: Yes, it's -- you've got the -- do we have an extra set of the trading information?
THE COURT: I have it. It's in the pocket. Thank you. Sorry about that.
THE WITNESS: Looks like the last page of what's actually in the binder.

Q. So the first trade was in April of 2012. Then there is a series of trades on May 3rd and May 4th. Do you see those trades?
A. Yes.
Q. All right. And there is a big trade on May 4th, right?
A. Yes.
Q. All right. And that trade is for a face amount of close to 250 million dollars, right?
A. That's correct.
Q. Okay. And after that trade was executed, were there news reports talking about trading in LightSquared debt?
A. There were. There was speculation that Charlie was a buyer of LightSquared debt.
Q. Okay. And you saw some of those news reports, right?
A. I did, yes.
Q. Okay. And did you receive any inquiries from directors about those news reports?
A. I did.
Q. Okay. And could you describe for the Court the inquiries that you received?
A. Yeah, there was an e-mail I received from Carl Vogel who is one of our board of directors, and he was inquiring on whether there was accuracy in the news reports or not. He had seen them as well.
Q. And was that just an e-mail to you, or to other people?

A. There were several people on it. I'm not sure who all was on it, but it was to multiple people.

Q. And did you respond to that inquiry?

A. I did not.

Q. Why not?

A. Well, the question was addressed to multiple people, number one. But more importantly, it was Charlie's personal business and I wouldn't comment on that to anyone other than Charlie, not a board member or anybody else.

Q. Now after these news reports came out, did you receive communications from Mr. Ketchum about the press?

A. Yes.

Q. Okay. If you'd turn to Defendants' Exhibit 39?

This is an e-mail from May 7, 2012. This is approximately four days since the smaller trades and three days since the big trade, right?

A. Yes.

Q. Okay. And Mr. Ketchum gets an e-mail from the New York Post. Do you see that?

A. Yes.

Q. And he sends -- he forwards that to you and he says "I'm not responding, but we should discuss whether we should both employ a more strenuous strategy around denial." Do you see that?

A. Yes.

Q. And did you discuss a strategy around denial with Mr. Ketchum?
A. No, I wouldn't call it a strategy. I don't know how often Steve gets calls from the press or not. But it's pretty easy to say no comment, which is what I would have done, and I just told him not to comment on it.
Q. So you told him to say no comment?
A. Yeah, there's is a need to comment. I don't think it's very typical that people who are money managers comment on their client's activities. But just to be sure I told him, no comment.
Q. Do you know if Mr. Ergen employed a more strenuous strategy around denial?
A. I don't know of one. I assume he would have said no comment as well.
Q. But you don't know --
A. But I don't know if he was asked or not.
Q. Okay. So we saw in Defendants' Exhibit 46 that Bal Harbour was formed. If we just go back to that and take a look at the penultimate page of Defendants' Exhibit 46, which is the certificate formation. It's the one that has the heading "Delaware". Do you see that?
A. Yeah, I think I'm on it.
Q. It's SPSO-1603. The Bates numbers are at the top of the page, unlike the rest of the binder.

EXHIBIT 7

EXHIBIT 7

Bankruptcy Hearing Date	Appearance for L-Band Acquisition ("LBAC")	Appearance for DISH
December 30, 2013	Wilkie Farr	n/a
January 9, 2014	Wilkie Farr	Sullivan & Cromwell
January 10, 2014	Wilkie Farr	Sullivan & Cromwell
January 13, 2014	Wilkie Farr	Sullivan & Cromwell
January 15, 2014	Wilkie Farr	Sullivan & Cromwell
January 16, 2014	Wilkie Farr	Sullivan & Cromwell
January 17, 2014	Wilkie Farr	Sullivan & Cromwell
January 22, 2014	Wilkie Farr	Sullivan & Cromwell
January 31, 2014	Wilkie Farr	Sullivan & Cromwell
February 11, 2014	Willkie Farr	Sullivan & Cromwell
February 24, 2014	Wilkie Farr	n/a
March 17, 2014	Wilkie Farr	Sullivan & Cromwell
March 24, 2014	Wilkie Farr	n/a
March 25, 2014	Wilkie Farr	n/a
March 26, 2014	Wilkie Farr	n/a
March 27, 2014	Wilkie Farr	n/a
March 28, 2014	Wilkie Farr	n/a
March 31, 2014	Wilkie Farr	n/a

In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

December 30, 2013

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

December 30, 2013

10:01 AM

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U.S. BANKRUPTCY JUDGE

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JOHN WANDER, The Blackstone Group

In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

January 9, 2014

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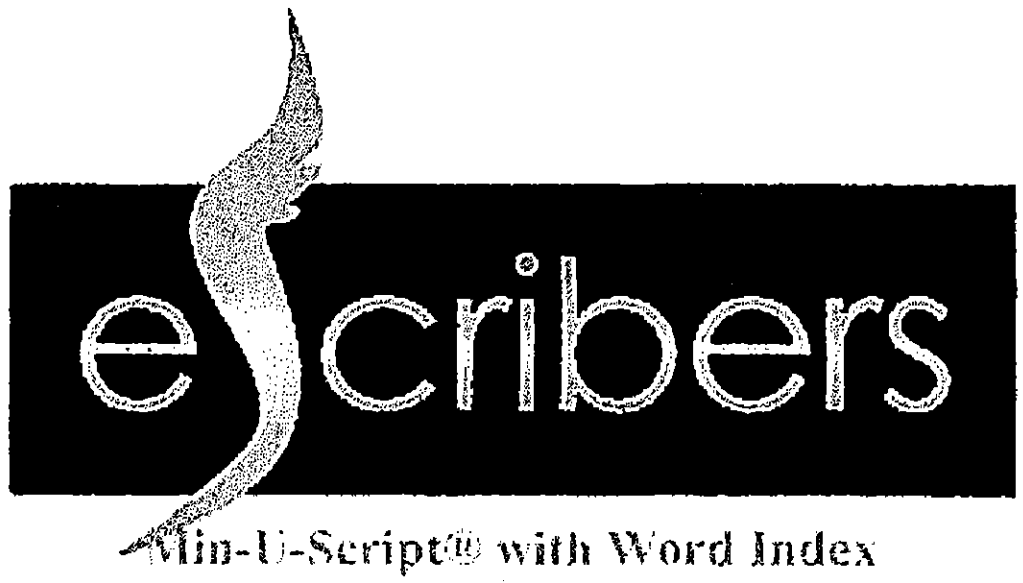

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Lead Case No. 12-12080-scc Adv. Proc. No. 13-01390-scc

- -x

In the Matters of:

LIGHTSQUARED, INC., et al.,

Debtors.

- -x

HARBINGER CAPITAL PARTNERS LLC, et al.,

Plaintiffs,

- against -

ERGEN, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 9, 2014

10:07 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

January 10, 2014

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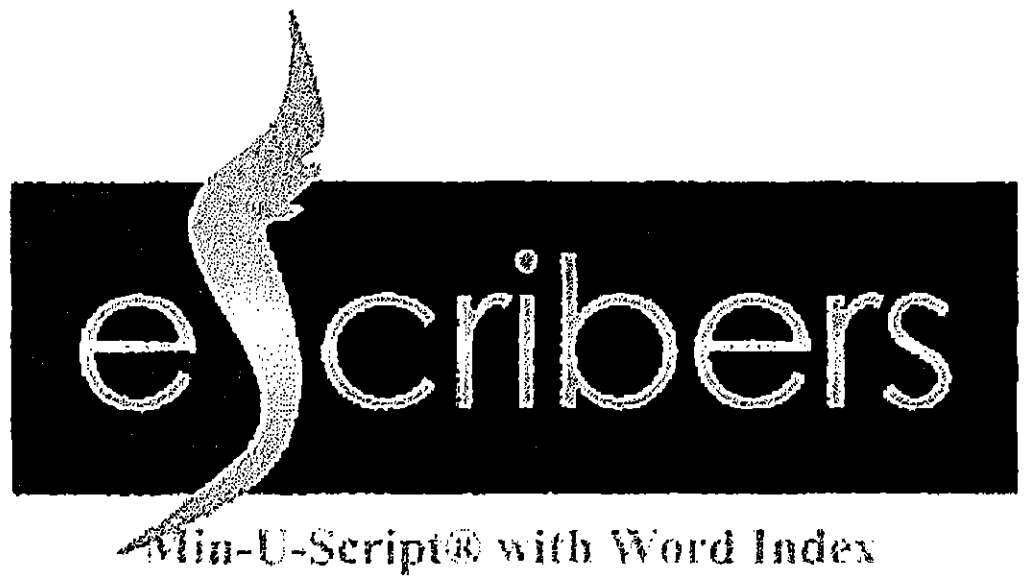

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Lead Case No. 12-12080-scc Adv. Proc. No. 13-01390-scc

- -x

In the Matters of:

LIGHTSQUARED, INC., et al.,

Debtors.

- -x

HARBINGER CAPITAL PARTNERS LLC, et al.,

Plaintiffs,

- against -

ERGEN, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 10, 2014

10:06 AM

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U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

January 13, 2014

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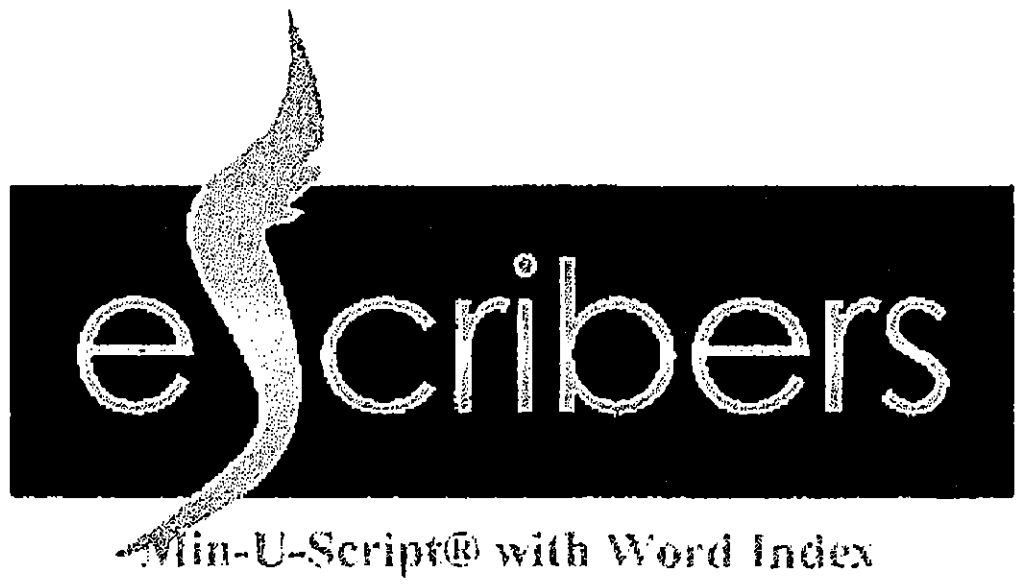

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Lead Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

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In the Matters of:

LIGHTSQUARED, INC., et al.,

Debtors.

- -x

HARBINGER CAPITAL PARTNERS LLC, et al.,

Plaintiffs,

- against -

ERGEN, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 13, 2014

10:12 AM

B E F O R E:

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U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

January 15, 2014

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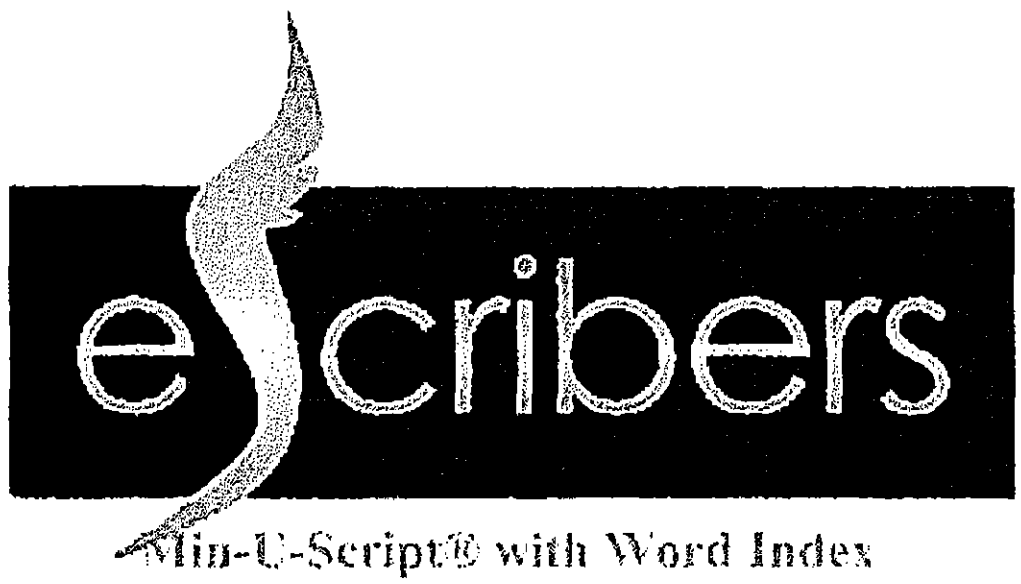

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Lead Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

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In the Matters of:

LIGHTSQUARED, INC., et al.,

Debtors.

- -x

HARBINGER CAPITAL PARTNERS LLC, et al.,

Plaintiffs,

- against -

ERGEN, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 15, 2014

10:03 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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In Re:

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Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

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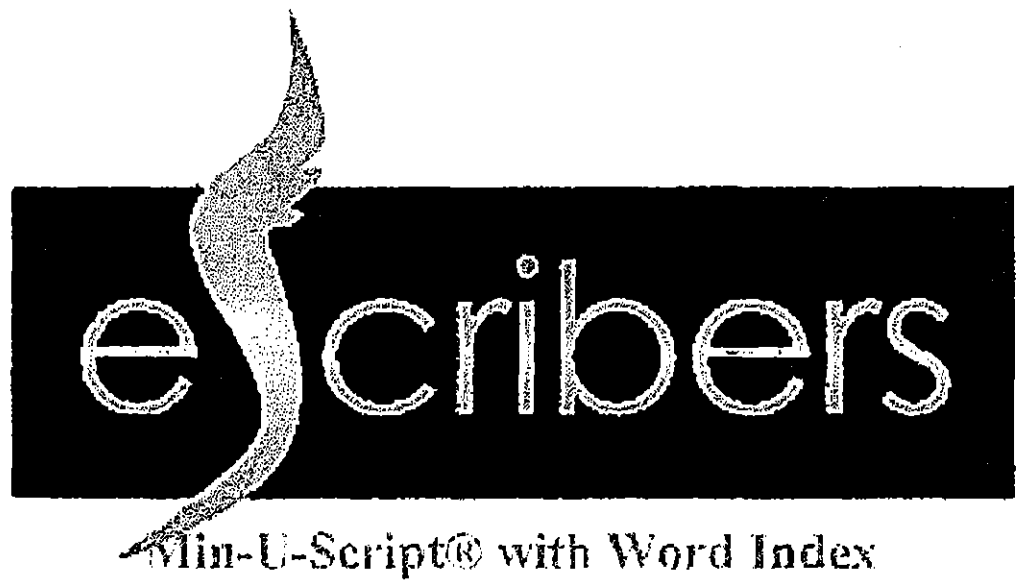

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Lead Case No. 12-12080-scc Adv. Proc. No. 13-01390-scc

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In the Matters of:

LIGHTSQUARED, INC., et al.,

Debtors.

- -x

HARBINGER CAPITAL PARTNERS LLC, et al.,

Plaintiffs,

- against -

ERGEN, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 16, 2014

10:20 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

January 17, 2014

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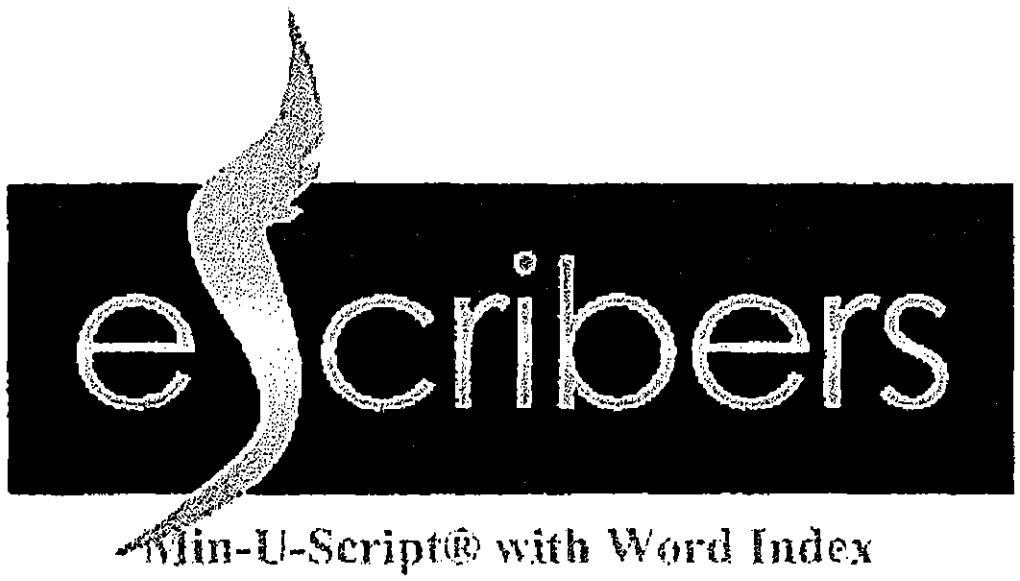

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Lead Case No. 12-12080-scc Adv. Proc. No. 13-01390-scc

- -x

In the Matters of:

LIGHTSQUARED, INC., et al.,

Debtors.

- -x

HARBINGER CAPITAL PARTNERS LLC, et al.,

Plaintiffs,

- against -

ERGEN, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 17, 2014

10:54 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

January 22, 2014

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SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

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LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 22, 2014

10:02 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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ROBERT J. GIUFFRA, ESQ.

In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

January 31, 2014

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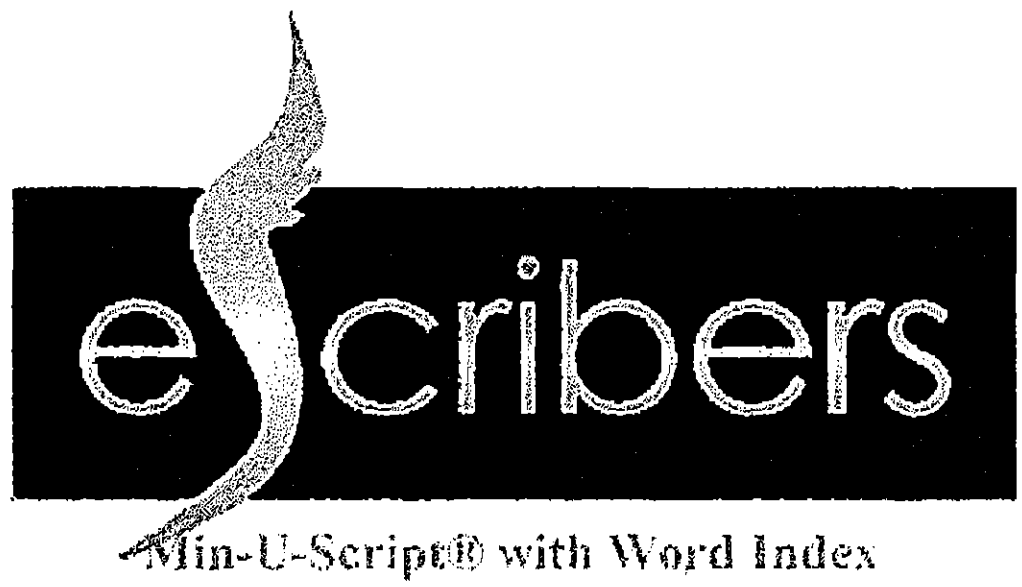

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 31, 2014

10:36 AM

B E F O R E:

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U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

February 11, 2014

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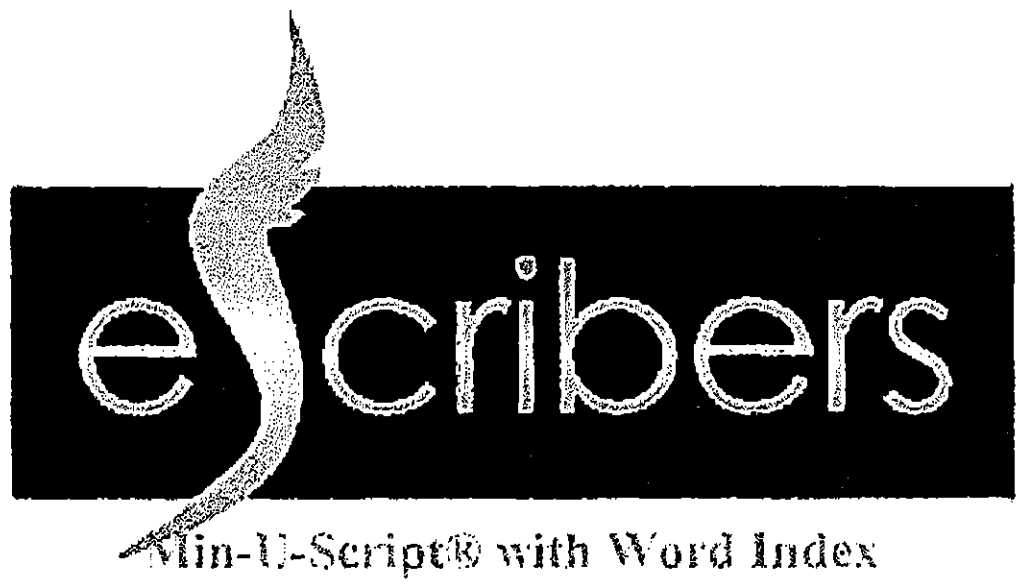

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Lead Case No. 12-12080-scc Adv. Proc. No. 13-01390-scc

- -x

In the Matters of:

LIGHTSQUARED, INC., et al.,

Debtors.

- -x

HARBINGER CAPITAL PARTNERS LLC, et al.,

Plaintiffs,

- against -

ERGEN, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

February 11, 2014

12:02 PM

B E F O R E:

HON. SHELLEY C. CHAPMAN

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

February 24, 2014

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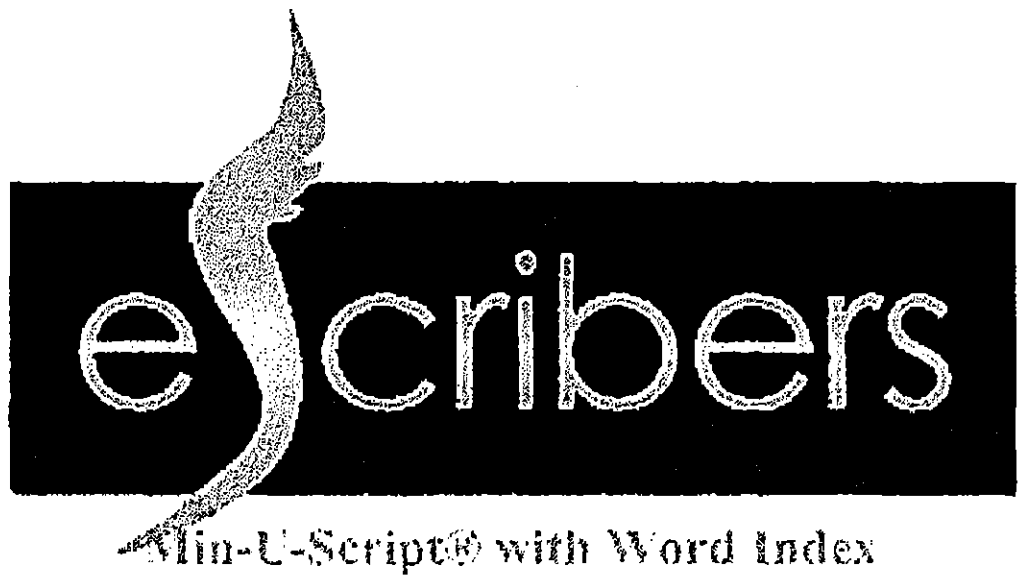

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

February 24, 2014

11:50 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

WILLKIE FARR & GALLAGHER LLP
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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc; Adv. Proc. No. 13-01390-scc

March 17, 2014

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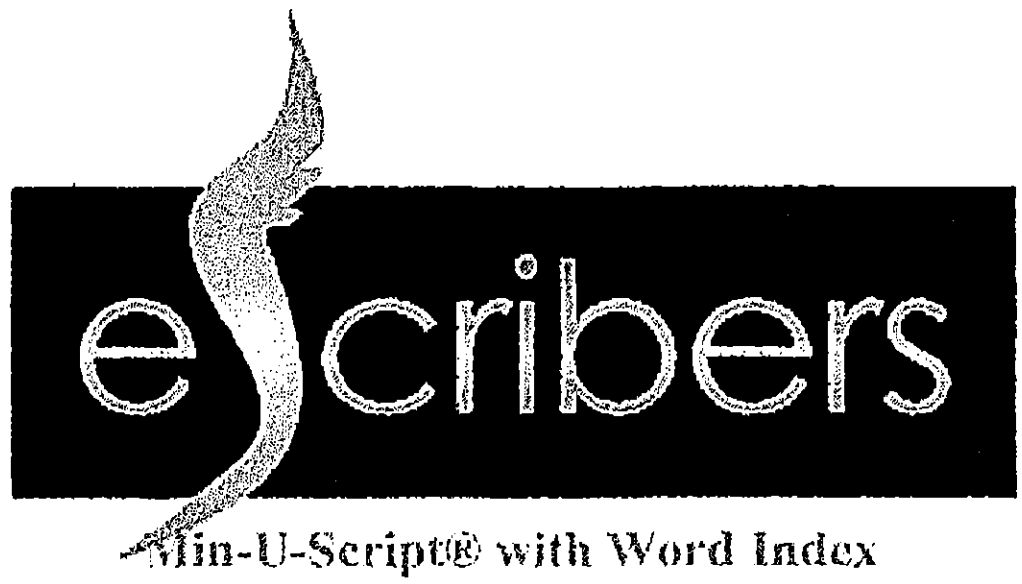

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Lead Case No. 12-12080-scc Adv. Proc. No. 13-01390-scc

- -x

In the Matters of:

LIGHTSQUARED, INC., et al.,

Debtors.

- -x

HARBINGER CAPITAL PARTNERS LLC, et al.,

Plaintiffs,

- against -

ERGEN, et al.,

Defendants.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 17, 2014

10:01 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

OPEN SESSION

March 24, 2014

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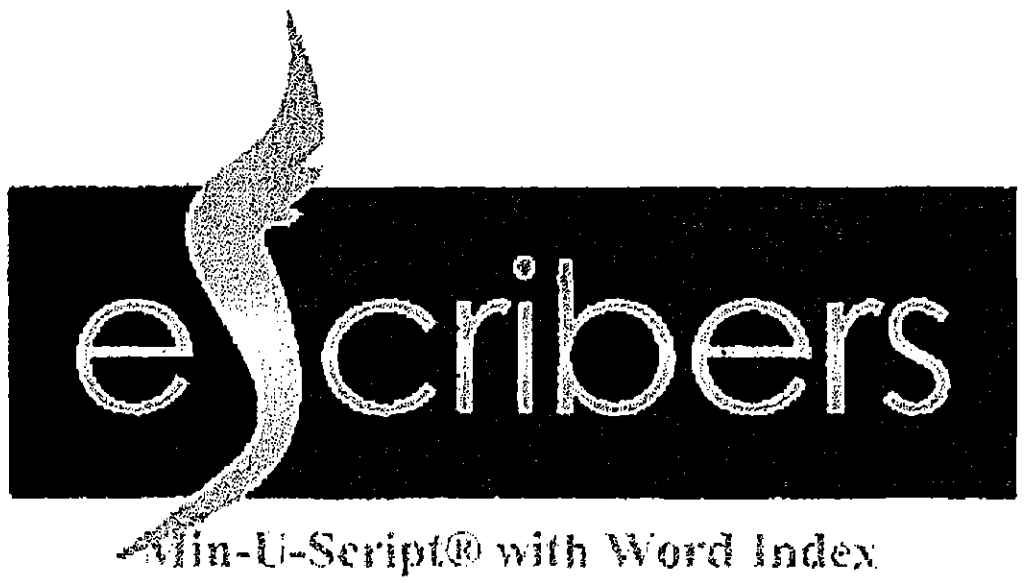

** PARTIAL TRANSCRIPT - UNSEALED **

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 24, 2014

10:06 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

OPEN SESSION

March 25, 2014

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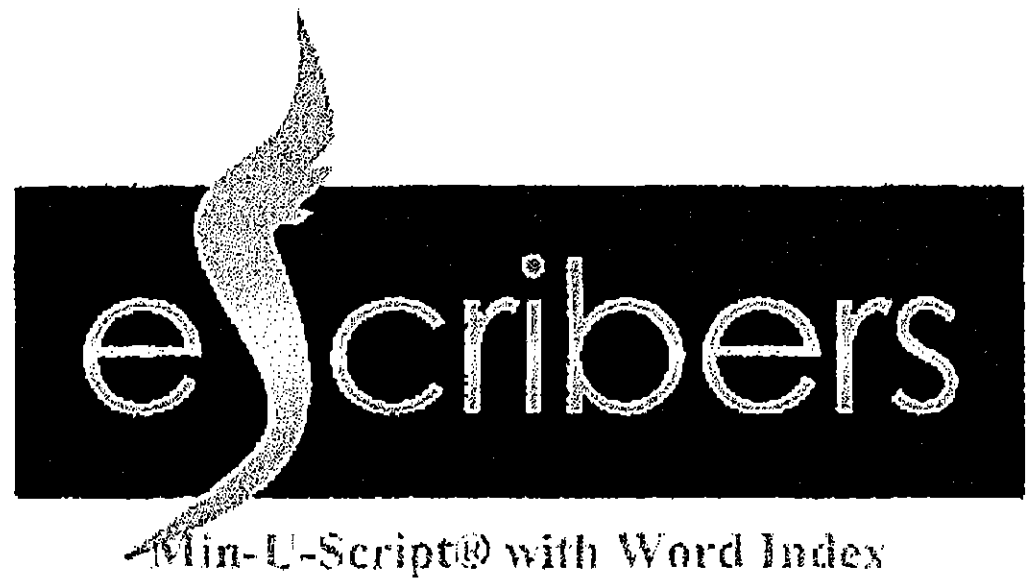

** PARTIAL TRANSCRIPT - UNSEALED **

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 25, 2014

10:07 AM

B E F O R E:

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U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

OPEN SESSION

March 26, 2014

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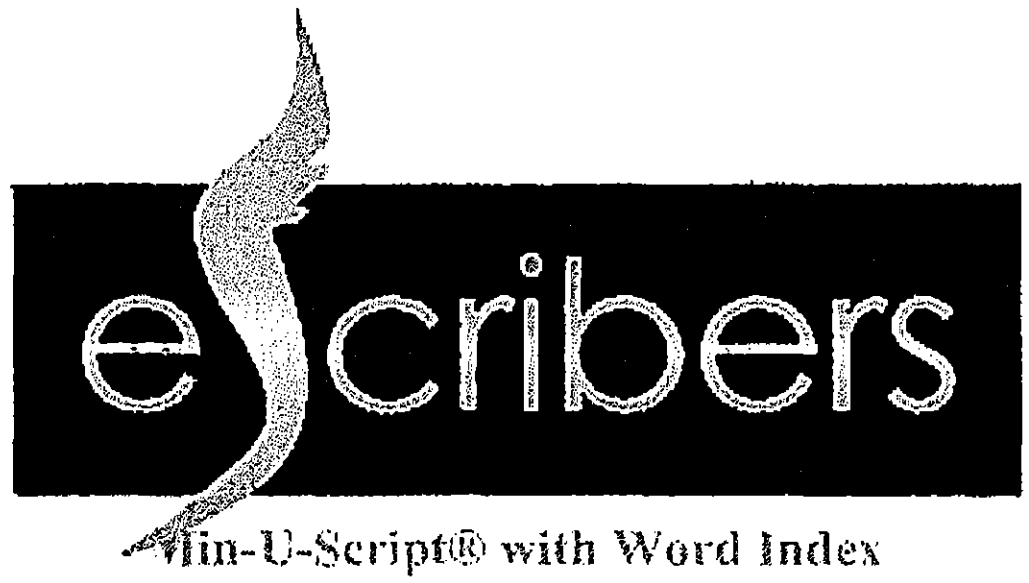

** PARTIAL TRANSCRIPT - UNSEALED **

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 26, 2014

10:06 AM

B E F O R E:

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U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

March 27, 2014

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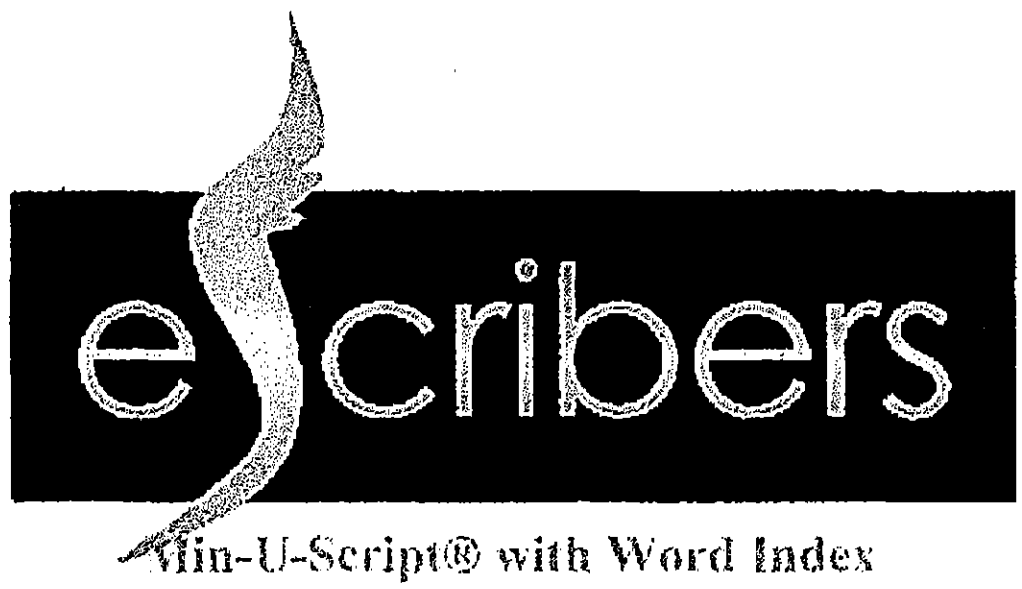

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 27, 2014

10:34 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

OPEN SESSION

March 28, 2014

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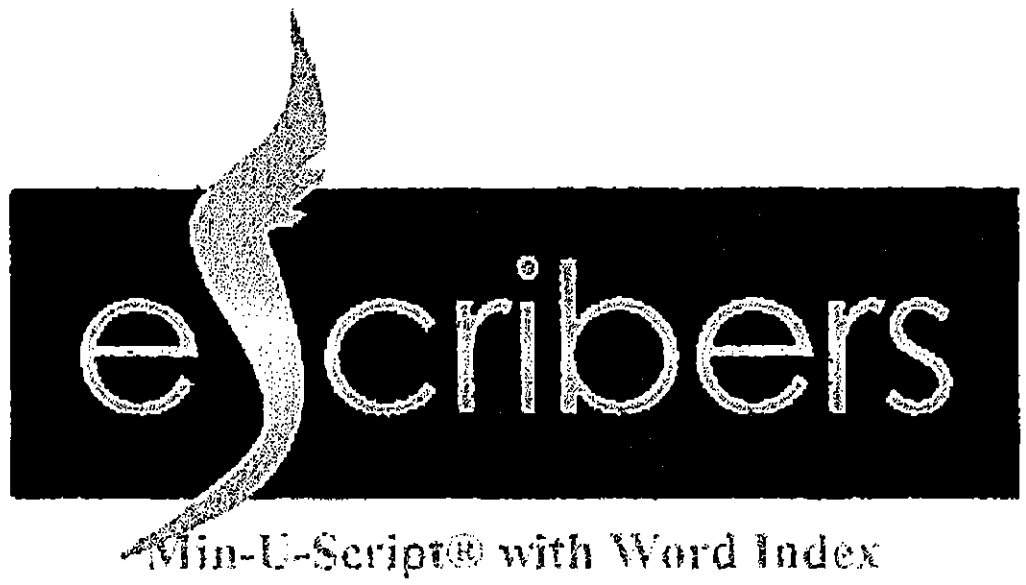

** PARTIAL TRANSCRIPT **

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 28, 2014

10:10 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

OPEN SESSION

March 28, 2014

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 28, 2014

10:10 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

OPEN SESSION

March 31, 2014

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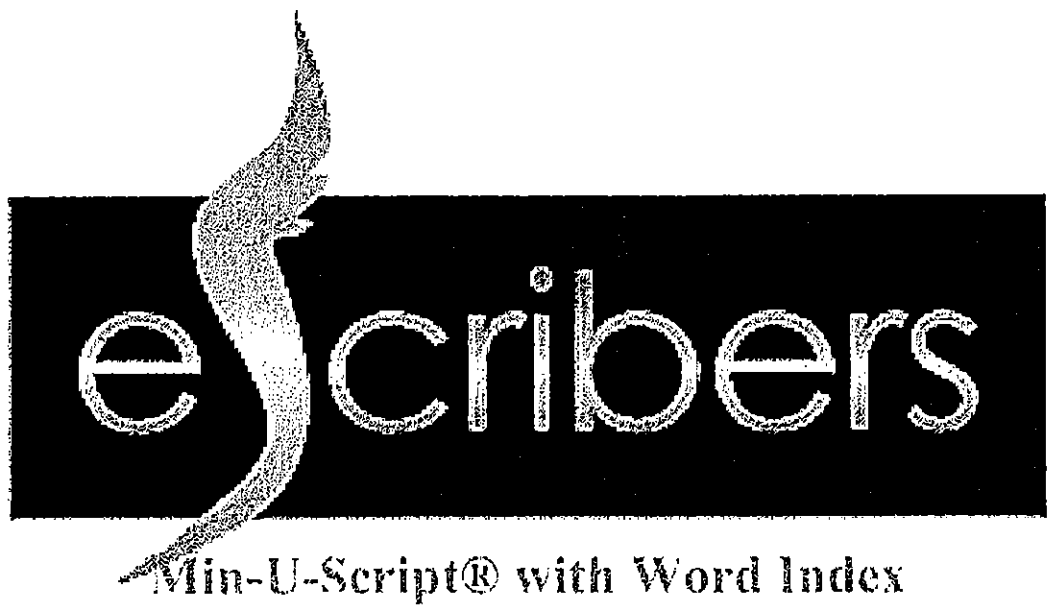

** PARTIAL TRANSCRIPT - OPEN SESSION **

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12080-scc

- -x

In the Matter of:

LIGHTSQUARED INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 31, 2014

11:17 AM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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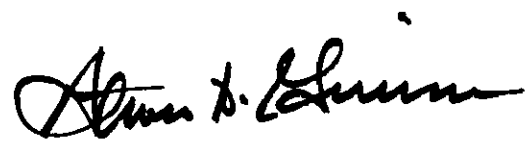
06/16/2014 02:05:36 PM



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Lead Counsel for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE DISH NETWORK CORPORATION DERIVATIVE LITIGATION	Case No: A-13-686775-B Dept. No.: XI

SUPPLEMENT TO STATUS REPORT

On June 6, 2014, Plaintiff Jacksonville Police and Fire Pension Fund ("Plaintiff"), by and through its undersigned counsel of record, submitted a Status Report (the "Status Report") pursuant to this Court's Minute Order on April 25, 2014. In the Status Report, Plaintiff informed this Court that on May 8, 2014, the Bankruptcy Court overseeing the LightSquared bankruptcy proceedings read into the record part of that court's findings and conclusions of law with respect to both the adversary proceedings and plan confirmation. Plaintiff's Status Report further

informed this Court that Judge Chapman intended to file a formal opinion with detailed factual findings on the adversary proceeding as well as a separate, detailed decision on plan confirmation as soon as the Bankruptcy Court was able to write the opinions. *See* Status Report at pg. 10, ll. 12-15.

On June 10, 2014, the Bankruptcy Court issued its Post-Trial Findings of Fact and Conclusions of Law with respect to the adversary proceedings, which is attached hereto as **Exhibit "8"** to this Supplement to Status Report. Plaintiff will submit the Bankruptcy Court's forthcoming decision on plan confirmation as soon as it becomes available.

Dated this 16th day of June, 2014.

HOLLEY, DRIGGS, WALCH, PUZEY &THOMPSON

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Lead Counsel for Plaintiffs

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 11th day of June, 2014 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing SUPPLEMENT TO STATUS REPORT, postage prepaid and addressed to:

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An employee of Holley, Driggs, Walch Puzey & Thompson

EXHIBIT 8

EXHIBIT 8

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
LIGHTSQUARED INC., *et al.*,	:	Case No. 12-12080 (SCC)
Debtors.	:	Jointly Administered
LIGHTSQUARED LP, LIGHTSQUARED INC., LIGHTSQUARED INVESTORS HOLDINGS INC. TMI COMMUNICATIONS DELAWARE, LIMITED PARTNERSHIP, LIGHTSQUARED GP INC., ATC TECHNOLOGIES, LLC, LIGHTSQUARED CORP., LIGHTSQUARED INC. OF VIRGINIA, LIGHTSQUARED SUBSIDIARY LLC, SKYTERRA HOLDINGS (CANADA) INC., AND SKYTERRA (CANADA) INC.,	:	Adv. Pro. No. 13-01390 (SCC)
Plaintiff-Intervenors,	:	
- against-	:	
SP SPECIAL OPPORTUNITIES LLC, DISH NETWORK CORPORATION, ECHOSTAR CORPORATION, AND CHARLES W. ERGEN,	:	
Defendants.	:	

POST-TRIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

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TABLE OF CONTENTS

SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Between April 13, 2012 and April 26, 2013, Charles Ergen, through an entity named SPSO, purchased approximately $844 million of the senior secured debt of LightSquared LP, a debtor in these chapter 11 cases. Mr. Ergen – the founder, chairman of the board of directors, and controlling shareholder of DISH Network – bought the debt, he says, without any strategic intent to benefit DISH. Rather, he was interested in acquiring LightSquared debt personally because he "liked the investment" and because he had been advised that DISH itself was not eligible to purchase the debt due to restrictions in the LightSquared LP Credit Agreement. The "diligence" on the purchaser eligibility issue, such as it was, was conducted by Mr. Ergen's longtime friend Jason Kiser, the Treasurer of DISH, who from time to time worked on personal matters for Mr. Ergen. Mr. Kiser also arranged the trades on behalf of Mr. Ergen, on "his own time" while at work at DISH. Promptly after Mr. Ergen's initial debt purchase in the face amount of $5 million on April 13, 2012, and particularly after his significant debt purchase in the face amount of $247 million on May 4, 2012, the press began to speculate about the identity of the SPSO purchaser, publishing stories with headlines such as "LightSquared [Term Loan] Trades North of 70 as Ergen Enters the Picture" and "Ergen Builds Cash Pile Amidst LightSquared Restructuring Talks." The trades and the press reports did not go unnoticed by LightSquared, especially after the news that it was Carl Icahn who had sold his nearly quarter billion dollar position in the debt to SPSO. Philip Falcone, the founder and principal owner of Harbinger Capital Partners, which is the principal shareholder of LightSquared, reacted to the news swiftly and strategically, writing in an email message: "Well I'm working on giving him a nice surprise," referring to Mr. Ergen and to LightSquared's May 9, 2012 modification of its Credit Agreement's Disqualified Companies list to include DISH.

The game was afoot. Almost two years of moves and counter moves have ensued, with Lightsquared's other stakeholders sometimes watching from the sidelines and sometimes entering the fray – all under the watchful gaze of the Federal Communications Commission, which to this day has not taken definitive action to clarify the status of LightSquared's valuable spectrum assets. The questions before the Court, among others, are whether SPSO's debt purchases violated the LightSquared LP Credit Agreement and whether its now approximately $1 billion claim (inclusive of interest) should therefore be disallowed, or, alternatively, whether SPSO's claim should be equitably subordinated by virtue of its conduct in connection with the debt purchases and/or in connection with these chapter 11 cases. The Court's analysis is as follows.[1]

THE PARTIES

Plaintiffs LightSquared LP, LightSquared Inc., LightSquared Investors Holdings Inc., TMI Communications Delaware Limited Partnership, LightSquared GP Inc., ATC Technologies, LLC, LightSquared Corp., LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, SkyTerra Holdings (Canada) Inc., and SkyTerra (Canada) Inc., as debtors and debtors in possession (collectively, with certain of their affiliated debtors and debtors in possession, "LightSquared" or the "Debtors") provide wholesale mobile satellite communications and broadband services throughout North America. Through its ownership of several satellites and licenses to use mobile satellite service spectrum issued by the Federal Communications Commission (the "FCC"), LightSquared delivers voice and data services to mobile devices used

[1] This Decision supersedes this Court's bench decision read into the record on May 8, 2014.

by the military, first responders and other safety professionals, and individuals throughout North America. (*See* Declaration of Marc R. Montagner [Bankr. Docket No. 3] ¶¶ 18-31.)[2]

Plaintiffs Harbinger Capital Partners LLC, HGW US Holding Company LP, Blue Line DZM Corp., and Harbinger Capital Partners SP, Inc. (collectively, "Harbinger") own in excess of 82 percent of the common equity of LightSquared and assert a general unsecured claim against LightSquared LP and claims against LightSquared Inc. (*See* Adv. Docket No. 1 ¶ 17.)

Defendant DISH Network Corporation ("DISH") is a public corporation organized and existing under the laws of the state of Nevada with its principal place of business in Englewood, Colorado. DISH provides broadband and satellite television services and aims to expand its broadband offerings, including by building a terrestrial broadband network. (PX0781 ¶¶ 30, 43.) In addition to its satellite broadcast business, DISH owns significant spectrum assets, including mobile satellite spectrum. (*Id.*) DISH is a direct competitor of LightSquared. (*Id.* ¶ 30; Jan. 13 Tr. (Ergen) 14:13-18; Jan. 10 Tr. (Kiser) 70:24-71:1; PX0013 at 10; Montagner Dep. 72:13-74:7; PX0159 at L2AP0007578.)[3]

Defendant EchoStar Corporation ("EchoStar") is a public corporation organized and existing under the laws of the State of Nevada with its principal place of business in Englewood, Colorado. EchoStar is a satellite communications company that currently operates, leases, or manages a number of satellites, including the satellites that provide services to DISH. EchoStar

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[2] Citations to "Adv. Docket No. __" refer to docket entries in this adversary proceeding, Adv. Pro. 13-1390-scc (Bankr. S.D.N.Y.) (the "Adversary Proceeding") and citations to "Bankr. Docket No. __" refer to docket entries in the Debtors' bankruptcy case, *In re LightSquared Inc.*, Case No. 12-12080-scc (Bankr. S.D.N.Y.).

[3] Citations to the trial transcripts of the Adversary Proceeding, dated January 9 through January 17, 2014 and March 17, 2014, will be referenced as "Jan. __ Tr. (witness) [page:line] or "Mar. __ Tr. (counsel) [page:line]." Citations to deposition testimony from the Adversary Proceeding will be referenced as "Witness Dep. [page:line]."

is a direct competitor of LightSquared. (PX0781 ¶ 31; Jan. 10 Tr. (Kiser) 15:15-21; Jan. 13 Tr. (Ergen) 15:8-12.)

Defendant SP Special Opportunities LLC ("SPSO") is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business nominally in New York, New York. SPSO's sole member and managing member is Special Opportunities Holdings LLC ("SO Holdings"). SO Holdings is a Delaware limited liability company whose sole member and managing member is Defendant Charles W. Ergen ("Ergen").

Defendant Charles W. Ergen, a natural person, is the founder, chairman of the boards of directors, and majority owner of both DISH and EchoStar. Mr. Ergen – personally and through his family trusts – beneficially owns and controls over 88 percent of DISH's voting shares and over 80 percent of EchoStar's voting shares. Mr. Ergen owns approximately 53 percent of DISH. Mr. Ergen also wholly owns and controls SO Holdings and SPSO. (PX0700 ¶¶ 1-2; Jan. 13 Tr. (Ergen) 94:19-95:2, 208:18-211:20; Howard Dep. 37:25-38:16; PX0372 at 2, 5; PX0371 at 2.)

PROCEDURAL HISTORY

On May 14, 2012 (the "Petition Date"), LightSquared commenced a voluntary bankruptcy case pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York. ([Bankr. Docket No. 1].)

On August 6, 2013, Harbinger commenced the Adversary Proceeding against Mr. Ergen, DISH, EchoStar, L-Band Acquisition, LLC ("LBAC"), SPSO, SO Holdings, Sound Point Capital Management LP ("Sound Point"), and Mr. Stephen Ketchum, alleging inequitable conduct,

fraud, aiding and abetting fraud, tortious interference with prospective economic advantage, tortious interference with contractual relationship, unfair competition, and civil conspiracy; and seeking equitable disallowance of claims, compensatory and punitive damages, costs and fees, interest, and other appropriate relief. (*See* Adv. Docket No. 1.)

On August 22, 2013, LightSquared intervened in the Adversary Proceeding on limited grounds. (Adv. Docket No. 15.) U.S. Bank National Association ("U.S. Bank"), Mast Capital Management LLC ("Mast"), and the Ad Hoc Secured Group of LightSquared LP Lenders (the "Ad Hoc Secured Group") also intervened on the same day. (Adv. Docket Nos. 12, 14.)

On September 9, 2013, motions to dismiss were filed by each of the defendants in the Adversary Proceeding. (Adv. Docket Nos. 29, 30, 32, 33, 34, 35.)[4] On September 30, 2013, Harbinger amended its complaint as of right (the "Harbinger Amended Complaint"). (Adv. Docket No. 43.) Between October 3 and October 5, 2013, each of the defendants filed a motion to dismiss the Harbinger Amended Complaint. (Adv. Docket Nos. 44, 45, 46.) After the filing of additional oppositions and replies, this Court held a hearing on October 29, 2013.

By Order dated November 14, 2013 (the "November Order"), this Court granted Defendants' motions to dismiss the Harbinger Amended Complaint. (PX0770.) The Court also granted Harbinger leave to file a second amended complaint that did not assert claims on Harbinger's own behalf, but that merely set forth an objection, pursuant to section 502 of the Bankruptcy Code, to SPSO's claim. (*Id.*) The Court also authorized LightSquared to file a complaint setting forth the basis for its intervention. (*Id.*) On November 21, 2013, the Court issued its Memorandum Decision Granting Motions to Dismiss Complaint ("Decision on the

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[4] The motions to dismiss filed in the Adversary Proceeding on September 9, 2013 were subsequently amended. *See* Adv. Docket Nos. 37, 38, 39.

Motions to Dismiss"), which set forth the bases for the November Order. (Adv. Docket No. 68; *Harbinger Capital Partners LLC v. Ergen (In re LightSquared Inc.)*, 504 B.R. 321 (Bankr. S.D.N.Y. 2013).)

On November 15, 2013, LightSquared filed a Complaint-in-Intervention (the "LightSquared Complaint") against SPSO, DISH, EchoStar, and Mr. Ergen (collectively, the "Defendants") seeking: (i) a declaration that SPSO is not an "Eligible Assignee" under LightSquared's October 10, 2010 Credit Agreement, as amended, modified, and restated (the "Credit Agreement") (PX0004), (ii) disallowance of SPSO's claim under 11 U.S.C. § 502(b), and (iii) equitable disallowance of SPSO's claim. (PX0771.) The LightSquared Complaint further alleges breach of contract against SPSO, as well as tortious interference with contractual relations against all Defendants. (*Id.*) The LightSquared Complaint also seeks equitable subordination as a remedy. (*Id.*)

On December 2, 2013, Harbinger filed a Second Amended Complaint (the "Harbinger Second Amended Complaint," and, together with the LightSquared Complaint, the "Complaints"), seeking (i) a declaration that SPSO is not an "Eligible Assignee" under the Credit Agreement, (ii) disallowance of SPSO's claim under 11 U.S.C. § 502(b), (iii) equitable disallowance of SPSO's claim, and (iv) equitable subordination of SPSO's claim under 11 U.S.C. § 510. The Harbinger Second Amended Complaint further alleges breach of contract against SPSO. (PX0781.)

On November 25 and November 26, 2013, the Defendants filed motions to dismiss the LightSquared Complaint,[5] and, on December 5, 2013, SPSO filed a motion to dismiss the

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[5] Adv. Docket Nos. 69, 70, 72, 73.

Harbinger Second Amended Complaint. (Adv. Docket No. 84.) After the filing of oppositions and replies, the Court held a hearing on December 10, 2013.

By Order dated December 12, 2013 (the "December Order"), the Court granted in part and denied in part Defendants' motions to dismiss the Complaints. (PX0784.) The December Order dismissed all of the claims asserted in the Harbinger Second Amended Complaint, except for Harbinger's claim seeking disallowance of SPSO's claim under 11 U.S.C. § 502(b). (*Id.* ¶ 3.) With respect to the LightSquared Complaint, the Court granted Defendants' motions only as to LightSquared's equitable disallowance claim against SPSO and its tortious interference claim against SPSO. (*Id.* ¶ 2.) The Court retained jurisdiction to hear and determine all matters arising from the interpretation, implementation, and enforcement of the December Order. (*Id.* ¶ 4.) Answers to the remaining counts of the LightSquared Complaint and the Harbinger Second Amended Complaint were filed on December 24, 2013. (Adv. Docket Nos. 102, 103, 104.) Pre-trial briefs were filed by the parties on January 7 and January 8, 2013. (Adv. Docket Nos. 113, 115, 119, 121.)

On January 9, 2014, the Court commenced a trial[6] in the Adversary Proceeding and heard live testimony from eight witnesses: (a) Charles Ergen; (b) Thomas Cullen; (c) Stephen Ketchum; (d) Jason Kiser; (e) Philip Falcone; (f) Douglas Smith; (g) William Q. Derrough; and (h) Mark S. Hootnick.

The parties also submitted additional evidence consisting of (i) over 800 exhibits and (ii) excerpts from the deposition transcripts of six witnesses in lieu of live testimony. Deposition

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[6] At the request of the parties, the Court bifurcated the Adversary Proceeding trial into two phases: liability and damages. The liability phase of the trial, which was held between January 9 and 17, 2014, and on March 17, 2014, will be referred to herein as the "Trial." The second phase of the trial, in which the extent of equitable subordination to be imposed on SPSO will be determined, has not yet been scheduled by the Court.

designations were submitted from the deposition transcripts of: (a) Steven Goodbarn; (b) Gary Howard; (c) Marc Montagner; (d) Robert Olson; (e) David Rayner; and (f) Joseph Roddy.

The Court requested that proposed findings of fact and post-trial briefs be submitted by LightSquared and Harbinger (together, "Plaintiffs") on February 24, 2014, and by Defendants on March 10, 2014. Those dates were subsequently modified by the Court. On February 24, 2014 and March 10, 2014, respectively, Plaintiffs submitted their (i) post-trial brief and proposed findings of fact and (ii) supplemental post-trial brief and supplemental proposed findings of fact. (Adv. Docket Nos. 132, 133, 137, 138.) On March 14, 2014, Defendants submitted proposed findings of fact and post-trial briefs, together with a response to Plaintiffs' supplemental post-trial brief. (Adv. Docket Nos. 140, 141, 142, 143, 144.) Closing arguments were held on March 17, 2014.

In addition, a flurry of sanctions motions and replies has been filed by the parties, each of which remains *sub judice*. (*See* Adv. Docket Nos. 145, 146, 148, 151, 152, 154, 158.)

This is an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure. Pursuant to 28 U.S.C. §§ 157 and 1334(b), the Court has jurisdiction to consider this matter a "core" proceeding. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FINDINGS OF FACT

The following constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure. Having considered the voluminous evidence, testimonial and documentary, including all exhibits admitted into evidence, as well as Plaintiffs' and Defendants' post-trial proposed findings of fact and briefs, and mindful that a court should not blindly accept findings of fact and conclusions of law proffered by the parties

(*see St. Clare's Hosp. and Health Ctr. v. Ins. Co. of North Am., (In re St. Clare's Hosp. and Health Ctr.)*, 934 F.2d 15 (2d Cir. 1991) (citing *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656 (1964)), and having conducted an independent analysis of the law and the facts, the Court makes the following Findings of Fact and Conclusions of Law:[7]

I. The Parties and Certain Relevant Third Parties

1. In 1980, Mr. Ergen founded EchoSphere LLC ("EchoSphere") with James DeFranco and Mr. Ergen's wife, Cantey Ergen. (Jan. 13 Tr. (Ergen) 11:24-12:7, 12:21-13:11.) EchoSphere became EchoStar, which later split into EchoStar and DISH. (Jan. 13 Tr. (Ergen) 14:19-24.) Today, EchoStar is a technology company that manufactures set-top boxes and builds and operates satellites. (Rayner Dep. 27:10-18; Jan. 13 Tr. (Ergen) 14:25-15:7.)

2. DISH sells satellite television services. (Jan. 13 Tr. (Ergen) 14:13-18.) EchoStar is a supplier to DISH, but they are separate companies. (Jan. 13 Tr. (Ergen) 15:8-12.)

3. DISH's board of directors has ten members, four of whom are independent under NASDAQ rules. (Jan. 13 Tr. (Ergen) 15:13-21; see also 3/22/13 DISH Network Corp. Schedule 14A at 2-3; 9/17/13 DISH Network Corp. Form 8-K at 1; 11/5/13 DISH Network Form 8-K at 1; 2/21/14 DISH Network Corp. Form 10-K at 99.) The DISH Board of Directors has four regularly-scheduled meetings a year, but on average, the DISH Board will meet between eight and ten times a year. (Jan. 13 Tr. (Ergen) 16:11-14.) Discussions at the DISH board level cover many subjects, including potential acquisitions, the raising of capital, the strategic direction of the company, and personnel issues within the company. (Jan. 13 Tr. (Ergen) 16:21-25.)

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[7] The findings of fact and conclusions of law herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

4. Neither DISH nor EchoStar has an interest in SPSO. (PX0767 (Goodbarn Nevada Dep.) 32:24-33:2, 90:10-23; Olson Dep. 14:6-15:14, 26:7-27:11; Jan. 13 Tr. (Ergen) 36:7-9.)

5. Mr. Ergen, as the holder of a majority share of voting rights (approximately 88 percent and 79.4 percent of the total voting power in DISH and EchoStar, respectively), has the ability to elect a majority of the directors for both companies and control all other matters requiring the approval of their stockholders. (Jan. 13 Tr. (Ergen) 94:19-95:2, 208:18-211:20; Howard Dep. 37:25-38:16; PX0372 at 2, 5; PX0371 at 2.) Mr. Ergen voted for each of the current DISH Board members, and he testified that he does not know whether it is possible for someone to be a director of DISH without his vote. (Ergen Dep. 18:5-16, 26:19-25; Jan. 13 Tr. (Ergen) 95:3-5.) As a result of Mr. Ergen's dominance, both DISH and EchoStar are "controlled compan[ies] as defined in the Nasdaq listing rules." (PX0349 at 39-40; PX0350 at 34.)

6. Mr. Thomas Cullen ("Cullen") is the Executive Vice President of Corporate Development at DISH, a position he has held since June 2011. (Jan. 17 Tr. (Cullen) 98:19-20, 101:3-5.)

7. Mr. Jason Kiser ("Kiser") is the Treasurer of DISH and Vice President of Corporate Development at DISH and EchoStar, and, together with Messrs. Ergen and Cullen, is part of the corporate development team at DISH and EchoStar. (Jan. 10 Tr. (Kiser) 15:25-16:6, 68:24-69:2, 69:20-22.) Mr. Kiser arranged SPSO's trades in the secured debt of LightSquared LP ("LP Debt") pursuant to direction from Mr. Ergen by placing the orders for the amount and pricing of the debt and arranging to provide the funds to close the trades. (Jan. 10 Tr. (Kiser) 25:6-8.)

8. Mr. Stephen Ketchum ("Ketchum") is the founder and sole managing partner of Sound Point. (Jan. 15 Tr. (Ketchum) 13:13-19.) Sound Point is an investment management and

advisory firm that served as trading manager and investment advisor for SPSO and executed SPSO's purchases of LP Debt. (Jan. 15 Tr. (Ketchum) 20:14-17.) Messrs. Kiser and Ketchum had a twenty-year long relationship that involved work related to both EchoStar and DISH. Mr. Ketchum served as the point of contact between Sound Point and Messrs. Kiser and Ergen. (Jan. 15 Tr. (Ketchum) 14:19-22, 93:23-94:3; Jan. 10 Tr. (Kiser) 24:10-25:8.)

9. SPSO was formed by Sound Point for the exclusive purpose of serving as the investment vehicle through which Mr. Ergen made trades in LP Debt (PX0162; PX0171; PX0183; PX0224; Jan. 10 Tr. (Kiser) 30:16-21, 31:20-32:14; PX0700 ¶¶ 1-2), without those purchases being traceable to Mr. Ergen (see Jan. 10 Tr. (Kiser) 30:16-21, 31:20-22, 32:2-14, 90:6-12, 90:25-91:20; Jan. 13 Tr. (Ergen) 36:13-37:4, 49:20-50:25; PX0117; PX0290 at LSQ-SPCD-000006771; PX0298).

10. Mr. Steven R. Goodbarn ("Goodbarn") is a member of the DISH Board of Directors and was a member of the special committee of independent directors of DISH that was formed to evaluate and make recommendations regarding a possible bid by DISH for LightSquared's assets (the "Special Committee"). (PX0768 ¶ 2.)

11. Mr. Gary S. Howard ("Howard") is a former member of the DISH Board of Directors and was a member of the Special Committee. (PX0768 ¶¶ 2, 53.)

12. Harbinger began acquiring the securities of LightSquared's predecessor, SkyTerra Communications, Inc. ("SkyTerra"), in 2006 and eventually took control of the company in early 2010, renaming it LightSquared LP. (Jan. 16 Tr. (Falcone) 14:23-16:11.)

13. Harbinger currently owns about 80 to 85 percent of the stock of LightSquared. (Jan. 16 Tr. (Falcone) 18:8-12.) About 30 to 40 percent of Harbinger's assets are invested in

LightSquared, and Harbinger has invested approximately $1.8 to $2 billion in LightSquared. (Jan. 16 Tr. (Falcone) 81:3-19.)

14. Mr. Philip Falcone ("Falcone") is the portfolio manager of Harbinger Capital Partners LLC. (Jan. 16 Tr. (Falcone) 12:3-13.) Mr. Falcone has been trading high yield distressed debt for over 20 years. (Jan. 16 Tr. (Falcone) 13:13-18.) Mr. Falcone has between $500 and $700 million invested in Harbinger, which is a majority of his net worth. (Jan. 16 Tr. (Falcone) 80:6-20.)

15. Mr. Falcone is a member of LightSquared's board of directors, having joined the Board in early 2012. (Jan. 16 Tr. (Falcone) 17:25-18:1; 82:1-3.) A majority of the LightSquared Board of Directors is controlled by Harbinger. (Jan. 16 Tr. (Falcone) 81:23-25.)

II. The LightSquared LP Credit Agreement and the Restrictions on the Transfer of LP Debt

16. In 2010, LightSquared obtained authorization from the FCC to build an ancillary terrestrial network ("ATC Network") that would integrate its satellite service with terrestrial satellite ground stations to provide fourth generation long term evolution (4G-LTE) broadband mobile services throughout the United States. (DX054 ¶¶ 5-7, 29-30, 33.) To finance the buildout of its ATC Network, on October 1, 2010, LightSquared LP and certain of its affiliates entered into the Credit Agreement with UBS AG, Stamford Branch ("UBS"), as Administrative Agent, and entities that were, or would serve as, lenders under the Credit Agreement (collectively, the "Lenders"). (*Id.* ¶ 37.) The Credit Agreement is governed by New York law. (PX0004 at HARBAP00004158, § 10.09(a).)

17. The Credit Agreement restricts transfers of the LP Debt. Section 10.04(a) of the Credit Agreement provides, in pertinent part:

> [N]o Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in

> accordance with the provisions of paragraph (b) of this Section 10.04, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section 10.04 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by Borrower shall be null and void).

(PX0004 at HARBAP00004153.)

18. Section 10.04(b) states that assignments of LP Debt are permitted to Eligible Assignees: "Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement . . . ." (PX0004 at HARBAP00004154.)

19. The term "Eligible Assignee" is defined in Section 1.01 of the Credit Agreement as follows: "[A]ny person to whom it is permitted to assign Loans and Commitments pursuant to Section 10.04(b)(i); *provided* that 'Eligible Assignee' shall not include Borrower or any of its Affiliates or Subsidiaries, any natural person or any Disqualified Company." (*Id.* at HARBAP0004058 (emphasis in original).)

20. The term "Eligible Assignee" also excludes "any natural person." (PX0004 at HARBAP0004058, §1.01.) Thus, pursuant to Section 10.04(b)(i), a natural person may not take an assignment of LP Debt ("Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement . . ."). (PX0004 at HARBAP00004154.) Pursuant to Section 10.04(d), a natural person also may not receive a Participation in LP Debt ("Any Lender may at any time, without the consent of, or notice to, Borrower or the Administrative Agent sell participations to any person (other than a natural person, Borrower or any of its Affiliates or any Disqualified Company . . ."). (*Id.* at HARBAP00004155.)

21. Mr. Ergen, as a natural person, is not an Eligible Assignee and is not permitted to own the LP Debt.

22. "Disqualified Company" is defined in Section 1.01 as follows:

> [A]ny operating company which is a direct competitor of the Borrower identified to the Administrative Agent in writing prior to the Closing Date and set forth on Schedule 1.01(a), and thereafter, upon the consent of the Administrative Agent . . . such additional bona fide operating companies which are direct competitors of the Borrower as may be identified to the Administrative Agent from time to time and notified to the Lenders. A Disqualified Company will include any known subsidiary thereof.

(PX0004 at HARBAP0004057-58.) The Credit Agreement thus prohibits assignment or other transfer of the LP Debt to a LightSquared competitor named on Schedule 1.01(a) or a known subsidiary of such a competitor.

23. The word "Subsidiary" in the definition section of the Credit Agreement is defined, "with respect to any person (the 'parent')," as including, "any other person that is otherwise Controlled by the parent. . . ." (PX0004 at HARBAP0004073, § 1.01.) "Controlled" is defined to mean "the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise. . . ." (*Id.* at HARBAP0004056, § 1.01.)

24. SPSO, SO Holdings, and Mr. Ergen were not initially included on Schedule 1.01(a) of the Credit Agreement, which, as of the inception of the Credit Agreement on October 1, 2010, did include EchoStar. (PX0004 at HARBAP00004166.)

25. On May 9, 2012, LightSquared amended the Disqualified Company list, Schedule 1.01(a) of the Credit Agreement, to add additional LightSquared competitors, including, among others, DISH. (PX0142.) On May 12, 2012, LightSquared again amended the Disqualified Company list to add Cablevision. (Jan. 16 Tr. (Falcone) 49:17-19; PX0901 at

HARBAP00011331; *see also* PX0190.) Each of DISH and EchoStar is a Disqualified Company under the Credit Agreement. SPSO is not a "known subsidiary" of any company identified as a Disqualified Company.

26. According to its CEO, LightSquared amended the Disqualified Company list on May 9 and 12, 2012, immediately prior to the Petition Date, "to make sure that the list of disqualified companies included all of [LightSquared's] competitors, because we didn't want competitors involved in the capital structure. We thought it was important as we were entering bankruptcy to make these updates." (Jan. 9 Tr. (Smith) 126:22-127:24; PX0161.)

27. The Credit Agreement defines the term "Affiliate" as "when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified." (PX0004 at HARBAP00004050-4051.)

28. On September 18, 2010, UBS proposed a draft of the Credit Agreement which did not include the concept of a Disqualified Company, but rather stated that an Eligible Assignee "shall not include Borrower or any of its Affiliates or Subsidiaries, any natural person or any person listed on Schedule 1.01(a)." (PX0001 at L2AP0009323.) UBS's draft did not restrict transfers to affiliates or "Affiliates" of companies or persons listed on Schedule 1.01(a); it only restricted transfers to companies or persons listed in Schedule 1.01(a). (PX0001 at L2AP0009323.)

29. On September 19, 2010, counsel for LightSquared proposed comments to UBS's draft. LightSquared's draft restricted transfers of LP Debt to any "Affiliate" of a company or person listed on Schedule 1.01(a). (PX0003.) Specifically, the draft stated that an Eligible Assignee "shall not include Borrower or any of its Affiliates or Subsidiaries, any natural person

or any Competitor." (PX0003 at L2AP0011786 (emphasis added).) It further stated, "'Competitor' shall mean (i) any person listed on Schedule 1.01(a), (ii) any other competitor of the Borrower that is designated as such in writing to the Administrative Agent by the Borrower from time to time and (iii) any Affiliate of any such person." (PX0003 at L2AP0011784.) Therefore, in this draft, transfers were restricted to any person or company listed on Schedule 1.01(a) as well as their "Affiliates."

30. On September 21, 2010, counsel for UBS proposed revisions to LightSquared's September 19, 2010 draft. (PX0002.) Those revisions removed the transfer restriction on any Affiliate of a company listed on Schedule 1.01(a) and, instead, restricted transfers to any Disqualified Company and "any known subsidiary thereof." (PX0002 at L2AP0011532.) The language from this draft defining Eligible Assignee and Disqualified Company is what appears in the final, executed Credit Agreement. (PX0002 at L2AP0011532; PX0004 at HARBAP00004057-4058.)

31. LightSquared Inc.'s Fourth Amended and Restated Stockholders' Agreement includes the defined term "Affiliates" and prohibits the transfer of any equity securities to "any of the entities set forth in Schedule 2.1(a)(ii) or any of their respective Affiliates." (PX0007 at HARBAP00010483.) LightSquared did not include a similar restriction on the transfer of its bank debt under the Credit Agreement.

32. Persons holding LP Debt are entitled to receive substantial non-public information about LightSquared and are granted access to LightSquared's officers and employees for information regarding LightSquared's ongoing business and operations. Prior to initial funding, LightSquared provided to the Lenders, among other things, multiple years of financial statements, plus current forecasts of anticipated financial performance (PX0004 at

HARBAP00004092-93, § 3.04); a listing of all interests in real property owned or leased by Borrower, together with representations regarding title, etc. (*id.* at HARBAP00004093-94, § 3.05); a listing of all copyrights, patents, and trademarks owned or licensed by Borrower, together with representations regarding same (*id.* at HARBAP00004094, § 3.06); and copies of all material agreements relating to the business operated by the Borrower (*id.* at HARBAP00004095-96, § 3.09.) Under the Credit Agreement, these disclosures must be updated regularly by the Borrower.

33. To meet this obligation, the Borrower must furnish to Lenders the type of information that would be included in annual and quarterly reports on SEC Forms 10-K and 10-Q (PX0004 at HARBAP00004108-9, §§ 5.01(a)-(b)), annual and quarterly budgets (*id.* at HARBAP00004110, § 5.01(h)), and "such other information regarding the operations, business affairs and financial condition of [Borrower, its parents and its subsidiaries] . . . as . . . any Lender may reasonably request, including, without limitation, updates on the Network build-out." (*Id.* at HARBAP00004110, § 5.01(j).) Each Lender also has the right to inspect and make copies of Borrower's financial records; to inspect Borrower's properties; and to "discuss the affairs, finances, accounts and condition of [Borrower, its parents and its affiliates] with the officers and employees thereof and advisors therefor (including independent accountants)." (*Id.* at HARBAP00004113-14, § 5.07(a).)

34. The Credit Agreement also provides that each Lender must "designate at least one individual to receive Private Side Communications [*i.e.*, communications containing material non-public information] on its behalf . . . and identify such designee (including such designee's contact information) on such Lender's Administrative Questionnaire." (PX0004 at HARBAP00004149, § 10.01(d).) A Lender may elect not to receive material non-public

information, but must, if so electing, waive "any and all claims based on or arising out of, not having access to Private Side Communications." (*Id.*)

35. SPSO did not waive its right to receive confidential information about LightSquared. To the contrary, SPSO specifically identified in the several Lender Questionnaires it provided to the Administrative Agent one or more persons to whom such information was to be delivered. (PX0198; PX0227; PX0282; PX0317; PX0362; PX0363; PX0365; PX0367; PX0411; PX0563; PX0618; PX0638; PX0658; PX0672; PX0728; PX0733; PX0849; PX0851.) Those individuals had access to information on LightSquared. (*See, e.g.,* PX0919-922.)

36. Under the express terms of the Credit Agreement, LightSquared's rights under the Credit Agreement cannot be waived. Section 10.02(b) explicitly requires written consent by the parties before a party may be found to have waived the terms of the Credit Agreement:

> Required Consents. Subject to Sections 10.02(c) and (d), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Borrower and the Administrative Agent or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent, the Collateral Trustee (in the Case of any Security Document) and the Loan Party or Loan Parties that are party thereto, in each case with the written consent of the Required Lenders . . . .

(PX0004 at HARBAP00004149-50.)

37. Section 10.04(a) of the Credit Agreement states that only those transferees permitted under the terms of the Credit Agreement receive any rights, remedies, or claims thereunder:

> Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby,

> Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(PX0004 at HARBAP0004153-54.)

38. Section 10.04(b) provides that "[a]ny assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph [relating to assignments] shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.04(d)." (PX0004 ¶ 10.04(b).)

39. Section 10.04(d) provides that LightSquared "agrees that any breach by any Lender or participant or sub-participant of the restrictions on assignment hereunder (including, without limitation, to Disqualified Companies) shall not excuse, in any respect, performance by the Borrower under the Loan Documents." (PX0004 ¶ 10.04(d).)

40. Section 10.16 of the Credit Agreement states that "all obligations of the Loan Parties [the Borrower and Guarantors] hereunder shall be absolute and unconditional irrespective of . . . any lack of validity or enforceability of any Loan Document or any other . . . circumstance which might otherwise constitute a defense available to, or a discharge of, the Loan Parties." (PX0004 ¶ 10.16.)

III. Background Regarding SPSO's Purchases of LP Debt

A. Messrs. Ergen and Kiser Investigate Whether DISH and EchoStar Can Purchase LP Debt

41. In the fall of 2011, Mr. Ergen believed the spectrum and satellites of LightSquared might be an attractive investment opportunity for DISH and therefore began looking into acquiring LightSquared's LP Debt. (Jan. 13 Tr. (Ergen) 109:3-9; Jan. 10 Tr. (Kiser) 27:12-18.)

42. Mr. Ergen asked Mr. Kiser, the Treasurer of DISH and a Vice President of Corporate Development at DISH and EchoStar, to provide him with information concerning a potential purchase by DISH of LightSquared's LP Debt. (Jan. 10 Tr. (Kiser) 27:19-28:5, 32:25-33:11, 77:7-18; Jan. 13 Tr. (Ergen) 25:4-18, 32:15-33:14, 112:10-113:23, 129:21-130:24.) Mr. Ergen stated that, when Mr. Kiser was first asked to check whether DISH could own the LP Debt, Mr. Kiser was acting in his capacity as Treasurer of DISH. (Jan. 13 Tr. (Ergen) 112:10-113:13; PX0832 at 88-89.) Mr. Kiser testified that when he initially inquired into who could purchase the LP Debt – and until it was clear that the companies could not purchase the debt – the LightSquared investment was considered a corporate opportunity for DISH and EchoStar. (Jan. 10 Tr. (Kiser) 32:25-34:7.)

43. Indeed, at the time when Messrs. Ergen and Kiser investigated purchasing the LP Debt, their roles and responsibilities at DISH and EchoStar included identifying potential investments and acquisitions for both companies. (Jan. 10 Tr. (Kiser) 68:24-69:9; Jan. 13 Tr. (Ergen) 95:6-24.)

44. After Mr. Ergen's initial request to determine whether DISH could purchase LP Debt, Mr. Kiser compiled information on LightSquared's spectrum and capital structure, which he shared with Mr. Ergen. (Jan. 10 Tr. (Kiser) 28:6-17.)

45. After providing this information to and discussing this information with Mr. Ergen, Mr. Kiser continued his examination into whether DISH and EchoStar could buy the LP Debt. (Jan. 10 Tr. (Kiser) 28:18-21.) To that end, Mr. Kiser sought and obtained Mr. Ergen's permission to retain Sound Point to facilitate purchases of the LP Debt and asked Sound Point's founder, Mr. Ketchum – a longtime investment banker for EchoStar who had worked with Mr. Kiser for over twenty years on EchoStar and DISH-related transactions – if DISH was permitted

to purchase the LP Debt. (Jan. 15 Tr. (Ketchum) 14:19-22; PX0116 at LSQ-SPCD-000000904; Jan. 13 Tr. (Ergen) 32:15-25; Jan. 10 Tr. (Kiser) 25:19-22.)

46. Mr. Ketchum acknowledged that the LightSquared transactions were the first time in twenty years of working with Mr. Kiser on behalf of DISH and EchoStar that he was asked to handle a personal investment for Mr. Ergen. (Jan. 15 Tr. (Ketchum) 13:22-25, 14:19-22, 94:4-7.)

47. At Mr. Kiser's request, Mr. Ketchum reviewed the Credit Agreement and determined that neither EchoStar nor DISH was eligible to purchase the LP Debt. (Jan. 10 Tr. (Kiser) 28:18-29:9, 78:18-79:1; Jan. 13 Tr. (Ergen) 32:22-25; Jan. 15 Tr. (Ketchum) 49:23-50:19, 95:10-14.)

48. Subsequently, Mr. Kiser consulted with Sullivan and Cromwell LLP ("Sullivan & Cromwell"), outside counsel to DISH and EchoStar, to determine whether DISH could purchase the LP Debt, providing Sullivan & Cromwell with excerpts from the Credit Agreement. (Jan. 10 Tr. (Kiser) 29:10-30:3, 118:14-18, 120:2-4; Jan. 13 Tr. (Ergen) 32:15-33:5.) No counsel other than Sullivan & Crowmwell, including in-house counsel for DISH, in-house counsel for Echostar, or counsel for Mr. Ergen and SPSO, were consulted on this issue. (Jan. 13 Tr. (Ergen) 32:15-33:3, 114:17-23, 180:23-181:2, 198:17-21; Jan. 10 Tr. (Kiser) 28:18-29:19, 78:24-79:22.)

49. After reviewing the Credit Agreement and consulting with Sound Point and Sullivan & Cromwell, Mr. Kiser determined that both DISH and EchoStar were restricted from buying the LP Debt, and communicated this to Mr. Ergen. (Jan. 10 Tr. (Kiser) 29:10-15, 30:4-9, 78:24-80:3, 121:8-22.)

50. In the fall of 2011, when Mr. Kiser, Mr. Ketchum, and Sullivan & Cromwell initially determined that both DISH and EchoStar were prohibited from purchasing the LP Debt

under the terms of the Credit Agreement, only EchoStar – but not DISH – was listed as a Disqualified Company on Schedule 1.01(a) of the Credit Agreement. (PX0004 at HARBAP00004166; PX0144; PX0151; Jan. 15 Tr. (Ketchum) 50:9-51:2.) DISH was subsequently added to the list of Disqualified Companies in May 2012. (PX0142.)

B. Messrs. Ergen and Kiser Create the Bal Harbour Entities, and Then SPSO, to Purchase LP Debt

51. After learning that DISH was prohibited under the Credit Agreement from purchasing the LP Debt, Mr. Kiser nonetheless asked Sound Point to monitor the prices and volume of the LP Debt. (Jan. 10 Tr. (Kiser) 30:4-9.)

52. In January, February, and March 2012, Mr. Ergen was seeking to acquire LP Debt for 40 cents on the dollar or less. (Jan. 10 Tr. (Kiser) 41:6-15; Jan. 13 Tr. (Ergen) 39:24-40:3; DX011; DX016; DX018; DX019;DX022; PX0021.) During that time, Mr. Kiser was monitoring the price of the debt for Mr. Ergen, but the debt was not yet trading at a price at which Mr. Ergen wanted to buy. (Jan. 10 Tr. (Kiser) 39:18-41:1, 42:24-43:15; DX011; DX016; DX018; DX019; DX022; PX0021; PX0032.)

53. On or after May 9, 2012, Messrs. Ergen, Kiser, and Ketchum were aware that the Credit Agreement prohibited competitors DISH and EchoStar from purchasing the LP Debt. In a May 9, 2012 email, Mr. Ketchum reported to Mr. Kiser that "[a]n amendment was just created whereby DISH Network Corp., DBSD, Clearwire, DirecTV, XM Satellite Radio Inc. were named as disqualified buyers." Mr. Ketchum specifically pointed out that "Charlie is not named." (PX0144.) The following day, Mr. Ketchum sent Mr. Kiser the original list of Disqualified Companies, as well as the exact language of the amendment. (PX0151; PX0155; *cf.* PX0190.) The copy of the amendment that Mr. Ketchum sent to Mr. Kiser included a handwritten note circling the term "Disqualified Company," explaining that this term "includes

any known subsidiary thereof." (PX0155 at SPSO-00001608.) Mr. Ketchum understood the term "subsidiary" to include any corporate entity controlled by a designated Disqualified Company. (Jan. 15 Tr. (Ketchum) 52:18-53:16; PX0155.)

54. Mr. Kiser further inquired of Sullivan & Cromwell in 2011 whether there were other ways for DISH or EchoStar to take advantage of "the LightSquared opportunity." (Jan. 10 Tr. (Kiser) 81:18-82:5.) Mr. Kiser discussed with Sullivan & Cromwell whether an investment vehicle could buy the LP Debt. (Jan. 10 Tr. (Kiser) 30:10-12.) Mr. Ergen testified that "[w]hen I talk to lawyers it's . . . more about, you know, how can I do this, as opposed to what the law says." (PX0866; Jan. 13 Tr. (Ergen) 199:4-7.)

55. No evidence was submitted demonstrating any exploration of the possibility of DISH or EchoStar purchasing the LP Debt through an "affiliate," nor any analysis of the possible corporate opportunity involved with such a structure.

56. Given the transfer restrictions in the Credit Agreement, if DISH and EchoStar could not buy LP Debt, then Mr. Ergen determined that he had an interest in "personally" purchasing the debt. (Jan. 10 Tr. (Kiser) 33:9-15, 77:11-18.) Accordingly, Mr. Kiser consulted with Sullivan & Cromwell to determine whether Mr. Ergen could buy the LP Debt, after which he understood that this would not work either, because the Credit Agreement barred Mr. Ergen and all other "natural persons" from buying the LP Debt. This led him to set up an investment vehicle. (Jan. 10 Tr. (Kiser) 30:16-21, 80:4-6, 120:20-24.)

57. Mr. Kiser structured the LP Debt purchases through a special purpose vehicle ("SPV"), initially directing the creation of two companies, Bal Harbour Capital Management LLC ("Bal Harbour Capital") and Bal Harbour Holdings, LLC (together with Bal Harbour Capital, the "Bal Harbour Entities"). (Jan. 10 Tr. (Kiser) 30:16-31:4, 87:3-8.) The Bal Harbour

Entities were incorporated in December 2011. (DX046; *see also* Delaware Department of State, Division of Corporations website (http://corp.delaware.gov/).)

58. After the Bal Harbour Entities had been formed, Mr. Kiser realized that a Littleton, Colorado address had been used in its formation documents. Mr. Ergen resides in Littleton, which is near Englewood, Colorado, where DISH and EchoStar are headquartered. (Jan. 10 Tr. (Kiser) 32:2-14, 35:21-24; Jan. 13 Tr. (Ergen) 36:13-20.) Concerned that the Colorado address would compromise Mr. Ergen's anonymity, Mr. Kiser directed Sound Point to create new SPVs to replace the Bal Harbour Entities. (Jan. 10 Tr. (Kiser) 32:2-14, 90:6-12, 91:12-20; Jan. 13 Tr. (Ergen) 35:24-36:6, 36:21-37:4, 49:20-50:25; PX0117.)

59. Mr. Ketchum suggested to Mr. Kiser that the new entity's name be SP Special Opportunities, LLC – a name suggesting Sound Point ownership. (PX0165.) Following Mr. Ketchum's suggestion, Mr. Kiser directed Sound Point to set up SPSO and SO Holdings on May 16, 2012.[8] (PX0221; PX0183; Jan. 10 Tr. (Kiser) 31:10-32:1, 91:9-11.)

60. Rather than listing a Colorado address, the SO Holdings and SPSO formation documents listed a Delaware address. (PX0183 at SPSO-00000512, SPSO-00000514.) As Mr. Kiser testified, SPSO's address was specifically chosen to deflect any possible connection between Mr. Ergen and Sound Point's purchases of the LP Debt. (Jan. 10 Tr. (Kiser) 32:2-14.)

61. It was important to Messrs. Ergen and Kiser that the public not know they were behind Sound Point's purchases. (Jan. 10 Tr. (Kiser) 30:16-21, 31:20-22, 32:2-14, 90:25-91:20; Jan. 13 Tr. (Ergen) 36:13-20; PX0171; PX0183; PX0224; PX0290 at LSQ-SPCD-000006771; PX0298.)

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[8] The capital structure of SPSO and SO Holdings was set up to mirror that of the Bal Harbour Entities. (PX0224; PX0221; PX0058.)

62. SPSO's first trade in LightSquared debt was made on April 13, 2012, at a price of 48.75 cents on the dollar. (Jan. 10 Tr. (Kiser) 35:25-36:13; Jan. 13 Tr. (Ergen) 42:16-18; PX0859.) The second trade was executed on May 3, 2012, at 59 cents on the dollar. (PX0859.)

63. On May 4, 2012, SPSO entered into a trade for a $247 million block of LP Debt, paying approximately $149 million. (PX0859.) Between April 13 and May 4, 2012 (prior to LightSquared's Petition Date on May 14, 2012), SPSO purchased a total of approximately $287 million in face amount of LP Debt. These initial purchases were made at prices between 48.75 cents and 60.25 cents on the dollar and cost Mr. Ergen a total of approximately $172 million. (PX0859.)

64. Following SPSO's purchase of the $247 million piece of debt, news reports speculated that Mr. Ergen was the purchaser of the debt. (Jan. 10 Tr. (Kiser) 37:5-13.) On May 7, 2012, a *Reuters* story on the trade mentioned that Mr. Steven Ketchum of Sound Point previously counted Mr. Ergen as one of his investment banker clients and that DISH owned wireless airwaves "similar to LightSquared." (PX0121.) On May 9, 2012, an *LCD News* story carried the headline, "LightSquared TL trades north of 70 as Ergen enters the picture." (DX045.) On May 10, 2012, a *Wall Street Journal* blog, "Deal Journal," published an entry titled "Ergen Builds Cash Pile Amid LightSquared Restructuring Talks." (DX396.) Following the publication of those articles, the price of LightSquared's debt increased. (PX0859; DX047.)

65. Mr. Ergen testified that when he started buying LightSquared debt, he did not have an idea of how much debt SPSO would eventually buy, and he was not interested in achieving a "blocking position" in the debt. (Jan. 13 Tr. (Ergen) 43:17-44:8.)

66. Even after creating the Bal Harbour Entities and SPSO and purchasing large quantities of LP Debt, Messrs. Ergen and Kiser continued to check whether DISH or EchoStar

could purchase the LP Debt directly. (PX0243.) On October 4, 2012, Mr. Kiser wrote to Mr. Ergen, "I still can't get confirmation the restricted list [LightSquared] had in place that prevented the company from buying them has fallen away due to the BK." (*Id.*) The same day, Mr. Ergen responded, "[i]f we can't be sure the company can buy them, then I am interested to increase my position at the 75 level at least up to a 33% ownership level of the class." (*Id.*)

67. Mr. Ergen and Mr. Kiser checked the restrictions again in order to understand whether LightSquared's bankruptcy filing had altered any of the restrictions, such that DISH could now purchase LP Debt. (Jan. 13 Tr. (Ergen) 240:23-241:14.) Nevertheless, Mr. Ergen believed that it was not worth contacting the banks and undermining his anonymity to determine whether the transfer restriction had in fact fallen away. (Jan. 13 Tr. (Ergen) 49:14-50:13.)

C. SPSO and Mr. Ketchum Did Not Reveal that Mr. Ergen Was Behind the LP Debt Purchases

68. Sound Point endeavored not to disclose SPSO's connection to Mr. Ergen. For example, on May 2, 2012, Mr. Ketchum advised a Sound Point employee that "Echostar wants up to $50mm LightSquared," and asked him to reach out to Seaport, a middleman, but directed that "we can't tip our hand." The employee replied, "Yeah, i haven't indicated anything to anyone." (PX0088.) The following day, the employee reported that he spoke with Seaport and noted that Kevin Gerlitz, another Sound Point employee, was concerned that the trade would show Bal Harbour Capital as the buyer in the documentation. The employee asked, "Will this create problems?" Mr. Ketchum responded, "Possibly. Sh*t." (PX0089.) Indeed, Sound Point was not even willing to disclose the identity of the buyer to Jefferies as the middleman, even if Jefferies created an ethical wall. (PX0100.)

69. A few days later, on May 5, 2012, Mr. Ketchum sent an email to Mr. Kiser describing a voicemail he received from a *Wall Street Journal* reporter regarding Sound Point,

stating he was "obviously" not going to call the reporter back, even though he "clearly didn't understand what Sound Point is." (PX0119.) Mr. Ketchum further noted that the reporter "did not mention Charlie or EchoStar" in his voicemail. (*Id.*) Mr. Kiser forwarded Mr. Ketchum's email to Mr. Ergen, explaining that Mr. Kiser had spoken to Mr. Ketchum about the issue and that "[t]here might just be a lot of people fishing all over the place based on speculation (they're [*sic*] weren't a lot of other logical buyers)." (*Id.*)

70. Similarly, on May 7, 2012, after receiving a press inquiry, Mr. Ketchum reached out to Mr. Kiser and asked whether they should "employ a more strenuous strategy" around denying to the press that Mr. Ergen was behind SPSO. (PX0124.) Additionally, email exchanges demonstrate Messrs. Ketchum and Kiser making light of the fact that there were rumors in the press indicating that Carlos Slim ("Slim") was behind Sound Point's purchases of the LP Debt, noting that Mr. Ketchum would "continue to get looks" because he's "Carlos Slim's main man" and that a news report suggesting it was Slim and not Ergen was "[m]aybe [] right."[9] (*See* PX0271; PX0216; Jan. 15 Tr. (Ketchum) 91:20-92:3.)

IV. SPSO is Solely a Front for Mr. Ergen

71. Further evidencing that Sound Point viewed SPSO as being identical to Mr. Ergen, Sound Point entered into a Trading Management Agreement with SPSO on April 15, 2012 – a month before SPSO and SO Holdings were even formed.[10] (PX0055 at LSQ-SPCD-

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[9] Carlos Slim is the principal of the Mexican telecommunications companies Telmex Internacional and America Movil (PX0895 (Cellular News, *America Movil, Telmex to Invest $880 Mn in Peru Through 2012*, (Apr. 18, 2010), available at *http://www.cellular-news.com/story/42891.php* (last visited Feb. 24, 2014)).)

[10] On April 5, 2012, Bal Harbour Capital entered into a trading management agreement with Sound Point, granting Sound Point non-discretionary authority to execute trades on its behalf. (PX0131 at LSQ-SPCD-000011949; Jan. 15 Tr. (Ketchum) 15:5-14.) Bal Harbour Capital was initially capitalized with one dollar ($1.00) and itself had no right to secure additional funding. (Jan. 15 Tr. (Ketchum) 19:18-25; PX0058 at LSQ-SPCD-000012134; PX0147 at SPSO-00001602; Ergen Dep. 120:2-10.) Under Bal Harbour Capital's Limited Liability Company Agreement, Mr. Ergen had no obligation to make further capital contributions beyond the initial one (continued...)

00000750; Jan. 15 Tr. (Ketchum) 18:22-25, 99:9-19; PX0221.) Mr. Ketchum could not recall another instance where he entered into a Trading Management Agreement with an entity that had not yet been formed. (Jan. 15 Tr. (Ketchum) 19:5-10; PX0049; PX0083; PX0084; PX0087; PX0088; PX0224.) Mr. Ketchum knew he was dealing with Mr. Ergen and had no doubt that Mr. Ergen had the financial wherewithal to fund the trades.

A. SPSO was Undercapitalized and Funded Solely at Mr. Ergen's Discretion

72. SPSO is wholly owned by its one Managing Member, SO Holdings, and Mr. Ergen wholly owns and is the sole Managing Member of SO Holdings.[11] (PX0221 at LSQ-SPCD-000005552, 5557, 5560, 5565; Jan. 10 Tr. (Kiser) 31:15-19.)

73. SPSO – the vehicle on behalf of which most of the LP Debt trades were initiated and all of the trades closed – was formed with a *de minimis* amount of funding. (Jan. 10 Tr. (Kiser) 56:22-57:6; Jan. 13 Tr. (Ergen) 127:20-25; PX0529; PX0530; PX0560; PX0859.) The operating agreements for both SPSO and SO Holdings require that the Managing Member – Mr. Ergen – make an initial capital contribution of ten dollars ($10.00) for each entity. (PX0221 at LSQ-SPCD-000005553, 5558, 5561, 5566; Jan. 15 Tr. (Ketchum) 18:5-21.) Mr. Ergen testified that this initial contribution to SPSO "wasn't very much," (Jan. 10 Tr. (Ergen) 127:18-25), and Mr. Kiser ignored Mr. Ketchum's recommendation, based on advice from Sound Point's CFO, that Mr. Ergen's other SPV, Bal Harbour Capital, be capitalized initially with $500,000. (Jan. 10 Tr. (Kiser) 87:24-88:3.)

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dollar capital contribution (PX0058 at LSQ-SPCD-000012127 ("[T]he Managing Member shall have no right or obligation to make any further capital contributions in the Company.").)

[11] The Bal Harbour Entities also were solely owned by Mr. Ergen. (PX0058 at LSQ-SPCD-000012124; PX0059 at SPSO-00000396.)

74. Neither the SPSO operating agreement nor SO Holdings operating agreement requires additional capital contributions from Mr. Ergen as Managing Member. (PX0221 at LSQ-SPCD-000005553, 5561 ("[t]he Managing Member is entitled, but not required, to make additional contributions to the capital of the Company").)

75. Bear Creek Asset Management LLC ("Bear Creek") is a registered investment advisor that manages fixed-income instruments for high-net-worth individuals and corporations. (Roddy Dep. 17:8-11.) Bear Creek manages DISH's and EchoStar's corporate cash in short-term investment accounts. (Jan. 10 Tr. (Kiser) 22:1-9; Jan. 13 Tr. (Ergen) 24:14-15; Roddy Dep. 43:3-14.) Bear Creek also manages a substantial amount of Mr. Ergen's personal assets. (Jan. 10 Tr. (Kiser) 22:9-13; Jan. 13 Tr. (Ergen) 24:11-13.)

76. Mr. Ergen was the only person who could make the decision to transfer funds from his account at Bear Creek to Bal Harbour Capital or SPSO for settlement of the LightSquared trades. (Jan. 10 Tr. (Kiser) 57:7-58:12, 87:13-19; Jan. 15 Tr. (Ketchum) 99:9-19; PX0046; PX0055; PX0116 at LSQ-SPCD-000000905 (Mr. Ergen had "full discretion over the investment decisions" in his accounts at Sound Point); Jan. 10 Tr. (Kiser) 24:6-9 (Mr. Ergen "makes his own decision" with respect to his investments).)

77. The initial capital contribution amounts for SPSO and SO Holdings were insufficient to buy a significant amount of LP Debt. (Jan. 15 Tr. (Ketchum) 18:8-21, 20:4-13.)

78. Although Mr. Ketchum knew that the Bal Harbour Entities and SPSO did not have sufficient funds in their accounts to cover the purchases of LP Debt prior to the closing of the trades, Mr. Ketchum did not perform a credit check with respect to SPSO and did not have an understanding of SPSO's financial resources or wherewithal. (Jan. 15 Tr. (Ketchum) 20:18-25; PX0062; PX0066; PX0070.)

79. Sound Point nevertheless traded on behalf of Mr. Ergen's minimally-funded entities because Mr. Ketchum understood that the entities were backstopped by Mr. Ergen. (PX0052; PX0056; PX0058; PX0059; PX0074.) For instance, on April 13, 2012, Sound Point initiated a $5 million LP Debt trade for Bal Harbour Capital, even though at that time the Bal Harbour account had not yet been funded. (PX0859; PX0066; PX0049; PX0050; PX0062; PX0070.) On April 17, 2012, Mr. Ketchum wrote to Kiser that, "[w]e need to get the Citi account open for BH Holdings and get $500,000 in the account before we do any more LightSquared trades." (PX0066.)

80. Mr. Ketchum testified that Sound Point was "comfortable" that Mr. Ergen would pay for SPSO's LightSquared debt purchases because "[i]t was implicit that if we executed a trade, SPSO would pay to settle the trade." Sound Point understood that this money would come from Mr. Ergen, and Mr. Ketchum stated that Sound Point was satisfied that the trades would be settled based on Mr. Ergen's credit rather than SPSO's credit. (Jan. 15 Tr. (Ketchum) 21:1-22:8, 120:13-16; Jan. 10 Tr. (Kiser) 57:7-59:5, 61:5-9, 74:11-19; DX229; PX0041; PX0052 at LSQ-SPCD-000005238 (documentation for Bal Harbour BNP Paribas account stated that Mr. Ergen had "$100 million +" of liquid net worth); PX0091; PX0116 at LSQ-SPCD-00000904.)

B. SPSO Votes Against Extension of LightSquared's Negotiations with Lenders

81. In early 2012, both Messrs. Ergen and Kiser knew that there was a strong possibility that LightSquared would file for bankruptcy. (*See, e.g.*, PX0033 (February 20, 2012 email from Mr. Cullen to Messrs. Ergen and Kiser enclosing article on LightSquared's default on $56 million payment to Inmarsat); PX0075 (April 27, 2012 email from Mr. Cullen to Mr. Kiser enclosing *Wall Street Journal* article discussing bankruptcy as an imminent possibility); PX0078 (April 30, 2012 email from Mr. Kiser to Mr. Ergen enclosing *Wall Street Journal* article discussing Mr. Falcone's attempt to get a one week "extension on default"); PX0121 (May 7,

2012 email from Mr. Cullen to Messrs. Ergen and Kiser enclosing *Reuters* story noting LightSquared's "uncertain future" and the possibility of a default); PX0163 (May 11, 2012 email from Mr. Kiser to Mr. Ergen enclosing *Debtwire* article suggesting LightSquared could file for bankruptcy).)

82. Throughout early 2012, Mr. Ketchum kept Mr. Kiser apprised as he monitored LightSquared's situation. (PX0031; PX0039; PX0044; PX0064; PX0074.) On May 4, 2012 – prior to LightSquared's bankruptcy filing – SPSO was notified that, in connection with the $247 million in LP Debt that SPSO had agreed to purchase but had not yet closed on, it had the right to vote on a proposed amendment to the Credit Agreement that would give LightSquared more time to attempt to reach an agreement with the LP Lenders and avoid bankruptcy. In an email on Friday, May 4, 2012, Mr. Kiser wrote to Mr. Ergen, in part, that "[t]he seller is inclined to vote to approve this one week extension of time to continue negotiations, and so if the buyer does not direct the seller to the contrary, that is how the seller will vote." (Jan. 10 Tr. (Kiser) 111:13-112:5; PX0111.) The amendment was due several days later, on Monday, but responses were sought before the weekend if possible. (PX0097.) Mr. Ergen replied to Mr. Kiser's email, "I would have them vote no." (Jan. 10 Tr. (Kiser) 113:13-15, 113:23-25; Jan. 13 Tr. (Ergen) 166:1-167:16; PX0111.) Following Mr. Ergen's direction, Mr. Kiser directed Sound Point to vote "no" on the amendment. (Jan. 10 Tr. (Kiser) 116:18-117:21; PX0097; PX0109.) A Sound Point employee relayed these instructions to Mr. Ketchum, commenting "[n]o extension, so they want it to file bankruptcy." Mr. Ketchum replied, "[n]o surprise there." (PX0096.)

83. While Mr. Ergen testified that he determined to vote "no" because he did not have the documents necessary to decide how to vote (Jan. 13 Tr. (Ergen) 166:1-167:16, 261:13-263:8), the record reflects that the amendment documents likely could have been obtained by

Sound Point, had Messrs. Ergen and/or Kiser indicated an interest in reviewing them over the weekend. When a Sound Point employee told Mr. Kiser that "I might have figured out a way to get the docs . . . please stand by," Mr. Kiser simply responded "[w]e'll vote no." (PX0097; PX0096.) Mr. Kiser also conceded that, before voting no, he made no effort to discuss with any of the LP Lenders why they wanted to extend the default deadline. (Jan. 10 Tr. (Kiser) 118:10-13; PX0097.) After seeing the email exchanges between Messrs. Kiser and Ketchum concerning the availability of the amendment documents, Mr. Ergen testified, "I'm disappointed that [Kiser] answered no. . . . That's not the way I would have done it. . . ." (Jan. 13 Tr. (Ergen) 262:13-263:8.)

C. SPSO's LP Debt Purchases

84. Mr. Ergen funded SPSO's debt purchases from his personal account at Bear Creek. None of the money used to fund SPSO's purchases of LightSquared debt came from DISH or EchoStar. (Jan. 13 Tr. (Ergen) 59:11-12; Jan. 10 Tr. (Kiser) 57:18-23; Rayner Dep. 23:14-24:2, 24:13-23; Olson Dep. 14:6-15:14.)

85. Mr. Robert Olson, DISH's Chief Financial Officer ("Olson"), testified that if DISH money had been used to fund the trades, he would have known because DISH's controller, Paul Orban, would need to approve the transactions. (Olson Dep. 14:10-15:14.)

86. Mr. Ergen's Bear Creek account that was used to fund SPSO's trades in LightSquared debt is titled the "Lindsey Revocable Trust" account (Jan. 10 Tr. (Kiser) 58:13-17; Roddy Dep. 17:24-18:8; DX326), and was set up in 2000 for estate planning purposes. (Jan. 13 Tr. (Ergen) 61:17-23, 62:7-8.) Mr. Ergen is its sole beneficiary and is authorized to make investments for the trust, and his wife, Cantey Ergen, is a co-trustee. (Jan. 13 Tr. (Ergen) 61:17-23, 62:7-8, 252:18-20.) Bear Creek understood that the Lindsey Revocable Trust was a personal trust account for Mr. Ergen. (Roddy Dep. 17:24-18:8.)

87. Mr. Ergen does not have an agreement or understanding with DISH regarding SPSO's investment in LightSquared debt, and he understands that the money he personally invested in LightSquared debt is at risk. (Jan. 13 Tr. (Ergen) 233:6-16.) Thus, if SPSO's claim in LightSquared receives an impaired recovery, Mr. Ergen bears the sole risk. (Jan. 13 Tr. (Ergen) 233:6-16.) In addition, there is no agreement pursuant to which DISH or EchoStar will share in any gains from SPSO's investments. Mr. Olson confirmed that there are no agreements between Mr. Ergen and DISH related to Mr. Ergen's purchases of LightSquared debt. (Olson Dep. 26:7-27:11.)

88. Between April 13, 2012 and April 26, 2013, SPSO contracted to purchase over $1 billion in face amount of LP Debt, of which it actually closed trades for $844,323,097.83 in face amount. When a trade was scheduled to close, Mr. Kiser would contact Bear Creek and tell it how much money was needed to close the trade. (Jan. 10 Tr. (Kiser) 21:23-22:13; 57:7-17.) Mr. Ergen would then authorize the wire transfer and Bear Creek would liquidate investments to fund the transfer. (Jan. 10 Tr. (Kiser) 21:23-22:13, 57:7-17.)

89. The following chart sets forth SPSO's trades in LP Debt, including the trade and closing dates, par amount, purchase price, cost, broker, and settlement status:

Trade Date	Closing Date	Par	Price	Cost	Counterparty	Status
04/13/12	09/06/12	5,000,000.00	48.750	2,437,500	UBS	Settled
05/03/12	07/23/12	4,545,500.00	59.00	2,681,845	Jefferies	Settled
05/03/12	07/26/12	20,000,000.00	59.250	11,850,000	Seaport	Settled
05/03/12	09/06/12	3,000,000.00	58.750	1,762,500	UBS	Settled
05/03/12	09/06/12	2,000,000.00	58.500	1,170,000	UBS	Settled
05/03/12	07/23/12	5,000,000.00	59.000	2,950,000	Jefferies	Settled
05/04/12	05/31/12	247,259,046.62	60.250	148,973,576	Jefferies	Settled
10/04/12	11/30/12	19,417,287.99	78.500	15,242,571	Jefferies	Settled
10/23/12	02/06/13	3,000,000.00	83.750	2,512,500	UBS	Settled
11/15/12	01/08/13	7,997,057.00	81.750	6,537,594	Jefferies	Settled
12/12/12	6/11/13	2,000,000.00	84.000	1,680,000	Goldman Sachs	Settled

Trade Date	Closing Date	Par	Price	Cost	Counterparty	Status
12/13/12	03/12/13	7,000,000.00	86.000	6,020,000	Jefferies	Settled
12/20/12	04/09/13	14,782,302.32	85.500	12,934,515	UBS	Settled
12/28/12	03/13/13	15,000,000.00	88,500	13,275,000	Jefferies	Settled
01/02/13	03/07/13	20,000,000.00	89.125	17,825,000	Jefferies	Settled
01/02/13	04/05/13	6,000,000.00	89.125	5,347,500	Jefferies	Settled
01/03/13	03/07/13	17,999,999.97	89.250	16,065,000	Jefferies	Settled
01/07/13	05/24/13	7,000,000.00	89.500	6,265,000	Jefferies	Settled
01/14/13	05/24/13	9,410,420.00	91.500	8,610,534	Jefferies	Settled
02/01/13	07/23/13	20,000,000.00	91.875	18,375,000	JPM	Settled
03/25/13	05/24/13	88,262,536.00	93.375	84,180,394	Jefferies	Settled
03/28/13	-	168,759,227.85	96.000	162,008,859	Jefferies	Unsettled
04/01/13	6/25/13	5,500,000.00	96.000	5,280,000	Seaport	Settled
04/19/13	6/14/13	122,250,172.79	96.000	117,360,166	Jefferies	Settled
04/26/13	6/18/13	145,712,408.57	96.000	139,883,912	Jefferies	Settled
04/26/13	6/18/13	46,186,366.57	96.00	44,338,912	Jefferies	Settled
Total Purchased		1,013,082,326.30	84.45	855,567,877		
Total Settled		844,323,097.83		693,559,018		Settled
Total Unsettled		168,759,227.85				Unsettled

(*See* PX0859 at 4.)

D. Mr. Ergen's Desire to Obtain a Blocking Position in LP Debt

90. Mr. Ergen's strategy in acquiring LP Debt included the acquisition of a blocking position that would enable SPSO to enforce "certain rights" during the bankruptcy proceeding. (Jan. 10 Tr. (Kiser) 47:22-48:10, 56:11-14; Jan. 13 Tr. (Ergen) 172:10-174:2; DX047.)

91. Mr. Ergen understood that creditors could be treated differently as a result of his investments in Loral, which went through a bankruptcy process. Mr. Ergen ended up with equity while other investors ended up with cash. (Jan. 13 Tr. (Ergen) 52:6-11.) Based on that experience, Mr. Ergen believed that 33 percent was a "meaningful percentage in bankruptcy," and that with that percentage, he "couldn't get jammed with a different kind of currency than

somebody else in that class might get."[12] (Jan. 13 Tr. (Ergen) 51:12-18, 172:25-173:3.) Mr. Ergen had a sizeable enough position in LightSquared to protect that he decided to acquire a blocking position; he stated that he "knew there were ways that [he] might be able to protect [his] investment if [he] got a third that [he] wouldn't have if [he had] half of that." (Jan. 13 Tr. (Ergen) 51:12-24.)

92. At Mr. Ergen's direction, Mr. Kiser (through Sound Point) regularly monitored how close SPSO was to reaching a blocking position and kept a close eye on developments in the bankruptcy itself. (*See* PX0244; PX0264; PX0276; PX0288; PX0289; PX0375; PX0379; PX0306; Jan. 15 Tr. (Ketchum) 102:7-12; *see also* PX0064; PX0096; PX0413; PX0239; PX0344; PX0262.)[13]

93. After Mr. Ergen decided to acquire a 33 percent stake in the LP Debt, Mr. Kiser asked Mr. Ketchum to track whether SPSO had a blocking position and to supply Mr. Kiser with the information about the calculation of a blocking position. (Jan. 15 Tr. (Ketchum) 102:7-16; 25:11-26:18, 48:19-25, 102:7-12, 104:16-21; PX0244; PX0144.) Notwithstanding such request, Mr. Kiser did not share SPSO's investment strategy with Mr. Ketchum. (Jan. 15 Tr. (Ketchum) 102:7-16.)

94. On March 28, 2013 – the date on which Messrs. Ergen and Kiser believed they had achieved their goal of obtaining a blocking position – Mr. Ketchum sent an email to Mr. Kiser, stating "You just bought a spectrum company." Later in that same email chain, Mr. Ketchum observed to one of his colleagues that "we now control the company." (PX0385.)

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[12] Mr. Kiser understood that a blocking position is desirable and protects one's investment by preventing others from unilaterally changing one's rights. (Jan. 10 Tr. (Kiser) 54:11-17.)

[13] Although Mr. Ketchum initially testified that he did not recall discussing acquiring a blocking position with Mr. Kiser, he later admitted that Mr. Kiser told him that "he was very interested in tracking whether or not SPSO had a blocking position with respect to LightSquared." (Jan. 15 Tr. (Ketchum) 102:7-12.)

V. Mr. Ergen Acted, at Least in Part, for the Benefit of DISH in Acquiring LP Debt Through SPSO

95. In the course of amassing a substantial position in LP Debt, Mr. Ergen used DISH's employees, resources, facilities, and counsel. Members of the DISH and EchoStar boards and DISH's management also were made aware of Mr. Ergen's purchases; there was no evidence presented reflecting any action or investigation by the DISH Board with respect to SPSO's LP Debt trades.

96. It is within the scope of Mr. Ergen's broad authority to lead strategic acquisitions of spectrum assets for DISH and EchoStar. (Jan. 10 Tr. (Kiser) 69:3-6, 69:23-70:9; Jan. 13 Tr. (Ergen) 95:6-16, 96:15-24; Howard Dep. 33:25-34:12; *see also* PX0010.) Mr. Ergen, as the Chairman of the Boards of DISH and EchoStar, is an officer and a full-time, salaried employee of DISH and EchoStar. (Jan. 13 Tr. (Ergen) 11:13-14, 94:4-18, 94:8-18; PX0349 at 20, 31; PX0350 at 17, 34.) In that capacity, Mr. Ergen "focus[es] on [the] strategic direction of the company" which includes acquisitions and strategic investments. (Jan. 13 Tr. (Ergen) 95:6-16; Jan. 10 Tr. (Kiser) 69:3-9; Howard Dep. 33:25-34:11; *see also* PX0010.) His responsibilities include the strategic pursuit of spectrum assets, which Mr. Ergen sees as necessary to compete with the large wireless carriers, to further DISH's strategic goal of diversifying away from its core Pay-TV business. (Jan. 10 Tr. (Kiser) 70:10-19; Jan. 13 Tr. (Ergen) 96:15-24, 100:25-101:4; Howard Dep. 30:15-31:13, 33:10-35:13; PX349 at ii.)

97. Mr. Ergen's role in managing the strategic direction of DISH and EchoStar includes the companies' attempts to acquire, or merge with, numerous spectrum-owning companies. (Jan. 13 Tr. (Ergen) 101:5-103:5.) Mr. Ergen is "responsible for what DISH does in connection with the LightSquared bankruptcy" and he "leads bids of this nature" as part of his responsibilities for DISH. (PX0767 (Goodbarn Nevada Dep.) at 186:25-96, 232:12-17.)

98. Mr. Kiser testified that Mr. Ergen "typically" is involved in strategic investments, and Mr. Kiser could not point to a single strategic investment made by DISH and EchoStar that Mr. Ergen had opposed. (Jan. 10 Tr. (Kiser) 69:23-70:9.) Further, Mr. Ergen, who achieves board consensus before bringing issues to vote, has not voted against a single board resolution in the past five years. (Jan. 13 Tr. (Ergen) 236:3-8.)

99. DISH has two policies governing investments made on behalf of the company. (Jan. 10 Tr. (Kiser) 23:10-11.) One policy governs the company's cash management projects and outlines how Bear Creek may invest the company's money. (Jan. 10 Tr. (Kiser) 23:11-21.) The second policy governs the company's strategic investments and states that "[a]ny investment not otherwise permitted by the Corporation's cash management policy shall not exceed $125 million in any single transaction or series of related transactions without approval of the Board of Directors; and investments not otherwise permitted by the Corporation's cash management policy shall not exceed $200 million in aggregate in any calendar quarter without approval of the Board of Directors." (DX331; Jan. 10 Tr. (Kiser) 23:10-24:5; Olson Dep. 12:15-23, 20:7-23.)

A. Mr. Kiser's Role in SPSO's LP Debt Purchases

100. Mr. Kiser has been employed by DISH and its predecessor companies for 27 years. (Jan. 10 Tr. (Kiser) 14:4-9, 15:25-16:1, 69:10-22; Jan. 13 Tr. (Ergen) 21:12-14.) As DISH's Treasurer, he focuses on corporate development, including capital-raising, investor relations, strategic acquisitions and investments, and the purchase of marketable securities. (Jan. 10 Tr. (Kiser) 16:2-6, 108:16-20, 140:6-18; Jan. 17 Tr. (Cullen) 139:18-140:5.) Mr. Kiser also performs corporate development services for EchoStar pursuant to a management services agreement between DISH and EchoStar. (Jan. 10 Tr. (Kiser) 69:10-22.)

101. As Treasurer of DISH, Mr. Kiser reports directly to Mr. Ergen. Under DISH's bylaws, Mr. Kiser must "perform all duties commonly incident to his office and such other duties

as may, from time to time, be assigned to him by . . . the Chairman of the Board of Directors." (PX0821 at § 5.2(f).) Accordingly, Mr. Kiser receives authorization from Mr. Ergen in making strategic investments for DISH's portfolio. (Jan. 10 Tr. (Kiser) 69:3-9.)

102. In the course of his duties, Mr. Kiser likewise has been involved in numerous proposed or actual transactions on behalf of DISH or EchoStar, including transactions involving Clearwire, Sprint, Blockbuster Inc., DBSD, and TerreStar. (Jan. 17 Tr. (Cullen) 139:16-140:9; Kiser Dep. 117:23-118:6, 173:18-21.) Mr. Ergen testified that "Kiser, in his role at DISH over the years, had been involved in a number of transactions and was familiar with looking at capital structures and interpreting those capital structures and determining things such as who could buy debt or if—and if there were any restrictions." (Jan. 13 Tr. (Ergen) 162:9-16.)

103. The scope of Mr. Kiser's employment and authority extends to transacting and monitoring trades on behalf of DISH, including purchases of other companies' debt and interacting with Bear Creek. (Jan. 10 Tr. (Kiser) 21:23-22:18.)

104. For example, when DISH made a decision sometime in early 2012 to make a strategic investment in LodgeNet, a company that provides pay-per-view movie services to hotel rooms, Mr. Ergen authorized Mr. Kiser to acquire LodgeNet debt on behalf of DISH, and Mr. Kiser – without authorization from the DISH Board – worked with Sound Point to execute the trades. (Jan. 13 Tr. (Ergen) 128:12-129:20; Jan. 15 Tr. (Ketchum) 14:11-18.) Similarly, when DISH acquired DBSD, Mr. Kiser checked for restrictions on competitors purchasing debt and then executed the trades of distressed debt. (Jan. 10 Tr. (Kiser) 106:21-107:16, 108:8-15.)

105. Mr. Kiser acted on direction from Mr. Ergen when he purchased the LP Debt, interacted with Bear Creek, and oversaw and monitored the LP Debt trades – precisely the same functions Mr. Kiser performs for DISH and EchoStar. (*See*, *e.g.*, Jan. 10. Tr. (Kiser) 84:13-22,

86:18-87:23; PX0031; PX0037; PX0064; PX0068; PX0078; PX0096; PX0136; PX0239; PX0344; PX0422; PX0295; PX0331; PX0390.)

106. Even after Mr. Ergen began purchasing the LP Debt, there were times when it was unclear to Mr. Kiser whether he was working for Mr. Ergen personally or for DISH. When he investigated whether the restrictions on DISH purchases had fallen away in the bankruptcy, he "asked a question for the company . . . I think I've also got an obligation to the company just as he does. I'm a fiduciary for the company." (Jan. 10 Tr. (Kiser) 83:19-84:24.) Further illustrating these overlapping and conflicting roles, Mr. Kiser testified that "I think I took one hat off and put the other hat on." (Jan. 10 Tr. (Kiser) 84:23-24.)

B. Mr. Ergen Uses DISH Employees, Resources, and Legal Counsel to Facilitate the LP Debt Purchases

107. Prior to and throughout the period in which Messrs. Ergen and Kiser were amassing LP Debt, other DISH employees, including Mr. Cullen – another member of DISH's corporate development group – closely monitored news relating to LightSquared and reported on those events to Messrs. Ergen and Kiser. (PX0018; PX0033; PX0075; PX0187; PX0223; PX0195; PX0393; PX0407; PX0408; PX0438.)

108. Mr. Kiser transacted business on behalf of SPSO from his DISH office,[14] using DISH's computers, phone lines, and email and outside investment bankers during general business hours.[15] (Jan. 10 Tr. (Kiser) 42:4-8; PX0042.) Although the purchases were purportedly done on Mr. Ergen's behalf, Kiser received no compensation apart from his salary at DISH for directing nearly $1 billion in LP Debt trades. Compensation was allegedly

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[14] Mr. Ergen also used his assistant at DISH to assist with SPSO matters. (PX0560; PX0059.)

[15] Mr. Kiser kept no log of the amount of time he spent working for Mr. Ergen personally compared to how much time he was working for DISH. (Jan. 10 Tr. (Kiser) 103:9-17.)

unnecessary because Kiser (a 27-year veteran of DISH/EchoStar) performed the trades "for the experience" and because, as Mr. Ergen testified, "he gets to spend time with me and I think he likes that." (Jan. 10 Tr. (Kiser) 26:13-19, 74:25-75:7; Jan. 13 Tr. (Ergen) 23:15-24:1, 133:7-10.)

109. Mr. Ergen has a family office, a personal asset manager (Bear Creek), and stock brokers that he uses regularly. (Jan. 13 Tr. (Ergen) 23:3-4, 26:15-17, 126:15-21, 127:2-3; Jan. 10 Tr. (Kiser) 21:6-12.) He has also made personal investments through a hedge fund, GSO. (Jan. 13 Tr. (Ergen) 126:22-127:3.) Yet, Mr. Ergen used DISH employees and facilities to acquire the LP Debt. (Jan. 13 Tr. (Ergen) 127:4-13.)

110. Mr. Kiser consulted DISH's outside counsel at Sullivan & Cromwell (whom Mr. Ergen never retained as personal counsel) to determine initially whether DISH and, later, Mr. Ergen, was prohibited from purchasing the LP Debt. (Jan. 10 Tr. (Kiser) 29:10-30:9, 33:9-34:7, 77:11-18, 80:4-6, 119:16-120:4, 120:11-24; PX0144.) Mr. Ergen relied on this advice for months, and did not retain personal counsel until the spring of 2013, after SPSO gained its blocking position. (Jan. 13 Tr. (Ergen) 67:1-11.)

C. DISH Board Members and Management Take No Action Upon Learning of Mr. Ergen's LP Debt Acquisition

111. In May 2012, news reports began speculating that Mr. Ergen was behind Sound Point's purchases of LP Debt. (PX0121; PX0898.) Mr. Ergen testified that no DISH or EchoStar Board member asked him about his purchases prior to his May 2, 2013 presentation to the DISH Board. (Jan. 13 Tr. (Ergen) 119:20-120:3; Jan. 10 Tr. (Kiser) 37:10-24.) In response to questioning from the Court, Mr. Ergen testified that once he learned that he could purchase the LP Debt personally, he did not apprise the DISH Board, its general counsel, or Mr. Cullen that he was acquiring the LP Debt because he did not believe that he had a fiduciary obligation to do