Throughout the ensuing week, the Merrill Entities' and the Citigroup Entities' personnel worked in conjunction with Tribune management to negotiate an improved deal with EGI that Merrill and Citigroup would in turn be able to sell and finance.[1164] At the same time, the Merrill Entities and the Citigroup Entities worked to garner the Chandler Trusts' and the McCormick Foundation's support for the EGI proposal by providing them financial and other information related to the EGI proposal.[1165] Although Citigroup remained skeptical about the likelihood of success of the deal, the Merrill Entities continued to press forward and promote the EGI proposal. On March 23, 2007, Mr. Costa wrote to Mr. Whayne concerning "Zell Financing and Impact on Spin:"[1166]

> You asked yesterday whether the financing of the Zell transaction would have any incremental cost compared to stand alone recap if second step of Zell did not close and we sought to pursue spin. . . . Zell Financing could permit the spin but the spin is not specifically architected into it as it is in the recap. . . . [G]iven some of the recent IRS developments in the debt for debt area, we would have a high degree of confidence in putting the following steps together if 2nd step of Zell deal doesn't come together
>
> - create a new loan that ML/Citi/JPM own
>
> - use proceeds of that loan to pay off existing debt
>
> - put spin-off together, and execute debt/debt exchange against this new loan.

Efforts to structure the transaction both from the buy and the sell sides of the equation continued to be discussed in the days immediately preceding the March 30, 2007 Special

[1164] Ex. 342 at TRB0077179 (Bigelow E-Mail, dated March 21, 2007).

[1165] Ex. 343 at FOUN0004711-FOUN0004715 (Greenthal E-Mail, dated March 23, 2007).

[1166] Ex. 344 at MS_273560-61 (Whayne E-Mail, dated March 23, 2007).

Committee meeting. On March 28, 2007, JPMorgan's Jeffrey Sell wrote an internal e-mail to Brian Sankey:[1167]

> [D]eal team informed me that over the weekend, the company, Merrill and Citi discovered that the exiting [sic] debt indentures . . . require that separate financial statements are required for each legal entity. . . . The Company . . . can't produce legal entity statements. . . . Merrill and Citi served up a structure which they have already approved which would give up the pledge of the stock of the operating subsidiaries and replace that security with a pledge of the stock of a new intermediate holding company for the publishing assets which would hold a single asset, an inter-company note in the amount . . . of $4.2B. We would continue to have guarantees of the operating subsidiaries which will provide us with a superior claim vis a vis the existing debt. The rub of the new structure is that the value of the collateral offered is less than the face value of the secured debt.

In an e-mail to other Merrill personnel working on the Tribune matter, David Tuvlin reported:[1168]

> Latest developments post ratings news from a call just concluded among the banks: . . . JPM uncomfy with collateral and wants to explore flex to a more standard stock of sub package (I explained the issues several times in detail but they are pretty adamant) . . . Citi said they need a condition in order to fund step 2 that ratings are no less than they are today!!!

On March 30, 2007, the Financial Advisors met with the Special Committee.[1169] Immediately before the meeting, EGI increased the price per share set forth in its prior offer, and Broad/Yucaipa informed the Tribune Board that its "$34 per share, $500 million investment and 40% warrant offer will work within the Company's ESOP recapitalization plan."[1170] Mr. Costa, Mr. Kaplan, and Ms. Mohr, reported these developments to the Special Committee and provided a comprehensive evaluation of the EGI proposal, including their evaluation of the transaction

[1167] Ex. 197 at JPM_00353676 (Sell E-Mail, dated March 28, 2007).

[1168] Ex. 345 (Tuvlin E-Mail, dated March 28, 2007).

[1169] Ex. 140 (Special Committee Meeting Minutes, dated March 30, 2007).

[1170] Ex. 346 at TRB0100566 (Broad/Yucaipa Letter, dated March 29, 2007).

financing, conditions to closing under the Step One Transactions and the Step Two Transactions, industry comparables, and precedent industry transactions.[1171] Mr. Kaplan advised the Special Committee that:[1172]

> There would have to be very substantial, and at this point highly unlikely, deterioration in the Company's operating results before the lenders would have grounds not to fund the closing.

In his interview during the Investigation, Mr. Kaplan testified regarding his statements at the Special Committee meeting:[1173]

> [I]n discussing the conditions, one principal condition that we did focus on was material adverse effect. And that I was clear that the measurement of performance was performance – if I'm recalling the condition correctly – relative to a peer group as opposed to an absolute measure of performance of the company between signing and closing.

Mr. Costa stated to the Examiner that from Tribune's perspective, and from his perspective as an advisor to Tribune, it was better to have minimal "conditionality" or "optionality" so that lenders could not back out of a deal.[1174]

On March 31, 2007, Mr. Costa and other members of the Merrill team sent a memorandum to their internal Fairness Opinion Committee recommending that the Committee find the EGI proposal fair to Tribune's stockholders. The memorandum outlined the proposed transaction and noted that it has an "offer value of $8.3 billion and implies an adjusted enterprise value of $11.9 billion."[1175] The memorandum further disclosed that the advisory fees payable to the Merrill Entities were expected to be approximately $15 million, in addition to which they

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[1171] Ex. 347 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated March 30, 2007).

[1172] Ex. 140 at TRIB-G0008792 (Special Committee Meeting Minutes, dated March 30, 2007).

[1173] Examiner's Sworn Interview of Todd Kaplan, July 8, 2010, at 179:17-180:2.

[1174] Examiner's Interview of Michael Costa, June 4, 2010.

[1175] Ex. 348 at ML-TRIB-0034924 (Merrill Interoffice Memorandum, dated March 31, 2007).

anticipated earning another $50 million related to its debt financing commitment of $4.1 billion.[1176] Tribune later filed its Form SC TO-I, Tender Offer Schedule and Amendment, attaching MLPFS' fairness opinion.[1177]

Leading up to the approval of the EGI proposal, the Merrill personnel internally discussed the topic of fees. In a March 11, 2007 e-mail exchange, Mr. Kaplan wrote that Merrill could expect $33-35 million in financing fees related to the Leveraged ESOP Transactions.[1178] Mr. Costa pushed back and said that Merrill should be "more aggressive."[1179] Mr. Kaplan questioned what Mr. Costa expected, and Mr. Costa replied, "More money."[1180]

In his interview, Mr. Costa told the Examiner that his comment in the e-mail reflected his disappointment at the significant difference between the expected and actual total fees that the Merrill entities would earn in connection with a Tribune transaction.[1181] Mr. Costa further stated that Merrill had advised Tribune that it had certain expectations of what it would earn on a combined basis from both the advisory services and lending fees.[1182] Under their agreement with Tribune, however, fees for the Leveraged ESOP Transactions would not be due unless and until the Step Two Transactions closed.[1183] Accordingly, with the exception of the $2 million advisory fee payment in 2006, MLFPS would not have received any advisory fees from Tribune for seven years of advisory work had Step Two not closed.[1184]

[1176] *Id.* at ML-TRIB-0034924-25.

[1177] Ex. 5 (Tender Offer).

[1178] Ex. 349 at ML-TRIB-0385025 (Costa E-Mail, dated March 11, 2007).

[1179] *Id.* at ML-TRIB-0385024.

[1180] *Id.*

[1181] Examiner's Interview of Michael Costa, June 4, 2010.

[1182] *Id.*

[1183] *Id.*

[1184] *Id.*

As noted, although MLPFS was providing investment banking services, MLCC also obtained for itself a role as an initial lender to Tribune and arranger of the debt that would be necessary to fund the Leveraged ESOP Transactions. On April 5, 2007, MLCC executed the Commitment Letters.[1185] At the closing of the Step One Financing, MLCC's lending commitments totaled $129 million or 17.2% of the Revolving Credit Facility, $2.7575 billion or 50% of the Tranche B Facility, and $750 million or 50% of the Tranche X Facility.[1186] At the closing of the Step Two Financing, MLCC's lending commitments totaled $448.8 million or 28% of the Bridge Facility[1187] and $606 million or 28.79% of the Incremental Credit Agreement Facility.[1188]

Although the Merrill Entities continued to explore the possibility of providing financing for alternative bidder Broad/Yucaipa,[1189] Merrill also was looking for ways to market the ESOP structure that it had assisted in creating. On April 2, 2007, Mr. Costa informed Mr. Kaplan that:[1190]

> Tribune will announce in the morning a $13B going private transaction sponsored by a newly created ESOP and Sam Zell. Transaction is largest leveraged ESOP ever, takes full advantage of very robust credit markets and has unique transaction design by Zell and further developed by Company and ML. Structure may have applicability to high net worth individuals as well as some PE firms. Todd an[d] I will work with Jeff Kaplan and Alan Hartman to make sure we are pushing this structure elsewhere.
>
> ML, Citi acting as advisor to TRB along with JPM providing the financing. MS advised special committee.

[1185] Ex. 305 (Amended and Restated Step One Commitment Letter, dated April 5, 2007); Ex. 309 (Amended and Restated Step Two Commitment Letter, dated April 5, 2007).

[1186] *See* Ex. 350 at TRB0445276 (Schedule I to Credit Agreement).

[1187] *See* Ex. 175 at TRB517070 (Schedule I to Bridge Credit Agreement).

[1188] *See* Ex. 351 (Increase Joinders).

[1189] Ex. 352 at ML-TRIB-0388154 (Costa E-Mail, dated April 10, 2007).

[1190] Ex. 353 (Nesi E-Mail, dated April 2, 2007).

> Greg, Bill [Osborn] intensely involved in this, including in negotiations with Zell. . . .

On April 3, 2007, Mr. Costa and Ms. Mohr were congratulated for their success in negotiating the deal involving the Leveraged ESOP Transactions,[1191] and Mr. Costa's colleagues analyzed potential clients for which those transactions might serve as a template.[1192] Discussing the applicability of the transaction template to potential other business opportunities, a fellow investment banker observed:[1193]

> Guys—truly amazing financing engineering. Even more kudos after I'm reading this. . . . In terms of applicability, my biggest question is can you (and would anyone really want to) do this where you don't have the following two Tribune attributes:
>
> A decent amount of investment grade debt that can serve as the "equity" here. Total leverage is 9x, which is effectively the purchase price. . . . Would any management team or Board really want to tighten the screws this much (FCF/Debt ratios are amazingly tight over the entire projection period) if they weren't effectively forced into it and had no other options.

Mr. Kaplan's response was guarded:[1194]

> Might merit discussion live, but I'd say
>
> —existing debt that can be subordinated is helpful, but not required—would suggest that with corp and shareholder tax eliminated, value is north of what Zell/ESOP group paid—Zell/ESOP group just needed to pay enough to beat other options
>
> —while FCF/Debt is tight, not any worse than some other deals we've seen recently . . . given the volume of calls I'm getting, I suspect that others will be interested
>
> As to Lev Fin—gating item was getting to B2/B corp ratings . . .

[1191] Ex. 354 at ML-TRIB-0608439 (Price E-Mail, dated April 3, 2007).

[1192] *See also* Ex. 352 (Costa E-Mail, dated April 9, 2007).

[1193] Ex. 355 at ML-TRIB-0387938 (Kaplan E-Mail, dated April 6, 2007).

[1194] *Id.* at ML-TRIB-0387938.

> [T]his was as challenging and complex a transaction as I've ever worked on.

Despite the sense of accomplishment in early April 2007, by May 2007, the market's lack of interest in the Step One Transactions was evident, and certain Merrill personnel expressed concern that syndication of the debt would be undersubscribed "on an allocable demand basis by a material amount."[1195] Internal communications among Merrill personnel attributed the problem in sales to be a reflection of the market's uneasiness with the deal itself rather than with market conditions generally.[1196]

After the Credit Agreement was signed on May 17, 2007,[1197] Merrill addressed the issue of the hold and sell levels for their portion of the Step One Financing, as well as the debt covenants.[1198] Nancy Meadows, of the Loan Execution & Management division, reported:[1199]

> Ultimately, the overall structure for step one changed slightly. . . . In terms of covenants, financial covenants include max leverage of 6.25X with stepdowns and interest coverage minimum of 1.75x with step-up to 2.0x next year. Also has capex limitation of $210 million. . . .
>
> The nice thing about this company is that the assets are divisible into saleable pieces — very good newspapers in Florida, big papers in LA, NY, and Chicago (not doing very well, it's true). As Don said, it's a melting ice cube but not one that disappears right away. I'm not saying we love the credit, and the leverage is high, but there is some asset value here.

Also in May 2007, Merrill's attention focused on the valuation opinion required as a condition precedent to closing Step One. Chandler Bigelow forwarded VRC's draft preliminary

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[1195] Ex. 356 at ML-TRIB-0390796 (Kaplan E-Mail, dated May 10, 2007).

[1196] *Id.* at ML-TRIB-0390795.

[1197] Ex. 179 (Credit Agreement).

[1198] Ex. 357 (Browning E-Mail, dated May 18, 2007).

[1199] *Id.* at ML-TRIB-0893577.

solvency analysis to Daniel Kazan, who in turn forwarded the document to Michael O'Grady, on behalf of the Merrill Entities, and to Rosanne Kurmaniak, on behalf of the Citigroup Entities.[1200]

> Only real question I would be interested in your view on is that they include a pv of tax savings on phones as a part of the entity value. I can understand the math and the rationale but we've never really included that in our valuation. Doesn't swing the outcome, just curious.

A colleague responded: "We have included in the sense that it is included in the future free cash calculations which would be lower but for the Phones tax shield."[1201] VRC issued its first solvency opinion on May 9, 2007, stating that Tribune was solvent on the completion of Step One.[1202]

(2) Due Diligence and Evaluations Performed.

As described above, the Merrill Entities and the Citigroup Entities had considerable access to the books and records of Tribune during the time leading up to the April 1, 2007 Tribune Board meeting. Additionally, both Merrill and Citigroup personnel met with the Special Committee on a near-weekly basis and the Tribune Board on a monthly basis. During each of these meetings, the parties reviewed Tribune's financials and analyzed the financing, structural, and other issues related to the strategic alternatives being considered by the Tribune Board. In addition, both Merrill and Citigroup participated in direct discussions with parties participating in the auction process. Overall, Merrill had significant access to information that was relevant to their roles.

There is some question, however, whether MLPFS had sufficient time to engage in comprehensive due diligence of each strategic alternative, given the constantly shifting dynamics

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[1200] Ex. 358 at ML-TRIB-1052281 (Marcus E-Mail, dated May 7, 2007).

[1201] *Id.*

[1202] Ex. 268 (VRC Step One Solvency Opinion, dated May 9, 2007). *See also* Report at § III.E.3.

of the various auction proposals, the continuing consideration of the self-help options, the shifting positions of the Large Stockholders, and the relatively late entry of the EGI proposal, among other factors.

As discussed above, MLPFS appeared to support the self-help recapitalization during March 2007, but then appeared to shift quickly to support the EGI proposal.[1203] Mr. Costa stated to the Examiner that the change was attributable to, among other reasons, the higher amount of cash flow or EBITDA under the EGI proposal as a result of synergies and cost cutting measures and a better understanding by MLPFS of how the ESOP tax shield worked.[1204] Mr. Costa viewed the tax shield as an "equity cushion." Mr. Costa stated to the Examiner that the new company would save an additional $60 million a year by matching employee 401(k) contributions with Tribune Common Stock instead of cash, which also increased his comfort with the EGI proposal.[1205]

c. Citigroup Entities.

Because the investment banker-advisors from Citigroup and Merrill worked together for most of the relevant period and performed similar roles, much of the story of Citigroup's involvement in Tribune advisory matters is discussed in the preceding section regarding Merrill. This section provides additional detail regarding Citigroup's involvement.

The Citigroup Entities and their designated roles in the Step One Transactions were as follows: (a) CGMI, as joint lead arranger and joint bookrunner,[1206] and advisor,[1207] and

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[1203] Ex. 338 (Costa E-Mail, dated March 10, 2007).

[1204] Examiner's Interview of Michael Costa, June 4, 2010.

[1205] *Id.*

[1206] Ex. 179 at 1 (Credit Agreement).

[1207] Ex. 360 (Citigroup Engagement Letter, dated October 27, 2006).

(b) Citicorp, as lender[1208] and co-documentation agent.[1209] Additionally, CGMI executed the Commitment Letters on behalf of "Citigroup."[1210] Some of the key personnel working with Tribune on behalf of the Citigroup Entities, and the department or working group with which each was affiliated, included the following:

Leveraged Finance

Julie Persily, Managing Director, Head of North America Leveraged Finance[1211]

Mallika Singh, Associate

Investment Banking

Michael Schell, Vice Chairman, Global Banking[1212]

Mark Simonian, Global Co-Head of TMT[1213]

Michael Canmann, Managing Director, Head of Chicago Investment Banking[1214]

John Apostolides, Associate

Ruoxi Chen, Analyst

Mergers and Acquisitions

Christina Mohr, Managing Director[1215]

[1208] Ex. 179 at 1 (Credit Agreement).

[1209] *Id.*

[1210] CGMI executed and entered into the Step One Commitment Letter and the Step Two Commitment Letter on behalf of "Citigroup," which was defined thereunder to mean: "CGMI, Citibank, N.A., Citicorp USA, lnc., Citicorp North America, Inc. and/or any of their affiliates as may be appropriate to consummate the transactions contemplated herein." *See* Ex. 305 at TRB-162128-29, 40 (Amended and Restated Step One Commitment Letter, dated April 5, 2007); Ex. 309 at (Amended and Restated Step Two Commitment Letter, dated April 5, 2007). Ultimately, Citibank executed the Credit Agreement, the Bridge Credit Agreement, and the applicable Increase Joinder. *See* Ex. 179 at TRB0520885 (Credit Agreement); Ex. 361 at S-1 (Bridge Credit Agreement); Ex. 351 at TRB0520680-86 (Increase Joinder – Citicorp North America, Inc.).

[1211] Ex. 178 at 12 (Step One Confidential Information Memorandum). Notably, Ms. Persily executed the Credit Agreement on behalf of Citicorp, as Vice President and Managing Director. *See* Ex. 179 at TRB 5020898 (Credit Agreement). Ms. Persily is no longer employed by Citigroup. *See* Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 19:20-22.

[1212] Ex. 363 at 9 (Citigroup Project Tower Approval Memorandum, dated October 12, 2006).

[1213] *Id.*

[1214] Ex. 178 at 13 (Step One Confidential Information Memorandum).

[1215] *See* Ex. 364 at CITI-TRIB-CC 00026403 (Leveraged Finance Final Approval Memorandum – Update). Although part of the group called "Mergers and Acquisitions," Ms. Mohr also is referred to as part of the "investment banking team." *See* Ex. 363 at 9 (Citigroup Project Tower Approval Memorandum, dated October 12, 2006). Notably, Ms. Mohr signed the Citigroup engagement letter on behalf of CGMI. Ex. 360 at CITI-TRIB-CC 00010128 (Citigroup Engagement Letter, dated October 27, 2006).

Rosanne Kurmaniak, Vice President[1216]

Tribune engaged CGMI on October 27, 2006 to serve as its financial advisor in connection with "a possible Transaction" involving Tribune.[1217] Pursuant to Tribune's October 27, 2006 engagement letter with CGMI, the parties contemplated that the Citigroup Entities might provide Tribune with more than advisory services:[1218]

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

The engagement letter further stated that the Citigroup Entities would establish a "Financing Team" to conduct due diligence and obtain information from Tribune that it would share with Tribune and potential purchasers, and, possibly, one or more "Purchaser Teams" to obtain information from and represent potential purchasers in the process. The engagement letter precludes the Citigroup advisory team from sharing non-public information with the Financing Team or any Purchaser Team without the consent of Tribune.

In her interview with the Examiner, Christina Mohr elaborated on the manner in which her Citigroup advisory team (including personnel from "Investment Banking" and "Mergers and Acquisitions") worked with the Citigroup lending team—and the distinct roles that each played in connection with Tribune. According to Ms. Mohr, the advisory team worked closely with

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[1216] Examiner's Sworn Interview of Rosanne Kurmaniak, July 7, 2010, at 17:16-19.

[1217] Ex. 360 at 1 (Citigroup Engagement Letter, dated October 27, 2006).

[1218] *Id.* at CITI-TRIB-CC 00010124.

management[1219] and was principally responsible for advising Tribune on strategic alternatives for Tribune, conducting the "hardcore analytics" behind management, board and lender presentations, and gathering and organizing information "to provide a level playing field of information to all prospective Purchasers" and their financing sources.[1220]

Consistent with the documentary evidence,[1221] Ms. Mohr acknowledged that her advisory group communicated with and worked closely with the lending group, headed by Julie Persily.[1222] Ms. Persily confirmed in her interview with the Examiner that she had interaction with Ms. Mohr's team, and explained that beginning in late 2006, Ms. Persily's lending group began developing "staple financing" to offer parties potentially interested in a Tribune transaction.[1223] Because Ms. Persily's group was assessing the amount of debt Tribune could handle on various recapitalization and spinoff scenarios—which Ms. Mohr's advisory group was helping management consider—the advisory group was providing the lending group with its analyses to integrate into its own work.[1224] Ms. Mohr described this as an "active dialogue"

[1219] Examiner's Interview of Christina Mohr, June 29, 2010 ("from early in 2006, the relationship changed and we became more on the inside, an integral part of the thought process, we had better access to the numbers, we were working with management hand in glove").

[1220] *Id.*

[1221] *See, e.g.,* Ex. 365 (Susman E-Mail, dated April 10, 2007) (discussing Mr. Susman's "negotiation with Zell on our financing fee" and "certain requests from Zell that I think will be important to the future coverage of the Tribune and other Zell entities" and planning a group meeting re same); Ex. 366 (Persily E-Mail, dated March 28, 2007) (discussing recent ratings news) ("I'm trying to spin our position . . . we will do it even with a negative outlook. But we cannot risk a further downgrade."); Ex. 384 (Singh E-Mail, dated March 24, 2007) (requesting the running of certain financial models relating to the "Zell deal" and commenting "We are still debating internally if we want to do this deal even with low ratings"); Ex. 885 (Persily E-Mail, dated March 22, 2007) (discussing results of Special Committee meeting attended by Ms. Mohr, and Ms. Persily's views regarding the EGI proposal) ("Having seen the book I am still extremely uncomfortable with Zell. No matter the rating. Deal creep brings debt high than the deal we approved for him which was 9.6bn new raise (7.1x thru the new money). Declining EBITDA is scary."); Ex. 369 (Persily E-Mail, dated March 1, 2007) (invitation to discuss proposed "collapsing" the finance teams, per suggestion of Todd Kaplan, who observes "we are starting to structure the Zell financing for the Zell group"); Ex. 370 (Persily E-Mail, dated February 13, 2007) (discussing potential pricing of Tribune securities assuming 8.5x leverage).

[1222] Examiner's Interview of Christina Mohr, June 29, 2010.

[1223] Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 52:1-17 and 24:4-12.

[1224] Examiner's Interview of Christina Mohr, June 29, 2010.

between the groups, which continued as Ms. Persily's team evolved from the staple finance team to the leveraged buyout team, developing the financing that facilitated the Leverage ESOP Transactions.[1225] As Ms. Mohr put it, "They learn enough from us to provide information to us to advise the Company appropriately."[1226]

Ms. Mohr stated further that the information provided to the lending team was "limited" and did not include "information about other bidders."[1227] As did Merrill's Michael Costa in his interview, Ms. Mohr referred to this limitation as a "wall," although by use of such term she did not mean an absolute information barrier:[1228]

> The way the wall works is the only information you give to the financing team is the type of information you would give to any bidder looking for financing — maybe a little more — its more a give and a take, but it is enough that they can provide competent advice when they do a parallel process — its not an integrated process at that point.

Likewise, Ms. Mohr indicated that she did not have visibility on all of the work of the lending team—which involved "market conditions and other realities that are not necessarily with the purview of the advisory team"[1229]—or any involvement with the decisions made by the "financing side of the house."[1230]

[1225] *Id.*

[1226] *Id.*

[1227] *Id.*

[1228] *Id.* Ms. Mohr elaborated as follows:

> We might know a whole range of things on the advisory side, but our job in working with the financing side on the staple was to help them understand the Company's assessment and projections and to help them reach a judgment about the capacity and the structure of the financing, but we were not in a position – we're not mandated with making them part of the advisory team per se.

Id.

[1229] *Id.*

[1230] *Id.* ("I can say they're goofy or they're smart, but my ability to impact the credit chain is zero—[there are] different managements.").

Ms. Persily had a slightly different understanding of the wall. She also described the wall as "intended to protect the company from confidential [information going] to people it doesn't want the information to go."[1231] However, in her view, she was "on the Tribune side working with Christina [Mohr] to create a staple financing package that would benefit the company and give it to individual buyers. So until a buyer was selected I didn't talk to any buyers. . . . I was on Christina's side of the wall."[1232] This changed after the Tribune Board accepted the EGI offer. "Once it became clear that Zell was the buyer I flipped and moved to Zell's side of the wall and I represented Zell and he was my interest."[1233]

Aside from their involvement with the Leveraged ESOP Transactions, certain Citigroup Entities also had been involved in *prior* transactions involving Tribune. In particular, an affiliate of CGMI, Citibank, N.A., served as the indenture trustee for the PHONES Notes.[1234] Citibank tried to remove itself as trustee, as evidenced by correspondence in January 2007 and March 2007 from Robert Kirchner of Citibank to Jack Rodden of Tribune stating that Citibank wanted to resign as trustee for the PHONES Notes.[1235] Citibank ultimately did not resign from its role as trustee until 2008, after completion of the Leveraged ESOP Transactions.[1236]

As is the case with Merrill, the evidence generally indicates that each group of Citigroup personnel had a distinct role and function in connection with the Leveraged ESOP Transactions, whether to advise Tribune as investment banker on Tribune's strategic options, underwrite and

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[1231] Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 51:11-14. *See also* Examiner's Sworn Interview of Rosanne Kurmaniak, July 7, 2010, at 126:11-127:5.

[1232] Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 52:1-11.

[1233] *Id.* at 52:14-17.

[1234] Ex. 49 (PHONES Indenture). Sometime after the date of this Indenture, Citibank, N.A. succeeded the Bank of Montreal Trust Company as indenture trustee. *See* Ex. 978 at TRB0507448 (Tripartite Agreement, dated August 1, 2008).

[1235] Ex. 372 (Rodden E-Mail, dated March 8, 2007).

[1236] Ex. 978 (Tripartite Agreement, dated August 1, 2008).

negotiate the financing for the transaction, or market the debt securities resulting from that financing to other lenders and investors.[1237] Indeed, following the closing of Step One, the CGMI advisory group ceased advising the Tribune Board—although it did provide discrete analytic tasks, as requested thereafter from time to time by management. Further, the lender team at Citigroup worked with the other Lead Banks to address issues related to consummation of the Step Two Financing.[1238] Although the record is not clear in some respects,[1239] on balance, the Examiner cannot conclude that the Citigroup Entities should be viewed as a single, solitary entity in connection with the Leveraged ESOP Transactions.

(1) Activities.

As discussed above, CGMI and MLPFS worked jointly in preparing and presenting strategic alternatives for Tribune, the Tribune Board, and the Special Committee. The Citigroup Entities learned about the EGI proposal on or about January 30, 2007.[1240] Ms. Persily queried Michael Canmann and Ruoxi Chen whether EGI had "a coverage person at Citi who should be involved" and later exclaimed that "I assume that we will want to finance him!"[1241] Mr. Canmann responded, "Yes to all. Waiting to hear from compliance."[1242] Despite professed

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[1237] At times, these roles conflicted. CGMI personnel from the Leveraged Finance Department advocated for a commitment condition requiring that Tribune's new debt receive at least a "B" rating from the rating agencies, while CGMI Mergers and Acquisition personnel opposed such a condition. Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 117:20-118:5.

[1238] *See* Report at § III.H.4.

[1239] As noted in the preceding section regarding Merrill, one area in which the record conflicts is the manner in which various transaction documents describe the fees to be paid to the various entities, the labels given to those fees, and the specific entities to which the payments actually were made. Given the inconsistency between the governing documents, the record is unclear whether the fees paid to the Citigroup Entities for their lending commitments and arranging services (but not for the advisory services provided to Tribune) were paid to or for the benefit of CGMI, Citicorp, or both. *See* Report at § III.D.16.

[1240] Ex. 373 (Canmann E-Mail, dated January 30, 2007).

[1241] *Id.*

[1242] *Id.*

excitement at the outset, CGMI quickly developed a skeptical view of the EGI proposal, as reflected in an internal February 6, 2007 e-mail from Ms. Persily:[1243]

> I spoke to ML. They are on board with this silly [ESOP] structure. Note: the cap table isn't showing the [ESOP] debt correctly. Its actually just more hy debt for a total of 3.425bn. . . . I am unequivocally not on board. Yet. But ML explained why they think it works. . . . ML is Sam's bank. They'll do anything for him. (They would not do this for KKR.)
>
> We'll listen politely. Perhaps make a few comments. And then I've got to figure out if this is real. . . .
>
> Let's try not to show too much of an opinion unless we have to. (That opinion being less focused on debt level than on free equity option.) Things change. (Last week they wanted 7-9bn of debt!) ML tells me that Zell is not looking for papers yet; still trying to figure out if there's a deal here.

Ms. Persily testified in her interview with the Examiner that she wrote this e-mail shortly after first learning about the EGI proposal.[1244] Ms. Persily also stated that she "had never heard of an ESOP" and "never heard of levering [an] ESOP. It took a month or so for people to educate me and get me comfortable. . . . But they did eventually."[1245] Ms. Persily further explained that her concern with the EGI proposal had more to do with anticipated marketing challenges than the proposal itself. Ms. Persily explained:[1246]

> You know, all along this was a very highly leverage[d] deal in a structure that the market is not familiar with. So my discomfort was always surrounding how we'd be able to sell that which we weren't holding. We were always going to hold a piece and I don't think I was uncomfortable with that in the beginning as much as I was uncomfortable with how we were going to market it.

[1243] Ex. 374 (Persily E-Mail, dated February 7, 2007).

[1244] Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 36:4-16.

[1245] *Id.* at 37:9-13.

[1246] *Id.* at 66:2-11.

On February 20, 2007, the day after Ms. Mohr received a revised proposal from EGI, Ms. Persily's skepticism apparently subsided, and she noted that she now believed "that this deal works . . . PHONES and existing notes act as equity cushion. Zell is hot right now."[1247] In her interview with the Examiner, Ms. Persily stated that she wrote favorably about the EGI proposal in this e-mail because it was directed to her boss, Chad Leat, and that when writing to her boss:[1248]

> I want to keep it positive because if I do decide I like the deal I want him to like it and he likes what I said. I talk to Chad [Leat] many, many times a day. Our communication isn't just via E-mail. I'm guessing for a week or so before this I had said I'm coming around. I think it's going to work I think we'll get there.

Ms. Persily further testified that she viewed the PHONES Notes as "equity" because "one could layer as much debt as they want—the PHONES did not have protection in their document to prevent layering debt above them . . . [w]hich is unusual."[1249] Ms. Persily also explained that in referring to "existing notes" she was referring to "senior notes that Tribune had issued . . . [and] in any liquidation scenario any debt that we placed on the company would be paid out before the senior notes. So we always look at a worst case scenario . . . and a worst case scenario you protect yourself and so we were protected."[1250] Ms. Persily added that it is her "nature to be very conservative" but that she ultimately got comfortable with the EGI proposal because "there was a lot of free cash flow."[1251]

[1247] Ex. 375 (Persily E-Mail, dated February 20, 2007).

[1248] Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 46:16-47:1.

[1249] *Id.* at 31:13-32:1.

[1250] *Id.* at 48:3-16.

[1251] *Id.* at 45:10 and 43:20-21.

Like Merrill and JPMorgan, the Citigroup Entities perceived the EGI proposal as a potential way to develop a relationship with Samuel Zell. Paul Ingrassia, a Managing Director and Group Head North America Real Estate & Lodging, wrote to Ms. Mohr:[1252]

> Christina, If we end us [sic] helping sam, if appropriate, please let him know how important his relationship is to our ecm and real estate teams, and that we were consulted. . . . We are trying to win a book position on his IPO of Equity International. . . .

In her interview with the Examiner, Ms. Persily explained that the Citigroup Entities did not have a relationship with Mr. Zell despite having tried "for many, many years" to develop one.[1253] For her part, Ms. Persily stated that she was "skeptical" but "intrigued" by the possibility of doing business with Mr. Zell because she did not know Mr. Zell personally but knew of his reputation and was "in awe of him."[1254]

Certain Parties alleged that Citigroup was improperly motivated to support the EGI proposal because of its desire to develop a relationship with Mr. Zell. The Examiner has not found credible evidence supporting this contention. To the contrary, Ms. Mohr stated in her interview that Citigroup did "not have [the] best relationship" with Mr. Zell during the course of negotiating the EGI proposal and described the relationship as "scanty."[1255] Ms. Mohr further stated that CGMI "didn't do the deal because of Sam Zell, we did the deal despite Sam Zell."[1256] Indeed, Mr. Zell supported a reduction in Citigroup's fees in order to bring in BofA, an entity with which Mr. Zell had a longstanding relationship.[1257]

[1252] Ex. 376 (Ingrassia E-Mail, dated February 20, 2007).

[1253] Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 35:3-4.

[1254] *Id.* at 34:20-35:10.

[1255] Examiner's Interview of Christina Mohr, June 29, 2010.

[1256] *Id.*

[1257] *See* Report at § III.E.6.d.

Citigroup and Merrill continued to weigh self-help alternatives suggested by Tribune, causing Todd Kaplan of Merrill to suggest collapsing the financing teams, requiring Tribune and EGI approval.[1258] Ms. Mohr subsequently advised other personnel at Citigroup that Tribune appeared yet again to be going in a different direction and moving away from the EGI proposal:[1259]

> The company wants to go the recap route and has told Zell that they are pencils down on his proposal. The recap that they want to do is a 15 dividend which is 1.2 billion less debt than we had been discussing.

This move was recognized as potentially costing Citigroup "another 18mm of fees (gross)."[1260] Ms. Persily testified in her interview with the Examiner that losing these fees was "not a significant number compared to the total. That gets divided among four people and net it's even less. So it's not that much [of a] difference."[1261] Ms. Persily also stated that "I don't think the fee would be the driver in our satisfaction between the standalone [recap] and the Zell [proposal]. It was purely a matter of ease of marketing. I've always said that the ESOP deal was going to be harder to market than a standalone deal."[1262]

Citigroup personnel also were aware of the market reaction to Tribune's self-help proposals. On March 15, 2007, Kevin Russell, Global Head of Convertible Securities for Citigroup, wrote to Suvir Thadani, Vice President of Citigroup Equity Capital Markets:[1263]

> [L]ots of speculation in the market regarding both comcast, and trb even more so, potentially looking to retire zones/phones. . . . please try to get infront [sic] of the bank on these issues.

[1258] Ex. 377 at CITI-TRIB-CC 00067425 (Canmann E-Mail, dated March 1, 2007).

[1259] Ex. 378 (Chen E-Mail, dated March 10, 2007).

[1260] Ex. 378 (Chen E-Mail, dated March 10, 2007).

[1261] Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 86:19-22.

[1262] *Id.* at 88:5-12.

[1263] Ex. 379 (Mohr E-Mail, dated March 15, 2007).

On being asked her thoughts on the issue later that day, Ms. Mohr responded, "[a]re you guys nuts? Call me."[1264]

A discrete function served by CGMI leading up to Step One involved revising various models related to Tribune's strategic alternatives. Chandler Bigelow and Daniel Kazan of Tribune communicated extensively with various CGMI personnel and transmitted information related to different models to them.[1265] Additionally, Mr. Bigelow transmitted information for review by CGMI personnel, such as sending Rosanne Kurmaniak of the Mergers & Acquisitions group and Michael Canmann a draft Duff & Phelps solvency analysis of the self-help proposal.[1266]

Mr. Bigelow testified to the Examiner that CGMI was the "keeper of the model," especially Ms. Kurmaniak.[1267] Ms. Kurmaniak told the Examiner that CGMI transitioned the models to Mr. Bigelow in September, October, or November 2007.[1268] Indeed, Ms. Kurmaniak considered her substantive work for Tribune completed in April or early June 2007.[1269] Although the exact date of the transition of the models is unclear, the Examiner found

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[1264] *Id.*

[1265] *See, e.g.,* Ex. 380 (Bigelow E-Mail, dated March 16, 2007); Ex. 381 (Kazan E-Mail, dated March 21, 2007).

[1266] Ex. 382 (Kurmaniak E-Mail, dated March 16, 2007).

[1267] Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 93:19-94:3. Citigroup's role in keeping and maintaining the model used by Tribune was a vestige of CGMI's activities advising the Tribune Board at Step One: "[After] this April, May, June time period . . . my role was effectively sort of done and we were running this model because it was an accommodation to the client and because . . . we had historically built it and we knew the functionality and all of that. . . . [A]s we began to transition into the financing role [we considered] whether we should be continuing to do that for the clients [because] generally when companies provide numbers to their banks it should be done by [the company]. . . ." Examiner's Sworn Interview of Rosanne Kurmaniak, July 7, 2010, at 113:10-114:3.

[1268] Examiner's Sworn Interview of Rosanne Kurmaniak, July 7, 2010, at 56:8-57:4, 86:21-87:12 ("[A]t a certain point [Citigroup] transitioned the model back to Chandler [Bigelow]. . . . I don't remember if that was September, October or November, but at a certain point we kind of said why don't you run your own models and we gave it back to them.").

[1269] *Id.* at 60:12-61:20.

documentary evidence showing that CGMI performed modifications to the Tribune models as late as September 27, 2007.[1270]

Mr. Bigelow and Ms. Kurmaniak worked together on the terms of the EGI proposal, and on March 16, 2007, Mr. Bigelow told Ms. Kurmaniak that there were certain "important changes to the Zell model" which he summarized as:[1271]

> (3) in the summary of change of control payments, we told them to increase this by $20M for possible transitional comp (now we are considering having the $37M for "management deal fees" rolling in the deal as phantom equity)
>
> (4) the annual cost savings is $80M not $100M
>
> (5) we told them to take 2007 capital expenditures to $175M and investments to $50M
>
> There is a question regarding how we model the deferred comp going forward and I will work on that one.

At times, Mr. Bigelow called on the Citigroup Entities' and the Merrill Entities' personnel to review Morgan Stanley's materials. For example, Mr. Bigelow forwarded Morgan Stanley's March 6, 2007 discussion materials to Mr. Kaplan and Michael O'Grady at Merrill, and to Ms. Persily and Mr. Canmann at Citigroup.[1272] Ms. Persily responded that she, Mr. Kaplan, and Mr. Bigelow should speak before Mr. Bigelow contacted Morgan Stanley, and she wrote "for the record:"[1273]

> [Citigroup's] proposal does not assume that we can get around the liens test in the existing bonds as indicated in the [Morgan Stanley] proposal discussion.

[1270] Ex. 889 (Roth E-Mail, dated September 27, 2007).

[1271] Ex. 380 (Bigelow E-Mail, dated March 16, 2007).

[1272] Ex. 337 at CITI-TRIB-CC 00067724 (Persily E-Mail, dated March 6, 2007).

[1273] *Id.* at CITI-TRIB-CC 00067723. Ms. Persily testified in her interview with the Examiner that it was her belief that Morgan Stanley's proposal "showed [Tribune] a proposal that subordinated the existing debt and we didn't think that was possible by virtue of not granting liens." Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 82:11-14.

> We believe that we effectively "subordinate" the existing bonds by denying them guarantees. The Company provides that all subs guarantee the new loan(s), so that the value of the stock collateral is only realized by the existing note holders after satisfaction of the guarantees. . . .
>
> NOTE: We believe that we can market this to the banks and funds and our counsel agrees with our analysis that guarantees provided to the lenders come ahead of unguaranteed existing debt.

Later e-mail communications between Ms. Persily and Ms. Mohr reflected continued concerns regarding EGI's proposal:[1274]

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

In her interview with the Examiner, Ms. Persily recalled that the proposal EGI gave to the rating agencies included more debt than Citigroup had approved, but that ultimately the debt level came back down to within the range that Citigroup had approved.[1275]

Ms. Persily followed up on her concerns and requested updated models incorporating a lower-than-expected rating, which would result in higher interest expenses. The models showed that "[g]iven that the interest expense will be a lot higher, the Company may not be able to handle this much debt."[1276] The Leveraged Finance group was "still debating internally if we

[1274] Ex. 383 (Persily E-Mail, dated March 22, 2007). In her interview with the Examiner, Ms. Persily explained that "deal creep" meant that "you commit to something, you'll say you do something and then things keep changing by a little bit." Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 94:11-22.

[1275] *Id.*

[1276] Ex. 384 at CITI-TRIB-CC 00141612 (Apostolides E-Mail, dated March 24, 2007).

want to do this deal even with low ratings."[1277] In the meantime, investment banker Michael Canmann was reporting that "[the] Board really wants us to push towards Zell."[1278]

In her interview with the Examiner, Ms. Mohr stated:[1279]

> [I]t wasn't as if we all looked at Zell and said let's do it, we thought about it, pushed back among financing teams [and] advisor teams, this was something that had not been done on this scale. We talked about, does . . . this work, it's tight, is it acceptable, a lot of debate.

According to Ms. Mohr, there "was a lot of back and forth and tug of war. . . . It wasn't flip or decided in an hour—it was a lot of soul searching."[1280] "People got up some mornings and were comfortable, and other mornings people said that they were uncomfortable with the risk. It was reflected in the financing; people said it was skinny."[1281] CGMI requested that its obligation to underwrite Tribune debt be conditioned on Tribune's debt receiving at least a single B rating.[1282] However, after Tribune received a single B rating in late March 2007, Ms. Persily wrote, "I am beside myself. Just sick over this. Don't know what to do."[1283]

In Ms. Mohr's view, the "debate" was not over the funding to be provided at Step One:[1284]

> Step One stood on its own and washed its own face. . . . The first step transaction was clear. . . . The real question was, do we take the incremental step to get in S corp. position and limit taxes to put us in a better position to monetize assets. . . . [Before the EGI proposal] everyone was comfortable with $10 billion to do the [recapitalization]. The question became for the incremental $2 billion [which was to come in at Step Two].

1277 *Id.*

1278 Ex. 385 (Canmann E-Mail, dated March 23, 2007).

1279 Examiner's Interview of Christina Mohr, June 29, 2010.

1280 *Id.*

1281 *Id.*

1282 Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 115:4-118:5.

1283 Ex. 1107 (Persily E-Mail, dated March 28, 2007).

1284 Examiner's Interview of Christina Mohr, June 29, 2010.

Ultimately, Ms. Mohr concluded that the completion of the Leveraged ESOP Transactions was "doable but tight."[1285] Ms. Kurmaniak told the Examiner that she shared this view and considered the possibility of closing on the Leveraged ESOP Transactions to be "tight," but that she had "comfort in the numbers."[1286] Ms. Kurmaniak also noted that the cash flow for the Leveraged ESOP Transactions was "relatively the same" as the recapitalization plan.[1287] Similarly, Ms. Persily stated in her interview with the Examiner that she concluded that the EGI proposal and the recapitalization were not that different. As Ms. Persily explained:[1288]

> [Although] there was more leverage on the company [under the EGI proposal], . . . what I came to believe was that there wasn't more risk on the company because the leveraged ESOP structure meant that the company didn't have to pay taxes. So the extra cash flow they had from not paying taxes could be used to pay down debt. So effectively if you looked at [the EGI proposal and the recapitalization] structures they had equal cash flow and that's how I got comfortable at the end of the day that there wasn't that much difference between them, but it was just another challenge to have to sell it to the market.

In preparation for the upcoming Tribune Board meeting, on March 29, 2007, Ruoxi Chen of the Investment Banking group forwarded Mr. Bigelow the most recent draft of the EGI proposal, and noted that "2008 Guaranteed Debt / Adj. EBITDA still breaks the covenant of 8.75x, but barely, at 8.76x."[1289] Tribune suggested that the investment bankers change certain presentation slides and remove others:[1290]

[1285] *Id.* ("[S]o what I got wrong was the lack of ability down the road to both monetize assets and withstand the cash shortfall. Personally if the Company sold the Cubs when it could have and had moved more rapidly to monetize non-core assets, [things] could have been – maybe not entirely different, but significantly better.").

[1286] Examiner's Sworn Interview of Rosanne Kurmaniak, July 7, 2010, at 51:8-52:1.

[1287] *Id.* at 51:16-19.

[1288] Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 88:22-89:11.

[1289] Ex. 386 (Chen E-Mail, dated March 29, 2007).

[1290] Ex. 387 (O'Grady E-Mail, dated March 28, 2007).

> On the covenant call today the company suggested a couple small changes to the "cushion" pages and then including them in the board book. I think the changes are just:
>
> In both the mgt case and the downside cases
>
> —revise Adjusted EBITDA for sale of cubs/comcast
>
> —delete the Total Debt . . . ratio
>
> —add EBITDA Cushion in $

Ms. Mohr noted that the solvency requirement at Step Two was very important to the Tribune Board.[1291] Ms. Mohr described a "tension" between the Tribune Board's desire to approve Step One, ensure that the lenders would not back out of Step Two, but only proceed with Step Two if doing so would not hurt Tribune. The solvency opinion addressed that tension:[1292]

> Well there is the solvency opinion—the tension—the board was trying to make sure deal finally financed and that the banks cannot back out—make sure I have committed financing. [They] had Wachtell Lipton so from board's perspective the board is trying to make sure [the] banks cannot back out if they changed their mind, because board had committed to first step.
>
> [The] Board said we need to make sure that banks can't decide to back out, but at same time they didn't want to do second step if it put the Company in danger and they came up with the construct such that we're not moving forward unless solvency—that was [an] other important condition.

Ms. Persily testified in her interview with the Examiner that the Lead Banks did not require the issuance of a solvency opinion, but that Citigroup took "comfort" in the fact that a

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[1291] Examiner's Interview of Christina Mohr, June 29, 2010. According to Ms. Mohr, the requirement "came from the board" was intended "to protect itself and the Company." *Id.*

[1292] *Id.*

solvency opinion was being issued by a third party.[1293] Ms. Persily considered VRC to be one of three firms that she would choose to perform such work.[1294]

Citigroup personnel continued to work with Mr. Bigelow leading up to the announcement of the Step One Transactions, including refinements to the Standard & Poor's analysis. Mr. Bigelow wrote to Ms. Kurmaniak: "As I mentioned to Dave [Tuvlin] and Julie [Persily] there is a small chance we can get S&P to drop their negative outlook—it's small."[1295] Citigroup personnel accordingly created a model entitled "S&P case," but Ms. Persily questioned it:[1296]

> Is this what they are looking for? 2008—down 10% from 2007 meaning 20% off Plan?
>
> This won't help them (or anyone) at all. We cannot solve that with [covenant] tweaks.

Mr. Bigelow suggested: "Looks like to me that if we widened the adj. ebitda cov by 25 bps in 2008 that we'd make it. 2009 would still be an issue, but I think they are less focused on that year."[1297] Ms. Persily rejected the notion of widening the covenant and suggested other lesser modifications to the model that would not affect EBITDA.[1298]

Following the announcement of the Leveraged ESOP Transactions, the Citigroup Entities learned that EGI was pushing to reduce the Citigroup Entities' fees because Samuel Zell wanted

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[1293] Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 129:13-17, 126:2-6.

[1294] *Id.* at 203:1-5 ("If somebody asked us who to hire to give a reasonable opinion VRC would have been — I told you there [were] three. VRC would have been one; Houlihan Lokey and Murray Devine two and three.").

[1295] Ex. 388 at CITI-TRIB-CC 00048053 (Persily E-Mail, dated March 29, 2007).

[1296] *Id.*

[1297] *Id.*

[1298] *Id.*

to add BofA to the group of Lead Banks.[1299] Ultimately, the Citigroup Entities' share of the commitments (and thus, fees) was reduced.[1300]

On April 5, 2007, CGMI executed and entered into the Step One Commitment Letter and the Step Two Commitment Letter on behalf of "Citigroup," which was defined thereunder to mean: "CGMI, Citibank, N.A., Citicorp USA, lnc., Citicorp North America, Inc. and/or any of their affiliates as may be appropriate to consummate the transactions contemplated herein."[1301] Ultimately, Citicorp executed the Credit Agreement (at Step One), and the Bridge Credit Agreement, and applicable Increase Joinder (at Step Two).[1302] At the closing of the Step One Financing, Citicorp's Step One lending commitments totaled $117 million or 15.6% of the Revolving Credit Facility; Citicorp was not a lender under the Tranche B Facility or the Tranche X Facility.[1303] At the closing of the Step Two Financing, Citicorp's Step Two lending commitments totaled $374 million, or 23.375%, of the Bridge Facility[1304] and $505 million, or 23.99%, of the Incremental Credit Agreement Facility.[1305]

After the Tribune Board approved the EGI proposal, Citigroup transitioned to due diligence activities—including providing feedback through its advisory group on VRC's solvency analysis. Beginning in early May 2007, the advisory group actively reviewed and

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[1299] Ex. 389 (Canmann E-Mail, dated April 3, 2007); Ex. 1051 (Canmann E-Mail, dated April 3, 2007).

[1300] Ex. 390 at 1 (Citigroup Relationship Memorandum, dated July 30, 2007).

[1301] *See* Ex. 305 at TRB-162128-29, 40 (Amended and Restated Step One Commitment Letter, dated April 5, 2007); Ex. 309 at (Amended and Restated Step Two Commitment Letter, dated April 5, 2007).

[1302] *See* Ex. 179 at TRB0520885 (Credit Agreement); Ex. 361 at S-1 (Bridge Credit Agreement); Ex. 351 at TRB0520680-86 (Increase Joinder – Citicorp North America, Inc.).

[1303] *See* Ex. 350 at TRB0445276 (Schedule I to Credit Agreement).

[1304] *See* Ex. 175 (Schedule I to Bridge Credit Agreement).

[1305] *See* Ex. 351 (Increase Joinders).

questioned VRC's analysis. Documents indicate, for instance, that Ms. Kurmaniak requested backup information from Mr. Bigelow about VRC's numbers:[1306]

> Can VRC provide you with some backup for the EBITDA and EBITDA + Cash Flow From Equity Investments numbers on page 9? I'm worried that they are mixing some numbers up. . . . It appears that for LTM, we're not sure what they're doing, in 2007 they are including Cubs/Comcast and 2008 excluding Cubs/Comcast.

Ms. Kurmaniak followed up with another point, as review of the VRC solvency analysis continued:[1307]

> [O]ne observation—it appears that their Sensitivity Case falls somewhere in between the Mgmt. Case and the Down 2% Case. . . . Not recommending that any action be taken on this, just wanted to give some perspective on where their case fell out relative to others.

Ms. Mohr's interview with the Examiner corroborated her involvement and that of Ms. Kurmaniak with the VRC analysis: "Before they were issued, our job was to look at what VRC was doing and look on the Company's behalf, and give push back on the analysis."[1308] "Rosie put together a note for the Company with comments, and it was my understanding that the Company was going to reflect those comments back to VRC."[1309] "Our comments were provided before the opinion was rendered and would have been reflected in what was finally produced."[1310] Ms. Kurmaniak further explained to the Examiner in her sworn interview that in reviewing VRC's work, "my primary focus when I was looking through their report was mechanically were they capturing the right numbers."[1311]

[1306] Ex. 391 (Kurmaniak E-Mail, dated May 7, 2007).

[1307] *Id.*

[1308] Examiner's Interview of Christina Mohr, June 29, 2010.

[1309] *Id.*

[1310] *Id.*

[1311] Examiner's Sworn Interview of Rosanne Kurmaniak, July 7, 2010, at 95:14-16.

Concurrently, Citigroup and Mr. Bigelow were working together on a model for Standard & Poor's. After revising the model, Ms. Kurmaniak commented to Mr. Bigelow:[1312]

> Interestingly, we did a cumulative (2008-2017) impact to FCF analysis and the net change of all the changes was abt $350 mm of FCF over the 10 year period. The $22mm of incremental lease expense, increase of 50bps in the TLB (the $5.5bn) and loss of EBITDA from asset sales largely offset the cash flow generated to pay down debt and resulting interest expense savings; but, I presume that S&P is focused on the near-term repayment of the Term Loan X (which is easily done with the asset/real estate proceeds).

Mr. Bigelow sought assurances that "the guaranteed debt to EBITDA ratio is markedly improved in the new scenario, correct?"[1313] Ms. Kurmaniak replied: "It is improved but not as much as the full cash flow pick up given the loss of ebitda."[1314]

Citigroup personnel were keenly aware of the problems with syndicating the Step One Financing. Michael Canmann wrote an internal e-mail on May 10, 2007: "[E]veryone should be aware that the bank syndication is struggling. There is some talk of having to flex again."[1315] John Apostolides had previously circulated a Standard & Poor's news release that discussed how the Lead Banks "boosted price talk on the second stage of their financing for Tribune Co."[1316] Mr. Canmann commented: "Some talk of having to do this. Didn't hear that company had agreed but they must have. Understanding is a little push back in the market overall and on this we knew it was tight relative to its size. Supposedly they actually got 350 of the bridge sold."[1317] Ultimately, however, the Step One Financing was syndicated because, as Ms. Persily explained

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[1312] Ex. 392 (Kurmaniak E-Mail, dated May 15, 2007).

[1313] *Id.*

[1314] *Id.*

[1315] Ex. 393 at CITI-TRIB-CC 00024662 (Mohr E-Mail, dated May 14, 2007).

[1316] Ex. 394 at CITI-TRIB-CC 00034991 (Apostolides E-Mail, dated May 8, 2007).

[1317] Ex. 394 at CITI-TRIB-CC 00034991 (Apostolides E-Mail, dated May 8, 2007).

in her interview with the Examiner, "we were promised by Zell that there would be huge cost cutting and his track record in that is very, very good. Hence our ability to sell all of the debt in step 1 which as you know I was very skeptical of."[1318]

As Citigroup continued to evaluate internally the Leveraged ESOP Transactions, a May 17, 2007 update to an earlier loan approval memo noted again that loan syndication was expected to be difficult due to the ESOP ownership structure, high leverage, and a lack of hard asset collateral for the bank debt.[1319] Unlike the earlier analysis performed on March 28, 2007, the updated memo did not list any offsets for the loan syndication risks.[1320] Similarly, Citigroup noted that bond syndication was expected to be difficult due to the ESOP ownership structure and the amount of bank debt ahead of bonds.[1321] Again, the updated memo did not list any offsets to these risks.[1322]

As it prepared the update to the loan approval memo, CGMI considered whether to include asset sales in its modeling assumptions.[1323] Ms. Kurmaniak approved the inclusion of the asset sales in the model but clarified that:[1324]

> [G]iven the addition of the Term Loan X, the increase in the TLB pricing and the need for the TLX to replace within 24 months, the Company suggested various alternatives and opportunities to generate cash and create the additional cash flow flexibility for the required near-term mandatory debt repayment inherent in the Term Loan X. These opportunities are there to show the ability to repay the X, but aren't necessarily the new base case management plan.

1318 Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 72:20-73:2.

1319 Ex. 395 at 5 (Citi Leveraged Finance Final Approval Memorandum, dated May 17, 2007).

1320 *Id.*; *cf.* Ex. 396 at 5 (Citi Leveraged Finance Final Approval Memorandum, dated March 28, 2007).

1321 Ex. 395 at 5 (Citi Leveraged Finance Final Approval Memorandum, dated May 17, 2007).

1322 *Id.*; *cf.* Ex. 396 at 5 (Citi Leveraged Finance Final Approval Memorandum, dated March 28, 2007).

1323 Ex. 397 (Apostolides E-Mail, dated May 16, 2007).

1324 *Id.*

(2) Due Diligence Performed.

Citigroup had considerable access to Tribune's books and records during the time leading up to the April 1, 2007 Tribune Board meeting. Additionally, both Citigroup and Merrill personnel jointly met with the Special Committee on a near-weekly basis, and with the Tribune Board on a monthly basis. During each of these meetings the parties reviewed Tribune financials and analyzed the financing, structural, and other issues related to the strategic alternatives being considered by the Tribune Board. In addition, both Merrill and Citigroup personnel participated in direct discussions with parties participating in the auction process. The Citigroup Entities had significant access to information that was relevant to their roles.

In addition to the activities of Citigroup personnel discussed above, Citigroup personnel also reviewed VRC's Step One solvency analysis. Citigroup requested backup information for EBITDA calculations, and they commented on the VRC draft report,[1325] which included questioning the basis of VRC's assumptions and noting where these conclusions lacked support.[1326]

Citigroup's internal deal approval memorandum in respect of financing the Leveraged ESOP Transactions identified several key risks of the EGI proposal, including softening industry trends, decreased ad spending, declining circulation, the availability and cost of quality syndicated programming, and the complex ESOP ownership structure.[1327] The memorandum discusses the view of Citigroup personnel that loan syndication would be difficult due to the ESOP ownership structure, high leverage, and the lack of hard asset collateral for the bank

[1325] Ex. 398 (Kurmaniak E-Mail, dated May 7, 2007).

[1326] Ex. 399 at CITI-TRIB-CC 00103593-601 (Handwritten comments to VRC Preliminary Report).

[1327] Ex. 400 at CITI-TRIB-CC 00019393 (Project Zoom/Tower Z and Project Tower Memorandum, dated March 28, 2007).

debt.[1328] The memorandum also asserts that the loan risks were offset by senior unsecured guarantees, strong market conditions, and sufficient flex,[1329] but that bond syndication would be difficult because of the amount of bank debt senior to the bonds.[1330]

On the other hand, the memorandum reflects the view that the Tribune Entities' significant scale in publishing and broadcasting, diversification across businesses and markets, strong free cash flow generation, and the existence of many saleable assets (*e.g.,* the Chicago Cubs and individual newspapers or stations) would help to mitigate these concerns.[1331]

d. BofA.

BofA was a relatively late arrival to the Step One Transactions, and consequently, its activities during this stage of the transaction were limited. The BofA Entities and their designated roles in the Step One Transactions are as follows: (a) BAS, as lender, joint lead arranger, and joint bookrunner, and (b) Bank of America, as lender and co-documentation agent.[1332] Key BofA personnel included Raju Patel (Senior Vice President), Charles Hagel (Senior Vice President, Credit Products Senior Manager), Daniel Petrik (Senior Vice President, Senior Credit Products Officer), and William (Hutch) Pegler, Jr. (Vice President, Leveraged Finance). As was the case at JPM, members of various working groups at BofA worked together on the Tribune matter.[1333]

[1328] *Id.*

[1329] *Id.*

[1330] *Id.*

[1331] *Id.*

[1332] Ex. 179 at 1 (Credit Agreement). Subsequently, Banc of America Bridge became a lender under the Bridge Facility. Ex. 175 at TRB0517063 (Bridge Credit Agreement). As is true of the JPM Entities, the BofA Entities served only as lenders to Tribune (not advisors) and therefore none of the BofA Entities were potentially conflicted. The distinction between Banc of America Bridge, Bank of America, and BAS is therefore less important than the distinctions among, for example, the Merrill Entities.

[1333] Ex. 179 (Credit Agreement); Ex. 544 at TRB0160944 (Larsen E-Mail, dated May 18, 2007); Ex. 309 at TRB0112684 (Amended and Restated Second Step Commitment Letter, dated April 5, 2007); Ex. 534 at 11

(1) Activities.

BofA's introduction to the Tribune auction process started with EGI. EGI initially participated in a conference call with the BofA client team on March 2, 2007, in the midst of Tribune's auction process, "to discuss the financing of their bid for the Tribune Company."[1334] At that meeting, EGI "asked Bank of America to provide a verbal indication of interest in co-underwriting a meaningful portion of the $11.35BN proposed financing" related to EGI's proposal.[1335] In response, the BofA client team informed its internal Leverage Finance Screening Committee that it "would like to express an interest in co-underwriting up to 33% of the proposed facilities in the event that EGI's offer prevails, providing us an opportunity to unseat one of the current underwriters."[1336] The ultimate goal of the client team was "to co-underwrite at least 25% of the proposed facilities and obtain 25% of the transaction economics."[1337]

BofA's client team was interested in participating in the financing despite the fact that the proposed financing was outside BofA's own underwriting guidelines in five of the ten different respects considered by BofA, including, among others, that it bore a pro forma risk rating of 6-, even though BofA's guidelines required a rating of 6 or better.[1338] Daniel Petrik of BofA testified to the Examiner that there were three factors that militated in favor of proceeding with

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(Step Two Confidential Information Memorandum); Ex. 923 at 1-4 (Project Bear Working Group List, dated March 2007). Daniel Petrik is listed in the contact list for BAS that is part of the Step Two Confidential Information Memorandum, but he also signed the Credit Agreement on behalf of Bank of America. Mr. Rose signed the Step Two Commitment Letter on behalf of both BAS and Banc of America Bridge. Raju Patel's signature block indicated that he is "Senior Vice President, Bank of America, Banc of America Securities." The Project Bear working group list included employees with e-mail addresses for both Bank of America and BAS.

[1334] Ex. 535 at 2 (Bank of America Deal Screen Memorandum, dated March 5, 2007); Ex. 536 at 2 (Project Bear Leveraged Finance Screening Memo, dated March 6, 2007).

[1335] Ex. 535 at 2 (Bank of America Deal Screen Memorandum, dated March 5, 2007).

[1336] *Id.*

[1337] *Id.*

[1338] *Id.*

the transaction – BofA's "track history . . . with Sam Zell," the "name of Tribune and all of its value as a name and all the newspapers behind it. And, three, just looking at the overall return on the risk as we look at that on every deal is a risk return issue."[1339] As to this last factor, Mr. Petrik testified that he meant both the fees the transaction would generate and the on-going relationship with Tribune.[1340] BofA's client team explained to BofA's internal Leveraged Finance Screening Committee that "we expect an appropriate risk/reward trade off if we obtain 25% of the economics from the proposed transaction as our share of the fees are estimated to be at least $40MM."[1341]

BofA had established relationships with both EGI and Tribune before EGI invited it to participate in the financing of EGI's proposal. BofA had a longstanding relationship with Tribune, and it "was awarded joint books roles in the Company's [previous] two bond offerings and was selected as dealer manager in a tender for certain of the Company's debt securities in 2004."[1342] In March 2007, BofA was one of the top five lenders to Tribune.[1343] BofA also had "an extensive relationship with Zell and EGI through Real Estate Banking, Private Banking, BABC, and Commercial Banking."[1344] As of March 2007, "EGI's primary financial partners [were] Bank of America, Merrill Lynch, and JPM."[1345]

EGI preferred "not to engage Citigroup . . . to take part in the financing as EGI [had] historically not had a relationship with Citi."[1346] Instead, due to "BAS' historical relationships

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[1339] Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 64:13-65:5.

[1340] *Id.*

[1341] Ex. 535 at 5 (Bank of America Deal Screen Memorandum, dated March 5, 2007).

[1342] Ex. 536 at 2 (Project Bear Leveraged Finance Screening Memo, dated March 6, 2007).

[1343] *Id.*

[1344] *Id.*

[1345] *Id.*

[1346] Ex. 539 at 1 (Project Bear Leveraged Finance Screening Memo Update, dated March 25, 2007).

with both Tribune and [EGI, EGI invited] BAS to participate in underwriting one-third of the financing for one-third of the economics."[1347] Ultimately, BofA underwrote 15% of the financing for a like percentage of the fee.[1348]

BofA presented the EGI proposal to its internal Leveraged Finance Screening Committee on March 7, 2007. A memo to the Screening Committee summarized the engagement and the proposal from EGI.[1349] This memo included financial projections based on a model provided by EGI that assumed the sale of three Tribune assets—the Chicago Cubs, Cablevision, and Recycler.[1350] It also analyzed some of the "credit considerations" implicated by EGI's proposal, including "competition from alternative media," "declining newspaper circulation and ad revenue," "low equity capitalization / high leverage at close," and FCC approval.[1351] Half the criteria were outside of BofA's guidelines,[1352] and one BofA senior vice president said that it was "the most highly levered deal I worked on in the cash flow group."[1353]

The "investment highlights" identified in the memo included "high-quality assets in major markets," "stable free cash flow generation," S-Corporation/ESOP tax benefits, and "substantial 'hidden value' in unconsolidated equity investments."[1354] The Screening Committee "supported moving forward due to their confidence that the paper could be distributed even

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[1347] *Id.*

[1348] Ex. 305 at 2 (Amended and Restated Step One Commitment Letter, dated April 5, 2007); Ex. 309 at 3 (Amended and Restated Step Two Commitment Letter, dated April 5, 2007); Ex. 542 at 1 (Amended and Restated Step One Fee Letter, dated April 5, 2007; Ex. 543 at 1-2 (Amended and Restated Step Two Fee Letter, dated April 5, 2007).

[1349] Ex. 536 at 1-3 (Project Bear Leveraged Finance Screening Memo, dated March 6, 2007).

[1350] *Id.* at 4

[1351] *Id.* at 5.

[1352] Ex. 535 at BOA-TRB-0001555 (Bank of America Deal Screen Memorandum, dated March 5, 2007).

[1353] Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 62:18-19.

[1354] Ex. 536 at 5 (Project Bear Leveraged Finance Screening Memo, dated March 6, 2007).

though this is a highly levered and complex transaction."[1355] BofA considered its track history with Samuel Zell, the reputation of Tribune and its newspapers, and the overall return on the risk it was taking, both in terms of the fees it would make on the underwriting and the benefits from building a relationship with Tribune.[1356]

Immediately after the Screening Committee meeting, on March 8, 2007, BofA's Raju Patel had a conversation with Nils Larsen of EGI.[1357] Mr. Patel e-mailed several Bank of America employees regarding the conversation and stated that "EGI is seeking to integrate [BofA] into the 'process' with Citi, ML, and JPM."[1358] Mr. Patel identified the next steps for BofA as (a) "Await decision to get us integrated into the process," and (b) "Continue data room/credit due diligence with goal of possibly underwriting 25% of the transaction by March 17th."[1359]

Mr. Patel had another conversation with Mr. Larsen the next day, again focusing on some of the challenges facing the EGI proposal.[1360] Mr. Patel learned that "Morgan Stanley is advising the special committee and advocating that the self-help deal has more value than the ESOP plan."[1361] He also learned that EGI was concerned "that emotional deal will outweigh their view of better economic ESOP deal."[1362] Mr. Patel again e-mailed several Bank of America employees regarding the conversation and summarized the "rough financial terms of the new

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[1355] Ex. 537 at 2 (Petrik E-Mail, dated March 21, 2007).

[1356] Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 64:18-65:11.

[1357] Ex. 538 at 2 (Patel E-Mail, dated March 21, 2007).

[1358] *Id.*

[1359] *Id.*

[1360] *Id.*

[1361] *Id.*

[1362] *Id.*

two-step structure" and provided updates on projections.[1363] Mr. Patel stated that BofA was "not at much disadvantage to other underwriters. EGI is looking for a way to get us inserted with competitive terms as they believe Citi (my guess) is the weak link."[1364] Later that same day, apparently, "EGI informed BAS that negotiations between Tribune and [EGI] had stalled."[1365]

By March 20, 2007, however, the EGI proposal was once again active. An update memo to the BofA Screening Committee noted "EGI informed the deal team that Tribune had reversed its earlier decision and approached [EGI] to continue discussion of the ESOP leveraged buy-out plan."[1366] That same day, Daniel Petrik prepared a draft e-mail describing the key risks in the EGI proposal and the factors that mitigated those risks.[1367] The key risks identified were (a) "[m]inimal cash equity contributed," (b) "[h]igh leverage coupled with declining newspaper circulation," and (c) "[r]egulatory approval by the FCC."[1368] According to Mr. Petrik's draft e-mail, the "minimal cash equity" risk was mitigated by "the implied equity value of the ESOP tax savings ($330MM) and cash expense savings ($100MM) of $430MM."[1369] Moreover, he noted that the "high leverage" risk was offset by consistent spending on newspaper advertising, Tribune's "equity investments in online media," "[a]sset sales of approximately $538MM that will assist in delevering the company [and the] [v]alue of other [e]quity investments such as The Food Network," and "[no] integration risk."[1370] The "regulatory approval" risk was mitigated by Tribune "currently operating successfully under FCC jurisdiction" and the ESOP structure which

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[1363] *Id.*

[1364] *Id.*

[1365] Ex. 539 at 1 (Project Bear Leveraged Finance Screening Memorandum, dated March 25, 2007).

[1366] *Id.*

[1367] Ex. 537 at 2 (Petrik E-Mail, dated March 21, 2007).

[1368] *Id.*

[1369] *Id.*

[1370] *Id.*

he expected "to minimize FCC's concern due to effectively no change of control."[1371] Mr. Petrik forwarded the March 20, 2007 draft e-mail to William Pegler the next day, stating that "the big thing we need you to confirm is the implied equity assumption."[1372] Mr. Petrik testified that he could not recall what Mr. Pegler did in response to his request in this regard.[1373]

EGI and Tribune presented EGI's proposal to the rating agencies on March 22, 2007, and provided a copy of the presentation, along with updated financial projections and structure details, to BofA the next day.[1374] EGI requested a "verbal commitment" from BofA to participate in the underwriting by March 28, 2007, subject to completion of due diligence and a "[r]ough idea of [their] terms."[1375] Due to these events and the evolution of the EGI proposal into a two-step process, BofA personnel provided an updated memo to the Screening Committee on March 25, 2007.[1376] On April 2, 2007, the Screening Committee approved underwriting 16.67% of the proposed financing for EGI's two step-proposal.[1377]

On March 28, 2007, BofA again met with EGI for a presentation on the financing of EGI's proposal. BofA provided a summary of proposed financing terms and conditions, subject to "satisfactory completion of due diligence, necessary credit approval and such other terms and conditions as determined by Bank of America, in its sole discretion."[1378] Unlike Citigroup's internal memorandum dated the same day—which indicated that loan syndication and bond

[1371] *Id.*

[1372] *Id.* at 1.

[1373] Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 100:12-14.

[1374] Ex. 539 at 1 and 5 (Project Bear Leveraged Finance Screening Memorandum, dated March 25, 2007).

[1375] *Id.* at 2 and 5.

[1376] Ex. 539 (Project Bear Leveraged Finance Screening Memorandum, dated March 25, 2007).

[1377] Ex. 540 at 1 (Project Bear Leveraged Finance Committee Approval Summary, dated April 3, 2007).

[1378] Ex. 541 at 10-12 (Bank of America Presentation to Equity Group Investments, LLC, Project Tower Discussion Materials, dated March 28, 2007).

syndication for EGI's proposal would be "difficult"—BofA expressed its belief that "the Tribune financing will be well received in the capital markets."[1379] The presentation also included a financing discussion of comparable transactions.[1380]

On April 5, 2007, BofA executed the Step One Commitment Letter and the Step Two Commitment Letter.[1381] At the closing of the Step One Financing, BofA's lending commitments totaled $105 million, or 14%, of the Revolving Credit Facility; BofA held no commitments under the Tranche B Facility or the Tranche X Facility.[1382] At the closing of the Step Two Financing, BofA's lending commitments totaled $224.4 million, or 14.03%, of the Bridge Facility[1383] and $303 million, or 14.39%, of the Incremental Credit Agreement Facility.[1384]

On May 3, 2007, the BofA client team submitted a Credit Approval Report, seeking approval to "initially hold up to $67.5MM of the $750.0MM revolving credit facility. . . . At this stage, we believe our Revolver commitment will be sold down to the $50.0MM—$67.5MM range in the primary syndication. Post-syndication, we will evaluate the viability of selling down our Revolver exposure in an orderly manner in the secondary market to a target hold level of $35.0MM - $40.0MM."[1385] Mr. Petrik testified to the Examiner that "right from Day 1" it had always been BofA's intent to sell down some portion of its share of the Revolving Credit Facility to that level.[1386] According to the May 3, 2007 Credit Approval Report, the risk characteristics

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1379 Ex. 541 at 13 (Bank of America Presentation to Equity Group Investments, LLC, Project Tower Discussion Materials, dated March 28, 2007).

1380 *Id.* at 15-17.

1381 Ex. 305 (Amended and Restated Step One Commitment Letter, dated April 5, 2007); Ex. 309 (Amended and Restated Step Two Commitment Letter, dated April 5, 2007).

1382 *See* Ex. 350 at TRB0445276 (Schedule I to Credit Agreement).

1383 *See* Ex. 175 (Schedule I to Bridge Credit Agreement).

1384 *See* Ex. 351 (Increase Joinders).

1385 Ex. 924 at 4 (Bank of America Credit Approval Report, dated May 3, 2007).

1386 Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 77:10-19 and 182:5-12.

of the transaction had deteriorated compared to those characteristics described in the March 5, 2007 Deal Screen Memorandum.[1387] Specifically, although the latter document noted that the proposed financing warranted a 6- pro forma risk rating, and fell outside of BofA's underwriting guidelines in five of the ten categories under review, the May 3, 2007 Credit Approval Report reflected a 7 pro forma risk rating, and that the transaction fell outside BofA's underwriting guidelines in nine of the ten categories listed.[1388] Mr. Petrik testified that these changes in BofA's analysis of the transaction were a combination of BofA "having more information given the fact we did more due diligence and the loan deteriorated."[1389] He further testified that by the time of the May 3, 2007 Credit Approval Report, BofA had "a better understanding of the business and maybe one more month of historical information showing, again, another decline in revenue, in EBITDA, and, therefore, impacting a lot of these ratios like fixed charge and the airball repayment and some of these other total debt to EBITDA issues."[1390]

On May 17, 2007, Bank of America executed the Credit Agreement.[1391] The next day, May 18, 2007, Raju Patel sent an e-mail to Mr. Larsen and Chandler Bigelow to inform them that "Bank of America will be looking to sell our current $105.0MM revolver exposure to around $70.0MM. There was some discussion about revolver sell-down in coordination with the joint book-runners but, apparently a solution was not achievable."[1392] Mr. Larsen responded that he was "not surprised to hear this" given "previous conversations and the information in the

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[1387] Ex. 535 at 5 (Bank of America Deal Screen Memorandum, dated March 5, 2007).

[1388] *Id.*; Ex. 924 at 11 (Bank of America Credit Approval Report, dated May 3, 2007).

[1389] Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 186:19-187:2.

[1390] *Id.* at 187:7-17.

[1391] Ex. 179 at TRB0520883 (Credit Agreement).

[1392] Ex. 544 at TRB0160944 (Larsen E-Mail, dated May 18, 2007).

market."[1393] He also stated that "it is hard to take this as a sign of confidence from BofA but I am willing to be persuaded otherwise."[1394]

(2) Due Diligence and Evaluations Performed.

Due to its late involvement in the process, BofA did not have substantial time to perform due diligence before confirming its initial interest in co-underwriting EGI's proposal. In fact, at the March 2, 2007 meeting, EGI pushed BofA for a response before the March 10, 2007 Tribune Board meeting when EGI's proposal would be evaluated against Tribune's self-help alternatives.[1395] Consequently, BofA began performing due diligence on co-underwriting EGI's proposal within days of the March 2, 2007 meeting. This due diligence included review of an EGI-prepared financial model, SEC filings, and existing senior note indentures.[1396] BofA identified several key credit risks and mitigating factors after that meeting.[1397]

A "Due Diligence Action Plan" was included as an addendum to the March 25, 2007 updated memo to BofA's Screening Committee.[1398] The due diligence outlined in this plan included "review of updated strategic operating plan," "review of 3rd party diligence reports," "review of tax, ESOP structure and ERISA requirements with outside advisors," "understanding of potential litigation related to dissident shareholders or investors," "assessment of ability to divest unconsolidated assets in the event of financial distress," "confirmation of [EGI's] plan/rights in the event step 2 is not executed," and "refining views of downside scenario."[1399]

[1393] *Id.*

[1394] *Id.*

[1395] Ex. 536 at 1 (Project Bear Leveraged Finance Screening Memo, dated March 6, 2007).

[1396] *Id.*; Ex. 538 at 3 (Patel E-Mail, dated March 21, 2007).

[1397] Ex. 535 at 10-11 (Bank of America Deal Screen Memorandum, dated March 5, 2007).

[1398] Ex. 539 at Addendum, 1 (Project Bear Leveraged Finance Screening Memorandum, dated March 25, 2007).

[1399] *Id.*

Mr. Petrik testified that he did not know whether all of the due diligence items on this Due Diligence Action Plan were completed by the time of the closing of the Step One Transactions, but that he knew that BofA had reviewed EGI's strategic operating plan and forecasts, and had discussed, in a general way, that EGI would be making changes to Tribune's personnel.[1400] He also testified that BofA had analyzed the transaction structure impact on cross-ownership limitations.[1401] Further, he recalled reviewing the accounting due diligence prepared by KPMG, and testified that BofA performed due diligence with respect to understanding the ESOP structure and the implications of the planned S-Corporation election.[1402] He explained that BofA also verified the timing of the planned asset sales and discussed with EGI the parties EGI believed would be interested in purchasing certain unconsolidated assets in the event of financial distress.[1403]

Mr. Petrik also testified that BofA had discussions with EGI regarding EGI's plans and rights in the event the Step Two Transactions did not close.[1404] BofA also prepared its own analysis of a downside case, using as a starting point the projections prepared by EGI.[1405] This downside modeling was in addition to other models and projections reviewed or prepared by BofA during the period leading up to the closing of the Step One Transactions.[1406] In preparing its cash flow projection models, BofA started with the projections it received from EGI and then

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[1400] Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 161:18-163:13.

[1401] *Id.* at 163:14-15.

[1402] *Id.* at 88:13-89:5 and 163:15-16.

[1403] *Id.* July 8, 2010, at 164:9-165:3.

[1404] *Id.* at 88:13-89:5 and 161:18-167:21.

[1405] Ex. 539 at Addendum 3 (Project Bear Leveraged Finance Screening Memorandum, dated March 25, 2007); Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 169:2-10.

[1406] Ex. 547 (Project Bear Sponsor Case, dated April 3, 2007); Ex. 550 (Investment Analysis – Project Tower, dated March 1, 2007); Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 202:20-205:6, 208:2-211:16, and 213:17-215:9.

"sensitize[d] it" and took steps to reach a comfort level that EGI's projections were realistic. As part of this process, BofA asked questions of EGI and requested additional data as needed.[1407]

In addition to performing its own analysis of the Leveraged ESOP Transactions,[1408] BofA had access to several such analyses from other lenders.[1409] Moreover, once it gained access to the data room, BofA assigned personnel to review the available data in order to further its due diligence.[1410] Mr. Petrik testified that in addition to doing its own due diligence, BofA also utilized the due diligence work product that it received from JPM, MLPFS, and Citigroup.[1411] BofA also planned to perform stress case testing before it provided a financing commitment.[1412]

BofA's verbal commitment to offer financing at its March 28, 2007 presentation to EGI was conditioned on "satisfactory completion of due diligence."[1413] On April 2, 2007, William Pegler sent an e-mail to several Bank of America employees and the Leveraged Finance Committee seeking approval to underwrite one-sixth of the financing for the Leveraged ESOP Transactions.[1414] Mr. Pegler noted that "[w]e will not have an opportunity to conduct additional business due diligence before signing letters, but will be relying on Cahill Gordon (underwriters' counsel) for satisfactory comfort on legal/structure/ESOP diligence issues. We will seek to arrange a call with Cahill prior to signing."[1415] Mr. Petrik testified that he reviewed the VRC

[1407] Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 90:16-91:9.

[1408] Ex. 547 (Project Bear Sponsor Case, dated April 3, 2007); Ex. 925 (Petrik E-Mail, dated March 26, 2007); Ex. 549 ("What If" Risk Rating Detail Reports, dated March 27, 2007).

[1409] Ex. 550 (Investment Analysis – Project Tower, dated March 1, 2007); Ex. 551 (Investment Analysis – Project Tower, dated March 23, 2007).

[1410] Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 213:2-11.

[1411] *Id.* at 83:20-84:22.

[1412] Ex. 535 at 10 (Bank of America Deal Screen Memorandum, dated March 5, 2007).

[1413] Ex. 541 at 10 (Bank of America Presentation to Equity Group Investments, LLC, Project Tower Discussion Materials, dated March 28, 2007).

[1414] Ex. 546 (Pegler E-Mail, dated April 2, 2007).

[1415] *Id.*

Step One solvency opinion dated May 24, 2007 but that BofA did not perform its own solvency analysis in connection with Step One.[1416] Mr. Petrik also testified that in approximately May 2007, Tribune's senior management made a formal presentation to JPM, MLPFS, Citigroup and BofA regarding all of the Tribune businesses.[1417]

e. Morgan Stanley.

Morgan Stanley's interactions with the Special Committee, Tribune, the Zell Group, Merrill, and Citigroup are discussed in other sections of the Report.[1418] This section focuses on Morgan Stanley's internal communications, due diligence, and other activities in connection with the Step One Transactions. In particular, this section addresses: (a) the Special Committee's engagement of Morgan Stanley and the related fee agreement between the parties, (b) Morgan Stanley's initial advisory and due diligence activities, (c) Morgan Stanley's internal views on the third-party bids and the self-help alternatives, (d) Morgan Stanley's participation in the final selection of the EGI proposal, Morgan Stanley's fairness opinion, and implementation of the Step One Transactions, and (e) Morgan Stanley's desire to participate in the Step One Financing as a lender.

Morgan Stanley's role evolved through the Step One Transactions from initially "look[ing] over the shoulder" of MLPFS and CGMI, to making valuation presentations to the Special Committee, to eventually negotiating the final terms of the EGI proposal with the Zell Group on behalf of the Special Committee and issuing a fairness opinion to the Special Committee opining on the fairness of the transaction to Tribune's stockholders.[1419]

[1416] Examiner's Sworn Interview of Daniel Petrik, July 8, 2010, at 117:20-119:21 and 124:2-6.

[1417] *Id.* at 69:13-22.

[1418] *See* Report at §§ III.D.1., III.E.4.b., III.E.4.c. and III.E.6.

[1419] Examiner's Interview of Thomas Whayne, June 11, 2010; Ex. 145 at 3 (Morgan Stanley Opinion Letter, dated April 1, 2007).

The key personnel working on behalf of Morgan Stanley were:

Investment Banking

Paul J. Taubman, Managing Director, Head of Global Mergers & Acquisitions[1420]

Thomas Whayne, Managing Director, Mergers & Acquisitions[1421]

Charles Stewart, Managing Director, Media & Communications[1422]

James D. Fincher, Associate, Media & Communications;[1423] Vice President[1424]

Steven D. Williams, Associate, Mergers & Acquisitions[1425]

Thomas Kvorning, Analyst, Media & Communications[1426]

Global Capital Markets

Ashok Nayyar, Managing Director and Co-Head, Leverage Finance[1427]

Kevin Sisson, Managing Director[1428]

William Graham, Executive Director[1429]

(1) The Special Committee's Engagement of Morgan Stanley and the Related Fee Agreement.

On October 6, 2006, the Special Committee appointed Morgan Stanley as the Special Committee's financial advisor in connection with its independent review of Tribune's strategic

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1420 Ex. 401 at 4 (Tribune Special Committee Working Group List, updated November 3, 2006); Ex. 402 at 2 (Presentation to the Tribune Special Committee, dated September 29, 2006); Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 30:16-18.

1421 Ex. 401 at 4 (Tribune Special Committee Working Group List, updated November 3, 2006); Ex. 402 at 2 (Presentation to the Tribune Special Committee, dated September 29, 2006).

1422 Ex. 401 at 4 (Tribune Special Committee Working Group List, updated November 3, 2006); Ex. 402 at 2 (Presentation to the Tribune Special Committee, dated September 29, 2006).

1423 Ex. 401 at 4 (Tribune Special Committee Working Group List, updated November 3, 2006); Ex. 402 at 2 (Presentation to the Tribune Special Committee, dated September 29, 2006).

1424 *Compare* Ex. 403 at MS_263484 (Stefan E-Mail, dated December 20, 2006) *with* Ex. 404 at MS_262901 (Fincher E-Mail, dated December 20, 2006) (noting apparent change in position).

1425 Ex. 401 at 4 (Tribune Special Committee Working Group List, updated November 3, 2006); Ex. 402 at 2 (Presentation to the Tribune Special Committee, dated September 29, 2006).

1426 Ex. 401 at 4 (Tribune Special Committee Working Group List, updated November 3, 2006); Ex. 402 at 2 (Presentation to the Tribune Special Committee, dated September 29, 2006).

1427 Ex. 402 at 2 (Presentation to the Tribune Special Committee, dated September 29, 2006).

1428 Ex. 405 (Sisson E-Mail, dated November 9, 2006).

1429 Ex. 406 at MS_286241 (Nayyar E-Mail, dated February 18, 2007).

alternatives,[1430] one week after Morgan Stanley made its pitch for the role to the Special Committee.[1431] Before official appointment, Morgan Stanley personnel began negotiating the fee arrangement with the Special Committee. Paul Taubman consulted with Ashok Nayyar on the fee, noting that the fee proposal should reflect "the opportunity cost of not providing financing."[1432] Mr. Nayyar suggested that Morgan Stanley "push hard to be allowed to put a staple for buyers," and queried whether Merrill and Citigroup were permitted to provide staple financing.[1433] Mr. Taubman explained:[1434]

> This is for the comm of [indpendent] directors. No chance there. As to citi and mer I don't know. But my first bit of advice to the comm will be to say they shouldn't be allowed to provide financing. And if they do we need to get paid considerably more.

Mr. Nayyar was concerned: "When can we talk? This is a major problem for us— $8 billion+ in financing. League table and $40 million in fees potentially left on the table. Need your help big time."[1435] Mr. Taubman relayed his and Mr. Nayyar's shared concerns to Skadden Arps, the Special Committee's legal counsel, which by October 8, 2006 had become responsible for negotiating Morgan Stanley's fees "due to a lack of progress" with Donald Grenesko, Tribune's Senior Vice President/Finance and Administration.[1436]

[1430] Ex. 407 (Special Committee Meeting Minutes, dated October 6, 2006). Morgan Stanley's duties pursuant to the engagement letter are discussed above. *See* Report at § III.A.3.e.(2).

[1431] Ex. 402 (Presentation to the Tribune Special Committee, dated September 29, 2006). The former Chair of the Special Committee, William Osborn, testified that a subgroup of the Special Committee chose Morgan Stanley. Examiner's Sworn Interview of William Osborn, June 24, 2010, at 13:4-12.

[1432] Ex. 408 at MS_351312 (Nayyar E-Mail, dated October 3, 2006).

[1433] *Id.*

[1434] *Id.*

[1435] *Id.*

[1436] Ex. 409 at MS_350511-MS_350512 (Taubman E-Mail, dated October 8, 2006).

Morgan Stanley and the Special Committee reached agreement on Morgan Stanley's fees on October 10, 2006.[1437] Under the fee agreement, Morgan Stanley was to receive $2.5 million as an upfront advisory fee.[1438] An additional $7.5 million transaction fee became due and payable once Morgan Stanley rendered its fairness opinion.[1439] Tribune ultimately paid Morgan Stanley the $7.5 million transaction fee, plus expenses of $167,703.91, on May 9, 2007.[1440] Much later, Morgan Stanley unsuccessfully sought approval from the Special Committee for an additional discretionary fee.[1441] Mr. Taubman testified that "the history here is we had had a vigorous bid ask on the original fee and what we ultimately agreed to do was in an effort to make sure that we got off on the right foot with the committee."[1442] Mr. Taubman "ultimately acquiesced to their request that we take our fee down significantly" in exchange for the

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[1437] Ex. 410 at MS_351314 (Taubman E-Mail, dated October 11, 2006); Ex. 411 at MS_199245-MS_199246 (Kvorning E-Mail, dated October 10, 2006).

[1438] Ex. 25 at MS 00211 (Morgan Stanley Engagement Letter); Examiner's Interview of Thomas Whayne, June 11, 2010. *See also* Report at § III.A.3.e.(2). (discussing the terms of the fee agreement).

[1439] Ex. 25 at MS 00211 (Morgan Stanley Engagement Letter); Examiner's Interview of Thomas Whayne, June 11, 2010; Examiner's Sworn Interview of Thomas Whayne, July 2, 2010, at 34:21-37:4. *See also* Report at § III.A.3.e.(2). (discussing the terms of the fee agreement). Morgan Stanley's fairness opinion ultimately was delivered on April 1, 2007. Ex. 145 (Morgan Stanley Opinion Letter, dated April 1, 2007). In contrast, former Special Committee Chair William Osborn testified that he thought Morgan Stanley was not entitled to the transaction fee after rendering its April 1, 2007 fairness opinion, because "from our perspective the transaction wasn't totally completed yet." Examiner's Sworn Interview of William Osborn, June 24, 2010, at 20:21-21:1. *See also id.* at 115:9-116:4. The evidence available to the Examiner at the time of the Report suggests that Mr. Osborn is mistaken and Morgan Stanley was, in fact, paid its transaction fee in May 2007 prior to the closing of Step One. *See* Ex. 412 (Stewart E-Mail, dated May 10, 2007); Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 24:19-27:2.

[1440] *See* Ex. 412 (Stewart E-Mail, dated May 10, 2007); Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 24:19-27:2. *See also* Ex. 25 at MS 00212 (Morgan Stanley Engagement Letter).

[1441] Ex. 413 at 2 (Overview of Morgan Stanley's Role in the Tribune Special Committee Review Process, dated December 3, 2007); Examiner's Interview of Thomas Whayne, June 11, 2010. *See also* Ex. 410 at MS_351314 (Taubman E-Mail, dated October 11, 2006). On the other hand, Mr. Osborn testified to the Examiner that he believes that Morgan Stanley asked for the discretionary fee sometime after the closing of Step Two. Examiner's Sworn Interview of William Osborn, June 24, 2010, at 17:12-14. He declined Morgan Stanley's request for the discretionary fee for two reasons: first, that the fee was inappropriate "because of the financial condition of the company at that point in time, it being highly leveraged," and second, because "I personally felt that that would have been a stretch." *Id.* at 16:20-17:10.

[1442] Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 101:6-10.

opportunity to pitch for the discretionary fee.[1443] Thomas Whayne noted that the market rate for its services in connection with the Step One Transactions "would probably be twice what we got," but in view of the preexisting roles of MLPFS and CGMI, Morgan Stanley "agreed to do it at less than market."[1444]

(2) Morgan Stanley's Initial Advisory and Due Diligence Activities.

Mr. Whayne described Morgan Stanley's involvement through the fall of 2006 as "fairly light touch, just looking over the shoulder of Merrill [and] Citi."[1445] The documents the Examiner reviewed, however, demonstrate that once the fee arrangement was in place, Morgan Stanley delved immediately into the engagement, participated in several conference calls with Tribune management and third-party bidders, and took part in meetings with the Special Committee.

Morgan Stanley's due diligence activities commenced the same day that Morgan Stanley learned it had been selected as the Special Committee's advisor.[1446] Thomas Kvorning, a Morgan Stanley analyst, worked with other Morgan Stanley personnel to begin building Morgan Stanley's own "Tribune LBO Model." The model was "based on [W]all [S]treet consensus" and initially assumed leverage levels of 7.5x or 8.0x and a $35 per share purchase price.[1447] Morgan Stanley considered valuation of Tribune's unconsolidated assets as a key model element because of a "large dispersion among brokers on the value of these and they could be worth up to

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[1443] *Id.* at 101:10-102:2.

[1444] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1445] *Id.*

[1446] *See* Ex. 408 at MS_351312 (Nayyar E-Mail, dated October 3, 2006); Ex. 415 at MS_198713 (Kvorning E-Mail, dated October 2, 2006); Ex. 416 (Audette E-Mail, dated October 4, 2006); Ex. 417 (Kvorning E-Mail, dated October 4, 2006); Ex. 418 (Stewart E-Mail, dated October 14, 2006) (agenda for October 14, 2007 conference call).

[1447] Ex. 415 at MS_198713 (Kvorning E-Mail, dated October 2, 2006) (listing several assumptions).

$2.0Bn."[1448] A discounted cash flow analysis[1449] and sum-of-the-parts analysis were added later.[1450] Overall, Morgan Stanley's valuation model, which eventually would become a key part of its fairness opinion, evolved as an ongoing iterative process.[1451]

Morgan Stanley undertook additional due diligence tasks, including:

- An analysis of Tribune's stockholders following the 2006 Tender Offer, "reflecting changes in economic/voting ownership for the Chandlers, the McCormick Foundation, Ariel Capital, Nelson Peltz and Davidson Kempner."[1452]
- An analysis of "four separation alternatives," comprising a "Broadcasting Sponsored Spin," "Publishing Sponsored Spin," "Publishing Sponsored Split (Chandlers and sponsor owning 100% of publishing)," and "LA Times Split (Chandlers owning 100% of LA Times)."[1453]
- Revisions of the valuation model to reflect updated broker consensus.[1454]
- Consideration of "the regulatory risks associated with various bidding groups."[1455]

In evaluating the due diligence data, Morgan Stanley's Investment Banking division personnel often reached out to their colleagues in the Global Capital Markets division for

[1448] Ex. 419 at MS_194831-194832 (Kvorning E-Mail, dated October 5, 2006).

[1449] Ex. 420 (Williams E-Mail, dated October 30, 2006). Mr. Williams raised a concern over the proper treatment of investments with negative incremental rates of return as an element of discounted cash flow. Ex. 420 (Williams E-Mail, dated October 30, 2006).

[1450] Ex. 421 at MS_199768 (Kvorning E-Mail, dated October 11, 2006).

[1451] Ex. 422 at MS_196674 (Baldi E-Mail, dated October 26, 2006); Ex. 423 (Whayne E-Mail, dated October 29, 2006).

[1452] Ex. 424 (Whayne E-Mail, dated November 5, 2006).

[1453] Ex. 425 (Stewart E-Mail, dated November 6, 2006).

[1454] Ex. 426 at MS_170027-170028 (Baldi E-Mail, dated November 13, 2006).

[1455] Ex. 427 (Stewart E-Mail, dated November 16, 2006).

insights and research assistance.[1456] For example, on October 13, 2006, Charles Stewart forwarded to Kevin Sisson an electronic copy of the staple financing package that MLPFS was poised to distribute to interested parties, and invited Mr. Sisson to comment.[1457] Mr. Sisson observed:[1458]

> Its exactly where we thought it would be at 7.5x. I don't really think of the phones as leverage because of the stock collateralizing them. They have conveniently left out any reference to a minimum cash equity contribution. . . . I think the total secured debt and total sr debt multiples may be .25 to .5x too high. Also think bank pricing is 25 to 50 bps too tight for the ratings assumptions and the size of the deal. . . . Other than that it looks ok.

In response, Mr. Kvorning revised his leveraged buyout transaction model to attempt to replicate MLPFS' and CGMI's staple financing package in accordance with Mr. Sisson's observations,[1459] and added a "segment LBO of Publishing" as a potential alternative.[1460] Later, Steven Williams also sought Mr. Sisson's view on an early iteration of the self-help alternative, or "standalone recap scenario:"[1461]

> As you know, the company currently has a committed staple (Merrill/Citi) on the LBO at 8.25x.
>
> We wanted to get a sense for few things related to a Tribune standalone recap scenario. 1) appropriate standalone leverage levels, 2) how the debt would tranche out bank v. bond, 3) treatment of PHONES, and 4) the cost/ratings on new issues etc.

[1456] *See e.g.*, Ex. 428 at MS_199055 (Wynne E-Mail, dated October 2, 2006); Ex. 429 at MS_280619 (Sisson E-Mail, dated October 13, 2006); Ex. 1038 at MS_173567 (Williams E-Mail, dated November 8, 2006).

[1457] Ex. 429 at MS_280619 (Sisson E-Mail, dated October 13, 2006).

[1458] *Id.* Mr. Sisson had preliminarily estimated leverage at 7.5x, but noted that "if there is a particularly good story/turnaround plan (e.g. cost cutting, etc.), we could be higher on leverage." Ex. 428 at MS_199055 (Wynne E-Mail, dated October 2, 2006).

[1459] Ex. 431 at MS_204407 (Kvorning E-Mail, dated October 15, 2006).

[1460] Ex. 432 at MS_203029 (Kvorning E-Mail, dated October 18, 2006).

[1461] Ex. 433 at MS_196111 (Williams E-Mail, dated October 27, 2006).

In concert with Subhalakshmi Ghosh from Morgan Stanley's Global Capital Markets division, Mr. Williams evaluated what had become known as the "Consolidated Tower Model."[1462] Ms. Ghosh commented:[1463]

> Can we look at leverage excluding Phones. Phones is sub debt so it doesn't make sense to include it in the bank debt section. In the sources and uses we can show the phones rolling to it shows up as a source and use of cash. But the 6.5x leverage you are calculating should not include the phones.

Mr. Williams then updated the model and replied that "we are no longer including PHONES in the leverage calculation, but we are including them as both a source and use of cash."[1464]

On a number of occasions, Morgan Stanley personnel questioned the quality of MLPFS' and CGMI's analyses and recommendations to the Special Committee. For example, Mr. Whayne disagreed with the accuracy of MLPFS' "Sum-of-the-Parts analysis."[1465] Multiple e-mails reflected tension at various times between Morgan Stanley on the one hand and CGMI[1466] and MLPFS on the other.[1467]

By early December 2006, due diligence activity slowed ahead of the final deadline for third-party auction bids. Mr. Williams noted that "[t]hings have been relatively quiet on the Tribune front."[1468] James Fincher confirmed "Nothing big at this stage . . . spoke to Tom yesterday and no new developments."[1469] On December 19, 2006, however, Mr. Kvorning noted

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1462 Ex. 1038 (Williams E-Mail, dated November 8, 2006).

1463 *Id.* at MS_173567.

1464 *Id.* at MS_173566.

1465 Ex. 434 (Whayne E-Mail, dated October 29, 2006).

1466 Ex. 435 at MS_278951 (Whayne E-Mail, dated November 10, 2006).

1467 Ex. 436 at MS_332439-332440 (Taubman E-Mail, dated December 22, 2006).

1468 Ex. 437 at MS_236660 (Fincher E-Mail, dated December 5, 2006).

1469 *Id.*

an update to Tribune's 2006-2010 business plan in the data room. Preparing to update Morgan Stanley's model, he summarized the revisions for the Morgan Stanley team as follows:[1470]

> —Publishing revenues adjusted downwards to reflects weakness in national advertising and circulation revenues
>
> —TV/Broadcasting revenue adjusted upwards after stronger-than expected performance
>
> —06E EBITDA increases by $4MM to $1,307MM and 07E EBITDA decreases by $5MM to $1,340MM. From '08-10E they forecasts incremental EBITDA of approx. $30MM (positive BCF adjustment for B&E outweighs negative from Publishing)
>
> —Various cost reductions (continued cost control in B&E, lower comp due to lower results, reduction of 401(k) contribution).

(3) Morgan Stanley's Views on the Third-Party Bids and the Self-Help Alternatives.

Morgan Stanley viewed the Tribune Board's and the Special Committee's focus on the auction process and strategic alternatives involving third parties as a weakness in Tribune's strategic evaluation process. In his interview with the Examiner, Mr. Whayne stated that Tribune's pursuit of a possible leveraged buyout transaction distracted it from consideration of other alternatives that could produce more value to Tribune's stockholders.[1471] For example, the record reflects that early in the engagement, Mr. Whayne commented that he would have considered whether a potential sale of the Los Angeles Times would offset the potential effects of a failure to achieve management's announced $200 million in cost reductions:[1472]

[1470] Ex. 438 at MS_237635-237636 (Kvorning E-Mail, dated December 19, 2006).

[1471] Examiner's Interview of Thomas Whayne, June 11, 2010. In contrast, Mr. Osborn testified, referring to the Special Committee's review of strategic options from September 2006 through April 2007, that in his view, "in terms of casting a wide net, we did a very thorough job." Examiner's Sworn Interview of William Osborn, June 24, 2010, at 61:8-9.

[1472] Ex. 439 (Whayne E-Mail, dated October 22, 2006). In contrast, Ms. Mohr stated to the Examiner that "there was substantial reverse inquiry around certain core assets--for example the LA Times." Examiner's Interview of Christina Mohr, June 29, 2010.

> Remember $185 million of the total $200 million of cost cuts is attributable to Publishing. . . . These cost reductions might not be achievable in which case the company will grow at the rate of Street estimates, or even below. If you can sell LA for a big multiple you can substantially derisk the company's plan.

Mr. Whayne stated to the Examiner that "the one thing we thought they didn't fully explore was could we do better by doing a series of assets sales and actually create more value for shareholders rather than simply pursuing an LBO."[1473] Mr. Whayne also noted that information flow was a recurring difficulty with the process, as Morgan Stanley's access to the "engine room" was limited.[1474]

In advance of their first Special Committee meeting on October 18, 2006,[1475] Mr. Taubman, Mr. Whayne, and Mr. Stewart shared several concerns regarding the short time frame imposed on the bidding process.[1476] Mr. Taubman viewed the initial transaction timetable as "being way accelerated with no meaningful feedback and no asset sale alternative."[1477] Mr. Whayne recognized that MLPFS' and CGMI's October 12, 2006 bid solicitation letter was geared toward achieving "an expedited process to sell the company."[1478] Mr. Stewart suggested promptly advising Special Committee Chair William Osborn that "1. Their timeframe is likely unrealistic. 2. Doesn't appear they have baked [sic] off staple sources. 3. Need to create

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[1473] Examiner's Interview of Thomas Whayne, June 11, 2010. Ms. Mohr, on the other hand, stated to the Examiner that she thought that Tribune "should sell assets as rapidly as possible," and that she "push[ed] to get asset sales done." Examiner's Interview of Christina Mohr, June 29, 2010.

[1474] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1475] Ex. 96 (Special Committee Meeting Minutes, dated October 18, 2006).

[1476] *See* Ex. 440 (Stewart E-Mail, dated October 12, 2006).

[1477] Ex. 440 at MS_300032 (Stewart E-Mail, dated October 12, 2006). *See also* Ex. 421 at MS_199768 (Kvorning E-Mail, dated October 11, 2006).

[1478] Ex. 440 at MS_300031 (Stewart E-Mail, dated October 12, 2006).

actionable alternative. 4. Credibility of 2007 projections (where they show growth) will be critical as will gannett [sic] online partnership considerations."[1479]

(i) Morgan Stanley's Evaluation of Self-Help Alternatives.

In early January 2007, Morgan Stanley was preparing to evaluate the anticipated auction process bids. In conjunction with this process, Morgan Stanley internally debated issues related to Tribune's valuation and investigated Tribune's current ownership profile.[1480] Morgan Stanley revisited the treatment of the PHONES Notes in early January, first seeking clarification on MLPFS' accounting for the value of the PHONES Notes.[1481] Internally, James Fincher asked for Mr. Stewart's view on the treatment of the PHONES Notes "from a valuation perspective. We are currently assuming the market value (~$550MM) but the Citi/Merrill guys assume $1Bn (based on $1.3Bn accreted value in 2029, less the value of the TWX shares they own)."[1482] At the same time, the pace of Morgan Stanley's due diligence activities increased as it prepared its "valuation/strategic alternatives presentation" for the January 12, 2007 Special Committee meeting, a presentation that included consideration of various self-help alternatives.[1483] Steven Williams again sought Ms. Ghosh's view of the recapitalization scenario, accounting for Tribune management's figures as updated in December 2007. In particular, Mr. Williams asked "whether

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[1479] *Id.* at MS_300030.

[1480] An ongoing internal debate over which unconsolidated assets should be grouped together reflected the larger difficulty that the unconsolidated assets could be, and typically were, grouped together in a number of different combinations. Ex. 441 (Williams E-Mail, dated January 3, 2007). Mr. Kvorning asked his Global Capital Markets colleagues to provide him with an update on "Tribune ownership," "[h]edge fund ownership," and "[i]ndex ownership" in order to examine any changes since the fall of 2006. Ex. 442 at MS_356704 (Thompson E-Mail, dated January 2, 2007). It was also reported that the volume of Tribune shares being shorted per month had been increasing since August 2006. Ex. 442 at MS_356702 (Thompson E-Mail, dated January 2, 2007).

[1481] Ex. 443 (Fincher E-Mail, dated January 6, 2007).

[1482] Ex. 444 (Fincher E-Mail, dated January 8, 2007).

[1483] Ex. 445 at MS_119574 (Baldi E-Mail, dated January 18, 2007).

we could possibly put more leverage on the business without an equity partner."[1484] Ms. Ghosh advised (in Mr. Williams' words) that "the business would support 1.25x below the ML/Citi staple on a WholeCo. Recap. . . . Tribune could support 6.25x PLUS PHONES. *i.e.* the WholeCo can support 6.25x plus another 0.75x including the PHONES at $1.0Bn for total leverage of 7.0x (including PHONES)."[1485] Ms. Ghosh suggested the following capital structure:[1486]

> Total Leverage: 6.25-6.50x (pre PHONES); PHONES at $1Bn add ~0.75x to total leverage getting you to 7.0x to 7.25x tot lev
>
> PF Capital Structure:
>
> 1) TLB @ L + 225 if Ba3/BB-, L + 250 if B1/B+
>
> 2) Sr Sec Nts (including $1.255Bn rollover notes) - Total of TLB+Sec Notes should be 4.75 - 5.00x of tot lev
>
> 3) 0.75x Sr Unsec Nts @ 9 - 9.25%
>
> 4) 0.75x Sr Sub Nts @ 10.5%
>
> Our analysis assumes your views for valuation of the individual businesses has not changed.

As Todd Schwarzinger, also of Morgan Stanley's Investment Banking division, summarized to Mr. Stewart on January 11, 2007:[1487]

> The short answer is that it seems each party has their own distinctive way of valuing the [PHONES Notes], with limited consistency between firms. In addition to valuing the security itself, there is also a bit of diversity in terms of valuing the potential $334MM tax liability resulting from the recent IRS proposal to capitalize the security's interest.

[1484] Ex. 446 at MS_119373–119374 (Williams E-Mail, dated January 9, 2007).

[1485] *Id.* at MS_119372.

[1486] Ex. 447 at MS_252215-252216 (Williams E-Mail, dated January 9, 2007).

[1487] Ex. 448 at MS_310738 (Schwarzinger E-Mail, dated January 11, 2007).

Mr. Fincher sought input from Robert Shepardson, a managing director and head of Morgan Stanley's Media & Communications group,[1488] regarding an alternative "where Tribune's broadcasting business would trade if publishing were separated. As part of the separation, broadcasting would be recapped at 6.5x leverage and would include three additional assets: the Cubs and Tribune's stakes in Food Network and Comcast SportsNet (assumed value of these assets is $1.3Bn)."[1489]

Mr. Whayne reported to Mr. Taubman a further development on "standalone recap scenarios" in late January:[1490]

> Christina called after finishing a meeting with TRB management and ML. . . . She said that their standalone recap base case provides for a $20 special dividend, which implies approximately 6.5x leverage (7.2x with the PHONES) -- basically the case that we showed the board a couple of weeks ago. Want to pursue immediately, but will be structured to provide for a spin when audited financials are completed. Have also decided that a Carlyle proposal which provides for the same after-tax economics will trump, given greater certainty.

Recent operating results from the fourth quarter of 2006 began to impact Morgan Stanley's analysis. From these results, which showed "publishing slightly behind budget and tv slightly ahead," Mr. Stewart expected that the "same trends [would] probably characterize 1q 07 performance."[1491] Mr. Stewart observed to Frank English, Morgan Stanley's Vice Chairman and Managing Director, Midwest Region,[1492] that the bidding process could result in "some partner trading at the finish line" as the final bid due date of January 17, 2007 approached, and that

[1488] Ex. 402 at 2 (Presentation to the Tribune Special Committee, dated September 29, 2006).

[1489] Ex. 449 at MS_251814 (Fincher E-Mail, dated January 8, 2007).

[1490] Ex. 450 at MS_289103 (Taubman E-Mail, dated January 25, 2007).

[1491] Ex. 451 at MS_310729 (Stewart E-Mail, dated January 10, 2007).

[1492] Ex. 401 at 4 (Tribune Special Committee Working Group List, updated November 3, 2006); Ex. 402 at 2 (Presentation to the Tribune Special Committee, dated September 29, 2006).

"[s]elf help alternatives as we have advocated all along as plan b" remained viable in the face of anticipated weak bids.[1493]

(ii) Morgan Stanley's Evaluation of the Third-Party Bids and Focus on the Chandler Trusts Proposal.

Although the Special Committee's bidding process ultimately resulted in proposals from the Chandler Trusts, Broad/Yucaipa, and Carlyle, Morgan Stanley concentrated primarily on the Chandler Trusts Proposal as the most serious, and in some ways most problematic, of the three bids received by the Special Committee on January 17, 2007.

Morgan Stanley's initial discussions with the Chandler Trusts took place soon after Morgan Stanley's engagement as part of an October 24, 2006 call with Rustic Canyon, the Chandler Trusts' financial advisor, and Goldman Sachs to discuss the Chandler Trusts' view of the sale process, "with the basic message that the family wants liquidity and preservation of capital."[1494] Mr. Whayne thought it "sounded like the dog caught the bus and doesn't know what to do now, except keep barking."[1495]

During the November 27, 2006 Special Committee meeting, Morgan Stanley suggested that "the Chandler Trusts could potentially serve as a significant source of competition for the financial party bidders."[1496] In his interview with the Examiner, Mr. Whayne commented that Morgan Stanley became concerned that a Chandler Trusts bid would frustrate the auction process because "what they were proposing was very different from what others were proposing,"

[1493] Ex. 451 at MS_310729 (Stewart E-Mail, dated January 10, 2007).

[1494] Ex. 452 at MS_300500 (Whayne E-Mail, dated October 25, 2006). Though the contact had been approved by Mr. Osborn, due to the tension with the other advisors, subsequent calls concerning the Chandler Trusts' views were coordinated with MLPFS and CGMI. Ex. 453 at MS_300764-300765 (Whayne E-Mail, dated November 1, 2006).

[1495] Ex. 454 at MS_299683 (Taubman E-Mail, dated October 24, 2006).

[1496] Ex. 99 at TRIB-G0007796 (Special Committee Meeting Minutes, dated November 27, 2006).

thereby creating uncertainty for other bidders.[1497] Mr. Whayne opined that "any good banker who had good in-house tax expertise and had been involved in unique structures could figure out what the Chandlers could deliver. . . ."[1498] Nonetheless, Mr. Whayne viewed the Chandler Trusts Proposal as a genuine bid.[1499]

Morgan Stanley internally reviewed a revised Chandler Trusts Proposal on December 11, 2006. James Fincher summarized the Chandler Trusts' valuation of Tribune: "Based on the identified differences in assumptions, it looks like their values should be approximately $3 per share higher than ours, so it appears that they could be (a) valuing unconsolidated investments lower, (b) valuing the Chandler Trust's shares more highly or (c) some combination of (a) and (b)."[1500] Morgan Stanley proceeded to analyze the tax implications of the Chandler Trusts Proposal out of concern that the Chandler Trusts could receive a windfall on a subsequent sale of Tribune's assets.[1501] Reviewing Morgan Stanley's analysis of the Chandler Trusts Proposal on January 3, 2007, Mr. Whayne suggested to Mr. Fincher:[1502]

> On the special cash dividend funding page, we should add a line for the cash to the Chandlers at the bottom of the page, and then figure out the per share dividend to [other] shareholders based on a share count reduced for the Chandler shares. I think this is a more accurate portrayal of what is happening and it forces us to get specific regarding [w]hat the Chandlers are getting. We should also add a new page at the end of Chandler section that seeks to derive their package value. . . . Probably a sensitivity based on their ownership and the valued accorded by the investor to Publishing.

[1497] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1498] *Id.*

[1499] *Id.*

[1500] Ex. 455 at MS_285383 (Taubman E-Mail, dated December 12, 2006).

[1501] Ex. 456 (Sperling E-Mail, dated December 12, 2006).

[1502] Ex. 457 (Whayne E-Mail, dated January 3, 2007).

By January 9, 2007, Steven Williams noted that the Chandler Trusts Proposal relied on outdated financials, causing him to question whether Morgan Stanley should run "the New Tower financials through the 'Chandlers' leveraged Broadcasting spin scenario."[1503] He debated whether to make the change, apparently, because although "we all agree that the Chandlers used old financials as the basis of their bid, . . . the flip side says they're old news and no longer relevant to a new leveraged spin analysis."[1504]

On January 12, 2007, Morgan Stanley formally presented to the Special Committee its preliminary valuation of Tribune and its views of the Chandler Trusts Proposal, auction process status, and "[s]elected [a]lternatives."[1505] Morgan Stanley received positive feedback on the presentation, but Mr. Whayne continued to disagree with Ms. Mohr on matters of strategy.[1506] Internally, Mr. Whayne noted positive feedback from the client following the meeting and additional requested analysis:[1507]

> Board meeting went well. One of the lead directors remarked that ours was the best presentation that they had seen. All wanted to take home to review further, which is unusual.
>
> Three follow up items:
>
> 1. Basis analysis for the top 20 Tower shareholders
>
> 2. Compare Street and Management estimates vs Actual performance to get a sense of who has been more accurate. Can likely do on a quarterly basis for last 2 years, but likely need plans that go back to do 3-4 years of analysis
>
> 3. Update valuation perspectives of Food Network stake (Street, DCF, Trading Multiples, etc).

[1503] Ex. 458 (Williams E-Mail, dated January 9, 2007).

[1504] *Id.*

[1505] Ex. 104 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated January 12, 2007).

[1506] Ex. 459 (Whayne E-Mail, dated January 15, 2007).

[1507] Ex. 460 (Stewart E-Mail, dated January 12, 2007).

On January 16, 2007, Mr. Whayne reported to Mr. Taubman that according to Michael Costa of Merrill:[1508]

> Chandlers are apparently scrambling to complete diligence and Michael had a conversation with Unterman signalling [sic] that they need to think about some sort of price protection tied to the trading price of B&E after separation, as well as assuming more of the unconsolidated assets than were in their original proposal. Unterman asked to speak to the [McCormick] Foundation re a voting agreement but Michael declined.

By January 18, 2007, Mr. Taubman wanted to avoid "legitimiz[ing] the chandler offer" by "claim[ing] market share for the deal being tracked as of today."[1509] Following the Chandler Trusts' revised proposal of January 26, 2007, Mr. Williams observed that "it doesn't appear that they've changed the value at all, just delivering more cash and putting some certainty around the trading level of Broadcasting with the collar. . . . Bargaining and Negotiations 101 . . . offer something different without actually increasing your value."[1510] Mr. Fincher viewed the "[k]ey change [a]s the inclusion of two contingent payment mechanisms - one depends on the trading value of the broadcasting business post-spin, the other on the resolution of an outstanding tax case."[1511]

In mid-to-late January 2007, internal Morgan Stanley communications reflected a theme of "cleaning up merrill and citi's mess."[1512] A Morgan Stanley analysis of the Chandler Trusts Proposal "using Goldman assumptions" found that "the addition of $800MM in value for CareerBuilder and Other Interactive Assets increases package value. Neighborhood of

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[1508] Ex. 461 (Whayne E-Mail, dated January 16, 2007).

[1509] Ex. 462 (Taubman E-Mail, dated January 18, 2007).

[1510] Ex. 463 at MS_128240 (Williams E-Mail, dated January 27, 2007).

[1511] Ex. 464 at MS_252208 (Fincher E-Mail, dated January 30, 2007).

[1512] Ex. 465 at MS_338566 (Taubman E-Mail, dated January 19, 2007).

$3.30/share in the 7.8x Pub case."[1513] Circulating an updated analysis of comparable transactions to the Morgan Stanley team on January 23, 2007, Mr. Williams noted a difference in Morgan Stanley's methodology from that of the other advisors:[1514]

> As a general rule, Citi/Merrill are using I/B/E/S consensus estimates pulled from Bloomberg for their EBITDA. We do not use I/B/E/S consensus because each broker treats EBITDA differently. We go through the process of hand-entering estimates from only the brokers that we have complete information for (*i.e.* we have the research report printed out and in front of us). This means that our consensus EBITDA estimates will differ slightly from those used by Citi/Merrill, but I am more confident in our numbers as we have confirmation that they are calculated on an apples to apples basis - and if they're not, we know exactly why.

In late January, MLPFS circulated a draft presentation in advance of the January 27, 2007 Tribune Board meeting in which it summarized all of the bids. Charles Stewart commented on the presentation, noting that the "range of value on self-help alternatives (eg whole co recap - $25-$33) seem[ed] very wide . . . needs more color on determinants of value, time vs. non-core asset value vs mkt multiples on core businesses vs mgmt ability to meet plan numbers."[1515] Mr. Taubman added:[1516]

> [O]n page 5 would kill first alternative, give carlyle a put up or shut up on second and then compare it to the third to choose one . . . then we need to flesh that out vis-à-vis chandler proposal as we try and strengthen it and try and keep burkle/broad warm . . . if we [lose] him so be it[.]

[1513] Ex. 466 (Williams E-Mail, dated January 21, 2007).

[1514] Ex. 467 at MS_121078-121079 (Williams E-Mail, dated January 23, 2007).

[1515] Ex. 468 at MS_268370 (Whayne E-Mail, dated January 26, 2007). Mr. Whayne concurred. Ex. 468 at MS_268370 (Whayne E-Mail, dated January 26, 2007).

[1516] Ex. 469 at MS_288216 (Taubman E-Mail, dated January 27, 2007).

(4) Morgan Stanley's Participation in the Selection of the EGI Proposal and Implementation of the Step One Transactions.

Morgan Stanley first learned about the Zell Group's initial "expression . . . of interest in sponsored recap" from Mr. Costa on January 26, 2007.[1517] Mr. Whayne expressed surprise at Samuel Zell's interest.[1518] In response, Christina Mohr of CGMI noted that there was "[n]o number from him yet, he had already signed a [confidentiality agreement] months ago."[1519] Mr. Whayne explained to the Examiner that when Mr. Whayne first heard about the EGI proposal he thought: "[W]hat was novel was that it was an S-corp ESOP. That was the part that was truly unprecedented. I'd never seen that done. I subsequently became educated that it had been done for other private [companies]. But I'm still not aware it'd been done to other public companies."[1520] Although it learned of EGI's interest on January 26, 2007, Morgan Stanley did not formally evaluate the EGI proposal for the Special Committee until March 21, 2007.[1521]

In the meantime, Morgan Stanley continued to evaluate the other third-party bids as well as develop the self-help recapitalization option. Neither the Carlyle Proposal nor the Broad/Yucaipa Proposal were "fully baked," in Mr. Whayne's view.[1522] Mr. Whayne expected the Chandler Trusts to submit a revised proposal, but Ms. Mohr was "[n]ot sure if they have the financing to be credible in a revision."[1523] According to Mr. Whayne, when Broad/Yucaipa subsequently reduced their offer price, their bid lost any attractiveness it may have had.[1524]

[1517] Ex. 470 at MS_290169-70 (Mohr E-Mail, dated January 26, 2007).

[1518] *Id.* at MS_290169.

[1519] *Id.* at MS_290168-69.

[1520] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1521] Ex. 136 (Special Committee Meeting Minutes, dated March 21, 2007).

[1522] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1523] Ex. 471 at MS_288560 (Mohr E-Mail, dated February 2, 2007).

[1524] Examiner's Interview of Thomas Whayne, June 11, 2010.

Morgan Stanley was still considering a leveraged spinoff of the Broadcasting Segment as of February 5, 2007.[1525] At the same time, Mr. Whayne reported to Mr. Taubman that he "[j]ust spoke to my contact at Zell. He thinks that they will be able to get to 33 [from $30], subject to getting key employees on board. Sam apparently has a call into Bill [Osborn]."[1526] The next day, EGI submitted a revised proposal at $33 per share.[1527]

Self-help asset sales also remained under consideration, as Morgan Stanley looked into "modeling in bridge loans that will be tied to selected assets that may potentially be sold by Tribune."[1528] In particular, Mr. Williams asked Ms. Ghosh whether "when thinking about loan / value ratios on bridge loans, is a good rule-of-thumb percentage around 75%? Also, is the L/V ratio attached to the gross proceeds from the sale or net proceeds after tax?"[1529] Ms. Ghosh replied that, "[i]f the tax liability is significant, and we have sufficient comfort around the sale price we can lend against it that keeps in mind the tax liability."[1530] Mr. Williams' reply reflects the challenges Morgan Stanley faced in obtaining timely financial information from Tribune, MLPFS, and CGMI and incorporating that data into its modeling:[1531]

> We will incorporate this concept into our model, as we are currently running the L/V ratio off of net proceeds vs. gross.
>
> Just so you know, Tribune management is currently in the process of updating their financial package, and we are trying to get the new info from the other advisors. The Company won't give the

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[1525] Ex. 472 (Fincher E-Mail, dated February 5, 2007).

[1526] Ex. 473 at MS_287136 (Whayne E-Mail, dated February 5, 2007). In his interview, Mr. Whayne acknowledged that William Pate of EGI is a "close personal friend . . . from college." Examiner's Interview of Thomas Whayne, June 11, 2010.

[1527] Ex. 474 at MS_265757 (Whayne E-Mail, dated February 6, 2007).

[1528] Ex. 475 at MS_239580 (Ghosh E-Mail, dated February 7, 2007).

[1529] *Id.*

[1530] *Id.*

[1531] *Id.* at MS_239578-79.

> package directly to us b/c we are spec. committee advisor, not Company advisor.
>
> As you can see, part of the frustration on this engagement is that we are essentially left out of the loop on many of the decisions that are made with the other advisors, and we have to make many of our judgments in the dark, without perfect information.

Morgan Stanley's frustrations aside, by the next day, Mr. Williams reported to James Fincher that "re: the Tower recap/div model . . . we are very close to matching with Citi/Merrill."[1532]

Efforts to model a revised structure involving an upfront share repurchase that was planned to occur in late March 2007, followed by a Broadcasting Segment spin planned to occur in September or October 2007, continued through mid-February.[1533] In preparation for a February 12, 2007 Special Committee meeting, Morgan Stanley focused on evaluating "(a) the doability of the Merrill/Citi proposal . . . and (b) reasonableness of their proposed fees."[1534] William Graham opined that "Structure & rates generally look ok to me. The key to this is seeing exactly what conditions and flex ML/Citi have around their financing commitments."[1535] In advance of the presentation, Mr. Whayne and Mr. Taubman continued to disagree with CGMI over the self-help recapitalization scenario. Mr. Whayne reported to Mr. Taubman that Ms. Mohr:[1536]

> favors the tender because believes it more effectively addresses chandler take-out relative to dividend, but I told her that I disagree with her math, and think it is inelegant to not distribute up to 20 if undersubscribed. she does not see why we would pay 32.5 when

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[1532] Ex. 476 (Williams E-Mail, dated February 8, 2007).

[1533] Ex. 477 at MS_238443 (Fincher E-Mail, dated February 11, 2007).

[1534] Ex. 478 at MS_264051 (Fincher E-Mail, dated February 9, 2007). MLPFS and CGMI were seeking $146 million in fees on a proposed $9.5 billion in debt. Ex. 479 at MS_252278 (Kvorning E-Mail, dated February 9, 2007).

[1535] Ex. 480 at MS_263991 (Fincher E-Mail, dated February 11, 2007).

[1536] Ex. 481 (Whayne E-Mail, dated February 12, 2007).

> we can pay 30, but she is focused primarily on the chandlers rather than broader signalling [sic] issues.

Mr. Taubman replied: "Fine. Then let's do a self tender at 30 and suggest that others not tender."[1537] Mr. Whayne commented: "Great message."[1538] Mr. Whayne and Mr. Taubman calculated that a tender offer with only the Chandler Trusts participating would be 56% undersubscribed.[1539]

Following the Special Committee meeting on February 12, 2007, Mr. Whayne reported what appeared to be progress:[1540]

> No information on hoy. Board has decided to pursue $20 distribution and spin.
>
> Will decide between dividend and tender this morning. Turns out Peltz now has a greater than 5% stake in company, so a tender where he does not participate takes him up to around 15%. Same issue with Ariel. Also learned that a shareholder vote will be required to give [McCormick] Foundation a convertible preferred, which is what they have demanded to help with Chandler issues. Very messy.

Nevertheless, a number of challenges remained. On February 15, 2007, Mr. Whayne suggested that Mr. Taubman report to Special Committee Chair William Osborn "that the [McCormick] Foundation and Chandlers are unhappy about dividend and that price discussions are testy. Unterman is being unreasonable as she wants price set based on [volume weighted average price] post dividend announcement."[1541] Mr. Taubman was dismissive.[1542]

[1537] *Id.* at MS_287505.

[1538] *Id.* at MS_287505.

[1539] Ex. 482 at MS_285971 (Taubman E-Mail, dated February 12, 2007).

[1540] Ex. 483 at MS_265773 (Whayne E-Mail, dated February 13, 2007).

[1541] Ex. 484 at MS_287527 (Whayne E-Mail, dated February 15, 2007).

[1542] *Id.* at MS_287525- 26.

Mr. Taubman spoke with Mr. Osborn on February 16, 2007, and reported to Mr. Whayne that he "[g]ave him the 25bp speech,"[1543] apparently taking an incremental approach to persuading Mr. Osborn of Morgan Stanley's views on financing. Mr. Whayne replied that CGMI viewed Tribune management as "spending most of their time focusing on the ESOP."[1544]

By February 20, 2007, the EGI proposal began to cause friction with the McCormick Foundation, which supported the self-help recapitalization.[1545] Mr. Whayne discussed the problem with Charles Mullaney, of Skadden Arps, and reported to Mr. Taubman that they:[1546]

> Discussed Zell proposal and he said that he is concerned by the high level of conditionality reflected in their term sheet. Also agrees that we need to hear from management in the next day or so as to their plan to make this work and timeframe. Also took the opportunity to ask him if he had seen our financing proposal. . . . He tried to avoid discussion but I said that I was surprised that we had not heard anything from the company regarding our proposal. . . . [He] reiterated that it is strange that no one has reached out to us.

Morgan Stanley thereafter increased its efforts to get Tribune management to focus on its self-help financing alternative. For example, Mr. Whayne offered to extend a proposed six-month bridge loan to seven years in response to Tribune Treasurer Chandler Bigelow's concern about the short repayment schedule.[1547] The same day, Mr. Whayne reported to Mr. Taubman that "Dennis [FitzSimons] and Crane [Kenney] approached State Street about serving as trustee for the ESOP, but were turned down. Are scrambling to find a trustee."[1548] Given its

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[1543] Ex. 485 at MS_287603 (Whayne E-Mail, dated February 16, 2007).

[1544] *Id.* at MS_287602.

[1545] Ex. 486 at MS_285992 (Taubman E-Mail, dated February 20, 2007). Jill Greenthal, of Blackstone, felt Tribune management and Michael Costa had become unresponsive, and "[t]hreaten[ed] to put pencils down." *Id.* at MS_285992.

[1546] Ex. 487 (Whayne E-Mail, dated February 21, 2007).

[1547] Ex. 488 at MS_288184-288185 (Whayne E-Mail, dated February 22, 2007); Ex. 489 at MS_287690 (Stewart E-Mail, dated February 22, 2007).

[1548] Ex. 490 (Whayne E-Mail, dated February 22, 2007).

own pending financing plan, this development was likely welcome to Morgan Stanley.[1549]

Indeed, by February 24, 2007, Charles Stewart reported significant progress:[1550]

> We are providing views on the $9bn financing package for tribune self-help alternatives. we are having some dialogues with the company and are starting to reveal that the Citi/ML proposal is way off market and reflects their taking advantage of a non-competitive process. would like to update you in more detail, especially as Don starts to get increasingly involved. . . .
>
> also had a 3 hour special committee meeting this morning. the process continues but we're down to the short strokes. it's a nearly fully baked self-help plan vs. a 3rd party acquiror at this point; should know more in the next few days.

A few days later, Mr. Whayne reported to Mr. Taubman that the Large Stockholders "do not believe the ESOP provides compelling value relative to the recap, particularly in light of the conditionality and the likely 9-12 month timeframe for regulatory approval, and that they would like efforts to revert to the prior recap effort."[1551] Mr. Whayne also noted "a looming issue with the Chandlers regarding an inability to provide them with [registration] rights until May when audited financials will be ready."[1552] Mr. Whayne commented to the Examiner that the reaction of the Large Stockholders' advisors to the conditionality in the EGI proposal was not illogical, considering he and Mr. Taubman shared the same view.[1553] Conditionality was Mr. Whayne's focus, second only to valuation, and Mr. Whayne viewed the level of conditionality in the EGI proposal as wholly unacceptable compared to that of the self-help recapitalization.[1554] Despite

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[1549] *See* Report at § III.E.4.e.(5).

[1550] Ex. 491 (Stewart E-Mail, dated February 24, 2007).

[1551] Ex. 492 (Whayne E-Mail, dated February 28, 2007).

[1552] *Id.*

[1553] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1554] *Id.*

the uncertainty, Morgan Stanley prepared its due diligence on reverse breakup fees in case the EGI proposal moved forward.[1555]

In his Examiner interview, Mr. Whayne recalled that Michael Costa and Todd Kaplan of Merrill strongly advocated for the ESOP, and stated that, in his view, this was because under the EGI proposal "they would make a lot of money."[1556] Stated differently, Mr. Whayne said that Mr. Costa favored the EGI proposal because "more debt, more fees."[1557] Mr. Whayne stated that "they were big architects of it throughout. They'd have advocated for it even as a one step [deal] with all the conditionality in it."[1558] Mr. Whayne explained that there were three main issues in the initial EGI proposal that Morgan Stanley viewed as unattractive: (a) stock price, (b) level of conditionality on the bid, and (c) if the transaction were completed as a one-step merger, investors would not receive cash for a number of months.[1559] Mr. Whayne explained that the first two issues were standard problems, "M&A 101."[1560] The third issue was unique to the EGI proposal.[1561] Mr. Whayne expounded that the issue of conditionality, specifically, the receipt of a fairness opinion before closing (which would be six to nine months after the announcement of the transaction), was something that Merrill would "always fight against in any M&A deal."[1562]

[1555] Ex. 493 (Whayne E-Mail, dated March 2, 2007).

[1556] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1557] *Id.*

[1558] *Id.*

[1559] *Id.*

[1560] *Id.*

[1561] *Id.*

[1562] *Id.*

Concerns about conditionality notwithstanding, the impact of Tribune's weak operating results in periods one and two were being felt by March 5, 2007. As Mr. Whayne reported to Mr. Taubman and Mr. Stewart, he:[1563]

> Spoke with Christina. According to her, Dennis is becoming more nervous about the $20 recap given the weakness in the business (down 5% in February, and 9% in January), and is considering recommending a lower amount (and potentially much lower) to the board. I asked her if they were going to modify their management plan for the second time in a month, and she said that they were not, but had less confidence in the plan at present. Said that certain members of publishing management were concerned that they could have covenant issues later in the year if the current business trajectory continues (a strong argument for Ashok's covenant lite concept).
>
> I noted three credibility problems with an argument for a lower dividend: (1) the free cash flow coverage ratios are the same in the recap as in the ESOP alternative (as she pointed out in the last board meeting), and the only difference is that one scenario involves the public LBO of a C-corp, while the other one involves a private LBO of an S-corp; (2) unless the management plan changes significantly, it is awkward to argue for a lower amount at this time given (a) [McCormick] Foundation/Chandler agreement which is based on a $20 dividend and (b) the fact that MS has consistently based our $20 view on the Research Case, which is still lower than even the revised management plan; (3) timing of argument for a less aggressive recap is strange given management agenda to pursue ESOP.
>
> Per the Zell term sheet, there was minor progress in that Zell agreed to 8% interest on the purchase price if closing occurs later than 6 months, as well as an upfront $15 per share distribution executed via a tender. The bring-down opinion still exists, although with some protection against Zell's upfront equity (still to be defined) if the D&P view of value declines between signing and closing. Still no movement on price, regulatory and financing conditionality or reverse break-up fee.

[1563] Ex. 494 (Whayne E-Mail, dated March 5, 2007). In his sworn interview with the Examiner, Mr. FitzSimons denied that his initial negative reaction to EGI's proposal resulted from the degree of leverage associated with the proposal. *See* Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 30:2-31:4. In her interview with the Examiner, Christina Mohr noted that Mr. FitzSimons "went hot and cold on this deal—this deal was alive, dead, dead, alive, it reflects that it was doable but a lot of debt." Examiner's Interview of Christina Mohr, June 29, 2010.

Mr. Whayne explained in his interview that at this time Tribune management's interest in the EGI proposal increased because it provided a "complete solution" whereby stockholders would receive cash up-front and Tribune could take on greater leverage while operating in an uncertain business climate.[1564] Nevertheless, as of March 6, 2007, Mr. Whayne remained of the view that the self-help recapitalization was the best option.[1565] The next day, however, Mr. Whayne thought the "Zell proposal still has a ways to go, but has improved substantially."[1566] Mr. Whayne expected MLPFS and CGMI to "argue for a $17.50 recap."[1567]

A March 10, 2007 e-mail from Mr. Costa reported a significant shift in thinking concerning the EGI proposal: "[s]hort answer is in light of recent operating performance no comfort in putting the kind of leverage necessary for Zell proposal to work and have board get comfortable with employees owning the equity. Also numerous issues in Zell proposal we could not solve."[1568] Following Mr. Costa's e-mail, Ashok Nayyar suggested to Mr. Whayne that "where the co ends with the div (15 to 20) [on a self-help recapitalization] should be a function of cash flows etc etc –including a covenant lite bank deal."[1569]

The next day, CGMI transmitted a self-help recapitalization analysis to Morgan Stanley, from which Mr. Stewart noted that it "[l]ooks like Z proposal is dead and is now moving in this

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1564 Examiner's Interview of Thomas Whayne, June 11, 2010. Mr. Whayne also stated to the Examiner that to his knowledge, Mr. Zell did not offer incentives to Tribune management to influence their support for his proposal. Examiner's Interview of Thomas Whayne, June 11, 2010.

1565 Ex. 495 (Whayne E-Mail, dated March 6, 2007). Mr. Wayne stated to the Examiner, "We at MS were skeptical that the Zell proposal was the right step to go at this point in time. Our view was that it didn't compare favorably in comparison to recap. We were talking about a $20 dividend. Thought that was compelling up front value to shareholders compared to $30 share price." Examiner's Interview of Thomas Whayne, June 11, 2010.

1566 Ex. 496 at MS_295073 (Whayne E-Mail, dated March 7, 2007).

1567 Ex. 496 at MS_295073 (Whayne E-Mail, dated March 7, 2007). Morgan Stanley's diligence then turned to preparing valuations of Tribune at $20, $17.50, and $15 dividend levels, and updating the research case to reflect more recent broker estimates. Ex. 497 at MS_140421-140424 (Fincher E-Mail, dated March 11, 2007).

1568 Ex. 498 at MS_294981 (Stewart E-Mail, dated March 10, 2007).

1569 *Id.*

direction. . . . We've asked for the financing commitment papers but you can get a sense of their latest thinking . . . [N]ow is when we will have to make our push."[1570] William Graham replied that CGMI's proposal reverted to:[1571]

> an all 1st lien deal. They have conveniently changed presentation format and taken off the secured debt ratios to not show the secured debt bust we pointed out in their last presentation. And they are now getting the $33MM rebate in fees we have been stressing for the "bridge" financing. They have not provided us detailed term sheets this time. Pretty substantial cash savings we have provided them.

Morgan Stanley's sense was that not all of Tribune management disfavored the EGI proposal. Mr. Whayne clarified to the Examiner that "I think it was really FitzSimons who wasn't in favor of Zell, it was not the rest of management as far as I know."[1572] Mr. Whayne further stated that he had heard that Mr. FitzSimons' concern "was really the result of a conversation he had with Marty Lipton at Wachtell Lipton about the Zell proposal. And Marty expressed some concerns – making some profound observations."[1573]

Due diligence on the EGI proposal continued within a week of the "pause."[1574] Mr. Whayne prepared to address certain issues with the EGI proposal with Skadden Arps attorneys, but expected to make little progress without a meeting of the Tribune Board "to air these

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1570 Ex. 499 at MS_296522-23 (Graham E-Mail, dated March 11, 2007).

1571 *Id.* at MS_296522.

1572 Examiner's Interview of Thomas Whayne, June 11, 2010.

1573 *Id.* Mr. FitzSimons confirmed in detail in his interview that his concerns about the EGI proposal had to do with the overall structure and conditionality of the transaction, not merely (or even primarily) the leverage involved. Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 30:2-42:5 and 53:4-19.

1574 Mr. FitzSimons attributed the pause in the process to "all the significant obstacles that existed. It's not to suggest that leverage wasn't always a consideration, but the primary reason for the pause were the long odds of getting this done and keeping the company further paralyzed -- or paralyzed for a longer period of time." Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 53:14-19. Mr. FitzSimons further stated: "Could leverage be a part of that? . . . I do not recall that being the primary reason for the pause that I initiated." *Id.* at 60:13-17.

issues."[1575] Internally, Morgan Stanley prepared an analysis "to understand the day 1 ownership split between the ESOP, Zell and Management, as well as the fully diluted ownership once the warrant is exercised by Zell."[1576] Premiums paid for large public-to-private transactions were also collected and examined.[1577] Morgan Stanley convened an internal fairness committee meeting to begin its fairness opinion work in earnest, consider whether to modify prior valuation multiples,[1578] and brief the team on the status of the proposals so as to be prepared for a final decision in either direction.[1579]

By March 20, 2007, Morgan Stanley personnel expressed concerns that MLPFS and CGMI would receive excessive fees under the EGI proposal. Mr. Whayne alerted Mr. Taubman to James Fincher's "profound insight" that "ML and Citi are receiving in excess of $400 million in fees to raise just over $200 million in outside equity."[1580] This concern apparently did not persuade the Special Committee to select the self-help recapitalization over the EGI proposal. On March 22, 2007, Mr. Whayne sent Tribune General Counsel Crane Kenney an e-mail to forward to the Zell Group:[1581]

> The Special Committee is focused on two principal elements with regard to your proposal:

[1575] Ex. 500 (Whayne E-Mail, dated March 16, 2007).

[1576] Ex. 501 at MS_254905 (Whayne E-Mail, dated March 17, 2007); Ex. 502 (Whayne E-Mail, dated March 21, 2007).

[1577] Ex. 503 at MS_144298 (Dickinson E-Mail, dated March 19, 2007).

[1578] Ex. 504 at MS_141557 (Fincher E-Mail, dated March 18, 2007).

[1579] Ex. 505 (Fincher E-Mail, dated March 18, 2007). One matter that Morgan Stanley apparently did not analyze at this point was VRC's solvency opinion. According to Mr. Taubman, Morgan Stanley was not asked by the Special Committee to review VRC's solvency opinion, and the Examiner found no evidence that Morgan Stanley evaluated VRC's May 9, 2007 Step One solvency opinion or VRC's May 24, 2007 bringdown of its May 9, 2007 solvency opinion. *See* Examiner's Sworn Interview of Paul Taubman, July 1, 2010, at 41:16-42:5. Mr. Whayne testified that he never approved an undertaking to replicate VRC's Step One solvency analysis. Examiner's Sworn Interview of Thomas Whayne, July 2, 2010, at 46:13-47:3.

[1580] Ex. 506 at MS_149681 (Whayne E-Mail, dated March 20, 2007).

[1581] Ex. 507 (Whayne E-Mail, dated March 22, 2007).

> 1. Improved Economics
>
> * Price Increase: Our analysis shows that the recap alternative can deliver between $31 to $35 per share, and the value inherent in your transaction needs to be well above the midpoint
>
> * Ticking Fee Increase: Ticking fee increase to 11% would reflect an appropriate risk-adjusted return for shareholders in the period until closing. Based on the current 5% ticking fee, we are marking down your headline number by approximately $1 to $1.50
>
> 2. Improved Commitment
>
> * Commitment to Close: Reverse break-up fee for failure to obtain financing or achieve regulatory approval. Propose $50 million, or 20% of your upfront investment, which represents approximately 0.4% of the transaction value, compared to an average reverse break-up fee of 2.4%
>
> * Commitment to the Company if Closing Not Achieved: Maintain investment in the company and board seat for 3 years.

Special Committee Chair William Osborn related to Mr. Whayne and Mr. Taubman that:[1582]

> I talked to Sam this morning and indicated the two of you, in coordination with Crane, would be in contact with Bill Pate(sp?) to resolve some of the economic terms of the deal and that we planned to meet next [Thursday] or Friday as a Board to make the final decision. I explained that while Merrill and Citi would stay engaged, the Committee was concerned about conflict of interest and felt having Morgan Stanley involved in the final details was most appropriate.

Just as the economic terms were nearly resolved, however, a comment on Tribune's declining performance led Mr. Whayne to seek an explanation from Donald Grenesko, Tribune's Senior Vice President/Finance and Administration:[1583]

> We are going to need a bridge from the management plan to your revised view as stated to the Special Committee on Wednesday that EBITDA will be down by $45 million relative to plan. Would

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[1582] Ex. 508 (Whayne E-Mail, dated March 22, 2007).

[1583] Ex. 509 (Whayne E-Mail, dated March 24, 2007).

> be helpful to have a quarterly comparison of your revised view compared to plan that includes revenue, EBITDA, operating income for Publishing and Broadcasting. Would also be helpful to understand timing of revised view given that during our diligence call the week before that you said that the plan had not been changed.

Discussing Morgan Stanley's valuations on March 25, 2007, Mr. Taubman summarized that "research has never moved. . . . mgmt projections never move. Its just mgmt projecting above research and then moving down to research."[1584] Mr. Whayne agreed, noting with respect to Tribune's management that "[d]enial seems to be the tactic, as I have received no response e-mail from Don. . . ."[1585] Mr. Taubman suggested that Morgan Stanley should "get a pack out to directors early this week which refutes most of this. Something to speak to [Mr. Osborn] about."[1586]

These internal communications indicate that Morgan Stanley had heard that, as of March 25, 2007, Tribune's operating performance had fallen $45 million behind management's plan for 2007.[1587] Nevertheless, in its first of two presentations to the Special Committee on March 30, 2007, Morgan Stanley observed that Tribune's "year-to-date financial performance is on track with the Management Plan for 2007."[1588] Following the meeting, Mr. Whayne reported to Mr. Taubman that:[1589]

[1584] Ex. 510 at MS_295708 (Whayne E-Mail, dated March 25, 2007).

[1585] *Id.*

[1586] *Id.* at MS_295707.

[1587] The Examiner has reviewed Tribune's Brown Books for the periods in question and has determined that Tribune's operating performance had not fallen $45 million behind management's plan for 2007. The March 2007 Brown Book indicated that for the year-to-date period from January 2007 through March 2007, Tribune's revenues were below plan by approximately $24 million and Tribune's operating profit was below plan by only $1.5 million. The variance to plan in January 2007 and February 2007 was even smaller. See Ex. 240 (Brown Book for Period 1, 2007); Ex. 241 (Brown Book for Period 2, 2007); Ex. 915 (Brown Book for Period 3, 2007).

[1588] Ex. 142 at MS 65068 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated March 30, 2007). *See also* Ex. 140 at 1 (Special Committee Meeting Minutes, dated March 30, 2007).

[1589] Ex. 511 (Whayne E-Mail, dated March 31, 2007).

> Sam called Bill and said that he thinks he can get to $34, and he will [contribute] $98 million of additional equity. Wants to leave ticking fee at 8% starting on 1/1/08. Said he needs more equity than 40%, and that there are rating agency issues that they are working through (I assume that relates to the $100 million ask if S-corp not in effect in calendar '08 because of '08 close). Will obviously require discussion with ESOP trustee. Asked that we not send docs to BB.

Sensing that the EGI proposal was on the verge of being approved, Mr. Whayne informed Ji-Yeun Lee, a managing director in the Morgan Stanley Investment Banking division, that:[1590]

> May approve tomorrow, although some uncertainty given Broad/Burkle and need for Zell to respond to ask we gave yesterday. Currently at $33.50, with ticking fee now at 8% but starting on 1/1/08, rather than 5% ticking from announcement. Revised proposal is economically equivalent to prior proposal, but the headline number is higher. We have asked for $34, with $75 mm more equity to bring to $300 mm. If we don't get, may put board in difficult position given Broad/Burkle to move forward tomorrow, although there is a strong bias to do so.

Morgan Stanley's second March 30, 2007 presentation to the Special Committee compared the Zell offer at $33 with the stand-alone leveraged recapitalization and Broadcasting Segment spin alternative.[1591] Morgan Stanley's April 1, 2007 presentation reflected its view of the basis for the last-minute negotiations that resulted in the final acceptance of the EGI proposal: "The Wall Street median target price is $31," even though "[t]he private market value of Tower, based on the analyst median, is approximately $34."[1592] The April 1, 2007 presentation also compared the EGI proposal at $34 with the same standalone leveraged recapitalization and Broadcasting Segment spin alternative.[1593] The same day, Morgan Stanley

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[1590] Ex. 512 at MS_293739 (Lee E-Mail, dated March 31, 2007).

[1591] Ex. 513 at MS 64946-64950 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated March 30, 2007); Ex. 141 at 1-2 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated March 30, 2007).

[1592] Ex. 144 at 9 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated April 1, 2007).

[1593] *Id.* at 1-2.

rendered its fairness opinion reflecting the decision to move forward with the EGI proposal.[1594] The assumptions Morgan Stanley made in rendering that opinion included that Tribune management's "financial projections . . . have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the future financial performance of the Company."[1595] The opinion stated that Morgan Stanley reviewed, among other things, "certain internal financial statements and other financial and operating data concerning the Company prepared by the management of the Company."[1596] Consistent with Morgan Stanley's observation in its first March 30, 2007 presentation that "year-to-date financial performance is on track with the Management Plan for 2007,"[1597] the opinion did not specifically discuss the deteriorating performance seen in January and February 2007. Instead, Morgan Stanley simply concluded that, based on its assumptions and the information Tribune management provided to Morgan Stanley, "the [$34 per share] to be received by the holders of shares of the Common Stock . . . is fair from a financial point of view to such holders."[1598]

[1594] Ex. 145 (Morgan Stanley Opinion Letter, dated April 1, 2007).

[1595] *Id.* at TRB0522242. In his sworn testimony to the Examiner, Mr. Whayne explained that:

> [W]e reviewed . . . multiple projections, a base case, a downside case, even an outside case and we did a variety of valuation analyses . . ., and we also did some credit [and] debt servicing analysis as well both in step 1 as well as step 2 based on those projections. . . . [We] spent much more time with management in step 1 because we were being asked to render an opinion in step 1 and in step 2 we spent less time because we'd spent time as part of step 1 and we were not being asked to render any opinion as part of step 2. So we certainly . . . diligence[d] those plans, had discussions with management around the assumptions underlying them and compared them to other projections in the public domain.

Examiner's Sworn Interview of Thomas Wayne, July 2, 2010, at 18:10-17 and 19:11-20.

[1596] Ex. 145 at TRB0522241-0522242 (Morgan Stanley Opinion Letter, dated April 1, 2007).

[1597] Ex. 142 at MS 65068 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated March 30, 2007).

[1598] Ex. 145 at TRB0522243 (Morgan Stanley Opinion Letter, dated April 1, 2007).

After the EGI proposal was accepted, Mr. Taubman observed to a colleague that "we were right all along. Told him 34 and more [equity] would get our support. And that was before broad and burkle did just that."[1599] Mr. Whayne stated to the Examiner that the Special Committee took the Broad/Yucaipa Proposal (including the increase to $34 per share a week before the EGI proposal was accepted) seriously, but viewed it as lacking in comparison to the EGI proposal.[1600] Broad/Yucaipa was "given extraordinary guidance as to how to paper a competing proposal."[1601] In Mr. Whayne's opinion, despite ultimately rejecting the Broad/Yucaipa Proposal, the Special Committee treated Broad/Yucaipa "more than fairly" in view of the fact that they never "[came] forward with mark ups to . . . agreements Zell had been actively developing over the course of the month."[1602]

(5) Morgan Stanley's Desire to Participate as a Lender in the Step One Financing.

A separate issue concerning Morgan Stanley's role in the Step One Transactions and the chronology of events summarized above was Morgan Stanley's desire to participate as a lender in the transaction, despite being prohibited from playing such a role under its engagement letter with the Special Committee.[1603] Mr. Osborn stated to the Examiner that Mr. Taubman repeatedly requested before April 1, 2007 that Morgan Stanley be permitted to participate in the Step One Financing.[1604] Although he acknowledged that Morgan Stanley's engagement letter barred Morgan Stanley from participating in the Step One Financing, Mr. Whayne stated during his interview with the Examiner that in February 2007, Mr. Osborn "asked us to give [the Special

[1599] Ex. 514 at MS_329940 (Taubman E-Mail, dated April 2, 2007).

[1600] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1601] *Id.*

[1602] *Id.*

[1603] *See* Report at § III.E.4.e.(1).

[1604] Examiner's Sworn Interview of William Osborn, June 24, 2010, at 100:6-101:17.

Committee] a view as to what we would do if we had been asked to provide financing on a similar basis" to the financing proposed by MLPFS and CGMI.[1605] According to Mr. Whayne, Mr. Osborn asked for "not a hypothetical thing but your best judgment as to if we asked you to provide financing what [Morgan Stanley] would be willing to do."[1606] In contrast, Mr. Osborn testified to the Examiner that "a lot of times I was fending [Morgan Stanley] off because they wanted to do more, they wanted to do other things, so I was trying to keep them out of the henhouse a little bit."[1607]

Morgan Stanley's Investment Banking personnel kept its Global Capital Markets colleagues advised of Tribune's strategic alternatives process, apparently setting the stage for Morgan Stanley to present its own financing proposal when and if the opportunity arose. For example, while attending a Special Committee meeting on February 13, 2007, Mr. Whayne asked for a rate on a "$1.8B PIK preferred rated CCC for TRB."[1608] William Graham estimated the interest rate at 10.5-11.0%, although MLPFS placed it at 15% and CGMI at 12-13%.[1609] Mr. Graham emphasized to Mr. Whayne that "1.8bn of PIK preferred is very large size in a format that the market does not see very often anymore."[1610] Mr. Whayne requested additional due diligence to refine this estimate.[1611] Mr. Whayne deferred to Mr. Taubman, however, on whether to seek the Special Committee's consent to formally propose financing terms.[1612]

[1605] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1606] *Id.*

[1607] Examiner's Sworn Interview of William Osborn, June 24, 2010, at 100:1-5.

[1608] Ex. 515 at MS_264598 (Fincher E-Mail, dated February 13, 2007).

[1609] *Id.* at MS_264596-97.

[1610] *Id.*

[1611] *Id.* at MS_264595. Kevin Sisson inquired whether the change to employ PIK notes was "covenant driven or debt service/interest coverage driven." Ex. 516 at MS_239535 (Whayne E-Mail, dated February 16, 2007). Mr. Whayne explained that it was partly the latter and partly "just so cash is not trapped in an entity that is almost entirely own[ed] by our client." *Id.* Particularly, the PIK notes would address "a restructuring of a partnership

By February 16, 2007, Morgan Stanley viewed MLPFS' and CGMI's financing proposal as "meaningfully off-market," and Mr. Taubman expressed that view directly to Mr. Osborn.[1613] One day later, Morgan Stanley delivered a formal financing proposal to Mr. Osborn and was prepared to commit the financing within three to four days based on due diligence performed by Morgan Stanley up to that time.[1614] Mr. Whayne viewed Mr. Osborn as Morgan Stanley's "best potential advocate," who could start a dialogue with Tribune management.[1615] Mr. Whayne summarized Morgan Stanley's pitch:[1616]

> 1. Morgan Stanley has identified significant cost saving opportunities and has developed a financing structure that improves Tribune's flexibility while reducing execution risk.
>
> 2. Savings of approximately $40MM in financing fees
>
> a. The utilization of a bridge loan to effect the spin-off of B&E eliminates the need to raise the same debt twice and saves Tribune over $30MM in financing fees
>
> b. Morgan Stanley's more aggressive, market-based underwriting fee proposal saves Tribune at least $10MM in fees.
>
> 3. Potential savings of $20MM due to lower interest rates. Morgan Stanley's more favorable view of the market acceptance of Tribune's financing could lead to annual interest savings of $20MM. Our market view is reflected in our proposal in the form of lower rates/caps and less flex.
>
> 4. Morgan Stanley has also identified areas to improve Tribune's flexibility with minimal cost impact Covenant lite

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where [Tribune] did not want cash trapped initially or on an ongoing basis as dividends are paid." *Id.* at MS_239534.

[1612] Ex. 517 (Whayne E-Mail, dated February 14, 2007).

[1613] Ex. 406 at MS_286240 (Nayyar E-Mail, dated February 18, 2007).

[1614] Ex. 406 (Nayyar E-Mail, dated February 18, 2007).

[1615] Ex. 518 at MS_287531 (Stewart E-Mail, dated February 18, 2007).

[1616] *Id.* at MS_287530.

term loan structure at both Publishing and B&E eliminates financial maintenance covenant requirements and is readily accepted in the leveraged markets.

5. We are prepared to fully commit to and underwrite the structure and terms of our proposal

6. By having Morgan Stanley act as an additional joint book-runner in the financing transactions, Tribune will get better execution and a significantly more flexible and less costly structure.

Charles Stewart concurred with Mr. Whayne's suggested approach and proposed ways to further finesse the discussion with Tribune management.[1617] MLPFS and CGMI quickly learned of Morgan Stanley's proposal.[1618] As Mr. Whayne reported to Mr. Taubman and Ashok Nayyar, "ML and Citi now know about our proposal. Apparently ML is very upset and is fighting hard against us. Citi is more philosophical. Let the games begin."[1619] Mr. Whayne reported positively to Ashok Nayyar that the Special Committee was currently "[biased] to recap which we will pursue unless two largest shareholders say they prefer other path, which they won't."[1620]

Morgan Stanley then presented its proposal to its internal Credit Commitment Committee in order to be in position to commit financing to Tribune "on time."[1621] Thomas Kvorning rebuilt a cash flow model for the review, in which he noted that "Publishing goes cash flow negative in 2008 due to the $175MM real estate [investment] (as it does in Tower's mgmt plan), but the rest of the years are CF positive. In 2009 both Publishing and Broadcasting EBITDA decreases sharply which makes the credit ratios look a bit strange in 2009."[1622] On February 24,

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[1617] Ex. 518 at MS_287529 (Stewart E-Mail, dated February 18, 2007).

[1618] Ex. 519 at MS_286296 (Whayne E-Mail, dated February 20, 2007).

[1619] *Id.*

[1620] Ex. 520 at MS_285968 (Nayyar E-Mail, dated February 24, 2007).

[1621] Ex. 521 at MS_242836 (Williams E-Mail, dated February 23, 2007); Ex. 522 at MS_238901-238902 (Fincher E-Mail, dated February 24, 2007); Examiner's Interview of Thomas Whayne, June 11, 2010.

[1622] Ex. 523 at MS_249364-249365 (Kvorning E-Mail, dated February 25, 2007).

2007, Mr. Whayne sent Tribune Treasurer Chandler Bigelow a "soft copy" of Morgan Stanley's financing proposal.[1623]

By February 25, 2007, Morgan Stanley received stronger signals that Tribune was not interested in pursuing the self-help plan, imperiling the Morgan Stanley financing proposal. Mr. Bigelow wrote to Mr. Stewart and Mr. Whayne that "before we went beyond just discussing ideas that you and Paul [Taubman] and Chip [Mullaney] would need to discuss with respect to independent advisory role with Special Committee."[1624] Mr. Whayne saw this as a real barrier: "I thought they would resort to this issue as a means of excluding us, notwithstanding superior [structure] and economics put together by Ashok and Bill. At least they are providing an early warning, now that we are past the tax fabrications."[1625] Additionally, the emergence of the EGI proposal caused Morgan Stanley to again focus on its advisory role:[1626]

> Now that we have started down this amorphous/undefined path of exploring the ESOP, not surprisingly the [McCormick] Foundation is underwhelmed, but the Chandlers are excited. The more time that is spent, the greater the risk to their prior deal -- to state the obvious.
>
> Seems that we should have a call to address the obvious issues that are going to matter to us, and that will obviously play into the likelihood that an ESOP will be acceptable to us.
>
> 1. First is price -- assume that we need to say that it has to be higher
>
> 2. Second, will need a reverse break fee if ESOP not completed. This will be hard as Zell will pay 20% at the most, if he will even do that. Employees obviously are not going to pay. ML/Citi say this is virtually impossible given construct, which I agree with

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[1623] Ex. 524 at TRB0051921 (Whayne E-Mail, dated February 24, 2007). The proposal indicated that Morgan Stanley was "prepared to fully commit to and underwrite the structure and terms of [its] proposal." *Id.* at TRB0051922.

[1624] Ex. 525 at MS_238712 (Fincher E-Mail, dated February 25, 2007).

[1625] *Id.* at MS_238711.

[1626] Ex. 526 (Whayne E-Mail, dated February 25, 2007).

practically. How do you think it impacts price, given the free option created?

> 3. Who should pay expenses of exploring ESOP? Path we are on is that the company will pay, but there is an obvious asymmetry with the way we have dealt with [the McCormick] Foundation and Chandlers thus far.

Nonetheless, Morgan Stanley continued to press for a role as a lender. On February 27, 2007, Mr. Stewart and Mr. Nayyar presented the Morgan Stanley proposal to Donald Grenesko and Mr. Bigelow, and despite the feeling a few days prior, Mr. Stewart viewed the discussion as positive for Morgan Stanley's chances:[1627]

> Don didn't say much but I think they acknowledge the benefits of our fee/rate/structure/covenant lite approach. They are very focused on certainty of being able to repurchase the 900mm for purposes of the debt for debt xc. That issue outweighs their concern about fees. Think ashok has got them comfortable with our structure/approach and gave them a number of alternative approaches.
>
> Think we continue to occupy the high ground behind a superior proposal and now Don has heard it live.
>
> Chandler continuing to press for an answer on us having a conversation with/approval from Chip before he could consider whether ask us to participate.

Mr. Stewart followed up with a call to Mr. Bigelow on February 28, 2007:[1628]

> Me/ashok/team speaking to chandler bigelow again tomorrow afternoon. I had a good heart to heart with him today and we still have some wood to chop. He wants to believe us but is getting views from bofa/jpm that seem to corroborate ml/citi perspective. Think we can still get there but need to push hard on him/don.

By March 1, 2007, Mr. Nayyar and William Graham were preparing to propose an "aggressive" plan for an all first-lien structure to Mr. Bigelow.[1629] Two days later, however, the

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[1627] Ex. 527 at MS_307891 (Taubman E-Mail, dated February 27, 2007).

[1628] Ex. 528 at MS_308428-308429 (Stewart E-Mail, dated February 28, 2007). In his testimony to the Examiner, Mr. Bigelow did not recall speaking with anyone in specific except Mr. Stewart, his contact at Morgan Stanley. Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 50:13-54:2.

situation with Tribune management remained in flux. Mr. Nayyar observed to Mr. Stewart that "[e]ven with better ideas and cost savings to Trib we are not getting anywhere. We have had to shake this up first with Paul and then me for them to pay any attention to what is a good structure for them. Clearly ML and C have a very strong relationship with them."[1630] Comparisons to MLPFS' and CGMI's financing proposal continued, with Morgan Stanley working to shift Tribune management's focus away from fees and toward the benefits of a "covenant-lite" approach.[1631]

Ultimately, Morgan Stanley's financing proposal was never accepted.[1632] In Mr. Whayne's view, the exercise nevertheless benefitted Tribune: "Reality is we were asked by Bill, we responded to Bill and as a result the financing got better."[1633]

Even after the Tribune Board finally rejected the self-help recapitalization option, Morgan Stanley considered whether it yet could participate in the Step One Financing.[1634] John McCann, a managing director in the Global Capital Markets division of Morgan Stanley, reported to a number of colleagues in his division and in the Investment Banking division, including Mr. Whayne:[1635]

> Talked to JP. They are having a bank meeting Thursday, with commitments due the end of the month. All of the titles are gone, including the Senior Managing Agent titles. They are looking for retail tickets.

[1629] Ex. 529 at MS_318982 (Graham E-Mail, dated March 2, 2007).

[1630] Ex. 530 at MS_294296 (Stewart E-Mail, dated March 3, 2007).

[1631] Ex. 531 at MS_296386 (Graham E-Mail, dated March 5, 2007).

[1632] Ms. Persily testified that in her view, Morgan Stanley's proposal "was kind of an arrow shot in at the last minute and it just didn't work." Examiner's Sworn Interview of Julie Persily, July 8, 2010, at 80:17-20. The flaw in Morgan Stanley's proposal, according to Ms. Persily, was that it "subordinated [Tribune's] existing debt and we didn't think that was possible by virtue of not granting liens." *Id.* at 82:11-14.

[1633] Examiner's Interview of Thomas Whayne, June 11, 2010.

[1634] Ex. 532 at MS_283831 (Radomski E-Mail, dated April 24, 2007).

[1635] *Id.*

> If this is important . . . to the company or to Zell, we can consider taking some of the term loan or revolver. If we do term loan, we probably resell it right after closing and don't lose much money, but I wold [sic] bet that if they ask us, they'll ask us to take revolver. If we do revolver, we'll most likely mark it at 95-97% of par day one, so we'll take a hit.
>
> JPM had no idea what if anything the company or Zell wants us to do. They were very much aware that we were conflicted from participating in the agent rounds of the financing. So if we are still conflicted, then that's the end of this. If we are not I think someone is going to have to [ask] the Company/Zell what they want from us, and we can evaluate the ask.

5. Knowledge and Actions of the Large Stockholders in Connection with the Step One Transactions.

a. The Large Stockholders.

(1) The Chandler Trusts.

The Chandler Trusts were the principal shareholders of Times Mirror from 1935 until its merger into Tribune on June 12, 2000.[1636] From that time until the final disposition of all of their shares of Tribune Common Stock in 2007, each of the Chandler Trusts, known as Chandler Trust No. 1 and Chandler Trust No. 2, was managed by a board consisting of seven trustees, each of whom was a member of both boards.[1637] In connection with the merger of Times Mirror into Tribune, the Chandler Trusts exchanged their Times Mirror common stock for Tribune Common Stock, representing approximately 10.6% of the total shares of Tribune Common Stock then outstanding, and four representatives of the Chandler Trusts were elected to the Tribune Board.[1638] One representative of the Chandler Trusts resigned from the Tribune Board on

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[1636] Ex. 1105 at 75 (Times Mirror 1999 Form 10-K/A); Ex. 552 at 7 (Tribune Schedule 13D, filed June 21, 2000).

[1637] Ex. 552 at 1-7 (Tribune Schedule 13D, filed June 21, 2000). The trustees at the time of the Tribune - Times Mirror merger were Gwendolyn Garland Babcock, Jeffrey Chandler, William Stinehart, Jr., Camilla Chandler Frost, Douglas Goodan, Judy C. Webb, and Warren B. Williamson; before the final disposition of all of the Chandler Trusts' Tribune Common Stock, Gwendolyn Garland Babcock and Douglas Goodan were succeeded by Susan Babcock and Roger Goodan, respectively.

[1638] *Id.* at 7-9; Ex. 1108 at 1 (Tribune Press Release, dated June 12, 2000).

May 8, 2001, following completion of the integration of Times Mirror into Tribune.[1639] The Chandler Trusts continued to be represented on the Tribune Board by Jeffrey Chandler, Roger Goodan, and William Stinehart, Jr., until their resignations on June 4, 2007.[1640]

(2) The McCormick Foundation.

The McCormick Foundation is a nonprofit organization that was established as a charitable trust in 1955 as a result of the death of Colonel Robert R. McCormick, the longtime editor and publisher of *The Chicago Tribune*.[1641] The mission of the McCormick Foundation is to help build a more active and engaged citizenry through six grant-making programs, Cantigny Park, two museums, and a civic outreach program.[1642] It is one of the nation's largest charities, having more than $1 billion in assets.[1643]

b. The Activities of the Large Stockholders Before, During, and After The Step One Transactions.

(1) The Auction Process.

The Large Stockholders played an active role in the events leading up to the auction process and the auction process itself.[1644] Following the 2006 Leveraged Recapitalization, on

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[1639] Ex. 553 at 2-3 (Tribune Schedule 14A, filed March 27, 2001).

[1640] Ex. 554 at TRB0166821 (Tribune Press Release, dated June 4, 2007).

[1641] Ex. 555 (Last Will and Testament of Robert R. McCormick, dated December 18, 1954 and Codicil, dated January 4, 1955). The Cantigny Foundation is a foundation that receives most of its funding from the McCormick Foundation. Given the lack of publicly available information relating to the Cantigny Foundation, the fact that the McCormick Foundation and the Cantigny Foundation apparently share the same board members, all of whom are current and former Tribune executives as mandated by the McCormick Foundation's formation documents, and the fact that the Foundation's Advisory Committee apparently was comprised of the same two representatives from both the McCormick Foundation and the Cantigny Foundation, the Report refers to the McCormick Foundation and the Cantigny Foundation collectively as the McCormick Foundation. The directors of the McCormick Foundation at the time of the closing of the Step One Transactions were James C. Dowdle, Dennis J. FitzSimons, David W. Hiller, John W. Madigan, and Scott C. Smith.

[1642] Ex. 555 (Last Will and Testament of Robert R. McCormick, dated December 18, 1954 and Codicil, dated January 4, 1955). *See also* http:/mccormickfoundation.org.

[1643] Ex. 555 (Last Will and Testament of Robert R. McCormick, dated December 18, 1954 and Codicil, dated January 4, 1955). *See also* http:/mccormickfoundation.org.

[1644] *See* Report at § III.D.1. for a discussion of the activities of the Chandler Trusts during this period.

December 14, 2006, the McCormick Foundation established the Foundation's Advisory Committee, consisting of two independent directors, to analyze and evaluate the course of action that the McCormick Foundation should take with respect to its shares of Tribune Common Stock.[1645] The McCormick Foundation subsequently retained Katten to serve as special legal counsel and to assist the Foundation's Advisory Committee and the Foundation's Board in their respective analyses.[1646] The McCormick Foundation also engaged The Blackstone Group L.P. as its independent financial advisor and requested Quarles & Brady LLP, its regular outside general counsel, and Brien O'Brien of Advisory Research, its long-time financial advisor, to assist the Foundation's Advisory Committee in evaluating the alternatives available to the McCormick Foundation with respect to the transactions under consideration by Tribune.[1647] The Foundation's Advisors also were tasked with providing advice to the Foundation's Advisory Committee and the Foundation's Board regarding related tax, legal, financial, and investment issues.[1648]

On January 4, 2007, the McCormick Foundation disclosed that it had formed the Foundation's Advisory Committee and that it had signed a non-disclosure agreement with Tribune to obtain access to Tribune confidential information.[1649] The next day, the Foundation's Advisory Committee informed the Special Committee by letter that it had studied a number of potential options regarding the McCormick Foundation's investment in Tribune.[1650] As a result of this analysis, the Foundation's Advisory Committee proposed a tax-free "split-off" of the

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[1645] Ex. 1114 at 1 (Unanimous Written Consent of Directors of the McCormick Foundation Board, dated May 23, 2007).

[1646] *Id.*

[1647] *Id.*

[1648] *Id.*

[1649] Ex. 557 at 3 (McCormick Foundation Schedule 13D, filed January 4, 2007).

[1650] Ex. 558 at 1 (Foundation's Advisory Committee Letter, dated January 5, 2007).

Broadcasting Segment combined with a leveraged recapitalization of the Publishing Segment, conditioned on (a) the completion of satisfactory due diligence review, including review and acceptance of tax and other contingent liabilities, (b) satisfaction with the final structure of the proposed transaction, (c) partnership of the McCormick Foundation with one or more equity investors on satisfactory financing terms in an aggregate amount sufficient to consummate the proposed transaction, (d) receipt of all required governmental, regulatory, third-party, and stockholder approvals, and (e) execution of definitive transaction documents.[1651]

On January 10, 2007, Katten reported to the Foundation's Advisory Committee that counsel to the Special Committee was amenable to substantive discussions between the Foundation's Advisory Committee and Tribune management, as part of the McCormick Foundation's due diligence process, and that counsel to the Special Committee had been advised that the Foundation's Advisory Committee intended to engage the Chandler Trusts directly in discussions relating to its proposal.[1652] Certain Parties contended that the cooperation and communication between the Chandler Trusts and the McCormick Foundation that followed were indicative of a collusive arrangement to control the outcome of Tribune's auction process. For example, Parties cited to internal e-mails between the Foundation's Advisory Committee and the Foundation's Advisors suggesting that it would be "difficult to do a transaction unless the 30% shareholders are reasonably comfortable."[1653] A representative of Advisory Research agreed, noting "how can the special committee proceed without knowing very specifically what the goals and objectives of 33 percent of the owners and of what the goals, objectives and desires of

[1651] *Id.*

[1652] Ex. 559 at FOUN0007432 (O'Brien E-Mail, dated January 11, 2007).

[1653] *Id.*

management are."[1654] Accordingly, the e-mail suggested that "as distasteful as it is," the McCormick Foundation and the Chandler Trusts should engage in discussions.[1655] Apart from this one e-mail that merely states the obvious point that participation and agreement of the Large Stockholders would be crucial to any fundamental transaction involving Tribune, no Party cited other evidence indicating collusive behavior on the part of the McCormick Foundation or the Chandler Trusts.

The Foundation's Advisory Committee delivered an outline of the McCormick Foundation's proposal to the Special Committee on January 17, 2007, with a letter expressing the McCormick Foundation's preference that Tribune continue as a public company with its current capital structure, unless an acquisition of the entire company at a substantial premium with minimal closing risk could be effected.[1656] The letter also informed the Special Committee that the Foundation's Advisory Committee was aware that consideration was being given to splitting Tribune, on a pro-rata basis to all stockholders, into two separate entities—the Publishing Segment and the Broadcasting Segment—and that the McCormick Foundation would consider supporting such a transaction "so long as it diffuse[d] the current stockholder discontent and antagonism."[1657] The letter also expressed a willingness to work with the Special Committee and Tribune management to develop the proposal for a tax-free "split-off" of the Broadcasting Segment and leveraged recapitalization of the Publishing Segment that the McCormick Foundation had made in its January 5, 2007 letter to the Special Committee.[1658]

[1654] *Id.*

[1655] *Id.*

[1656] Ex. 110 at 1 (Foundation's Advisory Committee Letter, dated January 17, 2007).

[1657] *Id.* at 2.

[1658] *Id.*

On January 17, 2007, the Chandler Trusts also submitted a proposal to the Special Committee.[1659] The Chandler Trusts Proposal involved an acquisition of the Publishing Segment, a tax-free spin-off of the Broadcasting Segment, and a recapitalization of the remainder of Tribune, sponsored by the Chandler Trusts.[1660] In his interview with the Examiner, Mr. Stinehart indicated that:[1661]

> The goal in making an offer in January 2007 was to put a floor in the auction process. If we could get control, then we would have gone through with our offer. As it was, we had no control and were on a board that was hostile toward us. We thought the secular trends were going to really hurt the newspaper and publishing business, and right or wrong, we wanted out.

On January 22, 2007, Katten advised the Foundation's Advisory Committee and the other Foundation's Advisors that counsel to the Chandler Trusts believed it to be advisable for the Chandler Trusts and the McCormick Foundation to conduct joint negotiations regarding Tribune's future direction.[1662] The Foundation's Advisory Committee subsequently had a number of discussions and one meeting with the Chandler Trusts to determine if there was any common ground among the Large Stockholders with respect to Tribune's restructuring efforts.[1663] The Foundation's Advisory Committee also maintained communication with the Special Committee.[1664]

On January 26, 2007, the Chandler Trusts delivered a revised bid to the Special Committee that essentially maintained the same proposed structure but resulted in higher

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[1659] Ex. 109 at 1 (Chandler Trusts Proposal, dated January 17, 2007).

[1660] *Id. See also* Report at § III.D.1.d.

[1661] Examiner's Interview of William Stinehart, June 28, 2010.

[1662] Ex. 560 at FOUN0007333 (Wander E-Mail, dated January 22, 2007).

[1663] Ex. 561 at 1 (Foundation's Advisory Committee Letter, dated February 2, 2007).

[1664] Ex. 114 at TRIB-G0007807 (Special Committee Meeting Minutes, dated February 3, 2007); Ex. 562 at TRIB 000023 (Special Committee Meeting Agenda, dated February 3, 2007).

stockholder values.[1665] In his interview, Mr. Stinehart noted that Tribune had released its 2006 financial results at about this time and Tribune had "drastic[ly] missed projections."[1666] As a result, Mr. Stinehart stated that although the Chandler Trusts "had been thinking about improving our floor bid, [we] decided not to and even dampened it a bit."[1667]

The McCormick Foundation's contacts with the Special Committee generated some pushback from the Special Committee's advisors. In a January 30, 2007 exchange of e-mails with Blackstone concerning a recapitalization proposal that allegedly had been presented on the McCormick Foundation's behalf to Tribune earlier that day, MLPFS expressed concern about whether communications between the McCormick Foundation and Tribune conformed to Tribune's bidding protocol established in connection with the strategic review process.[1668] Blackstone denied making a formal written proposal on behalf of the McCormick Foundation and asserted that only "possible paths" were discussed, but in a reply, MLPFS cautioned the McCormick Foundation to follow the established protocol in further contacts with Tribune.[1669] Although Blackstone expressed its readiness to discuss the alleged proposal with MLPFS, and neither the Chandler Trusts nor their advisors were involved at all in these e-mails,[1670] certain Parties contended that Blackstone's actions are evidence that the Large Stockholders ignored established protocols governing communications with Tribune, resulting in a formal reproach by Tribune's financial advisors. In actuality, MLPFS sent Blackstone only a cautionary e-mail advising Blackstone that "[t]here are some fairly well defined rules in this process including

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[1665] Ex. 111 (Revised Chandler Trusts Proposal, dated January 26, 2007).

[1666] Examiner's Interview of William Stinehart, June 28, 2010.

[1667] *Id.*

[1668] Ex. 563 at FOUN0014779-80 (Greenthal E-Mail, dated January 31, 2007).

[1669] *Id.*

[1670] *Id.*

contacts with the company. Would appreciate you sticking to those as other potential bidders are."[1671] Beyond this e-mail, no other breaches of the auction protocol were cited by the Parties. Moreover, in his interview with the Examiner, Mr. Stinehart stated that the Chandler Trusts had very little direct interaction with the Special Committee, observing that "[w]e knew, for all practical purposes, nothing of what was going on. They were trying to keep the Special Committee process pristine."[1672]

At a February 3, 2007 Special Committee meeting, Morgan Stanley presented a comparison of the revised Chandler Trusts Proposal and the revised Broad/Yucaipa Proposal with the three self-help options, together with a new proposal submitted by EGI.[1673] The EGI proposal required the Chandler Trusts and the McCormick Foundation to enter into voting agreements in which they would agree to vote their shares of Tribune Common Stock in favor of EGI's proposal.[1674]

On February 12, 2007, Rustic Canyon Partners and Goldman Sachs sent a letter to the Special Committee on behalf of the Chandler Trusts, acknowledging the delay in the Chandler Trusts' submission of a further revised proposal and stating that it would provide a revised proposal within ten days.[1675] The letter outlined some the revisions that would be expected, the advantages of the same, and the anticipated conditions to closing.[1676] On the same day, Rustic

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[1671] *Id.*

[1672] Examiner's Interview of William Stinehart, June 28, 2010.

[1673] Ex. 114 at TRIB-G0007806 (Special Committee Meeting Minutes, dated February 3, 2007). *See also* Ex. 113 (EGI Letter, dated February 2, 1007); Report at § III.D.1.e.

[1674] Ex. 116 at 2 (EGI Proposal, dated February 6, 2007). *See also* Report at § III.D.1.f.

[1675] Ex. 564 at 1-6 (Chandler Trusts Letter, dated February 12, 2007).

[1676] Ex. 564 at 1-3, 5 (Chandler Trusts Letter to Tribune, dated February 12, 2007).

Canyon Partners and Goldman Sachs sent a letter to Blackstone summarizing its previous discussions with Blackstone regarding the Chandlers Trusts' revised proposal.[1677]

After further review of the various third-party proposals and the self-help options, on February 12 and 13, 2007, the Special Committee determined that (a) the Chandler Trusts Proposal and the Broad/Yucaipa Proposal were unattractive compared to a self-help proposal involving a leveraged recapitalization and spin-off of the Broadcasting Segment, (b) the self-help proposal should be further developed, and (c) discussions with EGI regarding its proposal should be continued.[1678] In conjunction with the development of the self-help proposal, the McCormick Foundation initiated negotiations with the Chandler Trusts concerning the terms and pricing of a purchase of 25 million shares of Tribune Common Stock by the McCormick Foundation from the Chandler Trusts.[1679]

At a February 23, 2007 meeting of the Foundation's Advisory Committee, following presentations by the Foundation's Advisors regarding the specifics of the self-help proposal, the Foundation's Advisory Committee unanimously approved the self-help proposal, and decided to recommend that the Foundation's Board approve the self-help proposal.[1680]

That same day, the Foundation's Board also met.[1681] At this meeting, the Foundation's Advisory Committee reported on its activities over the prior months, including (a) its discussions with Tribune management, (b) its review of alternative plans and structures, (c) press coverage of its activities, and (d) its contacts with the Office of the Attorney General of Illinois.[1682]

[1677] Ex. 565 at 1-2 (Chandler Trusts Letter to Blackstone, February 12, 2007).

[1678] Ex. 119 at 1 (Special Committee Meeting Minutes, dated February 13, 2007).

[1679] Ex. 5 at 21 (Tender Offer).

[1680] Ex. 1116 at 7 (Foundation's Advisory Committee Meeting Minutes, dated February 23, 2007).

[1681] Ex. 1115 (McCormick Foundation Board Meeting Minutes, dated February 23, 2007).

[1682] *Id.* at 1-3.

However, the Foundation's Advisory Committee did not make a formal recommendation to the Foundation's Board to approve the self-help proposal at the meeting because Mr. FitzSimons informed the Foundation's Board that Tribune was not planning to take immediate action to approve the self-help proposal, and was continuing to consider EGI's proposal as an alternative.[1683]

On February 24, 2007, the Special Committee reviewed the status of the self-help proposal and the EGI proposal.[1684] The Special Committee then directed Tribune's management to solicit the views of the Chandler Trusts and the McCormick Foundation with respect to the EGI proposal and to continue to pursue the EGI proposal with a view to improving its economic terms and certainty.[1685] Tribune's Financial Advisors sent materials related to the EGI proposal to the Chandler Trusts and the McCormick Foundation.[1686] On February 25, 2007, Tribune's Financial Advisors had separate discussions with the representatives of the Chandler Trusts and the McCormick Foundation with respect to the EGI proposal.[1687] In his interview, Mr. Stinehart said that they were "interested" in the EGI proposal, and the promised $33 per share in particular, but that he "had concerns about red herrings being put out to delay the process."[1688]

On March 1, 2007, the Foundation's Advisory Committee responded by letter to the Special Committee's request for its position on the EGI proposal.[1689] The McCormick Foundation expressed "important concerns regarding the ESOP Proposal and whether it should be pursued for the reasons that follow, namely, Price, Timing and Execution Risk in comparison

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[1683] *Id.* at 5.

[1684] Ex. 123 (Special Committee Meeting Minutes, dated February 24, 2007).

[1685] Ex. 5 at 22 (Tender Offer).

[1686] *Id.*

[1687] *Id.*

[1688] Examiner’s Interview of William Stinehart, June 28, 2010.

[1689] Ex. 124 at 1-3 (McCormick Foundation Letter, dated March 1, 2007).

to the self-help proposal presently under consideration." The letter then described these concerns in further detail:[1690]

> Based on this analysis, you should be aware that the [McCormick] Foundation is not willing to sign a voting agreement in favor of the Zell/ESOP transaction as we now understand it. For the reasons described above, we believe the self-help proposal as presently negotiated should be pursued by the Special Committee and Board of Directors of the Tribune Company.

Similarly, on March 2, 2007, the Chandler Trusts notified the Special Committee that they (a) had identified "very significant problems" with the EGI proposal, including the execution risk posed by the probable lengthy governmental approval process and the related possibility that the proposed transaction could not be completed at the agreed valuation, (b) did not believe the proposal was in the best interests of any Tribune stockholders, and (c) were not prepared to enter into a voting agreement to support EGI's proposal.[1691] The Chandler Trusts expressed a willingness to work collaboratively with Tribune and the McCormick Foundation to pursue the self-help proposal, subject to the filing by Tribune of a shelf registration statement that would permit the Chandler Trusts to sell all of their remaining shares of Tribune Common Stock on completion of the self-help proposal.[1692]

In response to the concerns of the Large Stockholders, among others, the Special Committee requested revisions to the EGI proposal to provide for a two-step transaction in which a first-step tender offer would provide a "significant distribution to shareholders as soon as possible."[1693] EGI provided a revised term sheet that proposed a two-step transaction, to be followed by a second-step merger of Tribune into a special-purpose entity owned by the ESOP in

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[1690] *Id.* at 2-3. *See also* Report at § III.D.1.f.

[1691] Ex. 125 at 1 (Chandler Trusts Letter, dated March 2, 2007). *See also* Report at § III.D.1.f.

[1692] Ex. 125 at 2 (Chandler Trusts Letter, dated March 2, 2007).

[1693] Ex. 126 at 22:18-23:4 (Deposition of Thomas Whayne, May 17, 2007).

which Tribune would be the surviving entity and would become a wholly-owned subsidiary of the ESOP.[1694]

Certain Parties contend that the Large Stockholders worked together to influence the structure and outcome of the Leveraged ESOP Transactions. Although the record indicates that the Large Stockholders reviewed and supported further enhancements to the EGI proposal, the Large Stockholders primarily worked together, albeit begrudgingly,[1695] to negotiate and promote the self-help option. In fact, the Foundation's Advisors exchanged a memorandum summarizing the final negotiated self-help option as late as March 26, 2007, just five days before the Leveraged ESOP Transactions were approved by the Tribune Board.[1696] Additionally, the Foundation's Advisory Committee explicitly deferred to the Special Committee on the ultimate decision regarding the EGI proposal. In its March 1, 2007 letter, the Foundation's Advisory Committee made it clear that it was "only providing [its] present observations on the [EGI] proposal [and that the Special Committee] should understand that the determination of what is best for Tribune Company and its stockholders rests solely with the Special Committee and the Board of Directors of Tribune Company and not with the [Foundation's Advisory Committee]."[1697]

On or about March 10, 2007, the Special Committee had become uncomfortable with the EGI proposal and engaged the Chandler Trusts and the McCormick Foundation in discussions

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[1694] Ex. 127 at 1-3 (EGI Term Sheet, dated March 4, 2007). *See also* Report at § III.D.1.f.

[1695] In his interview, Mr. Stinehart confirmed the difficult nature of the relationship between the McCormick Foundation and the Chandler Trusts. Mr. Stinehart noted that Mr. FitzSimons served on the Foundation's Board and that, as a result, the Chandler Trusts viewed the McCormick Foundation as "basically part of management. There was no dialogue back and forth between us. Any conversations between the [Chandler]Trusts and the [McCormick Foundation] took place through advisors." Examiner’s Interview of William Stinehart, June 28, 2010.

[1696] Ex. 567 at 1-3 (Katten Memorandum, dated March 26, 2007).

[1697] Ex. 124 (McCormick Foundation Letter, dated March 1, 2007).

concerning a revised self-help proposal with a reduced dividend to Tribune's stockholders.[1698] The McCormick Foundation and the Chandler Trusts, in turn, engaged in discussions regarding their agreement on the sale of Tribune Common Stock by the Chandler Trusts to the McCormick Foundation in the context of a revised self-help proposal.[1699] As these discussions were ongoing, negotiations regarding the EGI proposal also continued, including discussions among representatives of Tribune, EGI, and the Chandler Trusts on the proposed voting agreement.[1700]

During this period, the McCormick Foundation reviewed the revised terms of the EGI proposal that had been provided to Blackstone.[1701] Negotiated documents were also sent to the McCormick Foundation for review and comment.[1702] The McCormick Foundation did not, however, participate in any of the negotiations with EGI and only discussed the terms of the EGI proposal with EGI's advisors.[1703] In addition, although requests were made for the McCormick Foundation to sign the proposed voting agreement,[1704] the McCormick Foundation declined to

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[1698] Ex. 5 at 23 (Tender Offer).

[1699] *Id.* In response to the Examiner's question as to why the Chandler Trusts were considering selling their Tribune Common Stock to the McCormick Foundation, Mr. Stinehart explained that:

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

Examiner's Interview of William Stinehart, June 28, 2010.

[1700] Ex. 5 at 24 (Tender Offer).

[1701] Ex. 568 at FOUN0004706-0004707 (Chomicz E-Mail, dated March 25, 2007).

[1702] Ex. 569 (Smith E-Mail, dated March 28, 2007); Ex. 1000 (Smith E-Mail, dated March 27, 2007).

[1703] Ex. 569 (Smith E-Mail, dated March 28, 2007); Ex. 1000 (Smith E-Mail, dated March 27, 2007).

[1704] Ex. 569 (Smith E-Mail, dated March 28, 2007); Ex. 1000 (Smith E-Mail, dated March 27, 2007).

participate in negotiations concerning the proposed voting agreement,[1705] in part because of the added expense of the financial and legal analysis that would need to be undertaken.[1706]

On or about March 31, 2007, the Chandler Trusts agreed to support the EGI proposal due to an increase in price to $34 per share and other improvements in the proposal's financial terms.[1707] Certain Parties contend that the substantial tax benefits of the EGI proposal were particularly attractive to the Large Stockholders, particularly the Chandler Trusts, and Tribune management. There does not appear to be any dispute that the structure of the EGI proposal provided certain tax benefits to the Large Stockholders, in particular the ability to avoid capital gains tax.[1708]

After the Special Committee's April 1, 2007 recommendation to approve the EGI proposal, Mr. Stinehart advised the Tribune Board that the directors representing the Chandler Trusts would abstain from the Tribune Board's vote on the EGI proposal, but that the Chandler Trusts would vote their shares of Tribune Common Stock in favor of the proposal and would enter into a voting agreement with Tribune to memorialize that understanding.[1709] Thereafter, the Tribune Board, minus the Chandler Trusts' representatives but including the McCormick Foundation's representative, voted to approve the EGI proposal, the Voting Agreement, and the

[1705] Ex. 5 at 24 (Tender Offer).

[1706] Ex. 977 at FOUN0004655 (Greenthal E-Mail, dated March 29, 2007); Ex. 571 at 1 (Greenthal E-Mail, dated March 27, 2007).

[1707] Ex. 5 at 25 (Tender Offer). *See also* Report at § III.D.1.f.

[1708] Ex. 572 (Musil E-Mail, dated March 30, 2007); Ex. 573 at EGI-LAW 00021094 (Havdala E-Mail, dated February 3, 2007); Ex. 89 (Wachovia Equity Research Publication, dated March 30, 2007); Ex. 570 (Brown E-Mail, dated February 17, 2007). Following the Tender Offer, the Chandler Trusts sold their remaining Tribune Common Stock. *See* Report at § III.F.3. The tax benefits of the ESOP structure were thus moot as to the Chandler Trusts.

[1709] Ex. 146 at 2 (Tribune Board Meeting Minutes, dated April 1, 2007).

Chandler Trusts Registration Rights Agreement.[1710] Tribune and the Chandler Trusts executed the Voting Agreement and the Chandler Trusts Registration Rights Agreement on April 1, 2007.[1711]

On May 23, 2007, Blackstone gave the Foundation's Board an opinion that the tender price was financially fair to the McCormick Foundation.[1712] The Foundation's Advisory Committee concluded that participation in the Tender Offer was in the best interest of the McCormick Foundation and recommended that the McCormick Foundation tender its shares of Tribune Common Stock.[1713] On May 23, 2007, the Foundation's Board authorized the McCormick Foundation's participation in the Tender Offer to the maximum permitted level.[1714]

In connection with the Tender Offer, and in accordance with the terms of the Voting Agreement, the Chandler Trusts tendered all of the shares of Tribune Common Stock held by them as of May 24, 2007.[1715] Because the total number of shares tendered by all Tribune stockholders exceeded the 126 million shares for which the Tender Offer was made, proration

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[1710] *Id.* at 4. In his interview, Mr. Stinehart described the reasons that the representatives of the Chandler Trusts ultimately abstained from voting on the EGI proposal:

> We abstained for four reasons. First, we were a part of the transaction—we had the voting agreement and the registration rights agreement, so we had a conflict. Second, we had not been a part of the Special Committee process, so we were missing a huge amount of info that they had but we didn't. Third, unlike any other director, we held in a fiduciary capacity a huge stake in the company for individual beneficiaries, which puts us in a unique position. FitzSimons' foundation was a charitable organization, so it was different. Fourth, we technically still had an offer on the table to buy the company. This was not coordinated, but the other two Trusts designees may have followed my lead in abstaining.

Examiner's Interview of William Stinehart, June 28, 2010.

[1711] *See* Report at §§ III.D.7. and III.D.8.

[1712] Ex. 575 at 2 (McCormick Foundation Board Meeting Minutes, dated May 23, 2007).

[1713] *Id.*

[1714] *Id.*

[1715] Ex. 5 at 102 (Tender Offer).

was required, and accordingly, Tribune did not accept for repurchase all of the shares tendered by the Chandler Trusts or the McCormick Foundation.[1716]

As a result of the completion of the Tender Offer, the Chandler Trusts' holdings were reduced to approximately 20.4 million shares of Tribune Common Stock, representing approximately 17% of the total shares then outstanding.[1717] The interest of the McCormick Foundation was reduced to approximately 11.8 million shares of Tribune Common Stock, representing approximately 10% of the total shares then outstanding.[1718]

Certain Parties argued that the participation of the Large Stockholders in the Tender Offer was representative of their efforts to cause Tribune to proceed with the EGI proposal. As discussed above, however, the record amply reflects that the Large Stockholders had concerns about the EGI proposal and actively encouraged Tribune to pursue the self-help proposal.

6. Knowledge and Actions of the Zell Group In Connection With the Step One Transactions.

The submission of, and modifications to, EGI's initial proposal, and the related negotiations and communications by and among EGI, the Special Committee, the Tribune Board, management, and their respective advisors, are discussed elsewhere in the Report.[1719] This section focuses on the following matters relating to the Zell Group: (a) the circumstances giving rise to EGI's initial proposal, (b) EGI's internal communications throughout the process, (c) Tribune's selection of the EGI proposal, (d) the extent, if any, to which Tribune director and officer transaction-based compensation played a role in the selection of the EGI proposal, and (e) the Zell Group's activities leading up to the closing of the Step One Transactions.

[1716] Ex. 576 at 5 (Tribune Schedule 14A, filed May 25, 2007).

[1717] Ex. 577 at 27 (Tribune Form 10-Q, filed May 8, 2008); Ex. 554 (Tribune Press Release, dated June 4, 2007).

[1718] Ex. 578 at 2-3 (McCormick Foundation Schedule 13D, filed May 31, 2007).

[1719] *See* Report at § III.D.1.

a. The Circumstances Giving Rise to the Initial EGI Proposal in February 2007.

EGI first considered an investment in Tribune in the fall of 2006.[1720] Nils Larsen, managing director of EGI, told the Examiner that "Tribune['s] announce[ment that] it was exploring strategic alternatives . . . made all the headlines," and he recalls that the "teaser" material prepared by MLPFS and CGMI crossed his desk in November 2006.[1721] Although Mr. Larsen did not recall having signed a confidentiality agreement to allow EGI to gain access to Tribune's due diligence materials, the record reflects that EGI signed a confidentiality agreement with Tribune on November 8, 2006.[1722] By November 17, 2006, however, EGI decided it was not interested in investing in Tribune.[1723] Mr. Zell explained to the Examiner that EGI's lack of interest in Tribune was because it was a media deal, it was overpriced, and EGI lacked a "competitive advantage."[1724] From November 17, 2006 to mid-January 2007, EGI did not participate in the auction process.

In late January 2007, however, the Special Committee asked MLPFS and CGMI to contact EGI to see if it was interested in making an investment as part of the recapitalization self-help option that the Special Committee was then considering as an alternative to a third-party deal.[1725] Mr. Zell confirmed to the Examiner that a telephone call from Merrill's Todd Kaplan advising him that the auction process was floundering caused Mr. Zell to renew EGI's interest in

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[1720] Examiner's Interview of Samuel Zell, June 14, 2010.

[1721] Examiner's Interview of Nils Larsen, June 15, 2010.

[1722] *Id.*; Ex. 226 at 22 (Proxy Statement).

[1723] Examiner's Interview of Samuel Zell, June 15, 2010, at 1; Examiner's Interview of Nils Larsen, June 15, 2010. The Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated November 17, 2006, also reflects that EGI had withdrawn from the bidding by that date. Ex. 579 at ML-TRIB-0105692 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated November 17, 2006).

[1724] Examiner's Interview of Samuel Zell, June 14, 2010; Examiner's Interview of Nils Larsen, June 15, 2010.

[1725] Examiner's Interview of Thomas Whayne, June 11, 2010.