



KeyCite Yellow Flag - Negative Treatment

† Declined to Extend by [In re Energy Future Holdings Corp.](#), Bankr.D.Del., August 5, 2014

373 B.R. 283

United States Bankruptcy Court,  
S.D. New York.

In re IRIDIUM OPERATING LLC, Iridium Capital Corp., Iridium IP LLC, Iridium Roaming LLC, Iridium (Potomac) LLC, and Iridium Promotions, Inc.

Statutory Committee of Unsecured Creditors on behalf of Iridium Operating LLC, Iridium Capital Corp., Iridium IP LLC, Iridium LLC, Iridium Roaming LLC, Iridium (Potomac) LLC, Plaintiff,

v.

Motorola, Inc., Defendant.

Bankruptcy No. 99–45005 (JMP).

Adversary No. 01–02952(JMP).

Aug. 31, 2007.

#### Synopsis

**Background:** Unsecured creditors committee in Chapter 11 cases of debtors-telecommunications providers brought adversary proceeding against contractor that developed and deployed mobile satellite communications system for debtors, seeking to avoid, as fraudulent or preferential transfers, prepetition payments received by contractor from debtors, and also alleging breach of fiduciary duty, breach of warranty, and equitable subordination. Parties agreed to bifurcated trial in which they would first try issue of whether debtors were insolvent or had unreasonably small capital during four-year prepetition period.

**Holdings:** Following bench trial, the Bankruptcy Court, [James M. Peck](#), J., held that:

<sup>[1]</sup> committee failed to prove, by a preponderance of the evidence, that debtors were insolvent or inadequately capitalized to perform under their business plan, and

<sup>[2]</sup> neither debtors' postpetition insolvency nor postpetition events established that debtors were insolvent or inadequately capitalized during four-year period in which challenged transfers were made.

Claims dismissed in part.

West Headnotes (38)

<sup>[1]</sup> [Bankruptcy](#) [Claims](#)

[51](#)Bankruptcy

[51VII](#)Claims

[51VII\(A\)](#)In General

[51k2821](#)In general

Public trading market constitutes an impartial gauge of investor confidence and remains the best and most unbiased measure of fair market value and, when available to bankruptcy court, is the preferred standard of valuation.

[5 Cases that cite this headnote](#)

[2]

[Bankruptcy](#)  [Preferences](#)  
[Bankruptcy](#)  [Fraudulent transfers](#)

[51](#)[Bankruptcy](#)  
[51V](#)[The Estate](#)  
[51V\(H\)](#)[Avoidance Rights](#)  
[51V\(H\)2](#)[Proceedings](#)  
[51k2725](#)[Evidence](#)  
[51k2727](#)[Weight and Sufficiency](#)  
[51k2727\(2\)](#)[Preferences](#)  
[51](#)[Bankruptcy](#)  
[51V](#)[The Estate](#)  
[51V\(H\)](#)[Avoidance Rights](#)  
[51V\(H\)2](#)[Proceedings](#)  
[51k2725](#)[Evidence](#)  
[51k2727](#)[Weight and Sufficiency](#)  
[51k2727\(3\)](#)[Fraudulent transfers](#)

In seeking to avoid, as fraudulent or preferential, prepetition transfers made by Chapter 11 debtors to contractor on project to develop and deploy mobile satellite communications system, unsecured creditors committee had burden of proving by a preponderance of the evidence that debtors were either insolvent or inadequately capitalized at the time of each of challenged transfers. [11 U.S.C.A. §§ 547, 548](#).

[1 Cases that cite this headnote](#)

[3]

[Bankruptcy](#)  [Preferences](#)  
[Bankruptcy](#)  [Fraudulent conveyances in general](#)

[51](#)[Bankruptcy](#)  
[51V](#)[The Estate](#)  
[51V\(E\)](#)[Preferences](#)  
[51k2601](#)[In general](#)  
[51](#)[Bankruptcy](#)  
[51V](#)[The Estate](#)  
[51V\(F\)](#)[Fraudulent Transfers](#)  
[51k2641](#)[Fraudulent conveyances in general](#)

Party seeking to avoid prepetition transfers must establish each element of its fraudulent transfer and preference claims, including debtor's insolvency or inadequacy of its capital. [11 U.S.C.A. §§ 547, 548](#).

[Cases that cite this headnote](#)

[4] [Bankruptcy](#) ↔ [Insolvency](#)

[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(H\)Avoidance Rights](#)  
[51V\(H\)2Proceedings](#)  
[51k2725Evidence](#)  
[51k2726Presumptions](#)  
[51k2726\(2\)Insolvency](#)

Failure of Chapter 11 debtors to make one \$90,000,000 interest payment on their public debt one month prior to filing for bankruptcy protection did not, by itself, support finding that debtors were not paying debts as they became due, so as to trigger presumption of insolvency under District of Columbia Uniform Fraudulent Conveyance Act (DCUFCA) for purposes of claims to recover alleged fraudulent and preferential transfers made by debtors prepetition. [D.C. Official Code, 2001 Ed. § 28–3102\(b\)](#).

[Cases that cite this headnote](#)

[5] [Bankruptcy](#) ↔ [Insolvency](#)  
[Bankruptcy](#) ↔ [Insolvency of debtor](#)  
[Bankruptcy](#) ↔ [Preferences](#)

[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(E\)Preferences](#)  
[51k2606Elements and Exceptions](#)  
[51k2607Insolvency](#)  
[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(F\)Fraudulent Transfers](#)  
[51k2643Insolvency of debtor](#)  
[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(H\)Avoidance Rights](#)  
[51V\(H\)2Proceedings](#)  
[51k2725Evidence](#)  
[51k2727Weight and Sufficiency](#)  
[51k2727\(2\)Preferences](#)

Failure to pay a single debt, even over a long period, will usually not justify a finding that debtor is generally not paying its debts as they become due for purposes of determining debtor's insolvency in the context of claims to avoid alleged fraudulent and preferential transfers.

[Cases that cite this headnote](#)

[6] [Bankruptcy](#) ↔ [Insolvency](#)  
[Corporations and Business Organizations](#) ↔ [Conveyances When Insolvent or in Contemplation of Insolvency](#)

[51Bankruptcy](#)

[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2726](#)Presumptions  
[51k2726\(2\)](#)Insolvency  
[101](#)Corporations and Business Organizations  
[101X](#)I Insolvency and Receivers  
[101X\(B\)](#)Fraudulent Conveyances and Preferences  
[101k2841](#)Conveyances When Insolvent or in Contemplation of Insolvency  
[101k2842](#)In general  
(Formerly 101k542(1))

That Chapter 11 debtors deferred, with contractor's consent, approximately \$900,000,000 in prepetition payments owed to contractor for project to develop and deploy mobile satellite communications system did not demonstrate that debtors generally were not paying debts as they became due, even when considered with debtors' missed \$90,000,000 interest payment, given absence of evidence that contractor was debtors' insider, and therefore deferral did not trigger presumption of insolvency under District of Columbia Uniform Fraudulent Conveyance Act (DCUFCA) for purposes of claims to recover alleged fraudulent and preferential transfers made to contractor by debtors prepetition. [D.C. Official Code, 2001 Ed. § 28-3102\(b\)](#).

[Cases that cite this headnote](#)

[7] [Fraudulent Conveyances](#)  [Insolvency](#)

[186](#)Fraudulent Conveyances  
[186III](#)Remedies of Creditors and Purchasers  
[186III\(1\)](#)Evidence  
[186k270](#)Presumptions and Burden of Proof  
[186k272](#)Insolvency

A rebuttable presumption of debtor's insolvency created by equitable insolvency under District of Columbia Uniform Fraudulent Conveyance Act (DCUFCA) does not shift to transferee the burden of persuasion to prove that nonexistence of insolvency is more probable than its existence; legislative commentary of Uniform Fraudulent Transfers Act (UFTA) to such effect, which was not adopted by District of Columbia, was merely advisory. [D.C. Official Code, 2001 Ed. § 28-3102\(b\)](#).

[Cases that cite this headnote](#)

[8] [Bankruptcy](#)  [Insolvency](#)  
[Fraudulent Conveyances](#)  [Insolvency](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2726](#)Presumptions  
[51k2726\(2\)](#)Insolvency  
[186](#)Fraudulent Conveyances

[186III](#) Remedies of Creditors and Purchasers  
[186III\(1\)](#) Evidence  
[186k270](#) Presumptions and Burden of Proof  
[186k272](#) Insolvency

Creditor may rebut presumption of debtor's insolvency during 90-day prepetition period arising under Bankruptcy Code's preferential transfer statute by introducing some evidence that debtor was not in fact insolvent at time of challenged transfer, and if creditor introduces such evidence, then party seeking avoidance of transfer must satisfy its burden of proof of insolvency by a preponderance of the evidence. [11 U.S.C.A. § 547\(f\)](#).

[Cases that cite this headnote](#)

[9] [Bankruptcy](#)  [Insolvency](#)  
[Bankruptcy](#)  [Insolvency of debtor](#)

[51](#) Bankruptcy  
[51V](#) The Estate  
[51V\(E\)](#) Preferences  
[51k2606](#) Elements and Exceptions  
[51k2607](#) Insolvency  
[51](#) Bankruptcy  
[51V](#) The Estate  
[51V\(F\)](#) Fraudulent Transfers  
[51k2643](#) Insolvency of debtor

Court should not take rigid approach in determining fair valuation of a company within context of Bankruptcy Code's solvency analysis, but rather should consider the totality of the circumstances. [11 U.S.C.A. § 101\(32\)\(A\)](#).

[1 Cases that cite this headnote](#)

[10] [Bankruptcy](#)  [Evidence](#)

[51](#) Bankruptcy  
[51V](#) The Estate  
[51V\(H\)](#) Avoidance Rights  
[51V\(H\)2](#) Proceedings  
[51k2725](#) Evidence  
[51k2725.1](#) In general

Although not dispositive, expert appraisals and valuations should be considered, when possible, in analyzing debtor's solvency under Bankruptcy Code. [11 U.S.C.A. § 101\(32\)\(A\)](#).

[Cases that cite this headnote](#)

[11] [Bankruptcy](#)  [Insolvency](#)  
[Bankruptcy](#)  [Insolvency of debtor](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(E\)](#)Preferences  
[51k2606](#)Elements and Exceptions  
[51k2607](#)Insolvency  
[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(F\)](#)Fraudulent Transfers  
[51k2643](#)Insolvency of debtor

In the context of determining debtor's solvency, for purposes of determining whether transfer can be avoided as fraudulent or preferential, fair valuation for a company that can continue day-to-day operations is based on a "going concern" or "market price" valuation. [11 U.S.C.A. §§ 101\(32\)\(A\)](#), [547](#), [548](#).

[2 Cases that cite this headnote](#)

[12] [Bankruptcy](#)  [Insolvency](#)  
[Bankruptcy](#)  [Insolvency of debtor](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(E\)](#)Preferences  
[51k2606](#)Elements and Exceptions  
[51k2607](#)Insolvency  
[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(F\)](#)Fraudulent Transfers  
[51k2643](#)Insolvency of debtor

When debtor-business is a going concern, debtor's fair value, for solvency purposes, is determined by the fair market price of debtor's assets that could be obtained if sold in a prudent manner within a reasonable period of time to pay debtor's debts. [11 U.S.C.A. § 101\(32\)\(A\)](#).

[2 Cases that cite this headnote](#)

[13] [Bankruptcy](#)  [Insolvency of debtor](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(F\)](#)Fraudulent Transfers  
[51k2643](#)Insolvency of debtor

To determine the adequacy of debtor's capital, for purposes of Bankruptcy Code's fraudulent transfer statute, court looks to such factors as debtor's debt to equity ratio, its historical capital cushion, and need for working capital in debtor's specific industry. [11 U.S.C.A. § 548\(a\)\(1\)\(B\)\(ii\)\(II\)](#).

[1 Cases that cite this headnote](#)

[14] [Bankruptcy](#) → [Insolvency of debtor](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(F\)](#)Fraudulent Transfers  
[51k2643](#)Insolvency of debtor

Although debtor must be adequately capitalized, in the context of claim to avoid fraudulent transfer under Bankruptcy Code, it does not need resources sufficient to withstand any and all setbacks. [11 U.S.C.A. § 548\(a\)\(1\)\(B\)\(ii\)\(II\)](#).

[Cases that cite this headnote](#)

[15] [Bankruptcy](#) → [Insolvency of debtor](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(F\)](#)Fraudulent Transfers  
[51k2643](#)Insolvency of debtor

In undertaking analysis to determine whether debtor had unreasonably small capital, for purposes of fraudulent transfer claim under Bankruptcy Code, court compares debtor's projected cash inflows, also referred to as "working capital" or "operating funds," with its capital needs throughout a reasonable period of time after questioned transfer; however, only those cash inflows that were reasonable for debtor to have expected to receive, whether through new equity, cash from operations, or available credit, are considered in this analysis. [11 U.S.C.A. § 548\(a\)\(1\)\(B\)\(ii\)\(II\)](#).

[1](#) [Cases that cite this headnote](#)

[16] [Bankruptcy](#) → [Insolvency of debtor](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(F\)](#)Fraudulent Transfers  
[51k2643](#)Insolvency of debtor

In determining whether debtor was adequately capitalized, for purposes of fraudulent transfer claim under Bankruptcy Code, court examines not what ultimately happened to debtor, but whether debtor's then-existing cash flow projections were reasonable and prudent when made. [11 U.S.C.A. § 548\(a\)\(1\)\(B\)\(ii\)\(II\)](#).

[Cases that cite this headnote](#)

[17] [Bankruptcy](#) → [Preferences](#)  
[Bankruptcy](#) → [Fraudulent transfers](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2727](#)Weight and Sufficiency  
[51k2727\(2\)](#)Preferences  
[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2727](#)Weight and Sufficiency  
[51k2727\(3\)](#)Fraudulent transfers

Cash flow projections of Chapter 11 debtors-telecommunications providers were reasonable and prudent when made, given substantial work, by debtors and outsiders, that went into creating and testing projections, and therefore unsecured creditors committee failed to prove, by a preponderance of the evidence, that debtors were insolvent or inadequately capitalized to perform under their business plan, and thus to show that prepetition transfers made by debtors to contractor in connection with development and deployment of mobile satellite communications system could be avoided as fraudulent or preferential transfers, particularly given failure of committee's experts to reconcile their conclusions with prevailing market judgment, which validated business plan, or to cast serious doubt on reliability of that judgment, which raised credibility concerns about experts' opinions. [11 U.S.C.A. §§ 101\(32\)\(A\), 547, 548](#).

[Cases that cite this headnote](#)

[18] [Bankruptcy](#) ↔ [Insolvency](#)  
[Bankruptcy](#) ↔ [Insolvency of debtor](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(E\)](#)Preferences  
[51k2606](#)Elements and Exceptions  
[51k2607](#)Insolvency  
[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(F\)](#)Fraudulent Transfers  
[51k2643](#)Insolvency of debtor

Neither postpetition insolvency of Chapter 11 debtors-telecommunications providers nor postpetition events, such as sale of debtors' assets for mere fraction of their costs, established that debtors were insolvent or inadequately capitalized during four-year period in which prepetition transfers challenged as preferential or fraudulent were made to contractor developing and deploying debtors' mobile satellite communications system, inasmuch as market was generally aware, during pertinent time period, of all relevant information regarding communications system's capabilities and limitations, even though such awareness did not equate to awareness of impact that limitations would have upon debtors' ability to achieve their business plan. [11 U.S.C.A. §§ 101\(32\)\(A\), 547, 548](#).

[Cases that cite this headnote](#)

[19] [Bankruptcy](#)  [Insolvency](#)  
[Bankruptcy](#)  [Insolvency of debtor](#)

[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(E\)Preferences](#)  
[51k2606Elements and Exceptions](#)  
[51k2607Insolvency](#)  
[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(F\)Fraudulent Transfers](#)  
[51k2643Insolvency of debtor](#)

Courts may consider postpetition events to some extent in valuing debtor's pre-bankruptcy assets for purposes of determining whether debtor was insolvent or inadequately capitalized at time of transfers challenged as fraudulent or preferential, but cannot engage in improper hindsight analysis. [11 U.S.C.A. §§ 101\(32\)\(A\), 547, 548.](#)

[Cases that cite this headnote](#)

[20] [Bankruptcy](#)  [Insolvency](#)  
[Bankruptcy](#)  [Insolvency of debtor](#)

[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(E\)Preferences](#)  
[51k2606Elements and Exceptions](#)  
[51k2607Insolvency](#)  
[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(F\)Fraudulent Transfers](#)  
[51k2643Insolvency of debtor](#)

When determining prepetition value of debtor's assets, for purposes of determining whether debtor was insolvent or inadequately capitalized at time of transfer challenged as fraudulent or preferential, it is not improper hindsight for court to attribute current circumstances, or current discovery of existence of previous set of circumstances; value, however, must be determined as of the time of alleged transfer, and not at what assets turned out to be worth at some time after bankruptcy intervened. [11 U.S.C.A. §§ 101\(32\)\(A\), 547, 548.](#)

[Cases that cite this headnote](#)

[21] [Bankruptcy](#)  [Insolvency](#)  
[Bankruptcy](#)  [Insolvency of debtor](#)

[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(E\)Preferences](#)  
[51k2606Elements and Exceptions](#)  
[51k2607Insolvency](#)  
[51Bankruptcy](#)  
[51VThe Estate](#)

[51V\(F\)Fraudulent Transfers](#)  
[51k2643Insolvency of debtor](#)

Important part of analysis to determine whether debtor was insolvent or had unreasonably small capital, for purposes of claims to avoid alleged fraudulent or preferential transfers, involves evaluation of debtor's own projections of future cash flows and whether those projections were reasonable and prudent when made, and one important indication of reasonableness of projections is management's input into creation of projections. [11 U.S.C.A. §§ 101\(32\)\(A\), 547, 548.](#)

[1 Cases that cite this headnote](#)

[22]

[Bankruptcy](#)  [Preferences](#)  
[Bankruptcy](#)  [Fraudulent transfers](#)

[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(H\)Avoidance Rights](#)  
[51V\(H\)2Proceedings](#)  
[51k2725Evidence](#)  
[51k2727Weight and Sufficiency](#)  
[51k2727\(2\)Preferences](#)  
[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(H\)Avoidance Rights](#)  
[51V\(H\)2Proceedings](#)  
[51k2725Evidence](#)  
[51k2727Weight and Sufficiency](#)  
[51k2727\(3\)Fraudulent transfers](#)

Without a firm basis to replace management's cost projections with those developed for litigation, starting point for a solvency analysis, in the context of preferential or fraudulent transfer claims, should be management's projections. [11 U.S.C.A. §§ 547, 548.](#)

[2 Cases that cite this headnote](#)

[23]

[Bankruptcy](#)  [Preferences](#)  
[Bankruptcy](#)  [Fraudulent transfers](#)

[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(H\)Avoidance Rights](#)  
[51V\(H\)2Proceedings](#)  
[51k2725Evidence](#)  
[51k2727Weight and Sufficiency](#)  
[51k2727\(2\)Preferences](#)  
[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(H\)Avoidance Rights](#)  
[51V\(H\)2Proceedings](#)  
[51k2725Evidence](#)  
[51k2727Weight and Sufficiency](#)

[51k2727\(3\)](#)Fraudulent transfers

When there is substantial evidence presented to show that debtor's business plan was prepared in a reasonable manner, using supportable assumptions and logically consistent computations, business plan constitutes a fair, reasonable projection of future operations, and alternative projections of future operations should be rejected in determining whether debtor was insolvent or inadequately capitalized for purposes of fraudulent or preferential transfer claims. [11 U.S.C.A. §§ 101\(32\)\(A\)](#), [547](#), [548](#).

[Cases that cite this headnote](#)

[24]

[Bankruptcy](#)  [Preferences](#)  
[Bankruptcy](#)  [Fraudulent transfers](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2727](#)Weight and Sufficiency  
[51k2727\(2\)](#)Preferences  
[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2727](#)Weight and Sufficiency  
[51k2727\(3\)](#)Fraudulent transfers

Alternative cash flow projections that were proffered by unsecured creditors committee in support of contention that Chapter 11 debtors were insolvent or inadequately capitalized at the time of prepetition transfers challenged as fraudulent or preferential had to be rejected, inasmuch as projections disregarded deliberative process of development and testing that produced debtors' own projections, which, by virtue of that deliberative process, appeared to be reasonable. [11 U.S.C.A. §§ 101\(32\)\(A\)](#), [547](#), [548](#).

[Cases that cite this headnote](#)

[25]

[Bankruptcy](#)  [Preferences](#)  
[Bankruptcy](#)  [Fraudulent transfers](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2727](#)Weight and Sufficiency  
[51k2727\(2\)](#)Preferences  
[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence

[51k2727](#)Weight and Sufficiency

[51k2727\(3\)](#)Fraudulent transfers

Expert analysis by investment bankers that confirms validity of cash flow projections of debtor's management is an indicator of reasonableness of projections, for purposes of determining whether alleged preferential or fraudulent transfers occurred while debtor was insolvent or inadequately capitalized; similarly, a thorough analysis by an independent accounting firm that affirms projections' validity is an indicator of reasonableness. [11 U.S.C.A. §§ 101\(32\)\(A\)](#), [547](#), [548](#).

[1 Cases that cite this headnote](#)

[26]

[Bankruptcy](#)  [Insolvency](#)

[Bankruptcy](#)  [Insolvency of debtor](#)

[51](#)Bankruptcy

[51V](#)The Estate

[51V\(E\)](#)Preferences

[51k2606](#)Elements and Exceptions

[51k2607](#)Insolvency

[51](#)Bankruptcy

[51V](#)The Estate

[51V\(F\)](#)Fraudulent Transfers

[51k2643](#)Insolvency of debtor

That Chapter 11 debtors-telecommunications providers closed on three syndicated bank loans and raised more than \$2,000,000,000 in the capital markets was indication of both solvency and capital adequacy for purposes of claims of unsecured creditors committee to avoid alleged preferential and fraudulent transfers made by debtors to contractor during four-year prepetition period. [11 U.S.C.A. §§ 101\(32\)\(A\)](#), [547](#), [548](#).

[1 Cases that cite this headnote](#)

[27]

[Bankruptcy](#)  [Evidence; witnesses](#)

[51](#)Bankruptcy

[51II](#)Courts; Proceedings in General

[51II\(B\)](#)Actions and Proceedings in General

[51k2163](#)Evidence; witnesses

Proponent of expert testimony must demonstrate that the proffered testimony is both reliable and relevant.

[Cases that cite this headnote](#)

[28]

[Bankruptcy](#)  [Evidence; witnesses](#)

[51](#)Bankruptcy

[51II](#)Courts; Proceedings in General

[51II\(B\)Actions and Proceedings in General](#)  
[51k2163Evidence; witnesses](#)

*Daubert* factors apply not only to the admissibility of evidence, but also apply to weight and credibility determinations.

[Cases that cite this headnote](#)

[29] [Bankruptcy](#)  [Evidence; witnesses](#)

[51Bankruptcy](#)  
[51IICourts; Proceedings in General](#)  
[51II\(B\)Actions and Proceedings in General](#)  
[51k2163Evidence; witnesses](#)

To assess whether expert testimony meets standards for admissibility, court should undertake a rigorous examination of the facts on which the expert relies, the method by which the expert draws an opinion from those facts, and how the expert applies the facts and methods to the case at hand.

[Cases that cite this headnote](#)

[30] [Bankruptcy](#)  [Evidence; witnesses](#)

[51Bankruptcy](#)  
[51IICourts; Proceedings in General](#)  
[51II\(B\)Actions and Proceedings in General](#)  
[51k2163Evidence; witnesses](#)

Expert's opinion that is not based on sufficient facts or data nor the product of reliable principles and methods properly applied should be rejected.

[Cases that cite this headnote](#)

[31] [Bankruptcy](#)  [Evidence](#)

[51Bankruptcy](#)  
[51VThe Estate](#)  
[51V\(H\)Avoidance Rights](#)  
[51V\(H\)2Proceedings](#)  
[51k2725Evidence](#)  
[51k2725.1In general](#)

Expert's disregard for methodology advocated by valuation authorities and typical practice in investment banking and academia shows that his opinions respecting debtor's solvency and adequacy of capitalization, in the context of fraudulent and preferential transfer claims, are not the product of reliable principles and methods for purposes of

determining admissibility of expert's testimony. [11 U.S.C.A. §§ 101\(32\)\(A\)](#), [547](#), [548](#).

[2 Cases that cite this headnote](#)

[32] [Bankruptcy](#)  [Evidence; witnesses](#)

[51](#)Bankruptcy  
[51II](#)Courts; Proceedings in General  
[51II\(B\)](#)Actions and Proceedings in General  
[51k2163](#)Evidence; witnesses

Expert opinion is unreliable and not based on sufficient facts and data, for purposes of evaluating its admissibility, when expert made no attempt to reconcile his view with a number of real-world events and failed to acknowledge and account for these events.

[1 Cases that cite this headnote](#)

[33] [Bankruptcy](#)  [Evidence; witnesses](#)

[51](#)Bankruptcy  
[51II](#)Courts; Proceedings in General  
[51II\(B\)](#)Actions and Proceedings in General  
[51k2163](#)Evidence; witnesses

Expert's failure to look at facts, even for a reality check, means that expert lacks sufficient facts, and renders his opinion unreliable and thus inadmissible.

[Cases that cite this headnote](#)

[34] [Bankruptcy](#)  [Evidence; witnesses](#)

[51](#)Bankruptcy  
[51II](#)Courts; Proceedings in General  
[51II\(B\)](#)Actions and Proceedings in General  
[51k2163](#)Evidence; witnesses

Court should reject an expert's conclusions when there is an analytical gap between the data and the opinion proffered.

[Cases that cite this headnote](#)

[35] [Bankruptcy](#)  [Evidence; witnesses](#)

[51](#)Bankruptcy  
[51III](#)Courts; Proceedings in General  
[51III\(B\)](#)Actions and Proceedings in General  
[51k2163](#)Evidence; witnesses

Court should exclude expert valuation testimony if the expert bases his analysis on an inappropriate set of cash flow projections, did not consider market values, and cannot explain the unreasonable implications of his analysis.

[3 Cases that cite this headnote](#)

[36] [Bankruptcy](#)  [Evidence](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2725.1](#)In general

When alternative cash flow projections are no better supported by the evidence than are those in debtor's business plan, projections in debtor's business plan should be used in conducting discounted cash flow analysis to determine debtor's solvency or adequacy of capitalization for purposes of fraudulent or preferential transfer claims. [11 U.S.C.A. §§ 101\(32\)\(A\), 547, 548](#).

[Cases that cite this headnote](#)

[37] [Bankruptcy](#)  [Evidence](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2725.1](#)In general

Expert's use of only one valuation methodology to conclude that Chapter 11 debtors were insolvent or inadequately capitalized at the time of prepetition transfers challenged as fraudulent or preferential did not provide necessary "check" on value at which expert arrived that would render such value a reliable measure of debtors' worth. [11 U.S.C.A. §§ 101\(32\)\(A\), 547, 548](#).

[Cases that cite this headnote](#)

[38] [Bankruptcy](#)  [Preferences](#)  
[Bankruptcy](#)  [Fraudulent transfers](#)

[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2727](#)Weight and Sufficiency  
[51k2727\(2\)](#)Preferences  
[51](#)Bankruptcy  
[51V](#)The Estate  
[51V\(H\)](#)Avoidance Rights  
[51V\(H\)2](#)Proceedings  
[51k2725](#)Evidence  
[51k2727](#)Weight and Sufficiency  
[51k2727\(3\)](#)Fraudulent transfers

Solvency analysis lacks credibility when expert uses projections that fly in the face of what everyone believed at the pertinent time.

[Cases that cite this headnote](#)

#### Attorneys and Law Firms

\*288 [Greg A. Danilow](#), Esq., [Michael F. Walsh](#), Esq., [Scott J. Atlas](#), Esq., [Diane Harvey](#), Esq. and [Ashish D. Gandhi](#), Esq., Weil, Gotshal & Manges LLP, New York, NY, for Statutory Committee of Unsecured Creditors.

[Garrett B. Johnson](#), Esq., [Anne McClain Sidrys](#), Esq. and [Maria P. Rivera](#), Esq., Kirkland & Ellis LLP, Chicago, IL, for Motorola, Inc.

### OPINION REGARDING INSOLVENCY AND UNREASONABLY SMALL CAPITAL

[JAMES M. PECK](#), Bankruptcy Judge.

#### TABLE OF CONTENTS

|  |     |
|--|-----|
| INTRODUCTORY STATEMENT AND OVERVIEW..... | 291 |
| PROCEDURAL HISTORY .....                 | 304 |

|   |     |
|---|-----|
| JURISDICTION AND VENUE .....  | 304 |
| FINDINGS OF FACT .....  | 305 |
| I. IRIDIUM CORPORATE HISTORY .....  | 305 |
| II. THE IRIDIUM SYSTEM .....  | 306 |
| A. Iridium System Performance .....   | 308 |
| B. Expectations About Handset Size .....  | 310 |
| III. RELEVANT INFORMATION REGARDING EXPECTED SYSTEM PERFORMANCE WAS<br>DISCLOSED TO IRIDIUM AND ITS INVESTORS .....               | 311 |
| A. Iridium And Its Board Were Informed About The System’s Voice Quality And Expected<br>Performance In Various Environments ..... | 311 |
| B. Iridium Publicly Disclosed System Limitations to Investors .....   | 313 |
| IV. IRIDIUM’S BUSINESS PLANS AND MARKET RESEARCH .....  | 314 |
| A. Early Iridium Business Planning And Market Research .....  | 314 |
| B. The 1996–1998 Market Research .....  | 316 |
| C. Translating Market Research Into Projections .....   | 317 |

|     |   |     |
|-----|---|-----|
| 1.  | KPMG Financial Models .....                                   | 318 |
| 2.  | Business Plan 2.0 .....                                       | 318 |
| 3.  | Business Plans—2.x, 2.x Update and 3.0 .....                  | 319 |
| D.  | Marketing Expert Opinions .....                               | 319 |
| V.  | IRIDIUM’S BANK LOANS .....                                    | 320 |
| A.  | Global Arrangers’ Due Diligence .....                         | 320 |
| B.  | The C & L/ADL “Banking Case” .....                            | 322 |
| 1.  | ADL technical due diligence .....                             | 325 |
| 2.  | ADL risk assessment .....                                     | 326 |
| 3.  | ADL understanding of system performance .....                 | 326 |
| VI. | IRIDIUM PUBLIC AND PRIVATE EQUITY AND DEBT TRANSACTIONS ..... | 326 |
| A.  | Private Equity Investments .....                              | 326 |
| 1.  | Due diligence associated with private investments .....       | 328 |
| a.  | Goldman Sachs .....   | 328 |
| b.  | Early investors .....   | 328 |
| B.  | 1995 Contemplated Debt Offering .....                         | 329 |

|       |   |     |
|-------|---|-----|
| C.    | Public Equity Offerings .....   | 329 |
| 1.    | Public Equity Due Diligence And Understanding Of System Limitations ..... | 330 |
| a.    | Merrill Lynch .....   | 330 |
| b.    | Salomon Smith Barney .....  | 331 |
| 2.    | Equity underwriter valuations of Iridium .....                            | 331 |
| D.    | Iridium’s Public Debt Offerings .....                                     | 332 |
| E.    | Bondholder due diligence and understanding of system limitations .....    | 333 |
| VII.  | IRIDIUM’S STOCK PRICE AND ANALYST ASSESSMENTS .....                       | 333 |
| A.    | Iridium Stock Price .....   | 333 |
| B.    | Analysts .....  | 334 |
| VIII. | EVIDENCE REGARDING IRIDIUM’S CAPITAL ADEQUACY .....                       | 335 |
| A.    | Iridium’s Financial Advisors .....  | 335 |
| B.    | Iridium CFO/CEO .....   | 336 |
| C.    | KPMG .....  | 336 |

|   |     |
|---|-----|
| IX. MOTOROLA SOLVENCY EXPERTS .....                   | 337 |
| A. Paul Pfeleiderer .....                             | 337 |
| B. Bruce Den Uyl .....                                | 337 |
| 1. Den Uyl DCF Analysis .....                         | 337 |
| a. 1995 DCF analysis .....                            | 338 |
| b. 1997 DCF analysis .....                            | 338 |
| c. 1998 DCF analysis .....                            | 338 |
| C. Other Evidence Regarding Iridium’s Solvency .....  | 338 |
| X. COMMITTEE’S SOLVENCY EXPERT .....                  | 339 |
| A. The Committee’s Adjusted Iridium Projections ..... | 340 |
| 1. Spragg’s 1995 Projections .....                    | 340 |
| 2. Spragg’s 1997 Projections .....                    | 341 |
| CONCLUSIONS OF LAW .....                              | 342 |
| XI. BURDEN OF PROOF .....                             | 342 |

|   |     |
|---|-----|
| XII. LEGAL STANDARDS FOR PROVING INSOLVENCY/INADEQUACY OF CAPITAL .....   | 344 |
| A. Insolvency.....  | 344 |
| B. Capital Adequacy.....  | 345 |
| XIII. RELEVANCE OF IRIDIUM’S SUBSEQUENT FAILURE IN DETERMINING INSOLVENCY<br>AND/OR INADEQUACY OF ITS CAPITAL ..... | 345 |
| XIV. ROLE OF CONTEMPORANEOUS EVIDENCE IN DETERMINING IRIDIUM’S<br>INSOLVENCY AND/OR INADEQUACY OF ITS CAPITAL ..... | 346 |
| A. Iridium’s Market Capitalization.....   | 346 |
| B. Iridium Projections of Future Cash Flows.....  | 347 |
| C. Analysts, Investors and Lenders .....  | 348 |
| XV. EXPERT TESTIMONY ON INSOLVENCY AND INADEQUATE CAPITAL .....   | 349 |
| A. Legal Standards Regarding The Reliability And Credibility Of Expert Testimony .....                              | 349 |
| B. The Expert Opinion Testimony Regarding Insolvency Offered By The Committee Is Not<br>Persuasive .....            | 350 |
| CONCLUSION .....  | 352 |

**\*290** The Statutory Committee of Unsecured Creditors (the “Committee”) on behalf of Iridium Operating LLC, Iridium Capital Corp., Iridium IP LLC, Iridium LLC, Iridium Roaming LLC and Iridium (Potomac) LLC (collectively “Iridium”) seeks to recover billions of dollars from Motorola, Inc. (“Motorola”) in this litigation on behalf of the Iridium estate. The Committee’s claims arise out of Motorola’s development and deployment for Iridium of a global telecommunications constellation of sixty-six low earth orbit satellites and related gateways pursuant to what is known as the Space System Contract. Under that contract and related contracts, Motorola received approximately \$3.7 billion in transfers from Iridium in accordance with the contract’s milestone payment schedule. Iridium activated its service with much fanfare in November 1998 and ended up in bankruptcy about nine-months later. The litigation explored, but did not fully explain, the reasons for this huge and embarrassing failure.

Following years of fact and expert discovery, pretrial motions and the submission of a final pretrial order, the parties, in consultation with the Court, consented to bifurcate the trial in order to streamline what otherwise would have been an unwieldy and prolonged proceeding. The first phase of the trial, by agreement, was limited to the questions of whether Iridium was insolvent or had unreasonably small capital during the four-year period prior to commencement of the bankruptcy case. Even with this agreement to limit the issues, this phase of the trial was unusually long—fifty trial days. Opening arguments took place on October 23, 2006; closing arguments were presented on June 5, 2007. Between the opening argument and the closing, 52 witnesses testified, including 7 experts, and 866 exhibits were admitted into evidence. The parties submitted detailed post-trial proposed findings of fact and conclusions of law and post-trial briefs. The issues regarding insolvency are unusually complex and present a challenging valuation problem.

After consideration of the evidence presented during this bench trial and review of extensive post-trial submissions, the Court in this opinion now decides whether Iridium was insolvent or had unreasonably small capital during the four-year period from August 13, 1995 through August 13, 1999 for purposes of fraudulent conveyance and preference claims seeking to avoid transfers from Iridium to Motorola that total approximately \$3.7 billion. In rendering this decision, the Court has considered a vast factual record and has had to weigh the conflicting opinions of **\*291** respected experts from a variety of disciplines. For reasons explained in the following introductory statement and overview and as detailed more fully in the findings of fact and conclusions of law sections below, the Court finds that the Committee has not carried its burden of proof in establishing that Iridium was insolvent or had unreasonably small capital during the relevant period.

The introductory statement below provides a summary and overview of the Court’s reasoning and reactions to the evidence presented during the solvency phase of the trial, but the reader should consult the findings of fact and conclusions of law sections for a more complete and specific understanding of the determination of the solvency questions before the Court.

The conclusions of law section of the Opinion includes references to the recent Third Circuit case, [VFB LLC v. Campbell Soup Co.](#) 482 F.3d 624 (3d Cir.2007). [VFB](#) has been instructive to the Court in identifying ways to think about and to reconcile the conflicting evidence in the record regarding enterprise value. Notably, [VFB](#) validates the use of market data for purposes of valuing a public company for fraudulent conveyance purposes and makes clear that the public markets constitute a better guide to fair value than the opinions of hired litigation experts whose valuation work is performed after the fact and from an advocate’s point of view. This Court agrees with the reasoning of the Third Circuit in [VFB](#) and has found that case to be pertinent and influential precedent. In light of the valuation principles stated in [VFB](#), the Court has found insufficient cause to set aside the verdict of solvency and capital adequacy already given to Iridium by the public markets.

### **INTRODUCTORY STATEMENT AND OVERVIEW**

The Debtors in this chapter 11 case, working closely with Motorola, conceived, developed, owned and operated a global telecommunications system that was designed to provide voice communication and paging services anywhere in the world so long as the antenna of a subscriber’s portable telephone handset or paging unit could be positioned to make radio contact with one of Iridium’s sixty-six low earth orbiting satellites.<sup>1</sup> The system seemed to be a promising and innovative advance in telecommunications at the time, but the business failed shortly after activation of the system.

<sup>1</sup> The original constellation design called for seventy-seven satellites, the atomic number in the periodic table for the element iridium, the inspiration for the company's name. The satellite telephone was not able to communicate with the orbiting satellites in environments where there were any significant obstructions between the antenna and the satellite (such as in buildings, especially high rise buildings, or in the so-called urban canyons of central business districts). The satellite service was augmented during the development of the system to include an optional cellular roaming feature. This roaming feature allowed the Iridium phone to function as a cell phone in obstructed or heavily shadowed environments in regions where cellular service was otherwise available.

Iridium's rapid decline into bankruptcy about nine months following commercial activation of its service was a business failure of epic proportions. During the seven years after Iridium was spun off from Motorola and prior to its bankruptcy and the eventual sale of its assets, Motorola served as Iridium's patron and contract counter-party, offering substantial technical and financial support and receiving progress payments pursuant to its contracts with Iridium during the four years prior to commencement of the bankruptcy aggregating \$3.7 billion. These transfers are the real focus of this phase of the trial, \*292 because a finding of insolvency or unreasonably small capital is needed to satisfy one of the essential statutory prerequisites for recovery of these transfers under applicable fraudulent conveyance law.

The questions of solvency and capital adequacy necessarily have entailed a comprehensive review of the engineering and commercial origins of the Iridium project, the physics of radio frequency propagation and fading, the technical characteristics and limitations of the Iridium system, what was known concerning these characteristics and limitations, the nature and extent of market research conducted on behalf of Iridium, the adequacy of forward-looking subscriber estimates and revenue projections, the reasonableness of Iridium's business plans, and the significance to the valuation question of various capital markets transactions that took place during the relevant period. Importantly, the evidence also has included conflicting expert opinion testimony regarding Iridium's solvency and the adequacy of its capital in light of its capital structure and business prospects.

*Competing Valuation Philosophies Point To Opposite Conclusions Regarding Insolvency*

Despite the complexity of the problem, at the risk of oversimplification, the valuation question posed by this litigation comes down to a contest between two fundamentally different valuation theories and methodologies. Motorola refers the Court to Iridium's success in the capital markets in raising impressive amounts of debt and equity and to an efficient public trading market in which Iridium's securities traded within ranges indicative of substantial enterprise value. Motorola's solvency defense is grounded in this empirical data.

The Committee disputes the validity of such market data for a company with fundamental weaknesses that it claims were not fully understood by Wall Street, that had no reportable earnings and that was a start-up enterprise gearing up to operate within an unproven new segment of the telecommunications industry, a segment that in practice proved to be worth far less than all the hype had once suggested. The Committee's insolvency case is grounded in the mismatch between market research that predicted a robust market for the new service and a system reality so incapable of servicing its target market that such research must have been seriously flawed.

The Committee asks the Court to disregard historical market data as manifestly unreliable and accept the conclusions of expert witnesses who performed a discounted cash flow analysis using adjusted cash flow projections prepared in contemplation of litigation. This analysis sharply reduces the estimates of projected future cash flow associated with professional business travelers to take into account the limitations of the Iridium service that rendered it unsuitable for this target market.

If the Court accepts the opinions of the Committee's experts, Iridium was insolvent or inadequately capitalized during the entire critical four-year period. If the Court accepts Motorola's market valuation theory, Iridium must have been solvent, despite the fact that it was unable to generate sufficient revenue to service its debt and descended into a death spiral and collapsed into bankruptcy shortly after going into commercial service.

Doubtless, the 1990's were exuberant times in the debt and equity markets. Subsequent reversals of fortune proved these markets to have been overly optimistic about the share values of Iridium and any number of other telecommunications

companies that were high flyers during the era. Nonetheless, valuation judgments can only be made utilizing the best \*293 information that is available at the time about future cash flows and business prospects. After careful deliberation, the Court is persuaded that contemporaneous market data for Iridium's publicly traded securities are both consistent with substantial enterprise value and inconsistent with insolvency. The market evidence is simply too voluminous and compelling to reach any other conclusion.

The Committee's experts have been unable to account for, to adequately explain or to reconcile the abundant market data that conflicts with their opinion, other than to question what the market knew about service limitations and to claim market judgments were not meaningful for a start-up company, particularly a company such as Iridium that required huge capital expenditures and a long development stage before generating any revenue. They elected not to test and validate their valuation opinions by utilizing any accepted methodologies other than the discounted cash flow approach to value, and based their opinion on restated cash flow projections that were tailored for litigation purposes well after commencement of this adversary proceeding.

As a result of not confronting the valuations implied by the public markets concerning the enterprise value of Iridium and other comparable companies in the mobile satellite communications industry and of dismissing the market data as inapplicable to their analysis, the Committee's experts narrowed their focus to the point that they did not testify convincingly regarding all of the evidence that the Court needed to evaluate and, in the process, diminished the usefulness and credibility of their opinions. M. Freddie Reiss, who was the Committee's principal valuation witness, at times was also adversarial in defense of his opinions and in many instances did not give simple and direct answers to questions during cross-examination. His "hired gun" advocacy from the witness stand and lack of responsiveness to certain seemingly straightforward questions did not help his credibility.

<sup>1</sup> Even though Iridium's failure demonstrates that the public markets turned out in this instance to be a very poor predictor of Iridium's future value, the Court has no doubt that the markets, especially after commercial launch, were reasonably well informed as to Iridium's operating characteristics and constraints, yet still managed to be terribly wrong about the company's actual prospects. Any reader of *The Wall Street Journal* knows that the markets are risky and unpredictable and that share prices frequently are influenced by a variety of factors unrelated to the fundamentals and potential of a particular company. Nonetheless, the public trading market constitutes an impartial gauge of investor confidence and remains the best and most unbiased measure of fair market value and, when available to the Court, is the preferred standard of valuation. See [VFB LLC v. Campbell Soup Co.](#) 482 F.3d 624 (3d Cir.2007).

With hindsight (and with what Motorola refers to as "hindsight bias"), the market value for Iridium securities during the relevant period turned out to be an unreliable indicator of future fair market value, but that does not justify ignoring this data. This conspicuously inconsistent data contradicts the opinions of the Committee's experts and needs to be explained and overcome in order for the Committee to carry its burden during this phase of the trial. However, the Committee's experts have treated such data as irrelevant and have not given a satisfactory explanation for the abundant conflicting market judgments of those who were lending to or investing in Iridium during the period \*294 leading up to and immediately after commercial activation.<sup>2</sup>

<sup>2</sup> Ed Staiano, formerly a senior executive at Motorola and the CEO of Iridium at the time of commercial activation, knew in intimate detail how the Iridium system actually functioned and was well aware of its various technical limitations, including the fact that the Iridium telephone would not work dependably indoors or in the urban canyons of central business districts, but he made the decision, nonetheless, to invest \$500,000 of his own money in Iridium securities in March 1999 (11/16/06 Tr. 71:22-24 (Staiano)). Thus, even a highly placed company insider had confidence that the company was a good investment at the same time that the Committee's experts assert that the company was insolvent and its equity was worthless. The Global Arrangers for a \$1 billion credit facility that closed in December 1997 engaged Coopers & Lybrand (now known as PriceWaterhouseCoopers) and Arthur D. Little to conduct extensive independent diligence with respect to the Iridium business plan as a condition to extending credit to Iridium. These consultants to the lenders "stress tested" the Iridium projections, prepared a more conservative set of projections that assumed a downside case for future company performance after commercial activation and gave a green light to the loan which was oversubscribed. Notably, well informed insiders and sophisticated outsiders believed in the future of the Iridium technology, considered the business plan to be attainable and thought that it was prudent to invest in or extend credit to the company. These business judgments, while anecdotal, imply that Iridium was solvent at the time and support the Court's decision that the Committee has not carried its burden of proof.

This failure to address conflicting data points that are opposed to their opinion of insolvency lessens in the Court's mind the weight to be accorded the testimony of these expert witnesses. Their testimony correlates well with the corporate failure that actually occurred but does not correspond with or take into account the widely held market perceptions that prevailed during the period leading up to bankruptcy. Because of the sheer volume of contemporaneous market evidence, to be effective and credible proponents of their opinion, the Committee's experts needed to do more than they did to demonstrate why all of the market participants were so terribly mistaken in assessing Iridium's value.

The failure of the Committee's expert witnesses to incorporate other valuation approaches and to account for inconsistent market data is troubling to the Court, not so much because it is absolutely necessary as a matter of valuation theory, but because the Court needs help to resolve the very pragmatic problem of how to fairly value Iridium. By not dealing directly with the extensive anecdotal evidence that contradicts their opinions, these experts have made it more difficult for the Court to accept their opinion testimony, testimony that seems to have veered into the zone of advocacy. As a result of not confronting the conflicting evidence of Iridium's solvency, the Committee's experts have lessened the impact of their testimony. In short, they have a credibility problem.

Motorola's fact and expert witnesses, on the other hand, succeeded in demonstrating that a tremendous amount of thoughtful planning went into the development, review and testing of Iridium's business plan and that industry consultants and market participants, including equity investors, underwriters and senior lenders, were reasonably well informed regarding the nature of the Iridium system and its limitations. On the basis of this diligence and what was known in the market, these market participants continued to believe, even months after commercial launch revealed how the system actually functioned, that Iridium had the potential to become a viable enterprise that could achieve its projections and that a significant worldwide market could be tapped for satellite \*295 voice communications despite the "line-of-sight" characteristics of the system.

Motorola offered an array of witnesses from multiple disciplines supporting the conclusion that market participants were aware of the limitations of the Iridium service and believed that users would still find it acceptable.<sup>3</sup> These witnesses included former Iridium employees, a major private investor in Iridium, investment bankers retained by Iridium and a representative of the lenders to Iridium. Motorola also called two business school professors, one from Stanford University and another from The University of Pennsylvania. The Stanford professor testified that an aggregation of purchases and sales within an informed market provides a reliable measure of fair market value, that market valuation is a main focus of his scholarly interest and that he regularly teaches this valuation theory to his MBA students. His academic perspective is that the markets provide the best and most meaningful data for determining the value of a business. He was both credible and persuasive. The Wharton professor explained that the survey methods used by consultants for Iridium to collect data regarding the market for the new service, in his opinion, were reasonable. Motorola also relied upon a recognized solvency expert from a financial consulting firm who testified that Iridium was solvent at all material times. That opinion was based on a discounted cash flow analysis and the contemporaneous valuation judgments of financial analysts who followed Iridium securities.

<sup>3</sup> It is worth noting that with the exception of four expert witnesses hired by the Committee to testify in its case, all witnesses for the Committee appeared electronically by means of designated portions of videotaped depositions. In contrast, Motorola presented the testimony of nine live witnesses, including certain individuals who appeared voluntarily even though they were beyond the subpoena power of the Court. Motorola contributed greatly to its defense by having live witnesses whose credibility could be assessed by the Court. Despite the utility of the videotaped testimony offered by both sides, there is no substitute for observing the demeanor of witnesses who are testifying in person in the courtroom. Witnesses who invested in Iridium (Theodore Schell), who provided investment banking services to Iridium (James Attwood) and who acted as one of the global arrangers for Iridium's senior credit facility (Thomas Cassin) all testified in person and, among other things, confirmed their awareness of the "line-of-sight" characteristics of the Iridium satellite service. The Committee elected not to cross-examine Mr. Schell and his testimony on this subject is un rebutted. Multiple witnesses indicated that they were familiar with the "line-of-sight" nature of the system, and, despite that, they appear to have assumed that the service still would be acceptable to prospective users.

Taken together and on balance, Motorola did a better job in establishing that market evidence was relevant and persuasive data that could not be ignored in determining insolvency than the Committee did in establishing that the market was an unreliable measure of value that should be ignored. Motorola, through convincing and credible evidence, established to the Court's satisfaction that when it came to valuation, market participants had not been misled about the expected performance of the Iridium system and were reasonably well versed regarding its capabilities. These participants seem to have done a poor job in predicting whether and when potential users of the Iridium satellite service would want to become subscribers, but that

failure to foresee that Iridium was ultimately doomed to fail does not mean that the original projections must have been wrong or were unreasonable when they were created.

The Committee's experts have assumed that Iridium's projections were unreasonable and have resorted to the creation of \*296 their own projections solely for purposes of supporting their opinion that Iridium was insolvent. Given the extraordinary amount of diligence that was performed by consultants retained by Iridium's lenders for the purpose of testing the reliability of Iridium's projections, the alternative set of projections crafted by the Committee's experts solely for purposes of this litigation are of uncertain reliability and of doubtful credibility.

These doubts, coupled with the strong evidence of a prepetition enterprise that had the ability to access the capital markets for debt and equity infusions throughout the relevant testing period,<sup>4</sup> are sufficient for the Court to conclude that the Committee has not met its burden by a preponderance of the evidence. While it may be splitting hairs, the consequence of the analysis described in this opinion is not a determination that Iridium truly was solvent or adequately capitalized but rather that the evidence presented by the Committee is insufficient to establish insolvency or unreasonably small capital.

<sup>4</sup> James Attwood, formerly of Goldman Sachs & Co., testified that the capital structure of Iridium was "conservative." (2/9/07 Tr. 109:23–110:5 (Attwood)).

#### *The Committee Did Not Prove That Major Marketing Mistakes Doomed Iridium*

The Committee's consistent theme throughout the trial has been that Iridium needed to attract customers within a target market of so-called professional business travelers, but that the Iridium satellite service could not meet the foreseeable needs of such sophisticated travelers because of system limitations that were recognized by Motorola engineers at the earliest stages of system development. The Committee claims that the inherent flaw in the business plan was Iridium's failure to appreciate the misalignment between the capabilities of the Iridium system and the reasonable expectations of its target customers who would insist on better service. The Committee contends that the Iridium service was not well suited to the needs of professional business travelers and that such travelers would only be interested in subscribing to a service that permitted reliable voice communications in those environments where sophisticated subscribers actually would expect to be able to use their mobile handsets—namely in buildings and in automobiles.

According to the Committee, this fatal marketing mistake grew out of survey questions that incorrectly portrayed the characteristics of the service and glossed over known limits to coverage. The Committee criticizes the language used in these questions that made the coverage seem better than it ever could be and that failed to adequately highlight the foreseeable limitations of the new system. The Committee makes the following contentions regarding Iridium's market research: if survey questions had been sufficiently clear and candid in detailing the holes in the coverage and in alerting respondents to those places where the service would not work, respondents would not have given responses indicating a willingness to use the service; failing to plainly articulate the system limitations caused survey respondents falsely to indicate a potential interest in subscribing to a service that in actuality was unsuitable for their needs, and this led the company and its consultants to a cascade of critical errors and the creation of a completely unreliable and unreasonable business plan; and Iridium ended up badly overestimating the demand for its new service resulting in a material overstatement of the number of projected subscribers, a materially false and overly optimistic estimate of the projected usage of the Iridium service by the professional \*297 business traveler segment and a gross miscalculation of the resulting revenue to be generated by the new business.

The argument, in a nutshell, is that the system as designed was never suitable for its intended target market and that during the years leading up to commercial activation people who should have known better lost touch with the reality that this particular technology would work well in an open field or on top of a mountain but not in a building and not in an automobile without an extra antenna on the roof—and this meant that the service would never be able to meet the needs of this key subscriber group.

Because of this known limitation in the quality, dependability and utility of the service that Iridium could deliver, the Committee submits that Iridium always lacked the money making potential to pay off the massive debt burden accumulated in connection with the design, development, deployment and commercial activation of the high-tech infrastructure of its

business. Global voice communication was a great and novel idea, but the concept required too much borrowed money to implement, and, if the Committee's theory is accepted, the business concept effectively was bankrupt before the company itself was.

The Committee's case is based, therefore, on the proposition that the capital cost to launch this business was far greater than Iridium ever could have been worth at fair valuation because real world subscribers would consider the service to be unsatisfactory and would not be willing to pay a premium price for spotty service. This means, regardless of what the projections said and regardless of what market participants may have known about the service prior to activation, that Iridium must have been insolvent and must have been undercapitalized during the relevant period.

In short, the Committee asserts that without Motorola's continuing support the business was doomed to fail from the start because it never had the capacity to generate enough cash flow to service or pay back its crushing load of debt.<sup>5</sup> Iridium suffered from unacceptable gaps in its coverage, \*298 and this meant that the company could never deliver adequate service to its principal target market, professional business travelers and high income individuals who would travel away from their home cellular systems and demand a quality of service comparable to the evolving quality of cellular service that would, at a minimum, permit coverage in buildings and in automobiles. Thus, the Committee claims, Iridium's failure was inevitable.

<sup>5</sup> Motorola committed its own resources to Iridium (including research and development relating to the Iridium handset and paging device), invested in Iridium equity, appointed members of Iridium's board of directors and guaranteed certain bank debt of Iridium. This backstopping of Iridium by Motorola may have led to the perception that Iridium was an unofficial part of Motorola's extended corporate family and that Motorola could be counted on to support Iridium, regardless of the lack of any enforceable commitment to do so. Although no evidence was presented during the trial concerning the value of this perceived mutually beneficial relationship with Motorola, the Court believes that market participants must have viewed the Motorola relationship favorably and may have factored Motorola's sponsorship of the project into the decision to purchase shares in or lend to the company. The Committee in questioning certain witnesses raised the possibility that Motorola may have used its position as one of the dominant players in the worldwide telecommunications industry to influence third parties to invest in or to enter into contracts with Iridium, but this point was not sufficiently developed or established definitively during the trial. However, some of the buoyancy in the market value of the securities of Iridium may have derived from the presence of Motorola as a contingent provider of possible credit support and the belief that Motorola had too much to lose, both economically and in terms of its reputation, if it permitted Iridium to fail. There is nothing in the record regarding this issue, nor is there anything to indicate that such perceived support is not a proper factor to be taken into account in determining solvency. This perception, real or imagined, of Motorola's behind the scenes support may help to explain why Iridium equity securities continued to reflect positive enterprise value even on the eve of the bankruptcy that rendered them worthless.

Notwithstanding this theory and the intuitive judgment that a business meltdown of this magnitude could not have occurred without a major structural defect in the business plan, oddly missing from the voluminous record is any credible proof as to what actually caused Iridium to fail. The business itself was a grand and elaborate vision of a global telecommunications future that proved to be wrong for a variety of reasons, including the unexpectedly rapid build-out of competing cellular systems, the expense and bulk of a telephone handset that was not as attractive or compelling as the evolving generation of pocket-sized cell phones with which it was being compared, the relatively high cost of subscribing to the service, the decision to proceed with commercial activation before all the software bugs had been eliminated from the system, lackluster performance by various gateway operators around the world who were insufficiently aggressive or simply unsuccessful in marketing the service to subscribers and undesirable limitations in the quality and performance of the satellite telephone service. No one disputes that there were many contributing factors. However, the Committee offered no proof demonstrating that the service limitations in fact caused business travelers to conclude that the service was unsatisfactory. The Court is left to speculate as to whether the projections were wildly overstated for this reason or whether some other combination of factors is to blame.

Did poor planning or poor execution or both cause Iridium to fail so spectacularly and so quickly? No single factor explains why Iridium was unable to sign up anywhere near the number of subscribers needed to achieve its business plan<sup>6</sup> and as Leo Mondale, Iridium's former Vice President of Marketing and Strategic Planning, has testified, there was no consensus within the company's senior management as to why Iridium failed (2/9/07 Tr. 73:24-74:6 (Mondale)). Counsel for the Committee acknowledged during closing argument that what caused the failure of Iridium is still an open question (6/5/07 Tr. 29:6-11 (Danilow)). This is an additional reason for concluding that the Committee has not met its burden of proving insolvency.

<sup>6</sup> Iridium created multiple business plans from its inception through the filing of its Chapter 11 petition. Some were issued in conjunction with private and public equity and debt offerings.

*Leo Mondale Confirmed That Iridium Performed Within Expected Ranges*

In addition to pointing out that there was no consensus regarding the proximate cause of Iridium's failure, Mr. Mondale provided the Court with particularly helpful insights regarding many of the other disputed facts in this case. Mr. Mondale appeared by means of video in the Committee's case and as a live witness for Motorola. He was knowledgeable and credible and offered testimony demonstrating how difficult it is to assign blame, after the fact, for the failure of a complex and technologically sophisticated project such as Iridium and to figure out what, if anything, was wrong with a marketing effort and business plan that had been so carefully considered and so thoroughly examined prior to system launch.

**\*299** As the senior officer mainly responsible for Iridium's marketing efforts, Mr. Mondale provided evidence that was helpful to the legal positions of both the Committee and Motorola. The fact that he was not aligned with either side served to burnish his credibility and add weight to his testimony. The Court asked no questions of any other witness during the trial except for Mr. Mondale and considered him to be an excellent source of information as to what actually took place during the development stage of Iridium's business. His responses to direct and unrehearsed questions were knowledgeable, candid and unbiased. Based on those responses, the Court is satisfied that the marketing functions at Iridium were carefully, thoughtfully and expertly managed in light of the information that was available at the time. The Court finds, as a result, that Iridium's own projections, rather than the adjusted set prepared by the Committee's experts, constitute the most appropriate starting point for performing a discounted cash flow analysis.

Mr. Mondale was no fan of Motorola, but he nonetheless agreed to appear as a live witness during Motorola's defense. He was something of a wildcard witness in that he could easily have provided evidence that would benefit the Committee. In the end, however, he demonstrated that the reality of Iridium's performance was neither black nor white, but nuanced, and he helped to sink the Committee's case while at the same time giving the Committee some useful ammunition. For example, he complained that Motorola did not share all of the technical information regarding the limitations of the system that the company needed to develop its marketing strategy. He also described how he clashed with Ed Staiano over the right date for activating the Iridium service; Staiano was a forceful leader with experience in the launching of cellular systems who would not tolerate further delays in activating the system while Mondale was urging caution due to his concern that the system was not yet ready for commercial use and that more time was needed to eliminate software bugs from the system. The system was launched on Staiano's schedule, an error that some would argue led to Iridium's prompt demise. (Tr. 2/9/07 39:23–40:25, 61:22–63:10 (Mondale))

Importantly, Mr. Mondale confirmed that the Iridium System after activation performed within expected ranges, albeit at the lower end. This means that the system upon commercial activation, while disappointing to those at Iridium like Mondale who had hoped for performance at the upper end of the spectrum of foreseeable outcomes, actually did deliver service to subscribers that matched Iridium's expectations. Mr. Mondale indicated that he might have elected to pursue a modified marketing strategy if he knew in advance precisely how the system would function once activated, but such an acknowledgement does not mean that the marketing strategy adopted by Iridium was anything but reasonable. (Tr. 2/9/07 36:5–24 (Mondale))

Quite to the contrary, Mr. Mondale's testimony supports the conclusion that the business plan was developed with extreme care and with the recognition that satellite service suffered from inherent line-of-sight limitations, which meant that the quality of subscriber service could not be predicted and depended on the physical location of both the satellite and the subscriber. That is why he summed up the subscriber experience with the comment "it depends," and with those two words conveyed an essential truth about satellite technology and the subscriber experience. Users needed to accept the fact that service would not be reliable in all environments.

**\*300** The subscriber experience was by its very nature variable and hard to define, and this is the source of the marketing problem that is at the heart of this case. Mr. Mondale and others may have hoped that the service would be better than it turned out to be, but the service parameters were entirely foreseeable. Mr. Mondale, those who worked with him in the marketing department, and the consultants for the Global Arrangers<sup>7</sup> all were aware of the fundamental characteristics of the

satellite technology and did their best with diligence and in good faith to predict the market demand and anticipated future revenue in light of known risks. Their failure to predict the market demand accurately does not imply that they failed to act reasonably or to generate reasonable projections.

<sup>7</sup> The Global Arrangers for Iridium’s 1996–1998 bank loans were Chase Securities, BZW and Barclays. (2/7/07 Tr. 6:16–7:5 (Cassin); MX 777 at MOT 942,559 (4/17/96 BOD Minutes))

*Projections Were Not Unreasonable When They Were Prepared*

Embedded within the Committee’s theory of the case is the common sense notion that Iridium’s failure shows that its projections were unrealistic and must have been unreasonable. While this argument does have some superficial appeal, the Court is unable to make the logical leap that Iridium’s failure leads to the conclusion that the projections must have been unreasonable when they were prepared.

This aspect of the Committee’s case amounts to *res ipsa loquitur*-type thinking: i.e., how could the projections have been close to reasonable when the service turned out to be so inadequate, the debt burden turned out to be so high and the revenue turned out to be so pathetically low? In effect, the Committee submits that the Court should apply its own independent judgment to reject the Debtor’s projections as being so patently absurd and unreasonable as to be neither credible nor reliable.

The Court is not prepared to do that on the basis of this record. Iridium’s cash flow projections were the result of a prolonged, deliberative process in which assumptions were vetted internally and by outside consultants. An extraordinary amount of work went into the development of these projections. As it turns out, the projections were not even close to being an accurate forecast of future performance, but the fact that Iridium ended up in bankruptcy does not mean that these projections were unreasonable and should be discarded or that it is now appropriate to start over and create a new set of adjusted projections.

Based on the evidence presented and the “right stuff” attitude displayed by many of the “Motorolans” who conceived and developed the system, the blind spot that permitted so many people to be so wrong about Iridium may be explained by a kind of “Field of Dreams” mentality that prevailed during the development stage of the project and that may have been colored by their own experience with cellular telephony. No one has stated in so many words, “if we build it, they will come,” but the Court is left with the impression that those who worked on this project, including the various consultants who performed so much diligence on the projections, must have felt intuitively that the ability to use one communications device in virtually all parts of the globe would be an irresistible innovation that would be attractive to many people. The sense of technical progress and the shared view at the time that global communications would find a market may have influenced those who reviewed \*301 the projections.<sup>8</sup> Context here is meaningful. This was very much a nineties project that was being developed at a time when the markets were hot and fueled by a sense of optimism in a future of global connectivity.

<sup>8</sup> It is notable that Iridium was not alone at the time in pursuing the dream of global satellite voice and data communications. Another competitor in the mobile satellite industry during this period was Globalstar. Globalstar followed a trajectory similar to Iridium’s and filed for bankruptcy in the District of Delaware on February 15, 2002.

Despite a comprehensive market research effort, actual subscribers were scarce and did not sign up in anywhere near the numbers projected or needed for commercial viability. The reality was far worse than what had been anticipated, but the failure to attract subscribers does not necessarily mean that Iridium’s forward-looking projections must have been unreasonable as of the time that they were created. The demonstrated inaccuracy of the projections does not justify rewriting them in the manner adopted by the Committee’s experts, particularly in the absence of any proof regarding the reasons the projections turned out to be so wrong.

And that is a vexing problem with the opinions presented by the Committee’s experts. The creation of a revised set of projections for purposes of performing a discounted cash flow analysis supporting the conclusion that Iridium was insolvent looks like second-guessing by financial experts who are doing precisely what they were hired to do—doing everything that needs to be done in order to justify giving an insolvency opinion.

The use of experts to express opinions that are essential elements to the prosecution of a cause of action is a familiar aspect of the litigation process. Therefore, the fact that the Committee's experts offered the opinion that Iridium was insolvent is hardly cause for surprise. However, it is cause for the Court to be vigilant in scrutinizing that opinion. The projections as revised by the Committee's experts assume that the original projections were seriously flawed because of the assumptions made regarding professional business travelers. This is fully compatible with the Committee's theory of the case, but appears designed to yield the desired results.

The Committee's experts have created their own projections that have been cut drastically to account for an overly optimistic projection of subscribers within the category of professional business travelers, but there has not been a persuasive showing that the methods used and the adjustments made are appropriate and that the revised projections should be accepted as a valid starting point for performing a discounted cash flow analysis. In addition to creating new projections that appear to have been fashioned for the express purpose of supporting the conclusion that is being advocated by the Committee, the Committee's experts have also chosen valuation dates that ignore a number of significant financing and capital markets transactions for Iridium. The analysis performed by the Committee's experts was structured with the objective of enabling these experts to conclude that Iridium was insolvent. While that is a recognizable aspect of complex commercial litigation, the Court finds the resulting opinion in this case to be contrived and unconvincing.

*There Is No Proof That Focuses On The Question Of Iridium's Insolvency During The Months Before Bankruptcy*

The solvency case, as tried by each of the Committee and Motorola, was presented as an all or nothing proposition that sought to characterize Iridium's financial condition during the entire four-year period \*302 prior to commencement of Iridium's bankruptcy cases. Neither side elected to approach the questions of solvency and capital adequacy by parsing this four-year period into smaller blocks of time or by concentrating on discrete smaller testing periods that are relevant to a preference and fraudulent conveyance analysis, such as the ninety-day or one-year period before bankruptcy. From the opposing points of view of the adversaries in this litigation, Iridium's financial condition was either uniformly positive or negative, either comfortably solvent and robust or hopelessly insolvent and undercapitalized throughout all four years before bankruptcy, and neither the Committee nor Motorola offered any evidence that focused particular attention on the critical months of growing financial distress leading up to Iridium's bankruptcy filing.

The Court recognizes, however, the very real possibility that Iridium may have been in the zone of insolvency or may have actually slipped into insolvency at some point between the date of commercial activation and the petition date. For example, during the nine months after commercial activation and before bankruptcy, the closing price of Iridium's shares began an inexorable and increasingly sharp decline. On the day after commercial activation, the price per share was \$48.75, but six months later had decreased to 14.00, and this might well be an indication that the equity market was starting to come to grips with the company's serious problem in attracting subscribers and in dealing with financial covenant defaults with its lenders. However, because of the way that the parties chose to present their theories of insolvency, the Court is unable to make any well-founded findings or conclusions as to this particular period of fairly conspicuous financial distress.

As of the petition date the price per share was \$3.06, and still reflected a positive enterprise value. Despite Iridium's business problems after commercial activation, the market continued to show a positive equity valuation for the company, even though that value dropped considerably in the months before bankruptcy and billions of dollars in assumed enterprise value evaporated. The Committee argues that the loss of this value in the period leading up to bankruptcy helps to demonstrate the fallacy of looking to the public market valuations as a reliable means to measure what a company is really worth, but, other than making a common sense argument based on the seemingly illogical ups and downs of the market, the Committee does not explain why these valuations should not be trusted as valid reference points even in a down market for a particular security.

While arguing that the decline in the price of Iridium shares before the filing date was a clear sign of financial distress and that positive share prices were false indicators of value given the grim reality of Iridium's inability to solicit subscribers and fulfill its business plan, the Committee presented no other evidence whatsoever focusing on the subject of solvency or capitalization during this period of rapidly deteriorating prices for Iridium equity. Curiously, in this respect, both the Committee and Motorola look to the same data, the share prices of Iridium equity, to support their respective positions.

The Committee's experts did not even value the company as of any date later than March 31, 1997 and did not consider events subsequent to that date to be relevant to their opinion regarding Iridium's financial condition. As a result, except for the overall opinions of FTI that are applicable to the entire four-year period, there is no direct evidence in the record to support \*303 a finding of insolvency at any point during the financial crisis that was brewing in the months before Iridium filed for bankruptcy, and the Court is left to speculate as to whether it might have been possible to prove by other means that Iridium was insolvent at some point in time prior to the petition date. Rather than speculate, the Court finds that there has been a failure to prove insolvency even during the period that Iridium's prepetition financial condition was most obviously suspect.

*No Support For Rejecting Market Indicators On Grounds Of Exuberance And Irrationality*

Throughout the trial, Motorola has hammered repeatedly that the public trading market for Iridium's securities was adequately informed and that the collective judgment of sophisticated market participants confirmed that enterprise value must have been significant. By treating this market data as irrelevant and unreliable, the Committee and its experts have elected to avoid a direct confrontation with this central message of Motorola's defense.

More recently, however, in its post-trial briefs and in closing argument, the Committee has suggested that the Court does not need expert testimony to discredit the values implied by the capital markets and can use its own insights, judgment and experience regarding irrational exuberance during the late 1990's to find that the market value of Iridium's securities is a poor proxy for determining fair market value.

The Committee has pointed to the dramatic failure of Iridium and the sale of its assets in bankruptcy for a tiny fraction of the billions that it cost to build the system as empirical proof that the market could not have been a rational valuation tool, at least in this instance of bullish optimism in the securities markets. According to the Committee, the market as a barometer of value should be rejected because market participants were oblivious to the dire consequences of Iridium's high leverage and low revenue.

The Committee asserts that the ultimate reality check here is that the market, in retrospect, could not have been a reliable reference point in light of subsequent events that proved the market to be so plainly wrong in measuring Iridium's fair value. Accordingly, the Committee says, the judgment of the market must be rejected. The Committee argues that the Court should pay attention to what actually happened to Iridium after commercial activation (including the steep decline in share values for Iridium during the months immediately before the bankruptcy filing) and disregard contemporaneous market data that appears to have been divorced from business reality, both with respect to the telecom industry in general and Iridium in particular.

Although this argument does highlight the "bubble" mentality that produced so many high-tech and telecom corporate disasters, there is no support in the record for not treating the public market data with deference as the best indicator of value, notwithstanding that the market was plainly wrong as an indicator of future value and badly misjudged the likelihood of Iridium's success. The Court is not bound to accept the value that has been ascribed to Iridium's securities by the public markets and has the broad discretion to find that the markets somehow were distorted and did not fairly reflect the underlying enterprise value of Iridium, but to justify disregarding values placed on these securities in an efficient public trading market, the Court needs a substantial reason to depart from that standard and find that the value implied by an efficient market is not a trustworthy benchmark. No \*304 such reason to disregard that benchmark is present here, and no persuasive evidence has been offered to justify any deviation from the valuation implied by the public trading markets.

### ***PROCEDURAL HISTORY***

On August 13, 1999, involuntary petitions were filed in this Court against Iridium, and Iridium and Iridium World Communications Ltd. ("IWCL") filed voluntary petitions on that same date in the United States Bankruptcy Court for the District of Delaware. By September 14, 1999, all of the Iridium entities had filed voluntary petitions in this Court or had their cases transferred from Delaware to be, with the exception of IWCL, procedurally consolidated. The Committee was

authorized by order dated March 15, 2000 to bring an action against Motorola on behalf of the Iridium debtors. On July 19, 2001, the Committee filed this adversary proceeding against Motorola. Motorola answered the Committee's complaint on October 8, 2001. Soon after, the discovery process began with initial document requests being served on November 1, 2001. Approximately a year later, Motorola moved for judgment on the pleadings. The Committee opposed the motion and the motion was denied on February 27, 2003.

Massive numbers of documents were produced and over eighty individuals were deposed. On February 28, 2006, following a pre-motion conference, Motorola moved for summary judgment as to all counts of the complaint. The Committee opposed summary judgment and, after significant briefing, the Court heard arguments on May 15, 2006. The summary judgment motion is currently pending, although this opinion disposes of a number of causes of action that were the subject of the motion.<sup>9</sup>

<sup>9</sup> The trial on insolvency disposes of the Committee's avoidance actions, Counts I and III (fraudulent transfers) and Counts II and IV (preferences), because insolvency is a necessary element of those claims. Count V (breach of fiduciary duty), Counts VIII and IX (breach of warranty in the SSC) and Count X (equitable subordination) are not resolved by this opinion. The Committee voluntarily dropped Counts VI and VII in September 2004.

In May 2006, Motorola filed *Daubert* motions to exclude the testimony of certain expert witnesses including the Committee's solvency expert, M. Freddie Reiss of FTI Consulting, and the Committee opposed these motions. The Court heard arguments on August 8, 2006 and concluded that Mr. Reiss was qualified to testify, but did express some concerns at that time regarding Mr. Reiss' failure to incorporate market data in his expert opinion. In September 2006, the parties agreed to limit the first phase of the trial to the issues of Iridium's insolvency and capital adequacy.

The trial began on October 23, 2006. In January 2007, at the conclusion of the Committee's case, Motorola moved for judgment on partial findings under [Rule 7052\(c\) of the Federal Rules of Bankruptcy Procedure](#). Motorola's motion under [Rule 7052\(c\)](#) challenged again the sufficiency and credibility of Mr. Reiss' opinion testimony and argued that the Committee had failed to prove insolvency. The Court reserved decision on that motion, and Motorola put on a solvency defense that included fact and expert witnesses. After the close of evidence, the parties submitted extensive proposed findings of fact, proposed conclusions of law and post-trial briefing. The Court heard closing arguments on June 5, 2007.

### ***JURISDICTION AND VENUE***

This Court has subject matter jurisdiction under [28 U.S.C. §§ 1334\(b\)](#) and 157(a) \***305** and under the July 10, 1984 "Standing Order of Referral of Cases to Bankruptcy Judges" of the United States District Court for the Southern District of New York. This is a core proceeding pursuant to [28 U.S.C. § 157\(b\)\(2\)\(F\)](#) and (H). Venue of this adversary proceeding is proper in this district under [28 U.S.C. § 1409](#).

This opinion sets forth the Court's findings of fact and conclusions of law pursuant to [Rule 52\(a\) and \(c\) of the Federal Rules of Civil Procedure](#), made applicable by [Rule 7052 of the Federal Rules of Bankruptcy Procedure](#).

### ***FINDINGS OF FACT***<sup>10</sup>

<sup>10</sup> Pursuant to [Fed.R.Civ.P. 52](#), as made applicable by Bankruptcy [Rules 7052](#) and [9014](#), without regard to what section of the opinion they are found, any and all findings of fact, shall be deemed to constitute findings of fact even if they are stated as conclusions of law, and any and all conclusions of law shall be deemed to constitute conclusions of law even if they are stated as findings of fact.

### I. IRIDIUM CORPORATE HISTORY

The Iridium concept was first conceived of and developed by Motorola engineers working in Motorola's Strategic Electronics Division in Chandler, Arizona. In 1987, Barry Bertiger, Ray Leopold and Ken Peterson, engineers in Motorola's Strategic Electronics Division, developed the concept for a satellite-based telephone system that would have commercial applications and that would provide worldwide coverage using one handheld, portable device. This became what was ultimately known as the "Iridium System." (10/24/06 Tr. 12:22–17:6 (Bertiger)<sup>11</sup>).

<sup>11</sup> Barry Bertiger was the Assistant General Manager of Motorola's Satellite Communications Division, and later its General Manager during the Iridium development effort.

Once Motorola's corporate leadership approved moving forward with the Iridium project in the 1989–1990 time period, a special business unit was formed to further pursue Iridium's design and development, and a number of additional engineers were hired. (10/24/06 Tr. 24:18–27:25 (Bertiger)) Shortly thereafter, this special business unit became Motorola's Satellite Communications Division ("SatCom"). (10/24/06 Tr. 28:1–16 (Bertiger)).

Iridium, Inc. (later Iridium LLC) was incorporated in June 1991 as a separate and distinct entity from Motorola SatCom, and this separate entity eventually became the owner of the Iridium System. (MX 501 at MOT 1,379,070 (Iridium 1998 10–K)). On July 29, 1993, through a private placement of Iridium, Inc. stock, the ownership of Iridium, Inc. was transferred from Motorola to a consortium of private investors. (MX 501 at MOT 1,379,070 (Iridium 1998 10–K)) and additional shares of Iridium, Inc. were sold in supplemental private equity offerings in 1994 and 1996. (MTX 135 (IL & FS SPA<sup>12</sup>); MTX 144 (1994 SPA); MTX 145 (Veba SPA); MTX 146 (Iridium SudAmerica SPA)

<sup>12</sup> Hereafter, "SPA" means Stock Purchase Agreement.

After Iridium's private placement in July 1993, Motorola held a significant interest in Iridium Inc., and by virtue of its investment had several representatives on the Iridium Board of Directors. (PX 255 at MOT 1,442,562 (1994 PPM<sup>13</sup>); MX 501 at MOT 1,379,070 (Iridium 1998 10–K)) Motorola had commercial relationships with many of the private equity investors.

<sup>13</sup> Hereafter, "PPM" means Private Placement Memorandum.

On July 29, 1996, Iridium Inc. changed its corporate form and became a Delaware limited liability company, Iridium, LLC, and the shareholders in Iridium, Inc. became \*306 members of Iridium LLC. (MX 501 at MOT 1,379,070 (Iridium 1998 10–K))

### II. THE IRIDIUM SYSTEM

Iridium LLC and Motorola entered into several agreements related to the Iridium System, including the Space System Contract ("SSC"), Operations & Maintenance Contract ("O & M Contract") and Terrestrial Network Development Contract ("TNDC"). (MX 68 at MOT 1,266,080 (IPO Prospectus))

Pursuant to the SSC, Motorola served as the prime contractor for the development of the space-related portions of the Iridium System, consisting of the satellite constellation itself and system control functions. The SSC also obligated Motorola to develop, license and sell certain handsets and provide gateway equipment systems by agreed deadlines. (PX 373 at MOT 249,654 and 658–60(SSC))

Motorola's SatCom unit focused on a number of aspects or segments of the Iridium program, including: overall design of the

complete Iridium System; designing, producing and launching the satellite constellation; designing, building and operating the system control facility that controlled and managed the network and constellation of satellites; designing and building the ground stations that connect the satellites to a terrestrial communication network; designing and developing the communication electronics; and interfacing with Iridium LLC. (1/24/07 Tr. 11:8–13:4 (Hoppal<sup>14</sup>))

<sup>14</sup> Tom Hoppal was a Motorola employee who worked in the systems engineering group on the Iridium program from 1991 to 1999. Hoppal was involved in conducting propagation studies and in developing a simulator to demonstrate Iridium’s voice quality.

The Iridium System as a whole was comprised of four principal components: the orbiting satellites, the gateways, the Iridium subscriber equipment, and the land-based interprotocol roaming infrastructure. (MX 501 at MOT 1,379,009 (Iridium 1998 10–K)) The first Iridium satellite was launched in May 1997 and most of the 66–satellite constellation was deployed by May 1998. (1/30/07 Morning Tr. 10:1–13 (Stamp<sup>15</sup>)) Iridium announced that it had commenced commercial voice service on November 1, 1998, followed by paging service on November 15, 1998. (MX 501 at MOT 1,379,003 (Iridium 1998 10–K))

<sup>15</sup> Dannie Stamp was the former Space System Segment Manager at Motorola SatCom. Stamp was the senior Motorola engineer in charge of producing and deploying the Iridium satellite constellation from 1990 to 2000. In late 2000, Stamp became Chief Operating Officer of Iridium Satellite LLC, the company that acquired Iridium’s assets during the bankruptcy case for \$25 million. Since 2000, Stamp has overseen all operational aspects of the Iridium system, including the satellites, gateways and handset production.

Early plans for the Iridium System called for a 77–satellite constellation that generated a range of 6–12 dB of link margin. In 1992, Motorola re-designed the system to have 66 satellites and 16 dB average link margin.<sup>16</sup> (1/24/07 Tr. 14:15–15:12 (Hoppal)) When Iridium was being designed in the late 1980s and early 1990s, there was some publicly available data on the effect of tree shadowing and building penetration losses on satellite signals. \*307 (12/1/06 Tr. 22:13–23:4; 57:11–58:24 (Vogel<sup>17</sup>))

<sup>16</sup> Generally, link margin is an accepted engineering term that indicates how much excess power (expressed in decibels (dB)) a wireless communication link has to operate above what is required to operate at optimal conditions. Additional link margin allows a system to penetrate or withstand more environmental or propagation effects. (1/24/07 Tr. 16:20–18:10 (Hoppal)) Increases in decibels are logarithmic increases in power, which means that Iridium’s 16 dB of link margin for satellite voice communications is 40 times more power than zero dB. (12/12/06 Tr. 133:23–135:8, 136:12–137:9 (Elbert))

<sup>17</sup> Dr. Wolfhard Vogel is a University of Texas researcher and expert in radio frequency propagation, with a specialty in space to ground signal propagation.

To gather additional data on possible system performance in varying environments (such as in moving vehicles), Motorola hired a recognized expert in the field, Dr. Wolfhard Vogel, to conduct propagation studies for the Iridium program beginning in November 1990.<sup>18</sup> (1/24/07 Tr. 20:8–21:2 (Hoppal)) Dr. Vogel developed and performed at least fifteen propagation data collection studies related to Iridium (almost all from 1991–1995). (PX 664 at MOT 3,231,508–510 (ITN–580, describing propagation data collection); MX 274 at W. VOGEL 0001102 (Paper describing propagation data collection)) Dr. Vogel was responsible for designing and conducting these propagation experiments. (12/1/06 Tr. 31:18–32:1, 33:2–14 (Vogel); 1/24/07 Tr. 32:11–24 (Hoppal))

<sup>18</sup> Propagation or environmental effects are objects or obstructions in the path between the subscriber and the satellite that cause attenuation of the signal. (1/24/07 Tr. 18:4–10, 19:19–24 (Hoppal)). A propagation study is done to determine the amount of signal attenuation in different situations and environments. (1/24/07 Tr. 19:25–20:13 (Hoppal)). During a propagation study, a radio signal (of a known strength) is propagated, or sent, from a transmitting device into a particular environment or location, where a receiver measures the level of the signal received. Simplifying the process, the “difference” in the measured signal power that was sent, and the amount remaining at the receiver, is the amount of signal attenuation or fade (in dB) present in the particular

environment that was the subject of the test. (1/24/07 Tr. 22:9–24:12, 28:22–29:7 (Hoppal))

The propagation studies performed and designed by Dr. Vogel were quite comprehensive. Through these studies, Dr. Vogel and Motorola gathered propagation data for different types of potential Iridium users, in a number of different environments. (PX 664 at MOT 3231511 (ITN–580, describing propagation data collection); MX 553 at ADL 0061702 (ITN–155, L–Band Propagation Statistics)) These studies were important because they provided data regarding the performance to be expected from the Iridium System, including foreseeable limitations in service.

Because a system may still be able to perform even when fades are sometimes greater than the system’s nominal link margin, one cannot extrapolate directly from fade data to system performance without using a computer-based simulator that considers system parameters beyond link margin. (1/24/07 Tr. 40:3–55:5 (Hoppal); 12/1/06 Tr. 54:24–55:16, 84:18–93:17 (Vogel))

In 1991, as Dr. Vogel and Motorola gathered propagation data, Motorola began developing a voice quality simulator to attempt to provide a demonstration of what Iridium voice service would sound like in various environments and also to assist in optimizing the design and performance of the Iridium System. (1/24/07 Tr. 34:15–35:3, 65:15–66:14 (Hoppal); 1/31/07 Tr. 6:20–7:20 (Ranganathan<sup>19</sup>)) The simulator’s capabilities were improved and expanded over time and allowed the user to adjust different variables to experience the impact on voice quality. (1/24/07 Tr. 65:15–66:22, 73:13–75:20 (Hoppal); MX 555 (ITN–107, L–Bank Link Voice Simulator))

<sup>19</sup> Murali Ranganathan was a Systems Engineer in Motorola’s SatCom organization from 1995 to 1999. Ranganathan had responsibility for simulator development and voice quality testing.

The simulator provided an approximation of what the voice quality of the Iridium service would sound like in different \*308 environments using actual propagation data taken by Dr. Vogel and taking into account the impact of the vocoder forward error correction and error mitigation techniques and other system features. (1/24/07 Tr. 65:15–66:5, 68:2–70:10 (Hoppal); 12/1/06 Tr. 46:24–49:7 (Vogel); MX 555 at MOT 3,238,297 (ITN–107, L–Band Link Voice Simulator)).

Before system launch, the simulator was the best available method for drawing conclusions about performance of the system with respect to the voice quality of the service that could be expected after system launch. (1/24/07 Tr. 100:14–23 (Hoppal); 10/24/06 Tr. 187:6–11 (Bertiger); 12/1/06 Tr. 46:24–49:7, 54:24–55:16, 84:18–93:17 (Vogel))

#### *A. Iridium System Performance*

The initial underlying premise of Iridium was stated, among other places, in the 1992 PPM: “The Iridium System is not expected to compete directly with traditional landline and cellular communication systems since it will cost more to use and will be subject to certain capacity limitations. Rather, it is intended primarily for use by individuals whose travel takes them to places where either their cellular standard is not available or traditional communications systems are inconvenient or unavailable.” (PX 253 at MOT 130,242)

In the late 1980s and early 1990s, terrestrial cellular systems operated with considerably less power than they do today, and service was not generally available deep within buildings. To the limited extent cellular service could be utilized in buildings, it was very spotty and depended on where the user was in the building and where the cell tower was located relative to the user. Users were accustomed to walking to windows, or walking outside, to make or receive cellular calls. (1/23/07 Tr. 12:7–13:21, 67:19–69:13 (Adams<sup>20</sup>); 12/4/06 Tr. 181:14–182:15 (Hillis<sup>21</sup>); 2/9/07 Tr. 102:3–103:1 (Attwood); 2/1/07 Tr. 33:1–34:19, 36:4–9 (Schell<sup>22</sup>); *see also* 10/25/06 Tr. 114:23–115:12 (Gercenstein<sup>23</sup>)) In addition, many of the cellular units in use at the time were mobile units that operated in vehicles using external antennas, and only some of these devices could be taken out and used as handhelds. (12/4/06 Tr. 150:2–7 (Hillis)) Satellite service was available at this time using equipment that was bulky and that was transported in a suitcase-sized carrying case. The subscriber units for the Iridium System were expected to be much smaller than the equipment that was in use at the time.

<sup>20</sup> Jerrold Adams was Iridium's President and Chief Operating Officer from October 1991 to February 1997.

<sup>21</sup> Durrell Hillis was General Manager of Motorola SatCom from 1990 to 1995.

<sup>22</sup> Theodore Schell was Sprint's Senior Vice President of Strategy and Corporate Development from 1984 to 2000. Schell oversaw and managed Sprint's due diligence process and assessment of the Iridium investment opportunity. Schell also served on Iridium's Board of Directors from 1993 through 1999.

<sup>23</sup> Mark Gercenstein was in charge of marketing and business development issues at Iridium from 1989 to 1993, and in that capacity, was responsible for generating Iridium's initial business plans.

The Iridium System, like all other mobile satellite communications systems (and geostationary satellite systems), operates best when there are no obstructions in the path, or line-of-sight, between the handset antenna and the orbiting satellite. (2/9/07 Tr. 100:13–101:14 (Attwood<sup>24</sup> (“Line-of- \*309 sight was the best...”))); 2/1/07 Tr. 23:8–24:8, 36:10–37:11 (Schell (“[L]ine of sight applies to all satellites.”)); 12/5/06 Tr. 76:19–77:16 (Maul<sup>25</sup>); 2/9/07 Tr. 13:23–14:5 (Mondale<sup>26</sup> (“you can be sure it will work if you have line-of-sight”)) In other words, “there must be an unobstructed path between the user and the handset and the satellite as the satellite moves through the sky and that clear unobstructed path must exist from the time that the phone is activated and a call is placed and the user conducts the phone call, until the user is finished and hangs up.” (Trial Tr. 12/12/06 at 8:6–22 (Elbert<sup>27</sup>)) This meant that there was uncertainty as to where and when the Iridium System would work and that the system performance could be fairly described with the words “it depends.” (2/9/07 Tr. 36:13–20 (Mondale)) The quality of service depended on multiple factors ranging from the location of the satellite to the degree of shadowing in the environment.

<sup>24</sup> James Attwood is a former Senior Vice President of Goldman Sachs' Investment Banking Division. Attwood was part of the Goldman team that was engaged as Iridium's financial advisor from 1991 through 1995. He served as placement agent for Iridium's 1993 and 1994 equity offerings, and he was selected to underwrite Iridium's contemplated high yield debt offering in 1995.

<sup>25</sup> Jeffrey Maul was Director of Arthur D. Little's Communication and Electronics Technology Consulting Group, and served as program manager and director in charge of the technical specialists who performed Arthur D. Little's technical due diligence on behalf of Iridium's lenders from May/June 1996 to December 1998.

<sup>26</sup> Leo Mondale joined the Iridium project in 1990 and worked for the company until August 1999. From January 1995 to mid-1997, Leo Mondale was Iridium's Vice President of Marketing and Strategic Planning. Leo Mondale was named Iridium's Vice President of Marketing and Strategic Planning in early 1995, and led the marketing efforts during this time frame. As Vice President of Marketing and Strategic Planning, Mondale was responsible for the development of Iridium's business plan 2.0 during 1995, 1996 and 1997.

<sup>27</sup> Bruce Elbert testified for the Committee as an expert. He was, among other things, the Senior Vice President of Operations at Hughes Aircraft, where he worked with communications satellites.

Motorola's former Chief Executive Officer, Chris Galvin, and Iridium's former Chief Executive Officer (and a Motorola senior executive before joining Iridium), Edward Staiano, testified that they knew since the late 1980s or early 1990s that the

Iridium System would have line-of-sight limitations. (Trial Tr. 11/16/06 at 8:10–23 (Galvin); Trial Tr. 11/7/06 at 114:7–115:11 (Staiano))

Iridium had 16 dB of link margin, meaning that it had approximately 40 times more power than necessary to operate in clear line-of-sight conditions. (2/13/07 Tr. 33:15–34:3 (Maul); 10/24/06 Tr. 38:4–25, 172:17–174:16 (Bertiger); *see also* 12/12/06 Tr. 133:23–135:8, 136:12–137:9 (Elbert)) Therefore, while operation in line-of-sight conditions would be optimal, the system was also expected to operate in certain situations where there were some obstructions in the line-of-sight between the satellite and the subscriber. (2/13/07 Tr. 33:15–34:3 (Maul); 10/24/06 Tr. 38:4–25, 172:17–174:16 (Bertiger); 2/9/07 13:23–14:5 (Mondale))

As a consequence of Iridium’s line-of-sight operations, the Iridium System did not work consistently in many wireless environments because of obstructions caused by buildings. These environments included urban areas, central business districts, and the interior of many buildings regardless of environment. (12/12/06 Tr. 8:23–11:4 (Elbert)) The reason, as Dr. Staiano explained, is that “[i]f you do that calculation, you will *realize* that the Iridium System had one-one thousandths of the power of a cellular system. The ability to attempt to penetrate walls, steel, cardboard of substance was not in the cards \*310 from day one, and that design was well-understood from day one.” (11/7/06 Tr. 115:15–116:3 (Staiano))

However, the system could work in any of these realistic wireless environments (i.e., in buildings, in urban areas and central business districts) if the conditions were exactly right at the time—if the satellite and the handset could “see each other.” (*See, e.g.*, 11/7/06 Tr. 125:4–16 (Staiano); 10/24/06 Tr. 170:25–170:14 (Bertiger); 12/12/06 Tr. 24:23–25:6 (Elbert)). Typically this meant the satellite would have to be on the same side of the building in sight of the window where the user was located. Dr. Vogel confirmed that operation within certain buildings was possible where fading was not extreme, particularly near windows and in smaller buildings of lighter construction density. (12/1/06 Tr. 58:10–59:8 (Vogel))

Because the Iridium satellites were constantly moving, service was not predictable in environments with obstructions. As the person in charge of technical consulting for Iridium’s senior secured lenders explained: “Satellites are constantly moving, so that’s luck of the draw. You go to this window, if there happens to be a satellite right outside this window within the line-of-sight, you may be able to establish a call, but you may not be able to hold the call up more than a minute or two because the satellite has moved out of position.” (12/5/06 Tr. 79:5–12 (Maul)) As soon as the satellite passed overhead or was otherwise no longer in clear-line-of-sight with the handset (i.e., blocked by the building itself), the call would be dropped. (12/12/06 Tr. at 23:1–26:13 (Elbert))

The same line-of-sight concept applies to in-vehicle use. That is, when the antenna could see the satellite, the user could get service, provided that, the vehicle itself was not in an area where there were obstructions that prevented a line-of-sight link. (2/9/07 Tr. 103:2–15, 104:1–10 (Attwood); 10/24/06 Tr. 94:13–24, 53:21–54:7 (Bertiger))

Motorola believed in 1992 that the Iridium voice service would operate inside a vehicle in open, freeway type environments where there were limited roadside obstructions to the line-of-sight. (12/4/96 Tr. 113:19–114:8 (Hillis); 1/24/07 Tr. 104:18–107:4 (Hoppal); 10/24/06 Tr. 95:5–20, 99:8–101:18, 166:4–170:16 (Bertiger))

Between 1992 and 1995, Dr. Vogel and Motorola continued to collect additional propagation data relating to usage in vehicles and continued to learn more about how the system would perform and operate in vehicles in different environments. (1/24/07 Tr. 111:11–112:6 (Hoppal))

Ultimately, it was concluded that an accessory antenna would improve in-vehicle system performance and Iridium supplied the accessory antenna as part of the package with the Iridium handset. (1/24/07 Tr. 114:10–115:1 (Hoppal); 2/9/07 Tr. 15:1–15 (Mondale)). Although there might be conditions that allowed in-vehicle usage of the Iridium System without an external antenna, the System had the best chance of working in a vehicle with a car-top antenna in an open or “lightly treed” environment. (Tr. 11/8/06 at 75:4–14 (Staiano)) (Tr. 10/24/06 at 53:21–54:7 (Bertiger))

#### *B. Expectations About Handset Size*

From the early 1990s on, Motorola’s handset group developed a number of concept handset models. (PX 132 (photo of various concept models)) These concept models were not working prototypes, but represented what Motorola hoped or

expected the unit might look like at the time of commercial launch, which was understood to be years away. (11/6/06 Tr. 18:8–19:17 (Mondale); 11/15/06 Tr. 36:4–36:17 \*311 (Seitz<sup>28</sup>); 10/24/06 Tr. 163:5–166:10 (Bertiger), 11/13/06 Tr. 16:3–16:25 (Zocher<sup>29</sup>))

<sup>28</sup> Marty Seitz was a Motorola engineer within the Cellular Subscriber Group who managed the team developing Motorola-manufactured Iridium handsets from late 1990 until 1999.

<sup>29</sup> Joan Zoche was Marketing Manager from 1990–1997 for the Satellite Subscriber Products Group, the part of Motorola’s Cellular Subscriber Group responsible for Iridium handset development.

Motorola engineers showed concept handset models of different sizes and shapes to Iridium, potential investors, and Goldman Sachs in the 1991–1993 timeframe. One such model, the Model D, was among the concept models shown. (11/15/06 Tr. 36:18–25 (Seitz); 10/24/06 Tr. 163:5–166:10 (Bertiger); 11/15/06 Tr. 149:4–17, 150:17–151:1, 159:5–9 (Mitchell<sup>30</sup>) (testifying that larger concept models, including MX 1111 and MX 1112, were shown to investors)) Iridium, the early investors and Goldman Sachs knew that there could be changes or modifications to the handset models as a result of the on-going development process. (11/15/06 Tr. 37:1–38:1 (Seitz); 02/01/07 Tr. 39:17–22 (Schell); 1/23/07 Tr. 70:11–71:12 (Adams); 12/11/06 Tr. 150:6–21 (Daverio<sup>31</sup>); 2/9/07 Tr. 99:6–100:3 (Attwood); 10/24/06 Tr. 163:5–166:10 (Bertiger))

<sup>30</sup> John Mitchell was Vice Chairman of Motorola from 1988 to 1995, and an Iridium Board Member from July 1993 through 1999.

<sup>31</sup> Paul Daverio was Chief Financial Officer of Iridium from January 1994 to the end of March 1997.

The Model F (with a larger antenna) was depicted in Iridium’s 1995 S–1, which stated: “Motorola has informed the Company that the portable, handheld ISU Motorola will develop is expected to be significantly larger and heavier than today’s smallest and lightest pocket-sized, hand-held cellular telephones and is expected to have a significantly longer and thicker antenna than hand-held cellular telephones.” (MTX 1 at 14, 44 (7/14/95 Form S–1)) Although the Committee contends that the size of the handheld individual subscriber unit (“ISU”) actually introduced was unattractively large in comparison with cellular handsets at the time, the Court, having examined various models of the ISU’s used by Iridium subscribers (e.g., PX 257), finds that handset size was not a material factor in Iridium’s lack of success in attracting subscribers. While smaller is almost always better when it comes to technology and a smaller headset with a smaller antenna undoubtedly would have had greater appeal to potential users, the ISU’s dimensions were in line with the size of portable cellular phones that were then still in use. The ISU was also much smaller than certain of the earlier competing satellite equipment of the era.

### *III. RELEVANT INFORMATION REGARDING EXPECTED SYSTEM PERFORMANCE WAS DISCLOSED TO IRIDIUM AND ITS INVESTORS*

#### *A. Iridium And Its Board Were Informed About The System’s Voice Quality And Expected Performance In Various Environments*

Although everyone at Iridium may not have completely understood all the nuances and possible usage permutations regarding the System’s performance, Iridium knew that the system had line-of-sight limitations. (1/9/07 Tr. 29:11–34:16, 109:2–6 (Reiss<sup>32</sup>))

<sup>32</sup> M. Freddie Reiss was the Committee’s solvency expert. He is a senior managing director in FTI’s Corporate Finance practice.

\***312** For example, Dr. Staiano, Iridium's CEO, testified that he, along with the rest of Iridium's management and engineers, was aware of the System's likely limitations and capabilities. (11/7/06 Tr. 30:22–31:14 (Staiano)) Other witnesses including Mark Gercenstein, Jerry Adams, William Kraus,<sup>33</sup> Leo Mondale and Kevin Lavin also corroborated that Iridium management was aware of the system's anticipated operating constraints. (10/25/06 Tr. 101:1–102:11, 110:17–112:21, 115:13–118:19 (Gercenstein)); (1/23/07 Tr. 27:6–24 (Adams)); (2/7/07 Tr. 166:9–167:19 (Kraus)); (2/9/07 Tr. 13:14–14:17 (Mondale)); (1/25/07 Tr. 39:20–43:8 (Lavin))

<sup>33</sup> William Kraus was Iridium's Manager of Marketing Models and Simulation, and later, Senior Manager of Marketing Models and Simulations, and eventually named Executive Director of Marketing.

Iridium employees, engineers and Board members were among the people who listened to the voice quality simulator set up at the Motorola facility in Chandler, Arizona. (1/24/07 Tr. 85:5–88:16 (Hoppal); 10/24/06 Tr. 160:14–161:22, 184:19–187:16, 190:14–195:17, 196:18–197:6 (Bertiger); *see also* 1/31/07 Tr. 7:8–20 (Ranganathan)) Iridium representatives had access to the simulator and could listen to any propagation environments that they might choose. (10/24/06 Tr. 186:25–187:16 (Bertiger)); 10/25/06 Tr. 112:22–113:7 (Gercenstein (Iridium's marketing team had access to and listened to the voice quality simulator))

The testimony of various former Iridium employees confirms that there was no mystery surrounding the expected operating characteristics of the Iridium System. It was generally recognized within the company that the satellite service would not work reliably within buildings, in automobiles (without an external antenna) or in environments with obstacles between the ISU and the satellite. Although these operating parameters were generally known, Iridium did not learn precisely how the system would actually function until it was activated and used by subscribers. Leo Mondale testified that the quality of the service turned out to be within the range that had been expected during the development of the Iridium System, but was at the lower end of that expected range. To that extent, the service, while foreseeable, was also disappointing. (2/9/07 Tr. 34:2–24 (Mondale))

Iridium had its own engineering staff that was involved with and kept apprised of technical developments as the system evolved. Some of those Iridium engineers worked at Motorola facilities. (1/30/07 Morning Tr. 15:23–17:9 (Stamp)); 10/24/06 Tr. 176:1–11 (Bertiger); 1/23/07 Tr. 53:7–16 (Adams) To the extent Motorola did not actively inform the Iridium engineers about an advance with the System, Iridium had access to information it needed regarding System development to make informed judgments about projected System performance. Iridium engineers attended and participated in numerous technical review meetings. (1/23/07 Tr. 53:7–54:19 (Adams); 10/24/06 Tr. 177:6–15 (Bertiger); 1/30/07 Morning Tr. 15:23–18:5 (Stamp)) Iridium engineers were invited to Motorola's *daily* operations meetings in Chandler, Arizona and participated in monthly operations reviews with Motorola subcontractors. (1/30/07 Morning Tr. 15:23–17:9 (Stamp)); Iridium engineers had full access to Motorola test facilities and factories. (1/30/07 Morning Tr. 16:22–17:1 (Stamp); 10/24/06 Tr. 175:14–176:11 (Bertiger)); Iridium engineers witnessed and participated in key engineering tests. (1/30/07 Morning Tr. 17:2–9 (Stamp); 10/24/06 Tr. 177:20–178:8 (Bertiger)); Iridium engineers were provided with a great \***313** deal of technical documentation and studies related to the System and the progress of its development, and were free to ask for specific documentation they needed. (1/23/07 Tr. 54:11–19 (Adams); 1/30/07 Morning Tr. 15:23–17:9 (Stamp); 10/24/06 Tr. 177:13–20 (Bertiger))

The Iridium Board established the Technical Advisory Committee (TAC) to help keep the Board informed about technical issues, and to examine technical issues related to the performance of the Iridium System in providing satisfactory service to Iridium users. (MX 1211 at MOT 1402677 (4/20/94 BOD Minutes); MX 406 at MOT 930240–41 (4/20/94 BOD Meeting Materials); # 1/23/07 Tr. 54:20–55:18 (Adams); 11/29/06 Tr. 42:11–20 (Bennett)) TAC members included Iridium engineers and employees, as well as technical experts chosen by board members, (1/30/07 Morning Tr. 18:6–20 (Stamp); 10/24/06 Tr. 184:3–14 (Bertiger); 11/29/06 Tr. 41:3–43:21 (Bennett); MX 406 at MOT 930243 (4/20/94 BOD Meeting Materials)) and until 1997, the TAC held regular, daylong meetings that involved presentations on technical topics as well as open discussion among participants. (1/30/07 Morning Tr. 18:6–19:10 (Stamp); *see, e.g.*, PX 84 at IR 061788 (12/15/96 TAC meeting materials)) Many of the engineers and other technical representatives who served on the TAC were also present during Iridium Board of Directors meetings. (11/29/06 Tr. 42:21–43:21 (Bennett)); *see also* 12/4/06 Tr. 166:21–168:13 (Hillis (Iridium BOD had "inside knowledge" regarding technical issues before Board meetings via their technical representatives))

At each Board meeting, Motorola gave a presentation regarding the technical status of the System, including progress on the SSC, any scheduling issues, and any new information on expected System performance to date. (12/4/06 Tr. 166:21–167:16 (Hillis); 11/15/06 Tr. 170:9–172:1 (Mitchell); 11/7/06 Tr. 9:14–20, 11:14–21 (Staiano); 10/24/06 Tr. 180:17–197:6 (Bertiger); 2/1/07 Tr. 45:21–46:9 (Schell); *see, e.g.*, MX 912 at MOT 946292–325 (4/19/95 BOD Materials))

During the months leading up to commercial activation in late 1998, Mr. Staiano chaired a *daily* meeting to discuss the Iridium System’s status and efforts to ready the system for activation. Motorola would generate, for Iridium’s review, the *daily* action/status summary of key technical issues, expectations for the following day, constellation status (including load status of the latest software releases), call performance, ISU defect status, payload software defect status and Gateway status, among other things. All of these data were the result of an ongoing large-scale testing and data analysis effort by teams of Motorola engineers. (11/28/06 Tr. 51:7–53:18 (Borota<sup>34</sup>); 11/27/06 Tr. 87:5–23, 115:17–120:9 (Millington); 1/31/06 Tr. 15:12–19:3, 27:19–28:18 (Ranganathan); 11/7/06 Tr. 32:15–34:17 (Staiano)) MX 1190 at MOT 61445 *et seq.* (Daily Status Report for 11/1/98)

<sup>34</sup> Mark Borota was a Motorola engineer who joined the Iridium program in 1990 and had responsibility for the SSC, including the design and development of the satellite constellation and the satellite control center that operates the constellation.

#### *B. Iridium Publicly Disclosed System Limitations to Investors*

In multiple public filings, including the 1995 S–1 Registration Statement and Private Placement Memorandum (“1995 PPM”), and subsequent public offering documents, Iridium described the limitations of the satellite voice service. In the context of what Iridium knew at the time, these descriptions were reasonable and accurate in describing the Iridium System’s \*314 projected performance. As a result, third parties were on notice as to the characteristics and limitations of the Iridium System. (*See* MX 631 at [IR–B 25498, 25498–99](#); MX 68 at MOT 1,266,021, 1,266,021–22; PX 123 at MLUC 14668–69; MX 100 at MOT 967,732–33; MX 98 at MOT 958,557–58)

Iridium’s January 21, 1999 prospectus for its secondary stock offering (“Secondary Offering Prospectus”) confirms that the limitations of the System as delivered matched Iridium’s prior expectations. Although it was prepared after commercial launch—after Iridium, the underwriters and others had used the System—the Secondary Offering Prospectus made virtually the same disclosures about satellite service limitations that had appeared in earlier disclosures. (MX 87 at MOT 2247456–457 (1/21/99 Prospectus)) Mondale testified, based on his experience as a current user of mobile satellite systems (“MSS”) that these 1999 descriptions of service limitations were accurate in January 1999 “and accurate today as well.” (2/9/07 Tr. 34:24–35:20 (Mondale))

### *IV. IRIDIUM’S BUSINESS PLANS AND MARKET RESEARCH*

From 1990 to 1998, Iridium (initially as a Motorola subsidiary) generated a series of business plans. These plans provided detailed information about Iridium’s business, including estimates of the number of projected subscribers to the Iridium satellite voice and paging services, anticipated minutes of use of those services, expected pricing of the service and handsets, and revenues to be derived from subscriber usage. (MX 384 (12/90 BP); MX 396 (12/91 BP); PX 253 (8/92 PPM); MX 409 (4/95 Market Analysis); MX 1274 (detailed 1995 projections and financials); MX 780 (BP 2.0); MX 734 (BP 2.x Update); MX 353 (BP 3.0))

#### *A. Early Iridium Business Planning And Market Research*

Iridium’s initial subscriber projections were based on a “top-down” analysis using several different inputs (10/25/06 Tr. 8:14–9:7 (Gercenstein); 3/12/07 Tr. 31:16–33:9 (Bradlow<sup>35</sup>)) The process involved developing projections that would be supported by the capabilities of the system and that would meet the needs of the business plan. (10/25/06 Tr. 106:2–10, 123:19–124:8 (Gercenstein))

<sup>35</sup> Dr Eric Bradlow is a professor of marketing statistics and education at the Wharton School of the University of Pennsylvania who was qualified as an expert in marketing, market research and forecasting.

Gercenstein believed the early subscriber projections were reasonable and realistic based on the information known at the time. (10/25/06 Tr. 99:6–22, 86:23–87:21, 122:24–123:16 (Gercenstein); MX 392 at MOT 1,266,593–597 (2/91 Consortium Meeting Materials))

The earliest primary market research done for the Iridium offering was the Arthur D. Little (“ADL”) analysis of U.S. Demand for Iridium Type Services conducted in 1991 (the “6/91 ADL Study”). (PX 1036 (6/91 ADL Study)) The 6/91 ADL Study was conducted to validate the original projections that had been created (10/25/06 Tr. 92:23–93:8 (Gercenstein)) and contained market estimates for U.S. subscribers as of 2000 and 2007. (3/12/07 Tr. 55:18–56:23 (Bradlow); PX 1036 at IR 97592, 97595 (6/91 ADL Study))

Question 3 of the ADL survey, described the Iridium service as follows: “There will soon be a new personal telephone service which at a reasonable cost will provide you with the capability to be reached or to place calls anywhere in the world using \*315 satellite technology, which is not limited in coverage like a cellular phone. To access the service you would have a small handset that fits in your pocket ...” (PX 1036 at IR 97697 (6/91 ADL Study))

This description described the global coverage of the satellite service, as contrasted to the limited geographic coverage of cellular at the time. (10/25/06 Tr. 27:2–23, 28:13–29:5, 93:9–18 (Gercenstein); 3/12/07 Tr. 52:5–53:7 (Bradlow); MX 438 at ADL 120365–66 (12/96 ADL memo re Technical Competitive Assumptions); MX 535 at CH–NY 0034121 (10/97 ADL Technical Information Memoranda)) Despite the Committee’s challenge to the “anywhere in the world” language used in this survey question, the Court finds that the question was reasonably descriptive of the geographical scope of the service and that it was not necessary to include language regarding service limitations within the question.

Prospective Iridium investors were briefed on the results of the 6/91 ADL Study at the June 1991 investor conference. Early investors, Goldman Sachs and later Coopers & Lybrand (consultants to the Global Arrangers of Iridium’s bank debt, “C & L”) received a copy of the 6/91 ADL Study, including the questionnaire. (2/9/07 Tr. 146:2–9 (Attwood); MX 395 at MOT 3,111,163–176 (6/91 Investor Consortium Meeting Materials); 2/28/07 Tr. 19:13–20:2 (Kenny<sup>36</sup>); MX 1042 at IR 133140 (Index of market research documents provided to C & L/syndicate banks))

<sup>36</sup> Lawrence Kenny was a Coopers & Lybrand partner, who led C & L’s Iridium marketing due diligence activities on behalf of Iridium’s Global Arrangers from 1996–1997.

Upon the closing of the 1992 PPM, Iridium took over responsibility for the marketing projections and the business plan (10/25/06 Tr. 78:11–15 (Gercenstein)) and continued to update, refine and reevaluate those projections. (10/25/06 Tr. 135:25–136:7 (Gercenstein))

During this same time period, Iridium and Motorola commissioned market research studies and assessments, including a 1993 two-volume study conducted by Booz Allen & Hamilton (“Booz Allen” or “BAH”). (MX 402 (BAH 1993 2–Volume Market Study (“1993 BAH Study”)))

The 1993 BAH Study was designed “to provide an independent analysis of issues related to [the Iridium] project and its business potential.” (11/6/06 Tr. 22:11–20 (Mondale)) To that end, Booz Allen assessed Iridium’s technical feasibility by analyzing things such as coverage, capacity, continuity of service, voice quality, satellite reliability and maintenance requirements. (12/7/06 Tr. 13:6–14:6 (Cornet<sup>37</sup>); *see also* MX 402 (1993 BAH Study)).

<sup>37</sup> Dr. Edward Cornet is a Vice President and Division Manager at Booz Allen in its worldwide technology business group, which focuses specifically on the space systems industry. Dr. Cornet and his team assessed the Iridium system technology for Booz Allen from 1992 to 1997, in connection with various market assessments that were then being performed by Booz Allen.

Prospective investors and Goldman Sachs were provided with a copy of the 1993 BAH Study. (11/6/06 Tr. 22:11–14 (Mondale); MX 402 at MOT 1,334,726–733 (2/93 BAH letter re: provision of study to Iridium investors); 2/9/07 Tr. 159:4–160:2 (Attwood))

In early 1995, Iridium reexamined its business plan and reaffirmed the subscriber and revenue projections contained in the 1992 PPM. (MX 409 at MOT 1,324,029 (4/95 Market Reassessment)); MX 408 at MOT 3095950 (4/95 Mondale memo); 2/9/07 Tr. 16:17–25 (Mondale (Iridium believed \*316 projections underlying 1995 S–1 were reasonable))

Goldman Sachs also conducted due diligence on the Iridium business plan in 1995 in connection with Iridium’s proposed debt offering. As part of that due diligence, Goldman Sachs re-examined and re-affirmed the 1995 projections and business plan. (2/9/07 Tr. 121:3–5, 128:7–15 (Attwood (Goldman Sachs believed the projections underlying the 1995 S–1 were reliable)))

By 1996, Iridium’s marketing department included over 100 employees, (2/9/07 Tr. 19:14–21; 21:13–19 (Mondale); 11/8/06 Tr. 160:10–19 (Nadkarni)) many of whom had backgrounds in consulting, satellite, and telecom businesses. (2/7/07 Tr. 82:17–84:1, 85:21–86:9 (Kraus))

Dr. Prakash Nadkarni led the day-to-day activities of the marketing department during this time. Dr. Nadkarni was responsible for serving as an “interface” between the Iridium marketing and engineering departments, and to ensure that the “technical implications [and] constraints” of the Iridium System were taken into account in Iridium’s marketing and business planning. (11/8/06 Tr. 112:7–113:17 (Nadkarni))

#### *B. The 1996–1998 Market Research*

By early 1996, Iridium had begun the process of rewriting its business plan. (2/9/07 Tr. 17:9–18:10 (Mondale)) This involved a re-examination of Iridium’s business proposition and intended markets, along with a new, large-scale primary market research campaign. (11/8/06 138:12–140:2 (Nadkarni); 1/23/07 Tr. 77:20–80:7 (Ohlandt); 2/7/07 Tr. 87:15–89:14 (Kraus); 2/9/07 Tr. 20:8–21:12 (Mondale); MX 780 at IRID–WH 244688 (BP 2.0))

In contrast to its earlier business plans, Motorola’s marketing expert Dr. Bradlow confirmed that Iridium used a “bottoms-up” methodology to size its markets for the 1997 and 1998 business plans. (3/12/07 Tr. 69:22–72:11 (Bradlow))

These market research efforts were very complex, utilizing extensive survey instruments and sophisticated methodologies. (2/7/07 Tr. 100:18–101:13 (Kraus)) The research studies were executed on a massive scale and involved a significant commitment of resources. (1/23/07 Tr. 163:11–164:4, 178:2–8 (Ohlandt); 2/7/07 Tr. 98:23–99:14 (Kraus); MX 780 at IRID–WH 244688 (BP 2.0); MX 353 at IR–M 35260 (BP 3.0); MX 306 at IR 1094 (7/97 C & L Final Report))

Iridium’s market research efforts was designed to achieve three primary goals—to size the potential market for MSS services, to estimate the portion of that market that would likely subscribe to Iridium over a competitor and to estimate the minutes a potential subscriber would use the Iridium services (satellite, paging and/or cellular roaming). (2/7/07 Tr. 91:21–94:15 (Kraus); 3/12/07 Tr. 81:11–83:12 (Bradlow)) Portions of the market research were also designed to gather information about pricing sensitivity to be used by Iridium in setting its product and airtime pricing. (2/7/07 Tr. 109:14–114:14 (Kraus))

The result of this market research process was six studies, which were used as inputs to the forecasts and projections in Iridium’s BP 2.0, 2.x, 2.x Update, and BP 3.0: (MX 780 at IRID–WH 244688 (BP 2.0; *see also* 2/9/07 Tr. 22:4–12 (Mondale)))

? ? AT Kearney Study of Demand for Mobile Satellite Services by the High Income International Professional Traveler (PX 156; *see also* MX 307 at PWC 92441–473—Appendix E (7/97 C & L Final Report Appendices));

? ? The Gallup Organization Survey of Demand for Global Stand–Alone \*317 Paging Services (MX 51; *see also* MX 307 at PWC 92474–479—Appendix F (7/97 C & L Final Report Appendices));

? ? The Gallup Organization Survey of Demand for Satellite and ICRS Services (MX 246; *see also* MX 307 at PWC 92480–513—Appendix G (7/97 C & L Final Report Appendices));

? ? The Gallup Organization Survey of Demand for Iridium Roaming Services Among Frequent and Infrequent Travelers (PX 157; *see also* MX 307 at PWC 92514–556—Appendix H (7/97 C & L Final Report Appendices));

? ? Booz Allen & Hamilton Study of the Corporate/Industrial Market for Roaming Services (PX 158; *see also* MX 307 at PWC 92668–703—Appendix K (7/97 C & L Final Report Appendices));

? ? Booz Allen & Hamilton Analysis of Usage (MX 842; *see also* MX 307 at PWC 92557–667—Appendices I, J (7/97 C & L Final Report Appendices))

Gallup, Booz Allen and AT Kearney were qualified and capable market research firms. (12/13/06 Tr. 116:22–117:23, 145:12–21 (Kraemer<sup>38</sup>) (2/7/07 Tr. 150:3–23 (Kraus); 1/23/07 Tr. 80:17–81:7 (Ohlandt); 11/8/06 Tr. 180:13–181:1 (Nadkarni)))

<sup>38</sup> Joseph Kraemer, the Committee’s marketing expert, was the partner-in-charge at AT Kearney when the AT Kearney study of International Professional Travelers was completed and provided to Iridium and when it was subject to due diligence by C & L.

### *C. Translating Market Research Into Projections*

Iridium analyzed the raw market research data and used computer models to develop actual subscriber and usage projections. (MX 780 at IRID–WH 244713 (BP 2.0))

The process of translating the raw data into projections was influenced by advice from consultants to the Global Arrangers.

Iridium discussed with C & L the various analytical steps it was performing on the raw data and provided substantial documentation of its analysis to C & L, including mathematical models. Iridium made changes in its analysis in response to comments from C & L. (2/8/07 Tr. 8:17–10:1 (Kraus)) C & L also participated in the process of determining the number of potential Iridium subscribers. (11/6/06 Tr. 205:24–206:15 (Kenny))

Because Iridium assumed the System was to be used only as a communications means of last resort, it assumed that users would be willing to take reasonable steps to accommodate to the limitations of the system, such as moving to locations where the phone might work better. (2/8/07 Tr. 62:5–63:3 (Kraus)) Thus, limitations were recognized but assumed to be acceptable inconveniences to prospective users of the service. Iridium also utilized filters (the same ones used by Booz Allen in its usage assessment), in an attempt to capture only those minutes of usage that could be expected on the Iridium System, based on where the System was expected to work and the availability of other superior communications options. (2/8/07 Tr. 11:18–13:2 (Kraus))

Iridium assumed for purposes of estimating mobility minutes of usage that subscribers would prefer using their cellular phone and would use that first if they could connect to their cellular network; in descending order of preference, subscribers would next consider using an Iridium device on a cellular network if that was an available option; subscribers were assumed to choose their satellite phone as a \*318 last resort only if they had no cellular or roaming option. (2/8/07 Tr. 12:17–20 (Kraus); 12/13/06 Tr. 166:17–169:5 (Kraemer); MX 306 at IR 1154 (7/97 C & L Final Report) (“Only potential call minutes made beyond existing coverage accrue to Iridium MSS network.”))

#### *1. KPMG Financial Models*

KPMG was retained to develop financial models to be used to generate and analyze the subscriber and revenue estimates in Iridium’s BP 2.0, BP 3.0 and Business Financial Plans. (1/31/07 Tr. 169:23–170:1 (Blough<sup>39</sup>)) KPMG developed three models for Iridium—financial, demand and pricing. (1/31/07 Tr. 120:4–121:18, 127:24–129:4, 129:23–130:21 (Blough)); 11/6/06 Tr. 200:16–201:1 (Kenny); MX 707 (12/96 memo re: scope of work for demand model); (MX 708, MX 709 (11/96

letters re: pricing model)); MX 710 (summary of inputs to summary financial model); MX 838 (2/97 C & L summary of KPMG demand model)

<sup>39</sup> Dr. Stephen Blough was the KPMG Partner in charge of developing the financial models used to generate and analyze the subscriber and revenue estimates in Iridium's BP 2.0, BP 3.0 and Business Financial Plans.

One of the purposes of the financial model was to allow the Global Arrangers to analyze and mitigate the risks of financing the Iridium project. (1/31/07 Tr. 120:24–122:16, 147:6–11, 149:4–11, 151:19–152:16, 182:12–184:5 (Blough); 12/11/06 Tr. 124:3 –22 (Daverio); MX 714 (11/20/96 letter from Global Arrangers re: risk factors to be incorporated in financial model from KPMG files)) The Global Arrangers were satisfied with the KPMG models as delivered to them. (1/31/07 Tr. 173:4–174:7 (Blough))

Representatives from KPMG, Iridium, the Global Arrangers, C & L and ADL developed the sensitivity analyses and risk factors addressed by the models via a collaborative effort. (1/31/07 Tr. 121:19–123:1, 147:6–15 (Blough); MX 713 (notes of 11/96 meeting between Global Arrangers, KPMG, ADL and C & L re: model); MX 714 (11/96 letter from Global Arrangers re: requirements for financial model with lists of risk factors identified by ADL and C & L)) C & L and ADL provided input about the risk factors they wanted incorporated into the financial model. (12/11/06 Tr. 125:24–127:5 (Daverio); 1/31/07 Tr. 147:12–152:16 (Blough); MX 714 (11/96 letter from banks re: requirements for financial model with lists of risk factors identified by ADL and C & L))

The variables in the financial model included: the effect of lower than expected performance of the Iridium System; delay in development and activation of the system; less than expected market access in key markets; errors in market research and analysis; and greater than expected competition from terrestrial cellular and other satellite providers. (MX 714 at KPMG 4741–4746; *see also* 1/31/07 Tr. 184:6–15 (Blough (risk factors identified in MX 714 were addressed in the final KPMG model); 12/11/06 Tr. 125:24–127:5 (Daverio); MX 714 at KPMG 4739 (Chase letter re KPMG Financial Model); MX 715 at IR 45852, IR 45863 (Financial Model Status Report))

## 2. Business Plan 2.0

In April 1997, Iridium released its BP 2.0, that included the ICRS offering and that gave subscribers the option of selecting satellite service, roaming service or both. (MX 443 (3/97 Mondale memo re: BP 2.0)) The addition of the ICRS offering to Iridium's business plan was presented to and formally approved by Iridium's Board of Directors. (MX 442 at MOT \*319 926,312–313 (1/97 BOD Meeting Minutes); MX 447 at IR 140647 (4/97 BOD Meeting Minutes)); 11/6/06 Tr. 75:10–77:1, 84:5–85:6 (Mondale) The March 31, 1997 Iridium Business Financial Plan was produced in conjunction with BP 2.0 and provided detailed projections, and information about the assumptions underlying them. (MX 243 (Iridium 3/31/97 Business Financial Plan))

Iridium believed that the market research instruments, the modeling, and the due diligence that went into BP 2.0 resulted in defensible forecasts that were appropriate to use in BP 2.0. (2/9/07 Tr. 30:12–22 (Mondale); 2/8/07 Tr. 14:3 –7 (Kraus)) Iridium believed that the projections in BP 2.0 were reasonable, and these projections were the result of a carefully managed, deliberative process. (2/9/07 Tr. 30:12–22 (Mondale))

The Court finds that the process that produced the projections in BP 2.0, including market research and analysis, was carefully planned, thoughtfully considered, and diligently executed. The work product was subject to internal and external review. As a result, the projections in BP 2.0 were reasonable when they were prepared.

## 3. Business Plans—2.x, 2.x Update and 3.0

Iridium released its BP 2.x update in November 1997 (MX 734 (BP 2.x Update)) and its updated BP 3.0 and updated Business Financial Plan in August 1998. (MX 353 (BP 3.0))

Iridium believed that its business plan forecasts remained “legitimate and accurate” even after commercial launch of the

system. (2/9/07 Tr. 37:14–17 (Mondale); *see generally* 2/9/07 Tr. 35:21–37:24 (Mondale))

#### *D. Marketing Expert Opinions*

Motorola's marketing expert, Dr. Eric Bradlow, testified regarding the market research and business planning by Iridium from 1990 to 1998. (3/12/07, 3/14/07 Tr. (Bradlow)) Dr. Bradlow examined Iridium's business plans from 1990 to 1998, including the underlying market research and methodologies used to create those plans. (3/12/07 Tr. 9:22–12:22, 22:17–27:16 (Bradlow)) Dr. Bradlow examined the numerous sources of support for the 1997 BP 2.0 and BP 2.x update, as well as the underlying projections, and concluded that they were reasonable. (3/12/07 Tr. 66:23–69:21, 111:18–117:19 (Bradlow))

Dr. Bradlow expressed the opinion that:

? ? Iridium's projections as of June 30, 1995, November 30, 1997 and December 31, 1998 were the product of a reasonable and appropriate forecasting process; including the underlying market research and data, and that the resulting forecasts were reasonable. (3/12/07 Tr. 10:10–13, 13:2–17:11 (Bradlow))

? ? The market research underlying these business plans—including the challenged 1991 ADL and 1997 Gallup Frequent/Infrequent (F/I) study—were appropriate and reliable inputs. (3/12/07 13:6–18, 15:19–16:4, 37:2–10, 84:3–24 (Bradlow))

He also confirmed that the “top-down” approach used by Iridium is typical for early-stage start-up companies, such as Iridium in 1991–1995. (3/12/07 Tr. 35:6–36:12 (Bradlow))

The Committee's marketing expert, Joseph Kraemer, challenged the reasonableness of the projections contained in Iridium's Business Plan 2.0 and expressed the opinion that the market research for those projections materially overstated the addressable market for professional business \*320 travelers largely because of the service descriptions used in Iridium's market research instruments. (Tr. 12/13/06 13:12–18 (Kraemer)) Although Mr. Kraemer was impressive and offered instructive testimony regarding the methodologies used in market research, the Court agrees with Dr. Bradlow and finds that the market research underlying the Gallup F/I study was appropriate.

### *V. IRIDIUM'S BANK LOANS*

#### *A. Global Arrangers' Due Diligence*

Chase Securities, BZW and Barclays were the Global Arrangers for Iridium's 1996–1998 bank loans. (2/7/07 Tr. 6:16–7:5 (Cassin<sup>40</sup>); MX 777 at MOT 942,559 (4/17/96 BOD Minutes))

<sup>40</sup> Thomas Cassin worked in Global Syndicated Finance at Chase Securities, and was the Chase banker principally responsible for the loans to Iridium from 1996 to 1998.

The first loan that the Global Arrangers arranged for Iridium was in August of 1996 for \$750 million and was fully guaranteed by Motorola. (2/7/07 Tr. 10:18–20 (Cassin); MX 291 at MOT 1,438,648 (8/21/96 Credit Agreement))

On December 19, 1997, Iridium entered into an agreement for a \$1 billion credit facility with a syndicate of banks (the “Banks”) led by the Global Arrangers. This facility was secured by the assets of Iridium, including a pledge of Iridium's rights in the \$243 million reserve capital call upon Iridium's initial equity investors and the FCC license for the Iridium System held by a Motorola subsidiary. (2/7/07 Tr. 16:2–15 (Cassin); MX 539 (12/19/97 Credit Agreement); MX 313 at IR 12618 (10/97 Confidential Information Memorandum))

This credit facility was 1.7 times over-subscribed and was increased from the originally proposed amount of \$750 million

because of the “excellent response” by the Banks. (MX 783 at IR 73890 (11/24/97 Banking & Finance Committee Materials))

On December 23, 1998, Iridium Operating LLC entered into two loans with the Banks: (i) a \$750 million Senior Guaranteed loan, fully guaranteed by Motorola, and (ii) an \$800 million Senior Secured loan, secured by the assets of Iridium and its affiliates (including the FCC license for the Iridium System, which was held for Iridium by a Motorola subsidiary) and a \$300 million standby guarantee from Motorola. (2/7/07 Tr. 42:16–43:4 (Cassin); MX 319 (11/6/98 Confidential Information Memorandum); MX 794 at MOT 1,438,854 (12/23/98 Iridium Press Release); MX 315 (\$750M Senior Guaranteed Credit Agreement); MX 546 (\$800M Senior Secured Credit Agreement); MTX 66 at CH–DE 0093567–69 (Second Amended and Restated MOU))

The December 1998 loans re-financed \$271.5 million outstanding on the 1996 Guaranteed Facility and the \$410 million outstanding on the 1997 Secured Facility. (See MX 501 at MOT 1,379,027, 1,379,100–101 (Iridium 1998 10–K))

The Banks included a number of lenders that had not participated in the 1997 loans. (2/7/07 Tr. 57:3–14 (Cassin); MX 549 at CH–DE 7736 (12/16/98 Chase Interoffice Memo re Iridium Update))

In deciding to make loans to Iridium, the Global Arrangers focused on Iridium’s ability to repay the loans. (2/7/07 Tr. 6:4–15 (Cassin); MX 714 at KPMG 4738 (11/20/96 letter re Financial Model (“the Global Arrangers will require sufficient model detail to determine the impact of such risks on the ability of Iridium to repay its debt obligations”); 2/26/07 Tr. 105:13–106:21 (Pfleiderer))) The Global Arrangers were concerned about the Banks’ \*321 ability to get repaid, and thus focused on what would happen in a downside case. (2/7/07 Tr. 20:19–21:2, 28:19–29:11 (Cassin); 2/26/07 Tr. 105:22–106:21 (Pfleiderer); 12/5/07 Tr. 34:25–35:4 (Maul))

In addition to the due diligence conducted by the Global Arrangers’ marketing and technical consultants on the issue of Iridium’s ability to repay the loans, the Global Arrangers also assessed Iridium’s overall capital structure and financing plan. (MX 545 at CH–NY 1335 (Iridium Screening Script); MX 544 at CH–NY 4969 (11/14/98 Chase Structuring Summary); MX 313 at IR 12604, 609 (10/97 Confidential Information Memorandum); MX 319 at [IR–B 60049](#), [IR–B 60063](#) (11/98 Confidential Information Memorandum))

The Global Arrangers analyzed Iridium’s financing requirements, financing plan and sources and uses of funds. (MX 537 at CH–DE 80726 (12/97 Closed Deal File)); MX 544 at CH–NY 4959–61 (11/14/98 Chase Structuring Summary (discussing financing needs, sources and uses of funding, and analyzing cash flows)); MX 545 at CH–NY 1335 (Iridium Screening Script (examining sources and uses and capital structures)); MX 313 at IR 12604, 12607 (10/97 Confidential Information Memorandum (examining sources and uses and cash flow for debt service); MX 319 at [IR–B 60049](#) (11/98 Confidential Information Memorandum))

Iridium provided the Global Arrangers and their consultants with information about the company and its business plan, including risks associated with the business plan. Iridium was fully responsive to questions and requests for information of the Global Arrangers and their consultants. (1/25/07 Tr. 28:1–30:12, 32:5–9 (Lavin); 11/7/06 Tr. 66:10–24, 67:5–16 (Staiano); MX 635 at IR 128838 (6/21/96 Due Diligence Memo))

Chase representatives were allowed to sit in on Iridium board meetings, they participated in a test call over the Iridium System in December 1997, the purpose of which was “to ensure that [the system] will meet the Banks’ expectations,” and they were invited to participate in the daily calls Dr. Staiano held in the months leading up to commercial activation. (11/7/06 Tr. 36:7–18, 67:11–16 (Staiano); MX 451–LM at IR 21489 (11/97 Mondale memo re: Bankers’ Voice Demonstration))

Chase was aware that there were limitations in how well the Iridium satellite service would work in cities and in buildings and had the ability to discern for themselves, through their advisors, the extent of those limitations and what, if any, effect these limitations would have on the Banks’ exposure to risk. (2/7/07 Tr. 40:1–12 (Cassin); MX 313 at IR 012667 (10/97 Confidential Information Memorandum))

Cassin believed that the Banks had enough information to understand the limitations of the Iridium satellite service. (2/7/07 Tr. 41:18–25 (Cassin))

In connection with its analysis, the Global Arrangers examined Iridium's capital structure based on book and market values. (MX 545 at CH-NY 1335 (11/99 Iridium Screening Script \$1.5BN Senior Credit Facilities); MX 319 at [IR-B 60049](#) (11/98 Confidential Information Memorandum); 2/27/07 Tr. 128:18-130:2 (Pfleiderer))

The Global Arrangers concluded that Iridium had a sufficiently strong capital structure as of December 1997 to raise \$2.2 billion in debt and equity from strategic investors and had a market cap of approximately \$6.2 billion. (2/7/07 Tr. 30:3-9 (Cassin); MX 313 at IR 12609 (10/97 Confidential Information Memorandum))

**\*322** On the basis of both its own due diligence and that of its marketing and technical consultants, Chase believed that Iridium would be able to repay or refinance the loan, that the Banks were adequately secured, and that the Banks would be made whole. (2/7/07 Tr. 32:25-33:10, 60:15-22 (Cassin)) These conclusions were based in part of the work performed by C & L as marketing expert and ADL as technical expert for the Global Arrangers. (2/7/07 Tr. 8:15-9:2 (Cassin)) These entities were capable and qualified to conduct due diligence for the Banks. (12/13/06 Tr. 145:22-146:13 (Kraemer))

#### *B. The C & L/ADL "Banking Case"*

In connection Iridium's credit facilities, the Global Arrangers hired C & L to perform business diligence and provide the Global Arrangers with a "banking case" scenario.

From May 1996 to October 1997, C & L conducted extensive due diligence on Iridium's marketing and distribution plans, including the underlying market research and analysis. (2/7/07 Tr. 7:16-14, 36:5 -12 (Cassin); 2/28/07 Tr. 4:7 -11, 5:1-8 (Kenny)), and

C & L was involved in the rewrite of Iridium's business plan in 1996 and 1997. (MX 780 at IRID-WH 244688, 244713 (BP 2.0))

The C & L due diligence team ranged in size from 20 to 60 people (2/28/07 Tr. 5:12-16 (Kenny)), and included telecom specialists in all major regions of the world. (11/6/06 Tr. 156:18-157:1 (Kenny))

C & L engaged Opinion Research Corporation ("ORC") as a subcontractor on the project to serve as subject matter experts in the areas of survey design, research, and execution, as well as subsequent analysis of data. (2/28/07 Tr. 29:21-30:14 (Kenny); 2/7/07 Tr. 90:2-16 (Kraus))

C & L understood the importance of the professional traveler segment to the overall business plan and so looked particularly closely at that component of the forecast. (11/6/06 Tr. 161:18-162:4 (Kenny)) C & L recognized that the business traveler targeted by Iridium was not the typical business traveler, but rather the business traveler going to areas where terrestrial communication services were not available. (2/28/07 Tr. 7:7-17, 8:3-7, 55:19-25 (Kenny); 11/6/06 Tr. 262:15-24 (Kenny); MX 780 at IRID-WH 244667 (BP 2.0))

At the outset of its [work](#), C & L was briefed extensively on the Iridium business plan, service offerings and limitations, target markets, and completed and planned market research. (11/6/06 Tr. 166:18-167:11 (Kenny); MX 223 (7/96 C & L Project Immersion materials); MX 225 (7/97 Iridium Marketing and Regulatory Plan Review presentation to C & L); MTX 155 (C & L list of all market research provided)). As part of this briefing, C & L was given copies of all of Iridium's marketing reports and distribution plans. (11/6/06 Tr. 167:15-168:1 (Kenny); *see also* MX 223 at PWC 40805-38 (C & L 7/96 Project Orientation Materials); MX 1042 (C & L market research index); MTX 155 (C & L list of all market research provided)) This included copies of the 1991 ADL Study, and the 1993 and 1996 BAH studies. (2/28/07 Tr. 19:24-20:2 (Kenny); MX 1042 at IR 133140 (C & L index of all market research received from Iridium, including ADL 1991 study); MX 223 at PWC 40805-38 (C & L 7/96 Project Orientation materials with summaries of all Iridium market research, including 1994 DS Howard, 1993 BAH Study, 1996 BAH Study))

C & L reviewed and assessed all of Iridium's past market research, including the service descriptions used in such research. (11/6/06 Tr. 175:8-16 (Kenny))

**\*323** During its due diligence, C & L had meetings with the Iridium marketing team several times a week, and also

exchanged emails and phone calls. In some cases, C & L had people working on site in Iridium's offices. (2/8/07 Tr. 10:2–11 (Kraus); *see also* 11/6/06 Tr. 85:14–86:4 (Mondale))

The due diligence effort was broken into two phases. Phase One consisted of an examination and analysis of Iridium's existing market research and business plan. Phase Two involved all aspects of the re-write of Iridium's business plan. (2/28/07 Tr. 17:25–18:15, 29:10–20 (Kenny))

Phase Two of C & L's due diligence began in October 1996 and continued through the development and release of Iridium's Business Plan 2.0, culminating in a July 1997 final report to the Global Arrangers. (2/28/07 Tr. 28:20–29:19, 33:14–34:11, 44:14–46:8 (Kenny); *see also* MX 435 (C & L Phase II Scope of Work); MX 306 (7/97 C & L Final Report); MX 307 (7/97 C & L Final Report Appendices))

C & L and ORC were involved in every step of the design and execution of the market research initiated after C & L's engagement—including the six studies that went into Iridium's Business Plan 2.0. (2/28/07 Tr. 29:10–20 (Kenny); 11/7/06 Tr. 16:23–18:16 (Staiano); 11/6/06 Tr. 61:3–16, 62:18–63:2 (Mondale); MX 435 at [IR-B 54114](#) (11/96 C & L letter re: expansion of scope of work (“Coopers will be involved in every step of the proposed research”)); 2/28/07 Tr. 6:14–24 (Kenny); *see also* MX 837 (12/96 Market Research Workplans); MX 780 at IRIDWH 244688, 244713 (BP 2.0))

C & L and ORC participated in the design of the studies conducted during the Phase Two due diligence. Because these studies were initiated during C & L's engagement, C & L and ORC were able to work closely with Iridium and the relevant research entities in charge of the studies on all aspects of the survey design, including reviewing the content of the surveys on a question by question basis. (2/28/07 Tr. 30:20–31:12, 36:4–10, 40:15–19 (Kenny); 1/23/07 Tr. 84:13–85:24, 86:20–87:5, 88:3–14 (Ohlandt); *see also* MX 435 (11/96 C & L letter re: expansion of scope of work); MX 307 at PWC 92514 (7/97 C & L Final Report Appendices))

Only after C & L and ORC were satisfied with the research design for each of the market research studies, including the specific wording of the questionnaire to be used during the research, did Iridium proceed to the execution stage. (1/23/07 Tr. 125:12–126:15 (Ohlandt); MX 336 (memo re sign-off from C & L))

C & L reviewed all steps of the analysis of the raw data from the surveys as well as translation of that data into the subscriber, usage and revenue projections in Iridium's Business Plan 2.0. (2/28/07 Tr. 31:18–32:21 (Kenny); 2/7/07 Tr. 121:18–122:23, 127:16–128:24, 174:7–17, 175:13–176:6 (Kraus)) The process of translating the survey data into these projections was complex and involved the use of a number of detailed analyses and sophisticated computer models, including a model, which allowed C & L and the Global Arrangers to analyze the effects of different assumptions and findings on the revenue case going forward. (11/6/06 Tr. 184:19–186:1 (Kenny); *see also* MX 828 (10/96 C & L letter re Interim scope of work)) The model took into account risks such as adoption rate, price movements, usage levels, and distribution constraints, as well as certain technical risks. (11/6/06 Tr. 186:24–187:24 (Kenny))

C & L had individuals on its Iridium due diligence team with telecom and technical experience, on whom C & L also relied for its understanding of system capabilities. (2/28/07 Tr. 8:19–22 (Kenny)) C & L representatives \*324 visited Motorola facilities in Arizona and talked to Motorola engineers and believed the people with whom it interacted at Iridium were knowledgeable about the expected characteristics of the product and service. (11/6/06 Tr. 164:23–165:23 (Kenny))

From the outset of its role as marketing due diligence consultant to the Global Arrangers, C & L understood that the Iridium system would work optimally when the terminal or the antenna on the terminal had a clear view of a satellite in the sky but that obstructions would lessen or eliminate the ability to create or maintain a connection. (2/28/07 Tr. 12:5–21 (Kenny); 11/6/06 Tr. 172:15–173:25 (Kenny); *see also* MX 824 (7/23/96 Information exchange meeting notes)).

During its due diligence, C & L also worked closely with the Global Arrangers' technical advisor, ADL. (2/28/07 Tr. 9:2–10 (Kenny)) ADL served as C & L's primary source of technical expertise and understanding of system capabilities. (2/28/07 Tr. 8:14–18 (Kenny)) The two advisors coordinated so that ADL's technical knowledge was conveyed to C & L and properly reflected in the marketing due diligence, including the Iridium Business Plan 2.0. (MX 436 at IR 4234–36 (11/96 ADL letter re expanded scope of work); MX 438 at ADL 120364 (12/96 ADL memo re technical competitive assumptions); MX 437 (11/96 ADL memo re technical competitive assumptions))

One of ADL's primary responsibilities was to highlight any technical risks that might impact the technical performance of the system, especially those that might impact a subscriber's decision to buy the service. (2/13/07 Tr. 17:20–19:5, 24:23–25:12 (Maul); 12/5/06 Tr. 27:2–25 (Maul); 2/9/07 Tr. 23:13–24:5 (Mondale); MX 1129 at ADL 0138593, 138605 (6/27/96 ADL Presentation); MX 1135 at ADL 0081543 (ADL 30 Day Due Diligence Report))

ADL had access to much, if not all, of the information generated regarding System performance and developed its understanding of System capability in real time in that ADL continued to learn more about the expected performance of the System and refined their understanding over time. (2/13/07 Tr. 34:4–35:23, 133:14–134:10 (Maul); 2/28/07 Tr. 88:19–89:25 (Kenny); MX 824 (7/23/96 Information exchange meeting notes)).

ADL reviewed from a technical standpoint the descriptions in the market research questionnaires of the various Iridium services. (2/13/07 Tr. 42:20–43:25, 51:13–18 (Maul); 12/5/06 Tr. 98:25–99:4 (Maul); 2/28/07 Tr. 31:13–17 (Kenny); MX 440 at IR 014976 (12/13/96 ADL detailed work schedule); MX 437 at IR 004210 (11/20/96 Memo re ADL Competitive Assumptions); MX 438 (12/20/96 Follow-up to Competitive Assumptions))

ADL concluded there were no major technical issues with the market research questionnaires. (2/13/07 Tr. 51:19–52:3 (Maul); 12/5/06 Tr. 99:19–100:4 (Maul); MX 440 at IR 014976 (12/13/96 ADL detailed work schedule)) To the extent ADL had questions or concerns about the market research questionnaires, it raised the issues with C & L and C & L agreed to take those issues into account when interpreting the results. ADL agreed this was an appropriate approach. (2/13/07 Tr. 52:4–54:15 (Maul); 12/5/06 Tr. 101:8–103:16 (Maul); MX 1141 at IR 004373 (2/28/97 ADL detailed work schedule); *see also* MX 1140 at ADL 0119328 (1/17/97 ADL detailed work schedule (ADL also sent comments or surveys to Iridium)))

ADL also concluded that Iridium's coverage was consistent with that assumed in the market research that formed the basis of Iridium's business plan. (MX 535 at \*325 CH–NY 0034121 (10/97 ADL Technical Information Memoranda); 11/6/06 Tr. 74:23–75:9 (Mondale (ADL's assumptions about system performance "were consistent with the market research")))

After performing its due diligence, C & L prepared and provided the Global Arrangers with its final report, (MX 306) which contains a detailed analysis of Iridium's BP 2.0 projections, as well as C & L's more conservative projections—the Banking Case—and C & L's rationale for those more conservative estimates. (MX 306 at IR 1030–38, 1046–48, 1094–95 (7/97 C & L Final Report)) C & L's final report takes a downside or conservative approach in quantifying the various risks that it identified for the Banks. (2/28/07 Tr. 44:14–45:4 (Kenny)) C & L concluded that its findings "supported management in broad terms about the size of the total potential subscriber base." (2/28/07 Tr. 45:5–12 (Kenny); MX 306 at IR 1031 (7/97 C & L Final Report)) Likewise, C & L concluded, "We believe Iridium's strategy is a rational response to Management's view of the market opportunity." (11/6/06 Tr. 210:18–211:7 (Kenny); *see also* MX 306 at IR 1027 (7/97 C & L Final Report))

In C & L's summary (included in the Confidential Information Memorandum given to the lending syndicate for the 1997 loan), C & L detailed its downside projections and further stated its conclusion that "while Iridium's assumptions, methodologies and data are not unreasonable for an equity case, C & L has approached banking case revenues from a debt standpoint, which requires the use of additional caution and conservatism, both cases, Iridium and banking, reasonably define the most likely boundaries of the company's actual performance." (2/28/07 Tr. 48:21–49:5, 49:10–18 (Kenny); 2/7/07 Tr. 28:14–29:11 (Cassin); MX 313 at IR 12721 (10/97 Confidential Information Memorandum))

### *1. ADL technical due diligence*

In May/June 1996 ADL was retained as a technical advisor by the Global Arrangers. (2/13/07 Tr. 6:5–9, 11:4–15, 7:15–23 (Maul)) ADL advised the Global Arrangers for two and a half years, performing technical due diligence on Iridium into December 1998, after Iridium's commercial launch. (2/13/07 Tr. 6:10–13 (Maul))

One of ADL's primary roles was to consult with and advise C & L in connection with its marketing due diligence and work in connection with BP 2.0.

During this time, ADL had, on average, 20 people working primarily on the Iridium project. (2/13/07 Tr. 24:12–17 (Maul)) Jeff Maul, who led the ADL due diligence effort, worked full time on the Iridium assignment for much of ADL's engagement. (2/13/07 Tr. 7:24–8:6 (Maul))

ADL had expertise in propagation, radio transmission, satellites, wireless telephone networks, telephone equipment, telephone handsets and paging devices, billing systems, computer systems, and antenna technology. To the extent ADL did not have a particular expertise in-house, it brought in qualified subcontractors with such expertise. (2/13/07 Tr. 8:7–10:14 (Maul); 12/5/06 Tr. 8:19–11:8 (Maul); MX 1127 (ADL Selected Qualifications); MX 1039 at CH–DE 39061 (ADL Pitch Materials))

ADL’s work consisted of several major activities: 1) assessing for the Global Arrangers the Iridium technology and the risks it entailed; 2) drafting and monitoring the technical conditions precedent in the December 1997 loan; and 3) working closely with the Global Arrangers’ marketing and other consultants to attempt to ensure they understood the system’s technical limitations. (2/13/07 Tr. 12:10–22 (Maul); 12/5/06 Tr. 18:8–20:17 (Maul); *see* \*326 *also* 12/5/06 Tr. 14:11–18:7 (Maul); MX 527 at ADL 0057140–7144 (ADL Engagement Letter))

### *2. ADL risk assessment*

Because the lenders were interested in Iridium’s ability to repay bank debt, ADL’s focus during its risk assessment was to identify the technical risks that might impact Iridium’s ability to meet its business plan and service its debt. (2/13/07 Tr. 21:8–22:12 (Maul); 12/5/06 Tr. 25:4–24; 32:6–18 (Maul); MX 430 at IR 008079 (ADL 90 Day Technical Due Diligence Report)) This included identifying risks to achieving the expected level of system performance. (2/13/07 Tr. 13:1–14:6 (Maul); MX 1135 at ADL 0081543–554 (ADL 30 Day Due Diligence Report); MX 1129 at ADL 138590–93 (6/27/96 ADL Presentation); MX 431 (9/11/96 ADL slides re Iridium Due Diligence Meeting))

ADL’s risk assessment concluded that the Iridium System, as designed, would likely work and could be implemented on or close to the planned commercial activation date. ADL shared this conclusion and the reasoning behind it with the Global Arrangers and Banks in October 1997. (2/13/07 Tr. 67:5–14 (Maul); 12/5/06 Tr. 47:7–49:6 (Maul); MX 535 at CH–NY 034112 (10/97 ADL Technical Information Memorandum))

### *3. ADL understanding of system performance*

Throughout its engagement, ADL worked to identify and predict the likely limitations of Iridium’s satellite service. To that end, ADL drew on its prior experience with satellite systems, reviewed propagation and attenuation data, analyzed the technical operations of the satellites and created computer models. Based on his team’s work, Maul believed that ADL understood how the Iridium System operated and the factors that impacted its performance. (2/13/07 Tr. 137:7–15 (Maul)) Specifically, ADL believed in 1996 and 1997, prior to commercial launch, that Iridium satellite voice service would work best in open, clear line-of-sight conditions. (12/5/06 Tr. 76:19–77:16 (Maul))

ADL believed it was accurate to generally describe the satellite voice service as operating “outside major cities, in open areas or within buildings near outside walls or in vehicles with external antenna.” ADL provided this description to C & L to aid in the development of the market research. (2/13/07 Tr. 46:8–47:18 (Maul); 12/5/06 Tr. 94:11–95:23 (Maul); MX 438 at ADL 120368 (12/20/96 ADL memo re Technical Competitive Assumptions for Market Research))

In late 1998, Maul tested the system by using Iridium handsets in a number of different environments. (2/13/07 Tr. 48:19–49:7, 133:8–14 (Maul)) Based on his own use of these handsets with the operational system, Maul believed ADL’s description of the satellite service “got it right.” (2/13/07 Tr. 46:8–47:18, 48:19–49:12 (Maul); MX 438 at ADL 120368 (12/20/96 ADL memo re Technical Competitive Assumptions for Market Research))

## *VI. IRIDIUM PUBLIC AND PRIVATE EQUITY AND DEBT TRANSACTIONS*

### *A. Private Equity Investments*

From 1992 to 1996, Iridium engaged in a series of private placements with a consortium of private investors, raising

approximately \$1.9 billion from these transactions. (MTX 1 at 3 (7/14/95 Form S-1); MX 632 at IRID-WH 36898-99 (2/19/96 Board Materials))

In August 1992, Iridium Inc. issued a private placement memorandum (PPM) in \*327 connection with an \$800 million private placement offering. (2/26/07 Tr. 93:10-94:6 (Pfleiderer); PX 253 (1992 PPM))

The 1992 PPM was the product of drafting and consultation among representatives from Iridium, Goldman Sachs and Motorola to ensure it was accurate based on the information known at the time. (1/23/07 Tr. 39:16-40:14 (Adams); 10/25/06 Tr. 46:21-47:24 (Gercenstein); 11/6/2006 Tr. 15:8 -16:7 (Mondale))

Jerry Adams, Iridium's then President and COO, was involved in preparing the 1992 PPM and reviewed it for accuracy and completeness prior to its issuance to potential private investors. (1/23/07 Tr. 39:16-40:14 (Adams); *see also* 12/4/06 Tr. 156:7-13 (Hillis (1992 disclosures were "accurate to the best of our ability")); 11/6/06 Tr. 15:8-16:7 (Mondale ("confident" that the 1992 disclosures were accurate)))

On July 29, 1993, the offering presented in the August 1992 PPM closed and the majority of Iridium, Inc.'s stock ownership was transferred from being wholly-owned by Motorola to a consortium of private investors. (MTX 17 (1993 SPA))

In May 1994, Iridium Inc. issued a private placement memorandum in connection with a \$600,000,000 private placement offering. (2/26/07 Tr. 93:10-94:6 (Pfleiderer); MTX 108 (1994 PPM)) The private placement offering set forth in the May 1994 PPM closed in August 1994. (MTX 144 at MOT 1,418,864 (1994 SPA); MTX 108 (1994 PPM))

After the close of the 1994 supplemental private placements, Iridium had raised over \$1.6 billion in equity, (MX 631 at [IR-B 25480, 25482 \(1995 PPM\)](#))).

In November 1995, Iridium, Inc. issued a private placement memorandum for 14 ½% Cumulative Convertible Preferred Stock and Units. Each Unit consisted of a \$100,000 14 ½% Senior Subordinated Discount Note due 2006 and a Warrant to purchase 13.8777 shares of Common Stock of Iridium. (MX 631 (1995 PPM)) The private offering set forth in the November 1995 PPM closed on February 16, 1996. (MX 632 at IRID-WH 36898-99 (2/19/96 Board Materials))

The investors acknowledged in the SPA's executed for the 1993-1996 private placements that they: (i) received and reviewed the PPM; (ii) understood that the PPM did not contain all information that may be relevant or necessary to understand the complexities of the Iridium technology; (iii) had an opportunity to ask questions as needed to understand the Iridium System, and (iv) had "full access to such other information" relating to the Iridium System "as such Investor has requested." (2/1/07 Tr. 17:20-18:21 (Schell); MTX 17 at MOT 26,526 (1993 SPA); MTX 135 at IRID-WH 363 (IL & FS SPA); MTX 144 at MOT 1,418,876 (1994 SPA); MTX 145 at MOT 1,418,915 (Veba SPA); MTX 146 at MOT 1,419,020 (Iridium SudAmerica SPA); MTX 147 at MOT 1,419,090-91 (Korea Mobile SPA))

After the close of the offering in February 1996, Iridium had raised over \$1.9 billion in debt and equity. MTX 1 at 3 (7/14/95 S-1); MX 632 at IRID-WH 36898-99 (2/19/96 Board Materials) This substantial private equity contribution by investors from 1992-1996 supports a finding of Iridium's solvency during that period, and the Court agrees with Motorola's experts on this point. (3/19/07 Tr. 25:14-26:2 (Den Uyl<sup>41</sup>); 2/26/07 Tr. 94:7-95:11 \*328 (Pfleiderer<sup>42</sup>))

<sup>41</sup> Bruce Den Uyl is a managing director and co-head of the financial advisory services practice at Alix Partners. Mr. Den Uyl was called by Motorola and was qualified as an expert in valuation and solvency.

<sup>42</sup> Dr. Paul Pfleiderer is a Professor of Finance at Stanford University. He has a Ph.D. in financial economics from Yale and teaches MBA and undergraduate principles of valuation. The Court accepted Dr. Pfleiderer as an expert in financial economics and corporate finance, including valuation, and he examined Iridium's solvency and capital adequacy from 1995 through the end of January 1999.

*1. Due diligence associated with private investments*

*a. Goldman Sachs*

Goldman Sachs served as placement agent for Iridium's 1992 and 1994 private equity offerings, and helped to identify and pursue the early equity investors. (2/9/07 Tr. 86:18–87:19, 95:7–14 (Attwood))

From 1991 to 1995, Goldman Sachs conducted due diligence on Iridium, including meeting with engineers involved in the project, reviewing market research studies and the business plan, and conducting sensitivity analyses of the Iridium business plan. (2/9/07 Tr. 96:12–98:15 (Attwood))

In connection with its due diligence, Goldman Sachs reviewed all the early market studies, including the 1991 ADL Study, the 1992 and 1993 BAH Studies and other marketing studies commissioned by certain private investors. (2/9/07 Tr. 97:20–22, 121:3–5, 122:21–123:25, 146:2–9 (Attwood); MX 626 at [IR-B 105447, 105450–51](#) (5/24/95 Due Diligence Document Index); MTX 18 (1992 BAH Study from GS files); MTX 19 (1993 BAH Study from GS files); MTX 130 (1992 McLaughlin Study from GS files); MTX 131 (1/93 BAH Presentation re: 1992 study from GS files))

Goldman Sachs also performed its own independent investigation of Iridium's business plan and concluded it was reasonable. ([1995 proposed] 2/9/07 Tr. 99:3–5, 128:7–15 (Attwood (“We [GS] would not have proceeded with that offering if we thought the business plan was unreasonable.”))); *see also* MTX 10 at GSUC 5972 (9/12/96 Goldman IPO Pitch (“credibility of market and revenue projections” is a key variable for valuation)) As part of its due diligence, Goldman Sachs reviewed the System capabilities and limitations (2/9/07 Tr. 121:6–8 (Attwood)), saw videos regarding System performance (2/9/07 Tr. 127:24–128:6 (Attwood)) and learned how the Iridium System was expected to operate, including the line-of-sight limitations of the satellite system.

*b. Early investors*

The experience of Sprint Corp., as an early investor in Iridium, appears to be representative of the experience of other early investors in Iridium. Sprint and most of the other private investors were sophisticated businesses with experience in the telecommunications industry. (2/9/07 Tr. 91:3–6 (Attwood); 11/15/06 Tr. 162:9–163:25 (Mitchell); 2/1/07 Tr. 7:9–8:14 (Schell); MX 1113 at IR–M 115157–60 (Investor Profiles); MX 501 at MOT 1,379,002 (Iridium 1998 10–K); MX 87 at MOT 2,247,508–510 (1/21/99 Prospectus))

Prior to investing in Iridium, Sprint and certain other of the private investors conducted thorough due diligence. (2/1/07 Tr. 8:23–9:13 (Schell); 2/9/07 Tr. 94:4–16 (Attwood); 1/23/07 Tr. 29:23–30:6 (Adams); 10/24/06 Tr. 149:13–22, 158:22–159:2 (Bertiger)) Sprint came to the decision to invest in the Iridium project with its eyes wide open following a detailed review of Iridium's business prospects and did so with knowledge of the line-of-sight limitations to the service. (2/1/07 Tr. 19:19–23, 22:5–24:8, 32:12–33:10, 33:17–34:19 (Schell))

Sprint understood Iridium's business plan, targeted markets, and associated \*329 risks and concluded that the Iridium business plans were reasonable. (2/1/07 Tr. 11:3–9, 19:24–21:23, 39:8–16 43:6–44:11 (Schell)). It appears that other early investors came to the same conclusions as Sprint and had access to the same available information before investing, although there is no direct evidence regarding what these investors knew or their motivations in deciding to invest.

*B. 1995 Contemplated Debt Offering*

In April 1995, Iridium and its financial advisor Goldman Sachs decided to raise additional capital through a high yield debt offering. (MX 624 at IR 67180 (4/19/95 Financing Committee Meeting documents); 12/11/06 Tr. 82:7–83:4 (Daverio)) Goldman Sachs and Merrill Lynch were selected as the underwriters for the contemplated 1995 debt offering (“Contemplated Debt Offering”). (2/9/07 Tr. 119:10–120:1 (Attwood); MTX 1 (7/14/95 Form S–1))

Before going forward with the Form S–1, Goldman Sachs conducted extensive due diligence, including another review of the market projections and forecasts, and a detailed review of the System limitations and capabilities. (2/9/07 Tr. 120:2–121:8 (Attwood); 12/11/06 Tr. 83:22–87:5 (Daverio); MX 625 at IR–M 109519–520 (2/24/95 memo re S–1 Due Diligence)) In

connection with its work on the Contemplated Debt Offering, Goldman Sachs came to the independent conclusion that the Iridium business plan and projections were reasonable. (2/9/07 Tr. 128:7–15 (Attwood))

Upon meeting resistance from prospective investors during road shows relating to the Contemplated Debt Offering, Iridium and Goldman Sachs concluded that the market conditions were not favorable to Iridium, and this led to the abandonment of the Contemplated Debt Offering and to the decision of Iridium's private equity investors to provide financing internally from the ranks of existing equity holders. (12/11/06 Tr. 90:23–93:4, 95:1–96:6, 97:23–98:8, 102:9–16 (Daverio); 2/9/07 Tr. 129:9–130:7 (Attwood); MX 629 at IR 13863–64) Globalstar encountered similar resistance at around this time and also withdrew its bond offering from the market in 1995. (12/11/06 Tr. 99:23–100:5 (Daverio); 2/9/07 Tr. 129:3–130:8 (Attwood); MX 630 at IR 067267)

### *C. Public Equity Offerings*

In June 1997 and January 1999, Iridium World Communications Ltd. (IWCL), a member of Iridium LLC, engaged in public equity offerings. (1/25/07 Tr. 10:25–11:19 (Lavin); MX 68 (IPO Prospectus); MX 87 (Secondary Offering Prospectus))

Merrill Lynch was the lead underwriter on Iridium's June 1997 IPO. (1/29/07 Tr. 69:15–23 (Schmiedeler<sup>43</sup>)) The co-managers for this offering were Donaldson, Lufkin & Jenrette, and Goldman Sachs. (1/25/07 Tr. 14:2–16 (Lavin); MX 68 at MOT 1,266,001 (6/97 IPO Prospectus))

<sup>43</sup> Robert Schmiedeler was Vice President in Investment Banking at Merrill Lynch from 1997 to 1999. Schmiedeler led the Merrill Lynch team for Iridium's 1997 IPO, 1997 and 1998 debt offerings, and January 1999 second equity offering.

Iridium's IPO was quite successful and was oversubscribed (1/29/07 Tr. 108:11–109:2 (Schmiedeler); MX 69 at MLUC 16267 (Merrill Lynch case study of IWCL IPO (“[The] stock price opened at \$22 1/4 ... representing an 11% increase over IPO price”)) and resulted in net proceeds of approximately \$223 million to Iridium. (MX 98 at MOT 958,544 (7/11/98 Series A & B Prospectus))

Merrill Lynch, Goldman Sachs, NationsBank, Salomon Smith Barney (“SSB”), and Soundview were lead underwriters for Iridium's \*330 secondary offering. (1/29/07 Tr. 112:1–4 (Schmiedeler); 2/26/07 Tr. 9:20–10:3 (Jones<sup>44</sup>); 1/25/07 Tr. 15:6–9 (Lavin); MX 87 at MOT 2,247,437 (1/99 Secondary Offering Prospectus))

<sup>44</sup> Thomas Jones was Managing Director of Investment Banking at Salomon Smith Barney from 1997 to 2000. He was the head of the investment banking team at SSB that worked on the Iridium project.

The secondary offering closed successfully on January 21, 1999, resulting in net proceeds of approximately \$242 million. (MX 501 at MOT 1,379,090 (Iridium 1998 10–K)) and was fully subscribed. (MX 87 at MOT 2,247,437 (Secondary Offering Prospectus); MX 501 at MOT 1,379,090 (Iridium 1998 10–K))

Merrill Lynch and SSB believed that the disclosures in the IPO Prospectus and Secondary Offering Prospectus were fair and accurate. (1/29/07 Tr. 105:7–12 (Schmiedeler); 2/26/07 Tr. 45:10–46:2, 78:23–79:12 (Jones)) Notably, the secondary offering closed after commercial activation and only seven months before the bankruptcy filing demonstrating investor confidence when actual service characteristics were fully disclosed.

## *1. Public Equity Due Diligence And Understanding Of System Limitations*

### *a. Merrill Lynch*

As the lead underwriter on Iridium's public offerings, Merrill Lynch performed due diligence that spanned a two year period (1/29/07 Tr. 68:2–10, 69:15–23 (Schmiedeler)) and that involved a review of all areas covered in the offering documents.

(1/29/0 Tr. 68:11–25 (Schmiedeler))

Merrill Lynch received, reviewed, and discussed Iridium’s market research (1/9/07 Tr. 157:20–159:2 (Reiss); 1/29/07 Tr. 77:12–24, 82:4–18, 88:8–89:15, 93:18–94:7, 127:25–128:11, 198:11–200:16 (Schmiedeler); 1/25/07 Tr. 25:22–26:8 (Lavin); MX 102 at 1,052,701, 714 (Memo re Motorola Certificate)) and analyzed Iridium’s 1997 and 1998 projections. (1/29/07 Tr. 101:14–17, 114:8–20, 127:17–24 (Schmiedeler)); MX 55 at IR 8645 (IPO Kick Off Meeting Memo (“The purpose of the meeting was [ ] to provide the underwriters with an update on the development of Iridium’s new business plan and financial model”))

Based on its extensive review, Merrill Lynch determined that Iridium’s projections were reasonably achievable. (1/29/07 Tr. 106:9–13, 140:4–10 (Schmiedeler))

For each of Iridium’s public offerings, Merrill Lynch examined and considered technical issues and the expected and actual performance of the system, including in the case of the secondary offering, using the Iridium phones and receiving updates on actual performance. (1/24/07 Tr. 88:4–16 (Hoppal); 1/29/07 Tr. 91:15–20, 122:15–123:3, 187:16–20 (Schmiedeler); MX 57 at IR 090482, 484 (1/97 Memo re Merrill Lynch IPO Due Diligence Requests))

Merrill Lynch learned through its diligence that the Iridium System had limitations if the line-of-sight between the antenna and the satellite was blocked. (1/29/07 Tr. 183:10–23, 185:22–187:11 (Schmiedeler)); *see also* MX 58 at IR 26899 (1/23–24/97 IPO Due Diligence Meeting Materials (discussing limitations in buildings, vehicles and cities))

Merrill Lynch also understood in 1997 that targeting the business traveler had its risks since satellite service was limited to line-of-sight, and did not function well in buildings and in urban areas. (MX 65 at MLUC 013519 (5/97 Merrill Lynch ECC Memo))

**\*331 b. Salomon Smith Barney**

In 1998, Salomon Smith Barney (“SSB”) became a co-manager of Iridium’s secondary offering. SSB performed due diligence on Iridium for at least seven months before closing of the secondary offering. (2/26/07 Tr. 9:20–10:21 (Jones); MTX 7 at SSBUC 3086 (12/98 ECC Memo)) At the time, SSB had one of the largest telecom groups on Wall Street, was the leading strategic advisor to the telecom industry, had already underwritten offerings for industry participants Globalstar and ICO and had advised many other satellite companies. (2/26/07 Tr. 12:6–14 (Jones); MX 987 at SSBUC 578, 582, 591 (3/98 SSB Discussion Materials); MTX 7 at SSBUC 3097 (12/98 SSB ECC Memo)) Consequently, SSB has a great deal of knowledge concerning the mobile satellite industry sector.

Over the period of March 1998 to January 1999, SSB was in regular contact with Iridium. (MX 991 at SSBUC 2542 (11/98 SSB Prescreening Memo); MX 989 (8/98 SSB Equity Linked Financing Discussion Materials); MX 990 at SSBUC 3444 (10/98 SSB Equity Market Alternatives Discussion Materials)) Investment bankers from SSB reviewed and analyzed Iridium’s projections and examined the assumptions underlying them. (2/26/07 Tr. 13:20–14:2 (Jones); MX 1000 at SSBUC 5180–81 (11/17/98 SSB Due Diligence Questionnaire); MX 1001 at SSBUC 5160 (11/20/98 SSB Questions on Financial Projections); MTX 7 at SSBUC 3086 (12/98 ECC Memo (SSB met with Iridium’s senior management team to review the business model)))

SSB also developed its own projections and analyzed Lehman Brothers’ projections. (2/26/07 Tr. 38:17–40:10 (Jones); MX 1004 at SSBUC 2664–65 (Iridium Model Assumptions re: Iridium Service / Market Penetration))

Upon completion of its review, SSB concluded that Iridium’s projections were reasonable. (2/26/07 Tr. 70:14–71:17 (Jones); MTX 7 at SSBUC 3086 (12/98 ECC Memo (“Iridium has developed an attractive strategy to capitalize on the significant demand and growth potential for MSS services”)))

SSB understood that line-of-sight issues would limit an Iridium satellite phone because, like any satellite phone, it connects to the constellation when it is in line-of-sight to the nearest satellite and therefore would not operate well in urban areas or inside buildings and cars. (MX 1006 at SSBUC 846 (1/6/99 Report re Follow-On Equity Offering))

Thomas Jones of SSB testified that he understood the satellite service worked in clear line-of-sight conditions and thought “people understood exactly what [the Iridium] phone would and wouldn’t do.” (2/26/07 Tr. 47:3 –48:21, 54:11–12 (Jones)) Jones testimony was informed by his opportunity to use the Iridium service after commercial launch. (2/26/97 Tr. 48:2–21 (Jones))

## 2. Equity underwriter valuations of Iridium

From 1997–1999, the equity underwriters assessed Iridium and believed that it had a high positive equity value:

? ? May 1997: Goldman Sachs gave Iridium \$5.4 billion private market equity value. (MX 1289 at GSUC 6627 (5/97 Goldman Sales Memo))

? ? May 1997: Merrill Lynch gave Iridium a \$4.1 billion private market equity value. (1/29/07 Tr. 99:21–100:24 (Schmiedeler); 2/26/07 Tr. 108:11–110:8 (Pfleiderer); 3/19/07 Tr. 54:20–55:10 (Den Uyl); MX 65 at MLUC 13470, 13473 (5/97 Merrill Lynch ECC Memo))

\*332 ? ? December 1998: Merrill Lynch gave Iridium a \$14 billion private market equity value. (MX 93 at MLUC 3387 (12/15/98 Merrill Lynch ECC Memo))

? ? December 1998: SSB gave Iridium an \$11.9 billion private market equity value. (2/26/07 Tr. 154:19–157:2 (Pfleiderer); MTX 7 at SSBUC 3226 (12/22/98 SSB ECC Memo))

In coming to their positive assessments of value, many investment bankers did not rely on or use Iridium’s projections, but performed their own analyses or relied upon the independent work of their research analysts. (1/10/07 Tr. 16:11–19:3, 23:15–25:9, 42:20–43:12 (Reiss); MX 1289 at GSUC 6627 (5/97 Goldman Sales Memo); MTX 7 at SSBUC 3219–3220, 3226 (12/22/98 SSB ECC Memo); MTX 100 at 5704–5708, 5719 (12/15/98 Merrill Lynch Draft Valuation Analysis (determining projections using subscriber, usage, and pricing assumptions and comparison to Globalstar); MX 65 at MLUC 013473–75 (5/97 Merrill Lynch ECC Memo); 2/26/07 Tr. 111:7–113:19, 137:8–138:9 (Pfleiderer); 3/19/07 Tr. 32:9–34:12, 64:23–66:17 (Den Uyl))) The Court does not accept these valuations as true, but does find that their very existence is a factor that tends to rebut the Committee’s assertions regarding insolvency. These underwriter valuations fall into the category of anecdotal information that does not prove solvency or establish enterprise value. What these valuations do demonstrate, however, is that there was a widely held perception on the part of sophisticated Wall Street investment firms that Iridium was a company with a substantial positive value.

### D. Iridium’s Public Debt Offerings

In 1997 and 1998, Iridium LLC, through its affiliates, Iridium Capital Corporation and Iridium Operating LLC, engaged in three public debt offerings. (MX 98 (7/11/97 Series A and B Prospectus); MX 100 (10/9/97 Series C Prospectus); PX 123 (5/8/98 Series D Prospectus))

The lead underwriters for the Series A and B Bond Offering were Chase Securities Inc. and Merrill Lynch. (1/25/07 Tr. 14:17–21 (Lavin); MX 98 at MOT 958,520 (7/11/97 Series A & B Prospectus))

The Series A and B Bond Offering closed on July 16, 1997, resulting in net proceeds of approximately \$746 million to Iridium. (MX 98 (7/11/97 Series A & B Prospectus); MX 487 at MOT 1,351,782 (1997 Iridium 10–K))

The lead underwriters for the Series C Bond Offering were Chase Securities Inc., BT Alex Brown, and Merrill Lynch. (1/25/07 Tr. 14:22–15:1 (Lavin); MX 100 at MOT 967,707 (10/9/97 Series C Prospectus))

The Series C Bond Offering closed on October 17, 1997, resulting in net proceeds of approximately \$293 million to Iridium. (MX 487 at MOT 1,351,782 (1997 Iridium 10–K))

The lead underwriters for the Series D Bond offering were Chase Securities Inc. and Barclays Capital. (1/25/07 Tr. 15:2–5 (Lavin); PX 123 at MLUC 014640 (5/8/98 Series D Prospectus))

The Series D Bond Offering closed on May 13, 1998, resulting in net proceeds of approximately \$342 million to Iridium. (MTX 60 at 22 (9/30/98 Iridium 10–Q))

From 1995 through January 1999, Iridium’s bonds generally traded at a price at or near par value and this indicated that the bond market believed that Iridium would be able to repay the debt owing on the bonds. (2/26/07 Tr. at 143:16–150:1 (Pfleiderer))

Credit rating agencies, including Moody’s and Standard and Poor’s, monitored \*333 Iridium’s risk of default in connection with its bank facilities and bond offerings. The rating agencies did not downgrade Iridium’s credit ratings until March, 1999. (2/26/07 Tr. 150:9–153:10 (Pfleiderer)) This shows a perception of deterioration in credit quality and an increased risk of default that did not arise until approximately five months prior to bankruptcy.

#### *E. Bondholder due diligence and understanding of system limitations*

Committee member Wall<sup>45</sup> invested in Iridium bonds in 1997, 1998 and in February through May of 1999. (1/29/07 Tr. 7:2–5, 8:8–11, 8:17–19 (Dixon<sup>46</sup>); 1/29/07 Tr. 23:6–10, 24:25–25:2, 27:15–28:3 (Wall); MX 104, MX 105, MX 106, MX 108, MX 109 (Wall Account Info.))

<sup>45</sup> Bruno Wall is President of Wall Financial Corporation, an Iridium bondholder and member of the Committee.

<sup>46</sup> John Dixon is a member of the Committee, and Chief Investment Officer of Taras Financial from 1994–2002. As Chief Investment Officer, Dixon was responsible for recommending investments and conducting due diligence.

Former Committee member Alliance Capital purchased Iridium bonds in 1997, 1998 and 1999 with a total investment in the \$100 million-range. (1/29/07 Tr. 40:16–41:22 (Jantzen<sup>47</sup>))

<sup>47</sup> Nelson Jantzen is a Senior Vice President at Alliance Capital, a former Committee member, who ran Alliance’s Public High Yield Group during the 1997 to 1999 timeframe.

These bondholders also invested in competing satellite telecommunications services, such as Globalstar and ICO. (1/29/07 Tr. 31:14–16 (Wall); 1/29/07 Tr. 38:21–39:9 (Jantzen); MX 104 at IRIDCOM 4021 (Wall Account Information); MX 113 at IRIDCOM 3403 (Securities Portfolios))

As a result of their knowledge of the industry and their due diligence, the bondholders, as sophisticated investors, understood that there were risks involved in investing in Iridium, including marketing, technological and regulatory risks. (1/29/07 Tr. 15:24–16:23 (Dixon); 1/29/07 Tr. 45:6–9, 46:4–13, 50:3–8, 53:22–54:1 (Jantzen); MX 1227 at AC 00055 (7/97 Alliance Capital Memo); MX 1229 at AC 00542 (7/22/97 KDP Analyst Report))

## *VII. IRIDIUM’S STOCK PRICE AND ANALYST ASSESSMENTS*

### *A. Iridium Stock Price*

A stock price represents a consensus estimate of expectations for the future of a company based on the discounted value of future cash flows and all manner of other information about the company. (3/19/07 Tr. 49:8–18 (Den Uyl); 2/27/07 Tr. 80:9–81:15 (Pfleiderer); *see also* 2/9/07 Tr. 119:4–9 (Attwood (expressing belief that a company’s stock price evidences its value); *see also* MX 69 at MLUC 16267 (6/9/97 Merrill Lynch Case Study)))

The public stock market reaches a price by aggregating and factoring in information from many sources. (2/26/07 Tr. 120:1–122:3, 127:11–23 (Pfleiderer))

Iridium's price per share represented its market value at a given point in time. (2/26/07 Tr. 127:11–23 (Pfleiderer); 3/20/07 Tr. 102:18–103:2 (Den Uyl))

Throughout 1997 and 1998, Iridium's stock prices ranged from \$17 up to above \$70, implying an equity valuation between \$2.3 and \$10 billion. (See, e.g., 3/19/07 Tr. 49:19–50:2, 79:4–15 (Den Uyl (discussing implied values as of 6/97, 11/97 and 12/98)); 2/26/07 Tr. 126:13–128:12 (Pfleiderer); MTX 7 at SSBUC 3212 (12/22/98 SSB ECC Memo))

**\*334** Iridium's implied market value based on price per share was lower than the discounted cash flow ("DCF") values reached by investment bankers at the time. This correlation between the DCF analysis and the value implied by the public markets is an indication that irrational exuberance did not distort Iridium's stock price. (2/27/07 Tr. 87:19–89:16, 97:10–100:15 (Pfleiderer); 1/8/07 Tr. 192:25–193:13 (Reiss))

Sophisticated market participants at the time considered Iridium's stock price to evidence its value, including:

? ? June 1997: Merrill Lynch found that the IPO price implied a public market value of Iridium of \$2.8 billion. (MX 69 at MLUC 16266 (6/9/97 Merrill Lynch Case Study))

? ? December 1997: Lehman Brothers found a total enterprise value of \$7.9 billion based on Iridium's market capitalization. (MTX 27 at IR 82 (12/8/97 Lehman Brothers Report))

? ? October 1997: Iridium's Global Arrangers noted that Iridium's market capitalization of \$6.2 billion was evidence of its ability to project a positive outlook and value to equity investors. (MX 313 at IR 012609 (10/97 Confidential Information Memorandum))

? ? March–December 1998: SSB consistently analyzed Iridium's stock price and volume and calculated large positive market values. (MX 987 at SSBUC 598 (3/98 SSB Discussion Materials (\$8.3 public market equity value in March 1998)); MX 989 at SSBUC 657 (8/98 SSB Presentation (\$6 billion public market equity value in August 1998)); MX 990 at SSBUC 3454 (10/98 SSB Discussion Materials (\$6.4 billion public market equity value in October 1998))

#### *B. Analysts*

From January 1998 to January 1999 a great number of analysts believed that Iridium had an equity value that ranged between \$4 and \$14 billion. (2/2/07 Tr. 131:24–133:1 (Pfleiderer); see also MTX 32 (Den Uyl's Summary of Analyst Reports) (including 1997, 1998, and 1999); 3/20/07 Tr. 140:10–141:4 (Den Uyl)) Although these assessments do not establish that the value of the company was within that range, this evidence does provide insight regarding the contemporaneous thinking of well-informed market observers. These indications of value are not determinative but do add weight to the proposition that Iridium was a company with a robust value at the time.

Examples of conclusions reached by the analysts who performed a discounted cash flow analysis with respect to Iridium are as follows:

? ? July 1997: DLJ gave Iridium a \$6.2 billion private market equity valuation. (PX 1492 at [IR-B 49124 \(7/24/97 DLJ Report\)](#))

? ? October 1997: BancAmerica Robertson Stephens gave Iridium a \$9.3 billion private market equity value. (MTX 9 at MOT 1,868,070 (10/8/97 BancAmerica Robertson Stephens Report); 1/10/07 Tr. 51:11–53:8 (Reiss))

? ? December 1997: Lehman Brothers gave Iridium an \$11.5 billion private market equity value. (3/19/07 Tr. 46:25–48:11 (Den Uyl); MTX 27 at IR 95 (12/8/97 Lehman Brothers report)); see also MTX 23 at 10 (10/8/97 Lehman Brothers Report (attributing \$16.9B equity value to Iridium))

? ? February 1998: Nationsbank gave Iridium a \$10.6 billion private market equity value. (3/19/07 Tr. 68:10–69:1 (Den Uyl); MTX 26 at \*335 IR 53507 (2/13/98 NationsBank Report))

? ? February 1998: Goldman Sachs found \$10.6 billion private market equity value. (MTX 81 at 11977 (2/98 Goldman Report))

? ? March 1998: Morgan Stanley gave Iridium a \$6.9 billion private market equity value. (3/19/07 Tr. 66:18–67:11 (Den Uyl); 2/26/07 Tr. 135:13–137:19 (Pfleiderer); MTX 8 at MLUC 65 (3/18/98 Morgan Stanley Report))

? ? July 1998: SSB research analyst gave Iridium a \$12.4 billion private market equity value. (MTX 7 at SSBUC 3261 (12/22/98 SSB ECC Memo))

At the time they valued Iridium, the analysts appear to have been aware of line-of-sight limitations applicable to the Iridium service. For example:

? ? August 1995: It was known that the Iridium satellite system had line-of-sight limitations. (MTX 5 at PWC 69290 (08/95 YankeeWatch Report); 1/9/07 Tr. 68:23–70:15 (Reiss))

? ? September 1997: NationsBank wrote that both Iridium and Globalstar have “the need for line-of-sight between users and satellites,” and further noted that “neither system will enable a user to complete a call from inside a conference room without windows, and calls made from inside many buildings and cars (even if the user is next to a window) will not go through.” (MTX 64 at AC 531 (9/16/97 NationsBanc Montgomery Report))

? ? October 1997: Chase High Yield Research described Iridium’s satellite system as something available assuming an unobstructed view of the sky, and noted that tall buildings and dense construction can impair the line-of-sight from the handset to the satellite. (2/7/07 Tr. 38:22–40:12 (Cassin); MX 1230 at AC 00494, 00497 (10/97 Chase High Yield Research Report))

? ? October 1997: BancAmerica Robertson Stephens stated that “[s]atellite transmissions require a line-of-sight between the satellite and receiver on the ground.” (MTX 9 at MOT 1,868,020 (10/8/97 BancAmerica Robertson Stephens Report))

? ? March 1998: Morgan Stanley believed that satellite subscribers would need to “be sure to find an open area where” obstructions “would not interfere with [the] phone’s line-of-sight reception to the satellite.” (MTX 8 at MLUC 000067 (3/98 Morgan Stanley Research Report))

? ? December 1998: CSFB explained that the Iridium satellite system worked where a “line-of-sight transmission is possible.” (MTX 52 at 80 (12/23/98 CSFB Report); 1/10/07 Tr. 53:9–55:20 (Reiss))

## VIII. EVIDENCE REGARDING IRIDIUM’S CAPITAL ADEQUACY

### A. Iridium’s Financial Advisors

From 1993 to 1995, Goldman Sachs served as Iridium’s financial advisor. (2/9/07 Tr. 82:16–83:5, 106:15–24 (Attwood); MX 1208 at GSUC 23281 (1/18/94 Goldman Presentation to Finance Committee); MX 1211 at MOT 1,402,672 (4/20/94 IBOD Minutes))

Goldman Sachs recommended Iridium’s target capital structure of 60% debt and 40% equity and considered the structure conservative. (2/9/07 Tr. 108:19–109:5, 110:20–112:13 (Attwood); MX 1208 at GSUC 23282 (1/94 Goldman Presentation \*336 to Finance Committee); MX 622 at MOT 1,324,452 (12/15/93 Goldman Sachs Preliminary Financing Plan))

Goldman Sachs advised that Iridium first should pursue the equity portion of its capital structure prior to accessing the debt market. (2/9/07 Tr. 86:18–87:19, 110:20–112:13 (Attwood); MX 1208 at GSUC 23281–82 (1/18/94 Goldman Presentation to Finance Committee)) The relationship between Iridium and Goldman Sachs soured and was terminated following the failure

of the Contemplated Debt Offering.

*B. Iridium CFO/CEO*

As CFO from January 1994 through March of 1997, Paul Daverio acted as a member of Iridium's senior management. He attended board meetings, oversaw the accounting function and assisted in Iridium's financing decisions. (12/11/06 Tr. 75:5–77:5 (Daverio))

Daverio believed that Iridium had a reasonable financial plan. (12/11/06 Tr. 130:7–25 (Daverio)) Iridium and its advisors periodically reviewed and revised the plan as changes in Iridium's circumstances or the market dictated. (12/11/06 Tr. 76:23–77:5, 80:5–83:21 (Daverio)) Iridium generally studied multiple alternatives and attempted to be proactive in obtaining funding, including planning for downside scenarios. (12/11/06 Tr. 79:25–80:4, 83:5–21, 107:9–108:13, 140:14–25 (Daverio); MX 912 at MOT 946327–333 (4/19/95 IBOD Materials); MTX 77 at IR 067453–71 (1/18/94 Finance Committee Material); MTX 83 at IR 200418–20 (4/30/97 B & F Committee Material); MTX 83 at IR 2013 84–86 (7/22/96 B & F Committee Material); MTX 86 at [IR–B 59850–859 \(3/13/98 B & F Committee Materials\)](#))

Daverio testified that Iridium's ability to pay its debts as they came due was never an issue during his tenure as CFO. (12/11/06 Tr. 108:24–109:3, 131:8–14 (Daverio))

At the close of the private equity offering in 1996, Daverio believed that Iridium had sufficient equity capital in place. (12/11/06 Tr. 107:6–108:23 (Daverio); MX 634 at IR 67761 (4/16/96 Banking and Finance Committee Meeting Materials))

Upon the completion of the December 1998 financing package and through early 1999, Dr. Staiano expressed his belief that Iridium had sufficient funding in place and would be able to pay its debts as they came due to the point that Iridium was projected to turn cash positive. He also believed in December 1998 that Iridium would be a financial success and would meet the business plan projections. (11/7/06 Tr. 69:15–70:19, 82:3–9, 85:19–86:2 (Staiano))

Demonstrating the sincerity of that belief, in March 1999, Dr. Staiano purchased with his own funds a half million dollars worth of Iridium stock. (11/7/07 Tr. 91:16–23 (Staiano))

*C. KPMG*

As of December 31, 1996, 1997 and 1998, KPMG concluded that Iridium was a going concern, meaning that there was no substantial doubt that it would be able to meet its obligations as they came due for the following 12 months. (1/31/07 Tr. 76:22–78:17, 79:1–82:6, 83:25–87:6, 87:18–88:6 (Milligan); MX 473 (12/96 Completion Memorandum); MX 494 (12/98 Completion Memorandum); MX 496 (12/98 Evaluation of Going Concern))

In March of 1999, KPMG re-examined whether Iridium was a going concern and concluded that no substantial doubt existed about Iridium's ability to continue as a going concern (and pay its debts as they came due) through January 1, 2000. (1/31/07 Tr. 88:10–91:15 (Milligan); MX \*337 497 (3/99 Addendum To Going Concern Memorandum))

As of March of 1999, KPMG concluded that although revenues and subscribers had been below expectations, the original projections were not unreasonable. (1/31/07 Tr. 89:14–91:6 (Milligan); MX 497 (3/99 Addendum To Going Concern Memorandum))

*IX. MOTOROLA SOLVENCY EXPERTS*

Motorola called two expert witnesses who testified regarding Iridium's solvency and capital adequacy: Professor Paul Pfleiderer and R. Bruce Den Uyl.

*A. Paul Pfeleiderer*

The Court accepted Dr. Pfeleiderer as an expert in financial economics and corporate finance, including valuation. (2/26/07 Tr. 83:23–25, 88:14–21 (Pfleiderer))

Dr. Pfeleiderer has a Ph.D. in financial economics from Yale and has been a Professor of Finance at Stanford University for 25 years. Dr. Pfeleiderer teaches principles of valuation to MBA and undergraduate students. (2/26/07 Tr. 82:6–83:22, 86:18–88:13 (Pfleiderer)) Dr. Pfeleiderer was asked by Motorola to examine the solvency and capital adequacy of Iridium between 1995 and 1999. Although Dr. Pfeleiderer has never before given a solvency opinion, this Court found him to be an especially credible witness. He approached the question of Iridium’s solvency from an academic point of view, and he responded to questions, both on direct examination and during cross examination, with great candor. He sincerely believes that market judgments are the most reliable tools for measuring enterprise value.

Professor Pfeleiderer looked at what may be inferred from the decisions made by market participants and examined Iridium’s solvency and capital adequacy from an economics perspective for the period from 1995 through the end of January 1999. (2/26/07 Tr. 88:22–89:12, 90:12–92:10 (Pfleiderer)) Based on his review of market data and the behavior of market participants, Dr. Pfeleiderer concluded that Iridium was solvent and adequately capitalized during this period.

This Court agrees with Professor Pfeleiderer that the value implied by an efficient market fairly reflected the underlying enterprise value of Iridium.

*B. Bruce Den Uyl*

The Court accepted Bruce Den Uyl as an expert in valuation and solvency. (3/19/07 Tr. 6:8–13 (Den Uyl)) Den Uyl has valued companies since at least 1985, including numerous public, telecom, and start-up companies, and companies in the bankruptcy context. (3/19/07 Tr. 4:11–6:2 (Den Uyl))

Den Uyl examined the issue of Iridium’s solvency from June 1995 to the end of January 1999. (3/19/07 Tr. 6:14–7:21, 9:20–10:17 (Den Uyl))

He utilized a number of valuation methodologies, including the DCF approach and market approach, which included looking at guideline companies and comparables, Iridium’s public stock price, debt offerings, and contemporaneous valuations. (3/19/07 Tr. 7:22–9:14 (Den Uyl))

*1. Den Uyl DCF Analysis*

Den Uyl performed a discounted cash flow analysis (or DCF) as of June 30, 1995, November 30, 1997, and December 31, 1998. (3/19/07 Tr. 9:20–10:17 (Den Uyl))

While generally a “base case” DCF is performed, it is also standard practice to perform a sensitivity analysis and examine a “downside case.” A “downside case” factors in additional risks, including the \*338 possibility that results will be lower than the base case projections. (3/19/07 Tr. 12:26–13:4 (Den Uyl))

*a. 1995 DCF analysis*

Under his 1995 “base case,” using Iridium’s 1995 projections and a 30% discount rate, Den Uyl concluded that Iridium was solvent and had an equity value of \$1.7 billion. (3/19/07 Tr. 16:25–17:20 (Den Uyl))

Under his June 1995 “downside case,” Den Uyl reduced Iridium’s 1995 projections by 25%, used a 25% discount rate and concluded that Iridium was solvent and had an equity value of more than \$1 billion. (3/19/07 Tr. 19:19–23 (Den Uyl))

*b. 1997 DCF analysis*

Under his November 1997 “base case,” using Iridium’s 1997 projections and a 30% discount rate, Den Uyl concluded that Iridium was solvent and had an equity value of approximately \$11.9 billion. (3/19/07 Tr. 32: 9–12 (Den Uyl))

Den Uyl performed two “downside case” DCF analyses as of November 30, 1997 using reduced projections: (1) an analyst median and (2) the C & L banking case. (3/19/07 Tr. 32:13–34:2, 36:2–24 (Den Uyl))

Under the 1997 downside analyst case, Den Uyl concluded that Iridium was solvent and had an equity value of more than \$7.5 billion. (3/19/07 Tr. 33:13–35:8 (Den Uyl))

Under the C & L downside “banking case,” Den Uyl concluded that Iridium was solvent and had an equity value of \$5.4 billion. (3/19/07 Tr. 36:2–25 (Den Uyl))

*c. 1998 DCF analysis*

Under Den Uyl’s 1998 base case, using Iridium’s 1998 projections and a 30% discount rate, Den Uyl concluded that Iridium was solvent and had an equity value of about \$15.8 billion. (3/19/07 Tr. 63:15–64:3)

Using reduced revenue projections based on analyst reports and a 25% discount rate, Den Uyl concluded that Iridium was solvent and had an equity value of approximately \$8.8 billion as of December 31, 1998. (3/19/07 Tr. 64:4–22 (Den Uyl))

Using revenue projections taken from the Global Arrangers’ technical consultants and a 23% discount rate, Den Uyl concluded that Iridium was solvent and had an equity value of approximately \$6.4 billion as of that same date. (3/19/07 Tr. 69:12–70:25 (Den Uyl))

Mr. Den Uyl was credible, but his work product also seemed to be largely derivative of the work of others and to be based on a recycling and repackaging of valuation data contained in analyst reports.

*C. Other Evidence Regarding Iridium’s Solvency*

In connection with assessing Iridium’s financial condition, Den Uyl and Dr. Pfeleiderer examined the following indicators of Iridium’s value:

? ? Private equity investments in Iridium. (3/19/07 Tr. 25:12–26:25 (Den Uyl); 2/26/07 Tr. 93:4–98:11)

? ? Contemporaneous third party valuations of Iridium. (See 3/19/07 Tr. 8:22–9:19, 52:13–53:11, 56:7–58:24, 81:1–82:19 (Den Uyl); 2/26/07 Tr. 91:20–92:10, 107:16–110:16, 129:7–130:4 (Pfleiderer); MTX 32 (Den Uyl Equity Analyst Valuation Chart))

? ? The analysis of Iridium’s lenders and their decisions to extend credit. (See 2/26/07 Tr. 159:24–164:24 (Pfleiderer); 2/27/07 Tr. 57:22–58:9, 58:15–25, 59:7–20, 111:19–113:23 (Pfleiderer); 3/19/07 Tr. 56:11–17, 59:8–23, 79:16–80:1 (Den Uyl))

\*339 ? ? Iridium’s stock price and the views of market participants at the time who considered Iridium’s stock price to be evidence of value. (See 3/19/07 Tr. 8:22–9:19, 49:8–18, 79:4–79:15 (Den Uyl); 2/26/07 Tr. 126:16–128:12 (Pfleiderer))

? ? The market’s positive response to and value of other MSS competitors, including Globalstar and ICO. (See 3/19/07 Tr. 8:22–9:18, 40:6–41:20, 71:12–74:9 (Den Uyl); 2/26/07 Tr. 168:11–179:14 (Pfleiderer))

Den Uyl also examined the market multiples of guideline companies in the wireless and satellite industry and compared those multiples to the multiples resulting from his DCF analysis of Iridium. (3/19/07 Tr. 20:15–21:12, 39:8–40:5, 103:25–140:5 (Den Uyl))

### X. COMMITTEE'S SOLVENCY EXPERT

The Committee presented two solvency experts from FTI Consulting, Inc. M. Freddie Reiss, a partner and co-chair of FTI's reorganization practice, analyzed Iridium's solvency using the DCF analysis based on projections prepared by his partner Mark Spragg<sup>48</sup> and using a discount rate of 34.5%. Mr. Reiss considered all of the standard valuation methodologies—the cost approach, precedent transactions, market comparables (or guideline companies), and the DCF methodology—but concluded that only the DCF methodology should be used to value Iridium. (1/8/07 Tr. at 46:14–54:11, 53:15–54:11, 103:8–103:25 (Reiss)).

<sup>48</sup> Mark Spragg, a Senior Managing Director in FTI's Corporate Finance practice, was the Committee's expert responsible for evaluating Iridium's market research instruments and creating the projections used in Reiss' DCF analyses.

Reiss performed two DCF analyses, one at June 30, 1995 and a second at March 31, 1997. (1/8/07 Tr. 15:16–18:5 (Reiss)) Reiss did not perform a DCF valuation after March 31, 1997. (1/8/07 Tr. 160:9–22 (Reiss)) The Court has difficulty in comprehending why FTI made no attempt to value Iridium during the almost two and one-half year period between March 31, 1997 and the petition date, particularly in view of the many significant transactions from a financial point of view that occurred during this period. FTI's election not to directly address such obviously important capital markets transactions is not an oversight, but a calculated decision leading to the inference that FTI's analysis has been manipulated to enable Reiss to express the opinion that Iridium was insolvent.

Reiss ignored and/or did not rely on the following contemporaneous reference points of Iridium's value in his solvency analysis:

- ? ? Iridium's stock price; (1/8/07 Tr. 193:14–194:6 (Reiss))
- ? ? Iridium's market capitalization; (1/8/07 Tr. 194:20–195:18 (Reiss))
- ? ? Iridium analyst reports; (1/10/07 Tr. 37:14–20, 45:11–46:8, 57:22–58:1, 101:7–12 (Reiss))
- ? ? Investment banker valuations of Iridium; (1/10/07 Tr. 10:18–11:6, 101:1–12 (Reiss))
- ? ? Comparable company analyses for Iridium, including satellite or wireless companies; (1/8/07 Tr. 102:18–23, 174:15–18 (Reiss))
- ? ? Globalstar, including its stock price, capital structure, or analyst valuations; and (1/10/07 Tr. 72:5–9; 80:7–16, 101:13–102:1 (Reiss))
- ? ? KPMG's going concern opinion. (1/10/07 Tr. 102:2–24 (Reiss))

**\*340** Reiss elected not to rely on the testimony of numerous witnesses who had knowledge of Iridium's projections and capital markets. (*See generally* 1/8/07 Tr. 137:17–155:18 (Reiss))

Reiss and his partner, Spragg, also did not consider or rely on C & L's final reports or "banking case" projections in forming their opinions. (1/9/07 Tr. 14:9–15:5; 1/10/07 Tr. 33:7–37:5 (Reiss); 1/22/07 Tr. 7:18–9:13 (Spragg ("we did not use the report that came out after the March 31, 1997 2.0 Plan because that came out in June of 1997 [after FTI's last valuation benchmark of March 31, 1997], I believe."))). FTI believed, however, that C & L's final report "validated" their view of Iridium's value. (1/9/07 Tr. 14:9–15:5)

Reiss' unreasonably small capital analysis consisted of calculating an internal rate of return based on the same FTI-created projections that Reiss used in his DCF. (1/10/07 Tr. 149:4–7 (Reiss)) Reiss also opined that Iridium had unreasonably small capital based on its efforts to raise financing in 1995 sufficient to meet cash flow needs through the fall of 1996 (e.g., Iridium's abandoned Contemplated Debt Offering necessitating additional capital inflow from current investors). (1/8/07 Tr.

at 82:24–83:2 (Reiss)). Iridium was ultimately able to raise significant amounts of debt and equity in subsequent transactions that were not considered by FTI in its unreasonably small capital analysis.

*A. The Committee's Adjusted Iridium Projections*

Spragg created revised projections for Iridium four years after Iridium's bankruptcy using data and market research from 1995–1997. (1/12/07 Tr. 48:12–17 (Spragg))

Spragg created his own projections from the bottom up rather than starting with Iridium's revenue projections and analyzing those. (1/12/07 Tr. 46:22–48:11 (Spragg)) Spragg believed it was necessary to create revenue projections for Iridium's business because Iridium was an almost entirely fixed cost business and, therefore, the primary risk facing Iridium was its ability to generate the large revenues needed to meet its obligations. To do so, Spragg used a financial model of Iridium's projections that FTI created. (1/11/07 Tr. 16:19–17:13 (Spragg)).

Spragg created his projections by selecting consultant reports and then adjusting downward from the estimates in those reports. (1/12/07 Tr. 48:4–24 (Spragg))

Spragg disagreed with the methodology used by the experts at the time and, in many cases, decided that the experts at the time made illogical and unreasonable assumptions. (1/12/07 Tr. 49:12–19 (Spragg)). Believing that his analysis of the information was superior to the analysis done at the time, in some cases Spragg substituted his assumptions for the ones made when the projections were initially created. (1/12/07 Tr. 49:22–50:14 (Spragg))

In order to determine whether Iridium's projections and methodologies for creating those projections were reasonable, Spragg compiled his own projections which he believed were based on reasonable assumptions, and then compared those side by side with Iridium's. Because Spragg found a large gap between the two sets of projections, he decided that Iridium's projections were unreasonable. (1/12/07 Tr. 53:10–55:14 (Spragg))

*1. Spragg's 1995 Projections*

Spragg created 1995 Professional Business Traveler (PBT) satellite-only revenue projections. In coming up with his projections, Spragg started with the 6/91 ADL Study and 1993 BAH Report. (1/11/07 Tr. \*341 39:4–39:15 (Spragg)) The 1993 BAH Study discussed subscribers in 2002, five years after commercial activation, while the 6/91 ADL Study estimated subscribers in 2000 and 2007, three and ten years after commercial activation. (PX 1036 at IR 97592 (6/91 ADL Study); MX 402 at MOT 1,886,220 (BAH 1993 2–Volume Study))

For his 1995 projections, Spragg made three adjustments to the “BAH” and “ADL” subscriber numbers—one for handset size, one for service limitations and one for handset price. (1/12/07 Tr. 170:6–16 (Spragg))

Additionally, Spragg made an 85% downward adjustment to both his “ADL” and “BAH” starting subscriber numbers for their purported failure to factor in service limitations. Though not an engineer, Spragg came to this determination through review of the Iritelite small antenna study. (1/11/07 Tr. 49:4–12 (Spragg); 1/12/07 Tr. 109:7–22, 147:17–148:2 (Spragg)) In forming his opinions about the Iritelite study, Spragg did not read any deposition testimony from Motorola or Iridium engineers, nor did he rely on the expert opinions of the technical experts engaged in this case by the Committee. (1/12/07 Tr. 148:3–149:3 (Spragg))

Spragg's 1995 professional traveler subscriber projections for 1998 were approximately 97% less than what Booz Allen and ADL were estimating; his subscriber projections for 2002 were 85–95% less than what ADL and Booz Allen estimated. (1/12/07 Tr. 170:17–171:5 (Spragg))

*2. Spragg's 1997 Projections*

As in the case of the 1995 projections, Spragg substituted his own judgment of the market for that of those Iridium employees

and outside consultants who were preparing estimates of the market for Iridium based on what they knew at the time. Spragg's exercise in looking back and recreating those projections for purposes of litigation exposes his work to particularly close scrutiny and raises questions as to why his work product should be deemed a valid starting point for a DCF analysis. The fundamental question becomes why his revised numbers should be considered more reliable than the numbers that were generated by those who were closest to the development of Iridium's projections and business plans.

To come up with his revised 1997 satellite subscriber projections, Spragg made downward adjustments to certain estimates in the AT Kearny Study. One significant adjustment of 70% was on account of the penetration rate. Spragg relied on a discussion in the C & L October 1996 preliminary report about penetration rates to support his adjustment. (1/22/07 Tr. 37:3–37:10 (Spragg); 2/28/07 Tr. 18:24–19:2 (Kenny)) Kenny of C & L testified that C & L did not quantify the penetration rate in that study but rather was showing the impact of hypothetical changed assumptions. (2/28/07 Tr. 22:5–23:21 (Kenny); *see also* MX 229 at IR 39082–83 (C & L 10/96 Phase I Final Report (noting “C & L has not yet quantified these risks”)))

The other report that Spragg used to come up with his 1997 satellite-only professional business traveler projections was a March 1996 BAH study. That report was not one of the six market research studies relied upon by Iridium in its business plan 2.0, nor was it based on any primary research. (1/22/07 Tr. 9:15–24 (Spragg)) At the time it was created, the 1996 BAH study was not intended to be used by Iridium as a tool for creating projections or assessing demand for Iridium's services. (12/6/06 Tr. 21:16–22:12 (Katz); *see also* MX 157 (BAH 1996 study, Volume 1—Demand Assessment); MX 1076 (BAH proposal to perform research))

\*342 Spragg's 1997 professional traveler subscriber projections for the year 2004 were 88% less than what Iridium had projected for the same year. (1/12/07 Tr. 32:13–23 (Spragg)) Spragg testified his projections were “considerably less” than were Iridium's. (1/12/07 Tr. 32:13–23 (Spragg))

Upon consideration of the methods used by Spragg to adjust the 1997 projections of AT Kearney and Booz Allen, the Court believes that Spragg could not have been purely objective in his selection of data and his determination to reduce subscriber estimates based on handset size, service limitations and pricing factors. Based on the examination and cross-examination of Spragg, the Court is left with the distinct impression that Spragg's work was carried out with litigation bias and for the express purpose of showing that Iridium was insolvent. Therefore, the Court finds that Mr. Spragg's work product is not a reliable starting point for a DCF analysis.

## CONCLUSIONS OF LAW

### XI. BURDEN OF PROOF

<sup>[2]</sup> <sup>[3]</sup> In this phase of the trial, the Committee has the burden of proof to show by a preponderance of the evidence that Iridium was either insolvent or inadequately capitalized at the time of any transfer made during the four-year period from August 13, 1995 through August 13, 1999. As the party seeking to avoid transfers during this time period, the Committee must establish each element of its fraudulent transfer and preference claims, including Iridium's insolvency or the inadequacy of its capital. *See* [Lawson v. Ford Motor Co. \(In re Roblin Indus., Inc.\)](#), 78 F.3d 30, 34 (2d Cir.1996); [Etablissement Kdaq Vaduz v. Piha](#), 901 F.Supp. 139, 140 (S.D.N.Y.1995); [In re Worldcom, Inc.](#), No. 02–13533, 2003 WL 23861928, at \*40 (Bankr.S.D.N.Y. Oct.31, 2003).

The Committee contends that the burden of proof shifts to Motorola to rebut a presumption of insolvency arising under the District of Columbia Uniform Fraudulent Conveyance Act (“DCUFCA”). [Section 28–3102\(b\)](#) of the DCUFCA states that, “a debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.” [D.C.Code § 28–3102](#).<sup>49</sup> The Committee contends that Iridium was “generally not paying its debts” and therefore should be presumed to be insolvent because it deferred \$594 million in contractual payments to Motorola from July to December of 1998, deferred another \$400 million in early 1999 and defaulted on \$90 million of interest payments on its public debt in July of 1999.<sup>50</sup>

<sup>49</sup> The DCUFCA is the District of Columbia's adoption of the Uniform Fraudulent Transfer Act ("UFTA"). The D.C. Legislature adopted the UFTA almost in its entirety on November 27, 1995, and it became effective February 2, 1996. See Feb. 9, 1996, D.C. Law 11-83, § 2, 42 DCR 6773. [Section 28-3102\(b\)](#) is based on [Section 2 of the UFTA](#). *Id.* For the purposes of this litigation, the DCUFCA is applicable because Iridium's principal place of business was located in Washington, D.C.

<sup>50</sup> The Committee did not raise this issue until after the close of evidence in its post-trial briefs. Prior to making this argument, the Committee took the position that it had the burden of proof and so stated in the opening statement of counsel (10/23/06 Tr. 4:17-21 (Danilow)).

<sup>141</sup> <sup>151</sup> It is undisputed that Iridium did not pay \$90 million dollars in interest payments on its public debt in July 1999. "The failure to pay a single debt ... however, ... even over a long period, will usually not justify a finding that a debtor is generally not paying its debts as they become due." [In re Better Care, Ltd.](#), 97 B.R. 405, 409 (Bankr.N.D.Ill.1989); see \*343 also [In re Reed](#), 11 B.R. 755, 760 (Bankr.S.D.W.Va.1981). Thus, the failure to make one \$90 million interest payment one month prior to its bankruptcy filing does not, by itself, support a finding that Iridium was not paying its debts as they became due.

<sup>161</sup> The only other basis for a determination that Iridium was generally not paying its debts as they became due is the approximately \$900 million in payments owed to Motorola that were deferred by Iridium with the consent of Motorola. See [In re All Media Properties, Inc.](#), 5 B.R. 126, 145 (Bankr.S.D.Tex.1980) (making arrangements to extend payments to insiders can be evidence of failure to pay debts as they become due); [In re Int'l Teldata Corp.](#), 12 B.R. 879, 882 (Bankr.D.Nev.1981) (deferral on long-term debt obligations to insiders is evidence of equitable insolvency). In [All Media](#) and [Int'l Teldata](#) the Court considered it a critical fact that the debtor's deferral of payments was to an insider. [In re All Media Props., Inc.](#), 5 B.R. at 147; [In re Int'l Teldata Corp.](#), 12 B.R. at 882.

In its argument regarding deferral of amounts owed to Motorola, the Committee assumes that Motorola is an insider of Iridium. While at some point it may be proven that Motorola is an insider, no evidence was presented on that subject during the trial. The Committee does not cite any cases, nor has this Court found any cases, to support the proposition that the deferral of payments by non-insider creditors should be construed as an indication of equitable insolvency. As such, Iridium's postponement of payments to Motorola may be a sign of financial distress or simple accommodations to manage cash flow before system activation, but the deferral, even when combined with the \$90 million missed interest payment, does not demonstrate that Iridium was generally not paying its debts as they became due. The Committee thus has failed to show that Iridium was equitably insolvent for purposes of [§ 28-3102](#) of the DCUFCA, and so there is no presumption of Iridium's insolvency.

<sup>171</sup> Even if there were such a presumption of insolvency under the DCUFCA, Motorola has offered substantial, credible evidence to rebut any such presumption. A rebuttable presumption created by equitable insolvency under the DCUFCA does not, as the Committee argues, shift to Motorola the burden of persuasion to prove that the nonexistence of insolvency is more probable than its existence. The Committee relies on the legislative commentary to the UFTA, which states that the "presumption imposes on the party against whom the presumption is directed the burden of proving that the nonexistence of insolvency ... is more probable than its existence," but the District of Columbia did not adopt this commentary. As such, the commentary is "merely advisory." See [Prairie Lakes Health Care Sys., Inc. v. Wookey](#), 583 N.W.2d 405, 414 (S.D.1998).

<sup>181</sup> Motorola has also sufficiently rebutted the presumption of insolvency during the 90 days preceding a bankruptcy filing under [11 U.S.C. § 547\(f\)](#) by introducing evidence that Iridium was not insolvent. For the purposes of [§ 547\(f\)](#), "[a] creditor may rebut the presumption by introducing some evidence that the debtor was not in fact insolvent at the time of the transfer. If the creditor introduces such evidence, then the [Committee] must satisfy its burden of proof of insolvency by a preponderance of the evidence." [In re Roblin Indus., Inc.](#), 78 F.3d at 34.

Therefore, counsel for the Committee was correct when he indicated at the outset of the trial that the Committee has the \*344 burden of proof. As such, the Committee must establish by a preponderance of the evidence that Iridium was insolvent or inadequately capitalized at the time of each of the transfers that the Committee seeks to recover. The Court concludes that the Committee has failed to show that Iridium was either insolvent or had unreasonably small capital at the time of these transfers and that the Committee has failed to meet its burden of proof.

## XII. LEGAL STANDARDS FOR PROVING INSOLVENCY/INADEQUACY OF CAPITAL

### A. Insolvency

To prove insolvency, the Committee must demonstrate that the sum of Iridium's debts exceeded the value of all of its assets, at a fair valuation, from August 13, 1995 through August 13, 1999. [11 U.S.C. § 101\(32\)\(A\)](#).

<sup>[10]</sup> <sup>[10]</sup> The Court of Appeals for the Second Circuit has adopted a “flexible approach to insolvency analysis.” [Union Bank of Switzerland v. Deutsche Fin. Servs. Corp.](#), No. 98 Civ. 3251, 2000 WL 178278, at \*8 (S.D.N.Y. Feb. 16, 2000). No rigid approach should be taken regarding the fair valuation of a company within the context of solvency analysis, but rather courts should consider the totality of the circumstances. [Lawson v. Ford Motor Co. \(In re Roblin Indus., Inc.\)](#), 78 F.3d at 38. Additionally, although not dispositive, expert appraisals and valuations should be considered, when possible, in a solvency analysis. *Id.*

“Insolvent” is defined as a “financial condition such that the sum of [the] entity’s debts is greater than all of [the] entity’s property, at a fair valuation ...” [11 U.S.C. § 101\(32\)\(A\)](#); see also [In re Total Technical Servs., Inc.](#), 150 B.R. 893, 899 (Bankr.D.Del.1993) (“Insolvency is defined by the general balance sheet test—the debtor is insolvent if the sum of the debtor’s debt (liabilities) is greater than all of its property at a fair valuation”). Likewise, the DCUFCA states that a “debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets, at a fair valuation.” [D.C.Code § 28–3102\(a\)](#).

<sup>[11]</sup> Fair valuation for a company that can continue day-to-day operations is based on a “going concern” or “market price” valuation. [In re PWS Holding Corp.](#), 228 F.3d 224, 233 (3d Cir.2000).

<sup>[12]</sup> When a business is a going concern, fair value “is determined by the fair market price of the debtor’s assets that could be obtained if sold in a prudent manner within a reasonable period of time to pay the debtor’s debts.” [In re Roblin Indus., Inc.](#), 78 F.3d at 35.

Courts generally look at a combination of valuation methodologies to determine valuation, including: (a) actual sale price, (b) discounted cash flow method, commonly referred to as DCF, (c) adjusted balance sheet method, (d) market multiple approach, (e) comparable transactions analysis, and (f) market capitalization. See, e.g., [In re Coated Sales, Inc.](#), 144 B.R. 663, 670 (Bankr.S.D.N.Y.1992) (actual sale); [MFS/Sun Life Trust–High Yield Series v. Van Dusen Airport Servs. Co.](#), 910 F.Supp. 913, 939–43 (S.D.N.Y.1995) (asset purchase price, DCF, comparable transactions); [In re Zenith Elecs. Corp.](#), 241 B.R. 92, 104 (Bankr.D.Del.1999) (DCF), [Lids Corp. v. Marathon Inv. Partners, L.P. \(In re Lids Corp.\)](#), 281 B.R. 535, 541 (Bankr.D.Del.2002) (adjusted balance sheet, market multiple approach, and comparable transactions); [VFB LLC v. Campbell Soup Co.](#), 482 F.3d 624, 631 (3d Cir.2007) (market capitalization).

### \*345 B. Capital Adequacy

<sup>[13]</sup> <sup>[14]</sup> “In order to determine the adequacy of capital for purposes of [11 U.S.C. § 548\(a\)\(1\)\(B\)\(ii\)\(II\)](#), a court will look to such factors as the company’s debt to equity ratio, its historical capital cushion, and the need for working capital in the specific industry at issue.” [MFS/Sun Life Trust–High Yield Series](#), 910 F.Supp. at 944. While a company must be adequately capitalized, it does not need resources sufficient to withstand any and all setbacks. *Id.* (citing [Credit Managers Ass’n of S. Cal. v. Fed. Co.](#), 629 F.Supp. 175, 187 (C.D.Cal.1985)).

<sup>[15]</sup> In undertaking an analysis of unreasonably small capital, courts compare a company’s projected cash inflows (also referred to as “working capital” or “operating funds”) with the company’s capital needs throughout a reasonable period of time after the questioned transfer. [Moody v. Sec. Pac. Bus. Credit, Inc.](#), 971 F.2d 1056, 1071–72 (3d Cir.1992); see also [Barrett v. Continental Ill. Nat’l Bank & Trust Co.](#), 882 F.2d 1, 4 (1st Cir.1989) (The “critical inquiry when considering whether a transfer or conveyance has left a company with an unreasonably small capital is ... one that weighs raw financial data against both the nature of the enterprise itself and the extent of the enterprise’s need for capital during the period in

question.”).

Only those cash inflows that were reasonable for a company to have expected to receive? whether through new equity, cash from operations, or available credit? are considered in this analysis. [Moody, 971 F.2d at 1072 n. 24, 1073.](#)

<sup>[16]</sup> In determining whether a company was adequately capitalized, courts examine not what ultimately happened to the company, but whether the company’s then-existing cash flow projections (i.e., projected working capital) were reasonable and prudent when made. See [Credit Managers, 629 F.Supp. at 187.](#)

<sup>[17]</sup> Based on the substantial work, both from within and from outside the company, that went into creation and testing of Iridium’s projections, the Court has concluded that these projections were reasonable and prudent when made and that the Committee has failed to prove that Iridium was insolvent or was inadequately capitalized to perform under its business plan.

### XIII. RELEVANCE OF IRIDIUM’S SUBSEQUENT FAILURE IN DETERMINING INSOLVENCY AND/OR INADEQUACY OF ITS CAPITAL

<sup>[18]</sup> <sup>[19]</sup> <sup>[20]</sup> The Committee’s case relies, in part, on the common sense proposition that Iridium’s failure is a strong indication of its insolvency and capital inadequacy during the period when the challenged transfers were made. Courts in this jurisdiction may consider postpetition events to some extent under certain circumstances, but reject the use of improper hindsight analysis in valuing a company’s pre-bankruptcy assets. See [In re Coated Sales, Inc., 144 B.R. at 668.](#) When determining the value of a company’s assets prepetition, “it is not improper hindsight for a court to attribute ‘current circumstances’ which may be more correctly defined as ‘current awareness’ or ‘current discovery’ of the existence of a previous set of circumstances.” *Id.* Such value, however, must be determined as of “the time of the alleged transfer and not at what [assets] turned out to be worth at some time after the bankruptcy intervened.” *Id.*

The Committee has failed to show that there was concealment of relevant circumstances at the time of the transfers or that there was a subsequent discovery of such \*346 circumstances that must to be taken into account when determining Iridium’s value. The record has shown that the market was generally aware of all relevant information regarding Iridium’s system capabilities and limitations, although such awareness of the technical limitations applicable to satellite service is not equivalent to an awareness of the impact that those limitations would have upon Iridium’s ability to achieve its business plan.

Other jurisdictions have also rejected the theory that evidence of insolvency after the petition date is indicative of the value of a company prepetition. [VFB LLC v. Campbell Soup Co., 482 F.3d at 633](#) (determining that the value or insolvency of a company at, or just after, the petition date is not indicative of the value of the company at a transfer date significantly preceding the petition date); [Matson v. Strickland \(In re Strickland\), 230 B.R. 276, 283 \(Bankr.E.D.Va.1999\)](#) (“[t]he fact that the Debtor was insolvent nine months after the alleged transfer is immaterial because evidence of insolvency on a date significantly distant in time from the date of the alleged transfer, without more, is ‘insufficient to support finding of insolvency on date of transfer for preference ... purposes’ ”) (quoting [In re Washington Bancorporation, 180 B.R. 330, 333 \(Bankr.D.D.C.1995\)](#); [Heilig-Meyers Co. v. Wachovia, N.A. \(In re Heilig-Meyers Co.\), 319 B.R. 447, 467 \(Bankr.E.D.Va.2004\)](#)), *aff’d Heilig-Meyers Co. v. Wachovia, N.A., 328 B.R. 471 (E.D.Va.2005)* (noting that simply proving insolvency on the petition date is not sufficient evidence to prove insolvency at the transfer date).

While there is case law supporting the contention that a significant business failure may indicate insolvency a short time prior to filing of the bankruptcy petition, (see [In re Washington Bancorporation, 180 B.R. at 333](#) (holding gross insolvency of \$32 million on the petition date may permit an inference of insolvency on a date preceding the petition date, but that same inference cannot be applied to a date six months prior to the petition date)), there is no case law that supports extending that finding over a four-year prepetition period, as the Committee asks the Court to do here, without other supporting evidence. The failure of a business, even a monumental failure, does not alone prove the insolvency of the business in the months and years prior to its demise.

Iridium’s indisputable postpetition insolvency does not prove that Iridium was insolvent at any point during the four years prior to filing for bankruptcy, and the Committee is unable to demonstrate prepetition insolvency by pointing to postpetition

events, such as the sale of assets for a mere fraction of the cost to design, build and deploy them.

#### XIV. ROLE OF CONTEMPORANEOUS EVIDENCE IN DETERMINING IRIDIUM'S INSOLVENCY AND/OR INADEQUACY OF ITS CAPITAL

##### A. Iridium's Market Capitalization

This Court considered contemporaneous valuations of Iridium, notably evidence of Iridium's stock price and the assessments of market analysts. A company's stock price is an "ideal datapoint" for determining value. [VFB LLC v. Campbell Soup Co.](#), No. Civ. A. 02-137, 2005 WL 2234606, at \*22 (D.Del. Sept.13, 2005). The Court in *VFB* recognized the advantage of contemporaneous market evidence as being "untainted by hindsight or post-hoc litigation interests" and found it important to consider the company's stock price and the opinions regarding value of other contemporaneous market participants. *Id.*

\*347 The Third Circuit, in *VFB*, affirmed the district court's "primary" reliance on the stock price and market-based valuations as a measure of value. [VFB LLC v. Campbell Soup Co.](#), 482 F.3d 624 at 631. The Court reasoned that "[e]quity markets allow participants to voluntarily take on or transfer among themselves the risk that their projections will be inaccurate." *Id.* The Court further noted that market capitalization reflects all the information that is publicly available about a company at the relevant time of valuation. *Id.* (citing [Basic Inc. v. Levinson](#), 485 U.S. 224, 245, 108 S.Ct. 978, 99 L.Ed.2d 194 (1988)).

Absent some reason to distrust it, the market price is "a more reliable measure of the stock's value than the subjective estimates of one or two expert witnesses." [VFB](#), 482 F.3d at 633; [In re Prince](#), 85 F.3d 314, 320 (7th Cir.1996); see also [In re Hechinger Investment Co. of Del.](#), 327 B.R. 537, 548 (D.Del.2005); [Peltz v. Hatten](#), 279 B.R. 710, 738 (D.Del.2002); [Metlyn Realty Corp. v. Esmark, Inc.](#), 763 F.2d 826, 835 (7th Cir.1985) ("[T]he price of stock in a liquid market is presumptively the one to use in judicial proceedings.").

The Supreme Court in [Basic v. Levinson](#), 485 U.S. at 244, 108 S.Ct. 978, explained the importance of market price in determining value:

"With the presence of a market, the market is interposed between seller and buyer and, ideally, transmits information to the investor in the processed form of a market price. Thus the market is performing a substantial part of the valuation process performed by the investor in a face-to-face transaction. The market is acting as the unpaid agent of the investor, informing him that given all the information available to it, the value of the stock is worth the market price."

##### B. Iridium Projections of Future Cash Flows

<sup>[21]</sup> Another important part of the insolvency or unreasonably small capital analysis involves an evaluation of the debtor's own projections of future cash flows and whether those projections were "reasonable and prudent" when made. [MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs.](#), 910 F.Supp. at 943 (expert analyses were correctly based on company projections which were determined to be reasonable; "[T]he question the Court must decide is *not* whether [the] projection was correct, for clearly it was not, but whether it was reasonable and prudent when made." (quoting [Credit Managers](#), 629 F.Supp. at 184)); [Moody v. Sec. Pac. Bus. Credit, Inc.](#), 971 F.2d 1056, 1076 (3d Cir.1992) (upholding district court determination that based on a company's own projections, which it found to be reasonable, the company was not insolvent); see also [VFB](#), 2005 WL 2234606, at \*26, \*29 n. 71 (D.Del.2005) (projections created by expert unreasonable because they "fly in the face of what everyone involved in the spin-off believed at that time") *aff'd* 482 F.3d 624 (3d Cir.2007).

<sup>[22]</sup> One important indication of the reasonableness of a company's projections is management's input into the creation of the projections. See [In re Radiology Assocs., Inc. Litig.](#), 611 A.2d 485, 490 (Del.Ch.1991). An "informed judgment from management" regarding projected earnings, which took into account anticipated events and expectations, was a reasonable valuation. [In re Duplan Corp.](#), 9 B.R. 921, 926 (S.D.N.Y.1980) (internal quotations omitted). " 'Without a firm basis to

replace management's cost projections' with those developed for litigation, the starting point for a solvency analysis should be management's projections." \*348 [In re Longview Aluminum, L.L.C., Nos. 03 B 12184, 04 A 01051, 04 A 00276, 04 A 00279, 2005 WL 3021173, at \\*9 \(Bankr.N.D.Ill. July 14, 2005\)](#) (rejecting expert's projections as an unreliable method of determining solvency).

<sup>[23]</sup> <sup>[24]</sup> When there is "substantial evidence presented to show that the [b]usiness [p]lan was prepared in a reasonable manner, using supportable assumptions and logically consistent computations," a "[b]usiness [p]lan constitutes a fair, reasonable projection of future operations" and "alternative projections of future operations" should be rejected. [In re Mirant Corp., 334 B.R. 800, 825 \(Bankr.N.D.Tex.2005\)](#). Here the Committee bases its case for insolvency on alternative projections that must be rejected because they disregard the deliberative process of development and testing that produced Iridium's projections, projections that by virtue of that deliberative process appear to be reasonable.

### C. Analysts, Investors and Lenders

<sup>[25]</sup> Expert analysis by investment bankers that confirms the validity of management's projections is an indicator of reasonableness. [In re Duplan Corp., 9 B.R. at 926 n. 9](#) (rejecting bondholders attempts to discard management's projections during litigation, when expert analysis by Bear Stearns confirmed the validity of the projections). Similarly, a thorough analysis by an independent accounting firm of the projections that affirms their validity is an indicator of reasonableness. [In re Fiberglass Indus., Inc., 74 B.R. 738, 745-746 \(Bankr.N.D.N.Y.1987\)](#) (rejecting an after-the-fact revision to the projections). Here, the role played by Coopers & Lybrand in analyzing Iridium's projections is such an indicator of reasonableness.

Courts further recognize that "[a] powerful indication of contemporary, informed opinion as to value" comes from private investors who "[w]ith their finances and time at stake, and with access to substantial professional expertise, [ ] concluded at the time [ ] that the business was indeed one that could be profitably pursued." [In re Longview Aluminum, 2005 WL 3021173, at \\*7; see also Davidoff v. Farina, No. 04 Civ. 7617, 2005 WL 2030501, at \\*10, \\*11, n. 19 \(S.D.N.Y. Aug. 22, 2005\)](#) (finding it important that "sophisticated investors with the most intimate knowledge of [the debtor's] business plan and capitalization had confidence in the company's future and certainly did not think that the company was undercapitalized" since it makes "no economic sense for defendants to invest literally billions of dollars in a venture that they knew would fail."); [Metlyn Realty Corp. v. Esmark, Inc., 763 F.2d at 835](#) ("The price at which people actually buy and sell, putting their money where their mouths are, is apt to be more accurate than the conclusions of any one analyst.")

In [Peltz v. Hatten, 279 B.R. at 740](#), the Court credited the valuations of the "informed and sophisticated" parties at the time, whose beliefs were confirmed by both market comparables and contemporaneous DCF studies. [279 B.R. at 740](#). The [Peltz](#) Court rejected an expert's DCF "done after the fact and for the purpose of proving a point in an adversarial proceeding," finding it "too subjective and too subject to manipulation." [Peltz, 279 B.R. at 741-742; see also In re Hechinger Inv. Co. of Del., 327 B.R. at 548](#) ("because valuation is, to a great extent, a subjective exercise [ ], the court will give deference to prevailing marketplace values rather than to values created with the benefit of hindsight for the purpose of litigation") (internal citations omitted); [In re Prince, 85 F.3d at 320](#) ("where market information is available, looking to the stock's 'fair market \*349 value' " is "the most accurate representation of the present value of the stock's future cash flows."); [Metlyn Realty, 763 F.2d at 835](#) (stock price is a valuation that includes the information of many professionals and is "an unusually reliable source of information").

Courts have also found comparable analyses involving developing companies to be a reliable valuation method. [Gentile v. SinglePoint Fin., Inc., No. Civ. A. 18677-NC, 2003 WL 1240504, at \\*6 \(Del.Ch. Mar.5, 2003\)](#) (relying on a comparable analysis between a software company in the "product development" stage and other emerging growth companies); [VFB, 2005 WL 2234606, at \\*27](#).

Sophisticated Wall Street firms, such as Merrill Lynch and Solomon Smith Barney, were underwriters of Iridium's equity and debt offerings. In addition, the DCF and comparables analyses performed or endorsed by the underwriters and analysts at the time attributed large positive values to Iridium. These are the same types of valuations to which Courts have given great deference. *See, e.g.,* [VFB, 2005 WL 2234606, at \\*26-27; Peltz v. Hatten, 279 B.R. at 740](#) (deferring to the "the informed and sophisticated" investment bankers in the case). Although these analyst reports were not admitted into evidence for the truth of the conclusions reached regarding Iridium's enterprise value, the reports nonetheless do reflect the assessments of analysts at

the time they were prepared and reveal the prevailing perceptions as to Iridium's value. These assessments of value by analysts do not establish the value of Iridium, but these multiple judgments, all of which are consistent with positive value, do demonstrate what sophisticated observers believed to be true and provide ancillary support for concluding that Iridium was not insolvent.

<sup>[26]</sup> Courts examining the question of adequate capital also place great weight on the ability of the debtor to obtain financing. See [Moody](#), 971 F.2d at 1071–73. The fact that Iridium closed on three syndicated bank loans and raised over \$2 billion in the capital markets between 1996 and 1999 is an indication of both solvency and capital adequacy. See [Credit Managers Ass'n of S. Cal. v. Fed. Co.](#), 629 F.Supp. at 187.

#### XV. EXPERT TESTIMONY ON INSOLVENCY AND INADEQUATE CAPITAL

Messrs. Reiss and Spragg's failure to reconcile their opinions of insolvency and inadequate capital with the contradictory evidence of positive value attributed to the business at the time provides sufficient reason for this Court to question the reliability and credibility of their opinions.

##### A. Legal Standards Regarding The Reliability And Credibility Of Expert Testimony

<sup>[27]</sup> A proponent of expert testimony must demonstrate that the proffered testimony is both reliable and relevant. [Daubert v. Merrell Dow Pharm., Inc.](#), 509 U.S. 579, 589, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993); [Amorgianos v. Nat'l R.R. Passenger Corp.](#), 303 F.3d 256, 265 (2d Cir.2002).

<sup>[28]</sup> The [Daubert](#) factors apply not only to the admissibility of evidence, but also apply to weight and credibility determinations. See, e.g., [Elliott v. Commodity Futures Trading Comm'n](#), 202 F.3d 926, 934 (7th Cir.2000) (affirming district court's decision to ignore unreliable testimony and finding that a "fact-finder should employ the reliability benchmark in situations ... in which unreliable expert testimony somehow makes it in front of the fact-finder, and assign the unreliable testimony little if any weight."); [Libas, Ltd. v. \\*350 U.S.](#), 193 F.3d 1361, 1366 (Fed.Cir.1999) (reliability of expert testimony applies to the weight accorded to that testimony as well as its admissibility).

<sup>[29]</sup> To assess whether expert testimony meets the requisite standards the court should undertake "a rigorous examination of the facts on which the expert relies, the method by which the expert draws an opinion from those facts, and how the expert applies the facts and methods to the case at hand." [Amorgianos](#), 303 F.3d at 267.

<sup>[30]</sup> An expert's opinion that is not "based on sufficient facts or data" nor "the product of reliable principles and methods properly applied," should be rejected. [Lippe v. Bairnco Corp.](#), 288 B.R. 678, 686 (S.D.N.Y.2003) *aff'd* 99 Fed.Appx. 274 (2d Cir.2004); [In re Rezulin Prods. Liab. Litig.](#), 369 F.Supp.2d 398, 425 (S.D.N.Y.2005) (rejecting expert testimony where "the plaintiffs' experts have ignored a large amount of information that calls many aspects of the [expert's theory] into question" and explaining that "any theory that fails to explain information that otherwise would tend to cast doubt on that theory is inherently suspect.")

<sup>[31]</sup> An expert's disregard for methodology advocated by valuation authorities and typical practice in investment banking and academia shows that his opinions are not the product of "reliable principles and methods." [Lippe](#), 288 B.R. at 690.

<sup>[32]</sup> Expert opinion is unreliable and not based on sufficient facts and data when the expert "made no attempt to reconcile his view [ ] with a number of real world events" and "fail[s] to acknowledge and account for these events." [Point Prod. A.G. v. Sony Music Entertainment, Inc.](#), No. 93 Civ. 4001, 2004 WL 345551, at \*10 (S.D.N.Y. Feb.23, 2004).

<sup>[33]</sup> "[F]ailure to look" at facts, "even for a reality check" means that an expert lacks sufficient facts and renders his opinion unreliable. [Zenith Elecs. Corp. v. WH-TV Broadcasting Corp.](#), 395 F.3d 416, 418 (7th Cir.2005).

*B. The Expert Opinion Testimony Regarding Insolvency Offered By The Committee Is Not Persuasive*

Messrs. Reiss and Spragg's analyses do not adequately explain, rebut, or analyze contemporaneous market valuations that indicate Iridium was solvent leading the Court to seriously question the reliability of the opinions expressed by these experts.

<sup>[34]</sup> A court should reject an expert's conclusions when there is "an analytical gap between the data and the opinion proffered." See [Gen. Elec. Co. v. Joiner](#), 522 U.S. 136, 146, 118 S.Ct. 512, 139 L.Ed.2d 508 (1997); [Nat'l Communications Ass'n, Inc. v. Am. Tel. & Tel. Co.](#), No. 92 Civ. 1735, 1998 WL 118174, at \*46 (S.D.N.Y. March 16, 1998) (rejecting economist's opinion because he ignored experience in the market).

<sup>[35]</sup> Similarly, a court should exclude expert valuation testimony if the expert bases his analysis on an inappropriate set of cash flow projections, did not consider market values, and cannot explain the unreasonable implications of his analysis. [Frymire-Brinati v. KPMG Peat Marwick](#), 2 F.3d 183, 186-87 (7th Cir.1993).

An inability to reconcile a comparable companies analysis and DCF analysis has been determined to be an indicator of unreliability. [Lippe v. Bairnco](#), 99 Fed.Appx. 274, 279 (2d Cir.2004); [To-Am Equip. Co. v. Mitsubishi Caterpillar Forklift Am., Inc.](#), 953 F.Supp. 987, 996-997 (N.D.Ill.1997) *aff'd* 152 F.3d 658 (7th Cir.1998) (finding expert analysis was not credible because price-to earnings ratio \*351 that DCF implied left DCF analysis "open to attack" and made it "farfetched").

<sup>[36]</sup> Mr. Spragg's opinions are suspect because he ignored or wrongly discarded Iridium's projections and much of the contemporaneous market research underlying those projections and instead created his own projections for litigation purposes. [In re Longview Aluminum, L.L.C.](#), 2005 WL 3021173, at \*7-8 (rejecting expert's analysis as insufficient to rebut the reasonableness of management's projections); see also [In re Fiberglass Indus., Inc.](#), 74 B.R. at 745-746 (finding that DCF analysis should use the projections prepared by management, who was well-qualified and experienced). Where alternative projections "are no better supported by the evidence than are those in the Business Plan," the projections in management's business plan should be used in the DCF. [In re Mirant Corp.](#), 334 B.R. at 825.

Mr. Reiss' opinions are similarly open to doubt. While the discounted cash flow method is a valid and standard approach ([In re Radiology Assocs. Inc. Litig.](#), 611 A.2d at 489), and may even be the preferred method for valuing a business such as Iridium,<sup>51</sup> the DCF "methodology has been subject to criticism for its flexibility; a skilled practitioner can come up with just about any value he wants." [To-Am Equip. Co.](#), 953 F.Supp. at 996-97. For this reason, it is important to validate conclusions reached using this methodology by comparing the results obtained when other accepted approaches to valuation are used.

<sup>51</sup> See [Lippe v. Bairnco Corp.](#), 288 B.R. at 689 (citing [Frymire-Brinati v. KPMG Peat Marwick](#), 2 F.3d at 186) (finding DCF to be "the most reliable method for determining the value of a business"); [Owestrom v. Federated Dep't Stores, Inc.](#), 84 F.Supp.2d 483, 488 (S.D.N.Y.2000), *aff'd*, 2 Fed.Appx. 81 (2d Cir.2001) (finding that DCF analysis is the "preeminent valuation methodology") (internal quotations omitted); [In re Med Diversified, Inc.](#), 334 B.R. 89, 99 (Bankr.E.D.N.Y.2005) (finding that the "failure to use the DCF method amount[ed] to a material flaw in [the expert's] methodology"); [Shubert v. Lucent Techs. Inc. \(In re Winstar Communications, Inc.\)](#), 348 B.R. 234, 276 (Bankr.D.Del.2005), *aff'd*, 2007 WL 1232185 (D.Del. Apr.26, 2007) (stating that preferred method of valuing a company as a going concern is DCF); [TV58 Ltd. Partnership v. Weigel Broad. Co.](#), 1993 WL 285850, at \*4 (Del.Ch. July 22, 1993) (finding when a company is a start-up, DCF is "most appropriate" method to value the company).

<sup>[37]</sup> Mr. Reiss' sole reliance on the DCF analysis to the exclusion of other valuation methodologies substantially diminishes the weight to be accorded to his opinion. Here, Mr. Reiss' use of only one valuation methodology "simply did not provide the necessary 'check' on the value he arrived at that would render that value a reliable measure of the company's worth." [In re Med Diversified, Inc.](#), 334 B.R. 89, 99 (Bankr.E.D.N.Y.2005).

Mr. Reiss' opinions are also entitled to less weight because of his conscious disregard of traditional valuation techniques and contemporaneous market evidence, including Iridium's stock price, which the courts view as a critical piece of information in valuing a company. See [VFB](#), 482 F.3d at 631. Basing his opinion only on two DCF analyses, combined with Mr. Reiss' inability to reconcile his conclusions of insolvency and inadequate capital with the market validation of Iridium's business plan and positive value at the time, leads to the conclusion that his opinions are of doubtful reliability. See [Lippe](#), 288 B.R. at 690; [Point Prods. A.G. v. Sony Music Entm't, Inc.](#), 2004 WL 345551, at \*10.

This Court follows the reasoning of the courts in *Peltz v. Hatten* and *VFB*. In *Peltz*, the court rejected the solvency expert's opinion that a valuation was unreasonable \*352 when that valuation had been agreed to by informed and sophisticated parties and supported by market comparables. *279 B.R. at 738–40, 744*. After rejecting the expert's opinion, it found the trustee could not carry its burden and thus, the fraudulent transfer claims were decided in favor of the defendant. *Id. at 748*.

In *VFB*, the court also rejected the expert solvency analyses that it found to be unreliable and unpersuasive. The court then determined that “[b]ecause the most persuasive evidence runs directly contrary to its position,” *VFB* had not met its burden to prove insolvency and inadequate capital by a preponderance of the evidence. *2005 WL 2234606 at \*31*. The Third Circuit affirmed the district court's judgment that the valuations of hired experts were a “side-show to the disinterested evidence of *VFB*'s capitalization in one of the most efficient capital markets in the world.” *VFB, 482 F.3d at 629*.

<sup>[38]</sup> A solvency analysis lacks credibility when an expert uses projections that “fly in the face of what everyone[ ] believed at that time.” *VFB, 2005 WL 2234606 at \*30 n. 71*. Here, Messrs. Reiss and Spragg's conclusions of insolvency and inadequate capital do not correlate with the market validation of Iridium's business plans and the positive value attributed to the business during the relevant period. This failure of the Committee's experts to reconcile their conclusions with the prevailing market judgment or to cast serious doubt on the reliability of that market judgment provides sufficient reason for this Court to seriously question the reliability of their opinions.

In light of the doubts surrounding the opinions of Messrs. Spragg and Reiss, the Committee has failed to carry its burden of proving, by a preponderance of the evidence, that Iridium was insolvent or had unreasonably small capital at the time of the questioned transfers.

### CONCLUSION

Notwithstanding its considerable length, this opinion can be reduced to a very basic proposition. The outcome of the solvency phase of the trial is due to the Committee's failure, despite diligent effort and passionate, effective advocacy, to carry its burden of proof on the central themes of insolvency and capital adequacy.

Upon application of the familiar litigation paradigm of burden of proof, the outcome here is relatively routine—the plaintiff Committee has not proven insolvency by a preponderance of the evidence. That failure of proof is due principally to the existence of conflicting market evidence that could not be credibly explained away and that throughout the relevant period (even as bankruptcy was imminent) pointed to a positive enterprise value for Iridium.

The fact that Iridium failed in such a spectacular fashion stands out as a disturbing counterpoint to the market's optimistic predictions of present and future value for Iridium, but in the end, the market evidence could not be denied. The capital markets synthesized and distilled what all the smart people of the era knew or believed to be true about Iridium. Given the overwhelming weight of that market evidence, it may be that the burden of proving insolvency and unreasonably small capital simply could not be met under any circumstances, regardless of the evidence adduced, in the wake of the Third Circuit's *VFB* decision, an influential case that has helped to illuminate the proper way to resolve the valuation questions presented here.

Therefore, Counts I, II, III and IV of the Committee's complaint are dismissed \*353 on account of the failure to establish an essential statutory element for recovery. Motorola shall submit an Order consistent with this Opinion in a form acceptable to the Committee, and the parties are directed to attend a case status conference on September 12, 2007 at 10:00 a.m. to consider procedures applicable to the resolution of Counts V, VIII, IX and X, the causes of action of the complaint that remain open and unresolved.

### All Citations

373 B.R. 283

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

## Filings (11)

| Title   | PDF   | Court           | Date          | Type   |
|---|---|-----------------|---------------|--------|
| <p><b><u>1. Motion for an Order Pursuant to Sections 363 and 105(A) of the Bankruptcy Code (A) Authorizing the Debtors to Accept and Implement that Certain Letter of Intent With Respect to the Purchase of Substantially All of Its Assets Made by Castle Harlan, Inc., (B) Authorizing Bidding Procedures, Including Approval of a Break-Up Fee, for the Sale of Assets Outside of the Ordinary Course of Business, (C) Authorizing Modifications to the Debtors' Employee Retention and Severance Plan, (D) Establishing A H</u></b></p> <p>In re: IRIDIUM OPERATING LLC, Iridium LLC, Iridium Capital Corp., Iridium IP LLC, Iridium Roaming LLC, Iridium (Potomac) LLC, Iridium Promotions, Inc., Debtors.<br/>2000 WL 35795611</p> |    | Bkrtcy.S.D.N.Y. | May 31, 2000  | Motion |
| <p><b><u>2. Motion for an Order Pursuant to Section 365 of the Bankruptcy Code and Fed. R. Bankr. P. 2002 and 6006 Approving the Debtors' Rejection of Certain Executory Contracts and Unexpired Leases</u></b></p> <p>In re: IRIDIUM OPERATING LLC, Iridium LLC, Iridium Capital Corp., Iridium IP LLC, Iridium Roaming LLC, Iridium (Potomac) LLC, Iridium Promotions, Inc., Debtors.<br/>2000 WL 35795610</p>  |    | Bkrtcy.S.D.N.Y. | Apr. 28, 2000 | Motion |
| <p><b><u>3. Limited Objection of 1575 Eye Street Associates To Debtors' Motion for an Order Pursuant to Section 363 of the Bankruptcy Code Granting Omnibus Authorization for Sales of Estate Property without Additional Notice or Hearing</u></b></p> <p>In re: IRIDIUM OPERATING LLC, Iridium LLC, Iridium IP LLC, Iridium Capital Corp., Iridium Roaming LLC, Iridium (Potomac) LLC, Debtors.<br/>2000 WL 35795609</p>  |  | Bkrtcy.S.D.N.Y. | Mar. 16, 2000 | Motion |
| <p><b><u>4. Motion for an Order Pursuant to Sections 105 and 363 of the Bankruptcy Code Granting Omnibus Authorization for Sales of Estate Property without Additional Notice or Hearing</u></b></p> <p>In re: IRIDIUM OPERATING LLC, Iridium LLC, IRIDIUM IP LLC, Iridium Capital Corp., Iridium Roaming LLC, Iridium (Potomac) LLC, Iridium Promotions, Inc., Debtors.<br/>2000 WL 35795608</p>   |  | Bkrtcy.S.D.N.Y. | Mar. 09, 2000 | Motion |
| <p><b><u>5. Limited Objection by the United States Trustee to Request to Obtain Post-Petition Financing</u></b></p> <p>In re IRIDIUM OPERATING, LLC., et al., Debtors.<br/>2000 WL 35795607</p>   |  | Bkrtcy.S.D.N.Y. | Feb. 10, 2000 | Motion |
| <p><b><u>6. Motion for Orders: (A) Authorizing Debtors in Possession to Obtain (i) Interim Secured Postpetition Financing on a Superpriority Basis Pursuant to 11 U.S.C.</u></b></p>  |  | Bkrtcy.S.D.N.Y. | Feb. 09, 2000 | Motion |

| Title  | PDF   | Court           | Date          | Type             |
|--|---|-----------------|---------------|------------------|
| <p><a href="#"><u>Section 364 And Granting Adequate Protection and (ii) Limited Use of Cash Collateral; (B) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(C)</u></a><br/>           In re: IRIDIUM OPERATING LLC, Iridium LLC, Iridium Capital Corp., Iridium IP LLC, Iridium Roaming LLC, Iridium (Potomac) LLC, Iridium Promotions, Inc., Debtors.<br/>           2000 WL 35795606</p>   |   |                 |               |                  |
| <p><a href="#"><u>7. Motion for Order Approving Third Stipulation (A) Setting Forth the Terms of a Financing Arrangement Pursuant to Section 364(b) of the Bankruptcy Code, (B) Regarding Limited Use of Collateral by the Debtors, and (C) Granting Adequate Protection</u></a><br/>           In re: IRIDIUM OPERATING LLC, Iridium LLC, Iridium Capital Corp., Iridium IP LLC, Iridium Roaming LLC, Iridium (Potomac) LLC, Debtors.<br/>           1999 WL 35018205</p> |    | Bkrtcy.S.D.N.Y. | Dec. 15, 1999 | Motion           |
| <p><a href="#"><u>8. Amended Motion for an Administrative Order Pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals</u></a><br/>           In re: IRIDIUM OPERATING LLC, Iridium LLC, Iridium IP LLC, Iridium Capital Corp., Iridium Roaming LLC, Iridium (Potomac) LLC, Debtors. In re: Iridium World Communications Ltd., Debtor.<br/>           1999 WL 35018204</p>                |    | Bkrtcy.S.D.N.Y. | Nov. 03, 1999 | Motion           |
| <p><a href="#"><u>9. First Amended Disclosure Statement With Respect to Joint Chapter 11 Plan of Liquidation of Iridium Operating LLC</u></a><br/>           In re: IRIDIUM OPERATING LLC, Debtor.<br/>           2009 WL 6540717</p>  |  | Bkrtcy.S.D.N.Y. | Sep. 04, 2009 | Filing           |
| <p><a href="#"><u>10. First Amended Joint Chapter 11 Plan of Liquidation of Iridium Operating LLC</u></a><br/>           In re: IRIDIUM OPERATING LLC, Debtor.<br/>           2009 WL 6540716</p>  |  | Bkrtcy.S.D.N.Y. | July 24, 2009 | Filing           |
| <p><a href="#"><u>11. Report of Dr. Joseph S. Kraemer</u></a><br/>           IRIDIUM OPERATING LLC, Iridium Capital Corp., Iridium IP LLC, Iridium LLC, Iridium Roaming LLC, Iridium (Potomac) LLC, v. MOTOROLA, INC.<br/>           2005 WL 6501061</p>   |  | Bkrtcy.S.D.N.Y. | Mar. 07, 2005 | Expert Materials |

**Negative Treatment**

**Negative Citing References (2)**

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

| Treatment             | Title  | Date          | Type | Depth   | Headnote(s) |
|-----------------------|--|---------------|------|---|-------------|
| Declined to Extend by | 1. <a href="#">In re Energy Future Holdings Corp.</a> <b>MOST NEGATIVE</b> <br>513 B.R. 651 , Bkrtcy.D.Del.<br>BANKRUPTCY - Discovery. Indenture trustee was entitled to discovery on debtor's solvency/insolvency.-  | Aug. 05, 2014 | Case |  | —           |
| Distinguished by      |  2. <a href="#">In re Tronox Incorporated</a> <br>503 B.R. 239 , Bkrtcy.S.D.N.Y.<br>BANKRUPTCY - Avoidance. Federal Debt Collection Practices Act qualified as "applicable law" under strong-arm provision.- | Dec. 12, 2013 | Case |  | —           |

### History (3)

#### Direct History (1)

1. [In re Iridium Operating LLC](#)    
373 B.R. 283 , Bankr.S.D.N.Y. , Aug. 31, 2007

#### Related References (2)

2. [In re Iridium Operating LLC](#)   
285 B.R. 822 , S.D.N.Y. , Sep. 23, 2002
3. [Iridium Operating LLC v. Motorola, Inc.](#)  
2003 WL 21507196 , S.D.N.Y. , June 30, 2003

Citing References (276)

| Treatment   | Title   | Date          | Type                    | Depth     | Headnote(s)   |
|-------------|---|---------------|-------------------------|-----------|---|
| Examined by | <p><b>1. <a href="#">Freeland v. Iridium World Communications, Ltd.</a></b> ”</p> <p>545 F.Supp.2d 59, 70+ , D.D.C.</p> <p>SECURITIES REGULATION - Judgment. Doctrine of collateral estoppel did not preclude contract creditor from challenging projections’ reasonableness.</p>   | Apr. 03, 2008 | Case                    | ■ ■ ■ ■ ■ | <p><a href="#">26</a></p> <p>B.R.</p>   |
| Examined by | <p><b>2. <a href="#">P 94,636 FREELAND, ET AL. V. IRIDIUM WORLD COMMUNICATIONS, LTD., ET AL.</a></b></p> <p>Fed. Sec. L. Rep. P 94636+</p> <p>U.S. District Court, D. District of Columbia. Civil Action No. 99-1002 (consolidated). 545 F. Supp.2d 59. Fed. Sec. L. Rep. ¶ 94,636. April 3, 2008. Opinion in full text. Opinion...</p>                 | Apr. 03, 2008 | Administrative Decision | ■ ■ ■ ■ ■ | —   |
| Examined by | <p><b>3. <a href="#">Opening Brief of LaSalle Bank National Association as Trustee</a></b> ”</p> <p>In re: DOCTORS HOSPITAL OF HYDE PARK, INC., Debtor. Appeals of: LaSalle Bank National Association f/k/a LaSalle National Bank, as Trustee for Certific... 2009 WL 2158965, *2158965+ , 7th Cir. (Appellate Brief)</p>                               | July 06, 2009 | Brief                   | ■ ■ ■ ■ ■ | <p><a href="#">25</a></p> <p><a href="#">26</a></p> <p>B.R.</p>                           |
| Examined by | <p><b>4. <a href="#">Reply Brief of Appellant Lasalle Bank National Association, as Trustee</a></b> ”</p> <p>LASALLE BANK NATIONAL ASSOCIATION, f/k/a LaSalle National Bank, as Trustee for Certificate Holders of Asset Securitization Corporation Commercial Pass... 2008 WL 751741, *751741+ , N.D.Ill. (Trial Motion, Memorandum and Affidavit)</p> | Jan. 22, 2008 | Motion                  | ■ ■ ■ ■ ■ | <p><a href="#">19</a></p> <p><a href="#">25</a></p> <p><a href="#">37</a></p> <p>B.R.</p> |
| Examined by | <p><b>5. <a href="#">Reply Brief of Appellant LaSalle Bank National Association, as Trustee</a></b> ”</p> <p>LASALLE BANK NATIONAL ASSOCIATION, f/k/a LaSalle National Bank, as Trustee for Certificate Holders of Asset Securitization Corporation Commercial Pass... 2008 WL 788303, *788303+ , N.D.Ill. (Trial Motion, Memorandum and Affidavit)</p> | Jan. 22, 2008 | Motion                  | ■ ■ ■ ■ ■ | <p><a href="#">19</a></p> <p><a href="#">25</a></p> <p><a href="#">37</a></p> <p>B.R.</p> |

| Treatment   | Title   | Date          | Type   | Depth   | Headnote(s)  |
|-------------|---|---------------|--------|---|--|
| Examined by | <b>6. <a href="#">Reply Brief of Appellant Lasalle Bank National Association, as Trustee</a> ”</b><br>LASALLE BANK NATIONAL ASSOCIATION, f/k/a LaSalle National Bank, as Trustee for Certificate Holders of Asset Securitization Corporation Commercial Pass...<br>2008 WL 861857, *861857+ , N.D.Ill. (Trial Motion, Memorandum and Affidavit)     | Jan. 22, 2008 | Motion |    | <a href="#">37</a><br>B.R.   |
| Examined by | <b>7. <a href="#">Opening Brief of Appellant LaSalle Bank National Association, as Trustee</a> ”</b><br>LASALLE BANK NATIONAL ASSOCIATION, f/k/a LaSalle National Bank, as Trustee for Certificate Holders of Asset Securitization Corporation Commercial Pass...<br>2007 WL 5021224, *5021224+ , N.D.Ill. (Trial Motion, Memorandum and Affidavit) | Nov. 13, 2007 | Motion |    | <a href="#">9</a><br><a href="#">19</a><br><a href="#">25</a><br>B.R.  |
| Examined by | <b>8. <a href="#">Opening Brief of Appellant Lasalle Bank National Association, as Trustee</a> ”</b><br>LASALLE BANK NATIONAL ASSOCIATION, f/k/a LaSalle National Bank, as Trustee for Certificate Holders of Asset Securitization Corporation Commercial Pass...<br>2007 WL 5025339, *5025339+ , N.D.Ill. (Trial Motion, Memorandum and Affidavit) | Nov. 13, 2007 | Motion |    | <a href="#">17</a><br><a href="#">19</a><br><a href="#">25</a><br>B.R. |
| Examined by | <b>9. <a href="#">Defendants' Joint Post-Trial Proposed Findings of Fact and Conclusions of Law</a> ”</b><br>U.S. BANK NATIONAL ASSOCIATION, Litigation Trustee of the Idearc Inc., et al. Litigation Trus, Plaintiff, v. VERIZON COMMUNICATIONS INC., Verizon Fina...<br>2012 WL 12535950, *1+ , N.D.Tex. (Trial Motion, Memorandum and Affidavit) | Nov. 16, 2012 | Motion |  | <a href="#">1</a><br><a href="#">3</a><br>B.R.                         |
| Examined by | <b>10. <a href="#">Post-Trial Brief of Plaintiffs-Counterclaim Defendants</a> ”</b><br>HEXION SPECIALTY CHEMICALS INC., et al, v. HUNTSMAN CORP.<br>2008 WL 8633480, *1+ , Del.Ch. (Trial Motion, Memorandum and Affidavit)   | Sep. 24, 2008 | Motion |  | <a href="#">1</a><br><a href="#">35</a><br>B.R.                        |
| Examined by | <b>11. <a href="#">Reply of Wilmington Trust, National Association to Objections to Confirmation of the Debtors' Prepackaged Plan of Reorganization Pursuant to Chapter 1...</a> ”</b><br>In re: GENCO SHIPPING & TRADING LIMITED, et al., Debtors.<br>2014 WL 3002114, *1+ , Bkrtcy.S.D.N.Y. (Trial Filing)  | June 10, 2014 | Filing |  | <a href="#">37</a><br>B.R.   |

| Treatment                           | Title  | Date          | Type              | Depth | Headnote(s)   |
|-------------------------------------|--|---------------|-------------------|-------|---|
| Distinguished by<br><b>NEGATIVE</b> | <b>12. <a href="#">In re Tronox Incorporated</a></b><br>503 B.R. 239, 297+ , Bkrtcy.S.D.N.Y.<br><br>BANKRUPTCY - Avoidance. Federal Debt Collection Practices Act qualified as "applicable law" under strong-arm provision.-   | Dec. 12, 2013 | Case              |       | —   |
| Discussed by                        | <b>13. <a href="#">Kipperman v. Onex Corp.</a></b><br>411 B.R. 805, 835+ , N.D.Ga.<br><br>BANKRUPTCY - Avoidance. Litigation trustee had standing to bring constructive fraudulent transfer claims.  | Aug. 13, 2009 | Case              |       | <a href="#">22</a><br><a href="#">31</a><br>B.R.                      |
| Discussed by                        | <b>14. <a href="#">In re Markson Rosenthal &amp; Co., Inc.</a></b><br>2009 WL 3763048, *9+ , Bkrtcy.D.N.J.<br><br>On June 7, 2006, MR Wind Down Company, Inc. f/k/a Markson Rosenthal & Company, Inc. (hereinafter "Debtor" or "MR") filed an amended adversary complaint against Rock-Tenn Converting...  | Oct. 27, 2009 | Case              |       | <a href="#">1</a><br><a href="#">11</a><br><a href="#">35</a><br>B.R. |
| Discussed by                        | <b>15. <a href="#">In re Charter Communications</a></b><br>419 B.R. 221, 236+ , Bkrtcy.S.D.N.Y.<br><br>BANKRUPTCY - Plans. Plan did not unfairly discriminate against objecting noteholders vis-a-vis general unsecured creditors.   | Nov. 17, 2009 | Case              |       | <a href="#">1</a><br>B.R.   |
| Discussed by                        | <b>16. <a href="#">Opinion on Confirmation of Plan of Reorganization and Adjudication of Related Adversary Proceeding</a></b><br>In re Charter Communications<br>2009 WL 8189485, *1+ , Bkrtcy.S.D.N.Y. (Trial Order)<br><br>Chapter 11 Adversary Proceeding JAMES M. PECK UNITED STATES BANKRUPTCY JUDGE Since these cases were filed on March 27, 2009, Charter Communications, Inc. ("CCI" and, together... | Mar. 27, 2009 | Trial Court Order |       | —   |
| Discussed by                        | <b>17. <a href="#">Brief of Appellees Ritchie SG Holdings, L.L.C., SGLP Holding, Ltd., and Sglp US Holding, L.L.C.</a></b><br>In re: SEMCRUDE L.P., Debtors. Bettina Whyte, as the Trustee, on behalf of SemGroup Litigation Trust, Appellant, v. Ritchie SG Holdings, L.L.C., et al...<br>2015 WL 3819361, *1+ , 3rd Cir. (Appellate Brief)   | June 15, 2015 | Brief             |       | <a href="#">9</a><br>B.R.   |

| Treatment    | Title   | Date          | Type   | Depth | Headnote(s)  |
|--------------|---|---------------|--------|-------|--|
| Discussed by | <b>18. <a href="#">Joint Reply Brief of Appellants Pacific Investment Management Company LLC, Deutsche Asset Management, Western Asset Management, Castlerigg Master Inve...</a></b> ¶<br>In the Matter of: PREMIER ENTERTAINMENT BILOXI LLC, doing business as Hard Rock Hotel & Casino Biloxi, and Premier Finance Biloxi Corp., Debtors. Prem...<br>2008 WL 6877477, *6877477+, 5th Cir. (Appellate Brief) | Sep. 11, 2008 | Brief  |       | <a href="#">1</a><br><a href="#">5</a><br>B.R.                         |
| Discussed by | <b>19. <a href="#">Defendants' Corrected Reply Brief Regarding Motion to Exclude the Opinions and Testimony of G. William Kennedy F.R.E. 702</a></b> ¶<br>Jim BROWN, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. Brett BREWER, et. al., Defendants.<br>2010 WL 1321558, *1321558+, C.D.Cal. (Trial Motion, Memorandum and Affidavit)   | Feb. 03, 2010 | Motion |       | <a href="#">35</a><br><a href="#">38</a><br>B.R.                       |
| Discussed by | <b>20. <a href="#">Defendants' Reply Brief Regarding Motion to Exclude the Opinions and Testimony of G. William Kennedy F.R.E. 702</a></b> ¶<br>Jim BROWN, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. Brett BREWER, et. al., Defendants.<br>2010 WL 1321557, *1321557+, C.D.Cal. (Trial Motion, Memorandum and Affidavit)   | Jan. 15, 2010 | Motion |       | <a href="#">35</a><br><a href="#">38</a><br>B.R.                       |
| Discussed by | <b>21. <a href="#">Plaintiff's Corrected Opposition to Defendants' Motion to Exclude the Opinions and Testimony of G. William Kennedy</a></b><br>Jim BROWN, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. Brett C. BREWER, et al., Defendants.<br>2009 WL 6764112, *6764112+, C.D.Cal. (Trial Motion, Memorandum and Affidavit)  | Dec. 23, 2009 | Motion |       | <a href="#">25</a><br><a href="#">35</a><br><a href="#">38</a><br>B.R. |
| Discussed by | <b>22. <a href="#">Plaintiff's Opposition to Defendants' Motion to Exclude the Opinions and Testimony of G. William Kennedy</a></b><br>Jim BROWN, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. Brett C. BREWER, et al., Defendants.<br>2009 WL 6764111, *6764111+, C.D.Cal. (Trial Motion, Memorandum and Affidavit)  | Dec. 22, 2009 | Motion |       | <a href="#">25</a><br><a href="#">35</a><br>B.R.                       |
| Discussed by | <b>23. <a href="#">(Declarations of Elizabeth A. Moriarty and Bradford Cornell in Support Thereof, Request for Judicial Notice, and (proposed) Order Filed Concurrently H...</a></b> ¶<br>Jim BROWN, v. Brett BREWER, et. al.<br>2009 WL 6824823, *6824823+, C.D.Cal. (Trial Motion, Memorandum and Affidavit)  | Nov. 30, 2009 | Motion |       | <a href="#">25</a><br><a href="#">35</a><br><a href="#">38</a><br>B.R. |

| Treatment    | Title  | Date          | Type   | Depth | Headnote(s)  |
|--------------|--|---------------|--------|-------|--|
| Discussed by | <b>24. <a href="#">Reply in Support of Defendants' Joint Motion in Limine to Exclude the Testimony and Expert Report of Gary R. Trugman</a></b><br>In Re WELLS REAL ESTATE INVESTMENT TRUST, INC. SECURITIES LITIGATION.<br>2010 WL 1722112, *1722112+, N.D.Ga. (Trial Motion, Memorandum and Affidavit)                                       | Jan. 15, 2010 | Motion |       | <a href="#">31</a><br><a href="#">32</a><br><a href="#">37</a><br>B.R. |
| Discussed by | <b>25. <a href="#">Memorandum of Law in Support of Defendants' Motion for Summary Judgment</a></b><br>In Re: Richard M. KIPPERMAN, not individually but solely in his capacity as Trustee for the Magnatrx Litigation Trust, Plaintiff, v. ONEX CORPORATION...<br>2009 WL 1946185, *1946185+, N.D.Ga. (Trial Motion, Memorandum and Affidavit) | Apr. 30, 2009 | Motion |       | <a href="#">26</a><br>B.R.   |
| Discussed by | <b>26. <a href="#">Response Brief of Appellee, Gus A. Paloian, as Chapter 11 Trustee</a></b><br>LASALLE BANK NATIONAL ASSOCIATION, f/k/a LaSalle National Bank, as Trustee for Certificate Holders of Asset Securitization Corporation, Commercial Mor...<br>2007 WL 5021225, *5021225+, N.D.Ill. (Trial Motion, Memorandum and Affidavit)     | Dec. 21, 2007 | Motion |       | <a href="#">19</a><br><a href="#">20</a><br>B.R.                       |
| Discussed by | <b>27. <a href="#">Response Brief of Appellee, Gus A. Paloian, as Chapter 11 Trustee</a></b><br>LASALLE BANK NATIONAL ASSOCIATION, f/k/a LaSalle National Bank, as Trustee for Certificate Holders of Asset Securitization Corporation, Commercial Mor...<br>2007 WL 5025341, *5025341+, N.D.Ill. (Trial Motion, Memorandum and Affidavit)     | Dec. 21, 2007 | Motion |       | <a href="#">19</a><br><a href="#">20</a><br>B.R.                       |
| Discussed by | <b>28. <a href="#">Response Brief of Appellee, Gus A. Paloian, as Chapter 11 Trustee</a></b><br>LASALLE BANK NATIONAL ASSOCIATION, f/k/a LaSalle National Bank, as Trustee for Certificate Holders of Asset Securitization Corporation, Commercial Mor...<br>2007 WL 5039336, *5039336+, N.D.Ill. (Trial Motion, Memorandum and Affidavit)     | Dec. 21, 2007 | Motion |       | <a href="#">19</a><br><a href="#">20</a><br>B.R.                       |
| Discussed by | <b>29. <a href="#">Ventas's Response to HCP's Omnibus Motion in Limine</a></b><br>VENTAS, INC., Plaintiff, v. HCP, INC., Defendant.<br>2009 WL 2899721, *2899721+, W.D.Ky. (Trial Motion, Memorandum and Affidavit)  | Aug. 11, 2009 | Motion |       | <a href="#">35</a><br>B.R.   |
| Discussed by | <b>30. <a href="#">Brief of the Appellant United States of America</a></b><br>In re REGENCY INTERNATIONAL FLOORING, LLC, Debtor. United States of America, Appellant, v. Jeff A. Moyer, Chapter 7 Trustee, Appellee.<br>2010 WL 1807431, *1807431+, W.D.Mich. (Trial Motion, Memorandum and Affidavit)   | Jan. 19, 2010 | Motion |       | <a href="#">11</a><br><a href="#">12</a><br>B.R.                       |

| Treatment    | Title   | Date          | Type   | Depth | Headnote(s)   |
|--------------|---|---------------|--------|-------|---|
| Discussed by | <p><b>31. <a href="#">Memorandum of Law in Support of Plaintiffs' Motion to Exclude Report and Testimony of Roger D. Siefert</a></b> ”</p> <p>In re LONGTOP FINANCIAL TECHNOLOGIES LIMITED SECURITIES LITIGATION.<br/>2014 WL 9877593, *1+ , S.D.N.Y. (Trial Motion, Memorandum and Affidavit)</p>  | Feb. 26, 2014 | Motion |       | <p><a href="#">32</a><br/><a href="#">33</a><br/><a href="#">34</a></p> <p>B.R.</p> |
| Discussed by | <p><b>32. <a href="#">Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Exclude the Expert Testimony of Mukesh Bajaj</a></b> ”</p> <p>BANK OF AMERICA, NATIONAL ASSOCIATION Banc of America Securities LLC, and U.S. Bank National Association, solely in its capacity as Trustee under the ...<br/>2013 WL 1194673, *1+ , S.D.N.Y. (Trial Motion, Memorandum and Affidavit)</p>           | Jan. 29, 2013 | Motion |       | <p><a href="#">38</a></p> <p>B.R.</p>   |
| Discussed by | <p><b>33. <a href="#">Motion to Compel Compliance with a Subpoena Served upon Highland Capital Management, L.P.; Memorandum of Points and Authorities in Support Thereof</a></b> ”</p> <p>TRANSCONTINENTAL CORPORATION, et al, Movants, v. HIGHLAND CAPITAL MANAGEMENT, L.P., Respondent.<br/>2012 WL 12265871, *1+ , N.D.Tex. (Trial Motion, Memorandum and Affidavit)</p>                                   | Feb. 29, 2012 | Motion |       | <p><a href="#">20</a></p> <p>B.R.</p>   |
| Discussed by | <p><b>34. <a href="#">Americas Mining Corporation's Motion for Judgment on Partial Findings Pursuant to Fed. R. Civ. P. 52(c)</a></b> ”</p> <p>ASARCO LLC and Southern Peru Holdings, LLC, Plaintiffs, v. AMERICAS MINING CORPORATION, Defendant; Americas Mining Corporation, Counterclaim Plaintiff..<br/>2008 WL 5739918, *5739918+ , S.D.Tex. (Trial Motion, Memorandum and Affidavit)</p>                | June 04, 2008 | Motion |       | <p><a href="#">15</a></p> <p>B.R.</p>   |
| Discussed by | <p><b>35. <a href="#">Plaintiffs' Reply to Defendant's Amended Opposition to Plaintiffs' Motion to Exclude Defendant's Expert Witness Dr. Craig Pirrong</a></b> ”</p> <p>ASARCO LLC and Southern Peru Holdings, LLC, Plaintiffs, v. AMERICAS MINING CORPORATION, Defendant.<br/>2008 WL 5739910, *5739910+ , S.D.Tex. (Trial Motion, Memorandum and Affidavit)</p>  | Apr. 28, 2008 | Motion |       | —   |
| Discussed by | <p><b>36. <a href="#">Americas Mining Corporation's Opposition to Plaintiffs' Motion to Exclude Defendant's Expert Witness Dr. Craig Pirrong</a></b> ”</p> <p>ASARCO LLC and Southern Peru Holdings, LLC, Plaintiffs, v. AMERICAS MINING CORPORATION, Defendant; Americas Mining Corporation, Counterclaim Plaintiff..<br/>2008 WL 5594873, *5594873+ , S.D.Tex. (Trial Motion, Memorandum and Affidavit)</p> | Apr. 24, 2008 | Motion |       | <p><a href="#">1</a></p> <p>B.R.</p>  |

| Treatment    | Title   | Date          | Type   | Depth | Headnote(s)  |
|--------------|---|---------------|--------|-------|--|
| Discussed by | <b><a href="#">37. Americas Mining Corporation's Amended Opposition to Plaintiffs' Motion to Exclude Defendant's Expert Witness Dr. Craig Pirrong</a></b> ”<br>ASARCO LLC and Southern Peru Holdings, LLC, Plaintiffs, v. AMERICAS MINING CORPORATION, Defendant; Americas Mining Corporation, Counterclaim Plaintiff...<br>2008 WL 5739909, *5739909+, S.D.Tex. (Trial Motion, Memorandum and Affidavit)                               | Apr. 24, 2008 | Motion |       | <a href="#">1</a><br>B.R.  |
| Discussed by | <b><a href="#">38. Americas Mining Corporation's Brief in Support of Motion for Summary Judgment on Plaintiffs' Claims</a></b> ”<br>ASARCO LLC and Southern Peru Holdings, LLC, Plaintiffs, v. AMERICAS MINING CORPORATION, Defendant; Americas Mining Corporation, Counterclaim Plaintiff...<br>2008 WL 5594870, *5594870+, S.D.Tex. (Trial Motion, Memorandum and Affidavit)  | Mar. 07, 2008 | Motion |       | <a href="#">1</a><br>B.R.  |
| Discussed by | <b><a href="#">39. Timothy Blixseth's Memorandum in Support of Motion in Limine to Exclude, or in the Alternative Strike Portions of, the Expert Opinions &amp; Testimony of...</a></b> ”<br>In Re: YELLOWSTONE MOUNTAIN CLUB, LLC, et al., Debtors. Michael SNOW, Greg C. Branch, A.C. and Linda Markkula (Trustees of the Arlin Trust), Spano Yel...<br>2010 WL 7098811, *1+, Bkrtcy.D.Mont. (Trial Motion, Memorandum and Affidavit) | Jan. 22, 2010 | Motion |       | <a href="#">21</a><br><a href="#">22</a><br><a href="#">35</a><br>B.R. |
| Discussed by | <b><a href="#">40. Debtors' Opposition to the Motion of the Official Committee of Unsecured Creditors of Station Casinos, Inc., et al., Pursuant to 11 U.S.C. §§ 105(a)...</a></b> ”<br>In re: STATION CASINOS, INC., Affects all Debtors.<br>2010 WL 11405033, *1+, Bkrtcy.D.Nev. (Trial Motion, Memorandum and Affidavit)   | Jan. 12, 2010 | Motion |       | <a href="#">1</a><br>B.R.  |
| Discussed by | <b><a href="#">41. Defendant Huntsman Corp.'s Post-Trial Brief</a></b><br>HEXION SPECIALTY CHEMICALS INC., et al, v. HUNTSMAN CORP.<br>2008 WL 8633481, *1+, Del.Ch. (Trial Motion, Memorandum and Affidavit)   | Sep. 24, 2008 | Motion |       | <a href="#">22</a><br>B.R.   |
| Discussed by | <b><a href="#">42. Pre-Trial Brief of Plaintiffs-Counterclaim Defendants</a></b> ”<br>HEXION SPECIALTY CHEMICALS INC., et al, v. HUNTSMAN CORP.<br>2008 WL 8633479, *1+, Del.Ch. (Trial Motion, Memorandum and Affidavit)   | Sep. 05, 2008 | Motion |       | <a href="#">35</a><br>B.R.   |

| Treatment    | Title  | Date          | Type   | Depth | Headnote(s)                                      |
|--------------|--|---------------|--------|-------|--|
| Discussed by | <b>43. <a href="#">Defendant Huntsman Corp.'s Pretrial Brief (Corrected)</a></b><br>HEXION SPECIALTY CHEMICALS INC., et al, v. HUNTSMAN CORP.<br>2008 WL 8633482, *1+, Del.Ch. (Trial Motion, Memorandum and Affidavit)  | Sep. 05, 2008 | Motion |       | <a href="#">9</a><br><a href="#">10</a><br>B.R.  |
| Discussed by | <b>44. <a href="#">Memorandum of Law in Support of the Motion of Plaintiffs USS Product Carriers LLC and USS Product Manager LLC for a Temporary Restraining Order and Pr...</a></b><br>USS PRODUCT CARRIERS LLC; and USS Product Manager LLC, Plaintiffs, v. BLACKSTONE CORPORATE DEBT ADMINISTRATION L.L.C.; Cerberus Partners, L.P.; Styx P...<br>2009 WL 6691266, *6691266+, N.Y.Sup. (Trial Motion, Memorandum and Affidavit) | Apr. 29, 2009 | Motion |       | <a href="#">4</a><br><a href="#">6</a><br>B.R.   |
| Discussed by | <b>45. <a href="#">Objection of the Official Committee of Equity Security Holders to Confirmation of the Prepackaged Plan of Reorganization</a></b><br>In re: GENCO SHIPPING & TRADING LIMITED, et at., Debtors.<br>2014 WL 3002113, *1+, Bkrtcy.S.D.N.Y. (Trial Filing)   | June 06, 2014 | Filing |       | <a href="#">17</a><br><a href="#">37</a><br>B.R. |
| Discussed by | <b>46. <a href="#">Reorganizing Debtors' Post-Trial Brief in Support of Confirmation of the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the United St...</a></b><br>In re: CHARTER COMMUNICATIONS, INC., et al, Debtors.<br>2009 WL 4499623, *4499623+, Bkrtcy.S.D.N.Y. (Trial Filing)   | Sep. 18, 2009 | Filing |       | <a href="#">19</a><br>B.R.                       |
| Discussed by | <b>47. <a href="#">Jpmorgan Chase Bank, N.A.'s As Administrative Agent, Post-Trial Brief in Support of its Objections to Confirmation and of Entry of Judgment in the Ad...</a></b><br>In re: CHARTER COMMUNICATIONS, INC., Debtors; Jpmorgan Chase Bank, N.A., as Administrative Agent, Plaintiff, v. Charter Communications Operating, LLC ...<br>2009 WL 4499629, *4499629+, Bkrtcy.S.D.N.Y. (Trial Filing)                     | Sep. 18, 2009 | Filing |       | <a href="#">1</a><br><a href="#">35</a><br>B.R.  |
| Discussed by | <b>48. <a href="#">Post-Trial Memorandum of Law Submitted by the Crossover Committee in Support of Confirmation</a></b><br>In re CHARTER COMMUNICATIONS, INC., et al., Debtors.<br>2009 WL 4499622, *4499622+, Bkrtcy.S.D.N.Y. (Trial Filing)  | Mar. 27, 2009 | Filing |       | <a href="#">28</a><br>B.R.                       |

| Treatment                                | Title  | Date          | Type | Depth | Headnote(s)                |
|--|--|---------------|------|-------|----------------------------|
| Declined to Extend by<br><b>NEGATIVE</b> | <b>49. <a href="#">In re Energy Future Holdings Corp.</a></b><br>513 B.R. 651, 662+, Bkrcty.D.Del.<br><br>BANKRUPTCY - Discovery. Indenture trustee was entitled to discovery on debtor's solvency/insolvency.-  | Aug. 05, 2014 | Case |       | —                          |
| Cited by                                 | <b>50. <a href="#">In re Meruelo Maddux Properties, Inc.</a></b><br>2013 WL 4045922, *5, C.D.Cal.<br><br>Meruelo Maddux Properties, Inc. ("MMPI") was incorporated in 2006. Richard Meruelo was Chief Executive Officer and Chairman of the Board; John Maddux was President, Chief Operating... | Aug. 07, 2013 | Case |       | <a href="#">1</a><br>B.R.  |
| Cited by                                 | <b>51. <a href="#">Brown v. Brewer</a></b><br>2010 WL 2472182, *30, C.D.Cal.<br><br>BUSINESS ORGANIZATIONS - Judgment. Genuine fact issues remained whether a corporation's CEO and president acted in bad faith during a buyout with an intent other than to maximize...                        | June 17, 2010 | Case |       | <a href="#">35</a><br>B.R. |
| Cited by                                 | <b>52. <a href="#">U.S. v. Menotte</a></b><br>484 B.R. 835, 840, S.D.Fla.<br><br>BANKRUPTCY - Avoidance. IRS qualified for conduit defense to bankruptcy trustee's power to recover payment from debtor as fraudulent transfer.  | Nov. 19, 2012 | Case |       | <a href="#">9</a><br>B.R.  |
| Cited by                                 | <b>53. <a href="#">LaSalle Nat. Bank Ass'n v. Paloian</a></b><br>406 B.R. 299, 351, N.D.Ill.<br><br>BANKRUPTCY - Avoidance. Trust was "initial transferee" of fraudulently transferred funds even without carte blanche authority over funds.  | Mar. 17, 2009 | Case |       | <a href="#">1</a><br>B.R.  |
| Cited by                                 | <b>54. <a href="#">Dietz v. Jacobs</a></b><br>2014 WL 1153502, *8, D.Minn.<br><br>Plaintiff Dietz is the Chapter 7 Trustee for debtors Genmar Holdings, Inc. ("Genmar Holdings"), Genmar Michigan, LLC, Genmar Tennessee, Inc., Triumph Boats, Inc., and Wood...                                 | Mar. 21, 2014 | Case |       | <a href="#">12</a><br>B.R. |
| Cited by                                 | <b>55. <a href="#">Burke v. Quick Lift, Inc.</a></b><br>668 F.Supp.2d 370, 383, E.D.N.Y.<br><br>MARITIME LAW - Recreational Boating. Seller of yacht was not liable for negligent installation of davit.   | Oct. 23, 2009 | Case |       | —                          |

| Treatment | Title   | Date          | Type | Depth   | Headnote(s)   |
|-----------|---|---------------|------|---|---|
| Cited by  | <p> <b>56. <a href="#">Carnegie Mellon University v. Marvell Technology Group, Ltd.</a></b> ”</p> <p>2014 WL 1320154, *15+ , W.D.Pa.</p> <p>This is a patent infringement case brought by Plaintiff Carnegie Mellon University (“CMU”), against Defendants Marvell Technology Group, Ltd. and Marvell Semiconductor, Inc....</p> | Mar. 31, 2014 | Case |    | <p><a href="#">1</a></p> <p>B.R.</p>                            |
| Cited by  | <p> <b>57. <a href="#">Janvey v. Alguire</a></b></p> <p>2013 WL 2451738, *8 , N.D.Tex.</p> <p>The Order addresses the Receiver’s motion for partial summary judgment against some of the Stanford investors who received payment in excess of their original investment (the “Net...</p>   | Jan. 22, 2013 | Case |    | <p><a href="#">32</a></p> <p>B.R.</p>                           |
| Cited by  | <p> <b>58. <a href="#">ASARCO LLC v. Americas Mining Corp.</a></b> ⚙</p> <p>396 B.R. 278, 396+ , S.D.Tex.</p> <p>BUSINESS ORGANIZATIONS - Piercing Corporate Veil. Judicial estoppel could not be applied to reverse-veil piercing alter-ego claim against parent to avoid fraudulent transfers.</p>                             | Aug. 30, 2008 | Case |    | <p><a href="#">15</a></p> <p><a href="#">21</a></p> <p>B.R.</p> |
| Cited by  | <p><b>59. <a href="#">In re SemCrude, L.P.</a></b> ”</p> <p>2013 WL 2490179, *10 , Bkrtcy.D.Del.</p> <p>Before the Court are constructive fraudulent transfer claims pursuant to § 548 and § 544 of the Bankruptcy Code, and § 116 and § 117 of Oklahoma’s UFTA (collectively, the...</p>   | June 10, 2013 | Case |  | —   |
| Cited by  | <p><b>60. <a href="#">In re Champion Enterprises, Inc.</a></b> ”</p> <p>2012 WL 3778872, *34+ , Bkrtcy.D.Del.</p> <p>The Court is issuing its Opinion following a brief trial with a voluminous record of documents and deposition designations. The adversary proceeding arises from the multi-debtor...</p>   | Aug. 30, 2012 | Case |  | <p><a href="#">12</a></p> <p>B.R.</p>                           |
| Cited by  | <p> <b>61. <a href="#">In re Tribune Co.</a></b></p> <p>464 B.R. 126, 150+ , Bkrtcy.D.Del.</p> <p>BANKRUPTCY - Plans. Acceptance by impaired class requirement must be met on debtor-by-debtor basis for joint plan.</p>   | Oct. 31, 2011 | Case |  | —   |

| Treatment | Title  | Date          | Type | Depth   | Headnote(s)                |
|-----------|--|---------------|------|---|----------------------------|
| Cited by  | <p> <b>62. <a href="#">In re Spansion, Inc.</a></b><br/>426 B.R. 114, 130+ , Bkrtcy.D.Del.</p> <p>BANKRUPTCY - Professionals. Appointment of examiner was not warranted in jointly administered Chapter 11 cases, even though debt threshold was met.</p>   | Apr. 01, 2010 | Case |    | <a href="#">31</a><br>B.R. |
| Cited by  | <p> <b>63. <a href="#">In re Tele globe Communications Corp.</a></b><br/>392 B.R. 561, 603 , Bkrtcy.D.Del.</p> <p>BANKRUPTCY - Discovery. Preliminary drafts of testifying expert's reports were not information that had to be preserved and produced.</p>   | Aug. 07, 2008 | Case |    | —                          |
| Cited by  | <p> <b>64. <a href="#">In re Plassein Intern. Corp.</a></b><br/>2008 WL 1990315, *8+ , Bkrtcy.D.Del.</p> <p>Debtor Plassein International Corporation ("Plassein") and its related entities (collectively "Debtors") filed voluntary petitions under chapter 11 of title 11 of the United States...</p> | May 05, 2008  | Case |    | <a href="#">25</a><br>B.R. |
| Cited by  | <p><b>65. <a href="#">In re Bachrach Clothing, Inc.</a></b> <br/>480 B.R. 820, 866+ , Bkrtcy.N.D.Ill.</p> <p>BANKRUPTCY - Avoidance. Court declined to "collapse" sale and LBO in order to hold debtor's former owners liable for harm inflicted by buyer.</p>  | Oct. 10, 2012 | Case |  | —                          |
| Cited by  | <p><b>66. <a href="#">In re TCI 2 Holdings, LLC</a></b> <br/>428 B.R. 117, 156+ , Bkrtcy.D.N.J.</p> <p>BANKRUPTCY - Plans. Court would choose between competing plans based, inter alia, on creditor support and scope of distributions.</p>  | Apr. 12, 2010 | Case |  | —                          |
| Cited by  | <p><b>67. <a href="#">In re Summit Global Logistics, Inc.</a></b><br/>2008 WL 819934, *10 , Bkrtcy.D.N.J.</p> <p>Before the Court is a motion filed by Summit Global Logistics, Inc. and its jointly administered affiliates (hereinafter collectively referred to as "SGL" or "Debtors") pursuant...</p>  | Mar. 26, 2008 | Case |  | —                          |
| Cited by  | <p><b>68. <a href="#">In re Adelpia Communications Corp.</a></b> <br/>512 B.R. 447, 496+ , Bkrtcy.S.D.N.Y.</p> <p>BANKRUPTCY - Avoidance. Bankruptcy court makes recommendations on strong-arm fraudulent transfer claims, as outside its power to decide.-</p>                                       | May 06, 2014  | Case |  | <a href="#">13</a><br>B.R. |

| Treatment | Title  | Date          | Type  | Depth | Headnote(s)                    |
|-----------|--|---------------|-------|-------|--------------------------------|
| Cited by  | <b>69. <a href="#">In re Genco Shipping &amp; Trading Limited</a> ”</b><br>513 B.R. 233, 242+ , Bkrtcy.S.D.N.Y.<br><br>BANKRUPTCY - Plans. Debtors established their value, for cramdown purposes.-  | July 02, 2014 | Case  |       | <a href="#">11</a><br><br>B.R. |
| Cited by  | <b>70. <a href="#">In re Lehman Brothers Holdings Inc.</a> ”</b><br>445 B.R. 143, 183+ , Bkrtcy.S.D.N.Y.<br><br>BANKRUPTCY - Bankruptcy Estate. Failure to disclose material information regarding sale of broker-dealer business did not warrant relief from sale order.                                | Feb. 22, 2011 | Case  |       | <a href="#">35</a><br><br>B.R. |
| Cited by  | <b>71. <a href="#">In re Citadel Broadcasting Corp.</a></b><br>2010 WL 2010808, *5 , Bkrtcy.S.D.N.Y.<br><br>The Second Modified Joint Plan of Reorganization of Citadel Broadcasting Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code, dated May 10, 2010, a...       | May 19, 2010  | Case  |       | <a href="#">22</a><br><br>B.R. |
| Cited by  | <b>72. <a href="#">Reply Brief for Petitioner-Appellant</a> ”</b><br>Huda T. SCHEIDELMAN, Petitioner-Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.<br>2014 WL 1259413, *1+ , 2nd Cir. (Appellate Brief)   | Mar. 21, 2014 | Brief |       | —                              |
| Cited by  | <b>73. <a href="#">Reply Brief for Appellant</a></b><br>In re: SEMCRUDE L.P., Debtors, v. BETTINA Whyte, as the Trustee, on behalf of SemGroup LitigationTrust, Appellant.<br>2015 WL 4055090, *1+ , 3rd Cir. (Appellate Brief)  | June 29, 2015 | Brief |       | <a href="#">21</a><br><br>B.R. |
| Cited by  | <b>74. <a href="#">Corrected Brief of Defendant-Appellee Plano Molding Company</a></b><br>KAWASAKI KISEN KAISHA, LTD., K Line America, Inc. and Union Pacific Railroad Company, Plaintiffs-Appellants, v. PLANO MOLDING COMPANY, Defendant-Appel...<br>2014 WL 3703261, *1+ , 7th Cir. (Appellate Brief) | July 16, 2014 | Brief |       | <a href="#">32</a><br><br>B.R. |
| Cited by  | <b>75. <a href="#">Brief of Defendant-Appellee Plano Molding Company</a></b><br>KAWASAKI KISEN KAISHA, LTD., K Line America, Inc. and Union Pacific Railroad Company, Plaintiffs-Appellants, v. PLANO MOLDING COMPANY, Defendant-Appel...<br>2014 WL 3044019, *1+ , 7th Cir. (Appellate Brief)           | June 27, 2014 | Brief |       | <a href="#">32</a><br><br>B.R. |

| Treatment | Title  | Date          | Type  | Depth | Headnote(s)                                      |
|-----------|--|---------------|-------|-------|--|
| Cited by  | <b>76. <a href="#">Brief and Short Appendix of Plaintiff-Appellant Rexam in Support of Appeal</a></b><br>REXAM BEVERAGE CAN COMPANY, Plaintiff-Appellant, v. David F. BOLGER, as Trustee of the David F. Bolger Reocable Trust, a Florida resident, and City of...<br>2009 WL 1900144, *1900144+, 7th Cir. (Appellate Brief) | June 22, 2009 | Brief |       | <a href="#">1</a><br>B.R.                        |
| Cited by  | <b>77. <a href="#">Brief of Appellants</a></b><br>RITCHIE SPECIAL CREDIT INVESTMENTS LTD., Rhone Holdings II. Ltd., Ritchie Capital Structure Arbitrage Trading, Ltd., Yorkville Investment I, L.L.C., a...<br>2014 WL 1275626, *1+, 8th Cir. (Appellate Brief)  | Mar. 18, 2014 | Brief |       | <a href="#">16</a><br><a href="#">20</a><br>B.R. |
| Cited by  | <b>78. <a href="#">Appellant's Opening Brief</a></b><br>In re YELLOWSTONE MOUNTAIN CLUB, LLC, et al., Debtors. Timothy L. Blixseth, Appellant, v. Brian Glasser, as Trustee of the Yellowstone Club Liquidatin...<br>2015 WL 1206093, *1+, 9th Cir. (Appellate Brief)  | Mar. 09, 2015 | Brief |       | —  |
| Cited by  | <b>79. <a href="#">Appellee's Brief</a></b><br>DAEWOO MOTOR AMERICA, INC., Plaintiff and Appellant, v. DAEWOO MOTOR CO., LTD., Defendant and Appellee.<br>2012 WL 6803479, *1+, 9th Cir. (Appellate Brief)   | Dec. 21, 2012 | Brief |       | —  |
| Cited by  | <b>80. <a href="#">Consolidated Brief of Defendants-Appellees</a></b><br>Sabrina LAGUNA, Carlos Acevedo, and Teresa Salas, individually and on behalf of all others similarly situated, Plaintiffs-Appellees, Amrit Singh, Obj...<br>2012 WL 3278626, *1+, 9th Cir. (Appellate Brief)  | Aug. 07, 2012 | Brief |       | <a href="#">36</a><br>B.R.                       |
| Cited by  | <b>81. <a href="#">Appellees/Cross-Appellants' Answering Brief on Appeal and Opening Brief on Cross-Appeal</a></b><br>GLOBAL GT LP and Global Gt Ltd., Appellees/Cross-Appellants, v. GOLDEN TELECOM, INC., Appellant/Cross-Appellee.<br>2010 WL 4090345, *4090345+, Del.Supr. (Appellate Brief)                             | Oct. 06, 2010 | Brief |       | <a href="#">1</a><br>B.R.                        |
| Cited by  | <b>82. <a href="#">Appellees/Cross-Appellants' Answering Brief on Appeal and Opening Brief on Cross-Appeal</a></b><br>GLOBAL GT LP and Global GT Ltd., Appellees/Cross-Appellants, v. GOLDEN TELECOM, INC., Appellant/Cross-Appellee.<br>2010 WL 3621408, *3621408+, Del.Supr. (Appellate Brief)                             | Sep. 10, 2010 | Brief |       | <a href="#">1</a><br>B.R.                        |

| Treatment | Title  | Date          | Type   | Depth | Headnote(s)                                      |
|-----------|--|---------------|--------|-------|--|
| Cited by  | <b>83. <a href="#">Corrected Appellant's Opening Brief</a></b><br>GOLDEN TELECOM, INC., Respondent<br>Below/Appellant, v. GLOBAL GT LP and Global GT Ltd,<br>Petitioners Below/Appellees.<br>2010 WL 3414642, *3414642+ , Del.Supr. (Appellate<br>Brief)   | Aug. 18, 2010 | Brief  |       | <a href="#">35</a><br>B.R.                       |
| Cited by  | <b>84. <a href="#">Appellant's Opening Brief</a></b><br>GOLDEN TELECOM, INC., Respondent<br>Below/Appellant, v. GLOBAL GT LP and Global GT Ltd,<br>Petitioners Below/Appellees.<br>2010 WL 3252982, *3252982+ , Del.Supr. (Appellate<br>Brief)   | Aug. 09, 2010 | Brief  |       | <a href="#">35</a><br>B.R.                       |
| Cited by  | <b>85. <a href="#">Appellants' Brief</a></b><br>WESTERN SKY FINANCIAL, LLC, Martin A. Webb,<br>Cashcall, Inc., and Delbert Services Corporation,<br>Appellants, v. STATE OF GEORGIA, EX REL. Samuel S.<br>Olsen...<br>2016 WL 1370343, *1 , Ga. (Appellate Brief)  | Mar. 31, 2016 | Brief  |       | —  |
| Cited by  | <b>86. <a href="#">Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment</a></b><br>Marc S. KIRSCHNER, as Trustee of the Yellowstone<br>Club Liquidating Trust, Plaintiff, v. Timothy L.<br>BLIXSETH, Defendant.<br>2014 WL 2957777, *1+ , C.D.Cal. (Trial Motion,<br>Memorandum and Affidavit)  | Mar. 24, 2014 | Motion |       | <a href="#">15</a><br>B.R.                       |
| Cited by  | <b>87. <a href="#">Defendant Midland National Life Insurance Company's Reply in Support of its Objections to and Motion to Exclude the Declaration of Jeffrey K. Dellinger...</a></b><br>Rosalie VACCARINO and David Lee Tegen, on Behalf of<br>Themselves and all Others Similarly Situated,<br>Plaintiffs, v. MIDLAND NATIONAL LIFE INSURANCE<br>COMPA...<br>2013 WL 8749561, *1+ , C.D.Cal. (Trial Motion,<br>Memorandum and Affidavit) | Dec. 16, 2013 | Motion |       | <a href="#">30</a><br><a href="#">32</a><br>B.R. |
| Cited by  | <b>88. <a href="#">Public Redacted" Mattel, Inc.'s Memorandum of Points and Authorities in Opposition to Defendants' and Consolidated Actions Motion in Limine No. 7 to ...</a></b><br>Carter BRYANT, an individual, Plaintiff, v. MATTEL,<br>INC., a Delaware corporation, Defendant, And<br>Consolidated Actions.<br>2008 WL 2810503, *2810503 , C.D.Cal. (Trial Motion,<br>Memorandum and Affidavit)                                    | July 01, 2008 | Motion |       | —  |

| Treatment | Title   | Date          | Type   | Depth | Headnote(s)  |
|-----------|---|---------------|--------|-------|--|
| Cited by  | <b>89. <a href="#">(Public Redacted) Mattel, Inc.'s Memorandum of Points and Authorities in Opposition to Defendants' Motion in Limine No. 7 to Exclude References to and...</a></b><br>Carter BRYANT, an individual, Plaintiff, v. MATTEL, INC., a Delaware corporation, Defendant.<br>2008 WL 2721130, *2721130+, C.D.Cal. (Trial Motion, Memorandum and Affidavit)   | Apr. 28, 2008 | Motion |       | <a href="#">35</a><br>B.R.   |
| Cited by  | <b>90. <a href="#">United States's Opposition to Cathcart's Daubert Motions to Preclude Testimony and Documents (Doc. 376 &amp; 377)</a></b><br>UNITED STATES OF AMERICA, Plaintiff, v. Charles CATHCART, et al, Defendants.<br>2009 WL 5002023, *5002023+, N.D.Cal. (Trial Motion, Memorandum and Affidavit)   | Oct. 30, 2009 | Motion |       | —  |
| Cited by  | <b>91. <a href="#">Tarkus Imaging, Inc.'s Opening Brief in Support of Daubert Motion to Exclude the Opinions of Christopher Gerardi</a></b><br>TARKUS IMAGING, INC., Plaintiff, v. ADOBE SYSTEMS, INC.; Canon U.S.A., Inc.; Nikon Americas, Inc.; and Nikon, Inc., Defendants.<br>2012 WL 3868099, *1+, D.Del. (Trial Motion, Memorandum and Affidavit)   | Mar. 23, 2012 | Motion |       | <a href="#">36</a><br>B.R.   |
| Cited by  | <b>92. <a href="#">Defendants Michael J.hanson and Ernie J.kindt's Brief in Support of Their Motion in Limine to Exclude all Opinion Testimony Related to Evidence of Ins...</a></b><br>MAGTEN ASSET MANAGEMENT CORPORATION, Plaintiff, v. Michael J. HANSON and Ernie J.Kindt, Defendants.<br>2008 WL 595706, *595706+, D.Del. (Trial Motion, Memorandum and Affidavit)  | Jan. 31, 2008 | Motion |       | <a href="#">30</a><br><a href="#">31</a><br><a href="#">37</a><br>B.R. |
| Cited by  | <b>93. <a href="#">Response to United States' Opposition to Leonard Weisman's Motion for Summary Judgment and Cross Motion for Summary Judgment Against All Defendants an...</a></b><br>UNITED STATES OF AMERICA, Plaintiff, v. Leonard M. WEISMAN; Robin Madden; Gay Courter Natural Resources Group, S.A.; and Railway Marketing Corporation...<br>2008 WL 3973902, *3973902, M.D.Fla. (Trial Motion, Memorandum and Affidavit) | June 27, 2008 | Motion |       | <a href="#">5</a><br>B.R.  |
| Cited by  | <b>94. <a href="#">Brief for Appellee Official Committee of Unsecured Creditors of Tousa, Inc., et al.</a></b><br>WELLS FARGO BANK, N.A., et al, Appellants, v. OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF TOUSA, INC., et al., Appellees.<br>2010 WL 3920212, *3920212+, S.D.Fla. (Trial Motion, Memorandum and Affidavit)   | Aug. 02, 2010 | Motion |       | <a href="#">11</a><br>B.R.   |

| Treatment | Title  | Date          | Type   | Depth | Headnote(s)                                      |
|-----------|--|---------------|--------|-------|--|
| Cited by  | <b>95. <a href="#">Initial Brief of the Second Lien Appellants</a></b><br>In re: TOUSA, INC., et al, Debtors. Wells Fargo Bank, N.A, et al., Appellants, v. Official Committee of Unsecured Creditors of Touse, Inc., et al., A...<br>2010 WL 2968804, *2968804+ , S.D.Fla. (Trial Motion, Memorandum and Affidavit)   | June 01, 2010 | Motion |       | <a href="#">26</a><br>B.R.                       |
| Cited by  | <b>96. <a href="#">Reply Brief in Support of Plaintiff's Motion for Summary Judgment</a></b><br>NISSAN MOTOR ACCEPTANCE CORPORATION, Plaintiff, v. SOWEGA MOTORS, INC., Robert W. Doll, Sandra W. Doll, and John Does 1-10, Defendants.<br>2012 WL 6598256, *1 , M.D.Ga. (Trial Motion, Memorandum and Affidavit)  | June 11, 2012 | Motion |       | —  |
| Cited by  | <b>97. <a href="#">Joint Responsive Brief of Defendants Robert W. Doll and Sandra W. Doll to Plaintiff's Motion for Summary Judgment</a></b> ¶¶<br>In Re: NISSAN MOTOR ACCEPTANCE CORPORATION, Plaintiff, v. SOWEGA MOTORS, INC., Robert W. Doll, Sandra W. Doll, and John Does 1-10, Defendants.<br>2012 WL 6598255, *1+ , M.D.Ga. (Trial Motion, Memorandum and Affidavit) | May 29, 2012  | Motion |       | <a href="#">15</a><br><a href="#">20</a><br>B.R. |
| Cited by  | <b>98. <a href="#">Defendants' Memorandum of Law in Opposition to Trustee's Second Motion for Summary Judgment</a></b> ¶¶<br>In Re: Richard M. KIPPERMAN, not individually but solely in his capacity as Trustee for the Magnatrx Litigation Trust, Plaintiff, v. ONEX CORPORATION...<br>2009 WL 5109799, *5109799+ , N.D.Ga. (Trial Motion, Memorandum and Affidavit)       | Nov. 02, 2009 | Motion |       | <a href="#">4</a><br>B.R.                        |
| Cited by  | <b>99. <a href="#">Trustee's Opposition to Defendants' Motion for Partial Summary Judgment on Trustee's Remaining Claims</a></b> ¶¶<br>Richard M. KIPPERMAN, not individually but solely in his capacity as Trustee for the Magnatrx Litigation Trust, Plaintiff, v. ONEX CORPORATION, et al...<br>2009 WL 5109800, *1+ , N.D.Ga. (Trial Motion, Memorandum and Affidavit)   | Nov. 02, 2009 | Motion |       | <a href="#">11</a><br><a href="#">12</a><br>B.R. |
| Cited by  | <b>100. <a href="#">Trustee's Response in Opposition to the Defendants' Motion for Summary Judgment</a></b><br>Richard M KIPPERMAN, not individually but solely in his capacity as Trustee for the Magnatrx Litigation Trust, Plaintiff, v. ONEX CORPORATION, et al...<br>2009 WL 1946187, *1946187+ , N.D.Ga. (Trial Motion, Memorandum and Affidavit)                      | May 29, 2009  | Motion |       | <a href="#">11</a><br>B.R.                       |

| Treatment | Title  | Date          | Type   | Depth | Headnote(s)                                      |
|-----------|--|---------------|--------|-------|--|
| Cited by  | <b>101. <a href="#">Plaintiff, Duchossois Industries Inc.'s Reply Brief in Support of Its Motion for Summary Judgment</a></b><br>DUCHOSSOIS INDUSTRIES, INC., an Illinois corporation, on its own behalf and/or as successor in interest to the Duchossois Group, Inc., Plaintiff, v. U... 2009 WL 5448215, *5448215+, N.D.Ill. (Trial Motion, Memorandum and Affidavit) | Dec. 02, 2009 | Motion |       | —  |
| Cited by  | <b>102. <a href="#">Ventas's Reply Memorandum in Support of Its Combined Motion for Partial Summary Judgment and for Relief Under Rule 16</a></b><br>VENTAS, INC., Plaintiff, v. HCP, INC., Defendant. 2009 WL 2899700, *2899700+, W.D.Ky. (Trial Motion, Memorandum and Affidavit)  | June 22, 2009 | Motion |       | —  |
| Cited by  | <b>103. <a href="#">Reply Brief of Appellant United States of America</a></b><br>In re REGENCY INTERNATIONAL FLOORING, LLC, Debtor. United States of America, Appellant, v. Jeff A. Moyer, Chapter 7 Trustee, Appellee. 2010 WL 1807430, *1807430+, W.D.Mich. (Trial Motion, Memorandum and Affidavit)   | Mar. 02, 2010 | Motion |       | <a href="#">11</a><br><a href="#">12</a><br>B.R. |
| Cited by  | <b>104. <a href="#">Plaintiffs' Memorandum of Law in Support of Motion to Preclude Testimony and Expert Report of Defendants' Expert Avram S. Tucker</a></b><br>Kenneth KRYS, et al., Plaintiffs, v. Robert AARON, et al., Defendants. 2015 WL 5720036, *1+, D.N.J. (Trial Motion, Memorandum and Affidavit)   | Apr. 22, 2015 | Motion |       | <a href="#">20</a><br>B.R.                       |
| Cited by  | <b>105. <a href="#">Plaintiffs' Reply Memorandum in Further Support of Their Motion to Exclude Report and Testimony of Roger D. Siefert</a></b><br>In re LONGTOP FINANCIAL TECHNOLOGIES LIMITED SECURITIES LITIGATION. 2014 WL 9877583, *1, S.D.N.Y. (Trial Motion, Memorandum and Affidavit)  | Mar. 19, 2014 | Motion |       | <a href="#">32</a><br><a href="#">33</a><br>B.R. |
| Cited by  | <b>106. <a href="#">Plaintiffs' Reply Memorandum in Further Support of Their Motion to Exclude Report and Testimony of Alan D. Bell</a></b><br>In re LONGTOP FINANCIAL TECHNOLOGIES LIMITED SECURITIES LITIGATION. 2014 WL 9877562, *1+, S.D.N.Y. (Trial Motion, Memorandum and Affidavit)   | Jan. 02, 2014 | Motion |       | <a href="#">32</a><br>B.R.                       |
| Cited by  | <b>107. <a href="#">Defendants' Brief in Support of Motion to Exclude the Expert Testimony of Mukesh Bajaj</a></b><br>BANK OF AMERICA, National Association and U.S. Bank National Association, solely in its capacity as Trustee under the Indenture, Plaintiffs, and Banc ... 2012 WL 7656171, *1+, S.D.N.Y. (Trial Motion, Memorandum and Affidavit)                  | Nov. 30, 2012 | Motion |       | <a href="#">35</a><br><a href="#">38</a><br>B.R. |

| Treatment | Title  | Date          | Type   | Depth | Headnote(s)                |
|-----------|--|---------------|--------|-------|----------------------------|
| Cited by  | <b>108. <a href="#">Defendants' Joint Supplemental Memorandum in Opposition to the Department of Labor's Objection to Magistrate Judge Peck's June 28, 2011 Order Requirin...</a></b><br>In Re: BEACON ASSOCIATES LITIGATION. 2011 WL 4467003, *1+ , S.D.N.Y. (Trial Motion, Memorandum and Affidavit)   | July 29, 2011 | Motion |       | <a href="#">37</a><br>B.R. |
| Cited by  | <b>109. <a href="#">Plaintiff's Pretrial Memorandum of Law</a></b><br>DEEP WOODS HOLDINGS, LLC, Plaintiff, v. SAVINGS DEPOSIT INSURANCE FUND OF THE REPUBLIC OF TURKEY (Tasarruf Mevuatı Sigorta Fund), Defendant. 2011 WL 1230621, *1+ , S.D.N.Y. (Trial Motion, Memorandum and Affidavit)  | Feb. 15, 2011 | Motion |       | —                          |
| Cited by  | <b>110. <a href="#">Plaintiff's Memorandum of Law in Opposition to State Street's Motion to Strike Portions of Rebuttal Expert Report of Dennis E. Logue</a></b><br>In re STATE STREET BANK AND TRUST CO. ERISA LITIGATION. This document relates to: 07 Civ. 8488 Prudential Retirement Insurance and Annuity Company, v.... 2010 WL 9526348, *1+ , S.D.N.Y. (Trial Motion, Memorandum and Affidavit) | July 02, 2010 | Motion |       | <a href="#">29</a><br>B.R. |
| Cited by  | <b>111. <a href="#">Reply Memorandum in Support of Defendants' Motion to Exclude Proposed Testimony By Plaintiff's Experts R. Bruce Den Uyl and Steven G. Panagos</a></b><br>RSL COMMUNICATIONS, PLC, v. BILDIRCI et al. 2010 WL 3045742, *3045742+ , S.D.N.Y. (Trial Motion, Memorandum and Affidavit)  | June 16, 2010 | Motion |       | <a href="#">31</a><br>B.R. |
| Cited by  | <b>112. <a href="#">Joint Brief of the Bay Harbour and York Appellees</a></b><br>In re: BH S&B HOLDINGS LLC, et al., Debtors. Official Committee of Unsecured Creditors, on behalf of Debtors, Appellant, v. Bay Harbour Master Ltd., e... 2010 WL 2335650, *2335650+ , S.D.N.Y. (Trial Motion, Memorandum and Affidavit)  | Apr. 09, 2010 | Motion |       | —                          |
| Cited by  | <b>113. <a href="#">Defendants' Reply Memorandum of Law in Support of Their Motion in Limine to Preclude the Testimony of Professor Jordan I. Siegel</a></b><br>Ken WIWA, et al., Plaintiffs, v. ROYAL DUTCH PETROLEUM COMPANY, et al., Defendants. Ken Wiwa, et al., Plaintiffs, v. Brian Anderson, Defendant. 2009 WL 2442805, *2442805+ , S.D.N.Y. (Trial Motion, Memorandum and Affidavit)         | May 08, 2009  | Motion |       | <a href="#">31</a><br>B.R. |

| Treatment | Title   | Date          | Type   | Depth | Headnote(s)                |
|-----------|---|---------------|--------|-------|----------------------------|
| Cited by  | <b>114. <a href="#">Defendants' Reply Memorandum of Law in Support of Their Motion in Limine to Preclude the Testimony of Professor Jordan I. Siegel</a></b><br>Ken WIWA, et al., Plaintiffs, v. ROYAL DUTCH PETROLEUM COMPANY, et al., Defendants. Ken Wiwa, et al., Plaintiffs, v. Brian Anderson, Defendant. 2009 WL 2473146, *2473146+, S.D.N.Y. (Trial Motion, Memorandum and Affidavit) | May 08, 2009  | Motion |       | <a href="#">31</a><br>B.R. |
| Cited by  | <b>115. <a href="#">Plaintiffs' Memorandum in Opposition to Defendants' Motion in Limine to Preclude the Testimony of Professor Jordan I. Siegel</a></b><br>Ken WIWA, et al., Plaintiffs, v. ROYAL DUTCH PETROLEUM COMPANY, et al., Defendants. Ken Wiwa, et al., Plaintiffs, v. Brian Anderson, Defendant. 2009 WL 2442789, *2442789+, S.D.N.Y. (Trial Motion, Memorandum and Affidavit)     | May 05, 2009  | Motion |       | <a href="#">31</a><br>B.R. |
| Cited by  | <b>116. <a href="#">Plaintiffs' Memorandum in Opposition to Defendants' Motion in Limine to Preclude the Testimony of Professor Jordan I. Siegel</a></b><br>Ken WIWA, et al., Plaintiffs, v. ROYAL DUTCH PETROLEUM COMPANY, et al., Defendants. Ken Wiwa, et al., Plaintiffs, v. Brian Anderson, Defendant. 2009 WL 2473130, *2473130+, S.D.N.Y. (Trial Motion, Memorandum and Affidavit)     | May 05, 2009  | Motion |       | <a href="#">31</a><br>B.R. |
| Cited by  | <b>117. <a href="#">Chesapeake Defendants' Reply in Support of Motion for Summary Judgment</a></b><br>UNITED FOOD AND COMMERCIAL WORKERS UNION, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. CHESAPEAKE ENERGY CORPORATION, Au...<br>2013 WL 7851549, *1+, W.D.Okla. (Trial Motion, Memorandum and Affidavit)   | Feb. 04, 2013 | Motion |       | —                          |
| Cited by  | <b>118. <a href="#">Marvell's Opposition to Cmu's Motion and Verified Petition for Supplemental Relief in Aid of Execution Pursuant to Pennsylvania Rule of Civil Procedure...</a></b><br>CARNEGIE MELLON UNIVERSITY, Plaintiff, v. MARVELL TECHNOLOGY GROUP, LTD., and Marvell Semiconductor, Inc., Defendants. 2013 WL 8812842, *1+, W.D.Pa. (Trial Motion, Memorandum and Affidavit)       | Dec. 16, 2013 | Motion |       | <a href="#">1</a><br>B.R.  |
| Cited by  | <b>119. <a href="#">Reply of Defendants Murff and Gifford in Support of Motion to Dismiss</a></b><br>NORTH PORT FIREFIGHTERS' PENSION-LOCAL OPTION PLAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. TEMPLE-INLAND, INC., Ke...<br>2012 WL 7148678, *1+, N.D.Tex. (Trial Motion, Memorandum and Affidavit)   | Nov. 01, 2012 | Motion |       | <a href="#">26</a><br>B.R. |

| Treatment | Title   | Date          | Type   | Depth | Headnote(s)  |
|-----------|---|---------------|--------|-------|--|
| Cited by  | <b>120. <a href="#">Plaintiffs' Memorandum in Support of Its Emergency Motion for Reconsideration of the Court's Decision to Exclude the Expert Testimony and Opinions of ...</a></b><br>WORLDWIDE NETWORK SERVICES, LLC, Plaintiff and Counter-Defendant, Worldwide Network Services International, FZCO, Plaintiff, v. DYNCORP INTERNATIONAL,...<br>2008 WL 7320985, *7320985, E.D.Va. (Trial Motion, Memorandum and Affidavit) | Apr. 14, 2008 | Motion |       | <a href="#">31</a><br>B.R.   |
| Cited by  | <b>121. <a href="#">Response to Reorganized Debtors' Objection to Claim Number 505 Filed by Commerzbank AG</a></b><br>”<br>In re ARCAPITA BANK B.S.C.(C), et al., Reorganized Debtors.<br>2014 WL 4795319, *1, Bkrtcy.S.D.N.Y. (Trial Motion, Memorandum and Affidavit)   | July 29, 2014 | Motion |       | <a href="#">2</a><br><a href="#">8</a><br><a href="#">21</a><br>B.R. |
| Cited by  | <b>122. <a href="#">Post-Trial Brief of Debtors and Debtors in Possession</a></b><br>In re: MARCO POLO SEATRADE B.V., et al., Debtors.<br>2011 WL 13060504, *1, Bkrtcy.S.D.N.Y. (Trial Motion, Memorandum and Affidavit)  | Oct. 19, 2011 | Motion |       | —  |
| Cited by  | <b>123. <a href="#">Objection of Investcorp Interlachen Multi-Strategy Master Fund Limited to Confirmation of Debtors' Reorganization Plan under 11 U.S.C. § 1129(b)</a></b><br>”<br>In re CHEMTURA CORPORATION, et al., Debtors.<br>2010 WL 11406207, *1+, Bkrtcy.S.D.N.Y. (Trial Motion, Memorandum and Affidavit)  | Sep. 09, 2010 | Motion |       | <a href="#">37</a><br>B.R.   |
| Cited by  | <b>124. <a href="#">Respondent Dole Food Company, Inc.'s Post-Trial Brief</a></b><br>”<br>In re DOLE FOOD COMPANY, INC. STOCKHOLDER LITIGATION; In re Appraisal of Dole Food Company, Inc.<br>2015 WL 3936336, *1+, Del.Ch. (Trial Motion, Memorandum and Affidavit)  | June 17, 2015 | Motion |       | <a href="#">1</a><br>B.R.  |
| Cited by  | <b>125. <a href="#">Respondent Golden Telecom, Inc.'s Opening Pretrial Brief</a></b><br>GLOBAL GT LP and Global GT Ltd, Petitioners, v. GOLDEN TELECOM, INC., Respondent.<br>2009 WL 7350708, *7350708+, Del.Ch. (Trial Motion, Memorandum and Affidavit)   | Sep. 14, 2009 | Motion |       | <a href="#">35</a><br>B.R.   |
| Cited by  | <b>126. <a href="#">Plaintiffs Reply Brief in Support of its Motion for Preliminary Injunction</a></b><br>MITSUBISHI POWER SYSTEMS AMERICAS, INC., Plaintiff, v. BABCOCK & BROWN INFRASTRUCTURE GROUP US, LLC, Babcock & Brown, L.P., Babcock & Brown Holdings, ...<br>2009 WL 7361110, *7361110, Del.Ch. (Trial Motion, Memorandum and Affidavit)  | July 01, 2009 | Motion |       | <a href="#">26</a><br>B.R.   |

| Treatment | Title  | Date          | Type   | Depth | Headnote(s)                                      |
|-----------|--|---------------|--------|-------|--|
| Cited by  | <b>127. <a href="#">Defendant Dish Network L.L.C.'s Memorandum of Law in Support of Motion to Exclude the Testimony of Jonathan Orszag</a></b><br>VOOM HD HOLDINGS LLC, Plaintiff, v. ECHOSTAR SATELLITE L.L.C., Defendant.<br>2012 WL 6763306, *1+, N.Y.Sup. (Trial Motion, Memorandum and Affidavit)   | June 27, 2012 | Motion |       | <a href="#">32</a><br><a href="#">33</a><br>B.R. |
| Cited by  | <b>128. <a href="#">Plaintiff's Opposition Memorandum to Defendant's Motion for Summary Judgment</a></b><br>AMARANTH LLC AND AMARANTH ADVISORS L.L.C. Plaintiffs, v. J.P. MORGAN CHASE & CO., J.P. Morgan Chase Bank, N.A. and J.P. Morgan Futures Inc. Defendants...<br>2011 WL 10591738, *1+, N.Y.Sup. (Trial Motion, Memorandum and Affidavit)  | Feb. 09, 2011 | Motion |       | —  |
| Cited by  | <b>129. <a href="#">Memorandum of Law in Support of the Financial Institution Defendants' Motion in Limine to Exclude or Limit the Expert Testimony of David F. Derosa and...</a></b><br>MILLER, et al, v. SANTILI, et al.<br>2009 WL 6865992, *6865992+, Pa.Com.Pl. (Trial Motion, Memorandum and Affidavit)  | Sep. 14, 2009 | Motion |       | <a href="#">19</a><br><a href="#">20</a><br>B.R. |
| Cited by  | <b>130. <a href="#">Memorandum of Law in Support of Defendant Frederick S. Schiff's Response to the Government's Trial Brief</a></b><br>UNITED STATES OF AMERICA, v. Frederick S. SCHIFF, Defendant.<br>2008 WL 5168996, *5168996+, D.N.J. (Trial Filing)  | Mar. 04, 2008 | Filing |       | <a href="#">31</a><br>B.R.                       |
| Cited by  | <b>131. <a href="#">Reply of Debtors and Debtors-in-Possession and Secured Lender to Objections to Proposed Disclosure Statement</a></b><br>In re: NESBITT PORTLAND PROPERTY LLC; Nesbitt Bellevue Property LLC; Nesbitt Lynnwood Property LLC; Nesbitt El Paso Property LP; Nesbitt Denver Proper...<br>2013 WL 4500134, *1, Bkrctcy.C.D.Cal. (Trial Filing)  | July 03, 2013 | Filing |       | <a href="#">1</a><br>B.R.                        |
| Cited by  | <b>132. <a href="#">Debtors' Reply to Objection to Second Emergency Motion for Entry of Interim Order (I) Authorizing Use of Cash Collateral: (II) Providing Adequate Prot...</a></b><br>In re CALIFORNIA COASTAL COMMUNITIES, INC. Signal Landmark Holdings, Inc. Signal Landmark Hearthsides Holdings, Inc. Hearthsides Homes, Inc. HHI Chandle...<br>2010 WL 5143609, *5143609, Bkrctcy.C.D.Cal. (Trial Filing) | June 23, 2010 | Filing |       | —  |

| Treatment | Title  | Date          | Type   | Depth | Headnote(s)                                     |
|-----------|--|---------------|--------|-------|---|
| Cited by  | <b>133. <a href="#">Objection by Aurelius Capital Master, Ltd., ACP Master, Ltd., and Aurelius Convergence Master, Ltd. to the Debtors' Second Amended Disclosure Statemen...</a></b><br>In re: VISTEON CORPORATION, et al, Debtors.<br>2010 WL 8768472, *1, Bkrtcy.D.Del. (Trial Filing)  | May 18, 2010  | Filing |       | <a href="#">1</a><br>B.R.                       |
| Cited by  | <b>134. <a href="#">Debtors' (a) Supplemental Memorandum of Law in Support of Confirmation and (B) Reply to Objections of Equity Holders Relating to Valuation of the Debt...</a></b> ”<br>In Re: SMURFIT-STONE CONTAINER CORPORATION, et al.<br>2010 WL 5489889, *1+, Bkrtcy.D.Del. (Trial Filing)  | Apr. 16, 2010 | Filing |       | <a href="#">22</a><br>B.R.                      |
| Cited by  | <b>135. <a href="#">Response of Deutsche Bank to Committee Objection to Propco Cash Collateral Order</a></b><br>In re: STATION CASINOS, INC.<br>2009 WL 7322213, *1, Bkrtcy.D.Nev. (Trial Filing)  | Aug. 31, 2009 | Filing |       | <a href="#">11</a><br>B.R.                      |
| Cited by  | <b>136. <a href="#">Debtors' Objection to Motion of the Official Committee of Unsecured Creditors to Prohibit Bank Group from Credit Bidding Pursuant to Bankruptcy Code S...</a></b><br>In re: THE BROWN PUBLISHING COMPANY, Dan's Papers, Inc., Brown Media Holdings Company, Boulder Business Information Inc., Brown Business Ledger, LLC, ...<br>2010 WL 6238312, *6238312+, Bkrtcy.E.D.N.Y. (Trial Filing) | July 14, 2010 | Filing |       | <a href="#">17</a><br>B.R.                      |
| Cited by  | <b>137. <a href="#">Report of Susheel Kirpalani, Examiner</a></b> ”<br>In re: DYNEGY HOLDINGS, LLC, et al., Debtors.<br>2012 WL 879302, *1+, Bkrtcy.S.D.N.Y. (Trial Filing)  | Mar. 09, 2012 | Filing |       | <a href="#">1</a><br><a href="#">25</a><br>B.R. |
| Cited by  | <b>138. <a href="#">Debtors' Sur-Reply to Cross-Motion of Wilmington Trust FSB, as Second Lien Agent, for Adequate Protection</a></b><br>In re: BOSTON GENERATING, LLC, et al, Debtors.<br>2010 WL 6231105, *6231105, Bkrtcy.S.D.N.Y. (Trial Filing)   | Oct. 18, 2010 | Filing |       | —   |
| Cited by  | <b>139. <a href="#">Response of Credit Suisse Ag, Cayman Islands Branch, to Limited Objection of Wilmington Trust FSB, as Second Lien Agent, to the Debtors' Proposed Fina...</a></b><br>In re BOSTON GENERATING, LLC, et al., Debtors.<br>2010 WL 6231089, *6231089, Bkrtcy.S.D.N.Y. (Trial Filing)   | Sep. 10, 2010 | Filing |       | —   |

| Treatment    | Title   | Date          | Type              | Depth | Headnote(s)  |
|--------------|---|---------------|-------------------|-------|--|
| Cited by     | <b>140. <a href="#">Objection of Investcorp Interlachen Multi-Strategy Master Fund Limited to Confirmation of Debtors' Reorganization Plan Under 11 U.S.C. § 1129(b)</a> ”</b><br>In Re: CHEMTURA CORPORATION, et al.<br>2010 WL 5462681, *5462681+, Bkrtcy.S.D.N.Y. (Trial Filing)                           | Sep. 09, 2010 | Filing            |       | <a href="#">1</a><br>B.R.  |
| Cited by     | <b>141. <a href="#">Memorandum of Law in Support of Confirmation of Amended Joint Chapter 11 Plan of Reorganization for Journal Register Company and Its Affiliated Debtor...</a> ”</b><br>In re JOURNAL REGISTER COMPANY, et al., Debtors.<br>2009 WL 5130776, *5130776+, Bkrtcy.S.D.N.Y. (Trial Filing)     | June 23, 2009 | Filing            |       | <a href="#">12</a><br>B.R.   |
| Cited by     | <b>142. <a href="#">Memorandum of Law and Supplemental Objection of Davidson Kempner Capital Management LLC; Elliott Associates. L.P.; Nomura Corporate Research &amp; asset M...</a> ”</b><br>In re: Delphi CORPORATION, et al., Debtors.<br>2008 WL 2323588, *2323588+, Bkrtcy.S.D.N.Y. (Trial Filing)      | Jan. 11, 2008 | Filing            |       | <a href="#">1</a><br>B.R.  |
| Cited by     | <b>143. <a href="#">Final Award</a> ”</b><br>GSI COMMERCE SOLUTIONS, INC., Claimant,<br>BABYCENTER, L.L.C., Respondent.<br>2011 WL 1111777, *1, S.D.N.Y. (Arbitration Award)  | Feb. 23, 2011 | Arbitration Award |       | <a href="#">30</a><br><a href="#">32</a><br><a href="#">33</a><br>B.R. |
| Mentioned by | <b>144. <a href="#">U.S. Bank Nat. Ass'n v. Verizon Communications Inc.</a></b><br>2012 WL 4512493, *2, N.D.Tex.<br><br>Before the court are (1) the plaintiff's Rule 104 motion to limit evidence and to strike all of defendants' expert testimony based on market value of Idearc stock or debt (docket... | Oct. 02, 2012 | Case              |       | —  |
| Mentioned by | <b>145. <a href="#">In re Doctors Hosp. of Hyde Park, Inc.</a></b><br>507 B.R. 558, 647, Bkrtcy.N.D.Ill.<br><br>BANKRUPTCY - Avoidance. Debtor-affiliated "special purpose entity" purchased debtor's healthcare receivables in a "true sale."  | Oct. 04, 2013 | Case              |       | —  |
| Mentioned by | <b>146. <a href="#">In re S.W. Bach &amp; Co.</a></b><br>435 B.R. 866, 875, Bkrtcy.S.D.N.Y.<br><br>BANKRUPTCY - Avoidance. Transfer of debtor's broker-dealer customer accounts to another broker-dealer was transfer of interest of debtor in property.  | Aug. 18, 2010 | Case              |       | <a href="#">2</a><br>B.R.  |

| Treatment    | Title  | Date          | Type                   | Depth | Headnote(s)                |
|--------------|--|---------------|------------------------|-------|----------------------------|
| Mentioned by | <b>147. <a href="#">Practical Law Resource ID 4-382-1268. Fraudulent Conveyances in Bankruptcy: Overview</a></b><br>Practical Law Resource ID 4-382-1268   | 2016          | Practical Law          |       | —                          |
| Mentioned by | <b>148. <a href="#">Commerce State Bank's Reply Brief Supporting the Motion to Intervene and Opposing Plaintiff's Motion for Temporary Restraining Order</a></b><br>FEED.ING BV, Plaintiff, v. PRINCIPLE SOLUTIONS, LLC; Principle Investments, Inc.; Kevin M. Zimmer; GCAM, LLC; GCAM-R, LLC; Kevin M. Zimmer and Amy E. ...<br>2014 WL 6378893, *1, E.D.Wis. (Trial Motion, Memorandum and Affidavit)              | Oct. 20, 2014 | Motion                 |       | —                          |
| —            | <b>149. <a href="#">022013 American Bankruptcy Institute 97. TRACK A: Fundamentals of Valuation Analysis. Part III: Testing the Models in Case Decisions and Other Scenarios</a></b><br>American Bankruptcy Institute<br><br>This article will provide a summary of key valuation models and will discuss some of the emerging trends in bankruptcy valuation. The most commonly used valuation models being used... | 2013          | Other Secondary Source | —     | <a href="#">23</a><br>B.R. |
| —            | <b>150. <a href="#">091813 American Bankruptcy Institute 181. CONSUMER TRACK: Fraudulent Transfer Issues</a></b><br>American Bankruptcy Institute<br><br>The author gratefully acknowledges the valuable research and writing assistance of Jessica Pevzner, an associate at Fried, Frank, Harris, Shriver & Jacobson LLP, in the preparation...   | 2013          | Other Secondary Source | —     | <a href="#">26</a><br>B.R. |
| —            | <b>151. <a href="#">VALUATION METHODOLOGIES: A JUDGE'S VIEW</a></b><br>20 Am. Bankr. Inst. L. Rev. 1, 16<br><br>At heart, chapter 11 is a simple exercise. In bankruptcy parlance, it is to gather the property of the estate, determine the amount and nature of the claims and confirm a plan of...  | 2012          | Law Review             | —     | <a href="#">36</a><br>B.R. |
| —            | <b>152. <a href="#">061313 American Bankruptcy Institute 197. Concurrent Session: The Ins &amp; Outs of LBOs</a></b><br>American Bankruptcy Institute<br><br>A leveraged buyout is one of several mechanisms for financing the purchase of an entire going-concern business. What distinguishes an LBO from a purchase financed by cash or other...  | 2013          | Other Secondary Source | —     | <a href="#">21</a><br>B.R. |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)  |
|-----------|---|------|------------------------|-------|--|
| —         | <p><b>153. <a href="#">022013 American Bankruptcy Institute 41. TRACK A: Fundamentals of Valuation Analysis. Part II: Applying the Models to Restructuring and Reorganization Stages</a></b><br/>American Bankruptcy Institute</p> <p>Valuation is very important in almost every stage of a bankruptcy proceeding, especially where a secured creditor is involved. Valuation often consists of valuing opaque, niche,...</p>              | 2013 | Other Secondary Source | —     | <a href="#">1</a><br>B.R.  |
| —         | <p><b>154. <a href="#">ACQUIRING OIL &amp; GAS ASSETS FROM A DISTRESSED SELLER OUTSIDE OF BANKRUPTCY</a></b><br/>Rocky Mountain Mineral Law Foundation Institute</p> <p>Since the summer of 2008, the oil and gas industry has been hit with a series of extraordinary changes both within the industry and in the world's financial markets. Beginning with...</p>   | 2010 | Other Secondary Source | —     | —  |
| —         | <p><b>155. <a href="#">Asset Protection: Legal Planning, Strat. &amp; Forms P 3.04. TYPES OF FRAUDULENT TRANSFERS</a></b></p> <p>There are two types of fraudulent transfers: (1) those made with actual intent to hinder, delay, or defraud and (2) those made under circumstances that constitute constructive...</p>   | 2016 | Other Secondary Source | —     | —  |
| —         | <p><b>156. <a href="#">Bankruptcy Evidence Manual s 702:1. Testimony by Experts-Overview</a></b></p> <p>The admissibility of expert testimony under Rule 702 requires that two preliminary determinations be made by the court. Rule 104(a). First, the court must decide whether expert...</p>   | 2015 | Other Secondary Source | —     | <a href="#">31</a><br>B.R.   |
| —         | <p><b>157. <a href="#">Bankruptcy Law Manual s 9A:16. Preferences in general-Transfer while debtor was insolvent</a></b></p> <p>If a debtor has sufficient assets to pay all obligations, creditors have no cause to complain when the debtor makes a preferential transfer. The equal treatment of creditors is not...</p>   | 2015 | Other Secondary Source | —     | <a href="#">11</a><br><a href="#">12</a><br><a href="#">20</a><br>B.R. |
| —         | <p><b>158. <a href="#">Bankruptcy Law Manual s 9A:37. Fraudulent transfers-Constructive fraudulent transfers-Requirement of proof of distressed financial condition: insolvency, unreasonably small capital or inability to pay debts</a></b></p> <p>The avoidance of a constructive fraudulent transfer under Code § 548(a)(1)(1)(B) requires proof of the debtor's financial condition at the time of the challenged transfer. The...</p> | 2015 | Other Secondary Source | —     | <a href="#">12</a><br><a href="#">20</a><br>B.R.                       |

| Treatment | Title  | Date | Type                   | Depth | Headnote(s)   |
|-----------|--|------|------------------------|-------|---|
| —         | <b>159. <a href="#">Bankruptcy Litigation s 17:110.50, Valuation issues</a></b><br>A valuation of the assets transferred can be central to a determination of fraudulent transfer claims. For example, value is a central concern in determining whether there is a...   | 2015 | Other Secondary Source | —     | <a href="#">11</a><br>B.R.  |
| —         | <b>160. <a href="#">Bankruptcy Litigation Manual s 9.05, DEFENSIVE TACTICS AND STRATEGIES</a></b><br>Bankruptcy Litigation Manual<br>One of the first decisions defense counsel must make when the preference action is instituted in the bankruptcy court is whether to demand a jury trial. As discussed earlier, the... | 2016 | Other Secondary Source | —     | —   |
| —         | <b>161. <a href="#">Bankruptcy Litigation Manual s 13.04, VALUATION METHODOLOGIES</a></b><br>Bankruptcy Litigation Manual<br>Enterprise valuation usually involves one or more of the following four methodologies: (i) discounted cash flow method (“DCF”), (ii) comparable company method, (iii) comparable...           | 2016 | Other Secondary Source | —     | —   |
| —         | <b>162. <a href="#">Bankruptcy Litigation Manual s 17.02, DEFINITIONS</a></b><br>Bankruptcy Litigation Manual<br>Insolvency under the Bankruptcy Code (the “Code”) means a true economic value and a “balance sheet” test, i.e., debts (liabilities) exceed property (assets) “at a fair...                                | 2016 | Other Secondary Source | —     | —   |
| —         | <b>163. <a href="#">Bankruptcy Litigation Manual s 17.04, FRAUDULENT TRANSFERS</a></b><br>Bankruptcy Litigation Manual<br>The fraudulent transfer doctrine permits the trustee’s avoidance of transfers made by the debtor on or within two years of the date of the bankruptcy petition in fraud of its...                | 2016 | Other Secondary Source | —     | —   |
| —         | <b>164. <a href="#">Bankruptcy Service Lawyers Edition s 34:51, Burden</a></b><br>Decisions holding or noting that a trustee seeking to avoid fraudulent transfer under 11 U.S.C.A. § 548 or other party challenging the transfer has the burden of proving the...   | 2016 | Other Secondary Source | —     | <a href="#">2</a><br><a href="#">17</a><br><a href="#">18</a><br>B.R. |

| Treatment | Title  | Date | Type                   | Depth | Headnote(s)                                      |
|-----------|--|------|------------------------|-------|--|
| —         | <b>165. <a href="#">Bankruptcy Service Lawyers Edition s 34:56. Standard of proof</a></b><br>Decisions holding that the preponderance of the evidence is the appropriate standard of proof in an adversary proceeding brought to avoid a transfer as fraudulent include:...  | 2016 | Other Secondary Source | —     | —  |
| —         | <b>166. <a href="#">Bankruptcy Service Lawyers Edition s 12:346. Other illustrative applications</a></b><br>Where subsidiaries of parent corporation voluntarily guaranteed each other's loans, one subsidiary subsequently became bankrupt within 90 days of its payment of supplier's invoice,...                        | 2016 | Other Secondary Source | —     | <a href="#">18</a><br>B.R.                       |
| —         | <b>167. <a href="#">Bankruptcy Service Lawyers Edition s 12:352. Generally</a></b><br>When bankruptcy court assesses debtor's solvency/insolvency at time of alleged fraudulent transfer, there is preference for accurate contemporary market data, if available. 11...   | 2016 | Other Secondary Source | —     | <a href="#">9</a><br>B.R.                        |
| —         | <b>168. <a href="#">Bankruptcy Service Lawyers Edition s 12:353. Probative value of schedules and evidence</a></b><br>Preference for contemporaneous market evidence in assessing a debtor's solvency/insolvency at time of alleged fraudulent transfer is by no means a requirement, and even when such...                | 2016 | Other Secondary Source | —     | <a href="#">10</a><br>B.R.                       |
| —         | <b>169. <a href="#">Bankruptcy Service Lawyers Edition s 12:355. Going concern value or fair market value</a></b><br>When liquidation in bankruptcy is not "clearly imminent," fair valuation of a debtor's assets and liabilities, for purposes of determining insolvency, is determined on a "going...                   | 2016 | Other Secondary Source | —     | <a href="#">11</a><br>B.R.                       |
| —         | <b>170. <a href="#">Bankruptcy Service Lawyers Edition s 33:310. Insolvency to be determined as of date of transfer-Retrojection</a></b><br>Bankruptcy Court's findings of fact for purposes of 11 U.S.C.A. § 547(b) that debtor was insolvent at time of March and April transfers to sole stockholder are not clearly... | 2016 | Other Secondary Source | —     | <a href="#">19</a><br><a href="#">20</a><br>B.R. |

| Treatment | Title  | Date | Type                   | Depth | Headnote(s)   |
|-----------|--|------|------------------------|-------|---|
| —         | <p><b>171. <a href="#">Bankruptcy Service Lawyers Edition s 33:312, Insolvency to be determined as of date of transfer-Illustrative particular applications</a></b></p> <p>Given size and nature of Chapter 11 debtor-airline, determination that 12 to 18 months was reasonable time period to use in making fair valuation of debtor's assets for purposes of...</p>                   | 2016 | Other Secondary Source | —     | <a href="#">18</a><br>B.R.  |
| —         | <p><b>172. <a href="#">Bankruptcy Service Lawyers Edition s 33:316, Assets and liabilities considered or not considered when determining insolvency</a></b></p> <p>Director who gave corporate debtor \$10 million in exchange for real property, prior to debtor's petition for Chapter 7 bankruptcy, was good faith purchaser, under California's...</p>                               | 2016 | Other Secondary Source | —     | <a href="#">23</a><br>B.R.  |
| —         | <p><b>173. <a href="#">Bankruptcy Service Lawyers Edition s 33:317, Assets and liabilities considered or not considered when determining insolvency-Future assets and liabilities</a></b></p> <p>Cash flow projections of Chapter 11 debtors-telecommunications providers were reasonable and prudent when made, given substantial work, by debtors and outsiders, that went into...</p> | 2016 | Other Secondary Source | —     | <a href="#">2</a><br><a href="#">17</a><br><a href="#">22</a><br>B.R. |
| —         | <p><b>174. <a href="#">Bankruptcy Service Lawyers Edition s 33:329, Expert evidence</a></b></p> <p>Chapter 11 debtor-natural gas broker was insolvent on date of its payment to natural gas supplier, for preference avoidance purposes, where debtor filed bankruptcy petition within...</p>  | 2016 | Other Secondary Source | —     | <a href="#">25</a><br><a href="#">37</a><br>B.R.                      |
| —         | <p><b>175. <a href="#">Bankruptcy Service Lawyers Edition s 33:331, Illustrative particular applications</a></b></p> <p>Estate representative did not establish that Chapter 11 debtor was "insolvent" at time of allegedly preferential transfers, made over 5 months before debtor filed bankruptcy...</p>   | 2016 | Other Secondary Source | —     | <a href="#">24</a><br>B.R.  |
| —         | <p><b>176. <a href="#">Bankruptcy Service Lawyers Edition s 33:346, Sufficiency of evidence to rebut presumption-Financial statements offered in evidence</a></b></p> <p>Supplier failed to rebut the statutory presumption of Chapter 7 debtor's insolvency during the 90 days prepetition, for preference avoidance purposes; two documents proffered by...</p>                        | 2016 | Other Secondary Source | —     | <a href="#">26</a><br>B.R.  |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)                                      |
|-----------|---|------|------------------------|-------|--|
| —         | <b>177. <a href="#">Bankruptcy Service Lawyers Edition s 33:357, Going-concern value-Appropriateness of using going-concern value</a></b><br>Chapter 11 debtor-airline's publicly traded debt was properly measured at its face value, rather than its market value, in determining debtor's solvency as of date of alleged...    | 2016 | Other Secondary Source | —     | <a href="#">11</a><br>B.R.                       |
| —         | <b>178. <a href="#">Bankruptcy Service Lawyers Edition s 33:942, Trustee's or debtor-in-possession's burden</a></b><br>Decisions holding that the trustee or debtor in possession has the burden of proving the debtor's insolvency at the time of the transfer include: While, outside bankruptcy, burden...                     | 2016 | Other Secondary Source | —     | <a href="#">8</a><br>B.R.                        |
| —         | <b>179. <a href="#">Bankruptcy Service Lawyers Edition s 34:295, Date of insolvency</a></b><br>When debtor is shown to be insolvent at a date subsequent to a particular transfer and debtor's condition did not change during the interim period, it is logical and permissible to...  | 2016 | Other Secondary Source | —     | <a href="#">19</a><br><a href="#">20</a><br>B.R. |
| —         | <b>180. <a href="#">Bankruptcy Service Lawyers Edition s 34:299, Proof of insolvency-Documentary evidence and witness testimony</a></b><br>While expert testimony is oftentimes helpful in constructive fraudulent transfer avoidance proceeding in assessing debtor's solvency at time of challenged transfers, determination... | 2016 | Other Secondary Source | —     | <a href="#">23</a><br>B.R.                       |
| —         | <b>181. <a href="#">Bankruptcy Service Lawyers Edition s 34:309, "Going concern" value</a></b><br>Determination as to whether Chapter 11 debtor was insolvent at time of, or was rendered insolvent by, alleged fraudulent transfers or conveyances had to include consideration of...  | 2016 | Other Secondary Source | —     | <a href="#">37</a><br>B.R.                       |
| —         | <b>182. <a href="#">Bankruptcy Service Lawyers Edition s 34:311, Methods of determining insolvency</a></b><br>In determining insolvency under 11 U.S.C.A. § 548(a)(2) [now § 548(a)(1)(B)], Code requires court to assess things from debtor's perspective; to decide whether debtor is insolvent,...                             | 2016 | Other Secondary Source | —     | <a href="#">12</a><br><a href="#">22</a><br>B.R. |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)                |
|-----------|---|------|------------------------|-------|----------------------------|
| —         | <p><b>183. <a href="#">Bankruptcy Service Lawyers Edition s 34:316, Other determinations-Debtor not insolvent</a></b></p> <p>Debtor-limited liability company (LLC) was not operating with unreasonably small capital when it made payments to the Internal Revenue Service, and thus, payments were not...</p>   | 2016 | Other Secondary Source | —     | <a href="#">17</a><br>B.R. |
| —         | <p><b>184. <a href="#">Bankruptcy Service Lawyers Edition s 34:319, Unreasonably small capital [Code s548(a)(1)(B)(ii)(II)]-Illustrative particular applications</a></b></p> <p>Bankruptcy court's finding, in strong-arm proceeding brought by Chapter 7 trustee to avoid, as constructively fraudulent under New Hampshire law, debtor's gratuitous transfer of...</p>        | 2016 | Other Secondary Source | —     | <a href="#">22</a><br>B.R. |
| —         | <p><b>185. <a href="#">Bankruptcy Service Lawyers Edition s 34:329, Shareholder, insider, officer, or principal-Compensation</a></b></p> <p>Finding that employer who used pension plan surplus to fund additional benefits did not receive reasonably equivalent value, and thus that employer's bankruptcy estate could avoid...</p>  | 2016 | Other Secondary Source | —     | <a href="#">26</a><br>B.R. |
| —         | <p><b>186. <a href="#">39 Causes of Action 2d 1, 1 U.S.C.A. s548(a)(1)(B)</a></b></p> <p>11 U.S.C.A. § 548(a)(1)(B) provides that the trustee in a bankruptcy case may avoid a transfer or obligation that was made or incurred on or within two years before the date of the...</p>  | 2016 | Other Secondary Source | —     | <a href="#">13</a><br>B.R. |
| —         | <p><b>187. <a href="#">43 Causes of Action 2d 219, Cause of Action in Bankruptcy Case for Avoidance of Preferential Transfer Under 11 U.S.C.A. s547</a></b></p> <p>Section 547(b) of the Bankruptcy Code, 11 U.S.C.A. § 547(b), provides that, except as provided in § 547(c) and (i), the trustee in a bankruptcy case may avoid any transfer of an...</p>                     | 2016 | Other Secondary Source | —     | <a href="#">2</a><br>B.R.  |
| —         | <p><b>188. <a href="#">55 Causes of Action 2d 467, Cause of Action to Set Aside or Recover for Fraudulent Transfer or Obligation Under Uniform Fraudulent Transfer Act</a></b></p> <p>This article discusses actions brought by creditors to set aside or recover for a fraudulent transfer or obligation under the Uniform Fraudulent Transfer Act (UFTA). The elements...</p> | 2016 | Other Secondary Source | —     | <a href="#">15</a><br>B.R. |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)  |
|-----------|---|------|------------------------|-------|--|
| —         | <b>189. <a href="#">Commercial Bankruptcy Litigation s 5:16. Terms of agreement for the use of cash collateral</a></b><br>The terms of the secured creditor's consent to the use of cash collateral can be documented in a written agreement effective only upon court approval or in an order that the...  | 2016 | Other Secondary Source | —     | —  |
| —         | <b>190. <a href="#">Commercial Bankruptcy Litigation s 11:35. Fraudulent conveyances-Kinds of fraudulent transfers and obligations-Transfers for less than reasonably equivalent value-Transfers that render the debtor undercapitalized</a></b><br>Pursuant to section 548(a)(1)(B)(ii)(II), the trustee may challenge as constructively fraudulent any transfer that was made for less than reasonably equivalent value, if the debtor... | 2016 | Other Secondary Source | —     | <a href="#">16</a><br>B.R.   |
| —         | <b>191. <a href="#">Expert Witnesses: Business and Economy Cases s 8:1. Practice tip-Top 5 bankruptcy expert witness suggestions</a></b><br>The expert must be qualified for the particular subject. The expert must employ an accepted methodology. The expert must apply the methodology properly to preclude bias. The expert...   | 2015 | Other Secondary Source | —     | <a href="#">30</a><br><a href="#">31</a><br><a href="#">37</a><br>B.R. |
| —         | <b>192. <a href="#">Expert Witnesses: Business and Economy Cases s 8:8. Deposition of a bankruptcy expert</a></b><br>The strategy for deposing a bankruptcy expert will vary with the range of topics that may arise in bankruptcy proceedings. The key to dealing with an expert in a bankruptcy...  | 2015 | Other Secondary Source | —     | <a href="#">35</a><br><a href="#">37</a><br>B.R.                       |
| —         | <b>193. <a href="#">Financial Handbook for Bankruptcy Professionals s 5.21.50. Valuations-Market capitalization</a></b><br>In a cluster of cases, courts struggled with the appropriate valuation approach for a public company as of the transfer date. In VFB LLC v. Campbell Soup Co., the Third Circuit...  | 2015 | Other Secondary Source | —     | <a href="#">2</a><br><a href="#">17</a><br><a href="#">26</a><br>B.R.  |
| —         | <b>194. <a href="#">Fraudulent Transfers: Applications and Implications s 2:7. Actual fraudulent intent-Insolvency</a></b><br>Insolvency is an important factor in determining whether a transaction is voidable as actual fraud, and it is important in establishing categories of constructive fraud....  | 2015 | Other Secondary Source | —     | —  |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)                                      |
|-----------|---|------|------------------------|-------|--|
| —         | <b>195. <a href="#">Ginsberg &amp; Martin on Bankruptcy s 8.02. PREFERENCES</a></b><br>Ginsberg & Martin on Bankruptcy<br><br>As its name implies, a preference is a pre-petition transfer in which a creditor gets preferred at the expense of other creditors in the bankruptcy. A preference violates the...   | 2016 | Other Secondary Source | —     | —  |
| —         | <b>196. <a href="#">Ginsberg &amp; Martin on Bankruptcy s 9.03. BANKRUPTCY CODE FRAUDULENT TRANSFER PROVISION</a></b><br>Ginsberg & Martin on Bankruptcy<br><br>The Bankruptcy Code does not limit the trustee to state law in attacking transactions as fraudulent conveyances. The trustee can choose state fraudulent transfer law in attacking a... | 2016 | Other Secondary Source | —     | —  |
| —         | <b>197. <a href="#">Judgment Enforcement s 6.02. FRAUDULENT TRANSFER CLAIM</a></b><br>Judgment Enforcement<br><br>"The fraudulent conveyance, as known in our law, may be roughly defined as an infringement of the creditor's right to realize upon the available assets of the debtor." The idea...   | 2016 | Other Secondary Source | —     | —  |
| —         | <b>198. <a href="#">Judgment Enforcement TABLE OF CASES.</a></b><br>Judgment Enforcement<br><br>(References are to section numbers.) Aaron v. McIntyre, 15 A.D.3d 475 (N.Y.A.D. 2 Dept., 2005), 15.05[E] Abbit v. Bernier, 387 F. Supp. 57 (D. Conn. 1974), § 5.06 ABCO...  | 2016 | Other Secondary Source | —     | —  |
| —         | <b>199. <a href="#">Anatomy of a Fraudulent Transfer Case: Hidden Complications</a></b><br><br>Kit Weitnauer is a partner of Alston & Bird LLP, resident in its Atlanta, Georgia office. In 2006 he was plaintiff's trial counsel (together with Oregon counsel) in a state court...  | 2014 | Other Secondary Source | —     | —  |
| —         | <b>200. <a href="#">When Markets Go Awry: Reconsidering Traditional Valuation Tools</a></b><br><br>Mr. Kaplan is a partner at Fried, Frank, Harris, Shriver & Jacobson LLP, resident in its New York office. He is a member of the Bankruptcy and Restructuring Group with a diverse...   | 2014 | Other Secondary Source | —     | <a href="#">35</a><br><a href="#">36</a><br>B.R. |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)   |
|-----------|---|------|------------------------|-------|---|
| —         | <p><b>201. <a href="#">LBO Jeopardy: The Challenge to Failed LBOs? Caselaw interpreting “unreasonably small capital” in the context of “constructive” fraud avoidance claims</a></b></p> <p>Randall Shaw is a candidate for an LLM in Bankruptcy at St. John’s University School of Law. He spent approximately 10 years working in corporate finance on Wall Street, primarily...</p>                                  | 2014 | Other Secondary Source | —     | <p><a href="#">15</a><br/><a href="#">21</a><br/><a href="#">23</a></p> <p>B.R.</p> |
| —         | <p><b>202. <a href="#">American College of Bankruptcy-Best Practices Report: Formation, Function, and Obligations of Equity Committees in Chapter 11</a></b></p> <p>Heather Lennox is a Partner in Jones Day’s Business Restructuring and Reorganization practice in New York, New York and Cleveland, Ohio. Dennis J. Connolly is a Partner in, and the...</p>   | 2014 | Other Secondary Source | —     | <p><a href="#">1</a><br/><a href="#">36</a></p> <p>B.R.</p>                         |
| —         | <p><b>203. <a href="#">Sections 548 and 550-Developments in the Law of Fraudulent Transfers and Recoveries in 2012</a></b></p> <p>Maryann Gallagher is counsel to the law firm Curtis, Mallet-Prevost, Colt &amp; Mosle LLP (“Curtis”) and Heather Elizabeth Saydah is an associate at Curtis. The authors gratefully...</p>  | 2014 | Other Secondary Source | —     | <p><a href="#">22</a></p> <p>B.R.</p>   |
| —         | <p><b>204. <a href="#">Sections 548 and 550-Developments in the Law of Fraudulent Transfers and Recoveries in 2013</a></b></p> <p>Maryann Gallagher is counsel to the law firm Curtis, Mallet-Prevost, Colt &amp; Mosle LLP (“Curtis”). The author gratefully acknowledges Bryan M. Kotliar and Benjamin Butterfield,...</p>  | 2014 | Other Secondary Source | —     | <p><a href="#">22</a></p> <p>B.R.</p>   |
| —         | <p><b>205. <a href="#">Pratt’s Journal of Bankruptcy Law 0008.05-8, THE YEAR IN BANKRUPTCY: 2007</a></b></p> <p>In a tumultuous year that is likely to be remembered for its extreme market volatility, skyrocketing commodity prices (e.g., crude oil hovering at \$100 per barrel), a slumping...</p>   | 2008 | Other Secondary Source | —     | <p><a href="#">2</a></p> <p>B.R.</p>  |
| —         | <p><b>206. <a href="#">Pratt’s Journal of Bankruptcy Law 2010.03-2, BANKRUPTCY COURT INVALIDATES \$500 MILLION IN LIENS GRANTED TO TOUSA’S FIRST AND SECOND LIEN LENDERS SIX MONTHS BEFORE CHAPTER 11 FILING</a></b></p> <p>In its recent decision in TOUSA, the United States Bankruptcy Court for the Southern District of Florida avoided as fraudulent transfers \$500 million in liens granted to first and...</p> | 2010 | Other Secondary Source | —     | <p><a href="#">35</a></p> <p>B.R.</p>   |

| Treatment | Title  | Date | Type                   | Depth | Headnote(s)  |
|-----------|--|------|------------------------|-------|--|
| —         | <p><b>207. <a href="#">112 Am. Jur. Proof of Facts 3d 99, Bankruptcy Action to Recover Preferential Prepetition Transfer of Property of Debtor Under 11 U.S.C.A. §547</a></b><br/>Am. Jur. Proof of Facts 3d</p> <p>The objectives of the Bankruptcy Code are (i) to rehabilitate financially distressed debtors by relieving them from payment obligations on some or all of their debts, while (ii)...</p> | 2016 | Other Secondary Source | —     | <a href="#">11</a><br>B.R.   |
| —         | <p><b>208. <a href="#">LET'S RETHINK MOORE v. BAY</a></b><br/>34-SEP Am. Bankr. Inst. J. 28 , 28</p> <p>Amidst ongoing discussion about problems in the Bankruptcy Code, most notably by the ABI Commission to Study the Reform of Chapter 11, the doctrine of Moore v. Bay has received...</p>  | 2015 | Law Review             | —     | —  |
| —         | <p><b>209. <a href="#">A CARTOON AND OTHER TAKEAWAYS FROM THE TRONOX CASE</a></b><br/>33-APR Am. Bankr. Inst. J. 20 , 20</p> <p>In an information age where emails, instant messages and texts have generated thousands of terabytes of information that is available for attorneys, consultants, testifying...</p>  | 2014 | Law Review             | —     | —  |
| —         | <p><b>210. <a href="#">RECONSIDERING THE UNIFORMITY OF UNIFORM FRAUDULENT TRANSFER ACT</a></b><br/>33-APR Am. Bankr. Inst. J. 28 , 28</p> <p>The Drafting Committee on amendments to the Uniform Fraudulent Transfer Act (UFTA) is considering amendments that would harmonize conflicting interpretations concerning pleading...</p>  | 2014 | Law Review             | —     | <a href="#">7</a><br>B.R.  |
| —         | <p><b>211. <a href="#">ARE A DEBTOR'S TRADING PRICES RELIABLE EVIDENCE OF ITS ENTERPRISE VALUE?</a></b><br/>30-SEP Am. Bankr. Inst. J. 56 , 56</p> <p>Valuation disputes can be among the most critical issues addressed during the course of a bankruptcy case, at least in terms of economic impact to various bankruptcy participants...</p>  | 2011 | Law Review             | —     | <a href="#">1</a><br>B.R.  |
| —         | <p><b>212. <a href="#">TOUSA SETS THE RECORD STRAIGHT ON VALUATIONS IN AVOIDANCE ACTIONS</a></b><br/>29-AUG Am. Bankr. Inst. J. 52 , 52+</p> <p>Editor's Note: Please see the February 2010 issue of the Journal for a feature article discussing a different issue from TOUSA. Also please see the News at 11 column in the March...</p>  | 2010 | Law Review             | —     | <a href="#">17</a><br><a href="#">35</a><br><a href="#">37</a><br>B.R. |

| Treatment | Title   | Date | Type       | Depth | Headnote(s)   |
|-----------|---|------|------------|-------|---|
| —         | <b>213. <a href="#">VALUATION QUESTIONS RAISED BY TOUSA</a></b><br>29-MAR Am. Bankr. Inst. J. 38 , 38<br><br>Editor's Note: Please see the feature by Jo Ann J. Brighton on page 18 of the February 2010 Journal for an analysis of different aspects of the TOUSA case. Lenders and their...   | 2010 | Law Review | —     | <a href="#">11</a><br>B.R.  |
| —         | <b>214. <a href="#">CONSTRUCTING A BANK HOLDING COMPANY INSOLVENCY MODEL: PART I</a></b><br>28-NOV Am. Bankr. Inst. J. 32 , 32+<br><br>Editor's Note: This is Part I of a two-part series. When a national bank is in financial distress, government regulators typically encourage or require the bank's holding company...  | 2009 | Law Review | —     | <a href="#">12</a><br>B.R.  |
| —         | <b>215. <a href="#">MMM-MMM GOOD: VFB v. CAMPBELL'S SOUP AND THE SOLVENCY OF PUBLICLY-TRADED DEBTORS</a></b><br>27-JAN Am. Bankr. Inst. J. 22 , 22+<br><br>VFB LLC v. Campbell's Soup Co. is chicken soup for this economist's soul. How? First, the Vlassic stork delivered an opinion of strong economic parentage. Second, VFB's and...  | 2009 | Law Review | —     | <a href="#">31</a><br>B.R.  |
| —         | <b>216. <a href="#">THE EXPANSION OF THE TRIGGERING CREDITOR DOCTRINE IN AN ACTION TO AVOID FRAUDULENT TRANSFERS</a></b><br>24 Am. Bankr. Inst. L. Rev. 249 , 277<br><br>C1-2Contents Introduction. 250 I. Evolution of the Law of Fraudulent Transfer. 254 II. Fraudulent Transfer Law. 256 A. Constructive Fraud. 256 B. Actual Fraud. 258 III....                                    | 2016 | Law Review | —     | <a href="#">12</a><br><a href="#">20</a><br>B.R.                      |
| —         | <b>217. <a href="#">BEFUDDLEMENT BETWIXT TWO FULCRUMS: CALIBRATING THE SCALES OF JUSTICE TO ASCERTAIN FRAUDULENT TRANSFERS IN LEVERAGED BUYOUTS</a></b><br>19 Am. Bankr. Inst. L. Rev. 71 , 112<br><br>Give me a lever long enough and a fulcrum on which to place it, and I shall move the world. Archimedes Archimedes, to move the entire globe, wanted only for a point firm and... | 2011 | Law Review | —     | <a href="#">21</a><br>B.R.  |
| —         | <b>218. <a href="#">SQUARING BANKRUPTCY VALUATION PRACTICE WITH DAUBERT DEMANDS</a></b><br>16 Am. Bankr. Inst. L. Rev. 161 , 230+<br><br>C1-3Table of Contents R1-2Introduction . L3162 I. Daubert Gatekeeper Determinations. 165 A. Daubert Standard. 165 B. Court's Role. 167 C. Relevance and Reliability. 168 1....   | 2008 | Law Review | —     | <a href="#">2</a><br><a href="#">17</a><br><a href="#">26</a><br>B.R. |

| Treatment | Title   | Date | Type       | Depth | Headnote(s)                                     |
|-----------|---|------|------------|-------|---|
| —         | <p><b>219. <a href="#">SHOULD AD HOC COMMITTEES HAVE FIDUCIARY DUTIES?: JUDICIAL REGULATION OF THE BANKRUPTCY MARKET</a></b><br/>86 Am. Bankr. L.J. 527 , 568</p> <p>This article is the first to substantively and directly address the question of whether informal creditor groups in bankruptcy cases could and should have fiduciary duties to other...</p>  | 2012 | Law Review | —     | <a href="#">12</a><br>B.R.                      |
| —         | <p><b>220. <a href="#">BANKRUPTCY SECTION 363(b) SALES: MARKET TEST PROCEDURES AND HEIGHTENED SCRUTINY OF EXPEDITED SALES MAY PREVENT ABUSES AND SAFEGUARD CREDITORS WITHOUT LIMITING THE POWER OF THE COURTS</a></b><br/>5 Brook. J. Corp. Fin. &amp; Com. L. 241 , 272</p> <p>On April 30, 2009, Chrysler LLC filed for Chapter 11 bankruptcy protection after failing to reach an agreement with lenders to restructure its debt. President Barack H. Obama...</p> | 2010 | Law Review | —     | <a href="#">1</a><br>B.R.                       |
| —         | <p><b>221. <a href="#">COMMENTS ON THE ARTICLES OF PROFESSORS BAIRD AND JANGER Symposium on Bankruptcy Claims Trading and Securities Regulation</a></b><br/>4 Brook. J. Corp. Fin. &amp; Com. L. 59 , 65</p> <p>Professors Douglas G. Baird and Edward J. Janger have clearly and concisely spelled out why we need regulation of what Professor Baird calls “The Bankruptcy Exchange.” However,...</p>   | 2009 | Law Review | —     | <a href="#">1</a><br>B.R.                       |
| —         | <p><b>222. <a href="#">MARKET EVIDENCE, EXPERT OPINION, AND THE ADJUDICATED VALUE OF DISTRESSED BUSINESSES</a></b><br/>68 Bus. Law. 1039 , 1041+</p> <p>One year ago, The Business Lawyer published an article arguing that courts, when adjudicating the value of distressed businesses, should predominantly defer to “market” evidence,...</p>   | 2013 | Law Review | —     | <a href="#">1</a><br><a href="#">26</a><br>B.R. |
| —         | <p><b>223. <a href="#">CAMPBELL, IRIDIUM, AND THE FUTURE OF VALUATION LITIGATION</a></b><br/>67 Bus. Law. 939 , 940+</p> <p>Five years ago, two landmark federal court valuation decisions, Campbell and Iridium, held that market evidence--rather than the testimony of paid litigation experts--should be...</p>   | 2012 | Law Review | —     | <a href="#">1</a><br><a href="#">35</a><br>B.R. |

| Treatment | Title  | Date | Type       | Depth | Headnote(s)  |
|-----------|--|------|------------|-------|--|
| —         | <p><b>224. <a href="#">LEVERAGED BUYOUT BANKRUPTCIES, THE PROBLEM OF HINDSIGHT BIAS, AND THE CREDIT DEFAULT SWAP SOLUTION</a></b><br/> 2011 Colum. Bus. L. Rev. 118 , 158+</p> <p>I. Introduction and Background. 121 II. Hundreds of Billions of Dollars are at Stake in the Coming Wave of Fraudulent Transfer Litigation. 126 III. Recent Judicial Decisions Can...</p> | 2011 | Law Review | —     | <a href="#">21</a><br><a href="#">25</a><br><a href="#">36</a><br>B.R. |
| —         | <p><b>225. <a href="#">CONSTRUCTION EXPERTS AND RES IPSA LOQUITUR: BRIDGING THE EVIDENTIARY GAP</a></b><br/> 30-FALL Construction Law. 22 , 27</p> <p>There has been scant authority on when expert testimony is required to establish a prima facie case for breach of a construction contract. The general rule in civil litigation has...</p>                           | 2010 | Law Review | —     | —  |
| —         | <p><b>226. <a href="#">GUIDANCE ON THE UNIFORM VOIDABLE TRANSACTIONS ACT</a></b><br/> 38-AUG L.A. Law. 12 , 12</p> <p>IN JULY 2014, THE NATIONAL CONFERENCE of Commissioners on Uniform State Law, also known as the Uniform Law Commission (ULC), amended the Uniform Fraudulent Transfer Act of 1984...</p>  | 2015 | Law Review | —     | <a href="#">7</a><br><a href="#">8</a><br>B.R.                         |
| —         | <p><b>227. <a href="#">A SIMPLE THEORY OF COMPLEX VALUATION</a></b><br/> 113 Mich. L. Rev. 1175 , 1218+</p> <p>Complex valuations of assets, companies, government programs, damages, and the like cannot be done without expertise, yet judges routinely pick an arbitrary value that falls...</p>  | 2015 | Law Review | —     | <a href="#">1</a><br>B.R.  |
| —         | <p><b>228. <a href="#">Sections 548 and 550 - Developments in the Law of Fraudulent Transfers and Recoveries in 2014</a></b></p> <p>Fraudulent transfer law “imposes a substantive prohibition: the debtor may not dispose of his property with the intent or effect of placing it beyond the reach of his creditor.”[...]</p>   | 2016 | Law Review | —     | <a href="#">22</a><br>B.R.   |
| —         | <p><b>229. <a href="#">. . . Table of Cases by Article</a></b></p>   | 2016 | Law Review | —     | —  |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)                                     |
|-----------|---|------|------------------------|-------|---|
| —         | <p><b>230. <a href="#">Rebuilding the Fallen House of Cards: The Bankruptcy Courts Should Require a Discounted Cash Flow Analysis as a Floor in Valuation Hearings to Value Mortgage Portfolios in Dysfunctional Markets</a></b><br/> 21 J. Bankr. L. &amp; Prac. 3 ART. 3, 3 ART. 3+</p> <p>Value is what people are willing to pay for it, but is something really worthless if no one is willing to buy it? The housing market collapse in 2006 and ensuing subprime mortgage...</p> | 2012 | Law Review             | —     | <a href="#">1</a><br><a href="#">35</a><br>B.R. |
| —         | <p><b>231. <a href="#">Recent Developments in the Application of Fraudulent Transfer Laws to Leveraged Buyout and Restructuring Transactions</a></b><br/> 20 J. Bankr. L. &amp; Prac. 1 ART. 3, 1 Art. 3+</p> <p>Fraudulent transfer avoidance actions by debtors, trustees, and creditors against former equity holders, lenders, and parties that received fees for services arising from failed...</p>   | 2011 | Law Review             | —     | —   |
| —         | <p><b>232. <a href="#">ONE-AND-A-HALF BADGES OF FRAUD</a></b><br/> 60 NO. 4 Prac. Law. 41, 41</p> <p>Savings clauses matter only when the value the lender extends never goes to the debtor and the lender knows it. If value goes to the debtor, there would be reasonably equivalent...</p>   | 2014 | Law Review             | —     | —   |
| —         | <p><b>233. <a href="#">031416 American Bankruptcy Institute 163. ABI Commission Report: Proposed Amendments and Their Impact on Valuation</a></b><br/> American Bankruptcy Institute</p> <p>Valuation is a central element of most chapter 11 cases. It helps identify the best use of the assets, and it determines distributions among stakeholders. It also forms the...</p>   | 2016 | Other Secondary Source | —     | <a href="#">35</a><br>B.R.                      |
| —         | <p><b>234. <a href="#">031416 American Bankruptcy Institute 329. Hot Topics in Valuation</a></b><br/> American Bankruptcy Institute</p> <ul style="list-style-type: none"> <li>• Wednesday, March 16 9:45-10:45 a.m. • The valuation of bankrupt and financially distressed firms is impacted by many factors including court decisions, changing business models,...</li> </ul>  | 2016 | Other Secondary Source | —     | <a href="#">26</a><br>B.R.                      |

| Treatment | Title  | Date | Type                   | Depth | Headnote(s)                                     |
|-----------|--|------|------------------------|-------|---|
| —         | <p><b>235. <a href="#">012116 American Bankruptcy Institute 333. CONCURRENT SESSION: Controversial Valuation Issues in the Context of Financial Distress and Bankruptcy</a></b><br/>           American Bankruptcy Institute</p> <p>1. Summary of professional standards regarding hindsight and reliance on subsequent events 2. Court opinions 1. Overview of valuation approaches 2. Summary of professional..</p>      | 2016 | Other Secondary Source | —     | <a href="#">1</a><br>B.R.                       |
| —         | <p><b>236. <a href="#">073114 American Bankruptcy Institute 245. CONCURRENT SESSION: Shakedowns vs. The Pursuit of Justice: The Current Landscape of Avoidance Actions</a></b><br/>           American Bankruptcy Institute</p> <p>In the recent decision of Official Committee of Unsecured Creditors of Quebecor World (USA) Inc. v. American United Insurance Co., et al. (In re Quebecor World (USA) Inc.), the...</p> | 2014 | Other Secondary Source | —     | <a href="#">7</a><br>B.R.                       |
| —         | <p><b>237. <a href="#">073114 American Bankruptcy Institute 401. CONCURRENT SESSION: Financial Statements: What's Hiding Beneath the Surface, and Why Does It Matter?</a></b><br/>           American Bankruptcy Institute</p>   | 2014 | Other Secondary Source | —     | —   |
| —         | <p><b>238. <a href="#">061214 American Bankruptcy Institute 185. CONCURRENT SESSION: Tour de Fraud: Fraudulent Conveyances</a></b><br/>           American Bankruptcy Institute</p> <p>Section 727(a)(2)(A) provides that debtor may not obtain a discharge if: Similarly, disparate division of assets is not found to be fraudulent when based upon moral grounds....</p>  | 2014 | Other Secondary Source | —     | <a href="#">12</a><br>B.R.                      |
| —         | <p><b>239. <a href="#">051514 American Bankruptcy Institute 269. CONCURRENT SESSION: "Market Value" Tests in Valuation</a></b><br/>           American Bankruptcy Institute</p> <p>What kind of 363 sale process, if any, would produce a reliable indication of value? Is implementing a "fair" and "arms-length" 363 sale process the key? See In Re Urban...</p>  | 2014 | Other Secondary Source | —     | <a href="#">1</a><br><a href="#">23</a><br>B.R. |

| Treatment | Title  | Date | Type                   | Depth | Headnote(s)                |
|-----------|--|------|------------------------|-------|----------------------------|
| —         | <p><b>240. <a href="#">120111 American Bankruptcy Institute 49. Concurrent Session: Financial Advisors Track Why Is There Never a Single Answer for the Cost of Capital or Value in Bankruptcy Proceedings? Part I</a></b><br/>American Bankruptcy Institute</p> <p>If valuation entails mathematical computations using established formulas, why do bankruptcy judges routinely preside over valuation hearings that involve two or more competing...</p>                  | 2011 | Other Secondary Source | —     | <a href="#">1</a><br>B.R.  |
| —         | <p><b>241. <a href="#">120111 American Bankruptcy Institute 49. Concurrent Session: Financial Advisors Track Why Is There Never a Single Answer for the Cost of Capital or Value in Bankruptcy Proceedings? Part I</a></b><br/>American Bankruptcy Institute</p> <p>If valuation entails mathematical computations using established formulas, why do bankruptcy judges routinely preside over valuation hearings that involve two or more competing...</p>                  | 2011 | Other Secondary Source | —     | <a href="#">1</a><br>B.R.  |
| —         | <p><b>242. <a href="#">102811 American Bankruptcy Institute 15. Intercreditor Issues</a></b><br/>American Bankruptcy Institute</p> <ul style="list-style-type: none"> <li>• § 510(a) of the Bankruptcy Code says that “subordination agreements” are enforceable in bankruptcy • Contracts are generally enforceable in bankruptcy, and intercreditor...</li> </ul>  | 2011 | Other Secondary Source | —     | —                          |
| —         | <p><b>243. <a href="#">102811 American Bankruptcy Institute 15. Intercreditor Issues</a></b><br/>American Bankruptcy Institute</p> <ul style="list-style-type: none"> <li>• § 510(a) of the Bankruptcy Code says that “subordination agreements” are enforceable in bankruptcy • Contracts are generally enforceable in bankruptcy, and intercreditor...</li> </ul>  | 2011 | Other Secondary Source | —     | —                          |
| —         | <p><b>244. <a href="#">092111 American Bankruptcy Institute 415. Joint Program Basic/Advanced: The Current Era of Fraudulent-Transfer Litigation A MARRIAGE OF CONVENIENCE? BANKRUPTCY COURT JURISDICTION AFTER STERN v. MARSHALL</a></b><br/>American Bankruptcy Institute</p> <p>Appendices Multiparty litigation presents a classic collective action problem. Added to the simple dispute over the existence of any liability to a plaintiff, multiple defendants...</p> | 2011 | Other Secondary Source | —     | <a href="#">20</a><br>B.R. |

| Treatment | Title  | Date | Type                   | Depth | Headnote(s)  |
|-----------|--|------|------------------------|-------|--|
| —         | <p><a href="#">245. 092111 American Bankruptcy Institute 415. Joint Program Basic/Advanced: The Current Era of Fraudulent-Transfer Litigation A MARRIAGE OF CONVENIENCE? BANKRUPTCY COURT JURISDICTION AFTER STERN v. MARSHALL</a><br/>American Bankruptcy Institute</p> <p>Appendices Multiparty litigation presents a classic collective action problem. Added to the simple dispute over the existence of any liability to a plaintiff, multiple defendants...</p>  | 2011 | Other Secondary Source | —     | <p><a href="#">20</a><br/>B.R.</p>   |
| —         | <p><a href="#">246. 080411 American Bankruptcy Institute 393. Concurrent Session: Young &amp; New Bankruptcy Practitioner Case Study</a><br/>American Bankruptcy Institute</p> <p>The most typical litigation brought in the bankruptcy arena involves avoidance actions, particularly preference actions brought pursuant to 11 U.S.C. § 547(b) of title 11 of the...</p>   | 2011 | Other Secondary Source | —     | <p><a href="#">21</a><br/><a href="#">25</a><br/><a href="#">36</a><br/>B.R.</p> |
| —         | <p><a href="#">247. 080411 American Bankruptcy Institute 393. Concurrent Session: Young &amp; New Bankruptcy Practitioner Case Study</a><br/>American Bankruptcy Institute</p> <p>The most typical litigation brought in the bankruptcy arena involves avoidance actions, particularly preference actions brought pursuant to 11 U.S.C. § 547(b) of title 11 of the...</p>   | 2011 | Other Secondary Source | —     | <p><a href="#">21</a><br/><a href="#">25</a><br/><a href="#">36</a><br/>B.R.</p> |
| —         | <p><a href="#">248. 050611 American Bankruptcy Institute 61. Concurrent Session: Valuation from Start to Finish and Beyond: DIP Financing, Cramdown, Rights Offerings, Warrants and Exit Financing Valuation from Start to Finish and Beyond: Overview of Valuation Methods</a><br/>American Bankruptcy Institute</p> <p>This Paper provides a detailed summary of methods commonly used by bankruptcy courts to reach valuation determinations. The four primary methods used are the Discounted Cash Flow...</p> | 2011 | Other Secondary Source | —     | <p><a href="#">1</a><br/>B.R.</p>  |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)                                      |
|-----------|---|------|------------------------|-------|--|
| —         | <p><b>249. <a href="#">050611 American Bankruptcy Institute 61. Concurrent Session: Valuation from Start to Finish and Beyond: DIP Financing, Cramdown, Rights Offerings, Warrants and Exit Financing Valuation from Start to Finish and Beyond: Overview of Valuation Methods</a></b><br/>American Bankruptcy Institute</p> <p>This Paper provides a detailed summary of methods commonly used by bankruptcy courts to reach valuation determinations. The four primary methods used are the Discounted Cash Flow...</p> | 2011 | Other Secondary Source | —     | <a href="#">1</a><br>B.R.                        |
| —         | <p><b>250. <a href="#">031011 American Bankruptcy Institute 175. Bankruptcy Litigation Tips for Trying a Real Estate Valuation, and Fraudulent-Transfer Actions Fraudulent Conveyance Actions: Overview of Key Issues</a></b><br/>American Bankruptcy Institute</p> <p>A fraudulent conveyance action is brought to void a transfer, and to recover the value of the transfer, when a debtor has attempted to put its assets out of the reach of its...</p>   | 2011 | Other Secondary Source | —     | <a href="#">11</a><br><a href="#">12</a><br>B.R. |
| —         | <p><b>251. <a href="#">031011 American Bankruptcy Institute 175. Bankruptcy Litigation Tips for Trying a Real Estate Valuation, and Fraudulent-Transfer Actions Fraudulent Conveyance Actions: Overview of Key Issues</a></b><br/>American Bankruptcy Institute</p> <p>A fraudulent conveyance action is brought to void a transfer, and to recover the value of the transfer, when a debtor has attempted to put its assets out of the reach of its...</p>   | 2011 | Other Secondary Source | —     | <a href="#">11</a><br><a href="#">12</a><br>B.R. |
| —         | <p><b>252. <a href="#">080510 American Bankruptcy Institute 377. The New Face of Lender Liability</a></b><br/>American Bankruptcy Institute</p> <p>The attached materials relate to the Unsecured Creditors Committee's adversary proceeding in the 2009 In re Yellowstone Mountain Club case in Montana bankruptcy court. I was...</p>   | 2010 | Other Secondary Source | —     | <a href="#">37</a><br>B.R.                       |
| —         | <p><b>253. <a href="#">042910 American Bankruptcy Institute 613. Cutting-Edge Issues in Bankruptcy Litigation What You Need to Know about Twombly and Iqbal</a></b><br/>American Bankruptcy Institute</p> <p>A. Every law student learns in their first-year civil procedure course that a party may move to dismiss a cause of action for "failure to state a claim." But you may have heard...</p>  | 2010 | Other Secondary Source | —     | <a href="#">19</a><br>B.R.                       |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)   |
|-----------|---|------|------------------------|-------|---|
| —         | <b>254. <a href="#">022410 American Bankruptcy Institute 357. Valuation Case Law Update: Legal and Financial Perspectives</a></b><br>American Bankruptcy Institute<br><br>In re Hawaiian Telcom Communications, et. al., Case No. 08-02005 (Bankr. D.Haw. November 13, 2009). Hawaiian Telcom Communications, Inc. and numerous affiliates ("Hawaiian...                        | 2010 | Other Secondary Source | —     | <a href="#">31</a><br>B.R.  |
| —         | <b>255. <a href="#">022509 American Bankruptcy Institute 49. Valuation Case Law Update: Legal and Financial Perspectives</a></b><br>American Bankruptcy Institute<br><br>Andrew I. Silfen is a partner and chair of the Bankruptcy and Financial Restructuring group at Arent Fox LLP resident in the New York office. Sally R. Siconolfi is an associate in...                 | 2009 | Other Secondary Source | —     | <a href="#">35</a><br>B.R.  |
| —         | <b>256. <a href="#">012209 American Bankruptcy Institute 403. How the West Was Won: Trying the Insolvency/Valuation Case-Iridium and Beyond</a></b><br>American Bankruptcy Institute<br><br>□ Rules & Concepts: Objectives & Limitations of Expert Testimony □ Expert Reports — FRCP 26(a)(2)(B) □ Expert Testimony □ Dos & Don'ts □ FRE Rule 702 & "Daubert" ("Hired Guns")... | 2009 | Other Secondary Source | —     | <a href="#">26</a><br>B.R.  |
| —         | <b>257. <a href="#">120408 American Bankruptcy Institute 959. Committee Session Commercial Fraud Task Force</a></b><br>American Bankruptcy Institute<br><br>• While there are many ways to value a company, this presentation will focus on three of the most commonly-used methods: • Discounted Cash Flow Model (DCF) — Using a DCF model, the...                             | 2008 | Other Secondary Source | —     | <a href="#">17</a><br><a href="#">26</a><br>B.R.                      |
| —         | <b>258. <a href="#">071008 American Bankruptcy Institute 717. Seaside Chat Squaring Bankruptcy Valuation Practice with Daubert Demands</a></b><br>American Bankruptcy Institute<br><br>Contested hearings on business valuations occupy a great deal of a bankruptcy court's time. In the past, issues of valuation in a bankruptcy case or adversary proceeding were...        | 2008 | Other Secondary Source | —     | <a href="#">2</a><br><a href="#">17</a><br><a href="#">26</a><br>B.R. |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)                                     |
|-----------|---|------|------------------------|-------|---|
| —         | <b>259. <a href="#">071008 American Bankruptcy Institute 869. View from the Bench: Supreme Court Year in Review JUDGES' ROUNDTABLE CASE SUMMARIES</a></b><br>American Bankruptcy Institute<br><br>Centre Insurance Co. v. SNTL Corp. (In re SNTL Corp.), 380 B.R. 204 (9th Cir. BAP 2007). The BAP considered whether an obligation arising under a guaranty which was revived... | 2008 | Other Secondary Source | —     | <a href="#">17</a><br>B.R.                      |
| —         | <b>260. <a href="#">080512 American Bankruptcy Institute 7. Hot Topics in Valuation Decisions/Fights</a></b><br>American Bankruptcy Institute   | 2008 | Other Secondary Source | —     | <a href="#">1</a><br><a href="#">35</a><br>B.R. |
| —         | <b>261. <a href="#">080403 American Bankruptcy Institute 801. Plenary Session JUDGES' ROUNDTABLE CASE SUMMARIES</a></b><br>American Bankruptcy Institute<br><br>Centre Insurance Co. v. SNTL Corp. (In re SNTL Corp.), 380 B.R. 204 (9th Cir. BAP 2007). The BAP considered whether an obligation arising under a guaranty which was revived...                                   | 2008 | Other Secondary Source | —     | <a href="#">17</a><br>B.R.                      |
| —         | <b>262. <a href="#">080403 American Bankruptcy Institute 801. Plenary Session JUDGES' ROUNDTABLE CASE SUMMARIES</a></b><br>American Bankruptcy Institute<br><br>Centre Insurance Co. v. SNTL Corp. (In re SNTL Corp.), 380 B.R. 204 (9th Cir. BAP 2007). The BAP considered whether an obligation arising under a guaranty which was revived...                                   | 2008 | Other Secondary Source | —     | <a href="#">17</a><br>B.R.                      |
| —         | <b>263. <a href="#">ONE-AND-A-HALF BADGES OF FRAUD</a></b><br><br>Loan documents have long used savings clauses as a way to minimize a lender's exposure to a fraudulent conveyance attack. No one thinks of them as a primary line of defense, but...  | 2014 | Other Secondary Source | —     | —   |
| —         | <b>264. <a href="#">HOW TO HANDLE CORPORATE DISTRESS SALE TRANSACTIONS</a></b><br><br>A. Introduction B. Identifying the Distressed Seller C. Risks of a Distressed Transaction Without Chapter 11 D. Chapter 11 Sales E. Advantages of Chapter 11 Sales F. Key Process...  | 2011 | Other Secondary Source | —     | —   |

| Treatment | Title  | Date | Type                   | Depth | Headnote(s)                |
|-----------|--|------|------------------------|-------|----------------------------|
| —         | <b>265. <a href="#">HOW TO HANDLE CORPORATE DISTRESS SALES TRANSACTIONS</a></b><br>A. Introduction B. Identifying the Distressed Seller C. Risks of a Distressed Transaction Without Chapter 11 D. Chapter 11 Sales E. Advantages of Chapter 11 Sales F. Key Process...  | 2010 | Other Secondary Source | —     | —                          |
| —         | <b>266. <a href="#">HOW TO HANDLE CORPORATE DISTRESS SALE TRANSACTIONS</a></b><br>A. Introduction B. Identifying the Distressed Seller C. Risks of a Distressed Transaction Without Chapter 11 D. Chapter 11 Sales E. Advantages of Chapter 11 Sales F. Key Process...   | 2009 | Other Secondary Source | —     | —                          |
| —         | <b>267. <a href="#">HOW TO HANDLE CORPORATE DISTRESS SALE TRANSACTIONS</a></b><br>1. Economic conditions over the past few years have increased the number of distressed companies that are seeking to sell assets as part of their plans to improve their financial...  | 2008 | Other Secondary Source | —     | —                          |
| —         | <b>268. <a href="#">2007 COMMERCIAL LAW DEVELOPMENTS</a></b><br>I. Personal Property Secured Transactions II. Real Property Secured Transactions III. Guaranties and Subordination Agreements IV. Fraudulent Transfers V. Financial Institutions VI...                   | 2008 | Other Secondary Source | —     | <a href="#">31</a><br>B.R. |
| —         | <b>269. <a href="#">HOW TO HANDLE CORPORATE DISTRESS SALE TRANSACTIONS</a></b><br>Copy for Insertion into Table of Contents: How To Handle Corporate Distress Sale Transactions Corinne Ball and John K. Kane Recent economic conditions have increased the number of... | 2008 | Other Secondary Source | —     | —                          |
| —         | <b>270. <a href="#">ANALYZING AND PURSUING FRAUDULENT TRANSFER CLAIMS</a></b><br>The law of fraudulent transfers and the basic concept that a debtor cannot transfer assets to prevent a creditor from satisfying its claim have existed for hundreds of years. The...   | 2009 | Other Secondary Source | —     | <a href="#">37</a><br>B.R. |

| Treatment | Title   | Date | Type                   | Depth | Headnote(s)                |
|-----------|---|------|------------------------|-------|----------------------------|
| —         | <p><b>271. <a href="#">P 82,385 UNITED STATES OF AMERICA, APPELLANT/CROSS-APPELLEE V. DEBORAH C. MENOTTE, TRUSTEE, APPELLEE/CROSS-APPELLANT.</a></b><br/>Bankruptcy Law Reporter</p> <p>¶ 82,385. U.S. District Court, S.D. Florida. Case Nos. 12-cv-80664-KMM, 10-bk-03455-PGH. 484 B.R. 835. 2012 U.S. Dist. Lexis 165201. November 19, 2012. Affirmed in part; Reversed...</p> | 2012 | Other Secondary Source | —     | <a href="#">9</a><br>B.R.  |
| —         | <p><b>272. <a href="#">P 82,100 IN RE TRIBUNE COMPANY, ET AL, DEBTORS.</a></b><br/>Bankruptcy Law Reporter</p> <p>¶ 82,100. U.S. Bankruptcy Court, D. Delaware. Docket No. 08-13141(KJC). 464 B.R. 1262011 Bankr. LEXIS 4128. October 31, 2011. Carey: In re TRIBUNE COMPANY, et. al CHAPTER 11,...</p>   | 2011 | Other Secondary Source | —     | —                          |
| —         | <p><b>273. <a href="#">P 81,087 IN RE JASON M. RANSOM, DEBTOR.</a></b><br/>Bankruptcy Law Reporter</p> <p>Jason M. RANSOM, Appellant v. MBNA AMERICA BANK, N.A., Appellee. ¶ 81,087. U.S. Bankruptcy Appellate Panel, Ninth CircuitBAP No. NV-07-1254-DBaMo. December 27, 2007. Appeal from...</p>  | 2007 | Other Secondary Source | —     | —                          |
| —         | <p><b>274. <a href="#">Insolvency or Inadequate Capitalization Not Proven</a></b><br/>West's Bankruptcy Newsletter</p> <p>The cash flow projections of Chapter 11 debtor-telecommunications providers were reasonable and prudent when made, given the substantial work, performed both by the debtors and...</p>   | 2007 | Other Secondary Source | —     | —                          |
| —         | <p><b>275. <a href="#">Space Law s 40:35, Statutory Committee of Unsecured Creditors v. Motorola, Inc</a></b><br/>Greg A. Danilow, Esq., Michael F. Walsh, Esq., Scott J. Atlas, Esq., Diane Harvey, Esq. and Ashish D. Gandhi, Esq., Weil, Gotshal &amp; Manges LLP, New York, NY, for Statutory...</p>  | 2016 | Other Secondary Source | —     | <a href="#">26</a><br>B.R. |
| —         | <p><b>276. <a href="#">Space Law s 40:38, Freeland v. Iridium World Communications, Ltd</a></b><br/>Donald J. Enright, Douglas Graham Thompson, Jr., Finkelstein Thompson LLP, Washington, DC, Fred T. Isquith, Gregory M. Nespole, Gustavo Bruckner, Scott J. Farrell, Wolf Haldenstein...</p>   | 2016 | Other Secondary Source | —     | <a href="#">21</a><br>B.R. |

## Table of Authorities (52)

| Treatment | Referenced Title   | Type | Depth   | Quoted | Page Number          |
|-----------|--|------|---|--------|----------------------|
| Cited     |  <p><b>1. <a href="#">Amorgianos v. National R.R. Passenger Corp.</a></b><br/> 303 F.3d 256, 2nd Cir.(N.Y.), 2002<br/> LITIGATION - Experts. Court could compare proposed expert testimony with scientific literature in determining its admissibility.</p>   | Case |    |        | <a href="#">349+</a> |
| Cited     | <p><b>2. <a href="#">Barrett v. Continental Illinois Nat. Bank and Trust Co.</a></b> <br/> 882 F.2d 1, 1st Cir.(Mass.), 1989<br/> Appeal was taken from order of the United States District Court for the District of Massachusetts, Andrew A. Caffrey, Senior District Judge, which, after vacating previously...</p>  | Case |    |        | <a href="#">345</a>  |
| Cited     |  <p><b>3. <a href="#">Basic Inc. v. Levinson</a></b><br/> 108 S.Ct. 978, U.S. Ohio, 1988<br/> Sellers of stock during period prior to formal announcement of merger brought Rule 10b-5 action in which it was alleged that material misrepresentations had been made due to denial...</p>   | Case |    |        | <a href="#">347+</a> |
| Discussed |  <p><b>4. <a href="#">Credit Managers Ass'n of Southern California v. Federal Co.</a></b> <br/> 629 F.Supp. 175, C.D.Cal., 1985<br/> Assignees for benefit of creditors of acquired corporation in leveraged buyout brought action against seller of stock alleging, inter alia, transfer was fraudulent conveyance. ...</p> | Case |  |        | <a href="#">345+</a> |
| Cited     |  <p><b>5. <a href="#">Daubert v. Merrell Dow Pharmaceuticals, Inc.</a></b><br/> 113 S.Ct. 2786, U.S. Cal., 1993<br/> Scientific Evidence. "General acceptance" is not necessary precondition to admissibility of scientific evidence under Federal Rules of Evidence.</p>   | Case |  |        | <a href="#">304+</a> |

| Treatment | Referenced Title  | Type | Depth | Quoted | Page Number          |
|-----------|---|------|-------|--------|----------------------|
| Cited     | <p><b>6. <a href="#">Davidoff v. Farina</a></b><br/>           2005 WL 2030501, S.D.N.Y., 2005</p> <p>This putative securities class action arises out of the June 28, 2000 initial public offering of 173,913,000 shares of Class A common stock (the "IPO") of Genuity, Inc...</p>                              | Case |       |        | <a href="#">348</a>  |
| Cited     | <p><b>7. <a href="#">Elliott v. Commodity Futures Trading Com'n</a></b><br/>           202 F.3d 926, 7th Cir., 2000</p> <p>SECURITIES REGULATION - Commodity Futures. CFTC finding of noncompetitive futures trading was reasonable and warranted deference.</p>  | Case |       |        | <a href="#">349</a>  |
| Mentioned | <p><b>8. <a href="#">Etablissement Kdaq Vaduz v. Piha</a></b><br/>           901 F.Supp. 139, S.D.N.Y., 1995</p> <p>Former shareholders of defunct corporation brought suit against former officer and director, alleging breach of fiduciary duty and state Business Corporation Law. The District...</p>        | Case |       |        | <a href="#">342</a>  |
| Cited     | <p> <b>9. <a href="#">Frymire-Brinati v. KPMG Peat Marwick</a></b><br/>           2 F.3d 183, 7th Cir.(Ill.), 1993</p> <p>Investors in corporation brought action against accounting firm which prepared corporation's financial statement for aiding and abetting securities fraud, securities fraud, and...</p> | Case |       |        | <a href="#">350+</a> |
| Cited     | <p> <b>10. <a href="#">General Elec. Co. v. Joiner</a></b><br/>           118 S.Ct. 512, U.S.Ga., 1997</p> <p>LITIGATION - Experts. Abuse of discretion standard applied to decision to exclude scientific evidence.</p>  | Case |       |        | <a href="#">350</a>  |
| Cited     | <p><b>11. <a href="#">Gentile v. SinglePoint Financial, Inc.</a></b><br/>           2003 WL 1240504, Del.Ch., 2003</p> <p>Petitioners, John A. Gentile ("Gentile"), Victoria S. Cashman ("Cashman") and Bradley T. Martin ("Martin"), Dyad Partners LLC ("Dyad Partners"), and John Knight...</p>                 | Case |       |        | <a href="#">349</a>  |

| Treatment     | Referenced Title   | Type | Depth   | Quoted | Page Number          |
|---------------|--|------|---|--------|----------------------|
| Distinguished | <p> <b>12. <a href="#">In re All Media Properties, Inc.</a></b></p> <p>5 B.R. 126, Bkrtcy.S.D.Tex., 1980</p> <p>In a proceeding on two involuntary Chapter 11 petitions brought under the Bankruptcy Code, the Bankruptcy Court, Edward H. Patton, Jr., J., held that: (1) claim is contingent as to...</p> | Case |    |        | <a href="#">343+</a> |
| Cited         | <p> <b>13. <a href="#">In re Better Care, Ltd.</a></b></p> <p>97 B.R. 405, Bkrtcy.N.D.Ill., 1989</p> <p>Creditors filed involuntary petition against debtor. The Bankruptcy Court, Erwin I. Katz, J., held that: (1) evidence failed to establish that debtor was generally not paying...</p>               | Case |    |        | <a href="#">342</a>  |
| Discussed     | <p> <b>14. <a href="#">In re Coated Sales, Inc.</a></b></p> <p>144 B.R. 663, Bkrtcy.S.D.N.Y., 1992</p> <p>Chapter 11 debtor brought adversary proceeding to recover alleged preferential transfer. The Bankruptcy Court, Cornelius Blackshear, J., held that: (1) debtor's assets had to be...</p>          | Case |    |        | <a href="#">344+</a> |
| Cited         | <p><b>15. <a href="#">In re Duplan Corp.</a></b></p> <p>9 B.R. 921, S.D.N.Y., 1980</p> <p>Chapter X trustee filed proposed plan of reorganization of debtor. The District Court, Kevin Thomas Duffy, J., held that Chapter X trustee's proposed reorganization plan for...</p>   | Case |  |        | <a href="#">347+</a> |
| Cited         | <p><b>16. <a href="#">In re Fiberglass Industries, Inc.</a></b></p> <p>74 B.R. 738, Bkrtcy.N.D.N.Y., 1987</p> <p>Secured creditor brought action to determine value of its collateral, and Chapter 11 debtors sought recovery of expenditures alleged to be necessary costs and expenses of...</p>   | Case |  |        | <a href="#">348+</a> |
| Cited         | <p> <b>17. <a href="#">In re Hechinger Inv. Co. of Del.</a></b></p> <p>327 B.R. 537, D.Del., 2005</p> <p>BANKRUPTCY - Jury. Liquidating trust of debtor corporation did not have right to trial by jury on its breach of fiduciary duty claim.</p>  | Case |  |        | <a href="#">347+</a> |

| Treatment | Referenced Title  | Type | Depth   | Quoted | Page Number          |
|-----------|---|------|---|--------|----------------------|
| Mentioned |  <b>18. <a href="#">In re Heilig-Meyers Co.</a></b><br>319 B.R. 447, Bkrtcy.E.D.Va., 2004<br>BANKRUPTCY - Avoidance. Debtors failed to show they were insolvent at time of alleged preferences.  | Case |    |        | <a href="#">346</a>  |
| Cited     |  <b>19. <a href="#">In re Lids Corp.</a></b><br>281 B.R. 535, Bkrtcy.D.Del., 2002<br>BANKRUPTCY - Avoidance. Book values were insufficient to rebut debtor's presumed insolvency for preference purposes.  | Case |    |        | <a href="#">344</a>  |
| Cited     | <b>20. <a href="#">In re Longview Aluminum, L.L.C.</a></b><br>2005 WL 3021173, Bkrtcy.N.D.Ill., 2005<br>These three adversary proceedings, arising in the bankruptcy case of Longview Aluminum, L.L.C., are before the Court for judgment after a joint trial. The proceedings were brought...  | Case |    |        | <a href="#">347+</a> |
| Cited     | <b>21. <a href="#">In re Med Diversified, Inc.</a></b><br>334 B.R. 89, Bkrtcy.E.D.N.Y., 2005<br>BANKRUPTCY - Witnesses. Putative expert was not qualified to give expert opinion on value in constructive fraudulent transfer proceeding.   | Case |   |        | <a href="#">351+</a> |
| Cited     | <b>22. <a href="#">In re Mirant Corp.</a></b><br>334 B.R. 800, Bkrtcy.N.D.Tex., 2005<br>BANKRUPTCY - Plans. Market's preconfirmation valuation of Chapter 11 debtors was not proper measure of value for plan confirmation purposes.  | Case |  |        | <a href="#">348+</a> |
| Cited     |  <b>23. <a href="#">In re PWS Holding Corp.</a></b><br>228 F.3d 224, 3rd Cir.(Del.), 2000<br>BANKRUPTCY - Plans. Causal connection is required to trigger absolute priority rule.  | Case |  |        | <a href="#">344</a>  |
| Cited     |  <b>24. <a href="#">In re Radiology Associates, Inc. Litigation</a></b><br>611 A.2d 485, Del.Ch., 1991<br>Minority shareholder in close corporation brought suit against other shareholders and related entities for breach of contractual and fiduciary duties. In addition, plaintiff... | Case |  |        | <a href="#">347+</a> |

| Treatment | Referenced Title  | Type | Depth | Quoted | Page Number          |
|-----------|---|------|-------|--------|----------------------|
| Mentioned | <p><b>25. <a href="#">In re Reed</a></b><br/>                     11 B.R. 755, Bkrcty.S.D.W.Va., 1981</p> <p>Creditors filed involuntary Chapter 7 petition against debtor. The Bankruptcy Court, Edwin F. Flowers, J., held that debtor was not generally paying his debts as they became due as...</p>                    | Case |       |        | <a href="#">343</a>  |
| Cited     | <p><b>26. <a href="#">In re Rezulin Products Liability Litigation</a></b><br/>                     369 F.Supp.2d 398, S.D.N.Y., 2005</p> <p>PRODUCTS LIABILITY - Experts. Expert testimony concerning drug's toxic effects was excludible given causation gap, difficulties with cited studies.</p>                         | Case |       |        | <a href="#">350</a>  |
| Discussed | <p><b>27. <a href="#">In re Roblin Industries, Inc.</a></b><br/>                     78 F.3d 30, 2nd Cir.(N.Y.), 1996</p> <p>Chapter 7 trustee brought adversary proceeding to avoid transfer as preferential. The United States Bankruptcy Court for the Western District of New York, Beryl E. McGuire, J.,...</p>        | Case |       |        | <a href="#">342+</a> |
| Cited     | <p><b>28. <a href="#">In re Strickland</a></b><br/>                     230 B.R. 276, Bkrcty.E.D.Va., 1999</p> <p>BANKRUPTCY - Avoidance. Debtor's mother's boyfriend was not an "insider" at time of alleged preference.</p>   | Case |       |        | <a href="#">346</a>  |
| Cited     | <p><b>29. <a href="#">In re Washington Bancorporation</a></b><br/>                     180 B.R. 330, Bkrcty.D.Dist.Col., 1995</p> <p>PREFERENCES. Chapter 11 debtor's negative \$32 million net worth six months after alleged preference was not sufficient, without more, to demonstrate its insolvency at time of...</p> | Case |       |        | <a href="#">346+</a> |
| Cited     | <p><b>30. <a href="#">In re Winstar Communications, Inc.</a></b><br/>                     348 B.R. 234, Bkrcty.D.Del., 2005</p> <p>BANKRUPTCY - Claims. Lender-equipment supplier for telecommunications carrier engaged in egregious conduct supporting equitable subordination.</p>                                       | Case |       |        | <a href="#">351</a>  |

| Treatment     | Referenced Title   | Type | Depth   | Quoted | Page Number          |
|---------------|--|------|---|--------|----------------------|
| Mentioned     |  <b>31. <a href="#">In re Worldcom, Inc.</a></b><br>2003 WL 23861928, Bkrcty.S.D.N.Y., 2003<br>On September 8, 9, 12, 15, 16, 17 and 19, 2003 and October 14, 15, 21 and 30 2003, this Court held a confirmation hearing (the "Confirmation Hearing") to consider a plan of...                | Case |    |        | <a href="#">342</a>  |
| Cited         |  <b>32. <a href="#">In re Zenith Electronics Corp.</a></b><br>241 B.R. 92, Bkrcty.D.Del., 1999<br>BANKRUPTCY - Plans. Plan could provide for release of creditor claims only by consenting creditors.   | Case |    |        | <a href="#">344</a>  |
| Cited         | <b>33. <a href="#">Libas, Ltd. v. U.S.</a></b><br>193 F.3d 1361, Fed.Cir., 1999<br>Importer brought action challenging Customs Service's classification of fabric as machine-loomed, rather than hand-loomed. The United States Court of International Trade, Richard...   | Case |    |        | <a href="#">349</a>  |
| Discussed     |  <b>34. <a href="#">Lippe v. Bairnco Corp.</a></b><br>288 B.R. 678, S.D.N.Y., 2003<br>BANKRUPTCY - Experts. Proffered expert who had acted as plaintiffs counsel would be precluded from testifying.  | Case |  |        | <a href="#">350+</a> |
| Cited         |  <b>35. <a href="#">Lippe v. Bairnco Corp.</a></b><br>99 Fed.Appx. 274, 2nd Cir.(N.Y.), 2004<br>BANKRUPTCY - Avoidance. Asbestos manufacturer's sale of its assets was not fraudulent conveyance.   | Case |  |        | <a href="#">350+</a> |
| Distinguished |  <b>36. <a href="#">Matter of International Teldata Corp.</a></b><br>12 B.R. 879, Bkrcty.D.Nev., 1981<br>Petitioning creditor filed an involuntary petition for bankruptcy under Chapter 7, and alleged debtor made a motion to dismiss. The Bankruptcy Court, Lloyd D. George, J., held... | Case |  |        | <a href="#">343+</a> |
| Cited         |  <b>37. <a href="#">Matter of Prince</a></b><br>85 F.3d 314, 7th Cir.(Ill.), 1996<br>Bankruptcy Estate. Goodwill of debtor's incorporated orthodontist practice was part of bankruptcy estate and did not fall under earnings exception.  | Case |  |        | <a href="#">347+</a> |

| Treatment | Referenced Title  | Type | Depth   | Quoted | Page Number          |
|-----------|---|------|---|--------|----------------------|
| Cited     |  <b>38. <a href="#">Matter of Total Technical Services, Inc.</a></b><br>150 B.R. 893, Bkrtcy.D.Del., 1993<br>PREFERENCES. Chapter 11 debtor's prepetition transfers to debtor's vice president were preferential.  | Case |    |        | <a href="#">344</a>  |
| Cited     |  <b>39. <a href="#">Metlyn Realty Corp. v. Esmark, Inc.</a></b><br>763 F.2d 826, 7th Cir.(Ill.), 1985<br>After District Court had approved settlement which called for acquiring corporation to pay additional \$2.80 per shares it had obtained in tender offer and for target to be merged...                                | Case |    |        | <a href="#">347+</a> |
| Discussed |  <b>40. <a href="#">MFS/Sun Life Trust-High Yield Series v. Van Dusen Airport Services Co.</a></b><br>910 F.Supp. 913, S.D.N.Y., 1995<br>Holders of bonds issued by airport services company brought action against company, former partners in company, and purchasers of company, claiming that leveraged buyout (LBO) of... | Case |    |        | <a href="#">344+</a> |
| Discussed |  <b>41. <a href="#">Moody v. Security Pacific Business Credit, Inc.</a></b><br>971 F.2d 1056, 3rd Cir.(Pa.), 1992<br>Chapter 7 trustee brought action against participants in leveraged buyout of corporate debtor, alleging fraudulent conveyance under Pennsylvania's Uniform Fraudulent Conveyance Act...                 | Case |  |        | <a href="#">345+</a> |
| Cited     | <b>42. <a href="#">National Communications Ass'n, Inc. v. American Tel. &amp; Tel. Co.</a></b><br>1998 WL 118174, S.D.N.Y., 1998<br>This Memorandum and Order records the resolutions of a number of motions made prior to trial. Counsel were orally informed of the resolutions previously. Plaintiff National...   | Case |  |        | <a href="#">350</a>  |
| Examined  | <b>43. <a href="#">Peltz v. Hatten</a></b><br>279 B.R. 710, D.Del., 2002<br>BANKRUPTCY - Avoidance. Stock purchase transaction was not constructively fraudulent.   | Case |  |        | <a href="#">347+</a> |

| Treatment | Referenced Title   | Type | Depth   | Quoted | Page Number          |
|-----------|--|------|---|--------|----------------------|
| Cited     | <p> <a href="#">44. Point Productions A.G. v. Sony Music Entertainment, Inc.</a></p> <p>2004 WL 345551, S.D.N.Y., 2004</p> <p>This memorandum and order follows a trilogy of decisions in this matter which, taken together and explained below in greater detail, effectively limit the time period and the...</p> | Case |    |        | <a href="#">350+</a> |
| Cited     | <p> <a href="#">45. Prairie Lakes Health Care System, Inc. v. Wookey</a></p> <p>583 N.W.2d 405, S.D., 1998</p> <p>Hospital sought to void as fraudulent transfer by patient and his wife of their real estate to their adult son. The Circuit Court, Third Judicial Circuit, Clark County, Robert L....</p>         | Case |    |        | <a href="#">343</a>  |
| Cited     | <p><a href="#">46. Questrom v. Federated Dept. Stores, Inc.</a></p> <p>84 F.Supp.2d 483, S.D.N.Y., 2000</p> <p>LABOR AND EMPLOYMENT - Hours and Wages. Valuation of company conformed to employment agreement.</p>   | Case |    |        | <a href="#">351</a>  |
| Cited     | <p><a href="#">47. To-Am Equipment Co., Inc. v. Mitsubishi Caterpillar Forklift America, Inc.</a></p> <p>953 F.Supp. 987, N.D.Ill., 1997</p> <p>Forklift dealer brought action against manufacturer under Illinois Franchise Disclosure Act. Manufacturer counterclaimed for unpaid invoices. After jury concluded that dealer...</p>  | Case |  |        | <a href="#">350+</a> |
| Cited     | <p> <a href="#">48. TV58 Ltd. Partnership v. Weigel Broadcasting Co.</a></p> <p>1993 WL 285850, Del.Ch., 1993</p> <p>Plaintiff TV58 Limited Partnership ("TV58LP") brought this appraisal action pursuant to 8 Del.C. § 262 for the value of its 200 shares of stock of Milwaukee TV58, Inc....</p>               | Case |  |        | <a href="#">351</a>  |
| Cited     | <p><a href="#">49. Union Bank of Switzerland v. Deutsche Financial Services Corp.</a></p> <p>2000 WL 178278, S.D.N.Y., 2000</p> <p>The bench trial of this action consumed four days in July 1999, and summations were heard on August 26, 1999. The dispute arose out of an agreement (the "Master Participation...</p>   | Case |  |        | <a href="#">344</a>  |

| Treatment | Referenced Title  | Type | Depth   | Quoted | Page Number          |
|-----------|---|------|---|--------|----------------------|
| Examined  |  <b>50. <a href="#">VFB LLC v. Campbell Soup Co.</a></b> <br>482 F.3d 624, 3rd Cir.(Del.), 2007<br>BUSINESS ORGANIZATIONS - Parent and Subsidiary. Parent corporation was not liable in connection with sale of underperforming businesses to subsidiary and spin-off.                | Case |  |        | <a href="#">291+</a> |
| Examined  |  <b>51. <a href="#">VFB LLC v. Campbell Soup Co.</a></b> <br>2005 WL 2234606, D.Del., 2005<br>VFB L.L.C. ("VFB") brought this action against Campbell Soup Company, Campbell Investment Company, Campbell Foodservice Company, Campbell Sales Company, Campbell Soup Company, LTD.... | Case |  |        | <a href="#">346+</a> |
| Cited     |  <b>52. <a href="#">Zenith Electronics Corp. v. WH-TV Broadcasting Corp.</a></b><br>395 F.3d 416, 7th Cir.(Ill.), 2005<br>COMMERCIAL LAW - Damages. Proffered expert testimony on lost profits was excludible as lacking in sufficient facts, given lack of statistics.  | Case |  |        | <a href="#">350</a>  |