Numerous financial analysts nonetheless followed Tribune and its reported financial results and developed their own forward-looking performance expectations for the Tribune Entities. In early 2007, approximately 17 analysts followed Tribune.[231] After Tribune's release of fourth quarter and full year 2006 results,[232] and at a time temporally proximate to the Tribune Board's approval of the 2007 budget, analysts' expectations of selected Tribune performance metrics ranged as follows:[233]

TRIBUNE IBES ESTIMATES ($mm)

Consensus Date	2007 Estimates			
	Revenue		EBITDA	
	IBES Median	IBES Mean	IBES Median	IBES Mean
01/2007	$ 5,495.8	$ 5,465.6	$ 1,287.7	$ 1,277.3
02/2007	$ 5,399.6	$ 5,395.1	$ 1,269.7	$ 1,267.8
03/2007	$ 5,367.8	$ 5,369.0	$ 1,277.6	$ 1,255.1

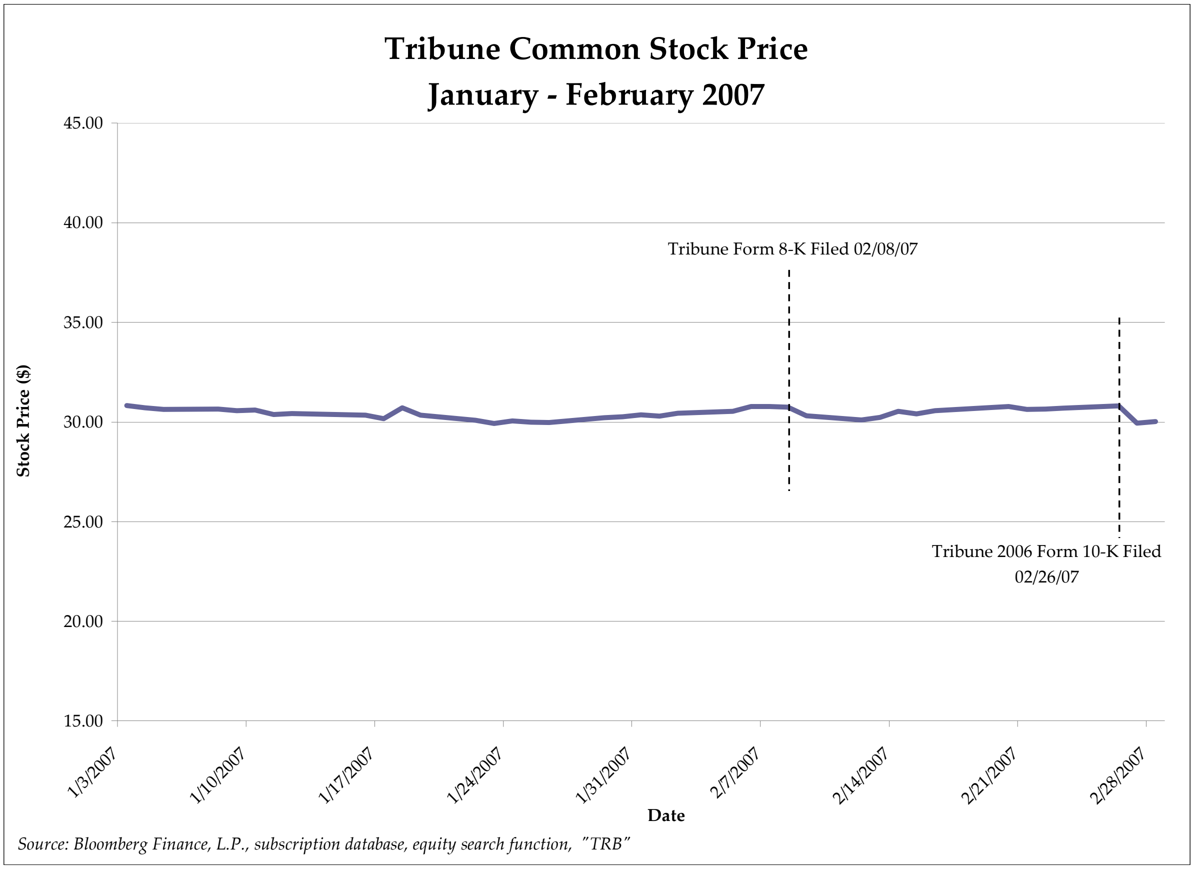
The public markets offer additional information regarding Tribune's financial prospects during this period. For example, during early 2007 (through the date of the issuance of fourth quarter and full year 2006 results in February 2007), Tribune Common Stock traded between approximately $30 and $31 per share notwithstanding public disclosure of Tribune's downward trends in annual revenue and profitability:[234]

231 Three of the analysts were restricted from rating Tribune because of involvement of their firms as advisors in the strategic review process. *See* Ex. 68 at TRB0413550 (Tribune Board Meeting Materials, dated February 13, 2007).

232 *See* Ex. 72 (Tribune Form 8-K, filed February 8, 2007); Ex. 14 (Tribune 2006 Form 10-K).

233 The Institutional Brokers' Estimate System data reflecting analyst consensus was obtained from Tribune's financial advisor, Lazard. *See* Ex. 74 (Tribune IBES Estimates).

234 Tribune stock price data was obtained from Bloomberg Finance, L.P., on the basis of a subscription to its searchable database. Tribune stock prices were obtained through use of the equity search function, "TRB" symbol. *See* Ex. 75 (Daily Tribune Stock Trading Price).



The graph above illustrates that prices for Tribune Common Stock showed little movement following the announcements of end-of year financial results for 2006, suggesting that those results may not have meaningfully altered the market's long-term expectations of Tribune's financial performance or the attendant risks.[235] The following table sets forth the relevant data illustrated in the above graph:

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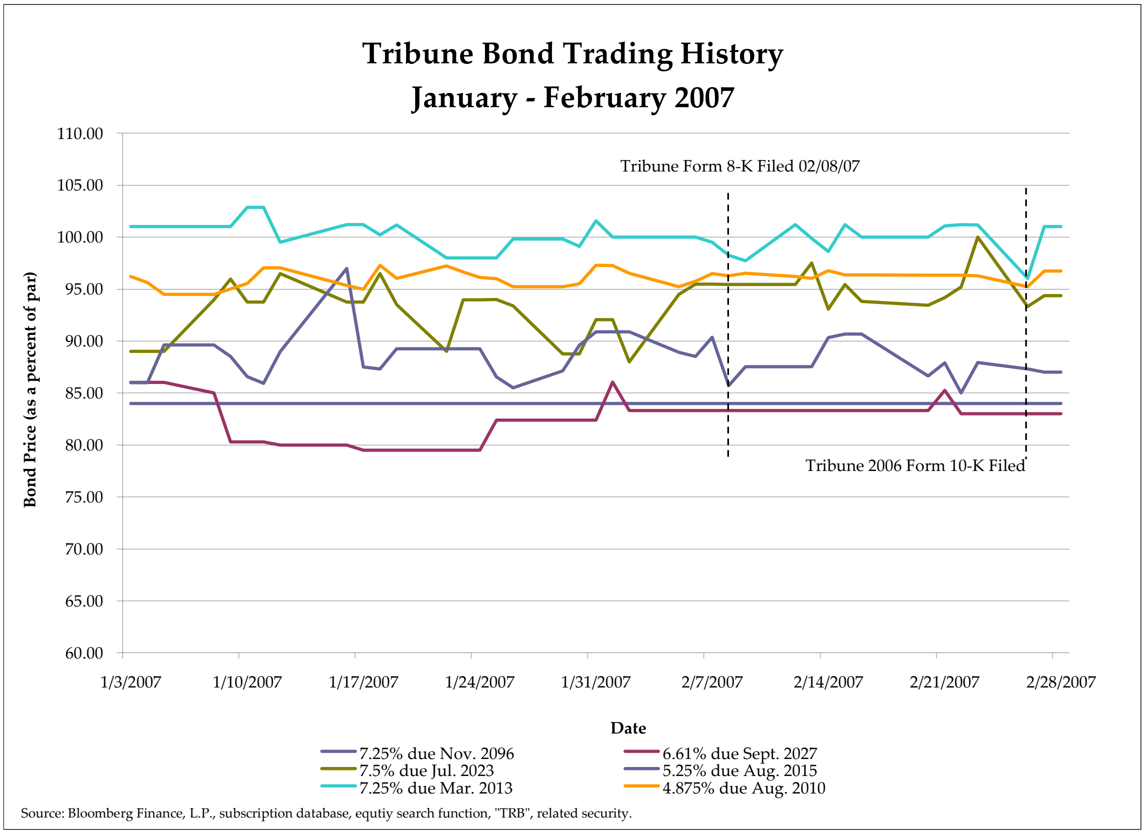
[235] The foregoing observations are inferential and have been drawn solely on the basis of observed changes in Tribune stock prices in periods immediately preceding and subsequent to public disclosure of actual financial results in Tribune's Form 10-Q for the fourth quarter of 2006. No statistically significant conclusions can be drawn relative to excess returns (*i.e.*, changes in stock price that are not related to general changes in the market) without performing econometric-based event studies to regress observed stock price changes against market and/or cohort returns. The Examiner did not perform this kind of econometric analysis due to time and budgetary constraints relating to the preparation of the Report.

MOVEMENT OF TRIBUNE COMMON STOCK PRICES BEFORE AND AFTER EARNINGS ANNOUNCEMENTS (1)					
		Close		**Open**	**Volume**
2/5/2007	$	30.53	$	30.37	1,159,900
2/6/2007		30.77		30.53	1,246,600
2/7/2007		30.77		30.96	2,531,800
2/8/2007 (2)		30.74		30.82	1,730,200
2/9/2007		30.31		30.74	1,262,800
2/12/2007		30.11		30.27	741,622
2/13/2007		30.22		30.09	645,574
2/21/2007	$	30.63	$	30.67	915,000
2/22/2007		30.64		30.51	600,500
2/23/2007		30.70		30.62	598,500
2/26/2007 (3)		30.81		31.00	1,605,464
2/27/2007		29.94		30.74	1,396,400
2/28/2007		30.03		29.85	1,076,600
3/1/2007		30.14		29.75	885,397

(1) Source: Bloomberg Finance, L.P., subscription database, equity search function, "TRB"
(2) Date of Tribune Form 8-K Filing
(3) Date of Tribune 2006 Form 10-K Filing

Likewise, bond prices for Tribune's then-existing publicly traded debt varied somewhat following the announcements of year-end financial results for 2006, but did not show a dramatic (let alone consistent) variance following the news—in some instances tilting up slightly, remaining relatively constant, or going down slightly—but generally remained within an 80% to 100% of face value range:[236]

[236] These inferential observations are subject to the same caveat as in the previous footnote. Data presented in the chart reflecting changes in bond prices were obtained from Bloomberg Finance, L.P. An alternative source of bond pricing information, Advantage Data, was reviewed as well by the Examiner based on data provided by Lazard, Tribune's financial advisor. *See* Ex. 76 (Bond Trading History). Results obtained from those alternative data providers generally reflect consistency, although modest differences were noted. *See* Ex. 77 (Tribune Bond Pricing).



c. Financial Performance in Early 2007.

Tribune's management monitored and evaluated the financial performance of the Tribune Entities on a monthly basis.[237] Each month, management prepared and circulated internally to other members of management a packet of materials referred to at Tribune as the "Brown Book."[238] The Brown Book contained both consolidated performance metric comparisons of budgeted to actual results (*e.g.,* revenue and profitability) and detailed analysis and commentary regarding discrete business unit performance.[239] According to Mr. Amsden, the Brown Books typically were prepared two-and-a-half to three weeks after the end of each reporting period.[240]

237 Technically, Brown Books were issued for each "reporting period," which approximated monthly reporting (although slight differences may exist between a calendar month and a reporting period). There is no evidence that the Brown Books were furnished to the Tribune Board.

238 *See, e.g.,* Ex. 78 at EGI-LAW00090375-90535 (Brown Book for Period 4, 2007).

239 *See, e.g., id.* at EGI-LAW00090375-90535.

240 *See* Ex. 66 at 18:2-18:19 (Rule 2004 Examination of Harry Amsden, December 16, 2009).

In conjunction with the preparation of the Brown Books, Tribune's management tracked Tribune's actual performance against management's plan. The monthly performance comparisons contained in the Brown Books were based on a comparison of monthly budgeted to actual unaudited results compiled by management.[241] As such, the Brown Books afforded management the opportunity to track and evaluate Tribune's monthly performance. Although Tribune typically did not publicly disclose information regarding its profitability until it issued its quarterly Form 10-Q or issued a Form 8-K summarizing quarterly results, Tribune did issue press releases each month with revenue statistics for the month before, including revenue for each business segment and comparisons to corresponding periods in the prior year.[242]

During the first quarter of 2007, Tribune performed essentially consistent with plan expectations on a consolidated basis, although Tribune underperformed the more aggressive expectations held by some analysts:

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[241] Monthly budgeted amounts contained in the 2007 Brown Books, in the aggregate, approximate the Tribune Board-approved 2007 plan annual total for revenue and operating profit, with the exception of differences principally attributable to budget modifications corresponding to unanticipated asset sales occurring during the year, and certain year end budget adjustments accounting for Step Two closing costs incurred during December 2007.

[242] *See, e.g.*, Ex. 79 (Tribune Press Release, dated May 14, 2007).

TRIBUNE CONSOLIDATED ($000s)				
	01/2007	02/2007	03/2007	Q1 YTD (1)
Revenue				
Brown Book 2007 Plan	$ 447,888	$ 391,911	$ 407,940	$ 1,238,917
Brown Book 2007 Actual	$ 441,948	$ 384,500	$ 391,785	$ 1,214,502
Variance	***($ 5,940)***	***($ 7,411)***	***($ 16,155)***	***($ 24,415)***
% of Variance	***-1.33%***	***-1.89%***	***-3.96%***	***-1.97%***
Operating Profit (EBIT) (2)				
Brown Book 2007 Plan	$ 50,481	$ 51,785	$ 80,754	$ 183,044
Brown Book 2007 Actual	$ 52,467	$ 50,739	$ 78,843	$ 181,462
Variance	***$ 1,986***	***($ 1,046)***	***($ 1,911)***	***($ 1,582)***
% of Variance	***3.93%***	***-2.02%***	***-2.37%***	***-0.86%***

(1) YTD Quarterly information does not equal the sum of the three months due to discontinued operations.
(2) Consolidated Operating Profit (EBIT) does not equal the combined operating profits of both the Publishing Segment and the Broadcasting Segment due to a deduction for corporate expenses.

At the business unit level, however, more significant variances to plan are observable, particularly regarding operating profit—favorable as to the Broadcasting Segment but unfavorable as to the Publishing Segment, with the two segments tending to partially offset one another on a consolidated presentation basis:

TRIBUNE ($000s)								
	Publishing Segment				Broadcasting Segment			
	01/2007	02/2007	03/2007	Q1 YTD (1)	01/2007	02/2007	03/2007	Q1 YTD (1)
Revenue								
Brown Book 2007 Plan	$ 351,357	$ 302,145	$ 308,972	$ 953,652	$ 96,531	$ 89,766	$ 98,968	$ 285,265
Brown Book 2007 Actual	$ 345,182	$ 294,232	$ 295,811	$ 931,494	$ 96,766	$ 90,268	$ 95,974	$ 283,008
Variance	***($ 6,175)***	***($ 7,913)***	***($ 13,161)***	***($ 22,158)***	***$ 235***	***$ 502***	***($ 2,994)***	***($ 2,257)***
% of Variance	***-1.76%***	***-2.62%***	***-4.26%***	***-2.32%***	***0.24%***	***0.56%***	***-3.03%***	***-0.79%***
Operating Profit								
Brown Book 2007 Plan	$ 44,005	$ 46,088	$ 58,106	$ 148,229	$ 11,558	$ 16,344	$ 26,972	$ 54,874
Brown Book 2007 Actual	$ 42,733	$ 42,557	$ 54,793	$ 139,721	$ 14,359	$ 19,746	$ 27,277	$ 61,382
Variance	***($ 1,272)***	***($ 3,531)***	***($ 3,313)***	***($ 8,508)***	***$ 2,801***	***$ 3,402***	***$ 305***	***$ 6,508***
% of Variance	***-2.89%***	***-7.66%***	***-5.70%***	***-5.74%***	***24.23%***	***20.81%***	***1.13%***	***11.86%***

(1) YTD Quarterly information does not equal the sum of the three months due to discontinued operations.

On April 19, 2007, Tribune issued a press release summarizing first quarter 2007 results in its earnings announcement.[243] Subsequently, on May 9, 2007, Tribune issued its Form 10-Q

243 Ex. 1075 (Tribune Press Release, dated April 19, 2007).

for the quarter ended April 1, 2007 setting forth, among other things, results of operations for the period.[244] The Form 10-Q reported results were consistent with actual results contained in the Brown Books for the first three months of 2007, both at the consolidated and business unit level of reporting:

TRIBUNE CONSOLIDATED ($000s)		
	2007 Q1 10-Q	2007 Q1 Brown Book Actual
Revenue	$ 1,214,502	$ 1,214,502
EBIT (1)	$ 181,462	$ 181,462
EBITDA (1)	$ 238,494	$ 238,494

(1) Consolidated EBIT and EBITDA do not equal the combined EBIT and EBITDA of the Publishing Segment and Broadcasting Segment divisions due to a deduction for corporate expenses

TRIBUNE ($000s)				
	Publishing Segment		Broadcasting Segment	
	2007 Q1 10-Q	2007 Q1 Brown Book Actual	2007 Q1 10-Q	2007 Q1 Brown Book Actual
Revenue	$ 931,494	$ 931,494	$ 283,008	$ 283,008
EBIT	$ 139,721	$ 139,721	$ 61,382	$ 61,382
EBITDA	$ 183,721	$ 183,758	$ 74,382	$ 74,136

Once again, Tribune Common Stock moved little after these filings.

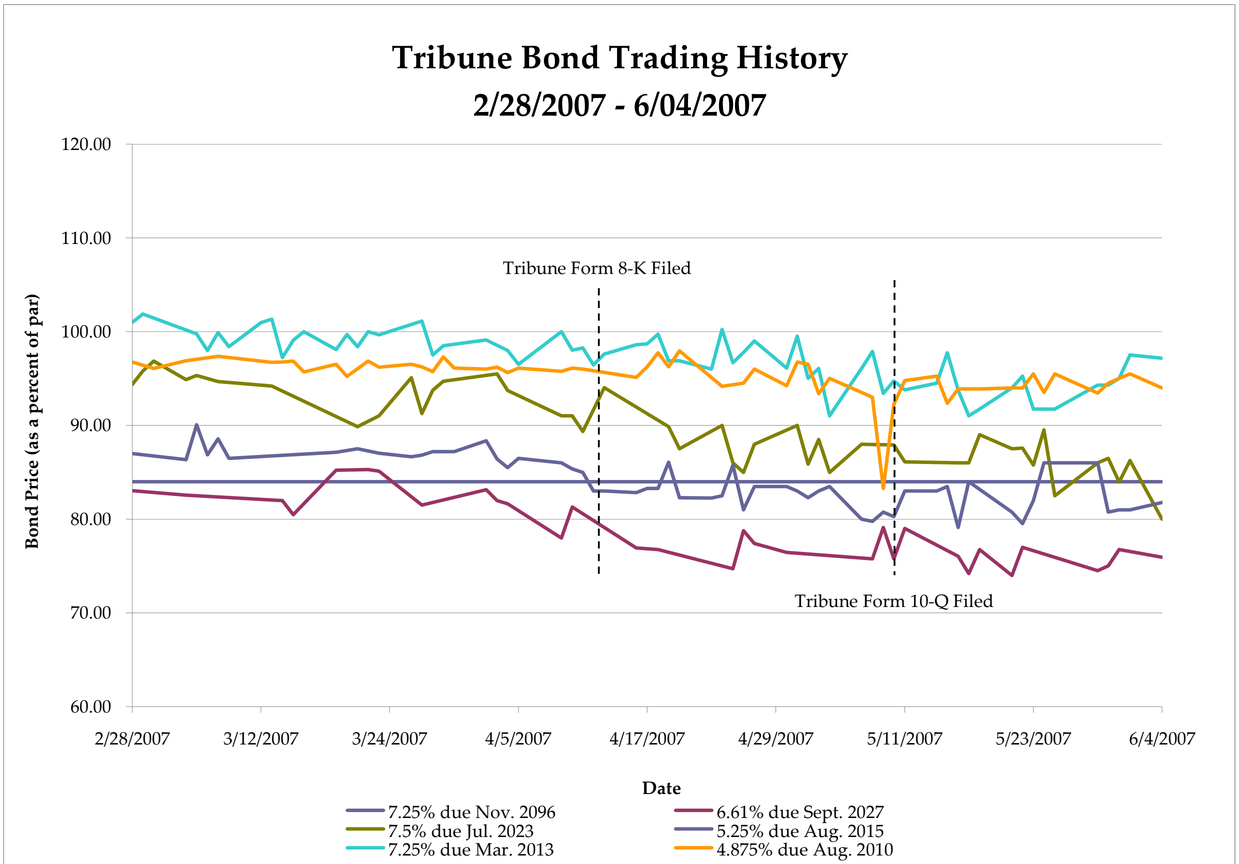
[244] Ex. 55 (Tribune Form 10-Q, filed May 9, 2007).

MOVEMENT OF TRIBUNE COMMON STOCK PRICES BEFORE AND AFTER EARNINGS ANNOUNCEMENTS (1)					
	Close		Open		Volume
4/16/2010	$	32.83	$	32.81	1,386,800
4/17/2010		32.83		32.78	1,085,300
4/18/2010		32.69		32.83	2,003,956
4/19/2007 (2)		32.48		32.70	2,693,500
4/20/2010		32.25		32.61	1,594,300
4/23/2007		32.49		32.29	711,600
4/24/2007		32.55		32.57	924,420
5/4/2010	$	32.83	$	32.84	657,069
5/7/2007		32.83		32.83	1,106,310
5/8/2007		32.86		32.83	1,156,683
5/9/2007 (3)		32.91		32.82	3,161,300
5/10/2007		32.94		32.84	1,339,900
5/11/2007		32.94		32.93	1,114,400
5/14/2007		32.93		32.92	723,700

(1) Source: Bloomberg Finance, L.P., subscription database, equity search function, "TRB"
(2) Date of Tribune Form 8-K Filing
(3) Date of Tribune Form 10-Q Filing

In general, bond prices showed little reaction to the announcement of earnings on either April 19, 2007 (the date corresponding to Tribune's Form 8-K earnings announcement) or May 9, 2007 (the date of Tribune's first quarter 2007 10-Q filing):[245]

[245] Bond prices did decline between the announcement of the Leveraged ESOP Transactions on April 2, 2007 and the closing of Step One on June 4, 2007. *See* Ex. 77 (Tribune Bond Pricing). This decline in price would be anticipated given the announcement of the Leveraged ESOP Transactions and associated rating agency commentary.



Source: Bloomberg, L.P., subscription database, equity search fuction, "TRB", related security.

In response to the announcement of the transaction on April 2, 2007, Standard & Poor's issued a research update on that same date.[246] In that report, Standard & Poor's downgraded Tribune's corporate debt rating from 'BB+ to 'BB-' and Tribune's credit rating remained on credit watch with negative implications.[247] Standard & Poor's also indicated that, on stockholder approval of the transaction, Standard & Poor's would further reduce Tribune's corporate credit rating from 'BB-' to 'B' with a stable outlook.[248]

246 Ex. 80 (Standard & Poor's Research Report, dated April 2, 2007).

247 *Id.*

248 *Id.*

d. Financial Performance in April and May 2007.

Although year-to-date actual results approximated the results anticipated in Tribune's February 2007 plan on a consolidated basis for the first three months of 2007, Tribune's consolidated financial performance for April 2007 deviated from projections. As reflected in the Brown Book for April 2007 (which likely was issued within the first two to three weeks of May), Tribune fell short of its internal expectations, missing budgeted operating profit in April by more than $11 million against a budgeted monthly profit of approximately $73.6 million (a variance to plan of more than 15%), despite a modest negative revenue variance of 3%:[249]

TRIBUNE CONSOLIDATED ($000s)		
	April 2007 (1)	
	Revenue	Operating Profit (2)
Brown Book 2007 Plan	$ 412,408	$ 73,591
Brown Book 2007 Actual	$ 399,470	$ 62,480
Variance	***($ 12,938)***	***($ 11,111)***
% of Variance	***-3.14%***	***-15.10%***

(1) Ex. 78 (Brown Book for Period 4, 2007).
(2) Consolidated operating profit does not equal the combined operating profits of the Publishing Segment and the Broadcasting Segment divisions due to a deduction for corporate expenses.

As shown in the table below, the Publishing Segment accounted for this negative variance:

[249] Ex. 78 at EGI-LAN0090375-90535 (Brown Book for Period 4, 2007).

TRIBUNE ($000s)				
	April 2007 (1)			
	Publishing Segment		Broadcasting Segment	
	Revenue	Operating Profit	Revenue	Operating Profit
Brown Book 2007 Plan	$ 293,230	$ 48,244	$ 119,178	$ 29,726
Brown Book 2007 Actual	$ 278,817	$ 35,508	$ 120,653	$ 31,136
Variance	***($ 14,413)***	***($ 12,736)***	***$ 1,475***	***$ 1,410***
% of Variance	***-4.92%***	***-26.40%***	***1.24%***	***4.74%***

(1) Ex. 78 (Brown Book for Period 4, 2007).

In a press release dated May 14, 2007, Tribune publicly disclosed its revenues for April 2007, by business segment, as well as certain other information regarding the nature of revenue declines experienced during the period, relative to a comparable period in the prior year.[250] The press release did not include information regarding Tribune's profitability for that month.

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250 *See* Ex. 79 (Tribune Press Release, dated May 14, 2007). The press release stated:

> Tribune Company (NYSE: TRB) today reported its summary of revenues and newspaper advertising volume for period 4, ended April 29. Consolidated revenues for the period were $399 million, down 3.6 percent from last year's $414 million.
>
> Publishing revenues in April were $279 million compared with $305 million last year, down 8.6 percent. Advertising revenues decreased 10.3 percent to $217 million, compared with $242 million in April 2006.
>
> - Retail advertising revenues decreased 6.8 percent as weakness in the specialty merchandise, home furnishings and department store categories was partially offset by strength in hardware/home improvement. Preprint revenues, which are principally included in retail, were down 8 percent. Retail revenues were adversely impacted by the shift of Easter advertising from period 4 in 2006 to period 3 in 2007.
> - National advertising revenues declined 8.2 percent; weakness in the financial and auto categories was partially offset by strength in movies.
> - Classified advertising revenues decreased 14.9 percent. Real estate fell 20 percent with over half of the decline due to weakness in the Florida markets. . . . Interactive revenues, which are primarily included in classified, were $21 million, up 20 percent, due to growth in all categories.
>
> Circulation revenues were down 7.2 percent due to selective discounting in home delivery and lower single-copy sales.
>
> Broadcasting and entertainment group revenues in April increased 10.2 percent to $121 million compared with $110 million last year primarily due to more Cubs home games. Television revenues fell 1.1 percent; a significant decrease in political advertising as well as weakness in restaurant/fast food and retail was partially offset by strength in automotive and movies.

May 2007 performance against plan showed an exacerbation of the negative performance against budget observed during April 2007. For May, the Brown Book reported a revenue short fall against plan of 8%, and a more pronounced operating profit short fall of 21% to plan on a consolidated basis:

TRIBUNE CONSOLIDATED ($000s)				
	April 2007 (1)		May 2007 (2)	
	Revenue	Operating Profit (3)	Revenue	Operating Profit (3)
Brown Book 2007 Plan	$ 412,408	$ 73,591	$ 441,391	$ 93,116
Brown Book 2007 Actual	$ 399,470	$ 62,480	$ 405,965	$ 73,515
Variance	*($ 12,938)*	*($ 11,111)*	*($ 35,426)*	*($ 19,601)*
% of Variance	*-3.14%*	*-15.10%*	*-8.03%*	*-21.05%*

(1) Ex. 78 (Brown Book for Period 4, 2007).
(2) Ex. 635 (Brown Book for Period 5, 2007).
(3) Consolidated Operating Profit does not equal the combined Operating Profits of the Publishing Segment and Broadcasting Segment due to a deduction for corporate expenses.

During May 2007, both the Publishing Segment and the Broadcasting Segment performed about equally unfavorably against plan, with unfavorable operating profit variance against plan of approximately 21% and 20%, respectively:[251]

TRIBUNE ($000s)								
	April 2007 (1)				May 2007 (2)			
	Publishing		Broadcasting		Publishing		Broadcasting	
	Revenue	Operating Profit	Revenue	Operating Profit	Revenue	Operating Profit	Revenue	Operating Profit
Brown Book 2007 Plan	$ 293,230	$ 48,244	$ 119,178	$ 29,726	$ 319,488	$ 65,895	$ 121,903	$ 31,599
Brown Book 2007 Actual	$ 278,817	$ 35,508	$ 120,653	$ 31,136	$ 291,910	$ 52,241	$ 114,055	$ 25,249
Variance	*($ 14,413)*	*($ 12,736)*	*$ 1,475*	*$ 1,410*	*($ 27,578)*	*($ 13,654)*	*($ 7,848)*	*($ 6,350)*
% of Variance	*-4.92%*	*-26.40%*	*1.24%*	*4.74%*	*-8.63%*	*-20.72%*	*-6.44%*	*-20.10%*

(1) Ex. 78 (Brown Book for Period 4, 2007).
(2) Ex. 635 (Brown Book for Period 5, 2007).

251 Although the preparation of the Brown Book for May 2007 likely occurred after the closing of the Step One Transactions, certain information bearing on May 2007 financial performance was probably known to Tribune management before closing. For example, Tribune prepared and issued weekly "flash" reports reporting advertising revenue and circulation. *See, e.g.*, Ex. 66 at 20:14-21:8 (Rule 2004 Examination of Harry Amsden, December 16, 2009).

Tribune issued a press release setting forth revenue results for May 2007, which again did not disclose profitability during the period.[252] This press release was issued after the Step One Financing Closing Date.

e. Revision of Tribune's Projections.

As previously noted, the financial projections underlying the Tribune Board-approved 2007 operational plan appear to be the same projections used to develop the original "ESOP Transaction Model" dated February 8, 2007, for use in connection with the transactions then being considered by Tribune.[253] In addition to various sensitivity versions developed by management, the underlying base case projections comprising the ESOP Transaction Model were modified on several occasions.[254] It appears that an updated base case projection model was developed in April 2007 to accommodate certain anticipated changes to transaction financing.[255] As such, these changes did not alter management's prior expectations regarding revenue and EBITDA. Hence, this version of the ESOP Transaction Model generally comported with the original set of projection parameters, with respect to Tribune's operations. During May, Tribune's management prepared another revised base case ESOP Transaction Model projection, this time reflecting downward adjustments to both the original February and subsequently developed April projection model projection parameters for both revenues and EBITDA.[256] These downward adjustments to forecasted revenues and earnings, however, did not reflect an alteration of management's expectations of the revenue and EBITDA contributions of Tribune's

[252] *See* Ex. 81 (Tribune Press Release, dated June 20, 2007).

[253] *See* Ex. 66 at 73:18-81:5 (Rule 2004 Examination of Harry Amsden, December 16, 2009); Ex. 71 (ESOP Transaction Model-Revised Operating Plan Case, dated February 8, 2007).

[254] For example, various "sensitivity" model scenarios were identified which quantified the effects of, for example, changing revenue growth assumptions on forecasted financial results.

[255] *See* Ex. 82 (ESOP Transaction Model, dated April 25, 2007).

[256] See Ex. 83 (ESOP Transaction Model, dated May 14, 2007).

businesses, but rather, as shown in the following table, represented adjustments to remove from the model the revenue and EBITDA contributions of newly identified assets anticipated to be sold in 2008. Those included "TMS" (*i.e.,* Tribune Media Services) from the Publishing Segment and "Washington/St. Louis/Portland/San Diego" broadcasting stations from the Broadcasting Segment. Additionally, the revised May model anticipated the avoidance of additional annual $22 million in "TMCT Lease Payments" as part of the Publishing Segment's cost projections. In the earlier models, the revenue and EBITDA contributions for these assets were included in projected amounts.[257]

A comparison of key revenue, EBIT, and EBITDA projection parameters in each of the February, April, and May 2007 versions of the ESOP Transaction Model is set forth in the table below:

CONSOLIDATED TRIBUNE ($000s)	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Revenue											
ESOP Transaction Model (February 2007)											
(Unadjusted - Basis for Tribune Board Approved 2007 Budget)	$ 5,386	$ 5,487	$ 5,523	$ 5,594	$ 5,623	$ 5,651	$ 5,681	$ 5,709	$ 5,739	$ 5,769	$ 5,799
(Adjusted) (1)	$ 5,168	$ 5,262	$ 5,295	$ 5,364	$ 5,392	$ 5,421	$ 5,449	$ 5,478	$ 5,508	$ 5,537	$ 5,567
ESOP Transaction Model (Adjusted - Dated April 25, 2007) (1)	$ 5,168	$ 5,262	$ 5,295	$ 5,364	$ 5,392	$ 5,421	$ 5,449	$ 5,478	$ 5,508	$ 5,537	$ 5,567
ESOP Transaction Model (Adjusted - Dated May 14, 2007) (2)	$ 5,168	$ 5,178	$ 5,072	$ 5,137	$ 5,161	$ 5,186	$ 5,210	$ 5,235	$ 5,269	$ 5,284	$ 5,309
Operating Cash Flow (EBITDA) (3)											
ESOP Transaction Model (February 2007)											
(Unadjusted - Basis for Tribune Board Approved 2007 Budget)	$ 1,271	$ 1,339	$ 1,367	$ 1,393	$ 1,389	$ 1,453	$ 1,398	$ 1,401	$ 1,407	$ 1,411	$ 1,415
(Adjusted) (1)	$ 1,244	$ 1,307	$ 1,335	$ 1,361	$ 1,356	$ 1,361	$ 1,365	$ 1,369	$ 1,374	$ 1,378	$ 1,383
ESOP Transaction Model (Adjusted - Dated April 25, 2007) (1)	$ 1,245	$ 1,310	$ 1,336	$ 1,362	$ 1,357	$ 1,362	$ 1,366	$ 1,370	$ 1,375	$ 1,379	$ 1,384
ESOP Transaction Model (Adjusted - Dated May 14, 2007) (2)	$ 1,245	$ 1,267	$ 1,253	$ 1,277	$ 1,271	$ 1,275	$ 1,277	$ 1,281	$ 1,285	$ 1,287	$ 1,290
EBIT (1),(2), (3)											
ESOP Transaction Model (February 2007)											
(Unadjusted - Basis for Tribune Board Approved 2007 Budget)	$ 1,023	$ 1,096	$ 1,120	$ 1,146	$ 1,142	$ 1,202	$ 1,143	$ 1,142	$ 1,144	$ 1,144	$ 1,143
(Adjusted) (1)	$ 997	$ 1,067	$ 1,091	$ 1,117	$ 1,112	$ 1,113	$ 1,112	$ 1,112	$ 1,113	$ 1,112	$ 1,113
ESOP Transaction Model (Adjusted - Dated April 25, 2007) (1)	$ 999	$ 1,071	$ 1,093	$ 1,119	$ 1,114	$ 1,115	$ 1,115	$ 1,114	$ 1,115	$ 1,114	$ 1,115
ESOP Transaction Model (Adjusted - Dated May 14, 2007) (2)	$ 999	$ 1,030	$ 1,016	$ 1,041	$ 1,035	$ 1,035	$ 1,032	$ 1,032	$ 1,032	$ 1,030	$ 1,029

(1) Revenue and expense categories exclude assets intended to be sold for adjusted projections (SCNI, Hoy, New York and Cubs)
(2) Revenue and expense categories exclude assets intended to be sold for adjusted projections (SCNI, Hoy, New York, Cubs, TMS, Select Cities and TMCT lease payments obligation reduction)
(3) Operating cash flow (EBITDA) and EBIT includes stock based compensation

257 Given the rough parity between the various models and projections developed in February, March, April, and May 2007, they are often referred to collectively in the Report as the February 2007 projections or spring 2007 projections, unless the context requires precision. Similarly, even though management's October 2007 models and projections were modified as late as November 21, 2007, *see infra* notes 2134 & 2142, they are generally referred to as the October 2007 projections or the fall 2007 projections.

2. Analyst Reports Before Announcement of the Step One Transactions.[258]

On January 4, 2007, Bear Stearns issued an analyst report in which it rated the Tribune Common Stock as "Peer Perform" and the publishing sector as "Market Underweight," with a target stock price of $31.[259] The analyst report followed the announcement by the McCormick Foundation that it had established an advisory committee to evaluate strategic options with respect to its ownership of Tribune Common Stock. Bear Stearns stated that "this move signals a vote of no confidence in current Tribune management, and may also indicate that the auction process . . . may not be generating as much interest as anticipated."[260] Bear Stearns concluded that the Tribune Common Stock was "an unattractive investment in our view at this time."[261]

On January 12, 2007, Morgan Stanley provided the Special Committee with a summary of selected research analyst reports from October 10, 2006, the day that Tribune reported its 2006 third quarter results,[262] through January 12, 2007:[263]

Firm	Rating	Target Price
Morgan Stanley	Equal Weight	N/A
ML&Co.	Neutral	$32-33
A.G. Edwards	Hold	N/A

258 Certain of the Parties cited to various newspaper articles in support of the contentions raised in such Parties' respective briefs, contending that such articles constitute proof regarding whether the Step One Transactions and the Step Two Transactions should be collapsed for the purposes of the Examiner's evaluation. The Examiner has determined that such newspaper articles are not dispositive as they do not include legal analysis and, in most instances, reflect assumptions by reporters regarding the technical details of the transactions. As such, the Examiner gives such newspaper articles no weight in rendering his conclusions in the Report.

259 Ex. 84 at 1 and 3 (Bear Stearns Analyst Report, dated January 4, 2007).

260 *Id.* at 1.

261 *Id.*

262 Ex. 85 (Tribune Press Release, dated October 10, 2006).

263 Ex. 70 at 14 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated January 12, 2007).

Firm	**Rating**	**Target Price**
Prudential	Overweight	$38
Barrington Research	Market Perform	N/A
Credit Suisse	Outperform	$37
Lehman Brothers	Underweight	$21
JPMorgan	Neutral	N/A
Wachovia	Market Perform	$30
Deutsche Bank	Hold	$31
Analyst Median	--	$31.78

On February 23, 2007, JPMorgan issued a research report, rating the Tribune Common Stock as "Neutral,"[264] noting that Tribune had the "worst monthly publishing ad growth performance, among [companies tracked by JPMorgan], in recent years."[265] However, JPMorgan concluded that it expected that "Tribune will realize EPS growth in 2007 in line with peers."[266]

On March 16, 2007, Lehman Brothers issued a Company Update, rating Tribune as "Underweight" and the sector as "Negative," with a $20 price target.[267] Lehman recommended that Tribune stockholders "take advantage of the current stock price and sell shares which have been propped up . . . by the six month strategic review process."[268] Lehman indicated that it was likely that Tribune "will not be sold at all,"[269] that it believed that Tribune's management "needs

264 Ex. 86 at 1 (JPMorgan Research Report, dated February 23, 2007).

265 *Id.*

266 *Id.* at 2.

267 Ex. 87 at 1 (Lehman Company Update, dated March 16, 2007).

268 *Id.*

269 *Id.* at 2.

to get back to running the company full-time,"[270] and that "putting this much debt on Tribune's newspapers and TV stations is way too risky and makes it very possible to put the company into bankruptcy somewhere down the road, especially if the economy slows, with or without the added tax savings from the ESOP financing."[271] Arguing that the "Tribune makes a poor LBO candidate,"[272] Lehman concluded that "we cannot even calculate an IRR for a leveraged buyout (LBO) assuming just $300 million in equity as the <u>IRR is too large of a negative number</u> and will not calculate . . . . [T]he net debt to EBITDA ratio is way too high. . . ."[273]

Wachovia Capital Markets issued a research report on March 30, 2007, rating Tribune as "Market Perform" and the newspaper sector as "Market Weight."[274] Wachovia's report discussed the ESOP structure, noting that the tax advantages associated with the structure "could be one of the reasons that the company has been favoring the Zell bid, as the Chandlers, the McCormick Trust, and management could all potentially benefit from" such a structure.[275] Wachovia concluded that its rating was "predicated on our belief that TRB is trading on a potential takeout value, rather than fundamentals, and we do not view the risk/reward as compelling."[276]

On April 1, 2007, Morgan Stanley provided the Special Committee with a summary of selected research analyst reports from February 8, 2007, the day that Tribune reported its 2006

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270 *Id.*

271 *Id.* at 3. Although the potential use of an ESOP in connection with EGI's offer had not been announced publicly by Tribune, on February 24, 2007, the Chicago Tribune reported that "Chicago real estate magnate Sam Zell is proposing to participate in a buyout of Tribune Co. in a deal structured around an employee stock ownership plan, several sources close to the situation said Friday." Ex. 88 (Chicago Tribune Article, dated February 24, 2007).

272 Ex. 87 at 4 (Lehman Company Update, dated March 16, 2007).

273 *Id.* at 3.

274 Ex. 89 at 1 (Wachovia Research Report, dated March 30, 2007).

275 *Id.*

276 *Id.*

fourth quarter and full year results,[277] through April 1, 2007, the day before Tribune announced that it had entered into the Leveraged ESOP Transactions:[278]

Firm	Rating	Target Price
Morgan Stanley	N/A	--
UBS	Neutral	$34
A.G. Edwards	Hold	N/A
Prudential	Underweight	$27
Credit Suisse	Outperform	$34
Lehman Brothers	Underweight	$19
Wachovia	Market Weight	$30
Citigroup	Hold	$33
Benchmark	Market Weight	$34
Bear Stearns	Peer Perform	$31
Deutsche Bank	Hold	$31
Analyst Median	--	$31

D. The Step One Transactions.

This section is a chronological summary of the actions taken, and agreements entered into, in connection with the Step One Transactions. Section III.E. addresses the knowledge and actions of the key participants with respect to the events culminating in the Step One Transactions.

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277 Ex. 90 (Tribune Press Release, dated February 8, 2007).

278 Ex. 91 at 9 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated April 1, 2007).

1. Tribune Board Deliberations.

a. Creation of the Special Committee.

On September 21, 2006, the Tribune Board created a Special Committee consisting of all of the members of the Tribune Board, other than the Chief Executive Officer and the three directors nominated by the Chandler Trusts,[279] to oversee a formal process of exploring strategic alternatives.[280] Morgan Stanley served as financial advisor and Skadden Arps served as legal counsel to advise the Special Committee.[281] The Tribune Board was advised by MLPFS and CGMI, who served as financial advisors, and Wachtell (New York, NY office) and Sidley Austin LLP (Chicago, IL office) served as outside legal counsel.[282] As part of this process, the Tribune Board authorized the Special Committee to seek third-party proposals for the acquisition of Tribune.[283] The process, initiated in September 2006, was an active, fluid, and at times, unpredictable one entailing a series of proposals and counterproposals, with intense involvement

[279] Notwithstanding a provision in Tribune's bylaws requiring that a Chandler Trust director serve on each committee of the Tribune Board, at the request of the other members of the Tribune Board, the Chandler Trusts agreed that no Chandler Trusts director would sit on the Special Committee, provided that the Chandler Trusts were "assured full and bona fide cooperation and regular communication between the [Special Committee] and its advisors and the Chandler Trusts and their advisors . . . in order that the views of the Chandler Trust may be considered by the [Special Committee] as it proceeds." Ex. 92 at 3 (Chandler Trusts Letter, dated October 2, 2006). William Stinehart, a Chandler Trusts trustee and a Tribune Board member, told the Examiner that the Chandler Trusts supported the formation of a special committee without any representatives of the Chandler Trusts or Tribune management because "[w]e needed to have an independent group making the decision, and it couldn't include us or management, because management didn't agree with us." Examiner's Interview of William Stinehart, June 28, 2010.

[280] Ex. 93 (Tribune Board Meeting Minutes, dated September 21, 2006). At a meeting of the Tribune Board on October 18, 2006, the Tribune Board formally adopted resolutions establishing the Special Committee and authorizing it to engage legal counsel and financial advisors. Ex. 94 at 1-3 (Tribune Board Meeting Minutes, dated October 18, 2006).

[281] Ex. 5 at 18 and 45 (Tender Offer). William Osborn, Chair of the Special Committee, told the Examiner that, throughout the auction process, MLPFS and/or CGMI typically first made presentations to the Special Committee, and then Morgan Stanley was asked to opine on what had been presented. Examiner's Sworn Interview of William Osborn, June 24, 2010, at 18:19-19:2. Mr. Whayne stated that Morgan Stanley's role was "to critique [CGMI's and MLPFS'] work both to them and the board." Examiner's Interview of Thomas Whayne, June 11, 2010.

[282] Ex. 5 at 45 (Tender Offer). MLPFS was a longtime financial advisor to the Tribune Board. Examiner's Sworn Interview of Crane Kenney, July 8, 2010, at 11:19-22.

[283] Ex. 5 at 17-18 (Tender Offer); Ex. 892 at 1 (Special Committee Meeting Minutes, dated October 6, 2006). *See also* Ex. 25 (Morgan Stanley Engagement Letter).

by financial and legal experts, the Large Stockholders, the Tribune Board, the Special Committee, and Tribune's management.

At its meeting on September 21, 2006, the Tribune Board reviewed with management and MLPFS the progress of negotiations on the restructuring of the TMCT LLCs, and reviewed with MLPFS and CGMI their analyses of strategic alternatives.[284] Following this meeting, Tribune publicly announced the creation of the Special Committee to oversee the process of evaluating strategic alternatives for Tribune.[285] Tribune stated that it expected the process to conclude by the end of 2006.[286] In addition, Tribune publicly announced the restructuring of the TMCT LLCs.[287]

Thereafter, the Special Committee directed MLPFS and CGMI to begin contacting private equity firms and potential strategic buyers to invite them to indicate their interest in an acquisition of Tribune, and Tribune entered into confidentiality agreements and began sharing information about Tribune with interested parties.[288] MLPFS and CGMI moved quickly to reach out to over thirty-six parties to gauge their interest in a possible transaction involving all or part of Tribune.[289] Over the next several weeks, several of these parties conducted due diligence for

[284] Ex. 5 at 17 (Tender Offer).

[285] *Id.* at 18; Ex. 1021 (Tribune Press Release, dated September 21, 2006). The Special Committee was comprised of Enrique Hernandez, Jr., Betsy D. Holden, Robert S. Morrison, William A. Osborn, J. Christopher Reyes, Dudley S. Taft, and Miles D. White.

[286] Ex. 5 at 18 (Tender Offer).

[287] Ex. 93 (Tribune Board Meeting Minutes, dated September 21, 2006); Ex. 1021 (Tribune Press Release, dated September 21, 2006).

[288] Ex. 5 at 18 (Tender Offer). As described by Christina Mohr of CGMI in her interview with the Examiner, "[a]t the outset, it started off as a robust process—there was plenty of interest." Examiner's Interview of Christina Mohr, June 29, 2010.

[289] Ex. 95 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007).

the purpose of determining whether to submit a preliminary bid for the acquisition of Tribune.[290] MLPFS and CGMI requested preliminary bids from interested parties by October 27, 2006.[291]

On October 18, 2006, MLPFS briefed the Special Committee concerning discussions with interested parties to date and the status of execution of confidentiality agreements with those parties.[292] Afterward, Morgan Stanley presented the Special Committee with valuations of Tribune as a whole and of its constituent parts.[293]

On October 31, 2006, the Special Committee reviewed the process to date with Tribune's financial advisors and management as well as with the Special Committee's financial and legal advisors.[294] The Special Committee also reviewed with Tribune's management and advisors the possibility of asset sales as an enhancement to the process, as well as the possibility of a further leveraged recapitalization of Tribune.[295] The Special Committee directed management and Tribune's financial advisors to continue the process of seeking a buyer for the Tribune Entities and to explore the sale of all of the Broadcasting Segment and certain individual assets.[296] Six

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290 Ex. 5 at 18 (Tender Offer).

291 *Id.*

292 Ex. 96 at 1 (Special Committee Meeting Minutes, dated October 18, 2006). Approximately nine parties submitted some form of an initial proposal as part of the auction process, not including EGI. Ex. 95 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007).

293 Ex. 96 at 2 (Special Committee Meeting Minutes, dated October 18, 2006).

294 Ex. 5 at 18 (Tender Offer). By October 31, 2006, Tribune had received preliminary indications of interest from five parties or groups with prices ranging from $30 to $34 per share, and seventeen private equity firms and potential strategic bidders had signed confidentiality agreements seeking to access to Tribune information to prepare a proposal. Ex. 97 at 1 (Special Committee Meeting Minutes, dated October 31, 2006); Ex. 5 at 18 (Tender Offer). By the end of the process, thirty-one entities had signed confidentiality agreements and nine had submitted initial proposals (not including the Zell Group). Ex. 5 at 18 (Tender Offer); Ex. 95 at 1-3 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Tribune, dated January 20, 2007).

295 Ex. 5 at 18 (Tender Offer). Mr. Osborn testified that although the advisors had solicited bids for all of Tribune, the proposals coming in were not "all about buying the company. . . . [S]ome of [them] involved spinning out broadcasting" or were merely for the acquisition of a discrete asset. Examiner's Sworn Interview of William Osborn, June 24, 2010, at 61:2-7.

296 Ex. 5 at 18 (Tender Offer).

parties continued in the process and conducted further due diligence, including data room access and management presentations.[297]

On November 17, 2006 and November 27, 2006 the Special Committee reviewed with Tribune's financial advisors the status of the process and the parties who remained interested in a potential acquisition of the Tribune Entities.[298] Based on the recommendation of Tribune's financial advisors, in order to allow interested parties to complete due diligence and "be in a position to provide firm, quality bids," the Special Committee approved a timetable providing that final bids would not be due until January 2007.[299] Thereafter, Tribune negotiated a confidentiality agreement with the Chandler Trusts,[300] which signed the agreement on December 1, 2006.[301] By December 12, 2006, five entities remained interested in purchasing all of Tribune and five others, including the Chandler Trusts, were interested in purchasing only discrete assets.[302] At the meeting held on December 12, 2006, the Special Committee established a January 12, 2007 deadline for delivery of final proposals from all interested bidders.[303]

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[297] Ex. 97 (Special Committee Meeting Minutes, dated October 31, 2006); Ex. 1046 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated October 31, 2006); Ex. 5 at 18 (Tender Offer).

[298] Ex. 98 (Special Committee Meeting Minutes, dated November 17, 2006); Ex. 99 (Special Committee Meeting Minutes, dated November 27, 2006).

[299] Ex. 98 at 1 (Special Committee Meeting Minutes, dated November 17, 2006). MLPFS told the Special Committee that at least one bidder had already requested an extension. Ex. 5 at 23 (Tender Offer). Mr. FitzSimons testified that the revised deadline was necessary because the Tribune Board was told by bidders that they "wouldn't be able to do their homework that quickly." Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 25:10-16.

[300] Ex. 100 at 1 (Special Committee Meeting Minutes, dated November 27, 2006).

[301] Ex. 101 (Confidentiality Agreement between Tribune and the Chandler Trusts, dated December 1, 2006).

[302] Ex. 981 at 1-2 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Tribune, dated December 12, 2006).

[303] Ex. 5 at 19 (Tender Offer). The Special Committee subsequently accepted proposals, however, submitted through January 17, 2007. Ex. 102 (O'Brien E-Mail, dated January 14, 2007).

On January 12, 2007, the Special Committee reviewed with Tribune's financial advisors and Tribune's management the status of the bidding process, as well as the various strategic alternatives available to Tribune, including a sale of all of the Tribune Entities, a leveraged recapitalization of Tribune, the sale of the Broadcasting Segment, a spin-off of the Broadcasting Segment, and a split-off of the Publishing Segment.[304]

On January 20, 2007, the Special Committee met to review the proposals that had been submitted to Tribune pursuant to its process.[305] The process had elicited three proposals.

b. The Broad/Yucaipa Proposal.

The Broad/Yucaipa Proposal offered a $13 billion sponsored recapitalization of Tribune funded through a combination of new debt from a consortium of lenders and a new preferred equity investment by Broad/Yucaipa, which would provide an immediate cash payment to stockholders of $27 per share.[306] Broad/Yucaipa estimated the total stockholder value of the offer at $34.30 per share.[307] MLPFS and CGMI valued it between $29.45 and $31.72.[308]

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304 Ex. 103 (Special Committee Meeting Minutes, dated January 12, 2007); Ex. 104 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated January 12, 2007).

305 Ex. 105 (Special Committee Meeting Minutes, dated January 20, 2007); Ex. 95 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007). MLPFS and CGMI presented valuations of Tribune in light of the unexpected decline in Tribune's operating results at the end of 2006 and beginning of January 2007, particularly in the Publishing Segment. Ex. 95 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007). In its presentation, MLPFS and CGMI told the Special Committee that management's revenue projections were "generally more aggressive than Wall Street research." Ex. 95 at 18 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007). Morgan Stanley, in its presentation, agreed that management's projections were "meaningfully above Research estimates," primarily due to management's projections for the Publishing Segment. Ex. 104 at 9 and 10-11 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune.).

306 Ex. 106 at 1 (Broad/Yucaipa Proposal, dated January 17, 2007).

307 *Id.* at 10.

308 Ex. 95 at 28 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007). In January 2007, Tribune Treasurer Chandler Bigelow wrote to Donald Grenesko, Tribune's Senior Vice President of Finance and Administration, that JPM believed that the Broad/Yucaipa Proposal "has too much leverage and that a self help route would be more prudent." Ex. 982 (Bigelow E-Mail, dated January 22, 2007). Mr. Osborn testified that the Broad/Yucaipa Proposal "was considered to be not as valuable as other bids were." Examiner's Sworn Interview of William Osborn, June 24,

Under the Broad/Yucaipa Proposal, Broad/Yucaipa would invest $500 million into a security that would convert to a 34% ownership of Tribune preferred stock.[309] The Tribune preferred stock would automatically be convertible to $125 million of Tribune Common Stock on stockholder and FCC approval, notwithstanding the fact that Broad/Yucaipa could put the preferred stock back to Tribune if not converted at the end of three years.[310] The Broad/Yucaipa Proposal also contemplated Series A Warrants to purchase 10% of the Tribune preferred stock at an exercise price of $7.00 per share and Series B Warrants to purchase 10% of the Tribune preferred stock at $9.00 per share, with full registration rights on shares and warrants.[311] Preferred stockholder approval rights were also included for some actions.[312]

The Broad/Yucaipa Proposal emphasized the "superior value" of its bid, stating that, "[b]y giving existing shareholders a continuing stake in the Company, they will gain a unique opportunity to participate in the growth and strategic rationalization opportunities driving returns that would otherwise be enjoyed only by a financial buyer."[313] The Broad/Yucaipa Proposal also emphasized the "high degree of certainty" that it would close, noting that no FCC approval was required, the "speed of execution" associated with the transaction, and "strong equity sponsorship" related to the deal.[314] The Broad/Yucaipa Proposal gave every indication that it was a serious bid, noting that "we are eager to proceed with this transaction. . . . Our proposal

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2010, at 64:13-14. Mr. Whayne of Morgan Stanley told the Examiner that the concerns of Tribune's advisors about the Broad/Yucaipa Proposal were "in terms of ability to get it done." Examiner's Interview of Thomas Whayne, June 11, 2010.

309 Ex. 106 at 10 (Broad/Yucaipa Proposal, dated January 17, 2007).

310 *Id.* at 1; Ex. 95 at 13 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007).

311 Ex. 95 at 13 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007).

312 *Id.*

313 Ex. 106 at 2 (Broad/Yucaipa Proposal, dated January 17, 2007).

314 *Id.* at 2-3.

will remain open through 5:00 p.m. Eastern Time on January 24, 2007, unless the Company earlier accepts or rejects our proposal, including by accepting or announcing an alternative transaction."[315]

c. The Carlyle Proposal.

The Carlyle Proposal, dated January 17, 2007, was an offer to purchase all of the outstanding capital stock and other equity interests of the Tribune Broadcasting Company, including the Chicago Cubs, Comcast SportsNet and the Food Network, for $4.8 billion.[316] The Carlyle Proposal was to be fully financed with a combination of debt and equity with up to $4.5 billion committed debt financing, with Carlyle contributing no less than 15% of the equity.[317] The purchase price of the Carlyle Proposal assumed that Carlyle would agree to a group of transferred entities, including WPIX, and Tribune would pay for final transition, severance, parachute, and related transaction payments.[318] Carlyle anticipated a $16 per share cash dividend to the holders of Tribune Common Stock.[319] The deal could also be combined with a recapitalization of the Publishing Segment.[320] Tribune's advisors valued the Carlyle Proposal at $24.81 to $28.49 per share.[321]

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315 *Id.*

316 Ex. 107 at 1-2 (Carlyle Group Proposal, dated January 17, 2007).

317 *Id.* at 2.

318 *Id.*

319 Ex. 108 at 1 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 27, 2007).

320 *Id.*

321 Ex. 95 at 28 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007).

The Carlyle Proposal emphasized Carlyle's qualifications and its ability to close a transaction quickly and asserted that Carlyle's offer was consistent with Tribune's strategic objectives:[322]

> We believe that our proposal optimally addresses Tribune's objectives with respect to value, speed and assurance of closure. We are prepared to work with your team "around the clock" to consummate a transaction as soon as practicable. Carlyle has a reputation for closing transactions quickly due to our vast capital resources and extensive transactional experience. Furthermore, since we have no attributable interests in any media properties which would prevent or delay regulatory approvals, we believe that we are ideally positioned to obtain FCC approval and close this transaction expeditiously. . . . We believe there is a significant opportunity to create value by repositioning the Business as a standalone entity in a private market setting. A committed, long-term investor such as Carlyle will be an important value-added partner for management.

Although the Carlyle Proposal was not a "binding agreement to enter into any transaction," it nonetheless evidenced a high level of commitment to finalizing a transaction: "Carlyle is prepared to move quickly to consummate this transaction with Tribune. With your cooperation, we believe we could be in a position to sign definitive documentation within a limited number of days."[323]

d. The Chandler Trusts Proposal.

The Chandler Trusts Proposal focused on an acquisition of Tribune's Publishing Segment, the Chicago Cubs, and Tribune's interest in Comcast SportsNet.[324] Additionally, the

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322 Ex. 107 at 1 (Carlyle Group Proposal, dated January 17, 2007).

323 *Id.* at 4.

324 Ex. 109 at 1 (Chandler Trusts Proposal, dated January 17, 2007). Tribune's advisors first alerted the Special Committee that the Chandler Trusts were interested in joining the bidding process on November 27, 2006. Ex. 100 at 1 (Special Committee Meeting Minutes, dated November 27, 2006). Chandler Trusts trustee and Tribune Board member William Stinehart said the Chandlers were interested because "we heard that the auction process wasn't going well." Examiner's Interview of William Stinehart, June 28, 2010. Mr. Stinehart said that, at the time, the Chandler Trusts just "wanted out." Examiner's Interview of William Stinehart, June 28, 2010. Mr. Stinehart added that "[t]he goal in making an offer . . . was to put a floor in the auction process. . . . [We] thought that if nothing goes, we'll take control of our own destiny." Examiner's Interview of William Stinehart,

Chandler Trusts proposed a tax-free spinoff of the Broadcasting Segment and a recapitalization of the remainder, with a $19.30 cash dividend to non-Chandler Trust stockholders.[325] The Chandler Trusts valued their offer at $31.70 per share,[326] although the Tribune's advisors valued the offer at between $26 and $27 per share.[327] The Chandler Trusts emphasized the following benefits of their proposal:[328]

> The structure contemplated by our proposal provides unique advantages to Tribune stockholders as compared with other alternatives by: (i) providing a premium valuation to both the unaffected trading price of Tribune stock and the value of the publishing business to be acquired, (ii) enabling Tribune's stockholders (other than the Chandler Trusts) to retain the full operating and strategic appreciation potential for the broadcasting business, (iii) enabling the separation of its publishing segment from its broadcasting and entertainment segment without the incurrence of tax, and (iv) eliminating the potential for significant regulatory delays as the result of the Federal Communication Commission's ("FCC") cross-ownership rules.

The Chandler Trusts Proposal was subject to the completion of due diligence and negotiation of definitive agreements, noting that:[329]

June 28, 2010. CGMI and MLPFS told the Special Committee that "the Chandler Trusts could potentially serve as a significant source of competition for the financial party bidders." Ex. 100 at 1-2 (Special Committee Meeting Minutes, dated November 27, 2006) . Mr. Whayne told the Examiner that he believed the Chandler Trusts Proposal would cause uncertainty among other bidders because the Trusts were proposing a structure that was so different from that proposed by other bidders. At that time, Mr. Whayne said that Tribune's advisors were "focused on a sale of the entire company so financial sponsors knew what they were competing against, it was just a price for the company." Examiner's Interview of Thomas Whayne, June 11, 2010.

325 Ex. 109 at 1 (Chandler Trusts Proposal, dated January 17, 2007).

326 *Id.*

327 Ex. 95 at 28 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007). Mr. Whayne told the Examiner that "[w]e had a strong view that it wasn't the path to go to maximize value, but they had a view I think in a real heartfelt view [that their proposal] was actually higher [than recapitalization]." Examiner's Interview of Thomas Whayne, June 11, 2010.

328 Ex. 109 at 1 (Chandler Trusts Proposal, dated January 17, 2007).

329 *Id.* at 6. By the January 27, 2007 Special Committee meeting, Tribune's advisors told the Special Committee that the Chandler Trusts Proposal would require an IRS ruling that would push closing out at least nine to twelve months. Ex. 95 at 4 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 20, 2007).

> This proposal will remain open until 5:00 pm Eastern Time, Wednesday, January 31, 2007 and we believe it should be possible to complete and sign definitive agreements for the proposed transaction before that time. We look forward to working with you to complete the proposed Transaction.

Along with these proposals, the Special Committee considered "self-help" alternatives including a further recapitalization.[330] Tribune's financial advisors indicated that they believed the recapitalization alternative created value in excess of $33 per share at the upper end of the potential valuation ranges.[331]

In addition, the Special Committee reviewed a letter submitted by the McCormick Foundation expressing the McCormick Foundation's preference that Tribune continue as a public company with its current capital structure unless a transaction could be obtained for all of the Tribune Entities at a substantial premium with minimal closing risk.[332] Following review, presentations by certain of the bidders, and consultations with its financial and legal advisors, the Special Committee, having determined that none of the proposals was satisfactory, directed Tribune's financial advisors to seek improvements in the proposals.[333] The Special Committee

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330 Ex. 108 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 27, 2007). Mr. FitzSimons testified that Tribune started considering a self-help recapitalization because "why let private equity get the subsequent premium after a takeout of the public shareholders. . . . Can we do some of these same things ourselves?" Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 22:11-14.

331 Ex. 108 at TRB0011455 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 27, 2007). Tribune's financial advisors placed the highest value—approximately $33 per share—on a spin-off of the Broadcasting Segment followed by a recapitalization of the remaining Publishing Group. *Id.* This version of recapitalization became known as the "self-help option." Examiner's Sworn Interview of Donald Grenesko, June 25, 2010, at 42:14-19. Tribune also considered a full recapitalization with or without a sale of the Broadcasting Segment to the Carlyle Group or some other third party. Ex. 108 at 5 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 27, 2007).

332 Ex. 110 (McCormick Foundation Letter, dated January 17, 2007).

333 Ex. 105 (Special Committee Meeting Minutes, dated January 20, 2007).

also directed Tribune's financial advisors to analyze alternatives that Tribune could implement on its own.[334]

e. Continuation of the Sale Process.

Following additional negotiations with MLPFS and CGMI, Broad/Yucaipa revised its proposal by offering to (a) remove all of the Series B Warrants and to increase the Series A Warrants by 5% (the Series A Warrants would thus give Broad/Yucaipa the right to purchase 15% of Tribune Common Stock on a fully diluted basis), (b) limit the maximum ownership on conversion of the preferred stock and the exercise of the Series A Warrants to 39.9% of the voting stock of Tribune, (c) remove all preferred stockholder approval rights, and (d) modify the put right.[335]

Carlyle revised its proposal by (a) removing the proposed purchase of the Food Network, resulting in an additional $315 million of value to Tribune, (b) increasing the purchase price of the remaining assets by $110 million, and (c) reducing the cash to fund a dividend to the holders of Tribune Common Stock from $16 per share to $14 per share.[336]

The Chandler Trusts submitted a revised proposal on January 26, 2007.[337] The structure of the original Chandler Trusts Proposal remained unchanged, but increased the cash consideration to Tribune's non-Chandler Trusts stockholders by $5.25 to $24.55 per share.[338] MLPFS and CGMI valued the revised offer's total undiscounted value at $30.19 - $31.64 per share for non-Chandler Trusts stockholders and between $33.17 - $38.00 per share for the

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334 *Id.* at 2-3.

335 Ex. 108 at TRB0011459-60 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 27, 2007).

336 Ex. 108 at TRB0011457-58 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated January 27, 2007).

337 Ex. 111 (Revised Chandler Trusts Proposal, dated January 26, 2007).

338 *Id.* at 1.

Chandler Trusts.[339] The Chandler Trusts also emphasized that the revised proposal resulted in a "higher level of risk sharing on the exchange ratio for Tribune's broadcasting business" and "a greater degree of certainty as to closing."[340]

On February 2, 2007, two weeks after the auction was to have closed, EGI submitted to Tribune a letter proposing a transaction in which a company ESOP would acquire Tribune at a price of $30 per share.[341]

The Special Committee received an update on the sale process at its meeting on February 3, 2007.[342] Morgan Stanley compared the Chandler Trusts Proposal and the Broad/Yucaipa Proposal to a leveraged recapitalization of Tribune that contemplated a cash dividend of $20 per share.[343] Following these reviews, the Special Committee directed management and Tribune's financial advisors to present a full comparison of the possible alternatives and recommendations to the Special Committee and the Tribune Board at their meetings scheduled for February 12 and 13, 2007.[344]

On February 6, 2007, EGI revised its initial proposal and submitted a summary term sheet proposing a single step, leveraged acquisition of Tribune by a company ESOP at $33 per

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339 Ex. 112 at 1, 4 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated February 3, 2007).

340 Ex. 111 at 1 (Revised Chandler Trusts Proposal, dated January 26, 2007).

341 Ex. 113 (EGI Letter, dated February 2, 2007). Apparently, few specific details of this proposal were provided to Tribune and its financial advisors at this point in the process. *See* Report at § III.E.6. for additional background on the submission of the EGI proposal.

342 Ex. 114 (Special Committee Meeting Minutes, dated February 3, 2007).

343 *Id.*; Ex. 115 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated February 3, 2007). Mr. Stinehart stated that although the Chandler Trusts had a final proposal on the table in January 2007, by the time the Tribune Board and Special Committee held meetings in February 2007, "it was relatively clear that the offer would probably not be accepted." Examiner's Interview of William Stinehart, June 28, 2010.

344 Ex. 114 at 2 (Special Committee Meeting Minutes, dated February 3, 2007).

share, with EGI investing $225 million in Tribune,[345] that would take, in the estimate of Tribune's advisors, nine to twelve months to close.[346]

f. Special Committee Activities and Response to the EGI Proposal.

The Special Committee met on February 12 and 13, 2007, to review presentations and recommendations with respect to the alternatives available to Tribune.[347] In addition, management reviewed certain revisions to the Tribune Entities' financial outlook based on preliminary operating results in January 2007, revising downward the outlook for the Publishing Segment.[348]

The review included presentations by Tribune's management and by the advisors with respect to a proposed recapitalization and spin-off plan.[349] As presented to the Special Committee by Morgan Stanley, the proposed recapitalization and spin-off plan would be comprised of four steps:[350]

(1) Tribune would leverage itself up to 6.9x 2006 adjusted EBITDA, and use the proceeds to repurchase $4.2 billion of Tribune Common Stock (approximately 149 million shares at an assumed price of $30 per share, constituting approximately 60% of the Tribune Common Stock outstanding), resulting in the equivalent of an $18 per share dividend;

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345 Ex. 116 (EGI Proposal, dated February 6, 2007); Ex. 5 at 21 (Tender Offer).

346 Examiner's Interview of Thomas Whayne, June 11, 2010 (under the initial EGI proposals, stockholders might not get cash for nine months).

347 Ex. 117 (Special Committee Meeting Minutes, dated February 12, 2007); Ex. 5 at 21 (Tender Offer).

348 Ex. 117 (Special Committee Meeting Minutes, dated February 12, 2007); Ex. 118 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated February 12, 2007); Ex. 5 at 21 (Tender Offer).

349 Ex. 118 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated February 12, 2007).

350 *Id.* at 4-5.

(2) The Broadcasting Segment would borrow $2.5 billion (pre-spin) and use $1.8 billion to repay certain outstanding Tribune debt;

(3) The Broadcasting Segment would be spun-off on a tax-free basis to all of Tribune's stockholders, with the remaining Broadcasting Segment debt proceeds being used to pay a dividend of $2 per share; and

(4) The Publishing Segment would sell the Chicago Cubs, Comcast SportsNet, and certain other assets.

Following the recapitalization and spin-off, current stockholders of Tribune would own 100% of both businesses. Tribune's management recommended proceeding with this plan.[351]

Management and Tribune's advisors also reported that the Chandler Trusts and the McCormick Foundation had been negotiating with respect to the purchase of shares of Tribune Common Stock by the McCormick Foundation from the Chandler Trusts in the context of the recapitalization and spin-off plan.[352]

In addition, the Special Committee was advised that, because of management's revised outlook for the Publishing Segment, Broad/Yucaipa had indicated that it would lower the initial cash consideration to be paid to Tribune's stockholders from $27 per share to $23 per share, but it would add a contingent value right tied to the proceeds, if any, of the Matthew Bender tax litigation.[353]

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

[352] Ex. 117 at 3 (Special Committee Meeting Minutes, dated February 12, 2007).

[353] *Id.* at 1; Examiner's Sworn Interview of William Osborn, June 24, 2010, at 64:14-20. Mr. Osborn also testified in a Rule 2004 examination that "the January numbers that came out that were a little softer than what [Broad/Yucaipa] had in their plans. And then as a result of that, and this communication with the bankers, they lowered their number from $27 to $23." Ex. 983 at 45:15-21 (Rule 2004 Examination of William Osborn, May 16, 2007).

Following these reviews and presentations, the Special Committee determined to recommend to the Tribune Board that Tribune proceed with the recapitalization and spin-off plan and that Tribune not continue to pursue the Broad/Yucaipa Proposal or the Chandler Trusts Proposal.[354] The Special Committee did, however, direct management and Tribune's advisors to continue to develop the EGI proposal to determine its feasibility.[355] On February 13, 2007, Tribune issued a press release providing an update on the Tribune Board's review of strategic alternatives, indicating that the Tribune Board expected to "make a decision on a course of action and have an announcement before the end of the first quarter."[356]

Tribune's management and advisors then worked to complete the required documentation with respect to the recapitalization and spin-off plan, including the negotiation of registration rights agreements with the Chandler Trusts and the McCormick Foundation.[357] In addition, the Chandler Trusts and the McCormick Foundation negotiated with respect to the terms and pricing

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354 Ex. 5 at 21 (Tender Offer); Examiner's Interview of Thomas Whayne, June 11, 2010. Mr. Whayne stated that: "we were of a mode that likely we were heading to a recapitalization plan because we didn't think anyone would come forward with a value proposition to satisfy shareholders." Examiner's interview of Thomas Whayne, June 11, 2010.

355 Ex. 119 at 2 (Special Committee Meeting Minutes, dated February 13, 2007). This was the first Special Committee meeting at which the EGI proposal was presented in detail. Ex. 117 at 2 (Special Committee Meeting Minutes, dated February 12, 2007); Ex. 987 at 15 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated February 12, 2007). Tribune's advisors first announced EGI's bid to the Special Committee at the February 3, 2007 meeting. Ex. 114 at 1 (Special Committee Meeting Minutes, dated February 3, 2007) ("Taubman and Whayne reported on a preliminary expression of interest from a new party since the last Committee meeting . . ."). At that time, EGI had only submitted a letter proposal and had not yet provided a term sheet with details of its proposed ESOP transaction. *Compare* Ex. 113 (EGI Letter, dated February 2, 2007) *with* Ex. 116 (EGI Proposal, dated February 6, 2007).

356 Ex. 120 (Tribune Press Release, dated February 13, 2007). Mr. Stinehart said that the Chandler Trusts insisted on the March 31, 2007 deadline "to make things happen sooner rather than later." Examiner's Interview of William Stinehart, June 28, 2010. Mr. FitzSimons also said the deadline was intended "to try to create a sense of urgency among the bidders." Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 132:14-17.

357 Ex. 5 at 21 (Tender Offer).

of a purchase of shares of Tribune Common Stock by the McCormick Foundation from the Chandler Trusts in connection with the recapitalization and spin-off plan.[358]

At the same time, Tribune's management and financial advisors sought to develop additional details with respect to the EGI proposal.[359] Tribune engaged McDermott Will & Emery LLP to advise it on ESOP matters and GreatBanc as trustee in connection with the possible ESOP transaction.[360] GreatBanc engaged Duff & Phelps as its financial advisor and K&L Gates as its legal counsel.[361]

On February 19, 2007, EGI submitted a revised term sheet to Tribune with proposed terms for the ESOP transaction.[362] The term sheet contemplated a merger in which Tribune's stockholders would receive $33 per share in cash, with EGI-TRB, an entity wholly-owned by EGI and newly-formed for the purposes of the proposed transaction, investing $225 million, a newly-formed ESOP investing $825 million, and the Tribune Entities incurring debt for the remaining cash payments to stockholders.[363] Following the merger, Tribune would elect to become a subchapter S corporation for federal income tax purposes, with the result that Tribune would no longer be subject to federal income taxes, subject to certain limitations.[364] The term

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[358] *Id.*

[359] *Id.* at 22. Michael Costa of MLPFS also briefed the Special Committee on the EGI proposal for the first time in depth. Ex. 117 (Special Committee Meeting Minutes, dated February 12, 2007). At this time, Mr. Whayne told the Examiner that there was "[l]ots of skepticism because [the] ability of shareholders to get cash could be nine months away whereas people wanted cash now, particularly the Chandlers who wanted some return of capital." Examiner's Interview of Thomas Whayne, June 11, 2010. Mr. Wayne observed that another concern was that EGI's initial proposal required a fairness opinion before Step Two would close, which he said put an extra condition on the Merger that made it less favorable than the self-help option. *Id.* Ms. Mohr, of CGMI, said that the EGI proposal did not initially include enough details to "see the whole thing, soup to nuts, to make sure [Zell had] thought it out all the way to the end." Examiner's Interview of Christina Mohr, June 29, 2010.

[360] Ex. 5 at 22 and 45 (Tender Offer).

[361] *Id.* at 22.

[362] Ex. 121 (EGI Term Sheet, dated February 19, 2007).

[363] *Id.*

[364] *Id.*

sheet also contemplated a management incentive plan providing management with stock appreciation rights having the economic equivalent of 5% of the outstanding Tribune Common Stock.[365] After preliminary conversations with Tribune's management and financial advisors, EGI submitted a revised term sheet on February 22, 2007, which included a description of the terms of proposed financing for the transaction.[366]

On February 24, 2007, the Special Committee reviewed with Tribune's management and advisors the status of the proposed recapitalization and spin-off plan, as well as an update with respect to the EGI proposal.[367] Tribune's advisors reported that "significant progress had been made on the documentation and other steps necessary to implement the potential recapitalization."[368] The advisors also described the steps involved in the proposed ESOP transaction and the anticipated timetable, noting that the EGI proposal contemplated voting agreements from the Chandler Trusts and the McCormick Foundation.[369] Following these reviews, the Special Committee consulted separately with its financial and legal advisors.[370] The Special Committee then directed Tribune's management and financial advisors to solicit the views of the Chandler Trusts and the McCormick Foundation with respect to the EGI proposal and to continue to pursue the proposal with a view to improving the economic terms and

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365 *Id.*

366 Ex. 122 (EGI Term Sheet, dated February 22, 2007).

367 Ex. 123 (Special Committee Meeting Minutes, dated February 24, 2007).

368 *Id.* at TRIB-G0051832. Ms. Mohr, of CGMI, commented that, by this point, "we had the recap transaction ready to go that was—could have been put in place." Examiner's Interview Christina Mohr, June 29, 2010.

369 Ex. 5 at 22 (Tender Offer). Thomas Whayne stated to the Examiner that Morgan Stanley expressed concern to the Special Committee that the EGI proposal had troublesome contingencies requiring the ESOP trustee to obtain a fairness opinion at the closing of the Merger, which could be six to nine months after the Tribune Board's approval of the deal. Mr. Whayne believed that these conditions made the EGI proposal less attractive because of the financial risk associated with conditioning the deal on receipt of a fairness opinion far into the future. Examiner's Interview of Thomas Whayne, June 11, 2010.

370 Ex. 5 at 22 (Tender Offer).

certainty.[371] Tribune's financial advisors sent materials related to the EGI proposal to the Chandler Trusts and the McCormick Foundation, and, on February 25, 2007, Tribune's advisors had separate discussions with representatives of the Chandler Trusts and representatives of the McCormick Foundation with respect to the EGI proposal.[372]

The McCormick Foundation and the Chandler Trusts responded with separate letters expressing concerns regarding the delays and completion risk associated with EGI's proposal.[373]

The McCormick Foundation raised three concerns:[374]

- Price. The McCormick Foundation argued that, although EGI's proposal contemplated a price per share of $33, such price should be "evaluated in light of 'when' and 'if' it will ever be paid to Tribune stockholders" and that therefore a discount should be applied to the price for the purposes of evaluating the proposed transaction.

- Timing. The McCormick Foundation estimated that EGI's proposal would not close for nine to twelve months following FCC publication of notice of the proceeding (expected to be April 2007 at the earliest). According to the McCormick Foundation, the resultant delay would "continue for a considerable period of time the unhealthy status quo for Tribune management and its Board of Directors."

- Execution Risk. The McCormick Foundation noted that the ESOP structure required delivery of a bring-down fairness opinion and that although such an opinion could normally be delivered within the three months between signing and closing, in this case delivery of the opinion would be delayed nine to twelve months until the FCC Order could be

371 Ex. 123 at TRIB-G0051834 (Special Committee Meeting Minutes, dated February 24, 2007); Ex. 5 at 22 (Tender Offer).

372 Ex. 5 at 22 (Tender Offer).

373 Ex. 124 (McCormick Foundation Letter, dated March 1, 2007); Ex. 125 (Chandler Trusts Letter, dated March 2, 2007).

374 Ex. 124 at 2 (McCormick Foundation Letter, dated March 1, 2007).

obtained. The McCormick Foundation argued that such a delay was especially problematic "in an industry that is in transition and which may deteriorate between now and closing." The McCormick Foundation also maintained that during the delay any material adverse change provisions in the proposed financing "could come into play if Tribune business results decline."

The Chandler Trusts also focused on the issue of the time that it would take to obtain the FCC Order and the related difficulty associated with obtaining the fairness opinion.[375] The Chandler Trusts noted that Tribune's outside counsel had informed the Chandler Trusts that it would take nine to twelve months to obtain the FCC Order.[376] William Stinehart, a trustee of the Chandler Trusts and a Tribune Board member, told the Examiner that the delay was particularly troubling because "there was serious concern that we might not get FCC approval."[377] The Chandler Trusts were concerned about the impact that "the statutory requirement that the price paid by the ESOP not exceed fair market value at the time of the closing" would have if "the value of Tribune stock were to decline during the interim period" thereby making it "impossible to complete the transaction at the agreed valuation."[378] Ultimately, Mr. Stinehart told the Examiner, "we got concerned that this was just another way to put us off for another nine months."[379]

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375 Ex. 125 at 1 (Chandler Trusts Letter, dated March 2, 2007). Mr. Whayne stated to the Examiner that Morgan Stanley also advised the Special Committee to reject any condition requiring a fairness opinion to close. Examiner's Interview of Thomas Whayne, June 11, 2010. Mr. Whayne also said that he advised the Special Committee that this condition "make[s] their proposal not competitive with a recapitalization [regardless of the share price]. . . . We're taking [a] huge risk that this financial firm could say later that the transaction is no longer fair." *Id.*

376 Ex. 125 at 1 (Chandler Trusts Letter, dated March 2, 2007). The letter from the McCormick Foundation had not indicated a source for this information.

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

378 Ex. 125 at 1 (Chandler Trusts Letter, dated March 2, 2007).

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

Both the McCormick Foundation and the Chandler Trusts concluded by indicating that, under the circumstances described in their respective letters, they were not willing to sign voting agreements in support of EGI's proposal, and they preferred that Tribune continue to work on a recapitalization and spin-off plan in which the Tribune Entities would increase the amount of their leverage to fund a stock repurchase and then spin off the Broadcasting Segment.[380]

In the face of the concerns expressed by several of Tribune's largest stockholders, including the McCormick Foundation and the Chandler Trusts, the Special Committee requested of EGI that any further proposal assume that Tribune would proceed first with a recapitalization that provided an upfront distribution to Tribune's stockholders.[381]

In response, on March 4, 2007, EGI provided Tribune with a revised term sheet that included an initial payment to Tribune's stockholders, followed by a later merger.[382] In particular, the revised term sheet contemplated that Tribune would effect a first step tender offer at $33 per share in cash as a means of providing a portion of the cash consideration to Tribune's stockholders more quickly and with greater certainty.[383] The revised term sheet also contemplated that stockholders would receive an 8% "ticking fee" on the merger consideration

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380 Ex. 124 at 2-3 (McCormick Foundation Letter, dated March 1, 2007); Ex. 125 at 1 (Chandler Trusts Letter, dated March 2, 2007).

381 Ex. 126 at 22-24 (Deposition of Thomas Whayne, May 17, 2007). At the time, Morgan Stanley was still "skeptical that the Zell proposal was the right step to go at this point in time" because of the condition of the fairness opinion and the time needed to close the proposed one-step transaction. Examiner's Interview of Thomas Whayne, June 11, 2010. Mr. Whayne told the Examiner that "Morgan Stanley really pushed very hard . . . that if we were going down a path with Zell he needed to provide upfront distribution we would have received in the recap so that those two options available to the company were on equal footing." *Id.* Nils Larsen of EGI also told the Examiner that his firm was "pushed to replicate the economics of [the self-help recapitalization] to the shareholders. . . . There was some concern and reluctance at the Board level that time is valuable. A deal at $30 that wasn't paid out for 15 months really should be looked at as something less than that and discounted to present value." Examiner's Interview of Nils Larsen, June 15, 2010.

382 Ex. 127 (EGI Term Sheet, dated March 4, 2007).

383 *Id.*

running from six months following the execution of the merger agreement until closing of the merger.[384]

On March 6, 2007, EGI provided a further revised term sheet that for the first time proposed a two-step transaction, together with other improved economic terms, thereby enhancing the proposal.[385] The revised term sheet contemplated that EGI-TRB would purchase $250 million of Tribune Common Stock at $33 per share as soon as practicable following execution of the merger agreement, and that the ESOP would purchase $250 million of Tribune Common Stock at market prices concurrently with executing the merger agreement.[386] The revised term sheet also contemplated that EGI-TRB's initial investment would be satisfied in the merger, but that EGI-TRB would then purchase a $185 million subordinated note and pay an additional $40 million for a 20-year warrant to acquire 38% of the Tribune Common Stock for an aggregate exercise price of $351 million.[387] In addition, the revised term sheet contemplated that stockholders would receive a 5% "ticking fee" on the merger consideration running from the date of the merger agreement until closing of the merger.[388]

On March 7, 2007, EGI's counsel provided Tribune with a revised draft of a merger agreement reflecting the revised structure of the proposed transaction.[389] The revised merger agreement contemplated that Tribune would merge with an entity owned by the ESOP, with the ESOP initially owning 100% of the Tribune Common Stock following the merger.[390] EGI's counsel also provided Tribune with drafts of a warrant agreement setting forth the terms of EGI's

[384] *Id.*

[385] Ex. 128 (EGI Term Sheet, dated March 6, 2007).

[386] *Id.*

[387] *Id.*

[388] *Id.*

[389] Ex. 129 (Draft Merger Agreement, dated March 7, 2007).

[390] *Id.*

proposed warrant and a voting agreement under which the Chandler Trusts and the McCormick Foundation would vote for the ESOP transaction.[391] During the next few days, the parties exchanged drafts of various agreements and comments on those drafts.[392]

On March 10, 2007, Tribune informed EGI that Tribune was reconsidering its level of comfort with the proposed ESOP transaction, including the levels of leverage contemplated by the transaction, and was also reconsidering the possible recapitalization and spin-off plan at reduced levels of leverage.[393] Nils Larsen of EGI suggested that this may have been a negotiating tactic by the Special Committee.[394]

March 11, 2007 e-mails written by Mr. Larsen stated that "the Company signaled to us that they had decided not to pursue either deal" because Tribune Chief Executive Officer Dennis FitzSimons was getting "cold feet on the leverage."[395] Mr. FitzSimons then apparently conveyed some of these concerns to Samuel Zell at a March 13, 2007 breakfast meeting.[396] Mr. FitzSimons testified that he told Mr. Zell that the "complexity of the transaction was causing us some difficulty in wondering could the transaction be, you know, could it be completed."[397] A March 15, 2007 internal JPM e-mail described EGI's proposal as "dead" and indicated that

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[391] Ex. 130 (Draft Warrant, dated March 7, 2007); Ex. 131 (Draft Voting and Proxy Agreement, dated March 7, 2007).

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

[393] *Id.*

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

[395] Ex. 132 at JPM_00246317 (Larsen E-Mail, dated March 11, 2007). In his sworn interview with the Examiner, Mr. FitzSimons denied that his initial negative reaction to EGI's proposal resulted from the degree of leverage associated with the proposal. *See* Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 30:2-31:4.

[396] Ex. 133 at JPM_00492786 (Cohen E-Mail, dated March 15, 2007).

[397] Ex. 134 at 120:9-12 (Rule 2004 Examination of Dennis FitzSimons, May 14, 2007). Mr. FitzSimons testified that his reconsideration of EGI's proposal in March 2007 was caused by two issues: (a) the "conditionality" of the deal, by which he meant "the number of hurdles that we would have to get over to do the transaction," and (b) concerns raised by mergers and acquisitions lawyer Martin Lipton about the level of scrutiny the transaction would likely undergo due to the high-profile nature of Tribune. Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 30:8-31:4, 34:15-17, and 36:18-37:3.

Tribune was focusing on pursuing a self-help alternative.[398] Thomas Whayne of Morgan Stanley explained to the Examiner that, in the mid-March 2007 time frame, Tribune's management "went back and forth as to what they wanted to do. Was it recap, was it Zell."[399]

Over the course of the following week, representatives of Tribune discussed with representatives of the Chandler Trusts and the McCormick Foundation the possibility of pursuing the recapitalization and spin-off plan with a dividend of $15 per share rather than $20 per share.[400] The McCormick Foundation and the Chandler Trusts engaged in discussions with respect to restructuring their agreement on the purchase of shares by the McCormick Foundation from the Chandler Trusts in the context of a reduced dividend.[401] Tribune's advisors and the Special Committee's financial and legal advisors also had discussions with respect to the advisability of pursuing a revised recapitalization and spin-off plan versus re-engaging on the ESOP transaction proposed by EGI.[402] As a result of these discussions, the Special Committee scheduled a meeting for March 21, 2007, to consider the status of the two potential transactions.[403]

On or about March 15, 2007, William Osborn, Chair of the Special Committee, contacted Mr. Zell to attempt to revive the EGI proposal.[404] Mr. FitzSimons testified that Mr. Osborn told

398 Ex. 133 at JPM_00492785 (Cohen E-Mail, dated March 15, 2007).

399 Examiner's Interview of Thomas Whayne, June 11, 2010. Ms. Mohr, of CGMI, told the Examiner that the process involved "really a lot of soul searching. People got up some mornings and were comfortable, and other mornings people said they were uncomfortable." Examiner's Interview of Christina Mohr, June 29, 2010. Ms. Mohr confirmed that Mr. FitzSimons, specifically, "went hot and cold on this deal. . . . It reflects the fact that it was doable but a lot of debt." *Id.*

400 Ex. 5 at 23 (Tender Offer).

401 *Id.*

402 *Id.*

403 *Id.*

404 Examiner's Interview of Samuel Zell, June 14, 2010. Mr. Whayne explained that he believed that a shift toward the EGI proposal occurred around this time, because Tribune wanted a "complete solution" and many of the

him to reopen discussions with EGI because he wanted the Special Committee to "develop this deal fully so the committee has multiple options to consider."[405] Mr. Zell stated to the Examiner that Mr. Osborn told him: "we've gone over this thing and really think it might work, and I said fine. And we then proceeded to go forward."[406]

At the March 21, 2007 Special Committee meeting, Tribune's management and advisors reviewed the terms of the proposed ESOP transaction with a first-step cash payment to stockholders equivalent to $17.50 per share, and compared it to a recapitalization and spin-off transaction with a $17.50 per share cash dividend.[407] At this point, the ESOP transaction was described by the Special Committee's financial advisors as follows:[408]

Step One

- The Tribune Entities would raise $7.3 billion of new debt;
- EGI-TRB would purchase from Tribune approximately 7.6 million shares of Tribune Common Stock at $33 per share for a total of $250 million; and
- The ESOP would purchase $250 million of newly issued shares of Tribune Common Stock at the market price.

Step Two

- The Tribune Entities would raise an additional $4.3 billion of debt and redeem the remaining public and EGI-TRB common stock for $33 per share, plus interest;

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impediments to the initial EGI proposal had been removed. Examiner's Interview of Thomas Whayne, June 11, 2010.

405 Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 58:10-11. An e-mail sent by Mr. Grenesko at the time indicated that he contacted EGI's William Pate to discuss the issues that had concerned management and that Mr. Pate said he "will talk to Sam [Zell]." Ex. 984 (Grenesko E-Mail, dated March 15, 2007).

406 Examiner's Interview of Samuel Zell, June 14, 2010.

407 Ex. 5 at 24 (Tender Offer).

408 Ex. 135 at 2 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated March 21, 2007).

- EGI-TRB would purchase $225 million of subordinated notes and a warrant to purchase 38% of the outstanding Tribune Common Stock for $350 million;
- The ESOP would initially own 100% of the outstanding Tribune Common Stock (subject to dilution for a management incentive plan); and
- The S-Corporation election would be made at the beginning of 2008 or 2009.

MLPFS and CGMI told the Special Committee that the ESOP transaction involved substantially more debt than a recapitalization and spin-off, but as a result of the tax advantages of the subchapter S-Corporation structure, as well as the elimination of Tribune's 401(k) cash contributions after creation of the ESOP and other cost savings, the cash flow available for debt repayment would be approximately equivalent in the two alternatives.[409] Christina Mohr, of CGMI, explained to the Examiner that the cash flow analysis was the same under both plans because Tribune could immediately reduce the amount of leverage under EGI's proposal by selling assets that did not have a positive cash flow.[410] This meant that the EGI could reduce the leverage through asset sales without reducing the cash flow necessary to service debt.[411] Tribune's financial advisors noted, however, that they expected that the credit rating agencies would rate the Tribune Entities' debt in the proposed recapitalization and spin-off transaction one

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409 Ex. 5 at 24 (Tender Offer).

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

411 *Id.* S*ee also* Ex. 135 at 4 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated March 21, 2007).

level higher than they would rate the Tribune Entities' debt in the proposed ESOP transaction.[412] Tribune's financial advisors also provided a comparative valuation of the two alternatives.[413]

In addition, MLPFS and CGMI noted that the details of the "Step One" of the ESOP transaction were similar to the proposed recapitalization and spin-off transaction (other than with respect to the participation of the ESOP and EGI-TRB's $250 million cash purchase price), and that if "Step Two" did not close:[414]

- It would have the same financial impact on Tribune and its stockholders as the proposed recapitalization and spin-off would have, except that EGI-TRB would have invested $250 million in new money in Tribune;[415]
- The Tribune Entities' employees would have invested $250 million in anticipated future cash benefits into Tribune;
- The spin-off of the Broadcasting Segment would have been delayed; and
- There would have been disruption to Tribune's stockholders and employees as a result of the failed transaction.

The Special Committee also heard presentations from GreatBanc and Duff & Phelps about their qualifications and the process they were following with respect to determining the fairness of the transaction to the ESOP.[416] Management reported on the Tribune Entities' recent

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412 Ex. 135 at 4 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated March 21, 2007).

413 Ex. 136 (Special Committee Meeting Minutes, dated March 21, 2007); Ex. 135 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated March 21, 2007); Ex. 137 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated March 21, 2007).

414 Ex. 135 at 2 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated March 21, 2007).

415 Mr. Whayne of Morgan Stanley told the Examiner: "[B]y virtue of what we were asking Zell to do which was convert his upfront warrant into equity we were basically accomplishing getting him to be a long-term investor and serve as a catalyst for change in the company." Examiner's Interview of Thomas Whayne, June 11, 2010.

416 Ex. 136 (Special Committee Meeting Minutes, dated March 21, 2007).

financial performance, and Tribune's legal advisors reported on the legal terms of the alternative transactions.[417] Tribune's advisors also reviewed the financing arrangements contemplated by each transaction.[418] The Special Committee consulted separately with its financial and legal advisors with respect to the two potential transactions.[419] Following these reviews, the Special Committee directed Tribune's management and advisors to present two fully developed alternatives to the Special Committee at a meeting on March 30, 2007 for a final determination.[420]

There were differences of opinion among Tribune's advisors about which transaction was more favorable for Tribune's stockholders. Ms. Mohr, of CGMI, suggested that she favored EGI's proposal and that, although she did not tell the Special Committee this directly, she made it clear that "we got comfortable at that time that the cash flow provided such that the Company would be [able] to satisfy these obligations, we absolutely thought this."[421] However, Mr. Whayne noted that Morgan Stanley still favored the self-help plan because "we thought [the] recap plan could yield value potentially better than [the] Zell proposal at $33."[422]

Between March 21, 2007 and March 30, 2007, representatives of Tribune, EGI, and the ESOP, including the Special Committee's financial and legal advisors,[423] negotiated the terms of

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417 Ex. 5 at 24 (Tender Offer).

418 *Id.*

419 *Id.*

420 Ex. 136 (Special Committee Meeting Minutes, dated March 21, 2007); Ex. 5 at 24 (Tender Offer).

421 Examiner's Interview of Christina Mohr, June 29, 2010. Ms. Mohr told the Examiner that by this point EGI's proposal "gets better fleshed out—[specifically] while the nominal leverage is higher, when you peel back and look at the analysis, the way people got comfortable was the fact that the cash flows were effectively identical." *Id.*

422 Examiner's Interview of Thomas Whayne, June 11, 2010. *See also* Ex. 599 (Pate E-Mail, dated March 23, 2007) ("[Whayne] said [O]sborn was mad . . . that Morgan Stanley institutionally didn't think the deal was best option for tower.").

423 Beginning on March 22, 2007, Morgan Stanley represented Tribune in negotiating the final terms of the transaction with EGI. Mr. Osborn told Morgan Stanley that "while [MLPFS] and [CGMI] would stay engaged,

the various agreements relating to the potential ESOP transaction.[424] In addition, representatives of Tribune and EGI negotiated with representatives of the Chandler Trusts with respect to the proposed voting agreement and registration rights agreement.[425] The McCormick Foundation declined to negotiate with respect to a voting agreement.[426] Tribune also sought to increase the certainty with respect to the transaction, to limit any breakup fees Tribune would have to pay, and to require a breakup fee from EGI in the event financing was not obtained for any reason other than a breach by Tribune or the ESOP.[427] In addition, Tribune required that its obligation to consummate a tender offer and complete the merger would be conditioned on the receipt of a satisfactory solvency opinion at both steps of the transaction.[428]

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the Committee was concerned about conflict of interest and felt having Morgan Stanley involved in the final details was most appropriate." Ex. 598 (Kenney E-Mail, dated March 22, 2007).

424 Ex. 5 at 24 (Tender Offer).

425 *Id.* Mr. Stinehart, a trustee for the Chandler Trusts, said the Chandler Trusts "gave the voting agreement in exchange for registration rights." Examiner's Interview of William Stinehart, June 28, 2010.

426 Ex. 5 at 24 (Tender Offer).

427 *Id.*

428 *Id.* Thomas Whayne of Morgan Stanley told the Examiner that "I'm fairly confident it was Steve Rosenblum at Wachtell. Wachtell was an advisor to the company that thought it was important to have [a] solvency opinion as a mechanism to protect the board." Examiner's Interview of Thomas Whayne, June 11, 2010. In his interview with the Examiner, William Osborn, former Chair of the Special Committee, indicated that he did not believe that obtaining the solvency opinion constituted a major hurdle:

> Q: Was there any concern about whether Tribune would be able to get the solvency opinion?
>
> A: We discussed that. I personally felt that there would not be a problem, and my rationale for that was around the value of the pieces of the company, number one, and number two, the fact that Mr. Zell had made an investment and wanted to proceed with this transaction. While there had been deterioration of the business, the cash flows were still quite strong, and the structure of the transaction was one that would give them flexibility going forward under nearly any circumstance, and I felt that the company would be fine.
>
> Q: Were others on the board of the special committee concerned about whether the company would be able to get its solvency opinion?
>
> A: I don't recall that anyone had a specific concern. It was just an issue that we knew had to be dealt with, and because of some of the deterioration in the business and some of the revised projections, we wanted to make certain it would be accomplished. I mean, if you recall at the time, there had been some deterioration of the business throughout the year of the company, so when you -- when your baseline is lower going forward than it was earlier, you know, your flexibility does change, and therefore, we wanted to make certain and we felt comfortable that there was still sufficient cushion in this that it would work.

As a result of negotiations with Tribune and the ESOP, the initial investment by EGI-TRB was restructured so that EGI-TRB would purchase $50 million in Tribune Common Stock and $200 million in a subordinated exchangeable note that would be exchangeable into Tribune Common Stock at Tribune's election, or automatically if the Merger Agreement was terminated.[429] The parties also negotiated the terms of the proposed financing.[430]

Tribune continued to seek improvements in the economic terms of the transaction, including an increase in the price to be paid to Tribune's stockholders and an increase in the investment to be made by EGI-TRB.[431] Tribune and GreatBanc also negotiated the terms of the ESOP's investment, including the price to be paid by the ESOP for the shares of Tribune Common Stock to be purchased by the ESOP.

In addition, the Tribune Board received two letters from Broad/Yucaipa. In the first letter, Broad/Yucaipa sought access to further information, and, thereafter, additional information was provided to them by Tribune and its advisors.[432] In the second letter, Broad/Yucaipa expressed its interest in participating with a $500 million equity investment in an ESOP transaction in which Tribune's stockholders would receive $34 per share.[433] This second single-page letter was not accompanied by any further documents or financing commitments.[434]

Examiner's Sworn Interview of William Osborn, June 24, 2010, at 41:12-42:20.

429 Ex. 5 at 24 (Tender Offer).

430 *Id.*

431 *Id.*

432 Ex. 138 (Broad/Burkle Letter, dated March 23, 2007); Ex. 5 at 24 (Tender Offer). In the March 23, 2007 letter, Broad/Yucaipa suggested that it would make an offer superior to EGI's proposal if given additional information and time to form a competing proposal. Ex. 138 at 1 (Broad/Burkle Letter, dated March 23, 2007) ("How can the Board now be certain that another investor would not be willing to pursue a transaction using this ESOP structure at a higher price?"). Mr. FitzSimons testified that Mr. Osborn instructed management to "try to give [Broad/Yucaipa] as much as possible for them to work with to see if they would come up with a more advantageous offer." Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 130:21-131:2.

433 Ex. 139 (Broad/Burkle Letter, dated March 29, 2007).

434 *Id.*

Thereafter, Tribune's financial advisors had further discussions with Broad/Yucaipa's financial advisors.[435]

Before the meeting of the Special Committee on March 30, 2007, EGI-TRB slightly revised its proposal to increase the stated per share consideration in the merger to $33.50, but with the "ticking fee" start date moved to January 1, 2008.[436] At this point, Mr. Whayne told the Examiner: "you had management as well as [MLPFS] and [CGMI] acting as very strong advocates for going down [the] Zell path."[437] Mr. Whayne told the Examiner that he believed that a shift toward the EGI proposal occurred around this time, because Tribune wanted a "complete solution" and because many of the impediments to the initial EGI proposal had been removed.[438] In addition, Tribune's advisors told the Examiner that Tribune became more familiar with how the tax shield under ESOP worked,[439] and with the fact that the cash flow under both proposals would be the same.[440]

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435 Ex. 5 at 24-25 (Tender Offer). Mr. Whayne told the Examiner that Broad/Yucaipa was "given extraordinary guidance as to how to paper a competing proposal [to] Zell." Examiner's Interview of Thomas Whayne, June 11, 2010.

436 Ex. 5 at 25 (Tender Offer).

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

438 *Id.* Among the key changes were the removal of the requirement of a fairness opinion after each step and the change to a two-step process. *Id.*

439 Examiner's Interview of Michael Costa, June 4, 2010. Mr. Costa further explained to the Examiner that three things changed concerning the Zell Group proposal: "(1) From this early [March] until end, amount of cash flow or EBITDA that Zell and company thought possible went up because of synergies, amount of costs that management under Zell could take out, went up from [March] until late [March]; (2) [B]etter understanding and more certainty how tax shield worked for ESOP, always there, not sure that in early [March] that all analysis done; I look at tax shield as equity cushion. Because if company would have to pay taxes but government says you don't have to, all of us are supporting transaction; [and] (3) Terms of Zell equity improved, more of it in final transaction than at this point in [March], but do not recall how much more." *Id.*

440 Examiner's Interview of Christina Mohr, June 29, 2010. Ms. Mohr, of CGMI, told the Examiner that Tribune was already willing to do the self-help plan and, "the way people got comfortable was the fact that the cash flows [in EGI's proposal] were effectively identical to the transaction that they were willing to do [*i.e.* the self-help option]." *Id.*

On March 30, 2007, the Special Committee and the Tribune Board met to review the alternative transactions.[441] At the meeting, Mr. FitzSimons told the Special Committee that Tribune management was changing its recommendation and now supported the EGI's proposed ESOP transaction.[442] Mr. FitzSimons testified that management supported the EGI's proposal because "allowing [Broad/Yucaipa] back in and at the risk of losing what had been an option that was worked out to the satisfaction of the advisors and the [Special Committee] was deemed to be very dangerous."[443] Former Special Committee Chair William Osborn also told the Examiner that at the end of March 2007, the Broad/Yucaipa Proposal was "too conditional at the time relative to [EGI's proposal] that had the financing arranged and was ready to go."[444]

Based on its consideration and the recommendations of Tribune's advisors, the Special Committee directed Tribune's management and financial advisors, and the Special Committee's financial and legal advisors, to seek to complete negotiation of the proposed ESOP transaction and present the completed proposal to the Special Committee on Sunday morning, April 1, 2007, with a full meeting of the Tribune Board to immediately follow.[445] The Special Committee determined that the Broad/Yucaipa Proposal required additional work and documentation, so the Special Committee directed its advisors to continue discussions with Broad/Yucaipa.[446]

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

[442] *Id.* at TRB 002649. Mr. FitzSimons testified that the last minute bid caused "a high level of frustration." Examiner's Sworn Interview of Dennis FitzSimons, June 25, 2010, at 131:20-21. Mr. FitzSimons further testified, "[T]here was a real desire so value wasn't lost to say let's move on, let's get a resolution to this process.'" *Id.* at 133:1-3.

[443] *Id.* at 133:1-7.

[444] Examiner's Sworn Interview of William Osborn, June 24, 2010, at 65:2-4.

[445] Ex. 140 at TRIB 002649-50 (Special Committee Meeting Minutes, dated March 30, 2007). *See also* Ex. 141 (Confidential Discussion Materials Prepared for Committee of Independent Directors of the Board of Directors of Tribune, dated March 30, 2007); Ex. 142 (Presentation to the Committee of Independent Directors of the Board of Directors of Tribune, dated March 30, 2007).

[446] Ex. 140 at TRIB 002649 (Special Committee Meeting Minutes, dated March 30, 2007); Ex. 5 at 25 (Tender Offer).

Over the following twenty-four hours, the representatives of Tribune, the ESOP, EGI, and the Chandler Trusts continued negotiation of the agreements with respect to the ESOP transaction. In the course of these negotiations, EGI-TRB agreed to increase the price to be paid to Tribune's stockholders from $33.50 to $34 per share with an 8% "ticking fee" running from January 1, 2008 to the actual closing date of the merger if the merger did not close by January 1, 2008.[447] EGI-TRB agreed that its initial $250 million investment in Tribune would be based on a $34 per share price, and that its investment would increase to $315 million in connection with the merger, consisting of a $225 million subordinated note and a $90 million purchase price for the warrant.[448] The parties also agreed to a breakup fee of $25 million to be paid by (a) Tribune to EGI-TRB if Tribune accepted a superior proposal, and (b) by EGI-TRB to Tribune if financing was not obtained for any reason other than breach by Tribune or the ESOP.[449] Tribune and the ESOP agreed to a $28 per share purchase price for the ESOP's purchase of shares of Tribune Common Stock.[450] The Chandler Trusts agreed to the voting agreement and, in connection with the registration rights agreement, to tender their shares of Tribune Common Stock in the contemplated tender offer and to cause the directors nominated by the Chandler Trusts to resign on the closing of the tender offer (or under certain other circumstances).[451]

On the morning of April 1, 2007, the Special Committee received a report on the status of the proposed ESOP transaction and additional discussions over the previous few days with

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447 Ex. 5 at 25 (Tender Offer). Mr. Whayne explained that the request for a price increase "came in with some amount of equity, but frankly more leverage." Examiner's Interview of Thomas Whayne, June 11, 2010. Ms. Mohr, of CGMI, told the Examiner that the "final bump" to $34 per share was not material to CGMI's evaluation of whether Tribune could service the debt. Examiner's Interview of Christina Mohr, June 29, 2010.

448 Ex. 5 at 25 (Tender Offer).

449 *Id.* at 24.

450 *Id.*

451 *Id.* at 25.

Broad/Yucaipa.[452] Tribune's management and advisors reported that all major open issues had been resolved with EGI, with the exception of the exercise price of the warrant.[453] During the course of the day, Tribune, the ESOP, and EGI reached agreement that the exercise price of the warrant would increase by $10 million per year for the first ten years of the warrant, to a maximum of $600 million, and that the term of the warrant would be reduced from 20 years to 15 years.[454]

g. Tribune Board Approval.

The Special Committee and the Tribune Board convened on the evening of April 1, 2007, and Tribune's management and advisors reported on the resolution of all open issues with EGI relating to the Leveraged ESOP Transactions.[455] In a separate meeting of the Special Committee, Morgan Stanley rendered its oral opinion to the Special Committee, subsequently confirmed in writing as of the same date, to the effect that, as of April 1, 2007, and based on the factors and subject to the assumptions set forth in its written opinion, the consideration under the Merger to be received by the holders of Tribune Common Stock (other than certain affiliated entities) was fair from a financial point of view to such stockholders.[456] The Special Committee

452 Ex. 143 (Special Committee Meeting Minutes, dated April 1, 2007). During his interview with the Examiner, Mr. Osborn asserted that the auction process benefited from the interplay among EGI's proposal, the Broad/Yucaipa Proposal, and the recapitalization and spin-off plan. For example, the Broad/Yucaipa Proposal was improved at the last minute, "basically offering to [sic] a similar transaction to the Zell transaction." Examiner's Sworn Interview of William Osborn, June 24, 2010, at 64:14-20.

453 Ex. 143 (Special Committee Meeting Minutes, dated April 1, 2007); Ex. 5 at 25 (Tender Offer).

454 Ex. 5 at 26 (Tender Offer).

455 Ex. 143 (Special Committee Meeting Minutes, dated April 1, 2007). The evening meeting of the Special Committee was by telephone. Ex. 146 at 1 (Tribune Board Meeting Minutes, dated April 1, 2007).

456 Ex. 143 (Special Committee Meeting Minutes, dated April 1, 2007); Ex. 144 (Presentation to the Committee of Independent Directors of the Tribune Board, dated April 1, 2007); Ex. 145 (Morgan Stanley Opinion Letter, dated April 1, 2007).

unanimously recommended that the Tribune Board approve the "Zell/ESOP transaction to acquire Tribune for $34 per share."[457]

At the full meeting of the Tribune Board, MLPFS gave its oral opinion, subsequently confirmed in writing as of the same date, on the fairness of the merger consideration from a financial point of view of the stockholders.[458] Morgan Stanley delivered to the full Tribune Board the opinion it had previously given to the Special Committee.[459]

On April 1, 2007, the Tribune Board voted to approve the Leveraged ESOP Transactions, including the establishment of the ESOP, the Merger, the Tender Offer, the Step One Commitment Letter, the Step Two Commitment Letter, and the entry into and performance of agreements related to the foregoing.[460] Representatives of the Chandler Trusts on the Tribune Board abstained from voting as directors; Dudley Taft was not present at the meeting and did not vote.[461] After the Tribune Board meeting, certain of the Leveraged ESOP Transaction documents were executed,[462] and on April 2, 2007, the Leveraged ESOP Transactions were

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457 Ex. 143 at 3 (Special Committee Meeting Minutes, dated April 1, 2007).

458 Ex. 146 at 2 (Tribune Board Meeting Minutes, dated April 1, 2007); Ex. 147 (MLPFS Opinion Letter, dated April 1, 2007).

459 Ex. 146 (Tribune Board Meeting Minutes, dated April 1, 2007).

460 *Id.*

461 *Id.* at 1. Mr. Stinehart, a Chandler Trusts trustee and Tribune Board member, said that the decision by all of the Chandler Trust trustees to abstain "was not coordinated, but the other two [Chandler] Trusts designees may have followed my lead in abstaining." Examiner's Interview of William Stinehart, June 28, 2010. Mr. Stinehart told the Examiner that he abstained from voting because (a) he viewed the Chandler Trusts as being part of the transaction because they entered Voting Rights and Registration Rights agreements, (b) he was "missing a huge amount of [information] that [the Special Committee] had but we didn't" because he was not on the Special Committee, (c) as trustee to the Chandler Trusts with individual beneficiaries, he held a fiduciary duty that the other Tribune Board members did not have, and (d) the Chandler Trusts still had an offer outstanding to purchase part of Tribune, which had never been rejected. *Id.*

462 Ex. 146 at Exhibit A (Tribune Board Meeting Minutes, dated April 1, 2007); Ex. 5 at 26 (Tender Offer).

publicly announced.[463] The description of the Leveraged ESOP Transactions in the press release included the following statements:[464]

> Shareholders will receive their consideration in a two-stage transaction. Upon completion of the transaction, the [C]ompany will be privately held, with an Employee Stock Ownership Plan (ESOP) holding all of Tribune's then-outstanding common stock. . . . The first stage of the transaction is a cash tender offer for approximately 126 million shares at $34 per share. . . . The second stage is a merger expected to close in the fourth quarter of 2007 in which the remaining publicly-held shares will receive $34 per share.

Tribune's SEC filings during the period before consummation of the Step One Transactions disclosed certain risks associated with the Leveraged ESOP Transactions. In Tribune's Form 10-Q for the period ended April 1, 2007 (filed May 9, 2007), Tribune disclosed three risk factors with respect to the Leveraged ESOP Transactions:[465]

- "Our businesses may be adversely affected by the Leveraged ESOP Transactions and the failure to consummate the pending Leveraged ESOP Transactions."[466] According to Tribune, the considerations underlying this risk factor included the diversion of management's attention away from day-to-day operations, transaction costs (which would be payable by Tribune whether or not the Merger closed), the termination of the Merger Agreement, the failure of the Tender Offer or the Merger to close, the failure to obtain necessary stockholder and FCC approvals to the Merger, and the failure to obtain the financing arrangements outlined in the Commitment Letters.[467]

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[463] Ex. 148 (Tribune Press Release, dated April 2, 2007).

[464] *Id.*

[465] Ex. 55 at 37-39 (Tribune Form 10-Q, filed May 9, 2007).

[466] *Id.* at 37.

[467] *Id.*

- "We currently have substantial debt and other financial obligations, and we expect to incur significant additional debt in connection with the Leveraged ESOP Transactions."[468] According to Tribune, the considerations underlying this risk factor included the need to dedicate greater amounts of cash flow to the payment of the LBO Lender Debt, the failure of operations to generate sufficient cash flow to pay the LBO Lender Debt, and the ability of the Tribune Entities to refinance the LBO Lender Debt on or before maturity.[469]

- "Consummation of the Leveraged ESOP Transactions will require regulatory approval from the FCC."[470] According to Tribune, the considerations underlying this risk factor included the timing of the FCC's review of the application and the need to obtain new cross-ownership waivers as a result of the change of control that would result from the Merger.[471]

On May 21, 2007, the Tribune Board (with Mr. Chandler, Mr. Goodan, and Mr. Stinehart abstaining) adopted resolutions approving, ratifying, and adopting in all respects the Credit Agreement entered into on May 17, 2007 and authorizing the officers of Tribune to take all actions "necessary, desirable, advisable, expedient, convenient or proper" to carry out the purposes of the resolutions adopted by the Tribune Board on April 1, 2007 and May 21, 2007.[472]

2. Approval by Subsidiary Boards.

The Guarantor Subsidiaries authorized the Credit Agreement Subsidiary Guarantee by unanimous written consent of the respective Subsidiary Boards (or sole or managing member, as

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468 *Id.* at 38.

469 *Id.* at 38-39.

470 *Id.* at 39.

471 *Id.*

472 Ex. 149 (Tribune Board Meeting Minutes, dated May 21, 2007).

applicable).[473] The recitals in the unanimous written consents of the Subsidiary Boards acknowledged Tribune's entry into the Credit Agreement, noted that the Guarantor Subsidiary's entry into the Credit Agreement Subsidiary Guarantee was a condition to making advances under the Credit Agreement, and referenced the form of Credit Agreement Subsidiary Guarantee attached as an exhibit to the Credit Agreement.[474] The resolution in the unanimous written consents of the Subsidiary Boards authorized "each of the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Treasurer" of such Guarantor Subsidiary to execute and deliver to the Credit Agreement Agent, the Credit Agreement Subsidiary Guarantee and "all other documents, instruments and agreements deemed necessary or desirable by the [Credit Agreement Agent] in order to guarantee the obligations of [Tribune] under the Credit Agreement."[475] The resolutions also authorized such officers to "take from time to time any actions deemed necessary or desirable by the Authorized Officers of the Company to establish the [Credit Agreement Subsidiary Guarantee] and to evidence the [Credit Agreement Subsidiary Guarantee] properly in accordance with the requirements of the Credit Agreement."[476] The unanimous written consents were dated as of June 4, 2007.[477]

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[473] Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007). These unanimous written consents of the Subsidiary Boards are substantially similar in form and substance. It appears that the directors of the Guarantor Subsidiaries did little to no diligence when asked to sign the Subsidiary Board written consents authorizing the execution, delivery, and performance of the Credit Agreement Subsidiary Guarantee, but instead simply signed the written consents at the request of Tribune's in-house counsel. Examiner's Interview of David Williams, June 18, 2010; Examiner's Interview of Timothy Landon, June 22, 2010. In his interview with the Examiner, former Tribune General Counsel Crane Kenney confirmed that he, David Eldersveld, or Mark Hianik (all in-house attorneys at Tribune) would likely have asked the directors of the Guarantor Subsidiaries to sign the written consents. Examiner's Sworn Interview of Crane Kenney, July 8, 2010, at 92:6-93:6.

[474] Ex. 150 (Unanimous Written Consents of the Subsidiary Boards, dated June 4, 2007).

[475] *Id.*

[476] *Id.*

[477] *Id.* The unanimous written consents of Homestead Publishing Company and Patuxent Publishing Company were dated as of June 6, 2007. The form and substance of these unanimous written consents are substantially the same as the other unanimous written consents and do not purport to ratify an action that was taken before the execution of the unanimous written consents.

3. Merger Agreement.

On April 1, 2007, Tribune entered into the Merger Agreement, by and among Tribune, GreatBanc (not in its individual or corporate capacity, but solely as trustee of the Tribune Employee Stock Ownership Trust, which formed a part of the ESOP), Merger Sub,[478] and, for limited purposes,[479] EGI-TRB.[480] Under the Merger Agreement, at and conditioned on the Effective Time, Merger Sub would merge with and into Tribune, with Tribune surviving the Merger and becoming a wholly-owned Subsidiary of the ESOP and holders of Tribune Common Stock receiving $34.00 per share in consideration on consummation of the Merger.[481]

The Merger Agreement (a Step Two Transaction) provided that Tribune would commence a tender offer for up to 126 million shares of Tribune Common Stock at $34.00 per share (a Step One Transaction).[482] The 126 million shares represented approximately 52% of the issued and outstanding Tribune Common Stock as of April 1, 2007.[483] To the extent that the Tender Offer was not consummated, the Merger Agreement nevertheless would remain in full force and effect and the Merger was to be consummated in accordance with the terms thereof.[484]

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478 Merger Sub was an entity newly-formed and wholly-owned by the ESOP for the purposes of the Merger.

479 EGI-TRB was a party to the Merger Agreement solely with respect to Section 8.12 thereof. Section 8.12 provided that, without the consent of EGI-TRB, neither the ESOP nor Merger Sub could (a) waive or amend any provision of the Merger Agreement or (b) agree to terminate the Merger Agreement (i) by mutual written consent or, (ii) before receipt of the Company Shareholder Approval, as a result of the Tribune Board failing to recommend that Tribune's stockholders vote in favor of the Merger or otherwise changing its recommendation to Tribune's stockholders in a manner adverse to the ESOP. Ex. 151 at § 8.12 (Merger Agreement).

480 Ex. 151 (Merger Agreement). The Merger Agreement was governed by Delaware law (*see* § 8.4). With respect to the Merger Agreement (a) the ESOP and Merger Sub were represented by the law firm of K & L Gates (Pittsburgh, PA office), (b) Tribune was represented by the law firms of Wachtell (New York, NY office), Sidley Austin LLP (Chicago, IL office), Skadden Arps (Chicago, IL office), and McDermott, Will & Emery LLP (Chicago, IL office), and (c) Tribune Acquisition was represented by the law firm of Jenner & Block LLP (Chicago, IL office). *See* Ex. 151 at § 8.7 (Merger Agreement).

481 Ex. 151 at § 2.1(a) (Merger Agreement).

482 *Id.* at § 5.14(a).

483 Ex. 5 at 101 (Tender Offer).

484 *Id.* at § 5.14(c)).

a. Reasonable Best Efforts.

Pursuant to the terms of the Merger Agreement, each of Tribune, the ESOP, and Merger Sub covenanted to use "reasonable best efforts" to "take promptly, or cause to be taken promptly, all actions, . . . and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable . . . to consummate and make effective the Merger and the other transactions contemplated" by the Merger Agreement.[485] Among the obligations delineated, the parties agreed to use reasonable best efforts to obtain all necessary governmental approvals and consents (including the FCC Order),[486] and to obtain certain third-party consents (including the consent of Major League Baseball).[487] In addition, Tribune covenanted to use reasonable best efforts to obtain financing for the Leveraged ESOP Transactions pursuant to the terms and conditions of the Commitment Letters and to "enforce its rights under" the Commitment Letters.[488] To the extent that Tribune became aware of any circumstance that would make the financing unlikely to occur in accordance with the terms of the Commitment Letters, Tribune agreed to use reasonable best efforts to arrange financing from "alternative sources."[489]

b. Closing Conditions.

Tribune's obligation to consummate the Merger was subject to the satisfaction or waiver of certain of conditions, including the representations and warranties of the ESOP and Merger Sub being true and correct when made and at and as of the closing date of the Merger, other than breaches thereof as would not have an ESOP Material Adverse Effect,[490] the FCC Order not

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485 *Id.* at § 5.6(a).

486 *Id.* at § 5.6(a)(i).

487 *Id.* at § 5.6(a)(ii).

488 *Id.* at § 5.11(a)(iv).

489 *Id.* at § 5.11(a).

490 *Id.* at § 6.2(a). "ESOP Material Adverse Effect" was defined under the Merger Agreement as the occurrence of an event that "would not, individually or in the aggregate, reasonably be expected to prevent or materially delay

imposing any condition on the ESOP or Tribune Entities that reasonably would be expected to have a material adverse effect on the Broadcasting Segment,[491] and receipt of an opinion from VRC, or another nationally recognized firm, as to the "solvency"[492] of Tribune after giving effect to the transactions contemplated by the Merger Agreement, including any financing and the closing of the EGI-TRB Purchase Agreement and the ESOP Purchase Agreement.[493]

The ESOP's and Merger Sub's respective obligations to consummate the Merger were subject to the satisfaction or waiver[494] of certain conditions, including the representations and warranties of Tribune under the Merger Agreement being true and correct when made and at and as of the closing date of the Merger, other than breaches thereof as would not have a Company Material Adverse Effect,[495] and Tribune having performed all of its obligations under the Merger Agreement in all material respects.[496]

The Merger Agreement also provided that the obligations of the parties to complete the Merger were subject to the satisfaction or waiver of certain mutual conditions, including, but not limited to, the following:

- Receipt of stockholder approval;[497]
- Issuance of the FCC Order granting the consents or approvals required under the Communications Act of 1934;[498]

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or materially impair the ability of the ESOP or Merger Sub to consummate the Merger and the other agreements contemplated by [the Merger Agreement]." *Id.* at § 4.1.

491 *Id.* at § 6.2(c).

492 "Solvency" was not defined in the Merger Agreement.

493 *Id.* at § 6.2(e).

494 Neither the ESOP nor Merger Sub were permitted to waive any condition to closing under the Merger Agreement without the consent of EGI-TRB. *See id.* at § 6.3 and § 8.12.

495 *Id.* at § 6.3(a).

496 *Id.* at § 6.3(b).

497 *Id.* at § 6.1(a).

- The consent of Major League Baseball;[499]

- Satisfaction of all conditions to the EGI-TRB Purchase Agreement (other than the closing of the Merger);[500] and

- Receipt by Tribune of financing on the terms set forth in the Commitment Letters, or alternative financing on substantially similar terms.[501]

As Tribune noted in its Form 10-Q for the quarter ended April 1, 2007, completion of the Tender Offer was not a condition to the Merger.[502]

c. Termination Rights.

The Merger Agreement was subject to several termination provisions.[503] The Merger Agreement was terminable by either party if, among other things, the Effective Time did not occur by May 31, 2008,[504] or if the Company Meeting concluded without obtaining Company Shareholder Approval.[505] In addition, the Merger Agreement was terminable by Tribune if the EGI-TRB Purchase Agreement was not consummated by August 17, 2007,[506] and by the ESOP if, before obtaining Company Shareholder Approval, the Tribune Board changed its recommendation to Tribune's stockholders to approve the Merger.[507]

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498 *Id.* at § 6.1(c).

499 *Id.* at § 6.1(d).

500 *Id.* at § 6.1(f).

501 *Id.* at § 6.1(g).

502 Ex. 55 at 19 (Tribune Form 10-Q, filed May 9, 2007).

503 Ex. 151 at § 7.1 (Merger Agreement).

504 *Id.* at § 7.1(b).

505 *Id.* at § 7.1(d).

506 *Id.* at § 7.1(i).

507 *Id.* at § 7.1(h).

In addition, although Tribune covenanted in the Merger Agreement that it would (a) "immediately cease any [ongoing] discussions or negotiations with any parties,"[508] and (b) not "initiate or knowingly facilitate or encourage any inquiry,"[509] in either case with respect to any alternative proposal to acquire Tribune, its assets or a material portion thereof, if Tribune did receive an unsolicited alternative proposal, the Merger Agreement was terminable by Tribune if the Tribune Board determined to accept a Superior Proposal.[510] For the purposes of the Merger Agreement, a "Superior Proposal" meant a bona fide proposal made before the receipt of the Company Shareholder Approval on terms that the Tribune Board or the Special Committee "determines in good faith, after consultation with the Company's or the Special Committee's outside legal and financial advisors, . . . is more favorable to the Company and its shareholders" than the transactions contemplated by the Merger Agreement.[511]

As contemplated by the EGI-TRB Purchase Agreement,[512] if the Merger Agreement was terminated before consummation of the Merger, EGI-TRB and the ESOP were granted certain registration rights by Tribune with respect to their shares of Tribune Common Stock.[513]

d. Termination Fees.

Under certain circumstances,[514] termination of the Merger Agreement would result in the obligation of either EGI-TRB or Tribune, as applicable, to pay a termination fee in the amount of $25 million to the other party.

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[508] *Id.* at § 5.3(a).

[509] *Id.*

[510] *Id.* at § 7.1(g).

[511] *Id.* at §§ 5.3(f) and (g).

[512] Ex. 152 at Recitals (EGI-TRB Purchase Agreement).

[513] *See* Report at § III.D.8.

4. EGI-TRB Purchase Agreement.

On April 1, 2007, Tribune, EGI-TRB, and Samuel Zell entered into the EGI-TRB Purchase Agreement,[515] with Mr. Zell a party to the agreement only as a guarantor of "each and every representation, warranty, covenant and agreement of EGI-TRB and the full and timely observance, payment, performance and discharge of its obligations" under the provisions of the EGI-TRB Transaction Documents.[516] Pursuant to the terms of the EGI-TRB Purchase Agreement, Tribune agreed to sell to EGI-TRB, (a) at the EGI-TRB Purchase Agreement First Closing, (1) 1,470,588 newly issued shares of Tribune Common Stock, for a purchase price of $50 million,[517] and (2) the Exchangeable EGI-TRB Note, for a purchase price of $200 million,[518] and (b) immediately following the consummation of the Merger, at the EGI-TRB Purchase Agreement Second Closing, (1) the Initial EGI-TRB Note, for a purchase price of $225 million,[519] and (2) the Warrant, for a purchase price of $90 million.[520]

a. Reasonable Best Efforts.

Pursuant to the terms of the EGI-TRB Purchase Agreement, each of Tribune and EGI-TRB covenanted to use "reasonable best efforts" to "take promptly, or cause to be taken promptly, all actions, … and to assist and cooperate with the other parties in doing, all things

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514 The payment of the termination fee under the Merger Agreement was governed by the terms of the EGI-TRB Purchase Agreement as discussed below. *See* Ex. 151 at § 7.1 (Merger Agreement); Ex. 152 at § 8.20 (EGI-TRB Purchase Agreement). *See also* Report at § III.D.4.d.

515 Ex. 152 (EGI-TRB Purchase Agreement). The EGI-TRB Purchase Agreement was governed by Delaware law (*see* § 8.7). With respect to the EGI-TRB Purchase Agreement, (a) EGI-TRB was represented by the law firm of Jenner & Block, LLP (Chicago, IL office), and (b) Tribune was represented by the law firms of Wachtell (New York, NY office), Sidley Austin LLP (Chicago, IL office), and Skadden Arps (Chicago, IL office). *See id.* at § 8.10.

516 *Id.* at § 8.18(a).

517 *Id.* at § 1.1.

518 *Id.*; Ex. 153 (Exchangeable EGI-TRB Note).

519 Ex. 152 at § 1.2 (EGI-TRB Purchase Agreement).

520 *Id.*

necessary, proper or advisable … to consummate and make effective the Merger and the transactions contemplated" by the EGI-TRB Purchase Agreement.[521] Among the obligations delineated, the parties agreed to use reasonable best efforts to obtain all necessary governmental approvals and consents (including the FCC Order),[522] and to obtain certain third-party consents (including the consent of Major League Baseball).[523] In addition, Tribune covenanted to use reasonable best efforts to obtain financing for the Leveraged ESOP Transactions pursuant to the terms and conditions of the Commitment Letters.[524]

b. Closing Conditions.

The EGI-TRB Purchase Agreement provided that the obligation of the parties to close the EGI-TRB Purchase Agreement First Closing was subject to there being no restraining order, injunction, or other court order prohibiting the consummation of the transactions contemplated by the EGI-TRB Purchase Agreement First Closing.[525] The obligation of Tribune to close the EGI-TRB Purchase Agreement First Closing was subject to EGI-TRB's and Mr. Zell's representations and warranties being true and correct and the fulfillment of their respective obligations under the EGI-TRB Purchase Agreement.[526] The obligation of EGI-TRB to close the EGI-TRB Purchase Agreement First Closing was subject to the Tribune's representations and warranties under the EGI-TRB Purchase Agreement being true and correct and the fulfillment of the Tribune's obligations under the EGI-TRB Purchase Agreement, certain of the Tribune's

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[521] *Id.* at § 5.7(a).

[522] *Id.* at § 5.7(a)(i).

[523] *Id.* at § 5.7(a)(ii).

[524] *Id.* at § 5.7(a)(v).

[525] *Id.* at § 6.1(a).

[526] *Id.* at §§ 6.2(a) and (b).

representations and warranties under the Merger Agreement being true and correct,[527] the Merger Agreement not having been terminated in accordance with any of its terms,[528] and the 1,470,588 newly issued shares of Tribune Common Stock and the Exchangeable EGI-TRB Note having been authorized for listing on the New York Stock Exchange.[529]

The EGI-TRB Purchase Agreement provided that the obligation of the parties to close the EGI-TRB Purchase Agreement Second Closing was subject to there being no restraining order, injunction, or other court order prohibiting the consummation of the transactions contemplated by the EGI-TRB Purchase Agreement Second Closing,[530] the Merger having been consummated,[531] and Mr. Zell having been elected Chairman of the Tribune Board.[532]

c. Termination Rights.

The EGI-TRB Purchase Agreement was terminable on the mutual written consent of the parties,[533] and by either party on the entry of a restraining order, injunction, or other court order prohibiting consummation of the Merger or the transactions contemplated by the EGI-TRB Purchase Agreement,[534] termination of the Merger Agreement in accordance with its terms,[535] or failure of the EGI-TRB Purchase Agreement First Closing to occur by August 17, 2007.[536]

The EGI-TRB Purchase Agreement was terminable by Tribune if EGI-TRB in any material respect breached a representation, warranty, or covenant under the EGI-TRB Purchase

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527 *Id.* at §§ 6.3(a) and (b).

528 *Id.* at § 6.3(d).

529 *Id.* at § 6.3(e).

530 *Id.* at § 7.1(a).

531 *Id.* at § 7.1(b).

532 *Id.* at § 7.1(c).

533 *Id.* at § 8.19(a).

534 *Id.* at § 8.19(b).

535 *Id.* at § 8.19(c).

536 *Id.* at § 8.19(f).

Agreement,[537] and by EGI-TRB if (a) Tribune breached in any material respect a representation, warranty, or covenant under the EGI-TRB Purchase Agreement,[538] (b) the Merger failed to be consummated by May 31, 2008,[539] (c) before Company Shareholder Approval, the Tribune Board changed its recommendation,[540] (d) the Company Meeting was concluded and Company Shareholder Approval was not obtained,[541] or (e) the Tribune Board accepted a Superior Proposal.[542]

d. Termination Fees.

A termination fee in the amount of $25 million was payable by Tribune to EGI-TRB if Tribune materially breached any of its representations, warranties, or covenants in the EGI-TRB Purchase Agreement or the Merger Agreement, as applicable, and:

- EGI-TRB terminated the EGI-TRB Purchase Agreement as a result of such breach; or
- EGI-TRB terminated the EGI-TRB Purchase Agreement as a result of the termination of the Merger Agreement due to Tribune's breach of its representations, warranties, and covenants contained therein; or
- EGI-TRB terminated the EGI-TRB Purchase Agreement as a result of the Merger not having occurred by May 31, 2008.[543]

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537 *Id.* at § 8.19(d).

538 *Id.* at § 8.19(e).

539 *Id.* at § 8.19(g).

540 *Id.* at § 8.19(h).

541 *Id.* at § 8.19(i).

542 *Id.* at § 8.19(j).

543 *Id.* at § 8.20(a).

A termination fee in the amount of $25 million also was payable by Tribune to EGI-TRB if either Tribune or EGI-TRB terminated the EGI-TRB Purchase Agreement as a result of termination of the Merger Agreement, and:

- The Merger Agreement was terminated in favor of a Superior Proposal or as a result of a change in the Tribune Board's recommendation; or

- EGI-TRB terminated the EGI-TRB Purchase Agreement as a result of the Tribune Board's acceptance of a Superior Proposal or a change in the Tribune Board's recommendation.[544]

Finally, a termination fee in the amount of $25 million was payable by Tribune to EGI-TRB if a Qualifying Transaction was disclosed before the Company Meeting and not permanently abandoned before the Company Meeting, and if Tribune then entered into such Qualifying Transaction within 12 months of termination resulting from:

- EGI-TRB or Tribune terminating the EGI-TRB Purchase Agreement as a result of termination of the Merger Agreement when the Merger Agreement was terminated due to the failure to obtain Company Shareholder Approval; or

- EGI-TRB terminating the EGI-TRB Purchase Agreement due to the failure to obtain Company Shareholder Approval.[545]

A termination fee in the amount of $25 million was payable by EGI-TRB to Tribune if EGI-TRB materially breached any of its representations, warranties, or covenants in the EGI-TRB Purchase Agreement, and:

- Tribune terminated the EGI-TRB Purchase Agreement as a result of such breach; or

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[544] *Id.*

[545] *Id.*

- Tribune terminated the EGI-TRB Purchase Agreement as a result of termination of the Merger Agreement where the Merger Agreement had been terminated as a result of the Merger not having occurred by May 31, 2008.[546]

A termination fee in the amount of $25 million was also payable by EGI-TRB to Tribune if either EGI-TRB or Tribune terminated the EGI-TRB Purchase Agreement as a result of termination of Merger Agreement; and

- The primary factor in the termination of the Merger Agreement was failure to satisfy the financing condition thereof; and

- The failure to satisfy such financing condition was not as a result of a material breach by Tribune or the ESOP of their respective representations, warranties, or covenants under the EGI-TRB Purchase Agreement, the Merger Agreement, the Commitment Letters, or any other documents delivered in connection therewith.[547]

e. The Exchangeable EGI-TRB Note, the Initial EGI-TRB Note, and the Warrant.

(1) Exchangeable EGI-TRB Note.

The Exchangeable EGI-TRB Note was an unsecured subordinated exchangeable promissory note in the original principal amount of $200 million, which note was exchangeable at the option of Tribune, or automatically under certain circumstances, into 5,882,353 shares of Tribune Common Stock.[548] The Exchangeable EGI-TRB Note was issued by Tribune on

[546] *Id.* at § 8.20(b).

[547] *Id.*

[548] Ex. 153 (Exchangeable EGI-TRB Note). The Exchangeable EGI-TRB Note was governed by Delaware law (*see* § 6(f)).

April 23, 2007 in favor of EGI-TRB pursuant to the terms of the EGI-TRB Purchase Agreement in connection with the EGI-TRB Purchase Agreement First Closing.[549]

Interest on unpaid principal on the Exchangeable EGI-TRB Note accrued at the rate of 4.81% per annum, payable in-kind on the last day of each calendar quarter beginning on June 30, 2007.[550] Payment of all outstanding principal and interest under the Exchangeable EGI-TRB Note was to be made immediately before the consummation of the Merger.[551] The Exchangeable EGI-TRB Note was subordinate and junior in right of payment to all obligations, indebtedness, and other liabilities of Tribune other than those that, by their express terms, ranked pari passu or junior to the obligations under the Exchangeable EGI-TRB Note.[552] Unless and until such time as the obligations to extend credit to Tribune under such senior obligations were terminated and paid in full in cash, Tribune was prohibited from making any payment of principal, interest, or otherwise on the Exchangeable EGI-TRB Note.[553]

If Tribune failed to make any payment of principal or interest when due under the Exchangeable EGI-TRB Note, the aggregate outstanding principal balance and accrued interest would become due and payable immediately on notice from EGI-TRB.[554] If Tribune made an assignment for the benefit of creditors, admitted in writing as to its inability to pay its debts generally as they became due, or became subject to an order adjudicating Tribune to be bankrupt,

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549 Ex. 152 at § 1.1 (EGI-TRB Purchase Agreement).

550 Ex. 153 at § 1(a) (Exchangeable EGI-TRB Note).

551 *Id.* at § 1(b).

552 *Id.* at § 2(a).

553 *Id.* at § 2(a).

554 *Id.* at § 3(b)(i).

the aggregate outstanding principal balance and accrued interest would become immediately due and payable without notice from EGI-TRB.[555]

At the option of Tribune, all or any portion of the outstanding principal balance of the Exchangeable EGI-TRB Note was exchangeable at any time for such amount of Tribune Common Stock as was determined by dividing (a) the outstanding principal balance being exchanged by (b) $34 (subject to adjustment as described therein).[556] In addition, immediately on termination of the Merger Agreement, all of the outstanding principal balance of the Exchangeable EGI-TRB Note was to be exchanged for such amount of Tribune Common Stock as was determined by dividing (a) the outstanding principal balance being exchanged by (b) $34 (subject to adjustment as described therein).[557] Any such shares of Tribune Common Stock would then be subject to Tribune's obligation to register such shares in accordance with the terms of the Registration Rights Agreement.[558]

(2) EGI-TRB Notes.

The Initial EGI-TRB Note was issued originally by Tribune in favor of EGI-TRB on December 20, 2007 in connection with the EGI-TRB Purchase Agreement Second Closing.[559] It

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[555] *Id.* at § 3(b)(ii).

[556] *Id.* at § 4(a).

[557] *Id.* at § 4(b). On such exchange of the original principal balance of the Exchangeable EGI-TRB Note for Tribune Common Stock, 40% of all (a) then-accrued but unpaid interest and (b) paid-in-kind interest and accrued but unpaid interest on such paid-in-kind interest would be paid by Tribune in cash. The remaining paid-in-kind interest would be deemed satisfied as a result of the foregoing payment, and 60% of the then-accrued but unpaid interest would be allocated as additional consideration for the exchange of the original principal balance of the Exchangeable EGI-TRB Note for Tribune Common Stock. *Id.* at § 4.

[558] *See* Ex. 154 at § 1 (definition of "Registrable Securities") (Registration Rights Agreement).

[559] *See* Ex. 155 (Initial EGI-TRB Note); Ex. 152 at § 1.2 (EGI-TRB Purchase Agreement). The EGI-TRB Notes are governed by Delaware law. *See* Ex. 155 at § 4(f) (Initial EGI-TRB Note).

appears that Tribune thereafter issued 25 separate EGI-TRB Notes, dated December 20, 2007, in lieu of the Initial EGI-TRB Note, to EGI-TRB and various assignees of EGI-TRB.[560]

The EGI-TRB Notes are unsecured subordinated promissory notes in the aggregate original principal amount of $225 million. Interest on unpaid principal on the EGI-TRB Notes accrues at the rate of 4.64% per annum, and is payable on the last day of each calendar quarter.[561] To the extent that the payment of interest under the EGI-TRB Notes otherwise is prohibited, such interest is capitalized as outstanding principal under the EGI-TRB Notes.[562] Principal payments in the aggregate of $250,000 are also due on the last day of each calendar quarter, with the outstanding principal balance and all accrued but unpaid interest due on December 20, 2018.[563]

If Tribune fails to make any payment of principal or interest when due under the EGI-TRB Notes, and (a) such failure is not cured within five business days or (b) such payment is not otherwise prohibited by the EGI-TRB Subordination Agreement, the aggregate outstanding principal balance and accrued interest becomes due and payable immediately on notice from EGI-TRB.[564] If Tribune makes an assignment for the benefit of creditors, admits in writing as to its inability to pay its debts generally as they become due, or becomes subject to an order adjudicating Tribune to be bankrupt, the aggregate outstanding principal balance and accrued interest, subject to the terms of the EGI-TRB Subordination Agreement, becomes immediately due and payable without notice from EGI-TRB.[565]

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[560] *See* Ex. 12 (Tribune Board Meeting Minutes, dated December 20, 2007).

[561] *See, e.g.,* Ex. 155 at § 1(a) (Initial EGI-TRB Note).

[562] *See, e.g., id.*

[563] *See, e.g., id.* at § 1(b).

[564] *See, e.g., id.* at § 3(b)(i).

[565] *See, e.g., id.* at § 3(b)(ii).

Tribune's obligations under the EGI-TRB Notes are unsecured and subordinated pursuant to the terms of the EGI-TRB Subordination Agreement.[566] The EGI-TRB Notes are subordinate and junior in right of payment to all obligations, indebtedness, and other liabilities of Tribune other than those that, by their express terms, rank pari passu or junior to Tribune's obligations under the EGI-TRB Notes and trade payables incurred in the ordinary course of business.[567]

(3) Warrant.

The Warrant is a 15-year warrant to purchase 43,478,261 shares of Tribune Common Stock (subject to anti-dilution adjustments), for a purchase price of $90 million.[568] The Warrant had an initial aggregate exercise price of $500 million, increasing by $10 million per year for the first ten years of the Warrant, for a maximum aggregate exercise price of $600 million (subject to adjustment),[569] and is exercisable, in whole or in part, through December 20, 2022.[570] The Warrant was purchased by EGI-TRB, pursuant to the terms of the EGI-TRB Purchase Agreement, for a purchase price of $90 million on December 20, 2007 in connection with the EGI-TRB Purchase Agreement Second Closing.[571]

f. EGI-TRB Purchase Agreement First Closing.

The EGI-TRB Purchase Agreement First Closing occurred on April 23, 2007.[572] In connection therewith, EGI-TRB purchased (a) 1,470,588 shares of the Tribune Common Stock at $34 per share for a purchase price of approximately $50 million, and (b) the $200 million

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[566] *See, e.g., id.* at § 2; Ex. 156 (EGI-TRB Subordination Agreement).

[567] Ex. 156 at § 2 (EGI-TRB Subordination Agreement).

[568] Ex. 157 at § 1(a) and (b) (Warrant). The Warrant is governed by Delaware law (*see* § 13). With respect to the Warrant, Tribune was represented by Wachtell (New York, NY office), and EGI-TRB was represented by the law firm of Jenner & Block LLP (Chicago, IL office). *See* Ex. 157 at § 16 (Warrant).

[569] *Id.* at § 1(b).

[570] *Id.* at § 2.

[571] Ex. 152 at § 1.2 (EGI-TRB Purchase Agreement).

[572] Ex. 4 at 46 (Tribune 2007 Form 10-K); Ex. 5 at 63 (Tender Offer).

Exchangeable EGI-TRB Note, for an aggregate purchase price of $250 million. Notwithstanding the provisions of the EGI-TRB Purchase Agreement which required Tribune to cause Mr. Zell to be appointed to the Tribune Board effective as of the date of the EGI-TRB Purchase Agreement First Closing,[573] Mr. Zell was appointed to the Tribune Board on May 9, 2007.[574]

5. ESOP Transactions.

a. ESOP Purchase Agreement.

On April 1, 2007, Tribune entered into the ESOP Purchase Agreement with GreatBanc (on behalf of the ESOP).[575] Pursuant to the terms of the ESOP Purchase Agreement, on April 1, 2007 Tribune sold 8,928,571 shares of Tribune Common Stock to the ESOP at a price of $28 per share.[576] GreatBanc also agreed not to tender shares in the Tender Offer.[577] The ESOP paid for the purchased shares with the ESOP Note, to be repaid by the ESOP over the 30-year life of the loan through its use of annual contributions, either in cash or in the form of forgiveness, from Tribune to the ESOP and/or through distributions paid on the shares of Tribune Common Stock held by the ESOP.[578]

b. ESOP Loan.

On April 1, 2007, Tribune and GreatBanc (on behalf of the ESOP) entered into the ESOP Loan Agreement.[579] The ESOP Loan Agreement documented an extension of credit of $250

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573 Ex. 152 at § 5.11 (EGI-TRB Purchase Agreement).

574 Ex. 4 at 46 (Tribune 2007 Form 10-K).

575 Ex. 158 (ESOP Purchase Agreement). The ESOP Purchase Agreement was governed by Delaware law (*see* § 12(c)). With respect to the ESOP Purchase Agreement, (a) Tribune was represented by the law firms of McDermott Will & Emory LLP (Chicago, IL office) and Wachtell (New York, NY office) and (b) the Trust was represented by K & L Gates (Pittsburgh, PA office). *See* Ex. 158 at § 12(b) (ESOP Purchase Agreement).

576 *Id.* at § 2; Ex. 5 at 66 (Tender Offer).

577 Ex. 158 at 1 (ESOP Purchase Agreement).

578 *Id.* at § 2; Ex. 160 (ESOP Note).

579 Ex. 159 (ESOP Loan Agreement). The ESOP Loan Agreement is governed by Illinois law (*see* § 7.4). With respect to the ESOP Loan Agreement, (a) the ESOP was represented by the law firm of K & L Gates

million from Tribune to the ESOP, as evidenced by the ESOP Note, which was made to permit the ESOP to purchase shares of Tribune Common Stock pursuant to the terms of the ESOP Purchase Agreement.[580] The ESOP Note was to be repaid by the ESOP to Tribune in 30 annual installments commencing on December 31, 2007, with an annual interest rate of approximately 5%.[581] GreatBanc (on behalf of the ESOP) also entered into the ESOP Pledge Agreement with Tribune whereby the ESOP pledged the shares of Tribune Common Stock acquired by the ESOP from Tribune as collateral for Tribune's extension of credit to the ESOP.[582] The ESOP Pledge Agreement provides that there is no recourse by Tribune with respect to the ESOP Pledge Agreement or the ESOP Note against the ESOP, the ESOP Trust, or GreatBanc, except to the extent of the assets of the ESOP Trust to which a creditor would properly have recourse under Treasury Regulation Section 54.4975-7(b) (and any successor provision thereto).[583]

c. Duff & Phelps Fairness Opinion.

Tribune initially engaged Duff & Phelps to provide a solvency opinion to Tribune in connection with either a spin-off of the Broadcasting Segment or the Leveraged ESOP Transactions.[584] Then, Tribune and the Special Committee engaged Duff & Phelps to explore Tribune's adoption of an ESOP and such ESOP's potential participation in EGI's proposed ESOP transaction.[585] Shortly thereafter, GreatBanc engaged Duff & Phelps as financial advisor to the

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(Pittsburgh, PA office), and (b) Tribune was represented by the law firm of McDermott, Will & Emery LLP (Chicago, IL office). *See id.* at § 7.2.

[580] Ex. 159 at §§ 2.2-2.4 (ESOP Loan Agreement).

[581] Ex. 160 at 1 (ESOP Note). The ESOP Note is governed by Illinois law. Ex. 160 at 1 (ESOP Note).

[582] Ex. 161 at § 1 (ESOP Pledge Agreement). The ESOP Pledge Agreement is governed by Illinois law. *Id.* at § 11.

[583] *Id.* at § 9.

[584] Ex. 162 (Engagement Letter between the Tribune Board and Duff & Phelps, dated February 13, 2007).

[585] Ex. 163 (Engagement Letter among Tribune, the Special Committee, and Duff & Phelps, dated February 26, 2007).

ESOP.[586] Tribune and the ESOP agreed that if a solvency opinion was required, Duff & Phelps would render the solvency opinion directly to the ESOP, and the Tribune Board would be given the right to rely on the opinion.[587]

On March 29, 2007, Duff & Phelps delivered a preliminary report to the ESOP Committee of GreatBanc.[588] During the course of the meeting, Duff & Phelps reviewed the terms of the Leveraged ESOP Transactions, noting that "[i]n the event the Merger Agreement is not consummated, the ESOP retains the ESOP Shares and the Company continues to be publicly-traded."[589] Reiterating that its views remained preliminary, Duff & Phelps indicated that "in its opinion, on a post-transaction basis, taking into account the S corporation tax shield, the fair salable value of the Company's assets is greater than its liabilities."[590] Duff & Phelps cautioned that it was "able to issue its financing opinion because of the anticipated benefits of the S corporation tax shield. If those tax benefits [were] not considered, [Duff & Phelps] would be unable to render its opinion."[591]

The ESOP again revised the terms of Duff & Phelps' engagement, this time providing for Duff & Phelps to deliver the ESOP with an opinion as to "the financial viability of the Company, as a going concern, and on a going-forward basis," following the close of the Leveraged ESOP Transactions.[592] Duff & Phelps specifically disclaimed that it would be opining as to Tribune's solvency.[593]

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586 Ex. 164 (Engagement Letter between GreatBanc and Duff & Phelps, dated March 8, 2007).

587 *Id.*

588 Ex. 165 (ESOP Committee Meeting Minutes, dated March 29, 2007).

589 *Id.* at 2.

590 *Id.* at 9.

591 *Id.*

592 Ex. 166 at 1 (Engagement Letter between GreatBanc and Duff & Phelps, dated March 31, 2007).

593 *Id.*

As a condition to closing under the ESOP Purchase Agreement,[594] on April 1, 2007 the ESOP received a fairness opinion from Duff & Phelps concluding that:[595]

> (i) the price of $28.00 per share, or an aggregate amount of $250 million, to be paid by the ESOP for shares of the Company's common stock is not greater than fair market value (as such term is used in determining "adequate consideration" pursuant to Section 3(18) of the Employee Retirement Income Security Act of 1974, as amended); (ii) the interest rate of 5.01% per annum on the ESOP Note does not exceed a reasonable rate of interest; (iii) the financial terms of the ESOP Note are at least as favorable to the ESOP as would be the terms of a comparable loan resulting from negotiations between independent parties; and (iv) the terms and conditions of the [Leveraged ESOP Transactions] are fair and reasonable to the ESOP from a financial point of view.

d. Closing of ESOP Transactions.

On April 1, 2007, Tribune sold 8,928,571 shares of Tribune Common Stock to the ESOP in exchange for the ESOP Note.[596] On that date, Duff & Phelps delivered its fairness opinion to GreatBanc, consistent with the provisions of the ESOP Purchase Agreement.[597]

6. Investor Rights Agreement.

On April 1, 2007, Tribune entered into the Investor Rights Agreement with EGI-TRB and GreatBanc (on behalf of the ESOP).[598] Each stockholder that was a party to the Investor Rights Agreement agreed to vote its shares following the Merger such that (a) the initial directors on the Tribune Board following the Merger would serve until the third annual election following the consummation of the Merger, (b) there would be two directors designated by EGI-TRB, and

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594 Ex. 158 at § 5(g) (ESOP Purchase Agreement).

595 Although Duff & Phelps did review Tribune management's and EGI's financial projections in connection with delivering its opinion, it did not opine as to Tribune's financial viability. Ex. 167 at 7 (Duff & Phelps Opinion, dated April 1, 2007).

596 Ex. 168 at 7-8 (Tribune Form 8-K, filed April 5, 2007 (without exhibits)).

597 Ex. 167 (Duff & Phelps Opinion, dated April 1, 2007); Ex. 158 at § 5(g) (ESOP Purchase Agreement).

598 Ex. 169 (Investor Rights Agreement). The Investor Rights Agreement is governed by Delaware law. *Id.* at § 10.13.

(c) there would be one director who would be the chief executive officer of Tribune, with the Tribune Board to be comprised of nine members.[599] The Investor Rights Agreement also contains provisions governing the transfer of the shares of Tribune Common Stock held by EGI-TRB and the ESOP, preemptive rights granted to the EGI-TRB and the ESOP by Tribune, and specified actions requiring the approval of a majority of the entire Tribune Board, including a majority of the independent directors and one designee of EGI-TRB.[600]

7. Voting Agreement.

On April 1, 2007, Tribune entered into the Voting Agreement with the Chandler Trusts, pursuant to which the Chandler Trusts committed to vote all of the shares of Tribune Common Stock they beneficially owned in favor of the Merger Agreement, whether or not recommended by the Tribune Board, and against any competing transaction, against any other agreement or action that was intended or would reasonably be expected to prevent, impede, or, in any material respect, interfere with, delay, postpone, or discourage the transactions contemplated by the Merger Agreement, and against any action, agreement, transaction, or proposal that would result in a breach of any representation, warranty, covenant, agreement, or other obligation of Tribune in the Merger Agreement, the ESOP Purchase Agreement, or the EGI-TRB Purchase Agreement.[601] Because the Chandler Trusts had sold all of their shares of Tribune Common Stock in advance of the Company Meeting,[602] the Chandler Trusts ultimately did not vote on the Merger Agreement.

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[599] *Id.* at § 2.1.

[600] *Id.* at §§ 3-10.

[601] Ex. 170 at § 1.1 (Voting Agreement). The Voting Agreement was governed by Delaware law. *Id.* at § 6.10.

[602] Ex. 171 at 9-10 (Chandler Trusts Schedule 13D).

8. Registration Rights Agreements.

On April 1, 2007, Tribune entered into the Registration Rights Agreement with EGI-TRB and GreatBanc (on behalf of the ESOP), pursuant to which Tribune granted to EGI-TRB and the ESOP certain demand and piggyback registration rights for the registration and sale of shares of Tribune Common Stock held by EGI-TRB or the ESOP, respectively, in the event that the Merger Agreement was terminated before consummation of the Merger.[603] The Registration Rights Agreement covered shares of Tribune Common Stock held by EGI-TRB and the ESOP pursuant to the EGI-TRB Purchase Agreement, the Exchangeable EGI-TRB Note, and the ESOP Purchase Agreement.[604]

On termination of the Merger Agreement before consummation of the Merger, each of EGI-TRB and the ESOP had the right, pursuant to the terms of the Registration Rights Agreement, to cause Tribune to register its shares of Tribune Common Stock for sale in the public markets three times.[605] EGI-TRB was not permitted, however, to exercise this right until the third anniversary of the closing of the Step One Purchase Transaction, and the ESOP was not permitted to exercise this right until the first anniversary of the execution of the Registration Rights Agreement.[606] In addition, following the third anniversary of the closing of the Step One Purchase Transaction, with respect EGI-TRB, and following the first anniversary of the execution of the Registration Rights Agreement, with respect to the ESOP, Tribune covenanted to use, on the request of EGI-TRB and the ESOP, respectively, reasonable best efforts to include the shares of Tribune Common Stock owned by such party in any registration statement (other

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[603] Ex. 154 (Registration Rights Agreement). The Registration Rights Agreement was governed by Illinois law. *Id.* at § 12(f).

[604] *Id.* at § 1 (definition of "Registrable Securities").

[605] *Id.* at § 2(a).

[606] *Id.*

than registrations on Form S-4 and Form S-8) filed by Tribune for the sale of Tribune Common Stock in the public markets.[607]

Under the Registration Rights Agreement, EGI-TRB covenanted not to transfer any of its shares of Tribune Common Stock or the Exchangeable EGI-TRB Note until the third anniversary of the closing of the Step One Purchase Transaction, other than to an affiliate of EGI-TRB, Mr. Zell, or Mr. Zell's family, in each instance provided that such transferee agreed to be bound by the terms of the Registration Rights Agreement.[608] The Registration Rights Agreement terminated on consummation of the Merger.[609]

On April 1, 2007, Tribune entered into the Chandler Trusts Registration Rights Agreement with the Chandler Trusts pursuant to which Tribune granted to the Chandler Trusts certain shelf registration rights for the registration and sale of Tribune Common Stock that the Chandler Trusts then owned.[610] On June 4, 2007, the Chandler Trusts exercised their rights under the Chandler Trusts Registration Rights Agreement to sell all of their remaining shares of Tribune Common Stock through a block trade underwritten by Goldman Sachs.[611]

9. The Step One and Step Two Commitment Letters.

a. The Step One Commitment Letter.

On April 1, 2007, Tribune entered into a commitment letter, which was amended and restated on April 5, 2007, with JPMorgan, JPMCB, MLCC, CGMI (on behalf of the Citigroup

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607 *Id.* at § 2(b).

608 *Id.* at § 2(e).

609 *Id.* at § 12(i).

610 Ex. 172 (Chandler Trusts Registration Rights Agreement). The Chandler Trusts Registration Rights Agreement was governed by Delaware law (*see* § 9(g)). With respect to the Chandler Trusts Registration Rights Agreement, (a) Tribune was represented by the law firms of Wachtell (New York, NY office) and Sidley Austin LLP (Chicago, IL office), and (b) the Chandler Trusts were represented by the law firm of Gibson, Dunn & Crutcher LLP (Los Angeles, CA office). *See id.* at § 9(c).

611 Ex. 10 at Exhibit 1.1 (Tribune Form 8-K, filed June 5, 2007); Ex. 4 at 46 (Tribune 2007 Form 10-K). *See* Report at § III.F.3.

Entities), Bank of America, and BAS for the Step One Financing.[612] Pursuant to the Step One Commitment Letter, each of JPMCB and MLCC, severally and not jointly, agreed to provide 30% of the Step One Financing; the Citigroup Entities, severally and not jointly, agreed to provide 25% of the Step One Financing; and Bank of America, severally and not jointly, agreed to provide 15% of the Step One Financing.[613] The aggregate commitment for the Step One Financing was $8.028 billion.[614] The Step One Commitment Letter stated that the Step One Financing would be used by Tribune in connection with the consummation of the Tender Offer, to refinance certain existing indebtedness of Tribune, for general corporate purposes, and to pay fees and expenses related to the Step One Transactions.[615]

The obligations of JPMCB, MLCC, the Citigroup Entities, and Bank of America under the Step One Commitment Letter were conditioned on:

- The negotiation, execution, and delivery of definitive documents, in customary form, reflecting the terms and conditions set forth in the Step One Commitment Letter;[616]

- There having been no offerings or issuances of or discussions regarding the offering or issuance of any indebtedness by the Tribune Entities (including any refinancing of existing indebtedness) from the date of the Step One Commitment Letter through the successful syndication of the Step One Financing, other than the indebtedness contemplated by the Step

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[612] Ex. 944 (Step One Commitment Letter). The Step One Commitment Letter was governed by New York law (*see* § 11). With respect to the Step One Commitment Letter, (a) Tribune was represented by the law firm of Sidley Austin LLP (Chicago, IL office) and (b) the Lead Banks were represented by the law firm of Cahill Gordon & Reindel LLP (New York office). *See id.* at § 14 (Step One Commitment Letter).

[613] *Id.* at 2-3.

[614] *Id.* at 2.

[615] *Id.* at 2.

[616] *Id.* at 2 and 4.

One Commitment Letter and the Step Two Commitment Letter and amendments to extend the maturity of the 2006 Bridge Credit Agreement;[617]

- The absence of any Company Material Adverse Effect, except as contemplated, required or permitted by the Merger Agreement, the EGI-TRB Purchase Agreement or the ESOP Purchase Agreement, during the period from December 31, 2006 through April 5, 2007;[618] and

- The absence of any Company Material Adverse Effect during the period following April 5, 2007.[619]

The Step One Commitment Letter also listed certain conditions to the initial borrowing under the Step One Financing.[620] Because the execution and delivery of the Credit Agreement on May 17, 2007 terminated the commitments under the Step One Commitment Letter,[621] the conditions to the initial borrowing under the Step One Financing as set forth in the Credit Agreement are discussed below.[622]

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617 *Id.* at 4-5.

618 *Id.* at 5. The definition of Company Material Adverse Effect carved out changes in general economic conditions or the industries in which Tribune and its Subsidiaries operated to the extent that such changed did not disproportionately affect Tribune and its Subsidiaries and changes resulting from the announcement and pendency of the Merger or the compliance with the terms of the Merger Agreement.

619 *Id.*

620 *Id.* at Annex II.

621 *Id.* at 9.

622 *See* Report at § III.D.10.b. One of the conditions to the initial borrowing under the Step One Financing set forth on Annex II to the Step One Commitment Letter was the consummation of the transactions that occurred at the EGI-TRB Purchase Agreement First Closing, including the purchase of the Exchangeable EGI-TRB Note. Ex. 944 at Annex II (Step One Commitment Letter). Because the EGI-TRB Purchase Agreement First Closing occurred on April 23, 2007, before the execution of the Credit Agreement on May 17, 2007, this condition to closing was not included in the Credit Agreement.

Completion of the syndication of the Step One Financing was not a condition to the commitments of JPMCB, MLCC, the Citigroup Entities, and Bank of America under the Step One Commitment Letter.[623]

b. The Step Two Commitment Letter.

On April 1, 2007, Tribune also entered into a second commitment letter, which was amended and restated on April 5, 2007, with JPMorgan, JPMCB, MLCC, CGMI (on behalf of the Citigroup Entities), Bank of America, Banc of America Bridge, and BAS for the Step Two Financing.[624] Pursuant to the Step Two Commitment Letter, each of JPMCB and MLCC, severally and not jointly, agreed to provide 30% of the Step Two Financing; the Citigroup Entities, severally and not jointly, agreed to provide 25% of the Step Two Financing; Bank of America, severally and not jointly, agreed to provide 15% of the Incremental Credit Agreement Facility, and Banc of America Bridge, severally and not jointly, agreed to provide 15% of the Bridge Facility.[625] The aggregate commitments for the Step Two Financing were $2.105 billion under the Incremental Credit Agreement Facility and $2.1 billion under the Bridge Facility.[626] The Step Two Commitment Letter stated that the Step Two Financing would be used by Tribune in connection with the consummation of the Merger and to pay fees and expenses related to the Step Two Transactions.[627]

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[623] Ex. 944 at 4 (Step One Commitment Letter).

[624] Ex. 1010 (Step Two Commitment Letter). The Step Two Commitment Letter was governed by New York law (*see* § 11). Under the Step Two Commitment Letter, (a) Tribune was represented by the law firm of Sidley Austin LLP (Chicago, IL office) and (b) the Lead Banks were represented by the law firm of Cahill Cordon & Reindel LLP (New York, NY office). *See id.* at § 14.

[625] *Id.* at 3.

[626] *Id.* at 2. The amount of the Bridge Facility was later reduced to $1.6 billion. *See* Ex. 175 at § 1.01 (definition of "Commitment") (Bridge Credit Agreement).

[627] Ex. 1010 at 2 (Step Two Commitment Letter).

The obligations of JPMCB, MLCC, the Citigroup Entities, Bank of America, and Banc of America Bridge under the Step Two Commitment Letter were conditioned on:

- The negotiation, execution, and delivery of definitive documents, in customary form, reflecting the terms and conditions set forth in the Step Two Commitment Letter;[628]

- There having been no offerings or issuances of or discussions regarding the offering or issuance of any indebtedness by the Tribune Entities (including any refinancing of existing indebtedness) from the date of the Step Two Commitment Letter through the successful syndication of the Step Two Financing, other than the indebtedness contemplated by the Step Two Commitment Letter, the Exchangeable EGI-TRB Note, the EGI-TRB Notes, and any senior notes offered or sold in connection with the Step One Transactions or the Step Two Transactions;[629]

- The absence of any Company Material Adverse Effect, except as contemplated, required or permitted by the Merger Agreement, the EGI-TRB Purchase Agreement, or the ESOP Purchase Agreement, during the period from December 31, 2006 through April 5, 2007;[630] and

- The absence of any Company Material Adverse Effect during the period following April 5, 2007.[631]

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[628] *Id.* at 3 and 5.

[629] *Id.* at 5.

[630] *Id.* The definition of Company Material Adverse Effect carved out changes in general economic conditions or the industries in which Tribune and its Subsidiaries operated to the extent that such change did not disproportionately affect Tribune and its Subsidiaries and changes resulting from the announcement and pendency of the Merger or the compliance with the terms of the Merger Agreement.

[631] *Id.*

Completion of the syndication of the Step Two Financing was not a condition to the commitments of JPMCB, MLCC, the Citigroup Entities, Bank of America, and Banc of America Bridge under the Step Two Commitment Letter.[632]

The Step Two Commitment Letter also listed certain conditions to the initial borrowing under the Step Two Financing, including:

- The accuracy of the representations and warranties in the Merger Agreement that were material to the interests of the lenders of the Step Two Financing, to the extent that the Merger Sub had the right to terminate the Merger Agreement as a result of the breach thereof, and representations and warranties respecting corporate status, power, authority, due execution, enforceability, margin regulations, and the Investment Company Act;[633]
- Delivery of financial statements, including a balance sheet on a pro forma basis giving effect to the Step Two Transactions;[634]
- Delivery of opinions of counsel and customary closing certificates;[635]
- Consummation of the Merger;[636]
- Consummation of the Step One Transactions;[637]
- Compliance with the Total Guaranteed Leverage Ratio test on a pro forma basis giving effect to the Step Two Transactions;[638] and

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632 *Id.*

633 *Id.* at 3.

634 *Id.* at Annex II.

635 *Id.* Delivery of a solvency certificate was not expressly required by Annex II to the Step Two Commitment Letter, but the term sheet for the Incremental Credit Agreement Facility attached as Exhibit A to the Step Two Commitment Letter listed delivery of a solvency certificate as a condition to effectiveness. *Id.* at A-1-2. *See* Report at §§ III.D.10.c. and III.G.3.c. for a discussion of the solvency representations and warranties in the Credit Agreement and the Bridge Credit Agreement.

636 *Id.* at Annex II.

637 *Id.*

638 *Id.*

- The purchase of the Initial EGI-TRB Note and the Warrant.[639]

The Step Two Commitment Letter terminated on the earliest to occur of (a) May 31, 2008, if the Step Two Financing Documents had not been executed and delivered, (b) the date the Step Two Financing Documents were executed and delivered, (c) if earlier than the date of execution of the Step Two Financing Documents, the date of termination of the Merger Agreement, and (d) August 17, 2007, if the Credit Agreement had not been executed and delivered.[640]

c. "Market Flex" Provisions of Step Two Financing.

On April 1, 2007, Tribune entered into a fee letter regarding the Step Two Financing, which was amended and restated on April 5, 2007. Pursuant to the terms of the Step Two Fee Letter, executed by MLCC, CGMI, JPMorgan, JPMCB, Bank of America, Banc of America Bridge, and BAS, as arrangers and initial lenders, and Tribune, the Lead Banks had the right to change certain terms of the Incremental Credit Agreement Facility and the Bridge Facility if the Lead Banks reasonably believed that the changes were necessary to achieve a successful syndication of such facilities.[641] The Lead Banks could make the following "market flex" changes without the consent of, but in consultation with, Tribune:[642]

- Increase the applicable interest rate margins for the Incremental Credit Agreement Facility by up to 50 basis points (which may also have been achieved through an original issue discount or a combination of an increase in the interest rate margins and original issue discount).

[639] *Id.*

[640] *Id.* at 9.

[641] Ex. 176 at § 3 (Step Two Fee Letter).

[642] *Id.*

- Reallocate up to $1.4 billion of the Incremental Credit Agreement Facility to the Bridge Facility (but any such reallocation would not increase the weighted average fee obligation of Tribune).

- Provide that any senior notes that could have been issued in lieu of the Bridge Facility be secured on a second lien basis with the Credit Agreement Debt.

The Lead Banks' right to make the foregoing "market flex" changes survived the execution of the documents effecting the Incremental Credit Agreement Facility and the Bridge Facility until the earlier of (a) the date that the Lead Banks' exposure under the Incremental Credit Agreement Facility was $0 and (b) 45 days after the Step Two Financing Closing Date.[643]

As discussed below, the Lead Banks had difficulty syndicating the Step Two Financing, due in part to the interest rate.[644] Tribune and the Lead Banks ultimately agreed to certain changes to the Step Two Financing, and, on November 21, 2007, Tribune and the Lead Banks entered into a side letter agreeing that, if Tribune borrowed no more than $1.6 billion under the Bridge Facility, (a) the Lead Banks would waive their right under the Step Two Fee Letter to reallocate up to $1.4 billion of the Incremental Credit Agreement Facility to the Bridge Facility and (b) cash interest on the Bridge Facility would be capped at 14.5% per annum with an additional 0.75% per annum of interest to be paid-in-kind or through original issue discount.[645]

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643 *Id.*

644 *See* Report at § III.H.4. The interest rate on the Bridge Facility, as contemplated by the Step Two Commitment Letter, would have been 9.85%.

645 Ex. 177 (Flex Side Letter). The Bridge Credit Agreement provides for paid-in-kind interest, not original issue discount. *See* Report at § III.G.3.b.

10. The Step One Financing.

a. Syndication of the Step One Financing.

The Step One Financing was syndicated by the Lead Banks pursuant to a confidential information memorandum dated April 2007.[646] The confidential information memorandum described a transaction that would result in "the Company going private and Tribune shareholders receiving $34 per share" with the transaction to be "completed in two stages."[647] The confidential information memorandum described the two stages as follows:[648]

> The first stage . . . of the [Leveraged ESOP Transactions] is a cash tender offer for approximately 126 million shares at $34 per share. The tender offer will be funded by incremental borrowings and a $250 million investment from [EGI-TRB], which occurred on April 23, 2007. The tender will settle concurrently with the funding of the [Step One Financing], which is currently expected to take place in late May. The second stage . . . is a merger, which is currently expected to close in the fourth quarter of 2007, in which the remaining publicly-held shares will receive $34 per share. . . . Zell will make an additional investment of $65 million in connection with the merger, bringing Zell's total investment in Tribune to $315 million. The board of directors of Tribune, on the recommendation of the Special Committee, has approved the agreements and will recommend Tribune shareholder approval of the merger. The Chandler Trusts, Tribune's largest shareholder, have agreed to vote in favor of the merger.

Additionally, the confidential information memorandum set forth "Shareholder and other necessary approvals" required to consummate the Merger:[649]

> The Merger is subject to a number of conditions including shareholder, HSR, [FCC], and Major League Baseball . . . approvals, compliance with certain covenants, no material adverse change in Tribune's business, and the delivery of a solvency

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[646] Ex. 178 (Step One Confidential Information Memorandum). Ultimately, under the Credit Agreement MLCC was the Syndication Agent, and JPMorgan, MLPFS, CGMI, and BAS were the Joint Lead Arrangers and Joint Bookrunners. Ex. 179 at Preamble (Credit Agreement).

[647] Ex. 178 at 19 (Step One Confidential Information Memorandum).

[648] *Id.* at 45.

[649] *Id.* at 47.

> opinion. On April 20, 2007, early termination of the HSR waiting period was granted. Shareholder approval is currently expected to take place in the third quarter of 2007, while the FCC approval is currently expected in late 2007.

As set forth in the confidential information memorandum, the Step One Financing consisted of the Revolving Credit Facility, the Tranche B Facility (in the amount of $7.015 billion),[650] and the Delayed Draw Facility,[651] and the Step Two Financing consisted of the Bridge Facility (in the amount of $2.1 billion[652]) and the Incremental Credit Agreement Facility.[653] The Step One Financing and the Step Two Financing were to be "marketed concurrently."[654]

The confidential information memorandum set forth the estimated sources and uses of funds for, and the pro forma capitalization of Tribune following, Step One and Step Two.[655] The Lead Banks estimated that $4.288 billion of the Step One Debt would be used to pay for the Tender Offer, $2.825 billion would be used to refinance existing debt, and $152 million would be used to pay Step One transaction and financing fees.[656] The Lead Banks estimated that $4.261 billion of the Step Two Debt would be used to consummate the Merger, $200 million would be used to redeem the EGI-TRB Exchangeable Note, $50 million would be used to repurchase shares of Tribune Common Stock owned by EGI-TRB, and $120 million would be used to pay Step Two financing and other fees.[657]

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[650] This was amount was reduced to $5.515 billion in the Credit Agreement when the $1.5 billion Tranche X Facility was added (Ex. 179 at § 1.01 (definition of "Tranche X Facility") (Credit Agreement)).

[651] Ex. 178 at 27 (Step One Confidential Information Memorandum).

[652] This was amount was reduced to $1.6 billion in the Bridge Facility. *See* Ex. 175 at § 1.01 (Bridge Credit Agreement) (definition of "Commitment").

[653] Ex. 178 at 28 (Step One Confidential Information Memorandum).

[654] *Id.*

[655] *Id.* at 23 and 25.

[656] *Id.* at 23.

[657] *Id.* at 25.

On April 26, 2007, a syndication meeting was held at which Mr. Zell and Mr. FitzSimons, among others, addressed potential lenders and answered questions.[658] At the meeting, Mr. Zell was quoted as saying that although the Leveraged ESOP Transactions appeared to be very highly leveraged:[659]

> [t]his is the only [leveraged transaction] I've ever seen where the value of the assets is measurably greater than the amount of leverage that we intend to put on it. I believe that this company, if we were to "liquidate" it tomorrow morning, the gross assets in place are significantly greater than the amount of debt that we envision putting on it.

With respect to anticipated cost savings resulting from the Leveraged ESOP Transactions, Mr. Zell said that "[o]bviously a focus on costs is important, but I promise you it's not possible to grow this business by just cutting costs. We have to generate revenue. We have to make our product much more relevant. . . ."[660]

As for selling assets, Mr. Zell said that:[661]

> we've undertaken this investment with the assumption that we would sell the Cubs and that we would sell the Comcast Sports interest. Other than those two assets in the media area, I don't think we have any plans to sell any of the other assets. Keep in mind that that zero basis which in effect creates a huge tax liability today, ten years from now has no tax liability because we will step up the basis, so it's very, very much in our interests to keep all of these assets through that ten year period. There's a real incentive to us to do so and that's our intention.

Mr. Zell also addressed the issue of the likelihood of the Step Two Transactions not closing, saying: "you know, shit happens, OK? So anything is possible, but obviously you could get a delay at the FCC. I think that frankly is probably the only scenario that could impact the

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658 Ex. 180 (Transcript of Lenders Meeting, dated April 26, 2007); Ex. 181 (Lenders' Presentation, dated April 26, 2007).

659 Ex. 180 at 8 (Transcript of Lenders Meeting, dated April 26, 2007).

660 *Id.* at 11.

661 *Id.* at 63.

phase two part of this transaction."[662] Addressing the rationale for the overall structure of the Leveraged ESOP Transactions, Mr. Zell said that:[663]

> Obviously the goal, with reference to the first step, was to have the same impact as a leverage[d] recap while we're waiting for the FCC approval and that's frankly a way to reward our shareholders for suffering through the last seven or eight months of process and obviously to improve their overall yield on a present basis.

Mr. FitzSimons also addressed the leverage issue at the meeting. He was quoted as saying: "[w]e've got strong free cash flow to pay down the debt which I know is important to everyone in this room."[664] As to anticipated cost savings, Mr. FitzSimons said, "[w]e also will look to accelerate cost reductions in the business, reengineering our business processes, taking advantage of our economies of scale, and this year we'll look to reduce total expenses by one percent,"[665] noting that:[666]

> We've also added in the cash savings by eliminating the 401K contributions that was $60 million we projected for this year was actually $70 million last year, so we won't have that cash expense, and then from being a private company we'll be making further staffing reductions in our corporate [inaudible] staffs since we will be private and we won't have listing fees and that sort of thing.

Donald Grenesko, Tribune's Senior Vice President/Finance and Administration, also addressed the issue of cost reductions:[667]

> [W]e're showing a three percent projected decline in 2007's consolidated operating cash flow to a billion two hundred seventy million, but that's still very strong cash flow numbers. Nevertheless, given the softness that we've seen through the first four months we've implemented contingency planning to offset

[662] *Id.* at 56.

[663] *Id.* at 74.

[664] *Id.* at 56.

[665] *Id.* at 18.

[666] *Id.* at 73.

[667] *Id.* at 34.

> possible revenue declines. We're looking at additional cost reductions, mostly staffing, that will save us another ten to 15 million dollars. We're going to reduce our 401K contribution, which will save an additional 15 to 25 million dollars . . . [s]o, in total, we're looking at $35 million to $50 million in savings on top of the $150 million of cost reductions that we've already announced.

In response to a question from a participant at the meeting regarding Tribune Entities' first quarter results relative to projected 2007 EBITDA, Mr. FitzSimons said:[668]

> Yes, in terms of the $1 billion 270 million of cash flow that we're projecting for 2007, as we've indicated, the first half of the year is really going to be a challenge for us and, you know, we recognize that from the start, but again we think that things should turn around in the second half of the year with the easier comps and some of the things that I had mentioned. Also I had mentioned this contingency planning where we expect to have potential savings of $35 million to $50 million on top of everything else that we had announced up to this point in time, so that $50 million would help us to the extent of another one or two percent decline in publishing's advertising revenues.

As discussed below,[669] additional meetings were held on September 26, 2007 and October 1, 2007 during which time Tribune discussed updates to its projections and model.[670]

b. Terms of the Step One Financing.

On May 17, 2007, Tribune entered into an $8.028 billion senior secured credit agreement with JPMCB, as administrative agent, MLCC, as syndication agent, Citicorp, Bank of America and Barclays as co-documentation agents, and the initial lenders named therein.[671] The Credit Agreement consists of the following facilities: (a) a $1.5 billion Tranche X Facility, (b) a $5.515

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668 *Id.* at 69-70.

669 *See* Report at § III.F.6.

670 Ex. 182 (Bank Due Diligence Teleconference Call Agenda and Schedules, dated September 26, 2007); Ex. 183 (Tribune Company Underwriters Due Diligence Agenda, dated October 1, 2007); Ex. 184 (Tribune Publishing Presentation); Ex. 185 (Tribune Broadcasting Presentation).

671 Ex. 179 (Credit Agreement). The Credit Agreement is governed by New York law (*see* § 8.09). With respect to the Credit Agreement, Tribune was represented by the law firm of Sidley Austin LLP (Chicago, IL office) (*see* § 8.02).

billion Tranche B Facility, (c) a $263 million Delayed Draw Facility, and (d) a $750 million Revolving Credit Facility, which includes a letter of credit subfacility in an amount up to $250 million and a swing line facility in an amount up to $100 million.[672] Once drawn, advances under the Delayed Draw Facility became part of the Tranche B Facility and were accorded the same treatment as the Tranche B Facility.[673] The Credit Agreement also provided a commitment for an additional $2.105 billion in new incremental term loans under the Incremental Credit Agreement Facility.[674] The terms of the Incremental Credit Agreement Facility are discussed below.[675]

Advances under the Credit Agreement bear interest at a rate based on either the "Base Rate" (the higher of JPMCB's corporate base rate and the overnight federal funds rate plus 0.5%) or the "Eurodollar Rate" (LIBOR) plus the applicable margin for the tranche of loan.[676] The applicable margins are set forth below:[677]

	Before the Step Two Closing		On and after the Step Two Closing	
Type of Loan	**Eurodollar Advances**	**Base Rate Advances**	**Eurodollar Advances**	**Base Rate Advances**
Tranche X Facility	2.50%	1.50%	2.75%	1.75%
Tranche B Facility	3.00%	2.00%	3.00%	2.00%

672 *Id.* at § 2.01.

673 *Id.* at § 1.01 ("Tranche B Advance" definition).

674 *Id.* at § 2.17.

675 *See* Report at § III.D.11.

676 Ex. 179 at § 2.07 (Credit Agreement).

677 *Id.* at § 1.01 ("Applicable Margin" definition).

	Before delivery of financial statements for the first full quarter commencing after the Step One Financing Closing Date		Following delivery of financial statements for the first full quarter commencing after the Step One Financing Closing Date	
Revolving Credit Facility	3.00%	2.00%	3.00%, 2.50% or 2.00%, based on the Total Guaranteed Leverage Ratio	2.00%, 1.50% or 1.00%, based on the Total Guaranteed Leverage Ratio

The applicable margins for the Tranche X Facility and the Tranche B Facility were subject to reduction by 25 basis points in the event that the Merger Agreement was terminated before consummation of the Merger and the corporate credit ratings for Tribune were B1 or better by Moody's and B+ or better by Standard & Poor's (in each case with a stable outlook).[678] Interest under the 2006 Credit Agreement is similarly calculated as "Base Rate" or "Eurodollar Rate" plus an applicable margin, but the applicable margins under the Credit Agreement are significantly higher.[679] As of December 30, 2007, the interest rate on the Tranche X Facility was 7.99% and the interest rate on the Tranche B Facility was 7.91%[680]

The Tranche X Facility had a maturity date of June 4, 2009,[681] the Tranche B Facility matures on June 4, 2014[682] and the Revolving Credit Facility matures on June 4, 2013.[683] Pursuant to the terms of the Credit Agreement, the proceeds of the Tranche X Facility and the initial draw under the Tranche B Facility were used to finance a portion of the Step One Transactions and to pay fees and expenses related thereto.[684] The proceeds of the Delayed Draw Facility were to be used to repay the obligations under the 6.35% Series E Medium-Term Notes

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678 *Id.*

679 *See* Report at § III.B.3.b.

680 Ex. 4 at 51 (Tribune 2007 Form 10-K).

681 Ex. 179 at § 2.06(d) (Credit Agreement).

682 *Id.* at § 2.06(b).

683 *Id.* at § 2.06(a).

684 *Id.* at § 5.01(j)(i).

due 2008, the 5.50% Series E Medium-Term Notes due 2008, and the 5.67% Series E Medium-Term Notes due 2008 as each matured.[685] The proceeds of the Revolving Credit Facility are to be used for working capital and general corporate purposes.[686]

An amortization payment of $750 million on the Tranche X Facility was due on December 4, 2008.[687] Quarterly amortization payments are required to be made on the Tranche B Facility in the amount of $13.7875 million ($14.445 million following the date on which the first advance was made under the Delayed Draw Facility) starting on September 30, 2007.[688] In the event that Tribune or any of its Subsidiaries incurs any indebtedness for borrowed money (subject to certain exceptions), generates excess cash flow for any fiscal year, sells assets or issues equity with an aggregate fair market value in excess of $10 million (subject to certain exceptions), or receives insurance proceeds or condemnation awards in excess of $10 million, Tribune is obligated to prepay the Credit Agreement Debt in an amount equal to the net cash proceeds thereof or, in the case of excess cash flow, 50% or 25% of such excess cash flow (based on the Total Guaranteed Leverage Ratio at such time).[689] Any mandatory prepayments under the Credit Agreement are applied first to the Tranche X Facility (in forward order of maturity), second to the Tranche B Facility (on a pro rata basis among the subsequent scheduled amortization payments, unless Tribune elects to apply such prepayments to the four

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[685] *Id.* at § 5.01(j)(ii). The 6.35% Series E Medium-Term Notes due 2008 and the 5.50% Series E Medium-Term Notes due 2008 were paid in full with the proceeds of draws under the Delayed Draw Facility.

[686] *Id.* at § 5.01(j)(iii).

[687] *Id.* at § 2.06(d).

[688] *Id.* at § 2.06(b).

[689] *Id.* at § 2.10(b).

installment payments scheduled to occur after the date of the prepayment), and third to the Revolving Credit Facility.[690]

Each lender under the Credit Agreement has the right to request that Tribune execute a promissory note evidencing the advances made by such lender.[691]

The Credit Agreement contains various affirmative and negative covenants (in the case of negative covenants, Tribune is required to not cause or permit any of its Subsidiaries to violate such covenants)[692] and specifies various events of default, including:

- Tribune was obligated to qualify and elect to be treated as an S-Corporation under Subchapter S of the IRC effective as of January 1, 2008; provided, that the failure to timely make such election could be cured by the investment of $100 million (subject to certain reductions) of junior capital by Mr. Zell or EGI-TRB;[693]

- Tribune is prohibited from selling the equity interests associated with the PHONES Notes unless Tribune contemporaneously purchases call options or otherwise enters into a hedge agreement to ensure Tribune's ability to perform under the terms of the PHONES Notes;[694]

- Tribune is required to comply with financial covenants with respect to guaranteed leverage and interest coverage, which are tested on a rolling four fiscal quarter period

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690 *Id.* at § 2.10(b)(iv).

691 *Id.* at § 2.16(a). The Examiner found no evidence that any lender under the Credit Agreement requested Tribune to execute such a note.

692 *Id.* at § 5.02.

693 *Id.* at § 5.01(n).

694 *Id.* at § 5.02(e)(ii).

basis[695] (the applicable ratio to be complied with in any given test period was based on whether the Step Two Transactions had occurred);[696]

- Tribune and its Subsidiaries are limited in their ability to make or accrue capital expenditures (subject to certain carve-outs) in any given year—the cap was $210 million in 2007 and 2008 and $145 million thereafter – but unspent amounts can be rolled forward into the succeeding years;[697]

- Tribune and its Subsidiaries are prohibited from incurring any indebtedness other than certain specified indebtedness, including the Step Two Financing, the Exchangeable EGI-TRB Note, the EGI-TRB Notes, and up to $450 million under a receivables facility;[698]

- FinanceCo, an entity wholly-owned by Tribune, newly-formed in connection with the FinanceCo Transaction, as described below,[699] is prohibited from engaging in any material business, holding any material assets, or incurring any material obligations, other than incurring debt as the co-obligor or guarantor of the Credit Agreement Debt and the Bridge Debt, holding the Intercompany Junior Subordinated Notes, and activities incidental to the foregoing;[700] and

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695 *Id.* at § 5.02(i).

696 *Id.*

697 *Id.* at § 5.02(i)(C).

698 *Id.* at § 5.02(c).

699 *See* Report at § III.D.12.

700 Ex. 179 at § 5.02(n) (Credit Agreement).

- A Change in Control is an event of default under the Credit Agreement[701] (but the consummation of the Step One Transactions and the Step Two Transactions was, by definition, not a Change in Control).[702]

The initial closing under the Credit Agreement was subject to the satisfaction of various conditions, including the following:

- Delivery of executed copies of the Credit Agreement and associated loan documents;[703]

- Delivery of a solvency certificate executed by the Chief Financial Officer of Tribune;[704]

- Delivery of opinions from outside counsel to the Borrower, the general counsel of the Borrower, special ESOP counsel to the Borrower and counsel to GreatBanc;[705]

- Delivery of financial statements, including a balance sheet as of April 1, 2007 on a pro forma basis giving effect to the Step One Transactions and on a pro forma basis giving effect to both the Step One Transactions and Step Two Transactions;[706]

- Delivery of financial projections for the five year period following the Step One Financing Closing Date on a pro forma basis giving effect to the Step One Transactions and on a pro forma basis giving effect to both the Step One Transactions and the Step Two Transactions;[707]

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701 *Id.* at § 6.01(g).

702 *Id.* at § 1.01 ("Change in Control" definition).

703 *Id.* at § 3.01(a).

704 *Id.* at § 3.01(b)(i). *See* Report at § III.D.10.c. for a discussion of the definition of solvency and the form of solvency certificate.

705 *Id.* at § 3.01(b)(ii).

706 *Id.* at § 3.01(b)(iii).

707 *Id.* at § 3.01(c).

- Delivery of an opinion of Duff & Phelps that the purchase price paid by GreatBanc (on behalf of the ESOP) for the Tribune Common Stock purchased by it was not in excess of fair market value, the interest rate on the ESOP Note was not in excess of a reasonable rate of interest, the terms of the ESOP Loan Agreement were at least as favorable to the ESOP as an arm's length negotiation between independent parties would be, and the terms and conditions of the ESOP Purchase Agreement and the Merger Agreement were fair and reasonable to the ESOP from a financial point of view;[708]
- The payoff of the indebtedness under the 2006 Credit Agreement and the Bridge Credit Agreement;[709]
- The consummation of the FinanceCo Transaction and the Holdco Transaction;[710]
- The execution and delivery of the Merger Agreement;[711]
- EGI-TRB and the ESOP having not participated in the Tender Offer;[712]
- The accuracy of representations and warranties;[713] and
- No default having occurred and was continuing at the time of, or would result from, the making of an advance.[714]

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708 *Id.* at § 3.01(l).

709 *Id.* at § 3.01(e).

710 *Id.* at § 3.01(m). *See* Report at § III.D.12. for a discussion of these transactions.

711 Ex. 179 at § 3.01(h) (Credit Agreement).

712 *Id.* at § 3.01(i).

713 *Id.* at § 3.02(i). *See* Report at § III.D.10.c. for a discussion of the solvency representations and warranties in the Credit Agreement.

714 Ex. 179 at § 3.02(ii) (Credit Agreement).

c. Solvency.

Section 4.01(l) of the Credit Agreement contains representations regarding the solvency of Tribune:[715]

> (i) As of the [Step One Financing] Closing Date, immediately after giving effect to the [Step One] Transactions, [Tribune] is Solvent.
>
> (ii) Upon and after consummation of the [Step Two] Transactions and as of the [Step Two Financing] Closing Date, immediately after giving effect to the [Step Two] Transactions, [Tribune] is Solvent.

"Solvent" is defined as:[716]

> '<u>Solvent</u>' and '<u>Solvency</u>' mean, with respect to [Tribune] on the [Step One Financing] Closing Date or the [Step Two Financing] Closing Date, as applicable, that on such date (a) the fair value and present fair saleable value of the aggregate assets (including goodwill) of [Tribune] exceeds its liabilities (including stated liabilities, identified contingent liabilities and the new financing), and such excess is in an amount that is not less than the capital of [Tribune] (as determined pursuant to Section 154 of the Delaware General Corporate Law), (b) [Tribune] will be able to pay its debts (including the stated liabilities, the identified contingent liabilities and the new financing), as such debts mature or otherwise become absolute or due and (c) [Tribune] does not have unreasonably small capital. As used in this definition:
>
> 'fair value' means the amount at which the aggregate or total assets of [Tribune] (including goodwill) would change hands between a willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, neither being under any compulsion to act and, on the [Step Two Financing] Closing Date, in a transaction having a similar structure;
>
> 'present fair saleable value' means the amount that may be realized by a willing seller from a willing buyer if [Tribune's] aggregate or total assets (including goodwill) are sold with reasonable promptness and, on the [Step Two Financing] Closing Date, in a transaction having a similar structure;

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715 *Id.* at § 4.01(l).

716 *Id.* at § 1.01 (definition of "Solvency").

> 'does not have unreasonably small capital' relates to the ability of [Tribune] to continue as a going concern and not lack sufficient capital for the business in which it is engaged, and will be engaged, as management has indicated such businesses are now conducted and are proposed to be conducted;
>
> 'stated liabilities' means recorded liabilities of [Tribune] as presented on the most recent balance sheet of [Tribune] provided to [JPMCB] prior to the [Step One Financing] Closing Date or [Step Two Financing] Closing Date, as the case may be;
>
> 'identified contingent liabilities' means the reasonably estimated contingent liabilities that may result from, without limitation, threatened or pending litigation, asserted claims and assessments, environmental conditions, guaranties, indemnities, contract obligations, uninsured risks, purchase obligations, taxes, and other contingent liabilities as determined by [Tribune];
>
> 'new financing' means (a) on the [Step One Financing] Closing Date, the indebtedness incurred, assumed or guaranteed by [Tribune] in connection with the [Step One] Transactions and (b) on the [Step Two Financing] Closing Date, the indebtedness incurred, assumed or guaranteed by [Tribune] in connection with the Transactions; and
>
> 'similar structure' means a structure similar to the structure contemplated in the Transactions (an S corporation (under Subchapter 5 of the [IRC]), owned entirely by an Employee Stock Ownership Plan, which receives favorable federal income tax treatment), or another structure resulting in equivalent favorable federal income tax treatment.

One of the conditions to closing under the Credit Agreement was the accuracy of the representations and warranties.[717] The accuracy of the representations and warranties also is a condition to any advances after the Step One Financing Closing Date under the Delayed Draw Facility and the Revolving Credit Facility.[718] Generally speaking, representations and warranties

[717] *Id.* at § 3.02(i). Note that, although the closing condition and the events of default section did not explicitly carve Section 4.01(l)(ii) out of the representations and warranties that were to be true as of the June 4, 2007 Step One Financing Closing Date, the language of that section ("Upon and after consummation of the [Step Two] Transactions . . . ") might be read to indicate that such representation and warranty was not intended to be operative unless and until the Step Two Transactions were consummated.

[718] *Id.* at § 3.02(i).

were to be accurate as of the date the advance was made, except that representations and warranties that by their terms were made as of a specific date were only required to be accurate as of that specific date.[719] It is also an event of default under the Credit Agreement if any representations and warranties were not true as of the date made or deemed made.[720] Because the solvency representations and warranties in the Credit Agreement were made as of the respective Step One Financing Closing Date and Step Two Financing Closing Date only, the failure of the solvency representation and warranty to be accurate as of any date other than the Step One Financing Closing Date or the Step Two Financing Closing Date would not, in and of itself (and assuming that the solvency representation and warranty was correct as of such dates), prohibit an advance under the Delayed Draw Facility or the Revolving Credit Facility or give rise to an event of default.

On June 4, 2007, as a condition to the occurrence of the Step One Financing Closing Date, Donald Grenesko, Senior Vice President/Finance and Administration of Tribune, delivered a solvency certificate to JPMCB stating, "As of the date hereof, immediately after giving effect to the [Step One] Transactions, [Tribune] is Solvent."[721] The certificate noted that Mr. Grenesko reviewed and relied on the opinions of VRC dated as of May 9, 2007 and May 24, 2007 for purposes of the solvency certificate.[722]

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[719] *Id.*

[720] *Id.* at § 6.01(b).

[721] Ex. 186 (Step One Solvency Certificate). Capitalized terms used but not defined in the solvency certificate had the meanings ascribed to such terms in the Credit Agreement.

[722] *Id.*

The solvency certificate delivered in connection with the Credit Agreement on the Step One Financing Closing Date was consistent with the form of solvency certificate attached as Exhibit E to the Credit Agreement.[723]

In addition, on June 4, 2007, as a condition to the occurrence of the Step One Financing Closing Date, Chandler Bigelow, a Vice President and the Treasurer of Tribune, delivered a Responsible Officer's Certificate under the Credit Agreement stating, "The undersigned certifies in his capacity as Vice President of the Company, that, as of the date hereof . . . the representations and warranties contained in Section 4.01 of the Credit Agreement . . . are correct in all material respects. . . ."[724] Section 4.01(l)(i) of the Credit Agreement states that, "As of the [Step One Financing Closing Date], immediately after giving effect to the [Step One] Transactions, [Tribune] is Solvent."[725]

d. The Credit Agreement Subsidiary Guarantee.

Tribune's obligations under the Credit Agreement are guaranteed by the Guarantor Subsidiaries pursuant to the Credit Agreement Subsidiary Guarantee.[726] The Credit Agreement Subsidiary Guarantee, executed by the Guarantor Subsidiaries on the Step One Financing Closing Date, provides that each of the Guarantor Subsidiaries, "jointly with the other [Guarantor Subsidiaries] and severally, as a primary obligor and not merely as a surety," unconditionally guarantees the monetary and other obligations of Tribune under the Credit Agreement[727] and that

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723 Ex. 187 (Form of Credit Agreement Solvency Certificate).

724 Ex. 188 at 1 (Credit Agreement Responsible Officer's Certificate, dated June 4, 2007).

725 Ex. 179 at § 4.01(l)(i) (Credit Agreement). Notwithstanding the above, Mr. Bigelow informed the Examiner that he never had been required to deliver a solvency certificate. *See* Examiner's Sworn Interview of Chandler Bigelow, June 17, 2010, at 109:22-110:2.

726 Ex. 189 (Credit Agreement Subsidiary Guarantee). The Credit Agreement Subsidiary Guarantee is governed by New York law. *See id.* at § 13 (Credit Agreement Subsidiary Guarantee).

727 *Id.* at § 1. Under the terms of the Credit Agreement, Tribune was required to enter into hedge arrangements to offset a percentage of its interest rate exposure under the Credit Agreement and other debt with respect to borrowed money. On July 2, 2007 and July 3, 2007, Tribune entered into the Swap Documents. The