UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 05-60080-CIV-MARRA/VITUNAC
(Proceeding Ancillary to Case No. 03-80612-CIV-MARRA/VITUNAC)

COURT APPOINTED RECEIVER of LANCER OFFSHORE, INC. and THE OMNIFUND, LTD.,

Plaintiff,

vs.

THE CITCO GROUP LTD., CITCO FUND SERVICES (CURACAO) N.V., CITCO FUND SERVICES (USA) INC., INTER CARIBBEAN SERVICES, LTD., ANTHONY STOCKS, KIERAN CONROY, and DECLAN QUILLIGAN,

Defendants.
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AMENDED COMPLAINT

(Jury Trial Demanded)

Plaintiff, Marty Steinberg, Esq., court-appointed Receiver (the "Receiver") of Lancer Offshore Inc. ("Offshore") and The OmniFund Ltd. ("OmniFund," collectively the "Offshore Funds"), through undersigned counsel, hereby sues Defendants, The Citco Group, Ltd. ("The Citco Group"), Citco Fund Services (Curacao), N.V. ("Citco N.V."), Citco Fund Services (USA) Inc. ("Citco USA"), (collectively referred to hereafter with The Citco Group and Citco N.V. as the "Citco Defendants"), Inter Caribbean Services, Ltd. ("ICS"), a Citco entity that served as a corporate director for OmniFund's predecessor funds, The Viator Fund ("Viator") and The Orbiter Fund ("Orbiter")[1], and for Offshore from its inception until 1998, and three individuals employed by the Citco Defendants – Anthony Stocks, Kieran Conroy, and Declan Quilligan,

[1] Unless otherwise specified, all references to OmniFund in this Amended Complaint are meant to include Viator and Orbiter as the predecessor funds to OmniFund.

each of whom served as Directors for Offshore (collectively with ICS as the "Director Defendants," and the Citco Defendants and the Director Defendants together as "Defendants"). The Receiver hereby demands trial by jury of all issues triable as of right by a jury and alleges upon information and belief the following:

I. INTRODUCTION

1. The Receiver brings this action against the Offshore Funds' former fund administrators – the Citco Defendants – for professional malpractice, gross negligence, breach of fiduciary duty under common law and under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and breach of contract. The Receiver brings this action against the Director Defendants and the Citco Defendants for their actions and inactions that breached their respective fiduciary duties to the Offshore Funds.

2. The Receiver was appointed by the Court in connection with a United States Securities and Exchange Commission ("SEC") enforcement action brought against the manager of the hedge funds, Michael Lauer ("Lauer"), and his management companies on July 8, 2003. This action is brought on behalf of the Offshore Funds only and asserts claims for damages caused directly to the Offshore Funds by its former fund administrators and directors, as opposed to any damages the fund administrators and directors may have caused to the Offshore Funds' investors and creditors.

3. As set forth in detail below, Lauer depleted the Offshore Funds by investing millions of dollars constituting significant percentages of the Offshore Funds total portfolios in a small number of companies whose shares were not listed on any major exchange and were instead traded infrequently on the over-the-counter markets. Lauer would use the Offshore Funds' assets to acquire large and often controlling stakes in these companies by purchasing securities with various restrictions on their trading through private transactions, even though

most of the companies had no earnings or even reasonable prospects for significant earnings. After obtaining these restricted shares and in order to create a "high" net asset value ("NAV") for the Offshore Funds at the end of the Offshore Funds' respective reporting periods, Lauer would typically purchase a small number of unrestricted shares in these companies, in the over-the-counter bulletin board market, for no apparent legitimate business purpose at a price much higher than either the original acquisition or historic price. Rather than scrutinizing or questioning these transactions, the Citco Defendants and Director Defendants instead valued *all* of the restricted and unrestricted shares owned by the Offshore Funds at the higher price manufactured by Lauer's manipulative trading – all without determining if using this valuation method provided the *fair* value for these securities. As will be detailed below, even the Citco Defendants and the Director Defendants believed that Lauer's claimed values were absurd, yet did nothing in response.

4. Because of the inflated NAV's, Lauer depleted the Offshore Funds further by extracting huge management and incentive fees – fees that were determined based on the absurdly high purported NAV's for the Offshore Funds that Lauer had created. The Citco Defendants also benefited from this inflation, as their administrative fees were directly tied to NAV's of the Offshore Funds. The Offshore Funds had total investor contributions of approximately $955,000,000.[2] The Offshore Funds have been placed into Receivership by the Court, and are in the process of being liquidated.

5. The extraordinary depletions of the Offshore Funds' assets, and the various other damages to the Offshore Funds, as discussed in detail below, would not have occurred but for the

[2] All amounts referenced in the Amended Complaint are a good faith estimate by the Receiver based on the documentation currently in his possession. They remain subject to revisions as the Receiver obtains additional documentation and to the extent that the documentation currently in his possession is unreliable.

acts of the Defendants, as described in the Counts of this Amended Complaint. The Citco Defendants administered the Offshore Funds from their respective inceptions through September 2002. The Citco Defendants were contractually obligated to provide administrative services and oversight to the Offshore Funds, including maintaining the Offshore Funds' financial and accounting books and records, computing the monthly NAV's of the Offshore Funds as of the close of business on the last business day of each month in accordance with generally accepted accounting principles ("GAAP"), and separate and apart from computing the value, independently pricing the Offshore Funds. Pursuant to the agreement among the parties, the Citco Defendants' administration fee was computed as a percentage of the Offshore Funds' NAV.

6. The Citco Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence abdicated their duties as an independent fund administrator by failing to independently price the Offshore Funds and failing to compute the monthly NAV's of the Offshore Funds in accordance with GAAP. Further, the Defendants knowingly and recklessly chose to ignore numerous "red flags" about the Offshore Funds' bogus valuations as provided below.

7. Instead of disclosing the absurdity of the valuations or taking any action at all to alert the independent directors (i.e., directors without an adverse interest) (the "Independent Directors"), investors, the Offshore Funds' auditors, or appropriate authorities to the Offshore Funds' true condition, the Citco Defendants and the Director Defendants signed off on grossly inflated valuations and collected their administration fees, which were based on these grossly inflated valuations. Competent monthly portfolio valuations by the Citco Defendants and Director Defendants would have preserved hundreds of millions of dollars of value in the

Offshore Funds in that: extraordinarily inflated management, incentive and administration fees would not have been paid; investments in illiquid, restricted stock would have stopped; payment of inflated redemption amounts based on the inflated NAV's would have been prevented; and the Offshore Funds would not have been able to remain in operation. Because Citco N.V. served as the fund administrator for the Offshore Funds as an agent, division, and/or joint venturer of The Citco Group, as part of The Citco Group's "global fund administrator" services, the Receiver brings these claims against The Citco Group as well.

8. The Receiver brings these claims against the Citco Defendants and the Director Defendants for their respective actions in directing that NAV's be issued even in the face of overwhelming evidence that Lauer manipulated fund values and claimed absurd valuations for certain holdings in various companies in the Offshore Funds' portfolios.

9. Based on the fund administration agreements between the Citco Defendants and the Offshore Funds, the Citco Defendants placed The Director Defendants on the boards of the Offshore Funds, charging each fund for their services as Directors. As such, the Citco Defendants, ICS, and their employees, namely, the Director Defendants, undertook fiduciary obligations to the funds that they administered. The Citco Defendants and the Director Defendants knowingly, consciously, recklessly, and/or with gross negligence failed to satisfy these fiduciary obligations.

10. During the time the Citco Defendants served as administrator for the Offshore Funds and the Director Defendants served either on Offshore's or OmniFund's respective Board of Directors, both the Citco Defendants and the Director Defendants were confronted with numerous "red flags" that each knowingly and recklessly chose to ignore, including the following: (a) there was a substantial increase in the Offshore Funds' value at a time when global

equity markets were performing poorly; (b) there was a substantial increase in the concentration of the Offshore Funds' holdings in a small number of thinly traded securities traded on the over-the-counter and bulletin board markets; (c) there was a substantial increase in the values attributed to the Offshore Funds' holdings in such securities; (d) there was a dramatic increase in the values given to large blocks of restricted stock that had been purchased for much lower prices; (e) there were small, end of period trades in the thinly traded stock of certain companies that served no business purpose other than to inflate the Offshore Funds' values; (f) the end of period trades, and the corresponding increases in value of the Offshore Funds, coincided with the calculation of Lauer's and the Citco Defendant's fees; (g) there was a substantial increase in the number of shares obtained by the Offshore Funds at little or even no cost; and (h) the Defendants knowingly accepted and approved Lauer's absurd valuations.

11. As a result of the Citco Defendants' and Director Defendants' gross negligence, breaches of fiduciary duties, aiding and abetting of fiduciary duties and separate and distinct breaches of contracts, the Offshore Funds themselves have been damaged in a number of ways. First, the Offshore Funds paid millions of dollars in management and incentive fees to Lauer, administration fees to the Citco Defendants, and, in some instances, finder's fees to sales agents—all based on the inflated NAV's of the Offshore Funds. If the Citco Defendants and the Director Defendants had properly calculated the Offshore Funds' NAV's, these payments would never have been made. Second, the Offshore Funds made continuing "investments" in various suspect companies after properly conducted valuation procedures would have revealed that the companies were grossly inflated as to value. Third, the Offshore Funds paid out hundreds of millions of dollars in redemptions to investors based on inflated NAV's. Fourth, the Offshore Funds were kept in operation, solicited additional investor funds, paid additional finder's fees,

incurred additional obligations in the conduct of their business and disposed of assets long after they were insolvent, thereby further deepening the insolvency and the liabilities that the Offshore Funds are now unable to fully satisfy.

II. THE PARTIES

A. The Receiver

12. The Receiver is a citizen of the State of Florida. On July 8, 2003, the SEC filed a Complaint for Injunctive and Other Relief against Lauer, his management companies and other entities before this Court in *SEC v. Michael Lauer, et al.*, Case No. 03-80612-CIV-Marra. On July 10, 2003, the Court entered a Receivership Order, which directs the Receiver to "[i]nvestigate the manner in which the affairs of . . . Offshore [and] OmniFund . . . were conducted and institute such actions and legal proceedings, for their benefit and on their behalf, and on behalf of the Offshore Funds' investors and other creditors, as the Receiver deems necessary . . .." The July 10, 2003 Order appointed the Plaintiff as receiver for Lancer Management Group LLC ("Lancer"), Lancer Management Group II LLC ("Lancer II"), Lancer Offshore Inc. ("Offshore"), OmniFund Ltd. ("OmniFund"), LSPV Inc. ("Offshore LSPV"), and LSPV LLC ("Partners LSPV") and empowered the Receiver to bring this action on behalf of those entities.

13. The Financial Services Commission ("FSC") of the British Virgin Islands, an enforcement agency comparable to the SEC, commenced an action in May 2003 against the Offshore Funds seeking to appoint a liquidator to wind up the funds. The FSC has agreed to stay its action while these Receivership proceedings continue in the United States.

B. The Director Defendants

14. Defendant, Anthony Stocks ("Stocks"), resides in London, England. Stocks served as a director of Offshore from 1995 until July 2001. Stocks simultaneously served as a

Director of the International Fund Services division of The Citco Group. Stocks is an English and Welch Chartered Accountant.

15. Defendant, Kieran Conroy ("Conroy"), resides in Dublin, Ireland. Conroy served as a director of Offshore from 1998 until early 2002. Conroy simultaneously served as a Managing Director of Citco N.V. from 1998 until 2001, when he moved to Ireland. Conroy is also an Irish Chartered Accountant.

16. Defendant, Declan Quilligan ("Quilligan"), resides in Curacao, Netherlands Antilles. Quilligan served as a director of Offshore from 2001 until early 2002. Quilligan simultaneously served as General Manager and Managing Director of Citco N.V. and was involved intimately with the day-to-day operations at Citco N.V. related to Lancer. Through his role as director and with Citco N.V., Quilligan traveled to New York to meet with Lancer personnel regarding various fund issues, including valuation. Quilligan is not a chartered accountant but holds a Masters Degree in Accounting from University College in Dublin, Ireland.

17. Defendant, Inter Caribbean Services, Ltd. ("ICS"), is a corporation organized under the laws of the British Virgin Islands and is one of The Citco Group's subsidiaries. ICS served as a director of Offshore from 1995 until 1998, as a director of Orbiter from its inception in January 1999 until its merger with Viator into OmniFund on March 31, 2002, and as a director of Viator from its inception in September 1999, until its merger with Orbiter into OmniFund on March 31, 2002. For ICS's service as a director for the applicable period, each of the Offshore Funds paid a fee to the Citco Defendants.

18. The Director Defendants and Citco N.V. continuously and systematically communicated with United States and Florida investors regarding subscriptions, redemptions,

and valuations of the Offshore Funds, as evidenced by correspondence attached hereto as Composite Exhibit "A."

C. The Citco Defendants--The Citco Group, Citco N.V., and Citco USA

1. Citco N.V.

19. Citco N.V. is the Curacao-based operating subsidiary of The Citco Group. It is a business entity organized and existing under the laws of the Netherlands Antilles, having its principal place of business at Kaya Flamboyan 9, P.O. Box 812, Curacao, Netherlands Antilles, and Citco Building, Wickams Cay, Road Town, Tortola, British Virgin Islands.[3]

20. Citco N.V. performs extensive fund management services for funds operated from the United States.

21. Citco N.V. performed extensive fund management services for Offshore and OmniFund while those funds were operated and managed by Lauer and Lancer from executive offices located in New York City and Connecticut. These services included, but were not limited to:

a. Collecting thousands of wire transfers from investors – both new investors and investors increasing their investment – through a bank account located in New York at Republic National Bank of New York, now known as HSBC Bank ("HSBC"), in an account held in the name of Citco Banking Corporation N.V.;

b. Providing a bank account with Citco Banking Corporation, N.V., located in New York, for the Offshore Funds;

c. Continuously and systematically issuing NAV statements to investors based in the United States, including at least one investor in Florida, attached hereto as Composite Exhibit "B";

d. Issuing thousands of NAV statements to New York-based Lancer personnel;

[3] Citco Fund Services-BVI/Citco B.V.I. Ltd. shares this Tortola, British Virgin Islands address with Citco N.V. and is also the registered agent for Omnifund and Offshore.

e. Continuously and systematically issuing invoices to New-York based Lancer offices;

f. Communicating on a systematic and continuous basis with the New York and Connecticut Lancer offices regarding issues of fund governance, subscriptions, and valuation;

g. Communicating on a systematic and continuous basis with United States and Florida investors and associated third parties as a conduit for information from Lauer and the Offshore Funds, including without limitation letters from Lauer, confirmation of subscriptions and redemptions, reviews of the Offshore Funds; status of the investors' accounts, and responses to investor inquiries; as evidenced by true and correct copies of such correspondence, attached hereto as Composite Exhibit "C;"

h. Continuously and systematically communicating and coordinating with Citco USA and Citco Technology Management Inc. in Florida to provide portfolio valuation services and technology infrastructure; and,

i. Providing its employees, the Director Defendants, to the Offshore Funds.

22. Citco N.V. is the largest division of the Citco Fund Services group. Citco N.V. provides full service administration to 205 funds, totaling $44.9 billion in assets and employs 115 people. When requesting payment from Lancer for fund administration services, Citco N.V. provided bank wire transfer information for such payments to be made. These payments could be sent to one of three places: a Citco Banking Corporation account in Curacao, a bank account at a Citibank branch in New York, New York, or a Citibank-owned post office box located in Philadelphia, Pennsylvania. Citco N.V. and the Director Defendants continuously and systematically issued these invoices via fax to Lancer's New York offices, as evidenced by true and correct copies of the invoices, attached hereto as Composite Exhibit "D."

23. The Citco Defendants issued these invoices to the Offshore Funds for administrative services including, without limitation, "preparation of net asset value statements, acting as the Fund's Registrar and Transfer Agent, maintaining the Shareholders Register, communications with Shareholders, Auditors and Third Parties, arranging of the payment of fees

and other expenses." A true and correct copy of this invoice from Citco N.V to the Orbiter Fund is attached hereto as Exhibit "E."

2. The Citco Group

24. The Citco Group is an integrated financial services holding company that operates through numerous subsidiaries. According to a recent marketing brochure for The Citco Group, the services offered by The Citco Group include corporate and fiduciary services, fund administration and shareholder services, custody and banking, fund advisory and brokerage services, and international pension services. The Citco Group's principal place of business is at Corporate Centre, West Bay Road, Grand Cayman, Cayman Islands-British West Indies.

25. The Citco Group does not earn any revenue independent of the revenue generated by its subsidiaries, and it serves as the vehicle by which its operating subsidiaries procure business from and conduct extensive fund management services for funds operated from within the United States and around the world. The Citco Group also maintains offices outside the United States and around the world, including offices in Curacao.

26. The Citco Group maintains offices throughout the United States, with multiple offices located in Pennsylvania, New York, California, and Florida. In serving the interests of its operating subsidiaries, The Citco Group and its immediate subsidiaries conduct extensive business, administrative, and marketing operations within the United States and the Southern District of Florida. In fact, three of The Citco Group's United States subsidiaries are Florida corporations with their respective principal places of business located in the Southern District of Florida. These subsidiaries include Citco Technology Management, Inc., which has its principal place of business located in Fort Lauderdale, Florida and maintains all of The Citco Group's technology infrastructure. In addition, Citco Corporate Services, Inc. shares its principal place of

business in Miami, Florida with Defendant Citco USA and serves as Citco USA's registered agent in Florida.

27. The Citco Group holds its network of subsidiaries out as the world's top providers of hedge fund administration services. The Citco Group claims that its wholly owned operating subsidiaries administer more than 1,000 funds worldwide – almost 30% of the global hedge fund management market, allegedly representing a combined net asset value of more than $110 billion.

28. Citco USA and Citco N.V. hold themselves out as offices of The Citco Group. Indeed, on The Citco Group's website (*http://www.citco.com/locations.jsp*), Citco USA and Citco N.V. are listed as offices of The Citco Group network. All of The Citco Group's subsidiaries, divisions, and offices are referred to throughout the website only as "Citco." Similarly, all of The Citco Group subsidiaries use the same "Citco" logo on their letterhead and, on each of The Citco Group subsidiaries' stationary, list all the places where The Citco Group affiliates are located – again emphasizing the integrated, global nature of The Citco Group.

29. The Citco Group represents that its operating subsidiaries combined constitute a "global fund administrator" and that its operating subsidiaries' ability to administer funds in offices throughout the world renders the combined enterprise able to provide a "consistent service platform."

30. The Citco Group asserts that its operating subsidiaries allow their personnel "the ability to transfer between offices and divisions" in order to maintain consistent levels of performance worldwide.

31. Substantially all information regarding hedge funds administered by any of The Citco Group's offices is maintained in a centralized database that can be accessed by the fund

manager. Indeed, the Citco website (*http://www.citco.com/funds/services_online.htm*) touts. "This online reporting service is available to Fund Managers of Funds administered by *any* of the Citco Fund Services offices." (Emphasis added).

32. The Citco Group's website also contains a brochure that describes a sophisticated, integrated computer system containing all client information that is located in Fort Lauderdale, Florida and operated by Citco Technology Management, Inc.:

> Citco's dedicated Information Technology Group, based in Fort Lauderdale, Florida is responsible for maintaining and monitoring all software and hardware configurations, and network support. The group also maintains Citco's exclusive database of security information (CDS Citco Data Source), providing prices and corporate actions for US and non-US securities, with integrated cross-reference identification codes, using multiple vendors such as Interactive Data Corporation (IDC), Reuters, Bloomberg and Telekurs. Each office is set up with a dedicated team of on-site IT staff to monitor daily operations and tailor needs of our clients.

See http://www.citco.com/funds/CitcoFundServicesBrochure.pdf. Accordingly, the Citco Defendants hold themselves out as experts in valuing.

33. In addition, Citco USA maintains a sophisticated, trademarked software system called "Ephesus," which has "fully integrated general ledger capabilities . . .." This software system includes "an order entry and order acceptance based system to process subscriptions, redemptions (including cash tracking), transfers and switches," and a sophisticated intranet. This software is available to and used by the rest of The Citco Group's entities around the world, including Citco N.V.

34. In fact, in a letter dated July 31, 1999, and on Citco Technology Management, Inc. letterhead (attached hereto as Exhibit "F"), The Citco Group reassured Citco N.V. clients regarding Year 2000 compliance issues with Ephesus and other computer-related issues. The letter stated, in relevant part:

> Year 2000 readiness statement for *Citco Funds Services* as of July 31st 1999:
>
> The purpose of this letter is to update you on the progress *Citco* is making with Year 2000 compliance.
>
> * * *
>
> *Citco's* core proprietary systems, Ephesus, our Fund Accounting Package, and Global Shareholder System (GSS), our Shareholder Record keeping system already store 4 digit years.
>
> * * *
>
> As a result of these efforts, *Citco Funds Services* is pleased to advise you that we are confident we will have no significant disruptions to our internal systems.
>
> * * *
>
> If you require additional information, please feel free to call me at our Ft. Lauderdale USA office at 954-351-7275 or E-Mail me at SHEIBLUM@CITCO.COM.

Emphasis added.

3. <u>Citco USA</u>

35. Citco USA is a Florida Corporation with its principal place of business located at 701 Brickell Avenue, 12th Floor, Miami, Florida.

36. William Keunen ("Keunen") is an officer of Citco USA, is a chartered accountant in England, is resident in the Citco USA Miami office, and resides in the Southern District of Florida.

37. The managing director of each office of The Citco Group that provides fund administration services – including Citco N.V. – reports to Keunen, the Director of Fund Services for The Citco Group. Keunen, in turn, reports to the four-person executive committee for The Citco Group.

38. In his role with The Citco Group, and operating from one of The Citco Group's Miami offices, Keunen was involved directly with the issues in this case, as he received and responded to both internal and external e-mail inquiries regarding the Offshore Funds, received and responded to correspondence regarding the Offshore Funds, and engaged in meetings and telephone discussions with various Lancer and Citco personnel regarding the Offshore Funds. Further, Keunen reported to all Citco directors regarding issues that Citco's internal audit department raised in May 2002 regarding the Lancer portfolio and fund valuation. Finally, Keunen directed the dissemination of the erroneous NAV's associated with the Offshore Funds into the United States and Florida.

39. Keunen initiated contact in June 2001 with the New York office of PricewaterhouseCoopers ("PwC"), the international auditing firm whose Curacao office was responsible for auditing the Offshore Funds. Keunen made this contact to engage in a conference call with PwC officials regarding fund valuation issues.

III. JURISDICTION AND VENUE

40. This Court has original, ancillary and/or supplemental subject matter jurisdiction over all claims at issue in this action pursuant to, *inter alia*, 15 U.S.C. § 78aa, 28 U.S.C. § 1367, and the doctrines of pendant and ancillary jurisdiction. This Court has original, ancillary and/or supplemental subject matter jurisdiction with respect to claims under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), pursuant to 29 U.S.C. § 1132(e)(1) and ERISA § 502(e)(1).

41. This Court has general personal jurisdiction over each of the Defendants under Florida Statutes § 48.193(2) and the United States Constitution by virtue of the Defendants' substantial, continuous and regular contacts with Florida.

42. Further, this Court has personal jurisdiction over all of the Defendants under Florida Statues § 48.193(2) and the United States Constitution by virtue of The Citco Group's substantial, continuous and regular contacts with Florida, which contacts may be imputed to the Director Defendants and Citco N.V. because of The Citco Group and Citco-USA's role as the Director Defendants' and Citco N.V.'s agents in the United States and Florida.

43. Alternatively, this Court has specific personal jurisdiction over Defendants under Florida Statutes § 48.193(1)(a) and the United States Constitution by virtue of the Defendants operating, conducting, engaging in and/or carrying on a business in Florida. The Defendants' breaches of duty and gross negligence arise out of the Defendants' engaging in business in Florida. Specifically, the Defendants continuously place its marketing materials in Florida's stream of commerce, maintain offices in the Southern District of Florida, maintain its integrated computer system containing all of the Defendants' client information in the Southern District of Florida, continuously and systematically communicate and coordinate with its offices located in the Southern District of Florida, and direct the Offshore Funds investors to contact the Defendants' offices located in the Southern District of Florida.

44. This Court has specific personal jurisdiction over each of the Defendants under Florida Statutes § 48.193(1)(b) and the United States Constitution by virtue of the Defendants' participation in the grossly negligent management and breaches of duty committed by the insiders of Offshore and OmniFund, which breaches occurred in the United States and Florida and caused injury in the United States and Florida.

45. This Court has specific personal jurisdiction over each of the Defendants under Florida Statutes § 48.193(1)(b) and the United States Constitution because of the Defendants' grossly negligent management of the Funds and breaches of duty, which breaches occurred in

Florida and caused injury in Florida by virtue of the Defendants' offices located in the Southern District of Florida and the Defendants' integrated computer system located in the Southern District of Florida, containing all of the Defendants' client information and the Offshore Funds' erroneous NAV's, which were knowingly disseminated by the Defendants to United States and Florida investors.

46. Finally, this Court has personal jurisdiction over each of the Defendants pursuant to the nationwide service of process allowed under 28 U.S.C. §§ 754[4] and 1692 and the Defendants' continuous and systematic contacts with the United States.

47. By Citco N.V.'s continuous and systematic contacts with the United States and Florida; by Citco N.V.'s engaging in a business in Florida; by committing tortious activity in the United States and Florida and causing injury in the United States and Florida; by issuing thousands of erroneous NAV statements to New York-based Lancer personnel, United States investors, and at least one Florida investor; by continuously and systematically communicating and coordinating with Citco USA and Citco Technology Management, Inc. located in the Southern District of Florida; by continuously and systematically maintaining its computer database containing all of Citco N.V.'s client information, including the value of United States-based securities, and the Offshore Funds' bogus valuations in the Southern District of Florida; by continuously and systematically collecting millions of dollars in wire transfers from United States and Florida investors through a bank account located in New York; by continuously and systematically directing the Funds to wire payment to bank accounts in Philadelphia and/or New York; by holding itself out as an office of The Citco Group; by communicating on a systematic and continuous basis with United States and Florida investors as a conduit for information from

[4] The Receiver has complied with the filing requirements of 28 U.S.C. § 754.

Lauer and the Offshore Funds; by continuously and systematically issuing invoices to New York-based Lancer offices; by continuously and systematically using a software platform maintained by Citco USA; by directing Citco-N.V. clients to contact "our Ft. Lauderdale USA office at 954-351-7275;" by continuously and systematically reporting to Citco USA and Keunen, an officer of Citco USA and a resident of the Southern District of Florida; and by collecting fees from monies obtained or solicited in the United States, which fees were inflated based on its own misconduct, personal jurisdiction is proper over Citco N.V. under Florida Statutes §§ 48.193(1)(a)-(b),(2) and 28 U.S.C. §§ 754 and 1692.

48. By The Citco Group's continuous and systematic contacts with the United States and Florida; by The Citco Group's Florida subsidiaries conducting business in Florida as The Citco Group's agents; by The Citco Group's engaging in a business in Florida; by committing tortious activity in the United States and Florida and causing injury in the United States and Florida; by continuously and systematically maintaining numerous offices throughout the United States, including offices located in Pennsylvania, New York, California, and the Southern District of Florida; by continuously and systematically holding itself out with its United States and Florida subsidiaries as an integrated corporation; by continuously and systematically conducting extensive business administrative and marketing operations within the United States and Florida; by continuously and systematically maintaining three subsidiaries with their principal places of business located in the Southern District of Florida; by continuously and systematically maintaining its computer database containing all of The Citco Group's client information and the Offshore Funds' bogus valuations, including the value of United States-based securities in the Southern District of Florida; by directing Citco-N.V. clients to contact "our Ft. Lauderdale USA office at 954-351-7275;" by continuously and systematically using a

software platform maintained by Citco USA; and by virtue of Keunen, a resident of the Southern District of Florida and officer of Citco USA, who also serves as Director of Fund Services for The Citco Group and continuously and systematically directed the issuance of erroneous NAV's for the Offshore Funds into the United States and Florida, personal jurisdiction is proper over The Citco Group under Florida Statutes §§ 48.193(1)(a)-(b),(2) and 28 U.S.C. §§ 754 and 1692.

49. By The Citco Group's and Citco N.V's continuous and systematic contacts with the United States and Florida; by The Citco Group and Citco N.V.'s engaging in a business in Florida and the United States by and through Citco-USA and Citco Technology Management, Inc. and by Citco-USA's conducting business in Florida, which contacts may be imputed to the Director Defendants because of The Citco Group, Citco-N.V., and Citco USA's roles as the Director Defendants' agents in the United States; by committing tortious activity in the United States and Florida and causing injury in the United States and Florida; by continuously and systematically communicating with the Offshore offices in New York and Connecticut; by continuously and systematically communicating with the Defendants' United States and Southern District of Florida offices, including Citco USA; by continuously and systematically traveling to the United States in their role as fund directors and fund administrators; by continuously and systematically communicating with United States and Florida investors regarding subscriptions, redemptions, and valuations of the Offshore Funds; by continuously and systematically engaging in marketing services in the United States and Florida; by serving as directors to the Offshore Funds, which invested in United States securities, were managed out of offices in Connecticut and New York, and which had United States and Florida investors; and by continuously and systematically reporting to Keunen, an officer of Citco USA and a resident of the Southern District of Florida, who directed the issuance of erroneous NAV's for the Offshore

Funds into the United States and Florida, personal jurisdiction is proper over the Director Defendants under Florida Statutes §§ 48.193(1)(a)-(b),(2) and 28 U.S.C. §§ 754 and 1692.

50. By Citco USA's continuous and systematic contacts with the United States and Florida; by Citco USA's conducting a business in Florida as a Florida Corporation with its principal place of business located in the Southern District of Florida; by committing tortious activity in the United States and Florida and causing injury in the United States and Florida; by holding itself out as an office of The Citco Group; by maintaining a sophisticated trademarked software system that provides a platform for subscriptions and redemptions used by The Citco Group and Citco N.V.; and by virtue of Keunen, an officer of Citco USA and a resident of the Southern District of Florida, who directed the issuance of erroneous NAV's for the Offshore Funds into the United States and Florida, personal jurisdiction is proper over Citco USA under Florida Statutes §§ 48.193(1)(a)-(b),(2) and 28 U.S.C. §§ 754 and 1692.

51. Venue is proper before this Court pursuant to 28 U.S.C. § 1409. Venue is also proper in this Court for the ERISA claims pursuant to 29 U.S. C. § 1132(e)(2) and ERISA § 502(e)(2).

52. Additionally, venue is proper in this Court pursuant to 28 U.S.C. §§ 754 and 1692.

IV. FORMATION AND ORGANIZATION OF THE LANCER ENTITIES

53. Michael Lauer ("Lauer") is a resident of Connecticut and is a hedge fund manager. Lauer is the founder, manager and sole shareholder of Lancer Management Group, LLC ("Lancer Management"), a Connecticut limited liability company that acted as the investment manager for the Offshore Funds. Lauer also is the *de facto* investment manager for the Offshore Funds. Lauer incorporated Lancer Management in Connecticut in 1997.

54. Lauer organized Offshore, a British Virgin Islands international business company, in 1995 as an offshore hedge fund for the purpose of investing in securities. From its inception in 1995 until the appointment of the Receiver on July 10, 2003, Offshore had approximately $906,000,000 of investor funds under management. Offshore was listed on the Irish Stock Exchange from December 24, 1998 through April 2003.

55. The Offshore Funds were open-ended investment funds, a defining feature of which is the ability of investors to purchase and redeem shares at a net asset value per share ("NAV/share"). Unlike ordinary public companies, the share prices of the Offshore Funds did not fluctuate as a function of the supply and demand for their shares. Rather, the price of a share in an open-end investment fund is solely a function of the calculated NAV/share of the fund. The principal factors in the calculation of the NAV/share of a fund are the value of the portfolio of securities held by the fund on the date of the calculation and the number of shares the fund has issued.

56. The Offshore Funds were not registered with the SEC, were open only to accredited investors with a certain minimum net worth, had limited redemption windows, and provided limited information concerning both the identity of the securities in the investment portfolio and the funds' investment strategies. Investors were solicited to invest in the Offshore Funds primarily through sales agents using a private placement memoranda ("PPM") and other marketing materials. For these very reasons, the Offshore Funds and their investors relied heavily on the NAV prepared by the Citco Defendants and the Director Defendants as well as the business acumen, industry reputation, other oversight services the Citco Defendants and the Director Defendants represented they would provide.

57. Lauer was also the founder, sole manager and sole shareholder of Lancer Management, the management company that served as the investment advisor to the Offshore Funds. In its capacity as investment advisor, Lancer Management was responsible for identifying and purchasing all investment positions held by the Offshore Funds. The Offshore Funds paid management and incentive fees to Lancer Management, ostensibly for the use of Lauer's expertise in selecting investment positions for the Offshore Funds. As the sole shareholder of Lancer Management, Lauer was the sole beneficiary of its income.

58. Lancer Management's fee for managing Offshore was 1% per year of the total funds under management for each investor and was calculated by multiplying Offshore's NAV at the beginning of each fiscal quarter by 0.25%. Lancer Management also received an incentive fee equal to 20% of the net profits of Offshore, including any unrealized gain, as calculated on the last day of Offshore's fiscal year.

59. Lauer also organized OmniFund, another British Virgin Islands international business company, through the March 2002 merger of two pre-existing funds, namely, Orbiter Fund, Ltd. ("Orbiter") and Viator Fund, Ltd. ("Viator"). Lauer incorporated both Orbiter and Viator in 1999 as British Virgin Islands international business corporations for the purpose of investing in securities. From its inception in 1999 to the appointment of the Receiver on July 10, 2003, investors invested approximately $49,000,000 to OmniFund.

60. Lancer Management's advisory fee for managing OmniFund was 2% per year of the total funds under management for each investor and was calculated by multiplying OmniFund's NAV at the beginning of each fiscal quarter by 0.5%. Lancer Management also received an "incentive fee" equal to 25% of the net profits of OmniFund, as calculated on the last day of OmniFund's fiscal year.

61. Prior to the formation of OmniFund, Lancer Management's fee for managing Orbiter was 1.5% per year, and was calculated by multiplying Orbiter's NAV at the beginning of each fiscal quarter by 0.375%. Lancer Management also received an incentive fee equal to 50% of the net profits of Orbiter, including any unrealized gain, as calculated on the last day of Orbiter's fiscal year.

62. Prior to the formation of OmniFund, Lancer Management's fee for managing Viator was 1% per year, and was calculated by multiplying Viator's NAV at the beginning of each fiscal quarter by 0.25% of the total funds under management for each investor. Lancer Management also received an incentive fee equal to 25% of the net profits of Viator, including any unrealized gain, as calculated on the last day of Viator's fiscal year.

63. This fee structure provided Lauer – the eventual beneficiary of the fees paid by the Offshore Funds to Lancer Management – with the incentive to artificially inflate the value of the Offshore Funds' holdings. A higher NAV necessarily results in higher fees.

64. Lauer's interests were thus adverse to the Offshore Funds' interests. These adverse interests were known to the Defendants. Lauer's interests were to maximize his management and incentive fees by causing the Offshore Funds to invest in securities, and engage in trading practices, that could be used to inflate the Offshore Funds' purported NAVs, regardless of whether such investments ultimately benefited the Offshore Funds. As will be discussed below, that is precisely what Lauer did.

V. STANDARDS AND RESPONSIBILITIES OF THE CITCO DEFENDANTS

65. Various sources and documents set forth the responsibilities and standards to which the Citco Defendants and the Director Defendants were held. These sources include the Offshore Funds' Articles of Association, agreements among the Citco Defendants and the Offshore Funds, the PPM for the Offshore Funds, the "Sound Practices" Manual, and the Citco

Defendants' own public pronouncements regarding appropriate conduct for hedge fund administrators.

A. Articles of Association

66. The Citco Defendants played a central role in the formation of the Offshore Funds and the incorporation of the Offshore Funds in the BVI. Specifically, a subsidiary of The Citco Group, Citco (B.V.I.) Ltd., prepared and filed the Articles of Association for the Offshore Funds. A true and correct copy of the Articles of Association for Offshore is attached hereto as Exhibit "G" and is incorporated herein by reference.

67. In relevant part, Offshore's Articles of Association required the Citco Defendants, as fund administrator, to determine Offshore's NAV on a monthly basis "in accordance with generally accepted accounting principles in the United States." In addition, the Director Defendants were required by the Articles of Association to consider whether prices generated in a securities' principal market reflected the investment's true value and whether some other valuation method should be used that better reflects the investment's fair value.

68. Offshore's Articles of Association further required the Director Defendants to manage Offshore's entire business and affairs. Specific items identified therein included not only determining Offshore's NAV but also issuing shares, maintaining a share registry, keeping proper accounts in accordance with GAAP, generating balance sheets for Offshore's general meetings, and hiring auditors, attorneys, and other service providers.

B. Citco Service Agreements with the Offshore Funds

69. In one form or another, Citco N.V. had Administrative Agreements with the Offshore Funds (the "Citco Agreements") from 1996 through its resignation in 2002. The Citco Agreements with Offshore, Orbiter, and Viator are attached hereto as Exhibits "H, "I, and "J", respectively, and are incorporated herein by reference.

70. In relevant part, the Citco Agreements required Citco N.V. to prepare and maintain all financial and accounting books and records of the Offshore Funds, compute monthly NAV's, independently price the Offshore Funds, hire all such attorneys, auditors, and other service providers as were necessary, and provide directors to each of the Offshore Funds. In return for these services, the Citco Defendants received an Administrative Fee from the Offshore Funds based on the NAV for each Offshore Fund as well as an additional monthly fee for the directors Citco provided to each of the Offshore Funds. In other words, the Citco Defendants also had an incentive to establish, conspire with Lauer or turn a blind eye towards Lauer's establishment of inflated NAV's.

C. The Private Placement Memoranda

71. Lauer issued separate PPMs for Offshore (the "Offshore PPM") and for OmniFund (the "Omnifund PPM"). Both PPMs provide that the Offshore Funds' total net asset values should be determined "in accordance with generally accepted accounting principles."

72. Both PPMs further assured investors and prospective investors that they could rely on the Citco Defendants, as described in the following excerpt:

> The Administrator
>
> CITCO Fund Services (Curacao) N.V. (the "Administrator") has been retained by the Fund to perform administrative services for the Fund. Pursuant to an Administration Agreement entered into between the Fund and the Administrator (the "Administration Agreement"), the Administrator is responsible for, among other things: (i) maintaining the register of Shareholders of the Fund and generally performing all actions related to the issuance and transfer of Shares of the Fund and the safe-keeping of certificates therefor, if any; (ii) reviewing subscriptions for Shares and accepting payment therefor; (iii) publishing and furnishing the Net Asset Value of the Fund's Shares in accordance with its Articles of Association; (iv) performing all acts related to redemption of Shares; (v) keeping the accounts of the Fund and such financial books and records as are required by law or otherwise for the proper conduct of the financial

> affairs of the Fund and making available annual financial statements for inspection, as well as furnishing quarterly reports regarding the Fund's performance and Net Asset Value per Share, to Shareholders; and (vi) performing all other matters necessary in connection with the administration of the Fund.

73. The Offshore PPM further stated that if the board of directors determined "that the valuation of any security or instrument pursuant to the foregoing does not fairly represent its market value, the Board of Directors shall value such security or instrument as it reasonably determines and shall set forth the basis of such valuation in writing in the Fund's records." See the Offshore PPM attached hereto as Exhibit "K".

74. The OmniFund PPM also stated that if the board of directors determined "that the valuation of any security or instrument pursuant to the foregoing does not fairly represent its market value, the Board shall value such security or instrument after consultation with and as advised by the Investment Manager, and shall set forth the basis of such valuation in writing in the Fund's records." See Exhibit "L". The Investment Manager is defined in Exhibit "L" as Lancer Management Group, LLC.

D. <u>The "Sound Practices" Manual</u>

75. The President's Working Group on Financial Markets, which was comprised of representatives of the Secretary of the U.S. Department of the Treasury and the respective chairs of the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission and the Commodity Futures Trading Commission, established minimum standards of care for persons involved in managing hedge funds. The Citco Defendants participated as part of a working group formed to create similar standards of care for European hedge funds. Collectively, these standards hereinafter are referred to as the "Sound Practices Manual". Relevant portions of the Sound Practices Manual are set forth below.

76. In general, the administrator should have experience in accounting for and valuing the products traded by the hedge fund. The hedge fund managers, directors, and administrators should conduct themselves with prudence and honesty, discharging their duties to the investment fund with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

1. Risk Management/Internal Controls

77. Hedge fund managers, directors and administrators should seek to limit the Fund's exposure to potential operational risks, including data entry errors, fraud, system failures and errors in valuation or risk measurement models. "Operational risk" is defined as the risk of loss due to system breakdowns, employee fraud or misconduct, errors in *models* or natural or man-made catastrophes, among other risks. It may also include the risk of loss due to the incomplete or incorrect documentation of trades. Operational risk may be defined by what it does not include: market risk, credit risk and liquidity risk.

78. Hedge fund managers, directors and administrators should consider measures to limit or mitigate operational risk, including establishing a risk monitoring function either internally with an appropriate level of checks and balances to ensure objectivity of risk analysis or through reliance on external service providers.

79. The risk monitoring function should also consider incorporating "asset liquidity" (i.e., the potential exposure to loss attributable to changes in the liquidity of the market in which the asset is traded) as an additional factor. While other entities face funding liquidity risk, this risk is more of a central concern to hedge funds, because funding liquidity problems can rapidly increase a hedge fund's risk of failure. A lack of funding liquidity can contribute to a crisis situation for the hedge fund.

80. Hedge fund managers, directors and administrators should ensure the independence of the risk monitoring function. The risk monitoring function should be segregated from the investment management function with different people responsible for each. The hedge fund managers, directors and administrators should regularly assess whether risk levels are acceptable and consistent with established risk policies and parameters.

81. Hedge fund managers, directors and administrators should establish adequate internal controls and review, including appropriate segregation of duties, controls over incoming and outgoing cash flows and balances with counterparties, daily confirmation of trades and positions, etc.

82. Hedge fund managers, directors and administrators should adopt an organizational structure that ensures effective monitoring of compliance with investment and valuation policies by allocating defined supervisory responsibilities and maintaining clear reporting lines. Suitably qualified personnel should be retained and adequate systems established to produce periodic reporting that permits hedge fund managers, directors and administrators to monitor trading activities and operations effectively.

83. Internal procedures and periodic independent review processes should seek to ensure the enforcement of policies and identify deviations from those policies. Appropriate controls, reporting and review processes should apply to internal and external managers or traders.

2. Valuation Policies and Procedures

84. A hedge fund's valuation methods should be fair, consistent and verifiable.

85. For NAV purposes, a hedge fund's managers, directors and administrator should value investments according to GAAP.

86. The following is a summary of certain pertinent sections of GAAP which govern security valuations that hedge fund managers, directors, and administrators routinely apply in calculating NAV's:

a. The fair value of an investment is the amount at which the investment could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale.

b. Management's best estimate in good faith of fair value should be based on the consistent application of a variety of factors with the objective being to determine the amount at which the investment could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale.

c. Situations may arise when quoted market prices are not readily available or when market quotations are available but it is questionable whether they represent fair value. Examples include instances when – market quotations and transactions are infrequent and the most recent quotations and transactions occurred substantially prior to the valuation date, and when the market for the security is "thin" (that is, there are few transactions or market-makers in the security, the spread between the bid and asked prices is large, and price quotations vary substantially either over time or among individual market-makers).

d. In estimating in good faith the fair value of a particular financial instrument, the board or its designee (the valuation committee) should, to the extent necessary, take into consideration all indications of fair value that are available. The following is a list of some factors to be considered:

    i. Financial standing of issuer;

    ii. Business and financial plan of the issuer and comparison of actual results to plan;

    iii. Cost at date of purchase;

    iv. Size of position held and liquidity of the market;

    v. Contractual restrictions on disposition;

    vi. Pending public offering with respect to the financial instrument;

    vii. Pending reorganization activity affecting the financial instrument (such as merger proposals, tender offers, debt restructurings, and conversions);

    viii. Reported prices and the extent of public trading in similar financial instruments of the issuer or comparable companies;

ix. Ability of the issuer to obtain needed financing;

x. Changes in the economic condition affecting the issuer;

xi. A recent purchase or sale of a security of the company;

xii. Pricing by other dealers in similar securities; and

xiii. Financial statements of portfolio companies.

e. No single method exists for estimating fair value in good faith because fair value depends on the facts and circumstances of each individual case. Valuation methods may be based on a multiple of earnings, or a discount or premium from market of a similar freely traded security of the same issuer; on a yield to maturity with respect to debt issues; or on a combination of these or other methods. The board of directors should be satisfied, however, that the method used to estimate fair value in good faith is reasonable and appropriate and that the resulting valuation is representative of fair value.

f. The information considered and the basis for the valuation decision should be documented, and the supporting data should be retained. The board may appoint individuals to assist in the estimation process and to make the necessary calculations. The rationale for the use of a good-faith estimate of fair value different from market quotations or pricing service valuations should be documented. If considered material, the circumstances surrounding the substitution of good-faith estimates of fair value for market quotations or pricing service valuations should be disclosed in the notes to the financial statements. That disclosure should include the circumstances surrounding the use of a blockage factor for an unrestricted investment that has a quoted market price in an active market.

g. For certain investments, such as securities that do not trade regularly, the board of directors and fund administrators should consider obtaining estimates of fair value from broker-dealers or other third-party sources. In some situations, the board of directors or fund administrator may determine that it is necessary to obtain an estimate of fair value from more than one pricing source. For example, this may be appropriate if a pricing source has a relationship with an entity that might impair its objectivity.

3. Other General Fiduciary Duties

87. In addition to the standards above, hedge fund managers, directors and administrators have certain general fiduciary duties.

88. Care should be taken to ensure that inducements and fees do not create unacceptable conflicts of interest or influence the hedge fund manager, director or administrator against acting in the best interest of the fund or its investors.

89. Hedge funds are controlled by directors either of the hedge fund itself, if organized as a company, or of the hedge fund's corporate general partner, if organized as a limited partnership. The directors should have relevant standing and experience to allow them to discharge their fiduciary and other duties. Hedge fund managers, directors, and administrators must act solely in the interest of the Fund and its investors.

E. The Citco Defendants' Marketing Materials and Publications

90. In various publications, brochures, and on their website, the Citco Defendants embrace the standards set forth in the Articles of Association, the PPM, and "Sound Practices" manual. The Citco Defendants further represent that their worldwide organization will carry out hedge fund administration in a prudent and independent manner.

91. A brochure for The Citco Group and its subsidiaries located on The Citco Group's website provides further laudatory statements regarding The Citco Group's worldwide capabilities and oversight functions. A copy of this brochure is attached hereto as Exhibit "M". The brochure provides::

> The Citco Group is an integrated company. Citco has substantial hedge fund experience. Citco is prepared to take advantage of the growth of the hedge fund industry. Its offices in Curacao and in other venues "typically work with our North American clients."
>
> Citco trains its staff in providing specialized accounting and valuation support, investor relations, corporate services and day-to-day management.
>
> Citco provides the following services:
>
> (A) Accounting.

(B) Valuation: "We price the portfolio using independent recognized pricing sources. We calculate the net asset value and prepare financial statements."

(C) Investor relations and communications.

(D) Corporate services, including all record keeping.

(E) Back Office Services including, but not limited to "daily profit and loss and net asset value calculations."

Shareholder Services

(A) Providing Share Registration.

(B) Order entry, acceptance, subscriptions, redemptions, transfers and switches. Shares are issued in certified or non-certified form.

(C) Overnight processing of trade activities, cash journals, cash movements and corporate actions, required for daily reconciliation and net asset value production are performed.

(D) Preparing SAS 70, US Statement of Auditing Standard Number 70, Reports on the Processing of Transactions by Service Organizations. The SAS 70 Report will provide information as to: "The control objectives and relevant policies and procedures in place to ensure that Net Asset Value calculations meet the criteria of accuracy, responsiveness and confidentiality."

92. In a November 28, 2003, interview with Hedgeweek which appears on The Citco Group's website, Keunen, The Citco Group Director of Fund Services, outlined The Citco Group's worldwide presence and capabilities, noting that The Citco Group has serviced Hedge Funds for 30 years and has 15 offices worldwide. The Citco Group has aggressively sought to represent hedge funds in the United States, marketing its sophisticated technology through a software platform called AExeo.

93. Keunen's November 28, 2003 Hedgeweek interview also recognized the fund administrator's vital role. First, because the U.S. does not regulate hedge funds, the "valuation process becomes a crucial part of the NAV calculation." Second, the administrator is "the ideal

independent counter party that is the sole counter party able to aggregate information in a way that represents added value to both investors and managers."

94. In the Alternate Investment Quarterly, Second Quarter 2002: The Role of Fund Administration and Technology in a Maturing Alternative Investment Market, Keunen recognized problems in the hedge fund industry that fund administrators must address:

> "To begin with, it is paramount that events such as the Manhattan Investment Fund fraud of 1999 are not repeated. Hedge Funds are burdened with the task of convincing the entire investment community that they can run their operations properly and responsibly."

95. John Verhooren ("Verhooren"), another executive with The Citco Group and a director for Offshore from 1995 to 1998, told the trade journal Hedge Funds Review in May 2003, that two of the most important duties of The Citco Group's subsidiaries in administering a hedge fund is determining and verifying the fund's NAV and fulfilling the administrator's "risk monitoring" responsibilities:

> "For example, pricing is an area at the heart of the administrator's business in which much technical discussion is taking place and new standards are developing. However, a good administrator will always have insisted on independent pricing, and will terminate a contract with a hedge fund if they cannot agree with its pricing methodology."
>
> "A study of 100 hedge fund failures concluded that operational risks are the main single cause of hedge fund failure."
>
> "It found that in those cases where the finger can be pointed at fraud and misrepresentation, water-tight operational standards can either reduce the size of losses or enable them to be uncovered at a much earlier stage."
>
> "The operational arena is the one most affected by the quality of a fund's counter parties, in particular its prime brokers and administrators. Institutional investors want an institutional quality administrator with experienced and appropriately qualified staff, independent pricing and valuation procedures, and the technology to support its enhanced role."

> "Even though the Funds themselves still tend to have monthly trading, the administrator can now publish either weekly or daily net asset values (NAV) for the fund, rather than the traditional monthly valuation."
>
> "Institutions have to disseminate a fund's numbers to their broad distribution of investors. They cannot afford to wait two or three weeks for a NAV; they need to have it within the first week at the latest."

96. An article recreated for The Curacao Financial Services Review, 2001, quoted Citco Officer and Offshore Director Quilligan at length regarding a hedge fund administrator's duties and responsibilities. In this article, Defendant Quilligan emphasized the fund administrator's need for independence and the administrator's fiduciary duties:

> "Independence combined with an accurate, timely and professional service is how we can add value."
>
> "The shareholders are our ultimate client and they rely on our experience and time in the industry – which is since the very beginning - and take confidence from our subsequent position as a market leader. Our involvement means they don't have to rely on the investment manager."
>
> "Citco Funds Curacao provides full administration services to alternate investment funds, including the provision of core accounting, Net Asset Value (NAV), fund set-up, investor relation and back office services . . .."
>
> "Shareholder services" . . . is a "centralized department" and can provide "services to Citco Funds whether they are administered in Curacao or New York. Citco provides daily profit and loss for U.S. clients."
>
> ". . . over the last couple of years, the perceived importance of the administrative side of the fund has grown significantly. First, there was the debacle of the Manhattan Fund at the end of 1999."
>
> ". . . the Fund Administrator must be independent to be taken seriously. The definition of independence in the context of traditional fund administration includes some of the following parameters:
>
> (A) Accounting and Net Asset Value calculation.

(B) All bank, broker and custody balances are agreed, and the portfolio is priced independently. Administrators use independent pricing services and analyze variances.

(C) The Net Asset Value per share is calculated based on the recognition of the fund's capital activity. Financial statements are produced and disseminated.

(D) At each reporting interval, reports are sent to all investors confirming the price of the funds, its performance and the investor's holdings. Thus, investors are kept informed of the welfare of their positions from an independent source.

(E) Corporate services such as maintaining the principal corporate records, convening meetings and dealing with local regulatory requirements are typically seen as standard fare by the administrators.

* * *

(H) Administrators will be required to demonstrate a commitment to technological capabilities that point to integrated systems featuring real time automated processing and reconciliations, the use of independent pricing services, and reporting capabilities . . .."

(I) "The role of the fund administrator is gradually evolving from a service provider that produces results on a monthly basis after the fact, into a back-office outfit that calculates daily P&L numbers and Net Asset Values."

"But the administrator's primary responsibility is as a fiduciary agent to a fund's investors. In addition, the administrator should be relied upon for an independent verification role that is efficient and accurate."

97. In a chapter of The Capital Guide to Hedge Funds entitled "A Year of Turmoil: Impact on Hedge Fund Operations," written in Fall 2002, Keunen recognized the importance and the risks of both portfolio pricing and thinly traded securities:

"The growing interest in hedge fund investing, together with a profile that generates daily media exposure, has made measuring and managing risk a hot topic within the sector."

"Investors indicate that their main concerns are liquidity and market risk. The majority have experienced a negative surprise

regarding a hedge fund manager; the result being that the demand for transparency takes on added urgency."

"Risk generally relates to performance, and poor performance can result from two major areas – market risk and operational risk. While market risk can be caused either by the performance of the market as a whole or by a specific position in a portfolio, operational risk is typically considered to be non-market related. This is the area that is affected most by the quality of a fund's counterparties, the prime brokers and the administrator."

"For example, pricing the portfolio can be problematic, especially in the case of illiquid securities or for portfolios with complex derivatives. Pricing models may be invalid and even listed securities are often thinly traded. In reality, the only time a price can truly be verified is when it is traded."

"So, how can the administrator help? The independence of the administrator is of critical importance. The fund's prospectus discloses its pricing policy, and scrutiny of the administration agreement provides insight into the administrator's role in the pricing process."

"Probing the administrator to verify their approach reinforces the overall perception as to whether the administrator is genuinely adding value to risk measurement. After all, the administrator could just be taking the prices from the fund manager."

"Finally, if the administrator is able to satisfy the investor's need for transparency, then they should be in a position to supply information about the fund's activities, if not about individual positions. This could include sector exposure, attribution and the proportion that big bets represent to the overall portfolio."

VI. THE CITCO DEFENDANTS AND DIRECTOR DEFENDANTS KNOWINGLY DISREGARDED AND/OR FAILED TO MEET THE APPLICABLE STANDARDS

98. Despite the Citco Defendants' and the Director Defendants' contractual and professional obligations and their representations and promises in publications and brochures, the Citco Defendants and the Director Defendants knowingly disregarded and/or failed to satisfy the minimum standards for risk monitoring, portfolio valuation applicable to hedge fund

administration, and guarantees of independence. By doing so, the Citco Defendants and the Director Defendants provided NAV's for the Offshore Funds that served to increase their own administrative fees thereby creating an irreconcilable conflict of interest between themselves and the Offshore Funds.

A. The Citco Defendants and Director Defendants Knowingly Disregarded and Ignored Numerous "Red Flags"

99. The facts known to the Citco Defendants and the Director Defendants regarding all the Offshore Funds, beginning at least back to 1999, and possibly even earlier, and extending until the Citco Defendants resigned in 2002, should have alarmed the Citco Defendants and the Director Defendants into action. Numerous "red flags" that were known to the Citco Defendants and the Director Defendants would have put a reasonably prudent fund administrator or director on notice that Lauer was engaged in conduct to the extreme detriment of the Offshore Funds. These glaring "red flags" would have prompted a reasonably prudent fund administrator or director to investigate and disclose the inflated values of the securities held by the Offshore Funds to the investors, the Independent Directors, the Offshore Funds' auditors, and/or the appropriate authorities. By simply complying with their professional responsibilities, the Citco Defendants and the Director Defendants could have ceased the diminution of the Offshore Funds' value.

1. Red Flag #1 – There Was a Substantial Increase in the Offshore Funds' Value at a Time When Global Equity Markets Were Performing Poorly.

100. Lauer's claims of rapidly increasing NAV's in a declining equity market should have received professional skepticism on the part of the Citco Defendants and the Director Defendants, but did not. At the conclusion of 1999, the global equity markets declined significantly and investors generally suffered negative returns for 2000 and 2001. In 2000, major equity indices either lost significant value or grew little – S&P 500 (-10.14%), DJIA (+5.11%),

NASDAQ 100 (-39.3%). In 2001, major equity indices lost value – S&P 500 (-13.04%), DJIA (-11.07%), NASDAQ 100 (-21.05%). Yet, the Offshore Funds purportedly grew exponentially during both 2000 and 2001. From December 31, 1999 to December 31, 2001, Offshore purportedly gained 37.9%. From December 31, 1999 to December 31, 2001, Orbiter purportedly gained 10.3%. From December 31, 1999 to December 31, 2001, Viator gained an astounding 105.8%. These dramatic gains, in the face of at best a stagnant or declining market should have caused the Citco Defendants and the Director Defendants to scrutinize the sources of the gains and reevaluate how the NAV's were calculated for the Offshore Funds.

2. Red Flag #2 – There Was a Substantial Increase in the Concentration of the Offshore Funds' Holdings in the Target Companies.

101. Over the same time period that the Offshore Funds' purported performance was strikingly better than the performance of the global equity markets, there was a growing concentration of the Offshore Funds' total portfolio attributed to increasingly fewer, thinly traded stocks, including Biometrics Security Technology, Inc. ("Biometrics") (formerly known as AUG Corp.), Fidelity First Financial Corp. ("Fidelity First"), SMX Corp. ("SMX"), XtraCard Corp. ("SMX") (formerly known as Nu-D-Zine, Inc., hereinafter as "Nu-D-Zine"), Method Products Corp. ("MPC"), Total Film Group, Inc. ("Total Film"), World Wireless Communications ("World Wireless"), Equitel, Inc. ("Equitel") and Continental Southern Resources, Inc. ("CSR") (collectively, the "Target Companies").

102. Specifically, there was a dramatic increase in the Target Companies as a percentage of the Offshore Funds' holdings. For the year ended December 31, 1998, the Target

Companies accounted for only 5.9% of the Offshore Funds' portfolio value of $325,600,000.[5] By December 31, 2000, the Target Companies accounted for 53.4% of the Offshore Funds' portfolio value of $768,200,000. This concentration continued to grow, so that by December 31, 2002, the Target Companies accounted for 83.2% of the Offshore Funds' portfolio value of $878,400,000. Moreover, the majority of the Target Companies were companies that did not make filings with the SEC and for which there was no publicly available financial information. This dramatic increase in the concentration of the Offshore Funds in the Target Companies should have presented a red flag sufficient enough to increase the Citco Defendants' and the Director Defendants' scrutiny of them. Even assuming the Citco Defendants and the Director Defendants recognized these tell tale aberrations that signified a valuation problem had permeated the Offshore Funds, rather than notifying investors, Independent Directors, the Offshore Funds' auditors, and/or appropriate authorities of this increasing "proportion that big bets represent to the overall portfolio," as Keunen stated fund administrators should do, the Citco Defendants and Director Defendants said and did nothing.

3. Red Flag #3 – There Was a Substantial Increase in the Values Attributed to the Offshore Funds' Holdings in the Target Companies.

103. At the same time there was a substantial increase of the Target Companies as a percentage of the Offshore Funds' holdings, there was also a dramatic increase in the values attributed to them. For the year ended December 31, 1998, the Target Companies accounted for only $19,300,000 of the Offshore Funds' portfolio value. By December 31, 2000, the Target Companies accounted for $342,400,000 of the Offshore Funds' portfolio value – a fourteen-fold

[5] The pre-receivership values stated for portfolio companies in this Amended Complaint do not reflect actual values but the values stated by Lauer and approved by the Defendants, unless otherwise noted. These values reflect Lauer's manipulative trading and valuation strategies. The Receiver does not endorse these numbers as true valuations for these holdings; rather, these manipulated valuations are so detached from reality as to give the Defendants obvious proof of Lauer's manipulations.

increase. By December 31, 2002, the Target Companies accounted for $730,700,000 of the Offshore Funds' portfolio value. This dramatic increase in the value of a small number of holdings should have caused the Citco Defendants and the Director Defendants to scrutinize the valuations placed on the Offshore Funds' holdings in the Target Companies and take appropriate steps to ensure that the "big bet" positions were carried at fair value in accordance with GAAP.

4. Red Flag #4 – There Was a Dramatic Increase in the Values Given to Large Blocks of Restricted Stocks That Had Been Purchased for Much Lower Prices.

104. Between 1998 and 2002, the bulk of the Offshore Fund's investments in the Target Companies were purchased for pennies per share in private, off-market transactions. These restricted securities were then written up by tens of millions (or even hundreds of millions) of dollars just days or months later based primarily on the price for comparatively tiny purchases of unrestricted shares of the same stock by the Offshore Funds that they acquired through the public markets. The holdings were then reflected in the financial statements as having millions of dollars of "unrealized gains." These dramatic jumps in purported value of restricted shares should have caused the Citco Defendants and the Director Defendants to scrutinize the valuations of the securities. Only when the Citco Defendants and Director Defendants were looking for a way to disassociate themselves from the Offshore Funds did they ask for an explanation of this issue from Lauer and Lancer.

5. Red Flag #5 – There Were Small, End of Period Trades in the Stock of the Target Companies Serving No Business Purpose Other than to Inflate the Offshore Funds' NAV's.

105. The Funds' tiny purchases of unrestricted shares in the Target Companies at high prices that were used to value the enormous holdings of restricted securities served no apparent business purpose other than to inflate the Offshore Funds' NAV's. When the Offshore Funds already held hundreds of thousands or even millions of shares in the Target Companies – and

often had controlling interests – there was no business purpose served in purchasing a comparatively miniscule number of publicly traded shares at the end of a month, quarter or fiscal year. These tiny, end of period trades should have caused the Citco Defendants and the Director Defendants to scrutinize the valuations of the securities in which these trades were taking place. Only when the Citco Defendants and Director Defendants were looking for a way to disassociate themselves from the Offshore Funds did they request an explanation of this issue from Lauer and Lancer.

6. Red Flag #6 – The End of Period Trades, and the Corresponding Increases in Valuation of the Target Companies, Coincided with the Calculation of Lauer's Fees.

106. Not only was there no valid business purpose for the small, end of period trades, but the timing of the trades suspiciously coincided with the timing of the calculation of management and incentive fees paid to Lancer and thereafter to Lauer. The management and incentive fees paid to Lancer and to Lauer were calculated based on the NAV of the Offshore Funds at the end of certain quarters or the fiscal year. It was thus in Lauer's interest to cause the NAV of the Offshore Funds to appear to be high at the points in time when these fees were calculated; the small, end of period trades in the Target Companies served this interest – a fact that should have been obvious to the Citco Defendants and the Director Defendants, especially since their *own* fees were calculated at the same time and on a similar basis.

7. Red Flag #7 – There Was a Substantial Increase in the Number of Shares Obtained by the Offshore Funds at Little or Even No Cost.

107. A substantial percentage of the shares in the Target Companies obtained by the Offshore Funds were acquired for little or no cost through the exercise of warrants, options or debt conversions. These very same securities were then valued at extraordinary amounts, despite their nominal cost basis. For example, in 2001, Lauer converted approximately $500,000 in defaulted loans to Fidelity First into common stock in Fidelity First. This conversion was done

at a ratio of one share of stock for each penny of debt (plus accrued interest), resulting in the issuance of 56,656,629 shares. Lauer then simultaneously valued these shares at $2 per share, resulting in the conversion of approximately $500,000 in worthless debt into equity with a purported value of approximately $113,000,000. This and other dramatic increases in value for securities obtained at little or no cost should have caused the Citco Defendants and the Director Defendants to scrutinize the valuations for those holdings. Only when the Citco Defendants and Director Defendants attempted to disassociate themselves from the Offshore Funds did they ask for an explanation of this issue from Lauer and Lancer.

8. Red Flag #8 – The Defendants Knowingly Accepted and Approved Lauer's Absurd Valuations.

108. During all relevant time periods, there was no readily ascertainable market price to determine the value of the majority of the Target Companies. For these securities, the Citco Defendants and the Director Defendants knew that the valuations claimed by Lauer were absurd. *See*, *infra,* Exhibit "O." Lauer used trades at the ends of months, quarters, and years in determining their purported values. The values claimed for these securities thus jumped from only a few million dollars to a figure approaching one billion dollars in only two years. The Citco Defendants, the Director Defendants and other service providers relied increasingly on the investment manager's baseless opinion for valuing thinly traded and restricted securities. This dramatic increase should have caused the Citco Defendants and the Director Defendants to scrutinize the valuations of the Offshore Funds' holdings. Instead, the Citco Defendants and Director Defendants relied on Lauer's absurd valuations and recklessly failed to verify them, when the Defendants knew that Lauer's fees, like theirs, increased with the value of the absurd valuations.

B. Citco Knowingly Failed to Monitor Risk and to Value the Portfolio Properly

109. Beginning at least as early as 2000, Lauer caused the Offshore Funds to pursue a risky investment strategy. In a 1997 *Business Week* article, Lauer was quoted as stating that the funds' "secret" was to seek out "fallen angels" – companies in which Wall Street firms have little or no interest. The PPM represented that "[t]he majority of the common stocks in which the Fund has and intends to invest are traded on the New York Stock Exchange, the American Stock Exchange or in the over-the-counter market in the United States of America." In recent years, however, Lauer caused the Offshore Funds to focus almost exclusively on roughly a dozen stocks traded on the over-the-counter ("OTC") market. OTC securities are securities that are not traded on an exchange such as the NYSE, NASDAQ or AMEX, usually due to an inability to meet listing requirements.

110. For each of the years between 2000 and 2003 inclusive, the great majority of the Offshore Funds' trading activity was for securities traded on the OTC markets, as opposed to the NYSE, NASDAQ or AMEX. Similarly, a significant portion of the Offshore Funds' total purported market value became concentrated in investments in a handful of companies with shares traded in the OTC markets.

111. As of December 31, 2001, approximately 74% of Offshore's purported market value was comprised of securities in only eight such companies. Similarly, as of December 31, 2002, approximately 84% of Offshore's purported market value was comprised of securities in only nine such companies, including the Target Companies.

112. Lauer's interest in the Target Companies, and his depletion of the Offshore Funds' assets into these companies, was not the result of his interest in any fundamental value in their businesses. The Target Companies had little or no earnings in 2000 or thereafter. In fact,

several of them had no material business operations. Only one of the Target Companies realized a profit in 2001, and that was a direct result of cancellation of debt, not from business operations.

113. Rather, Lauer depleted the Offshore Funds and invested in the Target Companies to further his own interests. The Target Companies were used by Lauer to inflate the purported NAV of the Offshore Funds and, as a result, the fees paid to Lauer and the Citco Defendants.

114. Lauer artificially inflated the purported value of the Offshore Funds' holdings in the Target Companies by causing the Offshore Funds to acquire large blocks of restricted stock or other securities in the Target Companies in private transactions, often paying only pennies per share. Lauer would then, directly or indirectly, make manipulative trades in a comparatively insignificant amount of the unrestricted, publicly traded stock of these Target Companies. At the end of certain months, Lauer would place orders for small numbers of shares in the thinly traded Target Companies at prices much higher prices than he paid in the private transactions. Often these orders would be the only retail transactions in shares of the Target Companies during that day. OTC pricing services then would report the price paid for these publicly traded shares.

115. The Citco Defendants and the Director Defendants would then use this "last trade price" as the per-share value of the Target Companies' shares without inquiring into the nature of the end of the month trades. The Citco Defendants and the Director Defendants projected the "last trade price" value onto *all* of the shares in the Target Companies held by the Offshore Funds, including the large blocks of restricted shares acquired for only pennies per share, without determining whether this valuation method was in accordance with GAAP as the Citco Defendants were contractually required to do or without regard to their obligation to determine if the transactions were performed by a person (such as Lauer) with a personal interest in the value

of the stock. For example, if the pricing source has a relationship that might impair its objectivity.

116. Lauer's conduct, along with that of the Citco Defendants and the Director Defendants, had the effect of grossly over-inflating the values assigned to the Offshore Funds' portfolio. For example, while the book (cost) value of Offshore's portfolio as of December 31, 2000 was $274,967,678, the reported market value was $711,487,556. Similarly, while the book (cost) value of Offshore's portfolio as of December 31, 2001 was $261,908,110, the reported market value was $830,293,002. The vast majority of the unrealized increase in value was not based on any actual increase in value of the Offshore Funds' portfolio, but was the result of Lauer's manipulation of the NAV and the Citco Defendants' and the Director Defendants' knowing and reckless failure to recognize the manipulation, knowing and reckless failure to apply the valuation principles under GAAP that they were required to apply, and knowing and reckless failure to independently price the Offshore Funds.

117. Significantly, these inflated NAV's for the Offshore Funds in turn inflated the fees payable to Lancer, Lauer, and the Citco Defendants. Lauer's conduct resulted in the overpayment in the tens of millions of dollars of management, incentive, and administrative fees to Lancer and to the Citco Defendants. These "false profit" fee payments harmed the Offshore Funds by draining the Offshore Funds of value. The inflated values also leant credibility to Lauer and prolonged the life of the Offshore Funds, despite hopeless and deepening insolvency, solely for the purpose of generating fees payable to Lancer, Lauer, and the Citco Defendants.

118. The Citco Defendants and the Director Defendants should have detected the grossly over-inflated valuations of the Target Companies as well as the exercise accumulation of equity positions in the Target Companies, since both the Citco Defendants and the Director

Defendants had contractual, statutory, and common-law obligations to the Offshore Funds to discover and take appropriate steps to prevent Lauer's continuing depletion of the Offshore Funds. Instead, the Citco Defendants' and the Director Defendants' gross negligence was an essential element of Lauer's ability to do so. Lauer would not have been able to prolong the life of the Offshore Funds and continue depleting them of value but for the gross negligence of the Citco Defendants and the Director Defendants.

1. Fiscal Year 2000 Holdings

119. As of December 31, 2000, the Offshore Funds' stated NAV consisted largely of holdings whose stated values were grossly overstated by Lauer and by the Citco Defendants. The Citco Defendants' failure to determine fair value for these holdings in accordance with GAAP fell well below the applicable standard of professional care and their contractual requirements.

(a) The Skynet Bridge Loans

120. As of December 31, 2000, Offshore had three outstanding bridge loans to Skynet Holdings, Inc. ("Skynet"), totaling $8,500,000, and Orbiter had an outstanding loan to Skynet of $1,600,000. The loans, however, were in default, and Skynet had filed for bankruptcy in June 2000.

121. Skynet's filings with the SEC – which were publicly available through various sources to the Citco Defendants and the Director Defendants – reflected that Skynet had filed for bankruptcy and that Offshore's $8,500,000 in loans was secured by nothing more than a third-position security interest in a Skynet subsidiary.

122. Moreover, a June 30, 1999 Skynet filing with the SEC stated that "[w]e believe that during the past several years [the subsidiary] has incurred substantial operating losses and presently has a negative net worth of approximately $8 million."

123. In light of this publicly available information, the Offshore Funds' obvious inability to recover the original value of the loans secured by a third-position security interest in a bankrupt entity, and contrary to GAAP, the Citco Defendants and the Director Defendants abdicated their respective responsibilities to value these loans at their fair value. Instead, the Citco Defendants and Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence carried the Skynet bridge loans at their full face value on Offshore's ledgers for purposes of NAV calculation.

124. Because of the bankruptcy, the Skynet Bridge Loans were later sold to a third party for approximately 3% of their total face value.

(b) SMX

125. As of December 31, 2000, Offshore owned common stock and warrants in SMX valued by Lauer at a total of $188,734,700. This represented approximately 27% of Offshore's total NAV as stated by Lauer. This valuation also represented a purported gain to Offshore of $186,379,890, according to Lauer.

126. The Citco Defendants and the Director Defendants knew or should have known the following about SMX's true condition as of December 31, 2000:

a. SMX had *no* revenues for the year.

b. SMX was a shell company with *no* operations of any kind.

c. SMX had total assets of only $2,154,244, made up of cash and one note receivable.

d. SMX was a non-reporting entity that did not file any publicly available financial information.

127. Even if the NAV stated by Lauer had not been manipulated through month-end trading, the valuation stated by Lauer was obviously inaccurate because it failed to account for the fact that 99.6% of Offshore's holdings in SMX consisted of restricted shares, which had been

acquired privately for $2,032,400, at an average cost per share of 36¢. These shares should not have been valued at the last closing price (which was based on transactions related only to unrestricted shares), even if legitimate, because they could not have been freely sold at such price. But, by using Lauer's manipulated market valuation of $27 per share, which the Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence used for NAV calculations, these restricted shares inaccurately reflected a gain of $150,274,600.

(c) Fidelity First

128. As of December 31, 2000, Offshore owned stock and warrants in Fidelity First valued by Lauer at a total of $39,510,715. This represented approximately 5.7% of Offshore's total NAV and represented a purported gain to Offshore of $31,310,359.

129. Yet the Citco Defendants and the Director Defendants knew or should have known the following about Fidelity First's true condition as of December 31, 2000:

a. Fidelity First had revenues from discontinued operations of only $810,696 for the year.

b. Fidelity First had *no* operations of any kind.

c. Fidelity First had a *negative* net worth of $753,520.

d. Fidelity First was a non-reporting entity that did not file any publicly available financial information.

130. Even if the NAV stated by Lauer had not been manipulated through month-end trading, the valuation stated by Lauer was obviously inaccurate because it failed to account for the fact that 90% of Offshore's holdings in Fidelity First consisted of restricted shares, which had been acquired privately for $5,238,856, at an average cost per share of $5.69. These shares should not have been valued at the last closing price (as a result of transactions related only to unrestricted shares), even if legitimate, because they could not have been freely sold at such

price. But, by using Lauer's manipulated market valuation of $22 per share, which the Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence used for NAV calculations, these restricted shares inaccurately reflected a gain of $15,005,723.

(d) Nu-D-Zine

131. As of December 31, 2000, Offshore owned stock and warrants in Nu-D-Zine valued by Lauer at a total of $51,329,445. This represented approximately 7.4% of Offshore's NAV and represented a purported gain to Offshore of $50,897,333.

132. Yet the Citco Defendants and the Director Defendants knew or should have known the following about Nu-D-Zine's true condition as of December 31, 2000:

a. Nu-D-Zine had *no* revenues for the year.

b. Nu-D-Zine was a shell company with *no* operations of any kind.

c. Nu-D-Zine had total assets of only $354,128, made up of $300,000 in cash and a $4,128 deferred tax asset

d. Nu-D-Zine was a non-reporting entity that did not file any publicly available financial information.

133. Even if the NAV stated by Lauer had not been manipulated through month-end trading, the valuation stated by Lauer was obviously inaccurate because it failed to account for the fact that 99.6% of Offshore's holdings in Nu-D-Zine consisted of restricted shares, which had been acquired privately for $425,000 at an average cost per share of 2¢. These shares should not have been valued at the last closing price (which resulted from transactions related to only unrestricted shares), even if legitimate, because they could not have been freely sold at such price. But, by using Lauer's manipulated market valuation of $1.06 per share, which the Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or

with gross negligence used for NAV calculations, these restricted shares inaccurately reflected a gain of $21,728.320.

2. The Fiscal Year 2000 Holdings of Orbiter and Viator

134. Like Offshore, Orbiter and Viator held securities in many of the same Target Companies, including Fidelity First, SMX, Total Film and World Wireless.

135. Using Lauer's and the Defendants' valuations, these securities represented $20,329,276 of Orbiter's total holdings, or 45%, in the fiscal year 2000 financial statements. They represented $12,595,904 of Viator's total holdings, or 47.8%, in the fiscal year 2000 financial statements.

136. Given the nearly worthless nature of the Skynet loans, the illiquidity of the Offshore Funds' restricted shares in SMX, Fidelity First and Nu-D-Zine, and the lack of a "quoted market price for these securities in an active market," under GAAP, the Citco Defendants and the Director Defendants should have measured the Offshore Funds' investments in the Target Companies' securities at their fair value, as determined in good faith, rather than valuing all these securities at their "last trade" price (a price that was obviously manipulated by Lauer) But, to fairly value these portfolio holdings would have meant that the Citco Defendant's fees would have been reduced accordingly. By willfully, knowingly, consciously, recklessly, and/or with gross negligence failing properly to value these investments, the NAVs for Offshore, Orbiter and Viator, as determined by the Citco Defendants and the Director Defendants, were grossly overstated. For example, in Offshore alone, despite these entities' lack of business operations, SMX was valued at $186,000,000 over its cost, Fidelity First was valued at $31,000,000 over its cost and Nu-D-Zine was valued at $51,000,000 over its cost.

3. Fiscal Year 2001 Holdings

137. As of December 31, 2001, the Offshore Funds' stated NAV consisted largely of holdings whose stated values were grossly overstated by Lauer and by the Citco Defendants and Director Defendants. The Citco Defendants' failure to determine fair value for these holdings in accordance with GAAP fell well below the applicable standard of professional care and their contractual requirements.

(a) Target Company Valuations

138. On June 18, 2002, Lauer provided the Citco Defendants and the Director Defendants with copies of valuation memoranda for ten companies (individually as "FY 2001 Valuation Memo"), including SMX, Fidelity First, Nu-D-Zine, Total Film, Lighthouse Fast Ferries, Inc., The Credit Store, Inc., Wolfpack Corp., EPL Technologies, Inc., Biometrics, and MPC.

(i) SMX

139. As of December 31, 2001, Offshore owned common stock and warrants in SMX valued by Lauer at a total of $133,416,942. This represented approximately 16% of Offshore's NAV and represented a purported gain to Offshore of $129,173,554.

140. Yet the Citco Defendants and the Director Defendants knew or should have known the following about SMX's true condition as of December 31, 2001:

a. SMX had revenues of only $99,441 for the year.

b. SMX was still a shell company with *no* operations of any kind.

c. SMX had total assets of only $1,282,034, comprised of cash and an amount owed to it from settling a lawsuit.

d. SMX was a non-reporting entity that did not file any publicly available financial information.

141. In the SMX FY 2001 Valuation Memo, Lauer justified the valuation of Offshore's holdings in SMX on the grounds that the company "has identified numerous potential acquisition candidates, one of which is Space Logic Ltd. (SLL)." Yet, the purported acquisition had not occurred as of the date of Lauer's memo and never actually occurred.

142. Even if the NAV stated by Lauer had not been manipulated, the valuation stated by Lauer was obviously inaccurate because it failed to account for the fact that 98.7% of Offshore's holdings in SMX consisted of restricted shares, which had been acquired privately for $2,032,400, at an average cost per share of 19¢. Offshore actually received approximately 5,000,000 shares of SMX during 2001 at zero cost. These shares should not have been valued at the stated price because they could not have been freely sold at such price. But, by using Lauer's manipulated valuation of $12.25 per share, which the Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence used for NAV calculations, these restricted shares inaccurately reflected a gain of $126,994,600.

(ii) Fidelity First

143. As of December 31, 2001, Offshore owned stock in Fidelity First valued by Lauer at a total of $120,192,474. This represented approximately 14.3% of Offshore's NAV and represented a purported gain to Offshore of $110,618,648.

144. Yet the Citco Defendants and the Director Defendants knew or should have known the following about Fidelity First's true condition as of December 31, 2001:

a. Fidelity First had non-operating revenues of only $106,768 for the year.

b. Fidelity First had *no* operations of any kind.

c. Fidelity First had total assets of only $81,646 and a *negative* net worth of $424,669.

d. Fidelity First was a non-reporting entity that did not file any publicly available financial information.

145. In the Fidelity First FY 2001 Valuation Memo, Lauer justified the valuation of the Fidelity First warrants in Offshore's portfolio on the grounds that Fidelity First "has developed an acquisition strategy to build a new type of financial services company. The concept is based upon the acquisition of Columbia National and or Vcross . . .." Yet, the purported acquisitions had not occurred as of the date of Lauer's memo and never actually occurred.

146. Even if the NAV stated by Lauer had not been manipulated through month-end trading, the valuation stated by Lauer was obviously inaccurate because it failed to account for the fact that 99.7% of Offshore's holdings in Fidelity First consisted of restricted shares, which had been acquired privately for $5,599,176, at an average cost per share of 10¢. These shares should not have been valued at the stated price because they could not have been freely sold at such price. But, by using Lauer's manipulated valuation, which the Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence used for NAV calculations, these restricted shares inaccurately reflected a gain of $113,984,719.

(iii) Nu-D-Zine

147. As of December 31, 2001, Offshore owned stock and warrants in Nu-D-Zine valued by Lauer at a total of $138,570,918. This represented approximately 17% of Offshore's NAV and represented a purported gain to Offshore of $137,289,208.

148. Yet, the Citco Defendants and the Director Defendants knew or should have known the following about Nu-D-Zine's true condition as of December 31, 2001:

a. Nu-D-Zine had *no* revenues for the year.

b. Nu-D-Zine was a shell company with *no* operations of any kind.

c. Nu-D-Zine had total assets of only $1,779,385.

d. Nu-D-Zine was a non-reporting entity that did not file any publicly available financial information.

149. In the Nu-D-Zine FY 2001 Valuation Memo, Lauer justified the valuation of the Nu-D-Zine warrants in Offshore's portfolio on the grounds that Nu-D-Zine "has identified numerous potential acquisition candidates, one of which is Active InterMedia, Inc. (AIM)." Yet the purported acquisition had not occurred as of the date of Lauer's memo and would never actually occurred.

150. Even if the NAV stated by Lauer had not been manipulated, the valuation stated by Lauer was obviously inaccurate because it failed to account for the fact that 98.8% of Offshore's holdings in Nu-D-Zine consisted of restricted shares, which had been acquired privately for $925,000, at an average cost per share of 3¢. These shares should not have been valued at the stated price because they could not have been freely sold at such price. But, by using Lauer's manipulated market valuation of $3.10 per share, which the Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence used for NAV calculations, these restricted shares indicated a gain of $82,193,750.

4. Continuing Failure as Fund Administrator and as Directors

151. Lancer and Lauer retained Stenton Leigh Capital Corp., ("Stenton Leigh") a purported security valuation expert, to prepare and provide valuation reports for four Target Companies – Nu-D-Zine, MPC, Biometrics and SMX. No valuation reports were provided for the remaining six companies for which such a report was requested by Lancer.

152. Stenton Leigh's valuation reports, however, used inappropriate and unrealistic projections, hypotheticals, and assumptions, and as such, could not be considered sufficient, reliable or adequate evidence upon which to value these securities "in good faith". More importantly, Stenton Leigh's principal, who executed the reports, stated therein that Stenton Leigh's "engagement is not of an independent nature and that I, my companies or affiliates may own shares in this Company or other LANCER-owned or LANCER-controlled companies."

153. In fact, Stenton Leigh shared the same address in Boca Raton, Florida as Biometrics, one of the companies that it was called upon to value, and the same address and phone number as Nu-D-Zine, another of the companies it valued. Principals of Stenton Leigh served as directors and officers of Biometrics, Nu-D-Zine, and SMX – three of the four Target Companies that Stenton Leigh valued at Lancer's request. Stenton Leigh was also a shareholder of MPC - the only other company Stenton Leigh was asked to evaluate. These blatant conflicts of interest were either known to the Citco Defendants and the Director Defendants or should easily have been discovered through basic due diligence in investigating the admittedly non-independent experts from whom the Citco Defendants and Director Defendants received valuation reports. At a minimum, the reports themselves revealed Stenton Leigh's lack of disinterestedness.

154. A comparison of Lauer's patently deficient justifications for his valuations with the true conditions of the Target Companies again makes the Citco Defendants' and the Director Defendants' gross negligence readily apparent. The true conditions of the Target Companies were either known or should have been discovered by the Citco Defendants and the Director Defendants through the exercise of their professional responsibilities simply by requesting copies of the Target Companies' financial statements and similar information. Instead, the Citco Defendants and the Director Defendants recklessly relied upon the "last trade" price as frequently supplied by Lancer itself in performing their NAV calculations.

155. The Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence continued abdicating their responsibilities as the independent fund administrator and as fund directors in valuing the Offshore's Funds holdings in the Target Companies.

156. Even with respect to the four securities for which Lauer provided valuation reports prepared by a conflicted expert, the Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence failed to follow GAAP. GAAP requires the Board of Directors to take into consideration all available indications of fair value. Also, the Defendants should have considered the conflicted nature of the evaluator.

157. Similarly, the Citco Defendants should have satisfied themselves independently that the methods used to estimate fair value in good faith were reasonable and appropriate and that the resulting valuations represented fair value. Given Stenton Leigh's lack of independence and its use of inappropriate and unrealistic projections, hypotheticals and assumptions, their valuations could not have been used as a basis to determine fair value. Similarly, the FY 2001 Valuation Memoranda also failed to provide a reasonable basis to determine the fair value of the ten companies Lauer discussed.

158. Given the illiquidity of Offshore's restricted shares in the Target Companies, and the lack of a "quoted market price [for the securities] in an active market," under GAAP, the Citco Defendants and the Director Defendants should have measured Offshore's investment in these companies' securities at fair value in good faith in accordance with GAAP. Because the Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence failed to do so, Offshore's NAV as of December 31, 2001 was grossly overstated. For example, SMX's valuation was approximately $129,000,000 over cost, while Fidelity First's valuation was approximately $110,000,000 over cost, and Nu-D-Zine's valuation was approximately $51,000,000 over cost.

VII. THE CITCO DEFENDANTS GRASP FOR WAYS TO AVOID LIABILITY AND ADMIT THAT THEY FAILED IN THEIR DUTIES

159. As early as October 1996, the Citco Defendants and the Director Defendants understood the valuation risks that the Offshore Funds and the investors were subjected to, as reflected on the October 31, 1996 memo from one of Citco's internal auditors, Ger Jan Meijer, to Defendant Quilligan, among others, and copied to, Defendant Stocks, among others (the "October 1996 Memo"). The October 1996 Memo, a copy of which is attached hereto as Exhibit "N", specifically states:

To: Sjaco Kroon
Declan Quilligan

From: Ger Jan Meijer

C.c.: Ben Jansen
Tony Stocks
John Verhooren
Edward Heidema

Date: October 31, 1996

Subject: Review NAV statements of Lancer Offshore, Inc. as of September 30, 1996

Herewith you receive some comments re the of Lancer Offshore Inc., as per September 30, 1996.

1. General

Lancer Offshore, Inc. (the "Fund") is a British Virgin Islands corporation. The Fund started operations in November 1995. Since November 1995 the net asset value per share increased from USD 100 to USD 189.72.

Directors of the Fund:	Anthony Stocks John Verhooren Inter Caribbean Services Ltd.
Investment manager:	Lancer Management Group LLC
Auditors:	Ernst & Young
Administration fee:	8 b.p. (minimum USD 750 per month for NAV up to USD 5 million, USD 1,250 for 5 till USD 10 million and USD 1,750 for 10 till USD 20 million.

DRAFT FOR DISCUSSION PURPOSES ONLY

Net assets on September 30, 1996 USD 10,803,551

1. Reg S deals

One of the investments activities of the Fund is Regulation S ("Reg S") deals. Under Reg S companies can sell unregistered securities to foreign investors without first registering the deal with the SEC. The foreign investors must hold the securities for at least 40 days, at which point (62%) of the increase of net assets resulting from operations (total USD 4,478,415) for 1996 can be allocated to Reg S dealing in EPL Technologies Inc. Shares of this company (with 40 days restriction) were purchased for USD 2.50 on the moment the market value was USD 6.25.

CITCO values the restricted securities immediately as common shares, which results in most of the cases directly in a high unrealized gain on the deal.

I do not agree with to value restricted shares as common shares, because of:

- its against the prudence concept;
- the value of the restricted shares are lower, because of the restriction;
- the market price can get a drop as soon as restricted securities are offered to the market. The offering of large quantities of shares resulting from Reg S will have a negative influence on the market value (watering).

In my opinion the accounting principles re restricted securities have to be amended. I propose a method with a daily appreciation from purchase price to expected market value. In this case the expected market value is the market value minus a discount percentage for watering. The discount percentage should depend

> from the quantity of restricted shares to be offered and the normal sales volumes on the market.
>
> I propose to ask the external auditors for a confirmation for the method to use.
>
> Furthermore I recommend to discuss with Kevin Meehan the disclosure requirements for the Fund for situations that a material (5 or more) percentage of interests in a company is held by the Fund.

* * *

160. As reflected by the October 1996 Memo, the Citco Defendants and the Director Defendants recognized very early in their affiliation with the Offshore Funds the importance of discounting the price of holdings in the Offshore Funds portfolio that are restricted and holdings in which the Funds held a 5% or more stake.

161. Yet, as reflected above, the Citco Defendants and the Director Defendants knowingly, consciously, recklessly, and/or with gross negligence failed to comply with their own recognized standards for valuing the portfolio.

162. Even in September 2001, Defendant Quilligan recognized that Lancer's valuations were absurd. In an e-mail that Quilligan sent to Defendant Conroy (attached hereto as Exhibit "O"), Quilligan admitted to his fellow director that the Lancer portfolio valuation had no basis in reality:

> From: Quilligan, Declan CUR
> Sent: Friday, September 21, 2001 5:20 AM
> To: Conroy, Kieran DUB
> Subject: FW: Lancer NAV
>
> I took a detailed look at the pf following notification by Serge of what valuation Lancer wanted to put on a prfd stock just recently bought. As far as I am concerned 75% of the portfolio is very illiquid with absurd valuations relative to the cost which is on average a fraction of the market value. Warrants are grossly overvalued and have been since start of year as the broker statement prices for wts have merely been accepted. Lancer accept

> this and agreed to write down such wts before end of year. PWC signed off on the latest financial statements to be released tomorrow but I am quite concerned. It appears to me that they have put absurd valuations on illiquid stocks since the start of the year in particular in order to compensate for serious losses from some of their P/E or reg D deals.

163. In later conversations amongst themselves, the Citco Defendants and the Director Defendants knew that these investments could not sustain the valuations placed on the various stock holdings, yet all failed to report these problems to anyone outside the Citco organization. For example, discussions in February 2002 recognized that the valuation placed on Total Film by the Offshore Funds was unrealistic at best. Ger-Jan Meyer wrote an e-mail to Defendant Quilligan on February 4, 2002 (attached hereto as Exhibit "P"), identifying this issue:

> From: Meyer, Ger-Jan CUR
> Sent: Monday, February 4, 2002, 5:30 PM
> To: Quilligan, Declan CUR
> Subject: Lancer
> Importance: High
>
> Bram Gedopt came to me and told me that he does not feel comfortable with the valuation with the Total Film Group. He has background information that the company has serious trouble, but Lancer is still showing a very high unrealized gain (cost USD8 mio market 35 mio) He has to issue the January 31, 2002 financials in this week. I think there is a serious risk that PWC want to adjust the valuation per December 31, 2001.
>
> I understood that you are away until February 12. Do you want that I contact Gino Nivilac to get a solution here?
>
> Rgrds,
>
> Ger Jan

164. Shortly thereafter and on February 6, 2002, Defendant Quilligan and Edward Heidema of Citco N.V. traveled to New York to meet with Lancer personnel, including Michael Lauer, Bruce Cowen, Martin Garvey, and David Newman. Quilligan sent the following recap

via e-mail of this meeting to Keunen in Miami and Conroy in Dublin (attached hereto as Exhibit "Q"):

From: Quilligan, Declan CUR
Sent: Wednesday, February 06, 2002 11:52 PM
To: Keunen, William MIA; Heidema, Edward CUR
Cc: Fenlon, Greg CUR; Conroy, Kieran DUB
Subject: RE: Lancer problems

William,
The meeting with Lancer this afternoon was unpleasant. Michael Lauer, Bruce Cowen, Marty Garvey and Dave Newman all attended and Edward was with me. They think their valuations of the portfolio is reasonable and are very much of the view that the market priced all the dot.coms [sic] and the Yahoo's etc of this world because of perception and nobody raised valuation issues for Funds that held these. We got off to a bad start when it turned out that an investigation into Fidelity First Financial Corp actually had no relevance to Lancer as the company they are invested in is First Fidelity Financial Corp which they say is a totally unrelated company. We stressed the risk awareness approach we are taking and that the Fund had been identified as one requiring extra scrutiny. They want time to put what we have asked for together and do not feel that the NAV should be delayed pending them acculating [sic] this information. They invited us to meet representatives from all these companies and if we wished to attend some of their meetings etc. Did any of this make me feel more comfortable, not really. Although they take haircuts on two positions they are hugely aggressive in valuing thinly traded stocks and Note they did say that all their investors know exactly what they are doing, that they speak to them regularly etc. They said they had replacement directors in line, one of which is an investor in the Fund and the other who is well known in the financial world (Eddie can you remember the name). Also Michael mentioned that if we were concerned that hey we could just walk away if we wished and Marty made a point of bringing up any mistake that we ever made. At this stage although there is subscription activity of $14m should we give them that time frame to collate everything we need and then on the basis of that make an informed decision of what we want to do. Note the below is a brief description of some of the large positions in the portfolio which I got sent to me from Curacao. Eddie can you add anything to the above? Is the next email that I will send in a minute a suitable one to send to Michael Lauer or should we add more or make it sound better. I am travelling [sic] for four hours between 8 and 12 tomorrow morn

but will be in touch soon thereafter. Kieran do you have anything to add. PWC are also concerned.

Rgds
Declan

AUG Corp.
AUGC suspended ongoing operations in 1/1/1999 and is currently seeking buyers or strategic partners for further development of its existing technology, as well as merger opportunities. For the 9 months ended 09/30/01, the company reports no revenue. Net loss before extraordinary item fell 69% to $48,000. Results reflect the suspension of revenue generating activities. Lower loss reflects the absence of $90,000 in interest expenses and $108,000 in other income.

NU-D-ZINE
No ready information available on this one, which is a concern in itself I would say.

SMX Corp – valued at over $130m
Issue: April 23, 2001
LAKE MARY, Fla., April 23 /PRNewswire Interactive News Release/ -- FARO Technologies Inc. (Nasdaq: FARO), a leading provider of computer-aided manufacturing measurement (CAM2) solutions, today announced that it has entered into an agreement with SMX Corp. of Kennett Square, PA to provide SMX up to $3.0 million in new financing. As part of this financing arrangement, FARO and SMX have executed a letter of intent for an option to acquire SMX.

SMX Corp. is a leading manufacturer and worldwide supplier of laser tracers and targets as well as metrology software and contract inspection services. Laser trackers are highly accurate, portable, coordinate measurement machines used to make three-dimensional measurements of tooling, fixtures, large parts and other large objects in a wide variety of industrial, scientific and commercial applications.

"Our financing and intended option to acquire SMX provides FARO an excellent opportunity to expand our product line with a complementary measurement technology to better serve our worldwide customer base," said Simon Raab, FARO's President and CEO.

> **Total Film Group**
> As part of the ongoing effort to restructure Total Film Group (the "Company") to profitability in the future, the Company reduced its workforce by approximately 75% at its Beverly Hills headquarters. The announced layoffs were due to the underperformance of the Company's two most recent motion pictures released through Paramount Classics: My First Mr. and Bride of the Wind.
>
> The Company, which has incurred ongoing losses from operations recently divested itself of all non-core business segments.
>
> Current market conditions have and are significantly affecting the Company's operating results and liquidity. In the near future, the Company will be forced to make difficult decisions regarding its plan of operation and capital structure. Currently, there is no assurance that the Company will be able to continue to fund its operations through the sale of equity or by issuance of debt instruments.

165. Despite this litany of problems with Offshore and on February 7, 2002, Keunen responded to Quilligan's e-mail by directing Citco N.V. to, "send out the NAV for Jan." (attached hereto as Exhibit "Q").

166. As demonstrated by the above email excerpts, the Citco Defendants and Director Defendants could have easily obtained independent information to verify the true value of the portfolio companies throughout their administration of the Offshore Funds.

167. It was not until March, 2002, however, that the Citco Defendants and Director Defendants apparently decided that the valuation problems had reached a crisis point. At that point, they finally decided to consult Lauer, as reflected by an e-mail exchange between Defendant Quilligan, Michael Lauer and Bruce Cowen, a Lancer insider, in March and April 2002. This exchange, which is attached hereto as Composite Exhibit "R", reflects that the Citco Defendants and the Director Defendants understood but ignored the risks that the Funds and their investors were exposed to:

From: Quilligan, Declan CUR [Dquilligan@citco.com]
Sent: Wednesday, March 27, 2002 9:55 PM
To: Bcowen@thelancergroup.com; Michael Lauer
Subject: RE: Memo Valuation Dec 31, 2001 and 2002

Bruce, Michael,
If you cannot get us the full detail re backup to the portfolio valuations that you already committed to give to us by March 31 please let me know what you can provide. We committed to our internal audit and compliance dept on the basis of your commitment to me to have detailed back up to valuation issues by this month end. Senior management of Citco are aware of the valuation issues and are keenly awaiting the data you promised. What can we get prior to March 31?

Pls let me know so we can move forward

Thanks
Declan

* * *

From: Quilligan, Declan CUR [mailto: DQuilligan@citco.com]
Sent: Monday, April 08, 2002 10:53 PM
To: bcowen@thelancergroup.com
Cc: mlauer@thelancergroup.com
Subject: Our discussion today

Bruce,

Just to confirm our discussion today. Citco needs to receive the full documentation, financial analyses, future plans etc that will justify the valuations that Lancer Management consistently say are fair and reasonable for the major positions in the portfolio. We were to receive such by March 31 but you have stated that due to a number of circumstances you were unable to collate the material in that timeframe. In order to properly evaluate such material prior to the next month end Citco requires such documentation by Tuesday April 23. If Citco has not received the requested documentation at that juncture Citco will have to consider its position carefully in the context of our internal risk management policies and other considerations.

Best regards,

Declan

* * *

From: Bruce Cowen [mailto:bcowen@thelancergroup.com]
Sent: Tuesday, April 09, 2002 8:30 AM
To: Quilligan, Declan CUR
Subject: RE: Our discussion today

* * *

Our first requirement is to continue to manage the Fund to ensure that we are performing our fiduciary responsibility to our investors, which we will continue to do. Secondly, we are preparing the necessary information for the audit and have engaged a firm to perform valuation services on certain positions as we feel this will be most beneficial to PriceWaterhouseCoopers in rendering an opinion on our financial statements.

* * *

In the meantime, I will prepare a memorandum, in some detail, on our major positions and present it to you by your deadline of April 23rd.

* * *

From: Quilligan, Declan CUR [DQuilligan@citco.com]
Sent: Thursday, April 11, 2002 4:55 PM
To: Bruce Cowen; mlauer@thelancergroup.com
Subject: RE: Our discussion today

Bruce, Michael,
Let me again reiterate that we are looking for comfort as regards valuation issues in the context of a risk management approach that is part of Citco's policies and procedures. We had an understanding that we would get information from Lancer Management by March 31 and not receiving that did cause us some difficulty. You are correct as regards what you say as regards small staff etc and I fully understand that point and the fact that you have a fiduciary responsibility to shareholders. You are also correct in saying that Citco and Lancer have always had a very good relationship and I very much hope that any tension that may have arisen over our requests for backup documentation will dissipate once we receive and are comfortable with the documentation provided.

> I regard the fact that you have engaged a valuation firm to perform valuation services as extremely positive and I much look forward to receiving the detailed memorandum on or before April 23 which will give us the time we need to go through it before month end.
>
> Please see attached the administration agreement. As part of computing the NAV we need to gain comfort about the valuation of the portfolio. With 6 thinly traded securities making up a very significant portion of the portfolio and net assets we feel it is appropriate to gain as much comfort as we can about these positions and on a regular basis and not just at audit time. You and Lancer Management do have an integral role in providing that comfort required to ourselves and of course PWC.
>
> Thank you and best regards.
> Declan

168. By the time Quilligan demanded this information, however, the Defendants' internal discussions focused on finding a way to extricate themselves from association with the Offshore Funds. By this point, the Citco Defendants' and Director Defendants' last hope was that the Offshore Funds' auditor would approve the Offshore Funds' financial statements. The Citco Defendants and the Director Defendants believed that the best method for avoiding liability was the auditors' approval of the financial statements.

169. Nevertheless, Citco personnel internally admitted that the Citco Defendants' and the Director Defendants' own management of the Offshore Funds was an utter failure. Internal auditor Ger-Jan Meyer prepared a valuation memorandum for wide dissemination inside The Citco Group regarding problems in Offshore's portfolio (attached hereto as Exhibit "S"). In relevant part, this memorandum states:

> To: Declan Quilligan
> Greg Fenlon
> Claudio Cecchini
> Bram Gedopt
>
> From: Ger Jan Meijer

C.c.: William Keunen
Dennis Dambruck
Edward Heidema
Jos Leppers
Albert van Nijen

Date: May 13, 2002

Subject: Valuation of the portfolio of Lancer Offshore Inc.

1. Introduction

CFS has concern about the possible aggressive valuation of the portfolio of Lancer Offshore Inc. and has requested the investment manager for additional background information about the valuation. We received this background information on May 8 and performed a review on it. Our findings are summarized in this memo.

* * *

3. Conclusions

* * *

3.2 Bloomberg

Most of the investments have a quotation in Bloomberg. These are obtained from the Bloomberg OTC Bulletin Board. It is doubtful if we can rely on these prices, because they look easy to manipulate by interested parties.

There are serious indications that Lancer is/was manipulating the prices for:

AUG Corp;
Method Prod;
Fidelity First Financial
World Wireless

Manipulation of market prices might be seen as a criminal action. We have jurisprudence about the Rockies funds (much smaller fund) where the directors had to pay a fine for manipulating the market price.

* * *

4. Aug Corp.

* * *

4.2 Comments on the Lancer valuation

In my opinion the valuation by Lancer is too aggressive and not based on the prudent concept:

- According to Bloomberg the trade volume is 0 to 5,000 share per week. Several weeks have no even [sic] any trading activity at all. It is doubtful that this market is a sound basis [for] determining valuation of a position of 18,000,000 shares;

- There is a risk that Lancer has influence/control over the market prices by Bloomberg. **There are even serious indications that Lancer is manipulating the market price.;**

- The market price of AUG is subject to high volatility and that could be an indication that the market price is not a sound source for valuation: (Nov 28, 2001: **6.00** / Dec 31, 2001: **3.50** / Jan 31, 2002: **5.00** / Feb 28, 2002: **5.00**).

* * *

- It is my experience that most other investment managers would value this position for not more than cost.

5. Manhattan Scientifics Inc.

* * *

5.2 Comments on Lancer Valuation

- According to Bloomberg the total number of shares is 120,900,000 per May 12, 2002;

- Total equity per March 31, 2002 is USD 1,240,000 (unaudited financials). Intrensic [sic] value per share is thus more or less USD 0.01. Market price is 20 to 30 times the intrinsic value;

* * *

5.3 Conclusion

It is my experience that a haircut of such huge positions (compared to the market volumes) should be taken. Also there will be dilution of the value per share when the warrants would be issued.

I propose a haircut of 20% on the total market value of shares and warrants – **20% x (8,001,455 + 3,200,000) = 2,240,291**

6. Method Prods Corp New common shares and warrants

* * *

6.2 Comments on Lancer valuation

Shares
- According to Bloomberg low quantities are traded. Several weeks have no even [sic] any trading activity at all. It is doubtful that this market is a sound basis [for] determining valuation of a position of 2,451,059 shares;

- There is a risk that Lancer has influence/control over the market prices by Bloomberg. **There are even serious indications that Lancer is manipulating the market price.** By the end of March the only trades were 500 shares for 5.00 on March 27 and 500 for 5.85 shares [sic] on March 28. Lancer was purchasing these quantities. Also for other months Lancer is always purchasing just before month end;

- The market price of Method Prod is subject to high volatility and that could be an indication that the market price is not a sound source for valuation: (April 25, 2002: **3.25** / April 30, 2002: **6.05**)

* * *

- It is my experience that most other investment managers would value this position for not more than cost.

7. Nu-D-Zine Bedding and Bath Inc

Pending: waiting for background information. No information found in Bloomberg.

8. SMX

* * *

8.2 Comments on Lancer valuation

- The trade volume according to Bloomberg is very thin if compared with the holdings by the fund;

- It is normal practice to take a haircut on the market price when having such huge positions;

- There is a risk that Lancer has influence/control over the market prices by Bloomberg;

- The market price is subject to high volatility and that could be an indication that the market price is not a sound source for valuation.

* * *

9. World Wireless Communication

* * *

9.2 Comments on Lancer valuation

- The trade volume according to Bloomberg is thin if compared with the holdings by the fund;

- It is normal practice to take a haircut (15-20%) on the market price when having such huge positions;

- There is a risk that Lancer has influence/control over the market prices by Bloomberg. Why is Lancer purchasing little quantities while they obtain large quantities of shares with the private placements . . .?

- Please note that Lancer Partners LP and Orbiter Fund LP have also positions.

* * *

10. Fidelity First Financial

* * *

10.2 Comments on valuation by Lancer

There are almost not [sic] quantities traded on the market and probably the only trades are made by the Lancer group. Such trades are always made just before month end. It is my opinion the Bloomberg prices is [sic] not good basis for valuation and **there are even serious indications that Lancer is manipulating the market prices.**

Emphasis in original.

170. Ger-Jan Meyer's memo was sent to Keunen for his review and comment. His response was to forward the memo to all Citco Executive Directors on May 22, 2002, addressing his comments to Christopher Smeets:

> From: Keunen, William MIA
> Sent: Wednesday, May 22, 2002, 7:48 PM
> To: zz*Citco All Executive Directors
> Cc: Quilligan, Declan CUR; Verhooren, John GEN; Conroy, Kieran DUB; Peller, Jay NYC
> Subject: Lancer
>
> Chris, as I mentioned to you yesterday, here is the story about Lancer, a fund that has been administered out of Curacao since its inception in 1995.
>
> Recently the management team in Curacao have become concerned about the pricing policy of the Fund, in particular with respect to its less liquid positions which at their current reported value make up two thirds of the value of the portfolio. We began by discussing our concerns with the Investment Manager and then asked for back-up in the form of reports about the relevant companies. To date two of seven reports have been received and they do not make for pleasant reading. Then we had our internal audit group perform a detailed analysis of the positions. Their report is enclosed. The upshot is that there are a handful of positions which we feel the IM has at the least grossly over-valued and at worst manipulated the month end valuations by executing large buys close to month end that force the price up. The whole situation was discussed during my visit to Curacao.
>
> Other issues to be taken into consideration:
>
> - The pricing policy of the Fund as stated in the Prospectus is clear – value positions at latest closing price – the Fund follows this policy and a strict interpretation of such indicates that it is not breaking its rules.
>
> - Our personal directors (Kieran and Declan) resigned earlier this year.
>
> - The Fund's auditors, PwC Curacao have signed each year's audit report up to 2000, but have still not signed off 2001. Their deadline is Irish Stock Exchange imposed – June 30. They recently collected the company reports we requested from the IM. If PwC decide not to sign, our mission is clear – resign

immediately. Declan is in touch with them, but they don't seem to be in any hurry and the May 31 NAV cycle looms.

- If PwC do sign, we should still consider our exit strategy, but by doing is likely to create shock-waves that could cause significant distress, and our association will not be pretty.

We will keep you posted – comments welcome.

Rgds, William

171. Keunen followed this up with discussions with Jay Peller of the New York City Citco operations. Peller agreed to check with Tudor Investments personnel to see if their people had heard of any of the companies in question.

172. Rather than passing their conclusions along to the Independent Directors, investors, or appropriate authorities as to the Offshore Funds' true condition, the Defendants instead continued plotting for their own exit as fund administrator. The issues with the Offshore Funds were discussed and decided at The Citco Group's highest level – its executive committee, meeting in New York City in May 2002. These e-mails contain clear evidence of the complete failure of the Defendants to live up to their duties and obligations. The e-mails attached hereto as Composite Exhibit "T" state:

From: Keunen, William MIA
Sent: Tuesday, May 28, 2002
To: Peller, Jay NYC; Barten, Dre NYC; Conroy, Kieran DUB; Verhooren, John GEN
Cc: Quilligan, Declan CUR
Subject: RE: Pause for thought...

The other topic for the EC in NY this week will be Lancer – we need to have our strategy in place. I know that Jay was speaking to people at Tudor on that – plus did we receive any more reports Declan?

They have also requested a copy of the watch-list – Declan, could you work on that based on what we discussed last week – plus any updated information?

Thks, William

* * *

From: Verhooren, John GEN
Sent: Wednesday, May 29, 2002 5:15 AM
To: Quilligan, Declan CUR; Keunen, William MIA; Peller, Jay NYC; Barten, Dre NYC; Conroy, Kieran DUB
Subject: RE: Pause for thought...

Declan,
any news from PWC?

I think their signing off is crucial. If they don't, all will come out and we will get the blame since it will be perceived that we never saw or reported it. This would be very bad news for us.

If they sign off, we still have time for an exit scenario. I think we should consider reporting this to whichever (US) authority could be responsible for this. At least that way it looks like we uncovered the problems. We have been following the accounting guide lines by taking the prices from official sources, but because of our internal controls and because of the good work of our internal audit and compliance department we uncovered this 'fraud.' (If we do this, obviously we should be 100% sure that it is fraud).

We probably should ask legal advice in any case as soon as possible. I don't think we need more valuation books to get more confirmation about the situation.

regards,

John

* * *

From: Quilligan, Declan CUR
Sent: Wednesday, May 29, 2002 12:11 PM
To: Verhooren, John GEN; Keunen, William MIA; Peller, Jay NYC; Barten, Dre NYC; Conroy, Kieran DUB
Subject: lancer

I received this email this morn. I have also scanned the introductory page to Stenton Leigh, the valuation firm which

> Lancer has used (has anybody heard from them) which I took from the internet.
>
> After we receive what is mentioned below I believe we/PWC will have valuation books for the 6 largest positions.
>
> Now that we have the name of the valuation firm I suggest I ask Lancer can we contact them direct, if they refuse we should resign because we cannot work properly under such restrictions. If they accede then we can ascertain if the valuation books we received are fully the work of Stenton Leigh and whether they fully stand over the valuations, their name is not mentioned in the valuation books or if it is I have not seen it. If they do stand over them it's a plus, its an independent party with industry expertise certifying the valuations, if they don't the whole thing has been a non-exercise and again on that basis we should resign. I think it is clear at this stage that our view is that the positions should be haircutted. If the IM is not prepared to revalue them then because our comfort level has been reduced we should resign. We should get legal advice before we confront the IM for a face to face high level discussion on the matter of haircutting because at this meeting it would have to be a "if you don't do this we will walk" situation. I think if we go this route and have this meeting we should look for an explanation of some of the small trades at end of month that appear to make little sense to us. We should get legal advice on that too. If the explanation don't [*sic*] make any sense then we might have obligations. Once we resign we will need legal advice as regards our notice to shareholders.
>
> As regard PWC we gave them the valuation books which Gino himself is examining. I spoke to Gino and he will be looking for more back up as regards what was contained in the booklets. They have some issues wrt price decreases subsequent to year end which they want answers on. This process will drag on for another few weeks I believe and I think if they don't get the responses they need they will qualify the report.

173. Only in connection with manufacturing its own "exit scenario" did the Citco Defendants and Director Defendants investigate the Target Companies, the valuations and end-of-period trades. By this point, however, the damage to the Offshore Funds had already been done. The e-mail attached hereto as Exhibit "U" states:

From: Quilligan, Declan CUR [Dquilligan@citco.com]
Sent: Thursday, June 06, 2002 3:11 PM
To: Bruce Cowen (E-mail); Michael Lauer
Subject: Conference call this morning

Michael, Bruce,
As per our conversation the positions that we are most concerned about are the positions that have little cost attached and very significant market values relative to the overall value of the portfolio.

These positions are
AUG Corp
Fidelity First Financial Corp
Method Products, both common stock and warrants
Nu-D-Zine Bedding & Bath Inc, both common stock and warrants
SMX Corp
Total Film Group
Expression Graphics

We have Stenton Leigh valuation booklets that you have sent to us. However what we would like to obtain in order to gain comfort as to the valuations is a memorandum from yourself as Investment Manager detailing to ourselves, PriceWaterhouse Coopers and the directors of the Fund, specific relevant information as to events that will propel liquidity in order that the current valuation of these investments will be realised. I would further like to have you detail your current thinking on your exit strategy from these positions.

As regards the trades that we mentioned this morning, can you please detail in written form the reasons for the small trades involving purchase of Method Products stock on March 27, 2002 and March 28, 2002 for blocks of 500 shares at a price of $5.00 and $5.85 respectively.

Furthermore, as regards warrant valuations, we had seen a valuation placed on Nu-D-Zine warrants as of November 30, 2001 of $50m. In December, we see a significant portion of these warrants leaving the portfolio for no gain. Again, we would like your assessment of this situation.

I would appreciate receiving this information on an urgent basis.

Regards

Declan.

174. The Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence failed to fulfill their duties and responsibilities. Instead, they were more concerned about avoiding their own exposure and responsibility for the Offshore Funds' problems.

VIII. THE CITCO DEFENDANTS' AND THE DIRECTOR DEFENDANTS' ACTIONS HAVE DAMAGED THE OFFSHORE FUNDS

175. As the direct and proximate result of the Citco Defendants' and the Director Defendants' professional malpractice, breaches of fiduciary duty, breach of contract and gross negligence, the Offshore Funds have been damaged in a number of different ways. These damages were caused directly to the Offshore Funds by their former fund administrator and directors as a result of professional malpractice, breaches of fiduciary duty, breach of contract, and gross negligence, separate and apart from any damages the Citco Defendants and the Director Defendants may have caused to the investors or creditors of the Offshore Funds. The Defendants signed off on grossly inflated valuations and collected their administration fee. The Defendants collected their fees that were based on the inflated valuations, enhancing their profits while recklessly, knowingly and willfully ignoring the absurd valuations. Competent monthly portfolio valuations by the Defendants would have preserved hundreds of millions of dollars of value in the Offshore Funds: extraordinarily inflated management, incentive and administration fees would not have been paid; investments in illiquid, restricted stock would have stopped; payment of inflated redemption amounts based on the inflated NAV's would have been prevented; and the Offshore Funds would not have been able to remain in operation.

176. First, the Offshore Funds were depleted by paying extraordinary amounts in management, incentive, and administration fees to Lancer Management, to Lauer, and to the Citco Defendants and the Director Defendants. These payments were calculated using the

inflated and erroneous NAV's that the Citco Defendants and the Director Defendants willfully, knowingly, consciously, recklessly, and/or with gross negligence concocted.

177. Second, the Offshore Funds were depleted by having their value poured into continuing "investments" in various portfolio companies long after the Citco Defendants and the Director Defendants should have known that the value of such companies was grossly inflated and that none of them had significant earnings or reasonable prospects for such earnings. For example, in the case of SMX, (discussed in paragraphs 114 through 116 and 128 through 131 above), Lauer caused Offshore to invest an additional $1,000,000 into SMX in 2002. Proper performance of their professional and contractual duties by the Citco Defendants and the Director Defendants would have exposed the outlandish valuation of SMX and would have prevented the Fund's assets from being further dissipated in this manner. A similar depletion of the Offshore Funds occurred with each investment in the other Target Companies. Consequently, the Citco Defendants and the Director Defendants failed miserably in their risk monitoring functions.

178. Third, the Offshore Funds were depleted by redemptions requested by investors that were calculated by the Citco Defendants and the Director Defendants based upon the inflated and erroneous NAV's. The redemption requests were submitted and paid out under the terms of the investors' agreements with the Offshore Funds. Yet the values ascribed to the redeemed shares were based on the inflated and erroneous NAV's. But for the willful, knowing, conscious, reckless, and/or grossly negligent acts of the Citco Defendants and the Director Defendants, these amounts would have been substantially lower and, correspondingly, the depletions of the Offshore Funds' value through "normal" investor redemptions would have been much less.

179. Fourth, the Offshore Funds were able to remain in operation, incur obligations and dispose of assets long after they were insolvent, thereby increasing the insolvency and the amount of the debt that the Offshore Funds were unable to repay.

180. The Receiver requests the Court prevent any officer, director, service provider, partner or shareholder who participated in the Citco Defendants' and the Director Defendants' conduct that harmed the Offshore Funds from receiving any of the recoveries obtained by the Receiver.

IX. CAUSES OF ACTION

COUNT I

PROFESSIONAL MALPRACTICE

(The Citco Defendants and Director Defendants)

181. The Receiver hereby realleges and incorporates by reference the allegations contained in Paragraphs 1 through 180 above as if fully stated herein.

182. The Citco Defendants, as administrators for the Offshore Funds, and the Director Defendants, as employees of the Citco Defendants, owed the Offshore Funds a duty to exercise reasonable care in the performance of their duties as administrators.

183. The Citco Defendants and Director Defendants breached their respective duties to the Offshore Funds by failing to perform the requisite professional services in accordance with the standard of reasonable care required of fund administrators and directors. The Citco Defendants and the Director Defendants breached the standard of reasonable care by willfully, knowingly, consciously, recklessly and/or with gross negligence: failing to independently price the Offshore Funds; failing to independently verify the valuations stated by Lauer; failing to discover the incorrect valuations and NAV calculations reported by Lauer; failing to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors,

investors or appropriate authorities; failing to be aware of, discover and/or investigate the "red flags" set forth above; and/or failing to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

184. The Citco Defendants and the Director Defendants' breaches of their respective duties of care owed to the Offshore Funds directly and/or proximately caused damages to the Offshore Funds. These damages include, but are not limited to, the following:

a. The Offshore Funds were depleted by paying tens of millions of dollars in management, incentive, and administrative fees to Lancer Management, Lauer, and the Citco Defendants, and in some cases, finder's fees to agents – all based on inaccurate NAV's that the Citco Defendants and Director Defendants provided.

b. The Offshore Funds were depleted by making continuing "investments" in various portfolio companies in 2001 and beyond, well after the Citco Defendants and the Director Defendants should have known that the value of these companies was grossly inflated and that none of them had significant earnings or reasonable prospects for such earnings.

c. The Offshore Funds were depleted through satisfaction of redemption requests by investors based on share prices that were calculated by the Citco Defendants and the Director Defendants based on the inflated and erroneous NAV's.

d. The Offshore Funds were able to remain in operation, incur obligations and dispose of assets long after they were insolvent, thereby increasing the insolvency and the amount of the debt that the Offshore Funds were unable to repay.

WHEREFORE, the Receiver prays that a judgment be entered against the Citco Defendants and the Director Defendants: (a) for compensatory damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the estates of the Offshore Funds (the "Receivership Estate"); and for such other relief as the Court deems just and proper.

COUNT II

BREACH OF CONTRACT

(The Citco Defendants and Director Defendants)

185. The Receiver hereby realleges and incorporates by reference the allegations contained in Paragraphs 1 through 180 above as if fully stated herein.

186. The Citco Agreements between the Offshore Funds and the Citco Defendants constitute valid and enforceable contracts between the Offshore Funds and the Citco Defendants.

187. The terms of the Citco Agreements required the Citco Defendants to perform certain services in accordance with the terms and provisions therewith. The Citco Agreements also provided the appointment of Citco employees as "independent directors" of the Offshore Funds with their own duties and responsibilities as articulated in the Citco Agreements.

188. The Citco Defendants and the Director Defendants breached the Citco Agreements by failing to perform the services articulated therein. These breaches include, but are not limited to, willfully, knowingly, consciously, recklessly and/or with gross negligence: failing to independently price the Offshore Funds; failing to independently verify the valuations stated by Lauer; failing to discover the incorrect valuations and NAV calculations reported by Lauer; failing to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; failing to be aware of, discover and/or investigate the "red flags" set forth above; and/or failing to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

189. The Citco Defendants and the Director Defendants' failure to perform these obligations constitutes serious error.

190. But for the Citco Defendants' and Director Defendants' gross negligence, willful misconduct or reckless disregard for their contractual duties, Lauer could not have continued to perpetrate harm upon the Offshore Funds.

191. The Citco Defendants and the Director Defendants' breaches of their respective contractual duties and their willful, reckless or grossly negligent conduct directly and/or proximately caused damages to the Offshore Funds. These damages include, but are not limited to, the following:

a. The Offshore Funds were depleted by paying tens of millions of dollars in management, incentive, and administrative fees to Lancer Management, Lauer, and the Citco Defendants, and in some cases, finder's fees to agents – all based on inaccurate NAV's that the Citco Defendants and Director Defendants provided.

b. The Offshore Funds were depleted by making continuing "investments" in various portfolio companies in 2001 and beyond, well after the Citco Defendants and the Director Defendants should have known that the value of these companies was grossly inflated and that none of them had significant earnings or reasonable prospects for such earnings.

c. The Offshore Funds were depleted through satisfaction of redemption requests by investors based on share prices that were calculated by the Citco Defendants and the Director Defendants based on the inflated and erroneous NAV's.

d. The Offshore Funds were able to remain in operation, incur obligations and dispose of assets long after they were insolvent, thereby increasing the insolvency and the amount of the debt that the Offshore Funds were unable to repay.

WHEREFORE, the Receiver prays that a judgment be entered against the Citco Defendants and the Director Defendants for: (a) actual, consequential, special, and incidental damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

COUNT III

GROSS NEGLIGENCE

(The Citco Defendants and Director Defendants)

192. The Receiver hereby realleges and incorporates by reference the allegations contained in Paragraphs 1 through 180 above as if fully stated herein.

193. The Citco Defendants and Director Defendants owed a duty to use reasonable skill and care in performing their fund administration services for the Offshore Funds, which duty included one or more of the following: the duty to use reasonable skill and care in advising the Offshore Funds on the appropriate course of action; the duty to use reasonable skill and care in providing the Offshore Funds with true and correct information; the duty to use reasonable skill and care in valuing the NAV's in accordance with GAAP; the duty to use reasonable skill and care to independently price the Offshore Funds; the duty to use reasonable skill and care to independently verify the valuations stated by Lauer; the duty to use reasonable skill and care to discover the incorrect valuations and NAV calculations reported by Lauer; the duty to use reasonable skill and care to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; the duty to use reasonable skill and care to be aware of, discover and/or investigate the "red flags" set forth above; and/or the duty to use reasonable skill and care to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

194. The Citco Defendants and the Director Defendants breached their duty of care by willfully, knowingly, consciously, recklessly and/or with gross negligence: failing to use reasonable skill and care to value the NAV's in accordance with GAAP; failing to use reasonable skill and care to independently price the Offshore Funds; failing to use reasonable skill and care to independently verify the valuations stated by Lauer; failing to use reasonable skill and care to

discover the incorrect valuations and NAV calculations reported by Lauer; failing to use reasonable skill and care to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; failing to use reasonable skill and care to be aware of, discover and/or investigate the "red flags" set forth above; and/or failing to use reasonable skill and care to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

195. The Citco Defendants and the Director Defendants' above-mentioned breaches constitute serious error.

196. The Citco Defendants and the Director Defendants committed the above-mentioned breaches even though they knew that their course of conduct would probably, most likely and/or imminently result in injury to the Offshore Funds.

197. The Citco Defendants and the Director Defendants had actual knowledge of the wrongfulness of their conduct and the high probability that injury or damage would result from it and/or that their conduct placed the Offshore Funds in clear and present danger that was likely to result in grave injury to the Offshore Funds.

198. Despite this knowledge, they intentionally, consciously, voluntarily and willfully performed their course of conduct and failed to perform their requisite duties and/or comply with their duty of care.

199. The Citco Defendants' and the Director Defendants' conduct was so egregious as to rise to the level of intentional misconduct or gross negligence.

200. The Citco Defendants and the Director Defendants actively participated in their misconduct.

201. The officers, directors or managers of the Citco Defendants and the Director Defendants knowingly participated in, condoned, ratified or consented to such conduct.

202. But for the Citco Defendants' and Director Defendants' gross negligence, willful misconduct and/or reckless disregard for their duties, Lauer could not have continued to perpetrate harm upon the Offshore Funds.

203. The Citco Defendants and the Director Defendants' conscious, voluntary and willful disregard for their duties of care and/or their grossly negligent breach of their duties of care directly and/or proximately caused damages to the Offshore Funds. These damages include, but are not limited to, the following:

a. The Offshore Funds were depleted by paying tens of millions of dollars in management, incentive, and administrative fees to Lancer Management, Lauer, and the Citco Defendants, and in some cases, finder's fees to agents – all based on inaccurate NAV's that the Citco Defendants and Director Defendants provided.

b. The Offshore Funds were depleted by making continuing "investments" in various portfolio companies in 2001 and beyond, well after the Citco Defendants and the Director Defendants should have known that the value of these companies was grossly inflated and that none of them had significant earnings or reasonable prospects for such earnings.

c. The Offshore Funds were depleted through satisfaction of redemption requests for shares that were calculated by the Citco Defendants and the Director Defendants based on the inflated and erroneous NAV's.

d. The Offshore Funds were able to remain in operation, incur obligations and dispose of assets long after they were insolvent, thereby increasing the insolvency and the amount of the debt that the Offshore Funds were unable to repay.

WHEREFORE, the Receiver prays that a judgment be entered against the Citco Defendants and the Director Defendants for: (a) compensatory and punitive damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

COUNT IV

BREACH OF FIDUCIARY DUTY

(The Citco Defendants and Director Defendants)

204. The Receiver hereby reallages and incorporates by reference the allegations contained in paragraphs 1 through 180 above as if fully stated herein.

205. The Citco Defendants, as Fund administrators, and the Director Defendants, as directors of the Offshore Funds, owed one or more of the following fiduciary duties to the Offshore Funds: the duty to value the NAV's in accordance with GAAP; the duty to independently price the Offshore Funds; the duty to independently verify the valuations stated by Lauer; the duty to discover the incorrect valuations and NAV calculations reported by Lauer; the duty to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; the duty to be aware of, discover and/or investigate the "red flags" set forth above; and/or the duty to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

206. The Citco Defendants and the Director Defendants breached their fiduciary duties to the Offshore Funds by willfully, knowingly, consciously, recklessly and/or with gross negligence: failing to value the NAV's in accordance with GAAP; failing to independently price the Offshore Funds; failing to independently verify the valuations stated by Lauer; failing to discover the incorrect valuations and NAV calculations reported by Lauer; failing to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; failing to be aware of, discover and/or investigate the "red flags" set forth above; and/or failing to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

207. The Citco Defendants, as the employer of the Director Defendants and as a party who provided the Offshore Funds with the services of the Director Defendants, are liable for the conduct of their employees under the theory of respondeat superior.

208. The Citco Defendants and the Director Defendants committed the above-mentioned breaches even though they knew that their course of conduct would probably, most likely and/or imminently result in injury to the Offshore Funds.

209. The Citco Defendants and the Director Defendants had actual knowledge of the wrongfulness of their conduct and the high probability that injury or damage would result from it and/or that their conduct placed the Offshore Funds in clear and present danger that was likely to result in grave injury to the Offshore Funds.

210. Despite this knowledge, they intentionally, consciously, voluntarily and willfully performed their course of conduct and failed to perform their requisite duties and/or comply with their duty of care.

211. The Citco Defendants' and the Director Defendants' conduct was so egregious as to rise to the level of intentional misconduct or gross negligence.

212. The Citco Defendants and the Director Defendants actively participated in their misconduct.

213. The officers, directors or managers of the Citco Defendants and the Director Defendants knowingly participated in, condoned, ratified or consented to such conduct.

214. But for the Citco Defendants' and Director Defendants' gross negligence, willful misconduct and/or reckless disregard for their duties, Lauer could not have continued to perpetrate harm upon the Offshore Funds.

215. The breaches of fiduciary duty committed by the Citco Defendants and the Director Defendants proximately caused damages to the Offshore Funds. These damages include, but are not limited to, the following:

a. The Offshore Funds were depleted by paying tens of millions of dollars in management, incentive, and administrative fees to Lancer Management, Lauer, and the Citco Defendants, and in some cases, finder's fees to agents – all based on inaccurate NAV's that the Citco Defendants and Director Defendants provided.

b. The Offshore Funds were depleted by making continuing "investments" in various portfolio companies in 2001 and beyond, well after the Citco Defendants and the Director Defendants should have known that the value of these companies was grossly inflated and that none of them had significant earnings or reasonable prospects for such earnings.

c. The Offshore Funds were depleted through satisfaction of redemption requests by investors based on share prices that were calculated by the Citco Defendants and the Director Defendants based on the inflated and erroneous NAV's.

d. The Offshore Funds were able to remain in operation, incur obligations and dispose of assets long after they were insolvent, thereby increasing the insolvency and the amount of the debt that the Offshore Funds were unable to repay.

WHEREFORE, the Receiver prays that a judgment be entered against the Citco Defendants and the Director Defendants for: (a) compensatory and punitive damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

COUNT V

AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY

(The Director Defendants)

216. The Receiver hereby reallages and incorporates by reference the allegations contained in paragraphs 1 through 180 above as if fully stated herein.

217. The Citco Defendants, as Fund administrators, owed one or more of the following fiduciary duties to the Offshore Funds: the duty to value the NAV's in accordance with GAAP; the duty to independently price the Offshore Funds; the duty to independently verify the valuations stated by Lauer; the duty to discover the incorrect valuations and NAV calculations reported by Lauer; the duty to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; the duty to be aware of, discover and/or investigate the "red flags" set forth above; and/or the duty to report the "red flags" set forth above to the Independent Directors.

218. The Citco Defendants breached their fiduciary duties to the Offshore Funds by willfully, knowingly, consciously, recklessly and/or with gross negligence: failing to value the NAV's in accordance with GAAP; failing to independently price the Offshore Funds; failing to independently verify the valuations stated by Lauer; failing to discover the incorrect valuations and NAV calculations reported by Lauer; failing to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; failing to be aware of, discover and/or investigate the "red flags" set forth above; and/or failing to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

219. The Director Defendants had knowledge of the above-mentioned breach or breaches of fiduciary duty committed by the Citco Defendants.

220. The Director Defendants provided substantial assistance to the Citco Defendants in carrying out these breaches, encouraged the Citco Defendants' wrongdoing and/or aided and abetted the Citco Defendants in breaching their fiduciary duty or duties to the Offshore Funds by willfully, knowingly, consciously, recklessly and/or with gross negligence: failing to value the

NAV's in accordance with GAAP; failing to independently price the Offshore Funds; failing to independently verify the valuations stated by Lauer; failing to discover the incorrect valuations and NAV calculations reported by Lauer; failing to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; failing to be aware of, discover and/or investigate the "red flags" set forth above; and/or failing to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

221. Because the Director Defendants aided and abetted the breaches of fiduciary duty by the Citco Defendants, they are also liable for the breaches of fiduciary duty.

222. The Citco Defendants and the Director Defendants committed the above-mentioned breaches even though they knew that their course of conduct would probably, most likely and/or imminently result in injury to the Offshore Funds.

223. The Citco Defendants and the Director Defendants had actual knowledge of the wrongfulness of their conduct and the high probability that injury or damage would result from it and/or that their conduct placed the Offshore Funds in clear and present danger that was likely to result in grave injury to the Offshore Funds.

224. Despite this knowledge, they intentionally, consciously, voluntarily and willfully performed their course of conduct and failed to perform their requisite duties and/or comply with their duty of care.

225. The Citco Defendants' and the Director Defendants' conduct was so egregious as to rise to the level of intentional misconduct or gross negligence.

226. The Citco Defendants and the Director Defendants actively participated in their misconduct.

227. The officers, directors or managers of the Citco Defendants and the Director Defendants knowingly participated in, condoned, ratified or consented to such conduct.

228. But for the Citco Defendants' and Director Defendants' gross negligence, willful misconduct and/or reckless disregard for their duties, Lauer could not have continued to perpetrate harm upon the Offshore Funds.

229. The substantial assistance and encouragement provided by the Director Defendants, which enabled the Citco Defendants to breach their fiduciary duty or duties, proximately caused damages to the Offshore Funds. These damages include, but are not limited to, the following:

a. The Offshore Funds were depleted by paying tens of millions of dollars in management, incentive, and administrative fees to Lancer Management, Lauer, and the Citco Defendants, and in some cases, finder's fees to agents – all based on inaccurate NAV's that the Citco Defendants and Director Defendants provided.

b. The Offshore Funds were depleted by making continuing "investments" in various portfolio companies in 2001 and beyond, well after the Citco Defendants and the Director Defendants should have known that the value of these companies was grossly inflated and that none of them had significant earnings or reasonable prospects for such earnings.

c. The Offshore Funds were depleted through satisfaction of redemption requests by investors based on share prices that were calculated by the Citco Defendants and the Director Defendants based on the inflated and erroneous NAV's.

d. The Offshore Funds were able to remain in operation, incur obligations and dispose of assets long after they were insolvent, thereby increasing the insolvency and the amount of the debt that the Offshore Funds were unable to repay.

WHEREFORE, the Receiver prays that a judgment be entered against the Director Defendants for: (a) compensatory and punitive damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

COUNT VI

AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY

(The Citco Defendants)

230. The Receiver hereby reallages and incorporates by reference the allegations contained in paragraphs 1 through 180 above as if fully stated herein.

231. The Director Defendants, as directors of the Offshore Funds, owed one or more of the following fiduciary duties to the Offshore Funds: the duty to value the NAV's in accordance with GAAP; the duty to independently price the Offshore Funds; the duty to independently verify the valuations stated by Lauer; the duty to discover the incorrect valuations and NAV calculations reported by Lauer; the duty to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; the duty to be aware of, discover and/or investigate the "red flags" set forth above; and/or the duty to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

232. The Director Defendants breached their fiduciary duties to the Offshore Funds by willfully, knowingly, consciously, recklessly and/or with gross negligence: failing to value the NAV's in accordance with GAAP; failing to independently price the Offshore Funds; failing to independently verify the valuations stated by Lauer; failing to discover the incorrect valuations and NAV calculations reported by Lauer; failing to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; failing to be aware of, discover and/or investigate the "red flags" set forth above; and/or failing to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

233. The Citco Defendants had knowledge of the above-mentioned breach or breaches of fiduciary duty committed by the Director Defendants.

234. The Citco Defendants provided substantial assistance to the Director Defendants in carrying out these breaches, encouraged the Director Defendants' wrongdoing and/or aided and abetted the Director Defendants in breaching their fiduciary duty or duties to the Offshore Funds by willfully, knowingly, consciously, recklessly and/or with gross negligence: failing to value the NAV's in accordance with GAAP; failing to independently price the Offshore Funds; failing to independently verify the valuations stated by Lauer; failing to discover the incorrect valuations and NAV calculations reported by Lauer; failing to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; failing to be aware of, discover and/or investigate the "red flags" set forth above; and/or failing to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

235. Because the Citco Defendants aided and abetted the breaches of fiduciary duty by the Director Defendants, they are also liable for the breaches of fiduciary duty.

236. The Citco Defendants and the Director Defendants committed the above-mentioned breaches even though they knew that their course of conduct would probably, most likely and/or imminently result in injury to the Offshore Funds.

237. The Citco Defendants and the Director Defendants had actual knowledge of the wrongfulness of their conduct and the high probability that injury or damage would result from it and/or that their conduct placed the Offshore Funds in clear and present danger that was likely to result in grave injury to the Offshore Funds.

238. Despite this knowledge, they intentionally, consciously, voluntarily and willfully performed their course of conduct and failed to perform their requisite duties and/or comply with their duty of care.

239. The Citco Defendants' and the Director Defendants' conduct was so egregious as to rise to the level of intentional misconduct or gross negligence.

240. The Citco Defendants and the Director Defendants actively participated in their misconduct.

241. The officers, directors or managers of the Citco Defendants and the Director Defendants knowingly participated in, condoned, ratified or consented to such conduct.

242. But for the Citco Defendants' and Director Defendants' gross negligence, willful misconduct and/or reckless disregard for their duties, Lauer could not have continued to perpetrate harm upon the Offshore Funds.

243. The substantial assistance and encouragement provided by the Citco Defendants, which enabled the Director Defendants to breach their fiduciary duty or duties, proximately caused damages to the Offshore Funds. These damages include, but are not limited to, the following:

a. The Offshore Funds were depleted by paying tens of millions of dollars in management, incentive, and administrative fees to Lancer Management, Lauer, and the Citco Defendants, and in some cases, finder's fees to agents – all based on inaccurate NAV's that the Citco Defendants and Director Defendants provided.

b. The Offshore Funds were depleted by making continuing "investments" in various portfolio companies in 2001 and beyond, well after the Citco Defendants and the Director Defendants should have known that the value of these companies was grossly inflated and that none of them had significant earnings or reasonable prospects for such earnings.

c. The Offshore Funds were depleted through satisfaction of redemption requests by investors based on share prices that were calculated by the Citco Defendants and the Director Defendants based on the inflated and erroneous NAV's.

d. The Offshore Funds were able to remain in operation, incur obligations and dispose of assets long after they were insolvent, thereby increasing the insolvency and the amount of the debt that the Offshore Funds were unable to repay.

WHEREFORE, the Receiver prays that a judgment be entered against the Citco Defendants for: (a) compensatory and punitive damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

COUNT VII

AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY

(The Citco and Director Defendants)

244. The Receiver hereby reallages and incorporates by reference the allegations contained in paragraphs 1 through 180 above as if fully stated herein.

245. Lauer owed a fiduciary duty to the Offshore Funds. Specifically, he owed one or more of the following fiduciary duties: the duty to accurately value each security in the portfolio and accurately calculate the NAV; the duty to accurately report the value of each security in the portfolio and the NAV calculations; and/or the duty to properly manage the Offshore Funds.

246. Lauer breached his fiduciary duties to the Offshore Funds by willfully, knowingly, recklessly and/or with gross negligence: incorrectly valuing the securities in the portfolio and incorrectly calculating the NAV; incorrectly reporting the securities in the portfolio and the NAV calculations; and/or mismanaging the Offshore Funds.

247. The Citco Defendants and the Director Defendants had knowledge of the above mentioned breach or breaches of fiduciary duty committed by Lauer.

248. The Citco Defendants and the Director Defendants provided substantial assistance to Lauer in carrying out his breaches of fiduciary duty, encouraged Lauer's wrongdoing and/or aided and abetted Lauer in breaching his fiduciary duty or duties to the Offshore Funds by willfully, knowingly, consciously, recklessly and/or with gross negligence: failing to value the

NAV's in accordance with GAAP; failing to independently price the Offshore Funds; failing to independently verify the valuations stated by Lauer; failing to discover the incorrect valuations and NAV calculations reported by Lauer; failing to report the incorrect valuations and NAV calculations reported by Lauer to the Independent Directors, investors or appropriate authorities; failing to be aware of, discover and/or investigate the "red flags" set forth above; and/or failing to report the "red flags" set forth above to the Independent Directors, investors or appropriate authorities.

249. Because the Citco Defendants and Director Defendants aided and abetted the breaches of fiduciary duty by Lauer, they are also liable for the breaches of fiduciary duty.

250. The Citco Defendants and the Director Defendants committed the above-mentioned breaches even though they knew that their course of conduct would probably, most likely and/or imminently result in injury to the Offshore Funds.

251. The Citco Defendants and the Director Defendants had actual knowledge of the wrongfulness of their conduct and the high probability that injury or damage would result from it and/or that their conduct placed the Offshore Funds in clear and present danger that was likely to result in grave injury to the Offshore Funds.

252. Despite this knowledge, they intentionally, consciously, voluntarily and willfully performed their course of conduct and failed to perform their requisite duties and/or comply with their duty of care.

253. The Citco Defendants' and the Director Defendants' conduct was so egregious as to rise to the level of intentional misconduct or gross negligence.

254. The Citco Defendants and the Director Defendants actively participated in their misconduct.

255. The officers, directors or managers of the Citco Defendants and the Director Defendants knowingly participated in, condoned, ratified or consented to such conduct.

256. But for the Citco Defendants' and Director Defendants' gross negligence, willful misconduct and/or reckless disregard for their duties, Lauer could not have continued to perpetrate harm upon the Offshore Funds.

257. The substantial assistance and encouragement provided by the Citco Defendants and the Director Defendants, which enabled Lauer to breach his fiduciary duty or duties, proximately caused damages to the Offshore Funds. These damages include, but are not limited to, the following:

a. The Offshore Funds were depleted by paying tens of millions of dollars in management, incentive, and administrative fees to Lancer Management, Lauer, and the Citco Defendants, and in some cases, finder's fees to agents – all based on inaccurate NAV's that the Citco Defendants and Director Defendants provided.

b. The Offshore Funds were depleted by making continuing "investments" in various portfolio companies in 2001 and beyond, well after the Citco Defendants and the Director Defendants should have known that the value of these companies was grossly inflated and that none of them had significant earnings or reasonable prospects for such earnings.

c. The Offshore Funds were depleted through satisfaction of redemption requests by investors based on share prices that were calculated by the Citco Defendants and the Director Defendants based on the inflated and erroneous NAV's.

d. The Offshore Funds were able to remain in operation, incur obligations and dispose of assets long after they were insolvent, thereby increasing the insolvency and the amount of the debt that the Offshore Funds were unable to repay.

WHEREFORE, the Receiver prays that a judgment be entered against the Citco Defendants and the Director Defendants for: (a) compensatory and punitive damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

COUNT VIII

BREACH OF ERISA FIDUCIARY DUTY

(The Director Defendants)

258. The Receiver hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 180 above as if fully stated herein.

259. The investors in Offshore include certain "benefit plan investors" as defined under 29 C.F.R. § 2510.3-101(f), which include most benefit and retirement plans and certain accounts whether or not subject to ERISA, including individual retirement accounts and foreign benefit plans.

260. The equity interests of such benefit plan investors in Offshore was approximately 30.18% as of December 31, 2000; 31.15% as of December 31, 2001; and 31.36% as of December 31, 2002.

261. The benefit plan investors in Offshore include plans that are subject to ERISA, including, but not limited to, the following: Bombardier Corp. Retirement Plan (U.S.); Hunnicutt & Co. Inc. Defined Benefit Plan; Dominion Resources Inc. Retirement Plan; Weyerhaeuser Company Master Retirement Trust; and Wyatt Incorporated Employees Profit Sharing Plan.

262. Accordingly, because the equity interests of benefit plan investor in Offshore has exceeded the 25% threshold under 29 C.F.R. § 2510.3-101(f). and because the benefit plan investors includes ERISA employee benefit plans, the assets of such ERISA plans include an undivided interest in each of Offshore's underlying assets, pursuant to ERISA's "plan asset" definition under 29 C.F.R. § 2510.3-101(a)(2). Therefore, the assets of Offshore constitute "plan assets" under ERISA.

263. Any person who exercises authority or control respecting the management or disposition of the assets of Offshore, and any person who provides investment advice with respect to such assets for a fee (direct or indirect) or has authority or responsibility to do so, is a fiduciary under ERISA, pursuant to 29 U.S.C. § 1002(21) (ERISA § 3(21)), and 29 C.F.R. § 2510.3-101(a)(2).

264. As the court-appointed receiver for Offshore, the Receiver has authority or control respecting the management or disposition of Offshore's assets and, to that extent, is an ERISA fiduciary, pursuant to 29 U.S.C. § 1002(21)(A) (ERISA § 3(21)(A)).

265. As a fiduciary with respect to Offshore's ERISA plan assets, the Receiver is authorized under 29 U.S.C. § 1132(a)(2) (ERISA § 502(a)(2)) to bring a civil action for appropriate relief under 29 U.S.C. § 1109 (ERISA § 409), which requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan . . .." Section 1109 also authorizes "such other equitable or remedial relief as the court may deem appropriate . . .."

266. As a fiduciary with respect to Offshore's ERISA plan assets, the Receiver is authorized under 29 U.S.C. § 1132(a)(3) (ERISA § 502(a)(3)) to bring a civil action to enjoin any act or practice which violates any provision of Title I of ERISA, or to obtain other appropriate equitable relief to redress such violations or to enforce any provision of Title I of ERISA.

267. The Offshore PPM expressly refers to the ERISA "plan asset" rule under 29 C.F.R. § 2510.3-101, and to ERISA's fiduciary and prohibited transaction rules under 29 U.S.C. §§ 1104-1106 (ERISA §§ 404-406), and includes a statement that ERISA's fiduciary and

prohibited transaction rules may apply "[i]f, by virtue of a Plan's purchase of a Share of the Fund, the assets of the Fund are deemed to be 'plan assets' under ERISA."

268. When the equity interests of benefit plan investors in Offshore exceeded the 25% threshold under 29 C.F.R. § 2510.3-101(f), the assets of Offshore became subject to ERISA, regardless of any statement or acknowledgement by Offshore or any other person or investor, or any provision in any document or agreement, that it was the intention to limit such benefit plan investor's equity interest to less than 25%.

269. The Director Defendants, in their capacity as directors, exercised authority or control over Offshore — an investment fund. Accordingly, as directors of the fund, the Director Defendants exercised authority or control respecting the management or disposition of the Offshore assets. To this extent, the Director Defendants were ERISA fiduciaries, pursuant to 29 U.S.C. § 1002(21)(A)(i) (ERISA § 3(21)(A)(i)).

270. The Director Defendants' authority or control respecting the management or disposition of Offshore's assets included, but was not limited to, their responsibility to appoint, monitor, and, if necessary, replace Lancer Management, which was an ERISA fiduciary in its capacity as Offshore's investment manager, in accordance with the Investment Management Agreement between Lancer Management and Offshore dated January 1, 1998 ("Investment Management Agreement"), which provides that Lancer Management is authorized to invest Offshore's assets "subject to the policies and control of the Board of Directors." A true and correct copy of the Investment Management Agreement is attached hereto as Exhibit "V."

271. The Director Defendants' authority or control respecting the management or disposition of Offshore's assets included, but was not limited to, their authority to "apply any

part of the assets of [Offshore] in the acquisition of any Investments as they shall in their absolute discretion determine" in accordance with the Articles of Association of Offshore.

272. The Director Defendants' authority or control respecting the management or disposition of Offshore's assets included, but was not limited to, their authority to "suspend redemption rights for all Shareholders when, in the opinion of the Board of Directors, disposal of part or all of the Fund's assets, or determination of Net Asset Value . . . would not be reasonable or practicable or would be prejudicial to the Shareholders," and "to terminate the Fund at any time and for any reason," in accordance with the Offshore PPM.

273. The Director Defendants' authority or control respecting the management or disposition of Offshore's assets included, but was not limited to, their responsibility to meet at least annually to review and assess the investment policy and investment performance of Offshore.

274. The Director Defendants' authority or control respecting the management or disposition of Offshore's assets included, but was not limited to, their responsibility to manage the business and affairs of the Offshore fund as provided in the Articles of Association.

275. The Articles of Association confer discretion and responsibility on the Director Defendants to determine the proper valuation of the fund, including considering whether prices generated in a securities' market reflected the investment's true value and whether some other valuation method should be used that better reflects the investment's fair value.

276. Accordingly, the Director Defendants directly or indirectly rendered investment advice for a fee or other compensation with respect to the assets of Offshore by virtue of their independent responsibility to value Offshore, and through their regular approval of Offshore's monthly NAV in accordance with policies and procedures set forth in the Articles of

Association. To this extent, the Director Defendants were ERISA fiduciaries, pursuant to 29 U.S.C. 1002(21)(A)(ii) (ERISA § 3(21)(A)(ii)), and 29 C.F.R. §§ 2510.3-21(c)(1)(i) and 2510.3-101(a)(2).

277. The Director Defendants rendered investment advice for a fee or other compensation with respect to Offshore's ERISA plan assets through their authority and contractual responsibility to independently calculate Offshore's NAV/share pursuant to the Citco Agreement with Offshore, which provides in part that Citco N.V. "shall be responsible for . . . computing the monthly [NAV]" for Offshore and "*independently* pricing the fund." (Emphasis added.) The Director Defendants had the responsibility under the Citco Agreement, the Articles of Association, and the PPM to provide values for any securities in Offshore's portfolio for which the open market did not provide an accurate valuation. To this extent, the Director Defendants were ERISA fiduciaries, pursuant to 29 U.S.C. § 1002(21)(A)(ii) (ERISA § 3(21)(A)(ii)), and § 29 C.F.R. §§ 2510.3-21(c)(1)(i) and 2510.3-101(a)(2).

278. As ERISA fiduciaries, the Director Defendants were obligated under 29 U.S.C. § 1104(a)(1) (ERISA § 404(a)(1)) to discharge their duties with respect to Offshore's ERISA plan assets: (i) solely in the interest of the beneficiaries of the ERISA plans; (ii) for the exclusive purpose of providing benefits to the beneficiaries of the ERISA plans and defraying reasonable plan administration expenses; (iii) with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (iv) by diversifying the investments of the Offshore ERISA plan assets so as to minimize the risk of large losses, unless under the circumstances it was clearly prudent not to do so.

279. As ERISA fiduciaries, the Director Defendants were prohibited under 29 U.S.C. § 1106(b) (ERISA § 406(b)) from self-dealing with respect to Offshore's ERISA plan assets.

280. The Director Defendants knowingly, recklessly, or with gross negligence breached their fiduciary duties with respect to Offshore's ERISA plan assets by failing to review, at reasonable intervals, the performance of Lancer Management as investment manager, in such manner as may be reasonably expected to ensure that its performance was in compliance with ERISA, in accordance with 29 C.F.R. § 2509.75-8, Q&A 17.

281. The Director Defendants knowingly, recklessly, or with gross negligence breached their fiduciary duties with respect to Offshore's ERISA plan assets by failing to investigate or respond to the "red flags" described herein that would have revealed that Lancer Management was not managing such plan assets in accordance with the Investment Management Agreement, Offshore's PPM and ERISA's strict fiduciary standards.

282. The Director Defendants knowingly, recklessly, or with gross negligence breached their ERISA fiduciary duty to determine independently the NAV's for Offshore, by failing to respond appropriately as to the portfolio values claimed by Lauer – which the Director Defendants knew were absurd – and by otherwise failing to investigate or respond to the "red flags" described herein that would have revealed the over-valuation of Offshore's NAVs.

283. The Director Defendants knowingly, recklessly, or with gross negligence breached their fiduciary duties with respect to Offshore's ERISA plan assets by failing to discover and reveal Lauer's conduct regarding his valuation of certain portfolio companies, such as the Target Companies within Offshore. The Director Defendants further failed to employ and perform independent valuations as required under the Citco Agreements and GAAP, and failed

to confirm the independence and accuracy of the valuations provided to the Citco Defendants by Lauer and by Lancer Management.

284. The Director Defendants' breaches alleged above resulted in grossly exaggerated valuations for Offshore and enabled Lauer to artificially prolong the life of Offshore, both of which significantly increased the fees paid to the Citco Defendants at the expense of the ERISA plans invested in Offshore,

285. Accordingly, by acting in a manner that resulted in excessive fees from Offshore, the Director Defendants breached their ERISA fiduciary duties by failing to act, with respect to Offshore's ERISA plan assets, solely in the interest of the beneficiaries of the plans and for the exclusive purpose of providing benefits to the beneficiaries of such plans, and by dealing with such assets in their own interests, in violation of 29 U.S.C. §§ 1104(a)(1) and 1106(b) (ERISA §§ 404(a)(1) and 406(b)).

286. The Receiver is entitled to relief from the Director Defendants in the form of: (i) a monetary payment to Offshore to reimburse it for the losses incurred or profits received with respect to the plan assets resulting from the breaches of fiduciary duties alleged above, as required by 29 U.S.C. § 1109(a) (ERISA § 409(a)); (ii) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (3) (ERISA §§ 409(a) and 502(a)(2) and (3)); and (iii) reasonable attorneys' fees and expenses as provided by 29 U.S.C. § 1132(g) (ERISA § 502(g)), and other applicable law.

WHEREFORE, the Receiver prays that a judgment be entered against the Director Defendants for: (a) damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving

any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

COUNT IX

BREACH OF ERISA FIDUCIARY DUTY

(The Citco Defendants)

287. The Receiver hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 180 and paragraphs 264 to 291 above as if fully stated herein.

288. The Citco Defendants, in accordance with the Citco Agreement with Offshore, "provid[ed] . . . directors" to Offshore, *i.e.*, the Director Defendants, who were employees of the Citco Defendants. The Citco Defendants, as the employer of the Director Defendants and as a party who was contractually obligated to and received payment for providing the Offshore Funds with the services of the Director Defendants, are liable for the conduct of their employees under respondeat superior.

289. The Citco Defendants exercised authority or control with respect to the management or disposition of the assets of Offshore through the Citco Defendants' authority or control over the Director Defendants, including through their authority and control over the Director Defendants' as employees and their authority to select which employees would be provided to serve or continue to serve as Offshore's directors. To this extent, the Citco Defendants were ERISA fiduciaries, pursuant to 29 U.S.C. § 1002(21)(A)(i) (ERISA § 3(21)(A)(i)).

290. The Citco Defendants rendered investment advice for a fee or other compensation with respect to Offshore's ERISA plan assets through their authority and contractual responsibility to independently calculate Offshore's NAV/share pursuant to a mutual agreement with Lauer in accordance with the Citco Agreement with Offshore, which provides in part that

Citco N.V. "shall be responsible for . . . computing the monthly [NAV]" for Offshore and "*independently* pricing the fund." (Emphasis added.) To this extent, the Citco Defendants were ERISA fiduciaries, pursuant to 29 U.S.C. § 1002(21)(A)(ii) (ERISA § 3(21)(A)(ii)), and § 29 C.F.R. §§ 2510.3-21(c)(1)(i) and 2510.3-101(a)(2).

291. As ERISA fiduciaries, the Citco Defendants were obligated under 29 U.S.C. § 1104(a)(1) (ERISA § 404(a)(1)) to discharge their duties with respect to Offshore's ERISA plan assets: (i) solely in the interest of the beneficiaries of the ERISA plans; (ii) for the exclusive purpose of providing benefits to the beneficiaries of the ERISA plans and defraying reasonable plan administration expenses; (iii) with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (iv) by diversifying the investments of the Offshore ERISA plan assets so as to minimize the risk of large losses, unless under the circumstances it was clearly prudent not to do so.

292. As ERISA fiduciaries, the Citco Defendants were prohibited under 29 U.S.C. § 1106(b) (ERISA § 406(b)) from self-dealing with respect to Offshore's ERISA plan assets.

293. The Citco Defendants knowingly, recklessly, or with gross negligence breached their fiduciary duties with respect to Offshore's ERISA plan assets by failing in their duty to calculate Offshore's NAV/share independently, by failing to inquire as to the portfolio values claimed by Lauer and by otherwise failing to investigate or respond to the "red flags" described herein that would have revealed the over-valuation of Offshore's NAV's.

294. The Citco Defendants knowingly, recklessly, or with gross negligence breached their fiduciary duties with respect to Offshore's ERISA plan assets by failing to insist that the

Director Defendants, as their employees, fulfill their ERISA fiduciary duties as directors of Offshore.

295. The Citco Defendants knowingly, recklessly, or with gross negligence breached their fiduciary duties with respect to Offshore's ERISA plan assets by failing to monitor, remove, and provide replacement employees to serve as directors of Offshore.

296. The Citco Defendants knowingly, recklessly, or with gross negligence breached their fiduciary duties with respect to Offshore's ERISA plan assets by failing to discover and reveal Lauer's conduct regarding his valuation of certain portfolio companies, such as the Target Companies within Offshore. The Citco Defendants further failed to employ and perform independent valuations as required under the Citco Agreements and GAAP, and failed to confirm the independence and accuracy of the valuations provided to the Citco Defendants by Lauer and by Lancer Management.

297. The Citco Defendants' breaches alleged above resulted in grossly exaggerated valuations for Offshore and enabled Lauer to artificially prolong the life of Offshore, both of which significantly increased the fees paid to the Citco Defendants at the expense of the ERISA plans invested in Offshore,

298. Accordingly, by acting in a manner that resulted in excessive fees from Offshore, the Citco Defendants breached their ERISA fiduciary duties by failing to act, with respect to Offshore's ERISA plan assets, solely in the interest of the beneficiaries of the plans and for the exclusive purpose of providing benefits to the beneficiaries of such plans, and by dealing with such assets in their own interests, in violation of 29 U.S.C. §§ 1104(a)(1) and 1106(b) (ERISA §§ 404(a)(1) and 406(b)).

299. The Receiver is entitled to relief from the Citco Defendants in the form of: (i) a monetary payment to Offshore to reimburse it for the losses incurred or profits received with respect to the plan assets resulting from the breaches of fiduciary duties alleged above, as required by 29 U.S.C. § 1109(a) (ERISA § 409(a)); (ii) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (3) (ERISA §§ 409(a) and 502(a)(2) and (3)); and (iii) reasonable attorneys' fees and expenses as provided by 29 U.S.C. § 1132(g) (ERISA § 502(g)), and other applicable law.

WHEREFORE, the Receiver prays that a judgment be entered against the Citco Defendants for: (a) damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

COUNT X

LIABILITY UNDER ERISA FOR BREACH BY CO-FIDUCIARIES

(The Director Defendants)

300. The Receiver hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 180 above as if fully stated herein.

301. As ERISA fiduciaries, the Director Defendants are subject to co-fiduciary liability under 29 U.S.C. § 1105(a) (ERISA § 405(a)) if: (i) they participated knowingly in, or knowingly undertook to conceal, an act or omission of another fiduciary – here, Lancer Management; (ii) they enabled, through failure to comply with their own fiduciary obligations, another fiduciary to commit a breach; or (iii) they had knowledge of another's breach, unless they made reasonable efforts under the circumstances to remedy the breach.

302. As alleged above, the Director Defendants knowingly, recklessly, or with gross negligence breached their fiduciary duties with respect to Offshore's ERISA plan assets by failing to monitor and replace Lancer Management as Offshore's investment manager and to review and assess Offshore's investment policies and performance and otherwise failing to respond to the "red flags" that would have revealed that Lancer Management's mismanagement of the plan assets; by failing adequately to supervise the calculation of NAV's for Offshore, and by failing to respond to the "red flags" that would have revealed the over-valuation of Offshore's NAVs; by failing to perform their valuation functions for Offshore's assets in accordance with GAAP and to employ independent valuations by disinterested parties as required under the Citco Agreements.

303. Because Lauer and Lancer Management exercised authority and control over the management and disposition of the assets of Offshore, and because Lauer provided investment advice to Offshore for a fee, they were fiduciaries with respect to Offshore's ERISA plan assets, pursuant to 29 U.S.C. § 1002(21)(A)(i);(ERISA § 3(21)(A)(i)).

304. Both Lauer and Lancer Management knowingly, recklessly, or with gross negligence breached their respective fiduciary duties under 29 U.S.C. § 1104 (ERISA § 404), with respect to Offshore's ERISA plan assets by investing such assets in risky start-up companies inappropriate for ERISA plans, by failing to adequately diversify Offshore's investments, and by inflating the values assigned to Offshore's portfolio, particularly the Target Companies, which resulted in excessive fees for Lauer, Lancer Management, and the Citco Defendants, and which prolonged the life of Offshore, at the expense of Offshore's ERISA plan assets.

305. The Director Defendants are liable for the breach of duty by their co-fiduciaries, the Citco Defendants, Lauer, and Lancer Management, because through the Director Defendants' failure to comply with their own fiduciary obligations, as alleged above, the Director Defendants enabled the Citco Defendants, Lauer, and Lancer Management to breach their respective fiduciary duties with respect to Offshore's ERISA plans assets.

306. The Director Defendants' failure to detect the over-inflated valuations of the Target Companies and over-accumulation of equity positions in the Target Companies and to detect Stenton Leigh's conflicts of interest as a security valuation expert enabled Lauer to prolong the life of Offshore and continue depleting Offshore's assets, to the detriment of Offshore's ERISA plan assets.

307. Alternatively, the Director Defendants knew of the Citco Defendants', Lauer's, and Lancer Management's breaches of fiduciary duty, as evidenced by communications to or from the Citco Defendants cited herein relating to valuation issues, and failed to take reasonable efforts under the circumstances to remedy such breaches, to the detriment of Offshore's ERISA plan assets.

308. Following their respective resignations, the Director Defendants continued to be liable for Offshore's losses resulting from the continued breaches by their co-fiduciaries Lauer and Lancer Management, to the extent that the Director Defendants' improper actions or their failure to act prior to resignation, as alleged above, enabled such breaches by Lauer or Lancer Management.

309. The Receiver is entitled to relief from the Director Defendants in the form of: (i) a monetary payment to Offshore to reimburse it for the losses incurred or profits received with respect to the plan assets resulting from the breaches of fiduciary duties alleged above, including

profits received by Lauer and Lancer Management, as required by 29 U.S.C. § 1109(a) (ERISA § 409(a)); (ii) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (3) (ERISA §§ 409(a) and 502(a)(2) and (3)); and (iii) reasonable attorneys' fees and expenses as provided by 29 U.S.C. § 1132(g) (ERISA § 502(g)), and other applicable law.

WHEREFORE, the Receiver prays that a judgment be entered against the Director Defendants for: (a) damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

COUNT XI

LIABILITY UNDER ERISA FOR BREACH BY CO-FIDUCIARIES

(The Citco Defendants)

310. The Receiver hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 180 above as if fully stated herein.

311. As ERISA fiduciaries, the Citco Defendants are subject to co-fiduciary liability under 29 U.S.C. § 1105(a) (ERISA § 405(a)) if: (i) they participated knowingly in, or knowingly undertook to conceal, an act or omission of another fiduciary – here, Lancer Management; (ii) they enabled, through failure to comply with their own fiduciary obligations, another fiduciary to commit a breach; or (iii) they had knowledge of another's breach, unless they made reasonable efforts under the circumstances to remedy the breach.

312. As alleged above, the Citco Defendants knowingly, recklessly, or with gross negligence breached their fiduciary duties with respect to Offshore's ERISA plan assets by failing to properly calculate NAV's per share in accordance with GAAP and failing to employ

independent valuations by disinterested parties; failing to challenge those NAV's per share stated by Lauer, and by otherwise failing to investigate certain "red flags" that would have revealed the improper conduct in which Lauer engaged; and by failing to insist that the Director Defendants, as their employees, fulfill their ERISA fiduciary duties as directors of Offshore, and to monitor, remove, and provide replacement employees to serve as directors of Offshore.

313. Because Lauer and Lancer Management exercised authority and control over the management and disposition of the assets of Offshore, and because Lauer provided investment advice to Offshore for a fee, they were fiduciaries with respect to Offshore's ERISA plan assets, pursuant to 29 U.S.C. § 1002(21)(A)(i);(ERISA § 3(21)(A)(i)).

314. Both Lauer and Lancer Management knowingly, recklessly, or with gross negligence breached their respective fiduciary duties under 29 U.S.C. § 1104 (ERISA § 404), with respect to Offshore's ERISA plan assets by investing such assets in risky start-up companies inappropriate for ERISA plans, by failing to adequately diversify Offshore's investments, and by inflating the values assigned to Offshore's portfolio, particularly the Target Companies, which resulted in excessive fees for Lauer, Lancer Management, and the Citco Defendants, and which prolonged the life of Offshore, at the expense of Offshore's ERISA plan assets.

315. The Citco Defendants are liable for the breach of duty by their co-fiduciaries, the Director Defendants, Lauer, and Lancer Management, because through the Citco Defendants' failure to comply with their own fiduciary obligations, the Citco Defendants enabled the Director Defendants, Lauer, and Lancer Management to breach their respective fiduciary duties to the ERISA plans invested in Offshore.

316. The Citco Defendants' failure to detect the over-inflated valuations of the Target Companies and over-accumulation of equity positions in the Target Companies and to detect Stenton Leigh's conflicts of interest as a security valuation expert enabled Lauer to prolong the life of Offshore and continue depleting Offshore's assets, to the detriment of Offshore's ERISA plan assets.

317. Alternatively, the Citco Defendants knew of the Director Defendants', Lauer's, and Lancer Management's breaches of fiduciary duty, as evidenced by communications to or from the Citco Defendants cited herein relating to valuation issues, and failed to make reasonable efforts under the circumstances to remedy such breaches, to the detriment of Offshore's ERISA plan assets.

318. Following their respective resignations, the Citco Defendants continued to be liable for Offshore's losses resulting from the continued breaches by their co-fiduciaries Lauer and Lancer Management, to the extent that the Citco Defendants' improper actions or their failure to act prior to resignation, as alleged above, enabled such breaches by Lauer or Lancer Management.

319. The Receiver is entitled to relief from the Citco Defendants in the form of: (i) a monetary payment to Offshore to reimburse it for the losses incurred or profits received with respect to the plan assets resulting from the breaches of fiduciary duties alleged above, including profits received by Lauer and Lancer Management, as required by 29 U.S.C. § 1109(a) (ERISA § 409(a)); (ii) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (3) (ERISA §§ 409(a) and 502(a)(2) and (3)); and (iii) reasonable attorneys' fees and expenses as provided by 29 U.S.C. § 1132(g) (ERISA § 502(g)), and other applicable law.

WHEREFORE, the Receiver prays that a judgment be entered against the Citco Defendants for: (a) damages, plus interest, fees, and costs; (b) declaring the Defendants and any other complicit third parties, including Lauer and other insiders, are precluded from receiving any distribution from the Receivership Estate; and (c) for such other relief as the Court deems just and proper.

Dated: December 19th, 2005

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-60080-CV-MARRA
DE#32

☐ **DUE TO POOR QUALITY, THE ATTACHED DOCUMENT IS NOT SCANNED**

ATTACHMENT(S) NOT SCANNED

X VOLUMINOUS (exceeds 999 pages = 4 inches)
☐ BOUND EXTRADITION PAPERS
☐ ADMINISTRATIVE RECORD (Social Security)
☐ ORIGINAL BANKRUPTCY TRANSCRIPT
☐ STATE COURT RECORD (Habeas Cases)
☐ SOUTHERN DISTRICT TRANSCRIPTS
☐ LEGAL SIZE
☐ DOUBLE SIDED
☐ PHOTOGRAPHS
☐ POOR QUALITY (e.g. light print, dark print, etc.)
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