

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)		
In re:	)		Chapter 11 Case No.
	)		
ATARI, INC., <u>et al.</u> ,	)		13-10176 (JMP)
	)		
Debtors,	)		
	)		

**SUPPLEMENTAL DECLARATION OF THOMAS CLARK CARLSON IN SUPPORT OF OMNIBUS REPLY OF THE OFFICIAL COMMITTEE IN SUPPORT OF THE APPLICATION TO RETAIN AND EMPLOY DUFF & PHELPS SECURITIES, LLC AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ATARI, INC., ET AL., NUNC PRO TUNC TO FEBRUARY 11, 2013**

Thomas Clark Carlson, under penalty of perjury, hereby declares, as follows:

1. I am a Managing Director at Duff & Phelps Securities, LLC (“D&P”), a professional services firm engaged in the business of providing financial advisory and related professional investment banking services, and with offices located at 55 East 52nd Street, 31st Floor, New York, New York, 10055. I submit this supplemental declaration (the “Supplemental Declaration”) pursuant to 11 U.S.C. § 1103 and Federal Rule of Bankruptcy Procedure 2014 in support of the *Omnibus Reply of the Official Committee in Support of the Application to Retain and Employ Duff & Phelps Securities, LLC as Financial Advisor to the Official Committee of Unsecured Creditors of Atari, Inc., et al., Nunc Pro Tunc to February 11, 2013* (the “Reply”), filed contemporaneously herewith by the Official Committee of Unsecured Creditors (the “Committee”) appointed in the Debtors’ chapter 11 cases. Except as otherwise indicated, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto.<sup>1</sup> I am duly authorized to make this Supplemental Declaration on behalf of

<sup>1</sup> Certain of the disclosures herein related to matters within the knowledge of other professionals at D&P and are based on information provided to me by them.

D&P.

2. As described more fully in my declaration in support of the Committee's application to employ and retain D&P, dated February 22, 2013 (the "Original Declaration"), D&P is a professional services firm engaged in the business of providing financial advisory and related professional investment banking services. D&P provides a broad range of services to its clients and has extensive experience in dealing effectively with a full range of issues and challenges that arise in corporate restructurings and business reorganizations.

**D&P IS WELL POSITIONED TO PROVIDE  
ESSENTIAL SERVICES TO THE COMMITTEE**

3. D&P will provide numerous services for the Committee, as detailed in the Original Declaration and as supplemented herein, including services related to: (i) the proposed sale of the Debtors' assets and (ii) the Committee's investigation into the prepetition secured and intercompany claims asserted against the Debtors. As described herein and in the Reply, both of these issues will be critical drivers of the recovery available for unsecured creditors in these cases.

4. While D&P is not running the sale process, D&P is poised to assist the Debtors, their professionals and the Committee in ensuring the sale process with respect to the Debtors' assets is robust, fair and value-maximizing. Among other things, D&P will facilitate bidder interest, analyze prospective bids, test the assumptions in the Debtors' management presentations, and analyze the Debtors' intellectual property portfolio on behalf of the Committee. In addition, D&P serves a vital function for the Committee in connection with the sale process because the Committee does not receive reporting on the sale process directly from the Debtors' investment bankers, but rather, D&P receives information from the Debtors'

investment bankers (often, on a professionals' eyes only basis), and then D&P reports to the Committee with appropriately filtered information. The Committee needs such information to fulfill its fiduciary duties to creditors, and the results of the sale process will substantially impact recoveries to general unsecured creditors.

5. D&P has considerable experience with bankruptcy sales, and has provided valuation and other services in the context of a sale under section 363 of the Bankruptcy Code in the following recent cases, among others: *In re The Brown Publishing Company*, No. 10-73291 (DTE) (Bankr. E.D.N.Y. 2009); *In re ATP Oil & Gas Corporation*, No. 12-36187 (Isgur) (Bankr. S.D. Tex. 2012); *In re Seahawk Drilling, Inc.*, No. 11-20089 (RSS) (Bankr. S.D. Tex. 2011); *In re Trico Marine Servs., Inc.*, No. 10-12653 (BLS) (Bankr. D. Del. 2010); *MMFX Steel Corp. of America*, No. 10-27571 (Bankr. C.D.Ca. 2010).

6. Furthermore, the Committee, with the assistance of its counsel and D&P, is actively investigating various claims and interests asserted against the Debtors' estates. This investigation is likely to entail the analysis of complex, long-running, multi-national transactions involving hundreds of millions of dollars and going back many years; to complete such an investigation (and to prosecute any attendant litigation), the Committee will require, among other things, forensic accounting and valuation services of D&P. The result of this investigation, and any subsequent litigation, will likely directly impact the recovery received by general unsecured creditors on account of their claims.

7. D&P has provided such services in connection with a complex investigation into prepetition claims in the following recent cases, among others: *In re Residential Capital, LLC*, No. 12-12020 (MG) (Bankr. S.D.N.Y. 2012); *In re The Brown Publishing Company*, No. 10-73291 (DTE) (Bankr. E.D.N.Y. 2009); *In re Seahawk Drilling, Inc.*, No. 11-20089 (RSS)

(Bankr. S.D. Tex. 2011); *In re Trico Marine Servs., Inc.*, No. 10-12653 (BLS) (Bankr. D. Del. 2010); *In re Chem Rx Corporation*, No. 10-11567 (MFW) (Bankr. D. Del. 2010); *In re Hayes Lemmerz International, Inc.*, No. 09-11655 (MJW) (Bankr. D. Del. 2009); *In re Global Power Equip. Group, Inc.*, No. 06-11045 (BLS) (Bankr. D. Del. 2006).

8. Consequently, not only are these services critical to the Committee and general unsecured creditors, but D&P is also well qualified to provide such services.

**D&P's FEE STRUCTURE IS HEAVILY NEGOTIATED  
AND REASONABLE UNDER THE CIRCUMSTANCES**

9. Upon its selection, D&P and the Committee engaged in thorough, arms-length negotiations concerning D&P's fee structure. This negotiation resulted in a substantial discount from D&P on its requested monthly fees in exchange for a one-time restructuring fee that would fully align D&P's compensation with recovery obtained by general unsecured creditors. It was only after these negotiations were completed that the Committee elected to retain D&P on the terms set forth in the Application, which I believe are fair and reasonable under the circumstances of these cases.

10. As is more fully set forth in Original Declaration, D&P proposes the following compensation for professional services rendered to the Committee: a monthly fee of \$50,000 per month (the "Monthly Fees"), plus a restructuring fee (the "Restructuring Fee") of up to \$700,000 based upon the percentage recovery received by general unsecured creditors on account of their allowed general unsecured claims in these cases. The Restructuring Fee will be calculated by applying the pro rata percentage recovery to be received by general unsecured creditors on account of their allowed general unsecured claims to a maximum of \$700,000.

11. As described above and in the Reply, D&P will provide services critical to the

recovery of general unsecured creditors in these cases. Because the Restructuring Fee is directly proportional to the recovery of general unsecured creditors, the result is that the interests of D&P and the unsecured creditors are squarely aligned. Furthermore, if a Restructuring Fee does not become payable to D&P (i.e. in the event that general unsecured creditors do not receive payment on account of their claims), then D&P will be limited to the Monthly Fee, which, based on my experience and my review of the fee structures of financial advisors in comparable cases, is below market for a case of this size and complexity.

12. Together with my colleagues at D&P, I reviewed the approved fee structures of financial advisors to official committees in certain chapter 11 cases commenced in 2012 where the debtors have between \$25 million and \$1 billion in liabilities. A summary of the fee structures approved in those cases is attached hereto as **Exhibit A**. As demonstrated by the Exhibit, fee structures that include both monthly and success fee components are commonplace in this District and elsewhere, and the fee structure proposed by the Committee in this case is well within the range of those which are regularly approved.

13. Moreover, the Restructuring Fee perfectly aligns D&P's interests with those of unsecured creditors in that D&P is not entitled to any Restructuring Fee unless unsecured creditors receive a recovery on account of their claims, and then only in direct proportion with the same proportional recovery as unsecured creditors. In essence, with respect to the Restructuring Fee, D&P is no differently situated than the unsecured creditors in these cases. As such, I submit that the proposed fee structure is reasonable under the circumstances.

**NO CURRENT ADVERSE INTEREST**

14. An affiliate of D&P, Duff & Phelps, LLC provides ongoing portfolio valuation services to certain funds affiliated with Alden Global Value Recovery Master Fund, L.P.

(“Alden”), who is the postpetition lender in these cases, as well as the equity holder of, and secured lender to, the Debtors’ parent company. The annual fees generated by Duff & Phelps, LLC from Alden are approximately \$200,000 per year, which represents an insignificant percentage of Duff & Phelps, LLC’s annual revenue.

15. Duff & Phelps, LLC’s relationship with Alden is unrelated to these cases, and D&P does not hold an adverse interest to the Debtors’ estates as a result of Duff & Phelps, LLC’s relationship with Alden. Duff & Phelps, LLC is a separate legal entity than D&P, providing different services and employing different personnel. Furthermore, strict information barriers are maintained between Duff & Phelps, LLC and D&P. Both companies maintain separate client files (digital and physical). While information can be exchanged between Duff & Phelps, LLC and D&P, a formal request must first be made and such a request is reviewed for, among other things, potential conflicts. Furthermore, I have taken additional steps to ensure that no files held by Duff & Phelps, LLC concerning Alden or its assets/affiliates would be shared with D&P under the present circumstances.

16. In view of the foregoing, I believe that D&P does not represent any adverse interest to the extent required by sections 328 and 1103 of the Bankruptcy Code and Bankruptcy Rule 2014.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing statements are true and correct to the best of my knowledge information and belief.

Dated: New York, New York  
March 18, 2013

/s/ Thomas Clark Carlson

Thomas Clark Carlson  
Managing Director

**EXHIBIT A**



## COMPARABLE UCC FINANCIAL ADVISOR FEES

(\$ in thousands)

Debtor	Industry	Petition Date	Filing District	Total Liabilities <sup>(1)</sup>	Advisor	Monthly Fees <sup>(2)</sup>	Restructuring / Transaction Fee
THQ, Inc.	Video Games & Entertainment	12/19/12	DE	\$248,100	Houlihan Lokey	\$150 <sup>(3)</sup>	Deferred Fee is equal to 5% of the value in excess of \$3mm distributable to unsecured creditor recoveries.
Revstone Industries, LLC	Automotive Parts Manufacturing	12/03/12	DE	\$50,000	FTI	\$85	Completion fee is equal to the greater of (i) \$175k or (ii) an amount derived from a sliding scale based on recoveries: 1% of the first \$5mm, 2% of the next \$5 - \$20mm, and 3% of the amounts in excess of \$20mm.
HMX Acquisition Corp.	Apparel	10/19/12	SDNY	\$110,763	Zolfo Cooper	\$125 <sup>(4)</sup>	A discretionary bonus of up to \$500k may be given to Zolfo Cooper upon the Committee's approval.
A123 Systems, Inc.	Electrical Components	10/16/12	DE	\$376,045	Blackstone	\$125 <sup>(5)</sup>	Restructuring Fee is \$1mm plus 0.5% of any distributable value to the unsecured creditors above \$125mm less secured debt (maximum of \$3mm).
K-V Discovery Solutions, Inc.	Healthcare	08/04/12	SDNY	\$728,300	Duff & Phelps	\$125	D&P shall have the ability to seek a reasonable deferred restructuring fee, subject to the direct approval and consent of the Committee and subject to notice, hearing, and approval of the Bankruptcy Court.
Solar Trust of America, LLC	Solar Energy	04/04/12	DE	\$103,988	Marathon Capital	\$50 <sup>(6)</sup>	Success fee is equal to 2.75% of the total purchase consideration paid to the Debtors from the sale of substantially all of the Debtors' assets. The Initial Success Fee approved was \$561k.
Global Aviation Holdings Inc.	Transportation	02/05/12	EDNY	\$493,200	Imperial Capital	\$75	The approved Completion Fee was to be no less than \$250k and not more than \$750k, in such amount as the Committee may determine in its sole and reasonable discretion.
Trident Microsystems, Inc.	Semiconductors	01/04/12	DE	\$39,608	Imperial Capital	\$175 <sup>(7)</sup>	Completion fee was \$550k.
Coach AM Group Holdings Corp.	Transportation	01/03/12	DE	\$402,000	Imperial Capital	\$75	The approved terms by the court included a Deferred Fee of up to \$400k.
Atari	Video Games & Entertainment	01/21/13	SDNY	\$310,000	Duff & Phelps	\$50 <sup>(8)</sup>	<b>D&amp;P shall receive a restructuring fee of \$700k multiplied by the pro rata percentage recovery received by the general unsecured creditors.</b>

Note: Includes all approved retention applications for UCC financial advisors for cases filed since 1/1/12 with total liabilities between \$25 million and \$1 billion. Excludes cases where the advisors were paid on an hourly basis. For comparison purposes, the fee calculations include the full monthly fee amount for the first month.

- (1) Total Liabilities amounts are based on The Deal. For Atari, the total liabilities amount is based on the Mattes Declaration filed on 1/21/2013.
- (2) Includes all potential credited amounts against the back-end Restructuring/Transaction Fees.
- (3) Monthly fees are \$150k first month, \$100k for next 2 months, and \$50k thereafter.
- (4) Monthly fees are \$125k for the first two months and \$50k thereafter.
- (5) Monthly fees of \$125k are 50% credited against Restructuring Fee after 2 months.
- (6) Monthly fees were \$50k for the first 4 months, \$40k for the next 4 months, and \$30k for following 4 months.
- (7) Monthly fees were \$175k for the first 8 months and \$125k thereafter.
- (8) Monthly fees are \$50k, which are 50% credited after 2 months.