UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

In re	*	**Chapter 11**
	*	**Case No. 06-10179 (B)**
OCA, INC., *et al.*,	*	
	*	**(Motion for Joint**
Debtors.	*	**Administration Granted)**
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PLAN SUPPORTERS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF AMENDED AND SUPPLEMENTAL JOINT CHAPTER 11 PLAN OF REORGANIZATION FOR OCA, INC. AND FILED SUBSIDIARIES AS OF SEPTEMBER 14, 2006

OCA, Inc. ("OCA") and certain of its subsidiaries[1], as debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), the Official Committee of Unsecured Creditors of OCA, Inc., *et al.* (the "Creditors' Committee"), the Official Committee

[1] Orthodontic Centers of Alabama, Inc. (06-10180); Orthodontic Centers of Arizona, Inc. (06-10181); Orthodontic Centers of Arkansas, Inc. (06-10182); Orthodontic Centers of California, Inc. (06-10183); Orthodontic Centers of Colorado, Inc. (06-10184); Orthodontic Centers of Connecticut, Inc. (06-10185); Orthodontic Centers of Florida, Inc. (06-10186); Orthodontic Centers of Georgia, Inc. (06-10187); Orthodontic Centers of Illinois, Inc. (06-10188); Orthodontic Centers of Indiana, Inc. (06-10189); Orthodontic Centers of Kansas, Inc. (06-10190); Orthodontic Centers of Kentucky, Inc. (06-10191); Orthodontic Centers of Louisiana, LLC (06-10192); Orthodontic Centers of Maine, Inc. (06-10193); Orthodontic Centers of Maryland, Inc. (06-10194); Orthodontic Centers of Massachusetts, Inc. (06-10195); Orthodontic Centers of Michigan, Inc. (06-10196); Orthodontic Centers of Minnesota, Inc. (06-10197);Orthodontic Centers of Mississippi, Inc. (06-10198); Orthodontic Centers of Missouri, Inc. (06-10199); Orthodontic Centers of Nebraska, Inc. (06-10200);Orthodontic Centers of Nevada, Inc. (06-10201); Orthodontic Centers of New Hampshire, Inc. (06-10202); Orthodontic Centers of New Jersey, Inc. (06-10203); Orthodontic Centers of New Mexico, Inc. (06-10204); Orthodontic Centers of New York (06-10205); Orthodontic Centers of North Carolina, Inc. (06-10206); Orthodontic Centers of North Dakota, Inc. (06-10207); Orthodontic Centers of Ohio, Inc. (06-10208); Orthodontic Centers of Oklahoma, Inc. (06-10209); Orthodontic Centers of Oregon, Inc. (06-10210); Orthodontic Centers of Pennsylvania, Inc. (06-10211); Orthodontic Centers of Puerto Rico, Inc. (06-10212); Orthodontic Centers of Rhode Island, Inc. (06-10213); Orthodontic Centers of South Carolina, Inc. (06-10214); Orthodontic Centers of Tennessee, Inc. (06-10215); Orthodontic Centers of Texas, Inc. (06-10216); Orthodontic Centers of Utah, Inc. (06-10217); Orthodontic Centers of Virginia, Inc. (06-10218); Orthodontic Centers of Washington, Inc. (06-10219); Orthodontic Centers of Washington, D.C., Inc. (06-10220); Orthodontic of West Virginia, Inc. (06-10221); Orthodontic Centers of Wisconsin, Inc. (06-10222); Orthodontic Centers of Wyoming, Inc. (06-10223); OrthAlliance, Inc. (06-10229); OrthAlliance New Image, Inc. (06-10230); OCA Outsource, Inc. (06-10231); PedoAlliance, Inc. (06-10232); Orthodontics Centers of Hawaii, Inc. (06-10503); Orthodontics Centers of Iowa, Inc. (06-10504); and Orthodontics Centers of Idaho, Inc. (06-10505).

of Equity Security Holders of OCA, Inc., *et al.* (the "Equity Committee"), and the pre-petition and post-petition secured lenders of the Debtors (the "Senior Secured Lenders" and together with the Debtors, the Creditors' Committee, and the Equity Committee, the "Plan Supporters") file these proposed findings of fact, conclusions of law, and incorporated memorandum of law in support of the confirmation of the Amended and Supplemental Joint Chapter 11 Plan of Reorganization for OCA, Inc. and Filed Subsidiaries as of September 14, 2006 (the "Plan") and respectfully represent as follows:[2]

Preliminary Statement[3]

1. The Court should confirm the Plan. The Debtors have conclusively demonstrated that the Plan is confirmable pursuant to sections 1129(a) and 1129(b) of the Bankruptcy Code as the Plan does not discriminate unfairly and is fair and equitable. Case law overwhelmingly supports the proposition that the Senior Secured Lenders may "gift" or transfer a portion of their recovery to the holders of Class 6 Equity Interests.

2. Moreover, the evidence adduced by the Plan Supporters at the Confirmation Hearing clearly demonstrates that the Senior Secured Lenders are not getting a windfall under the Plan. Among other things, numerous "market tests" have consistently concluded that the market does not believe that the Debtors are worth in excess of the Claims of the Senior Secured Lenders. Were the opposite true, the Debtors would have received at least one viable refinancing offer or offer to acquire the Debtors and assume the debt owed to the Senior Secured Lenders between the end of 2004, when the Debtors began searching for such offers, and the

2 The proposed findings of fact and conclusions of law and incorporated memorandum of law set forth herein are being filed with the Court pursuant to its request made during the September 15, 2006 hearing on the confirmation of the Plan.

3 All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

Confirmation Hearing. However, no such offers have been made in the more than eighteen months that the Debtors have been actively "shopping" themselves.

3. Indeed, not only have the markets spoken, but various fiduciaries have conducted substantial legal and financial due diligence with respect to the Debtors and in each case have chosen to support the Plan. These fiduciaries have each come to the same conclusion: the Plan is in the best interests of the Debtors, their estates, and their constituents. To ascribe to the Debtors a total reorganization value greater than the Claims of the Senior Secured Lenders would require the Court to (a) find that these fiduciaries each erred in the discharge of their duties and undervalued the Debtors, (b) find that each of the market tests was inherently flawed, and (c) in the face of this overwhelming evidence make a quantum leap and adopt the lay opinion of Bartholomew F. Palmisano, Sr. ("Palmisano") that the reorganization value of the Debtors is "either" at least $148,000,000 (Palmisano Test. 9/11) or $159,400,000 (Palmisano Ex. 89), and as high as $189,900,000 (Palmisano Test 9/11 and Palmisano Ex 89), and that the liquidation value of the Debtors is at least $150,000,000 (Palmisano Test. 9/11).

4. Palmisano's lay opinion of value is entitled to no weight because his "valuation" is without any third party support or corroboration, he is incapable of deciding a low end for his supposed "valuation," and defies logic, common sense, undisputed facts, and the reasonable and logical inferences that must be drawn from undisputed facts. Put simply, Palmisano's valuation opinion is rebutted by the undisputed fact that at no time since March 2005 has Palmisano been able to come up with a source of debt or equity financing that would satisfy the Claims of the Senior Secured Lenders.

5. The lay opinion of Palmisano also is entitled to no weight because: (a) as an 8% equity holder of OCA, he has a motive and bias to overstate value; (b) as a defendant in class

action lawsuits filed by holders of OCA's common stock, he has an incentive to overstate value and minimize the damage claims for which he may ultimately be liable; (c) the reasonable and logical inference is that if the total reorganization value of the Debtors is between $148,000,000 and $189,000,000, the Senior Secured Lenders would have been paid in full during the past 18 months through some type of transaction involving the Debtors; and (d) Palmisano testified that he agreed with the "sales" and "multiple" figures adopted by Michael Gries ("Gries")[4] in Gries' valuation methodology (Palmisano Ex. 89), however Palmisano testified that the "Corporate Overhead" projected by Gries of $22,000,000 should be lowered to somewhere between $12,800,000 and $14,700,000; this testimony regarding slashing corporate overhead costs is entitled to no weight because the unrefuted testimony of Gries established that OCA's historical corporate overhead in 2003, 2004, and 2005 was approximately $30,000,000 each year, that OCA's present corporate overhead run rate is $22,000,000 a year, that OCA needs to increase corporate overhead in areas such as finance, accounting and practice development, and that Palmisano himself told Gries that an appropriate corporate overhead projection for OCA would be $21,400,000 a year (Gries Test. 9/14) and Palmisano authored a restructuring proposal in March 2006 that set corporate overhead and capital expenditures at $19,700,000. (Debtors Ex. 7 at 10).[5] To conclude, the only reasonable and logical conclusions and inferences that can be drawn from the undisputed facts are that if the Debtors had such an enormous value, an alternative source of debt or equity financing would have been located over the past 18 months or OCA would have been sold in order to pay off the Claims of the Senior Secured Lenders in full, pay off the unsecured creditors in full, and pay a substantial dividend to equity holders. Indeed, if Palmisano had truly believed his own views as to the value of the Debtors, he would

4 Gries is the Chief Restructuring Officer and interim Chief Executive Officer of the Debtors.

5 Consistent with this statement to Gries, Palmisano has never made efforts to reduce corporate overhead expenses during 2005 and early 2006 when the Debtors were undergoing significant financial problems.

have been increasing his holdings of OCA's common stock all along. The simple failure to "show us the money" is the best evidence that the Debtors are not worth more than the Claims of the Senior Secured Lenders.

6. Accordingly, the Plan Supporters respectfully request that the Court: (a) confirm the Plan; and (b) make the findings of fact and conclusions of law contained herein (as well as those contained in the supplemental findings of fact and conclusions of law attached hereto as Exhibit A).

Background

7. Beginning on March 14, 2006 (the "Petition Date"), the Debtors filed for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"). Certain additional Debtors filed on March 17, 2006 and June 2, 2006. All of the Debtors' cases have been consolidated for procedural purposes only and are being jointly administered.

8. Pre-petition Secured Debt. On January 2, 2003, the Debtors entered into a $125,000,000 senior secured credit facility (as amended and supplemented from time to time, the "Senior Credit Agreement") with a syndicate of lenders (the "Pre-petition Lenders") and Bank of America, N.A., as Administrative Agent (the "Administrative Agent"). Beginning in March 2005, the Debtors defaulted on multiple covenants contained in the Senior Credit Agreement, including covenants relating to the timely filing of quarterly and annual reports with the United States Securities and Exchange Commission and the provision of audited financial information to the Pre-petition Lenders. (Palmisano Test. 9/11). From March 2005 though January 2006, the Pre-petition Lenders and the Debtors entered into a series of amendments to the Senior Credit Agreement which either served as a waiver of defaults or a forbearance by the Pre-petition

Lenders from exercise of remedies due to the continuing inability of the Debtors to comply with many of the covenants of the Senior Credit Agreement. (Palmisano Cross Ex. 9/14). As of the Petition Date, the Debtors had $91,723,334 in principal amount outstanding under the Senior Credit Agreement, plus accrued and unpaid interest of at least $501,688.57, plus fees and costs and expenses incurred in connection therewith, including, without limitation, a cash forbearance fee of $458,616 (the "Senior Secured Debt"). (Final DIP Order (P-487) at 9). All of the Debtors' obligations under the Senior Credit Agreement were secured by validly perfected first priority security interests in all of the Debtors' assets. (Id. at 9-10 and 25-26). The Senior Credit Agreement matured, and the Senior Secured Debt became payable, in its entirety, on January 2, 2006. (Gries Test. 9/5). The Debtors have been unable to pay the Senior Secured Debt in full or in part. (Gries Test. 9/5, Palmisano Cross. Ex. 9/14).

9. Pre-petition Refinancing Efforts. Beginning in 2004 and continuing through 2006, the Debtors began to seek financing alternatives that would allow them to refinance the Senior Secured Debt. (See Palmisano Test. 9/14). These "exhaustive" efforts (Complaint by Palmisano against Silver Point Finance, LLC and Bank Of America, N.A. (P-1599) (the "Palmisano Complaint") at ¶ 26), included the solicitation of offers from various financial institutions, including JPMorgan Chase, Leonard Green & Partners LP ("Leonard Green") and Capital Source Finance LLC, among others. (Debtors Ex. 10). None of these efforts, however, resulted in an offer to refinance the Senior Secured Debt. (Palmisano Complaint at ¶26 and Palmisano Cross. Ex. 9/14). Instead, each potential lender or investor solicited in 2004 and 2005 decided against making any financing commitment to OCA, with Leonard Green ending its 45 day due diligence period with a "Letter of No Interest" (Debtors Ex. 10). The market was speaking, and it was telling OCA that it did not value OCA in an amount exceeding the

outstanding Senior Secured Debt. Indeed, it is important to note that these rejections from the market came at a time when the number of active doctors performing under BSA's was nearly double the number that are now performing under BSAs without objection or, alternatively, have entered into similar support services agreements ("SSAs"). (Debtors' Ex. 15).

10. The Revlon Instruction and the Retention of Jefferies & Company. Following receipt of a refinancing proposal from Silver Point in the fall of 2005, OCA's then counsel, Anthony Correro, gave OCA's board of directors a "Revlon Instruction" advising them that OCA was now "in play" and that the directors' fiduciary duties under Delaware law required them to "shop" the company and seek financing or acquisition offers that were superior to the terms proposed by Silver Point. (See Palmisano Test. 9/11 and Debtors Ex. 45) Thereafter, in fall 2005, the Debtors engaged Jefferies & Co. ("Jefferies"), a well known investment bank, to (i) seek out sources for a debt and/or equity financing that would allow OCA to refinance the Senior Secured Debt and (ii) locate parties interested in acquiring the Debtors and assuming their debt obligations. Jefferies' compensation during this period was based entirely on a success fee, i.e. Jefferies would only be paid upon a successful refinancing of the Senior Secured Debt or other comprehensive restructuring of the company. (Debtors Ex. 37 at ¶5), The efforts of Jefferies, which Gries testified were those of an "economically motivated" actor, continued for four and half months until the Petition Date (Gries Test. 9/5 and Debtors Ex. 10). Jefferies conducted due diligence, put together materials, marketed OCA, conducted "road shows" with OCA and actively sought to market OCA. (Palmisano Test. 9/11). While multiple institutions initially expressed interest in the Debtors, not a single party came forward with any *bona fide* commitment for either a refinancing or acquisition of the Debtors. (Gries Test. 9/5, Palmisano

Test. 9/11 and Palmisano Cross Ex. 9/14). Once again, the market was speaking and telling OCA that its value was less than the outstanding amount of the Senior Secured Debt.

11. Massive Doctor Defections. In the winter of 2006, an increasing number of doctors terminated their business service agreements ("BSA's") due to the Debtors' uncertain financial condition. (Gries Test. 9/5, Palmisano Test. 9/11, and Proposal from Palmisano to Silver Point, Debtors Ex. 7 at 1-2). OCA also had been engaged in litigation with doctors in 2004 and 2005. (Palmisano Cross Ex. 9/14). At the time of its default under the Senior Credit Agreement, and at the time that OCA first announced its accounting issues, OCA had more than 250 active doctors performing under BSA's. As of the Petition Date, that number precipitously dropped to 175. (Debtors Ex. 15). As of the commencement of the Confirmation Hearing, the Debtors had only 129 doctors who had agreed to continue performing post-Effective Date under their BSA's without objection or who have, alternatively, entered into similar SSA's and are not at the same time seeking to terminate their contractual arrangements with the Debtors. (Id.)

12. Declining Financial Fortunes. Compounding the increasing doctor attrition, beginning in 2004, the Debtors began reporting significant losses.[6] These losses have continued during the bankruptcy, with the monthly net losses for July 2006 reaching $4,156,495. (See Monthly Operating Report for period ending 7/31/2006 (P-1778)). OCA's declining financial fortunes are also reflected in its deteriorating stock price, which has fallen from $6.29 a share in early January 2005 to $0.34 a share on the Petition Date and to $.03 on September 22, 2006. The Company effectively has no "equity" value and its stock continues to trade due only to the activities of speculators.

[6] Due to the historical accounting issues at the Debtors and alleged fraudulent financial statements, losses may have accrued differently than as set forth herein, and may have begun earlier.

13. DIP Facility. On March 17, 2006, and May 12, 2006, respectively, the court entered the Interim Order (P-48) (the "Interim DIP Order") and Final Order (P-487) (the "Final DIP Order" and together with the Interim DIP Order, the "DIP Orders") Granting Motion For Authority to (I) Obtain Postpetition Financing and Use Cash Collateral, (II) Granting Liens, Security Interests and Superpriority Claims, and (III) Granting Adequate Protection. Pursuant to the DIP Orders, the Debtors and the Senior Secured Lenders entered into a DIP financing agreement (the "DIP Agreement"), under which, as of September 5, 2006, (i.e. the first day of the Confirmation Hearing), the Debtors had borrowed a principal amount of $100,123,334.[7] The total amount of principal and interest due and owing to the Senior Secured Lenders as of September 25, 2006 is at least $101,496,257 (exclusive of any unpaid fees, costs and expenses that are otherwise payable to the Senior Secured Lenders pursuant to the DIP Orders). Of course, to exit bankruptcy, the Debtors anticipate (as of September 25, 2006) expending approximately an additional $12,540,000 towards Allowed Administrative Claims and other Effective Date payments required by the Plan.

14. Plan Negotiations. Shortly after the Petition Date, the Debtors and the Senior Secured Lenders began negotiating the contours of a chapter 11 plan of reorganization that would enable the Debtors to preserve, to the extent possible, their going concern value and emerge from bankruptcy as viable entities. The negotiations culminated with a chapter 11 plan of reorganization term sheet (the "Plan Term Sheet") and ultimately a chapter 11 plan of reorganization agreed to by the Debtors and the Senior Secured Lenders that required the Senior Secured Lenders to consent to the equitization of a significant portion of their debt. (Debtors Ex. 8) Palmisano drafted minutes of a April 20, 2006 Board call that stated that "Bart told the board

[7] All obligations under the DIP Facility are secured, in accordance with the DIP Orders, by validly perfected, first priority security interests in all of the assets of the Debtors.

that for the sake of the company, employees, doctors, shareholders, and creditors the board should adopt the presented [chapter 11 plan] term sheet. (Palmisano Cross Ex. 9/14, Palmisano Ex. 32 at 3). The Plan Term Sheet provided that the Senior Secured Lenders would receive on the Effective Date: (i) cash payment of the outstanding balance under the DIP revolving loans, all interest owing on the DIP Facility and all unpaid fees, costs, and expenses; (i) a new secured term loan totaling $50,000,000; and (iii) 100% of the Equity Interests in Reorganized OCA (subject to dilution by the potential issuance of stock to employees and doctor affiliates of the Reorganized Debtors). (Id. at 2)

15. The Debtors' Fiduciary Duty Out. The Plan Term Sheet provided a "fiduciary duty out" for OCA, i.e. the Debtors remain free to this day to support any alternative financing, plan of reorganization or other transaction so long as such transaction(s) would pay the Claims of the Senior Secured Lenders in full. (Debtors Ex. 8 at 15) The Debtors have never exercised this fiduciary duty out because no third party has ever committed to investing fresh capital sufficient to refinance the Claims of the Senior Secured Lenders. (Gries Test. 9/5) No third party has been able to deliver an alternative transaction based on the reorganization value of the Debtors exceeding (or even equaling) the Claims of the Senior Secured Lenders.

16. Negotiations with the Creditors' Committee. On March 24, 2006, the United States Trustee appointed the Creditors' Committee. (P-95) Thereafter, the Debtors and the Senior Secured Lenders began negotiating with the Creditors' Committee over the terms of a proposed consensual chapter 11 plan of reorganization that would provide for a distribution to the holders of Allowed General Unsecured Claims out of the recoveries that would have been distributed to the Senior Secured Lenders by operation of the absolute priority rule. A deal was struck only after the Creditors' Committee and their advisors conducted extensive due diligence

into the financial condition of the Debtors and the Reorganized Debtors' future business operations and prospects (as well as due diligence into the validity of the security interests and liens of the Senior Secured Lenders) and was memorialized in a separate term sheet (as amended, the "UCC Term Sheet"). (Debtors Ex. 8). That due diligence resulted in a May 2006 report prepared by Jeffery Jones ("Jones") of Loughlin Meghji + Co. ("L&M"), the Creditors' Committee's financial advisor, which found that the reorganization value of the Debtors did not exceed the Claims of the Senior Secured Lenders. (Debtors Ex. 66). As ultimately amended, the UCC Term Sheet provides that each holder of an Allowed General Unsecured Claim will receive its pro rata share of (i) $3,000,000, (ii) the proceeds of certain transferred avoidance actions; and (iii) contingent future payments from the Reorganized Debtors triggered by the occurrence of certain monetization events. (Debtors Ex. 8, Plan section 3.4.2). Under the terms of the UCC Term Sheet, General Unsecured Creditors have the possibility of recovering the full dollar amount of their Allowed pre-petition Claims. (Debtors Ex. 8, Plan section 3.4.2).

17. Creditors' Committee Fiduciary Duty Out. Like the Debtors, the Creditors' Committee has to this day a fiduciary duty out allowing it to support any alternative financing, plan of reorganization or other transaction with respect to the Debtors so long as such transaction(s) pay the Claims of the Senior Secured Lenders in full. (Debtors Ex. 8 at 15). Though this fiduciary duty out is still available to the Creditors' Committee and despite their significant efforts to find such an alternative transaction, they, like the Debtors, have been unable to find any third party that is willing to invest fresh capital in an amount sufficient to refinance the Claims of the Senior Secured Lenders. (Gries Test. 9/5). Again, the conclusion is inescapable that no third party believes that the total reorganization value of the Debtors exceeds the Claims of the Senior Secured Lenders.

18. Filing of Initial Plan of Reorganization. On May 12, 2006, in accordance with the Court-approved "Plan Support Agreement," the Debtors filed an initial proposed chapter 11 plan of reorganization that was based upon the terms of the Plan Term Sheet and the UCC Term Sheet. (P-492)

19. Appointment of Equity Committee. On June 13, 2006, the United States Trustee appointed the Equity Committee. (P-671). The Equity Committee proceeded to retain experienced counsel and financial advisors. As counsel to the Equity Committee has previously stated, "the main goal of the Equity Committee [was] to explore strategic alternatives" that would refinance the Claims of the Senior Secured Lenders. (Tr. 6/27/2006 18:16-20). Indeed, the Equity Committee was optimistic that it would be able to refinance the Claims of the Senior Secured Lenders because it believed that the value of the Debtors was in excess of $200,000,000 (Tr. 6/27/2006 115:6-17), or nearly double the amount of the Senior Secured Lenders' Claims. Moreover, the compensation of Imperial Capital ("Imperial"), the Equity Committee's financial advisor, was completely dependent upon Imperial finding a willing source of capital or equity sufficient to pay the Claims of the Senior Secured Lenders, thus making Imperial extremely motivated to find such a source of financing. (See Ex. A to Order Granting Motion to Retain Imperial dated 7/31/2006 (P-1292) at 1-2). However, despite Imperial's marketing and solicitation efforts, the Equity Committee has been unable to come forward with any strategic alternative that would refinance the Senior Secured Lenders

20. The Equity Settlement. Once the Equity Committee determined that no strategic alternatives existed, it began negotiations with the Senior Secured Lenders and the Debtors over the terms of a potential settlement (the "Equity Settlement") pursuant to which the Equity Committee would agree to support a consensual plan of reorganization for the Debtors. Pursuant

to the Equity Settlement, the Senior Secured Lenders have agreed to transfer to the holders of Equity Interests in OCA the opportunity (the "Rights Offering") to purchase up to 15% of the common stock of Reorganized OCA (the "New Common Stock") that otherwise was to have been distributed on the Effective Date to the Senior Secured Lenders under the Plan. All of the proceeds from the exercise of the Rights Offering will flow directly to Reorganized OCA as a capital infusion.

21. Testimony of Palmisano. At the Confirmation Hearing, Palmisano testified that he believed the value of the Debtors was between $148,000,000 and $189,000,000. (Palmisano Test. 9/11 and Palmisano Ex. 89). This "valuation," however, is rebutted by simple reality: at no time since the Debtors began their refinancing efforts in late 2004, has either Palmisano, who claims that he has more knowledge of the Debtors than any other person, or any other party come forward with a source of debt or equity financing that would satisfy the Claims of the Senior Secured Lenders. (Palmisano Test 9/11 and Palmisano Cross. Ex. 9/14). The only conclusion that can be drawn from this is that each of the numerous institutions approached to invest in the Debtors determined that the value of OCA did not exceed the Claims of the Senior Secured Lenders. To conclude otherwise is to find that sophisticated financial institutions turned down a viable investment with a potential for a significant return (if Palmisano's valuation was remotely accurate) for no logical reason.

22. Continued Rise In Administrative Expenses. Administrative expenses for the Debtors' cases have continued to rise and now exceed all previous projections. The Debtors' current estimate of Allowed Administrative Claims is approximately $9,540,000 and other Effective Date payments required by the Plan is at least $3,000,000. In fact, because of increasing Administrative Claims, at the Debtors' request, the Senior Secured Lenders have

increased the availability under the Working Capital Facility from $10,000,000 to $25,000,000 so that the Debtors have sufficient capital upon their emergence from bankruptcy to satisfy all of their required Plan payments and administrative expense obligations. (See Plan section 1.117; Gries Test. 9/5 and Patrick 9/11). Accordingly, as of September 25, 2006, the aggregate amount of the Senior Secured Lender Claims and the estimated Allowed Administrative Expense Claims is in excess of $111,036,257. Therefore, because the reorganization value of the Debtors is less than $111,036,257, the absolute priority rule provides that holders of Claims and Equity Interests that are junior to the Senior Secured Lenders are entitled to no recovery from the Debtors' estates.

23. Confirmation Hearing. At the conclusion of the Confirmation Hearing on September 15, 2006, the Court requested that the parties submit findings of fact (and supportive memoranda) dealing with the only issues not yet decided: valuation, cram down, and absolute priority. The Plan Supporters have filed this pleading pursuant to the Court's request. The Plan Supporters request that the Court adopt the following proposed findings of fact and conclusion of law with respect to these disputed issues.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW[8]

24. **As of September 25, 2006, the aggregate amount of principal and interest owed to the Senior Secured Lenders is at least $101,496,257 plus fees, costs, and expenses, and all such amounts are secured by validly perfected, first-priority liens on all of the assets of the Debtors. These Claims, as well as Allowed Administrative Claims, must be paid in full to the Senior Secured Lenders before any other Claimant or Equity Interest holder is entitled to receive any recovery pursuant to the absolute priority rule.**

8 All findings of fact are construed as conclusions of law and all conclusions of law construed as findings of fact to the extent applicable.

25. **The total reorganization value of the Debtors is $96,000,000. (See Gries Test. 9/5 and Debtors Ex. 19 and 20).** The Court heard extensive testimony from Gries, the Chief Restructuring Officer and interim Chief Executive Officer of the Debtors. Gries is a founding principal of Conway DelGenio Gries & Co. ("CDG") and is an expert on issues of valuation of businesses and business assets as well as the liquidation value of such assets. Gries testified that the reorganization value of the Debtors is $96,000,000. (See Gries Test. 9/5, and Debtors Ex. 19 and 20). The testimony of Gries, supported by his valuation report (Debtors Ex. 19) and his Summary of Reorganization Value (Debtors Ex. 20), is reasonable, and the Court should adopt his valuation as the total reorganization value of the Debtors. The only other expert to give testimony on valuation in this proceeding, was Jones of L&M who independently came to substantially the same conclusion on value as did Gries with a range of total reorganization value of between $78,200,000 and 117,400,000 with a midpoint of $97,800,000 which corroborated Gries' valuation. (Jones Test. 9/11 and Debtors Ex. 63). As further corroborating evidence, each of the aforementioned marketing efforts pursued by the Debtors, Jefferies, the Creditors' Committee, the Equity Committee, and others over the past two years have failed to elicit a single commitment to provide debt or equity financing sufficient to pay the Claims of the Senior Secured Lenders, or to provide for an acquisition of the Debtors and assumption of the Claims of the Senior Secured Lenders, thereby conclusively supporting a finding that the reorganization value of the Debtors is not more than $96,000,000. (Gries Test 9/5, Palmisano Test. 9/11, Palmisano Cross Ex. 9/14, and Debtors Ex. 10) Accordingly, the reasoning contained in Gries' valuation report, as supplemented by Gries' testimony at the Confirmation Hearing, should be adopted in its entirety by the Court.

26. **Since the Senior Secured Lenders are receiving less than the full value of their Claims, and since the reorganization value of the Debtors does not exceed the aggregate amount of the Senior Secured Lenders' Claims and Allowed Administrative Expense Claims, the holders of General Unsecured Claims (Class 4), the holders of Subordinated Claims (Class 5), and the holders of Equity Interests in OCA (Class 6), are not entitled to any recovery on the basis of the absolute priority rule.**

27. CDG conducted extensive due diligence in support of the valuation and liquidation analysis prepared by Gries including:

- CDG built "bottoms-up" projections for doctor level financials and corporate expenses;
- CDG determined comparable companies within OCA's line of business and reviewed such comparable companies for its analysis; and
- CDG made inquiries of the Debtors' employees and board members responsible for the Debtors' non-core assets and reviewed analyses by professionals retained by the Debtors to assist with respect to these assets.

28. **The Plan embodies a "gift" to the holders of General Unsecured Claims and Equity Interests in OCA from the Senior Secured Lenders.** Since no recovery is due to the holders of General Unsecured Claims or Equity Interests in OCA pursuant to the absolute priority rule, the distributions to Class 4 under the Plan and to Class 6 under the Equity Settlement represent transfers of portions of the recovery to which the Senior Secured Lenders are entitled, rather than a legally required distribution of the property of the Debtors' estates to holders of such junior Claims and Equity Interests.

29. **Even if the absolute priority rule were applicable to the Equity Settlement, because the Equity Settlement provides "new value" to the Debtors, it does not violate any provision of the Bankruptcy Code. The Equity Settlement falls within the "new value corollary" to the absolute priority rule for at least the following reasons:**

- **The Participants are contributing value that is in fact "new" because they will be purchasing the New Common Stock with cash and which will be received by Reorganized OCA with no restriction on its use.**
- **The price at which the New Common Stock is available to the Participants is equal or greater than the value of such New Common Stock.**
- **The Equity Settlement came only after numerous "market tests," none of which resulted in a commitment from a third party to finance or make any investments in the Debtors.**
- **The Equity Settlement is necessary to the Debtors' successful reorganization because, among other things, it is anticipated to provide an additional equity infusion for the Reorganized Debtors which will provide additional working capital.**

30. **The Plan complies with section 1129(a)(7) of the Bankruptcy Code. Section 1129(a)(7) requires that, with respect to each impaired class of Claims or Interests, each holder of such Claims or Interests (a) has accepted the plan or (b) will receive or retain property of a value, as of the effective date of the plan, that is not less than the amount such holder would receive if the debtor were liquidated on such date. Classes 3, 4, 5 and 6 are impaired under the Plan. Class 3 has accepted the Plan. General Unsecured Creditors (Class 4), holders of Subordinated Claims (Class 5) and holders of Equity Interests in OCA (Class 6) will receive at least as much under the Plan as they would in a chapter 7 liquidation.** The assumptions used by Gries in preparing the Liquidation Analysis attached to the Disclosure Statement as Exhibit D-3 including, without limitation, that a chapter 7 trustee would wind down the Debtors' business as soon as practical, are reasonable. Based on Gries' testimony and the liquidation analysis, the range of liquidation values, $29,556,000 to $67,886,000, is a fair and reasonable estimate of the liquidation value of the Debtors, following payment of administrative expenses and professional fees. (Gries Test 9/5, Debtors' Ex. 22). This amount is insufficient to pay the Claims of the Senior Secured Lenders and Allowed Administrative Claims in full and thus no class junior to Class 3, including the classes of General Unsecured Claims, Equity Interests in OCA, and Subordinated Claims would receive any

recovery in a chapter 7 liquidation. In contrast, under the terms of the Plan and Equity Settlement, the Senior Secured Lenders are "gifting" to the holders of General Unsecured Claims and Equity Interests a portion of their distributions. As a result, Classes 4 and 6 are receiving more value than they would have received in a chapter 7 liquidation, and the members of Class 5 are not any worse off than they would have been in a chapter 7 liquidation.

31. The Plan can be confirmed, pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding the failure of Classes 4 and 5 to accept the Plan because it does not discriminate unfairly, and is fair and equitable, with respect to these impaired dissenting classes. The Plan is fair and equitable and complies with the absolute priority rule, as no Class of Claims or Interests that is junior to Classes 4 and 5 will receive any property under the Plan on account of such Claims or Interests. The Equity Settlement is not a recovery under the Plan or the Bankruptcy Code of property of the Debtors or their estates, but instead is a "gift" or transfer from the holders of Class 3 Claims of a portion of the property that otherwise would have been distributable to such holders on account of their secured Claims and, accordingly, does not constitute unfair discrimination or otherwise violate any provision of the Bankruptcy Code.

ARGUMENT

I. The Court Should Adopt Gries' $96,000,000 Valuation as the Reorganization Value of the Reorganized Debtors .

32. The Court should adopt Gries' $96,000,000 valuation as the reorganization value of the Reorganized Debtors for the simple reason that such a valuation has been conclusively verified by the following "market tests":

- Refusals by JPMorgan Chase, Leonard Green and Capital Source, among others, to refinance the Claims of the Senior Secured Lenders.
- The Debtors' inability, after being issued a "Revlon Instruction" by its counsel and after hiring Jefferies to formally solicit refinancing or acquisition offers, to obtain commitments for any such refinancings or acquisitions.

- The inability of the Debtors and the Creditors' Committee to exercise their respective fiduciary duty outs during the pendency of the Debtors' bankruptcy cases and formulate alternate transactions that would have paid off the Claims of the Senior Secured Lenders in full and generated better recoveries for the Debtors' other constituents.
- The inability of the Equity Committee -- despite its protestations that the Debtors were worth at least $200,000,000 -- to find a single "strategic alternative" that would have paid off the Claims of the Senior Secured Lenders and generated better recoveries for the Debtors' other constituents.

33. Economically motivated actors -- and it is without dispute that entities such as JPMorgan Chase, Jefferies, and Imperial Capital are just that -- would have had few qualms refinancing the Senior Secured Lenders if they believed that the Debtors were worth more than the value of their outstanding debt -- refinancings where collateral value exceeds the amount of money loaned are inherently safe investments. Likewise, economically motivated actors would have had no qualms acquiring the Debtors and assuming their debt if the value of the Debtors exceeded the value of their debt. The fact that no third party chose to refinance or acquire the Debtors in the face of the Senior Secured Lenders' Claims makes it clear that the reorganization value of the Debtors -- despite the initial protestations of the Equity Committee and despite the "evidence" proffered by Palmisano during the Confirmation Hearing -- does not exceed the face amount of the Claims of the Senior Secured Lenders. . See, e.g, Matsushita Electric Indus. Co., Ltd., 475 U.S. 574, 587 (1986) (parties' conduct must be "evaluated in its factual context," and where such factual context makes clear that one party's allegations would require other party to behave in manner that "simply makes no economic sense," court should require that the alleging party "come forward with more persuasive evidence to support [its] claim than would otherwise be necessary.") This conclusion is further buttressed by the decline in the trading price of OCA's common stock to $.03.

34. Market tests have been uniformly favored by bankruptcy courts as the true barometers of value. See In re Leblanc, 346 B.R. 706, 714 (Bankr. M.D. La. 2006) (arm's length

sale is "the best evidence of the property's fair market value at the relevant time"); Serra Builders, Inc. v. John Hanson Savings Bank, FSB (In re Serra Builders, Inc.), 128 B.R. 615, 620 (Bankr. Md. 1991) (a bid that a potential seller is willing to make for a particular asset is "the best evidence" of such asset's actual value). Courts are loathe to stray from market tests when they are available. See In re Torch Offshore, Inc., 327 B.R. 254, 258 (E.D. La. 2005) (holding that although assets were recently appraised for higher amount "this is not an indication of market value because no firm was willing to offer this amount"); In re Oneida Lake Dev., Inc., 114 B.R. 352, 356 (Bankr. S.D.N.Y. 1990) (same; unsupported allegations of higher value could not controvert the evidence of the actual bids received). Here it is clear that many independent efforts were taken over a period of nearly two years to either refinance the Debtors or find a potential acquirer without any success. Moreover, the Creditors' Committee and the Equity Committee, fiduciaries each represented by sophisticated professionals, have concluded that the Plan fairly values the Debtors and is in the best interests of their respective constituencies. Accordingly, it is undisputed that the markets have clearly and uniformly spoken that the reorganization value of the Debtors does not exceed the face amount of the Senior Secured Lenders' Claims and that a reorganization value that equals Gries' $96,000,000 valuation should be adopted by this Court.

II. The Distribution of The Senior Secured Lenders' Recoveries to Holders of Equity Interests Does Not Violate The Bankruptcy Code.

35. In his efforts to derail an otherwise fully consensual plan of reorganization for the Debtors -- the Plan that has been agreed to by the Debtors, the Creditors' Committee, the Equity Committee, the Senior Secured Lenders and a significant number of the Debtors' doctor affiliates – Palmisano wrongly argues that the Plan violates the absolute priority rule embodied in section 1129(b) of the Bankruptcy Code because the Senior Secured Lenders cannot agree to transfer or

"gift" a portion of their recoveries (hereinafter referred to as the "Equity Gift") to the holders of Equity Interests in OCA (Class 6) in accordance with the terms of the Equity Settlement. However, as the overwhelming majority of courts that have considered this issue have held, the Equity Gift does not violate section 1129(b) of the Bankruptcy Code and is entirely consistent with all provisions of the Bankruptcy Code. Indeed, the Equity Settlement is the embodiment of the negotiated resolutions of complicated issues that the Bankruptcy Code and bankruptcy courts universally seek to foster.

36. Palmisano's arguments should not be adopted by the Court for at least the following two reasons: (a) he gives short shrift to the fact that the Senior Secured Lenders' Claims are secured by valid, perfected first priority liens on all of the Debtors' assets and (b) his reliance upon the fact that some of the cases supporting transactions similar to the Equity Gift did not arise in the context of chapter 11 is a red herring. Central to the validity of the Equity Gift is that the Senior Secured Lenders are undersecured and therefore are entitled, as a matter of law, to a distribution of all of the Debtors' property. This is the ultimate embodiment of the absolute priority rule and is clearly expressed by section 1129(b)(2)(A) of the Bankruptcy Code. Neither the Bankruptcy Code nor any other applicable law tampers with this inescapable conclusion.

37. Taking this into account, Palmisano's efforts to distinguish the Equity Gift from the gifts approved outside of the chapter 11 context are ill founded. There is no difference between a gift in the chapter 7 context, which was found to be valid in the seminal case of Official Unsecured Creditors' Committee v. Stern (In re SPM Mfg. Corp.), 984 F.2d 1305 (1st Cir. 1993), and the Equity Gift contained in the Equity Settlement. As the SPM court noted, chapter 7 effectively embodies the absolute priority rule: like section 1129(b) of the Bankruptcy

Code, section 726 provides that there can be no distributions to other creditors or interests holders of a debtor until and unless all security interests are satisfied. SPM, 984 F.2d at 1312 ("If a lien is perfected and not otherwise invalidated by law, it must be satisfied out of the assets it encumbers before any proceeds of the assets are available to unsecured claimants including those having priority").[9]

38. Accordingly, because an undersecured creditor has exclusive right to the assets subject to its security interests, the SPM court found that the gift contemplated therein did not violate the absolute priority rule or any other provision of the Bankruptcy Code: "it is hard to see how the priority creditors lost anything owed to them given the fact that there would have been nothing left for the priority creditors after the $5 million was distributed to [the secured lender]. The 'siphoning' of the money to general, unsecured creditors came entirely from the $5 million belonging to the [secured lender], to which no one else had any claim of right under the Bankruptcy Code." (Id.).

39. The SPM court went on to state that "[Bankruptcy] Code provisions governing priorities of creditors apply only to distributions of property of the estate. The Code does not govern the rights of creditors to transfer or receive nonestate property. . . . [C]reditors are generally free to do whatever they wish with the bankruptcy dividends they receive, including to share them with other creditors." Id. at 1313.

40. As the SPM court noted, a gift from a secured creditor to a subsection of junior creditors or interest holders is akin to the secured creditor's assigning to such subgroup its rights to receive a certain specified portion of its bankruptcy distribution. It is not a controversial

9 The principle that "[s]ecured creditors . . . would have recourse to their security before any of the Bankruptcy Act priorities come into play" is exactly the same in chapter 7 and chapter 11. United States v. Speers, 382 U.S. 266, 269, n.3 (1965) (a case decided under a provision of the Bankruptcy Act that applied to both reorganizations and liquidations).

proposition that a right to receive payment is freely transferable under nonbankruptcy law. Id. This observation crystallizes the central fallacy behind challenges to gifts – whether in the context of a chapter 11 plan of reorganization or otherwise. Because a secured creditor is otherwise entitled to transfer a portion of any recoveries it receives upon consummation of a plan of reorganization to holders of junior claims or interests, there is absolutely no reason why such a transfer should not be permitted under the auspices of a chapter 11 plan of reorganization in order to foster a speedy and consensual emergence from bankruptcy. To prohibit the making of gifts under a chapter 11 plan of reorganization is utterly illogical: it would deprive junior classes of the ability to negotiate for a portion of a senior classes' bankruptcy recoveries. See In re World Health Alternatives, Inc., 344 B.R. 291, 303-04 (Bankr. D. Del. 2006) (finding that if a gift transaction was not approved "only [the secured lender] would be a winner").

41. Moreover, SPM is far from being an outlier. Numerous other courts have relied upon SPM and adopted its reasoning in the context of chapter 11. See In re Worldcom, Inc., 2003 WL 23861928 *61 (Bankr. S.D.N.Y. Oct. 31, 2003) (holding, in the context of confirming a chapter 11 plan of reorganization, that a gift by senior classes does not violate section 1129(b) of the Bankruptcy Code, and stating that "any enhanced value received by holders of [junior classes] on account of contributions from [secured creditors] is not a treatment of these Claims under the plan and does not constitute unfair discrimination. . . . . The greater value received by [a junior class] does not violate the Bankruptcy Code because [such greater value is] the result of [secured] creditors . . . voluntarily sharing their recoveries under the Plan [and thus] is not the result of the Debtors' distribution of estate property to such creditors. Creditors are generally free to do whatever they wish with the bankruptcy dividends they receive, including sharing them with other creditors…"); In re Union Financial Services Group, Inc., 303 B.R. 390, 422

(Bankr. E.D. Mo. 2003) (holding, in the context of confirming a chapter 11 plan of reorganization, that a gift by secured creditors does not violate section 1129(b) of the Bankruptcy Code and further stating that proceeds of secured creditors' collateral "represent assets and distributions, in which the Debtors have no right, title or interest . . . and, which would otherwise be required by applicable law to be paid directly to the [secured creditors]." Accordingly, the plan provision that provided for payment of a portion of such proceeds to an intermediary class did not effect any unfair discrimination); In re Genesis Health Ventures, Inc., 266 B.R. 591, 617 (Bankr. D. Del. 2001) (holding, in the context of confirming a chapter 11 plan of reorganization, that a gift by secured creditors does not violate section 1129(b) of the Bankruptcy Code and stating that secured creditors "are free to allocate [value otherwise distributable to them] without violating the 'fair and equitable' requirement");[10] In re Iridium Operating LLC, 2005 WL 756900 (S.D.N.Y. April 4, 2005) *7 (holding, in the context of approving a settlement in a chapter 11 case, that where distribution to junior creditors comes from the secured creditor's collateral, it is a "distribution of non-estate funds. . . [and] the priority scheme for the distribution of estate assets under the Bankruptcy Code is not implicated, let alone violated . . ."); In re

[10] Palmisano's efforts to distinguish Genesis are unavailing. He asserts that Genesis dealt only with transfer of bankruptcy recoveries by a secured creditor to the reorganized debtors' management in exchange for continued services by such management after the consummation of the Genesis' plan of reorganization (Palmisano Response (P-1823) at ¶ 4). In fact, the Genesis court specifically held that an agreement of undersecured creditors to share a portion of their distributions with certain classes of unsecured creditors (while excluding other classes) did not violate the Bankruptcy Code and that there was "no impediment to the agreement." Genesis Health. 266 B.R. at 601, 617.

Palmisano's other attempt to distinguish SPM and Genesis from the Plan is simply incomprehensible. He states (Palmisano Objection to Plan Modifications at ¶ 6) that, while in SPM and Genesis the senior creditor was transferring "its own property that existed outside the plan," the Senior Secured Lenders here transfer property (the common stock of the Reorganized OCA) that is "created and exist[s] only by virtue of the Plan." Id. First, this is factually wrong as the senior creditors in Genesis in fact consented to a transfer of a portion of the new common stock of reorganized Genesis to specified classes of unsecured creditors. Genesis Health 266 B.R. at 598. Moreover, the Senior Secured Lenders, who are undersecured and have a valid and perfected lien on all of the Debtors' property and assets, are entitled to have the full reorganization value of the Reorganized Debtors distributed to them. The New Common Stock is not some "new" property created by the Plan, but the embodiment of such reorganization value, all of which is subject to the Senior Secured Lenders' security interests and which may be transferred by the Senior Secured Lenders to any junior class or classes they choose.

MCorp Fin., Inc., 160 B.R. 941, 948 (S.D. Tex 1993) (permitting senior unsecured bondholders to allocate a portion of their claim to fund a settlement with the FDIC over the objection of junior bondholders).

42. Indeed, the principal case on which Palmisano has relied in all his pleadings, In re Armstrong World Indus., Inc., 432 F.3d 507 (3rd Cir. 2005), confirms the fundamental principle that an undersecured creditor may transfer a portion of its bankruptcy recoveries to junior classes without violating section 1129(b) of the Bankruptcy Code. Contrary to Palmisano's insinuations, the plan of reorganization at issue in Armstrong was not "remarkably similar" to the Plan. (Palmisano Objection to Plan Modifications at ¶ 5). The Armstrong plan of reorganization contemplated a gift or transfer of recoveries by a class of ***unsecured*** creditors over the objections of a ***co-equal*** class and was therefore found to violate the Bankruptcy Code. Armstrong, 432 F.3d at 514. (emphasis added) In coming to the determination that such a gift violated the absolute priority rule, the Third Circuit, adopting the reasoning of the District Court decision below, specifically distinguished the SPM, MCorp, and Genesis Health decisions, supra, on the basis that the distributions shared with the junior classes in those cases (just as here), came from ***secured*** creditors and, accordingly, constituted "property [that] was ***not subject*** to distribution under Bankruptcy Code's priority scheme" since such "distribution was a 'carve-out,' a situation where a party whose claim is secured by assets in the bankruptcy estate allows a portion of its lien proceeds to be paid to others." Id. (emphasis added)

43. Accordingly, there is absolutely no contradiction between the position taken by SPM and its progeny and Armstrong. Indeed, this is precisely how other courts have interpreted Armstrong. For example, the Court in World Health has stated that the Armstrong decision was based on distinguishing cases where a secured creditor gave up a portion of its proceeds in favor

of certain junior classes, finding that "[s]uch a carve out does not offend the absolute priority rule of the Bankruptcy Code distribution scheme because the property belongs to the secured creditor – not the estate." World Health Alternatives, 344 B.R. at 299. The World Health Alternatives court further stated that "the Armstrong District Court, whose reasoning the Third Circuit adopted, also acknowledged the propriety of an ordinary carve out and the correctness of SPM: 'the secured lender in SPM had a substantive right to dispose of its property, including the right to share the proceeds subject to its lien with other classes'….[t]hus Armstrong distinguished but did not disapprove of SPM and the Genesis-MCorp line of authority." Id. (citations omitted)

44. Similarly, the Court in In re Protocol Services, Inc., Nos. 05-6782 JM11 – 05-6786 JM11 at 3 (Bankr. S.D. Cal. Dec. 23, 2005) (a copy of which is attached hereto as Exhibit B) upheld the gifting of bankruptcy recoveries by undersecured creditors to junior classes through a chapter 11 plan of reorganization in the face of an Armstrong objection stating: "The facts of SPM are consistent with the facts in this case, and justify its application herein, rather than the ruling in Armstrong World. The objecting parties contend that the Debtors are not worth more than the amount of the debt owed the [secured lenders]. Further the [secured lenders] are secured by all or substantially all of the assets of the Debtors. As a result they are entitled to grant equity to [junior classes] as an acceptable carve-out provision."[11] In sum, there

[11] Apart from Armstrong, the **only** other case that Palmisano cites in support of his argument is In re Sentry Operating Co. of Texas, Inc., 264 B.R. 850 (Bankr. S.D. Tex. 2001). Sentry Operating failed to even mention, let alone address, the overwhelming authority that supports the right of undersecured creditors to gift a portion of their recoveries to junior classes. Indeed the objections to the plan in Sentry Operating were based in part upon allegations of unfair discrimination between co-equal classes. It is important to note that the Sentry Operating court did not adopt any bright line rules; instead it engaged in a case specific analysis of unfair discrimination that was dependent upon the relative worth of the recoveries being transferred by an undersecured creditor to two junior co-equal classes. Id. at 865-67. There, the secured creditor had gifted enough cash from its recoveries to pay in full the allowed claims of unsecured trade creditors while at the same time gifting only enough cash to satisfy one percent of all other allowed unsecured claims. The Sentry Operating court found there to be no legal or factual basis for this

is no basis for Palmisano's allegation that the Equity Gift contravenes any provision of the Bankruptcy Code. Overwhelming precedential authority provides that the Senior Secured Lenders may, at their sole discretion, agree to transfer a portion of their recoveries under the Plan to any one of the junior classes.

III. The Equity Gift also does not violate the Bankruptcy Code Because it Constitutes "New Value".

45. The Equity Settlement therefore does not even implicate the absolute priority rule. Even if it did, however, the Court should find that the "new value corollary" to the absolute priority rule applies in this case. Southern Pacific Transportation Co. v. Voluntary Purchasing Groups, Inc., 252 B.R. 373, 389 (E.D. Tex. 2000). (setting forth requirements old equity must meet to fall within the "new value corollary" to the absolute priority rule).

46. The Equity Settlement satisfies the "new value corollary" as the Participants are purchasing the New Common Stock with cash at a price that is equal or greater than the value of such New Common Stock and those funds will be received by Reorganized OCA with no restriction on the use of funds. In addition, the Equity Settlement came only after numerous "market tests," none of which resulted in a commitment from a third party to finance or make any investments in the company. The Equity Settlement is necessary to the Debtors' successful reorganization because, among other things, it is anticipated to provide an additional equity infusion for the Reorganized Debtors which will provide additional working capital.

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differential treatment of unsecured claims. Id. at 864. However, the very same analysis strongly favors the Equity Gift in this case: the unsecured creditors are entitled to immediate cash payments with the potential to have all of their allowed claims satisfied in full by subsequent cash payments, while equity holders are entitled only to purchase shares in Reorganized OCA and take the risk that their additional invested capital may be lost in full. In other words, in this case the junior equity class is being asked to speculate while the senior creditor class is receiving a cash recovery. The differential treatment that concerned the Sentry Operating court is simply non-existent in the Plan.

47. As noted by the court in Armstrong with respect to the Supreme Court's view of the absolute priority rule:

> "In the 203 N. LaSalle case, the Supreme Court noted that the rule was not in fact absolute. And it stated that a "less absolute prohibition" stemming from the "on account of language" would "reconcile the two recognized policies underlying Chapter 11, of preserving going concerns and maximizing property available to satisfy creditors."

Armstrong, 432 F.2d at 515 (emphasis added)(citations omitted). The Equity Settlement accomplishes precisely these goals and allows the Debtors to preserve their going concern value to maximize the recoveries to all creditors in these cases.

CONCLUSION

Wherefore, the Plan Supporters respectfully request that the Court (i) confirm the Plan; (ii) make the findings of fact and conclusions of law contained herein and those contained in the supplemental findings of fact and conclusions of law attached hereto as Exhibit A; and (iii) grant the Plan Supporters such other relief as is just and proper.

DATED: New Orleans, Louisiana
September, 25 2006

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