

Extended Reporting Director and Officer Liability Insurance Coverage (the "Motion").

PLEASE TAKE FURTHER NOTICE that on **October 15, 2004 at 10:00 a.m.**, the Bankruptcy Court will hold a hearing to consider granting the relief requested in the Motion (the "Hearing"). Objections to the Motion, if any, must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and must be (i) filed with the Bankruptcy Court in accordance with General Order M-242 (as amended) – registered users of the Bankruptcy Court's case filing system must file electronically, and all other parties in interest must file on a 3.5 inch disk (preferably in Portable Document Format (PDF)), WordPerfect or any other Windows-based word processing format); submitted in hard-copy form directly to the chambers of the Honorable Robert D. Drain, United States Bankruptcy Judge; and served upon (i) RCN Corporation, 105 Carnegie Center, Princeton, NJ 08540, Attention: General Counsel; (ii) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Debtors, 4 Times Square, New York, NY, 10036-6522, Attention: D.J. Baker, Esq.; (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st floor, New York, NY 10004, Attention: Paul K. Schwartzberg, Esq.; (iv) Milbank, Tweed, Hadley & McCloy, counsel to the unofficial committee of noteholders, 1 Chase Manhattan Plaza, New York, NY 10005, Attention: Dennis

Dunne, Esq.; (v) counsel to any other statutory committee(s) appointed in these cases; (vi) Simpson Thacher & Bartlett, counsel to the agent for the Debtors' prepetition credit facility, 425 Lexington Avenue, New York, NY 10017-3954, Attention: Peter V. Pantaleo, Esq.; and (vii) HSBC Bank USA, the indenture trustee for the Debtors' outstanding debt securities, 452 Fifth Avenue, New York, NY 10001, Attention: Issuer Services, in each case so as to be **received** no later than 4:00 p.m. Eastern time on **October 13, 2004** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that only those objections made in writing and timely filed and received by the Objection Deadline will be considered by the Bankruptcy Court at the Hearing, and that if no objections to the Motion are timely filed and served in accordance with the procedures set forth herein, the Bankruptcy Court may enter an order granting the Motion **without further notice**.

Dated: New York, New York
October 1, 2004

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

/s/ D. J. Baker

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(A Member of the Firm)
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Attorneys for Debtors and
Debtors-in-Possession

and officer liability insurance. In support of this motion, the Debtors respectfully represent as follows:

BACKGROUND

1. On May 27, 2004 (the "Petition Date"), RCN, TEC Air, Inc., RLH Property Corporation, RCN Finance, LLC and Hot Spots Productions, Inc., the debtors and debtors-in-possession in case number 04-13638 (RDD) (collectively, the "Initial Debtors"), filed voluntary petitions in this Court for reorganization relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On August 5, 2004 RCN Cable TV of Chicago, Inc., the debtor and debtor-in-possession in case number 04-15120 (RDD), filed a voluntary petition in this Court for reorganization relief under the Bankruptcy Code. On August 20, 2004, 21st Century Telecom Services, Inc., RCN Telecom Services of Virginia, Inc., RCN Entertainment, Inc. and ON TV, Inc. (collectively with RCN Cable TV of Chicago, Inc., the "Affiliate Debtors"), the debtors and debtors-in-possession in case numbers 04-15505 (RDD) through 04-15508 (RDD), filed voluntary petitions in this Court for reorganization relief under the Bankruptcy Code. The bankruptcy cases of the Initial Debtors and the Affiliate Debtors are jointly administered under case number 04-13638 (RDD). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

2. On June 10, 2004, the Official Committee of Unsecured Creditors (the "Creditors' Committee") was appointed by the United States Trustee for the Southern District of New York (the "United States Trustee") for the Initial Debtors. No trustee, examiner or official committee has been appointed in the Affiliate Debtors' chapter 11 cases.

3. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are Bankruptcy Code sections 102, 105(a) and 363(b), and Rules 2002, 6004, 9006 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

RELIEF REQUESTED

5. By this motion, the Debtors request entry of an order authorizing the Debtors to purchase the Proposed Coverage (as defined below) and to pay all premiums associated therewith, pursuant to sections 105 and 363(b) of the Bankruptcy Code.

BASIS FOR RELIEF

6. In the ordinary course of the Debtors' business, the Debtors, like all major corporations, maintain directors' and officers' liability insurance that provides certain liability coverage with respect to the acts of the members of the

Debtors' boards of directors and their officers. The Debtors' current coverage affords coverage in an aggregate amount of \$60 million, and is provided by various insurance providers (the "D&O Policies").

7. The Debtors' current D&O Policies will expire on **October 15, 2004**, in accordance with their terms, unless the policies are renewed. The D&O Policies are claims made policies, meaning that such insurance covers only those claims actually made during the policy periods. Thus, once the Debtors' current D&O Policies expire, no further claims can be made under the policies, regardless of whether the claims arose during the policy terms, unless there is a renewal of the D&O Policies or an extension of the reporting period.

8. In light of the upcoming expiration date, the Debtors, together with their insurance brokers, Aon Financial Services Group and Aon Risk Services, Inc., have negotiated and obtained (i) renewal director and officer liability coverage that would extend and enhance existing coverage from October 15, 2004 through April 15, 2004, (ii) extended reporting coverage that would extend the period for reporting claims for six years from the date of emergence from chapter 11 (the "Proposed Coverage"), and (iii) a pricing indication regarding post-emergence director and officer liability insurance for a 12 month period from the date of emergence from chapter 11. By negotiating all three types of coverage together as a single package rather than individually, the Debtors were able to achieve more favorable

pricing and better terms and conditions for the renewal and extended reporting policies and in connection with the post-emergence policy.

9. The Debtors have kept the Creditors' Committee closely apprised of this process. The Creditors' Committee indicated that it would not oppose the purchase of extended coverage for the Debtors' directors and officers provided that such individuals would withdraw any claims filed against the Debtors for indemnification as of the effective date. Accordingly, the Debtors and the directors and officers that filed proofs of claim in these chapter 11 cases have agreed that such claims will be withdrawn (or deemed withdrawn) as of the effective date of the Debtors' plan of reorganization, provided that the Proposed Coverage is procured as contemplated in this Motion. Based upon this mutual agreement, the Creditors' Committee does not oppose the relief requested herein and has agreed that the Debtors may purchase such insurance, as more particularly described in the summary of the Proposed Coverage attached hereto as Exhibit A.

10. In sum, the premium for the renewal of the existing D&O Policy through the effective date of the Debtors' plan of reorganization is estimated to be between approximately \$1,246,000 and 1,261,000 for coverage in the amount of \$60 million, which is the amount of coverage under the existing D&O Policies. The premium for the extended reporting coverage is \$2 million for fresh aggregate coverage in the amount of \$22 million for six years.

11. The acquisition and maintenance of D&O insurance is a normal and customary part of every major corporation's business, and has been a part of the Debtors' ordinary course of business for many years. Accordingly, the Debtors believe that they may obtain the Proposed Coverage, and pay the premiums associated therewith, without an order of this Court authorizing it to do so under section 363(b) of the Bankruptcy Code. However, out of an abundance of caution, the Debtors have filed this motion to request such authorization.

APPLICABLE AUTHORITY

12. The Debtors request that this Court authorize its purchase of the Proposed Coverage, and the payment of premiums associated therewith, pursuant to Bankruptcy Code sections 105(a) and 363(b), as a use of estate property "other than in the ordinary course of business." Such authorization is appropriate if the Debtors demonstrate a sound business justification for doing so. See In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); In re Delaware Hudson Ry. Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991).

13. Once the Debtors articulate a valid business justification, "the business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" In re Integrated

Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992)(quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

14. The business judgment rule has vitality in chapter 11 cases and shields the Debtors' management from judicial second-guessing. See In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992)(quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)); In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("The Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a Debtors' management decisions.").

15. The Debtors submit that the premiums for the Proposed Coverage are reasonable in light of the market rates for such policies, and that sound business justifications exist for the purchase of the Proposed Coverage. The continued participation of the Debtors' current officers and directors remains critical to the Debtors' normal business operations and successful reorganization. The remainder of these cases will require difficult decisions on the part of the Debtors' directors and officers. Without the assurance that future litigation for actions taken on behalf of the Debtors will be covered by D&O policies, the current directors and officers of the Debtors may seek to avoid these necessary decisions or resign in order to avoid personal responsibility. The continuation of directors' and officers' insurance there-

fore is necessary in order to ensure that the Debtors' reorganization efforts are successful.

16. The Debtors also submit that the premiums for the Proposed Coverage are reasonable in light of the market for such policies and the circumstances of this case. Several weeks ago, the Debtors, with the assistance of their insurance broker, approached numerous potential insurance providers and began negotiations of renewal, extended reporting, and new policies for the reorganized Debtors as contemplated by the plan of reorganization filed with this Court on August 20, 2004. Based upon the extensive efforts of the Debtors and their broker, the Debtors have been advised that the premiums for the Proposed Coverage affords significant value to the company. Indeed, as discussed above, the Debtors were able to capitalize on advantageous pricing by procuring the Proposed Coverage in conjunction with a new D&O Policy for the directors of the reorganized Debtors under the proposed plan of reorganization.¹

17. As pointed out above, the Debtors believe that the use of estate funds to purchase the Proposed Coverage and to pay the premiums associated therewith is within the ordinary course of business and does not require Court approval. Nevertheless, the Debtors make this formal request out of an abundance of

¹ The Debtors do not seek authority at this time to use estate funds in connection with such new policies. The cost of such policies will be incurred by the reorganized Debtors after confirmation of the plan of reorganization.

caution and at the request of carriers, and reserve their rights to assert that the relief requested is in the ordinary course and so Court approval is unnecessary in the event that a party in interest files an objection to this motion.

18. The Debtors submit that no new or novel issue of law is presented with respect to the matters contained herein. Because the relevant authorities in support of the requested relief are cited in this motion, the Debtors request that the requirement of the service and filing of a separate memorandum of law under Local Bankr. R. 9013-1(b) be deemed satisfied.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the Debtors to purchase the Proposed Coverage and to pay the premiums associated therewith and (ii) granting such other and further relief as is just and proper.

Dated: New York, New York
September 30, 2004

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

/s/ D. J. Baker

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EXHIBIT A

Directors, Officers and Entity Liability Insurance Renewal/Run-off Status

Prepared for:



September 30, 2004

Presented by:

Colin Daly and Brian R. Bovasso
Aon Financial Services Group
4100 E. Mississippi Avenue, Suite 1300
Denver, Colorado 80246
(303) 639-4100

In Conjunction with:

Steve Schluter and Vivian Duff
Aon Risk Services, Inc.
10 Lanidex Center West, 3rd Floor
Parsippany, NJ 07054
(973) 463-6099 and (973) 463-6060



Please note this presentation shall not be construed as legal advice. In no way do the representations made herein concerning any insurance policy and the coverage provided therein take precedence over such policy. The contract language within the actual insurance policy remains controlling.

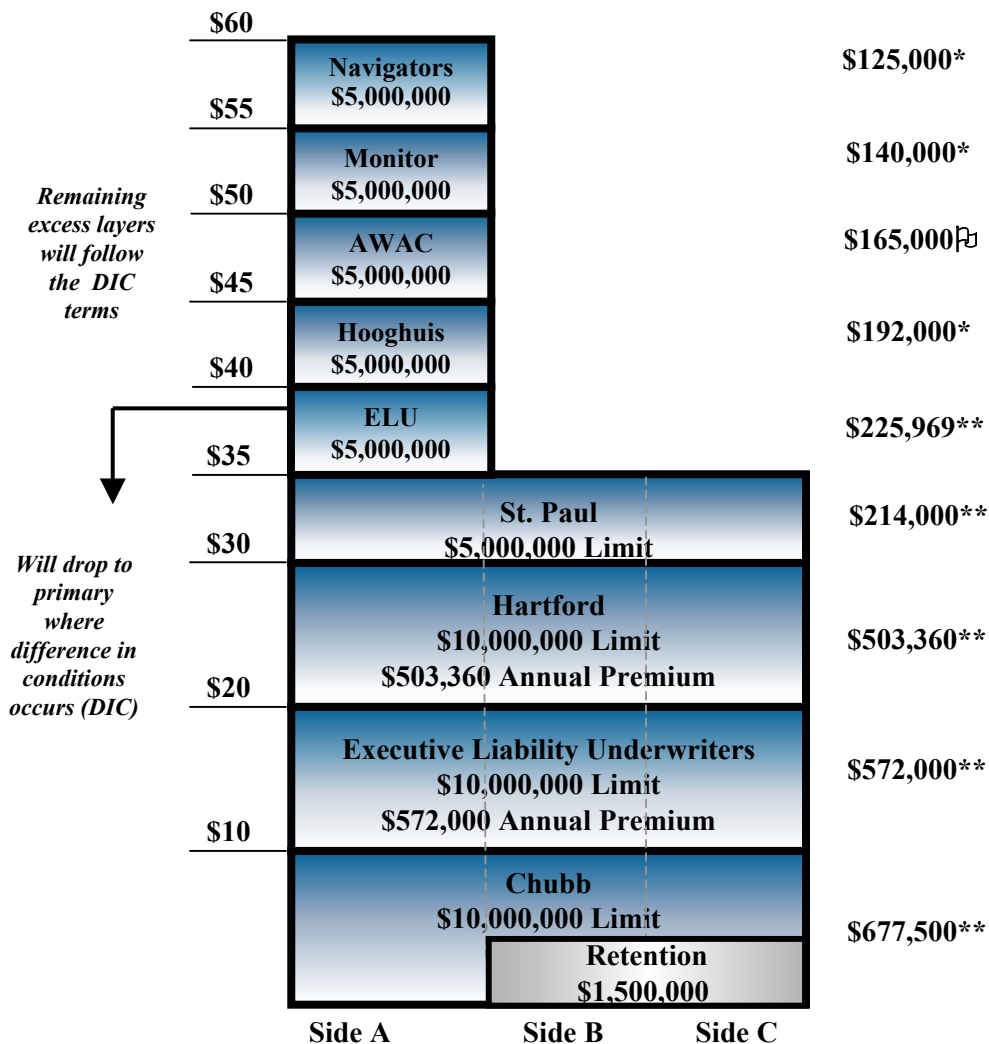




Overview of Current D&O Program



Limit of Liability: \$60,000,000 aggregate (\$35mm – ABC, \$25mm – A)
Retention: \$0 (non-indemnifiable claims) / \$1,500,000 (all other claims)
Policy Period: October 15, 2003 – October 15, 2004
Total Premium: \$2,814,829



* Plus 3% NJ surplus lines taxes and fees

** Plus .25% NJ surcharge

† Plus 4% Federal Excise Tax

Total - \$60mm → **\$2,814,829**



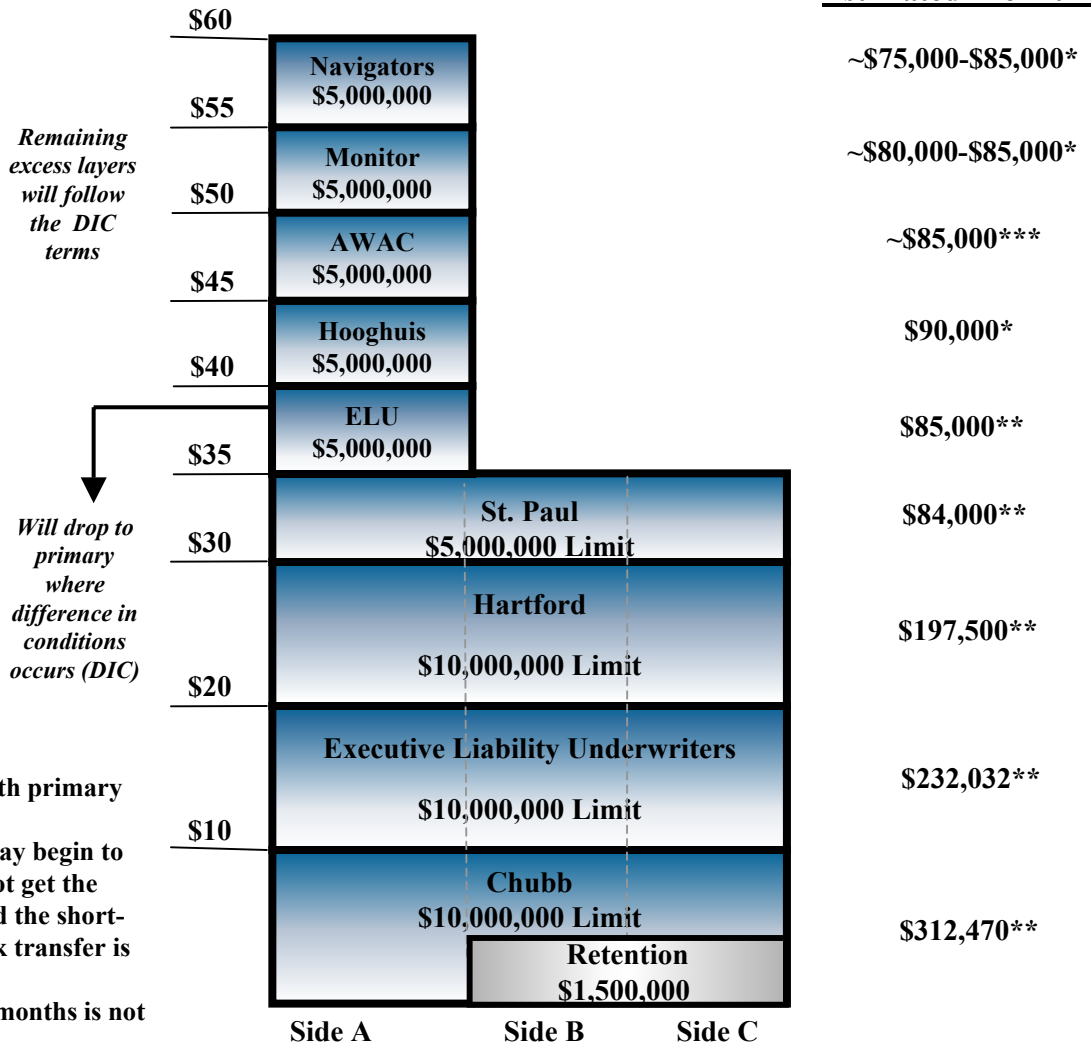
Potential Renewal/Run-off Programs



6-month Potential D&O Renewal Program (with ODL on Chubb layer)

Limit of Liability: \$60,000,000 aggregate (\$35mm – ABC, \$25mm – A)
Retention: \$0 (non-indemnifiable claims) / \$1,500,000 (all other claims)
Policy Period: October 15, 2004 – April 15, 2005
Total Est. Premium: ~\$1,246,000-\$1,261,000

Estimated Premium:



- ODL limit shared with primary \$10mm
- High excess layers may begin to flatten as they will not get the benefit of run-off and the short-term premium v. risk transfer is not in line
- Extension beyond 6-months is not guaranteed
- Broader severability of application language
- All premium is fully earned

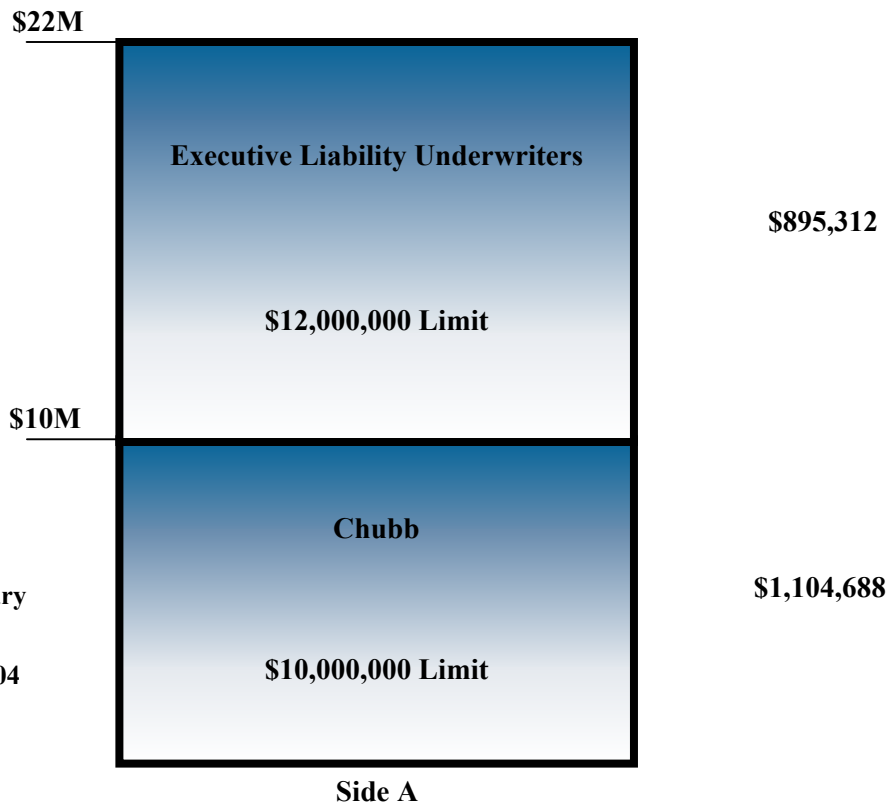
Total - \$60mm → ~\$1,246,000-\$1,261,000

* Plus 3% NJ surplus lines taxes and fees
 ** Plus .25% NJ surcharge
 *** Plus 4% Federal Excise Tax

6-yr. D&O Run-off Program w/Fresh Limit (with ODL on Chubb layer)

Limit of Liability: \$22,000,000 aggregate
Retention: \$0 (non-indemnifiable claims)
Policy Period: 6 years from BK emergence date
Total Premium: \$2,000,000

Premium:



- ODL limit shared with primary \$10mm
- Premium to be paid 10/15/2004
- Fresh Aggregate Limit
- All premium is fully earned

* Plus 3% NJ surplus lines taxes and fees
 ** Plus .25% NJ surcharge
 ☞ Plus 4% Federal Excise Tax

Total - \$22mm

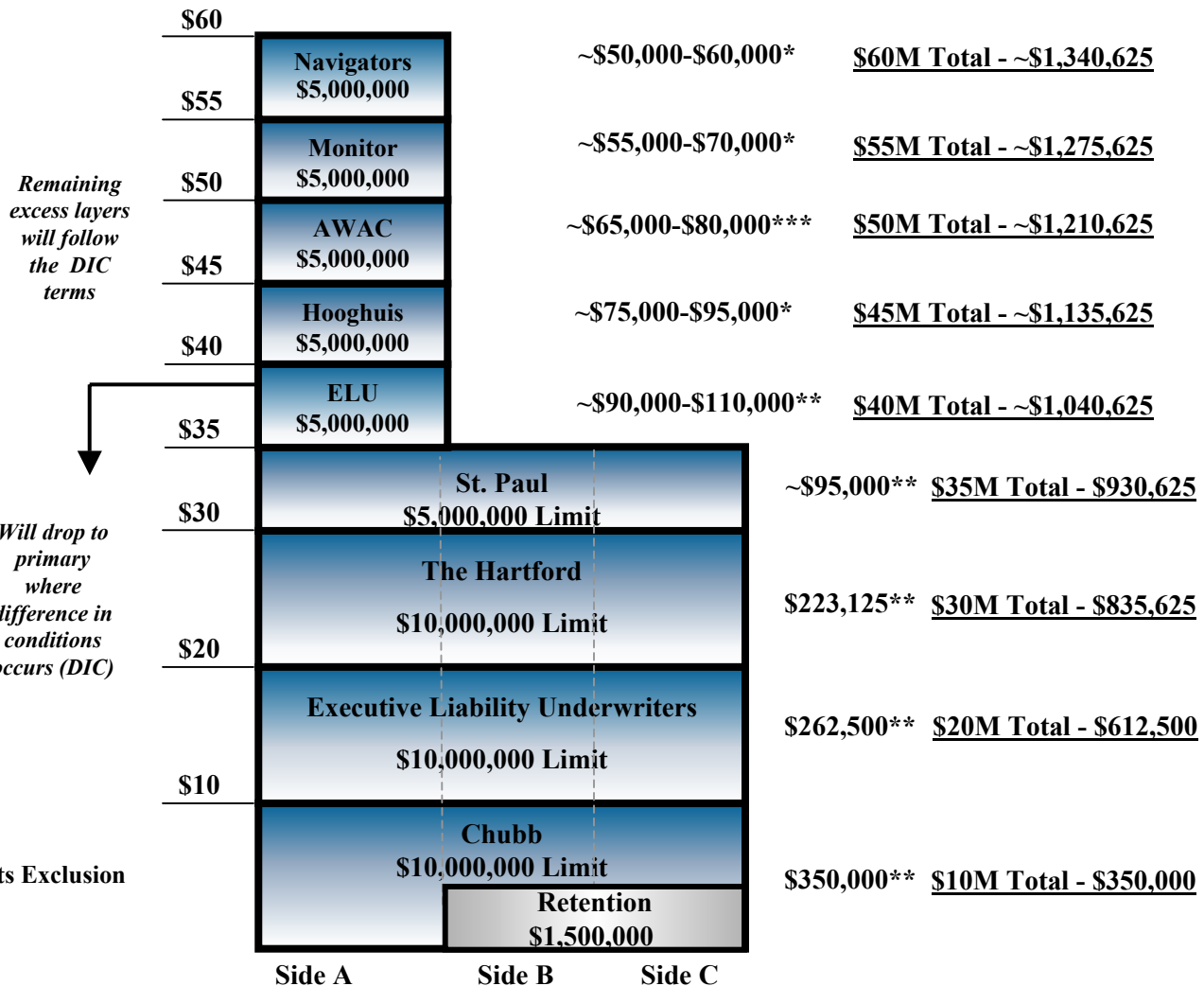
\$2,000,000



Potential NewCo D&O Program



Limit of Liability: \$60,000,000 aggregate (\$35mm – ABC, \$25mm – A)
Retention: \$0 (non-indemnifiable claims) / \$1,500,000 (all other claims)
Policy Period: 12 months from BK emergence date
Total Premium: ~\$1,265,625-\$1,345,625



* Plus 3% NJ surplus lines taxes and fees

** Plus .25% NJ surcharge

** Plus 4% Federal Excise Tax

Total - \$60mm → ~\$1,265,625-\$1,345,625

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re : Chapter 11
RCN CORPORATION, et al., : Case No. 04-13638 (RDD)
Debtors. : (Jointly Administered)
----- X

**ORDER UNDER 11 U.S.C. §§ 105 AND 363 AUTHORIZING THE
PURCHASE OF RENEWAL AND EXTENDED REPORTING DIRECTOR &
OFFICER LIABILITY INSURANCE COVERAGE**

Upon the motion (the "Motion")¹ of the Debtors for entry of an Order Under 11 U.S.C. §§ 105 and 363(b) Authorizing the Purchase of Renewal and Extended Reporting Director & Officer Liability Insurance Coverage; and the Court having reviewed the Motion, and the Court being satisfied that it is necessary and in the best interests of the Debtors, their estates, creditors, and parties in interest; and it appearing that notice of the Motion was good and sufficient under the particular circumstances and that no other or further notice need be given; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

¹ Unless otherwise defined herein, capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.
2. The Debtors' decision to utilize estate funds to procure the Proposed Coverage, upon terms and conditions no less favorable to the Debtors than those attached to the Motion as Exhibit A, is reasonable and appropriate under the circumstances.
3. The Debtors are authorized to consummate the purchase of the Proposed Coverage and to take any and all actions necessary or desirable to perform the Debtors' obligations and transactions contemplated thereby, including, but not limited to, paying the premiums or any other fees and charges necessary to obtain the Proposed Coverage.
4. Provided that the Debtors procure the Proposed Coverage, any and all Claims (as that term is defined in section 101(5) of the Bankruptcy Code) against the Debtors or their estates for indemnification, reimbursement or contribution asserted by or on behalf of the Debtors' directors and officers shall be withdrawn (or deemed withdrawn) on the effective date of any plan of reorganization for the Debtors.
5. The requirements of Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York for the filing of a memorandum of law is waived.

6. Notwithstanding Rule 6004(g) of the Federal Rules of Bankruptcy Procedure, this Order shall take effect immediately upon its entry.

Dated: New York, New York
_____, 2004

UNITED STATES BANKRUPTCY JUDGE