

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

U.S. BANK NATIONAL ASSOCIATION,  
Litigation Trustee of the Idearc Inc., *et al.* Litigation Trust,

*Plaintiff,*

v.

VERIZON COMMUNICATIONS INC.,  
VERIZON FINANCIAL SERVICES LLC,  
GTE CORPORATION, and JOHN W. DIERCKSEN,

*Defendants.*

CIVIL ACTION NO.

3:10-CV-1842-G

ECF

**DEFENDANTS' JOINT POST-TRIAL PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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Defendants jointly submit the following proposed findings of fact and conclusions of law to serve as the findings of fact and conclusions of law required by Federal Rule of Civil Procedure 52(a).

## **PROPOSED FINDINGS OF FACT**

### **A. Background**

#### *1. Nature of Action*

1. On September 15, 2010, U.S. Bank National Association, as Litigation Trustee of the Idearc Inc. *et al.* Litigation Trust (“Plaintiff”), filed this action against Verizon Communications Inc. (“Verizon”), Verizon Financial Services LLC (“VFS”), GTE Corporation (“GTE”), and John W. Diercksen (collectively, “Defendants”), alleging a variety of claims arising out of the spin-off of Idearc Inc. (“Idearc”) from Verizon (the “Spin-Off”). Plaintiff filed an Amended Complaint on November 30, 2011.

2. In a July 31, 2012 Memorandum Opinion and Order, the Court granted in part and denied in part Defendants’ Motion To Dismiss the Amended Complaint.<sup>1</sup> The Court dismissed Plaintiff’s fraudulent conveyance claims (Counts 1 and 2) related to \$7.1 billion in debt and the shares of stock that Idearc issued to Verizon in exchange for Verizon’s domestic directories business. The Court additionally dismissed Plaintiff’s claim for unjust enrichment (Count 10) and for alter ego (Count 11).

3. In an August 8, 2012 Memorandum Opinion and Order, the Court granted in part and denied in part Plaintiff’s Motion for Summary Judgment.<sup>2</sup> The Court granted summary judgment as to the new Idearc Board members’ express ratification of certain Spin-Off

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<sup>1</sup> Mem. Op. & Order, ECF No. 469 (July 31, 2012).

<sup>2</sup> Mem. Op. & Order, ECF No. 485 (Aug. 8, 2012).

resolutions dated November 16, 2006. The Court denied summary judgment as to Defendants' affirmative defense of ratification and did not decide whether the new Idearc Board approved or ratified the actions of the Idearc officers to effect the Spin-Off.

4. In a September 14, 2012 Memorandum Opinion and Order, the Court granted in part and denied in part Defendants' Motion for Summary Judgment and denied Plaintiff's Motion for Partial Summary Judgment.<sup>3</sup> The Court granted summary judgment dismissing Plaintiff's fraudulent conveyance claims (Counts 1 and 2) related to Idearc's transfer to Verizon of approximately \$2.5 billion in cash on the grounds that such claims were barred by § 546(e) of the Bankruptcy Code. The Court also entered judgment on Plaintiff's fraudulent conveyance claim related to interest that Idearc paid on its debt (Count 7) and that portion of Plaintiff's promoter fraud claim (Count 9) related to alleged aiding and abetting of attorneys' alleged fiduciary duty breaches and seeking punitive damages. The Court granted summary judgment on the breach of fiduciary duty claim against Mr. Diercksen (Count 3) insofar as it sought recovery in excess of applicable insurance coverage. The Court also found that Plaintiff's unlawful dividend claim (Count 8) was preempted by the Bankruptcy Code insofar as it related to the approximately \$2.5 billion transfer of cash.

5. On March 21, 2012, the Court issued an Order granting Defendants' Motion To Strike Plaintiff's Jury Demand.<sup>4</sup> On July 25, 2012, the Court denied Plaintiff's Motion for Reconsideration of the Jury Strike Order.<sup>5</sup> On September 10, 2012, the Court denied Plaintiff's Motion for Clarification of the Jury Strike Order.<sup>6</sup>

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<sup>3</sup> Mem. Op. & Order, ECF No. 523 (Sept. 14, 2012).

<sup>4</sup> Mem. Op. & Order, ECF No. 288 (Mar. 21, 2012).

<sup>5</sup> Mem. Op. & Order, ECF No. 459 (July 25, 2012).

<sup>6</sup> Order, ECF No. 521 (Sept. 10, 2012).

6. By Order dated August 22, 2012, the Court bifurcated the trial of this matter, limiting Phase I to a determination of “[w]hat was Idearc’s value at the time it was spun off from Verizon in November of 2006?”<sup>7</sup> All remaining factual questions were reserved for a potential Phase II.

7. By Order dated September 24, 2012, the Court denied Defendants’ Motions To Strike the Report and Testimony of Plaintiff’s experts Carlyn Taylor and David Schizer.

8. By Order dated October 2, 2012, the Court denied Plaintiff’s Motions To Limit Evidence and To Strike Expert Testimony concerning the market value of Idearc stock, as well as Plaintiff’s Motion To Exclude the Testimony Report of Defendants’ expert Jeff Balcombe.<sup>8</sup>

9. The trial of Phase I occurred over 10 days, from October 15 through October 26, 2012. Plaintiff introduced live testimony from three witnesses (two fact and one expert) and introduced video depositions from two additional fact witnesses. Defendants called 16 live fact witnesses and four expert witnesses, and introduced a video deposition from one additional fact witness.

2. *The Parties*

10. Plaintiff is a trust authorized to pursue claims as the successor-in-interest to Idearc, which was a wholly owned subsidiary of Verizon prior to the November 17, 2006 Spin-Off.

11. After more than two years of operations as an independent, New York Stock Exchange (“NYSE”)-traded company, and in the wake of the Great Recession, Idearc filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in March 2009. Plaintiff

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<sup>7</sup> Order at 2, ECF No. 504 (Aug. 22, 2012).

<sup>8</sup> Mem. Op. & Order, ECF No. 577 (Oct. 2, 2012).

was created as part of Idearc's Plan of Reorganization to pursue, among other things, potential claims against Defendants.<sup>9</sup>

12. Defendant Verizon is a publicly traded company organized under Delaware law.<sup>10</sup> Defendants VFS and GTE are wholly owned subsidiaries of Verizon.<sup>11</sup> Defendant John W. Diercksen is an officer of Verizon and served as the sole director of Idearc, formerly known as Verizon Directories Disposition Corporation ("VDDC") from its formation in June 2006 through November 16, 2006, the day before the Spin-Off.<sup>12</sup>

### **B. The Terms of the Spin-Off**

13. In connection with the Spin-Off, Verizon contributed its domestic print and electronic directories business to Idearc in exchange for approximately \$7.115 billion in Idearc debt, \$2.5 billion in cash, and 146 million shares of Idearc common stock. Thereafter, Verizon distributed the Idearc common stock to its existing shareholders.

14. In connection with the Spin-Off, Idearc incurred \$9.115 billion in debt and received commitments to lend it up to an additional \$250 million through a revolving credit facility. Idearc's debt was comprised of four components: (i) a \$1.515 billion secured Term Loan A; (ii) a \$250 million credit facility known as the "Revolver"; (iii) a \$4.75 billion secured Term Loan B; and (iv) \$2.85 billion in 8% Senior Notes due 2016 (the "Unsecured Notes").<sup>13</sup>

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<sup>9</sup> Am. Compl. ¶ 30.

<sup>10</sup> *See id.* ¶ 10.

<sup>11</sup> *See id.* ¶ 11.

<sup>12</sup> *See id.* ¶ 3.

<sup>13</sup> PX1103 at 9-12 of 550 (Idearc, Inc. Form 8-K filed on November 21, 2006, describing debt components); *see also* PX1062 at 8 of 135 (Credit Agreement describing \$1.515 billion in Term Loan A debt, \$4.75 billion in Term Loan B debt, and \$250 million revolver); PX1084 at 6 of 145 (Indenture describing \$2.85 billion unsecured notes).

**C. Idearc's Fair Market Value As Determined by Trading of Its Common Stock on the New York Stock Exchange**

15. On November 17, 2006, the day of the Spin-Off, the closing price of Idearc's common stock, as quoted on the NYSE, was \$26.25 per share.<sup>14</sup>

16. Idearc's common stock traded on a when-issued basis between November 6, 2006, and November 16, 2006.<sup>15</sup> It closed on November 6, 2006, at \$25.96, and traded between \$25.80 to \$28.15 during the when-issued trading period,<sup>16</sup> with average daily trading volume of approximately 1.45 million shares.<sup>17</sup>

17. Idearc's stock price increased following the Spin-Off, reaching its highest closing price of \$37.66 on May 23, 2007, more than six months after the Spin-Off.<sup>18</sup> The stock price remained above \$24.00 through November 2, 2007.<sup>19</sup>

18. On the date of the Spin-Off, there were 145,851,862 shares of Idearc common stock issued and outstanding.<sup>20</sup> Accordingly, the market value of Idearc's equity — that is, the market value of its assets in excess of its liabilities — was \$3,828,611,378 on November 17, 2006. Given Idearc's \$9.115 billion in outstanding debt, and after subtracting the \$100 million in cash on hand, which is included in the company's equity value but is not considered part of

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<sup>14</sup> DX611 at 2 of 16 (Bloomberg Stock Price Data).

<sup>15</sup> *See id.*; DX1629 (Bloomberg When-Issued Stock Price Data).

<sup>16</sup> DX611 at 2 of 16 (Bloomberg Stock Price Data); DX1629 (Bloomberg When-Issued Stock Price Data).

<sup>17</sup> DX1629 (Bloomberg When-Issued Stock Price Data); Tr. Vol. 8A at 9:13-24 (testimony of Defendants' expert Mark Hopkins).

<sup>18</sup> DX611 at 5 of 16 (Bloomberg Stock Price Data).

<sup>19</sup> DX611 at 7 of 16 (Bloomberg Stock Price Data).

<sup>20</sup> PX979 at 1 (Certificate of Transfer Agent and Registrar, Computershare Trust Company, N.A.); PX1092 at 1 (Letter to NYSE).

the company's total "enterprise value,"<sup>21</sup> the total enterprise value of Idearc, as calculated by trading on the NYSE, was no less than \$12.8 billion.<sup>22</sup>

19. The Court finds that the total enterprise value of Idearc, calculated based on the price of Idearc's common stock as traded on the NYSE, accurately reflected the fair market value of Idearc on the date of the Spin-Off. For the reasons set forth below, this valuation was corroborated by the overwhelming weight of evidence introduced during the Phase I trial. In addition, the evidence introduced during the Phase I proceeding overwhelmingly refuted Plaintiff's claim that Idearc's fair market value was less than \$9.6 billion. The Court therefore concludes that the fair market value of Idearc on November 17, 2006, was not less than \$12.8 billion.<sup>23</sup>

**D. Idearc's New York Stock Exchange Valuation Is Corroborated by Overwhelming Evidence**

*1. Idearc Was a Successful, Mature Business Generating Substantial Free Cash Flow with Large EBITDA Margins*

20. At the time of the Spin-Off, Verizon's Information Services division was the second-largest directories business in the United States, publishing more than 1,200 directories (or "books") in 35 states and the District of Columbia.<sup>24</sup> Its electronic yellow pages business, known as "Superpages.com," was the leading Internet yellow pages in the country by market

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<sup>21</sup> Tr. Vol. 8A at 11:9-15 (testimony of Defendants' expert Mark Hopkins). The term "enterprise value" refers to the total value of a company's operating assets, without regard to its liabilities.

<sup>22</sup> In calculating the total enterprise value, the Court only considered Idearc's \$9.115 debt liabilities. To the extent that any additional liabilities existed, they would increase Idearc's total enterprise value by the same amount. Accordingly, the Court has concluded that Idearc's total enterprise value was "no less than" \$12.8 billion on November 17, 2006.

<sup>23</sup> If measured on the first full day of trading after the Spin-Off, November 20, Idearc's equity value was \$4,113,022,508 and its total enterprise value was \$13.2 billion. DX611 at 2 of 16 (Bloomberg Stock Price Data).

<sup>24</sup> DX416 at 6, 16 of 77 (Rating Agency Presentation); PX901 at 79 of 158 (Form 10).

share.<sup>25</sup> Idearc was the incumbent publisher in 316 markets in the legacy GTE and Bell Atlantic regions, and also an independent publisher in 42 markets. It had a presence in 81 of the top 100 telecommunications markets across the United States and had a market share of at least 72 percent in its top 15 markets.<sup>26</sup>

21. Verizon Information Services (“VIS”), which was the name that Verizon used to describe the directories business in segment reporting in Securities and Exchange Commission (“SEC”) filings, was a stable generator of large cash flows, considered by Verizon’s senior management to be a “cash cow.”<sup>27</sup>

22. VIS historically had generated more than \$3.4 billion in annual operating revenue.<sup>28</sup> For 2006, pro forma “LTM 6/30/06” revenue (*i.e.*, revenue for the “last twelve months” ending June 30, 2006) was \$3.256 billion.<sup>29</sup> VIS had adjusted EBITDA (earnings before interest, tax, depreciation, and amortization) of \$1.7 billion in 2005.<sup>30</sup> VIS’s 2006 EBITDA, the year of the Spin-Off, was estimated in the financing model to be approximately \$1.559 billion.<sup>31</sup> Historically, VIS’s EBITDA margins were approximately 50 percent.<sup>32</sup>

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<sup>25</sup> DX416 at 16, 18 of 77 (Rating Agency Presentation); PX901 at 16-17, 78-79 of 158 (Form 10).

<sup>26</sup> DX416 at 16 of 77 (Rating Agency Presentation); PX901 at 79 of 158 (Form 10); DX488 at 23 of 45.

<sup>27</sup> Doreen Toben, who served as Verizon’s Chief Financial Officer (“CFO”) at the time of the Spin-Off, testified that Verizon’s directories business “was really a cash cow. It had a very high margin, produced a lot of cash. It was relatively stable for the cash that it produced.” Tr. Vol. 9B at 20:7-10. Samuel (“Dee”) Jones, who was Idearc’s Director of Financial Planning at the time of the Spin-Off and later became the CFO of Idearc (and, after it emerged from bankruptcy, of Supermedia), likewise testified to his belief that Verizon considered VIS to be a “cash cow.” Tr. Vol. 5B at 86:9-18.

<sup>28</sup> DX525 at 184-85 of 199 (Verizon 2005 10-K).

<sup>29</sup> DX416 at 6 of 77 (Rating Agency Presentation); DX313 at 41 of 72 (Confidential Information Memorandum for Public Siders); *see also* PX901 at 51 of 158 (Form 10) (reporting pro forma operating revenues of \$2.42 billion for the nine months ending September 30, 2006).

<sup>30</sup> DX416 at 50 of 77 (Rating Agency Presentation); DX313 at 41 of 72 (Confidential Information Memorandum for Public Siders).

<sup>31</sup> DX416 at 57 of 77 (Rating Agency Presentation); DX314 at 8 of 14 (Confidential Information Memorandum for Private Siders).

23. Then-Verizon Chief Executive Officer (“CEO”) Ivan Seidenberg testified about the historical performance of VIS, as reported in Verizon’s annual SEC 10-K filings. Describing the performance of the business in 2003, Mr. Seidenberg testified that:

The way I look at this is from the CEO’s perspective. You have a top line of 3.763 billion dollars, and then you have a segment income after all the taxes and expenses are taken care of[,] an income of 1.128 billion which basically says about a third of your business revenues show up in terms of bottom line. That’s an extraordinarily powerful business. . . . [I]t’s very, very powerful.

Tr. Vol. 6A at 41:13-21. That contribution of VIS to the bottom line of Verizon’s consolidated operations continued to be robust in 2004 and 2005.<sup>33</sup>

24. Although VIS generated significant free cash flow, Verizon’s management did not believe the division was fairly valued by investors as a component of Verizon’s stock price. At a time when stand-alone directories companies were trading at as much as 10 times EBITDA, Verizon was trading at only 5 to 5.5 times EBITDA.<sup>34</sup> As Mr. Seidenberg explained, investors viewed Verizon’s directories business “as having less value because [Verizon] owned it than if it was outside the company.”<sup>35</sup> As a result, the investment bankers advising Verizon were of the view that “Verizon, plus Directories, as two separate companies, would be more valuable if investors could hold them that way than as one stock.”<sup>36</sup>

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<sup>32</sup> DX416 at 50 of 77 (Rating Agency Presentation); DX313 at 24 of 72 (Confidential Information Memorandum for Public Siders).

<sup>33</sup> DX525 at 184 of 199 (Verizon 2005 10-K).

<sup>34</sup> Tr. Vol. 9B at 26:16-19 (testimony of Ms. Toben: “Verizon traded at maybe a 5 times EBITDA multiple. Maybe 5 and a half sometimes,” while stand-alone directories businesses were “at a much higher level, 8 to 10 potentially.”)

<sup>35</sup> Tr. Vol. 6A at 53:13-15.

<sup>36</sup> Tr. Vol. 7A at 86:22-87:3 (testimony from Jennifer Nason, a Managing Director at JP Morgan and Chairman of the Technology, Media and Telecom investment banking practice); *see also* Tr. Vol. 9B at 26:19-23 (testimony of Ms. Toben that bankers were “coming to us to say we think that if you do something with this property that it has a higher value outside of Verizon with these kinds of multiples than it does inside Verizon”). Verizon hired JP Morgan and Bear Stearns in November 2005 to advise it on the potential divestiture of VIS. DX516 at 3 of 9 (December 1, 2005 Verizon Board Presentation).

2. *On November 17, 2006, Investors Placed a Premium on Directories Businesses*

25. In 2005 and 2006, there was significant investor interest in directories businesses.<sup>37</sup> Ms. Nason testified that investors were buying up directories businesses and there was substantial interest in their steady cash flow. Jonathan Yourkoski, a Managing Director at Morgan Stanley, gave similar testimony concerning investor interest in directories businesses, stating that “[t]he capital markets were very receptive to directories companies, both the debt and equity portions of those markets.”<sup>38</sup>

26. The directories industry generated approximately \$15 billion in revenue in 2005.<sup>39</sup> Industry analysts such as the Kelsey Group forecasted continued year-over-year growth in the industry, with revenue gains for independent directories and small declines for incumbent print directories.<sup>40</sup> According to a memorandum submitted to Morgan Stanley’s credit committee in connection with its investment in Idearc’s debt, “[d]irectory advertising is often the primary form of paid advertising used by small- and medium-sized businesses due to its low cost and broad

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<sup>37</sup> Tr. Vol. 7A at 80:23-81:3 (testimony of Ms. Nason: “[T]here was a lot of activity in the directories industry at the time. There were other companies who had separated their directories businesses. Investors had received those separations very well.”); *id.* at 81:18-22 (testimony of Ms. Nason: “It was my view that and my experience that investors were very, very interested in directories businesses. And given that we had underwritten transactions in the market, we had firsthand evidence of that at the time.”); Tr. Vol. 8B at 97:8-13 (testimony of Michael Smith, a Managing Director of Goldman Sachs: “[A] number of other telecom companies had divested or separated their directories businesses. The market was very receptive to those assets, the debt and equity markets.”).

<sup>38</sup> Tr. Vol. 9A at 9:7-9. The former CFO of Verizon, Doreen Toben, testified that “[i]t was a time in the marketplace where you saw transactions, whether it was DEX or Donnelley. And so you started to see transactions in the marketplace. The bankers flooded in to see us. I could rattle off — Woody Young from Lehman. I had [ ] Victor Nici [of Merrill] come in. Jennifer Nason from [JP] Morgan come in. Andrew Decker from Bear Stearns, Peter Gross from Goldman. Morgan Stanley came in, Bob Sheppardson. So it was just a litany because of transactions in the marketplace of bankers coming in and saying we think you have an opportunity to unlock the value of director[ies].” Tr. Vol. 9B at 24:14-25; *see also* Tr. Vol. 8B at 96:19-97:17 (testimony of Mr. Smith that, in 2005, Goldman Sachs approached Verizon about a possible divestiture of its directories business).

<sup>39</sup> DX450 at 4 of 16 (Morgan Stanley CCC Materials).

<sup>40</sup> DX416 at 25 of 77 (Rating Agency Presentation) (quoting October 2005 estimates from the Kelsey Group); PX1060 at 74, 151 of 1105 (July 7, 2006 Form 10).

demographic distribution.”<sup>41</sup> Continued demand from small and medium-sized businesses, coupled with substantial renewal rates — which for Verizon were approximately 86 percent — caused many investors to conclude that the revenue stream generated by incumbent directories businesses would remain stable.<sup>42</sup>

27. Between 2002 and 2006, there were numerous mergers and acquisitions in the directories industry. Among other transactions, in 2002, RH Donnelley bought the Sprint directories business at an 8.6 times EBITDA multiple, and private equity investors the Carlyle Group and Welsh Carson bought Qwest Dex at a 7.8 times EBITDA multiple; in 2004, private equity investor Bain Capital acquired Verizon’s Canadian directories business at close to a 13 times EBITDA multiple; in 2005, Yell bought Transwestern at a 12.6 times EBITDA multiple; and, in 2006, RH Donnelley acquired Dex Media at approximately a 10.9 times EBITDA multiple.<sup>43</sup> Moreover, the EBITDA multiples for these and other directories transactions ranged from 7.4 times EBITDA to 14.1 times EBITDA, and were increasing over time.<sup>44</sup> Private equity firms — referred to by investment bankers as financial sponsors — exhibited significant interest in directories businesses because of their high and stable cash flow.<sup>45</sup>

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<sup>41</sup> DX450 at 4 of 16 (Morgan Stanley CCC Materials).

<sup>42</sup> DX450 at 12 of 16 (Morgan Stanley CCC Materials).

<sup>43</sup> PX27 at 31 of 54 (Directories – Analysis of Alternatives); DX330 at 43 of 81 (Houlihan Capital Adequacy Report).

<sup>44</sup> PX27 at 31 of 54 (Directories – Analysis of Alternatives).

<sup>45</sup> DX446 at 5 of 39 (Morgan Stanley Discussion Materials, November 8, 2005) (“Significant sponsor activity has driven increasing investor interest in the [directories] sector.”); *see also* Tr. Vol. 9A at 16:9-19 (testimony of Mr. Yourkoski) (“The financial sponsor community had looked at all of the directories businesses; in fact, had purchased the directories business out of Qwest, which became Dex Media, so a consortium of Carlyle and Welsh Carson were the winners there. Another company, Spectrum Equity, had purchased the directories out of Cincinnati Bell. The original buyout, what became Yellow Pages Group and ultimately became a publicly traded company, KKR, acquired that business, along with [the] Ontario Teachers Union out of BCE in 2002.”).

28. On August 25, 2005, Deutsche Bank Securities Inc. published a research report by equity analyst Paul Ginocchio entitled, “Wall Street’s View of the [Yellow Pages] Industry,” which stated, “Love the YP industry: RHD [RH Donnelley] and Dex have been our best two stock picks in the last year (out of 21 stocks covered) — still more upside to go.”<sup>46</sup> Under the heading “Why Yellow Pages stocks are ‘working,’” the analyst report touted the steady generation of free cash flow by yellow pages businesses<sup>47</sup> and noted that Deutsche Bank’s two global directories stock indices had risen 9 percent and 10.5 percent year to date versus only 3.6 percent growth of the S&P 500.<sup>48</sup>

29. According to a separate Morgan Stanley analysis, which was presented to Verizon in November 2005, the price of Dex’s common stock had traded up 42 percent between July 2004 and November 2005, and the price of RH Donnelley’s common stock had increased by 50 percent during that same time period.<sup>49</sup> Morgan Stanley reported that “[i]nvestors are favoring directories . . . companies due to predictable free cash flow and attractive yields.”<sup>50</sup> In late August 2006, Morgan Stanley again reported that “[i]nvestors continue to be attracted to high margins and modest capital requirements characterizing the [directories] business.”<sup>51</sup>

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<sup>46</sup> DX1856 at 3-4 of 90 (e-mail attaching, *inter alia*, Deutsche Bank Analyst Report). The Court finds that this analyst report would have been considered by a hypothetical buyer and seller of Verizon’s directories business in November 2006.

<sup>47</sup> DX1856 at 23-24 of 90 (e-mail attaching, *inter alia*, Deutsche Bank Analyst Report).

<sup>48</sup> DX1856 at 27 of 90 (e-mail attaching, *inter alia*, Deutsche Bank Analyst Report).

<sup>49</sup> DX446 at 5 of 39 (Morgan Stanley Discussion Materials, November 8, 2005). The Court finds that this analysis contains information that would have been available to a hypothetical buyer and seller of Verizon’s directories business in November 2006.

<sup>50</sup> DX446 at 5 of 39 (Morgan Stanley Discussion Materials, November 8, 2005).

<sup>51</sup> DX448 at 4 of 56 (Morgan Stanley Discussion Materials, November 8, 2005). H. Andrew Decker, a Managing Director at Bear Stearns and one of the lead advisors on the Spin-Off, likewise testified that “[t]he directories sector had been a very active one. There had been a number of transactions by which companies acquired other directory assets. There had been a number of financing transactions. The debt and equity markets seemed to be very comfortable with the basic investment thesis of the directories industry being a relatively stable and mature relatively high free cash flow requiring relatively low capital expenditure model.” Tr. Vol. 7B at 65:21-

30. In October 2005, RH Donnelley announced that it had reached an agreement to purchase Dex Media for approximately \$4.2 billion.<sup>52</sup> To finance the transaction, RH Donnelley borrowed \$2.3 billion, leaving the combined company with approximately \$10.9 billion in outstanding debt.<sup>53</sup> This debt represented approximately 7 times RH Donnelley's projected 2006 EBITDA.<sup>54</sup>

31. The Idearc Spin-Off resulted in significant demand for Idearc's debt securities. Each tranche of the financing — the \$1.515 billion Term Loan A and the \$250 million Revolver; the \$4.750 billion Term Loan B; and the Unsecured Notes, the most junior tranche of debt in the capital structure — was oversubscribed by a substantial amount. The Term Loan A and Revolver were oversubscribed by 1.66 times, meaning that there were requests to finance 66 percent more of the Term Loan A and Revolver than was necessary to complete the transaction.<sup>55</sup> The Term Loan B was oversubscribed by 1.37 times, while the Unsecured Notes were oversubscribed by 3.5 times.<sup>56</sup> As a result of the significant demand for Idearc debt, the yield on

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66:3. Mr. Smith from Goldman Sachs gave similar testimony. Tr. Vol. 8B at 97:10-13 (“Well, a number of other telecom companies had divested or separated their directory businesses. The market was very receptive to those assets, the debt and equity markets.”); *see also* DX437 at 4 of 71 (Goldman Sachs Discussion Materials, June 16, 2005) (“Public and private markets are currently valuing directories businesses at high multiples.”).

<sup>52</sup> DX446 at 12 of 39 (Morgan Stanley Discussion Materials, November 8, 2005).

<sup>53</sup> PX1333 at 130 of 276 (RH Donnelley 2007 10-K); DX1417 at 59 of 67 (Citigroup Discussion Materials, January 20, 2006).

<sup>54</sup> DX446 at 12 of 39 (Morgan Stanley Discussion Materials, November 8, 2005); DX776 at 8 of 9 (Bear Stearns Idearc Case Study). During the 2005-2006 time period, Dex West priced a bond offering with an interest rate below 6 percent, which Mr. Yourkoski testified was the lowest coupon for a company with the Dex West's credit rating. Tr. Vol. 9A at 9:3-14. That offering provides further evidence of contemporaneous market demand for directories company debt.

<sup>55</sup> PX973 (e-mail regarding Idearc loan allocations); DX382 (e-mail regarding Idearc debt allocations); Tr. Vol. 9B at 117:1-23 (testimony of JP Morgan Managing Director Jessica Kearns about the oversubscription); Tr. Vol. 10B at 23:18-25:10 (testimony of Defendants' expert Michiel McCarty); DD 6.5 (demonstrative used by Mr. McCarty with respect to the oversubscription).

<sup>56</sup> Tr. Vol. 10B at 24:2-25:10; DD 6.5 (demonstrative used by Mr. McCarty with respect to the oversubscription); Tr. Vol. 10A at 41:24-43:13 (testimony of Defendants' expert Jeff Balcombe that oversubscription of Unsecured Notes, the junior-most debt in the capital structure, reflected investor confidence that the value of Idearc's assets exceeded its liabilities).

the debt instruments (*i.e.*, their interest rate) was even lower than the bankers advising Verizon had anticipated.<sup>57</sup>

32. On April 10, 2007, Idearc filed a registration statement with the SEC related to the \$2.85 billion Unsecured Notes.<sup>58</sup> Beginning in early June 2007, after the registration statement was declared effective, and until November 2007, the Unsecured Notes traded at, above, or near par (100 cents on the dollar), reflecting investor confidence in Idearc's debt.<sup>59</sup>

3. *On November 17, 2006, Investors Placed a Premium on Stable Cash Flow*

33. Plaintiff's allegation that Verizon concealed that the revenues of its directories business were declining was not supported by the evidence introduced in the Phase I proceeding. Verizon's annual SEC filings on Form 10-K and Idearc's Form 10 reflected that VIS had declining revenues from 2001 through 2006.<sup>60</sup> Industry analysts, including the Kelsey Group and Simba, predicted further declines for the incumbent print business.<sup>61</sup> Many public equity analysts also predicted continued revenue declines for VIS.<sup>62</sup>

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<sup>57</sup> Tr. Vol. 9B at 118:6-10.

<sup>58</sup> PX1196 (Idearc Registration Statement).

<sup>59</sup> DX612 at 1-4 of 10 (Bloomberg Bond Price Data); Tr. Vol. 10A at 43:14-44:8 (testimony of Mr. Balcombe).

<sup>60</sup> DX525 at 184-85 of 199 (Verizon 2005 10-K) (showing revenue declining from \$3.763 billion in 2003, to \$3.549 billion in 2004, to \$3.452 billion in 2005); PX901 at 24, 51 of 158 (Form 10) (disclosing that pro forma operating revenues declined from \$3.831 billion in 2001 to \$3.374 billion in 2005).

<sup>61</sup> PX1060 at 219 of 1105 (Idearc July 7, 2006 Form 10 filing) ("According to the Kelsey Group, a provider of strategic research and analysis, incumbent print revenue is expected to decrease at a compound annual growth rate, or CAGR, of approximately 1.7% from 2006 to 2010, and during this same period, the Kelsey Group projects independent print revenue to have a CAGR of approximately 10.9%."); *see also* Tr. Vol. 4B at 54:5-25, 56:7-58:2 (discussing Kelsey group projections of declining consumer references to print yellow pages and declining return on investment to advertisers from print yellow pages).

<sup>62</sup> Tr. Vol. 4B at 111:17-113:12 (testimony of Ms. Taylor); DX1855 at 5 of 22 (Verizon Board Presentation, September 7, 2006) (analyst consensus of negative 2.1 percent compound annual growth rate); Tr. Vol. 9B at 40:12-41:5 (testimony of Ms. Toben concerning analyst forecasts).

34. No equity investor or public-side debt investor had access to Idearc's forecasts.<sup>63</sup> They were not included in the Form 10 that Idearc filed with the SEC<sup>64</sup> and were not included in any of the presentations that were made to public-side lenders. Accordingly, the only widely disseminated public information available to equity and public-side debt investors showed actual, historical revenue declines (from Verizon's public SEC filings) and projected future revenue declines (published by third-party analysts).<sup>65</sup>

35. The management forecasts that VIS made available to private-side investors did not reflect substantial increases in revenue or free cash flow. The forecasts projected essentially flat EBITDA from 2006 through 2010 — decreasing from \$1.559 billion in 2006 to \$1.555 billion in 2007 and in 2008, and then increasing slightly to \$1.566 and \$1.574 billion in 2009 and 2010.<sup>66</sup> The forecast of Idearc's free cash flow also reflected declines, decreasing from a projected \$459 million in 2006, to \$432 million in 2007, to \$425 million in 2008 and 2009, before increasing slightly to \$437 million in 2010.<sup>67</sup> The Idearc forecasts were provided only to private-side lenders who agreed not to trade in Idearc securities in the public markets, and to two rating agencies.<sup>68</sup>

36. Plaintiff did not introduce evidence of any investor that relied upon the Idearc forecasts, which had projected flat EBITDA and free cash flow results, in making a decision to

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<sup>63</sup> Ms. Kearns testified that, "if you are private-side, you can have access to nonpublic information, most notably the projections, the financial models and the assumptions that go along with them. If you are a public-side lender, you don't have access to that information." Tr. Vol. 9B at 89:13-19.

<sup>64</sup> Tr. Vol. 9A at 110:16-111:3 (testimony of Steve Slutzky of Debevoise that management's projections were not included in the Form 10 or Offering Memorandum); *see also* PX901 (Form 10).

<sup>65</sup> DX488 at 36 of 45 (Public Side Lender Presentation) (showing pro forma revenue declines from \$3.675 billion in 2003 to \$3.270 billion for the last 12 months ended June 30, 2006); Tr. Vol. 9B at 94:23-95:8.

<sup>66</sup> DX416 at 57 of 77 (Rating Agency Presentation); DX314 at 8 of 14 (Confidential Information Memorandum for Private Siders); DX494 at 5 of 8 (Private Side Lender Presentation).

<sup>67</sup> DX416 at 59 of 77 (Rating Agency Presentation).

<sup>68</sup> Tr. Vol. 4B at 41:4-42:5 (testimony of Ms. Taylor).

invest in Idearc debt or equity securities. Plaintiff also failed to introduce any evidence that supported its assertion that investors were only willing to purchase Idearc debt and equity because they believed that Idearc would have significant revenue and EBITDA growth.

37. Morgan Stanley, Citibank, and JP Morgan, three private-side investors that received the forecasts, prepared their own projections for revenue, EBITDA and free cash flow, rather than simply relying on the forecasts provided by Idearc's management. Morgan Stanley's credit committee considered a "base case" of financial projections done by that firm<sup>69</sup> that estimated a decline in EBITDA from \$1.558 billion in 2006 to \$1.320 billion in 2013.<sup>70</sup> Morgan Stanley also forecasted a decline in free cash flow from \$406 million to \$360 million during the same time period.<sup>71</sup> Nevertheless, Morgan Stanley concluded that, on the date of the Spin-Off, Idearc would have a total enterprise value of \$12.5 billion and an equity value of approximately \$3.4 billion.<sup>72</sup> Citibank's base case estimated year-over-year revenue declines, as well as declining EBITDA margins.<sup>73</sup> Nevertheless, Citibank concluded that Idearc had a total enterprise value of \$11.7 billion to \$14.4 billion.<sup>74</sup> JP Morgan created a downside case that estimated annual declines in net revenue ranging from negative 4.2 percent to negative 2 percent

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<sup>69</sup> Tr. Vol. 9A at 38:22-39:9 (testimony of Mr. Yourkoski that Morgan Stanley's credit team prepared their own base case and downside case).

<sup>70</sup> DX450 at 15 of 16 (Morgan Stanley CCC Materials).

<sup>71</sup> DX450 at 15 of 16 (Morgan Stanley CCC Materials); *see also id.* at 13 of 16 ("The credit base case assumes a gradual decline in EBITDA and, therefore, in free cash flow"). Morgan Stanley also prepared a downside case in which projected EBITDA declined from \$1.558 billion in 2006 to \$1.184 billion in 2013, while free cash flow declined from an estimated \$397 million to \$271 million. *Id.* at 16 of 16. Both the base case and downside case additionally predicted aggregate revenue declines on a year-over-year basis. *See id.* at 15-16.

<sup>72</sup> DX450 at 4 of 16 (Morgan Stanley CCC Materials); Tr. Vol. 9A at 37:1-16. The Court finds that Morgan Stanley's analysis is indicative of the type of analysis that would have been undertaken by a hypothetical buyer and seller of Verizon's directories business.

<sup>73</sup> DX745 at 11 of 27 (Citibank Credit Memorandum).

<sup>74</sup> DX745 at 19 of 27 (Citibank Credit Memorandum).

and adjusted EBITDA falling from an estimated \$1.559 billion in 2006 to \$1.244 billion in 2014.<sup>75</sup>

38. Goldman Sachs similarly prepared a downside forecast reflecting that EBITDA would decline annually between 2006 and 2014 by percentages ranging from 0.2 percent (2009) to 1.3 percent (2014).<sup>76</sup> Goldman Sachs' downside case reflected an estimated decline in free cash flow from \$423.8 million in 2006 to \$397.5 million in 2014.<sup>77</sup> Goldman Sachs calculated the enterprise value of Idearc on the date of the Spin-Off to be \$12.465 billion, with an equity value of approximately \$3.45 billion.<sup>78</sup> Goldman Sachs' credit committee approved a \$200 million commitment to the Term Loan A and the Revolver, recognizing, among other things, Idearc's "strong financial profile with significant free cash flow."<sup>79</sup>

39. Mr. Seidenberg also testified about his belief that Idearc would appeal to a different type of investor from those who held Verizon common stock. In his view, Idearc would appeal to investors that were interested in stable cash flow and a large dividend:

I think the issue was this business was extremely stable. And again, I would clearly take responsibility for the idea that in the longer term, being a public company would have given this business a pivot, a reset, give it a chance to try new and different things. But the most important thing is they were going to be spun out and paid a very big dividend, and they were going to have a very long term relationship with Verizon continuing.<sup>80</sup>

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<sup>75</sup> DX422 at 83 of 120 (JP Morgan Client Review Proposal).

<sup>76</sup> PX803 at 21 of 28 (Goldman Sachs Credit Memorandum).

<sup>77</sup> PX803 at 21 of 28 (Goldman Sachs Credit Memorandum).

<sup>78</sup> PX803 at 5 of 28 (Goldman Sachs Credit Memorandum); Tr. Vol. 8B at 106:10-23 (testimony of Goldman Sachs Managing Director Michael Smith). The Court finds that Goldman Sachs' analysis is indicative of the type of analysis that would have been undertaken by a hypothetical buyer and seller of Verizon's directories business.

<sup>79</sup> PX803 at 11 of 28 (Goldman Sachs Credit Memorandum); *see also id.* ("The capital expenditure requirements of the business are modest, amounting to less than \$85 million annually or less than 2.5% of the total operating revenue for each of the last 3 years. As a result, the Company generates strong free cash flow."); Tr. Vol. 8B at 103:3-4 (testimony of Mr. Smith about Goldman Sachs' \$200 million commitment).

<sup>80</sup> Tr. Vol. 6A at 73:11-18.

40. In its opening statement, Plaintiff asserted a dichotomy between a growth business and one that should be broken up and sold off for parts (which Plaintiff characterized as a “harvest business”).<sup>81</sup> The evidence, however, indicates that, while VIS had not been growing, Verizon and VIS management believed at the time of the Spin-Off that VIS was a valuable, steady producer of EBITDA and free cash flow and that it could prosper as an independent company. Plaintiff’s allegations that Mr. Seidenberg and Ms. Kathy Harless, the President of VIS who became Idearc’s CEO on the date of the Spin-Off, believed that the directories business was in “harvest” mode, and that Mr. Seidenberg and Ms. Harless withheld this information from prospective investors, are also unsupported by the evidence.

41. The evidence introduced during the Phase I trial indicates that, prior to the Spin-Off, the future leadership of Idearc believed that VIS had not been able to reinvest into its business the substantial free cash flow that it had generated. Ms. Harless testified that VIS had been unable to invest in its sales organization, in the print product, or in advertising in the years preceding the Spin-Off, and further that Idearc intended to make such investments following the Spin-Off.<sup>82</sup> Ms. Harless testified that, during Idearc roadshows, she communicated to prospective investors Verizon’s historical practice of utilizing the cash flow generated by the directories business to invest in other Verizon lines of business that were higher priorities to the overall company (such as wireless and broadband), rather than investing the cash flow generated by the directories business back into the business itself.<sup>83</sup>

42. Plaintiff relied on an e-mail (PX1161) that Ms. Harless sent to members of the Idearc Board in January 2007, shortly after the Spin-Off, which memorialized questions that Ms.

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<sup>81</sup> Tr. Vol. 1A at 7:19-21 (Plaintiff’s opening statement).

<sup>82</sup> Tr. Vol. 9A at 59:15-60:10.

<sup>83</sup> Tr. Vol. 9A at 58:2-7; DX1730.

Harless had received from investors and her responses thereto. In response to questions about whether Idearc could cut costs further, Ms. Harless's e-mail states that "No — We have been in Harvest mode for three years."<sup>84</sup> Questioned about this e-mail, Ms. Harless explained that, "number one, I'm referring back to when we were in Verizon, and we were cutting costs and not investing back into the directories business. Verizon had other priorities in which they were investing the dollars."<sup>85</sup> Although Plaintiff suggested that this e-mail reflects the internal views of Mr. Seidenberg and Ms. Harless, and that those views were withheld from the investor community, Ms. Harless testified that this e-mail reflected her actual statements to investors in various meetings that occurred in January 2007.<sup>86</sup>

4. *Valuations Considered by Verizon's Board of Directors*

43. On October 18, 2006, Verizon's Board of Directors held a telephonic meeting in which they approved the Spin-Off of Idearc, which would be effected through distributing Idearc shares to Verizon shareholders. At that time, Verizon's Directors received valuation advice from Verizon's outside advisors.

44. JP Morgan and Bear Stearns, which were the lead advisors to Verizon on the Spin-Off and the lead managers of the debt financing, recommended that the Board approve the Spin-Off transaction. They advised the Board about an appropriate capital structure for Idearc that included an aggregate of \$9.115 billion in debt, and advised the Board that they anticipated that, at the time of the Spin-Off, the total enterprise value of Idearc in the market would be between \$11.689 billion and \$12.468 billion, and its equity value would be between \$2.6 billion

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<sup>84</sup> PX1161 (K. Harless e-mail to Idearc Board).

<sup>85</sup> Tr. Vol. 9A at 69:13-17.

<sup>86</sup> Tr. Vol. 9A at 68:18-69:2.

and \$3.4 billion.<sup>87</sup> The total enterprise value therefore was approximately 7.5 to 8 times Idearc's projected 2006 EBITDA.<sup>88</sup>

45. Houlihan Lokey ("Houlihan"), one of the world's leading financial advisory firms,<sup>89</sup> also participated in the October 18 telephonic meeting of the Verizon Board.<sup>90</sup> Houlihan was formally hired in September 2006, but had begun working in August 2006, to provide an opinion as to whether Idearc would be solvent following the Spin-Off.<sup>91</sup> As part of its engagement, Houlihan conducted exhaustive due diligence regarding the Verizon directories business and the industry in general, including an examination of VIS's historical revenue information on a book-by-book basis.<sup>92</sup> Houlihan advised the Verizon Board of Directors that Idearc was solvent under all three tests of solvency — the balance sheet test, the cash flow test, and the reasonable capital test.<sup>93</sup> Houlihan also informed Verizon's Board that Idearc had a total enterprise value of \$11.536 billion to \$13.336 billion.<sup>94</sup>

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<sup>87</sup> Tr. Vol. 7A at 107:24-108:4 (testimony of Ms. Nason regarding the Verizon Board meeting); Tr. Vol. 7B at 91:6-11 (testimony of Mr. Decker regarding the same); DX266 at 7-11 of 33 (Verizon Board Presentation Speaker Notes, October 17, 2006). The Court finds that the JP Morgan and Bear Stearns recommendation is indicative of the type of information that would have been available to a hypothetical buyer and seller of Verizon's directories business in November 2006.

<sup>88</sup> DX266 at 11 of 33 (Verizon Board Presentation Speaker Notes, October 17, 2006); Tr. Vol. 7A at 109:3-22 (testimony of Ms. Nason).

<sup>89</sup> Tr. Vol. 7B at 8:12-22 (testimony of Mr. De Rose).

<sup>90</sup> Tr. Vol. 7B at 47:11-14 (testimony of Houlihan's Richard De Rose about the Verizon Board meeting). The solvency opinion provided by Houlihan is information that would have been considered by a hypothetical buyer and seller of Verizon's directories business in November 2006.

<sup>91</sup> Tr. Vol. 7B at 16:17-17:3 (testimony of Mr. De Rose).

<sup>92</sup> Tr. Vol. 7B at 17:4-20:22 (testimony of Mr. De Rose that a team of six at Houlihan spent two months "pretty much [ ] full time" working on the engagement, and describing the nature and extent of their due diligence).

<sup>93</sup> PX793 (Houlihan Solvency Opinion); PX1020 (Houlihan Solvency Opinion); DX556 at 29-33 of 33 (Verizon Board Presentation, October 18, 2006).

<sup>94</sup> DX556 at 29 of 33 (Verizon Board Presentation, October 18, 2006).

5. *Views of Key Participants in the Spin-Off*

46. Numerous individuals who directly participated in the Spin-Off appeared during the Phase I trial, and they credibly and uniformly testified to their belief that the value of Idearc's assets substantially exceeded its liabilities on the date of the Spin-Off.<sup>95</sup>

47. Mr. Seidenberg, the CEO of Verizon on the date of the Spin-Off, testified that he "supported and agreed with the opinion of all the experts that came in and showed us the net result of all the work they did. So I agreed with the valuation number of 12.5 [billion]."<sup>96</sup> The Court finds Mr. Seidenberg's testimony credible.

48. Ms. Toben, the CFO of Verizon on the date of the Spin-Off, testified that she believed Idearc's total enterprise value to be 7.5 times its estimated 2006 EBITDA or approximately \$12.1 billion.<sup>97</sup> The Court finds Ms. Toben's testimony credible.

49. John ("Jack") Mueller, the Chairman of the Board of Idearc as of the Spin-Off, who had extensive experience in the telecommunications industry and spent hundreds of hours studying Idearc's business, its historical performance, its business model, and meeting with management in advance of the Spin-Off,<sup>98</sup> testified to his belief that the "enterprise value of the to be spun Idearc" was "at least" "\$11.5 to \$12.5 billion."<sup>99</sup> The Court finds Mr. Mueller's testimony credible.

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<sup>95</sup> The views of JP Morgan's Ms. Nason and Ms. Kearns, Bear Stearns' Mr. Decker, Morgan Stanley's Mr. Yourkoski, Goldman Sachs' Mr. Smith, and Houlihan's Mr. De Rose are discussed in Parts I.D.4, I.D.6, I.E.1, and I.E.2, and will not be repeated here. The Court found all of these witnesses, and their testimony concerning Idearc's valuation as of the Spin-Off, to be credible.

<sup>96</sup> Tr. Vol. 6A at 72:7-13.

<sup>97</sup> Tr. Vol. 9B at 43:24-44:5.

<sup>98</sup> Tr. Vol. 8B at 58:11-59:23 (testimony of Mr. Mueller).

<sup>99</sup> Tr. Vol. 8B at 68:10-12, 17-18.

50. Ms. Harless, Idearc's CEO at the time of the Spin-Off, testified that she believed that "the implied equity value[] of between [\$]2.6 billion and \$4.1 billion" (which corresponds to a total enterprise value for Idearc of between \$11.7 billion and \$13.2 billion) was "very representative of the business."<sup>100</sup> Ms. Harless further testified that she believed that the value of Idearc's assets exceeded the value of its debts on November 17, 2006, and that she would not have agreed to be Idearc's CEO had she believed otherwise.<sup>101</sup> The Court finds Ms. Harless's testimony credible.

51. Mr. Coticchio, Idearc's CFO as of the Spin-Off, testified that he executed the Solvency Certificates associated with the Credit Agreement for the bank financing (PX1058) and the Unsecured Notes (DX652b), and that he believed the representations contained in the Solvency Certificates to be accurate on the date of their execution, November 17, 2006.<sup>102</sup> The Solvency Certificate (PX1058) includes (among other things) the representation that "the fair value of the assets of [Idearc], at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise."<sup>103</sup> The Court finds Mr. Coticchio's testimony credible.

52. Mr. Jones, the Executive Director of Financial Planning and Analysis at the time of the Spin-Off (and later CFO of Idearc and of SuperMedia), testified that he believed Idearc was solvent on the date of the Spin-Off and that Idearc could pay its debts as they became due.<sup>104</sup> Mr. Jones additionally testified that he received approximately 80,000 shares in Idearc and that,

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<sup>100</sup> Tr. Vol. 9A at 71:25-72:10.

<sup>101</sup> Tr. Vol. 9A at 72:16-73:1.

<sup>102</sup> Tr. Vol. 9B at 65:14-66:15, 68:7-69:24.

<sup>103</sup> PX1058 at 2 of 4 (Solvency Certificate).

<sup>104</sup> Tr. Vol. 5B at 133:3-5, 133:15-17.

other than to cover owed taxes, he held all of these shares up through Idearc's bankruptcy.<sup>105</sup>

The Court finds Mr. Jones' testimony credible.

53. Jeffrey Rosen, a partner at Debevoise & Plimpton ("Debevoise") and the lead transactional lawyer on the Spin-Off, testified to his understanding that Idearc "had very substantial equity value and a bright future."<sup>106</sup> Mr. Rosen additionally testified that Debevoise would not have gone forward as lead counsel on the transaction had it believed that Idearc would be insolvent as of the date of the Spin-Off,<sup>107</sup> nor would Debevoise have issued a Negative Assurances Letter or signed the Form 10.<sup>108</sup> The Court finds Mr. Rosen's testimony credible.

54. David Rievman, a partner at Skadden Arps and the lead attorney advising Verizon on tax aspects of the Spin-Off, testified that he signed a letter to the Internal Revenue Service ("IRS") in connection with the Private Letter Ruling request that contained the representation that "the fair market value of assets of [Idearc] will exceed liabilities immediately after the [Spin-Off]."<sup>109</sup> Mr. Rievman further testified that he had no reason to believe that information was not accurate.<sup>110</sup> The Court finds Mr. Rievman's testimony credible.

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<sup>105</sup> Tr. Vol. 5B at 132:3-17.

<sup>106</sup> Tr. Vol. 8B at 29:5-6.

<sup>107</sup> Tr. Vol. 8B at 22:10-15.

<sup>108</sup> Tr. Vol. 8B at 22:25-23:1. The Negative Assurance Letter explained that Debevoise had performed due diligence, and that nothing had come to Debevoise's attention to suggest that there were any material misstatements in the Offering Memorandum for the Unsecured Notes or that the Offering Memorandum omitted any material fact. Tr. 8B at 18:21-19:4; *see also* DX652(a) (Negative Assurances Letter).

<sup>109</sup> Tr. Vol. 6B at 28:14-29:19.

<sup>110</sup> Tr. Vol. 6B at 29:20-24.

6. *Contemporaneous Valuations by Investment Banks, Other Lenders, and Research Analysts*

55. Many of the financial institutions that extended \$9.115 billion in financing to Idearc prepared their own valuations of Verizon's directories business.<sup>111</sup> JP Morgan, for example, estimated the total enterprise value of Idearc to be \$10.8 billion to \$12.8 billion based on a discounted cash flow analysis using its own base case.<sup>112</sup> JP Morgan found that this DCF valuation was corroborated by reference to trading comparables, observing that a 7 to 8 multiple of 2006 estimated EBITDA indicated "a valuation range of \$11.0 to \$12.6 billion."<sup>113</sup> Morgan Stanley likewise estimated that Idearc had an enterprise value of \$12.5 billion and would have an equity market value of approximately \$3.4 billion.<sup>114</sup>

56. Citibank, which committed to fund \$225 million of Term Loan A and the Revolver, also estimated the total enterprise value of Idearc. In assessing Idearc's value, Citibank prepared its own forecasts of future revenue and EBITDA. In its base case, Citibank assumed larger declines in incumbent print revenue, and smaller growth in the independent print and electronic segments, than Idearc's management had projected. Citibank's base case estimated year-over-year revenue declines of 2 percent and a decline in EBITDA margin from 47.3 percent to 43 percent.<sup>115</sup> Citibank's downside case reflected even greater revenue declines.<sup>116</sup> Using these projections for purposes of a discounted cash flow analysis, and based

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<sup>111</sup> The Court finds that all of the analyses discussed in this Section conducted by investment banks evaluating whether to lend money to Idearc are indicative of the type of analysis that would have been undertaken by a hypothetical buyer and seller of Verizon's directories business in November 2006.

<sup>112</sup> DX422 at 21 of 120 (JP Morgan Client Review Proposal).

<sup>113</sup> DX422 at 21 of 120 (JP Morgan Client Review Proposal).

<sup>114</sup> DX450 at 4 of 16 (Morgan Stanley CCC Materials); Tr. Vol. 9A at 37:1-16 (testimony of Mr. Yourkoski).

<sup>115</sup> DX745 at 11 of 27 (Citibank Credit Memorandum).

<sup>116</sup> DX745 at 11 of 27 (Citibank Credit Memorandum).

on its evaluation of trading comparables, Citibank “estimate[d] the Enterprise Value of Verizon Directories to fall in the range of \$11.7Bn and \$14.4Bn.”<sup>117</sup>

57. In June 2005, Goldman Sachs provided Verizon with an analysis estimating that, as an independent company, VIS would be valued at 8 to 12 times EBITDA, resulting in a prospective enterprise valuation range of \$14.116 billion to \$21.175 billion.<sup>118</sup> In October 2006, Goldman Sachs estimated the enterprise value of Idearc at \$12.465 billion, based on a 7.9 times EBITDA multiple.<sup>119</sup>

58. Various equity analysts also published estimated values of Verizon’s directories business.<sup>120</sup> After the December 5, 2005 announcement that Verizon was exploring a divestiture of its directories business, various analysts published research reports reacting to the news. Bear Stearns provided Verizon with a summary of those reports.<sup>121</sup> Sanford Bernstein estimated the enterprise value of Verizon’s directories business at just under \$11 billion;<sup>122</sup> Goldman Sachs estimated that Verizon’s directories business “could fetch potentially 10.0 times EV/EBITDA or

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<sup>117</sup> DX745 at 19 of 27 (Citibank Credit Memorandum).

<sup>118</sup> DX437 at 27 (Goldman Sachs Discussion Materials, June 16, 2005); Tr. Vol. 8B at 101:24-102:2 (testimony of Mr. Smith).

<sup>119</sup> PX803 at 5 of 28 (Goldman Sachs Credit Memorandum); Tr. Vol. 8B at 106:10-23 (testimony of Mr. Smith); *see also* DX511 at 1-2 of 4 (Barclays Credit Memorandum estimating Idearc’s total enterprise value to be \$12.9 billion, 8.25 times EBITDA, while recognizing “slow secular decline” and historical performance that has “lagged the industry”); DX361 at 2, 4 of 6 (BlackRock Credit Memorandum estimating Idearc’s total enterprise value to be \$14.5 billion, 8.9 times LTM EBITDA, while recognizing declining revenue and margin contraction); DX563 at 3-4 of 5 (Loomis Sayles Credit Memorandum estimating Idearc’s total enterprise value to be \$14.1 billion, 9 times EBITDA, while recognizing declining revenue); DX2059 at 7, 26 of 71 (UBS Credit Memorandum estimating Idearc’s total enterprise value to be \$12.5 billion, 8 times EBITDA, while recognizing that electronic and independent print had lower margins than incumbent print); DX561 at 5 of 10 (Wells Fargo Credit Memorandum estimating Idearc’s total enterprise value to be \$12.6 to \$12.9 billion, 8 to 8.1 times EBITDA, while recognizing lower margins on electronic business); DX491 at 4, 11, 13 of 13 (Wachovia Credit Memorandum estimating Idearc’s total enterprise value to be \$14.82 billion, while recognizing lower margins on electronic business and declining revenues).

<sup>120</sup> The Court finds that the information contained in public analyst reports would have been available to the hypothetical buyer and seller of Verizon’s directories business in November 2006.

<sup>121</sup> DX389 at 4-9 of 9 (Bear Stearns Presentation); Tr. Vol. 7B at 76:19-79:16 (testimony of Mr. Decker).

<sup>122</sup> DX389 at 6 of 9 (Bear Stearns Presentation); Tr. Vol. 7B at 79:1-16 (testimony of Mr. Decker).

greater,” representing an approximately \$16 billion enterprise valuation;<sup>123</sup> Merrill Lynch “estimated an 8x EBITDA multiple on the directory business over \$1.7B of EBITDA,” representing a \$13.6 billion enterprise valuation;<sup>124</sup> and Royal Bank of Canada (“RBC”) Capital Markets estimated an enterprise “valuation range . . . of \$13.5 billion to \$16.9 billion.”<sup>125</sup> In July 2006, Stifel Nicolaus published a report estimating that “a tax-free valuation for the business should be [] \$15 billion-\$16 billion.”<sup>126</sup> BMO Capital Markets estimated that Idearc “could be valued in the public markets at close to \$20 billion, based on 2006E EBITDA of \$1.7 billion and 10-13x EV multiples implied by other recent transactions.”<sup>127</sup>

7. *Private Equity Interest in Verizon’s Directories Business*

59. In exploring potential options for the divestiture of its directories business, Verizon asked its financial advisors to explore a potential transaction involving private investors. Jennifer Nason testified that JP Morgan was in contact with seven to nine potential financial sponsors.<sup>128</sup> In August 2006, a consortium of three leading private equity firms — Texas Pacific Group, Madison Dearborn Partners, and Apollo Management — sent a letter to Verizon and its financial advisors at JP Morgan and Bear Stearns indicating that they could offer “a value-

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<sup>123</sup> DX389 at 7 of 9 (Bear Stearns Presentation).

<sup>124</sup> DX389 at 7 of 9 (Bear Stearns Presentation).

<sup>125</sup> PX89 at 2 of 8 (RBC Capital Markets analyst report); *see also* DX2068 at 2, 9 of 16 (May 3, 2006 CIBC World Markets analyst report estimating value of Idearc to be \$17 billion, while projecting revenue declines from \$3.452 billion in 2005 to \$3.245 billion in 2009); DX1725 at 20 of 34 (October 26, 2006 Deutsche Bank analyst report estimating value of Idearc to be \$12.2 billion); DX841 at 7 of 18 (November 28, 2006 Lehman Brothers analyst report estimating value of Idearc to be \$12.9 billion); DX1677 at 4, 6 of 22 (November 1, 2006 Natexis Bleichroeder analyst report estimating value of Idearc to be \$11.5 billion to \$15.1 billion despite negative revenue growth).

<sup>126</sup> PX455 at 1 of 3 (Stifel Nicolaus analyst report).

<sup>127</sup> PX456 at 1 of 4 (BMO Capital Markets analyst report); *see also* PX542 at 2 of 5 (Credit Suisse August 24, 2006 analyst report stating that, “[i]n a conservative scenario, we assume the directories business would be valued at \$11.9B - \$13.5B (7x-8x 2006 EBITDA)”).

<sup>128</sup> Tr. Vol. 7A at 104:14-18; *see also* PX157 (e-mail from JP Morgan’s Shane Wallace to Verizon and bank advisors noting inquiries from “private equity players”).

enhancing transaction for Verizon and its shareholders that is both superior to a stand-alone spin-off and achievable in a timely manner.”<sup>129</sup> The proposal contemplated an equity investment of approximately \$1.1 billion, debt financing in the amount of \$10.1 billion (representing 6.5 times estimated 2006 EBITDA), and a total enterprise value of approximately \$12.5 billion (representing 8 times estimated 2006 EBITDA).<sup>130</sup> These investors had retained investment banking firms Lehman Brothers Inc. and Credit Suisse, and the law firm Wachtell, Lipton, Rosen & Katz, to advise them on a potential transaction.<sup>131</sup>

8. *Mr. Hopkins’ Expert Opinion*

60. Defendants introduced the testimony of Mark Hopkins, whom the Court found qualified to provide an expert opinion on the subjects of valuation and solvency.<sup>132</sup> Mr. Hopkins estimated Idearc’s value on the date of the Spin-Off by reference to four different approaches: (1) market price;<sup>133</sup> (2) comparative company analysis;<sup>134</sup> (3) precedent transaction analysis;<sup>135</sup>

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<sup>129</sup> DX816 at 2 of 13 (Apollo Management Letter). This information would have been communicated to a hypothetical buyer and seller of Verizon’s directories business in November 2006.

<sup>130</sup> DX816 at 2-3 of 13 (Apollo Management Letter).

<sup>131</sup> DX816 at 9 of 13 (Apollo Management Letter).

<sup>132</sup> Tr. Vol. 7B at 116:3-4.

<sup>133</sup> For companies that are publicly traded, valuation using the market price approach determines value by adding the market value of a company’s common stock to the amount of outstanding debt and any non-operating liabilities, and then by subtracting the value of non-operating assets. Tr. Vol. 8A at 10:16-11:15.

<sup>134</sup> The comparable company methodology determines value by reference to the actual market trading of companies that are comparable to the company being valued. Tr. Vol. 8A at 13:25-14:3. It examines the total enterprise value of publicly traded companies that are considered “comparable” to the subject company, and then calculates a “multiple” determined by dividing the implied enterprise value (equity capitalization plus liabilities) by the annual revenue and EBITDA of the company being valued. *Id.* at 14:17-15:5.

<sup>135</sup> The precedent transaction methodology determines value by reference to the value assigned to comparable companies in merger and acquisition transactions, and then calculates a “multiple” determined by dividing the implied total enterprise value by the annual EBITDA or revenue of the company being valued. Tr. Vol. 8A at 22:2-8.

and (4) discounted cash flow (“DCF”) analysis.<sup>136</sup> These approaches reflect the generally accepted methodology for valuing a business.<sup>137</sup>

61. Mr. Hopkins concluded that Idearc’s fair market value as of the Spin-Off date, as calculated by reference to the trading of its common stock on the NYSE, was \$12.8 billion. Mr. Hopkins reached this conclusion by evaluating the price of Idearc’s common stock trading on a when-issued basis prior to the Spin-Off and concluding that this trading occurred in an open and unrestricted market.<sup>138</sup> Mr. Hopkins multiplied Idearc’s closing stock price as of November 16, 2006 (\$26.30) by the number of shares of Idearc stock to be issued (approximately 146 million), which reflected a market value of Idearc’s equity of \$3.84 billion.<sup>139</sup> Mr. Hopkins then added the amount of Idearc’s debt (\$9.115 billion) and subtracted the amount of Idearc’s cash on hand (\$100 million), which represented a non-operating asset, to reach a total enterprise value of \$12.8 billion.<sup>140</sup>

62. Mr. Hopkins’ comparative company analysis resulted in a valuation range of \$12 billion to \$14.4 billion.<sup>141</sup> Mr. Hopkins first examined the universe of publicly traded yellow pages companies and selected those that were most comparable to Idearc.<sup>142</sup> This “Peer Group” included RH Donnelley (which Mr. Hopkins concluded was the most comparable); Yell Group,

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<sup>136</sup> A DCF analysis determines the value of a company by calculating the present value of the company’s projected future cash flows, first determining projected cash flows for a discrete time period, and then determining a terminal value, which reflects cash flows into perpetuity. These amounts are then discounted to a net present value using a weighted average cost of capital. Tr. Vol. 8A at 26:1-12.

<sup>137</sup> Plaintiff’s expert, Carlyn Taylor, valued Idearc using a comparable company, precedent transaction, and DCF methodologies. Tr. Vol. 4B at 6:14-22. The parties agree that the market price of a company’s common stock as traded on a national securities exchange is generally the appropriate methodology for determining the total enterprise value of a publicly traded company such as Idearc. Tr. Vol. 1A at 6:5-12; Tr. Vol. 3 at 56:17-19.

<sup>138</sup> Tr. Vol. 8A at 10:7-15.

<sup>139</sup> Tr. Vol. 8A at 8:24-9:7.

<sup>140</sup> Tr. Vol. 8A at 11:9-15.

<sup>141</sup> Tr. Vol. 8A at 12:11-22.

<sup>142</sup> Tr. Vol. 8A at 14:4-9.

PLC; and Yellow Pages Income Fund.<sup>143</sup> Each of these publicly traded yellow pages companies sold similar products and services in the United States and Canada.<sup>144</sup> Mr. Hopkins then calculated multiples for each company in the Peer Group, using RH Donnelley as the reference point for the lower end of the range and the average of all of the multiples to calculate the high end of his range.<sup>145</sup> After determining the multiple range, Mr. Hopkins then calculated the range of values by multiplying Idearc's revenue and EBITDA by the selected multiples.<sup>146</sup> Mr. Hopkins determined his ultimate range of \$12 billion to \$14.4 billion by selecting the lowest of the resulting valuation figures for the low end of his range and the average of the valuation numbers for the high end of his range.<sup>147</sup>

63. Mr. Hopkins' precedent transaction analysis yielded a range of value from \$13.2 billion to \$15.8 billion.<sup>148</sup> Mr. Hopkins considered the universe of yellow pages acquisitions for which there was publicly available information and selected 14 transactions that had occurred in a comparable time frame (within three-and-a-half years of the Spin-Off) and had sufficient size (greater than \$1 billion).<sup>149</sup> Mr. Hopkins further narrowed the group of precedent transactions to the nine transactions involving acquired companies that had done business in North America and concluded that R.H. Donnelley's acquisition of Dex Media (which closed on January 31, 2006)

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<sup>143</sup> Tr. Vol. 8A at 14:4-16.

<sup>144</sup> Tr. Vol. 8A at 14:11-14. Mr. Hopkins did not include other domestic directories businesses in his analysis if those companies were privately held or if directories revenue was not separately reported (such as for AT&T). *Id.* at 16:8-14. Mr. Hopkins additionally excluded publicly traded European companies, which he concluded had different business models and product mixes that resulted in higher valuations. *Id.* at 16:15-17:3.

<sup>145</sup> Tr. Vol. 8A at 17:6-18:9. Mr. Hopkins reduced the RH Donnelley revenue multiple by 0.5 and the RH Donnelley EBITDA multiple by 1, a discount that resulted in a more conservative total valuation. *Id.* at 17:12-21. Mr. Hopkins' use of the average multiples for the high end of his range, instead of the highest multiple, also resulted in a more conservative total valuation. *Id.* at 18:3-9.

<sup>146</sup> Tr. Vol. 8A at 18:10-24.

<sup>147</sup> Tr. Vol. 8A at 18:25-19:14.

<sup>148</sup> Tr. Vol. 8A at 12:11-22.

<sup>149</sup> Tr. Vol. 8A at 20:10-25.

was the most comparable of the transactions.<sup>150</sup> After calculating the applicable multiples for each of these transactions, Mr. Hopkins used the Dex Media acquisition for the low end of his range<sup>151</sup> and the average of all transactions in North America for the high end of his range.<sup>152</sup> Mr. Hopkins' valuation of Idearc using this methodology resulted in a range of \$13.2 billion to \$15.8 billion, determined by using the lowest of the resulting valuation figures for the low end of his range and the average of the valuation numbers for the high end of his range.<sup>153</sup>

64. Mr. Hopkins' discounted cash flow analysis yielded a range of value from \$10.9 billion to \$13.7 billion.<sup>154</sup> Mr. Hopkins considered several different projections of cash flows for Idearc that had been developed in the year leading up to the Spin-Off.<sup>155</sup> He selected the projections from the final financing model because he found that this forecast reflected the most recent actual financial results of Idearc and was consistent with estimates for the yellow pages and advertising industries as a whole.<sup>156</sup> Mr. Hopkins tested the reasonableness of the projections by separately considering each Idearc business line (incumbent print, independent print, and electronic) and determining they were consistent with the historical and recent results

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<sup>150</sup> Tr. Vol. 8A at 22:12-25.

<sup>151</sup> Tr. Vol. 8A at 22:22-23:18. Mr. Hopkins again reduced the revenue multiple by 0.5 and the EBITDA multiple by 1, to reflect the fact that "RH Donnelley had performed historically somewhat better than Idearc was projected to." *Id.* at 23:21-25. This discount resulted in more conservative valuation figures.

<sup>152</sup> Tr. Vol. 8A at 24:7-16.

<sup>153</sup> Tr. Vol. 8A at 25:2-12.

<sup>154</sup> Tr. Vol. 8A at 12:11-22.

<sup>155</sup> Tr. Vol. 8A at 26:19-27:4.

<sup>156</sup> Tr. Vol. 8A at 27:15-29:4. Mr. Hopkins considered and rejected two available downside cases — (i) the projection in PX27 at 23 of 54 (Directories – Analysis of Alternatives) that Idearc revenues would decline at a 4.8 percent compound annual growth rate in perpetuity, which Mr. Hopkins rejected because using a simple average of historical trends was inconsistent with standard valuation principles, and because it ignored Idearc's improving performance and stabilization; and (ii) a Houlihan downside case, which Mr. Hopkins rejected because it reflected a "stress test" that Houlihan utilized to evaluate compliance with debt covenants in connection with a cash flow solvency evaluation, rather than a reasonable estimate of future cash flows. Tr. Vol. 8A at 29:18-32:12. Mr. Hopkins also performed a sensitivity analysis, by lowering projected revenue amounts. That sensitivity analysis did not impact his overall conclusion as to the value of Idearc. *Id.* at 121:20-122:12.

of the company, were supported by the revenue already booked for the rest of 2006 and the first half of 2007, and were more conservative than the revenue growth projected for the industry as a whole.<sup>157</sup> Mr. Hopkins' conclusions were corroborated by JP Morgan and Bear Stearns, each of which had earlier found the financing model projections to be reasonable and appropriate after extensive due diligence, by the assessments of Idearc's lenders, by various independent research analysts (who issued similar projections for Idearc), and by Houlihan.<sup>158</sup>

65. Mr. Hopkins then determined an appropriate discount rate for Idearc by determining its cost of equity and its cost of debt, and then weighting them (the "Weighted Average Cost of Capital" or "WACC") by reference to the equity and debt of Idearc's Peer Group, particularly its most comparable peer, R.H. Donnelley. This resulted in a WACC of 7.1 percent.<sup>159</sup>

66. Finally, Mr. Hopkins determined a terminal value for Idearc using the exit multiple method, "the most commonly used method in banking and finance."<sup>160</sup> Mr. Hopkins calculated a 7.7 times terminal multiple, which reflected a perpetual long term growth rate of -0.1 percent, a figure that Mr. Hopkins found to be consistent with Idearc's projections and corroborated by a variety of other sources.<sup>161</sup>

67. After identifying projected cash flows, a discount rate (7.1 percent), and a terminal multiple (7.7x) for Idearc, Mr. Hopkins calculated a total enterprise value for Idearc of

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<sup>157</sup> Mr. Hopkins also concluded that the projected EBITDA figures, with flat EBITDA and declining margins, were reasonable given the lower margins in Idearc's growing Internet business. Tr. Vol. 8A at 39:13-40:6.

<sup>158</sup> Tr. Vol. 8A at 41:18-42:13.

<sup>159</sup> Tr. Vol. 8A at 43:5-45:11; *see id.* at 123:10-124:5 (testimony from Mr. Hopkins explaining how the effective tax rate impacts the calculation of a WACC). This methodology is called the Capital Asset Pricing Model and is a standard industry model.

<sup>160</sup> Tr. Vol. 8A at 46:17-19.

<sup>161</sup> Tr. Vol. 8A at 47:15-48:13.

\$12.3 billion. However, in order to account for the inherent sensitivity and uncertainty of the assumptions that go into a DCF calculation, Mr. Hopkins created a range of valuations by applying a discount rate ranging from 6.6 percent to 7.6 percent and applying a terminal multiple ranging from 6.7x to 8.7x. This resulted in a range of value for Idearc of \$10.9 billion to \$13.7 billion.<sup>162</sup>

68. Mr. Hopkins' estimates of total enterprise value under these methodologies were mutually supportive and consistent, which is an important indicia of reliability.<sup>163</sup> Based on his comparable company, precedent transaction, and DCF analyses, Mr. Hopkins determined an overall range for Idearc's total enterprise value of between \$11.8 billion and \$13.2 billion. Mr. Hopkins calculated this range by taking the low end of his comparative company analysis and the midpoint of his DCF analysis.<sup>164</sup> The midpoint of Mr. Hopkins' final range for Idearc's total enterprise value was \$12.5 billion, which is consistent with the \$12.8 billion enterprise value derived from price of Idearc's common stock on the date of the Spin-Off.<sup>165</sup> It is also consistent with, and corroborated by, numerous contemporaneous valuations, including the average of valuations performed by independent research analysts leading up to the Spin-Off (\$12.6 billion), the valuation performed by Houlihan prior to the Spin-Off,<sup>166</sup> and the internal valuations of Idearc's lenders.

69. The Court finds Mr. Hopkins' analysis to be indicative of the type of analysis that would have been performed by a hypothetical buyer and seller of Verizon's directories business

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<sup>162</sup> Tr. Vol. 8A at 49:3-50:4.

<sup>163</sup> Tr. Vol. 8A at 12:23-25.

<sup>164</sup> Had Mr. Hopkins instead given a one-third weighting to each of his three approaches, he would have calculated a higher valuation range.

<sup>165</sup> Tr. Vol. 8A at 50:15-51:10.

<sup>166</sup> Tr. Vol. 8A at 51:14-52:2.

in November 2006, and further corroborates the \$12.8 billion enterprise valuation implied by Idearc's stock price on the day of the Spin-Off.

9. *Post-Spin Events*

70. Following the Spin-Off, Idearc operated as a publicly traded, independent company. During each quarter after the Spin-Off through the first quarter of 2008, Idearc paid a cash dividend to its shareholders of approximately \$50 million (for an aggregate amount of \$250 million).<sup>167</sup> On October 31, 2007, Idearc acquired Switchboard.com for approximately \$225 million in cash, all generated from ongoing operations.<sup>168</sup> For the years ended December 31, 2006, and December 31, 2007, Idearc received unqualified audit opinions from Ernst & Young, its outside auditor. Ernst & Young did not issue a going concern qualification to Idearc in either year, reflecting Ernst & Young's conclusion that Idearc was able to meet its obligations and stay in business for the next year.<sup>169</sup> Dee Jones, who served as Idearc's CFO at the time of the bankruptcy and who continues to serve as CFO of Idearc's successor SuperMedia, testified that the absence of such a qualified audit opinion from Ernst & Young signifies, "based on their assessment, that [Idearc] had [the] capacity to service [its] debt and service [its] obligations and continue in business throughout the subsequent 12 months."<sup>170</sup>

71. In March 2009, Idearc filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. Mr. Jones testified that the cause of Idearc's bankruptcy filing was

the degree and the breadth and the significance of the economic downturn that we went through, that this country went through in 2008, [2009], [2010], and the degree of impact it had on small and medium — in the small and medium

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<sup>167</sup> Tr. Vol. 5B at 131:3-13 (testimony of Mr. Jones); PX1582 at 42, 58 of 128 (Idearc 2008 Form 10-K).

<sup>168</sup> Tr. Vol. 5B at 129:17-23 (testimony of Mr. Jones); PX1357 at 35 of 116 (Idearc 2007 10-K) (describing purchase price as \$227 million).

<sup>169</sup> Tr. Vol. 5B at 134:3-20 (testimony of Mr. Jones).

<sup>170</sup> Tr. Vol. 5B at 134:23-135:1.

business space and consequently on our enterprise and numerous other enterprises in our industry.

As a result of that downturn, that sustained downturn, the breadth and degree and significance of that downturn, our revenues fell off dramatically, beyond levels that we had ever experienced. As a result of that, the earnings and the capacity to service the debt and the longer term prospects of being able to refinance or pay off the debt were diminished beyond recovery.<sup>171</sup>

**E. Independent Financial Industry Professionals Concluded That Idearc Could Support \$9.115 Billion in Debt**

72. The financing for the Spin-Off was led by JP Morgan’s Syndicated and Leveraged Finance group, by a team headed by Managing Director Jessica Kearns.<sup>172</sup> JP Morgan served as the “left lead arranger” for the secured credit facility, meaning that it was effectively in charge of the financing.<sup>173</sup> In addition, JP Morgan served as the book runner or lead underwriter for the Unsecured Notes.<sup>174</sup>

73. JP Morgan and Bear Stearns determined that Idearc could support, and they could place, \$9.115 billion in debt, which would give Idearc a leverage ratio of approximately 5.9 times projected 2006 EBITDA.<sup>175</sup> In determining the appropriate amount of leverage, JP Morgan and Bear Stearns balanced three objectives — determining an amount of debt that was readily serviceable given the company’s expected cash flows from operations; determining a sufficient level of remaining cash flow to pay a substantial dividend; and devising a capital structure that would allow Idearc’s equity trading to trade at a substantial value following the

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<sup>171</sup> Tr. Vol. 5B at 135:10-25.

<sup>172</sup> Ms. Kearns is group head for the Telecom, Media & Technology team in JP Morgan’s Syndicated and Leveraged Finance group. Tr. Vol. 9B at 80:15-16 (testimony of Ms. Kearns).

<sup>173</sup> Tr. Vol. 9B at 83:14-84:1 (testimony of Ms. Kearns).

<sup>174</sup> Tr. Vol. 9B at 102:14-19 (testimony of Ms. Kearns).

<sup>175</sup> Tr. Vol. 7B at 89:20-90:5 (testimony of Mr. Decker). After the investment banks recommended a capital structure, it was evaluated by the relevant groups at Verizon and Idearc, including finance, corporate development, legal, tax, and treasury. Tr. Vol. 9B at 30:20-31:3 (testimony of Ms. Toben); Tr. Vol. 5B at 125:20-127:17 (testimony of Mr. Jones).

Spin-Off.<sup>176</sup> Ms. Nason testified that JP Morgan believed “we could have put more debt on this company,” because eliminating the anticipated dividend payment would have left additional cash flow for debt service.<sup>177</sup> The ultimate debt structure represented an attempt “to achieve all [three] of those objectives.”<sup>178</sup>

74. In addition to deciding the appropriate amount of leverage for Idearc, JP Morgan and Bear Stearns also determined how Idearc’s debt would be structured — *i.e.*, the amounts that would be included in the Term Loan A facility, the Revolver, the Term Loan B facility, and the Unsecured Notes.<sup>179</sup> JP Morgan and Bear Stearns were responsible for syndicating the Term Loan A and Term Loan B loans, and for placing the Unsecured Notes with investors.<sup>180</sup> They worked on drafting the public- and private-side lender presentations and Confidential Information Memoranda,<sup>181</sup> and participated in presentations to the banks and the institutional investors that funded the Term Loan A and Term Loan B facilities.<sup>182</sup> JP Morgan, Bear Stearns, and their legal counsel at Cravath, Swaine & Moore worked on drafting the Offering Memoranda for the Unsecured Notes and the roadshow presentation materials (and reviewed and commented on the Form 10),<sup>183</sup> and then JP Morgan and Bear Stearns participated in meetings with prospective investors in the Unsecured Notes.<sup>184</sup>

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<sup>176</sup> Tr. Vol. 7A at 102:7-12 (testimony of Ms. Nason).

<sup>177</sup> Tr. Vol. 7A at 102:4-5.

<sup>178</sup> Tr. Vol. 7A at 102:12-13 (testimony of Ms. Nason).

<sup>179</sup> Tr. Vol. 9B at 81:23-82:3 (testimony of Ms. Kearns).

<sup>180</sup> Tr. Vol. 9B at 88:20-22, 102:14-19 (testimony of Ms. Kearns).

<sup>181</sup> Tr. Vol. 9B at 90:6-91:10, 97:2-18, 100:12-23 (testimony of Ms. Kearns).

<sup>182</sup> Tr. Vol. 9B at 88:20-89:7 (testimony of Ms. Kearns).

<sup>183</sup> Tr. Vol. 9B at 102:22-103:4, 109:1-16 (testimony of Ms. Kearns).

<sup>184</sup> Tr. Vol. 9B at 114:21-115:20 (testimony of Ms. Kearns).

1. *JP Morgan and Bear Stearns Determined Idearc's Capital Structure After Exhaustive, Unrestricted Due Diligence*

75. JP Morgan and Bear Stearns conducted extensive due diligence on VIS in particular, and on the directories industry in general, prior to determining the appropriate capital structure for Idearc.<sup>185</sup> JP Morgan spent hundreds to thousands of person-hours conducting due diligence, which included a review of VIS's historical financial performance on a market-by-market and book-by-book basis, and a detailed evaluation of projections based on a book-by-book analysis. JP Morgan carefully reviewed Idearc's business strategy and conducted numerous due diligence meetings with VIS's existing management team, which would become Idearc's future management team.<sup>186</sup> JP Morgan had held more than 40 separate diligence calls or meetings with Verizon and VIS employees,<sup>187</sup> received access to all of the information it requested from Idearc, and found management to be open and forthcoming.<sup>188</sup> Ms. Nason described the entire process as an "exhaustive" one.<sup>189</sup>

76. JP Morgan's extensive due diligence reflected its responsibilities as the leader of the secured financing and the lead underwriter of the Unsecured Notes. Ms. Kearns testified, "Our entire firm's reputation, and my personal reputation is based on us making sure that we are providing accurate information to investors."<sup>190</sup> Accordingly, JP Morgan took appropriate steps to ensure that all of the information set forth in the public- and private-side Lender Presentations,

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<sup>185</sup> Tr. Vol. 7A at 92:20-93:10 (testimony of Ms. Nason describing the due diligence process).

<sup>186</sup> Tr. Vol. 9B at 84:16-21, 85:4-13, 87:13-16, 93:18-94:4 (testimony of Ms. Kearns).

<sup>187</sup> DX413 at 65-81 of 81 (JP Morgan Debt Underwriting Commitments Committee Submission) (listing diligence meetings); Tr. Vol. 9B at 106:18-107:2 (testimony of Ms. Kearns).

<sup>188</sup> Tr. Vol. 7A at 94:10-15 (testimony of Ms. Nason).

<sup>189</sup> Tr. Vol. 7A at 94:16-19.

<sup>190</sup> Tr. Vol. 9B at 97:12-14.

the Confidential Information Memoranda, the Offering Memorandum, and the Form 10 was complete and accurate.<sup>191</sup>

77. JP Morgan and Bear Stearns also conducted due diligence in connection with their own investments in Idearc debt. JP Morgan and Bear Stearns each committed to loan Idearc \$250 million through the Term Loan A and the Revolver, and ended up funding approximately \$140 million.<sup>192</sup> Ms. Nason and Ms. Kearns testified that JP Morgan's commitment required approval from multiple credit committees and senior executives outside of the financing teams.<sup>193</sup> The credit committee memo seeking approval of JP Morgan's participation in the financing contained extensive modeling and described the significant due diligence that JP Morgan had performed.<sup>194</sup>

78. JP Morgan continued to hold the vast majority of its investment in Idearc debt long after the Spin-Off. Ms. Nason testified that, as of the date of Idearc's bankruptcy filing in March 2009, JP Morgan owned approximately \$125 million in Idearc debt.<sup>195</sup> JP Morgan held its position through bankruptcy and is therefore a beneficiary of the plaintiff trust.<sup>196</sup>

79. Bear Stearns, which also served as a lead advisor on the transaction, conducted extensive due diligence in coordination with JP Morgan. Bear Stearns participated in more than

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<sup>191</sup> Tr. Vol. 9B at 97:15-18, 100:19-23, 109:1-25 (testimony of Ms. Kearns).

<sup>192</sup> Tr. Vol. 7A at 110:1-111:8 (testimony of Ms. Nason); Tr. Vol. 7B at 93:21-94:3 (testimony of Mr. Decker). JP Morgan and Bear Stearns funded approximately \$140 million of their \$250 million commitments because the debt was oversubscribed. Tr. Vol. 9B at 117:1-23 (testimony of Ms. Kearns).

<sup>193</sup> Tr. Vol. 7A at 112:23-113:25 (testimony of Ms. Nason); Tr. Vol. 9B at 104:12-105:16 (testimony of Ms. Kearns).

<sup>194</sup> DX413 at 41, 65-81 of 81 (JP Morgan Debt Underwriting Commitments Committee Submission) (describing due diligence); DX422 at 20-22, 77-88 of 120 (JP Morgan Client Review Proposal) (modeling using JP Morgan base and downside projections), 6 of 120 (describing due diligence).

<sup>195</sup> Tr. Vol. 7A at 111:20-23.

<sup>196</sup> Tr. Vol. 7A at 111:24-112:4.

40 separate diligence calls or meetings with Verizon and VIS employees,<sup>197</sup> and had access to granular historical financial information, including book-by-book performance.<sup>198</sup>

80. Bear Stearns and JP Morgan reviewed an analysis prepared by McKinsey & Co. (“McKinsey”), a management consulting firm retained to assist VIS in developing a business plan for a stand-alone company.<sup>199</sup> McKinsey had stress-tested VIS’s revenue and EBITDA projections, and its analysis was considered by Verizon and Idearc in refining the final financing model.<sup>200</sup>

2. *More than 400 Financial Institutions Invested in Idearc’s Debt*

81. Each of the three tranches of the Idearc debt was significantly oversubscribed. All prospective investors in the Idearc secured debt (the \$1.515 billion Term Loan A and \$4.75 billion Term Loan B), which encompassed approximately two-thirds of the total debt offering, had access to Lender Presentations, Confidential Information Memoranda, and meetings with Idearc’s management.<sup>201</sup> These investors could elect whether to receive the additional non-public information available to the private-side lenders, but doing so precluded them from trading in the public markets for Idearc securities.<sup>202</sup> The institutions that purchased the \$2.85 billion in Unsecured Notes, which constituted approximately one-third of the total debt offering

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<sup>197</sup> DX413 at 65-81 of 81 (JP Morgan Debt Underwriting Commitments Committee Submission) (listing Bear Stearns as participating in all of the diligence meetings).

<sup>198</sup> PX2008 (Project Sunburst Dataroom Participants List) (listing Bear Stearns investment bankers Keith Barnish, Mike Cozart, Bill Deatherage, Andrew Decker, Brett Eisenman, Cory Fasold, James Ferency, Jason Frogel, David Granville-Smith, Andrew Guido, Andrew Haber, Junko Io, Dominick Petrosino, Uli Riebe, Dan Schafer, Alan Slocumb, Bram Smith, Dennis Talley, and Hilary Yeager as having access to the data room); Tr. Vol. 7B at 82:20-83:1 (testimony of Mr. Decker).

<sup>199</sup> Tr. Vol. 7B at 83:25-84:6 (testimony of Mr. Decker); DX761 (e-mail transmitting McKinsey Summary of Perspectives)

<sup>200</sup> Tr. Vol. 5B at 99:22-101:19 (testimony of Mr. Jones).

<sup>201</sup> Tr. Vol. 9B at 95:16-97:1, 97:19-25, 99:18-23 (testimony of Ms. Kearns).

<sup>202</sup> Tr. Vol. 9B at 89:8-90:8 (testimony of Ms. Kearns).

and were sold through a Rule 144A offering, received an Offering Memorandum and also had access to management.<sup>203</sup>

82. The Term Loan A and Revolver were syndicated primarily to large banks, including JP Morgan, Bear Stearns, Citibank, Bank of America, and Barclays.<sup>204</sup> A total of 28 financial institutions provided financing to Idearc through the Term Loan A and the Revolver.<sup>205</sup> The Term Loan B debt was syndicated to institutional investors, including asset managers and mutual funds such as BlackRock, PIMCO, and Eaton Vance, and insurance companies such as Prudential and Met Life.<sup>206</sup> There were 192 separate institutional investors that provided financing to Idearc through the Term Loan B, and they were joined by 14 of the banks that also provided financing through the Term Loan A facility.<sup>207</sup>

83. The Unsecured Notes were sold exclusively to Qualified Institutional Buyers (“QIBs”), which are entities that own and invest at least \$100 million in securities on a discretionary basis.<sup>208</sup> More than 200 QIBs purchased the Unsecured Notes in connection with the Spin-Off.<sup>209</sup> The investors in the Idearc Unsecured Notes included entities such as SEIX, Wellington, BlackRock, and T. Rowe Price.<sup>210</sup>

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<sup>203</sup> Tr. Vol. 9B at 102:14-103:13 (testimony of Ms. Kearns).

<sup>204</sup> Tr. Vol. 9B at 100:24-101:12 (testimony of Ms. Kearns).

<sup>205</sup> PX973 at 2 of 2 (e-mail regarding Idearc loan allocations); DX382 at 6 of 8 (e-mail regarding Idearc debt allocations); DD 6.9 (demonstrative used by Mr. McCarty in describing Term Loan A investors).

<sup>206</sup> Tr. Vol. 9B at 100:24-101:12 (testimony of Ms. Kearns).

<sup>207</sup> DX382 at 6-8 of 8 (e-mail regarding Idearc debt allocations); DD 6.10-6.11 (demonstratives used by Mr. McCarty in describing Term Loan B investors).

<sup>208</sup> 17 C.F.R. § 230.144A; Tr. Vol. 9A at 90:8-91:1 (testimony of Mr. Slutzky); Tr. Vol. 9B at 103:14-18 (testimony of Ms. Kearns).

<sup>209</sup> DX382 at 2-4 of 8 (e-mail regarding Idearc debt allocations); DD 6.12-6.13 (demonstratives used by Mr. McCarty in describing Unsecured Notes investors).

<sup>210</sup> Tr. Vol. 9B at 103:19-24 (testimony of Ms. Kearns); Tr. Vol. 10B at 37:2-38:8 (Mr. McCarty testifying about level of sophistication of QIBs).

84. Representatives of several lenders testified at trial. Michael Smith, a Managing Director at Goldman Sachs, testified that Goldman Sachs conducted due diligence prior to extending credit to Idearc, and the Goldman Sachs credit memorandum so confirmed. Multiple groups within Goldman Sachs, including members from the telecom, media, and technology investment banking group, the capital markets group, and the credit risk management groups, participated in drafting a credit memo, which was submitted to and evaluated by the Goldman Sachs Capital Committee to obtain approval for participation in the financing.<sup>211</sup> The Capital Committee, which was comprised of senior managers in the securities division, the investment banking division, senior risk and credit offices, and the CFO, approved Goldman Sachs' participation in the financing after review of the memo.<sup>212</sup> Goldman Sachs committed \$200 million to the Term Loan A and the Revolver, based on its conclusion that the Idearc Spin-Off was a reasonable transaction both to commit to and to place with investors.<sup>213</sup>

85. Jonathan Yourkoski, a Managing Director at Morgan Stanley, testified about the due diligence that Morgan Stanley performed in connection with its commitment to finance \$100 million of the Term Loan A and the Revolver. Mr. Yourkoski and his colleagues prepared a memorandum to the Morgan Stanley capital commitment committee summarizing the results of their analysis, which included a discussion of numerous risks faced by Idearc (including competition, revenue declines, and debt load).<sup>214</sup> As part of its due diligence, and based upon its evaluation of industry trends and VIS's historical performance, Morgan Stanley prepared a base

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<sup>211</sup> PX803 at 3 of 28 (Goldman Sachs Credit Memorandum).

<sup>212</sup> Tr. Vol. 8B at 104:1-8 (testimony of Mr. Smith).

<sup>213</sup> Tr. Vol. 8B at 104:12-22 (testimony of Mr. Smith); PX803 at 8-10 of 28 (Goldman Sachs Credit Memorandum) (detailing "Transaction Concerns" including "Continued competitive pressure on incumbent print yellow pages revenue," "Execution risk around growth initiatives," "Limited history and additional costs to operate as a standalone company," "Increased leverage and credit impact").

<sup>214</sup> DX450 at 13 of 16 (Morgan Stanley CCC Materials).

case and a downside case that estimated future revenues, EBITDA, and free cash flow for Idearc. Morgan Stanley's base case and its downside case projected declines in revenue, EBITDA, and free cash flow.<sup>215</sup> Nonetheless, Mr. Yourkoski recommended the investment, and Morgan Stanley's capital commitment committee approved it.<sup>216</sup>

86. Michiel McCarty, an expert witness with more than 37 years of experience in investment banking, reviewed internal documents from at least 16 different financial institutions that provided financing to Idearc. These financial institutions (which included JP Morgan, Bear Stearns, Goldman Sachs, and Morgan Stanley) produced approximately 278,000 pages of documents covering their analysis and evaluation of Verizon's directories business and Idearc's ability to service its debt.<sup>217</sup> Mr. McCarty testified that, based on his review of these documents and his experience with similar financings, he concluded that the financial institutions conducted meaningful due diligence on the proposed financing, including an evaluation of whether Idearc would have value in excess of its debt, before extending financing to Idearc.<sup>218</sup>

3. *Idearc's Capital Structure Was Designed To Provide Significant Free Cash Flow for Future Business Operations*

87. JP Morgan, Bear Stearns, and Verizon sought to provide Idearc with a capital structure that would leave Idearc with sufficient free cash flow to ensure operational flexibility. Idearc's total debt was set at a level that was expected to result in its equity having significant

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<sup>215</sup> DX450 at 14-15 of 16 (Morgan Stanley CCC Materials); Tr. Vol. 9A at 39:10-40:3 (testimony of Mr. Yourkoski).

<sup>216</sup> Tr. Vol. 9A at 30:23-31:19 (testimony of Mr. Yourkoski). Morgan Stanley (along with the other lenders) also executed a commitment letter that contained the representation that the "decision to issue our commitment is based on our independent investigation of the financial condition, creditworthiness, affairs, and the status of" Idearc. PX766 at 2 of 2 (Morgan Stanley Commitment Letter); *accord* PX767 (Credit Suisse Commitment Letter).

<sup>217</sup> Tr. Vol. 10B at 19:6-11, 19:18-20:8 (testimony of Mr. McCarty).

<sup>218</sup> Tr. Vol. 10B at 47:17-49:4, 53:1-55:5.

value.<sup>219</sup> JP Morgan and Bear Stearns advised the Verizon Board on October 18, 2006, that they expected Idearc would have an equity market capitalization of between \$2.6 billion and \$3.4 billion.<sup>220</sup> With an anticipated 146 million shares to be issued upon the Spin-Off, this resulted in an expected trading range of approximately \$18 to \$24 per share. Because Verizon was considering the divestiture of other assets that, like the directories business, were considered non-strategic, it was important to Verizon and to its banking advisors that the equity of Idearc trade well in the marketplace.<sup>221</sup>

88. JP Morgan and Bear Stearns recommended that Idearc have a capital structure that would support the payment of a \$200 million annual dividend. Because Idearc was viewed as a mature business, the bankers advised that the payment of an annual dividend would make Idearc's equity attractive to certain types of investors.<sup>222</sup> Planning for a substantial annual dividend additionally provided Idearc with a significant cushion for servicing its debt, because Idearc could suspend or reduce payment of the dividend in the event that its free cash flow was lower than anticipated. As then-Verizon CFO Doreen Toben explained:

We looked at the numbers. I know it was stress tested to make sure there was enough cash to service the debt. In addition to that, we sent it out with a discretionary dividend which could be stopped if there was any kind of issue. So between the stress test and the discretionary dividend, I was comfortable that it was good.<sup>223</sup>

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<sup>219</sup> Tr. Vol. 7A at 102:3-25 (testimony of Ms. Nason).

<sup>220</sup> DX266 at 8, 11 of 33 (Verizon Board Presentation Speaker Notes, October 17, 2006). Houlihan, as part of its solvency analysis, additionally concluded that Idearc would have an equity cushion in the range of \$2.4 billion to \$4.2 billion, which it characterized as "significant." Tr. Vol. 7B at 24:23-25 (testimony of Mr. De Rose).

<sup>221</sup> Tr. Vol. 7A at 102:17-25 (testimony of Ms. Nason).

<sup>222</sup> Tr. Vol. 7B at 90:11-24 (testimony of Mr. Decker with respect to balancing the interests of debt and equity investors in determining an optimal capital structure).

<sup>223</sup> Tr. Vol. 9B at 32:9-15. Several of the lender credit committee memoranda referenced the ability to suspend the dividend in the event of a cash shortfall. *See, e.g.*, DX422 at 85 of 120 (JP Morgan Client Review Proposal indicating that, in downside case, Idearc can suspend dividend payments and use its free cash flow to pay down the Term Loan B by maturity to a comfortable level); *id.* at 91 of 120 ("The Company has the ability to cut its

89. The \$250 million Revolver that was included in the capital structure provided additional liquidity to Idearc, as these funds could be drawn upon to cover any cash shortfalls from operations. The Revolver had no amortization requirements, and the interest rate on any borrowing under the facility was set at LIBOR plus 150 basis points, equal to the lowest rate of any of Idearc's debt.<sup>224</sup>

90. In light of the foregoing, Ms. Taylor's assertion that Idearc was "so tightly wound by putting this much debt on it, that it couldn't survive even a mild recession, let alone what actually happened," is contradicted by overwhelming evidence that Idearc had a significant cushion.<sup>225</sup> The Court finds Ms. Taylor's testimony to be unreliable.

91. In early 2008, when Idearc began to run into financial difficulty in the midst of the Great Recession, it suspended its dividend payments.<sup>226</sup> Then in late 2008, as economic conditions worsened and Idearc's business continued to be impaired, it drew down on the line of credit provided by the Revolver.<sup>227</sup>

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dividend if debt repayment is threatened."); DX511 at 3 of 4 (Barclays Capital Credit Memorandum) (analyzing downside case and "assuming suspension of \$200m/year dividend"); DX553 at 14 of 40 (UBS Credit Memorandum) (same). Houlihan made a similar observation in evaluating whether Idearc satisfied the cash flow and reasonable capital tests for solvency. Tr. Vol. 7B at 30:12-31:3 (testimony of Mr. De Rose) (reasonable capital test); *id.* at 29:21-30:9 (cash flow test).

<sup>224</sup> The Term Loan A paid interest at LIBOR + 150 bps, while the Term Loan B was set at LIBOR + 200 bps and the Unsecured Notes earned 8 percent interest. DX382 at 1, 5 of 8 (e-mail regarding Idearc debt allocations) (indicating final interest rates for Term Loan A, Term Loan B, and Unsecured Notes); DX652b at 1 of 3 (Officers' Certificate for Unsecured Notes indicating 8 percent interest rate); PX1103 at 11 of 550 (Idearc Form 8-K reporting 8 percent interest rate on Unsecured Notes).

<sup>225</sup> Tr. Vol. 4A at 120:6-9. On cross-examination, Ms. Taylor acknowledged that she had written an article that stated, among other things, that "no one [in the media sector] was prepared for the impact of the Great Recession." Tr. Vol. 5A at 38:3-13, 39:7-40:4.

<sup>226</sup> Tr. Vol. 5B at 131:6-7 (testimony of Mr. Jones).

<sup>227</sup> Tr. Vol. 5B at 130:18-21 (testimony of Mr. Jones).

**F. Plaintiff's Alleged Misrepresentations and Material Omissions Are Contradicted by Overwhelming Record Evidence**

92. Idearc's Form 10 and the Offering Memorandum for the Unsecured Notes contained comprehensive risk disclosures that were modeled upon the disclosures made by other public directories companies.<sup>228</sup> They accurately disclosed the risks that Idearc would face following the Spin-Off including, among other disclosures discussed in greater detail in this Section, the impact of: (a) the declining usage of print directories;<sup>229</sup> (b) changing technologies and user preferences and uncertainty surrounding whether Idearc would be able to respond adequately to these changes;<sup>230</sup> (c) increased and widespread competition from other print directory publishers, including independent directories;<sup>231</sup> (d) Idearc's reliance on small and medium-sized businesses;<sup>232</sup> (e) a prolonged economic downturn or other events that could produce changes in shopping patterns;<sup>233</sup> and (f) disruptions or turnover among sales representatives.<sup>234</sup> These risk-factor disclosures, which filled 15 single-spaced pages in the Form 10 and were equally detailed in the Offering Memorandum, were the product of extensive due diligence performed by Debevoise and many drafting sessions involving Debevoise, Skadden, VIS management, JP Morgan and Bear Stearns, and their counsel Cravath.<sup>235</sup>

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<sup>228</sup> Tr. Vol. 9A at 99:16-23, 100:10-101:13, 102:25-103:7 (testimony of Mr. Slutzky).

<sup>229</sup> PX 901 at 33 of 158 (Form 10); PX 909 at 36-37 of 247 (Offering Memorandum).

<sup>230</sup> PX 901 at 32 of 158 (Form 10); PX 909 at 36 of 247 (Offering Memorandum).

<sup>231</sup> PX 901 at 32 of 158 (Form 10); PX 909 at 35 of 247 (Offering Memorandum).

<sup>232</sup> PX 901 at 35 of 158 (Form 10); PX 909 at 39 of 247 (Offering Memorandum).

<sup>233</sup> PX 901 at 36 of 158 (Form 10); PX 909 at 40 of 247 (Offering Memorandum).

<sup>234</sup> PX 901 at 36 of 158 (Form 10); PX 909 at 40 of 247 (Offering Memorandum).

<sup>235</sup> PX 901 at 25-39 of 158 (Form 10); PX 909 at 23-42 of 247 (Offering Memorandum); Tr. Vol. 9B at 109:1-25 (testimony of Ms. Kearns); Tr. Vol. 9A at 91:8-97:15, 99:12-102:3, 103:24-106:19, 107:4-110:5 (testimony of Mr. Slutzky); DX 644 (Debevoise Due Diligence Memorandum); *id.* at 12-15 of 92 (listing drafting sessions); DX 413 at 65-81 of 81 (JPM Debt Underwriting Commitments Committee Memo) (listing JPM diligence meetings including drafting sessions).

93. Nevertheless, in its opening statement, Plaintiff represented that the Phase I evidence would establish “four falsehoods” purportedly made in connection with Verizon’s Spin-Off of its directories business that allegedly inflated the market price of Idearc’s common stock. During the course of the trial, Plaintiff and its expert made additional, ancillary allegations concerning material information that purportedly was withheld or misrepresented. Plaintiff failed to prove any of these alleged misrepresentations or omissions, and also failed to prove that the market price of Idearc’s common stock was artificially inflated for any reason. No reasonable fact-finder could conclude otherwise.

*1. Historical Revenue Declines in Urban Markets Were Disclosed*

94. Plaintiff alleged that Verizon’s yellow pages business “had been suffering a double digit decline” in “the major urban markets” and that this decline was not “share[d] with the market.”<sup>236</sup> According to Plaintiff, these undisclosed declines were the “canary in the mine shaft,” because major urban markets were more likely to experience Internet competition and an “intrusion by Google and Yahoo.”<sup>237</sup> The evidence overwhelmingly demonstrated that investors knew that VIS had experienced greater revenue declines in its major urban markets, and Plaintiff lacked any good-faith basis for suggesting otherwise.

95. Bear Stearns and JP Morgan were provided with detailed information about declining revenue in urban markets, including historical revenue figures on a book-by-book basis.<sup>238</sup> VIS management held a two-day meeting in Dallas on March 22-23, 2006, which was attended by representatives from JP Morgan, Bear Stearns, and Debevoise. During that meeting,

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<sup>236</sup> Tr. Vol. 1A at 8:16-23; *id.* at 20:6-9 (alleging that “they don’t tell anybody” about historical performance in individual urban markets).

<sup>237</sup> Tr. Vol. 1A at 8:9-9:10.

<sup>238</sup> Tr. Vol. 7A at 94:20-97:7 (testimony of Ms. Nason); Tr. Vol. 7B at 87:8-88:16 (testimony of Mr. Decker).

VIS's senior management reviewed historical results region-by-region, including year-over-year performance in individual urban markets.<sup>239</sup> VIS management met again with the JP Morgan and Bear Stearns advisory and financing teams on April 18, 2006, during which they reviewed the same type of historical information.<sup>240</sup> Historical and projected performance on a book-by-book basis were included in the electronic dataroom that Idearc made available to the investment banks and their outside law firm, Cravath, Swaine & Moore.<sup>241</sup>

96. The JP Morgan credit memo demonstrated a full awareness of historical revenue declines in major urban markets. For example, the memo described declining print revenue in Manhattan from \$105.5 million in 2004 to \$85.3 million in 2005 to \$64.3 million in 2006, and indicated that year-over-year declines were 9.7 percent, 19.2 percent, and 24.6 percent respectively in the years 2004-2006.<sup>242</sup> That credit memo further discussed print revenue declining in Boston from \$145.8 million in 2004, to \$136.2 million in 2005, to \$126.4 million in 2006, and indicated that the year-over-year declines in print revenue were 5.6 percent, 6.6 percent, and 7.2 percent respectively in the years 2004-2006.<sup>243</sup> JP Morgan's credit committee memo states that Verizon had provided JP Morgan with projections for 2006 to 2010 that were "built up on a directory by directory basis" and that predicted continued declines in books like Manhattan (negative 18.5 percent CAGR for 2005-2010) and Boston.<sup>244</sup>

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<sup>239</sup> PX233b (Net 7 Presentation, March 2006); Tr. Vol. 9A at 95:23-96:25 (testimony of Mr. Slutzky about March 22-23, 2006 meeting).

<sup>240</sup> Tr. Vol. 9B at 107:25-108:15 (testimony of Ms. Kearns about April 18, 2006 meeting).

<sup>241</sup> Tr. Vol. 9B at 93:18-94:7 (testimony of Ms. Kearns); PX2008 (Project Sunburst Dataroom Participants List); PX2009 (Project Sunburst Dataroom Contents).

<sup>242</sup> DX422 at 106 of 120 (JP Morgan Client Review Proposal).

<sup>243</sup> DX422 at 106 of 120 (JP Morgan Client Review Proposal).

<sup>244</sup> DX422 at 72 of 120 (JP Morgan Client Review Proposal).

97. Verizon provided Houlihan with historical revenue information on a book-by-book basis in connection with its due diligence for its solvency opinion.<sup>245</sup> Morgan Stanley received similar information. Morgan Stanley's files included historical market-by-market revenue information on both an as-published and an amortized basis, further broken down by national and local print.<sup>246</sup> Mr. Yourkoski testified that Morgan Stanley received "historical, as well as projected, results for the national print revenue, I believe local print revenue as well as book-by-book or cluster-by-cluster information for the directories business."<sup>247</sup> These materials included the year-over-year results for the very northeast urban markets that Plaintiff contended were not disclosed.

98. In addition, information concerning broadband penetration, competition from independents, and the general decline in yellow pages revenue in the northeast urban markets was widely known at the time of the Spin-Off.<sup>248</sup> These issues were discussed in industry reports published by entities such as Simba and the Kelsey Group.<sup>249</sup> They were discussed in equity analyst reports.<sup>250</sup> They were also identified as "risk factors" in Idearc's Form 10 and in the Offering Memorandum for the Unsecured Notes.<sup>251</sup>

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<sup>245</sup> Tr. Vol. 7B at 20:13-22 (testimony of Mr. De Rose).

<sup>246</sup> DX936 (e-mail transmitting VIS revenue data), DX937 (VIS National Revenue), and DX939 (VIS Local Revenue).

<sup>247</sup> Tr. Vol. 9A at 32:5-9.

<sup>248</sup> DX563 at 3 of 5 (Loomis Sayles Credit Memorandum noting that Idearc was experiencing "Declining Print Revenue," particularly in the "East Coast [M]arkets" that represented "66%" of Idearc's revenue); DX491 at 4-5 of 13 (Wachovia Credit Memorandum explaining "Difficulties in East Coast Markets" as a business risk for Idearc); DX361 at 4 of 6 (BlackRock Credit Memorandum noting that "Idearc has experienced faster declines in its top 30 markets relative to its incumbent markets in general").

<sup>249</sup> DX842 at 3 of 27 (excerpts from Deutsche Bank October 26, 2006 analyst report).

<sup>250</sup> DX1725 at 26 of 34 (Deutsche Bank October 26, 2006 analyst report); DX510 at 33 of 43 (Deutsche Bank November 17, 2006 analyst report). Similar information appeared in equity analyst reports issued shortly after the Spin-Off. *See, e.g.*, DX822 at 3 of 10 (January 12, 2007 Lehman Brothers equity research report stating that "IAR's structural exposure to bigger metro areas has in the past made it more vulnerable to share erosion, particularly as these markets are generally characterized by greater adoption of the Internet and wireless

2. *The Financial Model Set Forth Reasonable, Good-Faith Forecasts of Idearc's Revenue and EBITDA*

99. Plaintiff also alleged that, in July 2005, Mr. Diercksen and others entered into a fraudulent scheme to represent falsely that VIS would achieve a 2 percent growth in print revenues.<sup>252</sup> Plaintiff contended that, with this false projection of revenue growth, Verizon could maintain that its directories business had a value of \$13 billion, which purportedly was necessary to support \$9 billion in deleveraging through the Spin-Off. There was no credible evidence that any such scheme occurred, and Plaintiff lacked any good-faith basis for making this allegation.

100. Plaintiff repeatedly sought to elicit testimony that VIS's Idearc's revenue and EBITDA forecasts were knowingly false. To establish this (among other things), Plaintiff sought to elicit testimony that the valuation ranges for the directories business, as presented to the Verizon Board in a November 2005 "Strategic Update" (PX57), were based on unsupportably optimistic forecasts contained in the VIS 2006-2010 Plan of Record (PX100). Plaintiff alleged that the \$10.5 billion to \$15 billion DCF valuation range presented to the Verizon Board was

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technologies, which may accelerate the shift from print usage to online search"); DX2088 at 1 of 13 (Deutsche Bank September 21, 2007 equity research report stating that "urban areas are suffering most from online migration, decreased usage, advertiser attrition, and sales force turnover"); *id.* at 3 of 13 (discussing "the difficulties publishers are having in large, urban markets," noting that "over one half of directories in these markets are seeing significant or somewhat declining revenue over the past three years" and that "[t]his is a very serious issue for the industry overall, but particularly so for publishers such as Idearc (eg., Manhattan, Boston, Philly, Baltimore) and AT&T (eg., Atlanta, Houston) with higher-than-average large market exposure").

<sup>251</sup> PX901 at 36 of 158 (Form 10) ("our print product business has been adversely affected in urban markets in the Eastern states by difficult market conditions, including major disruptions of urban shopping and commuting patterns, declining consumer usage and intense competition"); PX909 at 41 of 247 (Offering Memorandum) (same); PX901 at 63 of 158 (Form 10) ("Some of our markets in the densely populated urban areas along the East Coast of the United States have been more adversely impacted by difficult market conditions, including declining market usage and intense competition. These markets represent a significant portion of our print products revenue."); PX909 at 62 of 247 (Offering Memorandum) (same); PX901 at 32 of 158 (Form 10) (discussing competition from independents); PX909 at 35 of 247 (Offering Memorandum) (same). While Plaintiff suggested that specific market-by-market historical revenue information should have been included in the Form 10, Mr. Slutzky — the Debevoise partner who took the lead on drafting the disclosures in the Form 10 (and the Offering Memorandum) — testified that he had reviewed numerous disclosures and that, to the best of his knowledge, no directories company had ever included historical revenue information on a market-by-market or book-by-book basis. Tr. 9A at 122:7-16.

<sup>252</sup> Tr. Vol. 1A at 18:1-9, 19:3-18 (Plaintiff's opening statement).

premised on 2 percent annual growth for print business revenues.<sup>253</sup> The Strategic Update, itself, however, makes clear that the valuation range was based on the previous five-year Plan of Record forecasts (2005-2009), which projected a decline — not growth — in incumbent print revenue.<sup>254</sup> Moreover, John Fitzgerald, who was responsible for the valuation section of the Strategic Update, testified that the primary input into a DCF valuation is the *perpetual* growth rate for *free cash flow*, rather than changes in *revenue* in any *single year*.<sup>255</sup>

101. Plaintiff also claimed that forecasts in the VIS financing model were knowingly false.<sup>256</sup> The evidence did not support this contention. Among other things, the evidence established that, in order to forecast Idearc's performance following the Spin-Off, it was necessary for VIS to develop a business plan that reflected projected financial performance of the directories business as a separate, stand-alone entity, *i.e.*, wholly separated from Verizon. This necessarily required VIS to develop financial assumptions different from those when VIS was a wholly owned subsidiary of Verizon. Then-VIS Director of Financial Planning Dee Jones, who had primary responsibility for the budgeting and planning process, testified that VIS “took [its] normal course five-year strategic plan, and then it was refined and adjusted to reflect the stand-alone aspect of it versus it being a subsidiary of Verizon.”<sup>257</sup> Mr. Jones testified that this forecast was prepared based on input from VIS President Kathy Harless and VIS CFO Andy Coticchio,

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<sup>253</sup> Tr. Vol. 1A at 94:18-22, 97:3-6, 97:11-17. The 2006-2010 Plan of Record projected a year-over-year growth rate of 2 percent for all revenue in 2009. PX100 at 54 of 115 (Plan of Record).

<sup>254</sup> PX57 at 8 of 35 (Verizon Board Presentation, November 3, 2005).

<sup>255</sup> Tr. Vol. 7A at 41:14-22, 42:9-43:13; *see also* Findings of Fact ¶¶ 139-140 (discussing Mr. Fitzgerald's testimony concerning the valuation analysis in a September 2005 VIS analysis).

<sup>256</sup> Tr. Vol. 1A at 8:9-10.

<sup>257</sup> Tr. Vol. 5B at 88:12-14. Mr. Jones testified that the five-year budgeting process for VIS involved both a “top-down” and a “bottom up” analysis, as well as communications and negotiations with Verizon's finance department. Tr. Vol. 5B at 92:2-94:3.

and with consideration of the views of Verizon's corporate finance department and McKinsey.<sup>258</sup> The financing model also reflected actions that Idearc management intended to adopt in response to industry conditions.

102. The financing model included estimated expenses associated with Idearc's assumption of various responsibilities that had previously been performed by Verizon.<sup>259</sup> The goal, as Mr. Jones testified, was to develop "a set of forecasts that was achievable and realistic and supportable."<sup>260</sup> Ms. Harless, Mr. Jones, and Mr. Coticchio each testified that they believed the final projections were achievable and represented the best estimate of Idearc's future performance.<sup>261</sup> Mr. Mueller, Idearc's post-Spin-Off Chairman of the Board — testified that he believed the business plan would be exceeded.<sup>262</sup>

I believed at the time that the collective revenue growth number and EBITDA number could be exceeded. Not met, exceeded. And it was not based upon what Verizon gave to me. I believed that there was a significant opportunity to reduce costs and a significant opportunity to increase revenue by focusing on this business, by managing this business appropriately. It's what I had done in the past. It's what happened with the Wel[s]h, Carson, Anderson, Sto[w]e and Carl[y]le purchase of DEX media at the time, and I believed that it could happen again.<sup>263</sup>

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<sup>258</sup> Tr. Vol. 5B at 91:19-103:19, 107:1-18 (testimony of Mr. Jones).

<sup>259</sup> Tr. Vol. 5B at 102:10-16 (testimony of Mr. Jones) ("But as part of the process associated with the spin, we developed a much more robust model than the normal course associated with that five-year plan and that five-year forecast, and then we had to develop stand-alone functions and activities and the effects of that."); *see also id.* at 103:20-104:3.

<sup>260</sup> Tr. Vol. 5B at 104:11-13.

<sup>261</sup> Tr. Vol. 5B at 108:11-14, 113:3-7 (testimony of Mr. Jones); Tr. Vol. 9A at 64:6-13, 20-25 (testimony of Ms. Harless that the projections represented the expected financial results for the future Idearc); Tr. Vol. 9B at 54:24-55:4 (testimony of Mr. Coticchio that he was comfortable with the stand-alone business plan); *id.* at 58:1-9 (testimony of Mr. Coticchio that he believed that Idearc would be able to meet EBITDA projections).

<sup>262</sup> Tr. Vol. 8B at 64:4-10; *see also* Tr. Vol. 10C at 223:12-225:4 (deposition testimony of Steve Robertson, corroborating his October 17, 2006 e-mail to his fellow future Board members stating that "the projections of EBITDA and cash flow are sufficiently conservative that we should be able to meet or exceed them," and that it looks like "Verizon is trying to spin out a company that has a high probability of success in the market") (quoting PX779 at 1 of 1).

<sup>263</sup> Tr. Vol. 8B at 87:5-88:4.

103. Plaintiff failed to prove its allegation that Idearc's business plan was forced upon Idearc.<sup>264</sup> Rather, the financing model was the product of good-faith debate among various constituencies within Verizon and represented a good-faith and "realistic expectation for the business."<sup>265</sup> Mr. Jones testified that the forecasting process was no different from the process used every year at Verizon in connection with budgeting.<sup>266</sup> Ms. Toben testified that the same process of negotiations and discussions was typical of the budgeting and forecasting for every line of business within Verizon.<sup>267</sup>

104. Verizon and VIS executives, as well as their advisors at JP Morgan and Bear Stearns, credibly testified that they believed that an independent Idearc would have opportunities that were not available to VIS as a division of Verizon. Mr. Seidenberg testified that

a spun-out VIS would be able to take actions to invest in new product, perhaps cut pricing if that's what they needed to do, perhaps adjust their cost structure if that's what they needed to do and actually behave much more like an separately positioned independent public company much the same way that we did to ourselves in our telephone books.<sup>268</sup>

Ms. Harless testified that, following the Spin-Off, "we were going to be able to . . . work on our vision and our strategy, and that we could now take the cash that we had before actually been

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<sup>264</sup> Tr. Vol. 9A at 65:1-10 (testimony of Ms. Harless that the projections were not forced upon VIS by Verizon corporate, and expressing her confidence in the projections); Tr. Vol. 6A at 18:24-19:1 (testimony of Mr. Jones that "[t]here was not a mandate around these forecasts"); Tr. Vol. 5B at 107:1-18 (testimony of Mr. Jones that no one at Verizon forced numbers on Idearc); Tr. Vol. 9B at 53:22-55:4 (testimony of Mr. Coticchio that projections were developed through the same interactive process used in any budget submission).

<sup>265</sup> Tr. Vol. 5B at 106:23-107:11 (testimony of Mr. Jones).

<sup>266</sup> Tr. Vol. 5B at 102:3-104:13 (testimony of Mr. Jones that the process for stand-alone financing model was analogous to the ordinary budgeting process, but that model was more robust).

<sup>267</sup> Tr. Vol. 9B at 34:18-25 (testimony of Ms. Toben: "Similar to all the other segments, corporate would come up with potentially some objectives. We would send them out to the groups. The groups would then come up with their own numbers, and typically as in any place in corporate America the numbers tend to be higher and the unit tend to be a little [bit] lower. There is a process of several months where we meet with the units and go through very specific assumption[s]."); *id.* at 54:7-11 (testimony of Mr. Coticchio that the back and forth was no different than in the preparation of any other business plan).

<sup>268</sup> Tr. Vol. 6A at 64:13-19.

giving to Verizon to be able to invest in our sales force, our advertising, and traffic distribution, things that we knew would grow this business.”<sup>269</sup> Ms. Nason also testified to her belief that VIS had a better chance to “achieve higher revenue, achieve higher EBITDA” “as a separate entity.”<sup>270</sup>

3. *Verizon Fully Disclosed the Tax Sharing Agreement, Which Was Not Material to Valuation*

105. The Spin-Off was structured to qualify as a tax-free transaction under § 355 and other sections of the Internal Revenue Code.<sup>271</sup> Verizon obtained a ruling from the IRS that the transaction would meet certain requirements necessary to qualify for tax-free treatment,<sup>272</sup> and Verizon obtained an opinion letter from Skadden Arps, its outside tax counsel, with respect to the tax-free treatment of those aspects of the transaction not addressed by the IRS ruling.<sup>273</sup>

106. As part of the Spin-Off, Verizon and Idearc executed a Tax Sharing Agreement that allocated tax responsibilities between the two entities and that was intended to protect the

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<sup>269</sup> Tr. Vol. 9A at 66:18-24; *see also* Tr. Vol. 5B at 88:22-89:10 (testimony of Mr. Jones that “I believed and we believed that, as an independent enterprise, being able to focus more on our particular business and our specific industry and our particular space, we would be better served than being controlled by Verizon as a subsidiary of Verizon where we believed we had limited investment being made in the enterprise”).

<sup>270</sup> Tr. Vol. 7A at 83:3-21 (“Because what often happens when you have businesses that are not a priority line of business in a company — and this was not a priority line of business for Verizon, they were focused increasingly on other areas — that those businesses can get forgotten to a certain extent and are not necessarily managed as well as they could be. And separating those businesses often gives them an opportunity to grow and develop in ways that they can’t as just one division of a conglomerate.”); DX776 at 4 of 9 (Bear Stearns summary of Spin-Off, noting that “Idearc will be able to focus on investing in its core business and pursuing important strategic relationships that most likely would not have been possible as a subsidiary of Verizon”); *see also* Tr. Vol. 8B at 99:24-100:8 (testimony of Mr. Smith that, as an independent company, Idearc would have “increased focus on the part of the management in terms of operational effectiveness and the investment of capital for return”); Tr. Vol. 9A at 16:20-17:24 (testimony of Mr. Yourkoski that an independent Idearc could reinvest its cash flow “back into the business for different things they could potentially invest in, whether it’s acquiring other directories businesses and realizing synergies or potentially investing in online assets or other areas that would be more strategic to the directories business”).

<sup>271</sup> PX901 at 15 of 158 (Form 10); PX1142 at 28 of 88 (Idearc 2006 10-K).

<sup>272</sup> Tr. Vol. 6B at 9:3-6 (testimony of Mr. Rievman); DX543 at 5-17 of 18 (IRS Private Letter Ruling).

<sup>273</sup> Tr. Vol. 6B at 9:7 (testimony of Mr. Rievman); PX1087 at 1-12 of 39 (Skadden Opinion Letter).

tax-free status of the Spin-Off.<sup>274</sup> In its opening statement, Plaintiff said it would prove that Verizon engaged in a “false tax scheme”<sup>275</sup> and that the Tax Sharing Agreement was “onerous” and “basically tied the hands of Idearc.”<sup>276</sup> Plaintiff also contended that, by calling the agreement a “Tax Sharing Agreement,” Verizon concealed Idearc’s obligation to indemnify Verizon for post-transaction conduct by Idearc that caused the transaction to become taxable.<sup>277</sup> Plaintiff additionally asserted, through its valuation expert Ms. Taylor, that the Tax Sharing Agreement reduced the marketability of Idearc and created a contingent tax liability that reduced its value. The evidence admitted during the Phase I trial did not support these allegations, and Plaintiff lacked any good-faith basis for asserting them.

107. A draft of the Tax Sharing Agreement was attached as an exhibit to Idearc’s Form 10 Amendment No. 4 that was filed with the SEC on October 26, 2006.<sup>278</sup> In addition, the final executed copy of the Tax Sharing Agreement was filed with the SEC on November 21, 2006.<sup>279</sup> The Form 10 described the Tax Sharing Agreement and contained extensive risk factors associated with it.<sup>280</sup> Accordingly, the terms of the Tax Sharing Agreement, including Idearc’s indemnification obligations,<sup>281</sup> were fully disclosed. Ms. Taylor testified that its terms were plain and obvious, and could be readily understood without any tax expertise.<sup>282</sup> Ms. Taylor

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<sup>274</sup> PX1068 at 7-9 of 14 (Tax Sharing Agreement).

<sup>275</sup> Tr. Vol. 1A at 10:2.

<sup>276</sup> Tr. Vol. 1A at 10:24-25.

<sup>277</sup> Tr. Vol. 1A at 23:1-4 (Plaintiff’s opening statement).

<sup>278</sup> DX564 at 74-86 of 289 (October 26, 2006 Form 10 filing); PX901 at 4 of 158 (Form 10); Vol. 9A at 115:21-24 (testimony of Mr. Slutzky).

<sup>279</sup> Tr. Vol. 4B at 42:23-43:4 (testimony of Ms. Taylor); PX1068 at 1, 13-14 of 14.

<sup>280</sup> PX901 at 4, 21-22, 26-27, 33, 38-39, 47, 115 & 122 of 158 (Form 10); Tr. Vol. 9A at 113:10-116:6 (testimony of Mr. Slutzky).

<sup>281</sup> PX1068 at 9 of 14 (§ 4.01(b)) (Tax Sharing Agreement).

<sup>282</sup> Tr. Vol. 4B at 44:11-46:16.

further testified that this “indemnification was something in the public domain,” that “you don’t have to be a tax person to understand” it, and that “this is clear as to what they are indemnifying for.”<sup>283</sup>

108. Defendants’ tax expert Thomas Wessel, one of the leading practitioners in the field of tax-free spin-offs and the principal author of a 1,000-page treatise on transactions qualifying for tax-free status under § 355 of the Internal Revenue Code,<sup>284</sup> testified that tax sharing agreements are typical in spin-off transactions. He testified that each of the 25 or more consummated tax-free spin-offs with which he has been involved included a tax sharing agreement.<sup>285</sup> Mr. Wessel further testified that the primary effect of a tax sharing agreement is to create incentives for the spun off company to exercise diligence before engaging in post-spin transactions that could undermine the tax-free status of the earlier spin-off.<sup>286</sup>

109. Mr. Wessel also testified that the Tax Sharing Agreement did not impose any significant post-spin restrictions on Idearc. He testified that Idearc retained the ability to engage in strategic acquisitions or mergers following the Spin-Off without violating the Tax Sharing Agreement or risking a tax liability.<sup>287</sup> The agreement did not preclude Idearc from making any acquisitions for cash.<sup>288</sup> Under a Treasury Regulation provision known as the “Super Safe Harbor,”<sup>289</sup> any third party could acquire 100 percent of Idearc’s outstanding equity any time after the Spin-Off so long as that specific acquiror had not engaged in “substantial negotiations”

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<sup>283</sup> Tr. Vol. 4B at 46:23-49:10.

<sup>284</sup> Tr. Vol. 6B at 49:23-50:24 (testimony of Mr. Wessel).

<sup>285</sup> Tr. Vol. 6B at 44:17-24, 46:21-23.

<sup>286</sup> Tr. Vol. 6B at 45:4-5, 45:16-46:5.

<sup>287</sup> Tr. Vol. 6B at 61:15-24.

<sup>288</sup> Tr. Vol. 6B at 62:6-9 (testimony of Mr. Wessel); *id.* at 15:19-22 (testimony of Mr. Rievman).

<sup>289</sup> Treas. Reg. § 1.355-7(b).

with Verizon or VIS about the acquisition in the two years prior to the Spin-Off.<sup>290</sup> Mr. Wessel also testified that the Tax Sharing Agreement did not impose any restrictions on Idearc's ability to acquire a company in exchange for up to 49.9 percent of Idearc's outstanding equity value.<sup>291</sup> That is, Idearc could have nearly doubled in size through a merger of equals without violating § 355 or the Tax Sharing Agreement.<sup>292</sup>

110. Mr. Wessel testified that companies spun off from their corporate parents are routinely acquired in the two years following their spin-off despite agreements that contain terms that are materially identical to those contained in the Verizon-Idearc Tax Sharing Agreement.<sup>293</sup> Mr. Wessel testified that, consistent with the Tax Sharing Agreement, Idearc could be acquired after the Spin-Off without triggering any indemnification obligation to Verizon. As an example, Mr. Wessel testified that, if Google had wanted to acquire Idearc the day after the Spin-Off, it could have done so without triggering any tax obligations so long as there had been no substantial negotiations between Verizon and Google in the two years prior to the Spin-Off.<sup>294</sup>

111. The Tax Sharing Agreement did not impose onerous restrictions on Idearc's ability to prepay or refinance its debts following the Spin-Off. The Tax Sharing Agreement imposed *no* restrictions on Idearc's ability to prepay or refinance its \$1.5 billion Term Loan A debt.<sup>295</sup> Rather, the restrictions on prepayment or refinancing applied only to the Term Loan B and the Unsecured Notes, in order to ensure those instruments would meet the definition of

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<sup>290</sup> Treas. Reg. § 1.355-7(b)(2); Tr. Vol. 6B at 62:18-64:15 (testimony of Mr. Wessel). Plaintiff did not introduce any evidence at trial that any such "substantial negotiations" had occurred.

<sup>291</sup> Tr. Vol. 6B at 108:6-16.

<sup>292</sup> Tr. Vol. 6B at 108:6-17 (testimony of Mr. Wessel).

<sup>293</sup> Tr. Vol. 6B at 71:4-73:2.

<sup>294</sup> Tr. Vol. 6B at 63:12-20.

<sup>295</sup> Tr. Vol. 6B at 60:20-23, 65:9-12 (testimony of Mr. Wessel); *id.* at 22:8-16 (testimony of Mr. Rievman).

“securities” under § 361 of the Internal Revenue Code.<sup>296</sup> That determination depends, in part, on whether those instruments had sufficiently long-term maturities on the date of issuance, and whether there was a plan to prepay the debt. Here, officers of both Verizon and Idearc signed a certificate on the date of the Spin-Off stating that they had no intent to prepay Idearc’s debt securities before maturity.<sup>297</sup> Mr. Wessel testified that the diligence contemplated by the Tax Sharing Agreement would be limited to confirming these facts.<sup>298</sup> Accordingly, if there had been a change in circumstances following the Spin-Off that caused Idearc management to want to prepay the debt, the representations in the certificate would still be true, and the prepayment would not have jeopardized the status of the Term Loan B or Unsecured Notes as “securities.”<sup>299</sup>

112. In this regard, the Tax Sharing Agreement imposed a reasonableness requirement on Verizon that permitted Idearc to engage in an acquisition or debt prepayment or refinancing upon providing to Verizon a “reasonably satisfactory” tax opinion from counsel or a new ruling

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<sup>296</sup> Tr. Vol. 6B at 65:24-66:17 (testimony of Mr. Wessel); *see* 26 U.S.C. § 361(a).

<sup>297</sup> PX1087 at 21 of 39 (Skadden Opinion Letter) (“Controlled and its affiliates have no plan or intention to, and Controlled does not expect that it or any of its affiliates will, directly or indirectly, modify, reprice, repay, prepay, pay down, redeem, retire, defease, or otherwise acquire, however effected, any of the Senior Unsecured Notes or the Tranche B Term Loans . . . prior to its stated maturity . . . .”); *id.* at 22-23 of 39 (containing signatures of John Diercksen of Verizon and Andrew Coticchio of Idearc).

<sup>298</sup> Tr. Vol. 6B at 67:4-68:10 (testimony of Mr. Wessel).

<sup>299</sup> Tr. Vol. 6B at 65:24-66:17. Plaintiff attempted to elicit testimony from Mr. Wessel that Idearc was effectively prohibited from engaging in an acquisition that required prepayment of the Term Loan B or the Unsecured Notes. Mr. Wessel testified that the critical issue was the intent at the time of the issuance of the debt:

[A]s I explained to you, the test is the time of issue. And if the holder’s at risk, there’s not a side agreement between the issuer and the holder and the holder is at risk to be in there for eight to ten years, the fact that someone comes on the scene, comes on the scene let’s say unexpectedly, there haven’t been substantial negotiations, I think a well-advised taxpayer is going to conclude that’s not a problem; great set of facts.

Tr. Vol. 6B at 96:13-24. Thus, an acquisition requiring prepayment of the Term Loan B or the Unsecured Notes would likely have constituted a change in circumstances that would allow such prepayment without jeopardizing the status of the debt as “securities.”

from the IRS that such a transaction would not affect the tax-free status of the Spin-Off.<sup>300</sup>

Refusing to accept such an opinion might subject Verizon to liability for failing to deal with Idearc in good faith.<sup>301</sup>

113. In light of the foregoing, Plaintiff lacked any good-faith basis for alleging any fraud or other wrongdoing in connection with the Tax Sharing Agreement. Plaintiff also failed to prove that the Tax Sharing Agreement had any impact on Idearc's valuation on November 17, 2006.

4. *Verizon Did Not Falsely Endorse Idearc*

114. Plaintiff has failed to establish the existence of any "false endorsement" of Idearc by Verizon.<sup>302</sup>

115. Plaintiff did not seek to introduce testimony from a single purchaser of Idearc debt or stock or offer any documentary evidence in support of this proposition. Representatives of JP Morgan, Bear Stearns, Morgan Stanley, and Goldman Sachs testified that they invested in Idearc debt on the basis of their own due diligence and their own independent investigation of the yellow pages industry in general and Idearc in particular.<sup>303</sup> The credit committee memos and other documents from 12 other lenders demonstrated that these financial institutions agreed to provide financing based on their own investigations. Plaintiff has failed to establish that any investor purchased Idearc debt or stock on the basis of any endorsement by Verizon, true or otherwise.

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<sup>300</sup> PX1068 at 8 of 14 (Tax Sharing Agreement); *see* Tr. Vol. 6B at 58:13-59:3, 67:20-68:10 (testimony of Mr. Wessel).

<sup>301</sup> Tr. Vol. 6B at 68:6-10 (testimony of Mr. Wessel) ("Because of course, under the tax sharing agreement, if one doesn't comply with one's obligations or carry it out in good faith, there are provisions that make the party responsible for losses suffered by the other party.").

<sup>302</sup> Tr. Vol. 1A at 6:22-7:3 (Plaintiff's opening statement).

<sup>303</sup> Findings of Fact ¶¶ 75-80, 84, 85.

116. Plaintiff suggested that a letter addressed to Verizon shareholders from then-Verizon CEO Ivan Seidenberg transmitting the Idearc Form 10 constituted a false endorsement of the transaction. But the letter simply advised Verizon shareholders that they would be receiving a distribution of Idearc stock in connection with the Spin-Off and “encourage[d]” those shareholders “to read the enclosed [Form 10] information statement” that “describes the spin-off in detail.”<sup>304</sup> It contains no endorsement, much less the false endorsement that Plaintiff has alleged, and Plaintiff lacked any good-faith basis for asserting otherwise.

5. *Verizon Disclosed the Impact of the 2003 Voluntary Separation Package, the Terrorist Attack on September 11, and Other Events*

117. Plaintiff represented it would prove that Verizon developed and communicated “several false turnaround stories,”<sup>305</sup> including that past revenue declines were caused by one-time events such as a 2003 Voluntary Separation Package that was offered to Verizon employees, the Big Dig in Boston, and the events of September 11 in Manhattan.<sup>306</sup> According to Plaintiff, these events were “just made-up stories,”<sup>307</sup> intended to disguise more fundamental operational and financial issues. Plaintiff failed to prove these allegations and lacked any good-faith basis for making them.

118. The evidence demonstrated that each of these events did, in fact, have a significant short-term impact on VIS, were well known to the financial institutions that lent money to Idearc or purchased its debt, and were accurately disclosed by Verizon and Idearc.<sup>308</sup> For example, Verizon offered a voluntary separation package to employees in 2003, which was

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<sup>304</sup> PX901 at 8 of 158 (Form 10).

<sup>305</sup> Tr. Vol. 1A at 9:19 (Plaintiff’s opening statement).

<sup>306</sup> Tr. Vol. 1A at 9:19-25 (Plaintiff’s opening statement).

<sup>307</sup> Tr. Vol. 1A at 21:3-4 (Plaintiff’s opening statement).

<sup>308</sup> See, e.g., PX901 at 36, 63-64 of 158 (Form 10).

accepted by a substantial number of VIS sales personnel and significantly impacted historical financial performance. Mr. Jones testified about the impact of this event, explaining that VIS lost half of its sales force as a result of this program:

One of the biggest assets in the enterprise . . . is the sales force in place and the relationships they develop with small and medium businesses in the space. It's not a clerk job, it's a job where you've got to develop relationships. That takes experience, and it takes time to build relationships. When you lose half your sales force, it can be very problematic because you lose half of the relationships that you developed over time with your client base, and you have to reestablish those.<sup>309</sup>

119. At the beginning of 2003, VIS's sales force was 3,023.<sup>310</sup> VIS experienced turnover of 87.6 percent that year, such that approximately 375 sales persons who were working for VIS at the beginning of 2003 were still employed at year's end.<sup>311</sup> VIS began to rebuild its sales force almost immediately, ending 2003 with 2,155 sales personnel, reflecting a 28.7 percent total decline in the sales force and approximately 1,780 new hires.<sup>312</sup> Mr. Jones testified that VIS "had to rebuild the sales force. We had to give them time to gain tenure and get better at their job and more efficient and more effective."<sup>313</sup> The voluntary separation program had a significant impact on VIS's financial performance for several years.<sup>314</sup> By the time of the Spin-Off, VIS had rebuilt its sales force, that sales force had been able to gain experience, and VIS reasonably expected that print revenue would stabilize in the future.<sup>315</sup>

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<sup>309</sup> Tr. Vol. 5B at 116:22-117:6.

<sup>310</sup> DX416 at 51 of 77 (Rating Agency Presentation).

<sup>311</sup> DX416 at 51 of 77 (Rating Agency Presentation).

<sup>312</sup> DX416 at 51 of 77 (Rating Agency Presentation).

<sup>313</sup> Tr. Vol. 5B at 116:9-11; *see also id.* at 116:22-117:6.

<sup>314</sup> DX416 at 51 of 77 (Rating Agency Presentation).

<sup>315</sup> Tr. Vol. 5B at 115:13-17 (testimony of Mr. Jones: "We had also had some sales force disruption, correction of those activities and adjustment around those elements. We felt like we could mitigate the decline somewhat.").

120. Defendants presented un-rebutted evidenced that the terrorist attacks on September 11, 2001, and the resulting changes in business and commuting patterns, reduced print revenue attributable to the Manhattan directories. The terrorist attacks affected VIS's ability to deliver directories in high rise buildings, changed traffic patterns, and changed consumer usage.<sup>316</sup> VIS responded by "re-scoping" its books (*i.e.*, changing their geographic coverage) and by making changes to their delivery and distribution schedules.<sup>317</sup>

121. These one-time events adversely affected VIS's financial performance,<sup>318</sup> and VIS responded with new initiatives and new strategies. By 2006, VIS reasonably was "expecting and [] forecasted similar performance" in the incumbent print business to that of its peers.<sup>319</sup>

Defendants introduced evidence demonstrating that VIS's performance in 2006 was, in fact, improving in accordance with VIS's expectations.<sup>320</sup> Although as-sold print revenue declined in 2005 by between 4 and 6 percent during the first eight months of the year (January through August), VIS's performance showed a 4 percentage point improvement in 2006 and revenue results that were consistent with its competitors.<sup>321</sup> Moreover, VIS's performance was in line with its business plan through August 2006 and had met its commitments to Verizon corporate

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<sup>316</sup> Tr. Vol. 5B at 117:7-17 (testimony of Mr. Jones).

<sup>317</sup> DX422 at 106, 112 of 120 (JP Morgan Client Review Proposal); DX801 at 49, 53 of 150 (April 18 VIS Presentations).

<sup>318</sup> Tr. Vol. 5B at 116:12-20 (testimony of Mr. Jones).

<sup>319</sup> Tr. Vol. 5B at 115:21-22.

<sup>320</sup> The directories business has a "forward nature" in that "the books are published, and then the revenue comes in over . . . the subsequent 12 to 18 months when the book is actually available and in circulation." Tr. Vol. 8A at 34:17-21 (testimony of Mr. Hopkins). As a result, a company is able to know its future revenues based upon the books already published. Tr. Vol. 8A at 34:21-22 (testimony of Mr. Hopkins) ("the company was able to have revenue [visibility]"). At the time of the Spin-Off, VIS had visibility into over 50 percent of its 2007 revenues. Tr. Vol. 8A at 34:21-22 (testimony of Mr. Hopkins); PX768 at 38 of 45 (Lenders' Presentation for Public-Siders). The published revenue results showed significant improvement in every quarter as compared to the prior year and were on track with the company's projections. PX768 at 38 of 45 (Lenders' Presentation for Public-Siders); DX2345 at 6 of 9 (VIS Operations Review) ("Results on as published basis are tracking to the Banker Preso").

<sup>321</sup> DX416 at 52 of 77 (Rating Agency Presentation).

(its budget) and to the bankers (the financing model).<sup>322</sup> In an Operations Review with Verizon corporate, VIS characterized its performance as exhibiting a “turnaround” in print revenue.<sup>323</sup>

Although print revenues were forecast to continue to decline, the rate of that decline had stabilized, and was expected to remain stable, consistent with the expectations for the industry as a whole.<sup>324</sup> Likewise, in an October 28, 2006 report to the incoming Idearc Board, Ms. Harless reported that “the revenues on an as sold basis have regain[ed] traction and are improving every day . . . the southeast, central, and west territories are all positive results with the northeast and mid-atlantic performing better than plan and approaching flat (the sales momentum is back!!!).”<sup>325</sup>

122. Plaintiff asserted that an e-mail from Sophia Xu, a Verizon employee in the Strategic, Development and Planning organization, constituted evidence of an allegedly false turnaround story. The events described in Ms. Xu’s e-mail (which included the voluntary separation package and the terrorist attacks), however, were not false. They were real and affected VIS’s business performance. In addition, this e-mail was written following a March 2006 meeting in Dallas of representatives of Verizon, VIS, JP Morgan, Bear Stearns, McKinsey, and Verizon’s and VIS’s outside counsel.<sup>326</sup> Given the extensive disclosures in the Form 10 and the other financing documents, and in light of the consistent testimony from Ms. Harless, Mr. Jones and Mr. Coticchio (from VIS),<sup>327</sup> Ms. Kearns (from JP Morgan),<sup>328</sup> and Mr. Rosen and Mr.

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<sup>322</sup> DX2345 at 2, 5 of 9 (VIS Operations Review); Tr. Vol. 5B at 119:13-121:2 (testimony of Mr. Jones).

<sup>323</sup> DX2345 at 6 of 9 (VIS Operations Review).

<sup>324</sup> Tr. Vol. 5B at 115:11-17 (testimony of Mr. Jones).

<sup>325</sup> PX871 (K. Harless e-mail to incoming Idearc Board).

<sup>326</sup> DX142 (S. Xu e-mail); Tr. Vol. 9A at 95:23-98:7 (testimony of Mr. Slutzky concerning March meeting).

<sup>327</sup> Tr. Vol. 9A at 56:11-24 (testimony of Ms. Harless that the risk disclosures in the Form 10 adequately disclosed the challenges facing Idearc); Tr. Vol. 5B at 78:2-8, 78:14-79:24 (testimony of Mr. Jones that the Form 10

Slutzky (from Debevoise) concerning the accuracy of the disclosures,<sup>329</sup> the Court finds Ms. Xu's word choice to be irrelevant and of no evidentiary value.

6. *Additional Scattershot Allegations Made by Plaintiff Are Contradicted by the Record Evidence*

123. In addition to the "four frauds" that Plaintiff alleged in its opening statement, Plaintiff also alleged that Idearc's market value was inflated because Defendants failed to disclose material information about a number of issues (such as the difference in margins between print and electronic revenue). The evidence established that the allegedly withheld information was, in fact, disclosed. In addition, Plaintiff failed to introduce any evidence showing that the alleged misrepresentations or omissions inflated Idearc's market value, or the amount of any such inflation.

a. *The Difference in Margins Between the Print and the Electronic Business Was Widely Known and Fully Disclosed*

124. Plaintiff's valuation expert Carlyn Taylor testified that, in reaching her opinion that Idearc's value from operations was \$7.5 billion to \$8.8 billion, she disregarded the price of Idearc's common stock as traded on the NYSE and under-weighted the two other leading market-based valuation methodologies (the comparable transaction and market multiple approaches). Ms. Taylor testified that she did so based on her opinion that the market price of Idearc was inflated because Verizon concealed material non-public information about, among

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accurately described risks facing the future Idearc); Tr. Vol. 9B at 58:10-59:4 (testimony of Mr. Coticchio about his belief in the accuracy of the Form 10).

<sup>328</sup> Tr. Vol. 9B at 109:1-25 (testimony of Ms. Kearns about drafting of the Form 10 with representatives from VIS, Verizon and their lawyers, and Bear Stearns, JP Morgan and their lawyers).

<sup>329</sup> Tr. Vol. 9A at 91:8-96:25 (testimony of Mr. Slutzky about extensive due diligence by Debevoise); DX644 (90-page memorandum discussing Debevoise due diligence); *id.* at 107:25-110:5 (testimony of Mr. Slutzky about due care in drafting the Form 10 with management, the bankers and their counsel, and the auditors); Tr. Vol. 8B at 18:13-17 (testimony of Mr. Rosen about his belief in the accuracy of the Form 10). The Court found Mr. Slutzky, and his testimony, credible.

other things, the difference in profit margins between VIS's incumbent print business and its electronic (Internet) business.<sup>330</sup> Ms. Taylor testified that this was a "very important issue,"<sup>331</sup> that she had "scoured the record," and that there was no evidence of any disclosure that EBITDA margins on electronic business were lower than the EBITDA margins on the incumbent print business.<sup>332</sup>

125. The evidence at trial strongly contradicted Ms. Taylor's testimony on this point.

- Citibank's credit committee memo stated that "Incumbent print directories traditionally enjoy[] low-50% EBITDA margin, while independent print and internet have achieved high-10% margin and low-20% margin, respective[ly]." The memo additionally stated that Idearc's future CFO Andy Coticchio "mentioned that the Company expects margins of independent print and internet to improve to high-20% and approximately 30%, respectively."<sup>333</sup>
- Wachovia's credit committee memo stated that incumbent print margins are currently "Low 50%" but projected to be "Mid 50%"; Internet margins are currently "Mid 20%" and expected to grow to "High 30%"; and independent print margins are currently "High Teens %" and forecast to grow to "Upper 20%."<sup>334</sup>
- The Royal Bank of Scotland credit memo stated that the growth of the Internet and independent print businesses undercut overall EBITDA margin because they were lower margin businesses and that "the impact on EBITDA is magnified as growth segments generate lower margins (c.20%) versus the c.50% margins of the incumbent directories business."<sup>335</sup>

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<sup>330</sup> Tr. Vol. 4A at 9:7-18:3.

<sup>331</sup> Tr. Vol. 4B at 63:9-64:15.

<sup>332</sup> Tr. Vol. 4B at 64:17-22 ("Q: And you have testified this morning that you wanted to do a thorough job so you scoured the information and asked your staff to do so to find out if there was any disclosure about the differences in the margin, right? A: Yes, we were looking for specific disclosures by the company on that."); *id.* at 65:1-5 ("A: Yes, I specifically asked my staff to look for this. Q: And they found nothing, no disclosure at all? A: We didn't find disclosure on this issue in the documents, yes.").

<sup>333</sup> DX745 at 11 of 27 (Citibank Credit Memorandum).

<sup>334</sup> DX491 at 4 of 13 (Wachovia Credit Memorandum).

<sup>335</sup> Tr. Vol. 4B at 72:22-73:21 (testimony of Ms. Taylor).

- BlackRock’s credit memo stated that “internet has lower margins than print directories.”<sup>336</sup>
- An Idearc presentation to the rating agency Moody’s states that “Independent margins expected to move toward[] target levels of 25%-35% (Yellow book is 24%) over the plan period. (2006 – 18% overall).” “Internet margins expected to continue to improve over the plan period to the high 30’s low 40’s (2006 in the mid 20’s).”<sup>337</sup>
- A Deutsche Bank equity analyst report dated November 27, 2006, 10 days after the Spin-Off, stated that “Incumbent directory EBITDA margins are in the low 50s percent range, independent margins are in the mid-teens and expected by management to get to the high 20s, and online margins in the mid 20s but expected by management to get to the high 30s.”<sup>338</sup>

On cross-examination, Ms. Taylor was unable to offer any credible explanation for her failure to locate any of this evidence.

*b. “Secular Change” in the Directories Business Was Widely Known*

126. Ms. Taylor also testified that investors were unaware that Verizon’s directories business was undergoing a “secular change” or that Mr. Seidenberg believed that the business was supposedly in “harvest mode” and therefore needed to be sold off.<sup>339</sup>

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<sup>336</sup> DX361 at 4 of 6 (BlackRockCredit Memorandum).

<sup>337</sup> DX2392 at 12 of 15 (Moody’s Presentation); Tr. Vol. 4B at 79:2-14 (testimony of Ms. Taylor).

<sup>338</sup> DX510 at 4 of 43; *see also* DX314 at 10 of 14 (Private Side Confidential Information Memorandum states: “EBITDA margin is expected to decline slightly from 48.2% to 47.1% due to an increase in the revenue contribution of the lower margin independent and Internet businesses”); DX279 at 44 of 54 (Private Side Lenders’ Presentation states: “Overall, margin is eroded by 110bps by 2010 due to improved incumbent print margins offset by growth in lower margin independent and Internet businesses”); PX803 at 18 of 28 (Goldman Sachs Credit Memorandum states: “Overall, margin is eroded by 110bps by 2010 due to improved incumbent print margins offset by growth in lower margin independent and Internet businesses”); DX2059 at 26 of 71 (UBS Credit Memorandum) (same); DX822 at 3 of 10 (Lehman Brothers January 2007 analyst report states: “IAR’s plans to diversify away from incumbent directories will likely impact overall margins given both online (mid 20s) and independent segment (mid teens) margins are lower relative to incumbent directory margins (in the low 50% range)”); DX2080 at 12 of 35 (Goldman Sachs April 2007 analyst report states: “We estimate the current EBITDA margin for Idearc’s online operations to be in the low- to mid-20%. Although we believe Idearc can move these margins into the low- to mid-30% range over time, we do not believe these margins will ever reach the levels associated with incumbent print revenues.”).

<sup>339</sup> Tr. Vol. 4A at 9:20-10:2; *see also* Tr. Vol. 1A at 7:17-21, 8:6-7 (Plaintiff’s opening statement).

127. The evidence demonstrated that investors were aware that VIS, as well as other incumbent directories businesses, was undergoing a secular change. In October 2004, Mr. Seidenberg stated in a Verizon quarterly earnings call that Verizon's directories business was facing "secular" change, comparing VIS to Verizon's traditional landline telephone business. Mr. Seidenberg also disclosed that print revenue — as reflected in Verizon's publicly reported financial statements, which disclosed VIS financial performance as a separate segment — was declining.<sup>340</sup>

128. Documents introduced at trial from various banks also reflected a broad awareness that the directories business was experiencing "secular" change. Citibank's credit memo, for example, stated that "[t]otal revenue growth has been slowly declining in recent years due to a secular decline in print directory demand."<sup>341</sup> A December 2005 equity analyst report published by the RBC Capital Markets stated that "VIS . . . is experiencing a secular revenue decline," particularly "a secular decline in print directory usage."<sup>342</sup>

129. More generally, the competitive pressures facing incumbent directories businesses were widely discussed prior to November 2006. In an August 2005 report on Wall Street's view of the Yellow Pages industry, Deutsche Bank equity analyst Paul Ginocchio stated that "Independent competition is the number one concern of directory shareholders, versus non-holders whose biggest concern is the Internet."<sup>343</sup> The Kelsey Group predicted declining revenues for the incumbent print industry based on the competitive pressures from the Internet

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<sup>340</sup> DX2354 at 31 of 35 (Verizon October 2004 earnings call) ("Director[ies] here's the way we look at this. Director[ies] has got the same kind of secular issues that Telco does. It's got declining books.").

<sup>341</sup> DX745 at 10 of 27 (Citibank Credit Memorandum).

<sup>342</sup> PX89 at 2-3 of 8 (RBC Capital Markets analyst report); Tr. Vol. 5A at 11:20-12:3 (testimony of Ms. Taylor).

<sup>343</sup> DX1856 at 9 of 90 (e-mail attaching, *inter alia*, Deutsche Bank Analyst Report).

and independent publishers.<sup>344</sup> Plaintiff's assertion that investors were unaware that the directories business was facing "secular change," Mr. Seidenberg's views of that issue, or that incumbent print revenue was declining in the face of competitive threats, was refuted by the evidence.<sup>345</sup>

130. In its opening statement, Plaintiff claimed that an e-mail (PX121) from Mr. Seidenberg to Ms. Toben and Mr. Diercksen, in which Mr. Seidenberg provided feedback on a proposed work plan from McKinsey, demonstrated that Mr. Seidenberg believed that VIS's print business should be sold off for parts and that its leading electronic business was worthless.<sup>346</sup> Mr. Seidenberg testified at length about this e-mail, explaining that it reflected his perception that the directories business was undergoing a transformation similar to that experienced in the traditional telephone business.<sup>347</sup> He testified that his use of the term "secular change" reflected his perception of competition from "print businesses [that were] being established inside the territories where we were operating our own businesses" — *i.e.*, a reference to competition from independents — as well as the impact of the Internet.<sup>348</sup> Mr. Seidenberg further testified that, prior to November 2006, these issues were frequently discussed by him and others at "conferences, external conferences and analyst meetings."<sup>349</sup>

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<sup>344</sup> DX842 at 3 of 27 (excerpts from Deutsche Bank October 26, 2006 analyst report).

<sup>345</sup> The Court has previously rejected Plaintiff's claim that Mr. Seidenberg and Ms. Harless were unique in understanding that Verizon had managed VIS "for cash," rather than investing in the business. PX1161, the document that Plaintiff relied upon for this claim, memorializes Ms. Harless's disclosures to investors. PX1161 (K. Harless e-mail to Idearc Board); Tr. Vol. 9A at 68:18-69:2 (testimony of Ms. Harless). Moreover, the documents introduced from various lenders reflect knowledge of Idearc's limited capital expenditures. DX1730 at 7 of 31 (roadshow presentation discussing VIS's limited reinvestment in the print product or in other growth initiatives); Tr. Vol. 9A at 58:19-60:4 (testimony of Ms. Harless).

<sup>346</sup> Tr. Vol. 1A at 14:18-15:19.

<sup>347</sup> Tr. Vol. 6A at 62:9-15.

<sup>348</sup> Tr. Vol. 6A at 63:3-12.

<sup>349</sup> Tr. Vol. 6A at 63:19-20. Similarly, Ms. Harless noted that the most frequently asked question on the roadshows was how Idearc was "going to overcome Google and Yahoo eating our lunch." Tr. Vol. 9A at 61:15-18.

131. Mr. Seidenberg explained his reference in the e-mail to “a new business model separate from Verizon” as follows:

That’s a summation of complicated problem into a couple of ideas. So when you think about it, every new print company that came into existence to compete with Verizon came in with lower margins. They cut prices. They established a very different model for the business than we had. So my view is that a spun-out VIS would be able to take actions to invest in new product, perhaps cut pricing if that’s what they needed to do, perhaps adjust their cost structure if that’s what they needed to do and actually behave much more like an separately positioned independent public company much the same way that we did to ourselves in our telephone books. . . .

So in the longer term I thought that allowing the business to pivot to a public company and then create a new business from where we started was a good answer. And the other obvious point to me was a spun-out VIS would have been the largest independent print business in the industry at that time. So I think it would have commanded a lot of attention and would have been able to drive strategies around what I thought was ripe to unfold.<sup>350</sup>

132. Mr. Seidenberg’s observations about how a private equity firm might manage Verizon’s directories business (if a private equity firm were to acquire it) by cutting markets did not constitute a recommendation that VIS should do the same. On the contrary, Mr. Seidenberg testified that he believed that an independent VIS would follow the approach taken in the telephone industry — “[w]e ended up with mergers, consolidation. Consolidation created value, and I think this was something that I was interested in pursuing here in the VIS business.”<sup>351</sup>

133. Plaintiff also suggested that Verizon had failed to disclose that it was experiencing secular decline more rapidly than its competitors.<sup>352</sup> The internal analyses by the institutions that extended loans to Idearc or purchased Idearc debt in connection with the Spin-Off reflect a pervasive awareness that VIS had experienced greater quarter-over-quarter and

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<sup>350</sup> Tr. Vol. 6A: at 64:8-19, 64:25-66:7.

<sup>351</sup> Tr. Vol. 6A at 62:15-18.

<sup>352</sup> Tr. Vol. 10B at 6:13-14 (Plaintiff’s examination of Mr. Balcombe).

year-over-year declines in revenues than its competitors. A Morgan Stanley presentation dated August 26, 2006, for example, included a table entitled “Directories Year over Year Revenue Growth” that shows, on a quarter-by-quarter basis from 2004 through the second quarter of 2006, the revenue growth numbers for VIS, AT&T, BellSouth, Dex, and RH Donnelley.<sup>353</sup> In each quarter, VIS had greater revenue declines than each of its competitors. The same page of that presentation contained another table reflecting declines in EBITDA margins on a quarter-by-quarter basis. Again, VIS’s margins were generally lower than those of its competitors.<sup>354</sup> Morgan Stanley identified “Company Releases” as the source for these figures.<sup>355</sup>

134. Documents prepared by JP Morgan and Bear Stearns demonstrated that these investment banks understood how VIS’s revenue declines compared to its competitors. A November 28, 2005 JP Morgan and Bear Stearns presentation contained a series of tables that analyze estimated revenue growth and EBITDA growth for the period between 2005 and 2007.<sup>356</sup> By these financial metrics, VIS was performing more poorly than Dex, RH Donnelley, BellSouth, and SBC.<sup>357</sup> The JP Morgan and Bear Stearns documents identified company filings and Wall Street research as the source of this information.<sup>358</sup>

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<sup>353</sup> DX448 at 12 of 56 (Morgan Stanley Discussion Materials, August 29, 2006).

<sup>354</sup> DX448 at 12 of 56 (Morgan Stanley Discussion Materials, August 29, 2006).

<sup>355</sup> DX448 at 12 of 56 (Morgan Stanley Discussion Materials, August 29, 2006).

<sup>356</sup> DX387 at 17 of 30 (JP Morgan and Bear Stearns Presentation, November 28, 2005).

<sup>357</sup> DX387 at 17 of 30 (JP Morgan and Bear Stearns Presentation, November 28, 2005).

<sup>358</sup> DX387 at 17 of 30 (JP Morgan and Bear Stearns Presentation, November 28, 2005). A June 14, 2006 Morgan Stanley equity analyst report likewise shows that VIS had experienced faster revenue declines than other incumbent print businesses. DX2069. Morgan Stanley noted that VIS had experienced revenue declines ranging from 2-3 percent to 5 percent year-over-year for the past several quarters. DX2069 at 3 of 10. It compared that performance to AT&T, whose directory business had modest declines of less than 1 percent year-over year. *Id.* The Court finds that the information contained in this public analyst report would have been available to a hypothetical buyer and seller of Verizon’s directories business in November 2006.

*c. Plaintiff Did Not Prove That Verizon's Senior Management Believed That the Actual Value of VIS Was Only \$6.5 Billion*

135. Plaintiff claimed that it would prove that Verizon senior executives knew that the actual enterprise value of VIS was only \$6.5 billion and therefore made affirmative misrepresentations or omissions about the directories business in order to obtain a higher valuation. Plaintiff relies on PX27, a July 2005 powerpoint presentation entitled “Directories – Analysis of Alternatives,” to support this allegation. The evidence introduced during the Phase I proceedings demonstrated that Plaintiff’s interpretation of this document was incorrect.

136. John Fitzgerald testified that PX27 did not reflect Verizon’s internal determination that VIS had an enterprise value of \$6.5 billion.<sup>359</sup> Mr. Fitzgerald testified that “the final valuation was what it was when the transaction was completed” — that is, \$12.8 billion.<sup>360</sup> The \$6.5 billion figure resulted from a downside case DCF analysis that evaluated a worst case scenario for the print business alone, ignoring VIS’s growing and valuable electronic business, and that was based upon a set of assumptions as to both future projections and the appropriate WACC.<sup>361</sup>

137. Mr. Fitzgerald also testified about the circumstances surrounding the creation of this document. He testified that, in June 2005, Verizon’s Strategy, Planning and Development group began a preliminary analysis of VIS in order to explore potential options if Verizon management decided to divest the business.<sup>362</sup> The initial analysis, which is set forth in PX27, was prepared by different portions of the Strategy, Planning and Development organization in a

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<sup>359</sup> Tr. Vol. 7A at 8:11-18 (testimony of Mr. Fitzgerald that “I can’t say we ever really finalized a valuation”); Tr. Vol. 1A at 75:6 (testimony of Mr. Diercksen that he never believed that the business had a value of \$6.5 billion).

<sup>360</sup> Tr. Vol. 7A at 8:11-18.

<sup>361</sup> Tr. Vol. 7A at 5:4-6:10, 7:9-25 (testimony of Mr. Fitzgerald).

<sup>362</sup> Tr. Vol. 6B at 120:3-9, 126:10-17.

few weeks, without any direct input or assistance from any VIS executive involved in operating the directories business.<sup>363</sup> The document included a preliminary evaluation of the market for directories businesses, as well as a wide range of possible values for VIS.<sup>364</sup> PX27 set forth potential enterprise valuations for VIS ranging from \$6.5 billion to \$17.8 billion.<sup>365</sup>

138. Mr. Fitzgerald testified that, beginning in late August 2005, he refined the potential valuation analysis based on, among other things, discussions with investment bankers and reviews of industry analyst reports.<sup>366</sup> This included Mr. Fitzgerald's review of an August 2005 Deutsche Bank analyst report by Paul Ginocchio. In that report, Deutsche Bank stated that a capital structure with a high debt to equity ratio (resulting in a lower WACC, and therefore a higher valuation) was appropriate for an independent directories business.<sup>367</sup>

139. In September 2005, Mr. Fitzgerald and his group were directed to evaluate divestiture options in greater detail, and they set forth their analysis in a formal presentation for senior management.<sup>368</sup> Mr. Fitzgerald testified that he was primarily responsible for this analysis, which "was intended to be presented to the" Corporate Leadership Council ("CLC").<sup>369</sup> Mr. Fitzgerald's presentation included a slide that contained a "football field," showing possible valuations ranging from \$11.5 billion (the low end of a discounted cash flow analysis) to \$16.5

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<sup>363</sup> Tr. Vol. 6B at 127:19-128:1, 128:25-129:6.

<sup>364</sup> Tr. Vol. 7A at 8:6-8 (testimony of Mr. Fitzgerald).

<sup>365</sup> PX27 at 32 of 54 (Directories – Analysis of Alternatives).

<sup>366</sup> Tr. Vol. 7A at 9:6-11.

<sup>367</sup> Tr. Vol. 7A at 12:15-21 (testimony of Mr. Fitzgerald explaining that the Ginocchio analyst report used numbers for the appropriate "weighted average costs of capital for companies in this industry . . . which were substantially below what we had been using internally, and a lower cost of capital correlates with a higher valuation, everything else being equal").

<sup>368</sup> DX129 (Asset Disposition Options, CLC Review); Tr. Vol. 7A at 16:22-17:16 (testimony of Mr. Fitzgerald).

<sup>369</sup> Tr. Vol. 7A at 17:9, 17:13-16.

billion (the high end of a precedent transactions analysis).<sup>370</sup> Mr. Fitzgerald testified that the updated DCF analysis resulted in a higher valuation for VIS than that set forth in PX27 because he utilized a lower WACC.<sup>371</sup> Mr. Fitzgerald explained that using a lower WACC was appropriate because of an intervening reduction in the “risk free rate” provided by Verizon Treasury, as well as the Deutsche Bank analysis.<sup>372</sup> Mr. Fitzgerald also testified that he corrected several analytical flaws in the July 2005 DCF, which was improperly “combining historical growth rates near term and then applying plan growth rates longer term.”<sup>373</sup> Mr. Fitzgerald additionally included revenues from VIS’s electronic business in the later analysis, which he concluded resulted in a higher — and in his view more reliable — valuation of VIS.<sup>374</sup>

140. Mr. Fitzgerald testified that this updated valuation was not final, but that it “beg[an] to narrow the range that we are thinking about, but there’s still no stated conclusion as to an answer.”<sup>375</sup>

141. The Court finds Mr. Fitzgerald’s testimony to be credible and persuasive. In light of his testimony, which was fully corroborated by Mr. Diercksen,<sup>376</sup> Plaintiff did not establish that the \$6.5 billion downside valuation of the print business set forth in the July 2005 presentation reflected Verizon’s belief as to the value of the directories business. As a result,

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<sup>370</sup> There are three valuation lines on the Valuation Summary page. The trading comparables range runs from \$14.3 to \$15.5 billion; the precedent transactions range runs from \$14.1 to \$16.5 billion; and the DCF range runs from \$11.5 to \$15 billion. DX129 at 7 of 15 (Asset Disposition Options, CLC Review); Tr. Vol. 7A at 18:18-21:3 (testimony of Mr. Fitzgerald).

<sup>371</sup> Tr. Vol. 7A at 20:16-21.

<sup>372</sup> DX1856 at 88 of 90 (Directories – Varying Viewpoints on VIS) (explaining that Verizon Treasury’s risk free rate had fallen from 5.2 percent in July to 4.7 percent); *id.* at 90 of 90 (showing that Verizon Treasury’s current weighted average cost of capital had fallen to 8.1 percent from 8.7 percent); Tr. Vol. 7A at 14:11-22, 20:16 (testimony of Mr. Fitzgerald).

<sup>373</sup> Tr. Vol. 7A at 21:11-18.

<sup>374</sup> Tr. Vol. 7A at 21:19-22, 22:11-14.

<sup>375</sup> Tr. Vol. 7A at 22:18-20.

<sup>376</sup> Tr. Vol. 1A at 75:6-8 (testimony of Mr. Diercksen).

there is no validity to Plaintiff's claim that Idearc's market price was inflated due to any failure to disclose that information.

*d. Verizon Did Not Improperly Conceal Negative Information About Idearc's Future Management*

142. Plaintiff asserted that the market value of Idearc was inflated because senior Verizon officials, including Mr. Diercksen, "knew that the management that would take over Idearc was not competent," but failed to share this alleged view with investors.<sup>377</sup> The Court does not find this argument persuasive.

143. Ivan Seidenberg testified that he had full confidence in Kathy Harless, the President of VIS and his direct report. Seidenberg testified that he "thought Kathy was extremely capable."<sup>378</sup>

Kathy Harless was a seasoned, professional warrior. Every job she was ever given — even before I knew her. She worked at GTE for many years. And the years she worked for me she was capable and competent and on the job all the time and banging away to do a good job. . . . I thought Kathy was extremely capable.<sup>379</sup>

144. Mr. Diercksen (the author of PX869, the primary evidence upon which Plaintiff relied for this assertion) testified that his e-mail reflected his frustration over a proposal under consideration to grant double bonuses to Idearc's management team.<sup>380</sup> As PX869 makes clear, at that time, Verizon was considering whether to permit Idearc's management to retain their Verizon long-term incentive awards, as well as to receive a supplemental bonus — characterized as analogous to a "founders' grant" — following the Spin-Off.<sup>381</sup> Mr. Diercksen testified that,

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<sup>377</sup> Tr. Vol. 1A at 8:2-4, 6-7 (Plaintiff's opening statement).

<sup>378</sup> Tr. Vol. 6A at 43:21.

<sup>379</sup> Tr. Vol. 6A at 43:9-13.

<sup>380</sup> Tr. Vol. 2A at 40:19-20.

<sup>381</sup> PX869 at 3 of 3 (J. Diercksen e-mail regarding bonuses).

while he “respected Ms. Harless’[s] management skills,” he wrote this e-mail because he believed that awarding a double bonus was inappropriate.<sup>382</sup> The subjective views of one Verizon manager, expressed in this context, are insufficient to impose a disclosure obligation on Verizon about management competence, particularly in light of Mr. Seidenberg’s views.<sup>383</sup>

145. The evidence further established that Mr. Diercksen and Ms. Harless had a strained relationship. JP Morgan and Bear Stearns were aware of this tension and made an independent determination as to whether it was material to their decision to invest in Idearc and to lead its financing. JP Morgan’s Ms. Nason testified that she became aware of “some tension between Mr. Diercksen and Ms. Harless,” which caused her “to take a longer, harder look perhaps at management and to have that as part of the diligence process.”<sup>384</sup> Following its due diligence, JP Morgan concluded that VIS had “a very competent management team that knew their business very well.”<sup>385</sup> Bear Stearns’ Andrew Decker testified that he was aware of a “competitive dynamic” between Ms. Harless and Mr. Diercksen, which gave him no cause for concern because “large corporations have different personnel issues.”<sup>386</sup> Plaintiff failed to provide any evidentiary basis to require Verizon to make disclosures about the competence of Idearc management.<sup>387</sup>

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<sup>382</sup> Tr. Vol. 2A at 43:10.

<sup>383</sup> Verizon’s CFO also testified that she had full confidence in Mr. Coticchio, Idearc’s CFO, and believed him to be a “[v]ery strong finance person.” Tr. Vol. 9B at 35:23. Ms. Toben explained that Mr. Coticchio had worked directly for her in the financial reporting and corporate finance organizations, and Ms. Toben testified that she “personally hand-picked Andy to go down to directory because I found him a very strong finance person.” Tr. Vol. 9B at 35:16-21.

<sup>384</sup> Tr. Vol. 7A at 98:3-10.

<sup>385</sup> Tr. Vol. 7A at 98:1-2 (testimony of Ms. Nason).

<sup>386</sup> Tr. Vol. 7B at 82:13-19.

<sup>387</sup> Mr. Slutzky testified that he had worked on “perhaps 100 disclosure documents” by the Spin-Off, but had never seen a disclosure document that included the “subjective assessment by one executive of another.” Tr. 9A at 125:20-126:10. Ms. Taylor likewise testified that she was unaware of “a single securities offerings for any

**G. The Valuation of Idearc Provided by Carlyn Taylor, Plaintiff's Expert, Was Unreliable**

146. Plaintiff introduced testimony from Carlyn Taylor, a Managing Director in the Corporate Finance Group of FTI Consulting, Inc., with respect to the valuation of Idearc on November 17, 2006. Plaintiff did not seek to have the Court find that Ms. Taylor was qualified to offer any opinions with respect to the Spin-Off.

*1. Ms. Taylor's Opinion About Idearc's Total Enterprise Value*

147. Ms. Taylor estimated the enterprise value of Idearc utilizing three different methodologies: (i) \$11.7 billion to \$13.2 billion, using the market multiple methodology; (ii) \$13.4 billion to \$15.8 billion, using a comparable transaction methodology; and (iii) \$5.4 billion to \$6.3 billion, using a discounted cash flow methodology.<sup>388</sup> Ms. Taylor concluded that Idearc's total enterprise value from operations was \$7.5 billion to \$8.8 billion, with a mid-point of \$8.15 billion.<sup>389</sup> She reached her opinion by applying 15 percent weighting to each of the two market-based methodologies and 70 percent weighting to the discounted cash flow methodology.<sup>390</sup>

148. Ms. Taylor gave zero weight to Idearc's total enterprise value as determined by the trading of its common stock on the NYSE.<sup>391</sup> She acknowledged on cross-examination, however, that, based on NYSE trading, the value of Idearc's equity was more than \$3.8 billion

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company in the history of this country since the 1934 and 1933 acts came into law that provide[d] the subjective views from one executive about another." Tr. 5A at 80:7-13.

<sup>388</sup> Ms. Taylor's "market multiple methodology" is the same approach that Mr. Hopkins labeled "comparative company analysis," and Ms. Taylor's "comparable transaction methodology" is the same as the approach that Mr. Hopkins labeled "precedent transaction analysis." Findings of Fact ¶¶ 60, 62-63 & nn.134-135.

<sup>389</sup> Tr. Vol. 4A at 28:12-18.

<sup>390</sup> Tr. Vol. 4A at 115:7-9.

<sup>391</sup> Tr. Vol. 3 at 56:20-57:4; Tr. Vol. 4B at 7:2-4.

on the date of the Spin-Off, reflecting an enterprise value of not less than \$12.8 billion.<sup>392</sup> She further acknowledged that the market capitalization of Idearc continued to increase after the Spin-Off through May 2007 (when it reached approximately \$5.5 billion, representing an enterprise value of not less than \$14.5 billion).<sup>393</sup> However, Ms. Taylor opined that Idearc’s “equity value” “really should have been a negative number”<sup>394</sup> and that “the market got it wrong, not just as to Idearc[,] but as to the entire [directories] industry in 2006.”<sup>395</sup>

149. Ms. Taylor stated that Idearc’s total enterprise value should be reduced based on her opinion that the Tax Sharing Agreement created a contingent tax liability.<sup>396</sup> She testified that she had calculated the amount of the potential liability (if it were incurred), but declined to offer an opinion as to “the probability of that contingent liability being incurred,” based on her understanding that Plaintiff would call a tax expert to testify as to the probability.<sup>397</sup> However, Plaintiff did not call a tax expert to testify and no such testimony was offered at trial.

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<sup>392</sup> DX611 at 2 of 16 (Bloomberg Stock Price Data); Tr. Vol. 4B at 7:20-23. The market capitalization is calculated by multiplying the stock price by the number of shares of outstanding stock.

<sup>393</sup> DX611 at 5 of 16 (Bloomberg Stock Price Data); Tr. Vol. 4B at 89:14-20.

<sup>394</sup> Tr. Vol. 4B at 34:1-5.

<sup>395</sup> Tr. Vol. 5A at 77:21-78:3. Ms. Taylor’s analysis was therefore inconsistent with her own testimony that the valuation standards “require[] that you look at what was — what’s called known or knowable at the time of the valuation.” Tr. Vol. 3 at 35:18-21.

<sup>396</sup> Tr. Vol. 4A at 26:24-27:2. Ms. Taylor also testified that she underweighted the market-based methodologies based on her opinion that the Tax Sharing Agreement limited Idearc’s ability to be acquired or otherwise engage in market activity. *Id.* at 115:21-116:2 (“But overall, in addition, the fact that you had the restrictions on the ability to even go to market, the whole point of a market approach is that you actually have the ability to access that market. And if you are prevented under an agreement from accessing the market, then you really need to weight the overall market approach lower.”). Ms. Taylor’s opinion was refuted by the evidence, and was therefore unreliable.

<sup>397</sup> Tr. Vol. 4A at 27:3-5.

2. *Ms. Taylor's Opinion That Verizon Fraudulently Inflated Idearc's Market Value Was Unreliable*

150. Ms. Taylor testified that, in her opinion, investors overvalued Idearc because of various alleged misrepresentations and omissions made by Verizon.<sup>398</sup> As shown in Part I.F. above, the evidence contradicted Ms. Taylor's opinion on this issue. For example, Ms. Taylor concluded that Verizon failed to disclose the significant differences in the EBITDA margins generated by VIS's incumbent print and electronic businesses.<sup>399</sup> However, the evidence at trial established that the variance between EBITDA margins was understood and evaluated by numerous investors in Idearc's debt and routinely discussed in public analyst reports in the months immediately following the Spin-Off. *See* Part I.F.6.a. Ms. Taylor also concluded that Verizon concealed the year-over-year declines in revenue in specific northeast urban markets.<sup>400</sup> However, the evidence at trial demonstrated that this information was disclosed, understood, and specifically evaluated by JP Morgan, Bear Stearns, and Morgan Stanley, and therefore did not provide an evidentiary basis for Ms. Taylor to disregard market-based valuations. *See* Part I.F.1.

151. Ms. Taylor offered the opinion that potential lenders would not have financed the Spin-Off had they known that Idearc's revenue would decline. She lacked the expertise to offer this opinion, which was refuted by the evidence. Idearc's financing model — which was provided to JP Morgan, Bear Stearns, the credit rating agencies, and certain private-side lenders — projected declining print revenue and relatively flat EBITDA over a five-year period. Citibank and Morgan Stanley, as well as other financial institutions, also prepared their own

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<sup>398</sup> Tr. Vol. 3 at 56:13-57:4; Tr. Vol. 4A at 17:19-18:15; Tr. Vol. 4B at 33:20-34:9 (conceding that her opinion “turn[s]” on the proposition that “the market was misled” into inflating Idearc's equity value by at least \$4 billion).

<sup>399</sup> Tr. Vol. 3 at 104:16-105:12; Tr. Vol. 4A at 15:2-17:18; Tr. Vol. 4B at 63:9-64:16.

<sup>400</sup> Tr. Vol. 3 at 96:17-99:14, 101:4-101:10; Tr. 4A at 12:2-17.

forecasts of Idearc's revenue and EBITDA, which assumed declining EBITDA and revenue.<sup>401</sup> Citibank nevertheless valued Idearc at between \$11.7 billion and \$14.4 billion,<sup>402</sup> and Morgan Stanley valued Idearc at \$12.5 billion.<sup>403</sup> Moreover, at least five equity analysts — at Lehman, Merrill Lynch, Sanford Bernstein, Deutsche Bank, and Goldman Sachs — issued public reports prior to the Spin-Off indicating a consensus view that Idearc's revenues would decline by 1.7 percent per year from 2006 through 2008.<sup>404</sup> This pervasive evidence that the institutions that financed the Spin-Off understood that Idearc's revenue could continue to decline contradicted Ms. Taylor's opinion that market-based valuations were unreliable because these institutions did not know that revenue would decline.

152. Ms. Taylor's decision to disregard market-based methodologies based, in part, on Verizon's failure to disclose alleged concerns about the competence of Idearc management also rendered her opinion unreliable.<sup>405</sup> *See* Part I.F.6.d. Moreover, the subjective views of Verizon executives concerning the competence of Idearc's management are immaterial as a matter of law. *See* Conclusions of Law ¶ 49.

### 3. *Ms. Taylor's DCF Valuation Was Unreliable*

153. The data that Ms. Taylor selected for her DCF analysis were unreasonable, and therefore resulted in an unreliable total enterprise value for Idearc. Among other things, her

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<sup>401</sup> DX450 at 13, 15 of 16 (Morgan Stanley Credit Memorandum); DX745 at 11 of 27 (Citibank Credit Memorandum).

<sup>402</sup> DX745 at 19 of 27 (Citibank Credit Memorandum).

<sup>403</sup> DX450 at 4 of 16 (Morgan Stanley Credit Memorandum); Tr. Vol. 9A at 37:1-16 (testimony of Mr. Yourkoski).

<sup>404</sup> Tr. Vol. 4B at 111:17-113:12 (testimony of Ms. Taylor). Likewise, a November 21, 2006 equity analyst report published by JP Morgan projected that Idearc's EBITDA would decline at 5.1 percent per year. Tr. Vol. 4B at 113:13-114:7 (same).

<sup>405</sup> The Court found Mr. Seidenberg's testimony to be credible, and his actual views are inconsistent with Ms. Taylor's mischaracterization of them.

forecasts of prospective revenue and EBITDA (created after the fact, for purposes of this litigation) were materially less favorable than the contemporaneous forecasts prepared by Idearc and Verizon management,<sup>406</sup> as well as the average forecasts prepared by the financial institutions that financed the Spin-Off and public equity analysts.<sup>407</sup> Ms. Taylor used a negative terminal growth rate in her DCF analysis — ranging from -3.9 percent to -7.9 percent — which was inconsistent with the judgments of Verizon, the financial institutions that extended loans to Idearc or purchased its debt in connection with the Spin-Off, and public analysts.<sup>408</sup> Finally, Ms. Taylor utilized a discount rate (or WACC) that was significantly higher than the contemporaneous rates utilized by participants in the transaction.<sup>409</sup> Ms. Taylor failed to provide any credible basis for disregarding the contemporaneous views of the actual participants in the Spin-Off.

154. It is undisputed that, by reference to market-based methodologies, the total enterprise value of Idearc was significantly greater than its \$9.115 billion in debt on November

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<sup>406</sup> The court has found credible the consistent testimony from Verizon and Idearc executives that the process for developing the financing model reflected the ordinary back and forth between corporate and the division, and was no different from the ordinary budgeting process at Verizon. *See* Part I.E.1.b. At trial, Ms. Taylor conceded that, in order to credit her opinion, the Court would need to conclude that Ms. Harless and Mr. Cotichio were not being truthful when they so testified. Tr. Vol. 4B at 108:17-109:24, 111:9-16. Because the Court finds their testimony to be credible, the Court necessarily finds that Ms. Taylor improperly disregarded management's forecasts.

<sup>407</sup> Tr. Vol. 10A at 70:5-71:6, 72:7-75:12 (testimony of Mr. Balcombe); DD 4.9, 4.10 (demonstratives demonstrating outlier nature of Ms. Taylor's forecasts discussed by Mr. Balcombe during his testimony); Tr. Vol. 8A at 57:14-17 (testimony of Mr. Hopkins that Ms. Taylor improperly "relied upon multiple sensitivities" rather than actual projections, "which you normally wouldn't do in a valuation"); *id.* at 58:12-16 (none of Ms. Taylor's inputs "were projections; they were all hypothetical sensitivity cases").

<sup>408</sup> Tr. Vol. 10A at 71:7-11, 78:25-80:4 (testimony of Mr. Balcombe); DD 4.11 (demonstrative demonstrating outlier nature of Ms. Taylor's terminal growth rate discussed by Mr. Balcombe during his testimony); Tr. Vol. 8A at 63:23-65:18 (testimony of Mr. Hopkins that Ms. Taylor's terminal growth rate was "incorrect and commercially unreasonable").

<sup>409</sup> Tr. Vol. 10A at 71:12-16, 81:7-82:24 (testimony of Mr. Balcombe); DD 4.12 (demonstrative demonstrating outlier nature of Ms. Taylor's WACC discussed by Mr. Balcombe during his testimony); Tr. Vol. 8A at 65:19-68:10 (testimony of Mr. Hopkins that Ms. Taylor's WACC was unreasonable and inconsistent with standard valuation principles).

17, 2006. In reaching her opinion that Idearc's enterprise value was only \$8.15 billion on that date, Ms. Taylor significantly overweighted the results of her DCF methodology. In addition, the valuation that Ms. Taylor reached with her DCF analysis was an outlier, dramatically inconsistent with the contemporaneous valuations reached by numerous equity analysts and prospective creditors, and therefore unreliable. Defendants' expert Jeff Balcombe identified 27 independent analyses of Idearc completed between December 2005 and November 17, 2006, each of which concluded that the total enterprise value of Idearc ranged between \$10.5 billion and \$22.1 billion.<sup>410</sup> Ms. Taylor's DCF analysis was approximately \$5 billion lower than the lowest of these independent valuations.<sup>411</sup>

155. Each input that Ms. Taylor utilized in her DCF analysis was an outlier, and each input drove down her estimated valuation of Idearc. Indeed, Ms. Taylor's DCF analysis resulted in a multiple of only 3.5 to 4.2 of Idearc's actual 2006 EBITDA.<sup>412</sup> None of Idearc's competitors had a market value anywhere approaching that low a multiple.<sup>413</sup>

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<sup>410</sup> Tr. Vol. 10A at 45:22-48:7; DD 4.5 (demonstrative demonstrating outlier nature of Ms. Taylor's DCF analysis discussed by Mr. Balcombe during his testimony).

<sup>411</sup> For more than a year after the Spin-Off, there does not appear to be any independent analysis of Idearc that ascribed it a total enterprise value of less than \$10 billion. DD 4.5.

<sup>412</sup> Tr. Vol. 10A at 82:25-83:25 (testimony of Mr. Balcombe); DD 4.13 (demonstrative used by Mr. Balcombe in describing EBITDA multiple implied by Ms. Taylor's DCF analysis).

<sup>413</sup> Tr. Vol. 10A at 83:15-25 (testimony of Mr. Balcombe); DD 4.13 (demonstrative used by Mr. Balcombe in comparing RH Donnelley EBITDA multiple to the level implied by Ms. Taylor's DCF analysis).

## PROPOSED CONCLUSIONS OF LAW

### A. Plaintiff Bears the Burden of Proof on Valuation

1. Plaintiff bears the burden of proving the valuation of Idearc on November 17, 2006.<sup>1</sup> As this Court noted in ruling on the parties' cross-motions for summary judgment, in order to prove that Idearc was insolvent or did not receive a reasonably equivalent value in the Spin-Off, Plaintiff must first prove Idearc's value at the time of the Spin-Off. Mem. Op. & Order at 15 & n.3, ECF No. 523 (Sept. 14, 2012) ("Summ. J. Op.").

2. Idearc incurred approximately \$9.1 billion in debt in connection with the Spin-Off, which it used, along with cash on hand, to provide approximately \$9.6 billion in cash and notes to Verizon in exchange for Verizon's directories business. Therefore, Plaintiff cannot prevail on its claim that Idearc did not receive reasonably equivalent value without proving that the fair market value of Idearc's directories business on the date of the Spin-Off was less than \$9.6 billion.<sup>2</sup>

3. Plaintiff has argued that Defendants bear the burden of proof on this issue because, Plaintiff claims, Idearc was not at all times a wholly owned subsidiary of Verizon

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<sup>1</sup> See, e.g., *In re Lamar Haddox Contractor, Inc.*, 40 F.3d 118, 121 (5th Cir. 1994) ("the plaintiff estate representative has the burden of proving insolvency by a preponderance of evidence"); *In re Iridium Operating LLC*, 373 B.R. 283, 342 (Bankr. S.D.N.Y. 2007) ("In this phase of the trial, the [plaintiff] has the burden of proof to show by a preponderance of the evidence that Iridium was either insolvent or inadequately capitalized at the time of any transfer made during the four-year period from August 13, 1995 through August 13, 1999. As the party seeking to avoid transfers during this time period, the [plaintiff] must establish each element of its fraudulent transfer and preference claims, including Iridium's insolvency or the inadequacy of its capital."); *Peltz v. Hatten*, 279 B.R. 710, 737 (D. Del. 2002) ("the burden of proving lack of reasonably equivalent value falls on the Liquidating Trustee"), *aff'd sub nom. In re USN Communications, Inc.*, 60 F. App'x 401 (3d Cir. 2003); *In re WCC Holding Corp.*, 171 B.R. 972, 984 (Bankr. N.D. Tex. 1994) ("The Trustee has the burden to prove each element of his state-law fraudulent transfer claim, which he asserts under 11 U.S.C. § 544."); *U.S. Bank Nat'l Ass'n v. U.S. Timberlands Klamath Falls, L.L.C.*, 864 A.2d 930, 947 (Del. Ch. 2004) ("To meet its burden to plead a breach of fiduciary duty [to creditors under Delaware law], the Trustee must plead facts sufficient to support a finding that Klamath is or was insolvent.") (internal quotation marks omitted), *vacated on other grounds*, 875 A.2d 632 (Del. 2005) (table).

<sup>2</sup> Plaintiff cannot prove that Idearc's fair market value was less than the \$9.1 billion in debt if it cannot prove that Idearc's fair market value was less than the larger \$9.6 billion that Verizon received from Idearc in exchange for Verizon's directories business. Therefore, the Court usually refers below to Plaintiff's failure to prove that Idearc's fair market was less than \$9.6 billion.

between its incorporation (as VDDC) and the date of the Spin-Off. This Court previously rejected that argument, holding that “no reasonabl[e] factfinder could conclude that Idearc was not a wholly owned subsidiary of Verizon up to and including November 16, 2006.” *Id.* at 26-27. Plaintiff therefore bears the burden of proof as to Idearc’s valuation on November 17, 2006.

4. However, this Court notes that, even if Plaintiff were correct with respect to this issue, Defendants have overwhelmingly established that the fair market value of Idearc on the date of the Spin-Off was at least \$12.8 billion.

**B. The Standard for Valuation Is the Fair Market Value of Idearc at the Time of the Spin-Off**

5. In bifurcating this case into two phases for trial, this Court set, as the issue to be determined in Phase I, “What was Idearc’s value at the time it was spun off from Verizon in November of 2006?” Order at 2, ECF No. 504 (Aug. 22, 2012).

6. The proper standard for determining “value,” in the context of this case, is the fair market value of Idearc on November 17, 2006, the date of the Spin-Off.<sup>3</sup> As the Fifth Circuit has

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<sup>3</sup> See *Sherman v. FSC Realty LLC (In re Brentwood Lexford Partners, LLC)*, 292 B.R. 255, 268 (Bankr. N.D. Tex. 2003) (under Texas law, “the court must apply a market analysis” to determine solvency); *WCC Holding*, 171 B.R. at 984 (in determining reasonably equivalent value under Texas law, assets received by the debtor should be valued “by looking at their fair market value on the date of transfer”); *In re Pioneer Home Builders, Inc.*, 147 B.R. 889, 891-93 (Bankr. W.D. Tex. 1992) (the phrase “a fair valuation” under the definition of insolvency in Texas’s Uniform Fraudulent Transfer Act refers to “the *fair market value* of the debtor’s property” — meaning the “value that a prudent business person can obtain from the sale of an asset when there is a willing buyer and a willing seller”); *In re Southmark Corp.*, 138 B.R. 820, 829 (Bankr. N.D. Tex. 1992) (“‘reasonably equivalent value’ under the [Texas Fraudulent Transfer Act] includes a transfer that is within the range of values for which the transferor would have willfully sold the assets in an arms-length transaction”); *U.S. Timberlands Klamath Falls*, 864 A.2d at 947 (under Delaware law, “a company may be insolvent if it has liabilities in excess of a reasonable market value of assets held”) (internal quotation marks omitted); *LaSalle Nat’l Bank v. Perelman*, 82 F. Supp. 2d 279, 290 (D. Del. 2000) (under Delaware law, “an entity is insolvent when it has liabilities in excess of a reasonable market value of assets held”) (internal quotation marks omitted); see also *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 545 (1994) (the phrase “reasonably equivalent value” under the Bankruptcy Code “ordinarily” has “a meaning similar to fair market value”); *Lamar Haddox*, 40 F.3d at 121 (under the Bankruptcy Code’s definition of insolvency, “a fair valuation” is determined “by estimating what the debtor’s assets would realize if sold in a prudent manner in current market conditions”) (internal quotation marks omitted); 5 *Collier on Bankruptcy* ¶ 548.05[2][a] (“for voluntary transactions the fair market value of the objects of exchange will usually be the most important factor” in determining reasonably equivalent value).

held, under the “classic formulation,”<sup>4</sup> the fair market value of an asset is “the price that a willing buyer would pay a willing seller, if both have reasonable knowledge of the facts and neither is under compulsion.”<sup>5</sup> Under this test, “[t]he buyer and seller are hypothetical, not actual persons, and each is a rational economic actor, that is, each seeks to maximize his advantage in the context of the market that exists at the date of valuation.”<sup>6</sup>

**C. The Price of Idearc Common Stock as Traded on the New York Stock Exchange Establishes That the Fair Market Value of Idearc Was at Least \$12.8 Billion**

7. As this Court has previously ruled, “under the right conditions,” “the market price of publicly traded stock is normally assumed to be one of the most reliable indicators of a company’s value.” Mem. Op. & Order at 5-6, ECF No. 577 (Oct. 2, 2012). That is because, as Judge Easterbrook has explained:

The price of an actively traded stock reflects the value placed on it by the professional investors who follow a firm closely. It is a “valuation” that includes the information of many professionals, not just one. It is therefore an unusually reliable source of information when the essential conditions (liquid markets, public information, and a following by professional investors) are met. The price at which people actually buy and sell, putting their money where their mouths are, is apt to be more accurate than the conclusions of any one analyst.

*Metlyn Realty Corp. v. Esmark, Inc.*, 763 F.2d 826, 835 (7th Cir. 1985). For this reason, “the price of stock in a liquid market is presumptively the one to use in judicial proceedings.” *Id.*

8. In similar cases, courts have found that a publicly traded company’s stock price is an “ideal data point” for determining the valuation of a company and that the NYSE is “the most disinterested source imaginable” for determining “the fair market value” of a business. *VFB LLC v. Campbell Soup Co.*, C.A. No. 02-137 KAJ, 2005 WL 2234606, at \*21-\*22 (D. Del. Sept.

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<sup>4</sup> *Quest Med., Inc. v. Apprill*, 90 F.3d 1080, 1086 (5th Cir. 1996) (internal quotation marks omitted).

<sup>5</sup> *Estate of Jameson v. Commissioner*, 267 F.3d 366, 370 (5th Cir. 2001); *accord, e.g., Adams v. United States*, 218 F.3d 383, 386 (5th Cir. 2000); *Quest Med.*, 90 F.3d at 1086.

<sup>6</sup> *Estate of Jameson*, 267 F.3d at 370.

13, 2005), *aff'd*, 482 F.3d 624 (3d Cir. 2007); *see also Campbell Soup*, 482 F.3d at 633 (holding that market price is “a more reliable measure of the stock’s value than the subjective estimates of one or two expert witnesses”); *Iridium*, 373 B.R. at 293 (holding that “the public trading market constitutes an impartial gauge of investor confidence”). Indeed, courts have given virtually dispositive weight to “objective evidence from the public equity and debt markets” in determining the fair market value of a spun-off company. *Campbell Soup*, 482 F.3d at 633 (affirming district court decision); *Iridium*, 373 B.R. at 291 (relying on “the verdict of solvency and capital adequacy already given to Iridium by the public markets”).

9. This legal conclusion was not in dispute at trial. Plaintiff conceded that, “[i]n most every case, it’s far better to have the market establish the value of [a] business than to have it established by paid expert testimony after the fact.” Tr. Vol. 1A at 6:10-12 (Plaintiff’s opening statement). Plaintiff’s valuation witness, Ms. Taylor, similarly testified that “normally you would look at the market value of the stock as a best indicator of the value of a company.” Tr. Vol. 3 at 56:17-19.

10. Here, the fair market value of Idearc on November 17, 2006, as calculated on the basis of the trading price of Idearc’s stock on the NYSE, was no less than \$12.8 billion.

Findings of Fact ¶ 18.<sup>7</sup>

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<sup>7</sup> During the trial, pursuant to Federal Rule of Evidence 201, the Court took judicial notice of the price at which Idearc’s stock traded on the NYSE, as well as other market data as reported by Bloomberg LP. *See, e.g., Truk Int’l Fund LP v. Wehlmann*, 737 F. Supp. 2d 611, 624 n.10 (N.D. Tex. 2009) (taking judicial notice of stock prices), *aff’d*, 389 F. App’x 354 (5th Cir. 2010); *Consumer Solutions REO, LLC v. Hillery*, 658 F. Supp. 2d 1002, 1008 n.2 (N.D. Cal. 2009) (taking judicial notice of yield rates); *SEC v. C. Jones & Co.*, Civil Action No. 03-cv-00636-WDM-KLM, 2009 WL 321696, at \*1 (D. Colo. Feb. 10, 2009) (taking judicial notice of stock prices and trading volumes); *Loveman v. Lauder*, 484 F. Supp. 2d 259, 267 n.48 (S.D.N.Y. 2007) (same). Bloomberg LP is a source of such data that cannot reasonably be questioned. *See Nguyen v. Radiant Pharm. Corp.*, No. SA CV 11-0406 DOC (MLGx), 2011 WL 5041959, at \*2 n.3 (C.D. Cal. Oct. 20, 2011) (taking judicial notice of stock prices from Bloomberg); *Teamsters Local 617 Pension & Welfare Funds v. Apollo Group, Inc.*, No. Civ. 06-02674-PHX-RCB, 2011 WL 1253250, at \*1 n.3 (D. Ariz. Mar. 31, 2011) (same).

**D. Idearc's \$12.8 Billion Valuation, as Calculated Based on Trading on the New York Stock Exchange, Is Overwhelmingly Corroborated by Additional Evidence**

11. In addition to the price at which Idearc's stock traded on the NYSE on the date of the Spin-Off, the record contains extensive additional direct and circumstantial evidence of Idearc's fair market value at the time of the Spin-Off. This evidence corroborates the \$12.8 billion valuation of Idearc calculated from its stock market price on the date of the Spin-Off and refutes Plaintiff's argument that Idearc's fair market value on that date was less than the \$9.6 billion in cash and notes that Verizon received from Idearc in exchange for its directories business.

*1. Valuation Evidence from Post-Spin-Off Stock and Bond Market Data*

12. The market value of Idearc's common stock, as traded on the NYSE, for the year following the Spin-Off provides powerful circumstantial evidence corroborating Idearc's \$12.8 billion valuation on November 17, 2006. Although such evidence, by definition, was not available to a hypothetical buyer or seller of Idearc on the date of the Spin-Off, this post-Spin-Off evidence corroborates the contemporaneous evidence of the significant value ascribed to mature businesses, such as Idearc, that generated significant revenue with high free cash flow.

13. The market price of Idearc's common stock, traded on the NYSE, increased following the Spin-Off. The closing price on the NYSE reached a high of \$37.66 per share on May 23, 2007. Findings of Fact ¶ 17. Idearc's stock price did not close below \$24 per share through November 2, 2007. *See id.* These prices imply a post-Spin-Off total enterprise value for Idearc between at least \$12.5 billion and at least \$14.5 billion.

14. While this trading was occurring, Idearc's reported financial results in the first three quarters of 2007 did not show "growth" in its revenues, as Plaintiff contended investors

were led to believe would occur, but instead showed continued, but slow, declines.<sup>8</sup> Idearc's financial performance was sufficient to allow Idearc to purchase another business for \$225 million using cash on hand, to pay out approximately \$50 million in dividends in each of those quarters, and to receive audit opinions with no qualification as to Idearc's ability to continue as a going concern. Findings of Fact ¶ 70.

15. Furthermore, the evidence showed that, while this trading was occurring, there were multiple disclosures of information — including regarding the difference in Idearc's margins for its incumbent print and electronic businesses, and the revenue declines that its incumbent print business faced in large urban markets — that Plaintiff contended (but did not prove) had been withheld from investors before the Spin-Off. Findings of Fact ¶¶ 95-98, 124-125.

16. For all of these reasons, Idearc's "market capitalization . . . months after the spin," therefore, provides important circumstantial evidence that Idearc "must have been worth more than [\$9.6 billion] at the time of the spin." *Campbell Soup*, 482 F.3d at 631, 632.

17. In addition, the \$2.85 billion in Unsecured Notes that Idearc issued as part of the Spin-Off were registered with the SEC on April 10, 2007, and were publicly traded beginning on June 7, 2007 — about six months after the Spin-Off. Findings of Fact ¶ 32. The fact that the Unsecured Notes traded "at par value" in a relatively stable interest rate environment corroborates the contemporaneous marketplace evidence that Idearc "was solvent at the time of the spin, and therefore received reasonably equivalent value" for the approximately \$9.6 billion cash and debt that Verizon received from Idearc in exchange for the directories business. *Campbell Soup*, 482 F.3d at 633.

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<sup>8</sup> PX1278 at 4 of 30 (Idearc Form 10-Q, Third Quarter 2007).

2. *Valuation Evidence from Verizon and Idearc Officers and Directors*

18. The Court's findings regarding the testimony from Verizon's and Idearc's officers and directors — Mr. Seidenberg, Ms. Toben, Mr. Diercksen, Mr. Fitzgerald, Ms. Harless, Mr. Mueller, Mr. Robertson, Mr. Coticchio, and Mr. Jones — are set forth above. *See, e.g.*, Findings of Fact ¶¶ 47-52, 100-103, 136-141.

19. It is well-settled that officers and owners of public companies may testify as to their opinion about the value of their business. *See* Fed. R. Evid. 701 advisory committee's note (2000 Amendment) (“[M]ost courts have permitted the owner or officer of a business to testify to the value or projected profits of the business, without the necessity of qualifying the witness as an accountant, appraiser, or similar expert.”); *Aunt Sally's Praline Shop, Inc. v. United Fire & Cas. Co.*, 418 F. App'x 327, 331 (5th Cir. 2011) (“It is well-settled that a business owner or officer who has personal knowledge of the facts may testify as to the business prospects of that business.”); *South Cent. Livestock Dealers, Inc. v. Security State Bank of Hedley*, 614 F.2d 1056, 1062 (5th Cir. 1980) (“The financial officer of the Feedlot was a witness qualified to testify to [the company's] value by knowledge and experience just as an owner is such a witness, and the district court did not err in allowing him to testify.”); *Downeast Ventures, Ltd. v. Washington Cnty.*, 450 F. Supp. 2d 106, 109-11 (D. Me. 2006) (holding that, if a sufficient foundation has been established, a corporate employee may render a lay opinion as to the value of corporate property).

20. Mr. Seidenberg and Ms. Toben were familiar with Verizon's directories business, and their actions in connection with the Spin-Off provided powerful circumstantial evidence that the value of Idearc's assets was substantially in excess of its liabilities. *Cf. Texas A&M Research Found. v. Magna Transp., Inc.*, 338 F.3d 394, 403 (5th Cir. 2003) (permitting testimony of

corporate officer “based on particularized knowledge based on his position as vice-president”); *Lativafter Liquidating Trust v. Clear Channel Communications, Inc.*, 345 F. App’x 46, 51 (6th Cir. 2009) (permitting investor and member of the board of directors of a company to testify about the company’s value and projected value without first qualifying as an expert).

21. Mr. Seidenberg and Ms. Toben credibly testified that they were familiar with VIS’s financial performance. They were responsible for reporting VIS’s financial results and projections directly to Verizon’s Board, and they signed the SEC filings that disclosed VIS’s financial data and results. Both Mr. Seidenberg and Ms. Toben considered the total enterprise value of Idearc on the date of the Spin-Off, and each took personal and professional risks in recommending that the Spin-Off proceed. Their testimony that they believed Idearc’s total enterprise value on November 17, 2006, was at least \$12 billion was credible and corroborates the marketplace data reflecting Idearc’s \$12.8 billion enterprise valuation on that date.

22. Mr. Diercksen reported directly to Mr. Seidenberg in 2005 and 2006, and Mr. Fitzgerald reported indirectly to Mr. Diercksen. Each testified that he had significant responsibilities for evaluating Idearc’s total enterprise value prior to the Spin-Off. As Verizon executives with responsibility for interacting with Wall Street investors and bankers, both Mr. Diercksen and Mr. Fitzgerald also considered the total enterprise value of Idearc on the date of the Spin-Off, and each took personal and professional risks in recommending that the Spin-Off proceed. Their testimony was credible, and further corroborates the market data reflecting Idearc’s \$12.8 billion enterprise valuation.

23. Ms. Harless, Mr. Coticchio, and Mr. Jones were officers of VIS prior to the Spin-Off and of Idearc afterwards. Before the Spin-Off, they were responsible for reporting on its operations and performance to Verizon corporate management. All three had years of

experience working for the company. Mr. Coticchio signed certifications with respect to Idearc's historical and expected future financial performance. Following the Spin-Off, all three undertook significant managerial responsibilities for Idearc's post-Spin-Off operations and financial performance. Each testified that he or she believed that Idearc's total enterprise value on November 17, 2006, substantially exceeded its liabilities. Their testimony was credible and further corroborates the market data reflecting Idearc's \$12.8 billion enterprise valuation.

24. Mr. Mueller and Mr. Robertson became directors of Idearc shortly before the Spin-Off. With full knowledge of Idearc's historical performance, and the opportunity to review Idearc's projections before the Spin-Off, they voluntarily took seats on the board, placing their careers and professional reputations at risk. Their testimony was credible, and their actions further corroborate the market data reflecting Idearc's \$12.8 billion enterprise valuation.

3. *Valuation Evidence from Investment Bankers, Lenders, and Market Analysts*

25. The Court's findings regarding the testimony from the investment bankers advising Verizon and Idearc on the Spin-Off (Ms. Nason, Ms. Kearns, and Mr. Decker), the testimony from investors in the Spin-Off (Mr. Smith and Mr. Yourkoski), and the evidence from other investors and market analysts, are set forth above. *See, e.g.*, Findings of Fact ¶¶ 44, 55-58, 75-86.

26. Courts routinely admit and rely on evidence regarding the value of assets obtained from the financial institutions that participated in a transaction — including the investment banks managing the transaction, investors in the transaction, and market analysts — when determining fair market value. *See Campbell Soup*, 2005 WL 2234606, at \*22 (considering “the opinions expressed by market participants both during and after the Spin-off,” in addition to the “trading

price of [the spun-off company's] stock”<sup>9</sup>; *Iridium*, 373 B.R. at 332 (finding that the “very existence” of “positive assessments of value” from investment bankers “is a factor that tends to rebut the [plaintiff's] assertions regarding insolvency”); *In re Plassein Int'l Corp.*, Bankr. No. 03-11489(KG), 2008 WL 1990315, at \*8 (Bankr. D. Del. May 5, 2008) (“[A] powerful indication of contemporary, informed opinion as to value comes from private investors who [w]ith their finances and time at stake, and with access to substantial professional expertise, [ ] concluded at the time [ ] that the business was indeed one that could be profitably pursued.”) (internal quotation marks omitted; second through fourth alterations in original); *Peltz*, 279 B.R. at 738 (“When sophisticated parties make reasoned judgments about the value of assets that are supported by then prevailing marketplace values and by the reasonable perceptions about growth, risks, and the market at the time, it is not the place of fraudulent transfer law to reevaluate or question those transactions with the benefit of hindsight.”).

27. For example, in *In re Old CarCo LLC*, 435 B.R. 169 (Bankr. S.D.N.Y. 2010), in which a litigation trust raised claims similar to those presented here, the court relied on the “involvement of sophisticated and independent market participants,” finding that their actions in an “open and highly publicized” transaction with “financial information concerning the valuation of the [subject company] readily available to investors and lenders . . . serve[d] as a benchmark of what is plausible concerning” the valuation of the company. *Id.* at 193.<sup>10</sup> The court further relied on the willingness of investors to make “billion[s] in credit available to fund the

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<sup>9</sup> See *Campbell Soup*, 2005 WL 2234606, at \*26 (“Prior to the Spin-off, Goldman Sachs valued the equity of VFI in the range of \$1 billion to \$1.2 billion, implying a value for the VFI Businesses of \$1.5 to \$1.7 billion. VFI’s own independent outside advisors, Braxton and Georgeson, valued VFI’s equity at between \$800 million and \$1.4 billion shortly before the Spin-off, implying a value for the VFI Businesses of \$1.3 billion to \$1.9 billion.”) (citations omitted).

<sup>10</sup> The court there took “judicial notice of the actions of market participants during the time of the transaction.” *Old CarCo*, 435 B.R. at 193 n.20.

transaction,” finding that their willingness to extend that credit “shows how implausible the theory is that all of these participants would expose themselves to the financial risk of a company unable to sustain its operations” and “show[s] that they perceived [the company] to be a viable entity.” *Id.* at 193-94.

28. Similarly, the *Iridium* court relied on the fact that “sophisticated outsiders . . . thought that it was prudent to invest in or extend credit to the company.” 373 B.R. at 294 n.2. The court explained that the investment bankers’ and other investors’ “business judgments, while anecdotal, imply that [the company] was solvent at the time and support the Court’s decision that the [plaintiff] has not carried its burden of proof.” *Id.* Moreover, the *Iridium* court relied on the fact that the investment bankers came “to their positive assessments of value” not by using the company’s own projections, but by “perform[ing] their own analyses” or by “rel[ying] upon the independent work of their research analysts.” *Id.* at 332. The court explained that, while it did “not accept the[] valuations as true,” “their very existence is a factor that tends to rebut the [plaintiff’s] assertions regarding insolvency,” because they “demonstrate . . . that there was a widely held perception on the part of sophisticated Wall Street investment firms that Iridium was a company with a substantial positive value.” *Id.*

29. Furthermore, evidence from the investment bankers, other lenders, and market analysts about Idearc’s total enterprise value on the date of the Spin-Off is admissible, contrary to Plaintiff’s argument that it is improper lay opinion testimony. The valuations in question were created in the course of deciding to loan substantial sums to Idearc, to acquire substantial amounts of its debt, or to provide advice to valued clients. The observations about Idearc’s total enterprise value were the result of careful study and diligence; the valuations therefore reflect business judgments based on their perception of Idearc and the directories industry, created as

part of their regular duties. *See Milton H. Greene Archives, Inc. v. Julien's Auction House LLC*, 345 F. App'x 244, 247 (9th Cir. 2009) (upholding admission of “lay opinion testimony regarding . . . valuation of auction items, which was part of [the witness's] regular job duties”); *United States v. Maher*, 454 F.3d 13, 24 (1st Cir. 2006) (“Rule 701 . . . is meant to admit testimony based on the lay expertise a witness personally acquires through experience, often on the job.”). Such percipient witness testimony is routinely admitted under Rule 701. *See MCI Telecomms. Corp. v. Wanzer*, 897 F.2d 703, 706 (4th Cir. 1990) (“The modern trend favors the admission of opinion testimony [under Rule 701], provided that it is well founded on personal knowledge [as distinguished from hypothetical facts] and susceptible to specific cross-examination.”) (citation and internal quotation marks omitted; second alteration in original); *cf. Campbell Soup*, 2005 WL 2234606, at \*26 (“[T]he contemporaneous views of people involved both before and after the Spin-off support the conclusion that the value of the VFI Businesses was greatly in excess of \$500 million at the time of the Spin.”).

30. Alternatively, this evidence is admissible, at a minimum, because it reflects what the investment banks, other lenders, and market analysts either said to Verizon, or would have said to a hypothetical buyer or seller of Idearc. Such information is among the kinds of information that a hypothetical willing buyer and willing seller, reasonably informed of the facts, would have considered and that would have informed their assessment of the value of Idearc at the time of the Spin-Off. *See, e.g., Estate of Jameson*, 267 F.3d at 370; *Quest Med.*, 90 F.3d at 1086.

4. *Valuation Evidence from Professional Advisors on the Spin-Off*

31. The Court's findings regarding the testimony from the professional advisors to Verizon and Idearc on the Spin-Off — Mr. De Rose, Mr. Rosen, Mr. Slutzky, and Mr. Rievman — are set forth above. *See, e.g.*, Findings of Fact ¶¶ 45, 53-54.

32. As explained above, non-expert testimony from percipient witnesses who make business and professional judgments on the basis of facts they observe as part of their regular duties is admissible on the issue of valuation. *See Milton H. Greene Archives*, 345 F. App'x at 247; *Maher*, 454 F.3d at 24. Such percipient witness testimony about valuation is admissible under Rule 701. *See MCI Telecomms.*, 897 F.2d at 706.

33. Mr. De Rose, on behalf of Houlihan, testified that he and his colleagues carefully analyzed Verizon's directories business — including historical revenue figures on a book-by-book basis — and provided a written opinion that Idearc would be solvent under all three tests of solvency, concluding that the total value of Idearc's assets would substantially exceed its liabilities. As part of that opinion, Mr. De Rose concluded that Idearc's total enterprise value was between \$11.536 billion and \$13.336 billion. Mr. De Rose's solvency opinion was prepared as part of his regular business duties and reflected his professional judgment based on his careful review of financial facts and data. *Cf. Teen-Ed, Inc. v. Kimball Int'l, Inc.*, 620 F.2d 399, 403 (3d Cir. 1980) (permitting accountant not designated as an expert to testify as a lay witness on the basis of facts and data perceived by him in his capacity as an accountant, and to submit a projection of profits based on such records); *Klang v. Smith's Food & Drug Ctrs., Inc.*, 702 A.2d 150, 154-55 (Del. 1997) (finding that a "Houlihan opinion" provided "substantial evidence" that, following the transaction, the company was solvent and its capital unimpaired). Mr. De Rose's testimony and Houlihan's contemporaneous valuation of Idearc, at a minimum, reflect

information that a hypothetical buyer or seller would consider in determining the fair market value of Idearc.

34. The testimony of Mr. Rosen and Mr. Slutzky of Debevoise, as the lead transactional and disclosure attorneys on the Spin-Off, and Mr. Rievman of Skadden Arps, as the lead tax attorney on the Spin-Off, is properly considered for reasons similar to those above. Like the investment bankers, these outside lawyers are additional “sophisticated outsiders” who took actions that, “while anecdotal, imply that [the company] was solvent at the time and support the Court’s decision that the [plaintiff] has not carried its burden of proof.” *Iridium*, 373 B.R. at 294 n.2. Like Mr. Mueller and Mr. Robertson, who acted as advisors in the months leading up to the Spin-Off and who agreed to become directors shortly before the Spin-Off, these outside lawyers staked their professional reputations on the Spin-Off and providing the public with accurate disclosures in the Form 10 or the IRS with accurate representations regarding, among other things, Idearc’s value following the Spin-Off.

5. *Defendants’ Experts’ Testimony*

35. Finally, Defendants presented testimony from four expert witnesses. Mr. Hopkins, a valuation expert, testified that he believed the total enterprise value of Idearc on the date of the Spin-Off was between \$11.8 billion and \$13.2 billion. He also testified that Ms. Taylor’s significantly lower valuation was unreliable because it was the product of improper fact selection and an unreliable application of those facts to valuation methodologies.

36. Mr. Balcombe, a valuation expert called as a rebuttal expert to Ms. Taylor, testified to the respects in which Ms. Taylor’s valuation was an outlier. He also testified that her valuation was based on factual assumptions that were unreasonable as compared to the facts and data relied on contemporaneously by the participants in the Spin-Off.

37. Mr. Wessel, a tax expert called as a rebuttal expert to Ms. Taylor,<sup>11</sup> testified as to the reasons the Tax Sharing Agreement did not create a contingent liability for Idearc and did not otherwise impose any significant limitations on Idearc's ability to engage in post-Spin-Off transactions or acquisitions. Mr. Wessel also testified that Idearc would likely have been able to engage in an acquisition that required prepayment of the Term Loan B or the Unsecured Notes without triggering any liability under the Tax Sharing Agreement, because prepayment of this debt under such circumstances would not have jeopardized the status of the debt as "securities" for tax purposes.

38. Mr. McCarty, an investment banking expert, provided testimony about the market for high yield debt and how that debt is evaluated and marketed as part of the financing of a spin-off transaction.

39. Each of these experts thus provided additional evidence that corroborated the fair market value of Idearc as determined by reference to its stock price on November 17, 2006, and refuted Plaintiff's contention that Idearc's fair market value on that day was less than \$9.6 billion.

40. Plaintiff's *voir dire* of Mr. Hopkins centered on the extent of his prior experience valuing directories businesses. Tr. Vol. 7B at 111:6-115:20. However, the Court concluded that Mr. Hopkins was qualified under Rule 702 to offer opinion testimony about Idearc's fair market value. *See id.* at 115:24-116:4; *see also In re Alta+Cast LLC*, No. 02-12982(MFW), 2004 WL 484881, at \*5 (Bankr. D. Del. Mar. 2, 2004) ("One need not be an expert in a particular industry to provide a valuation of a company in that industry."). Moreover, the Court finds that, in

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<sup>11</sup> Mr. Wessel had also been disclosed as a rebuttal expert to Plaintiff's tax expert, David Schizer. However, Plaintiff did not call Mr. Schizer to testify during trial, and Mr. Wessel limited his testimony to rebutting Ms. Taylor's statements regarding tax issues. Tr. Vol. 6B at 53:11-18, 55:13-21.

reaching his opinion that the total enterprise value of Idearc on the date of the Spin-Off was between \$11.8 billion and \$13.2 billion, Mr. Hopkins utilized a widely accepted methodology and reliably applied that methodology to a sufficient set of facts and data. *See Roman v. Western Mfg., Inc.*, 691 F.3d 686, 692 (5th Cir. 2012) (“A qualified witness may offer specialized or technical opinion evidence when based (1) on ‘sufficient facts or data’; (2) ‘the product of reliable principles and methods’; and (3) when ‘the expert has reliably applied [those] principles and methods to the facts of the case.’”) (quoting Fed. R. Evid. 702) (alteration in original).

41. Plaintiff provided no evidentiary basis to question Mr. Hopkins’ valuation opinion, his fact selection, his methodology for conducting his valuation, or his application of his methodology to the facts. For example, although Plaintiff suggested that Mr. Hopkins failed to perform a sensitivity analysis, Tr. Vol. 8A at 83:19-89:6, Mr. Hopkins testified that he did perform such an analysis and identified the places in his report in which he had set forth his analyses, *see id.* at 121:6-123:1. Similarly, although Plaintiff suggested that Mr. Hopkins had utilized an inappropriate discount rate (or WACC), *see id.* at 101:5-102:7, Mr. Hopkins explained convincingly that it was Plaintiff that had misunderstood the discount rate that Mr. Hopkins utilized, because Plaintiff failed to recognize that interest payments on debt are tax deductible and that the effective cost of debt is lower than the applicable interest rate, *see id.* at 123:2-124:5.

42. Plaintiff did not object to Mr. Balcombe’s qualifications at trial, and the Court found him to possess the necessary experience and qualifications to offer an opinion on Ms. Taylor’s valuation conclusion. Tr. Vol. 10A at 30:21-31:13. Mr. Balcombe credibly testified that the factual inputs and assumptions that Ms. Taylor utilized in her discounted cash flow methodology were not reliable because they were outliers, as compared to the contemporaneous

factual inputs and assumptions used by participants in the Spin-Off. Plaintiff's cross-examination of Mr. Balcombe failed to provide any basis for questioning his opinion.

43. Plaintiff did not object to Mr. Wessel's qualifications at trial, and the Court also found him to possess the necessary experience and qualifications to offer opinion testimony on tax issues relevant to spin-offs. Tr. Vol. 6B at 52:3-53:3. Mr. Wessel's testimony about relevant provisions of the Tax Sharing Agreement — and his analysis of why, as a practical matter, they did not limit Idearc's ability to engage in transactions or acquisitions after the Spin-Off or to repay its debt in connection with an acquisition — satisfied the requirements of Rule 702. Plaintiff did not offer countervailing opinion testimony from a tax expert of its own.

44. Nor did Plaintiff provide the Court with any basis to question the reliability of Mr. Wessel's testimony. For example, Plaintiff questioned Mr. Wessel about an e-mail string, PX1541a, from October 19-20, 2006, among VIS personnel and their outside counsel at Fulbright & Jaworski discussing the Tax Sharing Agreement. Plaintiff claimed that this e-mail supported its view that the Tax Sharing Agreement operated as a "poison pill" to restrict Idearc's post-Spin-Off ability to engage in transactions or pay off its debt before maturity. Tr. Vol. 6B at 81:3-86:20. But Mr. Wessel credibly testified that the e-mail discussed an early draft of the Tax Sharing Agreement that did not contain provisions providing Idearc with flexibility that were included in the final version. *See id.* at 103:15-106:17. In addition, as Mr. Wessel testified, the e-mail reflected an assumption by Idearc's tax advisors that Idearc's enterprise valuation on the date of the Spin-Off was likely to be between \$13 billion and \$15 billion. *See id.* at 101:22-103:14.

45. Finally, although Plaintiff objected to certain aspects of Mr. McCarty's testimony on the grounds that he was testifying in areas not suitable for expert testimony, the Court found

Mr. McCarty qualified to offer opinions on investment banking. Tr. Vol. 10B at 14:2-15:3. Mr. McCarty substantially assisted the fact-finder by explaining arcane investment banking concepts in straightforward terms. The Court has relied on the following specific portions of Mr. McCarty's testimony, which the Court finds credible and helpful to it as a finder of fact: first, Mr. McCarty's testimony about the oversubscription of each of the three types of debt issued in connection with the Spin-Off, and, second, the sophistication of the investors in the Idearc debt, including the entities that met the criteria to be Qualified Institutional Buyers, and were therefore able to purchase the Unsecured Notes. Plaintiff did not call into question the reliability of Mr. McCarty's testimony on these issues.

**E. Plaintiff Provided No Evidentiary Basis To Disregard the Market Price of Idearc's Common Stock in Determining Idearc's Fair Market Value**

46. As noted above, both Plaintiff and Plaintiff's expert, Ms. Taylor, agreed that the "market value of the stock [is the] best indicator of the value of a company." Tr. Vol. 3 at 56:17-19 (testimony of Ms. Taylor); *see also* Tr. Vol. 1A at 6:10-12 ("In most every case, it's far better to have the market establish the value of [a] business than to have it established by paid expert testimony after the fact.") (Plaintiff's opening statement). Plaintiff's contention that Idearc's fair market value on the date of the Spin-Off was less than \$9.6 billion, therefore, turns on its contention that the stock market price is an unreliable indicator of Idearc's fair market value. The Court finds that Plaintiff failed to carry its burden of proving that contention; the evidence at the Phase I trial did not support — and, in fact, overwhelmingly refuted — Plaintiff's contention.

*1. Plaintiff Failed To Substantiate Its Allegations That Verizon Engaged in "Four Falsehoods" That Inflated Idearc's Stock Price*

47. Courts require a "substantial reason" to "find that the value implied by an efficient market is not a trustworthy benchmark" for the fair market value of a company.

*Iridium*, 373 B.R. at 303; *see also Campbell Soup*, 2005 WL 2234606, at \*22. Indeed, this Court has previously held that, for Plaintiff to demonstrate that the “market price of the stock . . . [is] unreliable,” it must prove that Defendants made “material” misrepresentations or omissions that artificially inflated the stock price. Mem. Op. & Order at 5 n.3, ECF No. 577 (Oct. 2, 2012); *accord id.* at 6 n.4. Moreover, because the market price of Idearc’s common stock at the time of the Spin-Off implied a fair market value for Idearc that was substantially greater than its \$9.1 billion in debt, Plaintiff must prove not merely that the stock price was inflated, but also that it was inflated by billions of dollars. Plaintiff failed to introduce any competent evidence demonstrating that the market price of Idearc’s common stock was not a reliable benchmark for determining Idearc’s fair market value on the date of the Spin-Off.

48. In its opening statement, Plaintiff argued that the evidence would establish that the market price of Idearc’s stock was unreliable because Defendants engaged in “four basic falsehoods that were calculated to and did fool the market.” Tr. Vol. 1A at 6:20-22. Plaintiff failed to offer any credible evidence that Idearc’s stock price was inflated in any amount, much less that it was inflated by billions of dollars as a result of any alleged misrepresentations or omissions by Defendants.

49. *First*, Plaintiff asserted that Verizon falsely endorsed Idearc’s business prospects and its management, at a time when Verizon’s Chairman and CEO, Ivan Seidenberg, “did not believe that Idearc was going to grow” and Defendant John Diercksen “knew that the management that would take over Idearc was not competent.” *Id.* at 7:15-17, 8:2-4.<sup>12</sup> The Fifth Circuit has held that “generalized, positive statements about the company’s competitive

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<sup>12</sup> Plaintiff also asserted that financial institutions loaned billions of dollars to Idearc and acquired billions of dollars of its debt “because of Verizon” — that is, because Idearc’s directories business formerly had been owned by Verizon. Tr. Vol. 1A at 6:23-7:3. The evidence did not support this contention. Findings of Fact ¶¶ 114-116.

strengths, experienced management, and future prospects are not actionable because they are immaterial.” *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 869 (5th Cir. 2003). Verizon and its officers, therefore, were “under no duty to cast [Idearc] in a pejorative, rather than a positive, light.” *Id.* Verizon disclosed that Idearc’s (then VIS’s) revenues and EBITDA margins had been declining for the past five years. In addition, potential investors had the opportunity to meet and question Idearc’s management team before investing, and could form their own judgments about their capabilities. Findings of Fact ¶ 41. In sum, Verizon’s “expressions of confidence in its management or business are not actionable, especially where, as here, all historical information appears to be factually correct.” *Rosenzweig*, 332 F.3d at 869 (internal quotation marks omitted).<sup>13</sup>

50. Mr. Seidenberg testified credibly that he had full confidence in the ability of Ms. Harless, Idearc’s CEO upon the Spin-Off, to lead an independent Idearc. *See* Findings of Fact ¶ 143. Mr. Seidenberg also testified credibly that he believed an independent Idearc would be an attractive investment for investors seeking a mature, stable, cash-generating business that would pay out a large dividend. *See id.* ¶ 39. Plaintiff failed to introduce any evidence establishing that Verizon unlawfully failed to disclose information about Idearc’s expected future financial or operational performance.

51. *Second*, Plaintiff asserted that Verizon made false projections about Idearc’s future growth in order to obtain improperly an enterprise valuation of Idearc greater than \$13 billion. The evidence did not support this allegation. Instead, the evidence established that Verizon’s projections for Idearc’s business were reasonable and based on VIS’s own good-faith

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<sup>13</sup> As found above, Plaintiff did not challenge the accuracy of the historically reported, audited financial information for Verizon’s directories business, which was publicly disclosed. Findings of Fact ¶¶ 22, 33-34.

estimate of Idearc's future performance. *See id.* ¶¶ 101-103. Plaintiff failed to prove that the pre-Spin-Off projections for Idearc were anything other than "the result of a prolonged, deliberative process in which assumptions were vetted internally and by outside consultants." *Iridium*, 373 B.R. at 300. These projections, moreover, were not widely disseminated, and the sophisticated financial institutions that received them were prohibited from trading in Idearc securities in the public markets. Findings of Fact ¶ 34. In any event, the evidence shows that the sophisticated financial institutions that did receive VIS's financial projections conducted extensive due diligence and performed their own analyses of Idearc's likely financial performance. *See id.* ¶¶ 37-38. In light of this unchallenged evidence, Plaintiff's claim that the projections inflated the price of Idearc's common stock necessarily fails.

52. "[P]rojections of future performance not worded as guarantees are generally not actionable under the federal securities laws." *Krim v. BancTexas Group, Inc.*, 989 F.2d 1435, 1446 (5th Cir. 1993). That is because the "market gives the most credence to those predictions supported by specific statements of fact," and "[p]redictions of future growth stand on a different footing" from such statements. *Raab v. General Physics Corp.*, 4 F.3d 286, 290 (4th Cir. 1993).

53. Consistent with that legal background rule, the evidence showed that prospective lenders to Idearc and acquirers of its debt — as well as research analysts — did not look to Verizon's projections of Idearc's future performance when valuing Idearc. Instead, those entities valued Idearc and other directories companies by applying a multiple to current year EBITDA. *See, e.g.*, Findings of Fact ¶¶ 57-58. When those entities performed discounted cash flow analyses to derive a value of Idearc, they largely used their own projections of Idearc's future performance, even if they had also received management's projections. *See id.* ¶¶ 37-38. Those third-party valuations, moreover, refute Plaintiff's assertion that the directories business could be

valued at or around \$13 billion only if it were projected to have growing revenues or EBITDA. *See, e.g., id.* For these reasons as well, Plaintiff has not proved that Verizon's projections of Idearc's future performance artificially inflated Idearc's stock price.

54. During its opening, Plaintiff alleged that Verizon engaged in "fraud" when, in July 2005, it identified "two percent[ ] growth" as a "target" for the business's print revenues, in order to justify a "target value of [\$]13.5 billion." Tr. Vol. 1A at 18:1-9, 19:4-8. The evidence did not support — and, in fact, refuted — this contention. Findings of Fact ¶¶ 99-104.

55. At most, Plaintiff established that Verizon did not disclose that, between 2001 and 2005, it had downwardly revised its internal five-year projections for Verizon's directories business, in part because it determined that VIS would be unable to meet those projections. But there was no evidence that Verizon failed to disclose accurately the actual historical performance of the directories business. The Court finds that the non-disclosure of the downward revisions of prior internal five-year projections was not material as a matter of law. *See, e.g., Raab*, 4 F.3d at 290.

56. *Third*, Plaintiff alleged in its opening that it would prove that Verizon invented false "turnaround stories," particularly with respect to a 2003 voluntary separation package. But the evidence demonstrated that Verizon's response to the voluntary separation package resulted in improvements in VIS's financial performance. Moreover, Verizon's disclosures about the voluntary separation package were accurate. Idearc's Form 10 disclosed that, "[i]n 2003, Verizon offered a management voluntary separation program," that a "substantial portion of [the directories business's] sales force accepted this program offer," and that, "[a]s a result, sales were negatively impacted" into the "2004 and 2005 directories" years. Form 10, Amend. 6

(PX901) at 64 of 158. There was no evidence that any aspect of these disclosures was misleading.

57. *Fourth*, in its opening statement, Plaintiff contended that the evidence would establish that, although the Tax Sharing Agreement between Verizon and Idearc was filed with the SEC, the agreement failed to “describe . . . the real world” consequences for Idearc’s post-Spin-Off operations. Tr. Vol. 1A at 22:23-24:1. But Plaintiff’s own witness, Ms. Taylor — who conceded that she is “not . . . a tax expert” — testified that “anyone who loaned money” to Idearc or “who invested in its stock” could have understood what she characterized as the “unambiguous” terms of the document. Tr. Vol. 4B at 44:9-10, 45:11-19, 46:8-13. She later testified that “a sophisticated investor” or an “investment banker” would understand the terms of the Tax Sharing Agreement. *Id.* at 48:9-14. Defendants’ tax expert, Mr. Wessel, testified that a tax professional could readily understand the implications of the Tax Sharing Agreement for Idearc’s post-Spin-Off operations. Tr. Vol. 6B at 59:7-15. Because the understanding of market professionals is incorporated in the market price of a stock in an efficient market, like the NYSE, it follows that “the investing public knew of the [Tax Sharing Agreement] and how it affected the Spin-off.” *Campbell Soup*, 2005 WL 2234606, at \*12. Mr. Wessell additionally testified that the “real world” consequences for Idearc were minimal, as the Tax Sharing Agreement imposed limited restrictions on Idearc. At a minimum, the evidence failed to establish that Idearc’s market value was inflated as a result of the alleged non-disclosure of the “real world” effects of the Tax Sharing Agreement.

58. In addition to these alleged “four falsehoods,” Plaintiff also contended that Idearc’s stock price was unreliable because all but 100 of the more than 145.8 million shares of Idearc that Verizon distributed during the Spin-Off were invalidly issued. Related to that theory,

Plaintiff contended that Verizon did not own Idearc from the time of its incorporation as VDDC through the date of the Spin-Off.<sup>14</sup> As noted above, this Court previously entered summary judgment in favor of Defendants and against Plaintiff on this claim, holding that “no reasonable factfinder could conclude that Idearc was not a wholly owned subsidiary of Verizon up to and including November 16, 2006.” *Summ. J. Op.* at 26-27.

59. In addition, this Court previously held that, in determining Idearc’s fair market value, the “relevant question is what investors thought a 1/145,000,000 share of Idearc was worth in late 2006, not whether they would have bought a share of stock if they knew it was void.” *Mem. Op. & Order* at 4, ECF No. 577 (Oct. 2, 2012). At the time Plaintiff filed its motion, it had “not shown” why any alleged “failure[s] to observe corporate formalities in the spinoff and in the issuance of Idearc stock” — or any alleged “misrepresentations about corporate formalities” — “affected the underlying fundamentals” of Idearc or “were material to the value of Idearc as a going concern.” *Id.* at 5 & n.3. Plaintiff made no additional showing at trial to support its contention that the allegedly invalidly issued shares were material to the value of Idearc as a going concern or otherwise rendered unreliable the price of Idearc’s common stock as traded on the NYSE as a measure of Idearc’s value. Therefore, as this Court found previously, Plaintiff’s allegations regarding Idearc’s issuance of the shares that Verizon distributed to its shareholders and that traded on the NYSE are irrelevant to the question of the fair market value of Idearc’s directories business on the date of the Spin-Off.

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<sup>14</sup> Plaintiff’s claim that the 145.8 million shares were invalidly issued is based on its contention that Idearc’s Certificate of Incorporation was not validly amended to authorize the issuance of the additional shares, because Idearc amended that certificate pursuant to the provision of Delaware law applicable to a company that had received payment for its stock. *Pl.’s Rule 104 Mot. To Limit Evid. & To Strike All of Defs.’ Expert Test. Based on Market Value of Idearc Stock or Debt* at 13, ECF No. 509 (Aug. 28, 2012). Plaintiff claimed that Idearc could not rely on this provision of Delaware law because Verizon was not Idearc’s owner. *See id.* Plaintiff’s argument, however, ignores the Court’s prior ruling that Idearc was wholly owned by Verizon.

2. *Plaintiff's Expert Testimony on Idearc's Fair Market Value Was Unreliable and Entitled to No Weight*

60. Plaintiff not only failed to prove that the price of Idearc's common stock on the NYSE was inflated by some amount, but also made no effort to establish the amount of any such price inflation. Ms. Taylor testified that, in her opinion, the market capitalization of Idearc at the time of the Spin-Off "was off by 4 billion dollars" and that Idearc's "equity value" at that time "really should have been a negative number." Tr. Vol. 4B at 33:20-34:9. Ms. Taylor, however, failed to identify any methodology — whether an event study, regression analysis, or otherwise — that she used to reach this opinion quantifying the extent to which alleged misrepresentations and omissions artificially inflated Idearc's stock price.<sup>15</sup> The Court, therefore, finds that Ms. Taylor's opinion that Idearc's stock price was inflated, and therefore should not be used to determine the value of Idearc at the time of the Spin-Off, is unsupportable under Rule 702 and entitled to no weight. *See, e.g., Fener v. Operating Eng'rs Constr. Indus. & Misc. Pension Fund (Local 66)*, 579 F.3d 401, 410 (5th Cir. 2009) (holding that, without an "event study," an expert's claim that a stock price is inflated is mere "speculation") (internal quotation marks omitted). Courts do not "admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997); *see Hathaway v. Bazany*, 507 F.3d 312, 318 (5th Cir. 2007) ("[A]n expert's testimony that 'it is so' is not admissible.") (internal quotation marks omitted).<sup>16</sup>

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<sup>15</sup> Plaintiff bears the burden to "prove by a preponderance of the evidence that the testimony is reliable," based on an "objective, independent validation of the expert's methodology." *Moore v. Ashland Chem. Inc.*, 151 F.3d 269, 276 (5th Cir. 1998) (en banc); *accord Paz v. Brush Engineered Materials, Inc.*, 555 F.3d 383, 388 (5th Cir. 2009).

<sup>16</sup> Indeed, at times, Ms. Taylor explicitly framed her testimony as *ipse dixit*. *See, e.g.*, Tr. Vol. 3 at 101:4-10 ("Q. Okay. Now, this urban market information that is contained in the management presentation, why do you consider that to be relevant in consideration of your opinions relating to what the market knew or should have known? A. Because this was very relevant information, and it was not disclosed.").

61. A number of additional factors render Ms. Taylor's opinion unsupportable under Rule 702 and entitled to no weight. *First*, although Ms. Taylor's opinion was purportedly based on information specific to Idearc that allegedly was not disclosed or was misrepresented, Ms. Taylor testified that her opinion is that "the market got it wrong, not just as to Idearc[,] but as to the entire [directories] industry in 2006." Tr. Vol. 5A at 77:21-78:3. According to Ms. Taylor, the entire directories industry "was overpriced" because the "market was pretty frothy back then." *Id.* This testimony shows that hindsight bias affected her opinion. More generally, courts uniformly reject opinions that "the market was suffering from some 'irrational exuberance' in establishing [the spun-off company's] stock price," admonishing that such assertions provide "no basis for second-guessing the value that was fairly established in open and informed trading." *Campbell Soup*, 2005 WL 2234606, at \*26; *see also Iridium*, 373 B.R. at 303-04 (rejecting argument based on claims of market exuberance and irrationality).<sup>17</sup>

62. *Second*, the credibility of Ms. Taylor's valuation opinion was significantly undermined on cross-examination. Ms. Taylor testified that "no numbers were disclosed" reflecting the different margins realized by the historically declining print yellow pages business and the growing Internet yellow pages business. Tr. Vol. 4B at 63:9-65:5; *see* Tr. Vol. 4A at 15:2-17:11. Yet Defendants were able to point to numerous documents pre-dating (and immediately post-dating) the Spin-Off in which it was disclosed that margins on Idearc's Internet yellow pages business were in the neighborhood of 20 percent, which was much lower than margins on the print business. Tr. Vol. 4B at 70:14-80:14 (discussing DX278, DX279, DX491, DX745, DX953, DX1368, and DX2392). Ms. Taylor had no explanation for her failure to

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<sup>17</sup> Under accepted valuation methodology, it is also the case that market evidence of a public company's fair market value may not be rejected on grounds that the market was "frothy." Tr. Vol. 10A at 66:20-68:23 (testimony of Defendants' expert Mr. Balcombe).

discover these documents in her review of the pre-Spin-Off disclosures, stating only that Defendants had found documents she had not seen. *See id.* at 75:22-24.

63. Similarly, although Ms. Taylor testified on direct that the specific revenue declines in major urban markets in the Northeast were not disclosed, Tr. Vol. 4A at 12:6-17; *see also* Tr. Vol. 4B at 92:19-93:9, on cross-examination she conceded that Verizon disclosed those declines to JP Morgan and Bear Stearns, and that JP Morgan analyzed this issue in its internal credit memos — that is, in the documents it used in deciding to commit hundreds of millions of dollars of its own capital in connection with the Spin-Off, *see* Tr. Vol. 4B at 94:2-98:6 (discussing PX905). Defendants also demonstrated that these same declines were disclosed to other lenders, including Morgan Stanley. Tr. Vol. 9A at 30:23-31:3, 31:20-34:2, 48:8-49:8 (discussing DX936, DX937, DX939).<sup>18</sup> Expert opinion that is “not based upon the facts in the record” is properly excluded. *Guillory v. Dotmar Indus. Inc.*, 95 F.3d 1320, 1331 (5th Cir. 1996); *see Paz*, 555 F.3d at 388-89 (affirming district court’s exclusion of expert testimony that was “based on insufficient, erroneous information”).

64. *Third*, Ms. Taylor suggested that Idearc’s market value should be reduced based on her understanding of the impact of the Tax Sharing Agreement. She testified that the Tax Sharing Agreement reduced Idearc’s value by creating a “contingent liability” for Idearc and by

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<sup>18</sup> Ms. Taylor testified that she concluded that other concealed information — such as Mr. Seidenberg’s and Mr. Diercksen’s statements in internal e-mails — inflated Idearc’s stock price. That information is immaterial as a matter of law for the reasons set forth above. Conclusions of Law ¶ 49. Ms. Taylor also testified that variations in certain pre-Spin-Off projections were concealed. Tr. Vol. 3 at 82:16-83:5, 84:3-87:21. But the chart that Ms. Taylor used to depict the differences between the projections proposed by the directories business’s management and Verizon’s corporate management, as well as the final Spin-Off projections, had a Y-axis that exaggerated what were very small differences in the figures. Tr. Vol. 4B at 105:5-106:1. Although Ms. Taylor testified that small differences in projections “create huge differences” in discounted cash flow valuations, *id.* at 105:17-19, she did not calculate DCF valuations using the different projections. Defendants’ witness, Mr. Fitzgerald, provided such calculations and demonstrated that the consequences of using these different projections resulted in variations in value of about \$500 million. Tr. Vol. 7A at 32:17-35:2 (discussing DX110). Mr. Hopkins additionally testified that he considered alternative projections in his sensitivity analysis and that it had no impact on his valuation opinion. Tr. Vol. 8A at 121:11-122:12.

“plac[ing] restrictions” on Idearc’s post-Spin-Off operations. Tr. Vol. 4A at 26:3-27:7, 109:8-112:3. Yet Ms. Taylor also testified that, as to each issue, she expected Plaintiff to introduce testimony from a tax expert who could explain the probability of the contingent indemnification liability being triggered or impeding a post-Spin-Off transaction. *See id.* at 26:24-27:7, 110:23-111:3. Yet Plaintiff did not call a tax expert during its direct case — even though it had made the pre-trial disclosure that it had retained David Schizer to serve in that capacity.

65. In all events, as discussed above, the Tax Sharing Agreement was publicly disclosed, and Idearc’s market capitalization was approximately \$3.8 billion on the date of the Spin-Off. If, as Ms. Taylor contended, the Tax Sharing Agreement limited Idearc’s options and reduced its value, that would mean that the fair market value of Idearc implied by the price at which its common stock traded was even higher than \$12.8 billion, as participants in the stock market valued Idearc’s equity at approximately \$3.8 billion notwithstanding both its debt and what Ms. Taylor claimed was the negative effect on Idearc’s value of any contingent liability arising from the Tax Sharing Agreement.

66. *Fourth*, every assumption on which Ms. Taylor relied in her discounted cash flow valuation of Idearc reduced Idearc’s fair market value. Ms. Taylor’s selection of lower projections of future cash flow and terminal growth value, her use of a company-specific risk premium (which she testified “is inherently a subjective judgment”),<sup>19</sup> and her higher WACC (or discount rate) each had the effect of reducing Idearc’s value. Moreover, each of these factual assumptions was an outlier as compared to the assumptions used in contemporaneous DCF

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<sup>19</sup> Tr. Vol. 5A at 29:1-3. *See Delaware Open MRI Radiology Assocs., P.A. v. Kessler*, 898 A.2d 290, 339 (Del. Ch. 2006) (noting that “the company specific risk premium often seems like the device experts employ to bring their final results into line with their clients’ objectives, when other valuation inputs fail to do the trick”).

valuations of Idearc. *See, e.g.*, Tr. Vol. 5A at 17:12-20, 22:2-22, 28:16-29:3; Findings of Fact ¶¶ 153-155.

67. *Fifth*, Ms. Taylor’s decision to weight at 70 percent her discounted cash flow valuation — which, at \$5.4 billion to \$6.3 billion, was a clear outlier, even in comparison to the other valuations she testified that she relied upon in arriving at her valuation<sup>20</sup> — violated the standard valuation methodology for addressing outlier valuations. Tr. Vol. 4B at 30:11-33:6. Although Ms. Taylor testified that she followed that valuation methodology — and thoroughly investigated why her discounted cash flow valuation resulted in a value so much lower than market-based valuations, *see id.* at 32:19-22 — this Court finds that the evidence contradicts her testimony. As shown above, in her analysis, Ms. Taylor missed numerous pre- and post-Spin-Off disclosures of information that she contended were both material and never disclosed. Ms. Taylor also did not identify any methodology she used to conclude that these supposed non-disclosures — as opposed to her opinion that, in hindsight, *all* directories stocks were priced too high — inflated Idearc’s stock price.

68. In sum, Ms. Taylor was “unable to account for, to adequately explain or to reconcile the abundant market data that conflicts with [her] opinion, other than to question what the market knew.” *Iridium*, 373 B.R. at 293. She based her valuation opinion on “restated cash flow projections that were tailored for litigation purposes.” *Id.* Ms. Taylor did “not even attempt to show any market valuation of [Idearc] contemporaneous with the Spin-off that is anywhere close to the figures [she] urged” and, for this reason as well, her opinion provides “no credible evidence to justify setting aside [Idearc’s] stock price” as a measure of its value at the time of the

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<sup>20</sup> In arriving at her overall valuation, Ms. Taylor also valued Idearc at \$11.7 billion to \$13.2 billion using the “market multiple methodology” and at \$13.4 billion to \$15.8 billion using the “[c]omparable transaction methodology.” Tr. Vol. 4A at 114:7-25.

Spin-Off. *Campbell Soup*, 2005 WL 2234606, at \*26. At bottom, Ms. Taylor is simply “one analyst,” and her after-the-fact conclusions — even if sound, which they are not — are “apt to be [less] accurate” than a valuation drawn from the contemporaneous “price at which people actually [bought] and [sold], putting their money where their mouths are.” *Metlyn Realty*, 763 F.2d at 835.

69. Finally, Plaintiff did not move during trial to have the Court find Ms. Taylor qualified as an expert in any subject area. Plaintiff asserted at trial that Rule 702 does not require the Court to find that a proposed expert is qualified to offer opinions in a particular subject area.<sup>21</sup> The Court disagrees. Under Rule 702, as interpreted by the Supreme Court in cases such as *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), this Court “must be assured that the proffered witness is qualified to testify.” *Wilson v. Woods*, 163 F.3d 935, 937 (5th Cir. 1999); *see also Rothfos Corp. v. M/V NUEVO LEON*, 123 F. Supp. 2d 362, 371 (S.D. Tex. 2000) (court “must determine” whether witness is qualified to give proffered expert opinion). Although this Court has discretion “to determine *how* to perform its gatekeeping function,” it has “no discretion regarding the actual *performance* of the gatekeeper function.” *Goebel v. Denver & Rio Grande W.R.R. Co.*, 215 F.3d 1083, 1087 (10th Cir. 2000); *see* Fed. R. Evid. 104(a) (instructing that the trial court “must decide any preliminary question about whether a witness is qualified”).

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<sup>21</sup> Tr. Vol. 5B at 59:2-8 (arguing that, “under the new Rules of Evidence,” it is unnecessary to have “some formal proffer of the witness and [to] have her endorsed as an expert by the Court”); Tr. Vol. 10A at 30:25-31:1 (arguing that “the Rule just doesn’t require [the Court to qualify the witness as an expert on particular issues] anymore”). In fact, the 2000 amendment to Rule 702 “affirms the trial court’s role as gatekeeper,” and the committee notes state that “the admissibility of all expert testimony is governed by the principles of Rule 104(a).” Fed. R. Evid. 702 advisory committee’s note (2000 Amendment). The one subsequent amendment to Rule 702 was “intended to be stylistic only.” Fed. R. Evid. 702 advisory committee’s note (2011 Amendment).

70. Despite the fact that Plaintiff did not move during trial to have Ms. Taylor qualified as an expert in any subject area, it is clear to the Court that Plaintiff presented Ms. Taylor as an expert in the area of valuation. Defendants did not challenge Ms. Taylor's qualifications in the area of valuation, and the Court finds that Ms. Taylor is "qualified . . . by knowledge, skill, experience, training, or education" to offer opinion testimony in the area of valuation. Fed. R. Evid. 702. However, it is not clear whether Plaintiff sought to present Ms. Taylor as an expert during the Phase I trial in any other area. If that was Plaintiff's intent, the Court finds that the limited information Plaintiff elicited on Ms. Taylor's background in these areas was insufficient to prove that Ms. Taylor has sufficient qualifications in those areas.<sup>22</sup> *See Reid v. Albemarle Corp.*, 207 F. Supp. 2d 499, 501 (M.D. La. 2001) ("the burden is upon the party claiming that a witness is qualified in a particular field").

71. Furthermore, Plaintiff's decision not to move to have the Court find Ms. Taylor qualified to offer opinions in these areas appears to have been a strategic decision to deny Defendants the opportunity to *voir dire* Ms. Taylor on the limits of her expertise.<sup>23</sup> Even after this Court sustained Defendants' objection to one of Plaintiff's questions seeking an opinion from Ms. Taylor outside the area of valuation on the ground that "[t]here is no qualification of the witness to offer an expert opinion on anything," Plaintiff still did not seek to have the Court find Ms. Taylor qualified to offer expert opinions in these other areas.<sup>24</sup> Plaintiff's apparently

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<sup>22</sup> Plaintiff elicited limited testimony regarding Ms. Taylor's (1) "securities training and experience," Tr. Vol. 4A at 4:21-6:24; (2) background in investment banking, Tr. Vol. 3 at 11:25-12:5; (3) background in the telecommunications and yellow pages industries, *see id.* at 14:12-16:12, 32:25-35:10; (4) background in secured and "distress" debt restructuring and refinancing, *see id.* at 20:7-21:9, 30:1-24; (5) familiarity with corporate budget setting practices, *see id.* at 82:5-15; (6) experience in dealing with companies experiencing "bad debt" expenses, Tr. Vol. 4A at 69:21-70:6; and (7) experience in transactions raising tax issues, *see id.* at 111:4-112:3.

<sup>23</sup> Plaintiff was afforded — and took — that opportunity with respect to one of Defendants' expert witnesses. Tr. Vol. 7B at 111:6-116:5.

<sup>24</sup> Tr. Vol. 3 at 107:6-14.

strategic behavior provides the Court with additional support for its finding that Plaintiff did not meet its burden of proof that Ms. Taylor is qualified to offer expert opinions outside the area of valuation, assuming Plaintiff was seeking to elicit such opinion testimony.

**F. The Fair Market Value of Idearc at the Time of the Spin-Off Was at Least \$12.8 Billion**

72. In light of all of the evidence set forth above, the Court finds that the fair market value of Idearc at the time of the Spin-Off was at least \$12.8 billion. The Court finds further that Plaintiff failed to carry its burden of proving that the value of Idearc was less than the \$9.1 billion in debt that it incurred in connection with the Spin-Off or the \$9.6 billion in cash and notes that Verizon received from Idearc in exchange for the directories business. Indeed, the evidence as to the fair market value of Idearc's business at the time of the Spin-Off is so overwhelming that, if this case had been tried to a jury, the Court would have granted a motion for judgment as a matter of law under Rule 50(a), if one were made by Defendants at the close of trial.

*1. Judgment as a Matter of Law Under Rule 50(a)*

73. Plaintiff initially demanded a jury in this case. This Court struck Plaintiff's jury demand and later denied Plaintiff's motions for reconsideration and clarification. Mem. Op. & Order, ECF No. 288 (Mar. 21, 2012); Mem. Op. & Order, ECF No. 459 (July 25, 2012); Order, ECF No. 521 (Sept. 10, 2012). On September 17, 2012, Plaintiff petitioned the Fifth Circuit for a writ of mandamus seeking review of this Court's decision; the Fifth Circuit denied that petition on September 27, 2012.

74. Because this Court held a bench trial, it serves as the fact-finder and this case is governed by Federal Rule of Civil Procedure 52. After the conclusion of Plaintiff's case, Defendants moved for judgment on Phase I pursuant to Rule 52(c). The Court found that,

although it had “some doubts about whether the plaintiff has met its burden of proof,” “it would probably be better to have a full record on which to decide this case.” Tr. Vol. 5B at 64:9-13. The Court also noted the benefits to the Fifth Circuit of having a full record on which to decide the likely appeal in this case. *See id.* at 64:17-21.

75. Shortly before Defendants rested, and in advance of renewing their motion under Rule 52(c), Defendants filed a written notice requesting that the Court make a finding as to whether — had this case been tried to a jury — the Court would have granted a “directed verdict” pursuant to Federal Rule of Civil Procedure 50(a).<sup>25</sup> The Court did not make any finding on Defendants’ request at that time.

76. However, as the Court explained during trial, and as Plaintiff noted in a response filed after the close of trial, Rule 50(a) — which sets forth the procedure for seeking judgment as a matter of law, which previously was known as a directed verdict — applies in jury trials, not bench trials, and has a standard that differs from the standard under Rule 52. Tr. Vol. 10B at 68:22-69:18. Thus, Rule 50(a) does not apply here and does not govern the Court’s decision on the question of Idearc’s fair market value.

77. Defendants, however, have requested that the Court, in anticipation of a challenge to this Court’s decision to strike Plaintiff’s jury demand, make a finding that would serve to inform the Fifth Circuit whether — on the record presented — Plaintiff’s evidence was so deficient that the Court would have granted judgment as a matter of law on the issue of valuation if the case had been tried to a jury.

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<sup>25</sup> Defs.’ Joint Notice of Intent To Renew Mot. for J. Under Rule 52(c) at 3-4, ECF No. 607 (Oct. 25, 2012).

78. Plaintiff takes the position that it would be “improper[ ]” for this Court to address that issue.<sup>26</sup> The Court disagrees. The Court expects, given Plaintiff’s unsuccessful mandamus petition, that Plaintiff will seek to raise the jury issue on appeal in the event judgment is entered for Defendants. In the event of an appeal of the decision striking the jury demand, notwithstanding that court’s denial of Plaintiff’s pre-trial mandamus petition,<sup>27</sup> the Fifth Circuit could decline to address the jury issue if it finds that “the evidence could not have withstood a motion for a directed verdict at trial.” *McDonald v. Steward*, 132 F.3d 225, 230 (5th Cir. 1998) (internal quotation marks omitted); see *Bowles v. United States Army Corps of Eng’rs*, 841 F.2d 112, 117 (5th Cir. 1988) (“In a case in which the plaintiff’s case would not have survived a motion for a directed verdict, the denial of a jury trial is harmless error.”) (internal quotation marks omitted); see also Fed. R. Civ. P. 61 (setting forth harmless-error standard). Although this Court’s views on the sufficiency of the evidence are not dispositive on appeal — the Court’s finding would be reviewed *de novo*<sup>28</sup> — this Court believes that judicial economy would be served by making findings on that issue.<sup>29</sup>

79. The standard under Rule 50 is well established in this Circuit:

[T]he motion should be granted only if there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue. The Court should consider all of the evidence — not just that evidence which supports the non-mover’s case — but in the light and with all reasonable inferences most favorable to the party opposed to the motion. The court must not make credibility decisions

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<sup>26</sup> Pl.’s Resp. to Defs.’ Joint Notice of Intent To Renew Mot. for J. Under Rule 52(c) at 2 & n.2, ECF No. 610 (Oct. 29, 2012).

<sup>27</sup> At least one court of appeals has held that denial of such a mandamus petition “is the law of the case” in any subsequent appeal because — as Plaintiff claimed is the law in the Fifth Circuit — mandamus is the appropriate means of seeking appellate review of a decision striking a jury demand. See *Maldonado v. Flynn*, 671 F.2d 729, 732 (2d Cir. 1982) (per curiam).

<sup>28</sup> See, e.g., *MGE UPS Sys., Inc. v. GE Consumer & Indus., Inc.*, 622 F.3d 361, 365 (5th Cir. 2010).

<sup>29</sup> See, e.g., *Roscello v. Southwest Airlines Co.*, 726 F.2d 217, 221-24 (5th Cir. 1984) (undertaking an extensive examination of the record to determine whether denial of jury trial was harmless).

or weigh the evidence in making its determination. [T]o survive a Rule 50 motion, the party opposing the motion must at least establish a conflict in substantial evidence on each essential element of their claim. Ultimately, a court should not grant a Rule 50 motion unless the facts and inferences therefrom point so strongly and overwhelmingly in favor of the moving party that reasonable jurors could not have arrived at the verdict reached.

*Kilchrist v. Sika Corp.*, Civil Action No. 3:10-CV-2567-B, 2012 WL 3599383, at \*4 (N.D. Tex. Aug. 22, 2012) (citations and internal quotation marks omitted; second alteration in original).

Here, as detailed above, the evidence was wholly insufficient to allow any reasonable jury to find that the value of Idearc, on the date of the Spin-Off, was less than \$9.6 billion. Indeed, no reasonable jury could find that the value of Idearc was less than \$12.8 billion, the value implied by the closing price of Idearc's common stock on the NYSE on the date of the Spin-Off and corroborated — directly or circumstantially — by the contemporaneous views of every participant in the Spin-Off as well as by Defendants' expert testimony.

80. Therefore, the “facts and inferences [from the evidence] point so strongly and overwhelmingly in favor” of Defendants — and overwhelm what is, at most, the “mere scintilla of evidence” that Plaintiff has proffered — that “reasonable [people] could not arrive at a contrary verdict.” *McDonald*, 132 F.3d at 230 (internal quotation marks omitted). The evidence from the stock and bond markets, the documents containing contemporaneous valuations consistent with that evidence, the testimony from more than 15 percipient witnesses to the Spin-Off, the willingness of hundreds of sophisticated financial institutions to provide more than \$9.1 billion in financing, and the testimony from Defendants' valuation expert, Mr. Hopkins, all confirm that Idearc's fair market value was at least \$12.8 billion as of the date of the Spin-Off.

81. Against this, Plaintiff has no credible evidence of a valuation of Idearc less than \$12.8 billion, let alone less than the \$9.6 billion in cash and notes that Verizon received from Idearc in exchange for the directories business. For the reasons explained above, Ms. Taylor's

opinion that Idearc's common stock — which traded on the NYSE at a market capitalization of about \$3.8 billion — was in fact worthless and that Idearc's fair market value was less than the \$9.1 billion of debt it incurred in the Spin-Off is wholly unreliable. No witness other than Ms. Taylor supported Plaintiff's claim that Idearc's fair market value was less than \$9.1 billion.<sup>30</sup> Plaintiff did not introduce evidence sufficient to support its "four falsehoods" that, it claimed, rendered Idearc's stock price unreliable evidence of its fair market value. Indeed, as to most of them, it introduced no evidence at all. Finally, the handful of documents on which Plaintiff has consistently relied<sup>31</sup> — even read "in the light and with all reasonable inferences most favorable to" Plaintiff — are insufficient to "establish a conflict in substantial evidence on" the question of Idearc's fair market value, given the overwhelming evidence that Idearc's fair market value was at least \$12.8 billion. *Kilchrist*, 2012 WL 3599383, at \*4 (internal quotation marks omitted).

82. For these reasons, if this case had been tried to a jury, the Court would have granted a motion by Defendants for judgment as a matter of law under Rule 50(a), finding that Plaintiff had failed to carry its burden of proof that the fair market value of Idearc was less than \$9.6 billion and that no reasonable jury could have concluded otherwise.

2. *Judgment as Fact-Finder Under Rule 52*

83. As opposed to considering a motion under Rule 50(a) in a jury trial, where the Court sits as the fact-finder in a bench trial, the Court will resolve disputed issues of fact and make credibility determinations and is not required to give either party the benefit of any inferences from the evidence. *See, e.g., Complaint of Port Arthur Towing Co. on Behalf of M/V*

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<sup>30</sup> This includes Mr. Diercksen, whom Plaintiff called to testify as its first witness, as well as Mr. Seidenberg (Plaintiff played portions of his deposition and cross-examined him when Defendants called him to testify in their case-in-chief) and Ms. Xu (Plaintiff and Defendants played portions of her deposition). None of these individuals testified that Idearc's value was below \$9.6 billion.

<sup>31</sup> Those are PX27, PX121, PX243, and PX869.

*Miss Carolyn*, 42 F.3d 312, 318 (5th Cir. 1995) (per curiam) (stating, with respect to the court’s findings in a bench trial, “[w]eighing conflicting evidence and inferences and determining the relative credibility of witnesses to resolve factual disputes is the [factfinder’s] province”) (second alteration in original); *City of New Orleans for Use & Benefit of Sewerage & Water Bd. of New Orleans v. American Commercial Lines, Inc.*, 662 F.2d 1121, 1123 (5th Cir. 1981) (“[i]t is too well established to require extensive citation that credibility choices and the resolution of conflicting testimony are within the province of the court sitting without a jury”) (internal quotation marks omitted).<sup>32</sup> As explained above, even giving Plaintiff the benefit of all reasonable inferences from the evidence and without making credibility decisions, it is clear that Defendants must prevail on the issue of Idearc’s fair market value on the date of the Spin-Off. Without the benefit of those inferences, and with the Court free to make credibility determinations, the outcome of Phase I is clearer still.

84. As set forth above, the Court found credible Defendants’ witnesses’ testimony with regard to their actions in connection with the Spin-Off. *See, e.g.*, Findings of Fact ¶¶ 44-58, 75-86, 136-141.

85. In contrast, the Court finds that the documents on which Plaintiff relies cannot bear the weight that Plaintiff places on them. *See, e.g.*, Findings of Fact ¶¶ 122, 130, 135, 144.

86. The same is true of the testimony on which Plaintiff relies. *See, e.g.*, Findings of Fact ¶¶ 104, 122, 144, 146-155.

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<sup>32</sup> *See also, e.g., Diesel Props S.r.l. v. Greystone Bus. Credit II LLC*, 631 F.3d 42, 52 (2d Cir. 2011) (“When the district court is sitting as trier of fact, it has no obligation to draw a given inference merely because it is supportable; nor has it any obligation, in its capacity as trier of fact, to view the evidence in the light most favorable to a particular party. The obligations of the court as the trier of fact are to determine which of the witnesses it finds credible, which of the permissible competing inferences it will draw, and whether the party having the burden of proof has persuaded it as factfinder that the requisite facts are proven.”) (internal quotation marks and alterations omitted).

87. In sum, the record convincingly shows that Idearc's fair market value was at least \$12.8 billion on the date of the Spin-Off.

### **CONCLUSION**

88. The Court holds, based on the findings of fact and conclusions of law set forth above, that the fair market value of Idearc on the date of the Spin-Off was at least \$12.8 billion and that Plaintiff failed to carry its burden of proof that the fair market value of Idearc was less than \$9.6 billion. In light of the Court's prior rulings on Defendants' motions to dismiss and the parties' cross-motions for summary judgment, it appears to the Court that its decision on the fair market value of Idearc on the date of the Spin-Off — in combination with those other decisions — requires the entry of judgment in Defendants' favor on all of Plaintiff's remaining claims in this case. Plaintiff is therefore ordered to show cause, within 30 days of the entry of this order, why judgment should not be entered against it and in favor of Defendants on all remaining claims.

Dated: November 16, 2012

Respectfully submitted,

s/ E. Leon Carter

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**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system pursuant to the Court's Local Rules this 16th day of November 2012.

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