

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11  
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COMMERCECONNECT MEDIA : Case No. 09-12765 (BLS)  
HOLDINGS, INC. et al., :   
: (Jointly Administered)  
Debtors. :   
: **Hearing Date: September 8, 2009 at 1:00 p.m.**  
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**LIMITED OBJECTION OF GENESIS CLO 2007-2 LTD TO (A) MOTION TO  
APPROVE ADEQUACY OF DISCLOSURE STATEMENT AND; (B) MOTION TO  
APPROVE JOINT PLAN OF REORGANIZATION**

Genesis CLO 2007-2, Ltd. (together with its affiliates, “Genesis”) hereby objects to the Debtors’ Proposed Disclosure Statement and Proposed Joint Plan of Reorganization (the “Proposed Plan”) and respectfully states as follows:

**OBJECTIONS TO THE JOINT REORGANIZATION PLAN**

1. Genesis is owed approximately \$5,889,817.33 in principal amount of the Debtors’ First Lien Facility. Genesis does not believe that the Proposed Plan is in the best interests of the First Lien lenders because the Plan provides for too much conversion of the First Lien debt to equity of the reorganized Debtors and the Second Lien lenders should not be receiving anything under any reorganization plan.

2. Specifically, the Proposed Plan would provide a 38% recovery in the form of a new Secured Note with a very high coupon and 62% recovery in the form of equity in the reorganized company. The debt service requirements of the reorganized company are approximately equal to the run-rate of cash flow generation (\$6.7MM of EBITDA according to

CFO James Ogle, versus \$5.85 million interest expense \$0.6 million amortization and \$0.1 million agency fee) and as such the reorganized company will have very limited ability to re-invest in performance improving initiatives. Consequently, the high proportion of recovery received in the form of equity consideration is likely to have little, if any, value upon confirmation of the proposed plan and thereafter. And when the inevitable chapter 22 occurs, the First Lien Lenders will have compromised an unreasonably excessive amount of their debt claims for equity, which will be junior to the claims of all other creditors in a subsequent bankruptcy case.

3. In sum, Genesis believes that the economics to which the First Lien lenders are entitled have been unnecessarily sacrificed for a “consensual deal” and the capital structure upon emergence will be tested in a subsequent chapter 22, with the First Lien Lenders holding less debt than they should.

4. Notwithstanding the foregoing, Genesis recognizes that the Plan likely either meets the required elements for confirmation or the cost of contesting Plan confirmation will outweigh any anticipated benefits to Genesis.

5. However, Genesis objects and does not consent to the provisions of the Plan which seek to release or compromise the claims of Genesis against third parties and requests that such claims be preserved and not impacted in any way by confirmation of the Proposed Plan.<sup>1</sup> For example, Article VII.C.3 contains the following provision:

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<sup>1</sup> Non-consensual releases of non-debtor third parties are highly controversial and not routinely approved. See e.g., *In re Continental Airlines*, 203 F.3d 203, 212 (3<sup>rd</sup> Cir. 2000); *In re Metromedia Fiber Network, Inc. et al.*, 416 F.3d 136, 142 (2<sup>nd</sup> Cir. 2005)(“a non-debtor release is a device that lends itself to abuse.”); *In re Coram Healthcare Corp.*, 315 B.R. 321, 336 (Bankr. D. Del. 2004)(citing cases holding non-consensual releases could not  
(continued...)

Notwithstanding anything contained herein to the contrary, on the Effective Date and effective as of the Effective Date, each Holder of Claim who receives a Distribution under the Plan shall provide a full discharge and release (and each Entity so released shall be deemed released) to the Plan Sponsor and its Affiliates and each of their respective directors, officers, employees, members, attorneys, financial advisors, accountants, investment bankers, investment advisors, actuaries, Professionals, agents and representatives, each in their respective capacities as such, and their respective property from any and all causes of action, whether know or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing as of the Effective Date in law, at equity, whether for tort, fraud, contract, violations of federal or state securities laws or otherwise, arising from or related in any way to the Debtors, including, without limitation, those in any way related to the Chapter 11 Cases or the Plan; provided, however, that the foregoing Plan Sponsor release shall not operate to waive or release any causes of action (a) arising from any contractual obligations, (b) expressly set forth in and preserved by the Plan, the Plan Supplement or related documents, or (c) arising from claims for willful misconduct or gross negligence.

6. Section VII.C.1 and VII.C.2 also contain releases (and any related plan injunctions) which should not be construed to release any claims Genesis has against any third parties (directly or indirectly).

7. This is not a hypothetical concern. Genesis is informed and believes that the Plan Sponsor and the Chief Financial Officer (“CFO”) of the Debtors took steps prior to the Petition Date (and perhaps thereafter) to deprive the Debtors of the full and complete services of the CFO and diverted the CFO’s attention to at least one other portfolio company owned or managed by the Plan Sponsor. Genesis’s investigation is ongoing, but it very well may be the case that Genesis has claims against the Plan Sponsor, the CFO and others and any such claims

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be approved); *In re Zenith Elect. Corp.*, 241 B.R. 92, 111 (Bankr. D. Del. 1999)(same). *See also, In re Zenith Electronics Corp.*, 241 B.R. 92, 111 (Bankr. D. Del. 1999) (holding that releases of non-derivative third-party claims against non-debtor “cannot be accomplished without the affirmative agreement of the creditor affected.”) Thus, it is not at all clear that Bankruptcy Courts are jurisdictionally able to order the release by a creditor of the Debtors of a third party non-debtor when that creditor does not consent. Genesis does not consent to the release of any of its claims against third parties.

should not be negatively impacted by the Plan or the Order Confirming the Plan. The Plan should be modified and the Order Confirming the Plan should clearly carve out from any releases and injunctions under the Plan (and any other provisions of the Plan that would yield the same result as a release, directly or indirectly) any claims Genesis has against the Plan Sponsor, the CFO and any and all third parties (including the Debtors' advisors) which existed prior to the Effective Date of the Plan.

### **OBJECTIONS TO THE PROPOSED DISCLOSURE STATEMENT**

8. Akin to the foregoing, Genesis respectfully submits that the Disclosure Statement requires the following additional disclosure before it can be approved:

- Any investigation undertaken by the Debtors or their advisors with respect to potential claims of the Debtors against the Plan Sponsor (e.g., return of management fees or other distributions, and/or the irregularity of the Plan Sponsor diverting the attention of the Debtors' CFO to other Plan Sponsor portfolio companies) or any other Released Parties which are being released under the Plan;
- The results and conclusions of any such investigation and by whom it was undertaken;
- Why a release of the Plan Sponsor and other third parties is necessary;
- What claims, if any, are preserved by the Plan, the Plan Supplement or related documents;

- What analysis has been undertaken to justify the release of all avoidance actions under the Plan

**WHEREFORE**, Genesis respectfully requests that the Court enter an order consistent with this Objection.

Dated: August 31, 2009  
Wilmington, Delaware

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*/s/ Carl D. Neff*

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