

**FAIRFAX CIRCUIT COURT
CIVIL CASE COVERSHEET**

Parties:

Plaintiffs	Defendants
1. John DeGroote Services, LLC and John DeGroote,	1. F. Edwin Harbach, et al.
2. as liquidating trustee for and on behalf of the	2.
3. Bearingpoint, Inc. Liquidating Trust	3.

Plaintiff proceeding without Counsel – Address and Phone number required on Complaint

Plaintiffs Attorney:

Name: Andrew J. Terrell	Bar ID: 30093
Firm: Whiteford, Taylor & Preston, LLP	
Street: 3190 Fairview Park Drive, Suite 300	
City: Falls Church	State: VA Zip: 22042
Phone Number: (703) 280-9260	Fax Number: (703) 280-9139

Nature of Complaint (Check only one)

*** Cases in the Civil Tracking Program**

<input type="checkbox"/> Administrative Appeal	<input type="checkbox"/> Defamation *	<input type="checkbox"/> Malpractice – Medical *
<input type="checkbox"/> Affirmation of Marriage	<input type="checkbox"/> Delinquent Taxes *	<input type="checkbox"/> Mechanics/Vendors Lien *
<input type="checkbox"/> Aid & Guidance	<input type="checkbox"/> Eminent Domain	<input type="checkbox"/> Partition *
<input type="checkbox"/> Appeal Decision of Board of Zoning	<input type="checkbox"/> Encumber/Sell Real Estate	<input type="checkbox"/> Personal Injury – Assault *
<input type="checkbox"/> Appeal of Process/Judicial Appeal	<input type="checkbox"/> Erroneous Assessments	<input type="checkbox"/> Personal Injury – Auto *
<input type="checkbox"/> Appointment of Church/Organization Trustees	<input type="checkbox"/> Expungement	<input type="checkbox"/> Personal Injury – Emotional *
<input type="checkbox"/> Arbitration	<input type="checkbox"/> False Arrest/Imprisonment*	<input type="checkbox"/> Personal Injury – Premises Liability*
<input type="checkbox"/> Attachment	<input type="checkbox"/> Fiduciary/Estate Complaint	<input type="checkbox"/> Property Damage*
<input type="checkbox"/> Complaint – Equity *	<input type="checkbox"/> Garnishment – Federal – 180 days	<input type="checkbox"/> Products Liability*
<input type="checkbox"/> Complaint – Legal Cause of Action *	<input type="checkbox"/> Garnishment – Wage – 180 days	<input type="checkbox"/> Quiet Title *
<input type="checkbox"/> Compromise Settlement	<input type="checkbox"/> Garnishment – Other – 90 days	<input type="checkbox"/> Real Estate *
<input type="checkbox"/> Condemnation*	<input type="checkbox"/> Guardian/Conservator Adult	<input type="checkbox"/> Restoration of Driving Privilege
<input type="checkbox"/> Confession of Judgment	<input type="checkbox"/> Guardianship/Minor	<input type="checkbox"/> Vital Record Correction
<input type="checkbox"/> Construction *	<input type="checkbox"/> Injunction	<input type="checkbox"/> Writ Habeas Corpus
<input type="checkbox"/> Contract *	<input type="checkbox"/> Interpleader	<input type="checkbox"/> Writ Mandamus
<input type="checkbox"/> Conversion*	<input type="checkbox"/> Insurance *	<input type="checkbox"/> Wrongful Death*
<input type="checkbox"/> Court Satisfaction of Judgment	<input type="checkbox"/> Judicial Review	<input type="checkbox"/> Wrongful Discharge *
<input type="checkbox"/> Declare Death	<input type="checkbox"/> Malicious Prosecution *	<input checked="" type="checkbox"/> OTHER: Breach of fiduciary duty
<input type="checkbox"/> Declaratory Judgment *	<input type="checkbox"/> Malpractice – Legal *	

Damages in the amount of \$ 1.88 billion dollars + are claimed.

Requested Service: Sheriff Private Process Server DMV Secretary of Commonwealth
 State Corporation Commission Publication No Service at this time

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

JOHN DeGROOTE SERVICES, LLC and JOHN DeGROOTE, as liquidating trustee for and on behalf of the BEARINGPOINT, INC. LIQUIDATING TRUST

Plaintiffs,

v.

F. EDWIN HARBACH
400 Alton Road, Apt. 1001
Miami Beach, Florida 33139,

ALBERT L. LORD
1805 River Watch Lane
Annapolis, Maryland 21401,

RODERICK C. MCGEARY
1911 Waverley Street, #202
Palo Alto, California 94301,

J. TERRY STRANGE
2226 Mimosa Drive
Houston, Texas 77019,

DOUGLAS C. ALLRED
47 Valley Road
Atherton, California 94027,

BETSY J. BERNARD
40 Shalebrook Drive
Morristown, New Jersey 07960,

SPENCER C. FLEISCHER
2120 Washington Street
San Francisco, California 94109-2845,

JILL KANIN-LOVERS
117 Valley Forge Road
Weston, Connecticut 06883,

and

FILED
CIVIL INTAKE

2011 JUL 21 PM 3:14

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

COPY

Civil Action No. 2011-10612

JURY TRIAL DEMANDED

EDWARD MUNSON)
5879 Murfield Drive)
Rochester, Michigan 48306,)
Defendants.)

COMPLAINT

COME NOW Plaintiffs John DeGroote Services LLC and John DeGroote (together “the Trustee” or “Plaintiff”) as liquidating trustee for and on behalf of the BearingPoint, Inc. Liquidating Trust (the “Liquidating Trust”) for the Trustee’s complaint against Defendants F. Edwin Harbach, Albert L. Lord, Roderick C. McGeary, J. Terry Strange, Douglas C. Allred, Betsy J. Bernard, Spencer C. Fleischer, Jill Kanin-Lovers, and Edward Munson, and allege as follows:

INTRODUCTION

1. In July 2007, BearingPoint, Inc. was one of the largest professional and IT consulting firms in the world, with an aggregate value of as much as \$2.3 billion. Nineteen months later, in February 2009, BearingPoint was bankrupt, and was later liquidated, yielding approximately \$396 million in net proceeds. This Complaint seeks redress for the egregious breaches of fiduciary duty that caused this massive loss, and identifies the abject failure of BearingPoint’s directors to develop, manage and oversee the Company’s sales process, instead allowing it to be dominated by a self-interested Chief Executive Officer who had a personal interest in ignoring significant segments of the marketplace in order to maintain his management position, vest certain equity interests, and obtain new equity holdings in the purchasing entity. The failures of the directors were avoidable, and directly resulted in the tragic decline of the Company’s value and inability to obtain the best price available for its assets, which the directors could have achieved by either selling the Company as a whole for a price in the approximate

EDWARD MUNSON
5879 Murfield Drive
Rochester, Michigan 48306,

Defendants.

COMPLAINT

COME NOW Plaintiffs John DeGroote Services LLC and John DeGroote (together “the Trustee” or “Plaintiff”) as liquidating trustee for and on behalf of the BearingPoint, Inc. Liquidating Trust (the “Liquidating Trust”) for the Trustee’s complaint against Defendants F. Edwin Harbach, Albert L. Lord, Roderick C. McGeary, J. Terry Strange, Douglas C. Allred, Betsy J. Bernard, Spencer C. Fleischer, Jill Kanin-Lovers, and Edward Munson, and alleges as follows:

INTRODUCTION

1. In July 2007, BearingPoint, Inc. was one of the largest professional and IT consulting firms in the world, with an aggregate value of as much as \$2.3 billion. Nineteen months later, in February 2009, BearingPoint was bankrupt, and was later liquidated, yielding approximately \$396 million in net proceeds. This Complaint seeks redress for the egregious breaches of fiduciary duty that caused this massive loss, and identifies the abject failure of BearingPoint’s directors to develop, manage and oversee the Company’s sales process, instead allowing it to be dominated by a self-interested Chief Executive Officer who had a personal interest in ignoring significant segments of the marketplace in order to maintain his management position, vest certain equity interests, and obtain new equity holdings in the purchasing entity. The failures of the directors were avoidable, and directly resulted in the tragic decline of the Company’s value and inability to obtain the best price available for its assets, which the directors could have achieved by either selling the Company as a whole for a price in the approximate

range of \$1.0 to \$1.4 billion or by selling the company's businesses for an aggregate price of \$1.54 to \$2.3 billion. Instead, the directors' failures led to the company's bankruptcy and liquidation of its business units and other assets yielding net proceeds of approximately \$396 million, resulting in losses of \$627 million to \$1.88 billion.

2. As members of the Board of Directors (the "Board") of BearingPoint, Inc. (with its affiliates, "BearingPoint" or the "Company"), each of the Defendants had a fiduciary duty to actively prepare, determine, develop, and manage a strategy to pursue and maximize the highest value for the Company. This responsibility included the obligation to participate, actively and directly, in the management and oversight of the sales process, and to examine, explore, understand, and become fully informed of the sale options. As they were advised by management and by independent professional financial advisors, these options included: (i) finding and selling the Company as a whole to a strategic buyer, *i.e.* a buyer already engaged in a similar business; (ii) finding and selling the Company as a whole to a financial buyer, *i.e.* a private equity buyer; or (iii) selling the Company's various discrete business units to separate purchasers.

3. As detailed further below, the Defendants consciously disregarded and abdicated their fiduciary duties by, among other things, ignoring buyers in two of the three large segments of the sales market—strategic buyers of the whole and buyers of business units—effectively allowing the sales process to hinge upon the willingness of a financial (private equity) buyer to purchase the whole Company. This wrongful limitation occurred even though the Company's financial advisors told both the Board and the CEO that the critical strategic buyer market "should not be ignored," that the sale of parts could yield a higher value, and presented them with the specific identities of numerous potential strategic buyers of the whole Company as well

as buyers interested in the purchase of individual business units. One of the Company's financial advisors advised the defendants that it was ready to bring strategic buyers to the table, including two that already had their own boards' approval to proceed, while the Company's General Counsel, whose advice was repeatedly ignored by the Defendants, was forced to warn them that proceeding with fewer than all interested parties was "the kind of decision that could be revisited in litigation," and thus the Company had to have "at least one active, strategic alternative to private equity bids"

4. The defendants further abdicated their fiduciary responsibilities by delegating the flawed sales process to a conflicted director, Defendant F. Edwin Harbach, who as the Company's Chief Executive Officer, deflected marketplace interest by commandeering and manipulating the sales process in a self-interested effort to preserve and enhance his personal interests, including a continued management role and monetizing current and newly obtained equity in a prospective sale. Harbach effectively limited the sales process to pursuit of a sale of BearingPoint as a whole to a financial/private equity buyer that would provide for these benefits. The Defendants, including those who were later appointed to a purported "Special Committee," knowingly permitted this conduct to occur, in conscious disregard of repeated, direct warnings, advice, evidence, and pleas, as well as direct, personal knowledge that it *was* occurring, in direct contravention of their obligation to ensure that the process was yielding maximum value.

5. Not surprisingly, the ultimate negotiations with Defendant Harbach's chosen financial buyer, Cerberus Capital Management L.P. ("Cerberus"), failed. In pursuit of his personal interests, including an unreasonable demand for additional equity holdings, Harbach had funneled the opportunity for him to obtain such benefits to a potential sale with Cerberus. The negotiations, however, were so beset by conflicts and a flawed process that the Company's

then-financial advisor was forced to tell the other Defendants, after months of negotiations, that Cerberus was “choking” on Harbach’s equity demands and to request the other Defendants’ intervention into the process—intervention that never occurred. Less than three weeks later, Cerberus ceased negotiations, and thereafter, in February 2009, the Company filed for bankruptcy as a result of its foreseeable cash liquidity crisis. The Company, as was inevitable for a company such as BearingPoint, was liquidated soon thereafter. The bankruptcy of a professional services firm with operations around the globe, as all Defendants knew far in advance, meant devastating loss to the value of its business units and the overall enterprise, as well as loss of numerous jobs for employees. All of these losses could have been avoided had the Defendants complied with their fiduciary duties, but, tragically, they did not. This case demands redress for these losses for the benefit of the Company and its creditors.

PARTIES

6. On February 18, 2009, BearingPoint commenced chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). Pursuant to an order (the “Confirmation Order”) of the Bankruptcy Court confirming the Debtors’ Modified Second Amended Joint Plan Under Chapter 11 of the Bankruptcy Code dated December 17, 2009 (the “Plan”), the Bankruptcy Court established the BearingPoint, Inc. Liquidating Trust to liquidate the assets of BearingPoint, pursue causes of action of BearingPoint, and distribute proceeds of asset sales and litigation to creditors of BearingPoint. Specifically, the Plan and the Confirmation Order assigned causes of action of BearingPoint to the Liquidating Trust (*see* Confirmation Order at ¶¶ GGG, 37), and conferred on the Trustee the authority to prosecute on behalf of the Liquidating Trust “any and all Causes of Action, including, but not limited to, any and all avoidance . . . actions, recovery causes of action and objections to Claims” Confirmation Order at ¶ 37; Plan at §§ 5.7(g), 10.9.

7. The Trustee is the Court-appointed Trustee who succeeded to the rights of BearingPoint to pursue causes of action and is a limited liability company organized under the laws of Delaware. John DeGroote, a resident of Texas, is the sole member of John DeGroote Services, LLC.

8. Defendant F. Edwin Harbach is an individual and citizen of the United States, who, on information and belief, resides in the State of Florida. On November 30, 2007, the Board appointed Harbach, pursuant to 8 Del. C. §§ 142 & 223(a)(1), as Chief Executive Officer of BearingPoint (effective as of December 3, 2007), and elected Harbach a director of BearingPoint. At all relevant times, Harbach served as BearingPoint's chief executive officer and a director.

9. Defendant Albert L. Lord is an individual and citizen of the United States who, on information and belief, resides in Annapolis, Maryland. As of February 6, 2003, and at all relevant times, Lord served on the Board. As of May 15, 2008, Lord was appointed to and served on a supposed independent committee of the Board charged with the responsibility of reviewing, evaluating, and negotiating the terms and condition of a sale transaction with purchasers (the "Special Committee").

10. Defendant Roderick C. McGeary is an individual and citizen of the United States who, on information and belief, resides in Palo Alto, California. As of November 1999, and at all relevant times, McGeary served on the Board. As of May 15, 2008, McGeary was appointed to and served on the Special Committee.

11. Defendant J. Terry Strange is an individual and citizen of the United States who, on information and belief, resides in Houston, Texas. As of April 29, 2003, and at all relevant

times, Strange served on the Board. As of May 15, 2008, Strange served as the Chairman of the Special Committee.

12. Defendant Douglas C. Allred is an individual and citizen of the United States who, on information and belief, resides in California. At all relevant times to the allegations in this Complaint, Allred served on the Board.

13. Defendant Betsy J. Bernard is an individual and citizen of the United States who, on information and belief, resides in New Jersey. At all relevant times to the allegations in this Complaint, Bernard served on the Board.

14. Defendant Spencer C. Fleischer is an individual and citizen of the United States who, on information and belief, resides in California. At all relevant times to the allegations in this Complaint, Fleischer served on the Board.

15. Defendant Jill Kanin-Lovers is an individual and citizen of the United States who, on information and belief, resides in Connecticut. At all relevant times to the allegations in this Complaint, Kanin-Lovers served on the Board.

16. Defendant Edward Munson is an individual and citizen of the United States who, on information and belief, resides in Michigan. At all relevant times to the allegations in this Complaint, Munson served on the Board. Lord, McGeary, Strange, Harbach, Allred, Bernard, Fleischer, Kanin-Lovers, and Munson are all referred to collectively herein as the "Director Defendants" or the "Board."

JURISDICTION AND VENUE

17. This Court has jurisdiction pursuant to Va. Code Ann. § 17.1-513 and § 8.01-328.1(A). All of the Defendants over the course of several years regularly conducted and transacted business in the Commonwealth of Virginia, and specifically, Fairfax County, the location of BearingPoint's headquarters, by, among other things, attending Company board and

other committee meetings in person and telephonically in McLean, Virginia, managing the affairs of the Company through its headquarters in Virginia, and agreeing to provide corporate governance services to the Company as directors under its corporate policies. Defendants Fleischer, Lord, Strange, Munson, Allred, Harbach and McGeary also attended committee meetings in Virginia in furtherance of their role as directors. Defendant Harbach, in addition to the above, managed the Company in Virginia as chief operating officer and chief executive officer, interfaced with the Company's auditors located in McLean, Virginia, and attended meetings in addition to Board meetings including budget meetings, executive committee meetings, client meetings, meetings with employees, and a shareholder meeting. Defendant Munson was employed by the Company and provided employment services in Virginia. Defendant Lord was employed at a company located in Virginia, and he resided and owned real property in Virginia. Certain of the Defendants also used the Company's computer network, and all Defendants, by their acts and omissions, caused tortious injury to the Company in the Commonwealth of Virginia as described herein, and derived fees from services rendered in the Commonwealth.

18. Venue is proper in the Court pursuant to Va. Code Ann. § 8.01-262(4).

FACTS

BearingPoint Grew to Become a Leading Global Consulting Firm

19. Prior to 2009, BearingPoint was a management and technology consulting company that provided consulting services for private and government clients around the world. At all relevant times, its world headquarters was located in McLean, Virginia.

20. BearingPoint's corporate and business roots lay in the consulting arm of the accounting firm KPMG LLP. On January 31, 2000, KPMG LLP transferred its consulting

business to a newly-formed corporate entity, and on February 8, 2001, that entity began to trade on the NASDAQ National Market under the name KPMG Consulting, Inc.

21. On October 2, 2002, KPMG Consulting, Inc. changed its name to BearingPoint, Inc. and its common stock began to trade on the New York Stock Exchange under the symbol "BE."

22. BearingPoint generated revenues through fee-based consulting contracts with customers, many of which were governments or government agencies. Its core business was providing business consulting services, often concerning the installation, use, and management of information technology.

23. In the early years of the last decade, BearingPoint grew rapidly and internationally through debt-financed acquisitions, quickly becoming, on a revenue-generating basis, one of the world's leading providers of management and technology consulting services.

24. In 2006, BearingPoint reported annual net revenues of approximately \$2.55 billion and gross profits of approximately \$550.53 million.

25. In 2007, BearingPoint reported annual net revenues in the range of approximately \$2.64 billion, and gross profits of approximately \$468.53 million.

26. In neither 2006 nor 2007 did BearingPoint's gross profits exceed its selling, general, and administrative expenses, interest and other debt-related costs, with the result that in both years BearingPoint reported a net loss.

27. At all times relevant to this Complaint, BearingPoint's operations were divided into domestic and international business units. Domestically, BearingPoint's operations included the Public Services business unit, which contracted with governments and government agencies, the Commercial Services business unit, which did business with a range of commercial and

industrial customers, and the Financial Services business unit, which focused on the financial services industry. BearingPoint's international business units were divided into the Europe, Middle East and Africa ("EMEA"), Asia Pacific ("APAC"), and Latin America business units.

28. BearingPoint enjoyed strong performance from certain of its business units, most notably the Public Services business unit. The Public Services business unit consulted to large federal and state agencies, such as the United States Departments of Defense; Homeland Security; and Interior; provincial, state and local governments; defense contractors; and institutions of higher learning. In 2007, the Public Services business unit's net revenues were approximately \$1 billion, according to BearingPoint's 2008 Form 10-K. Evidence indicates that in 2007, the Public Services business unit generated earnings before income taxes, depreciation, and appreciation ("EBITDA") of approximately \$283 million.

29. BearingPoint also received significant revenue from its Commercial Services business unit, which consulted to corporate clients across a broad range of industries, including life sciences, energy, consumer industries, manufacturing, and utilities. Key customers included Microsoft and Chevron. In 2007, according to BearingPoint's 2008 Form 10-K, the Commercial Service business unit's net revenues were \$400.3 million, and evidence indicates that it generated EBITDA of approximately \$65 million.

30. The EMEA business unit served clients in sixteen countries. In 2007, the EMEA business unit generated net revenues of \$671.9 million and EBITDA of \$141.7 million.

31. The APAC business unit served clients in Asia and the South Pacific region. In 2007, the APAC business unit generated net revenues of \$271.4 million, with EBITDA of \$74 million. In 2007 and 2008, the APAC business unit was generally regarded as a unit that had good prospects of generating rapid growth in Chinese and other Asian markets.

32. The Financial Services and Latin American business units were less successful at the business unit level, but they provided BearingPoint with an expanded business and marketing reach, and larger global footprint to service BearingPoint's clients.

BearingPoint had Ongoing Financial Reporting Problems

33. BearingPoint's rapid growth in the early 2000's contributed to significant problems in its financial and accounting functions. Also, BearingPoint's foreign business units were not part of BearingPoint's central financial and accounting systems, but maintained separate legacy systems, further aggravating the financial and accounting problems. Those accounting problems, in conjunction with mounting debt obligations, forced BearingPoint's Board and management to focus on stabilizing the Company's financial reporting systems year after year.

34. In September 2003, BearingPoint acknowledged in its Form 10-K filed with the Securities and Exchange Commission ("SEC") that material weaknesses existed in its internal controls.

35. In 2004, BearingPoint introduced a new financial accounting system known as "OneGlobe." The system later proved unreliable, and aggravated problems with internal controls and required reporting.

36. In November 2004, BearingPoint acknowledged in a Form 10-QA filed with the SEC that it had materially overstated its accounts receivable. Its chief executive and financial officers resigned.

37. In April 2005, BearingPoint warned in a Form 8-K filed with the SEC that its recent financial statements were not reliable, and that the Company was the target of an informal SEC investigation.

38. Several securities fraud lawsuits were filed against BearingPoint and certain of its former officers in April 2005. The suits contended that classes of shareholders had suffered damages as a result of materially misleading financial reporting.

39. In response to these adverse developments, BearingPoint hired Harry You as its new chief executive officer in March 2005. You had received a degree in economics from Harvard College and a master's degree from Yale University, and had served as a managing director in the investment banking division of Morgan Stanley, leading its computer and business services group. When BearingPoint went public in 2001, You was part of the Morgan Stanley team that led the offering. From 2001 through 2004, You was the chief financial officer of Accenture Ltd. Prior to his appointment at BearingPoint in 2005, You served as executive vice president and chief financial officer of Oracle Corporation.

40. BearingPoint's appointment of You signaled recognition by the Board that the Company's top priorities included stabilizing its accounting function, and developing a sale or other disposition strategy to meet mounting debt obligations.

BearingPoint's Borrowings Caused a Mounting Liquidity Crisis

41. In 2001, BearingPoint's predecessor, KPMG Consulting, raised approximately \$2.3 billion in equity capital through an initial public offering.

42. To finance its rapid global growth through the early 2000's, BearingPoint obtained increasing levels of debt from capital markets.

43. In late 2004 and early 2005, BearingPoint raised \$450 million by issuing convertible subordinated debentures (denominated Series "A" and "B" notes). In April 2005, it issued an additional \$200 million in senior convertible subordinated debentures—the so-called Series "C" Notes—which carried the right to compel the Company to repurchase the notes at par value at specific dates, including April 15, 2009.

44. In July 2005, BearingPoint issued another \$40 million in face amount of unsecured notes.

45. As BearingPoint expanded, it became clear that its global operations were unable to support the debt load that had been undertaken to acquire and develop them. As a result, the need for a divestiture was approaching the inevitable.

46. In addition, BearingPoint was facing a litany of operational, legal, and macroeconomic obstacles that lessened the likelihood of BearingPoint's chances of surviving as a going concern. BearingPoint also continued to devote massive resources to implementation of yet another financial accounting and reporting infrastructure in an effort to timely produce reliable information necessary to operate the Company consistent with its duties as a substantial government contractor and as a public company.

47. BearingPoint also suffered cash flow shortages from its inability to repatriate cash from some of its international business units, and due to its defense of several lawsuits and government actions, including several significant actions brought or threatened by clients and SEC investigations relating to the Company's inability to timely file periodic reports with the SEC, and the restatement of prior financial statements to correct accounting errors and departures from generally accepted accounting principles.

BearingPoint Hired Harbach as Chief Operating Officer

48. In this environment of growing debt obligations and increasingly burdensome operational and legal hurdles, BearingPoint's Board appointed Defendant Harbach as its President and Chief Operating Officer in early 2007, reporting to You.

49. Before joining BearingPoint, Harbach had been in retirement for two years, following service with BearingPoint's competitor, Accenture, managing its operations in Tokyo, Japan. He had grown wealthy in that position. He had never worked as a consultant at

BearingPoint—and never would—but was interested in joining BearingPoint to achieve the upside potential of BearingPoint’s equity as his compensation.

50. In that regard, BearingPoint awarded Harbach an equity-heavy compensation package that included, among other things, a base salary of \$700,000, a sign-on bonus of \$1 million, a targeted annual bonus of up to \$700,000, and an equity grant, consisting of 888,325 restricted stock units. Each of the restricted stock units (“RSUs”) represented a right to receive one share of BearingPoint, Inc. common stock, or the cash equivalent. Harbach’s RSUs were scheduled to vest ratably on the anniversary of the grant in 2008, 2009, 2010, and 2011, so long as Harbach remained employed through a respective vesting date. At the time of the grant, the RSUs represented \$7,000,000 worth of BearingPoint stock.

BearingPoint Exhausted its Borrowing Abilities in 2007

51. At the beginning of 2007, BearingPoint faced an acute liquidity shortfall. Prior to 2007, nearly all of BearingPoint’s major debt obligations (apart from various credit facilities entered into from time to time) were unsecured. By the first quarter of 2007, however, BearingPoint was unable to raise further debt capital without giving collateral as security.

52. To address BearingPoint’s immediate crisis, the Board authorized an additional \$300 million of fully secured debt (the “2007 Secured Facility”). The 2007 Secured Facility closed and funded in June 2007, and was secured by substantially all of BearingPoint’s assets. The 2007 Secured Facility was fully drawn upon issuance, and all of the funds drawn were immediately consumed in operations. The 2007 Secured Facility also contained cross-default provisions that jeopardized the capital structure upon a default of certain debt obligations.

53. While the 2007 Secured Facility afforded BearingPoint temporary breathing space, it was obvious to the officers and directors of BearingPoint that the additional borrowed

funds were merely a short-term “band-aid” measure that did not address the Company’s long-term financial problems.

By Mid-2007, It was Clear BearingPoint Would Need to Pay the \$200 Million “Series C Put” in April of 2009

54. BearingPoint reported a net loss in 2006, and, at the beginning of 2007, the outlook was not much better. Further, by mid-2007, it was becoming clear that BearingPoint would have to pay the \$200 million Series C “Put” in April of 2009. Under the terms of the debenture agreement, the holders of the notes could opt to: 1) hold the notes until they matured in April 2025, continuing to receive 5% annual interest; 2) force BearingPoint to repurchase the notes at face value (the “Put” option) as early as April 2009; or 3) convert the shares into equity at a ratio of 151.5151 shares per \$1000 of debt, which equals \$6.60 per share. As part of its continued, downward trajectory, BearingPoint’s stock price slid below \$6.60 in July 2007, never to recover. Market prices for the Series C notes also indicated that note holders would exercise their put rights, as the notes were priced below par beginning in November 2007.

55. By the fall of 2007, Harbach and the Director Defendants knew or should have known that, even with the 2007 Secured Facility in place, the Company’s operations would not generate sufficient revenues to enable it to meet its obligations, including the debt owed to the holders of the convertible Series “C” notes in the form of the \$200 million “Put” obligation coming due in April 2009. They knew, or should have known, that some corporate disposition would be necessary to address the ongoing financial needs to support operations and the “Put” requirement likely to be exercised in April 2009.

Harbach Realized that He Could Personally Benefit From a Sale of the Whole Company to a Financial Buyer

56. BearingPoint reviewed its financial options and identified four potential strategies suggested by BearingPoint's advisors. First, BearingPoint could sell one or more of its business units to one or more purchasers to generate cash for partial satisfaction of maturing debt obligations, while preparing the remaining assets for a sale or restructuring. Second, BearingPoint could be sold, in whole, to a "strategic" buyer—a company providing similar professional services (such as a competitor to BearingPoint). Third, the entire Company could be sold to a "financial" buyer—a buyer able to finance an acquisition but without expertise in BearingPoint's businesses. Fourth, as the Company's liquidity crisis deepened, BearingPoint could attempt to arrange, through negotiations with its bondholders, for a debt-for-equity swap.

57. Harbach knew that each of these approaches carried benefits and risks to his current and potential future equity stake in BearingPoint. As further alleged below, he was to receive an additional compensation package when he became CEO that was even more heavily weighted with unvested equity, which under his employment and equity agreements with BearingPoint would be lost or devalued by most forms of corporate disposition.

58. Harbach knew that, through a sale to a financial buyer—one who did not compete with BearingPoint and thus did not possess a management team at the ready—he might negotiate an even greater amount of equity as part of his employment arrangements with the buyer. Thus, a sale to a financial buyer offered him the best chance to maximize his current equity and to receive more equity in BearingPoint.

59. Harbach similarly understood that a sale to a strategic buyer would be less advantageous to his individual interests. A strategic buyer—one who competed with BearingPoint—already would have management in the consulting industry and would not need

Harbach to fill that role. It was not lost on Harbach that a sale to a strategic buyer would likely result in his termination prior to consummation, and the consequential loss of his current and possible future equity in BearingPoint.

60. Further, Harbach recognized that a sale of an undivided BearingPoint to a financial buyer was in his best pecuniary interests. Conversely, sales of any discrete line of BearingPoint's business, which would reduce BearingPoint's debt load, would eliminate that line's future earnings from BearingPoint's business operations, and would diminish the size of BearingPoint.

61. Harbach knew, as experienced restructuring counsel would later advise, that a debt-for-equity swap would also likely result in loss of Harbach's board and management positions, as well as his current and potential equity interests.

62. Thus, all Defendants understood the dynamics associated with the different options open to BearingPoint in 2007: that sales of individual business units, a sale of the whole Company to a strategic buyer, and/or debt-for-equity swaps all conflicted directly with the individual pecuniary interests of Harbach and other senior management members.

63. Similarly, all Defendants knew the third option—a sale of BearingPoint in its entirety to a financial purchaser—gave Harbach and BearingPoint's senior management the best option for individual financial gain: retaining employment; retaining the value of their present BearingPoint equity, if any; and the potential to negotiate even more equity in a BearingPoint that would likely be relieved of its substantial debt burden.

64. The Director Defendants also knew that Defendant Harbach had no history or role as a client-serving consultant in BearingPoint's business, had no personal history in BearingPoint, and, as a manager recently brought in from the outside, was highly incentivized to

maximize the value of his and other management's equity-weighted personal compensation packages over the long term, even to the detriment of the Company's enterprise value.

65. All Defendants knew the worst possible option for BearingPoint was bankruptcy. Professional services businesses are poor candidates for chapter 11, primarily because personnel form the most valuable asset of these businesses and are not likely to remain with the business long enough to permit a restructuring. Further, customers are often unwilling to enter into the kind of long-term contracts with chapter 11 debtors that are essential to enterprise value, and customers in some countries abroad refuse to work with entities in chapter 11. As the former leader of Accenture's Japan business unit, Defendant Harbach was well aware of the disastrous consequences to BearingPoint's business operations there that a bankruptcy would bring. All of the Defendants knew and were advised that chapter 11 was a highly unfavorable approach, and unless accompanied by a fully consensual prepackaged plan of reorganization, was highly likely to result in massive erosion of the value of the enterprise.

BearingPoint's Advisors Recommended Selling Business Units

66. In or before 2007, BearingPoint engaged Morgan Stanley & Co., Inc. ("Morgan Stanley") and UBS Securities LLC ("UBS") as financial advisors to assist in addressing its mounting liquidity problems. On information and belief, each firm had broad experience in merger and acquisition transactions involving consulting services firms.

67. Beginning in early 2007, Morgan Stanley advised BearingPoint, in light of its financial condition and the four options described above, that pursuing sales of lines of business was the best option to maximize value.

68. Throughout the first three quarters of 2007, on the advice of its advisors and under then-CEO Harry You, BearingPoint actively explored and engaged in Project Navigation, a strategy to sell individual business units so as to address the mounting liquidity crisis.

69. On January 22, 2007, Morgan Stanley presented to the Board a scenario involving the potential sale of EMEA and APAC, units considered to be the best candidates for divestiture because of their value and the relative ease with which they might be severed from the domestic business units.

70. Each unit had high enterprise value. As Cerberus would later calculate, APAC's net revenues in 2007 were \$271.4 million, while its EBITDA was \$74 million. EMEA's net revenues for 2007 were \$671.9 million and its EBITDA was \$141.7 million.

The Board Decided to Pursue a Sale of the EMEA Business Unit

71. Based on Morgan Stanley's advice, the Board authorized BearingPoint's management to undertake a sales process to explore the feasibility of a sale of EMEA to its managing directors in a "management buy-out" structure, whereby EMEA managing directors would purchase a majority share in EMEA to become its direct owners.

72. In July 2007, UBS joined Morgan Stanley in actively advising the Company to pursue a strategy of business unit divestitures followed by an auction of the remaining business. On July 27, 2007, UBS told the Director Defendants that sales of individual business units were optimal, in part, because "[t]here does not appear to be a clear-cut buyer for [BearingPoint] as a whole," and because "[u]nfavorable debt markets make a financial sponsor sale challenging in the near term." On that same day, UBS recommended that the Company "execute a series of divestitures of the Company's business units, followed by a possible auction of the remaining business."

73. UBS presented the Director Defendants and others an "Illustrative Break-Up 'Road Map'" listing various options involving the structure and value of sales of individual business units, and listing potential purchasers that BearingPoint might pursue.

74. In August 2007, the Board determined, on the basis of sound advice from its advisors, to undertake a sales process and proceed with a strategy predicated on the sale of individual business units. It directed management to proceed with a sale of the EMEA business unit and to explore the potential sale of APAC.

75. On August 2, 2007, the Board authorized the expenditure of \$10 million “to further explore the potential sale of EMEA,” directed senior managers of BearingPoint, including then-chief operating officer Harbach, to “take the critical next steps it determines necessary to move forward with the EMEA transaction” and to “proceed with active due diligence and staging activities related to a possible transaction involving the Company’s [EMEA] operations.” Furthermore, the Board directed UBS to evaluate avenues for third-party equity financing to fund the EMEA transaction.

76. On November 4, 2007, UBS stated to Defendants Lord and Strange that an APAC “valuation of \$500 million to \$1 billion-plus is achievable.”

Harbach Began Efforts to Resist the EMEA Sales Process

77. Harbach did not support the sale of EMEA or any transaction involving the sale of individual business units. Appearing without then-CEO Harry You, Harbach informed the Board on May 10, 2007 that he would not consider a business unit sale “unless there was no long term intention to run the remainder of the company intact.” Such transactions would erode, and potentially destroy, the personal value of Harbach’s management and equity positions in the long-term residual business at BearingPoint. Despite Harbach’s position, the Board subsequently authorized the sales process.

78. Notwithstanding this directive, Harbach actively resisted EMEA’s sale and ultimately prevented its successful consummation in 2007. BearingPoint’s general counsel, who observed the process personally, stated that “the . . . main reason” that the EMEA deal could not

be consummated “was [that] Ed Harbach was not supportive. He was given every opportunity to allow this to proceed and refused.”

79. By the autumn of 2007, tensions had developed between You and BearingPoint’s Board.

Harbach Used Greenhill to Scuttle the EMEA Sale

80. BearingPoint discontinued its engagement of Morgan Stanley in September 2007. This left UBS as BearingPoint’s only financial advisor—an advisor that Harbach knew supported the strategy of selling parts of BearingPoint to reduce debt and supported the pending EMEA sale. In October, however, Harbach found support for his self-serving strategy of avoiding any sales and keeping BearingPoint together from the investment bank Greenhill and Company, Inc. (“Greenhill”). Greenhill was originally engaged by the Board in October 2007 to perform the discrete role of rendering a fairness opinion on the proposed EMEA sale.

81. Greenhill recognized the rift that had developed between the Board and You, the alternative strategy proposed by Harbach, and the opportunity to develop additional work at BearingPoint by supporting Harbach’s strategy and supplanting UBS as BearingPoint’s lead investment bank.

82. Harbach met with Greenhill on October 29, 2007 to discuss a larger role for Greenhill as primary advisor to BearingPoint. Harbach perceived that a change of investment bank would be a means to change UBS’s advice and divert the Board from the sale process. In these initial Greenhill discussions, Harbach—who lacked in-depth financial and accounting expertise and whose primary role had been operationally focused—advocated jettisoning the EMEA sale in favor of an attempt at an operational turnaround. He claimed that the Company’s liquidity was “in good shape,” cast doubt on perceived benefits of the EMEA transaction,

actively questioned UBS's conclusions that a sale of EMEA and other business units of BearingPoint would "unlock" more equity value than if BearingPoint remained consolidated, and refused to vouch for various assumptions underlying UBS's advice regarding the benefits of the EMEA transaction.

83. At this point, Greenhill had not been engaged to investigate BearingPoint's operational capabilities and had no independent basis on which to critique Harbach's observations. However, just six days after its October 29, 2007 meeting with Harbach, and with extremely limited information, Greenhill initially endorsed Harbach's vision of pursuing an operational turnaround, and merely "responding" to offers for the whole Company. As alleged below, Greenhill would withdraw that unreasonable endorsement when it learned more about the true state of BearingPoint's financial condition.

84. On November 4, 2007, UBS prepared a presentation for a Transaction Committee established by the Board consisting of Defendants Fleischer, Strange, and Lord, and stated that "the sale of EMEA would enable the Company to repay the entire senior term loan and significantly reduce leverage from 4x to approximately 3x" and that an APAC "valuation of \$500 million to \$1 billion-plus is achievable." That same day, a Greenhill representative, who had limited information and involvement with the Company at that time, inserted himself into the process by criticizing UBS's "sale of the parts" strategy in an email to Defendants Fleischer and Strange, noting that "quietly pursuing a sale of the whole company is the right route."

85. Although Greenhill was in favor of a sales process and communicated this position to the Board, Greenhill was eager to position itself as a lead advisor and went along with Harbach's effort to scuttle the EMEA sale and, contrary to the advice of UBS, told Harbach

without any reasonable basis that breaking up BearingPoint's U.S. business lines "always sounded problematic to us"

86. By November 13, 2007, it was apparent that BearingPoint managing directors with EMEA who were based in Scandinavian countries had decided not to participate in the management buy-out, and that the net cash proceeds that the Company would receive as a result of the sale of EMEA would likely be less than the minimum that the Director Defendants had hoped to achieve. As a result, questions arose concerning whether the EMEA transaction would close as predicted.

Harbach and Greenhill Advocated an "About Face" on the EMEA Sale

87. Having obtained Greenhill's initial and partial backing of his strategy—that is, not immediately selling EMEA—Harbach used an upcoming Board meeting on November 30, 2007 to present his alternative strategy that, while unrealistic and infeasible, aligned with his individual pecuniary interests.

88. Two weeks before that November 30, 2007 meeting, on or about November 14, 2007, UBS provided the Board with discussion materials for its consideration in advance of the upcoming meeting of the Board, specifically recommending that the Board continue to pursue the EMEA transaction and also consider pursuit of a sale of the Company's other business units. In making these recommendations, UBS, the Company's retained financial advisor, also told the Board that there was a "[l]imited likelihood of buyer for whole."

89. That same day, on November 14, 2007, Greenhill circulated to the Board a presentation suggesting that the Board should reverse its strategy, terminate the EMEA sales process, and instead (as it had recommended by email dated November 4, 2007 that "pursuing a sale of the whole company is the right route") consider a sale of the entire Company for several

alternative reasons, including because such a sale would provide “[m]ore equity ownership for management” Greenhill also advised the Board that any public announcement that the Company was for sale should be deferred for a few months, which would allow for the release of the Company’s 2007 year-end financial results.

90. Notably, in attempting to sell the entire Company, Greenhill explicitly advised the Director Defendants that while “[f]inancial buyers [were the] most likely” option, “strategics should not be ignored.” Importantly, the presentation also demonstrated that the sale of business units would yield a higher value than the sale of the Company as a whole.

91. Up to this point, the formal scope of Greenhill’s engagement had been brief and narrow. It had been engaged only a month before, in October, 2007, and its role had been limited to providing a fairness opinion in connection with the then-proposed sale of EMEA.

92. Further, as of this time, the Defendants knew that Greenhill had not been tasked by the Board to investigate, prepare or critique any financial model to demonstrate how BearingPoint’s liquidity problems could be addressed without a sale, nor to give advice to the Board as to how to manage its liquidity crisis, nor to advise the Company as to overall sale or disposition strategies.

93. Thus, simultaneous with its November 14, 2007 presentation, Greenhill pressed various directors and Harbach to expand its engagement with BearingPoint. On November 13, 2007 (the day before it circulated its November 14, 2007 presentation), Greenhill sent an email to Defendants McGeary, Strange, and Fleischer providing specific examples of situations where Greenhill was the sole or lead advisor in the sale or acquisition of a public company in order to provide “points about Greenhill’s capabilities to help [BearingPoint] in the next chapter.”

94. In touting its capability to act as the “sole or lead advisor in the sale or acquisition of” the entire Company, Greenhill’s November 13, 2007 email did not identify any transactions involving companies similar to BearingPoint. While UBS had broad experience with professional services companies, Greenhill was not recognized as having particular expertise in sale transactions involving professional services companies.

95. Also on November 13, 2007, Greenhill noted in an email to Fleischer its view “that a sale of the whole company is optimal . . .” and that it “[h]ad a very good call with [Defendant McGeary], who shares our views entirely.”

96. On November 29, 2007, Greenhill pressed Defendant Fleischer to engage Greenhill as its lead advisor, writing that “we obviously want to help the Company . . . as well as generally continue our role as advisor through whatever the next chapter may be. I feel like we went a bit out on a limb in the early weeks of this assignment”

97. Soon thereafter, Greenhill reached out to Harbach with a final pitch in its campaign to be retained as the Company’s advisor with the assurance that “[w]e see completely eye to eye on how Bearingpoint [*sic*] should proceed”

98. Greenhill’s efforts were successful; it was appointed as BearingPoint’s primary financial advisor on January 18, 2008.

The Board Terminated You, the EMEA Sale, and UBS’s Role as its Sole Financial Advisor

99. Harry You recognized the risk of bankruptcy as early as November, 2007, and advised that the sale of EMEA would help reduce that risk. On or about November 29, 2007, You provided a written presentation for circulation to the Board for its November 30, 2007 meeting. He recommended, among other things, that BearingPoint proceed with the EMEA transaction, as it allowed BearingPoint to “[s]trengthen BearingPoint’s balance sheet,” “reduce

bankruptcy risk,” and “increase attractiveness of balance of BearingPoint business to broadest range of interested [acquirers].” You also recommended proceeding with an investment by the Chinese government in APAC.

100. An analysis prepared by UBS supported You’s presentation. In that presentation, UBS reiterated its earlier warning of the “[l]imited likelihood of buyer for whole,” and that “[f]inancial buyers will be hampered by ... [p]oor credit markets which are not expected to strengthen in the near term.” UBS advised that the “Public Services business remains attractive,” and that “[s]ubstantial value upside can be created through crystallizing the value in APAC and Public Services, even before infrastructure savings are considered,” by divesting them from BearingPoint. UBS again noted various possible “strategic buyers” for Public Services, and outlined a strategy for divesting APAC from BearingPoint by pursuing an investment by the Chinese government in APAC and an initial public offering on Asian markets.

101. The Director Defendants rejected the advice of You and UBS, the Company’s only financial advisor at the time, and, at the November 30, 2007 meeting, abruptly terminated You as CEO, removed him from the Board, appointed Harbach to replace him, and elected Harbach as a director on the Board. At the same time, the Board decided that it would be appropriate for Defendants Fleischer and McGeary to speak with Greenhill on behalf of the Board about executing a new expanded engagement letter with Greenhill.

102. On December 11, 2007, Defendant McGeary told Greenhill that Harbach “understands the relationship the Board wants to establish with Greenhill.” By letter dated, January 18, 2008, a new engagement letter was executed with Greenhill confirming Greenhill’s engagement to develop and advise the Company with respect to alternatives involving:

- the sale of the Company as a whole,
- an acquisition of a majority of the Company’s stock,

- a sale of all or substantially all of the Company's assets, or
- a sale of its principal business units.

Prior to confirming Greenhill's engagement via this engagement letter, Greenhill reported to at least Defendant McGeary about the inbound calls of interest from potential buyers and how to deal with them before the release in February 2008 of the Company's Form 10-K for year-end 2007.

The Board Amplified Harbach's Equity Incentives Upon his Appointment as CEO

103. Harbach's appointments as CEO and as a director were accompanied by a substantial increase in his equity interests in BearingPoint. In addition to a base salary of \$900,214 (and a target annual bonus of the same amount), Harbach received an additional 199,275 Restricted Stock Units on January 2, 2008, as well as the option to purchase up to an additional 1,232,600 shares of BearingPoint common stock at \$2.76 per share. The RSUs and stock option grants were scheduled to vest ratably in four equal installments on the anniversary date of the grant in 2009, 2010, 2011 and 2012. If Harbach's employment was terminated without cause prior to a sale of BearingPoint or substantially all of its assets, Harbach's unvested equity, including that granted in connection with his prior appointment as COO, would be forfeited. This was the likely scenario if the Company was sold to a strategic purchaser. If, however, Harbach's employment was terminated without cause after a sale of BearingPoint or substantially all of its assets, all of Harbach's equity and options (including those awarded in connection with his appointment as COO) would vest immediately and become non-forfeitable. Because a financial buyer would likely want Harbach to stay in management for at least a transition period following the transaction, Harbach's equity and options would vest and he would be in a position to negotiate for higher equity in the new BearingPoint.

104. These new equity grants to Harbach, on top of the 888,325 RSUs granted to Harbach upon his appointment as COO in January of 2007, represented the potential for 2,320,200 shares of BearingPoint common stock. However, Harbach's options became almost immediately underwater when BearingPoint's stock price slid below the \$2.76 strike price in January of 2008—the same month of their award. Therefore, a financial buyer, and the ability to negotiate new and additional equity in a sale, represented a potential vehicle for personal gain for Harbach.

Harbach Quickly Dismantled BearingPoint's Plan to Sell its Parts

105. From the moment of his appointment as CEO, Harbach worked swiftly to dismantle the Company's previous disposition strategy and to obtain control over the Company's divestiture process to ensure its alignment with his own personal interests, without regard to BearingPoint's interests.

106. On the day of his appointment on November 30, 2007, Harbach, as CEO, advised the Board to terminate negotiations for the sale of EMEA. Harbach informed the Board that “unless he is otherwise directed by the Board, he will not approach or seek out potential investors or purchasers for BearingPoint . . . instead, he will focus on enhancing BearingPoint's operations and business performance.” He also made clear that his “preference [wa]s to wait until a bona fide offer is presented” before engaging resources towards a strategic transaction.

107. As of November 30, 2007, no financial model supported either Harbach's recommendation to address liquidity concerns through operations or his observation that BearingPoint did not need to consummate the EMEA transaction or sell other units because it “could continue to remain independent.”

108. As previously noted, as of this point in late 2007, Greenhill had no formal engagement with BearingPoint. Its narrow engagement to provide an EMEA fairness opinion

was now moot. Greenhill had not yet developed a long relationship with BearingPoint, or the accompanying insight that would permit it to critique management's operational assertions. It would not be until January 18, 2008 that Greenhill would be engaged as the Company's general purpose investment bank and not until February 2008 that it would see any financial forecast supporting Harbach's turnaround plans.

109. While Greenhill's understanding of the Company would deepen in the coming months, as of late 2007, Greenhill was forced to rely entirely on Harbach and other management for information regarding the Company's results, performance, and forecasts.

110. Thus, Harbach's strategic reversal and the Board's agreement to reverse course was not supported by a good faith financial model or any investment bank then engaged by BearingPoint.

111. Nevertheless, the Board terminated the EMEA transaction on November 30, 2007.

The Board Embarked on a New Sales Process

112. Pursuant to Harbach's request, the Board on November 30, 2007 revisited the topic of whether a sales process should be pursued. The Board instructed management "to continue its due diligence gathering exercise and to engage a small corporate development team under the leadership of General Counsel [Laurent] Lutz" but that "no proactive communications should be made, either within BearingPoint or externally, regarding a proposed strategic transaction involving BearingPoint."

113. The Board's instructions to reverse course from the approved "sale of the parts" plan and passively wait for an interested buyer with which to negotiate would prove disastrous for BearingPoint.

114. On December 3, 2007, BearingPoint publicly announced Harbach's appointment as CEO and its public reversal in strategy. The market responded negatively. Prior to its announcements, BearingPoint's stock price closed at \$3.65. On Monday, December 3, 2007, after the announcements, the stock price closed at \$2.94—down nearly 20%. And on that Wednesday, December 5, 2007, it closed at \$2.75, a drop of nearly 25% in less than one week.

115. The execution of Greenhill's January 18, 2008 engagement letter cemented Greenhill's lead advisory role.

116. Consistent with the sales process for the sale of the whole Company that was underway, Greenhill was hired to develop and advise "the Company with respect to various strategic and business alternatives for the Company involving a merger or sale of the Company as a whole, an acquisition of a majority of the stock of the Company, a sale of all or substantially all of the assets of the Company or the sale by the Company of any of its five principal business units (EMEA, Asia Pacific, Public Services, Commercial Services, and Financial Services)." Harbach now knew that, thereafter, UBS's role was nominal, and that UBS would not be privy to any of the real strategic direction and negotiation being undertaken.

117. In addition to engaging Greenhill to develop and give advice on the sale process, in January 2008, the Company also hired Tom Kendrot as a managing director to coordinate the sales process. This managing director had previously served as a contracted consultant to the Company and was officially on-board as a managing director by the end of January 2008.

118. Also on January 18, 2008, Harbach obtained control over BearingPoint's consideration of future sales alternatives by joining BearingPoint's Finance Committee, a subcommittee of the Board charged with the duty of "report[ing] and mak[ing] recommendations to the full Board for their deliberation and action with respect to all matters involving

BearingPoint's outlook or strategic alternatives." The Finance Committee consisted of Defendants Strange, McGeary, Harbach, and Fleischer.

The Board Permitted Harbach to Improperly Seize Control of the Financial Modeling and Budgeting Processes

119. As previously noted, and indicative of the need to sell the Company, no reasonable financial plan or model supported the feasibility of delaying a sale or limiting the scope of potential buyers, and solving the Company's liquidity crisis through operations alone. Having announced to investors and the public his vision of turning around BearingPoint and operating it as a profitable global enterprise, however, Harbach was pushed by the Board to support his strategy with a financial model projecting a positive spin on BearingPoint's future performance and cash position.

120. Soon after his appointment as CEO, but after he recommended to the Board to terminate the EMEA sale process (and any similar sale process), Harbach directed the Company's chief financial officer, Judy Ethell, to generate a 2008 business forecast that would support Harbach's turnaround strategy and show that the "Put" obligation could be met through operations, without the need for any corporate sale.

121. Under Harbach's close control, Ethell developed the first draft of the plan (the "2008 Management Plan") early in 2008.

122. Harbach caused the 2008 Management Plan to be presented to the Board on January 18, 2008, and on the basis thereof, represented to the Board that BearingPoint would have sufficient liquidity at year-end 2008 to meet the April 2009 "Put" requirement without the need for a corporate disposition or sale. This initial version of a "Management Plan," however, showed that the Company would suffer a \$100 million net loss in 2008.

123. The Director Defendants, knowing that the Company was for sale, were troubled by the projected \$100 million net loss in 2008 and asked Harbach to revisit the projected loss.

124. The Board's challenge proved difficult. Harbach quickly realized that he would be unable to meet the Board's challenge so long as Ethell—and the objectivity and insight inherent in the CFO function—was centrally involved in the process.

125. Harbach thus looked outside of Ethell's office and turned instead to Mike Pope, a managing director who worked neither for Ethell nor the office of the CFO, but rather was a direct report to Harbach. Pope, in Harbach's words, "function[ed] as a CFO" and was "closest to [Harbach regarding the] budget changes" and forecasts purportedly supporting Harbach's turnaround strategy. By using Pope, Harbach was free to control the message the forecast would send to the Board, outside investors and potential purchasers regarding BearingPoint's financial condition.

126. Harbach and Pope scoured the North American business units to create purported improvement opportunities, imposing aggressive profitability targets over business unit leaders' concerns that the targets were unrealistic. In at least one instance, a business unit leader pushed back on Harbach's imposed budget due to the negative impact an unachievable budget would have on that business unit leader's bonus. Knowing that the budget was unachievable, Harbach agreed to base that business unit leader's bonus on a target far less than Harbach's imposed budget number.

127. Unable to "find another \$100M" in North America, Harbach turned to the EMEA business unit—which had underperformed in 2007, and which until just weeks earlier, had been preparing to depart BearingPoint's ownership by way of a management buyout—and ordered it to make unspecified increases to their forecasted net revenues.

128. Within a few days, Harbach advised the Board that he had reviewed and revised the plan, which now magically projected positive net income in 2008 (the “2008 Management Plan”) instead of a \$100 million loss. At the same time, Harbach advised the Board that this “‘make a buck’ budget is clearly more aggressive [than his original 2008 Plan] and will be a challenge for us.”

129. On information and belief, the Director Defendants engaged in no in-depth questioning, examination, or exploration of this sudden and implausible change in projections or of the viability of the 2008 Management Plan, its underlying assumptions, the process used to generate it, or Harbach’s plan to solve the liquidity crisis through operational improvements alone.

Harbach Unveiled His Unrealistic Management Plan

130. The 2008 Management Plan gave an overly optimistic impression of the health of BearingPoint’s financial condition and its equity value, and was based on unrealistic assumptions regarding BearingPoint’s operational capacities, its ability to cut costs, and market conditions. In essence, the 2008 Management Plan created an inaccurate impression that BearingPoint had more time to run a sales process than it did in reality. From Harbach’s perspective, this bought him time to pursue his strategy of finding a financial buyer for the whole of BearingPoint, to avoid dispositions that would not benefit him personally, and to negotiate enhancements to his own compensation and equity.

131. Having rejected the initial Management Plan’s \$100 Million loss and directed Harbach to revise it, the Director Defendants had reason to suspect the feasibility of the 2008 Management Plan, its underlying assumptions, and the viability of Harbach’s strategy.

132. All Director Defendants were aware of BearingPoint's historic financial reporting problems—including acknowledged weaknesses in its internal controls and finance and accounting functions. Each was aware of the extensive analysis that had been done by Morgan Stanley and UBS, and their advice that in light of BearingPoint's structure, financial condition, and market conditions, sales of discrete business units of BearingPoint would be necessary to meet liquidity problems and maximize value to the Company.

133. Defendant McGeary in particular was aware of the lack of adequate controls in the process of creating the 2008 Management Plan. BearingPoint's General Counsel, Laurent Lutz warned Defendant McGeary on January 21, 2008 of his

continuing concern . . . that I have little, if any, visibility on the evolution of the budget. And, I had none prior to the December 3 investor call. So it is impossible for me to give advice on the accuracy, even before or after the fact, of impromptu statements like obtaining \$1 of Gaap [*sic*] net income nor can I correct them when the underlying premise on which they are based is not known. I have this morning again reiterated to [Harbach and Pope] the importance of having a detailed discussion of the content and assumptions under the budget as part of the preparation for Investor Day. That is all I can do. Anything you can do to reinforce would be appreciated.

134. In early February 2008, Harbach publicly unveiled the 2008 Management Plan to Company investors in the form of a carefully crafted "Guidance" intended to deflect any speculation that BearingPoint was in distress, facing a liquidity crisis and in a sales process. Harbach's Guidance projected, among other things, \$1 million in net income for the year and year-end cash in the range of \$500 million to \$570 million on a global basis. Harbach stated that BearingPoint's focus for 2008 was to "make profitability [its] first priority" and to push forward with operational improvements geared towards turning the Company around.

135. Harbach did not disclose to investors the sales process or the Board's directive to run a sales process. To the contrary, he deflected the issue by announcing that BearingPoint "can

handle the \$200 million put in April, 2009 with current cash from operations but we need to continue to strengthen [the balance sheet]. And what I mean by that is generate positive free cash flow from operations.” In reality, neither Harbach nor any of the Director Defendants knew at this time (and did not know even as of early May 2008) how much cash was needed—and where—to continue running the business while satisfying the April 2009 “Put” obligation. Harbach’s assertion amounted to little more than a guess rendered in pursuit of his objective—to funnel BearingPoint’s sales process towards self-interested ends.

136. Harbach was similarly careful to avoid disclosing the sale process in his internal messaging to BearingPoint managing directors regarding the 2008 Management Plan. Despite telling the Board that the 2008 Management Plan was “aggressive,” Harbach directed the managing directors to inform inquiring employees and clients that BearingPoint would have enough cash to survive through the next twelve months without needing to access capital markets, and that “[g]enerating and conserving cash are both crucial to our success in 2008. We think our [2008 Management Plan] is conservative.” There was absolutely no basis for the last of these statements, and it directly contradicted Harbach’s written message to the Board.

137. The Director Defendants formally approved the 2008 Management Plan on February 25, 2008, without adequate or good faith diligence into its feasibility.

138. Despite Harbach’s careful messaging, investors who saw the 2008 Management Plan remained doubtful and immediately questioned BearingPoint’s “ability to sustain its targeted net revenue, and its cash position.” Harbach’s stated intent to continue operating was not credited in the marketplace, and from the moment of his appointment, BearingPoint received numerous offers and overtures for dispositions.

Despite Embarking on a Sales Process, the Board Sat Idle while Harbach Deflected Numerous Purchase Offers

139. Even as Harbach launched his 2008 Management Plan, market and other forces continued to aggravate BearingPoint's troubles. Doubts about the 2008 Management Plan grew quickly among the Company's advisors at Greenhill, its investors, the market, the Company's general counsel and its financial officers, especially as BearingPoint's actual financial performance and operational metrics failed to keep pace with the projections of the 2008 Management Plan.

140. As the first quarter of 2008 progressed, the inevitability of a sale was clear to all Defendants. Harbach thus worked to maintain tight control over the scope and direction of the consideration of strategic sales alternatives to ensure they aligned with his personal interests.

141. Harbach was well-positioned to do so. As alleged below, having terminated the EMEA transaction, having effectively excluded UBS from the sales process by expanding the scope of Greenhill's engagement, and having secured an appointment to the Finance Committee, Harbach—unconstrained by any meaningful Board oversight—was free to deflect sales that might dilute or eliminate his long-term equity upside. At the same time, the Board, keenly aware of the sales process, failed to comply with its duties to prepare and develop a focused strategy to determine and pursue the best type of transaction reasonably available in order to maximize the value of the Company, which duty included the Board's obligation to engage, manage, and be fully involved in the sales process. It also required the Board to explore, know, and understand the market by arming themselves with specific and contemporary knowledge of the value of the Company and marketplace, to examine all reasonable types of transactions, and to have a reasonable, factual basis not to undertake exploration of a potential segment of the marketplace.

As alleged below, sadly, the passive and detached Director Defendants did nothing to check Harbach's ambitions.

142. Interest in BearingPoint by potential purchasers had intensified after Harbach had been appointed CEO, but especially as of December 3, 2007, when BearingPoint finally became current in its SEC filing obligations by filing its Form 10-Q for the third quarter of 2007, removing any impediment to a sale relating to its filing status. Despite Harbach's efforts to deflect sales interest, the potential sale of BearingPoint was widely discussed among BearingPoint's consultants and in the industry.

143. As of January 18, 2008, and continuing through April 2008, BearingPoint received "significant incoming call volume from parties interested in discussion [of] an acquisition of BearingPoint." Nevertheless, Harbach and the Board continued to adopt a passive strategy of merely "responding" to any overture of interest in individual business units (as opposed to the whole Company). Acknowledging that it did not intend to plan or provide for a proactive solicitation of interest, the Board directed Greenhill on January 18, 2008 simply "to log all calls and consider at the appropriate time with proper advice which callers might be worthy of re-engaging."

144. From late 2007 through April 2008, with the Director Defendants' knowledge, Harbach deflected, either personally or indirectly through Greenhill, numerous expressions of interest by potential purchasers, including several buyers interested in purchasing separate business units of BearingPoint, and several strategic buyers interested in purchasing the whole Company. With the Director Defendants' knowledge, Harbach deflected or caused the deflection of these overtures at their inception, without any deliberation or individualized determination as to their merits, or any consideration by the Board as to their merits, because

they did not fit his personal plans or suit his personal interest in preserving and enhancing his equity interests in BearingPoint.

145. As a result, the Director Defendants knowingly permitted BearingPoint to lose many opportunities for sales of all of BearingPoint or individual business units of BearingPoint.

146. In December 2007, a strategic purchaser, CGI Group, Inc., expressed interest in purchasing the whole Company. Harbach was informed by Greenhill that CGI was “one of the better inquiries” and a “good one to respond to when we are ready.” Harbach was also later warned by BearingPoint’s General Counsel Lutz, who would repeatedly express concerns and provide advice and guidance to the Board regarding the process, that discussions with CGI were important because “as legal protection for the board, having at least one, active strategic alternative to [financial] bids will be pretty important to demonstrating sufficient due diligence and business judgment on any final transaction decision.” As a result, when Harbach later selected his group of financial buyers to focus upon to further a transaction, he included CGI in the process as the lone strategic buyer without giving them due consideration.

147. On December 8, 2007, and again on January 8, 2008, Indachin Limited (“Indachin”) expressed interest in purchasing BearingPoint’s Commercial Services business unit. On January 8, 2008, Indachin offered to put together a proposal for the Board. On January 10, 2008, Greenhill told Defendant McGeary to “sit on” these kinds of inquiries until BearingPoint was ready to engage in dialogue with interested parties. On February 14th, Greenhill invited Indachin to participate in the sales process, but on the condition that Indachin consider a transaction for the whole Company. On February 29th, Indachin informed Greenhill that it had determined not to pursue a potential transaction with BearingPoint, citing concerns about “the outlook for a Bearing Point turnaround.” Greenhill informed Harbach of Indachin’s decision,

dismissing it as not “a significant detriment to our process since from the beginning we considered them as more interested in the commercial parts only.”

148. On December 20, 2007, Greenhill informed Defendants Strange, McGeary and Harbach that Nikko Principles Investment Japan, Ltd (“Nikko”) had expressed interest in purchasing APAC, which it valued at between \$500-600 million. Greenhill (still trying to secure Greenhill’s appointment as BearingPoint’s financial advisor and knowing the Board’s predisposition to restrict its consideration of potential sales transactions to a potential sale of the entire Company) deflected this interest, stating, “I believe we are all on the same page in terms of avoiding a series of breakup discussions.”

149. Around this same time, SERCO, a potential strategic buyer, approached UBS with interest in purchasing BearingPoint. The opportunity with SERCO was not further pursued, notwithstanding Greenhill’s and Lutz’s prior advice that strategic buyers “should not be ignored.”

150. In or about January 2008, Ernst & Young approached Harbach regarding the possibility of purchasing EMEA’s Finland practice. Harbach declined to consider the overture.

151. On or about January 7, 2008, Electronic Data Systems (“EDS”), a strategic purchaser, called Greenhill to express interest in a possible transaction. On January 8, 2008, Greenhill forwarded this information to Harbach. There was no further follow-up on the inquiry.

152. On January 17, 2008, Harbach was contacted by PriceWaterhouseCoopers on behalf of an undisclosed party interested in purchasing BearingPoint’s Spain practice. Harbach directed that the invitation be declined, and that the potential buyer be informed that BearingPoint would “pass on any widespread effort to try and sale [sic] the business and continue to run the same.” The very next day, Harbach accepted and agreed to Greenhill’s then-

proposed engagement to develop and advise the Company with respect to various alternatives for the sale of the Company as a whole or the sale of any of the Company's principal business units.

153. On January 22, 2008, CACI International Inc. ("CACI"), a strategic buyer with a significant public sector practice and a headquarters only miles from BearingPoint's, informed BearingPoint's Ethell that they "have made several acquisitions in the past few years" and that "if [BearingPoint] were to consider other strategic alternatives for our 'federal' business, CACI would be interested." At Harbach's direction, Ethell deflected CACI. There was no further follow-up with CACI or discussion of the inquiry.

154. Prior to January 30, 2008, a Citibank representative told Harbach that Citibank knew "several firms interested in our commercial business." When Citibank asked if Harbach wanted to meet with any of these firms, Harbach replied in the negative without seeking any additional information on the proposed buyers or their intentions, and informed Citibank that BearingPoint was focused on improving the business.

155. Through January, February and March, 2008, Credit Suisse/CPM Braxis expressed an interest in acquiring BearingPoint's Latin American business for approximately \$37-44 million. Despite being warned by General Counsel Lutz that "offers for Latin America are virtually non-existent and if this one is credible it may be one of a kind," Harbach also scuttled the opportunity by not responding to it.

156. On February 4, 2008, Harbach was told that the Chinese Government was still interested in investing in the APAC business unit. Harbach skillfully deflected the opportunity, claiming to be "OK trying to find something pragmatic" while simultaneously ordering that the opportunity be declined because BearingPoint had "gone through a change in leadership and [was] focused on running the business."

157. On February 14, 2008, MHW Capital expressed an interest in purchasing the “Government Services” (*i.e.* Public Services) business unit. Greenhill instructed Lutz to respond to the inquiry (and all such similar inquiries) by informing the purchaser that BearingPoint was not interested in pursuing inquiries for purchases of individual business units.

158. On February 26, 2008, UBS emailed BearingPoint’s General Counsel Lutz, informing him that UBS could “bring to the table . . . strategic buyer alternatives for the whole company” and that it had at least two strategic buyers ready to proceed. Lutz forwarded UBS’s invitation to Harbach, Strange, and McGeary. The invitation, on information and belief, was ignored by Defendants Harbach, Strange, and McGeary, notwithstanding Greenhill’s prior advice that strategic buyers should not be ignored.

159. In March 2008, Infosys Technologies Ltd., a strategic buyer, expressed interest in acquiring BearingPoint’s APAC business unit. Harbach deflected Infosys, informing its representatives that BearingPoint had “no interest in selling our APAC business or any other pieces of our business at this time.”

160. On March 13, 2008, Nikko again called Harbach to express interest in “equity participation in Japan/China.” Harbach again deflected the overture.

161. On March 19, 2008, CGI’s chief executive officer, Serge Godin, once again attempted to pursue CGI’s interest in a transaction involving BearingPoint. He was once again deflected by Harbach.

162. In early January 2008, and again in March 2008, SystemsNet/GTCR, a financial buyer, expressed interest in purchasing the whole Company, but requested to pursue due diligence only with respect to the Public Services unit. On March 12, 2008, Greenhill informed

Lutz: "I think we're all on the same page here (only looking for a deal for the whole)." SystemsNet/GTCR's interest in the Public Services business unit was not further pursued.

163. In early April 2008, the investment bank Goldman Sachs approached Harbach offering to explore "a strategic transaction," as well as an opportunity with Goldman's "own private equity group." While Harbach agreed to meet with Goldman Sachs, he did not meaningfully engage with either of the offered opportunities and deflected both.

164. In April 2008, Nomura, a potential strategic purchaser, expressed interest in buying BearingPoint's Japan operations. Harbach deflected that interest as well.

165. Defendant McGeary knew in January 2008 through a Greenhill report that a significant number of potential buyers had expressed interest in the purchase of BearingPoint, including, CGI, EDS through JP Morgan Chase, Bear Stearns Merchant Banking, GTCR Golder Rauner, Indachin Limited, Nikko Principal Investments Japan, Ltd., Ripplewood, and Silver Lake.

166. The Director Defendants who were members of the Finance Committee—Harbach, Fleischer, McGeary and Strange—knew as of February 4, 2008, that a plethora of buyers had shown interest in BearingPoint, including CGI, EDS through JP Morgan Chase, Bear Stearns Merchant Banking, GTCR Golder Rauner, Indachin Limited, Nikko Principal Investments Japan, Ltd., Ripplewood, Silver Lake, Cerberus, CACI, CitiBank (representing an unnamed strategic buyer), and Credit Suisse, and that Greenhill was recommending that the Director Defendants consider an additional five specifically-named financial buyers and nine specifically-named strategic buyers.

Harbach Designed the Sales Process to Favor His Personal Interests and the Director Defendants' Inaction Allowed Lucrative Offers to be Lost

167. On or about February 4, 2008, the Board's Finance Committee met to review Greenhill's discussions to date with potential purchasers who had made inbound calls and was advised by Greenhill that there was strong interest among parties with experience in the Company's sector. The Board's Finance Committee was comprised of Defendants Strange, Fleischer, McGeary, and Harbach, and was charged with the duty to report and make recommendations to the full Board for their deliberation and action with respect to all matters involving BearingPoint's outlook or strategic alternatives. During the February 4, 2008 meeting, Greenhill sought the Finance Committee's approval to sign non-disclosure agreements with all parties who had contacted Greenhill expressing interest in speaking with the Company about a possible transaction. The Finance Committee agreed to take this step. Notwithstanding Greenhill's request, the Finance Committee's concurrence therewith, and the explicit terms of Greenhill's engagement letter, there was no follow up with all the parties who had contacted the Company.

168. While Greenhill informed the Finance Committee on February 8, 2008 of many of the companies that had expressed interest in purchasing parts of BearingPoint (including two financial buyers and three strategic buyers) and companies that had expressed interest in purchasing the whole Company (consisting of five financial buyers and two strategic buyers), neither Greenhill nor Harbach informed the Finance Committee of all of the expressions of interests received by Harbach or other members of management, including several from various other strategic buyers or buyers interested only in parts of BearingPoint.

169. Greenhill did, however, tell the Finance Committee that there were other potential buyers to consider that had not contacted the Company via inbound calls and specifically

identified fourteen other potential buyers to be considered in a whole Company purchase, including nine potential strategic buyers.

170. By this point, Greenhill understood BearingPoint's financial distress and that Harbach's strategy was fanciful.

171. Rather than proceed with all interested parties who had initiated contact with the Company, as directed by the Finance Committee, or contact other potential buyers as suggested by Greenhill, Harbach and Greenhill limited their focus to the "sell to private equity" option.

172. Harbach caused Greenhill on February 13, 2008 to proceed with "Project Bullrun" (the code name for the sales process) and to engage with *only* those potential purchasers "that were identified [as having] 'expressed interest for whole'" of BearingPoint. Harbach had already deftly limited the scope of interested parties and would further concentrate on financial buyers, as opposed to strategic buyers. By this time, the managing director running the sales process and Greenhill were already working to put together a presentation to be presented to certain potential buyers in early March 2008 after the release of the Company's Form 10-K for 2007.

173. In March 2008, Defendant Harbach, along with Greenhill, the Managing Director in charge of the sales process and CFO Ethell, gave a road-show presentation to potential purchasers. Thereafter, all of the Director Defendants were aware of serious, continuing interest by both strategic and financial buyers in a merger or acquisition with BearingPoint. The interested parties included the strategic buyers CGI, CPM Braxis, InfoSys, EDS, Serco, and CACI; as well as the financial buyers Cerberus, Bear Stearns Merchant Banking, GTCR Golder Rauner, KKR, Indachin Limited, Nikko Principal Investments Japan, Ltd., Ripplewood, and Silver Lake. Despite this active level of interest, the Director Defendants continued to disregard

their duties and failed to explore these alternatives to maximize the value of the corporate enterprise.

174. Without the Board's active involvement in the management and oversight of the process, Harbach effectively proceeded with fewer than all interested bidders, and shopped BearingPoint to only certain preselected purchasers who indicated an interest in purchasing BearingPoint as a whole, all but one of which was a financial buyer. Most entities that had expressed interest in purchasing individual business units, including those communications alleged above, were not further pursued. Nor were the fourteen strategic purchasers identified by Greenhill pursued. Later that month, the Company's General Counsel advised Harbach that he should keep in mind that Cerberus—a financial purchaser to whom Harbach worked to funnel the sales process and which would turn out to be BearingPoint's primary private equity option—"is the ultimate bottom feeder."

General Counsel Lutz was Yet Again Ignored When he Provided Prophetic Advice

175. BearingPoint's general counsel was deeply concerned about Harbach's structural control of the sale process and the conflict between BearingPoint's needs on the one hand, and Harbach's personal interests and the interests of certain other directors who had significant debt and equity holdings on the other hand—so much so that in early 2008 he raised concerns to outside counsel for BearingPoint about the "configuration and operation of the Finance Committee," highlighting Harbach's "possible future package with a buyer," Fleischer's debt holdings, and McGeary's very recent departure as an executive chairman. Alluding to the active sales process, Lutz observed that "if we deliberate and go down to a set of, say, two finalists [in the sales process] is that not in part making a decision if there are more than two still interested in moving forward?" Prior to raising these specific concerns, Lutz had already told Defendants

Strange, Fleischer, McGeary, and Harbach, on February 26, 2008, that UBS had advised it was aware that the Company was being shopped and to “make particular note” of the fact that UBS was “ready to bring to the table . . . strategic buyer alternatives, for the whole company” and that “there are at least two who already have Board approval to proceed.”

176. On March 9, 2008, Lutz directly warned Defendants Harbach and McGeary about proceeding with fewer than all interested bidders, advising “it is the kind of decision that could be revisited in litigation to block a . . . transaction if someone wants to challenge the independence of the committee.” Lutz “suggest[ed] [that the committee] consider whether or not it is appropriate to have a full board call . . . after [the members of the committee] have had time . . . to deliberate and recommend any final decision.” Lutz’s warning was further passed along to Defendant Strange.

177. The next day, Lutz issued another warning, advising Defendants Harbach, Fleischer, Strange, and McGeary that “[i]t is debatable whether the Finance Committee is an ‘independent’ body” and that all of the Director Defendants should be involved.

178. Despite Lutz’s warnings, the Director Defendants failed to become actively involved, permitted Harbach to improperly narrow the bidding field to those purchasers he determined were most favorable to his own personal interest, and allowed Harbach to limit or cease discussions with those companies that Harbach determined to be inimical to his personal interests. Once again, the Director Defendants failed to insert themselves into the process to comply with their fiduciary duties.

179. During this crucial period, in early spring 2008, Harbach was the only Director Defendant to meet with any of the bidders. Despite Harbach’s direct conflict by virtue of his desire to obtain substantial equity in the new company and a future management role with any

financial buyer, none of the other Director Defendants directly participated in the process. The Director Defendants again ignored their fiduciary duty to insert themselves and take action to exercise oversight and control over the sale process led by Harbach.

180. Lutz's warnings would prove prophetic. Without independent control, check, or oversight on the process by which he would conduct the sales and due diligence process, Harbach freely limited BearingPoint's sales process to the one mode of transaction that would personally benefit him—a sale of the whole Company to a financial buyer—and block other obvious and attractive disposition strategies—sales of discrete lines of business or a sale of the Company to a strategic buyer—either of which raised the risk of eroding or eliminating the value of his expected equity interest and his management interest.

181. As alleged above, in March 2008, Harbach and other members of management met with the purchasers who indicated interest in the whole Company (and one purchaser who had expressed interest for both the whole Company or certain business units) and presented them with a "Management Presentation," which outlined the strengths of BearingPoint, set forth overly-optimistic business forecasts that projected BearingPoint's performance through 2012, and which (as alleged below) were prepared under Harbach's direction in an attempt to create a favorable impression as to BearingPoint's equity having value.

182. Harbach was careful, however, to create the pretense of "sufficient due diligence and business judgment" by including at least one strategic purchaser in these management presentations, as well as one purchaser who had expressed interest for the Commercial Services business unit.

183. Contrary to Lutz's advice, and due to the failure of the Director Defendants to properly oversee and manage the process, Harbach ignored the potential strategic buyers and

ensured that BearingPoint proceeded with only two bidders, both of which were financial buyers that made initial offers on March 31, 2008 to purchase the whole Company. Harbach caused BearingPoint shortly thereafter to eliminate further negotiations with more than a dozen potential counterparties, and limit further negotiations to the two financial buyers making offers for the whole: Silver Lake and Cerberus.

184. The Board granted Cerberus and Silver Lake due diligence rights in early April 2008. No other parties received due diligence rights during this crucial period, when a successful sale or sales would have advanced toward closure far in advance of the April 2009 “Put” obligation.

The Board Permitted Harbach to Completely Usurp Control of Financial Forecasting

185. As alleged above, after Harbach’s accession to the CEO position in late 2007, and after directing Ethell to prepare the 2008 Management Plan in January 2008, Harbach asserted close control over Ethell in order to gain and retain control over BearingPoint’s financial forecasting—the key to deflecting the urgency of sale efforts and persuading others of the viability of the 2008 Management Plan and Harbach’s strategy.

186. Ethell had been hired by Harry You in 2006 as the Company’s chief financial officer. Immediately upon Harbach’s accession to the CEO position in late 2007, Harbach commenced an effort to push Ethell out of the CFO position in order, as he put it to her, to “establish his own . . . CFO” who would report directly to him.

187. At the same time, Harbach began to push Ethell to the periphery of critical financial forecasting and strategic efforts, impeding her ability to properly function as a CFO.

188. Starting in mid-February 2008, Harbach excluded Ethell from the development of BearingPoint’s “Long Term Forecast,” a forecast built with time afforded by, and on the assumptions underlying, the “aggressive” 2008 Management Plan and which was designed for

the purposes of suggesting to potential purchasers of BearingPoint that BearingPoint's equity value would steadily increase from 2008 through 2012.

189. Like he did with the development of the 2008 Management Plan, Harbach closely controlled the development of the Long Term Forecast, relying primarily on Mike Pope and other direct reports rather than Ethell or her office. Harbach mandated that the Long Term Forecast be a "top down forecast" that incorporated the "aggressive" revenue and earnings targets that Harbach established. When business unit leaders identified operating limitations and recessionary effects that undermined the feasibility of meeting Harbach's imposed targets, Harbach ordered that the business unit leaders be "ke[pt] . . . out of this for now" and directed his staff to "stick to plan."

190. Ethell soon began to chafe under Harbach's inappropriate control over the finance function. To accelerate her departure, Harbach substantially reduced Ethell's bonus in February 2008. Soon thereafter, Harbach asked Ethell to leave her position.

191. In March 2008, Harbach hired David Hunter, an old friend and colleague from his previous employment at Accenture, as chief operating officer of BearingPoint and unit leader of APAC. Hunter then, and at all relevant times, resided in Australia. Hunter's real task, however, was to help Harbach seize control of BearingPoint's financial forecasting so Harbach could control disclosures to parties then bidding for BearingPoint.

192. Within days of hiring Hunter, Harbach instructed the search consultant engaged to recruit a new CFO to amend the position specification so that the new CFO would report to both the CEO and COO Hunter.

193. Hunter had absolutely no history with, or loyalty to BearingPoint, or knowledge of its operations. He had never worked for BearingPoint as a consultant, would never do so, and

had nothing to lose by its demise. His sole objective was to convert this opportunity into a personal benefit. As he put it shortly after being hired, he accepted the position because he had gotten “bored (in retirement),” adding that he was “financially independent and [did not] need the cash comp” and thus accepted a “comp package . . . largely equity/option based” in order to “participate in the equity upside” of the position with BearingPoint.

194. Hunter made his personal motivations clear from the outset. During his hiring process, Hunter’s attempts to extract all possible advantage out of his compensation package prompted one board member to question whether “David is the right person and has the appropriate motivation to accomplish what [Harbach] is hiring him for . . . I would expect the right person, at this point, to be so anxious to start driving a turnaround that he would be working; not spending all his time, energy and passion working on his compensation package and creating a family trust that did not already exist, to take advantage of this new contract.”

195. In April 2008, Hunter noted to a potential acquirer that his motivation was to “participate in the equity upside,” and he emphasized the importance of “meaningful management equity participation for all” managing directors in a transaction. Not surprisingly, Hunter’s initial compensation package was heavily weighted with equity.

196. Harbach’s installation of Hunter as chief operating officer was, on its face, highly irregular. Half a world away from the center of the Company’s operations and from all of its business leaders other than those in APAC, he was only an occasional visitor to the United States, and lived in Sydney, Australia. Calls and interactions with dozens of key management and staff had to be scheduled for the late evening to accommodate his location. With no experience in the Company’s operations or financial difficulties, he invented projected cost savings that were unachievable at Harbach’s direction. It should have been obvious to the

Director Defendants that he had been installed for the sole purpose of exercising control over forecasting and financial disclosure in order to serve Harbach's personal agenda to protect his and Harbach's personal interests in the sales process.

197. With Hunter installed as the new COO, and Ethell pushed to the sidelines of the finance and forecasting function, Harbach could continue largely unabated to obfuscate the true state of BearingPoint's financial condition to potential buyers.

198. Immediately upon his appointment in March of 2008, Hunter joined Harbach in exerting control over the forecasting function carried out by the Company's business units.

199. From April 2008 through June 2008, the due diligence process with Silver Lake and Cerberus commenced in earnest. Throughout that process, Harbach exerted tight control over the dissemination of financial information to Cerberus and Silver Lake with the goal of masking aggressive and overly optimistic financial disclosure, creating a false impression of equity value, and enhancing an impression of his own importance to the process and the future of the business.

200. By April 2008, with Hunter installed as COO, Ethell complained that she was "being impeded in her ability to accomplish her duties as CFO," and was "no longer being permitted to properly function as CFO."

201. In May 2008, Ethell resigned from her position as CFO.

The Board Ignored the General Counsel's and New CFO's Warnings about BearingPoint's Financial Forecasting Dysfunction

202. In the spring of 2008, Eileen Kamerick flew to Florida to meet with Harbach and interview for the CFO position as Ethell's replacement. Kamerick was a licensed attorney, had practiced corporate law at the firm of Skadden Arps, and gone on to earn her MBA and become a seasoned financial officer, with experience in both public and personal services companies.

Kamerick's experience and education gave her a good understanding of both the financial and fiduciary responsibilities of a chief financial officer.

203. Remarkably, Harbach never advised Kamerick during the job interview process that BearingPoint was at that very moment in discussions with potential purchasers for a sale of the Company. This omission occurred despite Lutz's advice to Harbach that it was "urgent[]" for Kamerick to be informed of the status of the sales process.

204. Kamerick joined BearingPoint as CFO in mid-May 2008. When she reported for work, she was astonished to learn that an active due diligence process for a whole Company sale was underway.

205. Kamerick joined BearingPoint just as it was releasing its first quarter, 2008 results, which demonstrated that the Company had, predictably, already missed its projections for the 2008 Management Plan.

206. Lutz and Greenhill by this time were already suggesting that the 2008 Management Plan be revised in light of BearingPoint's first quarter performance.

207. Kamerick immediately recognized a risk that BearingPoint's financial disclosures might be unreliable, and that as a consequence, she would "be directly at odds with the CEO and COO" with "really limited and . . . inadequate protection . . ." Immediately upon her arrival to BearingPoint, she became "worried about the position I am in." Kamerick was so concerned that, against Harbach's wishes, she engaged an independent consultant—Huron Consulting Group ("Huron")—to examine the 2008 Management Plan on the Company's behalf.

208. From May 18, 2008 to June 2, 2008, Huron analyzed marketplace and company information, and tested the assumptions behind the 2008 Management Plan.

209. It was also immediately obvious to Kamerick that there were serious questions regarding the credibility and reliability of BearingPoint's forecasting process, and that it was effectively under the control of COO Hunter, who had commandeered the CFO's staff so as to seize the message and dictate optimistic projections of net income for May 2008.

210. BearingPoint's corporate controller complained to Kamerick of the controls being asserted over him by Hunter. On May 20, 2008, Kamerick advised him that "[t]he CFO controls the presentation and communication of all financials, full stop. If you are ever pressured to do anything else, come to me, I will protect you."

211. At the same time, Kamerick became aware that Hunter was working outside of her purview to create forecasts for use in the sales process. She admonished Hunter: "As CFO, I must approve all forecasts and understand their assumptions prior to any distribution. Once my team and I have completed that, we will forward to you and [Harbach] for your approval. Such a process is a requirement of sound corporate governance and is the underpinning of the basics of the necessary controls to comply with Sarbanes Oxley. The CFO must have control of this process with the input of operations and senior management."

212. General Counsel Lutz directly advised the Board of his concerns about Hunter's overreaching. On May 19, 2008, Lutz reported to the Director Defendants that "David Hunter, leading the FP&A team (which last I looked reported to the CFO, not the COO) has now produced some sort of preliminary, updated 2008 forecast that indicates a \$20 million net income for the year. David is, apparently, the sole architect of this item, working with the [Business Unit Managing Directors]." Lutz also wondered how BearingPoint could "endorse this kind of budget improvement - which is above and beyond even the original forecast and guidance." As Lutz would later sum up the situation: "David Hunter [wa]s in the middle of running [the

forecasting process] all to the exclusion of the [newly-appointed] CFO who, after the fact, may but probably won't agree with Hunter's aggressive, self-held view of the world."

213. Kamerick warned Defendant Strange directly of Hunter's improper demands that her staff generate forecasts without her oversight.

214. Advised that Hunter was preparing a financial forecast outside of her oversight that would show \$20 million net income for the year, Kamerick replied, "No f-ing way." She immediately raised the issue with Harbach, warning that the "forecast David Hunter is presenting tomorrow bears no resemblance to what finance has been given by operations and [Hunter] has not shared it with me."

215. The severity of the dysfunction within BearingPoint's management was patent. Just a day after commencing her position as CFO, Kamerick found BearingPoint to be "a nuthouse." On May 19, 2008, Kamerick described BearingPoint as the "weirdest [f-ing] company on earth." As of May 23, 2008, there was no question to Kamerick that BearingPoint was "in crisis." Other managing directors shared this view.

216. Throughout this period, Harbach continued to deflect a meaningful sales process by representing to investors that BearingPoint was still able to generate and maintain sufficient liquidity by year-end 2008 to address the April 2009 "Put" and continue in operations. In a May 12, 2008 call to BearingPoint investors, Harbach claimed that while BearingPoint's first quarter financial results had fallen short of the 2008 Management Plan, "the most likely outcome for the year is that we will deliver performance near the bottom end of the range as we have previously named. Flat revenue growth, SG&A of \$580 million to \$585 million, net loss of approximately \$70 million, year [end] cash and cash equivalents in the vicinity of \$500 million and free cash flow of approximately \$30 million."

217. Harbach's claim of projected year-end "cash and cash equivalents in the vicinity of \$500 million" was intended to address a market perception that, in order to stay in operation, BearingPoint would need \$200 million for the "Put" obligation, and \$300 million for operations, in addition to a negotiated consent from its senior lenders.

218. Harbach understood the dampening effect those perceptions would have on expressions of interest by other potential purchasers. He had been warned by General Counsel Lutz just days before that "[s]ince you, effectively, became CEO in late Q4 on a 'run the business' platform and you have a \$200m put due in early 2009 . . . people are going to hold you accountable to this in ways they never held [Harry You]."

Management's Dysfunction was Known to Advisors, Analysts, Potential Purchasers, and the Board

219. Although the Board knew that Harbach and Hunter had hijacked the budget and forecasting process, and that unrealistic projections would hamstring the sales process, the Board failed to intervene, causing doubt, confusion and delay amongst BearingPoint's potential suitors. At this point, Greenhill, now better versed in BearingPoint's finances and operations, felt compelled to address the Board to contradict Harbach's public misstatements and representations as to BearingPoint's ability to meet the April 2009 "Put" through operations alone. Harbach had publicly stated that BearingPoint's financial advisors had "analyzed alternative strategies intended to further improve that structure, our global cash balances and their accessibility," and that as a result, Harbach "continue[d] to believe that improving the cash generated by our business and servicing our debt payments as and when they become due from the cash remains are [sic] highest priority."

220. On May 15, 2008, Greenhill advised the Board that potential purchasers and industry analysts "believe[d] that management projections for 2008/9 are not achievable." As

Greenhill advised the Board, criticism by industry analysts of Harbach's May 12, 2008 projections was immediate and unanimous.

221. Greenhill also highlighted for the Board on May 15, 2008, the "noteworthy" finding "that the most recent management plan is more than 60% above current research analyst estimates" and advised that the "Consensus Case could leave the Company with insufficient operating cash during the first half of 2009 and beyond . . . the market consensus for the Company's EBIDTA would lead to uncomfortably low operating cash in early 2009."

222. In an analyst report on May 23, 2008, headlined "BE Results not Good Beneath Surface," Morningstar noted that "the firm's equity value is significantly less than zero," and that Morningstar was "increasingly concerned about BearingPoint's ability to turn around its fortunes." Morningstar warned of the "increasing likelihood that the firm will either put itself (or some of its business units) up for sale or face severe financial distress (which could include bankruptcy) over the next 12 months."

223. Greenhill opined to the Board on May 15, 2008 that it was unlikely that the Company could survive in 2009 absent a near-term transaction, and recommended that discussions with potential purchasers continue, but that the Board should consider "alternatives."

224. On information and belief, Greenhill had directly and unsuccessfully questioned Harbach about the forecast, and attempted throughout the second quarter of 2008 to advise him to change course. Greenhill's advice was ignored.

225. On May 22, 2008, Greenhill complained to BearingPoint's Lutz that Greenhill "ha[d] given tons of advice that has been ignored to the company's clear and possibly fatal detriment."

226. After gaining access to the Company's financial data, both Cerberus and Silver Lake also questioned and criticized the 2008 Management Plan.

227. On May 12, 2008, Cerberus issued its "Preliminary Due Diligence Findings," concluding that the projections were unreliable. Cerberus reduced the terms of its offer, citing "emerging concerns about the reliability of [BearingPoint's] financial data," and noting that it felt the May 2008 Guidance would be "difficult to achieve."

228. In May 2008, after approximately six weeks of due diligence, Silver Lake pulled out of the sale process, questioning BearingPoint's ability to achieve the 2008 Management Plan and citing "significant" financial challenges which "discouraged" Silver Lake from proceeding any further.

Instead of Taking Direct Action, the Board Created an Oversight Committee, Which Also Failed to Act

229. Despite the numerous, obvious, and unavoidable indications that the Company's future was in dire straits, the Director Defendants on May 15, 2008, rather than becoming fully involved in the sales process and exploring the marketplace and options available to maximize value to the shareholders, belatedly appointed a "Special Committee" consisting of Defendants Lord, Strange, and McGeary, and tasked it and them directly to oversee and take control of the struggling sales process. Specifically, the Board authorized the Special Committee to "review, evaluate and negotiate the terms and conditions of a Potential Transaction (or any offer or indication of interest therefore)"

230. That same day, on May 15, 2008, Harbach assured the Special Committee members "that even if BearingPoint does not meet management's plan for 2008, there will be enough cash on hand to focus on its operations, to continue to improve BearingPoint's business and to pay the \$200,000,000 convertible bond 'Put' coming due in April 2009." General

Counsel Lutz soon thereafter warned Defendants McGeary and Strange that Harbach had “disingenuous[ly] . . . contorted” and “misrepresent[ed]” legal advice provided to the Director Defendants by outside legal counsel to support his contention that the Company would be able to satisfy the “Put,” much to Lutz’s “frustrat[ion].”

231. On May 19, 2008, Lutz informed each of the Director Defendants of “unanimous skepticism expressed by all financial advisors, analysts, and Bullrun parties against our existing management plan.”

232. Given the near-uniform skepticism regarding the achievability of the 2008 Management Plan expressed by investors, analysts, potential purchasers, and BearingPoint’s own advisors, General Counsel, and CFO, it was apparent to the Director Defendants that Harbach’s assurances were unreliable, and that while BearingPoint had no equity value, its substantial enterprise value was in grave danger of erosion through Harbach’s stewardship.

233. Concrete evidence contradicting Harbach’s assurances came just two weeks later, when Huron rendered its final report on or about June 2, 2008 showing that the 2008 Management Plan was unachievable, that it overstated year-end available cash by at least \$100 million, and that BearingPoint would not have enough to meet the April 2009 “Put” obligation. Huron informed Kamerick that it doubted that the operating improvements proposed by Harbach and Hunter were achievable.

234. Kamerick directly informed at least Defendants Harbach, Strange, Lord, and McGeary of Huron’s conclusions.

235. Defendants Harbach, Lord, Strange, and McGeary steadfastly resisted any effort to permit Huron to meet with the full Board. Instead, Harbach secured the termination of Huron,

without objection from Defendants Strange, Lord, or McGeary, who had been directly advised by Kamerick of its conclusions.

236. By this point, in furtherance of its due diligence efforts, Cerberus had requested nearly three dozen meetings with BearingPoint personnel, including employees below the senior-management level. In an effort to preserve control over the negotiations (and his last remaining, realistic option to preserve his long-term equity value in BearingPoint), Harbach monopolized the negotiations with Cerberus by closely restricting the circle of people who could be involved in the negotiations or sales process, ordering Lutz and other BearingPoint senior management to “share Bullrun with no one” without his “express consent,” and dictating that “[n]o one gets added without [Harbach’s] prior approval. We must keep this as quiet for as long as possible.”

237. Harbach’s restrictions on the involvement of other personnel could not be justified by the theory that disclosure of negotiations would lead to employee attrition. From and after March 2008, if not long before, it was well known to BearingPoint’s managing directors and employees that BearingPoint was for sale, and the sales process was widely known and discussed within the Company’s management.

238. Harbach’s unreasonable restrictions, which were intended to preserve his control over the negotiations in order to further his own self interest, eroded and delayed negotiations with Cerberus and contributed to their eventual breakdown.

The Special Committee and other Director Defendants Continued to Disregard their Fiduciary Duties

239. The Special Committee was aware of Harbach’s obstructionist tactics. On May 19, 2008, Lutz pleaded with BearingPoint’s outside counsel to “provide some guidelines to Harbach so that he understands that the Special Committee has authority to guide the sales process, not Harbach or management.” Lutz requested that outside counsel schedule a meeting

with Harbach so that Harbach “can hear directly what his role is and is not,” and pleaded with Defendants Strange and McGeary for “clearer direction from the [Special] committee. . . . It is now unclear to me who is running what and I would ask for clarity before getting pitted [between] my CEO, advisors, and committee.”

240. On May 22, 2008, Greenhill complained to Lutz that Cerberus had requested access to managing directors in individual business units, a request that was “consistent with every sale process I have been involved in for 24 years” but that Harbach was obstructing this access.

241. Greenhill now recognized that the situation was dire, and warned of the need to wrest the Cerberus negotiations from Harbach’s control “before the last potential hope for avoiding bankruptcy and meltdown is gone.”

242. Management, including Harbach, and the Director Defendants finally addressed the obvious and known danger of bankruptcy in May 2008, when General Counsel Lutz convened a meeting with one of the world’s leading bankruptcy firms, Weil Gotshal & Manges, LLP, to discuss insolvency options. Lutz received and communicated to the Director Defendants information regarding a possible debt-for-equity swap approach to stave off bankruptcy.

243. As a further indication of the Company’s increasing distress, having learned that she would not in fact gain control of the financial function, and that the other Director Defendants would not stand up to the actions of Harbach and Hunter, CFO Kamerick resigned on June 2, 2008—a mere three weeks after being hired.

244. Having been ignored and disregarded numerous times, on June 1, 2008, General Counsel Lutz took the unusual step of writing a formal letter to Defendants Lord, Munson, and Strange, as well as Dr. Wolfgang Kemna, who was another member of the Audit Committee,

warning of the serious management dysfunction within the Company. Among other things, Lutz warned that, “as general counsel,” he was “increasingly concerned with the increasingly informal manner which I perceive governance surrounding financial matters to be moving,” especially in light of “all the various conflicts between management and the Board and within the senior management team itself.” Lutz pleaded with them to “inform themselves,” and to “take whatever steps you feel necessary in a timely fashion to satisfy yourselves we are moving forward properly and deliberately.”

245. Against the backdrop of BearingPoint’s historic problems with reliable financial reporting and accounting, Kamerick’s abrupt resignation and Lutz’s warnings and pleas plainly underscored the long-standing critical necessity for direct and immediate Board involvement in, and management of, the sales process—yet the Board still failed to engage.

246. Instead, the Defendants remained indifferent to Kamerick’s warnings, Lutz’s warnings, Greenhill’s warnings, Huron’s conclusions, analysts’ conclusions, Silver Lake’s withdrawal, Kamerick’s resignation, and the Company’s failure to keep pace with the 2008 Management Plan. Despite the explicit charge of the Special Committee, the Director Defendants appointed to this Committee took no action to wrest control of the sales process from Harbach. They did not further question the reliability of the 2008 Management Plan, require that it be revised, implement controls over the forecasts being provided to potential purchasers, or act to remedy any of Huron’s findings. Nor did they reevaluate Harbach’s strategy of focusing on operational improvements and limiting a sale of the Company to a financial buyer. Instead, Harbach continued to lead BearingPoint down a path of destruction—unimpeded and unchecked.

The Board and Special Committee Permitted Harbach to Monopolize Sale Negotiations for Self-Interested Ends

247. Through the summer of 2008, Harbach continued to control the sale process in an effort to negotiate a transaction that would preserve and enhance his equity and management interests in BearingPoint, preventing BearingPoint from completing transactions that would have addressed its liquidity crisis and avoided bankruptcy. The other Director Defendants allowed this to occur despite repeated warnings of self-interest and BearingPoint's deteriorating cash position.

248. The obstacles to BearingPoint's objectives presented by the personal agenda of Harbach had long been obvious, but crystallized in June 2008, when Harbach began directly negotiating with Cerberus regarding compensation and equity arrangements for BearingPoint management in the proposed new entity—including his own.

249. The Director Defendants on the Special Committee themselves recognized Harbach's conflict of interest at least by May 23, 2008, when they pondered whether something was needed to "incentivize" Harbach to "speed up negotiations with Cerberus."

250. Those Director Defendants received explicit advice on numerous occasions, but at least as of June 6, 2008, that Harbach was self-interested in the negotiations over his own equity compensation, and all Defendants knew as of June 12, 2008 that Cerberus expected to make an offer to purchase the Company for a range of \$0.75 - \$1.00 per share but that the offer was contingent on resolution of the "key remaining issue[]" of management equity and compensation arrangements.

251. On June 15, 2008, the Special Committee was advised by Greenhill that the "status quo (do no transaction and pay the debt as it comes due) [wa]s the worst outcome

Bottom line is . . . the Company is very likely to be headed for default in early 2009 if no transaction is completed.”

252. By June 22, 2008, when BearingPoint had again missed its monthly forecast, even Harbach could no longer pretend that BearingPoint’s cash situation was anything but “troubling.” The next day, on June 23, 2008, Greenhill advised BearingPoint’s Board of what should have been obvious to the Board long before June: that “cash and employee attrition trends suggest [the status quo] is not feasible.” (Emphasis in original.)

253. Based on advice from Greenhill and outside counsel, and BearingPoint’s year-to-date financial performance, it was apparent to the Director Defendants that BearingPoint could not resolve its liquidity crisis through continued operations, that it was urgently necessary to plan, prepare for, and develop promising sales approaches for disposition of business units or of the whole Company to a strategic buyer.

254. Despite this, the Defendants still recklessly failed and consciously refused to evaluate and pursue alternative strategies for addressing the liquidity crisis or to monitor and oversee the negotiations with Cerberus. Instead, the Director Defendants on the Special Committee on June 6, 2008, permitted Harbach, without oversight, to “begin to discuss the broad parameters of a compensation system were the Company to be acquired by Cerberus,” and on June 12, 2008, authorized him to engage in self-interested negotiations over even his own compensation and management position without direct or meaningful oversight to ensure those negotiations were carried out consistently with BearingPoint’s interests.

255. As of early June 2008, Cerberus had proposed that eight percent of the total enterprise value be set aside and reserved for purposes of incenting management to stay with the post-transaction entity.