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**

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

FILED
CIVIL INTAKE
2011 JUL 21 PM 3:14
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

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.	Civil Action No. 2011-10612
F. EDWIN HARBACH 400 Alton Road, Apt. 1001 Miami Beach, Florida 33139,	
ALBERT L. LORD 1805 River Watch Lane Annapolis, Maryland 21401,	JURY TRIAL DEMANDED
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	

COPY

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 divesture 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 divestures 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."

<u>Harbach Began Efforts to Resist the EMEA Sales Process</u>

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.

<u>Harbach Used Greenhill to Scuttle the EMEA Sale</u>

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.

<u>The Board Terminated You, the EMEA Sale, and UBS's Role as its Sole Financial Advisor</u>

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