

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

CIVIL ACTION NO. 98-591-C

THOMAS HORN, et al.

PLAINTIFFS,

V.

ORDER

ROBERT McQUEEN, et al.

DEFENDANTS.

\* \* \* \* \*

On July 29, 2002, this court found the defendants liable for breach of fiduciary duty in their roles as trustees of an employee stock ownership plan ("ESOP") in violation of ERISA § 406, 29 U.S.C. § 1106. *Horn v. McQueen*, 215 F.Supp.2d 867 (W.D.Ky. 2002).<sup>1</sup> The court determined that in the case of such a breach, "loss will be measured as the difference between what the ESOP paid for the USCC stock and its fair market value at the time of transaction, plus interest." *Id.* at 881. The court found that the ESOP borrowed a total of \$34,427,353 to acquire approximately 66 percent of the outstanding shares of USCC. *Id.* at 872. The court also referred to a special master the matter of determining the fair market value of the company stock as of March 15, 1994. *Id.* at 891. The special master was instructed to "review the testimony of Kerrick, Risius, and Elsten<sup>2</sup> and issue a

---

<sup>1</sup> Because the July 29, 2002, opinion recounts the facts of this case in detail, the court will not address them in this order.

<sup>2</sup> This instruction was expanded to encompass the defendants' expert Gravitt by order dated July 1, 2003. (Docket No. 217)

281

report within six months of the date of referral, as to (1) the value of the USCC stock purchased by the ESOP in March, 1994, (2) the rationale employed in finding this value, and (3) as to each expert who testified at trial, an explanation of which portions of that expert's testimony the special master finds credible, and which portions the special master finds not credible, and why." *Id.* The parties objected to the findings in the special master's initial report. Following a hearing on those objections, the court resubmitted the case to the special master, who issued a supplemental report. The court heard oral arguments on the defendants' objections to the supplemental report on November 12, 2004. This matter is now before the court on the special master's supplemental report regarding the value of the USCC stock purchased by the ESOP in March 1994 and the issue of prejudgment interest for any overpayment.

#### **I. Special Master's Findings Concerning Valuation**

In addition to instructing the special master to consider the reports and testimony of Kerrick, Risius, Gravitt, and Elsten, the court instructed the special master that "[i]f, and only to the extent that, the value of the USCC stock remains ambiguous after the special master has examined the evidence, the ambiguity is to be resolved against the defendants." Docket No. 230 (citing *Secretary of U.S. Dept. of Labor v. Gilley*, 290 F.3d 827, 830 (6th Cir. 2002)).

After considering the experts' evidence, the special master determined that the value of USCC stock purchased by the ESOP in March 1994 was \$26.31

million. Supplemental Special Master's Report ("Supp. SMR") at 4. The special master also concluded that there were no ambiguities to resolve. Special Master's Report ("SMR") at 52.<sup>3</sup> Having found the special master's final report, with its supplement, to be thorough and well-reasoned, the court will adopt the special master's findings in their entirety.

#### **A. General Principles of Valuation**

The special master first addressed general principles relevant to valuations of the type engaged in by the experts. The special master noted that adequate consideration is defined as fair market value, or the price at which an asset would change hands between a well-informed and willing buyer and seller, citing 29 U.S.C. § 1002(18)(B) and DOL Prop. Regs., 53 Fed. Reg. at 17,634. SMR at 3. The special master noted factors considered in valuing a company, including the nature, the industry outlook, earning capacity, and the price of comparable companies. SMR at 3-4.<sup>4</sup> Three general approaches are used in applying these

---

<sup>3</sup> In his initial report, the special master had determined the value of the stock to be \$24.51 million. SMR at 47. This discrepancy resulted from an erroneous correction made by the special master before issuing the initial report. Supp. SMR at 5.

<sup>4</sup> The full list includes (A) the nature and history of the business, (B) the general economic outlook and outlook of the specific industry, (C) the book value of securities and financial condition of business, (D) the earning capacity of the company, (E) the dividend-paying capacity of the company, (F) the firm's goodwill or other intangible value, (G) the market price of similar publicly traded corporations, (H) the marketability of the firm's securities, and (I) the company's control premium. SMR at 3-4 (citing DOL Prop. Regs. § 2510.3-18(b)(4), 53 Fed. Reg. at 17,638).

factors: (1) the income approach, which estimates the future economic benefits for the company's owner and discounts them to present value using a discount rate factoring in risk and the time value of money; (2) the market approach, which looks at the price of comparable companies in a fair, efficient and fully-informed market; and (3) the asset approach, which is based on total fair market value of the company's net assets. SMR at 4-5. With these general principles in mind, the special master considered the evidence of each expert.

#### **B. Kerrick Report**

Kerrick, one of the defendants' experts, estimated the total value of USCC to be \$52.15 million in March 1994. SMR at 6.<sup>5</sup> The special master found this conclusion not credible, noting that Kerrick's testimony on the weighting process was conclusory and that the valuation methods were applied improperly in his report. SMR at 7, 19.

Kerrick used three valuation methods which accounted for 95% of the value of the company; all of these methods were based on the income approach. SMR at 7. The "capitalization of earnings" method, which used a weighted average of past years' income with a capitalization rate assigned to convert that income stream into perpetuity, was flawed because the 1993 income (which received the most weight) was based on an extrapolation from income during the first ten months of the year despite substantial year-end expenses, including \$1.75 million in bonuses to

---

<sup>5</sup> This would value the stock purchased by the ESOP at \$36.38 million (\$52.15 million x 66%).

owners. SMR at 8-9. The special master rejected Kerrick's attempt to reconcile these expenses by adding back certain other expenses – Kerrick had failed to take into account adjustments that should have been made in the other direction, and certain other expenses should not have been added back, making the adjustment look haphazard. SMR at 8-10. Kerrick further failed to justify the 11% discount rate on excess earnings. SMR at 10.<sup>6</sup> The special master also found Kerrick's reliance on past earnings as a measure of future earnings questionable where the firm's earnings were not stable; the special master also questioned the need to rely on past earnings since Kerrick was able to project future earnings. SMR at 10.

The most heavily weighted method, the "capitalized excess earnings" method, determined the fair market value of the business's net tangible assets, multiplied that value by an estimated fair rate of return, subtracted the resulting value from the business's weighted average net income to find the return on intangible assets, and multiplied (or capitalized) the result by estimating fair return on intangibles to determine the value of the firm's intangible assets. SMR at 11. The method determined the value of the company by adding the values of the tangible and intangible assets. SMR at 11. The special master found that the method suffered from the same improper calculation of 1993 net income. SMR at 12. The special master also criticized the use of the book value of net tangible assets instead of the higher market value, which had the effect of inflating excess

---

<sup>6</sup> This is significant because, under an income approach, the smaller the discount rate on the income, the higher the resulting value of the company.

earnings and the value of the business; Kerrick should have used the fair market value, as the IRS requires for valuations. SMR at 12. The excess earnings capitalization rate of 16% was improperly low because it included an adjustment for a 9% steady growth rate despite the expectation that USCC's growth would level off after two years. SMR at 12-13. Finally, the valuation should have used future rather than past earnings since future earnings had been estimated. SMR at 13-14.

The third valuation method, the "discounted future earnings" method, predicted the company's future earnings over a specified period, projected a "residual value" of the business at the end of the period, and then discounted that value to obtain the present value of the company. SMR at 14. Kerrick used two methods to determine the residual value – under the income residual method, the residual value was determined by capitalizing the income of the final period; under the net asset residual method, it was determined as the net asset value of the business at the end of the period. SMR at 14.<sup>7</sup> The special master described the method of valuing the business by discounting its expected future economic income as the most proper approach. SMR at 15. Kerrick's method was flawed, however, because it failed to subtract the value of the company's debt from the value of the company to the stockholders. SMR at 15-17. The income residual calculation did not exclude interest expenses, or the income due to debt holders rather than equity

---

<sup>7</sup> These two methods together received 53% of the weight of all the valuation methods. SMR at 14.

holders, from the income value. SMR at 16. The special master found Kerrick's testimony that such an adjustment was unnecessary not credible. SMR at 16. The net asset residual was flawed because it took into consideration the value of the firm's debt five years into the future but not the present value of that debt; more importantly, while Kerrick's testimony involved the bases for his income statement projections, he failed to provide a justification for his projected balance sheets, from which the debt value was drawn. SMR at 16-17.

The defendants argue that Kerrick's failure to subtract debt from his calculations is not fatal because the debt was factored into the higher discount rate used for projected cash flows; but the special master noted that the lack of detail in Kerrick's report concerning the discount rate prevents the court from knowing whether the debt was taken into consideration. Supp. SMR at 13-14. The special master also found in any event that Kerrick's discount rate numbers were not credible because of Kerrick's failure to explain the basis for the numbers. SMR at 23-24; Supp. SMR at 14. The court agrees with the special master's reasoning and conclusions concerning Kerrick's failure to subtract debt from his calculations.<sup>8</sup>

The special master also noted that Kerrick failed to disclose the basis of the projected revenues and expenses, noting Kerrick's testimony that they "appeared to

---

<sup>8</sup> With regard to Kerrick's testimony, the court in its liability opinion expressed its own concerns about the credibility of Kerrick's testimony, including his downplaying of time restraints, his testimony concerning the existence of a lower draft valuation, the vagueness of his testimony, and his inability to recall whether evidence of preliminary calculations was contained in the files. *Horn*, 215 F.Supp.2d at 883-86.

be reasonable” based on his understanding of the contracts in place and outstanding proposals. SMR at 17-18. Finally, the special master noted that Kerrick’s net asset residual unrealistically assumed liquidation after five years (which was inconsistent with his other methods, which focus on future earnings as measure of value) and failed to account for income tax on liquidation. SMR at 18-19. For these reasons, the special master found Kerrick’s evidence not credible. SMR at 19. The court finds Kerrick’s valuation not credible for the reasons stated by the special master.

### **C. Risius Report**

The plaintiffs’ expert, Risius, valued the company at \$31.21 million in March 1994. SMR at 19-20. The special master found the Risius report a conceptually complete application of the discounted cash flow method, the preferred valuation method, and, except with regard to capital expenditures, sound and credible. SMR at 33.

#### **1. Risius’s discounted cash flow method**

Risius’s discounted cash flow method was theoretically identical to Kerrick’s “discounted future earnings” method. SMR at 20. The special master found significant differences in its application, however. Risius substantiated his projected revenues for each company facility and his projected overall operating expenses, comparing them to the Kerrick and Bank of Louisville projections; Risius’s projections for earnings were significantly lower than Kerrick’s but justifiable,

whereas Kerrick relied on unstated assumptions. SMR at 20-21. The special master found the detailed Risius projections reasonable despite the defendants' contesting Risius's assumptions of no growth projected in future contracts and that USCC facilities would operate at less than full capacity. Supp. SMR at 10.

Risius set his discount rate at 17.5%, calculated using the weighted average cost of capital ("WACC") (a combination of the debt and equity discount rates). SMR at 21. The special master noted that Risius's equity rate of 25.6% was derived from market estimates, based on qualitative determinations, and constituted the sum of the risk-free rate of return, industry risk, company size, and company-specific risk. SMR at 21-22. The special master found Risius's calculation of the discount rate credible. SMR at 22. The special master disagreed with Gravitt's criticism that Risius failed to justify the rate and ignored the firm contractual nature of projected revenues. SMR at 22-23. Risius had considered aspects of USCC reducing its risk, including the government's low risk of default on its contracts and rapid growth in the industry; while a different expert might have come up with a different number, the special master found no basis to conclude that Risius did not consider appropriate factors. SMR at 22-23.

In response to the defendants' argument that the stability of the firm's existing contracts reduced the proper discount rate, the special master commented on the volatility of the firm's projected earnings (as noted by each expert) and the risky prospects for growth. SMR at 25. Further, the special master found Risius's

25.6% equity rate more credible than Kerrick's 20% rate because Risius was clearer about the source of significant data used and provided some narrative supporting his judgment, whereas Kerrick provided details in the form of numbers without any substantiation. SMR at 23-26. The court agrees with the special master's conclusions concerning the credibility of Risius's equity rate, including his reasoning concerning the stability, or lack thereof, created by the firm's existing contacts.

In response to the defendants' objection that Risius should have used the 14.5% "smoothed equity premium" from the Grabowski/King study to account for industry risk and company size, the special master noted that the defendants have failed to justify why the 17.2% "unsmoothed equity premium" is not more appropriate despite the relatively high value of USCC; it was also not clear that USCC was comparable with the exchange-traded companies included in the study. Supp. SMR at 7. Further analyzing Risius's rate, the special master concurred with the defendants' adoption of a risk-free rate of 6.99%. Supp. SMR at 8. The special master further agreed with the defendants on the importance of not double-counting company-specific risk by factoring it into multiple components of the calculation but found that Risius's report and testimony substantiated that he had properly examined the relevant factors. Supp. SMR at 8. The special master also noted that the defendants failed to support their assertion that a lower company-specific adjustment was appropriate. Supp. SMR at 9. Risius could have chosen a

lower adjustment, but the special master found a company-specific adjustment to 25.6% was not unreasonably high even if taken from the defendants' assumed base rate of 21.49% (the 6.99% risk-free premium plus the 14.5% "smoothed equity premium"). Supp. SMR at 9. The special master ultimately favored the evidence in the Risius report over the speculations of the defendants' counsel. Supp. SMR at 9. While the court notes that the defendants believe the equity rate to be the most important factor in these calculations, there is simply no basis upon which to conclude that another rate would be more appropriate than Risius's number. The special master found no impermissible double-counting between Risius's discount rate and what the defendants argued were low cash flow estimates. Supp. SMR at 10. The court agrees with the findings of the special master and finds no reason to believe that Risius has impermissibly double-counted the company-specific risk or used an unreasonably high company-specific or equity risk rate.

The special master dismissed criticism of the Risius report as being produced in 1997 as unfounded because it properly used only data available in March 1994.<sup>9</sup> SMR at 26-27. In addition, while Risius failed to justify his estimate of a 60:40 equity-to-debt ratio for USCC, the special master found the ratio reasonable because it was close to the 67:33 ratio based on the adjusted book value, total

---

<sup>9</sup> To the extent that Risius used a 1997 Grabowski/King study that would have been unavailable in March 1994, the court finds that such error does not materially affect the credibility of the Risius report.

value of equity, and total value of debt in Kerrick's report. SMR at 27-28.

Gravitt criticized Risius for failing to incorporate growth opportunities; the special master found this criticism unfounded in light of Risius's testimony that the firm's growth potential was recognized in actual revenue projections and a growth factor applied to the residual period. SMR at 28-29.<sup>10</sup> The defendants object to Risius's projected 3% growth rate, arguing for a higher growth rate in contract prices; the special master, however, found that the Risius report credibly assumed that the government would limit the increase in growth of its contract prices. Supp. SMR at 11. The defendants also argue that Risius unreasonably assumed that facilities would be operated at less than full capacity, but the special master noted that only Kerrick assumed full capacity – Risius's use of an average of the estimates of Kerrick and others was not unreasonable. Supp. SMR at 11. Finally, the defendants object that Risius failed to consider new business opportunities available to USCC. The special master noted that Risius considered three projects that were either newly completed or under construction in making his revenue projections; because the nature of the firm's sales involve "large, discrete, nonuniform contracts" that are inherently unpredictable, Risius properly declined to speculate as to growth in the absence of evidence of new contract negotiations or

---

<sup>10</sup> The growth factor applies for the residual period after the five-year horizon. It accounts for normal growth in earnings at the rate of inflation during the residual period, during which an analyst assumes no growth in business, but rather that the business will continue in its projected state indefinitely. The special master noted that this growth factor actually works in the defendants' favor, despite their objections. SMR at 28-29.

the firm's financial ability to expand operations. Supp. SMR at 12. The court agrees with the special master's reasoning and conclusions concerning Risius's projected growth. Risius was appropriately conservative in making his projections, particularly in light of the lack of evidence pointing persuasively toward future growth.

## **2. Errors in Risius report**

The special master found Risius's deduction of \$2 million allocated to capital expenditures in 1995 justified. SMR at 30. While the special master recognized the importance of considering capital expenditures in estimating future cash flows, he found that Risius had failed to justify his assumption of \$1 million in capital expenditures for all years. SMR at 30. Because the estimate was not derived from a percentage of revenue, did not include an explanation of why such deductions were required given the fact that USCC did not own many of its properties, and did not include an explanation of why the figure would not grow, the special master found the figure unsubstantiated. SMR at 30-31. The court agrees with the special master's finding that the \$1 million capital expenditure figure is unsubstantiated and that discarding the assumption will not significantly distort the valuation.

Risius also subtracted from the value of the company the present value of future payments owed to Clifford Todd under an employment, non-compete, and consulting agreement. SMR at 32. The special master determined that the contractual obligation should be taken at face value as a contract for future

services rather than existing debt and, therefore, was not properly subtracted from the value of the company to determine the company's equity value. SMR at 31-33.

Finally, the special master did not consider Risius's guideline company method calculations because Risius discarded them. SMR at 20. The defendants argue that Risius's errors, including his initial failure to account for a four-to-one stock split and attempts to correct the problem by making unjustified adjustments, raise credibility issues. The defendants further claim that Risius's decision to discard the \$105 million figure calculated under the guideline company method erodes his credibility, but the special master, noting that Risius admitted and discussed his error, found Risius's explanation credible. Supp. SMR at 19-20. The special master also found the \$105 million figure not relevant to the value of the USCC stock and noted that the defendants have admitted as much. Supp. SMR at 20. The court agrees with the special master's conclusions that Risius's report is credible despite the aborted use of the guideline method and that Risius's guideline approach is not the appropriate method of pinpointing a value of USCC stock.

With the exception of the adjustments required to remove assumed capital expenditures and the present value of payments to Todd (adjustments which do not affect Risius's basic projections and discounting), the special master found Risius's conclusions sound and credible. SMR at 33. The court agrees with these findings.

#### **D. Gravitt Report**

One of the defendants' experts, Gravitt, did not independently calculate a

value for USCC stock; instead, using a guideline approach, he endorsed as reasonable a value of \$33.4 million by comparing it to a guideline range of between \$26.98 million to \$91.4 million. SMR at 33-34. Gravitt found Kerrick's valuation reasonable and Risius's valuation unreliable. SMR at 34. The special master rejected this endorsement of Kerrick's valuation, noting that Kerrick failed to subtract debt while Gravitt properly did subtract the debt in applying his guideline approach; the special master found the criticism of Risius well-founded with regard to capital investments and payments to Todd, but not credible otherwise; and the special master adjusted and made use of Gravitt's guideline approach for estimating the value of the company. SMR at 34, 38-39, 44.

#### **1. Gravitt's findings**

The guideline approach used by Gravitt is a common application of the market-based approach, which calculates the value of the company by using a guideline measure which can be compared with the same guideline measure for similar publicly traded companies. SMR at 34-35. Risius and Kerrick both rejected this approach because of difficulty finding similar companies; Gravitt used four companies in his model. SMR at 35. Gravitt used as his guideline variable the ratio of market value of invested capital (MVIC) to earnings before interest, taxes, depreciation, and amortization (EBITDA). SMR at 35-36. Gravitt utilized the EBITDA for USCC and public companies and MVIC (the total value of debt and equity) for public companies from stock prices. SMR at 36. The special master

noted that this method eliminates the importance of debt structure. SMR at 36.

Risius noted that Gravitt used the March 1994 stock prices for the publicly traded companies and that those prices had jumped by more than 60% each after December 31, 1993. SMR at 36. The special master adjusted the guideline approach to consider the prices at both dates because the sudden, large fluctuation dramatically affected the results and noted that if the market rate is to reflect true value, it is difficult to believe that the value of these companies nearly doubled in three months absent any fundamental changes in the companies or the industry. SMR at 36-37. Risius also objected to the size of Gravitt's adjustment to add back to the EBITDA amounts paid to owners, although not to the necessity of making some adjustment. SMR at 37. The special master did not find either expert's number lacking in credibility and made use of both. SMR at 37. Risius objected that one of the four companies was not publicly traded until August 1994 and should not have been used; the special master found that the probative value of that company's data outweighed the distorting effect. SMR at 37-38.

After making these adjustments to the Gravitt report's method, the special master found guideline values for December 31, 1993 between \$42.4 and \$47.9 million and for March 15, 1994 between \$64.7 and \$73.2 million. SMR at 39. The special master noted the limitations of this guideline approach from the lack of closely comparable companies – USCC was highly leveraged and closely held – and the failure to consider several years of data. SMR at 39-40. The special master

found that these limitations affected the weight to be given to the approach, although it would be appropriate to use the results to check the reasonableness of the other experts' assumptions. SMR at 40-41.<sup>11</sup>

## **2. Gravitt's criticisms of Risius**

Gravitt criticized Risius's failure to use USCC's historical results in making projections; but the special master noted that Risius used data from the three years ending December 31, 1993, and that Kerrick weighted these three years most heavily. SMR at 41-42.

Gravitt also criticized Risius for valuing USCC at less than Kerrick's adjusted asset value when the net tangible assets should have established a minimum value for the company. SMR at 42. The special master noted that Kerrick did not conduct the rigorous assessment required for proper application of his method and also that Kerrick's book value for December 31, 1993, was not reliable because of its use of an incorrect 1993 income and other discrepancies; given these problems with the Kerrick report, the special master found the difference between the experts' values not material. SMR at 42-43.

Regarding Gravitt's argument that Risius used projected net earnings that resulted in profits lower than USCC's historic profits, the special master noted that the projections were higher than management's projections and that Kerrick had

---

<sup>11</sup> Gravitt, in using the guideline approach, likewise had not intended to assign a specific value to the USCC stock, but to establish a range of reasonable values. SMR at 40-41.

used similar numbers. SMR at 43.

Gravitt argued that Risius's estimated increases in the value of USCC contracts lacked adequate supporting information, but the special master found that the increases reflect inflation and that reliable information on future inflation is not available. SMR at 43.

Finally, Gravitt noted that Risius had made assumptions about the renewal of a USCC lease in 1998 rather than determining whether the lease was actually renewed; the special master found that it would have been improper for Risius to consider information not available in March 1994 in making his valuation. SMR at 43-44.<sup>12</sup> The court agrees with the special master's conclusions concerning Gravitt's findings.

#### **E. Special Master's Valuation**

The special master used Risius's discounted cash flow method to determine the proper value of USCC in March 1994 and used the ranges suggested by the guideline company approach to evaluate the results. SMR at 45.<sup>13</sup> Adjusting

---

<sup>12</sup> Because Elsten made no material conclusions regarding value and was not asked to assess the merits of the Kerrick or Risius report, the special master reviewed her testimony, but did not deem it material to valuation. SMR at 44. This court agrees.

<sup>13</sup> The special master did not use Kerrick's method because he found Kerrick's estimates not credible; Gravitt's method was not designed to assign a particular value to the stock. While Risius's report was the only remaining expert opinion on valuation, the special master did not adopt Risius's position by default, as the defendants suggest. The special master used only the parts of Risius's report that he found credible and made simple mathematical adjustments to correct for those portions that he found not credible. In relying on the evidence of record to

Risius's approach to add back the \$1 million charged to capital expenditures, the special master arrived at \$58.532 million as the total value of the company (debt plus equity) as of the transaction date. SMR at 45-46; Supp. SMR at 4.<sup>14</sup> The special master then subtracted the outstanding interest-bearing debt of \$18.674 million (including the total reported debt minus accounts payable, unearned income, and accrued expenses, which do not carry interest), which yielded an equity value for the company of \$39.858 million. SMR at 46-47; Supp SMR at 4.<sup>15</sup> Multiplying this equity value by 0.66 to reflect 66% of the stock purchased by the ESOP yielded a \$26.31 million value. SMR at 47; Supp. SMR at 4.<sup>16</sup>

#### **F. Marketability and Control Premium**

Marketability and control premium adjustments are commonly made in

---

make his valuation finding, the special master properly declined to conduct an independent analysis. See Supp. SMR at 13.

<sup>14</sup> The special master mistakenly adjusted the experts' mid-year discounting convention to end-year for the fifth year in his initial report. The special master has corrected this error in his supplemental report; this accounts for the difference between the numbers in the initial and supplemental reports. Supp. SMR at 5 .

<sup>15</sup> In doing so, the special master rejected the defendants' argument that only long-term debt and not short-term debt should be subtracted. The special master noted that he was dealing with a valuation issue rather than a projection period issue and that short-term creditors have a claim to the firm's assets. SMR at 47. The court concurs with the special master's findings concerning short-term debt.

<sup>16</sup> In response to the defendants' sheet of valuation numbers purporting to show that the special master's findings were at the low end of the permissible range, the special master made adjustments to the defendants' figures to subtract short-term interest-bearing debt and remove figures relying on Kerrick's unsubstantiated 20% discount rate debt. The remaining range calculated by discounted cash flows was from \$31.2 to \$39.9 million. Supp. SMR at 21-25.

valuing a closely-held company. SMR at 47. Kerrick concluded no discount for lack of marketability was necessary because other parties had indicated an interest in buying the firm and because of the required "put option" on the stock held by the ESOP; Kerrick did not discuss a control premium. SMR at 47-48. Risius concluded no discount for lack of marketability was necessary because of the "put option" and the fact that the ESOP held a controlling interest – as owner, the ESOP could obtain liquidity by selling the company. SMR at 48. Risius apparently incorporated the control premium into his valuation, which he calls a valuation for a "nonmarketable controlling-interest value." SMR at 48. Gravitt assumed that the two factors offset each other. SMR at 48. Because no expert thought an adjustment for marketability necessary, the special master did not make such an adjustment. SMR at 48. Risius did not explain the basis for his control premium, but the control premium incorporated by Risius benefitted the defendants and was not objected to by the plaintiffs so the special master found no ambiguity. SMR at 48-49.

## **F. Other Evidence**

### **1. Bank of Louisville evaluation**

The defendants asked the special master to consider the Bank of Louisville's evaluation. The special master noted that the bank had conducted a substantial investigation upon which Risius and Kerrick relied, but the special master did not rely on the evaluation as a valuation. SMR at 49-50. Relying on this court's

previous opinion, the special master found that the bank's concern was that it get paid, that it had no fiduciary relationship with the ESOP, and that the \$34.4 million loan was secured by the full value of the company, not just the 66% of the ESOP shares, indicating that the bank believed that USCC as a whole was worth at least \$34.4 million. SMR at 49-50; Supp. SMR at 18-19. The evidence had limited value because the bank's purpose and analysis were fundamentally different from those involved in a proper valuation of the stock. SMR at 50; Supp. SMR at 19.

The Bank of Louisville evaluation is not persuasive in determining the total value of the company for the reasons stated in this court's previous order and relied on by the special master. *Horn*, 215 F.Supp.2d at 889. The special master properly declined to consider the bank's evaluation.

## **2. Subsequent transactions**

The defendants asked the special master to consider later transactions,<sup>17</sup> but the special master found that they were not determinative of the value at the time of the ESOP transaction. SMR at 50-51. Three and four years after the ESOP transaction was not sufficiently close in time to be considered comparable contemporaneous transactions when the horizon for the experts' estimates was only five years. SMR at 50-51. The first of the transactions when discounted yielded results between \$31.8 million and \$36.4 million, depending on whose

---

<sup>17</sup> The Whitney Group bought the ESOP's shares for \$41 million in 1997. Correction Corporation of America bought the whole company in 1998 for \$117 million.

discount rate was used. Evidence of the second transaction was based on a one-sentence description a “hefty” four years after the ESOP transaction. SMR at 50-51. The special master rejected similar arguments in his supplemental report. Supp. SMR at 17-18.

The court finds that the special master correctly declined to consider these subsequent sales. The cases cited by the defendants in support of their consideration are not persuasive. While *Estate of Kaplin v. Commissioner of Internal Revenue* found that “little evidence could be more probative than the direct sale of the property in question,” the Sixth Circuit was considering a sale occurring two years later where the property had not been improved during that two-year period. 748 F.2d 1109, 1111 (6<sup>th</sup> Cir. 1984). Likewise, *Estate of Jung v. Commissioner of Internal Revenue* noted that courts are required to consider subsequent sales of property when the properties are comparable. 101 T.C. 412, 431 (1993). In this case, however, the properties are not comparable. The changes in USCC over the three- or four-year period and the experts’ five-year horizon indicate that these transactions are not reliable indicators of the value of USCC in March 1994.

### **3. Contemporaneous offers**

Relying on the court’s previous order, the special master found the contemporaneous offers alleged by the defendants vague, unsubstantiated, and not proper for consideration. SMR at 51. The special master correctly declined to

consider these offers. In its order as to liability, the court found the Robertson, Stephens & Co. offer vague, using numbers that were “put forth prior to the performance of any due diligence and are generally unsupported.” *Horn*, 215 F.Supp.2d at 888. At trial, the defendants presented this and other vague so-called offers only to show good faith, not as evidence of the value of the company. *Id.* These offers have no evidentiary worth in determining the value of USCC stock in March 1994.<sup>18</sup>

Because the court agrees with the special master’s findings, the court will adopt his findings concerning the credibility of the experts’ evidence and his determination of the value of USCC stock in March 1994. The court finds that the fair market value of the stock purchased by the ESOP was \$26.318 million. Because the ESOP paid \$34,427,353 for the stock, the court concludes that the ESOP overpaid in the amount of \$8,139,116.<sup>19</sup>

## **II. Prejudgment Interest**

### **A. Availability of Prejudgment Interest**

Both parties have filed motions relevant to the availability and determination

---

<sup>18</sup> The special master considered further submissions from the defendants but determined that they did not affect his determination. Supp. SMR at 27-28.

<sup>19</sup> The court derived this number by subtracting the rounded debt figure contained in the special master’s supplemental report, Supp. SMR at 4, from the rounded total value of USCC (equity plus debt), *Id.*, and then multiplying the difference by the 66.03% equity interest purchased by the ESOP, *see Horn*, 215 F.Supp.2d at 869. ( $\$34,427,353 - ((\$58.532 \text{ million} - \$18.674 \text{ million}) \times .6603) = \$8,139,116$ )

of prejudgment interest. (Docket Nos. 234 and 268) The defendants argue as an initial matter that prejudgment interest is not permitted under *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002). In *Great-West*, the Supreme Court interpreted the language of ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), allowing “other appropriate equitable relief” to bar suits for money other than suits for equitable restitution. *Id. (passim)* The defendants argue that “other appropriate equitable relief” in this case does not include prejudgment interest. The plaintiffs argue, in response, that they are entitled to equitable and remedial relief in their suit on behalf of the plan under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), as well as “other equitable relief” as individual plaintiffs under ERISA § 502(a)(3).

Section 502(a)(2) allows a civil action “by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title.” ERISA § 409(a), 29 U.S.C. § 1109(a), in turn, makes fiduciaries liable for breaches of their fiduciary duties and specifies available remedies:

The fiduciary is personally liable for damages (“to make good to [the] plan any losses to the plan resulting from each such breach”), for restitution (“to restore to [the] plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary”), and for “such other equitable or remedial relief as the court may deem appropriate,” including removal of the fiduciary.

*Mertens v. Hewitt Associates*, 508 U.S. 248, 252 (1993). *Mertens* distinguished between the broad relief available under § 502(a)(2) and the more limited “appropriate equitable relief” available under § 502(a)(3). *Id.* The Supreme Court also has found, however, that the broad recovery allowed under § 409(a) may inure

solely to the benefit of the plan as a whole and not to individual participants.

*Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 140-42 (1985).

Because this court has concluded that the plaintiffs, as participants in the ESOP, have properly brought this claim on behalf of the plan for loss occurring to the plan, they are entitled to pursue the broad range of remedies available to the plan under § 409(a).<sup>20</sup> *Great-West*, which addresses only § 502(a)(3) and its “other appropriate equitable relief” provision, does not affect the availability of relief under § 502(a)(2). Because the plaintiffs may seek a wide range of relief under § 502 (a) (2), the court need not address the availability of the requested relief under § 502 (a) (2). See *Helfrich v. PNC Bank*, 267 F.3d 477, 481 (6th Cir. 2001) (distinguishing between the two subsections and noting the “full gamut of legal equitable relief” available to individuals acting on behalf of plan).

The court has “wide latitude in compensating participants in an ESOP when a breach of fiduciary duty has been shown.” *Chao v. Hall Holding Co., Inc.*, 285 F.3d 415, 444 (6th Cir. 2002). This latitude includes the discretion to award prejudgment interest “in accordance with general equitable principles.” *Ford v. Uniroyal Pension Plan*, 154 F.3d 613, 616 (6th Cir. 1998) (allowing prejudgment interest in suit under § 502(a)(1)(B) for withheld benefits). Such interest simply

---

<sup>20</sup> The defendants argue that the plaintiffs may not seek such relief because the ESOP was terminated prior to the filing of this suit. The court rejects this argument because the loss to the ESOP, and, by extension, to the ESOP participants, occurred prior to termination. Allowing an ESOP fiduciary to avoid liability for such loss by terminating the ESOP would also be contrary to the broad remedial policy evinced by ERISA § 409(a).

compensates the plaintiffs for the “lost interest value of money wrongly withheld.” *Id.* at 618. The court warned against excessive interest rates that would over-compensate plaintiffs and, in effect, constitute punitive damages instead of just making good the plaintiff's losses. *Id.* On the other hand, the court warned that “an exceedingly low prejudgment interest rate fails to make the plaintiffs whole by inadequately compensating him or her for the lost use of money.” *Id.* The Sixth Circuit has noted that “[a]wards of prejudgment interest are compensatory, not punitive, and a finding of wrongdoing by the defendant is not a prerequisite to such an award.” *Drennan v. General Motors Corp.*, 977 F.2d 246, 253 (6th Cir. 1992). Thus, compensation concerns weigh heavily in the Sixth Circuit’s consideration of “equitable principles.”

Other circuits have expressed this equitable balancing in terms of fairness and compensation; factors considered by these circuits include whether the award of interest is sufficient to compensate the plaintiff, whether the award is fair, the presence or absence of bad faith, deterrence of delay in settling or paying claims, and the potential for unjust enrichment in the absence of interest. *See Mendez v. Teachers Ins. & Annuity Ass’n & College Retirement Equities Fund*, 982 F.2d 783, 790 (2d Cir. 1992) (interest to be awarded only where “fair, equitable and necessary to compensate the wronged party fully;” upholding denial where plaintiff had already received accrued interest); *Skretvedt v. E.I. DuPont De Nemours*, 372 F.3d 193, 208 (3d Cir. 2004) (interest compensates prevailing party for its true

costs, promotes settlement, and deters attempts to benefit from litigation delay and should be awarded unless inequitable; collecting cases on prejudgment interest); *Fritcher v. Health Care Service Corp.*, 301 F.3d 811, 820 (7th Cir. 2002) (award of interest “a question of fairness;” failure to award interest provides incomplete compensation and gives defendant incentives to delay); *Landwehr v. DuPree*, 72 F.3d 726, 739 (9th Cir. 1995) (in § 502(a)(3) case, finding award of interest “a question of fairness, lying within the court’s sound discretion, to be answered by balancing the equities” and upholding denial of interest where defendant lacked bad faith); *U.S. Industries, Inc. v. Touche Ross & Co.*, 854 F.2d 1223, 1256-58 (10th Cir. 1988) (asking whether award of interest is sufficient to compensate and whether award is fair; collecting cases on prejudgment interest), *implied overruling on other grounds recognized in Anixter v. Home-Stake Production Co.*, 77 F.3d 1215, 1231 (10th Cir. 1996).

Some of these courts have explicitly found a presumption in favor of the award of prejudgment interest, particularly where the defendant has breached his fiduciary duties. *See Skretvedt*, 372 F.3d at 208 (3d Cir. 2004) (interest to be awarded “unless exceptional or unusual circumstances exist making the award of interest inequitable”); *Fritcher*, 301 F.3d at 820 (interest presumptively available in ERISA cases); *U.S. Industries*, 854 F.2d at 1256-58 (interest normally awarded absent some justification for withholding). The court finds these considerations

equally applicable under Sixth Circuit law.<sup>21</sup>

In a similar case involving a breach of fiduciary duty by ESOP administrators, a district court in this circuit awarded prejudgment interest to make the ESOP whole, despite the court's finding that the defendants' conduct was not egregious and that some defendants did not act with the intent of personal gain. *Herman v. Hall Holding Co., Inc.*, Case No. 94-CV-2236, at 3 n.2 (N.D. Ohio September 28, 1999), *aff'd by Chao v. Hall Holding Co., Inc.*, 285 F.3d 415 (6th Cir. 2002).<sup>22</sup> In doing so, the district court noted that such interest is compensatory rather than punitive and that the defendants' willfulness is not determinative. *Id.* (citing

---

<sup>21</sup> The cases cited by the defendants for the proposition that prejudgment interest is barred by *Great-West* are inapposite as none of those cases involved an award under § 502(a)(2). *Helfrich* denied a claim for equitable restitution under § 502(a)(3). 267 F.3d at 481. *Community Health Plan of Ohio v. Mosser*, like *Great-West*, involved an impermissible attempt to recover contractual reimbursement from a beneficiary under § 502(a)(3). 347 F.3d 619 (6th Cir. 2003). In *Flint v. ABB, Inc.*, the Eleventh Circuit found that extra-contractual interest is not a "benefit due under the plan" under § 502(a)(1)(B) and posed a question in *dicta* about the availability of prejudgment interest under § 502(a)(3). 227 F.3d 1326, 1329, 1331 (11th Cir. 2003). Likewise, in *Kerr v. Charles F. Vatterott & Co.*, the Eighth Circuit found extra-contractual interest impermissible under § 502(a)(1)(B); the court also found prejudgment interest unavailable under § 502(a)(3) where the plaintiff had already received interest accrued on the benefits in his defined contribution account and the trustee had not been enriched. 184 F.3d 938, 942, 946 (8th Cir. 1999). None of these cases addresses the broader equitable or remedial relief available under § 502(a)(2). In addition, the Sixth Circuit has taken a broader view than the Eighth and Eleventh Circuits of the availability of prejudgment interest in § 502(a)(1)(B) cases post-*Great-West*. See, e.g., *Caffey v. UNUM Life Ins. Co.*, 302 F.3d 576, 585-86 (6th Cir. 2002) (suit to compel payment of long-term disability benefits).

<sup>22</sup> The relevance of *Hall Holding* to the present case is discussed at length in the court's July 29, 2002, opinion.

*Drennan*, 977 F.2d at 252). The prejudgment interest rate selected in *Hall Holding* more than doubled the damages awarded to the ESOP. *Id.* at 4.

This court finds an award of prejudgment interest necessary to adequately compensate the ESOP, and by extension the plaintiffs, for the "lost interest value of money wrongly withheld." In addition to compensation concerns, fairness weighs in favor of an award of prejudgment interest. This court previously found:

The evidence at trial showed that these defendants embarked upon creating an ESOP in order to retain control of their company; they settled upon a price with the selling principal without negotiation and agreed to a closing deadline imposed by that principal; they became trustees of the ESOP, while remaining corporate officers; they commissioned a valuation of the corporation's stock which was subjected to a compressed timetable, and for which they provided the projections, the end result of which was a value sufficient to consummate the transaction, but their primary review and analysis of which was merely to question why the corporation wasn't worth more.

*Horn*, 215 F.Supp.2d at 899. Although it was in the best interest of the ESOP participants to acquire the stock at the lowest possible price, "it is clear that the trustees were not looking at the transaction from that perspective." *Id.* The defendants in this case failed to act in objective good faith in conducting the stock purchase. Instead, the trustees engaged in the transaction in pursuit of their own self-interest with the goal of retaining control of the company. To the extent that the defendants benefitted from their breach of fiduciary duty, they have been enriched at the expense of the ESOP participants. Furthermore, failure to award interest would leave the ESOP participants with grossly inadequate compensation

for the time value of their money.<sup>23</sup> Given the general presumption in favor of prejudgment interest to make the ESOP whole and the balancing of the equities, the court finds an award of prejudgment interest appropriate.

#### **B. Appropriate Rate of Interest**

In determining the appropriate rate of interest, the court is to choose a rate sufficient to compensate the ESOP adequately without over-compensating it. *Ford*, 154 F.3d at 618. The plaintiffs suggest three methods of bringing the loss forward from March 1994: (1) interest at the rate of prime plus 100 basis points; (2) interest based on the return that would have been received in a model balanced portfolio; and (3) an accounting of profits arising from the stock that could have been purchased at the fair market value of the stock with the amount overpaid by the ESOP.<sup>24</sup>

##### **1. Prime rate plus 100 basis points method**

---

<sup>23</sup> The projections provided by the plaintiffs' expert indicate that the value of the money lost would have more than doubled since March 1994 if invested at the prime rate. See Risius Declaration, Docket No. 236.

<sup>24</sup> The plaintiffs argue that the court should award interest based on returns available under prudent alternative investments as in *Harris Trust & Savings Bank v. John Hancock Mutual Life Ins. Co.*, 122 F.Supp.2d 444, 465 (S.D.N.Y. 2000), and *Dardaganis v. Grace Capital, Inc.*, 889 F.2d 1237 (2d Cir. 1989). The defendants counter that consideration of alternative investment opportunities is impermissible in this case because the ESOP was prohibited by statute from making alternative investments and that an award of interest, therefore, is inappropriate. The court has already rejected this argument presented in a different form in its July 29, 2002, opinion where the court found that any overpayment for the stock constitutes loss to the ESOP under *Hall Holding*, even though the ESOP could invest only in stock of the company -- the overpayment constitutes benefits that should have been received by ESOP participants.

The defendants argue that this suggested rate would be an impermissible award in excess of the statutory prejudgment interest rate. The court notes initially that it is not bound by the state prejudgment interest rate. *See Rybarczyk v. TRW, Inc.*, 235 F.3d 975, 985 (6th Cir. 2000) (looking “with disfavor on simply adopting state law interest rates” in ERISA cases); *Ford*, 154 F.3d at 618-19 (upholding district court decision not to use Michigan statutory rate where state rate intended to compensate for litigation expense and would over-compensate because court already awarding fees and costs). Further, while the court may award prejudgment interest at the federal statutory post-judgment interest rate, 28 U.S.C. § 1961, *see Ford*, 154 F.3d at 619, the court is not bound to do so. *See Rybarczyk*, 235 F.3d at 986 (“This is not to say, however, that the § 1961 rate is the only permissible prejudgment interest rate.”).

*Rybarczyk* and *Ford* indicate that the court has great latitude in designating a prejudgment interest rate that complies with equitable principles, as discussed above. After noting prior decisions allowing the use of the § 1961 rate, *Rybarczyk* also cited with approval awards of prejudgment interest tied to the prevailing market rate, “thus reflecting what the defendant would have had to pay in order to borrow the money at issue.” 235 F.3d at 986 (citing *EEOC v. Wooster Brush Co. Employees Relief Ass’n*, 727 F.2d 566, 579 (6th Cir. 1984) (using adjusted prime rate); *Katsaros v. Cody*, 744 F.2d 270, 281 (2d Cir. 1984) (approving use of prevailing interest rates)). *Rybarczyk* ultimately upheld an award of prejudgment

interest at the higher of the § 1961 rate or the rate of return actually realized on the funds; such a formula would compensate the plaintiffs and at the same time prevent the possibility of unjust enrichment. 235 F.3d at 986. The overarching concern in determining the rate of interest is adequate compensation of the ESOP for the lost interest value of money wrongly withheld. *Ford*, 154 F.3d at 618. An award of interest based on the prevailing market rate would be appropriate to compensate the ESOP.

## **2. Model balanced portfolio method**

The second suggested method, preferred by the plaintiffs, would base the prejudgment interest rate on the return the funds would have generated had they been invested in a balanced portfolio consisting of 60% stocks and 40% bonds; the plaintiffs would use the returns available under the Vanguard Stock and Bond Market Indices for the period between March 1994 and the date of entry of judgment. The plaintiffs argue that this model represents the investment that a prudent investor would have made over the same period and that such a model is appropriate because no readily identifiable alternative investments are available.

The Eleventh Circuit has found the district court within its discretion in awarding prejudgment interest under a model portfolio approach. *GIW Industries, Inc. v. Trevor, Stewart, Burton & Jacobsen, Inc.*, 895 F.2d 729, 733 (11th Cir. 1990) (using model portfolio including investment of 35% of assets in long-term bonds and 35% in intermediate-term bonds where fund had actually invested 70%

of assets in long-term bonds, resulting in breach of fiduciary duty). The plaintiffs further argue that the burden is on the defendants to prove that the actual return in the absence of a breach would have been less than the amount proposed by the plaintiffs. *See Dardaganis*, 889 F.2d at 744 (noting common law presumption that, but for breach, trustee would have invested in most profitable alternative and that trustee bears burden of proving that fund would have earned less).

This method has the advantage of providing a more realistic rate of return on investable funds than would a prevailing market rate that would more appropriately measure the cost of borrowing funds. The defendants have not demonstrated that this approach is unjustified, as the court has rejected their argument that interest is improper because no alternative investments were available. The court concludes that this method is better suited to accomplish *Ford's* goal of adequately compensating the plan for the lost time value of money.

### **3. Accounting for profits from additional shares**

Under the third method suggested by the plaintiffs, the court would award the ESOP the additional shares that could have been purchased with the amount of the overpayment at the stock's fair market value as of March 15, 1994. The court would then require an accounting of the profits derived from the stock not held by the ESOP and award the profits derived from those additional shares.

The plaintiffs rely on the Sixth Circuit's finding in *Hall Holding* that "[t]he lower the price of the stock, the more shares that can be purchased by the ESOP,

assuming the investor will invest the same amount without regard to price per share." 285 F.3d at 442-43. The district court in *Hall Holding*, however, actually adopted an adjusted prime rate from 26 U.S.C. § 6621 rather than such an accounting of profits from additional shares that could have been purchased. Case No. 94-CV-2236, at 3-4 (N.D. Ohio September 28, 1999). The Sixth Circuit language merely explained the court's conclusion that the ESOP had suffered a loss.

This method would complicate unnecessarily the determination of appropriate interest without presenting a more realistic rate of return on the funds withheld since it is questionable whether the plan would have been able to purchase so many additional shares of USCC stock.<sup>25</sup>

The court concludes that the model balanced portfolio approach is the most appropriate method of awarding prejudgment interest in this case. Accordingly,

**IT IS ORDERED** that the special master's report is adopted. On the issue of damages, the court finds that the fair market value of the stock purchased by the ESOP in March 1994 was \$26.31 million and that the plan overpaid for that stock in the amount of \$8,139,116. The plaintiffs, on behalf of the plan, are awarded \$8,139,116 for the loss to the plan. Within five days of entry of this order, the plaintiffs shall file a proposed mathematical calculation of the prejudgment interest that the court should award based on the damages awarded herein. The defendants may file objections to that calculation, limited to any mathematical errors made by

---

<sup>25</sup> The additional shares would have given the ESOP more than 90% of the company's stock.

the plaintiffs, within five days of its filing. The plaintiffs may reply within another five days, if desired, whereupon the court will enter final judgment. Within those memoranda, the parties shall address the effect of setting off the settlement payment already received from the total award on the court's order, if any.<sup>26</sup>

---

<sup>26</sup> At the oral argument on the defendants' objections to the Supplemental Special Master's Report the parties agreed that the settlement money already paid by other fiduciaries must be subtracted from the award made by the court.

Signed on December 1, 2004

  
  
**Jennifer B. Coffman, Judge**  
**United States District Court**

**Other Orders/Judgments**3:98-cv-00591-JBC-CCG Horn, et al v. McQueen, et al SM

- Order

**U.S. District Court****Western District of Kentucky**

## Notice of Electronic Filing

The following transaction was received from SDB entered on 12/2/2004 at 12:28 PM EST and filed on 12/2/2004

**Case Name:** Horn, et al v. McQueen, et al**Case Number:** 3:98-cv-591**Filer:****Document Number:** 281**Docket Text:**

ORDER by Jennifer B. Coffman on 12/1/04; Adopting [231] Special Master's Report filed by Douglas C. Michael, [238] Supplement, [265] Supplement; findings on damages as set forth; parties to comply with remainder of order as set forth.(SDB)

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1036078947 [Date=12/2/2004] [FileNumber=236934-0]  
[48b7c8113873d2bf3e5619bb8e2712df30f942a179ff49dcd23b51545800ab0612fb  
73c77af51883899bdb7dee54c85886383f46486dfc9821b4ab6c322de1b3]]

**3:98-cv-591 Notice will be electronically mailed to:**

Joel T. Galanter jgalanter@stokesbartholomew.com,

Christopher Tyson Gorman tgorman@wyattfirm.com,

Griffin Terry Sumner gsumner@fbtlaw.com,

**3:98-cv-591 Notice will not be electronically mailed to:**

David M. Cook  
22 W. Ninth Street  
Cincinnati, OH 45202

Barbara B. Edelman  
Dinsmore & Shohl

250 W MAIN ST STE 1400  
LEXINGTON, KY 40507

Todd F. Jackson  
Lewis, Feinberg, Renaker & Jackson, PC  
1330 Broadway  
Suite 1800  
Oakland, CA 94612

Donald J. Kelly  
Wyatt, Tarrant & Combs  
500 W. Jefferson Street  
Suite 2600  
Louisville, KY 40202

Brad A. Lampley  
Stokes, Bartholomew, Evans & Petree  
424 Church Street  
Suite 2800  
Nashville, TN 37219

John J. McLaughlin  
Goldberg & Simpson  
101 S 5TH ST STE 3000  
Louisville, KY 40202-3174

Douglas C. Michael  
University of Kentucky College of Law  
University of Kentucky  
College of Law  
Law Building  
Lexington, KY 40506-0048

T. Steven Perry  
Stokes, Bartholomew, Evans & Petree  
424 Church Street  
Suite 2800  
Nashville, TN 37219

M. Stephen Pitt  
Wyatt, Tarrant & Combs  
500 W. Jefferson Street  
Suite 2600  
Louisville, KY 40202

Sherry P. Porter  
Goldberg & Simpson  
101 S 5TH ST STE 3000  
Louisville, KY 40202-3174

E. Douglas Richards  
Miller, Griffin & Marks PSC  
271 W. Short Street  
Suite 600  
Lexington, KY 40507-1292

Merrill S. Schell  
Wyatt, Tarrant & Combs  
500 W. Jefferson Street  
Suite 2600  
Louisville, KY 40202

D. Kirk Shaffer  
Stokes, Bartholomew, Evans & Petree  
424 Church Street  
Suite 2800  
Nashville, TN 37219

Alfred H. Sigman  
Sigman, Lewis & Feinberg PC  
436 14th Street  
Suite 1505  
Oakland, CA 94612

Sheryl G. Snyder  
Frost Brown Todd LLC  
400 W. Market Street  
32nd Floor  
Louisville, KY 40202