

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

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| In re:  | ) | Chapter 11              |
|   | ) |                         |
| CATHOLIC DIOCESE OF WILMINGTON,<br>INC., a Delaware Corporation, <sup>1</sup> | ) | Case No. 09-13560 (CSS) |
|   | ) |                         |
| Debtor.   | ) | Ref. Docket No. 546     |
|   | ) |                         |
|   | ) |                         |

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**DEBTOR’S OBJECTION TO THE EMERGENCY MOTION OF  
JAMES E. SHEEHAN TO HOLD CATHOLIC DIOCESE OF  
WILMINGTON, INC. AND OTHER PARTIES IN CIVIL CONTEMPT FOR  
VIOLATION OF THE COURT’S NOVEMBER 12, 2009 ORDER (D.I. 105)  
AND REQUEST FOR EXPEDITED CONSIDERATION THEREON**

Catholic Diocese of Wilmington, Inc., a Delaware corporation, the debtor and debtor in possession in the above captioned case (the “Debtor”), hereby objects (the “Objection”) to the motion [D.I. 546] (the “Contempt Motion”) of James E. Sheehan (“Movant”), to hold the Debtor, the Most Reverend W. Francis Malooly, D.D. (the “Bishop”), Young Conaway Stargatt & Taylor, LLP (“YCST”), and certain YCST attorneys in civil and criminal contempt for alleged violation of this Court’s *Order Approving and Authorizing Settlement Between the Debtors [sic] and James E. Sheehan* [D.I. 105] (the “Settlement Approval Order”). In support of this Objection, the Debtor respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. The Contempt Motion is a frivolous motion, and follows closely on the heels of a similar, frivolous motion [D.I. 534] (the “Committee Contempt Motion”) filed by the

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 5439. The Debtor’s mailing address is 1925 Delaware Avenue, P.O. Box 2030, Wilmington, Delaware 19899-2030.

Official Committee of Unsecured Creditors (the “Committee”), to which the Debtor previously objected on June 18, 2010 [D.I. 544].<sup>2</sup>

2. Movant’s Contempt Motion ups the ante from the Committee Contempt Motion, seeking imposition of fines of \$1,500 per day and appointment of a special prosecutor to preside over a criminal trial of the Debtor, the Bishop, YCST, and its attorneys, in the United States District Court for the District of Delaware. However, Movant’s Contempt Motion suffers from the same infirmities as the Committee Contempt Motion. Like the Committee, Movant eschews any meaningful textual or legal analysis of the Settlement Approval Order in favor of conclusory statements that contemptible conduct has occurred, followed by a wish list of sanctions to be imposed. Also like the Committee, Movant omits discussion of the Third Circuit’s principles used in guiding a contempt inquiry, which, as discussed below, would require a “specific,” “definite,” and “unambiguous” directive of this Court that admits of “no other reasonable interpretation” but that the act of filing the Amicus Curiae Motion was “forbidden”. The Settlement Approval Order contains no such directive, and it is not reasonable to suggest otherwise.

3. In addition, Movant was made aware of the Debtor’s intent to file the Amicus Curiae Motion prior to its filing with the Delaware Supreme Court on June 2, 2010. Indeed, as required by Delaware Supreme Court Rule 28, the Debtor advised the Delaware Supreme Court in its motion that Movant’s counsel had been consulted prior to filing the motion and that Movant indicated his intent to oppose the Amicus Curiae Motion. Movant filed an opposition to the Amicus Curiae Motion on June 8, 2010, arguing the Debtor had no right or standing to appear as an *amicus curiae* in light of the prior settlement with Movant. Yet, Movant

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<sup>2</sup> The Debtor incorporates its objection to the Committee Contempt Motion by reference as if set forth fully herein, and capitalized terms not otherwise defined herein have the meanings ascribed to them in such objection.

waited nearly three weeks after the filing of the Amicus Curiae Motion, and two weeks after filing its opposition to the Amicus Curiae Motion, and until mere days before commencement of the Court-ordered global mediation in this case, to assert for the first time that the Amicus Curiae Motion violated the Settlement Approval Order and constituted contemptible conduct.<sup>3</sup> To add further to the frivolity of Movant's conduct, Movant then asks, after an almost three-week delay, that the Contempt Motion be heard on an "emergency" basis—this, while the Debtor has pending in the Delaware Supreme Court a voluntary motion to defer consideration of the Amicus Curiae Motion pending mediation.

4. Given the complete lack of merit in Movant's legal arguments, and the timing of the Contempt Motion, the only conclusion that can be drawn is that the Contempt Motion, like the Committee Contempt Motion, was brought to harass and intimidate the Debtor into not participating in what will likely be its only opportunity to make a constitutional argument to the Delaware Supreme Court regarding the CVA, and to poison the atmosphere during the court-ordered mediation which is scheduled to go forward on June 26, 2010. As such, the Contempt Motion was brought for unreasonable and vexatious purposes and Movant's counsel should be held liable for all costs, expenses and attorney's fees incurred in responding to the motion pursuant to 28 U.S.C. § 1927.<sup>4</sup>

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<sup>3</sup> Notably, in Movant's response to the Amicus Curiae Motion, Movant argued the Debtor had violated the automatic stay, and warned of the Committee Contempt Motion, but made no mention of the Settlement Approval Order or Movant's own intent to seek contempt of court.

<sup>4</sup> The Debtor specifically reserves the right to file a motion for sanctions pursuant to Fed. R. Bankr. P. 9011, and to ask the Court to shorten the time to file such a motion, given the Movant's request for expedited consideration of the Contempt Motion.

## OBJECTION

### **I. The Amicus Curiae Motion Did Not Violate the Settlement Approval Order**

5. The Contempt Motion correctly states that, to establish civil contempt, a party must prove by clear and convincing evidence “(1) that a valid order of the court existed; (2) that the [alleged contemnors] had knowledge of the order; and (3) that the [alleged contemnors] violated the order.” (Contempt Mot. ¶ 44 (citing *Marshak v. Treadwell*, 595 F.3d 478, 485 (3d Cir. 2009).) However, the Contempt Motion casually omits the following, additional principles that guide the contempt inquiry in the Third Circuit, which were elucidated by Judge Walsh in *Clean Harbors, Inc. v. Arkema, Inc. (In re Safety-Kleen)*, 331 B.R. 605 (Bankr. D. Del. 2005) and discussed by the Debtor in its objection to the Committee Contempt Motion:<sup>5</sup>

The requirement of knowledge has a corollary: “the order which is said to have been violated must be specific and definite.” *In re Rubin*, 378 F.2d 104, 108 (3d Cir. 1967) (citation omitted). Put differently, “a person will not be held in contempt of an order unless the order has given him fair warning that his acts were forbidden.” *United States v. Christie Indus., Inc.*, 465 F.2d 1002, 1006 (3d Cir. 1972). Further, the long-standing rule in contempt cases is that ambiguities or omissions in an order will favor the party charged with contempt.” *Ford v. Kammerer*, 450 F.2d 279, 280 (3d Cir. 1971). In sum, the [party seeking to impose sanctions for contempt] must prove by clear and convincing evidence that the [alleged contemnor] violated an unambiguous order and that *no other reasonable interpretation of such order existed*. See *Harris v. City of Philadelphia*, 47 F.3d 1342, 1350 (3d Cir. 1995) (summarizing the applicable standard for contempt).

*Safety-Kleen*, 331 B.R. at 608.

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<sup>5</sup> In an email exchange prior to Movant’s filing of the Contempt Motion, Counsel for the Debtor advised Movant’s counsel that the Debtor disputed Movant’s interpretation of the Settlement Approval Order and specifically directed Movant’s counsel to the applicable portions of the Debtor’s objection to the Committee Contempt Motion which discussed and applied the controlling legal standard for interpretation of judicial orders in contempt proceedings. Rather than articulate how Movant’s reading of the Settlement Approval Order was warranted by existing law (or, at a minimum, by a nonfrivolous argument for its extension or modification), the Contempt Motion sidesteps this central issue entirely by citing *Marshak* for the standard of establishing civil contempt. *Marshak* did not address the interpretation of judicial orders in contempt proceedings because the conduct at issue in that case clearly violated the injunction; the issue on appeal was the applicability of that injunction to non-parties. See 595 F.3d at 482.

6. Movant relies upon the following decretal paragraph in the Settlement Approval Order (the “Release Approval Provision”) as the “specific,” “definite,” and “unambiguous” directive of this Court that admits of “no other reasonable interpretation” but that the act of filing the Amicus Curiae Motion was “forbidden”:

The mutual release among the Parties set forth below is hereby approved:

- a. Except as to the full and faithful performance of the Settlement, for good and valuable consideration, Sheehan, and its [*sic*] representatives, heirs, successors and assignees on the one hand, [*sic*] (“Releasor”) and the Debtor, and its officers, directors, agents, representatives, attorneys, employees, affiliates, heirs, executors, successors and assignees (“Releasees”), on the other hand, do hereby completely *release and forever discharge one another* and their past and present agents, employees, attorneys, successors and assigns *from all claims, rights demands* [*sic*], actions, obligations, liabilities, attorneys’ fee claims and causes of action of any and every kind, nature and character whatsoever, known or unknown, which the parties may now have or have ever had against one another, that are related in any way to the Sheehan Action up to and including the approval of the Settlement, including without limitation, those claims arising from or in any way connected with the subject-matter of the Settlement and any other litigation that has been filed against the respective parties whether based on tort, contract, or any federal, state or local law or regulation.

(Settlement Approval Ord. ¶ 8.) Movant argues it is “clear” that the Debtor’s challenges to the constitutionality of the CVA are “claims” related to the Sheehan Action and it is “equally clear” that the Debtor’s ability to raise such constitutional “claims” violates the Release Approval Provision. (Contempt Mot. at 7.)

7. Even assuming *arguendo* that assertions of constitutional law made in an *amicus curiae* brief could be construed as “claims” of the Debtor “against” movant that would

implicate the language of the Release Approval Provision—which they cannot<sup>6</sup>—there is simply no language in the Release Approval Provision, or the Settlement Approval Order as a whole, that could reasonably be construed as an injunction against the Debtor.

8. The Debtor does not understand the Release Approval Provision to intend or accomplish anything other than what it states, namely: that the Court “approves” a mutual release among the parties on terms materially similar to those set forth in the Release Approval Provision. Indeed, for its part, the Debtor can attest that the *only* purpose of including the Release Approval Provision in the Settlement Approval Order (which, as noted in the Contempt Motion, was drafted by the Debtor’s counsel) was to obtain this Court’s approval of *the Debtor’s* releases of claims against Movant and his representatives, heirs, successors and assignees. This is because any such claims would have been property of the Debtor’s bankruptcy estate, the release of which in the context of a settlement would constitute a non-ordinary course transaction requiring this Court’s approval under 11 U.S.C. § 363(b)(1). For this reason, the Release Approval Provision does not *order* the Debtor to do, or refrain from doing, anything whatsoever—it merely *authorizes* the Debtor to grant Movant a release substantially similar to the release set forth in the Release Approval Provision.

9. The Debtor’s interpretation of the Release Approval Provision is bolstered by other provisions in the Settlement Approval Order. In particular, paragraph 3 of the Settlement Approval Order provides that the Debtor “is authorized to enter into a settlement agreement on substantially the same terms as set forth herein,” which underscores that, at the time the Settlement Approval Order was entered, the *actual settlement* between the Debtor and

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<sup>6</sup> In bankruptcy, a “claim” means a “right to payment.” 11 U.S.C. § 101(5). The Amicus Curiae Motion does not assert a right to payment from Movant, nor can it be construed as a proceeding “against” Movant, as an *amicus curiae* is not, and does not become, a party to the proceedings. See *Giammalvo v. Sunshine Mining Co.*, 644 A.2d 407, 408-09 (Del. 1994) (discussing role of *amici curiae* in Delaware).

Sheehan (the “Settlement Agreement,” which is attached as Tab C to the Contempt Motion) had not been finalized. In light of this provision, Movant’s assertions throughout the Contempt Motion that *the Settlement Approval Order* released and discharged claims as set forth in the Release Approval Provision is simply wrong—any releases by the Debtor would be governed by the terms of the parties’ *actual* Settlement Agreement,<sup>7</sup> not the order approving the broad parameters of the settlement in concept.<sup>8</sup>

10. Paragraph 4 of the Settlement Approval Order provides that the Debtor “shall pay” Movant within a time certain, and paragraphs 5 and 6 provide for certain actions the parties “will not” take. Each of these provisions contains a specific decree as to what the Court intends to happen or not to happen, embodied in the mandate that parties “shall” or “will not” do something. Such mandatory language is conspicuously lacking in the Release Approval Provision, the operative language of which is that the “mutual release between the parties is hereby approved.” Had the Court intended the Release Approval Provision to prohibit or enjoin certain actions, presumably the Court would have interlined specific language of mandate. And at any rate, absent such specific language of mandate in the Settlement Approval Order, it is unreasonable and improper for Movant to attempt to bring the civil and criminal contempt

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<sup>7</sup> As discussed below, the actual Settlement Agreement between the parties contained a unilateral release by Movant with no reciprocal release by the Debtor. For purposes of the Contempt Motion it appears Movant prefers the release provision approved in concept by the Bankruptcy Court over the release provision to which Movant actually agreed.

<sup>8</sup> The Debtor notes that the relief requested in its Rule 9019 motion, which was granted by the Settlement Approval Order, was “*approv[al] of the Settlement and authoriz[ation] to enter into a settlement agreement that includes substantially the same terms as the Settlement.*” [D.I. 77 at ¶ 13 (emphasis added).] If the Settlement Approval Order had been intended by the Debtor or the Court to constitute *the* settlement between the parties, then the additional authorization “to enter into a settlement” would be superfluous.

powers of the federal judiciary to bear in what is, *at best*, a private breach-of-contract dispute between Movant and the Debtor.<sup>9</sup>

## II. The Amicus Curiae Motion Did Not Violate the Settlement Agreement

11. The Contempt Motion vaguely suggests that a violation of the Settlement Agreement between the parties (as distinct from violation of the Release Approval Provision of the Settlement Approval Order) could serve as the basis for contempt of the Settlement Approval Order, based on (i) a provision in the Settlement Agreement stating it is “subject to the orders of” this Court and “may be enforced pursuant to orders entered in” this chapter 11 case and (ii) the retention-of-jurisdiction provision in the Settlement Approval Order. (*See* Contempt Mot. at 4.) At best, however, these provisions of the Settlement Agreement and the Settlement Approval Order, taken together, establish the unremarkable (if not tautological) proposition that this Court has jurisdiction to enforce the Settlement Agreement and Settlement Approval Order by entering subsequent orders. Of course, “enforcement” of a contract does not mean the application of civil and criminal contempt powers in an otherwise private dispute between the contracting parties. But even if it did, there is *no reasonable basis* to assert that the Debtor violated the Settlement Agreement by filing the Amicus Curiae Motion.

12. Unlike the mutual release in the Release Approval Provision of the Settlement Approval Order, the *actual* release executed by Movant in the parties’ Settlement Agreement was unilateral—on the part of Movant. The Settlement Agreement provides, in pertinent part, as follows:

Plaintiff James Sheehan (hereinafter, “Mr. Sheehan” or “Releasor”, for and in consideration of the sum of [\$17,500] paid by and on behalf of the [Debtor] . . . , the delivery of which shall occur within ten business days

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<sup>9</sup> As discussed in more detail below, however, no reasonable person could read the Settlement Agreement as prohibiting the filing of the Amicus Curiae Motion, even on a contractual basis.

after this signed Release has been delivered to [Debtor's counsel], has remised, released, and forever discharged, and by these presents does for himself and his heirs, executors, administrators and assigns, remise, release and forever discharge, the [Debtor], its affiliates, subsidiaries, related entities and agents (hereinafter collectively referred to as "Releasees"), their heirs, executors, administrators, assigns, insurers, affiliates, employees or agents . . . of and from all manner of actions, causes of action, suits, debts, dues, sums of money, lawsuits, claims, demands, damages and liability whatsoever . . . arising out of and in any way growing out of or related to all known and unknown personal injuries and property damage, to include any derivative claims for loss of consortium, under any federal, state or local law that were asserted or could have been asserted by Releasor in [the Superior Court Action].

(Sett. Agmt. at 1.) Nothing in the Settlement Agreement releases "claims" of the Debtor (or other "Releasees") against Movant.

13. Lest there be any confusion about Movant's understanding of the Settlement Agreement not to contain any release by the Debtor, the Settlement Agreement (which was executed by Movant and attested by Movant's counsel) provides as follows:

The Plaintiff hereby declares that the terms of this Settlement Agreement and Release have been *completely read, are fully understood, and are voluntarily accepted* for the purpose of making a full and final compromise, adjustment and settlement of any and all claims that may now have, or ever have, disputed or otherwise, on account of the injuries and damages above-mentioned, against the aforesaid parties.

(Sett. Agmt. at 4 (emphasis added).)

14. And lest there be any doubt whether the terms of the parties' Settlement Agreement might include additional terms not set forth in the four corners of the document (such as, *e.g.*, the release provision approved in concept by this Court in the Release Approval Provision of the Settlement Approval Order), the Settlement Agreement provides as follows:

*This Settlement Agreement and Release contains the entire understanding of the parties, and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein. Any modification or waiver of any of the provisions of this Settlement Agreement and Release shall be effective only if made in writing and*

executed with the same formality as this Settlement Agreement and Release.

(Sett. Agmt. at 4 (emphasis added).)<sup>10</sup>

15. In light of the foregoing, unambiguous provisions of the fully-integrated Settlement Agreement between the parties, Movant's statements in the Contempt Motion that the Debtor's filing of the Amicus Curiae Motion violated the Settlement Agreement ring hollow. Indeed, there is no language whatsoever in the Settlement Agreement suggesting that the Debtor abandoned its ability to petition the Delaware Supreme Court for leave to file an *amicus curiae* brief, or that Movant believed Debtor had done so, as part of the "bargained for exchange" or as a "key part of the settlement" as stated so matter-of-factly by Movant in the Contempt Motion. (Contempt Mot. at 7.)

### **III. An Award Pursuant to 28 U.S.C. § 1927 is Appropriate**

16. 28 U.S.C. § 1927 provides, in pertinent part, that "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the costs, expenses and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. An award of sanctions under § 1927 is appropriate where an attorney "has (1) multiplied the proceedings; (2) in an unreasonable and vexatious manner; (3) thereby increasing the cost of the proceedings; and (4) doing so in bad faith or by intentional misconduct." *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90, 101 (3d Cir. 2008). Although the power to sanction under § 1927 "must be strictly construed and utilized only in serious situations, this caution will not prevent the award of sanctions 'for conduct that, viewed objectively, manifests either intentional or reckless disregard of the attorney's duties to the

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<sup>10</sup> The Debtor notes that, in derogation of this unambiguous integration provision, Movant characterizes the Settlement Agreement as an "*additional* agreement and release" (Contempt Mot. at 4 (emphasis added)), suggesting that the Settlement Approval Order constituted a stand-alone agreement.

court.” *Bowles Fin. Group v. Stifel, Nicolaus & Co.*, No. 93-6303, 1994 U.S. App. LEXIS 22897 (10th Cir. Aug. 22, 1994) (unpublished table decision) (quoting *Braley v. Campbell*, 832 F.2d 1504, 1512 (10th Cir. 1987)). The filing of a contempt motion without a reasonable basis is one such “serious situation” that may support an award under § 1927. *See id.* (affirming award of sanctions under § 1927 where attorney “had no reasonable basis for bringing the contempt motion” against the alleged contemnor); *see also Gomez v. Vernon*, 255 F.3d 1118, 1125-1135 (9th Cir. 2001) (affirming award of sanctions under § 1927 where attorneys brought contempt motion in bad faith); *Wolters Kluwer Fin. Servs. v. Scivantage*, 525 F. Supp. 2d 448, 544 (S.D.N.Y. 2007) (awarding sanctions under § 1927 where contempt motion was “meritless, made in bad faith, and designed to harass [the alleged contemnors] by forcing them to respond”), *rev’d in part on other grounds*, 564 F.3d 110, 118 (2d Cir. N.Y. 2009); *Suntiger, Inc. v. Telebrands Adver. Corp.*, Civ. Act. No. 97-423-A, 2004 U.S. Dist. LEXIS 28226, \*18 (E.D. Va. Mar. 29, 2004) (awarding attorneys’ fees to alleged contemnor who prevailed in contempt proceeding).

17. The Debtor respectfully submits that the Contempt Motion is frivolous on its face and exhibits a troubling “say anything, do anything” brand of advocacy on the part of Movant’s counsel who, apparently, believe they are unbound by controlling law or material facts. That counsel filed the Contempt Motion for vexatious purposes, and in bad faith, is apparent both from its timing and its sensational and outrageous demands for sanctions—including fines of \$1,500 per day and commencement of criminal proceedings against the Bishop and two YCST attorneys who, no doubt for maximum defamatory effect, are specifically named in the title of the Contempt Motion. Despite the frivolity of the Contempt Motion, the gravity of the accusations leveled against the Debtor, the Bishop, and YCST, and the serious sanctions requested in the Contempt Motion effectively required the Debtor to respond, resulting in an

unnecessary multiplication of these chapter 11 proceedings. Under these circumstances, and given counsel's pattern of filing similarly defamatory pleadings in this chapter 11 case on behalf of other clients,<sup>11</sup> Debtor believes an award of costs and fees pursuant to § 1927 is necessary and appropriate both to make the Debtor whole as a result of the instant abuse of process by Movant's counsel and to deter future abuses of process.

### **RESERVATION OF RIGHTS**

18. The Debtor reserves the right to supplement this Objection and assert any additional rights and defenses with respect to the Contempt Motion to which the Debtor may be entitled at law or in equity, including, but not limited to that an injunction against the Amicus Curiae Motion would constitute an impermissible intrusion upon the Debtor's First Amendment right to petition the Delaware government for a redress of grievances wrought by the passage of the CVA.<sup>12</sup>

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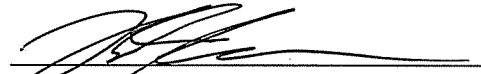
<sup>11</sup> [See D.I. 189 at 2 n.1 (accusing a former Bishop of Wilmington of engaging in practices condemned by the Church, based on "evidence" consisting of deposition transcripts which, if anything, demonstrate that counsel manufactured this theory); D.I. 470 & 488 (accusing lay employees, including a member of the Official Committee of Lay Employees, of engaging in a "cover up" of sexual abuse based on mischaracterizations of the record of the state court proceedings, as pointed out in Catholic Charities, Inc.'s motion to strike and reply in support thereof [D.I. 476 & 479].)]

<sup>12</sup> See U.S. Const. Amend. I ("Congress shall make no law . . . abridging the right of the people . . . to petition the Government for a redress of grievances."); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510-11 (1972) (California Motor Transport, 404 U.S. at 510-511 (finding it would be destructive of the right of petition to apply federal law so as to bar groups from "us[ing] the channels and procedures of state . . . courts to advocate their causes and points of view respecting resolution of their business and economic interests").

WHEREFORE, the Debtor respectfully requests that the Court deny the Contempt Motion, award the Debtor costs, expenses and attorneys' fees in connection with the Contempt Motion and this Objection pursuant to 28 U.S.C. § 1927, and grant the Debtor such other and further relief as is just and proper.

Dated: Wilmington, Delaware  
June 23, 2010

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