company Perelman sought to acquire would be compromised.

So Perelman tailored the facts to meet his needs. He told Kamerman that he had been buying blocks of stock since July 1982. Not surprisingly Perelman could not recall having made such statement (42 TR 115), but the record leaves no doubt on this score. Notes independently taken by each of the Goldman Sachs representatives and by Brown at the October 18 meeting document the fact that Kamerman told those present that Perelman had represented that he "started buying in July." (PX 210 at GS 1210; PX 211 at GS 1225; PX 215 at GS 1242; PX 503 at 13)

Sullivan's efforts at concealment, however, soon began to unravel. In early November, 1982 the SEC began an investigation into Sullivan's insider trading in Technicolor stock.

On November 3, 1982, a Ms. Cathy Malfa of the SEC advised Oliphant, Technicolor's in-house counsel, that the SEC had commenced an investigation into the trading of Technicolor stock, specifically identifying Sullivan as the target of the investigation. (Oliphant 151-52) In response to the SEC's request, by letter dated November 5, 1982, Oliphant furnished the Enforcement Division with information regarding meetings or conversations involving the company's management in which there was discussion of MAF's acquisition of Technicolor. (PX 124)

At the Board meeting on November 9, 1982, Oliphant advised the Directors of the SEC's investigation and of the fact that they were looking into Sullivan's trades. (22 TR 246; Oliphant 312; PX 79 at 000919) Immediately after the board

meeting, Sullivan was advised that the SEC wanted him to give testimony regarding his Technicolor trades. (22 TR 247)

Realizing that the matter had gone too far for him to contain by himself, Sullivan retained counsel. He attempted to enlist the aid of heavy hitter, Joseph Flom at Skadden Arps, but when told that Flom had a conflict due to his representation of MAF, Sullivan engaged Alan Levenson, an attorney at Fulbright & Jaworski. (22 TR 247)

In an effort to escape culpability for trading on inside information, Sullivan attempted to cover up the fact that he had confidential market information prior to executing a Technicolor trade for 1,000 shares (out of the 10,000 shares ordered) on September 13, 1982. In response to an SEC inquiry requesting information on the earliest date on which each of the Technicolor directors had discussed MAF's pending acquisition of Technicolor, Sullivan had Oliphant misrepresent the facts to the SEC. Responding to the SEC's official inquiry, by letter dated November 15, 1982, Oliphant wrote that:

> In the September 10, 1982 telephone conversation, no mention of MAF's interest in exploring the possibility of acquiring the Company was made. [PX 124 at 022867]

Eventually, however, Sullivan realized that somehow he had to defuse the minutes of the October 29, 1982 Special Board Meeting in which Kamerman is recorded as reporting that precisely such information was imparted to Sullivan in the September 10 call.

Although Sullivan admits that Oliphant left a draft of

the Special Board Meeting minutes at his hotel on November 8, 1982, he claims that he was out to dinner until midnight and did not have a chance to read them. (22 TR 260) Indeed, Sullivan testified that he still had not opened the envelope when the minutes were supposedly "approved" at the board meeting on November 9. (Id.)

It was only after Sullivan realized as a result of the November 9 board meeting (and the phone call from the SEC immediately thereafter) that the investigation would press forward, that he concluded a defensive tactical maneuver would be necessary. Accordingly, Sullivan claims to have suddenly discovered on November 22, 1982 -- nearly a month after the Special Board Meeting -- that a portion of the minutes was incorrect. On that day, Sullivan sent a letter (crafted by his counsel) (22 TR 273) advising that "[a]lthough the minutes may be technically accurate as a reflection of the Chairman's remarks at the October 29, 1982 meeting," they were "factually inaccurate" in that, "Mr. Tarnopol did not tell me during the September 10 telephone discussion that Mr. Perelman was interested in exploring the possibility of acquiring Technicolor." (PX 149) At trial Sullivan confirmed that he believed that the referenced description of the September 10 call in the minutes "was technically accurate as a reflection of the Chairman's remarks." (22 TR 271-72)

Significantly, although Sullivan was present for the entire Special Board Meeting, he raised no objection to the accuracy of Kamerman's comments at that time. So long as it

suited his purposes (e.g., allowing the board to believe he worked for his "finders fee") Sullivan was perfectly willing to have his fellow directors be misled and to allow them to deliberate on the most important corporate transaction ever before the Board without correcting this "error."

While Sullivan was too late to delete reference to the September 10 conversation from the minutes of the Special Board Meeting, he made certain, with the help of Oliphant, that no reference to the offending conversation would surface in any of the publicly disseminated documents. In late December 1982, Sullivan's counsel, Levenson, requested and Oliphant agreed to make certain changes in the Merger Proxy regarding "the discussions between Mr. Sullivan and Mr. Perelman and the dates." (Oliphant 317)

Seeking to distance himself from the whole messy affair, Sullivan claimed at trial not to recall discussing the language in the Proxy with Oliphant and not to have had discussions about deleting references to the September 10 call. (23 TR 56-7, 62) The record, however, belies his professed lack of communication. As discussed above, Sullivan's counsel, Levenson, acting on behalf of and presumably with the consent of his client, had discussions with Oliphant on precisely this issue. (Oliphant 317) In addition, on December 21, 1982, Oliphant sent a letter directly to Sullivan enclosing a copy of the draft Proxy for Sullivan's comments and approval and referring to "our telephone conversation" that same day. (PX 150) Oliphant specifically solicited Sullivan's thoughts about the discussion in the draft

Proxy describing the meeting he had regarding the acquisition and promised to call Sullivan and Levenson on December 22, 1982 for their comments.

Oliphant made no effort to corroborate or challenge Sullivan's version of his discussions with Tarnopol and Perelman. (Oliphant 318) Nevertheless, he complied with Sullivan's request to sanitize the Proxy to omit reference to the fact of his September 10 conversation with Tarnopol. As finally drafted, the Proxy refers only to "several meetings and numerous conversations" that Sullivan had with Perelman and/or Kamerman in connection with the acquisition. (PX 61 at P301349)

Such language was intended to do double duty. On the one hand, it was intended to create the impression that Sullivan had actually engaged in substantive sessions to justify his $150,000 fee (see discussion infra, pp. 145-57). At the same time, it protected Sullivan against exposure for his insider trading by deleting reference to the September 10 conversation that formed the source of his confidential information. Needless to say, the Schedule 14D-9 filed by Technicolor in connection with the transaction also omits reference to the September 10 conversation. (PX 57)

Sullivan also had friends high up in the MAF camp. As discussed above, Perelman already had shown himself willing to lie to Kamerman about the date he commenced buying Technicolor stock in order to protect Sullivan (and himself). He came through again for Sullivan in connection with the Offer to Purchase. A copy of the Tender Offer circular was provided to

Sullivan prior to its public dissemination. He reviewed its contents to be sure that no reference to the September 10 conversation appeared. (23 TR 52-3) Although Perelman undeniably was aware of the September 10 conversation between Tarnopol and Sullivan, having set it up himself, the Offer to Purchase expunges reference to that call altogether and only begins the sequence of events with the September 17 meeting -- four days after Sullivan purchased his shares. (PX 55 at P303809)

On January 24, 1983 Sullivan sold all of the Technicolor stock for $23 per share in connection with the Merger, thereby realizing a profit of $13,705.09 on the 1,000 shares he bought on September 13, 1982. (PX 151)

Ultimately, Sullivan's scheming proved fruitless. In order to end the SEC investigation and thereby spare himself further embarassment and possible prosecution, on February 4, 1983, Sullivan disgorged to Technicolor all profits realized on the sale of his 1,000 shares to MAF, sending a check in the amount of $13,705.09 to Kamerman. (23 TR 63; PX 151) Incredibly, on that very same day, Technicolor paid Sullivan a fee of $150,000 for "services" in connection with the transaction. (PX 475, see infra p. 156) While Sullivan denied that there was any quid pro quo involved in the fact that he would pay Technicolor the $13,000 if and when he got his $150,000 fee (23 TR 63), this remarkable documented coincidence speaks for itself.

Not only did Sullivan wind up with a net profit of some

$137,000, but he managed to recoup another $50,000 out of his insider trading troubles. Sullivan took steps to assure that payment of the legal fees incurred in connection with his defense of the insider trading charges would not come out of his pocket, but would be paid by Technicolor. At trial Sullivan conceded that he may have raised the topic of an indemnity with his counsel, Levenson, and that he would think that Levenson and Brown discussed the matter. (23 TR 74, 76) Although Brown had questions about the propriety of such an indemnity, as reflected in his notes of a conversation on the issue with Oliphant on January 14, 1983 (PX 503 at 38), Sullivan was indemnified. On March 14, 1983, the Board of Technicolor, then completely staffed with MAF personnel, voted to reimburse Sullivan $49,880.46 in legal expenses incurred in connection with the SEC's investigation. (PX 455 Response 2(c))

b. Sullivan Is Promised And Receives A $150,000 Fee For Supporting The Deal

As described above, not later than his September 17, 1982 meeting with Perelman, Sullivan agreed to facilitate MAF's acquisition of Technicolor. His support did not come cheaply. In return for his assistance, it was recommended that MAF, through Bear Stearns, pay Sullivan a fee of $150,000 for his services in connection with the transaction.

It is undisputed that the first mention of a fee for Sullivan was on October 4, 1982. According to Sullivan, at the meeting among Perelman, Kamerman and himself on that date, Kamerman said, "if anything happens here, I guess that you ought

to be compensated for it," and made reference to a "finder's fee". (22 TR 240; Sullivan 121-22) At trial, Kamerman testified that when he and Sullivan were walking back after the October 4 meeting he remarked, "if this thing works out . . . 'you get a finder's fee.'" (19 TR 89)

While there is essential agreement as to the words spoken, both men attempt to discount their import and toss off the remarks as mere "jokes" devoid of meaning. Subsequent events, however, reveal that the subject of a fee for Sullivan was no laughing matter, nor were Kamerman's comments intended or understood as such.

At a meeting later that month, Paul Hallingby of Bear Stearns, MAF's investment banker on the deal, endorsed the idea of a fee for Sullivan. Defendants admit that Hallingby told Sullivan he thought a fee "was a good idea." (PX 460 Response 95) According to Sullivan, at that meeting, Hallingby advised him and he understood that MAF would pay Bear Stearns a fee if there was a completed transaction and that Bear Stearns would recommend that Sullivan get a fee. (22 TR 240-41; 23 TR 6-8; Sullivan 126-28, 133-34) Although Sullivan admitted that Bear Stearns recommended he be paid a fee, he professed ignorance of the source of the money. Such disclaimer cannot be taken seriously. Simple logic dictates that Hallingby could only recommend that Bear Stearns or MAF pay Sullivan a fee and was in

no position to recommend anything to Technicolor. Sullivan had to have understood as much.[36]

As far as Sullivan was concerned, however, ignorance was bliss. Knowledge that the money was coming from MAF through Bear Stearns would create an instant conflict of interest on the part of Sullivan, who supposedly was acting on behalf of Technicolor in this transaction.

There can be no doubt, however, that this was precisely the arrangement that had been worked out. Rather than pay Sullivan directly for his services, initially it was arranged that MAF would compensate Sullivan indirectly by paying Bear Stearns a fee of $500,000 and having that firm kick back $150,000 to Sullivan.

At trial, Meredith Brown confirmed this to be the case. He testified that it was his understanding that Bear Stearns was getting a $500,000 fee from MAF, Sullivan was to receive a $150,000 fee, and that Bear Stearns was going to pay Sullivan out of its fee. (29 TR 82, 84) Mike Schell, an attorney at Skadden Arps, expressly advised Brown that Bear Stearns was going to "split" its fee from MAF with Sullivan, and Brown's understanding is memorialized in notes on his deal pad. (29 TR 84-5; PX 503 at 30)

On deposition, Oliphant recalled that the initial arrangement was for Bear Stearns to receive half a million

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36 Indeed, Kamerman testified that Sullivan told him on the evening of October 28, 1982, that Bear Stearns had offered him a fee of $150,000. (19 TR 153-54)

dollars in fees from MAF and that $150,000 of that was to be paid by Bear Stearns to Sullivan. (Oliphant 159) Sapp had the same understanding. (Sapp 442) Moreover, as discussed below (pp. 153-54), the contemporaneous documentation admits of no other conclusion.

There was considerable concern, however, about the conflict of interest inherent in Sullivan, a Technicolor director, being paid by MAF, the acquiring company. On deposition, Phyllis Schless, then a vice-president at Bear Stearns working on the transaction, testified that precisely these concerns were voiced during an internal telephone conversation that took place sometime after October 6, 1982, among Bear Stearns representatives Hallingby (who had recommended a fee to Sullivan), Frank Richardson, herself (and perhaps Tarnopol). In that call there was concern "as to who would pay the fee" and "surprise" that Sullivan expected payment. (Schless 18, 160-63, 173)

Sullivan himself was acutely aware of the conflict of interest posed by MAF's payment. Indeed, in his capacity as a member of Technicolor's audit committee, he had advised the committee and the full Board on August 25, 1982 of the need to avoid even a potential conflict of interest regarding one of the company's contractors (Ben Barry & Associates). (PX 474 at 110782; PX 64 at 001067)

Moreover, during October 1982 prior to the Special Board Meeting, Oliphant discussed the conflict of interest issue with both Kamerman and Brown. On deposition, Oliphant testified that

sometime in October 1982, "the aspect of it that I was discussing with Mr. Kamerman was in terms of the conflict of interest and Mr. Sullivan's being paid by the acquiring company or party." (Oliphant 159-60) According to Oliphant, Kamerman thought the arrangement was "strange" and raised questions about it. (Id.) Oliphant's concerns about the fee arrangement were of such a magnitude that he specifically discussed with both Kamerman and Brown the propriety of Sullivan participating in the Board Meeting. (Oliphant 162-63)[37]

Defendants admit that Oliphant and Brown discussed "whether the payment of a finder's fee by Bear Stearns to Mr. Sullivan would present a conflict of interest . . . ." (PX 460 Response 97) Brown subsequently confided to Sapp that he was "uncomfortable with a director of [Technicolor] getting a fee from Bear Stearns." (Sapp 442-43)

As late as October 27, 1982, Bear Stearns was still the designated payor of the Sullivan fee. Brown confirmed that the draft resolutions for the Special Board Meeting circulated on October 27 contain no reference to a fee for Sullivan. (29 TR 90; PX 66B at 022947-51)

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37 To the extent that Kamerman testified at trial that he never discussed the subject of the propriety of Sullivan participating in the Special Board Meeting in view of the fact that he was receiving a fee (21 TR 24-5), he cannot be taken seriously. Such testimony is flatly contradicted by Oliphant, a reliable witness on this matter with no self-interest. (Oliphant 159-60) Moreover, such statement is part of Kamerman's attempt to remove himself from any involvement with the Sullivan fee until after the issue of the conflict was resolved on October 28, 1982. As demonstrated below, such claimed lack of knowledge is false.

With the Special Board Meeting set for October 29, 1982, it was recognized that something had to be done about the conflict of interest presented by payment of a fee to Sullivan by Bear Stearns lest the entire transaction be tainted. Accordingly, a decision was made at the last minute to switch the source of the fee from Bear Stearns to Technicolor.

Early in the day on October 28, 1982, Oliphant made note of the fact that he had to discuss with Kamerman the subject of the Sullivan fee, specifically to confirm whether Technicolor had agreed to pay it. (Oliphant 173; PX 138 at 022916)

That evening a meeting was held at the offices of Debevoise. Defendants admit in sworn interrogatory responses that "on October 28, the subject of Technicolor's paying a fee to Mr. Sullivan was considered at a meeting attended by Messrs. Kamerman, Oliphant, Sullivan, Isham, Powitzky, Phillips and Brown...." (PX 460 Response; see also Responses 94, 110) Notes prepared by Oliphant at the meeting confirm the list of attendees and that the topic of Sullivan's fee was discussed. (PX 137)

The issue of the Sullivan fee was high on the agenda. When asked on deposition whether "[t]he subject of Mr. Sullivan's fee . . . [came] up at the meeting on the evening of the 28th," Oliphant responded with an unequivocal, "Yes." According to Oliphant's testimony and his notes, Kamerman described the revised arrangements for payment of Sullivan, namely, that Bear Stearns would get $350,000 from MAF and that Technicolor would pay Sullivan $150,000. (Oliphant 179; PX 137) Indeed, in the

course of the discussion about Sullivan's $150,000 fee, Kamerman "quipped," "I didn't know he came so cheaply...." (Oliphant 162)

Brown, another attendee at the October 28 meeting, also testified that the source of the Sullivan fee was taken up that evening and that the switch was made in that time frame. (29 TR 88-9)

Although both Kamerman and Sullivan signed the sworn interrogatory answers attesting to the fact that Sullivan's fee was discussed at the October 28 meeting, at trial they both disavowed such knowledge altogether. Incredibly, Kamerman testified -- in the face of verified interrogatory answers and written minutes documenting the meeting (PX 137) -- that there was no meeting at all (21 TR 21-2), and that, if there was one, the Sullivan fee was not discussed. (21 TR 17-8) While Sullivan recalled being present at the meeting, his recollection conveniently did not extend to discussion of his fee. (23 TR 18)

Not only does the evidence expose these memory lapses as fabrication, but in addition the documentary evidence contemporaneously prepared establishes to a certainty the last minute switch in the source of the Sullivan fee. As described above, Oliphant's notes, dated October 28, 1982, record the fact that Sullivan will be paid by Technicolor, not MAF. (PX 137; PX 138) The draft of the Technicolor 14D-9 dated October 26 and distributed October 27, reflects a fee of $500,000 to Bear Stearns and payment by Bear Stearns to Sullivan. That draft was revised by Oliphant in his own hand on October 28, 1982 (as indicated by his marginal vote, "revised per $150,000 by TK") to

record the fact that the obligation of payment had been changed to Technicolor. (Oliphant 158-59; PX 132 at 022957; PX 66B)

As discussed above, as of October 27, there was no Technicolor resolution regarding the Sullivan fee because Bear Stearns was to pay it. Brown made a note to "add to FS resolution" covering the changed arrangement and reflecting "$150,000 FS, Technicolor to pay it on consummation of merger." (PX 503 at 34) Sullivan testified that an agenda item was added to reflect a fee to him. (22 TR 242)

Moreover, the original Bear Stearns engagement letter, dated October 27, 1982 reflected payment of a $500,000 fee from MAF. That typed in amount was crossed out and the figure $350,000 scrawled in. (PX 223) A new letter, dated October 29, 1982, was then typed to reflect a payment of $350,000 to Bear Stearns. (PX 224)

Following the October 28 meeting at which the source of the fee was switched to Technicolor, Kamerman and Sullivan had a sudden restoration of memory. Both testified that they discussed the fee for the first time while waiting in the street for a car after the meeting. As Sullivan would have it, Kamerman raised the subject of a fee and when Sullivan demurred, Kamerman pressed him to accept. (23 TR 25-6) As Kamerman tells the story, Sullivan was the one who brought up the topic and urged that Kamerman take up his fee with the Board. (19 TR 153-54)

Neither of these disparate versions bears any resemblance to the truth. Both are documented lies. In any event, the record is clear that the decision that Technicolor pay

Sullivan a fee was made prior to the Special Board Meeting without consulting any other directors. Thus, by letter, dated October 28, 1982, Oliphant advised Fred McNabb, MAF's general counsel, that "Technicolor has agreed to pay Mr. Fred S. [sic] Sullivan $150,000 in connection with his role in the transaction." (PX 140; Oliphant 168) Sullivan confirmed at trial that it was his understanding that by October 28, Technicolor "had agreed" to pay him $150,000. (23 TR 25)

The last minute switch in the source of Sullivan's fee was only cosmetic in nature. The real payor did not change because the fee was to be paid only after MAF acquired Technicolor. Sullivan testified at trial that he understood all of the funds came from the purchaser and that at the time he received his check MAF owned all the stock of Technicolor. (23 TR 29-30) Kamerman likewise understood that Sullivan's fee would be paid by MAF stockholders (21 TR 25), as did the other Technicolor directors. (Bjorkman 34-5; Lewis 82-7)

As discussed more fully below (pp. 228-29), at the Special Board Meeting: (1) no disclosure was made of the switch in the source of the fee; (2) no consideration was given to the propriety of the Sullivan fee; (3) the question was never brought before the Compensation Committee; and (4) Director Charles Simone protested Sullivan's fee, but his objections were ignored.

Nevertheless, Sullivan voted on the package of resolutions relating to the transaction. Indeed, Oliphant's notes of the Special Board Meeting suggest that Sullivan may even

have moved the adoption of the resolutions, including the resolutions approving his own fee. (PX 141 at 022929)

Payment of a $150,000 fee to a Technicolor director for facilitating MAF's takeover bid was considered sufficiently out of the ordinary so as to be newsworthy. Articles in The Wall Street Journal and The Hollywood Reporter, dated November 8 and 9, 1982, respectively, reported on the circumstances surrounding the Sullivan fee. (PX 147, 148)

After the Merger, when Technicolor did not send him his payment fast enough, Sullivan demanded that Technicolor pay him his $150,000 promptly. While at trial, Sullivan could not recall having made such demand (23 TR 35-6), Kamerman testified on two separate occasions that he received just such a call from Sullivan asking where his money was. (Kamerman 416-17, 447) Sullivan was paid in full on February 4, 1983. (23 TR 30; PX 475)

To this day, no one can say what Sullivan did to "earn" his fee, or how it was computed. (23 TR 61) While ostensibly a finder's fee, Kamerman admitted that Sullivan was not a finder. If anyone, it was Tarnopol who brought Technicolor to Perelman's attention and put him in contact with Sullivan. (22 TR 68-9; 23 TR 61-2) In sum, Sullivan had lunch with Perelman on September 17; met with Perelman for a few minutes in his office on a subsequent date; and made a quick trip to California to attend the October 4 meeting, leaving for New York at 2 p.m. before the meeting had even concluded. Sullivan could not recall whether he ever had any substantive telephone calls with Perelman. He did

not meet with Brown nor with anyone from Goldman Sachs. (23 TR 58-61; 22 TR 67-8) Brown did not recall any discussions with Sullivan regarding what he did and could not on his own remember just what the services were that Sullivan performed. (29 TR 93, 96)[38] Given the fact that Sullivan did nothing of substance, the only logical conclusion is that the $150,000 fee was the price he commanded for support of the MAF transaction.

c. Sullivan Is Promised A Seat On The Board

As a further incentive to win Sullivan's support for MAF's acquisition of Technicolor, Perelman invited Sullivan to join the MAF Board after the acquisition of Technicolor was complete. The issue of Board seats was raised from the outset.

The testimony is conflicting with respect to who first initiated the idea of Board seats. On deposition, Perelman stated that he "clearly asked Fred Sullivan to join the board." (Perelman 253-54, 266) At trial, however, he did an about-face, testifying that Kamerman requested two seats (one for himself and one for Sullivan) -- a request to which he readily acceded. (42 TR 66) According to Sullivan, Kamerman arranged with Perelman for him to have a seat on the MAF Board. (23 TR 37-8)

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38 It is worth noting that in 1984, Sullivan served on the special committee of the MAF board in connection with Perelman taking that company private. That committee met for over eight months, and it was advised by counsel and investment bankers. Yet for those services Sullivan got no extra fee at all. (23 TR 106-09)

It is of no real consequence who first uttered the words. What is significant is that from the beginning Board seats for Sullivan and Kamerman were a condition for the deal. By October 7, 1982, Kamerman had advised Oliphant, as documented in his chronology, that board seats were a part of how the deal was being structured. (Oliphant 39; PX 126; 21 TR 39)

In connection with putting together a credit facility for the transaction, Perelman and/or other MAF representatives advised the banks by mid-October, 1982, including Beale and Seibert of Chase, that Sullivan would go on the MAF Board. (Beale 83-4, 91; Seibert 159; PX 259 at B001683) Seibert's October 18, 1982 Executive Memorandum regarding the deal states, "Fred Sullivan will be invited to join MAF's board of directors." (PX 233 at C00276) Members of the Goldman Sachs team also were advised prior to October 29, 1982 that Sullivan and Kamerman would join the MAF Board. (Sapp 263-64) On October 25, 1982, Oliphant confirmed to Brown that Sullivan and Kamerman would go on the MAF Board and requested that any necessary documentation be prepared. (Oliphant 132-33; PX 131 at 022898) That same day Brown confirmed with Schell that MAF had invited Messrs. Sullivan and Kamerman to join the Board. (27 TR 216-17; PX 503 at 31)

At the Special Board Meeting, the other directors were simply told, for the first time, that Sullivan and Kamerman would be joining the MAF Board. (Isham 106-07; Lewis 76-7; Oliphant 221; PX 72 at 000928) After the Merger, Sullivan's support was rewarded, and he was placed on the MAF Board in January, 1983. (Perelman 184-85; PX 55 at P303811)

d. Sullivan Receives Additional Financial Benefits

Appointment to the MAF Board was just the beginning of numerous lucrative perequisites showered upon Sullivan by a grateful Perelman to reward the former for his support of the MAF acquisition of Technicolor. Sullivan was appointed to the Boards of various other Perelman-controlled companies in the years indicated: MacAndrews & Forbes Holding, Inc. (1984); Revlon Group Incorporated (1985); Revlon, Inc. (1985) and Pantry Pride (1985).

Sullivan was paid lavish directors' fees far exceeding those of any other director. In 1983 Technicolor (after it was owned by MAF) paid Sullivan a total of $202,880, including $49,880 for legal fees paid by Technicolor in connection with defense of his insider trading charges and the $150,000 "finder's fee." For the years 1983 through 1986, MAF paid Sullivan a total of $212,500, including a $35,000 "consulting fee." Defendants admit that MAF does not use a single method to calculate director fees (PX 460 Response 84) so Perelman was free to treat Sullivan in a special way. For the years 1985 through 1988, Sullivan received $37,500 in fees from MAF Holdings, Inc. For the years 1985 through June 1986, Sullivan received $76,700 in fees from Revlon Group and $86,633 from Revlon, Inc. Sullivan also received $4,250 from Pantry Pride for a grand total of $620,463. (PX 509) At trial Sullivan acknowledged that he had received these sums from the various Perelman-controlled entities. (23 TR 47-8)

2. Morton Kamerman

a. Kamerman Receives A Golden Parachute Worth $3 Million For Support Of The MAF Deal

As a first order of business, Kamerman raised with Perelman the issue of an amended employment contract to protect him in the event that MAF bought Technicolor. It appears that the issue already was on the table at the initial October 4 meeting between Kamerman and Perelman and, for certain, was addressed no later than October 7, 1982. The chronology prepared by Oliphant records the fact that on October 7 he discussed with Kamerman "amendment to MK contract." (PX 126 at 022905) Oliphant testified that at that time Kamerman told him that he already had discussed the issue of an amended contract with Perelman. (Oliphant 37) At trial, Kamerman confirmed that "no later than" October 7 he discussed with Oliphant "amending the contract." (21 TR 39)

Although Perelman gave Kamerman assurances that he would be happy under an MAF-owned Technicolor, as far as Kamerman was concerned "Perelman was an unknown quantity to me." (Kamerman 253-54) Kamerman had "doubts" about Perelman's promises, and as he testified, "[t]hat's why I had my contract changed." (Kamerman 426-27) Kamerman confirmed at trial that he had doubts that Perelman would really come through on his promises. As he testified, "I don't buy pie in the sky . . . . I know that people come in, and they make changes in a company, and I might not be happy with it." (22 TR 25)

Prior to October 18, 1982, Kamerman advised Brown of the amendments to his employment contract. The richness of the package gave Brown pause. On the flight out to California, Brown made a note to caution Kamerman about his contract amendments: "Don't get too greedy." (PX 503 at 19) Brown took up the subject directly with Kamerman. As Brown explained, "[b]oth from the point of view of the appearance and the point of view of the substance, you don't want the chief executive officer to be unreasonable, to be greedy . . . in making amendments to his existing employment arrangements." (29 TR 38)

Apparently, Brown's advice went unheeded. By October 18, 1982, the specific enhancements sought by Kamerman had been fixed. The issue of Kamerman's contract amendments was high up on the agenda for the October 18 meeting. Notes taken by the three Goldman Sachs representatives, Sapp, Golden and Venuto (PX 210; PX 211; PX 215), as well as by Oliphant (PX 127) record the fact that the subject was second only to the issue of Kamerman's stock options. (<u>See infra</u>, pp. 166-67) While the participants to the meeting could not recall the specific order in which the topic was raised, all agree that it was indeed addressed. (21 TR 80, 131-32; 31 TR 112-13; Oliphant 70) Kamerman advised those present that he already had discussed the matter with Perelman and had received Perelman's verbal agreement to the contract changes (30 TR 28; 31 TR 112-13; 21 TR 80-1; Oliphant 70) -- a fact which is explicitly recorded in Oliphant's notes taken at the meeting: "MK's contract -- 2 chgs. -- verbal agmt. w/ Perelman." (PX 127) Thus, as of that date Kamerman knew that

his contract would be secure and amended to his benefit. (Oliphant 72)

In the course of negotiating the credit facility for the transaction, Perelman advised Chase that Kamerman's employment contract would be amended. (Beale 84; Seibert 127)

Oliphant drafted the amended contract, which was then reviewed by Kamerman and Brown. Kamerman confirmed to Oliphant prior to the Special Board Meeting that "Perelman had agreed in substance" to the amendments. (Oliphant 38-9, 166-67) By October 28, 1982, the amended contract had been drafted, was in final form ready for signing (Oliphant 174-74; PX 138 at 022917) and had been furnished to MAF for review and approval. (Oliphant 168-69; PX 140) (At the same time, Kamerman took steps to protect his in-house counsel by arranging for a new employment agreement for Oliphant).[39] In an effort to avoid disclosure of the substantial benefits that Kamerman and Oliphant were receiving from enhanced employment contracts granted in conjunction with approval of the MAF transaction, on October 28, 1982, Oliphant requested that Brown eliminate all reference to salaries in any publicly-filed documents. (Oliphant 170-71; PX 138)

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39 Oliphant, seeking to protect his position in connection with the MAF acquisition, took up the issue of his employment contract with Kamerman not later than mid-October 1982 (Oliphant 14-5, 104) and Kamerman personally agreed to the contract prior to the Special Board Meeting. (Kamerman 274-76) A contract was entered into between Oliphant and Technicolor dated October 15, 1982, two weeks before the Board Meeting. (PX 168)

Under the old contract, if the company terminated Kamerman, he would receive a consultant's fee of $100,000 a year for five years. (PX 159 at 098841) The terms of Kamerman's existing contract were described in the September 13, 1982 proxy for the Technicolor stockholders annual meeting[40] as follows:

> Mr. Kamerman's contract as amended, provides for him to be employed as Chief Executive Officer of the Company until June 30, 1988 at a minimum annual salary of $426,216 and provides for him to act as a non-exclusive consultant to the Company at an annual compensation of $100,000 for an additional five years commencing at the time of his termination as an officer of the Company or upon expiration of the employment contract . . . .

(PX 6 at P301063) The contract, as amended, provides substantial financial benefits to Kamerman, having a monetary value of approximately $2.9 million. Under the amended contract, Kamerman would continue to receive a salary of $426,216 per annum, each year until the contract expired on June 30, 1988, whether he was fired by Perelman after he took control or chose to leave voluntarily after two years. In addition, Kamerman would then receive a consultant's fee at the increased level of $150,000 a year for the succeeding five years. (PX 166; 22 TR 22-3) The value to Kamerman of his golden parachute was approximately $30 per share for each share he owned (in addition to the $23 purchase price).

Brown questioned the propriety of Kamerman voting at the Special Board Meeting in light of his financial interest in the

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40 Of course that meeting was postponed due to the MAF proposal.

transaction, as documented in his notes, "have MK disclose int & not vote." (PX 503 at 40) At trial, Brown admitted that it was his initial thought that Kamerman should disclose his interest at the Special Board Meeting and not vote. (29 TR 46) Ultimately, however, Brown concluded that it was not for him to tell the chief executive officer of the company what to do and Kamerman had made clear that he was not one who would listen. (29 TR 40-1)

Prior to the Special Board Meeting, Ryan told director Blanco that he intended to take issue with Kamerman's amended contract, unless MAF already had agreed to it. (Ryan 111) Ryan, however, was stopped dead in his tracks. Before he could even raise the issue, Kamerman represented to the Board that Perelman on behalf of MAF had approved the amendments to his employment contract (Ryan 158-59), thereby putting an end to the matter. Oliphant's notes taken at the Meeting confirm that Kamerman told the Directors that Perelman already had "accepted these changes." (Oliphant 197; PX 141 at 022921)

Despite Kamerman's financial interest by reason of the amended contract, the Board did not consider the propriety of Kamerman voting on the transactions. (27 TR 92-3; Isham 202; Lewis 90-1) The members of the Board were never provided with a text of the proposed contract amendments (Ryan 284; Sullivan 318) and the changes were never presented to the Compensation Committee for review. (Simone 44-5) Despite Kamerman's financial interest, he not only voted in favor of the package of resolutions relating to the MAF transaction, including approval

of his enhanced employment agreement, but he knew that as his vote went, so did that of the other directors. Kamerman's amended contract was signed by his long-time friend Bjorkman at the document execution session immediately following the Meeting. (Pre-Trial Order II(H) 60)

The "honeymoon" between Kamerman and Perelman was short lived; by Kamerman's count it lasted all of twenty minutes. (Kamerman 396) Perelman soon realized that Kamerman was a "difficult" executive who managed through "fear of dismissal" (42 TR 32) and that the relationship would not work. By defendants' admission, Perelman considered the possibility of terminating Kamerman following completion of the Tender Offer. (PX 460 Response 150) After having Kamerman's contracts reviewed, presumably to determine whether MAF could escape its payment obligation (PX 167), Perelman terminated Kamerman on February 28, 1983, one month after the Merger. Since that time, Kamerman has not engaged in any employment, but has spent most of his time in the Caribbean. (Lewis 142-44, 146) Kamerman made clear at trial that he is collecting every penny due him under the amended contract. (22 TR 23; Kamerman 279)

b. Kamerman Received Favorable Tax Treatment On His Option Shares

As of September 1982, Kamerman and his wife owned 128,874 shares of Technicolor stock, of which total Kamerman had acquired 15,249 shares via company-granted stock options. (PX 6 at P301059-60; PX 61 at P301362) The three-year holding period necessary to obtain capital gains tax treatment for the profit

received on sale of his option shares did not expire until January 1983.

From the start, Kamerman insisted on favorable tax treatment for these option shares as as condition for supporting the MAF acquisition of Technicolor. Kamerman testified that by no later than October 8, 1983 he discussed with Oliphant the three year period for holding option stock. (21 TR 40; Kamerman 157-58) Oliphant's recollection is in accord and he memorialized their discussion in his chronology for that date. (Oliphant 40; PX 126)

At the October 18, 1982 meeting with Goldman Sachs, Kamerman raised as the first order of business the need to delay the closing of the Merger until after January 1, 1983 due to his capital gains problem. Entries in separate sets of notes taken at the meeting by three different Goldman Sachs representatives, Sapp, Venuto, and Golden (PX 210, 211, 215) each independently document that this was the number one item on the agenda.

Thus, for example, Sapp's notes contain the following entries under issues for discussion: "(1) Delay closing to after 1/1/83, (2) stock options held less than 3 years, 45,000 shares, MK 15,000, 3 yrs 1/1/83, converts ordinary to capital gains." (PX 211 at GS 1224) When asked on deposition whether Kamerman raised the issue of delaying the closing until after January 1, 1983 because of capital gains problems with his option stock, Sapp responded with an unequivocal "Yes." (Sapp 226) While Sapp was not as candid at trial, when confronted with his own notes, he admitted that Kamerman's option stock was discussed in the

context of delaying the closing. (31 TR 109-110) Oliphant, also present at the meeting, likewise recorded that a January, 1983 closing was discussed in connection with the tax problems for option shares, so did Brown. (PX 127; Oliphant 68, 69-70, 102; PX 503 at 9)

In the face of five different sets of contemporaneously prepared notes, and testimony by several of those present on October 18, 1982, at trial Kamerman incredibly denied raising the issue of delaying the Merger. As far as he was concerned, he could unilaterally see to it that the closing were delayed. Thus, Kamerman said "[i]f I wanted it absolutely to take place after January 1, I could have done that myself simply by running the meetings out." (21 TR 79)

Moreover, Kamerman's denials are belied by subsequent events. Kamerman consulted his long-time friend and tax attorney, director Lewis on the tax implications of the timing of the sale of his Technicolor stock to MAF. (Lewis 64-5, 76; 21 TR 26-7; 29 TR 216) With the advice of Lewis, Kamerman worked out a deal with Perelman whereby he would hold his option stock until at least January, 1983. (Lewis 124; 29 TR 217)

On October 29, 1982, Kamerman and Bjorkman (and their wives) entered into the Stock Purchase Agreement by which they agreed to sell their Technicolor shares to MAF by tendering their shares to Macanfor. (PX 59) Kamerman personally owned 97,202 shares, however, the agreement only obligated him to tender 81,953 shares. The Agreement is silent as to the 15,249 option shares. (Id. at 017414) At trial Kamerman admitted that he

owned some 16,000 shares more than the number listed in the Agreement and that an arrangement had been worked out whereby he could hold his option shares and wait until January 1983 to turn them over to MAF. (21 TR 243-44)

At the Special Board Meeting, Kamerman disclosed to the directors that he and Bjorkman would enter into the Stock Purchase Agreement, but omitted to mention the side arrangement he had worked out for sale of his option shares. Defendants admit that Kamerman did not advise the other directors of the fact that he would hold his Technicolor stock in order to receive capital gains treatment on his option shares. (PX 460 Response 110(K); Sullivan 277) Brown, also present at the Special Board Meeting, had no recollection of Kamerman disclosing the sale of his stock in two lots. (29 TR 155-56)

Pursuant to the side deal that had been worked out between Kamerman and Perelman, the Merger was delayed until January 24, 1983 on which date Kamerman sold his 15,249 option shares to MAF. (PX 460 Response 263; PX 477) By reason of delaying sale of his option shares, Kamerman saved 30% in federal taxes (plus additional New York and/or California state and local taxes), a benefit clearly worth many tens of thousands of dollars.

c. Kamerman Is Guaranteed The Highest Price For Sale Of His Shares To MAF

Not only did Kamerman get capital gains treatment for his option shares, but he demanded most favored nations protection for sale of his stock to MAF. In connection with the

acquisition of Technicolor, MAF sought to acquire the stock of Bjorkman and Kamerman, the two directors owning the largest number of Technicolor shares. (Bjorkman 38; 42 TR 74) At the time Bjorkman and his wife owned 409,406 shares, and Kamerman and his wife owned 128,874 shares. (PX 6 at P301059-60; PX 61 at P301362)

Kamerman took up the matter of a price guarantee with Oliphant. (Oliphant 133-34) On October 25, 1982, Kamerman conferred with Brown and Golden on the issue of his insistence on price protection in the event any public shareholders got a higher price. (PX 131 at 022898) At trial Brown testified that he asked for such price protection so that in the event a higher price was paid in some other transaction, Kamerman and Bjorkman would get the benefit of it. (27 TR 218; PX 503 at 32)

As part of the deal, Kamerman extracted from Perelman an agreement that MAF would pay him the highest price paid to any public stockholder for a period of one year after Technicolor's approval of the acquisition. (Kamerman 277-79) The Stock Purchase Agreement expressly provides that:

> If on or before November 1, 1983, the Purchaser . . . acquires or has entered into but not consummated a binding agreement to acquire any Company Common Stock for a purchase price . . . in excess of $23 per Share, the per Share purchase price for . . . the [Kamerman and Bjorkman] Shares shall be increased by the amount of such excess.

(PX 59 at 014708) Thus, if after the Tender Offer closed a substantial minority shareholder still held shares and MAF offered to buy those shares at a premium, they would have to pay

Kamerman (and Bjorkman) the same premium. Such guarantee was not made available to any other Technicolor stockholders.[41]

At the Special Board Meeting, Kamerman did not fully disclose the terms and conditions of the Stock Purchase Agreement. He advised the directors that MAF had requested that the Kamermans and the Bjorkmans enter into the Stock Purchase Agreement with MAF "pursuant to which MacAndrews would purchase such individuals' shares at $23 per share upon the consummation of the tender offer." (PX 72 at 000927) Kamerman did not disclose the fact that he had been guaranteed a price protection not afforded any other stockholders.

d. Kamerman Is Promised A Seat On The MAF Board

Kamerman played both sides of the fence. To protect himself in the event he departed, he demanded a golden parachute worth nearly $3 million. But he also wanted to be taken care of in the event he stayed with the MAF-owned Technicolor.

As discussed above (pp. 157-58), Board seats were a perequisite to the deal from the start. According to Kamerman, it was Perelman who brought up the topic. (Kamerman 151-52) At trial Kamerman testified that Perelman volunteered to make him vice chairman of the MAF Board. (19 TR 134-35) Brown confirmed, as documented in his notes, that Kamerman advised him that

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41 For example, if MAF had quickly settled with Cinerama and paid it fair value before November 1, 1983, Kamerman and Bjorkman would have gotten the benefit of that enhanced price. No. other shareholders would have received a similar benefit.

Perelman offered him a Board seat and the vice chairmanship. (27 TR 163-64; PX 503 at 7)

On deposition, Perelman stated that he did not know whether he asked Kamerman or Kamerman expressed a desire to join the MAF Board. (Perelman 253) At trial, however, Perelman claimed that his current recollection was that Kamerman made the request. (42 TR 70)

In either case, it was understood from the beginning that a Board seat for Kamerman (and Sullivan) was part of the price to be paid for Kamerman's support of the deal. In fact, however, Kamerman was never elected to the MAF Board because he was terminated a month after the Merger.

Kamerman also asked Perelman for an equity position in MAF, but Perelman refused. (19 TR 134; Kamerman 154-55; Perelman 201-02) The matter was disclosed to Meyer of Bank of America, who recorded in a memorandum of October 19, 1982; "Kamerman has been offered a seat on the company board, as well as some ownership percentage in this company." (PX 259 at B001683)

3. Arthur N. Ryan

a. Ryan is Embroiled in a Bitter Feud With Kamerman

Since at least late 1981, Ryan and Kamerman were engaged in a bitter feud. The dispute was triggered by, among other things, losses in the Gold Key Division resulting from mismanagement and theft. The head of that division was found to have been involved in conflicts of interest and certain defalcations. Kamerman blamed Ryan for not having exercised

proper supervision and for going off on a "frolic and pander." (Ryan 48-9, 82-4; Kamerman 26-8, 320)

The rift between the two men only grew deeper. They had differences of opinion as to their respective roles in the company. (Ryan 83; Kamerman 320) Kamerman was dissatisfied with Ryan's performance and claimed he had exceeded his authority and "lied" to him. (Kamerman 26, 98) He claimed that Ryan was not telling him the truth about what people were reporting to him. (20 TR 210) In short, their personal relationship had deteriorated to a point where Ryan believed he "was going to take the blame for everything including World War II if he could have done that." (Ryan 84) Matters were so serious that by January/February 1982 Kamerman and Ryan were not even on speaking terms. (Ryan 412-13; Kamerman 30; Isham 36-7; Simone 17)

The other directors were well aware of the tense relationship that existed between Kamerman and Ryan. (Blanco 18-9; Lewis 38-9; Isham 36; Simone 17) Indeed, knowledge of their feud extended beyond Technicolor's borders. (Meyer 73-4)

The dispute reached its climax in spring 1982. At a Technicolor Board meeting on May 19, 1982, Kamerman engineered a restructuring of group vice presidents designed to centralize authority in his hands and strip Ryan of any power. At trial Kamerman admitted (and the minutes of the meeting record the fact), that his reorganization plan required all group vice presidents henceforth to report directly to him on all matters of policy and on any new activities. (20 TR 207; PX 63 at 000955) While in one breath Kamerman denied that the plan was intended to

reduce Ryan's authority (20 TR 205-06), in the next breath he admitted that the restructuring plan "was straightening him out and making it clear" what his role was. (20 TR 209-10) Moreover, all of the directors present at the May 19 Meeting understood that Kamerman's plan was a maneuver calculated to strip Ryan of power. (Ryan 85-7, 163; Sullivan 30-2, 35; Bjorkman 11-2; Isham 37, 38-40; Lewis 39-40; Oliphant 24-5; Kamerman 28-9; Gaul 7-8)

At the meeting, Ryan took the position that "such a division of responsibilities was not in conformance with the provisions of his employment contract with the Corporation," and, accordingly, requested that he be recorded as voting "No." (PX 63 at 000956-957)

In addition to realigning the reporting structure of the group vice presidents, Kamerman recommended that the formal incentive compensation plan for executives be scrapped and a new plan implemented which left bonuses to the discretion of management. (PX 63 at 000966-67) Ryan regarded the revision as part of Kamerman's program to undermine his authority and voted, "No." (Ryan 86-7; Isham 39; Lewis 43; PX 63 at 000967)

Although the minutes record Ryan's "No" vote in black and white, and the other directors stated that Ryan opposed the restructuring, Kamerman in his inimitable fashion testified at trial that Ryan did not vote "No", but that the vote was unanimous. (20 TR 208-09) As was their custom, all of the other directors took Kamerman's part in his dispute with Ryan and supported implementation of his anti-Ryan plan. Thus, for

example, both Bjorkman and Sullivan are on record as stating "that where there is a disagreement between the President and the Chairman concerning matters of Corporate management, that the Chairman must be the one to decide." (PX 63 at 000956; Ryan 88, 163; Isham 44-5)

Ryan believed that the reorganization plan violated his contract, which specified that all operating divisions would report to him. Accordingly, he consulted counsel "incessantly" to assess his options. (Ryan 86) Kamerman understood that Ryan thought his employment contract had been breached. (Kamerman 30)

Following implementation of Kamerman's restructuring plan, it was generally understood among the directors that Ryan did not have a future with the company and was considering his options. (Kamerman 31-2; Lewis 41-2; Isham 40-2; Sullivan 36; Gaul 118-19; Oliphant 24, 71) Ryan asked Kamerman to fire him, but Kamerman refused, claiming he wanted to rehabilitate him. (20 TR 211-12; Ryan 84)

As of fall 1982, open warfare continued unabated between the two. Kamerman confirmed at trial that as of October 1982, "I knew we had a big problem between us." (20 TR 204) He explained further, "I didn't trust that he was telling me the truth...." On certain things, Kamerman "absolutely believed" that Ryan was "a liar." (20 TR 205) In short, it was plain that the company was not big enough for the two of them and unless circumstances changed, Ryan would be the one to go.

During the week of September 20, 1982, Kamerman was apprised by Sullivan of MAF's proposal to acquire Technicolor.

(22 TR 211-12) Although Ryan was president of the company, Kamerman did not disclose to him MAF's offer to him. On deposition and in interrogatory responses Kamerman admitted that he did not tell Ryan of the MAF proposal. (Kamerman 204; PX 460 Response 18) At trial Kamerman confirmed that he did not advise Ryan of the MAF negotiations, but claimed that he told Ryan "there's something cooking". Kamerman gave as his reason for not telling Ryan any details the fact that "I distrusted him." (19 TR 139-40)

It is not credible that Kamerman threw Ryan even this meaningless tidbit. Ryan testified that he was told nothing by anyone in authority and that it was "certainly [his] belief" that a deliberate effort was being made by Kamerman to keep Ryan in the dark. (Ryan 94-5) At the October 18, 1982 meeting Kamerman told the Goldman Sachs representatives, as recorded in Oliphant's notes, that Ryan "does not know what's going on." (PX 127 at 022907) Kamerman directed Ryan not to talk to brokers. Kamerman specifically advised Oliphant that Ryan would have no role in the negotiations. (Oliphant 70-1)

Although Kamerman considered responding to Perelman's proposal with a management LBO, he did not disclose such plans to Ryan, but intentionally excluded him from participating in such a buyout. (Kamerman 129; Meyer 85) Kamerman refused to allow any of the Goldman Sachs representatives to talk to Ryan prior to the Special Board Meeting, explaining that such restriction was due to his estrangement from Ryan. (31 TR 104-05; Sapp 166-68; Kamerman 184)

It was only on October 27, 1982 that Kamerman finally disclosed to Ryan the acquisition proposal. But even in that conversation, Kamerman did little more than give Ryan notice of the Special Board Meeting to be held on October 29, 1982.

b. Ryan Is Secretly Advised Of The MAF Negotiations By Martin Davis And Believes He Will Get A Chance To Run The Company

As of September 1982, Ryan had been friends with Martin Davis, then a senior executive at Gulf + Western Industries, Inc. (now Paramount Communications) for more than 20 years. Davis knew of Ryan's predicament with Kamerman. (Ryan 88-9; PX 462, ¶¶ 1-2)

Perelman, who was a personal friend of Davis, had discussed his plans to acquire Technicolor with Davis. (42 TR 115-16; Perelman 56; PX 462, ¶ 3) Perelman also was aware of Ryan's difficulties. Defendants admit that, "Mr. Perelman discussed Mr. Ryan's situation at Technicolor with Mr. Davis and was told that Mr. Ryan was a competent executive, but that Messrs. Ryan and Kamerman were having difficulties with respect to their working relationship." (PX 460 Response 142) Moreover, on deposition Perelman testified that Davis had told him of Ryan's situation. (Perelman 55) At trial Perelman admitted that he knew of Ryan's problems, although he claimed that he could not recall whether Davis had been his source of information. (42 TR 17) Ryan understood that Davis had apprised Perelman from the outset of his difficulties with Kamerman. (Ryan 105)

Unbeknownst to Kamerman, on September 27, 1982, more than a week before the first Perelman-Kamerman meeting, Davis telephoned Ryan and informed him of Perelman's plans to acquire Technicolor. Davis, aware of Ryan's problems, told Ryan to "hang on" because he knew the people involved and thought they were "good guys." Indeed, he told Ryan "that he had steered them to the company." (Ryan 88-92; Pre-Trial Order II(G) 56)

Ryan realized that such a change could "personally benefit" him because it presented the opportunity for him to run the company. Accordingly, immediately after his conversation with Davis on September 27, 1982, Ryan consulted with his attorney, Richard Susman, regarding the impact this newly-imparted information could have on his position in the company. (Ryan 92-3)

Thereafter, Davis gave Ryan regular "progress reports" as to the status of negotiations; "a positive report indicating that he thought a good deal would be made." The information imparted by Davis was specific and Ryan believed it to be reliable. Defendants admit that in the course of these conversations, "Davis was aware of the difficulties with respect to the working relationship between Mr. Ryan and Mr. Kamerman and advised Mr. Ryan that a sale of the company to MAF might improve that situation." (PX 460 Response 140; Ryan 97-101; PX 128)

Davis also spoke further with Perelman, advising him of Ryan's outstanding executive abilities. (PX 462, ¶ 4; Perelman 329-30) Ryan believed that Davis was "singing [his] praises" to

Perelman to "protect" him and "give [him] a fair chance when and if the deal went through." (Ryan 100-01)

Recognizing the obvious benefit that he would realize if the transaction proceeded and Davis' intelligence proved accurate, Ryan consulted with his attorney regarding whether or not he should participate in the Special Board Meeting. Defendants admit that such discussions took place. (PX 460 Response 153; Ryan 109)

At the Special Board Meeting, Ryan did not disclose his communications with Davis or the assurances he had received that Perelman would give him an opportunity to run the company. (21 TR 267; Isham 43-4; Kamerman 311-12) Nevertheless, Ryan voted at the Meeting in favor of the MAF acquisition, knowing that by doing so he would seal Kamerman's fate at the company and assure his own.

Following the acquisition, Ryan took steps to assure the successful culmination of his plan. He actively campaigned to succeed Kamerman, advising Perelman of his strong points and Kamerman's weaknesses. (Ryan 323, 103; Gaul 127) Ryan remained in frequent contact with Davis regarding what was going to happen to Kamerman. (Ryan 377) Ultimately, Davis' predictions proved accurate.

On February 28, 1983, Kamerman was terminated by Perelman and Ryan was put in charge of Technicolor. Immediately thereafter, Kamerman walked into Ryan's office and said, "'I'm leaving and you're staying.'" He turned and left without shaking hands; that was the last time the two ever spoke. (Ryan 320) In

1984, Ryan was elevated to Chairman of Technicolor and given a lucrative new employment contract to go with his elevated status. Asked why he acceded to a new contract, Perelman's only response was that he wanted Ryan "to be content." (Perelman 383-84; PX 172)

4. Guy Bjorkman

a. Bjorkman Is Guaranteed The Highest Price For Sale Of His Shares To MAF

As of September 1982, Bjorkman and his wife were the largest Technicolor shareholders, owning in excess of 400,000 shares. (Bjorkman 10; PX 6 at P301059-60) Apart from his Technicolor holdings, Bjorkman was independently wealthy from the cosmetics business built by his wife, Germaine Monteil. He was 80 years old and in failing health. Bjorkman's wife was critically ill, a matter that weighed heavily on his mind. (Bjorkman 5, 11; Kamerman 14; Lewis 146-47, 148; Sullivan 110; Ryan 24; Simone 6)

Since Bjorkman had first become involved, together with Kamerman, in Technicolor in 1969, he had at all times gone along with Kamerman. The two had a long-standing personal and professional relationship. Kamerman met Bjorkman in 1964 when the former joined Germaine Monteil. (Bjorkman 5) The two eventually became business partners and shared offices in New York City from about 1970 until 1984. (Bjorkman 8; PX 6 at P301061) In 1968 they sold Germaine Monteil to British American Tobacco and, following the sale, in 1969 they bought equity

positions in and became involved with Technicolor. (Kamerman 14-15)

Due to advanced age, Bjorkman did not want to take an active role in running the company. Therefore, Bjorkman chose Kamerman to be chairman when his group took control of the Technicolor Board in 1976 (Bjorkman 4, 6; Ryan 14; Kamerman 14-5; Simone 11) -- and remained under his sway. (Simone 52-3; Bjorkman 11-2; PX 63 at 000956) Indeed, as of fall 1982, Ryan recognized that Bjorkman was under the "total intellectual control" of Kamerman. (Ryan 87)

Kamerman realized that Bjorkman's support was necessary for the deal with MAF to go forward and convinced him to sell his shares to MAF. (Bjorkman 38) As discussed above, Kamerman and his wife and Bjorkman and his wife entered into the Stock Purchase Agreement pursuant to which they agreed to sell all his shares to MAF. That Agreement gave Bjorkman (and Kamerman) preferential treatment over the other stockholders -- by guaranteeing them the highest price paid to any public shareholder for a period of one year after Technicolor's approval of the acquisition.

Moreover, the record confirms that Bjorkman was interested only in the personal impact the transaction would have on him, and did not independently consider the merits of the MAF deal. Bjorkman testified that he "wasn't aware . . . at all" that the proposal involved a public tender offer. As far as he was concerned, when the directors were asked to consider the MAF transaction, Bjorkman understood that the mechanism by which MAF

would purchase Technicolor stock was "[b]y buying out our stock, my wife and mine, and Mr. Kamerman and his wife...." Asked whether he understood how MAF would acquire the rest of the shares, Bjorkman testified, "I really didn't give it even a thought at the time." (Bjorkman 56)

Thus, it is self-evident that Bjorkman did not consider the shareholders' interests or whether they would be receiving a fair price, but was only concerned with guaranteeing himself a better price.

5. George Lewis

a. Lewis Votes For the MAF Deal To Advance His Personal Interests And Those Of His Clients, Kamerman And Bjorkman

As of September, 1982, Lewis was a long-time friend of both Kamerman and Bjorkman, the two directors with the largest positions in Technicolor stock. Lewis had known Kamerman since 1950 and met Bjorkman in 1968 in connection with the sale of Germaine Monteil to British American Tobacco. Lewis acted as tax counsel for Kamerman since 1964 and for Bjorkman since 1968. (29 TR 200, 210-11; Lewis 5-10)

Lewis, Kamerman and Bjorkman shared offices in New York City from about 1970 until the lease expired in 1984. Technicolor paid the rent. (29 TR 201; Lewis 12-4, 20-1; PX 6 at P301061) In 1980 Lewis was jointly asked by his close friends, Kamerman and Bjorkman, to join the Technicolor Board. (29 TR 211; Bjorkman 8; Lewis 10-1) In the fall of 1982 Kamerman needed tax advice in connection with sale of his block of shares to

MAF. Accordingly on October 5 or 6, 1982, Lewis (and Bjorkman) were included in the handful of individuals to whom Kamerman disclosed MAF's proposal to acquire Technicolor. (Lewis 49-50; PX 126 at 022905)

From the outset, Lewis' only concerns were the financial benefits that he would realize from the sale of his stock and the tax benefits he would arrange for his clients. When Kamerman told Lewis that he had received an offer of $20 a share, Lewis' reaction was one of "pleasure." Lewis and his wife together owned 8,700 shares of stock which they had bought at a low price. At trial Lewis testified that they thus stood to realize a gain of more than $87,000. (29 TR 222-23; Lewis 54)

Sometime after October 5 or 6, 1982, Lewis was retained by Kamerman to serve as tax counsel to provide tax advice in connection with the sale of his shares to MAF. Lewis advised Kamerman to delay sale of his option shares until January 1983 to get the benefit of capital gains treatment. (29 TR 216-17; Lewis 64-5, 76, 124; 21 TR 27) Lewis also counseled Bjorkman with respect to tax matters regarding sale of his stock to MAF. (Bjorkman 39; 29 TR 221) The Stock Purchase Agreement pursuant to which Kamerman and Bjorkman sold their shares to MAF reflects Lewis' advice. (PX 59) Lewis also advised Kamerman regarding his amended employment agreement. (Lewis 75-6, 79; 21 TR 27)

At the Special Board Meeting, Lewis did not disclose to the other directors that he had represented Kamerman and Bjorkman in connection with sale of their stock to MAF. (29 TR 227; Sullivan 323) Indeed, by his own admission, Lewis did not say

anything at the Meeting other than to inquire whether he could derive a tax benefit for himself by delaying sale of his shares until January 1983, similar to the arrangement that he had managed to work out for Kamerman. (29 TR 223) Lewis nevertheless participated at the Meeting and voted in favor of the transaction.

6. The Technicolor Director Defendants Are All Tainted By Bias Because They Were Kamerman's Puppets

Apart from the individual conflicts of interest specified above, all of the directors (except for Simone) were tainted by bias. As the record establishes, they were under the domination of Kamerman, were there to do his bidding and did not independently consider the merits of the MAF transaction.

Kamerman prided himself on the fact that he ran Technicolor in an "autocratic" fashion (Kamerman 173; Sullivan 103), and he boasted that he was "the leader and linchpin" that make Technicolor run. (Kamerman 425) His assessment of himself and the way he ran the company was shared by all those around him. Oliphant described Kamerman as "opinionated" and testified that he was incapable of admitting to a mistake -- a sentiment echoed by Gaul. (Oliphant 79-80; Gaul 113) On deposition and at trial Kamerman confirmed this to be the case. He routinely tossed aside contradictory testimony, insisting that he must be right and the other party in error or lying. (See below pp. 299-300 and Kamerman 98, 125-26) Perelman testified that Kamerman

managed through fear of dismissal -- one of the reasons he was fired. (42 TR 32)

Given his dictatorial style of management, Kamerman knew that once he gave the nod to the MAF transaction, the Technicolor Director Defendants would fall in line. Kamerman had good reason for such confidence. During the time that Kamerman was Chairman, the Board had consistently approved every proposal that he had advanced -- a situation which led Ryan to characterize it as "Kamerman's board." (Ryan 86)

By Kamerman's own account, there was not a single occasion during the time that he was Chairman (1976-82) that the Board voted against a proposal made by him. (Kamerman 174) Nor could any of the other directors recall any Kamerman proposal that ever had been voted down. (See, e.g., Isham 45; Lewis 5, 45) This state of affairs led director Simone to characterize the Board members as Kamerman's "puppets". Simone testified that for the entire six years that he was on the Board the other directors "agreed with everything. Nobody objected to anything." (Simone 276, 282)

Indeed, their staunch loyalty to Kamerman was demonstrated only several months before the Special Board Meeting, at the May 19, 1982 Board meeting. As described above (pp. 173-74) all of the Technicolor Director Defendants took Kamerman's part in his dispute with Ryan and voted to implement his reorganization plan to centralize authority in Kamerman's hands.

In view of this past history, Kamerman knew that once he had struck a deal with Perelman, the other Director Defendants would come through for him. As Kamerman admitted, "[t]here was a likelihood that if I was in favor of it [the price agreed upon with Perelman], they would go along with it, and if I was against it, they would be against it . . ." (Kamerman 174-75)

Given the predisposition of the Technicolor Director Defendants to accept the proposal advanced by Kamerman, who had a powerful financial interest in the MAF transaction himself, they too were tainted by bias.

K. CONSIDERATION GIVEN TO THE MAF DEAL BY THE TECHNICOLOR DIRECTOR DEFENDANTS AT THE SPECIAL BOARD MEETING WAS INADEQUATE AND IMPROPER

1. The Members Of The Technicolor Board Knew Little Or Nothing About The MAF Transaction When They Arrived At The Meeting

The Special Board Meeting to vote on the sale of Technicolor to MAF was scheduled for Friday, October 29, 1982 at 10:00 a.m. at the offices of Debevoise. A decision to call the Board meeting only was reached on the night of Wednesday, October 27, 1982. By Kamerman's own account, it was too late to reach all of the directors in New York. Kamerman managed to contact one or two of the directors, but left it to Oliphant to see to it that all of the Board members were notified. It was not until the night of October 28, 1982 when Kamerman met Oliphant at Debevoise's offices that he confirmed to Kamerman that he had communicated with all of the directors. (19 TR 149, 151-52)

Thus, most of the directors had less than 24 hours notice to attend a Board Meeting the following morning.

Although this was the most important corporate transaction ever to be considered by the Technicolor Board, the directors that entered the conference room on October 29 knew little or nothing about the reason why they had been so hastily summoned. The only director apart from Kamerman who knew any of the details of the transaction was Sullivan because he had been Perelman's initial point of contact at the company. As discussed above, Kamerman let director Lewis in on MAF's offer because he needed his tax advice, and director Bjorkman because he needed his commitment to sell his shares to MAF, but told them no more than they needed to know for those purposes. By Kamerman's admission he told Isham even less. (21 TR 36-7) Kamerman kept Ryan in the dark because he "distrusted" him and thought he was a "liar" (19 TR 140; 20 TR 205), so his knowledge was limited to the intelligence fed to him by Davis of Gulf + Western.

The remaining three directors, Blanco, Frye and Simone walked into the Meeting without so much as a clue as to the events that were about to unfold. Kamerman testified on deposition (Kamerman 288) and confirmed at trial that he told Simone "nothing" before the Meeting. (20 TR 150) The decision to keep his fellow directors uninformed was Kamerman's. Thus, Brown testified that he did not know that Blanco, Frye, Simone and Ryan had not had any time to consider the proposed transaction prior to October 29, 1982. (29 TR 49, 132)

Sullivan, the only member of the Technicolor Board ever previously to have been involved in the sale of a public company, made clear that in his experience it was highly unusual for the directors to be so ill informed. Sullivan testified that apart from one other transaction (involving Toledo Scale) he could not think of any situation in which the directors attended a meeting to sell the company without knowing what the subject of the meeting would be. (23 TR 86; Sullivan 252)

None of the Directors (other than Kamerman) were provided with any written materials regarding the transaction prior to the Special Board Meeting. (23 TR 86; Sullivan 270; Blanco 43-4; Isham 96) The directors were not furnished with any agenda prior to October 29, 1982, and few recall having one at the Meeting. (23 TR 87; Sullivan 248, 270-71; 22 TR 26-7; Kamerman 268-87; Blanco 43-4; Lewis 80; 27 TR 89; Isham 170-71; Oliphant 154; Sapp 460)

Moreover, this was not a Board that was ready to snap into action. Throughout Kamerman's chairmanship, the Technicolor Board met only quarterly. In the period 1980-1982 the Board meetings lasted at most two or three hours and were over by 12:00 or 1:00 p.m. in time for lunch. Kamerman admitted that as a general rule the directors spent no more than 12-15 hours a year on Technicolor in Board meetings. (20 TR 222-24)

Nor was there any opportunity for private deliberation among the directors at the Special Board Meeting. In addition to the Board, the following individuals were present throughout the Meeting: Brown and Phillips from Debevoise, Joseph Sullivan,

Golden, Sapp and Venuto of Goldman Sachs, as well as Oliphant and Powitzky, Technicolor's in-house counsel and chief financial officer, respectively. Simone explained that he was "dumbfounded" at not having been told what was going on and found "it was quite a shock" to see all these strangers milling about. (Simone 56, 261; Bjorkman 41-2; Kamerman 313; Blanco 26; Ryan 113; Lewis 79-80; Oliphant 183)

The entire Meeting lasted no more than three hours. (21 TR 250; 23 TR 94-5) Although the Board minutes state that the Meeting commenced at 10:00 a.m. and adjourned at approximately 1:00 p.m. (PX 72 at 000925, 000934), Ryan specifically testified that the substantive portion of the Meeting consumed no more than two or two and a quarter hours. (Ryan 309-10) According to Joseph Sullivan of Goldman, the entire meeting was "from one to two hours . . . . An hour, perhaps." (J. Sullivan 45-6) Bjorkman stated on deposition that he "couldn't remember under any circumstances" when the Meeting began and as for when it ended could remember only, "I know that Mr. MacAndrews invited us all to lunch." (Bjorkman 44)

2. A Press Release Announcing Agreement Between Technicolor And MAF Was Ready To Go Before The Meeting Began

The outcome of the Special Board Meeting was preordained. Under Kamerman's direction, Oliphant arranged for copies of a previously prepared press release announcing agreement between MAF and Technicolor to be communicated prior to start of the Board Meeting to key Technicolor management and to

the New York Stock Exchange, ready to go across the wire as soon as the Board voted. Oliphant's "To Do List" prepared on October 28, 1982, as well as his notes of the October 29 Meeting record the fact that he arranged for telex of such a press release to Gaul (head of Technicolor's Professional Film Division) at 9:00 a.m., one hour before the Meeting even began, and also alerted Technicolor's switchboard. Oliphant was also in contact at 9:00 a.m. that morning with Veronica Dever at the New York Stock Exchange to alert her that an announcement was imminent. (DX 132 at 022917; PX 141 at 022920)

Moreover, defendants admit that the press release was disseminated by Kekst and Company following the signing of the Merger Agreement. (PX 460 Response 227) Given the fact that the Meeting supposedly ended at 1:00 p.m. and was followed by the document execution session, and further given that the release already was across the wires by 1:40 p.m., it is clear that it was provided to Kekst prior to commencement of the Board Meeting. (PX 482)

There can be no doubt that Kamerman was still calling the shots as to when and how this release would be issued. Thus Brown made clear at trial that he had no part in and was not aware that a press release was circulated and ready to roll prior to commencement of the Board Meeting. (29 TR 134-36)

3. The Only Thing Kamerman Remembered About The Meeting Was Simone

Perhaps because the Meeting itself was of so little consequence to the outcome of the deal that had been struck,

Kamerman (and for that matter most of the Technicolor Director Defendants) had little recall on deposition as to what happened there. (See, e.g. Kamerman 365; Blanco 27; Sullivan 295; Bjorkman 46-7) On deposition, Kamerman did not recall what he discussed (Kamerman 313-14), what the Goldman Sachs representatives said (Kamerman 310) or even the fact that Brown was present at the Special Board Meeting. (Kamerman 361) As he put it, "I really don't recall just what happened in that meeting." (Kamerman 365)

At trial, however, Kamerman's memory experienced miraculous regenerative powers. He recounted in selective detail not only what he said, but also what Golden and Brown purportedly advised. Given the fact that by Kamerman's own admission the very same documents upon which he purportedly recreated his recollection were available to him at the deposition (20 TR 77, 100), the only logical inference is that his revived recollection was fictitious or it was aided by the assistance of counsel. Accordingly, Kamerman's amplified version of discussions at the Special Board Meeting must be discredited.

There was only one item that consistently stood out in Kamerman's mind, and that was the confrontation with Simone. On deposition Kamerman testified, "I really don't recall what happened in the meeting except for what Simone said." (Kamerman 365) At trial his memory was indeed just as vivid; he confirmed, "[Y]ou don't need any papers to remember something like that." (20 TR 117)

4. Kamerman Presented The Deal As A Fait Accompli

a. Kamerman Advised That He Struck a Deal With Perelman

Having struck a bargain with Perelman, Kamerman knew from past practice that once he gave the nod, the other Technicolor Director Defendants would fall in line. Although the information imparted by Kamerman and Technicolor's other advisers was incomplete and inadequate and on its face raised serious questions, the Technicolor Director Defendants sat silently by.

The tone of the Meeting was set from the start. Kamerman told the Board that he unilaterally had struck a deal with Perelman for sale of the company to MAF. By all accounts, and as recorded in the minutes, Kamerman advised that he had received an offer from Perelman at $20 a share and he had countered with $25. (20 TR 140; Isham 118; Ryan 113-14; Oliphant 417-88; PX 72 at 000926; PX 141 at 022920) Yet none of the Technicolor Director Defendants raised any questions about Kamerman's authority to make a counterproposal or fix a negotiating range prior to consulting the Board. Nor did they question his authority to negotiate a sale of the company without seeking authority from the Board. (29 TR 140; 27 TR 91)

Moreover, as a threshold matter, defendants admit no consideration was given to the need for formation of a special committee to independently evaluate the MAF proposal. Not only were a majority of the directors financially interested in the outcome of the MAF transaction, but Kamerman and Bjorkman together held 11.5% of the company's stock. (Oliphant 293; Isham

210; Blanco 40; 27 TR 93; PX 460 Response 117) In fact, as discussed below, no questions of either substance or procedure were raised by any of the Technicolor Director Defendants.

In his presentation Kamerman advised that in light of the proposed amendments to his employment contract and the proposed payment of a $150,000 fee to Sullivan, "he and Mr. Sullivan could be deemed to have a financial interest in the proposed MacAndrews transaction." (PX 72 at 000926-27) Yet none of the Technicolor Director Defendants raised the subject of whether it was appropriate for Kamerman and Sullivan to participate in Board deliberations on the proposals given their admitted financial stake. At no point were Kamerman and Sullivan asked to leave the Meeting (nor did they do so voluntarily) in order to permit a free and uninhibited exchange among the other directors. (27 TR 92; Isham 202; Lewis 88, 91; Ryan 123; Sullivan 144)

b. The Technicolor Director Defendants Made No Attempt to Determine Whether MAF's Offer Made Sense for Technicolor's Business and Its Shareholders

At the Special Board Meeting, there was no serious effort made by the Technicolor Director Defendants to evaluate the MAF offer in light of the current state of Technicolor's businesses in order to ascertain whether the $23 price made any sense. Apart from whatever limited financial data was contained in the Goldman Sachs presentation the Directors did not have available to them at the Meeting any financial information about Technicolor. Defendants admit that neither the 10-K for fiscal

year 1982 nor the 10-Q Report for the first quarter of fiscal 1983 was provided to the Directors at the Meeting. (PX 460 Response 211) For that matter they could not recall if any financial data was present at the Meeting (other than Goldman Sachs' report). (PX 460 Response 210) At trial, director Isham confirmed that the Directors did not receive the 10-K, 10-Q or any financial data. (27 TR 107, 108) Nor were they given any projections of Technicolor's business prospects after October 1982. (23 TR 89-90)

No such information was provided despite the fact that the most recent 10-Q for the first quarter ended September 25, 1982 was prepared and ready prior to the Special Board Meeting. Thus Sapp testified, and his notes confirm, that Goldman Sachs received a copy of Technicolor's draft 10-Q on October 25, 1982. (30 TR 159; 32 TR 79; PX 195; PX 212 at GS 1199) Yet Goldman Sachs did not provide such document to the directors at the Meeting. (33 TR 79-80)

In addition, Goldman Sachs was provided with a copy of a press release dated October 22, 1982, reporting Technicolor's first quarter results. (30 TR 152-53; PX 127) Sapp testified, however, that he did not know whether or not the release was a draft, whether Technicolor announced its earnings prior to the Special Board Meeting or made the information available to the Directors. (32 TR 80-2) In fact, Kamerman decided to kill the release after providing the information to Goldman Sachs but not to the directors. Notes prepared by Brown of a conversation on

Friday evening, October 22, 1982 regarding "earnings release" state "MK doesn't want a release." (PX 503 at 40)

In any event, the final 10-Q for the first quarter of fiscal 1983 was available by no later than October 28, 1982. On that date, at Kamerman's instruction, Oliphant sent a copy of Technicolor's 10-Q to MAF. Yet by Kamerman's own admission, the report was not provided to Technicolor's own directors at the Special Board Meeting. (PX 140 at 022942; 21 TR 233, 235, 238) It was not until November 2, 1982, four days after the Special Board Meeting, that Oliphant finally sent copies of the 10-Q to the directors (PX 73) and no review of the first quarter results as had until the November 9, 1982 Board Meeting. (PX 460 Response 243)

Likewise, the latest annual report for the fiscal year ended June 26, 1982 (and filed with the SEC on September 22, 1982) was not made available to the directors at the October 29 Meeting. (21 TR 237; PX 460 Response 210) Like the 10-Q, the annual report and financial statements of Technicolor (as of September 25, 1982) were only provided to the directors by letter on November 2, 1982. (PX 73)

Nor was there any meaningful evaluation at the Special Board Meeting of the MAF proposal in the context of the current condition of Technicolor's business. Kamerman could remember little of what he told the Board, but made clear, "I wasn't saying anything new. All I did was summarize it for them." (22 TR 6; 21 TR 254, 256)

By most accounts there was no discussion of Technicolor's cash flow or the value of that cash flow. (21 TR 254; 23 TR 88-9; 27 TR 100; 32 TR 127-28) There was no discussion by Kamerman about the prospects for the professional and government services operations or the outlook for its new videocassette duplicating business. (23 TR 87-8) Nor was there any discussion about the prospects for the motion picture industry in the years 1983 and beyond. (27 TR 96)

Although Ryan was present throughout the meeting, defendants admit that Ryan did not give any report on operations; it was not until November 9 that there was a review of operations and of Technicolor's 10-Q Report. (PX 460 Responses 241, 243) In fact, Ryan said nothing at the October 29 Meeting. Sullivan testified, "I don't remember Mr. Ryan saying anything at that meeting." (23 TR 88) None of the Technicolor director Defendants asked Kamerman if he had consulted with Gaul, Tesser, Donlon or Forster, the respective heads of Technicolor's Professional Film, One Hour Photo, Videocassette and Government Service operations and none of them reported on results or prospects at the Board Meeting. (29 TR 155)

There was no discussion at the Meeting as to where Technicolor operations stood vis-a-vis plan for fiscal 1983. (29 TR 10-03) Although Powitzky, Technicolor's chief financial officer was present, defendants admit that he said nothing. (PX 460 Response 218).

c. Kamerman Offered No Basis For Recommending MAF's $23 Per Share Offer

Despite the fact that no consideration was given to assessing whether or not MAF's offer was reasonable in the context of where Technicolor's business stood, Kamerman recommended acceptance of the $23 per share offer. The only real explanation he offered was that acceptance of the proposal was "advisable rather than shooting dice" on One Hour Photo. (21 TR 282, PX 141 at 022926) Only a short time before, however, Kamerman had publicly announced at the last annual stockholders' meeting on November 12, 1981, that One Hour Photo was a "tremendous growth opportunit[y]." (PX 3A at E03871)

Nothing had transpired in the interim with respect to that operation to account for Kamerman's sudden turnabout at the Special Board Meeting. Indeed just seven weeks prior to the Board Meeting, in the Annual Report dated September 7, 1982, Kamerman reported that "Sales and expenses at the store level have been substantially in line with our projections and we remain optimistic that the one hour photo business represents a significant growth opportunity for the Company." (PX 7 at 6) Notes taken by Oliphant at the Meeting record that Kamerman reported it would take four to six months before the final verdict on One Hour Photo was in. (PX 141 at 022925) It is probably correct that One Hour Photo was Kamerman's folly, but he had never before admitted it, and he gave no explanation for his about face after September 7, 1982.

Moreover, even if Kamerman had any legitimate basis for believing that One Hour Photo was "a crap shoot" as he characterized it (29 TR 171-72), the alternatives were not shooting dice or selling out. Just as Perelman was planning to terminate One Hour Photo, so too Technicolor could have retained its independence and sold or franchised that operation. Yet none of the Technicolor Director Defendants questioned Kamerman's characterization of One Hour Photo or discussed the impact on the company of getting out of that operation rather than selling to Perelman.

Kamerman also advised the Board that he believed the $23 price was "good" because it was ten times core earnings, which Kamerman reported were $2.30-$2.50 a share. (PX 141 at 022925) As discussed more fully below, however, that figure was net of One Hour Photo losses and did not take into account any amount for the value of the company's excess assets. As Kamerman knew, Perelman had estimated that sale of Technicolor's excess assets would yield $50 million, or approximately $11 additional per share.

The simple fact is that there was no logical basis for recommending acceptance of the $23 price. Kamerman admitted,

> No, I cannot recall how I arrived at it [the fairness of the $23 price]. I arrived at it based upon all of my knowledge. That's how I arrived at it.

(21 TR 256) Nevertheless, the Technicolor Director Defendants acquiesced in Kamerman's recommendation although Kamerman himself could not say how or why he had reached such determination.

5. Brown Gave No More Than A Cursory Once Over Of The Deal Structure

Meredith Brown of the Debevoise firm was at the Special Board Meeting ostensibly to explain the structure of the deal and to review the resolutions. Defendants admit, however, that they do not recall if the deal documents (Merger Agreement, Stock Option Agreement, Stock Purchase Agreement) or the resolutions were even present. (PX 460 Response 209) To the extent that the directors were asked, they confirmed at trial that they never saw any of the transaction documents. (23 TR 94; 27 TR 126-27)

If one is to assume that fair amounts of time were devoted to the Kamerman and Goldman Sachs presentations, as well as to the resolutions and voting process, at most Brown had something well under an hour to educate the Board on the structure of the deal. Given the complexity of the transaction and the total lack of familiarity of the directors with this deal (or indeed any deal of this nature), it is inconceivable that Brown could have provided more than a cursory once over at best.

Confirmation that this is the case is provided by the fact that the directors made clear that they did not fully understand the terms and conditions of the deal. At trial Sullivan testified that he did not fully understand how the lockup worked and "didn't have a complete understanding" of the terms of the Merger Agreement. (23 TR 102-04) Sullivan and Isham both testified at trial that they did not understand that there was no escape clause provided for Technicolor in the Agreement. (23 TR 101; 27 TR 127)

Bjorkman did not even understand the basic structure of the deal. Thus, he testified on deposition that he was not aware that the transaction involved a public tender offer. (Bjorkman 56) As noted above, not even Kamerman understood the Stock Purchase Agreement and concluded he had been "suckered." (21 TR 263-64)

6. Goldman Sachs' Presentation At The Special Board Meeting Was Inadequate

a. An Adverse Inference Should be Drawn From the Failure of John Golden to Appear at Trial

The logical witness for defendants to have called to testify regarding Goldman Sachs' presentation to the Technicolor Board would have been John Golden, the sole individual to make the oral presentation and the person ultimately responsible for the contents of the report provided to the directors. There are several possible explanations for his failure to appear. Golden's total lack of recall on deposition as to what he or anyone said at the Special Board Meeting made it virtually impossible to testify at trial about the Board presentation without impeaching his own credibility. Moreover, given his obvious disagreement with Kamerman regarding the need to seek out alternative bidders and to pursue an LBO opportunity, defendants may have sought to avoid an open clash between the two men in Court. Whatever the reason, it is clear that defendants' failure without explanation to call Golden permits the logical inference that his testimony would not have been helpful to them.

Instead defendants presented as Goldman Sachs' "star" witness none other than Golden's brief case carrier, Richard Sapp, who was then an associate one year out of business school. Sapp spoke not a word at the Special Board Meeting. His sole function was to hand out the Goldman report to the Technicolor Directors and return to his seat. (30 TR 207; Sapp 476)

b. The Directors Were Not Given Time to Read the Goldman Sachs' Report

The only written material furnished to the directors was Goldman Sachs' presentation, although a number of those present at the Special Board Meeting do not recall any Goldman Sachs documents ever having been made available to the directors. (Isham 171; Lewis 130-33; Golden 256-57) In any event, the directors had no opportunity to read the report. As Sapp testified, he passed out the document while Golden was giving introductory remarks. (30 TR 207) According to Ryan, the only thing Golden said by way of introduction concerning the document that was being passed out was that "he wanted them back." (Ryan 289) The Goldman Sachs' notes from the Board Meeting record as item number one, "Get Books". (PX 212 at GS 1205) In fact the document was collected from all the directors prior to the conclusion of the Meeting; they were prohibited from taking the report from the Meeting to study it. (24 TR 104-05; Isham 183; Oliphant 184, 194; Ryan 289)

Sapp testified, and others present at the Meeting agree, that there was no silent reading period to enable the directors

to digest the material. To the extent that any of the directors actually looked at the document, none of them had time to do any more than flip through the pages. (32 TR 115; Sapp 464; Sullivan 294; Blanco 28; Oliphant 195)

c. Goldman Sachs' Written Report Was Hastily Put Together and Its Oral Presentation Added Nothing

Goldman Sachs' written Board presentation for the most part contained the same materials that had been gathered in less than a day by Sapp and Venuto for the valuation package of October 20, 1982. (PX 188, 202) Apart from some adjustments to figures, the only items added were an LBO model, which shed no light on the value of Technicolor, and a comparison with certain specialty retailers, which was irrelevant because by Goldman Sachs' admission Technicolor was not a specialty retailer in 1982. (PX 202, Exs. 5, 6, 11) The written document prepared by Goldman Sachs for the Special Board Meeting generally contained only background information and historic financial data already known to the directors and the evaluation of other companies and deals which were admittedly not comparable or otherwise relevant to Technicolor and/or the MAF acquisition of Technicolor.

The oral presentation added nothing. Indeed given the almost total lack of recall by the Goldman Sachs representatives or the Directors as to what was said it might just as well have not occurred. Thus, Joseph Sullivan of Goldman Sachs' Los Angeles office could not even remember who spoke, let alone what he said. (J. Sullivan 42, 45) Golden recalled on deposition

that he was the spokesman, but that was about it. Asked whether he "actually recall[ed] the presentation that [he] made to the board," he responded with an unequivocal, "no."[42] Nor could he even say whether Goldman Sachs' written presentation was present at the Meeting or provided to the Directors. (Golden 256-57)

Sapp fared little better. On deposition he could not recall what Golden said about even a single exhibit in the Board book or how any of the exhibits supported the fairness of the $23 price. (Sapp 478 (Exs. 1 & 2); 485 (Ex. 3); 487, 493 (Ex. 4); 494-95 (Ex. 5); 504-05 (Ex. 6); 509-10 (Ex. 7); 510-11 (Ex. 8); 528 (Ex. 9); 540 (Ex. 10); 533 (Ex. 11); 555 (Ex. 12); 559 (Ex. 13) At trial Sapp attempted to conceal his total lack of recall by explaining the "purpose" of each exhibit. But this deceptive device was unmasked on cross examination when Sapp was again forced to admit that he did not recall the comments made by Golden on any exhibit in Goldman Sachs' Board presentation or how they spoke to the fairness of the $23 price. (32 TR 135-36 (Exs. 1 & 2); 138 (Ex. 3); 139 (Ex. 4); 142 (Ex. 5); 143-44 (Ex. 6); 145-57 (Ex. 7); 147-49 (Ex. 8); 166-67 (Ex. 9); 188 (Ex. 10); 189 (Ex. 11); 194 (Ex. 12); 195-97 (Ex. 13)) Sapp bluntly admitted,

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42 On deposition Golden did not recall what he said about any exhibit in the Board book or how it supported the fairness of the $23 price. (Golden 267, 269 (Ex. 1); 269 (Ex. 2); 270 (Ex. 3); 272 (Ex. 4); 272-73, 274-75 (Ex. 5); 275-76 (Ex. 6); 276-77 (Ex. 7); 277 (Ex. 8); 283, 286 (Ex. 9); 287, 289, 291-92 (Ex. 10); 292-93 (Ex. 11); 294-95 (Ex. 12).

> I don't believe Mr. Golden at any time during the presentation related any particular exhibit in the board book . . . to the fairness of the $23 price.

(32 TR 137)

Indeed, the Goldman Sachs presentation was a total blur to a number of the Technicolor Director Defendants, who had little or no recall as to the substance of what was said. As far as Sullivan was concerned, for example, he did not even recall that Golden talked about Technicolor's projected future performance or furnished projections. (Kamerman 365; Blanco 27; Sullivan 295, 305-06; Bjorkman 46-7)

d. The Historic Data Contained in the Report Already Was Known to the Directors

The first three exhibits to the Board Book were taken essentially verbatim from Goldman Sachs' valuation package. They contain historic information about Technicolor's stock trading history and ownership taken from publicly available data bases and Technicolor's public filings. (PX 202 at 022468-477; Sapp 478). Thus, the first exhibit provides a common stock price history for Technicolor for the years 1977-1982; the second exhibit provides a weighted average of trading prices for one, three and five year periods; and the third exhibit merely summarizes the common stock ownership of the company.

All of the information already was known to the Technicolor Board. It provided no insight as to the adequacy of the $23 price offered by MAF. Indeed, most of the directors have

no recollection of any discussion or anything Golden may have said regarding this information. (Ryan 290-91; Sullivan 296; Isham 174; Blanco 31; Oliphant 264) Sapp confirmed at trial that to the best of his recollection Golden said nothing to the Board as to how this information supported the fairness of the $23 price. (32 TR 136-37, 138)

Also included in the Goldman presentation was a historical financial summary of Technicolor by division for 1978 through 1982 together with plan numbers for 1983 (which was nothing more than the fiscal year 1983 budget, developed in spring 1982). (PX 202 at 022503-510; 32 TR 152) By Sapp's own admission, the directors already were familiar with this data and little time was spent on it. (32 TR 149-50; Ryan 297)

Although, as discussed above, Goldman Sachs was provided with Technicolor's 10-Q report for first quarter fiscal 1983, it did not include reference to those results for any of the company's divisions. (32 TR 153)

e. Goldman Sachs' "Projections" Were Suspect On Their Face But No Questions Were Asked By The Technicolor Director Defendants

Goldman Sachs' Board presentation included seven year "projections" of Technicolor with (PX 202, Ex. 9) and without (PX 202, Ex. 10) One Hour Photo, extending over the years 1983 through 1989. These so-called projections were nothing more than the mathematical constructs Kamerman had had prepared in 1981 and updated in July 1982 to help him make the One Hour Photo venture look attractive. (See above pp. 74-80)

Goldman Sachs accepted the projections including One Hour Photo without question, using the alternative 600 store scenario that Technicolor had provided. (DX 149(2); 31 TR 211) Goldman Sachs has never satisfactorily explained how it derived the numbers for Technicolor without One Hour Photo or why the forecast for earnings per share in its valuation memorandum differs from that in its Board presentation. By Sapp's own admission, Technicolor did not provide projections of the company excluding One Hour Photo. Sapp's sole explanation is that Powitzky told them how much to back out One Hour Photo. (31 TR 208-09)

As Sapp testified, however, Golden did not advise the directors that the projections received by Goldman Sachs were relied upon without verification. Nor was any explanation provided to the Board as to what the projections represented. (Ryan 298-99) Although both Kamerman and Powitzky were present, they made no attempt to tell the other directors what these "projections" really were. (32 TR 227) Kamerman did not ask Goldman Sachs to prepare any projections or special study in connection with its assignment because, "[i]t would have taken a long time to do one." (Kamerman 379)

The very fact that these projections went out seven years should have immediately raised questions because the Technicolor Director Defendants knew (or should have known) that Technicolor planned its business by using a one-year forecast and did not prepare long-term projections. (19 TR 18-9) Yet none of the Technicolor Director Defendants inquired as to the source of

these projections going out to 1989 or asked what they were. (32 TR 159; Ryan 301; Kamerman 381-82)

Apart from the length of the forecast, these projections contained assumptions that on their face demanded explanation and invited inquiry, but neither was forthcoming.

Although the 15% interest rate used in these projections was unreasonable given that Technicolor was paying substantially less for its One Hour Photo credit from Bank of America, there was no discussion or inquiry about the impact of a lower rate. (32 TR 155) Both projections assume proceeds from asset sales would be limited to $25 million, after tax, realized from the sale of Gold Key in 1984. This despite the fact that Perelman's financing proposal (known to Goldman Sachs) estimated $50 million in asset sales (including One Hour Photo) in one year. According to Brown, the Board was advised that MAF contemplated disposition of assets in the amount of $50 million (29 TR 144-45), yet none of the Technicolor Director Defendants asked why Goldman Sachs' projections assumed only half that amount.

Even assuming such information was not imparted, nevertheless the Technicolor Director Defendants knew that the company on its own was in the process of liquidating certain assets which were not included in Goldman Sachs' projections. Sapp testified that he had no recollection of any of the Technicolor Director Defendants asking what Goldman Sachs did to take into account the cash proceeds anticipated from the liquidation of Audio Visual or the sale of its Costa Mesa and London real estate. (32 TR 174-75)

Moreover, the Goldman Sachs' report itself was internally inconsistent regarding the amount realized from asset sales. While in both projections (PX 202, Exs. 9 & 10) Goldman Sachs used $25 million in asset sales, in its LBO analysis (PX 202, Ex. 11) it assumed $30 million in asset proceeds. As Sapp testified, no one noticed the dichotomy or asked why there was a difference of $5 million in different exhibits concerning asset proceeds. (32 TR 175)

Goldman Sachs' projections also were inconsistent with the figures it had received from the company. Thus, Goldman Sachs' valuation memorandum of October 20, 1982, which was based on Technicolor's fiscal 1983 plan, indicated earnings per share of Technicolor (with One Hour Photo) of $1.99 for fiscal 1983. (PX 188 at GS 1375) Yet despite purported reliance on Technicolor's plan, Goldman Sachs' projections with One Hour Photo in its Board book contain a forecast of $2.13 a share. (PX 202 at 022512) Sapp could offer no logical explanation for this discrepancy, nor did any of the Technicolor Director Defendants notice this fact and ask why Goldman was projecting seven percent higher earnings per share than the company had projected just a few months before. (32 TR 157-58)

Goldman Sachs' scenario for Technicolor with One Hour Photo also included a chart showing the net present value of Technicolor stock prices using multiples of 8 and 10 times earnings and various discount rates. (PX 202 at 022513) Assuming One Hour Photo worked out as projected by Technicolor and its management, the data compiled by Goldman demonstrated

that Technicolor had a potential worth of up to $46.00 a share in 1982 dollars. Yet none of the Technicolor Director Defendants inquired about the adequacy of the $23 price in the context of this information. Nor did they ask whether the timing was just plain wrong for the MAF transaction if one believed in the future of One Hour Photo, or whether a better price would be available from an entity that believed in One Hour Photo. (32 TR 164-65)

Goldman Sachs' projections for Technicolor without One Hour Photo (PX 202, Ex. 10) were just as obviously flawed. Thus, although Technicolor's consolidated balance sheet, included in Goldman Sachs' report, showed that the company had approximately $22.5 million of long-term debt outstanding (PX 202 at 022504), Goldman Sachs' projections assumed a long-term debt balance of $30 million when One Hour Photo was terminated. (PX 202 at 022515) This number was used despite the fact that there was a specific covenant in the Merger Agreement that limited Technicolor to $26.5 million in long term debt at the time that the Merger was consummated. (PX 57 at GS1318) Sapp testified that no one pointed out to the Directors the dichotomy between the restrictions on long-term debt in the Merger Agreement and the amount used in this forecast. (32 TR 168)

The assumption that depreciation was offset by matching capital expenditures was likewise unreasonable on its face. Technicolor had recently completed a modernization program and therefore it should have been anticipated that depreciation would exceed capital expenditures beginning fiscal 1983. (See PX 7 at 19; PX 42 at 107512) Capital expenditures in its fiscal 1983

budget for continuing operations, excluding One Hour Photo and Gold Key, were less than $2 million for domestic operations. (PX 337) Sapp admitted that he did not recall seeing any documentation regarding Technicolor's capital expenditure plans and did not understand that the company planned less than $2 million in such expenditures, but relied solely on what Powitzky supposedly said. (31 TR 228-29) Nor did any of the Technicolor Director Defendants question why Goldman Sachs used level depreciation and capital expenditures, given the amounts that Technicolor had expended on its core business in the past several years. (32 TR 169-70; Isham 189-90; Oliphant 275)

The forecast earnings per share for Technicolor without One Hour Photo assumed by Goldman Sachs in this projection differed from the numbers used just nine days prior in the valuation memorandum. While that memorandum projected earnings per share of $3.15 for fiscal 1983, Goldman's projections in the Board book showed only $2.43. (PX 202 at 022515; PX 188 at GS 1375) Sapp could offer no explanation or documentation to support this reduction of $.72 per share, but testified only that it was based on what Powitzky said. (32 TR 170)

Moreover, the $2.43 per share forecast for fiscal 1983 without One Hour Photo was only 30 cents more per share than the $2.13 for 1983 that Goldman projected for Technicolor with One Hour Photo. Goldman Sachs did not explain and the Technicolor Director Defendants did not ask why the termination of a major loss operation of the company resulted in such an insignificant earnings increase. (32 TR 172)

The forecast was manipulated in other ways to make the $23 price more palatable to the Technicolor Board. Thus, in comparison to the valuation memorandum, the projections without One Hour Photo in the Board Book showed decreased earnings per share in the near term and increased numbers in the later years. Despite these numerous discrepancies, Sapp could recall no specific questions asked by the Technicolor Director Defendants concerning the forecast numbers. (32 TR 172)

Goldman Sachs constructed its projections on the assumption that termination of One Hour Photo would generate no positive cash flow, although in its financing package to the banks, Perelman indicated a positive cash flow from selling One Hour Photo. Kamerman was of the view that a sale would produce positive cash flow (21 TR 96), but he said nothing about this error. Sapp's only explanation was that Powitzky had indicated that it could cost up to $10 million to exit from One Hour Photo. Sapp did not question that representation, did not ask to see a store-by-store P&L breakdown and was not even aware that the operating stores were making money in 1982. (32 TR 185-86) Instead Goldman Sachs arbitrarily assumed that closing One Hour Photo would be cash neutral and that assumption went unchallenged by the Technicolor Director Defendants. (32 TR 187-88)

Whereas Goldman Sachs' analysis of stock prices for Technicolor with One Hour Photo used multiples of 8 to 10 times earnings (PX 202 at 022513), its analysis without One Hour Photo used a multiple of only 5 to 8 times earnings for cash flow. (PX 202 at 022516) Sapp testified that he did not consult the

Standard & Poor's Industrial P/E ratios (which in the ten years up to 1982 showed an average P/E ratio of about ten). (32 TR 182) The sole rationale presented by Sapp at trial was that Technicolor without One Hour Photo would not be as high a growth company. (32 TR 176) Such explanation, however, ignores the fact which Sapp knew (or should have known) that Technicolor had entered the videocassette duplicating business and that Kamerman had reported to the stockholders that such business presented a "tremendous growth opportunit[y]." (PX 3A, E03871)

This potential for growth was likewise known to the Board. Yet Goldman Sachs offered no explanation and none of the Technicolor Director Defendants asked whether it had taken into account the growth opportunity presented by VideoCassette in fixing the range of multiples or why it had eliminated a ten multiple. (32 TR 176-77, 180-81; Kamerman 384-85; Sullivan 307; Isham 190; Oliphant 277)

f. The Other Information Provided by Goldman Sachs was Irrelevant

(1) None of the Selected Companies Was Comparable

The other information provided by Goldman Sachs to the Directors was irrelevant. Thus, Goldman Sachs attempted to compare the common stock characteristics of Technicolor with other film and video service production companies including, Berkey, Fotomat, Fox Stanley, MGM/UA, MovieLab, United Artists and Video Corporation of America. (PX 202, Ex. 4) Of these companies, only MovieLab was in the film processing business, but

as Ryan has testified, it was not economically or financially comparable to Technicolor. (Ryan 291)

Golden was responsible for the decision as to which companies to include. (30 TR 218) Although it was obvious to all concerned that the companies were simply not comparable, Golden did not offer and the Technicolor Director Defendants did not ask for any explanation as to why these seven companies were selected. (32 TR 139; Sapp 493; Isham 177, 179; Ryan 291-92; Kamerman 375-78; Lewis 134)

Likewise, Goldman Sachs' purported comparison of Technicolor with certain recent acquisitions of motion picture and video companies was of no relevance. (PX 202, Ex. 5) As Sapp testified, there were no transactions involving film processing companies in that time frame. (32 TR 141) By Sapp's admission, the only one of the seven transactions listed that had any degree of comparability with MAF's acquisition of Technicolor was the transaction involving Viacom and Video Corporation of America and that transaction was aborted. (32 TR 140-41) The remaining six transactions involved the acquisition of motion picture and television producing companies such as Columbia Pictures, Rastar Films, Twentieth Century Fox, that had nothing to do with the deal under consideration by the Technicolor Board. Yet once again the information went unexplained and unchallenged at the Special Board Meeting. (Ryan 294-95; Oliphant 268; Sapp 493-94; Golden 274-75)

Kamerman was recommending MAF's $23 offer if the range of values went as high as $32.

Defendants admit that the existence of the chart was not made known to the Board (PX 460 Response 188), nor was there any discussion at the Special Board Meeting of a price range of $20-$32 a share. (21 TR 270-71; 32 TR 59; 27 TR 110; Ryan 304-05; Sullivan 313-14; Isham 195; Blanco 42; Lewis 109)

Likewise, although Goldman Sachs had prepared LBO analyses at prices up to $28 a share, its presentation to the Board included only an LBO run at $23 a share. (PX 202, Ex. 11) Sapp testified that it just "happened to be the price being offered by MacAndrews and Forbes." (30 TR 247) There can be no real doubt, however, that selection of the $23 per share case was an attempt to provide justification for acceptance of the MAF offer.

As discussed above, Goldman Sachs' LBO analyses used arbitrarily selected assumptions which could be manipulated to achieve different results and which provided no information on the value of Technicolor. The $23 model included in Goldman Sachs' presentation used interest rates of 15%, asset sale proceeds of only $30 million and sales growth at a flat 10% -- assumptions which were unreasonable on their face. Golden had no recollection of what he told the directors about the Prism 23 study (Golden 292) and the directors, for the most part, did not recall any explanation of what assumptions were made and/or what conclusion could be derived. (Ryan 119-20; Kamerman 385;

Oliphant 277-78) Director Lewis was more candid, admitting "I can't ever recall having seen it [Prism 23]." (Lewis 133)

At trial Sapp confirmed that no one explained to the directors that changes in the interest rates, the repayment schedule, or the cash received from earnings on asset dispositions assumed in Prism 23 would impact on the feasibility and coverage ratios of the LBO. (32 TR 48-50)

Golden specifically told the Board that a price "a little bit higher" than $23 a share could be achieved in a management-led LBO. (30 TR 247, 31 TR 19) Despite being thus alerted to the feasibility of a higher price, however, none of the Technicolor Director Defendants asked whether Goldman Sachs had performed a similar study using the same assumptions at a higher per share price. Nor was any inquiry made as to whether Goldman Sachs' analysis demonstrated that MAF or another buyer could afford to pay more in an LBO based on the assumptions used. Instead, as Ryan explained, "people accepted" that MAF would not go higher and left it at that. (Ryan 120-22; Oliphant 285-86)

Golden did not disclose to the Board that just before the Meeting, Goldman Sachs had prepared LBO analyses at $25, $27 and $28 a share. (23 TR 96; 32 TR 60; Sapp 403, 564; Golden 175, 185-86) The directors are unanimous on this score and defendants admit that Goldman Sachs neither showed the directors (other than Kamerman) the Prism $25, $27 or $28 studies, nor even revealed the fact that they existed. (27 TR 108-09; Lewis 133-34, 245;

h. Goldman Sachs Opined Only That the $23 Price Offered By MAF Was "Fair" And Provided No Basis Even For that Conclusion

At the end of his presentation, Golden opined on behalf of Goldman Sachs that the $23 per share price offered by MAF was "fair" as of October 29, 1982. (31 TR 27) Given the fact that Goldman Sachs had performed no meaningful due diligence prior to rendering its opinion and had put together the bulk of its analysis in the space of a day, it is evident that such opinion was a seal of approval bought and paid for without any serious inquiry into the true value of Technicolor stock.

The record is clear on this score. On deposition Golden himself could not recall how, if at all, the information in the Goldman Sachs report supported the determination that the $23 price was fair. (Golden 271) At trial Sapp confirmed that Golden did not conclude that any of the exhibits in the report supported the fairness of the $23 price. (32 TR 136-37, 143-44)

It is equally apparent that the Board had absolutely no understanding as to how Goldman Sachs had reached its opinion. Asked if they could recall any basis for Goldman Sachs' conclusion, Directors Lewis and Bjorkman answered with a flat out "No." (Lewis 134-35; Bjorkman 47-8) Director Blanco did not even recall that the Board had been asked to make a decision at the Special Board Meeting that $23 per share was fair. (Blanco 27)

Defendants admit that the only subject on which Goldman offered an opinion was that the $23 per share price offered by

MAF was "fair" and that the directors understood Goldman's opinion to be so limited. (PX 459 Responses 85-7) Goldman was not asked by Technicolor to render an opinion as to the company's value, future prospects or future cash flow and did not do so. (PX 460 Response 177) Sapp confirmed at trial that Goldman Sachs was not retained to perform a valuation of the company. (30 TR 90-1)

As discussed above, Goldman Sachs representatives were aware, through discussions with Kamerman and the banks, that Perelman planned to restructure Technicolor by selling excess assets on an order of magnitude of $50 million as soon as he controlled a majority of the shares. Nevertheless, Goldman Sachs was not requested by Kamerman to, and did not consider the value of Technicolor under the Perelman restructuring plan, but only considered the company as it existed on October 29, 1982 in determining the "fairness" of the $23 a share price. (Sapp 236-37, 310) At the Special Board Meeting, Goldman Sachs did not disclose to the Technicolor directors the fact that it failed to take into consideration the impact of the Perelman reorganization plan.

i. Goldman Sachs Did Not Disclose That It Had Advocated Pursuit of Alternative Buyers And Prepared A Buyer's List

From the outset, Goldman Sachs had advocated pursuit of alternative buyers, but it was ultimately reduced to submission by Kamerman. At the Special Board Meeting, Golden did not disclose his attempts to convince Kamerman to seek out other

buyers. He said nothing about preparing a potential buyer's list. Instead Kamerman saw to it that Goldman Sachs followed his orders. Although he recalled scarcely anything that was specifically said at the Meeting, Kamerman recalled (as did Sapp) that "they did say that they had not shopped the deal. And they were told they were not to shop that deal." (19 TR 198; Sapp 471) Others of the Technicolor Director Defendants, including Sullivan and Isham, likewise understood that Goldman Sachs was instructed not to seek out buyers and did not do so. (23 TR 91; 27 TR 109-110)

The version of the Goldman Sachs presentation used by Golden at the Board meeting included in its table of contents "Preliminary Potential Buyers of Prism" and actually contained such a list as Exhibit 14. (PX 201 at GS 0663) But the list was deleted from the Board book provided to the directors and not even its existence was disclosed by Golden. (32 TR 209; 23 TR 96-7)

On deposition Golden had no explanation as to why the list was removed. (Golden 186; see also Sapp 118-19) Given the ongoing dispute between Golden and Kamerman on the issue of contacting other buyers, however, the logical conclusion is that Kamerman instructed that it be deleted.

That list apparently has been destroyed. It did not surface during the course of discovery proceedings. At trial no one could offer an explanation for the missing list other than Sapp's speculation that Golden "may have torn it out." (32 TR 209)

j. The Terms and Conditions of Goldman Sachs' Retention Were Never Properly Explained To Or Approved By the Board

As limited and structured by Kamerman, Goldman Sachs' function was to endorse the MAF offer of $23 a share by issuing a fairness opinion, in return for which it would receive a $625,000 fee for a few days' work. The engagement letter provided for Goldman Sachs to receive $100,000 up front, with the remaining 85% of its fee contingent on the deal with MAF going through. (PX 186) As discussed above, Kamerman did not consult any of the other directors regarding Goldman Sachs' retention.

Moreover, it is clear that the terms and conditions of Goldman Sachs' engagement were not properly explained at the Special Board Meeting (if indeed they were explained at all). A number of the directors testified that they remained uninformed on this issue. Thus when asked whether they were told of the contingent nature of Goldman Sachs' fee, directors Blanco, Lewis and Isham responded with an unequivocal "No." (Blanco 33; Isham 108; Lewis 99-100) As Director Lewis put it, "I assume they would be paid some money. How much, I didn't know." (Id.) Nor did Golden have any recollection of the subject of Goldman Sachs' fee being discussed. (Golden 301) On deposition Kamerman likewise had no recollection of a discussion on this score (Kamerman 309-10), but on trial with his memory recreated he claimed there was an explanation of why the fee was made contingent which had to do with allegedly saving the Company money if the deal aborted. (21 TR 261) Whatever the truth of

that claim, the terms of the engagement letter made it virtually impossible for Goldman Sachs to render an objective opinion. This inherent conflict was not fully disclosed, explained or discussed amongst the directors at the Special Board Meeting. (Lewis 100; Isham 109, 186; Ryan 282; 23 TR 84-5)

By all accounts, the engagement letter was never shown to any of the directors. (21 TR 260; 23 TR 84; Lewis 158; Isham 107; Sullivan 220-21, 244) Nor did the Board ever pass any resolution approving the terms and conditions of Goldman Sachs' retention. Such approval was expressly required by Article IV, Section 5 of Technicolor's By-Laws which invested the President with power to execute contracts and required Board authorization prior to the Chairman entering into a contract. (PX 2 at 001711-12) Given the fact that Kamerman was not even on speaking terms with Ryan (Technicolor's President), he simply ignored this requirement and proceeded on his own without authorization.

k. Goldman Sachs Did Not Fully Disclose The Limitations Of Its Oral Opinion

Prior to the Special Board Meeting Oliphant discussed with Goldman Sachs the form that its fairness opinion would take. Technicolor desired that a written opinion be present at the Meeting, but Goldman Sachs was unwilling to provide anything but an oral view because it had not yet performed the requisite due diligence for a written opinion. On deposition Sapp explained that Goldman Sachs would not provide a letter because it needed to do "confirmatory due diligence that we weren't able to do for the board meeting because of the restrictions placed on

us." (Sapp 438) At trial Sapp confirmed that Goldman Sachs would provide a written letter only after performing the necessary due diligence. (32 TR 89-91) Golden also testified that issuance of a written opinion letter "was subject to completion of our study." (Golden 312-13)

As late as October 27, 1982, Technicolor was urging that it be provided with a written opinion letter for the Board Meeting. Notes of that date made by Oliphant on the draft 14D-9, question whether the advice of Goldman Sachs would be written. (PX 132 at 022958; Oliphant 163)

At the Special Board Meeting, Golden delivered only an oral opinion on behalf of Goldman Sachs. Pursuant to firm policy, that oral opinion required the approval of two partners, one of whom had to be in the merger department. (30 TR 15) Asked who these individuals were, on deposition Sapp responded, "[i]t's just too long ago. I can't recall who we talked to." (Sapp 19, 563) Yet four years later at trial Sapp claimed to recall, essentially by process of elimination, that Messrs. Boisi and Sachs signed off on the oral opinion. Sapp admitted, however, that Golden took the lead in securing these approvals, and he recalled nothing about how the process was conducted or whether he was even present. (32 TR 111-14)

Moreover, that opinion was specifically qualified to be "as of this date", namely October 29, 1982. (31 TR 28; PX 214) It is clear that the limitations on this opinion were never properly disclosed. For the most part the directors could not recall being apprised of this qualification or what it meant.

(22 TR 38-9; Ryan 305-06; Kamerman 372-73; Sullivan 316; Lewis 95; Oliphant 287-88) Golden did not disclose to the Board the restrictions placed on Goldman Sachs prior to October 29, nor the need for subsequent review of its opinion, as qualified. Defendants admit that Goldman Sachs did not advise the Technicolor directors of the validity or relevance of its oral opinion to the value of Technicolor at the time of the Merger, which was planned to occur some three months or more into the future. (PX 460 Response 182) To the extent that any of the directors had any understanding on this score, it was that Goldman Sachs gave no assurance that the price would be fair at the time of the Merger. (27 TR 111) Golden did not disclose to the Board that the preliminary oral opinion expressed at the Meeting was subject to planned post-meeting due diligence and to subsequent written confirmation. (Golden 313; 22 TR 41)

The Board was not advised that Technicolor had requested a written opinion for the Meeting, but that Goldman Sachs refused to provide one because of the restrictions placed on it. The Board was not told that Goldman Sachs reserved its right to withdraw its oral opinion following post-meeting due diligence. Sapp admitted at trial, "I don't think it was stated in front of the board in that fashion." (32 TR 210; 22 TR 42) Indeed nothing was said on the subject of whether Technicolor should execute the Merger Agreement and related documents agreeing to the MAF acquisition and lockup, which contained no explicit fiduciary escape clause in the event Goldman Sachs did not confirm its oral opinion.

7. None of The Technicolor Director Defendants Raised Any Questions About the Transaction

The Technicolor Director Defendants were totally unschooled in transactions of the type presented by the MAF deal. As discussed above, none of these directors, with the exception of Sullivan, ever before had been involved in the sale of a public company (or for that matter had even sat on the Board of such company). Kamerman admitted that he was out of his depths. (19 TR 103)

Add to their lack of experience the fact that, apart from Kamerman and Sullivan, the other directors knew little or nothing about the MAF proposal prior to setting foot in the Debevoise conference room on October 29, 1982 and had not been provided with any written materials explaining the transaction.

Yet rather than attempting to compensate for their inexperience and lack of information by aggressively asking questions and taking their time, the Technicolor Director Defendants lived up to the title of "Kamerman's Board." They delivered up the required approval before lunch without so much as asking any questions about anything -- except their personal interests.

None of the Goldman Sachs representatives could recall any questions raised by the Technicolor Director Defendants regarding their presentation. (J. Sullivan 45; Sapp 470) When asked on deposition whether he recalled them asking any questions concerning the firm's analysis, Sapp responded with an

unequivocal, "no." (Sapp 476) Asked again at trial, Sapp did not recollect a single specific question posed. (32 TR 144) Although he claimed there must have been questions, all he could say was that the directors were not "dumb" so he assumed their questions were not "innocuous" or "superfluous." (32 TR 134)

Nor did Kamerman recall any comments or questions regarding his or Golden's presentation except, of course, for what Simone said. (Kamerman 364, 389) The Technicolor Director Defendants admit that no such inquiries were made or challenges advanced to anything said by Kamerman or Golden. (Blanco 30-1; Bjorkman 48-9; Ryan 303; Oliphant 289)

The only inquiries that Brown recalled were (as recorded in his notes) a question by Lewis about the personal tax consequences arising from sale of his stock to MAF and a question about One Hour Photo that Brown "[could not] make sense out of." (28 TR 36-7; PX 504 at 6) Oliphant's notes confirm that these were the only questions raised, apart from an inquiry by Frye also about taxes. (Oliphant 258, 293-94; PX 141 at 022928) To the extent that the directors recall any questions being asked, they focused on the tax effects of selling their stock. (Lewis 123-24; Sullivan 322-23) Sullivan testified that he had no recollection of Ryan, Frye, Blanco or Isham saying a word at the Special Board Meeting, and that the only comment made by Lewis was about taxes. (23 TR 88, 92) Lewis himself admitted that the only time that he spoke was to ask if he could delay the sale of his shares in order to get a tax benefit. (29 TR 233) Out of the 10 pages of board minutes, only a single paragraph

refers to discussion of any kind among the directors and in keeping with their testimony reflects such discussion was largely confined to questions by individual directors concerning the personal tax consequences arising from the sale of their stock to MAF.[43]

Nor did any of the Technicolor Director Defendants raise any questions regarding matters of procedure. No one questioned Kamerman's authority to make a counterproposal for sale of the company without first consulting the Board. (27 TR 91) Defendants admit that no one inquired why Kamerman retained Goldman Sachs without first seeking approval from the entire Board. (PX 460 Response 220) None of the Technicolor Director Defendants asked why they had been given such short notice for the Board Meeting, why there had been no prior meeting of the Board in connection with the MAF proposal or why a decision had to be made then and there on the spot in the space of less than three hours. (PX 460 Responses 220-21)

8. No Disclosure Was Made At The Special Board Meeting Of The Conflicts of Interest Of The Technicolor Director Defendants

Directors Sullivan, Kamerman, Ryan, Bjorkman and Lewis each had a substantial personal stake in the outcome of the MAF deal. Yet each participated at the Special Board Meeting and

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43 In the past the board minutes dutifully recorded director questions and comments. (See, e.g., PX 63; DX 9)

voted on the transaction without disclosing to their fellow directors the benefits that they stood to gain.

Casting a "yes" vote on the transaction put Sullivan one step closer to reaping a fat profit on the shares he had purchased after being tipped off to the deal in his September 10, 1982 conversation with Tarnopol. Nevertheless, Sullivan, by his own admission did not disclose his purchase on September 13 of 1,000 shares (or the fact that he had placed an order for up to 10,000 shares) to his fellow directors on October 29, 1982. (22 TR 282; Sullivan 275) Defendants admit there was no such disclosure (PX 460 Response 98), and all of the Technicolor directors so testified on deposition. (Kamerman 106, 284; Blanco 39; Ryan 114; Lewis 57-8; Simone 36; Oliphant 296) Indeed, even in the face of an explicit inquiry by Brown in connection with the Schedule 14D-9 as to whether any of the directors had traded in Technicolor stock within the past 60 days, Sullivan remained silent. (PX 72) At trial, however, Kamerman did another about face and insisted that Sullivan disclosed purchase of his 1,000 shares. (21 TR 10-12) In the face of defendants' admission in interrogatory responses, which Kamerman signed, and the uniformly contradictory testimony, the only logical conclusion is that Kamerman is wrong or lying.

Although Kamerman advised the Board that Sullivan had a financial interest in the transaction by reason of the $150,000 fee he was to receive (PX 72 at 000926-27), no disclosure was made of the circumstances surrounding the source of payment of the fee. Thus, nothing was said about the fact that Bear

Stearns, MAF's investment banker on the deal, had initiated the concept of a fee for Sullivan, nor the fact that the source of the fee was switched at the last minute to avoid the inherent conflict of interest of Sullivan being paid by the acquirer. (23 TR 33; Sullivan 143; Kamerman 285; Ryan 166, 287; Oliphant 295-96; PX 141 at 022925). Nor was Sullivan's fee taken up with the Compensation Committee. (20 TR 173; Sullivan 143-44; Simone 24; Answers ¶ 32)

At the Special Board Meeting the directors were told for the first time that Sullivan and Kamerman would join the MAF Board, but no disclosure was made of the fact that this was a condition of the deal from the outset or of the fact that Kamerman also had requested equity in MAF. (27 TR 92; Isham 106-07; Lewis 76-7; Oliphant 221)

Kamerman told the Board that he could be deemed to have a financial interest in the transaction by virtue of the amendments to his employment contract, which he represented had been approved by Perelman. (PX 72 at 000926-27; PX 141 at 022921; Ryan 158-59; Oliphant 193) That contract was never made available to the other directors for review (23 TR 93; Ryan 284; Sullivan 318), nor was it ever taken up with the Compensation Committee. (20 TR 173; Simone 44-5)

Moreover, Kamerman said nothing to the Board about the preferential arrangement he had made for sale of his stock to MAF in connection with the transaction. Defendants admit that Kamerman did not reveal that he had worked out an arrangement to sell his shares in two lots so as to get the benefit of capital

gains treatment for his option shares. (23 TR 93; 29 TR 155-56; Lewis 225; Sullivan 277; PX 460 Response 110(K))

Kamerman advised the Board that he and his wife and Bjorkman and his wife had entered into the Stock Purchase Agreement pursuant to which MAF would purchase their shares. (PX 72 at 000927) He failed to fully disclose the terms and conditions of the Agreement or the fact that he and Bjorkman, unlike any of the other stockholders, were guaranteed the highest price paid by MAF within a year for their Technicolor stock.

As for Ryan, he sat silently by confident that approval of the deal would mark the exit of Kamerman from the company and catapult him to its chairmanship. Nonetheless, at the Special Board Meeting Ryan did not disclose anything about his contacts with Davis or that the latter had secretly kept him abreast of the negotiations or that he had received assurances that Perelman would give him an opportunity to run Technicolor. (21 TR 267; 29 TR 192; Isham 43; Kamerman 311-12; PX 460 Response 146)

9. No Consideration Was Given To Numerous Elements of Technicolor's Worth

a. The Value Of Technicolor's Excess Assets Was Not Taken Into Account

In recommending acceptance of the $23 offer, Kamerman advised the Board that he believed the price was "good" because it was ten times Technicolor's core earnings of $2.30 - $2.50 a share. (PX 141 at 022925) Such conclusion, however, did not take into consideration the value of Technicolor's excess

assets. As demonstrated above (pp. 27-30), Kamerman was aware that Perelman planned to sell Technicolor's excess assets once he acquired the company and expected to realize $50 million from such divestitures.

The record is unclear as to whether and, if so, exactly what Kamerman told his fellow directors at the Special Board Meeting about Perelman's asset disposition plan. According to Brown, there was discussion to the effect that Perelman was going to finance the acquisition via the sale of assets and that the commitment letters contemplated asset dispositions on the order of magnitude of $50 million. (29 TR 145, 149) Kamerman, on the other hand, claimed that he did not discuss Perelman's plans at the Meeting although he admits he could have surmised what they were. (21 TR 268)

Assuming, as Brown testified, that the directors were apprised of Perelman's plan to sell off assets to the tune of $50 million, it should have been immediately apparent that Perelman's $23 per share offer bore no resemblance to Technicolor's true value. Given the fact that there were then outstanding approximately 4.5 million shares of stock, the $50 million in expected proceeds from sale of excess assets was worth $11 per share, meaning that Perelman would be paying only $12 per share for its core or continuing operations, at best a multiple of five times core earnings.

Even assuming that Kamerman's version has some basis and that the directors were not specifically apprised of Perelman's restructuring plan, nevertheless it should have been obvious that the $23 price did not reflect anything approaching the value of Technicolor stock. Apart from Perelman's plan, Technicolor itself already had efforts underway to sell certain of its excess assets: the Gold Key and Audio Visual Divisions, including the Costa Mesa property, as well as the excess London property.

Ryan was asking $38 million just for Gold Key (PX 210 at GS1217) and had reported to the directors at the last Board Meeting on August 25, 1982, that he expected to realize at least book value ($25 million). (PX 64 at 001073) Audio Visual was in the process of being liquidated. Technicolor's fiscal year 1983 profit plan reflects the fact that the company expected to realize between $1,356,000 and $5,671,000 from such liquidation, plus an additional $7 million from the sale of the Costa Mesa real estate. (PX 11 at 019774-75) Add to that the fact that sale of the London backlot was also under consideration and had been appraised up to 5.3 million British pounds, and even by Technicolor's own estimates the excess assets had a potential value in the $50 million range even without considering OHP and CPPD.

By all accounts, there was no discussion on this issue at all. Asked whether he gave any consideration to the value to shareholders of the $50 million that could be realized from the sale of assets, Kamerman responded, "I don't recall having thought that out...." (Kamerman 304-05) Likewise Sullivan

admitted that he "never heard anything like that." (Sullivan 280) The recollection of all those present at the Special Board Meeting was the same. (See, e.g., Isham 165; Lewis 94-5; Kamerman 296; 21 TR 254-55; 23 TR 87-8; 27 TR 103; 32 TR 129) Thus, in agreeing to the $23 price, the Director Defendants simply ignored $50 million of potential value to the shareholders.

b. Other Elements of Technicolor's Worth Were Ignored

Nor were any of the following items of Technicolor's worth taken into account by the Director Defendants: a) the value in the market place of a minimum of $25 million in annual cash flow expected to be generated by Professional and Government Services (Lewis 107; Kamerman 307, 334; Isham 134, 148-49; Sullivan 331-32); b) the value of the Technicolor tradename, which Revlon sold to Carlton PLC in October 1988 for $80 million (PX 453 Supplemental Response 14; Bjorkman 68; Kamerman 389; Isham 200; Lewis 150, 151); c) the value of the contracts held by the Government Services Division (Kamerman 390; Lewis 131; 22 TR 105-06); d) the growth prospects for Technicolor's film and videotape businesses which, by late 1982, were excellent (Isham 134; Lewis 125-26); e) the value of Technicolor's proprietary technology which gave its film processing business unique advantages (Kamerman 389; Isham 200; Ryan 390-91); f) the value of the unused London "back lot" and Costa Mesa real estate which were valued, respectively, at over 5 million pounds and $7 million (Ryan 397-98; Sullivan 327; Lewis 140-41); and g) the

improved financial performance of the Company (Isham 123, 142, 169-70).

Instead, in an effort to get the deal done quickly, the Technicolor Director Defendants merely ignored these and other critical elements of Technicolor's worth which demonstrated that the $23 price offered by MAF was ridiculously unfair.

10. No Consideration Was Given To Alternatives To The MAF Deal For Maximizing Shareholder Value

Having been confronted with an unsolicited offer to purchase the company, and having determined that the company would be sold, the Technicolor Director Defendants had an affirmative obligation to obtain the best possible price for the shareholders. They failed to discharge this obligation because they hastily accepted the MAF offer and gave no serious consideration to any possible alternatives to the MAF transaction. Indeed, the directors were emphatic in their testimony that the subject of alternatives was never even raised. (Blanco 29; Bjorkman 46; Lewis 101; Kamerman 305)

Kamerman was aware of, and had discussed with the Goldman Sachs representatives, possible alternative purchasers of the company. However, such discussions were not disclosed to the Board and no consideration was given by the Technicolor Director Defendants to seeking an alternate buyer. To the contrary, at Kamerman's instructions, Golden advised the Board that Goldman Sachs had been prohibited from seeking out other purchasers. As detailed below, Director Simone insisted that the company should

be shopped to see if a better price could be obtained and requested an opportunity to find a buyer. However, he was cut off abruptly and the request rejected out of hand.

Although Kamerman had raised the spectre of One Hour Photo as a purported justification for accepting the MAF offer, no consideration was given to the company remaining independent by simply disposing of that operation and/or fully implementing the Perelman restructuring plan. Nor was there any discussion of Technicolor just saying "no" and remaining independent and continuing along the path the company had pursued for the past several years. (21 TR 260; 27 TR 101-02; Isham 154, 157; Kamerman 310-11; Sullivan 279; Blanco 37; Ryan 258)

For that matter, consideration was not given by the Technicolor Director Defendants to any of a number of recognized alternatives for maximizing shareholder value, despite the fact that Technicolor previously had employed such devices to improve the market price of its stock. Technicolor had previously engaged in a self-tender in the mid 1970's and had considered (and in 1979 had received advice from Goldman Sachs) the use of increased dividends to enhance shareholder value. (Kamerman 86-8; PX 183) Yet at the Special Board Meeting no thought was given to selling assets and increasing the quarterly dividend paid to shareholders or engaging in a share buy back program. (27 TR 101; Isham 154; Blanco 32; Lewis 102; Ryan 249, 252, 279)

No consideration was given to the liquidation or break-up value of the Company. As Kamerman put it, "I didn't even think about it." Nor did he ask Goldman Sachs to investigate and

report to the board the liquidation value of the Company as against the $23 price being offered by Perelman. The Technicolor Director Defendants therefore had no idea whether such alternative could result in greater value for the shareholders. (21 TR 260; 27 TR 103; Isham 166-67; Lewis 92, 106; Kamerman 367-68)

As Director Lewis summed up the situation, "I don't think there was any range of discussion, other than rejecting or accepting the offer." (Lewis 103) As far as the other Technicolor Director Defendants were concerned, that was the end of the inquiry. It was only Charles Simone who spoke out and insisted that the company be shopped.

11. Director Simone Votes Against The Merger And The Charter Amendments, But The Board Ignores His Vote And Falsely Declares its Decision To Be Unanimous

a. Simone Discharges His Obligations As a Fiduciary

In presenting the MAF deal at the Special Board Meeting as a fait accompli to be rubber-stamped by the board, Kamerman failed to take into account that there was one single-minded, independent director who would vote his conscience and exercise his fiduciary duties on behalf of the Technicolor stockholders. That director was Charles Simone. Ill-health prevented Mr. Simone from appearing at trial, but his deposition testimony

presents an eloquent portrayal of what really happened at the October 29 meeting.[44]

Director Simone was a long time friend of Bjorkman. On October 26, 1982, Bjorkman telephoned Simone to tell him that the company "had been sold" and that a Special Board Meeting would be held on October 29 in that regard. Simone repeatedly asked for details, but Bjorkman, a staunch ally of Kamerman, refused to provide any information, telling Simone that it was "top secret." (Simone 21-2, 90, 121, 173-74, 198-99, 262) Bjorkman told Simone that Kamerman would call to give him the date and location of the Special Board Meeting.

The following day, October 27, Kamerman called Simone and advised him that a Special Board Meeting would be held on October 29 at 10:00 a.m. at the Debevoise office "and that was the end of our conversation." (Simone 22) Kamerman admits that he told Simone "nothing" before the Special Board Meeting. (20 TR 150) Accordingly, when Simone arrived at the Special Board Meeting and found himself in a room filled with numerous unknown individuals, in addition to the eight other directors; he had no real clue as to what was going on.

Simone had no personal stake in the transaction. He owned only a token amount of Technicolor stock and would derive no financial benefit from consummation of the deal. At age 79, a Frenchman of the old school of honor, who had been inducted into the prestigious French Legion of Honor, Simone took his

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44 Mr. Simone died on February 18, 1990.

responsibilities as a director and a fiduciary with the utmost seriousness. His actions at the Special Board Meeting were guided by that credo.

b. Simone Admonishes The Board Not To Jump on The First Offer

In keeping with his responsibilities as a fiduciary, Simone believed that it was his duty, and the duty of the other directors, to seek to obtain the highest price for the Technicolor stockholders. Simone listened in astonishment as events unfolded before him. It soon became apparent that Kamerman's purpose in calling the meeting was to get his board to give the nod to the deal that had been worked out with Perelman for MAF's acquisition of Technicolor. When at last Simone realized that the Company was about to be sold out from under the stockholders to the first bidder that happened to come along -- a financially strained licorice company at that -- Simone voiced his disapproval, and spoke out vigorously and persistently on behalf of the shareholders.

The record establishes that towards the end of the Special Board Meeting, the views of the directors on the transaction were solicited. Simone was called last. He immediately objected to the MAF transaction and alerted the other directors to their duty to seek out the best available offer. Simone stated that if the Company was for sale it should be publicly announced and shopped "so that other possible bidders could have a chance to purchase probably at a higher price." On deposition Simone explained that he objected because "we should

not be in a position to accept just one bid that had been made, and had more or less hands at our throat . . . to agree." (Simone 24, 38-9, 68-9, 174-75, 197-98, 201)

Brown's notes taken at the Special Board Meeting document Simone's objections and specifically record the fact that he questioned "should we jump on the first offer" or "could we do better." (PX 504 at 6) Moreover, at trial Brown testified that "towards the end of the process, if not the last person to be heard from," Mr. Simone squarely raised the question:

> 'Why are we going with the first person who has showed up as a bidder? Should we do that? Should we go with the first person, or should we see what else is out there?'

(27 TR 248) Likewise, Kamerman testified that Simone confronted the other directors with the issue of whether they should be taking the first offer and sought an opportunity to seek out a purchaser at a higher price. (Kamerman 197-98; 20 TR 120-22)

Simone questioned whether MAF, a purveyor of licorice and chocolate, was big enough or familiar enough with Technicolor's business to pay the best price. Simone believed that companies in the film industry such as Universal, Warner or Disney, that were closely associated with Technicolor and were familiar with the nature of its operations and its premier reputation, should be approached because they would be prepared to pay a better price. (Simone 38-9, 73-75, 160)

The Goldman Sachs team and Kamerman were aware of the benefits that a strategic buyer in the film business would bring to the deal. They knew, for example, that a film production

company could afford to pay more due to the business synergy that existed with Technicolor. Richard Simon, Goldman Sachs' entertainment research analyst, had specifically advised the Goldman Sachs crew that Coca-Cola might be interested in purchasing Technicolor due to the synergy between Columbia's film production business and Technicolor's film processing laboratories. (30 TR 98) On October 18, the Rank Organization had been discussed as a strategic buyer. Yet even in the face of these prior considerations and Simone's comments, they said nothing to the other directors about the benefits to be derived from such a strategic buyer. (31 TR 179)

Simone had good reason to believe that the $23 per share price being offered by MAF had no relation to the real value of Technicolor. On at least five or six occasions, from 1980 through 1982, Director Bjorkman had told Simone that Technicolor's stock was worth at least $40 a share. (See, e.g., Simone 13, 30, 53-4, 55, 57, 124-25)

c. Simone Seeks an Opportunity to Solicit Another Buyer But He Is Silenced

In an attempt to achieve a higher value for the stockholders, Simone asked for an opportunity to solicit an alternate buyer. Simone's request awakened the other directors from their lethargy and forced them to pay attention -- it was remembered by virtually all those present. When asked whether Simone requested an opportunity to solicit bidders for Technicolor other than MAF at a price in excess of $23 a share,

Kamerman responded, "yes." (20 TR 120-21; Kamerman 197-98) Oliphant specifically recorded in his notes of the Special Board Meeting that Simone asked about an "alternative buyer" (PX 141 at 022928) and confirmed that Simone asked "whether he could go out and try to find one [alternate purchaser]". (Oliphant 289, 291) Brown recalled, and recorded in his notes, some of the specific alternate buyers mentioned by Simone. (20 TR 179; PX 504 at 6) Directors Blanco, Isham, Lewis, Ryan and Sullivan all acknowledged that Simone spoke out and requested that he be given a chance to find another bidder. (Blanco 29; Isham 157-58; Lewis 105; Ryan 115-17; 23 TR 99)

Indeed at the Special Board Meeting Simone identified several potential purchasers, including Ed Downes and Martin Revson (the brother of Charles Revson of Revlon fame) whom he thought would be interested in an acquisition of Technicolor. Notes taken by Brown at the October 29 meeting record next to the name Revson and Downes, "They're int[erested]." At trial Brown testified that his notes referred to the fact that Simone identified two possible alternative buyers. (PX 504 at 6; 29 TR 179) Kamerman confirmed that Simone mentioned two people who might be interested in Technicolor. He specifically recalled Ed Downes and when shown Brown's notes acknowledged that the other was Revson. (21 TR 149, 159-6) Ryan independently recalled on deposition that Simone brought up Revlon as an alternative buyer. (Ryan 116-17)

Moreover, the record indicates that Revson's name previously had surfaced in connection with Simone as one

interested in Technicolor. Thus, notes taken by Brown on or about October 19, 1982 of a conversation with Kamerman state "Martin Revson - Simone - would Bjorkman be int[erested] in selling?" (PX 503 at 26) While Brown was unable to fully explain the notes, the logical inference is that Simone had told Kamerman at some prior time of Revson's interest in acquiring a substantial position in Technicolor by purchasing Bjorkman's shares. The notes provide added confirmation that the individuals identified by Simone at the Special Board Meeting as possible bidders were real and had a potentially serious interest in the company.

By his insistence, Simone forced the board to confront head-on the need to shop the company before jumping on the MAF bandwagon. Kamerman had succeeded in avoiding the issue prior to the Special Board Meeting by unilaterally instructing Goldman Sachs not to contact other potential buyers. He had managed to cut the issue off at the pass during the previous parts of the Meeting, by directing Goldman Sachs to advise the Board that it had been prohibited from shopping the Company. But a showdown could no longer be avoided.

The exchange that ensued from Simone's voice of conscience created an indelible imprint on Kamerman's otherwise imperfect memory. Kamerman made clear, "[t]here was nothing dramatic that happened there except for Simone, and I had to answer him." (Kamerman 367-68) Kamerman responded by rejecting Simone's request and recommending that the board immediately bring the MAF transaction to a conclusion. As Kamerman testified

on deposition, "I thought that the price was right and the deal had gone so far that it should go through." (Kamerman 199)

Kamerman voted to proceed with the MAF deal forthwith despite the fact that he knew that the price offered by MAF was not the best available price and that a strategic buyer in the industry could afford to pay more. Thus, in response to an inquiry, at the Special Board Meeting, by Bjorkman about the possibility of a higher price, Kamerman testified:

> I told you what I think this fellow's limits are. We are there. I can't tell you what would happen if we took some other method, but in this deal I think we have hit the top.

(20 TR 129, emphasis added).

Although no other methods or alternatives had been considered by the board and although there was no reason why they could not take the time necessary to do so, Kamerman cut Simone off and thereby foreclosed the opportunity of seeking out an offer at a better price for the shareholders.

At trial in an attempt to justify this course of action, Kamerman claimed that he advised those present that "there was too much downside risk to start shopping the company at that point." (20 TR 141) As Kamerman would have it, he explained to the other directors that there were dual risks that could result from putting Technicolor up for sale: problems in retaining and recruiting employees and potential damage to customer relations. As discussed above (pp. 91-6), however, these so called confidentiality concerns were an invention for trial.

Neither Kamerman nor any of the Technicolor Director Defendants breathed a word of any such confidentiality concerns in the thousands of page of deposition testimony given in these cases. Moreover, defendants' extensive descripton of discussions at the Special Board Meeting in interrogatory responses submitted just two months before trial, says nothing about any concern of harm to Technicolor's business. Yet as in the case of the participants to the October 18 meeting, all of the directors at trial towed the party line on confidentiality using very similar words, even identical phrases. Indeed, although Isham adverted to these concerns in his testimony at trial, he admitted that he did not mention them on deposition when asked virtually the same question. (27 TR 45-46)

Moreover, even if there ever had been any confidentiality concerns, by the time of the Special Board Meeting they could no longer be viable. The press release of October 27, announcing a halt in trading, pending news, alerted the investment community that something significant was brewing. Indeed the rumors heard that day, by Goldman Sachs' arbitrage desk suggested, that word of a sale was out. But no matter what, something was going to have to be said after the October 29 meeting and all of the confidentiality fears would then become reality unless one took it for granted that the board would approve the deal. The assumption of a done deal or a sure thing thus underscores the fact that Kamerman authorized issuance of the October 27 press release because he knew that the Special Board Meeting would be pro forma and that the announcement of a definitive agreement

between MAF and Technicolor would ensue on October 29. If the board rejected the transaction, announcement of that fact would put the Company in play, exposing it to the very confidentiality concerns that Kamerman claimed to be averting.

In addition, as discussed above (pp. 94-6), these purported confidentiality concerns simply did not make sense given the nature of Technicolor's business and such fact would (or should) have been immediately obvious to the Technicolor Director Defendants.

Given the totality of circumstances, it must be concluded that these confidentiality concerns were a poorly contrived fabrication to justify for the Court Kamerman's Byzantine mode of operation.

Brown testified that based on the information he had heard (which was the information that Kamerman provided), he advised the board that, if they so chose, they could proceed with the MAF offer without running an auction. Brown made clear that the decision was for the board to make. As he testified: "It was a business judgment for the directors to make as directors." (27 TR 250)[45]

Although Brown thus emphasized that the decision was up to the board and even though Simone had waved the Revlon flag in their faces, none of the Technicolor Director Defendants asked for the reasons underlying Brown's bare conclusion. Given that

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45 Recall that Brown did not know that Messrs. Blanco, Frye, Ryan and Simone had no advance knowledge about the deal. (29 TR 49, 132)

Brown stated that his opinion was based on the confidentiality concerns raised by Kamerman, the Technicolor directors should have been on the alert because it was evident that such concerns had no legitimate business basis.

The Technicolor Director Defendants did not ask on what basis they could go forward, whether there were other means of contacting potential purchasers short of holding an auction and what results those methods were likely to achieve. Rather than discharging their fiduciary obligation to make an informed decision, they placed blind reliance on Brown's conclusion. Had they asked the relevant questions (indeed had Brown himself probed the information that Kamerman fed him), it would have been apparent that such advice was not soundly based.

The decision to buy Kamerman's recommendation then and there without giving it even a second thought was in itself a breach of fiduciary obligations. There was absolutely no reason why the board had to reach a decision on the MAF proposal in the three hours allotted at the Special Board Meeting. By Kamerman's admission, "It was the most important [decision] they were going to make, and they wouldn't be able to retrieve that decision afterwards." (20 TR 166-67)

Any perceived urgency that had accompanied the onset of discussion with Perelman had long since dissipated. Far from presenting the deal as an ultimatum that had to be decided on a particular day, Perelman was so anxious for the deal that he was "green around the gills." Yet even though Simone had only learned of the MAF proposal at the Board Meeting on October 29,

neither Kamerman nor any of the other Technicolor Director Defendants were willing to allow him an opportunity to pursue alternate bidders. Indeed no consideration was given to simply delaying decision on the MAF offer so as to afford time to assess the range of options available to maximize shareholder value.

Brown made clear, "There could have been a decision to defer. There could have been a decision to study it further." (29 TR 157) Defendants admit that none of the Technicolor Director Defendants raised any objection that there had been no prior Board meeting to discuss the MAF proposal. (PX 460 Response 219) Nor did they ask for additional time to reflect on the MAF proposal, request that further work be done to evaluate that proposal or suggest that they adjourn until other alternatives had been explored. (PX 460 Response 221; Isham 160; 29 TR 158) Instead they voted to give the store away to Perelman without further ado.

d. Simone Votes Against the Transaction

As described above, Simone was the last director to be called in connection with the voting process. As he testified,

> I immediately without hesitation said I disapprove. And it is my opinion that this procedure is not legal and we should give a chance if Technicolor is going to be sold to let it be known so that other possible bidders could have a chance to purchase probably at a higher price.

(Simone 24) Unlike the other directors who had a personal stake in consummation of the MAF deal, Simone's vote was, if anything,

against his self-interest. By voicing his disapproval, he put honor above even his longtime friendship with Bjorkman.

Indeed Simone's testimony is uniquely truthful. No attorney so much as whispered in his ear prior to deposition. Rather, Simone told his own story about an event that struck him deeply -- unretouched by coaching.

The other directors understood (or should have understood) that Simone voted against the package of resolutions relating to the MAF transaction. However, not forced to face their accuser in Court, to look their colleague and conscience straight in the eye, they felt free to dissemble with impunity. Each was paraded before the Court and each represented that the vote was unanimous even though they knew this was not the case.

The record demonstrates that the voting process was so confused that it is unclear if a formal vote was even taken or recorded. No two witnesses tell the same story of what happened. Thus, although nothing in the Board Minutes (PX 72) says that the resolutions were read, as Kamerman tells the story, he read the resolutions aloud in full and then called upon himself first to vote. Thereafter he went around the table one at a time and each director voted in turn. Kamerman said that somewhere in this process a motion was made. (19 TR 206-07; 22 TR 15-16)

Brown, on the other hand, insisted that Kamerman did not read the resolutions at all, but that he took the directors through them in summary fashion. Moreover, according to his version there was no individual polling but after someone

proposed and seconded the resolutions, Kamerman asked for all those in favor and any contrary minded. Although in Brown's scenario there were no individual votes, he claims that he would have known even in this communal vote if Simone did not vote "Aye" because, as fate would have it, Simone was seated to his left, next to his good ear. (29 TR 183-84; 27 TR 250-52)

Yet a third version was offered by Sapp at trial, and that version differed from his prior account. Thus, when asked on deposition whether he recalled how the vote was conducted, Sapp's response was, "The vote on what? There may be multiple votes. I am not sure what they voted." (Sapp 567)

At trial Sapp recalled the reading of certain resolutions, followed by only one vote, which he claimed was by show of hands or voice vote. Although Sapp admitted that he could not remember whether Simone raised his hand or articulated his vote, he nonetheless recalled that the vote was unanimous. (32 TR 201, 203-07) As for Brown's claim that Simone was seated immediately to his left, Sapp drew a seating chart of the Meeting and testified that Powitzky or Oliphant may have been at Brown's left. (32 TR 120)

According to Lewis, Kamerman read the resolutions aloud and one person seconded the motion. As Isham would have it, several hands went up to move the proposal, although he couldn't recall if the proposal was seconded. Both Isham and Lewis claims that there was an oral polling of the directors, but neither could recall in what order they, or for that matter, anyone else voted. (27 TR 62-5; 26 TR 235; 29 TR 246-48)

Sullivan's account skips right to a vote; he did not recall any formal motion or seconding or any such procedure. As he would have it Kamerman voted "Yes" and then the table was polled orally (22 TR 258; 23 TR 97) Asked how the voting was conducted, Bjorkman's only response was, "This I have completely forgotten." (Bjorkman 49)

Nor was there any recordation of the vote that might serve to clarify this confused state of affairs. There were no written ballots. Brown did not have the directors sign the resolutions or the Schedule 14D-9. Nobody had to sign the minutes, nor was any document endered to the directors to indicate their approval. (29 TR 182; 20 TR 171) Although both Brown and Oliphant took copious notes of the Special Board Meeting, neither records the specific result of any vote. (PX 141, 504)

One may logically conclude, therefore, that in the confusion created by Simone's outburst and the haste to bring the Meeting to a conclusion without further incident, the voting process and results were deliberately left in an uncertain state. Thus although Simone legitimately believed that he expressed his opposition, it is possible that the other directors did not (or did not want to understand) how he voted. The very fact that the voting process on the most critical transaction ever considered by the board was conducted in a fashion as to admit of such confusion and conflicting testimony demonstrates that the Technicolor Director Defendants failed properly to discharge their fiduciary duties.

The Meeting thereafter was brought to a swift conclusion. Director Lewis did not recall anything that occurred after the vote (29 TR 256-57) and Oliphant recorded nothing in his notes of the Meeting. (PX 141) At most, a few minutes were spent on loose ends relating to certain employees contracts and filings in connection with the transaction. (29 TR 54; PX 504)

Simone, shaken by the events that had transpired, refused to attend the celebratory lunch hosted by Perelman. Instead, he immediately returned to his office to call his broker at Drexel Burnham, Rudy Bergman, for information about MAF. Bergman wrote Simone that same day, advising him to "wait and see." (Simone 25-6, 71-2, 179-80, 193, 239-40, 245-47; PX 154)

e. Simone Objects to the Sullivan Fee

Simone also learned for the first time at the Special Board Meeting that Sullivan would receive a fee of $150,000 for his services. He found such payment "unbelievable" and "unethical." Simone expressed his outrage at the payment of such a "bribe" by objecting to the transaction and voting against the package of resolutions, including the one that provided for payment of a fee to Sullivan. (Simone 23-4, 30-1, 36-7, 47-8, 241-2, 283)

Simone further objected that the fee was never presented to the Compensation Committee where he, as Chairman, would have voted against its payment and would have asked the other members likewise to turn it down. (Simone 23-4, 176-77, 192, 226) Accordingly, that night Simone called Bjorkman (Chairman of the

Executive Committee) and tendered his resignation as Chairman of the Compensation Committee in protest at what he believed to be an illegal payment to Sullivan. (Simone 26-7, 40, 82, 180; PX 465)

f. Simone Decides to Voice His Objection at the Special Stockholders Meeting But Is Never Given Notice of the Meeting

Simone also considered complaining to the SEC and to the Bar Association regarding what he believed to be a fraudulent and illegal transaction, but he decided to wait and see if MAF obtained financing and the transaction went forward. (Simone 26, 81-2, 137, 185-86) Simone asked Oliphant to advise him if and when MAF got financing. Moreover, Simone was told that there would be a Special Stockholders' Meeting, and he decided to go public with his objections there. (Simone 85, 103, 115, 188-89, 212, 213-14, 229-30)

On or about November 12, 1982, Oliphant called Simone, advised him that MAF had finalized its financing commitments and that all directors must tender their shares. Simone complied with the directive. (Simone 62-3, 86-7, 88-90, 170-71, 189, 214, PX 152) As a result, even though he was still a director, Simone was never given notice of the Special Stockholders' Meeting held on January 24, 1982, and he never saw the Proxy. Accordingly, Simone was prevented from bringing his objections regarding the MAF transaction directly to the stockholders. Indeed, Simone

counsel's advice and saw to it that the language was changed to disguise this fact. Accordingly, after the Special Board Meeting a printer's draft of the 14D-9 (erroneously labeled 14K-9) was prepared which deleted the word "oral" previously modifying the advice of Goldman Sachs. (PX 203 at GS2426)

The language was changed yet again in the final version of the 14D-9 disseminated to Technicolor stockholders on November 4, 1982 -- before Goldman Sachs even had commenced its due diligence review. (PX 204) In its final form, Section 4 provides that the directors considered a number of factors, including:

> (iii) The advice of Goldman Sachs & Co. ("Goldman Sachs"), the Company's financial advisor, with respect to the fairness of the price to be received by the holders of Common Stock in the Offer and the subsequent Merger,

(PX 57 at GS 1271) The Technicolor stockholders were thus led to believe that Goldman Sachs' opinion, on which the Board's recommendation was premised, was unconditional when, in fact, Goldman Sachs reserved the right to withdraw its oral opinion.

At trial no one was able to offer an explanation for these changes -- and there can be none other than an attempt at obfuscation. Indeed, Kamerman virtually admitted that the information provided in the 14D-9 regarding Goldman Sachs' advice put Technicolor stockholders at risk in the event the investment banker exercised its right to withdraw its opinion. Thus, Kamerman understood that Goldman Sachs could revoke its oral recommendation. (22 TR 49) Moreover, when asked at trial whether he understood that shareholders who tendered prior to a

revocation by Goldman Sachs were going to be stuck, he conceded, "I suppose. I must have understood it." (22 TR 49-50)

Yet, by his own admission, Kamerman did not advise Technicolor shareholders that Goldman Sachs' advice was oral. He was not aware of any communication to the shareholders advising that Goldman Sachs reserved the right to do post-meeting due diligence and to refuse to confirm its oral opinion. (22 TR 45-6)

Nor could anyone from Goldman Sachs explain why the language in the 14D-9 was changed. Sapp reviewed the drafts of the 14D-9 (which were ultimately approved by his superior, Golden), but claimed to have no knowledge as to why the word "oral", was deleted. (32 TR 93-6) Although Goldman Sachs refused to provide a written opinion at the Special Board Meeting because it had not performed post-meeting due diligence, it nevertheless approved deletion of the word "oral", thereby allowing Technicolor stockholders to believe that its opinion was final when in fact it had not even begun its due diligence.

Brown had nothing to add on this score. Not only did he disclaim knowledge as to why the language in the 14D-9 was changed, but he had no recollection of the limitations placed on Goldman Sachs that necessitated the oral opinion or of the fact that Goldman Sachs would not issue a written opinion until it had an opportunity to do full due diligence. (28 TR 110-12, 122) In short, given Brown's lack of knowledge as to what Goldman Sachs did to come up with its opinion, he could offer no explanation as to the basis for the Technicolor Director Defendants to have

issued their 14D-9 recommendation to begin with. Under these circumstances one also has to question the basis for his view that the directors had a sufficient basis upon which to act.

Apart from the exclusion of the word "oral" the final 14D-9 also was misleading as to the scope of Goldman Sachs' advice. Although the Goldman Sachs' opinion, as delivered by Golden at the Special Board Meeting, was specifically limited to be "as of this date" (i.e., October 29, 1982), Section 4 states that the opinion was given with respect to the fairness of the price at the time of the Tender Offer and Merger. But by Goldman Sachs' admission (as discussed below), it did nothing to reconsider its fairness opinion at any time after it issued its written opinion on November 19, 1982 and gave no assurances that its opinion would still be valid at the time of the Merger.

2. Goldman Sachs Performed No Meaningful Due Diligence After The Special Board Meeting

Goldman Sachs did not perform any meaningful due diligence after the Special Board Meeting. The only post-meeting "due diligence" which took place after the Tender Offer had commenced, consisted of a brief "confirmatory" visit to California by Sapp and Venuto -- Golden did not participate. The duo visited Technicolor's North Hollywood film processing facility, the Vidtronics facility and the One Hour Photo headquarters. For the most part, they could not even recall who they spoke to. Sapp and Venoto did not even bother to go see Technicolor's Newbury Park videocassette duplicating facility because, according to Sapp, the Vidtronics people said, "all it

is is a building with a bunch of machines in it." Their whirlwind tour was over by 5:30 p.m. (including time out for lunch). Sapp testified that as far as Goldman Sachs' due diligence, "that was the sum of it." (32 TR 33-6, 151; Golden 306-07; Sapp 85-90, 575)

3. Goldman Sachs' Written Opinion Was Not Issued Until November 19, 1982

Goldman Sachs' written fairness opinion was not issued until November 19, 1982, three weeks after the Special Board Meeting and more than two weeks after the Tender Offer had begun and the Technicolor directors had recommended acceptance of the offer by the shareholders in the 14D-9. (PX 204) Sapp drafted the letter, which was then reviewed by Golden. (Sapp 576)

Although firm policy required that two partners sign off on any fairness opinion, at trial Sapp was not able to identify who approved and/or signed Goldman Sachs' letter (nor could he do so on deposition, almost four years earlier).[47] Golden had no idea who approved on behalf of Goldman Sachs. (32 TR 214; Sapp 19, 563, 577; Golden 305-06) Defendants admit having no recollection that the written opinion was provided to any of the Technicolor directors (other than Kamerman). (PX 460 Response 184; see also Lewis 158; Oliphant 303-04)

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47 Similarly, Sapp had no recollection of which partners signed the written consent to print the opinion in the Proxy, as required by Goldman Sachs policy. (32 TR 216)

4. Goldman Sachs Allowed Its Written Opinion To Be Used In The Proxy Although It Gave No Consideration To Whether Its Conclusion Was Still Appropriate

Goldman Sachs was not asked to and did not reconsider its fairness opinion at any time after November 19, 1982. Kamerman testified that he did not know of anything that Goldman Sachs did after that date. (22 TR 65) By defendants' own admission, after Goldman Sachs issued the written fairness opinion in mid-November no due diligence activities were performed. (PX 460 Response 174) On deposition Sapp confirmed "[a]fter we delivered the written opinion, there was no meaningful contact...." with Technicolor. (Sapp 93)

Sapp further made clear that consent to use the written opinion in the Proxy was pro forma. He testified that between the issuance of its November 19 opinion (PX 204) and the consent on December 3 (PX 206), Goldman Sachs did not reconsider Technicolor or its performance. Nor, according to Sapp, was there any discussion concerning whether at the time of the Proxy there should be a re-evaluation of Technicolor. (Sapp 323, 578-79)

Nevertheless at trial Sapp claimed to recall a call from Powitzky requesting a written consent from Goldman Sachs. As Sapp would have it, he asked Powitzky at that time if there had been any material changes in Technicolor. (32 TR 218) Given Sapp's prior unequivical testimony and defendants' admission, Sapp's belated recollection should be chalked up to invention.

But it matters not, even if Sapp's offhand inquiry is given credence, the fact remains that Goldman Sachs did nothing to update its November 19 opinion in connection with the December 27, 1982 Proxy or the January 24, 1982 Merger, even though circumstances already had changed after November 30, 1982 when Perelman and MAF had taken control of Technicolor and began to implement their new business plan.

At trial Sapp testified that he had no recollection of any communications by himself or anyone at Goldman Sachs with any Technicolor director after October 29, 1982. (32 TR 220) (Of course prior to October 29, Goldman Sachs had been prohibited from talking to any Technicolor director other than Kamerman.)

In the period December/January, Goldman Sachs made no attempt to ascertain what, if anything, was being done to implement the plan of asset dispositions at Technicolor. (32 TR 219; Sapp 582) Likewise, Golden had no recollection of any discussions internally at Goldman Sachs or with Technicolor or MAF, about reviewing and revalidating its opinion in connection with the Proxy and Merger. (Golden 143)

Finally, defendants admit that at no time did the Technicolor board ask Goldman Sachs to re-evaluate the fairness of the price in the context of the Merger. (PX 460 Response 198) Nor were the directors aware that they could get Goldman Sachs to update its opinion in January before the Merger. (PX 460 Response 197)

M. THE TECHNICOLOR DIRECTOR DEFENDANTS FAILED TO RECONSIDER THE FAIRNESS OF THE $23 PRICE AT THE TIME OF THE MERGER

The MAF acquisition of Technicolor involved two separate transactions, a Tender Offer made in November 1982 and the freeze-out Merger, which purportedly was effected on January 24, 1983. (As originally planned the Merger was scheduled for February, 1983.) [PX 57 Exh. 6]) Notwithstanding the certainty that the Merger would occur months after Goldman Sachs issued its fairness opinion, during which the business prospects of Technicolor could undergo significant improvement and Perelman would begin to implement his restructuring plan, the Technicolor Director Defendants did not consider at the Special Board Meeting whether there was any need to re-evaluate the fairness of the $23 price at the time of the Merger.

Every director who testified on this issue at deposition, including Kamerman, stated that the issue was never raised and the board minutes provide written corroboration. (Lewis 89-9; Kamerman 295; Sullivan 317; Isham 164-65; Bjorkman 58-9; Oliphant 258-59; PX 72) At trial Sullivan and Isham confirmed that no consideration was given to the need to reconvene to reconsider the $23 price at the time of the Merger. (27 TR 112-13; 23 TR 91-2) Accordingly, Kamerman's predictable about face at trial on this issue must be rejected out of hand. (22 TR 55).

Nor did the Technicolor Director Defendants give consideration at any time subsequent to the Special Board Meeting

as to whether the $23 price offered by MAF was still fair at the time of the Merger.

Indeed, the Technicolor Director Defendants admit that they: 1) did not consider the results achieved by the company during the month of December 1982 and/or the last quarter of 1982; 2) did not take into account the impact of the Perelman restructuring plan; and 3) did not ask Goldman Sachs to reconsider its fairness opinion in light of circumstances pertaining at the time of the Merger. (PX 460 Responses 31, 198; PX 459 Response 104)

Bjorkman's response typified the attitude of the other Director Defendants. Asked whether he took any further interest in Technicolor or its businesses after October 29, 1982, he replied, "No, I didn't, of course I didn't. We had decided that the $23 price was fair and that was the end of it." (Bjorkman 75-6) Likewise, Lewis was so self-absorbed with the profit he personally had realized that he could not even comprehend why he would be asked to consider updated financial information in conjunction with the Merger. As he put it, "Why would they ask me to approve of the merger after I had tendered my stock and been paid?" (Lewis 34-5)

The Technicolor Director Defendants did not reconvene in January to consider whether it was fair to pay the remaining shareholders $23 a share based on the results to the date of the Merger. (Lewis 37; Isham 60-1; 27 TR 113-14) Although the Technicolor Board met again on January 11, 1983, the Technicolor Director Defendants admit that they did not even discuss the

fairness of the $23 price or the need to reconsider that price. (PX 460 Response 255; 27 TR 114-15; 23 TR 79). Defendants further admit that none of the following matters was considered: 1) the financial performance of Technicolor since October 26, 1982 and for the year as a whole, including the first ten days of January 1983; 2) MAF's restructuring plan; 3) profit plan projections for Technicolor for calendar 1983; and 4) Technicolor's future prospects and whether they had changed since October 29, 1982, (Id.) Indeed Kamerman admitted that profit flash information was not made available to the directors on January 11, 1983 or at any time before the Merger. (23 TR 82; PX 14).

Instead, in a fitting end to this sorry episode the Technicolor Director Defendants, having taken care of their own interests, washed their hands of the matter without so much as giving a thought as to whether the $23 price would be fair to the remaining shareholders.

N. MAF AND PERELMAN GAINED CONTROL OF TECHNICOLOR BY NOVEMBER 30, 1982 AND PROCEEDED WITH IMPLEMENTATION OF THE RESTRUCTURING PLAN

1. Following The Special Board Meeting Perelman/MAF Control Of Technicolor Was Assured

It was clear from October 29, 1982, that Perelman and MAF would assume control of Technicolor. Pursuant to the Merger Agreement (Sec. 6.02) signed on October 29, 1982, MAF was granted unfettered access to Technicolor's confidential financial

information.[48] (PX 61 at P301386) At the Special Board Meeting, Brown advised the directors that the Tender Offer by Macanfor would give MAF control of Technicolor more quickly than could be done by a merger alone. (PX 72 at 000927)

As a result of the Tender Offer, Perelman and MAF acquired legal control of Technicolor. Thus, as of November 30, 1982 (after the waiting period on the Tender Offer closed), Macanfor had accepted and purchased 2,426,506 shares of Technicolor common stock. When added to the 220,000 shares already owned by MAF this gave MAF beneficial ownership of 2,646,506 shares, or approximately 58% of Technicolor's outstanding common stock. As of December 3, 1982, MAF beneficially owned through Macanfor an aggregate of 3,754,181 shares or approximately 82.19% of Technicolor's outstanding common stock. (Pre-Trial Order II(C) 24; PX 61 at P301338-342)

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48 Section 6.02 of the Merger Agreement provides:

> 6.02 Access to Information. (1) Between the date of the Agreement and the Effective Time, the Company will give the Parent and its authorized representatives access to all plans, offices, warehouses and other facilities and to all books and records of it and its subsidiaries, will permit the Parent to make such inspection as it may require and will cause its officers and those of its subsidiaries to furnish the Parent with such financial and operating data and other information with respect to the business and properties of the Company and its subsidiaries as the Parent may from time to time request.

2. After The Special Board Meeting Perelman And MAF Begin To Exercise Actual Control Of Technicolor

a. MAF Demands And Receives Non-Public Information

Shortly after the Special Board Meeting, Carlton, Slovin and other MAF executives began demanding and receiving confidential business data and financial information from Technicolor. By November 1, 1982, a mechanism was in place (as recorded in Oliphant's notes) for MAF to obtain any requested financial information through Powitzky, Technicolor's chief financial officer. (PX 272; Oliphant 308) In addition, MAF requested and received records from the various operating heads of Technicolor's businesses.

At trial, Slovin testified to the steady stream of non-public business information that flowed from Technicolor to MAF during the pendency of the Tender Offer. Thus, on November 3, 1982, even before the Tender Offer commenced, Technicolor provided MAF with data concerning the contracts that its Professional Film Division had with the major studios. (PX 372) Pursuant to Carlton's request, on November 8, 1982, Powitzky forwarded balance sheets, income statements and cash flow projections for the three months ended December 25, 1982 and March 26, 1983, together with information about the status of One Hour Photo and Audio Visual. (PX 273; 24 TR 108-09) On November 11, 1982 Powitzky sent to Tsang of MAF the December, 1982 projected consolidating balance sheet and analysis of deferred tax asset on liability accounts. (PX 274; 24 TR 89-90)

As Slovin testified, on November 12, 1982, Ryan furnished "lots of information . . . that is not public...." about Gold Key including the balance sheet, accounts receivable run, accounts payable, and income statement. (PX 275; 24 TR 111) Ryan testified that by November 1982 when information was being furnished to MAF, the companies were operating as if they assumed the Tender Offer would give MAF control of Technicolor. (Ryan 343)

At Slovin's request, on November 19, 1982, Robert Forster head of Technicolor's Government Services, conveyed detailed data about outstanding contracts as well as information concerning proposals under evaluation. (PX 277; 24 TR 114-15) Moreover, Slovin testified that between November 19, 1982 and January 24, 1983, he requested and received "additional stuff that the public didn't know about pertaining to these contracts...." (24 TR 116)

Despite this free flow of information, Kamerman claimed that Powitzky had to get Brown's okay before releasing data to MAF. (22 TR 115) But Brown himself put the lie to such contention. He testified that after October 29, 1982, he had nothing to do with approving or rejecting MAF's requests for information from Technicolor and that pursuant to the Merger Agreement MAF could request whatever information it wanted. (29 TR 130-31)

b. MAF Takes Charge of Technicolor's Financial Affairs and Personnel

From December 4, 1982 forward, MAF consolidated the financial results of Technicolor with its own for tax and financial reporting purposes. (PX 400; Meyer 151) MAF required Technicolor to switch from a fiscal to a calendar year and instructed Technicolor to prepare a 1983 calendar year profit plan. (Cipes 49; Gaul 38; PX 347)

MAF charged Technicolor for legal and accounting services performed for MAF in connection with the transaction prior to the actual acquisition. Technicolor was charged for, and paid, hundreds of thousands of dollars for the fees of MAF's counsel (Skadden Arps) and its auditor (Coopers and Lybrand), in connection with the acquisition. Kamerman himself recognized that such payments were "screwy". (Kamerman 412-15; Lewis 159-60; PX 142)

Perelman and other MAF executives charged the company for personal luxuries, including expensive cars and trips. For example, Perelman charged a personal Jaguar to North Hollywood, only to turn it around and upgrade it for a $60,000 Maserati, which was likewise charged to the company. (Kamerman 417-21)

Further evidence of his control is that Perelman determined to replace the Technicolor Board with his own loyal supporters. Accordingly, he demanded the resignation of the Board in early January 1983. (PX 82, 83) Moreover, soon after assuming control, Perelman investigated the Kamerman/Ryan

situation and determined to fire Kamerman. He did so a month after the Merger.

3. Following The Special Board Meeting, MAF Proceeds With Implementation Of Perelman's Restructuring Plan

a. Slovin Takes Charge of MAF's Asset Divestiture Program

As Perelman made clear, "we made the evaluation of the business of Technicolor before we made the purchase, not after." (Perelman 271) That evaluation assumed the disposition of One Hour Photo, Consumer Photo Processing, Gold Key and Audio Visual. As demonstrated above, MAF's bank commitments for the acquisition were premised on the sale of $50 million worth of assets. Following October 29, 1982, MAF was ready to roll and Slovin was put in charge of implementing MAF's asset divestiture plan. (Perelman 272) Slovin testified that after the deal was signed on October 29, he went out to California to begin work in connection with their program. (24 TR 37)

On November 1, 1982, just 2 days after the Special Board Meeting, Kamerman held a meeting with the operating heads of the various Technicolor divisions at which time he advised that he was waiting for instructions from MAF on price and procedure relative to a sale of CPPD. Ryan testified, and his notes of the meeting record, that Kamerman announced that MAF planned to sell Consumer Photo Processing and that a selling price would be established within a week. Ryan understood that Kamerman was only waiting for instructions from MAF on the price and sales

procedure before sales efforts could proceed full speed ahead. (Ryan 314; PX 271)

At that meeting Kamerman also reported that MAF had determined there would be "no more commitment on 1 Hr. Photo." It was considering the various options available to terminate and liquidate that venture, including franchising the operation and selling the stores. (Ryan 314-15; PX 271) Kamerman concedes that he told Tesser that One Hour Photo may be "discontinued" and passed on MAF's directive not to hire people or sign new leases. (22 TR 107) Kamerman also advised his executives that MAF intended to continue Technicolor's efforts, already in progress, to sell Gold Key and the Costa Mesa real estate. (Ryan 315-16; PX 271)

On December 1, 1982, Perelman, Slovin and Carlton met in Los Angeles with Kamerman and the presidents of the various Technicolor divisions, as documented in notes taken at the meeting by Carlton. Their purpose was to get a fix on the current state of each of their businesses and to provide direction to Technicolor management on the implementation of the asset sales contemplated by MAF. (PX 278; Oliphant 320; Gaul 93-4) On or about December 2, 1982, MAF executives instructed Oliphant, Technicolor's in-house counsel, on what disclosures regarding the asset divestiture program should be included in Technicolor's Proxy. (Oliphant 322-23; PX 279)

Slovin made clear that MAF's disposition efforts intensified following the Tender Offer. He testified,

> The beginning part, the part of December and January we really started looking into the companies very intensively, spent a lot of time out there and started looking for buyers for several of the divisions.

(24 TR 37-8) By Slovin's own count, he traveled to California "33 times at the end of '82 and the early part of '83." (Id.)

In December 1982 MAF retained Bear Stearns to assist MAF in disposing of Technicolor assets. Slovin met with Jeffrey Bloomberg of Bear Stearns in late December 1982 and again in early January 1983 to explore the best methods to maximize monetization of "the three Technicolor businesses that do not fit into [MAF's] long term plans for the company" -- Gold Key, Consumer Photo Processing and One Hour Photo. Slovin, working together with Bear Stearns representatives and key Technicolor personnel, began targeting potential purchasers for the assets to be divested. A target date of June 30, 1983 was set for monetizing all Technicolor excess assets, including One Hour Photo, Audio Visual, Gold Key and Consumer Photo Processing. Bloomberg understood that MAF's target was $50 million in cash net from disposition of assets. Moreover, in early 1983 Slovin met with Seibert of Chase and advised her that MAF expected to meet its goal for asset disposition proceeds by mid-1983. (PX 225, 226; Slovin 109-10, 112-14, 120-21; Bloomberg 259-62, 264-65, 243-44)

b. Efforts to Sell Gold Key and Audio Visual Continue Under MAF

Ryan began efforts to sell Gold Key in the summer of 1982. At the Board meeting of August 25, 1982, Ryan reported that Gold Key could be sold for at least book value, and possibly more. (Kamerman 90-1; Ryan 267; PX 64 at 001073) By fall 1982, Ryan had met with representatives of at least seven companies regarding sale of this division and had succeeded in stimulating strong interest on the part of Polygram, Lorimar, Embassy and Viacom as he reported to the Board at its November 9, 1982 meeting. (Ryan 335-36; PX 79 at 000918)

Following that date Ryan provided MAF with detailed information about efforts to sell Gold Key and at MAF's instigation those efforts expanded. On November 30, 1982 Ryan met with MAF representatives to report on additional meetings he had had with potential purchasers of Gold Key. (Ryan 402-05; PX 275, 276, 310)

Ryan, together with MAF executives and Bear Stearns, prepared a detailed selling brochure on Gold Key which was distributed to potential buyers. (Ryan 424, 406; Bloomberg 265-66; PX 311, 487) The efforts proved successful: Gold Key was sold in 1983. (PX 403 at M00005)

Technicolor's fiscal year 1983 profit plan projected complete liquidation of its Audio Visual Division in 1983. (PX 11) Liquidation of that division began in mid 1982. MAF continued that process and was selling off the physical assets of the company in the first portion of 1983. (24 TR 44-5)

Efforts to sell the Costa Mesa property, which was part of the Audio Visual Division, began in summer 1982, and continued through the fall. With the authorization of Slovin (and/or Perelman) on January 12, 1983 Ryan executed a contract on behalf of Technicolor for sale of the Costa Mesa land to the Koll Company for $6.8 million. (24 TR 108; PX 308)

c. The Decision to Sell One Hour Photo and Consumer Photo Processing Was Made Before January 24, 1983

At trial Slovin testified that One Hour Photo was one of "the leading contenders for sale as of September - October 1982." As Slovin explained, disposition of One Hour Photo was "an integral part" of MAF's promise to the banks to raise $50 million from divestitures. (24 TR 76-7) Moreover, the loan agreement with Chase and the bank consortium limited MAF's total capital expenditures to $4.5 million. (PX 244 at B000037) Thus, by Slovin's admission, there was no way MAF could expand One Hour Photo after its acquisition of Technicolor. (24 TR 99-100, 105) MAF had only three options for One Hour Photo: sell it, franchise it or maintain the existing number of stores. (24 TR 106)

By November, 1982 a decision had been made not to open any additional One Hour Photo stores. Slovin confirmed that there was "a definite bias to get out of it at this time." (24 TR 109-10) Accordingly, throughout December and January, MAF considered the options available regarding One Hour Photo, including franchising and sale of stores. (24 TR 42)

Art Tesser, president of One Hour Photo, discussed purchasing the business with MAF and talked to Bank of America in December 1982 about financing the purchase. (Meyer 155-56; PX 298, 299; DX 152) In addition, plans were developed to publicize Technicolor's exit from the One Hour Photo business so that potential purchasers would come forward to bid for groups of stores. (PX 300, 301, 302, 493, 494)

MAF's initial bias in favor of a sale was never overcome and beginning in May 1983, groups of One Hour Photo stores were sold to several different purchasers, including Tesser.

MAF also proceeded with efforts to sell Consumer Photo Processing. Notes taken by Carlton dated November 30, 1982 record the name of Colorcraft as a potential purchaser and Slovin testified that he dealt with that company regarding the sale of Consumer Photo Processing. Slovin further testified that he had Colorcraft sign a confidentiality agreement on or about December 16, 1982, so they could obtain information about the business in connection with their interest in purchasing it. (24 TR 113-14; PX 276, 317)

Bear Stearns on behalf of MAF also explored potential purchasers for Consumer Photo Processing and in early 1983 received expressions of interest from Guardian Industries and Cue Industries. (Bloomberg 270-71; PX 227)

d. Technicolor Actually Realizes $50 Million From Asset Sales

In fact, the business plan conceived by Perelman as a predicate for his acquisition of Technicolor was successfully

implemented. Sales of assets generated in excess of $50 million in net cash proceeds. (PX 403 at M 00004-05; PX 315) MAF reported to Bank of America's Meyer that it anticipated $54.6 million in net proceeds from asset sales, not including the value of stock and warrants. (Meyer 355, 358-59; PX 268 at BB589) While the structure of some of the asset sales differed from that originally proposed, all four operations identified by MAF in the projections submitted to the Banks in October 1982 in connection with obtaining acquisition financing for Technicolor were divested. (PX 102)

In fact, results of the asset sales were so successful that those proceeds, together with operating profits of some $32 million, allowed MAF to pay down its acquisition loan far ahead of schedule. (Seibert 356-57, 367-68; PX 254; Beale 150-51; Meyer 235) In calendar 1983 MAF paid approximately $53.5 on the financing credit. (Meyer 307, 236; PX 42) The entire acquisition credit was paid off by fall 1984. (Seibert 369, 377)

Thus, in the space of less than a year and a half Perelman recouped more than $92 million of his investment in Technicolor, taking into account some $42 million in retained earnings and $50 million in asset sales, prompting even Kamerman to admit, "he made a terrific deal." (Kamerman 340-43)

O. DEFENDANTS DISSEMINATED FALSE AND MISLEADING DOCUMENTS IN CONNECTION WITH THE TRANSACTION

1. The Technicolor Defendants

On October 29, 1982 Technicolor issued a press release announcing that an agreement had been reached between MAF and Technicolor providing for the acquisition of Technicolor's stock at $23 a share. (PX 175) Thereafter, on November 4, 1982, Technicolor filed with the SEC and caused to be circulated to its stockholders a Schedule 14D-9 in which it recommended acceptance of the Tender Offer to its shareholders. (PX 57) On November 5, 1982, a 13D Statement was filed on behalf of Kamerman and his wife and Bjorkman and his wife in connection with sale of their respective shares to MAF. (PX 59) On December 27, 1982, Technicolor disseminated to its shareholders a Proxy Statement and Notice of the Special Shareholders Meeting to be held on January 24, 1983 to approve the Merger. (PX 61) Each of these documents contained material misrepresentations or omissions as set forth below.

a. The October 29 Press Release

(1) The October 19, 1982 press release represented that "the agreement has been approved by the boards of directors of MacAndrews & Forbes and Technicolor." (PX 175) Such statement was false and misleading because it implied to anyone with knowledge of the fact that the 95% super-majority shareholder vote in Technicolor's Charter could be amended only by the unanimous vote of Technicolor's directors, that such a unanimous

vote had been cast in favor of the transaction when, in fact, director Simone had voted against the package of resolutions taken up in connection with the transaction.

(2) The press release further represented that the Tender Offer would be subject to "financing of the offer under commitments MacAndrews & Forbes had already obtained." Such statement was false and misleading because it suggested that MAF had obtained a firm financing commitment for carrying out the Tender Offer when, in fact, no loan agreement had been executed and under Section 16 of the Offer to Purchase MAF could walk from the Tender Offer if it failed to obtain the necessary funds pursuant to such a definitive agreement. (PX 55 at P303815)

b. The Schedule 13D

A Schedule 13D, dated November 5, 1982, was submitted on behalf of Kamerman and Bjorkman in connection with sale of their shares to MAF. (PX 59) The document set forth the number of shares held respectively by Kamerman and Bjorkman (and their wives), including the 15,249 option shares owned by Kamerman. The Schedule 13D was false and misleading in that it failed to disclose why Kamerman was holding those 15,249 shares and not selling them pursuant to the attached Stock Purchase Agreement. Nor did the Schedule disclose the fact, as discussed above, that the deal was structured so that purchase of Kamerman's option shares would be delayed until after January 1, 1983, thereby affording him the benefit of capital gains treatment.

c. The Schedule 14D-9, Including The

November 4, 1982 Letter To Technicolor Stockholders

(1) Inadequate Disclosure Of How the Deal Was Negotiated And The Price Set

The Schedule 14D-9 was totally silent on the negotiations relating to the offer and the manner in which the $23 price was fixed. It omitted at least the following material information:

(a) Failed to disclose that Perelman made the approach to Technicolor through Sullivan and in that connection on September 10, 1982 had Tarnopol of Bear Stearns, MAF's investment banker, contact Sullivan and advise him of MAF's interest in acquiring the company.

(b) Failed to disclose that on September 17, 1982 Perelman and a representative of Bear Stearns met with Sullivan to further explore MAF's acquisition of Technicolor.

(c) Failed to disclose that, at Perelman's request, during the week of September 20, 1982, Sullivan telephoned Kamerman, advised him of Perelman's plan to acquire the company and urged him to meet with Perelman in that regard.

(d) Failed to disclose that sometime between September 17 and October 4, 1982, Sullivan met secretly with Perelman, at his request, to provide information on how best to approach Kamerman in the upcoming negotiations.

(e) Failed to disclose that the price was set at the first meeting between Kamerman and Perelman on October 4, 1982 with Perelman offering $20 a share and Kamerman making a counterproposal of $25/share.

(f) Failed to disclose that the $25 counteroffer made by Kamerman was a number arbitrarily plucked out of the air by Kamerman without having consulted any investment banker, internal financial advisor, counsel or even his own Board.

(g) Failed to disclose that there were no meaningful price negotiations following the October 4, 1982 meeting between Kamerman and Perleman.

(h) Failed to disclose that the sale to MAF was negotiated exclusively by Kamerman and that he reached an agreement on the terms and conditions of the sale of Technicolor no later than October 12, 1982 without having consulted any other directors, before having retained Goldman Sachs to opine on the adequacy of the agreed upon consideration and prior to having sought the advice of counsel.

(2) Failure to Disclose Director Conflicts

As discussed above, the Technicolor Director Defendants were disabled by numerous conflicts of interest. Yet none of the facts relevant to their self interest and their inability to render an impartial recommendation were disclosed. In that regard at least the following material omissions or misrepresentations were made:

(a) Failed to disclose that Sullivan placed an order for 10,000 shares of Technicolor stock on September 13, 1982, as a result of inside information concerning MAF's interest in acquiring Technicolor he had obtained from Tarnopol in the September 10, 1982 call.

(b) Failed to disclose that the purchase by Sullivan of 1,000 shares of Technicolor stock on September 13, 1982 (as disclosed on page 3 of the 14D-9) was an illegal insider purchase.

(c) Failed to disclose that Sullivan's insider trading in Technicolor stock became the subject of an investigation by the SEC in early November, 1982.

(d) Failed to disclose that the $150,000 payment to Sullivan (as disclosed on page 2 of the 14D-9) originally was to be paid by Perelman/MAF through Bear Stearns, with funds provided by MAF, and that the source of that payment was switched to Technicolor only on the eve of the Special Board Meeting.

(e) Was misleading because it represented that payment of the fee was in consideration for "services" performed by Sullivan in connection with the Offer and Merger when, in fact, Sullivan did not perform any substantive work.

(f) Failed to disclose that neither Sullivan's $150,000 fee nor the amendment to Kamerman's employment contract were presented to the Compensation Committee of Technicolor's Board of Directors, which was chaired by director Simone, who opposed the Sullivan fee.

(g) Failed to disclose that Simone resigned as Chairman of the Compensation Committee on the evening of October 29, 1982 to protest the approval of a $150,000 fee to Sullivan.

(h) Failed to disclose that as a condition of his support for the transaction, Kamerman was granted lucrative amendments in his employment contract, having a value of nearly $3 million.

(i) Failed to disclose that Kamerman insisted that the transaction be structured so as to delay the Merger until after January 1, 1983, to allow him to receive the benefit of capital gains treatment on 15,249 option shares owned by him.

(j) Failed to disclose that as a condition for their support of the transaction, Bjorkman and Kamerman were granted most favored nations protection guaranteeing them the highest price paid by MAF for Technicolor stock for one year after approval of the transaction -- a benefit not provided to any of the other stockholders.

(k) Failed to disclose that Ryan was induced to support the proposed transaction by promises from Perelman that were communicated to him by Martin Davis of Gulf + Western, that he would be given an opportunity to run Technicolor if it was acquired by MAF.

(l) Failed to disclose that Lewis represented both Kamerman and Bjorkman as tax counsel in connection with their personal sale of Technicolor stock to Macanfor and was induced to support the MAF acquisition of Technicolor in order to further the financial interests of his clients.

(m) Failed to disclose that in addition to the foregoing, all of the Technicolor Director Defendants also were interested in the transaction by reason of the certainty that they would vote with Kamerman.

(3) Falsely Represented that Board Approval Was Unanimous

The 14D-9 represented that the transactions had been unanimously approved by Technicolor's Board of Directors when, as discussed above, such was not the case. In this regard defendants made the following misrepresentations and omissions:

(a) Falsely stated that the Technicolor Directors had unanimously voted in favor of the proposed Tender Offer and Merger when, in fact, director Simone

(i) objected to and voted against the package of resolutions considered in connection with these proposals; and

(ii) stated at the October 29, 1982 Special Board Meeting that he was opposed to the Tender Offer and Merger and that, in his opinion, Technicolor should be exposed to competitive bidding.

(b) Falsely stated that Technicolor's Directors had unanimously voted in favor of an amendment to Technicolor's Certificate of Incorporation which would reduce the number of shareholder votes required to amend the Charter from 95% to two-thirds when, in fact, director Simone voted against the amendment.

(4) Inadequate Disclosure Regarding Goldman Sachs' Opinion And Other Factors Allegedly Supporting The Board's Recommendation

The 14D-9 represented that the Technicolor directors had considered three factors in reaching their conclusion to recommend shareholder acceptance of the Tender Offer. (PX 57 at 2) None of these purported reasons was adequately explained and each contained materially false and misleading information.

Thus, the 14D-9 represented that consideration was given to "the advice of Goldman, Sachs...., the Company's financial advisor, with respect to the fairness of the price to be received by the holders of Common Stock in the Offer and the subsequent Merger." Such representation was false and misleading in at least the following respects:

(a) Failed to disclose that Goldman Sachs had performed no due diligence prior to rendering its opinion at the Special Board Meeting.

(b) Failed to disclose that at the Special Board Meeting, Goldman Sachs had rendered only a tentative oral opinion which was subject to due diligence review and which Goldman Sachs reserved the right to withdraw.

(c) Failed to disclose that Technicolor entered into the Merger Agreement despite the fact that Goldman Sachs' opinion was subject to revocation.

(d) Failed to disclose that Goldman Sachs had not even commenced any post-meeting due diligence as of the date the 14D-9 was filed.

(e) Falsely represented that Goldman Sachs' opinion would be valid both at the time of the Tender Offer and Merger when, in fact, the oral opinion provided by Goldman Sachs was qualified in that it was specifically limited to be as of October 29, 1982 and no assurance was given that that opinion would still be valid or appropriate at the time of the Merger.

Another factor set forth as a basis for the Board's recommendation was "the relationship of the price per share being offered in the Offer and the Merger to past prices for the Company's Common Stock." Such representation was false and misleading in that it:

(f) Failed to disclose (as the Technicolor Board had been advised by Brown) that in the context of an acquisition such as this one the fact of a premium was irrelevant.

(g) Failed to disclose that as recently as second quarter 1981, Technicolor stock had been trading as high as $28.50 a share.

(h) Failed to disclose that the market price of the Technicolor stock had been artificially depressed by negative reaction to the OHP business.

The 14D-9 was false and misleading in representing as another consideration Technicolor's historical and current financial condition and prospects because:

(i) No explanation was provided as to how or why that condition supported the appropriateness of the $23 price.

(j) No disclosure was made of the fact that no serious consideration was given at the Special Board Meeting to Technicolor's financial results or its prospects and that the latest financial results contained in the company's 10-K and 10-Q were not even made available to the Directors.

(5) Inadequate Disclosure Regarding the Structure Of The Deal

The Technicolor defendants failed to make adequate disclosure regarding the structure of the deal. As discussed above, from the outset the deal was structured so as to grant Perelman an absolute blocking position that would sew up the deal for MAF and prevent another bidder from gaining two-thirds of the shares. Given the nature of the disclosures made, however, it was virtually impossible for a Technicolor shareholder to figure this out. In this regard, the Schedule 14D-9 contained the following omissions and misrepresentations:

(a) Failed to disclose that Perelman already had acquired 220,000 shares or 4.8% of Technicolor stock in the open market prior to the commencement of the Tender Offer.

(b) While the 14D-9 disclosed the existence of the Stock Option Agreement and Stock Purchase Agreement (PX 57 at 2), it failed to inform the shareholders that these were intended to and had the effect of granting MAF an absolute lock on Technicolor.

(c) While the 14D-9 implied (at 3) that the Directors all were committed to sell their shares to MAF, it failed to disclose the number of shares held by the Directors that were committed to MAF. (The only way that information could be ascertained would be by wading through exhibits buried at the back of the 14D-9.)

(d) Accordingly, there was no way for a Technicolor stockholder (except a detective) to figure out the total number of shares that actually were committed to MAF or the fact that MAF held a lock on close to 32% of all outstanding Technicolor shares on a fully diluted basis.

(e) In addition, no explanation was provided of the fact that Technicolor also had granted MAF a no-shop clause which not only prohibited it from seeking out or talking to other potential buyers, but also expressly committed Technicolor to the MAF transaction and precluded it from entering into a transaction with another company.

(6) No Disclosure of Consideration Given to LBO

The one alternative to the MAF offer that Kamerman and others of Technicolor management considered was a management LBO, but that fact was completely omitted. Thus, the 14D-9:

(a) Failed to disclose that Kamerman and certain members of management had considered responding to the MAF offer with a management LBO, had discussed this proposal with Bank of America and had been advised that the Bank was prepared to lend up to $150 million for such purpose.

(b) Failed to disclose that Goldman Sachs independently had considered and discussed with Kamerman and other Technicolor management the feasibility of a management-led LBO and that Goldman Sachs concluded that such an LBO at prices higher than $23 per share was feasible.

d. The December 27, 1982 Proxy Statement

The Proxy Statement disseminated to Technicolor shareholders on December 27, 1982 in connection with the Special Stockholders Meeting suffered from the same deficiencies as the

Schedule 14D-9 specified above.[49] In addition, the Proxy contained a number of other misrepresentations and omissions.

(1) Improper Disclosures Regarding Goldman Sachs' Opinion

Included in the Proxy was a copy of Goldman Sachs' November 19, 1982 written opinion which stated,

> it is our opinion that the cash consideration of $23.00 per share to be received by the holders of Common Stock pursuant to the Merger Agreement and the Tender Offer is fair to such holders.

(PX 61 at P301406) However, none of the background information necessary to insure that the opinion would not be misleading was provided.

As described above, it was not disclosed that initially Goldman Sachs issued an oral opinion that was subject to confirmatory due diligence and withdrawal if that due diligence provided unsatisfactory. Nor was there disclosure of the fact that Technicolor entered into the Merger Agreement despite the fact that Goldman Sachs' opinion was subject to revocation.

Moreover, defendants admit that nothing was done by Goldman Sachs subsequent to the issuance of its written opinion on November 19, 1982 with respect to Technicolor. Goldman Sachs admits that it did not give any consideration to re-evaluating the fairness of its opinion as of the time of the Merger and did

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49 The Proxy, did, however, disclose the fact that MAF had purchased 220,000 shares of Technicolor stock in the open market.

nothing to bring their opinion down to the time of the Merger. Yet the Proxy failed to disclose that Goldman Sachs' opinion was not current and that Goldman Sachs gave no assurances that its opinion would still be valid at the time of the Merger.

The Proxy was disseminated on December 27, 1982, nearly a month after Perelman had gained control of Technicolor (on or about November 30, 1982) and had begun implementing his restructuring plan for Technicolor. Nevertheless, there was no disclosure of the fact that Goldman Sachs' opinion did not take into account the effect of that plan on the value of Technicolor stock.

(2) Improper Disclosure Regarding Background and "Negotiations"

In addition to the deficiencies regarding the negotiations described above (pp. 281-82), the information provided regarding the background of the offer (PX 61 at 301344) was false and misleading in several additional respects. It gave the impression that the meeting on September 17, 1982 was the first contact between Perelman and Technicolor regarding the transaction when, in fact, at Perelman's request, a Bear Stearns representative had first contacted Sullivan on September 10 to advise of Perelman's interest in acquiring the company.

The Proxy represented that after the October 4 meeting, Sullivan, Perelman and/or Kamerman "had further discussions in subsequent telephone conversations and meetings" and "met or talked by telephone again on subsequent occasions to continue such discussions." (PX 61 at 301344) Such representation gave

the false impression that Perelman and Kamerman engaged in arms-length negotiations over an extended period of time when in fact as set forth above (pp. 52-6) such was not the case. In addition, this description is misleading in that it implies that Sullivan engaged in substantive discussions with Perelman when by Sullivan's own admission, the deal was negotiated exclusively by Kamerman. (See above pp. 40 and 50-1)

2. The MAF Defendants

Given the fact that Perelman/MAF were firmly in control of Technicolor by no later than November 30, 1982, they stood in a fiduciary capacity to Technicolor shareholders as of that time and owed them a duty of complete candor. Accordingly, they too, are liable for the omissions and misrepresentations contained in the Proxy as described above. The Offer to Purchase issued by MAF on November 4, 1982 also contained material omissions and representations as set forth below.[50]

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50 Because Perelman/MAF were not in a fiduciary relationship with plaintiff as of November 4, 1982, we do not contend that they are liable to plaintiff by virtue of these diclosure violations. (Although given MAF's blocking position, the terms of the Merger Agreement and the manner in which MAF directed the conduct of the Technicolor management after October 29, one might well argue that MAF had effective, working control of Technicolor and was thereby a fiduciary.) This summary of the MAF/Macanfor disclosure violations is included in order to assist the Court in assessing the overall climate of fraud and deception that prevailed in this transaction.

a. Improper Disclosure Regarding Negotiations

In addition to the deficient disclosures regarding the negotiations described above in connection with the 14D and Proxy, the information provided regarding the background of the offer (PX 55, P303809) was false and misleading in other respects.

The Offer to Purchase falsely represented that following the October 4 meeting Perelman and Kamerman "had further discussions in subsequent telephone conversations, and met again on two subsequent occasions to continue such discussions." (PX 55, P303809) In fact the two men met again on 3 separate occasions, but two of those occasions were purely social in nature. Thus, as described above, Perelman and Kamerman met for a drink at the Polo Lounge on October 20, 1982 but did not engage in any "substantive discussion." (22 TR 28) Thereafter, on the evening of October 28, they had a private dinner to celebrate their bargain, but by Kamerman's admission the deal was done by that time. (21 TR 249; Kamerman 146-47) Apart from the October 4 meeting, the only other meeting the two had where arguably anything of substance was discussed was held on October 12. As for that meeting, Kamerman admits that price was not discussed and that there was no further discussion on the terms and conditions of the acquisition. (Kamerman 160)

fact, Perelman had a lock on 31.4% of the stock by reason of the fact that the Technicolor directors were committed to sell their 113,389 shares, representing approximately 2.5% of Technicolor stock (in addition to the shares sold by Bjorkman and Kamerman pursuant to the Stock Purchase Agreement).

d. Improper Disclosure Regarding Restructuring Plan

The Offer to Purchase failed to disclose that implementation of Perelman's restructuring plan would commence immediately. The Offer represents that

> MacAndrews advised the Banks that it intended to review the operations of each of the Company's business segments . . . to determine whether it might be advisable to sell or otherwise dispose of any of such segments.

(PX 55 at P303811) In fact, Perelman had determined from the time Technicolor was identified as an acquisition target to divest specific excess assets, and MAF's acquisition financing was predicated on the disposition of four Technicolor divisions: Gold Key, Audio Visual, One Hour Photo and Consumer Photo Processing. Implementation of that plan began immediately following the Special Board Meeting (with MAF receiving non-public information regarding the operation to be sold) and was actively being pursued before the Tender Offer even concluded.

P. TRUTH IS TRANSITORY: DEFENDANTS' WITNESSES WERE NOT CREDIBLE

1. Morton Kamerman - "I'd Rather Be Swimming"

Kamerman's reputation preceded him. On deposition his colleagues and fellow directors painted a portrait of an arrogant ruler, incapable of admitting to error. As Gaul described Kamerman he was "tight-lipped," "difficult" and "very opinionated." Asked whether Kamerman ever admitted to making a mistake, he replied, "If he did, I never heard it." (See, e.g., Gaul 113; Oliphant 79-80) Kamerman himself proudly flaunted that image. He acknowledged that he was the self-appointed "leader" and "lynchpin" that kept the well-oiled Technicolor machine humming. (Kamerman 425).

Kamerman viewed himself as a superior being who made the rules by which everyone else had to play. He believed that he knew what was best for Technicolor. (Kamerman 437) He demanded and received blind allegiance from his Director Defendants and knew what he said would go. (Kamerman 173-75) In an effort to protect his turf, Kamerman operated with a kind of siege mentality -- winning loyalty from his employees via threats and fear of reprisals. (42 TR 32)

Ultimately Kamerman's hubris was his downfall at Technicolor. Perelman made plain that Kamerman's method of operation was a major factor in the decision to terminate him. (Id.)

So, too, Kamerman's performance at trial was his undoing. He evidenced a total disdain for the Court and for the judicial process. Time and time again he demonstrated his

willingness to say practically anything to save his skin -- no matter how far-fetched or irrational; no matter that he was contradicted by his own testimony, the testimony of everyone else or the printed word.

Kamerman's memory waxed and waned as it suited his purpose. On deposition he had virtually no recollection of anything. At trial his memory came flooding back to him as he sat on the witness stand. As Kamerman explained the magical process, "I reviewed in my mind and brought it back to life again, and it's still coming back to life as I talk about it." (20 TR 69)

Kamerman conceded at trial that on deposition he did not recall one meeting from the next. (Kamerman 110; 20 TR 54-7) Thus, he did not recall what he discussed with Sullivan prior to the October 4 meeting. (Kamerman 354; 20 TR 60-1) He did not recall what was said at his first meeting with Perelman on October 4 (Kamerman 108; 20 TR 61-2), and he had no real recollection of what transpired at the October 12 meeting with Perelman and Carlton. (Kamerman 159; 20 TR 66-8) Kamerman also drew a blank at deposition on what happened at the October 18 meeting with Goldman Sachs. (Kamerman 306; 20 TR 91-92)

Nor for that matter could he recall on deposition much of anything that happened at the Special Board Meeting. (Kamerman 313-14; 20 TR 76-7, 94-6) Kamerman could not recall what he said or for how long he said it (Kamerman 296; 20 TR 94); he could not remember what Goldman Sachs discussed (Kamerman 310;

20 TR 95); and he did not even recall that Brown was present. (Kamerman 361; 20 TR 110-12)

Yet at trial Kamerman spewed forth details of meetings and events that previously were a blank page in his mind. When asked how his memory had improved with age (four years after the deposition in 1985), Kamerman came up with a range of explanations that evidenced a creative but irrational mind and demonstrated utter contempt for the judicial process.

He claimed that he was unprepared at deposition, although he admits that he did not ask for more time. (20 TR 96). He claimed that he did not feel well, although he concedes that he did not request an adjournment. (20 TR 99-100) He claimed that to refresh his recollection he looked at documents, although by Kamerman's admission the very same documents were present at the deposition and shown to him. As Kamerman testified, "You were there, I was there, the documents were there. We were all there." (20 TR 80)

But what it really boils down to is that Kamerman did not give a hoot so long as he believed he was not a party to the proceedings. At trial he made clear that this was his attitude on deposition: "[i]t wasn't my headache" (20 TR 92); "I wasn't going to bother with it" (20 TR 56-7); "I'm not going to stretch or work." (20 TR 99) Although he was there in body, his mind gave no consideration to what he said or whether it was truthful or complete so long as it brought the deposition closer to an end. As only Kamerman could put it, "I'm not going to think about it. I'd rather be swimming." (20 TR 58)

So, by his own admission, Kamerman automatically responded "I don't recall" to virtually everything because he was not going to spend more than "one second" thinking about it. (20 TR 93-4, 96) The fact that Kamerman's testimony was twice sworn and given under oath was to his way of thinking a meaningless irrelevancy. He resolved that issue (as he did everything else on deposition) by claiming not to recall having signed and twice sworn to the truth of his deposition. (20 TR 59)

Kamerman gave visible expression to his attitude at trial. Asked to probe his memory and to stretch to try and recall events, Kamerman literally outstretched his arms in an exercise mode -- a gesture that symbolized his arrogant disdain for the Court and the judicial proceedings.

In the Alice-in-Wonderland world which Kamerman inhabits, if he said it did not happen, it did not happen, no matter that unassailable documentary proof exists to the contrary. Thus, for example, although the minutes of Technicolor's May 19, 1982 Board meeting record the fact that Ryan voted "no" to Kamerman's reorganization plan and revised incentive program (PX 63 at 000957, 000967), Kamerman insisted that he voted "yes." (20 TR 209)

Although Goldman Sachs' engagement letter states that the firm was engaged only to render a fairness opinion and although Kamerman admits "that's the way it was drafted," he nevertheless claimed at trial "it wasn't that way." (21 TR 67) Goldman Sachs' November 19 letter says nothing about bringing its fairness opinion down to the date of the Merger, but Kamerman

nonetheless insisted it was to continue to do due diligence. He testified "I don't know if its says it or it doesn't. That was the agreement." (22 TR 64-5)

Documentary evidence establishes and defendants admit that the final version of the Special Board Minutes was not circulated until November 10, 1982. (PX 80; PX 460 Response 225) Yet Kamerman insisted at trial that they were approved at the Board Meeting the day before on November 9 -- a physical impossibility. (22 TR 72-3)

Given Kamerman's view of himself, it was unacceptable and inconceivable that he could be mistaken. If someone did not agree with Kamerman, it was always the other guy who was wrong or a liar. Thus, confronted with Ryan's testimony that Simone mentioned Revlon as a possible alternate buyer at the Special Board Meeting, Kamerman answered "it isn't so" or "that's nonsense." (20 TR 203) When shown Ryan's deposition testimony that he favored creating a videocassette duplicating facility in Wales, Kamerman nevertheless insisted that Ryan agreed with his decision to terminate planning such a facility. (20 TR 218-20)

Likewise, when the testimony of Bank of America's Meyer regarding their meeting to consider a management LBO differed from his recollection, Kamerman's only explanation was that Meyer was wrong. Thus, Meyer testified that at that meeting Kamerman reported that Technicolor was a vulnerable company in October 1982. Advised of that testimony at trial, Kamerman retorted, "He's wrong . . . . that's not what happened." (21 TR 195-97) Meyer also testified that at that meeting he told Kamerman to

"tell us more" so that the Bank could study Kamerman's LBO proposal. Confronted with that testimony, Kamerman responded, "He's wrong. It didn't. It sounds good, but that's not what happened." (21 TR 197)

Kamerman was unwilling even to concede that Meyer was right as to the date the meeting took place. Although Meyer testified that the meeting took place on or about October 15, 1982 before he had any knowledge of the MAF proposal, Kamerman argued that Meyer was remembering it "incorrectly". (21 TR 201)

If he had to, Kamerman would go even further and besmirch the reputation of others, even his friends, if he deemed it necessary to protect himself. At trial Kamerman was asked whether he had a rift with his long-time friend Bjorkman over an economic impropriety that he had committed. Rather than say anything that might implicate himself, Kamerman launched into a long, off-color story about Bjorkman that did damage to the reputation of his friend and was totally irrelevant to the question posed.

At another point, Kamerman was advised that on deposition Bjorkman testified that Kamerman never consulted him on the subject of calling a board meeting. Incapable of admitting he was wrong, Kamerman instead attributed the contradiction to Bjorkman's declining health. As he put it, "Mr. Bjorkman was -- at the time of his deposition was rapidly going downhill, I am afraid." (21 TR 29-30)

Although Kamerman submitted verified interrogatory responses in these actions, he thought nothing of disavowing his

previously sworn statements if it suited his ends. Thus, for example, he admitted in verified interrogatory answers (and indeed in his deposition, pp. 106, 284) that Sullivan did not disclose his purchase of 1,000 shares of Technicolor stock at the Special Board Meeting. (PX 460 Response 98) At trial he did a volte-face and claimed "[t]here was such a disclosure." (21 TR 10-12)

So, too, Kamerman admitted in sworn interrogatory responses that he attended a meeting on October 28, 1982 at the Debevoise offices at which the subject of Technicolor paying a fee to Sullivan was considered. (PX 460 Responses 94-5) Yet at trial he totally denied the fact that such a meeting occurred and refused to admit that any such topic was discussed at the Debevoise offices. (21 TR 17-8, 21-2)

In these same interrogatory answers Kamerman admitted that he was shown the draft version of Goldman Sachs' report (PX 460 Response 21) which included a Prism 25 LBO analysis and a list of potential purchasers for Technicolor. (PX 201) Those sworn statements, however, did not stop Kamerman from testifying at trial that he never saw such a buyers list (22 TR 19) and did not know if he ever saw the Prism 25 analysis. (21 TR 210)

Although it is admitted in interrogatory answers that Goldman Sachs was retained only to render a fairness opinion and was not asked to reconsider the fairness of the $23 price at the time of the Merger (PX 459 Responses 85-7), as discussed above, Kamerman testified at trial that the opposite was true.

The one consistent recollection that Kamerman had on deposition and at trial was that the Simone incident was the most "dramatic" thing that happened at the Special Board Meeting. Yet in telling his whitewashed version of the incident at trial, numerous times Kamerman was tripped up by contradictions between his deposition and trial testimony.

On deposition Kamerman recalled that Simone told the directors that he had been approached by someone, and thought he could get more than $23 a share. At trial, Kamerman said "No, he did not" say that. (20 TR 122-24) On deposition Kamerman specifically recounted, "I had to answer him [Simone]." At trial he replied, "I just testified that I didn't answer Simone." (20 TR 136-37) At his deposition Kamerman testified "[w]e didn't specifically discuss going ahead with his [Simone's] recommendation," but at trial he said there was such discussion. (20 TR 147)

Asked whether we therefore should conclude that his deposition testimony was not truthful, Kamerman launched into an exegesis:

> What is truth? If I'm not telling a lie it is the truth. It's what I thought the truth is.
>
> I mean is truth transitory? Is that what you are trying to tell me?

(20 TR 148)

Given Kamerman's shifting view of truth and the contradictions inherent in his depiction of the Simone incident, his claim that Simone voted "yes" must be regarded as untrue.

Moreover, we submit that the Court should conclude that in general Kamerman was not a credible or believable witness. Indeed, we must say that in our view based on the witness' demeanor and the content of his responses, the only appellation that fits this witness is that he is a compulsive liar.

2. Richard Sapp - I'd Rather Be Someplace Else

From his demeanor and the nature of his responses, Sapp made clear that he viewed his presence in Court as an intrusion, an ordeal to be endured with as little effort on his part as possible.

Indeed this attitude of total disinterest permeated his view of the whole process. Asked whether prior to giving testimony in Court he reviewed his deposition, Sapp responded, "... . [I] started reading it from the first page and quickly got tired of it ... ." He added "[I] got tired and I stopped reading it." (31 TR 47)

Sapp's trial (and deposition) testimony are heavily laced with, "I don't recall." At times it became a litany that he repeated by rote rather than take any time to think about the question. On occasion what he lacked in recall he made up for with invention. Thus, when asked on deposition whether he recalled who responded to the valuation memorandum circulated on October 20, 1982, he responded with an unequivocal "no." (Sapp 130-31) At trial, however, he purported to specifically recall a discussion with Tom Mendell, a vice president in the merger

department, about the need to do an LBO analysis. (30 TR 83-4; 32 TR 51-2)

On deposition he insisted that he could not recall who approved the oral fairness opinion because it was "too long ago." (Sapp 19, 563) Yet almost four years later at trial he testified that Messrs. Boisi and Sachs signed off on the opinion. (32 TR 111-12)

On deposition Sapp recalled no discussion about reconsideration of Goldman Sachs' fairness opinion and specifically stated that he had no "meaningful contacts" with Technicolor after the written opinion was issued on November 19, 1982. (Sapp 93) At trial, however, he purported to recall a call with Powitzky on that very issue in connection with the consent to use the opinion in the Proxy. (32 TR 218)

Although when deposed, Sapp answered virtually every question posed about the Special Board Meeting with "I don't recall" or "I don't remember", at trial he testified in detail about what was discussed at that Meeting. Thus, for example, when asked on deposition whether Kamerman or someone else made a presentation at the Board Meeting concerning Technicolor's business, Sapp responded, "I don't remember." (Sapp 467) At trial Sapp belatedly recalled in detail that Kamerman gave an overview of Technicolor's business. (32 TR 121-24)

With respect to Goldman Sachs' presentation at the Special Board Meeting, Sapp recalled virtually nothing of what Golden said about any of the exhibits on deposition. But at

trial, he purported to recount Golden's comments. (See, e.g., Sapp 505, 510; 32 TR 145-49)

Asked about how the vote was conducted back in 1986, Sapp did not even recall what was voted on, whether there was a single or multiple vote or how the vote was conducted. (Sapp 567-68) Asked the same question at trial, Sapp somehow recalled that there was a single vote on all the resolutions. (32 TR 204-07)

In short, given his unexplained memory restoration at trial, the logical inference is that Sapp's testimony was largely the product of someone's coaching or a vivid imagination. By virtue of his demeanor and the content of his testimony, we submit that the Court should also conclude that Sapp was not a credible witness.

3. Defendants' Other Witnesses

The credibility of other defense witnesses must also be seriously questioned. As discussed above, on deposition not a single witness so much as mentioned any concern about damage to Technicolor's business that allegedly would result from knowledge that the Company was for sale. Not a single document records any such concern. This subject was such a well kept secret that the copious and compulsive corps of note takers (Brown, Oliphant, Golden, Sapp and Venuto) all neglected to even hint at its existence. In the same vein is the market test claim. When is a lockup not a lockup -- when it is a market test. Here too the word lockup was used ubiquitously in 1982, and market test was a

well kept secret. (So secret we doubt the market was even aware it was being tested.) Contrary deposition testimony and documentary evidence notwithstanding, at trial not only Kamerman and Sapp, but also Messrs, Brown, Isham and Lewis dutifully poured forth, almost word for word, the same story about confidentiality concerns and market tests. It was too good to be true -- and it was not.

SUMMARY OF ARGUMENT

Volume II: The Fraud Case

The preponderance of the credible evidence establishes that Charles Simone opposed the sale of Technicolor to MAF. Absent unanimous Board approval, which was not procured, a 95% shareholder vote was required to approve the Merger. Since only 7% of the Technicolor shareholders joined MAF/Perelman's 82% block to vote in favor of the Merger (a combined total of 89% of the shares outstanding), the Merger was void ab initio. Simone was not able to testify at trial due to failing health. He is now deceased. However, by stipulated Order (PX 466) his deposition testimony must be given the same weight as if he had been able to testify in person at trial. Simone's credibility is confirmed by his spontaneous, unwaivering admissions against interest at two depositions. His character was so unassailable defendants dared not challenge it. The record includes corroborating evidence of Simone's dissent, including the admission by Kamerman that Simone's actions and comments at the Special Board Meeting were "dramatic".

The Director Defendants breached their fundamental fiduciary duties of loyalty and care. They selfishly pursued a course of unfair dealing which led them to sell Technicolor at a firesale price. Serious conflicts of interest, which should have disqualified five interested directors from even participating in, much less voting at, the Special Board Meeting, dictated a course of unfair dealing proscribed by Weinberger v. UOP, Inc.. That unfairness included: how Sullivan and Kamerman selfishly

initiated the deal; how the underqualified directors were not prepared to consider the deal as a result of unnecessary, self-imposed haste and secrecy; how the Board's advisors were improperly selected, restricted and misinformed; how the transaction was poorly timed to benefit Perelman and the interested directors, to the detriment of all other shareholders; how the price was arbitrarily determined and based solely on what Perelman could pay, rather than on the value of Technicolor; how the structure of the deal was dictated by self-interest; and how a majority of self-interested directors unlawfully approved the deal. The Board's unfair dealing inevitably resulted in a sale that was so unfair that the price itself was a badge of fraud.

The Director Defendants' conduct was a clear violation of their Revlon duty. The Board sanctioned a transaction with these obvious flaws: a lockup deal entered into without even considering, much less evaluating, alternatives to maximize shareholder value; a lockin deal that did not give the directors even a "fiduciary out", thereby precluding a market test of the arbitrary price; and a hurried, hollow fairness opinion based on inaccurate and incomplete data and assumptions, which was such a poor substitute for meaningful negotiations and a market test that it deceived more than it enlightened.

The disclosure violations surpass those found to be fatal in Weinberger and Smith v. Van Gorkom. The publicly filed documents failed to disclose candidly and/or completely each of the following: conflicts of interest, many of which were not even disclosed to the directors, much less to the stockholders;

the casual and arbitrary manner by which the price was determined; the fact that there was a lockup, and how the lockup worked; the restrictions placed upon Goldman Sachs, and how it improperly prepared and presented its fairness opinion; the deliberate deletion of language informing the shareholders that the Goldman Sachs' opinion given at the Special Board Meeting was an oral opinion subject to subsequent due diligence and confirmation; the fact that the stock market price and future of Technicolor had been jeopardized by One Hour Photo, which by October of 1982 had become a "crap shoot" that could have been halted, had the Board the backbone to admit a mistake and to stop gambling with shareholder value; how the Special Board Meeting was conducted and what occurred at that meeting, including Simone's disapproval of the deal; and a host of other disclosure violations, which cumulatively were at least as important to the total mix of information provided to the shareholders as each of the above-described material breaches of the duty of candor.

The Director Defendants' gross negligence surpassed even that of Messrs. Van Gorkom, et al. found actionable in Smith v. Van Gorkom. The Director Defendants were so unqualified, unprepared and uninformed that it was simply not possible for them to make a snap decision to sell Technicolor at an impromptu three hour meeting. They did not know the background of the deal; they did not know how the price was determined; they did not understand the crucial terms of the deal; they did not know the value of Technicolor; and they did not know, much less evaluate, what alternatives were available.

Notwithstanding their lack of preparation, knowledge and understanding, the directors failed at the Special Board Meeting to ask questions and demand explanations in order to affirmatively discharge their fiduciary duty. They let themselves be misled and misinformed by the selfish and domineering Kamerman, who was assisted by the equally selfish silence of Sullivan and Ryan. The Director Defendants unjustifiably took comfort in a fairness opinion that was mere window dressing without substance. When given permission to vote by uninformed and misinformed outside counsel, they followed Kamerman and his handicapped advisors like sheep, except for Simone.

The gross negligence at the Special Board Meeting was unchecked by any procedural safeguards. There was no time to read, must less study, the deal documents or Goldman Sachs' report. There was no executive session to air conflicts of interest, and to permit candid criticism of Kamerman's deal and the outside advisors. The Director Defendants did not even consider employing any procedural safeguards, such as the appointment of a special committee of disinterested directors, requiring approval by a majority of the minority shareholders, or simply an adjournment to permit evaluation of the three cursory presentations made at the morning meeting. The Special Board Meeting was so casually conducted that even the vote of the directors was misconstrued, at best, or was misrecorded, at worst.

Perelman and MAF must share liability with the Director Defendants. Perelman controlled MAF and is responsible for its corporate misconduct as well as his own. Upon completion of the Tender Offer, MAF/Perelman became a majority shareholder of Technicolor and thereby assumed fiduciary responsibilities to the minority shareholders. As fiduciaries on both sides of the Merger transaction, MAF/Perelman have the burden of demonstrating the entire fairness of the Merger. This they cannot do. Indeed, the MAF/Perelman breach of duty rivaled that of Kamerman, Sullivan and Ryan, because, like them, MAF/Perelman knew better and knew more than the other Director Defendants. MAF/Perelman knew how the price had been determined, how the lockup worked and how much more Technicolor was worth than the bargain basement price. Notwithstanding that superior knowledge, MAF/Perelman did nothing to correct, or to improve the quality of, the public disclosure. That fact alone renders MAF/Perelman liable to plaintiff.

In addition to liability premised upon breach of fiduciary duty, MAF/Perelman are liable as aiders and abetters of the misconduct of the Director Defendants. Thus, all of the defendants are jointly and severally liable to plaintiff.

Plaintiff in the fraud action should be awarded rescissory damages for the fraudulent and/or grossly negligent taking of its 201,000 shares of Technicolor stock. Rescission is not possible, but rescissory damages are easily ascertainable. MAF/Perelman sold Technicolor to Carlton PLC in 1988 for $760 million, less adjustments. The company sold in 1988 was

fundamentally the same as the company acquired in 1983. All of the growth in Technicolor's core businesses was the natural outcome of business strategies in place as of the Merger, and that growth could have been financed from internal cash flow. Plaintiff's recovery should be its proportionate share of the Carlton sale price, with compound interest to "update" the sale to the present.

Plaintiff is also entitled to recover the costs of exposing the defendants' misconduct and vindicating its rights. In the exercise of the Court's sound discretion, plaintiff should be awarded its reasonable attorneys' fees to preclude a hollow victory which would reward defendants' misconduct.

Volume III: The Appraisal Case

Pursuant to 8 Del.C. §262, Cinerama is entitled to receive its proportionate share of the intrinsic value of Technicolor as of the date of the Merger, determined by the application of all relevant factors. The intrinsic value of Technicolor as of the Merger was $286 million, which is the equivalent of $62.75 fair value per share.

The appraisal must begin with a recognition that as of the date of the Merger, Perelman was in control of Technicolor and had begun the implementation of his new strategic plan for the company. That plan involved the disposition of specific non-productive or underproductive assets during 1983 for a net cash benefit of at least $50 million and the concentration of all future efforts on the film processing and videotape duplicating

and government contracting businesses. Technicolor under that plan, as it existed on the date of the Merger, is the entity to be appraised.

The appraisal process must consider all relevant factors, not just the stock market price of a company. Moreover, in this case the market price of Technicolor's stock prior to the MAF offer was artificially depressed as a result of negative reaction to the One Hour Photo adventure. Since the stock market never had a chance to value Technicolor under its revised business strategy implemented by Perelman, the stock market price of Technicolor is not a relevant or material factor in this appraisal.

The appropriate methodology for determining Technicolor's going concern value as of the Merger is a discounted cash flow technique, which is widely used and generally accepted in the financial community. Petitioners' experts used such a technique. Respondent's two experts, who could agree on virtually nothing, relied on methodologies that are not generally accepted in the financial community as techniques for calculating intrinsic value. Both of respondent's experts have relied exclusively on stock market generated values (Professor Hamada directly and Professor Rappaport indirectly), and both valued Kamerman's Technicolor. Accordingly, the Court should employ the Princeton Venture Research ("PVR") discounted cash flow model to value Technicolor as of January 24, 1983.

All of the mathematical/statistical techniques employed by PVR to develop its cash flow forecasts -- regression analyses,

a logistic curve, an experience curve and a perpetuity growing in nominal terms -- are generally accepted and widely used in the financial community for forecast purposes. They were all appropriately used and objectively employed in this case. The Court should therefore employ those techniques for the purpose of forecasting Technicolor's future cash flows.

As of the Merger, Technicolor's future prospects were excellent. The company was sound financially and had a dominant market position in film processing. Its facilities were the most modern and efficient in the industry and its service and speed were without equal. The videocassette duplicating plant was one of the largest in the world with state-of-the-art equipment. The company anticipated that its film processing business would be a stable generator of large cash flows, and its videocassette duplicating business offered an opportunity for tremendous growth.

The motion picture industry in January 1983 was economically healthy and expected to grow in the years ahead. The theatrical exhibition of films was growing with more screens being employed to show more films in wider first run releases -- all leading to greater demand for prints of motion pictures. Both the qualitative and quantitative evidence indicated that demand for film processing services would grow in the years after 1982. The home viewing of films on videocassettes had begun its non-linear growth patterns and was expected to experience explosive growth in the years following 1982. Technicolor was well positioned to capitalize on that growth.

Based on the foregoing status of the motion picture industry in January 1983 and Technicolor's competitive status in that industry, PVR developed reasonable inputs to its discounted cash flow model. Those inputs were few in number and based on the evidence available as of the Merger. Once employed in the model, the inputs led to objective, mathematically derived forecasts of operating profit and cash flow. Those forecasts were reasonable, even conservative.

The appropriate discount rate to employ in connection with the forecast cash flows is the rate which best measures the risk associated with those cash flows. Since the forecast Technicolor cash flows were less risky than those of an average manufacturing concern in 1982/83, and since the normal range for discounting such cash flows in 1982/83 was 10% to 15%, the appropriate and reasonable discount rate in this case is 12.5%.

The appraisal award should include interest of 12.07% compounded daily from the Merger date until the date of payment in order to make petitioners whole and guarantee them fair value in real economic terms. For the same reason and because the appraisal statute grants the Court the discretion to do so, the appraisal award should include reimbursement to petitioners of all their litigation costs, including the fees of their expert witnesses.