No; 07-2360

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT COURT

IN RE: ETOYS, INC., et al., 01-706

ROBERT K. ALBER
Appellant

v.

MORRIS NICHOLS ARSHT & TUNNEL ., et al

Appellees

The Appeal(s) from the United States District Court of Delaware
No; 05-830 and 05-831 (procedurally consolidated)

v.

UNITED STATES TRUSTEE APPELLEE

EMERGENCY MOTION Writ of MANDAMUS for Failure to be Noticed Requesting shortened noticed and extraordinary remedy because of evidence of a "*bankruptcy ring*" and Fraud upon the Courts with Justice Dept desire to cover up.

Laser Steven Haas
108 E Jewel St
Delmar Delaware, 19840
Laserhaas@msn.com
626-736-9291

TABLE OF CONTENTS

I. STATEMENT OF JURISDICTION

1. Quoting the US Trustee in their response to Robert Alber's initial brief, this appeal involves a core proceeding (*as defined in* **28 U.S.C. § 157(b)(2)**) arising under title 11 of the United States Code, over which the United States Bankruptcy Court for the District of Delaware had jurisdiction pursuant to **28 U .S.C. § 157(b)(1)**. The United States District Court for the District of Delaware had jurisdiction over Appellant Robert K. Alber's appeal from the bankruptcy court's October 4, 2005 order pursuant to **28 U. S.C. § 158(a)(l)**, as it was an appeal from a final order of the bankruptcy court. Mr. Alber timely filed a notice of appeal of the district court's February 27, 2007 final order dismissing his appeal to the district court. Accordingly, this Court has jurisdiction over Mr. Alber's appeal pursuant to **28 U.S.C. § 158(d)**. This Writ also states such as well as various other, serious issues, that make the instant appeal a matter that this honorable body needs to address at the request of this "*pro se*" petitioner Steven Haas ("Haas"), the Court approved liquidation company sole owner whom the bankruptcy Court also gave standing[1] to.

II Extraordinary Circumstances dictating the need for Writ of Mandamus

2. This Emergency Motion seeks a Writ of Mandamus that may be utilized when the system refuses to address matters of recusal or comply with unambiguous statutory mandates of disqualification. Fraud is continuous, even today, in eToys and the authorities thus far have engaged in staunch acts of "*nolle prosequi*". A Writ of

[1] The bankruptcy court approved two contracts for Collateral Logistics (CLI) that also mandated a certain number of personnel be provided for by CLI to the Debtor estate at the direct expense to be paid by Debtor. The vast amount of arguments that Haas lacks standing are disingenuous as a ruse to cover up fraud.

Mandamus[2] is "*drastic remedy that a court should grant only in extraordinary circumstances in response to an act amounting to a judicial usurpation of power*" (In re: Mwanze, 242 F.3d 521, 524 (3d Cir. 2001)). This court has jurisdiction and is about to make a decision in the eToys case that is germane to Emergency[3] issues and this Court should be informed of the facts documented below to avoid any further wasting of the Court's efforts of justice. It is imperative to inform the Court that serious criminal "*defensive*" posturing is occurring in a possible effort to pervert justice for the benefit of "*unclean hands*". They are doing preemptive efforts to thwart the appeal outcome Jan 2nd.

3. This Circuit has addressed the issue of "*bankruptcy rings*" before. (In re Arkansas Co., 798 F.2d 645 (3rd Cir. 08/13/1986)). This Circuit remarked upon the fabric of the stabs to clean up errant efforts, *after the fact*, to circumvent the Code, concerning offending applications of **§ 327(a)** and **Rule 2014** affidavits. This Circuit remarked;

> "[*W]e reject the notion that a complete and thorough post-application review may substitute for prior approval in most cases. This approach would render meaningless the structure of the Bankruptcy Code and Rules, which contain provisions requiring both prior approval of employment and after the fact approval of compensation. 11 U.S.C. §§ 327(a), 1103(a), 330; Bankruptcy Rules 2014(a), 2016, 2017".*

4. It is undisputed that errant, false **Rule 2014** affidavits[4] have occurred. This instant appeal originates from disputing the US Trustee signing of a Stipulation as the Court refused to disqualify parties who admitted mendacity. The illegality being readily

---

[2] TITLE 28 > Part V > CHAPTER 111 > § 1651
(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principals of Law.
[3] "*A writ of Mandamus[3] will issue only in extraordinary circumstances*" (See Sporck v. Peil, 759 F.2d 312, 314 (3d Cir. 1985) *(*See remarks in Arkansas of In re Laurent Watch Co., 539 F.2d 1231, 1232 (9th Cir. 1976) (per curiam)
[4] The US Trustee Motion to Disgorge and the bankruptcy Courts Opinion have affirmed false affidavits.

apparent as the Court and US Trustee seek *judicial usurpation of powers* by the Court approving an illegitimate clemency clause;

> "***WHEREAS***, *the United States Trustee shall not seek to compel TBF to make additional disclosures*"

5. There is no legal basis for the Bankruptcy Court to use such "*clause*" as a qualitative or quantitative measure of "*judicial usurpation*" of the integrity of the judicial process. Chiefly important, manifest injustice is continuous, within the jurisdiction of this Circuit by willful blindness, "*pretense*" and "*color of law*", benefiting a "*bankruptcy ring*" that is becoming incestuous organized crime within the Delaware court system.

6. The Matter of Arkansas was concerning a much less ruthless effort, being a "*nunc pro tunc*" employment, yet this Circuit felt it necessary to remark upon Cronyism and "*bankruptcy rings*" in the Arkansas matter to send a clear message and warning that the Circuit was aware of such nefarious possibilities, so that those that would engage in any efforts of end runs around the law and the Court's auspice would think twice. Where this Circuit specifically remarked;

> "*It is significant that Congress chose to place the requirement of court approval for the employment of an attorney, accountant, or other professional by the creditors committee directly in the Bankruptcy Code in 1978. 11 U.S.C. § 1103(a). The legislative history makes clear that the 1978 Code was designed to eliminate the abuses and detrimental practices that had been found to prevail. Among such practices was the cronyism of the "**bankruptcy ring**" and attorney control of bankruptcy cases. In fact, the House Report noted that "*in practice . . . the bankruptcy system operates more for the benefit of attorneys than for the benefit of creditors*." H.R. No. 595, 95th Cong., 2d Sess. 92, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6053"*

7. On Dec. 14, 2007, this Circuit scheduled the mattes for Trial on January 2, 2008. Then on Dec. 18, 2007 a motion by the "*planted*" party of Barry Gold[5] who has implied he will, *or has*, withdrawn as CEO/ Plan Administrator occurred. The perpetrators and Mr. Gold are seeking payment of legal defense funds, at the same time the KB Toys case[6] (*which owes the eToys Debtor tens and maybe hundreds of millions*) is rushing to a close, while the NY Supreme Court trial of tens of millions remains in serious question of fraudulent peril.

8. The Asst US Trustee testified to the fact that the parties sought permission concerning placing a connected party in as sole bankruptcy authority. Despite the warning the counsel for the Creditors and for the Debtor placed a connected party in as a "*wind-down coordinator*" (Barry Gold), who has been the Plan Administrator since November 2002 till present. Now the parties seek to maintain control by ruse[7] in replacing Mr. Gold.

9. While this movant does not desire to interrupt the current proceeding that is scheduled for January 2, 2008. Such may be necessary, at least for a few days, to give opposing parties the chance to respond. The fact remaining is the US Trustee and the other appellee's have refused to give this movant [Haas] proper notice, repeatedly, even after being forewarned[8] against such malevolent behavior. The perpetrators are in total, nefarious control of the estate, within and throughout, seeking to maintain safe control.

---

[5] It is undisputed, actually "*confessed*" that the Creditor's law firm Traub Bonacquist & Fox (TBF) did place a TBF paid associate within the Debtor as a "*wind-down coordinator*" doing such post-petition. As affirmed in both the US Trustee Disgorge Motion (D.I. 2195) & the Bankruptcy Court's Opinion (D.I. 2319)

[6] One of the non disclosures that remains ongoing is Barry Gold, the Debtor and Creditors counsel connections to Bain/KB Toys where the parties colluded and sold the assets of the eToys Debtor to Bain/KB for discounts in the tens of millions while the collaborative parties refused to seek public equity mergers.

[7] The parties rigged the plan votes, control the Plan by negative notice and own many of the claims without disclosure of the facts. After already confessing to ignoring a warning by the US Trustee and doing misdeeds

[8] When Haas sent the response to the Alber initial brief the email contained the specific warning for the parties to refrain from the continuous practice of not notifying Haas, which was patently ignored.

10. It is a fact, not in contention, that the Creditor and Debtor's counsel have confessed to supplying, multiple false **Rule 2014** affidavits to the bankruptcy court[9]. The counsels submitted monthly items to the Court and have provided over 19 false affidavits. Including two (2) false testimonies by the Plan Administrator. Yet, despite Court docket proofs of this perjury, the US Trustee and the bankruptcy court have stated no perjury has been documented being contradictory to its own Opinion[10] while approving the US Trustee's clause. Once one confesses of perjury nothing they say has value or verity.

11. This instant appeal also concerns the issue that no disentitlement has occurred as the bankruptcy court went on the record in the Opinion of October 4, 2005 refusing to disqualify,[11] also refusing to refer the matter to the US Attorney's office. Now the parties seek to pull a fast one on the Circuit's authority by replacing the Plan Administrator with a party hand picked to assure the continued success of their schemes.

III Issues presented

12. In the current debate of whether the district court abused its discretion in dismissing Mr. ALBER's appeal under Poulis, multiple parties requested to amend the appeal concerning Steven Haas (a/k/a Laser) (hereafter referred to as "Haas") and the

[9] The Debtor and Creditor's law firm have admitted to supplying, multiple, false affidavits to the Court. The Disgorge Motion, ¶19 and ¶35 stated the parties were [warned] while the Disgorge Motion proved intent ¶18

[10] The Court also stated in the OPINION that exculpations would not apply "*for acts constituting willful misconduct or gross negligence*." While Her Honor Walrath cited on such on page 12 & 13 of the OPINION in part 6 Exculpations; In re United Artists Theatre Co., 315 F.3d 217, 230 (3rd Cir. 2003); and In re PWS Holding Corp., 228 F.3d 224, 246 (3rd Cir. 2000) as there are more than 23 false affidavits *willful is affirmed*.

[11] Where there is an actual conflict of interest, however, disqualification is mandatory. See In re Marvel Entertainment Group, 140 F.3d at 476.) (emphasis added.) . In re Middleton Arms, L.P., 934 F.2d 723, 724 (6th Cir. 1991) the Sixth Circuit found that the prohibition against disinterestedness was "*unambiguous*" and held that "*[section] **327** prevents individual bankruptcy courts from having to make determinations as to the best interest of the debtors*

parties sought also to amend the appeal headings concerning Kelly B Stapleton. MNAT law firm has specifically named Haas specifically in the MNAT cross appeal[12] of 05-831.

13. This Court denied requests to amend parties, yet the parties of the US Trustee and various appellee's have refused to serve "*proper*" notice to party Haas. Haas notified the appellee's, when Haas sent out the Haas response brief in this instant appeal, warning the appellee's not to ignore Haas, or any other parties of interest[13]. That setback now presented, Haas also brings to this Court these other issues as well, for review,

a. Does Haas have standing as person aggrieved and/or appellee
b. Must the parties give notice to Haas and abstain from bad faith
c. Under Fed. Rules of Evidence - Judicial Notice 201[14]
    1. Was Barry Gold required to apply per § 327(a)
    2. Is the US Trustee Stipulation to Settle circumvent of **327(a)** valid
    3. Did the Bankr. Court errs in stating no perjury occurred.
    4. Did the Bankr. Court err in stating no disqualification
    5. Did the Bankr. Court err in refusing to refer to the US Attorney
    6. Did the Bankr. Court err in denying Haas standing
    7. Did the Dist Court err in dismissing Robert Alber under Poulis

---

[12] The appeals of Del. Dist. Ct. of 05-830 and 05-831 are procedurally consolidated

[13] Haas received a belated mailing of the US Trustee's response brief and appellant Robert Alber gave Haas a copy of the other appellee brief, remedies are required, as the parties, including the US Trustee endeavor to persuade this Court that Haas is a "*non party*". Schemes to defraud will prevail without vigilance.

[14] Federal Rules of Evidence 201 *re:* ARTICLE II. JUDICIAL NOTICE - Rule 201.

(a) *Kinds of facts.* A court may take judicial notice of a fact. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(b) *Kinds of law.* A court may take judicial notice of law. Law includes (1) the decisional, constitutional, and public statutory law, (2) rules of court, (3) regulations of governmental agencies, and (4) ordinances of municipalities and other governmental subdivisions of the United States or of any state, territory or other jurisdiction of the United States.

(c) *When discretionary.* A court may take judicial notice, whether requested or not.

(d) *When mandatory.* A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) *Opportunity to be heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken

8. Will this Court void Barry Gold, ab initio, per 327(a) or Plan 5.2
9. Was the Ordered response of January 25, 2005 a total come clean
10. Will this Court rule that "fraud on the court" has occurred, intentionally and make official referral to the US Attorney office

d. Can this Court order that Haas or CLI be Plan Administrator in place of the voided Barry Gold, for the sake of rectifying fraud & the Plan protection[15].

e. Due to the abundant skullduggery overwhelming documented; will this Court maintain authoritative watch over the case or Order a change of venue to assure integrity of the judicial process, including the "*extraordinar*y" method of "*Quo Warranto*" as this criminal conspiracy warrants.

f. Will this Court take notice that the Plan has extraordinary circumstances that exists that the Debtor's estate can be made whole by a comfort order

IV **This brief is submitted by Oath "*under penalty of perjury*".**

14. These facts are brought to you this day, by Steven Haas (a/k/a Laser Haas) (hereafter referred to as "Haas"). Whereby I, Steven Haas, this 26rh day of December 2007, "*under penalty of perjury*" testify to all items above as well as the following items below;

15. Accordingly the questions that we pose to you, or any reader of this criminal saga, shall simply be, - *do you mind*? Does one mind that officers supplied the court with sworn affidavits that were false, *intentionally*? Does one mind that the Dept of Justice has chosen to crush a whistle-blower while *defending the perpetrators of fraud*

[15] This request, while unusual is not improper. The bankruptcy Court originally approved Haas's company, Collateral Logistics Inc (CLI) as the Court's "sole" liquidation consultant. The parties conspired to defeat the liquidation efforts by perjury and willful fraud on the court. Haas has remained diligent in CLI duties. The position of "wind-down coordinator" and liquidation consultant or Plan Administrator are the same.

instead of protecting the public's trust as they are sworn to do[16]? Are you incensed by the fact that the Court itself, sought to be lenient on behalf of well-established colleagues[17]?

16. Is it upsetting to know the bankruptcy court's leniency is complicit in defrauding creditors and whistle-blowers[18]? Can anyone sit inactive while our system of justice, the US Trustee's bureau and US Attorney's office engage in a cover up that seeks to keep every authority from knowing that their acquaintances are involved in a plot of $300 million in fraud? Where the "*police*" of the Courts are defending versus arresting malfeasance as a "*syndicate*" has reared its ugly head and dares anyone to question why!

17. They have given i*mplied, blanket, immunity* to their well-established colleagues! Is this mockery of justice to continue? Can we stop people who state, with legal fraud, that they are Above the Law? Can we stop Organized Crime in our Courts?

V Background and Statement of the War of Fraud

A simple desire to destroy books n records and the next thing $300 million disappears.

18. One is bound to be astonished, and cynical, at the same time. The amount of subterfuge in the eToys saga makes it necessary to present this chronicle in a manner that will cure the doubter within. Haas is "*pro se*" after having hired eight different counsels, (*even though the Debtor's estate is contractually obligated*[19] *to provide defense*), where all

[16] The US Trustee is commanded by Oath of office and **28 USC § 586(a)(3)(F)** (and more) to halt the crimes.
[17] It is highly plausible that the Opinion of the Bankruptcy Court of Oct 4, 2005 was influenced to vindicate.
[18] The Court approved the Hiring of CLI and Haas; as a prudent matter of equitable justice it is appalling that the bankruptcy court would retaliate & deny adjudication upon merits of good faith, court approved work while refusing to address the issue of Fraud on the Court. Any Court must halt, rather than encourage Fraud.
[19] The bankruptcy Court approved the Contracts for CLI and Haas that stated the paperwork of CLI would be submitted to the Court with the "*assistance of Debtors counsel*" [MNAT] and the Indemnification clauses of the two [2] bankruptcy court approved CLI contracts specifically state the Debtor shall defend Haas and CLI.

counsels refused, despite **18 USC § 4 MisPrison** and **18 USC § 3057(a)**, firmly declining to report fraud on the court, by officers of the court, to any authority. As a result Haas and CLI was an abandoned client and was forced to become "*pro se*".

19. It is a moral & legal imperative that verification of the facts occurs. (*To assure the purity of the System of Justice*). Self-dealings, being illegal, are profuse[20]. They are enjoying the qualm that such cannot be, taking advantage of the unwillingness to hear.

20. It is necessary to review the three key court docket items,[21] the US Trustee and Bankruptcy Court provided, which will substantiate the actual criminality and a give anyone all the tangible evidence needed to know something is seriously wrong.

21. The firm of Morris Nichols Arsht & Tunnel (MNAT) was the Court approved counsel for the eToys bankruptcy case in Delaware (Bankr.# 01-706) (the "Debtor"). The firm of Traub Bonacquist & Fox (TBF) was the Court approved counsel for the Official Committee of Unsecured Creditors in eToys. The firm of Collateral Logistics, Inc., (CLI) was the Court approved, "*sole*" liquidation consultant of the Debtor. (Haas is the 100% sole owner of CLI). Robert Alber is an eToys public equity shareholder. The Post Effective Date Committee (the "PEDC") is the court approved Plan committee.

22. Abundant proofs of vast felony violations, including $300 million in fraud & voluminous acts of perjury (*several acts already confessed*[22]), have already been

---

[20] *A debtor in possession is bound by a duty of loyalty that includes an obligation to refrain from self dealing, to avoid conflicts of interests and [even] the appearance of impropriety* See e.g., Lopez-Stubbe v. Rodriguez-Estrada (In re San Jaun Hotel Corp.,) 847 F.2d 931, 950 (1st Cir. 1988); Bennitt v. Gremmill (In re Combined Metals Reduction Co.), 557 F.2d 179, 196-97 (9th Cir. 1977)

[21] The Fed R App Proc states that all parts of the original docket record are part of the Record. Therefore we ask that the Court review the US Trustee Motion to Disgorge Traub Bonacquist (D.I. 2195), the US Trustee Stipulation to Settle the Disgorge Motion (D.I. 2201) and the Opinion by the Bankruptcy Court (D.I. 2319)

[22] The Opinion & Order of the Court already documents that MNAT, Barry Gold and TBF had conflict of interest issues. It skips by the fact that false affidavits are Perjury. The fact remains perjury is confessed.

documented by the Bankruptcy Court[23]. The lawful authority[24] of the system has become void and rogue parties of the system making efforts to cover up an OOPS are now caught!

23. The management team that had originally formed eToys and went public in 1999 decides to file bankruptcy in 2000 and then declared that they were going to vacate the estate. The Court approved an Order to destroy[25] "*books n records*" (D.I. 300) after the eToys Debtor filed bankruptcy around March 7, 2001, leaving a void by a paperless trail.

24. Thus you have an uncanny situation where the Court should appoint a US Trustee; *in opposition*, Delaware is notorious for its disinclination to do so. Paul Traub the founder of Traub Bonacquist & Fox, as counsel for the creditors, being an opportunist, seized upon this perfect scenario as a pioneer of coarse ways to take advantage of the bankruptcy system. All the evidence of Court docket records demonstrates that TBF continuously became more brazen and flagrant[26] in disregard of **§ 327** and **Rule 2014**.

25. The fact is they (TBF & MNAT) admitted to acts of filing false **Rule 2014** affidavits in eToys[27], stating, in a cheeky[28] manner, that it was inadvertent. While

---

[23] The Asst US Trustee, Frank Perch, Disgorge Motion (D.I. 2195) only addressed a few of the 100 felony violations and concluded that there were multiple, intentionally false, **Rule 2014** affidavits and Fraud upon the Court had occurred. The US Trustee already proved TBF planted Barry Gold in the Debtor nefariously.

[24] Many parties staunchly persevere in denying appeal party Haas, Article III standing, as "*person aggrieved*" in order to dupe any honorable authority of the System of Justice and parties of interest from knowing that egregious, heinous crimes have occurred. Doing so under "*pretense*" and "*color of law*". Quite simply, the parties desire to cover up the issues, to hide the fact that well-established colleagues have stepped over the line. They need Haas to be denied standing so that adjudication upon merits never occurs. This will assure that the crimes go unpunished and cements material harm to parties of interest.

[25] (*Approving destruction of books & records is a specious event all its own*)

[26] Barry Gold has not disclosed his resume fact of being CFO of TSS Stores for 24 years, yet it is there where Mr. Gold first did a juggling act with **§ 327(a)** and a **§503(b)** claim, as a Supplemental Affidavit in the Stage Stores Bankruptcy case shows that the dodging of **§ 327(a)** of TBF and Barry Gold in many cases is profuse.

[27] It is an undisputed Fact that both MNAT and TBF supplied multiple (**19**), false **Rule 2014** Affidavits.

[28] In re Envirodyne, 150 B.R. at 1022 ("*if the professional sought to be employed does not satisfy one prong of this standard, the Code prohibits the court from authorizing his or her employment*"). His Honor Judge Alito stated In the Matter of Price Waterhouse 19. F.3d 138, 140 (3rd Cir. 1994) that the 3rd Circuit rejects the endeavor to misappropriate the Language that the Court may take a "*flexible approach*" in reference of In re BH&P, 949 F.2d at 1315 [**12] stating that *"in the current case, we must interpret and apply Section **327(a)*** ----- as we have explained, we find no ambiguity in the relevant language of Section **327(a)**." (*It should be noted that none of the debtors' creditors objected to the proposed retention in the Price Waterhouse case)*

fiendishly the truth is they admitted to a small amount of illegal acts, as they continuously remain silent about $300 million in fraud. They are also unfettered in major threats of retaliation, obstruction of justice and racketeering because of *implied immunity*[29].

26. The Asst US Trustee originally responded with a Motion to Disgorge[30] TBF. Which was then inexplicably followed by a Stipulation to Settle, by Mark Kenney (*the attorney for the US Trustee*). Additional fraud occurred in the KB Toys case, in March 2005, that Haas whistled upon, as TBF had threatened Haas to "*back off*" or CLI would not get paid and that Haas and/or CLI would suffer additional retaliations[31].

27. The eToys Bankruptcy Court then retaliated, expunging and dismissing Haas & CLI, wiping out CLI/ Haas's Senior priority admin claim for $3 million. That Haas did appeal in September 2005. The bankruptcy court then issued an Opinion and corresponding Order that approved the Stipulation to Settle on October 4, 2005.

28. Haas and Robert Alber immediately appealed this approval, while MNAT also cross-appealed. Multiple appeals, petitions for rehearing, including requests for en banc rehearing occurred, that were all dismissed without adjudication upon the merits of Haas, CLI issues or proper review of the matter of Fraud on the Court. (*Many by Judge Kent A Jordan*[32] *which demands recusal under* ***§455*** *and additional appeal rehearing*).

29. Subsequently the most recent appeal currently being reviewed by this Court, as the Dist. Ct. used the extreme of a prejudicial Poulis Std., to dismiss Robert Alber, where the dismissal by Poulis, to be utilized last, is in debate as the Judge used it as a first.

---

[29] With the Stipulation to Settle, the Bankruptcy Court simply ignores a request for **Rule 5004** Recusal and **Rule 2020** Review of Failure to Act of US Trustee and the Opinion. Thus parties remain openly "*conflicted*"!
[30] The Asst US Trustee resigned after placing in the Motion to Disgorge TBF for $1.6 million (D.I. 2195)
[31] Haas has testified, continuously, that the CLI attorney, Henry Heiman, emailed the threat of TBF to Haas.
[32] It has been subsequently learned that Judge Kent A Jordan was a partner of the Morris James law firm that Haas initially engaged for the CLI claim. The Morris James firm issue necessitates Recusal under **§ 455**.

30. Everyone, including more than four (4) parties from the US Trustee's office have submitted briefs, response briefs and letters to this Third Circuit Court seeking to expunge Haas and Robert Alber, while the Justice Dept has refused to prosecute the case[33].

31. The lack of action by the Dept. of Justice parties, (*that have breached their fiduciary duties*), are thereby forcing the question[34] of "*Quo Warranto*"! As the scheming parties of TBF, MNAT & Barry Gold can only succeed by ploy and plot, with the blind eyes of the police (*US Trustee*), as they are now conniving to replace the position of Plan Administrator with another of "*their*" own and justice dictates that this cannot be allowed.

VI. The 3 court documents that prove the intent to do a Cover Up

32. The proof of perjury and fraud is the Asst US Trustee's Motion to Disgorge TBF for $1.6 million[35]. (The Disgorge Motion) (D.I. 2195 in eToys Bankr) (Feb. 15 2005).

33. The Asst US Trustee did not seek the mandatory disqualification, required by law and falsely concluded that a "*planted*" party by the Creditors attorney (Barry Gold) (a "*wind down coordinator*") was kosher, being opposite to the Code mandates.

34. This false premise of stating Barry Gold was not required to apply per **§ 327(a)** is a requisite in order to hoodwink inquiries[36] and to defeat Haas and Alber.

---

[33] The US Attorney Colm F Connolly whose office has declined to prosecute the eToys perjury and Fraud. The Delaware US Attorney said there is no case. (*While not revealing the fact that Colm F Connolly was a partner with MNAT in 2001, when the fraud and perjury began. The violations of ethics remain insidious*).

[34] The Director of the US Trustee EOUST in Washington DC had replaced Roberta DeAngelis with a press release dated Dec. 22, 2004, as that was the very same date of the Emergency hearing on perjury it is key. At the same time, Director Friedman also had personnel, direct contact, with both Haas and Robert Alber, informing them that the issues would be addressed. Then, contrary to that assertion, Mark Kenney issues the Stipulation to Settle and Paul Traub continues his fraud pursuits in the KB Toys case, asking, without disclosing connections thereto, to be the one to prosecute a $100 million transfer. After Haas complained to the Asst US Trustee and Director Friedman both parties resigned for "personal reasons" with no remedy.

[35] The Disgorge Motion states, effectively, that TBF did file multiple, intentionally false, **Rule 2014** affidavits (more than 19), which were materially adverse to the eToys estate and the Disgorge Motion, concluded, materially adverse harm with fraud upon the court had occurred by TBF. (*The Disgorge Motion only addressed four (4) of the 100 felony items documented to the Courts*)

35. The Disgorge Motion occurred because Haas proved and Alber joined Haas regarding "*undisclosed*" conflict of interest existing between TBF and Barry Gold (*as well as many other items of non-disclosure*).

36. Then, less than 10 days later, on Feb 24, 2005, the Dept of Justice attorney, Mark Kenney, made that Disgorge Motion void impiously. Mark Kenney supplied a Stipulation to Settle, (D.I. 2201) to give new leniencies to TBF as it concluded that TBF only would pay $750,000 sanction for TBF's transgressions, with abatement of disclosure.

37. This act to Settle can only be described as subversion to an oath of office.

38. Finally, the third document, that pulls the wool over the eyes of the public, is the Bankruptcy Court's Opinion[37] of October 4, 2005 (D.I. 2319). That had a corresponding Order attached (D.I. 2320). Despite the fact that Paul Traub of TBF confessed[38] to the Court, in a March 1, 2005 hearing to multiple statutory violations, the court refused to disqualify or refer for prosecution. Even after TBF admits it paid Barry Gold four (4) payments of $30,000 each prior to TBF placing Barry Gold, *in a clandestine manner*, as the bankruptcy Court clearly errs in remarking no wrongdoing occurred.

39. The Opinion headed off Haas's appeal stating the Court finds the no criminal acts occurred. (*A statement made in comfort as everyone keeps striking and expunging Haas*). Then the Court also remarked, in a flagrant manner of Mark Kenney's Stipulation to Settle, that it refused to refer[39] the matter to the US Attorney's office[40].

VII The Dept of Justice warned TBF not to violate Section 327(a) and 101(14)

---

[36] The Disgorge Motion is also erroneously silent concerning MNAT and footnote1 says Mr. Gold is O K.
[37] http://www.deb.uscourts.gov/Opinions/2005/EtoysMNATfees.pdf
[38] Paul Traub was under direct Bankruptcy Court examination March 1, 2005 and while on the stand Paul Traub confessed to the fact that TBF paid Barry Gold four [4] payments of $30,000. (Transcript D.I. 2228)
[39] (*Violating **18 USC 3057(a)**, the **Judicial Canon's of Conduct** as well as any sense of ethical decency*).
[40] The Opinion is a 57 page that actually appears to be a defense document and is contradictory to itself and clear "unambiguous" statutory requisites and well established precedents within the Third Circuit.

40. Congress was aware that undisclosed conflicts are dangerous, which was affirmed by this Circuit, concerning the bankruptcy realm[41]. Therefore the Laws of **101(14)** "*definition of disinterested person*", Code **327(a)** "*Employment of Professional Persons*" and the affidavit requisite, to confirm that a court approved professional is in compliance, **Rule 2014,** was formed to assure judicial as well as professional integrity. The Asst US Trustee Disgorge Motion stated that he [fore] warned the parties[42]. (D.I. 2169 ¶19 & ¶35). Yet the Disgorge Motion and bankruptcy Court Orders refuse to disqualify.

41. Despite an authoritative instruction against an obvious unlawful act, the parties nefariously conspired to commandeer control of the estate. Whereby both the Debtor and Creditor's counsel (MNAT & TBF) drafted a clandestine Hiring Letter[43] (D.I. 2169) to place a connected party (Barry Gold of TBF) within eToys as the "*sole*" bankruptcy authority of the estate. They simply kept one exec on the payroll, to assure an appearance of a Debtor, (*David Gatto*) even though they were in essence, void of a client. The Hiring Letter documents duplication of CLI approved work by Barry Gold, who was a "*wind down coordinator*[44]" (*an effort to flip flop on what duties he was performing*).

---

[41] A recent report given to Congressional parties by the Legal Victim Assistance Project remarks upon the fact that it appears the US Trustee system is complicit in fraud. The document by Meryl Lanson reflects upon the Third Circuit case of In re Arkansas Co., 798 F.2d 645 (3rd Cir. 08/13/1986) which specifically noted that the system will continuously be corrupted by attorneys. The Third Circuit specifically cited Arkansas issues and remarked, "*This approach would render meaningless the structure of the Bankruptcy Code and Rules which contain provisions requiring both prior approval of employment and after the fact approval of compensation. 11 U.S.C. §§ 327(a), 1103(a), 330; Bankruptcy Rules 2014(a), 2016, 2017*". While this Circuit also remarked, "*Among such practices was the cronyism of the "bankruptcy ring" and attorney control of bankruptcy cases. In fact, the House Report noted that "*in practice . . . the bankruptcy system operates more for the benefit of attorneys than for the benefit of creditors.*" H.R. No. 595, 95th Cong., 2d Sess. 92, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6053*"

[42] The Disgorge Motion is very professionally written and detailed in proving fraud and perjury. Asst. US Trustee Frank Perch specifically states that the parties discussed the item of replacing key personnel of the Debtor with connected persons to the Court approved retained professionals and the US Trustee said NO!

[43] The eToys docket item 2169 is Barry Gold's response Jan 25, 2005 the Hiring Letter is Exhibit 1 thereof

[44] The Hiring Letter says Mr. Gold is a "*wind down coordinator*" this is duplicative of CLI as "sole" liquidation consultant for the Debtor's estate The combined collaborative powers of TBF, MNAT and Barry Gold, along with a willfully blind US Trustee's office effectively muscled out Haas and CLI from duties.

VIII Dept of Justice refuses to prosecute confessed perjury and obvious fraud

42. As the Asst Trustee remarked upon in the Disgorge Motion, the US Trustee is charged with overseeing Chapter 11 cases within the Delaware Judicial District in accordance with **28 U.S.C. § 586**. The US Trustee's office was designed by Congress to protect the system and public from "*bankruptcy rings*" and cronyism. The US Trustee is the "*policing*" authority of Chapter 11 bankruptcy matters as the Disgorge Motion pointed out in referencing *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.*), 898, F.2d 498, 500 (6 th Cir. 1990) (describing the US Trustee's office as a "*watchdog*").

43. When we shouted and screamed to all the authorities concerning the profuse frauds, the Delaware US Attorney, Mr. Colm Connolly's staff failed to tell us then (*3 years ago*) that Mr. Connolly was a partner with MNAT in 2001, when the bulk of the offenses occurred. (*It is perceptible that any honorable review of the facts, will kismet many*).

IX Trustee warned them not to do wrong as Fraud begins with a Hiring Letter

44. The Hiring Letter was submitted into the record, three years after it was drafted, along with their confessions to false affidavits. (D.I. 2169) as many false items are verified by the Disgorge Motion (D.I. 2195[45]). The exact verbiage of the Hiring Letter circumvention of the Code by offers, states the following;

> "*you shall retain such position – (i) the approval of your employment as an officer by Order of the U.S. Bankruptcy Court"*--

[45] Both the US Trustee Disgorge Motion and the subsequent Bankruptcy Court Opinion of October 4, 2005 directly quote the issue of "*wind-down coordinator*" which is only provided within the Hiring Letter of Barry Gold. How a policing and judicial authority can see such "*prima facie*" evidence and remain silent is absurd!

That was then made invalid by a bold, willful, circumvention and inducement –

" *–you have waived the condition in clause(i) you shall be appointed as President and Chief Executive Officer of the Company –*"

45. At such time Barry Gold was then paid $40,000 per month (*for two days work every two weeks*) and a promise of a bonus at the end of the case if he chooses willfully to evade the auspice of the Court. (*The letter was a scheme by TBF & MNAT*).

46. So restrictive is the statutory requisite on disqualification it is beyond the flexible powers of a Federal judge to circumvent the mandate, as is confirmed by *In re Middleton Arms, Ltd. Partnership* , 934 F.2d 723 (6th Cir. 1991). This Circuit has affirmed that disqualification is a Code mandate when non-disclosure violations occurs.

47. The failure of counsels to not independently review disbursed million dollar preferential cash transfer items, is a crime. (*In re Bucyrus* 94-20786 (E D Wisc.) *Matter of Gellene, Milbank & Tweed, Gellene imprisoned for perjury, total disgorgement of Milbank as they lost a $30 million lawsuit as a result of one instance of perjury to cover up a loan).*

48. Allowing the parties who engaged in subterfuge to keep their $14 million in semi -approved fees in eToys is the least of the criminal acts that has occurred in this saga. The US Trustee attorney, Mark Kenney now allows the parties to keep control of the vault of eToys, which the parties have seized nefariously by duping the Court's through perjury.

X The efforts of deny Haas standing are preemptory efforts to conceal Fraud

49. The Debtor was scheduled to hold an auction to sell the bulk of eToys assets to several parties in March 2001 for $5 million. Haas efforts helped the estate to accumulate over $45 million for liquidation assets. Instead of being appropriately

compensated for such triumph, CLI is being punished as the good faith sale efforts - harmed the scheme to sell the assets to connected parties. TBF, MNAT & Barry Gold are all hiding, under the guise of immunity *from disclosing clause;* of their relationship to Bain that acquired the eToys assets. They are all also connected to Bain's Liquidity Solutions[46].

50. MNAT, TBF and Barry Gold (*TBF's direct paid associate*) refused to compensate Haas or CLI at the end of 2001 and entered a document into the record, (*purportedly on behalf of CLI*), entitled the HAAS Affidavit in November 2001. The Certificate of Service document proves that MNAT did not give notice to Haas and CLI[47].

51. The parties had collectively discouraged Haas from seeking independent counsel for CLI; (*as a cost saving benefit to the estate*). The Court approved the Order that stated the paperwork of CLI would be supplied to the Court with the "*assistance of Debtor's counsel*" while waiving **Rule 2016**. This is corroborated by the Court Orders approving CLI (D.I 253 & 523) and the multiple affidavits of the Chairman of the Creditors Committee. So every time the scheming parties mention that CLI failed to file paperwork, they are testifying against their own failure to perform a fiduciary duty.

52. The Chairman also testified within multiple affidavits[48], to the fact that MNAT, TBF and Barry Gold deceived the Chairman when TBF and MNAT placed Mr. Gold in as eToys "*wind-down coordinator*". At all times Barry Gold was supplied by TBF,

[46] Liquidity Solutions acquired many of the Claims of the Debtor and Liquidity is Co-debtor of Bain's Stage.
[47] MNAT supplied the HAAS Affidavit to the Court and then later claimed it was a "*waiver*". The HAAS affidavit is eToys docket item 816 and any review clearly shows that CLI is entitled to success fees as it states in items 10 and 11 of the HAAS Affidavit. Combined with the amount of subterfuge no honorable body of justice can cleanly permit the parties to retaliate against HAAS without independent adjudication.
[48] The Courts simply ignore the Chairman's affidavits including the one of June 2005 (D.I. 2288 Exh A)

Traub stated Mr. Gold was as an "*arms length*" entity, unconnected to anyone, as another court approved, Xroads LLC submitted a bill stating[49], " awaiting *court approval of Gold*".

53. When the eToys shareholders questioned Mr. Gold about his TBF connections in a hearing on the Plan confirmation (*transcript D.I. 1394*). Mr. Gold denied[50] connections to TBF while on the stand and many in the room, (*including the Dept of Justice*), knew the statement was false at that time. Mr. Gold cemented the ruse by a Plan Declaration - Affidavit, where Barry Gold falsely stated, perjuring himself, that all the negotiations were done by "*good faith*" "*arms length*" parties (D.I. 1312) (*Gold &TBF*).

XI HAAS always had counsel until the Court expunged CLI in retaliation

54. From the time of the Haas Affidavit, once the defiant parties established goals in unethical behavior, until August 2005, Haas had engaged more than 8 counsels for CLI. All of who refused, despite the duty mandated under **18 USC § 4 MisPrison**, to report the acts of non-disclosure of conflict of interest to the Court or US Trustee. During the August 2005 hearing where the Bankruptcy Court expunged the CLI and Haas Senior priority Admin claims, His Honor Baxter refused a new counsel from speaking (Transcript D.I. 2322) where Haas had to go out of the Delaware system and seek new counsel to put in a "*pro hac vice*" as Judge Baxter made all counsel efforts moot expunging CLI claims.

55. Haas had informed, continuously, Mark Kenney, (*the Dept. of Justice, Wilmington DE, attorney for the* Region 3 *U.S. Trustee's office*), of the issues at hand. The

[49] EToys docket item 467 by CrossRoads LLC (the Court approved financial consultants) specifically states that Xroads negotiated the new D&O insurance for Barry Gold and was waiting up the Court's approval of the hiring of Barry Gold

[50] The Chairman of the Creditors Committee also gives affidavits stating TBF and Barry Gold deceived the Creditors Committee and the Court on Barry Gold and CLI issues. (D.I. 1481, 2111, 2281 & June 2005 2288.

responses by Mr. Kenney[51] were always dismissive until one day, in a fit of irritation; Mark Kenney did a "*lapse linguae*" as Mark Kenney stated that the conflict of interest issues of TBF & Barry Gold was resolved in the Bonus Sales case(DE Bankr 03-12284).

56. Researching how one case could cross collaterally solve the issues in another case led to the discovery of the Bonus Sales proof that inadvertently brought down their house of deceptive cards. Bonus Sales and the similar case of *In re Homelife* 01-2412 both had addressed the issues of TBF, Barry Gold their entity ADA and ineligibility due to conflicts of interest. TBF, Gold and Fleet Bank had already been addressed multiple times by the US Trustee. Fleet Bank remains a non-disclosed issue, even to this day, in the eToys matter by TBF and Barry Gold, along with many other "*hidden*" issues of the parties.

XII. The perpetrators are permitted retaliation as the Court expunges Haas

57. Enigmatically the Dept of Justice personnel, the perpetrators, and the Court's, have stated that Haas does not have permission to bring the issues of Fraud on the Court to the attention of the Court. The haughtiness to infer that one needs permission to point out fraud is disgraceful! This illegitimate denial of Article III standing is disingenuous, having no basis in statutory Law. The ardent horde does take advantage of loopholes or ambiguity. (A policeman can refuse to halt a robbery, if your money is ??)

58. It is only through this "*color of law*" that the parties are able to dodge prosecution by denying Haas or CLI standing. This is despite the fact that the Court did

[51] Mark Kenney was irritated at Haas persistence as Haas had notified Mark Kenney all along including Haas calling to Mark Kenney attention that the case Mark Kenney told Haas of, to dismiss Haas allegations, the Bonus Sales case and Mark Kenney failed to move immediately to rectify. Whether Mark Kenney has received remuneration or other considerations or is just seeking to be a good buddy, he is complicit overtly.

approve the CLI contracts, which state the eToys Debtor is directly responsible for all labor and expense "*to be paid for by eToys*" (eToys D.I 253 & 523). Thus the nine (9) months of labor by Haas for eToys gives pecuniary interest. As well as Code **503(b)** Substantial Contribution, if for no other contribution than that which has resulted in the disgorgement of $750,000 that TBF has agreed to pay. Courts are required to give adjudication upon the merits of **§ 503(b)**[52]. It is reprehensible unfairness, the worst manifest injustice that one could perpetrate, to punish a whistle-blower, while parties gain by collusion and perjury –(*thus far there has been no equitable justice in the eToys case*)!

59. MNAT, TBF and Barry Gold, did connive to persuade Haas, parties of interest and the Creditors, to "*trust them*" where they persuaded Haas not to obtain independent counsel for CLI as a cost saving measure to the estate, beguiling everyone. It is extremely specious that the only item that MNAT, TBF or Barry Gold supplied to the Court is the HAAS Affidavit of November 2001, which the parties falsely state it is a waiver. Who believes anyone would work a year and then say don't pay for the good faith work? Why would anyone fight for something given away? **Rule 2016** let off is specious!

60. A court cannot tender rewards to conflicted attorneys[53], who have gained *unjust enrichment*, with admitted "*unclean hands*", while the integrity of the court has been intentionally defiled. Any equitable justice has become a vacant notion in Delaware fraud.

XIII Asst US Trustee Frank Perch states that Fraud on the Court was intentional

[52] Matter of Stewarts Foods v. Broeckor (In re Stewart Foods) 64 F.4d 141, 27 Bankr. Ct. Dec. (CRR) 1016, 34 Collier Bankr. Cas. 2d (MB) (a claim arising from breach is an administrative expense if actual benefit)
[53] Evening the Opinion of the Bankruptcy Court concluded that "*extraordinary*" circumstances existed in the eToys case & failure to address fraud on the court would "*reward conflicting attorneys and punish plaintiff*"

61. As a result of finding Court docket (*Bonus Sales*) irrefutable proof of an ongoing, *non-disclosed*, relationship between TBF and Barry Gold, Haas placed such information into the Court docket record in the fall of 2004. After requests for an Emergency hearing the following acts occurred,

1. Two members of Goldman Sachs sat on the board of RR Donnelley while Donnelley voted on eToys/Sachs an issue, (including the $300 million lawsuit of the Debtor in NY Supreme Ct against Goldman Sachs) RR Donnelley and Goldman Sachs divested themselves of each other in Dec. 2004.
2. Lawrence Friedman the Director of the Dept of Justice EOUST office replaced the Region 3 Trustee; Roberta DeAngelis with Kelly B Stapleton and a DOJ UST press release was issued on *December 22, 2004*[54].
3. An Emergency hearing to address the non-disclosure/conflict issues occurred on *December 22, 2004*. At which time the Asst US Trustee stated to the Court it was apparent that *non-disclosures* occurred, *(Transcript docket item 2151*)
4. The Court Ordered responses to the allegations to occur by Jan 25, 2005.
5. The confessions to the non-disclosure occurred in the responses, also during a Feb 1, 2005 hearing and confessions during depositions taken per court approval on Feb. 9, 2005. (*Transcript of February 1, 2005 docket item 2191*).
6. The court rescheduled February 4, 2005 trial, for the CLI and Haas claims.
7. Asst US Trustee Frank Perch was to travel on Feb. 16, 2005 and informed the Court he would make the US Trustee's position on the issues known prior to.
8. On Feb 15, 2005 the Disgorge Motion of TBF for $1.6 million occurred.
9. The Disgorge Motion Feb. 15 2005 (D.I. 2195) stated that

    a. *The US Trustee had [fore] warned the retained professionals against replacing key personnel of the debtor with anyone connected to TBF*
    b. *That therefore the acts were deliberate, rather than inadvertent.*
    c. *There was material adverse harm.*
    d. *That the [diametric] lines between debtor and creditor were destroyed.*
    e. *TBF was vastly experienced bankruptcy attorney in national cases*
    f. *Fraud on the Court had occurred.*
    g. *To disgorge anything less than $1.6 million of the $3.5 million TBF had acknowledged receiving - would lack deterrent value*
    h. *The Disgorge Motion erroneously stated Barry Gold did not have to apply as a "post-petition" "wind-down" coordinator [per **327(a)**]*

10. Less than 10 days later Mark Kenney issued a Stipulation to Settle (D.I. 2201) containing the illegitimate clause "*shall not seek to compel – disclosure*"
11. Speciously neither the Disgorge Motion nor the Stipulation to Settle mentions MNAT. The crimes of MNAT non-disclosure issues are vastly understated.

[54] http://www.usdoj.gov/ust/eo/public_affairs/press/docs/stapleton_release2_12-04.htm (DeAngelis replaced)

12. On March 1, 2005 a hearing was conducted where Paul Traub of TBF confessed to the Court that he placed Barry Gold within the Debtor after TBF had paid Barry Gold four (4) payments of $30,000 each. (D.I. 2228)
13. We investigate why the "*no seek to compel*" clause was necessary and find an additional $100 million fraud item in KB Toys which Mark Kenney obstructs justice of when he asks the courts to expunge our proof . (KB Toys D.I. 2228)
14. We inform Frank Perch and Director Lawrence Friedman of the additional $100 million in Fraud[55] and Frank Perch, along with Lawrence Friedman resign[56].
15. The Court retaliates by rescheduling CLI trial date, expunges CLI, refuses CLI new counsel and denies Haas standing as "*person aggrieved*".

XIV A double-minded US Trustee's office proffers immunity for intentional fraud

62. The Stipulation to Settle (D.I. 2201) went way beyond Frank Perch's initial efforts of leniency with the improper permission to circumvent the Code.

63 This effort by Mark Kenney ignores the Law. As well as it smears the US Trustee's office by breach of fiduciary duty to protect the Courts from malfeasance. Here, we have extensive effort by TBF to abuse such an esteemed level of trust[57] flagrantly. With direct overt protective acts by the "*policing*" US Trustee on behalf of perjury and fraud.

V TBF confesses to four (4) payments of $30,000 each to CEO of eToys

64. On March 1, 2005 a hearing was conducted where Paul Traub of TBF was under direct Court examination (*Transcript D.I. 2228*) while the Court ordered, that as Haas's counsel refused to be present; Haas shall be denied standing per Article III. (*one would think the Court should have Ordered Haas's counsel to be present*).

---

[55] Proving Asst US Trustee Frank Perch correct, about lacking sufficient deterrent, Paul Traub of TBF was discovered to be petitioning to handle the $100 million cash payment to Bain in the KB toys bankruptcy case. Where TBF has not disclosed connections to Bain, Barry Gold worked in KB Toys with ADA and MNAT brazenly and flagrantly represents Bain. When Haas pointed it out Mark Kenney defended fraud. (DI 2228)

[56] http://www.usdoj.gov/ust/eo/public_affairs/press/docs/friedman_resignation_4-27-05.htm (Friedman resigns)

[57] *Please see* In re California Canners and Growers (Bankr. N.D. Cal 1987) 74 B.R. 336, also affirmed in Image Technical Services, Inc v. Eastman Kodak Company (N.D. Cal. 1993) 820 F. Supp. 1212, 1217 that also cites Schmitz v. Ziveti (9th Cir. 1994) 20 F.3d 1043, 1048-1049 "*a lawyer has a duty to investigate for his [firm's] potential conflicts of interest [reporting any violations to the court]*.

65. Again, Haas must be silenced in order to hide the facts of their crimes.

66. During the March 1, hearing Paul Traub of TBF confessed to the fact, under direct Court examination, that TBF, as Creditor's counsel paid Barry Gold four (4) separate payments of $30,000 each, prior to placing Barry Gold secretly within the Debtor. Yet the Court and US Trustee totally disregard this issue and the Hiring Letter furtively!

67. These acts of perjury and fraud are made extensively heinous, as the Asst US Trustee Frank Perch testified, in the Disgorge Motion of warnings (¶ 19 & ¶35).

68. The Justice Dept and the Court are defending the perpetrators. Is it any wonder why Haas and CLI cannot find a lawyer? Anyone with common sense can see that the Law is now not being applied. Speaking to over 1323 firms and attorneys all said no.

XVI Dept of Justice persons is acting as defense counsel for perpetrators

69. Further investigations by Haas and the eToys shareholders led to the discovery by Haas that TBF and MNAT had ongoing relationships with Bain/KB Toys. The significance being that MNAT, TBF and Barry Gold negotiated the sale of the Debtor's assets to Bain/KB Toys for discounts in the tens of millions.

70. As morose as that is, TBF further compounded their nefarious acts by petitioning the KB Toys court for the right to prosecute the $100 million cash that Bain and Michael Glazer had paid themselves pre petition. At which time Mark Kenney engaged in his 3rd overt act to obstruct justice by asking the KB Toys Court (*successfully*) to strike and expunge Haas (KB Toys # 04-10120)(D.I.2228).

71. The US Trustee office has persistently aligned themselves with the perpetrators as an appellee asking the Courts to expunge Haas and the eToys shareholders.

XVI Haas own counsel forwards threats by TBF to "*back off*" or else

72. Previously Haas attorney, Henry Heiman had passed on a threat by TBF's Susan Balaschak, doing so by email[58]. Whereupon TBF warned Haas that if he did not "*back off*" not only would CLI and Haas not be paid for the work, Haas's career would suffer greatly and additional retaliations would occur.

73. The outcome speaks for itself, as probability and result, where the court threw away Haas and CLI without any proper review upon *quantum meruit*!

XVII A pre-petition loan of $40 million and over $100 million fraud continues.

74. Haas also discovered that TBF and Barry Gold also had an ongoing undisclosed relationship with Wells Fargo/Foothill Capital. An entity which loaned the Debtor $40 million in November 2000 and transacted over $120 million[59] in withdrawals prior to the March 7, 2001 bankruptcy petition filing (again see *In re Bucyrus 94-20786* - Gellene/ prison – The case of Bucyrus is exactly on point with eToys fraud).

75. Haas discovered overseas-undeclared cash deposits in excess of $2 million. (*The Court stated it had no authority over international cash deposits*). More assets are

[58] Haas has submitted this into the record along with other items and His Honor Baxter permitted the parties to Strike and Expunge the Haas statement at the behest of the perpetrators. (D.I. 2294, 2295, 2297 & 2302). In revealing the actuality that Heiman passed along the threats by email Haas and CLI do not waive attorney client privilege.

[59] The Debtor's schedules stated that eToys only transacted $100 million prior to filing bankruptcy.

hidden by the conspired petition of the court for destruction of books and records in the very beginning of the case (approval D.I. 300).

XVIII Contacting authorities results in Obstructive run-arounds by DOJ personnel

76. The Court remarked that it had warned Haas against any further notices to the Court and had also warned of sanctions on July 26, 2005[60].

77. Haas had also contacted the OIG, the OGE, the OPR and the FBI (*especially after physical threats occurred.*) Also informing the Public Integrity Section and Pres Bush Corp Fraud Task Force, all of which referred Haas and the eToys shareholders back to the General Counsel (currently Roberta DeAngelis) of the EOUST office in Washington D.C and the US Attorney in Delaware.

78. Roberta DeAngelis in violation of protocol and ethics is now in charge of reviewing her own cases. The Opinion and Order were also immediately appealed and denied due to the US Trustee aligning themselves with TBF & MNAT .

79. Referring items to the US Attorney's office has had similar results. As the US Attorney in Delaware has now been nominated for the position of Delaware District Court Judge, his resume became public, upon which it is now discovered that Colm F Connolly was a partner with the MNAT law firm in 2001, when the fraud and perjury began. Not appointing an independent prosecutor is a disgraceful ethics violation.

80. The Opinion and corresponding Order of October 4, 2005 aids the readily apparent efforts to cover up as it is a 57-page testimony vindicating the parties with off-point remarks on ADA.. The Opinion also stated, errantly, that Barry Gold was not

[60] *July 25, 2005 the WSJ had issued a press story about the issue, which can be seen at* http://www.wjfa.net/bk/etoys.html A Wall Street Journal article on the TBF issued was printed July 25, 2005

required to apply per **§ 327(a).** (*They fraud needs this deceitful concept maintained*). The Court and US Trustee simply ignored a Dec. 1, 2005 Motion to Recuse under **Rule 5004** and a Motion to Review Failure to Act by US Trustee under **Rule 2020**.

XIX The US Trustee is extensively instructed and knows the Law has been broken

81. Multiple appeals have been filed and there is now this appeal in the Third Circuit appeal (case# 07-2360). The US Trustee's office is acting as an appellee with TBF, MNAT and Barry Gold defending the right to proffer the illegitimate settlement and immunity clause. Even the new Asst US Trustee Vara has joined violates his own actions.

82. The new Asst Trustee Vara handled the case of *In re Cold Metal* 02-43619 (E D Ohio Bankr 2002) where Trustee Andrew Vara addressed, *extensively*, the on-point issue of **§ 327(a)** as the brief signed by Trustee Vara cited the accurate case of Stahl v Bartley Lindsay Co. (*In re Bartley Co.*,) 137 B.R. 305, 309 (D. Minn. 1991) stating "*financial advisor or workout consultant is considered a professional subject to retention"*. (Barry Gold was required to apply and even Asst US Trustee is aware of it).

83. At the same time former Region 3 Trustee Roberta DeAngelis, in a report to the *"Subcommittee on Commercial and Administrative Law*" which was to the *Committee on the Judiciary* cited cases demonstrative of Her and the US Trustee's office detailed knowledge of Barry Gold scenarios, as DeAngelis quoted *In re: Harnischfeger*, case 99-02171 (Bankr. D. Del. 1999) The US Trustee [successfully] moved to disqualify the [*financial advisor*] firm for failure to disclose.

84. Mr. Gold is guilty of participating in the conspiracy to deceive the Creditors by participating in the Hiring Letters and his false testimony on the stand and the Plan Declaration. While there is also abundant "*prima facie*" evidence that the acts of perjury, etc., were "*deliberate, rather than inadvertent*" (D.I. 2195 ¶19).

XX. Barry Gold 327(a) issue is a deception under the "*color of law*" false premise.

85. The whole illegitimate premise of no prosecution is based upon the specious seed of pretense that Barry Gold was not required to apply per **§ 327(a)**. Such "*color of law*" pretense is a fallacy as Mr. GOLD complies with the factors to determine whether an entity to be employed by a debtor is a professional within the meaning of **327(a).** *In re Martin 817 F 2d 175 180 (1st Cir. 1987*) addressing both the "*unclean hands*" doctrine and listing the 12 factors to consider in application of who must apply and disclose by **327(a)**[61]**.** In re Kraft v Aetna 43 B.R. 119 Bankr. Ct. Dec (MD Tenn 1984) (*[Trustee] cannot bypass **327(a)** by stating mechanical services*.) All Circuits have adopted "*autonomy*" as the key.

86. The US Trustee is instructed from the onset, by a Handbook & Guidelines which can be found online at the US Trustee's website under the heading "*Significant Guidance Documents*" (please see Handbook[62]). All evidence aptly demonstrates the extensive knowledge they have on the issue at hand concerning Barry Gold per **§ 327(a)**.

---

[61] See also *In re Seatrain Lines, Inc*., 13 B.R. 980, 981 (S.D.N.Y. 1981) and *In re Fretheim*, 102 B.R. 298, 299 (D. Conn. 1989). *In re Twinton Properties* 27 B.R. 817 Bankr. (CCH) 69096 (MD. Tenn. 1983) *listing the 9 elements to be clear and convincing of no conflict*. In re: Childress v. Middleton Arms ("*Bankruptcy Court may not authorize even if the [Plan] debtor would be better served*".) (*The Sup Ct and Third Cir affirmed Middleton Arms certification that failure to disclose mandates disqualification.*) The quotes comes from the **US Trustee's Manual vol. 3**, *United States - Kraft v. Aetna Casualty and Sur. Co., 43 B.R. 119 (M.D. Tenn. 1984)*

[62] http://www.usdoj.gov/ust/eo/public_affairs/sig_guidance/index.htm This Dept of Justice Trustee Handbook and Guidelines is on a website so that everyone may know the Law. To keep the system Kosher.

Having such vast experience and expertise in the matter, one must therefore conclude that they know their fiduciary obligations and choose to do otherwise. Why, who knows?

XXI. Summary of criminal acts that have been confessed

`1. It is undisputed that TBF placed Barry Gold in as "*wind-down coordinator*" of the Debtor without disclosure. (D.I. 2195 ¶17)

2. TBF has confessed to multiple false affidavits including TBF's intentionally overt act permitting the false affidavits to stand, even after Traub and Michael Fox discussed the issue that their relationship became apparent (*publicly visible*) in the Bonus Sales case, yet they surreptitiously choose to remain silent demonstrating "*mens rea*". (D.I. 2195 ¶18).

3. It is a fact that MNAT has confessed to supplying multiple false affidavits, which is Perjury. (*While MNAT has failed to totally "*come clean*" on other false items such as Bain and Mattel*). TBF alone submitted over 15 pledges.

4. Barry Gold supplied additional "*actus reus*" items by the clandestine Hiring Letter (D.I. 2169), *which contains the illegitimate clause that bribed Mr. Gold if he would intentionally choose not to apply to the Court* [**§ 327(a)**]

5. Barry Gold "*scienter*" is documented by the perjury, on the stand, when questioned by Alber about undisclosed connections to TBF (D.I. 1394)

6. Barry Gold "*actus reus*" act of committing perjury was also the Plan Declaration/Affidavit, which stated that the Plan was negotiated in "*arms length*" negotiations between Debtor and Creditor's. (*Perjury as Mr. Gold is testifying* "arms length" *Between Barry Gold and TBF*)(D.I. 1312).

7. A **Rule 2014/2016** certification is required every time a fee application is submitted. More than a twenty such fee applications were submitted by TBF, MNAT & others knowledgeable about non-disclosure acts, these acts also compound the perjury violations. Where even the Scheme to Fix Fee statute (**18 USC 155**) while being a misdemeanor in nature, has become a format of a conspiracy felony when both the Debtor and Creditor's counsel conspire to draft the Hiring Letter to circumvent the court & the Code. (*It is absurd how MNAT refuses to state which partner did the drafting*).

8. Asst US Trustee Frank Perch also testified in the Disgorge Motion that TBF had discussed the issue, prior to doing the bad faith act, of anyone replacing key personnel of the Debtor with persons connected to retained lawyers in the case. (D.I. 2195 ¶19 &¶35). This is sufficient "*scienter*" requisite.

9. The Asst US Trustee documented additional "*bad faith*" acts of complicity when TBF sought to handle the conflicted issue of Goldman Sachs because MNAT was also non-disclosed. Whereby TBF compounded the original acts of "*non-disclosure*" by a supplemental affidavit, affirmatively misrepresenting TBF had no "*conflict of interest*" issues (D.I. 2195 ¶17).

10. The parties committed the crime of Intimidation of Victim/Witness when TBF warned Haas to "*back off*", or else Haas would see how high TBF was

"*connected*". MNAT has done similar efforts against Robert Abler nefariously in working with a party that sued Alber in many instances.

XXII. Dept of Justice breaches duty as it is not permitted discretion to give immunity

87. The US Trustee is the *"watchdog*[63]*"* for public equity entities per the **Janet Reno Reform Ac**t of **1994**. When the policing entity turns against the public's trust and engages in acts that defy statutory requisites, betraying Oaths of office, for the sake of felons, the whole system collapses and anarchy becomes the controlling factor.

88. The duty to Notify and Refer criminal acts is statutory for US Trustee's per **28 USC § 586(a)(3)(F)** and **18 USC 3057(a)**. So restrictive is the mandate to refer that the US Trustee's Handbook & Guidelines state that if a US Trustee desires that no prosecution occur, a Memo of Declination must be sent with a history of the events to the US Attorneys office. This was a Congressional mindset to protect against indecency; even a US Trustee is barred from any latitude of prosecution. The US Trustee cannot pic n choose whom to review for tribunal; it is the US Trustee's job to report and let others decide.

XXIII Justice Dept personnel continue efforts to Cover up their fiduciary breach.

89. Mark Kenney told this petitioner that a bribe or threat to "*back off*" was not a crime until the bribe was accepted or an act of documented harm had occurred (*nice try*)!

[63] CORPORATE DISCLOSURE STATEMENT PURSUANT [US Trustee] TO FED. R. APP. P. 26.1 [the]United States Trustees are officials of the Department of Justice appointed by the Attorney General to supervise the administration of bankruptcy cases and trustees . See 11 U.S.C. §§ 581-589; United States Trustee v. Revco,D.S.,Inc. (In re Revco D.S.,Inc), 898F.2d498, 499 (6`hCir. 1990)("*[t]heUnited States trustee, an officer of the Executive branch, represents . .[the] public interest*.")

90. TBF was assisted by Mark Kenney's Motion to Strike and Expunge this whistle-blower (*please see KB Toys case 04-10120 docket item 2228*). (*Taxpayers paying for the US Trustee's office to defend criminal acts – now that is a real budget breaker*).

91. Email notices have also been sent to Kelly B. Stapleton. As the Region 3 Trustee that replaced Roberta DeAngelis the fact remains Stapleton's electronic signature is upon all Trustee documents in the eToys matter since Feb. 2005. Including the erroneous Stipulation to Settle.

92. Roberta DeAngelis seeks to bring the full clout of the Washington DC office to the Third Circuit appeal, where she has signed her name to the brief, along with 3 other members of the United States Trustee Dept, to defeat "*pro se*" parties.

93. Spuriously the US Trustee is an appellee, hand in hand with the perpetrators, defending the right to proffer the illegitimate clause that circumvents **§ 327(a)**. While defrauding Haas/CLI with the efforts to improperly dismiss Haas

XXIV. It is a criminal conflict that theUS Attorney in DE was a partner at MNAT

94. Finally, the saga of the failure to prosecute can only be successful if a prosecutor, after being informed of the crimes, chooses to decline prosecution. Given the overwhelming amount of court docket evidence of perjury and fraud of MNAT, TBF and Barry Gold, the issue of selling the assets of one client (eToys) to their other "*continuous*" client (Bain) remains unaddressed. Begs the question, if Colm F Connolly handled the Bain/eToys/MNAT issue while he was a partner at the MNAT law firm?

XXV The criminal acts the shameful "*not seek to compel*" clause desires to Cover-Up

95. Having been enraged by the audacity of the Dept. of Justice double-mindedness, where we were already upset that the Disgorge Motion erroneously stated in the very first footnote thereof, remarking that Barry Gold was not required to apply[64] [per **§ 327(a)**]. Failing to seek the mandatory disqualification[65] of conflicted attorneys as required by Law. Even the CLI attorney at the time, Brad Brook said it was insulting and gave this petitioner the Norton books to see in black n white, case histories about requisites & Law.

96. It dawned on Haas that there must be something very important that would have one arm of the US Trustee's office endeavor to go against another arm. What could be so important as to necessitate such a dichotomy? The answer was found in research and the obvious, syndicated effort to protect ones cronies from additional, prosecution harm.

97. The US Trustee is instructed from the onset; by the Handbook & Guidelines[66], on who is required to apply as a professional person and how the US Trustee must protect the Court and public from such harms[67]. So many harms one is mind-boggled. No principled person can dismiss without extensive review, the following items,

---

[64] The Disgorge Motion 1st footnote states -1/ Gold, "*as an employee of the debtors rather than a professional employed under 11 U.S.C. §§ 327(a)*", was not required to file a Rule 2014 affidavit

[65] See *In re Seatrain Lines, Inc.*, 13 B.R. 980, 981 (S.D.N.Y. 1981) and *In re Fretheim*, 102 B.R. 298, 299 (D. Conn. 1989). *In re Twinton Properties* 27 B.R. 817 Bankr. (CCH) 69096 (MD. Tenn. 1983) *listing the 9 elements to be clear and convincing of no conflict*. In re Kraft v Aetna (*appraiser cannot bypass **327(a)** by stating mechanical services*.) In re: Childress v. Middleton Arms ("*Bankruptcy Court may not authorize even if the [Plan] debtor would be better served*".) (*The Sup Ct and Third Cir affirmed Middleton Arms certification **that failure to disclose mandates disqualificatio**n.*) The quotes comes from the US Trustee's Manual vol. 3, *United States - Kraft v. Aetna Casualty and Sur. Co., 43 B.R. 119 (M.D. Tenn. 1984)* The Circuits have long adopted the notion that it is the "autonomy" in bankruptcy decisions that is germane. You cannot simply rename a "*wind-down coordinator*" to the post of janitor (*or CEO*) & bypass the statutory requisite of the Code, an estate "*sine qua non*" is disclosure, above all else

[66] http://www.usdoj.gov/ust/eo/private_trustee/library/chapter11/docs/Ch11Handbook-200405.pdf

[67] (*We apologize if it seems that there is redundancy here, in pointing out the items that may now seem obvious and hammered home. As our efforts for 6 years, to get the felony criminal acts halted, have thus far been unsuccessful, we do not know how to conform with the requisite of the Law by any other manner than that of repeating the narrative enough, until someone "**gets it**" sufficiently- to then halt the crimes/remedy*)

1. The Debtor's estate sold the bulk of eToys assets to Bain/KB Toys. The $10 million was reduced to $3 million by TBF, MNAT and Barry Gold.
2. TBF, MNAT and Barry Gold are connected to Bain. Bain and their affiliated owner(s) controlled Stage Stores/Liquidity Solutions Where TBF and Barry Gold was engaged, prior to and during eToys work. Michael Glazer, the CEO of KB was at Stage Stores. (Southern TX Bankr 00-35078)
3. Mitt Romney owns a lot of stock in Stage Stores at the time the offenses transpired. Toby Lenk the CEO of eToys vacated the Debtor and went to work for a Bain affiliated. We now have Dave Gatto's resume of Bain.
4. MNAT is also connected to Bain; MNAT brazenly represents Bain in the KB Toys bankruptcy case (*as the cat is now out of the bag*). MNAT was less than candid in its disclosure discussions about the Learning Company. The Learning Company was a Bain, affiliated entity merging with Mattel.
5. While much has been discussed about the issue, the fact remains, though the Court and US Trustee have acknowledged reading the Hiring Letter, the criminality thereof has simply been ignored, TBF and Barry Gold are connected to Wells Fargo/Foothill Capital, Foothill loaned eToys $40 million in Nov 2000 and transacted over $100 million in cash transactions prior to eToys filing bankruptcy in March 2001.
6. TBF, MNAT and Barry Gold were all working in the KB Toys bankruptcy the same time they are working in the eToys bankruptcy, which is contemptible. TBF petitioned the KB Toys court to be the one to prosecute the $100 million cash pre petition transfer to Bain/Michael Glazer.
7. When we notified the Court, Mark Kenney motioned to strike us, instead of prosecuting the crime.
8. MNAT, Barry Gold, Ellen Gordon of Xroads and TBF refused to engage in purchase discussions with parties that sought to acquire the public entity of eToys. This is an SEC violation of the highest order.
9. The parties also refused to assist the shareholders to have an equity committee, which compounds the crimes when a sale is not sought by collusive efforts to gain sizeable control of the estate.

10. Xroads also had non-disclosed connections to Wells Fargo.
11. TBF and Barry Gold have undisclosed connections to Fleet and Merrill Lynch as well, huge causes of action and other matters of fiduciary duties.
12. TBF and Barry Gold also have non-disclosed connections to Goldman Sachs (I*n re: Cosmetics Plus*).
13. CLI had a potential merger/acquisition of Playco International. TBF and Barry Gold declined to consider the offer. TBF did not disclose TBF was creditors counsel in Playco.
14. TBF did not disclose in eToys or Playco that TBF was connected to the secured lender Wells Fargo (Wells Fargo was involved in both Playco and eToys matters).
15. TBF did not disclose connections to Paragon Capital that was co-owned by OZER and Wells Fargo in Playco.
16. TBF was of revoked status in the state of NY for several years, until Alber informed the Courts. (The bankruptcy court acknowledge blue ink copy).
17. TBF, MNAT and Barry Gold handpicked the counsel of eToys and TBF is co counsel for the eToys lawsuit against Goldman Sachs (*a $300 million dollar issue that the Supreme Ct of NY* has permitted to go forward. (case # 601805/2002)).
18. Susan Balaschak has supplied a false affidavit within (D.I. 216) stating that TBF has informed the eToys case "*parties of interests*" of everything. Including the Creditor's Committee.
19. Susan Balaschak has speciously offered Ellen Gordon of Xroads as a key witness of the fact.
20. TBF neglects to tell the NY Court that Scott Henkin of Fir Tree Value Fund already confessed to being part of the conspiracy to place Barry Gold in the Debtor, knowing that Barry Gold and TBF were connected.
21. Scott Henkin is guilty of conspiracy and seems to have been rewarded, as he is now a senior exec at D E Shaw who owns the "*new*" public entity of eToys.com on NASDQ (symbol KIDS).

22. At the same time the other Committee person that was assisting Haas to solve the eToys issues, (*Jim Brown of Fisher Price*), has been speciously removed from office.

23. TBF and Barry Gold entity ADA was formed by Nancy A Valente, who also works for Johnson & Johnson. J&J acquired the assets of Babycenter.com from eToys pre petition, (*purportedly for $10 million*).

24. As a pre petition preferential the J&J issue is also a crime, even without the Valente issue, when not independently reviewed.

25. Stage Stores is co-debtor with Liquidity Solutions, Liquidity Solutions deceptively began to acquire the bulk of eToys claims, without disclosure after Barry Gold was placed on board eToys in mid 2001. All claims therefore are equitable subordinates under Code **§ 510(c)**.

26. While at the same time the sale of the Debtor's assets to Bain/KB having "*undisclosed*" connections to the counsels and CEO of eToys results in the sale of eToys.com failing the "*bona fide*" requisite of the Code. This makes all sales to Bain/KB rescindable as fraudulent transactions or equitable subordinates. Etoys.com is now public again on NASDQ as KIDS.

XXVI **The acts of "*nolle prosequi*" seek to outclass the acts of perjury & Fraud**

98. The US Trustee's guidelines states the United States Trustees is instructed by **28 U.S.C. § 586(a)(3)(F). (***In the same manner the court is instructed by **18 U.S.C. § 3057***) The trustee must also (*a*) investigate the debtor's financial affairs, **11 U.S.C. §§ 704(4), 1106(a)(3);** (*b*) oppose discharge where appropriate, **11 U.S.C. §§ 704(6), 1202(b)(1), 1302(b)(1);** and (*c*) furnish information concerning the estate as requested by party in interest, **11 U.S.C. § 704(7**). (*i.e. Books n Records to the Court approved CLI.*)

XXVII Denial of standing is a criminal attempt to conceal fraud with no legal basis

99. Haas has sought, prior to this time, requests for **Fed.R.Civ.Proc. 23.1** "*Derivative rights of shareholder*s", **Fed.R.Civ.Proc Rule 24** "*Right to Intervention*" and **Fed.R.Civ.Proc Rule 25** "*Right to Substitution of Parties*" because the Courts would inappropriately allow CLI's counsels to abstain from the issue. **Rule 23.1, 24** and **25** are even given validity in Bankruptcy Rules as **7023.1**, **7024** and **7025** respectively. The denial of Article III has no foundation in Law, it only benefits the "*malum in se*"!

100. Also Haas had the qualified right offered to anyone (*even a janitor or person off the street)* under **§503(b)** Substantial Contribution. No one can suitably argue that the US Supreme Ct would sustain that such latitude to restrict "*due process*" can be use as a tool to defeat a whistle-blowers efforts to halt manifest injustice of fraud on the court, by officers of the court, who commit willful perjury and intentional, schemed fraud!

101. Be that as it may, TBF, MNAT and Barry Gold, along with the US Trustee/Court's have repeatedly denied Haas the ability to bring forth the proof of fraud. Even if, *arguendo*, you allow such perverse logic some fundamental basis, the fact remains it is now discovered that what is occurring is the Court, US Trustee and the perpetrators are finding fault with the Debtor's breach of a contractual fiduciary duty that the Court itself approved by the "*i**ndemnification***" clauses that were drafted by MNAT, TBF, Irell & Manella & Barry Gold. The Indemnification clauses specifically provide that the Debtor is to **DEFEND**, indemnify and hold harmless CLI and Haas. Finding fault of no counsel is finding fault with the Debtor, as is stated in Amended CLI order, the clause verbatim;

> ***Indemnification.*** *The Debtors shall defend, indemnify and hold CLI and its affiliates, the officers, directors, agents and employees of each, harmless from and*

against any and all claims, suits, damages, losses, liabilities, obligations, fines, penalties, costs and expenses (whether based in tort, breach of contract, product liability or otherwise), including reasonable attorneys fees and expenses, arising out of or based on any loss of the Remaining Collateral other than any such loss arising from or in connection with CLI's, its agents and/or employee's negligence or intentional misconduct.

102. Anyone can point out a crime. It is only for the benefit of criminals that one would deny any person the right of standing during issues or efforts to point out fraud.

103. It is established that "*Fraud upon the Court*" is a serious issue that the Circuits and the Supreme Court have established the "*doctrine*" of extended timing, which all seem to find their genesis in Hazel-Atlas Glass Co. v Hartford-Empire Co., 322 U.S. 328 (1944) ("*Hazel-Atlas"*) where it has been established that an Order is made void "*ab initio*" as stated in the In the matter of Kenner v. Comm'r Of Internal Revenue, 387 F.2d 689, 691 (7th Circuit 1968) "*a decision produced by fraud on the court is not in essence a decision at all and never becomes final.*" This precedent has been affirmed by the Circuits and was also quoted by the Court (MFW) in the Opinion of October 4, 2005. Yet, when it concerns Haas, the Court simply ignores its own advice in the Opinion, including the statements that "*extra-ordinary*" circumstances exist where the Court said "*that to hold otherwise [concerning TBF & MNAT] would only serve to punish [*plaintiffs*] and reward conflicting attorneys*" (please see Opinion by Her Honor Walrath pg 16) (D.I. 2319).

Conclusion and prayer for relief

104. So far any authoritative party must either face the *discretion is better than valor* pathway, by resignation, or; any public servant that remains is faced with an

overwhelming hedge of power, influence and the blue wall of silence truism. Leaving one with a choice to rule against one's esteemed colleagues or join in the deceit, (*a dilemma to say the least*)! Extraordinary circumstance needs many "*extraordinary*" remedies.

105. We therefore seek honorable public servants who will refuse to stand idle while corruption; cronyism and criminal acts of a "*bankruptcy ring*" pervert the entire justice system so blatantly that it ensnares everyone who the government assigns to the case. We need the undeniable spirit that seeks Truth, Justice and the American way.

106. The recent Dist Ct. case in Michigan dealt with a similar refusal to classify fraud as Fraud upon the Court (please see matter of M.T.G. *In re Matrix Tech Grp* 95-48268). However, unlike the Matrix case, where the question of "*intent*" is in debate, this case does have concrete proof of intentional circumvention with the written collaborative Hiring Letter. The case of Baron's in Florida (S FL Dist Ct 07-60770) cited the eToys & Matrix issues, concerning Fraud on the Court - and Baron's successfully reopened the closed case. (*It is amazing that other cases can accomplish remedies where the cited case is woefully lacking*.)

107. The N Y case of the *US Trustee Paul Banner v Cohen Estis and Assoc*, cited eToys as a case precedent for the denial of all fee's for non-disclosure. (*The Balco/Estis case involved only 1 non-disclosure issue, where eToys has over 20 failures to disclose*). To date there has been no adequate remedy in eToys, with sufficient deterrent, by proper disqualification and disgorgement, to conspired acts of willful, Fraud on the Court, accomplished via "*officers of the Court*". It appears that the whole Delaware court system is in disarray and that no one in the system of justice has the fortitude to stand tall.

108. One should only have to point out the egregiousness of the "*shall not compel*" clause and that item alone should send a shockwave through the system of justice. Anyone with any sense of decency should be aghast at the audacity of Mark Kenney and his cohorts. When a public servant betrays their oath of office and then engages in overt acts of obstruction contrary to ones fiduciary duties, against whistle-blowers, in order to cover up malfeasance by ones cronies. Such is instilling civil unrest by the destruction of the integrity of the judicial process for the sake of persons who consider themselves to be Above the Law. This is overwhelming demonstrated! One need only look at the facts, which we have placed online, in affidavit form, for everyone to see[68].

109. I, Steven Haas, (*a/k/a Laser*) testifies to these statements, throughout this brief, under the "*penalty of perjury*". We said we would provide you with a few items of criminal, felony violations. We have provided you with more than 30. Without going into the many, many more, such as Sarbanes Oxley, failure to disclose overseas cash assets, the SEC being instructed to refrain from making an official investigation occur. Every single time the court was told that CLI had waived all claims against the estate, was an act of perjury and collusion to defraud CLI and Haas. (*Does anyone really believe that a person would wave $3 million in fees/commissions earned over 9 months*?)

110. It is really a simple question. Was the nomination of a new head of the Dept of Justice a real change toward restoring the integrity of the Justice Dept? Or, being that a Presidential hopeful, Mitt Romney, owned Bain, a potential future boss, will such cause the Justice Dept. to maintain the status quo?

111. The parties of MNAT, TBF and Barry Gold have engaged in vote rigging, Plan rigging, perjury, fraud, deception and voluminous schemes that are as reprehensible

[68] http://fraud-corruption-mnat.townhall.com/Default.aspx

as anyone can imagine. They state the PEDC does this or that, when the fact is, they, the perpetrators of fraud, are the PEDC. (A*n independent counsel must review all the facts*).

112. Thus far the system of justice has shown no integrity? The evidence, the facts at hand, and the effort to remedy fraud in a manner befitting justice can only answer the question. Thus far in this eToys matter, it has been proven, that there is a double standard of justice. This case is the poster child to prove that there are those that there is a "bankruptcy ring" by those that are "*Above the Law*".

113. As stated originally, the issues presented are clearcut, as such we pray this Court utilize the **Fed Rules of Evidence** of **Judicial Notice 201** and put a halt to the organized crime that seeks to corrupt the entire system. Therefore we beseech that this Court state that Haas has standing as a "*person aggrieved*". That from this date forward the parties shall be sanctioned if the dare to effort to fail to notice Haas.

114. We feel it is readily apparent by every standard established within the Circuit that Barry Gold had to apply per **§ 327(a)**. It is also practical that a declaratory remark of the disdain of all efforts to circumvent the Code by the Stipulation to Settle occur. The Courts must halt all efforts to give implied immunity in the "*not seek to compel*" clause. As the Court and US Trustee are errant in the finding of fact and conclusion of Law, which the Opinion of October 4, 2005 states that no perjury has been documented. Many disqualifications are therefore required.

115. We also pray this Court acknowledge that there is overwhelming documentation that warrants the disqualification of MNAT, TBF, Barry Gold, Frederick Rosner, Irell & Manella, Xroads LLC, Richard Cartoon, Scott Henkin and any other person, party or entity that had complicity in the intentional deceptions. That all must

disgorge, at a minimum, 100% of all fees and expenses. That a comfort Order be given to permit proper Plan compliant causes of actions and pursuits. Including the remedies permitted due to the avoidable preference treatment afford KB/Bain acquisition of eToys assets. As well as the issues of equitable subordination of Liquidity Solutions, etc.

116. The Dist. Ct. was totally errant in dismissing Robert Alber by the Poulis Standard. As such this case is to be remanded to a Bankruptcy Judge to adjudicate properly the merits.(The shareholders should be granted an equity committee standing and counsel).

117. We especially pray this Court find that the original responses Ordered by the Bankruptcy Court for January 25, 2005 were to be a totally "*come clean*" affair. Lest the Courts send a message that officers of the court can continue deceptive practices due to the inability to ferret out all statutory violations that are continuously cloaked.

118. Given the abundant amount of skullduggery involved, we beseech this honorable body to maintain a heavier than average hand of authority to assure the integrity of the judicial process. If such is not prudent due to the need to keep each Court separate in duties, may it please the court to either change venue to California (the physical presence of the Debtor) or, in the pursuit of equitable justice and good faith efforts of Plan compliance it is therefore necessary to appoint a special independent Justice, above reproach.

119. Especially given the abundant bias shown against Haas and CLI by multiple judicial parties. As the recent case of Dickie Scruggs in Alabama demonstrates, it is sometimes necessary to recuse an entire Judicial body who would be faced with the dilemma of Ruling against a life long colleague. Especially since Haas filed a Judicial Misconduct complaint against the Bankruptcy Court for the abundant acts of bias.

120. Being that the Bankruptcy Court has ignored review request concerning Books n Records, a **Rule 2004** fishing expedition should be permitted by Haas and the shareholders, totally at the Debtor's expense. The Xroads LLC entity has been paid over a million dollars to handle the financial accounting of the Debtor and cannot state legitimately, that it will take time to detail all financial records.

121. The Bankruptcy Court also simply ignored the December 1, 2005 requests for Recusal under **Rule 5004** and Review of Failure to Act by US Trustee under **Rule 2020**. Therefore it is necessary, combined with the abundant efforts that are contrary to the statutory mandates of the US Trustee, that "*Quo Warranto*" be considered to remove the parties of Mark Kenney, Roberta DeAngelis, Colm F Connolly, Kelly B Stapleton, Andrew Vara, Her Honor Mary F Walrath, His Honor Randolph Baxter, His Honor Donald Sullivan and His Honor Kent A Jordan from this case. For most certainly we are parties with interest and extraordinary circumstances are already acknowledge, now being documented in abundance. Their honor is not a question, but their actions dictate a must.

122. Wherefore we ask that the Court make an official recommendation for a special US Attorney and prosecutor with official request for a statement from the SEC Bankruptcy Fraud Division whom Mark Kenney instructed not to send any official requests. That the Court void Barry Gold, ab initio, as is provided in the Plan clause 5.2 for willful misconduct and gross negligence. Barry Gold also had Plan clauses that forbade him from dealing with connected parties (clause 3.12). As such all payments, post-plan confirmation to MNAT, TBF, Frederick Rosner and/or any other connected issue, such as Bain, Liquidity Solutions, Richard Cartoon, etc. are void "*ab initio*".

123. As the parties schemed to defraud Haas and CLI, where Barry Gold was muscled in to do the duties of CLI and Haas. (*Wind down coordinator* being the same thing as "*sole*" liquidation consultant), to place Haas in, *nunc pro tunc*, as CLI and Haas were Court approved complies with every thing that is decent and correct, including Plan Administrator as this is in compliance and duties as liquidation consultant, already going above and beyond the call to halt organized criminal efforts to fleece the estate. As the perpetrators are engaged in efforts, anticipating this Circuits rulings, where they shall seek to replace Barry Gold with one of their own "*hand picked*" parties under the guise that the PEDC is a purely, honorable, framework. It is only prudent that the Courts do "extraordinary" remedies to assure the fraudulent acts do not continue.

124. The only parties that will object to the monies being returned to the estate, are those that took it and will lose it. Barry Gold has now motioned for his legal defense fund to be paid by the Debtor and his motion infers that the PEDC, which was till this date, Barry Gold's cronies, where Barry Gold hints, at the item Haas has known would come. The perpetrators of fraud can protect themselves by hand picking the PEDC and new Plan Administrator parties. Which will in essence assure their success in the criminal efforts, by proxy. The NY Supreme Court case of ebc1, Inc (Debtor) vs Goldman Sachs and others, was also a TBF ploy and all parties thereto, hand picked by TBF are subject to scrutiny even if they are the promised child, due to the association with TBF and the failure thus far to point out the frauds to the NY Supreme Ct. (we have been emailing all parties).

125. Susan Balaschak of TBF has falsely informed the NY Supreme Court that they have kept everyone informed and TBF seeks to offer the former Xroads LLC party Ellen Gordon as proof. Without disclosing to the NY Court all the issues prevalent and that

Ellen Gordon is most likely no longer with Xroads LLC as Xroads LLC contacted Haas about the fraud, perjury and Xroads billing issue.

126. The KB Toys case, which owes this Debtor money and is rushing to close is a matter of tens to maybe hundreds of millions of dollars. The NY Case is a $300 million issue. Which at the barest of minimums needs a new independent counsel to review and that Court to be officially informed of the jeopardy of all rulings being void, *ab initio*, due to the fraud on the court that is ongoing. A comfort order is highly warranted as this Debtor, with honorable Plan Administration, can become whole. Courts are required to act differently when a company can be made whole again.

127. We do not ask that the hearing scheduled for January 2, 2008 be delayed. We only ask that this Court permit Emergency relief, allowing shortened notice (*email should suffice*) and chance for reply, as an email notice is more good faith treatment, than those afforded Haas by the perpetrators who refuse to give notice to Haas.

128. We seek, (Haas begs), for your conscience and nobility. Friends of the Court are not permitted to ask the latitude of clemency, with self-dealings, for such abundant malfeasance. Once they do such acts, they are enemies of the Court. Please agree to have spirit against organized crime? We do not even ask that you solve the CLI senior admin claim or Haas claims issue(s). (*Though they have assisted in making this petitioner itinerant and bereft of career or funding*). For we will gladly let those items stand on their own once the fraud issues have been properly pursued.

129. It is not the eToys case or claims thereof that is the priority here. For Haas, CLI, eToys and even the defrauded shareholders is not an American quest. The issue here is key personnel at the Dept. of Justice would rather resign then force a remedy to occur.

This should exasperate any conscience. If the Justice Dept personnel, the US Trustee's attorney, can arbitrarily betray their Oath's of office and design to defraud the entire integrity of the judicial process, for the sake of ill gotten gains & perverted acts of justice on behalf of esteemed friends, then where can one turn? (*Anyone would be hard to find a case more reprehensible, with more fraudulent efforts, than eToys*).

130. We seek the American spirit of right and wrong. The sense of goodness and righteousness that is intolerant to insidious acts of bad faith by those we assign with authority over us, controlling the system of justice in our Federal Courts. They can only get away with the schemes, which has stolen a public entity and corrupted our Dept of Justice nefariously, if we permit them free reign to do so. As it has always been stated;

"*All that is required for evil to prevail is that good people remain at rest*"

131. For though it is our cookies that the attorneys and others have stolen, it is the American Jar of Justice whose lid was removed and tossed away for the benefit of those that have proven the Law has no authority over them. *Prima facie* evidence of a "*bankruptcy ring*" and Cronyism lives. This Circuit has already acknowledged such exists. (s*ee Arkansas Supra*). We pray the Court forgive our briefs length, our request for short notice and hope the Court is sympathetic to the plight of our pursuit for justice.

132. On Feb. 25, 2005 the Director of the EOUST emailed us that we had his specific attention and that his staff will exercise appropriate judgment. The result was the Stipulation to Settle and then the resignation of the Director and Asst US Trustee for personal reasons, that seems to have left the Justice Dept void of honorable persons in Delaware. We hope and pray, that this Court has extensive resilience to go well beyond such exercises and judgments and can see beyond the ineptitude of this "*pro se*" Haas

pleadings. While we would welcome (*and deeply need*) to have adjudication upon our "*quantum meruit*" for our good faith work that was Court approved. The fact of the matter is "*unjust enrichment*" is benefiting "*unclean hands*" of "*officers of the Court*" who perpetrated intentional "*Fraud on the Court's*" (With acts that are perjury "*confessed*").

133. Being that the parties are connected to many of the claims by non-disclosure and have therefore violated the **Plan clause 3.12**[69] that forbids dealings with connected parties. All the fraud, fees and monies connected thereto must be reviewed by a **Rule 2004** examination, which is a duty of CLI and Haas from day one. When TBF, MNAT, Barry Gold and others requested that the Court *"excuse*" CLI and Haas from **Local Rule 2016-(2)d** compliance, to not describe the detailed efforts, *except in generalities*, of the CLI duties, under the pretext of saving the estate expense. This is clear-cut conceivable evidence that they were scheming all along to intentionally defraud CLI and Haas. The Court approved the Order, which was drafted by the perpetrators. (*CLI contracts, which state the eToys Debtor is directly responsible for all labor and expense "to be paid for by eToys" excusing Rule 2016-(2)d compliance(eToys D.I 253 & 523).*)

134. The Foothill/Wells Fargo, Bain and other preferential transfers (*under **§ 547** of the Code*) or fraudulent conveyance (*under **§ 548** of the Code*) has occurred. Equitable Subordination[70] of the many crimes that is overwhelmingly documented can

[69] Section 3.12 of the Plan addresses and forbids "*Transactions with Related Persons*" while Plan Section 4.13 allows the Plan Administrator to Settle items under $1 million without Court approval (TBF's 3 million)

[70] The principles of equitable subordination are set out in the Code, and are defined by law. See, e.g., Pepper v. Litton, 308 U.S. 295, 305 (1939) (ruling that the bankruptcy court has exclusive jurisdiction over subordination, allowance, and disallowance of claims, and that the court may reject a claim in whole or in part according to the equities of each case); In re 80 Nassau Associates, 169 B.R. 832, 837 (Bankr. S.D.N.Y. 1994) (the court, citing In re Kansas City Journalism, 144 F.2d 791, 800 (8th Cir. 1944), stated that "[t]he power to subordinate a claim derives from the Bankruptcy Court's general equitable power to adjust equities among creditors in relation to the liquidation results") In re Poughkeepsie Hotel Assoc. Joint Venture, 132 B.R. 287, 292 (Bankr. S.D.N.Y. 1991) ("*The notion of equitable subordination, as embodied in **§ 510(c)**, is peculiar to bankruptcy law and an issue which can only be decided in a bankruptcy setting*");

make the Debtor whole. In re the O'Day Corp., 126 B.R. 370, 412 (Bankr. D. Mass. 1991) ("*equitable subordination is an equitable remedy available to the Trustee*"[Debtor]); HBE Leasing Corp. v. Frank, 48 F.3d 623, 633 (2nd Cir. 1995) ("***[e]****quitable subordination is distinctly a power of federal bankruptcy courts, as courts of equity, to subordinate the claims of one creditor to others*"). Code **§ 510(c)** is explicitly designed to halt fraud profits.

135. Now the nefarious hordes are up to their usual bag of tricks. They drafted the Plan to give the Plan Administrator and the PEDC, G-d like powers. Including the ability to pay items under $1 million, without the Courts approval. All they have to do is rush to settle the Goldman Sachs NY Court issue, where there is also major deceptions occurring and then "*plant*" their own hand picked in as Plan Administrator in place of Barry Gold. This would result in permanent manifest injustice to benefit "*unclean hands*".

136. We only ask that the Court see the facts as they are. Plainly evident and clearly demonstrative of a "*bankruptcy ring*", a terminology that no one desires to hear or acts that no one desires to admit. Yet it is an issue only an honorable body can resolve. Trusted parties, have deceived this Circuit, and other authorities. We pray that you send a message to the horde of Not Here, not in this Circuit! That no one, no matter how powerful, is Above the Law! Their power and influence can only continue to be contrary to Law if no honorable adjudication upon merits occur. Which is why we have come to this Circuit again. The last dismissal of this Circuit case 06-4308 stated CLI did trucking and security. Only this Circuit can prevent any such further falsehoods from occurring.

We humbly await the Court's response.

/s/ Steve Haas (a/k/a Laser) (Haas)
100% Sole owner of Collateral Logistics, Inc.
CLI being the Court approved company
Haas the Court approved employee of eToys

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

APPENDIX ITEMS EXHIBITS In the Docket Record

United States Trustee Motion to Disgorge Traub Bonacquist & Fox In re: eToys 01-706
(Bankr. Del. 2001) (D.I. 2195)

Affidavit Chairman Official Unsecured Creditors Committee
(Del Bankr eToys 01-706)(Del D.Ct 05-829)(3d Cir 06-4308)
(D.I. 1481, 2111, 2281 & June 2005 docket item 2288)

Collateral Logistics Court approved Contracts In re: eToys 01-706.,
Docket items 253, 523 (Original NIBS 249, 515)

*Barry Gold Hiring Letter part of January 25, 2005 Court Ordered Response-**Docket item 2169** –specifically Exhibit A Hiring Letter*

*Transcript March 1, 2005 Courts direct of Paul Traub, **(D.I. 2228)***

Plan Declaration of Barry Gold Affidavit **In re: eToys docket item 1312**

HAAS Affidavit November 2001 ***In re: eToys 01-706 (Docket item 816)***

The Bankruptcy Court's finding of facts and conclusions of Law OPINION October 4, 2005 (D.I. 2319) and corresponding Order (D.I. 2320)