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UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

COMMISSION  
CLERK

In re: Cordia Communications Corp., Case No. 6:11-bk-06493-KSJ  
Chapter 7

Debtor.

(Not jointly administered)

In re: NORTHSTAR TELECOM, INC., Case No. 6:11-bk-06495-KSJ

Debtor.

In re: MY TEL CO., INC., Case No. 6:11-bk-06496-KSJ

Debtor.

In re: MIDWEST MARKETING GROUP, INC., Case No. 6:11-bk-06497-KSJ

Debtor.

**CHAPTER 7 TRUSTEE'S MOTION (i) TO APPROVE GLOBAL SETTLEMENT  
AND COMPROMISE AND (ii) REQUEST FOR ENTRY OF A BAR ORDER**

**NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING**

NOTICE IS HEREBY GIVEN that this Motion seeks approval of a Global Settlement Agreement which (i) compromise claims the Trustee, on behalf of the bankruptcy estate, has against certain parties and (ii) seeks to bar claims you may have against some or all of the same parties. If the Motion is granted, you will be bound by the terms of the compromise entered between the Trustee and the Parties, and any cause of action which you have already been brought or which may be brought against the same parties, shall be barred from prosecution or collection by you.

Pursuant to Local Rule 2002-4, the Court will consider this Motion without further notice or hearing unless a party in interest files an objection within twenty-one (21) days from the date this paper is entered on the docket. If you object to the relief requested in this

paper, you must (i) file your Objection with the Clerk of the Court so that it arrives on or before the objection deadline at the Clerk of Court, United States Bankruptcy Court, George C. Young Courthouse, 400 W. Washington Street, Suite 5100, Orlando, FL 32801, (ii) serve a copy on the Chapter 7 Trustee, Mr. Richard B. Webber II, Zimmerman Kiser & Sutcliffe, P.A., 315 East Robinson Street, Suite 600, Orlando, FL 32801, and (iii) Florida Bankruptcy Counsel to certain Named Insureds, Mr. Roy S. Kobert, Broad and Cassel, 390 N. Orange Avenue, Suite 1400, Orlando, FL 32801.

If you file and serve an objection within the time permitted, the Court has scheduled a final hearing to consider only timely filed objections on **October 30, 2013 at 2:00 PM**, in Courtroom 6A, 6<sup>th</sup> Floor, George C. Young Courthouse, 400 West Washington Street, Orlando, FL 32801. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the relief requested in this Motion, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

You are reminded that Local Rule 5072-1(b)(16) requires that all persons appearing in Court should dress in business attire consistent with their financial abilities. Shorts, sandals, shirts without collars, including tee shirts and tank tops, are not acceptable. Avoid delays at Courthouse security checkpoints. You are reminded that Local Rule 5073-1 restricts the entry of cellular telephones and, except in Orlando, computers into the Courthouse absent a specific order of authorization issued beforehand by the presiding judge. Please take notice that as an additional security measure a photo ID is required for entry into the Courthouse.

RICHARD B. WEBBER II, not individually but as the duly appointed Chapter 7 Trustee ("Trustee") of converted bankruptcy estates of Cordia Communications Corp., Cordia Communications Corp. of Virginia, Northstar Telecom, Inc., My Tel Co., Inc., and Midwest Marketing Group, Inc. (collectively, the "Debtors"), pursuant to Federal Rule of Bankruptcy Procedure 9019(a), files this Motion to Approve Global Settlement and Compromise with certain Defendants and Settling Parties which includes a request for entry of a Bar Order ("Settlement"), and in support thereof the Trustee states as follows:

COM \_\_\_\_\_  
AFD \_\_\_\_\_  
APA \_\_\_\_\_  
ECO \_\_\_\_\_  
ENG \_\_\_\_\_  
GCL \_\_\_\_\_  
IDM \_\_\_\_\_  
TEL \_\_\_\_\_  
CLK \_\_\_\_\_

NG

**I. SETTLEMENT<sup>1</sup> OVERVIEW**

1. Attached hereto as Exhibit "1" is a chart ("Chart") summarizing the economic impact of the alternative scenarios: (i) if the Settlement<sup>2</sup> is not approved, (ii) if the Settlement is approved *without* inclusion of the Bar Order and (iii) if the Settlement is approved *with* the Bar Order. Interested parties are encouraged to see how the different scenarios impact your particular claim, test the underlying premise of the Trustee and contact the Trustee directly if you have any further questions.

2. Attached hereto as Exhibit "2" is the Settlement which includes the Bar Order provisions. Boiled down to its essence, the Settlement resolves all pending litigation the Trustee brought or could have initiated against third parties in exchange for a lump sum payment of \$3,337,500.00 (Three Million Three Hundred Thirty Seven Thousand Five Hundred Dollars and No Cents), without the attendant risk of litigation and the expenditure of substantial professional fees. To achieve this result, the Named Insureds must first waive the protection afforded by the D&O Policy. To do so, the Named Insureds must be provided absolute certainty that (i) the Cordia Trustee, the Cordia IP Trustee agree in this Settlement and Thermo Credit in their companion Settlement, to cease all collection activity, and execute certain Releases; and that (ii) all other third parties shall never be able to pursue claims or collection activity against the Named Insureds as described in the Bar Order incorporated here by reference, which protection can only be accomplished via a Bar Order.

<sup>1</sup> The description of the Settlement Agreement is provided in an effort to describe the salient terms of the Settlement, but is not intended to modify the Settlement. In the event of any inconsistency between the terms of the Settlement and this Motion, the Settlement attached hereto as Exhibit "2" shall control.

<sup>2</sup> Unless otherwise stated herein, all capitalized terms below shall have the same meaning ascribed to it in the Settlement, and if not defined in the Settlement, then as defined in 11 U.S.C. §101, or given its plain meaning in order to harmonize such definitional with the remainder of the Settlement.

**II. LEGAL AUTHORITY TO SUPPORT AUTHORIZATION OF THE SETTLEMENT**

3. The Trustee seeks approval of the Settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. Rule 9019(a) provides that, after notice and a hearing, a court may approve a proposed settlement of a claim. The decision of a trustee in bankruptcy to enter a settlement is made within his business judgment. *See In re Simmonds*, 2010 U.S. Dist. LEXIS 87739 (S.D. Fla. 2010). "Compromises are generally approved if they meet the business judgment of the trustee." *Id.* (citation omitted). The decision of whether or not to approve a compromise is within the sound discretion of the court. *See Id.*; and *see In re Chira*, 367 B.R. 888, 896 (S.D. Fla. 2007) citing *In re Air Safety Intern., L.C.*, 336 B.R. 843, 852 (S.D. Fla. 2005); *In re Arrow Air, Inc.*, 85 B.R. 886 (Bankr. S.D. Fla. 1988).

4. In passing on proposed settlements, the Court must determine whether a proposed settlement is fair and equitable. *In re Chira*, 367 B.R. at 896 (S.D. Fla. 2007). The Court must evaluate whether the compromise falls below the "lowest point in the range of reasonableness." *In re S&I Investments*, 421 B.R. 569, 583 (Bankr. S.D. Fla. 2009) citing *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993); *In re Arrow Air, Inc.*, 85 B.R. at 886 (Bankr. S.D. Fla. 1988); and *see In re: Rothstein Rosenfeldt Adler, P.A.*, 2010 Bankr. LEXIS 3001 (S.D. Fla. 2010).

5. The 11th Circuit, in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549, provided additional guidance regarding whether a settlement should be approved and established a four part test:

- (a) The probability of success in litigation;
- (b) The difficulties, if any, to be encountered in the matter of collection;

- (c) The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- (d) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

6. An analysis of each *Justice Oak* factor supports approval of the Settlement and the Bar Order Request:

(a) The probability of success in litigation. The Principals and Illinois have informed the Trustee of their intention to vigorously defend the allegations set forth in the Adversary Proceeding should the Trustee re-file the adversary. Given the scope and complexity of the issues involved and potential defenses to the action, the Trustee is not certain of complete success in the Adversary Proceeding.

(b) The difficulties, if any, to be encountered in the matter of collection. In light of the \$3,337,500.00 (Three Million Three Hundred Thirty Seven Thousand Five Hundred and No Cents) amount to be paid by Illinois with respect to the Settlement while weighing: (i) the limited assets of each of the Named Insureds, (ii) the difficulty in collection against each of the Named Insureds (iii) other reasonably expected expenses each of the Named Insureds and Illinois will face as a result of ancillary law suits filed against them, which would adversely impact the collection, (iv) the continued depletion of the D&O Policy caused by the payment to various defense counsel for representing the Named Insured due to the defense in multiple ancillary litigation cases; it is the Trustee's business judgment that this Settlement is in the best interest of the estate and its creditors. Given the limited financial resources of the Named Insureds, along with the fact that they are already the subject of lawsuits by other creditors arising from their involvement with the Debtors, the Trustee will encounter significant competing collection issues should he be required to re-file the Adversary Proceeding and litigate it to its conclusion.

(c) The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it. The issues involved in the Adversary Proceeding are complex, and will cause the estate to incur significant expense, inconvenience and delay should the Trustee be required to re-file and litigate the Adversary Proceeding to its conclusion.

(d) The paramount interest of the creditors and a proper deference to their reasonable views in the premises. The paramount interest of the creditors and a proper deference to their reasonable views in the premises will be substantially furthered by approval of the Settlement, without any further risk, expense or delay to the estate.

7. Based upon the foregoing, the Settlement is in the best interest of the estate and its creditors. Payment by Illinois, in the amount of \$3,337,500.00 (Three

Million Three Hundred Thirty Seven Thousand Five Hundred and No Cents), will provide the Estate with cash. The Settlement will also save the estate considerable resources by avoiding a trial and possible appeals in order to recover funds from the Principals and Illinois.

### III. THE BAR ORDER REQUEST

8. The Bar Order Request in the Motion should likewise be approved as a necessary and appropriate condition for approval of the Settlement. The Court has the inherent power under the Bankruptcy Code, including Section 105(a), to issue any order necessary or appropriate to carry out the provisions of Title 11. *See Munford v. Munford, Inc., (In re Munford)*, 97 F.3d 449, 454 (11th Cir. 1996)(finding bankruptcy court had authority under Section 105(a) to enter order barring claims against certain defendants); and *see In re Romagosa*, 2006 U.S. Dist. LEXIS 50629, 2006 WL 2085461 (M.D. Fla. 2006) (C.J. Baxter) (approving release of non-debtors from suits by creditors where settlement agreement released parties to underlying state court litigation). In *Munford*, the Eleventh Circuit concluded that (i) public policy favors settlements, (ii) the cost of litigation can be burdensome to a bankruptcy estate, and (iii) "bar orders play an integral role in facilitating settlements." *Munford* 97 F.3d at 455; accord *In re S&I Investments*, 421 B.R. 569, 583-586 (Bankr. S.D. Fla. 2009) (J. Ray) (approving a bar order as part of a settlement with the estate).

9. In the instant case, the Bar Order Request is an essential and critical element of the Settlement and the consents of the Named Insureds and the willingness of Illinois to fund \$3,337,500.00 (Three Million Three Hundred Thirty Seven Thousand Five Hundred and No Cents) in lieu of having to defend ancillary litigation on behalf of

the Named Insureds and any and all other principals, officers or directors of the Debtors is critical. The Settlement expressly provides the Named Insureds and Illinois with the option to terminate the entire Settlement if the Bar Order Request is not approved.

Further, the approval of the Bar Order Request will result in a payment of \$3,337,500.00 (Three Million Three Hundred Thirty Seven Thousand Five Hundred and No Cents) to the Debtors' estate and will save the Debtors' estate the cost of litigation in the Adversary Proceeding, both at the trial and potentially appellate courts levels. The payment of the \$3,337,500.00 (Three Million Three Hundred Thirty Seven Thousand Five Hundred and No Cents) shall ensure that there is some pro-rata distribution of assets to all priority administration creditors which involves for the most part, the claims of Governmental Units. Upon execution of the Settlement by the Settling Parties, the Cordia Trustee shall cause notification of the terms of the proposed Bar Order to be published in *The Wall Street Journal* in order to provide adequate publication notice to all creditors who may have not been included in the Sworn Schedules prepared by the Cordia Debtors or have elected to not file a Proof of Claim, such parties shall now have received sufficient notice to object to this Settlement. The Trustee shall request the Bankruptcy Court to make such a finding concerning publication notice as being binding on all third parties not on the matrices. Should this Court fail to approve a Bar Order, then the pursuit of the Adversary Proceeding will most likely continue and significantly deplete the D&O Policy which is a wasting policy. The D&O Policy continues to be depleted today caused by other ancillary litigation, which may result in the creditors and the bankruptcy estates receiving nothing.

**CONCLUSION**

For the reasons stated above, the Trustee requests: the Settlement be approved; with the Bar Order Request.

/s/ Richard B. Webber II, Trustee  
Richard B. Webber II, Trustee  
PO Box 3000  
Orlando, FL 32802-3000  
Telephone: (407) 425-7010  
rwebber@zkslawfirjm.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served this 2nd day of October, 2013 via CM/ECF service on all other parties receiving CM/ECF notice.

/s/ Roy S. Kobert,  
Roy S. Kobert, Esq.  
Florida Bar No. 777153  
rkobert@broadandcassel.com  
Broad and Cassel  
390 N. Orange Avenue, Suite 1400  
Orlando, Florida 32801  
Phone: 407-839-4200  
Fax: 407-650-0927  
*Florida Bankruptcy Counsel to certain  
Named Insureds*

Approval of the Thermo Settlement (filed contemporaneously with this Trustee's Settlement inclusive with the Bar Order) results in the possibility to achieve a 68% dividend as explained herein. (See Scenario 5).

To assist the reader in analyzing the impact of the proposed Settlements, below are a series of scenarios utilizing known numbers to date, forecasting future results based upon cash paid as a direct result of the proposed Settlements, as well as known decreases of liability based upon adjudicated objections to claims. There could be a dramatic shift in the actual dividend based upon the outcome of pending objections against \$12 million of remaining priority tax claims. **The scenarios are meant to assist the reader and are for illustration purposes only and do not reflect a guaranteed dividend or distribution to priority tax claimants.**

**Cash on Hand:**

As of August 1, 2013 the Cordia Trustee had on account \$4,324,023.00

**Secured Claims:**

Thermo Credit has asserted a fully secured claim in the amount of \$2,783,000, plus interest thereon, based upon moneys lent and secured by factored accounts receivable. If the Thermo Credit Settlement is not approved and Thermo Credit is successful in the litigation, the Cordia Trustee must pay the secured claim in full and will be left with \$1,541,023.

**Chapter 7 Priority Claims (11 USC 507(a)(2)) :**

At the August, 20, 2013 hearings, (i) The Cordia Trustee was instructed by court order to pay the Cordia IP Trustee's fees and costs of \$32,162 (ii) the Cordia Trustee's financial advisor was awarded \$56,202 and (iii) the Cordia Trustee was awarded \$88,351 for fees and expenses incurred for the four month period ending June 30, 2013. Following payment of these awards, the Cordia Trustee would then have on hand \$1,364,308. Estimated fees and expenses from July 1, 2013 through the end of the case for both the Cordia Trustee fees and for the Cordia Trustee's financial advisor are estimated at \$200,000, leaving a net available of \$1,164,308. (Should the Settlement not be approved, the Cordia Trustee will expect its professionals to prosecute the counterclaim against Thermo and to reinstate the adversary proceeding against the Named Insureds and Illinois which fees for these matters could be substantial). The Cordia Trustee is compensated

by a statutory formula set forth in 11 U.S.C §326(a) which estimated allowance would be \$300,000, resulting in a remainder available of \$864,308. The Cordia Trustee and the Internal Revenue Service have been directed to participate in a face-to-face settlement conference which is set for October 23, 2013 before the next hearing over a series of tax claims totaling approximately \$502,000. Due to the unique position of the Internal Revenue Service, for purposes of this analysis, the Internal Revenue Service's claims are presumed to be paid reducing the available cash to \$362,308. The Cordia Trustee must serve the all creditor matrices under Bankruptcy Rule 2002 with the pleading and order which requires notice to over 25,000 creditors utilizing the court approved third-party noticing vendor for labor and postage, amounts to \$60,000 per mailout on at least 3 occasions to complete the case, further reducing the available cash to \$182,308.

**Chapter 11 priority claims (11 USC 507(a)(2):**

All Court awarded or approved claims have been paid in full.

**Chapter 7 administrative priority tax claims (11 USC 507(a)(8))**

There have been over \$15,250,000 in priority tax claims filed in the Cordia bankruptcy cases. The Bar Date to file claims has passed. To date, the Cordia Trustee has successfully reduced \$3,250,000 of asserted priority tax claims down to \$1,147,966.92, or a reduction of 65%. The Cordia Trustee has pending objections to over \$12 million of priority tax claims. Presuming that the Cordia Trustee will have less success against the remaining claimants and achieves only 50% reduction of asserted claims, the end result would be a remainder of \$7,147,966.92 of Allowed priority tax claims.

Assuming the analysis above, the Cordia Trustee has prepared the following alternative scenarios for your consideration:

**Scenario 1: The Cordia Trustee withdraws the Settlement and concludes the bankruptcy cases**

If the Cordia Trustee wound down the cases quickly, the bankruptcy estates would have \$182,368 to distribute to \$7,147,966.92 of Allowed priority tax claims resulting in a pro rata dividend of 2.5% paid to priority tax claimants.

**Scenario number 2: The Settlement is NOT approved and the Cordia Trustee loses both cases at trial.**

If the Settlement is not approved (and presuming the Cordia Trustee is not successful in the litigation against Thermo and in the litigation against the Named Insureds and Illinois (or the Cordia Trustee is successful in such litigation yet the defendants are uncollectible) the Cordia Trustee would have incurred legal fees to try both cases which would leave the Cordia cases administrative insolvent. There would be a 0.00% distribution paid to priority tax claimants

**Scenario Number 3: the Settlement is NOT approved and the Cordia Trustee wins at trial against Thermo and again at trial against the Named Insureds**

A Thermo Credit win allows the trustee to retain \$2,783,000 of the proceeds on hand plus the available cash of \$182,308 resulting in part of \$2,965,308. A win against the Named Insureds and results in a judgment. Assuming there is a receipt sufficient to pay the Cordia Trustee professionals for the legal fees incurred for both trials, it still leaving the amount of cash in hand at \$2,965,308. The result would be a 41% distribution paid to priority tax claimants

**Scenario number 4: the Settlement is approved yet the Bar Order is stricken**

If the Settlement is approved without the Bar Order (so that the Cordia Trustee's settlement with Thermo Credit could still be consummated) there would be an additional \$1,541,383.02 of previously contested liened collateral now available for distribution after tendering the Thermo Payment. Presuming that the Cordia Trustee was not successful in the litigation against the Named INIC Insureds and INIC (or the Cordia Trustee is successful in such litigation yet there remains serious concerning collectability). Deducting \$200,000 for legal fees expended would result in funds on hand of of \$1,946,051.00 (2,146,051 -\$200,000) or a pro rata dividend of 27% paid to priority tax claimants

**Scenario number 5: the Settlement is approved with the Bar Order**

If the Settlement is approved with the Bar Order there would be an additional \$1,541,383.02 after tendering the Thermo Credit Payment of previously contested liened collateral now available for distribution; plus \$3,337,500 from the INIC Settlement Payment without deducting the attendant professional fees and expenses of prosecution, the Cordia Trustee would have on hand \$4,878,883.02, resulting in a pro rata dividend of 68% paid to priority tax claimants

**GLOBAL SETTLEMENT AND MUTUAL RELEASE AGREEMENT**

This Global Settlement and Mutual Release Agreement ("Settlement")<sup>1</sup> is made by and among (i) Debtor, Cordia Communications Corp. ("Cordia Communications"), (ii) Debtor, Cordia Communications Corp. of Va. ("Cordia VA"), (iii) Debtor, My Tel Co., Inc. ("My Tel"), (iv) Debtor, Midwest Marketing Group, Inc. ("Midwest"), and (v) Debtor, Northstar Telecom, Inc. ("Northstar") ("Cordia Communications", "Cordia VA", "My Tel", "Midwest" and "Northstar" are collectively referred to as the "Cordia Debtors"); (vi) Richard B. Webber, II, not individually, but as the duly appointed Chapter 7 Trustee of the forgoing Cordia Debtors ("Cordia Trustee"); (vii) Illinois National Insurance Company ("Illinois National"); (viii) Maria Abbagnaro ("Abbagnaro"); (ix) Kevin Griffo ("Griffo"); (x) Gandolfo Verra ("Verra"); (xi) Wesly Minella ("W. Minella"); (xii) Alexander Minella ("A. Minella"); and (xiii) Patrick Freeman ("Freeman") (Abbagnaro, Griffo, Verra, W. Minella, A. Minella and Freeman are collectively referred to as the "Named Insureds"), (xiv) Debtor, Cordia IP Corporation ("Cordia IP"); (xv) George Mills, not individually, but as the duly appointed Chapter 7 Trustee of Cordia IP ("Cordia IP Trustee"); (xvi) Byrum IP Funding Corporation ("Byrum"); (xvii) Geils Communication, Inc. ("Geils Inc."); (xviii) Geils Co., LLC ("Geils, LLC"); and (xix) Geils Ventures, LLC ("Geils Ventures") ("Byrum", "Geils, Inc.", "Geils, LLC" and "Geils Ventures" are collectively referred to as the "Byrum and Geils Entities") and, collectively, all of the foregoing nineteen (19) individuals and entities identified in items (i) - (xix) are referred to as the "Settling Parties" or in the singular case as a "Settling Party").

<sup>1</sup> All capitalized terms are as defined herein and, if not defined herein, then as defined in 11 U.S.C. §101, or shall be given their plain meaning.

## I. GENERAL STATEMENTS

1. The Settling Parties are executing this Settlement to fully, finally and forever resolve all pending claims, actions or proceedings that have been initiated or that could have been initiated in case(s), actions, proceedings or claim(s) whether raised or filed, previously adjudicated or still pending, or as more fully set forth below in order to avoid the attendant time, the protracted expense, and inherent uncertainty of litigation.

2. Nothing herein shall constitute an admission by any of the Settling Parties. Any statements or admissions contained herein are made solely as an accommodation by a Settling Party to another Settling Party to facilitate and implement this Settlement.

## II. BACKGROUND

### A. The Cordia Bankruptcy Filings<sup>2</sup>

3. On May 1, 2011, Cordia Communications filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division, and was assigned Case No. 6:11-bk-06493-KSJ.

4. On May 1, 2011, Cordia VA filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division, and was assigned Case No. 6:11-bk-06494-KSJ.

5. On May 1, 2011, Northstar filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division, and was assigned Case No. 6:11-bk-06495-KSJ.

<sup>2</sup> Two Cordia related entities did not seek bankruptcy protection: Cordia Corporation ("Cordia Corp.") and Cordia Prepaid Corporation ("Cordia Prepaid").

6. On May 1, 2011, My Tel filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division, and was assigned Case No. 6:11-bk-06496-KSJ.

7. On May 1, 2011, Midwest filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division, and was assigned Case No. 6:11-bk-06497-KSJ.

8. On May 6, 2011, this Court entered its *Order Granting Motion for Joint Administration of Cases* (Doc. No. 40).

9. On August 21, 2011, Cordia IP filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York, and was assigned Case No. 11-23631.

10. On February 1, 2012, this Court entered its *Order Converting Case to Chapter 7* (Doc. No. 389), converting the Cordia Debtor's cases to liquidation cases under Chapter 7, which cases were subsequently assigned to the Cordia Trustee by utilizing the panel of private trustees established by the United States Trustee pursuant to 28 U.S.C §586(a)(1).

11. On May 8, 2012, the New York Bankruptcy Court entered its Order (I) *Granting Florida Trustee's Motion to Transfer Venue to the United States Bankruptcy Court for the Middle District of Florida, Orlando Division, and (II) Transferring and Adjourning, Universal Service Administrative Company's Motion for Payment of Administrative Expense Claim and Universal Service Administrative Company's Motion to Compel* (Doc. No. 29), transferring the Cordia IP case to the Middle District of Florida, Orlando Division (Case No. 6:12-bk-06388-KSJ).

12. On July 18, 2012, this Court entered its *Order Granting Motion to Convert Case to Chapter 7* (Doc. No. 50), converting the Cordia IP case to a liquidation under Chapter 7 of the Bankruptcy Code, which was subsequently assigned to the Cordia IP Trustee utilizing the panel of private trustees established by United States Trustee pursuant to 28 U.S.C. § 586(a)(1).

**B. The Cordia Trustee Matters**

**(i) Cordia Trustee Investigation**

13. In December 2012, and March 2013, the Cordia Trustee cross-examined Griffo, Verra, W. Minella and A. Minella (collectively the "Adversary Insureds") during Bankruptcy Rule 2004 examinations in order to investigate filed causes of action against, and potential liability of, the Adversary Insureds, as well as any additional, potential causes of action.

14. The Cordia Trustee has obtained executed personal financial statements and the most recently filed tax returns of each of the Adversary Insureds conditioned on the execution of a Confidentiality Agreement or is in the process of obtaining any incomplete information.<sup>3</sup> The Cordia Trustee has determined to date that each of the Adversary Insureds appears, based on the information and records available, to have either no, or inconsequential, assets in his possession or control which could be economically utilized or liquidated for the benefit of creditors. The Cordia Trustee will complete such investigation to his satisfaction prior to the Objection deadline for the Settlement.

<sup>3</sup> Any creditor who wishes to examine the executed personal financial statements and/or tax returns for any individual Adversary Insured may contact Roy S. Kobert at rkobert@broadandcassel.com and counsel for the individual Adversary Insured with a copy to Cindy Page at cpage@broadandcassel.com and (i) request and execute the Confidentiality Agreement-(ii) secure the consent of counsel for the individual Adversary Insured and (iii) provide proof that you have a direct claim against such individual Adversary Insureds.

**(ii) The Cordia Trustee Adversary Proceeding**

15. On October 18, 2012, the Cordia Trustee filed an adversary proceeding against the Adversary Insureds and Illinois National in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division under Adversary Case No. 6:12-ap-00190-KSJ (the "Cordia Trustee Adversary Proceeding").

16. The Cordia Trustee Adversary Proceeding complaint alleged negligence against the Adversary Insureds asserting that they owed a duty of reasonable care to confirm that proper procedures were in place and were being followed by the employees, officers and agents of the Cordia Debtors for the collection, and subsequent remittance, of telecommunication taxes to various Governmental Units and for other tax remittance matters, including failure to account for and turn over such taxes and governmental fees.

**(iii) Tolling Agreement**

17. On January 15, 2013, a Tolling Agreement was entered between the Cordia Trustee and Illinois National, followed by a Tolling Agreement entered into between the Cordia Trustee and the Adversary Insureds.

18. These Tolling Agreements called for a dismissal of the Cordia Trustee Adversary Proceeding without prejudice. The Adversary Insureds and Illinois National secured Court approval of the Tolling Agreements to allow the Cordia Trustee to (i) continue his investigation; (ii) further assess claims that must serve to enhance the assets of the bankruptcy estate for the benefit of the creditors; and (iii) determine whether he could accomplish a global compromise or pursue litigation by re-filing the Cordia Trustee Adversary Proceeding. The Tolling Agreements abated any applicable statute of limitations for 190 days, effectively sunseting the Cordia Trustee Adversary



Proceeding as to Illinois National, until July 24, 2013 and as to the Adversary Insureds until August 2, 2013.

19. The Adversary Insureds, Illinois National and the Cordia Trustee (collectively referred to as the Adversary Parties) continued their work toward an amicable global resolution. The Adversary Parties proposed to maintain the status quo by way of an Amended Tolling Agreement. The Adversary Insureds drafted an Amended Tolling Agreement and solicited and obtained the consents of the Cordia Trustee and Illinois National. This Amended Tolling Agreement was executed on July 24, 2013 and extends the maturity dates of the two prior Tolling Agreements into a single maturity date, or 190 days from the date of hearing with respect to the Amended Tolling Agreement.

20. At the hearing held on August 20, 2013, the Bankruptcy Court orally approved the Amended Tolling Agreement, which hearing date became the Effective Date of the Amended Tolling Agreement. As an integral part of the Amended Tolling Agreement, the Cordia Trustee agreed to a dismissal of the Cordia Trustee Adversary Proceeding without prejudice in exchange for the Adversary Insureds' and Illinois National's agreement to extend the statute of limitations for the Cordia Trustee to reinstitute the Cordia Trustee Adversary Proceeding.

21. The Amended Tolling Agreement was approved by written Court Order on August 30, 2013 and is set to expire on February 26, 2014.

**(iv) The Cordia Trustee Demand Letter**

22. On September 13, 2013, the Cordia Trustee issued a letter making a demand upon Illinois National for the immediate tender of the remaining policy limits of the D&O Policy to resolve and settle on a global basis all matters that have been

noticed to the D&O Policy including the Cordia Trustee Adversary Proceeding, the Thermo Louisiana Case, the Thermo Adversary Case and the Thermo Related Claims as defined in the Thermo Settlement filed contemporaneously and agreed to seek and obtain a Bar Order as a precondition of the tender of the policy limits. Illinois National responded to the Cordia Trustee Demand Letter and agreed, subject to conditions set forth therein, to distribute the Illinois National Settlement Funds to an escrow account.

**C. The Cordia IP Trustee Matters**

**(i) Cordia Trustee IP Investigation**

23. At the present time, the Cordia IP estate is administratively insolvent and does not have funds to pay the 11 U.S.C. §507(a)(2) priority expenses of even the Cordia IP professionals for the their services performed to date.

24. The Cordia IP Trustee was only able to actively participate and cross-examine potential targets under oath due to the arrangements by and financial support from, the Cordia Trustee as part of the overall depositions of the Adversary Insureds by the Cordia Trustee and the addition of Geils, Inc. under oath, for the exclusive potential benefit of the Cordia IP estate. The Cordia Trustee has filed a claim in excess of \$13 million in the Cordia IP bankruptcy case. Consequently, any recovery made by the Cordia IP Trustee could significantly benefit the Cordia Trustee's estates as well.

25. On September 17, 2012, this Court approved the request of the Cordia IP Trustee to participate in the deposition in New York of W. Minella and ordered that the costs and professional expenses of the Cordia IP trustee's professionals shall be paid by the Cordia Trustee's cases (see paragraph 4 of D.E. 61). On December 18, 2012, the Bankruptcy Court approved the request of the Cordia IP Trustee to participate in the depositions of Griffo, Verra and A. Minella, by the Cordia Trustee and the addition of

Geils Inc. The Bankruptcy Court also ordered that all costs and professional expenses of the Cordia IP Trustee's professionals shall be paid through the Cordia Trustee's cases (see paragraph 4 of D.E. 64). Without the coordinated interplay with the Cordia Trustee, the Cordia IP Trustee would have been adversely impacted in conducting any meaningful discovery which might well have inhibited this Settlement and financial recovery as set forth herein.

26. In December 2012, and in March 2013, the Cordia IP Trustee conducted his own cross examination pursuant to Bankruptcy Rule 2004 of each of the Adversary Insureds as well as Geils, Inc. to investigate whether the Cordia IP Trustee had a good faith basis to assert independent causes of action against any of the Adversary Insureds, as well as Geils, Inc., and any affiliated entities.

27. The Cordia IP Trustee has obtained executed personal financial statements and the tax returns filed last year (to the extent they were filed) from each of the individual Cordia IP Adversary Targets as defined below, conditioned on the entering and execution of a Confidentiality Agreement or is in the process of obtaining any incomplete information. The Cordia IP Trustee has determined to date that the individual Adversary Parties-based on the information and records available, appear to have either no, or inconsequential, assets in their possession or control which could be economically utilized or liquidated for the benefit of creditors. The Cordia IP Trustee will complete such investigation to his satisfaction prior to the Objection deadline for the Settlement as set forth under the Middle District Court Rules.

**(ii) The Cordia IP Trustee Demand**

28. As a direct result of his own investigation, The Cordia IP Trustee has notified Byrum IP Funding Corporation ("Byrum"); Geils Communication, Inc. ("Geils,

Inc."); Geils & Co. LLC ("Geils, LLC"); Geils Ventures, LLC ("Geils Ventures"), ("Byrum", "Geils, Inc.", "Geils, LLC" and "Geils Ventures" collectively referred to as "Byrum and Geils Entities") along with A. Minella (collectively the "Cordia IP Adversary Targets") that he believes he has a good faith basis to initiate an adversary lawsuit for alleged fraudulent transfer, breach of fiduciary duty, and usurpation of a corporate opportunity, all of which the Cordia IP Adversary Targets refute.

29. On July 10, 2013, the Cordia IP Adversary Targets entered into a Tolling Agreement<sup>4</sup> with the Cordia IP Trustee thereby extending the statute of limitations for the Cordia IP Trustee to file a lawsuit for a 190 day period. Such extension would allow the Cordia IP Trustee to (i) continue his investigation; (ii) further assess claims that may serve to enhance the assets of the bankruptcy estate for the benefit of the creditors; and (iii) determine whether the Cordia IP estate would be a participant in this Settlement Agreement or independently pursue litigation. The Cordia IP Trustee's Tolling Agreement was approved by Court Order on August 1, 2013.

**III. BRIEF OVERVIEW OF THE SETTLEMENTS**

**A. The D&O Policy is a wasting policy**

30. To date, ninety four (94)<sup>5</sup> distinct Governmental Units have asserted Claims, against the Cordia Debtors and many of the Named Insureds and many have initiated administrative proceedings, secured judgments and/or commenced collection activities against one or more of the Named Insureds. Each of the Named Insureds has

<sup>4</sup> The Cordia Trustee Tolling Agreements and the Cordia IP Trustee Tolling Agreement served one primary purpose: provide a limited window of time to see if a global settlement can be achieved without losing causes of action due to the passage of time. Typically the Cordia Trustee and Cordia IP Trustee would entertain settlement concurrently while prosecuting their respective causes of action. However, due to the mechanics of the wasting policy set forth in the D&O Policy, such approach would be counterproductive to the creditor body.

<sup>5</sup> To the extent more than one INIC Insured is involved in claims asserted by a Governmental Unit, each INIC Insured is entitled to its own legal counsel due to divergent interests, unique facts or various degrees of culpability attributable to each INIC Insured and potential claims amongst the INIC Insured. As a direct result, defense costs are at various times quadrupled in a single jurisdiction.

asserted claims against Cordia Corporation's Directors and Officers Liability Policy Number 01-416-61-51, as issued by Illinois National (the "D&O Policy"). Each Named Insured has retained independent, non-conflicted legal counsel in each jurisdiction. The Named Insureds' retention of defense counsel and the incurrence of defense fees and costs, has necessarily resulted in an exponential increase in the monetary demands placed on the D&O Policy.

31. In addition to the defense costs associated with responding to the claims and demands of Governmental Units, additional defense fees and costs have been incurred, are being incurred, and will in the future continue to be incurred in (i) the Thermo Louisiana Case referenced in the pending settlement with ThermoCredit and (ii) the Cordia Trustee Adversary Proceeding.

32. The defense fees and costs incurred by the Named Insureds' defense counsel in these matters are currently being reimbursed under the D&O Policy. Once the limits of the D&O Policy are exhausted by the reimbursement of these defense fees and costs, Illinois National will have no further financial obligations under its D&O Policy. In the unlikely event that the D&O Policy is not fully exhausted by the payment of these defense fees and costs, the D&O Policy's remaining limits would not be available for the tax-related claims of the Governmental Units, as they do not constitute covered claims under the terms of the D&O Policy.

**B. Collectability**

33. The underlying calculus factored in by the Cordia Trustee and the Cordia IP Trustee in reaching the economic terms set forth in this Settlement has been driven

in part by the uncollectability of their respective claims from their identified targets as more fully set forth herein.

**IV. THE PROPOSED SETTLEMENTS**

**A. The Cordia Trustee Settlement**

**(i) Terms**

34. As an integral part of the Settlement, (i) the Named Insureds have agreed to waive their rights to have the proceeds of the D&O Policy utilized solely for payment of their defense fees and costs; (ii) Illinois National has agreed to pay, after payment of the Named Insureds' respective defense fees and costs, to the Cordia Trustee in the amount of \$3,337,500.00 (Three Million Three Hundred and Thirty Seven Thousand Five Hundred Dollars and no cents) (the "Illinois National Settlement Funds") in a lump sum, with such payment contingent upon the specific conditions set forth in IV(A)(ii) below; and (iii) the Cordia Trustee has, based on the analysis below, agreed to terminate the Amended Tolling Agreement upon the entry of a final and non-appealable Order approving this Settlement; (iv) an exchange of Releases, as will be executed, exchanged and delivered as set forth below; and (v) the necessary parties cooperating in the Cordia IP Settlement (collectively the "Cordia Trustee Settlement")

35. The Cordia Trustee has participated in numerous, substantive settlement negotiations with the Adversary Insureds and Illinois National over the past several months and has carefully considered the defenses available to the Adversary Insureds if a consensual resolution could not be achieved.

36. The Cordia Trustee has considered the economics of his position, the time and expense and risk of not prevailing, coupled with the lack of meaningful collectability for his causes of action, either jointly or severally from the Adversary Insureds, while

weighing the benefits of the substantial consideration provided by the tender of the Illinois National Settlement Funds. The Cordia Trustee has also investigated whether any of the Cordia estates hold any interest in the Assets to be sold herein

37. This Settlement is the result of arms-length negotiations among the Cordia Trustee, the Adversary Insureds and Illinois National. The Cordia Trustee believes, in the exercise of his business judgment, that the Settlement is in the best interests of the bankruptcy estates and their Creditors.

38. Upon approval of the Settlement by the Court and expressly upon satisfaction of the Conditions Precedent defined below in Paragraph IV(A)(ii), Illinois National shall pay to the Cordia Trustee the Illinois National Settlement Funds. The D&O Policy's limits are still being depleted each day by the incurrence of defense fees and expenses by the Named Insureds. As long as this Settlement is approved at the Court hearing on October 30, 2013 and provided there is sufficient limits remaining under the D&O Policy after payment of defense fees and expenses, Illinois National agrees that the amount of the Illinois National Settlement Funds shall not be downwardly adjusted.

**(ii) Conditions Precedent to the Payment of the Illinois National Settlement Funds**

39. The following sub paragraphs "a" through "i" are express conditions precedent that are integral and material inducements to payment of the Illinois National Settlement Funds to the Cordia Trustee. To purposefully coincide with the termination date of the Amended Tolling Agreement, on or before February 26, 2014, the Cordia Trustee shall have satisfied each of the conditions precedent below. If the Cordia Trustee fails to satisfy each of the conditions precedent below on or before February 26,

2014, the Cordia Trustee shall return the Illinois National Settlement Funds to Illinois within ten (10) business days after February 26, 2014:

- a. The Cordia Trustee must secure and obtain Bankruptcy Court approval of a Bar Order (as described herein), or what is sometimes referred to as a channeling injunction, against certain existing and future claims of any third parties, adopting verbatim its terms, conditions and scope unless modified by Illinois National in consultation with the Named Insureds. The Cordia Trustee acknowledges and agrees that a mandatory condition precedent to the Named Insureds waiving their right to protection under the D&O Policy for the defense fees and costs and for Illinois National to pay the Illinois National Settlement Funds is the Court's entry and approval of the Bar Order. Such Bar Order shall (i) be generally described in an advertisement and disseminated in a publication of general and widespread circulation to provide adequate notice as confirmed by the Bankruptcy Court to affected parties who may have not been scheduled or notified by the debtors or may not have filed a proof of claim, informing them of the Bar Order's salient terms and conditions including, the written objection deadlines and the October 30, 2013 hearing date; (ii) be identified on the front page of the Compromise Motion to alert the reader of the relief sought; and (iii) be included verbatim in the Court's Order approving the Settlement, which must be final and non-appealable;
- b. Entry of a Final Order and Judgment of Dismissal with prejudice, of the Cordia Trustee Adversary Proceeding effectuated by a withdrawal, with prejudice, of the Amended Tolling Agreement;
- c. Entry of a Final Order and Judgment of Dismissal, with prejudice, of the Thermo Louisiana Case;
- d. Entry of a Final Order and Judgment of Dismissal, with prejudice, of the Thermo Adversary Case;
- e. The Cordia Trustee shall secure from the Cordia IP Trustee (i) the required releases from the Cordia IP Trustee in favor of Illinois National and the Named Insureds and (ii) the withdrawal, with prejudice, of the Tolling Agreement with the Cordia IP Trustee;
- f. The Cordia Trustee and Cordia IP Trustee shall both provide Illinois National with a policy release and claim release under the D&O Policy;
- g. The Cordia Trustee shall be responsible for exchanging and securing execution of all mutual releases by and among the Settling Parties as well as ThermoCredit;

- h. The Settling Parties shall cooperate with any nonmaterial changes, if any, to this Settlement after its filing with the Court; and
- i. The Adversary Parties shall cooperate with the Cordia Trustee, including providing any reasonable assistance with any other claims which may be brought by the Cordia Trustee against third parties.

**B. The Cordia IP Trustee Settlement**

40. The Cordia IP Trustee has (i) considered the defenses available to the Cordia IP Adversary Targets if a consensual resolution could not be achieved; (ii) weighed the fact that the Cordia IP Trustee's bankruptcy estate would be in direct competition with the Cordia Trustee's bankruptcy estates in pursuing relief against similar parties, as there is some overlap between the estates of identified litigation targets; (iii) considered the fact that the Cordia IP Adversary Targets are comprised in part of dissolved corporate entities that are no longer actively in business and their principal has relocated to the United Kingdom; and (iv) concluded as a potential condition precedent that the Cordia IP Trustee must successfully prosecute an adversary proceeding against an insider who claims to hold a perfected security interest in the assets of Cordia IP and have such claim either reclassified as an unsecured claim or equitably subordinated under 11 USC §510(c) in order to realize an economic benefit from the sale of any remaining telecommunications equipment and parts.

41. The Cordia IP Trustee has undertaken some limited investigation regarding the true ownership of the assets and will not render an opinion.

42. The Cordia IP Trustee has considered the economics of his position, the time and expense and risk of not prevailing, coupled with the lack of meaningful collectability while weighing the consideration discussed below.

43. To facilitate the Settlement make the mechanics of this Settlement Agreement effective, the Cordia IP Trustee, in consultation and with the cooperation of the Cordia Trustee, as well as the Cordia IP Adversary Targets, and Sippop Corp. have each agreed to undertake the following acts upon the entry of a final and non appealable Order approving this Settlement:

- (i) The Byrum and Geils Entities have jointly agreed to pay \$10,000.00 (Ten Thousand Dollars and No Cents) to the Cordia IP bankruptcy estate to reimburse in part the costs incurred to conduct its independent investigation which culminated in the Settlement;
- (ii) \$32,162 of the Illinois National Settlement Funds shall be paid to the Cordia IP bankruptcy estate;
- (iii) Byrum shall waive its perfected security in the Assets described herein to facilitate their sale and execute any and all documents to assist the Cordia IP Trustee in consummating any such sale as is commercially reasonable;
- (iv) The Cordia IP Trustee shall reimburse the advances made by the Cordia Trustee pursuant to prior Court Orders which directly funded the fees awarded and paid pursuant to the May 16, 2013 *First Interim Application of Shutts & Bowen LLP for Compensation and Reimbursement of Expenses* [D.E. 90] in the amount of \$27,938.00 in professional fees and \$4,224.00 in costs;
- (v) The Cordia Trustee will (i) waive its over \$13 million worth of unsecured claims it has filed in the Cordia IP case and (ii) assume responsibility for all third-party copying and mailing costs to serve this Settlement and accompanying Motion on the all creditor matrix of Cordia IP as well as serving any subsequent Order emanating from the hearing; and (iii) to the extent the Cordia Trustee has any ownership interests in the Assets identified below, the Cordia Trustee will provide Releases in favor of the Purchaser and entities related to the Brazilian based prior business operations of Cordia Comunicacoes S/A – Brazil Cordia Do Brasil, PARTICIPAÇÕES, LTDA – Brazil and Canal West LTD – Brazil
- (vi) The Cordia IP Trustee will sell the Assets described herein to Sippop Corp, a Nevada corporate entity owned by a former Cordia insider in exchange for a lump sum payment totaling \$50,000, subject to higher or better offers made at the time of the Settlement hearing. Sippop Corp shall tender a 100% deposit (\$50,000) in

cleared funds with the Cordia IP Trustee no later than 5pm Orlando time on October 28, 2013, with the balance due, if any, upon the entry of a final and nonappealable order approving such sale. The deposit shall only be refundable should Sippop Corp be outbid. To be eligible to make a competing offer, any third party shall be (i) prepared to offer at least \$55,000 for the Assets and no later than 5pm Orlando time on October 28, 2013, provide the Cordia IP Trustee with a 100% deposit (\$55,000 or more) in cleared funds and make prior arrangements to participate in live bidding at the commencement of the Settlement hearing. The Cordia IP Trustee shall notify Sippop Corp if there is a qualified third party bidder. The Assets to be sold are being sold via a quit claim bill of sale, "as is, where-is",with no representations or warranties whatsoever by the Cordia IP Trustee with all faults and risks on the Purchaser. The notice of proposed sale shall also be served on the two notification addresses provided below. The successful purchaser shall receive (i) a separate Court Order approving such sale with the Court retaining jurisdiction over the sale, and (ii) the Cordia IP Trustee's quit claim bill of sale conveying the following Assets, less and except whatever, if any, of such items as were sold and conveyed to Colo Solutions, Inc. pursuant to the order of the Bankruptcy Court in the Cordia IP bankruptcy case dated December 10, 2012 (Doc. No. 70):

- (a) All outstanding accounts receivables, if any;
- (b) Network assets, including all Routers, Servers, Switches, Cables, UPS and related software and components previously housed at Cordia IP's colocation facilities located at (i) TELX Group, Inc.'s Data Center; 60 Hudson Street, 9<sup>th</sup> Floor, New York, NY 10013 (Notification: 17 State Street, 33<sup>rd</sup> Floor; New York, NY 10004; Attention: General Counsel and (ii) Coresite One Wilshire LLC's Data Center, One Wilshire Building, 624 S. Grand Avenue, Los Angeles, California 90017 (Notification: Coresite LLC; 1050 17<sup>th</sup> Street, Suite 800, Denver, Colorado 80265, Attention: General Counsel);
- (c) Software: transfer of PortaOne Software and License Agreement, including license 030607-MS01 and any other Porta One software in use at Cordia IP's colocation facilities; and
- (d) Any proprietary software: including any license, source code owned by CordiaIP and/or Cordia Comm to Cordia IP's internally developed software including TAMS, vTAMS, Netdash and COBI.

44. Should the Cordia IP Trustee fail to receive at least \$50,000 in proceeds from the sale of the Assets, then the Cordia IP Trustee shall be unilaterally entitled to terminate his participation in the Settlement.

45. The inclusion of the Bar Order in the Settlement Order is an express precondition for the Cordia IP Adversary Targets and Sippop Corp to participate in the Settlement with the Cordia IP Trustee.

**V. BAR ORDER**

46. Illinois National and the Named Insureds have expressly conditioned payment of the Illinois National Settlement Funds on the Cordia Trustee's agreement to seek and obtain the Bar Order. The Cordia IP Adversary Targets have also expressly conditioned their participation in the Settlement with the Cordia IP Trustee on the Cordia IP Trustee's agreement to seek and obtain the Bar Order.

**A. Bar Order**

47. A general description of the scope of the Bar Order shall be published as set forth herein. The Bar Order shall serve as a permanent channeling injunction enforceable against any and all Creditors, third parties of any type, whether actually named or identified, holders of any direct or indirect claims against or interest in any of the Cordia Debtors, Cordia IP, Cordia Corp. and Cordia Prepaid or the Byrum and Geils Entities or the Named Insureds or any other persons or entities or parties in interest, based in whole or in part on the business activities of any or all of the Cordia Debtors, Cordia IP, Cordia Corp. or Cordia Prepaid or the Byrum and Geils Entities (collectively the "Enjoined Parties"), and the Enjoined Parties shall hereinafter be permanently and forever barred, enjoined and restrained, as set forth more fully below, from ever

pursuing any and all claims or causes of action, demands or obligations of any kind whatsoever, whether such claim has previously matured, or has yet failed to mature, whether it is contingent or unliquidated, or whether it is known or unknown, whether seeking monetary claims or any other non-monetary claims or relief against (i) the Named Insureds, their legal or professional counsel, agents and assigns; (ii) any and all known or unknown principals, officers or directors, controlling persons, representatives and employees of any of the Cordia Debtors, Cordia IP, Cordia Corp. and Cordia Prepaid, their respective legal or professional counsel, agents and assigns; (iii) any and all known or unknown individuals or entities asserting or who may assert any basis for coverage under the D&O Policy, their respective legal or professional counsel, agents and assigns; and (iv) Illinois National and its affiliates, divisions, parents, subsidiaries, predecessors, successors, directors, officers, agents, attorneys, assigns, and all employees, agents or attorneys of the foregoing (collectively, the foregoing entities and individuals are referred to as "Bar Order Parties"). *The intent and purpose of the Bar Order is to directly enjoin the most expansive and comprehensive group of third parties, whether such party is known or unknown, identified or unidentified, suspected or unsuspected, from pursuing any and all claims or causes of action against the Bar Order Parties.*

48. The Bar Order shall **NOT** preclude the Enjoined Parties from pursuing any independent claim or action against any of the Bar Order Parties but only if such independent claim or action is completely and wholly unrelated to the activities of the Cordia Debtors, Cordia IP, Cordia Corp. and/or Cordia Prepaid. The Bankruptcy Court shall expressly retain jurisdiction in enforcing, implementing and interpreting the scope

of the Bar Order. The Bar Order Parties shall be afforded the same protections afforded a Trustee under the Barton Doctrine. If any party wishes to pursue any claims they believe are not impacted by the Bar Order, such party shall first seek relief from this Bankruptcy Court, and such party shall be deemed to have affirmatively consented to the jurisdiction of this Bankruptcy Court to enter final orders and judgments on such issue. For the avoidance of doubt, all Enjoined Parties are deemed to have consented to the Bar Order.

49. The Bar Order, shall permanently bar, restrain and enjoin the Enjoined Entities from ever:

- (i.) Commencing or continuing or bringing any suit of any kind or asserting any claim or making a demand against any of the Bar Order Parties;
- (ii.) Commencing or continuing or bringing any suit of any kind or asserting any claim or making a demand against any of the Bar Order Parties, or their respective property including the proceeds of such property, that arises from, is related to, is based upon or derives from any Claims held by the Enjoined Parties against any of the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, or the Byrum and Geils Entities;
- (iii.) Commencing or continuing or bringing any suit of any kind or asserting any claim or making a demand against any of the Bar Order Parties, or their respective property including the proceeds of such property, that arises from, is related to or results from any of the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, or the Byrum and Geils Entities' failure to perform under any agreement with any of the Enjoined Parties or failure to perform any obligation owed to any of the Enjoined Parties;
- (iv.) Commencing or continuing or bringing any suit of any kind or asserting any claim or making a demand against any of the Bar Order Parties, or their respective property including the proceeds of such property, that arises from, is related to, results from or derives from the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, or the Byrum and Geils Entities' breach of contract, breach of warranty or breach of any other obligation owed to any of the Enjoined Parties as a result of the same, or upon breach of any

duty owed to any Enjoined Parties whether based upon a theory of law or equity;

- (v.) Commencing or continuing or bringing any suit of any kind or asserting any claim or making a demand against any of the Bar Order Parties, or their respective property including the proceeds of such property, that arises from, is related to or results from any of the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, or the Byrum and Geils Entities' businesses;
- (vi.) Commencing or continuing or bringing any suit of any kind or asserting any claim or making a demand against any of the Bar Order Parties, or their respective property including the proceeds of such property, that arises from, is related to-, or is based upon any of the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, or the Byrum and Geils Entities' conduct, or any transaction or agreement by and among any of the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, the Byrum and Geils Entities and any of the Bar Order Parties;
- (vii.) Commencing or continuing or bringing any suit of any kind or asserting any claim or making a demand against any of the Bar Order Parties that would result in the avoidance of allegedly fraudulent or preferential transfers from any of the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, or the Byrum and Geils Entities to any of the Bar Order Parties, regardless of whether such Bar Order Party is the initial or subsequent transferees, and/or recovery of such allegedly fraudulent or preferential transfers from such Bar Order Party;
- (viii.) Commencing or continuing or bringing any suit of any kind or asserting a claim or making a demand against any Bar Order Party, or respective property, including the proceeds of such property, that arises from, is related to or results from the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, or the Byrum and Geils Entities' failure to pay, whether in whole or in part, any state, municipal or local tax assessments of any kind whatsoever;
- (ix.) Defending against any suit or claim filed or initiated by any Bar Order Party, that arises from is related to or results from any of the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, or the Byrum and Geils Entities' failure to pay, whether in whole or in part, any state, municipal or local tax assessments of any kind whatsoever;
- (x.) Collecting, recovering or receiving payments pursuant to any final judgment or order against any of the Bar Order Parties that arose

from, is related to, is based upon or derives from any of the Cordia Debtors, Cordia IP, Cordia Corp., Cordia Prepaid, or the Byrum and Geils Entities': (a) failure to perform any obligation owed to any of the Enjoined Parties; (b) breach of contract, breach of warranty or breach of any other obligation owed to any Enjoined Parties as a result of the same; (c) breach of any duty owed to any Enjoined Parties whether based upon a theory of law or equity; or (d) initially or subsequent transfer of assets to any of the Bar Order Parties;

- (xi.) Enforcing any terms set forth in any settlement agreements by and between any of the Bar Order Parties and any of the Enjoined Parties that would resolve, compromise or settle claims that would otherwise be enjoined by the Bar Order (collectively, the foregoing are referred to as the "Enjoined Claims");
- (xii.) Pursuing any of the enjoined actions recited herein as they relate to any claims against retained professionals including accountants and legal counsel as well as their agents and assigns of any of the Bar Order Parties;
- (xiii.) To the extent this Bar Order impairs any Enjoined Party's rights to pursue and recover from any of the Bar Order Parties, or their respective property interests, such Enjoined Party may be permitted to file a claim in the Cordia Debtors or Cordia IP bankruptcy cases equal to the value of such Enjoined Claims, and such claim shall be deemed timely filed, but not automatically deemed an Allowed Claim.

50. Should the Bankruptcy Court refuse or decline to approve the Bar Order in toto or in the format set forth in this Settlement for any reason whatsoever, then the Illinois National Settlement Funds shall be returned to Illinois National and all Settling Parties shall be returned to their respective positions

**V. MUTUAL RELEASES**

51. As a material condition and inducement for the Cordia Trustee, Cordia IP Trustee, Illinois National and the Named Insureds to enter into this Settlement, which requires payment of the Illinois National Settlement Funds to the Cordia Trustee and continued cooperation on the part of the Named Insureds, the Settling Parties have



further agreed to provide full and complete Releases from any and all claims and causes of action including those that are currently pending or could be filed or asserted against one another. This Settlement is intended to make the Releases self-effectuating so that a Court Order approving this Settlement shall be deemed as the approval and effectiveness of such Release for all purposes.

**B. Release: Named Insureds, Illinois National, and the Cordia Trustee and related parties:**

52. The Named Insureds, Illinois National—and the Cordia Trustee, as well as the Purchaser and entities related to the Brazilian based prior business operations of Cordia Comunicacoes S/A – Brazil Cordia Do Brasil, PARTICIPAÇÕES, LTDA – Brazil and Canal West LTD – Brazil their affiliates, and each of their respective officers, directors, executives, employees, attorneys, agents, representatives, distributors, predecessors, subsidiaries, affiliates, successors, heirs, administrators, executors and assigns, for and in consideration of the mutual promises and consideration given herein, the receipt and sufficiency of which is hereby acknowledged and confessed, do hereby fully MUTUALLY RELEASE, ACQUIT, AND FOREVER DISCHARGE each other and each of their respective attorneys, agents, representatives, distributors, predecessors, subsidiaries, affiliates, successors, heirs, administrators, executors and assigns of and from any and all legal claims, counterclaims, demands, rights, setoffs, defenses, contracts, accounts, suits, debts, outstanding notes, claims, agreements, actions, causes of action, sums of money, bills, specialties, covenants, promises, damages, executions, judgments, findings, controversies and disputes, whether known or unknown, in law or in equity, and any past, present or future duties, responsibilities, or obligations, of whatever kind or nature, asserted or unasserted, suspected or claimed,

and whether based in tort, contract, common law, statute or other theory of recovery, including, without limitation, any claims that were or could have been raised in the Claims. This Release does not apply to those obligations that remain as set forth in and pursuant to this Settlement Agreement. The parties shall execute and exchange separate release documents within 3 business days after the entry of a final and nonappealable Order and release of the Illinois National Settlement Funds.

**C. Release: Cordia IP Trustee and the Cordia IP Adversary Targets and Related Parties**

53. The Cordia IP Trustee and the Cordia IP Adversary Targets, as well as the Purchaser and entities related to the Brazilian based prior business operations of Cordia Comunicacoes S/A – Brazil Cordia Do Brasil, PARTICIPAÇÕES, LTDA – Brazil and Canal West LTD – Brazil, their affiliates, and each of their respective officers, directors, executives, employees, attorneys, agents, representatives, distributors, predecessors, subsidiaries, affiliates, successors, heirs, administrators, executors and assigns, for and in consideration of the mutual promises and consideration given herein, the receipt and sufficiency of which is hereby acknowledged and confessed, do hereby fully MUTUALLY RELEASE, ACQUIT, AND FOREVER DISCHARGE each other and each of their respective attorneys, agents, representatives, distributors, predecessors, subsidiaries, affiliates, successors, heirs, administrators, executors and assigns of and from any and all legal claims, counterclaims, demands, rights, setoffs, defenses, contracts, accounts, suits, debts, outstanding notes, claims, agreements, actions, causes of action, sums of money, bills, specialties, covenants, promises, damages, executions, judgments, findings, controversies and disputes, whether known or unknown, in law or in equity, and any past, present or future duties, responsibilities—\_or

obligations, of whatever kind or nature, asserted or unasserted, suspected or claimed, and whether based in tort, contract, common law, statute or other theory of recovery, including, without limitation, any claims that were or could have been raised in the Claims. This Release does not apply to those obligations that remain as set forth in and pursuant to this Settlement Agreement. The parties shall execute and exchange separate release documents within 3 business days of the entry of a final and nonappealable Order and release of the Illinois National Settlement Funds.

#### VI. MISCELLANEOUS PROVISIONS

54. Filing. Upon approval of this Settlement by the Settling Parties, the Cordia Trustee shall file and serve a Motion to Approve a Rule 9019 Compromise of Controversy ("Compromise Motion ") highlighting and outlining the terms and conditions of this Settlement Agreement and attaching this Settlement document as an exhibit and serving it on a timely basis pursuant to Rule 2002(a)(3) of the Federal Rules of Bankruptcy Procedure so it will be heard at the next scheduled hearing on October 30, 2013.

55. Binding Settlement. Except as specifically set forth as to the Cordia Trustee and Cordia IP Trustee herein, the Settling Parties and Enjoined Parties are bound by the terms set forth herein unless this Settlement is not approved by the United States Bankruptcy Court by the entry of a final and nonappealable Order.

56. Jurisdiction. The Settling Parties agree that the Orlando Bankruptcy Court shall have jurisdiction to enforce the terms and conditions, and address any application for interpretation of the Settlement.

57. Execution in Counterparts. The Settling Parties may execute this Settlement Agreement in counterpart originals. Each executed counterpart will be

considered an original, and all of them together will constitute a singular Settlement. No counterpart shall be altered or interlined and all of them together shall constitute but one and the same instrument. Each Party may secure the signature of the attorney and client or just the client. However, if the executing party is just the attorney, then the attorney's signature is an affirmative representation that he/she has reviewed the Settlement terms with his/her client; that the client has ratified this Settlement and the attorney has been duly authorized to execute and legally bind his/her client to this Settlement.

58. Ownership of Claims Subject To Release. Each of the Settling Parties hereby warrants and represents that he/she/it is the lawful owner of all rights, title, and interest in and to all matters released herein, and that he/she/it has not heretofore assigned or transferred, or purported to assign or transfer, any of such released matters, in whole or in part, to any other person or entity, and that he/she/it has the authority to enter into this Settlement and bind the Settling Parties to its terms.

59. Representation by Counsel. Each of the Settling Parties acknowledges that they he/she/it has either been represented by counsel in the negotiation and execution of this Settlement, or has voluntarily elected to proceed without the assistance of counsel and that he/she/it has had a full and complete opportunity and has availed himself/herself/itself of such opportunity for the advice of counsel in regard to all matters addressed herein. Each of the Settling Parties has entered into this Settlement freely and voluntarily and after consultation with his/her/its respective counsel, if applicable.

60. Construction. This Settlement is the product of negotiation and mutual draftsmanship. Any rule of contract construction under which this Settlement would be construed against the drafter shall have no application.

61. Successors and Assigns. This Settlement shall inure to the benefit of, and shall be binding upon, the Settling Parties and their respective heirs, executors, administrators, principals, parents and affiliated companies, successors and assigns.

62. Amendments and Waivers. Any amendment to this Settlement shall be in writing and shall conform to the same formalities as exhibited in this Settlement. No failure to exercise, nor delay in exercising, any right, remedy or power under this Settlement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy or power under this Settlement Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy or power provided herein or by law or in equity.

63. Authority. Each of the Settling Parties certifies (save and except the Cordia Trustee and the Cordia IP Trustee whose final authority is subject to approval of the Bankruptcy Court's ratification of the Settlement) that he/she/it has the full power and authority to execute this Settlement and certifies that he/she/it has obtained any necessary authorization for his/her/its signature on behalf of any entity.

64. Compromise. This Settlement implements the compromise and settlement of disputed and contested claims, and is entered into by the Settling Parties to avoid the expense and inconvenience of litigation. Nothing contained herein shall be construed as an admission by any party of any liability of any kind whatsoever.

65. Further Assurances. Each of the Settling Parties agrees to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Settlement.

66. Governing Law and Venue. This Settlement shall be construed and interpreted according to the laws of the State of Florida. Venue in the Orlando Division of United States Bankruptcy Court for the Middle District of Florida is proper pursuant to 28 U.S.C. §1409, as this Settlement is a proceeding arising under Title 11 or arising in or related to a case or cases filed under Title 11.

67. Entire Agreement. This Settlement constitutes the entire agreement among the Settling Parties hereto with respect to the subject matter hereof and supersedes any and all prior oral or written agreements and understandings among the Settling Parties relating to the subject matter hereof. No variations, amendments or modifications shall be binding upon the Settling Parties unless set forth in a writing fully executed by all Settling Parties to the Settlement. No Settling Party has relied on any representation or promise of another Settling Party or his/her/its agent not expressly set forth or referenced in this Settlement.

68. Attorneys' Fees. Each Settling Party shall be responsible for paying his/her/its own attorneys' fees and costs and each of the Settling Parties hereby releases all the other Settling Parties from any and all claims or causes of action concerning attorneys' fees and costs, except as specified in the next paragraph.

69. Prevailing Party Attorneys' Fees. In any future proceeding that may be brought to enforce this Settlement, the Bankruptcy Court shall award to the prevailing party and against the non-prevailing party his/her/its reasonable attorneys' fees and

costs. Each of the Settling Parties agrees that no party may challenge the enforceability or validity of this Settlement or any provision herein, or induce any third party to challenge the enforceability or validity of this Settlement, or any provisions herein. Any party who challenges the enforceability of this Settlement (or any provision hereof) or induces a third party to make a challenge to the enforceability of any portion of this Settlement, shall be liable to all the other Settling Parties for their reasonable and necessary attorneys' fees and expenses in defending the enforceability of the Settlement, or any part thereof, regardless of the outcome of the litigation.

67. Rescission of Entire Settlement. In the event a court of competent jurisdiction declares the Settlement, or any provision of this Settlement, invalid or unenforceable, the entire Settlement will be deemed rescinded and void *ab initio*, including all waivers and releases herein and the dismissals of the pending lawsuits with prejudice, which will be reinstated as if they had never been dismissed.

68. No Third Party Beneficiaries. This Settlement Agreement does not create any rights in any third parties and nothing contained herein shall be deemed to establish any rights or benefits for any third person, with the exception of the Named Insureds. No person not a Party to this Settlement Agreement has any "third party beneficiary" or other rights hereunder. Notwithstanding the foregoing, this Settlement Agreement is enforceable by, and against, the Settling Parties and their successors and assigns.

69. Parties Fully Informed. Each of the Settling Parties separately represents and warrants that before signing this Settlement he/she/it has fully informed itself/himself/herself of the terms, contents, conditions and effects of the Settlement and

in entering into this Settlement with the benefit and advice of legal counsel of its/his /her own choosing.

70. Execution by Client or Counsel. By execution below, each Settling Party agrees and affirmatively represents that he/she/it has full capacity and authority to execute, perform, and be bound by each and every term of this Settlement; and that if his/her/its undersigned counsel-is executing this Settlement on his/her/its behalf, that such counsel is qualified and has the authority to do so and to bind his/her/its client to the terms of this Settlement as if he/she/it had actually signed the Settlement.

IN WITNESS WHEREOF, the Settling Parties have caused this Settlement to be effective as of the last date of its full execution.

[Settlement has been executed in counterparts and will be filed with the Court]