IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Premier International Holdings Inc., *et al.*,	Case No. 09-12019 (CSS)
	(Jointly Administered)
Debtors.	**Related Docket No. 1471**

RESILIENT CAPITAL MANAGEMENT, LLC'S (1) OPPOSITION TO THE MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF AN ORDER EXTENDING THEIR EXCLUSIVE PERIOD IN WHICH TO SOLICIT VOTES ON THE DEBTORS' CHAPTER 11 PLAN OF REORGANIZATION; AND (2) CROSS-MOTION FOR APPOINTMENT OF A TRUSTEE OR, IN THE ALTERNATIVE, AN EXAMINER WITH EXPANDED POWERS

Resilient Capital Management, LLC ("Resilient"), a holder of Debtors' Preferred Income Equity Redeemable Shares ("PIERS"), by its undersigned counsel, hereby files this opposition to the Motion of Debtors and Debtors in Possession for Entry of an Order Extending Their Exclusive Period in Which to Solicit Votes on the Debtors' Chapter 11 Plan of Reorganization (Docket No. 1471) ("Opposition") and cross-moves the Court for appointment of a trustee to oversee the estates of Premier International Holdings, Inc. and its affiliated debtors-in-possession (the "Debtors"), or, in the alternative, for appointment of an examiner under 11 U.S.C. § 1104(c) with expanded powers to investigate the Debtors[1] and their former and current

[1] The Debtors are the following thirty-seven entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Astroworld GP LLC (0431), Astroworld LP (0445), Astroworld LP LLC (0460), Fiesta Texas Inc. (2900), Funtime, Inc. (7495), Funtime Parks, Inc. (0042), Great America LLC (7907), Great Escape Holding Inc. (2284), Great Escape Rides L.P. (9906), Great Escape Theme Park L.P. (3322), Hurricane Harbor GP LLC (0376), Hurricane Harbor LP (0408), Hurricane Harbor LP LLC (0417), KKI, LLC (2287), Magic Mountain LLC (8004), Park Management Corp. (1641), PP Data Services Inc. (8826), Premier International Holdings Inc. (6510), Premier Parks of Colorado Inc. (3464), Premier Parks Holdings Inc. (9961), Premier Waterworld Sacramento Inc. (8406), Riverside Park Enterprises, Inc. (7486), SF HWP Management LLC (5651), SFJ Management Inc. (4280), SFRCC Corp. (1638), Six Flags, Inc. (5059), Six Flags America LP (8165), Six Flags America Property Corporation (5464), Six Flags Great Adventure LLC (8235), Six Flags Great Escape

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management (the "Cross-Motion"). In support of its Opposition and Cross-Motion, Resilient states as follows:

PRELIMINARY STATEMENT

1. The members of Debtors' management are wholly inappropriate parties to supervise the Debtors through this reorganization. Debtors' management has shown that they are putting their own interest ahead of the Debtors' creditors and shareholders.

2. Accordingly, the Debtors' request for a further extension of their exclusivity period should be denied. As Resilient has previously stated (Docket Nos. 741 and 1089), the plan of reorganization proposed by Debtors provides no recovery whatsoever to holders of PIERS and common equity holders. Instead, the plan proposed by Debtors' management puts money in their own pockets in the form of an equity windfall and a "success fee" that was arranged for on the eve of bankruptcy, while leaving holders of PIERS and common equity with nothing.

3. In addition, the Debtors' management and the Board of Directors are inherently conflicted based on their positions with other related companies. As set forth in more detail below, management and the Board of Directors has drained the Debtors' resources while benefiting other related companies, who share officers and directors.

4. Accordingly, management and the Board of Directors should be replaced by a trustee with expertise in bankruptcy and restructuring matters, as well as the theme park business, in order to supervise the administration of the estates for the protection of creditors, equity holders, and other interested parties. As set forth herein, the circumstances present here

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L.P. (8306), Six Flags Operations Inc. (7714), Six Flags Services, Inc. (6089), Six Flags Services of Illinois, Inc. (2550), Six Flags St. Louis LLC (8376), Six Flags Theme Parks Inc. (4873), South Street Holdings LLC (7486), Stuart Amusement Company (2016).

clearly demonstrate "cause" to appoint a trustee under Section 1104(a)(1) of the Bankruptcy Code.

5. Moreover, even if the Court does not find "cause" to appoint a trustee, it can nevertheless appoint one because, pursuant to Section 1104(a)(2), it is in the best interest of the creditors and equity holders, and none of the normal facts that may counsel against a trustee is present. The cost of a trustee would not outweigh the benefits to Debtors' estate – it would be proportional to the added value and protection. Plus, the cost should be contrasted with the costs of maintaining the current management, who are poised to collect a bankruptcy jackpot and "success fee" in excess of $100 million for landing the Debtors in bankruptcy and then bringing them out.

6. If the Court does not appoint a trustee, Resilient respectfully submits that, alternatively, ample grounds exist for the Court to appoint an examiner with expanded powers pursuant to Section 1104(c) of the Bankruptcy Code to broadly investigate the Debtor and its management on behalf of all creditors, equity holders, and other parties-in-interest. At a minimum, any examiner's investigation should include any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the arrangement of the affairs of any of the Debtors by current or former management, including, but not limited to, issues of accounting irregularities and false representations concerning the Debtors' valuation.

BACKGROUND

7. On June 13, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their business as debtors and debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

8. On June 30, 2009, the Official Committee of Unsecured Creditors was appointed (Docket No. 121).

9. Resilient is a holder of 1,048,262 shares of PIERS, representing a $29,188,431 debt obligation. Resilient also owns $1,000,000 face amount of the Six Flags, Inc. 4.500% May 15, 2015 convertible notes.

10. On October 2, 2009, Resilient, by its counsel, filed a Notice of Appearance and Demand for Service of Papers in these jointly administered Chapter 11 cases (Docket No. 745).

11. Resilient is a party-in-interest in these Chapter 11 cases by virtue of its ownership of PIERS as of the Petition Date and the more than $29 million in losses it would sustain if the Debtors' Reorganization Plan were to be confirmed. Resilient plans to vigorously oppose confirmation of the current Reorganization Plan.

RELIEF REQUESTED

12. Resilient requests the appointment of a trustee to (i) replace the Debtors' management; (ii) perform tasks required under Sections 704 and 1106 of the Bankruptcy Code, specifically including investigating the financial affairs of the Debtors, the Debtors' pre-petition conduct, and claims the Debtor may possess that would result in additional sums of money coming into the estate; and (iii) where appropriate, perform the other functions that Sections 704 and 1106 of the Bankruptcy Code may provide.

13. In the alternative, Resilient requests the appointment of an examiner to investigate potential fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the arrangement of the affairs of the Debtors by the current or former management, including but not limited to accounting irregularities and false representations regarding the Debtors' valuation.

GROUNDS FOR RELIEF REQUESTED

POINT I

There Is Cause to Replace the Debtors' Management

14. Section 1104(a)(1) of the Bankruptcy Code provides that at the request of a party in interest or the U.S. Trustee, the Court shall order the appointment of a trustee "for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case…" 11 U.S.C. §1104(a)(1).

15. Resilient acknowledges that appointment of a Chapter 11 trustee is an "extraordinary remedy" requiring a demonstration of "cause" under Section 1104(a)(1) by "clear and convincing" evidence. *See In re The 1031 Tax Group, LLC*, 374 B.R. 78, 85 (Bankr. S.D.N.Y. 2007). Courts have wide discretion to evaluate "cause" on a case-by-case basis. *See In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 473 (3d Cir. 1998); *In re Clinton Centrifuge, Inc.*, 85 B.R. 980, 984 (Bankr. E.D. Pa. 1988). This case meets the standard.

16. "[T]he concepts of incompetence, dishonesty, gross mismanagement and even fraud all cover a wide spectrum of conduct." *See In re General Oil Distributors, Inc.*, 42 B.R. 402, 409 (Bankr. E.D.N.Y. 1984); *Shuster v. Dragone*, 266 B.R. 268, 272 (D. Conn. 2001). Moreover, "[a] court may consider both the pre and post-petition misconduct of the current management when making the determination that 'cause' exists for the appointment of a trustee." *In re The 1031 Tax Group, LLC*, 374 B.R. at 86.

17. The usual "strong presumption that a debtor should remain in possession," *see In re The 1031 Tax Group, LLC*, 374 B.R. at 86, does not apply here. The presumption "finds its basis in the debtor-in-possession's usual familiarity with the business it had already been managing at the time of the bankruptcy filing, often making it the best party to conduct

operations during the reorganization." *In re Marvel Entertainment Group, Inc.*, 140 F.3d at 471. Resilient requests that the Court appoint a trustee to replace the Debtors' management, whose acts brought the Debtors to financial ruin, and who are acting now for their own self-benefit at the expense of the holders of PIERS, as well as other parties-in-interest.

a. Management has breached the fiduciary duty owed to its constituents.

18. Prior to filing for bankruptcy, Debtors' management affirmatively stated that the PIERS obligation was a debt obligation and that it had three viable alternatives for paying off that obligation. On November 9, 2007, Jeff Speed, Debtors' Chief Financial Officer, stated that Debtors had a provision in their current credit agreement that specifically allows for a $300 million additional term loan to refinance the PIERS. Speed also stated the Debtors have the ability through a carve-out to their credit facility to sell non-core assets and to use those proceeds to pay-off the PIERS. Finally, he stated the Debtors could have refinanced the PIERS with a similar security.

19. On March 10, 2008 during a conference call, Debtors reiterated that they had viable alternatives for paying off the PIERS, including asset sales and drawing down on a $300 million credit facility.

20. As it turned out, Debtors took no steps to pay-off the PIERS. In a Form 10K dated March 11, 2009 for the year ended December 31, 2008, Debtors stated, "We are exploring a number of alternatives for the refinancing of our indebtedness and the PIERS." This was a false statement. During the Section 341 meeting of creditors, management testified that there was no attempt made to reach any sort of settlement with the PIERS holders. Management also stated that it never asked for any waiver of the default provisions of its bank agreement regarding the PIERS. Had it done so, management could easily have averted the bankruptcy. However,

management chose not to pursue these available avenues because doing so would have deprived the management team of its bankruptcy jackpot. Furthermore, if management had reserved funds it used to pay for an interest in "dick clark productions, inc." ("DCP"), it would have had more than enough funds to settle the PIERS obligation either through a tender offer for the PIERS or purchasing the PIERS.

21. Prior to the bankruptcy filing the PIERS had a total market capitalization of approximately five million dollars. Six Flags expended approximately $40 million on DCP and squandered an unknown amount on capital expenditures for DCP-themed attractions at Debtors' theme parks. These funds, in addition to the funds used to pay Johnny Rockets royalties and funds used to pay for Johnny Rockets restaurants inside Six Flags parks could have been used to easily avert a bankruptcy either through a tender offer for, or outright purchase of, PIERS obligations.

22. Debtors have also flip-flopped on their characterization of PIERS. In the April 2008 Analyst Day Presentation on file with the Securities Exchange Commission, the Debtors categorized the PIERS as debt. In their March 11, 2009 Form 10-K, they stated: "The PIERS are accounted for as mezzanine equity and if not redeemed or restructured at or prior to the redemption date of August 15, 2009, they will be reclassified as a current liability… We may from time to time seek to retire our outstanding debt (including the PIERS)." Once they filed for bankruptcy, however, Debtors took the position that PIERS is equity, and not debt.

b. Management has breached its fiduciary duty to PIERS holders.

23. Notwithstanding its public statements that the Debtors' management team's efforts have been successful, including in a March 16, 2009 earnings call in which Mark Shapiro, Debtor's CEO, stated: "During 2008 we were free cash flow positive with a record adjusted

EBITDA of $275.3 million. This was the best year ever for the company," management turned away from running the Debtors and diverted their attention to DCP.

24. As set forth above, in 2007, Debtors acquired approximately 40% of DCP, rather than conserving cash. The Board of Directors allowed the Debtor's CFO, Jeff Speed, to assume the responsibilities of CFO for DCP. Mark Shapiro also focused his attention on DCP. This led to many errors in their reporting, including having to later reassign their interest in DCP from Six Flags Inc., the parent company, to the Six Flags Theme Park unit "to correct an error in drafting." In addition, Debtors reported an inflated adjusted EBITDA of $275.3 million for 2008. This number was inflated because it included EBITDA from DCP. Despite management's claim to have achieved record-breaking earnings, even the inflated 2008 adjusted EBITDA was not a record. According to the Six Flags Presentation to Lenders on April 26, 2007 adjusted EBITDA in 2002 was $277 million.

25. During the prior management's tenure, Debtors generated an average adjusted EBITDA for the current portfolio of parks of $252.8 million for the four years 2002-2005. The current management, who has been in charge since 2006, generated an average adjusted EBITDA of $212.5 million for the four years 2006-2009. Despite their poor absolute and relative performance, management persists in continuing to disparage the performance of prior management. This behavior is hurting the company in many ways, including employee morale, and must be stopped immediately. Prior management worked hard to enhance shareholder value and the company would not have filed for bankruptcy and the shareholders would not have been wiped out if prior management were not forced out by the current leaders of Six Flags.

26. In addition, management has breached its fiduciary duty to its stakeholders by not maximizing the value of the company. For example, even though Debtors had repeatedly been

solicited with offers to purchase certain theme parks, which would have presumably generated enough liquidity for Debtors to pay-off their PIERS obligations, Debtors failed to pursue those offers. As management testified at the 341 meeting, the Board of Directors and management neglected to hire an investment banker to market individual parks and or the company prior to filing for bankruptcy. This failure was a fundamental violation of fiduciary obligation to all stakeholders.

c. Debtors' management is conflicted and self-interested.

27. Red Zone Capital GP, LLC ("Red Zone"), is a fund controlled by Dan Snyder, who is the Chairman of Six Flags, Inc. Red Zone purchased a 60% interest in DCP in June 2007, and Dan Snyder became its Chairman. Six Flags, Inc. acquired the remaining 40% interest in DCP. Around the same time, Snyder arranged for a licensing deal between Six Flags, Inc. and Johnny Rockets Group, Inc., which is a 1950's-themed restaurant chain ("Johnny Rockets") and is owned by Red Zone. The licensing deal provides that Johnny Rockets operates locations within Debtors' theme parks. Johnny Rockets pays Debtors an annual sponsorship fee, as well as 95% of the gross sales generated by the Johnny Rockets restaurants located in the Debtors' Parks.

28. Rather than focusing on Debtors' business, Debtors' management turned its attention to Red Zone-related entities and treated Six Flags as a marketing catapult for Red Zone investments. Mark Shapiro, who is the CEO for Six Flags, Inc. and former CEO of Red Zone, took over the management of DCP and became its executive chairman. He appointed the CEO of DCP, who reports directly to Shapiro. In addition, Shapiro is also a managing member of Red Zone. Jeff Speed, who is Six Flags, Inc.'s CFO, became CFO of DCP.

29. Other members of Debtors' Board of Directors also have an interest in Johnny Rockets, DCP, and Red Zone. These relationships have led management to pursue a number of questionable transactions with Red Zone entities and have led Six Flags to spend significant energy and monies, including capital expenditures, on behalf of Red Zone entities.

30. Thus, it is apparent that the Debtors' management and Board of Directors is conflicted due to their outside interests.

d. Management is also conflicted based on the success fee it would be paid upon consummation of a reorganization plan.

31. On the eve of bankruptcy, management created a plan that provides it with a windfall upon consummation of a plan of reorganization. This plan provides an "emergence bonus" of $5 million, as well as equity and options in the reorganized Debtors, and an additional 2.5% of equity in the form of options to be granted by the new board under the plan.

32. It is patently improper to incentivize a management team with a success bonus upon emergence from bankruptcy, especially when it was the same management team's incompetence and double dealing that led the company into bankruptcy in the first place.

33. Accordingly, a trustee should be appointed to investigate the circumstances surrounding the Debtors' entry into incentive contracts with management on the eve of bankruptcy.

e. The trustee should also investigate the circumstances surrounding management's initial plan of reorganization.

34. When they first filed for bankruptcy, the Debtors proposed a plan of reorganization that provided for nearly all of Debtors' equity to be given to their senior secured lenders based on a very low valuation of the Debtors.

35. That initial plan would have would have provided the senior secured lenders with a recovery well in excess of the amount they were owed, while depriving PIERS and common equity holders of the value inherent in Debtors' businesses.

36. The senior secured lenders and their administrative agent should have worked with the Debtors to avoid bankruptcy, rather than creating a reorganization structure that benefited the lenders and management at the expense of creditors and shareholders.

37. Accordingly, the trustee should investigate the circumstances surrounding the Debtors' relationship with its senior secured lenders and pursue all remedies available to the company including but not limited to: 1) Pursuing lender liability suits against the senior secured lenders 2) Equitably subordinating the senior secured lenders and/or 3) reinstating the senior secured debt.

f. Houlihan Lokey

38. On October 8, 2009, the Bankruptcy Court approved the Debtors' application to retain and employ Houlihan Lokey Howard & Zukin Capital LLC ("Houlihan Lokey") as a financial advisor (Docket No. 772).

39. Houlihan Lokey prepared an extremely low and questionable valuation of the Debtors that has yet to be validated. For the reasons previously set forth by Resilient (Docket No. 1089), Resilient submits that a trustee should be appointed to examine the merits of the Houlihan Lokey valuation upon which Debtors' plan of reorganization rests.

40. Resilient also asks that the trustee examine Houlihan's failures as financial advisor to the Debtors, particularly its failure to present a roadmap to avoid bankruptcy through asset sales and exchange offers with the PIERS.

POINT II

Appointment of a Trustee Is in the Interests of Creditors, Equity Holders, and Parties-in-Interest

41. Even if the Court does not find that "cause" exists to appoint a Chapter 11 trustee under Section 1104(a)(1), the Court may still appoint a trustee "if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate…." 11 U.S.C. § 1104(a)(2). "Section 1104(a)(2) envisions a flexible standard and give the [] court discretion to appoint a trustee when doing so would serve the parties' and estate's interests." *In re The 1031 Tax Group, LLC*, 374 B.R. at 90.

42. Among the factors courts consider in appointing a trustee under Section 1104(a)(2) are "(i) the trustworthiness of the debtor; (ii) the debtor in possession's past and present performance and prospects for the debtor's rehabilitation; (iii) the confidence – or lack thereof – of the business community and of creditors in present management; and (iv) the benefits derived by the appointment of a trustee, balanced against the cost of the appointment." *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 167 (Bankr. S.D.N.Y. 1990).

43. As set forth above, there can be no confidence in the current management of the Debtors based upon evidence of its own self-dealing and the decisions it made that led Debtors into bankruptcy.

44. Furthermore, current management is not working to correct its previous shortcomings to maximize the recovery for holders of PIERS and common equity. Instead, management is acting to benefit itself in the forms of a tremendous success fee for emergence from bankruptcy and an unconscionably large equity grant. Thus, the business community has little or no confidence that the Debtors' management, which drove Debtors into bankruptcy based on their poor decision making, should be permitted to continue to run the Debtors' affairs.

45. While there are costs associated with the appointment of a trustee, the benefits of such an appointment greatly outweigh the costs. A trustee armed with the power to investigate the current management's past dealings, including its arrangements with Red Zone, DCP, and Johnny Rockets, and the information provided to Houlihan Lokey that led to its under-valuation of the company, has the potential to provide recoveries to creditors that are being left out in the cold, while management acts to enrich itself.

46. Accordingly, the Bankruptcy Court should exercise its discretion in appointing a trustee.

POINT III

Alternatively, the Court Should Appoint an Examiner with Expanded Powers to Investigate the Debtors and Current and Former Management

47. Section 1104(c) of the Bankruptcy Code provides that if the Court does not order the appointment of a trustee, then at the request of any party in interest, the Court shall order the appointment of an examiner to conduct an investigation of the debtor if "the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, owing to an insider, exceed $5,000,000." 11 U.S.C. § 1104(c)(2). Here, Resilient is a party in interest and the Debtors easily meet the $5 million threshold. For example, Debtor Six Flags, Inc. listed its debt at over $2.3 billion in liabilities on its bankruptcy Petition (Docket No. 1). Because the statutory requirements are met, appointment of an examiner is mandatory." *See In re Revco D.S., Inc.*, 898 F.2d 498, 501 (6th Cir. 1990) ("we find that the appointment of an examiner is mandatory under § 1104(c)(2)"); *see also In re Loral Space & Comm., Ltd.*, No. 04 Civ. 8645, 2004 WL 299985, at *5 (S.D.N.Y. Dec. 23, 2003).

48. Section 1104(c) further provides that the examiner shall be appointed "to conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations

of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor." 11 U.S.C. §1104(c). While the Court is required to appoint an examiner, because the statute calls for an "appropriate" investigation, the Court "retains broad discretion to direct the examiner's investigation, including its nature, extent, and duration." *In re Revco*, 898 F.2d at 501.

49. Examiner investigations are designed to be broad. "The investigation of an examiner in bankruptcy, unlike in civil discovery under Rule 26, is supposed to be a 'fishing expedition,' as exploratory and groping as appears proper to the Examiner." *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (Bankr. S.D.N.Y. 1993).

50. Resilient respectfully submits that an examiner be appointed to examine the following issues including, but not limited to:

a. Debtors' management's employment contracts that provide a success fee for exiting bankruptcy;

b. Debtors' acquisition of DCP;

c. The profitability of a continued relationship between Debtors and Johnny Rockets;

d. The reliability of the valuation prepared by Houlihan Lokey;

e. The relationship between Debtors and their senior secured lenders;

f. The apparent conflict of interest among Debtors' management;

g. The circumstances surrounding the failure to classify PIERS as debt and to afford the PIERS creditors rights;

h. Debtors' breach of their fiduciary obligations to the PIERS and common equity holders, including failure to create an equity committee and to hire legal and financial advisors to represent the interests of the PIERS and common equity holders;

i. The propriety of reinstating the bank debt;

j. Management's decision to file for bankruptcy and the role the company's agents and advisors played in encouraging the commencement of the bankruptcy actions. This should include but not be limited to the roles of the senior secured lender's administrative agent and Houlihan Lokey. The examiner should also investigate whether the estates have claims of tortious interference, lender liability, gross negligence against any or all of the members of the Board of Directors, management, lenders and advisors; and

k. The amount of equity and options being granted to management.

CONCLUSION

51. For the reasons set forth herein, Resilient submits that the Court should deny Debtors' request to extend further their period of exclusivity. Resilient further submits that adequate cause exists for appointment of a trustee. In the alternative, if the Court declines to order the appointment of a trustee, Resilient respectfully requests that the court order the appointment of an examiner with a wide investigatory mandate and allow the parties in interest to be heard regarding the scope of the examiner's investigation. Resilient respectfully submits that, at the very least, the examiner's mandate should include the ability to investigate allegations of fraud, dishonesty, mismanagement, or irregularity in the arrangement of the affairs of any of

the Debtors by current management, including but not limited to, issues surrounding the Debtors' valuation.

Dated: February 11, 2010
Wilmington, Delaware

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PROPOSED ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Premier International Holdings Inc., *et al.*,	Case No. 09-12019 (CSS)
	(Jointly Administered)
Debtors.	

ORDER GRANTING CROSS-MOTION OF RESILIENT CAPITAL MANAGEMENT, LLC FOR APPOINTMENT OF A TRUSTEE OR, IN THE ALTERNATIVE, AN EXAMINER WITH EXPANDED POWERS

Upon consideration of the cross-motion of Resilient Capital Management, LLC, for appointment of a trustee pursuant to 11 U.S.C. § 1104(a) or § 1104(b), or, in the alternative, for appointment of an examiner with expanded powers under 11 U.S.C. § 1104(c) (the "Cross-Motion"); and this Court having jurisdiction to consider and rule on the Cross-Motion and the relief requested therein; after due notice of the Motion having been given to and the Court having held a hearing at which interested parties were presented with an opportunity to be heard; and upon the Court's determination of sufficient cause for the relief requested in the Cross-Motion; it is hereby ORDERED that:

1. The Cross-Motion is granted, and the United States Trustee is directed to appoint a trustee (the "Trustee") on or before _____ ___, 2010.

2. The Trustee shall replace the Debtors' management.

3. The Trustee shall perform the duties required under Sections 704 and 1106(a) of the Bankruptcy Code, specifically investigating the financial affairs of the Debtors and their managers' pre-petition and post-petition conduct, and claims the Debtors may possess; and

4. The Trustee shall perform other functions that Sections 704 and 1006 of the Bankruptcy Code provide pursuant to further orders of this Court.

5. The Debtors and all of their affiliates and subsidiaries and any statutory committee are directed to fully cooperate with the Trustee in connection with the performance of any of its duties or responsibilities. The Debtors and all of their affiliates and subsidiaries and any statutory committee shall promptly provide to the Trustee all documents, data, communications and information that the Trustee deems relevant to discharge its duties under this Order and the Bankruptcy Code.

6. The Trustee may retain counsel and other professionals if it determines that such retention is necessary, subject to the approval of this Court, and the Trustee and any professionals retained pursuant to any Order of this Court shall be compensated from the estates of the Debtors.

7. Nothing in this Order shall impede the right of the U.S. Trustee or any other party-in-interest to request any other lawful relief, including, but not limited to, the expansion of the scope of the Trustee's duties.

Dated: Wilmington, Delaware
_____ __, 2010

_____
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Scott J. Leonhardt, hereby certify that on this 11th day of February, 2010, a copy of the foregoing ***Resilient Capital Management, LLC's (1) Opposition to the Motion of Debtors and Debtors In Possession for Entry of an Order Extending Their Exclusive Period in Which to Solicit Votes on the Debtors' Chapter 11 Plan of Reorganization; and (2) Cross-Motion for Appointment of a Trustee, or, in the Alternative, an Examiner with Expanded Powers*** was served by electronic notification through the CM/ECF System for the United States Bankruptcy Court for the District of Delaware on all parties registered in these cases, and upon the parties listed below in the manner indicated:

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