

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

LOUIS J. PEARLMAN, *et al.*,

Debtor.

Case No. 6:07-bk-00761-ABB

Chapter 11

Jointly Administered

_____/

**SONEET R. KAPILA, as CHAPTER 11
TRUSTEE for LOUIS J. PEARLMAN,
LOUIS J. PEARLMAN ENTERPRISES,
INC. AND EACH JOINTLY ADMINISTERED
DEBTOR,**

Plaintiff,

v.

Adv. P. No. 6:07-ap-_____

**STUART HARRINGTON, WILMETTE
CAPITAL, LLC, a Minnesota limited liability
company, NORTH AMERICAN CAPITAL
MARKETS, INC., a Minnesota corporation,
NORTH AMERICAN CAPITAL MARKETS, LLC,
a Minnesota limited liability company, and
N.A. INVESTMENT SERVICES, INC., a
Minnesota corporation,**

Defendants.

_____/

**COMPLAINT TO AVOID AND RECOVER FRAUDULENT
TRANSFERS, FOR DAMAGES AND FOR OTHER RELIEF**

Plaintiff, Soneet R. Kapila, as the Chapter 11 Trustee ("Trustee" and/or "Plaintiff") for the bankruptcy estates of Louis J. Pearlman ("Pearlman") in Case No. 6:07-bk-00761-ABB, Louis J. Pearlman Enterprises, Inc. ("LJPE") in Case No. 6:07-bk-01505-ABB and each jointly administered Debtor in Case No. 6:07-bk-00761-ABB (collectively, Pearlman and LJPE shall be referred to as the "Debtors"), by and through

his undersigned counsel, files his Complaint to Avoid and Recover Fraudulent Transfers, For Damages and For Other Relief against Stuart Harrington ("Harrington"), Wilmette Capital, LLC, a Minnesota limited liability company ("Wilmette"), North American Capital Markets, Inc., a Minnesota corporation ("NACM, Inc."), North American Capital Markets, LLC, a Minnesota limited liability company ("NACM, LLC")(NACM, Inc. and NACM, LLC shall be referred to herein as "NACM")¹ and N.A. Investment Services, Inc., a Minnesota corporation ("NAIS") (collectively, Harrington, Wilmette, NACM and NAIS shall be referred to herein as "Defendants"), and alleges as follows:

NATURE OF ACTION

1. This is an adversary proceeding seeking (i) to avoid and recover fraudulent transfers made to the Defendants pursuant to Sections 544, 548 and 550 of the Bankruptcy Code, Chapter 726, Florida Statutes, and Fed. R. Bankr. P. 7001, (ii) damages for breach of fiduciary duty against Defendant Harrington, (iii) damages for aiding and abetting breach of fiduciary duty against the Defendants, (iv) the imposition of an equitable lien, constructive trust and/or resulting trust against the Defendants in respect of the transfers sought to be avoided herein, and (v) an accounting of all transfers and business transactions between the Defendants, on the one hand, and either or all of the Debtors.

¹ Upon information and belief, NACM, Inc. and NACM, LLC both operated under the name "North American Capital Markets." As set forth herein, certain of the transfers sought to be avoided herein were made to North American Capital Markets. As a result, for purposes of this Complaint, NACM shall refer to either or both of NACM, Inc. and NACM, LLC, whichever was the applicable recipient of the transfers in question.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this complaint pursuant to 28 U.S.C. §§ 1334 and 157.

3. Venue is proper in this district under 28 U.S.C. § 1409.

4. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157 (b) (2) (A), (B), (H) and (O).

PARTIES

5. Plaintiff is the court-appointed Chapter 11 Trustee for the bankruptcy estates of Pearlman, LJPE and each other jointly administered Debtor.

6. Upon information and belief, Defendant Harrington is an individual residing in Minnesota.

7. Defendant Wilmette is a Minnesota limited liability company.

8. Upon information and belief, Defendant Harrington owns and controls Defendant Wilmette.

9. Defendant NACM, Inc. is a Minnesota corporation.

10. Defendant NACM, LLC is a Minnesota limited liability company.

11. Upon information and belief, Defendant Harrington owns and controls Defendant NACM, Inc. and Defendant NACM, LLC.

12. Defendant NAIS is a Minnesota corporation.

13. Upon information and belief, Defendant Harrington owns and controls Defendant NAIS.

FACTUAL BACKGROUND

14. On March 1, 2007 (the "Pearlman Petition Date"), Tatonka Capital Corporation, Integra Bank, National Association, American Bank of St. Paul, and First National Bank & Trust Company of Williston (collectively, the "Petitioning Creditors") filed against Pearlman an involuntary petition under Chapter 11 of the Bankruptcy Code.

15. On March 8, 2007, the Petitioning Creditors filed an emergency motion for appointment of a Chapter 11 trustee (Dkt. No. 6; the "Emergency Motion"). As set forth in the Emergency Motion, upon information and belief, Pearlman has been involved in one of the largest "Ponzi" schemes in the State of Florida based, among other things, on fraudulent investments offered in connection with Trans Continental Airlines, Inc. ("TCA"), an entity controlled by Pearlman.

16. On March 16, 2007, this Court entered its Order Directing the Appointment of Chapter 11 Trustee for Pearlman (Dkt. No. 26).

17. On March 27, 2007, the United States Trustee filed its Notice of Appointment of Trustee (Dkt. No. 39), appointing Plaintiff as the Chapter 11 Trustee for Pearlman.

18. On March 30, 2007, this Court entered its Order Approving the Chapter 11 Trustee's appointment (Dkt. No. 46).

19. On April 5, 2007, this Court entered its Order for Relief for Pearlman (Dkt. No. 60; the "Order for Relief").

20. On April 18, 2007, LJPE filed a voluntary petition under Chapter 11 of the Bankruptcy Code in Case Number 6:07-bk-01505-ABB (the "LJPE Petition

Date”)(together with the Pearlman Petition Date, as applicable, the “Petition Date”). Thereafter, on motion for the appointment of a trustee filed by the Office of the United States Trustee, the Court, on May 8, 2007, entered an Order Directing the Appointment of a Chapter 11 Trustee (LJPE Dkt. No. 12). On May 25, 2007, the Court entered an order approving the selection of Soneet R, Kapila as the Chapter 11 trustee for LJPE (LJPE Dkt. No. 17).

21. On July 31, 2007, this Court entered its Order pursuant to which the Pearlman bankruptcy case, the LJPE bankruptcy case and the bankruptcy cases of the other Debtors were jointly administered with the Pearlman bankruptcy case designated as the lead case (Pearlman Dkt. No. 228; LJPE Dkt. No. 55).

THE EISA PROGRAM SCHEME

22. From as early as 1989 through January 2007, Trans Continental Airlines, Inc. (“TCA”), by and through its president, Pearlman, and other control persons of TCA, raised in excess of \$300 million from hundreds of investors nationwide. TCA, through Pearlman, and others, raised such funds by offering investors the “opportunity” to invest their funds into the “Employee Investment Savings Account” program allegedly maintained by TCA (the “EISA Program”).

23. Upon information and belief, the EISA Program was touted by Pearlman and others as being available solely to employees of TCA and their family and friends. However, upon information and belief, the investors solicited by Pearlman and others were not, with a few exceptions, employees or family members of employees of TCA.

24. Upon information and belief, Pearlman and others promised prospective and existing investors in the EISA Program that their investments would yield above-market interest rates because such monies were being invested through TCA, which was promoted as a financially strong and successful charter airline with a net worth of over \$100 million. Upon information and belief, Pearlman and others represented to existing and prospective investors in the EISA Program that TCA had significant banking relationships which enabled TCA to achieve these higher than market rates of return on its investments, which higher rates of return could be passed on to the investors.

25. Upon information and belief, Pearlman and others made several representations to investors and prospective investors in the EISA Program concerning the safety of the investments, including without limitation, that the funds (i) were secure and deposited in individual bank accounts with unique account numbers at United States financial institutions, (ii) were insured by the Federal Deposit Insurance Corporation, (iii) were re-insured by either Lloyds of London or AIG Insurance.

26. In actuality, the funds were not deposited into individual bank accounts for the investors with individual account numbers. Moreover, the funds did not have FDIC insurance protection, and there was no re-insurance from Lloyds of London, AIG Insurance or any other insurance company.

27. Rather, the funds received from investors in the EISA Program were deposited into various checking accounts held in the name of TCA and thereafter disbursed to various parties as opposed to remaining on deposit for such investors.

28. Upon information and belief, certain of the funds transferred by investors into the EISA Program were used to repay prior investors and/or pay interest to prior investors in the EISA Program.

29. Upon information and belief, at all relevant times herein, Pearlman and others knew that the representations being made to the investors in the EISA Program concerning such investments were false and misleading and were intended to induce such investors into transferring their monies to TCA.

THE BANK FRAUD SCHEME

30. From as early as 2003 through January 2007, Pearlman, both individually and through various entities owned and/or controlled by Pearlman, borrowed in excess of \$150 million in both secured and unsecured loans (collectively, the “Loans”) from numerous banks and financial institutions nationwide, including the Petitioning Creditors, HSBC Bank, Bank of America and First International Bank and Trust (collectively, the “Banks”).

31. Upon information and belief, Pearlman created and circulated, including through and with the substantial assistance of one or more of the Defendants, offering memoranda and similar due diligence materials to one or more of the Banks in an effort to convince the Banks to make the Loans.

32. The due diligence materials that were prepared and delivered to the Banks in support of the applications for the Loans included, without limitation, financial statements for TCA and other of Pearlman’s companies, financial statements of Pearlman individually, and audited financial statements and related reports from the auditing firm

of Cohen & Siegel. Among other things, the financial statements for both TCA and Pearlman listed substantial assets and a corresponding substantial net worth for each of TCA and Pearlman.

33. In fact, all or substantially all of the due diligence materials prepared and delivered to the Banks in support of the applications for the Loans was false and misleading. Among other things, neither TCA nor Pearlman actually had the substantial assets or net worth evidenced on such financial statements. Moreover, the auditing firm of Cohen & Siegel was a fiction. It simply did not exist.

34. Upon information and belief, Harrington (i) held himself out to one or more of the Banks as the “chief financial officer” for Pearlman and his various companies, (ii) acted as Pearlman’s agent in Pearlman’s dealings with one or more of the Banks in connection with the Loans, and/or (iii) arranged as a broker on Pearlman’s behalf one or more of the Loans with one of more of the Banks.

35. At all relevant times hereunder, Harrington knew or should have known of the false and fictitious nature of the financial and other information being provided to the Banks in support of the Loans, and that such information was intended to induce one or more of the Banks into making the Loans to Pearlman and his companies.

36. Upon information and belief, Harrington engaged in the above conduct both individually and through Defendant Wilmette, Defendant NACM and Defendant NAIS.

37. At all relevant times above, each of Pearlman and Harrington was either an officer, director or control person of one or more of the Debtors, or a *de facto* officer,

director or control person of one or more of the Debtors, and as such owed fiduciary duties to the Debtors and their creditors to act in the best interests of the Debtors and their creditors.

TRANSFERS TO OR FOR THE BENEFIT OF DEFENDANTS

A. Two Year Transfers To Defendant Harrington

38. In the two years prior to the Petition Date, Pearlman and LJPE collectively transferred to Defendant Harrington an amount equal to at least \$1,261,000.00 (the "Two Year Harrington Payments") in connection with, upon information and belief, Defendant Harrington's efforts in assisting Pearlman in obtaining the Loans from the Banks, including by acting as Pearlman's agent and "chief financial officer" in connection therewith. The Two Year Harrington Payments are detailed in the attached Exhibit A, which is incorporated herein by reference.

39. The Two Year Harrington Payments were made within two years preceding the Petition Date and were made at a time when Pearlman and LJPE were each insolvent.

B. Four Year Transfers To Defendant Wilmette

40. In the four years prior to the Petition Date, Pearlman transferred to Defendant Wilmette an amount equal to at least \$636,500.00 (the "Four Year Wilmette Payments") in connection with, upon information and belief, Defendant Harrington's efforts in assisting Pearlman in obtaining the Loans from the Banks, including by acting as Pearlman's agent and "chief financial officer" in connection therewith. The Four Year

Wilmette Payments are detailed in the attached Exhibit B, which is incorporated herein by reference.

41. The Four Year Wilmette Payments were made within four years preceding the Petition Date and were made at a time when Pearlman was insolvent.

C. Two Year Transfers To Defendant Wilmette

42. In the two years prior to the Petition Date, Pearlman transferred to Defendant Wilmette an amount equal to at least \$250,000.00 (the "Two Year Wilmette Payments") in connection with, upon information and belief, Defendant Harrington's efforts in assisting Pearlman in obtaining the Loans from the Banks, including by acting as Pearlman's agent and "chief financial officer" in connection therewith. The Two Year Wilmette Payments are detailed in the attached Exhibit C, which is incorporated herein by reference.

43. The Two Year Wilmette Payments were made within two years preceding the Petition Date and were made at a time when Pearlman was insolvent.

D. The Four Year Transfers to Defendant NACM

44. In the four years prior to the Petition Date, Pearlman and LJPE collectively transferred to Defendant NACM an amount equal to at least \$2,027,179.00 (the "Four Year NACM Payments") in connection with, upon information and belief, Defendant Harrington's efforts in assisting Pearlman in obtaining the Loans from the Banks, including by acting as Pearlman's agent and "chief financial officer" in connection therewith. The Four Year NACM Payments are detailed in the attached Exhibit D, which is incorporated herein by reference.

45. The Four Year NACM Payments were made within four years preceding the Petition Date and were made at a time when Pearlman and LJPE were insolvent.

E. The Two Year Transfers to Defendant NACM

46. In the two years prior to the Petition Date, Pearlman and LJPE collectively transferred to Defendant NACM an amount equal to at least \$1,840,601.00 (the "Two Year NACM Payments") in connection with, upon information and belief, Defendant Harrington's efforts in assisting Pearlman in obtaining the Loans from the Banks, including by acting as Pearlman's agent and "chief financial officer" in connection therewith. The Two Year NACM Payments are detailed in the attached Exhibit E, which is incorporated herein by reference.

47. The Two Year NACM Payments were made within two years preceding the Petition Date and were made at a time when Pearlman and LJPE were insolvent.

F. The Four Year Transfers to Defendant NAIS

48. In the four years prior to the Petition Date, Pearlman transferred to Defendant NAIS an amount equal to at least \$397,577.00 (the "Four Year NAIS Payments") in connection with, upon information and belief, Defendant Harrington's efforts in assisting Pearlman in obtaining the Loans from the Banks, including by acting as Pearlman's agent and "chief financial officer" in connection therewith. The Four Year NAIS Payments are detailed in the attached Exhibit E, which is incorporated herein by reference.

49. The Four Year NAIS Payments were made within four years preceding the Petition Date and were made at a time when Pearlman was insolvent.

50. The Two Year Harrington Payments, the Four Year Wilmette Payments, the Two Year Wilmette Payments, the Four Year NACM Payments, the Two Year NACM Payments and the Four Year NAIS Payments are sometimes collectively referred to herein as the “Fraudulent Payments.”

COUNT I
ACTUAL FRAUD – AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS RECEIVED BY DEFENDANT HARRINGTON
UNDER 11 U.S.C. §§ 548(a)(1)(A) AND 550

51. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

52. This is an adversary proceeding to recover fraudulent transfers pursuant to 11 U.S.C. §§ 548(a)(1)(A) and 550.

53. Within two years prior to the Petition Date, Pearlman and LJPE, as applicable, transferred the Two Year Harrington Payments to Harrington or for the benefit of Harrington.

54. The Two Year Harrington Payments were made by Pearlman and LJPE with the actual intent to hinder, delay or defraud present and future creditors of Pearlman and LJPE.

55. The Two Year Harrington Payments are avoidable, and should be avoided, pursuant to and under 11 U.S.C. § 548(a)(1)(A).

56. Pursuant to 11 U.S.C. § 550(a), the recovery of property for the benefit of the estates of Pearlman and LJPE, as applicable, is authorized to the extent that the Two Year Harrington Payments are avoided under 11 U.S.C. § 548(a)(1)(A).

WHEREFORE, the Trustee demands judgment against Harrington as follows: (i) determining that the Two Year Harrington Payments are fraudulent and avoidable pursuant to 11 U.S.C. §548(a)(1)(A), and avoiding the Two Year Harrington Payments; (ii) entering judgment in favor of the Trustee against Harrington for the amount of the Two Year Harrington Payments pursuant to Section 550 of the Bankruptcy Code, plus pre-judgment interest and post-judgment interest, and costs of suit; (iii) disallowing any claim that Harrington may have against Pearlman or any jointly administered Debtor with Pearlman, including without limitation, pursuant to and as provided in 11 U.S.C. §502(d), and (iv) for such other and further relief as the Court deems just and proper.

COUNT II
ACTUAL FRAUD – AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS RECEIVED BY DEFENDANT HARRINGTON
UNDER 11 U.S.C. §§ 544(b)(1) AND 550, AND
FLA. STAT. §§ 726.105(1)(a) AND 726.108

57. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

58. This is an adversary proceeding to recover fraudulent transfers pursuant to 11 U.S.C. §§ 544(b)(1) and 550, and the Florida Uniform Fraudulent Transfer Act, Fl. Stat. § 726.101 et seq. (“FUFTA”).

59. Within four years prior to the Petition Date, Pearlman transferred to Harrington the Two Year Harrington Payments to or for the benefit of Harrington.

60. Pursuant to 11 U.S.C. §544(b), the Trustee may avoid any transfer of an interest of Pearlman in property transferred to Harrington that is voidable under

applicable law (in this case under Fla. Stat. §§ 726.105(1)(a) and 726.108) by a creditor holding an unsecured claim.

61. The Two Year Harrington Payments were made by Pearlman with the actual intent to hinder, delay or defraud present and future creditors of Pearlman.

62. There is at least one actual holder of an allowed unsecured claim pursuant to 11 U.S.C. § 502, who would have standing to assert a claim for relief under FUFTA.

63. The Two Year Harrington Payments are avoidable, and should be avoided, pursuant to and under Fla. Stat. §§ 726.105(1)(a) and 726.108 and 11 U.S.C. § 544(b)(1).

64. Pursuant to 11 U.S.C. § 550(a), the recovery of property for the benefit of Pearlman's estate is authorized to the extent that Two Year Harrington Payments are avoided under 11 U.S.C. § 544(b)(1) and FUFTA.

WHEREFORE, the Trustee demands judgment against Harrington as follows: (i) determining that the Two Year Harrington Payments were fraudulent and avoidable under 11 U.S.C. §§ 544(b) and 550 and FUFTA; (ii) avoiding the Two Year Harrington Payments and entering judgment in favor of the Trustee against Harrington for the value of the Two Year Harrington Payments, plus pre-judgment and post-judgment interest, and costs of suit; (iii) disallowing any claim that Harrington may have against Pearlman or any jointly administered Debtor with Pearlman, including without limitation, pursuant to and as provided in 11 U.S.C. §502(d), and (iv) for such other and further relief as the Court deems just and proper.

COUNT III
ACTUAL FRAUD – AVOIDANCE AND RECOVERY OR
FRAUDULENT TRANSFERS RECEIVED BY DEFENDANT WILMETTE
UNDER 11 U.S.C. §§ 548(a)(1)(A) AND 550

65. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

66. This is an adversary proceeding to recover fraudulent transfers pursuant to 11 U.S.C. §§ 548(a)(1)(A) and 550.

67. Within two years prior to the Petition Date, Pearlman transferred the Two Year Wilmette Payments to Wilmette or for the benefit of Wilmette.

68. The Two Year Wilmette Payments were made by Pearlman with the actual intent to hinder, delay or defraud present and future creditors of Pearlman.

69. The Two Year Wilmette Payments are avoidable, and should be avoided, pursuant to and under 11 U.S.C. § 548(a)(1)(A).

70. Pursuant to 11 U.S.C. § 550(a), the recovery of property for the benefit of Pearlman's estate is authorized to the extent that the Two Year Wilmette Payments are avoided under 11 U.S.C. § 548(a)(1)(A).

WHEREFORE, the Trustee demands judgment against Wilmette as follows: (i) determining that the Two Year Wilmette Payments are fraudulent and avoidable pursuant to 11 U.S.C. §548(a)(1)(A), and avoiding the Two Year Wilmette Payments; (ii) entering judgment in favor of the Trustee against Wilmette for the amount of the Two Year Wilmette Payments pursuant to Section 550 of the Bankruptcy Code, plus pre-judgment interest and post-judgment interest, and costs of suit; (iii) disallowing any claim that Wilmette may have against Pearlman or any jointly administered Debtor with Pearlman,

including without limitation, pursuant to and as provided in 11 U.S.C. §502(d), and (iv) for such other and further relief as the Court deems just and proper.

COUNT IV
ACTUAL FRAUD – AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS RECEIVED BY DEFENDANT WILMETTE
UNDER 11 U.S.C. §§ 544(b)(1) AND 550, AND
FLA. STAT. §§ 726.105(1)(a) AND 726.108

71. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

72. This is an adversary proceeding to recover fraudulent transfers pursuant to 11 U.S.C. §§ 544(b)(1) and 550, and FUFTA.

73. Within four years prior to the Petition Date, Pearlman transferred to Wilmette the Four Year Wilmette Payments to or for the benefit of Wilmette.

74. Pursuant to 11 U.S.C. §544(b), the Trustee may avoid any transfer of an interest of Pearlman in property transferred to Wilmette that is voidable under applicable law (in this case under Fla. Stat. §§ 726.105(1)(a) and 726.108) by a creditor holding an unsecured claim.

75. The Four Year Wilmette Payments were made by Pearlman with the actual intent to hinder, delay or defraud present and future creditors of Pearlman.

76. There is at least one actual holder of an allowed unsecured claim pursuant to 11 U.S.C. § 502, who would have standing to assert a claim for relief under FUFTA.

77. The Four Year Wilmette Payments are avoidable, and should be avoided, pursuant to and under Fla. Stat. §§ 726.105(1)(a) and 726.108 and 11 U.S.C. § 544(b)(1).

78. Pursuant to 11 U.S.C. § 550(a), the recovery of property for the benefit of Pearlman's estate is authorized to the extent that Four Year Wilmette Payments are avoided under 11 U.S.C. § 544(b)(1) and FUFTA.

WHEREFORE, the Trustee demands judgment against Wilmette as follows: (i) determining that the Four Year Wilmette Payments were fraudulent and avoidable under 11 U.S.C. §§ 544(b) and 550 and FUFTA; (ii) avoiding the Four Year Wilmette Payments and entering judgment in favor of the Trustee against Wilmette for the value of the Four Year Wilmette Payments, plus pre-judgment and post-judgment interest, and costs of suit; (iii) disallowing any claim that Wilmette may have against Pearlman or any jointly administered Debtor with Pearlman, including without limitation, pursuant to and as provided in 11 U.S.C. §502(d), and (iv) for such other and further relief as the Court deems just and proper.

COUNT V
ACTUAL FRAUD – AVOIDANCE AND RECOVERY OR
FRAUDULENT TRANSFERS RECEIVED BY DEFENDANT NACM
UNDER 11 U.S.C. §§ 548(a)(1)(A) AND 550

79. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

80. This is an adversary proceeding to recover fraudulent transfers pursuant to 11 U.S.C. §§ 548(a)(1)(A) and 550.

81. Within two years prior to the Petition Date, Pearlman and LJPE, as applicable, transferred the Two Year NACM Payments to NACM or for the benefit of NACM.

82. The Two Year NACM Payments were made by Pearlman and LJPE with the actual intent to hinder, delay or defraud present and future creditors of Pearlman and LJPE.

83. The Two Year NACM Payments are avoidable, and should be avoided, pursuant to and under 11 U.S.C. § 548(a)(1)(A).

84. Pursuant to 11 U.S.C. § 550(a), the recovery of property for the benefit of the estates of Pearlman and LJPE is authorized to the extent that the Two Year NACM Payments are avoided under 11 U.S.C. § 548(a)(1)(A).

WHEREFORE, the Trustee demands judgment against NACM as follows: (i) determining that the Two Year NACM Payments are fraudulent and avoidable pursuant to 11 U.S.C. §548(a)(1)(A), and avoiding the Two Year NACM Payments; (ii) entering judgment in favor of the Trustee against NACM for the amount of the Two Year NACM Payments pursuant to Section 550 of the Bankruptcy Code, plus pre-judgment interest and post-judgment interest, and costs of suit; (iii) disallowing any claim that NACM may have against Pearlman or any jointly administered Debtor with Pearlman, including without limitation, pursuant to and as provided in 11 U.S.C. §502(d), and (iv) for such other and further relief as the Court deems just and proper.

COUNT VI
ACTUAL FRAUD – AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS RECEIVED BY DEFENDANT NACM
UNDER 11 U.S.C. §§ 544(b)(1) AND 550, AND
FLA. STAT. §§ 726.105(1)(a) AND 726.108

85. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

86. This is an adversary proceeding to recover fraudulent transfers pursuant to 11 U.S.C. §§ 544(b)(1) and 550, and FUFTA.

87. Within four years prior to the Petition Date, Pearlman and LJPE, as applicable, transferred to NACM the Four Year NACM Payments to or for the benefit of NACM.

88. Pursuant to 11 U.S.C. §544(b), the Trustee may avoid any transfer of an interest of Pearlman and LJPE in property transferred to NACM that is voidable under applicable law (in this case under Fla. Stat. §§ 726.105(1)(a) and 726.108) by a creditor holding an unsecured claim.

89. The Four Year NACM Payments were made by Pearlman and LJPE with the actual intent to hinder, delay or defraud present and future creditors of Pearlman and LJPE.

90. There is at least one actual holder of an allowed unsecured claim pursuant to 11 U.S.C. § 502, who would have standing to assert a claim for relief under FUFTA.

91. The Four Year NACM Payments are avoidable, and should be avoided, pursuant to and under Fla. Stat. §§ 726.105(1)(a) and 726.108 and 11 U.S.C. § 544(b)(1).

92. Pursuant to 11 U.S.C. § 550(a), the recovery of property for the benefit of the estates of Pearlman and LJPE is authorized to the extent that Four Year NACM Payments are avoided under 11 U.S.C. § 544(b)(1) and FUFTA.

WHEREFORE, the Trustee demands judgment against NACM as follows: (i) determining that the Four Year NACM Payments were fraudulent and avoidable under 11 U.S.C. §§ 544(b) and 550 and FUFTA; (ii) avoiding the Four Year NACM Payments and

entering judgment in favor of the Trustee against NACM for the value of the Four Year NACM Payments, plus pre-judgment and post-judgment interest, and costs of suit; (iii) disallowing any claim that NACM may have against Pearlman or any jointly administered Debtor with Pearlman, including without limitation, pursuant to and as provided in 11 U.S.C. §502(d), and (iv) for such other and further relief as the Court deems just and proper.

COUNT VII
ACTUAL FRAUD – AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS RECEIVED BY DEFENDANT NAIS
UNDER 11 U.S.C. §§ 544(b)(1) AND 550, AND
FLA. STAT. §§ 726.105(1)(a) AND 726.108

93. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

94. This is an adversary proceeding to recover fraudulent transfers pursuant to 11 U.S.C. §§ 544(b)(1) and 550, and FUFTA.

95. Within four years prior to the Petition Date, Pearlman transferred to NAIS the Four Year NAIS Payments to or for the benefit of NAIS.

96. Pursuant to 11 U.S.C. §544(b), the Trustee may avoid any transfer of an interest of Pearlman in property transferred to NAIS that is voidable under applicable law (in this case under Fla. Stat. §§ 726.105(1)(a) and 726.108) by a creditor holding an unsecured claim.

97. The Four Year NAIS Payments were made by Pearlman with the actual intent to hinder, delay or defraud present and future creditors of Pearlman.

98. There is at least one actual holder of an allowed unsecured claim pursuant to 11 U.S.C. § 502, who would have standing to assert a claim for relief under FUFTA.

99. The Four Year NAIS Payments are avoidable, and should be avoided, pursuant to and under Fla. Stat. §§ 726.105(1)(a) and 726.108 and 11 U.S.C. § 544(b)(1).

100. Pursuant to 11 U.S.C. § 550(a), the recovery of property for the benefit of the estates of Pearlman is authorized to the extent that Four Year NAIS Payments are avoided under 11 U.S.C. § 544(b)(1) and FUFTA.

WHEREFORE, the Trustee demands judgment against NAIS as follows: (i) determining that the Four Year NAIS Payments were fraudulent and avoidable under 11 U.S.C. §§ 544(b) and 550 and FUFTA; (ii) avoiding the Four Year NAIS Payments and entering judgment in favor of the Trustee against NAIS for the value of the Four Year NAIS Payments, plus pre-judgment and post-judgment interest, and costs of suit; (iii) disallowing any claim that NAIS may have against Pearlman or any jointly administered Debtor with Pearlman, including without limitation, pursuant to and as provided in 11 U.S.C. §502(d), and (iv) for such other and further relief as the Court deems just and proper.

COUNT VIII
ACTION FOR BREACH OF FIDUCIARY DUTY AGAINST
DEFENDANT HARRINGTON

101. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

102. Upon information and belief, at all relevant times, Harrington was a control person of one or more of the Debtors and/or *de facto* officer or director of one or

more of the Debtors in that he held himself out as the “chief financial officer” of Pearlman and one or more of the Debtors. As a result, Harrington owed the Debtors and their creditors a fiduciary duty to discharge his duties in good faith, with care that an ordinarily prudent person in a like position would exercise and in a manner reasonably believed to be in the best interests of the Debtors.

103. Upon information and belief, Harrington was negligent and/or exhibited a conscious, grossly negligent and/or reckless disregard for the best interests of the Debtors and their creditors in relation to the facts and circumstances set forth above. Harrington knew or, except for his negligence and/or conscious, grossly negligent and/or reckless disregard of the facts set forth above, should have known of the risk of damage that ultimately befell the Debtors and their creditors.

104. Upon information and belief, Harrington provided, or caused to be provided, false and misleading financial information to one or more of the Banks on behalf of Pearlman and/or one or more of the other Debtors in connection with the Loans.

105. Harrington was negligent, grossly negligent and/or acted with reckless disregard or in bad faith in the discharge of his duties.

106. As a direct and proximate cause of Harrington’s acts and omissions, the Debtors suffered damages in excess of \$150 million, including in the form of the Debtors’ increased insolvency as measured by the claims of the Banks that have been asserted against one or more of the Debtors.

WHEREFORE, the Trustee demands judgment against Defendant Harrington for (i) actual, compensatory, consequential, incidental, special and exemplary/punitive

damages in an amount to be proven at trial, but in no event less than \$150 million, (ii) costs and expenses as allowed by law, (iii) pre- and post-judgment interest as allowed by law, (iv) the imposition of a resulting trust, equitable lien and/or constructive trust in favor of the Trustee and against Harrington for any monies transferred to him in connection with the above, as well as the proceeds and products of such monies, and (v) any other legal or equitable relief the Court deems appropriate.

COUNT IX
ACTION FOR AIDING AND ABETTING BREACH OF FIDUCIARY
DUTY AGAINST THE DEFENDANTS

107. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

108. At all relevant times, Pearlman was an officer and/or director of one or more of the Debtors. As a result, Pearlman owed such Debtors and their creditors a fiduciary duty to discharge his duties in good faith, with care that an ordinarily prudent person in a like position would exercise and in a manner reasonably believed to be in the best interests of such Debtors.

109. Upon information and belief, Pearlman was negligent and/or exhibited a conscious, grossly negligent and/or reckless disregard for the best interests of such Debtors and their creditors in relation to the facts and circumstances set forth above. Pearlman knew or, except for his negligence and/or conscious, grossly negligent and/or reckless disregard of the facts set forth above, should have known of the risk of damage that ultimately befell the Debtors and their creditors.

110. Upon information and belief, Pearlman, among others, authorized certain of the Debtors to enter into the Loans with the Banks in order to advance his own interests to the detriment of such Debtors and their creditors.

111. Pearlman was negligent, grossly negligent and/or acted with reckless disregard or in bad faith in the discharge of his duties.

112. Upon information and belief, the Defendants had actual knowledge of and actively participated in, or provided substantial assistance in respect of, the actions and omissions that constituted breaches of his fiduciary duties by Pearlman.

113. As a direct and proximate cause of the acts and omissions of Defendants, the Debtors suffered damages in excess of \$150 million, including in the form of the Debtors' increased insolvency as measured by the claims of investors that have been asserted against such Debtors by the Banks.

WHEREFORE, the Trustee demands judgment against the Defendants, jointly and severally, for (i) actual, compensatory, consequential, incidental, special and exemplary/punitive damages in an amount to be proven at trial, but in no event less than \$150 million, (ii) costs and expenses as allowed by law, (iii) pre- and post-judgment interest as allowed by law, (iv) the imposition of a resulting trust, equitable lien and/or constructive trust in favor of the Trustee and against the Defendants for any monies transferred to them in connection with the above, as well as the proceeds and products of such monies, and (v) any other legal or equitable relief the Court deems appropriate.

COUNT X
ACTION FOR THE IMPOSITION OF AN EQUITABLE LIEN,
CONSTRUCTIVE TRUST AND/OR RESULTING TRUST AGAINST
DEFENDANTS

114. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

115. This is an action to impose an equitable lien, a constructive trust and/or a resulting trust against the funds of each of the Defendants, or any products or proceeds thereof, in the possession or control of the Defendants that are the subject of the Fraudulent Payments.

116. Based upon the facts and circumstances surrounding the Fraudulent Payments described above, equity requires the imposition of an equitable lien, a constructive trust and/or a resulting trust in favor of the Trustee for the benefit of the bankruptcy estates of Pearlman and LJPE, as applicable, against all funds or other things of value of the Defendants that are the subject of, or the products or proceeds of, the Fraudulent Payments.

WHEREFORE, the Trustee demands judgment against the Defendants for (i) the imposition of a resulting trust, equitable lien and/or constructive trust in favor of the Trustee and against the Defendants for all funds or other things of value of the Defendants that are the subject of, or the products or proceeds of, the Fraudulent Payments, and (ii) any other legal or equitable relief the Court deems appropriate.

COUNT XI
ACTION SEEKING AN ACCOUNTING AGAINST
THE DEFENDANTS OF ALL TRANSACTIONS AND BUSINESS
DEALINGS WITH PEARLMAN AND RELATED DEBTORS

117. Paragraphs 1 through 50 inclusive are realleged and incorporated herein by reference.

118. This is an action seeking an accounting from the Defendants in respect of any and all transactions and business dealings, including the transfers of money and property, between each of the Defendants on the one hand and Pearlman, LJPE and all of the other Debtors on the other.

119. Based on the allegations set forth herein describing a series of acts and omissions by the Defendants and various transactions and dealings related to the Loans, it is necessary and appropriate for the Defendants to provide a complete and full accounting of all transactions between the Defendants and the Debtors including, but not limited to, the transfer of all funds between the Debtors and the Defendants, including the Fraudulent Payments, (i) the transfer or disposition of the Fraudulent Payments by the Defendants, (ii) the current location of all property that relates to the Fraudulent Payments or that can be traced to the Fraudulent Payments, and (iii) all subsequent transfers by the Defendants to any party of any or all of the Fraudulent Payments originally received from the Debtors.

WHEREFORE, the Trustee demands judgment against the Defendants for (A) a complete and full accounting of (i) all transactions between the Defendants and the Debtors including, but not limited to, the transfer of all funds between the Debtors and the Defendants, including the Fraudulent Payments, (ii) the transfer or disposition of the

Fraudulent Payments by the Defendants, (iii) the current location of all property that relates to the Fraudulent Payments or that can be traced to the Fraudulent Payments, and (iv) all subsequent transfers by the Defendants to any party of such any or all of the Fraudulent Payments originally received from the Debtors, and (B) for any other relief the Court deems appropriate.

Dated: July 15, 2008

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Louis J. Pearlman Et Al
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United States Bankruptcy Court
Middle District of Florida - Orlando Division

Stuart Harrington - Two Year Transfers

Check Clearing Date	Check No.	Payee	Checks / Credits
03/21/05	1032	Stuart Harrington	155,000.00
07/06/05	1061	Stuart Harrington	185,000.00
01/24/06	8207	Stuart Harrington	53,500.00
04/06/06	1089	Stuart Harrington	175,000.00
05/08/06	1023	Stuart Harrington	92,500.00
09/18/06	1029	Stuart Harrington	350,000.00
12/01/06	1014	Stuart Harrington/Wilmette Capital	250,000.00
			1,261,000.00

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Wilmette Capital, LLC - Four Year Transfers

Check Clearing Date	Check No.	Payee	Checks / Credits
08/19/03	1005	Wilmette Capital, LLC	6,000.00
04/15/04	111	Wilmette Capital, LLC	95,000.00
07/06/04	1016	Wilmette Capital, LLC	195,500.00
12/27/04	1025	Northside Community Bank	90,000.00
12/01/06	1014	Stuart Harrington/Wilmette Capital	250,000.00
			<u>636,500.00</u>

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Wilmette Capital, LLC - Two Year Transfers

Check Clearing Date	Check No.	Payee	Checks / Credits
12/01/06	1014	Stuart Harrington/Wilmette Capital	250,000.00
			<u>250,000.00</u>

**Louis J. Pearlman Et Al
Case No. 6:07-bk-00761-ABB
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North American Capital Markets - Four Year Transfers

Check Clearing Date	Check No.	Payee	Checks / Credits
12/17/04	1024	North American Capital Markets	186,578.00
03/02/05	1031	North American Capital Markets	322,078.00
07/05/05	1062	North American Capital Markets	578,423.00
03/31/06	1090	North American Capital Markets	335,500.00
05/01/06	1022	North American Capital Markets	604,600.00
			2,027,179.00

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North American Capital Markets - Two Year Transfers

Check Clearing Date	Check No.	Payee	Checks / Credits
03/02/05	1031	North American Capital Markets	322,078.00
07/05/05	1062	North American Capital Markets	578,423.00
03/31/06	1090	North American Capital Markets	335,500.00
05/01/06	1022	North American Capital Markets	604,600.00
			<u>1,840,601.00</u>

Louis J. Pearlman Et Al
Case No. 6:07-bk-00761-ABB
United States Bankruptcy Court
Middle District of Florida - Orlando Division

N. A. Investment Services, Inc. - Four Year Transfers

Check Clearing Date	Check No.	Payee	Checks / Credits
06/02/04	1015	N.A. Investment Services, Inc.	397,577.00
			<u>397,577.00</u>