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**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| In re: | § | Chapter 11 |
| | § | |
| DBSI, INC., et al., | § | Case No. 08-12687 (PJW) |
| | § | |
| Debtors. | § | Jointly Administered |
| | § | |

# FINAL REPORT OF THE EXAMINER


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Joshua R. Hochberg, the duly authorized and appointed Examiner in *In re DBSI Inc., et al.*, Case No. 08-12687 (the "Cases" or "Bankruptcy Proceedings"), herewith files his Final Report in the Cases as follows:

## I. DEFINITIONS AND KEY PERSONS

A. Defined Entity Names: For purposes of this Report, the following terms shall have the meaning ascribed to them below:

1. "**2008 Notes**" or "**2008 Notes Corp**" shall mean DBSI 2008 Notes Corporation, an Idaho corporation.

2. **"BioMatrix"** shall mean BioMatrix Solutions LLC, formerly an Idaho limited liability company.

3. "**BioReaction**" shall mean BioReaction Industries LLC, an Idaho limited liability company.

4. "**Control Group**" shall mean former owners and senior managers of the DBSI Group, including Douglas Swenson, Charles Hassard ("Hassard"), John Mayeron ("Mayeron"), Walt Mott ("Mott"), Farrell Bennett ("Bennett"), John Foster ("Foster"), Thomas Var Reeve ("Reeve") and Gary Bringhurst ("Bringhurst").

5. "**DBSI Inc**." shall mean DBSI Inc., an Idaho corporation, which entity was known as DBSI Housing Inc. until April 1, 2008.[1]

6. "**DBSI Group**" shall mean and include the Debtor Entities, Non-Debtor DBSI Entities, Non-Debtor Project Subsidiaries and Technology Holding Companies.

7. "**DBSI Properties**" shall mean DBSI Properties Inc., an Idaho corporation, which entity was known as Spectrus Group LLC until April 1, 2008.

8. "**DBSI Realty**" shall mean DBSI Realty Inc., an Idaho corporation, which entity was known as DBSI Realty Corporation until March 25, 2008.

9. "**DBSI Related Companies**" shall mean, collectively, those entities that are not owned by DBSI Inc. but are owned by various members of the Control Group, including DBSI Securities, DCJ Inc., and Western Technologies.

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[1] Where in this Report "DBSI Inc." is used in connection with events prior to April 1, 2008, this should be read to refer to the predecessor entity, DBSI Housing Inc. Note that the Debtors themselves used these titles somewhat interchangeably after April 1, 2008 -- for example, DBSI Inc. continued to use bank accounts that were in the name of DBSI Housing Inc.

10. **“DBSI Securities”** shall mean DBSI Securities Corporation, an Idaho corporation.

11. “**DCJ Inc**.” shall mean, DCJ Inc., an Idaho corporation, which entity was formerly known as DBSI Inc. until March 25, 2008.[2]

12. “**DDRS**” shall mean, DBSI Discovery Real Estate Services LLC, an Idaho limited liability company.

13. “**Debtor Entities**” shall mean, collectively, DBSI Inc., the Operating Entities, the Debtor Project Subsidiaries and the DBSI Related Companies.

14. **“Debtor Project Subsidiaries**” shall mean those certain Project Subsidiaries that have been included as parties to the Bankruptcy Proceedings.

15. “**DRR**” shall mean DBSI Redemption Reserve, an Idaho general partnership.

16. **“EmergeCore”** shall mean EmergeCore Networks, LLC, formerly an Idaho limited liability company.

17. “**FOR 1031**” shall mean FOR 1031 LLC, an Idaho limited liability company.

18. “**Former Related Companies**” shall mean, collectively, those entities that are now wholly owned by DBSI Inc. but which have not always been wholly owned by DBSI Inc., including, DDRS, FOR 1031 and DBSI Properties Inc.

19. “**GCC**” shall mean DBSI Guaranteed Capital Corporation, an Idaho corporation.

20. “**GigOptix**” shall mean GigOptix, Inc., a Delaware corporation, as successor-in-interest to GigOptix, LLC, formerly an Idaho limited liability company.

21. “**Investments**” shall mean DBSI Investments Limited Partnership, an Idaho limited partnership, formerly known as DBSI Properties Limited Partnership.[3]

22. “**iTerra**” shall mean iTerra Communications LLC, an Idaho limited liability company.

23. **“Kastera Companies”** shall mean Kastera LLC, Kastera Development, LLC, Kastera Homes, LLC, and all subsidiaries of these entities.

24. “**Master Leaseco**” shall mean DBSI Master Leaseco, Inc., an Idaho corporation.

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[2] Other than in this sentence to note the former name of DCJ Inc., unless expressly otherwise noted, “DBSI Inc.” as used in this report refers only to the entity currently known as DBSI Inc. and formerly known as DBSI Housing Inc.

[3] The bank statements for this entity continued to use the name DBSI Properties LP following the name change.

25. “**Non-Debtor DBSI Entities**” shall mean, collectively, the Kastera Companies, Investments, DRR, Stellar and the Non-Debtor Project Subsidiaries.

26. “**Non-Debtor Project Subsidiaries**” shall mean those certain Project Subsidiaries that have not been included as parties to the Bankruptcy Proceedings.

27. “**Operating Entities**” shall mean DBSI Realty, DDRS, DBSI Development Services LLC, DBSI Land Development LLC, Spectrus Real Estate Inc., FOR 1031, Master Leaseco and DBSI Properties Inc.

28. “**Project Subsidiaries**” shall mean the DBSI related entities created in connection with the acquisition, ownership, management, leasing or sale of particular real estate projects or used in connection with a bond or note investment projects.

29. **“Property Portfolio”** shall mean real property managed by the DBSI Group pursuant to a master lease or other obligation to provide a guaranteed return to investors.

30. “**Stellar**” shall mean Stellar Technologies LLC, an Idaho limited liability company.

31. “**Subsidiaries**” shall mean, collectively, DBSI Realty Inc., DBSI Development Services LLC, DBSI Land Development LLC, Spectrus Real Estate Inc. and Master Leaseco.

32. “**Technology Companies**” shall mean all companies in which either Stellar or Western Technologies hold or previously held ownership interests, including BioMatrix, BioReaction, EmergeCore, GigOptix, iTerra, UltraDesign, Wavetronix, and Western Electronics.

33. “**Technology Holding Companies**” shall mean, collectively, Stellar and Western Technologies.

34. “**UltraDesign**” shall mean UltraDesign LLC, an Idaho limited liability company.

35. “**Wavetronix**” shall mean Wavetronix LLC, an Idaho limited liability company.

36. **“Western Electronics”** shall mean Western Electronics LLC, an Idaho limited liability company.

37. **“Western Technologies”** shall mean DBSI/Western Technologies LLC, an Idaho limited liability company.

B. Individuals Referenced in Report: A list of individuals referenced in this report is attached as **Appendix 1.**

## II. INTRODUCTION AND PROCEDURAL BACKGROUND

On November 10, 2008 (the "Petition Date"), the majority of the Debtors herein filed Voluntary Petitions for relief under Chapter 11 of the Bankruptcy Code. On March 25, 2009, the Bankruptcy Court entered its order directing the United States Trustee to appoint an examiner herein (the "Examiner Order") and on April 3, 2009, the United States Trustee filed her Notice of Appointment of Examiner ("Notice of Appointment") wherein she appointed Joshua R. Hochberg as the Examiner. On April 14, 2009, the Bankruptcy Court approved the Examiner's appointment.

The Examiner selected the law firm of McKenna Long & Aldridge LLP ("MLA"), to serve as his counsel in this case and the law firm of Cole, Schotz, Meisel, Forman & Leonard, P.A. to serve as his Delaware counsel. In addition, the Examiner determined that the services of an investigator and financial advisor would be necessary. The Examiner selected Don B. Southerland, Jr., CPA ("Southerland"), a former FBI Special Agent located in Texas to assist in the Examination, and Hays Financial Consulting, LLC of Atlanta, Georgia ("HFC") to serve as his Financial Advisor. Applications to employ all of these professionals were filed on April 17, 2009 and were granted by this Court on April 29, 2009.

In accordance with the Examiner Order, the Examiner consulted with the Debtors, the Committee and other parties in interest regarding the proposed investigation and prepared and submitted a proposed Work Plan and Budget on April 21, 2009 (the "Work Plan Motion"). On April 29, 2009, the Bankruptcy Court conducted a hearing with respect to the Work Plan Motion and granted the Work Plan Motion from the bench, made oral comments with respect to the Examiner's Work Plan and Budget, and authorized the Examiner to begin the investigation (the "Investigation" or "Examination") immediately. The Work Plan Motion contemplated a four-month Investigation and the filing of a single and final report at the conclusion of this period. On June 9, 2009, the Examiner provided an oral status report as ordered by the Court.

By mid-July 2009, the Examiner determined that an Interim Report would be appropriate for two primary reasons. First, the Official Committee of Unsecured Creditors in these Cases (the “Committee”) requested that the Examiner file an interim report to address certain issues related to the then-pending plan confirmation process. Second, the Examiner had uncovered information that brought into question issues concerning the Debtors’ books and records and uses of cash. The Examiner’s Interim Report was filed with the Court on August 3, 2009 (Docket No. 4159). Based at least in part upon information contained in the Interim Report, the Committee and the United States Trustee moved for the appointment of a Chapter 11 Trustee for the Debtors herein. The Debtors entered into a Stipulation on August 14, 2009 agreeing to the appointment of a Trustee effective August 31, 2009 (Docket No. 4240). Justice James R. Zazzali was appointed as Chapter 11 Trustee herein on September 1, 2009. (Docket No. 4375).

In the Interim Report, the Examiner also set forth revised recommendations to modify and amend the Work Plan set forth in the Work Plan Motion. The Court orally authorized the Examiner to complete his Investigation as modified by the Recommendations set forth at pages 17 through 19 of the Interim Report. The Examiner has now completed his Investigation as set forth in the Work Plan Motion and as modified in the Interim Report. This Report will constitute the final report, findings and conclusions of the Examiner.

## III. SUMMARY OF FINDINGS

### A. Interim Report Conclusions and Findings

In the Interim Report, the Examiner made the following interim findings:

1. DBSI Inc., Douglas Swenson, and the Control Group owned and/or controlled both the DBSI Debtor Entities and all significant DBSI Non-Debtor Entities. Specifically, DBSI

Inc., Douglas Swenson and the Control Group were able to control the flow of funds and direct that loans be made to or "secured" by DBSI Non-Debtor Entities assets including DRR, Stellar, DBSI Investments, and various Kastera Companies.

2. DBSI and Douglas Swenson-controlled companies, whether Debtors or Non-Debtors, were run as a unified business. The sources and uses of funds were evaluated by considering all companies controlled by DBSI Inc., Douglas Swenson and/or the Control Group. DBSI Inc. and its controlled entities typically commingled and accumulated their available funds, which were disbursed for the most pressing obligations as they came due. Intercompany transfers were typically treated as loans.

3. Many of the general ledger entries accounting for fund transfers do not fully, fairly and accurately reflect the transactions they purport to describe. It is the Examiner's understanding that these ledger entries are the primary sources of financial information provided by the Debtors to the Court and to creditors and parties-in-interest.

4. A company known as DRR, which is a Non-Debtor, was used as an intermediary for most intercompany cash transfers. DRR is purportedly a general partnership; however, no partnership agreement exists for this entity. The use of DRR helped obfuscate the true source and use of funds that were transferred between entities. Large loans receivable from DRR on the books of Debtor entities represent nothing more than an accumulation of fund transfers that were documented by accounting entries. The money that flowed through DRR was always obtained from other sources and DRR had no significant assets (other than the loans receivable) or business operations. Determining the true source of the funds received by DRR is complex. DBSI Inc.'s balance sheet dated December 31, 2008 reflects that DRR owes DBSI Inc. $196 million.

5. In large part, the loans made by 2008 Notes Corp were used for the benefit of DBSI Inc. to meet existing obligations and operating expenses, rather than for the investment purposes described in the Private Placement Memorandum ("PPM") for the 2008 Notes offering. DBSI Inc. and its controlled entities had severe cash flow problems and operating losses. DBSI Inc. used 2008 Notes proceeds to fund current operating expenses of a failing enterprise. Ultimately, none of the business entities controlled by Douglas Swenson and the Control Group had any reasonable likelihood of generating revenues sufficient to ever repay DBSI's obligations to the 2008 Notes Corp (or to the investors who contributed the cash to it).

6. Highly questionable internal valuations and appraisals were used to support loans from the bond, note, and fund programs sponsored by DBSI Inc.

In the course of completing his Investigation in these Cases, the Examiner has not discovered any documents or information that would cause him to alter or amend his findings in the Interim Report. In fact, the Examiner's additional work reinforces and supplements the above conclusions.

### B. <u>The Examiner's Final Conclusions and Findings</u>

Since making the findings and conclusions set forth above, the Examiner has continued his Investigation, which has included additional analysis of the Debtors' financial information and documents, additional and follow-up interviews, and review of information and documents from third parties. The Examiner adopts the interim findings set forth above as final findings and makes the following additional findings:

1. The DBSI Group businesses were in continuous need of new investor funds to fund pre-existing obligations at least as early as 2005. In particular, the DBSI Group of companies was burdened by huge high interest debt and master lease payment obligations,

excessive insider distributions, and unrestrained losing investments in the Technology Companies and the Kastera Companies.

2. A small group of management personnel, including Douglas Swenson, regularly tracked cash on a global basis and directed that investor funds be used to meet pre-existing obligations and operating expenses by evading restrictions governing the use of the investor funds. At times, in an elaborate shell game, loans were made from investor funds that were not backed by adequate security, debt was reallocated through after-the-fact bookkeeping entries in an effort to make it appear that loans were adequately secured, and inflated values were arbitrarily assigned to the assets "securing" loans.

3. The DBSI Group consistently operated at a loss, except for certain time periods when sales to TIC investors created booked profits. The Non-Debtor Kastera Companies and the Technology Companies also all consistently lost money and required substantial loans and capital contributions by DBSI or its affiliates to keep operating.

4. DBSI Group entities booked profits from inflated markups of real estate for sale to outside investors. Most of these profits were consumed by the costs of such sales. The inflated sales prices included arrangements obligating DBSI Inc. to make guaranteed payments to investors. But the operations of the underlying properties could not support these guaranteed investor payments.

5. DBSI Inc.'s guarantees of investments were illusory and were based on the cultivated false appearance that DBSI Inc. had substantial value. Similarly, the marketing claim that "no investors had ever lost money" was also illusory and reflected that newly raised investor funds were being used to pay off existing investors.

6. The Debtors used tenant-in-common ("TIC") investor and bond and note money interchangeably and pooled such money to make required payments when they came due. Investor funds from all sources were commingled and treated as fungible funds. The Debtors transferred debt obligations and infused cash to different entities as the need arose. The same funds were transferred and retransferred between numerous entities often on a daily basis.

7. Douglas Swenson and others played a critical role in preparing the DBSI financial statements and other documents that were vital to the Debtors' ability to continue to raise new funds from new investors. Most of these financial statements were not independently audited or certified. Swenson and others created a misleading financial picture of the DBSI Group by, among other devices:

a. using inflated values for entities and assets included in financial statements;

b. not fully and adequately disclosing the nature of intercompany accounts receivable in the Debtors' financial statements;

c. failing to make inter-company interest payments on loans and concealing this failure by converting accrued interest into additional principal;

d. concealing mounting loan receivable amounts by converting loans into equity; and

e. engaging in year-end cash manipulations which made it appear that certain entities were well capitalized when, in fact, they were not.

8. DBSI Inc. and its related companies went to great lengths to market investment properties by stressing that the uses of "Accountable Reserves" were restricted to property

improvements. In reality, DBSI treated Accountable Reserves as a source of cash for its cash strapped operating companies.

9. DBSI Inc., Douglas Swenson, and others managed and operated the DBSI Group businesses without regard for the separate identities of the companies within the DBSI Group. Transactions among companies in the DBSI Group were rarely documented properly. Accounting functions were mostly centralized.

10. Douglas Swenson and others continuously failed or refused to obtain appropriate outside, independent accounting or legal advice with respect to matters for which they had serious conflicts of interest. They used investor funds under their control for purposes not intended by the investors in order to continue operations, pay themselves distributions, and fund investments in Non-Debtor companies such as the Kastera Companies and the Technology Companies.

11. The Debtors' financial and accounting records and those of the DBSI Group as a whole, particularly the general ledgers, are unreliable, unorganized, inconsistent and often unintelligible. In addition, accounting personnel often modified entries explaining transactions well after the transactions occurred. It would be cost prohibitive and virtually impossible to confirm the sources and uses of funds that flowed among members of the DBSI Group. It would also be cost prohibitive and virtually impossible to fully trace the actual uses of significant portions of the funds derived from TIC investors and non-TIC investors.

12. Douglas Swenson and other insiders distributed significant amounts of money to themselves.

## IV. SUMMARY OF THE SCOPE OF THE INVESTIGATION

### A. The Initial Work Plan

On March 25, 2009, this Court entered the Examiner Order directing the United States Trustee to appoint an examiner in the Cases. On April 3, 2009, the United States Trustee filed her Notice of Appointment of Examiner ("Notice of Appointment") wherein she notified Joshua R. Hochberg (the "Examiner") of his appointment to serve as Examiner herein subject to approval of the Court. This Court approved the appointment of the Examiner on April 14, 2009.

In the Examiner Order, the Court directed the Examiner to "(a) investigate the circumstances surrounding (i) any and all of the Debtors' inter-company transactions and transfers, (ii) any and all transactions and transfers between and among the Debtors and any non-debtor affiliates, and (iii) any and all transactions and transfers between and among the Debtors and any insiders, officers, directors and principals of the Debtors and … (b) otherwise perform the duties of an examiner set forth in 11 U.S.C. §§ 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code" (collectively, the "Examination").[4]

The Examiner Order further directed the Examiner to consult with parties in interest in the case and to "reasonably promptly" propose a work plan and budget for the Examination contemplated in the Examiner Order (the "Work Plan"). In his Work Plan Motion, the Examiner set forth a proposed Work Plan and Budget and further outlined the investigation he conducted in connection with the formulation of his Work Plan and Budget. The Examiner proposed a four-month investigation schedule and identified seven primary areas on which he would focus his examination. The Work Plan Motion also included a budget for the proposed Investigation. The Court approved this Work Plan from the Bench during the hearing held to consider the Work

[4] *See* Examiner Order at ¶ 2.

Plan Motion on April 29, 2009. The following are the issues identified by the Examiner for Investigation in the Work Plan Motion:

1. The sources and uses of "Accountable Reserves" estimated to aggregate $70 million;

2. The sources and uses of funds maintained by the Debtor and or its Lenders in property and lender "reserve" accounts in connection with the TIC funds;

3. The sources and uses of funds received in connection with sales of TIC Properties including:

   a. the "Purchase/Sale Profits," as defined in the Work Plan Motion, on at least sampling basis;

   b. the uses of rents, management fees and other sums "swept up" and/or collected by the Debtors, on at least a sampling basis;

   c. the methodology used by the Debtors in re-segregating the TIC property monies just prior the bankruptcy filing, on at least a sampling basis; and

   d. the Debtors' cash management systems and procedures with respect to TIC Investors, on at least a sampling basis.

4. The sources and uses of material amounts of the funds raised from bond and note offerings;

5. The sources and uses of funds transferred to or through Stellar, Kastera Companies, the entity known as DRR, DBSI Investments and Spectrus Real Estate, Inc.[5] (collectively the "Specified Non-Debtor Entities");

[5] Spectrus is currently a Debtor entity.

6. The ultimate uses of funds transferred from the Specified Non-Debtor entities, including, particularly, the approximate $200 million transferred to the Technology Companies; and

7. The identification of monies transferred to insiders, including funds transferred to or through the Specified Non-Debtor Entities.

The Examiner further advised the Court that during the course of the Investigation he would attempt to identify transactions or transfers containing badges or evidence of material fraud or insider transactions and attempt to obtain a full reporting of such transactions.

**B. <u>The Revised Work Plan</u>**

The Work Plan Motion did not contemplate the filing of an Interim Report. However, for the reasons set forth in the Interim Report, the Examiner decided to file an Interim Report detailing certain of his initial findings and conclusions. In addition, the Examiner also proposed a revised Work Plan.

In particular, based on his work in tracing the use of funds raised by the 2008 Notes, the Examiner discovered that funds were commingled and transferred among numerous entities and that the journal entries explaining the use of funds could be misleading. The Examiner concluded that the extensive tracing of bond and note offering monies and of TIC investments, as contemplated in both the Examiner Order and the Work Plan Motion, would be time consuming, expensive and perhaps impossible without corresponding benefit to the Debtors and their Estates. In addition, the transactions analyzed in both the Interim Report and this Final Report illustrate that these funds often lost their separate identity as they moved among various Debtor and non-Debtor entities. It also appeared to the Examiner at the time the Interim Report was filed, that the Debtors used commingled funds to meet pre-existing obligations and operating expenses without regard to their source and without regard to whether such obligations and expenses were TIC-related or non-TIC-related.

Accordingly, because of the substantial work completed at that time, the expertise developed by the Examiner, and issues which had been identified by the Examiner that would be of benefit to the Debtors and their Estates, the Examiner recommended finishing much of the original Work Plan investigation, incorporating additional items into that Work Plan, and reporting to the Court pursuant to a revised Work Plan as follows:

1. Reporting on the amounts and timing of distributions to insiders from Debtors and non-Debtors. This Final Report also includes an analysis of why significant credits claimed by Douglas Swenson should not be used to offset the large distributions that were made to him.

2. Determining and reporting on the amounts booked, transferred, or loaned to Technology Companies and the uses of those funds. This Final Report also includes a description of the terms and conditions under which such funds were transferred to the Technology Companies (e.g., loan, equity stakes, and any conversions of loans to equity stakes) and explains what documentation exists or does not exist to support such transfers.

3. Reporting on the legal and financial issues related to Accountable Reserves.

4. Conducting the depositions of Douglas Swenson and, as necessary, interviews or depositions of additional persons.

5. Completing the investigation of four to six specific property transactions that appeared problematic to the Examiner. This Final Report details the Examiner's analysis of three complex property transactions that highlight the significant problems and issues with the way DBSI Inc. and the individuals who controlled it conducted business operations over a period of years.

6. Investigating and reporting on potential claims and causes of action against third parties. Several possible claims have been identified, but will require further investigation.

7. Reporting on and summarizing all other results to date, including the results of interviews and a description of significant documents.

The Examiner believes he has concluded his Investigation of the issues set forth in the Work Plan Motion as revised in the Interim Report to the fullest extent possible and practical under the circumstances of this case. The following is the Examiner's Report with respect to these issues.

## V. <u>THE EXAMINATION</u>

### A. <u>Investigation Since Filing of Interim Report</u>

#### 1. Re-Assembly of Team in Boise

Just prior to the filing of the Interim Report, the Examiner removed the team of professionals who had been working in the Debtors' Boise offices pending further direction from the Court with respect to the recommendations contained in the Interim Report. After receiving approval to continue the Investigation at the August 4, 2009 hearing, Southerland and representatives of HFC began to complete the Investigation. In addition, attorneys from MLA continued their work on the investigation. The Examiner's professionals had a continuous presence at the Debtors' office in Boise from early August through late September.

#### 2. Continued Investigation

Since the filing of the Interim Report, the Examiner's Investigation was focused on completing the tasks set forth in the Interim Report. In particular, HFC focused its efforts on completing the analysis of insider transactions, accounting for the uses of Accountable Reserve funds, investigating the individual transactions reported herein and other forensic accounting. In addition to completing the forensic accounting work, the Examiner's investigator and counsel completed the interviews of key employees. In certain cases, with respect to critical employees, in addition to conducting informal interviews, the Examiner took transcribed interviews in order to preserve a full record of the statements.

The Examiner's team has also devoted significant time to collecting and organizing the materials collected during the Investigation and relied upon in reaching the conclusions set forth in this Report. Finally, the Examiner's team has devoted significant time to the preparation of this Report.

### 3. Deposition of Douglas Swenson

Among the areas identified for further investigation in the Interim Report was the deposition of Douglas Swenson. As detailed in the Motion to Compel filed by the Examiner (Docket No. 4085), shortly after the appointment of the Examiner, Douglas Swenson advised the Examiner through counsel that he would consent to an interview and would fully cooperate with the Examiner. However, as the date of his interview approached, Douglas Swenson sought limitations on his examination or to be permitted to answer written questions as opposed to being subject to interview or depositions. Douglas Swenson ultimately reneged on his agreement to appear for an interview, and the Examiner then sought to compel his deposition testimony.

During the course of the Investigation, the Examiner learned that Douglas Swenson was consulted about and approved virtually ever major financial decision made by these Debtors and was responsible for many of the transactions reported herein. Accordingly, the Examiner determined that an extensive interview or deposition would be required. The Examiner rejected proposals from Douglas Swenson to respond to written questions and other alternatives.

After this Court entered an Order directing Swenson to appear for a deposition (Docket No. 4217), his counsel advised the Examiner, in writing, that he would refuse to answer any questions on the basis of his Fifth Amendment right against self-incrimination. A copy of this letter is at **Appendix 2.** Based on this written representation, the Examiner did not convene a deposition of Swenson.

Douglas Swenson is the only member of the Debtors' management who refused to be interviewed or deposed by the Examiner.

## B. Status of Budget

### 1. Budget Per the Work Plan

In the Work Plan Motion, the Examiner provided a detailed work plan setting forth how he intended to conduct the Examination together with a budget of fees which would be incurred in connection with this budget. No additional budget was prepared in connection with the revised work plan set forth in the Interim Report.

In the Work Plan Motion, the Examiner projected Examiner and Professional Fees in excess of $2,000,000. This figure excluded fees incurred in connection with the preparation of the Work Plan.

### 2. Fees and Expenses Incurred to Date

The following is a chart showing fees and expenses incurred through July 30, 2009:

**Summary of DBSI Monthly Fee Applications:**

| Time Period | MLA | HFC | Southerland | Total |
|---|---|---|---|---|
| First Monthly:<br>4/14/2009 - 4/30/2009 | $157,598.50 | $15,365.50 | $1,437.50 | $174,401.50 |
| Second Monthly:<br>5/1/2009 - 5/31/2009 | $215,681.00 | $120,464.00 | $45,712.50 | $381,857.50 |
| Third Monthly:<br>6/1/2009 - 6/30/2009 | $310,770.50 | $206,685.50 | $42,750.00 | $560,206.00 |
| Fourth Monthly:<br>7/1/2009 - 7/31/2009 | $497,047.00 | $258,832.00 | $62,550.00 | $818,429.00 |
| **Totals:** | **$1,181,097.00** | **$601,347.00** | **$152,450.00** | **$1,934,894.00** |

Although the Examiner does not yet have complete totals for the months of August, September, and October, it is likely that the cost of the Investigation will exceed the initial $2 million budget by at least $1 million. There are several reasons for this.

First, the Examiner's staff needed to spend far more time collecting documents and analyzing information regarding the Debtors and the DBSI Group than anticipated at the time the Investigation began. For example, the actual tracing of uses of cash to bank accounts was complicated by incorrect and misleading ledger entries, the complexity of the transactions involved, and the numerous transfers of the same funds among several different entities. In addition, although a substantial volume of information regarding the Debtors is available on a web site maintained by Debtors' Delaware bankruptcy counsel, Young Conaway Stargatt & Taylor, LLP ("YCST"), the Examiner found that the information contained therein did not address some of the important issues in the Investigation, was often incomplete and, in several cases, was inaccurate. Most significantly, the Debtors' accounting systems and records were far more complex, unorganized and misleading than anticipated. Indeed, the Examiner's staff has spent significant time unwinding complex transactions that were often designed by the Debtors to create a misleading impression of cash flows and uses of money. The original budget submitted by the Examiner contemplated that the forensic accounting portion of the Investigation would be completed by July. In fact, because of these challenges, the forensic accounting investigation took significantly longer than anticipated.

Although the Examiner did consult with the Debtor and the Committee prior to submitting the original budget, none of the professionals with whom the Examiner consulted prior to filing the Work Plan Motion had a true appreciation for the complexity of these records and none had any indication of the extent to which these records were misleading and, in certain cases, false.

Second, the original budget did not contemplate an Interim Report. When the Examiner discovered the extent to which the actual uses of proceeds from the 2008 Notes Corp varied from the general ledger entries and the extent to which the Debtors had commingled funds received by them, the Examiner determined that an interim report should promptly be filed. Indeed, upon the filing of the Interim Report, the Committee and the United States Trustee immediately moved for the appointment of a Chapter 11 Trustee. Although the drafting of this Interim Report required significant time and effort, it did have the effect of moving this case forward and the Examiner believes it added significant value.

Third, the cost of procuring information from the Technology Companies was far higher than anticipated. The Examiner was advised that current Stellar President and CEO Paul Judge, Stellar, and/or the Debtors could provide substantial information about the Technology Companies. At the request of the Debtors and the Committee, the Examiner originally attempted, unsuccessfully, to procure all necessary information through these sources as opposed to going directly to the Technology Companies. Ultimately, neither Judge nor the Debtors were able to provide critical information requested by the Examiner, and the Examiner was required to spend substantial time dealing directly with the Technology Companies and their counsel in order to obtain documents and information. In particular, each of the Technology Companies requested separate confidentiality agreements which required extensive negotiation. Moreover, the Examiner's staff met with representatives of each Technology Company, which required extensive preparation, travel, and subsequent review of the data they provided. In light of the large amounts of money transferred to the Technology Companies and the potential value of the

Technology Companies, the Examiner spent significant time and effort investigating issues related to these entities.

Fourth, in order to have access to the Debtors' electronic information in a central, searchable database, the Examiner copied numerous email and other databases. This task turned out to be far more complex and difficult than anticipated due to the many electronic databases used by the Debtors. However, the Examiner believes that the copying and preservation of this data was of substantial benefit to the Debtors' estates.

Fifth, the Examiner took steps to pin down critical witness testimony in transcribed interviews, which created a more useful record of statements that can be relied on by the Trustee.

Sixth, the Examiner was required to engage in motion practice with both Douglas Swenson and Eide Bailly concerning the subpoenas served on them.

In short, this Examination proved to be far more complex and challenging than originally anticipated.

## C. Interviews, Subpoenas and Documents

### 1. Witness Interviews

Shortly after his appointment, the Examiner compiled a list of persons who might have knowledge of facts related to the Investigation herein. Ultimately, the Examiner did not interview each and every person identified as a possible witness and focused on those individuals who would have knowledge of critical areas. **Appendix 3** hereto lists the persons interviewed by the Examiner. The Examiner conducted more than sixty interviews. The vast majority of these interviews were meetings between representatives of the Examiner and the witness that were not transcribed. In each of these instances, the Examiner's representative took detailed notes and prepared written summaries of the interviews. ("Interview Notes"). In certain cases, the

Examiner arranged for a court reporter to transcribe the interview. **Appendix 3** indicates those cases where a transcript exists ("Interview Transcripts").

In addition to the interviews listed in **Appendix 3,** the Examiner met with government agency representatives, attorneys and others not listed in that Appendix.

### 2. Subpoenas Served and Status

The Examiner has served several subpoenas during the course of his Investigation to both compel production of documents and testimony. **Appendix 4** is a chart listing the subpoenas served by the Examiner.

As of the filing of this Final Report, all outstanding issues related to these subpoenas have been resolved to the satisfaction of the Examiner and there are no outstanding issues with respect to any subpoenas.

### 3. Documents

The Examiner has collected voluminous documents, both in paper and electronic form, during the course of his investigation. The Examiner has preserved copies of these documents used in his investigation and has further organized the materials to the extent necessary for his investigation.

#### a. Electronic Information

Shortly after the Investigation began, the Examiner downloaded significant portions of the Debtors' general ledger information. The information was downloaded into Excel spreadsheets that are maintained on a server by the Examiner's Financial Advisors, HFC. In addition, HFC also imaged hard drives of computers used by several key current and former employees of the Debtors. HFC also imaged other electronic information from the Debtors' servers. The imaged electronic information and the General Ledger Download will be referred to herein as the "Examiner's Electronic Data."

### b. Paper Documents

The Examiner's staff has also collected voluminous paper copies of documents from the Debtors' records and from third parties in connection with the Investigation. The Examiner's staff has attempted to identify and organize potentially significant documents. Many of these documents have been incorporated into binders, which have been organized by subject matter (the "Binders"). The documents contained in the Binders are, in turn, organized by exhibit number. The Binders have also been electronically copied and stored in a database by counsel for the Examiner. The Examiner cites to numerous, but not all, of the documents contained in the Binders as exhibits to this Report (the "Report Exhibits"). The Report Exhibits from the Binders are cited using the following abbreviation of the Binder's subject matter followed by a tab number, as follows:

| | |
|---|---|
| ADDF __: | Appraisers and Due Diligence Firms |
| AR _: | Accountable Reserves |
| BN _: | Bonds and Notes |
| FS _: | Financial Statements |
| ID _: | Insider Distributions |
| MI _: | Miscellaneous Documents |
| NDE _: | Non-Debtor Entities |
| RP _: | Real Property Transactions |
| TC-BMX __: | BioMatrix |
| TC-BRI __: | BioReaction |
| TC-EME __: | EmergeCore |
| TC-GIG__: | GigOptix |
| TC-ITC __: | iTerra |
| TC-STE __: | Stellar |
| TC-WAV __: | Wavetronix |
| TC-WT __: | Western Technologies |

In addition to the Binders, other documents have been gathered and segregated by the Examiner's staff.[6] These other documents have been discussed with counsel for the Trustee. They are maintained at the Debtors' facilities in Boise, Idaho pending return to the Trustee.

### c. Disposition of Documents by the Examiner

None of the information made available to the Examiner by the Debtors is subject to any restriction on its use or publication. In addition, much of the information produced by third parties is not subject to any restriction on its use or publication. However, there are certain documents produced to the Examiner by third parties in this case that were produced pursuant to Confidentiality Agreements or Protective Orders.

In particular, the Examiner obtained personal financial information from Messrs. Bringhurst, Ellison, Foster, Hassard, Mayeron, Mott, and Reeve pursuant to a Confidentiality Agreement with them ("Insider Financial Documents"). The Insider Financial Documents were produced in connection with the Examiner's analysis of the payments made to these individuals as potential insiders. Certain of the Insider Financial Documents are contained in the Binders. None of the Insider Financial Documents are cited in the report or listed as Report Exhibits.

In addition, the Examiner entered into a protective order with Eide Bailly LLP, the public accounting firm that conducted audits of some entities in the DBSI Group, pursuant to which documents produced by Eide Bailly were designated as confidential (the "Eide Bailly Documents") and subject to agreed procedures prior to further dissemination of the documents. None of the documents or information cited in this Report or contained in the Binders violate the terms of the protective order.

[6] Stellar and the Technology Companies also provided the Examiner with numerous accounting and general ledger spreadsheets. These spreadsheets have not been included in the Binders, but are being preserved by counsel to the Examiner.

Third, the Examiner obtained information and documents from Stellar and the Technology Companies pursuant to confidentiality agreements executed by the Examiner and each of those entities. None of the documents or information cited in this Report or contained in the Binders violate the terms of the confidentiality agreements.

Finally, the Examiner has obtained certain work product information prepared by FTI Consulting, the Committee's Financial Consultants in this case (the "FTI Work Product") pursuant to a Common Interest Agreement between the Examiner and the Committee which was approved by this Court on May 14, 2008 (Docket No. 3533). The Examiner has not cited to any FTI Work Product in this Report, although he has utilized the FTI Work Product in his Investigation.

The Examiner will make the Examiner's Electronic Information, Interview Notes, Interview Transcripts, the Binders, the FTI Work Product,[7] the Miscellaneous Documents and the Report Exhibits available to the Trustee herein without any restriction on the Trustee's use of these documents; provided, however, that the Examiner will redact the Insider Financial Information and Eide Bailly Documents from the documents to be made available to the Trustee. The Examiner will seek direction from the Court, upon notice to Eide Bailly and the persons who produced the Insider Financial Information, as to the disposition of these documents.

The Examiner will also request direction from the Court concerning any further circulation or publication of all of the documents referred to in this Section. The Examiner will specifically request that this issue be addressed at the time he is discharged as Examiner herein

[7] The Examiner is advised by the Committee that it is currently negotiating a Confidentiality Agreement with the Trustee. The Examiner is advised that when this Agreement is finalized that the Examiner may then produce the FTI Work Product to the Trustee as set forth herein. As of the preparation of this Final Report, the Examiner is advised that this agreement has not yet been finalized.

and that he not be subject to continuing requests for all or any portion of the documents he has collected during the course of his Investigation.

## VI. HISTORY AND OVERVIEW OF THE DBSI GROUP AND RELATED COMPANIES

### A. Overview: A Business Model Doomed to Fail

Throughout its history, DBSI Inc. and its affiliated companies and subsidiaries sold investor interests that guaranteed certain returns to investors. The DBSI Group touted that it had a long history during which no investor had ever lost money, and that it had provided significant annual returns even during poor real estate markets. For many years, it maintained an impression of robust financial strength and consistent payments to investors. But, in recent years, it did not accomplish this track record through successful business enterprises. Rather, it did so by generating a consistent influx of cash from new investors through serial bond, note, and fund offerings and sales of TIC investor interests in property at prices that exceeded, in some cases significantly, the fair market value of that property. These offerings and sales resulted in long-term payment obligations to these new investors. Along with these serial cash infusions came a growing and recurring obligation to pay investors significant returns on their investments -- typically between 8 and 11 percent -- in the form of interest (for bond, note and fund offerings) or mater lease payments (for TIC sales). The frequency and size of the Company's fundraising efforts and the uses of the resulting cash illustrate that the Company relied on a steady, increasing flow of new investor money in order to both fund its operations and repay prior investors. In all, approximately $500 million was raised from investors through offerings in bonds, notes, and funds programs (generally, “internal funding programs”). As the Petition Date approached, DBSI apparently planned to raise up to $30 million in additional debt.[8]

DBSI’s first bond and note offerings in 1994 and 1995 raised approximately $19 million. DBSI did not offer additional notes until 1999, but during 1999, 2000, and 2001, it made eight separate debt offerings to investors, which were each fully subscribed. The 2001 offerings raised funds expressly to repay investors in the 1994 and 1995 offerings.

In the early 2000s, the Company also began selling TIC interests in real estate. This did not begin to be a significant source of cash for the Company until a 2002 IRS revenue ruling, which permitted investors to use these types of investments as a means of deferring tax liability for certain capital gains. That ruling made the purchase of TIC interests a more attractive option to investors and spurred DBSI’s sale of TIC interests. Beginning in 2004, TIC investments were sold by DBSI and FOR 1031. In connection with these sales of TIC interests, DBSI guaranteed income to investors using a master lease structure. This guaranteed rate of return further contributed to the attractiveness and resulting success of the TIC offerings. But like the offerings in the internal funding programs, it also saddled DBSI with significant, ever-growing, and recurring liabilities. With the increased volume of sales came an increasing number of investors who needed to be paid a guaranteed rate of return on their investment. Also during this time, DBSI’s overhead increased to accommodate the increased workload from these sales, and at the same time, the Technology Companies and Kastera Companies further drained cash from DBSI.

Other than the continuing sale of TIC interests on which DBSI and related entities booked a profit, the Examiner is not aware of a significant source of income to DBSI and its related entities. The profit margin DBSI could realize even with regard to TIC sales was

[8] BN 39; BN 40.

impaired by the cost of those offerings. While DBSI's standard practice was to mark up properties for sale to TIC investors by 20 percent of the acquisition price (approximately 17.3 percent of the Sales Price), a significant part of that margin was consumed by sales commissions and other offering expenses. As a result, net income to DBSI on the sale of each TIC property was relatively low. For instance, DBSI made 3.5 to 5 percent profit on TIC sales through the securities channel, and made 5 to 9 percent of the sales price from the real estate channel.[9]

As a result of this relatively low profit margin and its ever-increasing obligations, DBSI and its affiliates relied on increasing its volume of sales in order to fund its operations. Accordingly, DBSI became so desperate for "product" (commercial real estate) that it was willing to purchase unprofitable real estate at unjustified prices just to continue the cash stream generated by constant buying and selling.[10] Under DBSI's master lease structure, which ensured consistent returns to investors regardless of actual performance, investors had little incentive to be concerned about whether properties were actually good investments.[11] And indeed, DBSI Inc. employees recall that as early as the 2004 time frame, the Property Portfolio either barely broke even or did not break even at all because the income from the properties was insufficient to cover the combined burdens of debt service and TIC investor payments.[12]

As early as 2004, some DBSI Inc. accounting personnel believed that the company was failing because of severe cash shortages.[13] By late 2006, cash shortages were such a problem that DBSI Inc. formally monitored cash needs on a DBSI Group-wide basis. Senior management

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[9] Interview of Matthew W. Duckett, September 18, 2009 ("September 2009 Duckett interview") at 109:15-16.

[10] Interview of Mike Attiani, June 24, 2009 ("Attiani interview").

[11] *Id.*

[12] Attiani interview; interview of Chan Parmer (now known as Chan Barrieau), August 27, 2009 ("Parmer interview") at 44-48.

[13] Parmer interview at 33.

and accounting personnel within the DBSI Group (Douglas Swenson, Bringhurst, Duckett or Cole, Reeve, David Swenson and Jeremy Swenson) met weekly to review cash obligations and requirements. Cash moved among and between Debtor and non-Debtor entities to cover then-current cash needs of the DBSI Group entities.

To address cash needs, DBSI used funds raised from investors through note offerings to generate operating cash. DBSI created records purporting to reflect that this money was "loaned" to related entities using assets as "collateral." This "collateral" was often based on an 85 percent loan to value ("LTV") ratio where the "value" of the property was established by internal company personnel with no appropriate training.[14] DBSI also often reallocated collateral at year end based on these internal valuations to give the appearance of compliance with this 85 percent LTV ratio.

By at least 2005, the DBSI Group was largely dependent on new investor money to provide cash for operations and to fund payments to prior investors. And by 2007, the cash demands of operations and required payments to investors had become significant: the Property Portfolio was losing approximately $3 million per month.[15] Shortly before the petition date, the Debtors' own internal analysis of the Property Portfolio performance was that it was losing $8 million per month and that out of 244 properties in the portfolio, only 25 percent, or about 60 properties, made money.[16] Further, DBSI estimated that the Property Portfolio was going to lose

[14] Interview of Paul Hilbig, August 14, 2009 ("Hilbig interview").

[15] At his September 2, 2009 interview by the Examiner, Bringhurst provided a schedule purporting to show that the Debtors made money on the management of properties purchased after 2004. Interview of Gary Bringhurst, September 2, 2009 ("September 2009 Bringhurst interview") at 87. The Examiner concludes that this schedule provides a misleading picture of the Property Portfolio's performance. It contradicts the Debtors' own projection that the Property Portfolio would lose $23 million in the fourth quarter of 2008, and excludes expenses such as overhead, capital expenditures, and other expenses that the Debtors were required to absorb on behalf of investors.

[16] FS 11.

$23 million in the fourth quarter of 2008 alone, or $92 million per year. The largest expenses contributing to these losses were TIC investor payments, which by fourth quarter 2008 totaled $25 million per quarter. The downturn in the real estate market exacerbated cash flow problems because existing real estate was difficult to sell.

### B. Ownership and Early Business Model Overview

Diversified Business Services & Investments (which came to be called DBSI) was founded in 1979 by Mark Ellison, John Palfreyman and Douglas Swenson. All three were CPAs in the tax department of Touche Ross. Ellison and Palfreyman were also attorneys. The startup funding for the company ($30,000) was loaned by Ellison's father.

In 1992, Ellison and Palfreyman sold their interests in DBSI Inc. DBSI and some related entities came to be majority-owned by Douglas Swenson. John Mayeron, John Foster and Charles Hassard became 5-percent owners. Walt Mott, Chris Chrysler[17] and Farrell Bennett became owners in various percentages (less than 5 percent). Douglas Swenson, Mayeron, Hassard, Mott, Foster and Bennett acted as directors and executive officers managing and operating the various DBSI related entities.

DBSI's initial business was the sale of investments in commercial real estate (primarily hotels) and low-income housing, and in the management of those and other properties. The DBSI related entities created limited partnerships that purchased and owned each particular real estate project. The DBSI related entities "sponsored" these projects, meaning that they located the opportunities, purchased real estate and sold partnership interests in the limited partnerships to third party investors. DBSI Inc. acted as the general partner in these limited partnerships,

[17] Chrysler was brought into the company by Douglas Swenson as a partial owner, but was terminated after a matter of months.

managing and operating the investment vehicles. DBSI made money from the sale of the investment, received a management fee for managing the property and was to have received a back-end interest in any profits of the partnership after the investor received 100 percent of his or her investment back.

In 1999, DBSI Inc. gave its investors in the limited partnerships the option to either take a distribution of their share of proceeds, which would carry significant tax consequences, or to roll over their investment into other like-kind investments. The like-kind investments were other limited partnerships that owned what DBSI considered profitable properties. All investors then became Preferred Limited Partners in the property investments, and were guaranteed interest payments of approximately 7 percent per year. The sale of the assets owned by some of the old partnerships provided the approximately $30 million in funds initially used to create DRR.[18]

In 1994, DBSI made its first two public debt offerings, the 1994 DBSI Finance Corp. and DBSI Capital Corp., followed in 1995 by the 1995 DBSI Funding Corp. DBSI raised $19,000,000 through those debt offerings.

### C. <u>Cash Sources and Uses: 1999 – 2008</u>

Starting in approximately 1999, DBSI began raising cash through bond and note offerings. In 2000, DBSI began selling TIC offerings, but this did not immediately become a significant source of cash for DBSI. Beginning in 2003, as outlined below, the obligations associated with both of these sources of cash exceeded the revenue derived from the sales of these products. DBSI attempted to diversify their investment portfolio and expand their sources of revenue. DBSI tried to generate revenue from different kinds of real estate investments (i.e.,

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[18] Ellison and Palfreyman retained an interest in profits in the limited partnerships as part of their buyout agreement (there is one agreement that covers both of them) that allowed them to receive in excess of $400k each from the March 2007 sale of Meridian Freeway to a DBSI TIC.

land option and land banking investments) and from technology company investments. DBSI also tried to generate revenue from real estate services such as commercial property development and residential property development. None of these investments ever generated significant net income such as would cover the vast and expanding obligations of the DBSI Group.

### 1. Bonds, Notes, and Funds

A major source of cash for both Debtor and non-Debtor entities from the period of 1999-2008 was from the sale of bonds, notes, and shares in funds under SEC Regulation D,[19] which exempts certain securities offerings from the registration requirements of the Securities Act. Investors purchased interests in these internal funding programs through specially formed LLCs. The terms of these offerings were set forth in Private Placement Memoranda ("PPMs"). These investments offered above-average rates of return for these types of investments (typically, 8 to 11 percent). In addition, DBSI Inc. typically guaranteed the loans of investor money made to entities by these funding programs. Accordingly, these internal funding programs became attractive investment opportunities for investors but resulted in tremendous long term financial obligations for DBSI.

DBSI sponsored a small number of internal funding program offerings from time to time during the period beginning in 1994 through 1999; however beginning in 1999, both the size and frequency of the offerings began to increase. The following table used by DBSI in marketing lists DBSI Inc.'s significant bond and note offerings from 1999 through 2008:[20]

[19] 17 CFR § 230.501 *et seq*.

[20] BN 39. The Examiner has not traced the full amount of funds raised in each of these offerings except as to the 2008 Notes offering. According to the Examiner's analysis, Debtors raised $89.3 million in that offering.

## Prior Similar Debt Guaranteed By DBSI Inc. (1)

(As of August 31, 2008)

| Fund | Issue Date | Due Date | Interest Percentage | Original Amount | Current Principal Amount | Status |
|---|---|---|---|---|---|---|
| DBSI Finance Corp. | 1994 | 2001 | 8% participating, 11% fixed | $5,000,000 | $0 | Retired |
| DBSI Capital Corp. | 1994 | 2001 | 8% participating, 11% fixed | $10,000,000 | $0 | Retired |
| DBSI Funding Corp. | 1995 | 2002 | 8% participating, 11% fixed | $4,000,000 | $0 | Retired |
| DBSI 1999A Funding Corp. | 1999 | 2006 | 10% | $4,000,000 | $0 | Retired |
| DBSI 1999B Funding Corp. | 1999 | 2006 | 10% | $5,000,000 | $0 | Retired |
| DBSI 1999C Funding Corp. | 1999 | 2006 | 10% | $5,000,000 | $0 | Retired |
| DBSI 2000A Funding Corp. | 2000 | 2007 | 10.50% | $5,000,000 | $0 | Retired |
| DBSI 2000B Funding Corp. | 2000 | 2007 | 11% | $15,000,000 | $0 | Retired |
| DBSI Valley View LLC | 2005 | 2007 | 13% participating, 9% fixed | $810,000 | $0 | Retired |
| DBSI 2001A Funding Corp. | 2001 | 2008 | 11% | $5,000,000 | $4,335,000 | Current |
| DBSI 2001B Funding Corp. | 2001 | 2008 | 10% | $10,000,000 | $9,240,000 | Current |
| DBSI 2001C Funding Corp. | 2001 2002 | 2009 | 10% | $10,000,000 | $8,951,000 | Current |
| DBSI Guaranteed Capital Corp. | 2002 | 2008 | 9%, 9.50%, 10% | $51,000,000 | $13,461,000 | Current |
| DBSI Real Estate Funding Corp. | 2003 | 2010 | 9%, 9.50% | $42,170,000 | $35,612,000 | Current |
| DBSI 2005 Secured Notes Corp. | 2005 | 2012 | 8.15% | $55,000,000 | $54,138,018 | Current |
| DBSI Denton Court LLC | 2005 | 2008 | 13% participating, 9% fixed | $2,820,000 | $2,820,000 | Current |
| DBSI 2006 Secured Notes Corp. | 2006 | 2014 | 8.41% | $75,000,000 | $74,824,251 | Current |
| DBSI 2008 Notes Corp. | 2008 | 2015 | 9.5% | $90,000,000 | $88,673,374 | Current |
| Total: | | | | $394,800,000 | $292,054,643 | |

The following table lists DBSI Inc.'s significant Fund offerings:[21]

| Fund Offering | Offering Date | Capital Raised |
|---|---|---|
| DBSI Land Opportunity Fund LLC | March 19, 2006 | $24,753,492 |
| DBSI Short-Term Development Fund LLC | March 27, 2006 | $19,975,000 |
| DBSI 2007 Land Improvement & Development Fund LLC | January 24, 2007 | $55,342,800 |
| DBSI 2008 Development Opportunity Fund LLC | January 8, 2008 | $13,190,773 |
| Total: | | $113,262,065 |

According to DBSI's public representations about the amount of cash raised (from which the above charts were obtained), DBSI raised approximately $500 million through these offerings from 1994 until the Petition Date.

DBSI personnel have stated that these internal funding programs were beneficial to the company because having these funds available allowed DBSI to move more quickly on property acquisitions than if it had to first obtain third party financing from banks. DBSI then resold the properties it acquired at significant markups to outside investors. At the same time, however, this cash-raising strategy carried a significant cost. These funds did not produce significant up-front revenue for DBSI. Interests in internal funding programs were often sold on a "no-load" basis, meaning that 100 percent of the cash raised from investors was to be made available to the internal funding program for the purposes stated in the PPM. Sometimes the bonds and notes were sold with a certain "cost" margin built in, which was earmarked for payment of commissions and other expenses associated with selling the notes to investors. However, after commissions and marketing costs, DBSI made little, if any, money on these sales. In addition, there was a significant long-term, recurring expense as well: the debt instruments guaranteed

[21] BN 40. The Examiner has not traced the full amount of funds raised in each of these offerings.

investors interest at rates of 8 to 11 percent even if the proceeds were not deployed (i.e., sitting in the bond/note/fund companies instead of being used to finance properties).[22]

The stated purpose of most of the bond and note offerings was to raise money that could be loaned or otherwise provided to DBSI subsidiaries for investment purposes. The different internal funding programs had different restrictions on how investor proceeds were to be used. These restrictions generally related to permissible uses of the money, how the money was to be provided to subsidiaries, and, if the money was loaned, how the loan had to be secured.

- **Use:** Some funds were to be used only for real estate investment purposes (e.g., 2005 Notes, 2006 Notes). Others also permitted investment in non-real estate companies controlled by DBSI (2008 Notes). Still others permitted loans to entities for "general business purposes." (GCC). Unlike other Bond offerings, the 2001 bonds were expressly to be used to "refund similar bonds issued by DBSI Finance and Capital Corporations in 1994 and 1995."[23]

- **Security on Loans:** If the funds were disbursed to DBSI-related entities in loans, those loans were typically to be secured by a deed of trust on the property (or, if loans to non-real estate companies were permitted, a security interest in the assets of the non-real estate company). Secured loans typically required an 85 percent LTV ratio, meaning that the amount of the loan was not to exceed 85 percent of the value of the property that was being given as security.

The PPMs stated that the value of a property would be determined by an appraisal, but this was heavily qualified by carefully-scripted language. The PPMs also stated that the appraisal "may have been obtained by [DBSI Inc.] or an Affiliate rather than by a prospective first party mortgage lender or other disinterested third party." The PPMs further stated that "In the absence of an appraisal, property value will be determined solely by [DBSI Inc.] utilizing industry acceptable valuation methods such as capitalization of income, replacement cost, and comparable sales methodologies." The PPMs warned that "such valuations can be highly

[22] Interview of Paris Cole, September 19, 2009 ("September 2009 Cole interview") at 84:18-23.

[23] BN 41.

subjective and result in valuations that may not be reflective of actual market value," and that "regardless of valuation method . . . the 85 percent Loan to Value ratio is very high and such leverage is well in excess of what would normally be permitted by third-party lenders."[24]

Many of the note companies were required to be audited by an independent CPA as of each December 31. The fund companies typically did not have this audit requirement. Many of the bonds had a Trustee that audited the funds on an annual basis.

**Appendix 5** is a summary of the use restrictions placed on many of the bonds, notes and funds.

#### a. Marketing of Internal Funding Program Offerings

DBSI's offerings of interests in internal funding programs were made through securities broker/dealers. The primary source of the information about these offerings were the accompanying PPMs. These PPMs contained the interest rates promised to prospective investors. These rates ranged from roughly 8 to 11 percent.

The PPMs also included what was represented to be historical information about past offerings. The PPMs provided information about the amount of debt that had been raised and the remaining amount that was outstanding. By the time of the later debt offerings, DBSI's PPMs reflected that the prior debt that had come due had been fully retired.

#### b. Lending Oversight and Loan Committee

After the 2005 Notes offering, Douglas Swenson provided guidance to the DBSI and Kastera Companies' employees regarding the permissible uses of proceeds from 2005 Notes.

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[24] *See, e.g.*, BN 44 at 16.

Swenson noted that loans could not exceed 85 percent of the value of the property, and valuations were required to be supported by verification of the price paid for the property.[25]

By early 2007, DBSI Inc.'s oversight of internal lending became more formalized. In January 2007, DBSI Inc. established a loan committee to oversee the disbursement of loans by the various internal funding programs. The purpose of this committee was to ensure that loans made to DBSI Group entities complied with the PPMs for the various note and bond programs. The entities and the note and bond programs on which the requirement for Loan Committee approval was imposed included Master Leaseco, REF, GCC, and the 2005, 2006, and 2008 Notes Corps. The LID and the LOF were among certain Funds not subject to Loan Committee approval, but fund programs had their own committee. The Loan Committee manual contained a summary of the PPM terms of each of these funding programs.[26]

Members of the initial Loan Committee included Paris Cole, Mark Griffin, Wade Thomas, Jeremy Swenson, and Mary Schoeler (paralegal with DBSI's in-house law department who was a non-voting member). Thomas was the initial chair of the committee until he was replaced by Shane Warner on the committee in early 2008, at which time Griffin became chair. Other DBSI employees may have served on the Loan Committee at various points in time.

The procedures for the loan committee were set forth in a manual published in February 2007. The committee was to meet once weekly, but witnesses have stated that, in fact, meetings occurred more on an as-needed basis.[27] The Loan Committee manual provided certain guidelines for loan application packages. Those applications should contain information such as

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[25] BN 26.

[26] BN 47.

[27] September 2009 Cole interview at 60:10-13.

a summary of the project, the amount of loan requested, the funding source, anticipated project costs, the purchase and sale agreement for the property, and a valuation to support the requested loan amount "if available." A valuation was only *required* according to the manual when the requested loan amount exceeded the purchase price of the property.

Despite its appearance as a control measure, the Loan Committee exercised little oversight as a practical matter. It was composed of employees of DDRS or DBSI Inc. Douglas Swenson almost always signed documents on behalf of the entity requesting the loan.[28] Douglas Swenson, along with Ellison, selected the members of the Loan Committee, and one of his sons was on the Loan Committee.[29] Company employees recognized that Douglas Swenson was the ultimate decisionmaker in most significant aspects of Company operations.[30] As explained more fully in the Interim Report, he was 91 percent-owner of DBSI Inc., and he controlled all DBSI Group entities, as well as all Technology Companies other than GigOptix. Against this backdrop, the Examiner is unaware of any steps taken to assure the Loan Committee the degree of independence required to permit it to serve a true oversight function.

Furthermore, the Loan Committee's scope of review, both in practice and according to the procedures manual, was extremely narrow. The procedures manual limited the Committee's review to "whether the requested funds [could] be used for the particular Project," and not "approving the underlying project." And indeed, it does not appear that the Loan Committee inquired much beyond the four corners of the loan requests submitted to it. It appears that the Loan Committee primarily just verified that the property value stated in the loan application was

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[28] *See, e.g.,* RP 10.

[29] August 2009 Ellison interview at 102:16-20.

[30] *See, e.g.,* Miller interview at 127:3-8 (year-end collateral reallocations); September 2009 Duckett interview at 22:23-23:8 (presentation of financial statements).

sufficient to support the loan amount requested under the 85 percent LTV ratio, and did not scrutinize other aspects of the loan applications.[31] The Loan Committee did not question any appraisal or valuation presented to it in support of the loan requests. Further, it did not examine the proposed and/or actual use of the funds. The Examiner is unaware of any requests that were denied by the Loan Committee. In practice, it was merely a rubber stamp.

### 2. TIC Investments Generally

In 2002, a revenue ruling enhanced the popularity of TIC investments. Under the "TIC" investment vehicle, investors buy and own real estate directly in a specified percentage, as tenants in common along with other investor owners. As tenants in common, these two or more investors own an undivided, fractional interest in the asset. Section 1031 of the Internal Revenue Code allows investors to postpone paying tax on an investment gain if the proceeds are reinvested in "like-kind" property as part of a qualifying exchange. Accordingly, individuals that owned real estate could sell their real estate asset and invest the proceeds of such sale in a fractional TIC interest in a more valuable real estate asset without paying taxes on the proceeds of the sale. DBSI apparently first became involved in TIC sales in 2000.[32] However, it was immediately following the 2002 revenue ruling that the sales of TIC investor interests in improved real estate by DBSI and its related entities increased.

DBSI Inc. identified assets for acquisition and facilitated the acquisition process.[33] Acquired assets were then transferred to a separate DBSI related entity that marketed and sold assets to TIC investors. Until 2003, the TIC interests were marketed and sold exclusively as securities through the DBSI affiliate, DBSI Securities, a registered broker/dealer. In 2003,

[31] Interview of Shane Warner, August 1, 2009; interview of Wade Thomas, August 5, 2009.

[32] ADDF 05 at 11.

[33] Interview of Mark Ellison, May 13, 2009 ("May 2009 Ellison interview").

Douglas Swenson became interested in marketing and selling the TIC interests through another, separate entity intended to be a non-securities, real estate entity (i.e., selling the interest as real estate rather than securities). If interests were sold as real estate, they would not be subject to the many strict securities rules and regulations in connection with the marketing and sales of these interests.[34] The sale of TIC interests as real estate also opened a new and different market to sales people and professionals who were experienced and familiar with the real estate investment market.[35] In August 2003, Douglas Swenson and Reeve created a new entity, FOR 1031, LLC, for the purpose of marketing and selling TIC interests through the real estate channel.[36] Following the creation of FOR 1031, DBSI continued to identify and acquire assets and then Douglas Swenson would determine whether that asset would be marketed and sold by DSBI Securities as a security or by FOR 1031 as real estate. The asset was then sold to TIC investors accordingly.[37]

Properties were sold to investors by Project Subsidiaries at a price higher than what DBSI paid for the purchase of that asset. Typically, this mark-up on the property was approximately 20 percent of the sales price of the property.[38] DBSI received all of the profit from the sales through DBSI Securities Project Subsidiaries, less any brokerage commissions and expenses of

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[34] Interview of Mike Thomas, May 7, 2009 ("Thomas interview").

[35] Interview of Var Reeve, May 20, 2009 ("May 2009 Reeve interview"); interview of Matthew Duckett, June 2, 2009 ("June 2009 Duckett interview"); Thomas interview.

[36] FOR 1031 was intended to exist separate and apart from the DBSI family of companies. FOR 1031 was created in 2003. From that time until May 2005, Reeve was the lone stockholder of the company. In May 2005, Douglas Swenson exercised his options for 90% of the company to be effective retroactively as of December 31, 2004. Since that time, and until it was incorporated into DBSI, FOR 1031 has been majority owned by Douglas Swenson. Reeve and, for some period, Bringhurst, have owned minority interests in this entity along with Doug Swenson. Judge had options in this company that he never exercised. Since its formation and throughout its existence, FOR 1031 has been managed and controlled by Douglas Swenson, Reeve, and later Bringhurst.

[37] Thomas interview.

[38] June 2009 Duckett interview.

the sale. For assets sold to investors by FOR 1031 Project Subsidiaries, a percentage of the proceeds of the sale was retained by FOR 1031 and a percentage was paid to DBSI. [39] Initially, when DBSI was responsible for acquiring the properties for FOR 1031, DBSI received approximately 11 percent of the proceeds and FOR 1031 retained 9 percent.[40] Once FOR 1031 began acquiring its own assets, it retained 15 percent of the proceeds and DBSI received 5 percent.[41] The FOR 1031 Project Subsidiaries typically maintained a small percentage of ownership in the properties that they sold.[42]

**a. TIC Master Lease Structure**

In addition to tax benefits, DBSI made the purchase of TIC interests appear even more attractive to investors by implementing a master lease structure in connection with the real estate assets. Pursuant to this structure, improved projects that were sold to TIC investors were subsequently leased by investor owners to a DBSI or FOR 1031-related subsidiary pursuant to a long term master lease agreement.[43] The master tenant (i.e., the DBSI/FOR 1031 subsidiary) received and retained all income from the property. In exchange, the master tenant paid the master landlord (i.e., the owner investors) pre-set master lease payments throughout the period of the master lease. Accordingly, all profits generated by the assets (net of all expenses, including debt service and master lease payment obligations), if any, were retained by the master tenant, a DBSI related entity. Conversely, DBSI had to absorb the loss for any assets generating income that was not sufficient to cover the master lease payments and other property related expenses.

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[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] Interview of Mark Ellison, May 13, 2009 ("May 2009 Ellison interview").

[43] *Id.*

This structure was marketed to investors as a way of ensuring receipt of a consistent and predictable rate of return on their investment without the risk of fluctuating or deteriorating income.[44] Further, investors were not required to participate in the management and operation of the property.[45] Finally, this structure assured investors that they would not be required to make additional capital contributions to support and maintain their initial investment during their period of ownership.[46]

#### (1) Assurances by DBSI regarding Master Lease Payment Obligations

The master lease structure was particularly attractive to investors and the broker/dealers selling these TIC interests because of the financial assurances they were provided by DBSI/FOR 1031 regarding the ability of DBSI and its affiliates to satisfy all master lease obligations. First, investors and broker/dealers were assured of the financial strength of the DBSI subsidiary or affiliate acting as the master lessee. More importantly, however, DBSI Inc. guaranteed the master lease payment obligations to the TIC investors in connection with most master leases. Investors and broker/dealers were continuously assured of the financial ability of DBSI to make the master lease obligations of both FOR 1031 and DBSI related master leases should it become necessary.

Master leases entered into in connection with FOR 1031 sponsored transactions were referred to as "NNN Leases" and a DBSI project level subsidiary was established in each case to

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[44] AR 07 at 32. AR 14 was distributed by DBSI with identical language regarding Master Leases in the securities channel. These materials state: "All of the downside risk to the annual cash on cash return is mitigated during the term of the master lease, as long as the master tenant does not default on the lease….Along with the reduced downside risk, the risk of capital calls is also reduced if the master tenant has sufficient capitalization."

[45] *Id.*

[46] *Id.*

act as the master tenant under such leases.[47] Although these deals were sold through FOR 1031, DBSI owned the master tenant entity obligated under the master lease.

**(2) DBSI Master Leaseco**

Initially, DBSI or a DBSI project level subsidiary also acted as the master tenant under the leases entered into in connection with DBSI Securities transactions. However, on November 5, 2004, DBSI Master Leaseco, Inc. ("Master Leaseco") was formed to serve as the master tenant in connection with the master leases placed on improved real estate purchased and sold through DBSI related companies, primarily to TICs.[48] Master Leaseco is wholly owned by DBSI Inc.

In order to assure investors, broker/dealers and third party lenders that Master Leaseco could satisfy its financial obligations under the many master leases, Master Leaseco had to maintain certain capitalization requirements.[49] Douglas Swenson desired that the capitalization of Master Leaseco appear to be large, and took steps to accomplish this.[50] Financial compilations and audits were performed for Master Leaseco by independent CPAs to further assure parties that this entity was financially capable of meeting its obligations.[51] Provisions were included in the master leases that touted this purported capitalization and specifically required that Master Leaseco maintain their reported capitalization throughout the term of the master leases. A typical provision stated:

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[47] May 2009 Ellison interview.

[48] *Id.*

[49] *Id.*

[50] September 2009 Cole interview 129:4-8.

[51] May 2009 Ellison interview.

> "Capitalization of DBSI Master Leaseco, Inc. DBSI Master Leaseco, Inc., the sole member of the Tenant, has a capitalization of $15,400,000. DBSI Master Leaseco, Inc. is permitted and has loaned money to its Affiliates in connection with the acquisition of real property to be syndicated in offerings of tenant in common interests; provided, however, that such loans must be repaid in full within 180 days of the date such loan is funded, and that if any such loan is not repaid within 180 days of the date on which it is funded, DBSI Inc. will, within the 180 day period, make an additional capital contribution to DBSI Master Leaseco, Inc. in an amount equal to the outstanding principal balance of such unpaid loan."[52]

These representations regarding Master Leaseco's financial strength were reiterated and amplified by third-party due diligence reports prepared on behalf of DBSI and intended to be provided to broker/dealers. With its "audited assets in excess of $15 million" Master Leaseco was characterized in one due diligence report as "a blanket of financial security."[53] That same report also represented to broker/dealers (incorrectly, and apparently without any corrections by DBSI) that Master Leaseco had both $15.4 million in loans receivable from affiliates *and* $15.4 million "in cash and otherwise immediately available funds" as of September 30, 2007.[54]

Despite these lease requirements and the representations made to investors, broker/dealers and third party lenders, as explained later in this Report, it does not appear that Master Leaseco consistently maintained the required capitalization. Instead, this entity became a funding conduit for the DBSI Group, through which inter-company loans were received by and provided to related entities.

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[52] This language is taken from the most frequently used form of Master Lease Agreement as provided to the Examiner by DBSI's internal counsel. This form of lease agreement changed during the period of its use; however, this provision remained substantially similar over time and throughout its inclusion in the Master Lease Agreement.

[53] ADDF 05at 16.

[54] ADDF 05 at 5.

#### b. Third Party Debt Obligations

The majority of assets that were sold to TIC investors by DBSI related entities were encumbered by third party debt.[55] Investors assumed the related debt obligations based on their pro rata percentage of ownership in the asset.[56] Although the tenant in common investors assumed these third party debt obligations, debt service payments were to be made from the proceeds of the property's operations as required under the master lease. Accordingly, in addition to supporting the master lease payment obligations, operational income from the properties also had to be sufficient to support debt service obligations. DBSI had to absorb the loss for any assets with income that was not sufficient to cover the debt service obligations, the master lease payments and other property related expenses. Further, the third party debt obligations were typically guaranteed by DBSI and/or Douglas Swenson personally.[57] While this was attractive to investors and helped DBSI in the marketing and sale of the TIC interests, it further increased the obligations and the potential financial liability of the DBSI parent entity.

#### c. Property Maintenance Obligations

DBSI's master lease structure was further attractive to investors because it guaranteed investors that they would not be required to make additional capital contributions to support and maintain their assets during their period of ownership.[58] Initially, capital improvements, repairs, tenant and leasing costs and other expenses in connection with the investment asset were paid by DBSI which would set up a receivable from the property to be collected at the sale of the

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[55] Interview of Colleen Schulthies, June 22, 2009 ("Schulthies interview").

[56] *Id.*

[57] *Id.*

[58] AR 07. A substantially similar brochure (AR 14) was distributed by DBSI with identical language regarding Master Leases.

property.[59] Investors relied on the financial strength of DBSI to be able to pay these costs over the term of the master lease. However, in 2005, DBSI related entities began routinely designating approximately 5 percent of the funds from investors at closing that were to be set aside to pay such costs and expenses in connection with the asset over the term of the master lease. These additional funds were referred to as "Accountable Reserves." Investors were assured that the collection of such Accountable Reserves would ensure that the investment would be properly maintained over the course of the master lease without the risk of investors being required to invest additional funds for improvement or maintenance of the asset.[60] According to former employees of DBSI, DBSI was rarely willing to spend any funds to improve the properties, and this failure to maintain and improve the properties contributed greatly to the economic failure of the Property Portfolio.[61] Further, as discussed in greater detail later in this Report, the Accountable Reserve funds that were collected from investors were spent on the operational expenses of DBSI entities and on the acquisition of new properties by DBSI and its related entities and are no longer available.

**d. Income from TIC Sales**

As previously discussed, properties were sold to investors at a price higher than DBSI paid for the purchase of that asset. Typically, this mark-up on the property was approximately 20 percent of the purchase price of the property, but in some cases exceeded 40 percent. However, much of this profit margin was eaten up by overhead costs and expenses, brokerage fees and expenses and costs of the acquisition.

[59] AR 55.

[60] *See* AR 07; AR 14.

[61] Attiani interview; interview of Gary Raydon, June 18, 2009 ("Raydon interview"); interview of Peter O'Brien, May 11, 2009 ("O'Brien interview").

In addition and more significantly, with each cash-generating TIC sale, DBSI and the related entities were simultaneously generating substantial long term obligations in connection with the master lease structure. Any assets that were not generating net income after payment of master lease obligations, debt service obligations, regular operating expenses and long term maintenance, improvement and repair costs became a financial drain on DBSI. As promised to investors, DBSI continued to make all master lease payments to investors, regardless of the financial viability of any particular project. The majority of the assets on which DBSI related entities were obligated under the existing master leases were not generating income sufficient to cover their operating expenses, on-going improvements, debt service obligations and master lease payments.[62] Accordingly, revenue generated from the sale of new TIC interests (and other cash sources such as bond and note investment monies) had to be applied to cover the continually increasing obligations in connection with the master leases.

### 3. Other Business Lines / Investments

#### a. Raw Land, Land Banking and Land Option

In approximately 2006, DBSI and its affiliated companies began selling interests in raw land and land in various stages of development. DBSI planned to generate revenue by providing development and management services in connection with this raw land and land for development. In "land banking," DBSI purchased raw land on behalf of investors, and held it for long-term appreciation. DBSI maintained an option to purchase this raw land at a set price after a certain period of time, while paying the investor monthly or quarterly returns on their investment.

[62] Attiani interview.

The Examiner is not aware of these business ventures providing a significant source of revenue to DBSI independent of the sale of TIC interests. To the contrary, as discussed further later in this Report, the DBSI Group spent very significant sums of money on acquiring property for land banking, while also using these properties as a means to justify extracting money from internal funding programs to finance ongoing operations.

**b. Kastera Companies**

In 2005, Douglas Swenson and Reeve established Kastera LLC ("Kastera") to diversify DBSI's traditional commercial real estate investment vehicles.[63] Kastera was created for the purpose of acquiring, owning, developing and selling unimproved residential real estate.

Kastera was set up to operate separate and apart from the DBSI Group. However, it was not self-sufficient and DBSI related entities provided Kastera with financial support using DBSI Inc. and DBSI bond and notes funds loaned to Kastera. As DDRS's vice-president of accounting and finance stated in an interview with the Examiner:

> Q. Did FOR 1031 provide funding for Kastera?
>
> A. Yes.
>
> Q. Pretty much throughout Kastera's existence?
>
> A. Yeah, more in the earlier time of Kastera, . . . .[64]

The financial reliance of Kastera Companies on the DBSI Group and the commingling of finances among the companies is illustrated by the analysis of the Tanana Valley and Legacy

[63] Kastera LLC was originally called "BTL," which stood for "Built to Last." May 2009 Reeve Interview. Kastera LLC is the parent entity that presently owns, directly or indirectly, 100 percent of the interests of the Kastera related entities, including Kastera Homes LLC, Kastera Development LLC and a number of subsidiary project level entities. However, Kastera Homes and Kastera Development were not formed until 2007. The interests of Kastera LLC were originally owned by Douglas Swenson (66.67%) and Reeve (33.33%). Kastera LLC is now owned by DBSI (66.67%) and Reeve (33.33%).

[64] September 2009 Duckett interview at 31:1-4.

Hills properties discussed in Section IX of this Report. For example, although Kastera contributed only $400,000 to the acquisition of the $28.8 million Tanana Valley property (in the form of a small portion of the $3.4 million earnest money), the entity formed to acquire that property (a DBSI Inc. subsidiary and itself a non-Debtor) owes Kastera the full amount of the $3.4 million paid in earnest money on that acquisition.

Kastera Homes and Kastera Development also borrowed money from DBSI Inc. Neither company ever made a payment on this debt. Currently, Kastera Development owes DBSI Inc. $8,112,000 and Kastera Homes owes DBSI Inc. $4,864,000. This debt was never documented by executed notes. Duckett and Cole informed the Examiner's staff that Douglas Swenson approved payments of Kastera Companies expenses and informed them that they should pay any bills supplied by Joe Swenson.

By late 2006, Kastera was considering filing for bankruptcy. Shortly thereafter, Douglas Swenson personally traded his ownership interests in Kastera to DBSI Inc. on March 1, 2007 in exchange for four shares of DBSI Inc. stock ($6 million). Handwritten notes from this time period reflect discussions regarding how assets held by Kastera could be transferred or used to "generate cash flow for Housing" (DBSI Inc.) but not run afoul of fraudulent conveyance rules.[65]

**c. Technology Companies / Stellar**

As early as 1999, Douglas Swenson diversified the investment portfolio of the DBSI Group. In 1999, DBSI began investing funds in Western Electronics LLC, a technology manufacturing company. This relationship was the beginning of what would become many years of investment by DBSI in various technology related development and manufacturing related companies. As reported in Section X of this Report, although DBSI booked loans to and

[65] NDE 08.

investments in these technology related companies of well over $200 million, little if any revenue was ever returned to DBSI from these various investments.

### D. Cash Flow Management

In 2004, DBSI and FOR 1031 began forecasting their anticipated sources and uses of cash and coordinating that effort between the securities and real estate channels.[66] The purpose of this coordinated forecasting was to give Douglas Swenson an overall picture of the cash flow across the various entities.[67]

The DBSI Group used a model called a "Cash Schedule" or "Cash Sheet" to accumulate cash flow data and manage cash on a global basis. Although the Cash Schedules provided by the Debtors to the Examiner date back only to February 2007, Parmer recalled that, shortly after she started with DBSI in 2004, Bringhurst asked her to take over the preparation of the Cash Schedule from Brian Ware.[68]

In late 2004, Parmer found DBSI's cash position to be "insufficient" or "alarming."[69] More specifically, without knowing what cash flow might be available from FOR 1031, Parmer believed that DBSI's cash flow was insufficient to meet its operating expenses.[70] And, at the

[66] September 2009 Duckett interview at 25:8-26:2. At that time, Duckett handled the FOR 1031 forecast and coordinated with Chan Parmer (DBSI's Controller in 2004 and part of 2005) and Jeremy Swenson, who prepared the forecast for DBSI. Bringhurst was also involved in these efforts.

[67] *Id.*

[68] Parmer interview at 30:5-16.

[69] *Id.* at 31 (Q: "And when did you first come to believe that cash flow for DBSI was insufficient? Was that some point in 2004?" A: "Insufficient or alarming. It would have been in 2004, because then you'd get the surprise, too, of Western Electronics wanting funding. And it was like, okay, what's that about? And the Stellar entities. I mean, everybody needed cash.")

[70] *Id.* at 29:22-25.

same time, Western Electronics and the Stellar Technology Companies were also requesting and receiving substantial amounts of cash from DBSI.[71]

Parmer informed Bringhurst of her concerns over the poor cash flow forecast because she did not have good visibility into FOR 1031's cash forecast, which was prepared by Duckett and, along with other information concerning FOR 1031, was treated as "very confidential."[72] Shortly thereafter, Bringhurst transferred the DBSI cash forecasting responsibilities from Parmer to Duckett.[73]

Although the Examiner was unable to locate Cash Schedules for 2005 and 2006,[74] Cole estimated, that by November 2006, DBSI and FOR 1031 were unable to meet their operating needs without using money from the various bond and note offerings.[75] In addition, during 2005, DBSI collected millions of dollars in Accountable Reserves and was already using those monies to fund operations.[76] Further, in 2006, the DBSI Group determined that the securities channel needed almost $30 million in TIC sales during the month of November 2006 just to break even that month.[77] However, actual sales for that month were only slightly more than $10 million.[78]

As illustrated by the February 18, 2007 Cash Schedule,[79] the DBSI Group managed cash on a global basis.[80] In general, the Cash Schedules forecasted sources and uses of cash over

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[71] *Id.*

[72] *Id.* at 27:11-21 and 29:13-33:13.

[73] *Id.*

[74] As noted above, the oldest Cash Schedule provided to the Examiner is from February 2007.

[75] September 2009 Cole interview at 82:21-83:11.

[76] For further discussion, see the Accountable Reserves section of this Report.

[77] FS 05 at 8.

[78] *Id.*

[79] FS 17.

3-month blocks of time, including: (1) cash needed to acquire properties; (2) cash collected upon the closing of sales to TICs; (3) proceeds from loans; (4) payments to bond and note holders; (5) income and expense from the Property Portfolio (which included TIC payments); (6) corporate accounts payable; (7) payroll; and (8) funds needed to cover the monthly expenses of Kastera Companies and Stellar.[81] The Schedules also listed as "Additional Funds" the cash balances of the various bond, note and fund offerings, which were considered to be available to meet the cash needs of the DBSI Group.[82]

By late 2006 or early 2007, Douglas Swenson, Bringhurst, Reeve, Duckett, David Swenson, and Jeremy Swenson began holding "weekly cash meetings" to go over the Cash Schedule and discuss how to meet the DBSI Group's cash needs.[83] Duckett communicated the decisions made at the weekly cash meetings to the accounting staff so they could execute them.[84] On occasion, Duckett was unable to attend the weekly cash meeting and Cole attended in his place in order to present the Cash Schedule.[85]

During 2007, the DBSI Group's cash position worsened. In October 2007, TIC sales through the real estate channel were shut down due to pressure from the SEC over whether such sales constituted sales of securities.[86] At that point, the DBSI Group was experiencing a "cash crunch" in part because TIC sales through the real estate channel comprised 60 to 70 percent of

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(*Footnote continued from previous page*)

[80] September 2009 Cole interview at 48:10-14 (Q: "Am I correct that, at least by the time you began using a cash schedule, that cash was managed on a global basis for the DBSI entities, Kastera and tech companies." A: "Yes.")

[81] *See, e.g.,* FS 17.

[82] *Id.*; September 2009 Cole interview at 48:15-20.

[83] September 2009 Duckett interview at 27:4-14; September 2009 Cole interview at 40:6-41:1.

[84] September 2009 Cole interview at 192:13-195:2.

[85] *Id.*

[86] *Id.* at 55:20-56:16.

all TIC sales revenues for the entire DBSI Group.[87] Yet, FOR 1031 and DDRS continued with its full staff and did not lay anyone off at that time because it hoped to receive a National Association of Real Estate Exemption that would allow it to re-commence the sale of TICs through the real estate channel.[88]

Consequently, the DBSI Group increased it efforts to identify properties and assets within its control to use as "collateral" so that it could "borrow" against the bonds and notes in order to meet operational needs. For example, Cole, in his November 15, 2007 email[89] to Duckett, David Swenson and Jeremy Swenson, transmitted the current Cash Schedule and stated:

> Based on our projections we are okay this week but will still need approximately $4M next week.
>
> . . . .
>
> Based on Doug's values for the Fairview and Plantation shopping centers alone, we have enough collateral to pull out $5.8M, so I am not worried about being able to find enough collateral for the $4M. The $4M should be enough to get us through until the end of December, at which time we will need to look at some of the other collateral such as the Broadway Shopping Center and/or the Pavilion lots to meet our cash needs.
>
> . . . .
>
> Gary [Bringhurst] called earlier this morning, so I have already explained this all to him.

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[87] *Id*. at 53 (Q: "At the end of 2007 was DBSI and FOR 1031 experiencing a cash crunch?" A. "Yes." And that's in part because the real estate channel had been shut down?" A: "Yes."); September 2009 Duckett interview at 33:11-14 (Q: "And am I correct that the sales of tenant-in-common as real estate accounted for approximately 60, 70 percent of the revenues?" A: "Of the tenant-in-common revenues, yes.")

[88] September 2009 Cole interview at 55:20-56:16.

[89] FS 07.

When asked about this email, Cole agreed that in November 2007 the DBSI Group's current revenue was insufficient to cover its current operating needs without borrowing from the bonds and notes.[90]

By December 2007, the DBSI Group's cash position became even more dire and the shell game to identify "collateral" and free up bond and note money continued. In a December 18, 2007 email[91] from Duckett to Doug Swenson, Bringhurst, Jeremy Swenson, David Swenson, Reeve and Cole transmitting the Cash Schedule for that date, Duckett wrote:

> Attached is the cash sheet for this week. A few things to be aware of. . .:
>
> 3) We plan to borrow 6 million from REF [Bonds] by collateralizing the assets identified by Doug a few weeks ago.
>
> . . .
>
> 8) I am concerned about the time from Jan 15 - Jan 31 [2008] because of the negative cash and no identified collateral/resources to cover the shortfall.

In late January 2008, Matt Ray, whose main responsibility was managing the Cash Schedule, began working at DBSI.[92] At that time, Ray noted that the DBSI Group's cash position looked "grim" as it was forecasted to be negative by $11 million over the next three months.[93] Indeed, Ray, who had been laid off from his prior two jobs due to the financial problems of his employer, recalled telling his wife shortly after he started at DBSI that he had better start looking for another job because DBSI was not going to last too much longer.[94]

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[90] September 2009 Cole interview at 65:8-16.

[91] FS 03.

[92] Interview of Matt Ray, June 18, 2009 ("Ray interview").

[93] *Id.*

[94] *Id.*

Nonetheless, in the very next month, DBSI began selling the 2008 Notes and ultimately raised nearly $90 million.

Despite the Debtors' precarious financial condition in 2008, they made several irresponsible spending decisions. Douglas Swenson authorized Duckett and Cole to continue to fund the Kastera Companies' cash needs up to $5 million[95] and to continue to funnel $700,000 to Stellar each month.[96] He also authorized a $350,000 bonus to Mayeron for reaching various milestones in selling the 2008 Notes.[97] In July 2008, DBSI purchased the Pearson Lane property from Reeve at a profit to him, even though Douglas Swenson had previously told Reeve that the property was too small for the DBSI Group's business purposes.[98]

Thereafter, the DBSI Group's financial condition became even more desperate. In his September 5, 2008 email to Jeremy Swenson, David Swenson, Bringhurst and Cole, Duckett attached the most recent Cash Schedule and stated:

> 8) On September 30th 3 million is drawn from the 08 note against the Conley land to payoff GCC - this leaves approximately 7 million of additional borrowing ability against the Conley land.
>
> . . . .
>
> 9) This shows the 08 negative by the end of September - we will need to figure out how to move collateral between different notes to resolve this issue - shoul [sic] not be a problem.
>
> . . . .
>
> 10) Th [sic] challenge comes in late October when there is projected to be only around 6 million of total note availability with 7 million of collateral and approximately 10 million of working capital needed.

[95] BN 37, indicating that $3.8 million of the $5 million "Doug earmarked for Kastera" was needed by May 2008.

[96] FS 13.

[97] ID 24. For further discussion of this bonus, see the Insider Payments section of this Report, below.

[98] See the Insider Payments section of this Report, below, for further discussion of this transaction.

In October 2008, Douglas Swenson asked Duckett to make certain tax payments on his behalf using DBSI monies.[99] Given DBSI's precarious financial condition at the time and the fact that it had stopped all sales activity in September, Duckett did not feel that it would be appropriate to make the payments and refused to do so.[100] Nevertheless, on October 15, 2008, Kastera made $120,000 in tax payments on Swenson's behalf from monies Kastera borrowed from DBSI.[101]

In late October 2008, DBSI explored alternatives to declaring bankruptcy and prepared an analysis involving the creation of "Newco" -- a new company that would be able to take only the master-leased properties that made money, to cancel unprofitable leases and contracts, to draw money from the 2008 Notes with no collateral in order to pay interest, and to shift to the property owners the obligation to pay leasing commissions even though DBSI had already collected millions of dollars for that very purpose.[102]

In connection with the Newco analysis, the Debtors also analyzed the Property Portfolio in October 2008.[103] Of the 244 properties contained in the Property Portfolio at that time, only 61 properties performed well enough to cover all of their expenses and the Property Portfolio as a whole was projected to lose $7.9 million per month and $23.8 million for fourth quarter 2008.[104]

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[99] September 2009 Duckett interview at 143:8-144:9.

[100] *Id.*

[101] *Id.*

[102] FS 12; September 2009 Duckett interview at 116:7-123:15.

[103] FS 11.

[104] *Id.* These 61 properties were the "A" properties that the Debtors considered taking in connection with the formation of Newco.

Toward the end of October 2008, the Debtors borrowed from the 2008 Notes in order to make interest payments to the 2008 Noteholders.[105] As noted previously in the Examiner's Interim Report, the Examiner determined that, on October 29, 2008, $452,068 from the 2008 Notes was used to make interest payments to the 2008 Noteholders.[106]

## E. Intercompany Account Summary

In order to better understand the particular transactions described in this Final Report, a general understanding of the gross amounts transferred by and between Debtor Entities and DBSI Non-Debtor Entities and the corresponding intercompany accounts is helpful. For example, according to DBSI Inc.'s records, Non-Debtor DRR owes it significant sums of money. DRR, in turn, has no assets other than debts owed to it by other DBSI Non-Debtor Entities. Summarized below are the highlights of intercompany debt as detailed on various Debtor Entities and related companies' ledgers. As to all DBSI related intercompany "loans," accrued interest was, historically, periodically converted to principal.

### 1. Funds Owed to Debtor Companies by Non-Debtor Entities

As of the Petition Date, general ledger entries indicated that DBSI Debtor Entities were owed $193,195,617 in receivables from DBSI Non-Debtor Entities. In particular, the general ledger indicates that DBSI Debtor Entities are owed $180,708,910 from DRR, $4,695,836 from Kastera Homes, $7,685,870 from Kastera Development and $105,000 from Farrell Bennett. The

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[105] BN 15.

[106] Examiner's Interim Report, Ex. 6. The Examiner also previously reported that, on November 7, 2008, money from the 2008 Notes was used to pay legal fees of $363,019 to Foley & Lardner and $397,846 to Young Conaway. Subsequently, Ellison (DBSI's former General Counsel) admitted that 2008 Note money was used to pay such legal fees. August 28, 2009 transcribed interview of Ellison at 200:18-201:6 (Q: "Is it your understanding that proceeds from the 2008 notes were used to pay retainers for those two law firms?" A: "Can you clarify the movement of the funds in relation to that question?" Ellison's counsel: "Do you mean a direct transfer or one that went elsewhere? and then -- " Q: "It could have gone to China and back. But my question is, did that money come from the 2008 notes and go to those law firms?" A: "Okay. I believe that's ultimately where those monies ended up or some of the monies ended up."). Three days later, on November 10, 2008, the Debtors filed for bankruptcy protection.

vast majority of these receivables are undocumented loans approved or authorized by the Control Group.

The ledgers also indicate that DRR, which was used by the DBSI Group as a "bank" for transferring money, is owed substantial money by other DBSI Group entities. In particular, DRR is owed $93,210,242 by Investments, $117,721,421 by Stellar, and $6,806,815 by Western Technologies. With the exception of some executed promissory notes from Stellar in DRR's favor on December 31, 2004, these inter-company loans are also largely undocumented and were also approved or authorized by the Control Group. Investments was the company used by the Control Group to parcel out distributions to insiders. As detailed in the discussion of the Technology Companies, Investments was historically owed significant funds by Stellar, which debt it transferred to DRR.

#### 2. DBSI Investments Limited Partnership

Investments has receivables of $105,000 from Farrell Bennett. In addition to the debt to DRR, Investments has a payable to DBSI affiliates in the amount of $1,507,399 and a payable to DBSI Bonds (an account on Investments' books reflecting transactions with bonds issued by DBSI in 1999, 2000, and 2001) in the amount of $5,330,999. Investments has a negative equity balance of $201,338,771.

#### 3. Stellar

Stellar owes DRR $117,721,421 million. Stellar, in turn, is owed $37,736,992 by iTerra and $21,198,268 by Wavetronix. In addition to these amounts, Stellar wrote off as losses $19,509,622 loaned or invested in EmergeCorp and $1,254,106 invested in BioMatrix. Stellar also made equity investments of $4,000,000 in iTerra, $2,000,000 in Wavetronix, $2,000,000 in BioReaction and $1,381,372 in UltraDesign, totaling $9,381,372. Stellar converted debt to equity in BioReaction in the amount of $11,029,137[107] and GigOptix in the amount of $11,205,000[108] totaling $22,234,137. Stellar directly owes or has purportedly given a security interest in Wavetronix and BioReaction totaling $27,293,500 to 2008 Notes and $8,608,512 to GCC. These "security" interests may never have been perfected.

In total, Stellar owes $153,623,430 plus accrued interest while having receivables of $58,935,260, a deficit of $94,688,170.

#### 4. Western Technologies

Western Technologies has payables of $3,445,075 to GCC and $8,706,500 to 2008 Notes in addition to its debt to DRR of $6,806,815, for a total of $18,958,390 plus accrued interest. Western Technologies has no Accounts Receivable. It does have an equity position with Western Electronics which provides for the payment of $2,417,552 to be paid to Western Technologies prior to any other equity distributions.

During the years 2001 through 2004, Western Technologies forgave approximately $4.3 million in debt from Western Electronics. In 2007, Western Electronics wrote off a $9 million investment in Western Electronics Delta Corporation ("Delta"), a company that was dissolved in 2005. In addition, according to the current CFO of Western Electronics, Western Electronics billed DBSI for "services" rendered. These billings, which amounted to approximately $4.3 million, were offset against loans from Western Technologies.

### F. Financial Statements and Marketing to Investors

This section highlights aspects of how the Debtors' financial statements were used as a marketing tool and the misleading nature of those financial statements.

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[107] Amount does not include $1,387,067 in accrued interest that was also converted into equity.

[108] Amount does not include $245,000 in accrued interest that was also converted into equity.

### 1. Uses of Financial Statements

The Debtors utilized the financial statements of certain entities to advance their business interests as follows:[109]

- **DBSI Housing Inc.** (now known as DBSI Inc.) -- these financial statements were referenced in prospectuses for various investment offerings and third-party bank financing to make it appear that the parent company's large net worth guaranteed all obligations; and

- **Master Leaseco** -- these financial statements were provided to the retail brokers who sold TICs.

#### a. Marketing of Bonds, Notes, and Funds

In connection with the sales of bonds, notes, and funds, DBSI typically touted the fact that the investment was backed by a guarantee and that the guarantor, DBSI Inc., had a net worth in excess of $100 million. For example, the Private Placement Memorandum ("PPM") for the 2008 Notes stated:[110]

> The Guarantor has a net worth of $105 million . . . . The Guarantor will provide an unconditional guarantee of payment of the interest to the Noteholders and principal redemption of the Notes . . . . The guarantee may be enforced directly against the Guarantor without first proceeding against the Company in the event the Company fails to pay as required.

Similarly, the PPMs used by DBSI to sell TIC interests through the securities channel typically stated:[111]

> DBSI Housing has a net worth of more than $105 million. . . . DBSI Housing Inc. will be the guarantor under the Master Lease Guarantee.

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[109] September 2009 Cole interview at 180:24-184:22.

[110] BN 13 at 1. Douglas Swenson represented to the SEC during testimony described elsewhere in this Report that he viewed the guarantees as being backed by the entire DBSI Group, which included all entities in which he had a controlling interest. BN 05 at 47:11-16 and 111:6-7.

[111] AR 10 at 12.

The Confidential Memoranda used by FOR 1031 to sell TIC interests through the real estate channel included statements such as:[112]

> DBSI Housing Inc. (the "NNN Lessee") is an Idaho Corporation formed to act as the lessee of the Property under the NNN Plus Lease [i.e., the master lease].
>
> . . . .
>
> The obligations of special purpose lessees are frequently guaranteed by a corporate parent in commercial property leases. So it is with the Property where DBSI Housing Inc. will guarantee the obligations under the NNN Plus Lease. As of the most recent calendar year end, DBSI Housing Inc. had an unaudited estimated historical cost net worth available to support its various guarantees of approximately $89 million.
>
> . . . .
>
> DBSI Housing Inc.'s net worth has increased over the past ten (10) years at an average annual rate of increase of over 30 percent."

In addition, FOR 1031 also used marketing materials such as the booklet entitled, *Not All Cash Flows Are Created Equal, a basic guide to analyzing cash flow projections for investment real estate* (the "Booklet"),[113] to emphasize the importance of a heavily capitalized master lease company backed by a corporate guarantee from a high net worth entity. The claimed advantages of the DBSI business model were described in the Booklet as follows:

> The master lease typically involves a sponsor who arranges a lease on the entire property after the sale to the buyer for a stipulated amount of rent . . . . The entity leasing the entire property from the buyer is commonly referred to as the "master tenant." The master tenant is responsible, under the master lease, for all aspects of managing, leasing and operating the property, and paying all costs including debt service on behalf of the owner (excluding capital expenditures). In return for leasing the entire property, the master tenant is entitled to all income derived from the property in excess

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[112] *See, e.g.,* AR 19 at 33 and 34.

[113] AR 07.

> of its rent obligations to the owner (excluding capital expenditures). Conversely, the master tenant is also responsible for covering any deficiency between the property's income and the master tenants rent obligations.[114]
>
> . . . .
>
> **Larger Capitalization:** Identify a master tenant with larger capitalization (ideally in the form of cash or other hard assets rather than a letter of credit) and a portfolio of properties. As stated previously, a master tenant with more assets to back the lease offers much more security than a newly formed tenant with little or no capitalization.[115]
>
> . . . .
>
> **Corporate Guarantee:** Having more assets backing the lease is always better. Look for a corporation that has real and substantial assets (seen in balance sheet).[116]

The Booklet also encouraged potential investors to ask questions designed to get them to conclude that they should buy TICs from FOR 1031 because Master Leaseco was heavily capitalized and DBSI Inc. stood behind it with a meaningful corporate guarantee. For example, in a section entitled, Informed Questions, FOR 1031 suggested that investors ask:[117]

> What is the master tenant's capitalization?
>
> Is this capitalization in the form of cash and other hard assets or is it in the form of a letter of credit?
>
> Is there a "corporate guarantee" from the provider's parent company backing the master tenant's rent obligations?
>
> What is the credit history and track record of the master tenant and the guarantor (if applicable). Can I see some financial statements?

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[114] *Id.* at 32.

[115] *Id.* at 37.

[116] *Id.*

[117] *Id.* at 39.

As is discussed elsewhere in this Report, the financial statements of Master Leaseco were manipulated to make it appear as though the entity was heavily capitalized. In addition, DBSI Inc.'s net worth was inflated in its financial statements.

FOR 1031 also encouraged potential investors to ask questions that would allow it to respond that no investor had ever lost money with DBSI. For example, the Booklet contained an "Ask the Right Questions" section in which it suggested that investors ask: "Have any of your past investment real estate owners lost their initial capital in one of your properties?"[118] The sales team, having already been provided internally with a script, was instructed to respond, "No investor has ever lost money in a DBSI project or program"[119] or "In its 25 year history, DBSI has never missed a lease payment to a TIC owner nor has it defaulted on a loan."[120]

### 2. Misleading Nature of the Financial Statements

After DDRS was formed in March 2005, the financial statements of Master Leaseco and DBSI Inc. were prepared by Cole and his accounting staff with review and oversight by Duckett, Bringhurst, Hassard, and Douglas Swenson.[121] Each of them had been trained as accountants, were Certified Public Accountants, and had a strong grasp of accounting.[122] Douglas Swenson had the ultimate say in the presentation of the financial statements.[123]

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[118] AR 07 at 30.

[119] FS 42.

[120] FS 43.

[121] September 2009 Duckett interview at 16:5-18:6 and 22:14-8.

[122] *Id.*; June 2009 Duckett interview; September 2009 Bringhurst interview; September 2009 Cole interview at 9:9-11:13.

[123] September 2009 Duckett interview at 22:23-23:8.

#### a. DBSI Inc.'s Financial Statements

The financial statements used by DBSI Inc. to tout its ability to perform under the guarantee were unaudited and did not conform to Generally Accepted Accounting Principles ("GAAP").[124] The ostensible reason why DBSI Inc. did not have GAAP-compliant, audited financial statements was the cost of converting to GAAP in the initial audit, which was estimated to be approximately $2 million.[125]

The Examiner finds this explanation unpersuasive. First, relative to the magnitude of the funds raised by DBSI Inc., $2 million is a small sum of money. Second, the Control Group, including Douglas Swenson, regularly distributed funds to themselves and "invested" in Technology Companies and real estate opportunities much higher sums of money with little apparent thought or investigation. Rather than being a true cost concern, the Debtors' refusal to convert to GAAP and to obtain certified financial statements permitted them to avoid the oversight that outside accountants would have brought and to continue raising money from investors by maintaining the appearance that DBSI Inc. had substantial assets.

Because DBSI Inc.'s financial statements were not GAAP-compliant, they were misleading in two important respects that tie directly into the manner in which the statements were used in DBSI's marketing efforts. First, prior to June 2008, these statements netted as a single line item receivables due from and payables due to affiliated entities, including the companies that issued the bonds and notes. Second, the financial statements made no effort to accurately reflect the investments in affiliated entities such as Stellar and the Technology Companies. Even after the liabilities to the bonds and noteholders were presented as separate

[124] September 2009 Cole interview at 177:15-180:23.

[125] *Id.* at 188:23-189:13.

line items (i.e., on a "grossed up basis"), the financial statements continued to materially overstate the value of the amounts invested in Stellar and the Technology Companies. Each of these problems is discussed in further detail below.

**(1) Netting of Affiliated Payables and Receivables**

As Duckett explained, the biggest problem with the financial statements was that there was one "line item in the current assets that was called the due to and due from DBSI internal entities. . . . So that number was netted down to a -- what I'll call maybe not an extremely material number in the overall financial statement of DBSI."[126] This was grossly misleading for at least two reasons. First, in reviewing the balance sheet, the reader would not know that DBSI owed nearly $200 million to the bond and note holders because it had been netted against amounts due to DBSI from the Technology Companies, DRR and other affiliates so that what was left on the balance sheet was a small "Net receivable from affiliates." In other words, the liabilities presented on DBSI's balance sheet had been effectively understated by more than $200 million.

DBSI Inc.'s balance sheet for the period ended December 31, 2007 presented, under current assets, a "Net receivable from affiliates" of $1.4 million and nothing for liabilities owed to the bond and note holders.[127] Yet, the amount due at that time to the bond and note holders was approximately $194 million.[128]

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[126] September 2009 Duckett interview at 147:5-9.

[127] FS 22.

[128] *Id.,* in a note to the financial statements entitled Contingent Liabilities. Although the note discloses this figure as the amount of "outstanding recourse indebtedness of affiliates" it does so only in the context that DBSI Inc. could be contingently liable because it had guaranteed such indebtedness. The note did not explain that the indebted is an actual liability of DBSI Inc. by virtue of the fact that the finances of the bond and note companies, the entities that sold the bonds and notes, were consolidated into DBSI Inc.'s financial statements.

The netting of receivables and payables was misleading because the payables and receivables being netted were two very different things. The payables consisted of hard debt owed to bond and note holders with a defined maturity date. On the other hand, the receivables from the Technology Companies were likely uncollectible debts that neither Stellar nor the Technology Companies could pay off.[129] In fact Paul Judge, President of Stellar, commented that it would be a "tall order" for Stellar to repay DRR (approximately $117 million).[130] Further, the netting of receivables and payables did not reveal that prior loans had been converted to equity and that interest was not actually being paid on the loans.[131]

#### (2) Failure to Write Down the Investment in the Technology Companies

DBSI Inc.'s balance sheet for the period ended June 30, 2008 for the first time "grossed up" a portion of the affiliated receivables / payables and presented $38 million in bonds and notes payable as current liabilities and $259 million in bonds and notes payable as long-term liabilities. Thus, the reader can see from the face of the balance sheet that DBSI Inc. owed the bond and note holders nearly $300 million.

However, DBSI Inc.'s true net worth continued to be masked because the June 30, 2008 balance sheet also showed as an asset a $235 million "Investment in non-real estate entities" -- i.e., the Technology Companies (booked at cost) and other inter-company assets (still netted

[129] September 2009 Duckett interview at 148:2-14 (A: "To the bond and note companies they did owe more than $200 million. And they had receivables, if you will, if you want to call them [that] -- they had from Stellar Technologies companies in a similar type amount, and those are two very different [things] -- the bonds have a defined maturity schedule when they come due, and the realization of when the Stellar companies may have been above to convert -- have a liquidity event was very unknown…. So I felt it gave the reader of the statement not a clear picture about where the value is in this company.")

[130] Interview of Paul Judge, September 15, 2009 ("Judge interview") at 216:14.

[131] The financial statements also did not reveal whether the assets of these companies had already been pledged to specific sources of funds. Nor did they reveal that investments in failed Technology Companies were being written off and that those writeoffs were occurring well after the fact.

without any disclosure of the amounts being netted) -- with no reduction for the likelihood that DBSI might never recover its investment.[132] As explained by Duckett, this was misleading because:

> [T]here should have been some impairment analysis done on -- you know, you have this line item of investment in this entity. Is that investment completely good? Will that all completely convert? Are there some risks around that? And we did bring those concerns to Doug as well, and he said, 'Well, I feel that those will. Those are valid and fair.'[133]

As discussed in detail in the Technology Companies section of this Report, the value of DBSI Inc.'s investments in the Technology Companies was worth far less than $235 million built into the June 30, 2008 financial statements. The Examiner concludes that DBSI Inc. would likely have had a negative net worth had the investments in the Technology Companies been appropriately valued.

#### b. Master Leaseco's Financial Statements and Capitalization

After its creation in November 2004, Master Leaseco became an important part of DBSI and FOR 1031's marketing strategy to investors. As part of this strategy, both Master Leaseco's status as an entity with audited financial statements and its capital resources were touted. But Master Leaseco's financial statements did not portray an accurate picture of its financial condition. Rather, they were another means by which DBSI Inc. maintained the illusion of financial health to garner investors and obscured the significant losses incurred by many of its master lease properties.

Master Leaseco's financial statements reflected profits based on interest income. The financial statements omitted the financial performance of the Property Portfolio, which seldom,

[132] FS 23.

[133] September 2009 Duckett interview at 150:11-18.

if ever, was profitable. And Master Leaseco did not shoulder those losses. Instead, the losses were shunted to DBSI Inc., which was an unaudited entity. Although DBSI arguably was properly performing on its guarantee by covering the losses, the amounts being lost in the Property Portfolio were obscured. Because DBSI Inc. and not Master Leaseco supplied funds to cover the large losses of the Property Portfolio, the DBSI Group was able to make Master Leaseco's financial resources appear sufficient and to conceal the significant subsidies that were provided to the individual properties by DBSI Inc, which totaled approximately $75 million by November 2008.[134]

In addition, the Examiner identified instances in which the capitalization of Master Leaseco was manipulated coinciding with the end of audited periods. Master Leaseco was initially funded with $10 million on December 31, 2004.[135] This money was in fact a loan from DBSI Inc.[136] – one that was funded on December 31, 2004 and then "repaid" just three days later to DBSI Inc. DBSI Inc. then used the funds to acquire two real estate properties and to fund operating expenses. As reflected in the following section on Eide Bailly, financial statements reflecting this capitalization were prepared and provided to investors.[137] In addition, as explained further in the "Tanana Valley" section elsewhere in this report, the Examiner identified an instance in which the Debtors appear to have manipulated the cash position of Master Leaseco using a temporary year-end loan repayment.

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[134] FS 45.

[135] FS 44.

[136] FS 36.

[137] Three months later, in March 2005, accounting entries were made that created the appearance that the $10 million had been a contribution to Master Leaseco (instead of a loan), that Master Leaseco had loaned the money (rather than repaid it) to DBSI Inc., and that the "loan" to DBSI Inc. had been repaid. The Examiner has not traced whether the $10 million in cash was returned to Master Leaseco at that time. The Debtors' ledger records reflect that on July 31, 2006, Master Leaseco's "capitalization" was supplemented by an additional $5.4 million.

### 3. Role of Eide Bailly

Master Leaseco was one of the few DBSI Entities that was audited by an outside accounting firm. The accounting firm of Eide Bailly was retained to audit Master Leaseco. As set forth above, one of the selling points of the master lease structure was that Master Leaseco was audited by a public accounting firm.

The Examiner assessed audits and compilations prepared by Eide Bailly on behalf of various Debtor and non-Debtor entities, including Master Leaseco. In particular, the Examiner analyzed Eide Bailly's January 7, 2005 compilation of Master Leaseco's balance sheet, as well as its Master Leaseco audit report for the fiscal year ending December 31, 2005. According to the compilation, Master Leaseco had a $10 million cash capitalization. The compilation did not disclose that the claimed $10 million in cash capitalization as of January 7, 2005 had been booked as a loan and that most of the $10 million that was deposited on December 31, 2004 was withdrawn immediately after the end of the year, on January 3, 2005.

Eide Bailly's audit of the 2005 Notes Corp for the fiscal year ended December 31, 2006 did not report on the backdated, year-end manipulations of debts owed to 2005 Notes that were supposedly "secured" by multiple real property assets, as discussed in the "Legacy Hills" section of this Report below.[138] Nor did Eide Bailly's audit of Master Leaseco's financial records for the fiscal year ended December 31, 2007 report on the fact that Master Leaseco's apparent cash assets as of December 31, 2007 were transient and primarily attributable to the temporary repayment of a loan on that day, which was largely re-funded days after year-end, as addressed in the "Tanana Valley" section of this Report below.

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[138] Eide Bailly auditors were aware of these backdated accounting entries and were provided ledger entries that reflected the entry on April 27, 2007 of payoffs and collateral reallocations dated December 31, 2006. Interview of Debbie Miller, September 1, 2009 ("Miller interview") at 128:10-12.

As set forth above, the purported financial strength and cash capitalization of Master Leaseco was a critical part of the Debtors' marketing strategy, a fact that also should have been known to Eide Bailly. Eide Bailly produced its work papers on this matter to the Examiner subject to a protective order. For that reason, these work papers are not directly cited in this Report. The Examiner has determined, in light of the appointment of the Trustee in this case, that the best course of action with respect to Eide Bailly is to seek court permission to turn the Eide Bailly work papers over to the Trustee, to consult with the Trustee concerning this information, and to leave this matter to the Trustee for further review and analysis.

### G. <u>SEC Investigations of DBSI and FOR 1031</u>

Douglas Swenson gave sworn testimony before the SEC on two occasions. On June 28, 2005, he testified in the matter of DBSI Real Estate Funding Corp[139] ("REF," which had issued approximately $40 million in bonds in 2003). On April 27, 2006, he testified in the matter of FOR 1031, LLC.[140] The Examiner reviewed these testimony transcripts during the course of his Investigation. During his June 28, 2005 testimony, the SEC questioned Swenson concerning DBSI's ability to repay both the REF bonds and the $51 million in bonds issued in 2002 by DBSI Guaranteed Capital Corp.[141] Highlighted below is some of his testimony.

The SEC asked about the nature of the guarantee backing the bonds and the interests that stood behind them. Swenson responded, "I consider anything that I have a controlling interest in

[139] BN 05.

[140] MI 05.

[141] BN 05 at 30:12-46:3. The SEC's second investigation was of FOR 1031 and was focused on whether FOR 1031's offerings of fractional interests in real estate to Tenant in Common investors constituted securities. *See, generally*, MI 05. Given the nature of this latter investigation, it does not appear to have addressed DBSI's issuance of the 2005 and 2006 notes.

as being part of the DBSI Group"[142] and that the value of the entire DBSI Group was subject to the guarantee described in the REF bond offering circular.[143] Swenson explained that it would be very difficult to trace bond proceeds to particular assets because,

> "the cash flows of the entire operation really consist partly from operations but mostly from financing and from sales of assets. So, in the final analysis, in order to finance the activities of the entire group, it's really hard to trace where all the funds go to or where all the funds come from. But, with respect to these assets, as well as the financing of any particular property, the debts end up getting attached to specific assets or specific entities, but the proceeds of those debts really, in the final analysis, end up as financing for the activities of the entire group."[144]

Swenson also explained that he anticipated the bonds would be repaid from the projected revenues of the Technology Companies and from the assets purchased with the bond proceeds.[145]

## VII. INSIDER PAYMENTS

### A. Overview

In his initial Work Plan, the Examiner proposed to the Court that the Examination include: "the identification of monies transferred to Insiders, including funds transferred to or through the Specified Non-Debtor Entities."[146] The identification of these payments was requested by several parties during the course of the Examiner's consultations prior to filing the Work Plan. In his Interim Report, the Examiner advised the Court that the investigation of the Insider Payments was continuing and would be included in the Final Report to be filed in this matter.

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[142] *Id.* at 111:1-9.

[143] *Id.* at 47:11-16.

[144] *Id.* at 24:12-22.

[145] *Id.*

[146] April 21, 2009 Work Plan at Paragraph 38(g).

The Examiner has investigated payments, transfers and consideration provided to individuals identified as "Insiders" of the Debtors from 2000 to and through the Petition Date (the "Insider Payment Period"). For purposes of this Report, the following individuals have been identified as possible "Insiders" as that term is defined under the Bankruptcy Code: Douglas Swenson, Var Reeve, Walter Mott, John Foster, John Mayeron, Charles Hassard, Gary Bringhurst, Mark Ellison, Brian Olsen, Farrell Bennett, Jeremy Swenson, Matthew Duckett, David Swenson and Paris Cole (collectively, the "Insiders").

The Examiner has determined that the Insiders received $75,139,544 of direct and indirect cash payments ("Transfers") from the Debtors during the Insider Payment Period. These Transfers, more than half of which went to Douglas Swenson, include distributions, payments to and for the benefit of the Insiders, bonuses, salary, interest on and liquidation of personal bond investments, and redemption of ownership interests. The Examiner has prepared detailed schedules for each individual listing the Transfers received during the Insider Payment Period which are attached hereto as **Appendix 6**.[147] The chart that follows summarizes the amounts the Examiner determined went for the benefit of each Insider:

[147] The amounts paid to each of the insiders are set forth in detail in **Appendix 6**. The Examiner will not cite to the Appendix for each reference to an amount paid to an Insider herein and the Appendix should be consulted for supporting information regarding the amounts paid to each Insider. Further, the document in Appendix 6 contains only the pages reflecting the Examiner's calculations of Transfers to Insiders but omits pages showing the Debtors' calculations of those Transfers. Hence, gaps are evident in the pagination of Appendix 6.

| Insider | Amount |
| --- | --- |
| Douglas Swenson | $38,607,769.32 |
| Var Reeve | $7,004,211.30 |
| Walter Mott | $5,776,700.85 |
| John Foster | $4,969,290.39 |
| John Mayeron | $4,659,325.79 |
| Charles Hassard | $3,849,231.27 |
| Gary Bringhurst | $2,934,440.75 |
| Mark Ellison | $2,432,583.25 |
| Brian Olsen | $1,420,352.48 |
| Farrell Bennett | $1,132,172.44 |
| Jeremy Swenson | $763,699.97 |
| Matt Duckett | $732,575.78 |
| David Swenson | $513,721.34 |
| Paris Cole | $343,469.17 |
| **Grand Total** | **$75,139,544.10** |

The Examiner has also determined that $5,753,445 of the Transfers were made within 12 months of the Petition Date, including $661,384 made within 90 days of that date as summarized in **Appendix 7**.

A significant portion of the insider distributions were made through Investments,[148] an entity that was essentially a holding company for the partnership's interests in several older Limited Partnerships, Stellar and Western Technologies. Investments had little or no revenue of its own during the Insider Payment Period and was used as a conduit through which to make distributions because, unlike the original DBSI companies, which were S Corps (collectively, the

[148] This entity historically has also been known as "Properties" in DBSI accounting records.

"S Corps"),[149] Investments was a partnership and was permitted to make disproportionate distributions to its owners.[150]

From its inception in 1994 through 2007, Investments paid more than $17 million to the Insiders, most of which was transferred after 2000.[151] In general, Investments made distributions to the Insiders from funds provided to it by DRR, which was used as a conduit through which the Debtors transferred monies from other sources.[152] The ultimate source of monies transferred to the Insiders from Investments has not been determined by the Examiner, and the Examiner concludes that it would be virtually impossible to trace the original source of the transfers made through Investments. As set forth in more detail herein and in the Interim Report, the Debtors' business practice during the Insider Payment Period was to commingle funds received from all sources and to use such funds as they were needed. In effect, several Insiders advanced the position that the funds that came in were fungible and could not be identified.

According to schedules of DRR's Receivables and Payables, at year end 2003, $2,814,235 was owed by Investments to DRR.[153] This amount increased each subsequent year due to additional loans and the accrual of interest. As reflected in the DRR schedules, in both 2005 and 2007 the principal amount of the receivable from Investments, not including accrued interest, increased approximately $25 million. By the end of 2008, Investments owed DRR

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[149] The original DBSI S Corps were DBSI Inc. (then named DBSI Housing Inc.), DCJ Inc. (then named DBSI Inc.), DBSI Realty, and DBSI Securities.

[150] Interview of Charles Hassard, September 17, 2009 ("Hassard interview") at 68:20-69:14. Hassard claimed that this was important because distributions could be made without Douglas Swenson receiving a distribution commensurate with his greater than 80 percent ownership of Investments. *Id.*

[151] ID 25.

[152] For example, Hassard told the Examiner that Investments would have had to receive funds through DRR from DBSI Inc. in order to fund the $2.5 million in aggregate bonuses paid to Douglas Swenson, Hassard, Mayeron, Foster, and Mott in January 2005. Hassard interview at 69:15-70:21.

[153] NDE 13.

$101,144,847 including accrued interest. Additional amounts Investments owed DRR were also transferred and became liabilities of Stellar. Other than these entries in the Debtors' general ledger system, there was no documentation of the sources of the funds transferred to Insiders through Investments or of the basis for which such funds were transferred to Investments. In addition, the Debtors made no effort to keep track of the ultimate sources of monies transferred to the Insiders.

### B. Methodology for Examination of Insider Payments

During the Examination, the Debtors delivered schedules to the Examiner purporting to identify payments made to the Insiders during the Insider Payment Period. These schedules were the starting point of the Examiner's investigation of the Insider Payments. According to Jeremy Swenson and Debbie Miller, the Debtors' schedule was prepared by Miller, reviewed by Jeremy Swenson and reviewed by most of the Insiders and/or their respective counsel. Over time, and in response to questions from the Examiner for clarification and supporting information, the Debtors provided revised versions of the schedule to the Examiner.

In conducting the Investigation of Insider Payments, the Examiner both reviewed the list of insiders prepared by the Debtors and the transfers identified by the Debtors in the initial schedule. The Examiner's professionals searched various Debtor accounting systems, obtained information and documents directly from the Insiders and questioned the Insiders regarding the Transfers made to them. The Examiner has revised and expanded the schedule initially received from the Debtors to include additional persons as "Insiders," to include additional Transfers, and to dispute characterizations of non-cash transfers.

The list of insiders given to the Examiner by the Debtors did not include Jeremy Swenson, David Swenson, Brian Olsen, Matthew Duckett and Paris Cole. The Examiner decided to include these individuals as "Insiders" due to their familial relationships with other insiders, their positions within the Debtor entities, and/or the actual roles they played in the management of the Debtors.

Except for Douglas Swenson and Farrell Bennett,[154] all of the Insiders were interviewed by the Examiner and, with the exception of Brian Olsen, all generally confirmed that they reviewed the schedule pertaining to them against their tax returns and other records and believed the figures to be accurate.

### C. Analysis of Individual Insider Distributions

The following section of the Report addresses specific transactions involving each of the Insiders.

#### 1. Douglas Swenson

From 2000 through 2008, Douglas Swenson received net cash transfers of $38,607,769 from DBSI Group entities after giving him credit for $5,400,000 that he contributed in cash to DBSI.

The bulk of distributions to Douglas Swenson were in the form of cash distributions ($22.2 million), payments made to state and federal tax authorities on his behalf ($17.7 million),[155] and payments to Kastera Development ($3.5 million). Only a small amount ($51,286) was received in the form of salary.[156]

In early 2004, Swenson increased his monthly distribution to approximately $40,000 and began withdrawing large amounts from DBSI Group entities. For example, in February 2004, he

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[154] Farrell Bennett was not interviewed because he left DBSI in 1999 and received relatively straightforward Transfers.

[155] The Examiner has not determined the extent to which refund claims may be asserted in connection with such tax payments based on the findings in this report, and notes that the Insider Schedule prepared by the Debtors includes $3.4 million in refunds to Swenson in 2006, 2007, and 2008 of prior tax payments made for his benefit.

[156] Throughout the period at issue, Swenson drew a salary of approximately $5,000 per year, and, instead, received larger monthly distributions than the other owners. In 2001, Mott, Foster, Hassard, and Mayeron also received small salaries of between $4,800 and $21,000 before increasing them to approximately $170,000 in 2002.

received $450,000 through a check written by DRR that was booked as a "loan."[157] In addition, beginning in August 2004, he caused FOR 1031 to make payments of $500,000 per month on his behalf over the next 8 months (totaling $4,000,000). According to Duckett and a FOR 1031 accountant, the $4,000,000 was paid directly to a company called Montigen as an investment and recorded initially on FOR 1031's books as a Note Receivable from Douglas Swenson. Duckett further recalled that the transactions were later reclassified on May 31, 2005 as distributions to Swenson[158] and that Swenson later sold his investment in Montigen and contributed part of the proceeds, or $5,400,000, to DBSI in 2006 because "cash was tight." However, additional profits obtained from the Montigen investment were not given to DBSI.[159]

Like each of the other owners of Investments (Foster, Mott, Mayeron and Hassard), Swenson received a $500,000 payment as a "bonus" for the 2004 performance in early 2005. Swenson received his bonus on January 27, 2005. At the same time, in January 2005, Swenson increased the monthly distribution he received from Investments from approximately $40,000 to $62,000.[160] In January 2006, he increased his monthly distribution to approximately $72,000 per month (approximately $864,000 per year), which he continued to receive until June 2008.

[157] The Debtors were unable to provide the Examiner with a loan agreement supporting this payment or any other backup for it other than the cancelled check from DRR. Thus, it is not known whether the loan was from DRR, or the funds ultimately came from some other entity.

[158] June 2009 Duckett interview.

[159] *Id.* Swenson sold another $934,000 of Montigen Stock on October 15, 2007. This sale of stock was a result of an acquisition of Montigen by SuperGen. In addition to the proceeds from the sale of the Montigen stock, Swenson also received a corresponding value of SuperGen stock. SuperGen's records disclose that Swenson had received an additional 1,628,737 shares of SuperGen stock valued at $5,398,591.66 on April 25, 2007 (531,462 shares) and November 19, 2008 (1,097,275 shares). BNY Mellon's records indicate that Swenson transferred these shares on November 10, 2008 and January 22, 2009, respectively, to CODE Six LLC. Public records reflect that CODE Six was formed on October 9, 2008 with Jeremy Swenson as its Managing Member. On February 4, 2009, Jeremy Swenson was removed as the Managing Member and replaced by Douglas Swenson.

[160] Virtually all of the money used by Investments was funneled to it through DRR. As of December 2008, Investments owed DRR more than $100 million. NDE 13 (the receivable due from Investments to DRR is listed under DBSI Properties). The amount due at that time from DRR to DBSI Inc. was $193 million. *Id.*

Swenson continued drawing money despite the shutdown of TIC sales through the real estate channel in November 2007 and the resulting decrease in revenue.

According to Duckett, Swenson authorized FOR 1031/Spectrus to pay approximately \$12.8 million in expenses incurred by Kastera, a company in which Swenson, owned 66.67 percent.[161] As the funds were provided to Kastera, they were originally booked by FOR 1031 as an Affiliated Receivable due from Kastera, but were later reclassified on December 31, 2005 and October 1, 2006, as a "Distribution to Member" (i.e., a distribution to Douglas Swenson). Between March 2006 and October 2008, Swenson authorized another \$3.5 million to be disbursed by multiple DBSI entities to cover expenses incurred by Kastera.[162]

Swenson also directly benefited from more than \$120,000 in tax payments made on his behalf by Kastera in October 2008.[163] Duckett had refused to make these payments, which he considered to be inappropriate due to DBSI's precarious financial condition, and left DBSI shortly after telling Douglas Swenson that he would not make the payments.[164] Finally, Swenson received \$438,670 in "liquidating distributions" from several of the old Limited Partnerships. The bulk of this amount (all but \$9,911) was received on March 29, 2007, from DBSI Meridian

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[161] Duckett told the Examiner in his initial June 2, 2009 interview that FOR 1031 provided funding to Kastera on an "as needed" basis. He recalled that Douglas Swenson had approved the funding "in concept" and FOR 1031 processed the requests for funds from Kastera as they were received. Duckett believed Kastera used the funds to pay trade receivables, payroll and other expenses. As of September 2009, Kastera owed DBSI more than \$13 million. NDE 27; NDE 28.

[162] These funds were moved to Kastera through DRR and were recorded as having been loaned by DBSI Inc. even though they appear to have been given to Kastera by multiple DBSI entities over time. The Examiner did not trace these funds to their original source which would have required significant effort. The \$3.5 million figure includes cash amounts and does not include accruals for unpaid interest and other noncash items that appear in DRR's records.

[163] **Appendix 6** at 25.

[164] September 2009 Duckett interview at 143:8-144:19.

Freeway Associates, which owned the "Swenson Building" (DBSI Inc.'s former headquarters on Tech Lane in Meridian, Idaho) and sold it to TIC investors in 2007.

In sum, the Examiner concluded that Douglas Swenson received $38,607,769. The final insider payment schedule given to the Examiner by the Debtors indicated that Swenson had received no net benefits because he contributed back to DBSI $7 million more than he had received. In particular, the final schedule provided by the Debtors gave Douglas Swenson $38.2 million worth of credits: $5,400,000 derived from the Montigen investment, $5,417,888 on April 1, 2007 for his 66.7 percent ownership in Kastera LLC, and $27,432,818 on April 1, 2008, for his 86.5 percent ownership in Spectrus Group LLC. Indeed, during the course of the Investigation, it became clear to the Examiner that the Debtors wanted to create the appearance that Douglas Swenson had not received any net benefit from the payments made to him.

Although the Examiner did credit the Montigen payment from Swenson, the Examiner did not credit Swenson with contributing anything of value through these other "contributions" of stock for several reasons. First, the Kastera and Spectrus stock was not contributed. Rather, Swenson received an additional 4 shares of stock in DBSI Inc. in exchange for his Kastera stock[165] and 13,617 shares of DBSI Properties/Spectrus stock.[166] Moreover, the Debtors valued the contributed stock at book value rather than pursuant to any independent valuation at the time the stock was transferred.[167] These valuations in no way considered the then-current performance of the companies. For example, Kastera never generated sufficient cash flow to

[165] The Debtors were unable to provide the Examiner with a stock exchange agreement or any other documentation concerning this exchange.

[166] FS 41. Pursuant to this Agreement, Douglas Swenson exchanged his 9,000,000 shares in Spectrus for 13,617 shares of DBSI Inc. shares at a rate of .00152902 shares of DBSI Inc. stock for each share of Spectrus stock.

[167] Interview of Jeremy Swenson, June 2, 2009 ("J. Swenson interview") at 119:14-120:4.

fund its obligations[168] and relied on subsidies by other DBSI entities to pay its creditors,[169] and by April 1, 2007, had little to no value. Similarly, the Spectrus stock was contributed in April 2008, several months after the SEC caused Spectrus to stop selling TIC interests in real estate, thereby shutting off its primary revenue source.[170]

#### 2. Var Reeve

From January 2000 through October 2008, Reeve received insider payments totaling approximately $7 million. $2.4 million of this amount consisted of salary. Most of the remainder consisted of bonus distributions of $1.6 million and tax distributions of $2.95 million.

Reeve was a neighbor of Douglas Swenson in 1999 at a time when Reeve was employed by Western Electronics, whose bank was then calling its loan.[171] According to Reeve, the two talked about business and Reeve mentioned the financing issues facing Western Electronics. Swenson told Reeve that it was important to "save jobs" and offered to loan the money even if Western Electronics was unable to pay it back. Subsequently, DBSI acquired Western Electronics as part of the deal to repay the latter's bank loan.

In 2002, Reeve says that Douglas Swenson told him that he should learn the real estate business and put him in touch with Mayeron. Reeve then became employed by DBSI Realty.

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[168] Reeve believed that Kastera had completed its first 10 homes by 2006 and that the company was profitable before the allocation of overhead. May 2009 Reeve interview. However, in late 2006, DBSI was trying to find a way to receive Kastera's assets without becoming liable for a fraudulent conveyance due to concerns that Kastera may be insolvent. NDE 08.

[169] *See, e.g.*, FS 15 (indicating that DBSI was providing more than $150,000 per month to Kastera in order to meet its cash needs). September 2009 Duckett interview at 31:1-11.

[170] As discussed below, Bringhurst was unable to provide an estimate of FOR 1031's revenues in 2008. Interview of Gary Bringhurst, August 27, 2009 ("August 2009 Bringhurst interview") at 43:23-50:9. However, he did acknowledge that FOR 1031's primary source of revenue, TIC sales, was shut down in October 2007. *Id.* Duckett estimated that 60 to 70 percent of all TIC revenues were lost when the real estate channel was shut down. September 2009 Duckett interview at 80:21-81:3.

[171] May 2009 Reeve interview.

Mayeron introduced Reeve to various broker/dealers, and Reeve began to sell TIC interests and notes through PPMs. The TIC sales at that time were being sold through DBSI Securities. He remained in this role for six or seven months until August 2003. Soon thereafter, Reeve and Swenson decided to sell TICs through the real estate channel, and FOR 1031, LLC was formed in August 2003. Reeve believed that he owned 10 percent of FOR 1031 and Douglas Swenson or DBSI owned the other 90 percent.

TIC sales by FOR 1031 through the real estate channel increased markedly in 2004 and the Transfers to Reeve also increased. During 2004, he received a salary from FOR 1031 of $500,000 and a bonus of $500,000.[172] In addition, during 2005, FOR 1031 made tax payments on Reeve's behalf of more than $2,000,000 in connection with the 2004 tax year.[173]

During 2005, Reeve received a salary of approximately $311,000, $173,000 of which was paid by FOR 1031 and $128,000 was paid by Kastera Homes, LLC. In addition, on May 2, 2005, Reeve received cash distributions from FOR 1031 totaling $600,000.

During 2006, FOR 1031 made tax payments on Reeve's behalf in excess of $700,000. Also during 2006, Reeve received a salary from Kastera Homes, LLC of $300,270 and a $40,000 distribution from Kastera, LLC to purchase a 2005 GMC pickup. At the time the Kastera Companies were dependant on DBSI and FOR 1031 for their financing and owed FOR 1031 more than $12 million.

In 2007, Reeve received a salary from the Kastera Companies of approximately $465,000. In 2008, he received more than $460,000 from Kastera Development, LLC. During

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[172] **Appendix 6** at 29. In 2003, Reeve received a salary of approximately $92,000 from DBSI Management Services and $32,000 from Stellar Technologies, the latter for his work with the failed subsidiary EmergeCorp.

[173] *Id.* FOR 1031 was treated as an S Corp for tax purposes which meant that a portion of its earnings were treated as personal income to Reeve.

that time frame, the Cash Schedules for DBSI and FOR 1031 indicate that the Debtors were spending more than $250,000 per month to fund the expenses of the Kastera Companies.[174]

On July 9, 2008, Reeve received a $493,308 distribution from DBSI Pearson Lane, LLC.[175] Previously, in 2007, Reeve found an undeveloped property that he liked on Pearson Lane in McCall, Idaho (the "Pearson Lane Property") and asked Douglas Swenson if Kastera could purchase it.[176] According to Reeve, Douglas Swenson declined because the property was not large enough, but told Reeve he could purchase it on his own.[177] Shortly thereafter, Reeve and a friend, Chad Moffatt, purchased it for approximately $800,000.[178]

On July 9, 2008, shortly after DBSI had laid off a number of employees and was experiencing serious cash flow problems, a DBSI special purpose entity named DBSI Jarrell I-35 South LLC purchased the property from Reeve and Moffatt for $986,616.[179] Reeve informed the Examiner that a neighboring property owner had offered $1,000,000 for the Pearson Lane Property, he sold it to DBSI for 85 percent of the appraised value ($970,000), and he believed he "broke even" or close thereto on the sale.[180] Given the timing of the sale, the fact that Douglas Swenson had originally indicated that the property was too small for Kastera to buy and the fact that Reeve said he and Moffatt paid $800,000 for the property, it appears that DBSI did Reeve a favor by purchasing the Pearson Lane property from him at a small profit.

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[174] *See, e.g.,* FS 13.

[175] **Appendix 6** at 30.

[176] May 2009 Reeve interview.

[177] *Id.*

[178] *Id.*

[179] ID 21. The Examiner has included only one-half of this amount, $493,308, as an insider benefit to Reeve because Reeve said he split the sales proceeds with co-owner Moffitt. May 2009 Reeve interview.

[180] *Id.*

### 3. Walt Mott

From January 2000 through October 2008, Mott received payments totaling more than $5.7 million. $908,876 of this amount constituted salary while the bulk of the remainder consisted of bonus distributions and payments made to buy out his interest in the S Corps and Investments.

Mott, like Mayeron and Hassard (described below), received salary from DBSI Realty for the years 2002 through 2004 ranging from $175,000 to $182,000. At the same time, he received monthly distributions from Investments ranging between $8,000 and $13,000. At the end of 2004, the owners doubled their monthly distributions from Investments, increased their salaries by approximately $50,000 per year, and awarded themselves each a $500,000 bonus paid by Investments on January 18, 2005.[181] From January 2005 to September 2006, Mott received monthly distributions of $26,666.67 from Investments.[182]

Effective July 1, 2005, Mott entered into a Partnership Interest Agreement with Investments pursuant to which he received $7,500 per month, commencing more than a year later on October 1, 2006, for "services" to Investments.[183] He received the $7,500 per month until Investments stopped making payments in October 2008. He also received an option to

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[181] Mott believed that the monthly distributions to owners made by Investments represented distributions of DBSI's profits and were based upon agreement by the owners of the S Corps. Interview of Walt Mott, July 6, 2009 ("July 2009 Mott interview"). In January 2005, Mott's monthly distribution from Investments increased to $26,668 and remained at that level through September 2006, after which point he began receiving payments pursuant to a Partnership Interest Agreement and the Stock Redemption Agreement. **Appendix 6** at 36-37. As further discussed in connection with Mayeron, below, the genesis of the increase in benefits appears to coincide with the increase in TIC sales (especially through FOR 1031 which was owned by Douglas Swenson and Reeve) and Mayeron's complaints to Douglas Swenson in October 2004 about the formation of FOR 1031 and the sale of TIC interests through the real estate channel.

[182] *Id.*

[183] In his July 6, 2009 interview, Mott indicated that he began negotiating his buyout with Douglas Swenson in April 2005 and wanted to leave DBSI by the end of 2005. He further indicated that "it took a long time to get [Douglas] Swenson to do the contract" and a deal was not reached until Fall 2006. At the time of the interview, the Examiner had not yet received a copy of the Partnership Interest Agreement, and, thus, did not question Mott about why the Agreement was made effective July 1, 2005.

require Investments to purchase his 6.5 percent preferred general partnership interest "in its entirety or in multiples of 10%."[184] Pursuant to the Partnership Interest Agreement, Mott had received $180,750 as of the time of bankruptcy (24 monthly payments times $7,500 per month plus one payment of $750 on October 1, 2008).

Effective July 1, 2006, Mott entered into a "Stock Redemption Agreement" pursuant to which he sold his 5.55 percent ownership interest in each of the four S Corps for $3,452,546.[185] $1.5 million of this amount was payable in balloon payments of varying amounts from October 2006 through June 2008.[186] The remainder was secured by a 10-year note and was payable at a rate of $21,833.33 per month from October 2006 until November 2015.[187] Pursuant to the Stock Redemption Agreement, Mott appears to have received the $1.5 million in balloon payments, plus 24 payments of $21,833 per month from October 2006 through September 2008 (totaling $524,000) plus one payment in October 2008 of $2,009 for a total of $2,026,009.[188]

Mott claimed that he and Foster were "kept in the dark" by Douglas Swenson regarding where the Debtors derived their revenue and where the monies went.[189] He believed that most of the monies were used to form new companies owned by Douglas Swenson, Reeve and

[184] ID 32 at 1. In his July 6, 2009 interview, Mott indicated that he did not want to sell his interest in Investments because he had a negative tax basis and believed a sale would result in a $19 million tax liability due to recapture of past losses.

[185] ID 31. In his initial interview with the Examiner on May 8, 2009, Mott indicated that he sold his interest in the S Corps for $4.7 million, payable $250,000 "up front" with the rest over 10 years at 4.7 percent interest. He further indicated that he believed he had received lump sum payments quarterly that totaled approximately $2.1 million and that he believed he was still owed approximately $3.8 million. Interview of Walt Mott, May 8, 2009 ("May 2009 Mott interview"). Based on the Examiner's investigation of payments made by the Debtors and the terms of the Stock Redemption Agreement, it appears that Mott's recollection is incorrect.

[186] *Id.*

[187] *Id.*

[188] There was no outside appraisal done of the value of the S Corps in connection with Mott's buyout. Mott told the Examiner that he simply received roughly double the amount of Foster's earlier buyout. May 2009 Mott interview.

[189] *Id.*

Bringhurst such as DDRS, FOR 1031, and Kastera.[190] When asked where Investments got the money to pay him millions of dollars in distributions, Mott stated, "I don't know. Maybe from Western's revenues."[191]

On April 21, 2006, Mott received from DBSI Inc. a payment of $168,819, described as a "Liquidating Bond Distribution." Mott invested $10,000 on September 25, 2001 in the 2001A bonds and another $340,000 in the 2000B bonds during 2003 and 2004.[192] These funds, along with the $500,000 discussed in the next paragraph, plus the accrued interest thereon totaled approximately $807,000 by March 31, 2006.

On April 21, 2006, Mott liquidated $168,819. On May 15, 2006, Mott received a payment from DBSI Inc. of $577,499.06 described in the schedules provided to the Examiner by the Debtors as a "Note Payment." This appears, however, to have been a liquidation of most of the remaining funds that Mott had placed on deposit with DBSI Inc. and on which he was paid interest at 11 percent per annum. After receiving his $500,000 bonus check on January 18, 2005, Mott had deposited the funds with DBSI Inc. until May 15, 2006.[193] $577,499 of the $645,187 that Mott had remaining on deposit was liquidated on May 15, 2006 and paid to him with a DBSI Inc. check.[194]

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190 *Id.*

191 July 2009 Mott interview. The Examiner has found no evidence that Western Electronics ever made any distribution to Western Technologies, which in turn never had any income to enable it to make distributions to Investments.

192 ID 53.

193 *Id.*

194 *Id.*

### 4. John Foster

From January 2000 through October 2008, Foster received benefits totaling more than $4.9 million. The bulk of these benefits was in the form of monthly and annual distributions and the proceeds from the sale of his interest in the four S Corps and Investments.[195] Foster also received $636,661 in salary.

Effective September 1, 2002, Foster sold his interest in the S Corps for $2 million, payable in monthly installments of $8,333 over 10 years[196] and 10 percent of his interest in Investments for $420,000, payable in five installments of $84,000.[197] On December 6, 2004, the Stock Redemption agreement was amended to accelerate the payments made to Foster for his share of the S Corps.[198] Pursuant to the First Amendment, Foster received balloon payments as follows:

| | |
|---|---|
| June 30, 2004 | $100,000 |
| March 1, 2005 | $300,000 |
| July 1, 2005 | $300,000 |
| October 1, 2005 | $300,000[199] |

In connection with the sale of his interest in the S Corps, Foster received 69 payments of $8,333.33 per month from January 2003 through September 2008 and $833 in October 2008,

[195] *Id.* at 3.

[196] ID 49 §§ 2.1, 2.2.

[197] ID 50 § 1. Foster received the amounts due under this Agreement.

[198] ID 52.

[199] The payment scheduled for October 1, 2005, was not made until April 15, 2006.

before DBSI ceased payments.[200] Thus, as of the time of the bankruptcy filing, Foster had been paid $1,694,166 of the $2,000,000 sales price.

Effective January 1, 2006, Foster sold the remaining 90 percent of his interest in Investments for $2,866,000, payable over 10 years as follows:[201]

| | |
|---|---|
| January 1, 2006 through June 1, 2006 | $27,666 per month |
| July 1, 2006 through June 1, 2016 | $18,750 per month |
| April 15, 2006 | $300,000 |
| September 15, 2006 | $75,000 |
| October 15, 2006 | $75,000 |

Prior to the bankruptcy, Foster received all of the balloon payments, all six payments of $27,666, 26 payments of $18,750 and one payment of $1,875 on October 20, 2008 for a total of $1,105,250.[202]

Like the other owners, Foster received a $500,000 bonus in January 2005 paid by Investments. As further discussed in connection with the Transfers made to Mayeron, below, the increase in TIC sales in 2004 and Douglas Swenson's apparent success with FOR 1031 appears to have led to a large increase in Transfers made to the other owners despite the fact that they had no ownership interest in FOR 1031.

[200] **Appendix 6** at 47-51. The Examiner notes that there was no outside appraisal of the value of the shares in the S Corps repurchased from Foster.

[201] ID 48.

[202] **Appendix 6** at 49-51. $1,760,750 remained to be paid, or 94 more monthly payments at $18,750 per month minus the payment of $1,875 paid on October 20, 2008.

### 5. John Mayeron

From 2000 through 2008, Mayeron received benefits totaling more than \$4.6 million. Nearly \$3 million of this amount was received in the form of distributions made from Investments, including bonuses totaling \$1,250,000.

Mayeron told the Examiner that he was unhappy with the formation of FOR 1031 and the sale of TIC interests through the real estate channel.[203] He further indicated that he made his criticisms known to Douglas Swenson in the fall of 2004, that he (Mayeron) was a hard person to placate, and that "something must have placated his concerns" regarding FOR 1031.[204] Almost immediately thereafter, Douglas Swenson awarded Mayeron a \$500,000 bonus paid to him in two \$250,000 payments on October 12, 2004 and January 27, 2005.[205] Thus, it appears that Mayeron was placated by a \$500,000 bonus. Each of the other current owners in addition to Mayeron (Douglas Swenson, Hassard, Mott and Foster) of the original S Corps also received a \$500,000 bonus. In the aggregate, the bonuses paid to these five insiders in early 2005 totaled \$2.5 million.

Although Mayeron, Hassard, Mott, and Foster each claimed during their interviews that these bonuses came from "their profits" as the owners of the DBSI S Corps, the Controller of DBSI at the time informed the Examiner that DBSI's cash position in late 2004 was "alarming" in that it did not appear to be sufficient to pay its current debts.[206] Therefore, the bonuses were

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[203] Interview of John Mayeron, June 9, 2009 ("June 2009 Mayeron interview").

[204] *Id.*

[205] *Id.* at 60.

[206] Parmer interview at 27:4-33:13. Parmer acknowledged that she was responsible at that time for tracking only DBSI's cash position and that she did not know the cash position of FOR 1031 because Bringhurst and others "kept [it] very confidential." When she expressed concern to Bringhurst in late 2004 over DBSI's poor cash position, he transferred cash forecasting responsibilities for DBSI to Duckett (who was then the Director of Finance for FOR 1031) even though Parmer was still the Controller for DBSI. A few months later, when DDRS was formed in March 2005 to handle all of the accounting for DBSI and FOR 1031, Parmer was first assigned to a position below

(*Footnote continued on next page*)

not justified based on the performance of the companies these individuals owned. Although FOR 1031 reported net income for 2004 of approximately $50 million, that entity was owned 90 percent by Swenson and 10 percent by Reeve. If the source of the bonuses was FOR 1031, then Swenson was funding the payments out of a non-DBSI company that he later folded into DBSI.[207]

Mayeron's monthly distribution doubled from $12,913 in December 2004 to $25,707 in January 2005. This is the same increase in monthly distributions that was given to Hassard, Mott, and Foster. The distribution increase coincides with an increase in cash flow from TIC sales but not real profit.

In March 2008, Douglas Swenson "authorized a 2007 bonus for John Mayeron of $350,000" to be paid in increments for selling more than $40 million of the 2008 Notes.[208] Yet, DBSI did not begin selling the 2008 Notes until February 2008 (thus, the bonus could not have been for 2007 performance). Furthermore, DBSI had no available funds with which to pay such a bonus other than the funds collected from the investors in the 2008 Notes or from TIC sales made to investors through the securities channel.[209]

In addition to the large distributions he received from Investments, Mayeron was also paid a salary from DBSI Realty that, with the exception of two years, ranged between $175,000

(*Footnote continued from previous page*)

Duckett and then transferred to what she considered to be a meaningless role in internal audit before leaving shortly thereafter. *Id*.

[207] According to Miller, the money for these bonuses came from the financing of two properties that were later sold by FOR 1031 to TICs.

[208] ID 24.

[209] The bulk of the funds used to pay the $350,000 bonus came from the DBSI TIC Liquid Reserve account. ID 56.

and $195,000 from 2001 through 2008. The exceptions came in 2001 (when Mayeron only received $21,625 in salary) and in 2007 (when Mayeron's salary peaked at $380,000).[210]

Documents reflect that in April 2004, Mayeron lent $143,000 to Thomas Neil, a broker with whom DBSI did business. However, an April 4, 2004 journal entry and other documentation reflect that the money was wired from DRR to Neil.[211] Subsequently, the promissory note between Mayeron and Neil was made payable to DBSI Inc.[212] DRR's May 31, 2009 balance sheet shows a loan receivable from Neil of $76,749, which appeared to be the unpaid principal and interest due at that time.[213]

On the eve of bankruptcy on October 29, 2008, DBSI Inc. paid $10,000 on Mayeron's behalf as a legal retainer to Mayeron's personal bankruptcy attorney.[214]

#### 6. Charles Hassard

From January 2000 through October 2008, Hassard received insider payments totaling more than $3.8 million. Over $2.5 million of this amount was received in the form of distributions made from Investments, while the remaining $1.3 million represented salary.

In addition to an annual salary that ranged from $172,000 to $180,000 (with the exception of 2005 when it totaled $232,938), Hassard received monthly distributions from Investments of approximately $13,000 in 2000 and 2001, $8,000 for three months in 2002 and throughout 2003, $12,000 in 2004, $27,000 in 2005 and $26,667 from January 2006 until mid-June 2008.

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[210] *Id.* at 58 and 63.

[211] *Id.*

[212] *Id.*

[213] FS 14.

[214] DBSI Inc.'s accounting records indicate that, on October 29, 2008, a legal retainer of $20,000 was paid to Mayeron's and Hassard's personal bankruptcy attorney.

Hassard also received a $500,000 bonus for 2004 performance paid by Investments in three installments: $50,000 on January 27, 2005, $150,000 on January 27, 2005 and $300,000 on February 1, 2005. Hassard received a "bonus draw" of $64,440 on October 26, 2005 and an "Additional Distribution" of $150,000 on September 15, 2006.[215]

On the eve of bankruptcy on October 29, 2008, DBSI Inc. paid $10,000 on Hassard's behalf as a legal retainer to his personal bankruptcy attorney.[216]

### 7. Gary Bringhurst

From 2001[217] through 2008, Bringhurst received nearly $3 million from DBSI-related entities. $2.6 million of this amount was received by Bringhurst in the form of salary and bonus.

Notably, by the end of 2005, Bringhurst had the highest salary of any of the Debtors' executives. At its peak in 2007, Bringhurst's salary was $582,307. Despite his high salary, Bringhurst acted in his interviews with the Examiner as if he had very little to do with the actual management of the enterprise, other than to design processes and procedures.[218] Indeed, Bringhurst claimed to be unable to provide any estimate, without reference to documents, of the amount of FOR 1031/Spectrus' revenues in early 2008, after the SEC had caused it to cease selling TIC interests as real estate in October 2007 and during a time in which Bringhurst served as FOR 1031/Spectrus' highly compensated President and CFO.[219] Similarly, he claimed to be

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[215] *Id.* Hassard told the Examiner that he did not receive a bonus in early 2008 for 2007 performance due to the poor financial condition of DBSI at that time. Hassard interview at 81:3-83:21.

[216] DBSI Inc.'s accounting records indicate that, on October 29, 2008, a legal retainer of $20,000 was paid to Mayeron's and Hassard's personal bankruptcy attorney.

[217] Bringhurst began working for Western Electronics in 1999, prior to its affiliation with DBSI. The Examiner has not included benefits paid by Western Electronics to Bringhurst during 2000 because information for that year was not available.

[218] *See, e.g.,* August 2009 Bringhurst interview at 43:23-50:9.

[219] *Id.*

unable to estimate the amount of revenue earned by DBSI Inc. after he became its COO in the summer of 2008.[220]

Even though it was obvious to management that the Debtors had severe cash flow problems in 2008,[221] Bringhurst was paid $442,778 in salary and bonuses during that year. Indeed, Bringhurst also received bonuses of $86,000 in January 2008 and $50,000 on May 9, 2008, the latter of which was paid only about a month before DBSI laid off numerous employees due to cash flow deficiencies.

The Schedule of Insider Payments given to the Examiner by the Debtors and verified by Bringhurst during his initial interview in May 2009 omitted approximately $275,000 in tax payments made on his behalf by Spectrus in 2006. Yet Bringhurst, who acknowledged that he had reviewed the Schedule against his tax returns and other records, told the Examiner at his first interview that he believed the Schedule to be accurate and neglected to mention that it omitted $275,000 in tax payments made on his behalf.[222] During a second interview in August 2009, Bringhurst acknowledged that these tax payments were made by the Debtors on his behalf.[223]

In addition to a relatively high annual salary, Bringhurst was given an ownership interest in several DBSI-related entities without being required to purchase stock or make a capital contribution, including DBSI Western Technologies and Stellar.

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[220] *Id.*

[221] *See, e.g.,* FS 13 and FS 14.

[222] Interview of Gary Bringhurst, May 19, 2009 ("May 2009 Bringhurst interview").

[223] August 2009 Bringhurst interview at 119:17-121:6.

### 8. Mark Ellison

Ellison was one of the original founders of DBSI, but sold his interest in 1992 when he left to go into private practice as an attorney.[224] He returned to DBSI as General Counsel in approximately October 2004. Pursuant to the 1992 Sale of Interests in Business Agreement, Ellison retained an interest as a limited partner in certain of the old Limited Partnerships and continued to receive distributions in connection therewith. Accordingly, although the Examiner only traced salary payments made to Ellison from October 2004 (when Ellison returned to DBSI) through 2008, the Examiner has included Transfers received by Ellison from 2000 forward in connection with the Limited Partnerships.

From 2000 through 2008, Ellison received $2,432,538 from DBSI-related entities, $1,306,328 of which was salary.

The Insider Payments Schedule provided to the Examiner by the Debtors for payments made to Ellison also detailed that Ellison received $2,432,538 from 2000 through 2008. During his interview by the Examiner, Ellison acknowledged that he had reviewed the portion of the Insider Payments Schedule prepared by the Debtors listing the payments made to him from 2000 to 2008 and that, after consulting his tax returns and other records, it appeared to be materially correct.[225]

Ellison received liquidating distributions of $1.1 million from some of the old Limited Partnerships, pursuant to the 1992 Sale of Business Interests Agreement.[226] Although Ellison received benefits from Limited Partnerships that made profits, he did not share in the losses

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[224] At that time, he entered into a "Sale of Interests in Businesses" Agreement with Douglas Swenson and Palfreyman, the other two DBSI founders. ID 47.

[225] August 2009 Ellison interview at 202:5-203:14.

[226] ID 47.

suffered by other Limited Partnerships that were ultimately borne by DBSI. More than $500,000 of the liquidating distributions received by Ellison came from Meridian Freeway Associates, which sold the Swenson Building to TIC investors in 2007.

### 9. Brian Olsen

From 2001 through 2008, Olsen received $1.4 million from DBSI-related entities, all of which was in the form of salary and bonus.

Olsen, who is married to Bringhurst's sister, joined Western Electronics in 2001, moved over to FOR 1031 in 2004, and was the COO of DDRS from 2005 until 2009. Although his compensation was relatively modest until 2006, Olsen received more than $315,799 in salary and bonuses in 2008 when the Debtors were struggling to continue operations. More specifically, he received a $65,000 bonus in January 2008 and a $41,000 bonus in May 2008, shortly before the Debtors laid off numerous employees.

During his September 21, 2009 interview, Olsen told the Examiner that he received the $65,000 bonus in January 2008 because "2007 was a good year."[227] Yet, this was three months after FOR 1031's revenue stream had been shut down and at a time when the Debtors could not meet their daily cash needs without using money obtained from the bonds and notes. Moreover, Olsen claimed not to know why 2007 was a good year, how much the Debtors earned that year, or how they earned it.[228] Furthermore, Olsen admitted having seen reports that the Property Portfolio, which he was responsible for managing, lost $2 million to $3 million per month during 2007.[229]

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[227] Interview of Brian Olsen, September 21, 2009 ("B. Olsen interview") at 76:2-7.

[228] *Id* .at 76:8-19.

[229] *Id.* at 46:21-50:1.

Olsen was not listed as an Insider by the Debtors. The Examiner investigated the payments to Olsen due to his familial relationship to Bringhurst, his position in the upper management of DDRS, and the information from witnesses that he received relatively large bonuses in 2008.

#### 10. Farrell Bennett

From 2000 through 2008, Bennett received benefits of $1.1 million from DBSI-related entities, $841,225 of which was paid in connection with the buyout of his interest in the S Corps and due to his status as a preferred limited partner of Investments.

Bennett owned approximately 5 percent of the S Corps at the time he left DBSI in 1999, an interest equivalent to that held at the time by Mott, Foster, Hassard and Mayeron.[230] According to Mott, Bennett sold his interest to Douglas Swenson in late 1999 for approximately $1.2 million, with an upfront payment of $200,000 and a $1 million interest bearing note.[231] At the same time, he converted his limited partner interest in Investments to a preferred limited partnership share.

Since January 2000, Bennett has been credited with a preferred limited partner balance of $1,050,000 and has received interest thereon at 10 percent per annum.[232] In January 2003, Bennett borrowed $105,000 against this interest and his monthly distributions were reduced by the 10 percent interest on the $105,000 loan.[233]

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[230] May 2009 Mott interview.

[231] *Id.* The Examiner was unable to obtain a copy of Bennett's buyout agreement. However, he was able to determine that Bennett received $135,000 on January 3, 2000, in up-front payments to redeem his stock in the S Corps. **Appendix 6** at 84. These payments were not included in the insider schedules received from the Debtors.

[232] *See* ID 54.

[233] ID 55.

### 11. Jeremy Swenson

Jeremy Swenson is one of Douglas Swenson's sons. From 2001 through 2008, he received $763,700 from DBSI-related entities, all of which was in the form of salary and bonus.

The benefits paid to Jeremy Swenson each year peaked in 2007 when he received $139,069. He also received a $10,000 bonus in January 2008 and a $10,000 bonus in May 2008, which was the same amount he had received as quarterly bonuses in prior years.

Jeremy Swenson was not included in the list of insiders provided by the Debtors. The Examiner investigated the Transfers made to Jeremy Swenson due to the fact that he was Douglas Swenson's son and because of his position at DDRS.[234]

### 12. Matthew Duckett

From 2003 through 2008, Duckett received $732,575 from DBSI-related entities, all of which was in the form of salary and bonus.[235]

The benefits paid to Duckett peaked at $172,022 in 2007. He received bonuses of $20,560 in January 2008 and $13,500 in May 2008.

Duckett was not on the list of Insiders provided by the Debtors. The Examiner investigated the benefits paid to Duckett due to his position in the company as the head of accounting from 2005 until November 2008.

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[234] Several witnesses have informed the Examiner that Douglas Swenson, Bringhurst, Olsen, Jeremy Swenson, and David Swenson were involved in all material decisions.

[235] Duckett was hired by Western Electronics in December 1999 as a financial analyst, was promoted to controller of Western Electronics in 2003, became the controller of FOR 1031 in 2004, the Director of Accounting of DDRS in 2005, and Vice President of Accounting and Finance of DDRS in 2006. September 2009 Duckett interview. Salary information for Duckett for 2000 through 2002 was not available from the Debtors and has not been included in the figures discussed in this Report.

#### 13. David Swenson

David Swenson is another of Douglas Swenson's sons. From 2003 through 2008, he received $513,721 from DBSI-related entities, all of which was in the form of salary and bonus.

David Swenson began working for FOR 1031 shortly after it was formed in 2003 and then worked for DDRS from 2005 until after the bankruptcy filing. The benefits paid to David Swenson each year were relatively modest and peaked in 2007 when he received $121,568. He received a $10,000 bonus in January 2008 and a $10,000 bonus in May 2008, which was the same amount he had received as quarterly bonuses in prior years.

David Swenson was not on the list of insiders provided by the Debtors. The Examiner investigated the Transfers made to David Swenson due to the fact that he was Douglas Swenson's son and because of his position at DDRS.

#### 14. Paris Cole

From 2005 through 2008, Cole received $343,469 from DBSI-related entities, all of which was in the form of salary and bonus.

The Transfers made to Cole were modest, peaking at $105,354 in 2008.

Cole was not listed as an insider by the Debtors. The Examiner investigated the Transfers made to Cole due to his position as a high-ranking member of the accounting department and because of reports from witnesses that Cole was often included in the making of important decisions along with Douglas Swenson, Bringhurst, Jeremy Swenson, David Swenson, and Duckett.

## VIII. ACCOUNTABLE RESERVES

### A. Overview

The Examiner investigated the representations DBSI made concerning Accountable Reserves and how they were used by DBSI. The Examiner evaluated representations contained in offering and marketing materials and analyzed the cash flow of Accountable Reserves for a sampling of TIC projects. The offering and marketing materials led investors to believe that DBSI could only use Accountable Reserve funds for specified and restricted expenses. DBSI employees understood that the use of Accountable Reserves made it appear to investors that DBSI was selling property at a more competitive and lower purchase price. The Examiner concludes that Accountable Reserves provided DBSI with a source of available cash at a time when DBSI was short of the cash needed to maintain operations for the DBSI Entities. Contrary to its marketing materials, DBSI commingled Accountable Reserves with all other sources of cash and expended those funds as needed in its day-to-day operations.

**1. History**

DBSI and its affiliated companies purchased both improved and unimproved real estate and sold it to investors either through a real estate subsidiary (a FOR 1031 or Spectrus subsidiary) or a securities affiliate or subsidiary (DBSI Securities). Projects were sold to a group of unaffiliated TIC investors. Improved projects were then leased by investors to a DBSI related subsidiary pursuant to either a master lease agreement (for DBSI Securities or DBSI sponsored projects) or an "NNN Plus" lease agreement (for FOR 1031 and Spectrus sponsored projects). Unimproved projects were managed by a DBSI subsidiary pursuant to a master management agreement.

As early as 2003, DBSI affiliates began designating a portion of the funds collected from investors at closing as "Accountable Reserves." These Accountable Reserves were collected from investors at the time of the sale of the property based on their pro rata share of ownership in the project. According to promotional materials and offering statements, the Accountable Reserves were to be used by the DBSI subsidiary leasing or managing the project to pay for certain expenses in connection with the project. Accountable Reserves collected in connection with improved projects were to be used for tenant improvements, leasing commissions and, in some cases, capital improvements. Accountable Reserves collected in connection with unimproved projects were to be used for management fees, taxes, insurance and other municipal or related association fees. Any Accountable Reserves that were not used on the applicable project for those certain enumerated expenses were to be returned to the investors upon the sale of the project or termination of the master lease or management agreements.

From late 2003 until mid-2005, Accountable Reserves were seldom collected. As detailed in a schedule provided by DBSI Controller Matthew McKinlay,[236] the vast majority of Accountable Reserves were collected during and after 2005.[237] McKinlay's chart shows that after August 15, 2005, Accountable Reserves were collected in connection with almost every real estate project (improved and unimproved) sold by DBSI or its affiliates to investors ("Accountable Reserve Projects"). Former DBSI employees have informed the Examiner that DBSI began collecting Accountable Reserves because it allowed the selling affiliate to lower the "sales price" of the property while actually still maintaining the same margin on the sale through the Accountable Reserves.[238] More specifically, in order to realize DBSI's typical 20 percent total return on the sale of a property, DBSI found that it could lower its mark-up on the sales price to 15 percent (a rate more tolerable to investors) and then gain the use of another 5 percent from funds that were earmarked as Accountable Reserves. The investors were willing to pay the

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[236] **Appendix 8** is a spreadsheet provided to the Examiner by Matthew McKinlay, which includes real estate projects sold to investors by DBSI and its affiliates from and after 2003. This spreadsheet delineates all Accountable Reserve Projects, the amount of Accountable Reserve funds collected in connection with the Accountable Reserve Projects and the amount of Accountable Reserve funds used by DBSI and its affiliates in connection with the applicable Accountable Reserve Projects. Unless otherwise specified herein, the Examiner has not independently verified the truthfulness or accuracy of the information set forth on this spreadsheet.

[237] 96.8 percent of all Accountable Reserve funds were raised during and after 2005.

[238] Interview of John Mayeron, September 16, 2009 ("September 2009 Mayeron interview") at 136; August 2009 Ellison interview at 161-162.

Accountable Reserves because they were told that those funds would be used to improve their property investment or returned to them and that they would still be paid a return on their Accountable Reserve funds on the same terms and conditions as the return paid in connection with their purchase price investment in the project.[239] A former DBSI employee stated that DBSI also began collecting Accountable Reserves because of the tax benefits to DBSI.[240] As described in more detail below, DBSI did not report Accountable Reserves as part of its sales profits and instead reported Accountable Reserves as a liability, thereby lowering DBSI's overall taxable income.

### 2. Funds Raised as Accountable Reserves

DBSI and its affiliated entities collected a total of $99,691,566 in Accountable Reserves in connection with improved and unimproved real estate projects sold to investors.[241] Of this total amount, DBSI and its affiliated entities collected 92 percent, or $91,716,444, in connection with the sale of improved real estate projects, and eight percent, or $7,975,122, in connection with the sale of unimproved real estate projects. Of all Accountable Reserves, 48 percent were raised in connection with FOR 1031/Spectrus-sponsored projects and 48 percent were raised in connection with DBSI Securities-sponsored projects.[242]

According to the schedule provided by McKinlay, approximately $18,006,232 of the Accountable Reserve funds have been used by DBSI and its affiliated entities to pay expenses related to the Accountable Reserve Projects. The Examiner understands that approximately $81,685,334 of Accountable Reserve funds have not been used for the permitted expenditures in

[239] *Id.*

[240] June 2009 Duckett interview.

[241] **Appendix 8**.

[242] The remaining 4% were sponsored by an entity other than FOR 1031 or DBSI Securities or a combination of those entities.

connection with the Accountable Reserve Projects ("Unattributed Accountable Reserves").[243] These Unattributed Accountable Reserves were not segregated or preserved by the Debtors. The Unattributed Accountable Reserve funds were commingled with all other funds of the various DBSI related entities and were used by DBSI related entities, including both Debtor Entities and Non-Debtor Entities, for other non-project related purposes.[244]

### 3. Examination of Accountable Reserves

In connection with the Examination, the Examiner's professionals analyzed how DBSI marketed, maintained and used Accountable Reserve funds. The Examiner located and reviewed some DBSI inter-company correspondence and correspondence with investors, including in each case e-mail correspondence, to try to determine how Accountable Reserves were marketed and how they were understood by both the investors and Debtors. The Examiner interviewed current and former DBSI employees and senior management regarding their understanding of Accountable Reserves and how they described Accountable Reserves to investors both prior to and following the Bankruptcy. The Examiner questioned former employees and management regarding the Debtors' internal processes and procedures in connection with these funds, how the funds were used by the Debtors, and how the funds were maintained and treated for accounting and tax purposes by both the Debtors and investors. The Examiner also reviewed audit reports

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[243] Based on his review, the Examiner understands that DBSI may have spent certain amounts (totaling approximately $3,000,000) on particular Accountable Reserve Projects that should have come out of Accountable Reserve funds but were not properly accounted for and applied against the applicable Accountable Reserve balance. Accordingly, $18,006,232 as reflected on **Appendix 8** may understate the amount of Accountable Reserve funds applied to Accountable Reserve Projects by as much as $3,000,000. Similarly, the $81,685,334 scheduled as Unattributed Accountable Reserves may be as much as $3,000,000 higher than the actual amount of Accountable Reserve funds under DBSI's possession and control. Neither DBSI nor the Examiner has undertaken a complete analysis of this accounting to determine the exact amount of Unattributed Accountable Reserves.

[244] August 2009 Ellison interview at 170-171, 184; September 2009 Miller interview at 133; September 2009 Bringhurst interview at 114-119.

and financial statements of the Debtors to determine how Accountable Reserves were treated for accounting purposes.

In addition, the Examiner analyzed the contracts and uses of funds raised as Accountable Reserves in connection with a sampling of projects, (collectively, "Analyzed Accountable Reserve Projects") including Draper Tech Park, Allison Pointe Office, Arlington Town Square, SouthTrust Tower, Lakeview Sojourn, East 21st Street, North Park II, Carrolton East, Trekell & I-8, Wingfield Village and North Jarrell I-35.[245] These Analyzed Accountable Reserve Projects represent both improved and unimproved Accountable Reserve Projects that were sponsored through both the real estate channel and the securities channel and that were sold throughout the period of time in which Accountable Reserves were collected (i.e., 2004 through 2008). These projects were selected because they represent the highest dollar amount of Accountable Reserves collected during each year in connection with each of DBSI's sales channels (i.e., either the securities or the real estate channel) for each type of project (i.e., improved or unimproved land). The Examiner has reviewed marketing and promotional materials, investor prospectuses and investor agreements distributed and/or entered into by Debtors in connection with these Analyzed Accountable Reserve Projects. The Examiner also performed an accounting analysis of how these particular Accountable Reserve funds were maintained and used by Debtors after initially being deposited by investors.

### B. <u>Representations to Investors Regarding Accountable Reserves</u>

In connection with the Examiner's review of Accountable Reserves, the Examiner analyzed the representations made to investors by Debtors and their employees and agents in

[245] Analysis of selected projects confirmed that Accountable Reserves were commingled with other cash and expended in day to day operations. The Examiner did not fully analyze all Accountable Reserves collected by DBSI-related entities but believes that the selected projects are representative of standard practices of DBSI-related entities.

marketing materials, correspondence and investment offering materials. The Examiner also reviewed contractual provisions set forth in any agreements entered into between the Debtors and the investors in connection with Analyzed Accountable Reserve Projects.

### 1. General Marketing Materials Regarding Accountable Reserves

The Debtors' general marketing materials, which were widely distributed over a period of several years, provided that the Accountable Reserve funds could only be used to pay for certain property related expenses. In carefully scripted language, the marketing materials strongly implied, without actually promising, that the investors retained an interest in the Accountable Reserves following their deposit with the applicable DBSI property selling entity.[246] For example:

> Accountable Reserves: All $750,000 of reserves should be made accountable, meaning that the reserves will be **returned** to the owner to the extent that they are not used in the operation of the property. **The reserve should also be allowed to only cover actual capital and leasing costs**. This ensures that the master tenant has the incentive to use the reserves to add value to the property. **The master tenant should not be able to use these reserves to supplement its master lease rent obligations as this creates a significant conflict of interest**. (Emphasis added.)[247]

The marketing materials provided that the Accountable Reserve Funds were to be reserved for application only in connection with specific expenses. These materials further specifically provided that DBSI's use of these funds for general operating purposes (i.e., master lease obligations) should be prohibited. In fact, the marketing language went so far as to provide that use of these funds for purposes not related to actual improvement of the property created "a significant conflict of interest." Presumably, there was a "conflict of interest" because these

[246] AR 07 at 38; AR 14 at 47.

[247] *Id.*

were considered to be investor funds and, therefore, use of the funds should have been limited to expenditures that benefit the investors.

These promotional materials specifically contrasted the Accountable Reserves with "non-accountable reserves" collected by DBSI's competitors. The materials provided that, unlike Accountable Reserves, non-accountable reserves were *not* required to be used solely in connection with improvements to the properties. The materials further distinguished Accountable Reserves from non-accountable reserves by stating that a master tenant could use non-accountable reserves to "supplement its master lease rent payments to the owners" rather than to pay for improvements to the applicable project (implying that such uses would not be permissible in connection with Accountable Reserves).

The Examiner has not found any marketing materials distributed by DBSI to investors that disclosed to investors that Accountable Reserve funds were proceeds of the seller that could be used by the selling entity without restrictions. The Examiner has confirmed with Ellison, former general counsel of DBSI, that he had no knowledge of any marketing or promotional materials that included such disclosures.

**2. Offering Materials to Investors**

The Examiner reviewed PPMs (in the case of properties sold through the securities channel) or offering materials (in the case of properties sold through the real estate channel) distributed to investors in connection with the Analyzed Accountable Reserve Projects (both generally referred to for purposes of this Section as "offering materials"). These offering materials were not uniform, but appear to have evolved over time and varied slightly depending on whether the DBSI sponsoring entity was in the real estate channel or the securities channel and whether the project involved improved or unimproved property. However, the provisions applicable to Accountable Reserves were in most cases substantially similar throughout the time period in which these funds were collected and were substantively the same regardless of the channel sponsoring the project.

These offering materials purported to explain the nature of and obligations created in connection with Accountable Reserves in a footnote to a table that described the use of the proceeds of the sale of the projects.[248] Early versions of this footnote contained in the offering materials for DBSI Securities-sponsored projects described Accountable Reserves as follows:

> Accountable reserves for tenant improvements and leasing commissions will be repaid to the Purchasers to the extent not used in the operation of the Property.[249]

Again, this language impliedly limited the purposes for which Accountable Reserve monies could be used to the "operation of the Property." Subsequent versions of this footnote placed even more restrictions on the Debtors, describing Accountable Reserves as follows:

> Accountable reserves for tenant improvements, leasing commissions and capital improvements **cannot be used for operations** and will be repaid to the Purchasers to the extent not used. A portion of the Reserves may be allocated to the Lender to cover reserves required by the Lender. (Emphasis added).[250]

This language more clearly limited the purposes for which Accountable Reserve monies could be used and directly prohibited DBSI's use of the funds for general operating expenses. While this language did not require the Debtors to maintain these funds in a segregated account, it nevertheless clearly restricted their usage of these funds.

The footnote describing Accountable Reserves in the PPM for undeveloped Analyzed Accountable Reserve Projects was substantively similar but even more specific:

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[248] The PPM for the SouthTrust Tower project did not contain a footnote regarding Accountable Reserves and provided no information regarding the nature of Accountable Reserves other than to specify the amount to be collected in connection with that project.

[249] AR 15.

[250] AR 10.

> Includes annual management fees payable to Affiliates of the Company of $6,235, annual real estate taxes of $38,639, annual insurance of $75 and annual miscellaneous fees associated with the Land of $9,587. These fees may increase annually after the first year. Any unused Accountable Reserves will be returned to the Purchasers.

The footnote describing Accountable Reserves in the offering materials for real estate channel's Analyzed Accountable Reserve Projects was also substantively similar:

> Accountable reserves are amounts included in the purchase price that are conveyed by the seller for the Tenants-in-Common to the NNN Lessee for leasing commissions, tenant improvements, and capital expenditures during the term of the NNN Plus Lease. To the extent these Accountable Reserve amounts are not used during the term of the NNN Plus Lease they shall be returned to the Tenants-in-Common.

These footnotes were the only detail provided concerning Accountable Reserves in the offering materials. While the language used in offering materials for different types of projects varied slightly, all consistently and explicitly provided that (i) Accountable Reserves would only be used for certain enumerated purposes in connection with the applicable project and (2) any Accountable Reserves that were not used for certain enumerated purposes in connection with the applicable project would be returned to the investors.

Nothing in the offering materials distributed by DBSI to investors implied or disclosed to investors that Accountable Reserve funds were proceeds of the seller or that they could be used by the selling entity in its discretion. The offering materials did not imply or disclose to investors that Accountable Reserve funds would or could be used to pay for the general operating expenses of DBSI.

### 3. Correspondence and Representations to Investors Regarding Accountable Reserves

#### a. Representations Regarding Nature of Accountable Reserves

The Examiner reviewed evidence that Debtor employees represented that Accountable Reserves were the property of the investors and not DBSI, reviewed some relevant correspondence, and spoke with Debtor employees and former employees in order to analyze what representations were made. The Examiner obtained copies of correspondence from DBSI that appear to corroborate that investors were told that Accountable Reserves were their property.[251] Several former Debtor employees have confirmed that such representations were made to investors.[252] For example, in one piece of correspondence responding to investor inquiries regarding the nature and definition of Accountable Reserves, a former DBSI employee stated ". . . they are your monies, not DBSI's, so you would get them back if they are not spent."[253]

#### b. Representations Regarding Tax Treatment of Accountable Reserves

DBSI's statements to investors regarding the tax treatment of Accountable Reserves also clearly distinguished Accountable Reserves from other costs and payments in connection with the purchase of the project. The offering materials distributed to investors in connection with the Accountable Reserve Projects specifically noted that the Debtors provided no opinion regarding how Accountable Reserve funds should be treated for purposes of the investor's tax returns. However, DBSI conveyed to investors that Accountable Reserve funds needed to be treated separate and apart from the purchase price of the project. DBSI's tax manager noted internally

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[251] AR 08.

[252] Interview of Josh Hoffman, June 5, 2009 ("Hoffman interview"); June 2009 Mayeron interview.

[253] AR 08.

that to the extent that 1031 exchange funds were used to fund Accountable Reserves, these funds could not be treated as part of the purchase price and were believed to be "taxable boot" to the investor.[254] Annual letters sent to the investors also confirmed that such Accountable Reserve funds should be treated separate and apart from the purchase price, and indicated that Accountable Reserves were something different than the purchase price.[255]

### 4. Contractual Obligations Regarding Accountable Reserves

The Examiner confirmed with counsel for the Debtors that the only contractual agreements entered into between the Debtors and the investors in connection with the purchase of the property included the purchase and sale agreement; the master lease, management agreement or triple net lease (as applicable); the tenants in common agreement; and the loan assumption agreement. The Examiner has reviewed the form of each such agreement, as well as a sampling of executed versions of such agreements entered into in connection with Analyzed Accountable Reserve Projects. Based on this review, it appears that the only agreement executed between the Debtors and the investors that contained provisions applicable to Accountable Reserves was the "NNN Plus" lease agreement used in connection with the improved properties sold by FOR 1031 related entities (i.e., properties sold through the real estate channel).[256]

[254] AR 09.

[255] AR 16: "The purchase price of your property included funding of an Accountable Reserve. Your share of the reserve is indicated below. You should reduce the total purchase price by your share of the reserve to determine your depreciable basis in the property. Amounts expended from the reserve can be amortized or depreciated beginning when the new asset is placed in service."

[256] The Examiner's professionals also confirmed with internal counsel of the Debtors that the only contractual obligations regarding Accountable Reserves were set forth in the NNN Lease used in connection with the properties sold through FOR 1031 entities.

Most significantly, the provision that enumerated the purposes for which the lessee (the DBSI related entity) could use the Accountable Reserve funds stated:[257]

> In addition to the Reserve Accounts described in Section 3(h) hereof, any Accountable Reserves established and funded after the Commencement Date by assessment against Purchasers as part of the Purchase Price and paid by Purchasers **shall be available to LESSEE for the purposes of funding the construction of required tenant improvements, payment of leasing commissions incurred in the leasing of the Property pursuant to Section 19 hereof, and any capital improvements**. Prior to the requirement that LESSEE advance such expenses, LESSEE may first exhaust the funds available in such Accountable Reserves only to the extent the funds were paid into the Accountable Reserves by Purchasers and are used solely for payment of the costs of constructing tenant improvements and leasing commissions incurred for signed leases entered into in accordance and conformance with Section 19 hereof. If sufficient funds to make the expenditures are not provided from Accountable Reserves, LESSEE shall pay such costs directly. Upon termination of this Lease, **all Accountable Reserves shall remain the property of Purchasers** in accordance with their individual prorata ownership share in the Property, but shall be available to LESSOR or any Successor LESSEE solely for the purposes set forth in this Section 3(i). (Emphasis added).

Consistent with the offering materials, this language gave the lessee certain rights to use the Accountable Reserves funds for certain purposes related to the applicable Accountable Reserve Projects, including tenant improvements, leasing commissions and capital improvements. This language appears to limit the lessee's use of the Accountable Reserve funds to those items specifically enumerated and no other purposes. Further, the language specifically provided that upon termination of the lease, the Accountable Reserves were to ***remain*** the

[257] AR 17. This language is taken from the most frequently used form of NNN Plus Lease Agreement as provided to the Examiner by DBSI's internal counsel. This form of lease agreement changed during the period of its use; however, this provision remained substantially similar over time and throughout its inclusion in the NNN Plus Lease Agreement. Further, the NNN Plus Lease Agreements executed in connection with the Analyzed Accountable Reserve Projects contain the same or substantially the same language as the applicable provisions set forth in the NNN Plus Lease Agreements that were executed in connection with the Analyzed Accountable Reserve Projects.

property of the investors. Therefore, the quoted language can be read to establish that the Accountable Reserve funds belonged to the investors and were being held by the lessee for the term of the lease to be used only in accordance with the terms of this provision.

As noted, the contractual language set forth in the NNN Plus Lease Agreement was applicable only in connection with improved Accountable Reserve Projects sold through the real estate channel (FOR 1031 or Spectrus). No explicit contractual obligations existed in connection with unimproved Accountable Reserve Projects or improved Accountable Reserve Projects sold through the securities channel (DBSI Securities). As to the projects that were not subject to explicit contractual obligations, the representations made to investors through promotional materials, correspondence and offering materials is the best evidence of the understanding between the parties in connection with those properties. Except for the contractual differences, however, Accountable Reserves were otherwise treated by the Debtors uniformly regardless of the type of property or the channel through which it was sold. In other words, regardless of whether the contract detailed the uses of Accountable Reserves, it appears that the Debtors spent Accountable Reserves on whatever they wanted.

#### 5. Summary of Representations to Investors Regarding Accountable Reserves

Accountable Reserves were collected in connection with the sale of the Accountable Reserve Projects along with other funds, including the purchase price and other closing costs. However, the selling entities represented to the investors that Accountable Reserves were something separate and apart from the purchase price. Indeed, as previously described, the Examiner was informed by several former DBSI executives and owners that the purpose of Accountable Reserves was to represent that they were something separate and apart from the purchase price so that investors would not view them as part of the "mark up" on the purchase of the property.

Although none of the materials provided by or entered into by the Debtors directly required a segregation of these Accountable Reserve funds, the applicable materials did effectively provide that investors retained an ownership interest in the Accountable Reserve funds and that, as such, Debtors' use of these funds was to be limited to certain enumerated purposes. None of the materials provided by or entered into by the Debtors disclosed to investors that Accountable Reserve were part of the purchase price proceeds or that the funds could have been used for general operating purposes of DBSI until such time as they were needed in connection with the applicable project or returned to investors.

## C. Debtors' Treatment of Accountable Reserves

### 1. Accounting Treatment of Accountable Reserve Funds

Accountable Reserves were accounted for on a property-by-property basis, separate and apart and distinguishable from other proceeds of the sale of property. On, before, or sometimes after the deposit of Accountable Reserve funds by investors, DBSI created a property-specific Accountable Reserve ledger balance to track the Accountable Reserve funds raised for each specific property. This balance was then reduced over time by the amounts spent for specified expenses in connection with each project (e.g., tenant improvements, leasing commissions and capital improvements).

Accordingly, Accountable Reserve funds were not accounted for as if they were part of the purchase price of the property or part of the general operating funds of DBSI. Rather, DBSI's accounting treatment of Accountable Reserves was consistent with their representations to investors that Accountable Reserves were distinguishable from the sales proceeds of the property.

### 2. Tax/Financial Reporting and Treatment of Accountable Reserve Funds

Accountable Reserve funds were reported as liabilities on the financial statements and tax returns of DBSI and its related affiliates.[258] These liabilities were then reduced over time as monies were spent on leasing commissions, tenant improvements, and/or capital expenses in connection with the applicable Accountable Reserve Project.

The Accountable Reserve funds were not reported as income to DBSI or any of its related affiliates.[259] It appears that, for tax purposes, it was DBSI's position that Accountable Reserve funds were not part of the purchase price and/or income of DBSI. Mark Griffin, the former Director of Tax Operations for the DBSI group of companies, confirmed that Accountable Reserve funds were unquestionably not part of the purchase price and/or profits of DBSI and its affiliates, and that if they had been part of the purchase price, they should have been reported as profits on DBSI's tax returns. Griffin further confirmed that the senior management of DBSI (including Douglas Swenson and Hassard) were all aware that Accountable Reserves were being reported as liabilities on the Debtors' tax returns, while the purchase price, which was being reported as income, did not include Accountable Reserves. In fact, many of the senior management of DBSI have confirmed that one of the primary benefits of Accountable Reserves was the tax benefit for DBSI not having to report these funds as income.[260] In addition, analysis determined that, while DBSI did not report Accountable Reserve funds as income upon their receipt or their use, it did claim tax deductible expenses when Accountable Reserves were used for the operations of DBSI.

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[258] AR 06 at 16; interview of Mark Griffin, September 16, 2009 ("September 2009 Griffin interview") at 11-13; September 2009 Bringhurst interview at 117; Miller interview at 137-138.

[259] September 2009 Griffin interview at 11.

[260] June 2009 Duckett interview.

Similarly, the financial statements of DBSI and its affiliates that were distributed to investors and other third parties distinguished the Accountable Reserve funds from other purchase price proceeds.[261] These financial statements did not report the Accountable Reserve as income of Debtors but as liabilities separate and apart from any sales proceeds. However, at one time, Spectrus treated accountable reserves as income. In its 2007 audit of Spectrus' 2006 financial statements, Eide Bailly restated Spectrus' 2005 financial statements and reported Accountable Reserve funds as a liability rather than as sales income.[262]

### 3. Use of Accountable Reserve Funds

As detailed below, the Examiner reviewed and analyzed the uses of a sampling of the Accountable Reserves that were raised in connection with each of the Analyzed Accountable Reserve Projects.[263] For each of the Analyzed Accountable Reserve Projects, the Examiner traced the flow of the first few significant deposits made by investors (the "Analyzed Funds"). All of the funds comprising the initial deposits for a project were commingled and the flow of funds was the same for both sales proceeds and Accountable Reserves. The Analyzed Funds that the Examiner traced were included in these commingled monies. The deposits of investor funds included both Accountable Reserves and sale proceeds. Only 5 to 8 percent of the Analyzed Funds that were traced are actually attributable to Accountable Reserve funds.

The charts in **Appendix 9** depict the flow of portions of the funds raised for the analyzed projects and illustrate how the commingled monies were used for any and all purposes. Following the initial deposit of the Analyzed Accountable Reserve Funds, the Examiner traced

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[261] AR 18 at 11.

[262] AR 06 at 16.

[263] In these projects, purchase monies were deposited by investors over a period of time prior to the closing of the sale of the applicable project. The Examiner did not trace all of the deposits by all of the investors in connection with the purchase of each Analyzed Accountable Reserve Project.

the funds on a "first in, first out" accounting basis.[264] In large part, the uses of the Analyzed Funds were documented by reference notes and general ledger entries in DBSI's accounting systems. At times, these journal entries were entered days or weeks after the money was transferred and/or were subject to modifications and adjustments. The charts in **Appendix 9** detail the sources and uses of the Analyzed Funds as reflected in the original journal entries.

The Examiner concludes based on the analysis of the flow of Analyzed Accountable Reserve Funds and on representations made by former DBSI employees and management, that the cash flow of the Accountable Reserve funds differs significantly from DBSI's accounting treatment regarding such funds. Despite being distinguished from other sales proceeds for accounting purposes, Accountable Reserve funds were completely commingled with all other cash of the DBSI related entities and used for the general operations of all related DBSI entities.[265] As depicted more specifically in **Appendix 9,** upon the closing of the sale of an Accountable Reserve Project, the Accountable Reserve funds were deposited by investors along with all other proceeds of the sale into various DBSI-related accounts, general purpose accounts maintained by various DBSI related entities. Accountable Reserve funds were not separated from other sale proceeds at any point. Accountable Reserve funds and the purchase price proceeds were simply commingled upon deposit and followed the same course of treatment

[264] This means that the Examiner followed the flow of the first significant funds leaving the applicable accounts. Using this "first in, first out" method, the Examiner followed these funds through various transfers among DBSI related accounts and, where discernable, the ultimate use of the funds is noted. However, in most cases, the funds flowed to a DBSI-related operating account from which funds were then used to pay hundreds of miscellaneous expenses. The Examiner has not noted each of these expenditures so this analysis typically ends with the deposit of the Analyzed Funds into a general operating account from which funds would be used for any variety of operating purposes.

[265] August 2009 Ellison interview at 170-171, 184; Miller interview at 133; September 2009 Bringhurst interview at 114-119.

thereafter.[266] After the Petition Date, DBSI employees informed investors that Accountable Reserves had become part of DBSI's operating capital.[267]

The commingled Accountable Reserve funds and sale proceeds for each particular project were almost never maintained in property specific accounts, separate and apart from the income and proceeds of other projects. Immediately after the initial deposit of funds from investors, the funds were transferred to various accounts of DBSI-related entities, including both Debtors and non-Debtors. More specifically, these funds were immediately transferred to the general operating accounts and liquid reserve accounts of DBSI, DDRS, Spectrus, Master Leaseco, DRR, 2006 Notes Corp and DBSI Realty. These funds were then used to pay a variety of expenses for the various entities, including general operating expenses, payroll expenses and third party debt obligations. In addition, these funds were used to pay investment returns to DBSI bond and note holders and DBSI real estate investors. These Accountable Reserve funds were also used by Debtors and Non-Debtors (including the Kastera Companies) to pay costs and expenses to acquire real property. These funds were also transferred to DRR to fund various Debtor and non-Debtor entities including Stellar. Finally, undisclosed to investors, some of the Accountable Reserve funds collected by FOR 1031/Spectrus were kept by FOR 1031/Spectrus instead of being distributed to the proper DBSI entity and offset against a receivable from DBSI.[268]

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[266] *Id.*

[267] AR 04, a post-bankruptcy document, provides: "(Y)our Accountable Reserves were part of your initial investment and purchase price and you have been receiving full rent payments on those funds. The reserves were not segregated or specifically held in separate accounts, nor has DBSI represented in any of its offering documents that Accountable Reserves would be segregated or held in separate accounts. These amounts have been treated as part of DBSI's operating capital and also used to pay for items such as tenant improvements, leasing commissions, and capital expenditures on your property."

[268] September 2009 Cole interview at 149:18.

### 4. The Debtors' Position Concerning Accountable Reserves

In previous filings and correspondence with the Court, the Debtors advanced the position that the Accountable Reserves were "part of the investors' purchase price" of the property.[269] The Debtors contended that these funds were property of the Debtors that could be used for any and all purposes by DBSI and its affiliates in its discretion, and the Debtors acknowledged that such funds were in fact used to pay for the general operating expenses of Debtors.[270] The Debtors also contended that they had no obligation to maintain or reserve these funds in segregated accounts.[271] The Debtors reasoned that because there was no obligation to maintain the funds in a segregated account, they were not required to generally reserve or preserve these funds or limit the use of the funds.[272] The Debtors argued that DBSI's obligations arose upon the sale of the property when it had to return to the investors any Unattributed Accountable Reserves funds in connection with their particular investment property. The Debtors asserted that, accordingly, these investors should now be treated as general unsecured creditors since the Debtors do not have funds available to return the Unattributed Accountable Reserves to the investors.[273]

Most of the individuals responsible for the management of DBSI have represented that they understood Accountable Reserves to be part of the purchase price of the property and, as such, were property of the Debtors that could be used for any and all purposes by DBSI and its

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[269] *Id.* *See also* AR 03 ¶ 7: "…part of the purchase price paid to the seller for the property (and therefore the property of the seller, a DBSI entity) and not the investors."

[270] AR 03.

[271] *See id.*

[272] *See id.*

[273] AR 03 at ¶ 11.

affiliates in its discretion.[274] David Swenson likened Accountable Reserves to a loan from investors to DBSI, on which DBSI paid a monthly return and would eventually need to repay to investors, but which DBSI could use for any and all purposes until such repayment became necessary.[275] These individuals maintain that any restrictions on the use of Accountable Reserve funds that were set forth in the offering or marketing materials simply described the expenditures for which DBSI's general Accountable Reserve liability to investors could be reduced (i.e., if DBSI spent money on tenant improvements, DBSI could reduce its Accountable Reserve liability to investors by the same amount).

### D. Conclusions

DBSI and its affiliates used tens of millions of dollars in Accountable Reserve funds to cover general operating costs and expenses of the DBSI Group. These funds were never reserved by DBSI or it affiliates. Accordingly, these Accountable Reserves have been used and are no longer available. The Debtors have urged that the Accountable Reserves were part of the investor's purchase price of the property and could be used by DBSI and its affiliates without reservation. Some investors contend that the Accountable Reserves were not to be used by the Debtors for general operating expenses but were to be "reserved" by Debtors and used only in connection with certain expenses in connection with the applicable Accountable Reserve Project as enumerated in the marketing and promotional materials distributed in connection with the sale of that particular Accountable Reserve Project.

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[274] August 2009 Ellison interview at 177-184; September 2009 Bringhurst interview at 107-109; Hoffman interview; June 2009 Duckett interview; September 2009 Cole interview at 96-97; Interview of David Swenson, June 19, 2009 ("D. Swenson interview").

[275] D. Swenson interview.

The marketing materials, correspondence, investment offering materials and contractual obligations largely contradict the Debtors' position that the Accountable Reserves were proceeds from the Debtors' sale of the applicable Accountable Reserve Project that could be used by Debtors in their discretion. The representations made to investors in offering materials, contracts and marketing materials as described above consistently and explicitly provided that (i) Accountable Reserves would only be used for certain enumerated purposes in connection with the applicable project and (2) any Accountable Reserves that were not used for certain enumerated purposes in connection with the applicable project would be returned to the investors. The materials implied that these funds remained the property of investors following their deposit with DBSI, subject only to the rights of DBSI to apply them to certain enumerated expenses in connection with the investor's project. Nothing in the offering materials distributed by DBSI to investors implied or disclosed to investors that Accountable Reserve funds were proceeds of the seller that could be used by the selling entity in its discretion. Further, there was nothing in the offering materials that implied or disclosed to investors that Accountable Reserve funds would or could be used to pay for the general operating expenses of DBSI until such time as they were used in connection with the applicable project or returned to investors. Although the materials did not require that Accountable Reserve funds be segregated, the materials led investors reasonably to believe that the use of Accountable Reserve funds was restricted and that investors retained an ownership interest in the Accountable Reserve funds following the deposit of these funds with DBSI. Further, as described above, DBSI's former management has stated that it was DBSI's intention to market these Accountable Reserves as something separate and apart from other proceeds of the purchase price so that payment of such amounts would be tolerable to investors.

DBSI's financial reporting and tax treatment of Accountable Reserves directly conflicts with the contention that Accountable Reserves were part of the purchase price of the property. As described above, Accountable Reserves were not reported as income (as were other sales proceeds) but as a liability to DBSI. In fact, Duckett, a CPA and the former Vice President of Finance of the DBSI group of companies (i.e., DDRS), confirmed during an interview with the Examiner that he too discerned an internal conflict regarding the company's treatment of Accountable Reserve funds. Duckett reported that he expressed concerns to DBSI's senior management (including Hassard and Griffin) that these funds could not be characterized as a reserve liability for tax purposes while at the same time being characterized as a part of the purchase price to be used in the company's discretion.

# IX. REVIEW AND ANALYSIS OF SELECT PROJECTS

## A. Overview

The Examiner selected three projects, Legacy Hills, Tanana Valley, and North Jarrell, for in depth analysis following a preliminary evaluation. The Examiner determined that a detailed analysis of additional projects was both unfeasible and impractical. The three selected projects illustrate numerous problematic DBSI business practices. As detailed below, cash proceeds were consistently commingled. Bookkeeping entries were entered that purported to reflect and adjust obligations without regard to the effect those entries had on investors. Properties were overvalued and loans had inadequate security. Money was moved by and between companies without regard to their current standing as Debtor Entities and DBSI Non-Debtor Entities.

## B. Tanana Valley

### 1. Introduction

Tanana Valley is a 177.91 acre parcel of land in Meridian, Idaho. In 2007, the property was acquired by DBSI Tanana Valley LLC ("Tanana Valley LLC"). The acquisition of this property was funded primarily by a loan from the 2006 Notes Corp. In addition, the DBSI Group -- both Debtor Entities and DBSI Non-Debtor Entities -- used the property as "security" for borrowing and obtaining additional funds after the acquisition. The manner in which this money was borrowed illustrates several problematic practices of the Debtors, such as:

- Funds generated from these loans were moved among companies, not all of which are Debtors, with little or no formalities.
- Investors were misled regarding the actual use of the funds they contributed to the DBSI internal funding programs involved in the Tanana Valley project.
- The Debtors used 2006 Notes proceeds to meet then-current cash needs, contrary to the terms of the PPM for the 2006 Notes, which were to be used "only to acquire, develop and/or finance real estate properties prior to their sale, resale, third-party financing or syndication," and not "commingled with [DBSI Inc.'s] financial or business accounts."
- The Debtors repaid prior investors using new investor money.
- The Debtors used questionable and/or heavily qualified appraisals or other estimates of value to justify loan amounts.
- The Debtors manipulated loan balances immediately prior to calendar year ends, thereby improving the balance sheets of audited entities.
- The Debtors employed extraordinarily complex accounting entries that effectively obscured the true sources and uses of funds.

#### 2. Acquisition of Property

In April 2006, Kastera, a DBSI Non-Debtor Entity, agreed to buy the Tanana Valley parcel for $35 million from an unrelated party, Marty Goldsmith.[276] On October 10, 2006, Kastera paid $3.4 million in earnest money towards the property.

This earnest money payment by Kastera was funded by the Land Opportunity Fund ("LOF") ($3,000,000) and Kastera ($400,000).[277] The Examiner's analysis determined that the

[276] RP 01.

full amount of earnest money ($3,400,000) was booked as a loan from Kastera to Tanana Valley LLC and the $3,000,000 was recorded as having been contributed by the LOF to Kastera.[278]

After having paid the earnest money, Kastera management, in conjunction with DBSI senior management, sought justification for reducing the purchase price to be paid to Goldsmith. Kastera prepared a series of internal valuations for the property. These ranged from approximately $18,670,000 in November 2006 to $28,800,000 by February 20, 2007.[279] $28,800,000 was the renegotiated price ultimately reached between Kastera and Goldsmith. Because $3.4 million had already been paid in earnest money, an additional $25,400,000 was owed at closing.[280]

Based on the internal valuations of the property dating to late 2006, however, it appears that Kastera believed the property was worth less than what it ultimately agreed to pay. Indeed, on January 18, 2007, while renegotiation efforts were ongoing, Joe Swenson wrote that even an acquisition price of $27,000,000 "was derived with some 'effort'."[281]

After arriving at the purchase price, Kastera sought an appraisal on the property that would allow it to borrow money from a DBSI Secured Notes Corporation to pay the full

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(*Footnote continued from previous page*)

[277] The Examiner reviewed records of the Debtors from close to the time of the property acquisition that indicate that Kastera contributed this portion of the earnest money. RP 02. Kastera's accounting records reflect an entry made December 31, 2008 (well after the actual contribution and also after the Petition Date), which was not analyzed by the Examiner, reflecting that Kastera had contributed this amount plus interest ($480,258.54) to the Tanana Valley project.

[278] The LOF did not record its contributions to projects as loans receivable from a particular entity. Instead, the LOF's books recorded the $3,000,000 contribution to the Tanana acquisition under the "project number" for Tanana.

[279] RP 03; RP 04. Kastera's internal valuation of the Tanana property at approximately $18 million is reflected in a document dated November 2005. Because this document refers to the purchase and sale contract (which was executed in April 2006) and because the backup worksheets for this document reflect a computer-stamped date of November 3, 2006, the November 2005 date appears to have been an error.

[280] RP 05.

[281] RP 06.

purchase price without exceeding an 85 percent loan to value ratio required for such loans. Handwritten notes reflect that management of Kastera and DBSI discussed the fact that they could not have closed on the property if the appraisal was for the total amount of the purchase price.[282] Joe Swenson wrote a letter dated February 20, 2007 to an appraiser, Timothy Williams of Williams Research, Inc. In it, Joe Swenson stated that DBSI had justified a purchase price of "$28,900,000 [sic]" but asked Mr. Williams to return a value between 30 and 34 million.[283] The Examiner has not located a signed copy of this letter, but on February 23, 2007, Mr. Williams issued an appraisal of $31,000,000.[284]

Tanana Valley LLC was formed on February 21, 2007. Its sole member at the time of formation was DBSI Inc., and this has not changed. Tanana Valley LLC is not a Debtor.

Tanana Valley LLC and Goldsmith closed on the property on February 26, 2007. Tanana Valley LLC obtained a loan for $26,350,000 from 2006 Notes, an amount equaling 85 percent of the requested appraised value of $31,000,000 and exceeding the amount of cash owed to Goldsmith at closing.[285] 2006 Notes recorded a mortgage on the property in the amount of the loan.[286] The loan proceeds were used to pay the outstanding cash due on the transaction of $25,400,000. After credits for property tax and debits for fees, the surplus cash of $953,510 was repaid to the LOF in partial satisfaction of its $3,000,000 advance of earnest money.[287] The $26,350,000 loan was booked as a loan to Tanana Valley LLC from 2006 Notes.

[282] RP 07.

[283] RP 08. The letter appears to overstate the negotiated purchase price by $100,000.

[284] RP 09.

[285] RP 10.

[286] RP 11.

[287] RP 12.

The earnest money advanced by LOF to the Tanana Valley project was further reduced over time, and the Debtors' books presently reflect that LOF has no money invested in Tanana Valley. However, none of the funds used to reduce this investment balance were contributed by Kastera, which still holds a receivable of $3,400,000 owed by Tanana Valley. Moreover, aside from the surplus funds of $953,510 from closing, the Examiner's analysis revealed that no cash was paid to LOF to reduce this balance. On March 29, 2007, an entry was made in the Debtors' accounting system shifting $1,225,596 of the remaining balance to another project called One Hernando. The net effect of this entry was to make it appear that the LOF had invested that identical amount in One Hernando, rather than Tanana Valley. On May 15, 2007, the remaining balance of the $3,000,000 project investment, $820,893.38, was moved from LOF's books into an affiliated company receivable owed by DRR to DBSI Inc. Again, no cash was repaid to the LOF in connection with this reclassification, and other than removing the Tanana Valley investment from the LOF's books, the purpose for this entry is not apparent.

### 3. Ground Lease Structure, Sale of TIC Interests, and Use of TIC Proceeds

Using a ground lease structure, Tanana Valley LLC leased parcels of the Tanana Valley property to each of five LLCs (which, in turn, sold TIC interests in the five parcels) for a term of 99 years and prepaid rent roughly equal to a prorated portion of the $28,800,000 purchase price for the entire property.[288] The five parcels were named Cavanaugh I through V, and the LLCs were named similarly (DBSI Cavanaugh LLC, DBSI Cavanaugh II LLC, and so on). The five TIC portions of Tanana Valley are located south of a canal that runs through the property, and are sometimes referred to collectively as the "south of the canal" portion. In addition to the five

[288] *See*, *e.g.*, RP 13.

TIC parcels, there were two "north of the canal" portions: one commercial and one residential.[289] These portions were never sold to TICs, but as explained further below, were relevant to how the Debtors borrowed additional funds against the Tanana Valley property.

Beginning in September 2007, Tanana Valley LLC sold TIC interests in the five Tanana parcels located south of the canal. Based on acreage, these five parcels accounted for a prorated portion of $13,633,500.08 out of the total purchase price of $28,800,000. The TIC interests were sold at prices significantly marked up (between 40 and 47 percent) from this amount. All told, Tanana Valley LLC raised over $19,000,000 from TIC investors on this property.

Of the $19,000,000 in TIC investor funds raised in connection with Tanana Valley, $12,507,466 was applied to reduce debt on the property to 2006 Notes. After receiving money from TIC investors, the 2006 Notes Corp recorded partial satisfactions of its mortgage on the associated Cavanaugh parcels. These partial satisfactions did not state the dollar amount of the mortgage on the property that was being released; they only stated that the mortgage was released as to a portion identified by a legal description.[290] However, it appears from analysis of the Debtors' accounting records that the $26,350,000 loan receivable between the 2006 Notes Corp and Tanana Valley LLC was reduced in stages by amounts roughly coinciding with each parcel's prorated share of the original acquisition debt. Information about the five Cavanaugh parcels, including their size, prorated portion of the purchase price and original acquisition debt, sale price, markup, and principal paydown, is listed on the following table.

[289] RP 14.

[290] *See*, *e.g.*, RP 15.

**Cavanaugh Ground Lease Parcels Sold to Tenants-in-Common**

| Parcel | Acres | % of total 177.91 Acres | Prorated share of full purchase price ($28,800,000) | TIC Sale Price | TIC Markup | Prorated share of original debt ($26,350,000) | Principal Paydown (per SN 2006 GL) | Paydown Dates per GL |
|---|---|---|---|---|---|---|---|---|
| Cavanaugh I | 8.023 | 4.5096% | $1,298,760.05 | $1,910,661.00 | 47.11% | $ 1,188,275.25 | $1,206,474.00 | 12/11/07 & 2/5/08 |
| Cavanaugh II | 14.158 | 7.9580% | $2,291,891.41 | $3,243,185.00 | 41.51% | $ 2,096,921.48 | $2,096,803.00 | 12/11/07 & 1/2/08 |
| Cavanaugh III | 19.24 | 10.8145% | $3,114,563.54 | $4,382,255.00 | 40.70% | $ 2,849,609.35 | $2,848,709.00 | 3/14/2008 |
| Cavanaugh IV | 20.908 | 11.7520% | $3,384,578.72 | $4,787,679.02 | 41.46% | $ 3,096,654.49 | $3,096,480.00 | 12/11/07 & 1/2/08 |
| Cavanaugh V | 21.891 | 12.3045% | $3,543,706.37 | $5,055,848.00 | 42.67% | $ 3,242,245.24 | $3,259,000.00 | 2/4/2008 |
| Totals | 84.22 | 47.3385% | $13,633,500.08 | $19,379,628.02 | 42.69% | $ 12,473,705.81 | $12,507,466.00 | |

Additional analysis reveals that the remaining $7 million in TIC receipts was used for various operating expenses of Debtor and non-Debtor entities. Some of these funds were used for expenses such as payroll for various Debtor entities such as DDRS, DBSI Realty, and Spectrus. In addition, in many instances these investor proceeds were applied to fund DBSI's Property Portfolio operations.

### 4. Additional Borrowing in Connection with Property

Tanana Valley LLC borrowed additional funds from both 2006 Notes and Master Leaseco beyond the original $26,350,000 loan. In total, an additional $13,577,240 was borrowed against the property between June 2007 and the Petition Date. As explained further below, almost all of these funds were not used for the benefit of Tanana Valley LLC or the Tanana Valley property, but were instead used for business operations of DBSI Companies and/or to repay obligations of the DBSI Group Companies.

#### a. Loans Between Master Leaseco and Tanana Valley LLC

Between July 2007 and January 2008, Master Leaseco made two loans to Tanana Valley LLC.

The Examiner's findings with regard to the sources and uses of the funds loaned by Master Leaseco to Tanana Valley LLC are detailed further below.

### (1) July 3, 2007 Loan from Master Leaseco to Tanana Valley LLC: $4,650,000

On July 3, 2007, Tanana Valley LLC borrowed $4,650,000 from Master Leaseco. A promissory note was executed but not recorded -- according to the terms of the note, the debt was unsecured.[291] Nonetheless, according to the Debtors' own internal records, as a result the property became 100 percent financed, assuming a "value" of the property of 31,000,000.[292] In addition to the executed promissory note, accounting entries (an offsetting receivable and payable) were booked in the companies' financial records reflecting that Tanana Valley LLC owed the money to Master Leaseco.

Analysis reveals that the proceeds of this loan were not used for Tanana Valley LLC at all. Rather, the loan was a means by which the Debtors used new investor money to repay prior investors. The funds for this loan were obtained from new investors in TIC properties through Spectrus. These new TIC funds were used for a loan that was ostensibly to Tanana Valley LLC. However, despite the fact that Tanana Valley LLC never received the cash proceeds from this loan, the loan was recorded on its books as being money owed to Master Leaseco. In fact, Master Leaseco -- which, based on its cash ledger, did not have the cash assets to make this loan prior to receiving the funds from Spectrus -- provided the cash directly to DBSI Inc., which used it to pay off debt to the 2006 Notes owed by another DBSI project, Trekell & I-8.[293] Master Leaseco merely served as a conduit for funds received from new investors in TIC properties through Spectrus.

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[291] RP 16.

[292] RP 17.

[293] Trekell I-8 was an unimproved parcel of land in Arizona.

The movement of the funds for this loan was extremely complex to a degree that does not appear warranted except for the purpose of concealing the true source and use of the funds. It also illustrates the degree to which money moved among companies without regard to their present status as Debtor Entities or Non-Debtor Entities. The funds for the $4,650,000 loan originated from Spectrus (a Debtor) on June 29, 2007. Spectrus raised this money from TIC investments in the Treasure Valley Business Center and Metropolitan Square properties (both Debtors). The money was then transferred from Spectrus to Master Leaseco (a Debtor) through DBSI TIC Securities LLC (a Debtor account) and DBSI Industrial L.P. (a non-Debtor). On July 3, 2007, Master Leaseco paid the amount of $4,650,000 to DBSI Inc. (a Debtor). Once received by DBSI Inc., the cash was transferred to Spectrus, which immediately wired a slightly larger amount, $4,865,144, back to DBSI Inc. DBSI Inc. then paid the cash on the same day to 2006 Notes (a Debtor). This payment was recorded as paying off a receivable to 2006 Notes associated with another DBSI property, Trekell (a non-Debtor), but was also recorded as a loan from Master Leaseco to Tanana Valley.

The following table illustrates the movement of funds for the $4,650,000 loan on July 3, 2007 from Master Leaseco to Tanana Valley LLC:

**July 3, 2007 Master Leaseco Loan to Tanana Valley LLC**
**Actual Sources and Uses of funds Borrowed**
**$4,650,000**

1. Spectrus Group LLC/For 1031

Escrow Account 15500

| Date | Amount | Notes |
|---|---|---|
| 6/29/2007 | $ 491,250.47 | Cash ledger balance |
| 6/29/2007 | 5,677,432.50 | TIC Sale of Treasure Valley Bus Cntr |
| 6/29/2007 | 6,101,471.52 | TIC Sale of Metropolitan Square |
| | $ 12,270,154.49 | |
| 6/29/2007 | (6,445,373.12) | Funds to Spectrus Account 14000 |
| 6/29/2007 | (5,824,781.37) | Funds to Spectrus Account 14000 |
| | $ - | |

Transfer of $12,270,154.49 to
Money Market Account 14000

2. Spectrus Group LLC/For 1031

Money Market Account 14000

| Date | Amount | Notes |
|---|---|---|
| 6/29/2007 | $ (3,509,219.53) | Cash ledger balance |
| 6/29/2007 | 6,445,373.12 | Transfer From Spectrus Escrow Account |
| 6/29/2007 | 5,824,781.37 | Transfer From Spectrus Escrow Account |
| | $ 8,760,934.96 | |
| 6/29/2007 | (5,000,000.00) | Funds to DBSI TIC Liquid Reserve |
| | $ 3,760,934.96 | |

Transfer of $5,000,000 to
DBSI TIC Securities

3. DBSI TIC Securities LLC

Liquid Reserve Account

| Date | Amount | Notes |
|---|---|---|
| 6/29/2007 | $ 5,000,000.00 | Affiliated Co Payable from For 1031 |
| 6/29/2007 | (4,736,790.00) | Funds to Dindust via Hsg |
| | $ 263,210.00 | |

Transfer of $4,736,790 to
DBSI Industrial Services

4. DBSI Industrial Services (dindust)

Checking Operating Account 11000

| Date | Amount | Notes |
|---|---|---|
| 6/29/2007 | $ 4,736,790.00 | Funds from TIC LR thru DRR |
| 6/29/2007 | (4,736,790.00) | Funds to Master Leaseco |
| | $ - | |

5. Master Leaseco

Checking Operating Account 11000

| Date | Amount | Notes |
|---|---|---|
| 6/29/2007 | $ 4,736,790.00 | Funds from Dindust |
| 7/3/2007 | (4,650,000.00) | Tanana Valley funds from Hsg |
| | $ 86,790.00 | |

Transfer of $4,650,000 to DBSI Inc (Housing)
Checking Operating Account 11000

6. DBSI Inc

Checking Operating Account 11000

| Date | Amount | Notes |
|---|---|---|
| 7/3/2007 | $ 4,650,000.00 | Funds from MasterLease Co |
| 7/3/2007 | (4,650,000.00) | Funds to Spectrus |
| | $ - | |

Transfer of $4,650,000 to Spectrus Group/For 1031
Checking Operating Account 11000

7. Spectrus Group LLC/For 1031

Checking Operating Account 11000

| Date | Amount | Notes |
|---|---|---|
| 7/3/2007 | $ 210,201.51 | Cash ledger balance |
| 7/3/2007 | 4,650,000.00 | Funds from Hsg Op |
| 7/3/2007 | (4,865,144.00) | Funds to Hsg to Payoff SN 2006 Trekell |
| | $ (4,942.49) | |

Transfer of $4,865,144 to DBSI Inc (Housing)
Checking Operating Account 11000

8. DBSI Inc

Checking Operating Account 11000

| Date | Amount | Notes |
|---|---|---|
| 7/3/2007 | $ 4,865,144.00 | Funds from Spectrus TIC |
| 7/3/2007 | (4,865,144.00) | Funds to SN2006 - Trekell Payoff |
| | $ - | |

Transfer of $4,865,144 to 2006 Secured Notes
Trust Account 15500

9. 2006 Secured Notes

Trust Account 15500

| Date | Amount | Notes |
|---|---|---|
| 7/3/2007 | $ 4,865,144.00 | Trekell Principal Payment |

### (2) December 31, 2007 Repayment of $4,650,000 Loan from Master Leaseco to Tanana Valley LLC

On December 31, 2007, the July 3, 2007 loan was temporarily repaid in cash. DBSI Securities paid Master Leaseco $4,788,355.00, which comprised $4,650,000 in principal and $138,355 in interest. But this was a temporary repayment only -- a second loan of $3,000,000 was made just a few days later, immediately after the beginning of the next calendar year.

Master Leaseco was an audited entity, and its books were audited for the year ending on December 31, 2007. Debtors touted the capitalization of Master Leaseco as support for the financial stability of the company and the security of investments.[294] The Master Leaseco year-end audit report reflects Master Leaseco's total cash assets of $5,535,062 as of December 31, 2007.[295] Without the temporary repayment of the first Master Leaseco loan, Master Leaseco's cash assets would have been only $746,707. Days after December 31, 2007, Master Leaseco re-funded a loan to Tanana Valley LLC in the amount of $3,000,000. This temporary repayment coinciding with the year-end audit of Master Leaseco therefore had the effect of misrepresenting the true capitalization of Master Leaseco as of December 31, 2007.

In addition, analysis revealed that much of the funds for the temporary repayment, like the funding for the principal itself, came from investor funds paid to Spectrus rather than any assets of Tanana Valley LLC. On December 31, 2007, Spectrus paid cash totaling $4,037,916 from its escrow account to DBSI TIC Securities Operating Checking Account. The money paid by Spectrus to DBSI Securities represented a portion of funds coming from sales of TIC interests in another property, Park Creek Apartments, and from the outright sale of a property, Berkeley,

[294] *See* RP 18 at 49.

[295] RP 19.

to a third-party purchaser. Spectrus made the payment to DBSI Securities TIC Operating account in two separate transfers of cash on the same day, \$3,574,930.58 and \$462,985.16, to equal the \$4,037,915.74. On the same day that the two payments were deposited to the DBSI TIC Securities Account, \$1,600,000 was also moved from the DBSI TIC Securities Escrow account into the Operating Account. These funds were in part derived from the sale of investor units in the Cavanaugh II and IV LLCs, as well as another property unit for North Austin II. With the movement of the \$1,600,000 added to the \$4,037,915.74 sent from Spectrus, DBSI TIC Securities had sufficient cash to make the temporary repayment to Master Leaseco on December 31, 2007.

#### (3) January 4, 2008 Loan from Master Leaseco to Tanana Valley LLC: \$3,000,000

On January 4, 2008, days after the end of the calendar year and the repayment of the outstanding receivable between Master Leaseco and Tanana Valley, Master Leaseco again loaned money in connection with the Tanana Valley property. This time, \$3,000,000 in cash was provided to DBSI Inc., which placed the money in its liquid reserve account. Master Leaseco's organizational documents contain an executed promissory note reflecting this loan.[296] Although that promissory note indicates the loan was unsecured, the Debtors' internal records indicate that at the time Tanana Valley property became 92 percent financed.[297] The Debtors' financial records still reflect that this loan is outstanding.

Analysis reveals the following problems with this loan:

- As with the June 2007 loan, it was not used for the benefit of Tanana Valley LLC, the putative "borrower." Rather, it was generally used to meet DBSI's then-current cash needs, including repayment of earlier investors.

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[296] RP 20.

[297] RP 21.

- The making of this loan reversed the "repayment" of the initial loan between Master Leaseco and Tanana Valley LLC that had been made days earlier, just before year-end and the close of an audited period.
- Also as with the June 2007 loan, the loan proceeds were transferred among Debtor accounts in ways that have the practical effect of obfuscating the true sources and uses of these funds.

According to the Examiner's analysis, this loan was recorded as a receivable reflecting that Tanana Valley LLC owed Master Leaseco the loan principal amount. However, this cash was never provided to or used by Tanana Valley LLC. $1,000,000 was sent to DBSI Securities Liquid Reserve bank account. It was transferred in various increments to other Debtor bank accounts, including Spectrus, DDRS, DBSI Inc., and TIC Securities' own general checking account. Another $1,000,000 was transferred among various checking accounts of DBSI Inc., and ultimately deposited to DBSI Inc.'s M&I Checking Operating account. That same day, money was paid from that account to prior investors in other projects. About $374,000 was paid to liquidate principal in the "Valley View" fund,[298] meaning the money was used to pay back promissory notes. In addition, about $73,000 was paid to TIC investors in DBSI Horseshoe Bend Hills LLC, another DBSI real estate project.

**b. Loans from 2006 Notes Following Sales to TIC Investors**

In 2008, DBSI Inc. took out additional loans ultimately totaling $5,927,240 from the 2006 Notes Corp using the Tanana Valley property as collateral. By the time of the first such loan in February 2008, the five Cavanaugh parcels had been sold to TIC investors and were no longer available to DBSI Inc. or Tanana Valley LLC as collateral. However, the cash needs of both Debtors and non-Debtors continued unabated. To justify borrowing the additional funds it

[298] The Valley View fund was a small funding program formed in 2005 to raise $810,000 for a real estate development project. RP 22.

required, DBSI Inc. employed questionable valuation techniques involving both external appraisals and internal estimates of value. In addition, not all of the funds borrowed from 2006 Notes were used for property investment purposes as required by the PPM, but instead were used to fund the operation of the Debtors.

**(1) February 2008 Loan from 2006 Notes: $4,479,600**

Immediately after receiving over $5 million from an investor in the Cavanaugh V portion of the Tanana Valley property and using a portion of those funds to repay the 2006 Notes mortgage on the property, Tanana Valley LLC borrowed additional cash from 2006 Notes. On February 11, 2008, Tanana Valley LLC and 2006 Notes recorded a modification agreement to the original mortgage on the property indicating that the principal loan amount at that time was $16,709,508, that an additional $4,290,932 was being borrowed against the property, and that the outstanding principal amount was therefore $21,000,440.[299] Records reflect that this representation of the amount borrowed was inaccurate: in fact, 2006 Notes Corp loaned $4,479,600.

Analysis reveals the following additional problems with this loan:

- The Debtors justified the additional borrowing using an appraisal that was heavily qualified and significantly overstated the actual fair market value of the property.
- The Debtors created records relating to this loan that falsely make it appear as if the money was borrowed in connection with the Tanana Valley property, when in fact the money was used to cover the operating expenses of DBSI Inc.
- The Debtors took out this loan immediately after receiving a large infusion of cash from an investor in Tanana Valley. A portion of this money was used to repay 2006 Notes in satisfaction of its mortgage on the portion of the property sold to the investor. Even though the Debtors had about $1.8 million in cash remaining after this repayment, they needed even more cash to support their operations.

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[299] RP 23.

The Debtors and Tanana Valley LLC made improper use of an external appraisal to justify this additional borrowing amount. The Examiner reviewed a worksheet created by the Debtors and Tanana Valley LLC detailing how this additional borrowing could be justified, and determining that an additional $4,290,932 could be borrowed against the Tanana Valley property following the sale of Cavanaugh V to an investor.[300] As stated on the worksheet, the Debtors determined which portions of the property were still available to DBSI Inc. as collateral. One of these portions was the "commercial, north of the canal" portion, which consisted of 30.079 acres. That acreage constitutes 16.9 percent of the total area of the Tanana Valley parcel. 16.9 percent of the original appraised value of the Tanana Valley property ($31,000,000) is $5,241,128. In August 2007, Kastera had obtained a commercial, third-party appraisal of the "commercial, north of the canal" portion of the property that concluded that the property could, given certain conditions, be worth $10,150,000.[301] This additional value permitted the Debtors to justify the additional borrowing amount.

The Debtors' use of the August 2007 appraisal to support this additional borrowing was inappropriate. The appraisal itself expressly stated that the land was not then worth $10,150,000. The appraisal had been requested to assess the value of the property as if it were entitled in a certain way.[302] The property was not entitled in that way at the time of the appraisal, nor had it been entitled in that way by the time Debtors borrowed the additional funds.[303] But the appraisal was explicit that its conclusion assumed that such entitlements had been obtained. Because of

[300] RP 25.

[301] RP 26.

[302] Specifically, the appraisal was asked to assess the value of the property "as though 13.59 AC was designated C-N [Commercial Neighborhood], and 16.489 AC was designated TN-C (Traditional Neighborhood Center)." RP 26.

[303] The zoning change on which the appraisal was predicated was not obtained until May 27, 2008. RP 63.

the expense and risk involved in obtaining entitlements, this had the effect of significantly overstating the actual fair market value of the land at the time of the loan. Indeed, Debtors' internal valuation of this portion of the property prepared in connection with the bankruptcy is $3 to $3.75 million dollars. A note on that valuation acknowledges the commercial appraisal but notes that a lower value was estimated at the time of the bankruptcy "due to lack of current comps and longer term hold before local population growth justifies development."[304]

In addition, while this loan was made to Tanana Valley LLC and secured against that property, the proceeds from this loan were not used in connection with Tanana Valley at all. Rather, they were used to cover operational expenses of DBSI Inc. This use of funds was in violation of the 2006 Notes PPM, which stated that "[t]he proceeds of any Loans to Entities will be used only to acquire, develop, and/or finance real estate properties prior to their sale, resale, third-party financing or syndication."[305]

The Examiner's analysis shows that the amount of this loan was transferred to DBSI Inc.'s operating account at M&I Bank. It was then transferred to a "liquid reserve" account at KeyBank in the name of DBSI Realty, which is a DBSI Inc. bank account. From there, the money was consumed in operations. The entire sum of $4,479,600 was booked as a loan receivable owed by DBSI Inc. to 2006 Notes.

Finally, the Debtors borrowed this money immediately after Tanana Valley LLC received funds from a TIC investor and used that TIC money to repay 2006 Notes. On January 29, 2008, Tanana Valley LLC received $5,055,848 from a single TIC investor in the Cavanaugh V parcel.

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[304] RP 24.

[305] BN 45. Control Group member Mayeron, himself an investor in the 2006 Notes, acknowledged that it was his understanding as an investor that 2006 Notes proceeds were to be used only for real estate investment purposes and not for general company operations. September 2009 Mayeron interview at 127:24-128:6.

It used $3,259,000 of those funds to repay a portion of the initial $26,350,000 principal borrowed from 2006 Notes.[306] The remaining $1.8 million was available for use by the Debtors. That Debtors still required the loan for $4,479,600 to provide additional cash for operating capital within days of receiving significant TIC funds is strongly indicative of a severe cash flow problem in which TIC sales alone were not sufficient to sustain the operations of Debtors' business.

**(2) June 2008 Loan from 2006 Notes: Up to $3,398,284**

On June 4, 2008, the Debtors' loan committee approved a loan from 2006 Notes in the amount of $3,398,284. The full amount of this loan was not funded – only $1,447,640.26 was disbursed from 2006 Notes against this loan. Even though the loan was not fully funded, 2006 Notes Corporation recorded a modification to the original mortgage adding $3,398,284 to the loan principal, which the modification represented was $18,151,732, bringing the total recorded indebtedness on the Tanana Valley property to $21,550,016.

Analysis reveals the following additional problems with this loan:

- The loan amount was justified using highly questionable internal calculations of the value of the property.
- The loan proceeds were distributed to Kastera, a non-Debtor entity.

The "fair market value" used to justify this additional borrowing was massively inflated. The purpose of the additional loan was to develop a 24-acre residential parcel of the Tanana property. This parcel is a subset of the portion of the property that is "north of the canal" and that was not sold to TIC investors. Kastera justified the request for this loan based on a third party commercial appraisal that had been obtained a year earlier (in June 2007) for a commercial

[306] RP 27.

lender. That appraisal concluded that, while the value of the 24-acre parcel at that time was $3,600,000, "at completion" the parcel would be worth $8,010,000.[307]

"Completion" is not defined in the records reviewed by the Examiner, but Debtor-provided documents indicate that this parcel was not "complete" at the time of the Petition.[308] Nevertheless, Kastera used this valuation of $8,010,000 to calculate the amount of collateral available for borrowing on the Tanana Valley property, which permitted Kastera to justify additional borrowing against the property that it would have been unable to justify using the $3,600,000 valuation.

Using the $8,010,000 valuation, Kastera calculated that the value of a 63.6 acre portion of the Tanana Valley property that contained the 24-acre residential parcel and had not yet been sold to TIC investors was over $15,000,000. In other words, Kastera created a valuation of an area constituting 1/3 of the original 177-acre Tanana Valley parcel at more than 50 percent of the original purchase price of the property, notwithstanding the poor actual performance of the real estate market in 2007 and 2008. Kastera further calculated that $9,422,000 in then-current borrowings were outstanding against the 63.6-acre portion of the Tanana Valley land. Based on this, Kastera calculated that $3,398,284 remained available for borrowing against the property, given the 85 percent LTV restriction of the 2006 Notes PPM.[309]

Had Kastera based its value calculation instead on the $3,600,000 valuation, the value of the 63.6-acre parcel would have been around $10.4 million -- insufficient to support even the then-existing $9.4 million debt under an 85 percent LTV ratio. Kastera therefore needed to use

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[307] RP 65.

[308] An "estimate of percent complete," prepared post-petition by a DDRS employee, concluded that the portion of the Tanana Valley property on which the $8,010,000 appraisal was obtained (Residential Phase One) was only 70% complete as of the Petition Date. RP 64.

[309] RP 65.

the higher valuation of the property at its as-yet-unattained "completion" to justify the additional borrowing of funds.

The $1,447,640.26 borrowed using this valuation was disbursed in multiple phases to Kastera. This amount was not fully traced, but analysis of Kastera's financial records does reflect expenditures in connection with Tanana Valley totaling about $1.4 million. Most of these expenses were for work such as trenching, excavation, and engineering.

### C. Legacy Hills

#### 1. Introduction

Legacy Hills is a 660-acre parcel of land in Eagle, Idaho. In August 2005, Legacy Hills Development LLC (Legacy Hills LLC), a subsidiary of DBSI Inc., acquired development rights, but not ownership rights, in this property. Legacy Hills LLC did not acquire ownership rights in the property until August 31, 2007. However, both before and after that date, DBSI Inc. utilized the property as "security" on existing debt owed by other properties to the 2005 Notes Corp in order to appear to satisfy on paper the 85 percent LTV requirement of the 2005 Notes proceeds. In addition, DBSI Inc. used Legacy Hills LLC and the property to permit the borrowing of additional funds from other internal DBSI funding sources, including Master Leaseco and REF, in order to fund company operating expenses. The manner in which this property was acquired reflects several problematic practices of the Debtors, including:

- The use of questionable internal value assessments to justifying borrowing from internal company funding sources.
- Year-end reallocations of collateral to create the impression of satisfying the 85 percent LTV ratio required in Notes offering materials.
- Creation of corporate records and ledger entries that do not accurately reflect the transactions they purport to describe.
- Failure to secure indebtedness to the investor-funded 2005 Notes Corp in violation of the applicable PPM.

- The use of property not yet owned by DBSI or its affiliated entities as "collateral" for borrowing investor funds at required LTV ratios.

- The use of investor funds for general corporate operations, contrary to permitted purposes under PPMs.

- Involvement in the transactions by various entities in the DBSI Group, some of which are currently Debtors and some of which are currently non-Debtors.

### 2. Background and Acquisition of Property

DBSI Inc. formed Legacy Hills LLC on July 15, 2005 with Douglas Swenson listed as its sole manager.[310] The same day, Legacy Hills LLC acquired a development interest in the 660-acre parcel of Legacy Hills land pursuant to a "Subdivision Development and Purchase and Sale Agreement" with the purchaser of the land, Legacy Investments LLC, an unrelated entity.[311] The principal of Legacy Investments was Gregg Olsen, who is also unrelated to DBSI and its affiliated companies.

According to Olsen, Legacy Investments had a contract to buy the Legacy Hills property for $5.4 million.[312] Olsen did not provide, nor has the Examiner seen, a copy of this contract. Olsen lacked the cash to purchase the land himself and believed that he could not obtain bank financing to acquire the property because it was not entitled.[313]

[310] RP 29. DBSI Inc. replaced Swenson as manager in November 2005. RP 30.

[311] RP 31.

[312] Interview of Gregg Olsen, August 13, 2009 ("G. Olsen interview").

[313] Entitled land has received the zoning and other use designation approvals from cognizant government bodies that are prerequisites to developing the land. Obtaining entitlements can be a lengthy and costly process, and there is risk that the desired entitlements may not be granted, which can significantly impact the value of the land. Olsen believed that traditional lenders would not lend money to acquire unentitled land.

In an effort to obtain the necessary financing, Olsen sought out a partnership arrangement with Kastera. While he had no previous relationship with either DBSI or Kastera, he was referred to Kastera and Reeve specifically, although he cannot recall by whom.[314]

Notwithstanding his understanding that he was partnering with Kastera, Kastera had no apparent legal or financial involvement in the project. Rather, as stated *supra*, his agreement was with Legacy Hills LLC, a subsidiary of DBSI Inc. Reeve signed this agreement on behalf of Legacy Hills LLC as its president, but at the time he was not an officer of DBSI Inc., was never a manager of Legacy Hills LLC, and the Examiner has not seen documentation confirming that he was an officer of Legacy Hills LLC.

Pursuant to the Subdivision Development and Purchase and Sale Agreement with Legacy Investments, DBSI Inc. (not Kastera or Legacy Hills LLC) loaned Legacy Investments $5.4 million. This loan was to be repaid from proceeds of the eventual sale of improved land. Once the loan principal was repaid, the parties would split any eventual land sale proceeds 50-50. In exchange for this loan, Legacy Hills LLC acquired the right to develop the property and the right to a portion of the eventual proceeds from the sale of the land.[315]

On August 10, 2005, Olsen's company, Legacy Investments, acquired the land in an exchange pursuant to IRC Section 1031 from the prior owner through a qualified intermediary.[316] DBSI Inc. and Legacy Investments executed and recorded a deed of trust in favor of DBSI Inc.

[314] G. Olsen interview.

[315] RP 31.

[316] RP 32.

securing the loan of $5,415,612.[317] Legacy Investments also executed a promissory note reflecting the debt.[318]

According to Olsen, over the next two years Kastera engaged in efforts to entitle the land. However, to his knowledge, the land was never entitled.[319] Olsen also was paid "independent contractor" fees of $218,000.[320] Olsen acknowledges he did no work to earn these fees. Instead, he characterized them as compensation for the opportunity cost of awaiting completion of Kastera's entitlement efforts.[321] The Examiner has not seen any agreement in which DBSI or its affiliated entities agreed to pay these fees to Olsen.

In 2007, Olsen and Kastera personnel began discussing the possibility of a buyout of Olsen's ownership interest in the Legacy Hills land. Olsen asked Kastera personnel to make him an offer on his interests.[322] The agreements between Olsen and DBSI do not themselves grant an option to DBSI or Kastera to buy the undeveloped land, and Olsen was not required to repay the loan from DBSI Inc. until July 2010.

In connection with the buyout negotiations, Olsen recalls having been presented with information about interest accrued on the loan and expenses incurred on the property.[323] He recalled that DBSI's total "investment" in the property as of August 2007 was represented to him as having been about $7.7 million.[324]

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[317] RP 34.

[318] *Id.*

[319] G. Olsen interview. A portion of the Legacy Hills property, called "Trailhead," was entitled in June 2008.

[320] RP 35. The Examiner has not traced this payment to verify the amount or determine the source of the cash.

[321] G. Olsen interview.

[322] RP 35.

[323] Olsen did not recall having paid interest on the loan at any time.

[324] The Examiner has not reviewed any records reflecting this amount and did not trace the additional $2.3 million that Olsen claimed he was told had been invested in the property.

In a letter signed by Tom Morris on behalf of Legacy Hills LLC and written on Kastera letterhead, Kastera made an offer to Olsen requiring him to choose one of two options. Either he would sell Legacy Hills LLC his ownership interest in exchange for a cash payment of $1,000,000, or he would purchase Legacy Hills LLC's development rights by paying it the loan principal, interest, costs and expenses, plus $1,000,000.[325] Olsen does not believe that he could have gotten regular bank financing necessary to pay Legacy Hills LLC the requested sum because of the limited availability of traditional financing to purchase unentitled land.[326]

Olsen claims that he did not want to sell his interest in the property at that time, and it is not clear that there was any legal requirement for him to choose either option proposed by Kastera (unless DBSI Inc. was exercising its foreclosure rights under the Deed of Trust, of which the Examiner has seen no evidence). Nevertheless, he felt that he was "over a barrel" and that selling his ownership interest to DBSI was in his best interest at the time.[327]

Olsen does not know the source of the $1,000,000 Legacy Hills LLC used to buy his interest in the property, but he recalls hearing that the money was provided by Douglas Swenson because money was tight at DBSI.[328] Douglas Swenson's bank account statement reflects a $1,000,000 wire transfer to Olsen on August 31, 2007.

On August 31, 2007, Olsen deeded the Legacy Hills property to Legacy Hills LLC.[329]

[325] RP 35.

[326] G. Olsen interview.

[327] *Id.*

[328] G. Olsen interview.

[329] RP 33.

### 3. Analysis of Transactions in Connection with Legacy Hills Project

#### a. Funding of Initial Loan to Legacy Investments

According to the Examiner's analysis, the cash for the loan to Legacy Investments ($5,415,612) was actually paid at closing on August 10, 2005 by FOR 1031/Spectrus. It appears that at the time Spectrus had sufficient cash on hand to pay this money without obtaining financing. However, DBSI Inc. received the deed of trust.[330]

Several months later, FOR 1031 was repaid by DBSI Inc. In October 2005, REF loaned Legacy Hills LLC $4,590,000, or 85 percent of $5.4 million.[331] Legacy Hills LLC never received this money; rather, DBSI Inc. received it and paid it to FOR 1031. As of October 27, 2005, DBSI's records reflected that Legacy Hills LLC owed this amount to REF and DBSI Inc. owed the same amount to Legacy Hills LLC.

#### b. Year-End Manipulations of Receivables Associated with Legacy Hills LLC

The Examiner's review of the Legacy Hills project uncovered a pattern in which the Debtors manipulated their accounting records, primarily with respect to audited entities, immediately prior to year-end. These manipulations of loans relating to the Legacy Hills project are addressed in further detail below.

##### (1) Manipulation of Loans from REF

The $4,590,000 loan from REF to Legacy Hills LLC was never repaid. Rather, the Debtors' accounting records were manipulated immediately prior to year-end 2005 to make it

[330] RP 34.

[331] RP 36. This loan was assigned the same day from REF to Title One, a title company. The Examiner did not determine why or how this assignment occurred.

appear as though it was. Then immediately prior to year-end 2006, Debtors again manipulated accounting records relating to this loan.

On December 31, 2005, DBSI reclassified the booked debt showing that DBSI Inc. owed Legacy Hills LLC money to a "land asset" of Legacy Hills LLC, but Legacy Hills LLC's books still reflected that it owed REF $4,590,000. Then on December 31, 2006, the debt to REF was removed from the books of Legacy Hills LLC entirely, through a series of debits and credits, ultimately being folded into the existing receivable between DBSI Inc. and DRR.[332] No cash has ever been applied to reduce this receivable.

**(2) Manipulation of Loans from 2005 Notes**

On December 31, 2006, Debtors' accounting records reflect in a journal entry that 2005 Notes Corp loaned $11,158,993 to Legacy Hills LLC. But this is not what happened. In fact, no cash was disbursed in connection with this apparent loan. It simply represents an accounting entry by which portions of the indebtedness of other properties to 2005 Notes were combined and shifted to Legacy Hills LLC. The Debtors' accounting records referred to these debt transfers as "reallocate collateral" and "record YE [year-end] payoffs." The journal entries that "reallocated collateral" were actually made on April 27, 2007, well after the December 31, 2006 date of the transactions they purport to document.

These debt reallocations occurred because the Debtors were overleveraged in certain properties at the end of 2006. In this case, funds contributed by investors in the 2005 Notes Corp had been loaned in amounts exceeding (in some cases by a substantial amount) the 85 percent LTV ratio required in the 2005 Notes PPM. The reallocations of debt and collateral were

[332] The net effect of this manipulation was to reduce the amount that DBSI owed DRR in an intercompany receivable account.

backdated after calendar and fiscal year-end likely as a result of Douglas Swenson's annual review of the collateralization of loans.[333] These backdated debt and collateral reallocations ensured that, when audited, the books and records of Note companies would appear to be in compliance with the 85 percent LTV ratio requirement for loans of investor money.[334]

In the case of the Legacy Hills LLC debt to 2005 Notes, the net effect of the April 27, 2007 reallocations was to show on paper that, as of December 31, 2006, the 2005 Note proceeds were "secured" at 85 percent LTV in a variety of projects. But the reallocation was accomplished on paper only, with the Debtors reducing 2005 Notes debt on certain projects while increasing it on others. No money was actually repaid to the 2005 Notes in connection with these collateral reallocations, and no cash was paid out of the 2005 Notes or otherwise transferred.

Further, in order to use this debt reshuffling to make it appear that the 85 percent LTV requirement was met, property valuations were prepared that reflected inflated property values. The Debtors obtained an internal valuation of Legacy Hills that significantly overstated its value. This internal valuation estimated Legacy Hills at year-end 2006 to be worth almost $19,500,000 -- over 3.5 times the amount of money for which Olsen had acquired it just over a year earlier, with no improvements having been made to the land (including entitlements) and during a global real estate market collapse.[335] Indeed, the Debtors prepared assessments of the fair market value of most of their properties shortly before the Petition Date. At that time, the Debtors estimated

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[333] "Every year-end they would have Doug Swenson review the whole collateral and make any changes that he wanted to make, and I remember a year . . . . that we waited a very long time for him to get around to doing that. . . ." Miller interview at 127:3-8.

[334] "We are making them back into December so that -- basically for the audit, everything would be correct for year-end." *Id.* at 127:24-128:1.

[335] RP 37.

the present value of Legacy Hills to be $5,416,726 without entitlements.[336] In an interview with the Examiner, a company employee acknowledged that the Legacy Hills value assessment was inflated.[337]

Debtors obtained the internal valuation of $19,500,000 from a Kastera employee, Paul Hilbig. Debtors knew or should have known that Hilbig lacked sufficient qualifications to perform these valuations. Hilbig, who made the Debtors aware of his lack of qualifications to prepare appraisals of real estate, was not a certified or trained appraiser. He had a Masters Degree in Real Estate and had taken one class in property appraisal.[338]

And significantly, when Hilbig provided the value estimate of Legacy Hills and over $11 million of debt to 2005 Notes was transferred to the property, it was not even owned by any DBSI-affiliated entity. It was still owned by Olsen. Indeed, no deed of trust or security instrument was filed securing the December 31, 2006 "loan" of $11,158,993 to Legacy Hills LLC at the time it was made. As described more fully later in this Report, the loan was "papered" internally only.

The $11,158,993 debt to 2005 Notes was manipulated to make it appear that 2005 Notes Corp loans were adequately secured by the Legacy Hills and other properties. Indebtedness "secured" by three other properties -- Hill Road, Tiegs, and Pristine Meadows -- was transferred to Legacy Hills LLC and, in much smaller amounts, three other DBSI properties to make it appear that indebtedness was adequately secured by properties, consistent with the lending

[336] RP 38.

[337] September 2009 Duckett interview at 38-39.

[338] Hilbig interview.

requirements of the 2005 Notes Corp.[339] The largest component of the manipulated debt to 2005 Notes was $8,000,000 owed on Hill Road, followed by $4,558,993 owed on Tiegs.

Hilbig had prepared internal valuations of Hill Road and Tiegs, in addition to Legacy Hills and several other properties.[340] He assessed Hill Road as worth $4,928,230 and Tiegs, also referred to as Tiger 979, as worth $13,622,000.[341] At the time, Hill Road was "securing" $11,475,000 of debt from 2005 Notes (more than double the valuation by Hilbig), and Tiegs was "securing" $16,137,693.[342] Hilbig recalled that certain Debtor personnel were displeased with his valuation of Hill Road. He understood that the valuations related to the amount of money that could be borrowed against the property, and believed that money had already been borrowed against the property before he was asked to prepare a valuation (which indeed it had). He felt he was being asked to reach a higher value conclusion than he had, but he did not change his value conclusion for Hill Road.[343]

The properties were therefore "securing" more debt than even the internal valuations relied upon by the Debtors assessed them as being worth, but Debtors "transferred" sufficient debt to Legacy Hills LLC to bring the debt on the Hill Road and Tiegs properties to or below 85 percent of the internal valuation. The following table shows these debt reallocations:

[339] The three other properties that received 2005 Notes debt were Beacon, Peacock 129, and Cobra 370. The Examiner did not trace these reallocations of debt.

[340] RP 44; RP 45.

[341] The Examiner has not reviewed the reasonableness of these appraisals. However, the Examiner is aware that Hill Road had been acquired in October 2005 for $3,750,000.

[342] RP 46; RP 47.

[343] Hilbig interview.

| Property | Legacy Hills | Hill Road | Tiegs |
|---|---|---|---|
| 2005 Notes Debt 12/31/06 | $0 | $11,475,000 | $16,137,693 |
| Hilbig Assessed Value | $19,499,050 | $4,927,230 | $13,622,000 |
| 85 Percent of Assessed Value | $16,574,193 | $4,188,996 | $11,578,700 |
| Variance: Debt minus 85 Percent of Value | ($16,574,193) | $7,286,005 | $4,558,993 |
| Debt Added / (Reduced) on 12/31/06 | $11,158,993 | ($8,000,000) | ($4,558,993) |
| 2005 Notes Debt 1/1/07 | $11,158,993 | $3,475,000 | $11,578,700 |

Contrary to the requirements of the 2005 Notes PPM, the new "debt" transferred to Legacy Hills was not secured by a recorded first deed of trust or mortgage.

**(3) Manipulations of Legacy Hills Debt to REF Debt to Permit Commercial Borrowing on Another Property**

On August 31, 2007, additional debt to REF was recorded on Legacy Hills LLC's books in the amount of $4,160,000, increasing an existing receivable (described further below) to $5,693,000, where it remains today. Like the $11 million reallocated debt described *supra*, this increased debt does not represent cash at all. Rather, it too was a reallocation of debt to Legacy Hills LLC from two other projects, Broadway ($3.160 million) and Shadow Valley ($1 million). Documents evidencing this loan were executed but no lien was recorded.[344]

The Broadway project comprised a shopping center and an unimproved lot. REF loan money totaling $3,160,000 was outstanding on the overall project in August 2007. DBSI sought a $4,000,000 loan from a commercial lender, Bridger, but recognized that it would need to repay the REF loan before closing the Bridger loan. Rather than repay the loan, DBSI considered how it could reallocate the debt to permit the commercial borrowing to go forward. One idea was to

[344] RP 48. By the terms of the REF PPM, promissory notes were to be secured by liens "to the extent allowed by any senior liens," but stated that "there is no assurance at this time that over the term of the Bonds all of the Loans will be secured by liens."

use the vacant lot, which was worth $475,000, as collateral for the $3,160,000 loan. However, it was noted that the vacant lot could not provide enough collateral, so the loan would either need to be paid off or additional collateral would need to be located.[345] That additional collateral became Legacy Hills, to which the additional debt was transferred. The loan was granted on August 7, 2007.[346] The Examiner has not further reviewed the Broadway property or traced the use of these loan proceeds.

#### c. Additional Borrowing by Legacy Hills LLC to Fund Operations

On January 16, 2007, Douglas Swenson, on behalf of DBSI Inc. as the sole member of Legacy Hills LLC, executed a promissory note for $825,000 with Master Leaseco. The cash proceeds of this loan from Master Leaseco went to DBSI Inc., not Legacy Hills LLC. Along with proceeds from Master Leaseco relating to several other properties (including Pristine, Beacon, Cobra 370, and Black Cat), this amount was applied to reduce a negative cash ledger balance on DBSI Inc.'s books. DBSI's files reflect that this note was repaid on August 31, 2007.[347] In fact, it was not: the Examiner's review determined that on that date the debt was simply reallocated to another DBSI property, Off Brook.

On July 31, 2007, the Debtors borrowed $1,533,000 from REF against Legacy Hills. It is again significant to note that the Debtors did not own the Legacy Hills land at this time. Debtors' internal accounting records reflect and the Examiner's review determined that, while this loan was recorded as owing from Legacy Hills LLC to REF, Legacy Hills LLC never received cash from this loan. Instead, cash was provided to DBSI Inc. from REF. This money

[345] RP 49.

[346] RP 50.

[347] RP 51.

was used by DBSI Inc. to purchase a property called Indiana & 86th, which is unconnected with Legacy Hills. Despite not receiving any discernible benefit from this loan, Legacy Hills LLC still carries a debt on its books to REF for this amount. The Examiner did not locate any recorded documents reflecting this loan.

#### d. Creation of Loan Records Relating to Legacy Hills Debt that Do Not Fairly and Accurately Reflect Transactions

The Examiner identified false loan records that were created to support the reallocation of debt in connection with Legacy Hills.

As noted previously, no DBSI Group entity had an ownership interest in Legacy Hills prior to August 31, 2007. Nevertheless, the Debtors, through REF and 2005 Notes Corp, borrowed money purportedly in connection with, and secured by, that property prior to that date. Douglas Swenson later executed loan documents falsely indicating that Legacy Hills LLC's $11 million debt to 2005 Notes was incurred after the property was acquired.

On December 29, 2006, an "Income Property Loan Application" was created requesting the funding from 2005 Notes Corp. A "Term Loan Agreement" and "Promissory Note and Security Agreement" were executed, and a document titled "Mortgage" was also executed and notarized on that same date. All these documents reflected a loan amount of $11,158,993 and were signed by Douglas Swenson. But none of these documents were ever recorded. The 2005 Notes Corp PPM required that loans from its investors' proceeds be secured by a first deed of trust or mortgage on the property. In spite of this, Hassard, the Secretary of 2005 Notes Corp, executed a certificate accompanying the December 2006 income property loan application acknowledging that no Deed of Trust had been recorded.[348] After Legacy Hills LLC acquired

[348] RP 39; RP 40.

the property, documents were created that were identical in every respect to the "Income Property Loan Application," "Mortgage" and "Promissory Note and Security Agreement" dated December 2006.[349] The date of this second set of loan documents was August 31, 2007. The August 31, 2007 mortgage was recorded. Only the August 31, 2007 "loan" documents were made available on the database maintained by YCST, the Debtors' bankruptcy counsel. The December 2006 loan documents were physically maintained at the Debtors' offices in Boise and were only located after the Examiner's retained professionals traveled to those offices and searched for additional records.

Inaccurate documentation also exists with respect to Legacy Hills LLC's REF debt, described *supra*. The $4,160,000 in debt to REF described earlier was transferred to Legacy Hills LLC on August 31, 2007 and added to an existing loan from REF to Legacy Hills LLC of $1,533,000, creating a total debt to REF of $5,693,000. Debtors' files, however, contain two amendments to the promissory note for the initial $1,533,000 loan from REF falsely indicating that an additional $3,160,000 loan was made on August 31, 2007 and a $1,200,000 loan was made on October 31, 2007. There was no actual loan on October 31, 2007, and a $4,160,000 loan had been booked on August 31, 2007. As a result, for a period of time $1,000,000 of debt to the REF was not evidenced by a promissory note as required by the REF PPM. Although the numbers in the Debtors' promissory notes do not add up, the second amendment to the promissory note does accurately reflect the total debt of Legacy Hills LLC to REF: $5,693,000.

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[349] RP 41; RP 42; RP 43.

### D. North Jarrell

#### 1. Introduction

North Jarrell is a 565-acre parcel in Texas. In June 2007, DBSI Inc. formed DBSI Jarrell I-35 LLC for the purpose of acquiring this property. The property was acquired in June 2007 from unrelated third parties.

DBSI improperly used the North Jarrell property to improve the apparent financial performance of funds contributed by investors by:

- Establishing a fair market "value" for the property equal to the price at which DBSI chose to market it to TICs, despite the fact that Jarrell I-35 LLC had been unable to sell the property at a lesser price for approximately a year.
- Selling the property owned by one DBSI subsidiary to another DBSI subsidiary at a higher price for the express purpose of manufacturing a certain "return on investment" to the initial investors in the property, without regard to actual property value or performance, but consistent with the marketing materials provided to those initial investors.

The following is a more detailed discussion of the acquisition and subsequent financial transactions relating to the property.

#### 2. Property Acquisition, Subsequent Financing, and Resale

In May 2007, DBSI Jarrell I-35 LLC purchased the property for $7,497,377 from three LLCs that co-owned the property.[350] 100 percent of the funds to purchase the property was provided by the Land Improvement Development ("LID") Fund. This amount was recorded as an investment in "Project 7" in the LID's books and records.

[350] RP 52.

DBSI did not obtain an appraisal of the property before acquisition. Shortly after acquisition, however, DDRS obtained an appraisal from CBRE that concluded the property was worth $7.7 million.[351]

**a. Loan from Southwest Bank**

In November 2007, the Board of Directors of DBSI Inc. authorized Jarrell I-35 LLC to borrow $3,920,000 from Southwest Bank, which DBSI Inc. would guarantee.[352] The loan closed on November 9, 2007, and Southwest Bank recorded a deed of trust against the property that same day.[353] On November 16, 2007, the loan proceeds were received by the LID fund. According to the Examiner's analysis, the LID Fund used these loan proceeds (which totaled $3,850,000 after payment of taxes and fees) to reduce the amount of its investment in the North Jarrell project (Project 7).

**b. Resale of Property to Another DBSI Subsidiary**

In June 2008, the North Jarrell property was sold from DBSI Jarrell I-35 LLC to a newly-formed LLC, DBSI North Jarrell I-35 LLC, for $9.2 million.[354] According to a memorandum prepared by Mark Loutensock, DBSI Development's Operations Manager, the purpose of this sale was solely to return funds to the LID, and the sale price was set at a point that generated a certain return on investment to the LID.[355] The return on investment that was targeted was 20

[351] RP 53.

[352] RP 54.

[353] RP 55.

[354] RP 56.

[355] RP 57 at 13-15. The memorandum reflects that the LID Fund was experiencing cash flow problems, and had other pressing cash needs relating to other projects (specifically, the "Telecom office" and "Pin Oak"). The LID Fund was also having difficulty obtaining loans to develop the Jarrell property, although the memorandum does not acknowledge the Southwest Bank loan. Loutensock therefore recommended selling the Jarrell property at a price of approximately $9.2 million in order to generate an acceptable 20% rate of return on the investment.

percent, which was consistent with the rate of return stated in the LID PPM used to market that fund to investors.

The full amount of this purchase price was funded with investor cash loaned by 2005 Notes to North Jarrell I-35 LLC. To justify this loan (which was subject to an 85 percent LTV ratio requirement), Loutensock employed an arbitrary and highly inflated "fair market value" for the property. Loutensock assigned the property a value of $12,442,376, which was the amount at which the property was to be offered for sale to TIC investors.[356] However, by this time, Jarrell I-35 LLC had been trying for a year without success to sell the property at an even lower price.[357] There was no justification of why, during a poor global real estate market and without significant, if any, improvements, the property had increased so dramatically in value since its purchase for $7.5 million a year earlier -- and was worth more than the price at which it had been languishing on the market for a year.

The 2005 Notes PPM required that the value estimate employed to justify the loan represent the fair market value of the property and be supported either by a third party appraisal or reached using industry acceptable valuation methods.[358] In this case, neither criterion was met to justify the $9.2 million loan used to fund the resale of the property between the two DBSI subsidiaries. Recent value estimates based on input from disinterested third parties support that this valuation was wildly exaggerated. In connection with the bankruptcy, Debtors estimated the

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[356] RP 57.

[357] RP 58.

[358] BN 28.1 at 16.

value of many of their properties. Debtors obtained an assessment of the Jarrell property by a broker in Texas that ranged from $2,542,500 to $3,390,000.[359]

In June 2008, DBSI Jarrell I-35 LLC deeded the property to a newly created LLC, DBSI North Jarrell I-35 LLC.[360] A deed of trust between 2005 Notes and North Jarrell I-35 LLC was executed and recorded reflecting the debt of $9,244,981.[361] The LID Fund paid Southwest Bank $3,934,373.33 from these loan proceeds as repayment for the loan plus interest.

### 3. Sale of TIC and LLC Investor Interests

North Jarrell I-35 LLC sold TIC interests in the property pursuant to a June 3, 2008 PPM. Under that PPM, TIC interests in the property were based on a sales price of $12,442,373; TIC investors could purchase a percentage interest in the property, with the sale price based on the prorated portion of $12,442,373. The offering also included an LLC subscription portion, in which investors could buy membership shares in North Jarrell I-35 LLC. These shares would not vest nor would the funds used to buy them be applied toward the property cost until all anticipated sales of TIC interests had been made. Pending the closing of the TIC offering, the funds contributed by putative LLC investors were held in escrow.

The TIC offering on the North Jarrell offering never fully sold. Only $3,285,663.39 was raised from TIC investors. Of this amount, $2,525,213 was used to repay 2005 Notes. Mortgage releases were executed but not recorded in some cases until January 2009. The remaining funds from TIC investors were used for operating expenses of DBSI Properties.

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[359] RP 60. Debtors' internal calculation of the value of the property in connection with the bankruptcy was discounted by the percentage of the property that had been sold to TIC investors, and ranged from $1,780,314 to $2,373,753.

[360] RP 56.

[361] RP 59.

$2,560,096.06 was received from putative investors in North Jarrell I-35 LLC. This money was deposited into an account at M&I Bank, where it remained until November 14, 2008. On that date, it (along with other funds, altogether totaling roughly $9 million) was swept by M&I Bank, which currently retains possession of this money.

#### 4. Additional Borrowing Against Property

After selling TIC interests in the property, in August 2008 North Jarrell I-35 LLC borrowed an additional $962,050 from the 2005 Notes.[362] This additional borrowing was based on the same inflated valuation of $12,442,373 used to justify the initial loan from 2005 Notes. To justify this additional loan, North Jarrell I-35 LLC deducted the percentage of the property sold to TICs from the valuation, and determined that it could borrow up to 85 percent of the resulting adjusted value.[363]

These loan proceeds were paid to DBSI Inc. and then transferred to DBSI Properties' Operating Account, where it was consumed in operations of DBSI Inc. Significant debits from that account around the time the funds from 2005 Notes were deposited included a $660,000 transfer to DBSI Inc.'s liquid reserve account, a $375,000 transfer in connection with another project (Arbors of Brookhollow), and an outgoing wire transfer of $100,000. These uses were contrary to the PPM for the 2005 Notes, which only permitted use of those investor funds to "acquire, develop and finance real estate properties prior to their sale, resale, third-party financing, or syndication," and which stated that "None of the proceeds will be used for [DBSI Inc.'s] operating expenses. . . ."[364]

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[362] This additional loan was evidenced by a deed of trust dated August 21, 2008 but not recorded until November 5, 2008. RP 61.

[363] *See* RP 62.

[364] BN 28.1.

# X. STELLAR AND THE TECHNOLOGY COMPANIES

## A. Overview

During his initial consultations with parties in interest in this case, the Examiner was advised that the DBSI Group had transferred large sums of money to the entities referred to as the Technology Companies in this Report. The Examiner was further advised that these transfers started as early as the late 1990's and continued well into 2008, just prior to the Petition Date. Several parties questioned the wisdom and propriety of these transfers and virtually all of the parties with whom the Examiner consulted wanted to know whether some of these funds were transferred back to Douglas Swenson and other Insiders or whether Douglas Swenson and the Insiders received other, separate benefits as a result of these transfers.

The Examiner, after an extensive review and investigation of this matter, has reached three significant conclusions about the funds transferred to the Technology Companies.

First, the Examiner has confirmed that, indeed, large sums of money were transferred to the Technology Companies. The exact amounts of these transfers were not readily apparent because of periodic conversions of debt to equity, the shifting and reclassification of debt, and the use of other accounting devices. After extensive analysis, the Examiner concludes that DBSI-related entities transferred or made loans totaling $219,219,536 to the Technology Companies from 1999 to 2008.

Second, the evidence compiled by the Examiner, which includes the direct review of accounting records for those Technology Companies for which records were available and interviews of the management of certain of the Technology Companies, indicates that all of the funds actually provided to the Technology Companies was used for their routine business operations. For the five currently operating Technology Companies (Stellar, BioReaction, Wavetronix, GigOptix, and Western Electronics), the Examiner did not find any evidence that the funds that actually went to these entities from DBSI-related entities were subsequently transferred to Douglas Swenson or other Insiders or that Douglas Swenson and the Insiders received any benefits, except for stock ownership in the companies. For the Technology Companies that are no longer operating (iTerra, EmergeCore, UltraDesign, BioMatrix, Western Delta, and Strategic Finishing), fewer records were available and former employees were not interviewed. The Examiner did not find evidence indicating that any of the funds those companies received from DBSI were ultimately transferred to Insiders or funneled to other DBSI-related entities.

Third, the decision to fund and to continue funding the Technology Companies was made by Douglas Swenson and/or by select members of the Control Group. The Examiner, however, was unable to determine why Douglas Swenson and others continued to authorize the transfer of substantial sums of money to these entities even as (i) the DBSI Group suffered significant cash flow problems; (ii) certain of the Technology Companies failed, resulting in losses of tens of millions of dollars; (iii) the operating Technology Companies continued to require substantial cash infusions to continue to operate; and (iv) virtually no cash flowed upstream from the Technology Companies to the DBSI Group at a time when the DBSI Group badly needed cash. Indeed, several of the persons interviewed by the Examiner questioned the valuations on which continued funding of these entities was premised.

Some individuals interviewed by the Examiner suggested that DBSI's continued funding of the Technology Companies was based on the belief that one or more of these companies could be eventually be sold for a substantial profit and that such a sale would off-set the heavy losses already incurred with the failed Technology Companies and alleviate the substantial cash flow problems the Debtors were suffering. Moreover, the DBSI Group was so deeply invested in the

Technology Companies by the early 2000's that Douglas Swenson and the others may have felt they had no choice but to continue to fund these entities and to avoid additional write-downs. With respect to the decision to continue to fund these entities, the Examiner has concluded that Douglas Swenson was principally responsible for establishing the inflated valuations of the Technology Companies used to justify transfers from the Bond and Note Funds.

## B. Stellar Technologies LLC

### 1. Background

Stellar Technologies LLC ("Stellar") is a holding company based in Boise, Idaho that was formed in March 2000.[365] Stellar is a DBSI Non-Debtor Entity. Stellar was created solely to hold ownership interests in, assist in the management of, and provide capital and financing to a variety of technology start-up companies ("Stellar Technology Companies"). Stellar had no revenue-generating operations of its own and existed solely as a holding company for the Stellar Technology Companies and a conduit through which to loan or advance monies to the Stellar Technology Companies. The Stellar Technology Companies include BioReaction, Wavetronix, iTerra, GigOptix, UltraDesign, BioMatrix, and EmergeCore. Douglas Swenson was the driving force behind the investments in and financing provided to the Stellar Technology Companies.

From its inception to November 2008, Stellar received and pledged its assets for funds that were booked as loans and capital contributions from four DBSI-related entities -- Investments (formerly DBSI Properties L.P.), GCC, DRR, and 2008 Notes Corp. These loans and capital contributions totaled $186,391,416. On paper, Stellar invested or loaned the majority of these funds (approximately $118 million) to the Stellar Technology Companies, and used the

[365] A detailed summary of the ownership and history of Stellar is set forth in pages 56 - 59 of the Examiner's Interim Report.

remainder to service Stellar's existing debts, to fund potential new investment projects, and for its general corporate purposes.

In order to understand the funds Stellar received from DBSI-related entities and the ultimate use of those funds, the Examiner reviewed numerous records produced by Stellar's president, Paul Judge, and conducted multiple interviews with Judge.[366] The Examiner's investigation revealed the following general conclusions regarding borrowings and capital investments made by Investments, GCC, DRR, and 2008 Notes, which are discussed in more detail below:

- **DBSI and Douglas Swenson Controlled Stellar**: Stellar was controlled entirely by Douglas Swenson and the Control Group through Investments' 62.26 percent ownership interest in Stellar, DBSI Inc.'s 54.3 percent ownership interest in Investments, and Douglas Swenson's 91.38 percent ownership interest in DBSI Inc. Moreover, throughout Stellar's history, the company was managed by a board of managers that consisted entirely of DBSI-related individuals and insiders. Swenson has been a Stellar board member since the company's formation, and throughout that time has been heavily involved in Stellar's operations and has taken numerous actions on the company's behalf, including execution of many key documents on behalf of Stellar.

- **Largely Undocumented Loans**: Almost none of Stellar's borrowings were properly documented at the time the funds were loaned, and a significant portion of Stellar's debt remains completely undocumented to this day. For portions of Stellar's debt that were documented with promissory notes and loan agreements, most of those documents were prepared years after the actual funds had been loaned to Stellar.

- **All Notes Are Past Due**: All existing notes for Stellar's debt to GCC, DRR, and 2008 Notes are past due.

- **Largely Unsecured Debt**: The majority of the funds Stellar borrowed (including the entirety of its substantial borrowings from DRR) were never secured by any pledge of collateral from Stellar. In cases where Stellar did pledge collateral, many of the security interests were not filed or perfected properly.

[366] After the Petition Date, Judge became Stellar's sole employee. Prior to the Petition Date, Stellar had a small number of accounting, legal, and support staff employees.

- **Questionable Valuations Used to Support Borrowings**: The value of the collateral pledged for Stellar's GCC borrowings -- Stellar's ownership interests in the Stellar Technology Companies -- was based on highly subjective valuations of those companies prepared by Douglas Swenson. The valuations that were used to support Stellar's GCC borrowings were highly inflated because they were based on unrealistic projections as to the future profitability of the Stellar Technology Companies, all of whom had a long history of losing substantial sums of money and had significant debt owed to Stellar. In addition, although Stellar's borrowings from 2008 Notes were based on independent appraisals of the Stellar Technology Companies performed by outside accounting and valuation firms, Stellar manipulated the data in the appraisal reports to increase the value of its collateral.

- **DBSI Inc. Frequently Used New Loans to Stellar to Make Interest and Principal Payments on Preexisting Debt Owed by Stellar**: Throughout Stellar's existence, a significant portion of Stellar's borrowings from GCC, DRR, and 2008 Notes was used to make interest or principal payments to one of the other lending entities. In particular, over $20 million booked as loans to Stellar from DRR was used to make interest and principal payments on Stellar's debt to GCC, and in 2008, the entirety of the $27.9 million Stellar borrowed from 2008 Notes was booked as reducing the amounts Stellar owed to GCC and DRR.[367] According to Judge, the decision to use additional Stellar borrowings from GCC, DRR, and 2008 Notes to make principal and interest payments on preexisting Stellar debt to GCC and DRR was made at DBSI weekly cash meetings that included DBSI employees Douglas Swenson, Reeve, Bringhurst, Duckett, and Cole, among others.[368] According to Judge, Stellar had no involvement in these decisions and only learned that new borrowings were being used to pay off old borrowings months after the transactions had occurred.

- **DBSI Controlled All Transfers**: According to Judge, DBSI employees (including, among others, Douglas Swenson, Reeve, Bringhurst, Duckett, and Cole) also decided which lending entity would be the source of funds requested by Stellar and its subsidiary companies to fund their ongoing operations.[369] Stellar did not have any involvement in determining which funding entity it would receive borrowings from. Employees of the Technology Companies did not differentiate the funding they received as coming from GCC or DRR; rather, they viewed all funding received as having been provided by "DBSI" or Stellar.

- **Cash Flow Often Did Not Match Books**: Borrowings from Investments, GCC, and DRR that were provided to the Stellar Technology Companies were recorded

[367] As discussed in the Interim Report, a significant portion of the funds used to reduce Stellar's obligations to GCC did not actually go to repay GCC bondholders, but instead were used to fund DBSI's operations.

[368] Judge interview at 50-58, 74-84.

[369] *Id.*

on Stellar's and the Technology Companies' books as a loan from Stellar to the Technology Company and a corresponding loan from the lending entity to Stellar. Nonetheless, in most instances, the actual cash did not flow through Stellar's bank accounts; rather the cash went directly from Investments, GCC, or DRR to the Technology Companies' bank accounts.

- **Stellar Is a Shell Company**: Given that Stellar exercised virtually no control over its funding and had no revenue-generating operations of its own, Stellar was simply a shell company that did not operate independently of DBSI. At most, Stellar and its employees were simply used to manage investments made by DBSI-related entities in the Stellar Technology Companies.

- **Stellar's Liabilities Have Always Exceeded Its Assets:** Throughout its existence, Stellar's liabilities, which consist mostly of its debts owed to DRR, GCC, and 2008 Notes, have greatly exceeded Stellar's assets. At the end of 2008, Stellar's balance sheet listed Stellar's total assets at $34,885,898 and total liabilities at $169,263,620. The overwhelming majority of Stellar's assets consists of debt and accrued interest it is owed from its underlying Technology Companies and its stock ownership of those companies. Nearly all of its liabilities consist of still outstanding debt Stellar owes to DRR, GCC, and 2008 Notes, as well as accrued interest on that debt.

### 2. Ownership History

According to Stellar's corporate minutes, the company was formed on March 1, 2000. The ownership structure at formation was as follows:

| Name | Shares | Ownership Percentage | Consideration Provided |
|---|---|---|---|
| DBSI Inc. | 6,000,000 | 63.83% | $550,000[370] |
| John Wasden | 1,000,000 | 10.64% | Management services |
| Thomas Var Reeve | 1,000,000 | 10.64% | Management services |
| Gary Bringhurst | 1,000,000 | 10.64% | Management services |
| Robert Spence | 200,000 | 2.12% | Management services |
| BioReaction Industries, Inc. | 200,000 | 2.12% | Purchase of assets[371] |

[370] As described in more detail below, Stellar's ledger indicates that the initial $550,000 equity contributed from DBSI Inc. actually came from Investments. The initial $550,000 of capital was used to purchase the assets of the predecessor of BioReaction. Stellar's books indicate that Investments provided Stellar with additional equity contributions totaling $3,228,438 in 2000, increasing Investment's total equity contribution to Stellar to $3,778,438 as of the end of 2000.

The day after Stellar's formation, DBSI Inc. assigned its shares in Stellar to Investments. It is unclear why the assignment was made, whether DBSI Inc. received any consideration for the transfer of its ownership interest in Stellar to Investments, or what the source of the funds DBSI Inc. used to make its initial capital contribution.

Over time, Stellar's original ownership structure did not change significantly. The majority of additional shares issued after formation were small stakes given to persons affiliated with the underlying Stellar Technology Companies in exchange for services provided to Stellar. Additional shares were provided to some EmergeCore employees in exchange for their respective ownership stakes in EmergeCore, which were transferred to Stellar. Stellar also issued 200,000 shares to Eric Mott in 2004 in exchange for his service as Director of Operations for Stellar, and granted Judge options for 1,500,000 shares of Stellar with a strike price of $0.02 per share in exchange for his service as Stellar's President. Finally, Stellar also redeemed all of the shares previously granted to BioReaction Industries, Inc. As a result of these changes, Stellar's current ownership structure is as follows:

(*Footnote continued from previous page*)

[371] The 200,000 common shares given to BioReaction Industries, Inc. at formation was also part of the transaction that led to the formation of BioReaction Industries, LLC. In addition, BioReaction Industries, Inc. received 1,200,000 preferred shares of Stellar at Stellar's formation. Over time, these shares were redeemed by Stellar.

| Name | Shares | Undiluted Ownership Percentage | Fully Diluted Ownership Percentage | Consideration Provided |
|---|---|---|---|---|
| DBSI Investments Limited Partnership | 6,000,000 | 62.26% | 53.88% | $550,000 |
| John Wasden | 1,000,000 | 10.38% | 8.98% | Management Services |
| Thomas Var Reeve | 1,000,000 | 10.38% | 8.98% | Management Services |
| Gary Bringhurst | 1,000,000 | 10.38% | 8.98% | Management Services |
| Robert Spence | 200,000 | 2.08% | 1.80% | Management Services |
| David Arnold (Wavetronix) | 66,667 | 0.69% | 0.60% | Services |
| Michael Jensen (Wavetronix) | 66,667 | 0.69% | 0.60% | Services |
| Rick Johnson (EmergeCore) | 45,666 | 0.47% | 0.41% | Redemption of EmergeCore Shares |
| Lyle Jordan (iTerra) | 100,000 | 1.04% | 0.90% | Services |
| Paul Judge (Stellar) | 0[372] | 0.00% | 13.47% | Management Services |
| Douglas Lange (EmergeCore) | 15,000 | 0.16% | 0.13% | Redemption or EmergeCore Shares |
| Eric Mott (BioReaction/Stellar) | 134,411[373] | 1.39% | 1.21% | Management Services |
| Ty Plowman (EmergeCore) | 7,917 | 0.08% | 0.07% | Redemption of EmergeCore Shares |

### 3. Involvement by DBSI-Related Individuals and Insiders

Throughout the course of Stellar's existence, the company's board has been exclusively comprised of DBSI-related individuals and insiders. In fact, every member of the Control Group

[372] Judge has not exercised any of the 1,500,000 in stock options he received when he became president of Stellar.

[373] Although Mott was granted 200,000 shares in July 2004 for his service as Stellar's director of operations, the entirety of those shares were not fully vested by the time he left Stellar's employment. The 134,411 represents the vested portion of the initial 200,000 grant.

except for Farrell Bennett has served or continues to serve on Stellar's board, including Douglas Swenson (since inception), Bringhurst (since inception), Foster (inception to December 2005), Hassard (since inception), Mott (inception to November 2008), Reeve (since inception), and Mayeron (since July 2007). The only Stellar board members who are not members of the Control Group are Wasden, who has been on the board since inception, and Judge, who has been on the board since August 2005. By virtue of their service on Stellar's board, the Control Group has controlled Stellar at all times since its formation in 2000. Moreover, the documents reviewed by the Examiner show that Douglas Swenson took numerous actions on behalf of Stellar, including executing many documents on Stellar's behalf.

#### 4. Transfers of Funds to Stellar

From 2000 to 2008, Stellar's books reflect that the company received a total of $186,391,416 from GCC, Investments, DRR, and 2008 Notes. The following table breaks down the amount Stellar's books indicate was received from each entity and the principal balance reflected as being currently owed:

| Funding Entity | Loans Booked to Stellar | Current Principal Balance Owed By Stellar |
|---|---|---|
| GCC[374] | $29,197,658 | $8,608,512 |
| DRR[375] | $104,555,654 | $117,721,421 |
| Investments[376] | $25,344,604 | $0 |
| 2008 Notes | $27,293,500 | $27,293,500 |
| **TOTAL** | **$186,391,416** | **$153,623,433** |

#### a. GCC Transfers

##### (1) Total Amount Reported As Transferred: $41,258,403

Stellar's general ledger indicates that Stellar borrowed a total of $41,258,403 from GCC from 2002 to 2008, broken up into three distinct groups: (a) $27,127,658 borrowed from 2002 to 2003; (b) 12,060,745 borrowed in 2005; and (c) $2,070,000 borrowed in 2008. Each of these borrowings is discussed below.

##### (a) 2002 - 2003: $27,127,658

From 2002 to 2003, Stellar's ledger indicates that it borrowed a total of $27,127,658 from GCC. The large majority of this amount was transferred to Stellar's subsidiary companies, with the remainder recorded as having been loaned to Stellar. Of the amounts that went to Stellar, a significant portion ($2,608,720) is shown as Stellar's books as having been sent to DBSI Inc.

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374 The $29,197,658 GCC principal transferred to Stellar does not include $12,060,745 that originally was transferred to Stellar from DRR but later transferred to GCC on June 1, 2005. This $12,060,745 is included in the $104,555,654 representing Stellar's borrowings from DRR. If the $12,060,745 amount is included in GCC total, then the total principal amount transferred to Stellar from GCC becomes $41,258,403.

375 The $104,555,654 DRR principal transferred to Stellar does not include $21,566,166 that was originally transferred to Stellar from Investments but was subsequently transferred to become a Stellar liability to DRR in 2002. If this amount is included, the total principal Stellar received from DRR becomes $126,121,820.

The current principal balance Stellar owes to DRR includes $28,695,199 in accrued interest that was converted to principal at the end of 2007.

376 Stellar's books show that $21,566,166 Stellar received from Investments was transferred to DRR in 2002. The remaining $3,778,438 that Stellar received from Investments was converted to equity.

The chart below sets forth how, according to Stellar's books, the initial $27,127,658 Stellar borrowed from GCC was distributed to Stellar and the Technology Companies:

| **Entity** | **2002** | **2003** | **TOTAL** |
|---|---|---|---|
| BioReaction | $1,892,400 | $1,294,489 | $3,186,889 |
| Wavetronix | $2,598,300 | $1,378,000 | $3,976,300 |
| EmergeCore | $3,388,100 | $488,000 | $3,876,100 |
| iTerra | $7,294,525 | $4,019,308 | $11,313,833 |
| Stellar | $2,225,000 | $2,549,536 | $4,774,536 |
| **TOTAL** | **$17,398,325** | **$9,729,333** | **$27,127,658** |

The GCC borrowings that went to the subsidiary Technology Companies were recorded on Stellar's books as a loan from GCC to Stellar and a corresponding loan from Stellar to the subsidiary company. Nonetheless, the actual cash flowed directly from GCC's bank account to the individual Technology Company's bank account -- those funds did not flow through Stellar's bank account. For BioReaction, Wavetronix, and iTerra, the Examiner was able to verify that these entities actually received the GCC funds reflected on Stellar's books through direct cash transfers from GCC into the respective entities' bank accounts. Because the Examiner did not have access to EmergeCore's bank statements, it was not possible to verify whether EmergeCore actually received these funds from GCC, although EmergeCore's general ledger is consistent with the amounts reflected on Stellar's books as having originated from GCC.

Stellar's accounting records reflect that Stellar itself received $4,774,536 in funds from GCC in 2002 and 2003, which the general ledger indicates was used in the following ways: $2,608,720 was booked as paying GCC loan fees to DBSI Inc.; $690,000 was booked as repaying Stellar debt owed to DRR; $50,000 was booked as an interest payment to GCC; $818,536 was booked as being transferred to or used to pay expenses on behalf of EmergeCore, Wavetronix, and BioReaction; and $657,260 was booked as being used to pay Stellar's routine operating expenses. The Examiner was unable to determine why Stellar transferred $2,608,720 to DBSI Inc. for payment of loan fees.

Initially, the $27,127,658 that GCC loaned to Stellar was largely undocumented, was not secured by any collateral, and had no loan application or guaranty as required by the GCC offering circular.[377] The only document that the Examiner found relating to the initial funding from GCC was an October 1, 2002 promissory note signed by Stellar[378] payable on January 15, 2008 that charged interest at a rate of 11 percent per annum.[379] The note required Stellar to make monthly interest payments to GCC and provided that payments were to be first applied to accrued interest.

The initial October 2002 note, however, was deficient in many respects:

- **Amount of Note Less Than Amount Actually Borrowed:** The amount of the note was only $4,000,000, even though Stellar's actual GCC borrowings from 2002 to 2003 totaled $27,127,658.

- **No Term Loan Agreement:** The October 2002 note references a "Term Loan Agreement between the parties executed concurrently herewith," but no such agreement was located and there is no evidence that such an agreement was actually executed.

- **No Collateral:** Although the GCC offering circular required that "the promissory notes will be secured by a lien on the respective Entity's assets,"[380] no evidence was found indicating that Stellar pledged any collateral for its initial GCC borrowings. In fact, the note itself stated that "[p]ayment of this Note may not be initially secured by collateral."

- **No Evidence of Compliance with 85 percent Loan-to-Value Ratio:** The GCC offering circular required that loans would be made only to entities that had a loan-to-value ratio that did not exceed 85 percent. No evidence was found indicating that any

[377] TC-STE 01.

[378] Although the October 1, 2002 note does not specify who signed the document, the signature matches other documents that are identified as having been signed by Douglas Swenson.

[379] TC-STE 04.

[380] The offering circular also states, however, that "[t]here is no assurance at this time that over the term of the Bonds all of the Loans will be secured by liens."

valuations or information was provided to GCC to show that Stellar had sufficient value to support the 85 percent loan-to-value requirement.

- **No Loan Application:** Although the offering circular for the GCC bonds indicated that each entity receiving funding from GCC would have to submit a loan application, no evidence was found indicating that Stellar prepared any loan application in connection with its initial borrowings from GCC.

- **No Guarantee:** Although the GCC offering circular stated that "[t]he bond principal and interest payments will be unconditionally guaranteed by [DBSI Inc.]," no executed guarantee was located.

In April 2005, according to handwritten notes of meetings taken by a DBSI paralegal,[381] certain members of DBSI's legal and accounting department recognized the 2002 and 2003 transfers violated numerous provisions of the GCC offering circular. In response, DBSI's legal department put together a new note dated June 1, 2005 that superseded the prior October 2002 Stellar note.[382] A Term Loan Agreement dated June 1, 2005 was also prepared and executed.[383] Both the June 1, 2005 note and the Term Loan Agreement were signed by Douglas Swenson on behalf of Stellar and reflected the correct loan amount of $27,127,658. The interest rate remained at 11 percent per annum, and the entire principal balance was initially due on January 25, 2008, but was later extended to September 30, 2008.[384] Like the prior note, the June 2005 note and loan agreement provided that repayments would first be applied to interest, then principal, and still required Stellar to make monthly interest payments to GCC.[385] No evidence was found indicating that DBSI Inc. executed a guaranty for the June 2005 note, and the index[386]

[381] TC-STE 05.

[382] TC-STE 06.

[383] TC-STE 07.

[384] The extension was done via an amendment to the note executed on November 7, 2007. TC-STE 08. The extension was signed by Douglas Swenson both on behalf of GCC and Stellar.

[385] As explained below, Stellar's records show that it made monthly interest payments exclusively using funds borrowed from DRR.

[386] TC-STE 09.

of all closing documentation for the June 2005 GCC loan to Stellar does not list a guaranty from DBSI Inc. among the closing documents.

Unlike the October 2002 note, the June 2005 note was secured by all of Stellar's assets, including Stellar's pledge of its debt and equity interests in BioReaction, iTerra, EmergeCore, and Wavetronix. Stellar executed a separate security agreement (signed by Douglas Swenson on behalf of Stellar) pledging all of Stellar's assets as collateral for its GCC borrowings.[387] In addition, Stellar executed documents assigning all of its ownership shares in BioReaction, Wavetronix, EmergeCore, and iTerra to GCC and provided the stock certificates for those shares to GCC.[388] UCC financing statements documenting GCC's security interests in all of Stellar's, BioReaction's, iTerra's, EmergeCore's, and Wavetronix's assets were filed with the Idaho Secretary of State on July 13, 2005.[389]

Stellar also prepared a loan application in connection with the June 2005 note, as required by the GCC offering circular.[390] The loan application was dated June 1, 2005, and signed by Douglas Swenson on behalf of Stellar. The loan application did not contain any valuation information to show compliance with the 85 percent LTV ratio required by the GCC offering circular. Nonetheless, included among the closing documents for the June 1, 2005 loan was a chart dated January 2002 entitled "Estimated Equity Values -- DBSI Controlled Interests" that may have provided the valuation data for the collateral pledged by Stellar in connection with the June 2005 note.[391]

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[387] TC-STE 10.

[388] TC-STE 11.

[389] TC-STE 12.

[390] TC-STE 13.

[391] TC-STE 14.

The January 2002 Estimated Equity Values chart indicates a total value of $110,000,000 for the Stellar subsidiaries, broken down as follows: BioReaction -- $14,000,000; iTerra -- $36,000,000; EmergeCore -- $36,000,000; Wavetronix -- $12,000,000; BioMatrix -- $12,000,000. Although there is no indication as to how these values were determined or on what they were based, the evidence strongly indicates that that the January 2002 values for these companies were determined by Douglas Swenson. In his June 28, 2005 SEC testimony, Swenson was asked about a similar Estimated Equity Values chart dated November 26, 2002.[392] In his testimony, Swenson explained that DBSI regularly compiled Estimated Equity Value charts setting forth the value of all of the company's holdings and that he was the one who calculated the estimated values listed on the chart.[393] Swenson explained that the valuations were not based on any outside valuation or formal appraisal,[394] but rather that he himself derived the values by taking a percentage of either the projected sales provided by the Technology Company's management or the total value of Stellar's debt and equity interests in each company. This was corroborated by a number of witnesses (including, among others, Mott, Foster, Mayeron) who told the Examiner that the values on the Estimated Equity Values charts were estimated by Douglas Swenson, highly subjective, not independently analyzed, and not based on any formal appraisals.

The Examiner believes that the valuations determined by Douglas Swenson that were used to support Stellar's borrowings from GCC were inflated given the many years of heavy

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[392] The Examiner did not have access to the actual chart upon which the SEC questioned Mr. Swenson, but based on the description of the chart in his testimony, it appears that the chart is an updated version of the January 2002 chart that was found in the GCC closing documents.

[393] BN 05 at 67-89.

[394] The lone exception to this was for iTerra. Swenson testified that he derived the value for iTerra by using an estimated value prepared by an investment bank that iTerra's management provided to him.

losses the Stellar Technology Companies had suffered from 2000 to 2005 as well as the substantial debt those entities owed to Stellar. In fact, Judge stated during his interview that when he first saw the values for the Stellar Technology Companies listed on the chart (before he became president of Stellar), he too was skeptical about the accuracy of those numbers:

> When I first saw [the January 2002 Estimated Equity Values chart] for the first time in the 2003-2004 time frame, . . . I didn't believe those values. . . . I didn't have any direct involvement with the tech companies at the time. But just kind of what I had heard through the rumor mill, I knew those companies were still absorbing a lot of money. . . . [T]hose kind of values may have been appropriate prior to the [Internet] bubble bursting [but] by 2004, those kinds of values weren't . . . appropriate for what I generally knew about those companies.[395]

Moreover, Douglas Swenson and other DBSI Control Group members themselves did not believe that the Technology Companies could be accurately valued given the companies' long history of losses. For example, on December 6, 2004, Douglas Swenson, on behalf of Investments, and Foster entered into an agreement buying out Foster's partnership interest in Investments. That agreement, signed by both Foster and Swenson, stated that "[i]t was originally anticipated that [the Technology Companies] would be profitable to this date and an accurate valuation could be determined. Since . . . total profitability has not occurred it would be extremely difficult to establish a value which would be equitable to both parties."[396] Despite his inability to value the Technology Companies for internal purposes, Mr. Swenson had no difficulty doing so for securing financing.

[395] Judge interview at 69.

[396] ID 51.

#### (b) 2005: $12,060,745

In 2005, a total of $12,060,745 is reflected on Stellar's books as having come from GCC. Nonetheless, based on a series of handwritten notes and e-mails, the Examiner concludes that these funds were first loaned from GCC to Investments, not Stellar.[397] The handwritten notes and e-mails indicate that the purported original intent was for Investments to loan the entirety of the $12,060,745 it received from GCC to Stellar and its subsidiary companies,[398] but Investments never loaned or transferred any portion of the $12,060,745 to either Stellar or its subsidiaries.[399]

The handwritten notes and e-mails detail various DBSI legal and accounting personnel discussing in 2005 and 2006 how to address Investment's failure to loan the $12,060,745 to Stellar as originally intended. The notes and e-mails indicate that the purported original intent was to prepare and execute appropriate loan documents relating to the $12,060,745 that was loaned from GCC to Investments, but that plan was derailed by the fact that Investment's did not have sufficient collateral to pledge in order to comply with the GCC offering circular's 85 percent loan-to-value requirement. In the end, no loan papers were ever prepared documenting the $12,060,745 loan from GCC to Investments.

Ultimately, the issue was partially addressed through a series of bookkeeping entries on Investment's, Stellar's, and GCC's books that had the net effect of reclassifying Investment's $12,060,745 debt to GCC as Stellar's debt to GCC. Specifically, the DBSI accounting

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[397] TC-STE 05.

[398] The notes indicate that the entirety of the $12,060,745 GCC was to be loaned by Investments to Stellar at a rate of 11%, secured by Stellar's interests in its subsidiaries. Investment's loan of these funds to Stellar was to be secondary to GCC's $27,127,658 in direct loans to Stellar.

[399] Instead of loaning the funds to Stellar, Investments used the $12,060,745 it received from GCC for a variety of purposes, including repaying debt Investments owed to DRR, loaning those funds to DRR, paying distributions to Investment's partners, repaying other debts, making transfers to various real estate investments, and paying other miscellaneous expenses.

department made accounting entries dated June 1, 2005 that: (a) adjusted Stellar's books to reduce its preexisting debt to DRR by $12,060,745 and increase its debt to GCC by $12,060,745;[400] (b) adjusted Investment's books to eliminate its $12,060,745 debt to GCC and increase its debt to DRR by $12,060,745; and (c) adjusted GCC's books to eliminate its $12,060,745 receivable from Investments and increase its receivable from Stellar by $12,060,745. These were all bookkeeping adjustments -- no cash moved as a result of these entries. The net effect of these accounting entries was to reclassify $12,060,745 of Stellar's preexisting debt owed to DRR as debt now owed by Stellar to GCC to make the books reflect that Stellar received the $12,060,745 directly from GCC, not DRR, and that Investments received nothing from GCC.

Despite the addition of $12,060,745 to Stellar's GCC debt total in 2005, none of the Stellar loan documents was adjusted, revised, or updated to take the new GCC debt into account. Stellar did not pledge any collateral for the new $12,060,745 debt, and no documentation was provided to show that Stellar had sufficient value to support the $12,060,745 increase in its GCC debt. Moreover, the accounting entries that transferred the $12,060,745 debt to Stellar were dated June 1, 2005 -- the exact same date that the note and Term Loan Agreement documenting the original $27,127,658 that Stellar and its subsidiaries received from GCC in 2002 and 2003 was executed. The Examiner was unable to determine why the $12,060,745 GCC debt that was transferred to Stellar on its books on June 1, 2005 was not included in the revised note that was executed that same day. Thus, as it currently stands, the $12,060,745 that Stellar never received

[400] On Stellar's books, the $12,060,745 was split between the account that reflects what Stellar itself received from GCC ($4,218,205) and a separate account showing the amount of GCC funds that EmergeCore received from GCC ($7,842,540). Separate accounts on Stellar's books that tracked what Stellar and EmergeCore received from DRR were reduced by the same amounts. It is unclear why Stellar split the $12,060,745 in this manner.

but that was transferred as debt to Stellar on June 1, 2005 is not governed by any operative loan document and not secured by any collateral.

**(c) 2008: $2,070,000**

In 2008, Stellar's debt to GCC was increased by $2,070,000. Of this amount, Stellar's books indicate that $1,720,000 was received from GCC in June 2008, and the remaining $350,000 was transferred to Stellar on October 21, 2008 -- almost one month after the September 30, 2008 due date set forth in the June 2005 note. Moreover, none of the GCC loan documents were revised to take these new GCC borrowings into account, no additional collateral was pledged for the 2008 GCC borrowings, and no documentation was provided that showed that Stellar had sufficient value to support the $2,070,000 increase in its GCC debt while still remaining in compliance with GCC's 85 percent loan-to-value ratio requirement.

The entirety of the $2,070,000 Stellar borrowed from GCC in 2008 was recorded on Stellar's books as reducing Stellar's preexisting debt to DRR. As will be discussed in more detail below with respect to the use of Stellar's borrowings from 2008 Notes, it is likely that the decision to use additional GCC borrowings to reduce Stellar's DRR debt was made by DBSI and its accounting department to address DBSI's worsening cash flow problems in 2008.

**(2) Current Principal Balance: $8,608,512**

From 2006 to 2008, Stellar's books reflect that GCC was repaid $32,649,891 of the $41,258,403 total amount borrowed, leaving the current GCC principal balance owed at $8,608,512. Per the terms of the loan documents, Stellar was required to repay the full principal borrowed from GCC by September 30, 2008. Because $8,608,512 remained unpaid as of that date, the existing GCC note is past due. In addition, as of December 31, 2008, Stellar's books show $4,420,280 in accrued interest due to GCC. As such, as of December 31, 2008, the total balance of unpaid principal and accrued interest shown on Stellar's books as owed to GCC was $13,028,792.

Stellar's books show that the entirety of the funds that Stellar used to repay portions of the GCC principal balance came from additional borrowings it took from DRR[401] and 2008 Notes -- another instance where Stellar made repayments on one debt by borrowing from another funding entity. The table below details the repayments that were made to GCC and the source of funds for those repayments:

| **Year of Repayment** | **Source of Funds** | **Amount Repaid** |
|---|---|---|
| 2006 | DRR | $308,224 |
| 2007 | DRR | $18,014,703 |
| 2008 | DRR | $1,655,000 |
| 2008 | 2008 Notes | $12,671,964 |
| **TOTAL** | | $32,649,891 |

In addition, Stellar's records also show a total of $14,540,464 in interest payments to GCC from 2002 to 2008. Stellar's ledger indicates that the entirety of these interest payments was funded through borrowings Stellar took from DRR.[402] As set forth in more detail herein and in the Examiner's Interim Report, the Examiner has concluded that funds transferred from DRR to other entities (including Stellar) were commingled from many different sources. The Examiner did not attempt to trace which of the Debtor and Non-Debtor entities actually funded these interest payments to GCC.

[401] As detailed in the Examiner's Interim Report, DRR has no income streams of its own -- DRR received its funding solely from other DBSI-related entities, and all of those funds were commingled in DRR's account. The majority of DRR's funding came from borrowings it took from DBSI Inc. As of December 31, 2008, DBSI's records indicate that DRR owed DBSI Inc. $196,693,698.

[402] $11,147,223 of the GCC interest payments came from DRR borrowings reflected on Stellar's ledger as having gone directly to Stellar, while the remaining $3,393,241 in GCC interest payments came from DRR borrowings shown as having gone to Stellar's subsidiaries.

Judge stated in his interview that the decision to use DRR borrowings to make interest and principal payments on Stellar's GCC debt was made by DBSI employees, including, at various times, Douglas Swenson, Reeve, Bringhurst, Duckett, and Cole, among others. Judge stated that Stellar employees did not have any prior knowledge or involvement in the decision to use additional DRR borrowing to service Stellar's debt to GCC.[403]

Judge also explained that it was his understanding that the entirety of the principal amount that Stellar owed to GCC was to be repaid using funds obtained from 2008 Notes. Although there were sufficient funds available and designated for Stellar's use from 2008 Notes (total of $27,293,500) to repay the entirety of the principal balance owed to GCC as of December 31, 2007 ($20,865,476), only $12,671,964 of Stellar's 2008 Notes proceeds was applied to reduce Stellar's GCC debt.[404] Just as with the decision to use new DRR borrowings to service GCC debt, Judge stated that the decision to not use 2008 Notes proceeds to fully repay the amount owed by Stellar to GCC was made by DBSI employees and the weekly cash meeting participants and that neither he nor any Stellar representative had any involvement in or prior knowledge of that decision. Judge explained that when he learned that the entirety of the GCC balance had not been repaid with 2008 Notes borrowings, he raised the issue with DBSI's counsel, Ellison. Ellison told Judge that he would look into the issue, but it does not appear that any further action was taken to address Stellar's default under the GCC loan.

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[403] Judge interview at 50-58, 74-84.

[404] The remainder of the 2008 Notes funds ($14,621,536) was recorded on Stellar's books as follows: $14,353,199 reduction of the amount of principal by Stellar to DRR; $249,000 in interest payments by Stellar to 2008 Notes; and $19,337 to pay Stellar operating expenses. A detailed description of the use of the $27,293,500 Stellar borrowed from 2008 Notes (including how the $12,671,964 that purportedly went to repay GCC debt was ultimately used) is set forth in Section VII.C.1 of the Examiner's Interim Report.

The decision not to repay the entirety of the GCC balance using Stellar's 2008 Notes proceeds and instead use a significant portion of those funds to repay a portion of Stellar's debt to DRR appears to have been made to address DBSI Inc.'s growing cash flow problems in 2008. By directing $14,353,199 of Stellar's 2008 Notes proceeds to DRR, DRR was able to use those funds to immediately repay portions of DRR's existing debt to DBSI Inc. DBSI Inc. then used those funds to address its cash flow needs. If an additional $8,608,512 of Stellar's 2008 Notes proceeds had been used to repay GCC in its entirety, those funds would not have been available for DBSI Inc.'s cash needs, as those funds would have gone to GCC bondholders.

**b. DBSI Investments Transfers: $25,344,604**

Stellar's ledger indicates that Stellar and its subsidiary companies received a total of $25,344,604 from Investments from March 2000 to June 2002. Of that amount, Stellar's books indicate that $3,778,438[405] was transferred to Stellar in 2000 as a capital contribution by Investments, presumably as consideration for the 6,000,000 shares Investments obtained at Stellar's formation in March 2000.[406] This amount remains recorded in a capital account on Stellar's books. The remainder of the funds from Investments ($21,566,166) was originally recorded on Stellar's books as borrowings received from Investments from January 2001 to June 2002. Despite the fact that the $21,566,166 was recorded as debt on Stellar's books, none of these amounts were documented in any promissory note or loan agreement, nor was any security or collateral provided for these borrowings.

[405] According to Stellar's general ledger, of the $3,778,438 that was ultimately booked in a capital account, $998,837 originally came from DRR, but that amount was later transferred to the account that contained funds Stellar received from Investments.

[406] As previously indicated, the 6,000,000 shares were originally obtained by DBSI Inc. at Stellar's formation on March 1, 2000, but DBSI Inc. assigned those shares to Investments the following day.

The following chart breaks down which of the Technology Companies received funds from Investments:[407]

| Entity | 2000 (CAPITAL) | 2001 (To DRR) | 2002 (To DRR) | TOTAL |
|---|---|---|---|---|
| BioReaction | $1,451,578 | $2,592,700 | $572,389 | $4,616,667 |
| Wavetronix | $666,322 | $2,734,460 | $707,630 | $4,108,412 |
| EmergeCore | $796,900 | $5,528,437 | $1,150,950 | $7,476,287 |
| iTerra | $167,579 | $4,397,971 | $1,386,450 | $5,952,000 |
| UltraDesign | $0 | $9,380 | $58,000 | $67,380 |
| BioMatrix | $0 | $472,381 | $375,602 | $847,983 |
| Stellar | $696,060 | $1,184,347 | $395,469 | $2,275,876 |
| TOTAL | $3,778,439 | $16,919,676 | $4,646,490 | $25,344,605 |
| | | **$21,566,166** | | |

Stellar currently does not owe any portion of the $25,344,605 to Investments. As previously indicated, $3,778,438 was booked as an equity investment in Stellar by Investments. Through a series of accounting entries made on Stellar's books in 2002, the remaining $21,566,166 that was originally booked as debt owed by Stellar was transferred and became a debt owed by Stellar to DRR.[408] Thus, by the end of 2002, Stellar owed the entire $21,566,166 to DRR and owed nothing to Investments.

All of the amounts that Stellar's subsidiaries received from Investments were originally recorded on Stellar's books as an investment by Stellar in the underlying companies. On December 31, 2001, however, accounting adjustments were made on Stellar's books to transfer a

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[407] Stellar's records indicate that Stellar repaid $1,107,000 to Investments using funds it received from iTerra ($477,000 in July 2001 and June 2002) and EmergeCore ($630,000 in September and October 2001). These repayments are netted into the amounts EmergeCore and iTerra received from Investments as reflected on the chart.

[408] Specifically, on July 12, 2002, $16,919,676 was moved on Stellar's books from a note payable to Investments account to a note payable to DRR account. On Investment's books, Investments' debt to DRR was increased by the same amount. On December 31, 2002, $4,646,490 that was initially recorded on Stellar's books as a note payable to Investments was transferred to Stellar's note payable to DRR account. On the same day, Investments recorded a decrease in the same amount of its note payable to DRR.

portion of the funds BioReaction, Wavetronix, and iTerra received from Investments as a note payable to Stellar. After these accounting entries were made, Stellar's books reflected a $2,000,000 investment in BioReaction, a $2,000,000 investment in Wavetronix, and a $4,000,000 investment in iTerra. The remainder of the funds those entities received from Investments was reclassified on Stellar's books as note receivable from those entities. BioReaction's, Wavetronix's, and iTerra's books were also adjusted accordingly to show equity investments by Stellar ($2 million for BioReaction, $2 million for Wavetronix, and $4 million for iTerra) with the remainder recorded as a note payable to Stellar.

BioReaction's, Wavetronix's, and iTerra's actual receipt of funds from Investments was verified through a sampling of those entities' bank statements and accounting records. Those records indicate that they received funds directly from Investments -- those funds did not pass through Stellar's bank account. Because bank statements were not available for EmergeCore or UltraDesign, those entities' receipt of funds from Investments could not be confirmed, although those amounts are reflected in those entities' general ledgers. As for BioMatrix, no bank statements or general ledger were available for this entity, but BioMatrix's trial balances do generally correspond to the amounts shown on Stellar's books as having been provided to BioMatrix.

As for Stellar, its general ledger indicates that the majority of the $2,275,876 reflected as having gone directly to Stellar was used to pay Stellar's payroll, overhead, and general operating expenses, with smaller portions of those funds used to provide initial funding to new potential investment projects.

#### c. DRR Transfers

##### (1) Total Amount Transferred: $126,121,820

According to Stellar's books and records, Stellar borrowed a total of $126,121,820[409] from DRR from mid-2002 to November 2008.[410] This amount includes the $21,566,166 that was originally recorded on Stellar's books as having come from Investments but was transferred on Stellar's books to a note payable to DRR in 2002.

Of the $126,121,820 Stellar borrowed from DRR, $91,523,126 was recorded as having been loaned to Stellar's subsidiaries, while the remainder of $34,598,694 was recorded as having gone to Stellar itself. The table below details how the DRR funds were disbursed according to Stellar's records:

| Entity | Amount Received |
|---|---|
| BioReaction | $9,184,597 |
| Wavetronix | $18,396,814 |
| EmergeCore | $23,993,709 |
| iTerra | $27,829,034 |
| UltraDesign | $1,381,372 |
| GigOptix | $10,705,000 |
| BioMatrix | $32,600 |
| Stellar | $34,598,694 |
| **TOTAL** | $126,121,820 |

On Stellar's books, the entirety of the $126,121,820 borrowed from DRR was recorded as a note payable by Stellar to DRR. For DRR funds that ultimately went to Stellar's subsidiaries,

[409] Judge stated that he did not know where DRR obtained its funds and that he assumed that DRR's funding came from cashflow generated from DBSI's real estate operations. Judge interview at 98-99.

[410] This amount does not include $998,837.19 that Stellar's books indicated it received in 2000, which was ultimately transferred to Investments and subsequently became part of the $3,778,438 that was recorded on Stellar's books as Investment's equity contribution to Stellar. Because this amount ultimately was provided to Stellar as equity, it is not included in the figures reflecting Stellar's borrowings from DRR.

Stellar recorded a note receivable from its subsidiaries on its books. Although the bookkeeping entries indicate that DRR funds went to Stellar and then Stellar subsequently loaned those funds out to the individual Technology Companies, a review of Stellar's and the Technology Companies' bank statements shows that in almost all instances cash flowed directly from DRR's bank account into the Technology Companies' bank accounts without passing through Stellar's bank account.

For BioReaction, Wavetronix, iTerra, and GigOptix, the Examiner was able to verify that these entities actually received the DRR funds reflected on Stellar's books through direct cash transfers from DRR into the respective entities' bank accounts. Because the Examiner did not have access to EmergeCore's, UltraDesign's, or BioMatrix's bank statements, it was not possible to verify whether these entities actually received all of the funds shown on Stellar's books as having been sent from DRR to those entities. Nonetheless, both EmergeCore's and UltraDesign's general ledgers are consistent with the amounts reflected on Stellar's books as having originated from DRR. For BioMatrix, the Examiner did not have access to this entity's bank statements or general ledger, but BioMatrix's balance sheets show that BioMatrix received $32,600 in funding from Stellar from 2003 to 2004, which is the same amount shown on Stellar's records as having been sent to BioMatrix during this same time period.

**(2) Loan Documentation**

Stellar's borrowings from DRR were mostly undocumented. The only document governing any portion of Stellar's debt to DRR is an unsecured December 31, 2004 promissory note payable to DRR reflecting a loan amount of $41,627,720 and an interest rate of 12 percent per annum. This note was signed by Douglas Swenson on behalf of Stellar.[411] The amount of

[411] TC-STE 15.

the note was just $77,000 more than the balance Stellar owed to DRR as of December 31, 2004 ($41,550,720). The December 2004 note required that the entire balance of principal and accrued interest be repaid by December 31, 2005. Between December 31, 2004 and December 31, 2005, however, Stellar's records show no repayments to DRR, making the entire note past due.[412] Moreover, although Stellar's books indicate that it borrowed an additional $77,297,099 from DRR from 2005 to 2008, no additional notes were executed documenting these additional borrowings. There is no evidence that Stellar has ever pledged any collateral as security for any of its borrowings from DRR.

#### (3) Stellar's Use of DRR Funds

As previously indicated, Stellar's books show that Stellar received a total of $34,598,694 from DRR that was not transferred to any of its subsidiaries. More than half of this amount ($21,570,453) is shown on Stellar's records as being used to make interest ($11,147,223) and principal ($10,423,230) payments on Stellar's GCC debt.[413] Stellar's records also show that $929,895 of DRR borrowings was sent to DBSI Inc. to pay GCC loan fees.[414] In addition, in 2008, Stellar's books show additional borrowings from DRR to make $824,768 in interest payments to 2008 Notes. As noted elsewhere in this report, DRR was essentially used as a bank by the DBSI management, and the funds that passed through this entity were commingled funds from many different sources. As previously discussed, Judge stated in his interview that the

[412] In fact, in 2005, Stellar's borrowings from DRR actually increased by $4,055,840. This amount includes the $12,060,745 transfer of DRR debt to GCC that was recorded on Stellar's books on June 1, 2005.

[413] An additional $3,393,241 of DRR funds that were recorded as having been loaned to BioReaction, Wavetronix, EmergeCore, and iTerra was also recorded as having been used to make interest payments on GCC debt.

[414] As previously discussed, Stellar's records also show that $2,608,720 of GCC borrowings were used to pay "GCC loan fees" to DBSI Inc. Including this amount, the total amount shown on Stellar's books as being paid to DBSI Inc. for "GCC loan fees" is $3,538,615. The Examiner did not determine why Stellar made payments of GCC loan fees to DBSI Inc.

decision to use DRR borrowings to service GCC debt and make interest payments to 2008 Notes was made by DBSI management and that Stellar employees did not have any prior knowledge or involvement in that decision.[415]

For the remaining $11,273,578 that is recorded on Stellar's books as having been sent directly from DRR to Stellar, the Examiner did not do a detailed tracing of this entire amount, but based on a general review of Stellar's books, it appears that Stellar spent the funds as follows: approximately $4.5 million was used as part of Stellar's initial equity contributions in BioReaction, Wavetronix, and iTerra;[416] approximately $1 million was used either to provide initial funding to new projects that did not ultimately show any promise or to pay initial start-up costs for UltraDesign or BioMatrix; $1.2 million was used to redeem the 1,200,000 in preferred Stellar shares that was granted to BioReaction at Stellar's formation; approximately $370,000 represented distributions made to BioReaction Industries, Inc. on its preferred shares; and approximately $4.2 million was used to pay Stellar's payroll, overhead, and operating expenses for the eight-year period from 2000 to 2008.

**(4) Current Principal Balance: $117,721,421**

From 2002 to 2007, Stellar's records show that the $126,121,820 in principal that Stellar owed DRR was reduced by a total of $20,319,745, broken down as follows:

- **2002 -- $814,000 From iTerra**: Stellar's records show that in 2002, iTerra made payments totaling $814,000 to Stellar and that Stellar used the entirety of these funds to reduce its debt to DRR.

[415] Judge interview at 50-58, 74-84.

[416] As previously discussed, Stellar made initial equity contributions of $2,000,000 in BioReaction, $2,000,000 in Wavetronix, and $4,000,000 in iTerra. Based on a review of Stellar's records, approximately $4.5 million of the total $8,000,000 equity contributions to these three companies came from DRR funds. The remainder came from Investments' $3,778,438 initial capital contribution in Stellar.

- **2003 -- $6,460,000 Converted to Equity**: In 2003, $6,400,000 of Stellar's DRR debt was converted to equity. The $6.4 million was designated on Stellar's books as additional capital provided by Investments, despite the fact that it was DRR's debt that was converted. Investments received no additional ownership stake in Stellar in exchange for its $6.4 million equity contribution.

- **2005 -- $12,060,745 of DRR Debt Transferred to GCC**: As previously discussed, in 2005 a series of accounting entries were made that had the net effect of reducing Stellar's debt to DRR by $12,060,745 and increasing its debt to GCC by the same amount.

- **2007 -- $985,000 From BioReaction**: In 2007, BioReaction signed a promissory note payable to Stellar that allowed the company to draw up to $1,500,000 as an unsecured revolving line of credit. BioReaction drew a total of $985,000 under this line of credit. Stellar's records indicate that those funds came directly from DRR. BioReaction repaid the entirety of the amount using cash it generated from its own operations, and Stellar's records indicate that BioReaction's $985,000 repayment was transferred back to DRR.

In 2008, Stellar's books show repayments to DRR totaling $16,775,853. Nearly all of these repayments ($16,073,199) came from additional borrowings Stellar received from 2008 Notes and GCC.[417] Specifically, Stellar's books indicate that $14,353,199 in borrowings Stellar received from 2008 Notes and $1,720,000 in new borrowings from GCC was used to reduce Stellar's principal balance to DRR. Again, as Judge explained, the decision to use new borrowings from 2008 Notes and GCC to repay Stellar debt was made solely by DBSI employees and accounting personnel who participated in the weekly cash meetings.[418] The Examiner concludes that Stellar repaid DRR so that DRR could in turn use those funds to repay portions of its substantial debt to DBSI Inc., thereby allowing DBSI Inc. to address severe cash flow problems.

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[417] Stellar's records indicate that the additional repayments on the DRR debt in 2008 were made using $700,000 that GigOptix sent to Stellar (discussed in greater detail in the section relating to GigOptix) and $2,654 represented excess interest paid by BioReaction in 2007 that was applied to reduce DRR principal in 2008.

[418] Judge interview at 50-58, 74-84.

In total, $89,026,222 of the principal shown on Stellar's books as having been borrowed from DRR remains unpaid. At the end of 2007, DBSI directed that all accrued interest on the DRR debt as of December 31, 2007 (a total of $28,695,199) be converted to principal. Taking the converted interest into account, the principal balance shown on Stellar's books as owed to DRR is currently $117,721,417.[419] As of December 31, 2008, Stellar's balance sheet shows accrued interest on the DRR debt of $9,930,235. Accordingly, as of December 31, 2008, Stellar books indicate that it owes a total of $127,651,652 in principal and accrued interest to DRR.

#### d. 2008 Notes: $27,293,500

##### (1) Borrowings and Booked Use of Funds

In 2008, Stellar's books indicate that it borrowed a total of $27,293,500 from 2008 Notes. Stellar's records indicate that the entirety of this amount was used to reduce Stellar's existing debt to GCC and DRR. Specifically, $12,671,964[420] was recorded on Stellar's books as reducing the principal balance of its debt to GCC, and $14,621,536 was recorded as reducing the principal balance Stellar owed to DRR.

##### (2) Loan Documentation

The $27,293,500 loan from 2008 Notes to Stellar was documented in a promissory note and a term loan agreement -- both dated June 16, 2008 and signed by Judge on behalf of Stellar.[421] Per the terms of the note and the loan agreement, interest accrued on the debt at a 11.5 percent, and the principal amount was due on June 15, 2009. The loan to Stellar was

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[419] There is a $4 discrepancy between the balance calculated by the Examiner and the balance shown on Stellar's balance sheet.

[420] The $12,671,964 reduction in the GCC principal balance was recorded on Stellar's books as follows: $3,018,662 was used to repay the entirety of GCC funds that had previously gone to BioReaction; $3,766,402 was used to repay the entirety of GCC funds that had previously gone to Wavetronix; $4,148,446 was used to repay a portion of the GCC funds that had previously gone to iTerra (leaving a $6,573,512 unpaid balance); and $1,773,454 was used to repay a portion of Stellar's own GCC borrowings.

[421] TC-STE 16; TC-STE 17.

accompanied by an executed guarantee from DBSI Inc. signed by Douglas Swenson.[422] In addition, Stellar prepared a loan application to 2008 Notes that was signed by Paul Judge on behalf of Stellar and Douglas Swenson as a representative of Investments, Stellar's majority stakeholder.[423] Stellar also prepared a more detailed request for funds that was ultimately approved by the Loan Committee.[424]

#### (3) Overvalued, Unsecured Collateral Pledged

The 2008 Notes PPM required that any loans made from 2008 Notes proceeds not exceed 85 percent of the fair market value of the pledged collateral.[425] Ostensibly to comply with this requirement, Stellar pledged the entirety of its "membership interest" in BioReaction and Wavetronix, which it valued at $32,110,000, 85 percent of which is the $27,293,500 that Stellar ultimately borrowed from 2008 Notes. The Examiner concludes that these valuations were inflated.

The $32,110,000 value placed on Stellar's ownership interests in Wavetronix and BioReaction was derived from independent appraisals that the management of BioReaction and Wavetronix obtained to determine the value of employee stock option grants for tax purposes. These appraisal reports, however, expressly stated that appraisals were only to be used for valuing employee options, and the individuals who prepared the reports stated that they had no knowledge that their reports would be used for any other purpose, including to secure financing. Nonetheless, Stellar used data from these appraisal reports to derive a value for its ownership

[422] TC-STE 18.

[423] TC-STE 19.

[424] TC-STE 20. The request form indicates that Griffin, Cole, and Warner approved Stellar's loan request.

[425] BN 13.

interests in BioReaction and Wavetronix that it was pledging as collateral for its 2008 Notes borrowings.

The BioReaction appraisal report used to determine the value of Stellar's pledged collateral valued the company at $11,200,000 as of May 30, 2008.[426] At that time, Stellar had $10,510,000 invested in BioReaction -- $2 million was Stellar's initial capital contribution to BioReaction, and the remaining $8.51 million represented the total amount of Stellar debt that was converted into additional equity in the company. Because the $11.2 million appraised value of BioReaction exceeded the value Stellar's $10.51 million total equity in the company, Stellar placed a $10.51 million value on its ownership interest in BioReaction and used that value in its loan application for 2008 Notes proceeds.

The Wavetronix appraisal report that was used to determine the value of Stellar's pledged collateral valued the company at $0 as of December 31, 2007.[427] The zero valuation was due to the fact that any value the company had was completely off-set by the approximately $28.65 million in debt it owed to Stellar. Stellar's 2008 Notes loan application prepared by Judge, however, valued Wavetronix at $21.6 million, which was the value of the company calculated by the appraiser if Wavetronix's debt to Stellar was not taken into account.[428] Judge explained during his interview that, in his opinion, it was appropriate to not include Wavetronix's debt to Stellar in the valuation because the appraiser's report meant that the company could be sold at a

[426] The $11.2 million value for BioReaction was based on a market analysis of similar comparable companies and on financial projections provided by BioReaction's management. The Examiner did not find that DBSI or Stellar employees had any involvement in compiling the projections data that was provided to BioReaction's outside appraiser.

[427] Despite the conclusion that Wavetronix had no value as of December 31, 2007, the appraisal report used the Black Scholes methodology to derive a value of $0.35 for employee stock options.

[428] The appraiser's $21.6 million value for Wavetronix before its debt was taken into account was based on a market analysis of similar comparable companies and on financial projections provided by Wavetronix's management. The Examiner did not find that DBSI or Stellar employees had any involvement in compiling the projections data that was provided to Wavetronix's outside appraiser.

fair market value price of $21.6 million and, if such a hypothetical sale occurred, the entirety of the proceeds from the sale would go to Stellar to repay Wavetronix's debt, which would have had priority over the equity stakeholders in the company.

Despite Judge's explanation, the Examiner concludes that the value Stellar placed on Wavetronix was greatly inflated because it did not represent the value of Stellar's *ownership interest* in Wavetronix. According to the loan documents, Stellar only pledged its "membership interest" in Wavetronix -- not its interest in Wavetronix's $28.65 million debt owed to Stellar. Although Wavetronix debt to Stellar may have had some value, Stellar's ownership stake in the company did not because Wavetronix's debt to Stellar far exceeded the fair market value of the company. The proper value of Stellar's ownership interest in Wavetronix should have been $0.[429]

Most significantly, as previously discussed, in June 2005 Stellar had pledged all of its assets, including its debt and equity interests in BioReaction and Wavetronix, as security for a portion of its debt to GCC. Nonetheless, Stellar re-pledged its equity interest in BioReaction and Wavetronix to 2008 Notes.[430] The existence of the prior, first-position,[431] perfected lien on Stellar's ownership interest in BioReaction and Wavetronix was not taken into account in determining the value of the collateral. Accordingly, the value placed on Stellar's ownership interests in BioReaction and Wavetronix was inflated.

[429] On August 20, 2008, Hassard signed a certification on behalf of 2008 Notes affirming that the loan-to-value ratio does not exceed 85% of the fair market value of Stellar's pledged collateral. TC-STE 21.

[430] The pledge of encumbered assets as collateral for 2008 Notes borrowings was permitted under the terms of the private placement memorandum, which stated that "promissory notes may be secured by a lien on the respective Entity's assets or pledge of ownership interests, but the lien may be subordinate to any prior existing loan. As a result of senior liens, some or all of a Loan may be unsecured."

[431] On August 14, 2008 -- one month after the final 2008 Notes loan documents were executed -- Douglas Swenson signed a letter on behalf of GCC that provided GCC's written consent to Stellar's pledge of assets to 2008 Notes. TC-STE 22. Stellar's books, however, indicate that all of the 2008 Notes proceeds had already been loaned to Stellar by the time Swenson provided the written consent on behalf of GCC.

Finally, in addition to being overvalued, 2008 Notes' security interest in Stellar's pledged collateral may not have been perfected. Although required by the 2008 Notes PPM, no UCC financing statements were filed.[432] On August 20, 2008, a Memorandum of Pledge Agreement[433] was filed in Ada County, Idaho, that purports to perfect 2008 Note's security interest in the pledged collateral. The Memorandum of Pledge Agreement that was filed, however, only indicates that a Pledge Agreement[434] was executed between Stellar and 2008 Notes -- the Memorandum of Pledge Agreement does not describe the actual collateral pledged. The document also does not disclose that Stellar's pledged collateral was its ownership interest in BioReaction and Wavetronix. As such, the Memorandum of Pledge Agreement that was filed contains nothing that would put any potential lender on notice that Stellar's ownership interests in BioReaction and Wavetronix are pledged as collateral for outstanding borrowings.

**(4) Current Balance**

The promissory note required Stellar to repay the entire principal balance owed to 2008 Notes plus all accrued interest by June 15, 2009. Stellar's records, however, do not indicate that any portion of the principal Stellar borrowed from 2008 Notes has been repaid, leaving the current principal balance at $27,293,500 and past due under the terms of the promissory note. Stellar's records do indicate that Stellar made interest payments to 2008 Notes totaling $818,225. The entirety of these interest payments were made using funds Stellar borrowed from DRR.

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[432] As previously discussed, UCC statements were previously filed with the State of Idaho recording Stellar's pledge of all of its assets (including its debt and equity interests in Wavetronix, BioReaction, EmergeCore, and iTerra) as security for a portion of its GCC borrowings.

[433] TC-STE 23.

[434] TC-STE 24.

As of December 31, 2008, Stellar's balance sheet shows accrued interest on the 2008 Notes debt of $1,166,963. Thus, as of December 31, 2008, the total amount of principal and interest Stellar owed 2008 Notes was $28,460,463.

### C. <u>BioReaction Industries LLC</u>

#### 1. Background

BioReaction Industries, LLC ("BioReaction") is a company based in Tualatin, Oregon, that designs, manufactures, and installs air pollution control systems that use microorganisms to treat air emissions. As detailed below, from 2000 to 2007, BioReaction received significant sums from Investments, GCC, and DRR that were booked as either loans from or equity investments by Stellar. In order to understand these transactions and analyze BioReaction's use of these funds, the Examiner reviewed records produced by BioReaction and conducted an interview with the company's CEO, Karl Mundorff, and CFO, John Griffith, at their Oregon offices on July 28, 2009. BioReaction and its employees were fully cooperative with all aspects of the Examiner's investigation.

#### 2. Involvement of DBSI-Related Individuals and Insiders

A variety of DBSI-related individuals and insiders have served on BioReaction's board at various times since its inception, including Douglas Swenson (since inception), Foster (from inception to December 2007), Mayeron (from 2001 to 2004); Reeve (from inception to June 2001); Mott (since inception); Hassard (2000); and Judge (August 2005 to present). Douglas Swenson was elected chairman of the BioReaction board on August 15, 2005, and continues to hold that position. The company currently has a seven member board, with four inside directors (Swenson, Mott, Judge, and BioReaction's CEO (Mundorff)) and three outside directors who do not have any connection to DBSI.

The Examiner did not find any evidence that any DBSI-related individuals or insiders were employed by BioReaction, except for Eric Mott who previously worked at the company from 2004 to 2007. BioReaction made payments to Eric Mott, but the amount and frequency of those payments are consistent with the payment of salary.

No DBSI-related individuals or insiders have a direct ownership interest in BioReaction except for Eric Mott, who during the course of his employment was awarded a relatively small amount of stock (4,000 common units) as well as some unexercised option grants from the employee stock option plan.

### 3. Funds Received by BioReaction

From BioReaction's formation in March 2000 to the end of 2007, BioReaction received a total of $14,014,137 in funding from three sources -- Investments, GCC, and DRR -- which are broken down in the following amounts:

| Funding Entity | Amount Received |
|---|---|
| Investments | $2,000,000 |
| GCC | $3,186,889 |
| DRR[435] | $8,827,248 |
| **TOTAL** | **$14,014,137** |

#### a. Investments -- $2,000,000

The $2,000,000 BioReaction received from Investments came in as a capital contribution from March 2000 to April 2001. The entire amount was booked by BioReaction as a capital

[435] Stellar's books indicate that a total of $9,184,597 was transferred from DRR to BioReaction, which is $357,349 more than what is shown on BioReaction's records. The difference is attributable to $357,349 recorded on Stellar's books as having been borrowed from DRR on behalf of BioReaction and used to make principal ($168,227) and interest ($189,122) payments to GCC. Because these transactions were done at the Stellar level, they are not shown on BioReaction's books.

contribution made by Stellar and is still recorded on BioReaction's books in a Stellar equity account. Likewise, Stellar recorded a $2,000,000 capital investment in BioReaction on its books.

Included in the $2,000,000 that went from Investments to BioReaction is an initial $550,000 payment that BioReaction paid to purchase the assets of its predecessor company. The remaining $1,450,000 was paid in installments from April 2000 to April 2001. BioReaction's books and bank statements indicate that these installments came in both the form of direct cash deposits from Investments into BioReaction's bank accounts as well as funds paid by DBSI-controlled entities (e.g., DBSI Realty and DBSI Industrial) on BioReaction's behalf for payroll expenses, employee benefits, and other similar corporate overhead expenses.

**b. GCC -- $3,186,889**

From April 2002 to July 2003, BioReaction received $3,186,889 in funds from GCC. These amounts were recorded on BioReaction's books as a loan from Stellar even though the funds came directly from GCC. Although the transactions were recorded as loans from Stellar, the Examiner was unable to locate any note or other loan documentation governing these transfers, and BioReaction's records do not indicate that any interest accrued on the amounts BioReaction received from GCC. On Stellar's books, the funds BioReaction received from GCC was recorded as a note receivable from BioReaction and a note payable by Stellar to GCC. BioReaction's books and bank records indicate that all of the funds BioReaction received from GCC came in the form of direct cash deposits into BioReaction's bank accounts.

In July 2003, the entire $3,186,889 that BioReaction received from GCC was converted from a debt owed to Stellar to an increased equity stake for Stellar in BioReaction. BioReaction has never repaid any portion of the funds that it received from GCC, and the entire amount is currently recorded in a Stellar equity account on BioReaction's books.

c. DRR -- $8,827,248

From April 2001 to December 2007, BioReaction's records and bank statements indicate that the company received $8,827,248 in funds directly from DRR, the entirety of which was recorded on BioReaction's books as a loan received from Stellar. This amount was broken up into three distinct units: $3,944,248 that BioReaction received from 2001 to 2003; $3,898,000 that BioReaction received from 2004 to 2005; and $985,000 that BioReaction received in 2007.

(1) 2001 to 2003 -- $3,944,248

From 2001 to 2003, BioReaction received installments from DRR[436] totaling $3,944,248. From April to October 2001, the funds received from DRR came as both direct cash deposits into BioReaction's bank accounts as well as funds paid on BioReaction's behalf by DBSI-related entities for corporate overhead services provided to BioReaction. After October 2001, however, all funds received from DRR came in solely as direct cash deposits into BioReaction's bank accounts.

The amounts BioReaction received from DRR from 2001 to 2003 were recorded on BioReaction's and Stellar's books as a loan from Stellar. Stellar recorded these amounts in a note payable to DRR. No loan documentation was executed for this indebtedness, and BioReaction's and Stellar's books do not indicate that BioReaction was ever charged any interest on these amounts. In July 2003, Stellar converted the entirety of the $3,944,248 debt owed to it by BioReaction into an increased equity stake in BioReaction. The entirety of this amount is currently recorded on BioReaction's books in a Stellar capital account.

[436] Initially, the funds BioReaction received from DRR from 2001 to 2003 came from Investments, and Investments booked the funds it sent to BioReaction as part of its note receivable from Stellar. Sometime in 2003, however, Stellar's debt to Investments was transferred to DRR with Investments recording a corresponding reduction in its note payable to DRR. In Stellar's records, the funds that originally came from Investments (except for the initial $2,000,000 capital investment previously described) are shown as having originally come from DRR. After 2003, all funds BioReaction received as part of its debt to Stellar came directly from DRR.

### (2) 2004 to 2005 -- $3,898,000

From 2004 to 2005, BioReaction received installments directly from DRR totaling $3,898,000. Like the funds received in the earlier years, both BioReaction and Stellar recorded these amounts as a debt payable to Stellar, and Stellar included the amounts in its corresponding note payable to DRR. Unlike 2001 to 2003, however, BioReaction and Stellar executed loan documents to cover these transfers. Specifically, on January 1, 2005, BioReaction signed a convertible promissory note in favor of Stellar that gave Stellar the option to convert its debt into equity in BioReaction at a price of $0.01 per unit.[437] This convertible promissory note reflected a principal amount owed that corresponded to the funds that BioReaction received from DRR in 2004 (total amount received in 2004 was $3,756,000). The note was payable on January 1, 2010, and charged interest at 11 percent per annum. The note granted Stellar a security interest in all of BioReaction's assets, although the Examiner did not find any evidence that Stellar took steps to file, record, or otherwise perfect this security interest.

BioReaction received an additional $142,000 from DRR in 2005. Although both BioReaction and Stellar recorded this amount in the note payable by BioReaction to Stellar, the promissory note was not superseded or updated to reflect this additional borrowing. Nonetheless, it appears that both BioReaction and Stellar treated the additional funds received in 2005 as being governed by the terms of the January 1, 2005 promissory note, as the books for both entities accrue interest on these amounts at 11 percent per annum. Moreover, the entirety of the $3,898,000 in funds that BioReaction received from DRR from 2004 to 2005, plus $1,387,067 in accrued interest, was converted by Stellar into additional equity in the company in

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[437] TC-BRI 01.

a March 2008 transaction. BioReaction never repaid any portion of the $3,898,000 it received from DRR from 2004 to 2005.[438]

**(3) 2007 -- $985,000**

On June 26, 2007, BioReaction signed a promissory note that authorized BioReaction to draw up to $1,500,000 as an unsecured revolving line of credit payable in full by July 1, 2008. From July to December 2007, BioReaction drew a total of $985,000 under this line of credit. These funds came directly from DRR. By January 2008, BioReaction had repaid the entirety of the amount borrowed plus all accrued interest using cash it generated from its own operations.

**4. Use of Funds by BioReaction**

Based on the Examiner's review of BioReaction's records and bank statements and interviews conducted with BioReaction's CEO and CFO, the Examiner did not find any evidence that BioReaction made any improper use of the funds it received from Investments, GCC, or DRR. All of the funds appear to have been used for routine business purposes. The Examiner did not find any transfers of funds to DBSI insiders or DBSI-controlled entities, except for some relatively small payments to Stellar (approximately $41,000) to reimburse Stellar for expenses incurred on BioReaction's behalf, DBSI Industrial (approximately $9,000) to lease office equipment, and DBSI Realty (approximately $445,000) for payroll, benefits, and other corporate overhead services provided to BioReaction.

[438] BioReaction's employees stated that in February 2005, Stellar's controller, Randy Odenbrett, informed the company that he would be withdrawing $300,000 from BioReaction's operating account to make an interest payment on BioReaction's debt to Stellar. BioReaction employees stated that they had no say in the matter. On BioReaction's books, the $300,000 was used to reduce the accrued interest on its note payable to Stellar. On Stellar's books, the $300,000 was recorded as reducing the amount of interest owed on the funds BioReaction received from DRR, but the $300,000 interest payment ultimately went to GCC and was recorded as reducing the amount of interest Stellar owed to GCC.

### 5. Ownership and Debt-to-Equity Conversions

#### a. Initial Ownership -- 68.18 percent

BioReaction was formed on March 1, 2000, through the purchase of the assets and liabilities of its predecessor company, BioReaction Industries, Inc. The owners of BioReaction Industries, Inc. were paid $550,000 cash in the acquisition, which was provided by Stellar using funds Stellar obtained from Investments.[439] In addition, the owners of BioReaction, Inc. received 1,200,000 common shares and 200,000 preferred shares of Stellar in the purchase, which were all redeemed by Stellar from December 2002 to December 2008.[440]

At formation, 10,000,000 common shares were authorized, of which Stellar received 6,000,000 shares, the three original founders of BioReaction received 2,800,000 shares, and the remaining 1,200,000 shares were set aside for future employee grants. Accordingly, at formation, Stellar held a 68.18 percent ownership stake in the company on an undiluted basis and a 60 percent ownership interest on a fully diluted basis.

#### b. July 2003 Debt Conversion -- 93.02 percent

In July 2003, Stellar converted $7,131,137 in debt owed to it by BioReaction into additional shares of the company. The $7,131,137 that was converted represented the $3,186,899 that BioReaction received from GCC from 2002 to 2003 plus the $3,944,248 BioReaction received from DRR from 2001 to 2003. The debt-to-equity conversion transaction was approved by Stellar's board (Douglas Swenson, Foster, Wasden, Mott, Hassard, Bringhurst,

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[439] As discussed above, the $550,000 initial purchase price was ultimately recorded on BioReaction's books as a capital investment in the company by Stellar.

[440] Specifically, Stellar's books indicate that, from December 2002 to March 2008, Stellar paid $1.2 million to redeem to BioReaction Industries, Inc.'s 1.2 million common shares of Stellar, and paid $200 in December 2008 to redeem BioReaction Industries, Inc.'s 200,000 preferred shares.

and Reeve) and BioReaction's members (Douglas Swenson on behalf of Stellar).[441] The entire amount that was converted represented principal only because neither BioReaction nor Stellar had been accruing interest on the amounts borrowed from GCC and DRR prior to 2003.

As part of the July 2003 debt conversion, BioReaction's board approved an increase in the number of authorized membership units to 50,000,000 common shares and 20,000,000 preferred shares. In exchange for the conversion of its debt to equity, Stellar was initially issued 15,937,500 preferred membership units with an option to convert those units to common shares at rate of 2:1. Stellar immediately exercised this option, resulting in Stellar receiving 31,875,000 additional common units of BioReaction in exchange for the conversion of BioReaction's $7,131,137 in debt owed. The effective price of the conversion was approximately $0.22 per share, but no independent appraisal or valuation was used to determine this conversion price. Overall, it is unclear how the number of total shares Stellar would receive for conversion of its debt was determined.[442]

As a result of the July 2003 debt conversion, Stellar held a total of 37,875,000 shares of BioReaction, giving Stellar a 93.02 percent ownership interest on an undiluted basis and a 75.75 percent ownership interest on a fully diluted basis.

**c. November 2004 -- 93.7 percent**

In 2003, Randall Thom, a former BioReaction founder, was granted 5,625,000 in stock options in the company that vested over a five-year period and had a strike price of $0.25 per share. Thom left the company in 2004, at which time only 1,214,384 of his options had vested. In November 2004, the unvested balance of Thom's stock options were given to Stellar as fully

[441] TC-BRI 02; TC-BRI 03.

[442] Judge surmised that the award of 31,875,000 units to Stellar was a rough estimate that assumed that Stellar would convert approximately $8,000,000 in debt to equity at a rate of $0.25 per common share.

vested common units, giving Stellar an additional 4,410,616 common shares and increasing its total stock owned to 42,285,616 common shares or a 93.7 percent ownership interest in the company on an undiluted basis. Stellar did not provide any additional capital or convert any additional debt in exchange for these additional shares.[443]

### d. March 2008 Debt Conversion -- 98.17 percent

In March 2008, as part of a proposal approved by Stellar's board and by Douglas Swenson on behalf of Stellar in its capacity as the majority owner in BioReaction,[444] Stellar converted a total of $5,285,067 of debt into an additional equity stake in the company. This conversion resulted in loss of value for Stellar and was made without consideration of the effects the conversion might have on Stellar's current or anticipated creditors. The amount converted represented the $3,898,000 that BioReaction received from DRR from 2004 to 2005 plus $1,387,067 in accrued interest. Prior to the debt conversion, the board approved a 15:1 reverse stock split that converted Stellar's previous 42,285,616 common units to 2,819,041 common units. The board also approved a post-split increase in the total number of authorized shares from 3,333,333 common units to 12,000,000 common units.

The $5,285,067 in debt was converted into 4,130,063 post-split common shares, using a conversion rate of $1.28 per share, even though the January 1, 2005 convertible promissory note

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[443] Judge explained that the reason that the shares were granted to Stellar rather than returned to the employee stock option treasury was in recognition of the fact that Stellar had purportedly provided the company with an additional $297,000 in additional funding in 2003 that was not taken into account in the July 2003 debt conversion, and thus the transfer of the 4.4 million shares was to compensate Stellar for this additional funding. This explanation, however, is inconsistent with BioReaction's and Stellar's records, neither of which reflect the $297,000 additional funding that Judge claims was not included in the July 2003 debt conversion. Moreover, all funds BioReaction received from DRR subsequent to the 2003 debt conversion were ultimately included in the March 2008 debt conversion (except for the $985,000 that BioReaction borrowed under its line of credit, which BioReaction repaid in full by January 2008). If Judge's explanation were correct, $297,000 of the funds that BioReaction received subsequent to the July 2003 debt conversion should not have been included in the March 2008 debt conversion, as Stellar would have already converted that amount into equity in the company in July 2003.

[444] TC-BRI 04.

that governed these transfers to BioReaction gave Stellar the option to convert the debt to equity at a price of $0.01 per share. Both Judge and BioReaction employees stated in their interviews that both BioReaction and Stellar agreed not to convert the debt at a price of $0.01 per share to avoid massive dilution of the minority shareholders' ownership interests in the company and to increase the pool of shares available for grants under the company's employee stock option incentive plan.

The $1.28 conversion share price was derived using data collected by an outside accounting firm that was retained by BioReaction to perform an independent valuation of the company in December 2007 for the purpose of valuing the company's employee stock options. The December 2007 valuation concluded that, due to the large amount of debt owed by BioReaction and Stellar's entitlement to priority distributions due to its initial capital investment and prior conversion of debt to equity, minority owners had no equity in the company, resulting in only a nominal value of $0.01 to $0.03 per share for minority stakeholders.[445] Nonetheless, Judge used the data in the December 2007 valuation report to calculate a $1.28 share price for the Stellar debt conversion. He derived that figure primarily by assuming that the $5,285,067 debt BioReaction owed to Stellar did not exist. By using this assumption and making some additional adjustments to the appraiser's numbers, Judge was able to derive a debt conversion price of $1.28 per share.

Judge explained that in his opinion it was appropriate to not take into account the existing $5,285,067 in debt because, after the debt conversion, that debt would no longer exist on BioReaction's books. In fact, in a follow up valuation done by the same appraisers after the

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[445] TC-BRI 05.

March 2008 debt conversion,[446] the value of the debt Stellar converted in March 2008 remained at $1.28 per share. Nonetheless, the Examiner concludes that Stellar lost value in the March 2008 debt-to-equity transaction because it used a debt conversion share price that presumed that the very debt that was being converted had already been converted.

If the $5,285,067 debt had been taken into account in determining the conversion price, the data from the December 2007 valuation report indicates that BioReaction would have had a total residual equity value of approximately $3.2 million. Taking this value and dividing by the 3,015,551 shares outstanding at the time results in a share conversion price of approximately $1.06 per share.

Ultimately, although Judge disputed that it was improper for him to use the $1.28 conversion price for the debt conversion, he did acknowledge that Stellar gave up value with respect to the 2008 debt conversion because, at a minimum, Stellar had the right to convert the $5,285,067 in debt to equity at $0.01 per share pursuant to the terms of the convertible promissory note. Nonetheless, Judge's view was that any loss in value was a business decision that was made to avoid the negative impact a debt conversion at $0.01 per share would have had on the minority ownership interests and the company's employee incentive plan. This explanation by Judge ignores the fact that by giving up value, Stellar further impaired its ability to repay its creditors such as DRR, which, in turn, was indirectly funded by investor funds.

After the March 2008 debt conversion, Stellar held a total of 6,949,105 shares of BioReaction, giving Stellar a 97.25 percent ownership interest in the company on an undiluted basis. Stellar's ownership interest increased to 98.17 percent in 2009 when BioReaction

[446] TC-BRI 06.

redeemed 66,667 shares previously issued to one of the original founders of the company and returned those shares to the treasury.

## D. Wavetronix LLC

### 1. Background

Wavetronix LLC ("Wavetronix") is a company based in Lindon, Utah, that designs and manufactures a variety of technological products used to reduce traffic congestion, manage traffic flows, and improve road safety. As detailed below, from 2000 to 2007, Wavetronix received significant sums from Investments, GCC, and DRR that were booked as either loans from or equity investments by Stellar. In order to understand these transactions and analyze Wavetronix's use of these funds, the Examiner reviewed records produced by Wavetronix and interviewed the company's CEO, David Arnold, and CFO, Van Newby, at their Utah offices.

### 2. Stellar's Ownership of Wavetronix

At Wavetronix's formation, Stellar received 6,000,000 of the 10,000,000 common membership units of the company for a 60 percent stake[447] in exchange for an initial $2,000,000 investment that Stellar provided using funds obtained from Investments. The remaining 4,000,000 shares were given to the two founders of Wavetronix -- Arnold and Michael Jensen (2,000,000 shares each).[448]

In December 2004, the Wavetronix board approved an increase in the number of common units to 15,000,000 shares to create a pool of 2,000,000 shares for employee stock options. As a

[447] Wavetronix's CEO stated that Stellar's receipt of at least a 60% stake was a condition imposed by Douglas Swenson for any investment made by Stellar in Wavetronix, and that he understood that Swenson required at least a 60% stake for every Technology Company in which Stellar invested.

[448] In 2002, due to Jensen's decision to have less involvement with the company, 1,400,000 of his shares were transferred to Arnold and 100,000 of his shares were transferred to another Wavetronix employee, Peter Walters. After this transfer, Stellar held 6,000,000 units, Arnold held 3,400,000 units, Jensen held 500,000 units, and Walters held 100,000 units.

result of this increase, Stellar received an additional 2,100,000 shares and the original founders received an additional 900,000 units. After the December 2004 transaction, Stellar's ownership stake in Wavetronix increased to 62.31 percent on an undiluted basis. Due to the grant and exercise of options subsequent to December 2004, Stellar's current ownership stake (as of June 2009) in Wavetronix stands at 62.18 percent on an undiluted basis and 57.32 percent on a fully diluted basis.

### 3. Involvement of DBSI-Related Individuals and Insiders

The following DBSI-related individuals and insiders have served on Wavetronix's board at various times in the company's history: Douglas Swenson (since inception); Foster (from inception to October 2008); Wasden (since inception); Reeve (from inception to June 2001); Hassard (since January 2008); and Judge (since October 2005). Since July 2001, the company's CEO, Arnold, has served as chairman of the board of Wavetronix.

The Examiner did not find any evidence that any DBSI-related individuals or insiders were employed by Wavetronix or had any direct ownership interest in the company.

### 4. Funds Received by Wavetronix

From the company's formation in August 2000 to the end of 2007, Wavetronix received a total of $23,198,268 in funding from three sources -- Investments, GCC, and DRR -- which are broken down in the following amounts:

| Funding Entity | Amount Received |
|---|---|
| Investments | $2,000,000 |
| GCC | $3,976,300 |
| DRR | $17,221,968 |
| **TOTAL** | **$23,198,268** |

Although the funds came from three different sources, Wavetronix employees stated that at all times it was their understanding that the entirety of these funds was coming from DBSI.[449]

**a. Investments -- $2,000,000**

The $2,000,000 Wavetronix received from Investments came in as a capital contribution paid in separate installments from August 2000 to July 2001. Wavetronix booked the entire $2,000,000 that came from Investments as a capital contribution made by Stellar, and Stellar recorded a $2,000,000 capital investment in Wavetronix. The $2,000,000 initial investment in Wavetronix included both direct cash deposits from Investments into Wavetronix's bank accounts, as well as funds paid by DBSI-controlled entities (e.g., DBSI Realty and DBSI Industrial) on Wavetronix's behalf for payroll expenses, employee benefits, and other similar corporate overhead expenses. The $2,000,000 received from Investments is currently reflected in a capital account on Wavetronix's books.

**b. GCC -- $3,976,300**

From March 2002 to August 2003, Wavetronix received $3,976,300 in funds from GCC. Based on the Examiner's review of Wavetronix's bank statements, it appears that the entirety of the $3,976,300 from GCC came in as direct cash deposits into Wavetronix's bank accounts.

The amounts Wavetronix received from GCC were treated by Wavetronix as a loan from Stellar even though the funds came directly from GCC. On Stellar's books, the funds Wavetronix received from GCC were recorded as a note receivable from Wavetronix and as part of Stellar's note payable to GCC. As discussed in more detail below, the amounts Wavetronix

[449] On Wavetronix's books, amounts received from GCC were originally booked in a separate payable account entitled "Note Payable GCC (Deposits from DBSI Bonds GCC)" and amounts received from DRR were booked in an account entitled "Note Payable Stellar". Wavetronix employees explained that this accounting treatment was likely directed by Stellar's accountants, who assisted with the company's accounting, especially in the early years of the company's existence. In 2008, however, the entirety of the funds that Wavetronix received from GCC was moved to a single note payable to Stellar account on Wavetronix's books.

received from GCC were, after the fact, included in two promissory notes dated January 1, 2003, and January 1, 2004, that Wavetronix signed payable to Stellar.

Wavetronix never repaid any portion of the funds it received from GCC and never made any interest payments on the GCC debt. Nonetheless, as previously described in the section relating to Stellar, Stellar's books indicate that the full amount of its GCC borrowings that it loaned to Wavetronix, plus accrued interest, was repaid using additional borrowings Stellar received from DRR and 2008 Notes. Specifically, from May 2004 to March 2007, $964,948 was recorded on Stellar's books as having been borrowed by Stellar from DRR and subsequently used to make interest payments that had accrued on GCC funds that Stellar had loaned to Wavetronix. These payments increased the amount of Stellar's note payable to DRR, but were not added to Wavetronix's note payable to Stellar.[450] In March 2007, Stellar's books show a $209,898 reduction in the principal balance of GCC funds that were loaned to Wavetronix and a corresponding increase in the principal balance of DRR funds that were loaned to Wavetronix. Finally, on June 5, 2008, the remaining $3,766,402 in principal that Wavetronix originally received from GCC was recorded on Stellar's books as having been paid off in full using funds Stellar borrowed from 2008 Notes. These transactions had no impact on the amount that Wavetronix has recorded on its books as being owed to Stellar as the transactions simply shifted GCC debt to DRR and 2008 Notes -- the total amount Wavetronix owed Stellar did not change. On Stellar's books, however, the transactions decreased Stellar's payable to GCC by $3,976,300, increased its debt to DRR by $209,898, and increased its debt to 2008 Notes by $3,766,402.

[450] Initially, the GCC interest payments using funds from DRR were included in the amount owed by Wavetronix to Stellar but, in 2008, Stellar's accountants made an accounting adjustment on Wavetronix's books that removed this amount from the total amount owed by Wavetronix to Stellar.

Based on the Examiner's Investigation, it does not appear that Wavetronix had any involvement in the decision for Stellar to use new borrowings from DRR and 2008 Notes to pay off the amounts Wavetronix received from GCC. As previously explained, this decision was made by Stellar and the DBSI accounting department without consultation or discussion with Wavetronix.

#### c. DRR -- $17,221,968

From July 2001 to May 2007, Wavetronix received $17,221,968[451] from DRR (some of which was originally booked as coming from Investments) through numerous cash installments.[452] Although the cash went directly from DRR[453] to Wavetronix, the entirety of this amount was recorded on Wavetronix's books as a note payable to Stellar, and Stellar recorded these transfers as both a note receivable from Wavetronix and a note payable by Stellar to DRR. As discussed in more detail below, the amounts Wavetronix received from DRR from 2001 to 2006 were documented in a series of promissory notes payable to Stellar, but no note was executed for the amounts that Wavetronix received from DRR in 2007.

To date, no payments have been made by either Wavetronix, Stellar, or any other entity on the principal amounts that were borrowed from DRR and went to Wavetronix -- Wavetronix

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[451] This figure represents actual cash received by Wavetronix and does not include the $964,948 in interest payments and $209,898 in principal payments recorded on Stellar's books as having been made using Stellar borrowings from DRR. If these amounts are included, the total transfers to Wavetronix is $18,396,814, which matches what Stellar's books indicate was loaned to Wavetronix from DRR.

[452] In the early years (2000 to 2002), the amounts from DRR came in as both direct cash transfers into Wavetronix's bank accounts as well as funds booked to Wavetronix to cover amounts due to DBSI-related entities for corporate overhead services these entities provided to Wavetronix. Starting sometime in 2002, all funds Wavetronix received from DRR came in solely as direct cash deposits into its bank accounts.

[453] Initially, the funds Wavetronix received from DRR from 2001 to 2002 came from Investments, and Investments booked the funds it sent to Wavetronix as part of its note receivable from Stellar. Sometime in 2002 or 2003, Stellar's debt to Investments was transferred to DRR with Investments recording a corresponding reduction in its note payable to DRR. In Stellar's records, the funds that originally came from Investments (except for the initial $2,000,000 capital investment previously described) are shown as having originally come from DRR.

still owes Stellar the full $17,221,968 that Wavetronix received from DRR, and that amount is included in the total amount Wavetronix has listed on its books as a note payable to Stellar.[454] In 2009, however, Wavetronix made three $20,000 payments to Stellar using cash from its own operations. Stellar applied these amounts to reduce the total accrued interest owed by Wavetronix on the DRR debt. Wavetronix employees stated that the payments were made at the request of Judge, who indicated that because Stellar had no funding due to the DBSI bankruptcy, he needed any available cash from Wavetronix to cover his salary. Wavetronix stopped making the $20,000 monthly payments April 2009.

**5. Promissory Notes**

Wavetronix signed a series of promissory notes payable to Stellar documenting the amounts Wavetronix received from GCC and DRR from 2001 to 2006.[455] According to Wavetronix's employees, the notes were first executed sometime in the 2004 to 2005 time frame at the request of Foster, who at the time was the president of Stellar. Foster had Wavetronix sign a series of retroactive promissory notes effective in January of each year that would cover the amounts that Wavetronix borrowed in the prior year (e.g., January 1, 2002 note covered amounts Wavetronix received in 2001; January 1, 2003 note covered amounts Wavetronix received in 2002; etc.). Prior to the execution of the notes in the 2004/2005 time period, the transfers from GCC and DRR to Wavetronix were undocumented. After the retroactive notes were executed in 2004/2005, the amounts Wavetronix received from DRR in future years were documented in promissory notes that were executed in January of each subsequent year, except no note was executed in January 2008 for the amounts that Wavetronix received from DRR in 2007.

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[454] As of December 31, 2008, Wavetronix's balance sheet shows that the company owes Stellar $21,198,267, which includes the $17,221,968 received from DRR and the $3,976,300 originally received from GCC.

[455] TC-WAV 01 through TC-WAV 06.

Other than the relevant dates and the amounts owed, each note was substantively identical and imposed an obligation on Wavetronix to repay to Stellar the amounts that the company received from DRR and/or GCC in the prior year at an interest rate of 11 percent per annum. Each of the notes was accompanied by a security agreement in which Wavetronix pledged all of its assets to Stellar as collateral for the debt, but the Examiner did not find any evidence that Stellar took steps to file, record, or otherwise perfect this security interest. None of the Wavetronix notes gave Stellar the option to convert its debt into equity in the company. All of the relevant note documents were signed by Wavetronix's CEO and Douglas Swenson in his capacity as the chairman of the Stellar board. The following chart sets forth the total amount of each note and the borrowings covered by the note:

| Date of Note[456] | Repayment Date | GCC Borrowings From Prior Year Per Note Schedule | DRR Borrowings From Prior Year Per Note Schedule | Total Borrowings From Prior Year Per Note Schedule | Corrected Borrowings From Prior Year |
|---|---|---|---|---|---|
| 01/01/02 | 09/01/08[457] | $0 | $1,400,782 | $1,400,782 | $1,400,782 |
| 01/01/03 | 09/30/08[458] | $2,598,300 | $764,630 | $3,362,930 | $3,362,930 |
| 01/01/04 | 01/01/09 | $1,378,000 | $1,474,882 | $2,852,882 | $2,852,882 |
| 01/01/05 | 01/01/10 | $0 | $3,716,278[459] | $3,716,278 | $3,496,278 |
| 01/01/06 | 01/01/11 | $0 | $4,764,249[460] | $4,764,249 | $3,987,684 |
| 01/01/07 | 09/30/08[461] | $0 | $4,663,358 | $4,663,358 | $4,663,358 |
| | **TOTAL** | **$3,976,300** | **$16,784,179** | **$20,760,479** | **$19,763,914** |

Although Wavetronix received an additional $1,434,354 from DRR in 2007 and those amounts were recorded on Wavetronix's and Stellar's books as being amounts owed by Wavetronix to

[456] As indicated above, the January 2002, January 2003, January 2004, and possibly January 2005 notes were executed sometime in the 2004/2005 time period.

[457] The January 2002 note was originally payable on January 1, 2007, but Wavetronix and Stellar executed an amendment of the note on December 13, 2006, extending the repayment date to September 1, 2008. The Examiner did not find any additional extensions for the January 2002 note. On December 30, 2008, Stellar sent Wavetronix a notice of default on this loan. TC-WAV 07.

[458] The January 2003 note was originally payable on January 1, 2008, but Wavetronix and Stellar executed an amendment of the note on November 7, 2007, extending the repayment date to September 1, 2008. The Examiner did not find any additional extensions for the January 2003 note. On December 30, 2008, Stellar sent Wavetronix a notice of default on this loan. TC-WAV 08.

[459] The amount reflected on the January 2005 note is overstated by $220,000. On September 30, 2004, the note schedule indicates a transfer from DRR to Wavetronix of $178,000, when in reality only $101,000 was transferred to Wavetronix on that date. In February 2005, the error was discovered and accounting adjustments were made to both Stellar's and Wavetronix's books to correct the amount of this transfer to $101,000. The remaining $143,000 represents amounts that Stellar borrowed from DRR in 2004 to make interest payments to GCC. In 2008, these amounts were removed from the principal amount owed by Wavetronix to Stellar.

[460] The amount reflected on the January 2006 note is overstated by $776,565, which represents amounts that Stellar borrowed from DRR in 2005 to make interest payments to GCC. In 2008, these amounts were removed from the principal amount owed by Wavetronix to Stellar.

[461] The January 2007 note was originally payable on January 15, 2008, but Wavetronix and Stellar executed an amendment of the note on January 16, 2008, extending the repayment date to September 30, 2008. The Examiner did not find any additional extensions for the January 2007 note. On January 8, 2009, Stellar sent Wavetronix a notice of default on this loan. TC-WAV 09.

Stellar, no note or security agreement was ever executed for the 2007 transfers from DRR to Wavetronix.

### 6. Use of Funds by Wavetronix

Based on the Examiner's review of Wavetronix's records and bank statements and interviews conducted with Wavetronix's CEO and CFO, the Examiner did not find any evidence of improper use by Wavetronix of any of the funds it received from Investments, GCC, or DRR. All funds that Wavetronix received from Investments, GCC, and DRR appear to have been used for routine business purposes. Moreover, the Examiner did not find any evidence of transfers from Wavetronix to DBSI insiders or DBSI-controlled entities, except for some relatively small payments to Stellar, DBSI Industrial, and DBSI Realty to reimburse those entities for payroll, benefits, equipment leasing, legal, accounting, tax, and other corporate overhead expenses those entities paid on Wavetronix's behalf or otherwise provided to the company. In addition, Wavetronix made some relatively small payments to Western Electronics for manufacturing services that Western Electronics provided for Wavetronix products.

### 7. Appraisals

In 2008 and 2009, Wavetronix paid an outside accounting firm to perform appraisals of the company. Wavetronix employees reported that the 2008 appraisal (which valued the company as of December 31, 2007) was done at Stellar's request. Wavetronix employees stated that Stellar requested that Wavetronix obtain the appraisal to set a strike price for options granted under the company's employee stock option plan and to possibly raise additional financing for the company.[462]

[462] As previously discussed, Stellar ultimately used data from the 2008 Wavetronix appraisal to value its ownership stake in Wavetronix that it pledged as collateral for Stellar's borrowings from 2008 Notes.

The 2009 valuation was done on Wavetronix's own initiative. Wavetronix employees reported that the valuation was done as part of the company's effort to put together a plan to buy-out Stellar's ownership interest in the company due to the DBSI bankruptcy.

### E. <u>iTerra Communications LLC</u>

#### 1. Background

iTerra Communications LLC ("iTerra") was a Palo Alto, California company that designed and developed semi-conductor products. The company was formed in October 2000 and ceased operations in mid-2007, at which time all of iTerra's assets were transferred to form GigOptix LLC (which ultimately became GigOptix, Inc.). The Examiner was able to obtain records relating to iTerra from Stellar and GigOptix, Inc., including iTerra's corporate minutes, its general ledger, tax returns, loan documents, and bank statements. The Examiner did not interview any former iTerra employees, but did obtain information about the company's past operations from Paul Judge at Stellar as well as from GigOptix, Inc.'s CEO, Avi Katz.

#### 2. Stellar's Ownership of iTerra

According to iTerra's tax records, the company was formed in October 2000. At formation, Stellar received 5,500,000 shares of the company in exchange for a capital contribution of $167,579 that Stellar provided via transfers of funds from Investments. Stellar's 5,500,000 shares gave it an initial 65 percent ownership stake in the company, with the remaining 35 percent of the shares held by iTerra founders, none of whom appear to have had any past connection to DBSI-related companies and none of whom provided any cash contribution in exchange for their shares.

In 2001, Stellar made an additional equity investment of $3,832,421 using funds that originated from Investments. Stellar did not receive any additional shares for these contributions. The additional $3,832,421 provided by Stellar in 2001 raised Stellar's total equity contribution in iTerra to $4,000,000.

Since formation, Stellar has not received any additional shares in iTerra, but its ownership stake has grown to 80.10 percent on an undiluted basis, primarily due to some of the original founders of the company returning their shares to iTerra's stock treasury upon departing the company. The remaining 19.90 percent of iTerra continues to be held by various individuals and former iTerra employees, none of whom appear to have any prior affiliation with DBSI. Other than Stellar, the Examiner did not find any evidence that any DBSI-related individuals, insiders, or entities have ever held any direct ownership interests in iTerra.

### 3. Involvement of DBSI-Related Individuals and Insiders

The company's corporate records indicate that the following DBSI-related individuals and insiders served on iTerra's board at various times during the company's existence: Douglas Swenson (from inception until January 2007; November 2007 to current); Foster (from inception until January 2007), Hassard (since November 2007) and Judge (since August 2005) were board members. In addition, Douglas Swenson Douglas Swenson served as chairman of iTerra's board from August 2005 to January 2007. Based on a review of iTerra's records, no DBSI-related individuals or insiders appears to have worked for iTerra, although an individual named Jake Wasden was employed with iTerra from May 2001 to May 2006 and is believed to be related to John Wasden.[463]

[463] iTerra's general ledger indicates a variety of payments to Jake Wasden for payroll, moving expenses, and reimbursements, but there was insufficient payroll detail in iTerra's records to estimate how much iTerra paid Jake Wasden during the course of his employment with the company.

### 4. Funds Received by iTerra

From the company's formation in October 2000 to August 2007, iTerra's books indicate that the company received a total of $43,142,917 in funding from three sources -- Investments, GCC, and DRR -- which are broken down in the following amounts:

| Funding Entity | Amount Received |
|---|---|
| Investments | $4,000,000 |
| GCC | $11,313,833 |
| DRR | $27,829,084 |
| **TOTAL** | **$43,142,917** |

#### a. Investments -- $4,000,000

The $4,000,000 iTerra received from Investments came in as a capital contribution paid in separate installments from November 2000 to November 2001. iTerra booked the entire $4,000,000 that came from Investments as a capital contribution made by Stellar, and Stellar recorded a $4,000,000 capital investment in iTerra. The $4,000,000 initial investment in iTerra included both direct cash deposits from Investments into iTerra's bank accounts, as well as funds paid by DBSI-controlled entities (e.g., DBSI Realty and DBSI Industrial) on iTerra's behalf for payroll expenses, employee benefits, and other similar corporate overhead expenses. The $4,000,000 received from Investments remains recorded in a capital account on iTerra's books.

#### b. GCC -- $11,313,833

From March 2002 to July 2003, iTerra received a total of $11,313,833 in funds from GCC. The Examiner was able to verify iTerra's receipt of these funds through analysis of iTerra's bank statements. The amounts iTerra received from GCC were recorded on iTerra's books in a "bond payable" account. On Stellar's books, the funds iTerra received from GCC were recorded as a note receivable from iTerra and as part of Stellar's note payable to GCC. The amounts iTerra received from GCC were included in two promissory notes dated January 1, 2003, and January 1, 2004, that were signed by iTerra and payable to Stellar.

iTerra never repaid any portion of the principal it received from GCC and, at the time it ceased operations, iTerra's books indicated that it still owed the entire $11,313,833 to Stellar.[464] Nonetheless, Stellar's books indicate that $4,740,321 of the GCC borrowings that were transferred to iTerra were repaid -- $591,875 was repaid to GCC in 2007 using funds Stellar borrowed from DRR, and $4,148,446 was repaid to GCC using funds Stellar borrowed from 2008 Notes. Thus, on Stellar's books, the current balance of unpaid principal that Stellar borrowed from GCC and loaned to iTerra is $6,573,512, with the remaining portions of the original $11,313,833 now owed by Stellar to 2008 Notes and DRR.

Based on an analysis of iTerra general ledger, it appears that iTerra used the GCC funds it received for normal operating expenses, except for $814,000 of GCC funds shown on both Stellar's and iTerra's books as being used to make principal repayments to DRR in 2002.

**c. DRR -- $27,829,084**

From November 2001 to August 2007, iTerra books indicate that it received a total of $27,829,084 from DRR that came in through numerous cash installments during that period. Although the cash went directly from DRR[465] to iTerra, the entirety of this amount was recorded on iTerra's books as a note payable to Stellar, and Stellar recorded these transfers as both a note

[464] As discussed below, iTerra's books indicate that it borrowed $2,459,910 from DRR to make interest payments on the GCC debt.

[465] Initially, the funds iTerra received from DRR from 2001 to 2002 came from Investments, and Investments booked the funds it sent to iTerra as part of its note receivable from Stellar. Sometime in 2002 or 2003, Stellar's debt to Investments was transferred to DRR, with Investments recording a corresponding reduction in its note payable to DRR. In Stellar's records, all funds that went to iTerra from Investments (except for the initial $4,000,000 capital investment) are shown as having originally come from DRR.

receivable from iTerra and a note payable by Stellar to DRR. The amounts iTerra received from DRR from 2001 to 2007 were documented in a series of promissory notes payable to Stellar.

According to iTerra's records, the only repayments of DRR principal that occurred was in 2002, when iTerra's books indicate that the company borrowed $814,000 in funds from GCC and used those funds to reduce the principal amount owed to DRR. Including these "repayments," the current unpaid principal balance of DRR funds iTerra owes Stellar is $27,015,084.[466]

Of the total amount iTerra received from DRR, iTerra's records indicate that $3,051,785 was used to service GCC debt ($591,875 used to pay GCC principal and $2,459,910 used to make interest payments to GCC). Based on an analysis of iTerra's general ledger, the remainder of the DRR funds iTerra received from 2001 to 2007 was used for general operating expenses. iTerra's general ledger did not indicate that any of the funds it received from DRR were transferred to DBSI-related individuals or insiders.

#### 5. Promissory Notes

iTerra signed a series of promissory notes payable to Stellar documenting the amounts iTerra received from GCC and DRR from 2001 to 2007.[467] Other than the relevant dates and the amounts owed, each note was substantively identical in its material terms and imposed an obligation on iTerra to repay to Stellar the amounts that iTerra received from DRR and/or GCC in the prior year at an interest rate of 11 percent per annum (e.g., January 1, 2003 note covered amounts iTerra received from GCC and DRR in 2002). In all but one case,[468] the notes were

[466] On December 31, 2007, Stellar converted $7,770,908 of accrued interest to principal, thereby increasing the total principal balance owed by iTerra on the DRR debt to $34,785,992.

[467] TC-ITC 01 through TC-ITC 09.

[468] The Examiner was unable to locate a copy of a security agreement accompanying the January 1, 2006 note.

accompanied by a security agreement in which iTerra pledged all of its assets to Stellar as collateral for its debt. The Examiner, however, did not find any evidence that Stellar took steps to file, record, or otherwise perfect this security interest. None of the iTerra notes gave Stellar the option to convert its debt into equity in the company. From 2002 through 2006, all of the relevant note documents were signed by iTerra's CEO and Douglas Swenson on behalf of Stellar. The January 2007 and January 2008 notes were signed on behalf of iTerra by Judge, who was authorized by iTerra's board to execute the notes.[469] The following chart sets forth the total amount of each note and the borrowings covered by the note:

| Date of Note | Repayment Date | GCC Borrowings | DRR Borrowings | Total Borrowings |
|---|---|---|---|---|
| 01/01/02 | 09/01/08[470] | $0 | $565,550 | $565,550 |
| 01/01/03 | 09/30/08[471] | $7,294,500 | $572,475 | $7,866,975 |
| 01/01/04 | 01/01/09 | $4,019,308 | $1,760,435 | $5,779,743 |
| 01/01/05 | 01/01/10 | $0 | $5,772,000 | $5,772,000 |
| 01/01/06 | 01/01/11 | $0 | $7,157,280 | $7,157,280 |
| 01/01/07 | 01/01/12 | $0 | $6,841,242 | $6,841,242 |
| 01/01/08[472] | 01/01/13 | $0 | $3,605,907 | $3,605,907 |
| | **TOTAL** | **$11,313,808** | **$26,274,889** | **$37,588,697** |

### 6. Use of Funds by iTerra

Based on the Examiner's review of iTerra's records and bank statements, the funds iTerra received from Investments, GCC, and DRR appear to have been used for legitimate operations. iTerra's general ledger indicates, however, that iTerra made the following payments to DBSI-

[469] TC-ITC 10.

[470] The January 2002 note was originally payable on January 1, 2007, but iTerra and Stellar executed an amendment of the note on December 8, 2006, extending the repayment date to September 1, 2008. TC-ITC 02.

[471] The January 2003 note was originally payable on January 1, 2008, but iTerra and Stellar executed an amendment of the note on November 13, 2007, extending the repayment date to September 30, 2008. TC-ITC 04.

[472] The January 2008 note does not include the $591,875 of DRR borrowings shown on iTerra's books as being used to pay GCC principal or the $129,130 in DRR borrowing shown on iTerra's books as being used to pay GCC interest.

related entities: DBSI Industrial (approximately $240,000; equipment leasing); DBSI Realty (approximately $1.9 million; medical insurance, corporate overhead services); DBSI Leasing (approximately $1.2 million; use unclear); EmergeCore ($870); Wavetronix (approximately $3,400); Western Electronics (approximately $140,000 for "management consulting"); and Stellar (approximately $50,000 for legal fees and insurance expense).

#### 7. Current Status

iTerra ceased all operations in mid-2007, at which time all of its assets and liabilities were transferred to a new entity (GigOptix LLC) except for its $46,099,825 in debt owed to Stellar. Despite having no assets and $46 million in debt, the company has not been dissolved and Stellar continues to maintain the outstanding principal and interest owed by iTerra as a note receivable on its books.

### F. GigOptix, Inc.

#### 1. Background

GigOptix, Inc. (successor in interest to GigOptix, LLC) ("GigOptix") is a Palo Alto, California, publicly traded company that designs and manufactures advanced integrated circuits for high-bandwidth optical communication systems. GigOptix LLC was formed in July 2007 when it acquired all of the assets and liabilities of iTerra, except iTerra's existing debt owed to Stellar, which at the time included $46,099,825 in principal. In exchange for its transfer of assets, iTerra received 100 percent of the stock of GigOptix, LLC on an undiluted basis (54 percent on a fully diluted basis). After GigOptix, LLC was formed, the company continued borrowing money from Stellar, who provided funding to the company via funds obtained almost entirely from DRR. In August 2008, Stellar converted all unpaid portions of these borrowings into an equity position in GigOptix, LLC. In December 2008, GigOptix LLC merged with a publicly traded company, Lumera Corporation, to form GigOptix, Inc., which is currently a publicly traded company on NASDAQ. Much of the funds to close that transaction were obtained from DRR borrowings GigOptix, LLC obtained from Stellar.

In order to understand GigOptix's relationship with Stellar and its use of funds that originated from DBSI-related entities, the Examiner obtained documents from the company and interviewed the its current CEO, Avi Katz, and its acting CFO, Dawn Casterson.

**1. Involvement of DBSI-Related Individuals and Insiders**

The only DBSI-related individual who served on GigOptix, LLC's board was Paul Judge. No DBSI insiders or members of the Control Group served on GigOptix, LLC's board. When GigOptix, Inc. was formed in December 2008, Douglas Swenson was appointed to the board of that entity and continued to serve on GigOptix, Inc.'s board until he resigned from that position on August 31, 2009. Based on a review of GigOptix's records and discussions with its CEO, it does not appear that any DBSI-related individuals or insiders have worked for either GigOptix, LLC, or GigOptix, Inc.

**2. Ownership History and Funds Received**

When GigOptix, LLC was formed in July 2007, iTerra received 5,400,000 shares of GigOptix, LLC, in exchange for transferring all of its assets into the company. iTerra was the sole owner of GigOptix, holding a 100 percent stake in the company on an undiluted basis, and a 54 percent stake in the company on a fully diluted basis (the remaining shares were set aside for future employee option grants). On GigOptix's capital account charts, iTerra's contribution was valued at $1.6 million, although it is unclear how that value was determined. An independent appraisal of GigOptix LLC as of July 2, 2007, valued the company at $1.3 million.[473]

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[473] TC-GIG 07.

At formation, GigOptix signed a $7,000,000 convertible promissory note dated July 1, 2007, payable to Stellar at an interest rate of 6 percent per annum and due on December 31, 2008.[474] No collateral was pledged to secure the indebtedness. From July 2007 to August 2008, Stellar loaned GigOptix a total of $6,305,000 in funds under the note, the majority of which came in semi-monthly installments of $350,000.[475] Stellar's books indicate that it obtained all of the funds it loaned to GigOptix using loans from DRR. GigOptix recorded these funds as a note payable to Stellar, and Stellar recorded the funding it provided to GigOptix as a note receivable from GigOptix and a corresponding note payable to DRR. The interest rate on Stellar's borrowings from DRR (12 percent in 2007 and 8.45 percent in 2008) was considerably higher than the interest rate it was charging GigOptix, thus, Stellar was loaning money to GigOptix at a net paper loss.

On January 14, 2008, GigOptix, LLC executed a second convertible promissory note payable to Stellar in the amount of $4.4 million, with interest accruing at a rate of 6 percent per annum, and payable by December 31, 2008.[476] Again, GigOptix recorded these funds as part of its note payable to Stellar, and Stellar recorded the additional funding as a note receivable from GigOptix and a note payable to DRR. Like the earlier note, the January 2008 note also was not secured with any pledge of collateral by GigOptix. GigOptix's CEO explained that the purpose of the second note was to provide GigOptix with funds to acquire a European company called Helix. According to Stellar's records, it provided GigOptix with the $4.4 million in funds to

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[474] TC-GIG 02.

[475] GigOptix's receipt of these funds was verified through analysis of their bank statements and books. There was insufficient detail in GigOptix's general ledger provided to the Examiner to reach any conclusion as to how the company used these funds.

[476] TC-GIG 03.

acquire Helix on January 11, 2008,[477] using funds that Stellar borrowed from DRR at a rate of 8.45 percent per annum (again, a higher rate of interest than what Stellar was charging GigOptix). GigOptix's and Stellar's records indicate that $3,700,000 was used to acquire Helix, with the remaining $700,000 being returned to Stellar on February 5, 2008, who then returned the funds to DRR that same day.[478] Thus, by February 5, 2008, the outstanding balance on the second note was $3.7 million.

Both the July 1, 2007 and January 14, 2008 notes gave Stellar the option to convert the outstanding balance GigOptix owed Stellar into equity. The July 2007 note gave Stellar the right to convert any outstanding balance GigOptix owed on or after June 30, 2008, while the January 2008 note only allowed Stellar to convert any balance GigOptix owed as of the note's December 31, 2008 maturity date.[479] If Stellar exercised its right to convert, both notes indicated that the fair market value to be used for the debt conversions would be determined by agreement between GigOptix and Stellar.[480]

In March 2008, GigOptix announced that it would be merging with Lumera, a publicly traded company on NASDAQ. In preparation for that merger, Stellar and GigOptix started the process of converting GigOptix's debt to Stellar into equity, which ultimately was done on August 20, 2008.

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[477] GigOptix's receipt of these funds was verified through analysis of their general ledger and bank statements.

[478] The note specifically provided for repayment of up to $700,000 in principal within 30 days of the note's effective date and that such payments would be applied to reduce outstanding principal – not accrued interest.

[479] Both notes also contained provisions that automatically would convert Stellar's debt into equity if outside investors provided more than $10 million in financing to the company. Although GigOptix did receive outside investment in 2008, it was well below $10 million, so the automatic conversion feature of the July 2007 and January 2008 notes was not triggered.

[480] The notes further provided that if no agreement on value could be reached within 30 days, independent appraisers would be retained to determine the value to be used for the conversion of Stellar's outstanding debt. Because the parties were able to negotiate a "fair market" value, no independent outside valuation of GigOptix was obtained.

Just prior to the August 20, 2008 debt conversion, GigOptix owed Stellar a total of $10,005,000 in outstanding principal and approximately $245,000 in accrued interest.[481] Accordingly, $10.25 million of outstanding principal and interest was converted into 5,333,333 units of GigOptix, LLC, yielding a debt conversion rate of $1.92 per unit. At the time of the debt conversion, however, an outside investor – Avisan – provided $500,000 in capital to the company and received a total of 619,231 shares of GigOptix, LLC – a purchase price of $0.81 per unit.

When asked why Stellar paid more than twice as much for its shares than an outside investor, Judge explained that Stellar and GigOptix had agreed that Stellar would convert its debt at conversion rate based on Lumera's share price as of the day that the GigOptix-Lumera merger was announced in March 2008. Judge explained, however, that Avisan refused to convert at the same price and instead demanded that the number of shares it received for its $500,000 investment be determined by the share price of Lumera as of the date of Avisan's investment – not the date the merger was announced. Because Lumera's share price had fallen since the time the GigOptix-Lumera merger was announced, a lower rate was used to calculate the amount of shares Avisan would receive for its $500,000 investment.

In addition, as part of the August 20, 2008 debt conversion, both Stellar and GigOptix realized that an additional $1.2 million was needed to fund the company until the Lumera deal closed and to pay additional expenses associated with the Lumera transaction. Stellar agreed to provide this additional funding, which it did using funds borrowed from DRR ($850,000) and

[481] The $10,005,000 principal amount includes the $3.7 million due under the January 2008 note. As previously indicated, however, the January 2008 note did not give Stellar the right to convert any of the debt incurred under that note into equity until the note's maturity date, which was December 31, 2008. As such, the conversion of the $3.7 million in debt that was used to finance the Helix acquisition was not authorized under the terms of the January 2008 note.

GCC ($350,000).[482] On August 19, 2008, GigOptix and Stellar also executed a modification[483] to the July 2007 note that increased the amount of that note to $7.5 million to cover the additional funding.[484] On August 20, 2008, Stellar converted the additional $1.2 million it agreed to provide the company into an additional 1,739,742 shares of GigOptix, using a conversion rate of $0.69 per unit. Judge explained that the $0.69 rate was based on the fact that Lumera's share price had fallen even more by August 2008 from where it was when GigOptix and Avisan had negotiated their debt conversion price and from the share price when the GigOptix-Lumera merger was first announced in March 2008.

At the conclusion of the August 20, 2008 debt-to-equity conversion,[485] Stellar had converted the entirety of the $11,905,000 in funding it provided to GigOptix ($11,555,000 from DRR and $350,000 from GCC) into a 54.02 percent stake in GigOptix, LLC on an undiluted basis. No portion of those funds are currently owed to Stellar.

In November 2008, additional funding of $1,000,000 was received from a second outside investor – Arjesan LLC. With this additional investment, the capital structure of GigOptix LLC just prior to the Lumera merger and the formation of GigOptix, Inc. was as follows:

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[482] GigOptix's receipt of these funds was verified to the company's bank statements. There was insufficient detail in GigOptix's general ledger provided to the Examiner to reach any conclusions about how the company used these funds.

[483] TC-GIG 04.

[484] Prior to the increase, Stellar had loaned GigOptix $6,305,000. With the additional $1.2 million, the total principal balance loaned on the July 2007 note increased to $7,505,000. With the August 19, 2008 increase in the note amount to $7.5 million, $5,000 of the amount Stellar loaned to GigOptix was not documented in any note.

[485] TC-GIG 05.

| Owner | Shares | Consideration | Price | Ownership Percentage (Undiluted) | Ownership Percentage (Diluted) |
|---|---|---|---|---|---|
| iTerra | 5,400,000 | $1,600,000 | $0.30 | 34.40% | 24.65% |
| Avisan | 619,231 | $500,000 | $0.81 | 3.94% | 2.83% |
| Stellar Preexisting Debt | 5,333,333 | $10,250,000 | $1.92 | 33.92% | 24.35% |
| Stellar Additional Funding | 1,739,742 | $1,200,000 | $0.69 | 11.06% | 7.94% |
| Arjesan LLC | 2,631,579 | $1,000,000 | $0.38 | 16.74% | 12.01% |

In December 2008, the Lumera merger closed and GigOptix, Inc. was formed. As a result of the merger, Stellar's pre-merger 45 percent stake in GigOptix, LLC became an 18.6 percent stake in GigOptix, Inc., and iTerra's original 34.4 percent pre-merger stake in GigOptix, LLC became a 14.2 percent ownership interest in GigOptix, Inc.

### G. EmergeCore Networks LLC

#### 1. Background

EmergeCore Networks, LLC ("EmergeCore") was a company based in Boise, Idaho, that designed, developed, and sold servers and other information-technology hardware. The company was formed in October 2000 and ceased operations sometime in 2006. At year-end 2007, Stellar wrote off $19 million in loans and equity related to EmergeCore. Due to the company's defunct status, the Examiner obtained records from Stellar for this entity. Stellar only had a limited amount of records for the company, which included EmergeCore's corporate minutes, general ledger details from January 1, 2003 forward, tax returns, and loan documents. Although requested, Stellar was unable to provide the Examiner with any of EmergeCore's bank statements or any detailed accounting or general ledger information prior to January 1, 2003. Due to absence of these key pieces of information, the Examiner was unable to confirm EmergeCore's actual receipt of funds from Stellar or DBSI-related funding entities and had very little detail regarding the company's receipt and use of funds prior to January 1, 2003. Because EmergeCore is no longer an operating company, the Examiner did not devote the resources necessary to locate former employees of the company for the purpose of interviews or to obtain additional records that were previously maintained by the company.

### 2. Stellar's Ownership of EmergeCore

According to EmergeCore's tax returns and corporate records, the company was formed on October 3, 2000. At formation, Stellar received a 77.78 percent stake in the company (7,000,000 shares) in exchange for $796,900 Stellar provided to the company in 2000.[486] The remaining 22.22 percent of the company was held by four original founders of the company (none of whom were previously affiliated with DBSI), who each received 500,000 shares. The four founders did not provide any capital in exchange for their respective ownership stakes.

In 2001, a 2:1 stock split was approved by the EmergeCore board that increased Stellar's shares to 14,000,000 units and the four original founders' shares to 1,000,000 units each. EmergeCore's tax records indicate that, although Stellar received no additional ownership stake in the company in 2001, Stellar nonetheless provided an additional $6,203,100 in capital to the company that year, bringing its total equity investment in the company as of 2002 to $7,000,000.

From August 2002 to April 2003, Stellar obtained an additional 3,003,333 units of EmergeCore by purchasing shares previously granted to other owners. Specifically, from August 2002 to January 2003, Stellar purchased the 3,000,000 units originally granted to three of the founders of the company for a total of $175,000.[487] One of the original founders sold his shares to Stellar in August 2002 for $75,000 ($0.075 per share), while the other two founders sold each

[486] The $796,600 contribution from Stellar is reflected in EmergeCore's tax records relating to its capital accounts.

[487] The fourth original founder's 1,000,000 shares were exchanged for 75,000 shares of Stellar in November 2002, and those shares were returned to the treasury.

of their respective stakes to Stellar in December 2002 and January 2003 for $50,000 ($0.05 per share). The available records do not indicate how these share purchase prices were determined or why Stellar paid more for the shares it received in August 2002. In April 2003, Stellar paid $1,666.50 to purchase 3,333 shares ($0.50 per share) that a former EmergeCore employee obtained through the exercise of stock options. It appears that the amount Stellar paid to purchase these shares was determined using the original $0.50 strike price that the former employee previously paid to obtain the shares.

As a result of Stellar's stock purchases from August 2002 to April 2003, Stellar's total stake in the company increased to 17,003,333 shares or a 94.16 percent ownership interest on an undiluted basis, which is the stake Stellar held in EmergeCore from April 2003 until the company ceased operations in late 2006.

### 3. Involvement of DBSI-Related Individuals and Insiders

The company's corporate records indicate that the following DBSI-related individuals and insiders served on EmergeCore's board at various times during the company's existence: Douglas Swenson (chairman of the board since inception); Wasden (from inception to 2002); Foster (since inception); Reeve (from inception to April 2001 and again from August 2001 to November 2002); Mayeron (April 2001 to 2002); Mott (since 2003); and Judge (since 2005). Although initially EmergeCore's board membership was split evenly between DBSI and non-DBSI representatives, over time DBSI's representation on the board steadily increased, and by 2005 the EmergeCore board consisted of four DBSI representatives and only one EmergeCore representative.[488]

[488] On March 23, 2006, when the decision to shut the company down was made, the lone EmergeCore representative on the board (EmergeCore's CEO) resigned.

Due to the lack of sufficient detail in the available accounting records, the Examiner was unable to identify all of the individuals who were on the company's payroll during its existence. Nonetheless, EmergeCore's corporate minutes indicated that, in addition to his service on EmergeCore's board, DBSI Control Group member Reeve served as the company's president and CEO from July 2001 until his termination by the board in November 2002.[489] There was insufficient information in the available records to determine how much Mr. Reeve was compensated for his service as EmergeCore's CEO.

#### 4. Funds Received by EmergeCore

From its formation in 2000 to December 2006, EmergeCore's books show that the company received $19,866,147 in funds from Stellar, of which $11,605,870 came in as an equity investment and the remaining $8,260,277 was provided as a loan. Stellar's books also reflect $8,260,277 in loans to EmergeCore, but the amount of Stellar's equity investment in EmergeCore as shown on Stellar's books is $11,425,863, which is $180,007 less than what EmergeCore's books reflect.

##### a. $11,605,870 Equity Investment

EmergeCore's and Stellar's books indicate that Stellar's $11,605,870 equity investment was provided to the company from inception to October 2002 and that the majority of those funds originated from GCC ($3,017,600) and DRR ($8,231,746). An additional $176,517 represents the amount Stellar paid to purchase the 3,003,333 shares from minority owners from August 2002 to April 2003,[490] although Stellar's records do not indicate whether those funds

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[489] EmergeCore's records do not indicate that Reeve was granted or exercised any stock options or otherwise received any ownership stake in the company during his tenure as CEO.

[490] EmergeCore's board minutes indicate that the total amount Stellar paid for the shares was $176,666, which is $150 more than what is reflected on Stellar's books for these additional stock purchases.

originated from DRR, GCC, or some other funding source. The remaining $180,007 of the $11,605,870 is the unaccounted for difference between Stellar's capital contribution reflected on EmergeCore's books and the $11,425,863 capital contribution reflected on Stellar's books.

Due to the lack of EmergeCore bank statements, the Examiner could not verify EmergeCore's actual receipt of the $11,605,870 capital investment shown on EmergeCore's books.

#### b. $8,260,277 Loans

The $8,260,277 that was recorded on Stellar's and EmergeCore's books as a loan was booked to EmergeCore in multiple installments from October 2002 to December 2006. EmergeCore's books indicate that the entirety of the $8,260,277 came from Stellar, but Stellar's records indicate that the funds originated from two sources -- GCC ($858,500) and DRR ($7,401,777). Again, the Examiner could not verify EmergeCore's actual receipt of these funds in its bank accounts or determine whether the transfers came directly from GCC and DRR or flowed through Stellar's bank accounts.

The entirety of the $8,260,277 is documented in a series of five convertible promissory notes payable to Stellar that are dated January 1 of each year starting in 2003. The Examiner found signed versions of the notes for January 2003, 2004, and 2005, but could only locate unsigned versions of the January 2006 and January 2007 notes.

The five notes were similar in many ways. Each note charged 11 percent interest per annum on the amounts that EmergeCore received in the prior calendar year from GCC and DRR. Each note was accompanied by a security agreement in which EmergeCore pledged all of its assets to Stellar as collateral for its debt. The following chart details the amount of each note, the amount of funds that came from GCC and DRR, dates of repayment, conversion price, and whether the note was signed:

| Date of Note | Date of Repayment | Signed? | Interest Rate | Conversion Price | Amount from GCC | Amount from DRR | Total Loan Amount |
|---|---|---|---|---|---|---|---|
| 01/01/03 | 01/01/08 | Yes | 11% | $1.29 / unit | $370,500 | $85,000 | $455,500 |
| 01/01/04 | 01/01/09 | Yes | 11% | $0.02 / unit | $488,000 | $886,000 | $1,374,000 |
| 01/01/05 | 01/01/10 | Yes | 11% | $0.11 / unit | $0 | $3,721,643 | $3,721,643 |
| 01/01/06 | 01/01/11 | No | 11% | $0.67 / unit | $0 | $2,075,761 | $2,075,761 |
| 01/01/07 | 01/15/08 | No | 11% | Not stated[491] | $0 | $633,373 | $633,373 |
| **TOTAL** | | | | | **$858,500** | **$7,401,777** | **$8,260,277** |

Stellar's records indicate that EmergeCore made a total of $348,000 in repayments on its debt: $108,000 was paid on March 19, 2003; $140,000 paid on May 1, 2003; and $100,000 paid on July 8, 2003. Stellar's books and records indicate that these repayments were ultimately applied to reduce Stellar's debt to DRR. The July 2003 repayment of $100,000 was applied to reduce the amount of interest EmergeCore owed to Stellar on the DRR borrowings as well as the amount of interest Stellar owed to DRR for amounts loaned to EmergeCore.

#### c. Current Status of Funds Invested and Loaned to EmergeCore

On December 31, 2007, Stellar wrote off its debt and equity in EmergeCore. The total amount written off was $19,509,622. The write-off was accomplished through a series of closing transactions on Stellar's books that had the net effect of transferring the entirety of Stellar's investment and debt in EmergeCore into debt owed directly by Stellar to GCC ($3,358,454) and DRR ($16,151,168).

### 5. Use of Funds by EmergeCore

Because the Examiner did not interview any former employees of EmergeCore and had very limited accounting information for EmergeCore prior to January 1, 2003, there is insufficient information available to reach any conclusions as to how EmergeCore used the funds

[491] The January 2007 note did not indicate a debt conversion price -- the blank where the conversion price should have been listed was not filled in.

it obtained from DRR and GCC via Stellar or whether those funds were used for legitimate business expenses. Nevertheless, a review of EmergeCore's account payable information from its general ledger shows that the company did make some relatively small payments to the following DBSI-related entities and individuals from January 1, 2003 forward:

| Payee | Dates of Payments | Purpose | Total Amount Paid |
|---|---|---|---|
| DBSI Dorado LLC | 11/05 to 09/06 | Rent | $104,072.43 |
| DBSI Industrial | 01/04 to 11/07 | Equipment Leases | $244,930.04 |
| DBSI Realty | 01/03 to 12/07 | Miscellaneous Expenses | $512,464.37 |
| Stellar | 06/03 to 04/06 | Liability Insurance | $10,124.77 |
| Western Electronics | 01/03 to 04/06 | Manufacturing Services | $675,612.60 |
| Eric Mott | 06/06 to 09/06 | Meals | $156.29 |
| Randy Odenbrett | 08/05 to 11/05 | Meals and Entertainment | $6,106.21 |

### H. UltraDesign

#### 1. Background

UltraDesign LLC ("UltraDesign") was a company based in Utah that designed advanced communications circuits for use in cell phones, laptops, and other portable and handheld devices. The company was formed in November 2001 and ceased operations sometime in early 2006. At the end of 2006, almost all investments that had been made in UltraDesign were written off by Stellar as a loss. Due to its defunct status, the Examiner requested records relating to this company from Stellar. Stellar was only able to provide limited information for this company, which included board minutes, the company's general ledger, and tax returns from 2001 to 2007.[492] No bank statements were available for this entity. The Examiner did not interview any

[492] Additional information relating to UltraDesign was found in iTerra documents that Stellar provided to the Examiner.

former UltraDesign employees, although Stellar's president, Judge, provided additional information on this entity.

### 2. Stellar's Ownership of UltraDesign

According to UltraDesign's tax records and Judge, UltraDesign was formed in November 2001 as a spin-off of iTerra. UltraDesign's tax records indicate that when the company was formed, iTerra received a 98.52 percent stake in the company in exchange for $781,985 that iTerra provided to the company from its inception to December 2002.[493] iTerra obtained the money to fund its initial equity contribution in UltraDesign from Investments, DRR, and GCC.

In 2003, UltraDesign's tax records indicate that the capital structure of the company was reorganized. Stellar provided approximately $460,000 in funding to UltraDesign, which Stellar's records indicate came from borrowings Stellar received from GCC and DRR. In addition, prior to August 2003, UltraDesign's books indicate that iTerra provided the company an additional $440,787 in cash and assets, which raised iTerra's total investment in UltraDesign to $1,222,722.

In August 2003, iTerra assigned all of its remaining shares in UltraDesign to Stellar in exchange for $1,222,772 reduction of principal and $118,750 reduction of accrued interest iTerra owed to Stellar. The transfer of the iTerra shares gave Stellar a 64.15 percent stake in the company. No material changes in the ownership structure occurred after 2003. By the time UltraDesign ceased operations in 2006, Stellar's share in the company on an undiluted basis was 64.10 percent.

### 3. Involvement of DBSI-Related Individuals and Insiders

The company's board minutes show that the following DBSI-related individuals and insiders served on UltraDesign's board at various times: Douglas Swenson; Wasden; and Foster.

[493] The remaining 1.48% ownership stake of UltraDesign was granted to Comer.

Based on a review of the payees designated in UltraDesign's payroll accounts, it does not appear that any DBSI-related individuals or insiders were employed by UltraDesign.

### 4. Funds Received by UltraDesign

Based on a review of UltraDesign's, iTerra's, and Stellar's records and general ledgers, UltraDesign received a total of $1,381,372 from iTerra and Stellar from November 2001 to January 2006. Because the Examiner did not have access to UltraDesign's bank statements, UltraDesign's actual receipt of funds could not be verified. Nonetheless, as explained below, a review of UltraDesign's, iTerra's, and Stellar's books indicates that the $1,318,372 originated from DRR, GCC, and Investments.

#### a. November 2001 to August 2003 -- $1,222,772

From November 2001 to August 2003, UltraDesign's books indicate that iTerra provided the company with $1,222,772. iTerra's books indicate that most of this funding was provided through borrowings iTerra took from Stellar, and Stellar's ledger indicates that the funds loaned to iTerra originated from GCC, DRR, and Investments. Based on an analysis of iTerra's, UltraDesign's, and Stellar's general ledgers, the Examiner estimates[494] that the $1,222,772 originated from the following sources:

[494] Tracing the original source of the funds provided by iTerra to UltraDesign was difficult because funds shown on iTerra's ledger as having been received from GCC, DRR, and Investments were commingled in iTerra's cash accounts with funds iTerra generated from its own operations, and only a portion of those funds was transferred to UltraDesign (the remainder was used by iTerra for its own operations).

| Funding Source | Amount Provided to UltraDesign |
|---|---|
| Investments[495] | $19,875 |
| GCC[496] | $953,200 |
| DRR | $112,585 |
| Assets From iTerra | $137,112 |
| **TOTAL** | **$1,222,772** |

UltraDesign booked the $1,222,772 received from iTerra in an iTerra capital account. In August 2003, the entirety of the iTerra capital account on UltraDesign's books was transferred to a Stellar capital account as part of iTerra's transfer of its ownership stake to Stellar. Since August 2003, the Stellar capital account on UltraDesign's books contains the entirety of the $1,222,772 equity contribution that iTerra provided to UltraDesign prior to August 2003.

iTerra's books initially showed a $1,222,772 investment in UltraDesign but in August 2003, that balance was applied to reduce the amount of iTerra's note payable to Stellar. As of August 30, 2003, Stellar's books showed that the entirety of the $1,222,772 that iTerra originally provided to UltraDesign was now part of Stellar's note payable to DRR, with the same amount recorded as an investment by Stellar in UltraDesign.

#### b. August 2003 to January 2006 -- $158,000

From August 2003 to January 2006, UltraDesign's and Stellar's records show that UltraDesign received an additional $158,600 in funding from DRR that was recorded on

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[495] Stellar's records indicate that $9,380.56 of the Investments funds that UltraDesign received from iTerra originally was booked as an investment by Stellar in UltraDesign. Adjustments were later made to Stellar's, iTerra's, and UltraDesign's books to indicate that this amount came from Investments via iTerra.

[496] Based on Stellar's general ledger, it appears that $50,000 of the GCC funds UltraDesign received from iTerra originally came from Investments and was booked by Stellar as an investment in UltraDesign. Accounting entries were later made to transfer this amount to iTerra's payable to GCC.

UltraDesign's books as an equity investment by Stellar. On Stellar's books, the transfer of these funds to UltraDesign was recorded as an additional equity investment by Stellar and as a $158,600 increase in Stellar's note payable to DRR.

#### 5. Use of Funds and Current Status

Given the limited information available regarding UltraDesign and the fact that the Examiner did not interview any former employees of this entity, it is not possible to determine conclusively whether the funds that UltraDesign received from Investments, DRR, and GCC were used for legitimate business expenses. A review of UltraDesign ledger indicated that the company made some relatively small payments to DBSI-related entities during its existence, but these payments appear to be for legitimate services provided to UltraDesign. In particular, UltraDesign's records show transfers of approximately $35,000 to DBSI Realty for what are described as reimbursements for medical insurance and benefits; $6,578 to Stellar for reimbursement of liability and property insurance premiums; $47,000 to Wavetronix for rent; and $375 to EmergeCore to reimburse for travel expenses.

The majority of Stellar's $1,381,372 investment in UltraDesign was written off by Stellar by the end of 2006, with a small portion (less than $4,000) written off at the end of 2008.

### I. <u>BioMatrix Solutions LLC</u>

#### 1. Background

BioMatrix Solutions LLC ("BioMatrix") was a Utah-based company that was attempting to commercialize a technology that would detect harmful microorganisms. The company was formed in October 2001 and ceased operations sometime in 2003 or early 2004. Due to its defunct status, the Examiner requested records relating to this company from Stellar, but Stellar indicated that it had very few records regarding this entity. The only records that were available for this entity were its tax returns from 2001 through 2003 and balance sheets and year-end trial balances for each of those years. The Examiner did not have access to BioMatrix's books, general ledger, bank statements, corporate minutes, capitalization tables, loan documentation, or other similar information that would be needed to verify BioMatrix's receipt of funds from Stellar, DRR, GCC, or Investments or reach conclusions regarding BioMatrix's use of those funds.

#### 2. Stellar's Ownership of BioMatrix

Based on the Examiner's review of the limited available information, it appears that when BioMatrix was formed in October 2001, Stellar received a 63.82 percent stake in the company (24,000,000 shares), with the remaining shares being given to BioMatrix's two founders (4,800,000 shares each) and an entity called Cascade Technology Group, LLC ("Cascade") (4,000,000 shares). Based on a review of the company's tax returns, it appears that changes were made to BioMatrix's ownership structure because, by 2003, the two original founders no longer held any ownership stake in the company. The information available to the Examiner did not indicate what happened to the two original founders' shares. In any event, based on the available information, it appears that at all relevant times Stellar held a majority controlling interest in BioReaction.

#### 3. Involvement of DBSI-Related Individuals and Insiders

There was insufficient information to determine whether any DBSI-related individuals or insiders were employed by the company, served on the board of the company, or received payments from BioMatrix.

### 4. Funds Received by BioMatrix

Although the Examiner did not have access to BioMatrix's general ledger, BioMatrix's year-end trial balances[497] and Stellar's accounting records indicate that the company received a total of $1,254,106.15 from Stellar, Investments, GCC, and DRR from October 2000 to January 2004. The following chart breaks down this amount by year and funding source:

| Year | Expenses Paid By Stellar | Received From Investments | Received From GCC | Received from DRR | Total |
|---|---|---|---|---|---|
| 2000 | $250,523.78 | $0.00 | $0.00 | $0.00 | $250,523.78 |
| 2001 | $424,330.73 | $48,050.00 | $0.00 | $0.00 | $472,380.73 |
| 2002 | $72,991.64 | $302,610.00 | $25,000.00 | $98,000.00 | $498,601.64 |
| 2003 | $0.00 | $0.00 | $0.00 | $22,600.00 | $22,600.00 |
| 2004 | $0.00 | $0.00 | $0.00 | $10,000.00 | $10,000.00 |
| **TOTAL** | **$747,846.15** | **$350,660.00** | **$25,000.00** | **$130,600.00** | **$1,254,106.15** |

The amounts reflected in the chart above are derived from Stellar's general ledger.[498] These amounts, however, match the amounts reflected on BioMatrix's 2000 to 2003 year-end trial balances for its "Drawing" account ($250,523.78 for 2000; $472,380.73 for 2001; $498,601.64 for 2002; and $22,600 for 2003).[499] Because no bank statements were available for BioMatrix, the Examiner was unable to confirm precisely how the cash flowed to BioMatrix from the funding entities.

Stellar was unable to locate any notes, loan documents, security agreements, or other legal documentation governing the amounts that BioMatrix received, and it is unclear whether

[497] TC-BMX 01.

[498] On Stellar's loan schedules, the $32,600 that was transferred from DRR to BioMatrix in 2003 and 2004 is listed separately as funds that Stellar loaned to BioMatrix and funds that Stellar owes DRR. The remaining $1,286,706.15, however, is shown on Stellar's loan schedules simply as funds that Stellar received -- there is no indication on Stellar's loan schedules that those funds went to BioMatrix or are otherwise owed to Stellar by BioMatrix.

[499] No year-end trial balance was available for 2004. The reported amounts are reflected on both Stellar's general ledger and BioMatrix's year-end trial balances. The Examiner was unable to independently verify these amounts.

such documents ever were executed or whether the transfers to BioMatrix were treated as loans or equity investments. Because BioMatrix's trial balances lack any accrued interest accounts and Stellar recorded the funds that went to BioMatrix in an investment account on its books, it is likely that the amounts that BioMatrix received were treated as equity investments by Stellar.

#### 5. Use of Funds by BioMatrix

The Examiner did not have access to BioMatrix's general ledger and bank statements, and has not reached any conclusions as to the company's use of the funds it may have received from Stellar, Investments, DRR, and GCC. In 2003 and 2004, Stellar's books show a write-off of its investment in BioMatrix. As a result, all Investments, DRR, and GCC funding that is shown on Stellar's books as having gone to BioMatrix remains owed by Stellar to DRR and GCC, with Stellar no longer having a corresponding investment in or note receivable from BioMatrix.

### J. DBSI/Western Technologies LLC

#### 1. Background

DBSI/Western Technologies LLC ("Western Technologies") is a Boise, Idaho company formed in October 2000. Western Technologies is a Debtor. Western Technologies' records indicate that the company had no operations of its own and existed solely for the purpose of holding majority ownership interests in and providing funding to Western Electronics LLC ("Western Electronics"), Western Electronics Denver LLC ("Western Denver"), Western Electronics Delta Corporation ("Delta"),[500] and Strategic Finishing LLC ("Strategic Finishing").

[500] Western Delta was formerly known as Delta Engineering and Manufacturing Co.

Of these subsidiary companies, only Western Electronics remains an operating entity at the current time.[501]

From its inception through 2008, the records reflect that Western Technologies borrowed a total of $32,828,120 from GCC, DRR, and 2008 Notes. Western Technologies' records indicate that the company used nearly all of these "borrowings" to either provide loans to or equity investments in its subsidiaries or to service its preexisting debts. Currently, Western Technologies' records show that it owes a total of $18,958,390 in principal to GCC, DRR, and 2008 Notes, most of which is past due.[502]

The Examiner conducted a limited review of Western Technologies' use of funds and did not attempt to trace the actual uses of all funds booked as loans to Western Technologies. Nonetheless, based on an analysis of the available records, transactions relating to Western Technologies raise many of the same issues and problems that were found with respect to Stellar, including:

- **DBSI Inc. and the Control Group Controlled Western Technologies**: Western Technologies is a shell company that was operated by DBSI Inc. and its employees. The records indicate that Western Technologies had no employees of its own and all financial transactions relating to the company were directed by members of DBSI's Control Group. Moreover, DBSI Inc. and DBSI Control Group members Douglas Swenson, Reeve, and Bringhurst either directly or indirectly held controlling stakes in Western Technologies, and at all times during the company's existence, Western Technologies' board was made up of Control Group members.

- **Loans Are Past Due and Portion of Debt Is Undocumented**: Notes signed by Western Technologies for borrowings it received from GCC, DRR, and 2008 Notes are all past due. Moreover, although Western Technologies' records show the company borrowed approximately $10 million from DRR, a non-debtor, from 2005 to 2008, none of these borrowings were ever documented in a promissory note.

[501] Strategic Finishing was dissolved in 2005, and Western Delta was dissolved in 2007. Western Denver was merged into Western Electronics in February 2001.

[502] This amount includes $2,366,856 in interest owed to DRR that was converted to principal on December 31, 2007.

- **Unsecured Debt**: Some of the security interests granted by Western Technologies to GCC and 2008 Notes appear not to have been perfected.

- **Insufficient and Overpledged Collateral**: In 2002, when Western Technologies first purportedly pledged its assets as collateral for borrowings from GCC, Western Technologies actually had no significant assets available to pledge because the company did not legally hold any ownership interest in Western Electronics at that time. As such, the collateral pledged to GCC did not have sufficient value to support the more than $5 million in borrowings Western Technologies ultimately received. In addition, Western Technologies re-pledged its ownership interest in Western Electronics as collateral for its later borrowings from 2008 Notes. The existence of a possibly higher priority lien held by GCC on Western Technologies' ownership interest in Western Electronics was not disclosed to 2008 Notes or taken into account in determining the value of the pledged collateral.

- **Portions of Western Technologies' Borrowings Were Used to Make Interest and Principal Payments on Its Preexisting Debt**: Western Technologies' records indicate that, starting in 2005, the company borrowed funds from DRR and 2008 Notes to make interest or principal payments to either GCC or DRR. In particular, the entirety of the $8,706,500 Western Technologies borrowed from 2008 Notes was used to make principal payments to GCC and DRR.

- **Western Tech's 2008 Notes Borrowings Violated the Terms of the Private Placement Memorandum**: The 2008 Notes PPM stated that only $28,000,000 of 2008 Notes proceeds could be used to retire outstanding debt owed by Western Electronics, Stellar, BioReaction, GigOptix, and Wavetronix. Although Western Technologies is not identified as one of the entities whose preexisting debts could be retired using 2008 Notes funds, the entirety of the $8,706,500 it received from 2008 Notes was described as being used for that purpose. Moreover, Western Technologies' records indicate that it received 2008 Notes borrowings in September 2008. By that time, however, Stellar had already booked the $27,293,500 it received from 2008 Notes to retire portions of its preexisting debts to GCC and DRR. Thus, when Western Technologies booked an additional $8,706,500 in 2008 Notes borrowings as reducing its prior debts to GCC and DRR, it violated the $28 million limit set forth in the 2008 Notes PPM.

### 2. Ownership History

Western Technologies was formed in October 2000. At formation, Investments received a 100 percent ownership interest in Western Technologies (40,000,000 shares). As consideration for its ownership stake in Western Technologies, Investments was to transfer to Western Technologies its entire ownership interests in Western Electronics and Strategic Finishing. Nonetheless, Investments did not transfer its ownership interests in Western Electronics to

Western Technologies until April 21, 2005.[503] As such, from formation until April 21, 2005, Western Technologies held no ownership stake in Western Electronics.[504]

From inception until 2007, Western Technologies' ownership structure remained unchanged. On January 1, 2007, however, Bringhurst and Reeve received 5,000,000 units of Western Technologies each in exchange for assignment of their respective ownership stakes in Western Electronics. Accordingly, as of the Petition Date, Western Technologies was 80 percent owned by Investments, 10 percent owned by Bringhurst, and 10 percent owned by Reeve.

### 3. Involvement of DBSI-Related Individuals and Insiders

Throughout Western Technologies' existence, the company's board has been exclusively comprised of members of the Control Group, including Douglas Swenson, Foster, Hassard, Mott, and Mayeron.

The available records indicate that Western Technologies was purely a shell company and had no employees. Minimal corporate formalities were maintained for this entity -- in fact, throughout the course of its existence, Western Technologies' board met only four times. All financial transactions involving Western Technologies appear to have been effectuated by the DBSI accounting department at the direction of members of the Control Group. Given that Western Technologies' sole purpose was to borrow funds from DBSI-related entities and either lend those funds to or invest them in its subsidiaries, for all intents and purposes, the company was operated by the DBSI accounting department.

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[503] A memorandum prepared by a member of DBSI's legal department (TC-WT 01) indicates that the failure of Investments to transfer its shares of Western Electronics was likely an administrative error that was first discovered in February 2005.

[504] The records are unclear as to whether Investments ever transferred its ownership stake in Strategic Finishing to Western Technologies. Strategic Finishing's tax returns indicate that Western Technologies held an ownership stake in the company starting in 2000, but a corporate entity chart shows that Strategic Finishing is majority owned by DBSI Inc.

### 4. Transfers to Western Technologies

#### a. Total Borrowings and Uses

From 2000 to 2008, Western Technologies' records indicate that the company received a total of $32,828,120 from GCC, DRR, and 2008 Notes, of which $18,958,390 remains unpaid. The chart below breaks down these borrowings by entity:

| Funding Entity | Loans Booked to Western Technologies | Current Principal Balance Owed |
|---|---|---|
| DRR[505] | $18,346,120 | $6,806,815 |
| GCC | $5,775,500 | $3,445,075 |
| 2008 Notes | $8,706,500 | $8,706,500 |
| **TOTAL** | **$32,828,120** | **$18,958,390** |

Although the entirety of the $32,828,120 that Western Technologies borrowed from DRR, GCC, and 2008 Notes was not traced or verified to bank statements, Western Technologies' records indicate that most of the funds were either transferred to its subsidiary entities and ultimately written off (approximately $17.6 million) or was used to service preexisting debts owed by Western Technologies (approximately $11 million) to DRR and GCC. A relatively small portion of the funds (approximately $2.4 million) remains recorded as a capital investment in Western Electronics.[506] The chart below provides a rough overview of how, according to Western Technologies' records, the borrowed funds were disbursed and the current status of those borrowings:

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[505] The current principal balance shown on Western Technologies' books as owed to DRR includes $2,366,856 in accrued interest that was converted to principal at the end of 2007. In addition, an analysis of Investments' general ledger shows transfers to Western Technologies, Western Electronics, and Western Denver. Western Technologies' records, however, do not indicate any borrowings from Investments. It is likely that loans to Western Technologies and its subsidiaries that originally came from Investments were at some point reclassified on Western Technologies' books as funds having come from DRR.

[506] The use of approximately $1.8 million of the total funds shown as having been borrowed by Western Technologies' received could not be determined. This amount may represent funding provided to Strategic Finishing or Western Denver.

| Amount[507] | Indicated Use | Current Status |
|---|---|---|
| $2.4 million | Equity investment in Western Electronics | Still recorded as an investment |
| $9 million | Funds used to purchase Western Delta | Written off in 2007 |
| $8.6 million | Funding provided to Western Electronics from 2001 to 2004 | Fully written off by 2005 |
| $8.4 million | 2008 Notes proceeds used entirely to retire preexisting DRR and GCC debt | Still owed to 2008 Notes |
| $800,000 | DRR borrowings used to reduce principal owed to GCC | Still owed to DRR |
| $1.8 million | DRR borrowings used to make interest payments on GCC debt | Still owed to DRR |

#### b. DRR Borrowings

Western Technologies' records indicate that it received $18,346,120 from DRR from 2001 to November 2008.[508] These borrowings from DRR were largely undocumented. The only loan document relating to DRR loans to Western Technologies is an unsecured December 31, 2004 promissory note payable to DRR reflecting a loan amount of $2,921,158 and an interest rate of 12 percent per annum. This note was signed by Douglas Swenson on behalf of Western Technologies.[509] The amount of the note equaled the balance shown on Western Technologies' records as being owed to DRR as of December 31, 2004.

There are numerous issues with the minimal loan documentation for Western Technology's DRR borrowings:

[507] The figures reflected in the chart are approximations.

[508] Although unclear from the available records, portions of these borrowings may have originally been provided by Investments and later reclassified as loans provided by DRR.

[509] TC-WT 02.

- **Note is Overdue:** The December 2004 Note required that the entire balance of principal and accrued interest be repaid by December 31, 2005. No repayments were made by December 31, 2005. In fact, between December 31, 2004 and December 31, 2005, Western Technologies' records indicate that it borrowed an additional $3,681,497 from DRR.

- **DRR Debt Incurred Since 2005 Has Never Been Documented in a Note:** Western Technologies' records indicate that since December 31, 2004, the company borrowed an additional $10,209,062 from DRR. No additional notes, however, were executed documenting these additional borrowings and they currently remain undocumented.

- **Approximately $2.6 Million Used To Service GCC Debt**: Western Technologies' records indicate that the company used approximately $800,000 in borrowings from DRR to reduce principal owed to GCC, and used approximately $1.8 million in DRR funds to make interest payments to GCC. Given that Western Technologies had no employees, the decision to use DRR borrowings to service GCC debt was almost certainly made by DBSI.

From 2002 to 2007, Western Technologies' records show that the total $18,346,120 in principal borrowed from DRR was reduced by a total of $13,906,161, leaving an unpaid principal balance of $6,806,815.[510] Western Technologies' records indicate that $7,180,672 of the repayments came from borrowings Western Technologies received from 2008 Notes. As for the remaining $6,725,489 reduction in the amount Western Technologies owed to DRR, although somewhat unclear from the available records, it is likely that most, if not all, of this reduction was the result of Western Technology and DRR writing off loans previously provided to Western Electronics.

#### c. GCC Borrowings

Western Technologies' records indicate that it borrowed a total of $5,775,500 from GCC from July 2002 to January 2004, most of which was documented. Western Technologies signed a $5,000,000 promissory note dated July 1, 2002 that was payable to GCC.[511] Douglas Swenson

[510] This amount includes $2,366,856 in DRR accrued interest that was recorded on Western Technologies' books as having been converted to principal on December 31, 2007.

[511] TC-WT 03.

signed the note on behalf of Western Technologies. The note charged Western Technologies interest at a rate of 11 percent per annum and provided that all unpaid principal and accrued interest was due on January 15, 2008. The note also required Western Technologies to make monthly interest payments to GCC. DBSI Inc. provided a written guaranty for Western Technologies' $5 million indebtedness to GCC that was also signed by Douglas Swenson.[512]

The July 1, 2002 note was accompanied by a security agreement in which Western Technologies pledged all of its assets to GCC as collateral for its borrowings.[513] A UCC financing statement describing Western Technologies' pledged assets was filed with the Idaho Secretary of State on November 4, 2002.[514]

The July 2002 GCC loan documentation had two major problems. First, Western Technologies' records indicated that the total amount of Western Technologies' actual GCC borrowings exceeded the $5,000,000 note amount by $775,500. Second, although the GCC offering circular[515] required that all GCC loans be made only to entities that had a LTV ratio that did not exceed 85 percent, no evidence was found indicating that any valuation data was provided to GCC to show that Western Technologies had sufficient assets to meet the 85 percent loan-to-value ratio requirement for its $5,000,000 in borrowings from GCC.

In 2005, new loan documentation was prepared that attempted to address some of the deficiencies with the original loan documentation. An amended promissory note dated June 1, 2005 was signed by Douglas Swenson on behalf of Western Technologies that raised the principal loan amount to $5,775,500 to match Western Technologies' actual GCC borrowings as

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[512] TC-WT 04.

[513] TC-WT 05.

[514] TC-WT 06.

[515] TC-STE 01.

reflected on its books. A Term Loan Agreement dated June 1, 2005 was also prepared and executed.[516] Both the June 1, 2005 note and the Term Loan Agreement were signed by Douglas Swenson on behalf of Western Technologies.[517] Under the new note, Western Technologies was required to repay the entire principal and accrued interest it owed to GCC by January 15, 2008, later extended to September 30, 2008.[518]

A new security agreement dated June 1, 2005 was signed by Douglas Swenson on behalf of Western Technologies. The new agreement granted GCC a security interest in all of Western Technologies' assets, including its 32,350,000 membership units in Western Electronics, which Investments had officially transferred to Western Electronics in April 2005. The available records contain a UCC financing statement defining the collateral Western Technologies pledged under the security agreement, but there is no indication on the document that the financing statement was actually filed.[519]

Western Technologies prepared a loan application in connection with the June 2005 note as required by the GCC offering circular.[520] The loan application was dated June 1, 2005, and signed by Douglas Swenson on behalf of Western Technologies. The application indicated that Western Technologies intended to use GCC borrowings for general business purposes and to fund loans to Western Electronics. Although the loan application indicated that Western Technologies would provide its membership units in Western Electronics as collateral for the

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[516] TC-WT 07.

[517] An updated corporate guaranty from DBSI Inc. does not appear to have been prepared in connection with the June 2005 note. The DBSI Inc. guaranty executed in July 2002 limited DBSI Inc.'s liability under the guaranty to $5,000,000 plus accrued interest and fees.

[518] TC-WT 08.

[519] TC-WT 09.

[520] TC-WT 10. The offering circular for the GCC bonds required that each entity receiving funding from GCC submit a loan application, but no evidence was found that Western Technologies ever prepared any loan application in connection with the initial July 2002 note.

loan, the application itself lacked any information regarding the value of Western Technologies' ownership interest in Western Electronics and failed to show that the value of this asset was sufficient to meet the 85 percent LTV requirement set forth in the GCC offering circular.

According to Western Technologies' records, from 2005 to 2008, Western Technologies made approximately $2.3 million in principal payments to GCC, of which approximately $800,000 came from funds Western Technologies borrowed from DRR, and the remainder (approximately $1.5 million) came from funds Western Technologies borrowed from 2008 Notes, reflecting another instance where a DBSI-related entity used borrowings from one funding vehicle to repay preexisting debts owed to other funding entities. In addition, Western Technologies' records indicate that it borrowed an additional $1.8 million from DRR to make interest payments on its GCC debt.

Per the terms of the loan documents, Western Technologies was required to repay the full principal borrowed and all accrued interest owed to GCC by September 30, 2008. Western Technologies' records indicate that, as of August 31, 2008, its outstanding principal and interest owed to GCC was $5,098,185. In September 2008, however, the records indicate that Western Technologies borrowed $8,706,500 from 2008 Notes. Although there were more than enough funds borrowed from 2008 Notes to retire the entirety of Western Technologies' GCC debt, only $1,525,828 of the 2008 Notes proceeds were used for that purpose, with the rest being booked as repayments on Western Technologies' debt to DRR. As previously discussed with respect to Stellar's use of its 2008 Notes proceeds, the decision to direct Western Electronics' 2008 Notes proceeds to DRR was undoubtedly made by DBSI to address DBSI Inc.'s worsening cash flow problems in 2008. Ultimately, because 2008 Notes proceeds were not used to retire the entirety of Western Technologies' debt to GCC, Western Technologies currently owes GCC $3,445,075 in principal which is past due.

**d. 2008 Notes**

**(1) Recorded Receipt and Use of Funds**

In 2008, Western Technology's records indicate that it borrowed a total of $8,706,500 from 2008 Notes.[521] Western Technology's records indicate that the entirety of this amount was used to reduce Western Technology's existing debts to GCC and DRR. Specifically, $1,525,828 was recorded as reducing Western Technology's principal balance owed to GCC, and the remaining $7,180,672 was recorded as reducing its principal balance owed to DRR.

**(2) Loan Documentation**

Much of the loan documentation the Examiner found relating to Western Technologies' 2008 Notes borrowings was unsigned, and it is unclear whether any of these documents were ever actually executed. The unsigned 2008 loan documents, all of which are dated September 2, 2008 and drafted for Douglas Swenson's signature on behalf of Western Technologies, include: a promissory note; a term loan agreement; a loan application from Western Technologies; a pledge agreement; and a memorandum of pledge agreement.[522] These documents purport to document a $8,706,500 loan from 2008 Notes to Western Technologies, due on September 1, 2009, charging

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[521] Western Technologies' records actually indicate that 2008 Notes transferred a total of $9,600,828 to Western Technologies, which exceeded the amount that Western Technologies was authorized to borrow from 2008 Notes by $894,328. The records indicate that the $894,328 overage was returned to 2008 Notes on November 1, 2008 -- a few days after the last disbursement from 2008 Notes to Western Technologies occurred on October 29, 2008.

[522] TC-WT 11 through TC-WT 15.

interest at a rate of 11.5 percent per annum, and secured by Western Technologies' ownership interest in Western Electronics.[523]

Even if these documents were actually signed and executed, they still fail to properly document Western Technologies' borrowings from 2008 Notes in numerous respects. First, missing from the unexecuted set of loan documents is a corporate guarantee by DBSI Inc. The 2008 Notes PPM stated that all borrowings would be unconditionally guaranteed by DBSI Inc.[524]

Second, the 2008 Notes PPM stated that only Western Electronics, Stellar, BioReaction, GigOptix, and Wavetronix would receive 2008 Notes proceeds. That means that Western Technologies was not authorized to receive 2008 Notes borrowings. As such, the loan of 2008 Notes proceeds to Western Technologies violated the representations made in the 2008 Notes PPM.

Third, the 2008 Notes PPM mandated that only a maximum of $28 million of 2008 Notes funds could be used to retire the outstanding principal on preexisting debt of Western Electronics, Stellar, BioReaction, GigOptix, and Wavetronix. Western Technologies' records indicate that it received 2008 Notes borrowings starting in September 2008. By that time, however, Stellar ostensibly had already used the entirety of the $27,293,500 of 2008 Notes proceeds it borrowed to retire its preexisting debts. Thus, because Western Technologies' records indicate that the entirety of its $8,706,500 in 2008 Notes proceeds was used to retire its preexisting debts, the $28 million limit set forth in the 2008 Notes PPM was exceeded.

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[523] Western Technologies prepared a Request for Funds to the Loan Committee. TC-WT 16. It was approved on September 2, 2008 by committee members Swenson, Griffin, Cole, and Warner. The e-mails attached to the Request for Funds indicate that David Swenson prepared the Request.

[524] BN 13.

Fourth, although the unexecuted loan documents indicate that Western Technologies was pledging the entirety of its ownership interest in Western Electronics as collateral, the loan documents do not disclose that Western Technologies had pledged that very same collateral to GCC in June 2005. Both the 2008 Notes promissory note and the term loan agreement affirmatively represent that there are no preexisting liens on the pledged collateral.

Fifth, the value that Western Technologies assigned to its ownership interest in Western Electronics was based on an independent appraisal that was not intended to be used to secure financing, and the value that was placed on the collateral was likely overstated. The PPM for 2008 Notes required that any loans made from 2008 Notes proceeds not exceed 85 percent of the fair market value of the pledged collateral. To comply with this requirement, the loan documents indicate that Western Technologies calculated the value of its ownership interest in Western Electronics to be $13,255,630. This value was derived from an independent appraisal that Western Electronics' management obtained solely for the purpose of determining the value of employee stock option grants for tax purposes. The appraisal report expressly stated it was only intended to be used for this purpose, and the appraisers who prepared the reports stated that they had no knowledge that their reports would be used for any other purpose, including to secure financing. Despite the limitations on the report's use, Western Technologies nevertheless used data from the appraisal to value its ownership interest in Western Electronics for purpose of securing borrowings from 2008 Notes. Moreover, in deriving the value of its pledged collateral, Western Technologies did not take into account the fact that it had pledged the very same collateral to GCC in June 2005. Western Technologies' failure to take into account GCC's prior lien on its ownership interest in Western Electronics resulted in an overstated valuation of the collateral it pledged to 2008 Notes.

Finally, two members of the Loan Committee (Warner and Griffin) told the Examiner that they approved the loan based on the representation made to them that the entirety of the loaned proceeds would be used to repay all of Western Technologies' outstanding debt owed to GCC. These Loan Committee members stated that it was not disclosed to the Loan Committee that the majority of 2008 Notes funds provided to Western Technologies would be used to repay portions of Western Technologies' debt owed to DRR. Warner and Griffin both stated that, if this fact had been disclosed, they would not have approved Western Technologies' loan request.

#### (3) Current Balance

Western Technologies' records do not indicate that any portion of its $8,706,500 in borrowings from 2008 Notes has been repaid. As previously indicated, the unexecuted loan documents required Western Technologies to repay the entire principal balance owed to 2008 Notes plus all accrued interest by September 1, 2009. As such, Western Technologies' debt to 2008 Notes is now past due.

## K. Western Technologies Subsidiaries

### 1. Western Electronics LLC

Western Electronics LLC ("Western Electronics") is a contract electronics manufacturer based in Meridian, Idaho, and is currently the only operating subsidiary of Western Technologies. Western Electronics is not a debtor. In connection with the investigation, the Examiner obtained documents from Western Electronics and interviewed its CFO, Brad Grover, on August 6, 2009.

#### a. Formation and Ownership History

Western Electronics was formed in November 1999 through the acquisition of its predecessor entity, Western Electronics Corp. Western Electronics' corporate records indicate that, at the time of formation, Investments contributed $2,000,000 in equity in exchange for

6,000,000 units and was the sole shareholder in the company. Investments' acquisition of the company was done at the direction of Douglas Swenson, who first learned of the company through conversations with his next-door neighbor, Reeve, who at the time was CEO of Western Electronics Corp.[525]

Approximately one year after Western Electronics' formation, Western Technologies was formed. As previously discussed, the original intent was for Investments to transfer its ownership stake in Western Electronics to Western Technologies at the time of its formation, but the transfer of these shares did not actually take place until April 2005.

In 2001, additional shares of the company were issued to additional owners, including DBSI Control Group members Reeve (Western Electronics' CEO) and Bringhurst (Western Electronics' CFO). Wasden (former owner of Western Electronics Corp.) also received shares. Each received 5,000,000 shares a piece in exchange for services provided to the company.

In 2002, Western Technologies provided approximately $500,000 in additional capital to Western Electronics using funds most likely obtained from Investments. Western Technologies received no additional ownership stake for this additional capital contribution.

In 2007, Reeve and Bringhurst each exchanged their respective 5,000,000 shares in Western Electronics for 5,000,000 shares of Western Technologies. In addition, at some point between 2001 and 2007, Wasden returned 3,500,000 of his 5,000,000 units. Ultimately, as of the Petition Date, Western Technologies held a 94.5 percent ownership stake in Western Electronics on an undiluted basis, and a 75.2 percent stake in the company on a fully diluted basis. The only

[525] According to Reeve, he related to Douglas Swenson that Western Electronics Corp. was in dire financial straits due to its current default on a bank line of credit. Swenson told Reeve that he was looking to diversify from the real estate business and agreed to provide funding to repay the overdue line of credit in exchange for an investment position in the company. This agreement ultimately led to the creation of Western Electronics and Investments' initial $2,000,000 capital contribution, approximately $1.9 million of which was used to repay the overdue line of credit.

other DBSI-related individual or entity that currently holds an ownership stake in the company is Wasden, who still has 1,500,000 of the 5,000,000 shares he received in 2001, giving him a 3.1 percent stake in the company on an undiluted basis.

### b. Involvement of DBSI-related individuals

Multiple members of the Control Group have served on Western Electronics' board at various times throughout the history of the company, including Douglas Swenson, Hassard, Bringhurst, Reeve, Foster, and Mott.[526] From formation to the end of 2003, Western Electronics' board was mostly comprised of DBSI representatives, giving DBSI significant control over the company's operations during this time period. Moreover, in the early years, Western Electronics senior management consisted of individuals who would later become DBSI officers, including Reeve (CEO) and Bringhurst (CFO, and later CEO), or employees, including Duckett (head of accounting) and Brian Olsen (head of operations).

At the end of 2003, Western Electronics' board decided to add more non-DBSI related individuals to its board and bring in a new management team that had no connection to DBSI. Since that time, Western Electronics has operated more independently of DBSI.

### c. Debt to DBSI-Related Funding Entities

From 2001 and 2004, DBSI caused significant funding to be provided to Western Electronics for its operations. Western Electronics' and Western Technologies' records indicate that the funds provided to Western Electronics originated from Investments, DRR, and GCC, but was booked as debt owed by Western Electronics to Western Technologies. The total amount of funding provided to the company during this time period is approximately \$8.6 million.[527]

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[526] In addition, Wasden and Judge have served as board members for Western Electronics.

[527] Additional funds were also provided to Western Electronics prior to 2001 in the form of \$2.4 million in contributed capital from Investments as previously discussed, as well as approximately \$1 million in loans that

(*Footnote continued on next page*)

Approximately half of the $8.6 million "loaned" to Western Electronics was provided under an arrangement where DBSI-related entities paid the entirety of Western Electronics' payroll expenses and subsequently billed Western Electronics for the amount paid with the implicit understanding that Western Electronics would only reimburse DBSI for half. The portion of these payroll expenses that Western Electronics did not pay were considered loans from Western Technologies that were ultimately forgiven by Western Technologies and written off of Western Electronics' books in 2004.

The half of the expenses Western Electronics was supposed to pay was accomplished through largely unsupported book entries. Western Electronics' books indicate that it repaid approximately half of the $8.6 million in funding it received from DRR, Investments, and GCC. From 1999 to 2004, Western Electronics billed approximately $4.3 million to DBSI-related entities for purported "services rendered," and these billings were applied to reduce the total amount of borrowings the company received from Investments, GCC, and DRR. The current CFO of Western Electronics stated in his interview, however, that he was not aware of any actual services provided by Western Electronics to DBSI-related entities to support such billings and that his understanding was that this invoicing process was simply used to provide Western Electronics with sufficient monthly operating funds to keep the company at a break even position. According to Western Electronics' CFO, the entirety of the $4.3 million that Western Electronics "billed" to DBSI-related entities occurred prior to his joining the company in May

(*Footnote continued from previous page*)

Western Electronics' CFO stated was repaid by Western Electronics using cash from its operations. Little documentation was found relating to transfers to Western Electronics prior to 2001.

2004, during the time when Reeve, Bringhurst, Duckett, and Olsen were part of the senior management team at Western Electronics.[528]

Since May 2004, Western Electronics has not received any funding from Western Technologies, DRR, GCC, Investments, or 2008 Notes, and Western Electronics' audited financial statements do not indicate it owes any debt to these entities or any other DBSI-related companies.

### 2. Other Subsidiaries

Western Technologies also previously held ownership interests in three other subsidiary companies -- Western Delta, Strategic Finishing, and Western Denver. None of these entities are in operation today. The Examiner did not devote significant resources to analyzing these companies. The limited available information for these entities provided the following information:

**Western Delta**: Western Delta was formed in 2000 when Western Technologies paid approximately $9 million to acquire its predecessor company, Delta Engineering and Manufacturing Company. Western Technologies paid $4.5 million at the time of the acquisition, and the remaining $4.5 million was paid in 2005. That same year, 2005, Western Delta ceased operations and was liquidated. Western Technologies' $9 million investment in the company, however, was not written off Western Technologies' books until 2007.

**Western Denver**: Western Denver was formed in August 2000 and was merged into Western Electronics in February 2000. Records indicate that this entity may have received

[528] Some of these individuals claimed in their interviews that Western Electronics provided DBSI-related entities with IT assistance, such as a help desk, to support the $4.3 million that Western Electronics billed to DBSI from 2001 to 2004.

approximately $1.1 million in funding from Western Technologies prior to its merger into Western Electronics.

**Strategic Finishing**: Strategic Finishing was formed in March 2000. Although Western Technologies' corporate records indicate that Investments was to transfer its entire ownership stake in Strategic Finishing to Western Technologies when Western Technologies was formed in October 2000, the records are unclear as to whether this transfer actually occurred. Although Strategic Finishing's tax returns indicate that Western Technologies has held an ownership stake in the company starting in 2000, other records found by the Examiner suggest that the company may have been majority owned by DBSI Inc. There is some evidence that Strategic Finishing may have received approximately $6 million in funding from DBSI-related funding entities, but this was not verified, nor was it determined what portion, if any, of funds loaned to Western Technologies may have been provided to Strategic Finishing. Strategic Finishing was dissolved in 2005.

# XI. MISCELLANEOUS TOPICS

## A. Appraisal and Due Diligence Firms

### 1. Overview

During the course of the Investigation, the Examiner learned that the Debtors obtained third-party appraisals and due diligence reports regarding DBSI properties and offerings that were used in connection with the Debtors' business operations. To better understand the relationships of these third parties with the Debtors, the Examiner conducted a preliminary review of the appraisal work and due diligence reporting by four companies: Mick & Associates, P.C., LLO, Buttonwood Investment Services, LLC, CB Richard Ellis, and McColgan and Company, LLC. As part of this review, the Examiner collected documents and information regarding the appraisal work and due diligence reports prepared by these firms both from the Debtors and directly from the firms.

The Examiner did not conduct a detailed review of the role of these third parties in the Debtors' business operations and did not reach any conclusions with respect to them. This portion of the report simply summarizes the Examiner's work on this issue. The Examiner intends to turn over all documents collected in this review to the Trustee.

**2. Mick & Associates, P.C., LLO**

Bryan S. Mick and his firm Mick & Associates, P.C., LLO ("Mick") wrote numerous due diligence reports provided to broker/dealers on various DBSI related projects. Mick is a small law firm with six lawyers and three staff. The Examiner obtained hard copy and electronic records from Mick both on a voluntary basis and pursuant to subpoena.

Mick provided a list of approximately 140 different DBSI related offerings for which the firm provided due diligence reports to broker/dealers. According to Mick, the typical base fee charged to DBSI to conduct due diligence on any TIC offering, including the master-leased and land/option transactions from DBSI, was a fixed $8,500. Additional amounts were charged depending on the number of broker/dealers that were provided the report. The Examiner estimates that the total fees received by Mick since 2005 were approximately $1.4 million.

A significant portion of the diligence reports prepared by Mick consist of factual information, such as descriptive and background information, concerning various aspects of the project or DBSI's business operations in general. The reports include various statements purporting to limit their intended scope and permitted use. (One such limitation on use is that the reports are not to be provided directly to investors.) The reports also identify the types of information Mick reviewed in their preparation. Mick's review of key project documents in the reports highlight select elements considered to be significant. In addition to factual statements, the Mick reports include assessments and opinions about various aspects of the offerings, including the identification of perceived benefits as well as concerns and risks. The Mick reports often provide responses by DBSI or others regarding aspects of concern. The ultimate conclusions of the reports are typically stated in equivocal and conditional fashion.

There are records indicating that DBSI had an opportunity to review and comment on the reports prior to their distribution to the broker/dealers. Communications during such exchanges include e-mails that reflect occasions in which Mick apparently had substantive comments on DBSI offerings or had disagreements with DBSI regarding the firm's assessment of aspects of an offering.[529]

Some e-mail communications evidence a familiar working relationship between Bryan Mick and DBSI personnel, particularly Josh Hoffman.[530] Also, a hand-marked copy of Mick's report on the 2008 Notes Corp dated February 1, 2008 was located among DBSI's records which appears to reflect an instance in which comments made by DBSI personnel were incorporated, at least in part, into the final report by Mick, which resulted in language that is more favorable to DBSI.[531] In particular, the original version, dated February 1, 2008 and submitted to the Debtors, includes the concluding statement that Mick "cannot unqualifiedly recommend approval" of the offering. Handwritten notes on a copy of this report from the Debtors bracketed that statement and wrote the word "Negative." Subsequently, Mick issued a revised report on February 14, 2008 which bears a stamped Mick signature.[532] Along with other changes to the

[529] ADDF 01.

[530] ADDF 02.

[531] ADDF 03.

[532] ADDF 04.

report, the statement that Mick cannot unqualifiedly recommend approval was replaced with a qualified recommendation.

The Examiner has not investigated or analyzed the extent to which third parties, including investors, relied upon or considered the Mick reports in making or recommending investment decisions. In addition, although the Examiner's staff has had conversations with Mr. Mick, the Examiner has not deposed him and has not deposed persons on the Debtors' staff who worked with him. The Examiner has collected several thousand pages of records and hundreds of e-mails from Mick and will make this information available to the Trustee.

**3. Buttonwood Investment Services, LLC**

Buttonwood Investment Services, LLC ("Buttonwood") was the author of a lengthy Sponsor Review dated February 2008 which examined the DBSI Group of companies as a whole. The Examiner obtained hardcopy and electronic records from Buttonwood pursuant to subpoena. Buttonwood represented that, in addition to the Sponsor Review, it prepared approximately 85 program reviews, each particular to a single offering.

In response to inquiry by the Examiner, Buttonwood identified reviews including the following: LOF; 2006 Notes Corp; DBSI Stage 3 Development Fund; LID; 2008 Real Estate Opportunity Notes; 2008 Notes Corp; DOF; E-470; Florissant Market Place; West Boise; Riverview (Villages of Riverview); and North Jarrell. Of those, the Examiner obtained samples of files to review including: 2006 Notes Corp; LID; 2008 Notes Corp; Florissant Market Place; West Boise; Riverview (Villages of Riverview) and the February 2008 Sponsor Review.

The diligence reports prepared by Buttonwood largely compile factual information, often descriptive or historical, much of which was provided to Buttonwood directly by DBSI. The Buttonwood reports make some effort to identify perceived strong points and concerns, but in comparison with the Mick reports, they generally do not include substantial independent opinion or analysis of the particular offerings being described. Generally speaking, it appears that Buttonwood treated its role as primarily one of collecting and compiling information into reports. The Buttonwood reports typically appear to have been created in a relatively short timeframe, often repeating the same or similar information used in prior reports. Given the apparent routine nature of the reports, the documents reviewed by the Examiner do not reflect that Buttonwood engaged in any considerable effort to verify or audit the information provided by DBSI or consider whether the scope of its reports and inquiry were sufficient to provide a full picture of the offerings. However, the reports generally identify the limit of the materials reviewed and disclose that Buttonwood largely relied upon DBSI for the information disclosed.

At times, the Sponsor Review and, to a lesser extent, some of the project specific reviews include language that goes beyond simply stating objective facts. For example, the Sponsor Review states that the DBSI principals are "dedicated to the idea that no investor should lose money."[533] The Examiner will turn over his records relating to Buttonwood to the Trustee.

#### 4. CB Richard Ellis

CB Richard Ellis ("CBRE") was the appraiser of several properties associated with DBSI projects. Hardcopy and electronic records were obtained from CBRE pursuant to subpoena. In early conversations with CBRE's counsel, the Examiner was told that the overwhelming majority of work that CBRE did for DBSI was in property management and not appraisal work. However, substantial appraisal work was subsequently identified by CBRE. The Examiner obtained documentation for a sampling of more than 30 DBSI-related appraisals, some of which were "preliminary reports" provided to DBSI in advance of a full appraisal.

[533] ADDF 05.

Files for several sample properties were reviewed and analyzed. The documents reflect an atypical arrangement in which CBRE was regularly directed by DBSI not to prepare complete appraisal reports but instead to provide DBSI with "preliminary reports" that essentially include much of the information required to arrive at an estimated fair market value without actually ever stating an actual value. According to the engagement agreements, associated task orders and e-mail communications, CBRE was directed to only complete the appraisal upon the approval of DBSI.[534] This arrangement appears to have potentially allowed DBSI an opportunity to know in advance whether an appraisal would likely be favorable prior to allowing CBRE to proceed.

**5. McColgan and Company, LLC**

McColgan and Company, LLC ("McColgan") was the appraiser of a property associated with a DBSI development project in suburban Atlanta known as Riverview. McColgan is a small regional firm with a limited number of employees and a single main office. Hardcopy and electronic records were obtained from McColgan pursuant to subpoena.

The McColgan appraisal reports as well as the related work papers and communications were reviewed and analyzed. It is not apparent that McColgan understood DBSI's intended use of a Riverview appraisal. The report regarding the Riverview property dated August 3, 2008 described its intended purpose as "to provide a basis for acquisition and development by DBSI, the client and intended user of this report."[535] When specifically asked about the purpose of a Riverview appraisal by McColgan in e-mail communications, DBSI personnel responded that "[t]he purpose is not for financing," indicating only that DBSI "would like to estimate the 'as is'

[534] ADDF 06.

[535] ADDF 07.

market value of a fee simple interest in the property."[536] Also, there is some evidence of possible inaccuracies in the Riverview appraisals provided to third parties, although the Examiner has made no conclusion as to their materiality or relevance to the recipients. For example, one Riverview appraisal appears to initially misstate the number of acres of the property, yet no apparent adjustments in value or other consideration seem to be made after the error is corrected.[537] Also, the March 2005 and October 2007 Riverview appraisals appear to include conflicting information regarding the timing of prior ownership.[538] The information obtained from McColgan will be turned over to the Trustee.

### B. <u>DRR Update</u>

The Examiner's Interim Report contains detailed findings regarding the Examiner's Investigation of DRR, including the wholesale lack of formalities concerning its establishment, status and operation. Since the filing of the Interim Report, additional facts concerning DRR have come to the attention of the Examiner.

#### 1. DRR Promissory Notes

Much of the money that went into and out of DRR is only documented by journal entries. Since the filing of the Interim Report, the Examiner obtained information concerning attempts to document loans to and from DRR. The Examiner obtained copies of a set of promissory notes dated at year-end 2004 from Mary Ream, former document specialist for DBSI, who at this time is employed by Thomas Banducci, former attorney for DBSI.

In late 2004 or early 2005, DBSI had prepared promissory notes for entities owing DRR money. The notes are dated December 31, 2004 and signed by Douglas Swenson as "Maker."

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[536] ADDF 08.

[537] ADDF 09; ADDF 10.

[538] ADDF 11.

The notes total $228,349,509. However, an analysis of DRR receivables at December 31, 2004 prepared by Charles Hassard revealed that DRR's total receivables at that date were only $115,436,838.

The Examiner analyzed the promissory notes provided by Ream and determined that on their face they all evidence monies owed to DRR by other entities. In fact, at that time approximately half the total of the promissory notes should have been drafted as monies DRR owed to DBSI entities. $119,618,240 of the $228,349,509 in signed promissory notes were actually funds owed "by" and not "to" DRR. For example, there is a $15,698,563 promissory note from DBSI Inc. to DRR which should have been a $15,698,563 promissory note from DRR to DBSI Inc. according to the schedule for DRR given to the Examiner by Hassard.

**2. Authorized Signatories for DRR Bank Account**

As set forth in the Interim Report, DRR did maintain a bank account through which it received and transferred funds. Since the filing of the Interim Report, the Examiner has ascertained the identities of the persons who had signature authority over this account.

When the account was first opened, Douglas Swenson, Hassard and Foster, each of whom are also members of the Control Group, were the only persons with signature authority for the account. The authorized signatories were changed in 2006. At that time, Hassard and Foster were removed from the signature card and Duckett, Cole and Debbie Miller were substituted in their place. The signatories were changed again after Duckett and Cole left DBSI. At present, the individuals who have signature authority over the DRR bank account are Douglas Swenson, Jeremy Swenson, McKinlay and Miller.[539]

[539] According to the Debtors' accounting department, the balance in the DRR Account as of the Petition Date was $27,516.

### 3. DBSI Board Examination of DRR

Shortly after the filing of the Interim Report, Foley & Lardner LLP ("Foley"), which served as special counsel to the Debtors in this case, filed several monthly fee notices. Included in these fee notices were fees requested for services provided in March, April and May 2009. Several of these time entries raised serious questions concerning prior discussions and correspondence between the Examiner and the Debtors related to DRR.

By way of background, the Examiner had concluded in the Interim Report that the only documents evidencing ownership and control of DRR were the publicly filed Partnership Certificate filed with the State of Idaho (which the Examiner had located on his own), Hassard's summaries (which he turned over in his initial interview with the Examiner) and the DRR tax returns. In addition, a CD containing accounting information related to DRR was turned over to the Examiner; however, this contained financial information, not partnership related documents. The Examiner was also advised of the existence of a draft "Master Note" relating to borrowings by and between DRR and other entities that was never executed. The Examiner's understanding, at the time the Interim Report was filed, that all documents relating to the formation, status and operation of DRR had been identified and/or turned over to him.

Consequently, the Examiner was troubled to learn from the Foley fee statements that it spent significant time collecting documents related to DRR in April 2009, well before the Investigation began, and that Foley may have had custody of documents that were not turned over to the Examiner. These time entries began on March 27, 2009 with an hour-long phone conference about "DBSI Redemption Reserve" and continue into April.

In particular, Stephen Burr, a partner at Foley with an hourly rate of $761.30, spent 4.1 hours on April 7, 2009 "reviewing corporate documents relating to DBSI Redemption Reserve" followed by another 1.2 hours meeting with "corporate counsel" regarding DRR (the Examiner assumes that the corporate counsel was Ellison). In addition to these entries, Burr spent a total of 6.1 hours on April 15, 2009 "revising memorandum for company Board regarding DBSI Redemption Reserve" and "reviewing partnership documents of DBSI Redemption Reserve." Indeed, he spent 3.3 hours to review these "partnership documents" (his words). Burr spent additional time on April 29 on DRR issues, including 3.2 hours researching DRR "partnership arrangements." There are other entries concerning DRR, including a reference to a DRR "loan history." It also appeared to the Examiner that Foley prepared a presentation for the DBSI Board regarding DRR which was not produced or identified to the Examiner or mentioned by Ellison or by counsel for DBSI when asked about DRR related documents.[540]

The Examiner was particularly troubled by these time entries because it is clear that Ellison had access to the Foley work product regarding DRR at the time the Examiner began his investigation but chose not to share it with the Examiner or to even advise the Examiner of its existence, thus possibly resulting in substantial expense and delay and duplication of effort. In addition, the Examiner has significant questions about the documents that Burr spent 3.3 hours reviewing on April 15 and 4.1 hours reviewing on April 8, including whether they were produced to the Examiner. No partnership agreements or documents for DRR, other than those set forth above, have been produced to the Examiner.

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[540] There are also numerous time entries relating to an examination of inter company accounts including Stellar and the "Technology Companies" by Foley. These time entries begin in March and continue into April. The April time entries indicate that Burr spent 3.2 hours preparing materials for a DBSI Board of Directors meeting "regarding Stellar Debt and Debtor entities" on April 8, 2009 and then another 3.8 hours on April 8 "preparing materials for DBSI Board Meeting regarding Stellar Debt to Debtor entities." In addition, Burr spent 2.6 hours on March 25 reviewing "loan arrangements with 2008 Note fund borrowers." He then spent 3.6 hours on March 23 reviewing "Note PPMs in connection with Stellar debt to 2008 and GCC Note Funds." Although certain documents have been produced to the Examiner regarding Stellar, the Technology Companies and the 2008 Notes, the Examiner has not been given access to, and was not informed of, Foley's work product with respect to Stellar, the Technology Companies and the 2008 Notes. This work was all performed before the Examiner commenced his investigation in early May, 2009.

The Examiner did request the production of these materials from the Debtors prior to the appointment of the Trustee. The Debtors advised the Examiner that these materials were privileged. Counsel for the Debtors did confirm to the Examiner that Foley prepared a report for the DBSI Board of Directors regarding DRR in connection with an April 9, 2009 board meeting, but withheld this document on claim of privilege.

Upon the appointment of the Trustee, the Examiner discussed the production of these documents with the Trustee. As of the filing of this Report, the Trustee had not had the opportunity, in light of other pressing demands, to determine whether the privilege applied or should be waived with respect to these documents. Accordingly, these documents have not been considered by the Examiner in filing this Final Report.

## XII. CONCLUSIONS AND FURTHER PROCEEDINGS

The Examiner's conclusions and findings with respect to his Investigation are set forth at the beginning of this Report. The Examiner has now ceased all investigative activity. However, there are several outstanding issues that remain to be addressed by the Examiner.

First, the Examiner's professionals still have organization and compilation work related to documents and information obtained during the course of the Investigation. The extent of this work will depend, in large part, upon the Examiner's responsibilities with respect to further dissemination of information and records obtained by him. However, the anticipated time and expense for this work is minimal and the majority of professionals who assisted the Examiner in his Investigation have been directed to cease working on this matter pending further direction from the Court.

Second, as of the filing of this Interim Report, the Examiner and his professionals have not been paid any fees or expenses incurred from July 1, 2009 forward. The Examiner is currently in discussions with the Trustee concerning the payment of these fees and expenses, which are substantial. The Examiner anticipates coming to an agreement with the Trustee concerning the payment of outstanding fees and expenses, subject to review by the Court. If an agreement cannot be reached, further motion practice may be required.

Third, the Examiner contemplates seeking direction from the Court regarding the disposition of the documents and records obtained by him during the course of his Investigation and his availability for depositions or testimony. The Examiner intends to turn over all documents and records obtained during the Investigation to the Trustee. In addition, the Examiner believes he should be permitted to consult with the Trustee, the United States Trustee, and government agencies concerning the Investigation and his findings. However, the Examiner does intend to move the Court to relieve him, to the fullest extent possible, of any obligation to testify or consult with or provide documents and information to third parties with respect to the Investigation or his findings. The Examiner will also intends to move the Court concerning the use and disposition of a limited number of documents that were obtained pursuant to confidentiality agreements or protective orders. The Examiner intends to file motions with the Court seeking clarification of his duties going forward.

Finally, the Examiner anticipates seeking a formal discharge of his duties as Examiner herein together with other relief typically granted to Examiners who have completed an investigation of this nature.

The Examiner is prepared to formally present and summarize this Final Report to the Court and to answer any questions or address any comments the Court may have with respect to his Investigation, the Interim Report and this Final Report.

Respectfully Submitted,

Dated: October 19, 2009
Wilmington, Delaware

MCKENNA LONG & ALDRIDGE LLP

Joshua R. Hochberg, Examiner
MCKENNA LONG & ALDRIDGE LLP
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*Court Appointed Examiner*

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*Counsel to the Examiner*

# Appendix 1

## FINAL REPORT APPENDIX 1

## INDIVIDUALS REFERRED TO IN REPORT

1. **David Arnold** -- Current CEO of Wavetronix.

2. **Mike Attiani** -- Director of Operations of DBSI Inc. from March 2004-March 2005; Vice President of Property Management of DDRS from March 2005 - January 31, 2009.

3. **Thomas Banducci** -- Outside counsel for DBSI.

4. **Chan Parmer Barrieau** -- Accounting Manager of DBSI Inc. from June 2004 – June 2005.

5. **Farrell Bennett** -- Minority owner, officer and director of DBSI Inc. and its affiliates (including DBSI Investments LP) from 1992-1999.

6. **Gary Bringhurst --** Minority owner, officer and director of DBSI Inc. and certain affiliates, including Stellar and Western Electronics. CFO/COO of Western Electronics from 1992-2003; CFO of FOR 1031 from December 2003- Fall 2004 and CEO and President of FOR 1031 from Fall 2004-March 2005; President and CEO of Spectrus; President and CEO of DDRS from March 2005-2009; CFO of Master Leaseco; COO of DBSI Inc. from 2008-2009.

7. **Stephen Burr** -- Partner at Foley & Lardner LLP, outside counsel for DBSI.

8. **Chris Chrysler** -- Minority owner and CFO of DBSI in 1992.

9. **Paris Cole --** Controller of DDRS from March 2005-December 2008.

10. **Matthew Duckett --** Accountant and Controller of Western Electronics from December 1999- April 2004; Controller of FOR 1031 from April 2004-March 2005; Director of Accounting of DDRS from March 2005-2006 and Vice President of Finance of Accounting of DDRS from 2006-November 2008.

11. **Mark Ellison --** Owner, director and officer of DBSI Inc. and affiliates from 1979-1992; outside legal counsel for DBSI Inc. from 1992- 2004; General Counsel of DBSI Inc. from 2004- September 2009.

12. **John Foster --** Minority Owner, officer and director of DBSI and affiliates from 1992-2004.

13. **John Griffith** -- Current CEO of BioReaction.

14. **Mark Griffin --** Director of Tax and Vice President of Tax and Internal Audit at DBSI Inc. from September 2004 - November 2008.

15. **Brad Grover** -- Current CFO of Western Electronics.

16. **Charles Hassard** -- Minority owner, officer and director of DBSI and its affiliates (including DBSI Investments LP) from 1992 to present; Secretary of several Notes Corporations.

17. **Paul Hilbig --** Director of Acquisitions for Kastera Homes.

18. **Theresa Howe --** Paralegal for DBSI, Inc. from 2004 to 2008.

19. **Michael Jensen** -- Founder of Wavetronix; minority owner of Stellar.

20. **Rick Johnson** -- Minority owner of Stellar; former shareholder of EmergeCore.

21. **Lyle Jordan** -- Minority owner of Stellar; former shareholder of iTerra.

22. **Paul Judge --** Head of Sales of FOR 1031 from 2003-August 2005; President and CEO of Stellar from August 2005 -September 2009.

23. **Avi Katz** -- Current CEO of GigOptix.

24. **Douglas Lange** -- Minority owner of Steller; former shareholder of EmergeCore.

25. **Mark Loutensock --** Property manager for DBSI Funds properties from 2006-present.

26. **John Mayeron --** Minority owner, officer and director of DBSI and its affiliates (including DBSI Investments LP) from 1992 - present.

27. **Matthew McKinlay** -- Accountant for DBSI.

28. **Bryan S. Mick** -- Attorney, owner of Mick & Associates who provided independent third party due diligence of DBSI securities offerings.

29. **Debbie Miller --** Supervisor of Accounting of DBSI, March 2004- present.

30. **Chad Moffatt** -- Business associate of Var Reeve.

31. **Walter Mott** -- Minority Owner, officer and director of DBSI and affiliates from 1992-2006. Executive Vice President and COO of DBSI Inc. until March 2005.

32. **Karl Mundorff** -- Current CFO of BioReaction.

33. **Van Newby** -- Current CFO of Wavetronix.

34. **Peter O'Brien** -- Property manager for DBSI and DDRS from March 2005-February 2008.

35. **Brian Olsen** -- Director of Operations and Vice President of Operations of Western Electronics from 2000-2004; employee of FOR 1031 from 2004-March

2005; Vice President of Operations and COO of DDRS from March 2005-May 2009.

36. **Gregg Olsen** -- Former joint venture partner with Kastera.

37. **Randy Odenbrett** -- Former Controller of Stellar.

38. **John Palfreyman --** CPA, Attorney, former equal interest owner of DBSI from 1979 to 1992.

39. **Ty Plowman** -- Minority owner of Stellar; former shareholder of EmergeCore.

40. **Matt Ray --** Accountant for DBSI from 2008-present.

41. **Gary Raydon** -- Employee of DBSI in property acquisitions from September 2003-March 2005.

42. **Mary Ream** -- Former document manager for DBSI.

43. **Mary Schoeler** -- Former paralegal for DBSI.

44. **Robert Spence** -- Minority owner of Stellar.

45. **David Swenson --** Employee of FOR 1031 from 2003- March 2005; employee of DBSI from March 2005-September 2009 in property acquisition and management. Son of Douglas Swenson.

46. **Douglas Swenson --** Majority owner of DBSI and, directly or indirectly, all DBSI Group companies and officer and directors of DBSI and all DBSI Group companies from inception of all such companies until September 2009.

47. **Jeremy Swenson --** Controller of DBSI from December 2008-September 2009; prior to that, accountant for Western Electronics and DDRS. Son of Douglas Swenson.

48. **Joe Swenson** -- Former CFO of Kastera LLC and former President of Kastera Homes.

49. **Mike Thomas** -- Vice President of Property Acquisition of DBSI, Inc. from October 2003-April 2005.

50. **Wade Thomas --** Chief compliance officer of DBSI Securities and Associate General Counsel for DBSI, Inc. from April 2005 - January 2009.

51. **Thomas Var Reeve --** CEO of Western Electronics until from 1999-2003;; President and CEO of For 1031 from August 2003-March 2005; President of Kastera. Also, minority owner of DBSI and certain affiliates, including Kastera, Stellar and Western Electronics.

52. **Shane Warner** -- Associate counsel for DBSI from December 2007- November 2008.

53. **Jeff Warr --** General counsel for FOR 1031 and then DBSI from July 2004-present.

54. **John Wasden** -- Former owner of Western Electronics who now owns a minority interest in same.

55. **Timothy Williams** -- Appraiser with Williams Research, Inc.

# Appendix 2

YARMUTH WILSDON CALFO
ATTORNEYS AT LAW

Angelo J. Calfo
DIRECT 206.516-3872
acalfo@yarmuth.com

August 7, 2009

VIA EMAIL AND U.S. MAIL

Henry F. Sewell
McKenna Long & Aldridge LLP
303 Peachtree Streeet, Suite 5300
Atlanta, GA 30308

Re: *In re DBSI, Inc., et al.*; Chapter 11 Case No. 08-12687
United States Bankruptcy Court for the District of Delaware

Dear Mr. Sewell:

This is to confirm that, if called to testify in response to your deposition subpoena in the DBSI bankruptcy matter, Doug Swenson intends to invoke the Fifth Amendment in response to the examiner's questions. Based on your representations to the Court and in letters to us, I understand that you will not require Mr. Swenson to appear for deposition based on his representation in this letter.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Angelo J. Calfo

AJC:sr

# Appendix 3

## FINAL REPORT APPENDIX 3

## LIST OF PERSONS INTERVIEWED BY EXAMINER

| NAME | | | |
|---|---|---|---|
| **LAST** | **FIRST** | **NOTES** | **Transcribed Interview** |
| Arnold | David | CEO of Wavetronix | |
| Attiani | Mike | Former DDRS Vice President of Property Management | |
| Barrera | Corrie | Former FOR 1031/DDRS paralegal | |
| Bringhurst | Gary | Former DBSI COO, Master Leaseco CFO, DRR and FOR 1031/Spectrus President and CEO | X |
| Brown | Kim | DBSI Funds Accountant | |
| Carlson | Meg | CH Group employee; conducted GigOptix Valuation for Stellar | |
| Casterson | Dawn | GigOptix Acting CFO | |
| Castro-Johnson | Amy | Former FOR 1031 Accountant | |
| Cole | Paris | Former DDRS Controller | X |
| Davis | Mark | Former DDRS Director of Finance | |
| Duckett | Matt | Former DDRS Vice President of Finance | X |
| Ellison | Mark | Former DBSI General Counsel | X |
| Fantaski | Debbie | Former FOR 1031 Accountant | |
| Firkins | Russell | Member of Creditors' Committee as a Bond/Note investor | |
| Foster | John | Former DBSI minority owner | |
| Fremgen | Bill | Former FOR 1031/ DDRS land acquisitions employee | |
| Griffin | Mark | Former DBSI Vice President of Tax & Internal Audit | X |
| Griffith | John | BioReaction CFO | |
| Grover | Brad | Western Electronics CFO | |
| Hall | Korri | CH Group employee; conducted GigOptix Valuation for Stellar | |
| Hassard | Charlie | DBSI minority owner; Officer and Director of DBSI and affiliates; Secretary of several Notes Corporations | X |
| Hilbig | Paul | Former Director of Acquisitions for Kastera Homes | |
| Hoffman | Josh | Former DBSI Director of Investor Relations | |
| Holbrook | Angela | Former DBSI Director of Human Resources | |
| Holbrook | Braden | Former DBSI Director of Information Technology | |
| Howe | Theresa | Former DBSI paralegal | |
| Judge | Paul | Stellar President and CEO | X |

## FINAL REPORT APPENDIX 3

## LIST OF PERSONS INTERVIEWED BY EXAMINER

| NAME | | | |
|---|---|---|---|
| LAST | FIRST | NOTES | Transcribed Interview |
| Katz | Avi | GigOptix CEO | |
| Larson | Stephen | Grow Rasmussen employee; prepared tax returns for FOR 1031 | |
| Loutensock | Mark | Former DBSI/DDRS Land Development Manager | |
| Martin | Scott | Moss Adams employee, conducted valuation of Wavetronix | |
| Mayeron | John | DBSI minority owner | X |
| McKinlay | Matt | Current DBSI Accountant Supervisor | X |
| Mick | Bryan S. | Conducted due diligence of DBSI offerings for Mick & Associates | |
| Miller | Debbie | DBSI Accountant Supervisor | X |
| Minert | Ryan | Former DBSI tax department employee, prepared DBSI and Swenson tax returns | |
| Mott | Walter | Former DBSI minority owner | |
| Mundorff | Karl | CEO of BioReaction | |
| Neil | Thomas | Broker/Dealer, recipient of loan from Mayeron | |
| Newby | Van | CFO of Wavetronix | |
| O'Brien | Peter | Former DBSI property leasing employee | |
| Olsen | Brian | Former DBSI/FOR 1031 COO | X |
| Olsen | Gregg | Borrowed money from DBSI to acquire Legacy Hills property | |
| Ong | Geraldine | Blueback Corporation employee, performed S-4 work for GigOptix | |
| Orr | Daniel | Former DBSI Marketing Manager | |
| Parmer-Barrieau | Chan | Former DBSI Accountant | X |
| Ray | Matt | Former DBSI Cash Accountant | |
| Raydon | Gary | Former DBSI property acquisitions employee | |
| Reeve | Thomas Var | Former President of Western Electronics, FOR 1031 and Kastera LLC | |
| Reinstein | Dennis | Hooper Cornell PLLC employee; prepared valuation of Western Electronics | |
| Schulthies | Colleen | Former DDRS Associate Counsel | |
| Smith | Kevin R. | Eide Bailly employee, conducted audits of DBSI entities | |
| Stevenson | Jill | Former FOR 1031/ DBSI paralegal | |
| Swenson | David | Former DBSI property management and acquisitions employee; son of Douglas Swenson | |

## FINAL REPORT APPENDIX 3

## LIST OF PERSONS INTERVIEWED BY EXAMINER

| NAME | | | |
|---|---|---|---|
| **LAST** | **FIRST** | **NOTES** | **Transcribed Interview** |
| Swenson | Jeremy | Former DBSI Controller; son of Douglas Swenson | X |
| Temple | John | TIC Broker/Dealer with Omni Financial Services | |
| Thackrey | Darla | DDRS administrator; former employee of FOR 1031 | |
| Thomas | Mike | Former DBSI VP of Property Acquisition | |
| Thomas | Wade | Former DDRS Senior Counsel | |
| Warner | Shane | Former DDRS Associate Counsel | |
| Warr | Jeff | DDRS General Counsel | |
| Wilhoite | Charles | Willamette Associates employee, conducted valuation of BioReaction | |

# Appendix 4

## FINAL REPORT APPENDIX 4

## LIST OF SUBPOENAS SERVED BY EXAMINER

| NAME | SERVED |
|---|---|
| BioReaction | 6/30/09 |
| Bringhurst, Gary | 8/18/09 |
| Buttonwood | 7/8/09 |
| CB Richard Ellis | 7/8/09 |
| Cole, Paris | 8/18/09 |
| Duckett, Matthew[1] | 6/17/09 |
| Duckett, Matthew | 6/17/09 |
| Duckett, Matthew | 8/15/09 |
| Eide Bailly | 7/23/09 |
| Ellison , Mark | 8/18/09 |
| GigOptix | 6/30/09 |
| Grow Rasmussen | 6/11/09 |
| Hassard, Charles | 8/18/09 |
| Hooper Cornell | 6/18/09 |
| Judge, Paul | 9/4/09 |
| Mayeron, John | 8/18/09 |
| McColgan Company | 8/10/09 |
| Mick & Associates | 7/7/09 |
| Miller, Debbie | 8/18/09 |
| Stellar Technologies, LLC | 7/2/09 |
| SuperGen | 8/18/09 |
| Swenson, Douglas | 7/14/09 |
| Wavetronix | 6/30/09 |
| Western Electronics | 6/30/09 |

[1] Three Subpoenas were served on Mr. Duckett. The first was for his computer and computer media that he had taken with him when he left DBSI. The second was for records. The third was to compel his attendance at a transcribed interview.

# Appendix 5

**FINAL REPORT APPENDIX 5**

**SUMMARY OF BOND, NOTE AND FUND OFFERING USE RESTRICTIONS**

**A. DBSI Guaranteed Capital Corporation ("GCC")**[1]

GCC was funded by a series of bond offerings in 2002 and 2003. The proceeds from the sale of the bonds were to be used to make loans to DBSI-controlled entities. The proceeds could be used for any "general DBSI Group purposes," including (but not limited to) real estate financing. Those loans were required to be secured by a lien against the borrower's assets. The LTV requirement was "85% to the extent loans are secured by assets and 50% for all other loan amounts." GCC was not audited by independent CPAs.

**B. DBSI Real Estate Funding Corporation ("REF")**[2]

REF was funded by an offering on February 10, 2003 in the initial amount of $5,000,000 (subject to increase at the sole discretion of DBSI Inc.). The proceeds from the sale of the bonds were to be used to make loans to DBSI-controlled entities "to acquire, develop and/or finance real estate properties prior to their sale, resale, financing and/or syndication." Loans from REF were required to be secured by a lien against the borrower's assets, and there was an 85% LTV requirement. REF was to be audited by an independent CPA annually beginning December 31, 2003.

**C. DBSI 2005 Secured Notes Corporation ("2005 Notes Corp")**[3]

2005 Notes Corp was funded by an offering on August 9, 2005 in the initial amount of $20,000,000 (subject to increase at the sole discretion of DBSI Inc.). The proceeds from the sale

[1] BN 07, BN 08.

[2] BN 42.

[3] BN 28.1

of the notes were to be used to make loans to DBSI-controlled entities "to acquire, develop and/or finance real estate properties prior to their sale, resale, financing and/or syndication." Loans from 2005 Notes Corp. were required to be secured by mortgages or first deeds of trust on real estate owned by the borrower, and there was an 85% LTV requirement. 2005 Notes Corp was to be audited by an independent CPA annually beginning December 31, 2005.

**D. DBSI Short-Term Development Fund ("STDF")**[4]

STDF was funded by an offering on March 27, 2006 in the initial amount of $10,000,000 (subject to increase to $20,000,000 at the sole discretion of DBSI Inc.). The proceeds from sale of investment interests in the fund were to be used to provide capital for certain "projects," which in this case were "shadow-anchored" retail centers. A "shadow-anchored" retail center is one that is in close proximity to or contains a major anchor store (e.g., Target, Wal-Mart, etc.), but the anchor store is not a tenant of the property. A shadow-anchored property receives collateral benefit from the presence of the anchor, but not direct benefit in the form of rental income.

The STDF's capital contribution to projects was projected to represent about 15% of total development costs. The remaining 85% was to be funded by loans guaranteed by DBSI Inc. STDF was not audited by independent CPAs.

**E. DBSI 2006 Land Opportunity Fund LLC ("LOF")**[5]

LOF was funded by an offering on April 19, 2006 in the initial amount of $25,000,000 (subject to increase to $50,000,000 at the sole discretion of DBSI Inc.). The proceeds from sale of investment interests in the fund were to be used to provide capital or financing for certain

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[4] BN 43.

[5] BN 44.

"projects." These projects were to be the strategic investment in land opportunities by the "Manager" of the fund, DBSI Land Development, LLC. The express intent was to identify and acquire "strategically and well-located parcels of undervalued land in areas of projected population and economic growth." After acquisition, DBSI Land Development would engage in development efforts on the land over two years with a view towards selling the land within four years. The only project specifically identified in the PPM was 137 acres of raw land in Allen, Texas, which ultimately became known as the "121/Alma" project. The return to investors was based on the type of ownership interest acquired and a percentage of the LOF's profit on investments, if any.

The LOF did not provide money to DBSI entities on a loan basis. Therefore, the PPM did not contain security or LTV provisions. The LOF was not audited by independent CPAs.

**F. DBSI 2006 Secured Notes Corporation ("2006 Notes Corp")**[6]

2006 Notes Corp was funded by an offering on October 4, 2006 in the initial amount of $50,000,000 (subject to increase up to $100,000,000 at the sole discretion of DBSI Inc.). The proceeds from the sale of the notes were to be used to make loans to DBSI-controlled entities "to acquire, develop and/or finance real estate properties prior to their sale, resale, financing and/or syndication." Loans from 2006 Notes Corp were required to be secured by mortgages or first deeds of trust on real estate owned by the borrower, and there was an 85% LTV requirement. 2006 Notes Corp was to be audited by an independent CPA annually beginning in 2007.

[6] BN 45.

### G. 2007 Land Improvement & Development Fund LLC ("LID") and Development Notes[7]

LID was initially called the "DBSI 2006 Stage 3 Multi-Family Development Fund LLC," which was funded by an offering on September 11, 2006. Its name was changed to LID in connection with an additional offering on January 24, 2007. The LID offering was for a maximum offering amount of $21,000,000 (subject to increase up to $36,000,000 at the sole discretion of DBSI Inc.). The proceeds of the LID Fund were to be used "along with first lien loans from financial institutions to provide capital or financing" for projects. The LID proceeds provided to DBSI entities were not required to be secured with a deed of trust or mortgage and there was no LTV requirement. The return on investment to investors in the LID was to be based on the profit upon completion and sale of the projects funded by the LID. The PPM represented that such returns could be in the range of 18% to 20% or more. The LID was not audited by independent CPAs.

Also offered were LID "Development Notes," which had a maximum offering amount of $14,000,000 and promised a 12% return on investment, rather than a profit-sharing return like the LID. Development Notes proceeds were to be used to loan money to the LID, which would then use the money for the purposes described in the PPM.

### H. DBSI 2008 Development Opportunity Fund LLC ("DOF") and Development Notes[8]

DOF was funded by an offering on January 8, 2008 of investor interests in a Fund in the amount of $30,000,000. Proceeds were to be used to supplement first lien loans to provide

[7] BN 46.

[8] BN 33.

capital or financing for projects. Their participation in these projects would not be secured by any deed of trust. The projects undertaken with the DOF money had a project timeline of 18 to 36 months. The DOF proceeds provided to DBSI entities were not required to be secured with a deed of trust or mortgage and there was no LTV requirement. The return on investment to investors in the DOF was to be based on the profit upon completion and sale of the projects funded by the DOF. The DOF was not audited by independent CPAs.

Also offered were DOF "Development Notes," which had a maximum offering amount of $45,000,000 and promised a 12% return on investment, rather than a profit-sharing return like the DOF.

### I. DBSI 2008 Notes Corporation ("2008 Notes Corp")[9]

2008 Notes Corp was funded by an offering on February 6, 2008 in the initial amount of $50,000,000 (subject to increase up to $90,000,000 at the sole discretion of DBSI Inc.). The proceeds from the sale of the notes were to be used to make loans to DBSI-controlled entities either "to acquire, develop and/or finance real estate properties prior to their sale, resale, financing and/or syndication" or to "finance and refinance non-real estate Entities." Loans from 2008 Notes Corp. were not required to be secured by liens on the borrower's assets, but there was an 85% LTV requirement. Loans from 2008 Notes Corp could be subordinate to other loans. 2008 Notes Corp was to be audited by an independent CPA annually beginning with year-end 2008.

[9] BN 13

# Appendix 6

**DBSI Inc., *et. al.***

**Insider Consolidated Distribution Summary**

**Analysis of Examiner's Findings Compared to Debtor's Schedule**

| Insider | Per Debtor's Schedule Amount | Per Examiner's Schedule Amount | Difference |
|---|---|---|---|
| Doug Swenson | $ (7,197,586.63) | $ 38,607,769.32 | $ 45,805,355.95 |
| Var Reeve | 7,004,211.30 | 7,004,211.30 | - |
| Walter Mott | 4,853,422.64 | 5,776,700.85 | 923,278.21 |
| John Foster | 4,969,290.39 | 4,969,290.39 | - |
| John Mayeron | 4,555,576.57 | 4,659,325.79 | 103,749.22 |
| Charles Hassard | 3,839,231.27 | 3,849,231.27 | 10,000.00 |
| Gary Bringhurst | 2,638,739.75 | 2,934,440.75 | 295,701.00 |
| Mark Ellison | 2,432,583.25 | 2,432,583.25 | - |
| Brian Olsen | 1,420,352.48 | 1,420,352.48 | - |
| Farrell Bennett | 973,547.44 | 1,132,172.44 | 158,625.00 |
| Jeremy Swenson | 763,699.97 | 763,699.97 | - |
| Matt Duckett | 732,575.78 | 732,575.78 | - |
| David Swenson | 513,721.34 | 513,721.34 | - |
| Paris Cole | 343,469.17 | 343,469.17 | - |
| **Grand Total** | **$ 27,842,834.72** | **$ 75,139,544.10** | **$ 47,296,709.38** |

**DBSI Inc., *et. al.***
**Insider Distribution Summary by Type of Distribution**
**Analysis of Examiner's Findings Compared to Debtor's Schedule**

| Insider | Type | Per Debtor's Schedule Amount | Per Examiner's Schedule Amount | Difference |
|---|---|---|---|---|
| **Charles Hassard** | | **$ 3,839,231.27** | **$ 3,849,231.27** | **$ 10,000.00** |
| | Bond | 6,548.92 | 6,548.92 | - |
| | Distribution | 2,510,432.24 | 2,520,432.24 | 10,000.00 |
| | Liq Dist | 653.00 | 653.00 | - |
| | Salary | 1,299,054.11 | 1,299,054.11 | - |
| | Tax | 22,543.00 | 22,543.00 | - |
| **Doug Swenson** | | **$ (7,197,586.63)** | **$ 38,607,769.32** | **$ 45,805,355.95** |
| | Contribution | (50,514,494.81) | (5,400,000.00) | 45,114,494.81 |
| | Distribution | 27,611,244.90 | 22,212,406.51 | (5,398,838.39) |
| | Limited Partnership Distribution | 3,741.75 | 3,552,367.05 | 3,548,625.30 |
| | Liquidating Distribution | 438,670.00 | 3,741.75 | (434,928.25) |
| | Loan | (2,537,332.48) | 438,670.00 | 2,976,002.48 |
| | Salary | 51,286.38 | 51,286.38 | - |
| | Tax | 17,749,297.63 | 17,749,297.63 | - |
| **Farrell Bennett** | | **$ 973,547.44** | **$ 1,132,172.44** | **$ 158,625.00** |
| | Consulting | 50,947.12 | 50,947.12 | - |
| | Distribution | 817,600.32 | 841,225.32 | 23,625.00 |
| | Loan | 105,000.00 | 105,000.00 | - |
| | Stock Redemption | - | 135,000.00 | 135,000.00 |
| **Gary Bringhurst** | | **$ 2,638,739.75** | **$ 2,934,440.75** | **$ 295,701.00** |
| | Distribution | - | 20,000.00 | 20,000.00 |
| | Salary | 2,603,340.75 | 2,603,340.75 | - |
| | Tax | 35,399.00 | 311,100.00 | 275,701.00 |
| **John Foster** | | **$ 4,969,290.39** | **$ 4,969,290.39** | **$ -** |
| | Bond | 14,577.13 | 14,577.13 | - |
| | Consulting | 7,516.00 | 7,516.00 | - |
| | Distribution | 1,568,244.52 | 1,568,244.52 | - |
| | Note | 2,685,291.11 | 2,685,291.11 | - |
| | Salary | 693,661.63 | 693,661.63 | - |
| **John Mayeron** | | **$ 4,555,576.57** | **$ 4,659,325.79** | **$ 103,749.22** |
| | Bond | 56,371.16 | 56,371.16 | - |
| | Distribution | 2,955,751.73 | 2,982,751.73 | 27,000.00 |
| | Loan | - | 76,749.22 | 76,749.22 |
| | Salary | 1,523,030.68 | 1,523,030.68 | - |
| | Tax | 20,423.00 | 20,423.00 | - |

**DBSI Inc., *et. al.***
**Insider Distribution Summary by Type of Distribution**
**Analysis of Examiner's Findings Compared to Debtor's Schedule**

| | | Per Debtor's Schedule | | Per Examiner's Schedule | | |
|---|---|---|---|---|---|---|
| **Insider** | **Type** | | **Amount** | | **Amount** | **Difference** |
| **Mark Ellison** | | $ | 2,432,583.25 | $ | 2,432,583.25 | $ - |
| | Capital Gains | | 2,474.00 | | 2,474.00 | - |
| | Distribution | | 5,168.84 | | 5,168.84 | - |
| | Interest Payment | | 110.00 | | 110.00 | - |
| | Liquidating Distribution | | 1,118,501.75 | | 1,118,501.75 | - |
| | Salary | | 1,306,328.66 | | 1,306,328.66 | - |
| **Var Reeve** | | $ | 7,004,211.30 | $ | 7,004,211.30 | $ - |
| | Distribution | | 1,633,308.00 | | 1,633,308.00 | - |
| | Salary | | 2,420,863.52 | | 2,420,863.52 | - |
| | Tax | | 2,950,039.78 | | 2,950,039.78 | - |
| **Walter Mott** | | $ | 4,853,422.64 | $ | 5,776,700.85 | $ 923,278.21 |
| | Bond | | 168,819.60 | | 168,819.60 | - |
| | Distribution | | 1,916,526.46 | | 1,916,526.46 | - |
| | Guaranteed | | 180,750.00 | | 180,750.00 | - |
| | Note | | 1,670,172.64 | | 2,593,450.85 | 923,278.21 |
| | Salary | | 908,876.94 | | 908,876.94 | - |
| | Tax | | 8,277.00 | | 8,277.00 | - |
| **Jeremy Swenson** | | $ | 763,699.97 | $ | 763,699.97 | $ - |
| | Salary | | 763,699.97 | | 763,699.97 | - |
| **David Swenson** | | $ | 513,721.34 | $ | 513,721.34 | $ - |
| | Salary | | 513,721.34 | | 513,721.34 | - |
| **Brian Olsen** | | $ | 1,420,352.48 | $ | 1,420,352.48 | $ - |
| | Salary | | 1,124,352.48 | | 1,124,352.48 | - |
| | Bonus | | 296,000.00 | | 296,000.00 | - |
| **Paris Cole** | | $ | 343,469.17 | $ | 343,469.17 | $ - |
| | Salary | | 343,469.17 | | 343,469.17 | - |
| **Matt Duckett** | | $ | 732,575.78 | $ | 732,575.78 | $ - |
| | Salary | | 732,575.78 | | 732,575.78 | - |
| **Grand Total** | | **$** | **27,842,834.72** | **$** | **75,139,544.10** | **$ 47,296,709.38** |

**DBSI Inc., *et. al.***
**Insider Distribution Summary by Year of Distribution**
**Analysis of Examiner's Findings Compared to Debtor's Schedule**

| Year | Insider | | Per Debtor's Schedule Amount | Per Examiner's Schedule Amount |
|---|---|---|---|---|
| **2000** | | **$** | **928,454.16** | **1,063,454.16** |
| | Charles Hassard | | 152,316.00 | 152,316.00 |
| | Doug Swenson | | 165,428.00 | 165,428.00 |
| | Farrell Bennett | | 103,750.01 | 238,750.01 |
| | John Foster | | 158,363.00 | 158,363.00 |
| | John Mayeron | | 175,996.75 | 175,996.75 |
| | Mark Ellison | | 4,193.32 | 4,193.32 |
| | Walter Mott | | 146,663.00 | 146,663.00 |
| | Jeremy Swenson | | 21,744.08 | 21,744.08 |
| | David Swenson | | - | - |
| **2001** | | **$** | **1,432,300.19** | **1,432,300.19** |
| | Charles Hassard | | 178,129.08 | 178,129.08 |
| | Doug Swenson | | 198,940.39 | 198,940.39 |
| | Farrell Bennett | | 108,333.33 | 108,333.33 |
| | Gary Bringhurst | | 115,000.08 | 115,000.08 |
| | John Foster | | 180,972.12 | 180,972.12 |
| | John Mayeron | | 190,120.44 | 190,120.44 |
| | Mark Ellison | | 1,363.32 | 1,363.32 |
| | Var Reeve | | 148,461.63 | 148,461.63 |
| | Walter Mott | | 181,617.18 | 181,617.18 |
| | Jeremy Swenson | | 42,291.60 | 42,291.60 |
| | David Swenson | | - | - |
| | Brian Olsen | | 87,071.02 | 87,071.02 |
| | Matt Duckett | | - | - |
| **2002** | | **$** | **1,685,019.26** | **1,702,019.26** |
| | Charles Hassard | | 207,382.32 | 207,382.32 |
| | Doug Swenson | | 250,472.21 | 250,472.21 |
| | Farrell Bennett | | 113,750.00 | 113,750.00 |
| | Gary Bringhurst | | 115,000.08 | 115,000.08 |
| | John Foster | | 190,209.42 | 190,209.42 |
| | John Mayeron | | 292,496.61 | 309,496.61 |
| | Mark Ellison | | 23,338.32 | 23,338.32 |
| | Var Reeve | | 120,000.08 | 120,000.08 |
| | Walter Mott | | 225,815.64 | 225,815.64 |
| | Jeremy Swenson | | 44,584.59 | 44,584.59 |
| | David Swenson | | - | - |
| | Brian Olsen | | 101,969.99 | 101,969.99 |
| | Matt Duckett | | - | - |
| **2003** | | **$** | **2,291,445.91** | **2,291,445.91** |
| | Charles Hassard | | 281,583.32 | 281,583.32 |
| | Doug Swenson | | 286,609.19 | 286,609.19 |
| | Farrell Bennett | | 199,500.00 | 199,500.00 |

**DBSI Inc., *et. al.***
**Insider Distribution Summary by Year of Distribution**
**Analysis of Examiner's Findings Compared to Debtor's Schedule**

| Year | Insider | | Per Debtor's Schedule Amount | Per Examiner's Schedule Amount |
|---|---|---|---|---|
| **2003** | Gary Bringhurst | | 125,173.16 | 125,173.16 |
| | John Foster | | 511,017.03 | 511,017.03 |
| | John Mayeron | | 248,119.11 | 248,119.11 |
| | Mark Ellison | | 50,473.15 | 50,473.15 |
| | Var Reeve | | 124,805.39 | 124,805.39 |
| | Walter Mott | | 279,819.39 | 279,819.39 |
| | Jeremy Swenson | | 68,250.05 | 68,250.05 |
| | David Swenson | | 16,096.16 | 16,096.16 |
| | Brian Olsen | | 99,999.96 | 99,999.96 |
| | Matt Duckett | | - | - |
| **2004** | | **$** | **7,246,154.63** | **7,322,903.85** |
| | Charles Hassard | | 355,796.73 | 355,796.73 |
| | Doug Swenson | | 3,460,855.88 | 3,460,855.88 |
| | Farrell Bennett | | 94,500.00 | 94,500.00 |
| | Gary Bringhurst | | 300,004.87 | 300,004.87 |
| | John Foster | | 577,940.22 | 577,940.22 |
| | John Mayeron | | 613,326.23 | 690,075.45 |
| | Mark Ellison | | 170,085.92 | 170,085.92 |
| | Var Reeve | | 1,000,000.66 | 1,000,000.66 |
| | Walter Mott | | 332,109.46 | 332,109.46 |
| | Jeremy Swenson | | 74,942.58 | 74,942.58 |
| | David Swenson | | 77,077.15 | 77,077.15 |
| | Brian Olsen | | 115,627.24 | 115,627.24 |
| | Matt Duckett | | 73,887.69 | 73,887.69 |
| **2005** | | **$** | **47,316,760.35** | **35,332,264.59** |
| | Charles Hassard | | 1,141,088.20 | 1,141,088.20 |
| | Doug Swenson | | 37,521,059.12 | 25,492,938.36 |
| | Farrell Bennett | | 98,780.50 | 122,405.50 |
| | Gary Bringhurst | | 473,076.84 | 493,076.84 |
| | John Foster | | 1,821,971.18 | 1,821,971.18 |
| | John Mayeron | | 866,547.60 | 866,547.60 |
| | Mark Ellison | | 545,666.31 | 545,666.31 |
| | Var Reeve | | 3,064,525.00 | 3,064,525.00 |
| | Walter Mott | | 1,127,232.48 | 1,127,232.48 |
| | Jeremy Swenson | | 134,348.44 | 134,348.44 |
| | David Swenson | | 103,738.00 | 103,738.00 |
| | Brian Olsen | | 205,961.68 | 205,961.68 |
| | Paris Cole | | 61,173.80 | 61,173.80 |
| | Matt Duckett | | 151,591.20 | 151,591.20 |

**DBSI Inc., *et. al.***
**Insider Distribution Summary by Year of Distribution**
**Analysis of Examiner's Findings Compared to Debtor's Schedule**

| Year | Insider | | Per Debtor's Schedule Amount | Per Examiner's Schedule Amount |
|---|---|---|---|---|
| **2006** | | **$** | **2,875,867.33** | **9,953,804.41** |
| | Charles Hassard | | 652,577.12 | 652,577.12 |
| | Doug Swenson | | (3,891,474.88) | 2,889,801.20 |
| | Farrell Bennett | | 94,500.00 | 94,500.00 |
| | Gary Bringhurst | | 449,999.96 | 725,700.96 |
| | John Foster | | 948,155.99 | 948,155.99 |
| | John Mayeron | | 658,277.14 | 658,277.14 |
| | Mark Ellison | | 312,964.99 | 312,964.99 |
| | Var Reeve | | 1,101,612.28 | 1,101,612.28 |
| | Walter Mott | | 1,866,219.16 | 1,887,179.16 |
| | Jeremy Swenson | | 122,700.14 | 122,700.14 |
| | David Swenson | | 100,017.25 | 100,017.25 |
| | Brian Olsen | | 209,230.90 | 209,230.90 |
| | Paris Cole | | 82,326.09 | 82,326.09 |
| | Matt Duckett | | 168,761.19 | 168,761.19 |
| **2007** | | **$** | **(1,461,710.11)** | **10,796,202.74** |
| | Charles Hassard | | 501,000.08 | 501,000.08 |
| | Doug Swenson | | (6,142,487.44) | 5,213,107.20 |
| | Farrell Bennett | | 94,500.00 | 94,500.00 |
| | Gary Bringhurst | | 604,706.79 | 604,706.79 |
| | John Foster | | 331,490.96 | 331,490.96 |
| | John Mayeron | | 706,700.20 | 706,700.20 |
| | Mark Ellison | | 1,028,480.12 | 1,028,480.12 |
| | Var Reeve | | 490,971.95 | 490,971.95 |
| | Walter Mott | | 110,960.00 | 1,013,278.21 |
| | Jeremy Swenson | | 139,069.24 | 139,069.24 |
| | David Swenson | | 121,568.74 | 121,568.74 |
| | Brian Olsen | | 284,692.33 | 284,692.33 |
| | Paris Cole | | 94,614.86 | 94,614.86 |
| | Matt Duckett | | 172,022.06 | 172,022.06 |
| **2008** | | **$** | **(34,471,457.00)** | **5,245,148.99** |
| | Charles Hassard | | 369,358.42 | 379,358.42 |
| | Doug Swenson | | (39,046,989.10) | 649,616.89 |
| | Farrell Bennett | | 65,933.60 | 65,933.60 |
| | Gary Bringhurst | | 455,777.97 | 455,777.97 |
| | John Foster | | 249,170.47 | 249,170.47 |
| | John Mayeron | | 803,992.49 | 813,992.49 |
| | Mark Ellison | | 296,017.80 | 296,017.80 |
| | Var Reeve | | 953,834.31 | 953,834.31 |
| | Walter Mott | | 582,986.33 | 582,986.33 |
| | Jeremy Swenson | | 115,769.25 | 115,769.25 |
| | David Swenson | | 95,224.04 | 95,224.04 |

**DBSI Inc., *et. al.***
**Insider Distribution Summary by Year of Distribution**
**Analysis of Examiner's Findings Compared to Debtor's Schedule**

| Year | Insider | Per Debtor's Schedule Amount | Per Examiner's Schedule Amount |
|---|---|---|---|
| **2008** | Brian Olsen | 315,799.36 | 315,799.36 |
| | Paris Cole | 105,354.42 | 105,354.42 |
| | Matt Duckett | 166,313.64 | 166,313.64 |
| **Grand Total** | | **$ 27,842,834.72** | **75,139,544.10** |

**DBSI Inc., *et. al.***
**Insider Distribution Summary by Paying Entity of Distribution**
**Analysis of Examiner's Findings Compared to Debtor's Schedule**

| Paying Entity | Per Debtor's Schedule Amount | Per Examiner's Schedule Amount |
|---|---|---|
| DBSI 2001A Funding Corporation | $ 11,133.02 | $ 11,133.02 |
| DBSI 2001B Funding Corporation | 6,548.92 | 6,548.92 |
| DBSI 2001C Funding Corporation | 41,875.16 | 41,875.16 |
| DBSI Broadway Plaza, LP | 15,045.00 | 15,045.00 |
| DBSI Curtis Plaza, LP | 33,892.00 | 33,892.00 |
| DBSI Custers Inn Associates, LP | 833.33 | 833.33 |
| DBSI Discovery Real Estate Services | 4,828,492.29 | 4,828,492.29 |
| DBSI Finance Corporation | 17,490.11 | 34,490.11 |
| DBSI Greenwood Associates, LP | 52,696.00 | 52,696.00 |
| DBSI Investments, LP | 18,264,229.61 | 18,287,854.61 |
| DBSI Investors IV, LP | 2,040.51 | 2,040.51 |
| DBSI Kimberly Associates, LP | 199,633.00 | 199,633.00 |
| DBSI Leisure Village | 10,437.00 | 10,437.00 |
| DBSI Madison Park, LP | 44,962.50 | 44,962.50 |
| DBSI Management Services | 145,382.32 | 145,382.32 |
| DBSI Management Services LLC | 118,215.96 | 118,215.96 |
| DBSI Meridian Freeway Associates, LP | 969,719.00 | 969,719.00 |
| DBSI Metro 8 LeaseCo, LLC | 4,280.50 | 4,280.50 |
| DBSI Pacific Growth & Income, LP | 430.00 | 430.00 |
| DBSI Pearson Lane, LLC | 493,308.00 | 493,308.00 |
| DBSI Realty, Inc | 5,178,525.80 | 5,223,525.80 |
| DBSI Redemption Reserve, LP | 450,000.00 | 526,749.22 |
| DBSI Sandlewood Associates, LP | 96,400.00 | 96,400.00 |
| DBSI Sawtooth Associates, LP | 9,304.00 | 9,304.00 |
| DBSI Securities, Inc | 32,620.00 | 32,620.00 |
| DBSI Tri II, LP | 4,210.00 | 4,210.00 |
| DBSI Tri V, LP | 827.00 | 827.00 |
| DBSI Tri XIII, LP | 3,593.00 | 3,593.00 |
| DBSI, Inc. | (49,819,566.48) | 2,402,906.07 |
| DBSI/Tri Equity Income Fund, LP | 3,741.75 | 3,741.75 |
| DCI, Inc. | - | 15,000.00 |
| DCJ, Inc. | 58,724.46 | 58,724.46 |
| DP 05, LP | 4,444.00 | 4,444.00 |
| FOR 1031 LLC | 309,421.69 | 309,421.69 |
| FOR 1031, LLC | 10,375,535.87 | 10,611,202.11 |
| Kastera Development, LLC | 844,621.05 | 844,621.05 |
| Kastera Homes, LLC | 676,279.71 | 676,279.71 |
| Kastera, LLC | 40,000.00 | 40,000.00 |
| Mountain View, LP | 21,800.00 | 21,800.00 |
| Spectrus | 32,585,931.57 | 26,971,426.94 |
| Stellar Technologies | 69,744.28 | 69,744.28 |

**DBSI Inc., *et. al.***
**Insider Distribution Summary by Paying Entity of Distribution**
**Analysis of Examiner's Findings Compared to Debtor's Schedule**

| Paying Entity | Per Debtor's Schedule Amount | Per Examiner's Schedule Amount |
|---|---|---|
| Stellar Technologies, Inc | 715,471.03 | 715,471.03 |
| Terra Vista | - | 275,701.00 |
| Various | 20,560.90 | 20,560.90 |
| Western Electronics, LLC | 900,000.86 | 900,000.86 |
| **Grand Total** | **$ 27,842,834.72** | **$ 75,139,544.10** |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 1/28/2000 | DBSI Investments, LP | Distribution | 14,167.00 | Distribution |
| 2/3/2000 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 2/28/2000 | DBSI Investments, LP | Distribution | 14,167.00 | Distribution |
| 2/28/2000 | DBSI Investments, LP | Distribution | 1,666.00 | Distribution |
| 4/4/2000 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 4/26/2000 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 4/26/2000 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 5/30/2000 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 6/22/2000 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 7/28/2000 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 7/31/2000 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 8/28/2000 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 9/28/2000 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 10/31/2000 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 11/7/2000 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 11/30/2000 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 1/2/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 1/31/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 1/31/2001 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 2/28/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 4/2/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 4/30/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 4/30/2001 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 5/31/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 6/29/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 7/31/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 8/15/2001 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 8/31/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 9/28/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 10/26/2001 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 10/31/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 11/28/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 12/31/2001 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 12/31/2001 | DBSI Realty, Inc | Salary | 3,512.39 | 2001 Salary |
| 1/31/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 2/28/2002 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 3/1/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 3/14/2002 | DCJ, Inc | Tax | 144.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 3/14/2002 | DBSI, Inc | Tax | 30.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/14/2002 | DBSI Realty, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/14/2002 | DCJ, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/29/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 4/15/2002 | DBSI, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 4/15/2002 | DBSI, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 4/30/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 5/10/2002 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 5/30/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 6/28/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 7/17/2002 | DBSI Investments, LP | Distribution | 10,000.00 | Distribution |
| 7/25/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 7/31/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 7/31/2002 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 8/14/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 8/28/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 9/13/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 10/1/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 10/15/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 10/31/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 11/4/2002 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 11/14/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 11/29/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 12/13/2002 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 12/13/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 12/31/2002 | DBSI Realty, Inc | Salary | 4,800.21 | 2002 Salary |
| 1/15/2003 | DBSI Investments, LP | Distribution | 12,000.00 | Distribution |
| 1/31/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 1/31/2003 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 2/13/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 2/27/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 3/13/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 3/19/2003 | DCJ, Inc | Tax | 556.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 3/27/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 4/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 4/30/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 5/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 5/15/2003 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 5/29/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 6/16/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 6/30/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 7/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 7/31/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 8/4/2003 | DBSI, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 8/4/2003 | DBSI, Inc | Tax | 6.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 8/6/2003 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 8/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 8/28/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 9/11/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 9/26/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 10/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 10/30/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 11/3/2003 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 11/10/2003 | DBSI Realty, Inc | Tax | 20.55 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 11/10/2003 | DCJ, Inc | Tax | 20.54 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 11/13/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 11/25/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 12/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Distribution |
| 12/30/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Distribution |
| 12/31/2003 | DBSI Realty, Inc | Salary | 5,568.10 | 2003 Salary |
| 1/13/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Distribution |
| 1/29/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 2/4/2004 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 2/11/2004 | DBSI Redemption Reserve, LP | Distribution | 450,000.00 | Loan from DRR - Later offset against a payable to the insider and the net balance was converted to equity |
| 2/16/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Distribution |
| 2/19/2004 | DBSI Realty, Inc | Tax | 25.00 | Paid South Carolina Department of Revenue, recorded as distribution to insider |
| 2/26/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 3/11/2004 | DBSI Realty, Inc | Tax | 25.00 | Paid South Carolina Department of Revenue, recorded as distribution to insider |
| 3/11/2004 | DBSI Realty, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/11/2004 | DBSI, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/11/2004 | DCJ, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/12/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Distribution |
| 3/18/2004 | DBSI, Inc | Tax | 30.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/31/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 4/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Distribution |
| 4/28/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 5/6/2004 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 5/17/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Distribution |
| 5/28/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 6/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Distribution |
| 6/30/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 7/9/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Distribution |
| 7/30/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 8/6/2004 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 8/16/2004 | FOR 1031 LLC | Distribution | 500,000.00 | Loan from FOR 1031. On 5/31/05, it was reclassified as a distribution |
| 8/16/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Distribution |
| 8/31/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 9/15/2004 | FOR 1031 LLC | Distribution | 500,000.00 | Loan from FOR 1031. On 5/31/05, it was reclassified as a distribution |
| 9/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Distribution |
| 9/15/2004 | DBSI, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 9/30/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 10/7/2004 | DBSI Investments, LP | Tax | 1,350.00 | Paid State of New Jersey, recorded as distribution to insider |
| 10/12/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Distribution |
| 10/15/2004 | FOR 1031 LLC | Distribution | 500,000.00 | Loan from FOR 1031. On 5/31/05, it was reclassified as a distribution |
| 10/29/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 11/5/2004 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 11/15/2004 | FOR 1031 LLC | Distribution | 500,000.00 | Loan from FOR 1031. On 5/31/05, it was reclassified as a distribution |
| 11/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Distribution |
| 11/30/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 12/15/2004 | FOR 1031 LLC | Distribution | 500,000.00 | Loan from FOR 1031. On 5/31/05, it was reclassified as a distribution |
| 12/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Distribution |
| 12/30/2004 | DBSI Investments, LP | Distribution | 28,750.00 | Distribution |
| 12/31/2004 | DBSI Realty, Inc | Salary | 11,395.91 | 2004 Salary |
| 1/14/2005 | FOR 1031 LLC | Distribution | 500,000.00 | Loan from FOR 1031. On 5/31/05, it was reclassified as a distribution |
| 1/14/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 1/27/2005 | DBSI Investments, LP | Distribution | 500,000.00 | Annual Distribution |
| 1/31/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 1/31/2005 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |
| 2/15/2005 | FOR 1031 LLC | Distribution | 500,000.00 | Loan from FOR 1031. On 5/31/05, it was reclassified as a distribution |
| 2/15/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 2/28/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 3/14/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 3/15/2005 | Spectrus/For 1031 | Tax | 62,000.00 | Paid California Department of Revenue, recorded as distribution to insider |
| 3/15/2005 | Spectrus/For 1031 | Tax | 7,500.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 3/15/2005 | Spectrus/For 1031 | Tax | 3,500.00 | Paid Wisconsin Department of Revenue, recorded as distribution to insider |
| 3/15/2005 | Spectrus/For 1031 | Tax | 500.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 3/15/2005 | Spectrus/For 1031 | Tax | 100.00 | Paid New Mexico Tax & Revenue Department, recorded as distribution to insider |
| 3/15/2005 | Spectrus/For 1031 | Tax | 100.00 | Paid South Carolina Department of Revenue, recorded as distribution to insider |
| 3/16/2005 | FOR 1031 LLC | Distribution | 500,000.00 | Loan from FOR 1031. On 5/31/05, it was reclassified as a distribution |
| 3/16/2005 | DBSI, Inc | Tax | 4,020.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 3/16/2005 | DBSI Realty, Inc | Tax | 50.00 | Paid New Mexico Tax & Revenue Department, recorded as distribution to insider |
| 3/16/2005 | DBSI, Inc | Tax | 50.00 | Paid New Mexico Tax & Revenue Department, recorded as distribution to insider |
| 3/16/2005 | DBSI Realty, Inc | Tax | 35.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 3/16/2005 | DBSI Realty, Inc | Tax | 20.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 3/31/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 4/14/2005 | Spectrus/For 1031 | Tax | 85,681.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 4/14/2005 | Spectrus/For 1031 | Tax | 7,149.00 | Paid Minnesota Department of Revenue, recorded as distribution to insider |
| 4/14/2005 | Spectrus/For 1031 | Tax | 5,208.00 | Paid Louisiana Department of Revenue, recorded as distribution to insider |
| 4/14/2005 | Spectrus/For 1031 | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---:|---|
| 4/15/2005 | Spectrus/For 1031 | Tax | 14,115,000.00 | Paid Internal Revenue Service, recorded as distribution to insider |
| 4/15/2005 | DBSI, Inc | Tax | 340,000.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 290,000.00 | Paid Nebraska Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 140,000.00 | Paid Kansas DBSI, Income Tax, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 131,936.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 100,000.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 91,268.00 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | DBSI, Inc | Tax | 90,742.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 90,000.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 4/15/2005 | DBSI, Inc | Tax | 86,149.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 86,000.00 | Paid Taxable Processing Center, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 86,000.00 | Paid Wisconsin Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 83,000.00 | Paid Arizona Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 78,000.00 | Paid Indiana Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 48,200.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 32,000.00 | Paid Virginia Department of Taxation, recorded as distribution to insider |
| 4/15/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 4/15/2005 | Spectrus/For 1031 | Tax | 21,000.00 | Paid Maine Revenue Services, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 5,600.00 | Paid Treasurer - State of Iowa, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 1,744.00 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 1,500.00 | Paid Louisiana Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | DBSI, Inc | Tax | 1,314.00 | Paid Wisconsin Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | DBSI, Inc | Tax | 1,035.00 | Paid Louisiana Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | DBSI, Inc | Tax | 750.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 600.00 | Paid State of Michigan, recorded as distribution to insider |
| 4/15/2005 | DBSI Realty, Inc | Tax | 188.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 4/15/2005 | DBSI Investments, LP | Tax | 75.00 | Paid State of New Jersey, recorded as distribution to insider |
| 4/15/2005 | DBSI Realty, Inc | Tax | 25.00 | Paid Wisconsin Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | DBSI Realty, Inc | Tax | 20.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | DBSI Realty, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 4/15/2005 | DBSI, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 4/15/2005 | DBSI Realty, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | DBSI, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 4/15/2005 | Spectrus/For 1031 | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 4/25/2005 | Spectrus/For 1031 | Tax | 37,955.00 | Paid New Mexico Taxation & Revenue Dept, recorded as distribution to insider |
| 4/25/2005 | Spectrus/For 1031 | Tax | 1,665.00 | Paid Virginia Department of Taxation, recorded as distribution to insider |
| 4/25/2005 | Spectrus/For 1031 | Tax | 35.00 | Paid Wisconsin Department of Revenue, recorded as distribution to insider |
| 4/25/2005 | Spectrus/For 1031 | Tax | 5.00 | Paid Minnesota Department of Revenue, recorded as distribution to insider |
| 4/25/2005 | Spectrus/For 1031 | Tax | 1.00 | Paid Pennsylvania Department of Revenue, recorded as distribution to insider |
| 4/29/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 5/12/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 5/17/2005 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 107.00 | LP Distribution |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 5/26/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 6/2/2005 | Spectrus/For 1031 | Tax | 11.55 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 6/15/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 6/29/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 7/14/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 7/20/2005 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 7/29/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 8/2/2005 | DBSI, Inc | Tax | 3,558.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 8/2/2005 | DBSI, Inc | Tax | 3,314.00 | Paid New Mexico Taxation & Revenue Dept, recorded as distribution to insider |
| 8/9/2005 | DBSI Realty, Inc | Tax | 10.00 | Paid Louisiana Department of Revenue, recorded as distribution to insider |
| 8/9/2005 | DBSI Realty, Inc | Tax | 2.50 | Paid Louisiana Department of Revenue, recorded as distribution to insider |
| 8/9/2005 | DBSI Realty, Inc | Tax | 1.96 | Paid Louisiana Department of Revenue, recorded as distribution to insider |
| 8/12/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 8/17/2005 | DBSI, Inc | Tax | 20,366.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 8/17/2005 | DBSI, Inc | Tax | 815.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 8/17/2005 | DBSI, Inc | Tax | 407.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 8/22/2005 | DBSI, Inc | Tax | 2,245.00 | Paid Wisconsin Department of Revenue, recorded as distribution to insider |
| 8/29/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 9/1/2005 | Spectrus/For 1031 | Tax | 463.58 | Paid Minnesota Department of Revenue, recorded as distribution to insider |
| 9/7/2005 | DBSI Realty, Inc | Tax | 960.00 | Paid Louisiana Department of Revenue, recorded as distribution to insider |
| 9/7/2005 | DBSI Realty, Inc | Tax | 57.59 | Paid Louisiana Department of Revenue, recorded as distribution to insider |
| 9/14/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 9/29/2005 | DBSI Kimberly Associates, LP | Liquidating Distribution | 9,911.00 | Liquidating distribution |
| 10/3/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 10/13/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 10/26/2005 | DBSI Investments, LP | Distribution | 100,000.00 | Bonus Draw |
| 10/31/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 11/1/2005 | DBSI, Inc | Tax | 177,722.00 | Paid Iowa Department of Revenue, recorded as a distribution to insider |
| 11/10/2005 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 11/10/2005 | DCJ, Inc | Tax | 20.67 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 11/14/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 11/29/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 11/30/2005 | DBSI Realty, Inc | Tax | 10.00 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 11/30/2005 | DBSI Realty, Inc | Tax | 4.92 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 12/14/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 12/30/2005 | DBSI Investments, LP | Distribution | 31,016.71 | Distribution |
| 12/31/2005 | FOR 1031 / Kastera | Distribution | 6,281,205.24 | Reclass Affiliated Receivable - Kastera LLC to Distribution to Member |
| 12/31/2005 | DBSI Realty, Inc | Salary | 9,213.81 | 2005 Salary |
| 1/16/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 1/24/2006 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 1/31/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 2/14/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |

## Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 2/28/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 3/7/2006 | DCJ, Inc | Tax | 1,174.00 | Paid Colorado Department of Revenue, recorded as distribution to insider |
| 3/7/2006 | DCJ, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/15/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 3/15/2006 | DBSI, Inc | Tax | 3,500.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 3/15/2006 | DBSI, Inc | Tax | 1,000.00 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 3/15/2006 | DBSI, Inc | Tax | 750.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 3/15/2006 | DBSI, Inc | Tax | 50.00 | Paid New Mexico Tax & Revenue Department, recorded as distribution to insider |
| 3/15/2006 | DBSI Realty, Inc | Tax | 50.00 | Paid New Mexico Tax & Revenue Department, recorded as distribution to insider |
| 3/15/2006 | DBSI Realty, Inc | Tax | 25.00 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 3/15/2006 | DBSI Realty, Inc | Tax | 20.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 3/15/2006 | DBSI Realty, Inc | Tax | 20.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 3/28/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 4/6/2006 | Spectrus/For 1031 | Tax | 6,493.00 | Paid Colorado Department of Revenue, recorded as distribution to insider |
| 4/7/2006 | DBSI Realty, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 4/7/2006 | DBSI Realty, Inc | Tax | 10.00 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 4/13/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 4/17/2006 | DBSI Investments, LP | Tax | 250,000.00 | Paid Internal Revenue Service, recorded as distribution to insider |
| 4/17/2006 | DBSI, Inc | Tax | 80,000.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 59,000.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 35,000.00 | Paid Indiana Department of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 28,300.00 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 25,938.00 | Paid State of New Jersey, recorded as distribution to insider |
| 4/17/2006 | DBSI, Inc | Tax | 19,000.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 4/17/2006 | DBSI, Inc | Tax | 18,000.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 10,500.00 | Paid New Mexico Tax & Revenue Department, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 10,000.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 5,275.00 | Paid Nebraska Department of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 5,000.00 | Paid Illinois Department of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 4,650.00 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 3,950.00 | Paid South Carolina Dept. of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 3,900.00 | Paid Michigan Department of Treasury, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 3,850.00 | Paid Kansas Department of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 2,950.00 | Paid Virginia Dept of Taxation, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 2,737.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 1,775.00 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 1,250.00 | Paid Hawaii Department of Taxation, recorded as distribution to insider |
| 4/17/2006 | DBSI, Inc | Tax | 750.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 730.00 | Paid Mississippi Office of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI Investments, LP | Tax | 300.00 | Paid Alabama Department of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI, Inc | Tax | 200.00 | Paid Mississippi Office of Revenue, recorded as distribution to insider |
| 4/17/2006 | DBSI, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 4/17/2006 | DBSI, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 4/28/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 5/15/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 5/15/2006 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 5/31/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 6/14/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 6/29/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 7/14/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 7/20/2006 | DBSI, Inc | Tax | 3,868.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 7/20/2006 | DBSI, Inc | Tax | 3,733.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 7/20/2006 | DBSI, Inc | Tax | 2,317.00 | Paid Kansas Department of Revenue, recorded as distribution to insider |
| 7/20/2006 | DBSI, Inc | Tax | 2,289.00 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 7/20/2006 | DBSI, Inc | Tax | 1,550.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 7/20/2006 | DBSI, Inc | Tax | 670.00 | Paid State of New Jersey, recorded as distribution to insider |
| 7/20/2006 | DBSI, Inc | Tax | 500.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 7/20/2006 | DBSI, Inc | Tax | 206.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 7/20/2006 | DBSI, Inc | Contribution | (5,400,000.00) | Proceeds from sale of Montigen ownership were loaned to DBSI for the purchase of the Tiegs property. On 4/1/08, the loan was converted to DBSI Inc equity. |
| 7/24/2006 | DBSI, Inc | Tax | 30,424.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |
| 7/24/2006 | DBSI, Inc | Tax | 67.00 | Paid Mississippi Office of Revenue, recorded as distribution to insider |
| 7/28/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 8/14/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 8/15/2006 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 8/25/2006 | DBSI Investments, LP | Tax | 3,871.00 | Paid Michigan Department of Treasury, recorded as distribution to insider |
| 8/25/2006 | DBSI Investments, LP | Tax | 1,291.00 | Paid Hawaii Department of Taxation, recorded as distribution to insider |
| 8/25/2006 | DBSI Investments, LP | Tax | 70.00 | Paid Illinois Department of Revenue, recorded as distribution to insider |
| 8/31/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 8/31/2006 | DBSI, Inc | Tax | 54.19 | Paid Illinois Department of Revenue, recorded as distribution to insider |
| 9/5/2006 | DBSI, Inc | Tax | 293.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 9/5/2006 | DBSI, Inc | Tax | 70.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 9/14/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 9/29/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 10/1/2006 | Spectrus/Kastera | Distribution | 6,629,282.37 | Reclass Affiliated Receivable - Kastera LLC to Distribution to Member |
| 10/16/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 10/30/2006 | DBSI, Inc | Tax | 35.09 | Paid Kansas Department of Revenue, recorded as distribution to insider |
| 10/31/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 11/14/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 11/15/2006 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 11/28/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 12/15/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 12/19/2006 | DBSI, Inc | Tax | 573.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 12/29/2006 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 12/31/2006 | DBSI Realty, Inc | Salary | 5,598.80 | 2006 Salary |
| 1/15/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 1/18/2007 | DBSI Investments, LP | Tax | 275,988.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 1/31/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 2/6/2007 | DBSI, Inc | Tax | 88.66 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 2/15/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 2/15/2007 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 2/28/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 3/14/2007 | DBSI, Inc | Tax | 2,000.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |
| 3/14/2007 | DBSI, Inc | Tax | 1,250.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 3/14/2007 | DBSI, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/14/2007 | DCJ, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/14/2007 | DBSI Realty, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/14/2007 | DBSI, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 3/15/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 3/16/2007 | DBSI, Inc | Tax | 30.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/29/2007 | DBSI Meridian Freeway Associates, LP | Liquidating Distribution | 228,950.00 | Liquidating distribution |
| 3/29/2007 | DBSI Meridian Freeway Associates, LP | Liquidating Distribution | 196,487.00 | Liquidating distribution |
| 3/29/2007 | DBSI Meridian Freeway Associates, LP | Liquidating Distribution | 3,322.00 | Liquidating distribution |
| 3/30/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 4/16/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 4/17/2007 | DBSI, Inc | Tax | 10,500.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 8,856.00 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 8,205.00 | Paid Kansas Department of Revenue, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 3,030.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 2,895.00 | Paid Mississippi Office of Revenue, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 2,100.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 1,500.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 800.00 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 557.00 | Paid State of New Jersey, recorded as distribution to insider |
| 4/17/2007 | DBSI Investments, LP | Tax | 505.00 | Paid State of New Jersey, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 73.00 | Paid Illinois Department of Revenue, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 50.00 | Paid New Mexico Tax & Revenue Department, recorded as distribution to insider |
| 4/17/2007 | DBSI, Inc | Tax | 25.00 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 4/30/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 5/15/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 5/15/2007 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 6/1/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 6/15/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 6/29/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 6/29/2007 | DBSI Investments, LP | Tax | 11,828.07 | Paid Iowa Department of Revenue, recorded as a distribution to insider |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 7/16/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 7/31/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 8/15/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 8/15/2007 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 8/30/2007 | DBSI Investments, LP | Tax | 366.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 8/30/2007 | DBSI Investments, LP | Tax | 116.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 8/30/2007 | DBSI, Inc | Tax | 11.00 | Paid Illinois Department of Revenue, recorded as distribution to insider |
| 8/31/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 9/14/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 9/18/2007 | DBSI, Inc | Tax | 813.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 9/18/2007 | Spectrus/For 1031 | Tax | 456.00 | Paid Massachusetts Department of Revenue, recorded as distribution to insider |
| 9/18/2007 | DBSI, Inc | Tax | 256.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 9/18/2007 | Spectrus/For 1031 | Tax | 100.00 | Paid Office of Tax and Revenue |
| 9/21/2007 | DBSI Realty, Inc | Tax | 6.26 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 9/28/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 10/5/2007 | DBSI Investments, LP | Tax | 282.00 | Paid Nebraska Department of Revenue, recorded as distribution to insider |
| 10/15/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 10/29/2007 | DCJ, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 10/29/2007 | DCJ, Inc | Tax | 0.37 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 11/1/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 11/6/2007 | DBSI Investments, LP | Tax | 106,674.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 11/6/2007 | DBSI Investments, LP | Tax | 29,313.00 | Paid South Carolina Dept. of Revenue, recorded as distribution to insider |
| 11/6/2007 | DBSI Investments, LP | Tax | 8,551.00 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 11/6/2007 | DBSI Investments, LP | Tax | 7,012.29 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 11/6/2007 | DBSI Investments, LP | Tax | 3,740.00 | Paid Mississippi Office of Revenue, recorded as distribution to insider |
| 11/6/2007 | DBSI Investments, LP | Tax | 1,803.00 | Paid Alabama Department of Revenue, recorded as distribution to insider |
| 11/8/2007 | DBSI Investments, LP | Tax | 6,607.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 11/8/2007 | DBSI, Inc | Tax | 3,727.00 | Paid State of New Jersey, recorded as distribution to insider |
| 11/15/2007 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 11/20/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 12/3/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 12/17/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 12/19/2007 | DBSI Investments, LP | Tax | 10,126.00 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 12/21/2007 | DBSI Investments, LP | Tax | 1,572.64 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 12/21/2007 | DBSI Investments, LP | Tax | 82.31 | Paid Nebraska Department of Revenue, recorded as distribution to insider |
| 12/27/2007 | DBSI Investments, LP | Tax | 1,572.64 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 12/31/2007 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 12/31/2007 | DBSI Realty, Inc | Salary | 5,598.58 | 2007 Salary |
| 1/2/2008 | DBSI Investments, LP | Tax | 405.29 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 1/15/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 1/22/2008 | DBSI Investments, LP | Tax | 13,868.16 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 1/23/2008 | DBSI Investments, LP | Tax | 13,868.16 | Paid Oregon Department of Revenue, recorded as distribution to insider |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 1/23/2008 | Spectrus/For 1031 | Tax | 150.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 1/28/2008 | DBSI Investments, LP | Tax | 1,743.45 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 1/31/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 2/15/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 2/15/2008 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 2/29/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 3/11/2008 | DCJ, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 3/11/2008 | DCJ, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 3/13/2008 | DBSI, Inc | Tax | 2,923.80 | Paid Indiana Department of Revenue, recorded as distribution to insider |
| 3/14/2008 | DBSI, Inc | Tax | 4,500.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 3/14/2008 | DBSI, Inc | Tax | 4,000.00 | Paid Illinois Department of Revenue, recorded as distribution to insider |
| 3/14/2008 | DBSI, Inc | Tax | 2,000.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 3/14/2008 | DBSI, Inc | Tax | 1,275.00 | Paid South Carolina Dept. of Revenue, recorded as distribution to insider |
| 3/14/2008 | DBSI, Inc | Tax | 650.00 | Paid Mississippi Office of Revenue, recorded as distribution to insider |
| 3/14/2008 | DBSI, Inc | Tax | 68.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 3/14/2008 | DBSI, Inc | Tax | 50.00 | Paid New Mexico Tax & Revenue Department, recorded as distribution to insider |
| 3/15/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 3/31/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 4/2/2008 | DBSI, Inc | Tax | 138.00 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 10,228.00 | Paid Kansas Department of Revenue, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 6,488.00 | Paid Utah State Tax Commission, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 4,578.00 | Paid Michigan Department of Treasury, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 3,461.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 2,100.00 | Paid Minnesota Department of Revenue, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 1,221.00 | Paid Office of Tax and Revenue |
| 4/11/2008 | DBSI Investments, LP | Tax | 693.00 | Paid West Virginia State Tax Dept, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 630.00 | Paid Comptroller of Maryland, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 558.00 | Paid State of New Jersey, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 534.00 | Paid State of New Jersey, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 155.00 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 151.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 60.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 4/11/2008 | DBSI Investments, LP | Tax | 4.00 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 4/14/2008 | DBSI, Inc | Tax | 5,000.00 | Paid Kansas Department of Revenue, recorded as distribution to insider |
| 4/14/2008 | DBSI, Inc | Tax | 3,750.00 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 4/14/2008 | DBSI, Inc | Tax | 2,500.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |
| 4/14/2008 | DBSI, Inc | Tax | 2,500.00 | Paid State of New Jersey, recorded as distribution to insider |
| 4/14/2008 | DBSI, Inc | Tax | 100.46 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 4/14/2008 | DBSI, Inc | Tax | 50.00 | Paid Ohio Treasurer of State, recorded as distribution to insider |
| 4/14/2008 | DBSI, Inc | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |

## Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 4/14/2008 | DBSI, Inc | Tax | 10.00 | Paid Oregon Department of Revenue, recorded as distribution to insider |
| 4/30/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 4/30/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 5/15/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 5/15/2008 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 5/30/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 6/4/2008 | DBSI, Inc | Tax | 13,740.81 | Paid Indiana Department of Revenue, recorded as distribution to insider |
| 6/4/2008 | DBSI, Inc | Tax | 1,557.29 | Paid Indiana Department of Revenue, recorded as distribution to insider |
| 6/4/2008 | DBSI, Inc | Tax | 916.05 | Paid Indiana Department of Revenue, recorded as distribution to insider |
| 6/4/2008 | DBSI, Inc | Tax | 247.89 | Paid Indiana Department of Revenue, recorded as distribution to insider |
| 6/4/2008 | DBSI, Inc | Tax | 155.00 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 6/5/2008 | DBSI Discovery Real Estate Services | Tax | 9,500.00 | Paid Illinois Department of Revenue, recorded as distribution to insider |
| 6/13/2008 | DBSI Investments, LP | Distribution | 36,016.71 | Distribution |
| 6/16/2008 | Kastera Homes, LLC | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 7/9/2008 | DBSI, Inc | Tax | 3,615.45 | Paid Kansas Department of Revenue, recorded as distribution to insider |
| 7/9/2008 | DBSI, Inc | Tax | 2,306.34 | Paid Alabama Department of Revenue, recorded as distribution to insider |
| 7/21/2008 | DBSI, Inc | Tax | 396.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 7/21/2008 | DBSI, Inc | Tax | 369.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 7/21/2008 | DBSI, Inc | Tax | 248.80 | Paid Alabama Department of Revenue, recorded as distribution to insider |
| 7/21/2008 | DBSI, Inc | Tax | 230.87 | Paid Alabama Department of Revenue, recorded as distribution to insider |
| 7/21/2008 | DBSI, Inc | Tax | 139.06 | Paid Alabama Department of Revenue, recorded as distribution to insider |
| 7/21/2008 | DBSI, Inc | Tax | 70.97 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 7/21/2008 | DBSI, Inc | Tax | 39.57 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 7/21/2008 | DBSI, Inc | Tax | 37.00 | Paid North Carolina Department of Revenue, recorded as distribution to insider |
| 7/21/2008 | DBSI, Inc | Tax | 3.83 | Paid Alabama Department of Revenue, recorded as distribution to insider |
| 8/15/2008 | DBSI/Tri Equity Income Fund, LP | Limited Partner Distribution | 106.75 | LP Distribution |
| 10/14/2008 | DBSI, Inc | Tax | 720.00 | Paid Mississippi Office of Revenue, recorded as distribution to insider |
| 10/14/2008 | DBSI, Inc | Tax | 447.00 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 10/14/2008 | DBSI, Inc | Tax | 75.00 | Paid Mississippi Office of Revenue, recorded as distribution to insider |
| 10/14/2008 | DBSI, Inc | Tax | 40.00 | Paid Missouri Department of Revenue, recorded as distribution to insider |
| 10/15/2008 | Kastera Homes, LLC | Tax | 89,505.00 | Paid Georgia Department of Revenue, recorded as distribution to insider |
| 10/15/2008 | Kastera Homes, LLC | Tax | 15,305.00 | Paid Illinois Department of Revenue, recorded as distribution to insider |
| 10/15/2008 | Kastera Homes, LLC | Tax | 10,783.00 | Paid Indiana Department of Revenue, recorded as distribution to insider |
| 10/15/2008 | Kastera Homes, LLC | Tax | 3,301.00 | Paid Arizona Department of Revenue, recorded as distribution to insider |
| 10/15/2008 | Kastera Homes, LLC | Tax | 2,581.00 | Paid Michigan Department of Treasury, recorded as distribution to insider |
| 10/15/2008 | Kastera Homes, LLC | Tax | 452.00 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 10/15/2008 | DBSI, Inc | Tax | 108.00 | Paid Wisconsin Dept of Revenue, recorded as distribution to insider |
| 10/15/2008 | Kastera Homes, LLC | Tax | 91.00 | Paid Louisiana Dept of Revenue, recorded as distribution to insider |
| 10/15/2008 | Kastera Homes, LLC | Tax | 20.00 | Paid Idaho State Tax Commission, recorded as distribution to insider |
| 10/15/2008 | Kastera Homes, LLC | Tax | 1.00 | Paid Pennsylvania Dept of Revenue, recorded as distribution to insider |
| 12/31/2008 | DBSI Realty, Inc | Salary | 5,598.58 | 2008 Salary |

# Insider Transaction Detail
## Doug Swenson (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 3/2006-10/2008 | DBSI, Inc | Kastera Distribution | 151,993.71 | Funds to Kastera - Funds were disbursed on various dates and from multiple DBSI entities. |
| 5/2007-10/2008 | DBSI, Inc | Kastera Distribution | 3,400,373.34 | Funds to Kastera - Funds were disbursed on various dates and from multiple DBSI entities. |
| | | | **38,607,769.32** | |

# Insider Transaction Detail
# Var Reeve (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 12/31/2001 | Western Electronics, LLC | Salary | 148,461.63 | 2001 Salary |
| 12/31/2002 | Stellar Technologies, Inc | Salary | 112,249.25 | 2002 Salary |
| 12/31/2002 | Western Electronics, LLC | Salary | 7,750.83 | 2002 Salary |
| 12/31/2003 | DBSI Management Services | Salary | 92,497.72 | 2003 Salary |
| 12/31/2003 | Stellar Technologies, Inc | Salary | 32,307.67 | 2003 Salary |
| 09/02/2004 | Spectrus/For 1031 | Distribution | 300,000.00 | Originally recorded on books of FOR 1031 as a Notes Receivable - Affiliates. On 5/2/05 i |
| 10/18/2004 | Spectrus/For 1031 | Distribution | 200,000.00 | Originally recorded on books of FOR 1031 as a Notes Receivable - Affiliates. On 5/2/05 i |
| 12/31/2004 | Spectrus/For 1031 | Salary | 500,000.66 | 2004 Salary |
| 04/15/2005 | Spectrus/For 1031 | Tax | 1,750,000.00 | Paid Internal Revenue Service-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 240,000.00 | Paid Idaho State Tax Commission-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 34,000.00 | Paid Franchise Tax Board-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 22,500.00 | Paid Arizona Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 22,000.00 | Paid Nebraska Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 11,500.00 | Paid Iowa Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 11,000.00 | Paid Kansas Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 8,000.00 | Paid South Carolina Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 7,300.00 | Paid Indiana Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 7,250.00 | Paid Wisconsin Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 7,000.00 | Paid Treasurer of State of Ohio-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 5,000.00 | Paid Colorado Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 4,300.00 | Paid Virginia Dept of Taxation-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 4,100.00 | Paid New Mexico Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 975.00 | Paid North Carolina Department of Revenue-recorded as distribution to inside |
| 04/15/2005 | Spectrus/For 1031 | Tax | 750.00 | Paid Oregon Dept of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 600.00 | Paid Missouri Department of Revenue-recorded as distribution to insider |
| 04/15/2005 | Spectrus/For 1031 | Tax | 100.00 | Paid Michigan Department of Revenue-recorded as distribution to insider |
| 05/02/2005 | Spectrus/For 1031 | Distribution | 497,541.43 | Member Distribution |
| 05/02/2005 | Spectrus/For 1031 | Distribution | 102,458.57 | Member Distribution |
| 10/12/2005 | Spectrus/For 1031 | Tax | 24,095.00 | Paid Internal Revenue Service-recorded as distribution to insider |
| 10/12/2005 | Spectrus/For 1031 | Tax | 1,289.00 | Paid Nebraska Department of Revenue-recorded as distribution to insider |
| 10/12/2005 | Spectrus/For 1031 | Tax | 114.00 | Paid Missouri Department of Revenue-recorded as distribution to insider |
| 10/14/2005 | Spectrus/For 1031 | Tax | 756.00 | Paid Internal Revenue Service-recorded as distribution to insider |
| 10/14/2005 | Spectrus/For 1031 | Tax | 39.00 | Paid Nebraska Department of Revenue-recorded as distribution to insider |
| 10/14/2005 | Spectrus/For 1031 | Tax | 3.00 | Paid Missouri Department of Revenue-recorded as distribution to insider |
| 12/31/2005 | Kastera Homes, LLC | Salary | 173,100.00 | 2005 Salary |
| 12/31/2005 | Spectrus/For 1031 | Salary | 128,754.00 | 2005 Salary |
| 04/06/2006 | Spectrus/For 1031 | Tax | 721.00 | Paid Colorado Department of Revenue-recorded as distribution to insider |
| 04/17/2006 | Spectrus/For 1031 | Tax | 606,059.00 | Paid Internal Revenue Service-recorded as distribution to insider |
| 04/17/2006 | Spectrus/For 1031 | Tax | 65,929.00 | Paid Idaho State Tax Commission-recorded as distribution to insider |
| 04/17/2006 | Spectrus/For 1031 | Tax | 36,721.00 | Paid Franchise Tax Board-recorded as distribution to insider |
| 04/17/2006 | Spectrus/For 1031 | Tax | 5,071.00 | Paid North Carolina Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 3,569.00 | Paid Utah State Tax Commission-recorded as distribution to insider |

# Insider Transaction Detail
## Var Reeve (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 04/17/2006 | Spectrus/For 1031 | Tax | 3,243.00 | Paid Nebraska Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 2,760.00 | Paid South Carolina Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 2,612.00 | Paid Arizona Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 1,861.00 | Paid Indiana Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 1,799.00 | Paid Minnesota Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 1,389.00 | Paid Missouri Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 1,121.00 | Paid Wisconsin Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 1,088.00 | Paid Ohio Treasurer of State-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 974.00 | Paid Virginia Dept of Taxation-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 650.00 | Paid Oregon Dept of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 620.00 | Paid Idaho State Tax Commission-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 469.00 | Paid Illinois Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 427.00 | Paid State of Michigan-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 122.00 | Paid Alabama Department of Revenue-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 114.00 | Paid New Mexico Taxation and Revenue Dept-recorded as distribution to inside |
| 04/17/2006 | Spectrus/For 1031 | Tax | 40.00 | Paid Hawaii State Tax Collector-recorded as distribution to inside |
| 07/12/2006 | Spectrus/For 1031 | Tax | 23,982.78 | Paid Internal Revenue Service-recorded as distribution to inside |
| 09/01/2006 | Kastera, LLC | Distribution | 40,000.00 | Purchase of 2005 GMC Truck by Kastera, LLC |
| 12/31/2006 | Kastera Homes, LLC | Salary | 300,270.50 | 2006 Salary |
| 10/12/2007 | Spectrus/For 1031 | Tax | 22,881.00 | Paid Internal Revenue Service-recorded as distribution to inside |
| 10/12/2007 | Spectrus/For 1031 | Tax | 3,146.00 | Paid Idaho State Tax Commission-recorded as distribution to inside |
| 12/31/2007 | Kastera Development, LLC | Salary | 384,094.74 | 2007 Salary |
| 12/31/2007 | Kastera Homes, LLC | Salary | 80,850.21 | 2007 Salary |
| 07/09/2008 | DBSI Pearson Lane, LLC | Distribution | 493,308.00 | Purchase of land known as Pearson Lane in McCall, ID by DBSI Pearson Lane LL |
| 12/31/2008 | Kastera Development, LLC | Salary | 460,526.31 | 2008 Salary |
| | | | **7,004,211.30** | |

# Insider Transaction Detail
## Walt Mott (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 1/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 2/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 3/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/26/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 5/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 6/13/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 7/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 8/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 9/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 10/31/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 11/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 1/2/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 1/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 2/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/2/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/30/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 5/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 6/29/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 7/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 8/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 9/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 10/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 11/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 12/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 12/31/2001 | DBSI Realty, Inc | Salary | 8,288.18 | 2001 Salary |
| 7/17/2002 | DBSI Investments, LP | Distribution | 10,000.00 | Owner Dividend |
| 8/14/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 9/13/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 10/15/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 11/14/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 12/13/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 12/31/2002 | DBSI Realty, Inc | Salary | 175,815.64 | 2002 Salary |
| 1/15/2003 | DBSI Investments, LP | Distribution | 12,000.00 | Monthly Distribution |
| 2/13/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 3/13/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 4/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 5/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 6/16/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 7/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 8/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 9/11/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 10/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |

# Insider Transaction Detail
## Walt Mott (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 11/13/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 12/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 12/31/2003 | DBSI Realty, Inc | Salary | 179,819.39 | 2003 Salary |
| 1/13/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 2/16/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 3/12/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 4/15/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 5/17/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 6/15/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 7/9/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 8/16/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 9/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 10/12/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 11/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 12/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 12/31/2004 | DBSI Realty, Inc | Salary | 182,910.81 | 2004 Salary |
| 1/12/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 1/18/2005 | DBSI Investments, LP | Distribution | 500,000.00 | Bonus Check |
| 2/15/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 3/14/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 4/15/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 4/15/2005 | DBSI, Inc | Tax | 3,000.00 | Paid North Carolina Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 2,000.00 | Paid Nebraska Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 1,500.00 | Paid Kansas Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 900.00 | Paid Indiana Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 500.00 | Paid Missouri Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 200.00 | Paid Iowa Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 100.00 | Paid New Mexico Tax & Revenue Dept - reported as distribution to inside |
| 5/12/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 6/15/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 7/14/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 8/12/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 9/14/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 10/13/2005 | DBSI Investments, LP | Distribution | 26,668.33 | Monthly Distribution |
| 10/26/2005 | DBSI Investments, LP | Distribution | 84,725.00 | Bonus Draw |
| 11/14/2005 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/12/2005 | DBSI, Inc | Distribution | 1,094.14 | GP Distribution for Iowa taxes |
| 12/14/2005 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/31/2005 | DBSI Realty, Inc | Salary | 213,196.70 | 2005 Salary |
| 1/16/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 2/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 3/13/2006 | DCJ, Inc | Tax | 77.00 | Paid Colorado Department of Revenue - reported as distribution to inside |

# Insider Transaction Detail
## Walt Mott (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 3/15/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/13/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/17/2006 | DBSI Investments, LP | Distribution | 1,500.00 | Distribution for state taxes |
| 4/21/2006 | DBSI, Inc | Bond | 168,819.60 | Liquidating Bond Distribution |
| 5/15/2006 | DBSI, Inc | Note | 577,499.06 | Note Payment |
| 5/15/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 6/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 7/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 8/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 9/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 10/2/2006 | DBSI, Inc | Note | 200,000.00 | Note Payment |
| 10/2/2006 | DBSI Investments, LP | Distribution | 150,000.00 | Additional Distribution |
| 10/2/2006 | DBSI Securities, Inc | Note | 30,000.00 | Note Payment |
| 10/2/2006 | DBSI, Inc | Note | 17,466.67 | Note Payment |
| 10/2/2006 | DBSI Realty, Inc | Note | 10,000.00 | Note Payment |
| 10/2/2006 | DCJ, Inc | Note | 10,000.00 | Note Payment |
| 10/2/2006 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Compensation |
| 10/2/2006 | DBSI Securities, Inc | Note | 2,620.00 | Note Payment |
| 10/2/2006 | DBSI Realty, Inc | Note | 873.33 | Note Payment |
| 10/2/2006 | DCJ, Inc | Note | 873.33 | Note Payment |
| 11/1/2006 | DBSI, Inc. | Note | 20,960.00 | Note Payment |
| 11/1/2006 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Compensation |
| 11/21/2006 | DBSI, Inc | Note | 285,143.92 | Note Payment |
| 12/1/2006 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Compensation |
| 12/31/2006 | DBSI Realty, Inc | Salary | 148,846.22 | 2006 Salary |
| 1/1/2007 | DBSI, Inc. | Note | 188,226.22 | Note Payment |
| 1/1/2007 | DBSI, Inc. | Note | 28,233.93 | Note Payment |
| 1/1/2007 | DBSI, Inc. | Note | 11,263.79 | Note Payment |
| 1/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 1/1/2007 | DBSI, Inc. | Note | 1,689.57 | Note Payment |
| 2/1/2007 | DBSI, Inc. | Note | 11,309.69 | Note Payment |
| 2/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 2/1/2007 | DBSI, Inc. | Note | 1,696.45 | Note Payment |
| 3/1/2007 | DBSI, Inc. | Note | 11,355.77 | Note Payment |
| 3/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 3/1/2007 | DBSI, Inc. | Note | 1,703.37 | Note Payment |
| 4/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 4/2/2007 | DBSI, Inc. | Note | 190,536.69 | Note Payment |
| 4/2/2007 | DBSI, Inc. | Note | 28,580.50 | Note Payment |
| 4/2/2007 | DBSI, Inc. | Note | 11,402.05 | Note Payment |
| 4/2/2007 | DBSI, Inc. | Note | 1,710.31 | Note Payment |
| 5/1/2007 | DBSI, Inc. | Note | 11,448.51 | Note Payment |

# Insider Transaction Detail
# Walt Mott (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 5/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 5/1/2007 | DBSI, Inc. | Note | 1,724.28 | Note Payment |
| 6/1/2007 | DBSI, Inc. | Note | 11,495.17 | Note Payment |
| 6/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 6/1/2007 | DBSI, Inc. | Note | 1,724.28 | Note Payment |
| 7/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 7/2/2007 | DBSI, Inc. | Note | 164,417.00 | Note Payment |
| 7/2/2007 | DBSI, Inc. | Note | 24,662.63 | Note Payment |
| 8/1/2007 | DBSI, Inc. | Note | 11,589.00 | Note Payment |
| 8/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 8/1/2007 | DBSI, Inc. | Note | 1,738.00 | Note Payment |
| 9/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 9/4/2007 | DBSI, Inc. | Note | 11,638.00 | Note Payment |
| 9/4/2007 | DBSI, Inc. | Note | 1,738.00 | Note Payment |
| 10/1/2007 | DBSI, Inc. | Note | 126,435.00 | Note Payment |
| 10/1/2007 | DBSI, Inc. | Note | 18,965.00 | Note Payment |
| 10/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 11/1/2007 | DBSI, Inc. | Note | 11,731.00 | Note Payment |
| 11/1/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 11/1/2007 | DBSI, Inc. | Note | 1,759.00 | Note Payment |
| 12/3/2007 | DBSI, Inc | Note | 20,086.67 | Note Payment |
| 12/3/2007 | DBSI, Inc. | Note | 11,779.00 | Note Payment |
| 12/3/2007 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 12/3/2007 | DBSI, Inc. | Note | 1,766.00 | Note Payment |
| 12/3/2007 | DBSI Investments, LP | Note | 873.33 | Note Payment |
| 1/4/2008 | DBSI, Inc | Note | 230,000.00 | Note Payment |
| 1/4/2008 | DBSI, Inc | Note | 20,086.67 | Note Payment |
| 1/4/2008 | DCJ, Inc | Note | 10,000.00 | Note Payment |
| 1/4/2008 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 1/4/2008 | DCJ, Inc | Note | 873.33 | Note Payment |
| 2/1/2008 | DBSI, Inc | Note | 20,086.67 | Note Payment |
| 2/1/2008 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 2/1/2008 | DCJ, Inc | Note | 873.33 | Note Payment |
| 3/3/2008 | DBSI, Inc | Note | 20,086.67 | Note Payment |
| 3/3/2008 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 3/3/2008 | DCJ, Inc | Note | 873.33 | Note Payment |
| 4/1/2008 | DBSI, Inc | Note | 66,086.67 | Note Payment |
| 4/1/2008 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 4/1/2008 | DCJ, Inc | Note | 2,873.33 | Note Payment |
| 5/1/2008 | DBSI, Inc | Note | 20,086.67 | Note Payment |
| 5/1/2008 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 5/1/2008 | DCJ, Inc | Note | 873.33 | Note Payment |

## Insider Transaction Detail
## Walt Mott (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 6/1/2008 | DBSI, Inc | Note | 20,086.67 | Note Payment |
| 6/1/2008 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 6/1/2008 | DCJ, Inc | Note | 873.33 | Note Payment |
| 7/1/2008 | DBSI, Inc | Note | 52,086.67 | Note Payment |
| 7/1/2008 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 7/1/2008 | DCJ, Inc | Note | 4,873.33 | Note Payment |
| 8/1/2008 | DBSI, Inc | Note | 20,086.67 | Note Payment |
| 8/1/2008 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 8/1/2008 | DCJ, Inc | Note | 873.33 | Note Payment |
| 9/3/2008 | DBSI, Inc | Note | 20,086.67 | Note Payment |
| 9/3/2008 | DBSI Investments, LP | Guaranteed | 7,500.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 9/3/2008 | DCJ, Inc | Note | 873.33 | Note Payment |
| 10/1/2008 | DBSI Investments, LP | Guaranteed | 750.00 | Guaranteed Payment from DBSI Investments LP, a non debtor affiliate |
| 10/2/2008 | DBSI, Inc | Note | 2,009.00 | Note Payment |
| 10/2/2008 | DCJ, Inc | Note | 87.33 | Note Payment |
| | | | **5,776,700.85** | |

# Insider Transaction Detail
## John Foster (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---:|---|
| 1/3/2000 | DBSI Investments, LP | Distribution | 10,000.00 | Monthly Distribution |
| 1/15/2000 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 1/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 2/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 3/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/15/2000 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 4/26/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 5/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 6/22/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 7/15/2000 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 7/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 8/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 9/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 10/15/2000 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 10/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 11/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 1/2/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 1/15/2001 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 1/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 2/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/2/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/16/2001 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 4/30/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 5/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 6/29/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 7/16/2001 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 7/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 8/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 9/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 10/15/2001 | DBSI 2001A Funding Corporation | Bond | 408.02 | Bond Payment |
| 10/15/2001 | DBSI Finance Corporation | Bond | 16.86 | Bond Payment |
| 10/17/2001 | DBSI, Inc | Bond | 450.00 | DBSI Finance Cash Out |
| 10/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 11/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 12/27/2001 | DBSI Finance Corporation | Bond | 2.25 | Bond Payment |
| 12/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 12/31/2001 | DBSI Realty, Inc | Salary | 5,490.99 | 2001 Salary |
| 1/15/2002 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 4/15/2002 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 5/7/2002 | DBSI Pacific Growth & Income, LP | Distribution | 430.00 | Liquidating Distribution |
| 7/15/2002 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 7/17/2002 | DBSI Investments, LP | Distribution | 10,000.00 | Owner Dividends |

# Insider Transaction Detail
## John Foster (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 8/14/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 9/13/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 10/15/2002 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 10/15/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 11/14/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 12/13/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 12/31/2002 | Stellar Technologies, Inc | Salary | 137,678.90 | 2002 Salary |
| 12/31/2002 | DBSI Realty, Inc | Salary | 450.52 | 2002 Salary |
| 1/6/2003 | DBSI Investments, LP | Note | 41,666.65 | Note Payment |
| 1/15/2003 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 1/15/2003 | DBSI Investments, LP | Distribution | 12,000.00 | Monthly Distribution |
| 2/1/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 2/13/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 2/28/2003 | DBSI Investments, LP | Note | 84,000.00 | Note Payment |
| 2/28/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 3/13/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 4/1/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 4/15/2003 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 4/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 5/1/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 5/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 6/2/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 6/16/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 7/1/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 7/15/2003 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 7/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 8/1/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 8/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 9/1/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 9/11/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 10/1/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment - Incorrectly dated 10/1/01 but posted to the General Ledger in the correct month (Oct 2003). |
| 10/10/2003 | DBSI Investments, LP | Note | 84,000.00 | Note Payment |
| 10/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 10/15/2003 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 11/1/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 11/13/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 12/2/2003 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 12/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 12/31/2003 | Stellar Technologies, Inc | Salary | 108,033.75 | 2003 Salary |
| 1/2/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 1/15/2004 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |

## Insider Transaction Detail
## John Foster (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 1/15/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 2/2/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 2/16/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 3/1/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 3/15/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 4/1/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 4/15/2004 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 4/15/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 4/28/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 5/17/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 6/1/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 6/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 6/25/2004 | DBSI Investments, LP | Note | 100,000.00 | Note Payment |
| 7/15/2004 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 7/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 8/2/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 8/2/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 8/13/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 8/17/2004 | DBSI Investments, LP | Distribution | 833.33 | Distribution |
| 9/3/2004 | DBSI Investments, LP | Note | 84,000.00 | Note Payment |
| 9/3/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 9/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 10/15/2004 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 10/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 11/1/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 11/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 11/22/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 12/1/2004 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 12/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 12/31/2004 | Stellar Technologies, Inc | Salary | 141,424.95 | 2004 Salary |
| 1/14/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 1/15/2005 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 1/18/2005 | DBSI Investments, LP | Distribution | 500,000.00 | Bonus Payment / Note Payment |
| 2/14/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 2/22/2005 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 2/23/2005 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 2/25/2005 | DBSI Investments, LP | Note | 300,000.00 | Note Payment |
| 3/2/2005 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 3/14/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 4/1/2005 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 4/14/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 4/15/2005 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |

# Insider Transaction Detail
## John Foster (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 5/2/2005 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 5/13/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 6/1/2005 | DBSI Investments, LP | Note | 8,333.33 | Note Payment |
| 6/15/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 7/1/2005 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 7/5/2005 | DBSI Investments, LP | Note | 300,000.00 | Note Payment |
| 7/14/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 8/1/2005 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 8/12/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 9/1/2005 | DBSI, Inc | Distribution | 20,494.67 | DBSI Note Payment (DBSI Properties LP) - Reclassified via journal entry to DBSI Investments LP on 12/31/05. |
| 9/1/2005 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 9/14/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 10/3/2005 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 10/13/2005 | DBSI Investments, LP | Distribution | 27,212.92 | Monthly Distribution |
| 10/14/2005 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 10/26/2005 | DBSI Investments, LP | Distribution | 91,000.00 | Bonus Payment / Note Payment |
| 11/1/2005 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 11/14/2005 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/1/2005 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 12/14/2005 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/31/2005 | Stellar Technologies, Inc | Salary | 183,776.51 | 2005 Salary |
| 1/3/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 1/12/2006 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 1/16/2006 | DBSI Investments, LP | Note | 26,666.67 | Note Payment |
| 2/1/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 2/14/2006 | DBSI Investments, LP | Note | 26,666.67 | Note Payment |
| 3/1/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 3/15/2006 | DBSI Investments, LP | Note | 26,666.67 | Note Payment |
| 3/31/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 4/13/2006 | DBSI Investments, LP | Note | 26,666.67 | Note Payment |
| 4/14/2006 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 4/14/2006 | DBSI Investments, LP | Note | 300,000.00 | Note Payment |
| 5/1/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 5/15/2006 | DBSI Investments, LP | Note | 26,666.67 | Note Payment |
| 6/1/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 6/14/2006 | DBSI Investments, LP | Note | 26,666.67 | Note Payment |
| 6/30/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 7/14/2006 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 7/14/2006 | DBSI Investments, LP | Note | 24,750.00 | Note Payment |
| 8/1/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 8/14/2006 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |

## Insider Transaction Detail
## John Foster (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 9/1/2006 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 9/1/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 9/15/2006 | DBSI Investments, LP | Note | 75,000.00 | Note Payment |
| 10/2/2006 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 10/2/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 10/10/2006 | DBSI Investments, LP | Note | 75,000.00 | Note Payment |
| 10/13/2006 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 10/20/2006 | DBSI Realty, Inc | Consulting | 1,200.00 | Consulting Services |
| 11/1/2006 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 11/1/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 12/1/2006 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 12/1/2006 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 12/31/2006 | DBSI Realty, Inc | Salary | 116,806.01 | 2006 Salary |
| 1/2/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 1/2/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 1/16/2007 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 1/17/2007 | DBSI Realty, Inc | Consulting | 1,916.00 | Consulting Services |
| 2/1/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 2/1/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 3/1/2007 | DBSI, Inc | Note | 18,750.00 | Note Payment - Reclassified via journal entry to DBSI Investments LP on 3/31/07 |
| 3/1/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 4/2/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 4/16/2007 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 4/24/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 4/30/2007 | DBSI Realty, Inc | Consulting | 1,275.00 | Consulting Services |
| 5/1/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 5/1/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 6/1/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 7/2/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 7/2/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 7/16/2007 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 8/1/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 8/1/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 8/31/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 9/1/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 9/4/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 10/1/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment |
| 10/15/2007 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 10/25/2007 | DBSI Realty, Inc | Consulting | 1,650.00 | Consulting Services |
| 11/1/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 11/1/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 11/6/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |

## Insider Transaction Detail
## John Foster (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 12/3/2007 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 12/3/2007 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 1/4/2008 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 1/4/2008 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 1/15/2008 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 1/29/2008 | DBSI Realty, Inc | Consulting | 400.00 | Consulting Services |
| 1/29/2008 | DBSI Realty, Inc | Consulting | 350.00 | Consulting Services |
| 1/29/2008 | DBSI Realty, Inc | Consulting | 350.00 | Consulting Services |
| 1/29/2008 | DBSI Realty, Inc | Consulting | 175.00 | Consulting Services |
| 2/1/2008 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 2/1/2008 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 3/4/2008 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 3/4/2008 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 4/3/2008 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 4/3/2008 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 4/15/2008 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 5/1/2008 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 5/1/2008 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 5/30/2008 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 5/30/2008 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 7/1/2008 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 7/1/2008 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 7/9/2008 | DBSI Realty, Inc | Consulting | 200.00 | Consulting Services |
| 7/15/2008 | DBSI 2001A Funding Corporation | Bond | 412.50 | Bond Payment |
| 8/1/2008 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 8/1/2008 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 9/1/2008 | DBSI Investments, LP | Note | 18,750.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 9/3/2008 | DBSI, Inc | Note | 8,333.33 | Note Payment |
| 10/2/2008 | DBSI Investments, LP | Note | 833.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| 10/20/2008 | DBSI Investments, LP | Note | 1,875.00 | Note Payment from DBSI Investments LP, a non-debtor affiliate |
| | | | **4,969,290.39** | |

# Insider Transaction Detail
## John Mayeron (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 1/3/2000 | DBSI Investments, LP | Distribution | 10,000.00 | Monthly Distribution |
| 1/15/2000 | DBSI Finance Corporation | Bond | 550.00 | Bond Payment |
| 1/15/2000 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 1/15/2000 | DBSI Finance Corporation | Bond | 275.00 | Bond Payment |
| 1/15/2000 | DBSI Finance Corporation | Bond | 250.00 | Bond Payment |
| 1/31/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 2/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 3/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/15/2000 | DBSI Finance Corporation | Bond | 550.00 | Bond Payment |
| 4/15/2000 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 4/15/2000 | DBSI Finance Corporation | Bond | 275.00 | Bond Payment |
| 4/15/2000 | DBSI Finance Corporation | Bond | 250.25 | Bond Payment |
| 4/26/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 5/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 6/22/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 7/15/2000 | DBSI Finance Corporation | Bond | 550.00 | Bond Payment |
| 7/15/2000 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 7/15/2000 | DBSI Finance Corporation | Bond | 275.00 | Bond Payment |
| 7/15/2000 | DBSI Finance Corporation | Bond | 250.25 | Bond Payment |
| 7/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 8/31/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 9/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 10/15/2000 | DBSI Finance Corporation | Bond | 550.00 | Bond Payment |
| 10/15/2000 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 10/15/2000 | DBSI Finance Corporation | Bond | 275.00 | Bond Payment |
| 10/15/2000 | DBSI Finance Corporation | Bond | 250.25 | Bond Payment |
| 10/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 11/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 12/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 1/15/2001 | DBSI Finance Corporation | Bond | 550.00 | Bond Payment |
| 1/15/2001 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 1/15/2001 | DBSI Finance Corporation | Bond | 275.00 | Bond Payment |
| 1/15/2001 | DBSI Finance Corporation | Bond | 250.25 | Bond Payment |
| 1/15/2001 | DBSI Finance Corporation | Bond | 110.00 | Bond Payment |
| 1/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 2/9/2001 | DBSI Finance Corporation | Bond | 110.00 | Bond Payment |
| 2/9/2001 | DBSI Finance Corporation | Bond | 110.00 | Bond Payment |
| 2/9/2001 | DBSI Finance Corporation | Bond | 110.00 | Bond Payment |
| 2/9/2001 | DBSI Finance Corporation | Bond | 110.00 | Bond Payment |
| 2/9/2001 | DBSI Finance Corporation | Bond | 4.00 | Bond Payment |
| 2/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/16/2001 | DBSI Finance Corporation | Bond | 550.00 | Bond Payment |

# Insider Transaction Detail
## John Mayeron (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 4/16/2001 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 4/16/2001 | DBSI Finance Corporation | Bond | 275.00 | Bond Payment |
| 4/16/2001 | DBSI Finance Corporation | Bond | 250.25 | Bond Payment |
| 4/16/2001 | DBSI Finance Corporation | Bond | 110.00 | Bond Payment |
| 4/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 5/31/2001 | DBSI Investments, LP | Distribution | 13,333.33 | Monthly Distribution |
| 6/28/2001 | DBSI Investments, LP | Distribution | 13,333.33 | Monthly Distribution |
| 7/16/2001 | DBSI Finance Corporation | Bond | 550.00 | Bond Payment |
| 7/16/2001 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 7/16/2001 | DBSI Finance Corporation | Bond | 275.00 | Bond Payment |
| 7/16/2001 | DBSI Finance Corporation | Bond | 250.25 | Bond Payment |
| 7/16/2001 | DBSI Finance Corporation | Bond | 110.00 | Bond Payment |
| 7/28/2001 | DBSI Investments, LP | Distribution | 13,333.33 | Monthly Distribution |
| 8/31/2001 | DBSI Investments, LP | Distribution | 13,333.33 | Monthly Distribution |
| 9/28/2001 | DBSI Investments, LP | Distribution | 13,333.33 | Monthly Distribution |
| 10/15/2001 | DBSI Finance Corporation | Bond | 550.00 | Bond Payment |
| 10/15/2001 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 10/15/2001 | DBSI Finance Corporation | Bond | 275.00 | Bond Payment |
| 10/15/2001 | DBSI Finance Corporation | Bond | 250.25 | Bond Payment |
| 10/15/2001 | DBSI Finance Corporation | Bond | 110.00 | Bond Payment |
| 10/31/2001 | DBSI Investments, LP | Distribution | 13,333.33 | Monthly Distribution |
| 11/30/2001 | DBSI Investments, LP | Distribution | 13,333.33 | Monthly Distribution |
| 12/27/2001 | DBSI Finance Corporation | Bond | 550.00 | Bond Payment |
| 12/27/2001 | DBSI Finance Corporation | Bond | 425.00 | Bond Payment |
| 12/27/2001 | DBSI Finance Corporation | Bond | 275.00 | Bond Payment |
| 12/27/2001 | DBSI Finance Corporation | Bond | 250.25 | Bond Payment |
| 12/27/2001 | DBSI Finance Corporation | Bond | 110.00 | Bond Payment |
| 12/31/2001 | DBSI Realty, Inc | Salary | 21,626.55 | 2001 Salary |
| 12/31/2001 | DBSI Investments, LP | Distribution | 13,333.33 | Monthly Distribution |
| 5/31/2002 | DBSI Investments, LP | Distribution | 50,000.00 | Monthly Distribution |
| 6/11/2002 | DBSI Finance Corporation | Distribution | 17,000.00 | Distribution |
| 7/15/2002 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 7/15/2002 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 9/18/2002 | DBSI Investments, LP | Distribution | 50,000.00 | Monthly Distribution |
| 10/15/2002 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 10/15/2002 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 12/31/2002 | DBSI Realty, Inc | Salary | 189,146.61 | 2002 Salary |
| 1/15/2003 | DBSI Investments, LP | Distribution | 50,000.00 | Distribution |
| 1/15/2003 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 1/15/2003 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 4/15/2003 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |

# Insider Transaction Detail
## John Mayeron (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 4/15/2003 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 7/15/2003 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 7/15/2003 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 10/15/2003 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 10/15/2003 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 12/31/2003 | DBSI Realty, Inc | Salary | 191,419.11 | 2003 Salary |
| 1/15/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 1/15/2004 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 1/15/2004 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 2/16/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 3/15/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 4/4/2004 | DRR | Loan | 76,749.22 | Loan to Mayeron for $143,000.00 |
| 4/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 4/15/2004 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 4/15/2004 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 5/17/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 6/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 7/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 7/15/2004 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 7/15/2004 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 8/13/2004 | DBSI Investments, LP | Distribution | 12,086.00 | Monthly Distribution |
| 8/17/2004 | DBSI Investments, LP | Distribution | 833.33 | Monthly Distribution |
| 9/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 10/12/2004 | DBSI Investments, LP | Distribution | 250,000.00 | Bonus Distribution |
| 10/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 10/15/2004 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 10/15/2004 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 11/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 12/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 12/31/2004 | DBSI Realty, Inc | Salary | 195,714.31 | 2004 Salary |
| 1/14/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 1/15/2005 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 1/15/2005 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 1/27/2005 | DBSI Investments, LP | Distribution | 250,000.00 | Annual Distribution |
| 2/14/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 3/14/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 4/14/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 4/15/2005 | DBSI, Inc | Tax | 3,000.00 | Paid Iowa Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 2,000.00 | Paid New Mexico Tax & Revenue Dept - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 1,500.00 | Paid Kansas Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 4/15/2005 | DBSI, Inc | Tax | 900.00 | Paid Indiana Department of Revenue - reported as distribution to inside |

# Insider Transaction Detail
## John Mayeron (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 4/15/2005 | DBSI, Inc | Tax | 500.00 | Paid Nebraska Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 4/15/2005 | DBSI, Inc | Tax | 250.00 | Paid Missouri Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 200.00 | Paid Iowa Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 100.00 | Paid North Carolina Department of Revenue - reported as distribution to inside |
| 5/13/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 6/15/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 7/14/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 7/15/2005 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 7/15/2005 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 8/12/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 9/14/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 10/13/2005 | DBSI Investments, LP | Distribution | 25,707.50 | Monthly Distribution |
| 10/15/2005 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 10/15/2005 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 10/26/2005 | DBSI Investments, LP | Distribution | 100,000.00 | Bonus Draw |
| 11/14/2005 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 11/23/2005 | DBSI, Inc | Tax | 1,250.00 | Paid Iowa Department of Revenue - reported as distribution to inside |
| 12/14/2005 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/31/2005 | DBSI Realty, Inc | Salary | 189,739.26 | 2005 Salary |
| 1/13/2006 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 1/13/2006 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 1/16/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 2/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 3/7/2006 | DCJ, Inc | Tax | 77.00 | Paid Colorado Department of Revenue - reported as distribution to inside |
| 3/15/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/13/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/15/2006 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 4/15/2006 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 4/17/2006 | DBSI Investments LP | Tax | 1,100.00 | Paid Indiana Department of Revenue - reported as distribution to inside |
| 4/17/2006 | DBSI Investments LP | Tax | 250.00 | Paid Louisiana Department fo Revenue - reported as distribution to inside |
| 4/17/2006 | DBSI Investments, LP | Distribution | 150.00 | Distribution |
| 5/15/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 6/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 7/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 7/15/2006 | DBSI 2001C Funding Corporation | Bond | 1,250.00 | Bond Payment |
| 7/15/2006 | DBSI 2001C Funding Corporation | Bond | 425.00 | Bond Payment |
| 7/28/2006 | DBSI Investments, LP | Distribution | 75,000.00 | Additional Distribution |
| 8/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 9/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 9/15/2006 | DBSI Investments, LP | Distribution | 75,000.00 | Additional Distribution |
| 10/13/2006 | DBSI 2001C Funding Corporation | Bond | 1,250.01 | Bond Payment |

# Insider Transaction Detail
## John Mayeron (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 10/13/2006 | DBSI 2001C Funding Corporation | Bond | 425.01 | Bond Payment |
| 10/16/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 11/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/15/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/31/2006 | DBSI Realty, Inc | Salary | 180,000.08 | 2006 Salary |
| 1/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 1/16/2007 | DBSI 2001C Funding Corporation | Bond | 1,250.01 | Bond Payment |
| 1/16/2007 | DBSI 2001C Funding Corporation | Bond | 425.01 | Bond Payment |
| 2/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 3/14/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/16/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/16/2007 | DBSI 2001C Funding Corporation | Bond | 1,250.01 | Bond Payment |
| 4/16/2007 | DBSI 2001C Funding Corporation | Bond | 425.01 | Bond Payment |
| 5/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 6/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 7/16/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 7/16/2007 | DBSI 2001C Funding Corporation | Bond | 1,250.01 | Bond Payment |
| 7/16/2007 | DBSI 2001C Funding Corporation | Bond | 425.01 | Bond Payment |
| 8/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 9/14/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 10/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 10/15/2007 | DBSI 2001C Funding Corporation | Bond | 1,250.01 | Bond Payment |
| 10/15/2007 | DBSI 2001C Funding Corporation | Bond | 425.01 | Bond Payment |
| 11/20/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/17/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/31/2007 | DBSI Realty, Inc | Salary | 380,000.08 | 2007 Salary |
| 1/15/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 1/15/2008 | DBSI 2001C Funding Corporation | Bond | 1,250.01 | Bond Payment |
| 1/15/2008 | DBSI 2001C Funding Corporation | Bond | 425.01 | Bond Payment |
| 2/1/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 2/15/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 3/4/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/11/2008 | DBSI Investments, LP | Distribution | 100,000.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/15/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 3/17/2008 | DBSI Investments, LP | Distribution | 100,000.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/3/2008 | DBSI Investments, LP | Distribution | 100,000.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/3/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/15/2008 | DBSI 2001C Funding Corporation | Bond | 1,250.01 | Bond Payment |
| 4/15/2008 | DBSI 2001C Funding Corporation | Bond | 425.01 | Bond Payment |
| 4/30/2008 | DBSI Investments, LP | Distribution | 50,000.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/30/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/15/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Distribution from DBSI Investments LP, a non debtor affiliate |

# Insider Transaction Detail
## John Mayeron (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 6/4/2008 | DBSI Investments, LP | Tax | 916.05 | Income tax paid to state of Indiana. Taxes are related to debtor's taxable income that are paid through its shareholders as required by the Internal Revenue Code. |
| 6/13/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/15/2008 | DBSI Investments, LP | Distribution | 10,000.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/15/2008 | DBSI 2001C Funding Corporation | Bond | 1,250.01 | Bond Payment |
| 7/15/2008 | DBSI 2001C Funding Corporation | Bond | 425.01 | Bond Payment |
| 8/15/2008 | DBSI Investments, LP | Distribution | 10,000.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 9/15/2008 | DBSI Investments, LP | Distribution | 10,000.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/15/2008 | DBSI Investments, LP | Distribution | 2,666.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/29/2008 | DBSI, Inc. | Distribution | 10,000.00 | Legal retainer for John Mayeron and Charles Hassard (1/2 of $20,000) |
| 12/31/2008 | DBSI Realty, Inc | Salary | 175,384.68 | 2008 Salary |
| CY 2004 - CY 2008 | Various | Tax | 8,379.95 | Various pass-through entities paid additional state taxes of $8,380 for tax years 2004 to 2007. Total nonresident tax liabilities of the insider were $5,853, resulting in net refunds of $14,570 ($20,423 - $5,853 = $14,570). |
| | | | **4,659,325.79** | |

# Insider Transaction Detail
## Charles Hassard (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 1/3/2000 | DBSI Investments, LP | Distribution | 5,000.00 | Monthly Distribution |
| 1/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 2/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 3/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/26/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 5/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 6/22/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 7/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 8/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 9/28/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 10/31/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 11/30/2000 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 12/1/2000 | DBSI Tri XIII, LP | Liq Dist | 653.00 | Liquidating Distribution from DBSI TRI XIII, LP a non-debtor affiliate |
| 1/2/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 1/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 2/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/2/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 4/30/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 5/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 6/29/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 7/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 8/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 9/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 10/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 11/28/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 12/31/2001 | DBSI Investments, LP | Distribution | 13,333.00 | Monthly Distribution |
| 12/31/2001 | DBSI Realty, Inc | Salary | 4,800.08 | 2001 Salary |
| 1/15/2002 | DBSI 2001B Funding Corporation | Bond | 49.00 | Bond Payment |
| 4/15/2002 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 7/15/2002 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 7/17/2002 | DBSI Investments, LP | Distribution | 10,000.00 | Ownership Dividend |
| 8/14/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Ownership Dividend |
| 9/17/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 10/15/2002 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 11/14/2002 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 12/31/2002 | DBSI Realty, Inc | Salary | 172,583.32 | 2002 Salary |
| 1/9/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 1/15/2003 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 2/14/2003 | DBSI Investments, LP | Distribution | 15,000.00 | Monthly Distribution |
| 3/14/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 4/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 4/15/2003 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |

# Insider Transaction Detail
## Charles Hassard (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 5/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 6/16/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 7/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 7/15/2003 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 8/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 9/12/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 10/15/2003 | DBSI Investments, LP | Distribution | 8,000.00 | Monthly Distribution |
| 10/15/2003 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 11/3/2003 | DBSI Investments, LP | Distribution | 16,000.00 | Monthly Distribution |
| 11/15/2003 | DBSI Investments, LP | Distribution | 5,000.00 | Monthly Distribution |
| 12/31/2003 | DBSI Realty, Inc | Salary | 172,583.32 | 2003 Salary |
| 1/15/2004 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 3/19/2004 | DBSI Investments, LP | Distribution | 32,632.00 | Monthly Distribution |
| 3/22/2004 | DBSI Investments, LP | Distribution | 3,626.00 | Monthly Distribution |
| 4/15/2004 | DBSI Investments, LP | Distribution | 12,919.33 | Monthly Distribution |
| 4/15/2004 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 5/17/2004 | DBSI Investments, LP | Distribution | 1,292.00 | Monthly Distribution |
| 5/18/2004 | DBSI Investments, LP | Distribution | 11,627.33 | Monthly Distribution |
| 6/15/2004 | DBSI Investments, LP | Distribution | 11,627.33 | Monthly Distribution |
| 6/15/2004 | DBSI Investments, LP | Distribution | 11,627.33 | Monthly Distribution |
| 6/15/2004 | DBSI Investments, LP | Distribution | 1,292.00 | Monthly Distribution |
| 7/9/2004 | DBSI Investments, LP | Distribution | 11,627.33 | Monthly Distribution |
| 7/15/2004 | DBSI Investments, LP | Distribution | 1,292.00 | Monthly Distribution |
| 7/15/2004 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 8/13/2004 | DBSI Investments, LP | Distribution | 11,627.33 | Monthly Distribution |
| 8/16/2004 | DBSI Investments, LP | Distribution | 1,292.00 | Monthly Distribution |
| 9/15/2004 | DBSI Investments, LP | Distribution | 11,627.33 | Monthly Distribution |
| 9/15/2004 | DBSI Investments, LP | Distribution | 1,292.00 | Monthly Distribution |
| 10/12/2004 | DBSI Investments, LP | Distribution | 11,627.33 | Monthly Distribution |
| 10/15/2004 | DBSI Investments, LP | Distribution | 1,292.00 | Monthly Distribution |
| 10/15/2004 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 11/15/2004 | DBSI Investments, LP | Distribution | 11,627.33 | Monthly Distribution |
| 11/15/2004 | DBSI Investments, LP | Distribution | 1,292.00 | Monthly Distribution |
| 12/15/2004 | DBSI Investments, LP | Distribution | 11,627.33 | Monthly Distribution |
| 12/15/2004 | DBSI Investments, LP | Distribution | 1,292.00 | Monthly Distribution |
| 12/31/2004 | DBSI Realty, Inc | Salary | 178,456.48 | 2004 Salary |
| 1/14/2005 | DBSI Investments, LP | Distribution | 27,284.75 | Monthly Distribution |
| 1/15/2005 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 1/27/2005 | DBSI Investments, LP | Distribution | 150,000.00 | Bonus Payment |
| 1/27/2005 | DBSI Investments, LP | Distribution | 50,000.00 | Annual Distribution |
| 2/1/2005 | DBSI Investments, LP | Distribution | 300,000.00 | Bonus Check |
| 2/14/2005 | DBSI Investments, LP | Distribution | 2,729.00 | Monthly Distribution |

# Insider Transaction Detail
## Charles Hassard (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 2/15/2005 | DBSI Investments, LP | Distribution | 24,555.75 | Monthly Distribution |
| 3/14/2005 | DBSI Investments, LP | Distribution | 27,284.75 | Monthly Distribution |
| 4/14/2005 | DBSI Investments, LP | Distribution | 27,284.75 | Monthly Distribution |
| 4/15/2005 | DBSI, Inc | Tax | 3,000.00 | Paid North Carolina Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 2,000.00 | Paid Nebraska Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 1,500.00 | Paid Kansas Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 900.00 | Paid Indiana Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 500.00 | Paid Missouri Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 4/15/2005 | DBSI, Inc | Tax | 200.00 | Paid Iowa Department of Revenue - reported as distribution to inside |
| 4/15/2005 | DBSI, Inc | Tax | 100.00 | Paid New Mexico Tax & Revenue Dept - reported as distribution to inside |
| 5/13/2005 | DBSI Investments, LP | Distribution | 27,284.75 | Monthly Distribution |
| 6/15/2005 | DBSI Investments, LP | Distribution | 24,555.75 | Monthly Distribution |
| 6/15/2005 | DBSI Investments, LP | Distribution | 2,729.00 | Monthly Distribution |
| 7/14/2005 | DBSI Investments, LP | Distribution | 24,555.75 | Monthly Distribution |
| 7/14/2005 | DBSI Investments, LP | Distribution | 2,729.00 | Monthly Distribution |
| 7/15/2005 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 8/12/2005 | DBSI Investments, LP | Distribution | 2,729.00 | Monthly Distribution |
| 8/15/2005 | DBSI Investments, LP | Distribution | 24,555.75 | Monthly Distribution |
| 9/14/2005 | DBSI Investments, LP | Distribution | 24,555.75 | Monthly Distribution |
| 9/14/2005 | DBSI Investments, LP | Distribution | 2,729.00 | Monthly Distribution |
| 10/13/2005 | DBSI Investments, LP | Distribution | 24,555.75 | Monthly Distribution |
| 10/13/2005 | DBSI Investments, LP | Distribution | 2,729.00 | Monthly Distribution |
| 10/14/2005 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 10/26/2005 | DBSI Investments, LP | Distribution | 64,440.00 | Monthly Distribution |
| 10/26/2005 | DBSI Investments, LP | Distribution | 7,160.00 | Bonus Payment |
| 11/14/2005 | DBSI Investments, LP | Distribution | 24,000.00 | Monthly Distribution |
| 11/14/2005 | DBSI Investments, LP | Distribution | 2,666.67 | Monthly Distribution |
| 11/23/2005 | DBSI, Inc | Tax | 1,169.00 | Paid Iowa Department of Revenue - reported as distribution to inside |
| 12/14/2005 | DBSI Investments, LP | Distribution | 24,000.00 | Monthly Distribution |
| 12/14/2005 | DBSI Investments, LP | Distribution | 2,666.67 | Monthly Distribution |
| 12/31/2005 | DBSI Realty, Inc | Salary | 232,938.36 | 2005 Salary |
| 1/13/2006 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 1/16/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 2/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 3/7/2006 | DCJ, Inc | Tax | 77.00 | Paid Colorado Department of Revenue - reported as distribution to inside |
| 3/15/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/13/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/15/2006 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 4/17/2006 | DBSI Investments, LP | Distribution | 1,500.00 | Distribution for state taxes |
| 5/15/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 6/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |

# Insider Transaction Detail
## Charles Hassard (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 7/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 7/15/2006 | DBSI 2001B Funding Corporation | Bond | 250.00 | Bond Payment |
| 8/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 9/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 9/15/2006 | DBSI Investments, LP | Distribution | 150,000.00 | Additional Distribution |
| 10/13/2006 | DBSI 2001B Funding Corporation | Bond | 249.99 | Bond Payment |
| 10/16/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 11/14/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/15/2006 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/31/2006 | DBSI Realty, Inc | Salary | 180,000.09 | 2006 Salary |
| 1/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 1/16/2007 | DBSI 2001B Funding Corporation | Bond | 249.99 | Bond Payment |
| 2/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 3/14/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/16/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/16/2007 | DBSI 2001B Funding Corporation | Bond | 249.99 | Bond Payment |
| 5/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 6/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 7/16/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 7/16/2007 | DBSI 2001B Funding Corporation | Bond | 249.99 | Bond Payment |
| 8/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 9/14/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 10/15/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 10/15/2007 | DBSI 2001B Funding Corporation | Bond | 249.99 | Bond Payment |
| 11/20/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/17/2007 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 12/31/2007 | DBSI Realty, Inc | Salary | 180,000.08 | 2007 Salary |
| 1/15/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 1/15/2008 | DBSI 2001B Funding Corporation | Bond | 249.99 | Bond Payment |
| 2/15/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 3/15/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 4/15/2008 | DBSI 2001B Funding Corporation | Bond | 249.99 | Bond Payment |
| 4/30/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 5/15/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 6/4/2008 | DBSI, Inc | Tax | 916.05 | Income tax paid to state of Indiana. Taxes are related to debtor's taxable income that are paid through its shareholders as required by the Internal Revenue Code. |
| 6/13/2008 | DBSI Investments, LP | Distribution | 26,666.67 | Monthly Distribution |
| 7/15/2008 | DBSI Investments, LP | Distribution | 10,000.00 | Monthly Distribution |
| 7/15/2008 | DBSI 2001B Funding Corporation | Bond | 249.99 | Bond Payment |
| 8/15/2008 | DBSI Investments, LP | Distribution | 10,000.00 | Monthly Distribution |
| 9/15/2008 | DBSI Investments, LP | Distribution | 10,000.00 | Monthly Distribution |

# Insider Transaction Detail
## Charles Hassard (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 10/29/2008 | DBSI, Inc. | Distribution | 10,000.00 | Legal retainer for John Mayeron and Charles Hassard (1/2 of $20,000) |
| 12/31/2008 | DBSI Realty, Inc | Salary | 177,692.38 | 2008 Salary |
| CY 2004 - CY 2008 | Various | Tax | 12,180.95 | Various pass-through entities paid additional state taxes of $12,181 for tax years 2004 to 2007. Total nonresident tax liabilities of the insider were $8,896, resulting in net refunds of $13,647 ($22,543 - $8,896 = $13,647). |
| | | | **3,849,231.27** | |

# Insider Transaction Detail
## Gary Bringhurst (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 12/31/2001 | Western | Salary | 115,000.08 | 2001 Salary |
| 12/31/2002 | Western | Salary | 115,000.08 | 2002 Salary |
| 12/31/2003 | Western | Salary | 125,173.16 | 2003 Salary |
| 12/31/2004 | For 1031 | Salary | 300,004.87 | 2004 Salary |
| 12/22/2005 | Spectrus | Distribution | 20,000.00 | Additional Distribution |
| 12/31/2005 | DDRS | Salary | 443,084.84 | 2005 Salary |
| 12/31/2005 | For 1031 | Salary | 29,992.00 | 2005 Salary |
| 4/17/2006 | Terra Vista | Tax | 228,031.00 | IRS |
| 4/17/2006 | Terra Vista | Tax | 47,670.00 | ID State Tax Commission |
| 12/31/2006 | DDRS | Salary | 449,999.96 | 2006 Salary |
| 9/13/2007 | spectrus | Tax | 20,237.00 | Paid IRS |
| 9/13/2007 | spectrus | Tax | 915.00 | Paid Idaho State Tax Commission |
| 9/13/2007 | spectrus | Tax | 276.00 | Paid Kansas Department of Revenue |
| 9/13/2007 | spectrus | Tax | 218.00 | Paid California Franchise Tax |
| 9/13/2007 | spectrus | Tax | 187.00 | Paid Georgia Department of Revenue |
| 9/13/2007 | spectrus | Tax | 127.00 | Paid North Carolina Department of Revenue |
| 9/13/2007 | spectrus | Tax | 97.00 | Paid South Carolina Department of Revenue |
| 9/13/2007 | spectrus | Tax | 93.00 | Paid Utah State Tax Commission |
| 9/13/2007 | spectrus | Tax | 92.00 | Paid Indiana Department of Revenue |
| 9/13/2007 | spectrus | Tax | 92.00 | Paid Indiana Department of Revenue |
| 9/13/2007 | spectrus | Tax | 56.00 | Paid Ohio Department of Taxation |
| 9/13/2007 | spectrus | Tax | 9.00 | Paid Colorado Department of Revenue |
| 12/31/2007 | DDRS | Salary | 582,307.79 | 2007 Salary |
| 4/14/2008 | DDRS | Tax | 13,000.00 | Paid IRS |
| 12/31/2008 | DDRS | Salary | 442,777.97 | 2008 Salary |
| | | | **2,934,440.75** | |

# Insider Transaction Detail
## Mark Ellison (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 2/1/2000 | DBSI Broadway Plaza, LP | Distribution | 255.00 | Distribution from DBSI Broadway Plaza, LP a non-debtor affiliate |
| 2/1/2000 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 4/26/2000 | DBSI Broadway Plaza, LP | Distribution | 255.00 | Distribution from DBSI Broadway Plaza, LP a non-debtor affiliate |
| 4/26/2000 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 7/31/2000 | DBSI Broadway Plaza, LP | Distribution | 255.00 | Distribution from DBSI Broadway Plaza, LP a non-debtor affiliate |
| 7/31/2000 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 11/7/2000 | DBSI Broadway Plaza, LP | Distribution | 255.00 | Distribution from DBSI Broadway Plaza, LP a non-debtor affiliate |
| 11/7/2000 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 12/1/2000 | DBSI Tri XIII, LP | Liquidating Distribution | 2,940.00 | Liquidating distribution from DBSI TRI XIII |
| 1/31/2001 | DBSI Broadway Plaza, LP | Distribution | 255.00 | Distribution from DBSI Broadway Plaza, LP a non-debtor affiliate |
| 1/31/2001 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 4/30/2001 | DBSI Broadway Plaza, LP | Distribution | 255.00 | Distribution from DBSI Broadway Plaza, LP a non-debtor affiliate |
| 4/30/2001 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 8/14/2001 | DBSI Broadway Plaza, LP | Distribution | 255.00 | Distribution from DBSI Broadway Plaza, LP a non-debtor affiliate |
| 8/15/2001 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 10/26/2001 | DBSI Broadway Plaza, LP | Distribution | 255.00 | Distribution from DBSI Broadway Plaza, LP a non-debtor affiliate |
| 10/26/2001 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 12/19/2001 | DBSI, Inc | Interest Payment | 110.00 | Interest |
| 2/27/2002 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 2/28/2002 | DBSI Broadway Plaza, LP | Distribution | 255.00 | Distribution from DBSI Broadway Plaza, LP a non-debtor affiliate |
| 3/11/2002 | DBSI Broadway Plaza, LP | Liquidating Distribution | 12,750.00 | Liquidating distribution from DBSI Broadway Plaza |
| 5/10/2002 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 7/31/2002 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 9/18/2002 | DBSI Glenwood, LP | Liquidating Distribution | 10,100.00 | Proceeds from sale of DBSI Glenwood |
| 11/4/2002 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 1/31/2003 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 1/31/2003 | DP 05, LP | Liquidating Distribution | 4,444.00 | Proceeds from sale of Delta Best Western |
| 2/4/2003 | DBSI Custers Inn Associates, LP | Distribution | 833.33 | Distribution from DBSI Custers Inn Associates, a non-debtor affiliate |
| 5/2/2003 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 8/6/2003 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 11/3/2003 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 11/11/2003 | DBSI Madison Park, LP | Liquidating Distribution | 44,962.50 | Liquidating distribution from DBSI Madison Park |
| 2/4/2004 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 5/6/2004 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 5/20/2004 | DBSI Sandlewood Associates, LP | Liquidating Distribution | 96,400.00 | Liquidating distribution from DBSI Sandlewood Associates |
| 5/20/2004 | DBSI Leisure Village | Liquidating Distribution | 10,437.00 | Liquidating distribution from DBSI Leisure Village |
| 5/20/2004 | DBSI Sawtooth Associates, LP | Liquidating Distribution | 9,304.00 | Liquidating distribution for DBSI Sawtooth Associates |
| 5/20/2004 | DBSI Tri V, LP | Liquidating Distribution | 827.00 | Liquidating distribution from DBSI TRI V |
| 8/2/2004 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 11/5/2004 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 12/31/2004 | DBSI Management Services | Salary | 52,884.60 | 2004 Salary |
| 1/31/2005 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |

# Insider Transaction Detail
## Mark Ellison (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 5/11/2005 | DBSI Investors IV, LP | Distribution | 58.33 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 7/20/2005 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 9/29/2005 | DBSI Kimberly Associates, LP | Liquidating Distribution | 179,811.00 | Liquidating distribution from DBSI Kimberly Associates |
| 9/29/2005 | DBSI Kimberly Associates, LP | Liquidating Distribution | 9,911.00 | Liquidating distribution from DBSI Kimberly Associates |
| 11/10/2005 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 12/8/2005 | DBSI Curtis Plaza, LP | Liquidating Distribution | 33,892.00 | Liquidating distribution from DBSI Curtis Plaza |
| 12/20/2005 | DBSI Tri II, LP | Liquidating Distribution | 4,210.00 | Liquidating distribution from DBSI TRI II |
| 12/31/2005 | DBSI Realty, Inc | Salary | 317,609.15 | 2005 Salary |
| 1/24/2006 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 5/15/2006 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 5/23/2006 | DCJ, Inc | Capital Gains | 2,474.00 | Capital Gain |
| 8/15/2006 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 11/15/2006 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 12/31/2006 | DBSI Realty, Inc | Salary | 310,257.99 | 2006 Salary |
| 1/31/2007 | DBSI Meridian Freeway Associates, LP | Liquidating Distribution | 54,823.00 | Liquidating distribution from DBSI Meridian Freeway Associates |
| 2/15/2007 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 3/29/2007 | DBSI Meridian Freeway Associates, LP | Liquidating Distribution | 253,420.00 | Liquidating distribution from DBSI Meridian Freeway Associates |
| 3/29/2007 | DBSI Meridian Freeway Associates, LP | Liquidating Distribution | 228,950.00 | Liquidating distribution from DBSI Meridian Freeway Associates |
| 3/29/2007 | DBSI Meridian Freeway Associates, LP | Liquidating Distribution | 3,767.00 | Liquidating distribution from DBSI Meridian Freeway Associates |
| 5/15/2007 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 5/23/2007 | DBSI Greenwood Associates, LP | Liquidating Distribution | 35,820.00 | Liquidating distribution from DBSI Greenwood Associates |
| 5/23/2007 | DBSI Greenwood Associates, LP | Liquidating Distribution | 3,433.00 | Liquidating distribution from DBSI Greenwood Associates |
| 7/24/2007 | DBSI, Inc | Liquidating Distribution | 902.50 | Liquidating distribution from DBSI Investors XIV |
| 7/24/2007 | DBSI, Inc | Liquidating Distribution | 25,307.00 | Liquidating distribution from DBSI Investors XV Madison |
| 7/24/2007 | DBSI, Inc | Liquidating Distribution | 5,916.00 | Liquidating distribution from DBSI Investors XVI Sawtooth |
| 7/24/2007 | DBSI, Inc | Liquidating Distribution | 27,370.50 | Liquidating distribution from DBSI Investors XVI |
| 7/24/2007 | DBSI, Inc | Liquidating Distribution | 14,193.75 | Liquidating distribution from DBSI Investors XX |
| 7/24/2007 | DBSI, Inc | Liquidating Distribution | 304.25 | Liquidating distribution from DBSI Kimberly Associates |
| 7/24/2007 | DCJ, Inc | Liquidating Distribution | 19,160.50 | Liquidating distribution from DBSI Investors XVII |
| 7/24/2007 | DCJ, Inc | Liquidating Distribution | 2.75 | Liquidating distribution from DBSI Investors XVIII |
| 8/15/2007 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV, LP a non-debtor affiliate |
| 11/15/2007 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV LP, a non-debtor affiliate |
| 11/21/2007 | Mountain View, LP | Liquidating Distribution | 21,800.00 | Liquidating Distribution from Mountain View LP |
| 12/31/2007 | DBSI Realty, Inc | Salary | 333,076.87 | 2007 Salary |
| 2/15/2008 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV LP, a non-debtor affiliate |
| 2/21/2008 | DBSI Greenwood Associates, LP | Liquidating Distribution | 3,343.00 | Liquidating Distribution from DBSI Greenwood Associates LP |
| 5/15/2008 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV LP, a non-debtor affiliate |
| 8/15/2008 | DBSI Investors IV, LP | Distribution | 58.25 | Distribution from DBSI Investors IV LP, a non-debtor affiliate |
| 12/31/2008 | DBSI Realty, Inc | Salary | 292,500.05 | 2008 Salary |
| | | | **2,432,583.25** | |

# Insider Transaction Detail
## Brian Olsen (per Debtor and Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 12/31/2001 | Western Electronics LLC | Salary | 87,071.02 | 2001 Salary |
| 12/31/2002 | Western Electronics LLC | Salary | 101,969.99 | 2002Salary |
| 12/31/2003 | Western Electronics LLC | Salary | 99,999.96 | 2003 Salary |
| 12/31/2004 | FOR 1031 LLC | Salary | 115,627.24 | 2004 Salary |
| 12/31/2005 | DBSI Discovery Real Estate Services | Salary | 135,961.68 | 2005 Salary |
| 12/31/2005 | DBSI Discovery Real Estate Services | Bonus | 70,000.00 | 2005 Bonus |
| 12/31/2006 | DBSI Discovery Real Estate Services | Salary | 174,230.90 | 2006 Salary |
| 12/31/2006 | DBSI Discovery Real Estate Services | Bonus | 35,000.00 | 2006 Bonus |
| 12/31/2007 | DBSI Discovery Real Estate Services | Salary | 199,692.33 | 2007 Salary |
| 12/31/2007 | DBSI Discovery Real Estate Services | Bonus | 85,000.00 | 2007 Bonus |
| 12/31/2008 | DBSI Discovery Real Estate Services | Salary | 209,799.36 | 2008 Salary |
| 12/31/2008 | DBSI Discovery Real Estate Services | Bonus | 106,000.00 | 2008 Bonus |
| | | | **1,420,352.48** | |

# Insider Transaction Detail
## Farrell Bennett (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 1/3/2000 | DBSI, Inc. | Stock Redemption | 75,000.00 | Stock Redemption |
| 1/3/2000 | DBSI Realty Corp. | Stock Redemption | 45,000.00 | Stock Redemption |
| 1/3/2000 | DCI, Inc. | Stock Redemption | 15,000.00 | Stock Redemption |
| 1/3/2000 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 2/28/2000 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/30/2000 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/31/2000 | DBSI Investments, LP | Distribution | 2,083.34 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/26/2000 | DBSI Investments, LP | Consulting | 6,666.66 | Farrell Bennett Monthly Consulting Fees |
| 4/27/2000 | DBSI Investments, LP | Distribution | 2,083.34 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/26/2000 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/30/2000 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 6/13/2000 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 6/22/2000 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 7/27/2000 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/28/2000 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 8/27/2000 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 8/28/2000 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 9/28/2000 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 9/28/2000 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 10/28/2000 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/31/2000 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 11/28/2000 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 11/30/2000 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 12/28/2000 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 1/2/2001 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 1/28/2001 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 1/31/2001 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 2/28/2001 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 2/28/2001 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 3/28/2001 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/2/2001 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 4/28/2001 | DBSI Investments, LP | Distribution | 5,416.67 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/30/2001 | DBSI Investments, LP | Consulting | 3,333.33 | Farrell Bennett Monthly Consulting Fees |
| 5/28/2001 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 6/28/2001 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/28/2001 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 8/28/2001 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 9/28/2001 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/28/2001 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 11/28/2001 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/31/2001 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 1/31/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |

# Insider Transaction Detail
## Farrell Bennett (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 2/28/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/27/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/30/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/30/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 6/28/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/25/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/31/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 8/31/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/1/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/31/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 11/29/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/13/2002 | DBSI Investments, LP | Distribution | 8,750.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 1/3/2003 | DBSI Investments, LP | Loan | 105,000.00 | Loan on Preferred Value |
| 1/31/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 2/28/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/28/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/30/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/30/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 6/30/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/31/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 8/29/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 9/30/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/31/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 11/28/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/31/2003 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 1/31/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 2/29/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/31/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/30/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/31/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 6/30/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/30/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 8/30/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 9/30/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/31/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 11/30/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/30/2004 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 1/31/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 2/28/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/31/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/29/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/11/2005 | DBSI Investments, LP | Distribution | 23,625.00 | Distribution - Feb, Mar, Apr |

# Insider Transaction Detail
## Farrell Bennett (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 5/26/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 6/29/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/29/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 8/30/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/3/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/31/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 11/29/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/6/2005 | DBSI Metro 8 LeaseCo, LLC | Consulting | 4,280.50 | DBSI Housing-24/7 Daycare (Consulting Fees) |
| 12/29/2005 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 1/31/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 2/28/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/31/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/30/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/31/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 6/30/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/31/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 8/31/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 9/30/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/31/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 11/30/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/31/2006 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 1/31/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 2/28/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/30/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/30/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/31/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 6/29/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/31/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 8/31/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 9/28/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/31/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/3/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 12/31/2007 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 1/31/2008 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/4/2008 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 3/31/2008 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 4/30/2008 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 5/31/2008 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 6/30/2008 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 7/31/2008 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 8/31/2008 | DBSI Investments, LP | Distribution | 7,875.00 | Distribution from DBSI Investments LP, a non debtor affiliate |
| 10/2/2008 | DBSI Investments, LP | Distribution | 2,933.60 | Distribution from DBSI Investments LP, a non debtor affiliate |

## Insider Transaction Detail
## Farrell Bennett (per Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| | | | **1,132,172.44** | |

# Insider Transaction Detail

## Jeremy Swenson (per Debtor and Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 12/31/2000 | Western Electronics LLC | Salary | 21,744.08 | 2000 Salary |
| 12/31/2001 | Western Electronics LLC | Salary | 42,291.60 | 2001 Salary |
| 12/31/2002 | Western Electronics LLC | Salary | 35,538.43 | 2002 Salary |
| 12/31/2002 | Stellar Technologies | Salary | 9,046.16 | 2002 Salary |
| 12/31/2003 | Stellar Technologies | Salary | 60,698.12 | 2003 Salary |
| 12/31/2003 | DBSI Management Services LLC | Salary | 7,551.93 | 2003 Salary |
| 12/31/2004 | DBSI Management Services LLC | Salary | 74,942.58 | 2004 Salary |
| 12/31/2005 | DBSI Management Services LLC | Salary | 35,721.45 | 2005 Salary |
| 12/31/2005 | DBSI Discovery Real Estate Services | Salary | 98,626.99 | 2005 Salary |
| 12/31/2006 | DBSI Discovery Real Estate Services | Salary | 122,700.14 | 2006 Salary |
| 12/31/2007 | DBSI Discovery Real Estate Services | Salary | 139,069.24 | 2007 Salary |
| 12/31/2008 | DBSI Discovery Real Estate Services | Salary | 115,769.25 | 2008 Salary |
| | | | **763,699.97** | |

# Insider Transaction Detail
## Matt Duckett (per Debtor and Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 12/31/2001 | Western Electronics LLC | Salary | - | 2000 Salary[1] |
| 12/31/2002 | Western Electronics LLC | Salary | - | 2001 Salary[1] |
| 12/31/2003 | Western Electronics LLC | Salary | - | 2002 Salary[1] |
| 12/31/2004 | FOR 1031 LLC | Salary | 73,887.69 | 2004 Salary |
| 12/31/2005 | FOR 1031 LLC | Salary | 15,194.95 | 2005 Salary |
| 12/31/2005 | DBSI Discovery Real Estate Services | Salary | 136,396.25 | 2005 Salary |
| 12/31/2006 | DBSI Discovery Real Estate Services | Salary | 168,761.19 | 2006 Salary |
| 12/31/2007 | DBSI Discovery Real Estate Services | Salary | 172,022.06 | 2007 Salary |
| 12/31/2008 | DBSI Discovery Real Estate Services | Salary | 166,313.64 | 2008 Salary |
| | | | **732,575.78** | |

[1]Information not available.

# Insider Transaction Detail
## David Swenson (per Debtor and Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 12/31/2000 | DBSI Management Services | Salary | - | 2000 Salary[1] |
| 12/31/2001 | DBSI Management Services | Salary | - | 2001 Salary[1] |
| 12/31/2002 | DBSI Management Services | Salary | - | 2002 Salary[1] |
| 12/31/2003 | FOR 1031 LLC | Salary | 16,096.16 | 2003 Salary |
| 12/31/2004 | FOR 1031 LLC | Salary | 77,077.15 | 2004 Salary |
| 12/31/2005 | FOR 1031 LLC | Salary | 11,538.50 | 2005 Salary |
| 12/31/2005 | DBSI Discovery Real Estate Services | Salary | 92,199.50 | 2005 Salary |
| 12/31/2006 | DBSI Discovery Real Estate Services | Salary | 100,017.25 | 2006 Salary |
| 12/31/2007 | DBSI Discovery Real Estate Services | Salary | 121,568.74 | 2007 Salary |
| 12/31/2008 | DBSI Discovery Real Estate Services | Salary | 95,224.04 | 2008 Salary |
| | | | **513,721.34** | |

[1] Information not available.

# Insider Transaction Detail

## Paris Cole (per Debtor and Examiner)

| Date | Paying Entity | Type | Amount | Description |
|---|---|---|---|---|
| 12/31/2005 | DBSI Discovery Real Estate Services | Salary | 61,173.80 | 2005 Salary |
| 12/31/2006 | DBSI Discovery Real Estate Services | Salary | 82,326.09 | 2006 Salary |
| 12/31/2007 | DBSI Discovery Real Estate Services | Salary | 94,614.86 | 2007 Salary |
| 12/31/2008 | DBSI Discovery Real Estate Services | Salary | 105,354.42 | 2008 Salary |
| | | | **343,469.17** | |

# Appendix 7

## FINAL REPORT APPENDIX 7
## SCHEDULE OF INSIDER TRANSFERS WITHIN 90 DAYS / 12 MONTHS

| | 90 DAYS | | | | 12 MONTHS | | | | |
|---|---|---|---|---|---|---|---|---|---|
| EMPLOYEE NAME | Salary | Bonuses | Distributions | TOTAL | Salary | Bonuses | Distributions | Other | TOTAL |
| Douglas Swenson | $1,507 | | $122,536 | $124,043 | $5,599 | | $812,743 | | $818,342 |
| T. Var Reeve | $60,000 | | | $60,000 | $499,052 | $43,145 | | 493,308.00 | $1,035,505 |
| Walt Mott | | | $31,306 | $31,306 | | | $624,991 | | $624,991 |
| John Foster | | | $29,791 | $29,791 | | | $276,254 | | $276,254 |
| John Mayeron | $48,462 | | $32,668 | $81,130 | $180,000 | $350,000 | $331,941 | | $861,941 |
| Charles Hassard | $48,462 | | $30,001 | $78,463 | $180,000 | | $254,999 | | $434,999 |
| Gary Bringhurst | $53,846 | | | $53,846 | $323,077 | $136,000 | | | $459,077 |
| Mark Ellison | $53,846 | | $58 | $53,904 | $309,808 | | $25,376 | | $335,184 |
| Brian Olsen | $47,115 | | | $47,115 | $208,816 | $106,000 | | | $314,816 |
| Farrell Bennett | | | $10,809 | $10,809 | | | $81,684 | | $81,684 |
| Jeremy Swenson | $25,442 | | | $25,442 | $100,962 | $20,000 | | | $120,962 |
| Matt Duckett | $16,354 | | | $16,354 | $143,717 | $34,060 | | | $177,777 |
| David Swenson | $16,354 | | | $16,354 | $78,662 | $20,000 | | | $98,662 |
| Paris Cole | $32,827 | | | $32,827 | $94,099 | $11,632 | | 7,520.00 | $113,251 |
| | $404,215 | $0 | $257,169 | $661,384 | $2,123,792 | $720,837 | $2,407,988 | 500,828.00 | $5,753,445 |

# Appendix 8

**DBSI Inc., et al**
Accountable Reserve Balances by Year by Property
May 15, 2009

| Yardi Code | Property Name | Channel | Date Acquired* | Total A/R Raised** | Accountable Reserves Balance - End of Period 2004 | 2005 | 2006 | 2007 | 2008 | Current Balance | A/R Utilized | Percent of Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| p50001 | Northgate | #N/A | 1/1/1984 | - | - | - | - | - | - | - | - | 100% |
| p50003 | Indian Canyon Apts | #N/A | 11/1/1992 | - | - | - | - | - | - | - | - | 100% |
| p50006 | Fresno Forms | Securities | 6/3/2003 | - | - | - | - | - | - | - | - | 100% |
| p50008 | Salem State Offices | Securities | 7/3/2003 | - | - | - | - | - | - | - | - | 100% |
| p50009 | Rowesix Offices | FOR 1031 | 8/25/2003 | - | - | - | - | - | - | - | - | 100% |
| p50010 | Genesis Building | Securities | 9/8/2003 | - | - | - | - | - | - | - | - | 100% |
| p50011 | Fresno E Street | FOR 1031 | 10/16/2003 | 233,950 | - | 233,950 | 233,950 | 217,207 | 217,207 | 217,207 | 16,743 | 7% |
| p50012 | Solitude Building | FOR 1031 | 10/15/2003 | - | - | - | - | - | - | - | - | 100% |
| p50013 | Dorado Offices | FOR 1031 | 11/19/2003 | - | - | - | - | - | - | - | - | 100% |
| p50014 | Olympic Gateway Plaza | Securities | 11/25/2003 | - | - | - | - | - | - | - | - | 100% |
| p50015 | Regents Park | FOR 1031 | 12/10/2003 | - | - | 95,189 | - | - | - | - | - | 100% |
| p50016 | West Shaw Offices | Securities | 1/7/2004 | - | - | - | - | - | - | - | - | 100% |
| p50017 | Trinity Center | FOR 1031 | 1/28/2004 | - | - | - | - | - | - | - | - | 100% |
| p50018 | Park Ten | FOR 1031 | 2/6/2004 | - | - | - | - | - | - | - | - | 100% |
| p50019 | Highlander Building | Securities | 2/13/2004 | - | - | - | - | - | - | - | - | 100% |
| emtechs | Emerald Tech C & D | Securities | 2/20/2004 | - | - | - | - | - | - | - | - | 100% |
| met7-10 | Metro Annex 7-10 | Securities | 3/4/2004 | - | - | - | - | - | - | - | - | 100% |
| p50026 | Metro Annex 12 | FOR 1031 | 3/4/2004 | - | - | - | - | - | - | - | - | 100% |
| p50027 | Metro Annex 13 | FOR 1031 | 3/4/2004 | - | - | - | - | - | - | - | - | 100% |
| p50029 | Metro Annex 15 | FOR 1031 | 3/4/2004 | - | - | - | - | - | - | - | - | 100% |
| p50030 | Metro Annex 16 | FOR 1031 | 3/4/2004 | - | - | - | - | - | - | - | - | 100% |
| p50031 | Lakes at Bent Tree | FOR 1031 | 3/24/2004 | - | - | - | - | - | - | - | - | 100% |
| p50032 | Overland Park (College Bldg) | FOR 1031 | 4/8/2004 | - | - | - | - | - | - | - | - | 100% |
| p50033 | Metropolitan Offices | FOR 1031 | 4/16/2004 | - | - | 78,145 | - | - | - | - | - | 100% |
| p50034 | Corporate Center II | Securities | 5/4/2004 | - | - | - | - | - | - | - | - | 100% |
| p50035 | KCI Building | Securities | 5/6/2004 | - | - | - | - | - | - | - | - | 100% |
| p50036 | Vineyard Center | FOR 1031 | 5/13/2004 | - | - | - | - | - | - | - | - | 100% |
| p50037 | Capital One Building | Securities | 5/14/2004 | - | - | - | - | - | - | - | - | 100% |
| p50038 | Quorum Building | FOR 1031 | 5/18/2004 | - | - | - | - | - | - | - | - | 100% |
| p50039 | Blue Cross Building | FOR 1031 | 5/25/2004 | - | - | - | - | - | - | - | - | 100% |
| p50040 | Covington Building | FOR 1031 | 5/28/2004 | - | - | - | - | - | - | - | - | 100% |
| p50041 | Firemans Fund Building | FOR 1031 | 6/3/2004 | - | - | - | - | - | - | - | - | 100% |
| p50042 | Cornerstone Crossing | FOR 1031 | 6/8/2004 | - | - | - | - | - | - | - | - | 100% |
| p50043 | Parkhill Offices | FOR 1031 | 7/9/2004 | - | - | - | - | - | - | - | - | 100% |
| p50044 | Centre Plaza | FOR 1031 | 7/12/2004 | - | - | - | - | - | - | - | - | 100% |
| .p50045 | Woodlands I & II | FOR 1031 | 7/14/2004 | - | - | - | - | - | - | - | - | 100% |
| p50046 | Riverside Corp Center | FOR 1031 | 7/14/2004 | - | - | - | - | - | - | - | - | 100% |
| p50047 | Corporate Center III | Securities | 7/15/2004 | - | - | - | - | - | - | - | - | 100% |
| p50048 | Oak Hollow West | FOR 1031 | 7/15/2004 | - | - | - | - | - | - | - | - | 100% |
| p50049 | Brookhollow One | FOR 1031 | 7/15/2004 | - | - | - | - | - | - | - | - | 100% |
| p50050 | 700 Locust Offices (Partnership Bldg) | Securities | 7/15/2004 | - | - | - | - | - | - | - | - | 100% |
| p50051 | Summit Woods II | FOR 1031 | 7/19/2004 | - | - | - | - | - | - | - | - | 100% |
| p50052 | Plaquemine SSA Building | FOR 1031 | 7/19/2004 | - | - | - | - | - | - | - | - | 100% |
| p50053 | Phoenix Peak | Securities | 7/22/2004 | - | - | - | - | - | - | - | - | 100% |
| p50054 | Lamar Offices (Arbors at Brookhollow) | Securities | 7/23/2004 | - | - | - | - | - | - | - | - | 100% |
| p50055 | Gladstone Business Centre | FOR 1031 | 7/26/2004 | - | - | - | - | - | - | - | - | 100% |
| p50056 | Morningside Forest | FOR 1031 | 7/26/2004 | - | - | - | - | - | - | - | - | 100% |
| p50057 | Sheridan | REIT | 7/28/2004 | 775,000 | - | 367,400 | 775,000 | 737,756 | 351,553 | 351,553 | 423,447 | 55% |
| p50058 | Shawnee Mission | FOR 1031 | 7/28/2004 | - | - | - | - | - | - | - | - | 100% |
| p50059 | Collins Offices | Securities | 8/2/2004 | - | - | - | - | - | - | - | - | 100% |
| p50060 | 7275 W 105th St. (Marty Shops) | FOR 1031 | 8/10/2004 | - | - | - | - | - | - | - | - | 100% |
| p50061 | One Hanover | Securities | 8/16/2004 | 975,970 | - | 975,970 | 660,012 | - | - | - | 975,970 | 100% |
| p50062 | Lake Charles Fed Courthouse | State Offices | 8/20/2004 | 180,100 | - | 180,100 | 180,100 | 180,100 | 139,789 | 139,789 | 40,311 | 22% |
| p50063 | ACI Omaha Building | FOR 1031 | 8/25/2004 | - | - | - | - | - | - | - | - | 100% |
| .p50064 | Tower Park | FOR 1031 | 8/26/2004 | - | - | - | - | - | - | - | - | 100% |
| p50065 | Advantage Office Building | FOR 1031 | 9/5/2004 | - | - | - | - | - | - | - | - | 100% |
| p50066 | Fairway Center | Securities | 9/7/2004 | 150,000 | - | 150,000 | 71,637 | - | - | - | 150,000 | 100% |
| p50067 | Offices at Brookhollow | FOR 1031 | 9/9/2004 | - | - | - | - | - | - | - | - | 100% |
| p50068 | 1881 Valley View | FOR 1031 | 9/10/2004 | - | - | - | - | - | - | - | - | 100% |
| p50069 | Brookhill Towne Center | FOR 1031 | 9/20/2004 | - | - | - | - | - | - | - | - | 100% |
| p50070 | Summit Woods I | FOR 1031 | 9/27/2004 | - | - | - | - | - | - | - | - | 100% |
| p50071 | Corporate Center I | FOR 1031 | 9/27/2004 | - | - | - | - | - | - | - | - | 100% |
| p50072 | Farrow Road | FOR 1031 | 9/29/2004 | - | - | - | - | - | - | - | - | 100% |
| p50073 | Motorcoach | FOR 1031 | 9/29/2004 | - | - | - | - | - | - | - | - | 100% |
| .p50074 | Signature Place | Securities | 9/30/2004 | 475,000 | - | 453,913 | 395,357 | 44,811 | - | - | 475,000 | 100% |
| p50075 | Heritage Park II | FOR 1031 | 10/4/2004 | - | - | - | - | - | - | - | - | 100% |
| p50076 | 48 Perimeter | FOR 1031 | 10/6/2004 | - | - | - | - | - | - | - | - | 100% |
| p50077 | Riverbend Tech Center | FOR 1031 | 10/6/2004 | - | - | - | - | - | - | - | - | 100% |
| p50078 | Sprague & Hatch | Securities | 10/14/2004 | 100,000 | - | 56,081 | 53,792 | 53,792 | 53,792 | 53,792 | 46,208 | 46% |
| p50079 | Call Center Coeur D' Alene | FOR 1031 | 10/18/2004 | - | - | - | - | - | - | - | - | 100% |
| p50080 | Appleton Papers | FOR 1031 | 10/22/2004 | - | - | - | - | - | - | - | - | 100% |
| p50081 | Call Center Post Falls | FOR 1031 | 10/22/2004 | - | - | - | - | - | - | - | - | 100% |
| p50082 | 400/440 South Executive Drive | FOR 1031 | 10/27/2004 | - | - | - | - | - | - | - | - | 100% |
| p50083 | Executive Plaza II | Securities | 10/29/2004 | 50,000 | - | - | - | - | - | - | 50,000 | 100% |
| p50084 | Republic Insurance | Securities | 11/3/2004 | 300,000 | - | 300,000 | 300,000 | 300,000 | 300,000 | 300,000 | - | 0% |
| p50085 | Nuvell Building | FOR 1031 | 11/9/2004 | - | - | - | - | - | - | - | - | 100% |
| p50086 | Venture Tech | FOR 1031 | 11/10/2004 | - | - | - | - | - | - | - | - | 100% |
| p50087 | Metcalf 103 Center | FOR 1031 | 11/17/2004 | - | - | - | - | - | - | - | - | 100% |
| p50088 | Academy Spectrum Building | FOR 1031 | 11/22/2004 | - | - | - | - | - | - | - | - | 100% |
| .p50089 | Amarillo Apartments | Securities | 12/2/2004 | - | - | 300,000 | 53,594 | - | - | - | - | 100% |
| p50090 | Corporate Woods | FOR 1031 | 12/9/2004 | - | - | - | - | - | - | - | - | 100% |
| p50091 | Vatterott College Building | FOR 1031 | 12/16/2004 | - | - | - | - | - | - | - | - | 100% |
| p50092 | University Towers | FOR 1031 | 12/16/2004 | - | - | - | - | - | - | - | - | 100% |
| p50093 | Missouri Falls Building | FOR 1031 | 12/21/2004 | - | - | - | - | - | - | - | - | 100% |
| p50094 | North Park (Texas) | FOR 1031 | 12/22/2004 | - | - | - | - | - | - | - | - | 100% |
| p50095 | Executive Tower Center | FOR 1031 | 12/22/2004 | - | - | - | - | - | - | - | - | 100% |
| p50096 | Westpark Court | FOR 1031 | 12/26/2004 | - | - | - | - | - | - | - | - | 100% |
| p50097 | Decatur (Lindbergh) | FOR 1031 | 12/30/2004 | - | - | - | - | - | - | - | - | 100% |
| p50098 | Daniel Burnham (McCormick) | FOR 1031 | 12/30/2004 | - | - | - | - | - | - | - | - | 100% |
| p50099 | Watkins (AM General) | FOR 1031 | 12/30/2004 | - | - | - | - | - | - | - | - | 100% |
| p50100 | South Trust Tower | Securities | 1/3/2005 | 7,000,000 | - | 6,580,159 | 5,890,369 | 4,228,780 | 3,248,656 | 3,248,656 | 3,751,344 | 54% |
| p50101 | University Park Tech V | Securities | 1/4/2005 | 150,000 | - | 150,000 | 150,000 | 150,000 | 137,581 | 137,581 | 12,419 | 8% |
| p50102 | Network (Intech Eleven) | FOR 1031 | 1/7/2005 | - | - | - | - | - | - | - | - | 100% |
| .p50103 | Northridge I & II | FOR 1031 | 1/27/2005 | - | - | - | - | - | - | - | - | 100% |
| p50104 | Executive Park (Financial Plaza) | FOR 1031 | 1/31/2005 | - | - | - | - | - | - | - | - | 100% |
| .p50105 | Clear Creek Square | Securities | 2/24/2005 | 300,000 | - | 233,073 | 143,884 | 122,141 | 121,136 | 121,136 | 178,864 | 60% |
| .p50106 | Cedar East & Cypress | FOR 1031 | 2/25/2005 | - | - | - | - | - | - | - | - | 100% |
| p50107 | Progress Center 7 | FOR 1031 | 2/26/2005 | - | - | - | - | - | - | - | - | 100% |

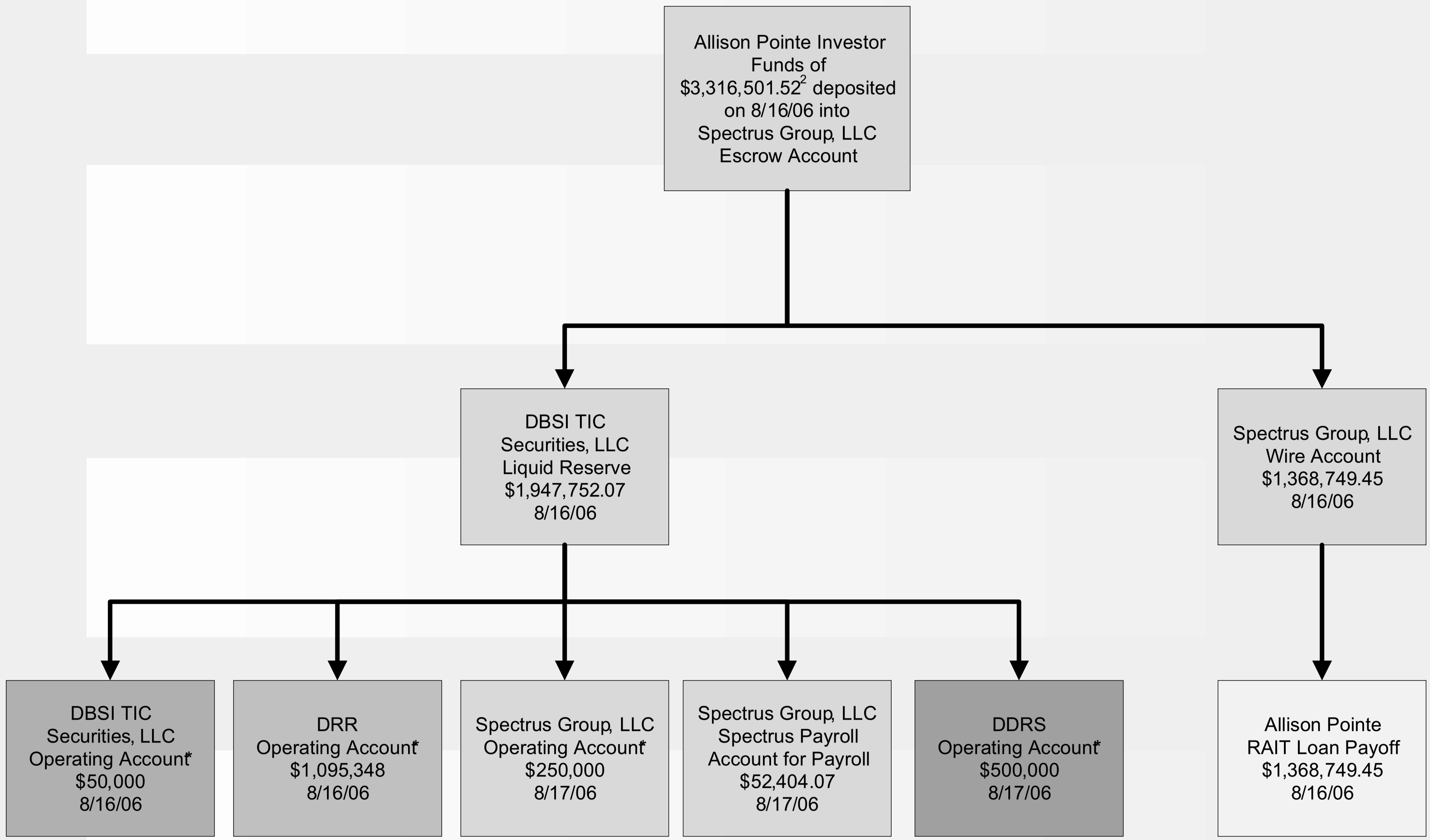
| Yardi Code | Property Name | Channel | Date Acquired* | Total A/R Raised** | 2004 | 2005 | 2006 | 2007 | 2008 | Current Balance | A/R Utilized | Percent of Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| p50108 | Weston Pkwy 13000 | FOR 1031 | 3/3/2005 | - | - | - | - | - | - | - | - | 100% |
| p50109 | Weston Pkwy 14001 | FOR 1031 | 3/3/2005 | - | - | - | - | - | - | - | - | 100% |
| p50110 | Crosstown Woods | FOR 1031 | 3/16/2005 | - | - | - | - | - | - | - | - | 100% |
| p50111 | Baymeadows | Securities | 3/16/2005 | 500,000 | - | - | 500,000 | 196,348 | 4,633 | 4,633 | 495,367 | 99% |
| p50112 | Kenwood | FOR 1031 | 3/22/2005 | - | - | - | - | - | - | - | - | 100% |
| p50113 | Ghent Road | FOR 1031 | 3/30/2005 | - | - | - | - | - | - | - | - | 100% |
| p50114 | Tollview | FOR 1031 | 4/5/2005 | - | - | - | - | - | - | - | - | 100% |
| p50115 | Spring Valley Road | FOR 1031 | 4/7/2005 | - | - | - | - | - | - | - | - | 100% |
| p50116 | South 75 Center | FOR 1031 | 4/29/2005 | - | - | - | - | - | - | - | - | 100% |
| .p50118 | Plano Tech Center | FOR 1031 | 5/4/2005 | - | - | - | - | - | - | - | - | 100% |
| p50119 | Eagle's Landing | FOR 1031 | 5/5/2005 | - | - | - | - | - | - | - | - | 100% |
| p50120 | Two Notch Road | FOR 1031 | 5/11/2005 | - | - | - | - | - | - | - | - | 100% |
| p50122 | Lake Natoma | FOR 1031 | 5/25/2005 | - | - | - | - | - | - | - | - | 100% |
| .p50123 | Torrey Chase | FOR 1031 | 5/27/2005 | - | - | - | - | - | - | - | - | 100% |
| p50124 | Windcom Court | FOR 1031 | 6/9/2005 | - | - | - | - | - | - | - | - | 100% |
| p50126 | Friar's Branch Crossing | Securities | 6/13/2005 | 350,000 | - | 350,000 | 350,000 | 344,525 | 323,175 | 323,175 | 26,825 | 8% |
| p50127 | Lincoln Park 10 | FOR 1031 | 6/24/2005 | - | - | - | - | - | - | - | - | 100% |
| p50128 | Lake Ellenor | FOR 1031 | 6/27/2005 | - | - | - | - | - | - | - | - | 100% |
| p50129 | Chattahoochee Corners | Securities | 6/29/2005 | 80,000 | - | - | - | - | - | - | 80,000 | 100% |
| p50130 | Northpark (Ridgeland) | FOR 1031 | 7/19/2005 | - | - | - | - | - | - | - | - | 100% |
| p50131 | Academy Park Loop | FOR 1031 | 7/20/2005 | - | - | - | - | - | - | - | - | 100% |
| p50132 | Holly Hill | FOR 1031 | 7/21/2005 | - | - | - | - | - | - | - | - | 100% |
| p50133 | Trinity Place | FOR 1031 | 7/29/2005 | - | - | - | - | - | - | - | - | 100% |
| p50134 | Parkway III | FOR 1031 | 8/15/2005 | 270,000 | - | 268,464 | 260,207 | 170,348 | 66,915 | 66,915 | 203,085 | 75% |
| .p50135 | Arrowhead | FOR 1031 | 8/29/2005 | 635,000 | - | 635,000 | 588,973 | 377,591 | 44,812 | 44,812 | 590,188 | 93% |
| p50137 | Mansell Forest | FOR 1031 | 9/15/2005 | 765,000 | - | 765,000 | 710,097 | 640,234 | 311,350 | 311,350 | 453,650 | 59% |
| p50138 | Plaza at Ridgmar | FOR 1031 | 9/19/2005 | 160,000 | - | 160,000 | 145,158 | 131,339 | 122,351 | 122,351 | 37,649 | 24% |
| p50139 | Hampton Tech Center | FOR 1031 | 9/23/2005 | 200,000 | - | 200,000 | 200,000 | 191,750 | 191,750 | 191,750 | 8,250 | 4% |
| .p50140 | Draper Tech Park | FOR 1031 | 9/29/2005 | 1,500,000 | - | 1,372,367 | 1,304,229 | 1,146,392 | 869,127 | 869,127 | 630,873 | 42% |
| p50141 | Wistar Center | Securities | 10/4/2005 | 255,000 | - | 255,000 | 249,069 | 203,612 | 154,202 | 154,202 | 100,798 | 40% |
| .p50142 | Legacy Country | FOR 1031 | 10/4/2005 | 291,550 | - | 291,550 | 291,550 | 275,304 | 275,304 | 275,304 | 16,246 | 6% |
| .p50143 | Legacy Main & High | FOR 1031 | 10/4/2005 | 145,750 | - | 145,750 | 142,915 | 142,915 | 127,197 | 127,197 | 18,553 | 13% |
| p50144 | Embassy Tower | FOR 1031 | 10/28/2005 | 400,000 | - | 398,361 | 241,578 | 241,578 | 165,275 | 165,275 | 234,725 | 59% |
| .p50145 | Spalding Triangle | FOR 1031 | 10/25/2005 | 575,000 | - | 575,000 | 454,662 | 346,940 | 336,541 | 336,541 | 238,459 | 41% |
| p50146 | Village Townhomes | Securities | 10/14/2005 | 200,000 | - | 190,000 | 183,040 | 162,468 | 162,468 | 162,468 | 37,532 | 19% |
| p50147 | Kellogg & Greenwich | REIT | 12/21/2005 | 302,500 | - | 302,500 | 302,500 | 296,516 | 290,598 | 290,598 | 11,902 | 4% |
| p50148 | Atlantic Blvd | Securities | 11/3/2005 | 246,000 | - | 246,000 | 65,799 | 65,799 | 65,799 | 65,799 | 180,201 | 73% |
| p50149 | 12 South Place-Owens | FOR 1031 | 6/22/2006 | 313,500 | - | - | 307,960 | 307,960 | 304,110 | 304,110 | 9,390 | 3% |
| .p50150 | Lakeview & Sojourn | Securities | 10/27/2005 | 2,450,000 | - | - | 2,450,000 | 2,408,987 | 2,333,453 | 2,333,453 | 116,547 | 5% |
| p50151 | Gateway Commons (Pepperell Pkwy) | FOR 1031 | 11/10/2005 | 242,756 | - | 242,756 | 242,756 | 242,756 | 240,864 | 240,864 | 1,892 | 1% |
| p50153 | Sherwood Plaza | FOR 1031 | 10/18/2005 | 980,000 | - | - | 852,690 | 369,021 | 288,061 | 288,061 | 691,939 | 71% |
| p50154 | Brendan Way | FOR 1031 | 11/19/2005 | 373,000 | - | 373,000 | 373,000 | 370,391 | 350,679 | 350,679 | 22,321 | 6% |
| p50156 | Cranberry Business Park | FOR 1031 | 12/22/2005 | 600,000 | - | 600,000 | 592,440 | 581,160 | 204,686 | 204,686 | 395,314 | 66% |
| p50157 | Northlite Commons II | FOR 1031 | 12/22/2005 | 283,750 | - | 283,750 | 283,750 | 283,750 | 283,750 | 283,750 | - | 0% |
| .p50159 | Brookfield & Pelham | FOR 1031 | 1/31/2006 | 1,627,500 | - | - | 1,622,014 | 1,548,809 | 1,432,448 | 1,432,448 | 195,052 | 12% |
| p50160 | Breckinridge Exchange | FOR 1031 | 3/9/2006 | 896,000 | - | - | 799,235 | 751,601 | 727,101 | 727,101 | 168,899 | 19% |
| p50162 | Keystone Commerce Center | FOR 1031 | 4/26/2006 | 896,000 | - | - | 896,000 | 896,000 | 809,867 | 809,867 | 86,133 | 10% |
| .p50163 | Wilson I | FOR 1031 | 4/28/2006 | 2,224,000 | - | - | 2,200,782 | 2,103,430 | 1,621,198 | 1,621,198 | 602,802 | 27% |
| .p50164 | East 21st Street | Securities | 4/28/2006 | 1,806,000 | - | - | 1,786,523 | 1,746,601 | 1,659,159 | 1,659,159 | 146,841 | 8% |
| p50166 | Battlefield Station (Sentry) | FOR 1031 | 8/23/2006 | 788,000 | - | - | 788,000 | 788,000 | 788,000 | 788,000 | - | 0% |
| p50167 | Woodside Center | FOR 1031 | 4/17/2006 | 1,150,050 | - | - | 1,150,050 | 1,136,130 | 1,110,187 | 1,110,187 | 39,863 | 3% |
| p50168 | Arbors at Mallard Creek | FOR 1031 | 10/27/2006 | 209,000 | - | - | 209,000 | 209,000 | 209,000 | 209,000 | - | 0% |
| .p50169 | Allison Pointe Office | FOR 1031 | 6/19/2006 | 2,730,000 | - | - | 2,582,851 | 2,373,079 | 2,363,179 | 2,363,179 | 366,821 | 13% |
| p50170 | Dacula Medical Office | FOR 1031 | 7/31/2006 | 570,000 | - | - | 570,000 | 570,000 | 560,135 | 560,135 | 9,865 | 2% |
| p50171 | Eagle Ridge Apartments | Securities | 4/28/2006 | 230,000 | - | - | 206,074 | 199,729 | 199,729 | 199,729 | 30,271 | 13% |
| p50172 | Silver Lakes Professional | Securities | 5/25/2006 | 800,000 | - | - | 786,344 | 742,279 | 730,631 | 730,631 | 69,369 | 9% |
| p50173 | Avenues North Center | FOR 1031 | 8/15/2006 | 826,668 | - | - | 800,000 | 826,668 | 820,686 | 820,686 | 5,982 | 1% |
| p50174 | Abbotts Bridge | FOR 1031 | 8/15/2006 | 698,000 | - | - | 698,000 | 680,286 | 414,431 | 414,431 | 283,569 | 41% |
| p50175 | Megan Crossings | FOR 1031 | 11/20/2006 | 1,120,000 | - | - | - | 1,039,812 | 919,172 | 919,172 | 200,828 | 18% |
| .p50176 | Colonnade at West Lake | Securities | 11/21/2006 | 707,000 | - | - | 655,099 | 701,483 | 664,531 | 664,531 | 42,469 | 6% |
| p50177 | Royal Montreal Plaza | Securities | 12/15/2006 | 321,200 | - | - | 295,733 | 274,689 | 233,773 | 233,773 | 87,427 | 27% |
| .p50178 | Highlands I & Southcreek III | FOR 1031 | 12/21/2006 | 1,982,202 | - | - | 1,982,202 | 1,486,771 | 1,231,966 | 1,231,966 | 750,236 | 38% |
| p50179 | Riverstone Medical | Securities | 12/28/2006 | 1,164,500 | - | - | - | 1,164,500 | 1,157,954 | 1,157,954 | 6,546 | 1% |
| .p50180 | White Pond | FOR 1031 | 12/29/2006 | 200,241 | - | - | 200,241 | 199,072 | 186,798 | 186,798 | 13,443 | 7% |
| p50181 | Eau Claire (McCann) | FOR 1031 | 12/15/2005 | 244,000 | - | - | 214,245 | 244,000 | 244,000 | 244,000 | - | 0% |
| p50183 | Cambridge Place Apartments | FOR 1031 | 1/17/2007 | 336,000 | - | - | - | 336,000 | 315,728 | 315,728 | 20,272 | 6% |
| p50184 | 48th Street Medical (Mercy Medical) | Securities | 1/18/2007 | 69,943 | - | - | - | 69,943 | 69,943 | 69,943 | - | 0% |
| .p50185 | North Park Omaha Portfolio I | FOR 1031 | 1/19/2007 | 1,320,543 | - | - | - | 1,320,543 | 1,320,543 | 1,320,543 | - | 0% |
| .p50186 | North Park Omaha Portfolio II | Securities | 1/19/2007 | 2,498,000 | - | - | - | 2,498,000 | 2,498,000 | 2,498,000 | - | 0% |
| p50187 | Shoppes at Misty Meadows Lane | FOR 1031 | 1/25/2007 | 240,000 | - | - | - | 240,000 | 229,578 | 229,578 | 10,422 | 4% |
| p50188 | MidValley Plaza | FOR 1031 | 1/30/2007 | - | - | - | - | - | - | - | - | 100% |
| p50189 | West Oaks Square | FOR 1031 | 2/14/2007 | 342,600 | - | - | - | 298,592 | 285,243 | 285,243 | 57,357 | 17% |
| p50190 | Bandera Trails Shopping Center | FOR 1031 | 2/20/2007 | 208,600 | - | - | - | 208,600 | 175,602 | 175,602 | 32,998 | 16% |
| p50191 | Woodlands Medical Office | FOR 1031 | 2/27/2007 | 456,000 | - | - | - | 418,072 | 418,072 | 418,072 | 37,928 | 8% |
| p50192 | Cross Roads Center | FOR 1031 | 2/27/2007 | - | - | - | - | - | - | - | - | 100% |
| p50193 | Cross Creek Center | FOR 1031 | 2/27/2007 | 234,500 | - | - | - | 234,500 | 214,258 | 214,258 | 20,242 | 9% |
| p50194 | Sapphire Pointe Center | FOR 1031 | 2/27/2007 | 159,600 | - | - | - | 76,104 | 76,104 | 76,104 | 83,496 | 52% |
| .p50195 | North Park Omaha Portfolio III | Securities | 3/13/2007 | 1,906,000 | - | - | - | 1,765,269 | 1,765,269 | 1,765,269 | 140,731 | 7% |
| .p50196 | Arlington Towne Square | FOR 1031 | 3/22/2007 | 1,976,000 | - | - | - | 1,976,000 | 1,346,426 | 1,346,426 | 629,574 | 32% |
| .p50197 | Trinity Ridge Business Center | FOR 1031 | 3/29/2007 | 1,372,000 | - | - | - | 1,372,000 | 1,307,050 | 1,307,050 | 64,949 | 5% |
| p50198 | Cross Pointe Center | FOR 1031 | 4/13/2007 | 555,000 | - | - | - | 555,000 | 555,000 | 555,000 | - | 0% |
| p50199 | Sam Houston Tech Center | FOR 1031 | 4/26/2007 | 770,000 | - | - | - | 760,141 | 697,337 | 697,337 | 72,663 | 9% |
| p50200 | Kemper Point | FOR 1031 | 4/27/2007 | 855,000 | - | - | - | 587,998 | 587,998 | 587,998 | 267,002 | 31% |
| p50201 | Sherwood Village | Securities | 5/8/2007 | 188,000 | - | - | - | 188,000 | 170,688 | 170,688 | 17,312 | 9% |
| p50202 | Currell Centre | Securities | 5/24/2007 | 637,500 | - | - | - | 492,388 | 501,408 | 501,408 | 136,093 | 21% |
| p50203 | Colony Commons I & II | Securities | 6/5/2007 | 345,000 | - | - | - | 345,000 | 345,000 | 345,000 | - | 0% |
| p50204 | St. Andrews Place | FOR 1031 | 6/14/2007 | 300,000 | - | - | - | 300,000 | 300,000 | 300,000 | - | 0% |
| p50205 | Gadd Crossing | FOR 1031 | 6/21/2007 | 660,000 | - | - | - | 660,000 | 660,000 | 660,000 | - | 0% |
| p50206 | Goshen Village Shoppes | Securities | 6/26/2007 | 575,000 | - | - | - | 575,000 | 491,230 | 491,230 | 83,770 | 15% |
| p50207 | Metropolitan Square | FOR 1031 | 6/29/2007 | 1,458,000 | - | - | - | 1,458,000 | 1,351,400 | 1,351,400 | 106,600 | 7% |
| p50208 | Treasure Valley Business Center | Securities | 6/29/2007 | - | - | - | - | - | - | - | - | 100% |
| p50209 | Willow Bend | Securities | 7/18/2007 | 495,000 | - | - | - | 495,000 | 495,000 | 495,000 | - | 0% |
| p50210 | Lifestyle Center | FOR 1031 | 8/9/2007 | 575,000 | - | - | - | 575,000 | 575,000 | 575,000 | - | 0% |
| p50211 | Winchester Office | FOR 1031 | 8/10/2007 | 650,000 | - | - | - | 650,000 | 643,451 | 643,451 | 6,548 | 1% |
| p50212 | Beacon Point | Securities | 8/15/2007 | 505,000 | - | - | - | 505,000 | 505,000 | 505,000 | - | 0% |
| p50213 | Mansell Plaza | Securities | 8/17/2007 | 283,500 | - | - | - | 262,573 | 267,387 | 267,387 | 16,113 | 6% |
| p50214 | Park Plaza Retail | Securities | 8/28/2007 | 980,000 | - | - | - | 980,000 | 980,000 | 980,000 | - | 0% |
| p50215 | Road 68 Retail Center | FOR 1031 | 8/30/2007 | 166,500 | - | - | - | 149,000 | 149,000 | 149,000 | 17,500 | 11% |
| p50216 | Meadow Chase Apartments | FOR 1031 | 8/31/2007 | 265,000 | - | - | - | 265,000 | 265,000 | 265,000 | - | 0% |
| p50217 | Haverford Place | Securities | 9/4/2007 | 400,000 | - | - | - | 398,445 | 395,320 | 395,320 | 4,680 | 1% |
| p50218 | Shops at Katy | Securities | 9/7/2007 | 480,000 | - | - | - | 480,000 | 472,003 | 472,003 | 7,997 | 2% |
| p50219 | Park Creek Apartments | FOR 1031 | 9/10/2007 | 1,100,000 | - | - | - | 1,087,001 | 1,096,465 | 1,096,465 | 3,535 | 0% |
| p50220 | Village at Old Trace | Securities | 9/12/2007 | 800,000 | - | - | - | 656,707 | 745,657 | 745,657 | 54,343 | 7% |

| Yardi Code | Property Name | Channel | Date Acquired* | Total A/R Raised** | 2004 | 2005 | 2006 | 2007 | 2008 | Current Balance | A/R Utilized | Percent of Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| p50221 | Stony Brook South | FOR 1031 | 9/12/2007 | 1,550,000 | - | - | - | 1,550,000 | 1,545,823 | 1,545,823 | 4,177 | 0% |
| p50222 | Carolina Commons | FOR 1031 | 9/27/2007 | 400,000 | - | - | - | 400,000 | 395,440 | 395,440 | 4,560 | 1% |
| p50223 | Fayette Town Center | FOR 1031 | 9/27/2007 | 360,378 | - | - | - | 360,378 | 360,378 | 360,378 | - | 0% |
| p50224 | Streetside at Towne Lake | FOR 1031 | 9/28/2007 | 550,000 | - | - | - | 538,460 | 532,155 | 532,155 | 17,844 | 3% |
| .p50225 | North Logan | FOR 1031 | 9/28/2007 | 450,000 | - | - | - | 450,000 | 450,000 | 450,000 | - | 0% |
| p50226 | Stone Oak Crossing II | Securities | 10/4/2007 | 700,000 | - | - | - | 700,000 | 700,000 | 700,000 | - | 0% |
| p50227 | Stone Glen Village | FOR 1031 | 10/5/2007 | 425,000 | - | - | - | 425,000 | 425,000 | 425,000 | - | 0% |
| p50228 | Second Street Quad | FOR 1031 | 10/22/2007 | 790,000 | - | - | - | 790,000 | 790,000 | 790,000 | - | 0% |
| p50229 | One Executive Center | FOR 1031 | 10/23/2007 | 1,100,000 | - | - | - | 1,056,999 | 847,530 | 847,530 | 252,470 | 23% |
| p50230 | Old National Town Center | FOR 1031 | 10/25/2007 | 1,000,000 | - | - | - | 1,000,000 | 1,000,000 | 1,000,000 | - | 0% |
| p50231 | Shops of Turkey Creek | Securities | 11/9/2007 | 106,260 | - | - | - | 67,099 | 106,260 | 106,260 | - | 0% |
| .p50232 | Green Steet Commons I & II | Securities | 11/20/2007 | 440,000 | - | - | - | 358,838 | 440,000 | 440,000 | - | 0% |
| p50233 | Springville Corner | Securities | 11/28/2007 | 270,000 | - | - | - | 75,840 | 269,380 | 269,380 | 620 | 0% |
| p50235 | Mansell Place | FOR 1031 | 12/20/2007 | 400,000 | - | - | - | 400,000 | 400,000 | 400,000 | - | 0% |
| p50236 | Texarkana Plaza | FOR 1031 | 12/28/2007 | - | - | - | - | - | - | - | - | 100% |
| .p50238 | Landmark Towers | Securities | 12/28/2007 | 2,100,000 | - | - | - | - | 2,047,841 | 2,047,841 | 52,159 | 2% |
| p50239 | Houston Levee Galleria | Securities | 1/22/2008 | 950,000 | - | - | - | - | 915,495 | 915,495 | 34,505 | 4% |
| p50240 | Shops at Trammel | Securities | 1/25/2008 | 400,000 | - | - | - | - | 389,842 | 389,842 | 10,158 | 3% |
| p50241 | Southport Pavilion | FOR 1031 | 1/31/2008 | 247,500 | - | - | - | - | 247,500 | 247,500 | - | 0% |
| p50242 | Anna Plaza | FOR 1031 | 2/7/2008 | 750,000 | - | - | - | - | 744,996 | 744,996 | 5,004 | 1% |
| p50243 | Fairlane Green - Phase II | REIT | 2/14/2008 | 950,000 | - | - | - | - | 756,350 | 756,350 | 193,650 | 20% |
| p50244 | Pinehurst Square East | Securities | 3/25/2008 | 1,442,031 | - | - | - | - | 1,442,031 | 1,442,031 | - | 0% |
| p50245 | Pinehurst Square West | Securities | 3/25/2008 | 960,000 | - | - | - | - | 960,000 | 960,000 | - | 0% |
| p50246 | North Stafford Center | Securities | 4/15/2008 | 1,974,792 | - | - | - | - | 1,974,792 | 1,974,792 | - | 0% |
| p50247 | Hickory Plaza | FOR 1031 | 4/25/2008 | 200,000 | - | - | - | - | 200,000 | 200,000 | - | 0% |
| .p50248 | Wisdom Pointe | Securities | 4/30/2008 | 450,000 | - | - | - | - | 440,797 | 440,797 | 9,203 | 2% |
| p50249 | Peachtree Corners Pavilion | Securities | 4/30/2008 | 266,708 | - | - | - | - | 266,708 | 266,708 | - | 0% |
| p50251 | Oakwood Plaza | Securities | 5/27/2008 | 489,639 | - | - | - | - | 489,639 | 489,639 | - | 0% |
| p50252 | Florissant Market Place | Securities | 6/27/2008 | 307,780 | - | - | - | - | 298,960 | 298,960 | 8,820 | 3% |
| p50253 | Topsham Fair Mall | FOR 1031 | 7/14/2008 | 564,000 | - | - | - | - | 564,000 | 564,000 | - | 0% |
| p50254 | Portofino Tech Center | Securities | 8/5/2008 | 928,000 | - | - | - | - | 928,000 | 928,000 | - | 0% |
| p50255 | Belton Town Center - Ph II | Securities | 9/10/2008 | 18,811 | - | - | - | - | 18,811 | 18,811 | - | 0% |
| p40001 | Broadway Plaza S C | Ltd Partnership | 6/1/1986 | - | - | - | - | - | - | - | - | 100% |
| p40002 | Fairview Plaza West S C | Ltd Partnership | 3/1/1996 | - | - | - | - | - | - | - | - | 100% |
| p40004 | Plantation Shopping Center | Ltd Partnership | 11/1/1998 | - | - | - | - | - | - | - | - | 100% |
| p40007 | Triangle Square S C | Ltd Partnership | 3/1/2000 | - | - | - | - | - | - | - | - | 100% |
| p65001 | DEA Building (Peacock) | Proforma | 8/27/2004 | - | - | - | - | - | - | - | - | 100% |
| p65002 | Alworth (Pro Team) | Proforma | 10/25/2005 | 40,000 | - | 40,000 | 40,000 | 40,000 | 40,000 | 40,000 | - | 0% |
| p65003 | Northpointe Tower | Proforma | 4/24/2006 | 1,700,000 | - | - | 925,867 | 841,565 | 810,479 | 810,479 | 889,521 | 52% |
| p65004 | Volvo Parkway | Proforma | 5/12/2006 | 7,721 | - | - | 9,314 | 8,150 | 7,721 | 7,721 | - | 0% |
| p65006 | Camden Village Shopping Center | Proforma | 9/25/2006 | 63,354 | - | - | 543,508 | 63,354 | 63,354 | 63,354 | - | 0% |
| p65007 | East 37th Street (Vatterott II) | Proforma | 6/1/2006 | - | - | - | - | - | - | - | - | 100% |
| p65008 | Shops at East West Connector | Proforma | 12/15/2006 | 167,000 | - | - | - | 520,913 | 55,159 | 55,159 | 111,841 | 67% |
| p60001 | Fran Lane | FOR 1031 | 8/16/2005 | 25,000 | | 19,931 | 19,931 | 19,931 | 1,925 | 1,925 | 23,075 | 92% |
| p60002 | Riverbend Farms | FOR 1031 | 8/25/2005 | 10,000 | | 7,758 | 5,036 | 5,036 | - | - | 10,000 | 100% |
| lb1001 | Colony East | Securities | 4/4/2006 | 20,000 | | | 20,000 | 14,463 | 10,225 | 7,975 | 12,025 | 60% |
| lb1002 | Hillcrest South | Securities | 7/12/2006 | 54,000 | | | 54,000 | 44,847 | 39,886 | 35,369 | 18,631 | 35% |
| lb1003 | Gaylord North | FOR 1031 | 7/12/2006 | 30,000 | | | 30,000 | 23,297 | 20,781 | 18,716 | 11,284 | 38% |
| lb1004 | Horseshoe Bend Hills | Securities | 8/25/2005 | 34,000 | | | 34,000 | 31,171 | 26,785 | 26,785 | 7,215 | 21% |
| lb1005 | Carrolton East | Securities | 7/6/2006 | 159,825 | | | 159,825 | 152,735 | 105,100 | 105,100 | 54,725 | 34% |
| lb1006 | Windhaven West | FOR 1031 | 7/6/2006 | 150,000 | | | 150,000 | 141,967 | 106,278 | 103,061 | 46,939 | 31% |
| lb1007 | Chambers and Hess | Securities | 1/5/2007 | 101,000 | | | 101,000 | 97,746 | 67,239 | 64,964 | 36,036 | 36% |
| lb1008 | Snake River 370 | Securities | 12/12/2005 | 55,500 | | | | 55,500 | 47,007 | 41,781 | 13,719 | 25% |
| lb1012 | Kings Hwy Village North | Securities | 4/5/2007 | 152,085 | | | | 147,541 | 142,111 | 137,995 | 14,090 | 9% |
| lb1013 | Ridgeview Drive | Securities | 2/14/2007 | 35,480 | | | | 31,279 | 26,726 | 22,625 | 12,855 | 36% |
| lb1014 | Thornton & I-8 | Securities | 3/16/2007 | 54,619 | | | | 46,467 | 41,014 | 37,417 | 17,202 | 31% |
| lb1015 | Trekell | Securities & FOR 1031 | 4/9/2007 | 23,645 | | | | 17,903 | 11,124 | 7,638 | 16,007 | 68% |
| lb1016 | Charlotte Airport | Securities | 3/30/2007 | 120,000 | | | | 114,068 | 104,232 | 104,232 | 15,768 | 13% |
| lb1017 | North Jarrell | Securities | 5/22/2007 | 109,418 | | | | | | 105,090 | 4,328 | 4% |
| lb1018 | Loop 1604 | Securities | 6/1/2007 | 205,206 | | | | 202,128 | 172,872 | 168,684 | 36,522 | 18% |
| lb1022 | Hwy 60 | Securities | 12/28/2007 | 161,036 | | | | | 155,504 | 154,004 | 7,032 | 4% |
| lb1023 | Buckley & 120th | Securities | 7/18/2007 | 36,750 | | | | 34,338 | 30,885 | 30,472 | 6,278 | 17% |
| lb1025 | Hernando South I | Securities | 12/14/2007 | 387,800 | | | | | 384,800 | 380,101 | 7,699 | 2% |
| lb1026 | Hernando South II | Securities | 12/14/2007 | 232,680 | | | | | 229,680 | 225,310 | 7,370 | 3% |
| lb1027 | Kettering Road | Securities | 3/29/2007 | 276,995 | | | | 256,555 | 270,445 | 266,324 | 10,671 | 4% |
| lb1028 | New Hampstead | Securities | 12/21/2007 | 221,022 | | | | | 217,917 | 213,826 | 7,196 | 3% |
| lb1029 | Kings Hwy Village South | Securities | 4/5/2007 | 152,085 | | | | 147,602 | 142,171 | 138,056 | 14,029 | 9% |
| lb1030 | Copenhaver | Securities | 4/5/2007 | 184,930 | | | | 135,360 | 130,465 | 126,316 | 58,614 | 32% |
| lb1035 | Echo Ridge III | FOR 1031 | 6/1/2006 | 89,311 | | | | | 89,167 | 89,167 | 144 | 0% |
| lb1037 | Indiana & 86th | Securities | 8/8/2007 | 187,017 | | | | 184,491 | 159,845 | 155,740 | 31,277 | 17% |
| lb1038 | North Austin II | Securities | 10/16/2007 | 91,600 | | | | 91,600 | 82,671 | 81,983 | 9,617 | 10% |
| lb1039 | North Austin III | Securities | 10/16/2007 | 145,670 | | | | 145,670 | 137,552 | 137,552 | 8,118 | 6% |
| lb1040 | North Austin | Securities | 10/16/2007 | 85,460 | | | | 85,460 | 77,927 | 77,973 | 7,487 | 9% |
| lb1042 | McMillian Road | Securities | 12/5/2005 | 49,000 | | | | 49,000 | 39,983 | 39,983 | 9,017 | 18% |
| lb1043 | Chinden Road | Securities | 12/5/2005 | 49,000 | | | | 49,000 | 38,611 | 38,611 | 10,389 | 21% |
| lb1044 | Cavanaugh | Securities | 2/26/2007 | 138,200 | | | | | 138,096 | 138,096 | 104 | 0% |
| lb1045 | Ash Avenue | Securities | 12/28/2007 | 291,249 | | | | | 288,316 | 284,235 | 7,014 | 2% |
| lb1047 | Cavanaugh II | Securities | 2/26/2007 | 119,000 | | | | 119,000 | 118,817 | 118,817 | 183 | 0% |
| lb1048 | Cavanaugh IV | Securities | 2/26/2007 | 174,000 | | | | 174,000 | 173,729 | 173,729 | 271 | 0% |
| lb1049 | New Hampstead II | Securities | 12/21/2007 | 221,022 | | | | 221,022 | 217,732 | 213,651 | 7,371 | 3% |
| lb1050 | North Medford | Securities | 3/17/2008 | 478,430 | | | | | 475,320 | 471,239 | 7,191 | 2% |
| lb1052 | Boise Foothills | Securities | 10/3/2007 | 183,160 | | | | | 168,402 | 163,807 | 19,353 | 11% |
| lb1054 | Villago North | Securities | 3/14/2008 | 713,864 | | | | | 678,505 | 675,425 | 38,439 | 5% |
| lb1057 | Cavanaugh III | Securities | 2/26/2007 | 174,000 | | | | | 170,793 | 168,072 | 5,928 | 3% |
| lb1058 | Villago South | Securities | 3/14/2008 | 852,225 | | | | | 826,915 | 822,834 | 29,391 | 3% |
| lb1064 | Cavanaugh V | FOR 1031 | 2/26/2007 | 184,000 | | | | | 183,717 | 183,717 | 283 | 0% |
| lb1069 | Echo Ridge IV | FOR 1031 | 6/1/2006 | 12,223 | | | | | 12,219 | 12,219 | 4 | 0% |
| lb1073 | West Boise | Securities | 10/4/2007 | 177,750 | | | | | 173,824 | 173,824 | 3,926 | 2% |
| lb1074 | E-470 East | Securities | 8/18/2008 | 409,988 | | | | | 409,988 | 407,047 | 2,941 | 1% |
| lb1079 | Wingfield Village | Securities | 6/23/2008 | 190,878 | | | | | 170,168 | 167,487 | 23,391 | 12% |
| | TOTAL | | | 99,691,566 | - | 17,876,166 | 40,334,944 | 70,938,856 | 81,683,827 | 81,685,334 | 18,006,232 | 18% |

*Represents the date DBSI acquired the property, not the date the asset was sold to TICs.
**A/R may have been raised as part of the initial sale, or as a result of the refinance of the asset.

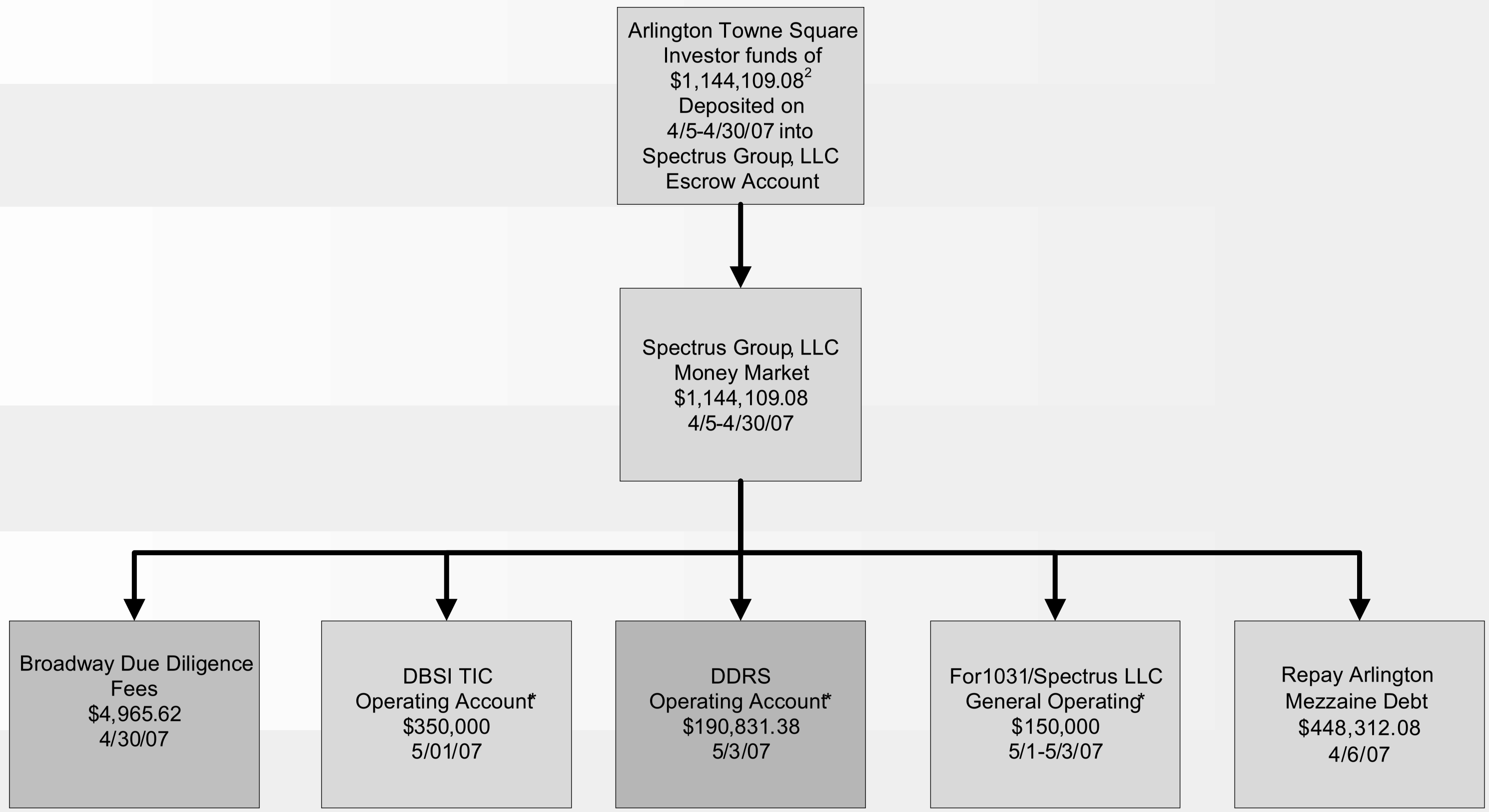
# Appendix 9

## Allison Pointe Office
## For 1031 Sponsored
## Improved Project
## Closed 6/19/06



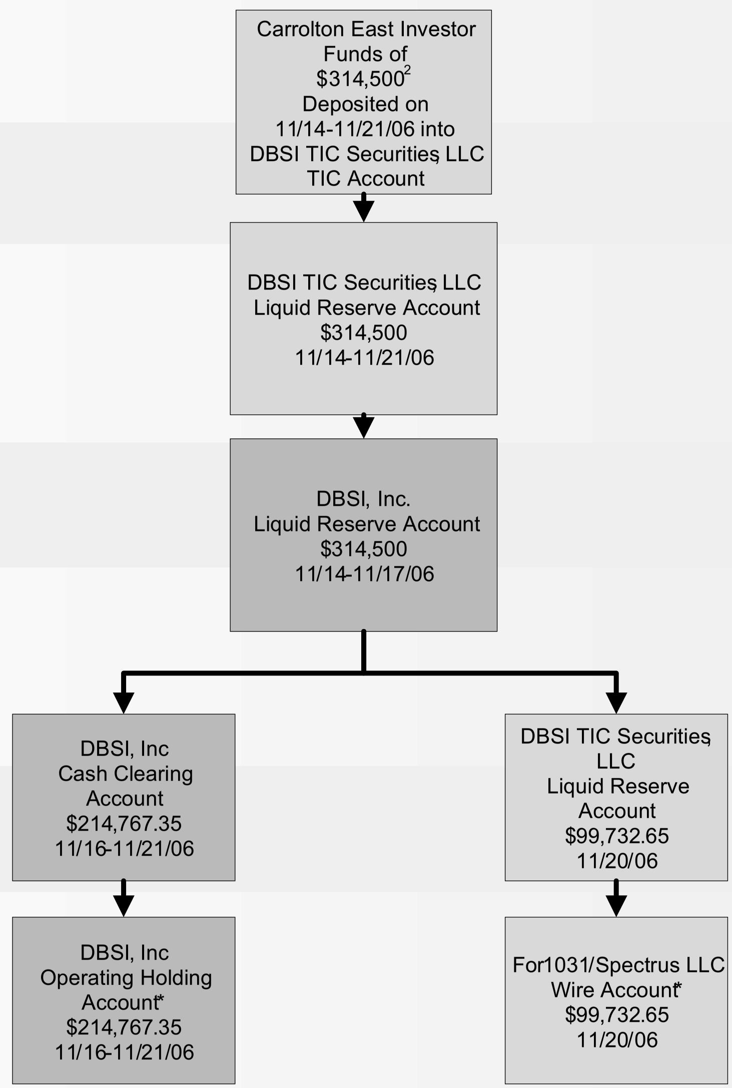

[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $3,316,501.52 of investor funds were traced and $265,320.12 of that amount was attributed to Accountable Reserves. Investor Funds for Allison Pointe totaled $33,852,000. Accountable Reserves of $2,730,000 were raised.
* Funds were transferred out of this account in small fractions to pay various expenses and/or to fund various accounts. Further cash flow tracing was not conducted

# Arlington Towne Square
# For 1031 Sponsored
# Improved Project
# Closed 3/22/2007



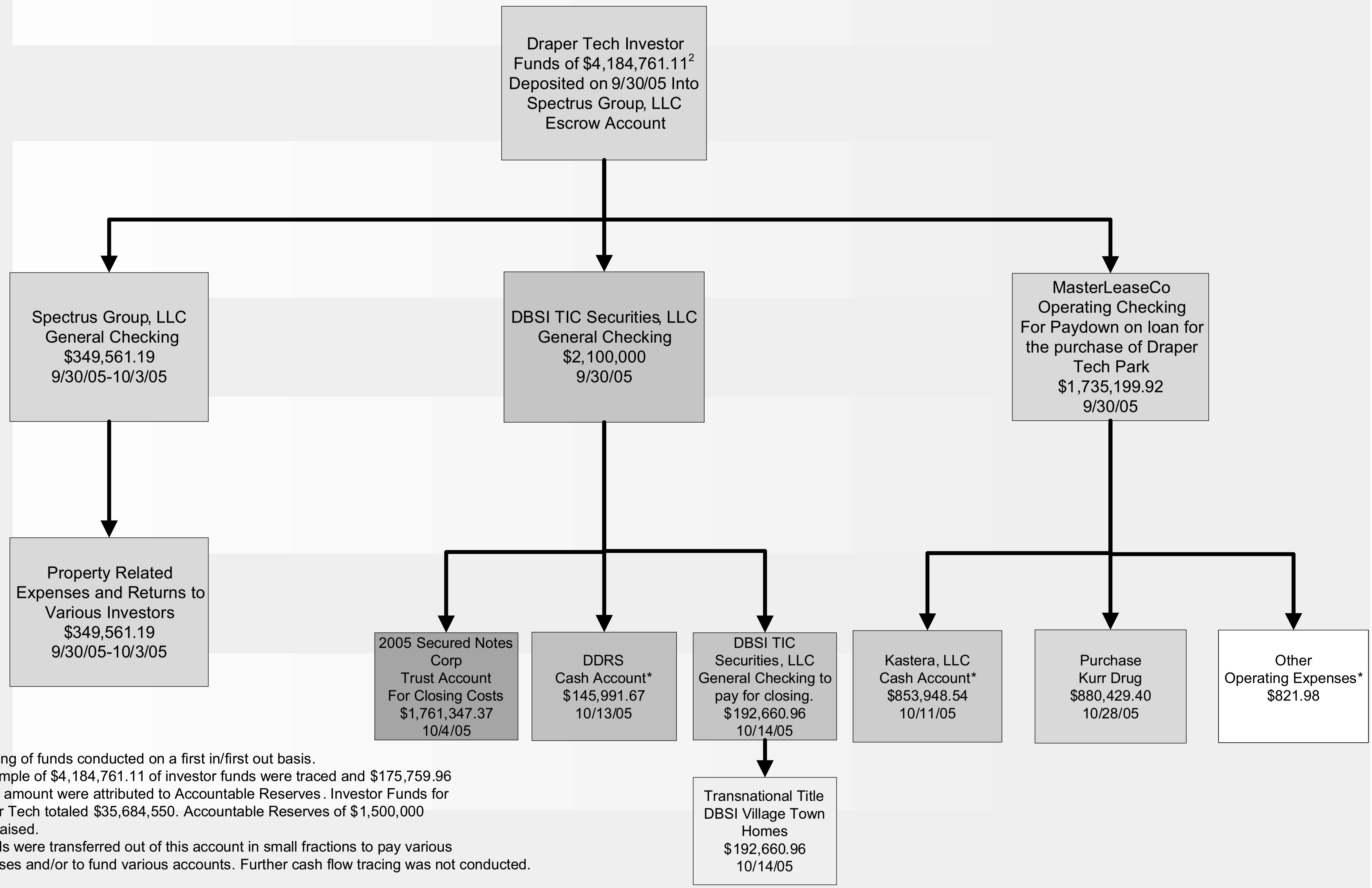

[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $1,144,109.08 of investor funds were traced and $61,781.89 of that amount was attributed to Accountable Reserves. Investor Funds for Arlington Square totaled $36,630,000. Accountable Reserves of $1,976,000 were raised.
* Funds were transferred out of this account in small fractions to pay various expenses and/or to fund various accounts. Further cash flow tracing was not conducted.

# Carrolton East
# DBSI Securities Sponsored
# Land Development Project
# Closed on 7/6/2006



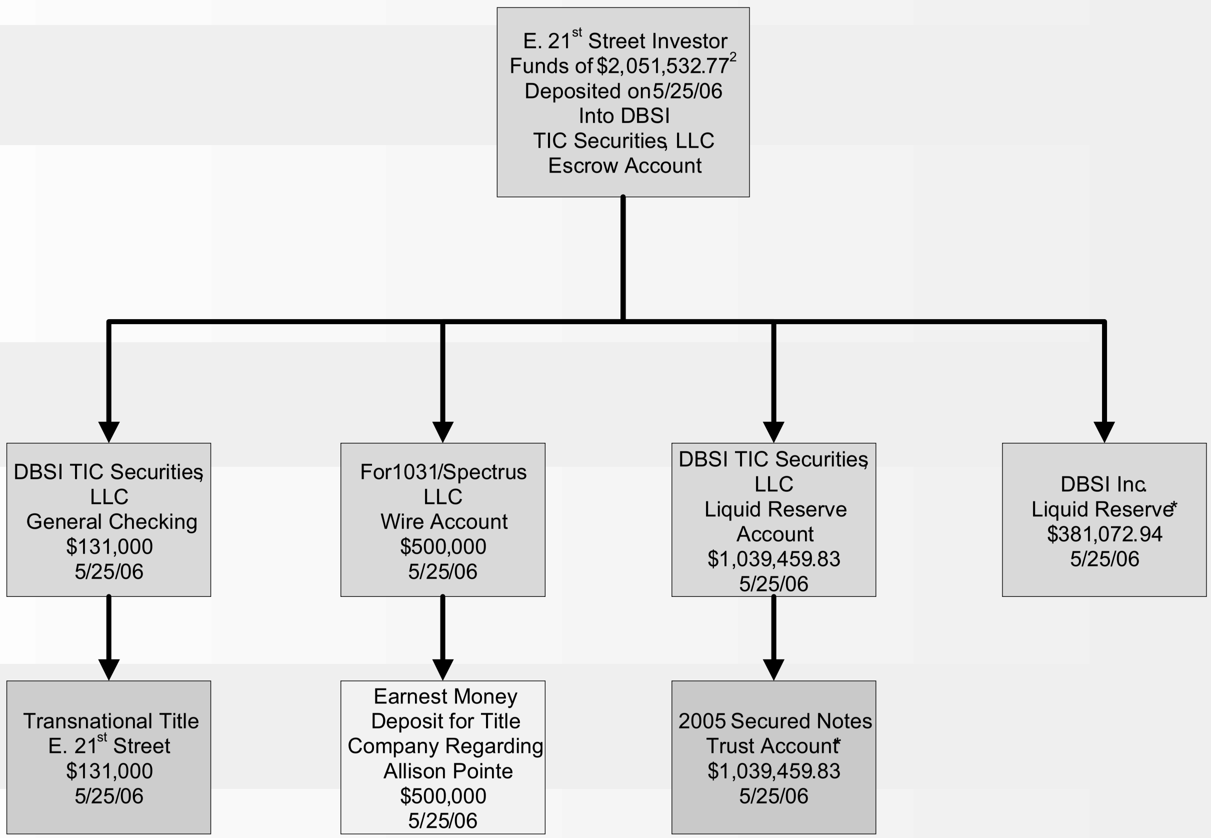

[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $314,500 of investor funds were traced and $17,314 of that amount was attributed to Accountable Reserves Investor Funds for Carrolton East totaled $2,903,076. Accountable Reserves of $159,825 were raised.
* Funds were transferred out of this account in small fractions to pay various expenses and/or to fund various accounts. Further cash flow tracing was not conducted.

# Draper Tech Park
# For1031 Sponsored
# Improved Project
# Closed 9/9/2005



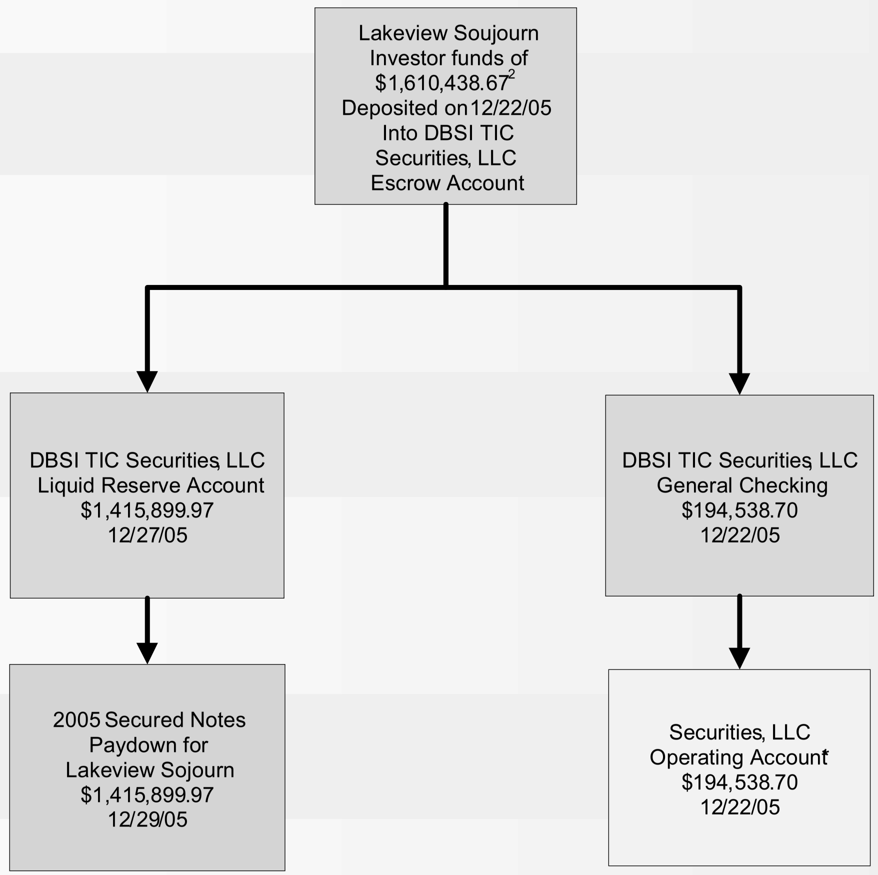

[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $4,184,761.11 of investor funds were traced and $175,759.96 of that amount were attributed to Accountable Reserves. Investor Funds for Draper Tech totaled $35,684,550. Accountable Reserves of $1,500,000 were raised.
* Funds were transferred out of this account in small fractions to pay various expenses and/or to fund various accounts. Further cash flow tracing was not conducted.

# East 21st St.
# DBSI Securities Sponsored Improved Project Closed 4/28/2006



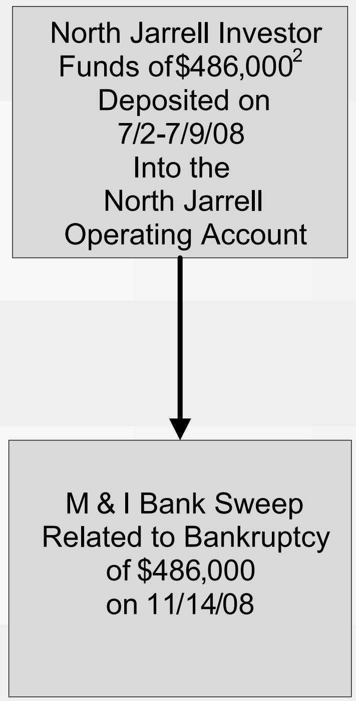

[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $2,051,532.77 of investor funds were traced and $164,122.61 of that amount was attributed to Accountable Reserves. Total Investor Funds for East 21st St. were $22,575,000. Accountable Reserves of $1,806,000 were raised.
* Funds were transferred out of this account in small fractions to pay various expenses and/or to fund various accounts. Further cash flow tracing was not conducted.

# Lakeview Soujourn
# DBSI Securities Sponsored
# Improved Project
# Closed 10/27/2005



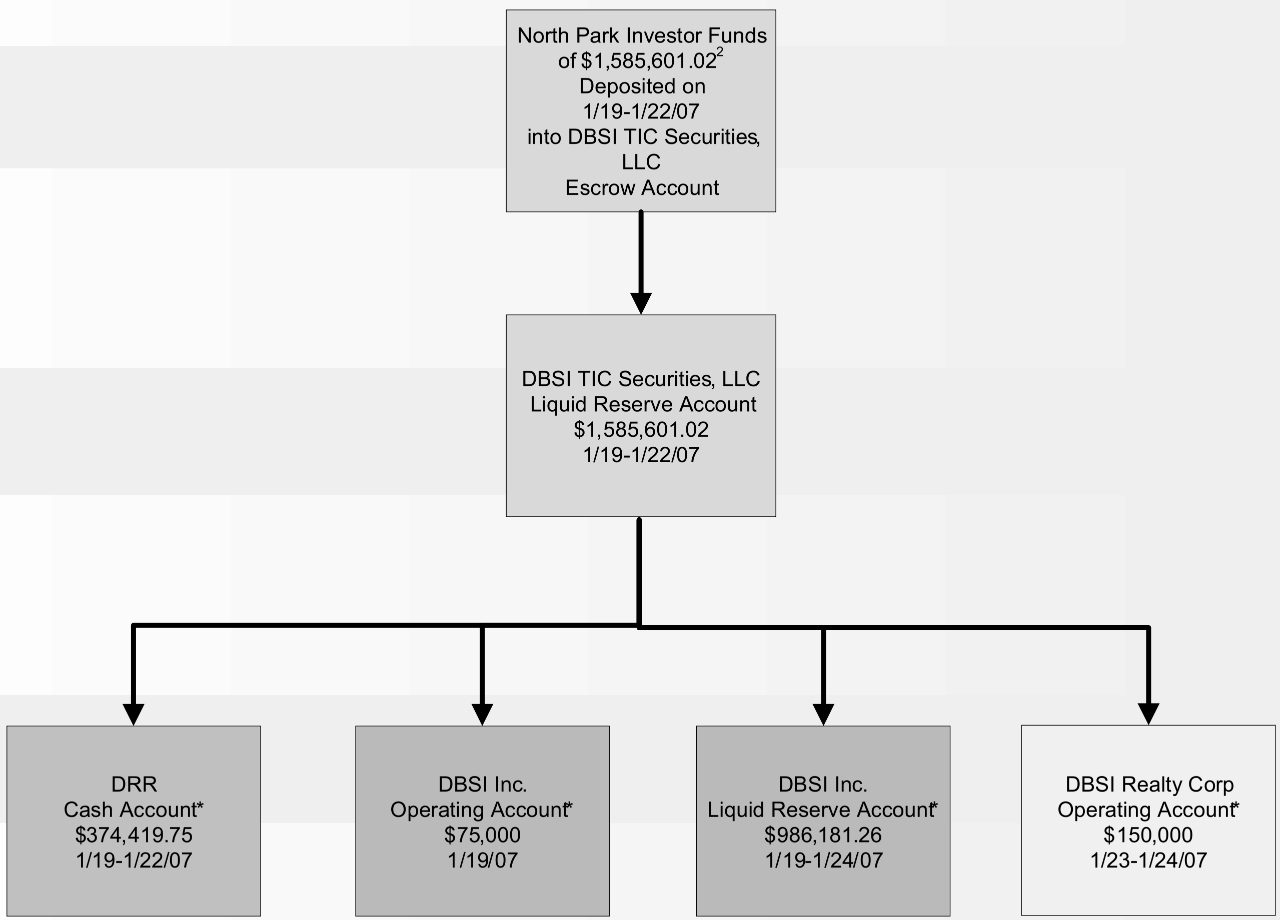

[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $1,610,438.67 of investor funds were traced and $130,445.52 of that amount was attributed to Accountable Reserves Total Investor Funds for Lakeview Soujourn were $30,125,000. Accountable Reserves of $2,450,000 were raised.
* Funds were transferred out of this account in small fractions to pay various expenses and/or to fund various accounts. Further cash flow tracing was not conducted.

**North Jarrell**
**Securities Sponsored Project**
**Land Development Fund**
**Closed on 5/22/07**



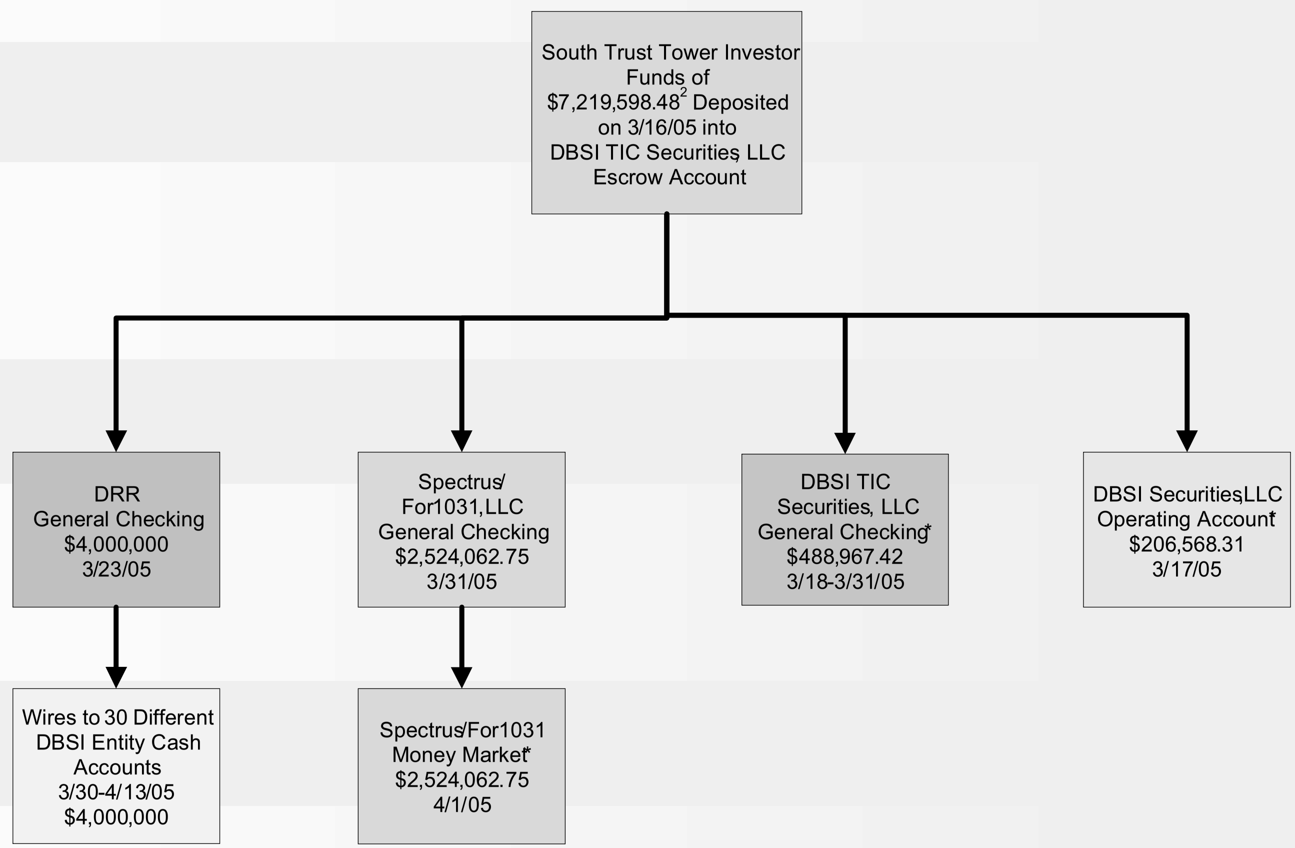

[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $486,000 of investor funds were traced and $4,371 of that amount were attributed to Accountable Reserves. Total Investor Funds for North Jarrell were $12,442,376. Accountable Reserves of $109,418 were raised.

# North Park Omaha Portfolio II
# DBSI Securities Sponsored
# Improved Project
# Closed on 1/19/2007



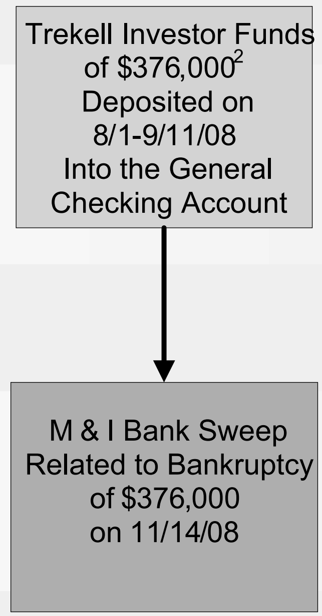

[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $1,585,601.02 of investor funds were traced and $104,649.66 of that amount was attributed to Accountable Reserves. Total Investor Funds for North Park II were $38,094,500. Accountable Reserves of $2,498,000 were raised.
* Funds were transferred out of this account in small fractions to pay various expenses and/or to fund various accounts. Further cash flow tracing was not conducted.

# South Trust Tower
# DBSI Securities Sponsored
# Improved Project
# Closed 1/3/2005



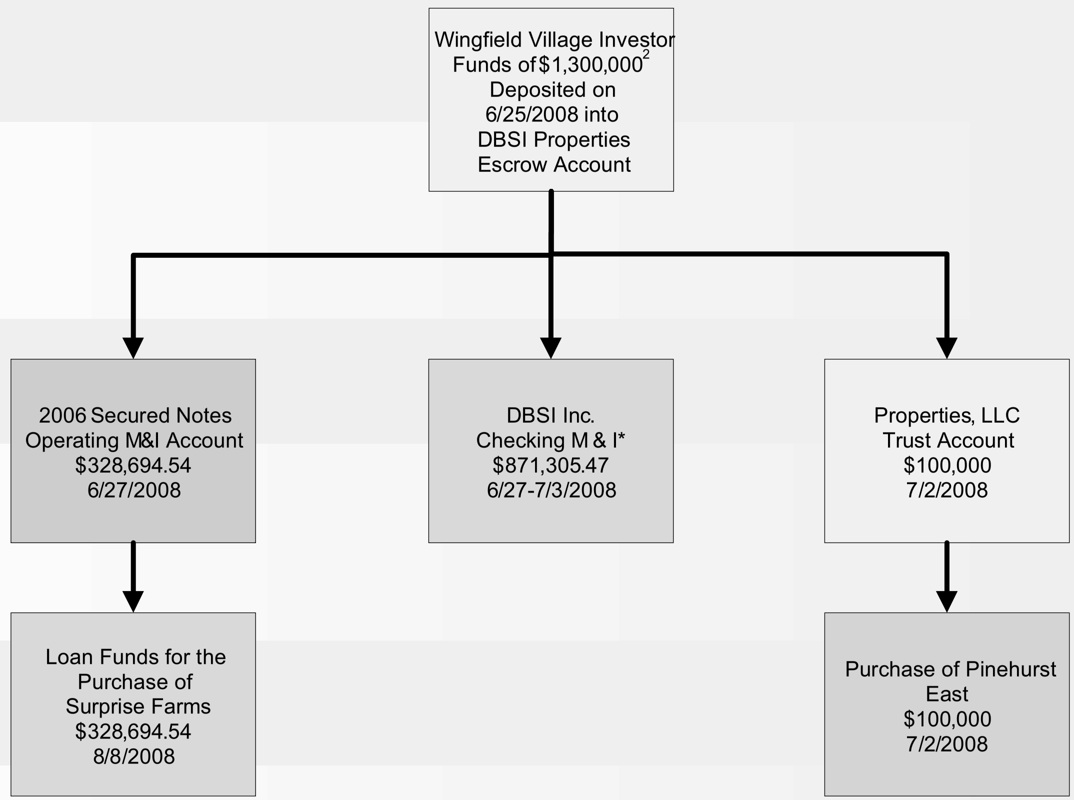

[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $7,219,598.48 of investor funds were traced and $64,976.85 of that amount was attributed to Accountable Reserves Total Investor Funds for South Trust Tower were $77,744,642 and Accountable Reserves of $7,000,000 were raised.
* Funds were transferred out of this account in small fractions to pay various expenses and/or to fund various accounts. Further cash flow tracing was not conducted.

## Trekell & I-8
## Securities/ For 1031 Sponsored Project
## Land Development Fund
## Closed 4/9/2008




[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $376,000 of investor funds were traced and $1,476.63 of that amount was attributed to Accountable Reserves. Total Investor Funds for Trekell were $6,020,779. Accountable Reserves of $23,644.80 were raised.

# Wingfield Village
# DBSI Securities, LLC Sponsored
# Improved Project
# Closed 6/23/2008




[1] Tracing of funds conducted on a first in/first out basis.
[2] A sample of $1,300,000 of investor funds were traced and $72,800 of that amount was attributed to Accountable Reserves. Total Investor Funds for Wingfield Village were $3,387,688. Accountable Reserves of $190,878 were collected.
* Funds were transferred out of this account in small fractions to pay various expenses and/or to fund various accounts. Further cash flow tracing was not conducted.