

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	§	Chapter 11
	§	
WORLDWIDE DIRECT, INC., <i>et al.</i>	§	Case No. 99-00108 (MFW) through
	§	Case No. 99-00127 (MFW)
Debtors.	§	(Jointly Administered)
	§	
	§	<u>Hearing Date:</u> November 19, 2002
	§	at 4:00 p.m. Eastern Prevailing Time
	§	<u>Objection Deadline:</u> November 14, 2002
	§	at 4:00 p.m. Eastern Prevailing Time

NOTICE OF MOTION

TO: (i) The United States Trustee; (ii) all parties entitled to receive notice pursuant to the Second Amended Consolidated Liquidating Chapter 11 Plan for SmarTalk TeleServices, Inc., and Affiliates, Proposed by the Debtors and by the Official Committee Of Unsecured Creditors; (iii) all known creditors and parties in interest.

Goldin Associates, L.L.C., in its capacity as Liquidating Trustee of the Worldwide Direct Liquidation Trust, as successor-in-interest to the Debtors¹ and the Official Committee of Unsecured Creditors, has filed the attached **LIQUIDATING TRUSTEE'S MOTION FOR ORDER: (I) AUTHORIZING AND APPROVING (A) SETTLEMENT AGREEMENT WITH CERTAIN FORMER OFFICERS AND DIRECTORS OF DEBTORS, AND (B) TAX ESTIMATION AGREEMENT REGARDING SECTION 501(b) TAX CLAIM AND TAX INDEMNIFICATION CLAIMS FILED BY CERTAIN FORMER OFFICERS AND DIRECTORS OF DEBTORS; AND (II) RELEASING AND BARRING CERTAIN CLAIMS AGAINST FORMER OFFICERS AND DIRECTORS, AND BRIEF IN SUPPORT THEREOF.**

You are required to file a response to the attached motion on or before **November 14, 2002 at 4:00 p.m. Eastern Prevailing Time** with the Clerk of the United States Bankruptcy Court for the District of Delaware, 5th Floor, Marine Midland Plaza, 824 Market Street, Wilmington, Delaware 19801.

¹ The Debtors are comprised of Worldwide Direct, Inc., SmarTalk TeleServices, Inc., SmarTalk USPS Sales Co., GTI TeleCom, Inc., a Florida corporation; USA Telecommunications Services, Inc., a North Carolina Corporation; SmarTel Communications, Inc., a Delaware corporation. SMTK NY-1 Corp., a New York corporation; Creative Network Marketing, Inc., a Delaware corporation; SmarTalk (Delaware) Corp., a Delaware corporation; SMTK Acquisition Corp., a Florida corporation; Conquest Telecommunication Services Corp., a Delaware corp.; SMTK Acquisition Corp. III, a Delaware corporation. SmarTalk Acquisition Corp., a Nevada corporation; Conquest Communications Corp., an Ohio corporation; Conquest Long Distance Corp., an Ohio corporation. Conquest Operator Services Corp., an Ohio corporation; SmarTel, Inc., a Massachusetts corporation; SmarTel International, Inc., a New York corporation; SmarTel Communications of Virginia, Inc., a Virginia corporation, and Conquest Operator Services, LP, a Delaware corporation

AUS	_____
CAF	_____
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COM	_____
CTR	_____
ECR	_____
GCL	_____
OPC	_____
MMS	_____
SEC	_____
OTH	_____

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At the same time, you must also serve a copy of the response upon movants' attorneys:

Steven K. Kortanek, Esq.
Klehr, Harrison, Harvey, Branzburg & Ellers, LLP
919 Market Street, Suite 1000
Wilmington, Delaware 19801
Telephone: (302) 426-1189
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and

Joseph J. Wielebinski, Esq.
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A HEARING ON THE MOTION WILL BE HELD ON NOVEMBER 19, 2002, AT 4:00 P.M. EASTERN PREVAILING TIME.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

/s/ Steven K. Kortanek
Steven K. Kortanek, Esq. (#3106)

Co-Counsel for Goldin Associates, L.L.C.,
Liquidating Trustee of the
Worldwide Direct Liquidation Trust

Dated: October 26, 2002

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	§	
	§	Case No. 99-00108 (MFW) through
WORLDWIDE DIRECT, INC., <u>et al.</u>	§	Case No. 99-00127 (MFW)
	§	(Jointly Administered)
Debtors.	§	Chapter 11
	§	
	§	Objection Deadline: November 14,
	§	2002 at 4:00 p.m. Eastern Prevailing
	§	Time
	§	Hearing Date: November 19, 2002, at
	§	4:00 p.m. Eastern Prevailing Time

LIQUIDATING TRUSTEE'S MOTION FOR ORDER: (I) AUTHORIZING
AND APPROVING (A) SETTLEMENT AGREEMENT WITH CERTAIN FORMER
OFFICERS AND DIRECTORS OF DEBTORS, AND (B) TAX ESTIMATION
AGREEMENT REGARDING SECTION 501(b) TAX CLAIM AND TAX
INDEMNIFICATION CLAIMS FILED BY CERTAIN FORMER OFFICERS AND
DIRECTORS OF DEBTORS; AND (II) RELEASING AND BARRING CERTAIN
CLAIMS AGAINST FORMER OFFICERS AND DIRECTORS, AND BRIEF IN
SUPPORT THEREOF

TO THE HONORABLE MARY F. WALRATH, UNITED STATES BANKRUPTCY JUDGE:

Goldin Associates, L.L.C., as Liquidating Trustee (the "Liquidating Trustee") for the Worldwide Direct Liquidation Trust (the "Liquidating Trust") submits this, its *Liquidating Trustee's Motion For Order: (I) Authorizing And Approving (A) Settlement Agreement With Certain Former Officers And Directors Of Debtors, And: (B) Tax Estimation Agreement Regarding Section 501(b) Tax Claim And Tax Indemnification Claims Filed By Certain Former Officers And Directors Of Debtors; And (II) Releasing And Barring Certain Claims Against Former Officers And Directors, And Brief In Support Thereof* (the "Motion"), and for the reasons set forth in this Motion, requests that this Court grant the relief requested herein, including among other things: (i) authorizing and approving the Settlement Agreement (the "Settlement Agreement") between the Liquidating Trustee and certain former officers and directors of the Debtors (collectively, the "D&Os"); (ii) authorizing and approving a Tax Estimation Agreement

(the "Tax Estimation Agreement"). permitting (among other things) the Liquidating Trustee to estimate the Liquidating Trust's reserve liability in a sum certain on disputed tax-related proofs of claim filed by certain of the D&Os, including a proof of claim filed under 11 U.S.C. § 501(b) on behalf of various taxing authorities; and (iii) barring the initiation of certain claims and enjoining certain non-governmental parties in interest from bringing claims against the D&Os. In support of the relief requested, of the Liquidating Trustee, would respectfully show this Court as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this Motion under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 147(b)(2)(A), (B), (C) and (O).

2. Venue of these bankruptcy cases and the Motion is proper before this Court in this district under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicate for the relief requested in the Motion is 11 U.S.C. § 105(a) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and under the terms of the Plan (defined below).

II. BACKGROUND

4. On January 19, 1999 (the "Petition Date"), Worldwide Direct, Inc. ("Worldwide"), SmarTalk TeleServices, Inc. ("SmarTalk") and SmarTalk's eighteen (18) direct and indirect subsidiaries (collectively, the "Debtors"), filed separate voluntary petitions for relief under

chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"). thereby initiating their bankruptcy cases before this Court.²

5. On February 2, 1999, the Official Committee of Unsecured Creditors (the "Committee") was duly appointed by the United States Trustee for the District of Delaware.

6. On July 11, 2000, this Court entered its *Order Granting Joint Motion of Debtors and Official Committee of Unsecured Creditors for Substantive Consolidation*, under which this Court ordered the substantive consolidation of the Debtors' respective estates (collectively, the "SmarTalk Estates").

7. On or about April 27, 2000, the Debtors and the Committee filed their *Disclosure Statement with Respect to the Second Amended Consolidated Liquidating Chapter 11 Plan for SmarTalk Teleservices, Inc., and Affiliates dated April 27, 2000. Proposed by the Debtors and by the Official Committee of Unsecured Creditors Committee* (respectively, the "Disclosure Statement" and the "Plan").

8. On June 7, 2001, this Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming Second Amended Consolidated Liquidating Chapter 11 Plan for SmarTalk TeleServices, Inc., and Affiliates, Proposed by the Debtors and by the Official Committee of Unsecured Creditors* (the "Confirmation Order"). under which this Court, among other things, confirmed the Plan. The Plan became effective in accordance with its terms on June 30, 2001 (the "Effective Date"). On the Effective Date, the Committee was dissolved and all of the

² The Debtors consist of SmarTalk USPS Sales Co., a Delaware corporation; GTI Telecom, Inc., a Florida Corporation; USA Telecommunications Services, Inc., a North Carolina corporation; SmarTel Communications, Inc., a Delaware corporation; SMTK NY-1 Corp., a New York corporation; Creative Network Marketing, Inc., a Delaware corporation; SmarTalk (Delaware) Corp., a Delaware corporation; SMTK Acquisition Corp., a Florida corporation; Conquest Telecommunications Services Corp., a Delaware corporation; SMTK Acquisition Corp. III, a Delaware corporation; SmarTalk Acquisition Corp., a Nevada corporation; Conquest Communications Corp., an Ohio corporation; Conquest Long Distance Corp., an Ohio corporation; Conquest Operator Services Corp., an Ohio corporation; SmarTel, Inc., a Massachusetts corporation; SmarTel International, Inc., a New York corporation; SmarTel Communications of Virginia, Inc., a Virginia corporation; and Conquest Operator Services, LP, a Delaware corporation

remaining assets of the SmarTalk Estates, including their interests in claims against the D&Os, were transferred to and vested in the Liquidating Trust. This Court appointed Goldin Associates, L.L.C. and Harrison J. Goldin as the Liquidating Trustee with respect to the Liquidating Trust. On July 12, 2001, by order of this Court, Goldin Associates, L.L.C. was appointed the sole Liquidating Trustee of the Liquidating Trust and has all of the powers and duties set forth in the Plan, the Confirmation Order and the Liquidating Trust.

9. Under the Plan, on the Effective Date: (a) the Liquidating Trust was created under and in accordance with the terms of the Liquidating Trust Agreement; and (b) the Liquidating Trust acquired title to all property of the SmarTalk Estates, including all claims and causes of action belonging to the Debtors. See Plan § 9.3.2.

10. Pursuant to the Plan, the Liquidating Trustee has the power and authority to compromise and resolve claims asserted by and against the SmarTalk Estates, subject to review and approval of the Liquidating Trust Board and, in matters involving controversies of more than \$5 million, with the approval of the Bankruptcy Court. See Plan § 9.3.6.1.

11. The Plan provides that that the Liquidating Trustee shall make interim distributions to the holders of Allowed Claims, assuming that certain preconditions have been met. See Plan §§ 8.3 and 9.3.6. The Plan also provides that the Liquidating Trustee shall reserve for Disputed Claims by establishing and funding the Disputed Claims Reserve. See Plan § 8.1. As to each Disputed Unsecured Claim, the Liquidating Trustee must fund the Disputed Claims Reserve with funds equal to the Pro Rata Share to be distributed as if such claim were an Allowed Claim in the lesser amount of either (i) the face amount of the Disputed Unsecured Claim or (ii) "the estimated amount of such Claim as determined by order of the Bankruptcy Court." See id.

12. The D&Os consist of: Robert H. Lorsch ("Lorsch"), Erich L. Spangenberg ("Spangenberg"), Glenn Andrew Folck ("Folck"), David A. Hamburger ("Hamburger"), Richard M. Teich ("Teich"), Robert M. Smith ("Smith"), Fred F. Fielding ("Fielding"), Jeff Lindauer ("Lindauer"), Ahmed O. Alfi ("Alfi"), Kenneth A. Viellieu ("Viellieu"), Wayne W. Wooddell ("Wooddell"), Jeff Scheinrock ("Scheinrock"), and Thaddeus Bereday ("Bereday"), who were each a former director and/or officer of Debtor SmarTalk. As described in further detail below, certain of the D&Os have filed proofs of claim in this Bankruptcy Case asserting claims for, among other things: (i) sums alleged to be due upon the termination of their employment by the Debtors as officers and employees; and (ii) indemnification against claims related to their position as officers or directors of the Debtors.

A. Trustee's Claims

13. Two (2) derivative actions have been filed against one or more of the D&Os: (i) Angard v. Lorsch, et al., Case No. BC200290, pending in the Superior Court for the State of California (the "California Derivative Action"); and (ii) Ernst v. Lorsch, et al., Case No. C2-98-1249, pending in the United States District Court for the Southern District of Ohio (the "Ohio Derivative Action") (collectively, the "Derivative Actions").⁵ The Liquidating Trustee, as representative of the Liquidating Trust, currently controls and has the right to prosecute the Derivative Actions and the claims asserted therein. The Liquidating Trustee also has the right to control any other derivative claims that may lie against any D&O relating to that D&O's acts and omissions as a director and/or officer of SmarTalk (collectively, with the claims pending in the Derivative Actions, the "Trustee's Claims").

⁵ The California Derivative Action has been dismissed without prejudice.

B. Coverage Action

14. Genesis Insurance Company ("Genesis"), Great American E&S Insurance Company ("Great American"), Zurich American Insurance Company ("Zurich"), and Executive Risk Indemnity, Inc. ("Executive Risk") (collectively, the "D&O Carriers") have issued certain insurance policies to Debtor SmarTalk including: (i) Genesis Directors and Officers Liability Insurance Policy No. YXB001317A for the policy period October 22, 1997 to October 22, 1998; (ii) Genesis Directors and Officers Liability Insurance Policy No. YXB001317B for the policy period October 22, 1998 to October 22, 1999; (iii) Genesis Directors and Officers Excess Liability Insurance Policy No. YXB001751 for the policy period June 24, 1998 to October 22, 1999; (iv) Genesis Directors and Officers Excess Liability Insurance Policy No. YXB001751A for the policy period October 22, 1998 to October 22, 1999; (v) Genesis Prospectus Liability Policy No. YXB001318 for the policy period October 22, 1996 to October 22, 1999; (vi) Great American Excess Directors and Officers Policy No. NXS2108115 for the policy period October 22, 1997 to October 22, 1998; (vii) Great American Excess Directors and Officers Policy No. NSX2108115 for the policy period October 22, 1998 to October 22, 1999; (viii) Great American Excess Prospectus Liability Policy NSX2108114 for the Policy Period October 22, 1996 to October 22, 1999; (ix) Zurich Excess Policy No. DOC229774301 for the policy period October 23, 1997 to October 23, 1998; (x) Zurich Excess Policy No. DOC229774302 for the policy period October 22, 1998 to October 22, 1999; and (xi) Zurich Prospectus Liability Policy No. DOC229774300 for the policy period October 22, 1996 to October 22, 1999; and (xii) Executive Risk Broad Form Directors and Officers Liability Policy No. 752-149361-98 for the policy period December 11, 1998 to October 22, 1999 (collectively, the "Policies").

15. The Liquidating Trustee, as representative of the Liquidating Trust, has brought a declaratory judgment action against the D&O Carriers in this Court, denominated as *Goldin Associates, L.L.C., Liquidating Trustee v. Genesis Insurance Company, et al.*, Adversary No. 01-4786 (the "Coverage Action"), alleging that the Trustee's Claims are covered claims under the Policies. In the Coverage Action, the D&O Carriers have filed a motion under Fed. R. Civ. P. 12(b)(6) and Fed. R. Bankr. P. 7012 to dismiss the Liquidating Trustee's complaint in the Coverage Action (the "Motion to Dismiss"). The Motion to Dismiss remains pending.

C. D&O Claims

16. Certain D&Os have filed one or more proofs of claim in the Bankruptcy Case which remain Disputed Claims (collectively, the "D&O Claims"), including but not necessarily limited to the claims identified and described on the attached Schedule I (the "D&O Claims Schedule"). The D&O Claims Schedule is incorporated as if fully set forth herein.

17. D&O Employment Claims. Certain of the D&O Claims arise under and involve employment agreements between the D&O claimant and SmarTalk and, in some instances, securities held by the D&O claimant in SmarTalk (collectively, the "D&O Employment Claims"). The D&O Employment Claims include the following:

Name	POC	Amount
Bereday	1162	\$450,000.00
Folck	705	\$4,552,962.87
Lindauer	151	\$2,114,000.00
Lorsch	739	\$1,312,600.89
Smith	1061	unknown
Spangenberg	706	\$934,012.73
Teich	1058	unknown

18. On or about June 29, 2002, the Liquidating Trustee filed an Objection to the D&O Employment Claims (the "D&O Employment Claims Objection") [D.E. 2782], asserting various

objections to the allowance as filed of the D&O Employment Claims, including that: (i) certain securities-based component claims of the D&O Employment Claims were subject to subordination under Bankruptcy Code § 510(b); and (ii) certain portions of alleged severance-pay component claims of the D&O Employment Claims were subject to disallowance under Bankruptcy Code § 502(b)(7). The D&O Employment Claims Objection remains pending.

19. D&O Indemnification Claims. Certain other D&O Claims arise under agreements providing for the indemnification of the D&O claimant against liability arising out of the D&O claimant's acts or omissions as a director or officer of SmarTalk (collectively, the "D&O Indemnification Claims"). The D&O Indemnification Claims include the following:

Name	POC	Amount
Alfi	584	unknown
Fielding	1080	unknown
Fielding	Not Designated	unknown
Lorsch	677	unknown
Lorsch	678	unknown
Lorsch	679	unknown
Smith	1062	unknown
Smith	1063	unknown
Spangenberg	673	unknown
Spangenberg	683	unknown
Spangenberg	684	unknown
Spangenberg	685	unknown
Teich	1050	unknown
Teich	1064	unknown
Viellieu	722	unknown

20. On or about July 3, 2000, the Committee filed its Original Complaint initiating an adversary proceeding in these bankruptcy cases against the D&Os that had filed D&O

Indemnification Claims, denominated as Adversary No. 00-691 (the "Indemnification Adversary Proceeding"). On or about July 17, 2000, the Committee filed its Second Amended Complaint in the Indemnification Adversary Proceeding, requesting that each of the D&O Indemnification Claims be disallowed under Bankruptcy Code § 502(e)(1)(B) or, alternatively, subordinated under Bankruptcy Code § 510(b). By operation of the Plan, the Liquidating Trustee succeeded to the Committee's claims in the Indemnification Adversary Proceeding. See Plan § 9.3.5.

D. The 510(b) Claim

21. In addition, Lorsch has filed a proof of claim under Bankruptcy Code § 501(b) on behalf of various federal, state, and local taxing authorities, referenced in the Official Claims Register as Claim No. 680 (the "501(b) Claim"). The 501(b) Claim is filed as a priority claim under Bankruptcy Code Section 507(a)(8) in an unknown amount.

22. By letter dated April 4, 2002, the Minnesota Department of Revenue (the "MN DOR") assessed Lorsch for state sales taxes alleged to be due from SmarTalk TeleServices on Account No. 2651964 in the amount of \$24,808.33 (the "MN Tax Assessment"). The MN DOR itself failed to timely file a proof of claim against the Debtors. Based upon its investigation of the MN Tax Assessment, the Liquidating Trustee has determined that the taxes asserted in the MN Tax Assessment are well-founded.

23. Except for the MN Tax Assessment, the Liquidating Trustee is unaware of any well-founded tax claim liability that: (i) has been the subject of an assessment made against any D&O; and (ii) has not been asserted against the Debtors in the form of a timely-filed proof of claim.

24. On or about June 30, 2002, the Liquidating Trustee filed its Objection to the 501(b) Claim (the "501(b) Claim Objection") [D.E. 2790]. The Liquidating Trustee asserted (among other things) that the 501(b) Claim should be disallowed (with the possible exception of

the claim relating to the MN Tax Assessment), on the grounds that: (i) any actual liabilities owing to the federal, state or local taxing authorities referenced in the claim has either been satisfied or was being adjudicated as part of claims filed by those taxing authorities; and (ii) the 501(b) Claim did not provide any documentation substantiating the claimed liability. The 501(b) Claim Objection remains pending.

III. RELIEF REQUESTED

25. The SmarTalk Estates, the Liquidating Trustee, the Liquidating Trust, the D&Os and the D&O Carriers wish to resolve in whole or in part the Trustee's Claims, the D&O Claims, the 510(b) Claim, and matters related to those claims. To accomplish this result, the parties have negotiated the material terms of settlement and compromise that are set forth in: (i) the Settlement Agreement, a true and correct copy of which is attached hereto as Exhibit "A"; and (ii) the Tax Estimation Agreement, a true and correct copy of which is attached hereto as Exhibit "B". (The Settlement Agreement and the Tax Estimation Agreement are collectively referred to as the "Agreements".)

26. The Settlement Agreement includes, in summary form, the following material terms and conditions:⁴

- a. **Payment.** The D&O Carriers, on behalf of the D&Os, shall pay to the Liquidating Trustee, on behalf of the Liquidating Trust, the sum of \$11,250,000 (the "Settlement Amount").

⁴ The terms and conditions of the Settlement Agreement set forth herein are provided in summary form. The entirety of those provisions, as well as other provisions that may be material conditions to the agreement are set forth in the draft Settlement Agreement attached hereto as Exhibit "A". To the extent that there is a discrepancy between any of the terms set forth summarily herein and the terms set forth in the Settlement Agreement, the terms as set forth in the Settlement Agreement shall control. Accordingly, all parties are directed to review the Settlement Agreement in full. Also, certain specific nonmaterial terms of the Agreements relating to the mechanism or procedure for implementing provisions of the Agreements are still under negotiation and subject to modification as currently set forth in the versions of those documents that are attached hereto. By way of example, the parties have agreed that any tax liabilities arising on interest income generated by escrowed settlement funds should be paid out of such funds or by the party that receives that interest income. The parties are still seeking to determine the most efficient and preferable manner of addressing that tax issue.

- b. **Waiver of Subrogation.** The D&O Carriers agree to waive and release any and all rights of subrogation that they have or may have, contractually or pursuant to common law or state or federal statute, in connection with the payment of the Settlement Amount.
- c. **Release and Dismissal of Claims by the D&Os.** The D&Os will withdraw and dismiss the D&O Claims, including the D&O Employment Claims, but *not* including the 501(b) Claim and the D&O Indemnification Claims to the extent that such claims are for indemnification against tax liabilities. The release also does not include any release of the following types of claims: (a) the D&O Indemnification Claim asserted by Viellieu for liability arising from any claim or action asserted against Viellieu as an officer, partner, principal, employee or representative of Donaldson Lufkin Jenrette Securities Corporation ("DLJ"); (b) the D&O Employment Claim filed by Wooddell dated as of November 19, 2001 [Claim No. 485], as modified and allowed pursuant to settlement agreement between Wooddell and the Liquidating Trustee;⁵ and (c) any rights to indemnification arising from Bereday's service as President of the SmarTalk Bankruptcy Estates from and after January 19, 1999.
- d. **Release by the Liquidating Trust.** The SmarTalk Estates, the Liquidating Trustee and the Liquidating Trust will release, acquit, and forever discharge the D&Os, all person insured under the Policies and the D&O Carriers, from any claim against the Policies, subject to certain enumerated exceptions.
- e. **Liquidating Trustee/Liquidating Trust Warranty.** The SmarTalk Estates, the Liquidating Trust and the Liquidating Trustee represent and warrant that there has been no assignment, subrogation, or other transfer of their interests in the Policies or any of the released claims. The SmarTalk Estates and the Liquidating Trust shall indemnify and hold harmless the D&O Carriers from any claim arising out of a breach by the SmarTalk Estates, the Liquidating Trustee, and the Liquidating Trust of their warranties that there has been no assignment or other transfer of such released claims.
- f. **Dismissal of Claims.** The Liquidating Trustee and the Liquidating Trust will voluntarily dismiss the Ohio Derivative Action and the Coverage Action, with prejudice. The SmarTalk Estates, the Liquidating Trustee and the Liquidating Trust also agree not to refile or otherwise pursue the California Derivative Action, which has already been dismissed without prejudice.
- g. **Releases by the Holders of Claims/Injunction.** Except as otherwise specifically provided in the Plan, all Holders of Claims (defined in the Settlement Agreement as persons that have filed proofs of claim and/or had claims scheduled in the Bankruptcy Case) shall be deemed to release the D&Os, the D&O Carriers, and

⁵ Under the Settlement Agreement between the Liquidating Trustee and Wooddell resolving Wooddell's D&O Employment Claim, that claim was allowed as a Class 1 Priority Claim in the amount of \$22,500.00 and a Class 6 Unsecured Claim in the amount of \$127,500.00.

any person claimed to be liable derivatively through the D&Os or the D&O Carriers of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, promises, damages, claims and liabilities arising from a claim or based upon the same subject matter as a claim against or equity interest in the Debtors existing on the Petition Date or which could arise based on any act, fact, transaction, cause, matter or thing which occurred prior to the Petition Date. However, the release of claims by Holders of Claims shall not: (a) limit the rights of any Holder of Claims to continue litigating any pending lawsuits, including but not limited to the lawsuits captioned: (i) In re SmarTalk Teleservices, Inc. Sec. Litig., Case No. C2-98-84 (including the complaints consolidated in that matter), pending in the United States District Court for the Southern District of Ohio; and (ii) Bruno v. SmarTalk Teleservices, Inc., Case No. BC194788, pending in the California Superior Court, Los Angeles County; (b) limit the rights of any Holder of Claims to assert that the actions of any of the Released Parties (defined in the Settlement Agreement as the D&Os, the D&O Carriers, and any person claimed to be liable derivatively through the D&Os or the D&O Carriers) should reduce the amount of any judgment against the Holder of Claims under the doctrine of proportionate liability or similar rights, laws or doctrines; (c) subject to the discharge granted under Section 524 and 1141 of the Bankruptcy Code, preclude police, federal tax or regulatory agencies from fulfilling their statutory duties; or (d) bar the claims, if any, of the United States or any other sovereign or governmental entity as against the D&Os, the D&O Carriers, and any person claimed to be liable derivatively through the D&Os or the D&O Carriers.

Holders of Claims shall be permanently enjoined from, and restrained against, commencing or continuing in any court or administrative court or administrative tribunal or body, any suit, action or other proceeding, or otherwise asserting any claim or interest, seeking to hold any of the D&Os, the D&O Carriers, and any person claimed to be liable derivatively through the D&Os or the D&O Carriers liable for any claim, obligation, right, interest, debt or liability that has been discharged or released pursuant to this Agreement. The satisfaction, release and discharge granted pursuant to the Settlement Agreement shall also act as an injunction against any person commencing or continuing any action, employment of process or act to collect, offset or recovery any claim or cause of action, satisfied, released or discharged under the Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by Sections 524 and 1141 thereof. However, nothing in this Agreement shall: (a) restrain and enjoin any Holder of Claims from continuing to litigate any pending lawsuits, including but not limited to the lawsuits captioned: (i) In re SmarTalk Teleservices, Inc. Sec. Litig., Case No. C2-98-84 (including the complaints consolidated in that matter), pending in the United States District Court for the Southern District of Ohio; and (ii) Bruno v. SmarTalk Teleservices, Inc., Case No. BC194788, pending in the California Superior Court, Los Angeles County; (b) limit the rights of any Holder of Claims to assert that the actions of any of the Released Parties should reduce the amount of any judgment against the Holder of Claims under the doctrine of proportionate liability or similar rights, laws or doctrines; (c) subject to the discharge granted

under Section 524 and 1141 of the Bankruptcy Code, preclude police, federal tax or regulatory agencies from fulfilling their statutory duties; or (d) bar the claims, if any, of the United States or any other sovereign or governmental entity as against the Released Parties.

- h. **Cooperation.** The D&Os (except Viellieu) agree to meet with the Liquidating Trustee and its counsel at reasonable times and to provide them with true and correct information, any requested documents and full cooperation in providing truthful and accurate information and testimony respecting the facts surrounding the transactions and events involved in litigation in which the Trustee may be or become a party, and will make themselves available for depositions or hearings or trial testimony at the request of the Liquidating Trustee's counsel, and testify factually, truthfully and accurately as to information about which they have personal knowledge. These D&Os agree to execute a common or joint interest agreement with the Liquidating Trustee that preserves the confidential and privileged nature of any discussions among them regarding any claim or litigated matter to the fullest extent allowed by law. Any travel and other expenses incurred by these D&Os pursuant to this paragraph will be paid by the Liquidating Trustee. Nothing in this paragraph shall require the disclosure of information protected by the attorney-client privilege or the attorney work product doctrine.
- i. **Tolling Agreement Extended.** The Tolling Agreement, currently in place among the Liquidating Trustee, the Liquidating Trust, and the D&Os, is extended until the date on which this Court approves the settlement contemplated by the Settlement Agreement and/or subsequent amendments to the Settlement Agreement. If this Court rejects the Settlement Agreement, then the Tolling Agreement is further extended until fifteen (15) days after the D&Os give written notice to counsel for the Liquidating Trustee of their decision to terminate the Tolling Agreement.

27. In connection with the claims to be compromised under the Settlement Agreement, the D&Os and the Liquidating Trustee desire to enter into the Tax Estimation Agreement to establish the terms under which the Liquidating Trustee shall be permitted to maintain reserves as required under the Plan on account of: (i) the D&O Indemnification Claims (to the extent that such claims pertain to the Debtors' alleged obligation to indemnify any D&O from such D&O's obligation as a responsible person for the Debtors' tax obligations); and (ii) the 501(b) Claim.

28. The Tax Estimation Agreement includes, in summary form, the following terms and conditions.⁶

- a. **Estimation of Tax Claims.** Commencing without delay upon the approval of this Agreement by the Bankruptcy Court, the Liquidating Trustee shall estimate the Trust's liability on account of all of the Tax Claims in the total amount of FIFTY THOUSAND DOLLARS (\$50,000) and shall maintain a minimum of such amount in reserve on account of the Tax Claims (as that term is defined in the Tax Estimation Agreement) for the purposes of making future distributions on such claims under the Plan. The Liquidating Trustee, at its sole discretion, may determine to maintain reserves on account of the Tax Claims in excess of the Estimated Tax Liability. To the extent that any of the Tax Claims become "Allowed Claims", as that term is defined under the Plan, the Liquidating Trustee shall separately reserve and make distributions for such Tax Claim as provided under the Plan. The Liquidating Trustee's obligation to reserve on account of all Tax Claims that are Disputed Claims shall terminate the earlier of: (i) the entry of a final order by the Bankruptcy Court adjudicating all of the Tax Claims (including the adjudication of the 501(b) Claim as to all taxing authorities identified in that claim), such that (a) upon entry of the final order, all of the Tax Claims will have been allowed, disallowed or otherwise fully resolved and (b) if any Tax Claim is determined to be an Allowed Claim, the cash reserves maintained on account of such allowed Tax Claim(s) exceed the amount that the Trustee would otherwise be required to maintain under the terms of the Plan; or (ii) the entry of an order of the Bankruptcy Court closing the Bankruptcy Case or otherwise determining that the Trust has been fully administered.
- b. **Partial Allowance of the 501(b) Claim:** The 501(b) Claim shall be allowed in the amount claimed by the MN DOR in the MN Tax Assessment, plus interest and penalties as permitted under applicable State law. The allowance of the 501(b) Claim for the taxes described in the MN Tax Assessment shall be without prejudice to: (i) the allowance of the 501(b) Claim as to other alleged unsatisfied tax obligations of the Debtors, if any, related to the Debtors' business operations; and (ii) all objections, counterclaims and other actions maintainable by the Liquidating Trustee regarding any alleged unsatisfied tax obligations of the Debtors.

29. Pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 9019(a), the Liquidating Trustee requests that this Court enter the proposed form of order attached hereto

⁶ The terms and conditions of the Tax Estimation Agreement set forth herein are provided in summary form. The entirety of those provisions, as well as other provisions that may be material conditions to the agreement, are set forth in the draft Tax Estimation Agreement attached hereto as Exhibit "B". To the extent that there is a discrepancy between any of the terms set forth summarily herein and the terms set forth in the Tax Estimation Agreement, the terms as set forth in the Tax Estimation Agreement shall control. Accordingly, all parties are directed to review the Tax Estimation Agreement in full.

generally providing that: (i) the Agreements are approved; (ii) the Liquidating Trustee is authorized to enter into the Agreements; (iii) certain persons holding claims and interests against the Debtors release and be restrained, barred and enjoined from prosecuting certain claims against the D&Os, the D&O Carriers and related parties as to their claims against the Debtors or otherwise on account of the Debtors' pre-petition operations, as specified and provided under the Settlement Agreement.

IV. LEGAL ARGUMENT

A. Settlement and Compromise Standards

30. Bankruptcy Rule 9019(a) provides, in pertinent part: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Bankruptcy Rule 9019(a). Section 105(a) of the Bankruptcy Code further provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

31. The Liquidating Trustee submits that the Agreements benefit the Liquidating Trust and its beneficiaries and impose no prejudice with respect to either. See In re UPI, No. 91 B 13955 (FGC), 1992 U.S. Bankr. LEXIS 842. at p. 3 (Bankr. S.D.N.Y., May 18, 1992). Settlements and compromises, such as those in the Agreements, are favored in bankruptcy. See In re Lehigh Valley Professional Sports Clubs, Inc., 2000 Bankr. LEXIS 520 (Bankr. E.D. Pa., May 5, 2000).

[i]t is well established that compromises are favored in bankruptcy in order to minimize the cost of litigation to the estate and expedite its administration, and that the approval of a compromise is within the sound discretion of the bankruptcy judge who must assess and balance the value of the claim being compromised against the value to the estate of the acceptance of the compromise proposal.

In re Lehigh Valley Professional Sports Clubs, Inc., 2000 Bankr. LEXIS 520 at pp. 17-18.

32. It is within a bankruptcy court's discretion to determine the reasonableness of a proposed settlement. See In re Lehigh Valley Professional Sports Clubs, Inc., 2000 Bankr. LEXIS 520 at pp. 17-19. In re Ashford Hotels, Ltd., 226 B.R. 797 (Bankr. S.D.N.Y. 1998), affirmed, modified and appeal dismissed, 234 B.R. 629 (S.D.N.Y. 1999); In re Best Products Co. Inc., 168 B.R. 35 (Bankr. S.D.N.Y. 1994), appeal dismissed, 177 B.R. 791 (S.D.N.Y. 1995), affirmed, 68 F.3d 26 (2nd Cir. 1995). "[I]n applying its discretion, the court . . . must act with regard to what is right and equitable under the circumstances and the law, and dictated by the reason and conscience of the judge to a just result." In re Ashford Hotels, Ltd., 226 B.R. at 802. The Agreements are the product of arms'-length negotiations among the parties, are fair, equitable, and in the best interest of the SmarTalk Estates and their creditors. Accordingly, the Liquidating Trustee submits that the Agreements should be approved.

33. The standard by which courts evaluate a proposed compromise and settlement is well established and realized in the Agreements. In addition to the specific terms and conditions of the settlement, and the fairness thereof, courts consider the following four factors in assessing a settlement:

- a. the probability of success in the litigation;
- b. the difficulty in collecting any judgment which may be obtained;
- c. the complexity of the litigation involved and the expense, inconvenience and delay necessarily attendant to it; and
- d. the interest of creditors and stockholders with a proper deference to their reasonable views of the settlement.

See, e.g., Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968); In re Marvel Entertainment, 222 B.R. 243, 249 (D.Del. 1998); In re Ashford Hotels, Ltd., 226 B.R. at 802. In re Best Products Co., Inc., 168 B.R. 35. In addition to the above-listed factors, courts "must also

consider all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise." In re Marvel Entertainment, 222 B.R. at 249.

34. The standard for assessing settlement and compromise agreements essentially balances the probability of litigation success and potential litigation costs against the costs and benefits of a proposed settlement. In applying that standard, a bankruptcy court need not conduct an independent investigation prior to determining the reasonableness of a settlement. In re Lehigh Valley Professional Sports Clubs, Inc., 2000 Bankr. LEXIS 520 at p. 18. ("The court's role is not to conduct a trial or mini-trial or to decide the merits of individual issues. Rather, it is to determine whether the settlement as a whole is fair and reasonable."). A bankruptcy court should canvass the issues before it, and thereupon adjudge whether a proposed settlement falls below the lowest point in the range of reasonableness. See id. ("Only if the court concludes that the settlement falls below the lowest point in the range of reasonableness should the compromise be rejected.").

35. The Liquidating Trustee has determined that the value of the cash, the releases of claims against the Liquidation Trust and the other consideration being tendered by the D&Os and the D&O Carriers constitute substantial value for the release of the Trustee's Claims and the other consideration being given by the Trustee under the Agreements. Thus, the Liquidating Trustee submits that the Court should, after applying the four-part settlement evaluation standard to the facts and circumstances in this Bankruptcy Case, grant the relief requested and authorize the Liquidating Trustee to enter into and implement the Settlement Agreement and the Tax Estimation Agreement.

36. Consideration. The consideration to be paid under the Settlement Agreement – \$11.25 million – represents material consideration for the claims to be released against the D&Os. Moreover, the Settlement Agreement provides for the release of the D&O Employment

Claims, with an aggregate face value of over \$450,000 in alleged priority claims and \$8 million in alleged general unsecured claims. Additionally, the Settlement Agreement provides that the D&Os shall release the D&O Indemnification Claims (except to the extent that such claims arise out of the Debtors' tax obligations). Although the Liquidating Trustee has objected to the allowance of the D&O Indemnification Claims, those claims may result in some liability to the Liquidating Trust and, at a minimum, will require the Liquidating Trustee to expend additional resources in the litigation of its objections to those claims.

37. Additionally, the Settlement Agreement provides that the D&Os (with the exception of Viellieu) shall agree to cooperate in making themselves available and shall testify truthfully in connection with currently pending litigation being prosecuted by the Liquidating Trustee against PricewaterhouseCoopers, LLC, the Debtors' former independent auditor, and Donaldson Lufkin Jenrette Securities Corporation, its former financial advisor. The Liquidating Trustee believes that obtaining that cooperation is a material benefit in prosecuting claims against those entities.

38. Likelihood of Success on the Merits. There is risk that the Liquidating Trustee would not prevail on some or all of the Trustee's Claims or that, if the Liquidating Trustee were to prevail on those claims, that the aggregate sum of the damages assessed against the D&Os will not exceed the value of the monetary consideration and release of claims and other consideration been tendered to the Liquidating Trustee under the Settlement Agreement. Among other things, the Liquidating Trustee believes that the most substantial contributing factors leading to the Debtors' financial insolvency resulted from the negligence, errors and omissions of the Debtors' independent auditors, PricewaterhouseCoopers, LLC, and its financial advisors, Donaldson, Lufkin & Jenrette Securities Corporation, in the execution of each firm's professional obligations to the Debtors.

39. Moreover, even if the Liquidating Trustee were successful in obtaining a significant judgment against any of the D&Os on any of the Trustee's Claims, the collection in full on such judgment or judgments is not assured. Among other things, the D&O Carriers have reserved their rights as to whether they are liable on the Trustee's Claims. If the D&O Carriers were to prevail in the Coverage Action, the Liquidating Trustee would have to recover directly from any individual D&Os found liable on the Trustee's Claims. The Liquidating Trustee believes that collecting on any judgments against individual D&Os may prove problematic.

40. Costs of Litigation. The prosecution of the Trustee's Claims to judgment and litigation of the issues raised in the Coverage Action, as well as the continued prosecution of the D&O Employment Claims Objection, are likely to require the Liquidating Trustee to expend significant sums for legal and other professionals, including consulting and expert witnesses concerning issues of liability and damages. The sums which would have to be expended to pursue claims against the D&Os are difficult to estimate, but are believed to be no less than \$500,000.00 and could exceed \$1,000,000.00. Nevertheless, there is no assurance that the Liquidating Trustee would obtain a more favorable result by foregoing resolving the claims at issue as provided in the Settlement Agreement.

41. The costs to the D&Os and the D&O Carriers is also, in some respects, borne by the Liquidating Trustee insofar as defense costs tendered under the Policies for the benefit of the D&Os effectively reduces the available liability coverage limits under those insurance policies.

42. The Settlement Agreement also provides for an expedited recovery for the Liquidating Trust, both in the form of a significant cash payment and through the release of funds reserved on account of the D&O Employment Claims. It will take significantly more time to litigate and possibly adjudicate on appeal issues involving both the Trustee's D&O Claims and the Trustee's Coverage Claims. The Liquidating Trustee believes that the Beneficiaries of the

Liquidating Trust would generally prefer to recover on claims sooner, rather than later. Thus, the Liquidating Trustee believes that there is significant value in resolving the claims addressed in the Settlement Agreement without the delay inherent in protracted litigation.

43. The Tax Estimation Agreement is also in the best interests of the Liquidating Trust and should be approved. The Tax Estimation Agreement provides generally that: (i) the 501(b) Claim will be allowed as to the MN Department in the amount necessary to satisfy the liabilities described in the MN Tax Assessment; and (ii) during the period of time that the 501(b) Claim and the D&O Indemnification Claims (as such claims relate to the Debtors' tax obligations only) remain pending, the Liquidating Trustee may estimate liability on such claims for purposes of funding its Disputed Claims Reserve in the amount of Fifty Thousand Dollars (\$50,000). The Liquidating Trustee believes the Tax Estimation Agreement is in the best interests of the Beneficiaries of the Liquidating Trust because: (i) it provides for the satisfaction of a well-founded tax claim against the Debtors; and (ii) provides for the reasonable estimation of the Liquidating Trust's exposure to tax liability, either directly to taxing authorities that would claim through the 501(b) Claim or as a result of having to indemnify D&Os on account of any taxes attributable to the Debtors that are satisfied by the D&Os, until such time as the D&O Tax Indemnification Claim and the 501(b) Claim are fully adjudicated.

44. The interests of the Liquidating Trust and its Beneficiaries strongly militate in favor of approval of the Agreements. Accordingly, the settlement and compromise standards of Bankruptcy Code § 105(a) and Bankruptcy Rule 9019(a) have been satisfied and this Court should approve and authorize the Liquidating Trustee to enter into the Agreements.

B. Release of Claims and Injunction Against Prosecution of Claims by Certain Holders of Claims.

45. As a condition of the consideration to be tendered and the releases to be granted by the D&Os, the Settlement Agreement provides that the Liquidating Trustee on behalf of

certain Holders of Claims (as that term is defined in the Settlement Agreement), shall release the D&Os, the D&O Carriers and related persons from claims that had been asserted by the Holders of Claims against the Debtors or which otherwise arose out of the Debtors' pre-petition operations. The Settlement Agreement also provides that Holders of Claims be barred from initiating and restrained and enjoined from prosecuting those released claims. Generally excepted from such releases and injunctions are:

- a. Pending lawsuits, including in the actions captioned, including claims asserted in the cases denominated as In re SmarTalk Teleservices, Inc. Sec. Litig., Case No. C2-98-84 (including the complaints consolidated in that matter), pending in the United States District Court for the Southern District of Ohio and Bruno v. SmarTalk Teleservices, Inc., Case No. BC194788, pending in the California Superior Court, Los Angeles County.
- b. Claims by any Holder of Claims to assert that the actions of any of the D&Os or D&O Carriers should reduce the amount of any judgment against the Holder of Claims under the doctrine of proportionate liability or similar rights, laws or doctrines;
- c. Claims by police, federal tax or regulatory agencies from fulfilling their statutory duties
- d. Claims of the United States or any other sovereign or governmental entity as against the Released Parties.

46. Bankruptcy Code § 105(a) authorizes bankruptcy courts to issue orders that are necessary or appropriate to carry out the provisions of the Bankruptcy Code. Although Section 524(e) generally prohibits the discharge of claims against non-debtor parties, the Third Circuit has expressly declined to establish a "blanket rule" to permit or proscribe them. See In re Continental Airlines, 203 F.3d 203, 213-14, (3rd Cir. 2000). Instead, the court held open the prospect that there would be circumstances under which it might validate a non-consensual release that is both necessary and given in exchange for fair consideration. See id. at 214 n. 11.

47. Other Circuit Courts have approved and upheld the release of creditor claims against parties that were co-liable with a debtor when those parties provided substantial benefit to the debtor's estate. See Securities and Exchange Commission v. Drexel Burham Lambert

Group, Inc. (In re Drexel Burham Lambert Group, Inc.), 960 F.2d 285, 293 (2nd Cir. 1992); Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.), 843 F.2d 636, 640, 649 (2nd Cir. 1988); Menard-Sanford v. Mabey (In re A.H. Robbins Co.), 880 F.2d 694, 702 (4th Cir. 1989), cert. denied, 493 U.S. 959, 110 S.Ct. 376, 107 L.Ed.2d 362 (1989).

48. In Drexel Burham and Johns-Manville, the Second Circuit upheld plans of reorganization containing releases and permanent injunctions of widespread claims against co-liable parties. In both of those cases, the plans also provided for consideration to parties who would be enjoined from suing the non-debtors. In A.H. Robbins, the Fourth Circuit also upheld non-debtor releases where the parties benefiting from the releases provided substantial sums for the payment of the claims of tort claimants. An important point in all of these cases was the fact that the parties benefiting from the releases and injunctions had contributed compensation to claimants through the debtor's bankruptcy estate in exchange for the release being granted.

49. Substantial consideration in the form of the payment of the Settlement Amount, the release of significant claims against the Liquidating Trust and other consideration described above is being tendered to the Liquidating Trust in return for the releases pertaining to Holders of Claims. The D&Os are also providing additional consideration by agreeing to release under the terms of a separate agreement with the D&O Carriers certain of their rights to additional coverage under the Policies, including rights to coverage for defense costs and claim coverage. Absent the D&Os agreement to release defense and coverage rights, the D&O Carriers would not have agreed to pay the Settlement Amount to the Liquidating Trustee.

50. Not only will the releases that the Liquidating Trustee is to grant on behalf of the Holders of Claims result in substantial benefit to those persons, the releases are carefully tailored to avoid any adverse effect on any direct, as opposed to derivative, claims against the D&Os and the D&O Carriers. For example, pending third-party lawsuits arising from intentional fraud or

personal violation of a securities law are not subject to the Settlement Agreement's release and injunction provisions. The release and injunction provisions are also narrowly tailored so that there is no release or injunction against claims that have been brought by shareholders against the D&Os and the D&O Carriers or the claims of governmental entities.

51. Although third-party releases have generally been addressed in the context of plan confirmation, such releases may also be granted under settlement agreements. See In re Munford, Inc., 97 F.3d 449, 455 (11th Cir. 1996). In Munford, the Eleventh Circuit affirmed a district court's ruling that 11 U.S.C. § 105 and Fed. R. Civ. P. 16 authorize a bankruptcy court to permanently enjoin non-settling defendants from asserting contribution and indemnification claims against a settling defendant because the permanent injunction was integral to the debtor's settlement with the settling defendant and because the bar order was fair and equitable. See also, In re Continental Airlines, 203 F.3d at 213. In Munford, the Circuit Court noted that the bankruptcy court had sufficiently protected the interests of the non-settling defendants by providing for them to receive a dollar-for-dollar reduction of settlement amounts for any judgment subsequently rendered against them. 97 F.3d at 455-56.

52. This Court, in the case of In re Zenith Electronics Corporation, explained the factors that it would consider in approving releases and injunctions in favor of non-debtor third parties via a plan of reorganization. These factors included: (a) an identity of interest between the debtor and the third party, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate; (b) substantial contribution by the non-debtor of assets to the reorganization; (c) the essential nature of the injunction to the reorganization to the extent that, without the injunction, there is little likelihood of success; (d) the agreement by a substantial majority of the creditors to support the injunction, specifically if the impacted class or classes "overwhelmingly" votes to accept the plan; and (e) provision in the plan for the payment

of all or substantially all of the claims of the class or classes affected by the injunction In re Zenith Electronics Corporation, 241 B.R. 92, 110 (Bankr. D.Del. 1999)(citing Master Mortgage Investment Fund, Inc., 168 B.R. 930, 937 (Bankr. W.D.Mo. 1994)).

53. Although the Zenith Electronics and the Master Mortgage cases dealt with third-party releases and injunctions in the context of a plan confirmation proceeding, the facts applicable to approval through a settlement agreement are satisfied in this case. First, the claims against the D&Os and the D&O Carriers that are to be released are essentially derivative of claims belonging originally to the Debtors and now, by operation of the Plan, to the Liquidating Trust. By resolving those claims through a collective agreement with the Liquidating Trustee, the D&Os and the D&O Carriers avoid separate litigation with the Holders of Claims (except as otherwise provided under the Settlement Agreement). Thus, the Liquidating Trustee, on the one hand, and the D&Os and the D&O Carriers, on the other hand, share an identity of interests in resolving claims maintainable against the D&Os and the D&O Carriers.

54. A suit by creditors against the D&Os would result in a draining of the Policies to the detriment of the other creditors herein. Also, the \$11,250,000 that will be paid by the D&O Carriers under the Settlement Agreement is a substantial contribution. And the releases and injunctions established by the Settlement Agreement are essential to obtaining payment of the Settlement Amount by the D&O Carriers – a payment that will inure to any parties that may be affected by the third-party release and injunction provisions contained in the Settlement Agreement.

55. This Motion shall be served upon each party receiving notice of the Plan in order to afford all such parties an opportunity to object to the third-party release and injunction provisions contained in the Plan. In this way, the Liquidating Trustee is allowing parties to voice their objections, if any, to the terms of the Settlement Agreement.

V. CONCLUSION

56. The Agreements are the product of arms-length negotiations among the parties and represent a fair and reasonable resolution of the disputes in issue. The Agreements provide for the resolution of various claims under terms that provide substantial benefit to the Liquidating Trust and its Beneficiaries. For those and the other reasons set forth above, the Liquidating Trustee requests that this Court authorize those Agreements and enter the attached proposed form of order.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Liquidating Trustee requests that this Court grant this Motion by issuing the proposed form of order attached hereto, authorizing Liquidating Trustee to enter into the Settlement Agreement and Tax Estimation Agreement under the same material terms and conditions and in substantially the same form as attached hereto as Exhibits "A" and "B", and that this Court grant the Liquidating Trustee such other and further relief, special or general, at law or in equity, as this Court may deem just and proper.

Dated: October 26, 2002

Wilmington, Delaware

Respectfully submitted.

KLEHR HARRISON HARVEY
BRANZBURG & ELLERS, LLP

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**ATTORNEYS FOR GOLDIN ASSOCIATES,
L.L.C., LIQUIDATING TRUSTEE OF THE
WORLDWIDE DIRECT LIQUIDATION
TRUST**

SCHEDULE I

D&O CLAIMS

CLAIMANT'S NAME	POC DATE	POC CR #	POC AMOUNT	BASIS	CLASSIFICATION
<u>D&O INDEMNIFICATION</u>					
Alfi, Ahmad 700 Berkshire Avenue La Canada, CA 91011	07-12-99	584	unknown	Indemnification (Securities Actions)	Priority; unsecured w/ reservation of right to assert claim as administrative
Fielding, Fred F. 1776 K. Street N.W. Washington DC, 20006	07-16-99	1080	unknown	Indemnification (Securities Actions)	Unsecured w/ reservation of right to assert claim as administrative
Fielding, Fred F. 1776 K. Street N.W. Washington DC, VA 20006	07-15-99	Not Designated	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative
Lorsch, Robert H. 3188 Kings Court Los Angeles, CA 90077	07-15-99	677	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative
Lorsch, Robert H. 3188 Kings Court Los Angeles, CA 90077	07-15-99	678	unknown	Indemnification (Securities Actions)	Unsecured w/ reservation of right to assert claim as administrative
Lorsch, Robert H. 3188 Kings Court Los Angeles, CA 90077	07-15-99	679	unknown	Indemnification from fees, expenses and liability in connection with Debtors' tax obligations	Priority (indemnification for unpaid taxes)
Smith, Robert M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1062	unknown	Indemnification (Securities Actions)	Unsecured w/ reservation of right to assert claim as administrative
Smith, Robert M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1063	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative

CLAIMANT'S NAME	POC DATE	POC CR #	POC AMOUNT	BASIS	CLASSIFICATION
Spangenberg, Erich L. 12136 St. Andrews Drive Kancho Mirage, CA 92270	07-15-99	673	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative
Spangenberg, Erich L. 12136 St. Andrews Drive Kancho Mirage, CA 92270	07-15-99	683	unknown	Indemnification (Securities Actions)	Unsecured w/ reservation of right to assert claim as administrative
Spangenberg, Erich L. 12136 St. Andrews Drive Kancho Mirage, CA 92270	07-15-99	684	unknown	Indemnification (Securities Actions)	Unsecured w/reservation of right to assert claim as administrative
Spangenberg, Erich L. 12136 St. Andrews Drive Kancho Mirage, CA 92270	07-15-99	685	unknown	Indemnification (Securities Actions)	Unsecured w/reservation of right to assert claim as administrative
Teich, Richard M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1050	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative
Teich, Richard M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1064	unknown	Indemnification (Securities Actions)	Unsecured
Viellieu, Kenneth c/o Paul Camilleri Donaldson, Lufkin & Jenrette Securities Corp 277 Park Avenue New York, NY 10172	07-15-99	722	unknown	Indemnification	Unsecured
<u>D&O EMPLOYMENT</u>					
Bereday, Thaddeus 2019 Beverly Road Upper Arlington, OH 43221	07-16-99	1162	\$450,000.00	Compensation and benefits pursuant to employment agreement	Priority

CLAIMANT'S NAME	POC DATE	POC CR #	POC AMOUNT	BASIS	CLASSIFICATION
Glenn Andrew Folck 760 Woods Hollow Lane Powell, OH 43065	07-15-99	705	\$4,552,962.87	Compensation and benefits pursuant to employment agreement	Unsecured
Jeff Lindauer c/o Amy Hallman Rice Dotsey & Whitney LLP 220 S. Sixth Street Minneapolis, MN 55402	06-01-99	151	\$2,114,000.00	Compensation and benefits pursuant to employment agreement	Priority (\$4,300) and Unsecured (\$2,108,700)
Lorsch, Robert H. 3188 Kings Court Los Angeles, CA 90077	07-15-99	739	\$1,312,600.89	Compensation and benefits pursuant to employment agreement	Priority (\$4,300) and Unsecured (in excess of \$1,308,300)
Smith, Robert M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1061	unknown	Unreimbursed business expenses	No classification by Claimant
Spangenberg, Erich L. 12136 St. Andrews Drive Kancho Mirage, CA 92270	07-15-99	706	\$934,012.73	Compensation and benefits pursuant to employment agreement	Priority (\$4,300) and Unsecured (not less than \$929,712.73)
Teich, Richard M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1058	unknown	Unreimbursed business expenses	Unsecured

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into as of March 1, 2002 by and among the bankruptcy estates of SmarTalk Teleservices and nineteen of its affiliates, which filed voluntary petitions under chapter 11 of the United States Bankruptcy Code as identified herein ("Bankruptcy Estates"), Goldin Associates, LLC, in its capacity as Liquidation Trustee (the "Trustee") of the Worldwide Direct Liquidation Trust (the "Liquidation Trust"); Robert H. Lorsch, Erich L. Spangenberg, Glen Andrew Folck, David A. Hamburger, Richard M. Teich, Robert M. Smith, Fred F. Fielding, Jeff Lindauer, Ahmed O. Alfi, Kenneth A. Viellieu, Wayne V. Wooddell, Jeff Scheinrock and Thaddeus Bereday (collectively, the "Director/Officers"); and Genesis Insurance Company ("Genesis"), Great American E&S Insurance Company ("Great American"), Zurich American Insurance Company, as successor in interest to Zurich Insurance Company ("Zurich"), and Executive Risk Indemnity, Inc. ("Executive Risk") (collectively, the "D&O Carriers"). The Bankruptcy Estates Trustee, the Liquidation Trust, the Director/Officers, and the D&O Carriers are referred to collectively herein as "Parties."

- A. WHEREAS, on January 19, 1999, SmarTalk TeleServices, Inc. and nineteen of its affiliates (collectively, the "Debtors") filed voluntary petitions under chapter 11 of the United States Bankruptcy Code, thereby commencing Case Numbers 99-108 to 99-127 (MFW) (collectively, the "Bankruptcy Case") as currently pending before the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").
- B. WHEREAS, the Official Committee of Unsecured Creditors (the "Committee") was duly appointed in the Bankruptcy Case by the U.S. Trustee for the District of Delaware on February 2, 1999.
- C. WHEREAS, by virtue of a certain Stipulation Regarding the Delegation of Certain Claims and Causes of Action entered by the Bankruptcy Court on or about September 20, 1999, and by further order of the Bankruptcy Court dated April 7, 2000, the Committee was given the authority and responsibility to prosecute various actions against third parties on behalf of the Debtors' bankruptcy estates.

- D. WHEREAS, on June 7, 2001, the Bankruptcy Court entered its Findings Of Fact, Conclusions Of Law And Order Confirming Second Amended Consolidated Liquidating Chapter 11 Plan for SmarTalk TeleServices, Inc. And Affiliates, Proposed By The Debtors and By The Official Committee Of Unsecured Creditors" (the "Order"). By the Order, among other things, the Bankruptcy Court confirmed the Plan. The Plan became effective in accordance with its terms on June 30, 2001. Upon that date the Committee was dissolved and all the remaining assets of the Debtors' bankruptcy estates including the Bankruptcy Estates' interest in claims against the Director/Officers have been transferred to and vested in the Liquidation Trust. The Bankruptcy Court appointed Goldin Associates, L.L.C and Harrison J. Goldin as the Liquidation Trustee with respect to the Trust. On July 12, 2001, by order of the Bankruptcy Court, Goldin Associates, L.L.C. was appointed the Sole Liquidation Trustee and has all the powers and duties set forth in the Plan, the Order and the Liquidation Trust.
- E. WHEREAS, various parties have filed proofs of claim and/or had claims scheduled in the Bankruptcy Case (the "Holders of Claims") and a mechanism for treatment of those claims has been specified under the Plan, Order and resulting Liquidation Trust.
- F. WHEREAS, the Trustee and its predecessor, the Committee, have asserted claims against the Director/Officers arising out of their conduct as directors and/or officers of some or all of the Debtors.
- G. WHEREAS, two derivative actions entitled Angard v. Lorsch. et al., Case No. BC200290 (Cal. Super. Ct.) ("California Derivative Action") and Ernst v. Lorsch, et al., Case No. C2-98-1249 (S.D. Ohio) ("Ohio Derivative Action") have been brought against the Director/Officers, and the Trustee and the Liquidation Trust currently control and have the right to prosecute these actions.
- H. WHEREAS, the D&O Carriers have issued certain insurance policies to SmarTalk including (i) Genesis Directors and Officers Liability Insurance Policy No. YXB001317A for the policy period October 22, 1997 to October 22, 1998; (ii) Genesis Directors and Officers Liability Insurance Policy No. YXB001317B for

the policy period October 22, 1998 to October 22, 1999; (iii) Genesis Directors and Officers Excess Liability Insurance Policy No. YXB001751 for the policy period June 24, 1998 to October 22, 1999; (iv) Genesis Directors and Officers Excess Liability Insurance Policy No. YXB001751A for the policy period October 22, 1998 to October 22, 1999; (v) Genesis Prospectus Liability Policy No. YXB001318 for the policy period October 22, 1996 to October 22, 1999; (vi) Great American Excess Directors and Officers Policy No. NXS2108115 for the policy period October 22, 1997 to October 22, 1998; (vii) Great American Excess Directors and Officers Policy No. NSX2108115 for the policy period October 22, 1998 to October 22, 1999; (viii) Great American Excess Prospectus Liability Policy NSX2108114 for the Policy Period October 22, 1996 to October 22, 1999; (ix) Zurich Excess Policy No. DOC229774301 for the policy period October 23, 1997 to October 23, 1998; (x) Zurich Excess Policy No. DOC229774302 for the policy period October 22, 1998 to October 22, 1999; and (xi) Zurich Prospectus Liability Policy No. DOC229774300 for the policy period October 22, 1996 to October 22, 1999; and (xii) Executive Risk Broad Form Directors and Officers Liability Policy No. 752-149361-98 for the policy period December 11, 1998 to October 22, 1999 (collectively, the "Policies").

- I. WHEREAS, the Trustee and the Liquidation Trust have brought a declaratory judgment action against the D&O Carriers entitled Goldin Associates, L.L.C., Liquidation Trustee v. Genesis Insurance Company, et al., Adversary Proceeding No. 01-4786 (Bankr. D. Del.) ("Coverage Action"), alleging that the Trustee and the Liquidation Trust's claims against the Director/Officers are covered under the Policies.

- J. WHEREAS, certain of the Director/Officers have filed proofs of claim in the Bankruptcy Case.

- K. WHEREAS, the Bankruptcy Estates, the Trustee, the Liquidation Trust, the Director/Officers, and the D&O Carriers wish to settle the disputes among them on the terms set forth below to avoid the expense and distraction of litigation.
NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, and for the covenants and agreements set forth in this Agreement and for other good and

valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties agree as follows:

1. Payment. Conditioned and effective upon execution of this Agreement by all of the Parties, the D&O Carriers, on behalf of the Director/Officers, shall pay to the Liquidation Trust the sum of \$11,250,000 (the "Settlement Amount"). The Settlement Amount shall be paid by Genesis, Great American, and Zurich in the manner and the amounts specified in the separate settlement agreement to be entered into between the D&Os and the D&O Carriers, as follows: (a) if the order identified in paragraph 10 below (the "Approval Order") becomes final by passage of time (i.e., there is no appeal), the D&O Carriers will pay the Settlement Amount to the Liquidation Trust within 20 days after the date the Approval Order becomes final; (b) if the Approval Order is appealed, then within 20 days following receipt of notice of appeal, the D&O Carriers shall deposit the Settlement Amount into an interest bearing escrow account. The Settlement Amount, plus all accrued interest through the date of payment shall be paid to the Liquidation Trust within three (3) business days after the Approval Order becomes final and nonappealable. If the Approval Order is reversed on appeal, then the Settlement Amount plus all accrued interest through the date of payment shall be returned to Genesis, Great American and Zurich. The Party or Parties who ultimately receive any interest income from the escrow account shall be liable for any unpaid taxes thereon. To the extent that that any taxes on interest income on the Settlement Amount becomes payable before the payment of the Settlement Amount to the Liquidating Trust, the D&O Carriers shall be permitted to withdraw or otherwise receive from the interest income sufficient funds to satisfy such taxes.

2. Waiver of Subrogation. Conditioned and effective upon the D&O Carriers' payment of the Settlement Amount pursuant to paragraph 1 above, the D&O Carriers, and each of them, agree to waive and release any and all rights of subrogation that they have or may have, contractually or pursuant to common law or state or federal statute, in connection with the payment of the Settlement Amount.

3. Release and Dismissal of Claims by the Director/Officers. Conditioned and effective upon the execution of this Agreement by all of the Parties and the payment of the Settlement Amount, the Director/Officers will withdraw and dismiss all Disputed

Claims (as that term is defined in the Plan) filed by them or on their behalf in the Bankruptcy Case, with the exception of: (i) that certain proof of claim in the Bankruptcy Case referenced in the Official Claims Register as Claim No. 680, on behalf of various state and local taxing authorities (the "Surrogate Tax Claim"), a true and correct copy of which is attached as Exhibit "A"; and (ii) the proofs of claim for indemnification described in Schedule "B" hereto, filed by certain of the Director/Officers and attached hereto as Exhibits "B-1" through "B-15" (collectively, the "Tax Indemnification Claims"), but only to the extent that such claims have preserved the right of the Director/Officer filing such proof of claim to indemnification on the Director/Officer's liability to a taxing authority as a responsible person for unsatisfied tax obligations of a Debtor. The Surrogate Tax Claim and the Tax Indemnification Claims are hereinafter referred to as the "Remaining D&O Claims". In addition, the Director/Officers, on their own behalf and on behalf of their present, former, and future successors, heirs, assigns, executors, administrators, and attorneys, and all persons acting by, through, under or in concert with them or any of them, hereby release, acquit, and forever discharge the Bankruptcy Estates, the Liquidation Trust, and the Trustee, and their present, former, and future directors, officers, employees, shareholders, agents, representatives, owners, principals, parent companies, divisions, subsidiaries, affiliates, associates, predecessors, successors, heirs, assigns, executors, administrators, insurers, reinsurers, and attorneys, and their present, former, and future directors, officers, employees, shareholders, agents, representatives, owners, principals, parent companies, divisions, subsidiaries, affiliates, associates, predecessors, successors, heirs, assigns, executors, administrators, insurers, reinsurers, and attorneys, and all persons acting by, through, under or in concert with them or any of them, from any claim, cause of action or demand, in law or in equity, of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent; provided, however, that (a) Kenneth Viellieu does not release the Bankruptcy Estates, the Liquidation Trust and the Trustee from any liability arising from any claim or action asserted against Mr. Viellieu arising from his capacity as an officer, partner, principal, employee or representative of Donaldson Lufkin Jenrette Securities Corporation ("DLJ"); (b) Robert H. Lorsch does not release the Bankruptcy Estates, the Liquidation Trust or the Trustee from any liability arising on account of the Surrogate Tax Claim; (c) the Director/Officers listed on Schedule "B" do not release the Bankruptcy Estates, the Liquidation Trust or the Trust from any liability arising on account of the Tax Indemnification Claims to the extent that such claims seek indemnification against

liability of any Director/Officer on account of the tax obligations of the Debtors; (d) the Bankruptcy Estates, the Trustee and the Liquidation Trust are not released from any obligation arising from or created by this Agreement; (e) Wayne Wooddell is not releasing the Bankruptcy Estates, the Liquidation Trust or the Trustee from obligations under the Settlement Agreement Regarding Claim by and Against Wayne Wooddell [Claim No. 485] dated as of November 19, 2001; and (f) Thaddeus Bereday is not releasing any rights to indemnification arising from Mr. Bereday's service as President of the Bankruptcy Estates from and after January 19, 1999, as provided in that certain letter agreement dated effective as of April 1, 1999 between Mr. Bereday and the Bankruptcy Estates. The Director/Officers further agree to reasonably cooperate with the Liquidation Trustee in connection with any efforts by the Liquidation Trustee to obtain an order of the Bankruptcy Court holding that any claims released pursuant to this provision are withdrawn, released, disallowed or deemed satisfied.

4 Release by the Liquidation Trust. Conditioned and effective upon the execution of this Agreement by all of the Parties and the payment of the Settlement Amount, the Bankruptcy Estates, the Trustee, and the Liquidation Trust, on their own behalf and on behalf of their present, former, and future directors, officers, employees, shareholders, agents, representatives, owners, principals, parent companies, divisions, subsidiaries, affiliates, associates, predecessors, successors, heirs, assigns, executors, administrators, insurers, reinsurers, and attorneys, and their present, former, and future directors, officers, employees, shareholders, agents, representatives, owners, principals, parent companies, divisions, subsidiaries, affiliates, associates, predecessors, successors, heirs, assigns, executors, administrators, insurers, reinsurers, and attorneys, and all persons acting by, through, under or in concert with them or any of them, hereby release, acquit, and forever discharge the Director/Officers, all persons insured under the Policies, and the D&O Carriers, and their present, former, and future directors, officers, employees, shareholders, agents, representatives, owners, principals, parent companies, divisions, subsidiaries, affiliates, associates, predecessors, successors, heirs, assigns, executors, administrators, insurers, reinsurers, and attorneys, and their present, former, and future directors, officers, employees, shareholders, agents, representatives, owners, principals, parent companies, divisions, subsidiaries, affiliates, associates, predecessors, successors, heirs, assigns, executors, administrators, insurers, reinsurers, and attorneys, and all persons acting by, through,

under or in concert with them or any of them, from any claim, cause of action or demand, in law or in equity, of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, including but not limited to any interest in or claim against the Policies; provided, however, that (a) the Liquidation Trust does not release Kenneth Viellieu from any liability arising from any of his acts or omissions undertaken in his capacity as an officer, partner, principal, employee or representative of DLJ; (b) the Bankruptcy Estates, the Trustee and the Liquidation Trust do not release DLJ, Donaldson, Lufkin & Jenrette, Inc., Global Retail Partners, L.P., DLJ Diversified Partners, L.P., DLJ Diversified Partners-A, L.P., GRP Partners, L.P., Global Retail Partners Funding, Inc., DLJ First ESC, L.P., DLJ ESC-II, L.P., Linda Fayne Levinson, Victor Grillo, Sr., or Raymond Wysocki; (c) The Bankruptcy Estates, the Trustee and the Liquidation Trust do not release Victor Grillo, Jr. or Lloyd Lapidus except to the extent that they are insured under the Policies, and (d) the Director/Officers are not released from any obligation arising from or created by this Agreement. Moreover, the Bankruptcy Estates, the Trustee and the Liquidation Trust do not waive any grounds for objecting to the Surrogate Tax Claim or the Tax Indemnification Claims, including the right to seek the equitable subordination of such claims.

5. Trustee/Liquidation Trust Warranty. The Bankruptcy Estates, the Liquidation Trust and the Trustee on behalf of the Liquidation Trust, on their own behalf, on behalf of any Holders of Claims, and on behalf of the Debtors, represent and warrant that there has been no assignment, subrogation, or other transfer of the Bankruptcy Estates', the Liquidation Trust's or the Trustee's interest in the Policies or any of the claims released in Paragraph 4 above (the "Released Claims"). The Bankruptcy Estates and the Liquidation Trust shall indemnify and hold harmless the D&O Carriers, and their present, former, and future directors, officers, employees, shareholders, agents, representatives, owners, principals, parent companies, divisions, subsidiaries, affiliates, associates, predecessors, successors, heirs, assigns, executors, administrators, insurers, reinsurers, and attorneys, and their present, former, and future directors, officers, employees, shareholders, agents, representatives, owners, principals, parent companies, divisions, subsidiaries, affiliates, associates, predecessors, successors, heirs, assigns, executors, administrators, insurers, reinsurers, and attorneys, and all persons acting by, through, under or in concert with them or any of them, from any and every claim or demand of every kind or character arising out of a breach by the

Bankruptcy Estates, the Trustee, and the Liquidation Trust of their warranties that there has been no assignment or other transfer of the Liquidation Trust's interest in the Policies or any of the Released Claims.

6. Dismissal of Claims by the Liquidation Trust. Conditioned and effective upon the execution of this Agreement by all Parties and the payment of the Settlement Amount, the Trustee and the Liquidation Trust will voluntarily dismiss the Ohio Derivative Action and the Coverage Action with prejudice. The Bankruptcy Estates, the Trustee, and the Liquidation Trust also agree not to refile or otherwise pursue the California Derivative Action, which has already been dismissed without prejudice.

7. Release by Holders of Claims. Except as otherwise specifically provided in the Plan, all Holders of Claims, on their own behalf and on behalf of their present, former, and future directors, officers, employees, shareholders, agents, representatives, owners, principals, parent companies, divisions, subsidiaries, affiliates, associates, predecessors, successors, heirs, assigns, executors, administrators, insurers, reinsurers, and attorneys, hereby release, acquit, and forever discharge the Director/Officers, the D&O Carriers, and any person claimed to be liable derivatively through the Director/Officers or the D&O Carriers (collectively, the "Released Parties") of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, promises, damages, claims and liabilities whatsoever, known or unknown, arising from a claim or based upon the same subject matter as a Claim or Interest and existing on the Petition Date or which thereafter could arise based on any act, fact, transaction, cause, matter or thing which occurred prior to the Petition Date. However, nothing in this paragraph shall: (a) limit the rights of any Holder of Claims to continue litigating any pending lawsuits, including but not limited to the lawsuits captioned: (i) In re SmarTalk Teleservices, Inc. Sec. Litig., Case No. C2-98-84 (including the complaints consolidated in that matter), pending in the United States District Court for the Southern District of Ohio; and (ii) Bruno v. SmarTalk Teleservices, Inc., Case No. BC194788, pending in the California Superior Court, Los Angeles County; (b) limit the rights of any Holder of Claims to assert that the actions of any of the Released Parties should reduce the amount of any judgment against the Holder of Claims under the doctrine of proportionate liability or similar rights, laws or doctrines; (c) subject to the discharge granted under Section 524 and 1141 of the Bankruptcy Code, preclude police,

federal tax or regulatory agencies from fulfilling their statutory duties; or (d) bar the claims, if any, of the United States or any other sovereign or governmental entity as against the Released Parties.

8. Cooperation. The Director/Officers (except Kenneth Viellieu) agree to meet with the Trustee and its counsel at reasonable times and provide the Trustee's counsel with true and correct information, any requested documents and full cooperation in providing truthful and accurate information and testimony respecting the facts surrounding the transactions and events regarding: (i) the claims originally brought by the Committee against PricewaterhouseCoopers, LLP, in a lawsuit filed in the 114th District Court for Dallas County, Texas and currently pending in the styled action *In re: Smarttalk Teleservices, Inc. Securities Litigation*, before United States District Court for the Southern District of Ohio, referenced as MDL Docket No. 1315 (the "PwC Litigation"); (ii) the claims originally brought by the Committee against Donaldson, Lufkin & Jenrette Securities Corp., et al., in a lawsuit filed in the United States District Court for the Central District of California and currently pending in the styled action *The Official Committee of Unsecured Creditors (the "Committee"), et al vs. Donaldson, Lufkin & Jenrette Securities Corporation, et al*, before the United States District Court for the Southern District of New York, referenced as Case No. 00 Civ. 8688 (the "WWD Litigation"); and (iii) any other litigation to which the Trustee may be or become a party, and will make themselves available for depositions or hearing or trial testimony at the request of the Trustee's counsel, and testify factually, truthfully and accurately as to information about which they have knowledge. The Director/Officers (except Kenneth Viellieu) agree to execute a common or joint interest agreement with the Trustee that preserves the confidential and privileged nature of any discussions among them regarding any claim or litigated matter to the fullest extent allowed by law. Any travel and other expenses incurred by the Director/Officers pursuant to this paragraph will be paid by the Liquidation Trust. The Director/ Officers appoint Boris Feldman of the law firm of Wilson Sonsini Goodrich & Rosati to accept service of process on their behalf in the PwC Litigation and the WWD Litigation. Nothing in this paragraph shall require the disclosure of information protected by the attorney-client privilege or the attorney work product doctrine.

9. Injunction and Stay. From and after the date upon which the Approval Order is entered and has become final and nonappealable, all Holders of Claims are permanently

enjoined from, and restrained against, commencing or continuing in any court or administrative court or administrative tribunal or body, any suit, action or other proceeding, or otherwise asserting any claim or interest, seeking to hold any of the Released Parties liable for any claim, obligation, right, interest, debt or liability that has been discharged or released pursuant to this Agreement. The satisfaction, release and discharge granted pursuant to this Agreement shall also act as an injunction against any person commencing or continuing any action, employment of process or act to collect, offset or recovery any claim or cause of action, satisfied, released or discharged under the Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by Sections 524 and 1141 thereof. However, nothing in this Agreement shall: (a) restrain and enjoin any Holder of Claims from continuing to litigate any pending lawsuits, including but not limited to the lawsuits captioned: (i) In re SmarTalk Teleservices, Inc. Sec. Litig., Case No. C2-98-84 (including the complaints consolidated in that matter), pending in the United States District Court for the Southern District of Ohio; and (ii) Bruno v. SmarTalk Teleservices, Inc., Case No. BC194788, pending in the California Superior Court, Los Angeles County; (b) limit the rights of any Holder of Claims to assert that the actions of any of the Released Parties should reduce the amount of any judgment against the Holder of Claims under the doctrine of proportionate liability or similar rights, laws or doctrines; (c) subject to the discharge granted under Section 524 and 1141 of the Bankruptcy Code, preclude police, federal tax or regulatory agencies from fulfilling their statutory duties; or (d) bar the claims, if any, of the United States or any other sovereign or governmental entity as against the Released Parties.

10. Requirement of Court Approval. The Parties' rights and obligations under this Agreement are contingent upon the Bankruptcy Court entering the Approval Order and that, by such order, the Bankruptcy Court approve this Agreement and that certain Tax Estimation Agreement, a true and correct copy of which is attached hereto as Exhibit "C", in full and such order having become final and nonappealable or, if appealed, having been affirmed finally with no further recourse to appeal. In the event that the Bankruptcy Court does not approve the settlement contemplated by this Agreement and by the Tax Estimation Agreement, this Agreement shall be void and without legal effect and each of the parties hereto shall be restored severally and respectively to their former

positions hereunder and thereafter all rights, privileges, remedies and powers of each party shall continue as though no such Agreement was entered into.

11. Tolling Agreement Extended: The Tolling Agreement currently in place among the Trustee, the Liquidation Trust, and the Director/Officers is extended until the date on which the Bankruptcy Court approves the settlement contemplated by this Agreement and/or subsequent amendments to the Agreement. If the Bankruptcy Court rejects this Agreement, then the Tolling Agreement is further extended until fifteen days after the Director/Officers give written notice to counsel for the Trustee of their decision to terminate the Tolling Agreement.

12. Construction of Agreement. The Parties acknowledge and agree that each has been given the opportunity to review independently this Agreement with legal counsel and agree to the particular language of the provisions hereof. In the event of an ambiguity in or dispute regarding the interpretation of same, interpretation of this Agreement shall not be resolved by any rule providing for interpretation against the party who causes the uncertainty or against the drafter and all Parties hereto expressly agree that in the event of an ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each party hereto participated in the drafting hereof.

13. No Third Party Rights Created. The Parties specifically disavow any intention to create rights in third parties under or in relation to this Agreement except as otherwise expressly provided herein.

14. Inadmissibility of Agreement. The Parties hereto understand and agree that this Agreement, the negotiations surrounding the Agreement, any payments made in relation to this Agreement or the Settlement Agreement referenced in Paragraph 1 above, and/or any evidence relating thereto shall not constitute, be construed as, or offered or received into evidence as, an admission of any wrongdoing by, or liability or obligation of, any party hereto. The Parties agree and acknowledge that this Agreement is entered into for the sole purpose of resolving contested claims and disputes as well as avoiding the substantial costs, expenses, and uncertainties associated with such disputes. It is also expressly agreed and acknowledged that all Parties to this Agreement have acted in

good faith and that neither this Agreement, its execution, the performance of any of its terms nor any of its contents shall constitute admission of any liability or of any insurance coverage or of any fact or any indication that any of the claims which were or could have been asserted against the D&O Carriers under the Policies have any merit.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

16. Amendment and Waiver. No breach of any provision hereof can be waived unless done in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions hereof. This Agreement may be amended only by written agreement executed by all Parties hereto.

17. Full and Final Settlement. The Parties intend that the execution and performance of this Agreement shall, as provided above, be effective as a full and final settlement of, and as a bar to, the claims, causes of action, and demands released above in paragraphs 3 and 4 (defined as the "Released Claims"). The Parties hereto covenant and agree that if they hereafter discover facts different from or in addition to the facts that they now know or believe to be true with respect to the subject matter of this Agreement, it is nevertheless their intent hereby to settle and release fully and finally the Released Claims. In furtherance of such intention, the release herein shall be and will remain in effect as a release notwithstanding the discovery of any such different or additional facts. It is expressly understood and agreed by the parties hereto that the Released Claims may encompass claims or matters the nature of which have not yet been discovered, and it is understood and agreed that to the extent they may be alleged to be applicable, all protections under California Civil Code § 1542, which reads, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor," or any similar provision of the statutory or nonstatutory law of any other jurisdiction are hereby waived.

18. Notices. All notices required or permitted under or pertaining to this Agreement shall be in writing and delivered by any method providing proof of delivery. Any notice

shall be deemed to have been given on the date of receipt. Notices shall be delivered to the Parties at the following addresses until a different address has been designated by notice to the other Party:

TO BANKRUPTCY ESTATES, TRUSTEE,
AND LIQUIDATION TRUST:

[insert jay goldin] _____

with copy to counsel

[insert Greg May] _____

TO GENESIS:

Martin G. Hacala, Esq.
Genesis Professional Liability Managers
25550 Chagrin Boulevard
Suite 300
Beachwood, Ohio 44122

TO GREAT AMERICAN:

Great American Insurance Companies
Executive Liability Division
P.O. Box 66943
Chicago, IL 60666-0943

TO ZURICH AMERICAN:

Neal Waiser
Zurich U.S.
1 Upper Pond Road
Building E/F
Parsippany, NJ 07054

TO EXECUTIVE RISK:

Richard F. Nace, Jr., Esq.
Senior Claims Officer
Chubb Specialty Insurance
82 Hopmeadow Street
P.O. Box 2002
Simsbury, CT 06070-7683

[insert addresses of Director/Officers]:

19. Authorization to Enter Agreement. The undersigned individuals executing this Agreement on behalf of their respective Parties or entities represent and warrant that

said individuals or entities are authorized to enter into and execute this Agreement on behalf of such Parties, that the appropriate corporate resolutions or other consents have been passed and/or obtained, and that this Agreement shall be binding on the Parties executing this Agreement.

20. Integration. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all other prior discussions, agreements and understandings, both written and oral, among the Parties with respect thereto.

21. Execution of Other Documents. Each party agrees to execute and deliver such other documents and instruments and to take such further action as may be reasonably necessary to fully carry out the intent and purposes of this Agreement.

22. Agreement Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

23. No Precedential Value. The parties agree and acknowledge that this Agreement carries no precedential value and should not be relied upon by any person as evidence of any obligation of any insurer under identical or similar policies.

24. Headings. The Parties agree that the underlined paragraph headings in this Agreement are included in the Agreement solely for the convenience of the Parties, are not part of the terms and conditions of the Agreement, and do not limit, alter, or otherwise affect the provisions of, and the Parties' rights and obligations under, this Agreement.

25. Voluntary Acceptance of Agreement. It is understood and agreed that the undersigned have entered into this Agreement upon the legal advice of their respective counsel and that the terms of this Agreement are fully understood and voluntarily accepted.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed and delivered by its duly authorized officer, as of the date first written above.

Undersigned:

BANKRUPTCY ESTATES

By: _____

Title: _____

TRUSTEE

By: _____

Title: _____

LIQUIDATION TRUST

By: _____

Title: _____

GENESIS INSURANCE COMPANY

By: _____

Title: _____

GREAT AMERICAN E&S INSURANCE COMPANY

By: _____

Title: _____

ZURICH AMERICAN INSURANCE COMPANY

By: _____

Title: _____

EXECUTIVE RISK INDEMNITY, INC.

By: _____

Title: _____

Robert H. Lorsch

Erich L. Spangenberg

Glen Andrew Folck

David A. Hamburger

Richard M. Teich

Robert M. Smith

Fred F. Fielding

Jeff Lindauer

Ahmed O. Alfi

Kenneth A. Villieu

Wayne V. Wooddell

Jeff Scheinrock

Thaddeus Bereday

AGREEMENT REGARDING (I) PROOF OF CLAIM FILED BY
ROBERT H. LORSCH ON BEHALF OF FEDERAL, STATE
AND LOCAL TAXING AUTHORITIES [CLAIM NO. 680]; AND
(II) PROOFS OF CLAIM FILED BY DIRECTORS AND OFFICERS
FOR INDEMNIFICATION AGAINST TAX LIABILITY

This Agreement (the "Tax Claim Agreement") is entered into and dated as of _____, 2002, by and among Goldin Associates, LLC, in its capacity as Liquidating Trustee (the "Liquidating Trustee") of the Worldwide Direct Liquidation Trust (the "Liquidation Trust"), and Robert H. Lorsch ("Lorsch"), Erich L. ("Spangenberg"), Richard M. Teich ("Teich"), Robert M. Smith ("Smith"), Fred F. Fielding ("Fielding"), Jeff Lindauer ("Lindauer"), Ahmed O. Alfi ("Alfi"), and Kenneth A. Viellieu ("Viellieu") (collectively, the "Tax Indemnification Claimants"). with reference to the following facts and recitals:

Recitals

A. On January 19, 1999 (the "Petition Date"), SmarTalk TeleServices, Inc. and nineteen of its affiliates (collectively, the "Debtors"), filed voluntary petitions under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), thereby commencing Case Numbers 99-108 to 99-127 (MFW) (collectively, the "Bankruptcy Case") before the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

B. On or about July 15, 1999, Lorsch filed a proof of claim in the Bankruptcy Case referenced in the Official Claims Register as Claim No. 680, on behalf of various state and local taxing authorities (the "Surrogate Tax Claim"), for taxes in unknown amounts alleged to be due by the Debtors to various federal, state and local governmental taxing authorities. Lorsch asserts that the Surrogate Tax Claim is a priority claim under 11 U.S.C. § 507(a)(8).

C. Each of the Tax Indemnification Claimants have filed one or more proofs of claim in the Bankruptcy Case which the Tax Indemnification Claimants assert, among other things, preserves each claimants' claim for indemnification from any tax liability assessed against such claimant as a responsible party for the tax obligations of the Debtors. Each of the proofs of claim allegedly preserving a tax indemnification claim against the Debtors is listed in Schedule "A" hereto and are collectively referred to as the "Tax Indemnification Claims".

D. On June 7, 2001, the Bankruptcy Court entered an order amending and confirming the "Second Amended Consolidated Liquidating Chapter 11 Plan for SmarTalk TeleServices, Inc., and Affiliates, Proposed by the Debtors and by the Official Committee of Unsecured Creditors" (as amended, the "Plan"). The Plan became effective in accordance with its terms on June 30, 2001 (the "Plan Effective Date").

E. Pursuant to the Plan, on the Plan Effective Date: (i) the Liquidation Trust was created under and in accordance with the terms of the Liquidating Trust Agreement; and (ii) the Liquidation Trust acquired title to all property of the Debtors' bankruptcy estates, including all available causes of action and other matters. Pursuant to the Plan, the Liquidation Trust has, among other things, the power and authority to compromise and resolve claims asserted by and against the bankruptcy estates. Goldin Associates, LLC, as Liquidating Trustee, has authority to

EXHIBIT "B"

act on behalf of the Liquidation Trust in connection with compromising or resolving claims asserted by or against the Liquidation Trust, subject to possible review and approval of the Liquidating Trust Board and the Bankruptcy Court.

F. By letter dated April 4, 2002, the Minnesota Department of Revenue (the "MN DOR") assessed Lorsch in the amount of \$24,808.33, not including interest and penalties, for state sales taxes alleged to be due from SmarTalk TeleServices on Account No. 2651964 (the "MN Tax Assessment").

G. The Liquidating Trustee and certain of its professionals have investigated the MN Tax Assessment. Based upon that investigation, the Liquidating Trustee has determined that the MN Tax Assessment is substantially accurate regarding the amount of unsatisfied sales taxes owed by the Debtors to the MN DOR. Apart from the unsatisfied sales taxes described in the MN Tax Assessment, the Liquidating Trustee is unaware of any other tax claim or assessment made against any of the Tax Indemnification Claimants on account of any alleged obligation of the Tax Indemnification Claimants to satisfy unpaid tax obligations of the Debtors.

H. On or about July 3, 2000, the Official Committee of Unsecured Creditors (the "Committee") filed its Original Complaint commencing an adversary proceeding in the Bankruptcy Case, referenced as Adversary Proceeding No. 00-691. On or about July 17, 2000, the Committee filed its First Amended Complaint in the Adversary Proceeding (the "Tax Indemnification Claim Objection"), in which the Liquidating Trustee, among other things, objected to the allowance of each of the Indemnification Claims. The Tax Indemnification Claim Objection remains pending and the Liquidating Trustee is the successor to the Committee on such objection.

I. On or about June 30, 2002, the Liquidating Trustee filed an objection to the Surrogate Tax Claim (the "Surrogate Tax Claim Objection"). The Surrogate Tax Claim Objection remains pending.

J. The Tax Indemnification Claimants and the Liquidating Trustee (collectively, the "Parties"), and certain other persons, intend to enter into a certain Settlement Agreement contemporaneously with entering into this Tax Claim Agreement, providing for, among other things, the resolution of claims belonging to the SmarTalk Estate against certain former officers and directors of the Debtors (the "D&O Settlement Agreement").

K. In connection with the resolution of the claims to be resolved under the D&O Settlement Agreement, the Parties desire to establish certain terms under which they shall provide for the estimation of reserves on account of the Surrogate Tax Claim and the Tax Indemnification Claims (collectively, the "Tax Claims") until such claims and the Surrogate Tax Claim Objection and the Tax Indemnification Claim Objection (collectively, the "Tax Claim Objections") are resolved by final order of the Bankruptcy Court.

IN CONSIDERATION OF THE FOREGOING, and for the covenants and agreements set forth in this Tax Indemnification Claim Agreement, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties agree as follows:

1. Estimation of Tax Claims. Commencing without delay upon the approval of this Agreement by the Bankruptcy Court, the Liquidating Trustee shall estimate the Trust's liability on account of all of the Tax Claims in the total amount of FIFTY THOUSAND DOLLARS (\$50,000) and shall maintain a minimum of such amount in reserve on account of the Tax Claims for the purposes of making future distributions on such claims under the Plan. The Liquidating Trustee, at its sole discretion, may determine to maintain reserves on account of the Tax Claims in excess of the Estimated Tax Liability. To the extent that any of the Tax Claims become "Allowed Claims", as that term is defined under the Plan, the Liquidating Trustee shall separately reserve and make distributions for such Tax Claim as provided under the Plan. The Liquidating Trustee's obligation to reserve on account of all Tax Claims that are Disputed Claims shall terminate the earlier of: (i) the entry of a final order by the Bankruptcy Court adjudicating all of the Tax Claims (including the adjudication of the Surrogate Tax Claim as to all taxing authorities identified in that claim), such that (a) upon entry of the final order, all of the Tax Claims will have been allowed, disallowed or otherwise fully resolved and (b) if any Tax Claim is determined to be an Allowed Claim, the cash reserves maintained on account of such allowed Tax Claim(s) exceed the amount that the Trustee would otherwise be required to maintain under the terms of the Plan; or (ii) the entry of an order of the Bankruptcy Court that the Trust has been fully administered.

2. Partial Allowance of the Surrogate Tax Claim: The Surrogate Tax Claim shall be allowed in the amount claimed by the MN DOR in the MN Tax Assessment, plus interest and penalties as permitted under applicable State law. The allowance of the Surrogate Tax Claim for the taxes described in the MN Tax Assessment shall be without prejudice to: (i) the allowance of the Surrogate Tax Claim as to other alleged unsatisfied tax obligations of the Debtors, if any, related to the Debtors' business operations; and (ii) all objections, counterclaims and other actions maintainable by the Liquidating Trustee regarding any alleged unsatisfied tax obligations of the Debtors.

3. Stipulations. The Parties stipulate that this Tax Claim Agreement and the terms hereof shall not be construed as evidence regarding the merits or the actual allowable amount, if any, of any of the Tax Claims, and that this Tax Claim Agreement and the terms hereof shall be without prejudice the rights of the Liquidating Trustee or any of the Tax Indemnification Claimants regarding adjudication of the Tax Claims and the Tax Claim Objections. The Parties further stipulate that this Tax Claim Agreement and the terms hereof shall be without prejudice to the rights of any of the Tax Indemnification Claimants arising upon the allowance of any of the Tax Claims, in whole or in part, from being brought current on distributions on a pro rata basis to other holders of "Allowed Claims" (as that term is defined in the Plan) in accordance with the Plan. Nothing in this Tax Claim Agreement shall constitute or be construed to constitute res judicata or collateral estoppel on any issues related to the allowance or disallowance of the Tax Claims or any other claims asserted by the Tax Indemnification Claimants.

4. Disclaimer of All Other Representations, Warranties, Promises, and Inducements. Except as expressly set forth herein and the D&O Settlement Agreement, the Parties make no other representations or warranties to the other Parties, whether express or implied or by operation of law or otherwise. Without in any way limiting the foregoing, the Parties agree and acknowledge that, except for the promises and agreements set forth in the D&O Settlement Agreement, no additional promise or agreement has been made as consideration for this Tax

Claim Agreement and that the execution of this Tax Claim Agreement has not been induced by any representation of the Parties or anyone on their behalf, including without limitation any representation or statement regarding the nature, extent or duration of damages sustained or any other matter. Each Party has undertaken such independent investigation as it deems appropriate and is entering into this Tax Claim Agreement in reliance on that investigation and evaluation and not in reliance on any advice, disclosure, representation or information provided by or expected from any other Party or its attorneys or representatives.

5. Entire Agreement. This Tax Claim Agreement constitutes the entire agreement among the Parties regarding the Tax Claims and supersedes all prior and contemporaneous agreements, representations, warranties, and understandings of the Parties, whether oral, written, or implied, as to the subject matter hereof. No supplement, modification, or amendment of this Tax Claim Agreement or waiver of rights hereunder shall be binding unless executed in writing by the Party affected thereby.

6. Assignees; Successors. This Tax Claim Agreement is and shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

7. No Admissions. Nothing in this Tax Claim Agreement or any negotiations or proceedings in connection therewith shall constitute or be deemed or claimed to be evidence of an admission by any Party of any liability, violation of law, or wrongdoing whatsoever, or the truth or untruth, or merit or lack of merit, of any claim or defense of any Party. Neither this Tax Claim Agreement nor any negotiations or proceedings in connection herewith may be used in any proceeding against any Party for any purpose whatsoever except with respect to effectuation and enforcement of this Tax Claim Agreement.

8. Interpretation and Construction. Each Party acknowledges that it has been or has had the opportunity to be represented by counsel and has received or has had the opportunity to receive independent legal advice regarding the meaning and effect of the terms of this Tax Claim Agreement. Each Party agrees that any rule of interpretation or construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation, construction, or enforcement of this Tax Claim Agreement.

9. Further Assurances. The Parties agree that they will cooperate in executing all documents necessary to effectuate this Tax Claim Agreement.

10. Counterparts. This Tax Claim Agreement may be executed in two or more counterparts, in which case this Tax Claim Agreement shall include each such executed and delivered counterpart, each of which shall be deemed to be a part of a single instrument.

11. Costs. Each Party shall bear and be responsible for any and all of its own expenses (including professional fees) associated with the negotiation of this Tax Claim Agreement and with the matters resolved hereby.

12. Bankruptcy Court Jurisdiction and Applicable Law. Each Party consents to the exclusive jurisdiction of the Bankruptcy Court over any matter, action, or proceeding relating to this Tax Claim Agreement, including any proceeding brought to enforce, interpret, reform, or rescind this Tax Claim Agreement, and agrees that the Bankruptcy Court shall be the exclusive

forum to hear, determine, and enter appropriate orders and judgments in all such matters, actions, or proceedings. This Tax Claim Agreement shall be governed in all respects, including validity, interpretation, and effect, by the Bankruptcy Code and the laws of the State of New York, without giving effect to the principles of conflicts of law thereof.

13. Effectiveness. This Tax Claim Agreement shall become effective on the first date after which: (i) each of the Tax Indemnification Claimants has executed this Tax Claim Agreement and delivered to counsel or the representative for the Trustee an original executed counterpart; (ii) the authorized representative of the Trustee has executed this Tax Claim Agreement and delivered to counsel or the representative for the Tax Indemnification Claimants an original executed counterpart; and (iii) Bankruptcy Court has entered an order approving both this Tax Claim Agreement and the D&O Settlement Agreement (the "Approval Order").

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its officers or other duly-authorized representatives.

**GOLDIN ASSOCIATES, LLC, LIQUIDATING
TRUSTEE OF THE WORLDWIDE DIRECT
LIQUIDATION TRUST**

By: _____
Name: _____
Its: Managing Director

ROBERT H. LORSCH

ERICH L. SPANGENBERG

RICHARD M. TEICH

ROBERT M. SMITH

FRED F. FIELDING

JEFF LINDAUER

AHMED O. ALFI

KENNETH A. VILLIEU

SCHEDULE A

MOTION FOR APPROVAL OF
TAX INDEMNIFICATION CLAIM ESTIMATION AGREEMENT

CLAIMANT'S NAME	POC DATE	POC CR #	POC AMOUNT	BASIS	CLASSIFICATION
D&O INDEMNIFICATION					
Alfi, Ahmad 700 Berkshire Avenue La Canada, CA 91011	07-12-99	584	unknown	Indemnification (Securities Actions)	Priority: unsecured w/ reservation of right to assert claim as administrative
Fielding, Fred F. 1776 K. Street N.W. Washington DC, 20006	07-16-99	1080	unknown	Indemnification (Securities Actions)	Unsecured w/ reservation of right to assert claim as administrative
Fielding, Fred F. 1776 K. Street N.W. Washington DC, VA 20006	07-15-99	Not Designated	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative
Lorsch, Robert H. 3188 Kings Court Los Angeles, CA 90077	07-15-99	677	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative
Lorsch, Robert H. 3188 Kings Court Los Angeles, CA 90077	07-15-99	678	unknown	Indemnification (Securities Actions)	Unsecured w/ reservation of right to assert claim as administrative
Lorsch, Robert H. 3188 Kings Court Los Angeles, CA 90077	07-15-99	679	unknown	Indemnification from fees, expenses and liability in connection with Debtors' tax obligations	Priority (indemnification for unpaid taxes)
Smith, Robert M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1062	unknown	Indemnification (Securities Actions)	Unsecured w/ reservation of right to assert claim as administrative
Smith, Robert M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1063	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative

CLAIMANT'S NAME	POC DATE	POC CR #	POC AMOUNT	BASIS	CLASSIFICATION
Spangenberg, Erich L. 12136 St. Andrews Drive Kanchu Mirage, CA 92270	07-15-99	673	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative
Spangenberg, Erich L. 12136 St. Andrews Drive Kanchu Mirage, CA 92270	07-15-99	683	unknown	Indemnification (Securities Actions)	Unsecured w/ reservation of right to assert claim as administrative
Spangenberg, Erich L. 12136 St. Andrews Drive Kanchu Mirage, CA 92270	07-15-99	684	unknown	Indemnification (Securities Actions)	Unsecured w/reservation of right to assert claim as administrative
Spangenberg, Erich L. 12136 St. Andrews Drive Kanchu Mirage, CA 92270	07-15-99	685	unknown	Indemnification (Securities Actions)	Unsecured w/reservation of right to assert claim as administrative
Teich, Richard M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1050	unknown	Indemnification (Derivative Actions delegated to the Committee)	Unsecured w/ reservation of right to assert claim as administrative
Teich, Richard M. c/o Robert H. Thau, Esq. Rosenfeld, Meyer & Susman, LLP 9601 Wilshire Boulevard, 4th Floor Beverly Hills, CA 90210	07-16-99	1064	unknown	Indemnification (Securities Actions)	Unsecured
Viellieu, Kenneth c/o Paul Camilleri Donaldson, Lufkin & Jenrette Securities Corp. 277 Park Avenue New York, NY 10172	07-15-99	722	unknown	Indemnification	Unsecured

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	§	Chapter 11
	§	
WORLDWIDE DIRECT, INC., et al.,	§	Case No. 99-00108 (MFW) through
	§	Case No. 99-00127 (MFW)
Debtors.	§	

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION FOR ORDER: (I)
AUTHORIZING AND APPROVING (A) SETTLEMENT AGREEMENT
WITH CERTAIN FORMER OFFICERS AND DIRECTORS OF DEBTORS,
AND (B) TAX ESTIMATION AGREEMENT REGARDING SECTION 501(b)
TAX CLAIM AND TAX INDEMNIFICATION CLAIMS FILED BY CERTAIN
FORMER OFFICERS AND DIRECTORS OF DEBTORS; AND (II) RELEASING
AND BARRING CERTAIN CLAIMS AGAINST FORMER OFFICERS AND
DIRECTORS, AND BRIEF IN SUPPORT THEREOF**

On this day came to be considered the *Liquidating Trustee's Motion For Order: (I) Authorizing And Approving (A) Settlement Agreement With Certain Former Officers And Directors Of Debtors And; (B) Tax Estimation Agreement Regarding Section 501(b) Tax Claim And Tax Indemnification Claims Filed By Certain Former Officers And Directors Of Debtors; And (II) Releasing And Barring Certain Claims Against Former Officers And Directors. And Brief In Support Thereof* (the "Motion")

Having considered the Motion, the relevant authority, and the representations of counsel, the Court finds that the Motion has merit and should be GRANTED. It is, therefore,

ORDERED that the material terms of the Settlement Agreement that is attached to the Motion as Exhibit "A", and fully incorporated herein by reference, are approved. It is further

ORDERED that the Liquidating Trustee is hereby authorized to enter into a settlement agreement under the same material terms contained in and in a form substantially identical to the Settlement Agreement (the "Final Settlement Agreement"). It is further

ORDERED that the material terms of the Tax Estimation Agreement that is attached to the Motion as Exhibit "B", and fully incorporated herein by reference, are approved. It is further

ORDERED that the Liquidating Trustee is hereby authorized to enter into a claims estimation agreement under the same material terms contained in and in a form substantially identical to the Tax Estimation Agreement (the "Final Tax Estimation Agreement"). It is further

ORDERED that upon full execution of the Final Settlement Agreement and the Final Tax Estimation Agreement by all parties thereto, the releases provided in the Final Settlement Agreement shall be and are deemed approved and enforceable. It is further

ORDERED that upon full execution of the Final Settlement Agreement and the Final Tax Estimation Agreement, all "Holders of Claims" (as that term is defined in the Final Settlement Agreement), are permanently enjoined from, and restrained against, commencing or continuing in any court or administrative court or administrative tribunal or body, any suit, action or other proceeding, or otherwise asserting any claim or interest, seeking to hold any of the Released Parties liable for any claim, obligation, right, interest, debt or liability that has been discharged or released pursuant to the Final Settlement Agreement. It is further

ORDERED that upon full execution of the Final Settlement Agreement and the Final Tax Estimation Agreement, all persons with actual or constructive knowledge of the Order are enjoined from commencing or continuing any action, employment of process or act to collect, offset or recovery any claim or cause of action, satisfied, released or discharged under the Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by Sections 524 and 1141 thereof. It is further

ORDERED, that, regardless of any other terms of this Order, nothing in this Order shall:
(a) limit the rights of any Holder of Claims to continue litigating any pending lawsuits, including

but not limited to the lawsuits captioned: (i) In re SmarTalk Teleservices, Inc. Sec Litig., Case No. C2-98-84 (including the complaints consolidated in that matter), pending in the United States District Court for the Southern District of Ohio; and (ii) Bruno v. SmarTalk Teleservices, Inc., Case No. BC194788, pending in the California Superior Court , Los Angeles County; (b) limit the rights of any Holder of Claims to assert that the actions of any of the Released Parties should reduce the amount of any judgment against the Holder of Claims under the doctrine of proportionate liability or similar rights, laws or doctrines; (c) subject to the discharge granted under Section 524 and 1141 of the Bankruptcy Code, preclude police, federal tax or regulatory agencies from fulfilling their statutory duties; or (d) bar the claims, if any, of the United States or any other sovereign or governmental entity as against the Released Parties. It is further

ORDERED that upon full execution of the Final Settlement Agreement and the Final Tax Estimation Agreement, the Liquidating Trustee shall be and is permitted to estimate liability on account of the Tax Claims (as defined and described in the Motion and the Final Tax Estimation Agreement) for the purpose of funding the Disputed Claims Reserve maintained in this case as provided and permitted under the terms of the Final Tax Estimation Agreement.

Signed this _____ day of _____, 2002.

United States Bankruptcy Judge