"THE ULLICO SCANDAL AND ITS IMPLICATIONS FOR U.S. WORKERS"

HEARING

BEFORE THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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**HEARING ON THE ULLICO SCANDAL
AND ITS IMPLICATIONS FOR U.S. WORKERS**

Tuesday, June 17, 2003

Committee on Education and the Workforce

U.S. House of Representatives

Washington, D.C.

The Committee met, pursuant to notice, at 10:40 a.m., in Room 2175, Rayburn House Office Building, Hon. John Boehner, Chairman of the Committee, presiding.

Present: Representatives Boehner, Petri, Ballenger, Hoekstra, McKeon, Castle, Johnson, Greenwood, Norwood, Ehlers, Isakson, Tiberi, Osborne, Wilson, Cole, Porter, Kline, Carter, Musgrave, Blackburn, Gingrey, Burns, Miller, Kildee, Owens, Payne, Andrews, Woolsey, McCarthy, Tierney, Kucinich, Holt, S. Davis, D. Davis, Grijalva, Majette, Van Hollen, Ryan, and Bishop.

Staff present: Jim Paretti, Professional Staff Member; Chris Jacobs, Staff Assistant; Christine Roth, Workforce Policy Counsel; Ed Gilroy, Director of Workforce Policy; Stephen Settle, Professional Staff Member; David Connolly, Jr., Professional Staff Member; Jo-Marie St. Martin, General Counsel; Dave Schnittger, Communications Director; Kevin Smith, Senior Communications Counselor; Kevin Frank, Professional Staff Member; Deborah L. Samantar, Committee Clerk/Intern Coordinator.

John Lawrence, Minority Staff Director; Mark Zuckerman, Minority General Counsel; Peter Rutledge, Minority Senior Legislative Associate/Labor; Michele Varnhagen, Minority Labor Counsel/Coordinator; Maria Cuprill, Minority Legislative Associate/Labor; Margo Hennigan, Minority Legislative Assistant/Labor; Joe Novotny, Minority Legislative Assistant/Education; Ann Owens, Minority Clerk.

OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE

Good morning to all of you. We are here this morning in exercise of our oversight authority - the responsibility we are charged with as Members of Congress and of this Committee.

In March of this year, the Committee began an investigation into ULLICO, a union-owned insurance company that was started in 1925 by the American Federation of Labor to ensure that rank-and-file union members in high-risk jobs could purchase affordable life insurance. In the seventy-some years since its founding, ULLICO has grown to become a multi-million dollar enterprise providing financial, lending, investment, and pension services to unions, union members, and union pension funds.

The Committee began this investigation based on facts which, as they became public, suggested while at the same time organized labor was decrying corporate wrongdoing and corporate greed, many of the leaders of these same unions were, in fact, themselves profiting at the expense of rank and file union members and their families.

Specifically, the facts suggest that ULLICO, under the leadership of its then Chairman, Robert Georgine, engaged in a series of transactions involving the sale of company stock to directors and officers at a price which the company knew or should have known was artificially low, and the repurchase of this stock a year or two later from the same officers and directors at a highly-inflated price. Notably, at the time these repurchases were made, officers and directors of the company were permitted to “cash” in all of their stock holdings, while the unions and union pension funds that held the vast majority of shares were not given this same opportunity.

In the course of this investigation, the Committee staff has reviewed thousands of pages of documents, including a highly-critical independent legal analysis conducted by the former governor of Illinois, James Thompson, which concluded that officers and directors of ULLICO very likely broke securities laws. Governor Thompson was expressly directed *not* to examine whether ULLICO broke federal pension and labor laws, including the Employee Retirement Income Security Act (ERISA) and the Labor-Management Reporting and Disclosure Act (LMRDA). As a result, the question of whether ULLICO's actions violated those laws remains unclear, and I think is a key issue for this Committee today.

What seems clear is that these officers and members of ULLICO's board, which was overwhelmingly comprised of top officials of some of this country's largest unions, acted inappropriately and reaped personal benefit at the expense of the very union members and pensioners they have a moral and legal duty to represent.

Last year, the financial collapses at Enron and WorldCom prompted this Congress to take strong and decisive actions to address corporate wrongdoing. And in the wake of these scandals, Congress approved, and the President signed into law, the Sarbanes-Oxley Corporate Accountability Act, one of the farthest-reaching protections of American workers in modern history. In the same spirit, this year, the House again passed the Pension Security Act to give rank-and-file workers the same access to professional investment advice that wealthy executives have.

Just as Congress acted quickly to hold corporate leaders accountable, it is my belief that this Congress should insist on the same type of financial accountability from union leaders. Union members have a right to know that the union leaders who manage the billions of dollars in union dues and labor pension funds are following the law and acting solely in the interest of the workers they represent. Rank-and-file union members deserve to know whether the leaders of ULLICO who participated in these stock deals violated the trust that they owe to their unions and union members.

While investigations by the Departments of Justice and Labor, the Securities and Exchange Commission, the federal grand jury, and state regulators will reveal whether the millions of rank-and-file union members were the victims of alleged illegal actions, we on this Committee have a responsibility to ensure that the interest of those union members are protected under our federal labor and pension laws. The credibility of ULLICO and its obligation to the unions, union pension funds, and union members who invested in the company is at stake.

With that, I want to thank our witnesses for appearing today, and we look forward to your testimony.

I now yield to my colleague and friend, the gentleman from California, Mr. Miller.

WRITTEN OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX A

OPENING STATEMENT OF RANKING MEMBER GEORGE MILLER, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman. I want to agree with you that I think that this hearing is quite appropriate, that there clearly is a disturbing set of facts and behavior that should be of concern to every Member of this Committee, and certainly in our role in oversight over the pension laws of this nation.

But I also want to make sure that we put this in context, and I'd like to note for the record what Governor Thompson said in his letter transmitting the report of his investigation of ULLICO stock purchase programs to the ULLICO board:

"Certain ULLICO officers and board members arguably acted inappropriately, to the detriment of the rights of the ULLICO institutional shareholders. As a result of their actions, certain officers and directors received preferential treatment in the sale of ULLICO stock. It is important in these times of highly-publicized cases of deliberate corporate malfeasance to distinguish what happened at ULLICO from these other cases emphasizing that we have found no evidence of criminal intent."

In many respects, the events of ULLICO represent allegations of another example of improper actions by corporate insiders, board members, and officers at the expense of shareholders. Unfortunately, that is an all too common story. I have a Congressional Research Service (CRS) report that I will put in the record, that is nineteen pages long listing civil charges arising from numerous corporate scandals, and another that is eight pages long listing criminal charges of corporate scandals.

Frankly, I wish the majority was as interested in investigating the billions of dollars employees lost in company 401(k) plans due to corporate fraud and abuse as it is in investigating the ULLICO transactions. Millions of employees lost all or substantial amounts of their nest eggs in companies like Enron, WorldCom, Global Crossing, Lucent Technologies, CMS Energy, Xerox, Duke Energy, and yet this Committee has held only one abbreviated hearing on Enron.

After a year-and-a-half of investigations of Enron, the Secretary of Labor has failed to collect one cent on behalf of Enron employees, as she is empowered to do under law. She has failed to issue a report or findings on the Enron investigation, failed to provide employees and the Congress with updates on her progress, and has yet to file a civil action on behalf of the Enron employees or on behalf of any employee of these companies that I have mentioned.

Mr. Chairman, I hope the inaction by the Secretary to address millions of pension victims of corporate fraud and abuse is subject to the next hearings, because a lot of employees are waiting after all of this time to recover the smallest portion of their nest egg.

However, I do want to say that since the ULLICO story became public, union officials have led efforts to mount the investigation of the alleged misconduct, insisted the results of that investigation be made public, and have implemented reforms.

Aaron Bernstein, one of the reporters who initially broke the ULLICO story, wrote in the May 27, 2003, issue of *Business Week*, and I quote, 'When it comes to good governance, corporate America can learn a useful lesson from all of the parties of the labor movement. What's notable is that after months of earnest battles, the AFL-CIO President John Sweeney and other labor leaders who sat on ULLICO's board moved decisively to clean up the mess. These actions stand as a model to other large companies. It's painfully clear today that corporate boards rarely fulfill their designated role as watchdog over the CEOs. But the AFL can now cite ULLICO not just as a case of executive greed, but as an example of how to deal with it."

Thank you, Mr. Chairman.

Chairman Boehner. Thank you, Mr. Miller. I'm eager to hear from our witnesses today, so I'll start with the introductions.

Our first witness today is Mr. Robert A.Georgine. He served as Chairman and Chief Executive Officer of ULLICO, Inc., Washington, D.C. from December of 1990 through May 2003. He was President of the AFL-CIO Building and Construction Trades Department from 1974 through 2000, and also served on the AFL-CIO Executive Committee.

The second witness is Mr. Warren E. Nowlin. Mr. Nowlin serves as a partner in the law firm of Williams Mullen here in Washington, D.C., focusing on corporate and securities law. He has advised pension funds and state retirement systems on their investment programs and their regulatory obligations under securities and tax laws, ERISA, and the Department of Labor regulations. Mr. Nowlin received his Bachelor's Degree from the University of Virginia, and his law degree from Washington & Lee University School of Law.

Our third witness is Mr. Damon Silvers. Mr. Silvers serves as Counsel to the current Chairman of ULLICO, Inc., Washington, D.C. and also serves as Associate General Counsel for the AFL-CIO.

I'd like to remind Members that we will be asking questions after the entire panel has testified. In addition, Committee Rule 2 imposes a five-minute limit on all questions.

Before the witnesses begin their testimony, I will ask each witness to take an oath. You should be aware that it is unlawful to make a false statement to Congress while under oath. In light of this, Mr. Georgine, will you please stand and raise your right hand?

[Witness sworn.]

Mr. Georgine, you may be seated. You may begin your testimony.

Mr. Georgine. I don't have any testimony, Mr. Chairman. Thank you.

Chairman Boehner. Mr. Nowlin, would you stand and raise your right hand?

[Witness sworn.]

The gentleman may begin his testimony.

STATEMENT OF WARREN E. NOWLIN, ESQ., PARTNER, WILLIAMS MULLEN, WASHINGTON, D.C.

Mr. Chairman and Members of the Committee, my name is Warren Nowlin. I'm a partner of the law offices of Williams Mullen here in Washington, and my practice is in the corporate area, specifically with focus on pension fund and fiduciary matters, and particularly their investment programs.

I'm not going to reread the brief testimony that I have submitted for the record. I will give you a brief background of my view of this, although I must say that I'm here as an expert, so I really don't have a strong position one way or the other.

I think the Committee here today is considering some interesting issues regarding the alignment of the laws of disclosure as they relate to corporations on the one hand, and pension fund and union pension funds on the other. When I say “pension funds,” I don't really differentiate between defined contribution plans and benefit plans for corporations and those for union pensions.

I appreciate the opportunity to testify today and to help the Committee investigate these matters. I have not examined all the facts, and indeed, I have not been privy to any non-public information in this matter. My information is limited, basically, to what's been in the press and certain excerpts I've received from others.

ERISA, as you all know, imposes a very high standard of care for its fiduciaries. It contains numerous restrictions and regulations on the plan trustees, and imposes a very high standard of loyalty and care. For example, a fiduciary must execute his duties solely, and I emphasize “solely” in the interest of the plan and its beneficiaries.

The duty of loyalty imposes an obligation upon fiduciaries to act with complete and undivided loyalty, with an eye single to the interests of the participants and the beneficiaries. Moreover, ERISA requires that a fiduciary must act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and with familiarity with such matters would use. We all know this standard. Most of us have looked at it. And it's frightening sometimes for the fiduciaries.

Fiduciaries can be held personally liable for breaching this standard. And Congress has adopted extensive rules under ERISA pertaining to prohibited transactions, what fiduciaries can and cannot do. And those rules generally prohibit any type of self-dealing or interested party transactions.

I guess in terms of remedies, if you look at ERISA, where there's been a breach of those prohibited transaction requirements, the fiduciary can be personally liable for any losses of the plan. But more importantly, the fiduciary is liable to disgorge any profits that he or she may have made on an interested party or an inside transaction.

The SEC has also adopted, as part of the Sarbanes-Oxley regimen, an ethics code as part of this new regimen that Congress passed the year before last. The new rules require a company to disclose whether or not it has adopted a Code of Ethics for its senior financial officers, and if not, why they haven't done so.

While the increased disclosure requirements that are imposed on publicly-traded companies under Sarbanes-Oxley may not have prevented what happened at ULLICO, the Committee should examine them and the divergence between the disclosures required and the actions required under Sarbanes-Oxley to those required by pension fiduciaries. Congress should consider aligning these disclosure schemes to protect the pension beneficiaries much in the way it has acted to protect the shareholders of public companies under Sarbanes-Oxley.

I think that concludes my initial remarks, and thank you.

WRITTEN STATEMENT OF WARREN E. NOWLIN, ESQ., PARTNER, WILLIAMS MULLEN, WASHINGTON, D.C. – SEE APPENDIX B

Chairman Boehner. Mr. Nowlin, thank you.

Mr. Silvers, would you stand and raise your right hand?

[Witness sworn.]

The gentleman may begin his testimony.

STATEMENT OF DAMON A. SILVERS, ESQ., COUNSEL TO THE CHAIRMAN, ULLICO, INC., WASHINGTON, D.C.

Good morning, Chairman Boehner, Congressman Miller, and Members of the Committee. My name is Damon Silvers. I am Counsel to the Chairman of ULLICO, Inc. I'm also an Associate General Counsel of the AFL-CIO. I'm grateful for the opportunity to appear today on behalf of ULLICO to discuss the events of the last several years.

Let me begin by stating that we believe our company was the victim of serious misconduct during the period from 1998 to 2002. ULLICO today, as a consequence, faces great challenges. But we believe the record shows that the labor movement and our company have one standard for corporate conduct, and that that standard has been enforced at ULLICO.

ULLICO is a private insurance holding company. Its mission, as the Chairman said in his introductory remarks, is to provide insurance and other financial services to working families, their unions, and their benefit funds.

From 1998 to 2001, due to a successful private capital investment, the value of ULLICO stock was largely a function of the price of Global Crossing, a publicly-traded company. During this time, ULLICO management constructed stock repurchase programs that enabled officers and directors of ULLICO to transact in the company's stock on terms significantly more favorable than those available to the unions and pension funds that hold 98 percent of that stock.

Special Counsel to ULLICO, former Illinois Governor, James Thompson, found in his report “a compelling case” that these transactions involved breaches of state corporate law, fiduciary duty, and strong cases that then Chairman Robert Georgine and then Chief Legal Officer

Joseph Carabillo engaged in intentional misconduct. Thompson found "no evidence of criminal intent," but did find that there were arguments on both sides as to whether the transactions involved had breached either federal or state securities laws. His report recommended that most of the directors return their stock-trading profits.

I would be happy to answer questions about the details of these transactions. However, the bulk of my testimony focuses on the response to these events by ULLICO shareholders and directors.

Over the last year, ULLICO board members, elected union leaders, union pension funds, their qualified plan professional asset managers, and unions themselves have worked together, first to bring about Governor Thompson's investigation of these stock transactions; secondly, to obtain the release of the results of that investigation; and finally, ultimately, to change the management of the company and adopt the Governor's report.

President Sweeney of the AFL-CIO led the call for an investigation and for its results to be made public. President Douglas McCarron of the Carpenters was the first person to return profits from the transactions voluntarily to the company. And later, he resigned in protest over management's resistance to the Thompson report. President Terry O'Sullivan of the Laborers International Union and John Wilhelm of the Hotel Workers led the fight on the board to adopt the Thompson report.

A month ago, at ULLICO's May 8th annual meeting, a reform slate of directors was elected, and chose Terry O'Sullivan as Chairman and CEO of ULLICO. He serves without pay or other compensation. Since May 8th, a number of steps have been taken to address ULLICO's business issues. Most importantly, ULLICO has hired an Acting President, Edward Grebow, who has extensive experience in fixing troubled businesses, to run ULLICO from day to day.

New management has also acted to address the recent misconduct starting on May 9th, the day after the new board took office, when the company asked the trustees of ULLICO management's rabbi trust to make no payments to anyone pending a board investigation of those trusts and how they came into being.

On May 13th, five days after the annual meeting, the new board voted to adopt Governor Thompson's recommendations, and to demand the return of $5.6 million in stock profits from officers and directors. Demand letters have been sent.

On May 13th, the board delegated to a subcommittee chaired by retired federal judge and new board member Abner Mikva the tasks of reviewing the remaining stock transactions pursuant to Governor Thompson's recommendations, as well as past executive compensation and past attorney and other service provider conduct. Further actions along those lines are listed in my written testimony.

In conclusion, the labor movement takes the very strong position that the problems in our corporate economy, conflicts of interest and lack of accountability, are structural. The story of misconduct at ULLICO is the story of these same structural problems manifesting themselves in a labor-affiliated business.

ULLICO is a private, for-profit company. During these transactions, it had numerous prominent corporate firms advising it, equity-linked executive compensation, and a board of directors with close relationships with its CEO. Like other private companies, and unlike public companies, unions, and pension funds, ULLICO was and is not required to disclose basic information about its governance or executive compensation. However, we have changed that in recent days voluntarily.

ULLICO's painful experience should reinforce the lesson of the last two years of corporate scandal. Conflicts of interest are real and can harm companies. Executive compensation is real and can harm companies. Stock-based compensation is not always a good idea. Expert gatekeepers can easily aid and abet wrongdoing, and boards can easily become captive to CEOs.

But at ULLICO, our directors and shareholders stood their ground, fought, and won, and the company is now acting to obtain the return of wrongful gains. Compare this story to those of one large public company after another, where investors seem unable to either recoup hundreds of millions of dollars in insider gains, or stop executive misconduct from rendering their investments worthless.

Finally, with regard to pensions, no one has lost a dime in pension benefits as a result of what has occurred at ULLICO. ULLICO employees have a defined benefit pension plan which, while it may have been hurt by these events, is properly diversified and in no danger of defaulting on its obligations.

What sacrifices there must be to put ULLICO back on track will be shared. But there has not and will not be the horrifying spectacle of dedicated, honest employees abandoned with no severance, no pension or health care, while executives wire themselves severance bonuses, as has occurred at powerful companies many times ULLICO's size.

Ultimately, the labor movement has one standard for corporate governance. It is a standard we fight for every day in the companies where worker money is invested, and it is the standard that has prevailed at ULLICO.

Thank you.

WRITTEN STATEMENT OF DAMON A. SILVERS, ESQ., COUNSEL TO THE CHAIRMAN, ULLICO, INC., WASHINGTON, D.C. – SEE APPENDIX C

Chairman Boehner. I thank all the witnesses for their testimony.

Mr. Georgine, throughout the time period in which this Committee's investigation is focused, you were the President and Chief Executive Officer of ULLICO and Chairman of its board. As such, you owed duties, both legal and moral, to the shareholders of your company, who were among some of the biggest unions and union pension funds in the country.

ULLICO's own investigation conducted by former Illinois Governor James Thompson, acting as Special Counsel, found, and I quote, “A compelling argument exists that the directors of ULLICO who benefited from the stock transactions in question violated their fiduciary obligations as directors and officers of the company.”

Furthermore, Governor Thompson concludes, and I quote, “Certain senior officers of the company”, and you are explicitly noted as one of those officers, sir, “violated the duties of loyal and care that you owe to the company.” The Thompson report concluded that you and your principal advisor were “primarily and most directly responsible” for incomplete and potentially misleading stock documents, and that you should have been more forthcoming with your shareholders regarding these inside stock transactions.

Mr. Georgine, as you sit here today, is it your testimony that this stock repurchase program, which netted millions of dollars for union leaders on the board at the expense of other shareholders, did not come at your direction, and that you were not the architect of this scheme?

Mr. Georgine. Mr. Chairman, while I'm confident that I have done nothing wrong, on the advice of my attorney, I respectfully decline to answer that question based upon my rights under the Fifth Amendment of the Constitution of the United States.

Chairman Boehner. Let me ask you this, Mr. Georgine. Is it true that while ULLICO ultimately and under public pressure engaged former Governor Thompson to investigate the company's actions, ULLICO's management did expressly instruct him not to examine whether ULLICO's actions broke federal pension or labor laws; is it not?

Mr. Georgine. I also decline, Mr. Chairman, with all due respect, to answer that question.

Chairman Boehner. Well, let me be clear, Mr. Georgine. You're refusing to answer the question on the basis of the protections afforded you under the Fifth Amendment of the United States Constitution?

Mr. Georgine. That's correct.

Chairman Boehner. And will you invoke your Fifth Amendment rights in response to all of our questions today?

Mr. Georgine. Yes, sir.

Chairman Boehner. Well, it's unfortunate that we're not going to get the cooperation of our key witness today. But that is the gentleman's right, and we will respect it.

Mr. Silvers, do you have any insight as to why the former board at ULLICO expressly instructed former Governor Thompson not to investigate whether ULLICO's directors or officers or board members violated federal labor and pension laws?

Mr. Silvers. Yes, Mr. Chairman, I can address that. I think that you are, in one aspect of your characterization of that matter, mistaken. The board of directors of ULLICO instructed Governor Thompson, in undertaking his investigation, to look broadly at all matters relating to stock transactions during the period when Global Crossing was an important asset of the company. There was no limitation in the instruction from the board to Governor Thompson regarding not looking at pension law or labor law or any particular law at all. The mandate was open-ended. That was the instruction from the board.

It is my understanding that counsel for the company at the time, not Governor Thompson and his staff, but other counsel for the company, expressed the opinion to Governor Thompson that this mandate should be understood not to include matters that did not implicate the obligations of the company and its agents, and that more broadly, they should not look at ERISA in general.

Now, what this advice to Governor Thompson meant was that the company, its directors, officers, and other agents have duties to the company under state fiduciary law, and they have obligations directly under state and federal securities laws and under the insurance laws of the various places in which ULLICO's subsidiaries are registered, and so on and so forth.

However, the obligations that exist under ERISA on the part of members of ULLICO's board who are fiduciaries of pension plans unaffiliated with ULLICO are not obligations that run to ULLICO the company. Similarly, obligations under our nation's labor laws that members of ULLICO's board had toward unions which they were officers of at the time are, again, obligations that do not run to the company.

This was the argument that was put forth to Governor Thompson. There's a little problem with it.

Chairman Boehner. Are you suggesting to me that because the board of directors of these large unions and union pension companies sit on ULLICO's board, where they have significant investments, you're suggesting to me that their fiduciary duty under ERISA and their obligations under the Labor-Management Reporting and Disclosure Act don't extend to their actions and their positions on ULLICO?

Mr. Silvers. Oh, absolutely not. No, sir. What I'm suggesting is that it is not the company's obligation to act as the enforcer of duties owed by its board members to third parties, and that it is not the company's obligation, this was the position taken by company counsel at the time, to expend company funds to enforce board of directors duties to third parties, be they unions or pension funds.

The problem with this reasoning, Mr. Chairman, is that there is an ERISA fund in which company officers and agents are fiduciaries of, and that is the ULLICO Staff Pension Fund. The ULLICO Staff Pension Fund is a shareholder in ULLICO. And this argument that was placed in front of Governor Thompson with respect to that fund, although current management is still looking at this, in our opinion today, as a tentative matter, we are not convinced by this argument in relationship to the ULLICO Staff Pension Fund.

Governor Thompson and his staff have informed us that while they listened to the views of ULLICO's counsel at that time, they made up their own minds not to look at ERISA matters at all, including those related to the ULLICO Staff Pension Fund. In our view, that may have been mistaken, but it is an understandable mistake in the context on the part of the Governor.

Chairman Boehner. Well, my time has expired. We'll come back in the next round of questions to deal with that.

The Chair recognizes Mr. Miller for five minutes.

Mr. Miller. Thank you, Mr. Chairman. Mr. Georgine has made it clear that he's not going to answer any questions under his right provided by the Constitution, and I would like to reserve my time to question the others at this point.

Chairman Boehner. The Chair recognizes the gentleman from Georgia, Mr. Norwood.

Mr. Norwood. Thank you very much, Mr. Chairman. I appreciate this opportunity to question our witnesses. Frankly, I am more than a little frustrated and disappointed that Mr. Georgine, who might have given this Committee answers to some very important questions, has chosen to refuse to cooperate with the Committee's investigation. The millions of union members whose pension suffered while Mr. Georgine and his cronies benefited deserve more than this; they deserve answers.

From where I'm sitting, I see a lot of rank-and-file union members whose interests unions are supposed to protect from losing money that went into the pockets of their so-called “representative” leadership.

While our federal law may provide for a certain amount of union “self-policing”, I am coming to believe that that may simply not be enough, that in light of what appears to be either flagrant disregard for or simple violation of the laws like the Labor-Management Reporting and Disclosure Act, which I intend to get to in a moment, the time may be here for this Committee to demand more than self-policing, and enhance and put some teeth into these laws.

But I digress. Let me say on the record that I am hopeful that the federal and state investigations of ULLICO that are underway, the Department of Labor, the Department of Justice, the Maryland State Insurance Commissioner, the SEC, the federal grand jury, will determine once and for all, and soon, whether and which laws have been violated here. And I make this promise, if we need to have to broaden this investigation to determine why federal grand juries think this area of the law is so unclear, I for one am only too happy to do so. The American people, particularly the millions of hard-working Americans who pay union dues, have a right to know.

I expect we will hear a lot today about ethics and, in particular, unions' codes of ethics. Again, I would say that union officials should not need a code of ethics to understand that they have a fiduciary duty to their rank-and-file. Any child knows that one ought not to fill their own pockets at the expense of the hard-working men and women they are supposed to represent. There is no doubt in my mind that ULLICO's board members knew that what they were doing smelled like week-old fish.

But this kind of selfish conduct seems to occur again and again, week-in and week-out, in the ranks of organized labor. And time and again, union officials pilfer their union treasuries and only receive a slap on the wrist.

If I may, Mr. Chairman, I'd ask to include in the record a *New York Times* article from last week that follows up on the hearing I held just last year. Some may find it very ironic for Charlie Norwood to quote the New York Times to support a point he wants to make. I assure you, it doesn't happen frequently.

Mr. Chairman, this story makes plain that the unethical, if not illegal actions of union leaders seems to know no bounds. I'd direct my colleagues to this story, which discusses the Manhattan District Attorney's investigation of Local 32BJ of the Service Employees International Union, and how union workers were coerced into campaigning for Mark Green, the Democratic candidate for mayor in 2001. Apparently, these workers told a grand jury that union officials had illegally pressured them to campaign for Mr. Green during their regular union workday, and to take personal days to campaign for Mr. Green.

One official in particular, Dominick Bentivegna, who is running against the sitting president of Local 32BJ, told the grand jury that top union leaders had ordered numerous illegal campaign activities. And I quote: "Every union staff member was forced to take personal days, vacation days and work for Mark Green and their candidates," he said. "We were forced to do campaign work during working hours. We had quotas to meet to recruit union members to campaign for Mark Green. We had to get on the phones to recruit members, and then we had to leaflet at subway stations during work hours. It was all illegal."

Now, if a district attorney can let this type of activity go by with only an agreement to promulgate a code of ethics, I think it is patently apparent that we need legal reform in our labor laws to stop this type of flagrant corruption.

So Mr. Chairman, perhaps we are not assembled today to pass judgment on the conduct of any one individual, but I argue when one reviews the numerous and flagrant instances of immoral and unethical conduct that has gone down since 1959, it becomes obvious that we're dealing with a systemic problem in our labor laws, rather than an isolated case of misconduct. Organized labor needs more than a slap on the wrist to prevent another ULLICO!

As I said earlier, one of the laws designed to protect against this sort of union corruption is the Labor-Management Reporting and Disclosure Act, or LMRDA. The LMRDA is intended to protect the rights of rank-and-file union members, and to provide accountability and prevent corruption by union leaders.

I ask unanimous consent for another minute.

Mr. Miller. I object, Mr. Chairman.

Chairman Boehner. Objection is heard. The gentleman's time has expired.

The Chair recognizes the gentleman from Michigan, Mr. Kildee.

Mr. Kildee. Thank you, Mr. Chairman. Mr. Silvers, why have ULLICO employees been less touched by the problems at ULLICO compared to those at companies like Enron and WorldCom? In particular, why did they not suffer the pension losses that employees at many large companies have suffered?

Mr. Silvers. Yes. This question of suffering was raised, I think, at some length a moment ago. You know, there's not a single human being that exists on this planet who has lost a penny in pension benefits, retirement benefits of any kind as a result of the events being reviewed today. That's not an excuse for those events, but it puts them in perspective, in my opinion.

And I have some basis for making this perspective. I know personally hundreds of people who lost everything, every penny of retirement savings they had, who worked at Enron and at WorldCom. I knew a gentleman; his name was Louis Allen. He was the transportation coordinator for Enron. He was 45 years old. He has a child. He's a single father. And he had all of his retirement money in Enron stock and Enron's 401K. He was the first person in his family to have a professional job. He lost his job, his retirement, his health care, and his severance in one day, the day after Enron declared bankruptcy. He came up here to Washington to see if someone would help him. I think he tried to meet with some of the members from the delegation from Texas. They didn't want to see him.

The AFL-CIO spent union members' money to fight to get Louis Allen his severance, and we got $13,000 of it. But it was not enough for Louis. Louis, at the age of 45, was unable to find a job for six months after that. At the age of 45, he had a stroke and died, after six months in a coma in the hospital.

If you want my opinion, Ken Lay murdered Louis Allen. Ken Lay is a wealthy man. Louis Allen, while he was marching to get his severance to pay for housing for his daughter, lost his home, by the way, in the middle of this. While he was marching, he could literally look up and see Ken Lay's condominium, the value of that thing alone was $7 million.

Mr. Kildee. And there weren't similar situations at ULLICO?

Mr. Silvers. Let me come to ULLICO now. The problems at ULLICO have led to some real difficulties at our company that we are hard at work in repairing. However, the majority of the employees at ULLICO have a defined benefit pension plan that is adequately diversified. And although that plan has a holding in ULLICO stock, and was disadvantaged in these transactions, whether illegally or not, I think we're not sure, but it was certainly disadvantaged economically, that plan is sound and continues to pay benefits.

ULLICO employees have 401(k) plans. Those plans are not loaded up with ULLICO stock. Those 401(k) plans certainly have suffered in the market, as everyone else has, but they've not collapsed. Most line ULLICO employees have union contracts. Their severance payments, their health care, everything is protected for them.

I do not mean to underestimate the seriousness of these events in any way and I think my testimony is clear on that point, but there simply isn't in these events either the scale or the intensity of human suffering, not in the slightest, as there was in literally dozens of the cases that the Ranking Member alluded to earlier. This is a serious matter, and one which pains the labor movement greatly, but it is simply not comparable to the events that this Committee, frankly, has ignored in the corporate economy.

Mr. Kildee. The fiduciaries of ULLICO, their actions were with greater dispatch than say with WorldCom or with Enron?

Mr. Silvers. Well, I think the key issue here is that the fiduciaries in a corporate law sense, the board of ULLICO, frankly, were split over what to do. But the elected leaders of the labor movement who served on that board, over time, starting with President Sweeney and Frank Hanley's request that a special investigative counsel and a special committee be appointed, a request which came four days after the first press accounts of these events, moved a reform program at ULLICO, and a reform program which has resulted in new management getting control at the company, and the new management has demanded the money be returned. And money has been returned.

At the moment, every active union president, to my knowledge, who received a benefit from these stock transactions, has pledged to return the money. And only one pledge is recent; the rest have been paid. Contrast that with pick-your-corporate scandal. All right?

The typical series of events in a corporate scandal is that bad news comes out; the CEO and the officers of the company hunker down; the board runs for cover; the stock price collapses; the debtors march in; the company goes bankrupt; everybody sues; the individuals hide behind the corporation's limited liability; no money ever returns to anyone; and the wrongdoers just walk away clean.

How much money has Ken Lay given to anybody? How about Bernie Evers? How about Louis Allen's mother and daughter? Why isn't Ken Lay giving them any money? And yet we investigate this matter in which people have voluntarily returned money, which the board of the company is demanding that all the rest of the money be returned, and in which it can't find a single solitary human being who's actually in their daily life been harmed.

Mr. Kildee. Thank you, Mr. Silvers.

Chairman Boehner. The Chair recognizes the gentleman from California, Mr. McKeon.

Mr. McKeon. Thank you, Mr. Chairman. I would like to yield at this time to my good friend from Georgia, Mr. Norwood.

Mr. Norwood. I thank the gentleman for that. We've given this a lot of thought, and I'd like to complete my statement, and I appreciate it very much.

As I said earlier, one of the laws designed to protect against this sort of union corruption is the Labor-Management Reporting and Disclosure Act, or the LMRDA. The LMRDA is intended to protect the rights of rank-and-file union members, and to provide accountability and prevent corruption by union leadership. Specifically, Section 501 of the LMRDA provides, and I quote the relevant portions, that "the officers, agents … and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group… It is, therefore, the duty of each such person… to refrain… from holding or acquiring any pecuniary or personal interest which conflicts with the interest of such organization, and to account to the organization for any profit received by him in whatever capacity."

That law seems pretty plain to me: where we have a board like ULLICO's composed of sitting union presidents and officers, profiting on insider stock deals at the expense of their unions, their union pension funds, and their union members, how is this not a violation of that law?

Since Mr. Georgine has chosen not to testify, I will ask that same question to our expert, Mr. Nowlin, here today. Mr. Nowlin, do you believe that there has been a violation of the law on the books?

Mr. Nowlin. Congressman, it's unclear on the facts that I have reviewed whether there is a violation of the law. I think it's clear that the law, at least when it comes to both corporate fiduciaries and ERISA fiduciaries, in the case of corporate law, it's intended to provide a mechanism by which interested director transactions can be approved by independent board members so that they are fair to the corporation. In this case, the corporation being ULLICO.

Mr. Norwood. Well, if the allegations were true, would it violate Section 501 of LMRDA?

Mr. Nowlin. It's possible.

Mr. Norwood. Now, I'll go further and ask if these deals didn't fall within the letter of Section 501; is it your testimony that they are the sorts of transactions intended to be prevented under this law? Does the law need to be changed, in your opinion?

Mr. Nowlin. Well, I think the most interesting part of the facts underlying this inquiry, and I don't think this is necessarily a union issue as much as it is a pension regulatory issue, if there is an issue at all.

Mr. Norwood. That may be correct. But do you feel like under the circumstances, if the allegations are true, should we change the law?

Mr. Nowlin. Possibly. And let me explain. If you look at what has happened under Sarbanes-Oxley in terms of expanding disclosure to shareholders, providing mechanisms by which shareholders have more information about, for example, incentive stock plans and things of that nature, and if you look at pension fiduciaries who may be serving in a separate capacity, in this case, the thing that is intriguing to me, and something that I think the law has a gray area in, I think this being a law-making body, this is where I find the policy issues to be interesting. If you look at the board composition at ULLICO, it was comprised principally of pension plan fiduciaries. They were not necessarily serving on that board as pension plan fiduciaries. They were serving as board members of ULLICO. But they derived a benefit through this stock plan, and it was indirectly as a result of their service as fiduciaries of the underlying union pension plans.

So what would be the query for the Committee? It's clear that ERISA, in Section 406, basically prohibits any type of self-dealing by a pension plan fiduciary. It prohibits the receipt directly or indirectly of benefits or additional compensation as a result of that fiduciary power and control. There are complex regulations that govern when those fiduciary duties apply. They're called the plan asset regulations when you're acting in a fiduciary capacity. And in this case, there are certain exemptions. For example, when a fiduciary becomes, or acts through an operating company, for example exemptions if you will, in this case, it is unclear that those duties applied to their actions and the benefits they received in their capacity as board members. However, I think it's clear that the intent of ERISA is to preclude those types of personal benefits. The intent of ERISA.

Now, the question is whether the law actually gets there. But there is language in ERISA and in Section 406 that prohibits direct and indirect benefits by fiduciaries, which in this case, the board members at ULLICO were all fiduciaries of an underlying pension plan.

Now, Mr. Silvers' testimony went to a whole different issue. That issue was that ULLICO's pension plan didn't lose any money. And indeed, I'm not sure there were any losses by any of the pension plans who own stock in ULLICO as a result of this.

But the question is broader. And the question is whether those fiduciary duties should extend to the role of the board members who were only there because of their underlying service as a pension plan fiduciary that was a stockholder of this company, ULLICO.

Mr. Norwood. I see our time is up, Mr. Chairman. And I sort of gather you're saying we need to do some corrections in the law so there's not so many questions about it.

Mr. Nowlin. It needs to be scrutinized.

Mr. Norwood. Will there be another round of questions?

Chairman Boehner. There may be. Gentlemen, Mr. Silvers would like to make a comment.

Mr. Silvers. I think that I concur with my fellow panelist's assessment that there's a complex ERISA issue here. He may have, I think, unintentionally perhaps misstated what I was saying about the impact of these events on ULLICO's staff pension plan. It appears to us at very first glance that the staff pension plan was disadvantaged by these transactions, meaning that the staff pension plan did not have access to the ability to tender under the same terms that insiders have.

Chairman Boehner. And neither did the unions who were represented by the members of the board of directors.

Mr. Silvers. No. The unions and the pension funds that were not affiliated with ULLICO that were represented by board members also were disadvantaged. The staff pension plan was not disadvantaged in any unique way.

What is unique about the staff pension plan in relation to all of this, in relation to the company's obligations, is the question that my fellow panelist raised about the obligations of officers of the company which is a sponsor of an ERISA plan, and the question of what those obligations are in a situation such as this.

There's complex case law that looks at when you are wearing your ERISA fiduciary hat and when you are not. Because the courts have found that being an ERISA fiduciary is not a 24-hour-a-day job, in a sense. You can be an ERISA fiduciary and also be in some other context in which your ERISA obligations may not apply with full force.

But conversely, there may be limits to that. And I'm not sufficient enough of an expert to be able to sit here and tell you exactly where those lines are drawn. But it's very complicated. And what I would like to say about this is, and the up-shot is that again I'm plagiarizing the testimony of my colleague here on the panel, the remedy that ERISA offers for a breach of duty is the remedy that the wrongful gains be returned. That's the remedy.

That is also the remedy for a breach of state corporate law fiduciary duty. And that is the remedy, whether or not laws have been broken, and it is not the company's job, ultimately, to enforce the law. That belongs elsewhere. But it is the company's job to protect its interest and the interest of its shareholders and the interest of its policyholders. And the company is seeking the return of the money.

Whether or not at the end of the day someone finds an ERISA violation here or not, by the time that happens, at least with respect to those moneys that Governor Thompson has given us a clear direction on, we will have sought the return of that money. And as I think they say in some parts of this country, you really can't hang a man twice.

Chairman Boehner. The Chair recognizes the gentleman from New Jersey, Mr. Andrews.

Mr. Andrews. Thank you, Mr. Chairman. The facts before the Committee today are very grave and very serious, which is why the U.S. Attorney, the SEC, the Department of Labor, and the Maryland State Insurance Commissioner are investigating this.

I don't think the Committee's hearing quite rises to the level of grave seriousness of the facts. We have one witness who relies on his rights not to testify, as is his right to do under the Constitution. We have another witness, Mr. Nowlin, who, quite appropriately, says he only knows the public record of the facts, and then as a very prudent and careful lawyer refuses to answer hypothetical questions, as any competent and well-thinking lawyer would. And then Mr. Silvers, who's here to give us a report, which I'm sure, disappoints the majority, of the proper remedial steps that have been taken at the company in recent days.

It strikes me that there's a clear contrast here between the Committee's pursuit of this very serious matter in this rather curious way, and the Committee's unwillingness to pursue what I believe is a far more serious matter that's clearly within our jurisdiction that we haven't paid a lot of attention to.

Early in 2001, when the Enron scandal first broke, we had the Secretary of Labor take certain actions and promise certain remedial measures to protect the pensioners under ERISA under Enron. On the 10th of September of 2002, the deputy secretary, Secretary Combs, was here and indicated to us that no action had yet been filed against Enron by the Department of Labor.

And she returned here on February 13th of this year. And I again asked her whether an action had been taken by the Department of Labor against Enron's pension plan, given the billions that were lost there, and here was her answer. I asked her when can we expect the department will disclose publicly whether it will pursue a civil action here or not? Here's what the secretary said:

"I am very hesitant to give you an exact date, because I don't have an exact date. I don't know the answer to that question. We are wrapping things up. I realize that I am saying the same, giving a similar response that I gave eight months ago, and had a similar question that you had. What can I say to the Committee, because you deserve a fuller answer? But we are not there yet. And it is difficult. You can't compromise an investigation by talking about it and putting it at risk. I am confident that we will do it soon. I don't want to put an exact date on it, because, as I said, I don't know the exact date."

That, Mr. Chairman, was February the 13th of 2003. We are now sitting here, by my count, about four months past that date, and the Committee has not ordained to bring the Secretary back to answer the question as to what remedial actions have been initiated against Enron.

Now, I don't in any way mean to dissuade anyone of the seriousness of the matters that are before this Committee. They are very serious matters. But as Mr. Silvers has testified, there doesn't appear to be any record that any pensioner has lost any pension funds as a result of this scandal. There may well be changes we should make in the pension laws, as Mr. Nowlin points out, that would make sense. But we compare this to the Enron scandal, where there is documented proof that thousands of people have lost billions of dollars.

We had a promise in September of 2002 we'd get a report on what the Department of Labor was going to do about it. We had a reiterated promise in February of 2003 that we'd have a report as to what the department was going to do about it. It is four months later. There has been no action. There has been no report. There has been no hearing. There has been no inquiry. It seems to me an odd juxtaposition of concern about this issue.

Chairman Boehner. Would the gentleman yield?

Mr. Andrews. I would be delighted to yield, yes.

Chairman Boehner. Let me deal with several points. First, you expressed your opinion that the majority was disappointed in the testimony from Mr. Silvers. And let me just make it perfectly clear that I'm not at all disappointed that ULLICO's new board has decided to clean up their act. And frankly, I think the testimony from Mr. Silvers was excellent.

But let's not do what the leaders of this Congress did in 1991, when the House Bank came along.

Mr. Andrews. Reclaiming my time. If you'd like to have a hearing about the House Bank, we can. I bounced no checks, by the way, for the record. We can have a hearing about the House Bank. But I thought the purpose of the Committee was to study and enforce the pension laws.

We have in front of us a case where, apparently, no one has lost any pension money. We have another case where people lost billions of dollars of pension money, about which we're doing nothing. I don't understand that.

Chairman Boehner. Will the gentleman yield?

Mr. Andrews. I would.

Chairman Boehner. Does the gentleman understand that this Committee has the responsibility for ERISA, and that we also have responsibility for the Labor-Management Reporting Disclosure Act, two issues that were excluded from the Thompson Committee report? And I believe that on behalf of union members from one coast to the other, this Committee has a responsibility to act.

And if I could make one other point. The Department of Labor's investigation of ULLICO has been going on for about the same time as its investigation into the potential pension abuses at Enron and others. Now, the gentleman knows how long the wheels of justice take to turn. I wish they would turn quicker.

Mr. Andrews. Well, reclaiming my time. What I also know is that we had testimony this morning that funds were returned to the ULLICO company, and are going to be returned. We also have no evidence of what happened to the assets of the principals involved in Enron that could have been recovered in the ensuing months that have gone by since the illegalities were committed.

And the point that I made to the Secretary last time when she was here is why are we sitting back and doing nothing as these assets are evaporating, instead of taking appropriate action in court to do something about it? I think that's a question the Committee should be taking a look at.

Chairman Boehner. The Chair recognizes the gentleman from Texas, Mr. Johnson.

Mr. Johnson. Thank you, Mr. Chairman. I just want to add that I believe the Justice Department is getting after those guys, and they're about to go to jail.

Chairman Boehner. Will the gentleman yield for just a moment?

Mr. Johnson. I will.

Chairman Boehner. To finish my point, when we had the House Bank scandal, the leaders, frankly, from both parties, went running down the well of the House and basically said, “We've done nothing wrong, and we won't do it again.” And we were going to save the House Bank by sweeping the dirt under the carpet.

Now, the fact is that this Committee does, in fact, have a responsibility to union members and workers across this country, and we intend to fulfill our responsibility. In addition, we had one of the first hearings within weeks of the Enron debacle and brought those people right here.

I yield back to my colleague.

Mr. Andrews. Is it still my time?

Chairman Boehner. No. Your time expired. The Chairman had already recognized Mr. Johnson.

Mr. Andrews. Are we going to have a second round today?

Chairman Boehner. Yes.

Mr. Johnson. Will you restart my time, Mr. Chairman?

[Laughter.]

Chairman Boehner. The gentleman has four minutes remaining.

Mr. Johnson. Well, I'd like to associate myself with your opening remarks, Mr. Chairman, and stress the seriousness and importance of the matter before us, just as Mr. Andrews has stated. I'm proud of the work this Committee has done in making sure that the workers of this country, whether union or otherwise, are protected. In the last Congress, we did witness corporate corruption, taking with them hard-earned retirement savings, as you said. And I think this Committee took strong, swift, and effective action, both in investigating and in proposing strong reforms.

I'm sad to say I see too many parallels in the situation presented before us by the ULLICO scandal. At the simplest level, I'm concerned with what I see is a leadership of a corporation profiting at the expense of its shareholders. And I'm doubly concerned whereas here, the leadership of the company, union leaders themselves, have both moral and legal obligations to protect the interests of their rank-and-file members, which I'm glad to see you're doing now.

And we're committed to insuring the workers of this country are protected. ERISA makes perfectly clear that trustees of pension plans owe a fiduciary duty to those plan members to act in their best interest. And I'm troubled that the Committee will not hear testimony from perhaps the best witness today.

As I understand it, the shareholders of ULLICO were some of this country's largest unions and union pension funds. At the same time, many of the members of the ULLICO board were themselves also pension fund trustees for the union.

Morton Bahr of the Communications Workers was a pension fund trustee for CWA. Martin Maddaloni of the Plumbers Union sat as a pension fund trustee, as did Arthur Coia of the Laborers International Union, among others. I would have liked to have asked how it is possible that they profited at the expense of pension funds. I would also have liked to have asked Mr. Georgine to explain what and when the board of ULLICO knew. It doesn't appear to me that this issue was ever addressed by the ULLICO board.

The issue of whether ERISA was violated is a question this Committee will have to find the answer to, and we've already discussed it some. In that effort, I understand the matter is being investigated by the Department of Labor, over which we have oversight. And I would, in the strongest terms, hope that the DOL will file or will make this investigation a priority, and give us the answer which rank-and-file union members deserve.

I do have a question for our expert here this morning, Mr. Nowlin. I mentioned earlier that my Subcommittee has oversight of ERISA. As you may be aware, the Department of Labor has proposed for the first time in decades to upgrade those regulations to ensure that our country's largest unions provide meaningful and accurate information to its members. I'm pleased to support the Department in making sure those reforms go forward, and ensure that the union rank-and-file members are protected.

My question to you, sir, is would increased financial disclosure requirements have helped to detect this issue more quickly, and will it help us in the future?

Mr. Nowlin. The answer is certainly, they would have helped reveal these problems more quickly, assuming that the proper disclosures are required under the rules.

You know, I think one of the proposals is to compress the period from 270 days to 90 days, and obviously, that would be very helpful. I think in the future, what this Committee should consider in terms of protecting the plans and their beneficiaries from a disclosure standpoint. If you simply would look at, I won't say misalignment, but the divergence of the reporting to plan beneficiaries of the investments of their pension plans as compared to corporate reporting, it strikes me that to some extent, the reporting obligation should be aligned.

If you look at the size of pension assets in this country, pension assets, frankly, have driven certain components of the economy during the boom time of the '90s, within a doubt. Without pension money, the venture capital industry would not have had the level of funds that it had.

And increasingly, regarding these moneys that are concentrated in pension funds, there needs to be a more, I won't say comprehensive system for disclosure, because there is a system for disclosure. But the disclosure needs to be aligned. If you look at the value of the money invested in corporations, public companies in America, and the money that is in pension plans in this country under management, those pension beneficiaries are not getting the same level of disclosure, and it's their money in the pensions.

So the answer is yes. In this case, it probably would have helped reveal the problems sooner, assuming that there is a requirement that related-party transactions of this nature be disclosed. But I think there needs to be scrutiny of aligning, for example, in a public company context, or the Committee requirements incentive comp. This was an incentive comp plan, in effect, that was intended to align the interest of the directors of ULLICO with the company itself, and that is ultimately the corporate purpose that's supposed to benefit the shareholders. It's aligning those interests.

I query whether that happened here. I'm not going to answer the question. But you've got to try and find the benefit for the shareholders of ULLICO. It's clear that in this case, the board benefited. Typically, you're looking to align those interests so that if the company does well, the board does well, to some extent, through their incentive comp. But in this case, because of the way the plan was crafted, the shareholders were boxed out, to some extent.

Chairman Boehner. The Chair recognizes the gentleman from Massachusetts, Mr. Tierney.

Mr. Tierney. I thank the Chairman.

Mr. Silvers, the Administration has recently proposed significant expansion in the LMRDA reporting requirements for unions. I think you're familiar with that. If those new requirements had been in effect since 1997, would they have had any impact on disclosing what transpired in ULLICO?

Mr. Silvers. No, they would not. And let me say I think that the comments of my colleague on the panel here that preceded me if you followed them through, really point the direction to where the problem lies with disclosure.

The Administration's LMRDA proposals are really extraordinary. I mean, they require unions to disclose essentially every line item of economic activity. If you were to take that document and walk it across the hall to the Financial Services Committee, people would start jumping out of the windows. It really is an extraordinary imposition, outside the realm of any other disclosure regime out there.

The only thing it won't do is fix this problem. The reason why it won't fix this problem is because this problem is fundamentally a problem of executive compensation and transactions at a private company. And that's also why it's my opinion that ERISA disclosure, while there are many ways in which ERISA can be improved, I don't want to suggest opposition to any particular concept, also would not really have prevented this.

What this situation lacked, and I think it's evident in the way in which the constituencies of ULLICO responded once the information was in people's hands, was comprehensive disclosure of compensation practices and director and officer stock transactions within ULLICO, a private company. Our laws at the federal level do not, and in no state that I'm familiar with, impose that kind of disclosure requirements on private companies. That's the problem.

Mr. Tierney. Let me ask you this. Since the problems arose at ULLICO, has that company itself done anything to address that issue?

Mr. Silvers. At ULLICO I do credit the prior management for doing this. This is not the doing of the current management. In the most recent proxy statement, which was the one for the annual meeting on May 8th where a change in management occurred, that proxy statement was put together pursuant to the corporate governance recommendations of the Thompson report. The prior management adopted a number of those corporate governance recommendations, and one of them was that ULLICO's proxy statement in the future essentially complied with the executive compensation disclosures that a public corporation would have to comply with. ULLICO will do that in the future, but we're doing so voluntarily.

And there are many, many, many other private companies in this country in which literally billions of dollars of ERISA money is invested, either directly or indirectly, through private capital funds of various kinds that make no such disclosures and are not required to. ULLICO has done so and will continue to do so voluntarily. That is the kind of disclosure that would have changed the situation, would never have allowed it to occur, in my opinion.

Mr. Tierney. Mr. Nowlin, in your opinion, is that the kind of disclosure that other companies, private companies, ought to be required to make?

Mr. Nowlin. Well, no, not necessarily. Because in the private company context, shareholders have the ability to invest or not invest and determine the terms on which they make their investment. Pension funds don't have to invest in private companies. And if they do go into an investment, make an investment in a significant way, in any event, they can dictate the terms of their investment, including what's going to get reported to them.

So I don't necessarily think you have to have increased regulation or reporting requirements on private companies. That's up to the private individuals that determine to invest.

Mr. Tierney. Thank you. Mr. Silvers, let me ask you this. Are there any losses that you know of by any union member that this Committee ought to be investigating in terms of trying to find some mechanism to make them whole again?

Mr. Silvers. As I said, the nature of this particular event was a “relative” disadvantage. The unions and the pension funds that were disadvantaged in these transactions actually did not lose money. They were deprived of an opportunity to have their stock repurchased at a very favorable price, an opportunity that officers and directors enjoyed.

Now, they have to have a little tiny bit of their stock repurchased. The repurchase offer that occurred in the late fall of 2000 was prorated. If a pension fund or a union tendered shares into that repurchase offer, it had approximately 2 percent of its tender repurchased. If you had less than 10,000 shares, and the officers and directors that transacted here did, and they tendered, you we able to have 100 percent repurchased. So there was an opportunity missed there, a very lucrative one. If there had been a completely fair treatment here, instead of having about 2 percent of their shares repurchased, the institutional holders, the unions and the pension funds, would have had about 5 percent repurchased.

As my testimony states, I mean, the current management of ULLICO and the labor movement board is very upset about this. This was not right, in our opinion. But it did not constitute a loss to these funds. The funds are carrying the ULLICO stock on their books at a profit, and in particular, at a profit comparable to what they would have had had they been investing in the S&P500.

As I've said repeatedly, not only is there no human being out there who has lost a pension benefit, there is no institution out there that's showing a loss on an investment as a result of this activity. This is, again, an enormous contrast with pick-your-company. Just an enormous contrast. It doesn't make this right. In fact, quite the opposite. But it nonetheless puts it in perspective.

Chairman Boehner. The gentleman's time has expired.

The Chair recognizes the gentleman from Oklahoma, Mr. Cole.

Mr. Cole. Thank you very much, Mr. Chairman. I want to first thank you for calling this hearing today, as others have said this morning. I think the seriousness of the situation we're discussing, and I think all parties have acknowledged it, can't be overlooked. And I, unfortunately, as a new Member of Congress, did not have the opportunity to participate last year in the hearings on Enron. Although I can assure you, as someone who owned Enron stock, bought it at the top and watched it go to the bottom, I followed that rather keenly.

And in the course of looking at the scandals that have unfolded over the last several months basically I have come to the conclusion this is not a business issue. This is not a labor issue. It is, at heart, an issue that revolves around two things. First, ethical behavior in positions of responsibility; and secondly, the fine points of corporate governance.

I also want to commend this Committee for taking its oversight responsibilities seriously. We've got a duty to tell the employees of this country that we're going to ensure their legal protections, and we're going to make sure that what we've put in place is effective. And I think perhaps that has been the greatest loss here, rather than a financial loss, the loss of confidence and trust that the participants in this particular enterprise have experienced.

When I go home to Oklahoma and talk to my constituents, my neighbors, my friends, I hear the same thing over and over again. They're sick of business as usual. Every week, they hear about another insider trading deal, more corporate shenanigans, and they tell me the same thing. They don't care if it's Democrats or Republicans. They don't care if it's labor or management. They just want it stopped. And they think their future is at risk.

I regret, Mr. Georgine, that most of my questions were directed at you. I certainly respect your right to exercise the Fifth Amendment. I regret that you've chosen to do so, because I think you could shed considerable light on the subject.

I know it's your position and the position of the board at the time that "nothing wrong was done." I think, frankly, many union members would disagree with that. I think many objective observers would disagree with that. I would have asked you whether or not you agreed with Governor Thompson's precise words, that there were violations of state securities laws and fiduciary duties here.

And even assuming that what occurred was perfectly legal, I don't think any objective observer would suggest that it wasn't wrong. I think quite the opposite. It's certainly discouraging to see the leadership of some of our company's largest unions, presidents and officers of labor organizations dedicated to protecting workers, profiting to the tune of $6 million at the expense of rank-and-file union members.

Now, many of those people were wise in the sense that they knew when to cut their losses, and knew when to reverse course. That doesn't change the fact that the transgression occurred in the first place.

Let me conclude simply by saying it's a sad episode. You know, I suspect this is a sad moment for you. Certainly a difficult moment, I know, for the company that you headed, and I commend them, frankly, for the actions that they've taken in recent years to restore confidence and to restore the integrity of that business. That's something that they should be commended for.

I would conclude with a question, since most of mine were preempted by the exercise of your Fifth Amendment rights, and direct that to our experts on the panel. Assuming nothing wrong, nothing illegal, was committed, what laws would you suggest, what actions would you suggest we take to make sure that situations like this don't happen again? What particular piece of corporate governance would you change so that we would know about this sooner, and be in a position to act more rapidly?

Mr. Nowlin. I'll be happy to answer the question first. I think there should be appropriate checks internally whenever there is an interested-party transaction like this stock plan. If you look at Sarbanes-Oxley, for example, in terms of the way it may require shareholder approval of an equity incentive plan like this, in this case, it wasn't so much the plan as it was how the plan was implemented and the decisions that were made under the plan.

But, I think if there is an independent, impartial approval of incentive comp plans in this context as there is for public companies, more independence at the audit committee level for a private company like this that's comprised predominantly by pension fund investors. I think those are the leading areas that I would focus on that could have avoided this type of a problem.

Mr. Silvers. Congressman, I think that my colleague on the panel has essentially stated my views about this. I'll elaborate for a moment, though.

As we know, there are tens of thousands, hundreds of thousands of private companies in this country, and the category ranges from everything to a little hot dog stand to a Bechtel, a Cargo, a Frank Perdue, you know, an industrial economic giant. It doesn't make any sense to me to make a hot dog stand comply with Sarbanes-Oxley. It just really seems ridiculous. On the other hand, ULLICO is committed in a number of ways to doing just that. We recognize we're not a hot dog stand.

It strikes me that Frank Perdue and Cargo and so forth, and ventures that have large amounts of ERISA money invested in them that are private companies as a legal matter might want to also do the same. And I know this is not this Committee's jurisdiction, or perhaps it is in some very roundabout way through ERISA. But that seems to me to be the hub of the matter, that there are private companies that aren't really private companies in the sense that they have larger consequences and involve the money of a lot of people spread out directly and indirectly. And it seems to make sense that there should be some standards to make sure that all those far-flung people are protected.

Chairman Boehner. The gentleman's time is expired.

The Chair recognizes the gentlewoman from Georgia, Ms. Majette.

Ms. Majette. Thank you, Mr. Chairman. And I thank the witnesses for being here today.

Certainly, as a lawyer and as a former judge, I have full respect for Mr. Georgine's invocation of his rights under the Fifth Amendment. And as I would instruct a jury that when someone does that, that is not to be held against him or her.

But I share the dismay and disappointment of my colleagues, and I'd like to associate myself with the remarks of my colleague from across the aisle, Mr. Cole. I think this whole situation is a very regrettable one. And whether or not there is any actual illegality discovered in this case, this situation really, I think, has to do more with not the loss of funds, but the loss of confidence and trust.

And I understand your comments, Mr. Silvers, that there weren't really any moneys lost. But you did say, if I understood you correctly, that the people affected by this were deprived of an opportunity to have their stock repurchased at a favorable rate that the directors and officers enjoyed, and that clearly, there was a missed opportunity, a very lucrative one, but you characterize that as not being a loss.

I would disagree with you. I consider that to be a very great loss. And frankly, I think it's analogous to the unlevel playing field that so many times, the representatives of unions, representatives of working people have been very strong advocates for, and who I would hope would continue to be strong advocates for leveling the playing field and making sure that everyone has an equal opportunity access to resources, making sure that people get a fair shake.

And frankly, with the events that have transpired and been revealed to us so far, I think there is a great deal of work that is going to need to be done by the unions and certainly in the other cases that we've talked about, alluded to, the people involved with Enron and WorldCom and those other situations as well, are going to have to do more than just repay the money. They're going to have to work very hard to rebuild that trust. And ultimately, that's the most important thing with respect to those people, as well as those of us, who have been entrusted with the public's welfare and well-being.

I just would briefly ask one question, though, for my clarification. You said that the board was split over what to do. What was the nature of that split?

Mr. Silvers. Congresswoman, may I first just say a word to you? I did not mean to suggest that the deprivation of the opportunity to get that money was not as serious as a "loss." And if I seem to suggest that, I really did not mean that.

Ms. Majette. Thank you.

Mr. Silvers. All I was intending to say was that as an accounting matter, the institutional investors in ULLICO have not had a loss on their books. But I share completely your view, that the deprivation of that opportunity to obtain stock at a very favorable price was as serious a matter as a loss, and in many senses, economically comparable to one. I completely share that, and I apologize to you if I was not clear about that.

In terms of your question about the board, I was not a member of the board, obviously, during that time. I have reviewed the minutes of the board meetings during that period. And I know something about what went on, and I will try to give you an account of that for a moment.

ULLICO, in the spring of 2002 had, and has today a rather large board, 28 people I think. I'm not sure exactly whether it was 29 or 30 at the time. Certain members of that board, most prominently the President of the AFL-CIO, John Sweeney, asked Mr. Georgine in his capacity as chairman to empanel a special investigative committee of the kind that union pension funds had asked the management of Enron to do at the time of the Enron affair, when the Enron affair first became known in October of 2001, and to have that committee hire an independent person of stature as counsel.

There was a disagreement on the board as to whether or not to have a committee. Mr. Georgine suggested, ultimately, that Governor Thompson, who was the kind of independent investigator that President Sweeney and other members of the board had wanted to have, that Governor Thompson be hired as an investigator, but that he report directly to the full board. President Sweeney's view was that there ought to be a committee of independent directors who had nothing to do with the transaction. And President Sweeney, having been on the board during the time of some of these events, felt that he himself was not qualified to serve on such a committee, but that there should be a committee. There was a disagreement about that.

Ultimately, President Sweeney and the directors who agreed with them that there should be a committee, agreed to have Governor Thompson report to the full board, because that way, there could be consensus and the investigation could move forward. And upon some consideration, it was the belief of those directors who wanted that committee that Governor Thompson was a person of such stature, and his firm had the resources, and they would be able to do an acceptable job.

There was a dispute about whether there should be a stock repurchase program in 2003 on the same terms as the stock repurchase program in years past. And there were members of the board, Linda Chavez-Thompson, the Executive Vice President of the AFL-CIO and John Wilhelm, the President of the Hotel Workers, who thought that there should not be, and voted against it. Finally, the real dispute, the dispute that really got going, was the dispute of whether to release the Thompson report to the shareholders and when to do so. And that, I think, is pretty amply covered in the press.

That's a brief catalog of some of the matters I'm familiar with. I'd be happy to extend that, if you wish.

Ms. Majette. Thank you.

Mr. Hoekstra. [Presiding] The gentlewoman's time is expired. I will yield myself my five minutes.

You know, we're not really looking at the conduct of any individual or group today. What the oversight hearing is intended to do is to take a look at the strengths and the weaknesses in our systems of law, and determine what we need to do to hopefully prevent these kinds of situations from occurring again in the future.

We did a similar investigation into the International Brotherhood of Teamsters. We spent 19 months going after that, and a lot of resources were invested. You know, this Committee and this Congress were able to help the Teamsters take the steps to self-regulate their internal union problems. That is, once the law and once Congress had helped them cut out the corruption, the union's new leadership I believe has been able to clean house on their own.

The important thing there is that once the corruption was cut out, Congress felt it was best to allow the union's leadership to clean house on their own. We didn't believe that it was the responsibility of Congress to do that, and we felt that what we needed to do was to monitor whether the Teamsters had the appropriate tools to make those changes themselves.

And that's, I think, where labor law needs to go. We're taking a look at whether labor law, and I think the examples of Enron and others is business and labor law, is sufficient to inform people so that they can hold their leadership accountable in the business world or in the unions to the behavior that we think is appropriate and good.

I reviewed the facts surrounding ULLICO, and evaluated the strengths in our current pension laws and many of the weaknesses in our more general labor laws. I found myself continually questioning how the union movement could have been so slow in meeting its obligation to self-police and self-regulate such conduct.

The issue that was perceived was how could the sitting presidents of many of our most respected unions have been so blind to what was going on. Those are the same kinds of questions that we asked back with the Teamsters investigation about the conduct of Ron Cary and his management team. How could so many have been blinded for so long while their union leadership decimated the union to the detriment of their own rank-and-file? That's why I think it was so important that Congress help the IBT right their problems. And I think that's what we need to take a look at here. What procedures do we need to put in place?

You know, I'm thinking that this Committee ought to consider making a strong recommendation to look at this, based on what's occurred in the past. There's an opportunity to step up to the plate and take action, and better and more effectively monitor internal conduct within the union movement.

My suggestion is that this Committee seriously considers the same recommendation we made following our investigation of the Teamsters. That is, with due speed, this Committee should strongly suggest that effective and enforceable codes of ethical practices be promulgated and implemented across all unions. I'd also be interested in seeing how that might apply to corporations in the business world.

The Teamsters heard this Committee loudly and clearly several years ago. And based upon what they heard Mr. Hoffa diligently made efforts to promulgate and implement a code of ethical conduct and enforce it. That may be the model. I suggest that what these codes, along with more transparency, would accomplish for the labor movement is insuring the rank-and-file that their officials operate ethically and in the best interest of the rank-and-file. I think that the way that this objective would be satisfied is very effectively described in the Teamsters draft code. The mission of this code is to provide for the well-being of workers, their families, and their communities by establishing a system to ensure accountability by enforcing the provisions of the code impartially.

The Teamsters describe the objective for this code using very simple language. They write, “This purpose is to make future attempts at abuse of the system apparent to the membership of the union.” I'd suggest that this is precisely the role that Congress intended for the labor movement to perform internally, and that a code, along with more transparencies, the precise supplement that will assure Congress that union democracy can work as intended.

I hope that as we go through this process that we outline the steps that are needed to clearly define what conduct is desirable and necessary, and that leadership in both the union and the business world should be held accountable. And then we put in place the steps to make sure that behavior is transparent to the members of the business world or the labor organization, so that they can hold their leadership accountable to this code of ethics.

With that, I will yield to Ms. Woolsey.

Ms. Woolsey. You didn't ask a question.

Mr. Hoekstra. Good observation. Thank you. I didn't have enough time.

Mr. Woolsey. All right, Mr. Chairman. Thank you.

I hope we are listening to this knowing that what is important about today's hearing is that ULLICO is an example of a mistake and some accomplishments. Mr. Silvers, you talked about the mistake. And we've talked and talked, and we're going to keep talking about it. It's not over. But if you would, tell us how the company has tried to regain the trust of the employees, what they've done, and is it working. Because that, indeed, could be an example for the rest of business.

Mr. Silvers. Actually, I'll try to touch on a few things. We've been extremely busy at ULLICO since May 8th. As I mentioned in my prepared remarks, we have hired an acting president, Edward Grebow, who is with us today in the audience. He is an expert in turnaround situations and in dealing with troubled companies in a variety of sectors, with experience at Sony and CBS and the Dime Savings Bank in New York, which presented some comparable problems to those that we have at ULLICO today.

We have reached out to all the various regulators and investigative bodies that the company has been involved with, sought to cooperate with them in every way possible, and sought to communicate with them about our business plans.

We have retained the management consulting firm the Boston Consulting Group to help us develop a short, medium, and long-term business plan. And we've retained the Blackstone Group to assist us with certain restructuring issues we have at the company, some lines of business that, frankly, don't make sense anymore. Actually, at this point, just one line of business that doesn't make sense anymore. And it's also going to help us with state buys in the company's capital structure.

We have, and again I'm talking about just in the last five weeks, reached out to our investor community and reversed what had been a draining of funds from our flagship real estate product, J for Jobs. Key consultants operating that marketplace have reversed our recommendation that funds withdraw. Hundreds of millions of dollars of money has returned to that product, a key product that provides a very healthy rate of return, and also creates jobs and helps build our local economies.

We have set forth a whole new policy of communication within the company with employees. And there was understandably a great deal of concern among employees about what was happening within the company before and after May 8th. We've had town meetings with employees at our headquarters. We've had a whole variety of different kinds of inter-business line communication that hasn't existed before.

And we are really focused on returning ULLICO to a position in which it is viewed as what it has always been historically, which is an institution of tremendous value for working people and their unions and their pension funds, an effort to restore that trust that Congressman Cole referred to, which we do believe is in need of being restored.

Ms. Woolsey. So in your response, tell us how you're communicating that to your employees. I mean, you're doing all this. How are they hearing about it, and are they getting it all the way down to the bottom?

Mr. Silvers. Well, the main way in which we've done this is through large meetings and telephone hookups to all our offices around the country, where Terry O'Sullivan, and the new CEO, Mr. Ed Grebow describe the company's plans and take questions. We've done that, you know, for several hours. And we've done that through the usual sorts of things one does in the company, through group e-mails and letters and so on and so forth.

The key message that we've been sending to people is, one, that we are refocusing this company on its historic mission, and two, as I said in my written testimony, this is going to be a tough time for the company, and it is a tough time for the company, but what sacrifices are necessary will be shared, and people will be involved.

Terry O'Sullivan has met with all the shop stewards of all the unions, an interesting and novel experience for him in his new role as CEO, and had just exactly that kind of conversation with them about specific business decisions. In those areas of the company where real structural change is necessary, we are meeting with all the employees before any decision is made, giving them an opportunity to hear what they can contribute.

I must say, whether accurately or inaccurately, in this sense, ULLICO is no different from any other corporation. The perception that there is a special deal for somebody out there is tremendously, tremendously corrosive. And no more so than in a company where people are very, very proud of what they do, and very proud of the service they provide to working people, and long-time employees, with a real sense that ULLICO is different, that it's not just about making money.

Whether accurately or inaccurately, many employees develop the impression that maybe that wasn't true. And that has been a terrible thing. And it's really been our first priority as a new management team to reverse that, to give people the sense that this is a working people's company, that this is a noble thing they do every day when they come to work, and that those values infuse everyone from top to bottom, and that we will abide by those values and stick to them, even when it's hard to do. That's really been our message.

Ms. Woolsey. Well, I thank you, and I think it's very good for your new CEO to meet his clients and know who they are. That's good. Thank you.

Chairman Boehner. The gentlewoman's time has expired.

The Chair recognizes the gentleman from Pennsylvania, Mr. Greenwood.

Mr. Greenwood. Thank you, Mr. Chairman. I also want to thank you for convening this hearing.

As the Chairman of the Energy and Commerce Subcommittee on Oversight, I can say with certainty that we in Congress have a particular responsibility to ensure that the laws which we enact are, in fact, being followed; where they are not, to do something about it; and where they are lacking, to strengthen them.

In that light, I would associate myself further with your remarks, Mr. Chairman. We are not sitting here this morning in judgment, but rather to determine exactly what transpired at ULLICO, and whether the laws within our jurisdiction are adequate to prevent this sort of behavior from recurring.

I am particularly frustrated with Mr. Georgine's refusal to testify. A number of my colleagues have raised some of these issues with respect to the law, but I think it's important that we make sure we understand the facts as well. I had wanted to take the opportunity to examine Mr. Georgine and determine whether he could shed some light on these facts.

Essentially, as I understand it, in 1998/1999, the board members of ULLICO were offered the opportunity to purchase shares in the company, and that Mr. Georgine was authorized by the company's Executive Committee and Compensation Committee to offer these shares.

But as I review the record, it appears that under the by-laws of the company, neither he nor either of these committees was, in fact, authorized to grant these shares. Specifically, ULLICO's by-laws expressly state that neither the chairman nor these committees had the authority to issue stock. And, in fact, even if they had this so-called authority, these board members were prohibited from determining matters that affected their own compensation. And it appears that's exactly what they did.

Now, given that ULLICO had board members purchasing stock that it appears they should never have been authorized to purchase, a little more than a year later, in December 2000, the board then offered to repurchase that stock at $146 per share, notwithstanding the fact that the company's investment in Global Crossing had plummeted, that it was obvious when ULLICO's books closed some days later, the value of the stock would be significantly lower.

And, in fact, when this repurchase program was authorized, it was rigged so that officers and directors of the company who held 10,000 or fewer shares could sell back all their stock, but that bigger shareholders, such as unions and union pension funds, were only able to sell back something like 2 percent of their stock.

I had hoped that the Committee would have had the benefit of Mr. Georgine's testimony to determine if the understanding of our facts is correct, and more important, how he justified what appears to me to be questionable transactions, at best. Mr. Georgine is entitled to avail himself of his Fifth Amendment rights. It does this Committee and, more importantly, Mr. Georgine himself little service to leave these questions unanswered.

So I do have a question I'd like to ask our legal expert, Mr. Nowlin. I'd be interested in hearing from your perspective about the issue of this authorization. As I see it, the company's by-laws prohibited directors from issuing stock without board approval, or voting on matters directly related to their own compensation. To me, these transactions appear to violate corporate laws, and

I'd like to know, sir, do you agree?

Mr. Nowlin. I haven't seen the by-laws. But assuming that they have that prohibition, then it would clearly be prohibited.

That having been said, there is nothing in state law that really prohibits a board approval of an interested party transaction. So in this case, if you do have a by-law prohibition, clearly, it's in violation of that by-law. The problem here is that there was no independence anywhere in the process of approving these transactions.

And indeed, clarifying an earlier remark I made today, I suggested that had the stock plan been approved by the shareholders, perhaps we wouldn't have had this problem. The irony is that the shareholders were, in many cases, the directors that did approve it, because they were serving in that fiduciary capacity. So it may not have helped. That's why you have to go one step further, in this case, and require truly independent authorization of comp plans and things like this.

One further elaboration. This company arguably, while it was private, if you look at the ownership, let's just say it was owned by 15 unions and their pension plans, it was ultimately owned by the union members and the union pension beneficiaries. Now, ERISA basically doesn't treat it that way. It says that there's no attribution rule in certain instances. But had there been, then it would have opened up a much broader level of disclosure.

Mr. Greenwood. Let me see if I can squeeze one more question in. Mr. Hoekstra spoke at some length earlier about unions adopting codes of ethics governing behavior. Now, as I understand it, ULLICO didn't have such a code of ethics. But in November 2002, Governor Thompson, who was commissioned to investigate and make recommendation in this matter, made his first recommendation that ULLICO adopt such a code of ethics addressing conflicts of interest, legal compliance, and unethical behavior, as well as clear corporate governance guidelines.

My question is to Mr. Nowlin. In your practice, can you tell me, is this something most corporations have?

Mr. Nowlin. Well, they do now, for the most part. They didn't always, prior to Sarbanes-Oxley. But under some of the exchange rules, the public companies have to have a code of ethics now. Sarbanes-Oxley basically made it a disclosure requirement as to whether you had one, and if not, why. But the stock exchanges took that a step further and actually required you to have one.

In the case of private companies, many private companies are following that route, although they're not legally mandated to do so. But, you know, as a corporate counsel, I think it's always a great thing for corporations to have codes of ethics, because it instills confidence in their shareholders and in their employees.

Mr. Greenwood. Mr. Chairman, it appears to me that Mr. Silvers would like to respond to some of my comments, and I would ask unanimous consent that he have time to do so.

Chairman Boehner. The gentleman may proceed.

Mr. Silvers. Thank you, Congressman. I just wanted to let you know that the board of ULLICO, before the current management arrived, adopted that recommendation that ULLICO adopt a code of ethics following the language of the Thompson report, and that that code is currently being drafted.

We have been somewhat focused on the more practical side of applying those sorts of principles in the last four or five weeks. And we're hopeful that we will be able to have the board adopt a draft code, if not at the meeting in July, then in the fall. I think my testimony, and my written testimony at greater length, shows you some of the matters we've been engaged in, in the meantime. But we intend to have such a code. Although, as my colleague says, there's no legal requirement that we do so.

Mr. Greenwood. It seemed to me, Mr. Silvers, that you were nodding affirmatively when I was stating in my opinion the committees in question did not have the authority to issue stocks. Were you, in fact, concurring in that?

Mr. Silvers. Well, I think there were multiple issues regarding those transactions. And I think one of them is authority, and the other is simply the fairness of the transaction, even granted the authority.

The Thompson report recommended that all the profits from those transactions, from the transactions that flowed from the issuance of stock to directors, be unwound and the profits returned. That recommendation was adopted by the new ULLICO board on May 13th. The demand letters have been sent to every person who benefited from that, and a number of individuals have already returned those profits.

Earlier, Mr. Morty Bahr was mentioned. He has returned profits from that transaction. Mr. Maddaloni has committed to the board he will do so, and we are awaiting his check. And Mr. Coia was mentioned earlier. Mr. Coia had never profited from these transactions.

Chairman Boehner. The gentleman's time has expired. As we conclude our hearing this morning, I think we've established by now we're not going to be getting any responses from our key witness, Mr. Georgine. Needless to say, we respect his right to invoke the Constitution, but let me also make clear how disappointed I am both with the answers that we aren't getting and, frankly, with some of the statements that we've heard.

We've repeatedly heard that the ULLICO situation doesn't compare with the outrages at Enron and other corporations last year. But at least the Enron officials who were called to testify before this Committee were willing to cooperate and provide answers. However that simple fact doesn't excuse the wrongdoing that appears to have occurred there, which wrecked many innocent lives.

But I also question the suggestion that Mr. Silvers made that no one has been harmed by the actions that took place at ULLICO. And it appears clear that at the very same time some union leaders were joining the chorus of well-deserved criticism for the leadership of Enron Corporation, ULLICO apparently set up a system of insider stock deals that made millions for the company's leadership at the expense of rank-and-file union members. And many of these same union leaders who spoke out so publicly on corporate accountability were or are still ULLICO board members. And this issue today isn't what took place at Enron, but rather what happened at ULLICO. And I think in both cases, it's clear there's a violation of trust, and possibly an illegal one.

Now, I appreciate Mr. Silvers' representations of the new board and the work that they're doing to clean up the mess that they inherited. And I wish you good luck in your continued endeavors to do that. But as you do that, let me just reiterate Section 501 of the Labor-Management Reporting and Disclosure Act that provides, and I'm going to quote this: "The officers, agents, and other representatives of the labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person to refrain from holding or acquiring any pecuniary or personal interests which conflicts with the interest of such organization, and to account to the organization for any profit received by him in whatever capacity." Now, that language, to me, puts the board members who represent the large unions and their members in a particularly touchy situation with regards to their service on the board of directors of ULLICO and some of the actions that took place.

I appreciate the testimony that we've received from two of our witnesses. I'd be happy to yield to my colleague, Mr. Miller.

Mr. Miller. I thank the Chairman for yielding.

I think that this hearing has brought out some very important points about fiduciary responsibilities and codes of ethics. And I would hope that if we are going to proceed, I don't know what the Chairman has in mind, but rather than us get into a labor-management back and forth, I think we ought to recognize that millions and millions of Americans have great exposure in their pension plans, be they 401(k) plans, be they defined benefit plans, be they multi-employer plans, and that at a minimum, we ought to insist upon a duty of trust in the fiduciary duty for these plans.

You just cited in the reporting act the duty there. I don't know if there's a comparable duty in corporate or civil law, whether there is that same duty or not. But I certainly believe that the pensioners and the employees and the shareholders, and even the customers of Enron, would have liked to have had that same duty exhibited by the corporate CEO and others at Enron. And we would have been more than happy to have Mr. Lay subpoenaed to this Committee and come in and decide what he was going to share with us. Because everybody in the country is still waiting to hear him share a single thought on this matter.

But I think the basic premise of what you've said here, Mr. Chairman, and what our witnesses have said is that we have an obligation to make sure that that fiduciary responsibility is properly broad enough, and that it is then enforced, and it is then obeyed by those who are charged with that duty. There were many that argued during Sarbanes-Oxley, that nobody could comply with it, or they wouldn't comply with it, or what-have-you. We're watching that unfold, and we'll see how that goes.

But I think also, in the one hearing we had here on Enron, what we saw were huge gaps in terms of what should have been a fiduciary responsibility. And in the context of reviewing this, I would hope that we would also be able to review those responsibilities to individuals who have continued to see their savings and their retirement plans devastated even today by continued disclosures of activities that I think all the members of this Committee would find unacceptable. I would hope that we would pursue that activity.

Mr. Silvers. Mr. Chairman, I'm sorry. I wish to correct something you said that's of great personal importance to me, and I apologize again if I didn't make this clear.

I very strongly feel that people were harmed by these events. I feel that the company of ULLICO was harmed, that the shareholders of the institutions were harmed. My only point was that no one has lost any pension money. No one has lost any pension benefit. But I'm very concerned not to be represented as saying that no one was harmed.

Chairman Boehner. I take that into the record. I ask unanimous consent that a certain document entitled *Report of the Special Counsel ULLICO, Stock Purchase Offer and Repurchase Programs and Global Crossing Investment*, prepared by Governor Thompson, and those volumes of exhibits which accompany the report, be made part of the record. Without objection, so ordered.

I also ask unanimous consent that the correspondence dated June 16, 2003, between Committee staff and counsel for Mr. Georgine, Mr. Georgine's letter to the Committee of the same date, and the Committee's response to Mr. Georgine's letter, be made part of the record. Without objection, so ordered.

Mr. Miller. Mr. Chairman, I had mentioned in my opening statement two documents from the Congressional Research Service. I would ask unanimous consent that they be made part of the record.

Chairman Boehner. Without objection, so ordered. And with that, this hearing is adjourned.

Whereupon, at 12:40 p.m., the Committee was adjourned.

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN JOHN BOEHNER, COMMITTEE ON EDUCATION AND THE WORKFORCE

Opening Statement of Rep. John Boehner (R-OH), Chairman
Education & the Workforce Committee

Hearing on
"The ULLICO Scandal and Its Implications for U.S. Workers"

June 17, 2003

Good morning.

We are here this morning in exercise of our oversight authority - the responsibility we are charged with as members of Congress and of this Committee.

In March of this year, the Committee began an investigation into ULLICO, Inc. - a union-owned insurance company that was started in 1925 by the American Federation of Labor to ensure that rank and file union members in high-risk jobs could purchase affordable life insurance. In the seventy-some years since its founding, ULLICO has grown to become a multi-million dollar enterprise providing financial, lending, investment, and pension services to unions, union members, and union pension funds.

The Committee began this investigation based on facts which, as they became public, suggested that while at the same time organized labor was decrying corporate wrongdoing and corporate greed, many of the leaders of these same unions were in fact themselves profiting at the expense of rank and file union members and their families.

Specifically, the facts suggest that ULLICO, under the leadership of its then Chairman Robert Georgine, engaged in a series of transactions involving the sale of company stock to directors and officers at a price which the company knew or should have known was artificially low, and the repurchase of this stock only a year or two later from these same officers and directors, at a highly-inflated price. Notably, at the time these repurchases were made, officers and directors of the company were permitted to "cash in" all of their stock holdings - while the unions and union pension funds who held the vast majority of shares were not given this same opportunity.

In the course of its investigation, Committee staff has reviewed thousands of pages of documents, including a highly-critical independent legal analysis conducted by the former governor of Illinois, James Thompson, which concluded that officers and directors of ULLICO very likely broke securities laws. Governor Thompson was expressly directed *not* to examine whether ULLICO broke federal pension and labor laws, including the Employee Retirement Income Security Act (ERISA) and the Labor-Management Reporting and Disclosure Act (LMRDA). As a result, the question of whether ULLICO's actions violated those laws remains unclear, and is a key issue for this committee today.

What seems clear is that these officers and members of ULLICO's Board - which was overwhelmingly comprised of the top officials of some of this country's largest unions - acted inappropriately, and reaped personal benefit at the expense of the very union members and pensioners they have a moral and legal duty to represent.

Last year, the financial collapses at Enron and WorldCom prompted this Congress to take strong and decisive action to address corporate wrongdoing. In the wake of these scandals, Congress approved, and President Bush signed into law - the Sarbanes-Oxley corporate accountability act - one of the farthest-reaching protections of American workers in modern history. In the same spirit, this year the House again passed the Pension Security Act, to give rank-and-file workers the same access to professional investment advice that wealthy executives have.

Just as Congress acted quickly to hold corporate leaders accountable, it is my belief that Congress should insist on the same type of financial accountability from union leaders. Union members have a right to know that the union leaders who manage billions of dollars in union dues and labor pension funds are following the law and acting solely in the interest of the workers they represent. Rank-and-file union members deserve to know whether the leaders of ULLICO who participated in these stock deals violated the trust they owe to their unions and union members.

While investigations by the Departments of Justice and Labor, the Securities and Exchange Commission, the federal grand jury, and state regulators will reveal whether the millions of rank-and-file union members were the victims of illegal actions, we on this Committee have a responsibility to ensure that the interests of those union members are protected under our federal labor and pension laws. The credibility of ULLICO and its obligation to the unions, union pension funds, and union members who invested in the company is at stake.

With that, I thank our witnesses for appearing here today. We look forward to your testimony.

APPENDIX B – WRITTEN STATEMENT OF WARREN E. NOWLIN, ESQ., PARTNER, WILLIAMS MULLEN, WASHINGTON, D.C.

WILLIAMS MULLEN

Introductory Statement
of
Warren E. Nowlin

Mr. Chairman and Members of the Committee:

My name is Warren Nowlin. I am a partner in the Washington office of the law firm of Williams Mullen. For twenty years I have practiced corporate law, with a focus on investment management and fiduciary duties of officers, directors and pension fund managers. I have represented pension funds, state retirement systems, endowments and foundations and their investment managers on their formulation and implementation of investment programs, and on compliance with laws governing fiduciaries.

I appreciate the opportunity to testify today, and to help the Committee as it investigates the matters involving ULLICO. I have not examined all the facts and indeed have not been privy to any non-public information in this matter. Accordingly, I do not profess to opine on the propriety of ULLICO's actions, but I agree that there are certainly areas where the allegations made, if true, could potentially impact federal labor and pensions laws. In particular, the facts under consideration highlight a number of policy issues that Congress may wish to consider. In particular, the divergence of disclosure laws applicable to pension funds and their fiduciaries from the evolving laws governing disclosure and interested party transactions in the public company arena, including Sarbanes-Oxley.

ERISA, for example, contains numerous restrictions and regulations on pension plan trustees by imposing a fiduciary duty of loyalty and care. Under ERISA, a fiduciary must execute his duties solely in the interest of plan participants and beneficiaries, holding the plan assets in trust and ensuring that such assets do not inure to the benefit of the employer. This duty of loyalty requirement imposes an obligation upon fiduciaries to act with complete and undivided loyalty with an eye single to the interests of the participants and beneficiaries. Moreover, ERISA requires that a fiduciary must act with

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the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiarity with such matters would use. If there is a breach of any of these duties, a fiduciary can be held personally liable, even to the extent of having to restore lost profits to the plan. The penalties include a requirement to disgorge profits made in any related party transaction that violates the so-called prohibited transaction rules of ERISA.

The scope of the fiduciary responsibility to plan participants is much wider than generally recognized because the ERISA definition of fiduciary is so broad. To be considered a fiduciary, one must only have an element of authority or control over the plan, including plan management, administration or disposition of assets. To the extent that plan sponsors influence or maintain discretionary authority over plan management or its investments, they are also considered to be fiduciaries. Thus, corporate officers, directors and in some cases, shareholders, that often exert enough control over such a plan may be deemed fiduciaries and could be held liable for a breach. In addition, fiduciaries may be personally liable if they knew or should have known of a breach by another fiduciary.

Although ERISA has no provision for punitive damages, it does provide for the assessment of a penalty against a fiduciary for a breach of duty. Under ERISA, any fiduciary who breaches any of the responsibilities, obligations, or duties shall be personally liable to make good to such plan any profits which have been made through use of assets of the plan by the fiduciary, and can subject to other equitable or remedial relief as a court deems appropriate, including the removal of such fiduciary.

Additionally, a fiduciary's duty of loyalty and care can be breached by certain prohibited transactions, including conflict and self-dealing transactions. ERISA contains broad prohibitions against dealing with plan assets in his own interest or for his own account or receive any personal consideration from any person dealing with the plan in a transaction involving plan assets. Moreover, a fiduciary is also prohibited from acting, whether or not for personal consideration, in a transaction involving the plan on behalf of a person whose interests are adverse to the plan or its participants or beneficiaries. If a fiduciary participates in any prohibited transaction, he may be held personally liable for this breach of fiduciary responsibility. Furthermore, these rules require the fiduciary to disgorge any profits personally made by him or her.

As this committee considers imposing additional financial disclosures, Congress has already required stricter levels of financial reporting of public companies under

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Sarbanes-Oxley. In an effort to improve public disclosure, Sarbanes-Oxley requires greater disclosure of financial records, internal control reports, company codes of ethics and audit committee financial experts as well as imposing financial certification by CEO's and CFO's.

The SEC has also adopted Ethics Code Rules as part of the Sarbanes-Oxley Act. These new rules require a company to disclose, whether or not it has adopted a code of ethics for its senior financial officers, and if not, why. Sarbanes-Oxley sets forth three general principles including the maintenance of honest and ethical conduct with regard to actual or apparent conflicts of interest between personal and professional relationships, full, fair, accurate, timely and understandable disclosure in SEC filings, and compliance with applicable governmental rules and regulations.

While the increased disclosure requirements that are imposed on publicly traded companies under Sarbanes-Oxley may or may not have prevented what happened at ULLICO, this Committee should examine them and the divergence between disclosures required to made to pension beneficiaries. Congress should consider aligning these disclosure schemes to protect pension beneficiaries the way it has acted to protect shareholders of public corporations.

In my practice, I've had extensive experience in corporate governance issues, counseling boards, companies and pension fiduciaries how to comply with laws and regulations, and in corporate codes of ethics and practices. While some or all of these laws may or may not apply to ULLICO, I am pleased to be able to answer questions of the Committee as it examines ways to improve the legal and regulatory structure, possibly in an effort to align the protections afforded pension beneficiaries with those increasingly provided to shareholders in public companies.

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WARREN E. NOWLIN

Warren Nowlin is a partner in the Washington, D.C. office of Williams Mullen, where he practices in the areas of corporate, securities, venture capital, investment management and finance. Mr. Nowlin provides general representation to corporations and financial institutions in a broad spectrum of transactions and strategic planning matters, including their merger and acquisition activities and debt and equity transactions. An active part of his practice involves the formation and structuring of investment funds (including LBO, private equity, venture capital and REOCs). He also represents emerging growth and technology companies in organizational planning, acquisitions and capital funding matters. Mr. Nowlin has experience in international transactions, including the formation of joint ventures and strategic alliances in emerging markets.

Mr. Nowlin's activities involve a variety of legal disciplines in connection with his investment management and venture capital practice. He is experienced in the formulation of domestic and off-shore venture capital and merchant banking "LBO" funds for investment in the U.S. and overseas. Mr. Nowlin has periodically utilized the venture capital operating company format under the DOL plan asset regulations and has experience in the qualification and licensing of SBICs under Small Business Administration regulations. He has represented all types of participants in the venture arena, including issuers, institutional investors and individuals.

Mr. Nowlin has represented pension funds, state retirement systems, captive investment subsidiaries and their investment managers and advisers on the formulation and implementation of venture capital, real estate and other direct investment programs, in the management of special asset classes, and on compliance with laws governing fiduciaries. His practice entails complex regulatory issues under securities and tax laws, ERISA and Department of Labor regulations.

His practice frequently involves issues under the federal Investment Advisers Act of 1940, the Investment Company Act of 1940 and the Securities Act of 1933. He is experienced in negotiating investment management arrangements on behalf of both investors and advisers. He has been involved in obtaining prohibited transaction exemptions from the Department of Labor and has expertise on a variety of regulatory issues such as soft dollar practices and proxy voting.

Mr. Nowlin received his B.S. degree from the University of Virginia and his J.D. degree, magna cum laude, from Washington & Lee University, where he was inducted into the Order of the Coif. Mr. Nowlin is a member of the District of Columbia, Virginia and Maryland Bars and the Business Law Section of the American Bar Association.

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Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Warren E. Nowlin

	Yes	No
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).		X

2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998:

None

	Yes	No
3. Will you be representing an entity other than a government entity?		X

4. Other than yourself, please list what entity or entities you will be representing:

None

5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4:

N/A

6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract:

None

	Yes	No
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:		X

Signature: Warren E. Nowlin Date: June 16, 2003

Please attach this sheet to your written testimony.

APPENDIX C - WRITTEN STATEMENT OF DAMON A. SILVERS, ESQ., COUNSEL TO THE CHAIRMAN, ULLICO, INC., WASHINGTON, D.C.

Testimony of Damon A. Silvers

Counsel to the Chairman, ULLICO, Inc.

Committee on Education and the Workforce

United States House of Representatives

June 16, 2003

Good morning Chairman Boehner, Congressman Miller, and members of the Committee. My name is Damon Silvers, and I am Counsel to the Chairman of ULLICO Inc. I am also an Associate General Counsel of the AFL-CIO. I am grateful for the opportunity to appear today on behalf of ULLICO to discuss the events of the last several years.

Let me begin by stating on behalf of ULLICO that we believe our company was the victim of serious misconduct during the period from 1998 to 2002. As I will describe in some detail, the company is currently hard at work understanding and repairing that misconduct. The company is here today to help the Committee understand what happened and to brief the Committee on how the company's directors, shareholders, and constituents within the broader labor movement responded and continue to respond to that misconduct.

ULLICO today faces great challenges. But ULLICO and the labor movement have already faced the ultimate test — the challenge of corporate misconduct within the family of labor, the challenge of holding friends and colleagues accountable. We believe the record shows that the labor movement has one standard, and that standard has been enforced at ULLICO.

ULLICO is a private insurance holding company incorporated in Maryland. Its largest subsidiary, the Union Labor Life Insurance Company, was founded by Samuel Gompers and other union leaders in 1925. Its mission was then, and is now, to provide insurance and other financial services to union members, their unions and their benefit funds. In particular ULLICO's mission is to provide services that working people and their institutions would not otherwise have been available. Originally, working people had difficulty getting simple life insurance. Today the company's subsidiaries provide life and health insurance, fiduciary insurance, and a variety of money management services tailored to the needs of worker benefit funds.

For decades, ULLICO's business and stock price was relatively stable. Directors and officers of the company tended to hold small amounts of stock for very long periods of time. Then, from 1998 to 2001, there were a number of transactions by ULLICO officers and directors in ULLICO stock. This was a time when ULLICO's stock price was largely a function of the price of Global Crossing, a publicly traded company. During this time ULLICO management constructed stock repurchase programs that enabled officers and directors to transact in the company's stock on terms significantly more favorable than those available to the unions and pension funds that hold 98% of ULLICO's shares. My testimony focuses on ULLICO's shareholders and directors response to these improper transactions, culminating in last month's change of management, and on the subsequent acts of the new ULLICO management. I have attached a brief chronology of the officer and director stock transactions, and would refer the Committee to Governor Thompson's report for a comprehensive account of the events in question.

Board and Shareholder Response

ULLICO's stock repurchase and purchase plans and the director and officer transactions were not disclosed in any clear or comprehensive way to the board or the shareholders of ULLICO. They became known to ULLICO constituents and non-selling directors through press accounts that appeared in March, 2002. These disclosures led to overwhelming labor movement opposition to the course being pursued by ULLICO management, and to the election of a new board on May 8, 2003, which then elected Terry O'Sullivan, President of the Laborers International Union, as Chairman and CEO of ULLICO.

The successful effort to elect a new slate of directors and appoint new management was the culmination of the efforts of a host of labor leaders, their unions, and worker pension funds. These efforts began when, in response to those press accounts in March, 2002, John Sweeney, the President of the AFL-CIO, wrote to ULLICO Chairman Robert Georgine. President Sweeney's letter stated that the press accounts of insider transactions raised serious issues that required an independent investigation by a committee of disinterested directors, with independent counsel. Shortly thereafter, then-Chairman Georgine agreed to recommend that the full board retain former Illinois Governor James Thompson as Special Counsel to the Board to investigate these events.

As Governor Thompson's investigation was drawing to a close in September, 2002, then-Chairman Georgine made an effort to persuade Governor Thompson to deliver his report orally. President Sweeney and other directors objected to that suggestion, as did Governor Thompson.

In October, 2002, before the issuance of the Thompson report, United Brotherhood of Carpenters President Douglas McCarron, became the first director who had profited from these stock transactions to announce that he would return the profits to the company. Since then Communications Workers President Morton Bahr, United Association of Plumbers and Pipefitters President Martin Maddaloni, and Amalgamated Transit Union President James La Sala have all committed to return their profits from these transactions. At this time all the active union presidents who participated in insider stock transactions at ULLICO have committed to return profits from those transactions.

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In October, President Sweeney, AFL-CIO Executive Vice President Linda Chavez-Thompson and International Union of Operating Engineers President Frank Hanley made clear to then-Chairman Georgine that they expected the company to release the Thompson report to its shareholders after the board had an opportunity to review Thompson's recommendation. Instead, the board sought to impose an open-ended confidentiality obligation on directors who read the report. Mr. Sweeney, Ms. Chavez-Thompson and Mr. Hanley therefore resigned from ULLICO's board, stating they were unwilling to be in the position of having read the Thompson report but being unable to share its contents with the labor movement institutions who were ULLICO's shareholders.

Other labor leader directors, such as Douglas McCarron, Terry O'Sullivan, and John Wilhelm, remained on the board and fought for the adoption of the Thompson report's recommendations.

Governor Thompson's report was made available to the board the Tuesday before Thanksgiving, 2002. Governor Thompson found a "compelling case" that the insider transactions had involved breaches of fiduciary duty, and strong cases that the breaches by Mr. Georgine and then Chief Legal Officer Joseph Carabillo had involved intentional misconduct. It found "no evidence of criminal intent," but did find that there were arguments on both sides as to whether the transactions had breached either federal or state securities laws. The report recommended that most of the directors return their stock trading profits. The report also recommended further review by the board of certain other insider stock transactions.

At that point, Georgine appointed a special committee of directors who had not transacted; although it included Terry O'Sullivan and John Wilhelm, it soon became clear the majority of the Special Committee was opposed to Governor Thompson's recommendation that the stock trading profits be returned to the company.

As it became clearer that the majority of the Special Committee was not prepared to adopt Thompson's report, Carpenters' President Douglas McCarron resigned in protest. Hotel Workers President John Wilhelm later resigned when the Committee actually voted to reject Governor Thompson's remedial recommendations.

During this period, the United Auto Workers Retirement Fund sued ULLICO to force the disclosure of the Thompson report, and union leaders such as AFSCME's and SEIU's Presidents called for the release of the Thompson report.

When the Board's Special Committee ultimately voted, the three current presidents of large unions who were on the Committee, Mr. O'Sullivan, Mr. Wilhelm, and Postal Workers Union President Vincent Sombrotto, made up the dissenting minority, who voted that those who transacted should return the money.

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Following the Special Committee's rejection of the Thompson report, Terry O'Sullivan, President of the Laborers Union, who had remained on ULLICO's board, and International Brotherhood of Electrical Workers President Ed Hill, who was not on the board, began to organize a reform slate to run for ULLICO's board of directors. The slate was made up exclusively of active elected union leaders and of prominent individuals from outside the labor movement. The slate had the support of the AFL-CIO and the Building Trades Department. Its goals were to change the management of the company, address the company's growing business crisis, and adopt the remedial recommendations of the Thompson report. The reform slate effort received overwhelming support from the pension funds and unions that hold the vast majority of ULLICO's shares. Representatives of Carpenters' funds played a particularly active role in this effort.

In the face of this shareholder sentiment, then-Chairman Georgine agreed to support the reform slate, and informed the board he would not run again for the board himself. However, ULLICO issued a press release stating that Mr. Georgine intended to remain as CEO and President. Ultimately, Mr. Georgine reconsidered position and resigned all his positions at the company just prior to the convening of the shareholders meeting on May 8.

On May 8, 2003, a slate of 15 directors was elected, constituting the majority of the board of 28 members. The new directors include former Secretary of Labor Alexis Herman, former federal judge Abner Mikva, and the former Chairman of the New York State Urban Development Corporation and the New York Metropolitan Transit Authority Richard Ravitch. The new board elected Terry O'Sullivan as the new chairman of the company on the afternoon of May 8. Chairman O'Sullivan serves without pay or other compensation from ULLICO.

ULLICO board members, elected union leaders, union pension funds, their qualified plan asset managers and unions themselves all worked together to force an investigation of these stock transactions, and to force the release of the results of that investigation. These efforts changed the management of the company, and have produced the voluntary return of a significant portion of the money received by the non-officer directors.

Events Since May 8

Since May 8, the new management of ULLICO has been focused both on dealing responsibly with the events of the recent past and on restoring ULLICO's business to profitability. Though this testimony does not focus on the efforts to repair ULLICO's business since May 8, I will note that ULLICO has hired an Acting President, Edward Grebow, with experience in restructuring troubled financial institutions, and has retained the Boston Consulting Group and the Blackstone Group to advise the company on a

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strategy to return ULLICO to profitability and strengthen its capital structure. The company is working hard to regain the confidence of our customers and our regulators.

Since May 8th ULLICO management has taken the following steps in relation to the stock transactions and other executive compensation that are the focus of this hearing:

On the evening of May 8, the company instructed all outside lawyers and consultants engaged in defending the insider stock transactions to freeze all activities. In-house counsel was directed to cooperate fully with all investigating authorities, and a significant number of previously withheld documents were then turned over to government agencies and Congressional committees.

On May 9th, the company instructed the trustee banks of the special executive compensation trusts, including the rabbi trusts that have received press attention, to make no payments to present or former executives, pending board investigation of the circumstances surrounding these trusts.

On May 13, five days after the annual meeting, the new board met, heard a presentation by Governor Thompson, and voted to adopt all of Governor Thompson's remedial recommendations, including to demand the return of the stock profits from officers and directors. The board also voted to authorize an inquiry into the role of outside service providers, including attorneys, auditors and consultants, in these events and their aftermath. With the adoption of the remedial recommendations, the company has adopted the findings of the Thompson Report.

On May 13th, the board also appointed a Legal and Regulatory Affairs Subcommittee, chaired by a new ULLICO director, University of Chicago law professor and former Congressman, federal judge and White House Counsel Abner Mikva. The subcommittee was charged with, among other matters, carrying out the Thompson report's remedial recommendations 2-4, reviewing past executive compensation, including the validity of the rabbi trusts and former Chairman Georgine's claim to be entitled to a "golden parachute," and reviewing service provider conduct.

On May 29, the company fired Joseph Carabillo for cause. Unbeknownst to new management, Mr. Carabillo had remained on the payroll on paid leave since he relinquished his position as Chief Legal Officer at the end of March .

On June 13, the company wrote to Mr. Carabillo and to Mr. Georgine, demanding that they return the amounts listed for each in Governor Thompson's first remedial recommendation.

On June 15, former Federal Judge Abner Mikva initiated the ULLICO board's follow-up inquiries into certain stock transactions, as required in Thompson report remedial recommendations 2-4. Judge Mikva notified those individuals who had profited in the

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transactions that an inquiry was underway and offering them the opportunity to explain their position to his Committee.

On June 15, the company informed attorneys for Mr. Carabillo and Mr. Georgine that as a result of Governor Thompson's findings that those individuals probably had committed intentional wrongful acts, the company could no longer reimburse legal expenses for either individual.

On June 15, the company wrote to the remaining directors listed in the Thompson Report's first remedial recommendation, to demand that they return their profits from the improper transactions. The company offered those directors the opportunity to obtain from the Internal Revenue Service a return of the taxes paid on these transactions before having to return the amount of those taxes to the company. These directors have been offered 30 days to respond fully, after which they will be removed from any positions they may have at ULLICO, and the company will consider further action to recover the monies at issue.

Conclusions

The labor movement takes the very strong position that the problems in our corporate economy: the conflicts of interest and lack of accountability are structural— that unregulated conflicts of interest have pushed the good, the bad, and the rest of us in the wrong direction. The story of misconduct at ULLICO is the story of these same structural problems manifesting themselves in a labor affiliated business.

ULLICO is a private, for-profit company involved in the capital markets. At the time of these events, it had a Big Four audit firm, numerous prominent corporate law firms advising it, and a board of directors with close relationships with its CEO. Private companies, unlike public companies, unions and pension funds, are not required to disclose basic information about their governance or executive compensation. We at ULLICO have concluded that the low disclosure and governance standards the law requires of private simply are not good enough for our company or its constituents.

ULLICO's painful experience should reinforce the lessons of the last two years of corporate scandal—conflicts of interest are real and can harm companies, excessive executive compensation is real and can harm companies, stock-based compensation is not always a good idea, expert gatekeepers can easily aid and abet wrongdoing, and boards can easily become captive to CEO's.

Workers' benefit funds have lost hundreds of billions of dollars investing in public companies over the last two years where wrongdoing occurred and bankrupted the companies in question before anyone could do anything to save them. At ULLICO, directors and shareholders accomplished a change in management and are acting to obtain the return of wrongful gains, when at one large public company after another

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investors seem unable to either recoup hundreds of millions in insider gains or stop executive misconduct from rendering their investments worthless.

The current management of ULLICO takes some pride in reviewing these events. Our directors and shareholders stood their ground, fought and won. The misconduct that occurred has not been allowed to destroy our company.

No one has lost a dime in pension benefits as a result of what has occurred. ULLICO employees have a defined benefit pension plan, which while it may have been hurt by these events, is properly diversified and in no danger of defaulting on its obligations.

What sacrifices there must be to put ULLICO back on track will be shared. And there will continue to be consequences for anyone who was entrusted with ULLICO's assets and good name and abused that trust. But there has not and will not be the horrifying spectacle of dedicated, honest people being turned out in the street with no severance or health care while executives wire themselves severance bonuses, as has occurred at powerful companies many times ULLICO's size.

Ultimately, the labor movement has one standard for corporate governance. It is a standard we fight for every day in the companies where worker money is invested, and it is the standard that has prevailed at ULLICO.

ULLICO today is focused on the future, but is not seeking to hide from the past. The company is more than willing to assist this Committee with any further concerns or questions the Committee may have about recent events at ULLICO.

Thank you.

Testimony of Damon A. Silvers
Counsel to the Chairman, ULLICO Inc.
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CHRONOLOGY OF DIRECTOR AND OFFICER STOCK TRANSACTIONS AT ULLICO

ULLICO's stock is held by worker benefit funds and unions. Officers and directors historically have held a very small portion of the company's stock. As a private company, ULLICO's stock is illiquid, and really the only way for a shareholder to sell stock and realize gains or losses is by selling it back to the company.

ULLICO's business had been basically stable for many years, when in the mid-1990's ULLICO began to invest in private capital opportunities, like technology startups. One such investment was a $7.5 million placement with a predecessor firm to Global Crossing. This investment was made in February, 1997. In September, 1998, Global Crossing went public.

ULLICO's investment in Global Crossing increased in value in late 1998 and 1999, to the point where it was worth over $1 billion. ULLICO's holding in Global Crossing stock became the company's dominant asset, dwarfing the company's operating assets.

ULLICO had, starting in 1996, returned cash to its investors through annual stock buybacks, priced at the company's book value per share at the most recent year end. There was an unavoidable lag time in this process. The stock would be priced based on its book value on December 31st, that value would not be adopted by the board until the board's meeting in early May, and the repurchase transactions would not occur until the fall. But there was nothing wrong with this as long as the company's stock price was stable, the true price was unknowable at the time of the repurchase offer, and each investor was treated equally in the repurchase plan.

ULLICO had a large board at that time, which was made up of present and retired union officers. However, the balance tilted decidedly toward retired labor leaders. These retirees were not directly accountable to the unions and pension funds that held ULLICO's shares. A number of directors owned small amounts of stock in ULLICO that they had accumulated over time, generally at the fixed purchase price of $25 that had prevailed for years.

In 1998, just before and just after the Global Crossing IPO, then ULLICO Chairman Robert Georgine offered directors and officers the opportunity to buy shares in two blocks of up to 2,000 shares each. Again, in 1999, an offer was made to the same officers and directors to buy up to another 4,000 shares. The prices of these offers were below the prices that one could calculate the shares were worth based on the real time value of ULLICO's Global Crossing shares. Thus, given the lag time in valuing ULLICO shares, there was an advantage in being a buyer of ULLICO stock as long as Global Crossing's stock price continued to go up. And only officers and directors could buy.

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Counsel to the Chairman, ULLICO Inc.
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But as soon as Global Crossing's stock price started to fall, in around March of 2000, it became advantageous to be able to sell ULLICO stock based on the year end 1999 book valuation. However, ULLICO management planned a repurchase plan in the spring of 2000 that addressed the possibility that insiders would gain just this type of unfair advantage. This extraordinary repurchase plan contemplated paying back over $300 million in cash to shareholders, but with vital protections in place. First, the planned buyback offer was tied to the price of Global Crossing. It could not be carried out if Global Crossing's stock price fell more than 15% from what it had been at year end 1999. It also treated all shareholders the same, other than those with de minimis holdings of under 100 shares, who were exempt from proration, meaning they could sell all their shares back to the company. Finally, this plan required all shareholders who held more than 1% of ULLICO shares to tender, so that no major shareholder would be left out. This proposed extraordinary repurchase plan, with these key protections, received a financial fairness opinion from Credit Suisse First Boston.

As Global Crossing's stock price continued to fall in the summer of 2000, that extraordinary plan could not be carried out because of the requirement that the price of Global Crossing's stock be within 15% of what it had been at the end of 1999. However, during the summer of 2000, then-ULLICO Chairman Georgine began repurchasing shareholdings of certain directors and officers on an ad hoc basis.

As the year drew to a close without a rebound in Global Crossing's stock price, Mr. Georgine called a special meeting of the board for November 2, 2000. At this meeting ULLICO management acknowledged that the Extraordinary Plan could not be implemented. Mr. Georgine suggested replacing it with a plan that had many of the features of repurchase plans from before 1998—no Global Crossing price collar, a 10,000 share exemption from being pro-rated, and no mandatory tender by institutions. The only problem was that ULLICO management appeared to have believed the protections of the extraordinary purchase plan were important in May, and clearly had notice of the issues those provisions were designed to address. In addition, ULLICO obtained neither a financial fairness opinion from Credit Suisse First Boston nor any other financial advisor. ULLICO also did not obtain a written legal fairness opinion from its corporate counsel at Arnold and Porter, although Arnold and Porter had reviewed the plan without making any objection.

The board meeting that approved this plan was called on short notice. Board members were not provided with a detailed agenda or an advance copy of the repurchase plan that was to be considered. Furthermore, management's briefing to the board appears not to have included any of the salient facts about the plan or of the facts about the large insider stock transactions that then-Chairman Georgine had been approving on an ad-hoc basis that summer and fall.

Once this new repurchase plan was put into effect in December, 2000, a substantial number of officers and directors sold their entire holdings in the ULLICO's stock. Free from the pro rata effect that restricted unions and pension funds to having less than 3% of their shares repurchased, these insiders had their entire holdings repurchased at $146/share, whereas the real value of ULLICO's stock at that time, based on Global Crossing's stock price, had fallen to close to $74.

The result of these events was that officer and director shareholders, who accounted for 1.83% of ULLICO's shares as of May, 2000, received 69% of the proceeds of all stock repurchases at the 2000 price of $146.04. That price was dramatically higher than the real value of the company's stock at the time of all of the repurchase transactions.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Damon A. Silvers		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).	Yes	No
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998: None.		
3. Will you be representing an entity other than a government entity?		No
4. Other than yourself, please list what entity or entities you will be representing: ULLICO Inc. American Federation of Labor and Congress of Industrial Organizations		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: Counsel to the Chairman, ULLICO Inc. Associate General Counsel, AFL-CIO		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract: ULLICO Inc. leased space to the General Services Adminstration from 1989 until December 2002 in ULLICO's headquarters building at 111 Mass. Avenue in Washington, DC. The annual rental fee was $2.65 million, plus $50,000 annually for parking.		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:		No

Signature: ______Damon A. Silvers______________________________ Date: __________June 16, 2003_______________

Please attach this sheet to your written testimony.

APPENDIX D – SUBMITTED FOR THE RECORD, "BUILDING WORKERS' UNION SET TO LIMIT POLITICKING," GREENHOUSE, STEVEN, THE NEW YORK TIMES, JUNE 9, 2003

The New York Times
nytimes.com

June 9, 2003

Building Workers' Union Is Set to Limit Politicking

By STEVEN GREENHOUSE

Officials with New York's largest union of janitors and doormen said yesterday that the union would soon agree to a new code of conduct governing its political activities to help resolve an investigation by Robert M. Morgenthau, the Manhattan district attorney.

Mr. Morgenthau began investigating the union, Local 32BJ of the Service Employees International Union, more than a year ago, after several of its staff employees told his office that they were coerced into campaigning for Mark Green, the Democratic candidate for mayor in 2001.

Several union workers said in interviews that they told a grand jury convened by Mr. Morgenthau that union officials had illegally pressured them to campaign for Mr. Green during their regular union workday and to take personal days to campaign for Mr. Green.

Union officials have repeatedly denied that they violated the law in supporting Mr. Green.

"We've cooperated with the district attorney in the past, and we'll continue to do so," said Karen Crowe, communications director for Local 32BJ, which represents more than 60,000 building service workers at thousands of office and apartment buildings in the New York metropolitan area.

One union official, who insisted on anonymity, said Local 32BJ and Mr. Morgenthau's aides were completing an agreement that would increase oversight of the union's political activities. The union official said the union had forwarded a proposed code of conduct to the district attorney's office, with some union officials saying they hoped an agreement on such a code would settle the investigation.

Barbara Thompson, Mr. Morgenthau's spokeswoman, did not return telephone calls yesterday.

The district attorney's efforts to get the union to adopt a new code of conduct were reported in The Daily News yesterday.

Officials familiar with the negotiations between Local 32BJ and the district attorney said the union had agreed to hire a new law firm that would keep close watch on the union's political activities. Critics of the union's president, Michael Fishman, said the law firm would effectively serve as an outside monitor whose role was to ensure that the union did not break the law in future political campaigns.

But one union official denied that the law firm would serve as a monitor, saying it would, like many law firms, merely advise its client on how to stay within the law.

Mr. Fishman is running for re-election this September, giving his supporters incentive to play down the scope and seriousness of any agreement with Mr. Morgenthau.

But Dominick Bentivegna, an elected union official running against Mr. Fishman for the local's presidency, said yesterday that he told the grand jury that top union leaders had ordered numerous illegal campaign activities.

"Every union staff member was forced to take personal days, vacation days and work for Mark Green and their candidates," he said. "We were forced to do campaign work during working hours. We had quotas to meet to recruit union members to campaign for Mark Green. We had to get on the phones to recruit members, and then we had to leaflet at subway stations during work hours. It was all illegal."

A document given to Mr. Morgenthau shows that on Dec. 5, 2001 the local's executive board reported $731,874 in political expenditures, including $161,659 for member mobilization, $118,596 for membership mailings and $59,982 for buttons and T-shirts.

Willie Vargas, a doorman on the Upper East Side who worked for four months as a paid organizer seeking to unionize janitors in New Jersey, said he backed Fernando Ferrer, then the Bronx borough president, for Mayor, but was strong-armed into campaigning for Mr. Green.

"I was there, and there was a lot of pressure on us to make sure we were working for Green on Primary Day," he said yesterday. "It was plainly stated that if you want to get anywhere in this place, this is how it is."

In another document given to the district attorney, the union's vice president, Kevin Doyle, told the union's top staff workers — its supervisors and delegates — that they were expected to work from 6 a.m. to 9 p.m. on Primary Day and that they would be assigned to specific locations and be responsible for giving out assignments.

APPENDIX E – SUBMITTED FOR THE RECORD, REPORT OF THE SPECIAL COUNSEL, ULLICO STOCK PURCHASE OFFER AND REPURCHASE PROGRAMS AND GLOBAL CROSSING INVESTMENT, GOVERNOR JAMES R. THOMPSON, CHAIRMAN, WINSTON & STRAWN, NOVEMBER 26, 2003

Privileged and Confidential
Attorney-Client Privilege
Attorney Work Product

Report of the Special Counsel ULLICO Stock Purchase Offer and Repurchase Programs and Global Crossing Investment

Governor James R. Thompson
Chairman
WINSTON & STRAWN

November 26, 2002

To the ULLICO Board of Directors:

On April 29, 2002, I accepted your appointment as Special Counsel to investigate the events surrounding ULLICO's 1998 and 1999 stock purchase offers to directors and senior officers, its stock repurchase programs and the Global Crossing investment. After seven months of investigation by Winston & Strawn, more than 40 interviews and the review of thousands of documents, I believe we have a sound understanding of the events at issue.

ULLICO recorded an extraordinary return of approximately $486 million on its $7.6 million investment in Global Crossing. The Global Crossing investment was consistent with ULLICO's philosophy of supporting investments which might create opportunities for its labor constituency.

In 1997, before the success of the Global Crossing investment became apparent, ULLICO's Board of Directors changed the manner in which ULLICO distributed profits to shareholders. It reduced, and eventually eliminated, dividends and adopted a formal stock repurchase program. ULLICO also continued its practice of repurchasing stock from time to time under an informal repurchase program administered by its Chairman.

As a result of the confluence of certain events, the repurchase programs as implemented in later years led to disproportionate distributions to certain officers and directors. What may have begun as appropriate programs supported by legitimate business purposes developed into programs that were not in the best interest of all the Company's shareholders.

Certain ULLICO officers and Board members arguably acted inappropriately and to the detriment of the rights of ULLICO institutional shareholders. As a result of their actions, certain officers and directors received preferential treatment in the sale of their ULLICO stock. It is important, in these times of highly publicized cases of deliberate corporate malfeasance, to distinguish what happened at ULLICO from these other cases by emphasizing that we have not found evidence of criminal intent.

In the following pages we set forth an executive summary of our report and thereafter the details of the evidence gathered in the investigation, our legal analysis thereof, and our findings and recommendations. The recommendations are designed to remedy what occurred, to prevent its reoccurrence and to guide future corporate governance of the Company. We emphasize that changes in ULLICO's corporate governance are essential and should be undertaken promptly.

We believe each director should have and take the opportunity to fully review the Report in its entirety before deliberating and acting on our recommendations. Because of the Report's length and detail, it may well be advisable for each director to receive in advance a copy of the Report for study with the caveat that it contains privileged information. In the meantime, we have made available to directors and their counsel copies of the Report to review at our offices or elsewhere. It is essential that each director read the full Report carefully.

My staff and I stand ready to make an in-person presentation of our findings and recommendations at your convenience and, of course, to answer any questions any Board member may have.

We appreciate the confidence you have entrusted in us to conduct this investigation, and we are grateful to the Company's staff for their cooperation with our inquiry.

Respectfully submitted,

Governor James R. Thompson
Special Counsel

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Executive Summary of Special Counsel Report

Factual Background

In 1987, ULLICO, Inc. ("the Company" or "ULLICO") was formed as a holding company for the Union Labor Life Insurance Company and various subsidiaries which provide insurance, pension, health and investment management and lending services to unions, union members and union pension funds. The by-laws of the Company authorize a 32-member Board of Directors, which has historically consisted primarily of present or former officers of major unions and pension funds that are substantial ULLICO shareholders.

A clear purpose in forming the holding company in 1987 was to raise capital—first through a bond sale and then a stock offering (the preferred certificate program) under which many union pension funds became shareholders for the first time. New subsidiaries were added, debt was reduced, and outside investments were proposed. Returns on core operations, however, continued to be variable, and in certain years operating losses were incurred.

Beginning in or about 1991, the ULLICO Board of Directors and senior management decided to undertake an aggressive investment program. To this end, ULLICO Chairman and Chief Executive Officer Robert A. Georgine hired Michael R. Steed as the Senior Vice President of Investments, and Steed proposed that the Company make a variety of private equity investments. One investment proved extraordinary by any measure: in February 1997, the Executive Committee of the Board, on the recommendation of Chairman Georgine and Steed, approved a $7.6 million investment in a new company called Nautilus LLC, the predecessor of Global Crossing. This investment eventually resulted in an incredible gross profit to ULLICO of about $486 million, or a return of approximately 6,390%.

In May 1997, well before the success of the Global Crossing investment became apparent, the Board approved a formal stock repurchase program under which the Company would repurchase shares of ULLICO Class A and B Stock acquired through the preferred certificate program. This stock repurchase program was intended to replace the historically high (often 9% cash and 10% stock) annual dividends paid by the Company, which dividends were reduced in 1997 and eliminated in 1999. The use of the stock repurchase program to replace dividends was a key element in the Company's strategy to improve the credit ratings of its insurance subsidiaries.

As initially envisioned and developed in consultation with Credit Suisse First Boston, the formal repurchase program was intended to allow the Company to repurchase $180 million in Class A and Class B Stock over 11 years, with $30 million of stock being repurchased in 1997 and $15 million of stock being repurchased in each of the following 10 years. The Company's other type of stock, Capital Stock, was not eligible for repurchase in the formal repurchase program.

The formal repurchase program had to be considered and approved by the Board of Directors or its Executive Committee each year it was offered, as there was no assurance that sufficient funds would be available to fund the program in each of the ten years after 1997.

The formal repurchase program, according to Chairman Georgine, was intended to be a "means for [ULLICO] to provide liquidity to [its] larger stockholders." This formal program, along with an informal, "discretionary" repurchase program that had apparently been in existence for a number of years but not formally authorized by the Board until November 2000, was overseen principally by Chairman Georgine and the Company's Chief Legal Officer, Joseph A. Carabillo. Capital Stock was eligible for repurchase through the "discretionary" program.

To facilitate the stock repurchase programs, the price for the Company's stock, which historically had been set at $25 per share, was annually set by the Company beginning in May 1997 based on ULLICO's prior year-end audited book value per share. Book value per share was calculated by dividing the Company's total stockholders' equity by the number of shares of ULLICO Capital, Class A and Class B Stock outstanding. The initial price set in May 1997, upon the adoption of the first formal repurchase program, was $27.06 per share, the per share book value of the Company's stock as of December 31, 1996. The price established for the repurchase programs was also used to value shares sold by the Company from time-to-time.

When Global Crossing completed its initial public offering in August 1998 and the value of ULLICO's Global Crossing investment skyrocketed, the book value of ULLICO's stock followed. By the end of 1999, ULLICO's unrealized and after-tax realized gains on its Global Crossing investment were more than $1 billion, or approximately 85% of the Company's total stockholders' equity. Because the ULLICO stock price was set only once a year (in May, based upon the audited financial statements for the prior calendar year), any ULLICO shareholder considering whether to redeem or purchase ULLICO stock had advance notice, based upon Global Crossing's stock price performance, as to whether ULLICO's shares would likely be higher or lower the following year.

As Global Crossing's value rose dramatically in 1998 and 1999, it was a good time to buy ULLICO stock, and each director and senior officer (but no other authorized ULLICO investor) was given an opportunity by the Company to buy up to 4,000 shares in the second half of 1998 and another 4,000 shares in December 1999. The purchase price for the shares offered was $28.70 in 1998 and $53.94 in 1999, the book values per share as of the December 31 preceding the dates of purchase. The stated purpose for the stock offers, which were purportedly approved by the Compensation Committee, was to align the interests of officers and directors with shareholders. All of the senior officers and most of the directors bought stock pursuant to this offer. Some bought 8,000 shares, others less. Many of those who participated in the stock offers made substantial profits.

ULLICO's senior officers received additional benefits as a result of the success of the Global Crossing investment. In July 1998, the Compensation Committee, in consultation with William M. Mercer and Company, an executive compensation consulting firm, approved a "Global Incentive Program" bonus under which the five most senior executives received a four-year special bonus (in addition to their base compensation and regular annual bonus) based on the performance of ULLICO's Global Crossing investment. By 2001, the five ULLICO executives, Georgine, Carabillo, James W. Luce, John K. Grelle and Steed (who received only two payments before he resigned), received a total of $5.67 million through this bonus program.

In July 1998, the Compensation Committee also authorized a "top hat" non-qualified deferred compensation plan for ULLICO's senior officers, Georgine, Steed, Carabillo, Grelle and Luce. The purpose of the deferred compensation plan was to allow senior executives to defer income (and thereby defer income tax) on a portion of their earnings and to make deemed investments of such deferred income in one or more investment alternatives. Amounts deferred under the plan are not required to be actually invested in the available investment alternatives. Rather, the investment alternatives simply provide a measure of return to plan participants. One of the investment alternatives was ULLICO Class A Stock.

ULLICO's senior officers took advantage of the flexible terms of the deferred compensation plan to exploit the large, but short-lived, increase in the book value per share of ULLICO's stock between 1998 and 2000. When the stock price was attractive in 1998 and late 1999, the senior officers allocated deferred compensation to deemed investments in ULLICO stock under the plan. When the book value per share peaked in 2000, these same officers withdrew all amounts allocated to the ULLICO investment stock account under the plan. This simple and quite common retirement planning vehicle was the source of approximately $4 million of earnings by Georgine over a two-year period from 1998 to 2000. ULLICO's other senior officers who participated in the plan each received between $350,000 and $600,000 during the same period.

On May 10, 2000, the Executive Committee of the Board approved a record-high stock price of $146.04 per share, based on the book value per share from the Company's audited financial statements as of December 31, 1999. At the same meeting, the Board also conditionally approved an "extraordinary" stock repurchase program based on the Global Crossing investment success. Under this program, ULLICO would repurchase from all shareholders (including holders of Capital Stock) up to 20% of ULLICO's outstanding stock having an aggregate value of approximately $240 million. The "extraordinary" repurchase program provided that, in the event the offer were over-subscribed, holders of 100 or fewer shares would be able to redeem all of the shares they tendered in the program while larger shareholders would be subject to proration. The "extraordinary" stock repurchase program was subject to several conditions, including that the price of Global Crossing stock had to be not less than $43 per share.

However, by November 2000, Global Crossing's stock price had not reached the $43 trigger price, and the Board determined, on November 3, 2000, to replace the "extraordinary" program with a $30 million stock repurchase program. Under this replacement program, if the offer were over-subscribed, shareholders who held fewer than 10,000 Class A and Class B shares could redeem 100% of their stock at the $146.04 per share price. These shareholders were principally the officers and directors who had bought stock pursuant to the 1998 and 1999 stock offers.

In contrast, ULLICO's large institutional shareholders owning 10,000 or more shares who tendered their stock pursuant to the repurchase program would be subject to proration in the event the offer were over-subscribed. This 10,000 share threshold had been included in prior programs approved by the Board.

The 2000 stock repurchase program, unlike the repurchase programs in 1997 through 1999, also contained a condition that all shareholders who owned more than 2% of the outstanding stock subject to the program had to tender all of their respective shares for repurchase in the program. This 2% Rule ensured that holders of 10,000 or more shares would be severely prorated given that those shareholders who were subject to the 2% Rule collectively held more than $800 million in stock in a repurchase program capped at $30 million.

Under the terms of the 2000 repurchase program, if the 2% Rule were not satisfied, the Chairman would have had limited authority to waive that condition of the program. The Chairman did not need to exercise this power because, as it turned out, the 2% Rule was satisfied. In fact, ULLICO's shareholders holding 10,000 or more shares collectively tendered about $1.1 billion of stock in the 2000 stock repurchase program. Under the proration rules of the program, the Company could repurchase only 2.2% of the shares tendered by each of these large shareholders. Thus, for example, a union or a pension fund that owned 10,000 shares could only redeem 220 shares at $146.04 per share through the 2000 repurchase program and receive $32,129. In contrast, however, a director or officer who owned 9,999 shares could redeem all of his or her shares at $146.04 per share and receive $1,460,254.

Paradoxically, the November 2000 $30 million stock repurchase program, under which proration was a virtual certainty, set a higher proration threshold than the May 2000 $240 million "extraordinary" repurchase program, which treated all shareholders (other than those holding 100 or fewer shares) equally. The result was that, under the $30 million replacement repurchase program, insiders received a substantially larger percentage of the funds distributed than they would have received under the previously proposed $240 million "extraordinary" program.

The November 2000 stock repurchase program failed to treat all shareholders equally and indeed greatly favored the very people, ULLICO's directors and officers, who had formulated, approved and implemented the program. Since dividends had been eliminated and there was no liquid market for ULLICO stock, the formal repurchase program was, other than the "discretionary" repurchase program discussed below, the only practical method by which a ULLICO shareholder could redeem Company stock.

Under the "discretionary" repurchase program administered by Chairman Georgine, a shareholder could sell shares of ULLICO stock, including Capital Stock. Historically, under long-time criteria, the Chairman exercised this discretion when a shareholder died, an officer or director resigned, or a union had a financial emergency. On November 3, 2000, Chairman Georgine told the directors that the "discretionary" program was "neither advertised nor encouraged." However, between May 2000 and April 2001, when the ULLICO stock price remained at $146.04 per share, the Chairman approved approximately $14.7 million in stock repurchases, mostly from insiders, through the "discretionary" program, even though most of these repurchases did not satisfy the traditional criteria.

By April 2001, twenty ULLICO directors and officers, who collectively owned less than 2% of the Company's outstanding stock as of May 2000, received $13.7 million, or 31% of the approximately $44.6 million paid to ULLICO's shareholders through the formal and "discretionary" programs in 2000 and early 2001 at the $146.04 per share price. In contrast, the pension funds and unions that owned over 90% of the Company's stock received approximately $28 million, or about 63% of all sums distributed. (The remaining 6% of shareholders held fewer than 10,000 shares but were not directors or officers.)

Despite the Chairman's comment at the November 3, 2000 Board meeting that ULLICO "is a long-term investment and has been a long-term investment since 1925," four current senior officers (Georgine, Carabillo, Grelle and Luce) who bought stock in 1998 and 1999 pursuant to the exclusive stock offers sold virtually all of these shares to the Company at the $146.04 per share price. Of the 20 directors (excluding Georgine) who bought shares in 1998 and 1999 pursuant to the exclusive stock offers, 15 sold most, if not all, of their shares to the Company at the $146.04 per share price. Only three current directors (Biller, Kruse and Sweeney) and one former director (Upshaw) still hold all of the ULLICO Class A Stock they purchased in 1998 or 1999.

Legal Analysis

■ Fiduciary Duties

ULLICO's directors and executive officers have fiduciary duties to the Company's shareholders under Maryland state law, where ULLICO is incorporated. Under state statutory law, directors must perform their duties: (1) in good faith; (2) in a manner they reasonably believe to be in the best interests of the Company; and (3) with the care that an ordinary, prudent person in a like position would use under similar circumstances. Officers owe duties of loyalty, obedience and care to the Company.

The Company's 1998 and 1999 stock offers and 2000 stock repurchase programs resulted in numerous self-interested transactions, *i.e.*, transactions with the Company in which the directors and officers stood to personally benefit. In general, self-interested transactions that are approved by a majority vote of disinterested directors after full disclosure and consideration of all relevant information are not void or voidable solely because of the involvement of interested directors.

The Company has identified five potential disinterested directors who voted to approve the November 3, 2000 Board resolutions. Four of these five directors held no Class A Stock at the time of this Board meeting (Directors Hurt, Joyce, Miller and O'Sullivan). However, three directors (Directors Hurt, Joyce and Miller) held Capital Stock that could have been repurchased through the "discretionary" program, which the Board approved on November 3, 2000. Only Director O'Sullivan, who was appointed to the Board in 2000, held no stock, Capital or Class A, as of November 3, 2000. Finally, outside Company counsel[1] have suggested that the fifth director, Chairman Georgine, although he held Class A and Capital Stock, was disinterested because, by virtue of the put rights in his employment agreements, he could redeem his shares without participating in either the 2000 formal repurchase program or the "discretionary" program.

While there are questions as to whether these five directors were both disinterested and fully informed of the relevant information, Maryland law requires only one disinterested director to approve self-interested transactions concerning other directors. Outside Company counsel have argued that at least one of these five directors was fully disinterested and fully informed, and that the transactions approved at the November 2000 Board meeting would not be void or voidable on the sole basis that they are self-interested transactions as to other directors.

However, compliance with Maryland law on approving self-interested transactions does not excuse the requirement that directors fulfill their fiduciary duties under Maryland law, *i.e.*, that they act in good faith, in a manner they reasonably believed is in the best interests of the company and with due care in approving the transactions. Under the facts discovered in the investigation, a compelling argument exists that directors, particularly those who benefited from self-interested transactions, did not satisfy these requirements. An equally forceful argument applies to the principal officers, Georgine and Carabillo, who were instrumental in creating and implementing the stock offer and repurchase programs, and who benefited from ULLICO stock transactions.

Good faith is the absence of any desire to obtain a personal benefit and is synonymous with adherence to what is referred to in many other states as a duty of loyalty or the duty of fair dealing. Most directors who approved the stock offer and repurchase programs had the opportunity to personally benefit from them, and many

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[1] "Outside Company counsel" refers to the lawyers hired by the Company in connection with this investigation, including Feder Semo Clark & Bard, P.C. and Sidley Austin Brown & Wood.

of them did. The stock offers were made available exclusively to directors and senior officers, and the repurchase programs were structured and administered in a manner that, intentionally or not, favored directors and officers over other (largely institutional) shareholders.

In performing his or her duties, a director must have a rational basis for his or her action and have knowledge of that basis when taking such action. We have been unable to discern the precise business purpose or basis for the 1998 and 1999 stock offers to directors and officers. Some directors and officers we interviewed believed that the stock offers were intended, at least in part, as compensation. Others, including Georgine and outside Company counsel, have disagreed.

To the extent the 1998 and 1999 stock offers were designed to provide directors and officers with a bona fide investment opportunity, these offers carried little or virtually no investment risk. The July 1998 offer to buy 2,000 shares occurred shortly before the Global Crossing initial public offering, which foreseeably would, and in fact did, substantially increase the value of ULLICO's Global Crossing investment and the book value of ULLICO's shares. The October 1998 stock purchase offer of 2,000 shares carried even less investment risk as ULLICO's unrealized gain on its Global Crossing investment had increased even further by that time.

Even though the price of Global Crossing stock could fluctuate up or down in 1998, downside risk on the ULLICO shares purchased by directors and officers in 1998 was limited. Any of the shares purchased in 1998 could have been redeemed at their cost through the formal repurchase program later that year.

The December 1999 stock purchase offer of 4,000 shares carried virtually no investment risk because: (1) the offer closed on December 29, 1999, two days prior to the date used to calculate the 1999 book value per share of $146.04; (2) the Company had earlier in the year realized approximately $193 million in a partial sale of its Global Crossing holdings, essentially ensuring that its book value would increase in 2000; and (3) Global Crossing's share price was near its all-time high in December 1999. Further underscoring the lack of risk in the December 1999 offer is the fact that three of the executive officers (Georgine, Carabillo and Grelle) took the unusual step of incurring a one-year bank loan to purchase their respective 4,000 shares.

If the stock offers were designed to align the interests of ULLICO's directors and officers with those of ULLICO's shareholders, as Chairman Georgine and others asserted, they were poorly suited to achieve that purpose. Any "alignment" of interests was very short-lived since almost 90% of the shares purchased by directors and officers in 1998 and 1999 were repurchased by the Company by January 2001.

To the extent the stock offers were intended as compensation, as some directors have asserted, the offers may have resulted in excessive compensation to several ULLICO directors, and perhaps officers as well. More importantly, if the stock offers were a means of compensation, then these offers should have been treated as such with appropriate standards set to determine what amounts, if any, should be paid to directors and officers and without tying the payment of those amounts to shareholder repurchase programs. These repurchase programs were purportedly for the equal benefit of all shareholders but were implemented in a manner that disproportionately favored directors and officers by allowing them to redeem all of the Class A Stock they purchased in 1998 and 1999.

Moreover, a serious question exists as to whether the 1998 and 1999 stock offers were properly authorized. The Compensation Committee purported to approve the stock offers, but did not have the authority to issue stock and its members were prohibited from deciding any matter relating to their own compensation. Thus, one could make a strong argument that the members of the Compensation Committee in approving the stock offers violated their fiduciary duties by approving matters outside their authority.

In light of questions raised regarding the Compensation Committee's authority to approve the stock offers, certain members of the Company's management, and others, have suggested that the authority for the stock offers may have come from a resolution of the Board adopted at its May 6, 1997 meeting. Pursuant to this resolution, the Board purported to authorize Georgine "in his sole discretion to offer shares of the Corporation's Stock that have been repurchased and returned to the status of authorized, but unissued shares[.]" However, it is at best questionable whether this delegation was intended to cover the exclusive stock offers to directors and officers and, even if so intended, it is questionable that such a wholesale delegation of authority by the Board would have been consistent with the directors' fiduciary duties.

Similarly, the investigation revealed no coherent "rational basis" for the Board's action in approving the 2000 formal repurchase program containing the 10,000 share threshold. The threshold led directly to a fundamental disparity in the way ULLICO's individual shareholders (mostly officers and directors) and its institutional shareholders (mostly union and pension funds) were treated under the program.

While there may have been a rationale for the 10,000 share proration threshold in 1997 when the long-term repurchase program was initially adopted, we could discern no meaningful rationale for that threshold in 2000. In fact, the use of the threshold in 2000, under the then-existing circumstances, seemed inconsistent with Chairman Georgine's statement to the Board in 1997 that the repurchase program was a means for "[the Company] to provide liquidity to [its] *larger shareholders*." (Emphasis added.) In any event, it is likely that whatever objectives the Board intended to achieve through the use of the 10,000 share proration threshold could largely have been achieved through other means that did not so significantly favor ULLICO's insiders at the expense of its large institutional shareholders.

In approving both the stock offer and repurchase programs, certain of ULLICO's directors did not act as an "ordinarily prudent person" would act in a "like position under similar circumstances." The stock offers lacked a clear business purpose and involved an excessive, and perhaps unauthorized, delegation of responsibilities. The terms of the repurchase program, at least in 2000, and the foreseeable proration effect, were (at best) not adequately considered, particularly given the extent to which officers and directors personally benefited from this program.

Outside Company counsel submits that the directors should have the benefit of the so-called "business judgment rule," which has essentially been codified under Maryland law for directors. In a court case, the business judgment rule would provide a procedural presumption in favor of directors' actions. This procedural presumption can be rebutted by a showing of a lack of either good faith or an informed basis for the directors' decisions. Under the facts of this case, it cannot be said with any reasonable degree of certainty that the business judgment rule would protect those directors who benefited from the programs at issue.

In addition to the directors, Georgine and Carabillo bear responsibility for the defects in the stock offer and repurchase programs from which they benefited. These officers were heavily involved in the creation, evaluation and implementation of the programs. Georgine exercised almost unfettered discretion in administering the "discretionary" repurchase program, and the Compensation Committee granted Georgine the discretion to determine the timing of all the stock offers. Each year's repurchase program was approved by the Board and/or the Executive Committee in the form presented by management. Carabillo, as ULLICO's Chief Legal Officer, assisted and provided legal advice to Georgine and the Board in connection with these matters. It is unclear under Maryland law whether officers' decisions are subject to the procedural protection of the business judgment rule.

Finally, outside Company counsel have indicated that the actions by directors and officers in connection with the stock offer and stock repurchase programs were based upon advice of both the Company's Chief Legal Officer Carabillo and outside counsel. Significantly, the burden is on the proponent of the advice of counsel defense (which is not a complete defense but, instead, provides evidence of good faith) to establish reasonable reliance on independent legal advice. This is a difficult burden to satisfy because Carabillo could not be deemed "independent" counsel as he stood to benefit from, and assisted in the structuring of, the transactions at issue. Moreover, while outside counsel provided significant legal services to the Company, it does not appear that they were ever specifically requested to evaluate the fiduciary duty issues implicated by the stock offer and repurchase programs. As important, the critical issues presented here were not legal issues, but rather primarily involved the appropriateness of certain business decisions, such as the timing of the exclusive stock offers and the design and implementation of the repurchase programs. These factual judgments diminish the relevance of any reliance on counsel defense in connection with the transactions at issue.

Traditional remedies for a breach of fiduciary duty resulting in profits to a director or officer include the return of profits received from the transactions at issue, or rescission of the transactions themselves.

■ Securities Law

Federal securities laws prohibit a person from making material misstatements or omissions in connection with the purchase or sale of securities. These laws also prohibit any scheme, device or practice which acts as a fraud or deceit upon any person. In order to violate federal securities laws, a person or company must generally act with "severe recklessness," a higher standard than the gross negligence required for a breach of fiduciary duty.

Under the federal securities laws, a statement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. The tender offer documents for the 2000 repurchase program arguably contained material misstatements and omissions.

Specifically, the tender offer documents did not disclose the individual stock ownership of directors and officers, nor the July 1998 or December 1999 exclusive stock offers. The documents did not disclose a 40,000 share stock bonus afforded Chairman Georgine in 1999 and financed by ULLICO, nor the existence of Georgine's put rights under his employment agreements. The documents did not disclose the existence of the "discretionary" repurchase program administered by the Chairman or the fact that directors and officers sold a significant number of shares pursuant to this program in 2000 at the $146.04 per share stock price. The tender offer documents also did not clearly disclose the potential impact of the repurchase program's proration provisions, which were particularly significant in 2000.

The tender offer documents not only may have failed, in our view, to provide sufficient disclosure regarding the purchase and sale of stock by directors and officers, but (at least in 2000) they also may have misled ULLICO shareholders regarding management's position on, and participation in, the formal repurchase program. For example, the 2000 tender offer documents stated that ULLICO and its Board of Directors believed shares of the Company's Capital Stock were an "excellent investment opportunity for investors seeking long-term growth of capital." The documents also stated, apparently with little or no basis for doing so, that ULLICO "has not been advised that any of its directors and executive officers presently intend[s] to tender any shares personally owned by them pursuant to the offer." Finally, the disclosure documents contained the statement that "neither the Company nor its Board of Directors makes any recommendation as to whether any shareholder should tender any or all of such shareholder's shares pursuant to the offer." It is difficult to reconcile these statements with the fact that, around the same time these statements were being made, officers and directors were selling a substantial amount of their ULLICO shares.

The juxtaposition of the 1998 and 1999 exclusive officer and director stock purchase offers with the terms of the 2000 formal stock repurchase program (including the 10,000 share proration threshold) and the "discretionary" repurchase program arguably constituted deceptive or manipulative acts or practices which were implemented through misrepresentations and material omissions in violation of federal securities laws.

While directors may have acted negligently in approving the 2000 formal stock repurchase program and the "discretionary" repurchase program, in our view neither the Company nor the directors acted with the severe recklessness required to establish a federal securities law violation. Further, even if one were to demonstrate that certain of ULLICO's directors and officers acted with severe recklessness in formulating, approving and implementing the stock offer and repurchase programs, it is not clear that the other elements of a federal securities law claim based upon material misrepresentations or omissions in the tender offer disclosure documents, such as causation and reliance, could be satisfied.

While we have not analyzed the state securities, or Blue Sky, laws of all 50 states, some jurisdictions apply a negligence standard for liability as a result of material misstatements or omissions in connection with the purchase or sale of securities. Therefore, with this lower intent standard, it is possible that ULLICO and its directors and officers who approved, implemented and benefited from the stock offer and repurchase programs could be subject to civil securities claims under state law.

Finally, because of the highly technical nature of the applicable federal securities law requirements and the fact that outside securities counsel were specifically hired to review these requirements, a reliance on counsel defense may be available in connection with federal securities law claims. However, the reliance on counsel defense may not be available in connection with claims based on applicable state securities laws which may be violated by negligent acts.

■ Criminal Law

Underlying every criminal prosecution is the element of criminal intent. In a financial fraud prosecution, a prosecutor is required to demonstrate beyond a reasonable doubt that a defendant had the specific intent to defraud his victim. Civil liability, on the other hand, can be established by showing negligence or severe recklessness under a lesser burden of proof. While the evidence gathered in the investigation demonstrates that certain ULLICO officers and directors were treated far more favorably than institutional shareholders in the sales of their ULLICO stock, their actions in connection with these sales, while arguably improper, were not criminal. Based on the information available to the Special Counsel, no evidence of criminal intent has been discovered.

Findings and Recommendations

The Special Counsel's findings and recommendations are set forth on pages 88 through 107.

Preface

Exhibits referenced in the following
Report are located at the end of the Report.

Documents referenced in the following Report
with a "U __, Tab __" designation are located in
a separate Appendix submitted with the Report.

Special Counsel Report

Introduction

On April 29, 2002, ULLICO's Board retained Governor James R. Thompson, Chairman of Winston & Strawn, "as counsel to render legal advice and make recommendations to the Board of Directors regarding the facts and circumstances surrounding the...Company['s] issuance and repurchase of its own stock since 1997, and any actions of the Company and persons associated with the Company in connection with the initial public offering of Global Crossing, Inc., and such other matters as he may deem appropriate." (U 17424, Tab 1)

In connection with this Report, Winston & Strawn interviewed over 40 witnesses, including ULLICO directors, officers, employees, outside consultants and attorneys who are identified on pages 108-109. Winston & Strawn also reviewed thousands of documents provided by the Company and others and consulted an expert on Maryland state corporate law and federal and state securities laws.[2] We have done our best, given the available time and resources, to conduct a careful and impartial investigation. However, there were practical and legal limitations on the information available to us. For example, we had no power to compel third parties to submit to interviews, produce documents or otherwise provide information.[3] In addition, certain directors were unavailable.[4]

2 This expert is Mark A. Sargent, Dean and Professor of Law, Villanova University School of Law. A brief summary of Dean Sargent's evaluation of certain matters contained in this Report is attached as Exhibit 8.

3 Credit Suisse First Boston, for example, declined our request for an interview, as did ex-director Upshaw.

4 The Company advised us that directors Biller, Maddaloni and West were unavailable because of health problems. Former directors Cullerton and Wynn are deceased.

Factual Background

The Company

ULLICO Inc. ("ULLICO" or the "Company"), located in Washington, D.C., is the holding company for several insurance companies that principally serve union members and their families. Formed in 1925 as Union Labor Life Insurance Company ("Union Labor Life") by the American Federation of Labor, the Company was created in large part because union members in high-risk jobs had difficulty obtaining life insurance coverage.

Union Labor Life offered life insurance and, through its subsidiaries, other insurance products. By 1987, Union Labor Life had grown to the point where it was decided, for capital creation purposes, to form a holding company called ULLICO Inc. In 1987, ULLICO had 10 subsidiary companies under its umbrella. By 1997, it had 24 subsidiaries.

ULLICO, through it subsidiaries, offers group life and health benefits and property and casualty insurance through agents and through direct response marketing. It also provides, among other things, pension fund, mortgage lending and real estate investment services.

ULLICO is managed by an executive staff headed, since December 1990, by Chairman and Chief Executive Officer ("CEO") Robert A. Georgine. ULLICO's by-laws authorize a 32-member Board of Directors ("Board"), which historically has consisted primarily of executives or retired executives of the unions and pension funds that ULLICO serves. These unions and pension funds are also ULLICO's major shareholders. Approximately two-thirds of the present directors were recommended for nomination to the Board by Georgine. (Georgine Interview)

ULLICO is a private stock company. Between 1925 and 1996 (inclusive), the stock was effectively valued at $25 per share. The Company paid substantial dividends throughout this period. For example, during the 10 years prior to 1992, ULLICO and its predecessor, Union Labor Life, paid 10% stock dividends per year, and a 9% cash dividend in eight of those 10 years. (U 030314, Tab 9)

Prior to 1997, if a shareholder wanted to sell the shareholder's stock, the shareholder had to first offer the stock to the Company, which could repurchase it at the $25 per share price. (U 030545, Tab 2) If the Company did not exercise its right to repurchase the tendered stock, the shareholder could sell it to another qualified shareholder (generally unions, organizations or individuals affiliated with the union movement) with the Company's approval. (U 030545, Tab 2)

ULLICO's mission statement includes a promise to "provide fair and equitable returns for our labor partners—OUR STOCKHOLDERS." (U 18157, Tab 18)

Preferred Certificate Program

Prior to 1992, the Company had issued only voting capital stock ("Capital Stock"). In 1992, the Board approved the sale of up to 12 million preferred certificates at a purchase price of $25 per certificate. The preferred certificates were convertible at any time by the holder into Class A voting shares ("Class A Stock") or, under certain circumstances, Class B non-voting shares ("Class B Stock").[5] Three years following the issuance of the preferred certificates, ULLICO had to either redeem the preferred certificates for cash or convert them into shares of Class A or B Stock.

Approximately $232 million in preferred certificates were sold over three years (1992–1995) and the vast majority of the certificates were converted over a three-year period into a like number of shares of Class A or B Stock. Prior to their conversion, the certificates provided semi-annual cash payments at an annualized rate of 8% of the $25 face value of the certificate. Upon conversion, another $1 was paid to holders of preferred certificates, making the last year dividend equivalent to 12%. The proceeds from the preferred certificate offering were used for operations, expansion and investment.

The preferred certificate program was aimed specifically at attracting pension funds as new ULLICO shareholders, although existing shareholders could also participate. (Steed Interview) All of the preferred certificates were converted by June 1998, by which time the Company had issued and outstanding about 256,000 shares of Capital Stock, 6.7 million shares of Class A Stock and 753,000 shares of Class B Stock.

Global Crossing Investment

In 1991, Chairman Georgine hired Michael Steed[6] as an outside financial advisor. Steed knew leaders associated with ULLICO as a result of his work as the Executive Director of the Democratic National Committee. In 1992, Steed formally joined the Company as Senior Vice-President of Investments. His job was to devise a strategy to increase ULLICO's assets and returns thereon. (Steed Interview)

On February 14, 1997, as a result of Steed's connections with Gary Winnick (the founder of Global Crossing), the Executive Committee, on Georgine's recommendation, approved an investment of up to $10 million in Nautilus LLC, which eventually became Global Crossing. (U 17350–51, Tab 3) ULLICO's actual investment was $7.6 million, and this investment was made through MRCo., a subsidiary of the Company. Union Labor Life loaned MRCo. $8 million to consummate this transaction. (U 000018, Tab 5) An LLC membership interest of approximately 10% in Nautilus LLC was received by MRCo. Other founding

[5] Class B Stock has the same par value of $1.00 per share as Class A Stock. (U 027989, Tab 47) The Company issues Class B Stock, which is non-voting stock, to large shareholders to avoid running afoul of ULLICO's by-laws requirement that no shareholder hold more than 9% of the Company's voting stock. (U 030547, Tab 2; Carabillo Interview)

[6] Michael Steed, former Senior Vice-President of Investments, left ULLICO on December 10, 1999. He filed a federal ERISA claim against ULLICO in June 2001 in connection with ULLICO's failure, among other things, to pay him all amounts he was allegedly owned under the Global Crossing incentive award program. The case has been settled.

shareholders included Canadian Imperial Bank of Commerce, CNA Insurance, and Pacific Capital Group (an entity controlled by Winnick). (Steed Interview)

By the time of Global Crossing's initial public offering ("IPO") in August 1998, ULLICO's stake in Global Crossing was worth more than 30 times its original investment. (U 000927–000925, Tab 25) Eventually, due to stock splits, ULLICO would own 33 million Global Crossing shares.

The Global Crossing IPO had a six-month underwriter lock-up. (U 044741, Tab 4) The founders also signed a Shareholders Agreement and a Registration Rights Agreement that restricted the sale by founders of their respective Global Crossing shares for two years, with certain exceptions such as tender offers. (U 044750, Tab 6; U 044782, Tab 7)

At first, it was contemplated that the ULLICO senior officers and directors would have the opportunity to purchase shares in the IPO as part of a "friends and family" program. (Steed Interview) Senior officers were subsequently removed from the friends and family list, but directors could, and some did, participate in that program.

In June 1999, ULLICO sold 9% of its Global Crossing stock in a tender offer made by US West for $192,688,809. The original lock-up restrictions on the sale of ULLICO's Global Crossing stock expired in March 2000 when the founders' Shareholders Agreement was terminated. (U 044750, Tab 6; Carabillo Interview)

In April 2000, ULLICO sold 2,568,160 shares in a secondary offering at $32.01 per share, resulting in gross proceeds of $82,206,801. As part of the secondary offering terms, ULLICO was once again restricted from further sales for 90 days.

In September 2000, ULLICO sold an additional 960,000 shares of Global Crossing stock through Merrill Lynch at $35.34 per share, resulting in gross proceeds of $33,929,617. In October 2000, ULLICO sold another three million shares in a block sale through Credit Suisse First Boston ("CSFB") at $26.91 per share, resulting in gross proceeds of $80,730,000. (U 045715, Tab 11; Linehan Interview) Also in October 2000, ULLICO entered into a prepaid forward sale with respect to five million Global Crossing shares through Bear Stearns. This prepaid forward sale protected those shares from further price erosion and provided ULLICO with an immediate payment of approximately $95 million. (Exhibit 5)

As of the end of October 2000, ULLICO held almost 19 million Global Crossing shares,[7] and did not dispose of any more shares until the Spring of 2002 when, between May 14 and June 5, it sold 11,216,959 shares at an average price of 7 ½ cents per share and received gross proceeds of $843,834. As of June 5, 2002, ULLICO held 7,364,403 of Global Crossing shares. (McKean Interview)

[7] It was Chairman Georgine's decision to hold the 19 million shares. Others in the Company suggested earlier in the year to sell one-third, hedge one-third and hold one-third of the Company's Global Crossing shares. (Grelle Interview) It does not appear from the Company's corporate records that ULLICO's liquidation strategy with respect to the Global Crossing investment was ever meaningfully discussed with the Board or the Executive Committee.

Through 2001, ULLICO's after tax gains on its Global Crossing investment totaled $305,100,000. (U 045567, Tab 10; U 045715, Tab 11; Stephani Interview) This amount is more than 10 times ULLICO's net income for 1997, the last year before any gains on the Global Crossing investment were recorded. (Exhibit 4) During the period from 1999 through 2001, while ULLICO was realizing gains on its Global Crossing investment, it was incurring substantial losses on its non-investment business operations. (Exhibit 4)

ULLICO's Stock Offer, Stock Repurchase and Employee Incentive Programs

■ 1997 Stock Repurchase Program

In 1997, ULLICO decided to abandon its fixed price share valuation in favor of a "book value" valuation method. In May 1997, the book value of each share was established at $27.06 based on ULLICO's audited balance sheet as of December 31, 1996. The Executive Committee minutes explain that "[b]ook value" per share is calculated "by taking the 'Total of Stockholders Equity' as shown on the financial statement and dividing it by the total number of shares outstanding of Class A, Class B, Capital Stock and any Preferred Certificates still outstanding."[8] (U 000014, Tab 5)

On May 5, 1997, William Egan of CSFB made a presentation concerning a proposed stock repurchase program to the Executive Committee. According to the minutes, "Mr. Egan, from [CSFB, explained] that the value added to the corporation in book value as a measure of value was practical, and passing along this measure to the stockholders aligned both the stockholders' interests and the Company's interests. The Company benefits by being able to retain capital for future growth, the stockholders benefit by participating in that growth more directly than they ever have in the history of the Company." (U 000013, Tab 5)

The minutes further reflect that "[s]everal officers participating in the discussion indicated that this repurchase program created a market, therefore, set the price for stockholders, especially those which are pension funds and need to record this in their portfolio." Another indicated that "one of the issues which has concerned rating agencies is the payment of large dividends which has hampered investment in future growth, and in this competitive environment, that has become a critical factor in the future of the Company." (U 000013, Tab 5)

According to Steed, tax issues were another primary motivation for the repurchase program. That is, dividends are taxed as ordinary income whereas repurchases could be taxed at capital gains rates. These tax benefits, however, affected individual investors only because unions and pension funds are tax-exempt. (Steed Interview)

On May 6, 1997, after another presentation by Egan of CSFB, the Board adopted a stock repurchase program under which the Company intended to repurchase $180

[8] According to Kenneth Hugessen of the corporate consulting firm William M. Mercer & Company (ULLICO's former compensation consultant), it is not uncommon for closely-held companies to use "book value" to value stock, and it is common for such companies to set such book value once a year.

million of Class A and B Stock over an 11-year period. Under this program, the Company would offer to repurchase $30 million of stock in 1997 and, "subject to having sufficient earnings and cash flow from operations," $15 million of stock in each of the subsequent 10 years. (U 000033, Tab 12) The per share repurchase price would be determined pursuant to the "book value" formula described above.

In his May 6, 1997 prepared statement to the Board outlining the repurchase program, Chairman Georgine stated that "the repurchase program...is a means for us to provide liquidity to our *larger stockholders*." (Emphasis added) (U 001210, Tab 13; see also U 000017, Tab 5) That is, the repurchase program was intended to essentially replace dividends as the principal return mechanism for shareholders. (Steed Interview) The Board thus decreased its cash dividend from 8% ($2.00) per share in 1996 to 2% ($0.54) per share in 1997. (U 000032, Tab 12) No dividends have been paid since 1998. (Exhibit 4)

The Stock Repurchase Program Term Sheet attached to the May 6, 1997 Board minutes explains the following repurchase program procedure: "If more shares are tendered than the Company has agreed to purchase, shares will be taken up pro rata and new certificates will be issued for returned shares. Tenders by holders of 10 or fewer shares will be accepted without pro ration. There is no minimum number of shares that must be tendered." (U 000033, Tab 12) As discussed below, this 10 share threshold was later replaced by a 10,000 share threshold prior to the commencement of the 1997 repurchase program.[9]

Although the stock repurchase program did not include Capital Stock shareholders, the Stock Repurchase Program Term Sheet addressed this issue: "Although the offer would not be made for Capital Stock, the Company intends in the future to offer the greater of book value or $25 per share to repurchase Capital Stock when exercising its right of first refusal *upon the death of a shareholder*. In the event a holder of Capital Stock gives notice of a desire to transfer such shares, the Company intends to offer to repurchase the shares at book value." (Emphasis added) (U 000033, Tab 12) This statement is the closest the Board came, until November 2000, to expressly approving the so-called "discretionary" repurchase program administered by Chairman Georgine (and further discussed below).[10]

Also on May 6, 1997, the Board authorized, directed and empowered the Chairman, "at his sole discretion to offer shares of the Corporation's Stock that have been repurchased and returned to the status of authorized, but unissued shares, to

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9 The Company has noted that, as of May 1997, 18 shareholders held fewer than 10,000 Class A shares, 14 of these shareholders held fewer than 5,000 Class A shares, 10 of these shareholders held fewer than 1,000 Class A shares, one shareholder held 100 or fewer Class A shares and no shareholder held 10 or fewer Class A shares. In 1997, only one shareholder who participated in the repurchase program held fewer than 10,000 shares, but that shareholder did not tender 100% of the shares and, therefore, did not satisfy all of the conditions of the 10,000 share proration exception. As of 2000, 43 shareholders held fewer than 10,000 Class A shares, 34 shareholders held fewer than 5,000 Class A shares, 17 shareholders held fewer than 1,000 Class A shares and 3 shareholders held 100 or fewer Class A shares. In addition, unlike in 1997, 19 shareholders (including 14 directors or officers) avoided proration under the 2000 formal repurchase program's 10,000 share proration threshold. (U 018243-44, Tab 87; U 27713, Tab 88). This issue is discussed in more depth below.

10 This statement is repeated in the term sheets used for future stock purchase programs. (see, e.g., 048222, Tab 8; U 019359, Tab 14; U 001368, Tab 15)

authorized investors as specified in the Corporation's Charter and By-Laws." (U 000030, Tab 12) This is the closest the Board came to authorizing Georgine to make the 1998 and 1999 stock offers to senior officers and directors discussed below.

On June 15, 1997, Georgine sent a letter to ULLICO's shareholders describing the new stock repurchase program. This letter notified shareholders that, although holders of Capital Stock could not redeem their stock in the program, they could offer their stock for repurchase by the Company: "Holders of Capital Stock, while not included within the formal repurchase program, still are expected to comply with the requirement that any company stock be offered for sale to the Corporation first, and so long as the Corporation is able, and it is within a good corporate policy, we will continue our past practice of repurchasing Capital Stock when offered by a holder of Capital Stock." (U 027721, Tab 16) As far as we could determine, this statement (and a similar statement in 1998 discussed *infra*) is the closest the Company came to disclosing the Chairman's "discretionary" repurchase program to its shareholders. The Chairman would employ this "discretionary" program in subsequent years to redeem not only Capital Stock but Class A Stock as well.

The May 5, 1997 Executive Committee resolutions stated that the repurchase offer should take place on June 1, 1997 or "as soon thereafter as is practical—with repurchase to be effective on June 30, 1997." The offer did not actually commence until November 1997.

On November 10, 1997, pursuant to the Board's May 6, 1997 authorization, ULLICO formally offered to repurchase $30 million of its Class A and B Stock at $27.06 per share. (U 001059, Tab 17) This tender offer remained open until December 10, 1997, and was over-subscribed.

The draft tender offer documents initially adopted the 10 share threshold reflected in the original Stock Repurchase Program Term Sheet discussed above. During the review process, however, that threshold was changed to 100 shares and then to 10,000 shares. (U 035240, Tab 19; U 035108, Tab 20) No person interviewed has been able to explain at whose direction these changes were made.

The tender offer documents explained how the 10,000 share threshold impacted stock repurchases in the following terms:

> The Company, upon the terms and subject to the conditions of the Offer, will accept for purchase, without proration, all Shares properly tendered and not withdrawn before the Expiration Date by or on behalf of holders of fewer than 10,000 Shares.... To avoid proration, however, such holder must properly tender all Shares that such holder beneficially owns. Partial tenders will not qualify for purchase without proration. The offer to purchase without proration is not available to owners of 10,000 or more shares even if such owners have separate stock certificates for fewer than 10,000 Shares. (U 001066, Tab 17)

Accordingly, pursuant to the repurchase program, holders of 10,000 or more shares (defined as Class A and Class B Stock) could tender all of their respective shares but would be prorated if the offer were over-subscribed. In contrast, holders of fewer than 10,000 shares could avoid proration so long as they tendered all of their respective shares.

In 1997, shareholders tendered 3,099,490 shares for repurchase and 1,108,647 were repurchased, resulting in a 35.76% proration. (Exhibit 6) Only one shareholder, a pension plan, holding fewer than 10,000 shares participated in the 1997 program. That shareholder, however, did not tender 100% of its holdings and, therefore, was prorated at the same level as the shareholders holding 10,000 or more shares. (U 046998–99, Tab 67)

Neither the Executive Committee nor the Board expressly approved the 10,000 share threshold in 1997. This threshold was adopted in subsequent years of the repurchase program and, in 2000, as discussed below, resulted in ULLICO's larger shareholders being able to redeem only 2.2% of their tendered shares while its under-10,000 shareholders, mostly directors and officers, were able to redeem 100% of their tendered shares.

One purpose behind a proration threshold, whether 10,000 shares or some another number, was reportedly tax-driven. According to ULLICO executives, outside counsel advised ULLICO that if every shareholder were to participate equally, the repurchase program would be treated as a dividend with unfavorable tax consequences to individual shareholders.[11]

Dividend income is taxed at rates applicable to ordinary income while gains on the sale of stock held for more than one year are taxed at more favorable rates applicable to long-term capital gains. Significantly, unions and pension funds, ULLICO's largest shareholders, are exempt from taxation. Accordingly, any tax motivation for the 10,000 share threshold was necessarily designed for individual shareholders, the vast majority of whom were officers and directors. Two directors indicated in their interviews that a reason for the 10,000 share threshold was to benefit officers and directors, many of whom owned fewer than 10,000 shares.

Another purported purpose behind the 10,000 share threshold was to eliminate small shareholders. Eliminating small shareholders would ease administrative burdens and help keep the total number of shareholders under 500, which is the limit for a privately-held company to avoid certain Securities and Exchange Commission ("SEC") reporting requirements. (Carabillo Interview)

[11] No attorney interviewed in this investigation recalled providing such advice. But this advice may have come from David Woodward, of LeBoeuf Lamb, who died in 1998. The tender offer documents warned that the IRS could view the redemptions as dividend income, regardless of how the transactions had been structured.

■ 1998 Employee Incentive, Stock Offer and Stock Repurchase Programs

• 1998 Employee Incentive Programs

In August 1998, Global Crossing completed its IPO, resulting in a large unrealized gain in the value of ULLICO's investment in Global Crossing. The success of ULLICO's investment in Global Crossing resulted in the creation of several programs designed to benefit ULLICO's senior executives, who some have contended were historically under-compensated when compared to their peers. (Carabillo and Manley Interviews)

According to the Company, each of these employee incentive programs was developed by ULLICO with the assistance of one or more of the following advisors: CSFB, PricewaterhouseCoopers ("PwC"), Mercer, Arnold & Porter and LeBoeuf, Lamb, Greene & MacRae, LLP ("LeBoeuf Lamb"), although which firm provided advice in connection with the implemented stock offer program for directors and officers is not clear.

Other than the October 1998 stock offer to directors and officers of ULLICO stock discussed below, which was disclosed in connection with the 1998 stock repurchase program, none of ULLICO's employee incentive programs were disclosed to ULLICO's shareholders. (U 009093, Tab 27)

◆ *Global Incentive Program*

On July 27, 1998, the Compensation Committee considered a compensation report provided by consultant William M. Mercer & Company ("Mercer") and approved an incentive program, referred to as the Global Incentive Program, for certain senior executives. This program was tied to ULLICO's profits on its Global Crossing investment.[12] (U 011974, Tab 21; U 000324, Tab 22; U 020216, Tab 23; U 020102, Tab 24)

In his statement to the Compensation Committee on July 27, 1998, Georgine said: "We will disclose this plan [the Global Incentive Program] to the Executive Committee at its next meeting, and ask them to ratify the action taken today. Partly, because this is the first program of its kind at ULLICO and because we want to set the stage for a more structured approach to long-term compensation." (U 000930, Tab 25) According to our records, the next Executive Committee meeting was held on November 30, 1998, but there was no mention of the Global Incentive Program at that meeting or, as far as we could determine, any Executive Committee or Board meeting.

The Global Incentive Program payments to ULLICO's five senior executives (Georgine, Steed, Grelle, Luce and Carabillo) from 1998 through 2001 totaled $5,673,824. These payments, and each executive's total cash compensation for each

[12] Mercer was not told that the Company intended to make the ULLICO stock purchase offers to directors and senior officers discussed *infra*, but Kenneth Hugessen of Mercer did not believe that this stock purchase program would have substantially changed his recommended Global Incentive Program. (Hugessen Interview)

year in the period 1996 through 2001 (including earnings under the non-qualified deferred compensation plan and profits on the sale of ULLICO stock), are reflected in Exhibit 2.

- *"Top Hat" Non-Qualified Deferred Compensation Plan*

Senior executives also were able to participate in the Deferred Compensation Plan effective as of August 1, 1998. (U 021800, Tab 26) Edward Bintz of Arnold & Porter prepared this program for the Company. (Bintz Interview)

On July 27, 1998, the Compensation Committee approved the ULLICO Non-Qualified Deferred Compensation Plan (the "Deferred Compensation Plan"), which allowed eligible participants to defer up to 25% of their base salary and up to 100% of their bonuses (including incentive awards under the Global Incentive Program) under the Plan. The purpose of the Deferred Compensation Plan was to allow senior executives to defer income (and thereby defer income tax) on a portion of their earnings and to make deemed investments of such deferred income in one or more investment alternatives. Amounts deferred under the Plan are not required to be actually invested in the available investment alternatives. Rather, the investment alternatives simply provide a measure of return to Plan participants.

ULLICO is obligated under the Deferred Compensation Plan to distribute deferred amounts and deemed interest and earnings on such amounts upon the request of Plan participants (subject to certain restrictions). The Deferred Compensation Plan was intended to be, and appears to satisfy the requirements of, a non-qualified, "top-hat" plan under ERISA. Top-hat plans are not subject to ERISA's fiduciary requirements.[13] The participants under the Deferred Compensation Plan were Georgine, Carabillo, Grelle, Luce and Steed. (See Tab 109)

Deferred compensation plans, such as ULLICO's, are quite common and, in many cases, appropriate retirement planning vehicles for highly-compensated executives. However, ULLICO's senior executives received a windfall in 2000 and 2001 as a result of "deemed" purchases and sales of ULLICO stock under the Deferred Compensation Plan. These deemed purchases and sales of ULLICO stock under the Deferred Compensation Plan raise some of the same issues as the exclusive stock offers in 1998 and 1999 and the Company's repurchase programs in 2000 and 2001.

The Deferred Compensation Plan allowed participants to elect among several deemed investment alternatives, including: "ULLICO Stock (which shall be valued at its current book value from time to time, as set each year by the Board of Directors of the Company or such Board's Executive Committee)."[14] The Deferred Compensation Plan also allowed a participant to:

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[13] 29 U.S.C. § 1101(a)(1).

[14] In addition to the ULLICO stock account, participants in the Deferred Compensation Plan initially could also allocate deferred income to three Separate Accounts in Union Labor Life or an account which bore interest at the rate of the 15-year treasury rate plus 2%. These other investment alternatives appear to have changed over time.

> elect to change the deemed investment of his Account as of any Valuation Date (but no more than once in any calendar quarter) by giving at least 30 days' advance notice to the Company's Vice President of Human Resources on such election form as may be prescribed by the Company's Vice President of Human Resources.

The Deferred Compensation Plan defines the term "Valuation Date" to mean the last day of each calendar month.

From the information provided to us during the investigation, it appears as if Georgine, Carabillo, Luce and Grelle deferred a significant portion of their earnings in 1998 and 1999 under the Deferred Compensation Plan, a substantial part of which was deemed to have been invested in ULLICO stock. Deemed investments in ULLICO stock in 1998 were made at the price of $28.70 per share, while deemed investments in 1999 were made at the price of $53.94 per share. Deemed investments in ULLICO stock were revalued annually following the adjustment to the book value per share approved by the Board or the Executive Committee.

So, for example, in September 1998, Georgine deferred $716,727 of his bonus under the Global Incentive Program and elected to have such amount allocated to the ULLICO Class A Stock investment account. His deemed investment was made at $28.70 per share. As a result of the increase in the book value per share of ULLICO's stock to $53.94 per share in May 1999, Georgine's $716,727 deferral was revalued to approximately $1.35 million in 1999. In August 1999, Georgine deferred an additional $656,366 and such amount was allocated to the ULLICO stock investment account at a price of $53.94 per share. In 2000, when the book value per share of $146.04 was approved by the Executive Committee, Georgine's deferred investment account grew to over $5.4 million, representing an almost 300% return on his original investments.

ULLICO's other senior officers also experienced extremely large returns on their deemed investments in ULLICO stock, although somewhat lower than Georgine. (Exhibit 2) In addition, unlike Georgine, who until 2001 had invested only in the ULLICO stock investment account under the Plan, Carabillo, Grelle and Luce changed their investment elections in December 1999 to shift all amounts allocated to non-ULLICO investment accounts into the ULLICO stock investment account. Deemed investments in ULLICO stock as a result of these change in investment elections were made at $53.94 per share, just prior to the date used to calculate the 1999 book value, i.e., December 31, 1999. Amounts allocated to the ULLICO stock investment account in December 1999 by Carabillo, Grelle, and Luce almost tripled when the book value per share was adjusted less than six months later.

Notwithstanding their exceptional investment success under the Deferred Compensation Plan, Georgine, Carabillo, Grelle and Luce each shifted all amounts allocated to their ULLICO stock account to other investment accounts after the book value per share of ULLICO stock rose to $146.04 per share in May 2000 and before the book value per share declined to $74.87 in May 2001. Carabillo, Grelle and Luce did so in June 2000. Georgine apparently did so in 2001.[15] Amounts withdrawn from the ULLICO stock account were reallocated to deemed money market accounts by Georgine, Carabillo and Grelle. Carabillo apparently withdrew all deferred income and deemed earnings (a total of approximately $606,000) from the Deferred Compensation Plan sometime in 2001 or early 2002. Luce reallocated his deemed investment in ULLICO stock to several investment alternatives.

- ***1998 Director/Officer Stock Purchase Offers***

Finally, directors and senior officers were able to participate in exclusive stock offers, under which the participants were granted the opportunity to purchase ULLICO Class A Stock at the price per share most recently established by the Board. There were no restrictions on the ability of participants in this program to subsequently sell any shares that they purchased. This program was new for ULLICO in the post-preferred certificate program period era, but the concept of allowing directors and officers to purchase stock was not unprecedented. Georgine's predecessor, Daniel O'Sullivan, occasionally provided directors and officers the opportunity to purchase Capital Stock at $25 per share. (Carabillo, Luce, Brown, Boede, McNulty and Steed Interviews) Prior to 1997, however, the value of ULLICO's stock was effectively fixed at $25 per share.

On February 11, 1998, the Executive Committee, pursuant to Article VI, § 1 of the by-laws, appointed a Compensation Committee, which consisted of Directors Barry, West and Wynn. The Compensation Committee was "authorized to act on all matters concerning compensation and the establishment and administration of all programs and agreements relating to compensation, whether current or deferred." The resolution added: "*No member of the Committee shall participate in the determination of any matter affecting his own compensation.*" (Emphasis added) (U 17329, Tab 28)

On July 27, 1998, pursuant to this purported authority and "[b]ecause of the unusual nature of this significant event," *i.e.*, the Global Crossing investment success, the Compensation Committee "decide[d] to authorize the offer of 2,000 shares of Class A Stock of ULLICO Inc. to each Director and Officer of the Company and instructed the Chairman to make that available at the earliest opportunity." (U 000325, Tab 22) Chairman Georgine also reported to the Compensation Committee at this meeting that: "[E]ach Director and Officer will have the opportunity to buy ULLICO stock, up to 2000 shares (*can go up to 4000*) at the current 28.70 book value." (Emphasis added) (U 000929, Tab 25) The Compensation Committee minutes, however, do not reflect the authorization for the "up to 4000" stock purchase opportunity.[16]

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15 Outside Company counsel have indicated that Georgine may have shifted his deferred income out of the ULLICO stock investment account as a result of a change in the plan administrator under the Deferred Compensation Plan. He apparently did so, however, just prior to the time ULLICO's stock price decreased from $146.04 to $74.87 per share.

16 Frank Manley, ULLICO's former compensation expert, characterized this offer as similar to "in the money" options; that is, an equity benefit without investment risk. He also felt that the Company could not justify a significant award to directors based on the Global Crossing investment success given

"[E]ach Director and Officer" eligible to participate in the stock offer program included those directors on the Compensation Committee. This action by the Compensation Committee members was contrary to the February 11, 1998 Executive Committee resolution discussed above, which expressly prohibited members of the Compensation Committee from participating in a matter directly affecting their own compensation.

By letter dated July 29, 1998, Chairman Georgine offered each senior officer and director of ULLICO the right to purchase 2,000 shares of Class A Stock at the $28.70 per share stock price, stating:

> In recent years the subject of corporate governance has been frequently debated. The idea is that management and the board of directors should have their interests in line with the stockholders, and good common sense tell us that this is a good idea. If the stockholders, the true owners of the corporation, do well then the officers and directors should also do well. And the officers and directors in conducting their everyday business should have the interests of the stockholders foremost in their minds.

In this letter, Georgine also said: "Over the years I have purchased ULLICO stock whenever it was available, and I intend to purchase additional stock at this time." (U 028021, Tab 29)

By letter dated October 13, 1998, Chairman Georgine offered each senior officer and director the right to purchase an additional 2,000 shares of Class A Stock at the $28.70 stock price. In this letter, Georgine explained that the offer "reinforces our belief that it is important to have Directors who participate in the Company's equity[.]"[17] The stock offer program for directors and senior officers had the effect of creating more small shareholders, the antithesis of one of the stated administrative goals of the 10,000 share proration threshold in the formal repurchase program. (U 028019, Tab 30)

It is unclear how the Compensation Committee was able to authorize Georgine to make the 1998 stock offers (as well as the 1999 stock offer discussed below) consistent with the Company's by-laws. Arnold & Porter, in a memorandum dated July 9, 2002 (prepared pursuant to our request), asserted that such authority came from the Executive Committee. (U 047020, Tab 31) But even if, as Arnold & Porter asserts, "ULLICO's By-Laws provide that compensation of directors and certain officers is to be fixed (or in the case of appointed officers, approved) by the Executive Committee," the by-laws (Art. VI, § 2) expressly state that "the Executive Committee...*shall not have authority to...issue Stock*." (Emphasis added.) (U 030552, Tab 2) As discussed above, the Compensation Committee obtained its

that the directors had a minimal role in connection with that investment. (Manley Interview) Georgine did not dispute the fact that the directors had a minimal role in the investment. (Georgine Interview)

17 Exhibit 1 is a chart that shows those officers and directors who purchased stock pursuant to the July 1998 and October 1998 stock offers, as well as a subsequent 4,000 share offer in 1999, and the sums received when some of them redeemed those and other ULLICO shares they owned at a price of $146.04 per share in 2000-01.

authority from the Executive Committee. Accordingly, based on a plain reading of the by-laws themselves, it appears that the Compensation Committee lacked authority "to...issue Stock" and, in particular, "to authorize the offer of 2,000 shares of Class A Stock of ULLICO Inc. to each Director and Officer of the Company."

Chief Legal Officer Joseph A. Carabillo acknowledged that the Compensation Committee lacked authority to instruct Georgine to make stock offers to directors and senior officers. (Carabillo Interview) Nevertheless, according to Carabillo and Arnold & Porter, Georgine did not need authorization from the Compensation Committee to make these offers because, on May 6, 1997, the Board authorized, directed and empowered the Chairman, "at his sole discretion to offer shares of the Corporation's Stock that have been repurchased and returned to the status of authorized, but unissued shares, to authorized investors as specified in the Corporation's Charter and By-Laws." (U 000030, Tab 12; U 047020, Tab 31) In addition to the issue of whether this purported approval involved an excessive, and perhaps impermissible, delegation of authority, this argument, however, may be flawed for at least two reasons.

First, Article II(B) § 2 of the by-laws defines authorized investors of ULLICO to include, among others, "such Directors or Officers as may be elected or employed by the Company, *as the Board of Directors may from time to time grant the right of purchase*." (Emphasis added.) (U 030546, Tab 2) Neither Carabillo nor Arnold & Porter has addressed the fact that the by-laws authorize directors and officers to purchase stock only "as the *Board of Directors* may from time to time grant[s] the right of purchase." (Emphasis added.) The Board, in its May 6, 1997 resolution at issue, did not delegate to Georgine the specific authority to "grant the right of purchase" to "directors or officers." Therefore, an issue remains as to whether the May 6, 1997 Board resolution discussed above authorized Georgine to offer stock *to officers and directors*.

Second, even if the May 6, 1997 resolution authorized Georgine to offer stock to other directors and officers, there is no indication that the Board authorized Georgine to issue stock to himself. When asked if Georgine had authority to approve his own purchases of ULLICO Class A Stock, Carabillo replied that this was a good question. (Carabillo Interview).

Georgine, when interviewed, said that his intent in making the 1998 and 1999 stock offers was to provide directors and officers with a long-term investment opportunity and not compensation.[18] However, he believed that directors and officers should be able to sell their shares whenever they needed money. As discussed below, most of the stock purchased by directors and officers in 1998 and 1999 was sold back to the Company in 2000 and 2001, and no stock offers have been made to directors or officers since 1999. Georgine also said he relied upon Carabillo's advice regarding his authority to issue stock.

18 Georgine's counsel, in subsequent discussions, indicated that regardless of the original intent underlying the 1998 and 1999 stock offers, those offers should be viewed as compensatory.

The July 1998 offer to buy 2,000 shares occurred shortly before the Global Crossing initial public offering, which foreseeably would, and in fact did, substantially increase the value of ULLICO's Global Crossing investment and the book value of ULLICO's shares. The October 1998 stock purchase offer of 2,000 shares carried even less investment risk as ULLICO's unrealized gain on its Global Crossing investment had increased even further by that time. Even though the price of Global Crossing stock could fluctuate up or down in 1998, downside risk on the ULLICO shares purchased by directors and officers in 1998 was limited. Any of the shares purchased in 1998 could have been redeemed at their cost through the formal repurchase program later that year.

Based upon the facts that (1) the stock offer was purportedly approved by the Compensation Committee allegedly pursuant to its authority to fix directors' and officers' compensation, (2) the Compensation Committee alluded to the success of ULLICO's investment in Global Crossing as a basis for making the offer, and (3) the purchases carried minimal investment risk, it is clear that the 1998 stock offers (as well as a similar offer made in 1999 and discussed below) had the effect of providing additional compensation to ULLICO's directors and officers when they later sold their stock.

- **1998 Stock Repurchase Program**

On May 4, 1998, the Executive Committee authorized a $15 million repurchase program for Class A and B Stock at a "book value" price of $28.70 per share. (U 17326–27, Tab 32)

On May 5, 1998, the Chairman told the Board that the stock price had risen to $28.70 per share, but the minutes make no mention of the 1998 stock repurchase program adopted by the Executive Committee. (U 000034, Tab 106) The Board did, however, adopt a 2% cash dividend (or $0.57 per share). (U 000036, Tab 106)

On June 30, 1998, Georgine sent a letter to ULLICO's shareholders announcing the 1998 stock repurchase program. In this letter, Georgine explained: "Capital Stockholders will be treated as they have been in the past with liquidity provided whenever possible by the Corporation, in accordance with sound corporate practice, based on a request for repurchase from a holder of Capital Stock. Therefore, Capital Stock is not considered to be within the repurchase program." (U 027307, Tab 107) As far as we could determine, this statement did not appear in letters to shareholders describing stock repurchase programs in subsequent years.

On November 9, 1998, ULLICO formally offered to repurchase $15 million of its stock at $28.70 per share. (U 009065, Tab 27) This offer included the 10,000 share threshold used in the 1997 tender offer documents. (U 009071, Tab 27) Before the tender offer documents were finalized, however, outside counsel Douglas Beck of LeBoeuf Lamb raised a question of whether repurchases of stock from the under-10,000 shareholders could cost the Company more than the $15 million made available in the repurchase offer.[19] (U 037894, Tab 33) This question highlighted the disproportionate impact the proration threshold could have on shareholders. The issue was never addressed in the tender offer documents or, as far as we could determine, elsewhere.[20]

The 1998 repurchase offer was under-subscribed: there were only 149,693 shares tendered, and therefore shareholders holding 10,000 or more shares were not prorated. (Exhibit 6) The Company repurchased only $4.3 million of stock. This was likely due to the upward trend in Global Crossing's stock price during 1998 and an expectation that the increase in Global Crossing's stock price would result in a significantly higher book value for ULLICO stock.

In August 1998, Global Crossing was trading at $25 per share. When the 1998 repurchase offer was initiated on November 9, 1998, Global Crossing's stock price had risen to $32 per share. Global Crossing's stock price closed at $37 on December 1st, and reached $43 on December 9th. The 1998 repurchase offer was open until December 11th. Consistent with this trend, Steed recalled that the Qualified Pension Asset Managers ("QPAMs"), who managed pension funds that were major ULLICO shareholders, came to the conclusion that the ULLICO stock price would be higher in 1999. (Steed Interview)

The October 1998 stock purchase offer to directors and officers, but not the July 1998 stock purchase offer, was disclosed in the 1998 repurchase offer disclosure document sent to all ULLICO shareholders. Apparently, only purchases within 40 business days preceding the commencement of the repurchase offer were disclosed. (U 009093, Tab 27) It is not clear why ULLICO adopted this 40 business day standard, although it is similar to a specific disclosure standard applicable to public company tender offers.

On November 30, 1998, Chairman Georgine hailed the success of the Global Crossing investment in his report to the Executive Committee. He explained that ULLICO's "original 80 thousand shares had transformed themselves into 16,590,130 shares, with additional warrants for another 349,000 shares, which have not yet been exercised. Our per share acquisition cost is well below $1 per share on the original investment. As of Friday, November 27th, the stock was trading at $37 3/8ths. On paper, not considering taxes and other questions, it is worth $620 million as of close of business on Friday."[21] (U 17325, Tab 34)

19 Before August 1998, Carabillo chiefly relied on David Woodward at LeBoeuf Lamb for legal advice. Douglas Beck, another LeBoeuf Lamb corporate partner, and Arnold & Porter took more active roles in advising the Company on corporate law matters after Woodward passed away suddenly in the Summer of 1998. (Beck Interview)

20 LeBoeuf Lamb counsel Douglas Beck's subsequent comment on a draft of the 2000 tender offer document that the number of shares held by fewer than 10,000 shareholders should be specifically disclosed was not adopted by the Company. (U025692, Tab 85).

21 A few months after this statement, in March 1999, Global Crossing announced a 2 for 1 stock split, doubling the shares ULLICO owned.

1999 Stock Offer and Repurchase Programs

• 1999 Director/Officer Stock Offer Program

On February 13, 1999, the Executive Committee, pursuant to Article VI § 1 of the by-laws, appointed the Compensation Committee (consisting of Directors Barry, Cullerton, West and Wynn) with "full authority to act on all matters concerning compensation of officers and other employees, including all current and deferred compensation, *and including the establishment and administration of all plans, programs, and agreements, and including the issuance of stock*." (Emphases added) (U 17318, Tab 35) Although the underscored phrase is new, it does not change the fact that this attempt to delegate authority conflicts with Article VI, § 2 of the by-laws, which expressly states that "the Executive Committee...*shall not have authority to...issue Stock*." (Emphasis added) (U 030552, Tab 2) The Executive Committee resolution also states that: "No member of the Committee shall participate in the determination of any matter affecting his own compensation." (U 17318, Tab 35)

On May 13, 1999, the Compensation Committee (Cullerton not attending) authorized Georgine to offer up to 4,000 shares of ULLICO stock to senior officers and directors. "That offer would be at book value [*i.e.*, $53.94 per share] and will be made some time during the course of the year 1999 *at the Chairman's discretion*." (Emphasis added) (U 000328, Tab 36; U 001580, Tab 37) Providing the Chairman with absolute discretion to determine the timing of the offer in 1999 differed from the Compensation Committee resolution approving the 1998 stock offer, which specifically instructed the Chairman to make the shares available "at the earliest opportunity."

As previously discussed, the Compensation Committee lacked authority to issue stock under ULLICO's by-laws. In addition, because the stock purchase offers were clearly in the nature of compensation, Directors West, Barry and Wynn participated in determining their own compensation in contravention of the February 13, 1999 Executive Committee resolution.

On December 10, 1999, Chief Legal Officer Carabillo sent the Chairman a memo attaching a draft letter offering stock to officers and directors and discussing several issues in connection with such offer. In the memo, Carabillo first explains that, based on a discussion with Edward Bintz and Dennis Lyons of Arnold & Porter, "there are issues involved in any sale at this time."[22] Nevertheless, according to Carabillo, "there appear to be no prohibitions on us going forward [with] the sale of stock to officers and directors." (U 021378, Tab 38) Second, Carabillo explains that one potential issue concerning the stock offer was the "possibility, however remote, that the [Internal Revenue Service ("IRS")] on audit could question a sale at this stage of the year arguing that there was an intrinsic value." (U 021378, Tab 38) Third, Carabillo explains to Georgine that his authority to make these stock offers came from the May 6, 1997 Board resolution that authorized the Chairman "to sell stock

[22] Neither Bintz nor Lyons recalled this conversation. (Bintz Interview, Lyons Interview)

that has been retired through prior acquisitions" and from the Compensation Committee. (U 021378, Tab 38) As discussed above, this legal analysis is subject to challenge. The Chairman, in his interview, stated that he relied upon Carabillo's advice for his authority to make the offer.

By letter dated December 17, 1999, Chairman Georgine offered each senior officer and director the right to purchase up to 4,000 shares of Class A Stock at a price of $53.94 per share, the book value per share based on ULLICO's December 31, 1998 audited balance sheet. Again, the Chairman explained: "Over the years I have purchased ULLICO stock whenever it was available, and I intend to purchase additional stock at this time." (U 007090, Tab 44) This letter was distributed on the date the 1999 stock repurchase program expired and a week after Steed resigned from the Company.

As previously discussed, the Compensation Committee left the timing of this stock offer to Chairman Georgine's discretion. He waited until December 17, 1999 to make the offer. Carabillo stated in his interview that he repeatedly urged Georgine to make the offers in the Fall of 1999, but Georgine was preoccupied with other matters. (Carabillo Interview) Georgine had no recollection of the reason he waited until December 17, 1999, to make the offer, but he denied that the timing of this offer had anything to do with Steed's departure from the Company or the term of the 1999 stock repurchase program. (Georgine Interview)

At its December 17, 1999 meeting, the Compensation Committee again addressed the "concept of having the directors and senior officers participate through an offer of stock in the Company at $53.94." At this meeting, "[t]he concept was advanced by Mr. Carabillo that since the corporation is not publicly traded and stock options do not have the same effect as in a publicly traded corporation, whether the Committee would desire to make loans to individuals to facilitate the purchase of the stock." But "[t]he Committee declined to make such an offer of financing."[23] (U 011990, Tab 39; U 024743, Tab 40) Georgine stated that he opposed having the Company make loans to the officers and directors to buy stock. (Georgine Interview)

Nevertheless, on December 28, 1999, Chairman Georgine sent a letter acknowledging the assignment of 4,000 shares of ULLICO stock to Mellon Bank (MD) N.A. ("Mellon Bank") as collateral for a one-year loan of $215,760 to Carabillo and Karin E. Vaughn. This amount was needed to buy 4,000 shares of ULLICO stock pursuant to the December 17, 1999 offer. This letter also granted Mellon Bank the absolute right, exercisable at any time, to put the shares of stock to ULLICO "for an amount sufficient to repay any borrowing by [Carabillo], including principal amount, interest outstanding and/or penalties." (U 009945–46, Tab 41) Also on December 28, 1999, Chairman Georgine sent an identical letter to Mellon Bank

[23] At this same meeting, the Compensation Committee approved a Stock Purchase and Credit Agreement with Georgine pursuant to which Georgine was offered the opportunity to purchase 40,000 shares of ULLICO stock with the proceeds of a loan provided by ULLICO. The loan would be forgiven over the ensuing five-year period, provided that Georgine remained employed by the Company. The Stock Purchase and Credit Agreement also allowed Georgine to put the 40,000 shares to the Company as the loan was forgiven or repaid. This agreement is discussed in more depth below.

concerning a $215,760 loan to Chief Financial Officer John K. Grelle and his wife, and Carabillo sent an identical letter to Mellon Bank concerning a $215,760 loan to Georgine and his wife. (U 009947–50, Tab 42 and 43)

These letters likely constituted indirect guarantees by ULLICO of the loans made by Mellon Bank to the officers personally.[24] We are unaware of any action taken by the Board of Directors or any of its committees authorizing Georgine and Carabillo to deliver these letters. Nor was there anything in the corporate records to indicate that such letters were ever disclosed to the Board or any of its committees. In their interviews, Grelle and Carabillo stated that they had never previously borrowed money to buy stock in any company. Georgine, in his interview, noted that he had done so only once before. (Grelle, Carabillo and Georgine Interviews).

According to Carabillo, Paul Berger and Edward Bintz of Arnold & Porter approved Chairman Georgine's December 17, 1999 stock offer. (Carabillo Interview) Bintz denied that he even knew about the actual stock offer, although he was involved in discussions concerning a potential stock offer and Company loans to officers and directors in late 1999. (Bintz Interview) Berger said he first learned of this stock offer in 2002.[25] (Berger Interview)

Carabillo stated that LeBoeuf Lamb and PwC concluded that ULLICO had no obligation to disclose this offer to shareholders. (Carabillo Interview) PwC's Gary Stephani, however, asserted that while, in his view, United States generally accepted accounting principles ("GAAP") did not necessarily require the Company to disclose stock offers and repurchases to or from directors in its audited financial statements, PwC did not advise ULLICO on required disclosure in its formal repurchase offer disclosure documents. (Stephani Interview) Douglas Beck of LeBoeuf Lamb denied that he knew about the December 17, 1999 stock offer until mid-2002. (Beck Interview) Teresa Valentine, ULLICO in-house counsel who worked on the stock repurchase programs, confirmed that she never spoke with Beck concerning the stock offers to directors and officers. (Valentine Interview)

Each senior officer of ULLICO eligible to participate in the 1999 stock offer purchased the maximum of 4,000 shares. (It cost each officer $215,760 to purchase 4,000 shares at the $53.94 stock price.) Twelve directors (other than Georgine) participated in the 1999 stock offer, purchasing an aggregate of 15,400 shares.

All the stock purchases by officers and directors were recorded in the stock ledger on December 29, 1999, two days before the date used to calculate the 1999 "book value," *i.e.*, December 31, 1999. At this point, Global Crossing's stock price had risen to $50 per share (even after a two-for-one stock split in March 1999). In

24 In addition, on February 1, 2000, Chairman Georgine signed a promissory note payable to the Company for $215,760—the precise cost of 4,000 shares of Class A Stock at the $53.94 stock price. According to the note, "[n]o interest shall accrue if the principal sum is paid prior to February 15, 2000." (U 006959, Tab 46) Neither Georgine nor his counsel could explain why this note was executed.

25 In or about June 1999, Arnold & Porter represented Georgine in his personal capacity in connection with certain income and estate planning issues. (U 043064, Tab 51) Arnold & Porter also represented Steed in the Fall of 1999 in connection with the formation of a new private equity fund to be managed by Steed. (U 038743, Tab 52)

addition, the Company had earlier in the year realized $192 million in a partial sale of its Global Crossing holdings, virtually ensuring that ULLICO's book value would increase significantly in 2000. Accordingly, the officers and directors had strong reason to believe that, at the time of their respective stock purchases pursuant to the December 17, 1999 offer, the Global Crossing investment success would result in a much higher Company share price when set by the Board in the Spring of 2000 based upon the Company's December 31, 1999 book value.

Although Steed was not offered the opportunity to purchase stock after he resigned in December 1999, he claims to have believed that the Company's stock price would increase based on the December 31, 1999 financial statements, perhaps even double. Similarly, Grover McKean, who replaced Steed as ULLICO's Senior Vice President of Investments, offered that any reasonable investor could have concluded in December 1999 that the Board would adopt a book value in May 2000 that was significantly higher than the prior year's book value. (McKean Interview)

A similar observation caused PwC, in connection with the 2001 audit, to restate the Company's 2000 financial statements. PwC revised the accounting for officer and director stock purchases in 1998 and 1999 due to the lack of investment risk assumed by the purchasers. According to PwC, in order for the stock purchases by officers and directors to receive the original (more favorable) accounting treatment, these investors would be required to make a "substantive investment and be at risk for a significant period of time." In the course of expanded audit procedures undertaken by PwC in early 2002, PwC reviewed director and officer stock transactions between 1998 and 2000 (including sales and repurchases) and concluded that the criteria for the original accounting treatment was not satisfied. (Grelle and Stephani Interviews)

ULLICO included a note in the Company's 2001 audited financial statements explaining: "For 2000, this revision caused an increase in sales, general and administrative expenses [*i.e.*, compensation expenses] of $11.7 million and a like amount decrease in net income." (U 027993, Tab 47) According to Gary Stephani of PwC and others, ULLICO has not yet addressed the tax consequences of the 2000 restatement, including the possibility of amending its tax returns to take a tax deduction for the increase in compensation expense. The Company has not asked us to analyze the appropriateness of the tax treatment by the Company or individual directors and officers of the 1998 and 1999 stock offers. The determination that the Company should take a compensation expense tax deduction could cause all or a portion of the funds received by directors and officers from the stock repurchases to be taxable as ordinary income as opposed to capital gains.[26] (Stephani Interview)

ULLICO has not made shares available for purchase to its officers and directors since the December 1999 offer. Carabillo recalled asking Georgine in 2000 whether

[26] Another note was added to the 2001 audited financial statements disclosing 40,000 shares purchased by "stockholder" (*i.e.* Chairman Georgine) with the proceeds of a loan from ULLICO. The loan was forgivable if certain conditions were met. See discussion on pages 51 through 52. (U 028010, Tab 47; Stephani and Grelle Interviews)

Georgine wanted to again offer to directors and officers the opportunity to buy ULLICO stock. Carabillo, through his counsel, stated that Georgine's response was that he had already done enough for the officers and directors and that at ULLICO's current price ($146.04) no one would participate.

- **1999 Stock Repurchase Program**

On May 17, 1999, the Executive Committee authorized a $15 million repurchase program at a "book value" price of $53.94 per share. (U 17314–15, Tab 48) At the meeting, "[t]he Chairman discussed the decision to authorize a stock repurchase again for 1999. He commented that this decision was not without substantial discussion since Management is not recommending any cash dividend this year." (U 17314, Tab 48) The Executive Committee resolution approving the 1999 stock repurchase program made no mention of a 10,000 share proration threshold, but the threshold was mentioned in the repurchase program term sheet. (U 048222, Tab 8)

On May 18, 1999, the Chairman made the following comments to the Board: "The Corporation experienced a tremendous gain in the value of ULLICO Inc. stock—based primarily on unrealized gains from Global Crossing. The Executive Committee voted a repurchase program yesterday based on book value for year end 1998 at *$53.94* per share—a *gain of more than 87%*." (Emphasis added) (U 000041, Tab 49) The Chairman further noted that "Global Crossing is a wonderful event, but it has the potential of overshadowing our true mission—the way we serve the labor movement." The Board minutes made no mention of the 10,000 share proration threshold. No dividend was authorized in 1999.

On September 21 and 22, 1999, the Executive Committee and the Board, respectively, received a report on the status of ULLICO's operating results, including ULLICO's receipt of a gross realized gain of $185.2 million ($108.4 million after taxes) on the sale of 9% of its Global Crossing stock in response to a US West tender offer in June 1999. (U 17307, Tab 50; U 17381, Tab 53)

Moreover, at the September 22, 1999 Board meeting, Director Cullerton made a motion on behalf of the Compensation Committee members to "authorize a five-year employment agreement for Mr. Georgine as Chairman, President and CEO." After discussion, the Board moved unanimously to award this five-year term of employment to Georgine and to delegate to the Compensation Committee the full authority to negotiate all terms and conditions of the contract. (U 17383, Tab 53) The Board, however, did not specifically delegate any authority to the Compensation Committee to issue stock or lend corporate funds to Chairman Georgine. This issue is discussed in more detail below.

On November 16, 1999, ULLICO formally offered to repurchase $15 million of its stock at $53.94 per share. (U 026662, Tab 54) The repurchase offer, which expired on December 17, 1999, was over-subscribed, but the proration of shares tendered by shareholders holding 10,000 or more shares was slight as 91.93% of the shares tendered were redeemed.[27] (Exhibit 5)

The offer repeated the 10,000 share threshold used in the 1997 and 1998 tender offers. (U 026668, Tab 54) Although outside counsel Douglas Beck commented that the 10,000 share threshold disclosed in the draft tender offer documents was "awfully high," the threshold was never altered. (Beck Interview; U 026280, Tab 55)

Information about the officers and directors' stock offer program was not in the repurchase program tender offer disclosure document sent to shareholders on November 16, 1999, because the disclosure document only included information about purchases or sales by officers and directors within the 40 business days prior to commencement of the repurchase offer. (U 026698, Tab 54) The actual purchases of ULLICO shares by directors and officers pursuant to the December 17, 1999 offer letter occurred shortly after the 1999 tender offer closed.

Even though ULLICO's stock price had virtually doubled between 1998 and 1999, no officer or director sold in 1999 the stock acquired by him in 1998. Presumably, the officers and directors correctly believed that ULLICO's stock price would increase further the following year.

2000 Stock Repurchase Programs

- **Proposed "Extraordinary" Stock Repurchase Program**

On May 10, 2000, the Executive Committee adopted a repurchase price of $146.04 per share based on the Company's "book value" calculated as of December 31, 1999. According to the minutes, "[m]anagement recognizes that the Global share price is down *and that we may repurchase at a premium*. The Company has a commitment to honor in the repurchase program. It would not be appropriate for the Company to act inconsistently in 2000. Management believes that Global Crossing will again return to its previous trading values as it did in 1999." (Emphasis added) (U 17285, Tab 57)

The Executive Committee also discussed and approved an "extraordinary" stock repurchase program based on the Global Crossing investment success. Under this program, ULLICO would repurchase up to 20% of ULLICO's outstanding stock (having an aggregate value of approximately $240 million) from *all* shareholders, including holders of Capital Stock, at $146.04 per share. To pay for this program and obtain additional cash, the Company planned to sell $360 million of its Global Crossing shares by the end of 2000. (U 17284–85, Tab 57)

The Executive Committee established certain conditions for this "extraordinary" repurchase program. One condition was that the market price of Global Crossing

[27] By letter dated January 5, 2000 to Carabillo, Stanley R. Heimbigner, the Secretary-Treasurer of a local affiliate of the Bakery, Confectionery, Tobacco Workers & Grain Millers International Union expressed concerns about the manner in which ULLICO valued its stock in the 1999 repurchase program. (U 007182, Tab 56) Heimbigner noted that the use of the per share book value as of December 31, 1998, significantly under-valued the Company's stock given the success of the Global Crossing investment during 1999. Heimbigner noted, in particular, that even if the Company utilized the unaudited stockholders' equity as of June 30, 1999, the book value per share would have been nearly $102. Georgine responded to Heimbigner's letter without raising his concerns to the Board.

stock had to be not less than $43 per share at the closing of the offer. The Chairman explained to the committee that although Global Crossing traded at $50 per share by the end of 1999 (the stock price used to calculate "book value" as of December 31, 1999), the stock was trading at only about $33 per share in May 2000. The $43 "trigger" price was necessary to give the Company "a reasonable opportunity to realize its gain on the stock in order to fund this offer." In addition, the "extraordinary" repurchase program was conditioned upon either 93% of all shares outstanding being tendered, or all shareholders holding 1% or more of the Company's outstanding stock participating in the tender offer. (U 17284, Tab 57)

Finally, instead of adopting the 10,000 share threshold used in prior years, the "extraordinary" repurchase program term sheet states: "Tenders by holders of 100 or fewer shares will be accepted in total." (U 17287, Tab 57)

On May 11, 2000, the Board approved this "extraordinary" stock repurchase program with the same conditions described above. Chairman Georgine explained that the condition requiring that either 93% of all shares outstanding be tendered or all shareholders holding 1% or more of the Company's outstanding stock tender their respective shares protected the Company "from a significant reapportionment of the ownership of the Corporation through a repurchase of this magnitude." Chairman Georgine further explained that the reason for requiring all shareholders with 100 or fewer shares to tender all of their respective shares if they intended to participate in the program was "to eliminate unnecessary bookkeeping—we have many shareholders with less than 100 shares of Capital Stock, our older form of stock, that have been on the books for many years." (U 000049, Tab 58)

Under this proposed program, any shareholder holding more than 100 shares, including directors and officers, would have been treated equally. If all shareholders tendered all of their respective shares in the offering then each shareholder would have been able to redeem 20% of the shareholder's ULLICO holdings.

According to the minutes, "Credit Suisse First Boston evaluated the [extraordinary] repurchase program and they have issued an opinion, which was included with the agenda item. They concluded that the offer is favorable to our stockholders and has been balanced in a manner so it will not jeopardize the Corporation's well being." (U 000050, Tab 58) In a memorandum dated May 10, 2000, to Chairman Georgine, Jonathan Plutzik and Paul W. Brown of CSFB explained the basis for this opinion:

> Because ULLICO's by-laws state that Shares may not be transferred without giving ULLICO the option to purchase the Shares for $25.00, in the absence of an alternative repurchase offer from ULLICO the value of the Shares is effectively capped at $25.00 per Share. This is the case even if ULLICO failed to exercise its option to purchase in a particular instance—it is unlikely that anyone else would agree to pay more than $25.00 for Shares that would continue to be subject to the same $25.00 purchase option in the hands of the new shareholder. The Repurchase Price of $146.04 is significantly in excess of price that a

shareholder could obtain in absence of the Repurchase. (U 046890, Tab 59)

As far as we could determine, however, when the extraordinary $240 million stock repurchase program was abandoned in November 2000 because Global Crossing had not hit the $43 trigger price, CSFB did not prepare an evaluation of the replacement $30 million repurchase program (discussed below) or its components, including its 10,000 share proration threshold.

In spite of several references to a "100" share threshold in the documents related to the $240 million proposed extraordinary repurchase program, Georgine, when interviewed, said that he believed the "100" reference was a typographical error and should have been "10,000." Several other [directors] indicated that the reference to a "100" share threshold may have been a "typo." We were not able to find supporting evidence for the assertion that the "100" share threshold resulted from a typographical error.

At its May 2000 meeting, the Board also authorized Chairman Georgine to appoint members of a new committee on Corporate Governance, which was requested "to examine our practices and procedures as we begin the Year 2000 and a new millennium of service." (U 000047, Tab 58; U 040602, Tab 60) On August 29, 2000, the Executive Committee appointed Georgine (as Chair), Bahr, McCarron and Cullerton as members of the Corporate Governance Committee. (U 17278–79, Tab 61)

It appears, however, that the creation of the Corporate Governance Committee may have been designed to preempt questioning from a director or shareholder on the issue of executive compensation disclosures. In or about April 2000, Carabillo retained Arnold & Porter to address potential questions from directors and shareholders concerning the disclosure of executive compensation, particularly the compensation received by Chairman Georgine, and other issues.[28] (U 038605, Tab 63; U 044491, Tab 64; Smith Interview) Arnold & Porter prepared a "ULLICO 2000 Strategy Book" that addressed potential issues or challenges that could be raised at the May 2000 Board meeting together with various possible responses. (U 039819, Tab 65; Baltz and Smith Interviews)

This memorandum suggests the appointment of a "blue ribbon" corporate governance committee as a "pre-emptive strike" against questions concerning "disclosure of ULLICO's executive compensation practices at the Board meeting." (U 039822–24, Tab 65) Arnold & Porter drafted potential areas of inquiry for the committee, but the firm apparently did not provide ULLICO with further advice concerning this matter. (U 038854, Tab 66)

As it turned out, no director or shareholder raised questions concerning executive compensation at the May 2000 Board and shareholder meetings. Nonetheless, based

[28] A memorandum on the rights of shareholders to obtain Company information which management viewed as confidential was previously prepared by Dennis Lyons of Arnold & Porter on December 14, 1995. (U 037202, Tab 62)

on information obtained through certain director interviews, it appears as though the Corporate Governance Committee has convened.

- **Discretionary Stock Repurchases**

Several shareholders asked to have certain of their shares repurchased by the Company in the Summer and early Fall of 2000 pursuant to the so-called "discretionary" stock repurchase program historically administered by the Chairman. Under this program, which was not formally approved by the ULLICO Board until November 2000, Georgine entertained requests by shareholders to have some or all of their respective shares (Class A, Class B or Capital Stock) repurchased on an ad hoc basis. As indicated above, the practice of allowing the Chairman to repurchase stock on a discretionary basis dates back many years. In general, however, this practice was limited to repurchasing shares when a shareholder died, an officer or director resigned or a union had a financial emergency. (Carabillo Interview)

The 2000 repurchases pursuant to the "discretionary" repurchase program were not so limited. Between May and November 2000, Georgine authorized ULLICO to repurchase the following shares from non-retiring officers and directors: (1) 3,000 Class A shares from Carabillo on May 31, 2000; (2) 4,000 Class A shares from Grelle (CFO) on June 1, 2000; (3) 4,000 Class A shares from Georgine on July 20, 2000; (4) 4,000 Class A shares and 1,250 Capital shares from West (director) on August 9, 2000; (5) 3,386 Class A shares and 886 Capital shares from Luce (Executive Vice President) on August 9, 2000; (6) 8,664 Class A shares from Bernard (director) on September 13, 2000[29]; and (7) 2,000 shares from Maddaloni (director) on October 10, 2000. (U 047005–06, Tab 67) ULLICO created a specific "Director/Officer Request for Repurchase" form that was used to facilitate discretionary repurchases from officers and directors. (U 027121, Tab 68) At this point, the $146.04 stock price adopted by the Board was, by far, the highest stock price in the history of ULLICO and its predecessor. During the Summer of 2000, the market price of Global Crossing's stock remained well-below the $50 per share price as of December 31, 1999.

It appears that officers and directors redeemed stock through the "discretionary" program for one or more of the following reasons: (1) to redeem only some of their shares, which was not permitted without proration under the formal program; (2) to redeem Capital Stock, which was not historically included in the formal repurchase program; (3) because they needed the money; or (4) because they wanted to take advantage of the record-high share price. (Carabillo, Georgine and other Interviews) For example, John Grelle, the Company's Chief Financial Officer, told us that in June or July 2000 he received a note saying that the Chairman was

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29 Director Bernard held more than 10,000 shares of Class A Stock as of May 11, 2000, when the Board set ULLICO's stock price at $146.04 per share. Bernard received 7,894 shares of Class A Stock through the 1992 preferred certificate program and a total of 3,000 shares in the 1998 and 1999 director and officer stock purchase offers. This discretionary redemption of 6,664 shares of Class A Stock from Bernard allowed him to redeem all of his remaining Class A shares pursuant to the 2000-01 formal repurchase program as an under-10,000 shareholder. Bernard would have been able to redeem only 2.2% of his Class A shares if he had not participated in the "discretionary" repurchase program.

redeeming some of his shares. He then decided to redeem the shares he purchased in 1998 to pay off the loan he incurred in connection with the shares he purchased in 1999. (Grelle Interview)

None of the discretionary repurchases were contemporaneously, if ever, disclosed to the full Board. They also were not disclosed in the 2000 tender offer disclosure document, which in fact suggested that directors and officers would not participate in the formal repurchase program and that they "believe[d] the shares represent[ed] an excellent long-term investment opportunity." (U 000213, Tab 82)

On September 9, 2000, in connection with his work on the Steed dispute, Carey Smith of Arnold & Porter authored an e-mail expressing doubt that discretionary stock repurchases were authorized by the Board.[30] (U 038452, Tab 70) Arnold & Porter eventually suggested that the Company formalize the "discretionary" repurchase program through a Board resolution and at least attempt to ratify prior "discretionary" repurchases. (Lyons Interview)

Dennis Lyons of Arnold & Porter believed the discretionary repurchases from directors reflected a degree of self-dealing. Lyons advised Carabillo in or about the Fall of 2000 to have disinterested directors review these repurchases (although he did not recall if he used the term "self-dealing" in his conversation with Carabillo). Lyons further recommended that all information concerning these repurchases be fully disclosed to these directors. Such disclosures should identify the officers and directors involved, the number of shares repurchased, and other relevant information. (Lyons Interview)

Lyons and Carabillo also discussed drafting resolutions for the November 2000 Board meeting. Lyons suggested to Carabillo that the Board pass a resolution requiring disinterested Board members approve the discretionary repurchases of ULLICO stock from other directors and officers. Carabillo, however, took the position that instead of having a disinterested committee of the Board vote to approve these stock repurchases, this issue should be handled by requiring reports to the Compensation Committee of discretionary repurchases from officers and directors. (Lyons Interview) Lyons apparently did not advise Carabillo that this approach would be inappropriate.

An Arnold & Porter e-mail dated October 17, 2000, indicates that Carabillo was "reluctan[t] to have specific information on repurchases go to the Comp[ensation] Committee or board." (U 043461, Tab 71; Smith Interview) Georgine, however, apparently felt that a report of repurchases from officers and directors should be made from time to time to the Compensation Committee. According to another Arnold & Porter e-mail dated November 1, 2000, Carabillo told Georgine that this

[30] An Arnold & Porter memorandum dated July 9, 2002 (which was prepared in response to our inquiry), conflicts with the conclusion reached by Carey Smith. According to that memorandum, Article V, § 3 of the by-laws grants Chairman Georgine "full authority and responsibility for the management, conduct and control of the affairs of the Company," and this authority allowed Georgine to administer the "discretionary" repurchase program even before it was formalized in November 2000. See MGCL §§ 2-103(10), 2-310(a)(1). (U 047020, Tab 31)

approach "was not strictly necessary," but it "buttressed the optics." (U 038397, Tab 72; U 038401, Tab 73; Smith Interview)

Additional officer and director discretionary repurchases occurred after the November 3, 2000 Board meeting, where, as discussed below, an attempt was made by the Board to ratify the Chairman's discretionary power to redeem stock. These repurchases, made at $146.04 per share, included the following: (1) 7,312 Class A shares from Casstevens (director) on January 16, 2001; (2) 1,500 Class A shares from Cullerton (director) on January 16, 2001; (3) 2,900 Class A shares from Luce on January 16, 2001; (4) 12,523 Class A / 4,345 Capital shares from Georgine on February 14, 2001; (5) 1,097 Capital shares from Gentleman on March 2, 2001, and (6) 1,535 Capital shares from McNulty (director and Union Labor Life General Counsel) on March 2, 2001. In sum, directors and officers redeemed 62.6% of all shares repurchased through the "discretionary" program at the $146.04 stock price.

In the end, it appears that the director and officer repurchases were disclosed to, but not specifically approved by, the Compensation Committee during its March 6, 2001 meeting.[31] These discretionary repurchases of 62,728 shares approved by the Chairman and having an aggregate value of $9.2 million were neither disclosed to, nor expressly approved by, the Board, the Executive Committee or ULLICO's shareholders.

- **Actual 2000 Stock Repurchase Program**

On August 29, 2000, the Executive Committee reported a $478.8 million decline in the market value of ULLICO's Global Crossing investment since December 31, 1999. (U 017283, Tab 61) The August 30, 2000 Board meeting minutes further state: "Future volatility in the carrying value of the Global stock will continue to impact stockholders' equity until such time as all Global shares have been divested or securitized." (U 17402, Tab 75)

As discussed below, this decline in Global Crossing's stock caused the Company to abandon its proposed "extraordinary" repurchase program and adopt a new repurchase program that—along with the 1998 and 1999 stock purchase offers to directors and officers and the "discretionary" repurchase program described above—are at the core of this investigation.

- ***November 3, 2000 Board Meeting***

On November 3, 2000, the Board abandoned the "extraordinary" repurchase program conditionally approved in May 2000 because the market price of Global Crossing did not hit the $43 trigger price. (U 000055, Tab 76) At the time, Global Crossing stock was trading at only $23 5/8 per share. Accordingly, a replacement repurchase program providing for the repurchase of up to $30 million of Class A and Class B Stock at $146.04 per share was approved, and no dividend was authorized. Notwithstanding the significant decline in the value of ULLICO's Global Crossing

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[31] We only have draft minutes of that meeting. (U 021066, Tab 74) Carabillo did not believe that these minutes were ever finalized. (Carabillo Interview)

investment, it does not appear as if the Board considered or discussed a lower repurchase price that more accurately reflected its then-existing book value per share.

Arnold & Porter assisted ULLICO in drafting the November 2000 Board resolutions. (U 039236–37, Tab 77) Edits to draft versions of the November 2000 resolutions by two Arnold & Porter attorneys reflect a proposal to change the 10,000 share proration threshold to a 5,000 share threshold.[32] (U 044317, Tab 78; U 039168, Tab 79; Baltz and Smith Interviews) It is unclear what led to this proposed change and why it was not adopted, but it appears that the Company decided to act consistently with past programs. On July 24, 2000, Carabillo sent a memo to Georgine explaining that the Company should keep the 10,000 share threshold consistent with prior years "for credibility reasons" despite the fact that the Global Crossing investment success "has significantly distorted our numbers."[33] (U 047022, Tab 69)

Prior to the November 2000 Board meeting, there was also a debate concerning whether shareholders holding fewer than 10,000 shares should be categorically exempt from proration, even if they did not tender all of their respective shares. For example, a draft memorandum from Carabillo to Georgine dated October 31, 2000 (attached to a fax from Carabillo to Baltz and Smith of Arnold & Porter) describes this proposal:

> The fifth (v), is a "Resolved" that allows you to treat Shareholders who hold 10,000 shares or less in two fashions. *One, it specifies they are not subject to the prorating provisions—this allows the Corporation to buy back the entirety of their shares—but also gives you the authority in your discretion to repurchase a portion thereof. I do not believe that we want to force those holders to come in for their entire holding of stock and this will allow us to consider them on a discretionary basis for a portion thereof.*

(Emphasis added) (U 044939–40, Tab 80). The proposed resolution stated: "Tenders of shares of Stock by stockholders who hold 10,000 shares or less of Stock . . . will not be subject to the prorationing provisions[.]" (U 040355, Tab 81) This proposal (that under-10,000 shareholders be categorically exempt from proration regardless of whether they tender 100% of their respective shares) conflicts with Carabillo's statement at his interview that one of the two principal purposes of the 10,000 share threshold was to eliminate small shareholders, which, according to him, were shareholders holding fewer than 10,000 shares.

This proposed modification of the 10,000 share threshold was rejected, but it is not clear why or by whom. The 10,000 share threshold actually submitted to, and adopted by, the Board was consistent with the threshold adopted in the prior years, with one exception. Unlike in prior years, the resolution gave the Chairman the

32 In his interview, Grover McKean expressed his belief that a 5,000 share threshold would have been more appropriate to accomplish the goal of eliminating small ULLICO shareholders. (McKean Interview)

33 Rick Baltz of Arnold & Porter told Carabillo that 10,000 shares was not a typical "odd lot" as defined under the SEC's tender offer rules, which define an "odd lot" as fewer than 100 shares. (Baltz Interview)

discretion to have the Company repurchase outside of the formal program some, but not all, shares held by a shareholder who tenders 10,000 shares or fewer. In addition, this resolution purports to ratify the "discretionary" repurchases made by the Chairman before November 3, 2000:

> A tender of shares of Stock by a stockholder who holds 10,000 shares or fewer of Stock and who properly tenders all shares of Stock that such stockholder beneficially owns will not be subject to the prorationing provisions nor in the aggregate to the overall limit on purchases set forth above. A tender of shares of Stock by a stockholder who holds 10,000 shares or fewer of Stock and who properly tenders less than all shares of Stock that such stockholder beneficially owns will be subject to the prorationing provisions and in the aggregate to the overall limit on purchases set forth above. *Purchases from such stockholders otherwise may be made by the Chairman at or below the price from time to time last established by the Board of Directors, whether or not during the pendency of the tender offer provided for by this resolution, at any time from the date of the annual meeting in the year 2000 to the date next preceding of the annual meeting in the year 2001. Such purchases shall be of the entirety of the Stock held by the stockholder offering the same or, at the discretion of the Chairman, of a portion thereof.*

(Emphasis added) (U 000059–60, Tab 76).

The implementation of the 2000 repurchase program was also subject to the Corporation receiving tenders of 100% of the shares beneficially owned by each and every stockholder that held in excess of 2% of the outstanding shares of Class A and B Stock (the so-called "2% Rule"); provided that management could modify or waive such condition at the discretion of the Chairman so long as the repurchase would not cause a "significant redistribution of equity." (U 000060, Tab 76) The 2% Rule was apparently intended to avoid a significant reallocation of shareholder ownership and ensure compliance with the by-laws' requirement that no ULLICO shareholder own more than 9% of the Company's voting stock. (U 030545, Tab 2; Carabillo and Brown Interviews)

The combination of the high stock price ($146.04) and the 2% Rule—under which the Company should have expected shareholders to tender collectively stock worth at least $883 million in an offering capped at $30 million—virtually guaranteed that shareholders holding more than 10,000 shares would be subject to extreme proration. (Beck Interview)

At the November 3, 2000 Board meeting,[34] Chairman Georgine delivered a detailed statement reflected in the minutes. (U 000055–58, Tab 76) Georgine generally described the revised repurchase program and the history of the Global Crossing investment. The Chairman explained: "As we have said from the very beginning,

[34] The November 3, 2000 Board meeting was attended by directors Bahr, Barry, Bernard, Boede, Casstevens, Cullerton, Georgine, Hurt, Joyce, La Sala, Maloney, McCarron, McNulty, Miller, O'Sullivan, West, Wynn, Wyse as well as officers Carabillo, Grelle, Luce and McKean. Directors who did not attend included Biller, Brown, Coia, Gentleman, Kruse, Maddaloni, Sombrotto, Sweeney, Upshaw, Wilhelm and Hanley.

ULLICO Inc. is a long-term investment and has been a long-term investment since 1925." He also indicated that additional funds that might otherwise have been available for the repurchase program, thereby allowing a tender offer of greater than $30 million, had been set aside for the contemplated purchase by ULLICO of Amalgamated Bank of Chicago. (U 000057, Tab 76) Because of a failure to receive regulatory approval, this proposed transaction was never completed. (Grelle and Luce Interviews)

The Board then addressed several other matters. First, the Board authorized the informal "discretionary" repurchase program described above under which Georgine could approve stock repurchases outside of the formal repurchase program at a price no greater than that most recently specified by the Board (so long as the repurchase with respect to any particular stockholder did not exceed 1% of the total outstanding Class A, Class B and Capital Stock). (U 000058, Tab 76) In his prepared remarks for the Board, Georgine explained: "*We do not advertise this [program] and we do not encourage it.*" (Emphasis added) (U 000057, Tab 76)

Second, the Board resolved that only stockholders who are currently eligible to purchase stock could participate in the formal and informal stock repurchase programs. (U 000059, Tab 76) This resolution had the effect of precluding Steed and Maloney, both former ULLICO officers, from participating in the program. (Carabillo Interview)

Finally, the Board passed the following general ratification resolution: "That any and all actions taken by the Chairman or other appropriate officers of the Corporation falling within the scope of any of the preceding resolutions and consistent therewith taken at any time, whether prior or subsequent hereto, are hereby confirmed, ratified, and approved." (U 000061, Tab 76)

The discretionary repurchases from directors and officers from May to October 2000 that the Board purported to ratify were actually not specifically disclosed to the Board. Moreover, as discussed below, no aspect of the "discretionary" repurchase program was disclosed in the 2000 tender offer documents. (U 00211, Tab 82)

Arnold & Porter never provided ULLICO with a formal opinion as to whether the ratifications at the November 2000 Board meeting would be deemed effective under applicable law. (Baltz Interview; U 041079, Tab 83). At Paul Berger's request, Carey Smith prepared a memo to the file in connection with an Arnold & Porter opinion concerning the Company's dispute with Steed. In this memo, Smith disclaims opining on Carabillo's "view" that the purported ratification in the above-quoted resolution was legally effective. (U 041079, Tab 83; Smith Interview)

Sometime prior to the November 2000 Board meeting, in a conversation with Carabillo concerning the November 2000 proposed Board resolutions which would approve the actual 2000 repurchase program, Arnold & Porter attorney Dennis Lyons identified a potential issue. He explained that, pursuant to the proposed resolution, those director shareholders who owned fewer than 10,000 shares of ULLICO stock would be asked to approve a transaction that would grant them preferential treatment over other shareholders, *i.e.*, those shareholders holding 10,000 or more shares. Lyons, therefore, advised Carabillo that this program needed to be approved by a majority of disinterested directors. Lyons emphasized that no interested director should be permitted to vote for the November 2000 stock repurchase program. (Lyons Interview) However, this issue was never presented to the Board and all directors who attended the November 2000 meeting were allowed to vote on the program, which was unanimously approved without any discussion of the potential preferential treatment. Carabillo, through his counsel, has denied that Lyons provided this advice to him.

- ***Tender Offer and Other Repurchases at $146.04***

On November 21, 2000, Georgine sent a letter to ULLICO's shareholders announcing the change in the 2000 repurchase program. In this letter, Georgine incorrectly stated that all shareholders would be prorated and, therefore, "share equitably in the offering":

> The Company anticipates receiving shares in excess of the $30 million it is offering to repurchase, *so it will pro-rate each submission so all participating Stockholders share equitably in the offering.* Other terms and conditions of the repurchase will be described in the Offering Memorandum.

(Emphasis added) (U 027728, Tab 84) Notably, this letter did not indicate that shareholders holding fewer than 10,000 shares could avoid proration.

On December 14, 2000, ULLICO formally offered to repurchase $30 million of its Class A and Class B Stock (but not Capital Stock) at $146.04 per share. (U 000211, Tab 82) The offer ended on January 16, 2001. Notwithstanding the inaccurate statement in Georgine's November 21, 2000 letter described above, the 10,000 share proration threshold in the formal repurchase program was fully disclosed in the tender offer documents.[35] (U 000219, Tab 82) What was not disclosed in the tender offer documents, however, was the "discretionary" repurchase program, including the ability of the Chairman to repurchase through the "discretionary" program all or any portion of the shares held by holders of fewer than 10,000 shares, notwithstanding the terms of the formal repurchase program. Nor did the offering documents disclose (1) that all ULLICO senior executives and directors, except Georgine, who owned ULLICO stock (a total of 24, excluding former executives Steed and Maloney) held fewer than 10,000 shares of Class A Stock, or (2) that several of the directors and officers redeemed shares through the Chairman's "discretionary" program several months before the 2000 tender offer commenced.

Moreover, the following language suggested by Doug Beck of LeBoeuf Lamb in the "Introduction" to the tender offer disclosure document was never incorporated into

[35] The 10,000 share threshold adopted by the Board applied to holders of "10,000 shares or fewer," but the tender offer described the 10,000 share threshold as applying to holders of "fewer than 10,000 shares." This discrepancy did not appear to have any effect on the implementation of the program.

the final version: "In addition, the Company also hereby offers to purchase all Shares held by any holder of fewer than 10,000 Shares as of [date] that tenders all of the Shares beneficially owned by such holder. As of [date], there were [___] Shares held by holders of fewer than 10,000 Shares." (U 025691, Tab 85) This language would have given shareholders some idea as to the amount of the $30 million that might be paid to shareholders holding fewer than 10,000 shares of stock. It is unclear why this suggested revision was rejected.

As in prior years, the tender offer documents included the following statement: "The Company has not been advised that any of its directors and executive officers presently intend to tender any Shares personally owned by them pursuant to the Offer." (U 000217, Tab 82) There appears to have been no attempt by the Company, however, to determine whether officers and directors intended to participate in the program. (Valentine Interview) Nor did ULLICO disclose the "discretionary" repurchase program or the substantial repurchases from directors and officers under that program in the Summer and early Fall of 2000.

ULLICO, however, did disclose that, "[a]s of September 30, 2000, the Company's directors and executive officers as a group (33 persons) beneficially owned an aggregate of 100,971 outstanding Shares (Class A Common Stock) representing approximately 1.3% of the outstanding Shares." (U 000217, Tab 82) In comparison, the 1999 tender offer documents disclosed that "[a]s of September 30, 1999, the Company's directors and executive officers as a group (33 persons) beneficially owned an aggregate of 63,929 outstanding Shares (Class A Common Stock) representing approximately 0.8% of the outstanding Shares." (U 026666, Tab 54) Outside Company counsel contends that a shareholder who had received both documents could have deduced from this comparison that directors and executive officers as a group were given some opportunity to purchase collectively at least 37,042 Class A shares.

In addition, the proxy statement for the May 2000 stockholders meeting disclosed the number of voting shares of ULLICO stock owned by each director. (U 17467–68, Tab 45) A shareholder could have compared this proxy statement to the proxy statements for the May 1999 and May 1998 stockholder meetings to determine which directors purchased and redeemed stock during this period. (U 17472, Tab 86; U 17474–75, Tab 108) In addition, the proxy statement revealed that all directors, other than Georgine, held fewer than 10,000 shares of Class A Stock.

The 2000 repurchase offer was over-subscribed, and the proration for shareholders holding 10,000 or more shares of Class A and Class B Stock was extreme, as only 2.2% of their tendered shares were redeemed. (Exhibit 6). In contrast, the Company repurchased at the $146.04 stock price *all* of the shares tendered by senior officers and directors, a substantially larger amount than they would have otherwise received if the earlier proposed "extraordinary" program had been similarly over-subscribed. In other words, management and the Board implemented a replacement 2000 formal repurchase program that reduced the amount available to shareholders from $240 million to $30 million while potentially providing a larger portion of the funds available for repurchase to the class of shareholders that included directors and officers (*i.e.*, under-10,000 shareholders).

Following the expiration of the 2000 repurchase program in January 2001, and prior to the May 2001 Board meeting at which a substantially lower share price was established, Chairman Georgine approved additional share repurchases at the $146.04 stock price other than the director and officer repurchases discussed above. For example, the Chairman authorized the Company to repurchase half of the number of shares tendered by four unions and pension funds. (U 038895, Tab 91; U 038896, Tab 92; U 012558, Tab 93; U 047011, Tab 67; Grelle Interview)

On January 23, 2001, Chairman Georgine received a fax from Carabillo listing which shareholders who tendered stock pursuant to the 2000 repurchase program would be prorated and which shareholders would not be prorated because they held fewer than 10,000 shares. According to this list, 14 of the 19 shareholders who were able to take advantage of the under-10,000 proration exception were officers or directors of the Company.[36] (U 018243–44, Tab 87; U 027713, Tab 88)

The list also reflects that four directors and the family member of a fifth director requested and received "exceptions" to the 10,000 share threshold procedures. Finally, this shareholder list reflects that four of the seven shareholders who redeemed Capital Stock at the $146.04 stock price were directors (although director Hurt eventually decided not to redeem his Capital Stock).[37] (U 018245, Tab 87) The list shows that shareholders holding 10,000 or more shares were prorated drastically and only redeemed 2.2% of their tendered shares.[38]

When interviewed, Georgine said that the 2.2% proration was not apparent to him when he reviewed the list. When offered a specific example of how a director received more under the repurchase program than a pension fund which tendered more than forty times the number of shares tendered by the director, Georgine's response was to refer to the rules of the program. The Chairman and his Chief Legal Officer participated in designing these rules, which, in 2000, favored themselves and other insiders.

ULLICO repurchased a total of 305,636 shares of Class A and Capital Stock in 2000–01 at the $146.04 per share stock price through the formal and "discretionary"

36 This list, which is dated January 19, 2001, does not include the redemption of 4,345 shares of Capital Stock held by Georgine on February 14, 2001. The Company did not send checks to shareholders who participated in the 2000-01 stock repurchase program until almost one month after the offer expired, on February 20, 2001.

37 Hurt sent a request dated January 9, 2001, to Georgine asking to redeem 100 of his 110 shares of Capital Stock. (U 027500, Tab 89) On April 4, 2001, Carabillo granted Hurt's request conditioned on Hurt tendering the original stock certificate. (U 027505, Tab 90) Hurt decided not to tender any of his shares due to a comment made by Carabillo in early 2001 that directors normally did not ask to have Capital Stock repurchased until they retired. (Hurt Interview) However, the 2000-01 redemptions of certain other non-retiring directors (West, Gentleman, McNulty and Casstevens) and one officer (Luce) included Capital shares redeemed at the $146.04 share price pursuant to the Chairman's "discretionary" program. (Exhibit 1)

38 The Company has asserted that ULLICO's shareholders received a huge benefit simply from the increased value of their shares. However, in a private company with limited and discretionary redemption rights and a stock price set once a year, realizing the increased share value is problematic, as evidenced by the 2.2% proration in 2000.

programs, utilizing approximately $44.6 million in Company funds. The 20 directors and officers who redeemed Class A and Capital shares at the $146.04 price in 2000–01 redeemed a total of 93,923 shares and received a total of $13.7 million, or 31% of the total funds distributed by the Company while its stock price was set at $146.04 per share. (Exhibit 1)

About $9.63 million of the $13.7 million was used to repurchase shares originally purchased by the directors and officers in the 1998 and 1999 stock offers. About $1.54 million of the $13.7 million related to shares of Class A Stock received through the conversion of preferred certificates. About $1.38 million of the $13.7 million related to shares of Capital Stock redeemed through the "discretionary" program. (The remaining $1.17 million related to the 8,000 shares Georgine redeemed pursuant to his Stock Purchase and Credit Agreement.)

Approximately $4 million of the $13.7 million was paid to the directors and officers through the formal repurchase program, and the remainder ($9.7 million) was paid to directors and officers through the "discretionary" repurchase program. The directors and officers realized a collective pre-tax profit of at least $10.7 million.

Exhibit 1 (attached) lists those directors and officers who took advantage of the exclusive opportunity to buy up to 8,000 Class A shares in 1998 and 1999. This chart also shows the repurchases by ULLICO at the $146.04 stock price of most of these purchased shares (as well as, in some instances, Capital Stock and Class A Stock acquired in the preferred certificate program) through the formal and/or "discretionary" repurchase programs.

The directors we interviewed expressed mixed reactions to the repurchases of stock at the $146.04 stock price from officers and directors under the formal and "discretionary" programs as compared with the repurchases of stock from other shareholders.

Director Wyse was surprised to learn that officers and directors received about one-third of the funds paid to shareholders through the formal and "discretionary" programs at the $146.04 stock price. Had he known that this would be the result, he probably would have spoken out on the issue. (Wyse Interview) Director Bahr stated that had he known about the severe proration that large shareholders would suffer in the 2000 program he would not have approved the program. (Bahr interview)

Director McNulty, who is also the General Counsel of Union Labor Life, expressed no concerns about the effects of the 10,000 share threshold because no one objected to the program. But had he known about the severe proration impacting larger shareholders he would have considered whether this raised fiduciary duty issues. (McNulty Interview)

Directors Sweeney and Chavez-Thompson expressed concerns about whether repurchases of stock from officers and directors were consistent with positions taken by the AFL-CIO. (Sweeney and Chavez-Thompson Interviews) Several directors were surprised or shocked by the $13.7 million in director/officer repurchases at the $146.04 price. (Wilhelm, Hanley, Chavez-Thompson and other Interviews)

In contrast, Kenneth Brown, a former director, had no reaction to these repurchases and feels that the repurchase program is sound. (Brown Interview) Director Hurt was not surprised by these repurchases. (Hurt Interview) Director Kruse voiced no concern about the stock offer and repurchase programs because he relied on professionals for advice concerning these programs. (Kruse Interview) Director Casstevens and other directors made similar remarks and felt that the director repurchases posed a public relations problem, but not a legal problem, and therefore the special investigation was not needed. (Casstevens and other Interviews) Director Joyce stated that the repurchase program in 2000 was structured to provide directors and officers with additional compensation, and these directors and officers were entitled to this money because they had earned it. He also noted that shareholders holding 10,000 or more Class A or B shares would have only been able to each redeem only a few more shares than they would have redeemed if the threshold had been 100 instead of 10,000. (Joyce Interview)

Several directors noted that the Board was kept in the dark as to certain matters, including executive compensation, and believed that compensation information should be given to the Board and the shareholders.

In the course of our interviews, several directors and officers suggested that the repurchase programs were a "win-win" situation for both insiders and other ULLICO shareholders. They essentially argued that all shareholders benefited from share repurchases at increasingly higher prices between 1997 and early 2001 and that even the lower repurchase prices in the latter part of 2001 and in 2002 were above the $25 per share price that most ULLICO shareholders paid for their stock.

While most ULLICO shareholders who participated in the share repurchase programs profited in an absolute sense, smaller shareholders (primarily insiders) were certainly treated more favorably in a relative sense. By virtue of the 10,000 share proration threshold, smaller shareholders were able to sell all of their shares in the formal repurchase program, while larger shareholders were not. This was particularly stark in 2000, where larger shareholders were only able to sell approximately 2.2% of the shares they tendered. Smaller shareholders were treated more favorably under the "discretionary" repurchase program as well, typically being permitted to redeem 100% of their shares while the few larger shareholders who participated in the "discretionary" program were frequently only able to redeem 50% of their tendered shares. As a result of this disparate treatment between smaller and larger shareholders, insiders received a disproportionate amount of the funds paid to shareholders for shares repurchased by the Company at $146.04 per share between May 2000 and May 2001.

At his interview, Georgine stated that the directors deserved some credit for the Global investment by ULLICO since they approved it. He did not believe their action merited a cash bonus. However, he did not view the stock offer programs as a bonus program.

■ 2001 Stock Repurchase Program

On May 7, 2001, the Executive Committee authorized a $15 million repurchase program at a "book value" price of $74.87 per share, based on the Company's December 31, 2000 audited financial statements. (U 17269–70, Tab 94)

At its May 8, 2001 meeting, the Board adopted the identical program, which included the same 10,000 share proration threshold used in the 2000 formal repurchase program. At this meeting, the Chairman announced that

> [T]he value had been reduced substantially from the value set in May of 2000, when ULLICO Inc.'s Board adopted a value of $146.04. But considering the market turmoil, and the impact on the overall market and Global Crossing in particular, which was trading at around fifteen dollars at year end, ULLICO Inc.'s stock held up well.

(U 000064, Tab 95)

On December 17, 2001, ULLICO formally offered to repurchase $15 million of its Class A and Class B Stock (but not Capital Stock) at $74.87 per share. (U 026756, Tab 96) The offer expired on January 17, 2002, and was substantially over-subscribed. The proration for holders of more than 10,000 shares was again extreme at 2.657%. (Exhibit 5). Even though the directors and officers should have been aware that holders of 10,000 or more shares suffered a 2.2% proration in the 2000 program, no changes were made to the repurchase program to prevent the reoccurrence of similarly severe proration in the 2001 program.

Five under-10,000 shareholders, including one officer (Executive Vice President Luce), participated in the formal 2001 repurchase program. Luce was allowed to redeem 1,100 of his 1,500 Class A shares. That he was allowed to do this under the formal repurchase program (as opposed to tendering all of his share holdings) indicates that he was granted an exception to the condition that holders of fewer than 10,000 shares tender all of their shares to avoid proration.

One director, Martin Maddaloni, redeemed 800 of his shares at the $74.87 price pursuant to the Chairman's discretionary authority in October 2001. (U 047011, Tab 67)

■ 2002 Stock Repurchase Program

At its recent Board meeting in May 2002, the Board set a $46.58 stock price and approved another $15 million repurchase program. Director Linda Chavez-Thompson moved to suspend the 2002 stock repurchase program pending the completion of Winston & Strawn's internal investigation. That motion received no support and was withdrawn. (Chavez-Thompson Interview) Director Wilhelm indicated he wanted to make a motion to eliminate the 10,000 share proration threshold in the 2002 proposed program, but according to Wilhelm, Chairman Georgine did not allow him to make the motion. (Wilhelm Interview) Chairman Georgine denies that he knowingly kept Wilhelm from making the motion. (Georgine Interview)

As of the date of this Report, only four individuals (Biller, Kruse, Sweeney and Upshaw) who bought shares pursuant to the 1998 or 1999 stock offers to directors and senior officers still retain all of those shares. Their action appears to be consistent with the stated purpose of the stock offers, *i.e.*, to align the interests of directors with other shareholders through a long-term investment in the Company.

Chairman Georgine's Employment Agreements

Chairman Georgine's base salary, annual bonus, and payments from the Global Incentive Program discussed above, totaled $1,627,273 in 1998, $1,316,025.50 in 1999, $1,466,862.57 in 2000 and $1,254,166.50 in 2001. (Exhibit 2) In addition, Georgine received earnings on his non-qualified deferred compensation investments of $4,051,060 (Exhibit 2) Finally, Georgine received gross proceeds of $3,047,563 (yielding an estimated net pre-tax profit of $2,595,303) from the Company's repurchase of 16,523 shares of Class A Stock and 4,345 shares of Capital Stock at the $146.04 per share price in 2000–2001. (Exhibit 1) This stock purportedly was repurchased pursuant to Georgine's employment agreements entered into in the latter part of 1999. It is unclear, however, whether those agreements were duly authorized.[39]

On September 22, 1999, ULLICO's Board, in Executive Session, unanimously approved and authorized a five-year agreement employing Georgine as Chairman, President and CEO, and delegated to the Compensation Committee "full authority to negotiate all terms and conditions of the contract." (U 17383, Tab 53)

The members of the Compensation Committee and Chairman Georgine entered into the employment agreement contemplated by the Board in December 1999, with an effective date of October 1, 1999 ("Employment Agreement"). (U 041221, Tab 97) As part of his compensation package, Georgine also entered into a Split-Dollar Life Insurance Agreement dated February 9, 2000. (U 041237, Tab 97) As indicated above, he also participated in the Deferred Compensation Plan. (U 041220, Tab 97) Moreover, Georgine had, in the past, entered into a Supplemental Retirement Agreement dated August 30, 1994 (U 041247, Tab 97; U 041266, Tab 97), and a Trust Agreement dated November 5, 1994 (U 041256, Tab 97). While these agreements and arrangements appear to have been duly authorized, two other agreements with Georgine, a Stock Purchase and Credit Agreement and an Addendum to Georgine's Employment Agreement, may not have been.

[39] Georgine also received a salary from the AFL-CIO until he retired in or about April 2000. He donated his net salary from the AFL-CIO to charity from 1995 to 2000.

■ Stock Purchase and Credit Agreement

The December 17, 1999 and December 27, 1999 Compensation Committee minutes reflect that the committee approved a "bonus" to Georgine of 40,000 shares of Class A Stock. (U 011989, Tab 39; U 011987, Tab 99; U 038443, Tab 100) There is no indication in the corporate records provided to us that this bonus was expressly approved or contemplated by the Board in its September 1999 resolution discussed above or otherwise. Carabillo expressed his view, however, that this bonus was consistent with the Board's intent. However, he was not at the Executive Session during which this issue was discussed. (Carabillo Interview)

On the basis of the Compensation Committee action in December 1999, Georgine and each member of the Compensation Committee executed a Stock Purchase and Credit Agreement. (U 039222, Tab 101) This agreement allowed Georgine to purchase 40,000 shares of Class A Stock at $53.94 per share with a loan from the Company of $2,157,600. The loan would be forgiven ratably over a five-year period, so long as Georgine continued to serve as Chairman, President and CEO. The loan was secured by a pledge of the 40,000 shares, which pledge would be released as the loan was forgiven.

The Stock Purchase and Credit Agreement is dated December 30, 1999, and Georgine received the 40,000 shares on or about February 1, 2000. Georgine, however, did not execute the agreement until February 11, 2000, and Directors Wynn, West, Barry and Cullerton did not execute the agreement until February 28, 2000, April 6, 2000, April 6, 2000, and May 10, 2000, respectively. (U 005762, Tab 98; U 039229, Tab 101) The delay in the execution of this agreement has not been explained and, according to Arnold & Porter attorney Bintz, may raise tax and accounting issues. (Bintz Interview) This agreement was never expressly disclosed to directors or shareholders. However, the proxy statement for the May 2000 Stockholders Meeting reflected that Georgine owned 52,868 shares of voting stock, which would have included the 40,000 shares received pursuant to the Stock Purchase and Credit Agreement. (U 17467, Tab 45) Also, in a footnote to the financial statements in the 2001 Annual Report (note 14) there is an oblique reference to the issuance of the 40,000 shares to a "stockholder," but few details are provided and Georgine's name is not mentioned.[40] (U 028010, Tab 47)

The Stock Purchase and Credit Agreement contains a put option: "At Employee's election, Employee may, upon thirty (30) days' advance written notice to the Corporation, require the Corporation to purchase from Employee, in cash, all or any portion of the Purchased Shares [*i.e.*, the 40,000 shares issued pursuant to the Stock Purchase and Credit Agreement] that no longer constitute Collateral, and the Corporation shall promptly so purchase such shares at a purchase price per share equal to Fair Market Value." (U 039227, Tab 101)

40 Frank Manley, ULLICO's former compensation expert, believed that Georgine's employment agreements, including the incentive bonus, were not unusual for the industry. (Manley Interview)

The December 27, 1999 Compensation Committee minutes explain the rationale underlying this put option, as follows:

> It was also noted that it would be important for Mr. Georgine to be able to realize value on the shares of stock he owns in order to meet his assignment. Recognizing that ULLICO is not a public market stock a 'Put' option should be included in the document to allow Mr. Georgine the right to submit shares of stock at will, for a price consistent with that established by ULLICO's Executive Committee, or the Board of Directors, pursuant to its responsibilities.

(U 011987, Tab 99) Carabillo further explained that the put option allowed Georgine to put the shares at his discretion to pay taxes resulting from the loan forgiveness. (Carabillo Interview)

Georgine sold the first 8,000 shares released under this agreement on February 14, 2001 at $146.04 per share, although it is unclear whether he gave the required 30 days advance written notice to the Company of his election to exercise the put option. (U 047010, Tab 67) Aside from this minor issue, there is a serious question as to whether the 40,000 share bonus and the corresponding loan granted to Georgine pursuant to the Stock Purchase and Credit Agreement were duly authorized.

First, although the Board on September 22, 1999, approved and authorized a five-year agreement employing Georgine as Chairman, President and CEO, and delegated to the Compensation Committee "full authority to negotiate all terms and conditions of the contract," the Board did not expressly authorize the Compensation Committee to enter into the Stock Purchase and Credit Agreement *in addition to* the five-year Employment Agreement. Nor did the Board authorize the Compensation Committee to issue any stock to Georgine. (U 17383, Tab 53)

Second, the Compensation Committee lacked the authority to issue stock on its own accord and, therefore, could not have issued the 40,000 share bonus to Georgine without express authority from the Board. On February 13, 1999, the Executive Committee appointed the Compensation Committee with "full authority to act on all matters concerning compensation of officers and other employees, including all current and deferred compensation, and including the establishment and administration of all plans, programs, and agreements, *and including the issuance of stock*." (Emphasis added) (U 17318, Tab 35) Notwithstanding the emphasized phrase, which purports to grant the Compensation Committee authority to issue stock, the by-laws make it clear that "the Executive Committee...*shall not have authority to...issue Stock*." (Emphasis added) (U 030552, Tab 2) Accordingly, the authority to issue stock delegated by the Executive Committee to the Compensation Committee described above is suspect.

■ Employment Agreement Addendum

In addition to the 8,000 share repurchase discussed above, ULLICO repurchased from Georgine the 8,000 shares he purchased in 1998 and 1999 pursuant to the exclusive director/officer stock offers, 523 Class A shares purchased through the preferred certificate program as well as 4,345 shares of Capital Stock, all at the $146.04 stock price. ULLICO repurchased 4,000 of these shares on July 20, 2000, and the remainder of these shares on February 14, 2001. (U 047005, Tab 67, U 047010, Tab 67)

In the Fall of 2000, Carabillo discovered that Georgine's October 1, 1999 Employment Agreement (as opposed to the Stock Purchase and Credit Agreement) did not include a put option that would have authorized the July 20, 2000 repurchase. (Carabillo Interview) Accordingly, the July repurchase of 4,000 shares of Georgine's stock necessarily was made pursuant to the "discretionary" program administered by Georgine himself as opposed to his Employment Agreement. (U 039238, Tab 102; U 038451, Tab 103; U 043461, Tab 71) This obviously created a conflict of interest.

Carabillo brought this issue to the attention of the Compensation Committee. (Carabillo Interview) On October 20, 2000, just before the Board approved the 2000 formal stock repurchase program and the "discretionary" repurchase program on November 3, 2000, the Compensation Committee concluded that it was intended that the October 1, 1999 Employment Agreement was to include a put option that would have authorized Georgine's July 20, 2000 redemptions. But, "through an oversight," such put option was inadvertently omitted from Georgine's Employment Agreement. The Compensation Committee then approved an Addendum to Georgine's October 1, 1999 Employment Agreement and explained that the put option in this Addendum was "pursuant to the grant of authority from the Board of Directors." (U 012273, Tab 104) For the reasons previously stated concerning the compensation committee's apparent lack of authority to issue stock or approve the Stock Purchase and Credit Agreement, this explanation is also suspect.

The Addendum is undated, but it is deemed to have modified "the Original Agreement effective retroactively to the Effective Date," *i.e.*, October 1, 1999. (U 006306–07, Tab 105) The put option in the Addendum gave Georgine the right "at any time during or after the Employment Term" to "require, at Employee's election, the Corporation to purchase from Employee, in cash, all or any portion of the Shares [Class A or Capital], and the Corporation shall promptly so purchase such Shares as a purchase price per Share equal to Fair Market Value [*i.e.*, book value]."

On March 6, 2001—after the repurchases discussed above were completed—the Compensation Committee again discussed Georgine's put options and, according to the draft minutes of that meeting (we have not been provided with the final minutes), unanimously approved and ratified the repurchase of all shares Georgine sold to the Company in 2000 and 2001. (U 021067, Tab 74) The Board, however, never expressly ratified the repurchase of Georgine's stock in July 2000 discussed above.

Legal Analysis

Fiduciary Duty Law

The Company's 1998 and 1999 stock offers and 2000 stock repurchase programs resulted in numerous self-interested transactions, *i.e.*, transactions with the Company in which the directors and officers stood to personally benefit. These transactions may not be voidable solely on the ground that they were self-interested transactions. However, under the facts discovered in the investigation, a compelling argument exists that directors, particularly those who benefited from self-interested transactions, did not satisfy their fiduciary duties to the Company and its shareholders in connection with the exclusive stock offers to directors and senior officers in 1998 and 1999 and the formal and "discretionary" repurchase programs in 2000. An equally forceful argument applies to the principal officers, Georgine and Carabillo, who were instrumental in creating and implementing the stock offer and repurchase programs, and who benefited from ULLICO stock transactions.

■ Interested Director Transactions

Section 2–419 of the Maryland General Corporate Law ("MGCL") provides that a transaction is not void or voidable solely because of the presence of an interested director at the meeting in which the transaction was approved if:

> (a) The fact of the interest is disclosed or known to the board of directors and the board of directors authorizes the transaction by the affirmative vote of a majority of the disinterested directors even if less than a quorum; or
>
> (b) The fact of the interest is disclosed or known to the stockholders and the stockholders, other than stockholders who are interested in the transaction, approve the transaction; or
>
> (c) The contract or transaction is fair and reasonable to the corporation.

Maryland law does not require a separate vote of disinterested directors, nor does it require that a committee of disinterested directors be formed. Moreover, a single disinterested director may approve a contract or transaction. See James J. Hanks, Jr., Maryland Corporation Law § 6.22 (Aspen 2001) ("Hanks"). If a majority of disinterested and informed directors approves a transaction, then that transaction cannot be attacked solely on the basis that it is a self-interested transaction.

The Company has identified five potential disinterested directors who voted to approve the November 3, 2000 Board resolutions. Four of these five directors held no Class A Stock at the time of this Board meeting (Directors Hurt, Joyce, Miller and O'Sullivan). But three of these directors held Capital Stock that could have been repurchased through the "discretionary" program, which the Board approved on November 3, 2000. Only Director O'Sullivan, who was appointed to the Board in

2000, held no stock, Capital or Class A, as of November 3, 2000. Finally, outside Company counsel have suggested that Chairman Georgine, although he held Class A and Capital Stock, was disinterested because, by virtue of the put rights in his employment agreements, he had no need to participate in either the 2000 formal repurchase program or the "discretionary" program.

While it is questionable whether these five directors were both disinterested and fully informed of the relevant information, Maryland law requires only one fully informed, disinterested director to approve self-interested transactions to invoke the protection of Section 2–419. Outside Company counsel have argued that at least one of these five directors was fully disinterested and fully informed, and that the transactions approved at the November 2000 Board meeting would not be void or voidable on the sole basis that they were self-interested transactions as to other directors.

However, compliance with Section 2–419 in approving self-interested transactions does not satisfy the directors' statutory duties under Maryland law, *i.e.*, that they act in good faith, in a manner they reasonably believe to be in the best interests of the company and with due care in approving the transactions.

■ Statutory Duties Imposed on Directors Under Maryland Law

Certain duties are imposed on the directors of ULLICO, which is a Maryland corporation, as a matter of Maryland law. Section 2–405.1(a) of the MGCL provides that a director shall perform his or her duties:

(1) in good faith;

(2) in a manner he reasonably believes to be in the best interests of the corporation; and

(3) with the care that an ordinarily prudent person in a like position would use under similar circumstances.

MGCL § 2–405.1(a) (2002). The failure by a director to satisfy any one of these statutory standards would constitute a breach of the director's fiduciary duties.

MGCL section 2-405.2, however, allows a Maryland corporation to limit the recovery of damages from officers or directors for certain breaches of fiduciary duty. Pursuant to this statute, ULLICO's Articles of Incorporation were amended on May 24, 1989, to provide that ULLICO's directors and officers, when acting in their capacities as directors or officers, shall not be liable for money damages to the Company or its stockholders except: (1) "to the extent it is proven that they actually received an improper benefit or profit in money, property, or services, for the amount of the benefit or profit in money, property, or services actually received"; or (2) "to the extent that a judgment or other final adjudication adverse to the person is entered in a proceeding based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding." (U 030377, Tab 113) This provision of the Articles of Incorporation provides the maximum protection to directors and officers permitted under Maryland law.

Based on MGCL section 2-405.2 and ULLICO's Articles of Incorporation, those directors who did not personally benefit from the transactions at issue would not likely be held liable for money damages to the Company or its stockholders.

- **Subsection 2–405.1(a)(1)—"Good Faith"**

"Good faith," as applied to a director pursuant to subsection 2–405.1(a)(1), is the absence of any desire to obtain a personal benefit or a benefit for some person other than the corporation. See Yost v. Early, 589 A.2d 1291, 1298 (Md. App. 1991). "Good faith is generally synonymous with adherence to what is referred to in other states as the duty of loyalty or the duty of fair dealing." Hanks § 6.6(b).[41] The obligation of good faith includes a duty of candor with the stockholders to reveal to them all facts about important matters involving the corporation. This duty arises in order to provide stockholders with sufficient information to, among other things, decide how to vote in the election of directors and whether to continue to hold their shares or sell them. See Hanks at § 6.6(b).

◆ ***1998 and 1999 Stock Offers to Directors and Senior Officers***

While the precise business purpose for the 1998 and 1999 stock offers is unclear, the stock offers undoubtedly had the effect of compensating certain of ULLICO's directors and senior officers. The Compensation Committee purportedly approved the 1998 and 1999 stock offers in direct conflict with the Executive Committee resolution stating: "No member of the Committee shall participate in the determination of any matter affecting his own compensation." Moreover, under ULLICO's by-laws, the Compensation Committee was not authorized to issue stock. Therefore, one could make a strong argument that those members of the Compensation Committee who purported to approve the 1998 and 1999 stock offers violated their fiduciary duties to the Company and its shareholders by approving matters outside their authority from which they derived a substantial personal benefit.

◆ ***2000 Stock Repurchase Program***

On November 3, 2000, the Board approved the 2000 formal stock repurchase program and purported to ratify the "discretionary" stock repurchase program. At that point in time, a majority of the Board members had a specific interest in the repurchase program and benefited from the fact that the formal repurchase program as well as the Chairman's "discretionary" program (which was not generally "advertised") afforded the interested directors the ability to tender 100% of their shares while significantly limiting the sale opportunities available to shareholders owning 10,000 shares or more (other than Georgine).

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[41] Demonstrating that a director has an interest in a transaction creates a *prima facie* case that the director was not acting in good faith supporting the transaction but is not conclusive on the issue. A director is not required, just because he is director, to forego acting in some other capacity in which he is dealing with the corporation. See Waterfall Farm Sys., Inc. v. Craig, 914 F. Supp. 1213, 1228 (D. Md. 1995).

Management was not forthcoming in explaining to the Board the purpose or effect of the 10,000 share threshold or the foreseeable impact of the threshold upon the Company's larger shareholders. However, it should have been clear to a director exercising due care that the 2000 formal repurchase program would result in a severe proration to the holders of 10,000 or more Class A shares. It should also have been clear to the directors that any of them who participated in the repurchase program (all of whom but Georgine owned fewer than 10,000 Class A shares) could disproportionately benefit by redeeming 100% of their tendered shares.[42]

The Board's action in approving the 2000 formal repurchase program and the "discretionary" repurchase program administered by the Chairman occurred at a time when ULLICO had eliminated conventional cash and stock dividends, which historically had been as high as 18% per year. The only distributions afforded shareholders were through the formal and "discretionary" repurchase programs, the latter available to only those shareholders who were familiar with it. There was no guarantee that in the future ULLICO would be able to offer future dividends or large formal repurchase programs.

A strong argument exists that those directors who participated in, and disproportionately benefited from, the 2000 formal stock repurchase program did not act in good faith in approving that program. These directors acted to the detriment of ULLICO's larger shareholders who, unlike the directors, would be subject to proration under the program. Moreover, those directors who participated in the "discretionary" repurchase program before November 3, 2000, voted in favor of ratifying these stock repurchases without fully disclosing the transactions to the full Board. As a result, many directors were unaware of all the prior discretionary repurchases that they purportedly ratified at the Board meeting. Likewise, Georgine, who administered the "discretionary" program, may have breached his duty of good faith by failing to fully disclose the benefits received by other directors under the program while, at the same time, asking the Board to ratify the undisclosed transactions.

- **Subsection 2–405.1(a)(2)—"Reasonable Belief" Requirement**

The "reasonable belief" requirement under Maryland law means that there must be some rational basis for a director's action, that the director must have knowledge of that basis when taking such action and that his performance must be based upon that knowledge. See Martin Marietta Corp. v. Bendix Corp., 549 F. Supp. 623, 633–34 (D. Md. 1982). Moreover, directors are required to act in a manner they reasonably believe to be "in the best interests of the corporation," rather than the best interests of

[42] The high likelihood that the 2000 repurchase offer would be over-subscribed was apparently well-known. Georgine, in a letter to stockholders on November 21, 2000, in which he summarized the upcoming repurchase offer, stated: "[T]he Company anticipates receiving shares in excess of the $30 million it is offering to repurchase ...." (U 027728, Tab 84)

any particular stockholder or group of stockholders. See Werbowsky v. Collomb, 766 A.2d 123, 133 (Md. App. 2001).[43]

- ***1998 and 1999 Stock Offers to Directors and Senior Officers***

We have been unable to discern the business purpose for the 1998 and 1999 stock offers to directors and senior officers. Chairman Georgine, in correspondence to directors and senior officers, stated that the purpose of these stock offers was "that management and the board of directors should have their interests in line with the stockholders[.]" Some directors and officers we interviewed postulated additional or different purposes. For example, certain directors stated that they believed the stock offers and repurchases were intended to be a form of director compensation while others viewed the stock offers as an "equity opportunity."

Even if one were to assume that the business purpose for the stock offers was that expressed by Chairman Georgine, the offers were not structured to achieve that purpose. For example, unlike typical director or employee equity awards, the stock offers at issue here—which arguably were made at below fair market value (particularly the stock offers made in December 1999)—contained no vesting conditions or restrictions on the ability of directors and officers to immediately sell stock purchased in the program. In fact, several directors and officers did just that. Of the 86,565 shares purchased by directors and officers in the 1998 and 1999 stock offers, 68,063 shares were repurchased by ULLICO at the $146.04 stock price in 2000 and early 2001.

Therefore, it is unclear to us whether the 1998 and 1999 stock offers had any coherent business purpose and, if so, what that purpose was. At best, the stock offers appear to have been ill-suited to achieve ULLICO's stated objective. The stock offers resulted in only a short-lived alignment of the interests of directors and officers with those of ULLICO's other shareholders since 20 out of 24 directors and officers who purchased stock in 1998 and 1999 (excluding Michael Steed and Mark Maloney) sold most, if not all, of their shares to the Company by 2001, in most cases at $146.04 per share. This ultimately resulted in directors and officers being disproportionately favored over ULLICO's other shareholders in the repurchases made in 2000 and 2001 at the $146.04 per share stock price pursuant to the formal and "discretionary" repurchase programs. The sales by directors and officers in 2000 and 2001 were also contrary to Georgine's statement to the Board at the November 2000 Board meeting, at which the 2000 formal repurchase program and the "discretionary" repurchase program were approved, that ULLICO "is a long-term investment and has been a long-term investment since 1925."

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[43] A Maryland corporation has the general power to acquire any of its own stock. MGCL § 2-103(10). In addition, Maryland law provides specific grants of authority in two different sections that allow a corporation to acquire its own shares. See MGCL § 2-309(a) ("If authorized by its board of directors, a corporation may make distributions to its stockholders, subject to any restriction in its charter and the limitations in § 2-311."); id § 2-310(a)(1) ("Subject to the provisions of its charter and § 2-311...if authorized by its board of directors, a corporation may acquire the corporation's own shares.").

- *2000 Repurchase Program*

While the stock repurchase program may have been originally designed in 1997 with the "reasonable belief" that the program was in the Company's best interests, the program, as implemented in 2000, worked largely to the benefit of certain directors and executive officers of the Company at the expense of the other shareholders. There does not appear to have been any "rational basis" for this disparate treatment.

In particular, the investigation revealed no rational basis for the Board's action in approving the 2000 formal repurchase program containing the 10,000 share proration threshold. The threshold led directly to a fundamental disparity in the way ULLICO's individual shareholders (mostly officers and directors) and its institutional shareholders (mostly unions and pension funds) were treated under the program. Even ULLICO's own outside counsel noted that the 10,000 share proration threshold was "awfully high" and that a threshold of below 100 shares, known commonly as an odd lot, is standard.[44]

ULLICO's management has put forward two principal reasons for exempting holders of fewer than 10,000 shares from proration in the formal repurchase program. The first is that the threshold was "tax driven." According to management, a 10,000 share demarcation line was needed because a repurchase program that essentially treated all shareholders equally would be viewed as a dividend by the IRS and would affect each shareholder's ability to receive capital gains tax treatment on any profits realized from such shareholder's stock sale.[45] Unions and pension funds, which held a substantial majority of ULLICO's shares, are tax exempt and would have had no interest in this tax-driven motivation. Accordingly, the principal beneficiaries of the proration threshold, from a tax perspective, were the officers and directors who sold their shares. This justification is inconsistent with Chairman Georgine's statement to the Board in 1997 that "the repurchase program...is a means for us to provide liquidity to our *larger stockholders*." (Emphasis added)

Management's second rationale for the 10,000 share threshold was that it was designed to eliminate small shareholders, thereby reducing administrative expenses and avoiding potential reporting requirements under the Securities Exchange Act of 1934 (the "Exchange Act") that would apply if the Company had more than 500 shareholders.[46] This second rationale is also not persuasive and is at odds with the effect of the 1998 and 1999 stock offers, which resulted in more, not fewer, "small" shareholders. Nor was ULLICO particularly close to the 500 shareholder ceiling.

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[44] The resolution adopted by the Board in connection with the first repurchase program in 1997 provided for a 10 share proration threshold. LeBoeuf Lamb incorporated the same in its first draft, only to change it to 100 shares thereafter. The Company then appears, without Board approval, to have changed the proration threshold to 10,000 shares. Outside counsel in subsequent years suggested the 10,000 share threshold was too high. Indeed, the resolution for the $240 million repurchase program conditionally adopted in May 2000, but later abandoned, provided for a 100 share proration threshold, which is more typical for partial tender offers. Outside counsel then suggested that the $30 million repurchase program adopted by the Board in November 2000 have a 5,000 share proration threshold, which also was rejected by the Company.

[45] The formal tender offer documents warned that even with the 10,000 demarcation line the IRS might still view a repurchase of stock as a dividend.

[46] Companies with assets in excess of $10 million and more than 500 shareholders are required to register their equity securities under Section 12 of the Exchange Act.

Finally, the Company likely could have achieved the same or similar objectives without so disadvantaging ULLICO's large shareholders through other means, such as: (1) using a lower, more reasonable proration threshold; (2) including Capital Stock in the repurchase program; (3) limiting the aggregate number of shares that would be exempted from the proration threshold; or (4) limiting or precluding repurchases from insiders under the proration threshold.

It seems clear that while the precise business purpose for the 1998 and 1999 stock offers is unclear, the stock offers, which arguably were made at below fair market value, undoubtedly had the effect of compensating certain of ULLICO's directors and senior officers. Maryland law allows directors to set their own compensation as long as the compensation is reasonable. See MGCL § 2–419(d)(2)(2002). However, if the true purpose for the 2000 stock repurchase program, as well as the redemptions through the "discretionary" repurchase program in 2000 and 2001, was, as some have suggested, to compensate directors and certain executives, the program still would have lacked sufficient business justification.

According to the 2000 tender offer documents, "the Company's directors and executive officers as a group (33 persons) beneficially owned…approximately *1.3% of the outstanding Shares*." (Emphasis added) Nevertheless, the Company repurchased from directors and senior officers about $13.7 million (*or approximately one-third*) of the approximately $44.6 million of shares repurchased in 2000–01 at the $146.04 share price through the formal and "discretionary" programs. The pre-tax profits realized in 2000 and 2001 by the 16 directors (excluding Georgine) who sold their shares amounted to more than $5.7 million. We are unaware of any legitimate business justification for distributing compensation through this type of transaction as opposed to simply increasing directors' fees or awarding bonuses. In addition, if these stock profits represented compensation to directors, such compensation would not appear to be justified by the limited services they performed for the Company (except perhaps as to those directors who received nominal amounts).[47]

ULLICO's four senior officers who sold stock to the Company during this period collectively received pre-tax profits of approximately $4.9 million. The amounts received by the senior officers as a result of their stock sales also may have been unreasonable under the circumstances, particularly given the fact that these officers were already being directly and substantially compensated for the success of the Global Crossing investment under the Global Incentive Program, the Deferred Compensation Plan and other employee compensation programs.

In sum, if the 2000 stock repurchase program was intended, in part, to compensate directors and officers, that purpose was not adequately disclosed or considered, and the program itself was poorly designed to achieve that purpose in an equitable manner.

[47] For example, Bernard's pre-tax profit was $1,329,620; West's pre-tax profit was $989,060; Casstevens's pre-tax profit was at least $809,628; and Joseph Maloney's pre-tax profit was $418,880. In contrast, Brown's pre-tax profit was $4,605.

- **Subsection 2–405.1(a)(3)—"Ordinarily Prudent Person"**

Section 2–405.1(a)(3) of the MGCL requires a director to act with the same care that an "ordinarily prudent person" would act in a "like position under similar circumstances." The principal focus of § 2–405.1(a)(3) regarding directors executing their duties as a reasonably prudent person is on "the process by which the decision is made, not the wisdom of the decision or the results." Hanks § 6.6(b). While the process by which a director makes his decision will necessarily vary with the significance, complexity and other aspects of the decision, as a general rule, board members should have available to them all information material to the decision and should have some opportunity to ask questions of management and to meet and evaluate the matter with other directors and management.

While section 2-405.1(a)(3) appears to impose an ordinary negligence standard, Maryland courts to date have continued to require proof of gross negligence as the basis for recovery against directors for a breach of the "ordinarily prudent person" standard. See Billman v. Maryland Deposit Ins. Fund Corp., 593 A.2d 684, 697 (Md. App. 1991); Mountain Manor Realty, Inc. v. Buccheri, 461 A.2d 45, 50 (Md. App. 1983) (general rule is that court will not interfere with proper exercise of business judgment by board unless plaintiff presents evidence of gross or culpable negligence).

- ***1998 and 1999 Stock Offers to Directors and Senior Officers***

The approval of the stock offers involved an excessive, and perhaps impermissible, delegation of authority by the Board. The Compensation Committee purported to approve the stock offers but, as discussed earlier, may not have been authorized to do so under ULLICO's by-laws. Moreover, the Compensation Committee did not impose nor, as far as we could determine, consider any reasonable conditions on the terms of the stock offers, including the timing of the stock offers. Instead, the Compensation Committee delegated this discretion solely to Chairman Georgine. Finally, based on ULLICO's corporate records, it does not appear as if the approval of the stock offers by the Compensation Committee or the participation by directors and officers in the stock offer program was reported to ULLICO's Board or Executive Committee.

In light of questions raised regarding the Compensation Committee's authority to approve the 1998 and 1999 stock offers, certain members of the Company's management and others have suggested that the authority for the stock offers may have come from a resolution of the Board adopted at its May 6, 1997 meeting. Pursuant to this resolution, the Board purported to authorize Georgine "in his sole discretion to offer shares of the Corporation's Stock that have been repurchased and returned to the status of authorized, but unissued shares[.]" (U 000030, Tab 12) It could be argued that, in effect, the Board properly delegated its authority to issue stock to a Board committee, consisting solely of Georgine.

Under MGCL Section 2-411, a board of directors may delegate to a committee composed of one or more directors the power to issue stock if the board has "establish[ed] a method or procedure for determining the maximum number of shares to be issued." Here, the Board established no "method or procedure" for determining the maximum number of shares to be issued, other than to restrict Georgine from issuing more stock than the Company had repurchased. Given that, under the "discretionary" repurchase program, Georgine had sole discretion to repurchase shares from time-to-time, one could argue that there was no meaningful restriction on his authority to issue stock and, therefore, no "method or procedure" for determining the maximum number of shares to be issued.

Moreover, the Board's authorization did not set any parameters regarding the procedure for offering the stock, the price at which the stock was to be offered, the amount of stock to be offered or when or to whom the stock would be offered. Even assuming the Board's delegation was permissible under MGCL Section 2-411, which is unclear, it is doubtful that such a wholesale delegation of authority by the Board was intended. If the Board did intend such a wholesale delegation of authority, it is questionable whether such delegation was consistent with the directors' duty of due care. As provided in Section 2-411(d) of the MGCL, "the appointment of a Committee, the delegation of authority to it, or action by it under that authority does not constitute, of itself, compliance by any director, not a member of the committee, with [his or her fiduciary duties] under §2-405.1[.]"

- ***2000 Stock Repurchase Programs***

Certain directors similarly may have failed to exercise due care in approving the formal and "discretionary" repurchase programs in 2000. Based on our review of corporate records and interviews with directors, there appears to have been little meaningful discussion regarding the terms of the formal repurchase program in 2000. In fact, most directors were unable to articulate a clear justification for the 10,000 share threshold, other than the fact that the same threshold had been used in the previous years. Although a few directors viewed the 10,000 share threshold as a means to compensate directors, this purpose, as far as we could tell, was never discussed at the Board meeting.

In our view, an "ordinarily prudent person" should have realized that the 10,000 share proration threshold, when combined with the 2% Rule, would have resulted in severe proration to the shareholders holding 10,000 or more shares. At a minimum, a prudent director should have at least requested information from management regarding the impact of these components of the 2000 repurchase program on the directors and the shareholders as a whole. Directors should have inquired into how much stock was owned by individual directors and officers and, therefore, how much stock would be eligible to be resold in the repurchase program without proration. Likewise, before ratifying the "discretionary" program, directors should have made themselves aware of all stock repurchases from insiders under that program.

Certain directors commented to us that if they had been aware of the severe proration that would result in the 2000 repurchase program or the insider repurchases under the "discretionary" program, they would not have voted to approve the programs. A strong argument exists that the formal repurchase program, at least as structured and implemented in 2000, was not in the best interests of the Company's shareholders. It appears that due care was not exercised by the directors in approving the programs at issue, particularly those directors who participated in these programs and were, therefore, well aware of the programs' benefits to insiders. That is, it is questionable whether the directors adequately informed themselves prior to approving the 2000 formal repurchase and "discretionary" programs.

- **Business Judgment Rule**

The business judgment rule creates the presumption that in making business decisions, the directors of a Maryland corporation have acted in accordance with the fiduciary duties imposed by Section 2-405.1(a). See Yost v. Early, 589 A.2d 1291, 1298 (Md. App. 1991); MGCL § 2-405.1(e). The effect of the business judgment rule under Maryland law is to place upon the person attacking the directors' action the burden of proving, prior to any further inquiry, lack of good faith or an informed basis for the decision. Once sufficient evidence is presented to rebut the presumption, the burden of proof is on the directors to present evidence that they satisfied their fiduciary duties. See Hanks at § 6.8.

Under the facts of this case, it cannot be said with any reasonable degree of certainty that the business judgment rule would protect the actions of those directors who benefited from the programs at issue. There is a greater likelihood that those directors at the time of the November 3, 2000 Board meeting who did not profit from the stock offer and repurchase programs would be deemed to have satisfied their fiduciary duties by virtue of the presumption under the business judgment rule. These directors include Directors Biller, Coia, Hanley, Hurt, Joyce, Kruse, Miller, O'Sullivan, Sombrotto, Sweeney, Upshaw and Wilhelm.

Fiduciary Duties Imposed on Officers Under Maryland Law

While there is no statutory standard of conduct for corporate officers under Maryland law, officers are subject to general agency principles. See Hanks at § 6.19. Under Maryland law, an officer, as an agent of the corporation, owes the corporation duties of loyalty, obedience and care. See Ins. Co. of N. Am. v. Miller, 765 A.2d 587, 596–98 (Md. App. 2001). A corporation acts under the supervision and direction of its board of directors. Implicit in an officer's duties of loyalty and care is the obligation of the officer to disclose to the board all information in his possession that is required by the members of the board to perform their corporate responsibilities. See id. at 597; Impala Platinum Ltd. v. Impala Sales (U.S.A.), Inc., 389 A.2d 887, 903 (Md. 1978) (quoting Herring v. Offutt, 295 A.2d 876, 879 (1972)) (recognizing duty of fiduciary "to make full disclosure of all known information that is significant and material to the affairs" of the fiduciary relationship); see also Hanks § 6.19. Unlike with directors, it is unclear whether officers can invoke the protection of the business judgment rule. That is, there may not be a presumption that officers acted in a manner consistent with their fiduciary duties.

The obligation of an officer to disclose information is heightened when the officer has an interest that conflicts with the interests of the corporation or its shareholders. When faced with a conflict of interest, an officer is required to disclose the conflict prior to acting on behalf of the corporation. The taking of any action by an officer prior to such disclosure would constitute a breach of such officer's duties of loyalty and care. See Ins. Co. of N. Am., 765 A.2d at 597 (citing RESTATEMENT (SECOND) OF AGENCY § 389 (1958)).

Georgine and Carabillo were heavily involved in the formulation and implementation of the 1998 and 1999 stock offers, the formal stock repurchase program and the "discretionary" stock repurchase program. In fact, Georgine exercised almost unfettered discretion in administering the "discretionary" repurchase program, and the Compensation Committee granted Georgine the discretion to determine the timing of the stock offers. Carabillo, as ULLICO's Chief Legal Officer, assisted and provided legal advice to Georgine in connection with these matters. The terms of the repurchase program (including the 10,000 share threshold) were ultimately approved by the Board and/or the Executive Committee in the form presented by management.

Notwithstanding their significant involvement in the stock offer and repurchase programs, certain officers of ULLICO, principally Georgine and Carabillo, failed to adequately disclose to the Board their personal interests in these programs. Nor did they disclose to the Board the extent to which they personally benefited from ULLICO stock transactions. In fact, our investigation revealed that senior management engaged in a concerted effort to withhold executive compensation information from the Board, including compensation received indirectly from the stock offer and repurchase programs.

In the course of our investigation, we found several instances where the Board was asked to act without receiving all relevant information. For example, in November 2000, the Board was asked to ratify various stock repurchases under the "discretionary" program without being informed that a substantial portion of the repurchases had been made from directors and officers. To the contrary, the Chairman emphasized at the Board meeting that ULLICO "is a long-term investment and has been a long-term investment since 1925." The Board was also not informed of the reasons for, or the impact of, certain terms of the programs it was asked to approve, including the 10,000 share proration threshold in the formal repurchase program. Finally, management had access to detailed information concerning participation in the stock offer and repurchase programs and was aware of the disparate treatment between under-10,000 Class A shareholders (primarily officers and directors) and the remaining Class A and B shareholders (primarily unions and pension funds). This information was not fully shared with the Board members.

Had management made adequate and complete disclosure of all relevant information regarding the stock offer and repurchase programs to the Board, including their personal interests in these programs, it is possible that the Board and its committees would have acted differently. In fact, several directors told us that they might not have voted to approve these programs had they been aware of the extent to which certain insiders profited from such programs at the expense of the other shareholders.

■ Fiduciary Duties Under the Federal Labor Laws

Fiduciary duties similar to those imposed by Maryland law which may be applicable to self-interested transactions involving officers and directors may also arise under the Federal Labor-Management Disclosure and Reporting Procedure Act ("LMDRA") (29 U.S.C. § 501 *et seq.*) and the Employment Retirement Income Security Act ("ERISA") (29 U.S.C. § 1100 *et seq.*). These statutes impose fiduciary duties upon individual directors who may be officers of unions or trustees of pension funds who are ULLICO shareholders. These duties are similar to the statutory and fiduciary duties discussed above. However, outside Company counsel have advised the Special Counsel that the Special Counsel's mandate does not extend to the consideration of the applicability of these statutes to the conduct by individual directors because of the union or pension fund positions that they hold. Therefore, we have not analyzed these issues.

ULLICO provides pension fund administrative services. The Company has advised us that it does not make any investment decisions for, and therefore has no fiduciary duties under ERISA to, the pension funds for which it provides administrative services. Finally, ULLICO makes investment decisions for its own pension fund. ERISA fiduciary obligations exist in connection with acts by ULLICO's pension trustees (including Georgine and Carabillo) who also were heavily involved in the formulation and implementation of the repurchase programs. However, outside Company counsel have advised the Special Counsel that the Special Counsel's mandate does not extend to the consideration of the applicability of ERISA to the conduct by ULLICO pension fund trustees. Therefore, we have not analyzed these issues.

Securities Law

■ General

As part of our investigation, we evaluated the impact of the Company's actions through its officers and directors under applicable federal securities laws, including the general anti-fraud provisions of the Exchange Act as set forth in Section 10(b) and Rule 10b-5 and, in connection with tender offers, as set forth in Section 14(e) and the rules promulgated thereunder. We have also considered the applicability of the anti-fraud provisions of state securities, or "Blue Sky," laws. A brief discussion of potential liability issues under Blue Sky laws is included at the end of this section.

Rule 10b–5(b) proscribes, in connection with the purchase or sale of a security where interstate commerce or the mails are used, the making of "any untrue statement of material fact or…[omitting] to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." Rule 10b–5 also prohibits a "device, scheme or artifice to defraud" under subsection (a) thereof and, under subsection (c), any act, practice or course of business which acts as a "fraud or deceit" upon any person.[48]

Section 14(e) is a component of the Williams Act provisions regulating tender offers. Section 14(e) provides that: "It shall be unlawful for any person…to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer."

Section 14(e) also delegated to the SEC rulemaking authority to prescribe "means reasonably designed to prevent such acts and practices as are fraudulent, deceptive, or manipulative."[49] Section 14(e) is a "broad antifraud prohibition" that was modeled on the antifraud provisions of Section 10(b) and Rule 10b–5. It supplements the more precise disclosure provisions found elsewhere in the Williams Act while requiring disclosure "more explicitly addressed to the tender offer context than that required by Section 10(b)."[50] In addition, it has been interpreted as indicating Congressional intent "to assure basic honesty and fair dealing" in connection with tender offers.[51]

People who control primary violators may also be liable for violations of Section 10(b), Section 14(e) or the rules promulgated thereunder.[52]

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48 To establish liability under Section 10(b) of the Exchange Act and under Rule 10b-5, subsection (b), a plaintiff must show that "(1) the defendant made a false statement or omission of material fact (2) with scienter (3) upon which the plaintiff justifiably relied (4) that proximately caused the plaintiff's damages." Phillips v. LCI Int'l, Inc., 190 F.3d 609, 613 (4th Cir. 1999). Federal courts in D.C. impose an identical standard. See IDT Corp. v. eGlobe Inc., 140 F. Supp. 2d 30, 32-33 (D.D.C. 2001). Scienter in this context means "an intent to deceive or defraud." See Media Gen., Inc. v. Tomlin, 2001 U.S. Dist. LEXIS 11712, at *12 (D.D.C. Aug. 9, 2001).

In addition to the "misrepresentation or omission" prongs of 10b-5, the Rule also imposes liability for "any device, scheme or artifice to defraud" (Rule 10b-5(a)) or any other "act, practice or course of business" that "operates…as a fraud or deceit." Rule 10b-5(c). Subsections (a) and (c) arguably do not require a misrepresentation or omission. See Affiliated Ute Citizens of the State of Utah v. United States, 406 U.S. 128, 152-53 (1972) ("To be sure, the second subparagraph of [Rule 10b-5] specifies the making of an untrue statement of a material fact and the omission to state a material fact. The first and third paragraphs are not so restricted."); see also Shores v. Sklar, 647 F.2d 462, 469-70 (5th Cir. 1981); Ross v. Bank South, N.A., 885 F.2d 723, 729-30 n.10 (11th Cir. 1989) (following Shores but noting that scienter requirement met by showing of "severe recklessness"). In Santa Fe Indus., Inc. v. Green, 430 U.S. 462 (1977), the Court determined that 10b-5 was not violated in the absence of any "deception, misrepresentation or nondisclosure," lending support to the argument that "deception" could occur, even in the absence of a misrepresentation or nondisclosure. Id. at 476. In two recent Supreme Court decisions on Rule 10b-5, the Court emphasizes that Rule 10b-5 should be broadly interpreted to meet its remedial purposes. See S.E.C. v. Zandford, 122 S. Ct. 1899 (2002); Wharf Ltd. v. United Int'l Holdings, Inc., 532 U.S. 588 (2001).

49 15 U.S.C. 78n(e) (1994). LeBoeuf Lamb provided a detailed memorandum to ULLICO discussing the rules and requirements of Section 14(e) on March 27, 1997.

50 Schreiber v. Burlington Northern, Inc., 472 U.S. 1, 10-11 (1985) (citations omitted).

51 Macfadden Holdings, Inc. v. JB Acquisition Corp., 802 F.2d 62, 66 (2d Cir. 1986).

52 Section 20(a) provides: "Every person who, directly or indirectly, controls any person liable under any provision of this Act or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action."

To prove a violation of Section 10(b) or Section 14(e), the alleged wrongdoer needs to have acted with extreme or severe recklessness. In re Baan Co. Sec. Litig., 103 F. Supp. 2d 1, 19 (D.D.C. 2000) (finding scienter based on allegations of extreme recklessness). In Baan, the district court stated that scienter can be found based on "facts that constitute circumstantial evidence of either reckless or conscious behavior...A reckless statement is one involving not merely simple, or even excusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendants or is so obvious that the actor must have been aware of it." Baan, 103 F. Supp. 2d at 20–21; see also Chris-Craft Indus. Inc. v. Piper Aircraft Corp., 480 F.2d 341, 343 (2d Cir. 1973) ("In determining whether 14(e) violations were committed...we shall follow the principles developed under Rule 10b-5 regarding the elements of such violations.").[53]

■ Disclosure Issues

In 1997, the cash dividend paid to shareholders was substantially reduced from 8% to 2% and eliminated totally by 1999. The only method for distributions to most shareholders was the formal repurchase program and, to those shareholders who were aware of it, the "discretionary" repurchase program administered by the Chairman. In 1998 and 1999, during the time ULLICO's shareholder's equity was increasing because of the success of the Global Crossing investment, directors and officers *only* were allowed to purchase more shares.

There was little or no investment risk associated with the purchase of these shares because of the timing of the purchases and the manner in which ULLICO set its yearly share price, which did not timely account for this increase in stockholders' equity. These same directors and officers were allowed to sell their shares back to ULLICO at the highest possible price ($146.04) in 2000 and early 2001 due to the following factors: (1) all but one of the directors' and officers' holdings were below the 10,000 share proration threshold, allowing them to redeem 100% of their tendered shares in the formal repurchase program; (2) the discretionary authority of the Chairman to redeem shares in his discretion and, in the case of the officers and directors, included all that they tendered; and (3) the put options under Georgine's employment agreements.

The directors who participated in the Company's repurchase programs voted to approve the formal repurchase program and ratify the "discretionary" repurchase program at the November 3, 2000 Board meeting, except for three directors who benefited but did not attend that meeting. Those three directors nonetheless were

[53] There is no private right of action for aider and abettor liability for a 10b-5 violation, although the SEC can pursue the same under Section 17 of the Act. See Newcome v. Esrey, 862 F.2d 1099 (4th Cir. 1988). Also, mere breaches of fiduciary duty, not constituting deception or manipulation, do not violate Section 10(b) and Rule 10b-5. See Santa Fe Indus. v. Green, 430 U.S. 462 (1977). In a suit brought under Rule 10b-5, "the plaintiff must show both 'loss causation—that the misrepresentations or omissions caused the economic harm—and transaction causation—that the violations in question caused the [plaintiff] to engage in the transaction in question." Bennett v. United States Trust Co., 770 F.2d 308, 313 (2d Cir. 1985). A direct or proximate relationship between the loss and the misrepresentation must be shown. See id. at 314.

aware, or should have been aware, of the resolution effectuating the programs in which they participated, and they did not object to their implementation or otherwise disclose to the Board their interests in the approved transaction.

The Company's two principal officers, Georgine and Carabillo, were instrumental in the design of the repurchase programs, and were directly responsible for their implementation and the disclosures made to the Board and the Company's shareholders. When announcing the 2000 formal repurchase program to the shareholders in a letter dated November 21, 2000, Chairman Georgine stated that all shareholders would "share equitably in the offering." After reviewing relevant transactions, it is clear that they did not. In fact, holders of fewer than 10,000 shares who participated in the repurchase programs (primarily directors and officers) were treated significantly better than ULLICO's other shareholders.

The disclosure documents delivered in connection with the formal repurchase program arguably contained material misstatements or omissions in violation of the disclosure requirements of Rule 10b-5 and Section 14(e) of the Exchange Act. Under these provisions, a statement or omission is material if "there is a substantial likelihood that a reasonable investor would consider it important [in making an investment decision.]" Put another way, there must be a substantial likelihood that the disclosure of the information "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[54]

The disclosure documents used under the formal repurchase program prior to 2001 did not disclose the individual stock ownership of directors and officers, nor the July 1998 or December 1999 exclusive stock offers. The documents did not disclose the 40,000 share stock bonus afforded Chairman Georgine in 1999 and financed by ULLICO, nor the existence of Georgine's put rights under his employment agreements. The documents did not disclose the existence of the "discretionary" repurchase program administered by the Chairman or the fact that directors and officers sold a significant number of shares pursuant to this program in 2000 at the $146.04 per share price. The repurchase offer documents also did not clearly disclose the potential impact of the repurchase program's proration provisions, which were particularly significant in 2000 and 2001. Nor did they clearly disclose how these proration provisions benefited directors and officers. Arguably, these disclosures would have been material to the decision by shareholders to participate in the repurchase offers.

The possible inadequacy of ULLICO's repurchase offer disclosure is most apparent in the case of the 2000 repurchase program, given the stock issuances to ULLICO's directors and officers in 1998 and 1999 and the substantial stock repurchases by ULLICO at $146.04 per share in 2000, much of which occurred prior to the commencement of the formal repurchase program. Moreover, it was or should have been apparent to the directors and the principal officers of ULLICO that the 2% Rule

[54] TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

in the 2000 program, together with the record-high share price, would result in severe proration to holders of 10,000 or more shares. In our view, this impact was foreseeable and should have been better disclosed. As to the Chairman's "discretionary" repurchase program, he personally advised the Board at the November 3, 2000 meeting that it was *not* a program which he "advertised." In fact, the tender offer disclosure documents did not disclose the existence of the "discretionary" repurchase programs or any repurchases thereunder, including repurchases from insiders, other than possible repurchases of Capital Stock upon the death of a shareholder.

The repurchase offer disclosure documents may not have only failed to provide sufficient disclosure regarding the purchase and sale of stock by directors and officers, but they also may have contained specific disclosures that were arguably misleading, at least in the 2000 formal repurchase program. For example, the disclosure documents in each year stated that ULLICO "has not been advised that any of its directors and executive officers presently intend[s] to tender any shares personally owned by them pursuant to the Offer." In fact, according to witness accounts, ULLICO never asked directors or officers whether or not they intended to participate in the formal tender offers, raising a question as to whether ULLICO had any basis for making this disclosure.

Again, this is particularly true in 2000, when several officers and directors did participate in the formal repurchase program and tendered a significant number of shares pursuant to the "discretionary" repurchase program and, in the case of Chairman Georgine, his employment agreements. During 2000 and early 2001, ULLICO repurchased approximately $13.7 million of stock from directors and officers at a price of $146.04 per share, pursuant to the formal and "discretionary" repurchase programs and the Georgine employment agreements, both before and after the tender offer was made. None of these repurchases were clearly disclosed to shareholders.

The 2000 tender offer disclosure documents also stated, as did the tender offer documents used in prior years, that ULLICO and its Board of Directors believed the shares to be an "excellent investment opportunity for investors seeking long-term growth of capital."[55] Chairman Georgine made similar statements to directors and shareholders in correspondence relating to stock purchases as well as at Board meetings. It is difficult, however, to reconcile these statements, at least those made in 2000, with the fact that officers and directors (including Chairman Georgine) were, at the same time these statements were being made, selling a substantial amount of ULLICO shares. In light of these statements, it is unclear how the disclosure of repurchases by ULLICO from directors and officers would not have been viewed as material to a shareholder's decision to participate in the formal repurchase program.

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[55] It is interesting to note that this statement was deleted from the 2001 repurchase offer.

During the period between 1997 and 2001, the only director and officer stock transactions that were specifically disclosed in the tender offer documents were the purchases by directors and officers in the Fall of 1998. The purchases made in the Summer of 1998 and the Winter of 1999 were never clearly disclosed to shareholders, nor were any repurchases from directors or officers pursuant to the formal or "discretionary" repurchase programs or the Georgine employment agreements.

The apparent rationale for not disclosing these transactions was that they fell outside a "40 business day" standard used in the disclosure documents. The tender offer disclosure documents contained disclosure stating that "based upon ULLICO's records and upon information provided to ULLICO by its directors and executive officers, neither ULLICO nor any of its subsidiaries nor, to the best of ULLICO's knowledge, any of the directors or officers of ULLICO,...has effected any transactions in ULLICO's shares during the 40 business days prior to the date [of the relevant disclosure document]."

We have been unable to ascertain precisely why ULLICO used a "40 business day" cut-off in determining its disclosure obligation. However, an outside attorney for ULLICO indicated that it may have been used by analogy to a specific disclosure rule applicable to public company tender offers. However, this specific disclosure requirement should not have superseded the general disclosure requirement under Rule 10b–5 and Section 14(e), which prohibits the making of "any untrue statement of material fact or...[omitting] to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, *not misleading*." (Emphasis added.)

Information regarding purchases and repurchases from directors and officers that was omitted from the tender offer disclosure documents arguably could have been material to the investment decision being asked of ULLICO's shareholders. The information may also have led certain shareholders to oppose, or seek to enjoin, the formal repurchase program. Moreover, ULLICO may have made matters worse by providing limited disclosure to the effect that no stock transactions had occurred within the preceding "40 business days." While literally true, this disclosure, in the context of the other disclosures in the tender offer documents, arguably created a misleading impression that ULLICO's officers and directors were not actively engaged in the sale of Company stock.

Finally, the tender offer disclosure documents did not contain any information regarding executive compensation, nor was executive compensation information (including information regarding the Georgine employment agreements) available to shareholders from any other source. In fact, in the course of our investigation, we found substantial evidence that ULLICO management engaged in a concerted effort to withhold executive compensation information from members of ULLICO's Board of Directors and its shareholders.[56]

There is a plausible argument that compensation information regarding ULLICO's executives would not have been material to ULLICO's shareholders in making their decisions as to whether to participate in the formal repurchase program and, therefore, disclosure was not required. Moreover, executive compensation disclosure is generally not included in tender offer disclosure documents for public companies (although the information is always available through another publicly-available filing). However, where, as here, a substantial amount of the benefits received by ULLICO's senior officers and directors (particularly Chairman Georgine) was in the form of stock issued and repurchased by ULLICO pursuant to transactions and agreements that were not otherwise disclosed, one could take the position that some disclosure of executive financial benefits should have been made, particularly in 2000 and 2001 when the bulk of the stock repurchases from management occurred.

Another disclosure issue in connection with ULLICO's tender offer documents involves its recommendation with respect to the offer. Rule 14e–2 under the Exchange Act provides that the subject company of a tender offer must, within 10 business days from the dissemination of the tender offer, make a statement to its shareholders that it: (1) recommends acceptance of the offer; (2) recommends rejection of the offer; (3) is remaining neutral; or (4) is unable to take a position.[57] ULLICO facially complied with this rule by including in the tender offer disclosure documents a statement that "neither the Company nor its Board of Directors makes any recommendation as to whether any shareholder should tender any or all such shareholder's shares pursuant to the offer."[58]

However, as previously discussed, the 2000 repurchase offer disclosure document also stated that ULLICO and its Board of Directors believed that the shares represented "an excellent investment opportunity for investors seeking long-term growth of capital" and that ULLICO "had not been advised that any of its directors and officers intended to tender any shares pursuant to the offer." Despite possible technical compliance with Rule 14e–2, it is difficult to reconcile the disclosure contained in ULLICO's repurchase documents with the actions of ULLICO's directors and officers, particularly in 2000.

In 2000, at the same time that ULLICO took a neutral position with respect to the repurchase offer, denied knowledge of any intention by the directors and officers to participate in the repurchase offer, and endorsed the shares of ULLICO as an excellent long-term investment opportunity, ULLICO management was aware that

56 In a memorandum dated December 14, 1995, Dennis Lyons of Arnold & Porter advised the Company that some authorities had contended that under state corporate law a corporation that solicits proxies for an annual meeting, even though not subject to the SEC proxy rules, has an obligation to make available to the Company's shareholders information regarding the Company's senior management, including compensation information.

57 See Rule 14e–2.

58 This statement is taken from the ULLICO Offer to Purchase dated December 14, 2000. There are similar statements in each year's repurchase offer disclosure document.

several directors and officers were selling a substantial number of shares pursuant to a "discretionary" repurchase program and, in the case of Georgine, his employment agreements.

While the disclosure in ULLICO's repurchase offer documents clearly could have been better, reasonable persons could disagree over whether the disclosure deficiencies are actionable. For example, while ULLICO did not disclose in the 2000 repurchase offer disclosure documents that all directors and executive officers (other than Georgine) owned fewer than 10,000 shares and, therefore, would benefit from the proration threshold, ULLICO's proxy materials, distributed several months earlier, did disclose individual director share ownership. Similarly, a very conscientious shareholder could have compared annual proxy materials between 1998 and 2001 and inferred that the Company was issuing and repurchasing stock from insiders. Moreover, the impact of the Global Crossing investment on the Company's shareholders' equity (and book value per share) was discussed in the Company's disclosure documents and a reasonable investor would likely have concluded in 2000, based on the disclosure provided and information generally available, that it was a good time to sell ULLICO stock. Therefore, one could conclude that the disclosure inadequacies, while significant, should not give rise to a claim under Rule 10b-5 or Section 14(e) of the Exchange Act. There also is an argument that even if material, the disclosure deficiencies were not the primary cause of any harm suffered by ULLICO's larger shareholders.

■ Deceptive Acts or Practices Issues

As discussed above, Rule 10b–5 prohibits any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce...from (a) employing "any device, scheme, or artifice to defraud"... or (c) engaging in "any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person," in connection with the purchase or sale of any security. In addition, Section 14(e) prohibits a person from engaging in any "fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer."[59] Section 14(e) also delegates to the SEC rulemaking authority to prescribe "means reasonably designed to prevent" such acts and practices as are "fraudulent, deceptive or manipulative."[60]

Arguably, the stock issuances in 1998 and 1999 and the subsequent repurchases pursuant to the formal and "discretionary" repurchase programs constituted deceptive or manipulative acts or practices in violation of Rule 10b–5(a) and (c) and Section 14(e). A central element of the formal repurchase program is that it has treated holders of fewer than 10,000 shares in a significantly different manner than ULLICO's other shareholders. In addition, there is evidence that in the

59 United States v. O'Hagan, 521 U.S. 642, 667, 673 (1997).

60 The Supreme Court has interpreted this phrase to authorize SEC prohibition not only of the "core" activity, namely fraud, but also of sufficiently related activity that, although not necessarily fraudulent, nonetheless falls within the prophylactic scope of a rule "reasonably designed" to prevent the core activity (such as deceptive or manipulative acts or practices). Id.

"discretionary" repurchase program, smaller shareholders (principally directors and officers) were treated preferentially. As discussed earlier, we have not been able to discern the precise business purpose or basis for distinguishing between smaller shareholders (principally directors and officers) and ULLICO's other shareholders under the formal and "discretionary" repurchase programs in such a significant manner.

In particular, it is unclear why ULLICO adopted and retained the 10,000 share proration threshold in the 2000 repurchase program. Although certain of ULLICO's directors and officers have offered explanations for the threshold, none appears compelling and it should have been apparent, particularly in 2000, that the threshold would result in a dramatic disparity in the treatment of ULLICO's shareholders under the formal repurchase program. Both LeBoeuf Lamb and Arnold & Porter questioned the appropriateness of this 10,000 share threshold, but these concerns apparently were ignored.[61]

In addition, one could argue that the stock purchases made by the directors and officers in 1999 (and perhaps in 1998) violated Rule 14e–3. Rule 14e–3 was adopted in an effort to regulate insider and tippee trading in the tender offer context.[62] In United States. v. O'Hagan,[63] the Supreme Court approved Rule 14e–3 as a preventative rule designed to prevent violations of Section 14(e). Rule 14e–3(a) is triggered if any person has taken a "substantial step" to commence a tender offer. This rule applies both before and after a tender offer has commenced and, indeed, even if a tender offer never commences as long as a substantial step has been taken.[64]

Under Rule 14e–3, once a company has taken a "substantial step" to commence a tender offer, it is illegal for those who possess material information regarding the

61 Although ULLICO is not a public company, by way of comparison, its proration provisions would not have complied with the rules governing tender offers for public companies. Rule 13e–4 of the Exchange Act governs tender offers by public companies of their own equity securities (so-called "issuer tender offers"). Under the Rule, in a situation where an issuer is making a tender offer for less than all of the outstanding securities of any class, if the offer is over-subscribed, the issuer must purchase those securities tendered on a pro-rata basis. A limited exception to this rule is for holders of fewer than 100 shares of a security (an "odd-lot") who may sell all of their securities without proration. This practice is often used to eliminate "odd lot" owners of a security.

62 Rule 14e-3(a) provides in pertinent part:

If any person has taken a substantial step or steps to commence, or has commenced, a tender offer (the "offering person"), it shall constitute a fraudulent, deceptive or manipulative act or practice within the meaning of Section 14(e) of the [1934] Act for any other person who is in possession of material information relating to such tender offer which information he knows or has reason to know is nonpublic and which he knows or has reason to know has been acquired directly or indirectly from:

(1) The offering person,

(2) The issuer of the securities sought or to be sought by such tender offer, or

(3) Any officer, director, partner or employee or any other person acting on behalf of the offering person or such issuer,

to purchase or sell or cause to be purchased or sold any of such securities or any securities convertible into or exchangeable for any such securities or any option or right to obtain or to dispose of any of the foregoing securities, unless within a reasonable time prior to any purchase or sale such information and its source are publicly disclosed by press release or otherwise.

63 521 U.S. at 672-73.

64 See SEC v. Mayhew, 121 F.3d 44, 53 (2d Cir. 1997) (citing SEC v. Maio, 51 F.3d 623 (7th Cir. 1995) (meeting of officials "much more serious than any previous discussion between the parties" satisfies substantial step requirement); SEC v. Musella, 578 F. Supp. 425, 443 (S.D.N.Y. 1984) (retaining law firm before tender offer is substantial step); Camelot Indus. Corp. v. Vista Res., Inc., 535 F. Supp. 1174, 1183 (S.D.N.Y. 1982) (meeting between officers is a substantial step)).

tender offer to purchase or sell securities of that company prior to the time the tender offer is publicly disclosed. Although we have not identified a reported case in which Rule 14e-3 was applied in a similar context, it could be argued that the purchases of stock by directors and officers in 1998 and 1999 violated Rule 14e-3(a).

The 1999 purchases, in particular, were completed on December 29, 1999, pursuant to offers made by Chairman Georgine on December 17, 1999. The purchases were effected at the price per share established by ULLICO's Board of Directors in May 1999 based on the book value per share as of December 31, 1998. Accordingly, the purchase price for the shares offered in December 1999 was based on financial information that was almost one-year old. During this one-year period, the price of Global Crossing stock had, on a split-adjusted basis, more than doubled.

ULLICO's stockholders' equity experienced an even greater increase during the course of 1999. ULLICO's stockholders' equity increased by nearly 90% from December 31, 1998 to June 30, 1999 and by an additional 40% from June 30, 1999 to the end of the year, largely based on unrealized gains from ULLICO's investment in Global Crossing. Moreover, based on our investigation, it is quite clear that, at the time, management was aware of the significant increase in the value of this investment and its corresponding effect on the book value of ULLICO's stock.

At the time of the December 1999 stock purchases by officers and directors, it is likely that ULLICO had already taken "substantial steps" to commence the 2000 tender offer, as such term has been interpreted under Rule 14e-3. The Board approved an 11-year $180 million repurchase program in 1997. While the terms of each specific tender offer were thereafter approved annually by the Board, the repurchase program was a long-term program designed to replace cash dividends as the principal means of making distributions to ULLICO's shareholders, and ULLICO never significantly deviated from the program (other than the proposed "extraordinary" program adopted in May 2000 that was later abandoned). In fact, the terms of the program, including the manner in which ULLICO's shares were valued and the 10,000 share proration threshold, remained very consistent between 1997 and 2001, and we found no evidence that either ULLICO's management or Board of Directors considered abandoning or significantly altering (other than with respect to size) the repurchase program during this time period.

In December 1999, at least certain directors and officers were clearly in a better position than ULLICO's other shareholders to predict the substantial increase in ULLICO's book value per share that would be used for purposes of the 2000 repurchase offer. Directors and officers were also in an inherently more favorable position to assess the likelihood of the 2000 repurchase offer being approved and the probable terms of the offer.

Therefore, one could argue that the stock purchases made by directors and officers in 1999 (and perhaps in 1998 as well) were made in anticipation of the subsequent year's tender offer at a higher price per share after ULLICO had undertaken "substantial steps" to commence such tender offer. As a result, if one were to conclude that at the time of the stock purchases directors and officers possessed material, inside information regarding the following year's repurchase offer, these purchases could arguably constitute deceptive practices within the meaning of Section 14(e) of the Exchange Act.[65] In our view, however, the hurdles to establishing a violation of Rule 14e-3 would be quite significant.

Intent, Causation and Reliance Issues

Any violation of the federal securities laws requires that the violator acted with at least extreme or severe recklessness. While directors may have acted negligently in approving the 2000 stock repurchase program and the "discretionary" repurchase program, in our view they did not act with severe recklessness.

In addition, given the highly technical nature of the applicable securities law requirements, and the fact that numerous lawyers and law firms were aware of the 1998 and 1999 stock offers and were provided the opportunity to review the structure of the repurchase programs and the disclosure documents prepared in connection with those programs, the Company and certain of its directors and officers may have a viable reliance on counsel defense to any federal securities law claim.

Finally, even if one were to demonstrate that certain of ULLICO's directors and officers acted with severe recklessness in formulating, approving and implementing the stock offer and repurchase programs, it is not clear that the other elements of a federal securities law claim relating to material misrepresentations or omissions in the tender offer disclosure documents, such as causation and reliance, could be satisfied.

State Securities Law Issues

In addition to the federal securities laws, securities transactions are subject to the general antifraud provisions of state securities, or "Blue Sky," laws.[66] These laws typically provide for criminal and civil penalties and, in some cases, private remedies for investors injured as a result of violations. They also generally provide for control person liability.

The state securities laws of a jurisdiction may be applied whenever there has been an offer or sale of securities in that jurisdiction, regardless of the offeror's state of incorporation or its place of business. Accordingly, in a situation such as here, where

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65 Moreover, paragraph (d) of Rule 14e-3 makes it unlawful for any person to communicate material nonpublic information relating to a tender offer if it is foreseeable that the communication is likely to result in an improper purchase, except for specified communications that are generally necessary to the tender offer process. To the extent that ULLICO's directors and officers communicated with each other or others regarding the terms of any tender offer undertaken during the relevant period, it is possible that they did so in violation of Rule 14e-3(d).

66 We have not included in the Report an analysis of the subject transactions under a common law fraud theory (fraudulent misrepresentation or concealment) since Rule 10b-5 has generally been held to be substantively broader, and subject to a lower burden of proof, than a common law fraud action. However, in situations involving corporate mismanagement, it is possible that the common law may provide redress in areas where Rule 10b-5's application has been somewhat limited.

ULLICO made offers to sell and repurchase securities to shareholders residing throughout the United States, the Blue Sky laws of many states could be implicated.

In contrast to federal law, there is a lower standard for culpability under the Blue Sky laws of many states in the context of a civil securities claim relating to inaccurate or misleading disclosures in offering documents. While we have not analyzed the Blue Sky laws of all 50 states, in many states, if a plaintiff proves material misstatements or omissions in an offering document, to avoid liability, the defendant must then establish that he did not know, and in the exercise of reasonable care could not have known, of the misstatement or omission.[67] In effect, these states apply a negligence standard.

It is therefore possible that, because of the lower intent standard, ULLICO and its "control persons" who designed, approved, implemented and, in some cases, benefited from the stock offer and repurchase programs could be subject to claims of civil liability under the Blue Sky laws of certain states in which offers were made. A reliance on counsel defense may not be available for violations of those state securities laws where the culpability standard is negligence. See Idaho v. Montgomery, 135 Idaho Rptr. 348, 351 (2001); Colorado v. Terranova, 38 Col. App. 476, 481-82 (1976).

Criminal Law

Underlying every criminal prosecution is the element of criminal intent. For example, in a financial fraud case, a prosecutor is required to demonstrate beyond a reasonable doubt that a defendant had the specific intent to defraud the victim. Civil liability, on the other hand, can be established through a showing of severe recklessness or even negligence, depending upon the legal theory used. While the evidence gathered in our investigation demonstrates that certain ULLICO officers and directors were treated more favorably than other shareholders in the sales of their ULLICO stock, their actions in connection with these sales, while arguably improper, were not criminal. Based on the information available to the Special Counsel, no evidence of criminal intent has been uncovered and therefore, in our opinion, a prosecutor, based upon the present record, should not conclude that criminal statutes reviewed as part of our investigation have been violated.

Role of Counsel and Other Professionals

In our investigation, several directors and officers of ULLICO indicated that, with respect to the design and implementation of the exclusive stock offer and repurchase programs, they relied on inside and outside counsel as well as other professionals, including CSFB and PwC.

In performing his or her duties on behalf of the corporation, a director may rely on information, opinions, reports and statements prepared by an officer or employee of

[67] See, e.g., Maryland, District of Columbia, Michigan, Indiana, Massachusetts and Wyoming.

the corporation whom the director reasonably believes to be reliable and competent in the matters presented. MGCL Section 2–405.1(b)(1)(i). A director may similarly rely on information provided by a professional or expert, including a lawyer, investment banker or certified public accountant, as to matters the director reasonably believes to be within that person's professional or expert competence. MGCL Section 2–405(b)(1)(ii).[68] The burden of proof is on the director defendant to demonstrate that he or she meets the requirements of Section 2-405.1(b). Yost v. Early, 589 A.2d 1291, 1299 (Md. App. 1991). Reliance on counsel is not a complete defense but, instead, constitutes evidence of good faith. Moreover, "[a] director is not acting in good faith if he has any knowledge concerning the matter in question which would cause such reliance to be unwarranted." MGCL Section 2-405(b)(2).

Officers may invoke a common law advice of counsel defense. To invoke an advice of counsel defense under Maryland law, a defendant must show "(1) that he or she communicated to counsel all facts he or she knew or reasonably should have known; and (2) that he or she relied in good faith upon the advice given." VF Corp. v. Wrexham Aviation Corp., 686 A.2d 647, 653 (Md. App. 1996). "Seeking and relying upon the advice of an attorney not only constitutes no evidence of fraud, but it is evidence of the contrary." VF Corp. v. Wrexham Aviation Corp., 715 A.2d 188, 198 (Md. 1998).[69] As with directors, the burden of proof is on the officer defendant to demonstrate that he or she has a valid advice of counsel defense. SEC v. Scott, 565 F. Supp. 1513, 1534 (S.D.N.Y. 1983).

Outside Company counsel have contended that the directors and officers of the Company relied heavily on outside counsel, specifically two law firms, LeBoeuf Lamb and Arnold & Porter. Both firms provided advice during the relevant period, with LeBoeuf Lamb being principal outside corporate counsel until some time in 1999, and Arnold & Porter thereafter assuming that role. Both firms at various times also reviewed the disclosure documents related to the 1997 through 2001 formal repurchase programs.

As to LeBoeuf Lamb, David Woodward, who for many years was the principal LeBoeuf Lamb attorney servicing the ULLICO account, died suddenly in 1998. Douglas Beck, a younger partner at LeBoeuf, took over for Woodward but did not serve ULLICO in the same role Woodward had, *i.e.*, as *de facto* outside general counsel. By the Fall of 2000, LeBoeuf Lamb's role had significantly diminished.

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68 See also Billman v. Maryland Deposit Ins. Fund Corp., 593 A.2d 684, 697 (Md. App. 1991); Pittsburgh Terminal Corp. v. Baltimore & Ohio R.R., 875 F.2d 549, 552 (6th Cir. 1989). A director may also rely upon information and other reports from board committees. However, "[t]he appointment of any committee, the delegation of authority to it, or action by it under that authority does not constitute, of itself, compliance...with the standard provided in § 2-405.1[.]" Yost v. Early, 589 A.2d 1291, 1299 (Md. App. 1991).

69 "A defendant must establish that he actively sought and relied on the advice of counsel..." SEC v. Scott, 565 F. Supp. 1513, 1535 (S.D. N.Y. 1983). A defendant seeking to assert the advice of counsel defense must also apprise his counsel of all the material facts. Id. at 1534. (Defendant failed "to apprise his counsel of all the material facts and therefore cannot rely on his counsel's advice to shield him from culpability."). "Good faith reliance on the advice of counsel means more than simply supplying counsel with information. Corporate executives have an independent duty to insure that proper disclosures are made." SEC v. Enter. Solutions, Inc., 142 F. Supp. 2d 561, 576 (S.D.N.Y. 2001).

While Beck reviewed the tender offer disclosure documents for the 2000 repurchase program (whose elements significantly favored the director and officer shareholders), it does not appear that he was asked to consider the broader issues about the program, including its fairness to all of ULLICO's shareholders and potential self-interested transactions. In addition, there is no evidence that LeBoeuf Lamb knew, at the time, of the stock purchase offers to directors and officers in July 1998 and December 1999.

Arnold & Porter was more substantively involved during the critical period leading up to the implementation of the 2000–01 stock repurchases. Arnold & Porter lawyers were involved in drafting and/or reviewing the May and November 2000 Board resolutions which approved the programs at issue. Arnold & Porter was also involved in a substantive review of the terms of, and the disclosure documents pertaining to, the 2000 formal repurchase offer. In addition, Arnold & Porter lawyers were aware of substantial repurchases of stock from directors and officers pursuant to the "discretionary" program in the Summer and early Fall of 2000 as well as the 1998 and 1999 stock offers.

The Company and its directors and officers have contended that because of Arnold & Porter's work for the Company in 2000, and the information available to the law firm, the potential fiduciary duty issues related to the repurchase programs should have been apparent to Arnold & Porter. However, the evidence is not persuasive that Arnold & Porter or, for that matter, LeBoeuf Lamb, was specifically requested to consider the fiduciary duty issues implicated by the approval of the 1998 and 1999 stock offers and 2000 repurchase programs through which certain officers and directors significantly benefited. These law firms deny having been given this assignment and Chief Legal Officer Carabillo denies specifically giving such an assignment. Nevertheless, Arnold & Porter arguably had access to sufficient information about the stock offers, the "discretionary" repurchase program and the structure of the formal 2000 repurchase program such that, if asked, it could have provided advice concerning the fiduciary duty implications of these programs.

In fact, there is evidence that one Arnold & Porter partner, without being asked by ULLICO, did recognize potential issues related to director self-interested transactions in connection with the repurchase programs approved in November 2000 and communicated certain concerns to the Company. Dennis Lyons, a senior partner at Arnold & Porter, stated at his interview that he advised Carabillo in connection with the preparation of the November 3, 2000 Board resolutions that there was an issue in connection with the Board approving a repurchase program from which certain directors would benefit. Lyons stated that he told Carabillo that it was advisable that ULLICO have an independent committee of the Board comprised of disinterested directors approve the 2000 formal repurchase program and review any repurchases from directors through the "discretionary" program. According to Lyons, Carabillo responded that he intended to have the information related to prior "discretionary" stock repurchases disclosed to the Compensation Committee instead of having these transactions approved by the Board or one of its committees. It appears that Carabillo's decision was not objected to by Arnold & Porter. This advice by Arnold & Porter, not followed by Carabillo, appears to be the only advice affirmatively provided by outside counsel relevant to the fiduciary duty issues discussed in this Report.

Outside Company counsel and counsel for ULLICO's directors and officers have nonetheless asserted that the outside law firms, given the information in their possession, had a professional responsibility to identify and make the Company aware of the potential fiduciary duty implications of the stock offer and repurchase programs. Even assuming that such a duty existed, Maryland law does not allow directors to satisfy their fiduciary duties based on a mere assumption from outside counsel's silence that the transactions at issue did not raise fiduciary duty concerns. To the contrary, the pertinent Maryland statute allows directors to rely on information contained in an affirmative "opinion, report, or statement" but makes no reference to the ability of directors to rely on the absence of legal advice. MGCL Section 2-405.1(b). Similarly, Maryland common law requires reliance "in good faith upon the advice *given*." VF Corp., 686 A.2d at 653 (emphasis added). Therefore, it is unlikely that the Company, its directors and officers could succeed in meeting their burden of showing that an advice of counsel defense is warranted under this theory.

Moreover, advice of counsel would not shield officers and directors from liability based on poor business, as opposed to legal, decisions. As one commentator noted in connection with the advice of counsel defense:

> Many defendant officers and directors, in the course of litigation against them, seek to justify their actions through a claim that they relied on the advice of their legal counsel. Technically speaking, this is not a defense in and of itself, but rather only an evidentiary fact relevant in certain causes of action in helping to establish the defendant's reliance upon the business judgment rule...
>
> A corporate officer or director is expected to have his own good business judgment and the fact that he or she relied upon an attorney's business judgment would not absolve the officer or director from having exercised due care.

Dan L. Goldwasser, Reliance on Advice of Counsel, 623 PLI/Comm 181, 183 (June 4, 1992).

Similarly, in Hines v. Dataline Sys. Inc., 787 P.2d 8, 19 (Wash. 1990) (en banc), the Washington State Supreme Court stated as follows:

> Reliance on counsel regarding the materiality of facts does not sustain the officer's burden of proof that he didn't know of the *existence of the facts* by reason of which liability is alleged to exist...We agree with the Court of Appeals that a director cannot "wash his hands of all corporate decisions particularly when he has access to the same facts as counsel did in the case at hand."

(Emphasis added.)

Accordingly, directors may also have difficulty meeting their burden of establishing an advice of counsel defense to a fiduciary duty claim given that the transactions at issue primarily involved business, as opposed to legal, decisions.[70] Any reliance on counsel by directors and officers would also not likely shield them from responsibility for their actions based on the facts they knew or should have known. In short, a strong argument exists that the exercise of good business judgment and due care should have led a reasonably prudent director and officer to conclude that the repurchase programs as structured and implemented, at least in 2000, impermissibly benefited insiders.

To the extent directors and officers claim that they relied on advice provided by Chief Legal Officer Carabillo, such reliance may not be sufficient to provide a defense given that Carabillo's advice was neither independent nor objective. Carabillo could not be deemed "independent" legal counsel given that he helped design the programs at issue and personally benefited from those programs. See, e.g., SEC v. Cavanagh, 1 F. Supp. 2d 337, 374 (S.D.N.Y. 1998) (holding advice of counsel defense unavailable because defendant "could not reasonably have expected [counsel] to render an independent opinion as to the legality of the transaction given his personal involvement in structuring it and his financial stake in its completion"). Although we have not found a Maryland case on point, Maryland statutory law is consistent with this principle in that it states: "A director is not acting in good faith if he has any knowledge concerning the matter in question which would cause such reliance to be unwarranted." MGCL Section 2-405(b)(2).

As indicated above, however, the advice of counsel inquiry is different in the federal securities law context. Given the highly technical nature of the applicable securities law requirements, and the fact that numerous lawyers and law firms were aware of the 1998 and 1999 stock offers and were provided the opportunity to review the structure of the repurchase programs and the disclosure documents prepared in connection with those programs, the Company and certain of its directors and officers may have a viable reliance on counsel defense to any federal securities law claim. However, a reliance on counsel defense may not be available for violations of those state securities laws where the culpability standard is negligence.

As to the other professionals providing advice to ULLICO, only PwC and CSFB have been identified as companies upon which management and the Board relied in implementing the programs at issue. However, our investigation revealed that PwC did not provide advice on the substantive terms of the stock offers or repurchase programs but was principally involved in providing and verifying financial information contained in the tender offer documents. While CSFB helped design the 1997 repurchase program and reviewed the 2000 "extraordinary" repurchase program, we were provided with no evidence that CSFB ever reviewed the 1998 and

[70] The civil application of the reliance on counsel defense is different than in the criminal context where, "[g]ood faith reliance on advice of counsel by a criminal defendant may rebut a showing of criminal intent." SEC v. Enter. Solutions, Inc., 142 F. Supp. 2d 561, 576 (S.D.N.Y. 2001).

1999 stock purchase offers or the stock repurchase programs (formal and "discretionary") adopted by the Board in November 2000.

Disgorgement, Rescission and Ratification

■ Disgorgement or Rescission

"Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989). The concept of disgorgement is applied similarly whether the violations at issue constitute securities fraud or breaches of fiduciary duty.

Courts have broad equitable powers to order disgorgement in securities fraud cases. See SEC v. First Pac. Bancorp., 142 F.3d 1186, 1191 (9th Cir. 1998) ("The district court has broad equity powers to order the disgorgement of 'ill-gotten gains' obtained through the violation of the securities laws."); see also First City Fin. Corp., 890 F.2d at 1230 ("We see no indication in the language or the legislative history of the Exchange Act that even implies a restriction on the equitable remedies of the district courts."). Courts will typically order defendants to disgorge their "ill-gotten gains" where it is necessary to prevent unjust enrichment and deter others from violating the securities laws.[71] In ordering disgorgement, courts may only exercise their equitable power over property causally related to the wrongdoing. First City Fin. Corp., 890 F.2d at 1231. However, "disgorgement need only be a reasonable approximation of profits causally connected to the violation." Id.

Similarly, "[t]here are many potential remedies for a breach of fiduciary duty, including restitution, rescission, disgorgement of profits, and constructive trusts." Avianca, Inc. v. Corriea, 1993 WL 797455, at *4 (D.D.C. 1993). "It is well established that a court has extraordinary powers when confronted with a violation of a fiduciary duty." Id. "The reason such unusual remedies are tolerated—even encouraged—is that there is a pressing need for remedies in fiduciary duty cases, remedies that will serve to deter violations of fiduciary duty." Id. Maryland law recognizes both restitution and disgorgement as remedies for breaches of fiduciary duty. Lerner Corp. v. Three Winthrop Props., Inc., 723 A.2d 560, 566 (Md. App. 1999).

In lieu of disgorgement, the Company could also consider rescission. Under this remedy, the Board could declare some or all of the transactions under review as void at their inception, and treat the transactions as if they had never happened. Rescission is commonly used as a remedy in securities fraud cases. See United States ex rel. Rahman v. Oncology Assocs., 198 F.3d 489, 498 (4th Cir. 1999).

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[71] See SEC v. Fischbach Corp., 133 F.3d 170, 175 (2nd Cir. 1997) ("The primary purpose of disgorgement orders is to deter violations of the securities laws by depriving violators of their ill-gotten gains."); First Pacific Bancorp., 142 F.3d at 1190 (9th Cir. 1998) ("Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable."); SEC v. Johnston, 143 F.3d 260, 262 (6th Cir. 1998) ("The purpose of disgorgement is to force [a] defendant to give up the amount by which he was unjustly enriched rather than to compensate the victims of fraud.").

Similarly, courts have broad equitable powers to order rescission as a remedy for breaches of fiduciary duty. See Arkrotirianakis v. Burroughs, 262 F. Supp. 918, 924 (D. Md. 1967); see also Avianca, Inc., 1993 WL 797455, at *4 ("There are many potential remedies for a breach of fiduciary duty, including … rescission[.]").

In determining whether to recommend disgorgement or rescission, the Company, in consultation with its tax counsel, should consider the potential tax consequences each remedy will trigger.

■ Ratification

In general, a self-interested or unauthorized transaction between a corporation and one of its directors or officers is not void or voidable on those grounds if disinterested directors or disinterested stockholders approve the transaction at issue. MGCL §§ 2–419(a), (b); Wittman v. Crooke, 120 Md. App. 369, 707 A.2d 422 (Md. App. 1998) ("Maryland has long recognized the proposition that a board of directors is not 'liable to stockholders for acts ratified by them.'").

To have a valid ratification, the interest must be fully "disclosed or known" to the board, committee or stockholders approving the transaction. MGCL § 2–419(b)(1). Moreover, a majority of disinterested directors or shareholders must vote to approve the transaction. Id. § 2–419(b)(1)(i) & (ii). The presence of interested directors at the meeting where the board approves the transaction and the counting of the interested director's vote does not vitiate the ratification, so long as a majority vote of disinterested directors approves the transaction. Id. §§ 2–419(a)(2) & (3). The vote may occur either prospectively to approve the transaction or retrospectively to ratify it, and approval "is effective without regard to the size of the benefit that the director may receive from the contract or transaction." Hanks § 6.22[b] at 220.4.[72]

[72] In addition to director or shareholder approval, the Maryland statute allows for ratification of an interested director transaction by "[a]ny procedures authorized by Section 2-418." MGCL § 2-419(e). The procedures referred to in § 2-418 are those for a determination of eligibility for indemnification by a special counsel. Id. § 2-418 (e)(2). Interested directors may participate in the selection of special legal counsel if a quorum of disinterested board members cannot be established. Id. § 2-418(e)(2)(ii).

Corporate Governance

Introduction

During our investigation, it has become apparent that many of the significant issues related to ULLICO's sales and repurchases of its own stock might have been avoided had the Company implemented and enforced sound corporate governance policies. ULLICO's Board took an important first step in this regard by establishing a Corporate Governance Committee in 2000.

Sound corporate governance necessarily implicates a host of important issues, including board composition, director qualifications and executive and director compensation. A critical element of corporate governance and accountability is "independence." A corporation should be managed under the direction and supervision of a board of directors that is independent from management. Our investigation revealed that management too often injected itself into and was permitted to direct the Board's deliberative process. Moreover, the Board too often wholly delegated core responsibilities (such as executive compensation) to committees, the members of which were essentially chosen by the Chairman (U 30552, Tab 2), raising questions as to whether Board or committee actions were inappropriately influenced by management. Committee actions were not adequately disclosed to or monitored by the Board.

Senior management and the Board must collaborate, but it is critical that the Board make its own informed and independent business judgments. Moreover, in those areas where there is or may be a conflict of interest with management, independent directors should have exclusive control, *e.g.*, audit, compensation, nominating/governance committees. Management and those directors affiliated with members of management should not be on these committees and should not participate in their deliberations. Moreover, the members of these committees should be selected by the Board as a whole, or by an independent committee of the Board, and not by the Chairman and Chief Executive Officer.

Another fundamental element of corporate governance and accountability is the full and complete disclosure of all material matters and developments to the company's governing body: the board of directors. The board of directors of a corporation is ultimately responsible for governing the corporation. Management operates under the supervision and at the direction of the board of directors. A board can only act in the best interests of shareholders if it is adequately informed. It is rarely, if ever, appropriate for management to withhold important information from members of a company's board of directors, even if management concludes that disclosure is not legally required. In those instances where withholding information may have a legitimate business purpose, that determination should be made not by management, but rather through a process that includes a disinterested group of directors.

Board Independence

The New York Stock Exchange ("NYSE") and NASDAQ recently adopted proposed listing standards that would require that independent outside directors comprise a majority of the Board and that key committees (*e.g.*, audit, compensation, and nominating/governance committees) be made up solely of independent directors. Institutional investors and other organizations, including CalPERS, TIAA-CREF and AFL-CIO, have established voting guidelines that highlight the importance of independent directors. See, e.g., AFL-CIO Proxy Voting Guidelines (1997); TIAA-CREF Policy Statement on Corporate Governance (1997); CalPERS U.S. Corporate Governance—Core Principles & Guidelines (1998); Damon Silvers Testimony to NYSE (AFL-CIO) (May 2002).

ULLICO's Board currently has only two management-directors, and most directors would likely be considered "independent" as that term has been historically defined. However, the concept of director independence has recently received substantial attention and many have suggested tightening the definition of "independent" director.

The NYSE, for example, has proposed listing standards that would disqualify any director from being "independent" if he or she has a "material relationship" with the company on whose board the director serves. The NYSE has also proposed specific relationships that are "per se" bars to independence. In our view, it is important that ULLICO's Board thoroughly evaluate all circumstances and relationships that might result in actual or potential conflicts of interest, or that might bear on the issue of director independence. In making independence determinations, the Board should consider all relevant facts and circumstances.

Relationships that could impair director independence may include commercial relationships with a director or a director's affiliated union, personal or business relationships with members of management, or familial relationships. In this regard, we note that numerous ULLICO directors have affiliations with the Building and Construction Trades Department of the AFL-CIO, of which Mr. Georgine served (until recently) as president.[73] In situations where ULLICO or members of its management do have a relationship with a particular director, the Board should determine whether or not it compromises the director's independence.

The Board's basic criteria for making independence determinations, and specific findings that a given relationship is not sufficiently material to compromise a director's independence, should promptly be disclosed to ULLICO's shareholders. See, e.g., NYSE Corporate Accountability and Listing Standards Report (June 2002); NYSE Corporate Governance Rule Proposals (August 2002). The Board may wish to require that different persons hold the positions of Chairman and CEO since the

[73] Approximately two-thirds of present Board members were recommended for nomination to the Board by Chairman Georgine.

Chairman's duty to oversee management could be compromised if self-monitoring is required. AFL-CIO Proxy Voting Guidelines (1997).

Board and Committee Performance

ULLICO's Board has historically been comprised of leaders in the United States labor movement. The Board is extremely large as compared to peer companies, and it meets infrequently, typically twice a year. Attendance at Board meetings is poor. The average attendance at Board meetings from May 1997 through April 2002 is about 70%. (Exhibit 7) There may have been compelling business or personal reasons why directors were unable to attend these Board meetings. However, when such reasons significantly interfere with the ability of a director to perform core director functions, such as attending meetings, the director should resign.

Several notable commentators have recently suggested that the performance of a board, its committees and individual members should be regularly evaluated to help focus corporate responsibility and promote accountability. See Jay A. Conger et al., Corporate Boards: Strategies For Adding Value At The Top (Jossey-Bass 2001); Harvard Business Review On Corporate Governance (Harvard 2000). In this regard, specific governance objectives and director responsibilities should be clearly defined, perhaps in formal corporate governance policies and committee charters that describe responsibilities, objectives and powers, and provide for periodic self-evaluations.

In addition, the Board may wish to evaluate its Board composition and the frequency of its meetings. See NYSE Corporate Accountability and Listing Standards Report (June 2002). A large board can lead to excessive delegation and make it difficult to convene and to keep all members fully informed. A somewhat smaller board may enhance director participation and result in effective and timely decision-making. To draw on the talents of former directors and other prominent leaders, ULLICO could form an advisory board. In addition, the Board should delegate only specific, clearly defined responsibilities to its committees, and committees should regularly report to the Board. Members of these committees should be selected by the Board as a whole or an independent committee of the Board. The Board might also want to consider rotating committee assignments to better draw on the talents of Board members.

Board and Committee Membership

The directors serve to protect the best interests of the shareholders. AFL-CIO Proxy Voting Guidelines (1997). In recruiting directors, the Company should consider the expertise and knowledge of individual directors so that the Board as a whole has the ability to understand and play a meaningful role in the Company's core business, significant management issues and shareholder concerns. Jay A. Conger et al., Corporate Boards: Strategies For Adding Value At The Top (Jossey-Bass 2001); Harvard Business Review On Corporate Governance (Harvard 2000).

Specifically, the Company should consider diversifying its Board by recruiting not only leaders from the labor movement but also those with significant finance, accounting, legal, and management experience. The Company may also want to encourage individual Board members to attend corporate governance training seminars, so that members are kept apprised of current financial, legal and ethical developments that impact their service as directors. NASDAQ Corporate Governance Proposals (July 2002).

A properly functioning audit committee is critical to effective corporate governance. Members of the audit committee should have financial and accounting experience, and at least one member of the audit committee should be a financial expert. See, e.g., Sarbanes-Oxley Act (July 31, 2002); NYSE Corporate Accountability and Listing Standards Report (June 2002). In view of the size and scope of ULLICO's operations, the audit committee should play a more significant and active role in the governance and oversight of the Company. This is particularly true in situations that pose actual or potential conflicts of interest with management.

■ Shareholder Participation

Meaningful shareholder participation depends, in large part, on disclosure to shareholders, including the disclosure of each director's potential conflicts of interest and material relationships with the Company. NYSE Corporate Accountability and Listing Standards Report (June 2002); Harvard Business Review On Corporate Governance (Harvard 2000). The Board should conduct a thorough evaluation of ULLICO's communications with its shareholders, both formal and informal, including a review of proxy and annual report disclosures.

Disclosures should be sufficient such that the shareholders, the ultimate owners of the Company, can make meaningful and informed decisions regarding the election of directors and other matters requiring a shareholder vote and whether or not to continue to hold their shares. In particular, the Board should evaluate policies on disclosure of executive compensation, related party transactions and stock issuances and repurchases. In the "discretionary" program, for example, Chairman Georgine stated that the repurchase program was neither "advertise[d] nor encourage[d.]" Yet, some (but not necessarily all) shareholders were clearly aware of the program. There would seem to be something inherently inappropriate about a program that could so significantly impact shareholders but that is not fully disclosed to all shareholders.

In addition, ULLICO should provide full and complete disclosure of executive and director compensation to all ULLICO shareholders, unless, and only to the extent, the Board determines that there is a valid business purpose for withholding that information. AFL-CIO Proxy Voting Guidelines (1997); NASDAQ Corporate Governance Proposals (July 2002). To the extent specific compensation information is not disclosed, the Board should provide an explanation to shareholders of its compensation policies (particularly with respect to CEO compensation) and the rationale for withholding specific compensation information.

The Board should also consider seeking shareholder approval for those material matters that are either unusual or pose inherent conflicts of interest, even if shareholder approval is not legally required. Examples of these matters would include Company loans to directors or executive officers as well as equity-based compensation programs.

Corporate Governance Committee

The Company and its advisors recognized the need for a corporate governance committee in 2000, and indeed the Board may wish to revisit some of the recommendations regarding the proposed responsibilities of that committee. (U 38853–55, Tab 66). For example, in its August 3, 2000 memo faxed to Joseph Carabillo, Arnold & Porter suggested that the Corporate Governance Committee review the composition of the Audit Committee and observed that "[m]ost public companies have adopted audit committee charters setting forth the duties of the audit committee. In addition, audit committee members must be 'independent' and meet certain financial sophistication requirements." (U 38854, Tab 66) Arnold & Porter also suggested that the Board consider reducing its size and creating an advisory board. (Id.) Most significantly, Arnold & Porter suggested that the Corporate Governance Committee might consider reviewing the Company's policies relating to the repurchase of stock from shareholders and the compensation of directors and officers. (Id. at 38855) Indeed, ULLICO might have avoided its current difficulties had the Corporate Governance Committee formulated clearly defined standards relating to the issuance and repurchases of stock as well as executive compensation.

Following up on the Arnold & Porter recommendations, the Board might decide to delegate to the Corporate Governance Committee the task of developing comprehensive corporate governance guidelines and a code of business conduct and ethics that address, among other things, director qualification standards, director responsibilities and company policies regarding executive officer and director compensation, conflicts of interest, confidentiality, the protection and proper use of company assets and compliance with laws and regulations. NYSE Corporate Accountability and Listing Standards Report (June 2002); NASDAQ Corporate Governance Proposals (July 2002); NYSE Corporate Governance Rule Proposals (August 2002).

Findings

The Global Crossing Investment

In 1997, ULLICO made a $7.6 million investment in Global Crossing that yielded a return of about $486 million. Without doubt, this 6295% return was extraordinary by any measure. Further, this return occurred when the Company was in need of capital to support its core business operations.

The Chief Financial Officer recommended in the Summer of 2000 that the Company sell one-third of its Global Crossing stock, hedge one-third of the stock and retain the remaining one-third of the stock. The Chairman decided to sell or hedge 40% and hold 60% (or 19 million shares) of the Company's Global Crossing stock in the hope that the stock price would rebound. While 18 months later Global Crossing was bankrupt, and the stock became virtually worthless, the Chairman's decision not to sell further shares was not unreasonable given the sentiment of market professionals at the time.[74]

The Chairman and other executive officers, and to a much lesser extent the Board, deserve credit for the Global Crossing investment success. Therefore, it did not appear unusual for the executive officers, and to some extent the Board, to have been rewarded for this success. However, as discussed at length in this Report, the method by, and the extent to which, management and the Board were effectively compensated through certain stock transactions were inappropriate.

Stock Repurchase Programs

The November 3, 2000 decision by the Board to implement the 2000 formal repurchase program with a combination of: (1) the condition requiring all shareholders holding more than 2% of Class A and B shares to tender all of their shares; (2) the 10,000 share proration threshold; and (3) an inflated repurchase price, ensured that there would be severe proration of shares tendered by the Company's largest shareholders participating in the program. The directors and officers, meanwhile, would be able to redeem 100% of their holdings.

The repurchase program approved in November 2000 replaced a "extraordinary" repurchase program conditionally approved in May 2000. The replacement repurchase program reduced the amount available to shareholders in the formal repurchase program from $240 million to $30 million while potentially providing a larger portion of the funds available for repurchase to the class of shareholders that included directors and officers (*i.e.*, under-10,000 shareholders). In addition, the directors and officers could, and did, take advantage of the Chairman's "discretionary" repurchase program, which the directors also approved at the November 3, 2000 meeting.

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74 Perhaps the only criticism of the Chairman's action is that, given the significance of the Global Crossing investment to ULLICO's financial condition, decisions concerning the disposition of that asset should have been made by the Board after informed debate.

In the course of our interviews, many of the Company's directors and advisors were unable to articulate the purpose for using the 10,000 share proration threshold in the 2000 formal repurchase program, other than that it had been used in prior years. The Company's management and certain directors have indicated that the 10,000 share threshold was originally implemented to eliminate small shareholders and for tax reasons. However, neither rationale is persuasive, at least with respect to the 2000 repurchase program.

The Company created more, not fewer, small shareholders through its officer and director stock offers in 1998 and 1999. Moreover, unions and pension funds did not pay taxes on the sale of their ULLICO stock, so any tax benefit occurred only to individual shareholders, mostly the directors and officers. The Company likely could have achieved the same or similar objectives through other means without so disadvantaging its larger shareholders. Therefore, without passing on the wisdom of the repurchase program in general, we have concluded that the specific terms of the 2000 repurchase program were materially flawed given the circumstances that existed at the time. These flaws redounded to the benefit of certain directors and officers at the expense of ULLICO's large institutional shareholders.

■ Stock Offers to Directors and Senior Management

The 1998 and 1999 stock offers were implemented and purportedly approved (with questionable authority) by Georgine or the Compensation Committee in anticipation of the prospect that after Global Crossing's IPO the value of ULLICO stock would increase. Indeed, the ULLICO stock price nearly doubled from 1998 to 1999 and nearly tripled from 1999 to 2000. During this time, only directors and officers were given the opportunity to purchase additional shares of ULLICO stock.

While we have been unable to discern the precise business purpose for the 1998 and 1999 stock offers, it clearly had the effect of compensating certain of ULLICO's directors and officers. The stock offers carried little or no investment risk and thus did not, as Chairman Georgine suggested, align the interests of management and the Board with those of other ULLICO shareholders.

Twenty of the twenty-four directors and officers who purchased stock in 1998 and 1999 (excluding Steed and Mark Maloney) sold most, if not all, of their shares back to the Company by 2001, in most cases at $146.04 per share. Of the approximately $44.6 million paid to shareholders selling shares at the $146.04 per share price in 2000–01, $13.7 million was paid to officers and directors, with sixteen directors (other than Georgine) who sold stock, receiving almost $7.5 million of this amount. These directors received preferential treatment over other shareholders, and such preferential treatment was never disclosed. Further, except perhaps for those directors who received nominal amounts, it is questionable whether the profits received by those directors who sold their stock at $146.04 were reasonably related to the services they performed for the Company.

It is unclear whether the total compensation paid to ULLICO's senior officers (Georgine, Carabillo, Luce and Grelle) was reasonable when compared to the compensation received by executives at peer companies. However, these executives were already receiving a bonus, separate from their regular annual bonus, under the Global Incentive Program and significant earnings under the Deferred Compensation Plan tied to their deemed investment in ULLICO stock. Therefore, these officers may not have been entitled to another "bonus" tied to the Global Crossing investment success, which the stock offer program represented.

Even if one were to assume, however, that the total compensation paid to the directors and senior officers was reasonable, the method by which they received compensation under the repurchase programs was not appropriate. Compensation should not have been paid to the directors and officers at the expense of shareholders holding 10,000 or more Class A and Class B shares through the formal repurchase program. Nor should it have been paid through the "discretionary" repurchase program that was originally designed for a different purpose and administered solely by the Chairman.

ULLICO Management and Corporate Governance

ULLICO's Board has historically been comprised of leading leaders in the United States labor movement. The Board is extremely large as compared to peer companies, and it meets infrequently, typically twice a year. Attendance at Board meetings is poor. On average, from 1997 to 2002, only 70% of Board members have attended Board meetings. (Exhibit 7) The Company does not have any informal or formal director training program.

The Board has never adopted corporate governance guidelines delineating director responsibilities and fundamental corporate policies. The Board delegates key corporate decisions to various Board committees and management, often in a wholesale manner. In some cases, it appears that the delegations were not permissible. For example, the stock offers were purportedly approved by the Compensation Committee notwithstanding the fact that the committee had no authority to issue stock and its members were barred from setting the terms of their own compensation.

In addition, committee decisions have not always been reported to the Board in a timely manner. Candidates for the Board are identified, and members of key Board committees (including the Executive Committee and the Compensation Committee) are selected, by the Chairman. There are no term limits on Board or committee membership. The role of the Chairman in the selection of Board and committee members, and the involvement by senior management generally in the deliberations of the Board and its committees, casts doubt on the independence of Board and committee actions.

A properly functioning and active audit committee is a key component of corporate governance. The Board's Audit Committee, which until recently had not kept meeting minutes, historically has been passive. The Audit Committee could benefit from the addition of more members with financial expertise.

The composition of the Board, and the manner in which it has discharged its responsibilities, has made it difficult for it to play a significant and active role in the governance and oversight of the Company. In connection with the matters under investigation, the extent of involvement by senior management (particularly Georgine and Carabillo) in Board and committee decisions, and the passiveness of the directors in discharging their duties, resulted in the inability of the Board to exercise independent and informed business judgments. This is particularly true with respect to the 1998 and 1999 stock offers and the 2000 formal and "discretionary" repurchase programs, where senior management had both conflicts of interest and substantial involvement.

■ Fiduciary Obligations of Directors and Officers

Under the facts discovered in the investigation, a compelling argument exists that directors, particularly those who benefited from self-interested transactions, did not satisfy their fiduciary duties to the Company and its shareholders in connection with these transactions. An equally forceful argument applies to the principal officers, Georgine and Carabillo, who were instrumental in creating and implementing the stock offer and repurchase programs, and who benefited from ULLICO stock transactions. Directors' fiduciary duties have been codified under Maryland state law. Officers' duties are governed by common law.

The Company's 1998 and 1999 stock offers and the 2000 stock repurchase programs resulted in numerous self-interested transactions. Under Maryland law, a transaction is not void or voidable solely because of the presence of an interested director at the meeting in which the transaction was approved if the transaction is approved by at least one fully informed, disinterested director. It is questionable whether any fully informed, disinterested director was present at the November 2000 Board meeting at which the 2000 formal repurchase program and the "discretionary" repurchase program were approved. However, the existence of a disinterested director at the November 2000 Board meeting is not at all dispositive of whether members of the Board satisfied their statutory fiduciary duties in approving the programs.

Compliance with the Maryland law provision concerning self-interested transactions means only that the transactions at issue are not void or voidable *solely* because of the involvement of interested directors. It does not excuse the requirement that directors fulfill their fiduciary duties under Maryland law, *i.e.*, that they act in good faith, in a manner they reasonably believe to be in the best interests of the company and with due care in approving the transactions.

Under the facts revealed in this investigation, a compelling argument exists that those directors who benefited from the transactions at issue did not satisfy these requirements. The exclusive stock offers and the 2000-01 repurchase programs, as structured and implemented, improperly benefited directors and officers at the expense of ULLICO's larger shareholders. Our investigation uncovered no clear rationale for the approval of the exclusive stock offers or the Board's approval of the 2000 formal repurchase program containing the 10,000 share proration threshold. Moreover, the approval of the stock offers involved excessive, and perhaps impermissible, delegation of authority by the Board.

The process by which the Compensation Committee and the Board evaluated and approved the stock offer and repurchase programs raises questions of whether ULLICO's directors satisfied their duty of due care under Maryland law. Certain directors were either inadequately informed (through their own and management's fault) about the purposes and impact of the programs, or knowingly approved programs that a reasonably prudent director should have realized (under the circumstances existing at the time) were not in the best interests of the Company or its shareholders. In this regard, certain directors failed to give due consideration to, or provide an adequate justification for, the substantial and disproportionate benefits received by directors and officers under the stock offer and repurchase programs.

Outside Company counsel have argued that the directors would have the benefit of the business judgment rule. In a court case, the business judgment rule would provide a procedural presumption in favor of directors' actions. This procedural presumption can be rebutted by a showing of a lack of either good faith or an informed basis for the directors' decisions. Under the facts of this case, it cannot be said with any reasonable degree of certainty that the business judgment rule would protect the actions of those directors who benefited from the programs at issue.

A forceful argument exists that certain senior officers of the Company, principally Georgine and Carabillo, violated their duties of loyalty and care to the Company. Georgine and Carabillo were heavily involved in the creation, implementation and disclosure of the exclusive stock offer and repurchase programs, and personally profited from these programs. Georgine and Carabillo also failed to adequately disclose to the Board and the Company's shareholders the extent to which they (and other insiders) participated in and benefited from ULLICO stock transactions. In addition, Georgine and Carabillo should have been more forthcoming with members of the Board and shareholders regarding the reasons for, and the impact of, the stock offer and repurchase programs (including the 10,000 share proration threshold) and other matters that may have influenced the directors' decisions to approve the programs. Georgine and Carabillo were also primarily and most directly responsible for the Company's disclosure documents that were, in some cases, incomplete and potentially misleading. The law is unclear as to whether officers could even attempt to invoke the business judgment rule which, in any event as noted, can be overcome.

Securities Law

ULLICO is a private company not subject to most of the requirements of the federal securities laws relating to tender offers. However, the securities transactions under the stock offer and repurchase programs were subject to the anti-fraud provisions of Sections 10(b) and 14(e) of the Exchange Act.

The repurchase offer disclosure document used by the Company in connection with the 2000 formal repurchase program may have contained material misstatements or omissions in violation of the anti-fraud provisions of the federal securities laws. In addition, the juxtaposition of the 1998 and 1999 stock purchase offers made exclusively to directors and officers with the terms of the 2000 formal repurchase program (including the 10,000 share proration threshold) and the "discretionary" repurchase program arguably constituted deceptive or manipulative acts or practices implemented through misrepresentations and material omissions in violation of these laws.

However, any violation of these laws require that the person act with "severe recklessness." While directors may have acted negligently in approving the 2000 stock repurchase program and the "discretionary" repurchase program, in our view they did not act with the severe recklessness required to establish a federal securities law violation, particularly given their reliance on counsel concerning securities law matters. Even if one were to demonstrate that certain of ULLICO's directors and officers acted with severe recklessness in formulating, approving and implementing the stock offer and repurchase programs, it is not clear that the other elements of a federal securities law claim relating to material misrepresentations or omissions in the tender offer disclosure documents, such as causation and reliance, could be satisfied.

While we have not analyzed the state securities, or Blue Sky, laws of all 50 states, some jurisdictions apply a negligence standard for liability as a result of material misstatements or omissions in connection with the purchase or sale of securities. Therefore, with this lower intent standard, it is possible that ULLICO and its directors and officers who approved, implemented and benefited from the stock offer and repurchase programs could be subject to civil securities claims under the securities laws of those jurisdictions in which offers or sales of securities occurred.

■ Non-Qualified Deferred Compensation Plan

The large increase in the book value of ULLICO stock between 1998 and 2000 allowed ULLICO's senior officers, Georgine, Carabillo, Grelle and Luce, to make substantial returns on amounts deferred under ULLICO's Deferred Compensation Plan. This simple and quite common retirement planning vehicle, for example, was the source of approximately $4 million of earnings by Georgine over a two-year period from 1998 to 2000. ULLICO's senior officers took advantage of the flexible terms of the Deferred Compensation Plan to exploit the large, but short-lived, increase in the book value per share of ULLICO's stock between 1998 and 2000. When the stock price was attractive in 1998 and late 1999, the senior officers allocated deferred compensation to deemed investments in ULLICO stock under the Plan. When the book value per share peaked at $146.04 in 2000, these same officers withdrew all amounts allocated to the ULLICO investment stock account under the Plan.

The opportunity to so easily exploit the terms of the Deferred Compensation Plan to generate such large returns based on the short-lived increase in the book value of ULLICO stock was the result of either a serious design flaw in the Plan or the purposeful decision by the Compensation Committee to permit the Company's senior officers to earn substantial additional compensation under the Plan. In the course of our investigation, we found no evidence that the latter was intended or, if intended, adequately considered.

Role of Counsel and Other Professionals

In light of the evidence developed in the investigation, it appears unlikely that a defense based on the advice of counsel or other professionals would be available to ULLICO's officers and directors in connection with a breach of fiduciary duty claim. Although attorneys prepared the November 2000 Board resolutions, there is limited evidence that attorneys or other professionals provided ULLICO with advice concerning whether the 1998 and 1999 stock purchase offers, the "discretionary" stock repurchase program or the formal 2000 stock repurchase program raised fiduciary duty concerns. Moreover, the issues present here primarily involve the appropriateness of certain business, as opposed to legal, decisions, such as the timing of the exclusive stock offers and the design and implementation of the repurchase programs.

In contrast, a defense based on reliance on counsel may be available to certain directors and officers, as well as the Company, in connection with any federal securities law claims. It is less clear, however, whether such a defense is available in connection with state securities laws which can be violated through negligent acts.

Lack of Criminal Intent

Based upon the information available to the Special Counsel, there is no basis to conclude that any person acted with criminal intent in connection with the transactions at issue.

Recommendations

Remedial Recommendations and Commentary

We recommend that the Board create a committee comprised of disinterested directors (that is, those directors who did not hold stock as of November 3, 2000 or who have been appointed as a ULLICO director since that date) that will, based upon full consideration of the events described in this Report, decide the appropriate remedies. This special committee should decide either to recommend return to the Company of the profits received by directors and officers as a result of those sales or to ratify the sale of shares purchased in the 1998 and 1999 stock offers (which arguably were not properly authorized in the first instance).

Our remedial recommendations discussed below include a strong recommendation that directors and certain officers return profits made on the sale of stock they bought in 1998 and 1999. We also recommend that the special committee consider whether other amounts received by directors and officers should also be returned.

Any breach of directors' and officers' duties outlined in this Report is not predicated on whether the amounts received by the directors and officers were or were not compensation or, if compensation, whether the compensation was reasonable. Even if the stock offers were a means of compensation, these offers should have been treated as such with appropriate standards set to determine what amounts, if any, should be paid to directors and officers and without tying the payment of those amounts to shareholder repurchase programs. These programs were purportedly for the equal benefit of all shareholders but were implemented in a manner that disproportionately favored directors and officers over large institutional shareholders by allowing the former to redeem all of their Class A Stock, and leaving the latter with the ability to redeem only 2.2% of their Class A Stock.

Some of the directors and officers in their interviews, and their lawyers in recent submissions to the Special Counsel, have suggested that the stock offer and repurchase programs should or could be viewed as a form of compensation as support for their argument that no funds should be returned. As discussed in detail throughout this report, the precise business purpose of the 1998 and 1999 stock offers and the preferential treatment of directors and officers received under the repurchase programs is unclear. Some of the directors and officers we interviewed believed that the stock transactions were intended, at least in part, as compensation. Others, including Georgine and outside Company counsel, disagreed. In any event, whether intended or not, the manner in which the stock offers and repurchases were structured and implemented did, in fact, provide substantial financial benefits to certain of ULLICO's directors and senior officers.

Just prior to the release of this Report, outside Company counsel provided us with a preliminary study of the compensation paid to the directors and senior officers of ULLICO between 1991 and 2001 prepared by a recognized compensation consulting firm. The compensation study was apparently commissioned by counsel to Chairman Georgine and essentially concludes that, even considering the stock transactions, the compensation paid to Company directors and officers during this time period was competitive and reasonable.

We were engaged by ULLICO to investigate the events surrounding the 1998 and 1999 stock offers, the Company's repurchase programs and the Global Crossing investment. We were not engaged to evaluate the reasonableness of compensation paid to ULLICO's directors and officers, although we have attempted to identify those programs and arrangements that may properly be reviewed as compensation and the legal issues related thereto.

To the extent the disinterested committee of the Board, in considering and implementing the recommendations outlined in the Report, believes it is important to evaluate the fairness and reasonableness of the compensation or other amounts paid to ULLICO's directors and senior officers, we urge it to employ a process that truly ensures an objective and impartial analysis. If the retention of experts or advisors becomes necessary, the disinterested committee, not management or interested directors, should select the experts and advisors and outline the parameters of their engagement. The experts and advisors should have no prior association or affiliation with management or interested directors (or their affiliates) that could even arguably taint their independence.

Finally, in considering or evaluating any report of outside experts or advisors, the disinterested committee should ensure that the outside expert or advisor is fully informed about all aspects that could affect its analysis, and critically evaluate the assumptions, methodology and analysis contained in the report. In this regard, the study recently submitted by management makes numerous assumptions, findings and comparisons that a diligent committee member might reasonably question. For example, the study suggests that there was "improving corporate performance at ULLICO" during this period from 1998 to 2001. It also concludes that, based on several of the "metrics" they used to measure corporate performance, ULLICO's performance has been "superior" over this time period compared to the performance of a "peer group." The members of the peer group are not identified in the study.

The compensation study also concludes that ULLICO's management team demonstrated "superior performance" based, again, on a comparison to this unidentified peer group. In its comparable company and transaction analysis, the study compares ULLICO to companies that do not appear at all comparable. For example, the study cites to a recent study of equity compensation paid at Fortune 50 companies. The study also evaluates ULLICO's Global Incentive Program and other compensation programs in the context of transaction bonuses and awards paid by clearly distinct companies, such as JP Morgan, Chase Manhattan Corp., and Chevron, involved in significantly different transactions.

As mentioned earlier, we are not compensation experts and a review of the reasonableness of the compensation or other amounts paid to ULLICO's directors and officers through the stock transactions, the Global Incentive Program, the Deferred Compensation Plan and other programs is outside our mandate. However, to the extent the disinterested committee finds it appropriate to conduct or commission this analysis, it should do so in a careful and impartial manner. For example, in evaluating the Company's operating and management performance over the past several years, compared to peer group companies, the committee should consider not only the Global Crossing investment success but also the apparent financial difficulties in certain of the Company's core operations. (Exhibit 4) Moreover, in constructing the appropriate peer group, the committee should carefully evaluate whether such companies are truly comparable to ULLICO. Given management's apparent involvement with the preliminary compensation study furnished to us, we would suggest that the disinterested committee give it little or no weight in considering and implementing our recommendations.

In addition to the compensation study, just prior to the release of this Report outside Company counsel provided the Special Counsel with a legal memorandum on certain issues of Maryland law prepared by Jim Hanks, a notable authority on Maryland law, and a legal memorandum prepared by outside Company counsel on the availability of a reliance on counsel defense to ULLICO's directors and officers under Maryland law. We were well aware of Hanks's treatise on Maryland corporate law prior to receiving his memorandum and, in preparing the Report, carefully considered the arguments made by Hanks and outside Company counsel in their respective memoranda. We also consulted extensively with our own expert on Maryland corporate law, Dean Mark A. Sargent. A summary of Dean Sargent's evaluation of the memoranda prepared by Hanks and outside Company counsel is attached as Exhibit 8. For the reasons outlined in this Report, we concur with Dean Sargent's evaluation.

Our specific remedial recommendations are as follows:

1. Directors and certain officers should return to the Company profits from sales of ULLICO stock purchased in 1998 and 1999. These pre-tax profits are as follows:

Morton Bahr	$35,202
John J. Barry	$280,730
William G. Bernard	$326,780
Marvin J. Boede	$234,680
Kenneth J. Brown	$4,605
Joseph A. Carabillo	$720,420
Bill J. Casstevens	$603,080
John E. Cullerton	$176,010
John J. Gentleman	$29,335
Robert A. Georgine	$837,760

James LaSala	$88,005
Martin J. Maddaloni	$234,680
Joseph F. Maloney	$418,880
Douglas J. McCarron	$418,880[75]
James F.M. McNulty	$95,189
Jacob F. West	$837,760
Roy Wyse	$23,025
William H. Wynn	$234,680
Total	$5,599,701

Commentary. We strongly recommend that the return of the profits received by those directors who sold stock in 2000 and 2001 which they had purchased in 1998 and 1999 be the remedy in a matter where the directors and officers were so disproportionately favored.

We also strongly recommend that Chairman Georgine be asked to return the profits he received from the repurchases at the $146.04 price of the 8,000 shares of Class A Stock he purchased pursuant to the 1998 and 1999 stock offers. His pre-tax profits were $837,760. Georgine is the Chairman of the Board, administered the stock offer program, determined the timing of the stock offers, voted for and implemented the repurchase programs at issue and, as CEO and President, played a principal role in sponsoring these programs. The shares Georgine purchased in 1999 were also financed by a loan from Mellon Bank, for which the Company provided credit support that apparently was not authorized by the Board or any of its committees. Moreover, there is a serious question regarding whether Georgine was authorized by the Board to issue stock to himself.

Even if Georgine's profits from the sale of shares he acquired in 1998 and 1999 were deemed a form of compensation for the Global Crossing investment success, the return of such profits may well be appropriate given that the Compensation Committee (which purported to approve the stock offers) was not authorized to issue stock and Georgine received more than $2 million pursuant to the Global Incentive Program, which was intended to reward him for the Global Crossing investment success. He also (1) received approximately $4 million in profits between 1998 and 2000 under the Company's Deferred Compensation Plan, (2) received a 40,000 share stock bonus under the Stock Purchase and Credit Agreement, and (3) participated in several other compensation and fringe benefit programs. (Exhibit 2) Our conclusions would be the same whether the repurchases of Georgine's ULLICO stock occurred through the "discretionary" program or pursuant to the put option contained in the Addendum to Georgine's Employment Agreement, which was entered into under questionable circumstances.

75 Before the issuance of this Report, Director McCarron voluntarily agreed to return to the Company the profits made on his stock purchases.

Finally, we strongly recommend that Chief Legal Officer Carabillo be asked to return the profits he received from the repurchases at the $146.04 price of the 7,000 shares of Class A Stock he purchased pursuant to the 1998 and 1999 stock offers. His pre-tax profits were $720,420. He was principally involved with, and benefited from, all of the transactions at issue—*i.e.*, the 1998 and 1999 stock offer programs, the formal 2000 stock repurchase program with its 10,000 share threshold and the "discretionary" stock repurchases from directors and officers. The shares Carabillo purchased in 1999 were also financed by a loan from Mellon Bank, for which the Company provided credit support that apparently was not authorized by the Board or any of its committees. Moreover, Carabillo supervised the preparation of the tender offer disclosure documents to ULLICO's shareholders. As the Company's Chief Legal Officer, Carabillo was the officer most directly responsible for ensuring that the programs and disclosures at issue were legal and proper.

Even if Carabillo's profits were deemed to be a form of compensation for the Global Crossing investment success, return of such profits may well be appropriate given that the Compensation Committee (which purported to approve the stock offers) was not authorized to issue stock and Carabillo has received about $750,000 under the Global Incentive Program, which was intended to reward him for the Global Crossing investment success. He also received approximately $320,000 in profits between 1998 and 2000 under the Company's Deferred Compensation Plan and participated in other compensation programs.

Assuming the special committee decides that return of the profits is the appropriate remedy, the Board should then decide whether to distribute the returned proceeds to other shareholders who tendered stock in the 2000 formal repurchase program and were prorated, or otherwise retain and reinvest these funds. If the committee ratifies some of the transactions at issue, it should decide whether shareholder ratification would also be prudent.

2. Determine whether a return of profits by Chairman Georgine is appropriate in connection with his Stock Purchase and Credit Agreement.

Commentary. The special committee should consider whether to recommend return of profits received by Georgine on the repurchase at $146.04 per share of 8,000 of the 40,000 shares he acquired under the Stock Purchase and Credit Agreement in December 1999 at the $53.94 stock price.

As discussed above, there is a serious question as to whether the issuance of the 40,000 shares acquired pursuant to the Stock Purchase and Credit Agreement was duly authorized. In addition, the timing of this bonus raises several questions that should be reviewed by the special committee.

In his interview, Carabillo explained that the Compensation Committee initially intended to grant a $2 million bonus to Georgine in 1999, but decided instead to offer Georgine the opportunity to purchase 40,000 shares financed by a loan provided by ULLICO, with the loan to be forgiven over a five-year period. According to

Carabillo, the stock issuance was more favorable to Georgine from a tax perspective. At the time the Stock Purchase and Credit Agreement was purportedly approved by the Compensation Committee (December 1999), ULLICO's stock price was $53.94 per share, based on the book value per share as of December 31, 1998. Accordingly, 40,000 shares would have been valued at $2,157,600. The Stock Purchase and Credit Agreement, however, is dated December 30, 1999, one day before the date used to calculate the 1999 "book value." At this point, it had to have been clear to those involved that, based on the increased value of ULLICO's Global Crossing investment, the 40,000 shares would be worth significantly more than $2,157,600.

In fact, the Stock Purchase and Credit Agreement was not executed by Georgine and the Compensation Committee members until well after December 31, 1999. Significantly, Director Cullerton, the last member of the Compensation Committee to execute the Stock Purchase and Credit Agreement, signed the agreement on May 10, 2000, the very same day the Executive Committee adopted a ULLICO stock price of $146.04 per share. Arguably, therefore, at the time the Stock Purchase and Credit Agreement was fully executed, the 40,000 shares acquired by Georgine were worth $5,841,600, almost triple the intended bonus of $2 million.

The special committee should evaluate these circumstances and determine whether the terms of the Stock Purchase and Credit Agreement are consistent with what the Compensation Committee and the Board of Directors intended. The committee should then decide whether to consider ratification of that agreement and the stock repurchases pursuant to that agreement or seek to amend that agreement and/or require a return of the profits to the Company. If the special committee chooses to ratify the redemption of Georgine's 8,000 bonus shares in February 2000 (under which Georgine received $1.17 million), it may wish to seek a limitation of the remaining shares he is entitled to redeem under the Stock Purchase and Credit Agreement. The committee should also consider whether to ratify or seek to invalidate the Addendum to Georgine's Employment Agreement to the extent that there is any question concerning the authorization for, and the repurchases under, that Addendum.

3. Determine whether a return of profits or ratification is the appropriate remedy for the director and officer redemptions of Capital Stock and Class A Stock acquired through the preferred certificate program ("Class A Preferred Stock"). The pre-tax profits from these redemptions are as follows:

   William G. Bernard – $1,002,839 (Class A Preferred Stock)

   Bill J. Casstevens – $166,604 (Class A Preferred Stock) and at least $39,943 (Capital)[76]

   John F. Gentleman – at least $132,780 (Capital)

[76] We have been unable to determine the cost basis for those directors and officers who redeemed Capital Stock in 2000 and 2001. Although we assumed a cost basis of $25 per share, Capital Stock received as dividends would have a cost basis of zero, thus increasing the profits stated above.

Robert A. Georgine – $66,378 (Class A Preferred Stock) and at least $525,918 (Capital)

James F. M. McNulty – at least $185,796 (Capital)

Jacob F. West – at least $151,300 (Capital)

Commentary. The special committee should evaluate the repurchases of Capital Stock and Class A Preferred Stock from directors and officers at the $146.04 stock price. These transactions did not result from the 1998 and 1999 stock offers. However, these transactions may have nonetheless been inappropriate because: (1) most of the transactions occurred through the "discretionary" repurchase program, which was not fully disclosed to ULLICO's directors or shareholders; or (2) the repurchases occurred through the formal repurchase program and the directors benefited from the 10,000 share proration threshold. Again, the committee should decide whether to ratify these transactions or to recommend return of the profits to the Company.

4. Determine whether a return of profits is appropriate in connection with the stock profits received by officers Luce and Grelle. These pre-tax profits are as follows:

John K. Grelle – $837,760 (all Class A from 1998 and 1999 stock offers)

James W. Luce – at least $789,299 ($582,270 Class A from 1998 and 1999 stock offers, $99,787 Class A Preferred Stock and at least $107,241 Capital Stock)

Commentary. The special committee of disinterested shareholders should determine the reasonableness of the "compensation" received by the senior officers other than Georgine and Carabillo (*i.e.*, Grelle and Luce[77]) in the form of stock sales. These executives did not appear to be significantly involved in the creation or promotion of the 1998 and 1999 stock offer programs, the 2000 stock repurchase program or the "discretionary" stock repurchase program. Nor does it appear that they were directly responsible for recommending or approving any of these programs. It is also unclear whether the overall compensation received by these executives (including gains on stock repurchases) is disproportionate to the market value of their respective services. Accordingly, even if the special committee recommends return of profits from the directors and other senior officers, it may nonetheless be reasonable for the committee to ratify the stock purchases and repurchases of these two officers.

The committee should pay particular attention, however, to those repurchases from senior officers pursuant to the "discretionary" stock repurchase program given that this program was not fully disclosed to ULLICO's directors or shareholders. Further, the committee should recognize that Luce and Grelle were already being compensated for the success of the Global Crossing investment through the Global Incentive Program, with each officer receiving aggregate bonuses of about $750,000

[77] Steed and Maloney were unable to participate in the 2000–01 stock repurchase program.

under the Program between 1998 and 2001. In addition, Grelle and Luce also received approximately $570,000 and $605,000 in profits, respectively, under the Company's Deferred Compensation Plan between 1998 and 2000. (Exhibit 2) The committee should thus consider whether the profits made by Luce and Grelle on the sale of Class A Stock purchased in 1998 and 1999 represent an additional and unwarranted bonus.

Finally, the committee may decide to distinguish between Luce and Grelle, given: (1) Grelle's larger role in the programs as Chief Financial Officer; (2) his detailed understanding of the impact of the Global Crossing success on the calculation of book value per share; (3) his necessary involvement in the accounting issues surrounding the restatement of ULLICO's 2000 financial statements; and (4) the fact that he incurred a loan from Mellon Bank that was indirectly supported by the Company to finance the purchase of 4,000 Class A shares pursuant to the December 1999 stock offer.

5. Determine conditions for future sale of stock bought by officers and directors in 1998 and 1999 and still held.

Commentary. The special committee should determine whether those directors who purchased shares in 1998 and 1999 and have not sold the same may keep those shares. We suggest that the special committee determine that such action would be appropriate given that these directors apparently purchased their respective shares of ULLICO stock to align their interests with the shareholders, consistent with the stated purpose of the stock offers. If the committee adopts this recommendation, however, it should decide what restrictions, if any, should be placed upon the sale of these shares in the future.

6. Re-examine the manner in which ULLICO sets the value of its stock and impose adequate safeguards to ensure that the stock price utilized in connection with any purchase or sale of Company stock represents a reasonable approximation of the fair value of such stock.

Commentary. ULLICO currently sets the value of its stock five months after year-end. While at its inception this practice may have been appropriate, this practice over time created opportunities for self-interested transactions which led to this investigation and Report. The Company should revisit its stock price valuation practices and periodically evaluate whether the practices makes sense in view of general market conditions, variations in its operating and investment results, fluctuations in its stockholders' equity and alternative valuation methodologies.

Corporate Governance Recommendations

We strongly urge that the Board and its Corporate Governance Committee develop comprehensive corporate governance guidelines and a code of business conduct and ethics that address, among other things, director qualification standards, director responsibilities and company policies regarding director and officer compensation, conflicts of interest, confidentiality and compliance with applicable laws and regulations. While ULLICO is not a public company and its mission is to provide "fair and equitable returns" to its labor partner shareholders, there is no reason to believe that many of the corporate governance reforms that have swept public companies should not have equal application and benefit to a company like ULLICO. The duties of loyalty and care are at the core of most corporate governance reforms.

While it is important that the Board and the Corporate Governance Committee tailor these guidelines and standards to fit ULLICO's unique corporate culture and mission, we would recommend, at a minimum, that, as soon as possible, they consider the following recommendations.

1. Adopt comprehensive written corporate governance guidelines and a code of conduct and ethics within 60 days.

Commentary. ULLICO, which does not have a comprehensive code addressing the conduct of directors and officers, should adopt and publicize a code of conduct and ethics for directors, officers and employees with effective reporting and enforcement mechanisms. The code of conduct should address, among other things: conflicts of interest; corporate opportunities; confidentiality; compliance with laws, rules and regulations, including ERISA; and reporting on illegal and unethical behavior.

The adoption of clear corporate governance guidelines is equally important. These guidelines should address, among other things: a strategic planning process; director qualification standards and responsibilities; director orientation and continuing education; director compensation; annual board and committee evaluations; establishment of an effective system of internal controls; and plans for succession of management.

2. Appoint, within 60 days, a Chief Compliance Officer to administer the code of conduct and ethics and to report semi-annually to the Board on all compliance efforts.

Commentary. The Company should appoint a Chief Compliance Officer who is knowledgeable about corporate governance and will be directly responsible for the administration of the code of conduct and ethics and its standards and procedures. This person should be a senior member of management and should report semi-annually to the Board on all compliance efforts and issues. Board minutes should reflect the reporting.

3. Distribute the code of conduct and ethics to all directors, officers and employees for signature and maintain a file of acknowledgement forms.

Commentary. It is essential that all directors, officers and employees sign a certification form acknowledging the reading and receipt of the code of conduct and ethics.

4. Eliminate the "discretionary" repurchase program immediately and, if necessary, replace it with a limited program, approved by the Board, that is designed to accommodate the needs of estates, retirees and shareholders demonstrating an immediate financial need. Any such program should set clear written standards for the limited repurchase of shares. These standards should be disclosed to all shareholders.

Commentary. As originally envisioned, the discretionary repurchase program was designed to provide liquidity and accommodate the needs of estates, retirees and shareholders demonstrating an immediate financial need. This salutary purpose became secondary in 2000 and 2001. The discretionary repurchase program should return to its original limited purpose with clear written standards.

5. Institute and maintain a training and education program, within 60 days, for all directors and officers in regard to: (a) their legal and ethical responsibilities as directors; (b) the financial condition, the principal operating risks and the performance factors materially important to the business of ULLICO; and (c) the operation, significance and effects of compensation and incentive programs and related party transactions.

Commentary. The need of all corporate directors and officers to fully understand their statutory and management responsibilities has never been greater. Regular training and continuing education of officers and directors will best address this need and ensure their understanding of current best practices and legal and industry developments. New Board members should have an opportunity to confer with senior management and generally be briefed on the strategies, goals and risks of the Company as well as its major business concerns. Jon F. Elliott, Directors' and Officers' Liability § I-3.F 3 (2002)

6. Require that, effective immediately, the Corporate Governance Committee, the Audit Committee or ULLICO's shareholders review and approve each proposed material transaction between the Company and any director or officer of the Company, including any loan, guaranty or redemption program of the Company. Such review and approval shall include:

    (a) a written explanation of why the transaction is in the best interests of the Company without regard to the interest or desire of the individual;

    (b) a documented rationale for engaging in the transaction;

    (c) a specific determination of the fairness of the transaction; and

    (d) written disclosure regarding all material terms of the transaction to all directors and, in the event shareholder approval is sought, all shareholders a substantial period of time prior to the Company entering into the transaction.

Commentary. Our investigation indicated that a significant number of directors did not fully understand the monetary benefits granted to other directors and to officers under the programs at issue. The Corporate Governance Committee must focus on related party transactions and procedures.

7. Disclose in the annual proxy statements all significant transactions between the Company and its directors, officers and other affiliates.

Commentary. The only way that the shareholders with a vested legal interest in the Company can realistically understand all significant transactions between the Company and its directors, officers and other affiliates is through full written disclosure in the annual proxy statements.

8. Require information relating to officer and director compensation of all types (*e.g.*, salary, bonus, fees, equity, loans, retirement plans and perquisites) be disclosed by the Compensation Committee in writing to the Board and to the shareholders at least on an annual basis unless, and only to the extent, the Board determines in writing that there is an important business purpose for withholding such information. In addition, the Company's overall compensation policies should be disclosed to shareholders.

Commentary. There is likely no greater focus today in corporate governance than on officer and director compensation. Shareholders are entitled to a full understanding of this compensation. The structure of management compensation should directly link the interests of management to the interests of all shareholders, and that structure and linkage should be disclosed not only to the full Board but to all shareholders.

9. Reduce the size of the Board to allow it to function efficiently and effectively.

Commentary. The ULLICO Board at present is authorized to have 32 members. Directors have attended an average of only 70% of the Board meetings even though ULLICO has fewer Board meetings than most comparably-sized public companies. (Exhibit 7) One part of the attendance solution may be to significantly reduce the size of the Board. The size of the Board should be determined with a view to the Board's ultimate effectiveness in decision-making. Former Board members could still assist the Company as part of an advisory group.

10. Require that at least a majority of the members of the Board be independent.

Commentary. Because of its labor origin, mission and values, most ULLICO directors have had close ties to senior Company management. Independent directors will increase the quality of Board oversight and lessen the possibility of damaging conflicts of interest. We also recommend that the Board be expanded to include persons who have not served as union presidents or pension fund trustees. This recommendation in no way suggests that independent directors not be fully committed to the labor movement and the traditional mission and values of the Company.

11. Require that the Board meet at least four times annually.

Commentary. Board meetings have not been held in a uniformly consistent manner. (Exhibit 7) The issues that ULLICO faces requires regular oversight by a Board that holds at least four meetings annually.

12. Require that independent Board members, or a committee of independent directors, determine committee assignments.

Commentary. Many committee members have been recommended for nomination solely by Georgine. A Nominating Committee consisting solely of independent directors should assume this responsibility.

13. Require the Board to delegate only specific, clearly defined responsibilities to its committees, and, effective immediately, further require all committees to maintain minutes and report regularly to the Board.

Commentary. There have been few charters at ULLICO to guide and define committee responsibilities and to evaluate committee performance. Charters for Audit, Corporate Governance and Nominating Committees can address: (a) the committee's purpose; (b) the committee's goals and responsibilities; and (c) annual performance evaluations. The preparation and distribution of accurate and complete meeting minutes is important in evaluating director performance and maintaining proper corporate records.

14. Require that all members of the Audit, Compensation, Nominating and Corporate Governance Committees be independent.

Commentary. Independent directors are essential to sound and responsible committees and lessen the probability of damaging conflicts of interest.

15. Rotate committee assignments regularly to ensure director independence and to better draw on the talents of Board members.

Commentary. It is important to receive new input and to draw on the talents of new directors on committees. Regular rotation of committee assignments increases the likelihood of achieving this goal. Directors who have special qualifications (e.g., legal or financial qualifications) may sit on a specific committee for extended periods.

16. Authorize committees to engage independent advisors as necessary.

Commentary. In the course of fulfilling their duties, committees may need and want to engage independent advisors. The committees should be empowered to retain such advisors without seeking Board or management approval.

17. Amend ULLICO's by-laws to provide for the removal of any director who, absent exceptional circumstances, fails to attend three consecutive Board meetings.

Commentary. A diligent director should attend board meetings on a regular basis and, if a member of a committee of the board, committee meetings as well. Regular attendance ensures that a director is knowledgeable about the plans, programs and developments of the company. Jon F. Elliott, Directors' and Officers' Liability § I-3.B 3 (2002). Parenthetically, public reporting companies must disclose in their proxy materials the identity of any incumbent director not attending at least 75% in the aggregate of meetings of the board and committees on which the director sits. A significant number of ULLICO directors missed several consecutive Board meetings between 1997 and 2001. While directors may have other important business commitments, that does not excuse the failure of directors to regularly attend Board meetings. If directors' other commitments are too great, they should resign from the ULLICO Board and permit those who can regularly attend Board meetings to serve. Each director who misses a meeting must fully inform himself or herself of the matters discussed, and actions taken, at that meeting.

18. Require that all members of the Audit Committee have financial and accounting experience and at least one member of the Audit Committee be a "financial expert" as that term shall be defined by the Securities and Exchange Commission pursuant to the considerations outlined in the Sarbanes-Oxley Act of 2002.

Commentary. The increasing importance of audit committees cannot be overstated. Public and private companies need to ensure that at least one member of the committee is a financial expert. The ULLICO audit committee would be well served to have several members with significant financial and/or accounting experience.

19. Consider barring loans to or arranging financing for directors and officers (in Sarbanes-Oxley).

Commentary. Loans to executive officers and directors have come under increased scrutiny due to the inherent conflicts of interest they present. To the extent the Company grants such loans, such loans should be fully disclosed to and approved in advance by the full Board or the shareholders.

List of Interviews Conducted and Submissions Received

■ Directors

1. Morton Bahr, ULLICO Director (President, Communication Workers of America)
2. John J. Barry, ULLICO Director (International President Emeritus, International Brotherhood of Electrical Workers)
3. William G. Bernard, ULLICO Director (President Emeritus, International Association of Heat and Frost Insulators & Asbestos Workers)
4. Marvin J. Boede, ULLICO Director (Former President, United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada)
5. Kenneth J. Brown, ULLICO Director (Former President, Graphic Communications International Union)
6. Bill J. Casstevens, ULLICO Director (Former Secretary-Treasurer, United Automobile, Aerospace and Agricultural Implement Workers of America Union ("UAW")
7. Linda Chavez-Thompson, ULLICO Director (Executive Vice-President, AFL-CIO)
8. John F. Gentleman, ULLICO Director (Former President, ULLICO, Inc.) (oral proffer by counsel)
9. Frank H. Hanley, ULLICO Director (General President, International Union of Operating Engineers)
10. Frank D. Hurt, ULLICO Director (President, Bakery, Confectionery, Tobacco Workers & Grain Millers International Union)
11. John T. Joyce, ULLICO Director (Former President, International Union of Bricklayers and Allied Craftworkers)
12. Earl J. Kruse, ULLICO Director (President United Union of Roofers, Waterproofers and Allied Workers)
13. James LaSala, ULLICO Director (President, Amalgamated Transit Union)
14. Joseph F. Maloney, ULLICO Director (Secretary-Treasurer Emeritus, Building & Construction Trades/AFL-CIO)
15. Douglas J. McCarron, ULLICO Director (General President, United Brotherhood of Carpenters and Joiners of America)
16. James F. M. McNulty, ULLICO Director (General Counsel, The Union Labor Life Insurance Company)
17. Lenore Miller, ULLICO Director (Former President, Retail, Wholesale & Department Store Union)
18. Terrence M. O'Sullivan, ULLICO Director (General President, Laborers' International Union of North America)
19. James H. Rankin, ULLICO Director (President, Glass, Molders, Pottery, Plastics & Allied Workers International Union)
20. Vincent R. Sombrotto, ULLICO Director (President, National Association of Letter Carriers) (Written Submission)
21. John J. Sweeney, ULLICO Director (President, AFL-CIO)
22. John W. Wilhelm, ULLICO Director (General President, Hotel Employees and Restaurant Employees International Union)
23. Roy Wyse, ULLICO Director (Former Secretary-Treasurer, UAW)

■ **ULLICO Executives**

24. Erin Barrow, Senior Corporate Legal Assistant
25. Joseph A. Carabillo, Vice President, Chief Legal Officer and Assistant Secretary
26. Robert A. Georgine, Chairman, CEO and President
27. John K. Grelle, Senior Vice President and Chief Financial Officer
28. Joseph Linehan, Vice-President, Private Capital
29. James W. Luce, Executive Vice-President
30. Grover L. McKean, Senior Vice President, Investments
31. Teresa Valentine, Assistant Vice-President and Chief Compliance Officer

■ **Advisors**

32. Zeyad Awad, Auditor, PricewaterhouseCoopers
33. Richard Baltz, Attorney, Arnold & Porter
34. Douglas Beck, Attorney, LeBoeuf Lamb
35. Paul Berger, Attorney, Arnold & Porter
36. Edward Bintz, Attorney, Arnold & Porter
37. Kenneth Hugessen, Director, Mercer & Co., Outside Compensation Consultant, 1998-1999
38. Dennis Lyons, Attorney, Arnold & Porter
39. Frank Manley, Outside Compensation Consultant
40. Carey Smith, Attorney, Arnold & Porter
41. Gary Stephani, Lead Engagement Partner, PricewaterhouseCoopers

■ **Others**

42. John Hiatt, General Counsel, AFL-CIO
43. Damon Silvers, Assoc. General Counsel, AFL-CIO
44. Michael R. Steed, Former ULLICO Executive Vice-President, Investments

Exhibits

Exhibit 1

Officers and Directors	Title or Affiliation	Capital Stock	Class A Shares			All Shares Sold 2000–2001 Prog/x-Prog $146.04	Gross $ (All Sales)	Minimum[78] Pre-Tax Profits		Remaining Stock As Of May 2001	
			Pref. Cert.	'98 28.70	'99 53.94			All Sales	Sales of '98 and '99 Class A Shares	Capital	Class A
Georgine[79]	Ch/CEO	4,345	523	4000	4000	0/20,868	$3,047,563	$2,598,378	$837,760	0	32,000
Carabillo	Ch. Leg. Ofr.	0	0	3000	4000	4000/3000	1,022,280	720,420	720,420	0	0
Grelle	CFO	0	0	4000	4000	4000/4000	1,168,320	837,760	837,760	0	0
Luce[80]	Exec. V.P.	886	786	3000	4000	0/7172	1,047,399	789,299	582,270	0	1,500
M. Maloney[81]	V.P., Sales	308	784	4000	4000	N/A	N/A	N/A	N/A	308	8,784
Steed[82]	V.P., Invsmnt.	262	524	2000	(quit)	N/A	N/A	N/A	N/A	262	2524
Bahr	Commun.	0	0	300	0	300/0	43,812	35,202	35,202	0	0
Barry	Electrical	165	0	2000	500	2500/0	365,100	280,730	280,730	165	0
Bernard	Asbestos	270	7,894	2000	1000	2230/8664	1,590,960	1,329,620	326,780	270	0
Biller	Postal	146	941	4000	250	0	0	0	0	146	5,191
Boede	Plumbers	292	0	2000	0	2000/0	292,080	234,680	234,680	292	0
Brown	Graphics	292	0	0	50	50/0	7,302	4,605	4,605	292	0
Casstevens	Auto	330	1,312	4000	4000	0/7642	1,116,038	809,628	603,080	0	2,000
Cullerton	Hotel	0	0	2000	0	0/1500	219,060	176,010	176,010	0	500
Gentleman	ULLICO	1,097	0	250	0	250/1097	196,716	162,116	29,335	0	0
Kruse	Roofers	0	0	0	100	0	0	0	0	0	100
LaSala	Transit	602	0	750	0	750/0	109,530	88,005	88,005	602	0
Maddaloni[83]	Plumbers	0	0	2000	1000	0/2000	292,080	234,680	234,680	0	1,000
J. Maloney	Construct	212	0	2000	2000	4000/0	584,160	418,880	418,880	212	0
McCarron[84]	Carpenters	0	0	2000	2000	4000/0	584,160	418,880	418,880	0	0
McNulty	Un. Lab. Life	1,685	0	615	250	865/1535	350,496	280,986	95,189	150	0
Sweeney	AFL-CIO	355	0	250	0	0	0	0	0	355	250
Upshaw	Athletes	0	0	1000	0	0	0	0	0	0	1,000
West	Iron	1,250	0	4000	4000	4000/5250	1,350,870	989,060	837,760	0	0
Wynn	Food	892	0	2000	0	2000/0	292,080	234,680	234,680	892	0
Wyse	Auto	0	0	0	250	250/0	36,510	23,025	23,025	0	0
Totals						93,923	$13,716,516[85]	$10,666,644	7,019,731		

[78] Certain of the shares acquired and sold by various officers and directors may have been received by them as dividends prior to 1998. The basis of those shares paid as dividends would be zero. The pre-tax profit is calculated using a $25 per share basis. To the extent any of these shares had a zero basis, the pre-tax profit would therefore increase.

[79] 6,000 of the shares that Georgine redeemed at $146.04 were received by him as part of his 1999 Stock Purchase and Credit Agreement.

[80] Luce also redeemed 1,100 Class A shares at $74.87 per share in the 2001 formal repurchase program.

[81] Maloney brought a lawsuit against the Company, which is pending, relating to the disposition of these shares.

[82] Steed settled his lawsuit against ULLICO on March 21, 2002. Among other things, the settlement agreement provided a $53.94 per share price, the applicable book value at the time Steed resigned in December 1999, for Steed's shares.

[83] Maddaloni also redeemed 800 shares in October 2001 at $74.87 per share.

[84] McCarron transferred 3,000 of these shares to his mother. We have treated these 4,000 shares as redeemed through the formal program, but the Company's documents are inconsistent on this point. (U 018243-44)

[85] This figure represents 31% of the $44,635,000 in total redemptions at $146.04.

Exhibit 2

ULLICO INC. Senior Officer Financial Benefits (Including Stock Profits at $146.04 Per Share and Earnings on Deferred Compensation Plan) Years 1996 through 2001*	Year 1996	Year 1997	Year 1998	Year 1999	Year 2000	Year 2001
Robert A. Georgine Chairman, President &CEO						
Base Salary	$650,000	$650,000	$ 650,000	$ 650,000	$ 650,000	$ 650,000
Annual Incentive	250,000	N/A	250,000	N/A	300,000	500,000
Global Incentive	N/A	N/A	727,273	666,025	516,862	104,166
Stock Profits	N/A	N/A	N/A	N/A	469,360	2,129,018
Deferred Comp. Earnings	N/A	N/A	N/A	630,321	3,420,739	Unknown
Totals	**$900,000**	**$650,000**	**$1,627,273**	**$1,946,346**	**$5,356,961**	**$3,383,184**
Michael R. Steed Senior Vice President of Investments						
Base Salary	$ 309,000	$ 318,300	$ 335,000	$ 360,000	N/A [B]	N/A [B]
Annual Incentive	N/A	49,680 [A] 77,187 [A]	130,000	132,500	N/A [B]	N/A [B]
Global Incentive	N/A	N/A	727,273	666,025	N/A [B]	N/A [B]
Stock Profits	N/A	N/A	N/A	N/A	N/A [B]	N/A [B]
Deferred Comp. Earnings	N/A	N/A	N/A	N/A	N/A [B]	N/A [B]
Totals	**$ 309,000**	**$ 445,167**	**$1,192,273**	**$1,158,525**	**N/A [B]**	**N/A [B]**
John K. Grelle Senior Vice President & CFO						
Base Salary	$ 200,000	$ 260,000	$ 290,000	$ 305,000	$ 500,000	$ 500,000
Annual Incentive	N/A	40,700 [C]	90,000	80,800	145,800	281,250
Global Incentive	N/A	N/A	272,727	249,779	193,830	39,064
Stock Profits	N/A	N/A	N/A	N/A	469,360	368,400
Deferred Comp. Earnings	N/A	N/A	N/A	22,622	547,326	Unknown
Totals	**$ 200,000**	**$ 300,700**	**$ 652,727**	**$658,201**	**$1,856,316**	**$1,188,714**
James W. Luce Executive Vice President						
Base Salary	$ 262,500	$ 275,600	$ 290,000	$ 300,000	$ 420,000	$ 420,000
Annual Incentive	N/A	20,000 [A] 43,000 [A]	90,000	80,800	120,000	236,250
Global Incentive	N/A	N/A	272,727	249,779	193,830	39,064
Stock Profits	N/A	N/A	N/A	N/A	505,983	283,316
Deferred Comp. Earnings	N/A	N/A	N/A	19,382	586,285	Unknown
Totals	**$ 262,500**	**$ 338,600**	**$ 652,727**	**$649,961**	**$1,826,098**	**$978,630**
Joseph A. Carabillo Vice President & Chief Legal Officer						
Base Salary	$ 187,250	$ 200,000	$ 210,000	$ 220,000	$ 350,000	$ 350,000
Annual Incentive	N/A	17,700 [A] 43,000 [A]	55,000	48,800	84,600	196,875
Global Incentive	N/A	N/A	272,727	249,779	193,830	39,064
Stock Profits	N/A	N/A	N/A	N/A	352,020	368,400
Deferred Comp. Earnings	N/A	N/A	N/A	13,549	304,001	0
Totals	**$ 187,250**	**$ 260,700**	**$ 537,727**	**$532,128**	**$1,239,451**	**$954,339**

* The salary and incentive payment information reflected in this Exhibit were provided by the Company and have not been independently verified by the Special Counsel

[A] Annual Incentives listed for Year 1997 are bonuses for years 1995 and 1996 combined and paid in 1997.

[B] Mike Steed resigned from ULLICO Inc. on December 10, 1999.

[C] Incentive payment in 1997 is for 1996 performance only due to Grelle's employment at ULLICO beginning January 2, 1996.

Exhibit 3

ULLICO v. Global Crossing Share Price 1996–2002		
Year	**ULLICO Share Price**	**Global Crossing Share Price[86]**
1996	$25.00	N/A
1997	$27.06 (as of 5/97)	N/A
1998	$28.70 (as of 5/98)	$24.94 (as of 8/17)
		$45.13 (as of 12/31)
1999	$53.94 (as of 5/99)	$94.88 (as of 5/31)
		$100.00 (as of 12/31)
2000	$146.04 (as of 5/00)	$50.12 (as of 5/31)
		$28.62 (as of 12/31)
2001	$74.87 (as of 5/01)	$25.40 (as of 5/31)
		$1.68 (as of 12/31)
2002	$46.58 (as of 5/02)	$0.14 (as of 5/31)
		N/A

86 Global Crossing's Stock Split in March 1999. The Global Crossing Stock Price from this point onward is adjusted to reflect this stock split, *i.e.*, the actual Global Crossing Stock Price for each period is half of the amount shown in the Exhibit

Exhibit 4

Year	ULLICO Pre-Tax Net Income (12/31) (Excluding Realized Gains on Investments)	ULLICO Net Income (12/31) (Including Global Crossing and Other Investment Gains and Losses)	ULLICO Dividend
1996	$7,515,000	$10,018,000	8% Cash (Capital) 8% Cash (Preferred Certificates & Class A/B)
1997	$10,066,000	$28,759,000	2%
1998	($2,455,000)	$8,282,000	2%
1999	($90,723,000)[87]	$58,900,000	Not Applicable
2000	($77,362,000)[88]	$111,990,000	Not Applicable
2001	($41,961,000)[89]	$12,747,000	Not Applicable

* The information in this chart was provided by the Company and does not include minority interest impact.

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87 According to the Company's 2000 Annual Report, total net realized gains on investments, excluding Global Crossing, were $19.0 million.

88 According to the Company's 2000 Annual Report, total net realized gains on investments, excluding Global Crossing, were $27.7 million.

89 According to the Company's 2001 Annual Report, total net realized gains (losses) on investments, excluding Global Crossing, were ($10.9 million).

Exhibit 5

Return to ULLICO on its Global Crossing Investment				
Date	**Transaction**	**No. of Shares**	**Net Price per Share[90]**	**Before Tax Proceeds**
Jun 99	US West Tender Offer	3,070,738	$62.75	$192,688,809
Apr 00	Secondary Offering	2,568,160	32.01	82,206,801
Sep 00	Open Market Sales	960,000	35.34	33,929,617
Oct 00	Block Trade	3,000,000	26.91	80,730,000
Oct 00	Forward Sale	5,000,000	19.03	95,157,990
May 14–Jun 5, 2002	Misc. Sales	843,834	.07523	843,834
				Gross Pre-Tax: $485,557,052[91]

[90] Rounded to two decimal places

[91] Net After Tax through 2001: $305,100,000. ULLICO held approximately 18 million shares as of June 5, 2002, valued at approximately 7.5 cents per share.

Exhibit 6

Over 10,000 Shareholders Prorations 1997–2001			
Date	Shares tendered	Shares Redeemed	Proration
1997	3,099,490	1,108,645	35.76%
1998	149,693	149,693	100%
1999	302,496	278,086	91.93%
2000	7,400,693	162,891	2.2%
2001	7,129,749	189,464	2.657%

Exhibit 7

Board Meeting Attendance Chart

January 1997 Through March 2002

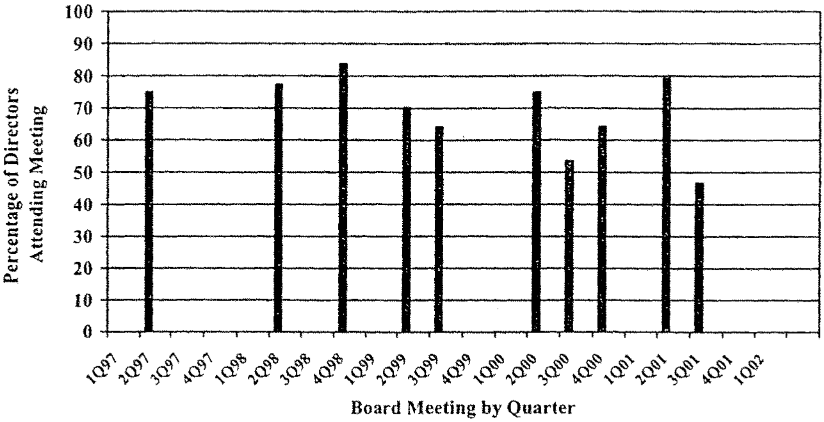

Exhibit 8

Privileged and Confidential
Attorney-Client Privilege
Attorney Work Product

MEMORANDUM

TO: Winston & Strawn

FROM: Mark A. Sargent

DATE: November 22, 2002

RE: **ULLICO**

I am Dean and Professor of Law at the Villanova University School of Law. Prior to assuming my present position I taught corporate and securities law at the University of Maryland and University of Baltimore law schools for over 15 years. I also served as Chairman of the Corporation Laws Committee of the Maryland State Bar Association.

At your request and pursuant to the protections of the attorney-client privilege and work product doctrine, I have reviewed the *Report of the Special Counsel, ULLICO Stock Purchase Offer and Repurchase Programs and Global Crossing Investment* (the Report); Affidavit of Lenore Miller, dated November 12, 2002; Declaration of John T. Joyce, dated November 12, 2002; a Memorandum of Jim Hanks to Baker Botts L.L.P and Sidley Austin Brown & Wood LLP dated November 13, 2002; and a Memorandum of Thomas C. Green to Winston & Strawn dated November 13, 2002. You have asked me to review Hanks' and Green's analysis and conclusions with respect to the application of Maryland law to the ULLICO stock purchase offer and repurchase programs (the Programs). I have not undertaken an independent investigation of the facts and circumstances relating to the Programs. My observations in this letter are thus based entirely on my review of the documents referenced above and my familiarity with Maryland law. My general conclusion is that nothing in the Hanks or Green Memoranda undermines the analysis or conclusions contained in the Report. I have also found nothing distinctive in Maryland law that would mandate analysis or conclusions different from those contained in the Report.

1. The Hanks Memorandum.

While accurate in some respects in its description of certain aspects of Maryland corporation law, Mr. Hanks' memorandum does not address, let along dispel, the most important fiduciary concerns raised by the Report, and reaches some conclusions that are largely irrelevant.

A key example is his extended discussion of section 2-419 of the Maryland General Corporation Law (MGCL), through which he reaches the conclusion that the repurchase programs are not void or voidable because of their approval by an interested director. This discussion is largely irrelevant, because the Report acknowledges that the repurchase programs seem to have been approved by at least one disinterested director. The Report's concerns are with the broader question of whether approval of the transactions nonetheless constituted a breach of the standard of conduct required of directors. Mr. Hanks acknowledges that this question must be considered even when a transaction is not voidable under section 2-419.

Even though Mr. Hanks' conclusions about section 2-419 are irrelevant, it should be noted that several of his assumptions about the applicability of section 2-419 are questionable. For example, it is my understanding from the Report that fewer of the directors were disinterested at least with respect to the 2000 Formal Repurchase Program and the Informal

Repurchase Program than Mr. Hanks seems to assume. More important, Mr. Hanks' conclusion that the stock purchase offers were "fair and reasonable" to the corporation under section 2-419(c) seems to me to be questionable. His analysis of this issue argues that the offers were "fair and reasonable" for the following reasons: granting directors and officers stock in the corporation, even without charge, is common, as is granting in-the-money options; the directors and officers were required to pay for the stock; selling stock to directors and officers at a price below their underlying value is not inherently problematic; the directors were at economic risk when they purchased the stock; there was no evidence of a plan on the part of the members of the Board to benefit themselves at the expense of the stockholders; stockholders other than directors and officers were given the opportunity to have their shares repurchased at the same price as the directors and officers; and Maryland law permits a director to be compensated for board service and for a board to set its own compensation.

This analysis combines points of little relevance, questionable assumptions and an avoidance of the major issues actually raised. For example, it may be true that directors and officers are often compensated for their services with stock, and sometimes with in-the-money options, that they are sometimes allowed to purchase stock for less than their underlying value, and the boards may set their members' compensation, but none of those observations address the specific concerns raised by the Report about these particular transactions. Similarly, the observation that outside stockholders were given the opportunity to purchase the shares at the same price as the directors and officers may also be true, but does not in itself compel the conclusion that the offers were fair, when the transactions are viewed in light of the whole sequence of events. Furthermore, it is my understanding that there is significant disagreement about whether the directors and officers did in fact assume any meaningful risk associated with their purchases of ULLICO stock. For example, Mr. Hanks' argument that the fact that some directors chose not to purchase the stock suggests that the stock presented economic risk is a *non sequitur*. There may have been other reasons personal to each director that led them to not participate in the purchase program. Outside directors also simply may not have understood the type of economic windfall the opportunity represented. Furthermore, Mr. Hanks downplays the importance of the Global Crossing investment to the value of the ULLICO stock by pointing out that the investment represented only 30% of ULLICO's total assets at its highest point. More significant to the question of economic risk, however, was the fact that the Global Crossing investment represented a substantially greater percentage of ULLICO's shareholders' equity, the key determinant of the stock's value, and hence the economic risk to the directors and officers who purchased the stock.

Most important, the conclusion that the stock purchase offers as a whole were "fair and reasonable to the corporation" fails to take into account the questionable relationship between the amount of "compensation" paid to the directors and the minimal services they provided in connection with the Global Crossing investment; the unauthorized delegation of power to issue stock to Robert A. Georgine; the unauthorized actions of the Compensation Committee in setting its members' own compensation; and Georgine's failure to meet his duty of candor in informing the board and the stockholders of all material facts relating to the transactions. It also is worth noting that on page 14 of his Memorandum Mr. Hanks does not address the question of whether the preferential impact of the 10,000 share provision in the Formal Repurchase Program was "fair and reasonable." He simply dismissed the 10,000 share requirement as "irrelevant" because he claims that the transaction was approved by disinterested directors.

Thus, if the stock offers and the repurchase programs were to be evaluated pursuant to section 2-419(b)(2), there would be a significant possibility that they would not be found "fair and reasonable." In any event, Mr. Hanks' conclusion that they would be found "fair and reasonable" is essentially a red herring, because the Report does not depend upon a finding that the repurchase programs were voidable under section 2-419.

A similar red herring is his extended discussion of the meaning of fiduciary duty under the MGCL. While it is correct that the MGCL does not use the term "fiduciary," the Maryland courts certainly do, as Mr. Hanks concedes, particularly in cases involving the duty of loyalty. Furthermore, section MGCL § 2-405.1 is, in effect, a codification of the concept of fiduciary duty. The failure to use the specific term is thus of little significance. Mr. Hanks uses the distinction to make the obvious point (and one universal in American corporate law) that the director of a corporation does not have the same level of fiduciary obligation as a trustee. Whatever practical significance that distinction may have it is completely irrelevant here, because the Report does not assume that the directors had some type of heightened trustee-type duty. The Report analyzes the conduct of the directors explicitly under the statutory standard of conduct applicable to them under section 2-405.1.

To get to the heart of the matter, Mr. Hanks' analysis of the programs under section 2-405.1 is conclusory and, in my opinion, not substantiated by the facts, thus leaving intact the serious concerns raised by the Report under that section.

First, with respect to the question of "good faith," Mr. Hanks seems to conclude that the directors acted in good faith primarily upon the basis of self-serving assertions by two directors that they acted in good faith. Obviously, self-serving assertions such as these are of little weight. Furthermore, their representations do not establish the state of mind of the other directors, many of whom were tainted by a conflict of interest. The assertion by the two directors that they sought the advice of Arnold & Porter also does not in itself establish good faith. In addition, there is not only a good faith problem but a possible breach of the duty of loyalty on the part of those directors who stood to receive substantial benefits through approving the stock purchase offers and repurchase programs. The taint of conflict of interest will undermine any presumption under Maryland law that the directors acted in "good faith" for purposes of section 2-405.1.

Second, his conclusion that the directors acted "[i]n a manner he [or she] reasonably believes to be in the best interests of the corporation," ignores the serious questions raised by the Report as to whether the Programs were in fact designed and implemented to achieve their avowed objectives as opposed to enriching insiders.

Third, Mr. Hanks' conclusion that the directors acted "with the care of an ordinarily prudent person under the circumstances" seems to be based upon an assumption that they spent an adequate amount of time in meetings and were adequately briefed and advised. These facts do not take into account the Board's grossly negligent and unauthorized delegation of stock issuance authority to Georgine without "providing for or establishing a method or procedure for determining the maximum number of shares to be issued," as required by MGCL § 2-411(b); its failure to supervise Georgine's conduct of the Informal Repurchase Program; its failure to prevent the Compensation Committee's unauthorized determination of its members' own compensation; and its failure to prevent material misstatements and omissions in public disclosures to shareholders. Furthermore, even those directors who approved the repurchase programs but did not participate in them may not have acted with due care, because they apparently failed to consider the preferential impact of the repurchase and the enrichment of other directors and officers at the expense of the stockholder.

In short, in my opinion, the Report has identified facts and provided a legal analysis raising the significant possibility that there was a material and widespread failure on the part of the members of the ULLICO board to meet the required standard of conduct under the Maryland statute. Nothing in Mr. Hanks' analysis on pp. 15-16 alters that conclusion.

2. The Green Memorandum

While the Green Memorandum is correct that reliance upon counsel can be used in defense of a fiduciary duty claim under section 2-405.1(b)(1), the Report indicates that there are significant factual questions about: (i) what information was actually communicated to ULLICO's outside counsel and by whom; (ii) what counsel reasonably would infer about the Programs from what was communicated; (iii) what advice was sought from that counsel with respect to the Programs; (iv) what advice actually was provided and; (v) the extent to which that advice was communicated to the full board and actually relied upon.

Even more important, much of the "reliance" asserted in the Green memorandum seems to have been reliance on counsel's silence, i.e., an argument that because sophisticated counsel knew something about the transactions and did not object, the client could rely on counsel's silence to assume that the transaction was proper. Furthermore, recognition of a defense of reliance on a counsel's silence seems singularly inappropriate when the directors who would substantially benefit from the repurchase programs were called upon to approve the transactions, especially when the scale of that benefit would be grossly disproportionate to the directors' ordinary fee-based compensation. Under those circumstances, the directors should have sought more detailed and specific assurance of the legality and the fairness of the transactions from independent counsel and other outside experts in order to invoke the reliance on counsel defense.

In my opinion, there is thus a serious legal question under Maryland law as to whether reliance upon counsel's silence is sufficient to establish a reliance upon counsel defense under section 2-405.1(b)(1).

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PROFESSIONAL EMPLOYMENT

1. Dean and Professor of Law
   Villanova University School of Law (July 1, 1997-Present)

2. University of Maryland School of Law (UMSL)
   Associate Dean for Academic Affairs (1994-1997)
   Piper & Marbury Professor of Law (1993-1997)
   Professor of Law (1989-1997)
   Director, Law and Entrepreneurship Program (1989-1997)
   Faculty Editor, The Business Lawyer (1991-1997)

3. Southern Methodist University School of Law
   Visiting Associate Professor of Law (Spring 1988)

4. Washington College of Law, American University
   Visiting Professor of Law (Fall 1987)

5. University of Baltimore School of Law (UBSL)
   Professor of Law (1987-1989)
   Associate Professor of Law (1983-1987)
   Assistant Professor of Law (1980-1983)

6. Csaplar & Bok
   Boston, Massachusetts
   Private Practice (1978-1980)

ARTICLES

1. "Blue Sky Mysteries of the National Securities Markets Improvements Act," 23 Sec. Reg. L.J. 172 (1997).

2. "Compounding the Enigma: Are LLC Interests Securities?," 2 NASAA Enforcement L. Rep. 185 (1994).

3. "A Future for Blue Sky Law," 61 U.Cinn. L. Rev. 471 (1993) (symposium piece).

4. "Are Limited Liability Company Interests Securities?," 18 Pepperdine L. Rev. 1069 (1992) (symposium piece).

5. "The New Regulation D: Deregulation, Federalism and the Dynamics of Regulatory Reform," 68 Wash. U. L.Q. 225 (1990) (reprinted at 22 Sec. L. Rev. 3 (1991)).

6. "Two Cheers for the Maryland Directors and Officers Liability Statute," 18 U. Balt. L. Rev. 278 (1989) (symposium piece).

7. "State Disclosure Regulation and the Allocation of Regulatory Responsibilities," 46 Md. L. Rev. 801 (1987) (symposium piece) (reprinted in Contemporary Issues in Securities Regulation, Butterworth, 1988, at 103-48).

MARK A. SARGENT
PAGE 2

8. "Do the Second Generation State Takeover Statutes Violate the Commerce Clause?," 8 Corp. L. Rev. 3 (1985) (reprinted in Tender Offers: Developments and Commentaries, Quorum Books, 1985, at 75-103).

9. "State Limited and Private Offering Exemptions: The Maryland Experience in a National Perspective," 13 U. Balt. L. Rev. 496 (1984) (symposium piece).

10. "A Reexamination of the Agency Doctrine of Election," 36 U. Miami L. Rev. 411 (1982) (Co-author: Arnold Rochvarg).

11. "On the Validity of State Takeover Regulation: State Responses to MITE and Kidwell," 42 Ohio St. L. J. 689 (1981) (reprinted at 14 Sec. L. Rev. 221 (1982)).

EDITING PROJECTS

1. "Symposium: Religion and Investing," 3 Vill. J. L. & Investment Mgmt. ______ (2002)

2. "Symposium: The National Securities Markets Improvements Act One Year Later," 53 Bus. Law. 507 (1998).

3. "Check-the-Box and Beyond: The Future of Limited Liability Entities," 52 Bus. Law. 605 (1997) (Co-editor: Larry Ribstein).

4. "Review of Developments in State Securities Regulation - Blue Sky Law in Cyberspace," 52 Bus. Law. 315 (1996).

5. "Symposium on the Maryland Director and Officer Liability Statute," 18 U. Balt. L. Rev. 225 (1989).

6. "Symposium on State Securities Regulation," 13 U. Balt. L.Rev. 435 (1984).

REPORTS

1. "Report and Recommendations on Mental Health Inquiries on the Maryland Bar Application," October 1995 (report prepared for the Section of Legal Education and Admissions to the Bar, Maryland State Bar Association).

2. "Report on State Merit Regulation of Securities Offerings," 41 Bus. Law. 785 (1986) (prepared for the ABA State Regulation of Securities Committee).

SHORTER ARTICLES

1. "Legal Defense: When Sued, How Should the Church Behave?," Commonweal, June 14, 2002, at 13.

2. "The Real Scandal: Enron's `Crimes' Were Legal," Commonweal, March 8, 2002, at 10.

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3. "An Alternative to the Sectarian Vision: the Role of the Dean in an `Inclusive' Catholic Law School," 13 U. Toledo L. Rev. 171 (2001) (symposium piece).

4. "Another Mouse that Roared: Maryland's Leadership in the Law of Business Organizations," 30 Md. B.J. 15 (Jan./Feb.1997).

5. "Immigration Law: The Maryland Law School Experience," 30 Md. Bar J.1 (May/June 1997).

6. "State Treatment of LLC Interests as Securities," 3 J. Lim. Liab. Co. 137 (1997).

7. "What Does it Take? The Hallmarks of a Business Lawyer," Business Law Today, July/August 1996, at 11.

8. "LLCs as Securities - California Style," 1 J. Lim. Liab. Co. 181 (1995).

9. "Are LLC Interests Securities? - Part I," 1 J. Lim. Liab. Co. 34 (1994); "Are LLC Interests Securities? - Part II," 1 J. Lim. Liab. Co. 127 (1994).

10. "Will Limited Liability Companies Punch a Hole in the Blue Sky?", 21 Sec. Reg. L. J. 429 (1993).

11. "No More Tinkering!", Business Law Today, July-Aug. 1992, at 5.

12. "SCOR One for the Issuer," N. Y. L. J., June 1, 1992, at 7.

13. "A Blue Sky State of Mind: The Meaning of 'Willfully' in Blue Sky Criminal Cases," 20 Sec. Reg. L. J. 96 (1992).

14. "ULOE: New Hope, New Challenge," 45 Bus. Law. 1319 (1990) (co-author: Hugh Makens).

15. "The SCOR Solution," 18 Sec. Reg. L. J. 93 (1990).

16. "RUSA Revisited," 16 Sec. Reg. L. J. 79 (1989).

17. "Director Liability Statutes Placed in Perspective," Nat'l L. J., July 4, 1988, at 23.

18. "Blue Sky Enforcement Actions - Some Practical Considerations," 14 Sec. Reg. L. J. 343 (1987).

19. "Some Thoughts on the Revised Uniform Securities Act," 14 Sec. Reg. L. J. 62 (1986).

20. "State Regulation of Investment Companies - Sources of the Current Controversy," 13 Sec. Reg. L. J. 167 (1985).

21. "The Challenge to Merit Regulation - Part II," 12 Sec. Reg. L. J. 367 (1985).

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22. "The Challenge to Merit Regulation - Part I," 12 Sec. Reg. L. J. 276 (1984).

23. "Bluer Skies in Maryland: An Introduction to the New Maryland Exemptions for Limited and Private Offerings," 1983 U. Balt. L. Forum 22 (Co-author: K. H. Matney).

24. "Research in Securities Regulation Revisited," 79 Law Libr. J. 259 (1987) (co-author: Melanie L. Senter).

25. "Research in Securities Regulation: Access to the Sources of the Law," 75 Law Libr. J. 98 (1982) (Co-author: Emily R. Greenberg).

COMMERCIAL PUBLICATIONS

1. Proxy Rules Handbook (Clark Boardman Callaghan 8th ed. 2000) (Co-author: Dennis R. Honabach).

2. D&O Liability Handbook (Clark Boardman Callaghan 10th ed. 2000) (Co-author: Dennis R. Honobach).

3. Limited Liability Company Handbook (Clark Boardman Callaghan 9th ed. 2000) (Co-author: Walter D. Schwidetsky).

BOOK REVIEWS

1. Review of Ercole, Levine et al., Maryland Limited Liability Company Forms and Practice Manual, Daily Record (Baltimore), Dec. 31, 1993, at 12.

2. Review of Hanks, Maryland Corporation Law, and Schulman, Moscow & Lesser, Michigan Corporation Law and Practice, 47 Bus. Law. 1355 (1992).

3. "A Sense of Order: The Virtues and Limits of Doctrinal Analysis," review of Loss & Seligman, Securities Regulation, vols. I-IV, 104 Harvard L. Rev. 634 (1990).

4. Review of Moscow & Makens, Michigan Securities Regulation, 39 Bus. Law. 359 (1983).

5. Review of Karmel, Regulation by Prosecution, and Seligman, The Transformation of Wall Street, 12 U. Balt. L. Rev. 371 (1982).

DRAFTING PROJECTS

1. Co-Reporter, Revision of the Uniform Securities Act, National Conference of Commissioners on Uniform State Laws, 1982-83.

2. Reporter, Revision of the Maryland Securities Act, Maryland State Bar Association, 1985-88.

MARK A. SARGENT
PAGE 5

3. Principal Draftsman, Maryland Securities Division Regulations .09 and .15, private and limited offering exemptions under the Maryland Securities Act, 1981-82.

COURSES

Securities Regulation; Securities Regulation Workshop; Business Associations; Business Crime; Business Planning; Business Lawyering; Mergers & Acquisitions; Law & Finance of High Technology.

LAW SCHOOL AND UNIVERSITY SERVICE

1. Chair, UMAB Presidential Search Committee (June 1993-February 1994).
2. Chair, UMAB Defining Quality Advisory Committee (1992-93).
3. Chair, UMSL Strategic Planning Committee (1990-92).
4. Law School Representative, Task Force for the Unification of the University of Maryland at Baltimore and the University of Maryland - Baltimore County; Chair, Mission Statement Writing Group (1991-1992).
5. Chair, UBSL Long-Range Planning Committee (1988-89).
6. Chair, UBSL AALS Self-Study Committee (1982-83).
7. Coordinator, UBSL Faculty Colloquium on Business Organizations (1983-85).
8. Coordinator, UBSL Faculty Workshop (1986-87, 1988-89).
9. Adviser, Maryland Law Review (1990-1991).
10. Adviser, Maryland Journal of International Law and Trade (1989-1991).
11. Adviser, UMSL Business Law Society (1989-1992).

DISTINCTIONS

1. Teacher of the Year, University of Maryland School of Law 1994-95.
2. Member, American Law Institute (1991-Present).
3. Spirit of Excellence Award, University of Baltimore 1984.

EDITORIAL POSITIONS

1. Co-Editor-in-Chief, Villanova Journal of Law and Investment Management (1998-Present).
2. Member, Editorial Board, The Business Lawyer (1997-1999).

MARK A. SARGENT
PAGE 6

3. Faculty Editor, The Business Lawyer (1992-1997).

4. Member, Board of Editors, Journal of Limited Liability Companies (1994-1999).

5. Member, Board of Contributing Editors and Advisers, Securities Regulation Law Journal (1992-1995).

BAR LEADERSHIP

1. Chair, Corporation Laws Committee, Maryland State Bar Association (1996-1997).

2. Chair, Committee on Representing Emerging Companies, Maryland State Bar Association (1990-1994).

3. Chair, Section Council, Section of Legal Education and Admissions to the Bar, Maryland State Bar Association (1995-96).

4. Member, Section Council, Section of Business Law, Maryland State Bar Association (1990-1993).

BOARDS

1. Member, Board of Trustees, Wilmington Trust Mutual Funds, 2002-present.

2. Independent General Partner, Fiduciary Capital Partners SBIC (1998-2002).

3. Member, Board of Directors, Saint Thomas More Society of Pennsylvania (1998-Present)

4. Member, Board of Directors, Empowerment Zone Legal Services, Inc. (1996-1997)

5. Member, Advisory Board, UMBC Technology Enterprise Center (1989-1995).

6. Member, Board of Trustees, Handel Society of Baltimore (1989-94)

MISCELLANEOUS

1. Member, National Adjudicatory Council, National Association of Securities Dealers, Inc. (2000-Present)

2. Arbitrator, American Arbitration Association (1998-Present)

3. Arbitrator, National Association of Securities Dealers, Inc. (1988-92).

4. Arbitrator, SEC v. Prudential Securities, Inc. Settlement (1994-1996).

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PAGE 7

5. Hearing Officer, Division of Securities, Office of the Maryland Attorney General (seven matters, 1982-89).

6. National Endowment for the Humanities Summer Fellowship, Stanford Law School (1982).

7. Continuing legal education program chairman and instructor: ALI-ABA; Practicing Law Institute; ABA Section of Business Law; ABA Torts and Insurance Practice Section; Warren Gorham Lamont; Maryland Institute for Continuing Professional Education of Lawyers; Michigan Institute of Continuing Legal Education; Minnesota Institute Legal Education; Maryland State Bar Association; North American Securities Administrators Association (NASAA); Northwest Securities Institute; SMU School of Law; Suffolk University Law School; Maryland Lawyers for the Arts.

8. Pro Bono Consultancies: ABA; NASAA; Michigan State Bar; Virginia Corporation Commission; Maryland Division of Securities.

9. Executive Producer, "Insight Out," (October, 1995) (a training video for use with a campus-wide Americans with Disabilities Act evaluation survey).

EDUCATION

1. Wesleyan University
B.A., magna cum laude, 1973

   -Member: Phi Beta Kappa
   -High Honors: Comprehensive Examinations in the College of Letters
   -Junior Fellow, Wesleyan Center for the Humanities
   -Connecticut State Scholar (1969-73)

2. Cornell University
M.A., Medieval and Renaissance History, 1975

   -Danforth Fellowship

3. Cornell Law School
J.D., 1978

   -Student research assistant: Cornell Institute on Organized Crime

PERSONAL

1. Admitted to Massachusetts Bar, 1978.

2. Born April 28, 1951, New London, Connecticut.

3. Married to Joan Taranto Sargent with one child, Alexander.

Mark A. Sargent
Representative Presentations

May 31, 2002

1. Presenter, "A Vision of an 'Inclusive' Catholic Law School," Conference on Catholics in the Public Square, Pew Foundation and Commonweal Magazine, Malibu, CA, February 24, 2002.

2. Panelist, "The Forces of Secularization in the Legal Academy," Conference of Religiously Affiliated Law School, Malibu, CA, February 22, 2002.

3. The Phillip Hallie Lecture, "The Crisis in Catholic Social Thought," College of Letters, Wesleyan University, Middletown, CT, October 24, 2001.

4. "The Role of Independent Directors in Mutual Fund Governance," Conference on Mutual Fund Regulation in the Next Millennium, New York Law School, New York, N.Y., February 4, 2000.

5. "Will Lawyers Be the Providers of Legal Advice in the 21st Century?," Association of American Law Schools (AALS) Annual Meeting, Washington, D.C., January 6, 2000.

6. Chair, Panel Discussion, "The National Securities Markets Improvements Act: Unanswered Questions," North American Securities Administrators Association, Annual Meeting, Nashville, Tennessee, October 5, 1998.

7. "A Program in Law & Entrepreneurship," AALS Workshop on Teaching Business Associations, Washington, D.C., May 1, 1998.

8. "The (Un)importance of SEC-Mandated Disclosure of Executive Compensation," Symposium on Corporate Disclosure and its Impact on Corporate Morality, Columbus School of Law, Catholic University, Washington, D.C., April 16, 1998.

9. "Subject-Matter Focused Externships," Conference on Externship Pedagogy: Theory and Practice, Columbus School of Law, Catholic University, Washington, D.C., March 7, 1998.

10. "When are LLC Interests Securities?", New Jersey Institute of Continuing Legal Education, Rutgers University, New Brunswick, New Jersey, November 20, 1996.

11. "Conversions Into LLCs," Suffolk University Law School, Boston, November 8, 1996.

12. "Raising Capital via Private Placements - Legal Issues," Dingman Center for Entrepreneurship, University of Maryland, September 16, 1996.

13. "Problems of Fiduciary Obligation in LLC Law", Minnesota Institute of Legal Education, Minneapolis, MN, May 2, 1996.

14. "Non-Tax Issues in LLC Law: An Overview", Maryland Institute for Continuing Professional Education of Lawyers (MICPEL), Baltimore, Maryland, May 1, 1996.

15. Organizer and Panelist, Panel Discussion on "*Hopwood v. Texas*: Its Implications for Affirmative Action in Legal Education," Maryland State Bar Association Section of Legal Education and Admissions to the Bar, Baltimore, Maryland, April 29, 1996.

16. "The Evolution of Limited Liability Entities", Maryland Judicial Institute, Annapolis, Maryland, April 19, 1996.

17. Testimony on the "Capital Markets Deregulation and Liberalization Act of 1995," before the Subcommittee on Telecommunications and Finance Subcommittee of the Committee on Commerce, U.S. House of Representatives, December 5, 1995.

18. "Fiduciary Problems in LLCs," Suffolk University Law School, Boston, November 29, 1995.

19. "Why Mandatory CLE?," Maryland State Bar Association Annual Meeting, Ocean City, Maryland, June 9, 1995.

20. "Living Within the Securities Laws," Limited Liability Conference, Warren Gorham & Lamont, Hilton Head, South Carolina, June 6, 1995.

21. Panelist, "The Role of the Character Committee Interview in the Bar Admissions Process," Section of Legal Education and Admissions to the Bar of the Maryland State Bar Association, Annual Meeting, Baltimore, May 3, 1995.

22. "New Approaches to Regulating LLCs," North American Securities Administrators Association, ABA Subcommittee on State Securities Regulation, Annual Meeting, Boston, MA, Oct. 10, 1994.

23. "Legal Constraints on Private Placements," Dingman Center for Entrepreneurship, University of Maryland-Baltimore County, October 4, 1994.

24. "Experiential Learning and the Training of Business Lawyers," Morgan, Lewis & Bockius (Securities Law Department), Washington, D.C., September 19, 1994.

25. "Are LLC Interests Securities?," "Should a Law Firm Be an LLC or an LLP?," Minnesota Institute of Legal Education, Minneapolis, MN, June 15, 1994.

26. "Access to Private Capital for Small Businesses," Baltimore Chamber of Commerce, Baltimore, MD, April 26, 1994.

27. "Main Currents in D&O Liability," Program on Developments in the Law Affecting Corporate Officers and Directors, ABA Torts and Insurance Practice Section, Baltimore, MD, December 14, 1993.

28. "Creating an Entrepreneurial Culture," Maryland Partnership Symposium, Dingman Center for Entrepreneurship, University of Maryland-College Park, September 14, 1993.

29. "Intellectual Property Dilemmas in the Life-cycle of Entrepreneurial Companies," Program for the Maryland Department of Economic and Employment Development, Baltimore, MD, July 27, 1993.

30. "Goals of Externship Programs in Business Law," Clinical Legal Education Association Conference on Externships, McLean, VA, May 5, 1993.

31. "Professional Practice Plans in Legal Education," University of Maryland School of Social Work, Baltimore, March 4, 1993.

32. "A Critical Analysis of the SEC's Small Business Initiative," Northwest Securities Institute, Vancouver, BC, February 27, 1993.

33. "Financial Resources for Early-Stage Biotechnology Companies," Greater Baltimore Committee Biotech Professionals' Forum, Baltimore, January 14, 1993.

34. "A Future for Blue Sky Law," Washington-Baltimore Corporate Law Teachers Working Group, George Washington University National Law Center, Nov. 11, 1992; University of Maryland School of Law Faculty Workshop, Nov. 19, 1992.

35. "Venture Capital Financing Agreements," MICPEL, Business Document Drafting Series, Baltimore, Oct. 21, 1992.

36. "The New SEC Rules for Small Business Securities Offerings," Maryland State Bar Association (MSBA), Securities Law Committee Program, Baltimore, Oct. 2, 1992.

37. "Review of Recent Maryland Corporation and Partnership Law Decisions," MSBA Section of Business Law Program, MSBA Annual Meeting, Ocean City, MD, June 11, 1992.

38. "Duties, Rights and Liabilities of Directors of Non-profit Corporations," First Annual Non-profit Organizations Institute, Goucher College, Towson, MD, May 28, 1992.

39. "A Program in Law & Entrepreneurship," ABA Section of Business Law, Committee on Legal Education, Annual Section Meeting, Orlando, FL, April 10, 1992.

40. "Are Limited Liability Company Interests Securities?", Symposium on Current Issues in Securities Regulation, Pepperdine School of Law, Malibu, CA, Feb. 22, 1992.

41. "Origins of the Fiscal Crisis," Teach-In on Maryland's Fiscal Crisis, University of Maryland School of Law, Baltimore, Jan. 29, 1992.

42. "Fear and Loathing in the Law World," The Breakfast Club, Baltimore, Feb. 13, 1992.

43. "The Maryland Court of Appeals in Review," MSBA Section of Judicial Administration, Mid-year Meeting, Baltimore, Nov. 9, 1991.

44. "Private Placements Under the State Securities Laws," PLI Program on Private Placements 1991, New York, NY, Apr. 12, 1991.

45. "A Legal Primer for Maryland Arts Organizations," Maryland State Arts Council, Baltimore and Easton, MD, Oct. 13 and Nov. 10, 1990.

46. "A Defense of Socratic Teaching: Comments on Jerold Israel," University of Maryland School of Law (UMSL) Orientation Program, Baltimore, Aug. 23, 1990.

47. "Procrustes' Bed: The Impact of Merit Regulation on Business Financing," ABA Section of Business Law, Annual Meeting, Chicago, IL, Aug. 7, 1990.

48. "Problems in Planning Exempt Transactions Under Federal and Maryland Securities Law," MICPEL Program on Raising Money Privately, College Park, MD, Nov. 3, 1989.

49. "Comments on the Revised Uniform Securities Act," ABA Section of Business Law, State Regulation of Securities Committee, Annual Section Meeting, Houston, TX, April 1, 1989.

50. "Blue Sky Internationalization," North American Securities Administrators Association (NASAA), Annual Meeting, Santa Fe, NM, Oct. 12, 1988.

51. "Analysis of the New Michigan Fair Price Takeover Statute," Michigan Institute of Continuing Legal Education, Ann Arbor, MI, July 29, 1988.

52. "The New State Takeover Statutes: Constitutional Considerations," ALI-ABA Program on State Takeover Regulation Today, Philadelphia, PA, Oct. 27, 1988.

53. "The Legal Framework of Blue Sky Enforcement," SMU School of Law, Program on Blue Sky Law Today, Dallas, TX, Oct. 22, 1987.

54. "Sources of the D & O Liability Crisis," University of Baltimore School of Law, Program on the Current Crisis in Directors' Liability, Baltimore, Feb. 24, 1987.

55. "Maryland Corporation Law Decisions 1983-86," MSBA Mid-Year Meeting, Bethesda, MD, Jan. 9, 1987.

56. "What is Merit Regulation?," ABA Young Lawyers Division, Program on Merit Regulation, ABA Annual Meeting, New York, NY, Aug. 12, 1986.

57. "Edgar v. MITE Corp. and the Origins of the Second Generation State Takeover Statutes," ALI-ABA Program on New Directions in State Takeover Regulation, San Diego, CA, May 10, 1986.

58. "Law School Twenty-five Years Ago and Today," Serjeant's Inn, 25th Anniversary Dinner, Baltimore, Dec. 11, 1985.

59. "Blue Sky Regulation of Real Estate Securities Offerings," ALI-ABA Program on Modern Real Estate Transactions, Charlottesville, VA, June 26, 1985.

60. "The Historical Development of the Dual Regulatory System," ABA Section of Business Law, Annual Meeting, Los Angeles, CA, March 29, 1985.

61. "Blue Sky Law: The Current Controversy," University of Maryland School of Law Symposium on Corporate and Securities Law Developments, Baltimore, Nov. 1, 1984.

62. "Securities Disclosure: Myth & Meaning," NASAA Analysts' Symposium, St. Louis, MO, Aug. 21, 1985.

63. "Introduction to State Regulation of Real Estate Securities Offerings," ALI-ABA Program on the Effect of Securities Regulation on Real Estate Transactions, New York, NY, Oct. 24, 1983.

64. "After the Fall," University of Baltimore School of Law, Program on New Directions in State Takeover Regulation, Baltimore, March 30, 1983.

65. "Revising the Uniform Securities Act During the Financial Revolution," NASAA Financial Institutions Forum, Baltimore, Jan. 24, 1983.

66. "MITE and its Progeny," NASAA Annual Meeting, Seattle, WA, Oct. 6, 1982.

67. "On Revising the Uniform Securities Act," NASAA Annual Meeting, Seattle, WA, Oct. 4, 1982.

Special Counsel Staff

The senior members of the Special Counsel staff, all lawyers at Winston & Strawn, have substantial experience in corporate internal investigations, securities regulation, securities litigation and criminal law.

Special Counsel James R. Thompson, Chairman of Winston & Strawn, is the former Governor of Illinois (1977-1991) and United States Attorney for the Northern District of Illinois (1971-1975). Governor Thompson is a member of numerous corporate boards.

Special Counsel Staff Director Robert W. Tarun is co-author of the treatise Corporate Internal Investigations and has supervised scores of internal investigations. Mr. Tarun is a former Executive Assistant United States Attorney and has substantial criminal defense and regulatory experience. Stephen J. Senderowitz supervised, as the Deputy Chief of Special Prosecutions Division in the United States Attorney's Office, financial markets prosecutions, and in private practice has concentrated his practice in civil and criminal securities and derivatives litigation. Daniel A. Ninivaggi specializes in corporate finance and securities transactions. Timothy M. Broas and Charles B. Klein are litigators experienced in both complex civil and criminal law as well as corporate internal investigations.

Attorneys Jon J. Kramer, Christopher M. McClellan and Raymond W. Mitchell provided substantial assistance in connection with the legal research and analysis thereof used in the Report. Attorneys Thomas P. Fitzgerald, Barry J. Hart and Karen M. Kowalski assisted on tax issues, and Attorney Michael S. Melbinger provided advice on employee benefit plans.

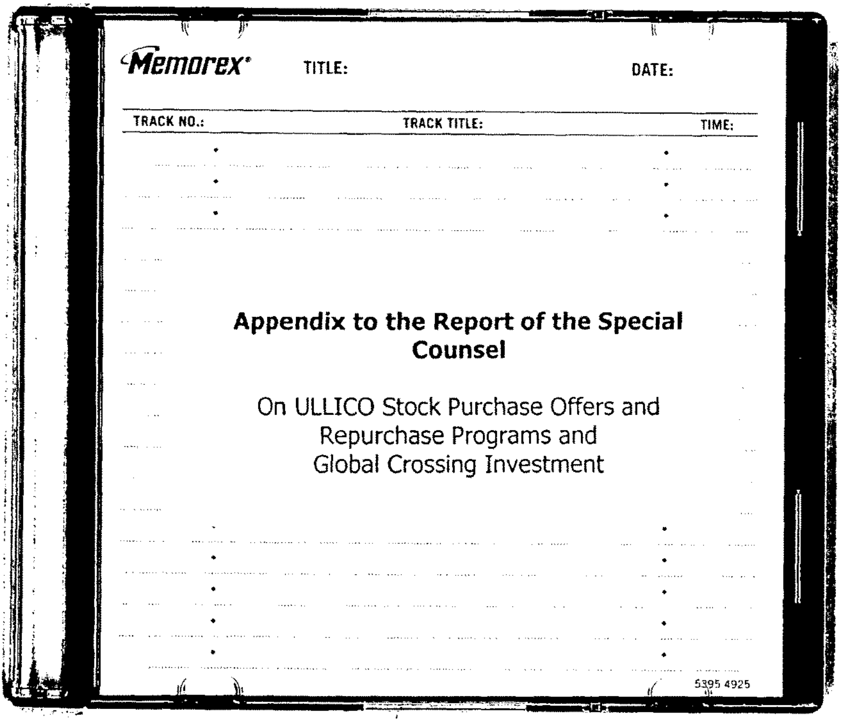
Paralegal services were provided by Megan Bushor, Kevin J. Behan and John D. Frier. Abbe L. Wright provided graphics assistance.

Notice

The following changes have been made to the Report since it was first issued on November 26, 2002:

1. The name "Wilhelm" was added to footnote 34 on page 42 and also at the end of the third full paragraph on page 63.
2. The names "Wyse, McCarron" were deleted from the third line from the bottom of page 38, as the reference quoted from their interviews related to the formal program and not the discretionary program as indicated.
3. Director Hanley's name was added to the end of footnote 34 on page 42.
4. In the first full paragraph on page 40, the following reference "(4) 12,523 Class A shares from Georgine; (5) 4,345 Capital shares from Gentleman (director and former officer) on March 9, 2001;" was corrected to read as follows: "(4) 12,523 Class A / 4,345 Capital shares from Georgine on February 14, 2001; (5) 1,097 Capital shares from Gentleman on March 2, 2001;".
5. The name "Bernard" was deleted from footnote 37 on page 46.

APPENDIX F – SUBMITTED FOR THE PERMANENT HEARING ARCHIVE, APPENDIX TO THE REPORT OF THE SPECIAL COUNSEL, ON ULLICO STOCK PURCHASE OFFERS AND REPURCHASE PROGRAMS AND GLOBAL CROSSING INVESTMENT, AND CD ROM. TAB NUMBER REFERENCES TO APPENDIX INCLUDED IN PRINTED HEARING REPORT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On ULLICO Stock Purchase Offers and Repurchase Programs and Global Crossing Investment
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Appendix to the Report of the Special Council
On ULLICO Stock Purchase Offers and Repurchase Programs
and Global Crossing Investments

Tab Number	Document Description	Bates-Range
1	Minutes of the April 29, 2002 Meeting of the Board of Directors of ULLICO, Inc.	U 017423-017434
2	ULLICO, Inc. By-Laws	U 030545-030553
3	Minutes of the February 14, 1997 Meeting of the Executive Committee of ULLICO, Inc.	U 017347-017353
4	8/13/98 Global Crossing Ltd. Lock-Up Letter to: Smith Barney Inc. from: Michael Steed	U 044741-044742
5	Minutes of the May 5, 1997 Meeting of the Executive Committee of ULLICO, Inc.	U 000011-000018
6	Global Crossing Ltd. Stockholders Agreement dated August 12, 1998	U 044750-044781
7	Global Crossing Ltd. Registration Rights Agreement dated August 12, 1998	U 044782-044826
8	ULLICO, Inc. 1999 Term Sheet Stock Repurchase Program	U 048222
9	ULLICO, Inc. Confidential Offering Memorandum dated May 22, 1992	U 030308-030371
10	7/19/02 Letter to: Stephen Senderowitz from: Gary Stephani re: Attached Schedules on the Impact of the Global Crossing Investment	U 045567-045570
11	Charts re: Global Crossing - ULLICO's Sell Decisions vs. Wall Street Sentiment	U 045715
12	Minutes of the May 6, 1997 Meeting of the Board of Directors of ULLICO, Inc.	U 000029-000033
13	5/6/97 Chairman Georgine's Report of the Chairman	U 001204-001211
14	1/15/02 Fax to: Joseph Carabillo from: Joseph Semo re: Attached ULLICO, Inc. Term Sheet Stock Repurchase Program	U 019356-019359
15	5/7/01 ULLICO, Inc. 2001 Repurchase Resolutions	U 001365-001374

Appendix to the Report of the Special Council
On ULLICO Stock Purchase Offers and Repurchase Programs
and Global Crossing Investments

Tab Number	Document Description	Bates-Range
16	6/15/97 Letter to: James F. M. McNulty from: Robert A. Georgine re: Introduction of the ULLICO Stock Repurchase Program	U 027720-027723
17	11/10/97 Offer to Purchase for Cash Class A Common Stock, Class B Common Stock, and Preferred Certificates by ULLICO, Inc.	U 001059-1097
18	ULLICO, Inc. Employee Handbook	U 018147-018192
19	5/30/97 Memo to: John Grelle, John Luce, Charles Sormani, and Michael Steed from: Joseph Carabillo re: Equity Offering/Redraft of Offering Document with attached Offering Document	U 035234-035268
20	5/14/97 Memo to: John Luce, Charles Sormani, and Michael Steed from: Joseph Carabillo re: Offer to Repurchase Stock with attached edited Draft of Offering Document	U 035104-035132
21	7/26/98 ULLICO, Inc. Report on Development of Incentive Award Plans by William M. Mercer, Inc.	U 011974-011980
22	Minutes of the July 27, 1998 Compensation Committee of ULLICO, Inc.	U 000324-000326
23	8/24/98 Memo to: R. A. Silas from: Joseph A. Carabillo re: Compensation Committee/Senior Officers with attached chart re: Global Crossing Single Event Award 1998	U 020214-020217
24	8/24/98 Memo to: R. A. Silas from: Joseph A. Carabillo re: Compensation Committee/Senior Officers with attached 8/17/98 Memo to: Robert Georgine from: Michael Steed re: Global Crossing Bonuses	U 020099-020107
25	Robert Georgine's Statement for the 7/27/98 ULLICO, Inc. Compensation Committee Meeting	U 000927-000936
26	8/31/98 Fax to: Michael Steed from: Joseph Carabillo re: Attached Letter and Memo re: Global Crossing Compensation/Incentive Award	U 021792-021807

Appendix to the Report of the Special Council On ULLICO Stock Purchase Offers and Repurchase Programs and Global Crossing Investments

Tab Number	Document Description	Bates-Range
27	ULLICO, Inc. Offer to Purchase Dated November 9, 1998	U 009065-009096
28	Minutes of the February 11, 1998 Meeting of the Executive Committee of ULLICO, Inc.	U 017328-017335
29	7/29/98 Letter to: Joseph F. Maloney from: Robert A. Georgine re: Stock Offering to ULLICO directors and senior officers of 2,000 shares of Class A Stock	U 028021
30	10/13/98 Letter to: Joseph F. Maloney from: Robert A. Georgine re: Stock Offering to ULLICO directors and senior officers of an additional 2,000 shares of Class A Stock with attached ULLICO, Inc. Stock Purchase Request Form	U 028019-028020
31	7/9/02 Fax to: Stephen Senderowitz from: John A. Freedman re: Responses to Earlier Questions	U 047019-047021
32	Minutes of the May 4, 1998 Meeting of the Executive Committee of ULLICO, Inc.	U 017326-017327
33	11/5/98 Fax to: Catherine M. Shea from: Douglas N. Beck re: Attached edited 1998 ULLICO Offer to Purchase	U 037887-037911
34	Minutes of the November 30, 1998 Meeting of the Executive Committee of ULLICO, Inc.	U 017324-017325
35	Minutes of the February 13, 1999 Meeting of the Executive Committee of ULLICO, Inc.	U 017316-017323
36	Minutes of the May 13, 1999 ULLICO, Inc. Compensation Committee Meeting	U 000327-000328
37	Robert Georgine Draft Agenda for the July 12, 1999 Meeting	U 001579-001582
38	12/10/99 Memo to: Robert Georgine from: Joseph Carabillo re: Sale of Stock with attached draft letter and Stock Purchase Request	U 021373-021381

Appendix to the Report of the Special Council
On ULLICO Stock Purchase Offers and Repurchase Programs
and Global Crossing Investments

Tab Number	Document Description	Bates-Range
39	Minutes of the December 17, 1999 Compensation Committee Meeting of ULLICO, Inc.	U 011988-011990
40	8/20/99 Memo to: Robert Georgine from: Joseph Carabillo re: Offer of Stock to Directors and Officers with attached Draft Director and Officer Stock Purchase and Credit Agreement	U 024741-024761
41	12/28/99 Letter to: Foster Mays from: Robert Georgine re: Assignment of ULLICO, Inc. Stock as Collateral for Joseph A. Carabillo	U 009945-009946
42	12/28/99 Letter to: Foster Mays from: Robert Georgine re: Assignment of ULLICO, Inc. Stock as Collateral for John K. Grelle	U 009947-009948
43	12/28/99 Letter to: Foster Mays from: Joseph Carabillo re: Assignment of ULLICO, Inc. Stock as Collateral for Robert A. Georgine	U 009949-009950
44	12/17/99 Letter to: Morton Bahr from: Robert A. Georgine re: Stock Offering to ULLICO directors and senior officers of 4,000 shares of Class A Stock	U 007090
45	Notice of Annual Meeting of Stockholders to be held May 11, 2000 with 2000 ULLICO, Inc. Proxy Statement Attached	U 017466-017469
46	7/28/00 Handwritten note from John K. Grelle re: Attached Information for the payoff of Robert Georgine's Loan with Mellon Bank	U 006957-006961
47	ULLICO, Inc. 2001 Annual Report	U 027961-028015
48	Minutes of the May 17, 1999 Meeting of the Executive Committee of ULLICO, Inc.	U 017314-017315
49	Minutes of the May 18, 1999 Meeting of the Board of Directors of ULLICO, Inc.	U 000040-000046
50	Minutes of the September 21, 1999 Meeting of the Executive Committee of ULLICO, Inc.	U 017305-017313

Appendix to the Report of the Special Council On ULLICO Stock Purchase Offers and Repurchase Programs and Global Crossing Investments

Tab Number	Document Description	Bates-Range
51	6/9/99 Memo from: Paul S. Berger re: Robert A. Georgine's Income and Estate tax-related Planning	U 043064-043066
52	9/24/99 Letter to: Michael Steed and Robert Georgine from: Paul Berger re: Retainment of Arnold & Porter by Michael Steed	U 038743-038744
53	Minutes of the September 22, 1999 Meeting of the Board of Directors of ULLICO, Inc.	U 017380-017383
54	ULLICO, Inc. Offer to Purchase Dated November 16, 1999	U 026661-026701
55	10/8/99 Fax to: Teresa Valentine from: Douglas Beck re: Attached Draft 1999 Offering Memorandum for ULLICO's Stock Repurchase with edits	U 026276-026302
56	1/5/00 Letter to: Joseph Carabillo from: Stanley R. Heimbigner re: Questions re: Calculation of the values	U 007182-007184
57	Minutes of the May 10, 2000 Meeting of the Executive Committee of ULLICO, Inc.	U 017284-017288
58	Minutes of the May 11, 2000 Meeting of the Board of Directors of ULLICO, Inc.	U 000047-000053
59	5/10/00 Memo to: Robert A. Georgine from: Jonathan Plutzik and Paul Brown re: Proposed Stock Repurchase Review	U 046889-046891
60	8/3/00 Draft ULLICO, Inc. Corporate Governance Committee Issues List	U 040602-040603
61	Minutes of the August 29, 2000 Meeting of the Executive Committee of ULLICO, Inc.	U 017278-017283
62	12/14/95 Memo to: Joseph A. Carabillo from: Dennis Lyons re: Rights of stockholders of ULLICO, Inc.	U 037202-037220

Appendix to the Report of the Special Council
On ULLICO Stock Purchase Offers and Repurchase Programs
and Global Crossing Investments

Tab Number	Document Description	Bates-Range
63	4/14/00 Letter to: Rick Baltz and Carey Smith from: Joseph Carabillo re: Potential Discussion of Executive Compensation at Board Meeting	U 038605-038653
64	4/17/00 E-mail to: Paul Berger and Richard Baltz from: Carey Smith re: Ullico Executive Compensation	U 044491
65	ULLICO 2000 Strategy Book	U 039818-039866
66	8/3/00 Fax to: Joseph Carabillo from: Carey Smith re: Attached Draft ULLICO, Inc. Corporate Governance Committee Issues List	U 038853-038855
67	5/21/02 ULLICO Class A Ledger of Stockholders	U 046993-047014
68	ULLICO, Inc. Director/Officer Request for Repurchase	U 027121
69	7/24/00 Memo to: Robert Georgine from: Joseph Carabillo re: Shareholders who hold 10,00 shares or less	U 047022
70	9/22/00 E-mail to: Paul Berger and Dennis Lyons from: Richard Baltz re: Analysis of the Proposed Stock Buyback Questions	U 038452-038457
71	10/17/00 E-mail to: Richard Baltz, Dennis Lyons, Paul Berger, Edward Bintz, and James Joseph from: Carey Smith re: Draft Amended and Restated Employment Agreement	U 043461-043462
72	11/1/00 E-mail to: Joseph Carabillo, Paul Berger, and Rick Baltz from: Carey Smith re: Draft Resolutions Concerning Stock Repurchases	U 038397-038400
73	11/1/00 E-mail re: Paul Berger, Richard Baltz, and Dennis Lyons from: Carey Smith re: Revised Resolutions Concerning Stock Repurchases	U 038401-038409
74	Minutes of the March 6, 2001 Compensation Committee Meeting of ULLICO, Inc.	U 021063-021073
75	Minutes of the August 30, 2000 Meeting of the Board of Directors of ULLICO, Inc.	U 017399-017403

Appendix to the Report of the Special Council
On ULLICO Stock Purchase Offers and Repurchase Programs
and Global Crossing Investments

Tab Number	Document Description	Bates-Range
76	Minutes of the November 3, 2000 Meeting of the Board of Directors of ULLICO, Inc.	U 000054-000061
77	Talking Points re: Resolutions with handwritten notes	U 039236-039237
78	10/31/00 Fax to: Joseph Carabillo from: Carey Smith re: Draft Resolutions Concerning Stock Repurchases	U 044312-044319
79	10/30/00 Memo to: Robert Georgine from: Joseph Carabillo re: Resolutions Concerning Stock Repurchases with attached Resolutions	U 039163-039170
80	10/31/00 Fax to: Rick Baltz and Carey Smith from: Joseph Carabillo re: Revised memo re: Resolutions Concerning Stock Repurchases	U 044938-0044956
81	10/27/00 E-mail to: Richard Baltz, Denis Lyons and Paul Berger from: Carey Smith re: Resolutions Concerning Chairman's Repurchases	U 040353-040357
82	ULLICO, Inc Offer to Purchase Dated December 14, 2000	U 000211-000256
83	5/31/01 Memo from: Carey Smith re: Share Repurchases	U 041079
84	11/21/00 Letter to: James F. M. McNulty from: Robert A. Georgine re: ULLICO, Inc. Class A and Class B 2000 Stock Repurchase Program	U 027727-027728
85	11/16/00 Fax to: Teresa Valentine from: Douglas Beck re: Draft Offer to Purchase fro Cash by ULLICO, Inc.	U 025687-025699
86	Notice of Annual Meeting of Stockholders to be held May 18, 1999 with 1999 ULLICO, Inc. Proxy Statement Attached	U 017470-017472
87	1/23/01 Fax to: Robert Georgine from: Joseph Carabillo re: Attached Spreadsheets of Shareholders to be Pro-rated and Under 10,000 Shares	U 018236-018245
88	2/20/01 Letter to: Douglas McCarron from: Robert A. Georgine re: ULLICO's Offer to purchase all 1,000 shares tendered for $146,040.00	U 027713-027715

Appendix to the Report of the Special Council
On ULLICO Stock Purchase Offers and Repurchase Programs
and Global Crossing Investments

Tab Number	Document Description	Bates-Range
89	1/9/01 Letter to: Robert Georgine from: Frank Hurt re: Request to tender 100 shares of Capital Stock	U 027500
90	4/4/01 Letter to: Frank Hurt from: Joseph Carabillo re: Process to tender 100 shares of Capital Stock	U 027505-027507
91	4/10/01 Letter to: Graphic Communications International Union from: Robert A. Georgine re: ULLICO's Offer to Repurchase 1,929 of the 3,857 shares tendered outside the 2000 Repurchase Program at the $146.04 price per share for $281,711.16	U 038895
92	4/10/01 Letter to: Graphic Communications International Union from: Robert A. Georgine re: ULLICO's Offer to Repurchase 2,573 of the 5,145 shares tendered outside the 2000 Repurchase Program at the $146.04 price per share for $375,760.92	U 038896
93	1/24/01 Draft Letter to: John Sweeney from: Robert Georgine re: ULLICO's Offer to Repurchase 2,100 of the 80,000 shares tendered outside the 2000 Repurchase Program at the $146.04 price per share	U 012557-012558
94	Minutes of the May 7, 2001 Meeting of the Executive Committee of ULLICO, Inc.	U 017269-017272
95	Minutes of the May 8, 2001 Meeting of the Board of Directors of ULLICO, Inc.	U 000062-000067
96	ULLICO, Inc. Offer to Purchase Dated December 17, 2001	U 026756-026801
97	Robert A. Georgine Employment Agreement and Addendum to Employment Agreement	U 041216-041268
98	2/1/00 Letter to: Robert A. Georgine from: Robert A. Georgine re: Stock Purchase of 40,000 shares of ULLICO Class A Stock	U 005762
99	Minutes of the December 27, 1999 Compensation Committee Meeting of ULLICO, Inc.	U 011986-011987
100	Stock Purchase Incentive Compensation Proposal	U 038443-038445

**Appendix to the Report of the Special Council
On ULLICO Stock Purchase Offers and Repurchase Programs
and Global Crossing Investments**

Tab Number	Document Description	Bates-Range
101	10/17/00 Note to: Rick Baltz from: Joseph Carabillo re: Attached Stock Purchase Incentive Compensation Proposal	U 039219-0392231
102	10/17/00 E-mail to: Richard Baltz, Paul Berger, and Carey Smith from: Dennis Lyons re: "Put Right" in the Stock Purchase and Credit Agreement	U 039238
103	10/17/00 E-mail to: Dennis Lyons, Richard Baltz and Paul Berger from: Cary Smith re: Robert Georgine's stock sales since 5/31/00	U 038451
104	Minutes of the October 20, 2000 Compensation Committee Meeting of ULLICO, Inc.	U 012272-012274
105	RAG- Employment Agreement Original File	U 006305-06311
106	Minutes of the May 5, 1998 Board of Directors of ULLICO, Inc. Meeting	U 000034-000036
107	6/30/98 Letter to: Bill J. Casstevens from: Robert A. Georgine re: 1998 ULLICO, Inc. Stock Repurchase Program for Class A & B ULLICO Stock Only	U 027307-027308
108	Notice of Annual Meeting of Stockholders to be held May 5, 1998 with 1998 ULLICO, Inc. Proxy Statement Attached	U 017473-017476
109	ULLICO Inc. Non-Qualified Deferred Compensation Plan 1999, 2000 and 2001 Plan Statement of Activity for R. Georgine, J. Carabillo, J. Grelle, and J. Luce	U 048260-048269
110	ULLICO Inc. 1998 Annual Report	U 009437-009491
111	ULLICO Inc. 1999 Annual Report	U 048342-048401
112	ULLICO Inc. 2000 Annual Report	U 048282-048341
113	April 24, 1989 Articles of Amendment of Articles of Incorporation to ULLICO Articles of Incorporation	U 030377-030378

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APPENDIX G – SUBMITTED FOR THE RECORD, LETTER FROM JOHN A. BOEHNER, CHAIRMAN, COMMITTEE ON EDUCATION AND THE WORKFORCE, TO ROBERT A. GEORGINE, JUNE 16, 2003

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MAJORITY–(202) 225-4527
(TTY)–(202) 226-3372
MINORITY–(202) 225-3725
(TTY)–(202) 226-3116

June 16, 2003

Via Facsimile

Mr. Robert A. Georgine
c/o Randall J. Turk, Esq.
Baker Botts LLP
The Warner
1299 Pennsylvania Ave., NW
Washington, DC 20004-2400

Dear Mr. Georgine:

The Committee on Education and the Workforce (the "Committee") has received your letter of today's date, requesting that you be excused from testifying at hearing before the Committee tomorrow, June 17, 2003, on the grounds that you may be directed to decline to answer questions at hearing at the direction of your attorney.

The Committee respects your right to exercise any testimonial right or privilege to which you may be entitled, and to decline to answer or fully answer questions as your attorney directs. The Committee is mindful of the ongoing public investigations and private lawsuits currently pending in this matter. Nonetheless, in light of the seriousness of this matter and the fact-finding nature of this hearing, it is not clear that you will not be able to answer or choose not to answer all of the questions put before you.

In light of these facts, the Committee must decline to excuse your appearance at hearing tomorrow. Accordingly, this serves to inform you that the Committee will expect your presence at hearing at 10:30 a.m. on June 17, 2003 in room 2175 of the Rayburn House Office Building, pursuant to the Committee's subpoena dated May 21, 2003, the service of which was accepted by your attorney. Thank you for your anticipated cooperation.

Sincerely yours,

JOHN A. BOEHNER
Chairman

cc: The Honorable George Miller, Senior Democratic Member

APPENDIX H – SUBMITTED FOR THE RECORD, LETTER FROM ROBERT A. GEORGINE, TO JOHN A. BOEHNER, CHAIRMAN, COMMITTEE ON EDUCATION AND THE WORKFORCE, JUNE 16, 2003

ROBERT A. GEORGINE
301 VALLEY BROOK DRIVE
SILVER SPRING, MARYLAND 20904

June 16, 2003

John A. Boehner, Chairman
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Mr. Chairman:..

The House Committee on Education and the Workforce has subpoenaed me to appear for a hearing tomorrow concerning the stock repurchase program that was in place at ULLICO Inc. from 1997 to 2001.

As you may be aware, I am no longer an officer of ULLICO, having resigned from the Company on May 8, 2003. I therefore no longer have access to ULLICO's books and records. Prior to resigning, however, I testified extensively about the stock repurchase program during the internal investigations recently conducted by the law firms of Winston & Strawn and Sidley & Austin, the results of which I understand have been made fully available to your Committee. In particular, I have already explained that everything we did was done based on the advice of professionals at Credit Suisse First Boston and Coopers and Lybrand, as well as on the advice of attorneys – both inside counsel at ULLICO and lawyers at such prestigious Washington, D.C. law firms as Arnold & Porter and LeBoeuf, Lamb, Greene & MacRae.

As you may also be aware, there currently are underway numerous inquiries or investigations concerning ULLICO's stock repurchase program. In addition to your Committee's investigation, the program is under investigation by the United States Senate Committee on Governmental Affairs, the United States Department of Labor, the United States Securities and Exchange Commission, the Maryland Insurance Administration and a federal grand jury. There is also a private lawsuit that has been filed about the program. Under these circumstances, my attorney has advised me that prudence dictates that I respectfully decline to testify any further about the stock repurchase program, including at the Committee's hearing on Tuesday, until the grand jury has concluded its investigation.

The purpose of this letter is to request that, as the Committee's Chairman, you kindly relieve me of the obligation to appear before the Committee on Tuesday and accept this letter in lieu thereof.

Sincerely yours,

Robert A. Georgine

Robert A. Georgine

APPENDIX I – SUBMITTED FOR THE RECORD, LETTER FROM JAMES A. PARETTI, JR., ESQ., PROFESSIONAL STAFF MEMBER, COMMITTEE ON EDUCATION AND THE WORKFORCE, TO RANDALL J. TURK, ESQ., BAKER BOTTS LLP, WASHINGTON, D.C., JUNE 16, 2003

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MAJORITY–(202) 225-4527
(TTY)–(202) 226-3372
MINORITY–(202) 225-3725
(TTY)–(202) 226-3116

June 16, 2003

Via Facsimile

Randall J. Turk, Esq.
Baker Botts LLP
The Warner
1299 Pennsylvania Ave., NW
Washington, DC 20004-2400

Dear Mr. Turk:

As we discussed in our telephone conversation on Friday, I understand that it may be your client Robert A. Georgine's position that he may not be compelled to testify before the Committee on Education and the Workforce at hearing by virtue of privilege under the Fifth Amendment to the U.S. Constitution. I understand further that Mr. Georgine may invoke the Fifth Amendment and decline to testify before the Committee.

While Mr. Georgine is of course free to exercise any such right to which he may be entitled, this is to confirm that, as I indicated to you in our conversation and confirmed in the voicemail message I left for you on Friday afternoon, the Committee on Education and the Workforce will nonetheless expect Mr. Georgine's presence at hearing at 10:30 a.m. on June 17, 2003 in room 2175 of the Rayburn House Office Building, pursuant to the Committee's subpoena dated May 21, 2003, the service of which was accepted by you on Mr. Georgine's behalf.

If you have any further questions, please do not hesitate to call me directly.

Sincerely,

James A. Paretti, Jr., Esq.
Professional Staff Member

APPENDIX J – SUBMITTED FOR THE RECORD, CONGRESSIONAL RESEARCH SERVICE, REPORT FOR CONGRESS, CRIMINAL CHARGES IN CORPORATE SCANDALS, ORDER CODE RL31866, UPDATED MAY 15, 2003

Order Code RL31866

Report for Congress

Received through the CRS Web

Criminal Charges in Corporate Scandals

Updated May 15, 2003

Mark Jickling
Specialist in Public Finance
Government and Finance Division

Paul H. Janov
Information Research Specialist
Information Research Division

Criminal Charges in Corporate Scandals

Summary

Since the collapse of Enron Corp. in late 2001, there has been a series of scandals involving major U.S. corporations. Recurring elements in the scandals include improper or fraudulent accounting, self-enrichment by corporate officers, stock trading on inside information ("insider trading"), and the destruction or falsification of business records. A number of cases have resulted in criminal indictments, some followed by guilty pleas. This report tracks post-Enron criminal charges. Companies are listed alphabetically, and individuals who have been charged, indicted, or have pleaded guilty are identified. A longer list of companies with recent accounting problems (not all of which have resulted in criminal indictments) may be found in CRS Report RS21269, *Accounting Problems Reported in Major Companies Since Enron*.

The 107th Congress responded to the series of corporate scandals that began with Enron by passing the Sarbanes-Oxley Act of 2002. That law created a new oversight body for corporate auditors, imposed new disclosure requirements on corporations, including a mandate that CEOs personally certify the accuracy of their firms' public financial reports, and increased criminal penalties for a number of offenses related to securities fraud. For a summary of the legislation, see CRS Report RL31554, *Corporate Accountability: Sarbanes-Oxley Act of 2002: (P.L. 107-204)*. This report will be updated regularly.

Contents

List of Tables

Criminal Charges in Corporate Scandals

Introduction

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002, P.L. 107-204, which had its genesis early in 2002 after the declared bankruptcy of the Enron corporation. The Act establishes a new regulator for corporate auditors, the Public Company Accounting Oversight Board, which is to be supervised by the Securities and Exchange Commission. The Act restricts accounting firms from performing a number of other services for the companies they audit and requires new disclosures for public companies and the officers and directors of those companies. Other issues affected by the new legislation are securities fraud, criminal and civil penalties for violating the securities laws and other laws, blackout periods for insider trades of pension fund shares, and protections for corporate whistleblowers.

The ongoing criminal prosecutions are a complementary phase of the effort to improve corporate accountability. Many observers maintain that prosecution of individuals alleged to have abused the public trust, together with new legal and regulatory standards for corporate behavior, is crucial to restoring investor confidence in the fairness and transparency of the public securities markets. **Table 1** identifies firms and individuals associated with a number of high-profile cases against whom criminal charges have been filed by federal prosecutors since the collapse of Enron Corp. (although in some cases the alleged misconduct occurred before Enron's fall). Where available, Department of Justice [http://www.usdoj.gov] press releases have been cited in addition to newspaper sources.

Table 1. List of Charges, Indictments, and Guilty Pleas in Corporate Scandals Since Enron

Company/Individual	Charged (C), Indicted (I), or Guilty Plea (G)	Charges	Sources
Adelphia Communications			
John J. Rigas (chief executive officer)	9/23/02 (C)	All charged with wire fraud, bank fraud, securities fraud, and conspiracy	*New York Times*, 9/24/02, sec. C, p. 1, col. 5
Michael Rigas (executive vice president)	9/23/02 (C)		
Timothy Rigas (chief financial officer)	9/23/02 (C)		
James R. Brown (vice president for finance)	9/23/02 (C) 9/14/02 (G)		*New York Times*, 9/24/02, sec. C, p. 1, col. 5, and 11/15/02, sec. C, p. 7, col. 1
Michael C. Mulcahey (director of internal reporting)	9/23/02 (C)		*New York Times*, 9/24/02, sec. C, p. 1, col. 5
Timothy Werth (director of accounting)	01/10/03 (G)	Securities fraud, wire fraud, and bank fraud	*New York Times*, 1/11/03, sec. C, p. 3, col. 1
Arthur Andersen			
David Duncan (former partner)	4/10/02 (G)	Obstruction of justice (related to Enron audit) Arthur Andersen (the firm) was convicted on the same charge in June 2002	*New York Times*, 4/11/02, sec. A, p. 1, col. 2
Credit Suisse First Boston			
Frank P. Quattrone (banker)	5/12/03 (I)	Obstruction of justice and destroying evidence	*New York Times*, 5/13/03, sec. C, p. 1, col. 2

Company/Individual	Charged (C), Indicted (I), or Guilty Plea (G)	Charges	Sources
Enron Corp.			
Andrew Fastow (chief financial officer)	10/2/02 (C)	Charged with securities fraud, wire fraud, mail fraud, money laundering, and conspiracy	Department of Justice, 10/2/02, press release #568[a]
	10/31/02 (I)	Indicted by a grand jury on 78 counts of fraud, money laundering, and conspiracy	Department of Justice, 10/31/02, press release #627[b]
	5/1/03 (I)	Charged with insider trading and tax fraud	Department of Justice, 5/1/03, press release #268[c]
Kevin Howard (Enron Broadband Services [EBS] vice president of finance)	3/12/03 (I) 5/1/03 (I)	Charged with securities fraud, wire fraud, conspiracy, and making false statements to FBI agents	Department of Justice, 3/12/03, press release #153[d] Department of Justice, 5/1/03, press release #268[c]
Michael Krautz (EBS senior director of accounting)	3/12/03 (I) 5/1/03 (I)	Charged with securities fraud, wire fraud, conspiracy, and making false statements to FBI agents	Department of Justice, 3/12/03, press release #153[d] Department of Justice, 5/1/03, press release #268[c]
Michael Kopper (finance executive)	8/21/02 (G)	Conspiracy to commit wire fraud and money laundering	*New York Times*, 8/22/02, sec. A, p. 1, col. 6
Ben Gilsan (treasurer) Dan Boyle (finance executive)	5/1/03 (I)	Securities fraud, insider trading, and tax fraud	Department of Justice, 5/1/03, press release #268[c]
Lawrence M. Lawyer (finance executive)	11/26/02 (G)	Pleaded guilty to filing a false income tax return and failing to report taxable income	Department of Justice, 11/26/02, press release #696[e]

Company/Individual	Charged (C), Indicted (I), or Guilty Plea (G)	Charges	Sources
Kenneth Rice (EBS chairman)	5/1/03 (I)	Securities fraud, wire fraud, and money laundering	Department of Justice, 5/1/03, press release #268[e]
Joseph Hirko (EBS president)			
Kevin Hannon (EBS chief operating officer)			
Scott Yeager (EBS senior vice president)			
Rex Shelby (EBS senior vice president)			
Lea Fastow (assistant treasurer)	5/1/03	Conspiracy to commit wire fraud , money laundering conspiracy, and filing false tax returns	Department of Justice, 5/1/03, press release #268[e]
HealthSouth			
Weston Smith (chief financial officer)	3/19/03 (G)	Securities fraud and wire fraud	Department of Justice, 3/19/03, press release #165[f]
William T. Owens (chief of financial operations)	3/26/03 (G)	Conspiracy to commit wire fraud and securities fraud	Department of Justice, 3/26/03, press release #180[g]
Emery Harris (vice president of finance)	3/31/03 (G)	Conspiracy to commit wire fraud and securities fraud	Department of Justice, 3/31/03, press release #198[h]
Kenneth Livesay (chief information officer)	4/3/03 (G)	Conspiracy to commit wire fraud and securities fraud and to falsify financial information	Department of Justice, 4/3/03, press release #205[i]
Angela C. Ayers (vice president)	4/3/03 (G)	All charged with wire fraud and conspiracy to commit wire fraud and securities fraud	Department of Justice, 4/3/03, press release #205[i]
Cathy C. Edwards (vice president)	4/3/03 (G)		
Rebecca Kay Morgan (group vice president)	4/3/03 (G)		
Virginia B. Valentine (assistant vice president)	4/3/03 (G)		

Company/Individual	Charged (C), Indicted (I), or Guilty Plea (G)	Charges	Sources
Michael Martin (chief financial officer)	4/8/03 (C)	Conspiracy to commit wire fraud and securities fraud	Department of Justice, 4/8/03, press release #212[j]
Malcolm McVay (treasurer)	4/21/03 (G)	Conspiracy to commit wire fraud and securities fraud	Department of Justice, 4/21/03, press release #245[k]
Aaron Beam (chief financial officer)	4/24/03 (G)	Bank fraud	Department of Justice, 4/24/03, press release #255[l]
ImClone Systems			
Samuel Waksal (chief executive)	8/7/02 (I) 10/15/02 (G)	Trading on inside information	*New York Times*, 8/8/02, sec. A, p. 1, col. 1, and 10/16/02, sec. C, p. 1, col. 2
Just for Feet, Inc.			
Adam Gilburne (executive)	5/12/03 (G)	Conspiracy to commit wire fraud and securities fraud	Department of Justice, 5/12/03, press release #283[m]
Kmart			
Joseph A. Hofmeister (vice president)	2/26/02 (I)	Fraud, conspiracy, and making false statements	*New York Times*, 2/27/03, sec. C, p. 1, col. 5
Enio A. Montini Jr. (senior vice president)	2/26/02 (I)		
Merrill Lynch			
Douglas Faneuil (stockbroker)	10/2/02 (G)	Faneuil pleaded guilty to obstruction of justice related to insider trading of ImClone Systems	*New York Times*, 10/3/02, sec. C, p. 1, col. 2

Company/Individual	Charged (C), Indicted (I), or Guilty Plea (G)	Charges	Sources
NatWest Bank			
Giles R. Darby (banker)	6/27/02 (C)	All three are British bankers charged with wire fraud in connection with Enron's off-the-books partnerships	*New York Times*, 6/28/02, sec. C, p. 1, col. 2 Department of Justice, 6/27/02, press release #377[n]
David J. Bermingham (banker)	6/27/02 (C)		
Gary S. Mulgrew (banker)	6/27/02 (C)		
NewCom Inc.			
Sultan W. Khan (president and chief executive)	9/5/02 (I)	Fraud, money laundering, filing false statements, and conspiracy	*New York Times*, 9/6/02, sec. C, p. 4, col. 3
Asif M. Khan (executive vice president)	9/5/02 (I)		
Steven C. Veen (chief financial officer)	9/5/02 (I)		
Quaker Alloy			
Thomas W. Lambach (chief financial officer)	4/3/02 (G)	Wire fraud and conspiracy	Harrisburg (PA) *Patriot-News*, 4/4/02, p. B12
Joseph Stewart (human resource manager)	4/3/02 (G)		
Qwest Communications			
Grant Graham (chief financial officer)	2/25/03 (I)	Corporate accounting fraud	Department of Justice, 2/25/03, press release #112[o]
Thomas Hall (senior vice president)	2/25/03 (I)		
John Walker (vice president)	2/25/03 (I)		
Bryan Treadway (assistant controller)	2/25/03 (I)		

Company/Individual	Charged (C), Indicted (I), or Guilty Plea (G)	Charges	Sources
Rite Aid			
Martin L. Grass (chairman and chief executive)	6/23/02 (I)	Various counts of securities fraud	*New York Times*, 6/22/02, sec. A, p. 1, col. 1
Franklin Brown (chief counsel and vice chairman)	6/23/02 (I)		
Franklyn Bergonzi (chief financial officer)	6/23/02 (I)		
Erik S. Sorkin (executive vice president)	6/23/02 (C)	Lying to the grand jury	
Timothy J. Noonan (president and chief operations officer)	7/10/02 (G)	Withholding information from the company's internal investigators	Lancaster (PA) *Intelligencer Journal*, 7/11/02, sec. Business, p. B-7
Tyco International			
L. Dennis Kozlowski (chairman and chief executive)	9/12/02 (I)	Grand larceny, enterprise corruption, falsifying records. Kozlowski was also indicted 6/4/02 for sales tax evasion, as was Swartz on 2/19/03.	*New York Times*, 9/13/02, sec. A, p. 1, col. 3; 6/5/02, sec. C, p. 1, col. 2; and 2/20/03, sec. C, p. 6, col. 3
Mark H. Swartz (chief financial officer)	9/12/02 (I)		
Mark Belnick (general counsel)	9/12/02 (I) 2/3/03 (I)	Falsifying records Indicted on three additional charges	*New York Times*, 9/13/02, sec. A, p. 1. col. 3 *New York Times*, 2/4/03, sec. C, p. 1., col. 2

Company/Individual	Charged (C), Indicted (I), or Guilty Plea (G)	Charges	Sources
WorldCom			
Scott Sullivan (chief financial officer)	8/27/02 (I)	Numerous counts of securities fraud and conspiracy	Department of Justice, 8/27/02, press release #494[p]
Buford Yates, Jr. (director of general accounting)	8/27/02 (I) 10/7/02 (G)	Securities fraud	Department of Justice, 8/27/02, press release #494[p] *New York Times*, 10/8/02, sec. C, p. 9, col. 1
David Myers (former controller)	9/26/02 (G)	Securities fraud	*New York Times*, 9/27/02, sec. C, p. 2, col. 3
Betty Vinson (an executive in the General Accounting Department)	10/10/02 (G)	Securities fraud and conspiracy	*New York Times*,10/11/02, sec. C, p. 10, col. 1
Troy Normand (an executive in the General Accounting Department)	10/10/02 (G)		

Notes:
a. See [http://www.usdoj.gov/opa/pr/2002/October/02_crm_568.htm].

b. See [http://www.usdoj.gov/opa/pr/2002/October/02_crm_627.htm].

c. See [http://www.usdoj.gov/opa/pr/2003/May/03_crm_268.htm].

d. See [http://www.usdoj.gov/opa/pr/2003/March/03_crm_153.htm].

e. See [http://www.usdoj.gov/opa/pr/2002/November/02_crm_696.htm].

f. See [http://www.usdoj.gov/opa/pr/2003/March/03_crm_165.htm

g. See [http://www.usdoj.gov/opa/pr/2003/March/03_crm_180.htm]

h. See [http://www.usdoj.gov.opa/pr/2003/March/03_crm_198.htm].

i. See [http://www.usdoj.gov.opa/pr/2003/April/03_crm_205.htm].

j. See [http://www.usdoj.gov.opa/pr/2003/April/03_crm_212.htm].

k. See [http://www.usdoj.gov.opa/pr/2003/April/03_crm_245.htm].

l. See [http://www.usdoj.gov.opa/pr/2003/April/03_crm_255.htm].

m. See [http://www.usdoj.gov.opa/pr/2003/May/03_crm_283.htm].

n. See [http://www.usdoj.gov/opa/pr/2002/June/02_crm_377.htm].

o. See [http://www.usdoj.gov/opa/pr/2003/February/03_crm_112.htm].

p. See [http://www.usdoj.gov/opa/pr/2002/August/02_ag_494.htm].

APPENDIX K – SUBMITTED FOR THE RECORD, CONGRESSIONAL RESEARCH SERVICE, MEMORANDUM TO MARK ZUCKERMAN, CIVIL CHARGES IN CORPORATE SCANDALS, MAY 29, 2003

Congressional
Research
Service

Memorandum

May 29, 2003

TO: House Education and the Workforce Committee
Attention: Mark Zuckerman

FROM: Mark Jickling
Specialist in Public Finance
Government and Finance Division

SUBJECT: Civil Charges in Corporate Scandals

This memorandum responds to your request for a list of civil charges filed in connection with the post-Enron corporate scandals. The list below complements CRS report RL31866, *Criminal Charges in Corporate Scandals*. The list is limited to corporations and their officers or employees that fit within the Enron pattern. That is, these are cases that display one or more of the following: charges of irregular accounting and auditing, management self-dealing, conflicts of interest between firms and financial advisors (or Wall Street firms and their customers), and manipulation or abusive trading in energy markets. Small "garden variety" examples of securities or accounting fraud are excluded.

The civil cases listed here include only those filed by federal regulatory agencies – principally the Securities and Exchange Commission (SEC), but also a few actions by the Commodity Futures Trading Commission (CFTC) and the Federal Energy Regulatory Commission (FERC). Private lawsuits, such as shareholder derivative actions, are not included, although many of the companies listed are targets of multiple private suits brought by investors, employees, and others.

It should be noted that the most common form of resolution of civil cases like these is the consent agreement, whereby the defendant neither admits nor denies any wrongdoing. Despite the formal non-admission of guilt, the consent agreement often imposes fines and other sanctions. These are described in the list.

The time period covered by the list begins with the Enron bankruptcy in December 2001. All the charges listed were filed since then, but in many cases the admitted or alleged misconduct occurred earlier.

If more information is needed, please call me on 7-7784.

Table 1. List of Civil Charges Filed by Federal Regulators in Corporate Scandals Since the Enron Bankruptcy in December 2001

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Adelphia Communications	7/24/02 (F)	SEC charges that Adelphia and the named individuals (1) fraudulently concealed corporate liabilities by placing them on the books of off-balance-sheet entities, (2) falsified reported financial results, and (3) concealed rampant self-dealing, including diversion of corporate funds to private uses. Disgorgement of ill-gotten gains and a bar from service as officers or directors of public companies are sought.	SEC Press Release 2002-110
John J. Rigas, founder			
Timothy J. Rigas			
Michael J. Rigas			
James P. Rigas			
James R. Brown, senior executive			
Michael C. Mulcahy, senior executive			
Arthur Andersen			
Phillip E. Harlow, senior partner	1/27/03 (S)	SEC charges relating to Harlow's work at Sunbeam Corp. were settled – Harlow was barred from practicing accounting before the SEC for three years.	Washington Post, 1/28/03, p. E1
Bear, Stearns	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC relating to issuance of research reports not based on principles of fair dealing and good faith. Paid fines totaling $80 million.	SEC Press Release 2003-54

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
CSFB (Credit Suisse First Boston)	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC relating to issuance of fraudulent research reports and improper allocation of "hot" initial public offerings of stock. Paid fines totaling $200 million.	SEC Press Release 2003-54
	1/22/02 (S)	Settled SEC and NASD charges relating to abusive allocations of shares in "hot" initial public offerings of stock by paying fines totaling $100 million.	SEC Press Release 2002-14
Frank Quattrone, investment banker	3/06/03 (F)	NASD charged Quattrone with "spinning" initial public offering shares, i.e., giving shares to executives in exchange for other investment banking business.	Wall Street Journal, 3/07/03, p. C1.
Datek Securities Corp.	1/24/02 (S)	Datek agreed to pay fines totaling about $6.3 million to settle SEC securities fraud charges relating to abusive trading on the Nasdaq stock market.	Wall Street Journal, 1/25/02, p. C9.
Sheldon Maschler, trader	1/14/03 (S)	The four agreed to pay fines totaling about $53 million to settle SEC charges relating to abusive trading on the Nasdaq stock market.	Wall Street Journal, 1/15/03, p. C1.
Jeffrey Citron, trader			
Aaron Elbogen, CEO			
Moishe Zelcer, compliance officer			
Deutsche Bank Securities	12/03/02 (S)	Paid a $1.65 million fine to settle SEC charges relating to failure to retain e-mail records.	SEC Press Release 2002-173

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Dynegy Inc.	9/24/02 (S)	Dynegy settled SEC charges relating to improper and misleading accounting (relating to fictitious "round-trip" energy trades) by paying a $3 million fine.	SEC Press Release 2002-140
	12/19/02 (S)	CFTC settled charges that Dynegy and West Coast Power manipulated the price of natural gas by reporting false price and volume information. Dynegy agreed to cease and desist from further violations and pay a $5 million fine.	CFTC Release: 4728-02
El Paso Merchant Energy	3/26/03 (S)	El Paso settled CFTC charges of attempted manipulation and false reporting of natural gas price and volume information by agreeing to pay a $20 million fine.	CFTC Release: 4765-03
Enron Corp.			
Andrew Fastow, chief financial officer (CFO)	10/02/02 (F)	Based on charges of violations of anti-fraud, record keeping, and internal controls provisions of securities laws, the SEC seeks disgorgement of ill-gotten gains, including compensation, civil money penalties, and a bar from serving as an officer or director of a public company.	SEC Press Release 2002-143
Michael J. Kopper, corporate official	8/21/02 (S)	To settle SEC charges of securities fraud, related to misleading accounting practices, Kopper agreed to disgorge and forfeit about $12 million, and to be barred from serving as an officer or director of a public company.	SEC Press Release 2002-126

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Hunter Shively, natural gas trading supervisor	3/13/03 (F)	The CFTC charged Shively and Enron with manipulating natural gas prices and operating an illegal futures exchange.	CFTC Release: 4762-03

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Enron Broadband Services, Inc.			
Kenneth D. Rice, CEO	3/12/03 (F) 5/01/03 (F, amended)	Charged with violating antifraud laws and personally reaping $150 million in unlawful profits. The suit seeks disgorgement and civil money penalties.	SEC Press Release 2003-58
Joseph Hirko, CEO			
Kevin P. Hannon, chief operating officer			
Rex Shelby, vice president			
F. Scott Yeager, vice president			
Kevin A. Howard, executive			
Michael W. Krautz, executive			
Goldman, Sachs	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC relating to issuance of research reports not based principles of fair dealing and good faith. Paid fines totaling $110 million.	SEC Press Release 2003-54
	12/03/02 (S)	Paid a $1.65 million fine to settle SEC and NASD charges relating to failure to retain e-mail records.	SEC Press Release 2002-173
HealthSouth	3/18/03 (F)	SEC charges based on overstatement of reported earnings since 1999 by at least $1.4 billion. Assets of CEO Richard Scrushy were frozen by court order.	SEC Press Release 2003-38

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Richard Scrushy, CEO	3/19/03 (F)	Charged with accounting fraud by the SEC, which seeks monetary penalties and a bar from serving as an officer or director of a public company.	SEC Press Release 2003-34

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Homestore Inc.			
John Giesecke, Jr., CEO Joseph J. Shew, CFO John DeSimone, vice president	9/25/02 (S)	SEC charged that Homestore's revenues were fraudulently overstated by 60% during 2001. The three individuals agreed to pay fines totaling about $5 million, and were barred from serving as officers or directors of public companies.	SEC Press Release 2002-141
Household International	3/19/03 (S)	SEC charges were based on false and misleading accounting statements regarding delinquent loans. Household agreed to cease and desist from these accounting practices.	SEC Press Release 2003-35
ICN Pharmaceuticals	12/29/02 (S)	SEC securities fraud charges were settled when ICN agreed to comply with detailed corporate governance and disclosure-related undertakings for a period of five years and to pay a $1 million fine.	Hepatitis Weekly, 12/30/02, p. 21.
ImClone Systems			
Samuel Waksal, CEO	6/12/02 (F) 3/11/03 (S)	SEC charged Waksal with insider trading and sought disgorgement and a bar from serving as an officer or director of a public company. Waksal settled the suit by agreeing to pay about $800,000 and submitting to the officer and director bar.	SEC Press Release 2002-87

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
InterBank Funding Corp	7/23/02 (F)	The SEC filed fraud charges relating to the concealment of losses in a group of mutual funds.	Wall Street Journal, 7/24/02, p. C12.
Simon A. Hershon, CEO			
KPMG	1/14/02 (S)	The SEC censured KPMG for violating auditor independence rules by serving as auditor for a company in which it had made substantial investments.	SEC Press Release 2002-4
KPMG	1/29/03 (F)	The SEC charged KPMG, a Big Four accounting firm, and four individuals with permitting Xerox Corp. to manipulate accounting practices to close a $3 billion "gap" between actual operating results and the results reported in published accounting statements. The four were at various times leaders of the team that performed the Xerox audit.	SEC Press Release 2003-16
Michael A. Conway, senior partner			
Joseph T. Boyle, managing partner			
Anthony P. Dolanski, partner			
Ronald A. Safran, partner			
Kmart			
Joseph A. Hofmeister, vice president	2/26/03 (F)	The SEC charged the two with accounting fraud and sought disgorgement of ill-gotten gains and money penalties.	Wall Street Journal, 2/27/03, p. A3
Enio A. Montini Jr., vice president			
Lehman Brothers	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC relating to issuance of research reports not based on principles of fair dealing and good faith. Paid fines totaling $80 million.	SEC Press Release 2003-54

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Lernout & Hauspie	10/10/02 (F)	SEC charged L&H with accounting fraud, related to overstatement of revenues by at least $100 million.	Boston Globe, 10/11/02, p. E2.

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Lucent Technologies	2/27/03 (S)	Lucent settled an SEC investigation into its accounting practices with a consent agreement that did not require restatement of earnings or payment of a fine.	Wall Street Journal, 2/28/03, p. B7
Merrill Lynch	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC relating to issuance of fraudulent research reports not based on principles of fair dealing and good faith. Paid fines totaling $200 million.	SEC Press Release 2003-54
Henry Blodgett, managing director and senior research analyst	4/26/03 (S)	Charged by the SEC with issuing false research reports, Blodgett agreed to pay $4 million and to be censured and barred from the securities industry for life.	SEC Press Release 2003-56
Robert S. Furst, senior executive Schuyler M. Tilney, senior executive Daniel H. Bayly, senior executive Thomas W. Davis, senior executive	3/17/03 (F)	The four are charged by the SEC with aiding and abetting accounting fraud at Enron Corp., by engaging in fraudulent transactions designed to overstate Enron's earnings. Merrill Lynch (the firm) was also charged, but agreed to settle the charges by paying $80 million in disgorgement and penalties.	SEC Press Release 2003-32
Microsoft	6/03/02 (S)	Microsoft agreed to cease and desist from accounting practices that involved maintaining improper reserve accounts used to "smooth out" the company's reported earnings.	SEC Press Release 2002-80

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
J.P. Morgan Securities	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC relating to undisclosed payments for research reports. Paid fines totaling $80 million.	SEC Press Release 2003-54
Morgan Stanley	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC of making undisclosed payments for research reports. Paid fines totaling $125 million.	SEC Press Release 2003-54
	12/03/02 (S)	Paid a $1.65 million fine to settle SEC and NASD charges relating to failure to retain e-mail records.	SEC Press Release 2002-173
NewCom			
Sultan Warris Khan, CEO	6/09/02 (S)	The three paid fines and were barred from serving as directors or officers of public companies to settle SEC charges of securities fraud related to overstatement of revenues.	Los Angeles Times, 6/12/02, p. C4.
Asif Mohammad Khan, vice president			
Steven Conrad Veen, CFO			
PNC Financial Services Group	7/18/02 (S)	PNC agreed to cease and desist from accounting improprieties resulting from transactions with special purpose entities (SPEs). Approximately $762 million in bad loans and venture capital investments were transferred from PNC's books to SPEs. Concurrent with the SEC order, the Federal Reserve Bank of Cleveland executed a Written Agreement with PNC, relating to the same transactions.	SEC Press Release 2002-109

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
PricewaterhouseCoopers	7/17/02 (S)	PwC and its brokerage affiliate settled SEC charges relating to violations of auditor independence rules, and agreed to a $5 million fine.	SEC Press Release 2002-105
Qwest Communications			
Joel Arnold, vice president	2/25/03 (F)	The eight individuals are charged by the SEC with engaging in civil fraud by inflating Qwest's revenues by about $144 million in 2000 and 2001, through various deceptive accounting practices. The SEC seeks monetary penalties and/or bars from serving as officers or directors of public companies.	SEC Press Release 2003-25
Grant Graham, financial officer			
Thomas W. Hall, vice president			
Bryan Treadway, assistant controller			
John M. Walker, vice president			
Douglas K. Hutchins, director			
Richard L. Weston, vice president			
William L. Eveleth, vice president for finance			
Raytheon	11/25/02 (S)	Raytheon agreed to cease and desist from violations of the SEC's Regulation FD, which prohibits selective disclosure of financial results. The company was not fined.	Boston Herald, 11/26/02, p. 31.

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Reliant Resources	1/31/03 (S)	Reliant agreed to a $13.8 million fine to settle a FERC investigation into evidence that Reliant withheld power to drive up electricity prices in California on June 21 and 22, 2000.	Orange County Register, 2/11/02, p. OC Register 1.
Rite Aid			
Martin Grass, CEO Frank Bergonzi, CFO Franklin Brown, vice chairman	6/21/02 (F)	The SEC filed charges of accounting fraud, based on massive overstatement of financial results from 1997 through 1999. The SEC seeks disgorgement of bonuses and civil penalties, and a bar from serving as an officer or director of a public company.	Los Angeles Times, 6/22/02, p. A1.
Robertson Stephens	1/09/03 (S)	The SEC's charges relate to the allocation of stock in "hot" initial public offerings during 1999 and 2000. In exchange for receiving allocations (i.e., being allowed to buy offered shares), over 100 customers paid millions of dollars in the form of excessive commissions. Robertson Stephens paid $28 million to settle the charges.	SEC Press Release 2003-3
Paul Johnson, senior research analyst	1/09/03 (F)	Charged with issuing fraudulent research reports and failing to disclose significant conflicts of interest.	
Safety-Kleen			
Paul R. Humphreys, CFO William D. Ridings, controller Kenneth W. Winger, CEO	12/12/02 (F)	Charged by the SEC with financial fraud related to overstatement of net income by $534 million between 1997 and 1999. Complaint seeks disgorgement and officer and director bars.	SEC Litigation Release No. 17891

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Thomas W. Ritter, Jr., vice president	12/12/02 (S)	Enjoined from violating securities laws.	
Susan Moore, financial reporting manager		Agreed to cease and desist from violations of securities fraud and reporting laws.	

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Salomon Smith Barney	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC relating to issuance of fraudulent research reports and improper allocation of "hot" initial public offerings of stock. Paid fines totaling $400 million.	SEC Press Release 2003-54
	12/03/02 (S)	Paid a $1.65 million fine to settle SEC and NASD charges relating to failure to retain e-mail records.	SEC Press Release 2002-173
Jack Grubman, managing director and research analyst	4/28/03 (S)	Charged by SEC, NASD, NYSE, and New York state with issuing fraudulent and misleading research reports; agreed to pay $15 million fine	SEC Press Release 2003-55
Sunbeam Corp.			
Al Dunlap, CEO	9/03/02 (S)	To settle SEC accounting fraud charges, the two agreed to pay fines totaling $700,000 and were barred from serving as officers or directors of public companies.	Knight Ridder Tribune News Service, 9/03/02, p. 1.
Russell Kersh, CFO			
Trump Hotels & Casino Resorts	1/16/02 (S)	Company agreed to cease and desist from making misleading statements in pro forma accounting releases (which do not follow GAAP).	SEC Press Release 2002-6

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Tyco International			
L. Dennis Kozlowski, CEO	9/12/02 (F)	SEC filed civil fraud charges, seeking restitution of compensation and loans, and money penalties. The SEC charged that the three "treated Tyco as their private bank, taking out hundreds of millions of dollars of loans and compensation without ever telling investors."	SEC Press Release 2002-135
Mark H. Swartz, CFO			
Mark A. Belnick, chief legal officer			
Frank E. Walsh, Jr., director	12/17/02 (S)	Charged with concealing a $20 million "finder's fee" received from Tyco in connection with a 2001 merger. Walsh agreed to repay the $20 million to settle the charge.	SEC Press Release 2002-177
UBS Warburg	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC relating to issuance of research reports not based on principles of fair dealing and good faith, and for receiving undisclosed payments for research. Paid fines totaling $80 million.	SEC Press Release 2003-54
U.S. Bancorp Piper Jaffray	4/28/03 (S)	Settled charges by New York State, NASD, NASAA, NYSE, and SEC relating to issuance of research reports not based on principles of fair dealing and good faith, and for receiving undisclosed payments for research. Paid fines totaling $32.5 million.	SEC Press Release 2003-54
	12/03/02 (S)	Paid a $1.65 million fine to settle SEC and NASD charges relating to failure to retain e-mail records.	SEC Press Release 2002-173

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
Waste Management Inc.			
Dean L. Buntrock, founder and CEO	3/26/02 (F)	The SEC charged the five with accounting fraud – a systematic scheme to falsify and misrepresent the company's financial results between 1992 and 1997. The SEC sought disgorgement of ill-gotten gains, money penalties, and bars from serving as an officer or director of a public company.	SEC Press Release 2002-44
Phillip B. Rooney, chief operating officer			
James E. Koenig, CFO			
Thomas C. Hau, controller			
Herbert Getz, general counsel			
Bruce D. Tobecksen, vice president			
West Coast Power	12/19/02 (S)	CFTC settled charges that West Coast and Dynegy manipulated the price of natural gas by reporting false price and volume information. West Coast agreed to cease and desist from further violations and pay a $5 million fine.	CFTC Release 4728-02

Company/Individual	Date Civil Action Filed (F) or Settled (S)	Charges	Source
WorldCom	6/26/02 (F) 5/19/03 (S)	The SEC charged that WorldCom overstated its earnings between 1999 and 2002 as a result of improper accounting practices. WorldCom agreed to pay a fine of $500 million, pending bankruptcy court approval.	SEC Litigation Release 18147
David F. Myers, controller	9/26/02 (F)	Barred from serving as officer or director of a public company; monetary penalties pending.	
Buford Yates, Jr., director of accounting	10/02/02 (F)	Barred from serving as an officer or director of a public company; suspended from practicing accounting before the SEC; monetary penalties pending.	
Betty Vinson, accountant	10/10/02 (F)	Suspended from practicing accounting before the SEC; monetary penalties pending.	
Troy M. Normand, accountant	10/10/02 (F)	Suspended from practicing before the SEC; monetary penalties pending.	
Xerox	4/11/02 (S)	Xerox agreed to pay a $10 million fine to settle SEC charges that it used fraudulent accounting to overstate its earnings between 1997 and 2000.	SEC Press Release 2002-52

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