

## **F. Avoidance Actions: Fraudulent Transfers and Preferences**

1. **Fraudulent Transfers.** Under the Bankruptcy Code and under various state laws, a debtor may recover or set aside certain transfers of property, known as fraudulent transfers, made for less than reasonably equivalent value or fair consideration, while the debtor was insolvent or which rendered the debtor insolvent or unable to pay debts as they matured, or made with intent to hinder, delay, or defraud creditors.

The Committee believes that fraudulent transfers should be investigated and pursued for the benefit of all holders of General Unsecured Claims. In fact, the Committee Complaint includes Causes of Action alleging fraudulent transfers against the GE Entities.

2. **Preferences.** Under the Bankruptcy Code, a trustee or debtor-in-possession may seek to recover through adversary proceedings certain transfers of the debtor's property, including payments of cash, to or for the benefit of a creditor, for or on account of an antecedent debt, made while the debtor was insolvent (which is rebuttably presumed), during the 90 days immediately preceding the bankruptcy filing (or, in the case of a transfer to or on behalf of an insider, during the one year preceding the bankruptcy filing) to the extent that the transferee received more than it would have received on account of that debt through a liquidation of the debtor under chapter 7 of the Bankruptcy Code. The preference statute can be very broadly applied because it allows the debtor to recover payments regardless of whether there was any impropriety in such payments.

Some of the most common defenses to a preference action include, first, that the transfer was made in the ordinary course of the debtor's and the recipient's business and according to ordinary business terms. Also protected is a substantially contemporaneous exchange for new value given to the debtor and intended as such by both the transferor and the creditor to or for whose benefit the transfer was made. Another defense protects a transfer to the extent that the creditor subsequently gave new value to the debtor (a) not secured by an otherwise unavoidable security interest and (b) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of the creditor.

The Committee believes that its fiduciary obligations under the Bankruptcy Code require it to pursue preference recoveries for the benefit of all General Unsecured Creditors. In fact, the Committee Complaint includes Causes of Action alleging preferences against the GE Entities. The limitation period for commencing preference actions is two years from the Commencement Date, or December 28, 2002.

The Debtors, in consultation with the Committee and GE Capital, explored several alternatives for pursuing preference recoveries and ultimately retained ASK Financial, Inc., to handle the preference analysis and recovery on a contingency basis. ASK is currently analyzing invoices and manual and non-manual payments by the Debtors during the 90 days

immediately preceding the Commencement Date to determine the Debtors' potential Causes of Action to recover preferential payments under the Bankruptcy Code.

Under section 502(d) of the Bankruptcy Code, distributions on account of Claims held by a Creditor against whom an Avoidance Action is pending will be delayed until the Creditor has returned all amounts sought in the Avoidance Action or the Avoidance Action has been otherwise resolved.

### **ARTICLE III**

#### **SUMMARY OF THE CREDITORS' PLAN OF LIQUIDATION**

##### **A. Introduction**

Chapter 11 promotes equality of treatment of creditors and holders of interests who hold substantially similar claims against or interests in the debtor and its assets. The consummation of a plan is the principal objective of a chapter 11 case and sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan by a Bankruptcy Court makes the plan binding upon the debtor, any person acquiring property under the plan, and any creditor or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan. Subject to certain limited exceptions and other than as provided in a plan itself or an order confirming a plan, confirmation may discharge a debtor from any debt that arose before the date of confirmation of the plan and substitutes therefor the obligations specified in the confirmed plan, and terminates all rights and interests of Interest holders.

THE REMAINDER OF THIS SECTION PROVIDES A SUMMARY OF THE CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS UNDER THE CREDITORS' PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE CREDITORS' PLAN (AS WELL AS THE EXHIBITS THERETO AND DEFINITIONS THEREIN), WHICH IS ANNEXED TO THIS CREDITORS' DISCLOSURE STATEMENT AS **EXHIBIT A**.

THE STATEMENTS CONTAINED IN THIS CREDITORS' DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE CREDITORS' PLAN AND IN DOCUMENTS REFERRED TO THEREIN. THE STATEMENTS CONTAINED IN THIS CREDITORS' DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE CREDITORS' PLAN OR DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO THE CREDITORS' PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENT OF SUCH TERMS AND PROVISIONS.

THE CREDITORS' PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN CONTROL THE ACTUAL TREATMENT OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS AND WILL, UPON OCCURRENCE OF THE EFFECTIVE DATE, BE BINDING UPON ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS, THEIR ESTATES, ALL PARTIES RECEIVING PROPERTY UNDER THE CREDITORS' PLAN, AND OTHER PARTIES IN INTEREST. IN THE EVENT OF ANY CONFLICT BETWEEN THIS CREDITORS' DISCLOSURE STATEMENT, ON THE ONE HAND, AND THE CREDITORS' PLAN OR ANY OTHER OPERATIVE DOCUMENT, ON THE OTHER HAND, THE TERMS OF THE CREDITORS' PLAN AND/OR SUCH OTHER OPERATIVE DOCUMENT WILL CONTROL.

In general, a chapter 11 plan of reorganization (i) divides claims and interests into separate classes, (ii) specifies the property that each class is to receive under the plan, and (iii) contains other provisions necessary to the reorganization of the debtor. Under the Bankruptcy Code, "claims" and "interests" are classified rather than "creditors" and "shareholders" because such Persons may hold claims or interests in more than one class. For purposes of this Creditors' Disclosure Statement, the terms "creditor" and "shareholder" refer to the holder of a "Claim" or "Interest," respectively, in a particular Class under the Plan. The term "Impaired" refers to those Creditors to whom this Creditors' Disclosure Statement (and the related Ballots and other materials delivered together herewith) are being furnished and who are entitled to vote to accept or reject the Creditors' Plan. The Claims in Classes 3B (General Unsecured Claims) are impaired under the Creditors' Plan, and the holders of Claims in such Classes are entitled to vote to accept or reject the Creditors' Plan.

A chapter 11 plan may specify that certain classes of claims or interests are to have their claims or interests remain unaltered by the plan. Such classes are referred to as "unimpaired" and, because of such favorable treatment, are conclusively deemed to accept the plan. Accordingly, under Section 1126(f) of the Bankruptcy Code, it is not necessary to solicit acceptances from the holders of claims or interests in such classes. Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, Other Priority Claims, and Convenience Claims are not impaired under the Plan, and each such class is, therefore, conclusively deemed to have accepted the Creditors' Plan.

A chapter 11 plan may also specify that certain classes will not receive any distribution of property under the plan. Under Section 1126(g) of the Bankruptcy Code, such classes are conclusively deemed to reject the plan and, therefore, need not be solicited to vote to accept or reject the plan. The holders of Claims in Class 4A (Subordinated Secured Claims), Class 4B (Subordinated Unsecured Claims), and Class 5 (Interests) will not (unless the Committee Litigation is unsuccessful) receive or retain any property under the Creditors' Plan on account of such Claims or Interests, and each such Class is, therefore, conclusively deemed to have rejected the Creditors' Plan.

The Effective Date will occur when each of the conditions precedent to the Effective Date of the Creditors' Plan specified in Article IX, Section 9.2, of the Creditors' Plan have been satisfied or waived in accordance with Article IX, Section 9.3, of the Creditors' Plan.

## **B. Overview**

1. The Creditors' Plan provides for the liquidation and conversion of all of the Debtors' assets to Cash and the distribution of the net proceeds realized therefrom to Creditors of the Debtors holding Allowed Claims in accordance with the rules and priorities established by the Bankruptcy Code. Under the Creditors' Plan, as discussed below, the Chapter 11 Cases and the Debtors' Estates will be substantively consolidated for all purposes, including making distributions to Creditors.
2. As of April 2002, the Debtors' significant liquidated property included approximately the following amounts: unencumbered cash of \$61.7 million; a wind-down fund of \$4.8 million; a retention fund of \$6.8; a tax refund of \$2 million to \$3 million; in which GE Capital asserts a lien; cash collateral, in which GE Capital asserts an interest, of approximately \$50 million, plus certain GE Capital cash collateral in respect of letter of credit disputes.
3. The Debtors' property remaining to be liquidated includes, without limitation, (i) 11 unencumbered leased properties and 17 owned properties, (ii) Excess Assets of the pension plans (estimated to be \$25-40 million), and (iii) potential recoveries from the Committee Litigation and Causes of Action, including, without limitation, recoveries of preferential pre-petition transfers by the Debtors. Recoveries on Causes of Action will increase the total value of the Debtors' assets available for distribution to holders of Allowed Claims by an amount that cannot presently be quantified. If successful in most respects, the Committee Litigation would result in a distribution to General Unsecured Creditors of 100% of their Allowed Claims.

## **C. Summary Of Classification And Treatment Of All Claims And Interests Under The Creditors' Plan**

1. The Creditors' Plan divides Claims into classified Claims and unclassified Claims. In addition, certain Claims are Impaired, and certain Claims are Unimpaired. As set forth in Section 1124 of the Bankruptcy Code, a Claim is Impaired unless the plan (1) leaves unaltered the legal, equitable and contractual rights of the Claim or (2) provides for the reinstatement of the Claim.

2. Classified Claims which are deemed impaired are entitled to vote on the Creditors' Plan, classified Claims which are deemed Unimpaired are not entitled to vote on the Creditors' Plan, and unclassified Claims are presumed to have accepted the Creditors' Plan and, therefore, do not vote on the Creditors' Plan.
3. The classification of Claims and Interests, the estimated aggregate amount of Claims in each Class, and the amount and nature of distributions to holders of Claims or Interests in each Class are summarized below. For the Estimate of Total Amount of Claims, the Committee has relied on certain financial information from the Disclosure Statement dated March 1, 2002, with respect to the Joint Plan filed by the Debtors and GE Capital, as subsequently modified, and certain information provided by the Debtors' claims administrator, ACE.

<b>Class</b>	<b>Approximate Estimated Total Claims</b>	<b>Estimated Recovery</b>	<b>Treatment</b>
<u>Unclassified</u>			
Administrative Expense Claims	\$14,000,000 <sup>4</sup>	100%	Unimpaired; paid in full in Cash on the Effective Date.
<u>Unclassified</u>			
United States Trustee Claims	Undetermined	100%	Unimpaired; all fees payable under 28 U.S.C. § 1930, whether due before or after the Effective Date, until the Chapter 11 Cases are closed by final decree, shall be paid in full in Cash.
<u>Unclassified</u>			
Professional Fee Claims	Undetermined	100%	Unimpaired; paid in full in Cash on monthly basis, subject to approval by the Bankruptcy Court.
<u>Unclassified</u>			
Priority Tax Claims	\$15,000,000 <sup>5</sup>	100%	Unimpaired; holders of Allowed Priority Tax Claims shall be paid in full in Cash on the Effective Date.

<sup>4</sup> Exclusive of reclamation Claims filed as Administrative Expense Claims by certain unpaid shippers of goods to the Debtors under section 546(c) of the Bankruptcy Code. Based on information provided to date by the Debtors, the Committee estimates reclamation Claims at approximately \$9 million. As discussed in Article II, Section D, above, on January 11, 2002, GE Capital and the Debtors jointly filed a motion to reclassify reclamation Claims as General Unsecured Claims. Holders of approximately one-half in value of the reclamation Claims objected to the reclassification motion. The Committee has not taken a position on the motion, which has been adjourned until Confirmation. If the reclassification motion is unsuccessful, a portion of the reclamation Claims may retain their filed priority as Administrative Expense Claims, and the total amount of Administrative Expense Claims would increase, diluting the prospective recoveries of holders of General Unsecured Claims.

<sup>5</sup> At the time of the preparation of this Creditors' Disclosure Statement, the combined total of Priority Tax Claims and Other Priority Claims is approximately \$15,000,000. By the Effective Date, the amount of each Claim for Priority Taxes and Other Priority Claims will be separately liquidated.

<b>Class</b>	<b>Approximate Estimated Total Claims</b>	<b>Estimated Recovery</b>	<b>Treatment</b>
<u>Class 1</u>			
Secured Claims	Undetermined	100%	Unimpaired; the underlying Collateral will be valued and returned to the holders of Secured Claims. If the value of the Collateral securing such Claim is less than the amount of such Claim, the difference shall be a General Unsecured Claim.
<u>Class 2</u>			
Other Priority Claims	\$15,000,000	100%	Unimpaired; holders of Allowed Other Priority Claims shall be paid in full in Cash on the later of thirty (30) days after the Effective Date or the date on which the Claims are Allowed, or as soon thereafter as is practicable.
<u>Class 3A</u>			
Convenience Claims	\$2,800,000 <sup>6</sup>	100%	Unimpaired; holders of Allowed Convenience Claims, or holders of General Unsecured Claims who choose to reduce their Allowed Claims to \$100, shall receive Cash in the amount of their Allowed Claims.

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<sup>6</sup> Assuming that most creditors with claims \$500 or less will opt into this treatment.

<b>Class</b>	<b>Approximate Estimated Total Claims</b>	<b>Estimated Recovery</b>	<b>Treatment</b>
<u>Class 3B</u>			
General Unsecured Claims	\$390,000,000 <sup>7</sup>	4-100%	Impaired; holders of Allowed General Unsecured Claims shall receive their Pro Rata Share of Available Cash on the later of thirty (30) days after the Effective Date or the date on which the Claims are Allowed, or as soon thereafter as is practicable. Initial Distributions are projected to be 4% and Subsequent Distributions will be made as proceeds of unencumbered assets including, without limitation, the Committee Litigation are collected.
<u>Class 4A</u>			
Subordinated Secured Claims	\$534,000,000 <sup>8</sup>	0%	Impaired; holders of Subordinated Claims will not receive distributions or retain property on account of their Claims, except as otherwise described in Article IV, Section F, below.
<u>Class 4B</u>			
Subordinated Unsecured Claims	\$449,000,000 <sup>9</sup>	0%	Impaired; holders of Subordinated Claims will not receive distributions or retain property on account of their Claims, except as otherwise described in Article IV, Section F, below.

<sup>7</sup> The amount included in Class 3B does not include unsecured Claims of the GE Entities in an approximate Filed amount totaling \$449 million and represents a mid-point in the estimated range of claims between \$360 and \$420 million.

<sup>8</sup> The amount included in Class 4A consists of Secured Claims of the GE Entities in an approximate Filed amount totaling \$534 million, which Claims are secured by Collateral having an estimated equal value.

<sup>9</sup> The amount included in Class 4B consists of Unsecured Claims in an approximate Filed amount totaling \$449 million.



<b>Class</b>	<b>Approximate Estimated Total Claims</b>	<b>Estimated Recovery</b>	<b>Treatment</b>
<u>Class 5</u>			
Interests	Interests in the Debtors (members)	0%	Impaired; holders of Interests will not receive distributions or retain property on account of their Interests; all Interests shall be extinguished and be deemed cancelled.

Total Claims Filed in each of the foregoing Classes may exceed the estimates of Allowed Claims given above. Although the Committee anticipates that total Allowed Claims will be lower than total Claims Filed in each Class, the amounts stated above only represent the Committee's best current estimate of the total amount of Claims in each Class that will ultimately be Allowed based on information from the Debtors and their claims agent. The actual amount of Allowed Claims in any Class may differ significantly from the Committee's estimates given in this Creditors' Disclosure Statement, and any such difference may be material and may affect the recoveries of holders of General Unsecured Claims.