

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

<p>BRIARCLIFF SOLUTIONS HOLDINGS, LLC., in its individual capacity, and derivatively on behalf of BRIARCLIFF SOLUTIONS GROUP, LLC, and BRIARCLIFF SOLUTIONS GROUP, LLC</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">- against -</p> <p>FIFTH THIRD BANK (CHICAGO), GRANITE CREEK FLEXCAP I, L.P., PHILIP KAIN, MARK RADZIK, DAVID MISSNER, JEFFREY WELLEK, JAMES IVERSEN and ROGER ROSE,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p style="text-align: center;">Index No.: 70431//2012</p> <p style="text-align: center;"><u>AMENDED VERIFIED COMPLAINT</u></p>
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Plaintiffs Briarcliff Solutions Holdings, LLC (“BSH”) and Briarcliff Solution Group, LLC (“BSG”) (“Plaintiffs”), through their undersigned counsel Schlam Stone & Dolan LLP, for their Amended Verified Complaint against Defendants Fifth Third Bank (Chicago) (“FTB”), Granite Creek FlexCap I, L.P. (“GCP”), Philip Kain, Mark Radzik, David Missner, Jeffrey Wellek, James Iversen and Roger Rose (collectively “Defendants”), allege as follows:

NATURE OF ACTION

1. This is an action for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of the covenant of good faith and fair dealing, and breach of contract brought by BSG and BSH.
2. As described within, GCP and FTB violated their duties of good faith and fair dealing under their loan agreements with BSG by, *inter alia*, conspiring to force BSG into an

artificial payment default of their own making, and using that default to seize control of the BSG board through GCP's appointment of three of the five directors.

3. Those directors -- working in the interests of GCP and FTB rather than of the company, and with the cooperation of James Iversen, who controlled the fourth board seat -- proceeded to use their control to cause BSG, whom they were nominally representing as fiduciaries while negotiating with GCP and FTB as lenders, to pay \$875,000 in cash to FTB (beyond its regular debt service), to take out at least \$500,000 in additional loans from GCP on unreasonable terms (including hundreds of thousands of dollars in fees to GCP), to deny BSG's CEO the right to even consider the option of a bankruptcy filing while these oppressive actions were taken over his objection, and to attempt to convert the equity of BSG to the benefit of GCP.

4. In March 2011, all of BSG's assets were foreclosed upon by secured creditors -- including James Iversen -- with the proceeds applied to the company's obligations toward FTB. Mr. Iversen, who had been appointed as BSG's CEO by the GCP-controlled board in June 2010, resigned that title immediately before the foreclosure (but remained a BSG board member for several more weeks.)

PARTIES AND VENUE

5. Plaintiff BSH is a New York limited liability company with an address of 45 Woodfield Road, Briarcliff Manor, New York 10510. Non-parties Paul Lightfoot and Christian Feuer together own the entirety of BSH.

6. Plaintiff BSG is a New York limited liability company with an address of 45 Woodfield Road, Briarcliff Manor, New York 10510. BSG was owned 88.89% by BSH; the remaining owners of BSG were James Iversen and non-party Alfred Iversen, the former owners of non-parties AL Systems, Inc. and Mincron SBC Corporation (defined below).

7. Defendant FTB is a Michigan banking corporation with offices located at 222 W. Riverside Plaza, Chicago IL 60606.

8. Defendant GCP is a Delaware Limited Partnership with its chief executive offices located at 222 West Adams Street, Suite 1980, Chicago, IL 60606.

9. Defendant Kain is a natural person residing, upon information and belief, in the State of Illinois. At relevant times, Defendant Kain was a Senior Vice President and/or Managing Director of FTB.

10. Defendant Radzik is a natural person residing, upon information and belief, in the State of Illinois. At relevant times, Defendant Radzik was a managing partner of GCP, and a member of the BSG board of directors.

11. Defendant Missner is a natural person residing, upon information and belief, in the State of Illinois. At relevant times, Missner was a GCP-appointed member of the BSG board of directors.

12. Defendant Wellek is a natural person residing, upon information and belief, in the State of Illinois. At relevant times, Wellek was a GCP-appointed member of the BSG board of directors.

13. Defendant James Iversen is a natural person residing in the State of New York. James Iversen was a member of the BSG board of directors at all relevant times until his resignation in August of 2009, and again from January 2010 through April 2011.

14. Defendant Rose is a natural person residing, upon information and belief, in the State of Florida. Mr. Rose served as Mr. Iversen's appointee on the BSG board of directors from August 2009 until January 2010 and, upon appointment by the GCP-controlled board, served as CEO of BSG from January to June 2010.

15. Venue is appropriate in Westchester County, pursuant to CPLR § 503, because Plaintiffs reside in this County.

FACTUAL HISTORY

A. BSG And Its Operating Companies

16. BSG is a holding company that, until March 2011, owned and operated two businesses, AL Systems, Inc. (“ALS”) and Mincron SBC Corporation (“Mincron”). ALS and Mincron provided enterprise software solutions to leading retailers and wholesale distributors.

17. In late 2001, Mr. Lightfoot was hired to turn around ALS, the predecessor to BSG. ALS had previously lost money for years. By the end of 2002, as Mr. Lightfoot became its President, Chief Executive Officer and Director, ALS was profitable and trending positively on key business metrics. ALS’s revenue and profits grew dramatically from fiscal year 2003 through fiscal year 2006 under Mr. Lightfoot’s leadership.

18. In 2007, Mr. Lightfoot co-founded BSG, bringing in new investors to first acquire ALS and to then acquire Mincron. To partially finance these transactions, in or about December 2007, BSG, ALS and Mincron received a senior term loan from FTB and a subordinated mezzanine loan from GCP.

19. The loan terms were set forth in documents (the “Loan Agreements”) entitled: (1) the Senior Subordinated Loan and Security Agreement, Dated as of December 21, 2007, by and among Granite Creek FlexCap I, L.P., Briarcliff Solutions Group, LLC, AL Systems, Inc. and Mincron SBC Corporation; (2) the Loan and Security Agreement, Dated as of December 21, 2007, by and among Fifth Third Bank (Chicago), Briarcliff Solutions Group, LLC, AL Systems, Inc. and Mincron SBC Corporation; and (3) various documents executed in

connection with (1) and (2). These Loan Agreements set forth the terms on which GCP and FTB would lend money to BSG. BSH was also a party and signatory to the Loan Agreements.

20. From December 2007 until March 2011, the business of BSG was run through ALS and Mincron, its two operating companies. BSG had no independent operations of its own.

B. Defendants Seize Control And The GCP Directors Breach Their Fiduciary Duties

21. At the beginning of 2009 BSG, while current in its debt service, faced operational difficulties as a result of the severe financial crisis then prevailing. Mr. Lightfoot, as BSG's CEO, proposed a series of measures to enhance BSG's operational standing by cutting costs, improving profits and increasing cash balances.

22. In the spring of 2009 GCP, through Mr. Radzik, proposed a foreclosure transaction through which the existing equity holders in BSG would lose their equity, with a majority of equity to be placed in the hands of GCP, and a minority with the management (Lightfoot and Feuer, the members of BSH).

23. When BSH, through Mr. Lightfoot and Mr. Feuer, declined to participate in the transaction in April 2009, Mr. Radzik became angry, and stated he would foreclose on BSG (which would require the cooperation of, FTB as senior lender.) When Mr. Lightfoot advised FTB of these developments, Mr. Kain initially stated that he would support GCP's position. After Mr. Lightfoot stated that BSG would do everything in their power to defend, including a bankruptcy filing, Mr. Kain reversed course, and assured Mr. Lightfoot that FTB would not cooperate with GCP in its foreclosure efforts.

24. At this time, BSG's position was already improving, and it had remained current in its payments to both lenders. Nonetheless, in May 2009 FTB, citing certain

previously-existing technical defaults in BSG's financial ratios, invoked its contractual right under the loan documents to prohibit BSG from making payments to GCP as junior lender for a period of 120 days, beginning with the payment due June 30, 2009. BSG was able to continue making its payments to GCP, but complied with this direction at FTB's insistence.

25. Mr. Lightfoot and Mr. Feuer were aware that, under the Loan Agreements, BSG's failure to make payments triggered in GCP a right to take over the BSG board. They were concerned that FTB and GCP would exercise not only their other powers under the Loan Agreements, but this power as well, to their own benefit as lenders and contrary to the interests of BSG.

26. From the spring through the fall of 2009, Mr. Lightfoot had led discussions regarding a restructuring plan that would pay GCP in full for the payments that had been missed at FTB's insistence as described above, and revise the loan terms to the satisfaction of all parties to enable BSG to continue to remain current on its obligations to FTB, to catch up on the GCP payments missed due to the FTB-imposed standstill, to remain current on future obligations to GCP, and to continue the operating performance momentum achieved during 2009.

27. In August 2009, James Iversen resigned from the BSG board, and named Mr. Rose to hold the seat over which he held appointment power.

28. Upon information and belief, Mr. Rose had been recommended to Mr. Iversen as an "independent director" by Mr. Radzik, who stated that he had only met Mr. Rose once, did not know him well and had not worked with him.

29. On several occasions, Mr. Rose stated to Mr. Lightfoot, Mr. Feuer, Mr. Lynch and other BSG management personnel that he did not know Mr. Radzik apart from an

informational interview, and that they had only met once and had never worked together, since Mr. Rose had never done any business with GCP.

30. Upon information and belief, Mr. Rose had in fact worked previously with GCP, Mr. Radzik, Mr. Missner and/or Mr. Wellek on one or more deals where GCP had taken control of the board of its borrowers.

31. By October 2009, Mr. Lightfoot had achieved the oral consent of all of the BSG equityholders, of FTB, of and, except for the GCP, all of the major creditors – including the Mincron and ALS sellers -- to the restructuring transaction he had spent much of the year working on.

32. Mr. Lightfoot and Mr. Feuer remained concerned about the intentions of GCP and FTB, however, especially in light of GCP's refusal to agree to the plan that all other equityholders and major creditors had approved.

33. At a BSG board meeting on October 27, 2009, Mr. Lightfoot secured a resolution from the BSG board authorizing the officers of BSG to file for bankruptcy protection if, "in the judgment of the Board, it is desirable and in the best interests of the Company, its creditors and other parties in interest that the Company file or cause to be filed a voluntary petition seeking relief under the provisions of Chapter 11 of Title 11 of the United States Bankruptcy Code." Mr. Radzik (then GCP's sole appointed board member) and Mr. Rose (James Iversen's appointed board member) opposed the resolution, which carried by a vote of 3-2.

34. BSG's cash balance and profitability improved dramatically over the course of the 2009 calendar year, profits increasing approximately 50%, and cash balance even more, from 2008. As the end of year approached, the company was in a strong cash position and

remained current, at all times, on its debt service to FTB. Due to the size of BSG's obligations to FTB and GCP, however, Mr. Lightfoot regarded the availability of the bankruptcy option as a key element in the Company's negotiating position.

35. BSG resumed its payments to GCP in late 2009, promptly after FTB's contractual right to prohibit such payments expired.

36. Defendants lured Mr. Lightfoot and Mr. Feuer to a meeting in Chicago on December 7, 2009, based on false assurances by Defendant Kain that FTB remained willing, and GCP had now agreed, to finalize an agreement based upon the plan Mr. Lightfoot had negotiated with the other equity holders and major creditors.

37. In fact, no consideration to that detailed plan was given the meeting at all. Instead, Defendant Kain turned the meeting over to Defendant Radzik of GCP, who served Mr. Lightfoot and Mr. Feuer with legal notices announcing, *inter alia*, that GCP had seized control of the board of BSG (as well as the boards of ALS and Mincron), and had arranged for a meeting of the new BSG board to withdraw the authority to pursue filing for bankruptcy protection that Mr. Lightfoot had previously secured from the board.

38. GCP's contractual basis for seizing control of the board of BSG was BSG's failure to make the very payments that FTB had prohibited it from making.

39. The legal notices served at the December 7, 2009 meeting, and the plan underlying them, manifestly were the product of substantial advance work and, upon information and belief, were the product of prior agreement among and between and among FTB, GCP, Kain, Radzik (with the collusion of Rose), whereby they would force BSG into a payment default and GCP would then exploit that default to take control of the company.

40. At least one reason for concealing the purpose of the meeting from BSH was to ensure that, by the time BSH had learned of Defendants' plan, control of the board would have been seized, by personal delivery of the notices at the December 7 meeting, thus preventing Mr. Lightfoot from acting on the authorization that he had, from the prior board, to pursue filing for bankruptcy protection.

41. Before the December 7 board seizure, BSH and its principals controlled the BSG board, which consisted of Mr. Lightfoot, Mr. Feuer, Michael Lynch (an outside director and BSH's designee), Mr. Radzik (representing GCP), and Roger Rose (the designee of James Iversen.) After the seizure, Mr. Lynch was the sole representative of Plaintiff BSH. The remainder of the board consisted of Mr. Radzik, two new GCP designees (Mr. Missner and Mr. Wellek) and Mr. Rose, giving GCP voting control of the board.

42. Upon information and belief, Mr. Missner, Mr. Wellek, and Mr. Rose, while nominally discharging their duties as directors of BSG, at all times worked with Mr. Radzik and/or Mr. Kain to represent the interests of GCP and FTB, rather than the interests of BSG.

43. Defendants proceeded to use their board control of BSG, and their stripping of its recourse to the possibility of bankruptcy protection, to advance the interests of GCP and FTB as lenders, to the detriment of BSG, its members, and its other creditors.

44. The GCP-controlled board's course of conduct in this regard included at least the following actions:

- A. On December 14, 2009, the new, GCP-controlled board of BSG rescinded the authorization to file for bankruptcy protection that Mr. Lightfoot had previously secured from the BSG board.
- B. The GCP-controlled board attempted to entrench the BSG default -- which Defendants had created -- by preventing BSG from making up

the payments to GCP that FTB had “turned off” effective June 2009, although the FTB 120-day “turn-off” period had expired. (However, Mr. Lightfoot was authorized to make the payments in his capacity as CEO, and did so prior to 2009 year end.)

- C. The GCP-controlled board swept BSG’s substantial cash reserves, by causing it to make payments, above and beyond the regular debt service to FTB (which BSG had continued to make without fail), in the amount of \$375,000 in December 2009, and an additional \$300,000 in January 2010.
- D. The GCP-controlled board proposed a new transaction that would have diluted the BSG equity holders to the point that they would have owned only 1% of the company, while FTB would have received \$300,000 in cash. Although the equity transaction was not completed, the cash sweep to FTB was, as set forth immediately above.
- E. After causing the company to transfer much of its substantial cash balance to FTB, thereby creating a cash crisis, in June 2010 the GCP-controlled board then caused BSG to borrow back more than \$500,000 *from GCP*—without exploring other sources of financing – on commercially unreasonable terms, including fees of at least \$350,000 and an 18% interest rate. \$200,000 from these loan proceeds was paid to FTB to reduce its outstanding loan balance (in addition to the \$675,000 previously paid to FTB, described above.) While this loan benefitted GCP (through the fees and highly favorable loan terms) and FTB (through the cash payment), it did nothing to improve the cash crisis that Defendants had created.

45. The manner in which the January 2010 cash sweep to FTB was accomplished illustrates the extent to which the GCP-controlled board had abandoned the interests of the company.

46. In December 2009 and January 2010, Mr. Lightfoot was engaged in extensive negotiations with FTB, in which he indicated the company was prepared to make substantial cash payments, beyond regular debt service, in exchange for a forbearance agreement with respect to BSG’s interest obligations.

47. In January 2010, Mr. Lightfoot learned that GCP, through Mr. Missner, was negotiating directly with FTB on the same subjects that he was negotiating on, thereby undermining the company's negotiating position.

48. In other words, GCP was simultaneously negotiating with FTB to allow seizure of the company's cash, while pursuing its own plans to seize the company's equity: all for a company that had never missed a loan payment (except when required to do so, for a period of 120 days, by the direction of FTB, which missed payments were made up as soon as FTB's contractual right to prohibit payment expired.).

49. GCP-controlled board used information that members of the GCP-controlled board had used on BSG board calls to negotiate with FTB, contrary to the best interests of BSG.

50. Mr. Lightfoot urged the BSG board to put the interests of the company before the interests of FTB and GCP by, for example, restoring the bankruptcy declaration and injecting the prospect of a bankruptcy filing into the negotiations, securing advice of counsel as to litigation options, and refusing to provide cash to FTB other than as a result of vigorous negotiations that resulted in a corresponding benefit to the company. The GCP-controlled board refused to do so.

51. Rather, Mr. Lightfoot then learned that, through its private negotiations by Mr. Missner with FTB, the GCP-controlled board had approved the second, \$300,000 cash sweep to FTB described above, without obtaining any benefit for BSG in return.

52. Mr. Lightfoot resigned as CEO of BSG effective January 31, 2010. In the summer of 2010, he sued BSG for severance due under his employment agreement. That matter, styled *Paul Lightfoot v. Briarcliff Solutions Group, LLC*, Supreme Ct., Westchester Co., Index

No. 050003/2010, was settled in the summer of 2012. The matter now at bar does not raise any claims against BSG, or any employment-related claims.

53. Upon Mr. Lightfoot's resignation, the GCP-controlled board appointed Mr. Rose as CEO of BSG. He remained in that position until June 2010, when the GCP-controlled board replaced him with James Iversen. Mr. Iversen worked part time – no more than several days a month – and was paid \$20,000 a month.

54. Through its stripping of cash and loading on of additional debt, the GCP-controlled board destroyed BSG's future prospects which, as discussed above, had been highly favorable, based on the success of Mr. Lightfoot's 2009 plan, at the time the GCP-controlled board seized control of the company. In February 2011, BSH received notice that the stock of ALS and Mincron – BSG's only assets – were being foreclosed upon by the two groups that had sold those assets to BSG in the 2007 transaction: including Mr. James Iversen. The foreclosure was subject to the debt of FTB and GCP and, upon information and belief, was carried out with their consent.

55. BSH, through Mr. Lightfoot, urged the BSG board to retain new counsel to investigate the company's options, including litigation, and to investigate whether the transaction represented a continuation of collusion between FTB and GCP, now with the foreclosing parties. The Company responded with a letter from the company's lawyers stating that the BSG board had previously considered Mr. Lightfoot's allegations of collusion by the GCP-controlled board with GCP and FTB and the board "believed they were in compliance with their fiduciary duties." The board took no action in response to the foreclosure.

56. The foreclosure sale went forward on March 24, 2011. There were no bidders apart from the Mincron and ALS sellers (including James Iversen), who tendered their notes in exchange for all the assets of the respective companies.

57. Without its holding companies, BSG was left without any material assets.

58. Thus, the effect of the foreclosures was to eliminate BSH as an obstacle to Defendants' continuing misconduct at BSG by transferring ownership of BSG's assets from the BSG (owned nearly 90% by BSH, which had consistently objected to Defendants' misconduct) to the Mincron and ALS sellers (including James Iversen, who had cooperated with Defendants' misconduct, over the objections of BSH).

59. On or about March 16 2011, Defendant Radzik resigned from the BSG board seat he held as one of Defendant GCP's designees. Defendant GCP declined to appoint a successor.

60. On or about April 6, 2011, Defendants Missner, Wellek and James Iversen all resigned from the BSG board. GCP declined to appoint a successor to either Missner or Wellek, its other two designees, and James Iversen declined to appoint a successor to the seat he controlled.

61. This left Mr. Lightfoot as the sole remaining member of the BSG board.

62. On or about May 16, 2011, Defendant James Iversen sent an email to the Company's insurer, stating that Mr. Lightfoot was "the sole remaining member of the Board of Directors of BSG."

63. Despite repeated notices sent at the direction of the Court in the severance litigation mentioned above, and despite Mr. Lightfoot's emailed requests for notification as to whether they would be appointing successor board designees, neither the resigned directors, nor

GCP, took any action in connection with the business of the Company from April 6, 2011 until January 31, 2013.

64. On January 31, 2013, Defendant James Iversen sent an email to to Mr. Lightfoot and others purporting to reclaim the seat on the BSG board that he had abandoned.

65. On January 31, 2013, Defendant GCP, through Defendant Radzik, sent a letter to Mr. Lightfoot and others purporting to appoint Defendants Radzik, Missner and Rose to the BSG board.

66. On January 31, 2013, Defendant Missner sent an email to Mr. Lightfoot and others purporting to call a “Special Meeting” of the Board of Directors of BSG for February 11, 2013.

67. Among the purposes stated by Mr. Radzik for the February 11 meeting are: (i) to cause the Company “to consider retention of Quarles & Brady LLP to represent the Company in seeking dismissal of the Complaint [in this matter] and/or an amendment to the Complaint to remove the Company as a plaintiff; (ii) “Acknowledgement [by BSG] of additional Liabilities” assertedly payable to defendant GCP “as a result of certain advances to be made by [GCP] on behalf of the Company in order to finance the retention by the Company of Quarles & Brady LLP”; and (iii). to consider the filing of a voluntary bankruptcy petition.

68. In other words, after having abandoned their positions on the board of the Company after it had been denuded of assets through the foreclosure sale – and having done so in violation of the BSG Operating Agreement, which requires 60 days’ notice of resignation – and having left the Company for dead for nearly two years, Defendants now seek to reassert their control of the Company’s board for the sole purpose of preventing it from asserting its claims against them.

69. Plaintiffs dispute the right of Defendants to claim the board seats, or to use those board seats to protect themselves from the claims asserted in this action. Should Defendants proceed with their plan to seize control of the Company's board in order to insulate themselves from suit, the Company reserves the right to assert claims relating to such behavior, in this action or otherwise, for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, or otherwise.

CAUSES OF ACTION

AS AND FOR PLAINTIFFS' FIRST CAUSE OF ACTION
(Breach of fiduciary duty under New York law; by BSG and BSH,
directly and, in the alternative, derivatively on behalf of BSG,
against GCP, Radzik, Missner, Wellek, James Iversen and Rose)

70. Plaintiffs reallege and restate paragraphs 1-69 of the Complaint as if fully stated herein.

71. As directors of BSG, Defendants Radzik, Missner, Wellek, James Iversen and Rose owed the company the strictest duty of loyalty, including a duty to prefer its interests to those of GCP or FTB.

72. BSG was a "Manager-managed" LLC, in which the Board of Directors was sole manager of the Company.

73. As such, the directors owed a fiduciary duty to the members, including BSH.

74. By reason of its control over the GCP-appointed directors and, upon information and belief, as evidenced by the control that it exercised over BSG through them, GCP is chargeable with the duties of a fiduciary at BSG.

75. By the actions described above and otherwise, including, without limitation, by agreeing with GCP and FTB to strip the company of cash and to burden it with

unnecessary and unreasonable debt for the benefit of FTB and GCP, refusing to consider the option of bankruptcy when negotiating with the lenders, and failing to defend the company from foreclosure upon all of its assets, these Defendants breached their duties to BSG and BSH.

76. BSG and BSH have been injured as a result of these actions in an amount to be determined at trial, and believed to exceed \$10 million.

77. The aforesaid acts were outrageous and exhibited a willful and wanton disregard for the rights of BSG and BSH, justifying an award of punitive damages in an amount to be determined at trial, and believed to exceed \$10 million.

78. To the extent Defendants' effort to reclaim control of the BSG board, described above at ¶¶ 64-69, might otherwise be deemed to call the Company's maintenance of this claim into dispute, BSH, as owner of 88.89% of the BSG equity, asserts this claim derivatively on behalf of BSG. Demand on the alleged BSG "board" controlled by Defendants to proceed with this action against themselves, which they have taken such extraordinary steps to derail, would manifestly be futile.

AS AND FOR PLAINTIFFS' SECOND CAUSE OF ACTION
(Aiding and Abetting Breach of fiduciary duty under New York law; by BSG and BSH directly and, in the alternative, derivatively on behalf of BSG, against FTB, Kain, and, alternatively, GCP and James Iversen)

79. Plaintiffs reallege and restate paragraphs 1-78 of the Complaint as if fully stated herein.

80. By the actions described above and otherwise, Defendants Kain and FTB knowingly lent substantial assistance to the breaches of fiduciary duty described above.

81. As an alternative to the inclusion of GCP in the first cause of action, and to the extent if any that GCP is deemed not to be chargeable with the duties of a fiduciary at

BSG, GCP knowingly lent substantial assistance to the breaches of fiduciary duty described above.

82. James Iversen aided in abetted the aforesaid fiduciary breaches, to the extent those breaches occurred during the period when Mr. Rose, rather than James Iversen, occupied the board seat that James Iversen controlled.

83. BSG and BSH have been injured as a result of these actions in an amount to be determined at trial, and believed to exceed \$10 million.

84. The aforesaid acts were outrageous and exhibited a willful and wanton disregard for the rights of BSG and BSH, justifying an award of punitive damages in an amount to be determined at trial, and believed to exceed \$10 million.

85. To the extent Defendants' effort to reclaim control of the BSG board, described above at ¶¶ 64-69, might otherwise be deemed to call the Company's maintenance of this claim into dispute, BSH, as owner of 88.89% of the BSG equity, asserts this claim derivatively on behalf of BSG. Demand on the alleged BSG "board" controlled by Defendants to proceed with this action against themselves, which they have taken such extraordinary steps to derail, would manifestly be futile.

AS AND FOR PLAINTIFFS' THIRD CAUSE OF ACTION
(Breach of contract under Illinois law by BSG and, in the
alternative, by BSH derivatively on behalf of BSG, against GCP
and FTB)

86. Plaintiffs reallege and restate paragraphs 1-85 of the Complaint as if fully stated herein.

87. The Loan Agreements contain an Illinois choice of law provision.

88. By the actions described above and otherwise, including without limitation by agreeing that FTB would require BSG to cease making payment to GCP so as to trigger

GCP's right to seize control of the BSG board and thereafter loot the company, Defendants GCP and FTB breached their contracts with BSG, by violating the covenant of good faith and fair dealing, in that they exercised their discretion under the contracts in a manner inconsistent with the reasonable expectations of the parties, rather than reasonably and with proper motive.

89. BSG and BSH have been injured as a result of these actions in an amount to be determined at trial, and believed to exceed \$10 million.

90. The aforesaid acts were outrageous and exhibited a willful and wanton disregard for the rights of BSG and BSH, justifying an award of punitive damages in an amount to be determined at trial, and believed to exceed \$10 million.

91. To the extent Defendants' effort to reclaim control of the BSG board, described above at ¶¶ 64-69, might otherwise be deemed to call the Company's maintenance of this claim into dispute, BSH, as owner of 88.89% of the BSG equity, asserts this claim derivatively on behalf of BSG. Demand on the alleged BSG "board" controlled by Defendants to proceed with this action against themselves, which they have taken such extraordinary steps to derail, would manifestly be futile.

AS AND FOR PLAINTIFFS' FOURTH CAUSE OF ACTION

(Breach of covenant of good faith and fair dealing under New York law; by BSG BSG and, in the alternative, by BSH derivatively on behalf of BSG, against GCP and FTB)

92. Plaintiffs reallege and restate paragraphs 1-91 of the Complaint as if fully stated herein.

93. By the actions described in the foregoing cause of action for breach of contract, and in the alternative in the event the law of New York rather than of Illinois is deemed applicable to the contract claims, Defendants GCP and FTB breached the covenant of good faith and fair dealing implicit in their contracts with BSG, pursuant to which neither party to a

contract may do anything which has the effect of destroying or injuring the right of the other party to receive the fruits of the contract, or take actions that so directly destroy the value of the contract for another party that the acts may be presumed to be contrary to the intention of the parties,

94. BSG and BSH have been injured as a result of these actions in an amount to be determined at trial, and believed to exceed \$10 million.

95. The aforesaid acts were outrageous and exhibited a willful and wanton disregard for the rights of BSG and BSH, justifying an award of punitive damages in an amount to be determined at trial, and believed to exceed \$10 million.

96. To the extent Defendants' effort to reclaim control of the BSG board, described above at ¶¶ 64-69, might otherwise be deemed to call the Company's maintenance of this claim into dispute, BSH, as owner of 88.89% of the BSG equity, asserts this claim derivatively on behalf of BSG. Demand on the alleged BSG "board" controlled by Defendants to proceed with this action against themselves, which they have taken such extraordinary steps to derail, would manifestly be futile.

AS AND FOR PLAINTIFFS' FIFTH CAUSE OF ACTION
(Breach of fiduciary duty; by BSG and BSH, directly and, in the
alternative, derivatively on behalf of BSG, against GCP, Radzik,
Missner, James Iversen and Rose)

97. Plaintiffs reallege and restate paragraphs 1-96 of the Complaint as if fully stated herein.

98. To the extent Defendants' claim to be or act in the purported capacity of BSG Defendants', any decisions made to prevent the Company from asserting claims against them would constitute breaches of their fiduciary duties to BSG and BSH.

99. Such actions would constitute self-interested transactions under Section 411(b) of the New York Limited Liability Company Law, which Defendants cannot show to be “fair and reasonable as to the limited liability company at the time it was approved.”

100. The self-interested transactions taken or proposed by Defendants are in breach of their fiduciary duties to BSG and its members, and this Court should issue an order rescinding or avoiding those transactions.

WHEREFORE, Plaintiffs demand judgment in their favor as follows:

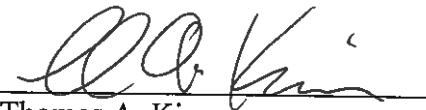
- a. On the First Cause of Action, for breach of fiduciary duty, a money judgment in favor of Plaintiffs and against GCP, Radzik, Missner, Wellek, James Iversen and Rose, jointly and severally, for compensatory and punitive damages, in an amount to be determined at trial which is at least \$20,000,000, plus pre- and post-judgment interest, costs and such other relief as is deemed just and proper by the Court;
- b. On the Second Cause of Action, for aiding and abetting breach of fiduciary duty, a money judgment in favor of Plaintiffs and against FTB, Kain and, alternatively to the first Cause of Action, GCP and James Iversen, jointly and severally, for compensatory and punitive damages in an amount to be determined at trial, which is at least \$20,000,000, plus pre- and post-judgment interest, costs and such other relief as is deemed just and proper by the Court;
- c. On the Third Cause of Action, for breach of contract/the duty of good faith and fair dealing under Illinois law, a money judgment in favor of BSG and against GCP and FTB, jointly and severally, for compensatory and punitive damages in an amount to be determined at trial, which is at least \$20,000,000, plus pre- and post-judgment interest, costs and such other relief as is deemed just and proper by the Court;
- d. On the Fourth Cause of Action, in the alternative to the Third Cause of Action, for breach of contract under New York law, a money judgment in favor of BSG and against GCP and FTB, jointly and severally, for compensatory and

punitive damages in an amount to be determined at trial, which is at least \$20,000,000, plus pre- and post-judgment interest, costs and such other relief as is deemed just and proper by the Court.

- e. On the Fifth Cause of Action, for breach of fiduciary duty, an order avoiding or rescinding any self-interested transactions carried out in violation of the Defendants' fiduciary duties.

Dated: New York, New York
February 7, 2013

SCHLAM STONE & DOLAN LLP

By: 
Thomas A. Kissane
David J. Katz
26 Broadway
New York, New York 10004
(212) 344-5400

*Attorneys for Plaintiffs Briarcliff Solutions
Holdings, LLC and Briarcliff Solution Group, LLC*

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

PAUL LIGHTFOOT, being duly sworn, deposes and states:

1. I am a member of Briarcliff Solutions Holdings, LLC, which is majority member of Briarcliff Solutions Group, LLC, both Plaintiffs in the within action.

2. I have read the foregoing Verified Amended Complaint and am familiar with the contents thereof. That document is true to my own knowledge, except as to matters therein stated on information and belief and as to those matters, I believe them to be true.


PAUL LIGHTFOOT

Sworn to before me
this 7th day of February 2013



Notary Public

THOMAS A. KISSANE
Notary Public, State of New York
No. 02K1500389
Qualified in Westchester County
Commission Expires 02/20/15