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7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
10

11 In re

12 **PROFESSIONAL BUSINESS**
13 **PLANNING & RESEARCH INC.,**

14
15 Debtor.

Case No. SA 04-10201 TA

Chapter 7

**CHAPTER 7 TRUSTEE'S NOTICE OF MOTION
AND MOTION FOR ORDER APPROVING THE
SALE OF CERTAIN ALLEGED BAD FAITH
CLAIMS OF THE ESTATE PURSUANT TO
BANKRUPTCY CODE SECTION 363(b)(1)
SUBJECT TO OVERBID PROCEDURES
PURSUANT; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF JOHN M.
WOLFE IN SUPPORT THEREOF**

16
17
18
19 Date: May 8, 2007
Time: 11:00 A.M.
20 Place: Courtroom 5B
411 West Fourth Street
21 Santa Ana, California 92701

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1 TO THE HONORABLE THEODOR C. ALBERT, UNITED STATES BANKRUPTCY
2 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR AND ITS
3 COUNSEL, CREDITORS AND OTHER PARTIES-IN-INTEREST:

4 NOTICE

5 PLEASE TAKE NOTICE that on May 8, 2007 at 11:00 A.M., in Courtroom 5B,
6 before the Honorable Theodor C. Albert, United States Bankruptcy Judge, John M. Wolfe,
7 Chapter 7 Trustee ("Trustee") for the bankruptcy estate ("Estate") of Professional Business
8 Planning & Research, Inc., a California corporation ("Debtor") will bring this Motion For Order
9 Approving the Sale of Certain Alleged Bad Faith Claims of the Estate Pursuant to Bankruptcy
10 Code Section 363(b)(1) Subject to Overbid Procedures ("Sale Motion").

11 In brief, one of the assets identified in the Debtor's bankruptcy schedules is alleged
12 damages arising from an involuntary bankruptcy petition filed against the Debtor on April 18,
13 2001. In its bankruptcy schedules, the Debtor valued this alleged bad faith filing claim at
14 \$5,737,000. The Trustee with the assistance of counsel has investigated this potential asset,
15 which consists of claims against David Okun. David Okun has offered to purchase this asset for
16 \$10,000. Subject to Court approval, the Trustee has agreed to accept the purchase offer, subject
17 to certain overbid procedures described below.

18 The Sale Motion is based upon this Notice of the Motion, the Motion and Memorandum
19 of Points and Authorities in Support thereof, the Declaration of John M. Wolfe, the pleadings
20 and files in the Debtor's bankruptcy case, and upon such further oral and documentary evidence
21 as may be presented to the Court in support of the Sale Motion.

22 PLEASE TAKE FURTHER NOTICE that objections, if any, shall be filed with the
23 Clerk of the above Court and a copy served upon Shulman Hodges & Bastian LLP to the
24 attention of Mark Bradshaw, 26632 Towne Centre Drive, Suite 300, Foothill Ranch, California
25 92610 and the Office of the United States Trustee, Ronald Reagan Federal Building and United
26 States Courthouse, 411 West Fourth Street, #9041, Santa Ana, California 92701-8000 no later
27 than fourteen days prior to the scheduled hearing.

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PLEASE TAKE FURTHER NOTICE that failure to file a timely response may be deemed as consent to the relief requested in the Sale Motion. SEE, LOCAL BANKRUPTCY RULE 9013-1(a)(7) and (11).

Dated: April 4, 2007

SHULMAN HODGES & BASTIAN LLP



Leonard M. Shulman
Mark Bradshaw
Attorneys for John M. Wolfe, the Chapter 7 Trustee
for the Bankruptcy Estate of
Professional Business Planning & Research Inc.

1 MOTION

2 In support of the Sale Motion, the Trustee respectfully represents as follows:

3 A. Case Commencement

4 On or about April 18, 2001, David Okun filed an involuntary Chapter 7 petition against
5 the Debtor that is currently pending as an involuntary proceeding before the Court as Case No.
6 SA 01-13267 TA ("Involuntary Case").

7 The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code
8 ("Second PBPR Case") on January 14, 2004 ("Petition Date").

9 Pursuant to the Application for Order Approving Appointment of Chapter 11 Trustee and
10 Fixing Bond; and Order Thereon filed by the Office of the United States Trustee ("UST") and
11 approved by the Court by Order entered July 14, 2004, the UST appointed John M. Wolfe
12 ("Trustee") as the Chapter 11 Trustee for the Second PBPR Case.

13 The Trustee determined that administration of the case did not require the Debtor to
14 remain in a Chapter 11 proceeding. As such, upon the Motion of the Trustee, and pursuant to
15 Court Order entered July 20, 2006 ("Conversion Date"), the Second PBPR Case was converted
16 to a Chapter 7 proceeding.

17 John M. Wolfe is the duly appointed, qualified and acting Trustee for the Estate of the
18 Second PBPR Case.

19 B. The Alleged Bad Faith Claims

20 Debtor's records indicate that the Debtor was formed and organized as a corporation by
21 Rodney C. Miles ("Miles") on or about October 12, 1977 and that Miles was the sole shareholder
22 of the Debtor at all times from and after its inception.

23 The Trustee is advised that the Debtor was controlled and utilized by Miles in the
24 conduct of his business as a financial advisor and real estate developer, investor and manager.

25 The Trustee is advised that on January 8, 2004, Miles filed a voluntary petition for relief
26 under Chapter 11 of the Bankruptcy Code, thus commencing case number SA 04-10085 TA
27 ("Miles Bankruptcy Case"). The Miles Bankruptcy Case was converted to a Chapter 7 and
28 Thomas H. Casey was appointed as the Chapter 7 trustee for the Miles Bankruptcy Case.

1 The Chapter 11 bankruptcy filings by the Debtor and its insider Miles appear to have
2 been triggered by litigation brought against Miles and/or the Debtor, by people who had invested
3 with Miles in real estate development projects and were asserting claims against Miles and his
4 affiliated entities. The allegations include that Miles mismanaged the projects and fraudulently
5 diverted funds.

6 At the time of the filing of the Chapter 11 case, the Debtor owned or controlled a number
7 of properties or interests in properties and partnerships. During this case, it has been determined
8 that David Okun and his wife, Sheila Reiser-Okun (collectively the "Okuns"), asserted interests
9 in a number of the Miles-affiliated entities, had sued Miles, the Debtor and a number of the other
10 Miles affiliates, and had recorded prejudgment writs of attachment and later abstracts of
11 judgment against properties owned by the Debtor, Miles and other Miles affiliated entities.

12 As set forth above, on or about April 18, 2001, David Okun filed an involuntary Chapter
13 7 petition against the Debtor that is currently pending before the Court as Case No. SA 01-13267
14 TA ("Involuntary Case"). One of the assets identified in the Debtor's Bankruptcy Schedules
15 completed by Miles in the Second PBPR Case is alleged "damages from bad faith involuntary
16 bankruptcy filed April 18, 2001" ("Alleged Bad Faith Claims") In the Second PBPR Case, the
17 Alleged Bad Faith Claims were valued at \$5,737,000.

18 **C. The Proposed Sale of the Bad Faith Claim**

19 The Trustee has investigated the Alleged Bad Faith Claims which consists of claims
20 against David Okun. The Trustee has discussed with counsel for David Okun the Alleged Bad
21 Faith Claims as well as claims asserted by the Okuns against the Second PBPR Case. Claims
22 asserted by the Okuns against the Second PBPR Case have been resolved pursuant to that certain
23 Order Approving Distribution Agreement Between the Trustee on the One Hand and Creditors
24 David Okun and Sheila Reiser-Okun on the Other entered by the Court on March 8, 2007.

25 David Okun ("Buyer") has offered to purchase the Alleged Bad Faith Claims for
26 \$10,000. The Trustee has determined that the costs to pursue the Alleged Bad Faith Claim will
27 likely outweigh any additional recovery the Estate might achieve. As such, in order to eliminate
28

1 the need for costly litigation, subject to Court approval, the Trustee seeks to sell the Alleged Bad
2 Faith Claims pursuant to the following terms and conditions:

3 1. Purchase Price. The Buyer shall pay to the Trustee within five business days of
4 the date of entry of a Bankruptcy Court order approving the sale ("Effective Date") the sum of
5 \$10,000 ("Purchase Price"), or an amount as increased by a successful overbid, for the purchase
6 of the Alleged Bad Faith Claims. The Trustee agrees to transfer ownership of the Alleged Bad
7 Faith Claims upon closing. Closing shall occur upon payment of the Purchase Price ("Closing
8 Date"). The Purchase Price shall be paid in cash or other immediately available, good funds.

9 2. Purchase Without Warranties. The Buyer acknowledges that he is purchasing the
10 Alleged Bad Faith Claims on an "AS IS - WHERE IS" basis without representations or
11 warranties of any kind, express or implied, being given by the Trustee, concerning the value,
12 existence, condition or fitness of purpose for any use thereof and subject to any and all liens and
13 encumbrances, if any. The Buyer represents and warrants that he is purchasing the Alleged Bad
14 Faith Claims as a result of his own investigations and not buying the Alleged Bad Faith Claims
15 pursuant to any representation made by any broker, agent, accountant, attorney or employee
16 acting at the direction or on behalf of the Trustee. The Buyer acknowledges that upon
17 Bankruptcy Court approval of the offer, Buyer forever waives, for himself, and his successors
18 and assigns, any and all claims against the Trustee, the Debtor's Estate, and its attorneys, agents,
19 and employees, arising or which might otherwise arise in the future concerning the Alleged Bad
20 Faith Claims.

21 3. Sale Subject to Overbids. The sale of the Alleged Bad Faith will be subject to the
22 Bidding Procedures described below.

23 **D. Notice Of Bidding Procedures**

24 In order to obtain the highest and best offer for the benefit of the creditors of this Estate,
25 the Trustee also seeks Court approval of the following bidding procedures) ("Bidding
26 Procedures"):

27 1. The potential overbidders must bid an initial amount of at least \$1,000 over the
28 Purchase Price offered for the Alleged Bad Faith Claims by the Buyer. Thus, the initial

1 minimum overbid must be at least \$11,000 cash and the agreement to purchase the Alleged Bad
2 Faith Claims on an AS IS - WHERE IS basis as set forth above.

3 2. Overbids must be in writing and be received by Trustee's counsel, Shulman
4 Hodges & Bastian LLP to the attention of Mark Bradshaw by no later than the time of hearing on
5 the Sale Motion.

6 3. Overbids must be accompanied by certified funds in an amount equal to ten
7 percent of the overbid purchase price.

8 4. The overbidder must also provide evidence of having sufficient specifically
9 committed funds to complete the transaction or a lending commitment for the bid amount and
10 such other documentation relevant to the bidder's ability to qualify as the purchaser of Alleged
11 Bad Faith Claims and ability to close the sale and immediately and unconditionally pay the
12 winning bid purchase price at Closing.

13 5. The overbidder must seek to acquire the Alleged Bad Faith Claims on terms and
14 conditions not less favorable to the Estate than the terms and conditions to which the Buyer has
15 agreed to purchase the Alleged Bad Faith Claims, including closing on the sale in the same time
16 parameters as the Buyer and agreeing to purchase the Alleged Bad Faith Claims on an AS IS -
17 WHERE IS basis.

18 6. If overbids are received, the final bidding round for the Alleged Bad Faith Claims
19 shall be held at the hearing on the Sale Motion in order to allow all potential bidders the
20 opportunity to overbid and purchase the Alleged Bad Faith Claims.

21 The foregoing Bidding Procedures will provide for an orderly completion of the sale of
22 the Alleged Bad Faith Claims and insures that potential overbidders are provided with full
23 disclosure as to the overbid procedures and the specific Alleged Bad Faith Claims to be sold. By
24 having all bidders compete on similar terms, the interested parties and the Court may compare
25 competing bids in order to realize the highest benefit for the Estate. Thus, the Trustee is
26 requesting that the Court approve the Bidding Procedures as a fair and reasonable method of
27 realizing the highest and best price for the Alleged Bad Faith Claims for the benefit of this
28 Estate's creditors.

1 **E. Good Cause Exists to Approve the Sale of the Alleged Bad Faith Claims**

2 The Trustee believes that good cause exists to approve the proposed sale of the Alleged
3 Bad Faith Claims based on the following:

4 • The Trustee understands the risks inherent in any litigation. The Trustee would
5 have to litigate the Alleged Bad Faith Claims and respond to any appeal of a judgment that the
6 Trustee may obtain. The issues involved are complex and would require substantial time and
7 money to resolve. The sale avoids costly and risky activities related to litigation of the Alleged
8 Bad Faith Claims and results in benefit to the Estate -- i.e., a \$10,000 payment to the Estate.

9 • As the outcome of litigation to pursue the Alleged Bad Faith Claims would
10 impact the administration of this case through increased litigation costs, approval of the sale will
11 aid the Trustee in preserving assets of the Estate.

12 • The expenses incurred to commence formal litigation to pursue the Alleged Bad
13 Faith Claims would most likely exceed any additional benefit that might be achieved. The sale
14 provides certainty and guaranties the Estate will retain cash from the Alleged Bad Faith Claims.
15 Due to the costs of litigation, the amount under the sale is likely greater than the Trustee could
16 realize if he was successful in litigating the Alleged Bad Faith Claims.

17 • The Trustee recognizes that in its Bankruptcy Schedules the Debtor asserted that
18 the value of the Alleged Bad Faith Claims is higher than what the claims are being sold for.
19 However, similar type of claims against the Okuns arising from an involuntary petition filed
20 against Miles were sold in the Miles Bankruptcy Case for only \$15,000. As such, it appears that
21 the Debtor's value attributed to the Alleged Bad Faith Claims may have been grossly overstated.

22 In summary, the sale of the Alleged Bad Faith Claims, subject to the Bidding Procedures,
23 is based on good business judgment that will benefit the Estate and creditors and therefore
24 approval of the Sale Motion is proper.

25 **WHEREFORE**, based upon this Sale Motion, the Trustee requests the Court enter an
26 Order granting the following:

27 I. Approving the Bidding Procedures.

28

1 2. Approving the sale of the Alleged Bad Faith Claims for \$10,000, or an amount as
2 increased by overbid, pursuant to the terms and conditions set forth above including that the sale
3 is on an "AS IS - WHERE IS" basis without representations or warranties of any kind, express or
4 implied, being given by the Trustee, concerning the value, existence, condition or fitness of
5 purpose for any use thereof and subject to any and all liens and encumbrances, if any.

6 3. Upon Court approval of the sale, that the successful purchaser of the Alleged Bad
7 Faith Claims forever waives, for himself, and his successors and assigns, any and all claims
8 against the Trustee, the Debtor's Estate, and its attorneys, agents, and employees, arising or
9 which might otherwise arise in the future concerning the Alleged Bad Faith Claims.

10 4. Authorizing the Trustee to execute any and all conveyances contemplated by the
11 proposed sale the Alleged Bad Faith Claims.

12 5. That the sale of Alleged Bad Faith Claims is exempt from any and all sales or
13 transfer tax obligations.

14 6. So that the Trustee does not lose this favorable business opportunity, waiving the
15 ten-day stay of the order approving the sale under Federal Rules of Bankruptcy Procedure
16 6004(g).

17 7. And the Court enter such other and further relief the Court deems just and proper.

18
19 Dated: April 4, 2007

SHULMAN HODGES & BASTIAN LLP



Leonard M. Shulman
Mark Bradshaw
Attorneys for John M. Wolfe, the Chapter 7 Trustee
for the Bankruptcy Estate of
Professional Business Planning & Research Inc.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. THE COURT MAY AUTHORIZE THE TRUSTEE'S SALE OF THE ALLEGED

3 BAD FAITH CLAIMS

4 The Trustee, after notice and hearing, may sell assets of the Estate. Bankruptcy Code
5 Section 363(b). The standards to establish are that there is a sound business purpose for the sale,
6 that the sale is in the best interests of the estate, i.e., the sale is for a fair and reasonable price,
7 that there is accurate and reasonable notice to creditors and that the sale is made in good faith. In
8 re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); In re Lionel Corp.,
9 722 F.2d 1063, 1069 (2d Cir. 1983). Business justification would include the need to close a sale
10 to one of very few serious bidders where an asset has been shopped and a delay could jeopardize
11 the transaction. See, e.g., In re Crowthers McCall Patmer, Inc., 114 B.R. 877, 885 (Bankr.
12 S.D.N.Y. 1990) (extreme difficulty finding a buyer justified merger when buyer found). The
13 Trustee's proposed sale of the Properties meets the foregoing criteria.

14 A. Sound Business Purpose

15 The Ninth Circuit in In re Walter, 83 B.R. 14 (Bankr. 9th Cir. 1988) has adopted a
16 flexible, case by case test to determine whether the business purpose for a proposed sale justifies
17 disposition of property of the estate under Section 363(b). In Walter, the Ninth Circuit, adopting
18 the reasoning of the Fifth Circuit in In re Continental Air Lines, Inc., 780 F.2d 1223 (5th Cir.
19 1986), and the Second Circuit in In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983), set forth the
20 following standard to be applied under Bankruptcy Code Section 363(b).

21
22 Whether the proffered business justification is sufficient depends
23 on the case. As the Second Circuit held in Lionel, the bankruptcy
24 judge should consider all salient factors pertaining to the
25 proceeding and, accordingly, act to further the diverse interests of
26 the debtor, creditors and equity holders, alike. He might, for
27 example, look to such relevant factors as the proportionate value of
28 the assets to the estate as a whole, the amount of lapsed time since
the filing, the likelihood that a plan of reorganization will be
proposed and confirmed in the near future, the effect of the
proposed disposition on future plans of reorganization, the
proceeds to be obtained from the disposition vis-a-vis any
appraisals of the property, which of the alternatives of use, sale or
lease the proposal envisions and, most importantly perhaps,
whether the asset is increasingly or decreasing in value. This list is

1 not intended to be exclusive, but merely to provide guidance to the
2 bankruptcy judge.

3 Walter, supra, at 19-20 [quoting In re Continental Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir.
4 1986)].

5 Here, the facts surrounding the sale of the Alleged Bad Faith Claims pursuant to the
6 terms set forth in the Sale Motion support the Trustee's business decision that the proposed sale
7 is in the best interests of the Estate and its creditors. Considering that the sale of the Alleged Bad
8 Faith Claims shall be subject to the Bidding Procedures, the Trustee believes the sale to be in the
9 best interest of the Estate and its creditors and that proposed sale is fair and reasonable under the
10 circumstances of this case.

11 Through the sale it is anticipated that the Estate will generate approximately \$10,000 in
12 net sale proceeds for the Alleged Bad Faith Claims. Absent the sale, the Estate may receive no
13 benefit from the Alleged Bad Faith Claims as the costs to pursue the claims may outweigh any
14 additional benefit the Estate may achieve.

15 The sale contains no material impediments to competitive bidding for the Alleged Bad
16 Faith Claims. The Buyer's bid for the Alleged Bad Faith Claims is effectively a "stalking horse"
17 bid which may serve to elicit competitive bids. In the event that an overbid for the Alleged Bad
18 Faith Claims is received, a more meaningful distribution to be made on account of unsecured
19 claims may be possible.

20 The Trustee understands the risks inherent in any litigation. The Trustee would have to
21 litigate the Alleged Bad Faith Claims and respond to any appeal of a judgment that the Trustee
22 may obtain. The issues involved are complex and would require substantial time and money to
23 resolve. The sale avoids costly and risky activities related to litigation of the Alleged Bad Faith
24 Claims and results in benefit to the Estate – i.e., a \$10,000 payment to the Estate.

25 The Trustee recognizes that in its Bankruptcy Schedules the Debtor asserted that the
26 value of the Alleged Bad Faith Claims is higher than what the claims are being sold for.
27 However, similar type of claims against the Okuns arising from an involuntary petition filed
28

1 against Miles were sold in the Miles Bankruptcy Case for only \$15,000. As such, it appears that
2 the Debtor's value attributed to the Alleged Bad Faith Claims may have been grossly overstated.

3 Therefore, the Trustee respectfully submits that, if this Court applies the good business
4 reason standard suggested by the Second Circuit in Lionel, the sale of the Alleged Bad Faith
5 Claims as proposed herein should be approved.

6 **B. The Sale Serves The Best Interests Of the Estate and Creditors**

7 The benefits to the Estate, as set forth above, are tremendous due to the funds to be
8 generated from the sale. The Trustee does not want to lose this beneficial business opportunity.

9 Thus, the Trustee has made a business decision that it is in the best interest of the
10 creditors of this Estate that this Sale Motion be approved.

11 **C. Accurate and Reasonable Notice**

12 It is expected that notice of this sale Motion will satisfy the requirements for accurate and
13 reasonable notice and will be appropriate under the circumstances.

14 The Trustee shall provide notice of the proposed sale and the terms of the sale to creditors
15 and parties in interest. The Notice of this Sale Motion will include a summary of the terms and
16 conditions of the proposed sale, the time fixed for filing objections, and a general description of
17 the Alleged Bad Faith Claims to be sold. The Trustee submits that the notice requirements will
18 have been satisfied, thereby allowing creditors and parties in interest an opportunity to object to
19 the sale. Hence, no further notice should be necessary.

20 **D. The Sale is Made In Good Faith**

21 The proposed sale of the Alleged Bad Faith Claims has been brought in good faith and
22 has been negotiated on an "arms length" basis.

23 The court, in Wilde Horse Enterprises, set forth the factors in considering whether a
24 transaction is in good faith. The court stated:

25
26 'Good faith' encompasses fair value, and further speaks to the
27 integrity of the transaction. Typical 'bad faith' or misconduct,
28 would include collusion between the seller and buyer, or any
attempt to take unfair advantage of other potential purchasers. . . .
And, with respect to making such determinations, the court and

1 creditors must be provided with sufficient information to allow
2 them to take a position on the proposed sale. (citations omitted)

3 Id. at 842.

4 In the present case, the negotiation of the proposed sale of the Alleged Bad Faith Claims
5 was an arms-length transaction. The negotiations with the Buyer has resulted in an offer that
6 will have substantial benefit. As set forth in the Notice of the Sale Motion, the creditors will
7 have been provided with sufficient notice of the sale under the circumstances of this case.
8 Accordingly, the sale is in good faith and should be approved. The Trustee shall request such a
9 finding pursuant to Bankruptcy Code Section 363(m) at the hearing on this Sale Motion.

10 **II. THE COURT HAS AUTHORITY TO APPROVE THE BIDDING PROCEDURES**

11 Implementation of the Bidding Procedures is an action outside of the ordinary course of
12 the business. Bankruptcy Code Section 363(b)(1) provides that a trustee “after notice and
13 hearing, may use, sell or lease, other than in the ordinary course of business, property of the
14 estate.” Furthermore, under Bankruptcy Code Section 105(a), “[t]he court may issue any order,
15 process, or judgment that is necessary or appropriate to carry out the provisions of this title.”
16 Thus, pursuant to Bankruptcy Code Sections 363(b)(1) and 105(a), this Court may authorize the
17 implementation of Bidding Procedures.

18 The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a
19 bankruptcy court to issue orders determining the terms and conditions for overbids with respect
20 to a sale of estate assets. In re Crown Corporation, 679 F.2d 774 (9th Cir. 1982). The Crown
21 Corporation court entered an order specifying the minimum consideration required for an
22 overbid as well as the particular contractual terms required to be offered by overbidders. Id. at
23 777. The Crown Corporation decision also approves an order requiring and setting the amount
24 of potential overbidder’s deposits and authorized courts to determine the disposition of such
25 deposits. Id. While the discussion is not extensive, the Crown Corporation decision recognizes
26 the authority of bankruptcy courts to order the implementation of bidding procedures such as
27 those proposed in the present case.
28

1 a. **The Bidding Procedures Are Untainted by Self-Dealing**

2 The Bidding Procedures have been proposed in good faith and have been negotiated on
3 an "arms length" basis. Therefore, there is no prospective taint in dealings between Trustee and
4 any potential bidders.

5 b. **The Bidding Procedures Encourage Bidding And Are Fair In Amount**

6 The Bidding Procedures are designed to encourage, not hamper bidding and are
7 reasonable under the circumstances. The Bidding Procedures are intended to provide potential
8 overbidders with adequate information to make an informed decision as to the amount of their
9 bid and the validity of their bid.

10 c. **The Bidding Procedures Are Fair, Reasonable And Serve The Best Interests Of The**
11 **Estate**

12 The proposed Bidding Procedures serve the Estate in several ways. First, the procedures
13 themselves are fair, reasonable and productive; they will permit the Trustee to conduct an orderly
14 administration of the Alleged Bad Faith Claims and obtain the best possible price on the best
15 possible terms for the Alleged Bad Faith Claims.

16 The Bidding Procedures will ensure that all bids will be comparable. The Trustee will
17 determine which bid is the highest and best for the Estate. The comparability requirement of the
18 Bidding Procedures will make it possible to accomplish this task.

19 The Bidding Procedures will help the Trustee to obtain the highest and best possible price
20 for the Alleged Bad Faith Claims. The bidding procedures institutes minimum overbid
21 increments which the Trustee believes are reasonable. Thus, Trustee will be able to obtain
22 substantial benefit for this Estate from the sale of the Alleged Bad Faith Claims from competing
23 bids.

24 The Bidding Procedure requires that potential bidders demonstrate their capacity to
25 complete the transaction. It would be a serious loss to the Estate if it surrendered its opportunity
26 to sell the Alleged Bad Faith Claims to the Buyer in favor of a competing bidder only to discover
27 the successful bidder incapable of consummating the transaction. Thus, requiring bidders to
28 qualify as qualified bidders will protect the Estate from such a loss.

1 The most important benefit of the Bidding Procedures to the Estate is that their
2 implementation will enable the consummation of the proposed sale. The proposed sale will be
3 best way to obtain the maximum and most expedient recovery for creditors of this Estate.
4 Implementation of the Bidding Procedures is an essential component of consummating the sale
5 and maximizing the value of the Alleged Bad Faith Claims for the Estate and creditors.

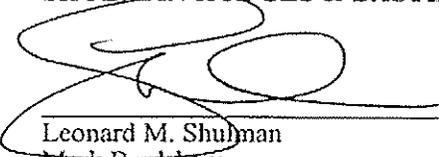
6 The Bidding Procedures proposed by the Trustee are fair and provide for a "level playing
7 field" for all prospective bidders. The proposed Bidding Procedures establish a reasonable but
8 expeditious timeline for allowing the Trustee to give notice of the proposed sale and qualified
9 bidders to conduct reasonable due diligence and submit competing offers, thereby potentially
10 generating additional value for the Estate. Furthermore, the notice that the Trustee proposes to
11 provide to creditors and parties in interest in connection with the Bidding Procedures and Sale
12 Motion is designed to attract the most interest and is sufficient under the circumstances of this
13 case. Thus, approval of the Bidding Procedures would serve the best interests of the Estate and
14 its creditors.

15 III. CONCLUSION

16 In conclusion, the Trustee respectfully submits that sale of the Alleged Bad Faith Claims
17 as proposed herein is in the best interests of the Estate and creditors and requests that this
18 Honorable Court enter an order approving the Sale Motion and for such other and further relief
19 as the Court deems just and proper.

20 Dated: April 4, 2007

SHULMAN HODGES & BASTIAN LLP

21 
22 Leonard M. Shulman

23 Mark Bradshaw

24 Attorneys for John M. Wolfe, the Chapter 7 Trustee
25 for the Bankruptcy Estate of
26 Professional Business Planning & Research Inc.
27
28

1 9. I am advised that on January 8, 2004, Miles filed a voluntary petition for relief
2 under Chapter 11 of the Bankruptcy Code, thus commencing case number SA 04-10085 TA
3 (“Miles Bankruptcy Case”). The Miles Bankruptcy Case was converted to a Chapter 7 and
4 Thomas H. Casey was appointed as the Chapter 7 trustee for the Miles Bankruptcy Case.

5 10. The Chapter 11 bankruptcy filings by the Debtor and its insider Miles appear to
6 have been triggered by litigation brought against Miles and/or the Debtor, by people who had
7 invested with Miles in real estate development projects and were asserting claims against Miles
8 and his affiliated entities. The allegations include that Miles mismanaged the projects and
9 fraudulently diverted funds.

10 11. Debtor’s records indicate that at the time of the filing of the Chapter 11 case, the
11 Debtor owned or controlled a number of properties or interests in properties and partnerships.
12 During this case, it has been determined that David Okun and his wife, Sheila Reiser-Okun
13 (collectively the “Okuns”), asserted interests in a number of the Miles-affiliated entities, had
14 sued Miles, the Debtor and a number of the other Miles affiliates, and had recorded prejudgment
15 writs of attachment and later abstracts of judgment against properties owned by the Debtor,
16 Miles and other Miles affiliated entities.

17 12. As set forth above, on or about April 18, 2001, David Okun filed an involuntary
18 Chapter 7 petition against the Debtor that is currently pending before the Court as Case No. SA
19 01-13267 TA (“Involuntary Case”). One of the assets identified in the Debtor’s Bankruptcy
20 Schedules completed by Miles in the Second PBPR Case is alleged “damages from bad faith
21 involuntary bankruptcy filed April 18, 2001” (“Alleged Bad Faith Claims”) In the Second PBPR
22 Case, the Alleged Bad Faith Claims were valued at \$5,737,000.

23 13. With the assistance of counsel I have investigated the Alleged Bad Faith Claims
24 which consists of claims against David Okun. With the assistance of counsel I have discussed
25 with counsel for David Okun the Alleged Bad Faith Claims as well as claims asserted by the
26 Okuns against the Second PBPR Case. Claims asserted by the Okuns against the Second PBPR
27 Case have been resolved pursuant to that certain Order Approving Distribution Agreement
28

1 Between the Trustee on the One Hand and Creditors David Okun and Sheila Reiser-Okun on the
2 Other entered by the Court on March 8, 2007.

3 14. David Okun ("Buyer") has offered to purchase the Alleged Bad Faith Claims for
4 \$10,000. I have determined that the costs to pursue the Alleged Bad Faith Claim will likely
5 outweigh any additional recovery the Estate might achieve. As such, in order to eliminate the
6 need for costly litigation, subject to Court approval, I seek to sell the Alleged Bad Faith Claims
7 pursuant to the terms and conditions described in the Sale Motion.

8 15. In order to obtain the highest and best offer for the benefit of the creditors of this
9 Estate, I also seek Court approval of the Bidding Procedures described in the Sale Motion.

10 16. The Bidding Procedures will provide for an orderly completion of the sale of the
11 Alleged Bad Faith Claims and insures that potential overbidders are provided with full disclosure
12 as to the overbid procedures and the specific Alleged Bad Faith Claims to be sold. By having all
13 bidders compete on similar terms, the interested parties and the Court may compare competing
14 bids in order to realize the highest benefit for the Estate. Thus, I am requesting that the Court
15 approve the Bidding Procedures as a fair and reasonable method of realizing the highest and best
16 price for the Alleged Bad Faith Claims for the benefit of this Estate's creditors.

17 17. I believe that good cause exists to approve the proposed sale of the Alleged Bad
18 Faith Claims based on the following:

19 • I understand the risks inherent in any litigation. I would have to litigate the
20 Alleged Bad Faith Claims and respond to any appeal of a judgment that I may obtain. The issues
21 involved are complex and would require substantial time and money to resolve. The sale avoids
22 costly and risky activities related to litigation of the Alleged Bad Faith Claims and results in
23 benefit to the Estate – i.e., a \$10,000 payment to the Estate.

24 • As the outcome of litigation to pursue the Alleged Bad Faith Claims would
25 impact the administration of this case through increased litigation costs, approval of the sale will
26 aid in preserving assets of the Estate.

27 ////

28 ////

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Foothill Ranch, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 26632 Towne Centre Drive, Suite 300, Foothill Ranch, California 92610.

On April 13, 2007, I served the documents named below on the parties as follows:

DOCUMENT(S) SERVED: **CHAPTER 7 TRUSTEE'S NOTICE OF MOTION AND MOTION FOR ORDER MOTION FOR ORDER APPROVING THE SALE OF CERTAIN ALLEGED BAD FAITH CLAIMS OF THE ESTATE FREE AND CLEAR OF CERTAIN LIENS PURSUANT TO BANKRUPTCY CODE 363(b)(1) SUBJECT TO OVERBID PROCEDURES; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF JOHN M. WOLFE IN SUPPORT**

SERVED UPON: **SEE THE ATTACHED SERVICE LIST**

- (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Foothill Ranch, California. I am readily familiar with the practice of Shulman Hodges & Bastian LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY FEDERAL EXPRESS OR AIRBORNE EXPRESS) I am readily familiar with the practice of Shulman Hodges & Bastian LLP for collection and processing of documents for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by such overnight delivery company for overnight delivery.
- (BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by ASAP Corporate Service to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on April 13, 2007, at Foothill Ranch, California.



Lorre E. Clapp

SERVICE LIST

Debtor

PROFESSIONAL BUSINESS PLANNING &
RESEARCH, INC.
PO BOX 6905
LAGUNA NIGUEL, CA 92607

Returned 1/22/2007, undeliverable

Chapter 7 Trustee

JOHN M. WOLFE, TRUSTEE
5450 TRABUCO ROAD
IRVINE, CA 92620-5704

Secured Creditor

DAVID B. OKUN M.D. FACP
A MEDICAL CORPORATION
24953 PASEO DE VALENCIA
LAGUNA HILLS, CA 92653

Creditor Listing

ESTATE OF A.P. BAIMA
C/O WILLIAM KEELER, JR.
6051 NORTH FRESNO STREET, SUITE 200
FRESNO, CA 93710

Creditor Listing

INTERNAL REVENUE SERVICE
INSOLVENCY GROUP 3 MAILSTOP 5503
24000 AVILA ROAD
LAGUNA NIGUEL, CA 92677

RFSN- John Imandoust aka Ahmad Imandoust as Trustee of the Imandoust Revocable Trust Dated

February 2, 2001

EVANGELINE J. LARSON, ESQ.
WINTON & LARSON, LLP
11770 BERNARDO PLAZA COURT, SUITE 255
SAN DIEGO, CA 92128

Creditor Listing

PBPR MONEY PURCHASE PLAN
P.O. BOX 6905
LAGUNA NIGUEL, CA 92607

Additional Notice

PETER J SUKIN MD
TRICOUNTY BEHAVIORAL HEALTH
9326 MEDICAL PLZ DR STE A
CHARLESTON, SC 29406-9138

Schedule D Creditor

COUNTY TAX COLLECTOR
FRANK L. FREITAS
ROOM 203 COUNTY GOVERNMENT CENTER
SAN LUIS OBISPO, CA 93408

Additional Notice for Debtor - Creditor

Listing

PROFESSIONAL BUSINESS PLANNING &
RESEARCH, INC.
29441 ANA MARIA
LAGUNA NIGUEL, CA 92677

Interested Party

OFFICE OF THE UNITED STATES
TRUSTEE
411 WEST FOURTH STREET, ROOM 9041
SANTA ANA, CA 92701-4593

Creditor Listing

EMPLOYMENT DEVELOP. DEPT.
BANKRUPTCY GROUP MIC 92E
P.O. BOX 826880
SACRAMENTO, CA 94280-0001

Schedule E Creditor

FRANCHISE TAX BOARD
ATTN: BANKRUPTCY - SPECIAL
PROCEDURES
P.O. BOX 2952
SACRAMENTO, CA 95812-2952

Creditor Listing

IRVIN AND WILLIE ANDERSON
4824 BRAYTON PLACE
LOS ANGELES, CA 90041

RFSN - David B. Okun and Sheila Reiser- Okun

MARK R. CAMPBELL, ESQ.
MARK CAMPBELL LAW
300 SOUTH HARBOR BOULEVARD
SUITE 700
ANAHEIM, CA 92805

Creditor Listing

PETER J. SUKIN M.D. INC.
MONEY PURCHASE PENSION PLAN
27762 FORBES ROAD, SUITE 17
LAGUNA NIGUEL, CA 92677

RFSN

RODNEY C. MILES
29441 ANA MARIA
LAGUNA NIGUEL, CA 92677

Creditor Listing

SECURITIES AND EXCHANGE
COMMISSION
5670 WILSHIRE BLVD., 11TH FLOOR
LOS ANGELES, CA 90036

Attorney for Debtor

NICK O'MALLEY, ESQ
1505 E. 17TH STREET, SUITE 108
SANTA ANA, CA 92705

Schedule D Creditor

ANDREW HALL TRUST
429 AVENIDA VAQUERO
SAN CLEMENTE, CA 92672

Creditor Listing

ESTATE OF A. BAIMA
2051 W. 238TH STREET
TORRANCE, CA 90501

Schedule F Creditor

GWEN TAYLOR
231 WAVE
LAGUNA BEACH, CA 92651

Schedule F Creditor

JOHN IMANDOUST
380 STEVENS AVENUE SUITE 307
SOLANA BEACH, CA 92075

Schedule D Creditor

MELLON 1ST BUSINESS BANK
P.O. BOX 20086
ENCINO, CA 91416

Schedule D Creditor

PETER SUKIN RETIREMENT PLAN
597 ANITA STREET
LAGUNA BEACH, CA 92651

Schedule F Creditor

ROSE MILES
1956 GOLDEN ARROW
LAS VEGAS, NV 89109

Schedule D Creditor

VERTOX INC. PLAN
1313 E. ST. GERTRUDE PLACE
SANTA ANA, CA 92705

Schedule F Creditor

PAUL COUCHOT, ESQ
WINTHROP COUCHOT PROFESSIONAL CORP.
660 NEWPORT CENTER DRIVE, 4TH FLOOR
NEWPORT BEACH, CA 92660

Former Counsel to the Chapter 11 Trustee

T. EDWARD MALPASS, ESQ
LAW OFFICES OF T. EDWARD MALPASS
16148 SAND CANYON AVENUE
IRVINE, CA 92618

Chapter 7 Trustee for the Bankruptcy Estate of

Rodney C. Miles - Interested Party
THOMAS H. CASEY, TRUSTEE FOR
BANKRUPTCY ESTATE OF RODNEY C. MILES
C/O LAW OFFICE OF THOMAS H. CASEY, INC.
22342 AVENIDA EMPRESA, SUITE 260
RANCHO SANTA MARGARITA, CA 92688

Attorneys for Peter J. Sukin, M.D., Inc. Money
Purchase Plan

WILLIAM L SCHANZ, ESQ.
SCHANZ ACROMITE LLP
31461 RANCHO VIEJO ROAD SUITE 201
SAN JUAN CAPISTRANO, CA 92675

Attorneys for Vertox, et al.

LARRY E. DUFFY, JR., ESQ.
WALSORTH FRANKLING BEVINS &
MCCALL
1 CITY BLVD WEST FIFTH FLOOR
ORANGE, CA 92868-3677

RETURNED MAIL

Schedule F Creditor

JOHN IMANDOUST
531 STEVENS AVENUE WEST, SUITE C
SOLANA BEACH, CA 92075

Returned August 15, 2006, undeliverable -
See New Address received August 16, 2006

RFSN - David B. Okun and Sheila Reiser-Okun

MARK R. CAMPBELL, ESQ.
MARK CAMPBELL LAW
444 WEST OCEAN BLVD., SUITE 1400
LONG BEACH, CA 90802

Schedule D Creditor

IRVIN AND WILLIE ANDERSON
P.O. BOX 50113
PASADENA, CA 91115

Returned 9/5/2006, undeliverable

Returned August 23, 2006, No Such Person. See
address from the California State Bar

Attorneys for Peter J. Sukin, M.D., Inc. Money

Purchase Plan
WILLIAM L SCHANZ, ESQ.
SCHANZ ACROMITE LLP
27762 FORBES ROAD, SUITE 17
LAGUNA NIGUEL, CA 92677
See New Address Received Via Email 10/4/2006

RFSN

RODNEY C. MILES
P.O. BOX 6905
LAGUNA NIGUEL, CA 92607

Returned 1/22/2007 -See Street Address Contact
Information