



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

ANTHONY MURRAY, CHARLES H. MCKINNEY,  
DAVID KAMINSKY, ELIZABETH CADELL, as  
individuals and owners of property in the Town of  
Dewey Beach, Delaware,

Plaintiffs,

v.

TOWN OF DEWEY BEACH, a municipal  
corporation of the State of Delaware, TOWN  
COUNCIL OF DEWEY BEACH, consisting of,  
MAYOR DIANE HANSON, JAMES LAIRD,  
JAMES PRZYGOCKI, MARTY SEITZ, and  
RICHARD N. SOLLOWAY, in their official capacity;  
DIANA K. SMITH, Town Manager, in her official  
capacity, WILLIAM D. MEARS, Town Building  
Official, in his official capacity, DEWEY BEACH  
ENTERPRISES, INC., a Delaware Corporation; and  
RUDDERTOWNE REDEVELOPMENT, INC., a  
Delaware Corporation,

Defendants.

C.A. No:

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, by and through their undersigned attorneys, hereby bring this action for declaratory relief and the issuance of a permanent injunction and allege in support thereof as follows:

**THE PARTIES**

1. Plaintiffs are owners of property in the Town of Dewey Beach, Delaware.
2. Defendant Town of Dewey Beach is a Delaware municipal corporation chartered by special enactment of the Delaware General Assembly with its official address at 105 Rodney Avenue, Dewey Beach, DE 19971.

3. Defendant Dewey Beach Town Council (the “DBTC”) is the governing body of the Town of Dewey Beach. DBTC members are also frequently referred to as Commissioners.
4. Defendant Diane Hanson is the Mayor and Council Member of the Town of Dewey Beach.
5. Defendants James Laird, James Przygocki, Marty Seitz and Richard N. Solloway are DBTC members.
6. Defendants Diana Smith and William Mears are officers of the Town of Dewey Beach serving respectively as Town Manager and Town Building Official.
7. Defendant Dewey Beach Enterprises, Inc., is a Delaware corporation with a Registered Agent entitled Ruddertowne Redevelopment, Inc., with an official address at 124 Dickinson Street, Dewey Beach DE 19971.
8. Defendant Ruddertowne Redevelopment, Inc. is a Delaware corporation with a Registered Agent entitled DCG Services, Inc., with an official address at 100 South Rockland Falls Road, P.O. Box 4175, Wilmington, DE 19807.

#### **PRELIMINARY STATEMENT**

9. This complaint arises out of a private agreement made by and between the Town of Dewey Beach (the “Town”) and Dewey Beach Enterprises, Inc. and Ruddertowne Redevelopment, Inc. (collectively, “DBE/RRI”) which purports to create private zoning rights in, and establish a private zoning district for, property sought to be developed by DBE/RRI in a way that does not conform with the Town’s Zoning Code.
10. The impetus for this accommodation creating a private zoning contract between the

Town and DBE/RRI is multi-faceted, but appears principally to have been the Town's desire for relief from the duress of at least five pending legal proceedings brought by DBE/RRI against the Town and many of its current and former officials and Commissioners, in both their official and personal capacities. DBE/RRI has aggressively pursued these legal challenges and personal liability in an attempt to litigate the Town into submission and to create a means for its private end-run around the Town's longstanding 35-foot building height limitation - a height limitation applicable to all Zoning Districts since the Town's incorporation in 1981. This height limitation was reaffirmed when the DBTC adopted its new Zoning Code in 2008. And eighty-six percent of the Town's voters supported a September 2008 referendum which sought to amend the Town's Charter to reflect the same.

11. This complaint seeks a declaration that the MAR and the private Zoning District it purports to create for DBE/RRI is an *ultra vires* act by the Town and therefore invalid and unenforceable and seeks a declaration that the building permit issued on July 15, 2011 to DBE/RRI under the MAR is likewise invalid. The complaint also seeks a permanent injunction with respect to enforcement of the MAR and the building permit.

### **FACTUAL BACKGROUND<sup>1</sup>**

---

<sup>1</sup> Much of the history of DBE/RRI's efforts to seek approval of their proposed project in its various forms—as well as the history of the Town's opposition to the same—is set forth in the pleadings and the various Court decisions in the various pending or resolved lawsuits, including: *Dewey Beach Enterprises, Inc. v. Board of Adjustment of the Town of Dewey Beach*, (Del. Super.) C.A. No. S08A-08-002; *reversed and remanded on appeal* (Del.) No. 465-2009; *Dewey Beach Enterprises, Inc. and Ruddertowne Redevelopment, Inc. v. Town of Dewey Beach, Dell Tush, David King, Diane Hanson, and Richard Hanewinckel*, (D. Del.), 09-507 (GMS); *Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Dell Tush, Marc Appelbaum, Richard Hanewinckel, Diane Hanson and Marty Seitz*, (Del. Ch.), C.A. No.

***The Private Zoning Contract By and Between The Town Of Dewey Beach And DBE/RRI***

12. In late 2010 and early 2011, DBE/RRI and the Town of Dewey Beach endeavored to settle the costly litigation onslaught initiated by DBE/RRI by entering into a “Resolution of the Commissioners of the Town of Dewey Beach Approving a Mutual Agreement and Release Regarding the Ruddertowne Redevelopment Project” (the “MAR”). (Exhibit 1 hereto).
13. The Town Manager executed the MAR first on December 6, 2011 and the DBTC later purportedly “voted to engage in the review process provided in paragraph 8” of the MAR on December 11, 2010 in an “Executive Session” of the DBTC.
14. The MAR contemplates dismissal of the Town and its former and current Commissioners and officials from the numerous federal and state law suits in exchange for the DBTC’s approval and issuance of a building permit to DBE/RRI for construction of a nonconforming mixed use project that would, *inter alia*, exceed the long-established 35-foot height limitation set forth in the Town’s Zoning Code.<sup>2</sup>
15. The private exchange and accommodation also includes a provision for 3000 sq. ft. of office space for the Town’s administrative offices and an indemnification obligation

---

4426-VCN; *Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, James Przygocki, and Marty Seitz*, (Del. Ch.), C.A. No. 5833-VCN; *Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, James Przygocki, and Marty Seitz*, (Del. Ch.), C.A. No. 4991-VCN; *Dewey Beach Enterprises, Inc. v. Town of Dewey Beach, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Commissioners of Dewey Beach, Mayor Richard N. Solloway, Marc Appelbaum, Diane Hanson, James Przygocki, and Marty Seitz*, (Del. Ch.), C.A. No. 5711.

<sup>2</sup> The development plan for the Ruddertowne project incorporated into the MAR included a maximum building height of 45.67 feet and use as a hotel.

for legal fees and expenses (including the payment of insurance deductibles) of up to \$250,000 for the Town and its current and former officials in the event of future lawsuits which challenge the approval of the nonconforming project and the private Zoning District purportedly created by the MAR.

16. At its essence, the MAR creates a private Zoning District specifically for the DBE/RRI property and a private means to obtain a building permit from the Town—established by way of private contract between the Town and the landowner rather than by the requisite ordinance and building permit application and approval process. This private contract fails to conform with the procedures, processes, laws and regulations applicable to Zoning changes and the issuance of building permits in the Town, including 22 *Del. C.* § 301, *et seq.*
17. More specifically, the MAR impermissibly (i) authorizes the DBTC, rather than the Town Building Inspector, to finally approve and issue a building permit—including one that fails to conform with the Town’s Zoning Code; (ii) permits DBE/RRI to violate the building height limitations expressly set forth in both the former and current Zoning Code<sup>3</sup>; (iii) allows the construction of a hotel in the Town—which is prohibited in all of the Town’s Zoning Districts; (iv) authorizes issuance of a building permit for a period that exceeds the time period set forth by the Town’s Code; and (v) disregards the requirement that Zoning changes be enacted by an ordinance—thereby defeating the fundamental right guaranteed by the Town Charter of residents to seek a referendum on such changes made by ordinance.

---

<sup>3</sup> Nor does the Town’s Comprehensive Plan include any provision for relaxing the height limitation in any part of the Town.

18. In January and February of 2011 drafts of the MAR were presented to Town residents at series of public “workshops.” Despite that DBE/RRI insisted that no public comment or testimony was permissible under the MAR at those workshops, many of the Town’s residents requested during the “workshops” that the DBTC introduce an appropriate ordinance for the Zoning changes sought by DBE/RRI in the MAR. These requests were disregarded by the DBTC, and despite further public inquiries made directly to the Town’s attorney during at least two of the workshops, the Town failed to provide any legal basis supporting the proposition that the Zoning changes (or variances or special exceptions) sought by DBE/RRI in the MAR could be validly enacted without an ordinance amending the Zoning Code.
19. In later-issued responses to “Frequently Asked Questions” published on the Town’s Website, the Town simply declared “as we have explained, the proposal and project which will result from the execution of the [MAR] does not violate the Dewey Beach Zoning Code, or any other applicable law.”
20. The MAR mandated that only one “public hearing [be] held by the Town Commission to take public testimony” on February 26, 2011. The MAR further mandated that Town Council, at a “Special Town Meeting immediately following the February 26, 2011 public hearing [] approve or deny DBE/RRI’s proposed structure, surrounding development, plan and building permit application.” See MAR, exhs. A and B § 8(b)(v).
21. The MAR also mandated that DBTC grant DBE/RRI’s building permit application “subject to the Building Official’s recommendation to the Town Commissioners as to compliance with the applicable sections of the Dewey Beach Code and the

Comprehensive Plan.” *Id.* On information and belief, no such recommendation or certification of compliance with the Town’s Zoning Code was ever provided to DBTC by the Building Official.

22. Rather, at a June 17, 2011 “Town Meeting,” the DBTC only narrowly questioned the Town’s Building Official about whether the proposed project and construction plan was consistent with the project and plan previously presented in the MAR at the February 26 Special Town Meeting at which the DBTC approved the MAR by resolution. That is, the DBTC did not inquire about—and the Town’s Building Official did not offer any recommendation to the DTBC as to—compliance with the applicable sections of the Zoning Code. Thus, the DBTC has failed to publicly determine (as opposed to privately agree-to), and the Town’s Building Official has failed to publicly certify in accordance with the obligation to do so under the Town’s Code, whether the plan and building permit conformed with the Town’s Zoning Code.
23. Similarly at a June 11, 2011 meeting, the Town’s Planning and Zoning Commission was precluded under the terms of the MAR from making (and the DBTC precluded from considering) any recommendation concerning the construction plan’s compliance with the Town’s Zoning Code. The MAR expressly restricted the Town’s Planning and Zoning Commission to making only a recommendation “regarding the consistency of the construction plans with the application presented at the [February 26] Special Town Meeting by DBE”—that is, the Planning and Zoning Commission could only opine on whether the plan before them was the same as the one already approved by the DBTC at the February 26 Special Town Meeting.
24. Thus, the DBTC’s “consideration” of the “recommendations” by the Town’s Building

Official and the Town's Planning and Zoning Commission were illusory and meaningless. The language of the MAR makes this evident:

If the final construction plans are consistent with the Special Town Meeting approval of the plan and building permit granted by the Town Commissioners and representations of DBE made at the public hearings provided for herein, the Town Commission, after consideration of the recommendations of the Planning Commission provided for herein, *shall grant all final Town approvals by a majority vote.*

25. The terms of the MAR impermissibly dictated the DBTC's June 17 vote. The building permit was issued on or about July 15, 2011.
26. To this date neither the Town Building Official nor the DBTC have confirmed—as is required under the Town's Code at section 185-80 ["No building shall be erected, constructed, altered, moved, converted, extended or enlarged without the owner or owners first having obtained a building permit, and such permit shall require conformity with the provisions of this chapter..."]—that the proposed project and plan and accompanying application for a building permit conforms with the Town's Zoning Code.
27. The DBTC's adoption by resolution and final approval of the MAR not only disregarded (in favor of private zoning contract) the codified process for Zoning changes and building permit approval, but also was intentionally designed to side-step the fundamental rights of the Town's residents under the Town's Charter "to petition to require reconsideration by the Commissioners of Dewey Beach of any adopted Ordinance and to approve or reject it at a referendum election...." Had the DBTC sought to accomplish by ordinance that which it purports to have done by the MAR private contract, the due process rights of the Town's residents would have been

honored and observed; rights to protest and present evidence in opposition at a proper forum and to seek reconsideration of the same by referendum.<sup>4</sup>

***DBTC's Failure To Enact An Ordinance Is Fatal To The Enforceability Of The MAR***

28. The Town's Zoning Code is set forth in Chapter 185 of the Dewey Beach Municipal Code.
29. An amendment, supplement, or change to the boundaries of Zoning districts *or the regulations established for such Zoning districts* as set forth in Chapter 185 must be enacted by ordinance.
30. A lawfully enacted ordinance requires compliance with the following statutory mandates :
  - (a) The subject of the ordinance must be properly advertised on the DBTC's agenda for introduction and referral to the Planning and Zoning Commission;
  - (b) The ordinance must be introduced in writing at the DBTC's public meeting;
  - (c) DBTC must refer the ordinance to the Planning and Zoning Commission for a public meeting;
  - (d) The Planning and Zoning Commission must hold a public hearing, after proper public notice, on the proposed ordinance and make a recommendation back to the DBTC;
  - (e) DBTC must properly advertise that it plans to vote on the ordinance;
  - (f) DBTC must provide the public with complete and accurate copies of the entire ordinance as proposed;
  - (g) A majority of the DBTC must vote in favor of the ordinance;
  - (h) The vote of each member of the DBTC, together with the rationale, must be entered on the record.
31. Chapter 185 governs all Zoning decisions made by the DBTC, and expressly overrides private agreements imposing lesser zoning restrictions such as the MAR.

---

<sup>4</sup> The Town's Charter provides that voters "have the power to petition to request reconsideration by the Commissioners of Dewey Beach of any adopted Ordinance and to approve or reject it at a referendum election."

Section 185-83 states:

It is not intended by this chapter to interfere with or abrogate or annul any easement, covenants, or other agreement between the parties; provided, however, that where this chapter imposes a greater restriction upon land development or construction, or the use of buildings or premises or upon height of buildings, or requires larger open spaces than are imposed or required by other resolutions, ordinances, rules, regulations, or by easements, covenants or agreements, the provisions of this chapter shall govern.

32. The DBTC failed and/or refused to effectuate by ordinance the private Zoning Code change applicable only to the DEB/RRI property as sought by the MAR, and thereby failed to comply with the statutorily mandated procedures for effectuating a change to the Town's Zoning Code or the regulations applicable to a particular property or Zoning District.
33. This failure by the DBTC to conform with both substantive and procedural requirements of the Town's Zoning Code precludes its assertion or enjoyment of any presumption that the private Zoning change for the DEB/RRI property was a valid legislative act.
34. Approval of the MAR was, therefore, *ultra vires* insofar as it purports to have approved the nonconforming DEB/RRI plan, project and building permit.
35. More specifically, the Town's Zoning Code at Section 185-73(A) requires the DBTC to pass an ordinance in order to amend, supplement, or change the Zoning Code regulations. The DBTC failed to do so.
36. By private arrangement through the MAR, the DBTC purported to change the Town's Zoning Code regulations for the DEB/RRI's property in the "RB-1" Zoning district to allow construction of a hotel—despite the absence anywhere in the Zoning Code of

such a permissible use.

37. Also by private arrangement through the MAR, the DBTC purported to change the Town's Zoning Code regulations for the DBE/RRI's property to allow construction of a building that exceeds the thirty-five foot height limitation set forth in the RB-1 Zoning District (Section 185-25 (H) of the Town's Zoning Code)—as well as every other Zoning District in the Town.

***The Building Permit Was Invalidly Issued And Violates The Town's Code***

38. Chapter 71 of the Town's Code governs the issuance of Building Construction permits.
39. The Town's Code at section 71-2(A)(2) requires that a permit applicant receive plan review approval from the Sussex County Building Inspection Department and pay for and receive a valid Sussex County building permit *before* issuance of the building permit from the Town.
40. On information and belief, the permit issued by Sussex County to DBE/ RRI was expired at the time of the July 15, 2011 issuance of the building permit.
41. On information and belief, DBE/RRI had not applied for and received a new County permit as of that date.
42. The Town's Code at section 71-3(g) limits the validity of a building permit to one year with a one year renewal and an additional year renewal only in extraordinary circumstances subject to approval by the Council. The permit issued to DBE/RRI is purportedly valid for three years with two automatic one-year renewals and a sixth year renewal upon approval by the DBTC. The issuance of the DBE/RRI building permit on such terms is violative of the Town's Code and renders the permit invalid.

***Town Officials Interfered With Town Residents' Right to Appeal To The Board of Adjustment***

43. The Town's Code at section 185-66 authorizes the Board of Adjustment (the "BOA") "to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of this chapter."
44. On March 25, 2011, fifteen Town resident-property owners filed an appeal to the BOA challenging the Town Manager's decision to execute a private contract [the MAR] by and between the Town and DBE/RRI—a contract which implicated the administration and enforcement of the Town's Zoning Code.
45. On April 29, 2011, the Chairman of the BOA sent an email to the Town Manager informing her of the BOA's decision to hear the March 25, 2011 appeal. The email also requested authority to engage independent counsel to "help guide us on the complicated legal issues involved with this appeal."
46. At or around the same time, the Town Manager refused to formally accept the appeal and declined to forward to the BOA the appeal filed by the fifteen Town resident-property owners—reasoning that the appeal was improper because the Town Manager had made no administrative decision or determination in executing the MAR, but rather, that the execution of the MAR by the Town Manager was a legislative act of the DBTC not properly the subject of an appeal to the BOA under the Town's Code.
47. Specifically, the Town Manager took the position that the appeal was improper as filed because her administrative act of executing the MAR, was done "on behalf of Town Council" and was actually "a decision of the Dewey Beach Town Council, as a legislative body, and not an order, requirement, decision, or determination of an

administrative official...”

48. The Town Manager took this position despite the fact that her execution of the MAR occurred *before the DBTC had openly or publicly engaged in any consideration of the MAR and before the DBTC had taken any legislative act with respect to the MAR.*
49. If the Town Manager’s position, as set forth above to deny the BOA’s ability to hear the appeal is correct, and the MAR—upon execution by the Town Manager on behalf of the Town—indeed constituted a legislative decision of the DBTC, it rendered the public hearings, the Planning commission’s recommendations, and Building Official’s input, pursuant to the MAR’s “Plan & Building Permit Approval Process” illusory and meaningless. If the Town Manager’s position as set forth above is correct, it concedes that the private Zoning Code change and issuance of the nonconforming Building Permit was a foregone conclusion at the time of the MAR’s execution.
50. The Town Manager’s interference with the BOA appeal violated the Town’s Code found at sections 185-65 through 67 which authorize the BOA itself, and *not the Town Manager*, to determine whether it should hear or decide an appeal.
51. The Town Manager has no authority under the Town’s Code to interfere with an appeal directed to the BOA—and it is particularly troubling that the Town Manager would take steps to directly interfere with an appeal that putatively involved a proper challenge to an administrative act or decision (the execution of the MAR) by the Town Manager.
52. Many of the same Town residents filed a second appeal to the BOA on May 27, 2011 challenging the Town Manager’s decision to interfere with the first (March 25)

appeal.

53. Again, the Chairman of the BOA requested independent legal counsel and indicated that the BOA intended to proceed to consider the second appeal. This request was made by email to the Town Manager and the Town Mayor on June 7, 2011.
54. And again, the Town Manager interfered with the appeal—this time by letter dated June 8, 2011 from the Town Manager responding to the June 7 email from the Chairman of the BOA. The June 8 letter declared—without citation to any legal authority and without further detail—that the second appeal “simply did not meet the basic threshold requirements for a valid appeal pursuant to State law and, therefore, the appeal was not forwarded by Town Hall to the Board of Adjustment for a hearing,” and the appeal was “simply not properly filed and it would therefore be improper and create a bad precedent if the appeals were to be considered by the Board.”
55. Instead of providing a legal basis, the June 8 letter plainly reveals the Town’s paranoia about the likelihood of further legal action by DBE/RRI against the Town, its Boards, its Commissioners and officials in their individual capacities, in the event that the BOA proceeded (even with independent legal counsel) to hear the two appeals, stating:

I would also be remiss in my duties as Town Manager in evaluating risk, if I did not inform you that the setting of a hearing on this matter could result in legal action by Dewey Beach Enterprises against the Town of Dewey Beach, the [BOA] as a body and the individual members of the [BOA] personally...

Indeed as you probably recall, Dewey Beach Enterprises has not been hesitant to pursue all of its legal remedies, and as you also may recall DBE has previously brought personal claims against Town officials and at least one Planning and Zoning board member that withstood summary

judgment in the federal District Court of Delaware.

The Town Council would also have an action against the Board since an appeal hearing would put the decision of Town Council at issue. I, however, cannot begin to speculate if Town Council would pursue such an action.

### **COUNT I – DECLARATORY JUDGMENT**

56. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.
57. A real and justiciable controversy exists between the parties regarding, *inter alia*, the enforceability of the MAR, the legality of the private Zoning changes, the validity of the issuance of the building permit to DBE/RRJ, and the interference with the BOA appeals process.
58. Plaintiffs' claims involve issues that are real and adverse and issues that are ripe for judicial determination.
59. Plaintiffs' claims have been sufficiently developed such that this Court can enter declaratory judgment which will end a current controversy.
60. Plaintiffs have no adequate remedy at law.

### **COUNT II -PERMANENT INJUNCTION**

61. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.
62. Plaintiffs can establish actual success on the merits of its claim challenging the MAR as *ultra vires*, the private zoning decisions as unenforceable and the issuance of a building permit to DBE/RRJ as invalid. Plaintiffs can establish actual success on the merits of its claims challenging the illegal, arbitrary and capricious denial of the Town resident's right to appeal to the BOA in violation of procedural due process rights.

63. Plaintiffs will suffer irreparable harm in the absence of permanent injunctive relief.

The unlawful private rezoning and construction of the DBE/RR1 project irreparably threatens Plaintiffs—some of whom live and operate businesses on one parcel removed from the proposed DBE/RR1 project—and all of whom live in a small resort community through which passes the only highway to the State beaches. Plaintiffs will suffer unnecessary increases in vehicular and pedestrian congestion in the Town as the result of a construction project which unlawfully exceeds height and use restrictions contained in the Town’s Zoning Code—including additional congestion on the only road to the nearest hospital in Lewes. The Town’s prized but fragile beaches will suffer from increased use and decreased privacy as the result of the unlawful construction project. Plaintiffs are also harmed irreparably by denial of their right to seek a referendum in response to a Zoning change by ordinance – because the MAR created a private zoning contract by resolution. Plaintiffs are further harmed irreparably by denial of their right to take an appeal to the BOA in connection with the Town Manager’s execution of the MAR and the issuance of the nonconforming building permit.

64. The harm to Plaintiffs greatly outweighs any harm visited upon Defendants.

Defendants can suffer little harm by being required to observe and comply with all applicable State and Town, procedural and substantive, statutory requirements and Zoning regulations.

65. Plaintiffs have no adequate remedy at law.

★ ★ ★

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order:

- A. Declaring that approval of the MAR was an *ultra vires* act of the DBTC;
- B. Declaring invalid the issuance of the building permit to DBE/RRI;
- C. Declaring invalid the recordation of the MAR and DBE/RRI plan;
- D. Declaring that the Town Manager was without authority to interfere with the two appeals to the BOA;
- E. Permanently enjoining the enforceability of the MAR or any of its provisions.
- F. Permanently enjoining the issuance of any building permit based upon the MAR or any of its provisions.
- G. Awarding costs, including reasonable attorneys' fees and expenses;
- H. Granting such other and further relief to Plaintiffs as the Court may deem to be just and appropriate.

BERGER HARRIS, LLC



---

Michael W. McDermott (DE ID No. 4434)  
John G. Harris (DE ID No. 4017)  
Brian M. Gottesman (DE ID No. 4404)  
1201 N. Orange Street  
One Commerce Center, 3<sup>rd</sup> floor  
Wilmington, Delaware 19801  
(302) 655-1140 (phone)  
(302) 655-1131 (fax)  
[mmcdermott@bergerharris.com](mailto:mmcdermott@bergerharris.com)  
[jharris@bergerharris.com](mailto:jharris@bergerharris.com)

*Attorneys for Plaintiffs*

Dated: August 15, 2011