

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
ETOYS, INC., <u>et al.</u> <sup>1</sup> ,	)	Case Nos. 01-0706 (MFW)
	)	through 01-0709 (MFW)
Debtors,	)	
	)	
	)	

**STIPULATION AND AGREED ORDER AUTHORIZING AND APPOINTING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO INVESTIGATE, COMMENCE AND PROSECUTE TURNOVER AND PREFERENCE AVOIDANCE ACTIONS AGAINST GOLDMAN, SACHS & CO.**

**Recitals**

A. On March 7, 2001 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors"), commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly.

B. On March 16, 2001, the Office of the United States Trustee for this district convened an organizational meeting and the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee").

C. In early December, 2000, the Debtors engaged Goldman for the purpose of effectuating a sale, merger or capital infusion for the Debtors. In connection with the

<sup>1</sup> The Debtors are EBC I, Inc., f/k/a eToys, Inc. ("eToys"), and its affiliated debtors and debtors-in-possession, PMJ Corporation, eKids, Inc and EBC Distribution, LLC, f/k/a eToys Distribution, LLC.

engagement, the Debtors and Goldman entered into an Engagement Letter dated December 4, 2000.

D. In connection with that same engagement another letter agreement, between the Debtors and Goldman was entered into dated February 7, 2001 (the "February 2001 Agreement"). The February 2001 Agreement required the Debtors to transfer and, the Debtors, in fact, transferred to Goldman the amount of \$3,000,000 (the "Transferred Funds"), plus \$150,000 for reasonable out-of-pocket expenses. In accordance with the terms of the February 2001 Agreement, the Debtors are entitled to a refund of, at least \$2.5 million of the Transferred Funds, plus interest.

E. The Committee, with the consent and cooperation of the Debtors, has commenced an investigation of whether the Transferred Funds are recoverable as avoidable preferential transfers under section 547 of the Bankruptcy Code. Additionally, the Committee, with the consent and cooperation of the Debtors, has commenced an investigation of whether the Transferred Funds are subject to turnover under section 542 of the Bankruptcy Code. The Debtors and the Committee have concluded that all of such transfers may be recoverable under sections 542, 547 and 550 of the Bankruptcy Code. To date, notwithstanding repeated demands, Goldman has refused to return the Transferred Funds to the Debtors. Accordingly, the Debtors and the Committee have determined that an adversary proceeding is necessary to recover the Transferred Funds from Goldman.

F. Counsel for the Debtors currently are unable to prosecute the proposed avoidance and turnover actions and any other causes of action that may exist against Goldman (collectively, the "Actions"). However, the Debtors are amenable to the appointment of the

Committee as a representative of the Debtors' estates to commence and prosecute the Actions for the benefit of the Debtors' estates.

**Stipulation and Agreed Order**

In light of the factual recitals set forth above, the parties hereto, through their undersigned counsel, stipulate and agree as follows:

1. The Committee, on behalf of the Debtors' estates, is hereby appointed and authorized to investigate, commence and pursue the Actions against Goldman and to take any and all actions necessary and appropriate in connection therewith, without further order of the Court.

2. The Committee: (a) shall consult with the Debtors, before prosecuting (e.g., commencing an Action, taking discovery or filing pleadings) any litigation with respect to the Actions; and (b) shall (i) consult with the Debtors, regarding the terms of any proposed settlement of any Action prior to settling any such Action and (ii) provide the Debtors with notice of the terms of any proposed settlement of any Action at least three (3) days prior to the acceptance of such settlement by the Committee on behalf of the Debtors' estates.


3. This Stipulation and Agreed Order shall not be modified, altered, amended or vacated without the prior written consent of all parties hereto. Any such modification, alteration, amendment or vacation in whole or part shall be subject to the approval of this Court.

4. This Stipulation and Agreed Order shall not be modified, altered, amended or vacated without the prior written consent of all parties hereto. Any such modification, alteration, amendment or vacation in whole or part shall be subject to the approval of this Court.

5. This Stipulation and Agreed Order is the entire agreement between the parties in respect of the subject matter hereof, and may be signed in counterpart originals.

Dated: September 25, 2001

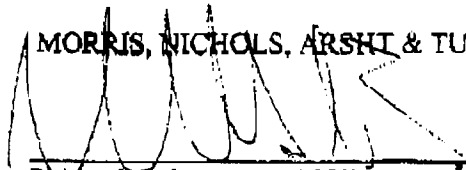
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Counsel for Debtors and Debtors in  
Possession, eToys, Inc., et al.

SO ORDERED this 12<sup>th</sup> day of October, 2001

  
UNITED STATES BANKRUPTCY JUDGE

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