

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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EBC I, INC., f/k/a eToys INC., BY THE
POST-EFFECTIVE DATE COMMITTEE, :

Index No. 02/601805

Plaintiff, :

I.A.S. Part 3 (KSM)

-against- :

GOLDMAN, SACHS & CO. :

Defendant.
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**DECLARATION OF SUSAN BALASCHAK IN SUPPORT OF PLAINTIFF'S
MOTION TO VACATE THE DECISION AND ORDER OF THE SPECIAL
REFEREE CONCERNING DISCOVERY OF ETOYS' INDIVIDUAL
CREDITORS AND FRIENDS AND FAMILY PROGRAM**

I, Susan Balaschak, declare that:

1. I am a member of the law firm of Dreier LLP, which is bankruptcy counsel to the plaintiff Post-Effective Date Committee in the above-captioned litigation.

2. I am knowledgeable regarding the circumstances surrounding the Chapter 11 bankruptcy case of the EBC I, Inc., f/k/a eToys, ("eToys"), the inception of this litigation against eToys' former underwriter, Goldman Sachs & Co., and the role of the PEDC in the litigation.

3. I have reviewed the June 7, 2007 Decision and Order of special referee Judge Bradley and submit this declaration in order to correct certain misunderstandings concerning the role of the PEDC in this litigation.

4. This action was originally filed by the Official Committee of Unsecured Creditors for the now-bankrupt eToys (the "Official Committee"). By Order dated October 12, 2001 ("October 12th Order"), the bankruptcy court authorized the Official Committee to bring any causes of action belonging to eToys against Goldman Sachs. A

true and correct copy of that order is annexed hereto as Exhibit A. The October 12th Order did *not* authorize, or require, the Committee to pursue or investigate any claims on behalf of eToys individual creditors.

5. Upon the effective date of eToys' bankruptcy plan, the Official Committee ceased to exist and was replaced by the Post-Effective Date Committee ("PEDC"), which was deemed to be substituted in all pending actions originally filed by the Official Committee.

6. The three members of the PEDC are LEGO, Inc., Fir Tree, and Fisher Price (a subsidiary of Mattel, Inc.).

7. As bankruptcy counsel, the Dreier firm intermittently reports to the PEDC regarding, among other things, any litigation updates. Contrary to Judge Bradley's conclusion, however, neither counsel or the PEDC report on the litigation to the individual creditors of eToys. Although the PEDC has a duty to maximize the proceeds to the debtor's estate, which ultimately flow to the individual creditors, the PEDC otherwise has no connection to each creditor. The PEDC does not represent nor is it the agent for the individual creditors or former employees of eToys. The PEDC represents the unsecured creditors, as a group. In addition, my firm is counsel to the PEDC, not counsel to, or agent for the individual creditors. As a matter of fact, my firm would be conflicted if it represented any individual creditor with an adverse interest to the PEDC or the estate.

8. As such, the PEDC does not have legal control over any of the individual creditors or eToys former employees. The PEDC does not have the legal right to demand documents from individual creditors or employees, and it does not have the practical

ability to simply round up documents from them. Since the individual creditors and former employees are not parties, compliance with Judge Bradley's order will likely require plaintiff's counsel and my firm to issue third party subpoenas to the creditors and employees at issue.

9. The PEDC does have some control over certain aspects of the Debtor's estate. This includes access to a warehouse of documents maintained that belonged to eToys; as well as to certain professionals and companies who are working in the bankruptcy case. Plaintiff has made the documents available to defendant. In addition, plaintiff produced Ellen Gordon, one of the professionals, who worked on the bankruptcy case for deposition in this action.

Dated: June 12, 2007

By: Susan F. Balaschak
Susan F. Balaschak
DREIER, LLP
499 Park Avenue
New York, N.Y. 10022
(212) 652-3746