

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<i>In re</i>	:	Chapter 11
	:	
ETOYS, INC., <i>et al.</i>	:	Case Number 01-706 (MFW)
	:	
	:	Jointly Administered
	:	
Debtors	:	
	:	<b>Hearing Date: 3/8/2005 at 3:00 p.m.</b>
	:	<b>Objection Deadline: 3/4/2005 at 2:00 p.m.</b>

**NOTICE OF MOTION**

**TO:** THE DEBTOR; THE POST EFFECTIVE DATE COMMITTEE; TRAUB BONACQUIST & FOX LLP; COLLATERAL LOGISTICS, INC.; ROBERT ALBER; AND GARY RAMSEY

The United States Trustee has filed a Motion to Approve Settlement of the United States Trustee’s Motion for Entry of an Order Directing the Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP for Services Rendered as Counsel to the Official Committee of Unsecured Creditors (the “Settlement Motion”).

Responses to the Settlement Motion, if any, must be filed on or before March 4, 2005 at 2:00 p.m. (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware 19801.

At the same time, you must serve a copy of the response upon the undersigned counsel for the United States Trustee and upon counsel for Traub Bonacquist & Fox LLP.

A HEARING ON THE SETTLEMENT MOTION WILL BE HELD ON MARCH 8, 2005 AT 3:00 P.M. BEFORE THE HONORABLE MARY F. WALRATH, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT, COURTROOM 4, 824 MARKET STREET, FIFTH FLOOR, WILMINGTON, DELAWARE 19801.

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IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

**KELLY BEAUDIN STAPLETON  
UNITED STATES TRUSTEE**

Dated: February 24, 2005

**BY:** /s/ Mark S. Kenney  
Mark S. Kenney, Esquire  
Trial Attorney  
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(302) 573-6497 (Fax)  
[mark.kenney@usdoj.gov](mailto:mark.kenney@usdoj.gov)

Counsel for Traub Bonacquist & Fox LLP.:

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SHEARMAN & STERLING  
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Ronald R. Sussman, Esquire  
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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 11
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ETOYS, INC., <i>et al.</i>	:	Case Number 01-706 (MFW)
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	:	Jointly Administered
Debtors	:	
	:	<b>Hearing Date: 3/8/2005 at 3:00 p.m.</b>
	:	<b>Objection Deadline 3/4/2005 at 2:00 p.m.</b>

**UNITED STATES TRUSTEE’S MOTION TO APPROVE SETTLEMENT OF  
MOTION FOR ORDER DIRECTING DISGORGEMENT OF FEES PAID TO  
TRAUB BONACQUIST & FOX LLP FOR SERVICES RENDERED AS  
COUNSEL TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS (D.I. 2195)**

In support of her Motion to Approve Settlement of the United States Trustee’s Motion for Entry of an Order Directing the Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP for Services Rendered as Counsel to the Official Committee of Unsecured Creditors (the “Settlement Motion”), Kelly Beaudin Stapleton, the United States Trustee (“UST”), by undersigned counsel, avers:

1. This Court has jurisdiction to hear this Motion.
2. Pursuant to 28 U.S.C. § 586, the UST is charged with overseeing the administration of Chapter 11 cases filed in this judicial district. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys. Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that UST has “public interest standing” under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6<sup>th</sup> Cir. 1990) (describing the UST as a “watchdog”).
3. Pursuant to 11 U.S.C. § 307, the UST has standing to be heard on this Motion.

4. The UST and Traub Bonacquist & Fox LLP (“TBF”) have agreed to settle the UST’s Motion for Entry of an Order Directing the Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP for Services Rendered as Counsel to the Official Committee of Unsecured Creditors (the Disgorgement Motion”) on the terms detailed in the proposed Stipulation of Settlement attached hereto and incorporated herein as Exhibit A.

5. Stipulations in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the estate, and providing for the efficient resolution of bankruptcy cases. *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *In re Coram Healthcare Corp.*, 315 B.R. 321, 329 (Bankr. D. Del. 2004). A bankruptcy court should approve a stipulation if its is fair and equitable and is in the best interest of the estate. *In re Cajun Electric Power Cooperative, Inc.*, 119 F.3d 349, 355 (5<sup>th</sup> Cir. 1997). To make this determination, the court “must assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” *Id.* at 356; *Martin, supra*, 91 F.3d at 393.

6. To approve a stipulation, the court must consider four criteria:

- (a) The probability of success in litigation;
- (b) the likely difficulties in collection;
- (c) the complexity of the litigation involved and the expense, inconvenience and attendant delay; and
- (d) the paramount interest of the creditors.

*Martin, supra*, 91 F.3d at 393. In addition, given that the Disgorgement Motion is at its heart a motion for sanctions, the court should consider the deterrent value that will be derived from the

proposed settlement, *Pearson v. First NH Mortgage Corporation*, 200 F.3d 30, 42 & n. 7 (1<sup>st</sup> Cir. 1999) and whether approval of the settlement reflects the exercise of restraint and discretion and complies with principles of equity. *Matter of Olsen Indus., Inc.*, 222 B.R. 49, 62 (Bankr. Del. 1997).

7. The UST respectfully submits that upon consideration of all of the factors to be weighed in considering a settlement, and in light of the extensive and complex litigation that will ensue if the Stipulation of Settlement is not approved, the upon application of the foregoing criteria, the proposed Stipulation of Settlement is a reasonable and equitable compromise of the Disgorgement Motion. Moreover, approval would reflect the Court's exercise of restraint and discretion.

8. No prior request for the relief requested herein has been made to this or any other court.

9. Notice of this Motion has been provided to each of the persons upon whom the Disgorgement Motion was served.

WHEREFORE, the United States Trustee respectfully requests that this Court issue an order approving the Stipulation of Settlement.

Respectfully submitted,

**KELLY BEAUDIN STAPLETON  
UNITED STATES TRUSTEE**

Dated: February 24, 2005

**BY:** /s/ Mark S. Kenney  
Mark S. Kenney, Esquire  
Trial Attorney  
J. Caleb Boggs Federal Building  
844 King Street, Suite 2207, Lockbox 35  
Wilmington, DE 19801  
(302) 573-6491  
(302) 573-6497 (Fax)

# Exhibit A

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X

In re:	Chapter 11
ETOYS, INC., <u>et al.</u> ,	Case No. 01-706 (MFW)
Debtors.	Jointly Administered

-----X

**STIPULATION OF SETTLEMENT BETWEEN THE UNITED STATES TRUSTEE AND  
TRAUB BONACQUIST & FOX LLP OF MOTION FOR ENTRY OF ORDER  
DIRECTING DISGORGEMENT OF FEES PAID TO TRAUB BONACQUIST & FOX  
LLP FOR SERVICES RENDERED AS COUNSEL TO OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS**

**WHEREAS**, the United States Trustee has conducted due diligence in connection with the non-disclosures described in the *United States Trustee's Motion for Entry of Order Directing Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP for Services Rendered as Counsel to Official Committee of Unsecured Creditors* (the "Motion"); and

**WHEREAS**, Traub Bonacquist & Fox LLP ("TBF") has cooperated in response to the United States Trustee's post-effective date inquiries regarding relationships between or among TBF, Asset Disposition Advisors LLC ("ADA") and Barry Gold between the commencement of this Chapter 11 case and the effective date of the confirmed eToys, Inc. Chapter 11 plan; and

**WHEREAS**, in TBF's pleading filed on January 25, 2005 at Docket No. 2171 (the "TBF Objection"), TBF made disclosures regarding the relationships between and among TBF, ADA and Barry Gold as they existed up to the effective date of the confirmed eToys, Inc. Chapter 11 plan, and TBF has amplified its disclosures in the depositions of two members of



TBF conducted on February 9, 2005 and hereby consents to the unsealing and filing of record of the transcripts of those depositions; and

**WHEREAS**, the United States Trustee shall not seek to compel TBF to make additional disclosures; and

**WHEREAS**, TBF and the United States Trustee agree that they enter into this Stipulation without admission of any kind by any party for any purpose as to any matter addressed in, relating to, or arising out of this Stipulation; and

**WHEREAS**, TBF does not admit or concede any of the factual allegations, characterizations, inferences or legal contentions asserted by the United States Trustee in the Motion except as specifically admitted or conceded in the TBF Objection or this Stipulation; and

**WHEREAS**, the United States Trustee agrees that the settlement herein does not constitute and shall not be construed as a finding in favor of the United States Trustee on any of the factual allegations, characterizations, inferences or legal contentions in the Motion; and

**WHEREAS**, the United States Trustee and TBF have agreed, subject to the Court's approval, upon a disgorgement by TBF of \$750,000 in settlement of the Motion; and

**WHEREAS**, this Stipulation is intended by TBF and the United States Trustee to be a complete and final resolution of the Motion upon the Court's approval hereof;

**NOW THEREFORE, SUBJECT TO COURT APPROVAL, IT IS HEREBY STIPULATED** as follows:

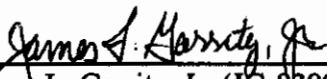
1. The recitations above are incorporated herein by reference.
2. In full and complete satisfaction of the Motion, TBF will disgorge, from sums previously awarded to it as compensation and expense reimbursement for services rendered, the sum of Seven Hundred Fifty Thousand dollars (\$750,000.00).

3. TBF will remit the foregoing amount to the reorganized debtor within 15 days of an order approving this stipulation.


4. TBF will file with the Court an affidavit attesting that the foregoing amount has in fact been paid over to the reorganized debtor.

5. TBF will not challenge the timeliness or authority of the United States Trustee to file its Motion.

**TRAUB BONACQUIST & FOX LLP**

  
James L. Garrity, Jr. (JG-8389)  
SHEARMAN & STERLING LLP  
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(212) 848-7179 - Fax

**KELLY BEAUDIN STAPLETON  
UNITED STATES TRUSTEE**

  
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-and-

Ronald R. Sussman (RS 0641)  
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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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ETOYS, INC., <i>et al.</i>	:	Case Number 01-706 (MFW)
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	:	Jointly Administered
Debtors	:	
	:	<b>Hearing Date: 3/8/2005 at 3:00 p.m.</b>
	:	<b>Objection Deadline: 2/28/2005 at 4:00 p.m.</b>

**ORDER APPROVING SETTLEMENT OF UNITED STATES TRUSTEE’S MOTION  
FOR ENTRY OF ORDER DIRECTING DISGORGEMENT OF FEES PAID TO  
TRAUB BONACQUIST & FOX LLP FOR SERVICES RENDERED AS  
COUNSEL TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS (D.I. 2195)**

AND NOW, upon consideration of the United States Trustee’s Motion to Approve Settlement of Motion for the Entry of an Order Directing the Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP (“TBF”) for Services Rendered as Counsel to the Official Committee of Unsecured Creditors (the “Settlement Motion”), and after notice and a hearing thereon and good cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that the Motion is GRANTED, and the Stipulation of Settlement attached as Exhibit A to the Settlement Motion is hereby approved.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2005

\_\_\_\_\_  
MARY F. WALRATH  
United States Bankruptcy Judge

**CERTIFICATE OF SERVICE**

I certify that, on February 24, 2005, I caused to be served a copy/copies of the United States Trustee's Motion to Approve Settlement of the United States Trustee's Motion for Entry of an Order Directing the Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP for Services Rendered as Counsel to the Official Committee of Unsecured Creditors via facsimile and electronic mail on the following person(s):

Robert J. Dehney, Esquire  
Gregory W. Werkheiser, Esquire  
Michael G. Busenkell, Esquire  
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I further certify that on February 24, 2005, I served copies of the foregoing Motion by Federal Express and electronic mail on the following person:

Robert K. Alber  
17685 DeWitt Avenue  
Morgan Hill, CA 95037  
[condo28@mail.com](mailto:condo28@mail.com)

I further certify that on February 24, 2005, I served copies of the foregoing Motion by Federal Express on the following person:

Gary L. Ramsey  
905 Juniper Drive  
O'Fallon, IL 62229

/s/ Delores A. Stump  
Delores A. Stump

Legal Clerk