THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 7
AMMOCORE TECHNOLOGY INC.,	:	Case No. 06-10318 (PJW)
Debtor.	:	**Docket Ref. No.: 79**

OBJECTION OF ATHANASSIOS KATSIOULAS AND THE BOARD OF DIRECTORS OF AMMOCORE TECHNOLOGY, INC. TO THE TRUSTEE'S MOTION TO SETTLE ADVERSARY PROCEEDING PURSUANT TO 11 U.S.C. § 105 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

Anthanassios Katsioulas ("Katsioulas") and the Board of Directors of Ammocore Technology, Inc. (the "New AmmoCore Board") hereby object to the Trustee's Motion to Settle Adversary Proceeding Pursuant to 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9019 (the "Settlement Motion"). In support thereof, Mr. Katsioulas and the Board state as follows:

BACKGROUND

A. Background of AmmoCore.

1. AmmoCore Technology, Inc. ("AmmoCore" or the "Debtor") is in the Electronic Design Automation ("EDA") and Semiconductor Intellectual Property industries. The EDA industry supplies the $250 billion semiconductor industry with software used in the design of microchips (which, in turn, supplies the $1 trillion electronic systems industry (i.e., talking teddy bears, microwave ovens, cell phones, personal computers, etc.)).

2. Since the Debtor's inception (and through its demise), four companies (collectively, the "Market Leaders") provided eighty percent of the $4.3 billion EDA industry revenues.

3. Cadence Design Systems, Inc. is one of these Market Leaders. The other three Market Leaders are competitors of Cadence.

4. Started in 1999, the Debtor was in the business of selling technology to its customers utilized in conjunction with the Market Leaders' products to increase performance and reduce cost.

5. Impressed by AmmoCore's technology (and concerned by intensified competition from the other Market Leaders), Cadence explored a potential investment in AmmoCore and, in early 2001, hired Handel Jones to report on AmmoCore's technological and business potential. Handel Jones is a well-recognized business and economic consultant and economist in the EDA and the semiconductor industries.

6. Optimistic of the Debtor's technology and its positioning in the EDA industry, Mr. Jones authored an encouraging report (the "Cadence-AmmoCore Report"), a true and correct copy of which is annexed hereto as Exhibit A, making several findings including but not limited to the following:

- AmmoCore developed an "efficient" methodology for "increasing productivity," (Cadence-AmmoCore Report, p. 5);
- AmmoCore's concepts were "effective and very powerful," (Cadence-AmmoCore Report, pp. 6, 9, 19);
- AmmoCore's tools show dramatic improvements on existing technology and represents a "significant competitive advantage," (Cadence-AmmoCore Report, pp. 7, 9);
- AmmoCore's technology has significant benefits, including "reduced time to revenues" and "lower silicon costs," and utilization of third party tools, (Cadence-AmmoCore Report, p. 8);

- AmmoCore is likely to gain momentum from a customer support perspective, if it expands its engineering organization and marketing and customer support organization, (Cadence-AmmoCore Report, p. 9);

- AmmoCore has strong technological capabilities and unique technology concepts, (Cadence-AmmoCore Report, pp. 9-11, 19);

- AmmoCore appears well-positioned to address industry demand, (Cadence-AmmoCore Report, p. 13), should have significant market opportunities, and can obtain multiple revenue streams (Cadence-AmmoCore Report, p. 15);

- AmmoCore has "excellent" business potential because market demand for its product will be "very strong," (Cadence-AmmoCore Report, p. 16);

- AmmoCore "should achieve high revenue growth, with the ability to generate large profits" with appropriate marketing strategies, (Cadence-AmmoCore Report, p. 16);

- AmmoCore's chief executive officer, Tom Katsioulas, "has an in-depth understanding of the design environment" and, with his management team "has been effective and prudent, with initial contracts being signed with companies that have the potential for continued revenues," (Cadence-AmmoCore Report, p. 17);.

- AmmoCore's overall assessment is "very positive." (Cadence-AmmoCore Report, p. 20.)

B. Cadence's Take Over of AmmoCore.

7. Based on the Cadence-AmmoCore Report authorized by Handel Jones, Cadence, its executives and affiliates invested $13.7 million in AmmoCore in early 2001 in "Series-B" financing (the "Series-B Financing").[1] Investors in the Series-B Financing (collectively, the "Series-B Investors") included the following:

- *Cadence* – Cadence's senior vice president, **Jim Hogan** managed Cadence's investments, mergers and acquisitions, including matters relating to AmmoCore. Mr. Hogan reported to **Ray Bingham** (Cadence's CEO) and **Donald L. Lucas** (Cadence's Chairman).

[1] The Series-A financing was comprised of 48 individual investors holding $2.5 million in notes issued by AmmoCore.

- *Telos Venture Partners* ("Telos") – a venture capital fund in which **Cadence** owned majority interest and **Cadence executives** owned the remaining interest. The general partners of Telos, **A. K. Kalekos**, **Bruce Bourbon**, and later, **Jim Hogan**, reported to Cadence's investment committee members **Donald L. Lucas** (**Cadence's** Chairman) and **Ray Bingham** (**Cadence's** CEO);

- *RWI Group* ("RWI")– A venture capital fund managed by **Donald A. Lucas**, son of **Donald L. Lucas** (**Cadence's** Chairman), and **William Baumel**. **Ray Bingham** (**Cadence's** CEO) also invested in RWI and **Donald L. Lucas** (**Cadence's** Chairman) and other **Cadence** directors served as RWI partners;

- *Donald L. Lucas* – The Chairman of **Cadence**;

- *Donald A. Lucas* – The founding partner of **RWI** and son of **Cadence** Chairman **Donald L. Lucas**; and

- *B.J. Cassin* – a personal friend of **Donald L. Lucas**.

8. At the time of the Series-B Financing, the above-relationships were inadequately disclosed.[2]

9. The Series-B Investors required the Debtor to designate two board seats to represent their interests. Kevin Hall, an independent Series B Investor, filled one board seat and Cadence vice president Jim Hogan assumed the second board seat. The Cadence-affiliated Series-B Investors acquired a two-thirds interest in the Series-B Financing and controlled 29.5% of AmmoCore as a result of the Series-B Financing.

10. After closing the Series-B Financing, AmmoCore's board of directors had five seats. The common shareholders designated two seats (filled by AmmoCore founders Katsioulas and Stan Chow), the Cadence-affiliated Series-B Investors designated two seats, and, in accordance with the terms and conditions of a written voting agreement (the "Voting Agreement"), the vote of the four directors determined who served in the fifth "at-large" seat.

[2] Mr. Lucas has a history of this type of incomplete or inadequate disclosure, which was the subject of an opinion written by Vice Chancellor Strine in *In re Oracle Corp. Derivative Litig.*, 824 A.2d 917 (Del. Ch. 2003).

11. Seeking to advance its own interests, Cadence began inappropriately interfering in AmmoCore's corporate affairs in April of 2001. For example, Cadence chairman Donald L. Lucas blocked efforts to install a well qualified candidate to fill the "at-large" board seat because of an affiliation with a Cadence (but not an AmmoCore) competitor. Then, the Cadence chairman pushed for the Cadence-controlled Telos partner, A. K. Kalekos, to fill the "at-large" seat.[3]

12. Mr. Kalekos, the Cadence-controlled Telos partner, then headed AmmoCore's CEO search committee and recommended that AmmoCore hire Jim Kupec as AmmoCore's CEO (despite a lack of domain experience expressed by Handel Jones).

13. In February, 2002, AmmoCore hired Mr. Kupec, who replaced Mr. Katsioulas as AmmoCore's CEO. Mr. Katsioulas then assumed the position of AmmoCore's vice president of marketing, but maintained his board seat. Violating the terms of the Voting Agreement, the Cadence-affiliated board members asked Stan Chow to surrender his seat to Mr. Kupec.

14. Now controlled AmmoCore's board of directors, Cadence began interfering in AmmoCore's business affairs to further Cadence's own interest. For example, Cadence-controlled AmmoCore director Jim Hogan (a Cadence executive) improperly influenced AmmoCore to develop a product more favorable to Cadence. Cadence also improperly steered AmmoCore into competing with the Market Leaders, rather than offering profitable, complementing products and services for customers of the Market Leaders.

15. In protest of Cadence's continued interference in AmmoCore's affairs, Mr. Katsioulas resigned as an AmmoCore officer and director and A. K. Kalekos denied an

[3] The board members representing the common shareholders ultimately acquiesced, but only if the AmmoCore board expanded to seven members (to maintain the voting balance established in the Voting Agreement).

AmmoCore founder's request to assume Mr. Katsioulas' vacant board seat. Cadence then installed Salah Werfelli, a Cadence executive, as vice president of marketing and sales.

16. During Werfelli's tenure as an AmmoCore officer, Cadence paid Mr. Werfelli a secret compensation, which he accepted in addition to his AmmoCore salary.

17. Now in control of AmmoCore's board and management team, Cadence abandoned AmmoCore's existing sales opportunities and shifted AmmoCore's proven business model to a "Cadence-centric" business plan resulting in AmmoCore's competing with, instead of complementing, the Market Leaders .

18. At the insistence of Cadence CEO Ray Bingham, the Cadence-controlled Debtor hired Jim Lindstrom as its Chief Financial Officer. Like Werfelli, *Cadence also secretly compensated Mr. Lindstrom*, who accepted the dual compensation from AmmoCore and Cadence during his tenure as an officer of AmmoCore.

19. In late November 2002, AmmoCore raised an additional $8 million in Series-C financing (the "Series-C Financing") resulting in changes to AmmoCore's board without regard to the Voting Agreement. One notable change was the resignation of the only independent Series-B Investor, Kevin Hall, who resigned after learning of Cadence's inappropriate meddling in AmmoCore's affairs.

20. By email dated January 8, 2003, Mr. Katsioulas, acting through his counsel, questioned changes to AmmoCore's proven business model, questioned the role of former Cadence executives in AmmoCore, their dual compensation, and other corporate irregularities. (*See* Exhibit B [email from E. Kastner to W. Lazarow].) Neither Cadence nor AmmoCore offered any meaningful response.

21. In October, 2003, AmmoCore raised another $7 million in Series-D financing (the "Series-D Financing"). The Series-D Financing documentation also retroactively approved Werfelli's and Lindstrom's dual compensation arrangements with Cadence (which secretly began the previous year, before the Series-C Financing).

22. After the Series-D Financing, Cadence-affiliated parties controlled nearly over 35% of AmmoCore's diluted stock and continued to dominate its board and management team. Cadence continued to manipulate AmmoCore's sales to advance his own interests. Around this time, Cadence increased its hold on the AmmoCore's board by installing RWI director Bill Baumel as an AmmoCore director.

23. In early 2004, AmmoCore board members and Cadence executive Jim Hogan became a general partner of Telos and Cadence installed another one of its former executives, Steve Flannery, as Vice President of U.S. Sales.

24. In mid-2004, Cadence interfered with AmmoCore's sales resulting in a loss of a $2.5 million customer budget reserved for AmmoCore. Cadence instead used those funds to "fill-in" a larger Cadence deal. AmmoCore then depleted its cash significantly and reduced its headcount.

25. The Cadence-affiliated investors agreed to fund AmmoCore in a two tranche loan (the "Bridge Loan"). In October 2004, AmmoCore closed on the first tranche, enabling AmmoCore to operate until January, 2005. Cadence Chairman Donald L. Lucas instructed the lenders on the Bridge Loan not to fund the second tranche.

26. Cadence then began soliciting and stealing away key AmmoCore engineers, while the Cadence-controlled AmmoCore board negotiated a deal with Cadence to sell AmmoCore's assets to Cadence for $2 million.

27. AmmoCore signed an asset purchase agreement, but Cadence did not. Even though Cadence did not execute the asset purchase agreement, Cadence still took possession of AmmoCore's intellectual property. One month later, Cadence unexpectedly withdrew from the transaction, claiming it could not make the intellectual property work.

C. Cadence Commences AmmoCore's Involuntary Bankruptcy.

28. After the failed Cadence deal, the Cadence-controlled AmmoCore board resigned *en masse*. A grass-roots effort by eighty shareholders (thirty of which were also creditors) led by Mr. Katsioulas, attempted to wrestle control of AmmoCore away from Cadence.

29. As a result, eight Cadence-affiliated creditors commenced an involuntary petition against the Debtor under section 305 of Title 11 of the United States Code §§ 101, *et seq*. (the "Bankruptcy Code") on April 6, 2006. The involuntary petition was signed by Donald L. Lucas on behalf of three petitioning creditors. B.J. Cassin (a personal friend of Donald L. Lucas and an AmmoCore investor), also signed on behalf of three petitioning creditors and Cadence Design System (Ireland), Ltd.

30. Montgomery Claybrook was installed as an interim trustee (the "Trustee"). During the 17-month pendency of this case, the Trustee has done little – if anything – to fulfill his statutory duties. He has not convened a meeting of creditors, he has not filed any schedules, and he has not filed the Debtor's statement of financial affairs. He has not even filed a creditors' matrix.

31. From the outset, the Trustee expressed skepticism about this case. On August 7, 2006, Mr. Claybrook emailed Cadence's Delaware counsel (Rob Dehney) "[t]his case needs to disappear." (Exhibit C, p. 2 [email from M. Claybrook to R. Dehney of 8/7/06, 10:16 AM].) When Mr. Dehney asked "how to make it disappear," (exhibit C, p. 2 [email from R. Dehney to M. Claybrook of 8/7/06, 10:17 AM]), the Trustee responded "move to dismiss. It's your client's

collateral anyway…you guys can play hide the cheese with Mr. Kat[sioulas]." (Exhibit C, p. 2 [email from M. Claybrook to R. Dehney of 8/7/06, 10:18 AM].)

32. Recognizing that bankruptcy may have been inappropriate, Cadence's counsel told the bankruptcy trustee that he needs "to come up with a solution that gives you some reason to keep the case, sell me the [intellectual property] and [gives Cadence a] release." (Exhibit D, p. 1 [email from R. Dehney to M. Claybrook of 8/8/06 9:37 AM].)

33. During the course of protracted email exchanges, Mr. Dehney and the bankruptcy trustee frequently joked about AmmoCore's bankruptcy proceeding and made disparaging remarks regarding Mr. Katsioulas, including the following:

- After reading an EE Times article about Mr. Katsioulas' efforts to salvage AmmoCore, the bankruptcy trustee joked to Cadence's counsel: "[l]ooks like we're in business. I'm going to get an order to operate – full steam ahead." (Exhibit D, p. 2 [email from M. Claybrook to R. Dehney of 8/8/06, 9:27 AM].)

- In an email from Cadence's counsel to the bankruptcy trustee, Mr. Dehney refers to Mr. Katsioulas as a "whack-job." (Exhibit D, p. 1 [email from R. Dehney to M. Claybrook of 8/8/07, 9:37 AM].)

- Disregarding the importance and significance of his position as bankruptcy trustee, Mr. Claybrook remarked to Cadence's counsel: "I should ask for a larger carve out but, I won't – let's just extricate ourselves from this delicate situation with as much dignity and solemnity as possibly – I'll try to keep a straight face." (Exhibit D, p. 1 [email from M. Claybrook to R. Dehney of 8/8/06, 11:09 AM].)

- In an email from the bankruptcy trustee to Cadence's counsel, the bankruptcy trustee refers to Mr. Katsioulas as a "drama king," (after learning of the passing of Mr. Katsioulas' mother) and, after not hearing from him, morbidly jokes: "I just hope we didn't lose him…" (Exhibit E, p. 2 [email from M. Claybrook to R. Dehney of 8/31/06, 2:54 PM and 3:02 PM].)

D. The Lippe Investigation.

34. Given the concern regarding Cadence's pervasive interference with AmmoCore, Mr. Katsioulas and the AmmoCore Board retained Paul Lippe, Esquire, an attorney and an

industry expert, to investigate Cadence's misconduct and self-dealings, if any, in its affairs with AmmoCore.

35. Based on the facts stated above, Mr. Lippe made various findings in a report of his investigation of AmmoCore (the "Lippe Report"), a true and correct copy of which is annexed hereto as Exhibit F, including but not limited to the following:

- In early 2002, a time when AmmoCore proved the success of its business model and began gaining momentum, Cadence took control of AmmoCore's board and the operations.
- Cadence separately compensated several AmmoCore officers.
- The Cadence dominated management shifted the Debtor's business and product strategies into a Cadence-centric flow, causing AmmoCore's sales engagements to slow.
- Cadence interfered with AmmoCore's sales opportunities for its own benefit, resulting in AmmoCore's substantial loss of revenue.
- In late 2004, AmmoCore raised a bridge loan negotiated by Cadence-affiliated parties *on both sides*.
- Because Cadence refusal to fund the second tranche of the Bridge Loan, it forced AmmoCore into a "fire sale" dissipating its potential value and negotiating leverage.
- Cadence negotiated with the Cadence-controlled AmmoCore board to buy AmmoCore's assets for $2 million.
- After Cadence forced AmmoCore to supply it with the intellectual property Cadence was purchasing (before the closing), Cadence withdrew from the asset purchase deal unexpectedly, but after having the intellectual property for a month.
- Cadence manipulated its dealings with AmmoCore to the disadvantage of the company and to the advantage of Cadence's business, Cadence executives and board members.

E. Cadence's Declaratory Relief Action.

36. In April, 2007, the New AmmoCore Board moved the Court for permission to take a 2004 examination of Jim Hogan to assist the Chapter 7 trustee in his investigation of,

among other things, the value of AmmoCore's intellectual property and whether the estate had any claims against Cadence and others.

37. In opposition to the New AmmoCore Board's motion for a 2004 examination, Cadence commenced the adversary proceeding the Trustee now seeks to settle (the "Adversary Proceeding") and used the subsequently commenced lawsuit as grounds to prevent the New AmmoCore Board from taking Jim Hogan's 2004 exam.

38. The New AmmoCore Board noted Cadence's improper use of process at oral argument, but the Court ultimately denied the New AmmoCore Board's motion, finding that the board of directors of a Chapter 7 bankrupt corporation had no standing to take a 2004 examination. (*See* Bankr. D.I. 71 [May 10, 2007 Hrg. Tr. 5:1-4, 29:13-19, 30:8-9, 30:15].)

39. As explained below, however, and unknown to the New AmmoCore Board and Katsioulas at the time, Cadence and the Trustee had already reached a settlement when Cadence commenced the Adversary Proceeding!

40. The crux of Cadence's Adversary Proceeding is to "get a declaratory judgment saying [Cadence] is an angel and absolving it." (*See* Exhibit G, p. 1 [email from D. Harris to R. Dehney of 5/24/07, 9:24 AM].)

41. The Trustee has not taken any discovery in the adversary proceeding. In fact, no party has taken any discovery on the merits in the Adversary Proceeding.

F. The Bankruptcy Trustee and Cadence Reached a Settlement Before Cadence Commenced The Adversary Proceeding.

42. Beginning in August, 2006, the Trustee and Cadence began settlement discussions. On November 17, 2006, the Trustee wrote to Cadence's Delaware counsel that his lawyer will call "with a proposal" on how to structure a deal. (*See* Exhibit H [email from M. Claybrook to C. Miller of 11/17/06, 2:57 PM].)

43. Then, on December 5, 2006 -- over four months before Cadence commenced the Adversary Proceeding and more than seven months before the Trustee spoke with any potential fact witnesses -- the Trustee offered to settle with Cadence for $75,000. (*See* Exhibit I, p. 2 [email from D. Harris to C. Miller of 12/5/06, 10:34 AM].)

44. Over the next several months, the bankruptcy trustee and Cadence apparently reached a deal to settle any of the potential claims of the estate against Cadence for $50,000, but when Cadence commenced the Adversary Proceeding, the Trustee withdrew from the $50,000 settlement and re-issued his $75,000 demand. (*See* Exhibit J [emails between D. Harris and R. Dehney of 4/30/07, 12:20 PM and 5/3/07, 1:59 PM].)

45. Shortly after Cadence commenced the Adversary Proceeding, Cadence's Delaware counsel forwarded a proposed settlement agreement to the Trustee. (*See* Exhibit K [email from C. Miller to M. Claybrook of 4/26/07, 8:16 PM].) Upon information and belief, the parties reached a second settlement sometime in early or mid-July and the parties executed the settlement agreement at the end of August.

46. After reaching their second settlement in principal, Cadence arranged for the Trustee to hold brief, informal and secret discussions with Jim Hogan on August 10, 2007 and with Handel Jones (author of the Cadence-AmmoCore Report), RWI Partner Bill Baumel, and Edward Chun (a Cadence employee) on July 24, 2007. (*See* Exhibit L [various emails from E. Dettmer to D. Harris] and Exhibit N.)

47. Mr. Baumel refused to participate in any call with the Trustee unless RWI received a release: "I do not want to talk to the trustee and their lawyer, have Cadence and Telos released but not RWI, and then have Tom [Katsioulas] go nuts and go after RWI." (*See* Exhibit L, p. 2 [email from B. Baumel to E. Dettmer of 7/19/07, 3:36 PM].)

48. Other than providing general topics of discussion, the Trustee has not disclosed the content of his and his counsel's secret meetings.

49. Other than these four individuals, the Trustee has not met or spoken with anyone else including Paul Lippe, the AmmoCore investigator and author of the Lippe Report (which describes the basis for multiple claims against Cadence), or the numerous witnesses listed in the Lippe Report.

50. Despite the Trustee's statements in the Motion to the contrary, he never interviewed Mr. Katsioulas regarding the above facts. In fact, the Trustee ignored Mr. Katsioulas' numerous requests for telephonic discussions.

51. The Trustee is now asking the Court to approve his settlement, which does nothing except provide the estate with $75,000 and improperly provides extremely broad releases to third parties (Telos, RWI and Lucas) by Mr. Claybrook and on behalf of third parties.

52. Notably, the Settlement does not attempt to liquidate Cadence's claim (or establish the value of its collateral), which, according to Cadence's Delaware counsel, was the purpose of the Adversary Proceeding. (*See* D.I. 80 [7/12/07 Hr. Tr.] at 12:1-8.)

53. In the Settlement Motion, the Trustee makes cursory allegations that the settlement is within the range of reasonableness, but does not speak of why these above facts are of so little or no value nor does the Trustee describe the estimated range of reasonableness.

54. The Settlement Motion indicates that the Debtor will be provided with immediate funds and protracted litigation will be eliminated. Yet, it does not liquidate Cadence's debt and does not describe any benefit to the creditors.

55. The Settlement Motion states that Cadence has valid defenses to the litigation, but, when asked about those defenses, Ms. Harris stated she "cannot speak for Cadence with respect to the totality of its defenses."

56. By letter dated September 17, 2007, a true and correct copy of which is annexed hereto as Exhibit M, counsel for Katsioulas and the New AmmoCore Board wrote the Trustee's counsel asking for additional information with respect to the settlement.

57. By letter dated September 21, 2007, a true and correct copy of which is annexed hereto as Exhibit N, the Trustee's counsel responded without providing any additional information supporting the Trustee's settlement and frequently hiding behind a veil of the work-product doctrine.

OBJECTION

58. Bankruptcy Rule 9019 provides that "on motion by the Trustee and after notice and a hearing, the Court may approve a compromise or settlement." Fed. R. Bankr. P. 9019. "There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated." *Protective Comm. for Ind. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S.Ct. 1157, 1163 (1969).

59. Taking its cue from the Supreme Court, the Third Circuit recognizes four criteria for determining the reasonableness of a settlement: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the

creditors. *In re Martin*, 91 F.3d 389, 393 (3d Cir.1996); *In re Marvel Entertainment Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1990); *In re Grant & Broadcasting of Philadelphia, Inc.*, 71 B.R. 390, 395 (Bankr. E.D. Pa. 1987); *In re Neshaminy Office Building Assoc.*, 62. B.R. 798, 803 (Bankr. E.D. Pa. 1986). The ultimate inquiry is whether the compromise is fair, reasonable and in the best interest of the estate. *Marvel,* 222 B.R. at 279; *In re Louise's, Inc.,* 211 B.R. 798, 801 (D. Del. 1997); *Neshaminy Office Building Assoc.,* 62 B.R. at 802.

60. The obligation of a bankruptcy court is not to try the case, but to canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness. *In re Integrated Health Services, Inc.*, 2001 Bankr. LEXIS 100 at *7 (Bankr. D. Del. 2001). *In re Grant & Broadcasting of Philadelphia, Inc.,* 71 B.R. 390, 395 (Bankr. E.D. Pa. 1987); *In re Neshaminy Office Building Assoc.*, 62. B.R. 798, 802 (Bankr. E.D. Pa. 1986).

I. **The Trustee Fails To Meet The *Martin* Settlement Standards.**

61. The Trustee has not established the necessary record to support a ruling approving his compromise with Cadence.

62. The Trustee has made no showing on the first *Martin* factor: the probability of success in litigation. The Trustee's Settlement Motion states superficially "that Cadence may have valid defenses to the Adversary Proceeding" (which makes little sense since Cadence is the plaintiff and none of the defendants have asserted counterclaims). The Trustee neither articulates the estate's claims against Cadence nor Cadence's defenses to those claims. Without describing these claims and defenses, the Court has no record to make a finding with respect to the first *Martin* factor.

63. Simply put, AmmoCore has a strong case against Cadence. And there can be little doubt – if any – that Cadence's pervasive interference in AmmoCore affairs (i.e., by installing its own personnel as directors and officers, changing the business model, and paying-

off executives) has damaged AmmoCore. The Cadence-AmmoCore Report commissioned by Cadence paints AmmoCore as an industry "gem" in 2001, before Cadence made its initial investment in AmmoCore. The Lippe Report details how Cadence infiltrated AmmoCore's board and management team, created impermissible conflicts of interest by secretly paying AmmoCore executives, and manipulated AmmoCore's business model to further Cadence's – not AmmoCore's – interests. In the end, a Cadence-controlled management team agreed to a "fire sale" of AmmoCore's assets to Cadence and Cadence left AmmoCore bankrupt. AmmoCore's potential claims against Cadence, had the Trustee investigated them, include (but are not limited to) debt recharacterization, equitable subordination, antitrust violations, breaches of fiduciary duty, breaches of contract, fraud, and tortious interference.

64. Yet the Trustee makes no record describing any of these claims, Cadence's defenses to them, or the probability of success on the merits. Nor can he because the Trustee conducted no investigation. The Trustee alleges in the Settlement Motion that he (or his counsel) reviewed a few "hundred" documents, deposition transcripts, and held interviews of "numerous" persons and potential witnesses. In reality, he only spoke with four people at Cadence-arranged secret meetings (all of whom have a relationship with Cadence) and read a couple deposition transcripts (from depositions Cadence took). And he did this after he reached a settlement with Cadence. Inexplicably, the Trustee never spoke with Paul Lippe nor the numerous witnesses identified in Lippe's report.

65. When pressed to back up the allegations in the motion, neither the Trustee nor his counsel could do so. On September 17, 2007, counsel for Mr. Katsioulas and the New AmmoCore Board requested that the Trustee provide information supporting the reasonableness of the proposed settlement. The Trustee responded to these requests as follows:

Letter from M. Barrie to D. Harris (Exhibit M)	Letter from D. Harris to M. Barrie (Exhibit N)
Identify of all claims of the estate against Cadence, as referenced in paragraph 11 of the Settlement Motion.	The claims identified in the Lippe Report and referenced in the pending adversary proceeding.
Identify the potential defenses that Cadence may have to the adversary proceeding, as referenced in paragraph 12 of the Settlement Motion.	Procedural defenses (such as statute of limitations) and substantive defenses (such as denial of the allegations contained in the Lippe Report).
Identify the numerous persons and potential witnesses interviewed by the Trustee (or his counsel) with information about the Debtor and the allegations set forth in the adversary proceedings, as described in paragraph 12 of the Motion. Please identify the interviewee, the interviewer (*i.e.*, the Trustee or his counsel), the date(s) of such interviews, and a description of the discussions, and provide us with any notes taken during such interviews.	1. Mr. Katsioulas (telephone calls and deposition transcript); 2. Thomas Romero (deposition transcript); 3. Cadence's Bill Baumel (July 24, 2007) 4. Handel Jones (July 24, 2007); 5. Edward Chun (July 24, 2007); 6. Cadence's Jim Hogan (July 24, 2007)
Describe the legal research conducted and the results of such research, as discussed in paragraph 12 of the Settlement Motion.	Legal research relating to Cadence's defenses and issues of fiduciary duties.

66. It is obvious the Trustee has failed to undertake a meaningful investigation of the estate's claims against Cadence. Consequently, the Trustee cannot make any record, including an evidentiary record, supporting a Court determination that the first *Martin* factor has been satisfied.

67. The Trustee cannot meet the second *Martin* factor either. Cadence is a $6 billion company. Collecting on an ultimate verdict against Cadence would present little – if any – difficulty.

68. The Trustee also has no support for third *Martin* factor: the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it. The Trustee does not bother addressing this factor in his Motion, except to say "the realization of the complexity of the litigation" convinced him the proposed settlement was fair and reasonable. But he cites no background, facts or legal analysis supporting his superficial statement. The truth is, without an investigation and a description of the claims, no one can know whether the litigation is complex.

69. The Trustee has similarly failed to make a record regarding the expense, inconvenience and delay attending to litigation. On several occasions, Mr. Katsioulas and the New AmmoCore Board provided names of attorneys willing to review and ultimately prosecute this case, as a Section 327(e) professional, for the Trustee on a contingency basis. The Trustee did not call one of them. Mr. Katsioulas has also offered to finance the investigation of the claims or, alternatively, to conduct the investigation and turnover all of his information to the Trustee. And given that distributions to unsecured creditors – if any – will be nominal, delay is not of particular concern. Finally, the Trustee will not be inconvenienced by the litigation, other than by doing his statutory duties in administering the assets for the benefit of all creditors and, given the possible magnitude of the claims, shareholders.

70. Thus, the Trustee has made no record supporting a Court finding that the settlement satisfies the third *Martin* factor.

71. Finally, the Trustee fails to establish how the settlement is in the paramount interests of creditors for the same reasons outlined above. This is especially true here, where the Trustee has done nothing to identify the creditor body or provide his constituents with notice of this motion and an opportunity to object.

II. **The Trustee Cannot Show The Settlement Is Fair And Equitable.**

72. The Trustee also fails to show how his proposed settlement is fair and equitable. Specifically, the Trustee has not explained why a $75,000 settlement with Cadence – in litigation where Cadence spent $2 million in legal fees – is fair. (*See* Exhibit P [excerpts of Dep. Tr. of Wm. Porter].)

73. Obviously, the Trustee cannot explain why the settlement is fair and equitable without seriously investigating AmmoCore's claims against Cadence. Putting that aside for the moment, however, the Trustee's conduct in this bankruptcy case demonstrates that his settlement is not fair, equitable and reasonable:

- Writing in an email to Cadence's Delaware counsel: "[t]his case needs to disappear" and "it's your collateral anyway…you guys can pay hide the cheese with Mr. Kat[sioulas];"
- Joking to Cadence's Delaware counsel about Mr. Katsioulas' attempts to salvage the AmmoCore's value;
- Plotting with Cadence's Delaware counsel to "extricate ourselves from this delicate situation with as much dignity and solemnity as possible – I'll try to keep a straight face;"
- Deprecating Mr. Katsioulas in an email to Cadence's Delaware counsel by referring to him as a "drama king" and morbidly joking to Cadence's Delaware counsel, after not hearing from Mr. Katsioulas for some time, "I just hope we didn't lose him."

74. In addition to a lack of professionalism, these email communications show the Trustee neither seriously considered nor intended to seriously consider the estate's claims against Cadence.

75. And the Trustee's actions confirm this. As described above, the parties began settlement discussions last Summer and reached a deal to settle the estate's claims for $50,000 before Cadence commenced the Adversary Proceeding. (*See* Ex. J.) The settlement then increased to $75,000 when Cadence commenced the Adversary Proceeding, despite Cadence's

Delaware counsel's belief that the deal would not increase. (*Id.*) Not until after the parties reached a settlement in principal in July 2007 did the Trustee speak to four fact witnesses at Cadence-arranged, secret meetings.

76. The settlement does not even resolve the estate's disputes against Cadence because it fails to liquidate Cadence's claim –the purported reason for Cadence commencing the Adversary Proceeding (and waives the Trustee's and the Debtor's right to object to the amount of any subsequently filed claim).

77. The Trustee has presented no record to show the settlement is fair and equitable. Indeed, the record only shows that the Trustee cannot make such a showing.

III. The Court Cannot Approve the Settlement Because The Trustee Cannot Show It Falls Within A Range Of Reasonableness.

78. Just as the Trustee presents no record supporting the *Martin* factors and that the settlement is fair and equitable, he presents no record supporting a finding that the proposed settlement falls above the lowest point in the range of reasonableness.

79. The Trustee makes no attempt at articulating how $75,000 for AmmoCore's claims against Cadence, which include debt recharacterization, equitable subordination, antitrust violations, breaches of fiduciary duty, breaches of contract, conspiracy, fraud, and tortious interference, among others, falls within a range of reasonableness. He cannot because the settlement amount has no relationship to the claims.

80. The Trustee settled this action in April, 2007 for $50,000 and this amount increased to $75,000 only because Cadence filed the Adversary Proceeding. Yet the Trustee spoke with no witnesses until after striking his deal with Cadence. And despite encouragement and offers of assistance from Mr. Katsioulas and the New AmmoCore Board, the Trustee did not

speak to the author of the Lippe Report, made no contact with the witnesses identified in that report, and failed to explore contingency fee opportunities.

81. The Trustee's $75,000 also seems exceptionally low given Cadence's exhaustion of $2 million in matters relating to this litigation. (*See* Exhibit P.)

82. Thus, the settlement cannot be approved.

IV. The Releases Contained In The Proposed Settlement Agreement Are Inappropriately Broad.

83. The Court cannot approve the settlement because it impermissibly attempts (i) to give releases on behalf of third parties, and (ii) give releases to third parties.

84. It is well-established that a Trustee (and the Court) has no power to grant a release on behalf of third parties. *In re Coram Health Care Corp.*, 315 B.R. 321, 335 (Bankr. D. Del. 2004); *In re Digital Impact, Inc.*, 223 B.R. 1, 14 (Bankr. N.D. Okla. 1998) (bankruptcy court does not have jurisdiction to approve non-debtor releases by third parties).

85. Here, the Trustee improperly seeks to release Cadence and the Cadence-related parties on behalf of non-Debtors:

> [t]he Trustee, on behalf of himself and AmmoCore and its past, present and future officers, directors, shareholders, joint venturers, partners, insurers, attorneys, employees, independent contractors agents, representatives, predecessors, successors and assigns, and for any parent, subsidiary or affiliate entities, alter ego, partnership, or other related person or entity, and each of their respective officers, directors, shareholders, joint venturers, partners, insurers, attorneys, employees, independent contractors, agents, representatives, predecessors, successors and assigns

(Settlement Agreement, p. 4-5.) The Trustee provides no authority – nor can he – permitting him to give a release on behalf of and bind parties other than himself and the Debtor. This would be especially egregious here where the Trustee gave notice of his proposed settlement only to such few people.

86. Similarly, the parties being released are impermissibly broad. *See Coram Healthcare Corp.*, 315 B.R. at 335; *In re Zenith Elecs. Corp.*, 241 B.R. 992 (Bankr. D. Del. 1999). Despite recognized limitations on third-party releases imposed by the courts of this district, the Trustee seeks to release the following third-parties:

> Cadence and its past, present and future officers, directors, shareholders, joint venturers, partners, customers, insurers, attorneys, employees, independent contractors, agents, representatives, predecessors, successors and assigns, and for any parent, subsidiary and other affiliated entities, alter ego, partnership, or other related person or entity, and each of their respective officers, directors, shareholders, joint venturers, partners, insurers, attorneys, employees, independent contractors, agents, representatives, predecessors, successors and assigns.

87. The Trustee has provides the Court with no authority regarding why his extraordinary request is permissible and makes no attempt justify them with a record. Accordingly, the proposed settlement cannot be approved.

* * *

88. Annexed hereto as Exhibit O are the declarations of twenty creditors and shareholders objecting to the Trustee's proposed settlement and joining in this objection.

[THIS SPACE INTENTIONALLY BLANK]

WHEREFORE, the Board of Directors of AmmoCore Technology, Inc. and Mr. Katsioulas respectfully request that the Court enter an order (i) denying the Trustee's Motion to Approve the Settlement with Cadence, and (ii) granting such other and further relief the Court deems just and proper under the circumstances.

Dated: October 3, 2007

/s/ Michael J. Barrie

Michael J. Barrie (#4684)
824 North Market Street, Suite 1001
Wilmington, DE 19801-3011
(302) 888-4554 (telephone)
(302) 888-1696 (facsimile)

AND

Eric A. Nyberg (*pro hac vice*)
Chris D. Kuhner (*pro hac vice*)
KORNFIELD, PAUL & NYBERG, P.C.
1999 Harrison Street, Suite 2675
Oakland, CA 94612-4722
(510) 763-1000 (telephone)
(510) 273-8669 (facsimile)

Co-Counsel for Defendants Anathasious Katsioulas and The Board of Directors of AmmoCore Technology, Inc.