

**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	:	
	:	Hearing Date: 3/8/2005 at 3:00 p.m.
	:	Objection Deadline: 3/4/2005 at 2:00 p.m.

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
J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Wilmington, DE 19801
(302) 573-6491
(302) 573-6497 (Fax)
mark.kenney@usdoj.gov

Counsel for Traub Bonacquist & Fox LLP.:

James L. Garrity, Esquire
SHEARMAN & STERLING
599 Lexington Avenue
New York, NY 10022
Fax (212) 848-7179
jgarrity@shearman.com

Ronald R. Sussman, Esquire
KRONISH LIEB WEINER &
HELLMAN LLP
1114 Avenue of the Americas
New York, NY 10036
Fax (212) 479-6275
rsussman@kronishlieb.com

**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	:	
	:	Hearing Date: 3/8/2005 at 3:00 p.m.
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**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 (6th 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 it 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 (5th 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 (1st 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:

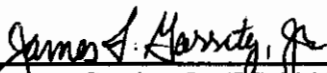
1. The recitations above are incorporated herein by reference.
2. In full and complete satisfaction of the Motion, TBF will disgorge, from sums previously awarded to it as compensation and expense reimbursement for services rendered, the sum of Seven Hundred Fifty Thousand dollars (\$750,000.00).

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.

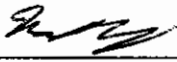
5. TBF will not challenge the timeliness or authority of the United States Trustee to file its Motion.

TRAUB BONACQUIST & FOX LLP



James L. Garrity, Jr. (JG-8389)
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
(212) 848-4000
(212) 848-7179 - Fax

**KELLY BEAUDIN STAPLETON
UNITED STATES TRUSTEE**



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

-and-

Ronald R. Sussman (RS 0641)
KRONISH LIEB WEINER & HELLMAN
LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 479-6000
(212) 479-6275 - Fax

**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)
	:	
	:	Jointly Administered
Debtors	:	
	:	Hearing Date: 3/8/2005 at 3:00 p.m.
	:	Objection Deadline: 2/28/2005 at 4:00 p.m.

**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
MORRIS, NICHOLS, ARSHT &
TUNNELL
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
Fax (302) 658-3989
gwerkheiser@mnat.com

Paul Traub, Esquire
Michael S. Fox, Esquire
TRAUB BONACQUIST & FOX, LLP
655 Third Avenue
New York, NY 10017
Fax (212) 476-4787
ptraub@tbfesq.com

James L. Garrity, Esquire
SHEARMAN & STERLING
599 Lexington Avenue
New York, NY 10022
Fax (212) 848-7179
jgarrity@shearman.com

Ronald R. Sussman, Esquire
KRONISH LIEB WEINER &
HELLMAN LLP
1114 Avenue of the Americas
New York, NY 10036
Fax (212) 479-6275
rsussman@kronishlieb.com

Frederick B. Rosner, Esquire
JASPAN SCHLESSINGER HOFFMAN
1201 N. Orange Street, Suite 1001
Wilmington, DE 19801
Fax (302) 351-8010
frosner@jshllp-de.com

Mark Minuti, Esquire
SAUL EWING LLP
222 Delaware Avenue
P.O. Box 1266
Wilmington, DE 19899-1266
Fax (302) 421-6813
mminuti@saul.com

Steven Haas
Collateral Logistics, Inc.
12901 Garden Grove Boulevard, Suite 101
Garden Grove, CA 92843
Fax (714) 539-7823
bhaass@aol.com

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

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