Approved: May 13, 2011
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

All members were present except:
Senator Emler - excused

Committee staff present:
Ms. Margaret Cianciarulo, Committee Assistant
Mr. Ken Wilke, Kansas Legislative Research Department
Mr. Reed Holwegner, Office of the Revisor of Statutes
Ms. Dorothy Noblitt, Office of the Revisor of Statutes

Conferees appearing before the Committee:

Others attending:
See attached list.

Continued overview of the Kansas Bioscience Authority

Upon calling the meeting to order, Chairperson Wagle said that they have had several meetings asking questions of the KBA. Yesterday we sent each Committee member a packet from the KBA with some answers to some recent questions. We have had some discussion in this Committee about a Post Audit and about the possibility of a forensic audit and the first document before them is a Scope Statement that we will get to later. She said she has found some information that alarms her and would like to walk the Committee through some documents she has brought here today.

1.) The first document is 76-99b02, the law when we enacted the Bioscience Authority. (5) describes it's mission, which "is to make Kansas the most desirable state in which to conduct, facilitate, support, fund and perform bioscience research development and commercialization, to make Kansas a national leader in bioscience, to create new jobs, foster economic growth, advance scientific knowledge and improve the quality of life for the citizens of the state of Kansas." Regarding (6), she said at the time it was the legislatures desire to give tremendous freedom to the Bioscience Authority and make it independent of scrutiny from the legislature in order to grow Kansas jobs.

2.) The second are two bios, the first is Mr. Thornton's bio from the Bioscience Authority's website. He earned a bachelor degree at the University of Wisconsin. His second bio shows he earned a double major in Political Science and History and he worked for the former Speaker of the House, Representative Dennis Hassert as mentioned in the last meeting, and certainly that opened doors for the KBA as we were trying to acquire NBAF. She is discerned, and this is not validated, Mr. Thornton took a job with former Representative Hassert upon graduating from college and before Mr. Hassert was Speaker of the House.

3.) The third is a document she just pulled off the internet, showing a number of business interests that Mr. Thornton has been involved with in the State of Illinois before he came to Kansas. Referring to the second page of this document, she said you will see he has been in a managing position for divine inter Ventures, Inc. so, he certainly has a tremendous background from the state of Illinois with a number of companies.

4.) The next document is from the state of Illinois, dated November, 2010 and is the appointment of the Governor to the Illinois Science and Technology Committee, which was formed to create jobs in the state of Illinois. Referring to the second page of the report, it lists Mr. Thornton's name. The Chair said that she has asked her Research staff to call the state of Illinois to verify that he is still sitting on the Committee, but we have not been able to discern that. This November, 2010 date apparently is the appointment process in Illinois and does not have that ending date you are appointed.

5.) The next document you can find on the Illinois Board of Elections and is a PAC showing Mr. Thornton as Chairman to promote technology in the state of Illinois. I do not know how active this PAC is. It appears to be a current PAC.

6.) Because she did not have access to the bankruptcy documents that are public in the system, she has asked a bankruptcy attorney about the document she handed out earlier stating that Mr. Thornton was involved with the divine interVentures and she asked someone to look at the chain of bankruptcy documents of that company from Illinois and how it is working its way through the system. This document has a number of places where the public can go to learn about this bankruptcy for example, Business Weekly, but it does not have all of the official filings for the court. You will find though, on page 3 of the document referred to in #3, it reads "Tom's direction of the company resulted in a loss of $421M in less than 18 months which resulted in the chapter 11 filing. You have to string together the pieces and "follow the money" but what you find is that Tom was deeply involved with both management companies," she guesses divine became Enivid which is devine spelled backwards, "and now according to the Massachusetts court Bankruptcy Court in Massachusetts considered the Enivid bankruptcy a deepening insolvency which equates to fraudulent prolongation of a corporation's like beyond insolvency." A deepening insolvency is where someone went out and asked for more money to be invested in the company knowing that company was not going to succeed and was going to go through bankruptcy. She understands there is a current investigation at the SEC that is yet to be determined.

7.) However, she would like to point out the LexisNexis document which is one of the bankruptcy documents that have been filed. On the front page is the name Jude Sullivan who is also named in this Enivid bankruptcy. She referred the Committee to page 14, left hand column, the second paragraph, which she thinks Mr. Sullivan was asking to be released from his involvement in this deepening insolvency. It reads, "Although Sullivan is mentioned less frequently than the other Defendants in the Complaint; the Plaintiff has adequately alleged that Sullivan was privy to the same negative information possessed by the other Defendants which should have caused him, as general counsel to the Company, to advise the Board of the re-class course the Company was pursuing. Days before the completion of the RoweCom transaction, Sullivan sent a detailed e-mail to the other Defendants and members of management which highlighted and predicted all of the problems the acquisition of RoweCom would create for Divine. Yet he remained silent at a Board meeting the following day at which the acquisition was approved. Likewise, he had information about the faulty financial projections which, in a statement attributed to Sullivan by the Plaintiff, were dictated by Filipowski over the objections of Humenasky and other officers to secure the desired Board vote..." Id. at P90. Sullivan's position is further compromised by the fact that he was not merely silent while in the possession of material negative information, but he allegedly led the efforts to create a business judgment defense while aware of that information. *See* Id. At P200. Although there are fewer references to Sullivan than the other Defendants in the Complaint, the overall theme is the same: that Filipowski so dominated the members of the inner circle that each failed to exercise his business judgment before the Board by keeping their misgivings secret."

8.) The next two documents are about Mr. Sullivan. The first is his web page showing he works for K&L Gates. The second sheet is one of the pages of the handout the Committee was given in their March 4, 2011 Committee meeting. She wanted to point out that K&L Gates has been paid to advise the KBA, $42,257 in 2010 and $11,482 as of 1-31-11. And in communications she has had with employees at the KBA, there are numerous conferénce calls with Jude Sullivan.

9.) The next two documents show where Mr. Thornton is a paid Director for an Illinois company called Advanced Life Sciences. He sits on the audit and nominating committees. She did not bring his payroll, but that is available. The Chair stated her concern, and the Committee is probably wondering, is this a conflict of interest for Kansas when we are trying to grow jobs in Kansas? She went on to say, this is a new document off of the Securities & Exchange Commission website because this company, where Mr. Thornton currently sits and is being paid, is going into default. They have had a reverse 3-to-1stock split. As far as she knows, she is not verifying that, because Mr. Thornton is not here. He is still the Director of this company.

10.) The next concern she would like to bring before the Committee's attention, and knows some of you have been going through books and have concerns to, was the Cydex grant from the KBA of $195.2K in 2009. The former President of Cydex is Mr. Theron Odlaug, who serves with Mr. Thornton on the Board of Directors at Advanced Life Sciences Holdings, Inc. The Chair said she cannot find the meeting minutes where it was his conflict of interest he shared with the Board, yet this company received $195.2K.

11.) She is concerned about another conflict of interest as shown in the next two documents regarding Mr. Terry Osborn. The first document, which is a salary sheet given to the Committee at the February 21, 2011 Committee meeting, showed he served on the Heartland BioVentures staff. According to this sheet, his base salary is $150K and insurance compensation is $24K. She is hoping the Board can verify. As shown on the second document, Mr. Osborn also has two other full-time jobs. He is a resident of Illinois and sits on the Board of Directors of Advanced Life Sciences in Illinois. The Chair stated everything to her, appears not to be pro-Kansas and was hoping the Bioscience Authority would hire Kansans and grow jobs in Kansas.

12.) Of the next two documents, the first is from the website of the KBA, an article about the $50M that is committed to be invested. Not all of it is invested, because it does require matching funds but the venture capital investments to be committed of $50M of withholding tax, is taken from the Kansas taxpayers. She referred them to the bottom of page 1 and top of page 2, where it lists the companies that have had these pre-commitments for money and would like the Committee to take note that seven of these commitments are from outside of Kansas. Of special concern with her, is with one of these commitments which is with Midwest Venture Partners from Chicago. She would like to show the Committee their website and referring to the second document, she said she has talked to some bioscience professionals about this company and has been told there is no venture fund in this company. I am still trying to validate that and cannot validate without Mr. Thornton being here. Regarding Mr. Thornton and Mr. Thomas Churchwell's friendship, they used to meet every Monday for coffee, I have been told, and meet with bio-professionals in Chicago. Mr. Churchwell is a managing partner in this company.

She went on to say, she knows she has given the Committee a lot of information very quickly and it certainly concerns me. Everything we are looking at would need to be validated further, but what I have presented here should lead to more questions and further validation of exactly how monies are spent at the KBA.

14.) The next document is an article dated January 10, 2007 entitled, "New effort to boost startups." This came out and Mr. Thornton was the acting CEO, he took over in 2006. The article was from the Lawrence Journal World how KBA was going to start a new effort called Heartland BioEnterprise and is sure it is something we all supported because it was going to lend a helping hand to Kansas companies. Helping them raise capital, give them advice, and get their feet on the ground. That is what she understood the goal of this company was. She referred them to the second paragraph at the bottom of page one, which read, "The model comes from Cleveland BioEnterprise, which started six years ago and attracted less than $5M in venture capital during its first year. In 2006, working with a $3.3M operating budget – the programs' companies attracted $175M in venture capital." The last sentence on page one read, "We're talking about growing our own here." Mr. Thornton said.

She referred the Committee to page 2, saying she wanted to share with them an article from the Cleveland, Ohio newspaper dated February 4, 2007. It is an article about how Kansas was going to start the Heartland BioEnterprise, including:

A.) In the first column, paragraph 3, she read, "There will be no official connection between the two organizations, but both will benefit from the informal partnership, according to BioEnterprise president Baiju Shah." She said it explains the Ohio organization.

B.) Referring them to column 2, it says, "By contrast, the state of Kansas has just two venture capital funds, according to Mr. Tom Thornton, President and CEO of Kansas Bioscience Authority." "We have a lack of early-stage capital, Mr. Thornton said."

C.) "BioEnterprise," which the Chair understands is a company out of Ohio, "is receiving "a modest consulting fee" to advise officials in Kansas on how to set up their operation. She read, " Once Heartland BioEnterprise becomes active, the organizations plans to help each other find venture capital, technology, talent and information in their respective regions," Mr. Shah said."

D.) What concerns the Chair with Mr. Shah, she referred the Committee to column 3, paragraph 3 which reads, "Though Kansas is not yet brimming with venture capital, it is already a source of other resources.

For instance, through the Cleveland area is active in biopharmaceutical research, Kansas is a good source of pharmaceutical entrepreneurs who could help launch companies in Ohio, Mr. Shah said."

15.) The next document comes from yesterday's folder, page 3, number 5, at the bottom of the page, because it follows up on Mr. Shah. "The total paid to BioEnterprise was $200,000." The Chair wonders if this is a conflict of interest?

16.) This document she received from a business man in her community, who took a project to the KBA. What this individual person was concerned about is in the second paragraph. Reading, "During a recent meeting with members of the KBA's Heartland BioVentures, we were informed of certain "invitation only" programs that were not publicly available to all companies." The Chair said she thinks the Committee needs to ask questions about what is available for Kansas investors and if there are other programs and how they discern how they allocate monies to different Kansas companies.

17.) Regarding the third paragraph of an email she received regarding the KBA's investment in Novita Therapeutics, it has spun off two companies. One was a medical device which was Flow Forward and the other was an internet tax company and none of these details are available publicly. But this person is wondering if "spinning out companies so early could easily dilute the KBA investment. Also, one has to wonder, how the creation of an internet tax credit trading company fits within" the goal of growing bioscience companies in Kansas."

18.) The last handout are pictures on Facebook of a party and if you look at sheet two, it shows a $100 bill that was given out at the KBA staff holiday luncheon where we were charged $1,103. She referred the Committee to the third sheet that listed "Meeting and Travel Expenditures" from the KBA's February 21, 2011 booklet. She went on to say, they have had testimony about bonus checks and we are sitting here cutting our budget significantly. We are not overseeing how money is being spent at the KBA, not overseeing any conflict of interest. Some individuals who work there, brought me $100 bills that were at the tables. It had a new picture in the center of the bill. A picture of Tom Thornton was replacing Ben Franklin.

A copy of the above handouts are (Attachment 1) attached and incorporated into the Minutes as referenced. A copy of the KBA's responses referred to in paragraph 1 on page 1 of today's Minutes, is (Attachment 2) attached and incorporated into the Minutes as referenced, with the exception of the KBA, Revised CEO Compensation Analysis dated May 10, 2010, marked CONFIDENTIAL – draft for discussion, which can be found in Senator Wagle's office.

The Chair said she wanted to give the KBA a chance, I know that the Committee has just been given these documents and I know that the KBA can't respond to this and I will give them that chance to talk.

She recognized Senator Masterson who had some questions off of the original answers to our questions, including, there were a few companies who took KBA investment that appears no longer to be in the state of Kansas, what checks do you have in place to get the money back? He said the first one was ANOxA and there was a commitment to them for $300K. They paid back $120K, that still leaves $180K out there. We were getting seven new employees relocating to Kansas, $6M in equity financing and the answer to the question that arose was, what was the current operating status of the investment? The answer that came back was ANOxA out-licensed its technology, its U.S. sales and marketing is located in Overland Park, Kansas and the product is in a development phase, awaiting approval of clinical trial plans by the FDA. He went on to say he went to the Kansas Secretary of State website and did a search on ANOxA and according to them they don't even have a copy of their license in Kansas back in August of 2009 and it had a mailing address in Reno. The only thing he could find to tie to Kansas, is an attorney listed as resident agent residing in Leawood. So what was the current status of the money that was spent or committed, the status of that particular company right now, is it Overland Park, Kansas or Reno, Nevada, or forfeit? (Governor Carlin said David Vranicar and Jan Katterhenry are here today and said there are a lot of things they can respond to today and would suggest from a format point of view, if this could have been distributed a little bit in advance, we might have been able to answer some more questions. Jan Katterhenry said she can tell the Committee, they currently have ANOxA under review. We are trying to get more information. We did send out the license. Her understanding was they did have an employee working at this company in Overland Park. She called on Mr. David Vranicar, who introduced himself, saying he was the President of Heartland Bioscience, and this company is not the company that is based in Overland Park. They licensed their technology to a company called Becker and Becker Products.) But ANOxA received the KBA funds. (Ms. Katterhenry said we are currently in the process of attempting to obtain new information from ANOxA as to their exact status, particularly given the fact that they have not licensed their technology. Do you have the ability within your agreements to recover that money? (If a company moves away from the state of Kansas within 10 years of funding, KBA may require the funding that KBA has provided, be returned to the KBA.) One of the companies that jumped out at me was Cydex.

They got $195K and they were bought out by Ligand in California. If you have a company that is bought out, there is this receipt of cash.

Are there any parameters that allow for that? And also, be recovered if you have a large company? (Mr. Vranicar said, it would apply in the same way. But in this case Cydex is not moving and ownership is changing so they will be owned by a much larger pharmaceutical company in San Diego. But Cydex, the operation, and business remain here.) Also, ANOxA appears to have moved to Nebraska? (ANOxA is one that was, for all intensive purposes, a business failure. It was a start-up company that had an interesting technology they were pursuing and in the end, the business model did not work successfully. So they reorganized the company, essentially they dissolved the company in Kansas and reorganized the company with new investors in Omaha. The KBA as an earlier investor, was given an opportunity to invest more money into the company as part of the reorganization but chose not to. So KBA no longer has an interest in this company.) So that was just a loss for us? (That's correct.)

The Chair asked Governor Carlin, I don't know if you know about any of these situations with Mr. Jude Sullivan or Mid-West Venture Partners, do you know about the $5M investment? (Mr. Vranicar answered this. He said the KBA made an initial commitment to Mid-West Venture Partners as well as with seven other firms. And there were a number of requirements which KBA specified in their response that we provided to you, that defined the terms under which they had to meet before KBA would invest. He referred the Committee to page 4, number 7 of the response to the questions sheet of the March 17, 2011 meeting. In the case of Mid-West Venture Partners, they did not successfully raise funding for their investment fund and so the KBA has not made any investment into that fund.) What information did they give you that would make you think that they even would grow Kansas jobs? If there was no venture capital fund existing, why did they tell your Board this is such a great deal for Kansas and we are going to give them $5M when they get their matching funds? (The challenge in Kansas was lack of capital. So the KBA had a strong desire to increase the amount of venture capital that would be available for merging companies in Kansas. One of the requirements in the terms, was that the firm had to set up an operation in Kansas. And the reason there is only one firm on there that was in Kansas is because there are no other bioscience firms in the state of Kansas, so there could not be any others that we invested in that were already here. KBA engaged in an outside consultant with particular expertise in the evaluation of venture firms, to have an external review for their Board of all the firms that applied, and out of that came the eight to which they made commitments. The expectations were, we hoped, they would be successful after KBA's conditional commitment to them and help them become successful. However, at that time it was a significantly bad time for venture.capital firms to be raising money in the micro environment.) Who was the firm that KBA hired? (Ennis Knupp and it is now called Hewitt Ennis Knupp.)

The Chair said if we are overseeing funds here, is that money being invested, bringing back an adequate return and truly growing jobs in Kansas? (The strategy of this venture fund, approved with the KBA, was not to create jobs. Venture companies do not hire lots of people, but it would bring capital to invest in emerging bioscience companies in the state of Kansas who in turn, over time, create capital investment to attract other equity dollars. He went on to give some history of MPM, including starting a new animal health company in Kansas that has attracted commitments of $20M in equity funding.) Do you have statistics on how many other venture capital investments have succeeded? (Don't know off the top of his head. We can look that up for you.) Would like statistics on both the companies and the firms. (On the firms, there will be out of 10 investments, several that will fail or succeed, one or more will return tremendous return through acquisitions, public offerings, etc. and in between you have several modest ventures. Venture capital usually succeeds on the big hits. He does not know the statistics specifically. We can get some more here and distribute.) That would probably be very important to the Committee.

The Chair recognized Senator Lynn who asked what is the time frame once the investment is made for that to translate, when do we see results? (Generally, venture firms are set up to be10 year terms, 10 year horizons and typically from the time they are taking their money with capital to invest, they will invest most of their money in the first portion of their life cycle of 10 years. Maybe into the third year, there will be new investments. Typically, they hold money in reserve for follow-up investments, and they may do some new investments to deals they had done earlier in the years 4, 5, 6, may be even 7. Then in the final years, maybe 6 or 7 through 10, they are in the harvest mode where they are trying to cut their investments, exit in some way so they get their cash back. Investors hold limited partnership interest in those funds and so the investors earn their returns as the fund generates its cash flow. KBA had already received proceeds from a sale, our pro rate share of our investment in that fund.) What was the amount of the proceeds? (I don't remember, it was significant on the basis of how much money we had in.) Regarding Innovia, that was discussed earlier, a $650K equity investment that KS Inc. did a review on. Yet in the packet you gave us on February 21, 2011, Innovia was not listed as a delinquent company but there was information in this report that in the jobs traced back, there was$3.1M they were getting back in equity. Now that they are in Omaha, what happened to the $3.1M? (Ms. Katterhenry answered, we no longer show any outcomes so when the jobs decrease, we take the jobs off.) So did we loose on that deal? ($650K.) So the $3.1M was based on the equity back? (Mr. Vranicar wanted to know when was that one invested because, he would like to look that one up and maybe be able to clarify this for you. Do you know a date? (Ms. Katterhenry said it was in July, 2007.) Senator Lynn said she thinks the Committee would like some clarification on what happened with Innovia. (Ms. Katterhenry said the bank basically called in the note for $200K and so a company was found in Nebraska and purchased the note from the bank for that amount, the bank would not foreclose on Innovia.)

The Chair recognized Senator Steineger who said his foundation of concern is based on:

1.) KPERS investments, the net loss was $194M

2.) The DOT com bust in the stock market, people can be fooled by hype.

3.) The past months, he has read over court documents, bank documents etc. and the case has had publicity. There has been an amazing number of individuals from Kansas City all the way back to Chicago who are supplying a lot of information regarding Tom Thornton about his background and history that is proven factual and documented. He compared the article on Ms. Karen Plentz from the Kansas City Star and saying the two were eerily similar There are a lot of problems with this agency including discrepancies between KBA's booklets versus the audit and financial statements provided by Allen, Gibb & Hewitt.

(Governor Carlin said he feels compelled to respond at this point because what the Senator just said represents some of your concerns and in thinking, we need to get to the bottom of this and quickly. First of all, when you present this to us as we arrived, it is rather difficult for us to respond and answer your questions. It is a lot easier for Senator Steineger to walk out of here and have a press conference and make all these charges when we haven't had a chance to respond. It is very unfortunate we have gotten into this pattern, but we will do the best we can. We want charge by charge to be raised here now, so we can respond in terms of what we can today. You talk about Ms. Lynch, it is a personnel matter. We regret having to get into it but, you are on the wrong side of that, let me tell you. If she is one of your credible sources, you are making a mistake. I would also say, and respectfully request, I have been the Chair for a while and you nor any member of the Committee has ever come to me and said, we need to sit down and talk, we have got concerns. Why weren't we as a Board contacted? The Board has and continues to be actively involved. We stand behind what we have done. We understand that when you make investments, some don't work out. But the genius of your 2004 legislation, gave us huge opportunities and we are about to blow that by raising questions, if legitimate, that should be handled appropriately, not in a public setting where the desire is a press conference after this is over. We welcome the opportunity to discuss anything you have found. If there are concerns and legitimate ones, let us handle it professionally. We can meet in private. A lot of this involves personnel and client privilege we can't talk openly about some of these companies. We are not concerned about anything you have shared.) The Chair thanked him for his statement saying, her only concern is that they are the only taxpayer funded entity that is not brought under the scrutiny of the Ways and Means Committee on how the money is being spent and that's highly unusual. The crafters of this Legislation didn't want to tie your hands and wanted to give the Authority the ability to invest and grow jobs in Kansas. What she laid out today are concerns she has about conflict of interest. Why can't we hire law firms in Kansas instead of K&L Gates in Chicago? (All the firms in Kansas had conflicts. We had to get somebody who was outside, who could advise us who did not have a specific conflict.) And so you chose Mr. Thornton's partner at Enivid? (We made that decision because it was a sound recommendation supported by consultants we had hired to advise us.) And who is that? (Ms. Katterhenry said it is not our legal counsel.) How was K&L hired, was that through your consultant or was that a suggestion through Tom Thornton? (Ms. Katterhenry said that was a suggestion. Governor

Carlin said it would be kind of surprising if the CEO we hired, didn't occasionally have suggestions for us on how to proceed.) He brought in a guy from Ohio whose job is to grow jobs in Ohio. (Who is the guy he brought in from Ohio to grow jobs in Ohio?) Mr. Shah, which you have shown here today received $200K. (To grow jobs in Ohio?) But consult for Kansas, and what if he takes our information back to Ohio? (Well, may I respectfully share with you, all of this is relatively new for Kansas. The whole venture capital area, we were basically zero. We had never done anything sophisticated in terms of really growing the economy until you wisely created this legislation. So it was all new, and for us to say we were not going to talk to anybody across the country or partner with anybody across the country, we are only going to use Kansas talent, would be a rather guaranteed set of steps to fail. We didn't have the experience or talent here and let me tell you, when it comes to venture capital, in a lot of these projects, collaborating and working with others, is one of the keys for us to succeed.) The Chair said she has no problem with you working with professionals, what I do have is a problem making sure every dollar isn't spent wisely in trying to grow Kansas. (Let me go back a little while ago when you talked about this was the only entity that was not under annual appropriations or this Committee. That was the way it was designed. That's one of the reasons it is so successful or potentially great and why other states are looking at it as a model. It was set up to minimize politics and to have stability so that we couldn't make multimillion dollars a year commitments.) How are we minimizing politics when we have your top CEO, who has a degree in political science and history, taking taxpayer money, making about $450K a year, and hiring companies to tell him what they should make, going to Christmas parties at the taxpayer's dollar, giving out bonus checks and $100 bill with his picture on it. (Well, I wasn't at that party. Ms. Katterhenry said those were not bonus checks, it was a joke. Governor Carlin said that's a joke or I assume it was a joke.) Well, it was a joke on the taxpayers of Kansas. (Well.)

The Chair recognized Senator Steineger who said he regrets that they only got this information today. We only got it last night. He would say, there were several times the KBA showed up and gave us a big packet of stuff at the beginning of the Committee meeting. He then said he would give him some questions and please answer or bring the answers.

1.) He would like to know about the Enlaped investment and Michael Beckloff. He would like to know about Tom and Michael's relationship. They both served on the Board of the Enterprise Center of Johnson County and was this disclosed per KDA rules?

2.) He would like to know a little more about Cydex and Theron Odlaug. He and Tom serve on a Board of Advanced Sciences holdings back in Illinois, one of the companies that went bankrupt and Mr. Odlaug received a grant from KBA for Cydex. Was that relationship disclosed to the Board, did the Board know about that?

3.) He would like to know more about the Enivid case and Tom claims to have worked for this company for several years. He claims in his bio that was on line, that he managed a $120M investment portfolio.

This is the company that has gone bankrupt. It is also the company where he and Judy Sullivan apparently did business together. It is U.S. Bankruptcy court for the District of Massachusetts, case #03-11472. The Chair said she wonders if they should write the questions down. Governor Carlin said if you could submit them in writing we will respond. Senator Steineger said we will.

4.) He would also like to know about Terry Osborn who served on the same Board as Mr. Odlaug and Mr. Thornton and now, or did work for the KBA and apparently lives in Chicago. I am not sure if he is still working there or not.

5.) To Ms. Katterhenry, would like to know about case #08-2344 involving Epic systems. If you are the same Jan Katterhenry that was involved in that case, that involved illegally altering stocks and certificates and back dated them, settled out of court, SEC. The Chair said they would write the questions down and asked what does the Governor think of that idea? (Very definitely with a list like that, we will need the list and we will have to go back and respond.)

The Chair recognized Senator Longbine who said he is a little uncomfortable about the way we have been progressing. This is our third meeting and in each, we have had accusations, innuendos of impropriety done at KBA. But we have not had one person step up to the microphone and make those accusations. I don't know if they are unavailable, unwilling or they do not exist. If there are accusations or concerns, I would request that they stand at the microphone and make those accusations so the Committee can act upon them. But this hearsay back and forth, I am really uncomfortable with. So is it possible to have those that are accusing the bioscience of misdoing, to stand at the microphone and make those accusations?

The Chair said, she is willing to share at this time, she has talked to a number of individuals who work at the KBA and I have told them that when they share with her the information, all of which I have not shared here today, that they would receive by statute, whistle-blower protection and they cannot be fired and of course everyone of them is worried about being fired. And of course, when they sit down at lunches with Mr. Thornton and his new wife and talk about doing a recall with Susan Wagle and Susan is going to lose her job too. I don't think your employees should be called into meetings, asked to say things unwillingly, and be put under pressure to think that they are going to lose their job if they talk to a legislator. We have a very clear whistle-blower statute that covers agencies and authorities. (Governor Carlin said he simply requests, as Chairman of the Board, that he have a little bit of communication from you so I know what I need to address.)

The Chair said she would like to start with the communication of hiring of people from Chicago. (Are you talking about Terry Osborn?) Terry Osborn, Jude Sullivan, I am very concerned and one reason I held this meeting today is because our post audit committee is meeting on the 24th and if we want them to do a forensic audit, we have to take to them the question and have the post audit committee authorize that a forensic audit is done at the KBA. And this Committee has to vote on that and take the question before post audit then we will have a forensic post audit done at the KBA. (And why the forensic audit?) To look at how money is being spent there, to see if it meets number five's goal, which is growing jobs in Kansas. (And the audit that was done by Kansas Inc. didn't follow that pattern?) That was done a few years ago. (They didn't do a forensic audit, they did a program audit.) Right and you have some Allen, Gibbs and Houlik's audits in here that don't reflect the numbers you are giving us in your books. I can't tract your money. (So you are accusing a certified audit firm out of Wichita, that they are not doing their job?) I don't want to accuse anybody. I think this is taxpayer money. (We have had a clean bill of health from them for several years.)

The Chair said the only reason we are here is to see if money is being spent wisely. Let me explain this further. We have a bill in my Committee which reorganizes KTECH and moves it under the Department of Commerce where they have oversight of taxpayer dollars and this Committee has to decide before we adjourn this session, if we want the KBA to continue as an independent authority that has no legislative oversight or whether or not we want them to have financial oversight of the legislature and that bill has not been worked yet. (Governor Carlin – I just hope if you proceed in that direction, you understand the risk, because the benefits of what you did in 2004 will be lost. We won't have the private sector involvement. We won't be able to do projects like NBAF and we will probably lose NBAF.) NBAF is federal money and there is no money in KBA for NBAF. (That is correct. We are involved, yes. But for you to blamely say we are not going to, regardless of what we do in Kansas, is very unrealistic and scarey.) I don't know what grounds you have in saying that. (We communicate and work with the folks back there and there is real concern. They follow the activities of this Committee and they were willing to do the project because there was some stability, some continuity that would go through the time frame of building that facility.) And what we want as an oversight agency of all funds spent, is to make sure that NBAF is successful and if we have someone at the helm who has a history of taking money, (We will check into all of those specifics.) then we have a problem. (I am just saying, as long as we deal with our differences in a very public manner on personnel issues as well as dealing with companies that have protections that are built in, we are running a real risk of damaging the progress we have made. That is all I am respectively asking.) So let's make an agreement. Let' have a meeting on the first day of veto. I won't throw anything out and you can respond to questions. (We request the questions in advance so we will have the right people with the right answers, specifically to give you what your are asking.) We are concerned about the $5M venture capital commitment, how that was approved to the company in Illinois, and the individual who worked with Mr. Thornton. (Again, why don't you put those specifically in writing so there is no miscommunication, so as not to be dependent on my memory to what we are to come back with.) We are going to do that. Senator Merrick offered the same. The Chair said they would give their questions to Mr. Reed Holwegner, Kansas Legislative Research Department, and he will forward them to the agency, since the legislature won't be here for three weeks and we will get the questions answered when they come back.

The minutes of the Senate Commerce Committee at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

Adjournment

As the Senate Judiciary Committee was getting ready to meet, the meeting was adjourned. The time was 9:30 a.m.

The next meeting is scheduled for April 28, 2001.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: april 1 2011
Friday

NAME	REPRESENTING
Bryan Denton	N/A
Dion Lefler	Eagle
Scott Rothschild	Lawrence Journal-World
[illegible]	United Healthgroup
Bruce Witt	Via Christi Health
Leigh Keck	Capitol Strategies
Eric Benedict	Intern to Sen. Wagle

58 in att.
room full

74-99b02. Findings and declarations; exercise of powers permitted by act deemed essential governmental function. (a) The legislature of the state of Kansas hereby finds and declares that:

(1) Biosciences develop uses of biochemistry, molecular biology, genetics, biotechnology, bioengineering and life sciences to promote and enhance health care, veterinary medicine, agriculture, forestry, energy, pharmacy, environment and other industries in the state of Kansas;

(2) high-paying jobs and innovative commercial products ensue from the biosciences, which requires an educated workforce with advanced technical skills;

(3) the universities, colleges, nonprofit institutions and private enterprises in the state of Kansas will be able to further educate and train scientists, health care professionals and technicians to provide a supportive environment for bioscience research, development, testing and product commercialization activities through increased targeted investments;

(4) manufacturing, licensing and commercialization of products derived from the biosciences will benefit the state's economy and will facilitate the development of the bioscience industry and associated educational institutions in the state of Kansas;

(5) the mission of the Kansas bioscience authority is to make Kansas the most desirable state in which to conduct, facilitate, support, fund and perform bioscience research, development and commercialization, to make Kansas a national leader in bioscience, to create new jobs, foster economic growth, advance scientific knowledge and improve the quality of life for the citizens of the state of Kansas;

(6) the needs of the citizens of the state of Kansas and the public and private entities engaged in the biosciences will be best served by an independent public authority charged with the mission of facilitating, supporting, funding and performing bioscience projects for the benefit of its citizens to promote the state's research, development and commercialization objectives.

(b) The exercise of the powers permitted by this act are deemed to be an essential governmental function in matters of public necessity in the provision of bioscience, education, research, development and commercialization.

Senate Commerce Committee
Date: April 1, 2011
Attachment 1

KANSAS BIOSCIENCE AUTHORITY

Home | About the KBA | Programs | Heartland Bioventures | Projects Funded | Outcomes | Expertise | News | Contact Us

SEARCH [ ] Go

- KBA Leadership
- KBA Staff
- Governance
- FAQ
- Contact Us

Tom Thornton
President and Chief Executive Officer
Kansas Bioscience Authority

In November of 2006, Tom Thornton became the first president and chief executive officer of the Kansas Bioscience Authority (KBA), where he leads the effort to stimulate growth in bioscience research and business in Kansas through the investment of approximately $580 million generated by the Kansas Economic Growth Act.

Mr. Thornton previously served as president and chief executive officer of the Illinois Technology Development Alliance, establishing it as one of the most respected technology development organizations in the country. He was the senior vice president for Convergent Technology Group, a Seattle-based mergers and acquisitions advisory services firm, and managing partner for divine interVentures, an early-stage venture investment fund. Early in his career, Mr. Thornton served as director of policy for U.S. Rep. J. Dennis Hastert, former speaker of the U.S. House of Representatives.

Mr. Thornton earned his bachelor's degree from the University of Wisconsin at Madison.

"There is no imagining the state now without the Kansas Economic Growth Act and resulting Kansas Bioscience Authority."

- Wichita Eagle

1.2

Thomas Thornton

President of Kansas Bioscience Authority

Summary

Tom Thornton is a recognized leader in the development of public/private technology development initiatives. He has developed and led two of the most respected public/private technology development organizations in the United States. He is a leading figure in innovation policy and a frequent speaker on topics related to technology enterprise growth, technology entrepreneurship and science and technology policy issues.

Experience

President and CEO at Kansas Bioscience Authority
October 2006 - Present (4 years 6 months)

Tom Thornton is the first President and CEO of the Kansas Bioscience Authority (KBA), the largest bioscience development program in the nation. The Kansas Bioscience Authority is a $581-million investment fund created by the Kansas Economic Growth Act of 2004 to expand the state's world-class research capacity and bioscience clusters; stimulate the formation and growth of bioscience startups; and facilitate bioscience business expansion and attraction.

Tom has served as the KBA's President and CEO since October 2006. Since then, Kansas has been named as one of the top five bioscience economies by Business Facilities Magazine.

KBA investments through June 2010 have helped generate 1,195 new jobs; $212.6 million in capital expenditures; $86.6 million in new research funding; and $48.3 million in equity investments. Including estimated wages of jobs, that represents a $9.41 return to the state's economy for each $1 invested by the KBA.

1 recommendation available upon request

Director at Advanced Life Sciences
2003 - 2010 (7 years)

President at Illinois Technology Development Alliance
January 2005 - October 2006 (1 year 10 months)

Mr. Thornton led the Illinois Technology Development Alliance, one of the most respected technology development organizations in the nation. The ITDA provides strategic consulting services and seed capital to emerging technology ventures to better position them for dynamic growth.

President at The Illinois Coalition
March 2001 - December 2004 (3 years 10 months)

Mr. Thornton led the Illinois Coalition's Venture Development Group (VDG), one of the most respected technology development organizations in the nation. The VDG provides startup assistance services to seed-stage technology ventures with a goal of better positioning them for growth and preparing them to seek private investment.
1 recommendation available upon request

Senior Vice President at Convergent Technology Group
July 2001 - March 2002 (9 months)

Mr. Thornton led Seattle-based Convergent Technology Group's merger and acquisition and investment banking advisory services in the greater Midwest. Convergent provides strategic financial advisory services to technology companies worldwide.

Managing Partner at divine interVentures
October 1999 - May 2001 (1 year 8 months)

Mr. Thornton led divine#s business-to-business e-commerce investment team, managing $120 million in investments in 15 portfolio companies. Chicago-based divine was a publicly held operating company that partnered with entrepreneurs and brick-and-mortar businesses to build market leaders in business-to-business e-commerce, Internet infrastructure and Internet-related business services.
1 recommendation available upon request

Education

University of Wisconsin - Madison
BA, Political Science and History, 1983 - 1987
Activities and Societies: Double Major in Political Science and History; Honors program for both; Varsity rower and member of the 1987 national team.

Honors and Awards

Crain's Chicago Business recognized Tom as one of Illinois' top 100 most influential leaders in technology nine times since 1997, and as one of the state's top 40 business leaders under 40 years of age in 1998. Tom has served as science and technology advisor to four governors, and served on Mayor Richard Daley's council of technology advisors. KansasBIO recognized Tom as one of its Big Thinkers in 2007.

1.4

Thomas Thornton

President of Kansas Bioscience Authority

Linked in.

3 people have recommended Thomas

"I worked with Tom at Advanced Life Sciences when he was Chairman of the Nominating & Corporate Governance Committee. Tom is a very professional manager and was very well organized as he lead this important committee. He has extensive experience in the biotechnology field and is an excellent person to work with."

— **Richard Wieland**, *EVP & CFO, Advanced Life Sciences*, worked with Thomas at Kansas Bioscience Authority

"Tom's innovations in technology development, his passion for the industry, and his knowledge of entrepreneurship and financing have truly changed the landscape of technology development in Illinois. I personally learned a lot from Tom, and believe that Tom's knowledge and network are enormously valuable for early stage technology companies across the state."

— **Lynne B.**, *Director of Partner Development, The Illinois Coalition*, reported to Thomas at The Illinois Coalition

"I worked with Tom at divine interventures, which was an innovative and entrepreneurial private equity fund focused on early stage technology investments. divine was THE most exciting company to work for in Chicago, and Tom was one of THE people that made the entire culture of divine exciting. Tom is a high energy individual, who was "all in". Like many of us, Tom was completely committed and focused to the success of the both the firm, the early stage companies for which he was responsible, as well as all the people on his team. As the leader of the Agriculture & Food vertical, Tom's skill at building and motivating well respected individuals was unparalleled at divine. Everyone wanted to work on his team. He led his group with a great sense of vision and an exceptional ability to get things done. Tom is a true "force of nature." He is an amazing executive who knows how to meet/exceed the expectations from his superiors while motivating his troops to do the impossible. I appreciated working with him since he is also a fun guy with a great sense of humor. Bottom Line: Tom will generate results, and will do so with professionalism, with great intelligence, with commitment, and with grace."

— **Richard P.**, *VP Partner Development, divine interventures Inc.*, worked indirectly for Thomas at divine interVentures

1-5

On December 20, 2004, Enivid Inc. went out of business as per its Chapter 11 liquidation filing under bankruptcy. Enivid, Inc. operates as a service and software company that focuses on extended enterprise solutions. It offers services for systems integration, brand extension, call center automation, business process optimization, operational strategy consulting, SAP installation, supply chain and customer management, and technology infrastructure consulting. The company also deploys software solutions that focus on collaboration, workflow, and relationship and content management. In addition, it builds, hosts, manages, monitors, and secures clients' applications by offering design and engineering of managed hosting solutions; installation, configuration, and testing of hardware and software systems; maintenance, back-ups, and upgrades; performance and security monitoring; and technical support. The company was co-founded in 1999 under the name **divine interVentures, inc.** by Andrew J. Filipowski, Paul L. Humenansky, and Michael P. Cullinane. **It later changed its name to divine, inc. in 2001 and to Enivid, Inc. in June 2004**.
http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=89541

Key developments for Enivid Inc.

SEC Revokes Registrations Of Securities Of Enivid

09/23/2010

An Administrative Law Judge has issued an Order Making Findings and Revoking Registrations by Default to Enivid Inc., Administrative Proceeding No. 3-14005. The Order Instituting Proceedings (OIP) alleged that company failed repeatedly to file required annual and quarterly reports while the securities were registered with the Securities and Exchange Commission (SEC). The Default Order finds the allegations of the OIP to be true as to company. It revokes the registrations of each class of registered securities of company, pursuant to Section 12(j) of the Securities Exchange Act of 1934.

SEC Orders Hearing On Registration Suspension Or Revocation Against Enivid

08/12/2010

In conjunction with August 12, 2010 trading suspension, the Securities and Exchange Commission (SEC) also instituted public administrative proceeding to determine whether to revoke or suspend for a period not exceeding twelve months the registration of each class of the securities of Enivid Inc. for failure to make required periodic filings with the Commission. In this Order, the Division of Enforcement (Division) alleges that the Company is delinquent in its required periodic filings with the Commission. In this proceeding, instituted pursuant to Exchange Act Section 12(j), a hearing will be scheduled before an Administrative Law Judge. At the hearing, the judge will hear evidence from the Division and the Company to determine whether the allegations of the Division contained in the Order, which the Division alleges constitute failures to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 there under, are true. The judge in the proceeding will then determine whether the registration pursuant to Exchange Act Section 12 of each class of the securities of the Company should be revoked or suspended for a period not exceeding twelve months. The Commission ordered that the Administrative Law Judge in this proceeding issue an initial decision not later than 120 days from the date of service of the order instituting proceeding.

http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=89541

From October 1999 to May 2001, Mr. Thornton was the Managing Partner for divine interVentures, Inc., a service and software company, and led seed- and early stage venture investing teams that managed over $120 million and contributed to divine interVenture's initial public offering.

Thomas Thornton, Managing Partner of divine interVentures, a private Chicago-based Internet incubator, presented an interesting perspective on e-commerce. Divine interVentures was based on the premise that technology growth requires new business models, and divine represents a truly unique model. While the firm is often referred to as a venture capital fund, it acts more like an operating company.

Divine interVentures uses several techniques to help launch new companies. First, it provides equity investment, and, more importantly, a host of other services. Echoing the remarks of other speakers, Thornton noted that money is not enough. Second, divine's investments are focused on a few key Internet-related sectors: infrastructure, business services, and business-to-business e-commerce. Overall, divine has funded 52 different companies working in these sectors, making divine interVentures the world's largest for-profit incubator. Third, divine provides a unique set of business services to its portfolio companies, ranging from Web design to real estate management, to accounting and other office services. In fact, many of these service organizations are divine-funded start-ups themselves. Finally, firms supported by divine can tap into strategic corporate partnerships with firms like Dell, HP, and Compaq, enabling the start-ups to serve as both customers and suppliers to these larger corporate partners.

While e-commerce businesses are driven by technology, this does not mean that business opportunities are limited to Silicon Valley and other high-technology centers. In fact, Thornton contended that regions across the country can prosper from this technological revolution. As more traditional industries embrace e-commerce, opportunities for firms based in rural America will grow. He pointed to farms.com as a prototypical example. Set up in 1995 outside of Memphis, Tennessee, farms.com is the nation's leading online provider of information on agricultural markets.

THOMAS V. THORNTON Managing Partner divine interVentures Thomas Thornton is managing partner of divine interVentures, a Chicago-based Internet company that works with entrepreneurs and brick-and-mortar businesses to build market leaders for the new economy. **Thornton manages Skyscraper Ventures**, a $100 million early-stage investment fund, for the company.

Mr. Thomas V. Thornton, Tom serves as the President of Enivid Inc. He is employed at Enivid Inc. He served as Managing partner with divine interVentures, a venture capital firm and an incubator for startup B2B Internet companies.
http://investing.businessweek.com/research/stocks/private/person.asp?personId=99924&privcapId=89541&previousCapId=22211581&previousTitle=ADVANCED%20LIFE%20SCIENCES%20HOLD

Tom's direction of the company resulted in a loss of $421 million in less than 18 months which resulted in the chapter 11 filing. You have to string together the pieces and "follow the money" but what you find is that Tom was deeply involved with both companies and now according to the Massachusetts court Bankruptcy Court in Massachusetts considered the Enivid bankruptcy a deeping insolvency which equates to "fraudulent prolongation of a corporation's life beyond insolvency."
http://www.abiworld.org/committees/newsletters/busreorg/vol6num1/BusReorg1.pdf. The bankruptcy has also been described as "It has also been described as "consciously and intentionally" disregarding the responsibilities of a director "by knowingly failing to make decisions critical to the company on an informed basis." See Boles v. Filipowski, 345 B.R. 426 (Bankr. D. Mass. 2006).

Expiration and Vacancy Report Governor's Appointments

November 2010

Illinois General Assembly
LRU
LEGISLATIVE RESEARCH UNIT

259 PS report

1-9

Illinois Science + Technology Committee

Appointed by: **Governor** Position: Public/unspecified number

Number of Positions: 61 Number of vacancies: 0

Appointee Name	*Appointed*	*Expires*
John C. Alexander	7/22/98	00/00/00
Richard C. Alkire	7/22/98	00/00/00
Jo Ann E. Argersinger	8/27/98	00/00/00
Joseph G. Asbury	12/18/97	00/00/00
Leonard A. Batterson	7/22/98	00/00/00
William Braun	12/18/97	00/00/00
J. Grant Brewen	12/18/97	00/00/00
David H. Cohen	12/18/97	00/00/00
Dean Jerome Cohen	12/18/97	00/00/00
John R. Conrad	12/18/97	00/00/00
Braha Mohan Das	12/18/97	00/00/00
Joseph M. Davie	12/18/97	00/00/00
E. A. Davis	12/18/97	00/00/00
Thomas A. DeFanti	12/18/97	00/00/00
G. Tanner Girard (D)	12/18/97	00/00/00
Kevin Greene	12/18/97	00/00/00
David L. Gross	12/18/97	00/00/00
John C. Guyon	12/18/97	00/00/00
Paul G. Heltne	7/22/98	00/00/00
Clyde Kimball	7/22/98	00/00/00
John Kirkwood	12/18/97	00/00/00
Irving Klotz	12/18/97	00/00/00
David J. Kuck	12/18/97	00/00/00
Dr. Leon M. Lederman	7/22/98	00/00/00
Dr. Morris W. Leighton	12/18/97	00/00/00
Dr. Judith Liebman	12/18/97	00/00/00
Dr. Franzie Loepp	12/18/97	00/00/00
Dr. Stephanie Pace Marshall	7/22/98	00/00/00
John A. Mathes	12/18/97	00/00/00
Clyde McCarter	7/22/98	00/00/00
John W. McCarter	7/22/98	00/00/00
Dr. Keith W. McHenry	12/18/97	00/00/00
Stephen C. Mitchell	7/22/98	00/00/00
John Moore	12/18/97	00/00/00
Hassan Najib	12/18/97	00/00/00
Lorin I. Nevling	12/18/97	00/00/00
Dr. Kenneth F. Packer	12/18/97	00/00/00
John Peoples	7/22/98	00/00/00
Dr. Mark Ratner	12/18/97	00/00/00
Dr. Charles Rhodes	12/18/97	00/00/00
Dr. Arthur H. Rubenstein	12/18/97	00/00/00
Sedat Sami	12/18/97	00/00/00
Dr. William R. Schowalter	12/18/97	00/00/00
Dr. Alan Schreisheim	12/18/97	00/00/00
Alan Schriesheim	7/22/98	00/00/00
Virginia Scott	12/18/97	00/00/00
Richard G. Semonin	12/18/97	00/00/00
Dr. James W. Sennot	12/18/97	00/00/00
Charles W. Shanley	7/22/98	00/00/00
Dr. Larry L. Smarr	7/22/98	00/00/00

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Appointee Name	*Appointed*	*Expires*
Judith Stockdale	12/18/97	00/00/00
Dr. James Stuckel	12/18/97	00/00/00
Dr. David Thomas	12/18/97	00/00/00
Judith Thornburg	12/18/97	00/00/00
Thomas Volney Thornton	7/22/98	00/00/00
Lydia Villa-Komaroff	7/22/98	00/00/00
Dr. Phillip Wagreich	12/28/97	00/00/00
Dr. Darsh T. Wasan	12/18/97	00/00/00
Karen A. Witter	7/22/98	00/00/00
Dr. Jerrold H. Zar	12/18/97	00/00/00
Robert J. Zimmer	7/22/98	00/00/00

1-11

Current Post

TECPROMOTE - IL State PAC

Purpose: Support technology, entrepreneurship and capital formation.

820 Lake Avenue
Wilmette, IL 60091

Final
State 7490
Local 9593
Committee ID 14886

Officers Previous Officers Candidates Propositions

Name	Title	Address
Thomas V Thornton	Chairman	618 W Waveland Ave Unit 3W Chicago, IL 60613

Return to Committee Search

PUBWEB3

1-12

In re ENIVID. INC., et al., Debtors. JAMES B. BOLES, LIQUIDATION TRUST REPRESENTATIVE OF THE LIQUIDATING TRUST OF ENIVID, INC., Plaintiff, v. ANDREW J. FILIPOWSKI, PAUL HUMENANSKY, MICHAEL CULLINANE AND JUDE SULLIVAN, Defendants.

Chapter 11, Case No. 03-11472-JNF, Adv. P. No. 04-1439-JNF

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MASSACHUSETTS

345 B.R. 426; *2006 Bankr. LEXIS 1315*; *46 Bankr. Ct. Dec. 202*

July 12, 2006, Decided

COUNSEL: [**1] For enivid, inc., fka Divine, Inc., et al, Debtor: Adrienne Kotowski Walker, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, Boston, MA; Charles Azano, Kevin J. Walsh, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Boston, MA; D. Mark McMillan, Bell, Boyd & Lloyd LLC, Chicago, IL; J. Douglas Bacon, Stephen R. Tetro, Latham & Watkins, Chicago, IL; Jack Simms, Baker And McKenzie, Chicago, IL; Jessica Locke Berry, Goodmans LLP, Toronto, ON; Kelley W. White, Casas Benjamin And White LLC, Skokie, IL;Richard E. Mikels, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, Boston, MA; Timothy Slavin, Mintz Levin, Boston, MA.

For Kevin A. Norris, Kevin A. Norris, Senior Attorney, ProQuest Information And Learning Co., Creditor Committee Chair: Michael D. Warner, Warner Stevens, L.L.P., Fort Worth, TX.

Keith Costa, Creditor Committee, Pro Se, Avnet Applied Computing, Phoenix, AZ.

Walter R. Crosby, Creditor Committee, Pro Se, Terabase Corp., Danvers, MA.

Frank J. Fields, Creditor Committee, Pro Se, Global Crossing Telecommunications, Pitsford, NY.

For Aleksander Szlam, Creditor Committee: Mark N. Berman, Nixon Peabody LLP, Boston, MA.

For Official Committee Of Unsecured [**2] Creditors, Creditor Committee: David T. Cohen, Lewis T. Stevens, Simon, Warner & Doby, L.L.P., Fort Worth, TX; Emily S. Chou, Warner Stevens, L.L.P., Fort Worth, TX; Jacob Aaron Esher, Lynne F. Riley, Altman Riley Esher LLP, Boston, MA; Michael D. Warner, Warner Stevens, L.L.P., Fort Worth, TX.

For James B. Boles, (Substituted for Stewart Grossman, Examiner), Liquidation Trust Representative enivid, inc., Liquidation Trust, Plaintiff: Michael D. Warner, Warner Stevens, L.L.P., Fort Worth, TX.

For Andrew J. Filipowski, Defendant: D. Ethan Jeffery, Hanify And King PC, Boston, MA.

For Paul Humenansky, Defendant: Joel G. Chefitz, Howrey Simon Arnold And White LLP, Chicago, IL.

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For Michael Cullinane, Defendant: Lawrence Wojcik, Samuel B. Isaacson, DLA Piper Rudnick Gray Cary US LLP, Chicago, IL.

For Jude Sullivan, Defendant: Francis Kelleher, Rachel S. Spooner, Sergio Campos, Goodwin Procter, LLP, Boston, MA.

JUDGES: Joan N. Feeney, United States Bankruptcy Judge.

OPINION BY: Joan N. Feeney

OPINION

[*433] **MEMORANDUM OF DECISION**

I. INTRODUCTION

The contested matters before the Court are the following: (1) "Defendant Andrew J. Filipowski's Motion to Dismiss Counts I, [**3] V-VII, and XII-XIV of the First Amended Complaint" through which defendant Andrew Filipowski ("Filipowski") seeks to dismiss, pursuant to *Fed. R. Civ. P. 12(b)(6)* and *9(b)* (the "Filipowski Motion to Dismiss"), Counts I, V through VII and XII through XIV of the First Amended Complaint (the "Complaint") filed by James B. Boles, the Liquidation Trust Representative (the "Plaintiff") of the Liquidation Trust dated December 20, 2004, established pursuant to the enivid, inc. [1] "Official Committee of Unsecured Creditors' Amended Plan of Liquidation Under Chapter 11 of the Bankruptcy Code dated September 30, 2004, as Modified November 23, 2004" (the "Plan"); (2) the "Motion to Dismiss Claims Against Defendant Paul Humenansky" through which defendant Paul Humenansky ("Humenansky") seeks to dismiss Counts II, V through VIII, and XIII through XV of the Complaint [2] (the "Humenansky Motion to Dismiss"); (3) "Michael P. Cullinane's Motion to Dismiss Plaintiff's First Amended Complaint" through which defendant Michael Cullinane ("Cullinane") seeks to dismiss Counts III, V through VIII and XII of the Complaint (the "Cullinane [**4] Motion to Dismiss"); and (4) "Defendant Jude Sullivan's Motion to Dismiss the Amended Complaint" through which defendant Jude Sullivan ("Sullivan") seeks dismissal of all Counts in the Complaint against him (the "Sullivan Motion to Dismiss") (collectively, the "Motions to Dismiss")(Filipowski, Humenansky, [*434] Cullinane and Sullivan, each a "Defendant" and, collectively, the "Defendants"). [3]

1 By order dated October 6, 2004, the Court substantively consolidated the Chapter 11 case of enivid, inc. (f/k/a divine, inc.) with the bankruptcy estates of the following related entities: Open Market, Inc., enivid Managed Services, Inc., enivid DR Corporation, Viant Corporation, eShare Communications, Inc., Delano Technology Corp., enivid technology ventures, iCentral, Inc., Inventions, Inc., enivid/emicom, Inc., SageMaker, Inc., Waypoint Software Corporation, Preceptual Robotics, Inc., enivid Global Services, Inc., eprise Corporation, Denalii, Inc., Melita Finance, Inc., SMI Holding Corp., Retrieval Technologies, Inc., enivid international, Inc., enivid software, inc., Opinionware.com, Inc., Melita Intellectual Property, Inc., smallwonders software!, inc., Open Market Securities Corporation, Futuretense Corporation, RWT Corporation, LOTN, Inc., Eprise Securities Corp., SageMaker (Europe), Inc., Global Recall, Inc., databites, inc., enivid interVentures, Inc., enivid Ireland, Inc., Folio Corporation, Venture Capital Unlimited Acquisition, enivid Synchrony Communications, Inc., Softmetric, Inc., Air enivid, Inc., and SM2 Holding Corp.

[**5]

2 Although Humenansky's Motion to Dismiss makes reference to Count XV, no basis is asserted in his memoranda for dismissal of that count.

3 Each Defendant in this Adversary Proceeding has filed a Motion to Dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)*, made applicable to this proceeding by *Fed. R. Bankr. P. 7012(b)*, for failure to state claims upon which relief may be granted and pursuant to *Fed. R. Civ. P. 9(b)*, made applicable to this proceeding by *Fed. R. Bankr. P. 7009*, for failure to plead fraud with sufficient particularity.

Each of the Defendants filed Memoranda of Law in support of their respective Motions to Dismiss [4] to which the Plaintiff filed responsive memoranda and each Defendant filed a reply brief. On November 14, 2005, the Court conducted a hearing after which it took the Motions to Dismiss under advisement. On December 22, 2005, the Defendants jointly filed a "Motion for Leave to Supplement Briefing on Defendants' Motion to [**6] Dismiss" (the "Motion to Supplement") through which they sought to supplement their arguments in view of the recent case of *Alberts v. Tuft (In re Greater Southeast Cmty. Hosp. Corp.), 333 B.R. 506 (Bankr. D. D.C. 2005)*. The Court allowed the Motion to Supplement on December 28, 2005. On January 9, 2006, the Plaintiff filed a response to the Motion to Supplement, and the Defendants filed a joint reply on January 19, 2006.

4 Defendants Humenansky, Cullinane and Sullivan each adopted and incorporated by reference

all of the applicable arguments in the Memoranda of Law filed by each of the other Defendants.

II. THE PLAINTIFF'S COMPLAINT

A. Background

The Court accepts the following facts alleged in the Complaint as true for purposes of this decision. *See Warth v. Seldin, 422 U.S. 490, 501, 95 S. Ct. 2197, 2206, 45 L. Ed. 2d 343 (1975)*. The following summary represents a statement of facts according to the Plaintiff and does not constitute findings [**7] or a determination of any facts.

enivid, inc., f/k/a divine, inc. ("Divine" or the "Company"), a Delaware corporation, was founded in 1999 by Filipowski as an internet-holding company, known as an "incubator" company, engaged in business-to-business e-commerce through a community of associated companies. Prior to establishing Divine, Filipowski was a founder of PLATINUM technology, inc. ("Platinum") which was ultimately sold in 1999 for $ 3.6 billion. Filipowski had worked with each of the Defendants in some capacity while at Platinum. Humenansky had served as Platinum's Chief Operations Officer and Cullinane had served as its Executive Vice President and Chief Financial Officer. Sullivan had been Platinum's outside counsel. While at Divine, the Defendants held the following offices and positions:

Name	Office	Director Status
Filipowski	Chief Executive Officer	Board Member from
	January 1, 2000 through May 23,	January 1, 2000 until
	2003	Effective Date of
		Confirmation of the Plan
Humenansky	President and Chief Operating Officer	Board Member from
	October 19, 2000 through May 23, 2003	January 1, 2000 until
		Effective Date of
		Confirmation of the Plan
Cullinane	Chief Financial Officer	Board Member from
	January 1, 2000 through May 23, 2003	January 1, 2000 until
		Effective Date of
		Confirmation of the Plan
Sullivan	Secretary and General Counsel	Sullivan was not a
	October 19, 2000 through	Director
	April 8, 2003	

[**8] [5] [6]

5 In addition to Filipowski, Humenansky and Cullinane, the Board of Directors (the "Board") consisted of members who are not defendants in this action. See Am. Compl. at PP 193-94. The number of directors who served on Divine's Board at any given time is unclear from the Complaint. The Plaintiff conceded at the November 14, 2005 hearing that he has not alleged that a majority of the Board breached their fiduciary duties. Rather, he represented that only "select individuals," namely Filipowski, Humenansky and Cullinane, breached their duties as Board members. Tr. at p. 81-82.

6 The employment termination date for each of Filipowski, Humenansky and Cullinane is subject to dispute.

[*435] As an incubator company, Divine promoted itself as providing management and other resources with the goal of taking companies in its portfolio public. Divine raised over $ 100 million in its initial public offering ("IPO") in July, 2000. In that year, Divine acquired interests in more than 50 associated companies (the "Associated [**9] Companies"). The initial public offering market was evaporating in 2000, however, and Divine's incubator business failed to produce a single IPO for any of the Associated Companies.

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Toward the end of 2000, many members of management believed that the incubator concept had failed and that Divine should pursue a new business strategy. In February 2001, Divine announced that it would acquire companies engaged in the "Enterprise Web Solutions" business and then integrate the acquired companies and their products and services into the portfolio of existing Divine products. Divine planned to reorganize and integrate the products and services of the Associated Companies into Divine's development, marketing, sales and support channels. This strategy presented significant operational and integrative challenges, in part, because the existing development, marketing, sales and support channels of Divine were in their beginning stages and also required significant development and integration efforts.

Divine actively implemented its new strategy in 2001 during which it acquired 20 companies, for which it expended almost $ 21 million in cash, issued more than 230 million shares of its common stock [**10] and assumed over $ 85 million in debt. Divine focused on acquiring financially distressed companies with operational concerns. A significant number of the acquired companies were in financial distress. While many of Divine's acquisitions helped to create the appearance of increased revenues, they failed to move Divine towards profitability. Through the first three quarters of 2001, Divine continued to incur operating losses and its cumulative operating losses for the first three quarters of 2001 totaled over $ 175 million. Filipowski was devoted to Divine's growth-by-acquisition strategy. Many members of management of the Company, however, questioned this business plan because of the costs, negative effect on cash flow and operational challenges associated with the acquisitions. Noting the problems facing the Company, members of management attempted to direct Filipowski's focus toward operations rather than acquisitions. With mounting financial challenges, internal dissent began to grow.

One of the companies targeted for acquisition by Divine was RoweCom, Inc. [*436] ("RoweCom") which managed library orders of large institutions for publications. It placed orders with publishers and provided [**11] customer and ancillary services for libraries. While RoweCom's business did not fit within any of Divine's business spheres, the addition of RoweCom enhanced the appearance of Divine's gross revenues. RoweCom, however, was a financially distressed company, having operated at a loss for several years. Moreover, its operations historically resulted in cyclical cash flows throughout the year. RoweCom typically paid publishers in December or January of each year for subscription orders placed by its customers. As a result, RoweCom usually required additional funding in the fourth quarter when publisher payments were in excess of collections from customers. Divine's cash flow problems, as well as the lack of synergy between Divine and RoweCom's business, led some within Divine to question the acquisition. Humenansky and Sullivan, in particular, expressed their doubts about the acquisition through e-mails to Filipowski. During the due diligence process, Humenansky wrote: "I become less and less sure of this acquisition every day that goes by, since I just don't see a lot of benefit versus a lot of work. All others are right on, but this one I have a really bad feeling about." Am. Compl. [**12] at P52. Similarly, on October 31, 2001, Sullivan wrote to Filipowski and other members of management:

> I may not do this justice from the financial modeling perspective, but the Cliff's Notes version is that RoweCom's financial position has deteriorated to a much worse position than I believe any of us were aware of . . . and we have been trying to get a handle on exactly how bad the situation is so that a reasonably informative report of the situation can be presented . . . before we close this deal.

Id. at P53.

Notwithstanding the misgivings of some managers, the Company completed the acquisition of RoweCom on November 6, 2001. This transaction placed Divine in the zone of insolvency as of November 30, 2001. Nevertheless, following the acquisition of RoweCom, Divine acquired eight additional companies (collectively the "Acquisitions"):

Company Name	Date of Acquisition
Data Return Corp.	January 2002
Northern Light Technology	January 2002
Real World Technology Corporation	February 2002
Perceptual Robotics, Inc.	February 2002
Net Unlimited	February 2002

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Company Name	Date of Acquisition
Denalii, Inc.	April 2002
Delano Technology, Inc.	July 2002
("Delano") Viant	September 2002
Corporation ("Viant")	

[**13] The completion of these Acquisitions created a number of economic and operational problems for the Company. The Defendants were aware of the problems facing the Company and that they repeatedly attempted, to no avail, to direct Filipowski's focus toward operating Divine, rather than continuing acquisitions. Filipowski [*437] received numerous e-mails from Divine management about their concerns, but he dismissed or gave little credence to the opinions of senior management. In the face of the repeated warnings from management about Divine's financial condition, Filipowski expressed his desire to move ahead with the Acquisitions. None of the Defendants communicated their concerns about the Acquisitions to the Board which ultimately approved the transactions.

In the first quarter of 2002, Filipowski presented projections to the board showing that the Company would achieve profitability by the end of 2002. The business plan presented to the Board reflected that the Company would have $ 83 million in cash at the end of the first quarter of 2002. "[A]ccording to Sullivan, these projections were dictated by Filipowski over the objections of Humenansky and other officers to secure the desired [**14] Board vote and neither Humenansky nor any of the other Defendants advised the Board that these numbers reflected revenue plans that were beyond levels believed achievable." Id. at P90.

By mid-March 2002, the Company's actual operating results indicated that the Company would miss the first quarter projections presented to the Board. [7] This gave rise to disagreements among the Defendants regarding the projections which would be delivered to the Board at the end of March 2002 for the next quarter. The Defendants engaged in numerous e-mails about the content of the financial materials to be included in the Directors' presentation packets, and many believed that Filipowski insisted on presenting the Board with overly aggressive revenue figures which were not achievable. Debates among Filipowski and management ensued. When Filipowski circulated his ideas for providing the Board with "good news" and making the overall numbers "look a lot better," Humenansky initially replied: "[The projections] are already aggressive. It's not worth the risk to me." Id. at PP95 and 98. Filipowski concluded the debate, stating: "In the final analysis it is my call to make," to which Humenansky [**15] replied ". . . it is [Filipowski's] call to make. . ." Id. at PP98 and 99. The projections Filipowski insisted on presenting to the Board were inflated and devoid of support. Despite the debate among management about the projections, the Defendants failed to pass information about the faulty projections to the Board.

7 Divine ultimately reported a cash balance of $ 78.1 million for the first quarter of 2002, a discrepancy of less than $ 5 million from the original projection presented to the Board. Sullivan attributed achievement of this figure to Divine's withholding of payments for accounts payable.

In January 2002, Humenansky had warned Filipowski that the Company was running out of cash and that the Company could not continue to acquire other businesses because of the continuing depletion of cash resources. The Company's deteriorating cash position forced Filipowski and the Company to switch from acquisitions which were driven by Divine's business strategy, to acquisitions to obtain more cash for Divine's [**16] balance sheet. In February 2002, management provided the Board with a detailed presentation regarding Divine's need to raise cash. The reasons included a lack of operating history and the marketplace perception of Divine as a "risky company," as well as the need to achieve revenue targets.

Divine was insolvent by the end of the first quarter of 2002, as the fair market value of its assets did not exceed its liabilities. Despite this fact, Filipowski remained focused on the acquisition strategy [*438] to obtain cash, at one point stating "we need to acquire cash even at drill bit prices." Id. at P110. Divine proceeded with the acquisitions of Viant and Delano which Filipowski believed would produce $ 90 million in cash for Divine. Humenansky's initial response to the Viant acquisition was "you must be kidding." Id. at P121. Later, he said: "They have zero pipeline and we are going to terminate almost everyone." Id. at P124. Despite the concerns regarding Viant, on September 27, 2002, the Company completed the acquisition. The Board minutes reflect that Humenansky did not notify the Board of his concerns about Viant, and that Filipowski, Humenansky and Cullinane voted in favor [**17] of the Viant acquisition. Although Divine originally pursued Viant to add more than $ 80 million in cash to its balance sheet, it completed the deal even though it only resulted in Divine adding $ 6.9 million in cash to its balance sheet.

The Delano transaction caused similar concerns. Humenansky wrote: "As we drill down into the Delano revenue numbers, there is a considerable amount that is bogus." Id. at P129. After learning of the potential acquisition of Delano, Alekzander Szlam ("Szlam"), Divine's Chief Strategy Officer, wrote to Cullinane, Humenansky and other members of management that he was totally against the deal and that it would "kill" Divine. On July 9, 2002, Ken Mueller ("Mueller"), the Company's controller, stated: "[Based on Delano's] update today, I don't think that we will net more than [$ 1-2 million] of cash from this transaction." He went on to say "if we are doing this deal for cash, we should call it off now." Id. at P147. On July 31, 2002, the Company completed the Delano acquisition. The Board minutes reflect that none of the Defendants notified the Board of their concerns with regard to Delano and that Filipowski, Humenansky and Cullinane voted [**18] in favor of it. The Delano Acquisition resulted in the addition of only $ 4.8 million in cash to Divine's balance sheet.

In April 2002, Divine began investment discussions with Oak Venture Partners ("Oak"). As a result, Oak agreed to provide $ 61 million in equity financing in exchange for more than 30% of Divine's capital stock. In May 2002, Oak made its first investment in Divine of $ 22.9 million, and, in July 2002, it invested an additional $ 38.7 million. Despite these investments, Divine remained insolvent and continued to experience operational problems. The acquisition pace made integration of operations difficult, if not impossible. Divine had to terminate numerous employees upon the completion of each of the Acquisitions. As a result, it incurred costs for large severance packages, and the acquired companies provided little value to Divine.

Beginning with the April 1, 2002 Board meeting, the Board began to consider fiduciary duties of a board of directors of a corporation which is in the "zone of insolvency." [8] At this meeting, in response to questions from the Board, Filipowski, Cullinane and Humenansky stated that expense and revenue targets presented to the Board were [**19] reasonable and attainable. In light of this information, the Board determined that "at the present time even under a 'zone of insolvency' analysis all relevant constituencies were best served by Divine continuing to operate under its current operating plan." Id. at P204.

8 The Plaintiff alleged that the Company actually entered the zone of insolvency many months before in November of 2001 with the closing of the RoweCom transaction.

On April 16, 2002, Humenansky e-mailed Filipowski stating that he was "ready to transition out of Divine" because "I just [*439] disagree with way too much anymore to support this going forward." Id. at P157. Throughout May 2002, Humenansky sent additional e-mails to Filipowski voicing his concerns about customer issues, employee retention and the "general feeling of failure" in the organization. On May 1, 2002, he wrote to Filipowski: "I feel the company is in a tailspin, and we need to make major changes," and, on May 22, 2002, he wrote: "I can't run the business going forward. [**20] . . I'm at the end of my rope now." Id. at PP162 and 164. Despite the repeated statements of his intention to leave, Humenansky stayed with Divine until after the bankruptcy filing.

In connection with Divine's earlier acquisition of Eshare Communications, Inc. ("Eshare"), Eshare's Chief Executive Officer, Szlam, received options to "put" a significant number of shares of Divine's common stock. In April 2002, Szlam exercised his "put" options at a cost of almost $ 6.2 million to Divine. The Defendants did not advise the Board that Szlam exercised his put options until after Divine's Audit Committee Meeting on May 1, 2002, a decision which precipitated the resignation of an outside director of the Company.

On May 23, 2002, Mueller wrote to Filipowski, Humenansky and Cullinane regarding RoweCom France which had recently incurred more than $ 12 million in obligations due to overdrafts. RoweCom France was unable to repay the overdrafts and, as a result, auditors advised Divine that it should declare RoweCom France insolvent. Mueller outlined Divine's resulting financial obligations and the potential impact of the RoweCom France overdrafts on Divine in the second and third quarters [**21] of 2002. Filipowski responded saying "Less of an issue after Oak and Viant is [sic] done." Id. at P196. While the RoweCom France information was provided by Mueller specifically in advance of the Board Meeting scheduled later in the day of May 23, 2002, none of the Defendants communicated the information to the Board. At that meeting, the Defendants suggested that the Board continue considering the fiduciary duties of a director of a corporation which is in the zone of insolvency. Following the Board's consideration of this issue, it concluded that "all relevant constituencies were best served by the Corporation continuing to operate under its current operating plan." Id. at P198. The Board reached this conclusion without the information that RoweCom France was insolvent.

Discussions about the zone of insolvency were frequent throughout 2002. The Board meeting minutes reflect that the Board discussed the matter for the first time on April 1, 2002 and again on May 13, 2002, May 23, 2002 and August 14, 2002. At these meetings, the Board consensus was the same: "after considering the rights and interests of Divine's constituencies, the Board determined . . . under a 'zone of [**22] insolvency' analysis, all relevant constituencies were best served by Divine continuing to operate under its current operating plan." There is no record that any of the Defendants spoke during Board meetings to advise the Board of Divine's true economic condition.

In July 2002, Divine disbanded its Mergers and Acquisitions unit. During the summer of 2002, Humenansky repeatedly warned that the Company was going to miss its third quarter projections and that it faced major cash flow problems for the fourth quarter. At the close of the third quarter, Divine's cumulative operating losses totaled $ 683.7 million since the Company's initial public offering in July 2000. In the fourth quarter, the annual RoweCom publisher payments loomed. When Divine entered the fourth quarter of 2002, it did not have sufficient cash or available [*440] financing to pay publishers for the periodicals RoweCom's customers had ordered and for which they had already paid. From and after the RoweCom acquisition, Divine had used monies from pre-paid subscriptions from RoweCom's customers to fund Divine's operations, not the subscriptions. Through much of the fourth quarter of 2002, Divine was engaged in negotiations [**23] to sell RoweCom. By mid-December 2002, the Board determined that Divine was not able to continue to support RoweCom and was not in a position to finance the RoweCom year-end publisher payments. By the end of December 2002, Divine publicly announced that it was no longer willing to financially support RoweCom's operations. On January 27, 2003, RoweCom filed a Chapter 11 bankruptcy petition.

Once in bankruptcy, RoweCom filed an adversary proceeding against Divine seeking over $ 73 million in damages for, among other things, "looting" RoweCom. Thereafter, the United States Department of Justice and the Securities and Exchange Commission also began investigating the management of RoweCom and Divine. Moreover, in mid-November 2002, prior to RoweCom's decision to file a bankruptcy petition, Divine's auditors informed the Company that it would issue a "going concern" qualification in the absence of a definite operating plan for 2003. Divine explored several strategic alternatives, including the sale of its entire business or various divisions, however, the Company could not secure a buyer.

On February 25, 2003 (the "Petition Date"), Divine filed a voluntary petition under Chapter 11 of [**24] the United States Bankruptcy Code (the "Code"), and the Court subsequently consolidated the case with those of Divine's subsidiaries. Filipowski, Humenansky and Cullinane were still employed as officers on the Petition Date under the terms of their respective employment agreements (collectively, the "Employment Agreements"), and they continued to serve as directors until the effective date of the Plan. The Company sold substantially all of its assets on May 15, 2003, and on May 22, 2003, it filed a Motion for an Order Authorizing Rejection of the Executory Employment Agreements. Filipowski, Humenansky and Cullinane objected to the motion, alleging that the Company had previously terminated their employment. Each of the Employment Agreements provided for large payments in the event of employment termination. The Plaintiff alleges that Filipowski, Humenansky and Cullinane timed the terminations of their employment agreements in an improper attempt to qualify the termination payments as administrative expense claims against Divine's bankruptcy estate at the expense of the general unsecured creditors. The Defendants filed a number of proofs of claim in which they asserted, *inter alia,* [**25] damages and administrative expense claims for termination of the Employment Agreements, indemnification for legal costs and expenses incurred in connection with their status as officers and directors of Divine, and general expense reimbursement.

B. The Complaint

The Complaint is 113 pages, contains 411 paragraphs and alleges 16 counts against the Defendants. The causes of actions are as follows: (1) Count I, captioned "Breach of the Fiduciary Duty of Loyalty" against Filipowski, in his capacity as an officer and director of Divine; (2) Count II, captioned "Breach of the Fiduciary Duty of Loyalty" against Humenansky, in his capacity as an officer and director of Divine; (3) Count III, captioned "Breach of the Fiduciary Duty of Loyalty" against Cullinane, in his capacity as an officer and director of Divine; (4) Count [*441] IV, captioned "Breach of the Fiduciary Duty of Loyalty" against Sullivan, in his capacity as an officer of Divine; [9] (5) Count V, captioned "Breach of the Fiduciary Duty of Care" against all Defendants, in their capacities as officers of Divine; (6) Count VI, captioned "Breach of the Fiduciary Duty of Good Faith" against all Defendants, in their capacities as officers [**26] of Divine; (7) Count VII, captioned "Deepening Insolvency" against all Defendants; (8) Count VIII, captioned "Objection to Indemnification Claims *Fed. R. Bankr. P. 3007*" against all Defendants; (9) Count IX, captioned "Objection to Duplicative Claims/Objection To Administrative Claims *11 U.S.C. § 502*; *Fed. R. Bankr. P. 3007*" against Cullinane, Humenansky and Filipowski; (10) Count X, captioned "Objection to Employment Termination Claims *11 U.S.C. § 502*; *Fed. R. Bankr. P. 3007*" against Filipowski, Cullinane and Humenansky; (11) Count XI, captioned "Objection to Expense Reimbursement Claims *11 U.S.C. § 502*; *Fed. R. Bankr. P. 3007*" against Filipowski; (12) Count XII, captioned "Subordination" against all Defendants; (13) Count XIII, captioned "Avoidance and Recovery of Fraudulent Transfers *11 U.S.C. §§ 548*; 550" against all Defendants; (14) Count XIV, captioned "Avoidance and Recovery of Preferential Transfers *11 U.S.C. §§ 547*; 550" against [**27] all Defendants; [10] (15) Count XV, captioned "Objection to Claims filed by Retainer Defendants *11 U.S.C. § 502*; *Fed. R. Bankr. P. 3007*" against all Defendants; and (16) Count XVI, captioned "Objection to Indemnification Claims Arising from Third Party Civil Actions *11 U.S.C. § 502*; *Fed. R. Bankr. P. 3007*" against all Defendants. Counts I through VI shall be referred to herein as the "Fiduciary Duty Counts."

9 As stated above, Sullivan was not a Director of Divine.

10 The Plaintiff has pled this Count as an alternative to Count XIII.

III. THE MOTIONS TO DISMISS

As noted above, the Defendants have each filed a Motion to Dismiss various counts of the Complaint against them pursuant to *Fed. R. Civ. P. 9(b)* and *12(b)(6)*, made applicable to this proceeding by *Fed. R. Bankr. P. 7009* [**28] and *7012*. Each of the Defendants adopt and incorporate by reference all applicable arguments in each other's briefs.

A. Standard for Dismissal Pursuant to *Fed. R. Civ. P. 12(b)(6)*

When reviewing a *Rule 12(b)(6)* motion, the court must accept as true all material allegations of the complaint and construe the complaint in favor of the plaintiff. *See Warth v. Seldin, 422 U.S. 490, 501, 95 S. Ct. 2197, 2206, 45 L. Ed. 2d 343 (1975)*. Nevertheless, in determining a *Rule 12(b)(6)* motion, the Court need not credit unsupported conclusions. *Dartmouth Review v. Dartmouth College, 889 F.2d 13, 16 (1st Cir. 1989), overruled on other grounds, Educadores Puertorriquenos en Accion v. Hernandez, 367 F.3d 61 (1st Cir. 2004)*. The Federal Rules of Civil Procedure "do not require a claimant to set out in detail the facts upon which he bases his claim." *Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)*. "To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice [**29] of what the plaintiff's claim is and the grounds upon which it rests." Id. (quoting *Fed. R. Civ. P. 8(a)(2)*). *See also Stanziale v. Nachtomi (in re Tower Air, Inc.), 416 F. 3d 229, 237 (3d Cir. 2005)*(under Federal *Rule 8*, the plaintiff need only plead the "basic facts" necessary to provide the defendant with fair notice of the plaintiff's claims and the [*442] general factual background upon which it rests and should not be deprived of the opportunity to pursue claims on a *Rule 12(b)(6)* motion for lack of detailed facts.).

Nevertheless, it also is well established that the pleading requirements are "not entirely . . . toothless," *Dartmouth Review, 889 F.2d at 16*. The First Circuit has required a minimal level of factual particularity rather than mere allegations of conclusions. *See Fleming v. Lind-Waldock & Co., 922 F.2d 20, 24 (1st Cir. 1990)*(" [T]he necessary factual averments are required with respect to each material element of the underlying legal theory.")(citing *Gooley v. Mobil Oil Corp., 851 F.2d 513, 515 (1st Cir. 1988)*).

B. Standard for Dismissal Pursuant [**30] to *Fed. R. Civ. P. 9(b)*

Although *Fed. R. Civ. P. 8(a)(2)* requires the Plaintiff to plead a "short and plain statement of the claim," claims for fraud are subject to the heightened pleading requirements of *Fed. R. Civ. P. 9(b)*, made applicable to this proceeding by *Fed. R. Bankr. P. 7009*. Pursuant to *Rule 9(b)*: "In all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity. Malice, intent, knowledge and other conditions of mind of a person may be averred generally." *Fed. R. Civ. P. 9(b)*.

The Defendants seek dismissal of certain counts of the Complaint pursuant to *Rule 9(b)* because they contend that the Plaintiff has failed to plead fraud and nondisclosure allegations with sufficient particularity. The Plaintiff counters that he need not plead any allegations with the specificity required by *Rule 9(b)* because he has not alleged causes of action based upon fraud. He adds that the allegations of misrepresentation and nondisclosure contained in the [**31] Complaint are merely components of his overall legal theory that the Defendants violated their duties by disregarding their own business judgment. While a number of the counts in the Complaint involve allegations of misrepresentation and concealment, the essence of the Complaint is that the Defendants abdicated their responsibilities through a number of infractions including reckless and irrational decision making, improper domination and control and failure to engage in debate at Board meetings about the questionable transactions. The allegations concerning misrepresentation and nondisclosure represent only examples of the Defendants' disregard of their business judgment, and the Defendants cannot recharacterize the Complaint as one based on fraud and seek to overcome it by reliance on *Rule 9(b)*.

IV DISCUSSION

A. The Fiduciary Duty Counts

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In evaluating the merits of the Defendants' Motions to Dismiss to the Fiduciary Duty Counts, the Court must consider two affirmative defenses, the Delaware business judgment rule and the exculpatory clause contained in Divine's Certificate of Incorporation. These two defenses are the subject of many decisions in cases where defendants [**32] have sought dismissal of complaints containing allegations such as those in this adversary proceeding.

1. The Business Judgment Rule

The business judgment rule, "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984), overruled on other grounds, Brehm v. Eisner, 746 A.2d 244 (Del. 2000).* The rule "operates as both a procedural guide for litigants and a substantive rule of law" [*443] in breach of corporate fiduciary duty cases. *Citron v. Fairchild Camera and Instrument Corp., 569 A.2d 53, 64 (Del. 1989).* "As a general matter, the business judgment rule presumption that a board acted loyally can be rebutted by alleging facts which, if accepted as true, establish that the *board* was either interested in the outcome of the transaction or lacked the independence to consider objectively whether the transaction was in the best interest of its company and all of its shareholders." *Orman v. Cullman, 794 A.2d 5, 22 (Del. Ch. 2002)* [**33] (emphasis in original). With respect to the first element, interest ". . . means that directors can neither appear on both sides of a transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing, as opposed to a benefit which devolves upon the corporation or all stockholders generally." *Aronson 473 A.2d at 812* (citations omitted); *see also In re GM Class H Shareholders Litig., 734 A.2d 611, 617-18 (Del. Ch. 1999)*(the benefits received must have been of a sufficiently material importance to the director, in the context of his economic circumstances, as to have made it improbable that he could perform his fiduciary duties to the shareholders without being influenced by his overriding personal interest).

On the separate question of independence, "[i]ndependence means that a director's decision is based on the corporate merits of the subject before the board rather than extraneous considerations or influences." *Aronson 473 A.2d at 816.* Independence ". . . involves an inquiry into whether the director's decision resulted from that director being *controlled* by another." *Orman, 794 A.2d at 25 n.50* [**34] (emphasis in original). Control may be demonstrated by a showing that the director is *dominated* by that other party, whether through close personal or familial relationship or through force of will. Id. (emphasis in original). A director can also be controlled by another if the challenged director is *beholden* to the allegedly controlling entity. Id. (emphasis in original). "A director may be considered beholden to . . . another when the allegedly controlling entity has the unilateral power . . . to decide whether the challenged director continues to receive a benefit, financial or otherwise, upon which the challenged director is so dependent or is of such subjective material importance to him that the threatened loss of that benefit might create a reason to question whether the controlled director is able to consider the corporate merits of the challenged transaction objectively." Id.

2. The Exculpatory Clause

Divine's Third Amended and Restated Certificate of Incorporation (the "Charter") contains a clause of the type which typically eliminates or limits the personal liability of directors for monetary damages for breach of the duty of care (the "Exculpatory Clause"). [**35] Under *Section 102(b)(7)* of the Delaware General Corporation Law [11] corporations can adopt [*444] charter provisions that eliminate or limit the personal liability of directors for monetary damages for breach of the duty of due care, but not claims based on breach of the duty of loyalty, intentional misconduct or knowing violation of the law. Divine's Charter contains the statutory language of *Section 102(b)(7)*. See Am. Compl. at P326. [12]

11 *Del. Code Ann. tit. 8, § 102(b)(7)* provides, in pertinent part:

> (b) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section, the certificate of incorporation may also contain any or all of the following matters:
>
> > (7) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director: (i) For any breach of the di-

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rector's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under § 174 of this title; or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. . .

[**36]
12 Ordinarily, a court may not consider any documents that are outside the complaint in the context of a *Rule 12(b)(6)* motion. Documents which are sufficiently referred to in the complaint, however, become part of the pleading, and thus the document may be considered on a *Rule 12(b)(6)* motion. *Alternative Energy, Inc. v. St. Paul Fire and Marine Ins. Co., 267 F.3d 30, 33 (1st Cir. 2001).*

B. Count I-Breach of the Fiduciary Duty of Loyalty against Filipowski

In Count I of the Complaint, the Plaintiff alleges that Filipowski engaged in five general categories of wrongful conduct which were motivated by his self-interest: (1) approval of the Acquisitions and approval of the continued operation of Divine without a plan to achieve profitability; (2) participation in the manufacture of a "business judgement defense" in anticipation of litigation; (3) dissemination of false or inflated financial information to the Board and concealment of material information about the true condition of the company from the Board, including Divine's failure to meet projections, the insolvency of [**37] RoweCom France and Szlam's exercise of his put options; (4) failure to consider advice provided by other Divine officers; and (5) misrepresentation of his interest in, and the material personal gain he received from, Divine's acquisition of certain companies and properties in which he had a personal interest.

In seeking dismissal of Count I, Filipowski argues, that the Plaintiff has failed to sufficiently allege that he had a material self-interest or that he lacked the independence necessary to overcome the business judgment rule. Additionally, he argues that the Plaintiff has failed to plead causation of injury to Divine as a result of any wrongful conduct on his part, citing *In re GM (Hughes) S'holder Litig., 2005 Del. Ch. LEXIS 65, No. Civ. A. 20269, 2005 WL 1089021, at *8 (Del. Ch. May 4, 2005)*("Without allegations to somehow link the accretion of a material benefit to the decision to approve the. . .transactions, the allegations of pecuniary self-interest are merely conclusory and not well pled."); *Fleming v. Lind-Waldock & Co., 922 F.2d 20, 24 (1st Cir. 1990)*(". . . the necessary factual averments are required with respect to each material element of [**38] the underlying legal theory."). In support of the latter argument, he asserts that the Plaintiff must allege that a majority of the voting Board members were self-interested or lacked independence, citing *Continuing Creditors' Committee of Star Telecomms., Inc. v. Edgecomb, 385 F. Supp. 2d 449, 460 (D. Del. 2004)*("To allege a breach of the duty of loyalty based on actions or omissions of the Board, the Plaintiff must 'plead facts demonstrating that a *majority* of a board that approved the transaction in dispute was interested and/or lacked independence.'"(quoting *Orman v. Cullman, 794 A.2d 5, 23 (Del. Ch. 2002)*(emphasis in original)). Otherwise, Filipowski argues, the disabling self-interest cannot be said to have caused the challenged decision.

1. Self-Interest

The Plaintiff alleges that Filipowski's wrongful conduct was the product of [*445] the "self-interest of entrenchment" and that he was motivated solely or principally for the impermissible purpose of retaining office for personal reasons, citing *Cede & Co., v. Technicolor, Inc., 634 A.2d 345, 363 (Del. 1993)*(further history omitted); *In re Anderson, Clayton S'holders Litig., 519 A.2d 680, 688 (Del. Ch. 1986).* [**39] Filipowski asserts that Count I should be dismissed because his interest in maintaining his salary, position, benefits and stock ownership coincided with the interest of the Company, citing *Roselink Investors, LLC v. Shenkman, 386 F. Supp. 2d 209, 219-220 (S.D.N.Y. 2004)*("[A]ny personal interest [a director] had in keeping [his company] out of bankruptcy was consistent with the best interests of [the company]. . .").

The Court finds that the Plaintiff's allegations concerning Filipowski's employment, stock position and perquisites, which constituted material benefits to him, coupled with his unwavering personal adherence to the acquisition strategy in the face of mounting operational and financial problems and warnings, especially from the Company's chief operating officer, permit a reasonable inference of the self-interest of entrenchment. The Court also finds that the self-interest exhibited by Filipowski, as detailed in the Complaint, was inconsistent with the interests of the Company and its creditors. The Plaintiff reproduced numerous e-mails in which members of Filipowski's own management team questioned the value of the acquisition targets, the Company's [**40] ability to absorb the acquired companies and the direction of the Company in light of its worsening cash position. Filipowski's typical response to these communications was a "damn the torpedoes" approach. His responses included the following statements: "We are going to go down the course we have set and the two options are it will either kill us or we will succeed. . . I will not tolerate a strategy that give us 0 chance of succeeding and just kill us over a longer period of time." *See* Am. Compl. at P72, "Some of this takes time and perseverance. Constant vacillation is not the answer. . . This is the gut check time and we need to get the current strategy to mature and it will." Id. at P77. "We have got to draw the line and go for it." Id. at P233. Based upon these averments, the Court finds that the Complaint contains sufficient facts alleging that Filipowski's principal motivation in the performance of his duties was his desire to maintain his acquisition strategy by maintaining his position and office as the Company's chief executive officer. In the process of maintaining that strategy, Filipowski's interests were at odds with the interests of the Company.

2. Causation

[**41] The Court must next assess whether the Plaintiff has sufficiently pled that Filipowski's self-interested conduct caused injury to the Company and its creditors. The issue of causation is most crucial to the allegations in Count I which involve Filipowski's approval of the Acquisitions and the continued operations of Divine. Although the Plaintiff seeks to attribute responsibility for these decisions and transactions to Filipowski, they could not have been consummated absent approval of the majority of the Board. In the absence of facts alleging that a majority of the Board was either interested in the outcome of the disputed transactions or lacked the independence to consider the transaction independently, the Court would ordinarily have to presume that the Board acted loyally. *See Orman v. Cullman, 794 A.2d 5, 22 (Del. Ch. 2002)*. The Court may, however, reasonably infer causation if there are sufficient facts in the Complaint to establish that the Board made the challenged decisions on the basis of false information provided by, or at the [*446] direction of, Filipowski or that it would not have made the decisions had it been in possession of the information concealed [**42] by, or at the direction of, Filipowski.

The Complaint contains a number of allegations which tend to undermine the Plaintiff's theory that the Board reached its ill-fated decisions as a result of Filipowski's wrongful conduct: "As Divine pursued yet another flawed strategy, its officers and board members repeatedly ignored the numerous warning signs."Am. Compl. at P4; "Despite being presented with overly optimistic projections, the Board was well aware of Divine's precarious financial condition." Id. at P116; "[T]he acquisition pace instigated by Filipowski, and approved by the Board, made integration of operations impossible." Id. at P150; "Despite numerous warning signals, including continued failure to meet projections, the Board did not question or investigate the information they received." Id. at P191; and "Rather than simply taking the necessary action to address Divine's problems and rein in Filipowski, [the officers and Board members] attempted to 'create' their own defense to the lawsuits they knew would be filed." Id. at P199.

The Court must weigh these allegations against the numerous allegations in the Complaint which suggest that the Board reached [**43] many of their critical decisions while in the possession of misinformation supplied by Filipowski or in the absence of material information which was concealed by him and the other Defendants. These allegations include the Defendants' failure to disclose to the Board information regarding the viability of some of the acquisition targets and the questionable synergistic value these companies could deliver to Divine; the internal dissent within management regarding the Company's acquisition strategy and the operational and cash flow pressures it created; the Company's rapidly deteriorating financial condition while the Board conducted its "zone of insolvency" deliberations; factors which cast doubt on the achievability of the second quarter financial projections; Humenansky's statements to Filipowski that he intended to leave Divine over disagreements concerning the direction of the Company and the failure of the Defendants to communicate certain material events at Board meetings such as the insolvency of RoweCom France and the Szlam put exercise.

Faced with competing allegations in the Complaint, the Court must resolve the conflict by construing the Complaint in a light most favorable [**44] to the Plaintiff. *See Warth v. Seldin, 422 U.S. 490, 501, 95 S. Ct. 2197, 2206, 45 L. Ed. 2d 343 (1975)*. Bound by that standard, the Court concludes that the Plaintiff has pled sufficient allegations of causation regarding the Acquisitions and continued operation of the Company in Count I to overcome dismissal. In reaching this conclusion, the Court notes that it is most troubled by the allegations that Filipowski did not reveal the internal disagreements concerning Divine's acquisition strategy and its business plan to the Board. Had the Board been aware of the dissent among management, it is reasonable to infer that the Board may have more closely scrutinized and reexamined the Company's strategy. Given the alleged conduct of Filipowski, it is also reasonable to infer that the Board lacked the ability to consider transactions objectively because pertinent information was withheld. The Court is currently constrained by the facts as alleged in the Complaint. This will not be the case at trial when the Court will require the Plaintiff to present evidence that the Board actually relied on inaccurate information when it approved each of the disputed transactions and/or [**45] that the Board would [*447] not have approved the respective transactions had it been aware of the information which was withheld by, or at the direction of, Filipowski.

The remaining allegations in Count I relate principally to Filipowski's personal conduct rather than decisions involving the Board. Specifically, the Plaintiff alleges that Filipowski breached his duty of loyalty to Divine by, *inter alia,* participating in the "business judgment defense,"providing false financial information to, and concealing material information from, the Board, ignoring information and advice provided by Divine's other officers and misrepresenting his personal interest in certain Divine transactions. [13] The Court finds that the Plaintiff has pled sufficient facts to establish Filipowski's involvement in this conduct, and for the reasons stated above, as well as because of the obvious injury the Divine creditors have suffered, the Court finds adequate allegations of causation. The Plaintiff, however, has failed to plead any facts with respect to Filipowski's alleged misrepresentation of the Perceptual Robotics, Inc. transaction other than a conclusory statement that he obtained a "material personal [**46] gain" from it. These facts do not give Filipowski fair notice of the grounds of the Plaintiff's claim against him. *See In re Tower Air, Inc., 416 F. 3d at 237.* The Court dismisses all claims in Count I relating to Filipowski's alleged misrepresentation of his personal interest in the companies enumerated in paragraph 267 of the Complaint. The Court denies Filipowski's Motion to Dismiss all other claims in Count I of the Complaint.

13 The Complaint alleges that Filipowski owned an interest in Goose Island (purchased by Divine from a Filipowski affiliate in July 2000 and later sold at a loss by Divine in July 2002) and that Filipowski owned an interest in and was a director of Opinionware.com (acquired by Divine in April 2001), iGive.com (no date of transaction provided in the Complaint), Panthera Productions (no date of transaction provided in the Complaint), Perceptual Robotics, Inc. (acquired by Divine in February 2002), Sequoia Software Corporation (no date of transaction provided in the Complaint), and the National Transportation Exchange (no date of transaction provided in the Complaint). Other than with respect to the Perpetual Robotics transaction, the Plaintiff fails to allege in the Complaint that any of the aforementioned transactions in which Filipowski is alleged to have had a self-interest occurred during the zone of insolvency. Accordingly, the Court will only consider the Plaintiff's claim that Filipowski breached his duty of loyalty by misrepresenting his personal interest and gain from the Perceptual Robotics transaction.

[**47] C. Count II- Breach of the Fiduciary Duty of Loyalty against Humenansky

The Plaintiff alleges nearly identical misconduct against Humenansky in Count II of the Complaint [14] as is alleged against Filipowski in Count I, except that he asserts that Humenansky's loyalty to Divine was compromised as a result of his domination by Filipowski as well as by the self-interest of entrenchment. Humenansky argues that assertions of personal or business relationships, without more, are insufficient to rebut the presumption that he acted independently as a director, citing *Beam v. Stewart, 845 A.2d 1040, 1050 (Del. 2004).*

14 Count II also contains a claim based upon Humenansky's misrepresentation of, and material gain from, the Sequoia Software and National Transportation Exchange transactions. The Court allows Humenansky's Motion to Dismiss these claims because the Plaintiff failed to allege that the transactions involving these companies occurred during the zone of insolvency and because the allegations are insufficiently pled even under a notice pleading standard.

[**48] The Court agrees that a plaintiff must allege more than the existence of [*448] a personal or business relationship to support a breach of loyalty claim. Domination and control, however, are not tested merely by economics. *In re Oracle Corp. Deriv. Litig., 824 A.2d 917, 938 (Del. Ch. 2003).* A plaintiff must allege some facts showing a director is beholden to an interested director in order to show lack of independence, *Orman, 794 A.2d at 24.* "The critical issue . . . is whether the director was conflicted in his loyalties with respect to the challenged board actions." *Litt v. Wycoff, 2003 Del. Ch. LEXIS 23, No. Civ. A. 19083-NC, 2003 WL 1794724, at *4 (Del. Ch. March 28, 2003).* The quoted e-mails in

the Complaint portray Humenansky as an often candid and objective critic of the Company's acquisition strategy. Humenansky contends that the e-mails on their face show the diligent discharge, not abdication, of his duties. The Court disagrees because the vocal dissent he exhibited when communicating with management was not apparent at Board meetings. The conduct alleged in the Complaint indicates a pattern whereby Humenansky issued numerous serious warnings about the [**49] Company's financial condition and direction and then retreated to a position of silence or, in some cases, approval at Board meetings at which the very transactions and strategies he questioned were effectuated. [15] *See* Am. Compl. at PP 78-82, 98-99, 121, 145, 147, 157-58, 209-10. As set forth in the Complaint, Humenansky's repeated declarations of loyalty and deference to Filipowski, his failure to leave Divine after stating his intention to do so over his disagreements about strategy, and his reluctance to publicly challenge Filipowski's judgment in spite of the documented disagreements between the two, indicate that Humenansky was dominated by Filipowski and succumbed to his will to maintain the Company's acquisition strategy. The allegations are more than conclusory statements, and they permit a sufficient inference that Humenansky lacked independence in the execution of his duties to withstand dismissal. The Court reiterates its above rulings with respect to Count I and denies Humenansky's Motion to Dismiss Count I of the Complaint other than with respect to the claims involving National Transportation Exchange and Sequoia Software.

> 15 In his brief, Humenansky provides additional portions of Board meeting minutes which are not contained in the Complaint in an attempt to show that the Board was well informed when it deliberated over the Acquisitions and accordingly it adequately considered the merits of those transactions prior to approving them, relying on *Alternative Energy, Inc. v. St. Paul Fire and Marine Ins., Co., 267 F.3d 30, 34 (1st Cir. 2001).* Notwithstanding any issue regarding the propriety of the Court's consideration of documents outside the Complaint in a *Rule 12(b)(6)* context, the Court finds nothing in those minutes which contradicts the Plaintiff's allegations that the Defendants withheld information from the Board or knowingly allowed the Board to consider misinformation.

[**50] D. Count III- Breach of the Fiduciary Duty of Loyalty against Cullinane

The claims alleged in Count III against Cullinane are nearly identical to those in Counts I and II. [16] As the Company's chief financial officer, Cullinane had a heightened responsibility for oversight and attention with respect to the Company's financial information. Humenansky, Sullivan and other members of management copied Cullinane on many of the quoted e-mails detailing their concerns about the Company's direction and the Acquisitions. [*449] Cullinane also authored his own e-mails to Filipowski about the Company's cash position and his doubts about some of the Acquisitions. In particular, Cullinane wrote to Filipowski on October 5, 2001 in connection with the Company's acquisition of Data Return, Inc., stating: "68 million [expletive] shares for a company running out of cash, losing $ 5 million per month. . . What am I missing?" Id. at P69. Cullinane did not convey his objections to the Board, and he later recommended the acquisition of Data Return to the Board. He likewise voted in favor of a number of the other Acquisitions while aware of the internal debate surrounding them. Additionally, [**51] Cullinane was copied on Filipowski's and Humenansky's e-mails regarding the 2002 second quarter financial projections submitted to the Board, and he was also informed of the RoweCom France insolvency crisis. Despite Cullinane's possession of all of this information, the Plaintiff alleges that he never informed the Board of Divine's true economic condition or of the inaccurate financial information presented to them at the behest of Filipowski.

> 16 Count III contains a claim based upon Cullinane's alleged misrepresentation of and material gain from the National Transportation Exchange transaction. As with the other insider transaction claims in the Complaint, this claim is inadequately pled. The Court allows Cullinane's Motion to Dismiss with respect to such claim.

Although Cullinane's warnings about the Company were typically less vehement than Humenansky's, he was privy to the objections raised by management about the Company's strategy and Filipowski's unwillingness to change its course. As with Humenansky, [**52] the Court can reasonably infer that Cullinane's silence in the face of so much negative information was a result of Filipowski's dominance. Based upon these averments, the Court finds adequate allegations in the Complaint to support Cullinane's domination by Filipowski and his resulting conflict of loyalty to the Company. The Court denies Cullinane's Motion to Dismiss with respect to Count III other than with respect to the claim set forth in paragraph 289 of the Complaint.

E Count IV Breach of the Fiduciary Duty of Loyalty against Sullivan

There are no claims in Count IV against Sullivan based on his approval of the Acquisitions or the continued operation of Divine, [17] and there are no allegations that he misrepresented any interest in or any gain from any entity purchased by Divine. Otherwise, the claims in Count IV mirror the claims against the other Defendants: dissemination of false financial information, concealment of material information from the Board and participation in the "business judgment defense."

17 Sullivan was not a director of the Company.

[**53] Sullivan argues that the Plaintiff fails to identify any actionable decision or conduct by Sullivan which gives rise to any claim against him. Although Sullivan is mentioned less frequently than the other Defendants in the Complaint, the Plaintiff has adequately alleged that Sullivan was privy to the same negative information possessed by the other Defendants which should have caused him, as general counsel to the Company, to advise the Board of the reckless course the Company was pursuing. Days before the completion of the RoweCom transaction, Sullivan sent a detailed e-mail to the other Defendants and members of management which highlighted and predicted all of the problems the acquisition of RoweCom would create for Divine. Yet he remained silent at a Board meeting the following day at which the acquisition was approved. Likewise, he had information about the faulty financial projections which, in a statement attributed to Sullivan by the Plaintiff, were "dictated by Filipowski over the objections of Humenansky and other officers to secure the desired Board vote. . ." Id. at P90. Sullivan's position is further compromised [*450] by the fact that he was not merely silent [**54] while in the possession of material negative information, but he allegedly led the efforts to create a business judgment defense while aware of that information. *See* Id. at P200. Although there are fewer references to Sullivan than the other Defendants in the Complaint, the overall theme is the same: that Filipowski so dominated the members of his inner circle that each failed to exercise his business judgment before the Board by keeping their misgivings secret. The Court denies Sullivan's Motion to Dismiss with respect to Count IV.

F. Count V-Breach of the Duty of Care against all Defendants

The same conduct alleged in Counts I through IV forms the basis for a breach of the duty of care claim in Count V against all Defendants, solely in their capacities as officers of Divine. Presumably, the Plaintiff asserts these claims against the Defendants as officers to avoid the Company's Exculpatory Clause.

The fiduciary duty of care requires that officers and directors of a Delaware corporation "use the amount of care which ordinarily careful and prudent men would use in similar circumstances," *Graham v. Allis-Chalmers Mfg. Co., 41 Del. Ch. 78, 188 A.2d 125, 130 (Del. Ch. 1963),* [**55] and "consider all material information reasonably available" in making business decisions. *Brehm v. Eisner, 746 A.2d 244, 259 (Del. 2000).* "[C]ompliance with a director's duty of care can never appropriately be judicially determined by reference *to the content of the board decision* that leads to a corporate loss, apart from consideration of the good faith *or* rationality of the process involved." *In re Caremark Int'l Inc. Deriv. Litig., 698 A.2d 959, 967 (Del. Ch. 1996)*(emphasis in original). Whether a court "considering the matter after the fact, believes a decision substantively wrong, or . . . 'stupid' [or] 'egregious' . . . provides no ground for director liability, so long as the court determines that the process employed was either rational or employed in a *good faith* effort to advance corporate interests." Id. (Emphasis in original). When the conduct of a corporate board is challenged, Delaware courts ordinarily review that conduct under the presumption of the business judgment rule. [18] However, "[the rule's] protections can only be claimed by disinterested directors." *Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984).* [**56] In order to plead around the business judgment rule, a plaintiff must plead "a simple and brief statement of claims of irrationality or inattention [to give] directors and officers fair notice of the grounds of those claims." *Tower Air, 416 F. 3d 229 at 239.*

18 The rule is "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984).* Delaware courts have held that the business judgment rule covers officers and directors in actions involving directors, *see* e.g. *Cinerama, Inc., v. Technicolor. Inc., 663 A.2d 1156, 1162 (Del. 1995)*(further history omitted), however, it is unclear whether the rule applies to corporate officers solely in their capacities as officers which is the context of Count V. The Court will presume for purposes of this opinion that the Delaware business judgment is available to the Defendants as officers of Divine as the Plaintiff has not argued otherwise.

[**57] The Defendants argue that the breach of care claims should be dismissed because they are entitled to the full protection of Delaware's business judgment rule and the provisions of the Exculpatory Clause. The Plaintiff responds that neither the business judgment rule nor the Exculpatory Clause [*451] provide protection to officers whose conduct was, as here, in bad faith. To overcome the presumptions of the business judgment rule, the Plaintiff relies heavily on the standard articulated in *In re Walt Disney Co. Deriv. Litig., 825 A.2d 275 (Del. Ch. 2003).* In that case, the plaintiffs alleged that

the defendant directors breached their fiduciary duties when they approved an extravagant employment agreement with the company's president which was unilaterally negotiated by the company's chief executive officer and then failed to oversee the chief executive officer's dealings with the president regarding his termination. The plaintiffs alleged that the directors "failed to exercise *any* business judgment and failed to make *any* good faith attempt to fulfill their fiduciary duties" to the corporation. *Id. at 278*. "In short the . . . complaint allege[d] [**58] facts implying that the . . . directors failed to 'act in good faith and meet minimal proceduralist standards of attention.'" Id.(quoting *Gagliardi v. TriFoods Int'l, Inc., 683 A.2d 1049, 1052 (Del. Ch. 1996)*). The Disney Court held that the business judgment rule did not apply, stating:

> "These facts, if true, do more than portray the directors who, in a negligent or grossly negligent manner, merely failed to inform themselves or to deliberate adequately about an issue of material importance to their corporation. Instead, the facts alleged. . . suggest that the defendant directors *consciously and intentionally disregarded their responsibilities*, adopting a 'we don't care about the risks' attitude concerning a material corporate decision."

Id. at 289 (emphasis in original).

The Court finds that the Plaintiff has sufficiently alleged that Filipowski consciously and intentionally disregarded his responsibilities to the Company's stockholders and creditors under the *Disney* standard. The facts of *Disney* are distinguishable from the instant case as they involved an abdication of oversight by the director defendants and an "ostrich-like" [**59] approach to material decision making. Here, the facts alleged indicate that Filipowski was actively involved in the oversight of the Company to the extent that he dominated the other Defendants. Although the facts of this case differ from those of *Disney*, this Court has little trouble characterizing the decision making process employed by Filipowski as irrational and reflective of a knowing and deliberate indifference to the potential risk of harm to the Company. [19] *See* Am. Compl. at PP72, 77 and 110. Because Filipowski's actions were either "not in good faith" or involved "intentional misconduct," the liability waiver available under the Exculpatory Clause cannot serve as a basis for dismissal of Count V against him. *See Disney at 290*. The Court finds that the Plaintiff has adequately alleged that Filipowski acted in an irrational, reckless or a grossly negligent manner and that the breach of due care claims against him are not subject to the defenses afforded by the business judgment rule or the Exculpatory Clause. Accordingly, the Court denies Filipowski's Motion to Dismiss Count V of the Complaint.

> 19 The Court reiterates that it will be the Plaintiff's burden at trial to prove that the Board would not have approved the disputed transactions or the continued operation of the Company had it been aware of the information which was falsified or withheld by, or at the direction of, Filipowski.

[**60] With respect to Humenansky, the Court also finds sufficient support in the Complaint for a determination that he intentionally and consciously disregarded his responsibilities to the detriment of the Company. The Humenansky e-mails may [*452] reflect the diligent discharge of his duties in some instances. The facts alleged also depict the disregard of those duties at Board meetings at which the disputed transaction and strategies were approved. Id. at PP78, 145, 147, 158 and 179. Based upon the facts alleged, the Court finds that the decision making process employed by Humenansky was not rational and was not employed in good faith. Accordingly, the Court denies Humenansky's Motion to Dismiss Count V of the Complaint.

With respect to Cullinane and Sullivan, the Court also finds adequate allegations in the Complaint to overcome the business judgment rule. They shared the same concerns about the Acquisitions and the Company's acquisition strategy, they withheld the same information about the inflated financial projections and they knowingly and intentionally remained silent before the Board about their concerns. They were silent regarding the truly crucial issues facing the Company, but [**61] were somehow meticulous in documenting discussions about their duties in light of the "zone of insolvency" at multiple Board meetings to foster the impression that they were exercising their business judgment. These actions were intentional and not merely negligent or grossly negligent. Based on these facts, the Court finds that Cullinane and Sullivan are not entitled to the presumption that they acted in good faith or in the best interests of the Company, and the Exculpatory Clause is unavailable as a defense to them. *See Disney at 290*. The Court denies Cullinane and Sullivan's Motions to Dismiss Count V.

G. Count VI-Breach of the Duty of Good Faith against all Defendants

The Plaintiff charges in Count VI that the Defendants breached their duty of good faith to Divine and its creditors by approaching the operation of Divine with a level of indifference or egregiousness that amounted to bad faith. Relying on the Disney standard, the Plaintiff alleges that the Defendants consciously and intentionally disregarded their responsibilities by knowingly failing to make decisions critical to Divine on an informed basis and by ignoring facts they knew to be true.

Several [**62] Delaware cases have examined whether good faith is an independent fiduciary duty or a component of the traditional fiduciary duties of care and loyalty under Delaware law. *See Cede & Co. v. Technicolor, Inc., 634 A.2d 345, 361 (Del. 1993)*(further history omitted)(referring to the duty of good faith as a separate duty within the triad of duties of good faith, loyalty and due care); *but see In re Gaylord Container Corp. S'holder. Litig., 753 A.2d 462, 475-76, n. 41 (Del. Ch. 2000)*(referring to good faith as a subsidiary requirement of the duty of loyalty). In Disney, the issue of good faith arose out of the board's failure to exercise their responsibilities, but the court did not definitively rule on whether an independent or separate duty of good faith existed. The Defendants assert that the duties of good faith and loyalty are synonymous, citing *Roselink Investors, L.L.C. v. Shenkman, 386 F. Supp. 2d 209, 221 (S.D.N.Y. 2004)*(dismissing good faith claim and noting that Delaware law does not recognize an independent duty of good faith)(citing *Orman v. Cullman, 794 A.2d 5, 14 (Del. Ch. 2002)*, and *Emerald Partners v. Berlin, 2001 Del. Ch. LEXIS 20, No. Civ. A 9700, 2001 WL 115340,* [**63] *at *64 n. 63 (Del. Ch. Feb. 7, 2001), vacated by, 787 A.2d 85 (Del. 2001)*). [20] The Defendants argue that the Plaintiff has [*453] failed to plead a violation of the duty of loyalty and, therefore, he cannot assert any violation of good faith. Alternatively, the Defendants contend that the Plaintiff's Disney-type claim fails because the Complaint depicts the Defendants' efforts to address, not disregard, the challenges facing Divine.

> 20 The Court notes that, on appeal, the Delaware Supreme Court found a "triad of primary fiduciary duties: due care, loyalty, and good faith." *Emerald Partners v. Berlin, 787 A.2d 85, 90 (Del. 2001).*

Based on the Delaware Supreme Court's holding in *Emerald Partners*, Count VI is not redundant to the breach of loyalty claims. For the reasons stated above, the Court finds sufficient allegations of bad faith with respect to all Defendants. The Court denies the Defendants' Motions to Dismiss Count VI of the Complaint.

H. Count VII-Deepening Insolvency [**64] Against All Defendants

The Plaintiff advances a claim for "deepening insolvency" against the Defendants in Count VII. The term refers to the "fraudulent prolongation of a corporation's life beyond insolvency." *Baena v. KPMG LLP, 389 F. Supp. 2d 112, 117 (D. Mass. 2005)*. Deepening insolvency claims are based on the theory that to the extent that liquidation is not already a certainty, the additional incurrence of debt or other actions make a salvageable situation impossible to the detriment of the corporation and its creditors. *See generally Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co., Inc., 267 F.3d 340, 349-50 (3d Cir. 2001)*(construing Pennsylvania law). Recently, many decisions have examined the theory of deepening insolvency and whether it should be recognized as its own independent cause of action. *See generally Kittay v. Atlantic Bank (In re Global Service Group, LLC), 316 B.R. 451, 456-57 (Bankr. S.D.N.Y. 2004)*. This Court need not resolve whether the claim of deepening insolvency is a separate tort in this case because of the deficiencies in Count VII and because the theory is part of the other counts [**65] in the Complaint.

As a basis for the deepening insolvency claim, the Plaintiff alleges that "[s]pecifically, after the Viant and Oak transactions were complete, the Defendants knew that Divine would not be able to obtain any more cash infusions. Notwithstanding that fact, the Defendants caused Divine to continue to conduct business and make acquisitions even after that time. . . with the result of spending most of Divine's last remaining cash reserves and increasing its debt load." Am. Compl. at P320. According to the Plaintiff, the second Oak financing was completed in July 2002, the Company disbanded its mergers and acquisitions unit in July 2002, and the Viant Acquisition was completed on September 27, 2002. Id. at PP140 and 145. The Plaintiff has pled no facts regarding any further acquisitions after Viant, and the Court must therefore presume that there were none. To the extent Count VII relates to post-Viant and Oak transactions, it is deficient because there are no facts which support harm to the creditors. To the extent Count VII is based upon the Board's decisions to conduct business after those transactions, the Court finds such claims to be subsumed within Counts [**66] I through VI. The Court allows the Defendants' Motions to Dismiss Count VII with respect to all Defendants.

I. Count VIII- Objection to Indemnification Claims under *Fed. R. Bankr. P. 3007* against All Defendants

Each of the Defendants filed proofs of claim against the Company's bankruptcy estate seeking, *inter alia*, indemnification for legal costs and expenses, including any judgment or settlement obligations which may arise with respect to litigation against them regarding Divine (the "Indemnification Claims"). Article XII.A.1 of the Company's Charter provides that Divine shall indemnify its officers and directors "if such person acted in [*454]

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good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful." Additionally, Article XII.B. of the Charter contains the Exculpatory Clause which protects directors for monetary damages for breach of the duty of due care, but not claims based on breach of the duty of loyalty, intentional misconduct or knowing violation [**67] of the law. Based on the allegations set forth in Counts I through VIII, the Plaintiff alleges that the Defendants breached their duty of loyalty, engaged in intentional misconduct, did not act in good faith, and/or did not act in a manner the Defendants reasonably believed to be in the best interests of Divine. As a result, the Plaintiff argues, the Defendants are not entitled to indemnification from Divine and the Indemnification Claims should be disallowed in their entirety. The Defendants respond that Count VIII is dependent upon a viable breach of fiduciary duty claim which the Plaintiff does not have. Pursuant to the Court's rulings with respect to Counts I through VI above, the Court denies the Defendants' Motions to Dismiss Count VIII.

J. Count XII-Subordination against all Defendants [21]

21 The Court will not address Counts IX through XI as none of the Defendants asserted grounds for dismissal of those Counts.

In Count XII, the Plaintiff seeks to equitably subordinate the Defendants' proofs of [**68] claim to the claims of all other general unsecured creditors pursuant to *11 U.S.C. § 510(c)* based on their inequitable conduct, as alleged in Counts I through VIII (the "Subordination Claims"). The Defendants argue that Count XII fails because the Plaintiff has not adequately pled "inequitable conduct" on the part of the Defendants or misconduct resulting in injury to creditors.

Section 510(c)(1) of the Code provides in pertinent part that "the court may-(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim . . ." *11 U.S.C. § 510(c)*. *Section 510(c)* of the Code "adopts the long-standing judicially developed doctrine of equitable subordination under which a bankruptcy court has power to subordinate claims against the debtor's estate to claims it finds ethically superior under the circumstances." *Allied E. States Maint. Corp. v. Miller (In re Lemco Gypsum, Inc.), 911 F.2d 1553, 1556 (11th Cir. 1990), rehearing denied, 930 F.2d. 925 (11th Cir. 1991)*. Courts in Massachusetts have adopted the widely-accepted [**69] test for equitable subordination articulated by the Fifth Circuit in *Fabricators, Inc. v. Tech. Fabricators, Inc. (In re Fabricators, Inc.), 926 F.2d 1458 (5th Cir. 1991). See e.g. Capitol Bank & Trust Co. v. 604 Columbus Ave. Realty Trust (In re 604 Columbus Ave. Realty Trust), 968 F.2d 1332, 1353 (1st Cir. 1992)*; *Aquino v. Black (In re AtlanticRancher, Inc.), 279 B.R. 411, 439 (Bankr. D. Mass. 2002)*; *In re Beverages Intl. Ltd., 50 B.R. 273 (Bankr. D. Mass. 1985)*. In In re Fabricators, the Fifth Circuit reiterated its three-prong test for equitable subordination first set forth in *Benjamin v. Diamond (In re Mobile Steel Co.), 563 F.2d 692 (5th Cir. 1977)* as follows: (i) the claimant must have engaged in some type of inequitable conduct; (ii) the misconduct must have resulted in injury to the creditors or conferred an unfair advantage on the claimant; and (iii) [*455] equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Code. *926 F.2d at 1464-65* (citing *Mobile Steel at 700*). The First Circuit has elaborated on the test as follows: [**70] "Although the remedy of equitable subordination has been applied relatively infrequently, it is usually directed towards misconduct arising in three situations: when a fiduciary of the debtor misuses his position to the disadvantage of other creditors; when a third party dominates or controls the debtor to the disadvantage of others; or when a third party defrauds the other creditors." *604 Columbus Ave. Realty Trust, 968 F.2d at 1359-60 (1st Cir. 1992)*.

When analyzing inequitable conduct, "[c]laims arising from dealings between a debtor and an insider are rigorously scrutinized by the courts. . ." *Id. at 1360*. Harm to creditors is established if ". . .the party seeking equitable subordination demonstrates that the claimant's conduct harmed the debtor or its other creditors." *In re Mid-American Waste Systems, 284 B.R. 53, 71 (Bankr. D. Del. 2002)*. "There is no requirement that the purported misconduct or the harm it causes be a major cause of the debtor's bankruptcy. Id. "If the misconduct harmed the entire creditor class, it is sufficient to show as harm that general creditors will be less likely to collect their debts as a [**71] result of the misconduct." *Liberty Mut. Ins. Co. v. Leroy Holding Co. (In re Fort Ann Express, Inc.), 226 B.R. 746, 757 (N.D.N.Y. 1998)*(citing *604 Columbus Ave. Realty Trust, 968 F.2d at 1363*).

The Court finds adequate facts in the Complaint to state a cause of action for equitable subordination of the Subordination Claims with respect to all of the Defendants. [22] All of the Defendants were officers and/or directors of the Company and thus were insiders of the Company, *see 11 U.S.C. § 101(31)(B)(i)* and *(ii)*, whose claims are subject to rigorous scrutiny. *604 Columbus Ave. Realty Trust, at 1360*. With respect to the first prong of the *Mobile Steel* test, the Court finds the allegation of inequitable conduct against the Defendants to be adequately supported in Counts I through VI of the Com-

1-29

plaint. Additionally, the allegations concerning the attempts of Filipowski, Humenansky and Cullinane to secure administrative expense claims by terminating their employment contracts prior to the Company's rejection of those contracts sufficiently convey the misuse of their position and an attempt to achieve unfair advantage [**72] over general unsecured creditors. *See* Am. Compl. at PP 255-257. Under the second prong of the *Mobile Steel*, the Court also finds sufficient allegations to support the likelihood of injury to creditors as the Defendants' conduct may have caused, or substantially contributed to, the bankruptcy of the Company and a circumstance where general creditors would be less likely to collect their debts. Finally, the Court finds that the subordination of the Defendants' claims would not be inconsistent with the Bankruptcy Code. Principles of equity would be offended by the allowance of the Defendants' claims in the event the Plaintiff prevails in this Adversary Proceeding, and such allowance would confer an unfair advantage on the Defendants and prejudice unsecured creditors. The Court denies the Defendants' Motions to Dismiss Count XII. Should the Plaintiff [*456] prevail at trial on the equitable subordination claims against the Defendants, they may still assert that subordination should be limited to the extent necessary to offset any harm suffered by the creditors.

22 Although *§ 510(c)* deals with allowed claims, a determination as to whether a claim is subject to equitable subordination under *§ 510(c)* may be made before the determination as to the allowance of the claim. *U.S. Abatement Corp. v. Mobil Exploration & Producing U.S., Inc. (In re U.S. Abatement Corp.), 39 F.3d 556, 560 (5th Cir. 1994).*

[**73] *K. Count XIII-Avoidance and Recovery of Fraudulent Transfers against all Defendants*

Count XIV-Avoidance and Recovery of Preferential Transfers against all Defendants

Each of the Defendants have alleged in their proofs of claim that Divine is obligated to indemnify them for all legal costs and expenses which arise with respect to litigation against them regarding Divine. Divine paid a total of $ 275,000.00 in retainers (the "Retainers") on February 14, 2003 to various law firms for their representation of the Defendants in connection with governmental investigations and other litigation against them in their capacity as officers and directors of Divine. The Retainer payments were made eleven days prior the Petition Date and well after the Company entered the zone of insolvency. The Plaintiff asserts that the Defendants were not entitled to indemnification from Divine and seeks to recover the Retainers as fraudulent transfer pursuant to *11 U.S.C. § 548(a)* or, in the alternative, to avoid them as preferential transfers pursuant to *11 U.S.C. § 547(b).* [23] The Defendants contend that the Complaint lacks the allegations necessary [**74] to set aside Divine's indemnity obligation under its Charter and because the Plaintiff fails to plead with particularity that Divine paid the Retainers "with actual intent to hinder, delay, or defraud" creditors under *§ 548(a)(1)(A)*. Notwithstanding questions about the adequacy of the allegations of "actual intent" for purposes of *§ 548(a)(1)(A)*, the Court finds sufficient allegations to support the elements of *§ 548(a)(1)(B)(i)* and *(ii)*. The quoted provisions of the Charter contained in the Complaint expressly preclude indemnification [*457] in the event that an officer or director acted in bad faith or in a manner that they did not reasonably believe to be in the best interests of the Company. As stated above with respect to Count VIII, the Court finds adequate factual support in the Complaint to establish that the Defendants' conduct fell within the bad faith exception to the indemnification obligation. As a result, the Company may have had no obligation to pay the Retainers on the Defendants' behalf, and it would have received less than a reasonably equivalent value in exchange for the Retainer payments at a time when it was insolvent. The Court denies the Defendants' Motions to Dismiss [**75] Count XIII of the Complaint.

23 *11 U.S.C. § 548(a)*, as it was in effect at the commencement of this Adversary Proceeding, provides in pertinent part:

> (a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily -
>
> (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
>
> (B)(i) received less than a reasona-

bly equivalent value in exchange for such transfer or obligation; and

(ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation. . .

11 U.S.C. § 548.

11 U.S.C. § 547(b), as it was in effect at the commencement of this Adversary Proceeding, provides:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property-

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made-

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if-

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b).

[**76] In the event the Defendants are entitled to indemnification from the Company, the Plaintiff alternatively claims that the Retainer payments are avoidable as preferential transfers in Count XIV. The Defendants argue that the Retainer payments were not preferential transfers under *§ 547(b)* because the Plaintiff fails to sufficiently allege that the Company paid the Retainers on account of an antecedent debt and because they were not creditors. *See 11 U.S.C. § 547(b)(1)* and *(2)*. A "claim" is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured . . ." *11 U.S.C. § 101(5)(A). See Woburn Assocs. v. Kahn (In re Hemingway Transp. Inc.), 954 F.2d 1, 8-9 (1st Cir. 1992)*(indemnification agreement created a right to payment contingent on a future occurrence and was a "claim" under the Bankruptcy Code). The Plaintiff's theory is that, if the Defendants' actions were not violations of their fiduciary duties, then they had "claims" against, and were owed "debts" by, Divine within the [**77] meaning of *11 U.S.C. § 101(12)*. Such debts were antecedent to the payments of the Retainers because they arose under Divine's Charter which was filed in July of 2000. *See In re Mid-American Waste Systems, Inc., 228 B.R. 816, 822 (Bankr. D. Del. 1999)*(a corporation's commitment to indemnify, as provided in the cer-

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tificate of incorporation, existed at the time each of the officers and directors commenced employment).

The Court finds that, if the Defendants are entitled to indemnification from the Company, such indemnification obligation was a contingent debt owed to the Defendants and incurred on the date when Divine first became obligated to indemnify them, namely the date of the filing of the Charter with the State of Delaware. [24] As such, the Retainer payments would have been paid "on account of an antecedent debt." The Court finds the other elements of *§ 547(b)* to have been adequately pled, and the Court denies the Defendants' Motions to Dismiss Count XIV of the Complaint.

24 Or the date they were first employed by the Company if such date was after the filing of the Charter.

[**78] **V. CONCLUSION**

The Court will not address Counts XV or XVI as none of the Defendants asserted grounds for dismissal of those Counts. For the above stated reasons, the Court denies the Motions to Dismiss in their entirety except for Count VII and those portions of Counts I through III which relate to the alleged misrepresentation by Filipowski, Humenansky and Cullinane of their interest and gain from the transactions enumerated in PP267, 278 and 289 of the Complaint. Upon the filing of answers by the Defendants, the Court will issue a pre-trial order.

By the Court,

Joan N. Feeney

United States Bankruptcy Judge

Dated: July 12, 2006

ORDER

In accordance with the Memorandum dated July 12, 2006, the Court hereby denies the Motions to Dismiss of Andrew Filipowski, Paul Humenansky, Michael Cullinane and Jude Sullivan in their entirety except for Count VII and those portions of Counts I through III which relate to the alleged misrepresentation by Filipowski, Humenansky and Cullinane of their interest and gain from the transactions enumerated in PP267, 278, and 289 of the Complaint. Upon the filing of answers [*458] by the Defendants, the Court will issue a pre-trial order.

[**79] By the Court,

Joan N. Feeney

United States Bankruptcy Judge

Dated: July 12, 2006

Professionals

Printable Version

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Partner
Chicago +1.312.781.7160
Fax +1.312.345.9995
jude.sullivan@klgates.com
Add to Outlook Contacts

Areas of Practice • Representative Experience • Professional Background • Bar Admissions • Education

Areas of Practice

Jude Sullivan concentrates his practice in corporate, mergers and acquisitions, private equity and venture capital matters. Mr. Sullivan's experience includes:

- Mergers and acquisitions, representing both purchasers and targets in transactions involving public and private companies
- Venture capital investments and private equity transactions, representing both investors and portfolio companies
- Served as general counsel of and corporate counsel to a publicly traded software and service company
- Extensive experience working with technology companies

Representative Experience

- Served as buyer's transaction team leader in connection with a $2.1 billion hostile acquisition of a publicly traded waste containment company.
- Served as seller's transaction team leader in connection with a $3.6 billion sale of a publicly traded software company.

Professional Background

Prior to joining the firm, Mr. Sullivan was General Counsel, Senior Vice President and Secretary of divine, inc., a publicly traded enterprise software and service company. As general counsel at divine:

- Responsible for negotiating and documenting venture capital investments for which an aggregate of approximately $350 million was invested in more than 35 portfolio companies
- Led the acquisition of more than 25 entities, including seven public targets and two public targets from whom assets were acquired in bankruptcy
- Served as the chief legal counsel and advisor to divine's board of directors

Mr. Sullivan also previously served as Director of Business Development for HALO Technology Holdings, Inc., a publicly traded technology holding company, and as General Counsel and Director of Corporate Development of Lakeview Technology, Inc., a Chicago-based software and professional services company.

Mr. Sullivan was formerly a partner in two large Chicago-based law firms.

Bar Admissions

- Bar of Illinois

Education

- J.D., University of Illinois College of Law (1990) (*magna cum laude*, Order of the Coif)
- B.S., University of Illinois (1986)

PRACTICES & INDUSTRIES
CORPORATE
CORPORATE GOVERNANCE
PRIVATE EQUITY AND VENTURE CAPITAL
NEWSSTAND

Named in Enivid Bankruptcy

Hired by KBA

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KBA - MAR 4

Legal Services - FY 2010 and FY 2011

Vendor Name	Professional Assigned	FY 2010	Year-to-Date January 31, 2011
K&L Gates	Jude Sullivan	42,257	11,482
Lathrop & Gage	Catherine Logan	187,718	56,868
Total Legal Services Expense		229,975	68,350

ADVANCED LIFE SCIENCES HOLDINGS, INC.
TABLE1
Form Type: DEF 14A
Period End: Apr 01, 2009
Date Filed: Feb 25, 2009

Name of Director	Audit	Compensation	Nominating
Non-Employee Directors:			
Scott F. Meadow		X*	
Theron E. Odlaug, Ph.D.		X	X
Terry W. Osborn, Ph.D.	X		X
Richard A. Reck	X*		
Israel Rubinstein, M.D.	X	X	
Rosalie Sagraves, Pharm.D.		X	X
Thomas V. Thornton	X		X*
Employee Directors:			
Michael T. Flavin, Ph.D.			
John L. Flavin			

X = Committee member; * = Chair

Advanced Life Sciences Holdings, Inc. (ADLS)

8-K

Current report filing
Filed on 03/24/2011
Filed Period 03/24/2011

Thomas V. Thornton
is a Paid Director

This pulled from
SEC website 3-24-11

Company currently
in default

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **March 24, 2011**

ADVANCED LIFE SCIENCES HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	**000-51436** (Commission File Number)	**30-0296543** (I.R.S. Employer Identification No.)

1440 Davey Road **Woodridge, Illinois** (Address of principal executive offices)	**60517** (Zip Code)

(630) 739-6744
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 2.02. **Results of Operations and Financial Condition.**

On March 24, 2011, Advanced Life Sciences Holdings, Inc. (the "Company") issued a press release announcing its financial results for the fourth quarter and full year ended December 31, 2010 and a reverse stock split on a 1-for-30 share basis (the "Reverse Stock Split"). A copy of the press release is attached hereto as Exhibit 99.1.

Item 9.01. **Financial Statements and Exhibits.**

(d) Exhibits:

99.1 Press Release dated March 24, 2011 announcing its financial results for the fourth quarter and full year ended December 31, 2010 and the Reverse Stock Split

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ADVANCED LIFE SCIENCES HOLDINGS, INC.

Dated: March 24, 2011

By: /s/ Michael T. Flavin
Name: Michael T. Flavin, Ph.D.
Title: Chairman and Chief Executive Officer

Exhibit Index

Exhibit No.	Description
99.1	Press Release dated March 24, 2011 announcing its financial results for the fourth quarter and full year ended December 31, 2010 and the Reverse Stock Split

ADVANCED LIFE SCIENCES™

1440 Davey Road
Woodridge, IL 60517
(Phone) 630.739.6744
(Fax) 630.739.6754
www.advancedlifesciences.com

Company Contact: John Flavin 630-754-4343
Email: jflavin@advancedlifesciences.com

March 24, 2011

Advanced Life Sciences Announces 2010 Fourth Quarter and Full Year Financial Results and Reverse Stock Split

CHICAGO, IL, March 24, 2011/PRNewswire/: — Advanced Life Sciences Holdings, Inc. (OTCBB: ADLS.OB), a biopharmaceutical company engaged in the discovery, development and commercialization of novel drugs in the therapeutic areas of infection, oncology and respiratory diseases, today announced its financial results for the fourth quarter and full year ended December 31, 2010 and the approval of a 1-for-30 reverse stock split of the Company's issued and outstanding common stock.

Dr. Michael Flavin, Chairman and CEO of Advanced Life Sciences, commented: "During the fourth quarter, we continued to make progress toward our strategic objectives including the Restanza community acquired bacterial pneumonia (CABP) program and biodefense initiatives. Since the completion of our Agreement with the United States Food and Drug Administration (FDA) for the Special Protocol Assessment (SPA), we have discussed the Restanza opportunity with several potential strategic partners. Their views match that of ours in that there is an urgent need for new antibiotics that work through novel mechanisms of action, and that there is an alarming dearth of late-stage compounds that represent real partnering opportunities for companies that need to expand their antibiotic franchises. They also recognize that the regulatory landscape has shifted and companies developing antibiotics need to deal with the new set of guidelines. They believe that we have made significant progress in defining the new environment through our work with the FDA. We are hopeful that we will be able to convert this interest into a meaningful collaboration."

"As announced earlier this year, the Company has engaged in a strategic alternatives review process. While we continue to take steps to improve the financial standing of our Company, we believe that a potential strategic transaction, partnership or acquisition will be in the best interest of all our shareholders," said Dr. Flavin. "In the meantime, we will continue to advance our discussions and opportunities to work with the US Government regarding Restanza's potential in biodefense and global health."

The net loss allocable to common shareholders for the three months ended December 31, 2010 was $3.3 million or ($0.01) per share compared to a net loss allocable to common shareholders of $1.5 million or ($0.02) per share for the three months ended December 31, 2009. All share and per share information is presented on a pre-split basis. The increase in the net loss for the quarter is primarily due to a non-cash impairment charge which was partially offset by reduced salary and benefit costs and other operating expenses associated with the development of the Company's lead antibiotic, Restanza.

Cash used for operating activities during the quarter was approximately $1.0 million. In the fourth quarter, the Company raised approximately $0.8 million in proceeds through the use of a Standby Equity Distribution Agreement and made a $0.4 million commercial loan principal payment to further reduce outstanding debt. The Company ended the year with cash totaling approximately $0.2 million. Cash used for operating activities for the full year was approximately $6.4 million.

-MORE-

Full Year Expense Analysis, 2010 versus 2009:

- Research and development expenses decreased $2.0 million to approximately $2.5 million for the year ended December 31, 2010 from approximately $4.5 million for the year ended December 31, 2009. The decrease in R&D expense is due to lower government grant expenses associated with the Company's biodefense development program for Restanza as well as reduced salary and benefit costs and other operating expenses.

- Selling, general and administrative expenses decreased $1.9 million to $4.4 million for the year ended December 31, 2010 from $6.3 million for the year ended December 31, 2009. The decrease primarily reflects lower salary and benefit costs and other operating expenses.

Fourth Quarter Expense Analysis, 2010 versus 2009:

- Research and development expenses decreased by $1.1 million to approximately $0.2 million for the three months ended December 31, 2010 compared to $1.3 million for the three months ended December 31, 2009 due to lower government grant expenses associated with the Company's biodefense development program for Restanza.

- Selling, general and administrative expenses were reduced to $0.6 million for the three months ended December 31, 2010 from $0.9 million during the fourth quarter of last year due to reduced salary and benefit costs and other operating expenses.

2010 Achievements

- Achieved an agreement with the US Food & Drug Administration on the SPA for Restanza in CABP which provides a clear roadmap to approval;

- Responded to BARDA requests for information relating to a potential funding award to develop Restanza as a biodefense and public health countermeasure;

- Submitted a full contract proposal in response to a Broad Agency Announcement (BAA) issued by the National Institutes of Allergy and Infectious Diseases (NIAID) for the development of Restanza in IV formulation for the therapeutic treatment of multiple category A and B bacterial threats;

- Reported potent Restanza *in vitro* data in *Burkholderia psuedomallei* and *Burkholderia mallei*, which are important biodefense and global health related pathogens and announced positive data from an *in vitro* study assessing Restanza against 30 strains of *Burkholderia pseudomallei*, further highlighting its ability to address serious bacterial infections that are becoming untreatable due to the increasing public health threat of bacterial resistance to currently marketed antibiotics;

- Presented Restanza biodefense data and exhibited at the 50th Annual Interscience Conference on Antimicrobial Agents and Chemotherapy;

- Announced positive results from *in vitro* and *in vivo* studies assessing the efficacy of Restanza against the species of *Plasmodium* that cause malaria and entered into a Cooperative Research and Development Agreement (CRADA) with The Walter Reed Army Institute of Research to allow the institute to perform advanced animal efficacy testing of Restanza against various *Plasmodium* species that cause malaria;

-MORE-

- Expanded the collaboration with the U.S. Government to include the evaluation of Restanza's activity against sexually transmitted infections (STIs), such as gonorrhea;
- Announced positive results from preclinical toxicology and pharmacokinetic studies of an intravenous (IV) formulation of Restanza that support its use in a hospital setting;
- Reduced outstanding debt by $3.9 million in 2010 by completing a debt-for-equity exchange and a $1.9 million commercial loan principal payment;
- Awarded a $245,000 cash tax grant by the U.S Internal Revenue Service through the Qualifying Therapeutic Discovery Project;
- Announced the publication of a research paper in the journal *Bioorganic and Medicinal Chemistry Letters* that reports data using the Company's core triterpenoid platform technology in the discovery and development of new cancer therapeutic agents.

Reverse Stock Split

The Company also announced today that a 1-for-30 reverse split of its common stock will take effect at 5:00 p.m. on Monday, March 28, 2011. The Company's common stock will be quoted on the OTC Bulletin Board on a split-adjusted basis beginning upon the opening of trading on March 29, 2011, under the symbol of ADLSD.OB. After 20 business days, the symbol will revert back to ADLS.OB.

As a result of the reverse stock split, every 30 shares of the Company's common stock issued and outstanding or reserved for issuance immediately prior to the effective time will be converted into one share of common stock. Fractional shares will not be issued and stockholders who otherwise would have been entitled to receive a fractional share as a result of the reverse stock split will receive an amount in cash the closing sales price of the Company's common stock as reported on the OTC Bulletin Board on March 28, 2011.

Letters of transmittal are expected to be sent to stockholders by the company's transfer agent, VStock Transfer LLC, shortly after the effectiveness of the reverse stock split. No action by the Company's stockholders is required prior to receipt of these letters.

The reverse stock split was approved by the Company's stockholders at the Company's annual meeting of stockholders held on April 8, 2010. The number of shares of common stock subject to outstanding stock warrants and options, and the exercise prices and conversion ratios of those securities, will automatically be proportionately adjusted for the 1-for-30 ratio provided for by the reverse stock split.

As part of the amendment to its certificate of incorporation to effect the reverse stock split, Advanced Life Sciences Holdings, Inc. will also reduce its authorized shares of capital stock from 625,000,000 to 25,666,666 shares and its authorized shares of common stock from 620,000,000 to 20,666,666 shares.

Business Outlook and Goals for 2011

- Support pending government funding submissions and submit additional proposals to develop Restanza as a biodefense and public health countermeasure;

-MORE-

- Advance discussions with prospective pharmaceutical company and government partners as part of our evaluation of strategic alternatives for the company;
- In-license additional value-enhancing pipeline candidates.

Financial Guidance for 2011

Advanced Life Sciences has taken certain cost cutting measures including a company-wide compensation reduction plan to further reduce its operating expenses. To fund ongoing operations in 2011, the Company intends to raise additional capital through the sale of equity while pursuing potential government contracts and commercial partnerships. The Company has approximately 25 million shares, on a pre-split basis, available for sale under the current equity facility with Dutchess Capital. There are approximately 184 million authorized shares, on a pre-split basis, remaining for subsequent equity financing opportunities. The Company is currently in default on its outstanding credit facility with Leaders Bank. Under the provisions of the loan agreement, Leaders Bank has certain rights and remedies including accelerating the loan repayment in which case the Company may have to file for bankruptcy protection. The Company is in discussions with Leaders Bank to resolve the current default.

Conference Call Details

Advanced Life Sciences will host a conference call and live webcast at 9:00 a.m. Eastern Time on Thursday, March 24, 2011 to discuss the Company's fourth quarter and year end financial results.

The conference call will be webcast simultaneously over the Internet. Please visit the Investor Relations section of the Advanced Life Sciences corporate website www.advancedlifesciences.com. Alternatively, callers may participate in the conference call by dialing 888-713-4211 (domestic) or 617-213-4864 (international). The passcode for the conference call is 86880056. Investors are advised to dial into the call at least ten minutes prior to the call to register. Participants may pre-register for the call at https://www.theconferencingservice.com/prereg/key.process?key=PAVMV3UD3. Pre-registrants will be issued a pin number to use when dialing into the live call which will provide quick access to the conference by bypassing the operator upon connection.

About Advanced Life Sciences

Advanced Life Sciences is a biopharmaceutical company engaged in the discovery, development and commercialization of novel drugs in the therapeutic areas of infection, cancer and respiratory diseases. The Company's lead candidate, Restanza, is a novel once-a-day oral antibiotic in late-stage development for the treatment of respiratory tract infections including CABP and biodefense pathogens including anthrax, plague and tularemia. For more information, please visit us on the web at www.advancedlifesciences.com or follow us on twitter at http://twitter.com/advancedlifesci.

-MORE-

Forward-Looking Statements

Any statements contained in this press release that relate to future plans, events or performance are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements represent our management's judgment regarding future events. The Company does not undertake any obligations to update any forward-looking statements whether as a result of new information, future events or otherwise. Our actual results could differ materially from those discussed herein due to several factors including the success and timing of our clinical trials and our ability to obtain and maintain regulatory approval and labeling of our product candidates; our plans to develop and commercialize our product candidates; the loss of key scientific or management personnel; the size and growth of potential markets for our product candidates and our ability to serve those markets; regulatory developments in the U.S. and foreign countries; the rate and degree of market acceptance of any future products; the accuracy of our estimates regarding expenses, future revenues and capital requirements; our ability to obtain financing on terms acceptable to us; our ability to obtain and maintain intellectual property protection for our product candidates; the successful development of our sales and marketing capabilities; the success of competing drugs that become available; and the performance of third party collaborators and manufacturers. These and additional risks and uncertainties are detailed in the Company's filings with the Securities and Exchange Commission.

###

ADVANCED LIFE SCIENCES HOLDINGS, INC. AND SUBSIDIARY
(A Development Stage Company)

CONSOLIDATED BALANCE SHEETS

	December 31, 2010	December 31, 2009
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	$ 159,596	$ 2,841,801
Grant receivable	—	530,219
Prepaid insurance	33,576	111,761
Other prepaid expenses	11,612	88,535
Total current assets	204,784	3,572,316
PROPERTY AND EQUIPMENT:		
Furniture and fixtures	214,380	244,072
Computer software and equipment	281,257	258,786
Leasehold improvements	177,253	177,253
Total property and equipment—at cost	672,890	680,111
Less accumulated depreciation	(628,347)	(624,158)
Property and equipment—net	44,543	55,953
OTHER ASSETS:		
Assets held for sale	250,000	2,760,936
Deferred offering and financing costs	248,266	13,566
Other long-term assets	25,000	25,000
Total other assets	523,266	2,799,502
TOTAL ASSETS	$ 772,593	$ 6,427,771
LIABILITIES AND EQUITY (DEFICIT)		
CURRENT LIABILITIES:		
Accounts payable	$ 1,211,113	$ 604,334
Accrued payroll	34,803	664,436
Other accrued expenses	548,725	661,504
Accrued interest payable	99,134	73,194
Short-term lease payable	4,829	4,350
Current portion of the line of credit	8,080,000	—
Short-term grant payable	500,000	—
Total current liabilities	10,478,604	2,007,818
Long-term lease payable	16,011	—
Long-term grant payable	—	500,000
Long-term notes payable - related party	—	2,000,000
Line of credit	—	10,000,000
Total liabilities	10,494,615	14,507,818
COMMITMENTS AND CONTINGENCIES		
EQUITY (DEFICIT):		
Common stock, $0.01 par value—620,000,000 shares authorized and 259,303,325 issued and	2,593,033	849,250

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outstanding at December 31, 2010; 120,000,000 shares authorized and 84,925,010 issued and outstanding at December 31, 2009		
Additional paid-in capital	128,557,628	122,621,392
Deficit accumulated during the development stage	(140,872,683)	(131,550,689)
Noncontrolling interest in subsidiary	—	—
Total equity (deficit)	(9,722,022)	(8,080,047)
TOTAL LIABILITIES AND EQUITY (DEFICIT)	$ 772,593	$ 6,427,771

ADVANCED LIFE SCIENCES HOLDINGS, INC. AND SUBSIDIARY
(A Development Stage Company)

CONSOLIDATED STATEMENTS OF OPERATIONS

	Three months ended December 31, 2010	Three months ended December 31, 2009	Twelve months ended December 31, 2010	Twelve months ended December 31, 2009	Period From Inception (January 1, 1999) Through December 31, 2010
Revenue:					
Management fees	$ —	$ —	$ —	$ —	$ 1,161,180
Grants	—	1,057,952	752,853	2,793,191	4,822,445
Royalty—related party	—	—	—	—	45,238
Total revenue	—	1,057,952	752,853	2,793,191	6,028,863
Expenses:					
Research and development	219,018	1,302,221	2,499,488	4,462,281	97,542,170
Contracted research and development—related party	—	—	—	—	7,980,299
Selling, general and administrative	568,254	921,706	4,371,071	6,322,849	37,742,557
Impairment charge	2,510,936	—	2,510,936	—	2,510,936
Total expenses	3,298,208	2,223,927	9,381,495	10,785,130	145,775,962
Loss from operations	(3,298,208)	(1,165,975)	(8,628,642)	(7,991,939)	(139,747,099)
Net other (income) expense:					
Interest income	(224)	(2,225)	(8,360)	(11,561)	(2,968,783)
Interest expense	252,376	262,561	946,191	1,036,762	5,131,806
Other (income) expense, net	(244,479)	26,643	(244,479)	146,092	(98,387)
Gain on sale of interest in Sarawak Medichem Pharmaceuticals joint venture	—	—	—	—	(939,052)
Net other (income) expense	7,673	286,979	693,352	1,171,293	1,125,584
Net loss	(3,305,881)	(1,452,954)	(9,321,994)	(9,163,232)	(140,872,683)
Less net loss attributable to the noncontrolling interest in subsidiary	—	—	—	—	—
Net loss attributable to Advanced Life Sciences Holdings, Inc.	(3,305,881)	(1,452,954)	(9,321,994)	(9,163,232)	(140,872,683)
Less accumulated preferred stock dividends of subsidiary for the period	43,750	43,750	175,000	175,000	2,019,792
Net loss available to common shareholders	$ (3,349,631)	$ (1,496,704)	$ (9,496,994)	$ (9,338,232)	$ (142,892,475)
Net loss per share available to common shareholders - basic and diluted	$ (0.01)	$ (0.02)	$ (0.06)	$ (0.16)	
Weighted average shares outstanding - basic and diluted	236,557,801	79,087,262	153,372,740	57,781,126	

Cydex.

The KBA provided a grant for $195,000 to Cydex in 2009. In 2011 Cydex was acquired by Ligand http://www.ligand.com/cydex. Ligand's goals to reduce Cydex's operations and move it to California per their business model. http://www.ligand.com/about-ligand. Additionally the former President (till November 2010) was Theron Odlaug.
http://investing.businessweek.com/research/stocks/private/person.asp?personId=30684537&privcapId=428931&previousCapId=428931&previousTitle=CyDex%20Pharmaceuticals,%20Inc. Mr. Odlaug also sits on the Board of Directors with Tom Thornton at Advanced Life Sciences Holdings, Inc. While an R&D Voucher grant was given to Cydex, the relationship between Mr. Odlaug and Mr. Thornton was not disclosed to the Board per the meeting minutes. Mr. Odlaug is also an Illinois native and former iBIO director in which he and Tom frequently interacted. Again, this relationship was not disclosed.

KBA FEB 21

From Revenues and Expenses Budget Comparison Report:	Year-to-Date January 31, 2011
Salaries Expense	$ 971,446
Employer Payroll Taxes	57,799
Benefits:	
Employer-provided insurance coverage (net of employee share of premiums)	57,613
Retirement plan discretionary employer contribution	72,391
Total Wages and Benefits from Revenues and Expenses Budget Comparison Report	**$ 1,159,249**

Kansas Bioscience Authority Annualized Salaries and Benefits at January 31, 2011:

Operational Staff:

Name	Title	Base Salary	Annualized Benefits (KBA Portion) Insurance	Retirement Contribution
Abdullah, Tariq	General Counsel	$ 110,000	$ 9,514	$ -
Cummings, Mary	Marketing Communications Specialist	60,180	980	4,814
Katterhenry, Janice	CFO and COO	175,000	13,627	14,000
Kemp, Bradley	Project Director, Cancer Fighting Cures	126,000	5,775	10,080
LoScalzo, Marsh	Executive Assistant	66,150	8,373	5,292
Micheel, Gary	Facilities Project Manager	113,500	14,353	9,080
Montes, Katie	Executive Assistant	43,000	6,394	3,440
Murray, Christine	Marketing Communications Specialist	65,000	5,847	-
Nester, Arika	Accountant	75,000	10,358	-
Ruf, Nancy	Contract Administrator	77,000	11,853	6,160
Saale, Ruth	Director of Accounting and Financial Reporting	100,000	7,102	8,000
Thornton, Lindsay	Director of Special Projects	107,500	580	8,600
Thornton, Thomas	President and CEO	265,000	21,820	21,840
Vranicar, David	President, Heartland BioVentures	175,000	14,422	14,000
White, Ryan	Outcomes and Database Analyst	61,800	10,517	3,090
	Operational Staff subtotal	**$ 1,620,130**	**$ 141,513**	**$ 108,397**

Heartland BioVentures Staff:

Name	Title	Base Salary	Annualized Benefits (KBA Portion) Insurance	Retirement Contribution
Colbert, Donald	Federal Research Funding Specialist	$ 52,500	$ 6,249	$ -
Harrington, Keith	Director of Commercialization, Heartland BioVentures	134,400	5,412	10,752
Kay, Lisa	Executive Assistant, Heartland BioVentures	42,800	533	3,424
Krol, Thomas	Director of Commercialization, Heartland BioVentures	157,500	12,580	12,600
Osborn, Terry	Director of Commercialization, Heartland BioVentures	150,000	24,226	-
Simpson, Tony	Bioenergy Director, Heartland BioVentures	157,500	11,655	-
	Heartland BioVentures Staff subtotal	**$ 694,700**	**$ 60,655**	**$ 26,776**
Total Kansas Bioscience Authority Annualized Salaries and Benefits		**$ 2,314,830**	**$ 202,168**	**$ 135,173**

Note: KBA staff may earn a performance bonus.

KBA FEB 21

Vendor Name	Business Purpose	Amount
Bella Vita Bistro - Wichita	KBA and grantee meeting prior to stakeholder event	420
Bobby Van's Steakhouse	Meeting with Dan Glickman	80
Bristol	Meeting with Rex Wiggins - TVAX	51
California Pizza Kitchen	Venture Accelerator meeting - PGAV, R. McKim	34
Capital Grille	Meeting with George Turner	91
Church Street Café - Albuquerque	During travel to LABS21 Conference	18
Coco Bolo's - Manhattan	Briefing of Rep Yoder's district director	10
Falling Waters Grill - Topeka	During travel to Topeka board meeting	10
First Watch Cafe	KU spinout discussion	29
Great Dane Pub	During travel to Wisconsin Econ Dev Assoc Conference	39
Hanover Pancake House	During travel to Topeka board meeting	9
Hanover Pancake House	During travel to Topeka board meeting	4
Hays House Restaurant	During travel to Dodge City Economic Gardening Conf	13
Hereford House	NBAF risk assessment meeting	210
Hereford House	Julie Brewer - DHS - reimbursement for lunch	(50)
Holiday Inn - Madison	During travel to Wisconsin Econ Dev Assoc Conference	12
Holiday Inn - Madison	During travel to Wisconsin Econ Dev Assoc Conference	26
Houlihan's	Staff introductory lunch for Tariq Abdullah	74
Houlihan's	Accountant meeting	25
Houlihan's	Network meeting - R. Miller	28
Houlihan's	Meeting with KansasBio - A. Kreps	23
Johnny's Tavern	Aly Van Dyke - KC Business Journal	23
Johnny's Tavern	Meeting with SAFC Bioscience	79
Johnny's Tavern	Staff introductory lunch for Arika Nester	68
Johnny's Tavern	Mark Long - incubator consultant	33
Johnny's Tavern	Meeting - Lathrop & Gage	57
Johnny's Tavern	Venture Accelerator - Novita Therapeutics	39
Johnny's Tavern	Business lunch with Kennedy & Coe	50
JT's Grill	Business planning meeting	25
Lidia's	ACE Conference	42
Masa 14	NBAF meeting with DHS	35
McDonald's	During travel to Biotech Assn Livestock Network mtg	5
Mortar & Pestle Restaurant	During travel to KU School of Pharmacy Grand Opening	7
Mr. Goodcents	CIBOR lunch	54
Panera Bread	Matrix working lunch	69
Panera Bread	CIBOR lunch	127
Panera Bread	NDDA	55
Panera Bread	KBA team meeting	55
Panera Bread	MPM Capital meeting	51
Rosewood Hotel	Meeting with Xenometrics and VC - Laura Kilcrease	123
Rosewood Hotel	Planning meeting for GPCC and stakeholder event	54
Starker's Private Reserve	KBA staff holiday lunch	1,103
Taylor Street Market	During travel to MidAmerica Healthcare Venture Forum	12
Teller's Restaurant - Lawrence	Meeting with KU Provost	34

Kansas Bioscience Authority
Senate Commerce Committee Information
February 21, 2011

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- Terry Osborne of the KBA's Heartland BioVentures.

Terry works at the KBA and has 2 other full time jobs as the President and CEO of AbaStar MDx and GeneExpress, Inc both of Chicago Ill. Terry is listed as a resident of the state of Illinois on the company's public documents. With all three of his combined, full time jobs, Mr. Osborne makes $450,000 a year. Terry and Tom also sit on the Board of Directors of Advanced Life Sciences Holdings, Inc. in Illinois. Again, this relationship has not been disclosed

KANSAS BIOSCIENCE AUTHORITY

October 8, 2009

Kansas Bioscience Authority commits $50 million to increase venture capital, accelerate bioscience business growth

OLATHE, Kan. — The Kansas Bioscience Authority took bold action today to significantly increase the amount of venture capital available to innovative Kansas bioscience businesses — and to lead the state's economic recovery — approving a commitment to invest $50 million in eight private venture capital funds. The KBA investments will create a powerful magnet for private capital investment from around the country in Kansas bioscience companies.

To qualify for KBA investment, the eight funds are required to have a substantial presence in the state, including establishing Kansas offices. Additionally, the fund managers must each raise a minimum of $25 million from private and institutional sources, effectively leveraging the KBA's investment to $250 million.

KBA president Tom Thornton said the fund addresses an immediate need and is a key component of the KBA's efforts to position Kansas as a national leader in the biosciences.

"Capital is the lifeblood of bioscience companies. Innovators all across Kansas are developing world-class bioscience products and services only to see their true societal and economic development potential suffer for a lack of early stage capital. With the KBA's investment commitments, Kansas is attracting the attention of some of the most respected venture capital firms in the country to help high growth potential bioscience companies in Kansas access growth capital to gain full-scale commercialization," Thornton said.

The funds will work closely with the KBA's **Heartland BioVentures** program, which provides hands-on business assistance and financial resources to high potential early stage bioscience companies to help better position them to raise private growth capital to bring globally competitive products and services to market.

"What is unique about our approach is that we are helping develop credible, quality investment opportunities while also partnering to ensure these opportunities get funded," Thornton said.

The KBA board of directors approved commitments to invest with the following venture capital firms (listed alphabetically by commitment size):

- Burrill & Company, San Francisco, CA, $10 million
- MPM Capital, Boston, MA, $10 million
- N Partners / MidPoint Food & Ag, Carmel, IN, $5 million
- Meadowlark Venture Partners, Chicago, IL, $5 million
- Midwest Venture Partners, Chicago, IL, $5 million

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Open Prairie Ventures, Olathe, KS, $5 million

- Prolog Ventures, St. Louis, MO, $5 million
- Triathlon Medical Ventures, Cincinnati, OH, $5 million

Together, these funds provide a range of expertise in the bioscience sectors in which Kansas has existing strengths: animal health, bioenergy, biomaterials, plant biology, and human health. Working with multiple funds also exponentially expands the venture capital network focused on bioscience companies at varying stages of development in Kansas and provides the greatest assurance of increased venture capital flow into the state.

The funds were selected after a rigorous evaluation process that began in February and included an assessment by an independent, nationally recognized financial services firm; extensive due diligence by KBA staff members; a detailed review by the KBA investment committee; and unanimous approval by the KBA board of directors.

Entrepreneurs and venture capital experts from around the country underscored the importance of the strategy of jumpstarting the growth of bioscience venture capital in Kansas:

Dr. Nicholas Franano, chief executive officer of Novita Therapeutics: "This new fund will provide Kansas businesses with much needed access to national and international networks of capital and investors and accelerate the growth of the biosciences industry and jobs in the state of Kansas. Once again, the Kansas Bioscience Authority has come through with a big win."

Dan Berglund, president and CEO of the State Science & Technology Institute (SSTI): "With the creation of the Kansas Bioscience Growth Fund, the KBA is addressing a critical building block needed for a tech-based economy: capital for start-up companies. This is particularly critical now as venture capitalists make fewer, later-stage investments. Areas like Kansas that make these kinds of investments are going to be the ones that benefit in the future."

Jim Jaffe, president and CEO of the National Association of Seed and Venture Funds (NASVF): "Access to capital for seed and early stage companies is an essential element in creating jobs and building world-class companies, especially in today's venture environment when most funding is going to later stage opportunities. NASVF commends the Kansas Bioscience Authority for taking a leadership role in Kansas and being a catalyst for innovation and supporting the seed and early stage entrepreneur."

<u>Related PDF</u>

"The KBA is helping local entrepreneurs avoid the biotech valley of death."

- Debra Ellies, PhD, CEO and President, OsteoGeneX

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No Venture Fund

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Thomas L. Churchwell

Managing Partner — 20 Yrs Operations, 20 Yrs VC with Top-Tier IRR

Tom is a prominent player in the Midwest venture capital community with more than 20 years of experience working with start-up technology-based companies, and an additional 20 years of experience in operations in large corporations. In 2001, he led the formation of ARCH Development Fund I, LP, which raised $31 million, investing in 16 seed- and early-stage life sciences and technology companies. Previously, he was President and CEO of ARCH Development Corporation, a subsidiary of the University of Chicago, commercializing technology from the university and Argonne National Laboratory.

Since 1987, Tom has played an active role in more than 60 seed- and early-stage investments with a top-tier track record. He currently serves as a director of several early-stage companies in the Midwest. Additionally, Tom is President of TiE Midwest and board member of the Chicagoland Entrepreneurial Center, IBIO and the Illinois Venture Capital Association. He holds a B.A. degree from DePauw University and J.D. degree from Northwestern University School of Law. Contact: tlc@midwestvp.com

Our Team

Thomas L. Churchwell
Managing Partner

David B. Wortman
Managing Partner

MIDWEST VENTURE PARTNERS

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For Investors

Extensive Capabilities across Stage and Sector.
Employing our operational/mentoring and venture investing experience and utilizing our extensive network, we work with investors to drive exceptional business performance and top-tier investment returns from both start-up and early-stage companies. While we have broad experience in both life sciences and technology, we have particular interests in two specific areas: healthcare IT applications and medical devices eligible for FDA 510(k) clearance.

 About Us. Contact Us. Site Map.

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About Us

Operational Experience, Investment Experience and an Extensive Network.
The MVP team represents more than 60 years of operating and venture investing experience, along with a robust and unique network of executives and investors throughout the Midwest. We maintain a returns-driven agenda in all of our activities while employing our experience to monitor, mentor and advise CEOs of start-up and early-stage companies and make educated judgments as to which are likely to be great successes.

Our Team

Thomas L. Churchwell
Managing Partner

David B. Wortman
Managing Partner

MIDWEST VENTURE PARTNERS

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MIDWEST VENTURE PARTNERS™

For Entrepreneurs

Extensive Experience in Operating and Financing Successful Companies.
Developing successful start-up and early-stage opportunities requires access to excellent platform intellectual property from multiple sources, strong management teams, numerous strategic partner options and a clear exit strategy. Before getting involved, we do rigorous due diligence to determine that the company has access to a unique technology that satisfies a market need and that the company can attract adequate financing to ultimately reach the target customer. Generally, we look for opportunities that satisfy the following criteria:

General Investment Criteria

- Proprietary product or service
- Sustainable competitive advantage
- Viable business model
- Large market
- Dedicated entrepreneurs
- Exit opportunity in 3-5 years with top-tier return

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The MVP team and its network of executives and investors are located throughout the Midwest. You can email us at at info@midwestvp.com.

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LJWorld.com

New effort to boost startups

Heartland BioEnterprise gets $4.5 million for 3 years

January 10, 2007

The Kansas Bioscience Authority is getting ready to help promising scientific companies get the help - and money - they need to survive and thrive.

The authority's board of directors, meeting Tuesday at the Dole Institute of Politics, approved plans to launch an assistance effort known as Heartland BioEnterprise.

The project - receiving up to $4.5 million from the authority during the next three years - will be designed to give bioscience startups the business assistance they need to have the best chance of landing venture capital, the millions of dollars infused into promising technologies to help bring them to market.

Kansas currently lacks significant sources of venture capital, and that hampers efforts to commercialize promising research under development at Kansas University and other research institutions and among a variety of entrepreneurs, said Tom Thornton, the authority's president and chief executive officer.

The $4.5 million will be used to create a seed fund for financing such companies, and hiring a staff to counsel them and a board to guide them. That way, Heartland BioEnterprise will eliminate many of the traditional barriers standing between promising startups and the organized sources of venture capital necessary to feed them.

Companies would get help finding executive talent, compiling solid business plans and otherwise making their operations as attractive as possible for potential venture capitalists, Thornton said. Then the companies would be in a position to secure their own financing.

"We're providing them the assistance they need to get to the next stage," said Clay Blair, chairman of the authority.

The model comes from Cleveland BioEnterprise, which started six years ago and attracted less than $5 million in venture capital during its first year. In 2006 - working with a $3.3 million operating budget - the programs' companies attracted $175 million in venture capital.

An "aspirational goal" for Kansas, Thornton said, would be to have companies in Kansas drawing $100 million of venture capital each year. Heartland BioEnterprise would be expected to work with 10 to 12 companies a year, many of them spun out of Kansas universities.

"We're talking about growing our own here," Thornton said.

Originally published at: http://www2.ljworld.com/news/2007/jan/10/new_effort_boost_startups/

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Kansas BioEnterprise to mirror local operation

By CHUCK SODER
csoder@crain.com

Hopefully for Northeast Ohio, two BioEnterprises will be better than one.

The Kansas Biosciences Authority on Jan. 16 approved plans to spend up to $4.5 million on a project to create Heartland BioEnterprise, an organization that would be modeled after BioEnterprise, the Cleveland nonprofit that helps young biotech companies bring products to market.

There will be no official connection between the two organizations, but both will benefit from the informal partnership, according to BioEnterprise president Baiju Shah.

The Kansas Biosciences Authority is the only group to put money toward a plan to follow BioEnterprise's lead, but others, such as the state of Wisconsin, are interested in the idea as well, Mr. Shah said.

Officials in Kansas hope their planned organization can mimic BioEnterprise's success. Mr. Shah said the organization has helped increase venture capital investment in Northeast Ohio's early-stage biotech companies to $171 million in 2005 from $33 million in 2002.

By contrast, the state of Kansas has just two venture capital funds, according to Tom Thornton, president and CEO of the Kansas Biosciences Authority.

"We have a lack of early-stage capital," Mr. Thornton said.

BioEnterprise is receiving a "modest consulting fee" to advise officials in Kansas on how to set up their operation, Mr. Shah said.

Once Heartland BioEnterprise becomes active, the organizations plan to help each other find venture capital, technology, talent and information in their respective regions, Mr. Shah said.

He is unsure how active the partnership between the two groups will be, but he noted that new technology companies often need outside help.

"The worst thing we can do is to try to build a wall around ourselves," Mr. Shah said.

Though Kansas is not yet brimming with venture capital, it is already a source of other resources. For instance, though the Cleveland area is active in biopharmaceutical research, Kansas is a good source of pharmaceutical entrepreneurs who could help launch companies in Ohio, Mr. Shah said.

BioEnterprise would help Kansas companies access Cleveland-area resources as well, Mr. Shah added, citing how a Kansas company called VasoGenix Pharmaceuticals Inc. conducts clinical trials at the Cleveland Clinic.

"This is a game of collaboration," he said.

Mr. Shah said he "wouldn't be concerned at all" that other regions following the BioEnterprise model could turn into competitors.

In Kansas' case, the two organizations often would focus on different biotech industries: Whereas Cleveland's BioEnterprise assists companies developing technology for the health care field, Heartland for the most part would focus on other areas, such as biofuels, plant sciences and animal health.

Heartland occasionally could help companies connected to health care because Mr. Thornton said the group also aims to help companies that create biocomposites — advanced materials often used in orthopedic devices and surgical implants.

Like Mr. Shah, Mr. Thornton said he is committed to keeping the partnership strong even after Kansas has its own BioEnterprise.

"We're not saying, 'Thanks for the great idea, we're going to run off and do it,'" Mr. Thornton said. "We really think the world of what those guys are doing."

Va. brokerage adds Solon insurance biz to asset list

By SHAWN A. TURNER
sturner@crain.com

The businesses of Loan Protector Insurance Services of Solon have been acquired by Virginia-based insurance brokerage Hilb Rogal & Hobbs Co.

Terms of the deal were not disclosed. Hilb Rogal acquired both Loan Protector General Agency Inc. and Loan Protector Tracking Services Inc.

Included in the company's work is insurance verification for mortgage lenders, and it is developing proprietary software to help mortgage providers with escrow services, according to Loan Protector's web site.

Loan Protector employs 75 at its two Solon offices, said president Ronald F. Wiser, who declined to answer other questions about the transaction but provided a news release about it.

"(Hilb Rogal's) commitment to helping clients manage their property and casualty exposures fits extremely well with Loan Protector's way of doing business," Mr. Wiser said in the statement.

Hilb Rogal now counts two locations in Ohio following the deal. The other is in Columbus.

"This is the first of this type of business we have acquired," said Liz Cougot, director of communications for Hilb Rogal. "We're always looking to gain exposure in new markets."

Publicly traded Hilb Rogal earned $65.6 million, or $1.83 per share, through the first nine months of 2006, an increase of 79% from earnings of $36.7 million, or $1.03 per share, during the like period in 2005. A 5% increase in revenue, to $535.4 million, for the first three quarters of 2006 versus the like period the previous year helped boost profits.

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KBA Response to Senate Commerce Committee Questions of March 17, 2011

1. a. **The KBA's Summary of Commitments Paid and Remaining as of Feb 14 does not show clearly Investment as distinct from Grant Sums. Please add columns to this document to show:**

- Original Investment Agreed: is the same as the column titled "Funds Committed"
- Actual Investment to Date: is the same as "Total Paid To Date at [date]"
- Remaining Investment Sum: is the same as "Total Remaining to be Paid"
- Estimated Current Value of this Investment: a column has been added for those investments that are carried on the balance sheet – column is titled "Investment Balance at 1/31/11. See attached

b. **Is this Schedule supposed to be in synch with the KBA's Schedule of Commitments as of June 30?**

The February 14th schedule reflects approved commitments through February 14, 2011 and payments through January 31, 2011; whereas the June 30, 2010 schedule reflects approved commitments and payments through June 30, 2010.

c. **The KBA's Summary of Commitments Paid Schedule has a Projected Outcomes Column. Some of these commitments are now 4 years old. Have efforts been made to verify and update any of these commitments?**

Yes, the realized columns are up-dated at least annually; however, the projected column rarely changes.

2. **Please provide copies of files on the following commitments/ investments and answer the following questions for each.**

i. Choco Finesse
ii. Innovia
iii. Enalaped
iv. ANOxA
v. NOWA
vi. Megastarter
vii. Hospira
viii. CyDex
ix. Rising Star Krista Walton
x. Proteon

Note: Rising Star Krista Walton – KBA approved funding of $700,000 and then released (withdrew) the funding when Dr. Walton left KSU.

Note: Proteon – The KBA has not made any commitments to or investments in Proteon Therapeutics.

Note: Client company files contain sensitive, confidential, proprietary and competitive information, the release of which could be harmful to the interests of the company and the state of Kansas. Furthermore, such information is exempted from the Kansas Open Records Act pursuant to K.S.A. 74-99b06.

Questions about commitments/ investments

a. **Who is grantee (recipient) or who owns company?**

i. Choco Finesse, LLC
ii. Innovia Medical, LLC
iii. Enalaped, LLC
iv. ANOxA Corp. (C Corp.)
v. NOWA Technology, Inc. (C Corp.)
vi. Megastarter, LLC
vii. Hospira, Inc.
viii. CyDex Pharmaceuticals, Inc. (C Corp.)

With regard to who owns the company?

i. Choco Finesse, LLC – Privately held by founding management
ii. Innovia Medical, LLC – Privately held by professional investors
iii. Enalaped, LLC – Privately held by founding investors
iv. ANOxA Corp. (C Corp.) – Privately held
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vi. Megastarter, LLC – Privately held by founding investors
vii. Hospira, Inc. – Subsidiary of publicly traded parent
viii. CyDex Pharmaceuticals, Inc. (C Corp.) – Subsidiary of Ligand Pharmaceuticals

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b. **How much does grantee compensate themselves in salary, fees, personal expenses?**

This is a question that should be addressed to the companies.

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The company applies to the KBA under either the direct equity program or one of the Authority's other programs.

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f. **Who/how is it determined when KBA shares profits or gains refunds?**

The investment agreements between the company and KBA specify in detail how profits and investment gains will be shared among the investors. In general, KBA will share in direct proportion to its percentage ownership in the company.

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The major vendors related to this project were:

- Akin Gump Strauss Hauer & Feld, LLP—Legal and legislative services.
- BJE Associates –Technical and Scientific inquiries.
- Burns & McDonnell –Engineering support services.
- Dickstein Shapiro-Legal and legislative services.
- Fleishman & Hillard – Media and public relations.
- Midwest Research Institute – Developed and presented an operational plan and strategy.
- Parris Communications – Media and public relations.

With respect to the vendors and services, it is important to identify that approximately $400,000 was spent for legal expenses to defend a lawsuit by Texas intended to steal the NBAF from Kansas. It was recognized by the Congressional Delegation, Gov. Sebelius and KBA's board of directors that the KBA should intervene in the lawsuit. Ultimately, the suit was found to be not "ripe". The lawsuit, as of now, has been dropped.

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The total paid to BioEnterprise was $200,000.

6. **Who is and who are the beneficiaries of sums paid to Heartland Bio Ventures? What was the work performed and by whom?**

Heartland BioVentures (HBV) is the internal KBA program focused on commercialization of bioscience technologies in Kansas. HBV consists of a team of experienced bioscience professionals and an executive assistant. Expenses associated with HBV are for staff salaries and benefits, as well as all other operating expenses of this component of the KBA, including industry events/sponsorships, travel, office rent, consulting services, dues/subscriptions, etc.

7. **Venture capitalists and funds: KBA committed $30M to 8 VC firms or funds with only requirement being to open a KS office, and requirement to raise/have $25M in additional capital. Provide name, address, and principals for each VC. Provide listing of fees and expenses VC's bill to the funds.**

The KBA conditionally committed up to $50 million to eight venture capital funds; $5 million to each of six funds, and $10 million to each of two funds. All investments required the funds to meet various requirements before the KBA would invest, including but not limited to the following:

- Each fund to receive $5 million in KBA investment must raise a minimum of $25 million of outside investment capital, and each fund to receive $10 million in KBA investment must raise a minimum of $40 million of outside capital.
- KBA's funding commitment to each fund will not exceed 20% of the fund's aggregate capital raised.
- KBA and each fund must execute a mutually acceptable limited partnership agreement and any other associated legal documents required to appropriately document the rights and responsibilities of each party.
- Each fund shall commit to open and maintain an office in Kansas, and a principal from the fund shall spend at least three days per month on average in the Kansas office.
- Each fund shall commit that at least one principal from the fund will attend the annual InvestMidwest Forum in Kansas City or St. Louis, the Animal Health Investment Forum in Kansas City, and the Great Plains Capital Conference in Wichita, plus, if requested by the KBA, at least one other meeting annually in the State of Kansas involving multiple venture capital firms.
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- Each fund shall provide the KBA an opportunity to co-invest alongside the fund in Kansas bioscience companies under certain conditions (to the extent such co-investment opportunities are provided to other limited partner investors).
- Each fund shall commit to collaborate and meet regularly with KBA staff to discuss investment prospects, fund portfolio companies, and relevant business interests of both parties.

To date, the KBA has completed three venture fund investments. The fund name, address, and principal(s) for each such fund are as follows:

- MidPoint Food & Ag Fund, L.P.
  Address: 8527 Bluejacket Street, Lenexa, KS 66214
  Principals: Ron Meeusen, Andy Ziolkowski

- Open Prairie Ventures II, L.P.
  Address: 18001 W 106th St., Suite # 125, Olathe, KS 66061
  Principal: Mike Peck

- MPM BIOVENTURES V, L.P.
  Address: 1901 Olathe Blvd., Kansas City, KS 66103
  Principal: Steven St. Peter

The KBA will consider investments in the additional funds to which KBA has not yet provided investment to the extent those funds meet all of the KBA's investment requirements.

8. **Please provide a copy of the report that Buck Consultants prepared for the KBA.**

Please see attached.

Senator Susan Wagle
300 SW 10th St.
Room: 135-E
Topeka, Kansas 66612

March 10, 2011

Dear Senator Wagle,

We are writing to share our concern over the Kansas Bioscience Authority, its use of tax payer money and lack of transparency. I am an established orthodontist in the city of Wichita and a medical device entrepreneur. My son and I have established a company known as Elipses, LLC and are currently developing our first product, which will be an FDA regulated device. It was our understanding that the purpose of the KBA was "to foster the growth of startups…." Our legal counsel encouraged us to contact the KBA regarding assistance and possible funding to help our project along. To date, our experience with the organization has been less than positive. Their business model states they "are investing in bioscience growth throughout the business cycle…." We are an early stage startup company and felt our business plan was a perfect fit for their model.

During a recent meeting with members of the Kansas Bioscience Authority's Heartland Bioventures, we were informed of certain "invitation only" programs that were not publically available to all companies. Being new to this arena we thought it was odd that a public organization would have "invitation only" programs. It was only through our persistence that we were informed about this "invitation only" application. Apparently the Proof of Concept application we received from Tom Krol was only available to the select few companies that they felt worthy to receive this information. As an entrepreneur in this area it is difficult enough to find funding and support for new startup businesses especially in today's economic environment. But to think that a public agency which is supposed to serve Kansans is playing "hide the ball" with its programs and support is very disturbing.

We were unable to locate on the agency's website or brochure any information about this stand alone Proof of Concept program or from where the funding for it comes. Additionally, we were questioned about our legal counsel, patent attorney and the patentability of our device suggesting that they were in some way negligent. The KBA representatives responded with materials they found through a simple Google search that were not even related to our product or even available in the United States. This suggested that our product had already been invented. I can assure you that we have done our due diligence and that even our FDA consulting agency has remarked that this device is unique and innovative.

Finally, it became apparent during our meeting with the Kansas Bioscience Authority that they were not familiar with the medical device industry and many of their comments to us were simply their own policy preferences and have no foundation in the regulations put out by the FDA. There was no assistance by the KBA representatives as to how we should navigate their application process. We were even reprimanded for providing the application and documentation for the R&D Voucher Program, suggesting that our device was not even worthy of that type of funding. Based on their website, we believed this to be our best avenue for funding. Needless to say we left that meeting very discouraged and looking for another means of assistance.

Our main reason in contacting you was to inform you of these concerns. We are optimistic that Elipses, LLC, our new Kansas company, will be successful and provide Kansas jobs. However, our experience with the Kansas Bioscience Authority has proven to be cumbersome and discouraging. Thank you for your consideration and service to this district.

Sincerely,

Adam Crowder – President
Richard E. Crowder, DDS – Vice-President
Co-Founders Elipses, LLC

Dear Senator Wagle:

I applaud your efforts in leading the review of the KBA. I do believe it is long overdue.

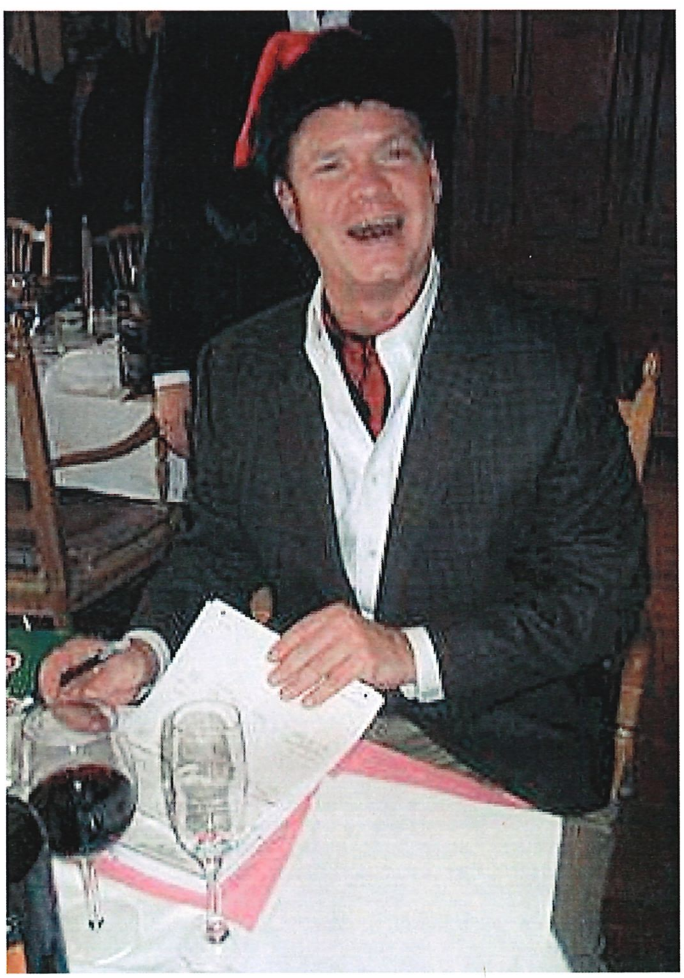
So you will understand my comments, let me say that I live in Lawrence but work with start-up medical device companies around the country. I have been in various senior management positions within the operations of these companies including CEO and have raised considerable capital from various venture capitalist. I think I understand the role that a KBA should have, at least with medical device start-ups.

The concern about salaries does not bother me personally as much as it does the public. These salaries are actually in line with people in the industry if the individuals are qualified to hold the actual positions. The qualifications seem, however, to be lacking at the KBA. It is also most concerning that Tom Thornton's wife is also an employee of KBA. That conflict should be avoided by any CEO both for the perception of outside investors and internal operations. It is indicative of poor decision making.

What I would like to bring your attention to is the perception of a bad deal that KBA appears to have made. They invested in Novita Therapeutics and this company has since spun off two companies, one a medical device company (Flow Forward) and the other is an internet tax credit exchange company (Baxi). Since Novita is private, none of the details are available publicly, But spinning out companies so early could easily dilute the KBA investment. Also, one has to wonder how the creation of an internet tax credit trading company fits within the KBA mission. Again, this appears to poor decision making and lack of due diligence on the part of the KBA.

I hope your efforts will lead to productive changes at the KBA. The mission is right, but the implementation is questionable.

Sincerely,



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THIS NOTE IS NOT LEGAL TENDER
FOR ALL DEBTS, PUBLIC AND PRIVATE
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KBA Response to Senate Commerce Committee Questions of March 17, 2011

1. a. The KBA's Summary of Commitments Paid and Remaining as of Feb 14 does not show clearly Investment as distinct from Grant Sums. Please add columns to this document to show:

- Original Investment Agreed: is the same as the column titled "Funds Committed"
- Actual Investment to Date: is the same as "Total Paid To Date at [date]"
- Remaining Investment Sum: is the same as "Total Remaining to be Paid"
- Estimated Current Value of this Investment: a column has been added for those investments that are carried on the balance sheet – column is titled "Investment Balance at 1/31/11. See attached

b. Is this Schedule supposed to be in synch with the KBA's Schedule of Commitments as of June 30?

The February 14th schedule reflects approved commitments through February 14, 2011 and payments through January 31, 2011; whereas the June 30, 2010 schedule reflects approved commitments and payments through June 30, 2010.

c. The KBA's Summary of Commitments Paid Schedule has a Projected Outcomes Column. Some of these commitments are now 4 years old. Have efforts been made to verify and update any of these commitments?

Yes, the realized columns are up-dated at least annually; however, the projected column rarely changes.

2. Please provide copies of files on the following commitments/ investments and answer the following questions for each.

i. Choco Finesse
ii. Innovia
iii. Enalaped
iv. ANOxA
v. NOWA
vi. Megastarter
vii. Hospira
viii. CyDex
ix. Rising Star Krista Walton
x. Proteon

Note: Rising Star Krista Walton – KBA approved funding of $700,000 and then released (withdrew) the funding when Dr. Walton left KSU.

Note: Proteon – The KBA has not made any commitments to or investments in Proteon Therapeutics.

Note: Client company files contain sensitive, confidential, proprietary and competitive information, the release of which could be harmful to the interests of the company and the state of Kansas. Furthermore, such information is exempted from the Kansas Open Records Act pursuant to K.S.A. 74-99b06.

Questions about commitments/ investments

a. Who is grantee (recipient) or who owns company?

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ii. Innovia Medical, LLC
iii. Enalaped, LLC
iv. ANOxA Corp. (C Corp.)
v. NOWA Technology, Inc. (C Corp.)
vi. Megastarter, LLC
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With regard to who owns the company?

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Senate Commerce Committee
Date: April 1, 2011
Attachment 2

b. **How much does grantee compensate themselves in salary, fees, personal expenses?**

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  Principal: Mike Peck

- MPM BIOVENTURES V, L.P.
  Address: 1901 Olathe Blvd., Kansas City, KS 66103
  Principal: Steven St. Peter

The KBA will consider investments in the additional funds to which KBA has not yet provided investment to the extent those funds meet all of the KBA's investment requirements.

8. **Please provide a copy of the report that Buck Consultants prepared for the KBA.**

Please see attached.

Kansas Bioscience Authority
Summary of Commitments Paid and Remaining (cash basis)
At February 14, 2011

Note: Highlighted projects are considered investments rather than grants.

Project	Description	Date Approved	Funds Committed	Total Paid to Date at 1/31/11	Total Remaining To Be Paid	Investment Balance at 1/31/11	Projected Outcomes
Heartland BioEnterprise	Funding supports a KBA program emphasizing business formation and acceleration to grow bioscience companies and to help them raise venture capital investment.	1/5/2006	$ 200,000	$ 200,000	$ -		Business Formation and Acceleration
KansasBio 2006	Assistance supports Kansas' outreach and attraction activities at the annual BIO International Convention, the preeminent gathering of tens of thousands of bioscientists and business and a key Kansas marketing opportunity.	1/5/2006	$ 100,000	$ 100,000	$ -		Outreach and Attraction Activities
Hospira, Inc	The KBA awarded $200,000 to Hospira, a global specialty pharmaceutical and medication delivery company with 14 manufacturing facilities worldwide, including a facility in McPherson. A $60 million expansion of the McPherson plant has been completed, and funding supports an effort to encourage qualified students to investigate careers in the biosciences and to recruit, hire, and retain recently graduated scientists from Kansas universities.	4/11/2006	$ 183,000	$ 183,000	$ -		33 new employees
Quintiles	The KBA awarded $3.5 million to defray moving and employment training costs associated with the company's relocation of its clinical development services, clinical pharmacology, and Phase I clinical research units to Overland Park.	4/11/2006	$ 3,500,000	$ 3,500,000	$ -		650 new employees and $45 million in capital expenditures
JACAM Chemicals	The KBA awarded $500,000 to JACAM Chemicals, which provides services and products to numerous industries including oil, gas, pipeline, and municipal and industrial water systems. Funding is for the purchase of scientific equipment and recruitment of research personnel for an expanded facility in Rice County.	4/11/2006	$ 500,000	$ 500,000	$ -		60 new employees and $4.98 million in capital expenditures
IdentiGEN	The KBA awarded $125,000 to IdentiGEN for a research voucher for a K-State professor and financial assistance to defray the cost of scientific equipment in Kansas laboratories. IdentiGEN is an innovative provider of DNA-based solutions to the agri-food industry with plans to locate headquarters for its U.S. operations in Lawrence.	4/11/2006	$ 50,000	$ 50,000	$ -		35 new employees, $41,500 in research funding, and $1.9 million in capital expenditures
FY2006 Totals		**FY 2006 Totals**	**$ 4,533,000**	**$ 4,533,000**	**$ -**	**$ -**	
City of Manhattan (NISTAC)	The KBA awarded $1 million to Manhattan for construction of and equipment for wet lab incubator space.	7/13/2006	$ 1,000,000	$ 500,000	$ 500,000		200 new employees and $5.65 million in capital expenditures
CritiTech	The KBA awarded $48,700 to CritiTech to create smaller and more uniform particles in the area of drug delivery. Funding is for the purchase and setup of a new and improved coating unit, greatly expanding CritiTech's capacity to perform feasibility and development projects for pharmaceutical companies.	7/13/2006	$ 48,700	$ 48,700	$ -		Two new employees and $100,000 in federal research funds
Kansas City Area Development Council	Assistance supported the development of a business recruitment marketing plan by the KC metropolitan area's umbrella economic development organization to enhance marketing efforts aimed at attracting life science companies.	7/13/2006	$ 41,200	$ 41,200	$ -		Marketing Plan
Kansas City Area Life Sciences Institute	Assistance provided matching funds to support a federal planning grant for a regional wet lab incubator to be located at KU Medical Center. The Kansas City Area Life Sciences Institute and the National Institute for Strategic Technology Acquisition and Commercialization also provided matching funds.	7/13/2006	$ 10,000	$ 10,000	$ -		$50,000 in research funding
MGP Ingredients	The KBA awarded $40,000 for research vouchers to K-State for creating higher value products from distillers dried grains, millfeeds, corn stalks and wheat straw that segregate into several fractions and are used in subsequent biorefinery operations and products. MGPI is a recognized pioneer in the development and commercialization of bio-based products as well as specialty starches and proteins for use in a wide array of consumer goods. It is embarking on an aggressive plan to develop a substantial business based on bio-based, biodegradable resins designed to economically replace plastic resin.	7/13/2006	$ 40,000	$ 40,000	$ -		Six new employees
Nutri-Shield	The KBA awarded $40,000 to Nutri-Shield, a company engaged in development, manufacturing, marketing, and sales of preservatives. The company's primary business is the removal of odors and flavors from commercial grade preservatives used in food and health care and cosmetic products. Funding is for assistance in developing and transitioning a process for synthesizing sorbic acid from the carbohydrate fraction of corn from proven lab scale to a plant setting. Funds will be split between research vouchers and equipment and lab needs.	7/13/2006	$ 39,379	$ 39,379	$ -		$85,238 in capital expenditures and $35,000 in research funding
Sunflower Bioenergy Phase I	The KBA awarded $13,000 for a Phase I project to the National Institute for Strategic Technology Acquisition and Commercialization (NISTAC) to identify and commercialize renewable energy technology for western Kansas. Funding will be matched by Sunflower Electric Power Corporation and NISTAC.	7/13/2006	$ 13,000	$ 13,000	$ -		$23,980 in research funding
Wet-Lab Planning & Architecture	The KBA awarded $150,000 for planning and architectural work for the Kansas Bioscience Park and K-State Olathe Innovation Campus.	7/13/2006	$ 83,491	$ 83,491	$ -		Architecture design
KUMC Wet-Lab Upgrade	The KBA awarded $100,000 to KU Medical Center to upgrade the wet lab at the Kansas City Biotechnology Development Center at the KUMC Research Institute.	7/13/2006	$ 100,000	$ 100,000	$ -		$100,000 in capital expenditures
Topeka Chamber of Commerce	The KBA awarded $13,388 to the Topeka Chamber of Commerce for due diligence to facilitate the attraction process of a bioscience company seeking to expand its production and bioprocessing operations.	7/13/2006	$ 13,388	$ 13,388	$ -		A due diligence report
Caravan Ingredients	The KBA awarded $1 million to this leading researcher and manufacturer of functional bakery ingredients and health products with plans to relocate its national headquarters to Lenexa. Funding will be equally divided between Kansas research universities in the form of research vouchers and the company for purchasing and sustaining research equipment.	7/13/2006	$ 970,000	$ 370,000	$ 600,000		100 new employees
OncImmune Loan	The KBA awarded $2.5 million to OncImmune, which was founded in 2003 to commercialize technology developed in the laboratories of Professor John Robertson, a professor of surgery at Nottingham University. The focus of Oncimmune's technology is on the early detection of cancer, in particular breast cancer, and the company plans to collaborate with the University of Kansas on pharmaceutical chemistry at the Lawrence campus and on cancer clinical research at the KU Medical Center. The company is establishing its North American headquarters in Kansas.	10/12/2006	$ 2,000,000	$ 2,000,000	$ -	$ 2,430,715	480 new employees and $2.1 million in research funding

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Project	Description	Date Approved	Funds Committed	Total Paid to Date at 1/31/11	Total Remaining To Be Paid	Investment Balance at 1/31/11	Projected Outcomes
OncImmune R&D Vouchers	The KBA awarded $2.5 million to OncImmune, which was founded in 2003 to commercialize technology developed in the laboratories of Professor John Robertson, a professor of surgery at Nottingham University. The focus of Oncimmune's technology is on the early detection of cancer, in particular breast cancer, and the company plans to collaborate with the University of Kansas on pharmaceutical chemistry at the Lawrence campus and on cancer clinical research at the KU Medical Center. The company is establishing its North American headquarters in Kansas.	10/12/2006	$ 479,728	$ 404,728	$ 75,000		480 new employees and $2.1 million in research funding
Junction City, KS (Ventria)	The KBA awarded $1 million to Junction City to support the attraction of Ventria Bioscience, a plant-made pharmaceutical and plant-made industrial products company expanding its nursery, greenhouse, field production and bioprocessing operations to Junction City. The company plans to grow genetically modified rice which can be processed into pharmaceutical, medical food ingredients and bioprocessing ingredients.	10/12/2006	$ 1,000,000	$ -	$ 1,000,000		95 new employees and $4.5 million in capital expenditures
NBAF Phase I	KBA funding supports the effort to bring NBAF to Kansas. NBAF is a $650 million federal laboratory to research and develop countermeasures to animal, human, and zoonotic diseases, to Kansas.	1/9/2007	$ 250,000	$ 250,000	$ -		To site NBAF as its preferred location in Kansas
Kansas Bioscience Park/K-State Campus	The KBA awarded $7.6 million for the development of a 105-acre bioscience park in Olathe that will be home to the K-State Olathe Innovation Campus and growing bioscience companies. Funding is for work such as landscaping, utility installation, engineering, street construction, surveys, excavation, grading, sidewalks, streetlights, and site preparation.	1/9/2007	$ 4,945,477	$ 259,035	$ 4,686,442		$7.6 million in capital expenditures and 1,800 new employees
KansasBio 2007	Assistance supports Kansas' outreach and attraction activities at the annual BIO International Convention, the preeminent gathering of tens of thousands of bioscientists and business and a key Kansas marketing opportunity.	1/9/2007	$ 75,000	$ 75,000	$ -		Outreach and Attraction Activities
Hospira, Inc	The KBA awarded $64,000 Hospira, a global specialty pharmaceutical and medication delivery company with 14 manufacturing facilities worldwide, including a facility in McPherson. A $60 million expansion of the McPherson plant has been completed, and funding supports an effort to encourage qualified students to investigate careers in the biosciences and to recruit, hire, and retain recently graduated scientists from Kansas universities.	1/9/2007	$ 44,000	$ 44,000	$ -		8 new employees
Sunflower Bioenergy Phase II	The KBA awarded $500,000 to the National Institute for Strategic Technology Acquisition and Commercialization (NISTAC) for a Phase II project to identify and commercialize renewable energy technology for western Kansas, including funding for engineering and economic/legal due diligence. Sunflower Electric Power Corporation will contribute the land, and NISTAC will contribute intellectual property.	1/9/2007	$ 500,000	$ 150,000	$ 350,000		161 new employees, $278,000 in research funding, and $400 million in capital expenditures
Edenspace Systems Expansion/Attraction	The KBA awarded $200,000 to Edenspace Systems, which seeks to become a key supplier in the renewable fuels industry by engineering crops to lower the cost of cellulosic ethanol. The company has been awarded more than $2.8 million in development funding from the U.S. Department of Energy and has signed key development agreements with the U.S. National Renewable Energy Laboratory (NREL), USDA and the leading ethanol facility development company, ICM, Inc.	3/13/2007	$ 200,000	$ 100,000	$ 100,000		30 new employees, $2.8 million in federal research funding, and $5 million in investment capital
Centers of Innovation - KCBID	The KBA awarded a $200,000 planning grant for a proposed Kansas Center for Biomaterials Innovation and Design (KCBID) to establish a premier Kansas-based institution for biomaterials research and education and commercialization of the research into innovative medical devices. The lead applicants of this planning grant proposal are the University of Kansas and Wichita State University, in collaboration with Pittsburg State University's Polymer Research Institute, the Research Centers of Via Christi Health System, and over 20 other private industries, educational institutions, and public organizations. The technology platforms in which KCBID will focus are development of biomaterials and medical devices for the dental and orthopedic (including spine) fields, with a secondary complementary focus on medical imaging, tissue engineering and combination products.	5/25/2007	$ 66,667	$ 66,667	$ -		A business plan to create a center of innovation for biomaterials and $242,889 in research funding
Centers of Innovation - KBICDD	The KBA awarded a $180,000 planning grant for the proposed Kansas Bioscience Innovation Center in Drug Delivery (KBICDD) to transform outstanding drug-delivery capabilities at the University of Kansas into a completely integrated, high-performance, world-class drug-delivery organization. It is anticipated that the KBICDD will be a subsidiary of the Kansas University Center for Research, and KU plans to form the KBICDD based on a core concept of industry collaboration. The KBICDD also has secured the support and participation during the planning grant phase of virtually every drug discovery institution in the region, including both public and private research institutes; a wide range of biotechnology, biopharmaceutical, and drug specialty companies; contract research organizations; and animal health companies.	5/25/2007	$ 180,000	$ 180,000	$ -		A business plan to create a center of innovation for drug delivery and $346,232 in research funding
Centers of Innovation - Plant Design	The KBA awarded a $200,000 planning grant for the Kansas Innovation Center for Advanced Plant Design. Proposed by the Kansas Wheat Commission, the center will focus on the emerging commercial opportunities for wheat, sorghum, small grains, and native plants and grasses. It will accelerate scientific discoveries and innovation in plant bioscience such as commercialization of sustainable, drought-tolerant, high-yielding varieties; foods with reduced allergenicity; new food products that are rich in anti-oxidants and cancer-fighting components; plant-derived medicines; and high bio-mass plants optimized for cellulosic bio-fuel production. Facilities for the center will be headquartered at Kansas State University in Manhattan, collaborating with existing research programs at the University of Kansas in Lawrence.	5/25/2007	$ 200,000	$ 200,000	$ -		A business plan to create a center of innovation for plant sciences and $200,000 in research funding
Heartland BioVentures Phase I	Funding supports a KBA program emphasizing business formation and acceleration to grow bioscience companies and raise venture capital investment.	5/25/2007	$ 3,100,000	$ 2,093,928	$ 1,006,072		Business Formation and Acceleration
POCI Budget		5/25/2007	$ 76,106	$ -	$ 76,106		
FY2007 Totals		**FY 2007 Totals**	**$ 15,476,136**	**$ 7,082,516**	**$ 8,393,620**	**$ 2,430,715**	

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OsteoGeneX SOST Inhibitor	The KBA awarded $130,000 to OsteoGeneX for the development of a small molecule inhibitor of the new bone anabolic target sclerostin (SOST) for the treatment of osteoporosis and related bone disorders. Through genomic approaches, sclerostin was identified as a master regulator of bone mass affecting men and women. Using proteomic approaches, OsteoGeneX discovered and patented sclerostin's mechanism of action. Since then, the work was awarded a NIH Phase I SBIR proof-of-concept grant to screen a small molecule library for compounds blocking SOST function.	7/10/2007	$ 130,000	$ 130,000	$ -		Collaboration with the University of Kansas to identify the dosing of authenticated lead candidates and to begin animal and clinical trials. 8 new employees and $134,000 in federal research funding
ABADRL - City of Manhattan	The USDA's Arthropod-Borne Animal Disease Research Laboratory lacks certifiable BSL-3/BSL-3Ag facilities and thus necessitates a move to some other U.S. location. It is not possible for the 30-member research team to "solve major emerging and/or exotic arthropod-borne disease problems that affect the U.S. livestock industry and wildlife" without access to higher level of biocontainment space. Thus, the USDA is exploring relocation options for ABADRL, both near-term and long-term. The KBA's investment would allow the near-term laboratory and office needs to be addressed by fitting out shell space in the new City of Manhattan incubator facility.	7/10/2007	$ 1,500,000	$ 1,022,000	$ 478,000		30 new employees and $3.3 million in research dollars
Innovia Medical	The KBA awarded $300,000 equity investment to Innovia, plus an additional $350,000 if matched by Kansas private equity investors, to commercialize an FDA-approved product called EarCheck, which utilizes the only technology for the rapid detection of middle ear fluid, a key indication of ear infections.	7/10/2007	$ 650,000	$ 650,000	$ -	$ -	$100,000 in capital expenditures and $3.1 million in equity
City of Emporia - REG	The KBA awarded $300,000 over 10 years to the City of Emporia to support the attraction of Renewable Energy Group, the nation's leader in biodiesel marketing, which plans to build a commercial-scale, multiple feedstock biodiesel production facility in Emporia. When the facility opens, Renewable Energy Group's biodiesel network will market more than 310 million gallons of biodiesel a year.	7/10/2007	$ 300,000	$ -	$ 300,000		30 new employees and $65 million in capital expenditures
KC BioMediX	The KBA awarded KC BioMediX a $150,000 convertible debenture to commercialize technologies developed at the University of Kansas for the care and treatment of infants born prematurely, particularly assisting with the problem of non-nutritive sucking. KC BioMediX has licensed the sole rights to commercialize the technologies and devices described in two patent applications. $150,000 and interest in the amount of $16,693 was subsequently converted to equity.	7/10/2007	$ 150,000	$ 150,000	$ -	$ 150,000	99 new employees $607,000 in capital expenditures, and $1.45 million in investment capital
CritiTech BTIIP	The KBA awarded $264,048 under the Bioscience Tax Investment Incentive Program to support CritiTech's manufacture of fine-particle pharmaceuticals through a process known as precipitation with compressed antisolvent. The company is pursuing an investigational new drug application for its new product Nanotax.	9/28/2007	$ 264,048	$ 264,048	$ -		25 new employees, $750,000 in private investment, and $400,000 in federal research funding
Kansas Environmental Management Associates	The KBA awarded a $312,500 research and development voucher to Kansas Environmental Management Associates (KEMA) for a collaboration with the Advanced Manufacturing Institute to develop, construct, and operate a farm-scale phosphorous recovery system to remove 75 percent of the phosphorous from cattle feedlot lagoon water. KEMA is leading an effort in conjunction with the AMI of Kansas State University to address the growing concern of excess nutrient level accumulation on farmland, specifically, phosphorous accumulation.	9/28/2007	$ 312,500	$ 312,500	$ -		26 new employees, $65,000 in research funding and $86,688 in capital expenditures
ThermoFisher Remel	The KBA awarded $1.25 million to Thermo Fisher Scientific for the expansion of its Lenexa operations, which manufactures and distributes Remel products. The company is a global manufacturer of a wide range of high-quality microbiology products used in clinical, industrial, research, and academic laboratories.	9/28/2007	$ 1,250,000	$ 250,000	$ 1,000,000		166 new employees and $7 million in capital expenditures
NBAF Phase II	KBA funding supports the effort to bring NBAF to Kansas. NBAF is a $650 million federal laboratory to research and develop countermeasures to animal, human, and zoonotic diseases, to Kansas.	9/28/2007	$ 440,000	$ 440,000	$ -		To site NBAF as its preferred location in Kansas
Collaborative Biosecurity Research Initiative	The KBA has launched a $2.5 million Collaborative Biosecurity Research Initiative (CBRI) to bring together researchers nationwide to create products that protect Americans from the intentional use of animal-borne diseases to disrupt the national economy or to infect humans. The goal of the CBRI is to support inter-institutional research to: 1) develop counter-measures for foreign-animal diseases; 2) provide advanced test and evaluation capability for threat detection, vulnerability, and countermeasure assessment for animal and zoonotic diseases; 3) support licensure of vaccine countermeasures through essential animal-model testing and evaluation; and 4) strengthen biosecurity capabilities of institutions serving certain regions and populations.	9/28/2007	$ -	$ -	$ -		The CBRI will introduce the unique biosecurity research capabilities and facilities at Kansas State University to investigators nationally and develop strategic alliances to promptly confront animal- and public-health threats by leveraging multi-disciplinary expertise
KansasBio 2008	Assistance supports Kansas' outreach and attraction activities at the annual BIO International Convention, the preeminent gathering of tens of thousands of bioscientists and business and a key Kansas marketing opportunity.	9/28/2007	$ 100,000	$ 100,000	$ -		Outreach and Attraction Activities
Edenspace USDA SBIR Phase I	The KBA awarded $40,000 to support Edenspace's breakthroughs in lowering processing costs and increasing yields of biofuels from sorghum, corn, and switchgrass. The KBA funding serves as a 50 percent match to a Small Business Innovation Research grant the company has been awarded by the U.S. Department of Agriculture.	11/26/2007	$ 40,000	$ 40,000	$ -		$80,000 in federal research funding
Edenspace DOE SBIR Phase I	The KBA awarded $50,000 to support Edenspace's breakthroughs in lowering processing costs and increasing yields of biofuels from sorghum, corn, and switchgrass. The KBA funding will serve as a 50 percent match to a Small Business Innovation Research grant the company has been awarded by the U.S. Department of Energy.	11/26/2007	$ 50,000	$ 50,000	$ -		$100,000 in federal research funding

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Eminent Scholar - University of Kansas	The KBA awarded $5 million over five years to attract Dr. Blake Peterson to a tenured position in the KU School of Pharmacy. He will teach at both the professional and graduate level in the department of medicinal chemistry; develop and maintain an active research program; train graduate, undergraduate and postdoctoral students; and develop research collaborations across different disciplines within KU. Dr. Peterson is important to KU's cancer drug discovery program, which is the heart of KU's strategy for gaining National Cancer Institute designation as a cancer center. KBA funds are being used to assist in providing lab space, along with assistance from the KU Cancer Center. Dr. Peterson also has a high interest in technology transfer and commercialization. He is the founder of Indigo Biosciences, a preclinical contract research organization servicing clients involved in pharmaceutical R&D, biotechnology, and related sectors. Dr. Peterson has filed for 12 patent disclosures and been awarded over $7.2 million in NCI funding.	1/16/2008	$ 5,000,000	$ 3,000,000	$ 2,000,000		$25.9 million in research funding over 10 years
Eminent Scholar - Kansas State University	The KBA awarded $2,055,000 over five years to establish Dr. Juergen Richt (DVM, PhD) as a Regents distinguished professor at Kansas State University. Dr. Richt will have a primary faculty appointment in the Department of Diagnostic Medicine/Pathobiology, an academic unit of the College of Veterinary Medicine. He is expected to be a campus and statewide asset, providing animal health research leadership with investigators in the College of Veterinary Medicine, the university and the state. Dr. Richt's infectious disease work requires a combination of BSL-3/BSL-3Ag biocontainment to be conducted in the Biosecurity Research Institute at K-State. He has been a lead scientist at the National Animal Disease Center (in the Virus and Prion Diseases of Livestock Research Unit) and a professor at Iowa State University. He is involved in cutting-edge research in two high-impact areas, prion diseases and influenza, and has established a strong reputation in the basic science of borna viruses and vaccines and diagnostics for other key viral diseases.	1/16/2008	$ 2,055,000	$ 1,380,000	$ 675,000		$4 million in research funding over five years
Pinnacle Technology	The KBA awarded $375,000 to Pinnacle Technologies, a Lawrence-based company that specializes in wireless, Web-enabled sensor conditioning, data acquisition, and biotechnology products, to develop real-time wireless monitoring and data acquisition systems for use in studying the brain activity of mice and rats. This technology provides researchers with new tools to use in understanding the effects of degenerative brain disorders and developing cures for those disorders.	1/16/2008	$ 375,000	$ 375,000	$ -		9 new employees and $879,290 in federal research funding
Biosecurity Research Institute	The KBA awarded $1,548,000 to implement technologies at the Biosecurity Research Institute (BRI) at Kansas State University and enhance the ability to offer distance educational programming via satellite or over the Internet. The BRI's integrated training suite (ITS) is a combined modern classroom and fully functional laboratory with all the equipment common to a biosafety level 3 research laboratory. With additional technologies, the ITS will become a functioning educational studio permitting the BRI learning experience to include the production of professional-level DVDs of training programs. The BRI training and education DVDs will be offered for national and international distribution, further demonstrating leadership in this arena and greatly extending the impact of K-State. This leadership in biosecurity education and training will serve as a national resource for training the staff that will occupy the proposed National Bio and Agro-Defense Facility.	2/26/2008	$ 1,548,000	$ 1,548,000	$ -		Enhance the BRI as an attractor for the NBAF, for new bio-businesses, and additional research programs for the BRI. At just 27 percent occupancy, the ITS will generate $564,300 per year in revenue, and, with training and education programs at a 57 percent occupancy rate, $945,000 per year in funding and $1.5 million in capital expenditures
KU Breidenthal KUMCRI	The KBA awarded $2 million to partially match a $3 million grant awarded by the federal government to create new wet-lab incubator space at KU Medical Center's Breidenthal Research Building. The addition will help area start-up companies grow and stay in Kansas as they develop new drugs and medical devices that will not only help improve human health but expand the state's economy.	4/8/2008	$ 2,000,000	$ 145,000	$ 1,855,000		$4 million in additional capital expenditures,136 new jobs and 26 companies. 16 of the companies will graduate from the incubator into other spaces, generating $40 million in revenue plus $10 million annually going forward
Eminent Scholar - Wichita State	The KBA awarded $911,954 over five years to attract eminent scholar Dr. Paul Wooley to Kansas to create an orthopedic immunogenetic laboratory to study the biocompatibility of composite implants, with the goal of developing alternatives to the metal joints used today in knee and hip replacements, which weaken bone mass and often require additional replacements over time. Dr. Wooley's specialties include the pathology and treatment of connective tissue diseases, biocompatibility, tissue engineering, and gene therapy. He will serve as director of research at Via Christi's Orthopaedic Research Institute and research professor at Wichita State University.	4/8/2008	$ 911,954	$ 547,172	$ 364,782		$5 million in research funding over a five-year period
OsteoGeneX NIH SBIR Phase II	The KBA awarded $375,000 for the further development of a groundbreaking treatment to stop the advance of osteoporosis and related bone disorders. This grant, which is a partial match of a federal NIH/NIAMS Small Business Innovation Research grant, is OsteoGeneX's second award from the KBA, following a $130,000 grant last year that resulted in the identification of several bone-building small molecules.	6/5/2008	$ 375,000	$ 375,000	$ -		$995,000 in federal research funding
Ventria Phase I Expansion	The KBA awarded a $3.75 million convertible note as part of a $7.5 million financing plan to expand operations, including an increase in employment and expanded production capacity in Kansas. The financing will help the company prepare for the commercial launch of its pediatric health product, which was clinically shown to shorten the duration of acute childhood diarrhea, the second leading killer of children under the age of 5, claiming 2 million lives annually on a global basis. The company's patented protein expression technology, ExpressTec, is highly efficient and uses rice as a biological factory to produce protein-based products for human health and nutrition.	6/5/2008	$ 3,750,000	$ 3,750,000	$ -	$ 4,612,862	$3.75 million in capital expenditures,19 full-time jobs and 7 part-time jobs
Immunogenetix Therapeutics, Inc. (IGX)	The KBA awarded a $420,000 convertible note to ImmunoGenetix to support the development of its therapeutic vaccine for HIV designed to inhibit viral replication by enhancing antibody and cellular immune response. The company's approach will reduce dependency on anti-HIV drug cocktails and diminish the emergence of drug-resistant HIV strains.	6/5/2008	$ 420,000	$ 420,000	$ -	$ 447,146	$420,000 in private investment capital

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Vince and Associates, LLC	The KBA awarded $200,000 to expand the company's pharmaceutical clinical research trials capacity to meet significant increases in the demand for clinical studies. The expansion doubles floor space with a dedicated 50-bed clinical research facility for Phase I trials.	6/5/2008	$ 200,000	$ 150,000	$ 50,000		29 new employees
TVAX Inc BTIIP	The KBA awarded $187,622 to TVAX Biomedical for a clinical trial of a unique cancer treatment that uses a patient's own immune cells to fight the disease.	6/5/2008	$ 187,622	$ 187,622	$ -		Significant progress in the FDA approval process
FY2008 Totals		**FY 2008 Totals**	**$ 22,009,124**	**$ 15,286,342**	**$ 6,722,782**	**$ 5,210,007**	
KC BioMediX preferred equity investment	The KBA made an equity investment of $400,000 in KC BioMediX to commercialize technologies developed at the University of Kansas for the care of infants born prematurely. The company's FDA-approved device, the NTrainer System, uses state-of-the-art hardware and software to treat preemies who have difficulty feeding orally so they can quickly gain strength and grow. This award follows a $150,000 KBA investment last fall and is part of a $4 million round of company financing.	7/15/2008	$ 400,000	$ 400,000	$ -	$ 400,000	$3.1 million in private investment capital
KC BioMediX common equity investment	The KBA awarded KC BioMediX a $150,000 convertible debenture to commercialize technologies developed at the University of Kansas for the care and treatment of infants born prematurely. This $150,000 debenture and $16,693 in accrued interest were converted to common equity. This investment relates to the interest portion of the conversion.	7/15/2008	$ 16,693	$ 16,693	$ -	$ 16,693	
VasoGenix Pharmaceuticals convertible note	The KBA awarded a $200,000 convertible note to support the development of an IV and controlled-release drug treatment for acute decompensated heart failure, a disease that affects 5 million people and 550,000 new patients annually. The company is completing pre-clinical studies of its treatment that uses a molecule with a history of safe use in humans and which aims to improve human health while reducing re-hospitalization costs by $6 billion per year.	7/15/2008	$ 200,000	$ 200,000	$ -	$ 232,677	$200,000 in private investment capital
NBAF Phase III	KBA funding supports the effort to bring NBAF to Kansas. NBAF is a $650 million federal laboratory to research and develop countermeasures to animal, human, and zoonotic diseases, to Kansas.	8/15/2008	$ 400,000	$ 400,000	$ -		To site NBAF as its preferred location in Kansas
KansasBio 2009	Assistance supports Kansas' outreach and attraction activities at the annual BIO International Convention, the preeminent gathering of tens of thousands of bioscientists and business and a key Kansas marketing opportunity.	8/15/2008	$ 100,000	$ 100,000	$ -		Outreach and Attraction Activities
Kansas Venture Capital Program	The KBA will solicit a request for qualifications to determine the interest of qualified professional venture capital investors in establishing a bioscience venture capital fund in Kansas. Based upon the quality and nature of responses, the KBA may commit to a limited partner investment in a funds, or funds, subject to capital commitments from other private and institutional investors.	8/15/2008	$ 1,000,000	$ 93,261	$ 906,739		At least $200 million of professionally managed capital
WCGME Grad Med Educ Planning Grant	The KBA awarded $250,000 to the Wichita Center for Graduate Medical Education for the development of a long-range sustainability plan for WCGME. This includes the evaluation of department operational and financial performance, including faculty deployment and productivity.	9/12/2008	$ 250,000	$ 250,000	$ -		A successful operating plan for WCGME
WCGME research centers	The KBA awarded $5.88 million to the Wichita Center for Graduate Medical Education for a research program that will lead to the creation of three new research centers. These centers are intended to improve health care delivery and patient outcomes; potentially lead to new drugs, medical products, and intellectual property; and serve as the basis for sustained accreditation of the 14 medical residency programs in Wichita.	10/28/2008	$ 5,880,000	$ 2,572,500	$ 3,307,500		Three self-sustaining research centers that will improve health care delivery and patient outcomes, and lead to new drugs, medical products and intellectual property
KSU Biomass Inventory Assessment	The KBA awarded $300,000 to Kansas State University to create a county-level inventory of biomass resources such as agricultural crop residues; grain and oilseed crops; and herbaceous energy crops. As part of the KBA's development of a strategic plan to advance the state's national bioenergy leadership, this data will highlight opportunities for the state as its bioenergy sector expands to help the country meet the National Renewable Fuels Standard, which federally mandates a significant increase in non-corn based biofuel use.	10/28/2008	$ 300,000	$ 300,000	$ -		A comprehensive inventory of biomass resources in the state to support bioenergy industry growth
ICM Collaborative Bioenergy Research	The KBA awarded $1 million to Colwich-based ICM for a collaborative bioenergy research project to bring cellulosic ethanol solutions to the marketplace using non-food sources such as switchgrass, corn fiber, and sorghum. ICM will work with Edenspace Systems, Diamond Ag, and Kansas State University following the U.S. Department of Energy's recent selection of ICM as one of four small-scale biorefinery companies to lead biomass-to-ethanol research efforts using innovative conversion technologies.	10/28/2008	$ 1,000,000	$ 550,000	$ 450,000		$3 million in research funding
Nowa Technology	The KBA awarded a $1.5 million loan to NOWA Technology to commercialize its patent-pending technology that chemically extracts marketable products such as fuel oil and mineral salts from municipal wastewater and eliminates the need to incinerate or landfill sludge. This proprietary process reduces wastewater treatment costs while providing significant environmental benefits.	10/28/2008	$ 1,500,000	$ 1,000,000	$ 500,000	$ 1,065,800	$2.5 million in private investment capital
Pinnacle NIH SBIR In-Vivo Wireless	The KBA awarded $375,000 to Pinnacle Technology for the commercialization of a wireless neurochemical biosensor for laboratory research that supports the pre-clinical development of new pharmaceuticals. The investment will partially match a Phase II Small Business Innovation Research grant from the National Institutes of Health.	10/28/2008	$ 375,000	$ 329,014	$ 45,986		$840,000 in research funding
ANOxA headquarters relocation	The KBA awarded $300,000 to ANOxA CORP, an animal-health biotechnology company, for the commercialization of a new drug to treat a common equine disorder should it move its headquarters to Kansas. The company is expected to hire seven employees upon relocation.	10/28/2008	$ 300,000	$ 120,000	$ 180,000		7 new employees, relocation to Kansas, and $6 million in equity financing

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Kansas Bioscience Authority
Summary of Commitments Paid and Remaining (cash basis)
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Project	Description	Date Approved	Funds Committed	Total Paid to Date at 1/31/11	Total Remaining To Be Paid	Investment Balance at 1/31/11	Projected Outcomes
KU Cancer Center Cluster Hire	The KBA awarded $750,000 to the University of Kansas Cancer Center to hire three researchers to support the work of center director Dr. Roy Jensen as KU seeks National Cancer Institute designation as a comprehensive cancer center.	10/28/2008	$ 750,000	$ 562,500	$ 187,500		$1 million in research funding
Via Christi/Wichita State University cluster hire	The KBA awarded $327,500 to Via Christi Medical Center to secure a researcher to work with KBA eminent scholar Dr. Paul Wooley as he studies the biocompatibility of composite implants leading to orthopedic surgery applications such as prosthetic joints.	10/28/2008	$ 327,500	$ 170,000	$ 157,500		$750,000 in research funding
NBAF - DHS	KBA funding supports the effort to bring NBAF to Kansas. NBAF is a $650 million federal laboratory to research and develop countermeasures to animal, human, and zoonotic diseases, to Kansas	1/12/2009	$ 35,000,000	$ -	$ 35,000,000		$650 million in capital expenditures; 1,641 construction jobs; 300-500 scientific jobs, and a $150 million annual operating budget
Edenspace USDA SBIR Phase II	The KBA awarded $360,000 to Manhattan-based Edenspace Systems as a partial match to a $750,000 grant from the U.S. Department of Energy and a $350,000 grant from the U.S. Department of Agriculture. The funding will support the further development of technology to lower processing costs and increase yields of biofuels from sorghum, corn, and switchgrass.	1/27/2009	$ 175,000	$ 175,000	$ -		$350,000 in federal research funding
Edenspace DOE SBIR Phase II	The KBA awarded $360,000 to Manhattan-based Edenspace Systems as a partial match to a $750,000 grant from the U.S. Department of Energy and a $350,000 grant from the U.S. Department of Agriculture. The funding will support the further development of technology to lower processing costs and increase yields of biofuels from sorghum, corn, and switchgrass.	1/27/2009	$ 184,724	$ 142,362	$ 42,362		$369,448 in federal research funding
ICM Biomass Gasification	The KBA awarded $500,000 to ICM to support the testing of a biomass gasification system that converts waste to synthetic fuel gas for power generation in industrial and commercial settings. The technology is intended to serve small communities that need to safely dispose of waste while generating reliable power for the electric grid. The company will invest an additional $1.7 million in the project and receive an in-kind land-use contribution from Harvey County.	1/27/2009	$ 500,000	$ 500,000	$ -		$1.5 million in capital investment and operations
VasoGenix Pharmaceuticals convertible note 2	The KBA awarded $400,000 to VasoGenix Pharmaceuticals to support the ongoing development of an IV and controlled-release drug treatment for acute decompensated heart failure, a disease that affects 5 million people and 550,000 new patients annually. The company is raising capital for the filing of an investigational new drug application with the U.S. Food and Drug Administration.	1/27/2009	$ 400,000	$ 400,000	$ -	$ 439,770	$400,000 in private investment capital and progress in the FDA IND application process
KBP Venture Accelerator	The Kansas Bioscience Park Venture Accelerator will be a 39,720 square foot building with 14 wet labs for startup bioscience companies as well as office space for the KBA.	1/27/2009	$ 19,000,000	$ 1,232,791	$ 17,767,209		Formation and growth of bioscience startup firms
Wahl/Hixon renovation	The KBA awarded $26.4 million for state-of-the-art cancer research space at the University of Kansas Medical Center (KUCC) in Kansas City, Kan. to advance its cancer research program for National Cancer Institute (NCI) designation and to recruit cancer-related eminent, rising star, and emerging scholars. KUCC has identified 170,000 gross square feet in the Wahl/Hixon Research Complex to meet the near-term, state-of-the-art space needs for basic and translational cancer research. The total estimated renovation cost is $50 million, of which $34 million is for design and construction and $16 million is for equipment. The KBA investment will support 10 years of bond payments for construction costs.	3/9/2009	$ 26,400,000	$ 7,920,000	$ 18,480,000		Over the 10 years of the KBA's financing, in constant dollars, these 37 Principal Investigators (PIs) will generate nearly $151 million, of which $113 million is direct and $38 million is indirect. In addition the 37 PIs will need 204 research staff
LDCBA Incubator	The KBA awarded $3.25 million over three years in matching funds to the Lawrence-Douglas County Bioscience Authority for a wet lab incubator at the University of Kansas. The incubator will facilitate the growth of the bioscience industry in Douglas County and supplement other existing or proposed incubators in the Kansas City metro region. The facility's location will allow it to attract customers who seek close proximity to KU, and the community and university will invest $4 million in the project.	3/9/2009	$ 3,250,000	$ 3,250,000	$ -		Assistance for start-up companies leading to employment growth
KUCC/Stowers	The KBA awarded $250,000 to a team from the University of Kansas for research to develop drug candidates that target the cells that start tumors and support tumor growth.	3/9/2009	$ 250,000	$ 150,000	$ 100,000		Cancer research in Kansas and expanded cancer research capabilities
KUCC Compound Management System	The KBA awarded $500,000 to the University of Kansas for an automated compounds management system at the University of Kansas High Throughput Screening Laboratory. This automated compound management system will play a highly significant role in catalyzing collaboration between the University of Kansas and Kansas State University. Specifically, it will allow for joint cancer research to be conducted where very large chemical compounds libraries can be rapidly screened so binding targets can be quickly identified and made available to the commercial drug discovery process.	3/9/2009	$ 500,000	$ 500,000	$ -		A national screening center for disease-focused foundations and societies and increased funding from the NIH and industry-sponsored applied research
NBAF Phase IV	KBA funding supports the effort to bring NBAF to Kansas. NBAF is a $650 million federal laboratory to research and develop countermeasures to animal, human, and zoonotic diseases, to Kansas.	3/9/2009	$ 500,000	$ 500,000	$ -		To site NBAF as its preferred location in Kansas
KBCI KABB	The KBA awarded $4.1 million to create the Kansas Bioenergy and Biorefining Center of Innovation, uniting key industry players with the world-class research and development efforts at the University of Kansas and Kansas State University. The center of innovation will use commercial biorefining to develop alternative fuels and chemicals; commercialize efficient biomass resources for cost-effective quality power; and improve carbon capture.	3/9/2009	$ 4,100,000	$ 910,000	$ 3,190,000		$7.75 million in research funding
KBCI - CIBOR	Award to create medical instruments, medical devices, and composite implants that will improve the practice of orthopedic medicine. The center will focus on commercial viability, conducting research requested by industry to meet market needs and capitalizing on the concentration of composites expertise found in Wichita due to the state's longstanding aviation industry leadership.	5/19/2009	$ 4,000,000	$ 4,000,000	$ -		A biomaterials sector that will contribute $100 million to the Kansas economy over 10 years. CIBOR is expected to increase employment in Kansas by 2,000 over 10 years.

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KBCI - HPI KICAPD Advanced Plant Design	Award to develop advanced technologies for gene discovery, trait validation and crop improvement in order to deliver new products and production platforms. The global research team associated with the center will focus on emerging commercial opportunities for wheat and sorghum, crops in which Kansas has world-renowned leadership and expertise.	5/19/2009	$ 4,000,000	$ 4,000,000	$ -		The center projects creating 90 jobs and at least nine commercial start-ups within five years. Within 10 years, the center projects the creation of 36 patents, 20 commercial start-ups and 285 jobs.
CyDex R&D Voucher	Award to commercialize reformulated drugs that address limitations of existing therapies, with a focus on improving a cancer drug for patients with multiple myeloma	5/19/2009	$ 195,000	$ 121,297	$ 73,703		Private funding support to build research excellence and development of CyDex's product Capitsol-Enabled Melphalan.
SCF Technologies	Award to further develop a novel approach to converting drugs into sterile, powder form. The process is expected to significantly reduce costs in drug manufacturing, while easing the process of administering drugs for both physicians and patients.	5/19/2009	$ 50,000	$ 50,000	$ -		Research funding of $100,000 from the National Institute of Health (NIH)
NanoScale NIH SBIR	Award to expedite the testing of nanoparticles for diagnostic and therapeutic uses in fighting cancer by allowing earlier disease detection and improving the ability of drugs to hit their intended targets with fewer side effects	5/19/2009	$ 50,000	$ 50,000	$ -		$150,000 federal funding to assist with the proof of concept required to move this application into the commercial marketplace.
CCRI KUCC Scripps	Award for collaborative studies by the University of Kansas Cancer Center and Scripps Research Institute to reduce the unwanted toxicity often associated with chemotherapy and to improve the treatment of breast and prostate cancers.	5/19/2009	$ 500,000	$ 300,000	$ 200,000		The project will advance promising anti-cancer agents for breast and prostate cancer treatment from drug discovery through preclinical development. In addition to patient safety, inactive or significantly less active prodrugs have advantages of reducing occupational risks to people associated with the manufacture, formulation, preparation and administration of chemotherapy agents to patients.
CCRI Wichita Clinical Trials	Award to initiate Phase I clinical trials in the Wichita area through a partnership of the University of Kansas Cancer Center, Cancer Center of Kansas, Midwest Cancer Alliance and Via Christi Regional Medical Center. Phase I trials will complement the successful Phase II and III programs in Wichita and strengthen rural and regional treatment options.	5/19/2009	$ 500,000	$ 186,596	$ 313,404		Enhance the Phase I clinical trial capability of the KU Cancer Center to evaluate new drug agents through a collaborative clinical trial partnership in Wichita, Kansas.
ADM R&D Voucher	Award for bioenergy research at the University of Kansas Center for Environmentally Beneficial Catalysis, which will focus on converting multiple feedstocks into a wide platform of fuels and chemicals to replace or improve upon petroleum-based products.	5/19/2009	$ 1,200,000	$ 500,000	$ 700,000		Research funding of $1.2 million plus this projection could lead to new technologies that can be integrated into processing plants and new feedstocks that can be grown, harvested and processed in Kansas.
Kansas Cancer Operations Phase I	KBA initiative to support the development of new and better cancer treatments and to bring cutting-edge cancer treatments closer to home for all Kansans through National Cancer Institute designation for the KU Cancer Center.	5/19/2009	$ 600,000	$ 401,218	$ 198,782		Build the state's cancer research and care enterprise.
FY2009 Totals		**FY 2009 Totals**	**$ 114,153,917**	**$ 32,353,232**	**$ 81,800,685**	**$ 2,154,940**	
NBAF Phase V	KBA funding supports the effort to bring NBAF to Kansas. NBAF is a $650 million federal laboratory to research and develop countermeasures to animal, human, and zoonotic diseases, to Kansas.	7/21/2009	$ 1,000,000	$ 1,000,000	$ -		To site NBAF as its preferred location in Kansas
KC BioMediX Equity II	Award to commercialize technologies developed at the University of Kansas for the care of infants born prematurely, using state-of-the-art hardware and software to treat preemies so they can quickly gain strength and grow.	8/14/2009	$ 500,000	$ 500,000	$ -	$ 500,000	Attracting $750,000 in additional investment capital
Megastarter (City of Manhattan NISTAC II)	Award for the company to establish its headquarters in Kansas to commercialize a microbial supplement for the livestock and dairy industry, which will provide a low-cost method to improve animal health and increase profitability by counteracting a destructive digestive condition in cattle.	8/14/2009	$ 300,000	$ 300,000	$ -		An industrial attraction that could lead to a full-scale production company and 13 new jobs. As the company scales up, it may require additional capital expenditure and job growth.
Ventria Bioscience NIH SBIR Ph II	An award that partially matches a competitive National Institutes of Health grant to further develop a safe and effective plant-based alternative to the animal-based cell culture media traditionally used in vaccine and biotherapeutic production.	8/14/2009	$ 144,744	$ 134,744	$ 10,000		Research funding for Kansas of $347,386 from the NIH
City of Manhattan NISTAC II - $1 Million build out of space	Award to complete the build out of space in the city's wet lab incubator park, with Megastarter's research and production facility as the first tenant	8/14/2009	$ 1,000,000	$ -	$ 1,000,000		Attraction of one company in the near future and possibly others in the future
KBA Growth Fund	The Kansas Bioscience Growth Fund (KBGF or the Fund) is a $50 million investment under which the Kansas Bioscience Authority will invest in up to eight professionally managed venture capital investment funds over a period of several years. Through these fund investments, the KBA would be a limited partner in the funds. These venture capital funds would in turn invest in Kansas bioscience companies, often in conjunction with other venture funds located outside the state. These syndicated investments would bring more national and regional investment capital to the state of Kansas, likely beyond the KBA's investment into the eight selected funds.	10/8/2009	$ 29,000,000	$ -	$ 29,000,000		KBA's investment is expected to encourage additional bioscience investment in the state of Kansas and leverage additional investment capital.

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Project	Description	Date Approved	Funds Committed	Total Paid to Date at 1/31/11	Total Remaining To Be Paid	Investment Balance at 1/31/11	Projected Outcomes
KBA Growth Fund - Cultivian Ventures	The Kansas Bioscience Growth Fund (KBGF or the Fund) is a $50 million investment under which the Kansas Bioscience Authority will invest in up to eight professionally managed venture capital investment funds over a period of several years. Through these fund investments, the KBA would be a limited partner in the funds. These venture capital funds would in turn invest in Kansas bioscience companies, often in conjunction with other venture funds located outside the state. These syndicated investments would bring more national and regional investment capital to the state of Kansas, likely beyond the KBA's investment into the eight selected funds.	10/8/2009	$ 5,000,000	$ 2,049,095	$ 2,950,905	$ 1,680,866	KBA's investment is expected to encourage additional bioscience investment in the state of Kansas and leverage additional investment capital.
KBA Growth Fund - MPM	The Kansas Bioscience Growth Fund (KBGF or the Fund) is a $50 million investment under which the Kansas Bioscience Authority will invest in up to eight professionally managed venture capital investment funds over a period of several years. Through these fund investments, the KBA would be a limited partner in the funds. These venture capital funds would in turn invest in Kansas bioscience companies, often in conjunction with other venture funds located outside the state. These syndicated investments would bring more national and regional investment capital to the state of Kansas, likely beyond the KBA's investment into the eight selected funds.	10/8/2009	$ 10,000,000	$ 2,041,488	$ 7,958,512	$ 2,019,069	KBA's investment is expected to encourage additional bioscience investment in the state of Kansas and leverage additional investment capital.
KBA Growth Fund - Open Prairie Ventures	The Kansas Bioscience Growth Fund (KBGF or the Fund) is a $50 million investment under which the Kansas Bioscience Authority will invest in up to eight professionally managed venture capital investment funds over a period of several years. Through these fund investments, the KBA would be a limited partner in the funds. These venture capital funds would in turn invest in Kansas bioscience companies, often in conjunction with other venture funds located outside the state. These syndicated investments would bring more national and regional investment capital to the state of Kansas, likely beyond the KBA's investment into the eight selected funds.	10/8/2009	$ 5,000,000	$ 1,776,034	$ 3,223,966	$ 1,294,274	KBA's investment is expected to encourage additional bioscience investment in the state of Kansas and leverage additional investment capital.
Eminent Scholar - KU (Volkin)	Attraction of an Eminent Scholar to the School of Pharmacy to direct and expand the Laboratory for Macromolecule and Vaccine Stabilization. The Eminent Scholar is a pharmaceutical scientist and research and development manager with 20 years of experience in formulation development and analytical characterization of biopharmaceuticals and vaccines. The Eminent Scholar has extensive experience building and leading research programs that lead to commercialization discovery.	11/9/2009	$ 2,490,185	$ 504,493	$ 1,985,692		Expand existing cancer research in Kansas and contribute to NCI designation in 2011.
CCRI KSU - UTCC	Award for a project involving researchers from Kansas State University and the University of Texas' M.D. Anderson Cancer Center to improve the treatment of pancreatic cancer using a new gene therapy based on umbilical cord stem cells	11/10/2009	$ 500,000	$ 250,000	$ 250,000		Viable intellectual property will result that could be developed and licensed to private industry. Improvements in pancreatic cancer diagnoses and could have significant commercial value.
NanoScale DOD SBIR Phase I	NanoScale Department of Defense SBIR Phase II award totaled $1,516,488, for the development of an enhanced contaminated human remains pouch (ECHRP) system. The United States Department of Defense is interested in developing an enhanced contaminated human remains pouch that they can use for battlefield casualties, particularly with the relatively new threats of chemical and biological warfare agents in the battlefield.	11/10/2009	$ 375,000	$ 375,000	$ -		Federal funds of $1,516,488
NanoScale NSF STTR Phase I	NanoScale received a $150,000 Small Business Technology Transfer (STTR) Phase I grant, focused on the synthesis and delivery of nanoparticles in order to determine the specific stage of development in the progression of cancer at the earliest possible time. Award to expedite the testing of nanoparticles for diagnostic and therapeutic uses in fighting cancer by allowing earlier disease detection and improving the ability of drugs to hit their intended targets with fewer side effects.	11/10/2009	$ 50,000	$ 50,000	$ -		Federal funds of $150,000 will be used to further the scientist's knowledge related to reproducible manufacturing and initial scale-up of nanomaterials with the desired particle size (8 nm).
POCI - CritiTech	The purpose of this award is to obtain marketing research information regarding peritoneal cancers treatment, the existing ovarian cancer market and the unmet clinical need and how CritiTech's product profile might meet that need.	11/10/2009	$ 50,000	$ 50,000	$ -		Increase value of the company by further proving the technology.
AGCO DOE Matching	AGCO holds a dominant position in the manufacturing of large square balers with over a 60% market share. The company is leveraging Federal Grants, State Funds, and collaborative relationships to develop and deploy new technology critical to solving the biomass handling and logistics issues facing the next generation of biofuels facilities.	1/26/2010	$ 1,500,000	$ 240,300	$ 1,259,700		Investment of $9.7M and development of an industry in Kansas.
Eminent Scholar - KU	KU hired Rakesh K. Srivastava, PhD, as a professor of pharmacology, toxicology, and therapeutics at the KU Medical Center and a member of the KU Cancer Center. Srivastava's research focuses primarily on the molecular mechanisms of cancer cell growth and apoptosis (a form of cell death) and the development of new cancer drugs—including drugs using naturally occurring compounds. KU reports that the hiring of Srivastava will advance the university's cancer drug discovery programs, which are at the heart of KU's strategy for gaining National Cancer Institute designation as a cancer center.	1/26/2010	$ 1,775,000	$ 100,000	$ 1,675,000		Total research funding of $2,493,750
CBRI KSU PRRS	The KSU research team led by Dr. Jishu Shi is investigating the swine viral disease porcine reproductive and respiratory syndrome (PRRS) to better understand the host immune mechanisms that can lead to the development of novel adjuvants and diagnostic reagents to provide protection against the most virulent PRRS strains. It is designed to bring together U.S.-based and international researchers to create products that protect Americans from the intentional use of animal-borne diseases to infect humans or to disrupt the national economy.	1/26/2010	$ 500,000	$ 75,000	$ 425,000		Potential new company and establish international cooperation and collaboration.
TVAX Immunotherapy	TVAX Biomedical is a biotherapeutics company in Lenexa. The company is authorized by the FDA to conduct pivotal, registering phase III trials to test the safety and efficacy of its patented cellular immunotherapy treatment for brain and kidney cancers. TVAX applies its expertise in antigen (a substance that causes the body's immune system to react) identification, engineering and cell processing to produce active T cell immunotherapy products designed to stimulate an immune response.	1/26/2010	$ 600,000	$ 300,000	$ 300,000	$ 300,000	$1.6M in equity-like financing, advancement of the company's regulatory plan leading toward final FDA marketing approval.

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Planning Grant - Animal Health Center of Innovation	Planning grant for the enhancement of the business development plan for the resubmission to and consideration of the KBA to establish a Kansas Animal Health Center of Innovation.	1/26/2010	$ 250,000	$ 223,089	$ 26,911		
Ceva Biomune	Ceva Biomune, based in Lenexa, KS, is one of the world's leaders in the manufacture of live, inactivated, recombinant and autogenous vaccines for poultry, swine and cattle. Ceva Biomune has developed an extensive range of biological products for poultry, and is expanding its expertise to products for selected cattle and swine market segments. Biomune's poultry vaccines help protect both animal and human health and support food safety and security.	3/9/2010	$ 700,000	$ 100,000	$ 600,000		Create 81 new full time bioscience jobs with average annual salary $50,000 and $15M in capital expenditures.
SAFC Bioscience	SAFC Biosciences is one of the world's leading suppliers of critical raw materials and specialized cell culture products and services to the global health care industry. SAFC Biosciences serves organizations involved in human therapeutics, animal health and diagnostics in various stages of development from preclinical through clinical phases I, II, and III to marketed products. SAFC Biosciences creates media and cell cultures suitable for protein growth in pharmaceutical manufacturing, and generates significant annual revenues.	3/9/2010	$ 250,000	$ -	$ 250,000		$6M in capital investment and 27 new jobs with an average salary of $41,000.
POCI - AIR, Inc.	Aero Innovative Research, Inc. founded in 2005, is an early-stage Wichita, Kansas company focused on developing and marketing innovative mobility devices for the wheelchair market. AIR's patented first product is a complete departure in technology from existing wheelchairs, with improved function, superior materials, advanced design, and computer automated machining replacing the manual labor involved in conventional welded tubing and fabric wheelchairs. The product is designed with the current industry in mind, allowing a vast array of existing accessories to fit the product in order to insure customizability and easy acceptance in the existing marketplace. The total size of the wheelchair market is estimated at $2.4 billion, and at $305 million for the ultra lightweight segment of the market that AIR's initial product will address.	5/7/2010	$ 73,000	$ 73,000	$ -		Aero Innovative Research, Inc. expects to have raised sufficient capital to carry the Company to the operating cash flow breakeven point by Q1 2011. Distribution will be expanded to create sales revenue and margin to reinvest into Company growth.
Cargill Expansion and Attraction	Cargill is a diversified, international producer and marketer of food, agricultural, financial and industrial products and services. Cargill Meat Solutions is a wholly owned subsidiary of Cargill, and represents Cargill's US-based Meat and Poultry businesses. This group of businesses is a part of Cargill's Animal Protein Platform, which is a collection of 14 different business units around the world. Cargill Meat Solutions is a Kansas-based division of Cargill focused on developing innovative food safety technologies and new food products. The Technology and Innovation Center to be supported with this grant will be a $15 million, 70,000 to 80,000 square foot facility and will include a BSL-2 pathogen research lab where new food safety technologies and processes are developed and tested and will represent a destination for Cargill customers from around the world.	5/10/2010	$ 750,000	$ 200,000	$ 550,000		$15 million capital investment, retention of 51 jobs in Kansas and addition of estimated 10 net new jobs at an average salary of $73,600 over 5 years
CBRI ABADRU - Rift Valley Fever	A collaboration led by Dr. William Wilson of the USDA between ABADRU, Kansas State University, the University of Wyoming and MKS Technologies to develop new and novel diagnostic tests and tools, including point of care testing that can be distributed to regional laboratories for early detection of Rift Valley Fever Virus. The potential for Rift Valley Fever Virus (RVFV) being used as a bioterrorism agent is widely recognized. The US Department of Homeland Security (DHS) considers Rift Valley Fever a high consequence biological threat, and has selected it as one of the eight target pathogens for study at the National Bio and Agro-Defense Facility (NBAF). This project will provide the diagnostic tools necessary for the early detection and the ability to respond diagnostically to either an intentional or accidental introduction to RVFV.	5/10/2010	$ 498,917	$ 100,000	$ 398,917		Commercialization to provide diagnostics reagents and point of care tools to regional BSL-2 laboratories for early detection of RVF. As Kansas prepares for NBAF's implementation, this will likely bring more collaborations, companies, research and jobs to Kansas.
CCRI KU Fabian	The University of Kansas Cancer Center has submitted an application to the KBA's Collaborative Cancer Research Initiative for a year-long project entitled "Omega-3 fatty acids for prevention of breast cancer in premenopausal women." The research team is to be led by Carol J. Fabian, MD, the program leader for the cancer center's cancer prevention program and a professor of hematology and oncology at KU. There are two other KU collaborators and one from out of state, Stephen Hursting, PhD, professor and chair of nutritional sciences at the University of Texas at Austin. Breast cancer is the most common invasive cancer affecting women in the United States, with about 200,000 cases each year, nearly a quarter of which are diagnosed in patients younger than 50. Tumors in younger patients are often more aggressive than those in older women and are usually more advanced at the time of diagnosis. Serious progress toward preventing breast cancer will require interventions with minimal side effects; this project will develop preliminary data on one such potential intervention, the administration of natural omega-3 fatty acids.	5/10/2010	$ 249,975	$ 175,000	$ 74,975		The project is not in itself expected to lead to a commercial product or to a patentable invention. But it does represent the first step in a long-term research enterprise that has the potential to lead to such property. In addition, the project expects NCI to provide near-term follow-on research funding.
Deciphera Pharmaceuticals R&D	Deciphera Pharmaceuticals, Inc. ("DPI") was created as a drug discovery and development company focused on designing, optimizing, and introducing "best-in-class" small molecule Switch Inhibitors of protein kinases in oncology indications for human clinical trials and the global pharmaceutical marketplace through the use of its proprietary drug discovery technology platform, Phylomechanics. DPI applied to the KBA for an R&D Voucher in order to perform key studies to result in lead compound identification and optimization, which will allow these programs to enter the pre-clinical development phase. The research plan for this proposal is derived from Deciphera's general approach to kinase inhibitor drug discovery. The proposed timeline for this proposal is 9-12 months, during which Deciphera will complete the Lead Identification and Optimization phase of Discovery. Milestones are performance-based and reflect a commitment to complete all studies, including those for which matching funds are not requested.	5/10/2010	$ 390,000	$ 138,925	$ 251,075		KBA funding of this proposal will enable the simultaneous pursuit of three advanced programs to a high value inflection point and provide Deciphera with a great deal of flexibility in the generation of capital to advance its internal product opportunities. It should also be noted that the partnered projects would also offer potential revenue streams if they make it to market in the form of late stage milestone payments and royalties on sales.

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Project	Description	Date Approved	Funds Committed	Total Paid to Date at 1/31/11	Total Remaining To Be Paid	Investment Balance at 1/31/11	Projected Outcomes
PRA Intl Expansion and Attraction	PRA International is a leading global Clinical Research Organization (CRO) providing outsourced clinical services across all phases of drug development for pharmaceutical and biotechnology companies. PRA specializes in studies involving oncology, neurology/psychiatry, respiratory/allergy, cardiology and infectious diseases and has supported over 2,100 clinical trials worldwide. PRA generally divides its businesses into three core lines 1) early development services, 2) product registration, and 3) late phase services. The company currently operates an 80-bed Phase I facility that employs 125 people in Lenexa, KS and hopes to build a new bioanalysis lab in close proximity to its Phase I facility in order to quickly enter the domestic market. In doing so, PRA will become a one-stop shop for small biotech companies and other CROs.	5/10/2010	$ 350,000	$ 150,000	$ 200,000		This facility, which will be the central lab for PRA Early Development Research, is expected to require approximately $3.5 million in capital investment and result in the addition of 52 net new jobs over five years with an average salary of $51,000.
POCI - Novita Therapeutics	Novita Therapeutics, LLC is a medical device and biotechnology company developing novel treatments for important unmet medical needs in the vascular, renal, and gastrointestinal fields. Funding will help company complete the technical development of a design for a new cardiovascular device.	5/14/2010	$ 72,578	$ 72,578	$ -		Novita expects to raise up to $3,250,000 of equity from angel investors and approximately $10M of capital from a syndicate of venture capital investors.
Heartland BioVentures Phase II	Funding supports a KBA program emphasizing business formation and acceleration to grow bioscience companies and raise venture capital investment.	5/24/2010	$ 100,000	$ -	$ 100,000		Business Formation and Acceleration
Kansas Cancer Operations Phase II	KBA initiative to support the development of new and better cancer treatments and to bring cutting-edge cancer treatments closer to home for all Kansans through National Cancer Institute designation for the KU Cancer Center.	5/24/2010	$ 693,000	$ 66,221	$ 626,779		Build the state's cancer research and care enterprise.
NBAF Phase VI	KBA funding supports the effort to bring NBAF to Kansas. NBAF is a $650 million federal laboratory to research and develop countermeasures to animal, human, and zoonotic diseases, to Kansas.	5/24/2010	$ 700,000	$ 56,058	$ 643,942		To site NBAF as its preferred location in Kansas
NBAF Research	KBA funding supports the effort to bring NBAF to Kansas. NBAF is a $650 million federal laboratory to research and develop countermeasures to animal, human, and zoonotic diseases, to Kansas.	5/24/2010	$ 500,000	$ -	$ 500,000		To site NBAF as its preferred location in Kansas
Megastarter Loan	KBA funding supports the effort to relocate the company to Wamego, Kansas. Loan is to finance a portion of the company's total build-out cost at the Wamego facility.	6/9/2010	$ 500,000	$ 500,000	$ -	$ 500,000	Create 13 full-time employees and the commercialization of products.
FY2010 Totals		**FY 2010 Totals**	**$ 65,862,399**	**$ 11,601,025**	**$ 54,261,374**	**$ 6,294,209**	
OsteoGeneX Equity	The KBA investment will support the studies necessary for a successful FDA preclinical meeting including lead drug candidate selection and optimization, and will support the national entry phase for international intellectual property protection.	7/27/2010	$ 500,000	$ -	$ 500,000	$ -	Projected $2.0M in equity investment from angel investors. Women's Capital Connection members along with a new and original angel have invested approximately $305,000 in the current convertible note round. Future patent prospects.
Rising Star - KU (Nie)	Nie's research focuses on the molecular mechanisms of breast and prostate cancer cell growth and on development of novel cancer drugs that are likely to have implications both for drug discovery and for improved cancer diagnostic techniques. Nie's hiring will advance the university's progress toward a successful NCI designation application.	7/27/2010	$ 850,000	$ -	$ 850,000		Realized research funding of $1,409,000 (NCI and DOD grants) with a projection of $3,930,000 in federal research funding over the next 10 years. One realized job with his hiring and lab personnel budgeted in the future. Creation of start-up companies, commercialization of products, and patents.
Rising Star - KU (Xu)	Xu's addition to the KU faculty and the cancer center is important to KU's cancer drug discovery programs, which are at the heart of the university's strategy for gaining National Cancer Institute designation as a Cancer Center. Xu's responsibilities include developing research infrastructure, securing external funding, attracting other investigators, enhancing collaborations, and moving discoveries from the laboratory to the marketplace.	7/27/2010	$ 780,000	$ -	$ 780,000		Realized NCI grant funding of approx. $700,000 and a projection of $3,526,000 in federal research funding over the next 10 years. One realized job with his hiring and lab personnel budgeted in the future. Creation of start-up companies, commercialization of products, and patents.
POCI - EnalaPed	Funding will allow the company to prepare and submit a pre-IND meeting briefing package to the FDA, and conduct an FDA pre-IND meeting to agree on the overall clinical development and regulatory pathway for a new formulation of an existing drug to treat pediatric hypertension. The company will conduct initial research and feasibility for an Orphan Drug Designation Request (ODDR) for this product. The orphan drug designation will provide 7 years of market exclusivity and greatly strengthen the financial position of the company and the product market.	8/2/2010	$ 74,500	$ 74,500	$ -		Conducting the pre-IND meeting and finalizing the overall product development plan and budget will allow for de-risking of the project, increasing the overall value of the company, and enhancing fund raising opportunities.
POCI - IdentiGEN	IdentiGEN currently offers a range of DNA based traceability services to the US meat processing and retail sectors aimed at bolstering consumer confidence and underscoring product differentiation.	9/17/2010	$ 74,910	$ 35,000	$ 39,910		IdentiGEN plans to develop a new product available for use in current markets.
POCI - Centaur	Centaur, Inc. is an Olathe, KS based animal health company serving the diagnostic, pharmaceutical, and contract manufacturing markets. Centaur is testing a new treatment and prevention for a common equine ailment, and hopes to bring its product to the market in 2011.	9/28/2010	$ 51,120	$ 46,120	$ 5,000		Centaur expects to successfully complete field trials of its compound, and to introduce it to the domestic market in late 2010 or early 2011.

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Project	Description	Date Approved	Funds Committed	Total Paid to Date at 1/31/11	Total Remaining To Be Paid	Investment Balance at 1/31/11	Projected Outcomes
Eminent Scholar - KU (Anant)	The KBA will invest $1.45 million over five years to support Dr. Shrikant Anant, whom KU has recruited to the KU Cancer Center as associate director for prevention and as a tenured, endowed professor in the department of molecular and integrative physiology. His research focuses on gastrointestinal cancer; he works on molecular genetics, RNA binding proteins, dietary chemoprevention and drug discovery and development. He has identified a proto-oncogene, a tumor suppressor, a natural chemopreventive compound, and microRNAs regulated by the RNA binding proteins. The university calls Anant's research "highly translational," and the external reviewers agreed, meaning that he will likely contribute to the drug discovery, development, and delivery enterprise that is at the center of KU's strategy for attaining NCI designation.	10/11/2010	$ 1,450,000	$ -	$ 1,450,000		Projected outcomes include 5 jobs (Anant's own job and four research support personnel), and a minimum of $5 million in research dollars over the next 10 years. Dr. Anant has filed nine invention disclosures and patents and executed an NIH research contract.
Eminent Scholar - KU (Bhalla)	The KBA will invest $2.051 million over five years to support Kapil Bhalla, MD, FACP, as the deputy director of the KU Cancer Center and as a tenured, endowed professor in the department of internal medicine. His research interests are novel targeted therapeutics of breast cancer, lymphoma, and leukemia; identification and validation of novel therapeutic targets; investigating anti-cancer activity of pipeline therapeutics; genomics, epigenomics, and chaperone biology. Bhalla's research interests are "highly translational" according to the university, which will contribute to KU's drug discovery, development, and delivery enterprise that is at the center of the strategy for attaining NCI designation. Bhalla "has successfully initiated both NIH/CTEP [Cancer Therapy Evaluation Program] and industry-sponsored clinical trials and is currently working with pharmaceutical and biotechnology companies to jointly develop a number of targeted therapeutics."	10/11/2010	$ 2,051,000	$ -	$ 2,051,000		Projected outcomes include 8 jobs (Bhalla's own job and seven research support personnel), and a minimum of $7 million in research dollars over the next 10 years. Dr. Bhalla has also filed for two patents on discoveries originating in his lab.
Eminent Scholar - KU (Godwin)	The KBA will invest $3,362,500 over five years to support an associate director for translational research of the KU Cancer Center and as a tenured, endowed professor in the department of pathology and laboratory medicine. He will direct the Molecular Pathology Laboratory. His research focuses on cancer genetics and molecular therapies primarily for breast, ovarian, and gastrointestinal cancer. The associate director has NCI funding which will help the cancer center solidify its NCI funding base required for the designation.	10/11/2010	$ 3,362,500	$ -	$ 3,362,500		Projected outcomes include 8 jobs (this position and seven research support personnel), $300,000 in capital expenditures (equipment), and a minimum of $7.3 million in research dollars over the next 10 years. In addition, the recruit has two patents for lab discoveries pertinent to cancer drugs and two pending applications for patents.
Eminent Scholar - KU (Welch)	The KBA will invest $1.575 million over five years to support the associate director for basic science in the KU Cancer Center and as a tenured, endowed professor in the department of pathology and laboratory medicine. KU expects that he will eventually become chair of the recently approved department of cancer biology. His research focuses on the biology and genetics of breast cancer and particularly on metastasis. As associate director for basic science, he is responsible for recruiting, mentoring, and evaluating basic cancer scientists and evaluating their productivity; anticipating the short- and long-term needs of the basic sciences and working with the director and the associate director for shared resources to meet those needs; stimulating, overseeing, and seeking support for the basic science research programs, such as the risk factors for carcinogenesis program. He will enhance the cancer center's research program in cancer prevention.	10/11/2010	$ 1,575,000	$ -	$ 1,575,000		Projected outcomes include 5 jobs (this position and four research support personnel), and a minimum of $7.75 million in research dollars over the next 10 years. The recruit has five patents based on research discoveries arising from his lab; all relate to identification of therapeutic targets for breast and other types of cancer.
Orbis SBIR Phase II Matching	Orbis BioSciences, Inc. is an early-stage Kansas company focused on providing new controlled release delivery systems to human and animal pharmaceutical companies. This broad-based and patented technology is called Precision Particle Fabrication (PPF). The PPF technology allows the company to control the release profile of a drug for sustained release, controlled release, and pulsatile release based on needs within the marketplace. The company has received an award from NIH SBIR to develop a scalable process for the fabricating oil encapsulated microparticle with uniform sizes and physical characteristics. The KBA award will supplement the SBIR award with consulting expertise, additional prototype materials and business development commercialization resources. The KBA's investment and the SBIR together will align the current particle fabrication process with current good manufacturing practices (cGMP), and support work to successfully scale up the technology for use with viable pharmaceutical products.	10/11/2010	$ 347,550	$ 149,750	$ 197,800		Three jobs and $695,173 federal research dollars. Additionally, this work paves the way for much more rapid growth of Orbis through increased revenue and additional employment.
POCI - Emerge Medical Solutions	Emerge Medical Solutions is a Healthcare IT company in Lenexa, Kansas developing clinical decision support systems for key disease states in cardiology. Emerge's focus is on improving the decision making process at the point-of-care and on improving clinical outcomes.	10/20/2010	$ 199,860	$ -	$ 199,860		Projected outcomes include a robust Clinical Decision Support System package that addresses a substantial clinical subspecialty and positions the company for rapid growth.
POCI - NanoScale	Project assesses whether a simple and fast urine or blood test for cancer is feasible using nanoparticle/enzyme technology. NanoScale is a Kansas company in Manhattan that manufactures and markets customer driven technologies, products, and solutions for environmental remediation, personal protection, energy and health related needs. The company's healthcare focus is on the development and commercialization of proprietary technologies related to cancer detection, imaging, and treatment.	10/26/2010	$ 199,996	$ 60,000	$ 139,996		Human proof of concept data will allow the company to apply for additional funding from NIH and NSF, as well as from private investors, which in turn will allow for follow-on technology development and clinical testing.

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Project	Description	Date Approved	Funds Committed	Total Paid to Date at 1/31/11	Total Remaining To Be Paid	Investment Balance at 1/31/11	Projected Outcomes
POCI - Visimed	Visimed is an early stage company providing advanced image analysis and workflow solutions that enable radiologists, surgeons and other healthcare professionals to better serve patients by obtaining better information from medical imaging. The company was founded to license and commercialize advanced clinical visualization technologies based on the AVW software library and AnalyzeMD platform invented at Mayo Clinic. Visimed's first product is a diagnostic visualization technology for epilepsy treatment. This first clinical product synthesizes data from a suite of medical imaging tools and presents visualization to assist physicians planning epilepsy surgery. The KBA investment will help Visimed complete the development of its Epilepsy Seizure Focus Localization technology, prepare its 510(k) filing, obtain a CPT reimbursement code, and generate awareness among neurologists and neurosurgeons.	12/6/2010	$ 161,600	$ -	$ 161,600		510K approval, pre-launch at the American Association of Neurological Surgeons, and CPT reimbursement code.
POCI - Pulse NeedleFree Systems	Pulse NeedleFree Systems is an early-stage Kansas company focused on developing drug delivery systems for animal health, and more recently, human health applications. Since its founding in 2001, Pulse has become the industry leader in the animal health needle-free technology segment and it is a vibrant participant in our region's animal health industry corridor initiative. Pulse has commercialized a line of needle-free animal health injections systems. This POCI would be used to advance the Company's injection device so that it may be used multiple times in succession without a risk of contamination. Specifically, funding would be used to re-engineer and re-test a new tip for the Company's existing injection device. This effort will position Pulse NeedleFree Systems for strategic partnerships associated with its human health needle-free technology platforms.	12/17/2010	$ 73,800	$ 20,000	$ 53,800		a new vaccine administration device that may be used in animal and human health. If successful, additional R&D investment and jobs to support the device.
CEEZAD - Center of Excellence in Emerging Zoonotic & Animal Diseases	Kansas State University requested $4 million from the KBA as a partial match of funding from the U.S. Department of Homeland Security (DHS) to establish the Center of Excellence for Emerging and Zoonotic Animal Diseases (CEEZAD). CEEZAD has been awarded $12 million over six years to enhance DHS's capabilities in developing state-of-the-art countermeasures for high priority foreign animal diseases. The award by the KBA will be used to expand CEEZAD's program of work beyond that which was funded by DHS. The winning CEEZAD proposal was developed by KBA Eminent Scholar Dr. Juergen Richt and the Center will be led by him. KBA funding will also support the training of a Kansas workforce for federal facilities (e.g. NBAF) and Animal Health Corridor companies. In addition, KBA will provide a Matching Program which will expand the Ad Hoc Grant Program which is partially supported by DHS.	12/21/2010	$ 4,000,000	$ -	$ 4,000,000		Four jobs, federal research funding, and a pipeline of trained Kansas workers to meet the workforce needs of federal laboratories and companies. Development with commercial partners that will lead to new products for Kansas companies and potentially attract companies to the region.
Aratana Therapeutics	Aratana Therapeutics is an animal health-focused start-up company that will identify and develop pharmaceutical therapeutics for the animal health sector. Aratana will fund, develop and manage the clinical trials and development activities necessary to achieve regulatory approval. The company's goal is to partner these products to animal health companies that have a meaningful presence in the relevant sector of the animal health market. The focus of the company is not restricted to a particular animal species or technology. The KBA and venture firms MPM Capital, Avalon Ventures and Cultivian Ventures have funded a Series A Round of $20 million to take the first two products through development to regulatory approval at the FDA and potentially in other markets. The KBA has invested in Aratana in this Series A Round as an equity partner under the same terms and conditions as the founding venture investors.	12/21/2010	$ 1,000,000	$ 500,000	$ 500,000	$ 500,000	$19 million in venture capital equity investment
The Learning Collaborative	The Learning Collaborative is a new drug-development partnership of government, disease philanthropy, and academia designed to speed drug development and overcome traditional commercial barriers to new drugs for rare diseases. The KBA funds would be used to enable the KU cancer center to participate in two drug repurposing projects that would entail investigator-initiated clinical trials at KU.	12/21/2010	$ 500,000	$ -	$ 500,000		Positive clinical results lead to commercial activity and the KU Cancer Center will benefit from a share of that activity commensurate with its contributions to its creation. Cancer patients in Kansas will have access to clinical trials and ultimately a promising new drug therapy.
Heartland BioVentures NDDA	Funding supports a KBA effort emphasizing identification and promotion of the capabilities of the Contract Research and Clinical Service Organizations (CROs) located in the greater Kansas City region. This region has the potential to be widely viewed as a world class cluster of CROs providing a wide range of services from discovery to post-market analysis to the human and animal health industries. The companies in the region have helped to develop more than 50 of the world's top drugs. The results of a recent industry market report show that CROs in the KC region conduct the ninth highest number of clinical trials in the US.	1/24/2011	$ 175,000	$ 72,500	$ 102,500		Expect findings will provide useful industry benchmarks, support the KBA's effort to map and support this industry, identify capabilities, differences and unique attributes of the industry in the KC region, direct future growth of this core capability, and create new jobs in the region.
KBCI - CIBOR FY11	CIBOR is a non-profit corporation designed to be a catalyst for a true collaboration among Kansas institutions and companies with proven expertise in proprietary areas of 1) orthopaedic medical practice 2) aerospace composite materials research and manufacturing, and 3) biocompatibility of new materials in the body. CIBOR is requesting these funds in order to develop medical devices utilizing advanced composite materials technology derived from aerospace technology, which resides in the CIBOR partnership. CIBOR has requested funding for the remaining two quarters of FY2011. This funding will support CIBOR core operations, maintain CIBOR's current facility and labs, and allow CIBOR to continue to advance its highest priority development projects. CIBOR has re-prioritized all of its programmatic activities with a commercial focus based on its Commercial Thesis Analysis.	1/24/2011	$ 1,500,000	$ -	$ 1,500,000		In-kind contributions related to technology of approximately $2.9 million and $1.1 million in federal or private grants

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Kansas Bioscience Authority
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Project	Description	Date Approved	Funds Committed	Total Paid to Date at 1/31/11	Total Remaining To Be Paid	Investment Balance at 1/31/11	Projected Outcomes
KBCI - HPI KICAPD Advanced Plant Design FY11	HPI requested new funding for the third and fourth quarters of FY2011. Based on the strategic goals of HPI in FY2011, and the total amount of KBA funding available to support the Centers of Innovation for the remainder of FY2011, KBA staff recommended FY2011 HPI funding of $1.0 million. This proposed funding will support core HPI operations (staff, lease, utilities, etc.), as well as the Advanced Plant Breeding Services (APBS) business, University research collaborations, and further development of the Natural Products business line. HPI will require a minimum of $500,000 to cover core operations through FY2011, which it should be able to cover with existing cash (increased by the KBA's $1.0 million payment made in December 2010). The proposed additional FY2011 cash investment will allow HPI to continue to advance key development projects.	1/24/2011	$ 1,000,000	$ -	$ 1,000,000		Possible additional equity investment of $400,000 and in-kind contributions of approximately $4.0 million mainly from contributed services from Partners.
Lead Horse Technologies	Lead Horse Technologies is an early-stage, pre-revenue healthcare IT company based in Junction City, KS. The Company develops clinical decision support systems to provide physicians, pharmacies, and other decision makers more robust and timely information related to adverse drug reactions (ADRs). The KBA recommended investment is in the form of an unsecured convertible note as part of the $2.2 million round currently being raised. It will support the company's commercialization plan and enable LHT to begin selling its product. The KBA will co-invest alongside accredited investors on the same terms and conditions, and in tranches over time as the company raises the money for this round.	1/24/2011	$ 500,000	$ -	$ 500,000	$ -	Additional $1,225,000 of additional equity plus hire an experienced sales executive
Plastikon Industries	Plastikon Healthcare, LLC, which is a new company created as a subsidiary of Plastikon Industries, will operate a major component of Plastikon Industries, Inc.'s burgeoning healthcare manufacturing business. Presently, the company has orders to produce resin-filled sterile plastic products for Siemens Healthcare Diagnostic, Inc. In the next three years, Plastikon Healthcare desires to add additional products and orders for corporations in the healthcare industry and clinical diagnostic labs. Plastikon Healthcare is under a contingent contract to acquire a 45,000 square foot industrial building in the East Hills Business Park in Lawrence, Kansas. To convert the building into a sterile "clean room" healthcare manufacturing facility, the company plans to invest approximately $7M. The project will utilize "Blow-Fill-Seal" technology to manufacture sterile fluid-filled resin products. Plastikon Industries, Inc. has been in this type of manufacturing business for 30 years, while making plastic parts for healthcare and automotive industries. Plastikon Industries, Inc. is expanding its business by pursuing new areas of opportunity in the healthcare industry.	1/24/2011	$ 750,000	$ -	$ 750,000		Outcomes include126 new Kansas jobs with an average wage of $42k per job, and $7M in capital investment for facility upgrades and equipment over the next five years.
POCI - Innovative Products	Innovative Products, Inc. (IPI) is a privately held dental products development company. IPI was founded in 2007 by Dr. Irwin Boe, DDS in Leawood, Kansas and currently operates as a virtual company based out of Dr. Boe's personal residence. The company's efforts are all focused on the commercialization of the Flexi-Lume System, a multi-modal dental illumination device. The HBV staff introduced Dr. Boe to Biomedical Devices of Kansas (BMDK), a Kansas-based device development company, to assist in the technical and commercial development of this device. The collaboration between IPI, BMDK and the KBA has resulted in this POCI opportunity, which is designed to assess the market for the Flexi-Lume system.	2/4/2011	$ 63,230	$ -	$ 63,230		The Company believes that the Market Validation Study can be completed within 3 months of the approval of this POCI proposal. The most important outcome of the market validation study is the go/no-go decision to move the Flexi-Lume product forward.
POCI - ChocoFinesse	ChocoFinesse is an early-stage Kansas company focused on late stage product development and successful commercialization of EPG (Esterified Propoxylated Glycerol) as a safe and highly palatable low calorie substitute for cocoa butter and other fats in confectionary and other food uses. ChocoFinesse has finalized an exclusive License Agreement with KSU / NISTAC, and is in position to take advantage of a unique product which meets an unmet need in a large global market.	2/7/2011	$ 131,800	$ -	$ 131,800		$3 million equity
POCI - CritiTech Nanotax Phase I Clinical Trial	CritiTech, Inc. is a Lawrence, Kansas-based pharmaceutical-sciences company with a portfolio of patented technologies intended to improve the efficacy of existing medical products and processes and enable development of difficult-to-formulate new drug candidates. The objective of the POCI grant is to expand the study to an additional clinical research site that utilizes the latest NCI recommended standard of care, and thus, increase patient enrollment and accelerate this safety study.	2/7/2011	$ 197,500	$ -	$ 197,500		CritiTech expects that the primary outcome of this project will be the successful completion of a Phase I clinical trial of Nanotax.
FY2011 Totals		FY 2011 Totals	$ 21,569,366	$ 957,870	$ 20,611,496	$ 500,000	
Totals			$ 243,603,942	$ 71,813,985	$ 171,789,957	$ 16,589,872	

Kansas Bioscience Authority Investment Policy and Process

Investment Policy

The Kansas Bioscience Authority (KBA) is dedicated to integrity and strives to do business in an entrepreneur-friendly manner. As an independent, publicly-funded entity, our investment process must be fully transparent for our investments and stakeholders.

The KBA's investment process was developed based on an analysis of best practices from across the economic development and investment communities, particularly as they related to the funding of bioscience research and commercialization activities. After studying programs of similar organizations and professional venture investors, and combining the best elements of each, KBA's process was specifically tailored to its planned activities and enables future reference, benchmarking and review.

Investment Process

The KBA has a rigorous, yet efficient, investment process designed to make sound investment decisions and manage our portfolio. A client begins working with a Heartland BioVentures staff and through on-going consultation with the HBV team it may be suggested that a client apply for funding through the KBA. The KBA follows a seven-stage process in evaluating potential investment opportunities, with go/no-go decision points at the end of each phase. All investments made by the KBA will follow this process.

Program Guidelines and Application Submission: Each program managed by the KBA has its own unique program guidelines and application materials, but the review process defined below is the same regardless of statutory program.

Application Assessment: Initial assessment of all application submissions is by a KBA staff member applying program guidelines, eligibility and investment criteria and is based on discussions held with the applicant in meetings or teleconferences, and a review of written submissions provided by the entity seeking investment (e.g., academic research institution, startup, mature company). We may reject opportunities at this assessment stage with an email or telephone call. We aim to qualify submissions quickly before either party allocates and uses significant resources. Each rejected investment submission has the opportunity to request a debriefing session with a KBA staff member and is given the opportunity to reapply with a modified submission.

Scientific and Financial Due Diligence: All eligible applications are subjected to extensive scientific and financial due diligence, among other evaluation criteria required by the program's guidelines. KBA staff members will conduct due diligence on most investment opportunities but may also choose to contract with outside parties to provide additional capability in unique circumstances.

If, after scientific and financial due diligence, the KBA staff concludes the opportunity to be potentially suitable for investment, an investment recommendation is prepared for presentation to the KBA investment committee, a standing committee of the KBA board of directors.

Investment Committee Consideration: During the investment committee meeting, the nature of each opportunity is discussed along with due diligence findings and recommendations provided by KBA staff members or outside contractors and the committee determines whether to recommend the investment to the full board of directors for financing.

Board of Directors Approval: Final approval is based on a review of the investment recommendation by the board of directors of the KBA (in special instances, the executive committee will review the recommendation). The KBA board of directors has the right to change terms, funding levels and other financing parameters.

Investment Documentation: After each investment is approved by the KBA executive committee or board of directors, KBA staff members will complete legal documentation.

Monitoring and Reporting: All KBA investments will be closely monitored by the authority's staff. This includes reporting required of all investments on project success and progress against milestones and objectives. These reports should provide a clear statement of work including objectives, tasks, milestones and economic development outcomes. Monitoring is also intended to enable the KBA to provide on-going assistance to its investments.

Compliance

To ensure rigorous and consistent evaluation of all investment proposals and the transparency of the KBA investment process, all investments, other than selected proof of concept investments, considered by the KBA should follow the investment process.

Investment Committee

The investment committee is a standing committee of the board chartered to evaluate potential investment opportunities. All prospective investments will be presented for consideration by the investment committee under the investment process described above, prior to consideration by the executive committee or board of directors.

The investment committee shall, at the call of its chair or the CEO, consider potential investments that have been reviewed and evaluated by the KBA staff and/or external evaluators. All materials regarding a potential investment shall be transmitted to the committee at least 48 hours prior to the meeting. Investments approved by the committee shall be documented in the form of a clear resolution outlining the terms of the potential investment.

The chief financial officer will then communicate to the full board a brief summary of all investments approved by the investment committee within one week following the investment committee meeting.

Confidentiality

The KBA has developed and approved a conflict of interest and documentation policy that restricts disclosure by directors and officers and prohibits personal use of information gathered through their official capacities with the authority.

External reviewers will be asked to comply with this policy and sign confidentiality agreements.

Post-Award Reporting Requirements

A report on milestones will be required before each payment is made, in addition to a final report on project success and progress against milestones and objectives. The reports should provide a clear statement of work, including objectives, tasks, and expected outcomes. Reports will be required for all parties to an agreement with the KBA, including academic research institutions and private companies partnering with lead companies.

Company Impact Metrics: The KBA expects reporting on economic impacts including:

- Full-time jobs created or jobs retained and total associated wages
- Part-time jobs created or retained and total associated wages
- Increased revenues
- Number of strategic partners
- Number of patents applied for and granted
- Federal funds acquired (e.g., Small Business Innovation Research [SBIR] or Small Business Technology Transfer [STTR] funds)
- Capital expenditures (purchases of new equipment or construction/ rehabilitation of facilities at the company)
- New start-up companies created
- Number of commercial products or services (e.g. Trademark)
- Third party funding
  - Venture capital
  - Other investments (e.g. strategic partners)

Partner Impact Metrics: Reporting from partner institution must include:

- Grants acquired for activities conducted under the proposal
- Income generated by commercializing a product identified in the proposal
- Invention disclosures, licenses, patent applications, and patents awarded for technologies developed under this proposal

Economic Impact Monitoring: Annually for 10 years following the funded period, the award recipient will be required to report economic impacts resulting from the project.

Repayment Requirements

The business activities created or developed from the grant activities shall remain in operation within Kansas for a period of 10 years subsequent to the expiration of the grant funding period. In the event that the grantee relocates grant activities outside the state, the grant may be terminated and repaid in its entirety.

Conflict of Interest

A key factor in establishing and protecting the KBA's reputation and credibility with our stakeholders is establishing total transparency and accountability. Central to this is a governance structure that includes a conflict of interest policy that is strictly adhered to by all KBA staff members and directors.

The KBA board of directors approved a conflict of interest and documentation policy. Additionally, to conform to our statute and best practices, the KBA has extended its conflict of interest and documentation policy to the review, consideration, documentation and monitoring of investments. Furthermore, the KBA's statute requires that the authority's board of directors be notified of any conflicts and that those conflicts be recorded in the minutes of a regular board of directors meeting.

Under no circumstances does the KBA solicit or accept donations in return for KBA funds.

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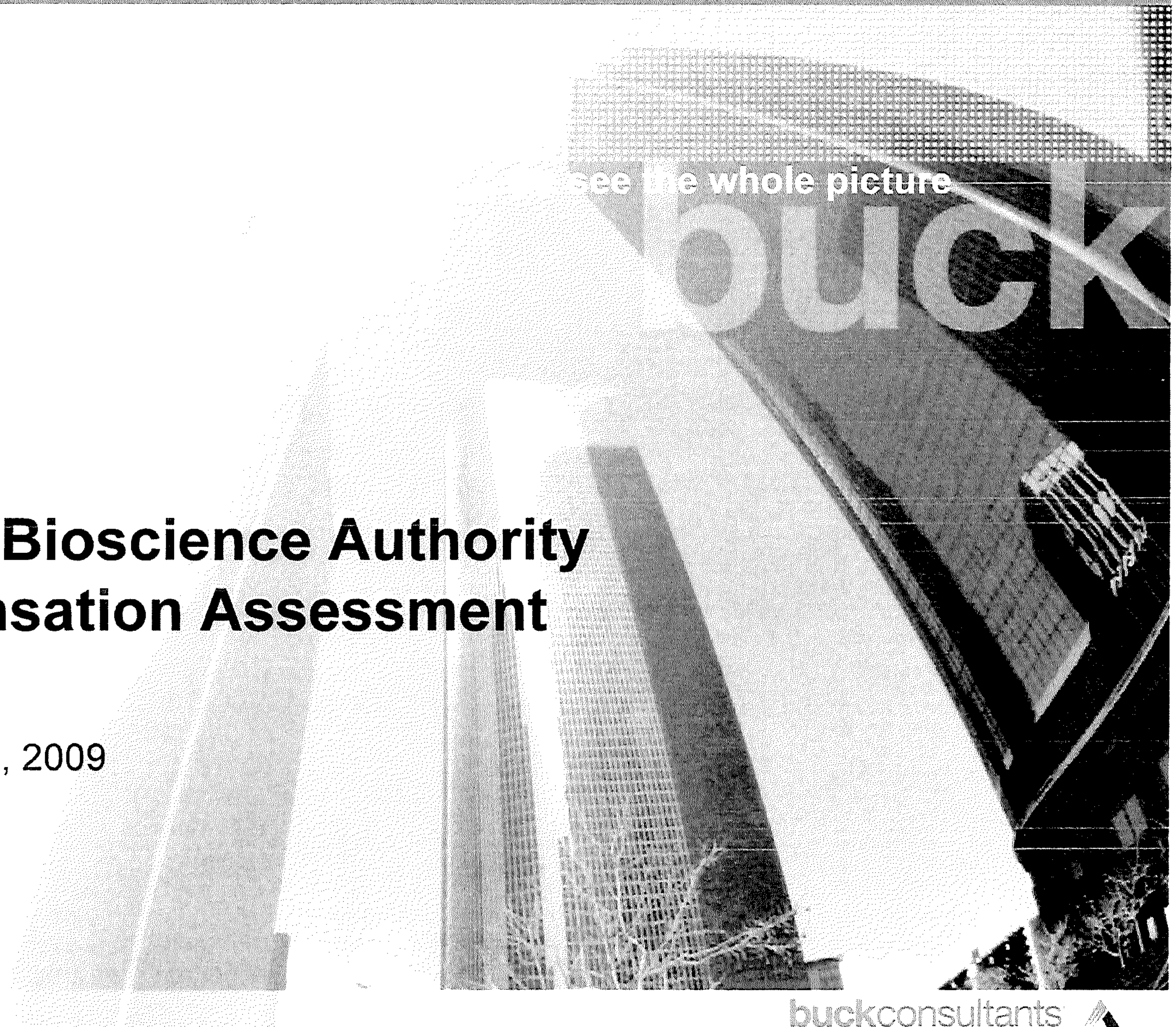
KANSAS BIOSCIENCE AUTHORITY



Kansas Bioscience Authority Compensation Assessment

November 25, 2009

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an ACS company

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Introduction

- The Kansas Bioscience Authority ("KBA") was created by the Kansas Economic Growth Act of 2004, with the purpose of advancing Kansas' leadership in bioscience.
- KBA is committed to expanding Kansas' research capabilities, promoting innovation, and encouraging company formation that will create high-paying jobs in the long-term. The KBA initiative is designed to:
  - Build world-class research capacity,
  - Foster the formation and growth of bioscience startups,
  - Support expansion of the state's bioscience clusters, and
  - Facilitate industrial expansion and attraction.
- KBA has engaged Buck Consultants ("Buck") to perform a compensation assessment for their executive team – President and CEO, the Chief Financial Officer/Chief Operating Officer, and the President of Heartland BioVentures.
- As a part of the assessment, Buck:
  - Developed a compensation philosophy
  - Created a comparison group
  - Benchmarked KBA executive compensation levels against a comparison group
  - Provided compensation plan recommendations
- Buck's assessment was a collaborative process with the KBA Executive Committee of the Board of Directors and KBA management to ensure all components of the assessment align with KBA's short- and long-term strategy.

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Executive Summary

- KBA currently offers executives a total remuneration package which includes:
  - Base Salary
  - Annual Bonus (opportunity ranges from 10% - 50% of base salary depending on position)
  - Benefit Package
  - Expense Allowance (CEO only)
- Buck compared KBA's total remuneration package to pay levels of comparable positions at peer organizations.
  - KBA's competitive market position varied by incumbent. However, all KBA executives are at or below the 75th percentile of the competitive market (the maximum pay level suggested by the Compensation Philosophy developed as a part of this analysis). Current market position:
    - ***President and CEO***: between the 50th and 75th percentile of the market (1% below the 75th percentile)
    - ***CFO/COO***: between the 50th and 75th percentile of the market (8% above the median)
    - ***President, Heartland BioVentures***: between the 25th and 50th percentile of the market (7% below the median)
- Later in this report, Buck makes some recommendations to enable KBA's executive compensation program to better align with the compensation philosophy.

Our Assessment Approach

- Buck used the following process for assessing competitive compensation levels and developing recommendations for KBA executive positions:

Identify and Confirm Market and Positions

- Conducted executive interviews to understand each executive role and the relationship to KBA
- Confirmed understanding of the positions
- Worked with KBA management, and Executive Committee to define a comparison group of similar organizations
- Gathered compensation and financial information from KBA

Conduct External Research

- Gathered source materials:
  - IRS Form 990s from approved peer group
  - Published not-for-profit survey data (for reference)

Determine Competitive Pay Levels

- Collected compensation data from IRS Form 990s including:
  - Total cash compensation
  - Contributions to benefit plans, deferred compensation and expense allowances
- Calculated 25th, 50th, and 75th percentile data
- For reference, collected compensation data from survey source materials, including:
  - Base salary
  - Total cash compensation

Draft and Final Reports

- Developed compensation philosophy and comparison group, share draft reports with KBA's Executive Committee
- Drafted report summarizing compensation findings compared to KBA data
- Provide recommendations for future compensation decisions.

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Executive Compensation Philosophy

The following Executive Compensation Philosophy will provide a framework for compensation decisions that will be made during the next year, as well as in the future.

Vision and Strategy

- KBA has established three primary program objectives for 2010:
  - Accelerate bioscience commercialization in Kansas
  - Protect American Food Supply and Agricultural Economy
  - Bring cutting-edge cancer treatments closer to home for millions of Kansas citizens
- These themes and programs will evolve in future years. One of the objectives of the compensation program is to create alignment with these objectives.

Role of Executive Compensation

- Compensation should be sufficient to attract and retain qualified talent at KBA while maintaining levels appropriate for a quasi-governmental agency.

Compensation Components

- KBA will pay a combination of salary, cash incentive, and benefits, the allocation of which should be competitive with that for similar positions in comparable organizations.

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Compensation Philosophy (continued)

Pay for Performance

- The alignment of pay and performance is important. KBA aims to enhance this alignment by setting objective, measureable goals for its incentive programs.

Pay Market

- KBA will use external comparators as a reference in determining competitive compensation arrangements for executives. The comparators will be organizations that are similar to KBA in any of the following respects:
  - Have a similar mission or business model
  - Represent an industry where KBA has expertise
  - Focus on economic development
- Comparators will have assets between $10M - $500M.
- Comparator data will be supplemented by survey data if appropriate.

Competitive Positioning

- Base salaries and benefits will be competitive with the market.
- KBA's executive compensation program will provide an opportunity to compensate at the higher end (75th percentile) of the market. This opportunity is consistent with the pay for performance model KBA wants to implement.

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Comparison Group Development

- In our report to the KBA Executive Committee of the Board and CEO dated 10/30/09, Buck developed three "straw man" comparison groups of not-for-profit organizations for the Executive Committee's consideration – comparing KBA executive pay to market pay levels.
- Three comparison groups were developed based on their similarity to KBA, both in terms of industry (development, commercialization, biotech, etc.) and size (assets).
- In identifying potential comparators, Buck developed a hypothesis that there was no relationship between executive pay and organization size for organizations like KBA.
  - It is our experience that executive pay decisions in investment organizations in the not-for-profit sector are driven more by the organization's needs than any single compensatory principle.
- To test our hypothesis, we ran correlations on the three initial comparison groups and found there was not a strong correlation between executive pay and organization size (assets).
- Buck then reviewed the initial three comparison groups with KBA's Executive Committee and CEO to get their input on the appropriateness of individual comparators; a revised comparison group was developed.
- We also ran correlations on the revised comparison group and came to the same conclusion, no correlation exists between executive pay and organization size (r^2 = .01) , which supported our initial hypothesis.

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Comparison Group Development (continued)

- The final comparison group* represents a blend of 17 not-for-profit organizations that best reflect the mission and size of KBA:
  - Work in similar industries to KBA;
  - Will be viewed as representative of the labor markets in which KBA competes.
- In addition to specific comparator organizations, we also included reference slides (in Appendix 2) which contain base salary and total cash compensation market percentiles from published compensation surveys.
  - Market percentiles from the published surveys contain detail from not-for-profit and for-profit industries.
  - Since KBA attracts talent from a broad range of markets, these percentiles represent competitive pay practices for similar positions that may be outside the not-for-profit market.
  - We have reviewed data in these surveys to ensure they are consistent with the peer group data.

* A detailed list of comparators can be found in Appendix 3 of this report.

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Market Matches

- The same comparison group (17 not-for-profit organizations) was used as a basis to compare all three KBA executives to the market.
- KBA's President and CEO was matched to the top executive (Executive Director, CEO, etc.) at comparator organizations.
- KBA's CFO/COO was matched to top-level finance executives (CFO, Controller, Treasurer, etc.) at comparator organizations.
  - Although this position at KBA includes some COO responsibilities, the predominant focus of the role seemed to match best with the finance-related positions.
- The President, Heartland BioVentures was compared to the highest paid executive in a comparator organization that ***was not*** the CEO or top finance executive.
  - Matches to this position (Senior Program Officer, Chief Operating Officer, Corporate Secretary, etc.) varied depending on the comparator organization.
  - In organizations where there was a comparable match to an aspect of the KBA position (Commercialization, Entrepreneurial Development, etc.), Buck included that match as well.

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Competitive Findings – Total Cash Compensation (TCC)

- The table below illustrates KBA total cash compensation (base salary + annual bonus) values, competitive total cash compensation market percentiles, and the variance of KBA total cash compensation to the market percentiles.
- All KBA executives' total cash compensation values fall between the 50th and 75th percentile of the competitive market:
  - President and CEO is at the 75th percentile of the competitive market.
  - CFO/COO is below the 75th percentile of the competitive market.
  - President, Heartland BioVentures is slightly above the market median.

KBA Position	Incumbent	KBA Total Cash Compensation*	Market Total Cash Compensation			KBA Variance to Market		
			25th %tile	50th %tile	75th %tile	TCC Variance to 25th %tile	TCC Variance to 50th %tile	TCC Variance to 75th %tile
President and CEO	Tom Thornton	$375.0	$219.0	$294.4	$380.4	71%	27%	-1%
CFO/COO	Janice Katterhenry	$176.0	$95.2	$147.4	$188.5	85%	19%	-7%
President, HBV	David Vranicar	$189.8	$141.4	$182.1	$239.0	34%	4%	-21%

- Market total cash compensation percentiles are based on the comparison group Buck developed.

*KBA Total Cash Compensation values = Base Salary + Incentive Opportunity for each executive – (50% of Base Salary for President and CEO, 10% of Base Salary for CFO/COO, and 15% of Base Salary for President, HBV).

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Competitive Findings – Total Remuneration (TR)

- The table below illustrates KBA total remuneration (total cash compensation + benefits + expense allowances), competitive total remuneration market percentiles, and the variance of KBA total remuneration to the market percentiles.
- KBA executives' total remuneration values are at or below the standard established in the compensation philosophy
  - President and CEO is at the 75th percentile of the competitive market.
  - CFO/COO is between the 50th and 75th percentile of the competitive market.
  - President, Heartland BioVentures is between the 25th and 50th percentile of the competitive market.

			Market Total Remuneration			KBA Variance to Market		
KBA Position	Incumbent	KBA Total Remuneration	25th %tile	50th %tile	75th %tile	TR Variance to 25th %tile	TR Variance to 50th %tile	TR Variance to 75th %tile
President and CEO	Tom Thornton	$416.5	$253.1	$351.9	$422.1	65%	18%	-1%
CFO/COO	Janice Katterhenry	$190.2	$116.9	$175.6	$228.5	63%	8%	-17%
President, HBV	David Vranicar	$204.3 *	$173.2	$219.4	$287.5	18%	-7%	-29%

- Market total remuneration percentiles are based on the comparison group Buck developed and include benefit and expense account values of individual comparators.

* Reflects the retirement contribution Mr. Vranicar will not be eligible to receive until the fiscal year beginning in 2010.

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Compensation Plan Recommendations

- Based on the Compensation Philosophy, Buck recommends the following overall adjustments to KBA's total remuneration package:
  - ***Base Salary***: KBA base salaries should remain constant assuming the board adopts our bonus opportunity recommendations.
  - ***Annual Bonus Opportunity***: Based on their market position compared to the stated compensation philosophy, KBA should keep the President and CEO's opportunity at 50% and increase the opportunity for the CFO/COO and President, Heartland BioVentures as suggested in the chart below.
  - ***Benefits***: The package of benefits offered are in line with other organizations of this size. The President and CEO's benefit package is around the 50th percentile of the comparison group and therefore in line with the peer group. Benefit levels for the CFO/COO and President, HBV, however, are both below the 25th percentile of the market. This is primarily due to their choice not to participate in the medical plan.
- Individual recommendations are as follows:

Compensation Element	President and CEO	CFO/COO	President, HBV
Base Salary	Remain constant assuming bonus recommendations are adopted	Remain constant assuming bonus recommendations are adopted	Remain constant assuming bonus recommendations are adopted
Annual Bonus Opportunity	Keep opportunity at 50%	Increase Opportunity to 20%	Increase Opportunity to 30%
Benefits	At market median	Board can consider compensating for non-participation election	Board can consider compensating for non-participation election

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Compensation Plan Recommendations (continued)

- Along with the recommendations on the previous page, Buck also recommends KBA's Executive Committee introduce the concept of "***target bonus***" to executives.
  - Based on our interviews with KBA management and the Executive Committee, Buck feels the current bonus opportunity is viewed as an entitlement by KBA executives, i.e., expectation is that bonus will be paid at maximum.
  - By introducing a target bonus concept and describing what level of performance warrants threshold, target, and maximum opportunity, there is more clarity regarding bonuses when they are paid out.
- The bonus plan should involve a more robust goal-setting process where goals are objective, measurable, documented, and easily communicated to individual executives.
- Performance levels for the varying pay-out amounts should be defined.
- The Executive Committee should create a more rigorous and objective performance management structure that ensures plan participants are aware of, and are able to track their performance relative to goals.
- Adjust the President and CEO's annual increase and bonus determination timing to June 30th of each year – the same time as other KBA executives.
  - In July, assess his performance for bonus from October 1, 2009 – June 30, 2010.
  - Determine what his full year bonus would have been based on that performance
  - Multiply that bonus by 9/12 to reflect the partial year
  - Beginning in June 2010, his bonus will be on a fiscal year basis

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Next Steps

- The Executive Committee should:
  - Formally approve the Executive Compensation Philosophy and the comparison group
  - Set the President and CEO's salary
  - Approve compensation parameters for CFO/COO and President, Heartland BioVentures
  - Decide whether to compensate CFO/COO and President, Heartland BioVentures for their choice to not participate in the medical plan
  - Approve increased bonus levels for CFO/COO and President, Heartland BioVentures
  - Develop measurable goals for the incentive plan
  - Introduce the target bonus concept
  - Define threshold, target and maximum goals for CEO
  - Consider if the incentive plan for the President and CEO should provide an opportunity above the 75^{th} percentile of the market to increase his compensation opportunity
  - Consider additional short-term incentive with deferral opportunity
  - Revisit market analysis every couple of years
- The CEO should:
  - Set salary for the CFO/COO and President, Heartland BioVentures (if there is a decision to change it)
  - Set performance metrics for threshold, target and maximum incentives for the CFO/COO and President, Heartland BioVentures

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Appendices

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Appendix 1 – 990 Comparator Detail

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990 Detail – President Comparators

Peer Organization	FYE	Title	Incumbent	Company Revenue	Expenses	Assets	Total Cash Compensation	Contributions to Employee Benefit Plan & Deferred Comp Plans	Expense Account and Other Allowances	Total Remuneration
The Lemelson Foundation	6/30/2008	President	Julia Novy-Hildesley	$38.3	$25.0	$388.4	$228.5	$34.5	$0.0	$263.0
Research Triangle Institute	9/30/2007	President	V. Haynes	$614.0	$586.0	$291.8	$569.3	$62.6	$0.0	$631.8
Midwest Research Institute	6/30/2008	President and CEO	James L. Spngarelli	$324.0	$323.7	$166.7	$744.6	$20.7	$9.6	$775.0
Bristol Bay Economic Development Corp	6/30/2008	Chairman/President/CEO	H. Robin Samuelsen	$29.1	$20.4	$165.5	$103.1	$23.6	$0.0	$126.7
Riverfront Development Corporation of Delaware	6/30/2008	Executive Director	Michael S. Purzycki	$4.3	$13.2	$149.9	$179.4	$23.6	$0.0	$203.0
Norton Sound Economic Development Center	12/31/2007	CEO	Eugene Asisksik	$30.9	$15.7	$117.8	$210.5	$36.7	$0.0	$247.2
The Energy Foundation	6/30/2008	President and Director	Eric Heitz	$67.6	$53.6	$66.2	$225.0	$22.5	$0.0	$247.5
Infectious Disease Research Institute	12/31/2007	CEO/Head of Research	Steve Reed	$42.5	$11.0	$61.3	$228.2	$15.1	$0.0	$243.3
Kentucky Highlands Investment Corp	3/31/2008	President	Jerry Ricket	$6.6	$3.8	$58.4	$312.2	$47.9	$0.0	$360.1
Ben Franklin Technology Partners of Northeastern Pennsylvania	6/30/2008	CEO/President	R. Chadwick Paul Jr.	$12.4	$10.3	$40.7	$285.8	$93.3	$0.2	$379.3
Ben Franklin Technology Partners of Southeastern Pennsylvania	6/30/2008	President and CEO	RoseAnn B. Rosenthal	$16.8	$10.4	$39.7	$305.3	$34.3	$2.0	$341.6
CDC Small Business Finance Corp	9/30/2008	President and CEO	Kurt Chilcott	$19.2	$16.0	$37.9	$472.1	$54.9	$0.0	$527.0
Pittsburgh Lifesciences Greenhouse	6/30/2008	Chief Executive Officer	John Manzetti	$15.4	$9.3	$30.0	$397.5	$29.1	$0.0	$426.6
Research Park Corporation	6/30/2007	President	Edward Ashworth	$4.1	$3.0	$18.2	$192.4	$30.4	$0.0	$222.8
BioEnterprise Corporation	6/30/2008	President	Baiju Shah	$5.3	$4.5	$10.9	$339.4	$70.4	$0.0	$409.8
Massachusetts Biomedical Initiatives	12/31/2007	President and CEO	Kevin O'Sullivan	$2.3	$2.7	$10.8	$193.3	$0.0	$0.0	$193.3
Jumpstart	6/30/2008	President and CEO	Ray Leach	$8.2	$5.7	$10.4	$369.3	$34.3	$0.0	$403.6
			25th percentile	***$6.6***	***$5.7***	***$30.0***	***$219.0***	***$24.3***	***$0.0***	***$253.1***
			50th percentile	***$16.8***	***$11.0***	***$58.4***	***$294.4***	***$35.3***	***$0.0***	***$351.9***
			Average	***$73.0***	***$65.6***	***$97.9***	***$325.6***	***$38.6***	***$0.7***	***$364.9***
			75th percentile	***$38.3***	***$20.4***	***$149.9***	***$380.4***	***$49.6***	***$0.0***	***$422.1***
			90th percentile	***$170.1***	***$161.7***	***$216.8***	***$528.4***	***$68.3***	***$3.6***	***$588.4***
Kansas Bioscience Authority	**6/30/2008**	**President and CEO**	**Tom Thornton**	**$37.4**	**$13.1**	**$110.4**	**$375.0**	**$34.0**	**$7.5**	**$416.5**
			Percentile Rank	**74.2%**	**56.0%**	**67.8%**	**73.8%**	**47.4%**	**98.0%**	**69.4%**

Notes/Assumptions

Competitive market percentiles have been aged to 12/1/09 at an annual rate of 2.0% per year.
For KBA. Total Cash Compensation = Base Salary + Bonus Opportunity (50% of Base Salary).

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990 Detail – CFO/COO Comparators

Peer Organization	FYE	Title	Incumbent	Company Revenue	Expenses	Assets	Total Cash Compensation	Contributions to Employee Benefit Plan & Deferred Comp Plans	Expense Account and Other Allowances	Total Remuneration
The Lemelson Foundation	6/30/2008	Chief Financial and Admin Officer	Phillip Varnum	$38.3	$25.0	$388.4	$68.7	$14.2	$0.0	$82.9
Research Triangle Institute	9/30/2007	Chief Financial Officer	J. Gibson	$614.0	$586.0	$291.8	$368.9	$44.7	$0.0	$413.6
Midwest Research Institute	6/30/2008	VP and CFO	Fred V. Cornwell	$324.0	$323.7	$166.7	$255.3	$24.5	$6.7	$286.5
Bristol Bay Economic Development Corp	6/30/2008	Chief Financial Officer	Robert Leingang	$29.1	$20.4	$165.5	$88.8	$17.0	$0.0	$105.9
Riverfront Development Corporation of Delaware	6/30/2008	Controller	Fancis Lucey	$4.3	$13.2	$149.9	$76.1	$19.1	$0.0	$95.2
The Energy Foundation	6/30/2008	VP and CFO	Robert O'Connor	$67.6	$53.6	$66.2	$155.0	$15.5	$0.0	$170.5
Kentucky Highlands Investment Corp	3/31/2008	VP and CFO	Brenda McDaniels	$6.6	$3.8	$58.4	$202.7	$43.1	$0.0	$245.8
Ben Franklin Technology Partners of Northeastern Pennsylvania	6/30/2008	CFO/Treasurer/Secretary	Kathy Ann Minnich	$12.4	$10.3	$40.7	$96.1	$25.0	$0.0	$121.1
Ben Franklin Technology Partners of Southeastern Pennsylvania	6/30/2008	Chief Administrative Officer & Assistant Treasurer	Adare McMillan	$16.8	$10.4	$39.7	$162.2	$34.3	$0.0	$196.5
BioEnterprise Corporation	6/30/2008	VP, Officer (Finance and Admin)	William D. Poore	$5.3	$4.5	$10.9	$109.0	$28.8	$0.0	$137.8
Jumpstart	6/30/2008	Chief Financial Officer	Richard Jankura	$8.2	$5.7	$10.4	$143.1	$49.5	$0.0	$192.6
			25th percentile	***$7.4***	***$8.0***	***$40.2***	***$95.2***	***$18.6***	***$0.0***	***$116.9***
			50th percentile	***$16.8***	***$13.2***	***$66.2***	***$147.4***	***$25.7***	***$0.0***	***$175.6***
			Average	***$102.4***	***$96.1***	***$126.2***	***$162.2***	***$29.6***	***$0.6***	***$192.5***
			75th percentile	***$52.9***	***$39.3***	***$166.1***	***$188.5***	***$40.0***	***$0.0***	***$228.5***
			90th percentile	***$324.0***	***$323.7***	***$291.8***	***$263.0***	***$46.8***	***$3.5***	***$295.1***
Kansas Bioscience Authority	**6/30/2008**	**CFO/COO**	**Janice Katterhenry**	**$37.4**	**$13.1**	**$110.4**	**$176.0**	**$14.2**	**$0.0**	**$190.2**
			Percentile Rank	**69.0%**	**49.7%**	**55.2%**	**72.0%**	**0.0%**	**0.0%**	**56.3%**

Notes/Assumptions

Competitive market percentiles have been aged to 12/1/09 at an annual rate of 2.0% per year.

For KBA: Total Cash Compensation = Base Salary + Bonus Opportunity (10% of Base Salary).

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990 Detail – President, Heartland BioVentures

Peer Organization	FYE	Title	Incumbent	Company Revenue	Expenses	Assets	Total Cash Compensation	Contributions to Employee Benefit Plan & Deferred Comp Plans	Expense Account and Other Allowances	Total Remuneration
The Lemelson Foundation	6/30/2008	Senior Program Officer	Jill Tucker	$38.3	$25.0	$388.4	$112.7	$19.8	$0.0	$132.5
Research Triangle Institute	9/30/2007	Vice President (International Development Group)	L. Maggart	$614.0	$586.0	$291.8	$269.4	$31.7	$0.0	$301.1
Bristol Bay Economic Development Corp	6/30/2008	Seafood Investment Officer	Paul Peyton	$29.1	$20.4	$165.5	$132.6	$13.4	$0.0	$145.9
Riverfront Development Corporation of Delaware	6/30/2008	Director of Facilities	Dan Zier	$4.3	$13.2	$149.9	$77.9	$13.3	$0.0	$91.2
Norton Sound Economic Development Center	12/31/2007	CDQ Harv Manager	Jon Zuck	$30.9	$15.7	$117.8	$229.7	$0.0	$0.0	$229.7
The Energy Foundation	6/30/2008	Chief Rep	Fuqiang Yang	$67.6	$53.6	$66.2	$160.0	$13.3	$4.2	$177.5
Infectious Disease Research Institute	12/31/2007	Medical Director	Franco Piazza	$42.5	$11.0	$61.3	$216.5	$4.3	$0.0	$220.9
Kentucky Highlands Investment Corp	3/31/2008	VP and COO	L. Ray Moncrief	$6.6	$3.8	$58.4	$308.1	$50.1	$0.0	$358.2
Ben Franklin Technology Partners of Northeastern Pennsylvania	6/30/2008	VP - Ent Development	Joseph M. Lane	$12.4	$10.3	$40.7	$148.6	$40.8	$0.1	$189.5
Ben Franklin Technology Partners of Southeastern Pennsylvania	6/30/2008	Assistant Corporate Secretary	Terrence Hicks	$16.8	$10.4	$39.7	$176.7	$36.2	$0.0	$212.9
Ben Franklin Technology Partners of Southeastern Pennsylvania	6/30/2008	VP Technology Commericalization - Life Sciences	Anthony Green	$16.8	$10.4	$39.7	$137.2	$30.9	$0.0	$168.1

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990 Detail – President, Heartland BioVentures (continued)

Peer Organization	FYE	Title	Incumbent	Company Revenue	Expenses	Assets	Total Cash Compensation	Contributions to Employee Benefit Plan & Deferred Comp Plans	Expense Account and Other Allowances	Total Remuneration
Ben Franklin Technology Partners of Southeastern Pennsylvania	6/30/2008	VP Technology Commercialization - Physical Sciences	Steve Costantino	$16.8	$10.4	$39.7	$114.9	$6.3	$0.0	$121.2
CDC Small Business Finance Corp	9/30/2008	Executive Vice President	Michael Owen	$19.2	$16.0	$37.9	$408.1	$24.1	$0.0	$432.2
Pittsburgh Lifesciences Greenhouse	6/30/2008	VP and Chief Investment Officer	James Jordan	$15.4	$9.3	$30.0	$265.0	$27.7	$0.0	$292.7
BioEnterprise Corporation	6/30/2008	SVP, Officer	James A. Scozzie, Ph.D	$5.3	$4.5	$10.9	$210.5	$68.6	$0.0	$279.1
BioEnterprise Corporation	6/30/2008	VP, Officer (Strategic Planning, Alliances, and Admin Operations)	Robert A. Baxter	$5.3	$4.5	$10.9	$164.8	$59.8	$0.0	$224.5
Jumpstart	6/30/2008	Chief Operating Officer	Rebecca Braun	$8.2	$5.7	$10.4	$178.9	$34.1	$0.0	$212.9
			25th percentile	*$8.2*	*$9.3*	*$37.9*	*$141.4*	*$13.7*	*$0.0*	*$173.2*
			50th percentile	*$16.8*	*$10.4*	*$40.7*	*$182.1*	*$28.6*	*$0.0*	*$219.4*
			Average	*$55.9*	*$47.7*	*$91.7*	*$201.2*	*$28.8*	*$0.3*	*$230.2*
			75th percentile	*$30.9*	*$16.0*	*$117.8*	*$239.0*	*$37.2*	*$0.0*	*$287.5*
			90th percentile	*$52.5*	*$36.4*	*$216.0*	*$296.6*	*$55.8*	*$0.9*	*$337.2*
Kansas Bioscience Authority	**6/30/2008**	**President, HBV**	**David Vranicar**	**$37.4**	**$13.1**	**$110.4**	**$189.8**	**$14.6**	**$0.0**	**$204.3**
			Percentile Rank	**80.4%**	**62.2%**	**74.1%**	**57.2%**	**31.9%**	**0.0%**	**39.8%**

Notes/Assumptions

Competitive market percentiles have been aged to 12/1/09 at an annual rate of 2.0% per year.
For KBA: Total Cash Compensation = Base Salary + Bonus Opportunity (15% of Base Salary).
Total Remuneration reflects a retirement plan contribution for which Mr. Vranicar will become eligible to receive beginning July 1, 2010.

990 Detail – Chief Operating Officer Matches (for reference)

- For reference, Buck gathered compensation levels for Chief Operating Officer roles in the comparison group.
- Only two comparators had incumbents with a COO title listed on their From 990.
- This indicates that organizations in KBA's comparison group do not have that role, which may be a function of organization size or executive team structure.

Peer Organization	FYE	Title	Incumbent	Company Revenue	Expenses	Assets	Total Cash Compensation	Contributions to Employee Benefit Plan & Deferred Comp Plans	Expense Account and Other Allowances	Total Remuneration
Kentucky Highlands Investment Corp	3/31/2008	VP and COO	L. Ray Moncrief	$6.6	$3.8	$58.4	$308.1	$50.1	$0.0	$358.2
Jumpstart	6/30/2008	Chief Operating Officer	Rebecca Braun	$8.2	$5.7	$10.4	$178.9	$34.1	$0.0	$212.9

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Appendix 2 – Survey Analysis Detail

Survey Analysis Detail (for reference)

- The table below illustrates KBA executives compared to similar positions in published compensation surveys.
  - The first set of 3 matches represent compensation levels specific to the not-for-profit industry.
  - The second set of 3 matches represent compensation levels at all organizations, which contains data from the not-for-profit and for-profit industries.

Survey Name	Position Title	Survey Scope I	Survey Scope II	# Cos.	# EEs	Competitive Base Salary Percentile 25th	Competitive Base Salary Percentile 50th	Competitive Base Salary Percentile 75th	Competitive Total Cash Percentile 25th	Competitive Total Cash Percentile 50th	Competitive Total Cash Percentile 75th
Not-for-Profit Matches											
Chief Executive Officer						**$213.3**	**$288.2**	**$375.2**	**$219.6**	**$306.4**	**$434.7**
ERI Salary Assessor	Chief Executive Officer	NFP	$24M - Op. Budget	na	na	$111.2	$167.8	$236.7	$129.9	$195.9	$276.6
ECS Top Management	Chief Executive Officer	NFP	All Orgs (< 400 FTE)	14	14	$277.4	$374.9	$508.0	$277.4	$400.8	$676.4
TCS	Chief Executive Officer	NFP	Org. Budget ($20M < $50M)	65	66	$196.3	$265.7	$340.9	$196.3	$265.7	$348.3
PRM	Chief Executive Officer	NFP	Org. Budget ($16M < $30M)	41	41	$268.4	$344.3	$415.2	$274.8	$363.3	$437.6
Chief Financial Officer/Chief Operating Officer						**$118.6**	**$153.2**	**$191.2**	**$120.6**	**$161.9**	**$201.8**
ERI Salary Assessor	Chief Financial Officer	NFP	$24M - Op. Budget	na	na	$82.8	$114.2	$151.6	$90.3	$124.6	$165.5
ECS Top Management	Chief Financial Officer	NFP	All Orgs (< 400 FTE)	13	13	$141.8	$189.7	$239.5	$142.5	$210.6	$266.0
TCS	Chief Financial Officer	NFP	Org. Budget ($20M < $50M)	41	41	$121.2	$150.0	$178.1	$121.2	$150.0	$178.1
PRM	Chief Financial Officer	NFP	Org. Budget ($16M < $30M)	35	35	$128.6	$158.8	$195.4	$128.6	$162.5	$197.8
President, Heartland BioVentures						**$143.9**	**$219.6**	**$272.0**	**$150.4**	**$240.2**	**$327.4**
ERI Salary Assessor	Executive Vice President	NFP	$24M - Op. Budget	na	na	$81.6	$117.7	$161.2	$92.3	$133.1	$182.3
ECS Top Management	Executive Vice President	NFP	All Orgs (< 400 FTE)	6	6	$175.6	$251.3	$334.4	$180.5	$311.4	$516.3
ECS Top Management	Top Division Executive	NFP	All Orgs	7	13	$138.4	$288.0	$374.2	$144.2	$309.9	$448.1
TCS	Deputy Executive Officer	NFP	Org. Budget ($20M < $50M)	26	26	$144.1	$202.6	$222.0	$144.1	$202.6	$222.0
PRM	Deputy Executive Officer	NFP	Org. Budget ($16M < $30M)	16	18	$179.7	$238.3	$268.4	$190.7	$244.1	$268.4
All Orgs Matches											
Chief Executive Officer						**$261.6**	**$336.3**	**$428.9**	**$334.4**	**$433.4**	**$572.6**
ERI Salary Assessor	Chief Executive Officer	Biotech	$37M	na	na	$309.3	$408.0	$526.3	$432.8	$570.9	$736.6
ECS Top Management	Chief Executive Officer	All Orgs	$37M	na	na	$222.3	$310.5	$417.4	$282.4	$394.4	$530.3
ECS Top Management	Chief Executive Officer	All Orgs	< $100M ($58M)	32	32	$253.3	$290.3	$343.1	$288.1	$334.9	$450.9
Chief Financial Officer/Chief Operating Officer						**$199.6**	**$250.1**	**$313.2**	**$235.9**	**$297.6**	**$391.6**
ERI Salary Assessor	Chief Financial Officer	Biotech	$37M	na	na	$196.8	$258.0	$330.9	$246.5	$323.1	$414.5
ERI Salary Assessor	Chief Financial Officer	All Orgs	$37M	na	na	$148.7	$201.9	$265.7	$173.1	$235.0	$309.3
ECS Top Management	Chief Financial Officer	All Orgs	< $100M ($58M)	32	32	$253.3	$290.3	$343.1	$288.1	$334.9	$450.9
President, Heartland BioVentures						**$170.9**	**$217.4**	**$272.6**	**$222.9**	**$285.7**	**$378.4**
ERI Salary Assessor	Executive Vice President	Biotech	$37M	na	na	$219.0	$261.8	$310.8	$294.4	$351.8	$417.7
ERI Salary Assessor	Executive Vice President	All Orgs	< $100M ($32M)	na	na	$145.3	$203.1	$272.9	$182.5	$255.0	$342.7
ECS Top Management	Executive Vice President	All Orgs	< $100M ($32M)	18	20	$129.5	$172.4	$218.8	$171.5	$229.8	$300.2
ECS Top Management	Top Division Executive	All Orgs	< $100M ($48M)	23	56	$189.7	$232.4	$287.8	$243.1	$306.1	$452.9

Survey Analysis Roll-up (for reference)

- The table below illustrates KBA base salary and total cash compensation values compared to a 50/50 blend of the not-for-profit and all orgs survey matches on the previous page.

50/50 Blend of NFP and All Orgs Survey Data

KBA Position	KBA Base Salary	Competitive Base Salary Percentile 25th	Competitive Base Salary Percentile 50th	Competitive Base Salary Percentile 75th	KBA TCC*	Competitive Base Salary Percentile 25th	Competitive Base Salary Percentile 50th	Competitive Base Salary Percentile 75th
Chief Executive Officer	**$250.0**	$237.5	$312.2	$402.1	**$375.0**	$277.0	$369.9	$503.6
Chief Financial Officer/Chief Operating Officer	**$160.0**	$159.1	$201.6	$252.2	**$176.0**	$178.3	$229.8	$296.7
President, Heartland BioVentures	**$165.0**	$157.4	$218.5	$272.3	**$189.8**	$186.6	$263.0	$352.9

*KBA Total Cash Compensation values = Base Salary + Incentive Opportunity for each executive - 50% of Base Salary for President and CEO, 10%of Base Salary for CFO/COO, and 15%of Base Salary for President, HBV.

Appendix 3 – Comparison Group Detail

Comparison Group Detail

Peer Organization	Revenue	Expenses	Assets	Organization Description
The Lemelson Foundation	$38.3	$25.0	$388.4	The Lemelson Foundation celebrates and supports inventors and entrepreneurs in order to strengthen social and economic life. Established in 1993 by Jerome Lemelson, one of America's most prolific inventors, the Lemelson Foundation sparks, sustains and celebrates innovation and the inventive spirit. It supports projects in the U.S. and developing countries that nurture innovators and unleash invention to advance economic, social and environmentally sustainable development. To date the Foundation has donated or committed more than $150 million in support of its mission.
Research Triangle Institute	$614.0	$586.0	$291.8	RTI International is one of the world's leading research institutes, dedicated to improving the human condition by turning knowledge into practice. Our staff of more than 2,800 provides research and technical expertise to governments and businesses in more than 40 countries in the areas of health and pharmaceuticals, education and training, surveys and statistics, advanced technology, international development, economic and social policy, energy and the environment, and laboratory and chemistry services.
Midwest Research Institute	$324.0	$323.7	$166.7	MRI is an independent, not-for-profit, contract research organization. Established in Kansas City in 1944 to provide research and development for industry. More information on MRI's breakthroughs, 1944-today. MRI performs research in the areas of National Defense, Health Sciences, Agriculture & Food Safety, Engineering, Environment, Information Technology, Energy, Biological Sciences and Analytical Chemistry. Mission: Providing solutions through scientific research, technology development, and technical services for the benefit of government, industry, and the public.
Bristol Bay Economic Development Corp	$29.1	$20.4	$165.5	BBEDC provides jobs, training and educational opportunities to CDQ-eligible residents, and economic development tools and resources for communities. A partial list our programs includes: Bering Sea groundfishing jobs, Harvey Samuelsen Scholarship Program, Vocational Funding, Internship Programs, Technical Assistance with business plans and feasibility studies, Infrastructure and Seed Funds, Fisheries and Economic Research.
Riverfront Development Corporation of Delaware	$4.3	$13.2	$149.9	The Riverfront Development Corporation of Delaware (RDC) strives to stimulate economic vitality along the Brandywine and Christina rivers. It also seeks to increase historic preservation and promote public access along the two rivers. RDC tries to get site control along the two rivers, either through direct acquisition or long-term leases or in participation with private developers. It also acts as a developer and oversees construction and leasing of space.
Norton Sound Economic Development Center	$30.9	$15.7	$117.8	NSEDC maintains a balance between local economic development oriented towards the residents in the region and active participation in the distant-water fisheries in the Bering Sea and Aleutian Islands, and also a balance between programs designed to provide immediate benefits for the residents of the communities in its region and longer term investments which will provide a stable long term source of economic strength.

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Comparison Group Detail (continued)

Peer Organization	Revenue	Expenses	Assets	Organization Description
The Energy Foundation	$67.6	$53.6	$66.2	The Energy Foundation is a partnership of major donors interested in solving the world's energy problems. Our mission is to advance energy efficiency and renewable energy — new technologies that are essential components of a clean energy future. Our primary role is as a grantmaker, providing resources to the institutions that most effectively leverage change. When we see an unmet need we also take direct initiatives, commission papers, or convene meetings.
Infectious Disease Research Institute	$42.5	$11.0	$61.3	IDRI is a Seattle-based not-for-profit organization committed to applying innovative science to the research and development of products to prevent, detect and treat infectious diseases of poverty. By integrating capabilities, IDRI strives to create an efficient pathway to bring scientific innovation from the lab to the people who need it most.
Kentucky Highlands Investment Corp	$6.6	$3.8	$58.4	KHIC was formed in 1968 to stimulate growth and create employment opportunities in a nine-county region of Southeastern Kentucky. In 2003, KHIC expanded the service area to twenty two counties. Our mission is to provide and retain Employment Opportunities in Southeastern Kentucky through sound investments and management assistance.
Ben Franklin Technology Partners of Northeastern Pennsylvania	$12.4	$10.3	$40.7	Ben Franklin Technology Partners of Northeastern Pennsylvania links early-stage technology firms and established manufacturers with funding, people, technology, universities and other resources to help them prosper. In the process, we fuel economic growth for northeastern Pennsylvania. Our mission is to boost the economy of our region with new and retained jobs, new technology companies, and established manufacturers that are more competitive. We provide early-stage technology firms and established manufacturers with funding, networking opportunities, and technical and business expertise. The program has been recognized and modeled nationally and internationally.
Ben Franklin Technology Partners of Southeastern Pennsylvania	$16.8	$10.4	$39.7	Ben Franklin Technology Partners of Southeastern Pennsylvania is the region's catalyst for Stimulating Entrepreneurial Potential. For over 25 years, we have invested in innovative enterprises and created commercialization pathways and partnerships that generate wealth through science and technology. Ben Franklin is part of the Commonwealth of Pennsylvania's Ben Franklin Technology Partnership. We provide entrepreneurs and established businesses with the Capital, Knowledge, and Networks to compete in the global marketplace. Over the years, we have provided more than $130 million to groom more than 1,600 regional enterprises across all areas of technology.
CDC Small Business Finance Corp	$19.2	$16.0	$37.9	CDC Small Business Finance is committed to helping small businesses grow throughout California, Arizona and Nevada. In over 30 years CDC has provided more than $5 billion in SBA-504 loans and other funding, resulting in more than 100,000 jobs. We partner with over 100 private lending institutions that consistently choose us for our expertise, reliability, experience and extraordinary service.

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Comparison Group Detail (continued)

Peer Organization	Revenue	Expenses	Assets	Organization Description
Pittsburgh Lifesciences Greenhouse	$15.4	$9.3	$30.0	The Pittsburgh Life Sciences Greenhouse (PLSG) provides entrepreneurial life sciences enterprises in Pittsburgh and western Pennsylvania with the resources and tools they need to make global advances in research and patient care. We promote the relationship between research, technology and commercialization with Capital Investment and Business Growth programs that have been specifically tailored to the needs of western Pennsylvania's life sciences industry.
Research Park Corporation	$4.1	$3.0	$18.2	Louisiana Technology Park™ is a technology-focused business incubator established in partnership with the State of Louisiana to grow early-stage Internet and high-tech companies and assist them in developing sustainable, profitable ventures. Incubator members build their businesses with support from experienced entrepreneurs, professional staff, investor support and a network of strategic partners (local, regional and national companies providing professional services at reduced rates). The incubator's comprehensive business services include a Tier IV state-of-the-art data center, Internet connectivity, Class-A tenant space, 24/7 secured access, advanced phone and communication equipment, receptionist support as well as training, mentoring and consulting. The campus is located at Bon Carré Business Center which is a nearly one million square-foot technology, research and business hub located in the heart of Baton Rouge.
BioEnterprise Corporation	$5.3	$4.5	$10.9	BioEnterprise is a business formation, recruitment, and acceleration initiative designed to grow health care companies and commercialize bioscience technologies. Based in Cleveland, BioEnterprise's founders and partners are Cleveland Clinic, University Hospitals, Case Western Reserve University, Summa Health System and BioInnovation Institute in Akron.
Massachusetts Biomedical Initiatives	$2.3	$2.7	$10.8	Massachusetts Biomedical Initiatives (MBI) is a private, independent economic development organization dedicated to job creation and innovative healthcare throughout Massachusetts by promoting the growth of start-up biomedical companies. MBI offers support to creative entrepreneurs with sound scientific business plans. Through its MBI Incubator facilities located in Worcester, MBI lowers barriers to success for emerging companies by providing cost-effective, high quality laboratory space and support services. MBI is committed to collaborating with the academic, business and government communities to promote Massachusetts as the world leader in the life science industry.
Jumpstart	$8.2	$5.7	$10.4	JumpStart is a nationally recognized venture development organization that accelerates the progress of high potential, early-stage businesses. Through the depth of its entrepreneurial team and breadth of its high value resources, JumpStart improves client success in achieving the milestones and raising the follow-on capital necessary to create wealth. In doing so, JumpStart strives to create a more prosperous future for Northeast Ohio.

	Revenue	Expenses	Assets
25th %tile	*$6.6*	*$5.7*	*$30.0*
Median	*$16.8*	*$11.0*	*$58.4*
Average	*$73.0*	*$65.6*	*$97.9*
75th %tile	*$38.3*	*$20.4*	*$149.9*
90th %tile	*$170.1*	*$161.7*	*$216.8*
Kansas Bioscience Authority	**$37.4**	**$13.1**	**$110.4**

Competitive Percentiles

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Appendix 4 – Methodology

Methodology

- Buck matched KBA positions to jobs with similar roles and responsibilities in comparable organizations
- We collected market data from the most recently available IRS Form 990s of comparison organizations and published compensation surveys (for reference)
- Published survey sources used include:
  - Economic Research Institute, Executive Compensation Assessor (2009)
  - ECS Watson Wyatt Data Services, Top Management Compensation Report (2009/2010)
  - PRM Consulting, Management Compensation Report (2008)
  - Total Compensation Solutions, Not-for-Profit Compensation Survey (2009)
- Different data sources provide data on different elements of pay:
  - Form 990s include total cash compensation and total remuneration (total cash compensation + benefits)
  - Published survey data includes base salary and total cash compensation (base salary + annual incentives/bonuses).
- All 990 and survey data have been aged to 12/1/09 at an annual rate of 2.0% per year