

FURTHER AMENDED CONFIDENTIAL SETTLEMENT NOTICE TO CERTAIN SHAREHOLDER DEFENDANTS – SUBJECT TO FEDERAL RULE OF EVIDENCE 408

In re: Tribune Company Fraudulent Conveyance Litigation, 11-MD-2296 (RJS) (S.D.N.Y.)

Kirschner v. FitzSimons, et al., 12-CV-2652 (RJS) (S.D.N.Y.) (“FitzSimons Action”)

Deutsche Bank Trust Co. Ams., et al. v. Adaly Opportunity Fund TD Secs. Inc., et al., 11-CV-04784 and all other cases on Schedule A (together, “the Noteholder Cases”)

Niese, et al. v. Alliance Bernstein L.P., 11-CV-04538 (S.D.N.Y.) and all other cases on Schedule B (together, “the Retiree Cases”)

October 25, 2017

This communication is addressed only to counsel for certain defendants in the FitzSimons Action, the Noteholder Cases and the Retiree Cases (collectively the “Shareholder Actions”) referenced above and to certain pro se defendants (i.e., defendants that have not retained counsel). If you are represented by counsel in this matter, please deliver this communication to your counsel.

This Notice updates the Trustee’s Settlement Notice dated September 6, 2017 solely to alert defendants and their counsel that due to significant interest in the offer detailed herein, and the logistical difficulties of processing the substantial number of settlements and attendant requests, Plaintiffs have **extended the deadline** for executing all agreements pursuant to this offer from October 30, 2017 to **November 3rd, 2017**, with all payments for executed agreements due on or before **November 10th**.

Marc S. Kirschner, Litigation Trustee (“the Trustee”) and Plaintiff in the FitzSimons Action and all Plaintiffs in the Noteholder Cases and the Retiree Cases (together with the Trustee, “Plaintiffs”) hereby offer to settle **all** of the claims in the Shareholder Actions to recover payments to certain defendants in connection with the Tribune LBO (as defined below).

Mr. Kirschner was appointed to be the Litigation Trustee of the Tribune Litigation Trust by the United States Bankruptcy Court for the District of Delaware. Plaintiffs in the Retiree Cases are former Tribune employees and creditors with allowed, unpaid claims against Tribune. Plaintiffs in the Noteholder Cases are indenture trustees acting on behalf of former Tribune bondholders with allowed, unpaid claims against Tribune.

Plaintiffs are making this settlement offer for a limited time to provide defendants that received between \$50,000 and \$1,000,000 in aggregate payments from Tribune for Tribune stock in connection with the Tribune LBO (hereafter “Shareholder Payments”) an opportunity to consensually fully and finally resolve all Shareholder Actions. If you or your client (hereafter, “you”) is eligible to participate in the settlement and chooses to do so, **all** Plaintiffs will provide legal releases of all claims asserted in **all** of the Shareholder Actions and dismiss you with prejudice from all such cases in which you were or are named.

At the present time Plaintiffs' claims for Shareholder Payments have been dismissed, and are on appeal or will be appealed at the appropriate time. However, Plaintiffs believe that a ruling expected from the United States Supreme Court early next year in *Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, No. 16-784 ("*Merit Mgmt.*"), which was granted review on May 1, 2017 (*see* 137 S. Ct. 2092 (2017)), on the proper scope and application of 11 U.S.C. § 546(e), coupled with the Trustee's decision to seek to amend the FitzSimons Action to assert a constructive fraudulent conveyance claim against you based on that ruling, could legally enable some, if not all, of the Plaintiffs to pursue their claims to recover the Shareholder Payments the vast majority of the defendants received (subject to a single collective recovery).

The Plaintiffs are therefore offering to settle all claims against qualifying defendants in exchange for a single cash payment of **16% of all Shareholder Payments you received from Step One of the Tribune LBO, and 36% of all Shareholder Payments you received from Step Two of the Tribune LBO (defined below), inclusive of all interest and fees. The foregoing offer is based on settlement payments of just 10% of your Step One Shareholder Payment and 20% of your Step Two Shareholder Payment, plus 9% prejudgment interest from the dates you received the payment in 2007 (less a favorable, temporary discount on the interest).**

Summary of Litigations

Plaintiffs' claims against you arise from the leveraged buyout of Tribune Company that closed in two steps in 2007 (the "Tribune LBO"). In the Tribune LBO, Tribune transferred funds to shareholders and other parties in exchange for their shares on or about June 4, 2007 ("Step One" of the LBO) and again on or about December 20, 2007 ("Step Two" of the LBO). Tribune filed for bankruptcy protection less than one year after the Step Two transfers were made.

The FitzSimons Action was commenced by the Official Committee of Unsecured Creditors of Tribune in November 2010 on behalf of Tribune's creditors that were harmed by the LBO. The right to prosecute the FitzSimons Action has been assigned to the Tribune Litigation Trust, which filed the Fifth Amended Complaint on August 1, 2013. The FitzSimons Action is currently pending for pretrial proceedings in the United States District Court for the Southern District of New York. Count 1 of the FitzSimons Action alleges that the Shareholder Payments were intentional fraudulent conveyances under federal law because, among other things, they were made by Tribune with actual intent to hinder, delay, or defraud Tribune's creditors.

If you have been named as a defendant in Count 1, it is because various records received by the Trustee show that you received, directly or indirectly, at least \$50,000 in Shareholder Payments. You previously have been served with the complaint and/or amended complaints. A copy of the Fifth Amended Complaint can be viewed at www.tribunetrustlitigation.com under the "Documents" tab.

FitzSimons Action Status: On January 6, 2017, the District Court issued an opinion and order dismissing Count 1, which asserts an intentional fraudulent transfer claim against all shareholder defendants (the "Count One Order"). *In re Tribune Co. Fraudulent Conveyance Litig.*, No. 11-MD-2296, 2017 WL 82391 (S.D.N.Y. Jan. 6, 2017). By letter dated February 1, 2017, the Litigation Trustee indicated his intention to appeal the Count One Order, and by order dated February 23, 2017, the District Court agreed to enter a final judgment permitting the

interlocutory appeal of the Count One Order at an unspecified future time once the remaining motions to dismiss are resolved. No. 11-MD-2296 (S.D.N.Y. Feb 23, 2017) [Dkt. No. 6944].

On July 18, 2017, the Litigation Trustee sought approval from the Court to make a motion to amend the Fifth Amended Complaint to add a new Count 1-B, which would assert a *constructive* fraudulent transfer claim against the vast majority of shareholder defendants, the effect of which would be stayed pending the U.S. Supreme Court's ruling in *Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, Supreme Court Docket No. 16-784. In *Merit Mgmt.*, the Seventh Circuit Court of Appeals joined one other circuit in declining to interpret the securities safe harbor embodied in 11 U.S.C. § 546(e) to include fraudulent transfers that passed through a financial institution as a mere conduit. 830 F.3d 690 (7th Cir. 2016). The Litigation Trustee believes that if the Supreme Court affirms it will permit the prosecution of the shareholder clawback claims against the vast majority of shareholder defendants under a constructive fraud theory. In his July 18, 2017 letter the Trustee also asked the Court to defer entering a final judgment in respect of the Count One Order. On August 24, 2017, Judge Sullivan issued an order denying without prejudice the Trustee's request to amend his operative complaint to include a constructive fraudulent conveyance claim. In his order, Judge Sullivan stated that "[i]f, and when, the Supreme Court affirms the Seventh Circuit in *FTI Consulting*, the Trustee would have a strong argument in support of amending his complaint to include a constructive fraudulent conveyance claim." No. 11-MD-2296 [Dkt. No. 7019]. On August 31, 2017, the Supreme Court set *Merit Mgmt. Grp., LP v. FTI Consulting, Inc.* for oral argument on November 6, 2017. See Supreme Court Docket No. 16-784, available at <https://www.supremecourt.gov>.

Noteholder/Retiree Cases Status: Many of the defendants named in the FitzSimons Action were also sued in the Noteholder Cases (see schedule A) or Retiree Cases (see schedule B); in addition the Noteholder Cases included claims against a defendant class of former Tribune shareholders. On September 23, 2013, the District Court issued an opinion and order dismissing the Noteholder Cases and the Retiree Cases for lack of standing. *In re Tribune Co. Fraudulent Conveyance Litig.*, 499 B.R. 310 (S.D.N.Y. 2013), *aff'd*, 818 F.3d 98 (2d Cir. 2016), *pet. for cert. filed sub nom. Deutsche Bank Trust Co. Ams. v. Robert R. McCormick Found.*, No. 16-317 (U.S. Sept. 9, 2016). That order was subsequently affirmed on alternative grounds by the U.S. Court of Appeals for the Second Circuit on March 29, 2016. The Noteholder Plaintiffs petitioned the U.S. Supreme Court for a writ of certiorari, and such petition remains pending. That petition raises, among other bases for reversal, the same Section 546(e) safe harbor interpretation at issue in *Merit Mgmt.*, as well as the state-law preemption ruling of the Second Circuit.

Details of Settlement

- 1. Eligibility:** You are eligible to participate in the settlement if you received **more than \$50,000 and less than \$1,000,000 in aggregate Shareholder Payments** in Step One and Step Two of the Tribune LBO, and are not named in any count of the Fifth Amended Complaint in the FitzSimons Action other than Count 1.
- 2. Settlement Terms:** All Plaintiffs will settle all claims asserted against you in the Shareholder Actions in return for **payment of a total of 16% of the amount of**

Shareholder Payments you received in Step One of the Tribune LBO (if any), plus 36% of the amount of Shareholder Payments you received in Step Two of the Tribune LBO (if any). This includes all claims to recover all Shareholder Payments, and all claims for prejudgment interest, fees and costs. In return for payment of this amount, you will be dismissed with prejudice from the above litigations and will receive full releases of all claims related to your Shareholder Payments by the Trustee Plaintiff, the Noteholder Plaintiffs, and the Retiree Plaintiffs.

For example, if you received a total of \$170,000 in Shareholder Payments between Step One and Step Two (split evenly), in order to accept this Settlement and be dismissed you would need to make a payment of \$44,200 (16% x \$85,000 + 36% x \$85,000).

Should you elect not to settle, Plaintiffs will continue to prosecute the Shareholder Actions against you to the fullest extent of the law, including through the proposed amendment and any pending or future appeals and will seek judgment against you for the full amount of Shareholder Payments you received at Step One and Step Two, plus prejudgment interest (which would continue to accrue), costs and fees from the date of each payment through the date of judgment.

3. **Deadline:** This offer expires on November 3, 2017, three days prior to oral argument in the *Merit Mgmt.* Supreme Court appeal, which is scheduled to take place on November 6, 2017. See Supreme Court Docket No. 16-784, available at <https://www.supremecourt.gov>. All payments must be received on or before November 10, 2017.
4. **To accept the settlement offer:** Please contact Plaintiffs' settlement administrator, Kurtzman Carson Consultants, at (866) 927-7079 and we will send you a form settlement agreement for execution. When you call, please have available records or other information as to the exact amount of Shareholder Payments you received at both steps of the LBO. If you reach a voicemail, please leave your contact information, and someone will contact you promptly. The form settlement agreement can also be obtained on the Litigation Trust's website: www.tribunetrustlitigation.com.

Akin Gump Strauss Hauer & Feld LLP
Friedman Kaplan Seiler & Adelman LLP
*Counsel for the Litigation Trustee and the
Plaintiffs in the Noteholder Cases*

Questions and Answers

How do I know if I or my client is eligible to participate in the settlement?

You are eligible to participate in the settlement if you received more than \$50,000 and less than \$1,000,000 in total Shareholder Payments in Step One and Step Two combined. Eligibility is based on the Shareholder Payments received, not on the profit made on the sale of the Tribune shares compared to what the shares were purchased for.

Can I or my client participate in the settlement if I or my client received a Shareholder Payment in Step One or in Step Two, but not in both steps?

Yes, you may participate so long as the total amount you received in Step One and/or Step Two is more than \$50,000 and less than \$1,000,000. You will have to represent in the actual Settlement Agreement the actual amount of Shareholder Payments you received.

How much is the settlement amount?

The settlement amount is 16% of the Shareholder Payments you received in Step One, plus 36% of the Shareholder Payments you received in Step Two.

How does this settlement offer compare to Plaintiff's prior settlement offer?

This settlement offer is significantly more favorable to defendants than was Plaintiffs' prior global settlement offer, which was not limited by Shareholder Payment size, and is similar to the prior offer made exclusively to defendants that received between \$50,000 and \$100,000 in Shareholder Payments. To date more than 200 defendants have accepted the Plaintiffs' prior offers and have been released.

Are the terms of the settlement offer negotiable?

No. The terms of the settlement offer, as specified in the settlement agreement and summarized in this notice, are not negotiable.

What else do I need to do to accept and enter the settlement?

You may contact Plaintiffs' settlement administrator, Kurtzman Carson Consultants ("KCC"), at (866) 927-7079 if you wish to accept the settlement offer or for any other questions you have. You will be sent an actual written settlement agreement containing the terms of the settlement, such as the amount of the necessary payment, mutual releases, and provisions requiring Plaintiffs to dismiss the litigations against you. The settlement will not be effective until all parties have signed and you have made the required settlement payment.

How are Shareholder Payments made jointly to two or more defendants, or for the benefit of two or more persons, going to be treated?

Eligibility to participate in this settlement is based on the Shareholder Payments received, *not* on the number of defendants or persons that may have jointly received or otherwise shared in such

Shareholder Payments. For example, a husband and wife who owned a joint securities account, or a trust with three siblings as beneficiaries, that received Shareholder Payments totaling \$1,500,000, would not be eligible to participate in the Settlement by dividing the total Shareholder Payments into “per person” amounts.

Likewise, the settlement payment amounts are based on the Shareholder Payments received, not the number of defendants. A husband and wife that jointly received \$150,000 in total Shareholder Payments would only need to make one settlement payment between them, not one payment each.

How long will the settlement offer remain open?

You must accept the settlement offer before November 3rd, three days before the oral argument occurs in *Merit Mgmt.* before the Supreme Court in order to participate, and make the required settlement payment on or before November 10th, 2017.

The dollar amount mentioned in the summons I or my client received included only some of the LBO payments I or my client received. Do I need to take the other payments into consideration in connection with the settlement?

Yes. You will need to disclose, and calculate the settlement amount on, all the Shareholder Payments you received in connection with Step One and Step Two of the LBO, whether or not they are mentioned in the summons or Fifth Amended Complaint. If the total amount of the actual payments is \$1,000,000 or more, you are not eligible to participate in this offer.

The dollar amount mentioned in the summons I or my client received is incorrect, or stated simply as “\$50,000.” How does this affect the settlement offer?

If the number in the summons is incorrect, you will be given an opportunity to submit information showing the correct amount, and the settlement amount will be calculated on the actual amount of Shareholder Payments (assuming it is more than \$50,000 and less than \$1,000,000). If the number is stated simply as \$50,000, you will need to submit information showing the actual amount (assuming it is more than \$50,000 and less than \$1,000,000) to participate in the settlement.

What happens if I or my client does not agree to participate in the settlement?

You will remain a defendant in the litigations in which you are named unless and until those actions are finally resolved, subject to whatever defenses and responses you may have. If one or more of the Plaintiffs is ultimately successful, they will seek judgment against you for the full amount of all Shareholder Payments at Step One and Step Two made to you, plus prejudgment interest running from the date of each payment and through the date of judgment.

If I do not have an attorney, should I hire one?

You do not need an attorney to accept this offer. However, Plaintiffs encourage all defendants to consult with an attorney about this lawsuit and settlement offer. You can seek further information about obtaining possible legal representation at www.tribune-defendants.com.

Notice to Tribune Retiree Claimants

Pursuant to the *Fourth Amended Joint Plan of Reorganization for Tribune Company and Its Subsidiaries Proposed by the Debtors, the Official Committee of Unsecured Creditors, Oaktree Capital Management, L.P., Angelo, Gordon & Co., L.P., and JPMorgan Chase Bank N.A.* (the “Plan”), certain Tribune Retiree Claimants or other Holders of Claims arising from Non-Qualified Former Employee Benefit Plans (as such terms are defined in the Plan) are treated as Released Parties (Plan §§ 1.1.186 and 1.1.187) and have received partial or complete releases of claims asserted by the Litigation Trust. If you are the beneficiary of such a release, this settlement offer may not pertain to you. It is recommended that you ask counsel whether this settlement offer pertains to you.

1. Pursuant to §§ 11.2.1 and 11.2.2 of the Plan, the Litigation Trust has released the first \$100,000 of claims which have been or could have been asserted by the Litigation Trust against Retirees treated as Released Parties. Such Retirees:
 - Asserted claims against Tribune based upon unpaid benefits under one or more of Tribune’s Non-Qualified Former Employee Benefit Plans referred to as the Deferred Compensation Plan, the Excess Pension Plan, the Supplemental Executive Retirement Plan, and the Supplemental 401(k) Plan, as well as various individualized retirement agreements; and
 - Elected treatment under Plan §§ 3.2.6(c) (i), (ii) (iii) or (iv) in Item 4C (or failed to make an election) on the supplemental election ballot circulated in connection with the Plan. To the extent that you elected treatment under Item 4C or failed to make an election, you would have received, among other things, a cash or other distribution in the amount of 32.73% of your allowed claim and a right to a pro rata distribution from the Litigation Trust on account of your Class 1F Litigation Trust Interest.

2. Pursuant to the Plan, the Litigation Trust has released all claims which have been or could have been asserted by the Litigation Trust against certain Retirees who:
 - Asserted claims against Tribune based upon unpaid benefits under one or more of Tribune’s Non-Qualified Former Employee Benefit Plans referred to as the Deferred Compensation Plan, the Excess Pension Plan, the Supplemental Executive Retirement Plan, and the Supplemental 401(k) Plan, as well as various individualized retirement agreements; and
 - Elected treatment under Item 4A or 4B on the supplemental election ballot circulated in connection with the Plan. To the extent that you elected treatment under Item 4A or 4B, you would have received, among other things, a cash or other distribution in the amount of 35.18% of your allowed claim, but ***no*** right to a pro rata distribution from the Litigation Trust.

Schedule A

Case Number	Caption
11-cv-04522-RJS	Deutsche Bank Trust Company Americas v. Abu Dhabi Investment Authority
11-cv-04784-RJS	Deutsche Bank Trust Company Americas v. Adaly Opportunity Fund
11-cv-04900-RJS	Deutsche Bank Trust Company Americas v. Cantor Fitzgerald & Co.
11-cv-05136-RJS	Deutsche Bank Trust Company Americas v. CIBC World Markets Corp.
11-cv-09319-RJS	Deutsche Bank Trust Company Americas v. Blackrock Institutional Trust Company, N.A.
11-cv-09406-RJS	Deutsche Bank Trust Company Americas v. Sumitomo Trust & Banking Co. (U.S.A.)
11-cv-09407-RJS	Deutsche Bank Trust Company Americas v. Merrill Lynch Trust Company
11-cv-09408-RJS	Deutsche Bank Trust Company Americas v. Eaton Vance Multi Cap Growth Portfolio
11-cv-09409-RJS	Deutsche Bank Trust Company Americas v. Paniagua
11-cv-09410-RJS	Deutsche Bank Trust Company Americas v. King
11-cv-09510-RJS	Deutsche Bank Trust Company Americas v. Anderson
11-cv-09511-RJS	Deutsche Bank Trust Company Americas v. The Burroughs Wellcome Fund
11-cv-09512-RJS	Deutsche Bank Trust Company Americas v. Aqua America-Gabelli Asset Mgt.
11-cv-09514-RJS	Deutsche Bank Trust Company Americas v. Associated Bank Green Bay, NA
11-cv-09515-RJS	Deutsche Bank Trust Company Americas v. Mazur
11-cv-09568-RJS	Deutsche Bank Trust Company Americas v. Employees Retirement Fund of the City of Dallas
11-cv-09569-RJS	Deutsche Bank Trust Company Americas v. Bank of America N.A. / GWIM Trust Operations
11-cv-09570-RJS	Deutsche Bank Trust Company Americas v. Long
11-cv-09571-RJS	Deutsche Bank Trust Company Americas v. Ader
11-cv-09572-RJS	Deutsche Bank Trust Company Americas v. First Republic Bank
11-cv-09581-RJS	Deutsche Bank Trust Company Americas v. Robert Dishon Family Trust
11-cv-09582-RJS	Deutsche Bank Trust Company Americas v. 1st Source Bank
11-cv-09583-RJS	Deutsche Bank Trust Company Americas v. Sirius International Insurance Corporation
11-cv-09584-RJS	Deutsche Bank Trust Company Americas v. Aetna, Inc.
11-cv-09585-RJS	Deutsche Bank Trust Company Americas v. Wells Fargo Bank, N.A
11-cv-09586-RJS	Deutsche Bank Trust Company Americas v. Sowood Alpha Fund LP
11-cv-09587-RJS	Deutsche Bank Trust Company Americas v. RBS Securities Inc.
11-cv-09588-RJS	Deutsche Bank Trust Company Americas v. Automotive Machinists Pension Trust Fund
11-cv-09589-RJS	Deutsche Bank Trust Company Americas v. Huntington National Bank
11-cv-09590-RJS	Deutsche Bank Trust Company Americas v. Ameriprise Trust Co.
11-cv-09591-RJS	Deutsche Bank Trust Company Americas v. Goodrich Corp MAS TR QUAL EMPL BEN
11-cv-09592-RJS	Deutsche Bank Trust Company Americas v. American Electric Power
11-cv-09593-RJS	Deutsche Bank Trust Company Americas v. AG Edwards & Sons
11-cv-09594-RJS	Deutsche Bank Trust Company Americas v. Verizon Investment Management Corporation
11-cv-09595-RJS	Deutsche Bank Trust Company Americas v. Alliance Capital Mgmt LLC
11-cv-09596-RJS	Deutsche Bank Trust Company Americas v. Wells Fargo Investments, LLC
11-cv-09597-RJS	Deutsche Bank Trust Company Americas v. ING Trust Equity Inc. Port
11-cv-09598-RJS	Deutsche Bank Trust Company Americas v. Ametek Inc Employees Master Retirement Trust
11-cv-09599-RJS	Deutsche Bank Trust Company Americas v. Pandora Select Partners LP
11-cv-09600-RJS	Deutsche Bank Trust Company Americas v. U.S. Bank, N.A.
12-cv-00061-RJS	Deutsche Bank Trust Company Americas v. Waterman Broadcasting Corporation
12-cv-00062-RJS	Deutsche Bank Trust Company Americas v. National Electrical Benefit Fund
12-cv-00063-RJS	Deutsche Bank Trust Company Americas v. McGurn
12-cv-00064-RJS	Deutsche Bank Trust Company Americas v. Ohlson Enterprises
12-cv-00065-RJS	Deutsche Bank Trust Company Americas v. 1994 Alicia P. Guggenheim
12-cv-00549-RJS	Deutsche Bank Trust Company Americas v. Fushimi
12-cv-00550-RJS	Deutsche Bank Trust Company Americas v. Oppenheimer Main Street Select Fund
12-cv-00552-RJS	Deutsche Bank Trust Company Americas v. AIG Life Insurance Company

Schedule B

Case Number	Caption
11-cv-04538-RJS	William A. Niese v. Alliance Bernstein L.P.
12-cv-00551-RJS	William A. Niese v. A.G. Edwards Inc.
12-cv-00554-RJS	William A. Niese v. Chandler Trust No. 1
12-cv-00555-RJS	William A. Niese v. ABN AMRO Clearing Chicago LLC